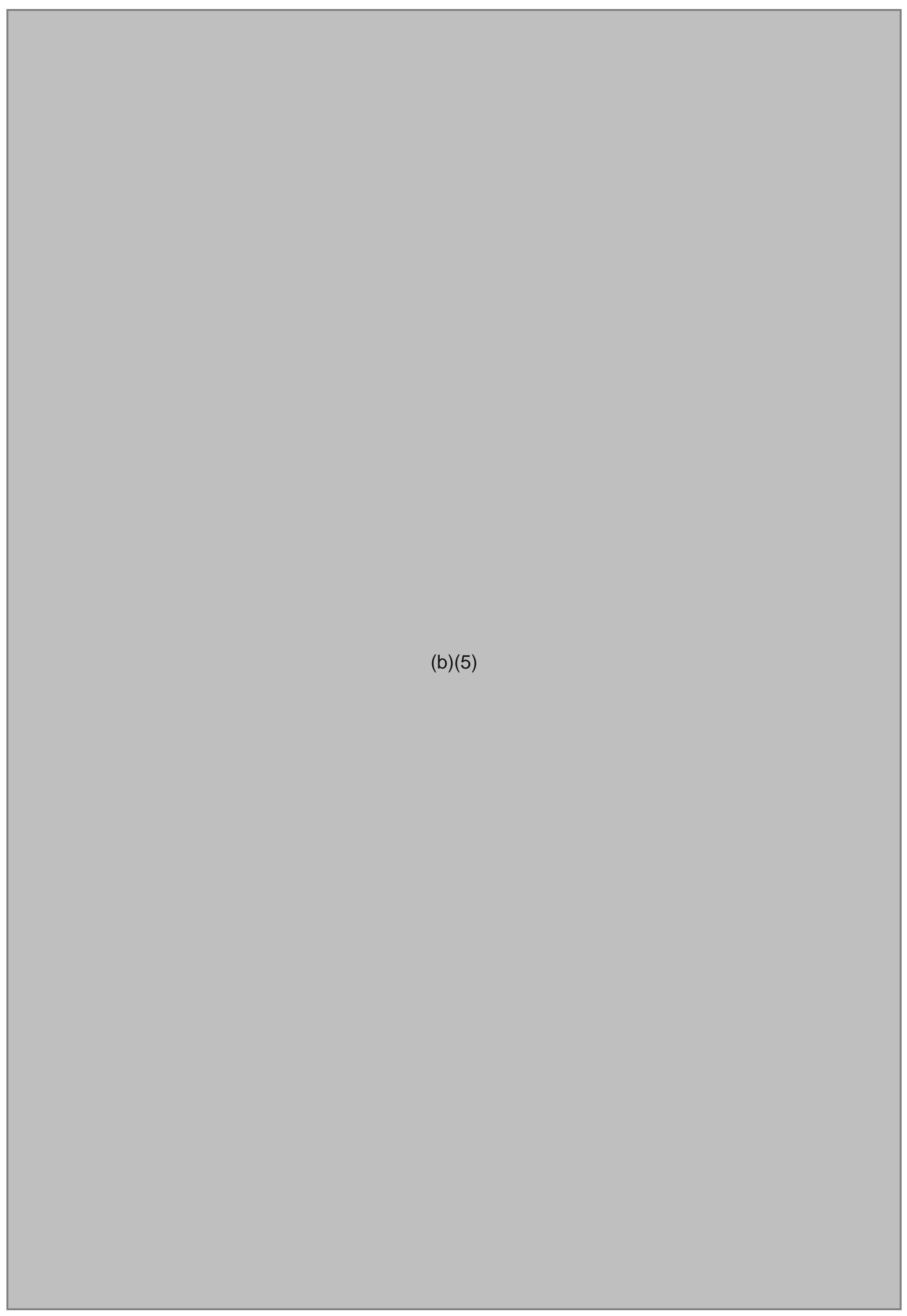
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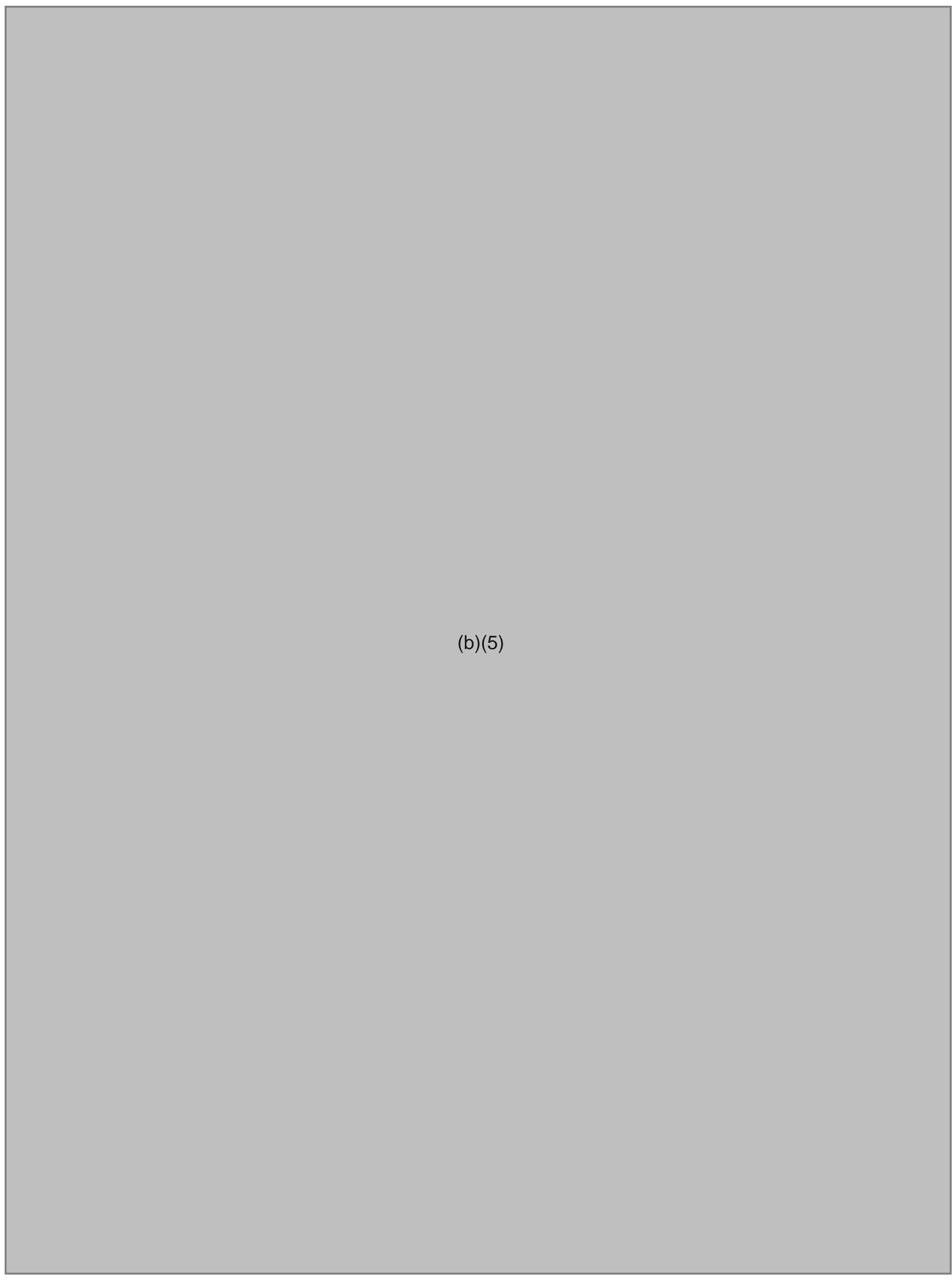
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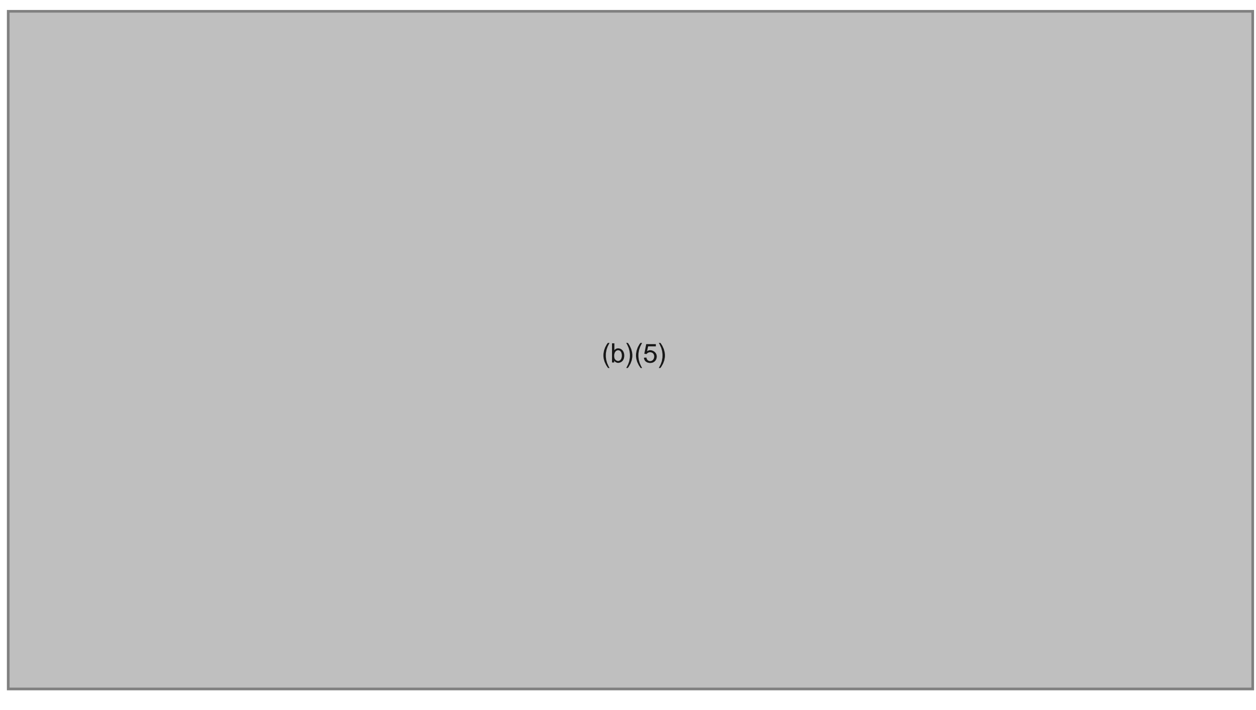
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Cc:
Subject: CAT open questions 1
Date: Wednesday, November 12, 2014 12:59:07 PM
Attachments: CAT open questions 1.docx

Here's my compilation of work in DC right now on the open questions you've passed back. About three are still waiting for numbers either from ICE or ORR; I don't think we have anything outstanding with CBP left but let me know if there's anything else you need (b)(5)
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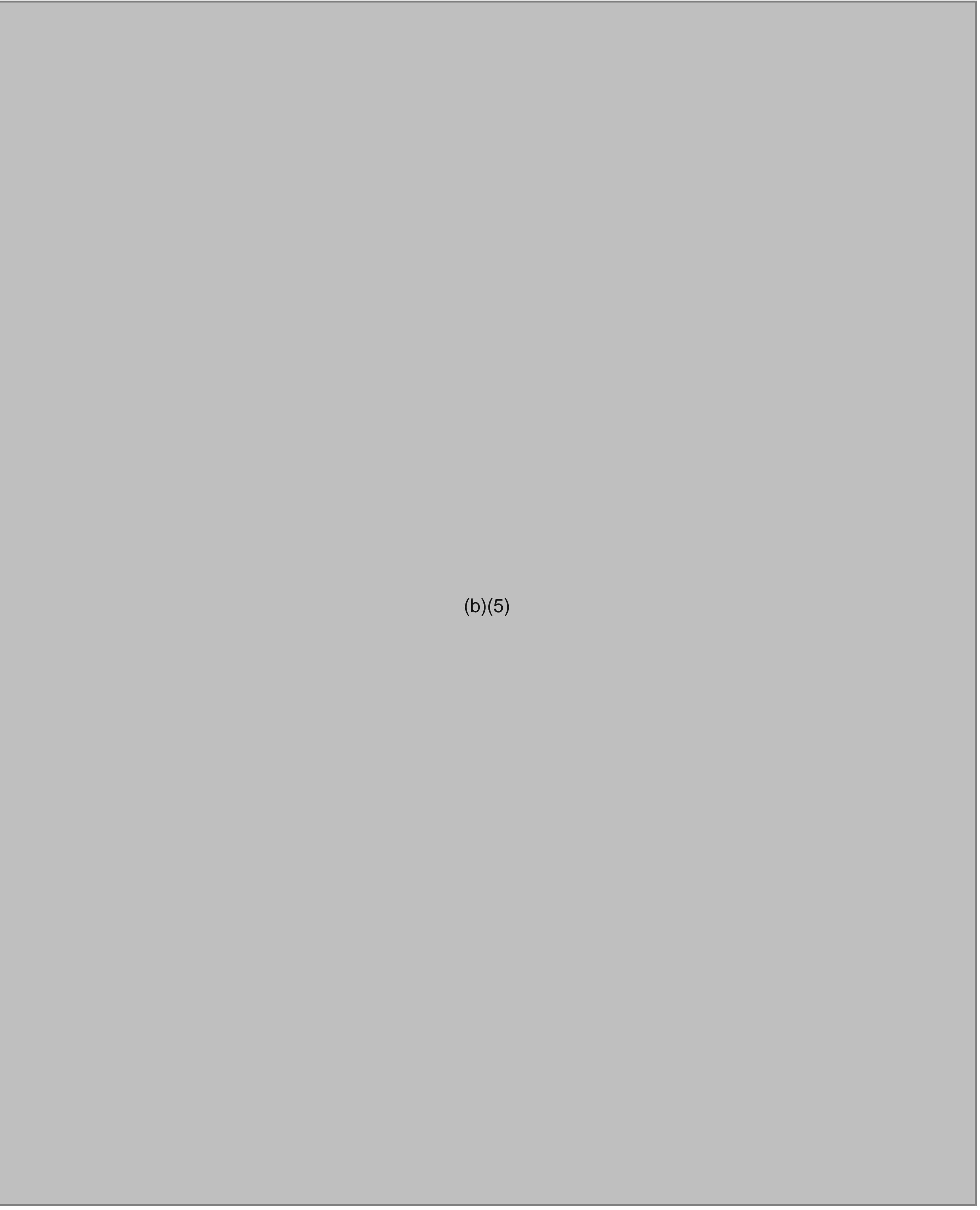

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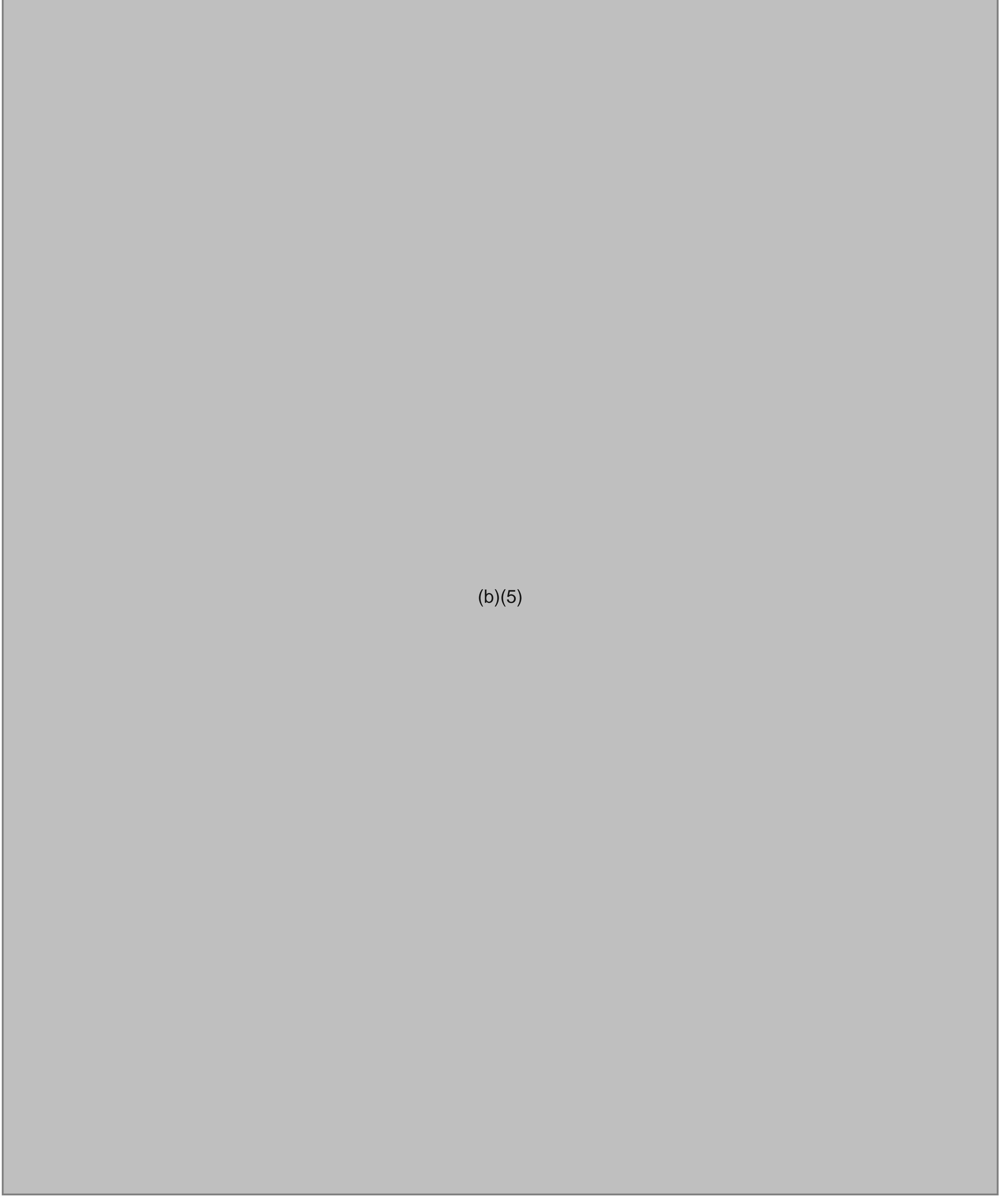

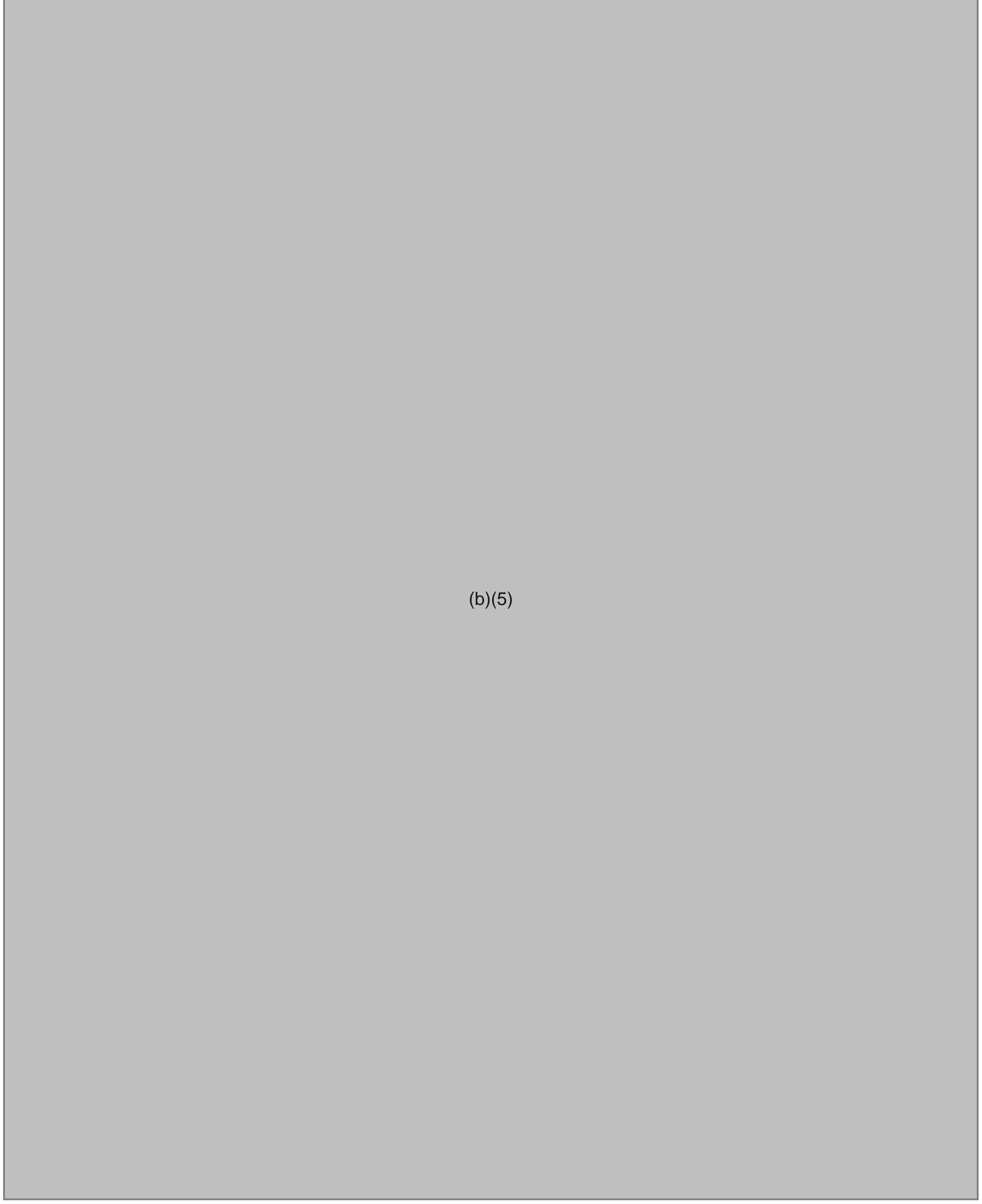
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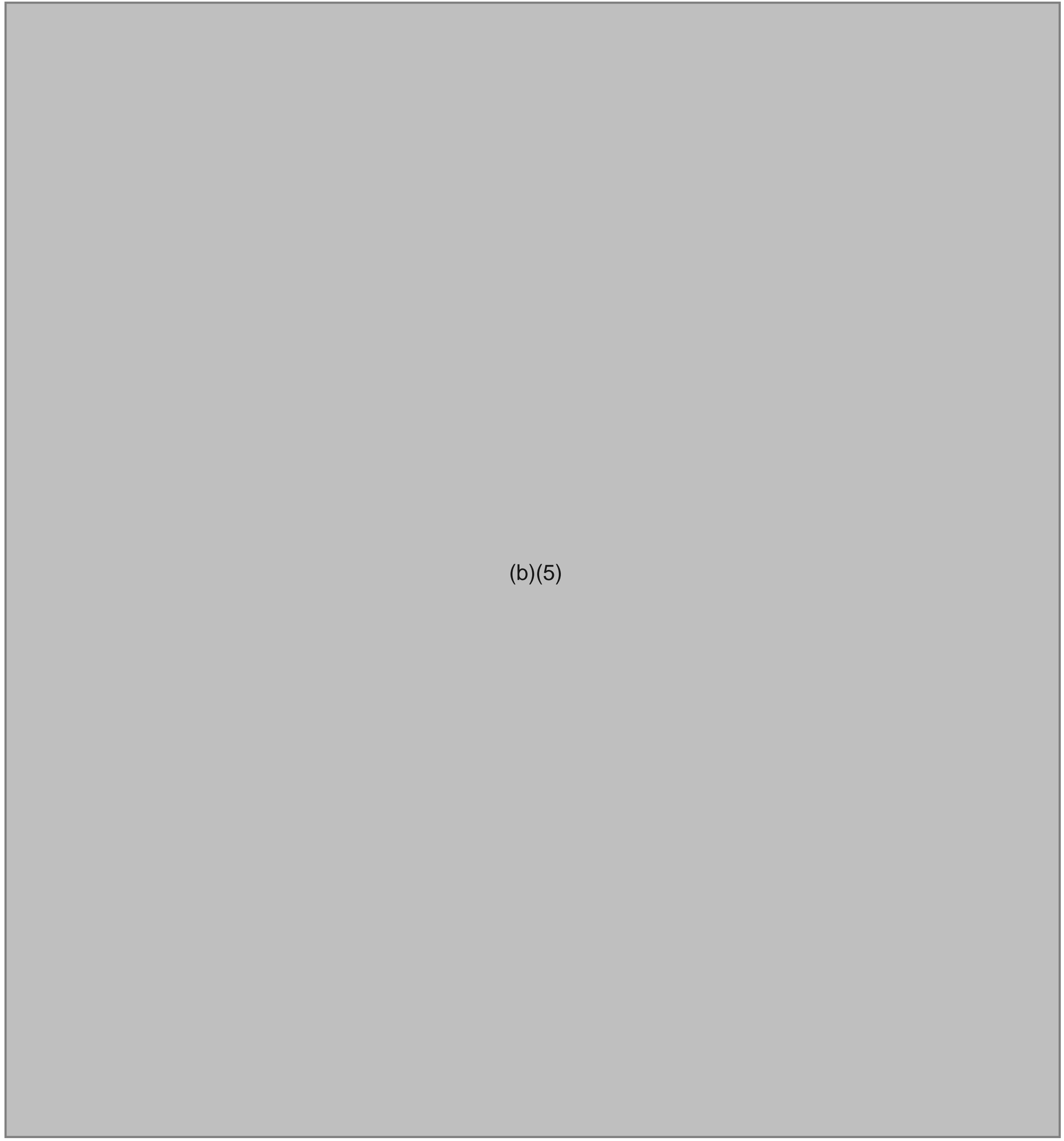

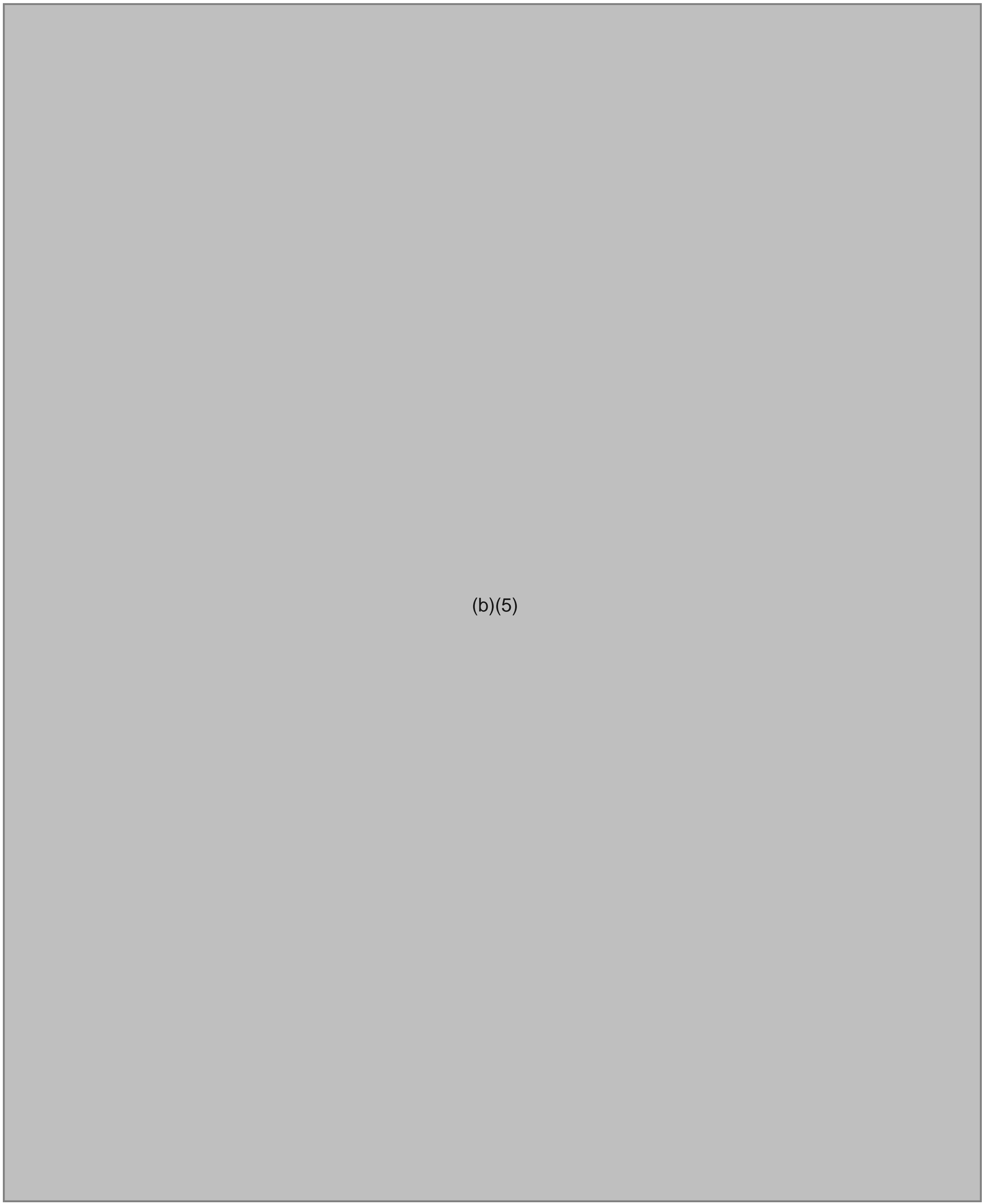
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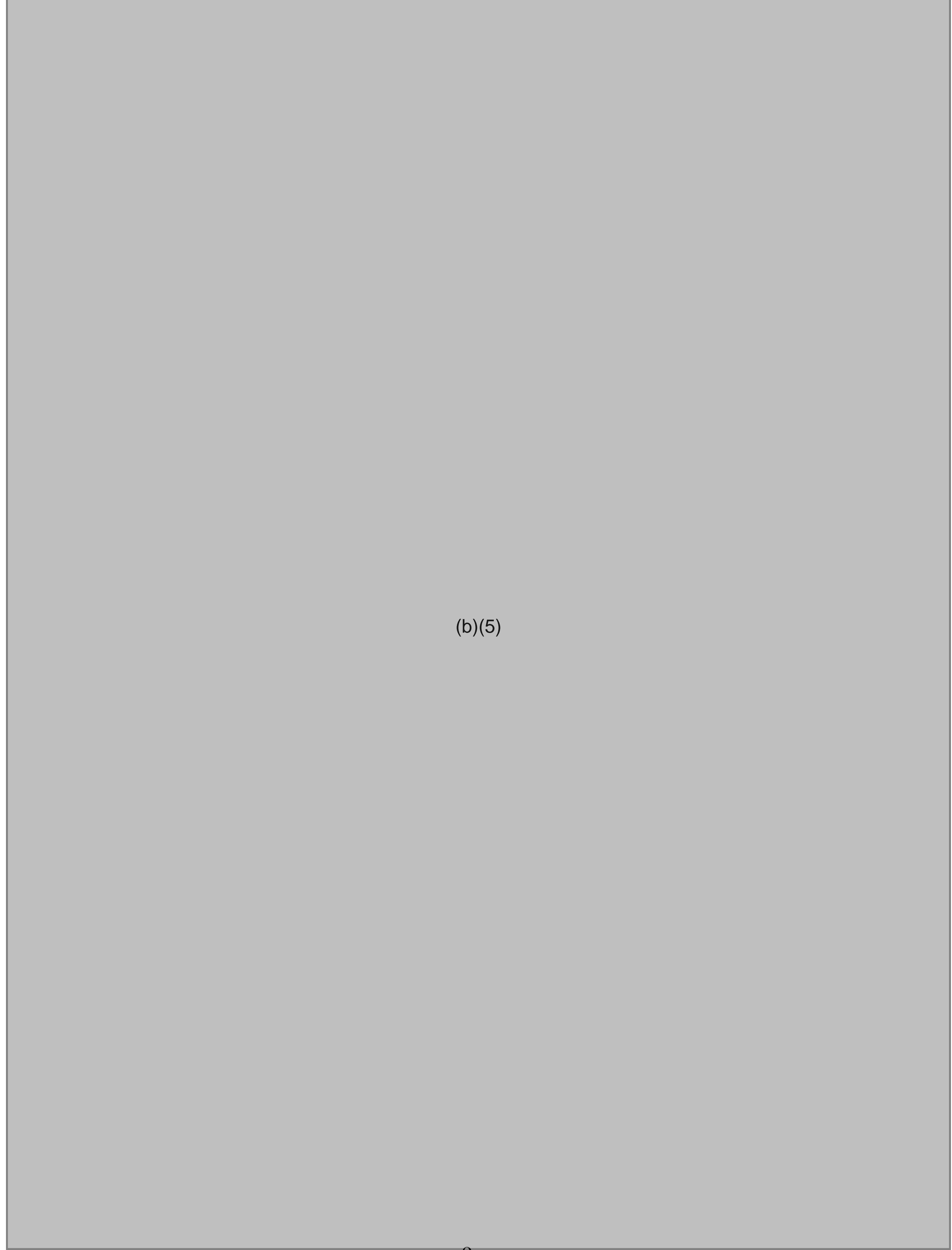
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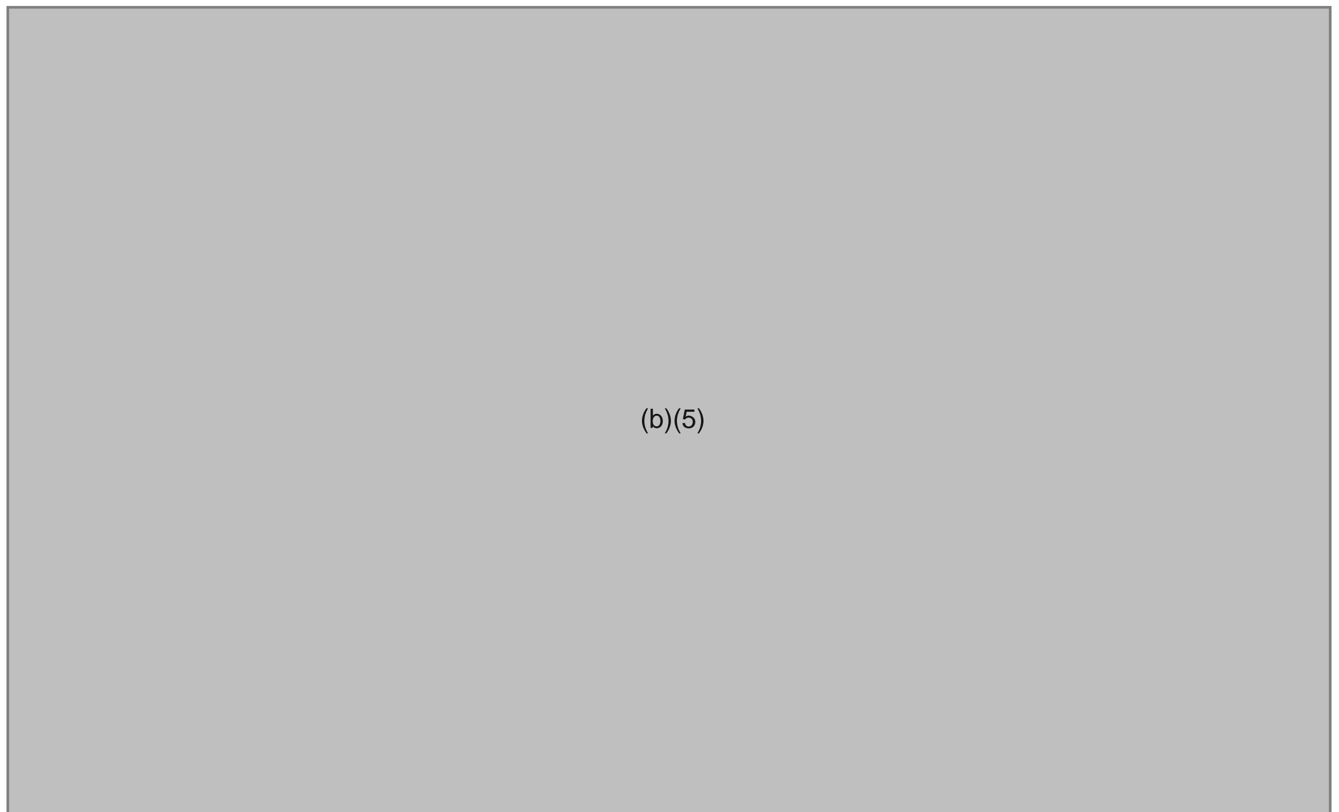

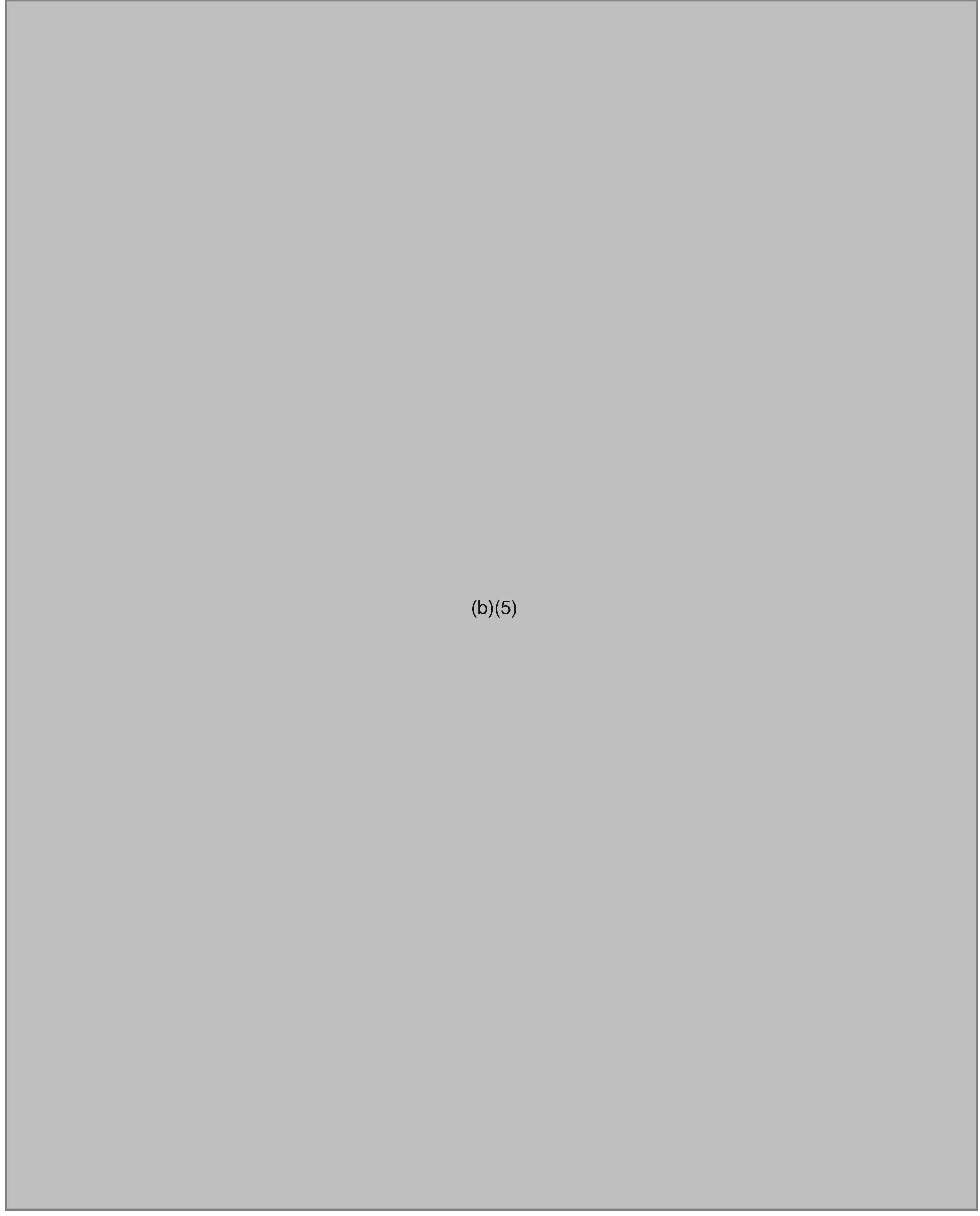
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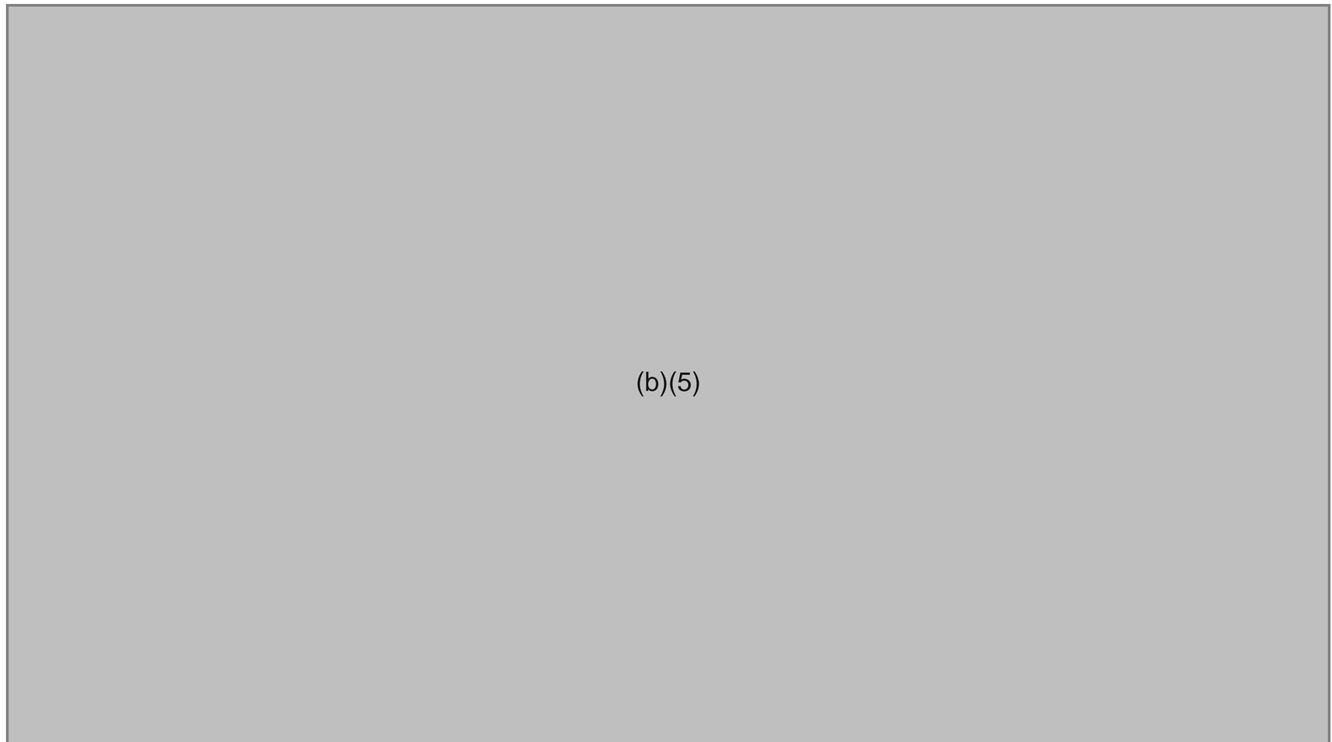

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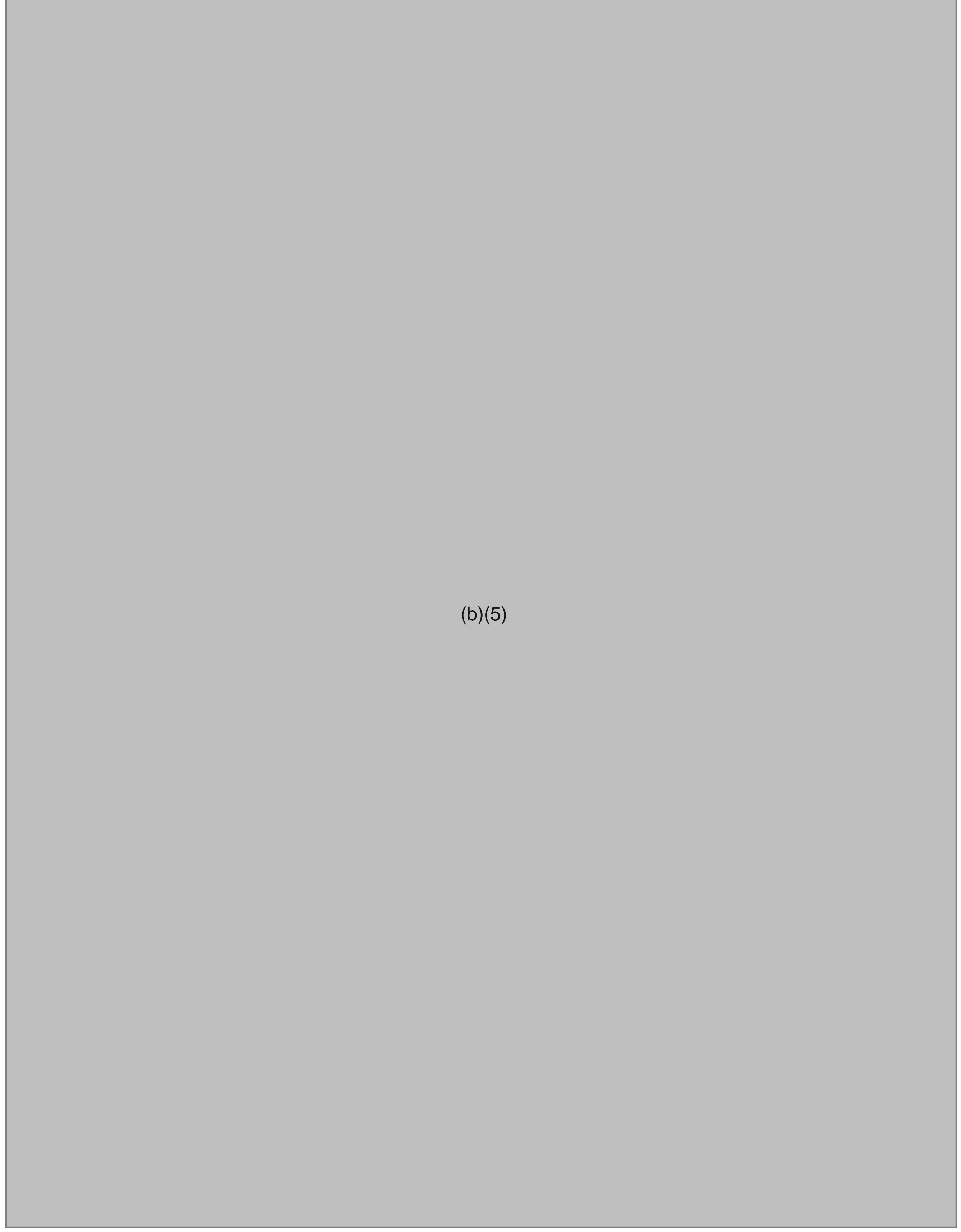
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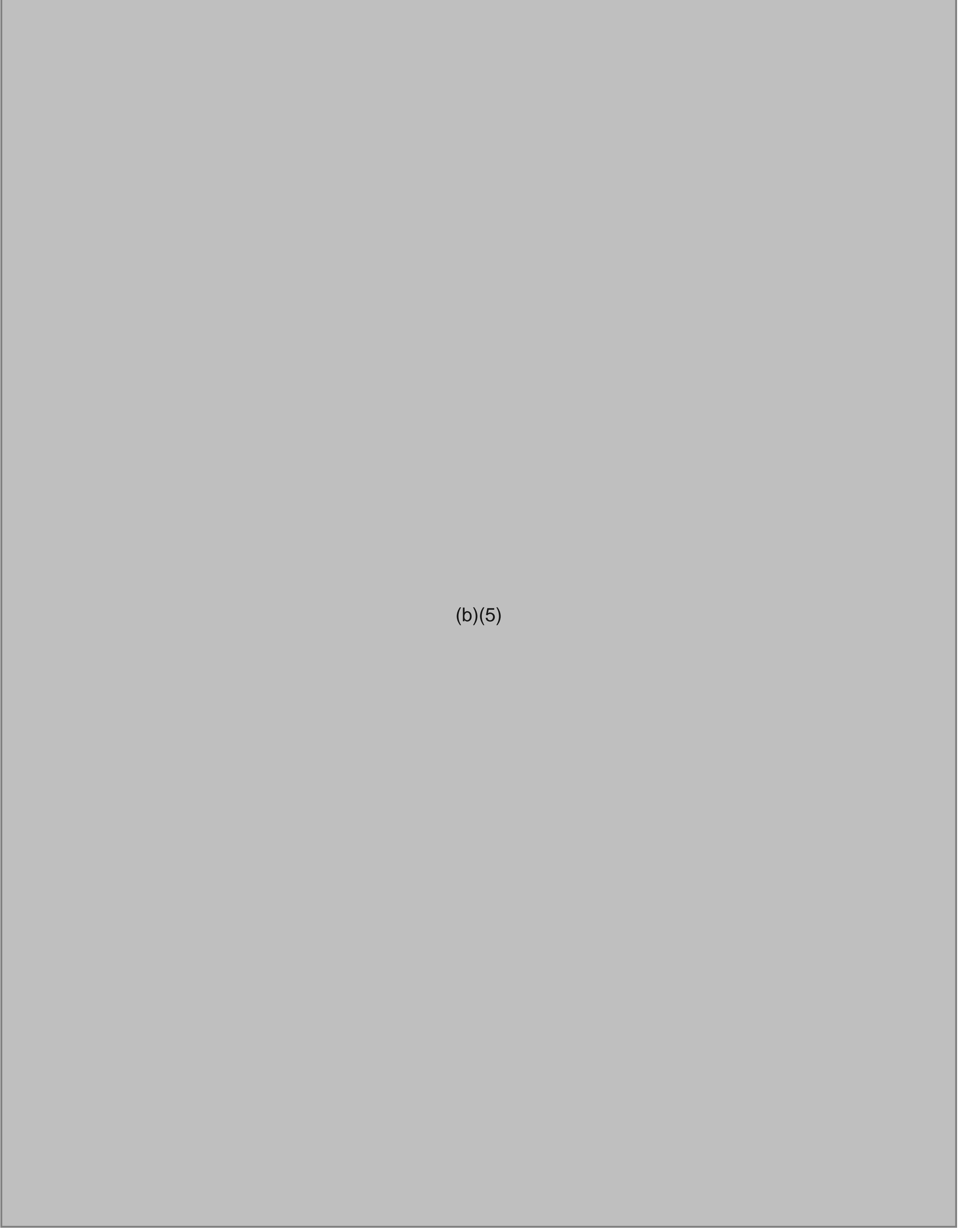
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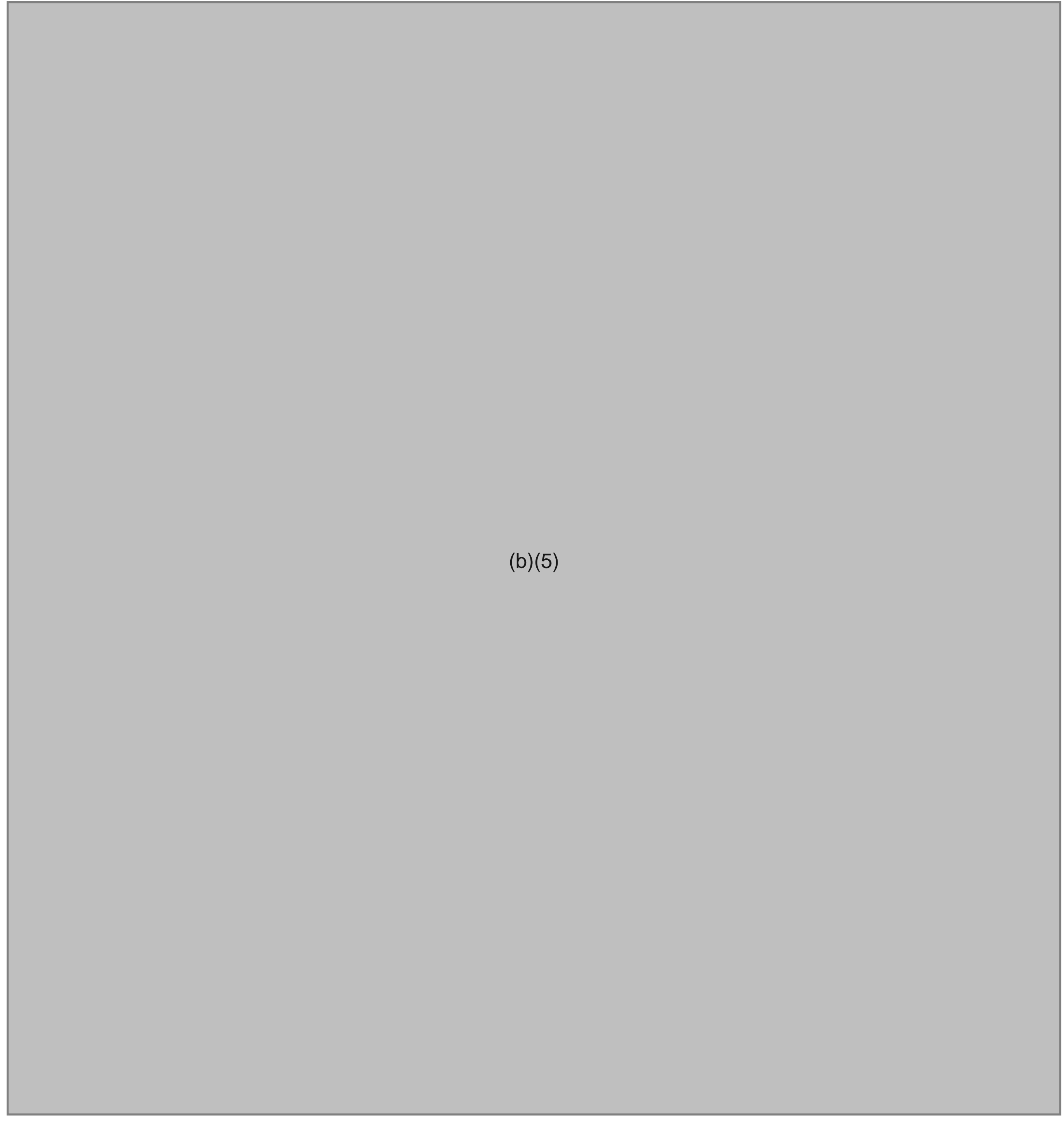

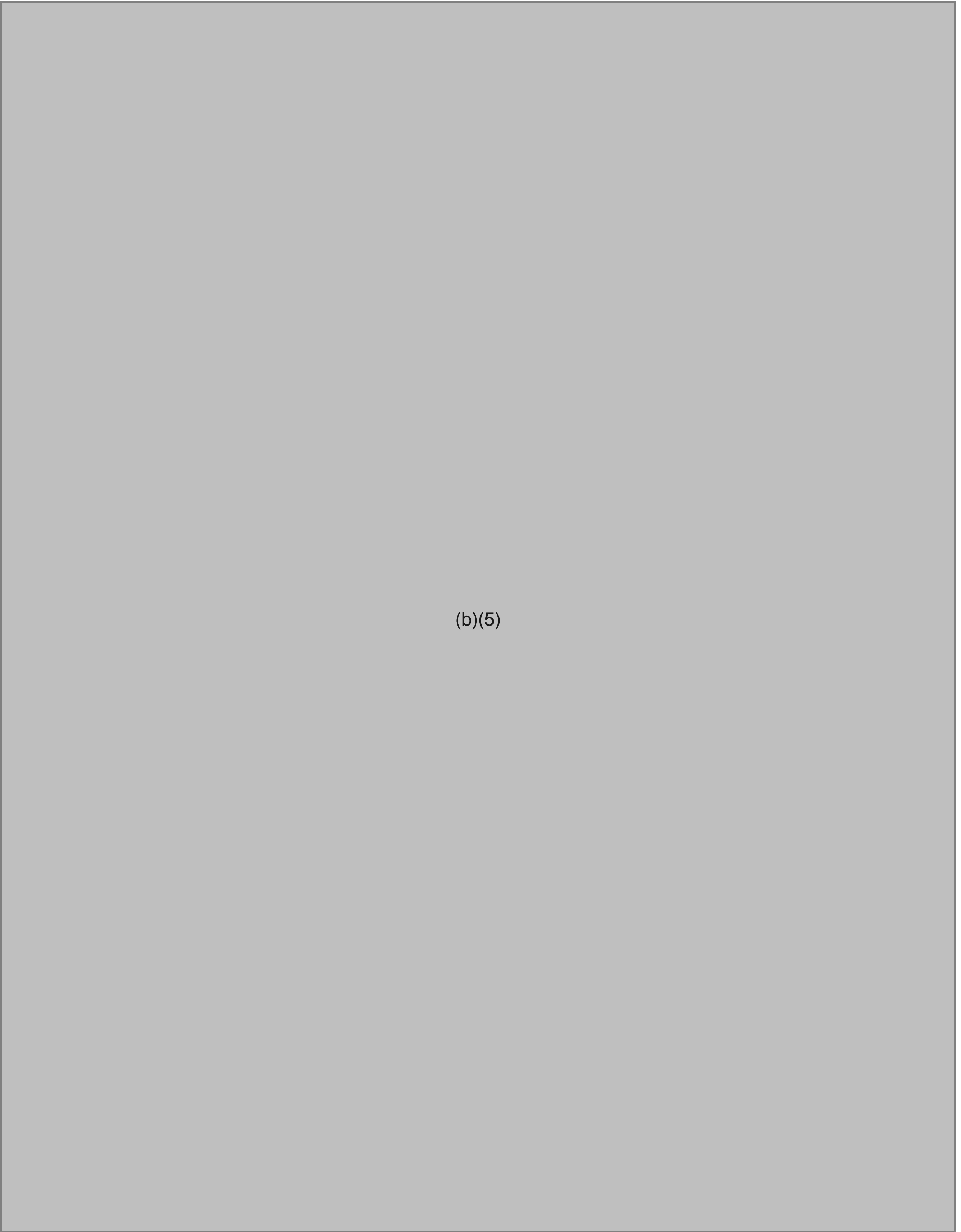
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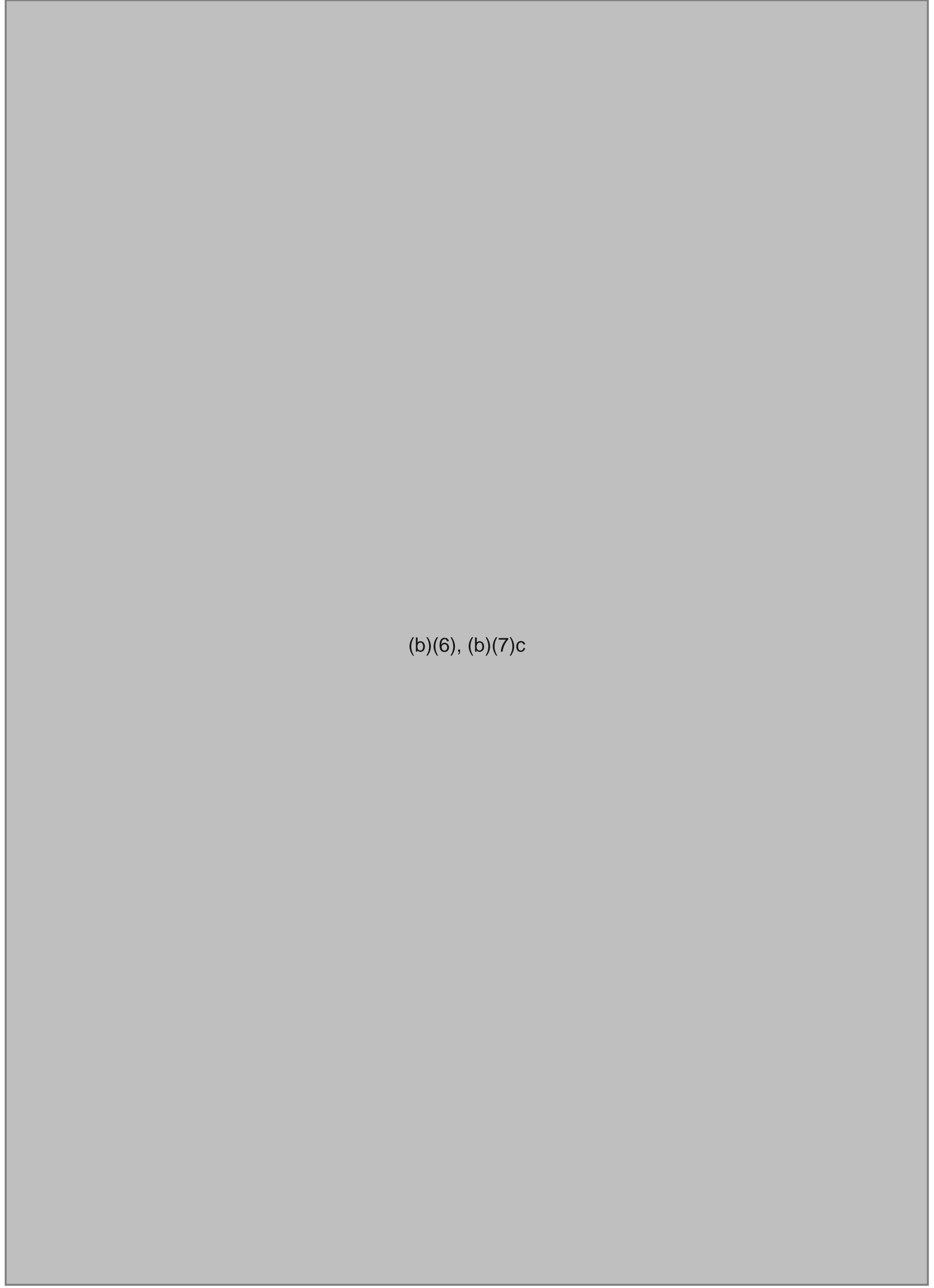
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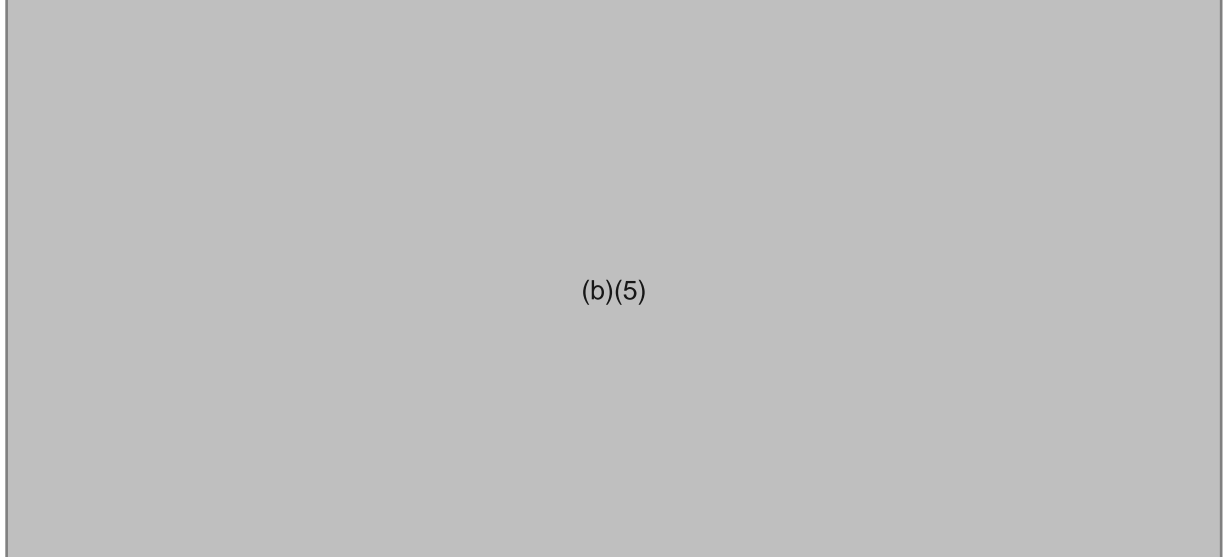

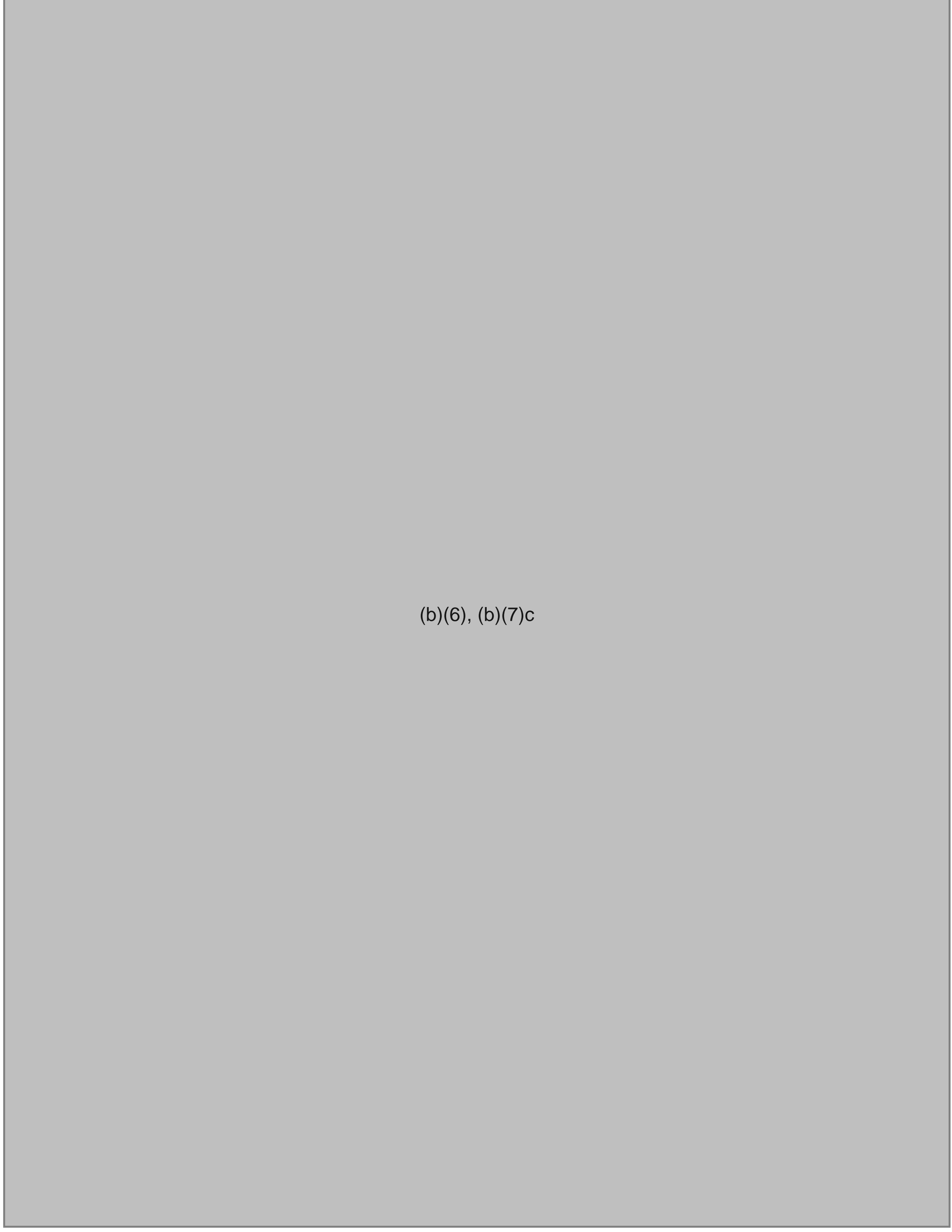
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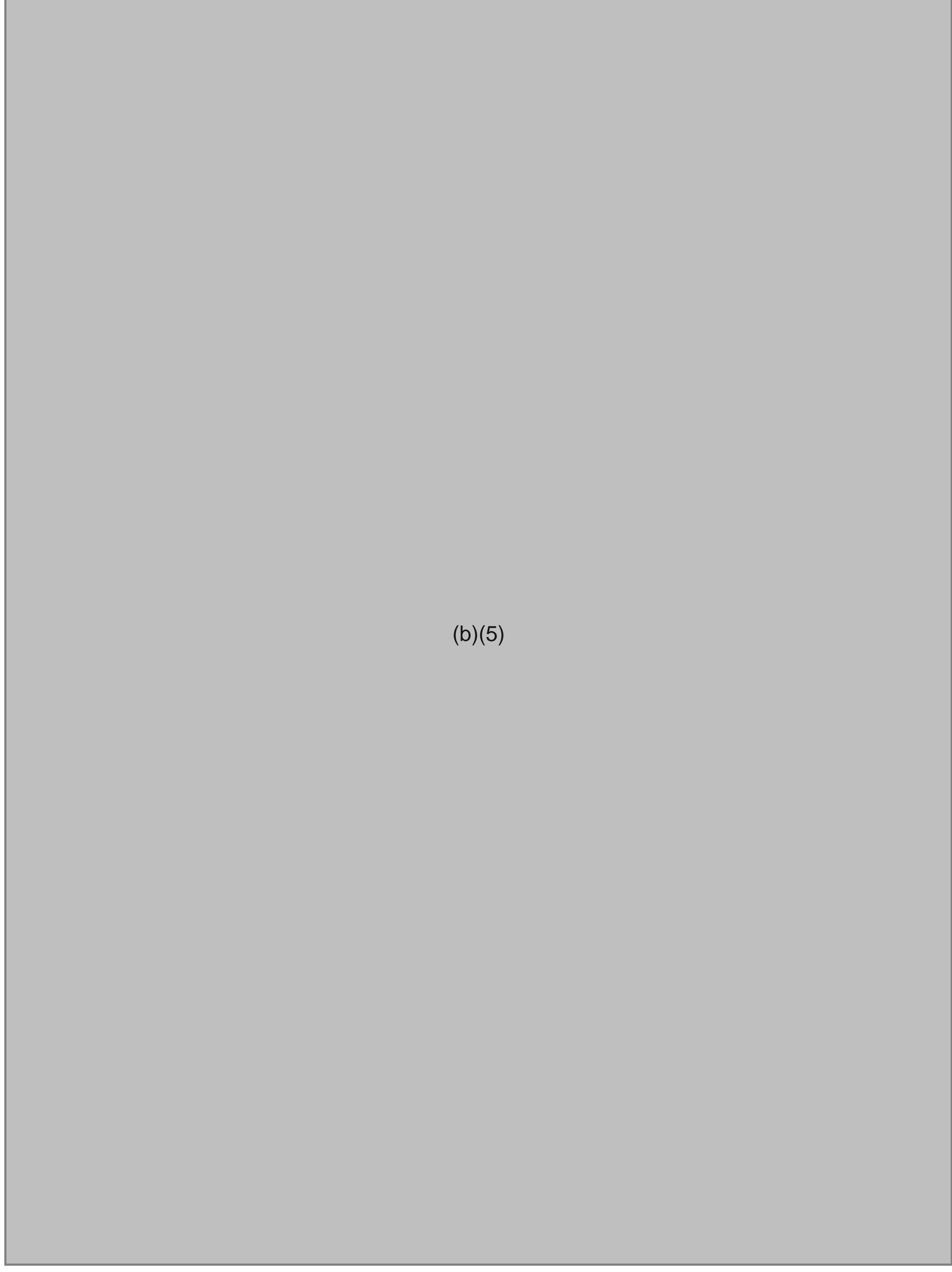
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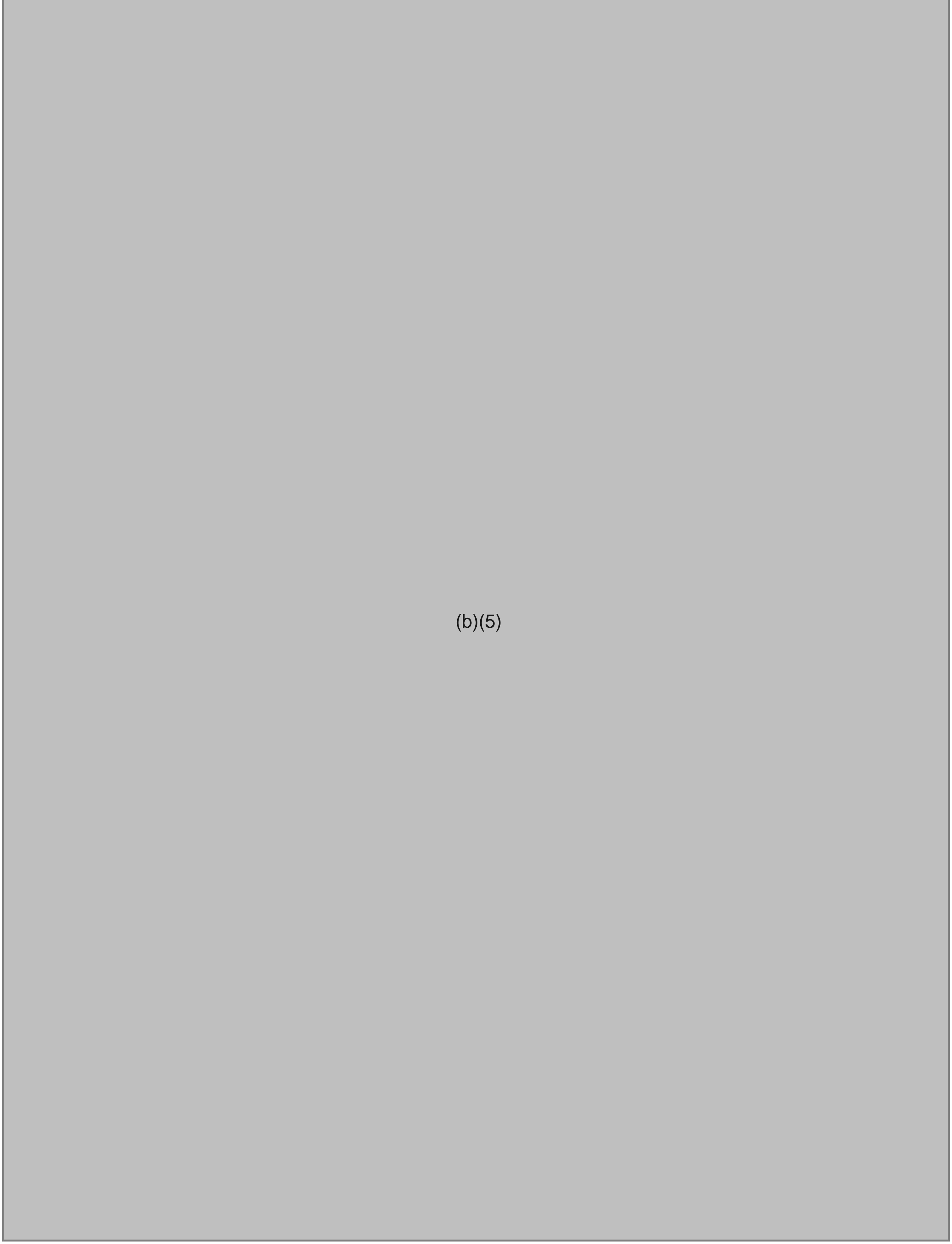
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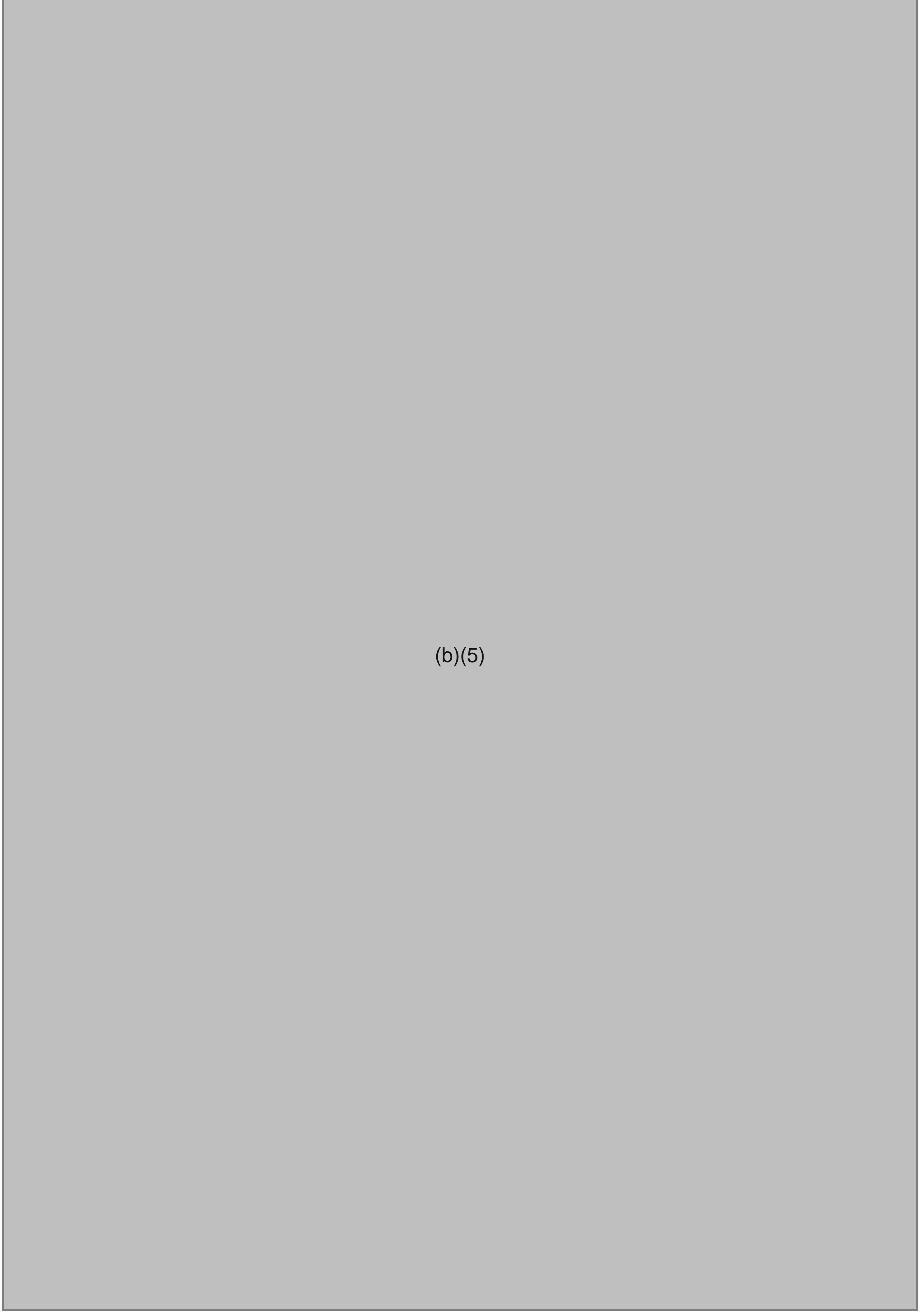
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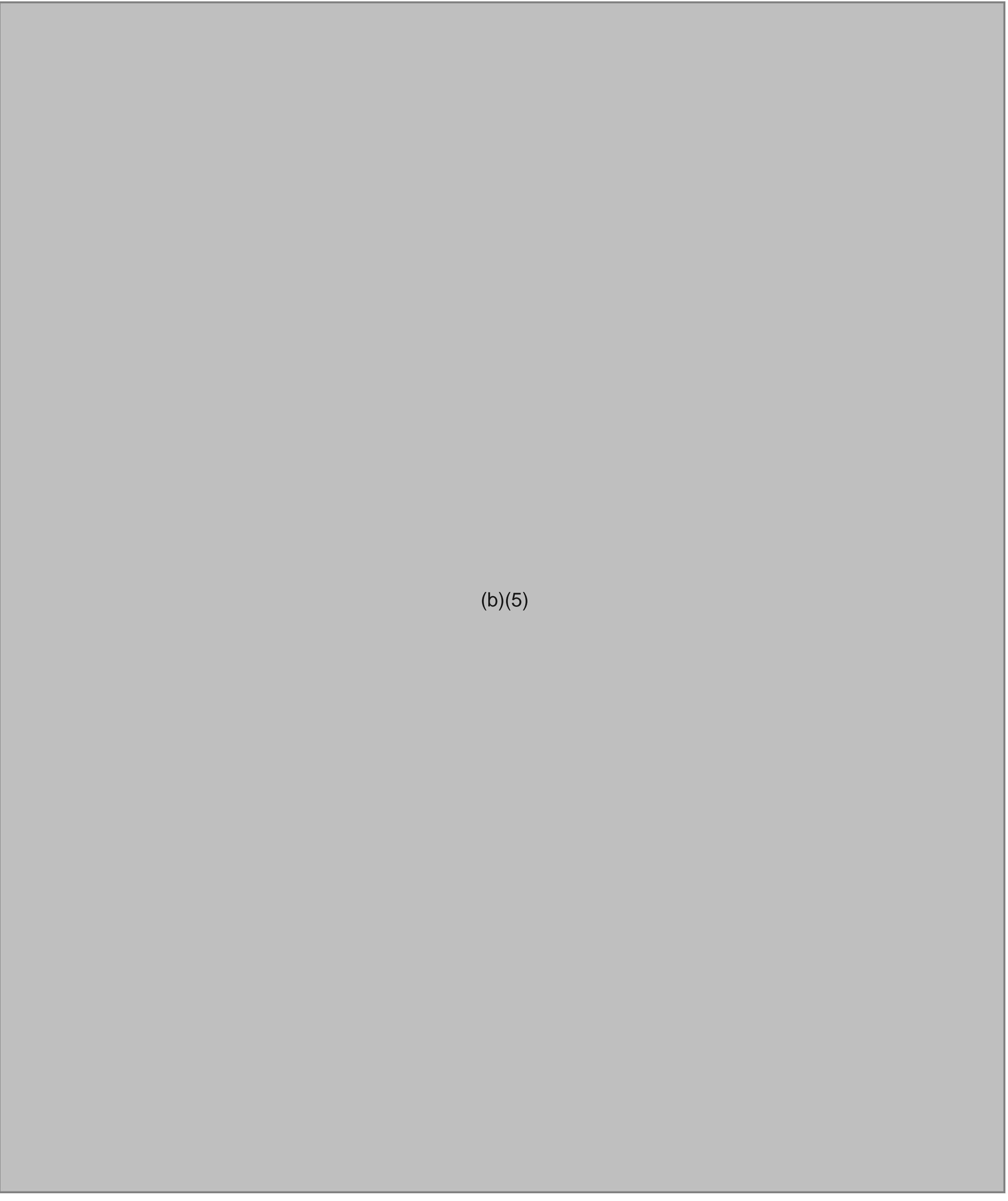

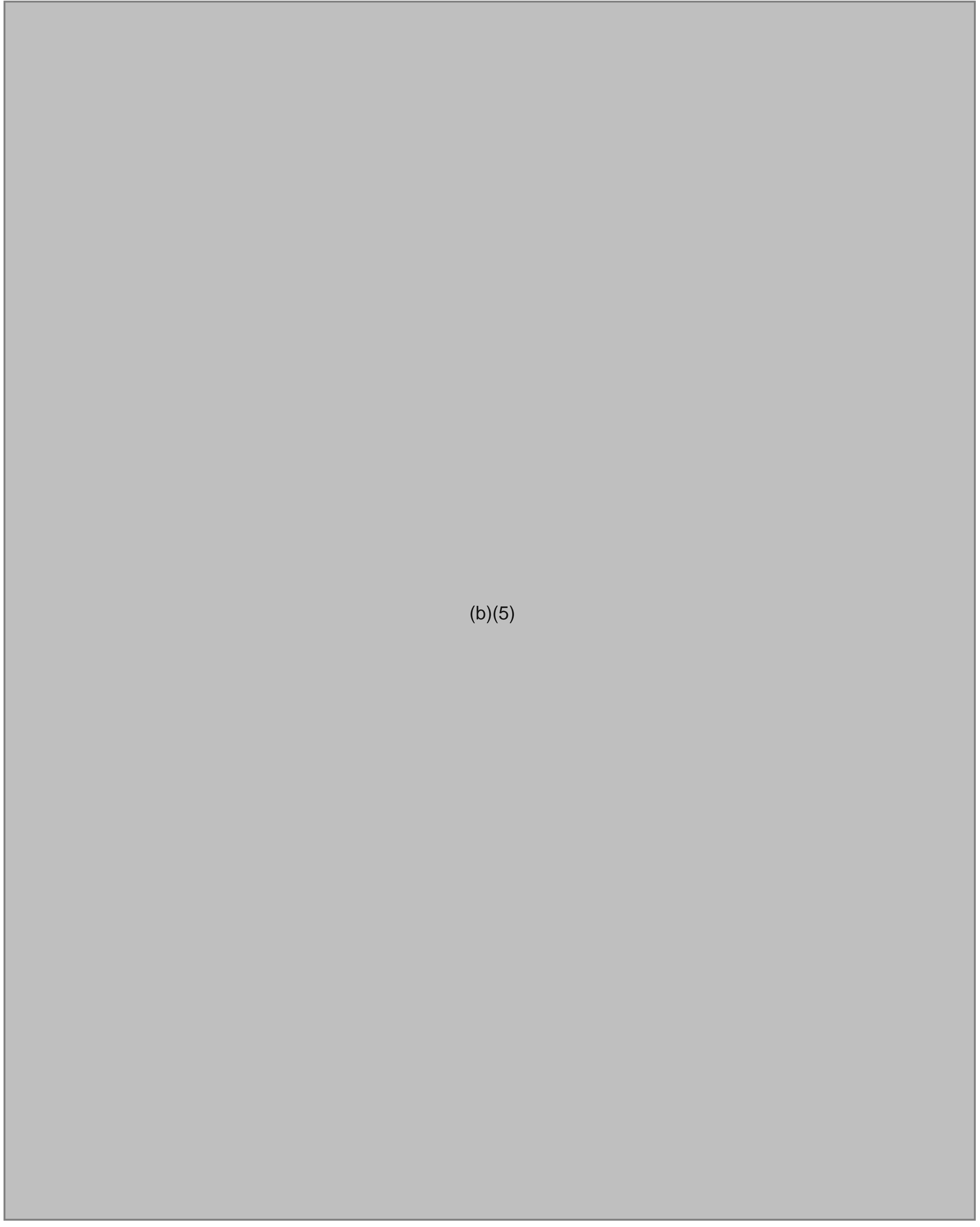
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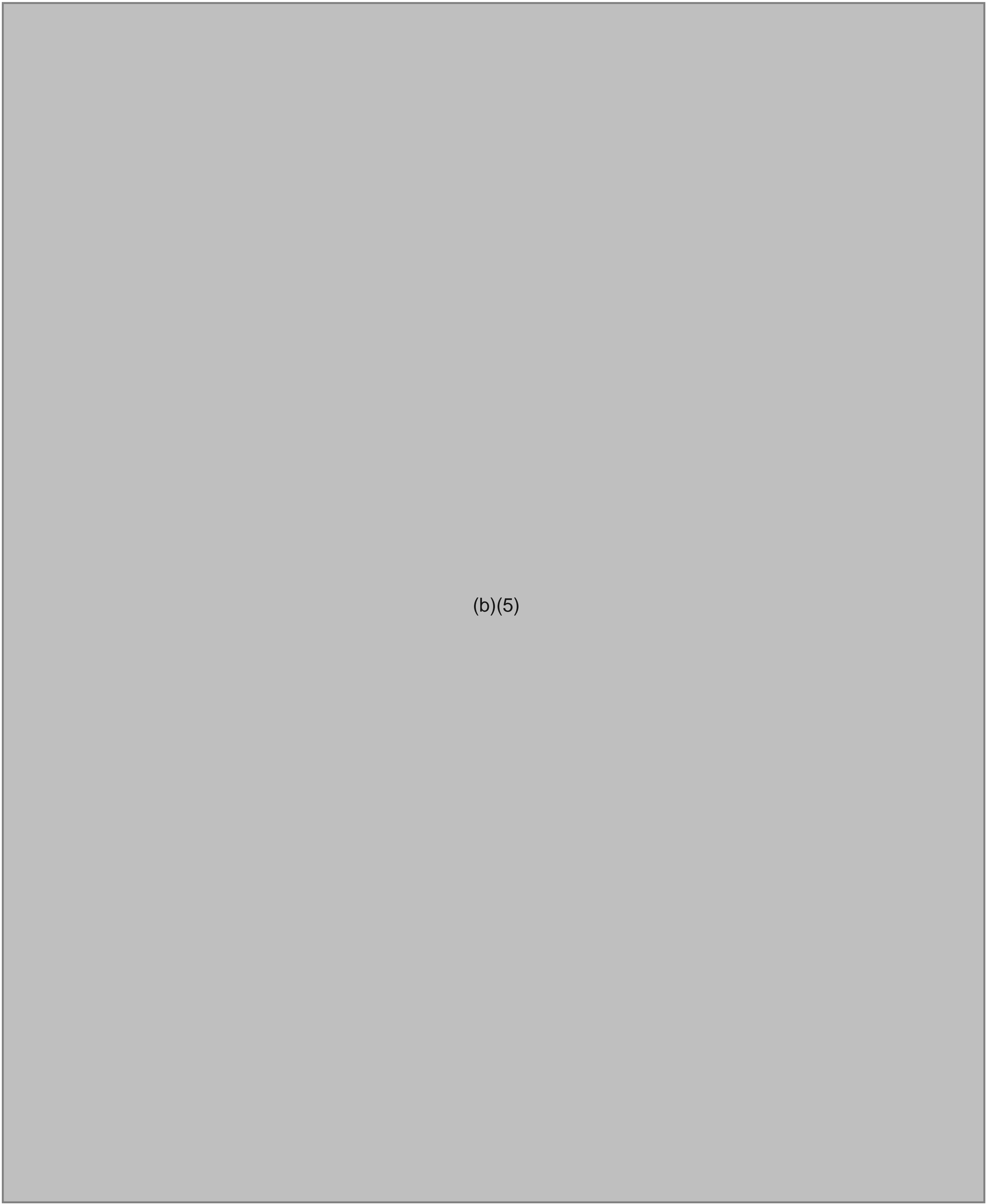
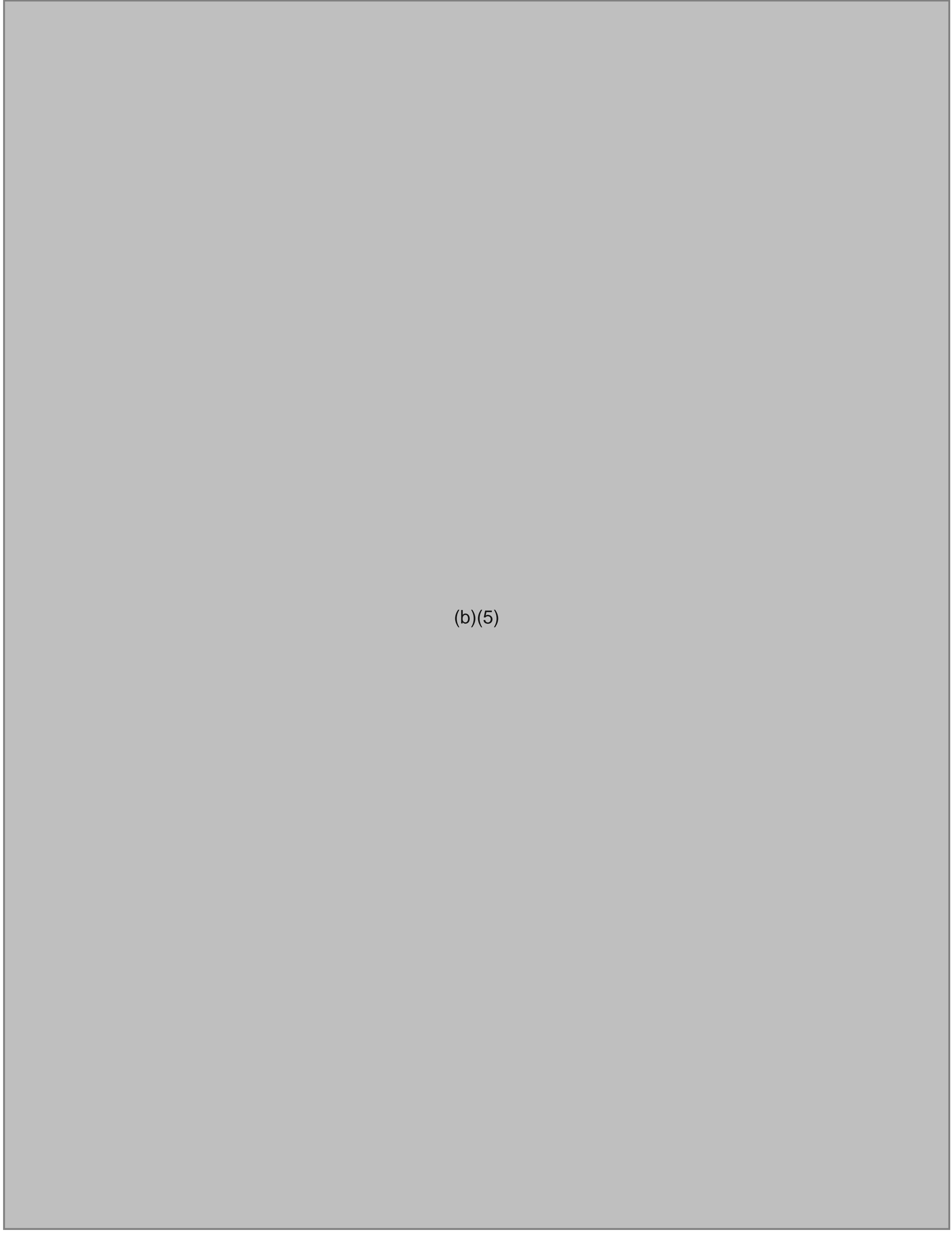
F. Housing

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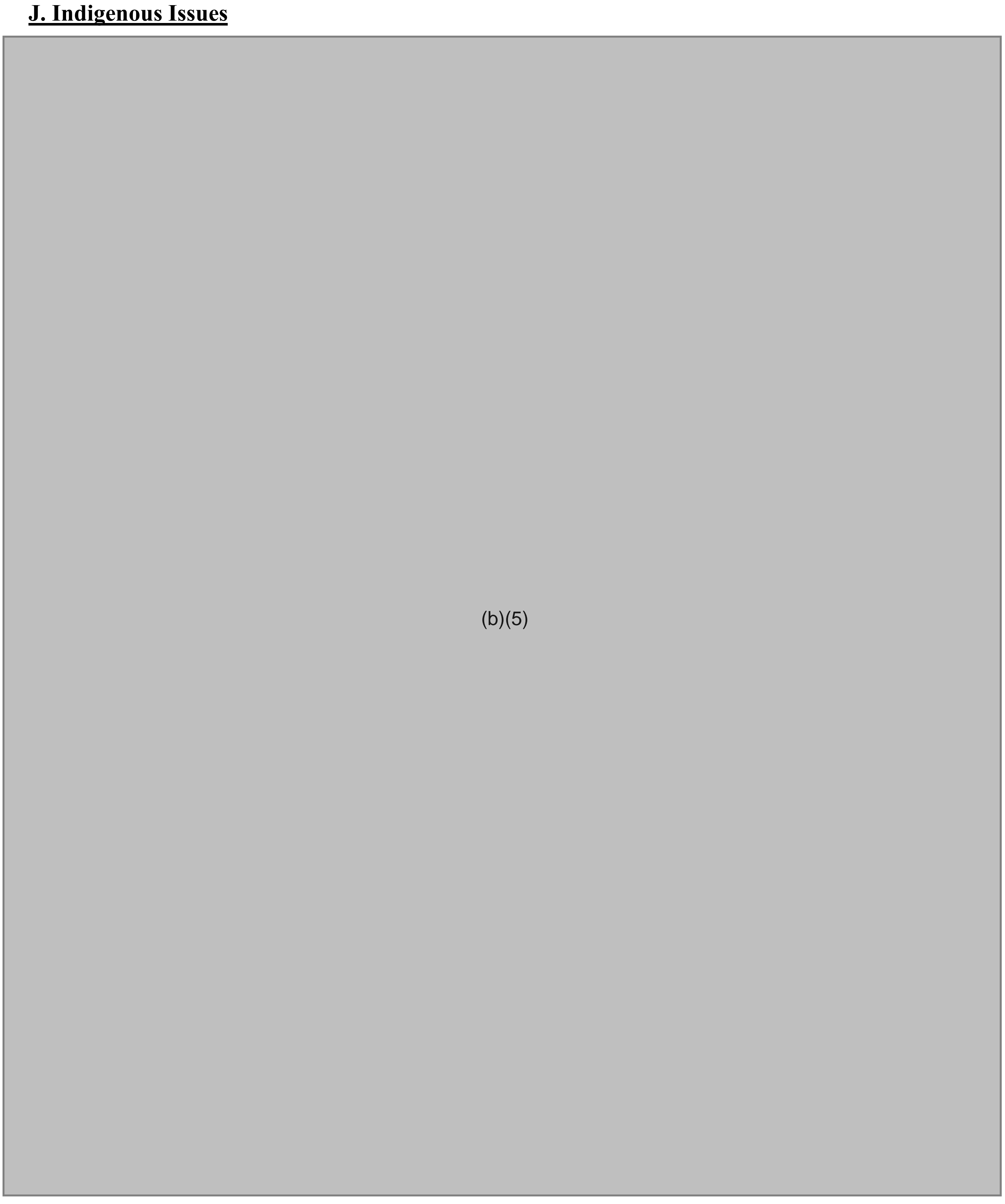
J. Indigenous Issues



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L. Immigration

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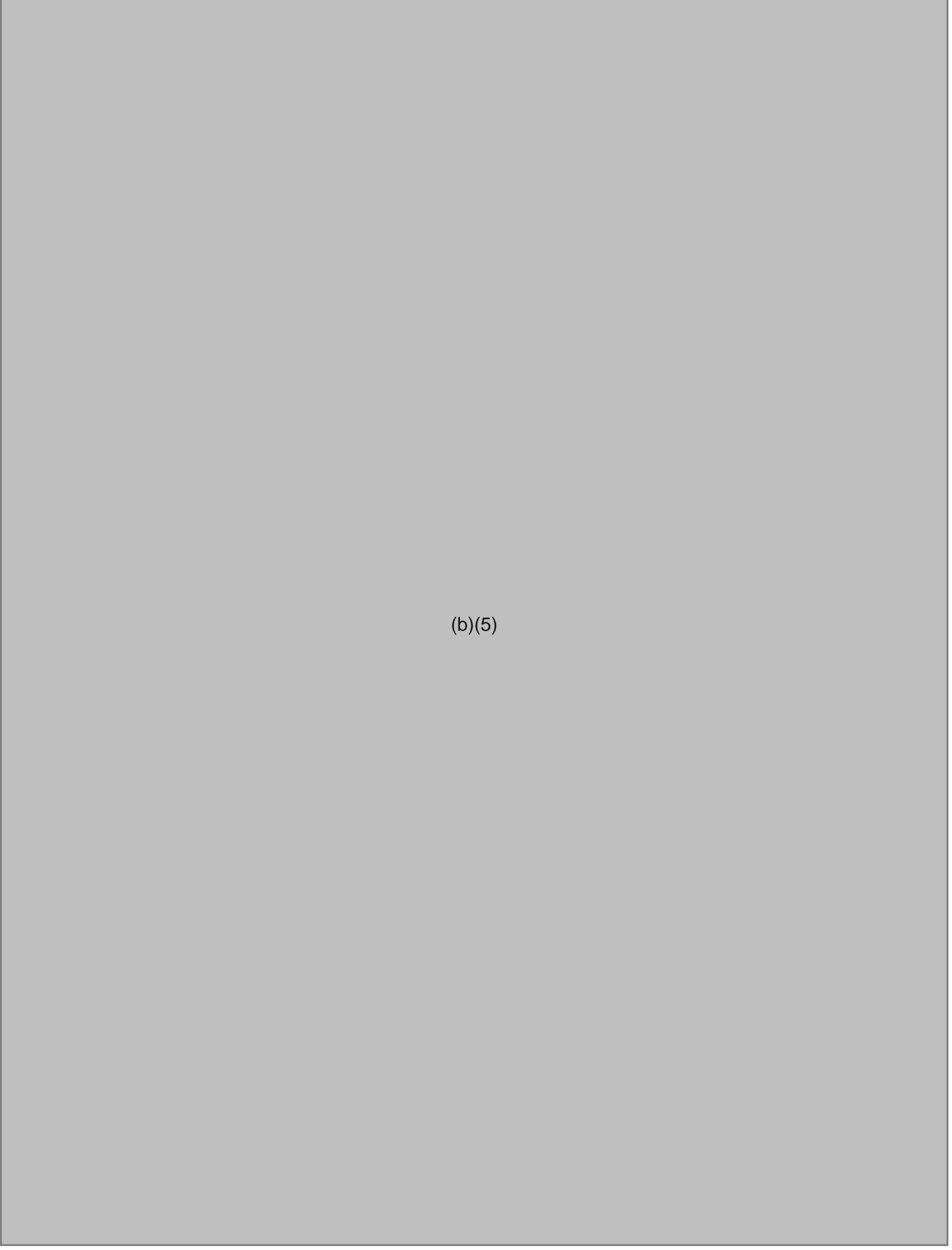
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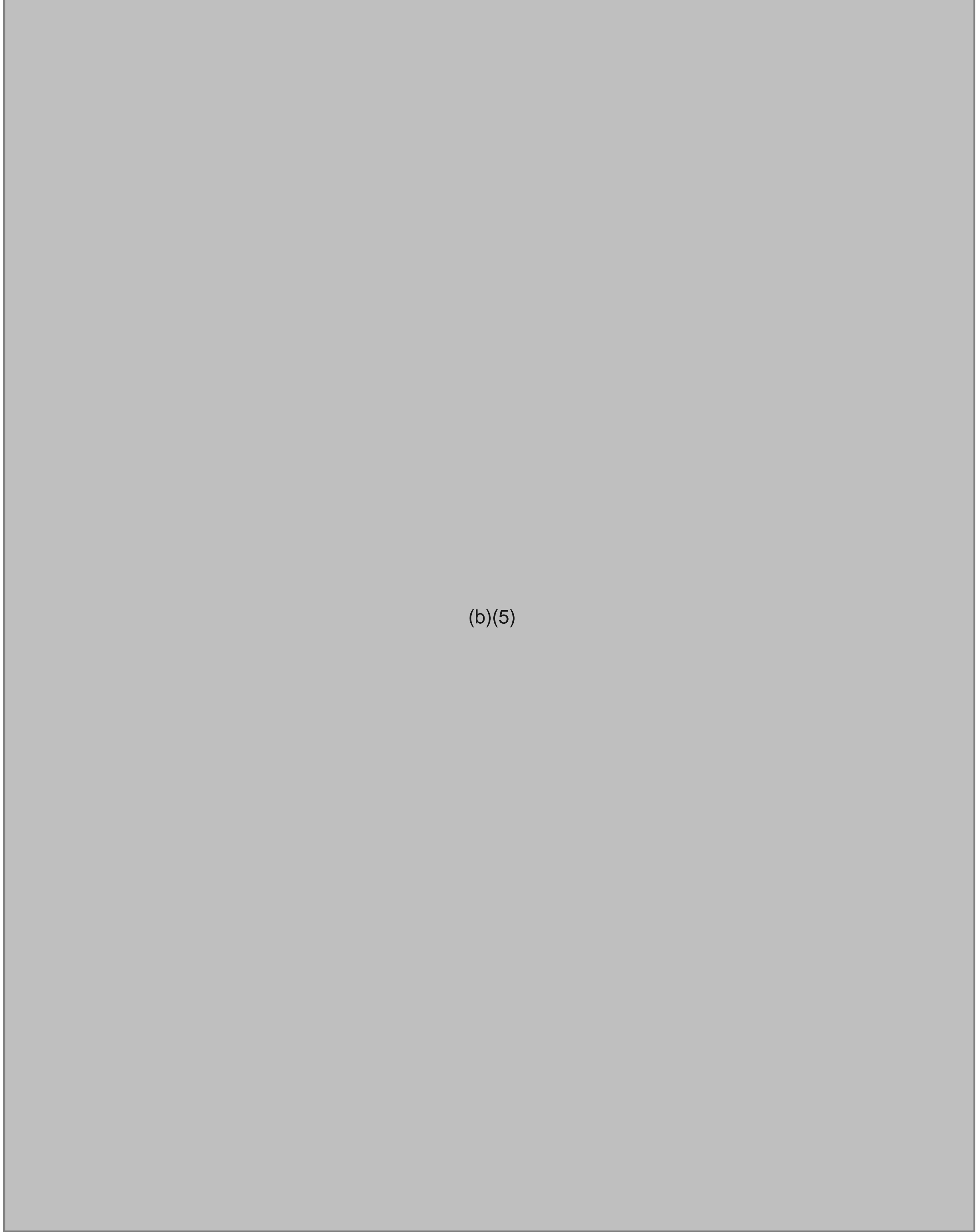
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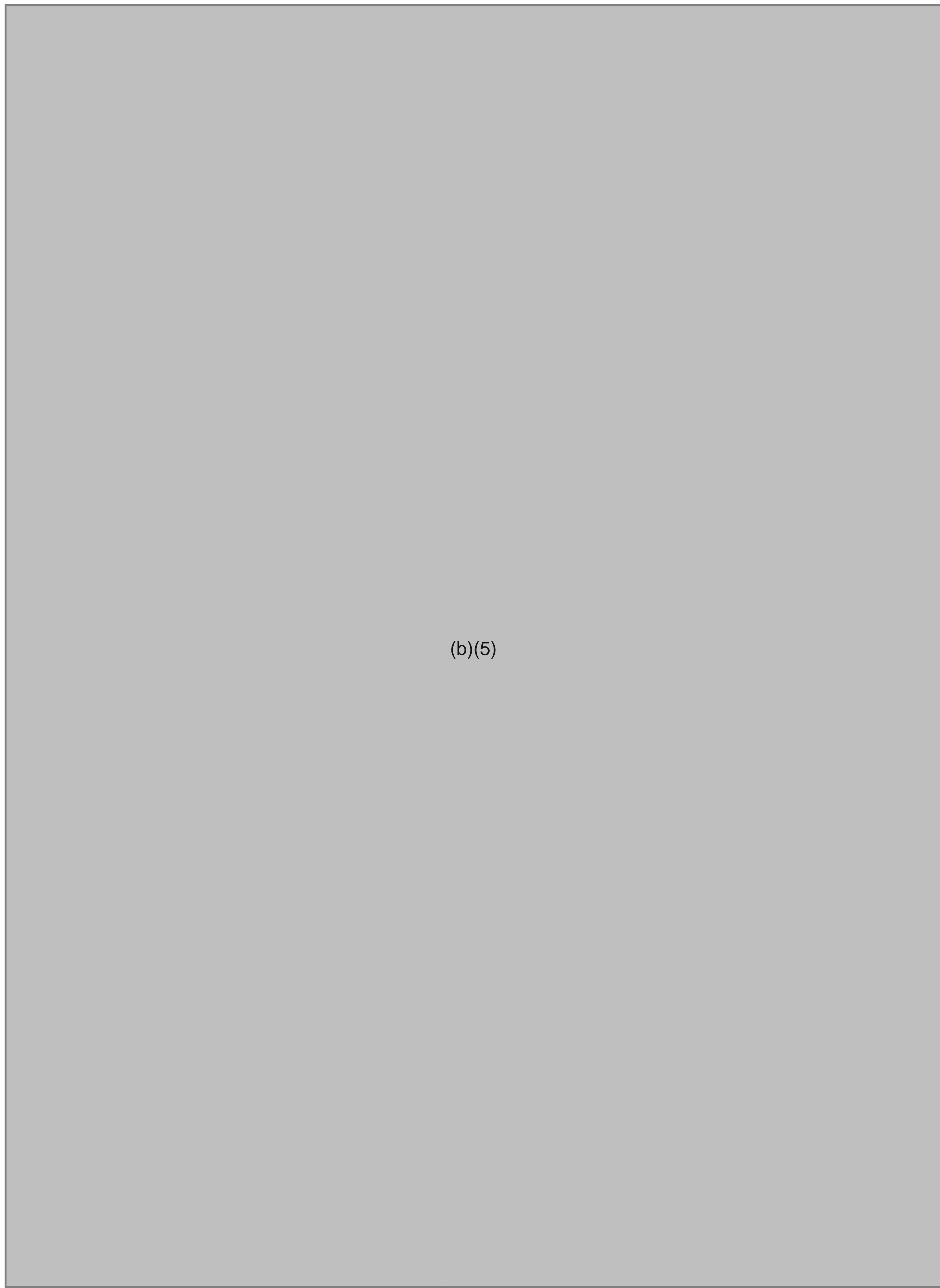
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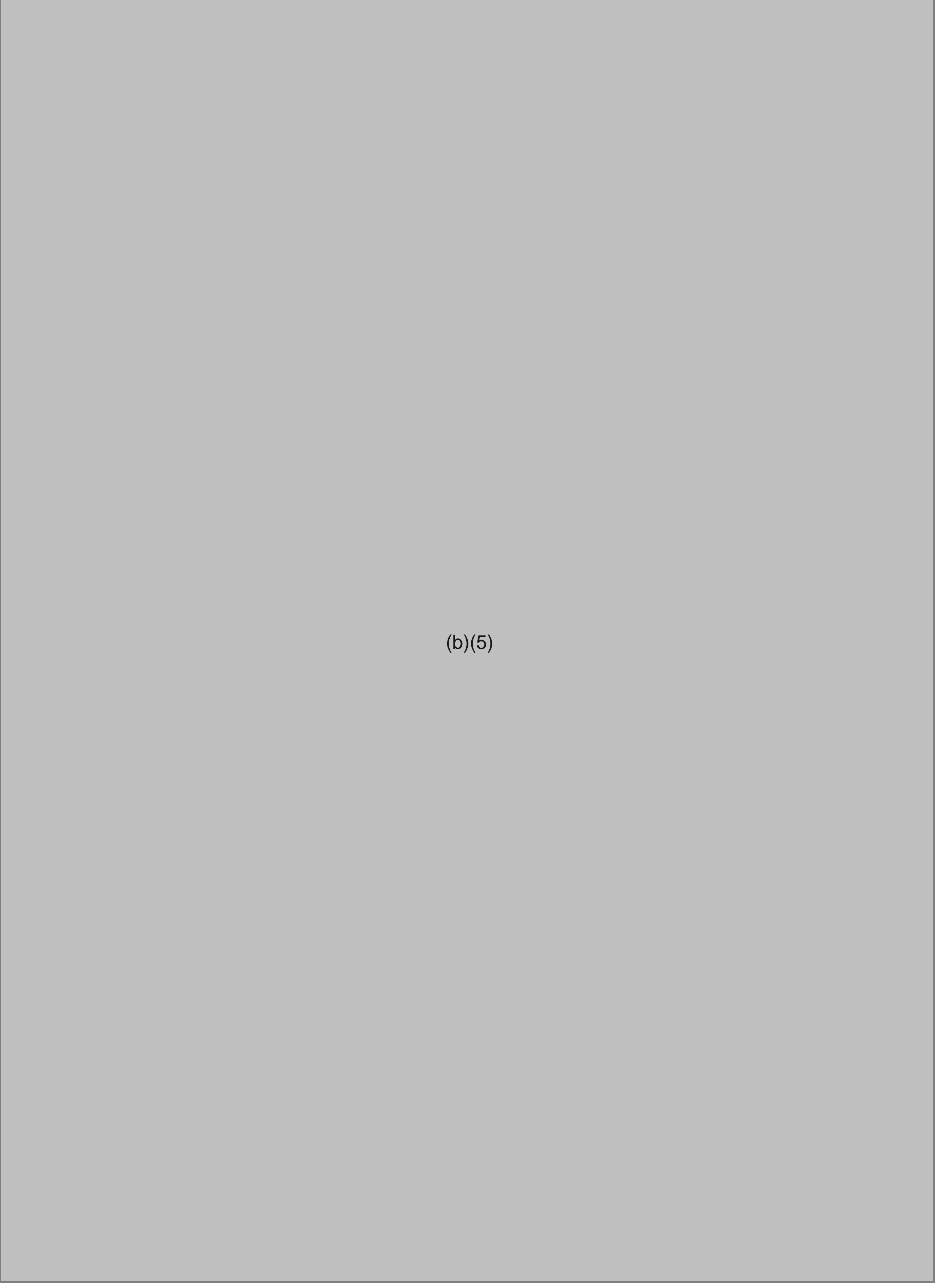
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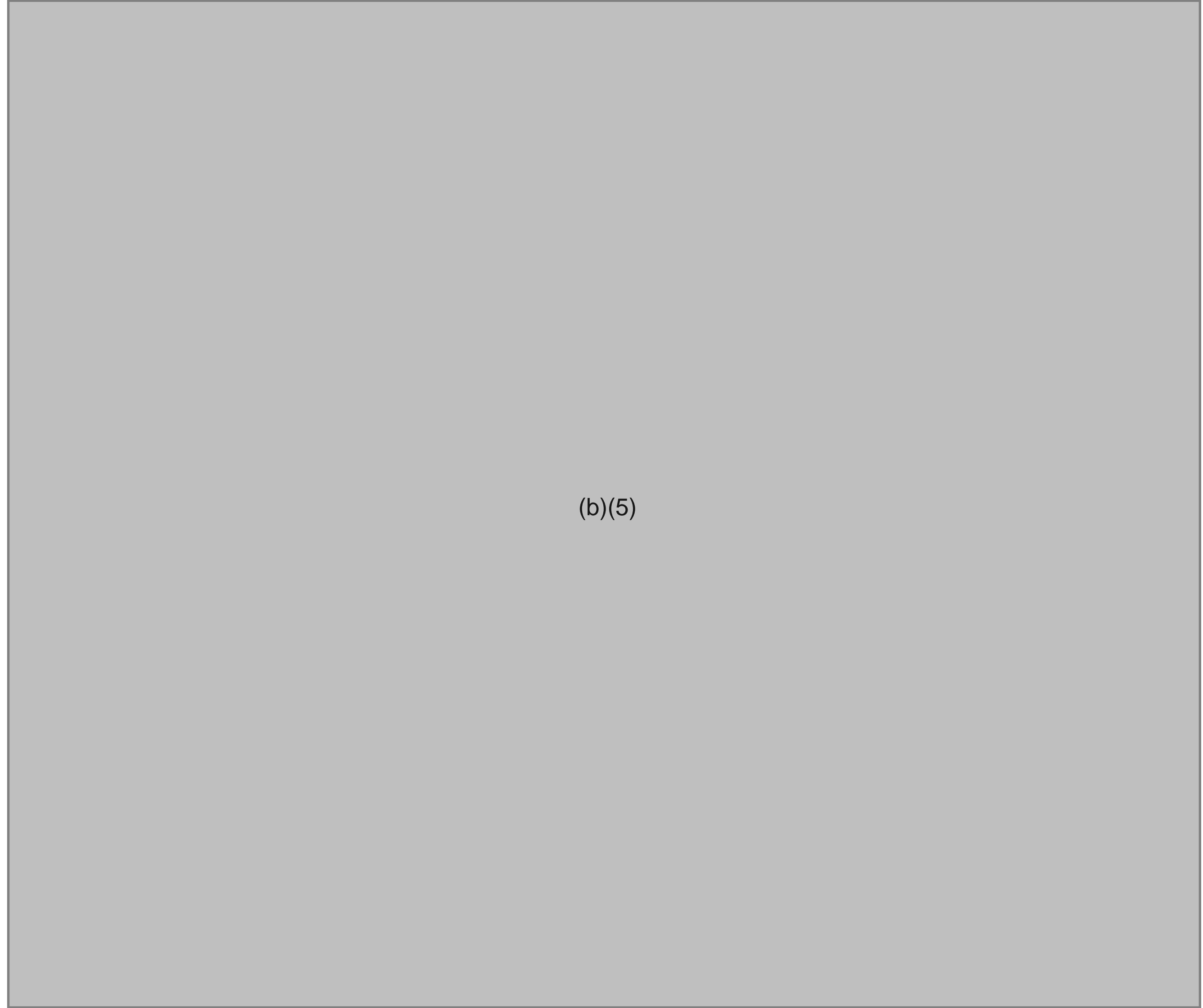

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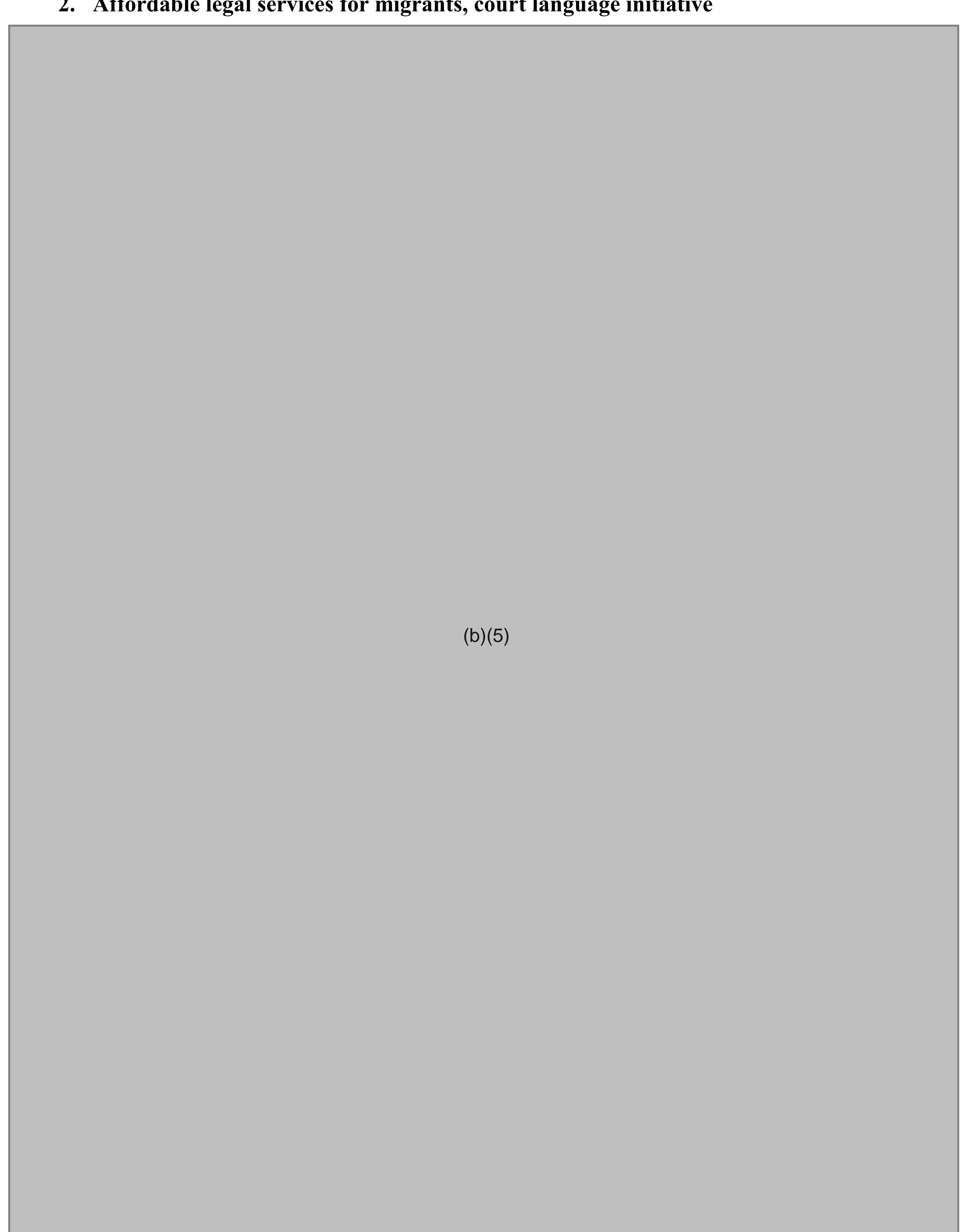
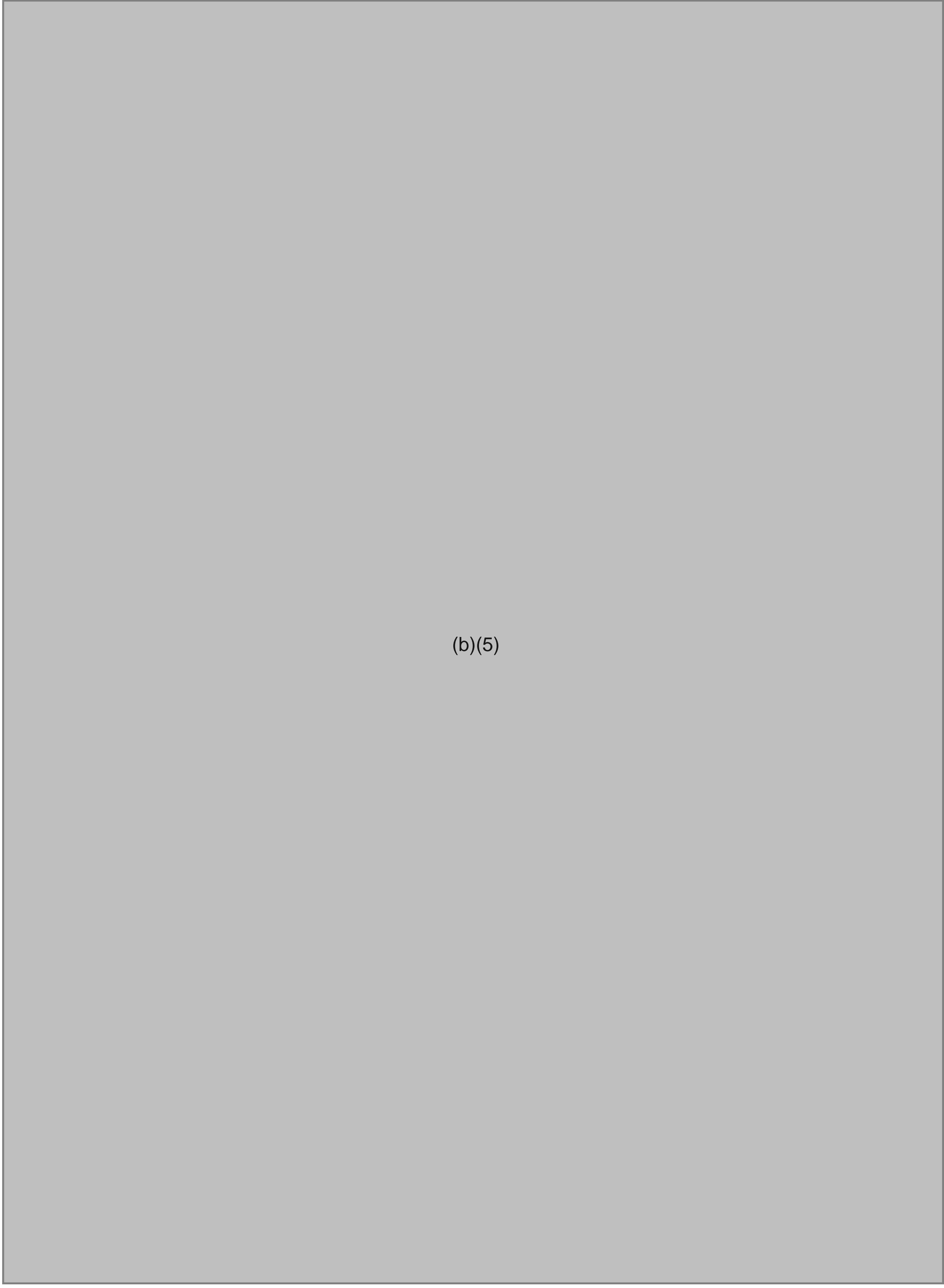
2. Affordable legal services for migrants, court language initiative

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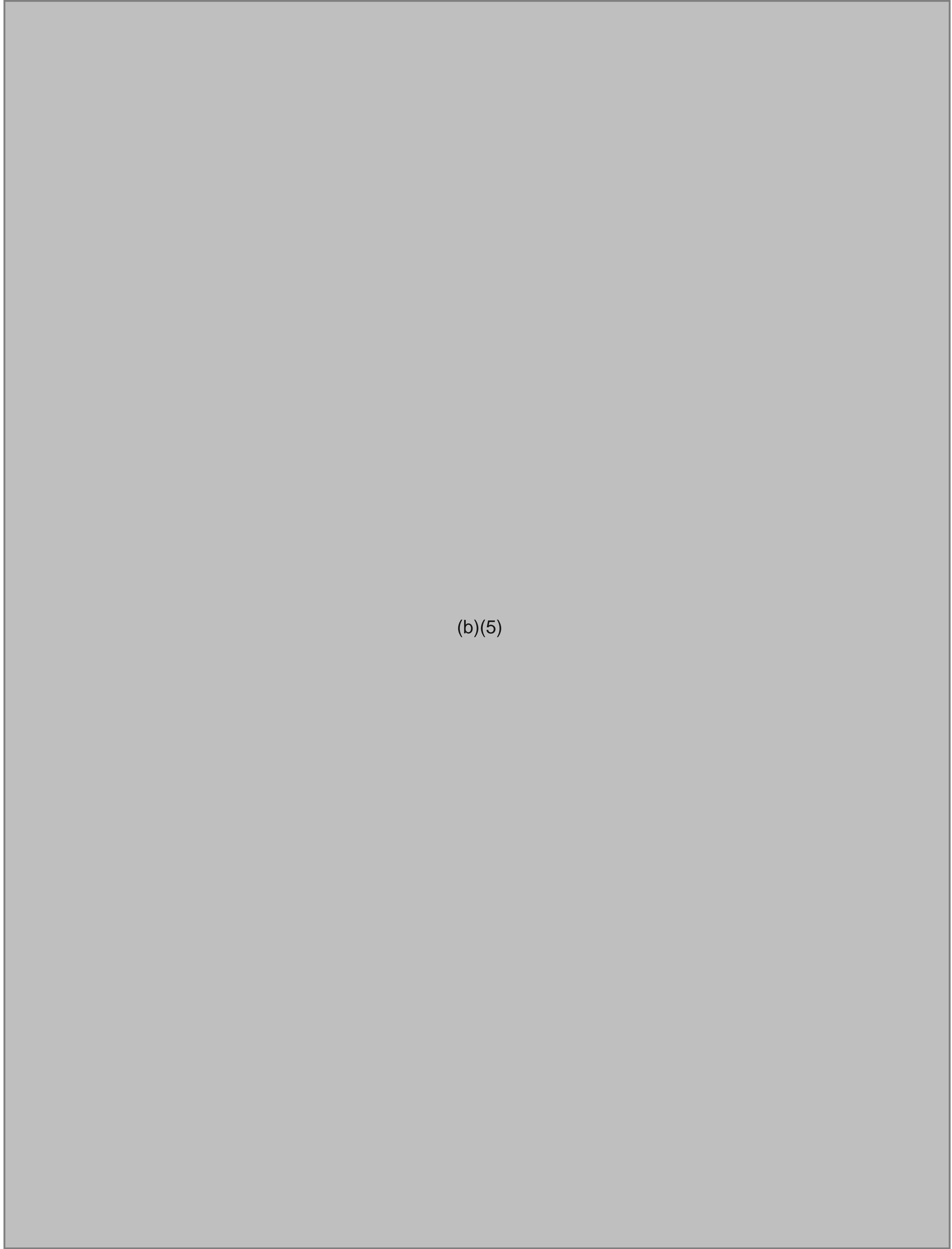
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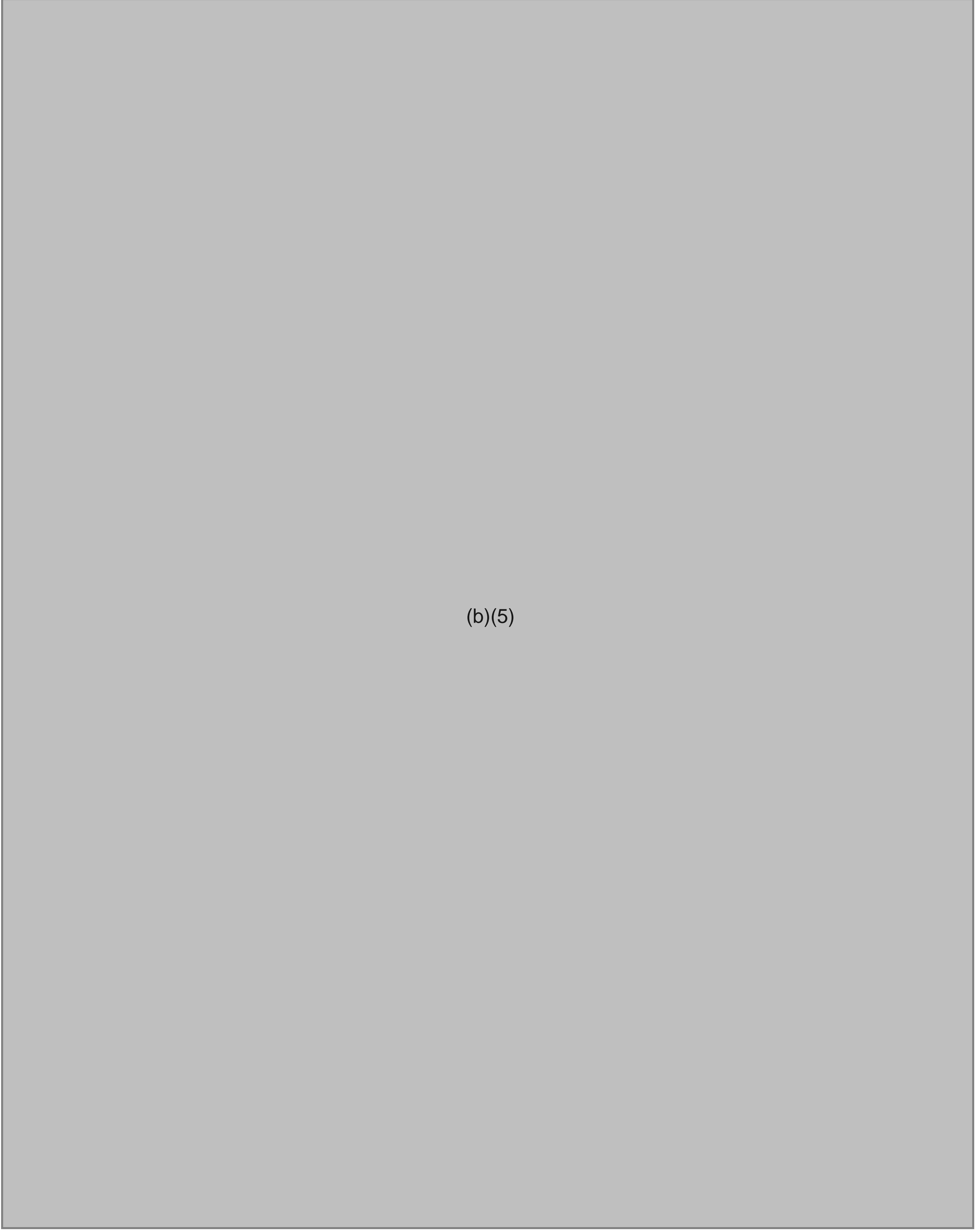

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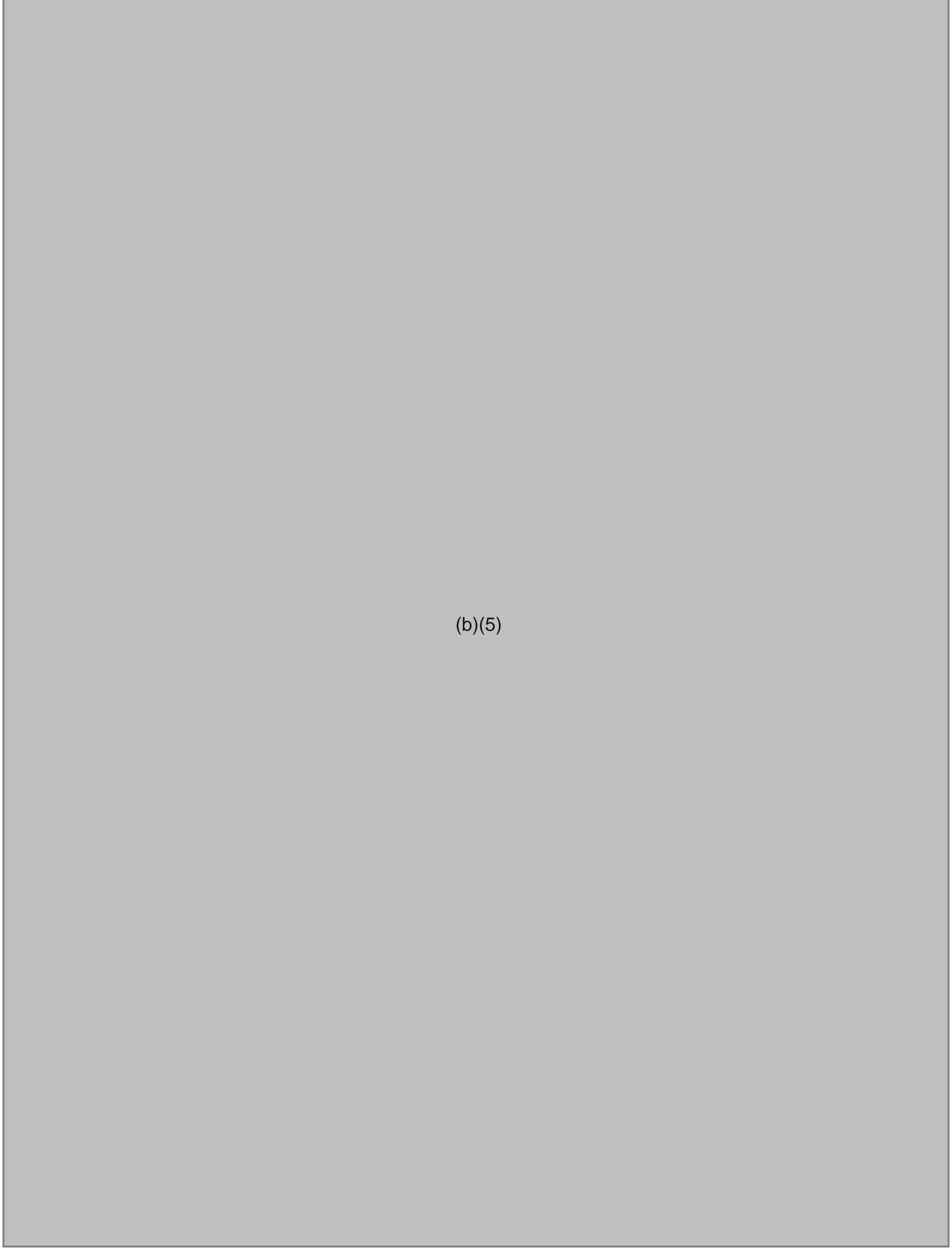
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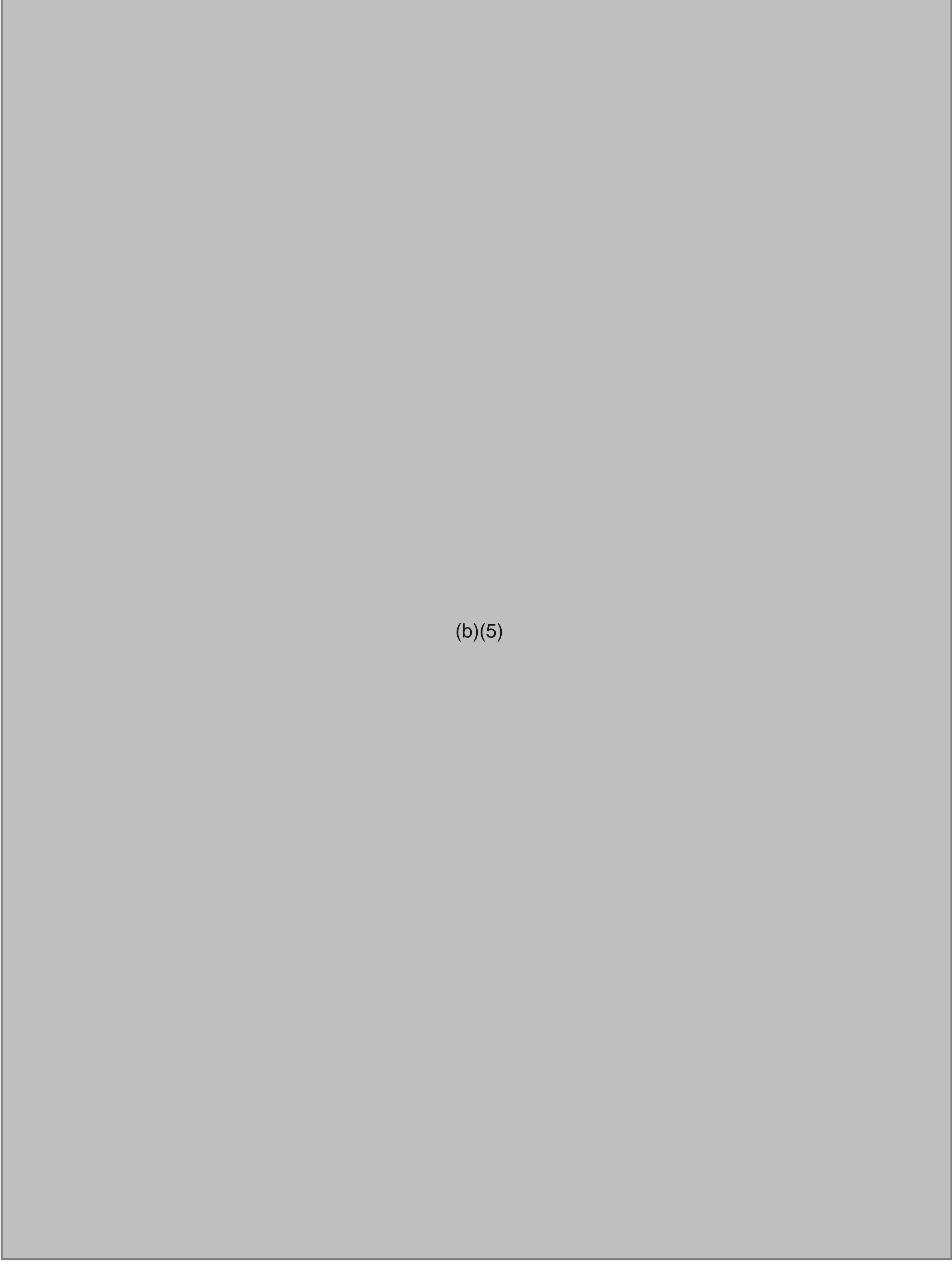
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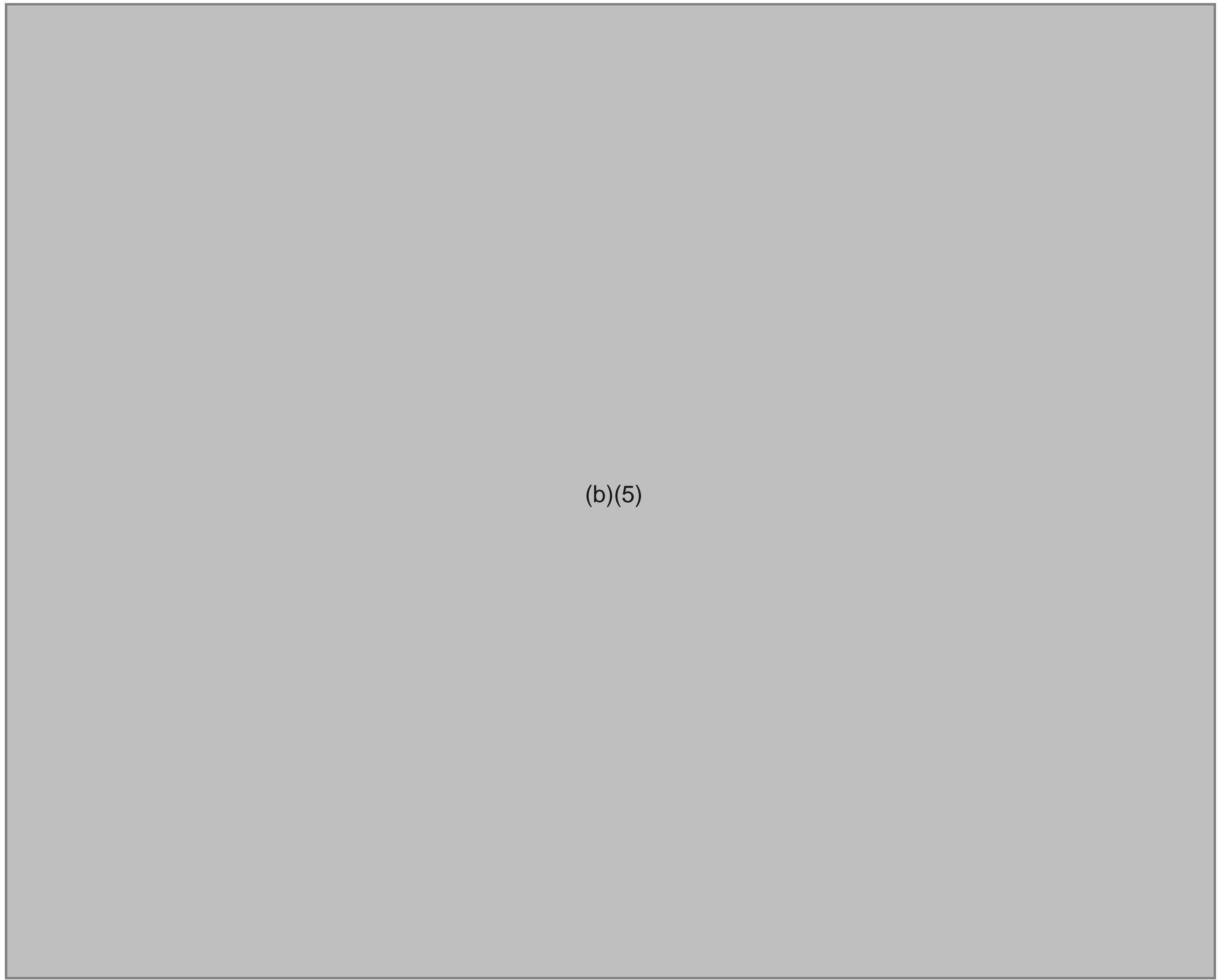

3. Due Process and Asylum Protection

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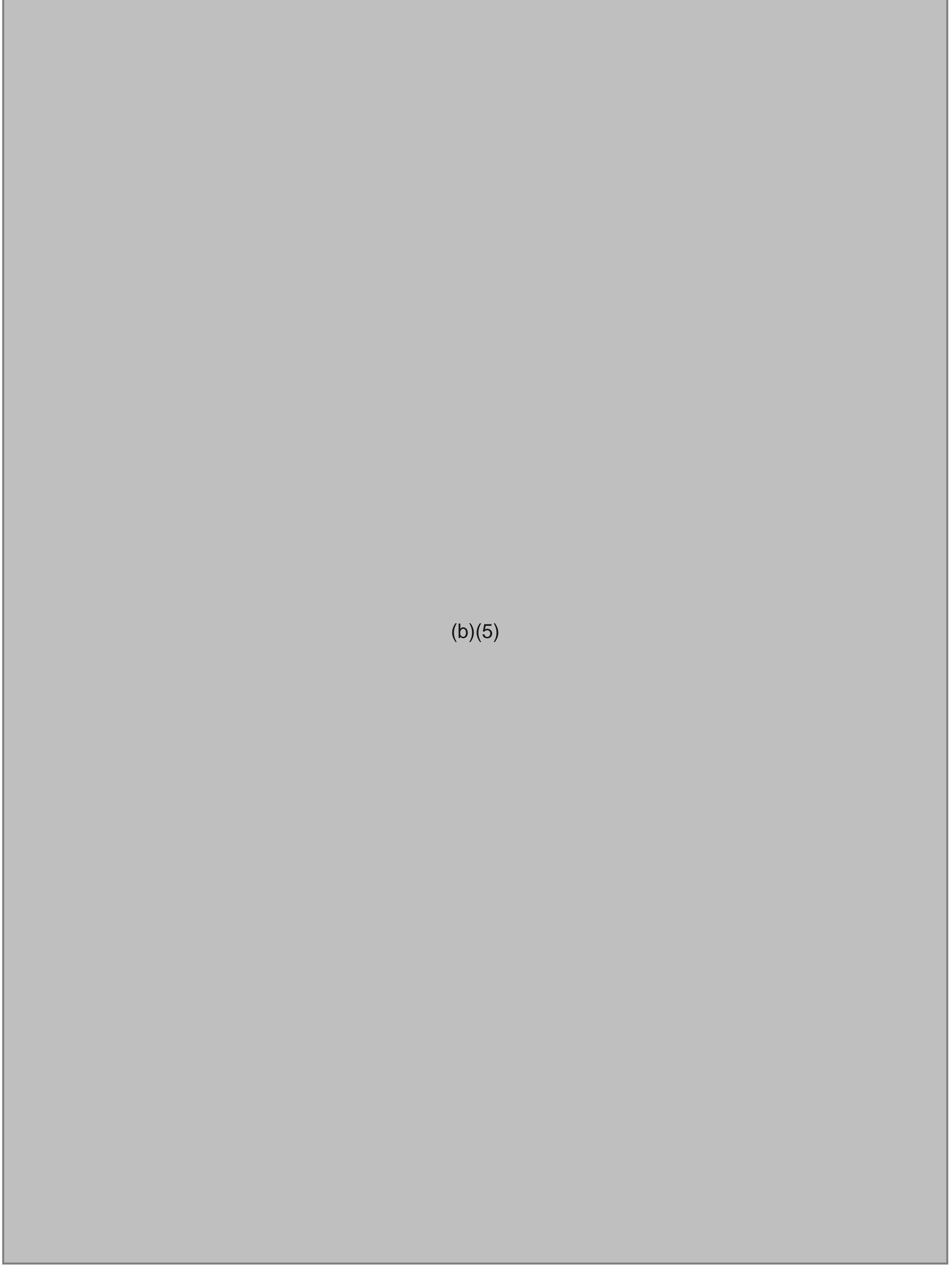
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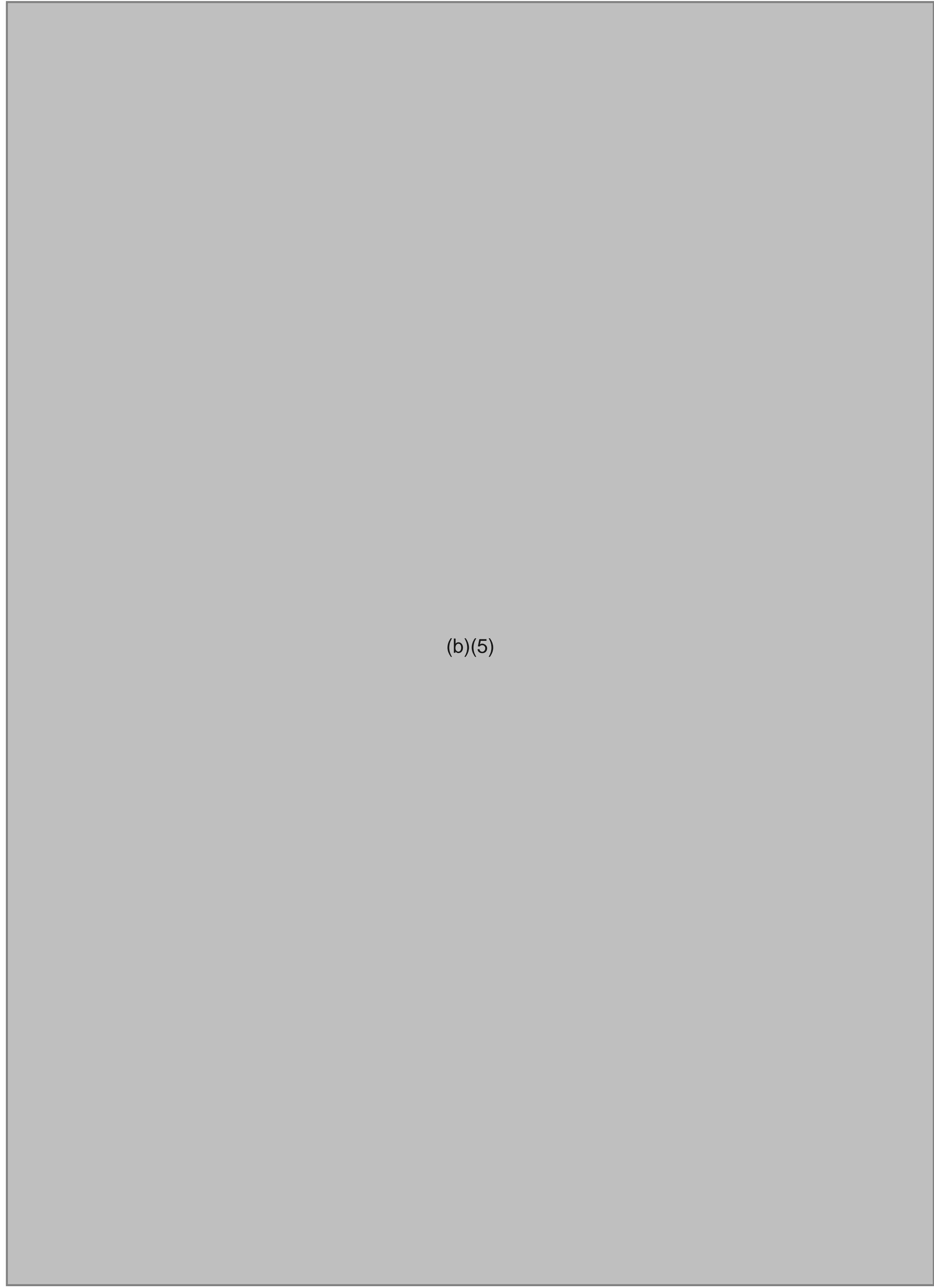
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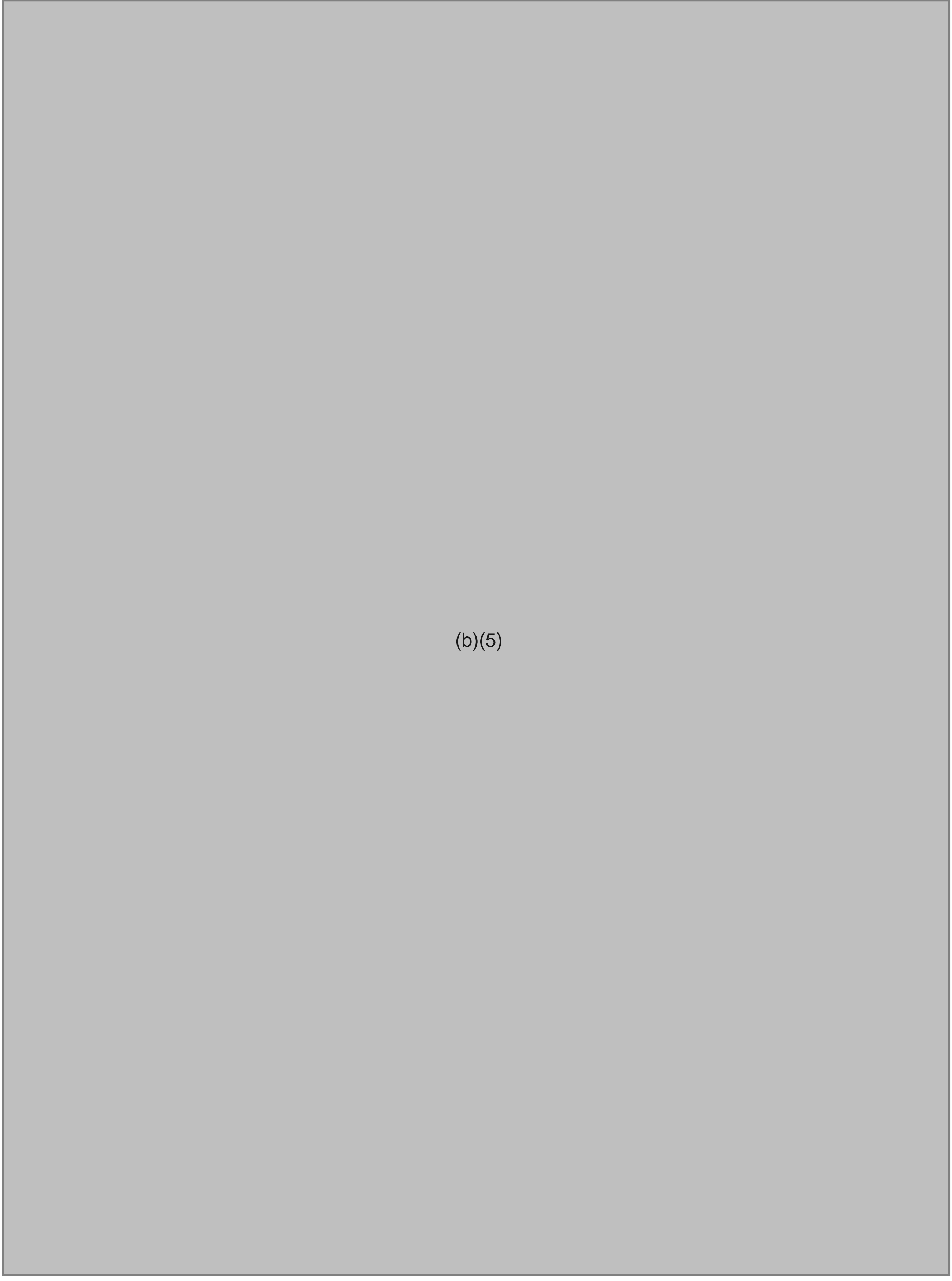
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4. Due Process of Human Rights complaints

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5. Retaliation and intimidation against complainants

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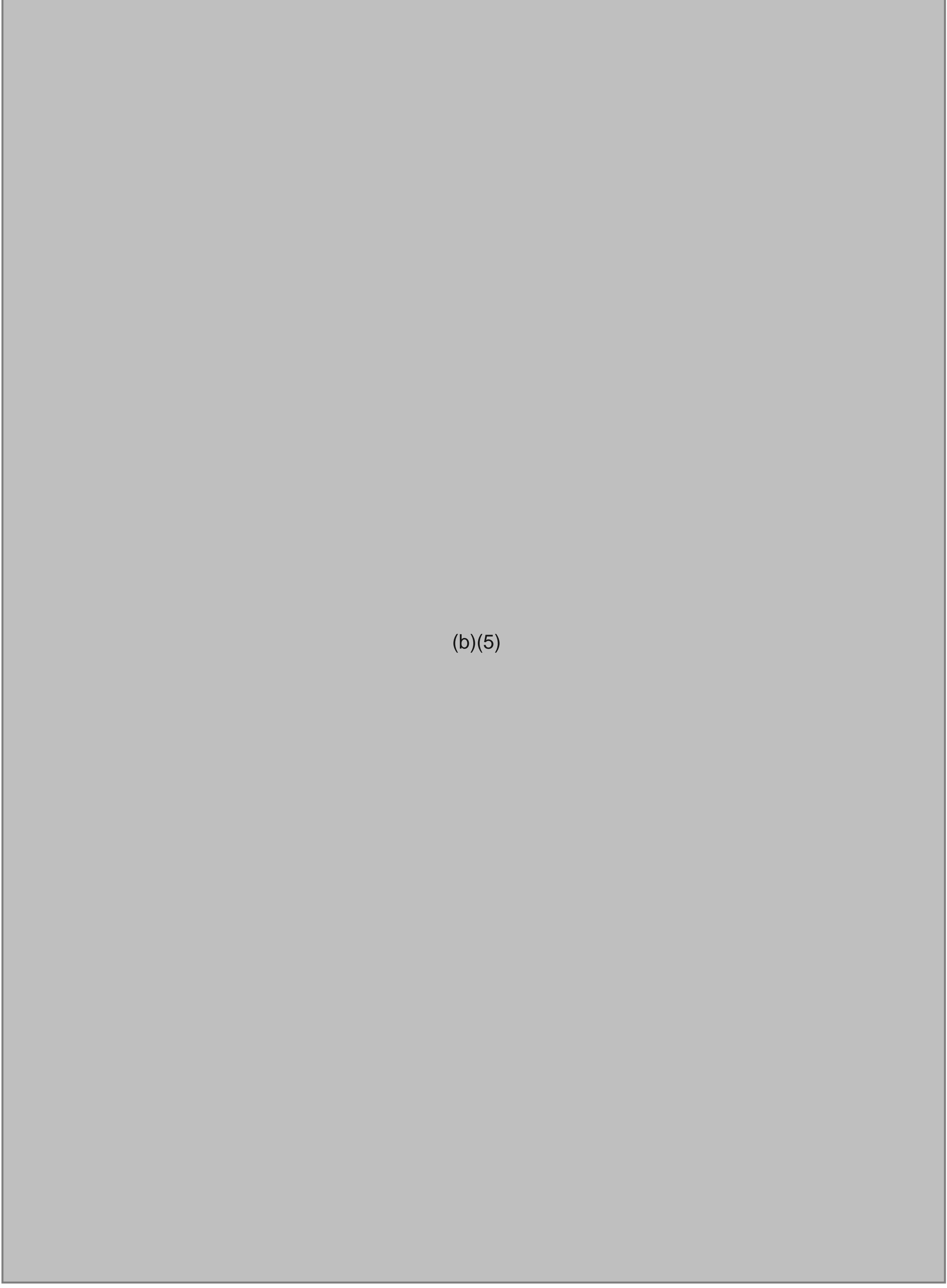
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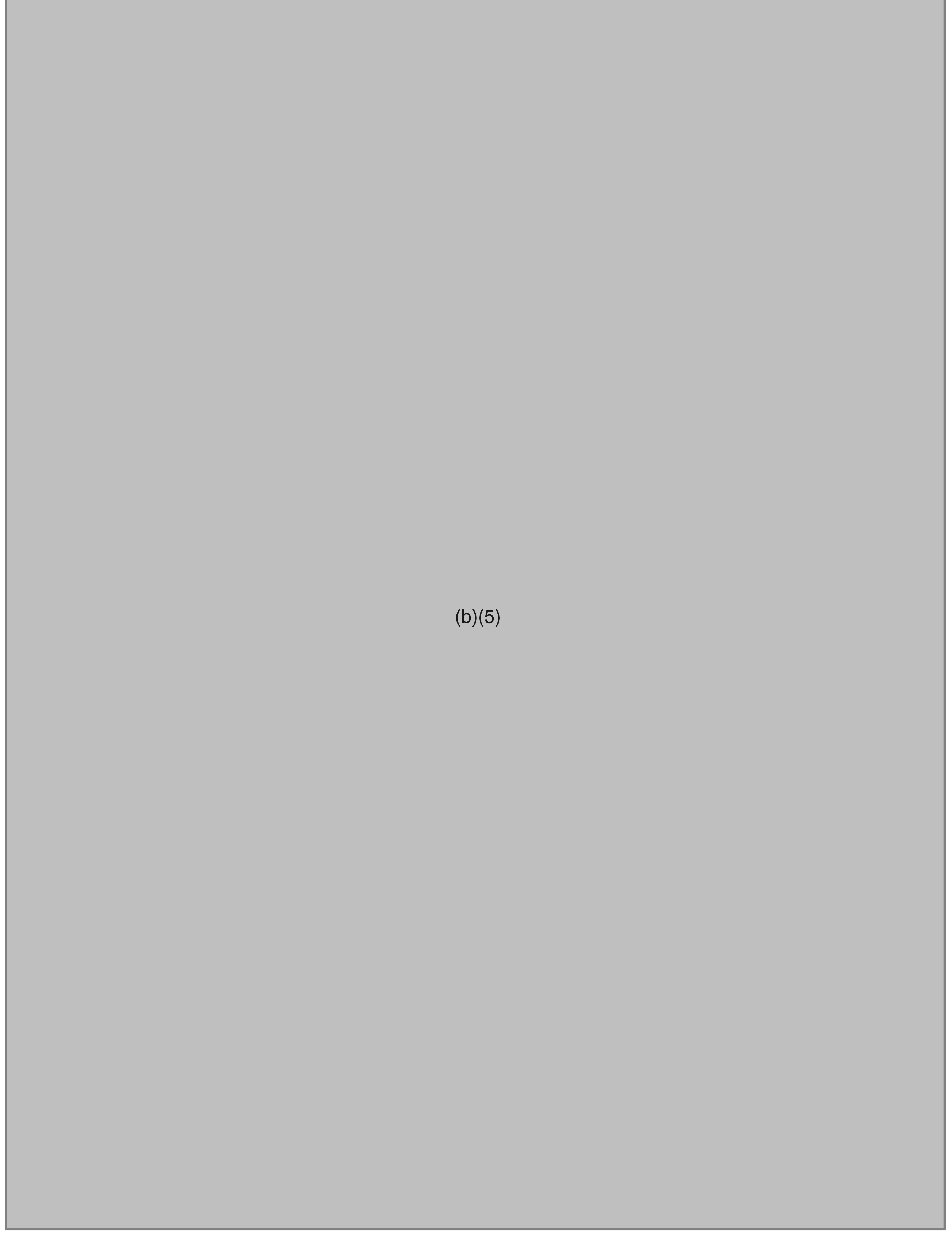
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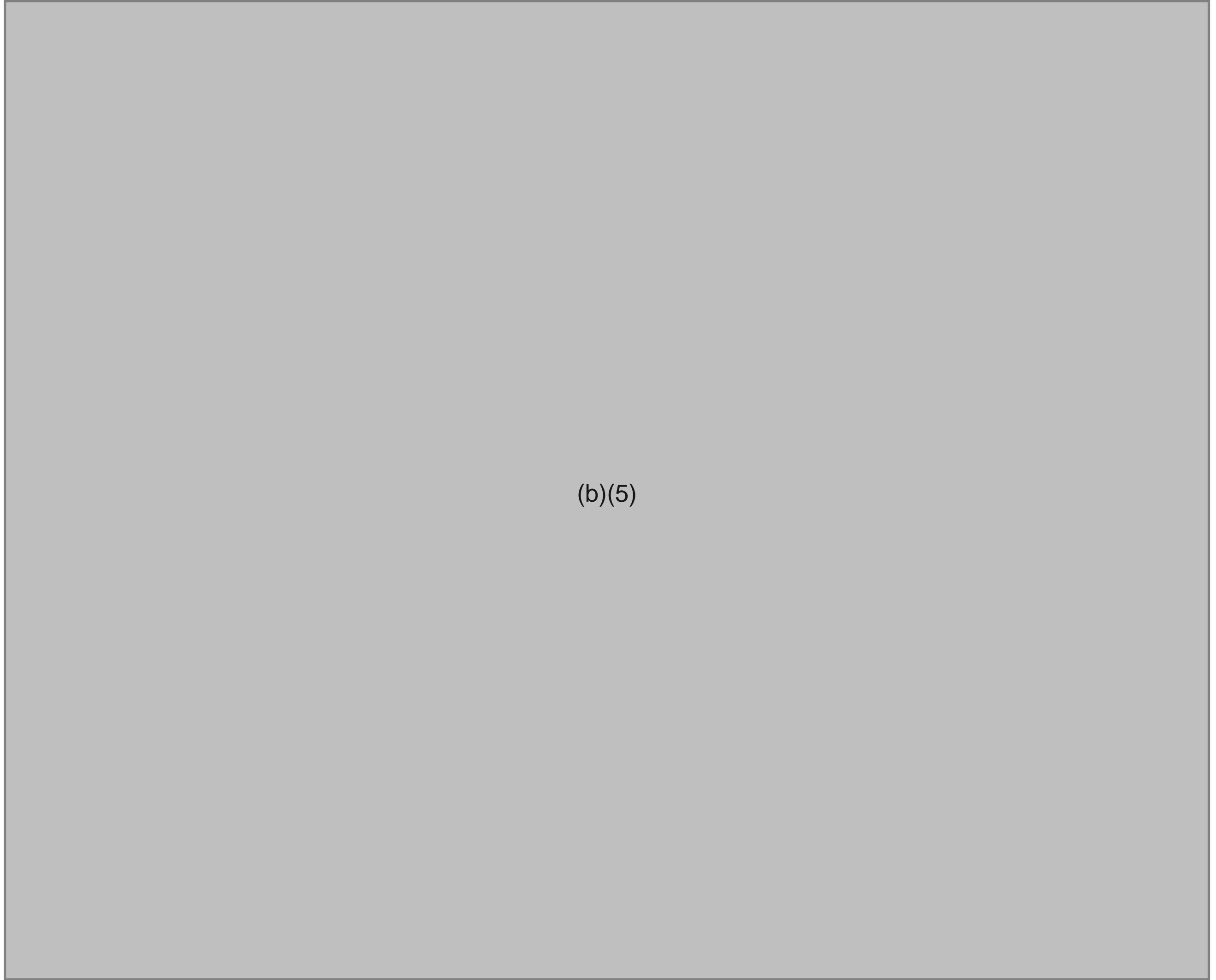
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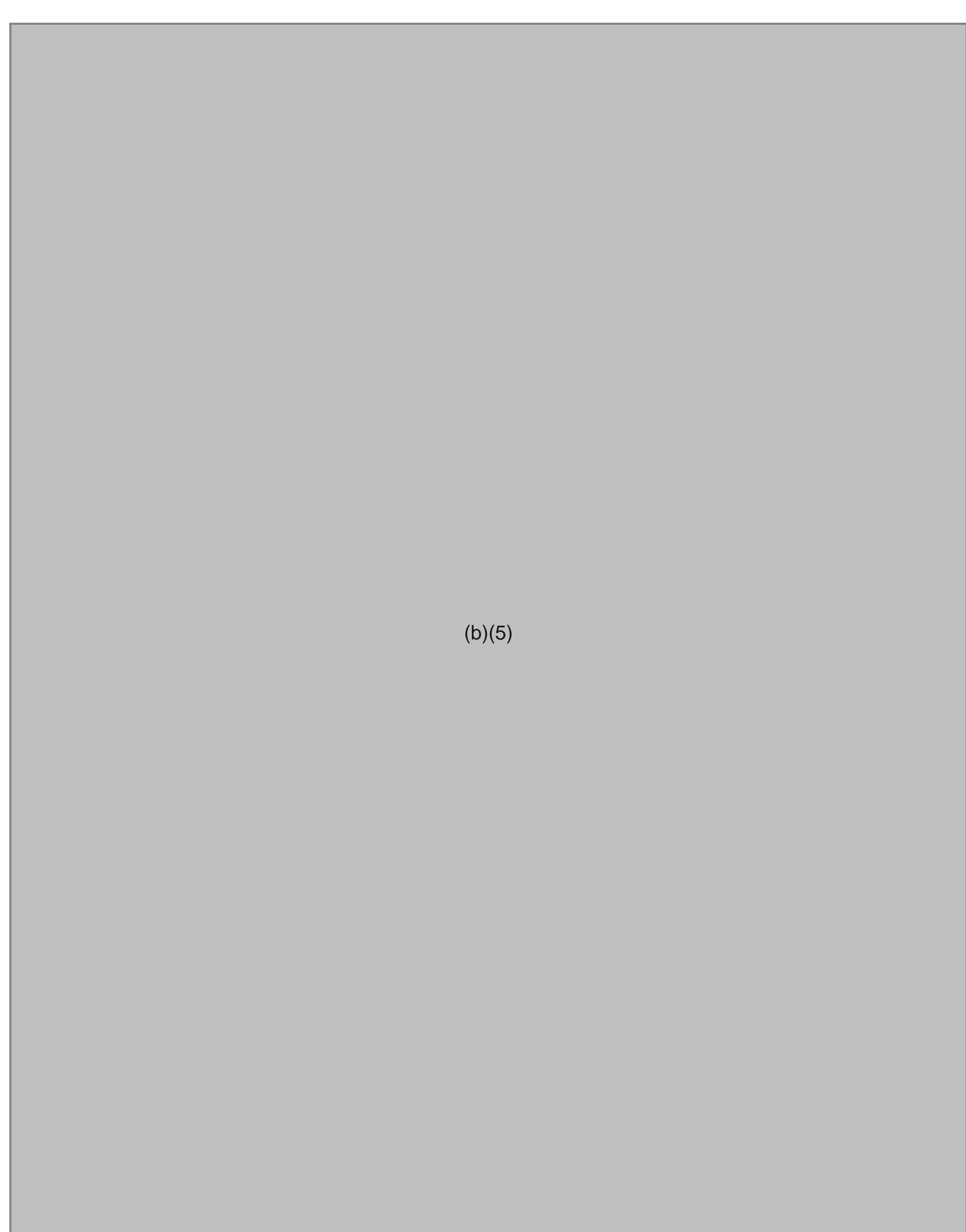

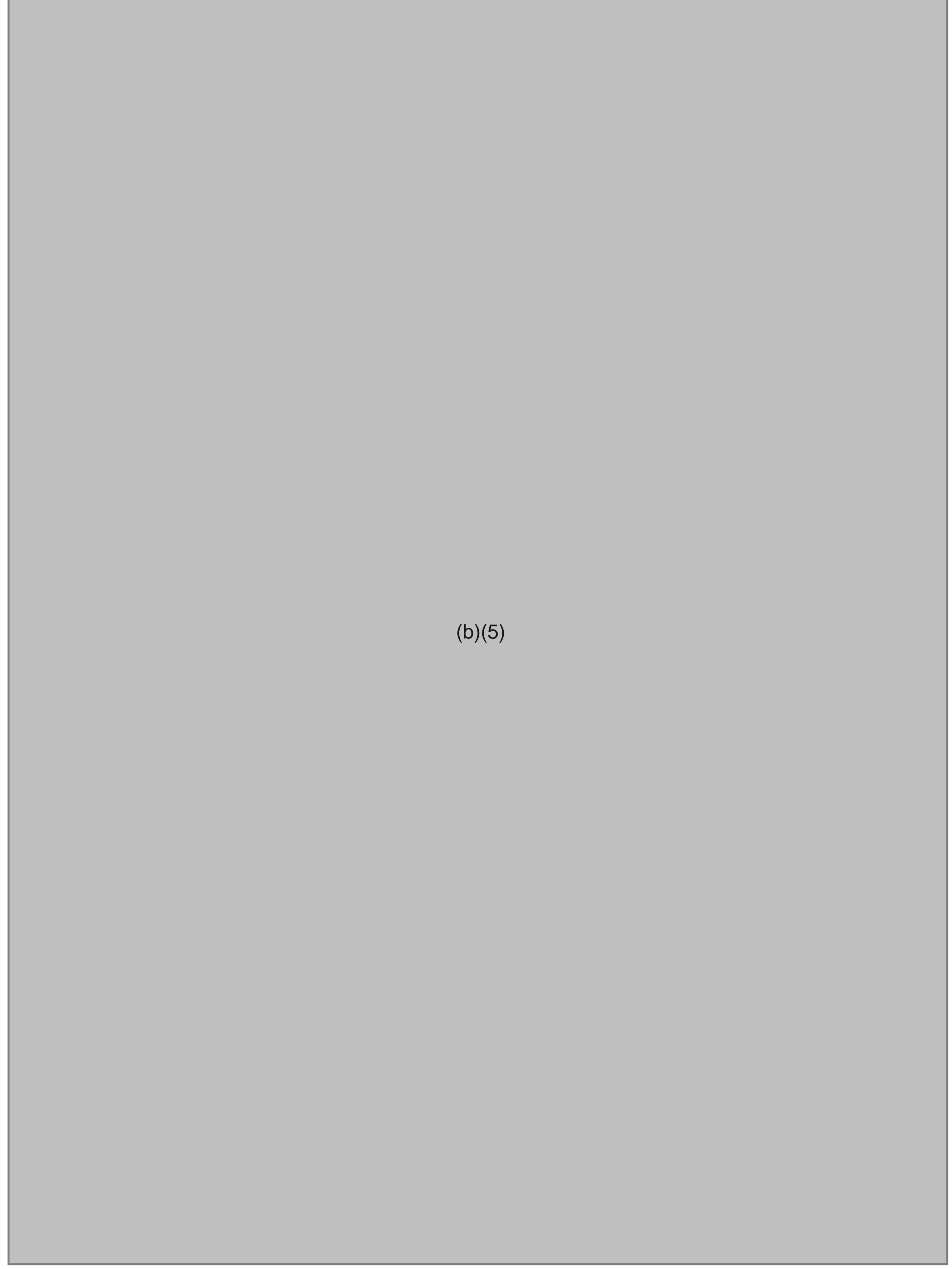
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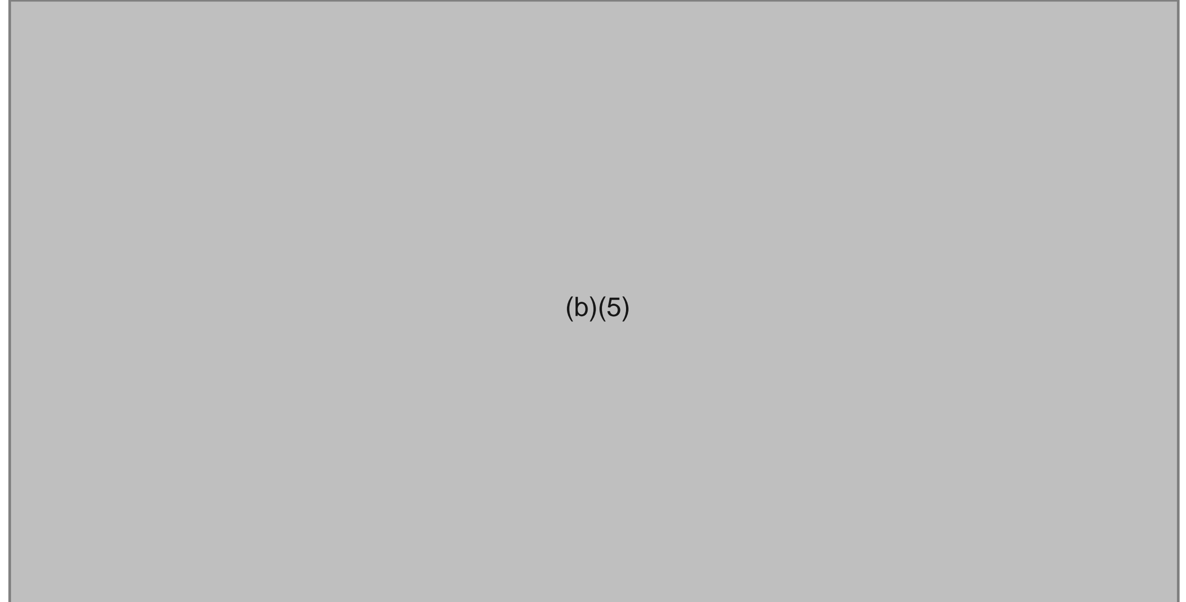

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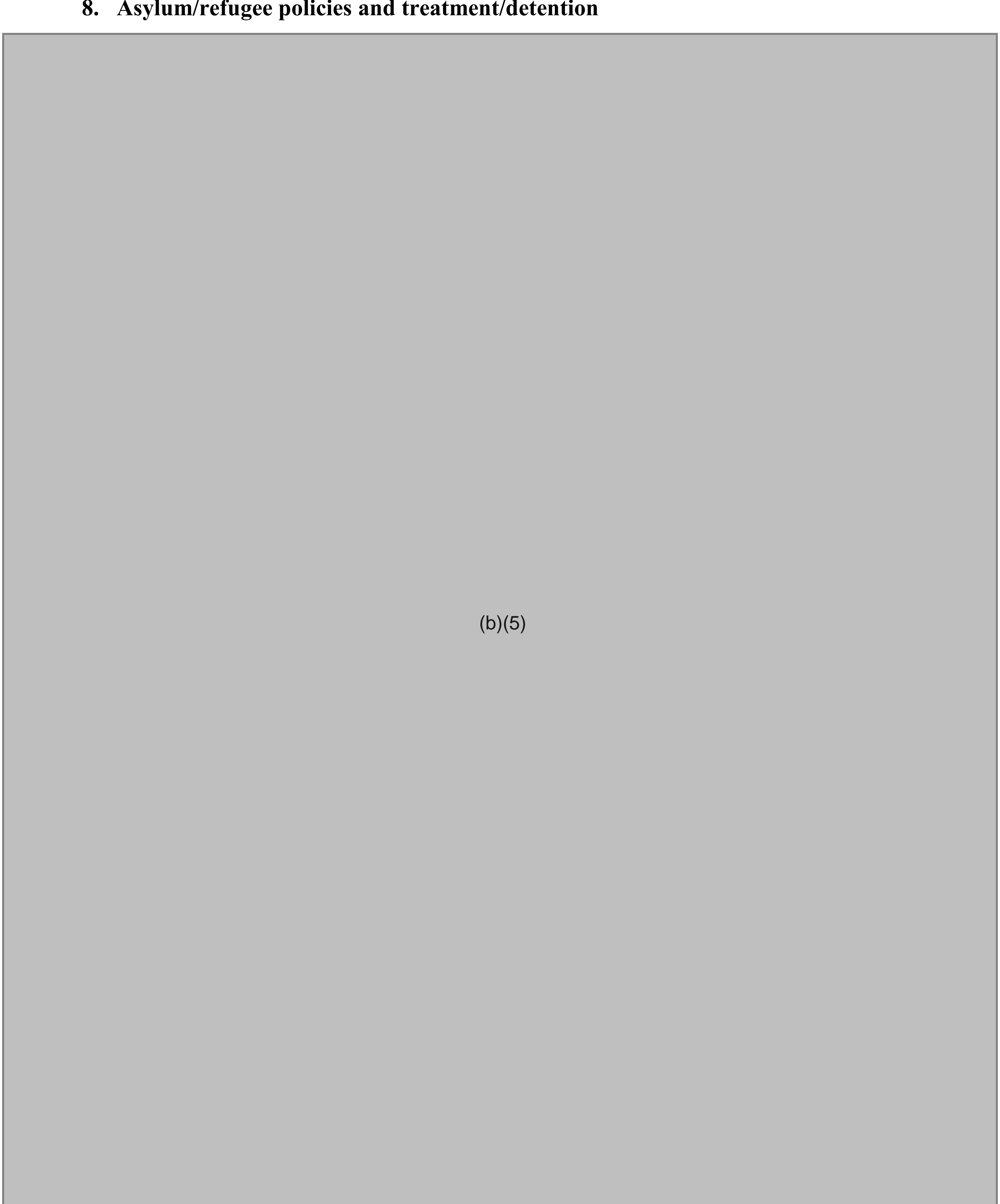

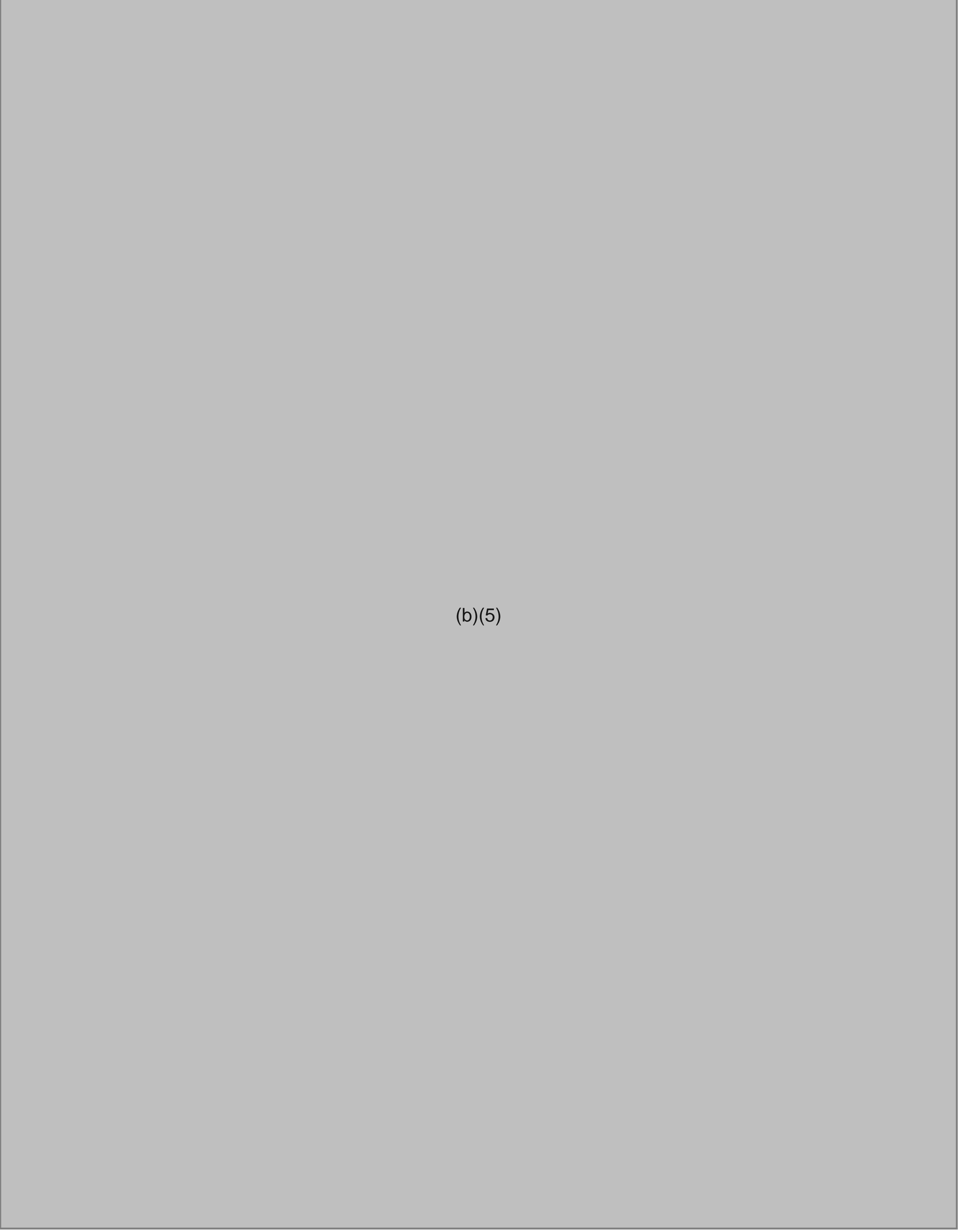
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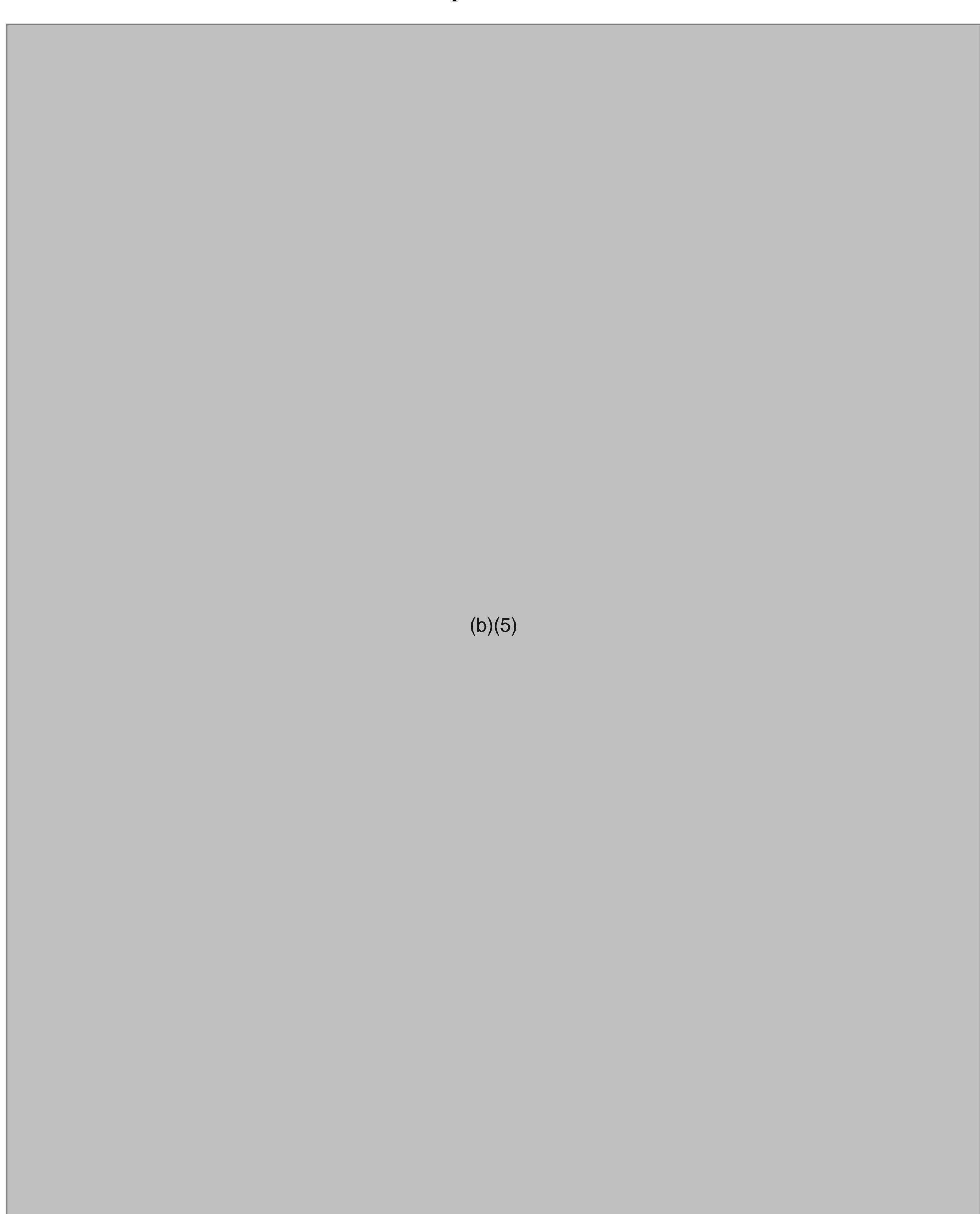

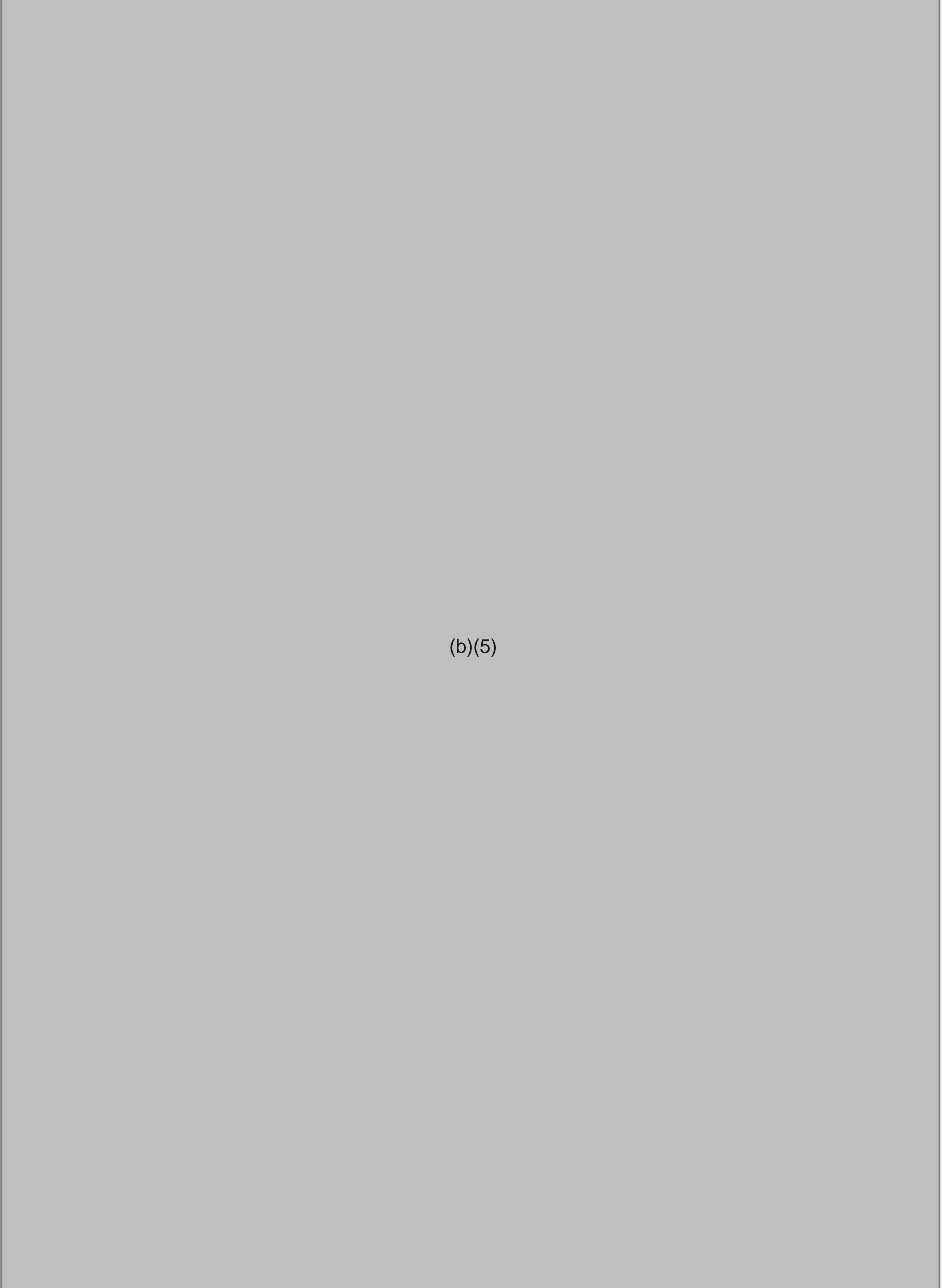
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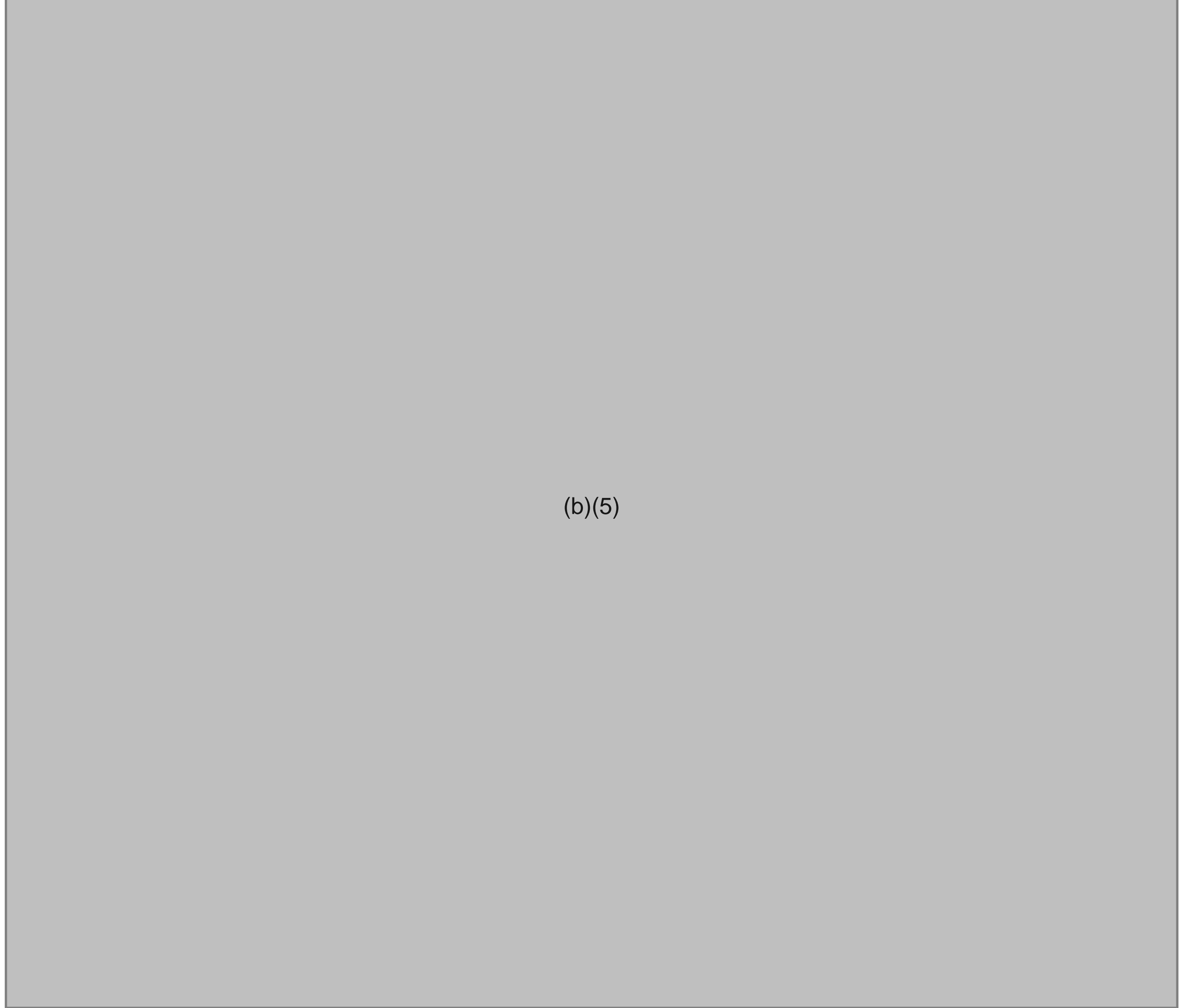
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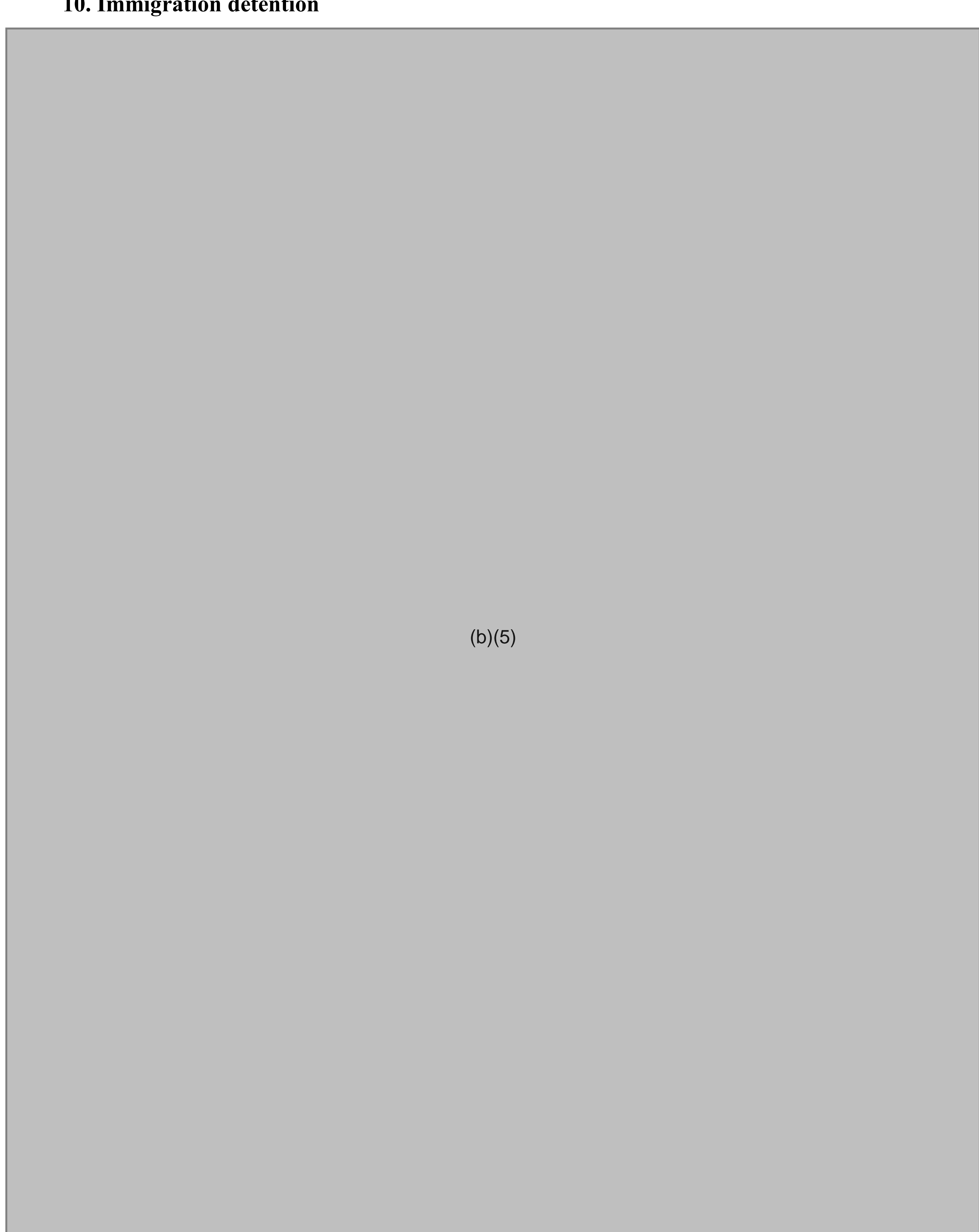
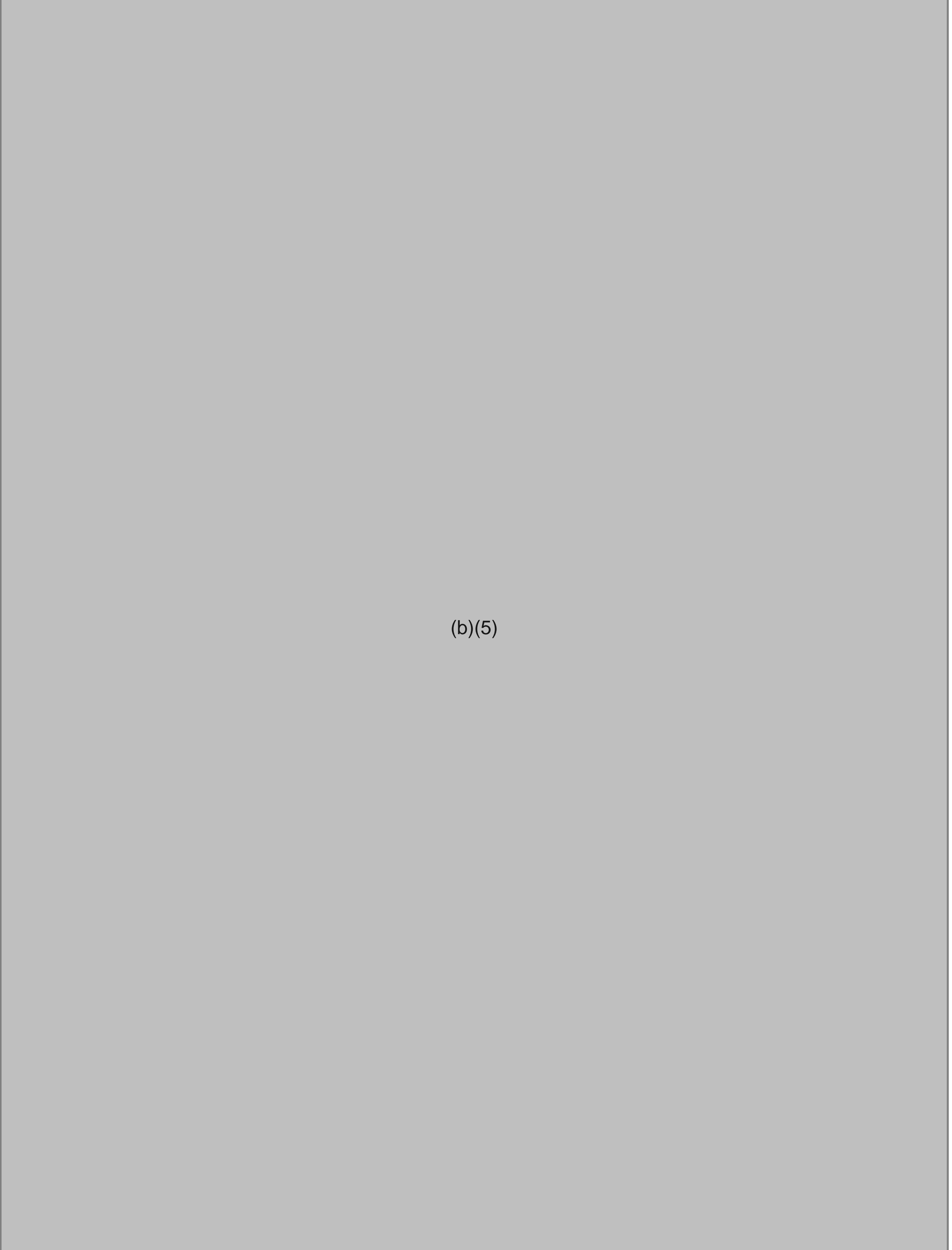
10. Immigration detention

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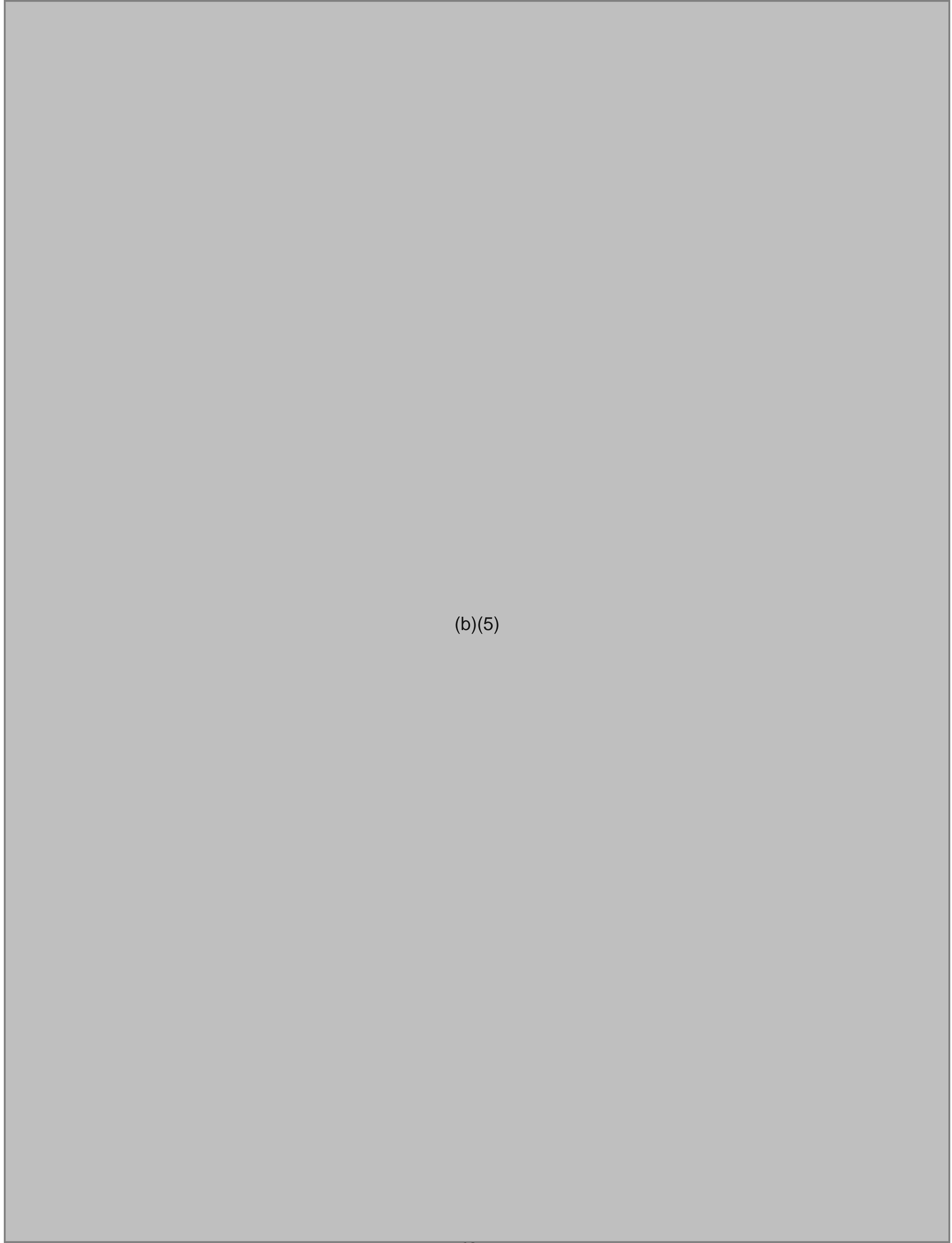
DHS-011-0000001-0000218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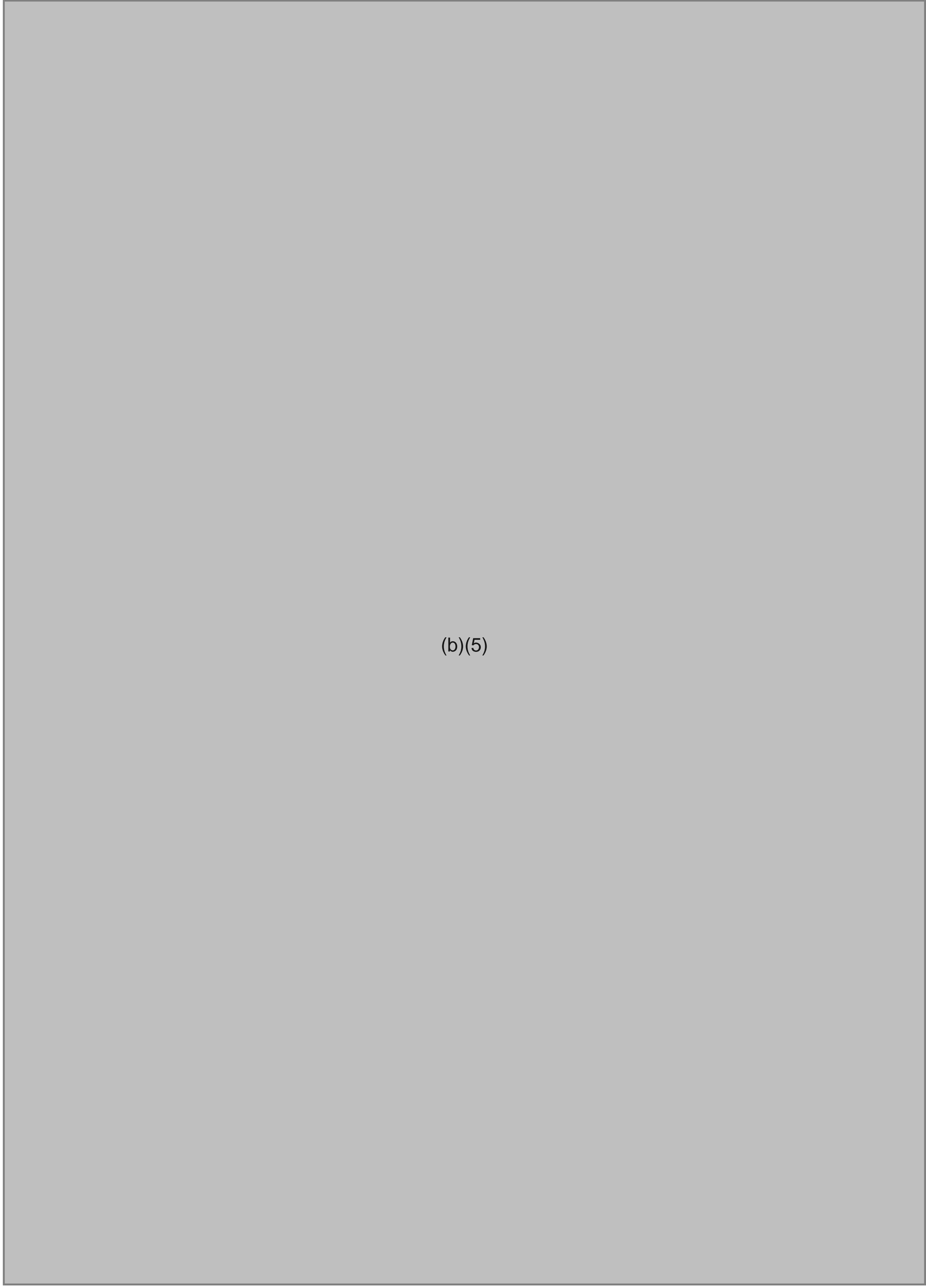
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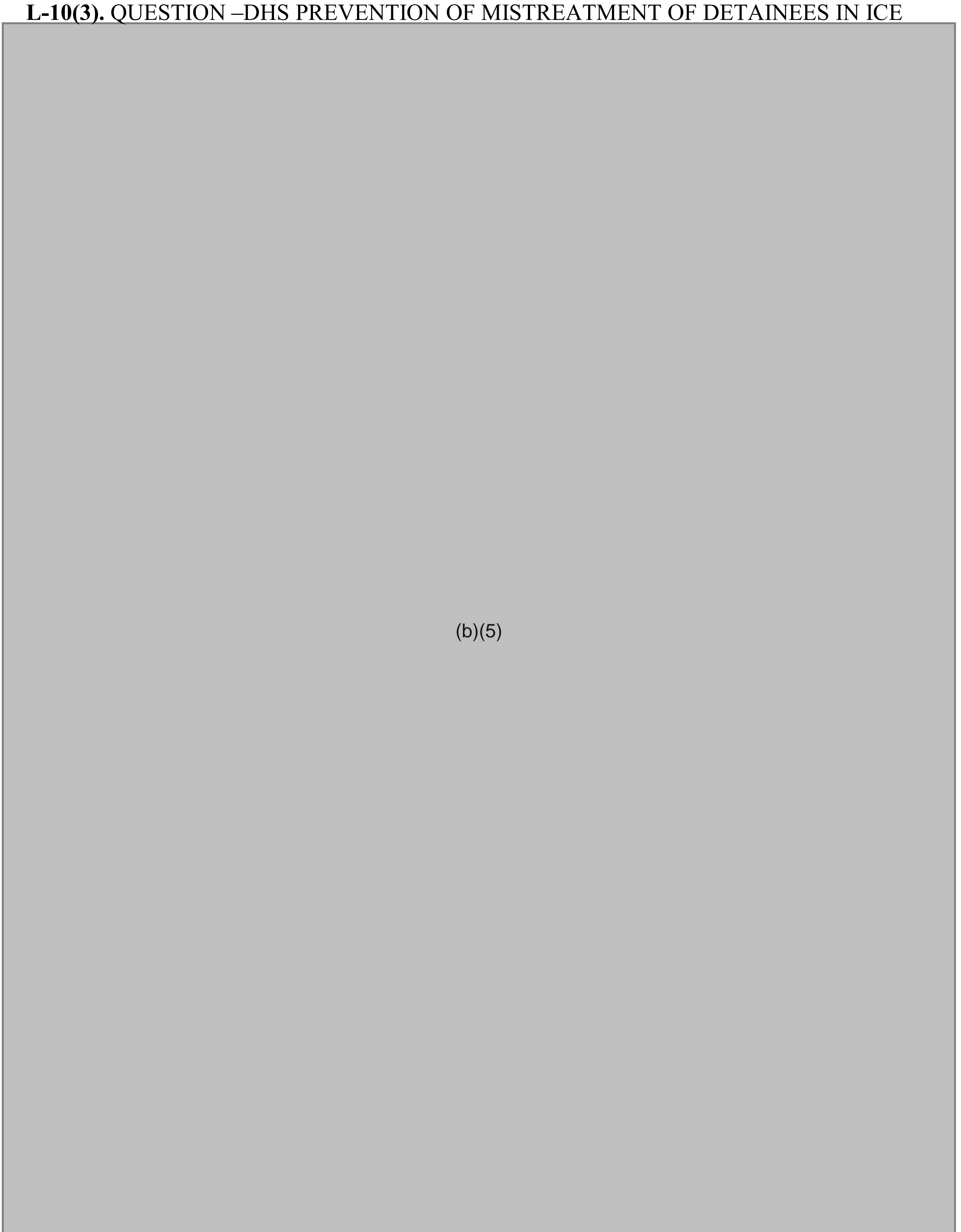
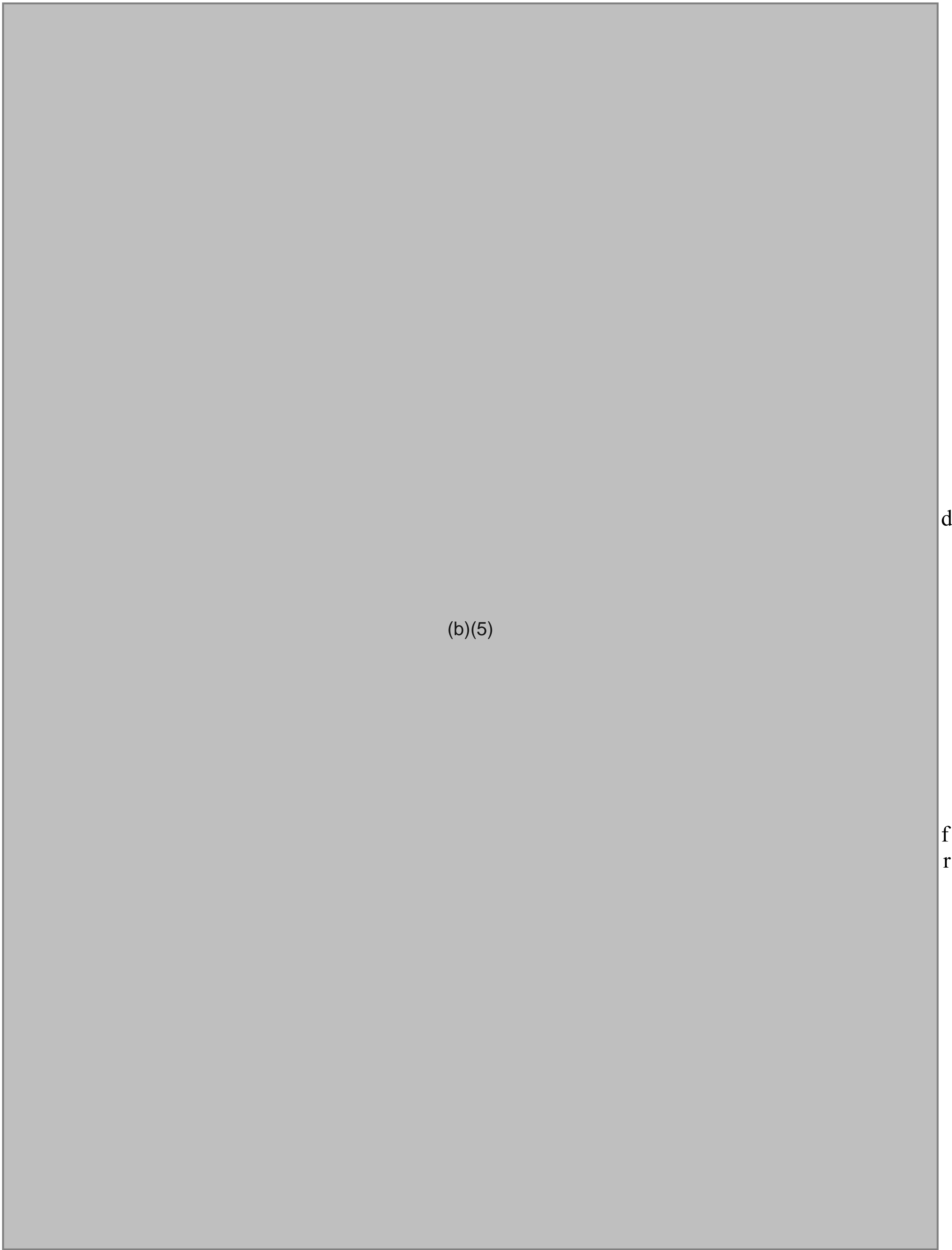
(b)(5)

L-10(3). QUESTION –DHS PREVENTION OF MISTREATMENT OF DETAINEES IN ICE





d

f
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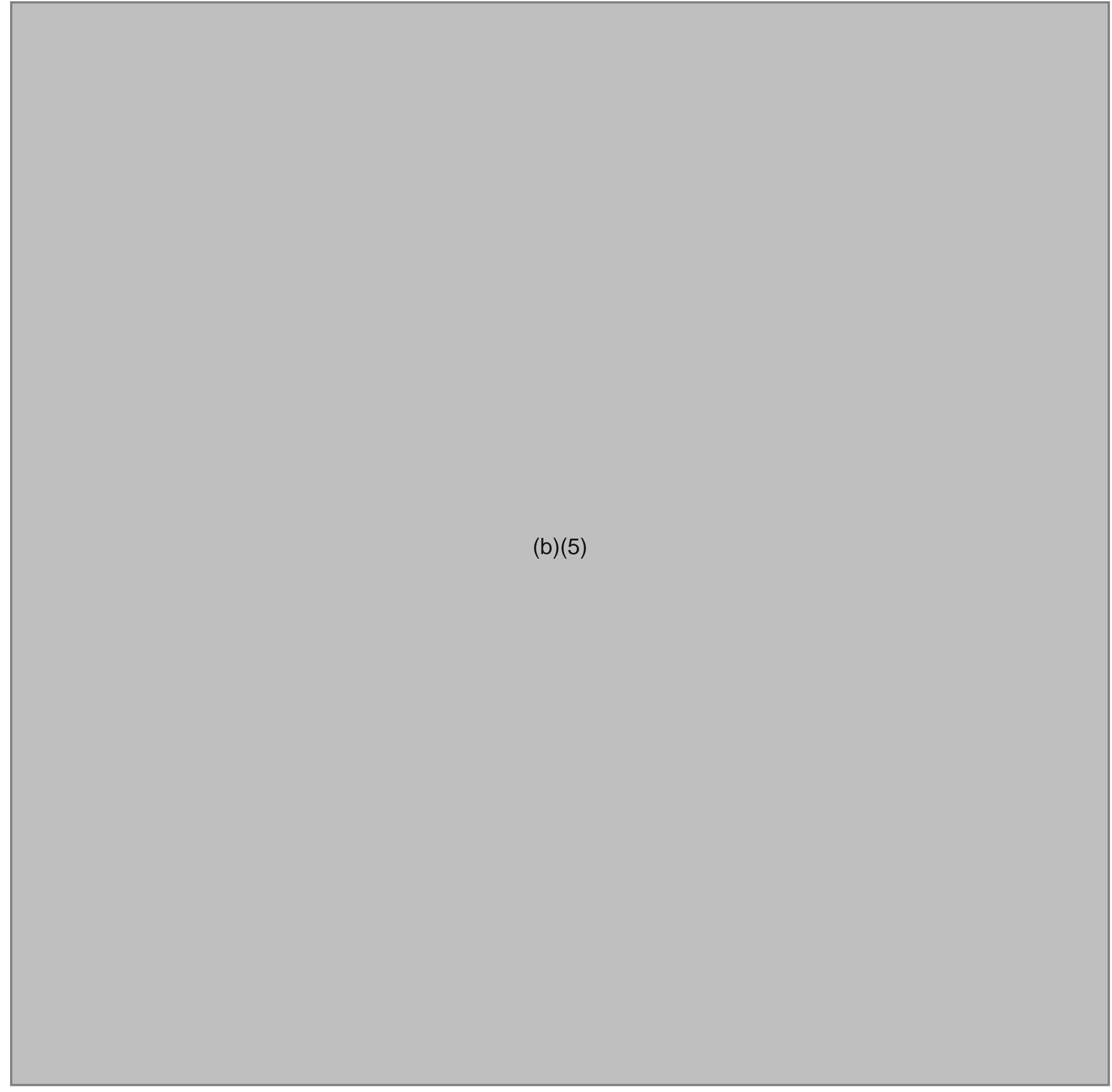
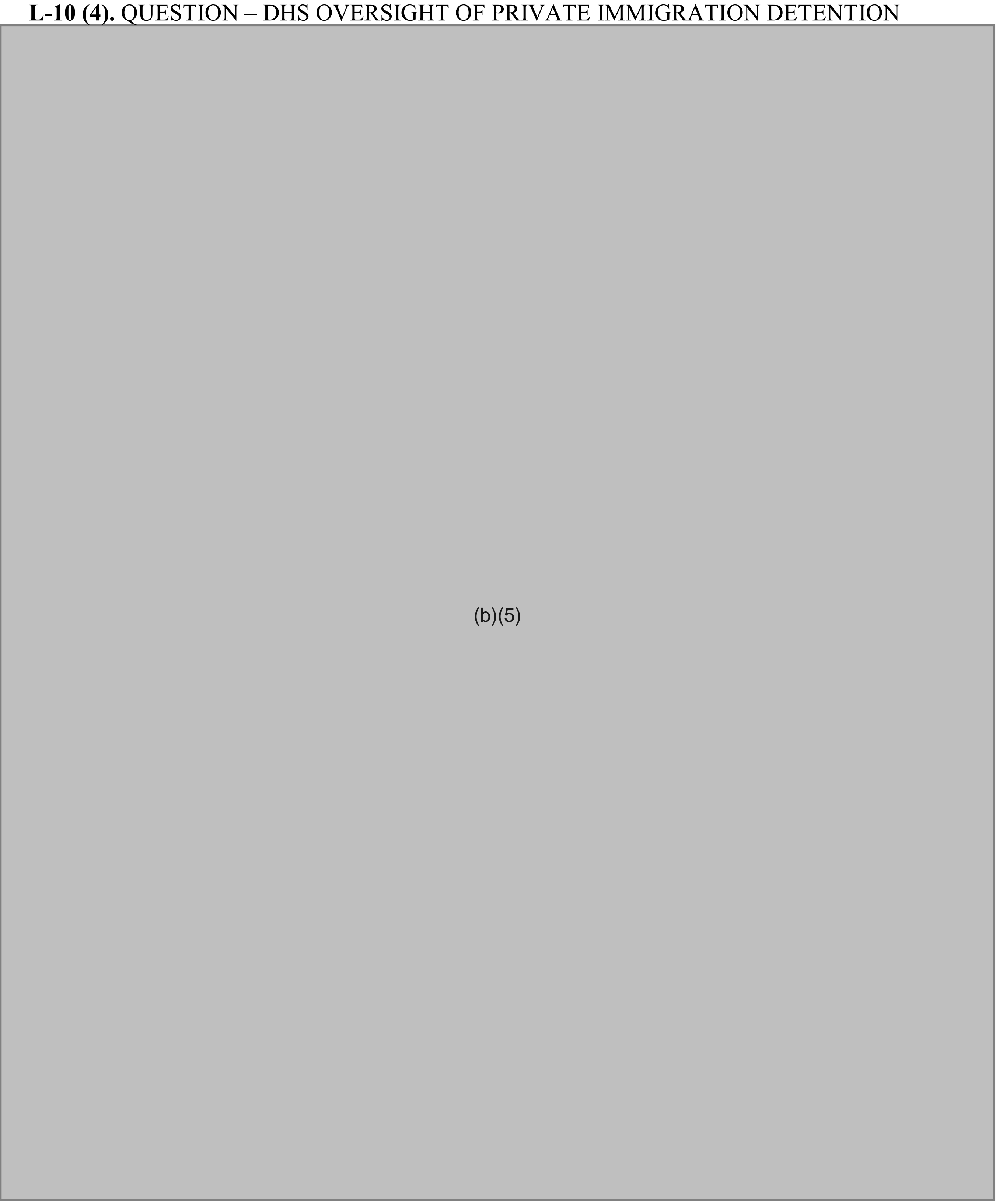
8/8/2014 4pm



L-10 (4). QUESTION – DHS OVERSIGHT OF PRIVATE IMMIGRATION DETENTION



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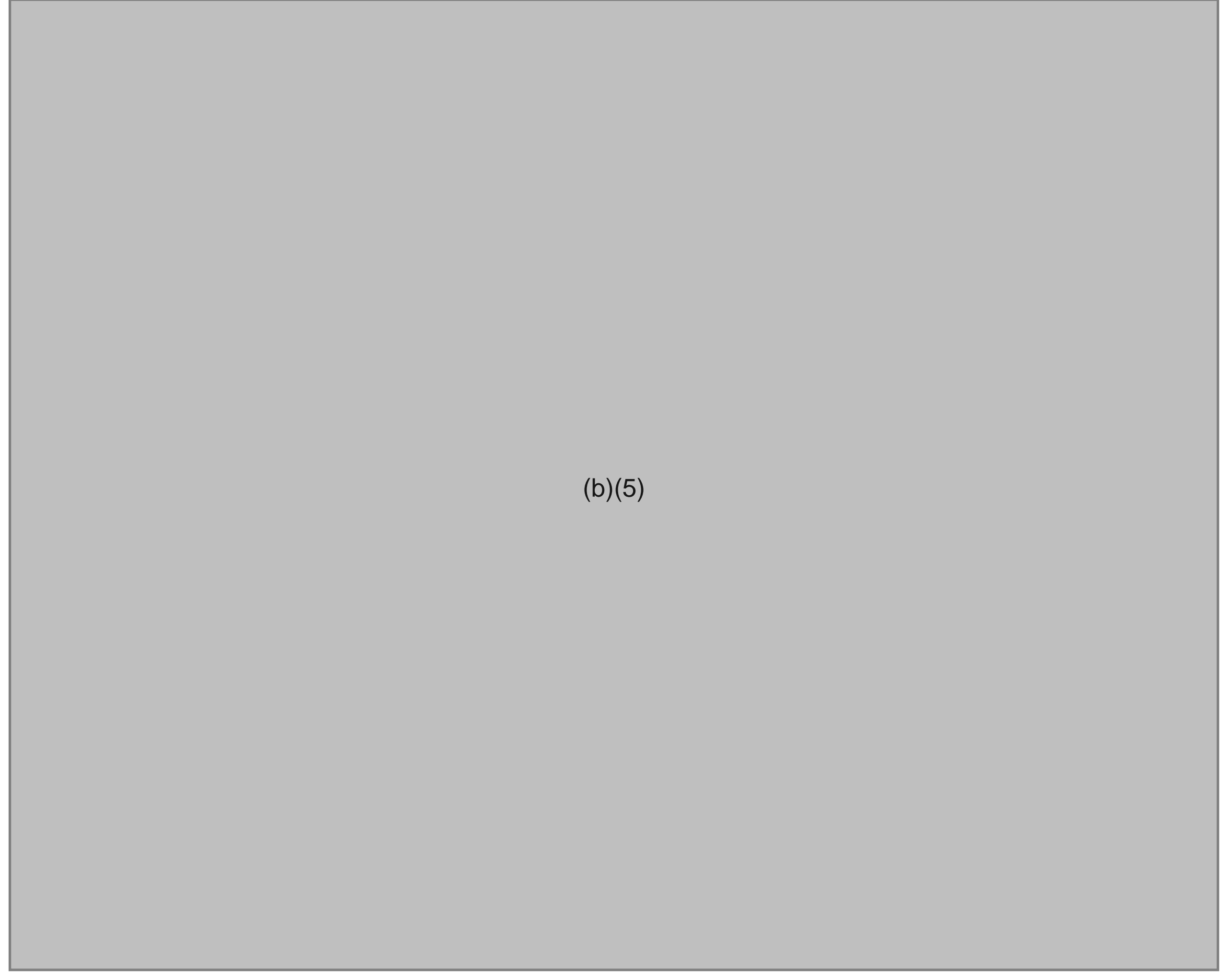

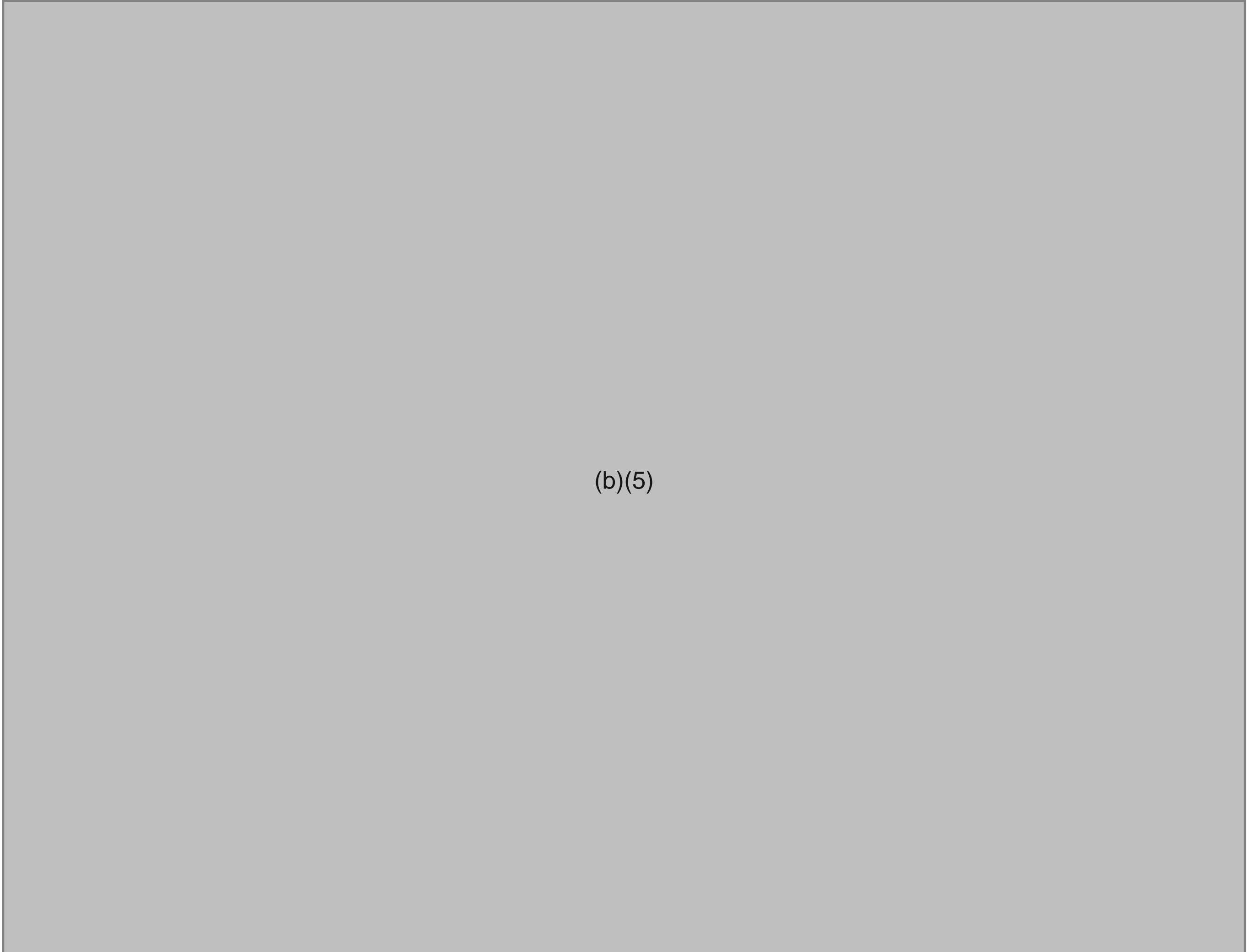
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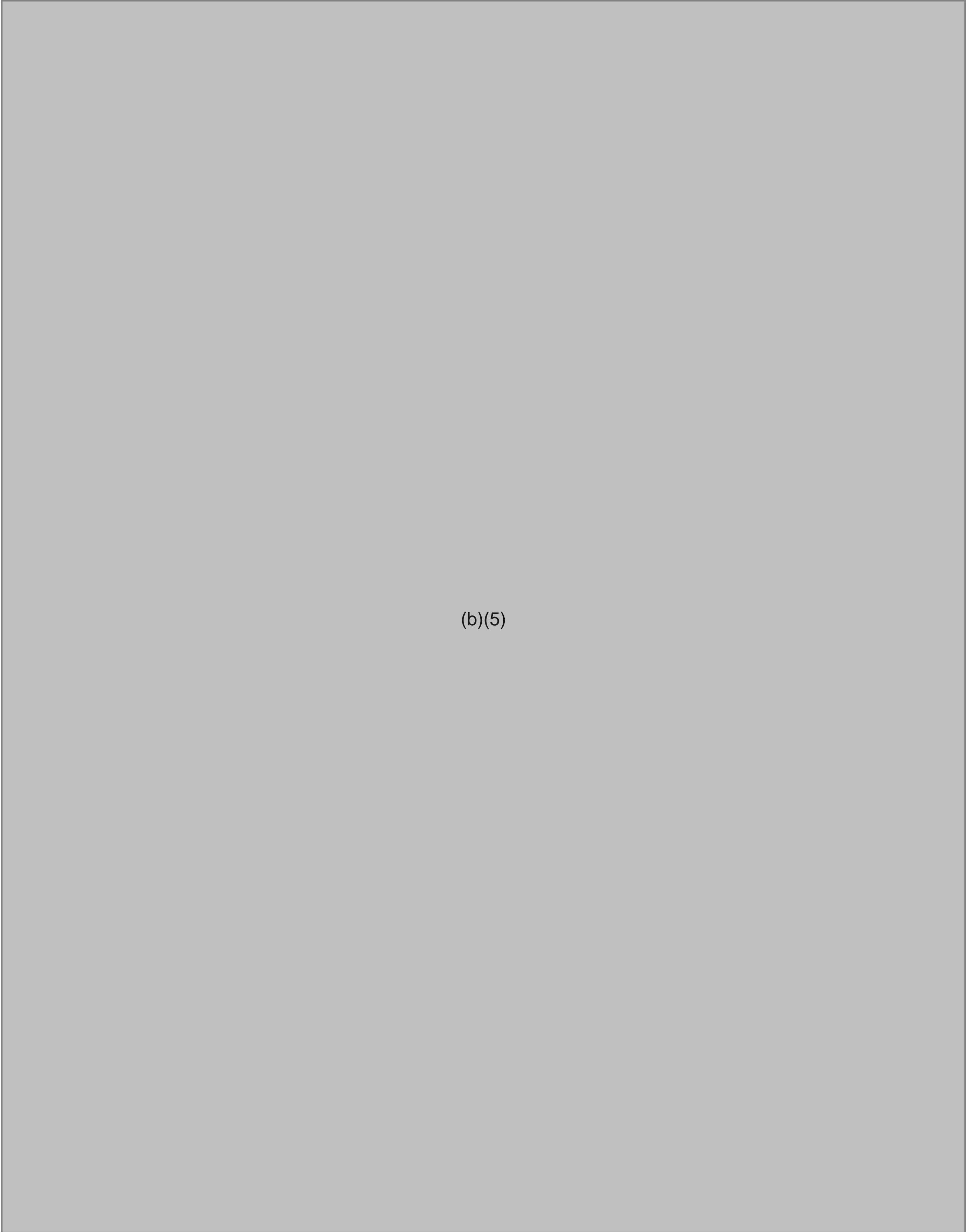
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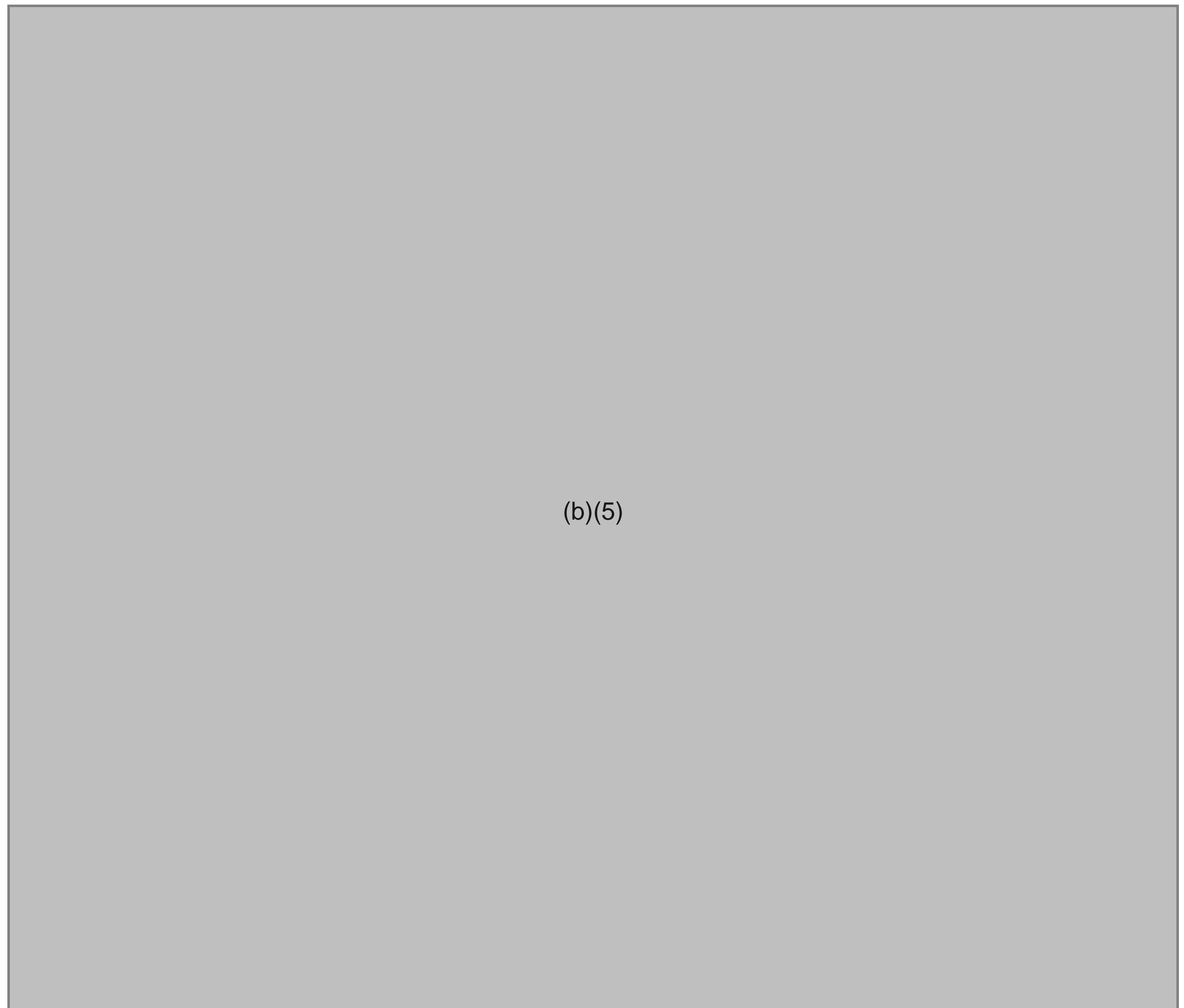
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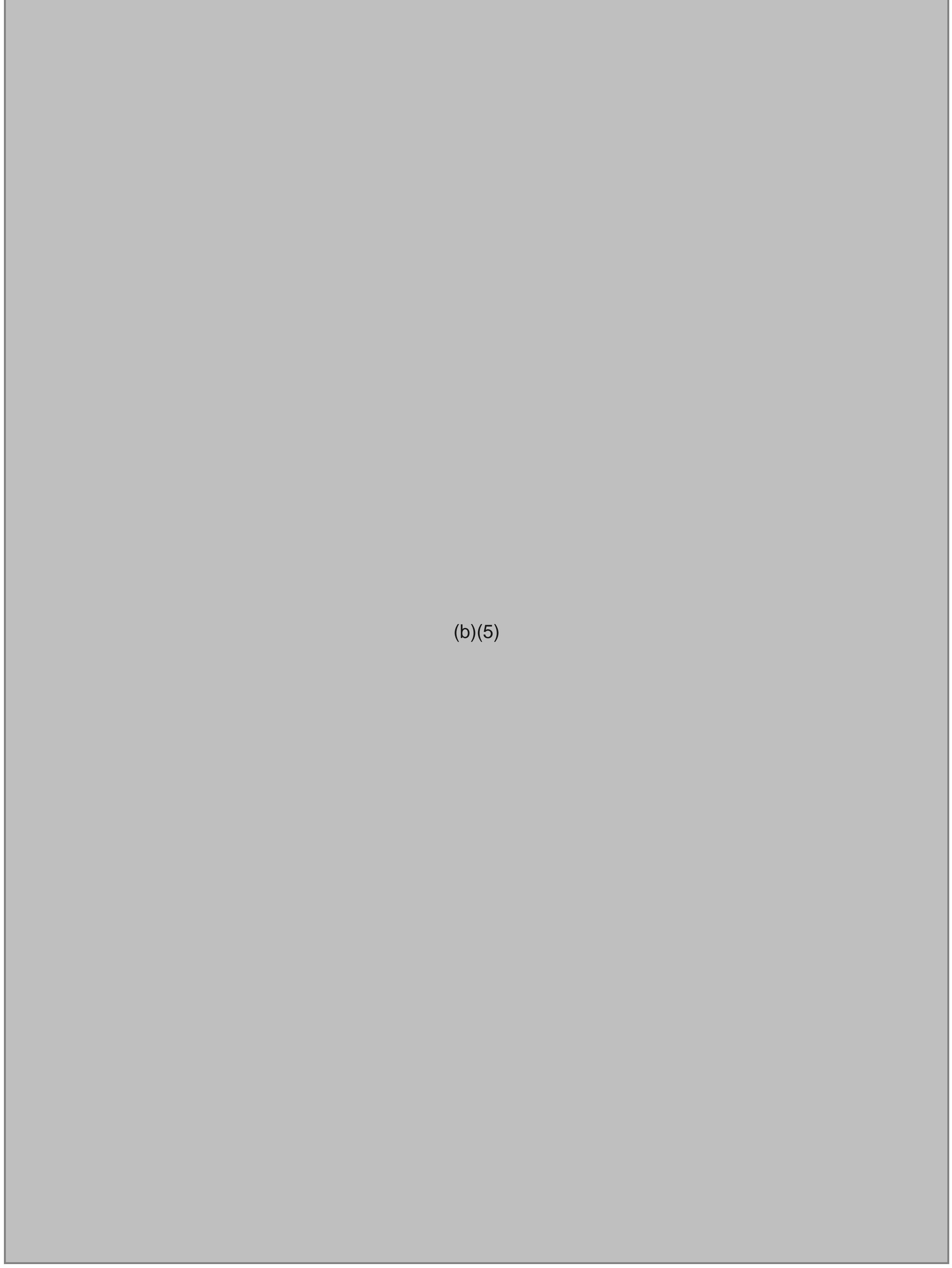
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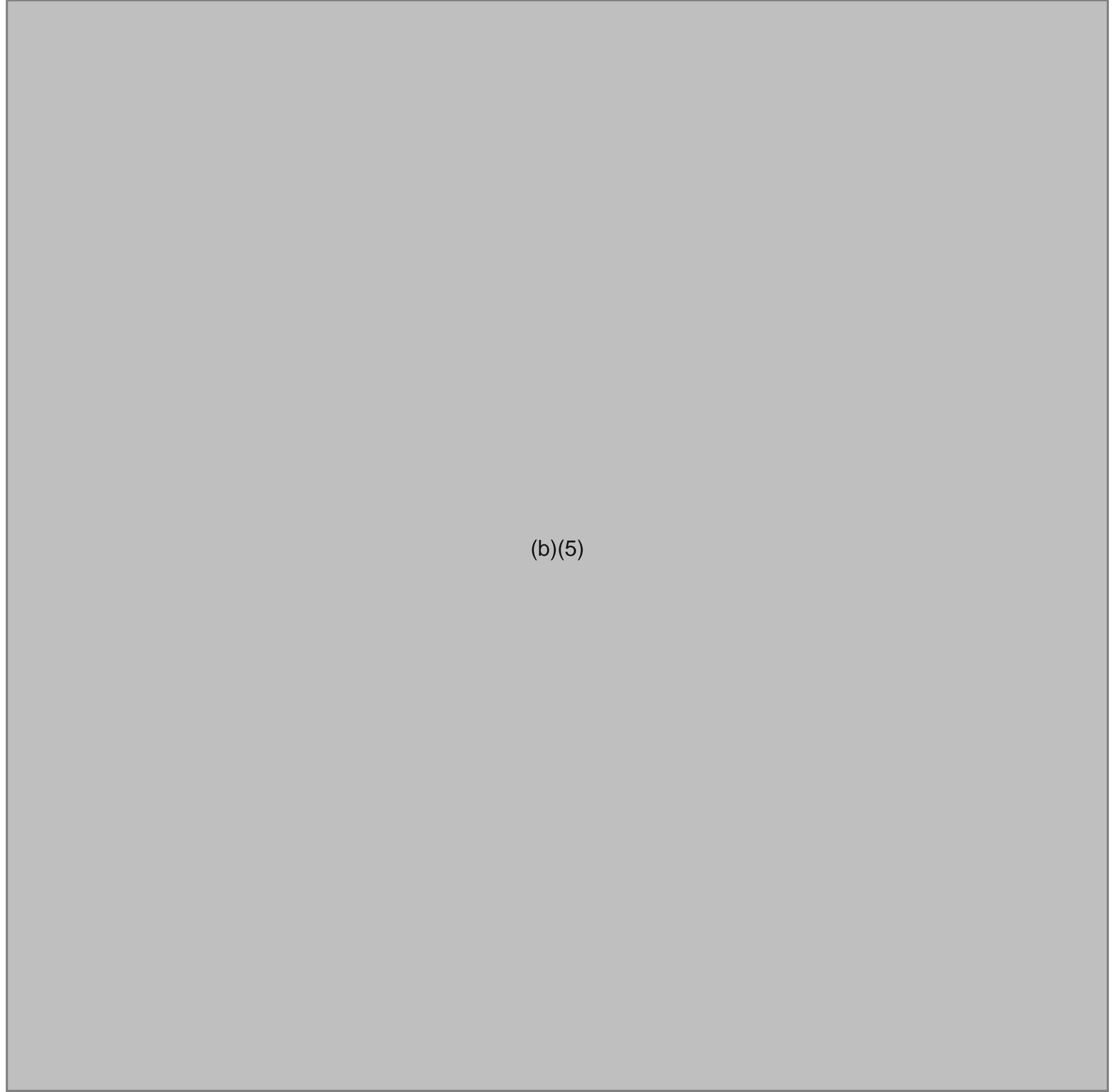
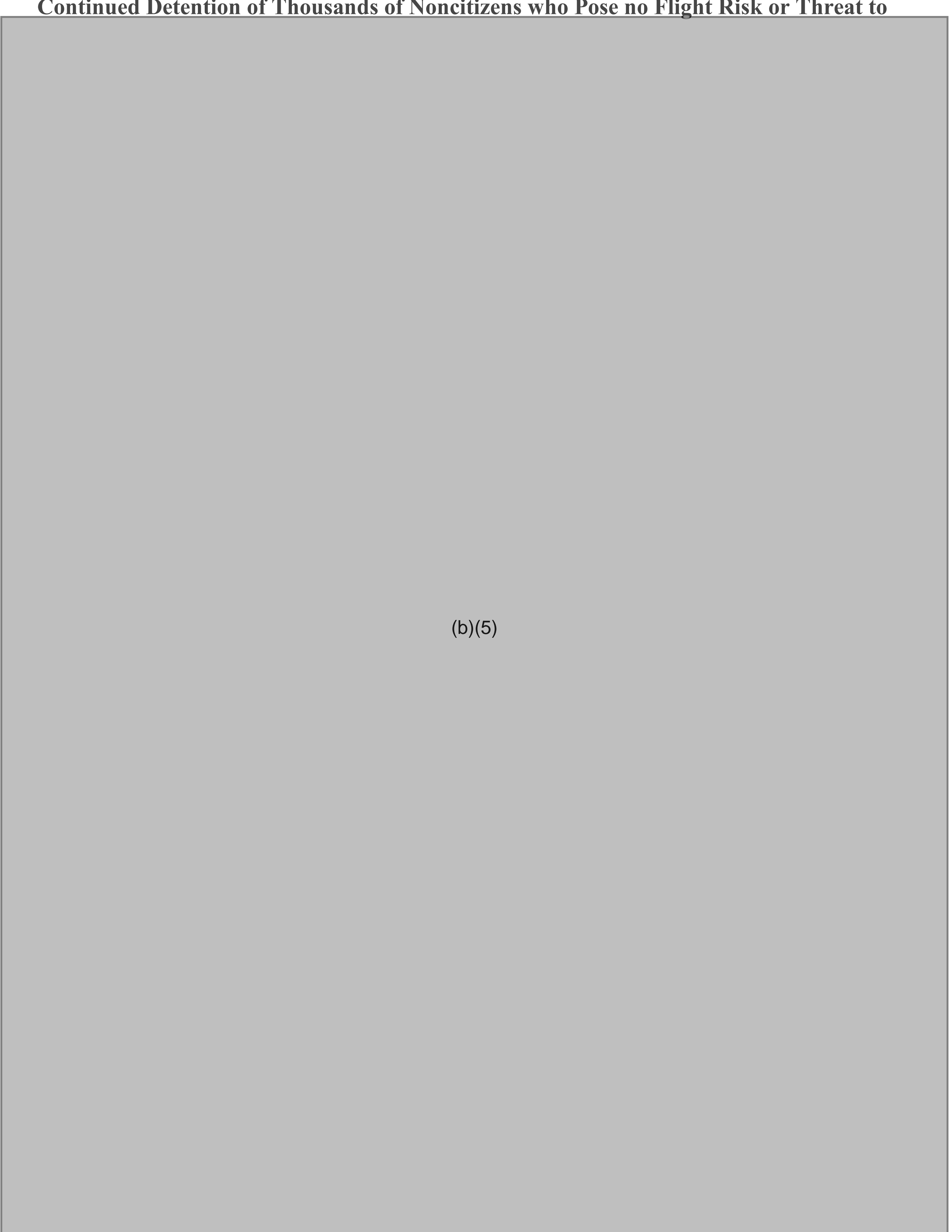
8/8/2014 4pm



Continued Detention of Thousands of Noncitizens who Pose no Flight Risk or Threat to



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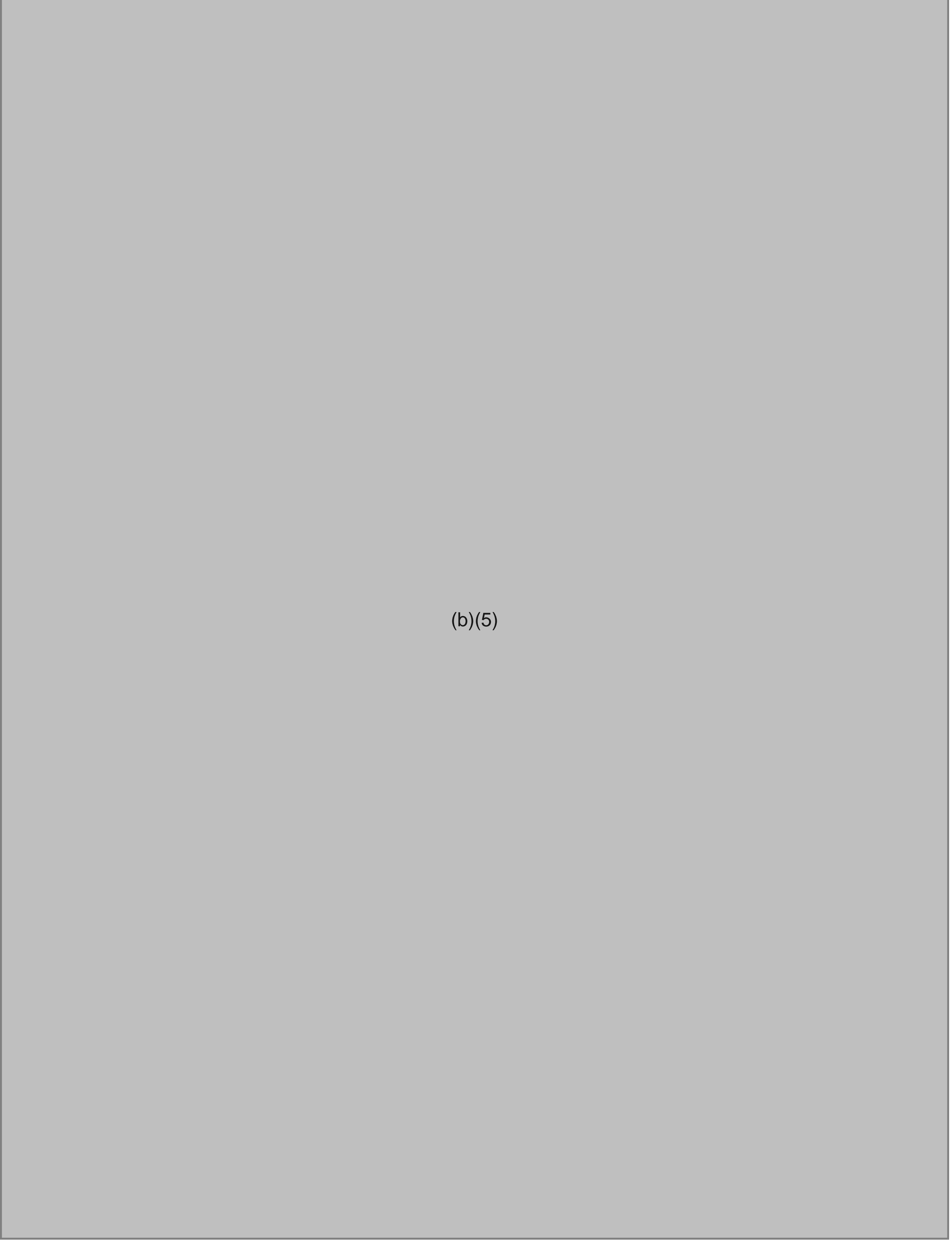
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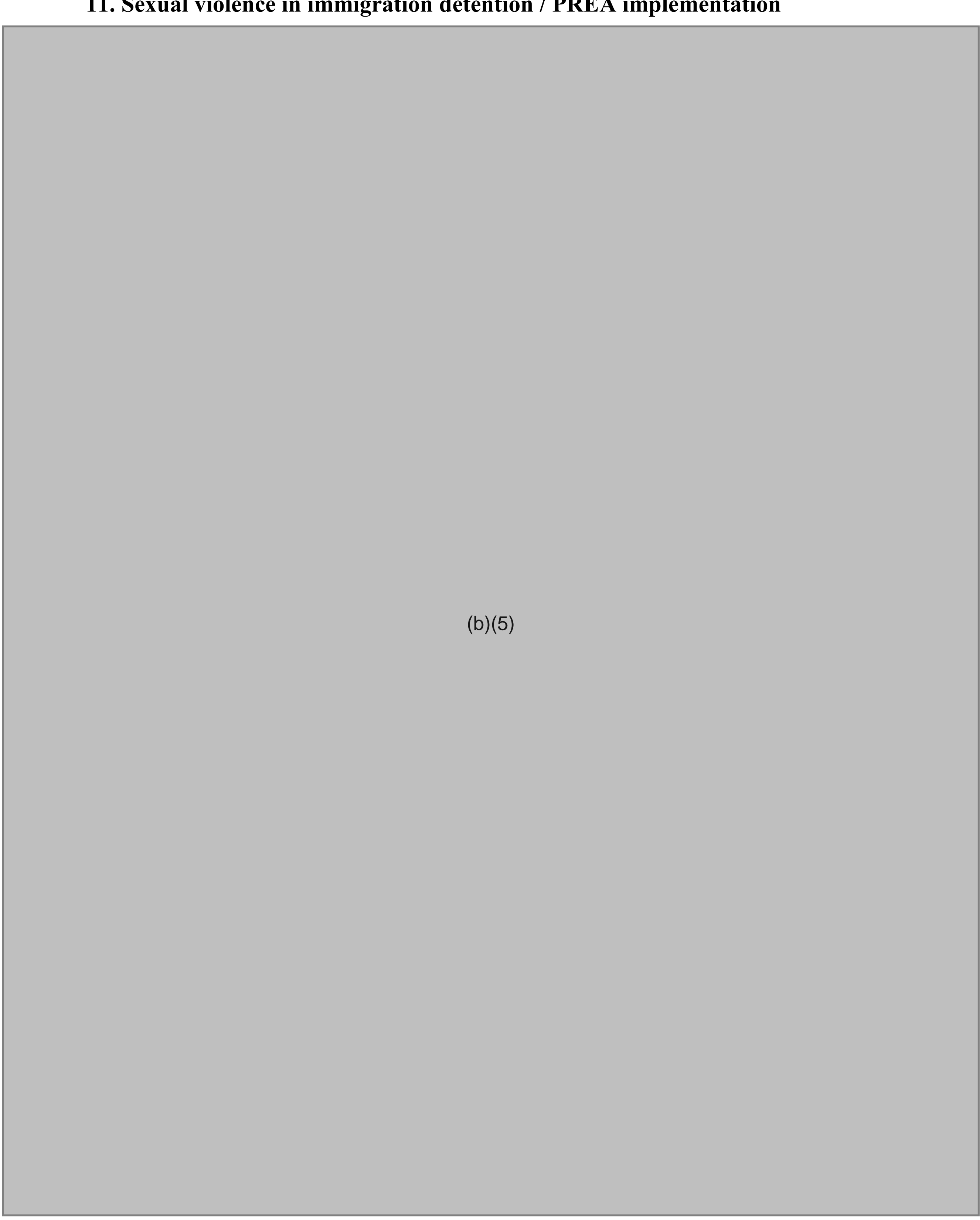
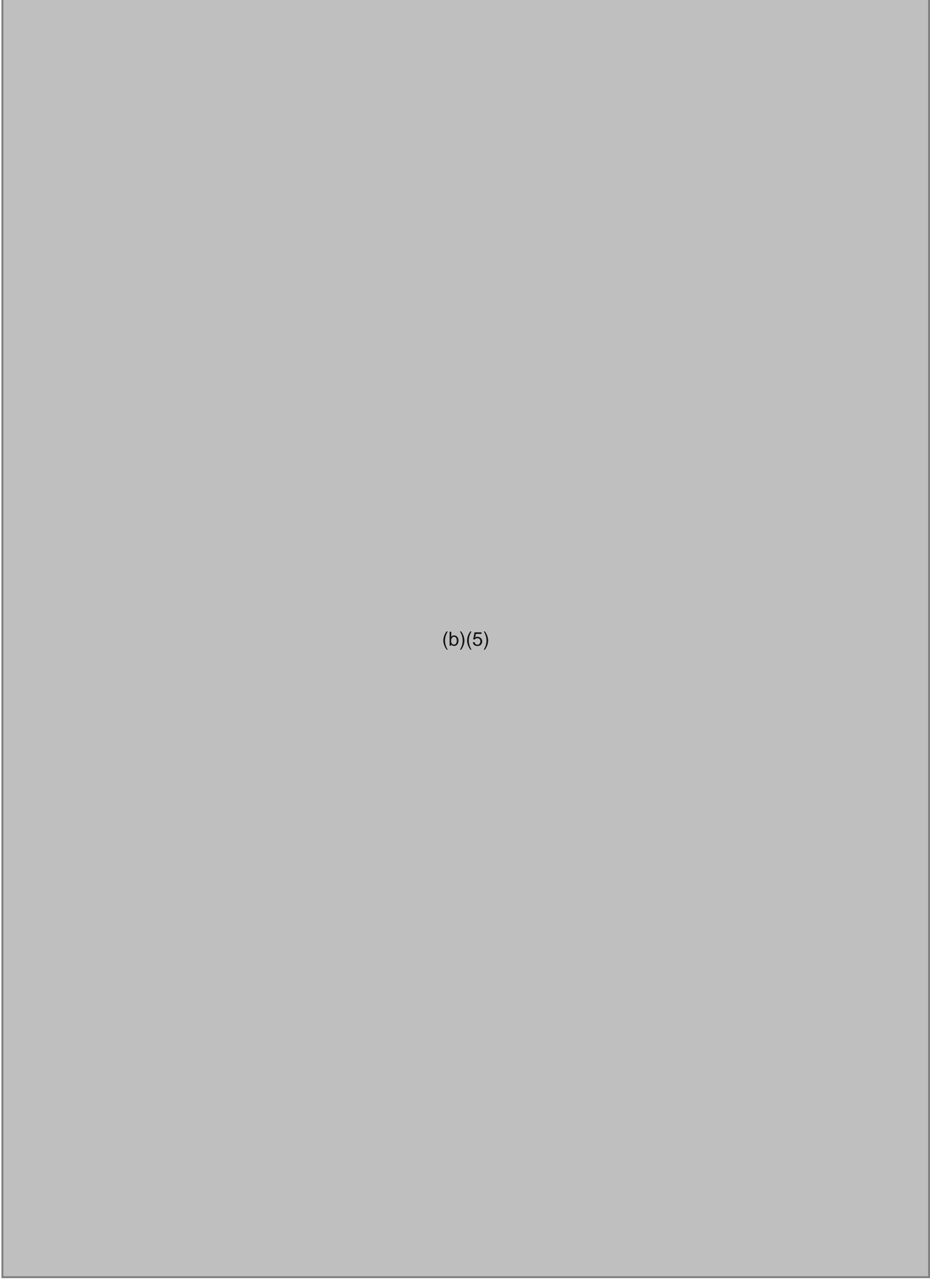
8/8/2014 4pm

(b)(5)

DHS-011-0000001-0000235

11. Sexual violence in immigration detention / PREA implementation

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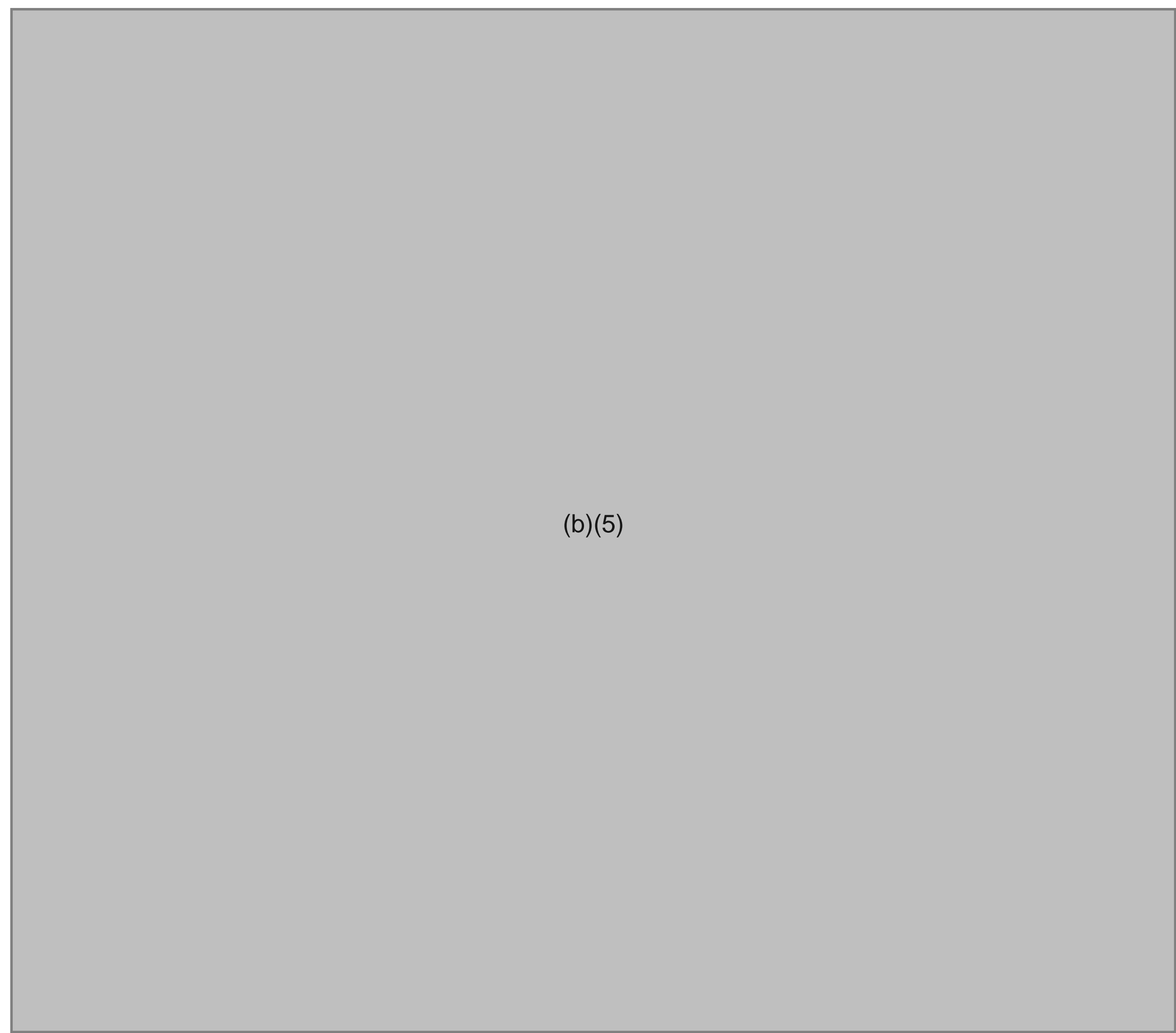
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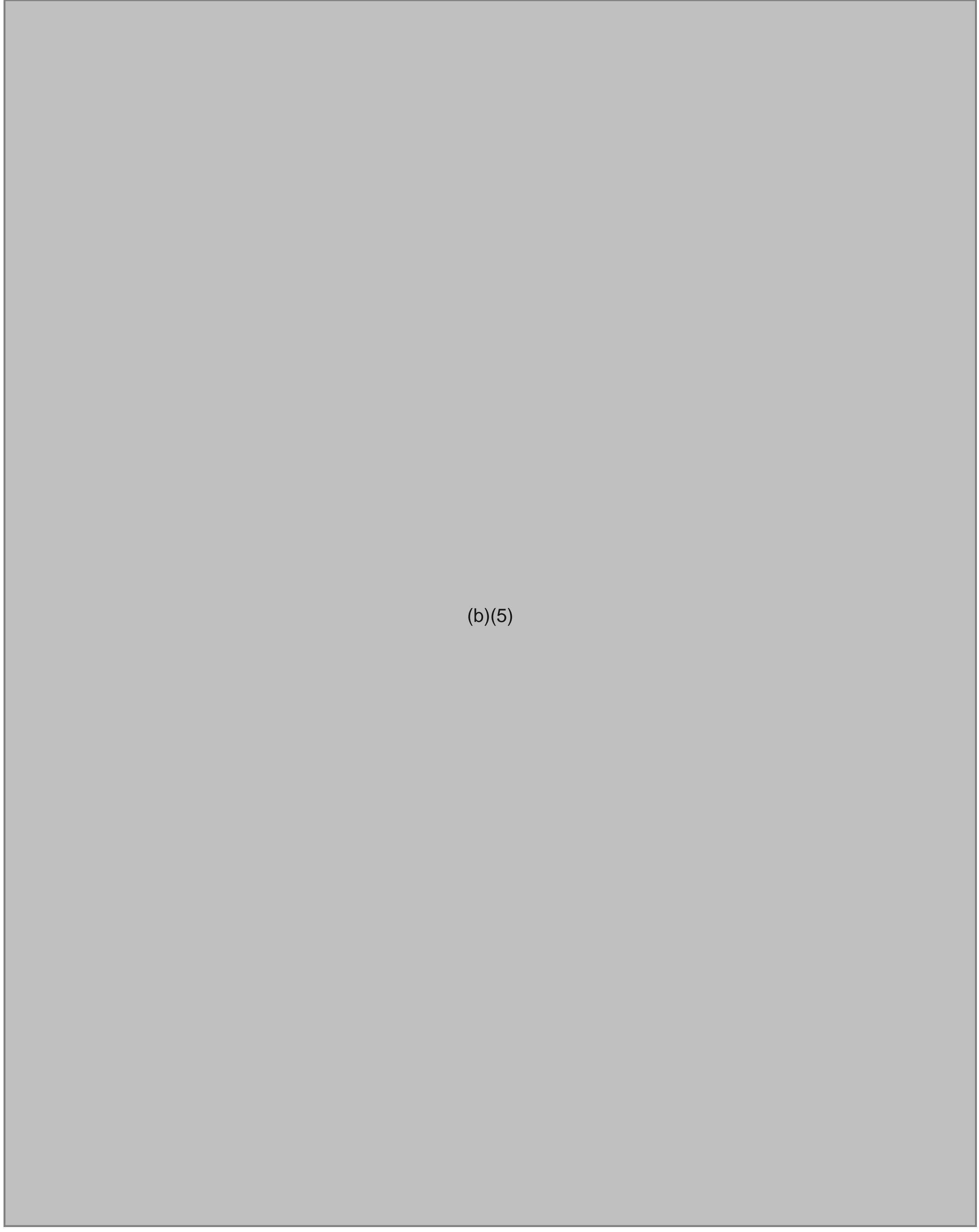
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8/8/2014 4pm

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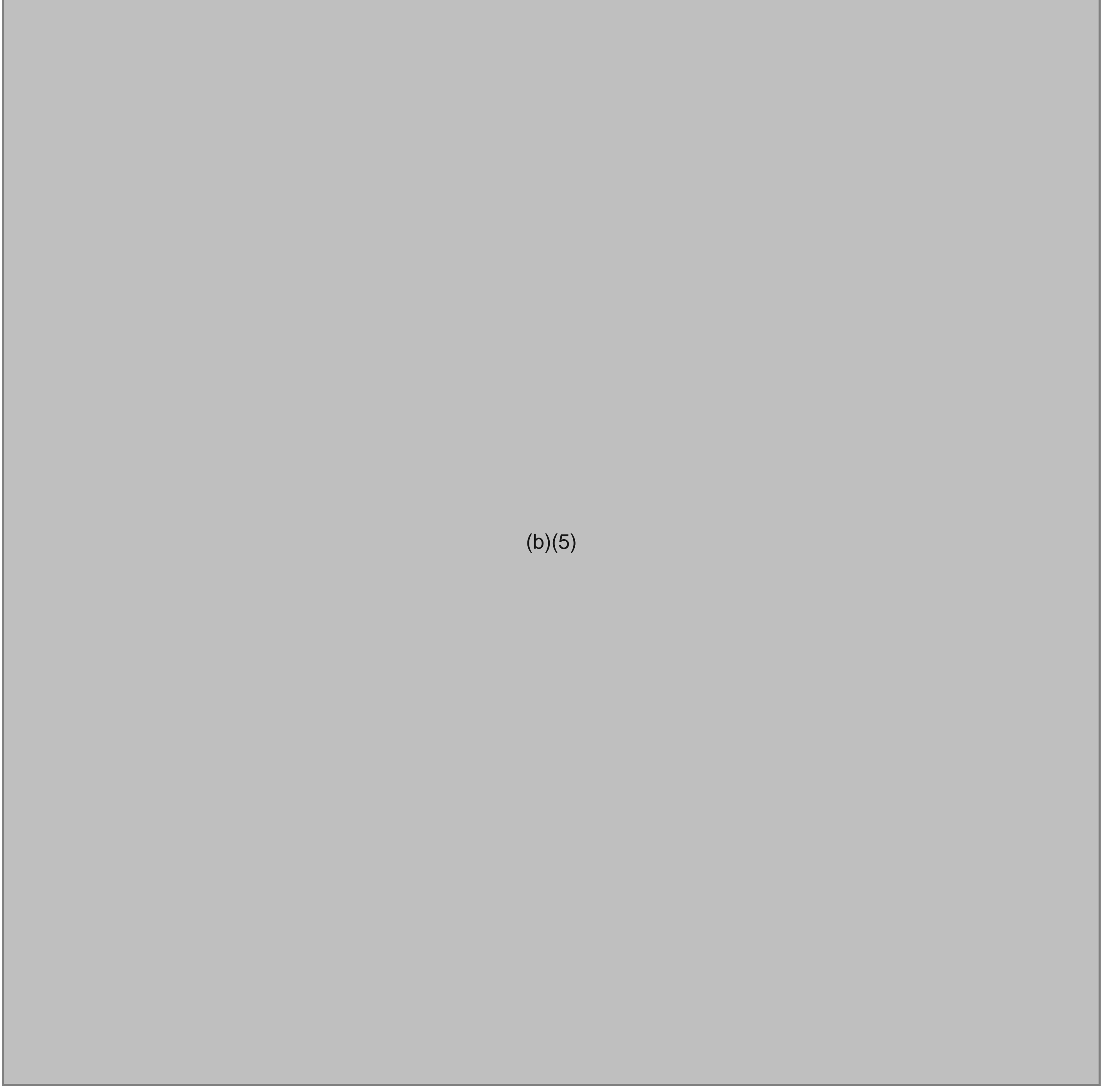
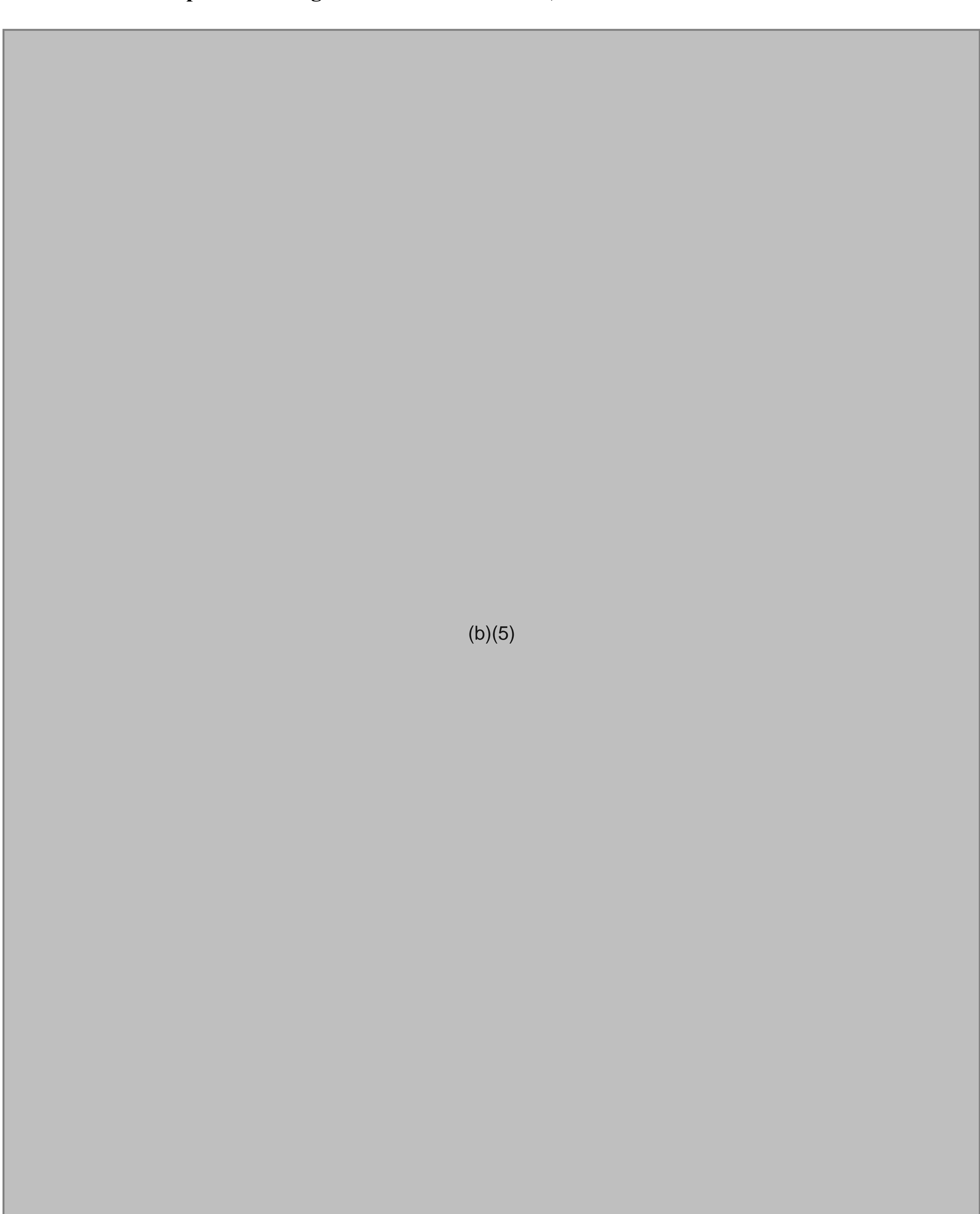
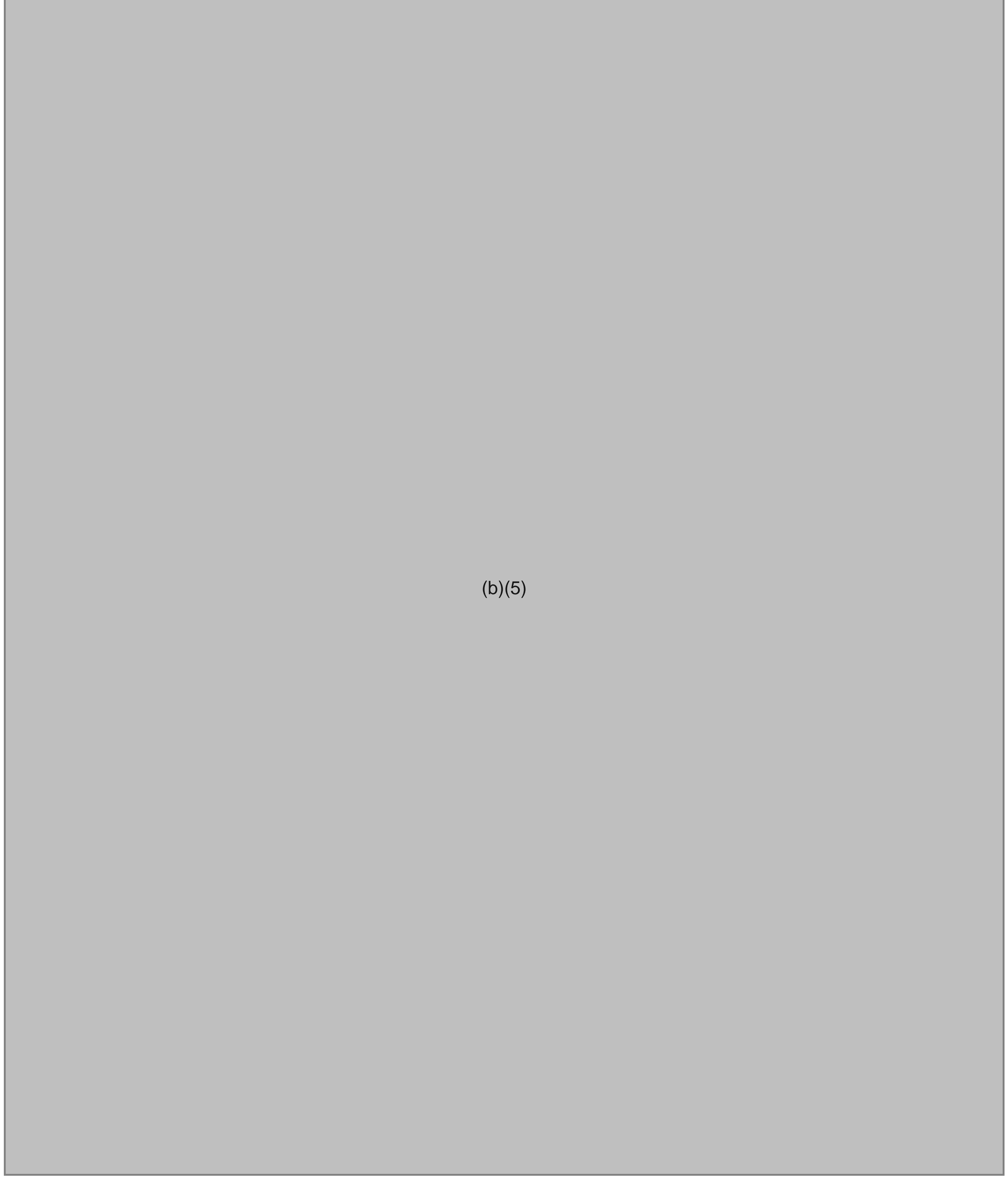
8/8/2014 4pm



12. Unaccompanied immigrant children – counsel, best interests of child

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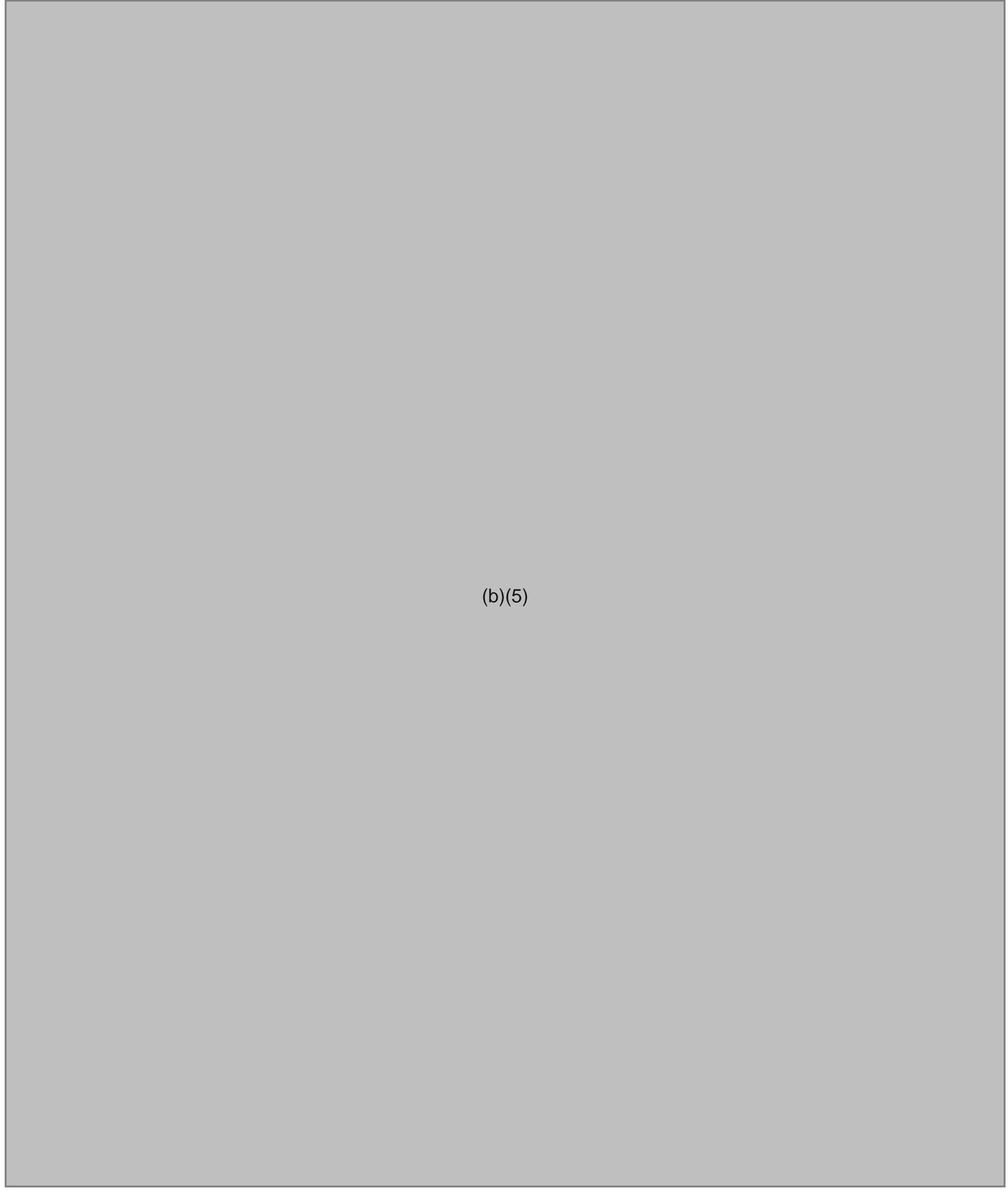
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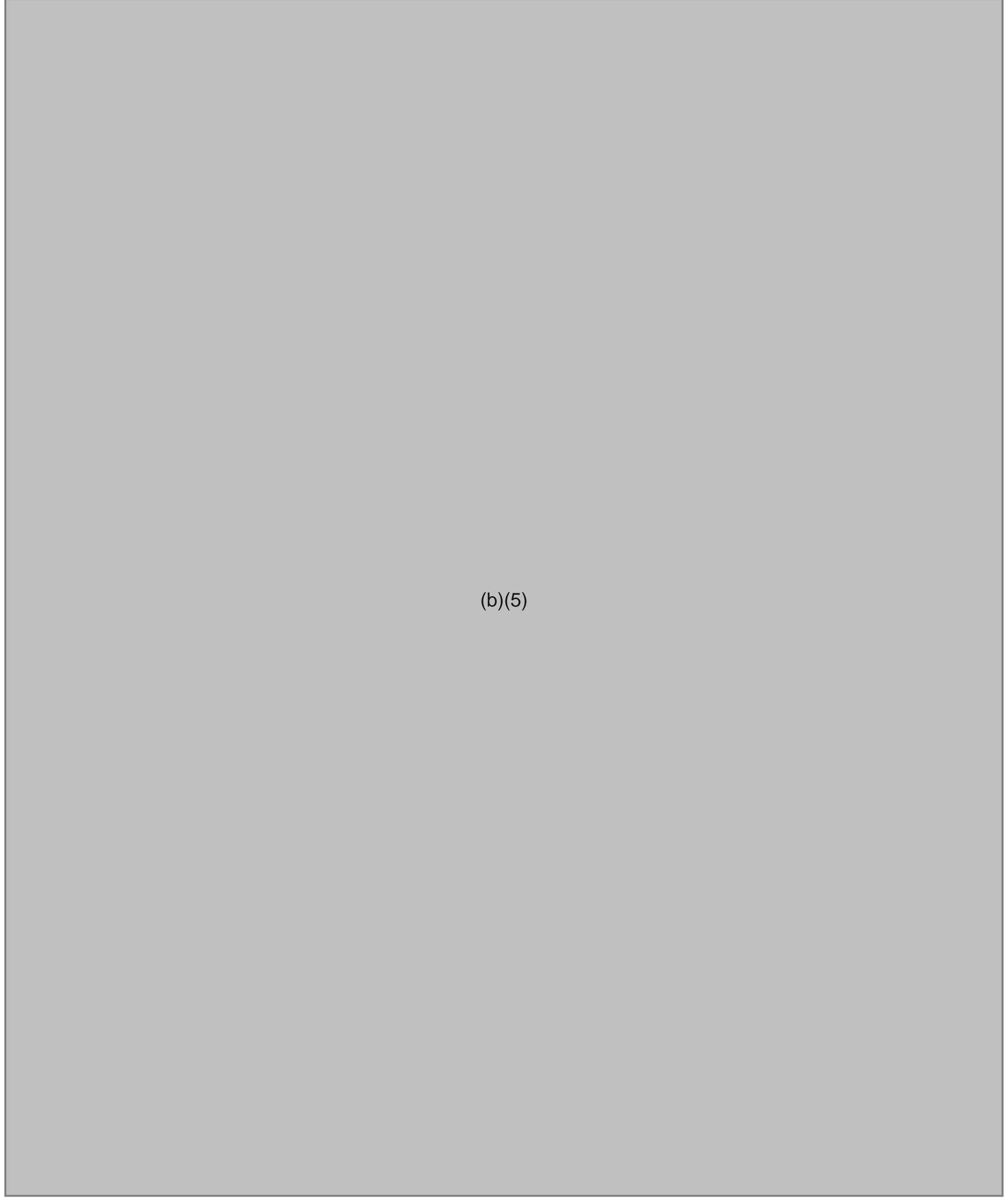
(b)(5)

DHS-011-0000001-0000245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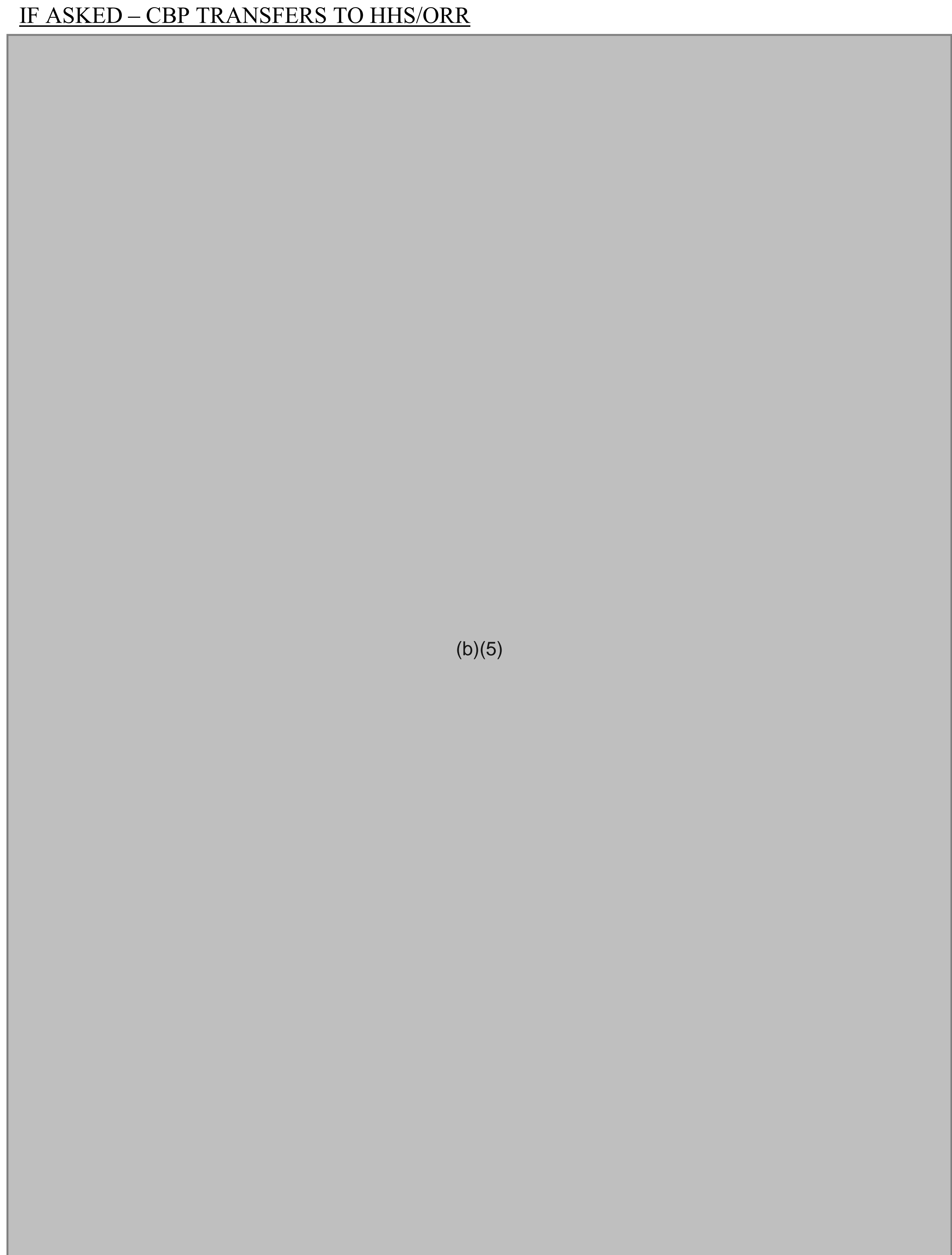
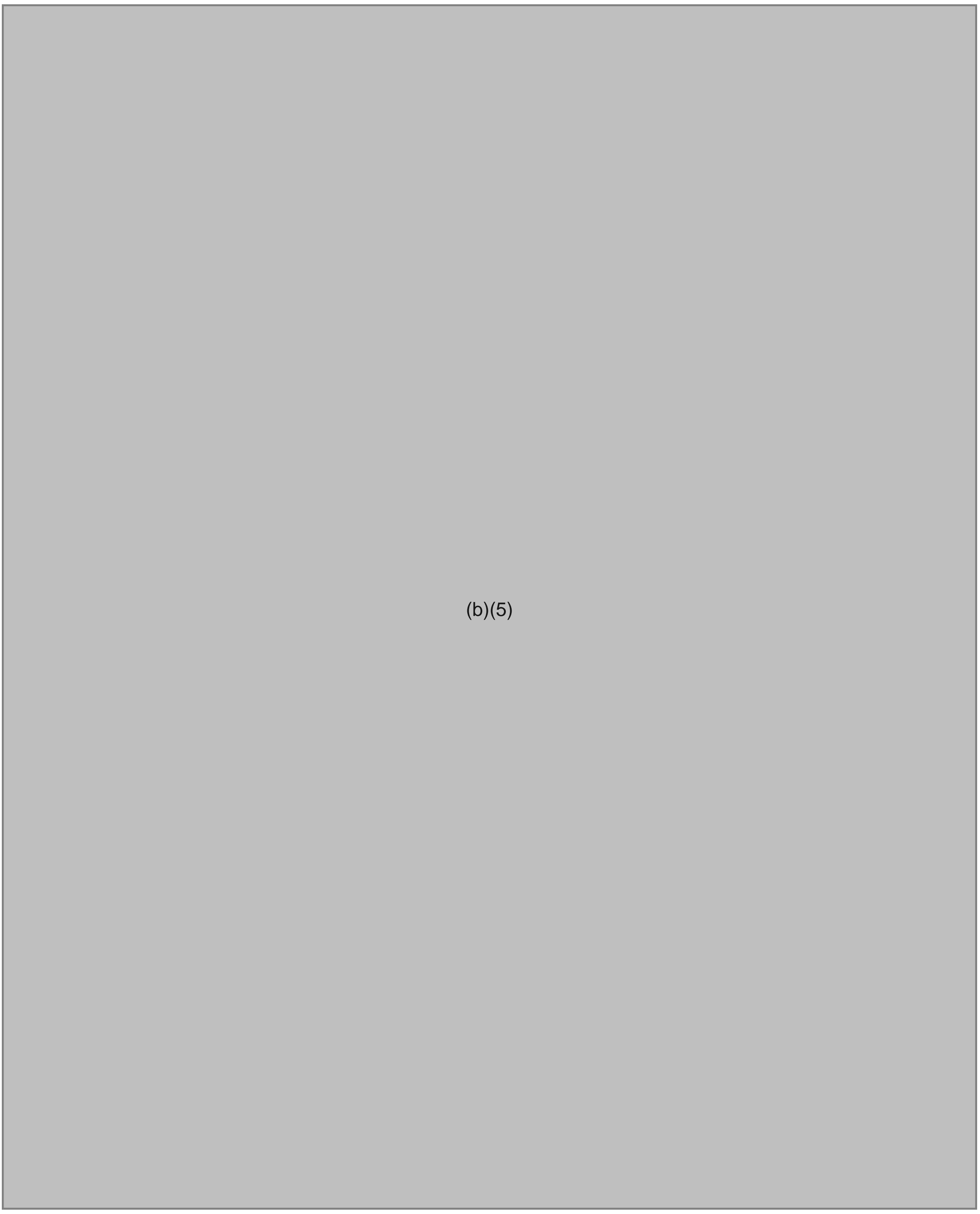
IF ASKED – CBP TRANSFERS TO HHS/ORR

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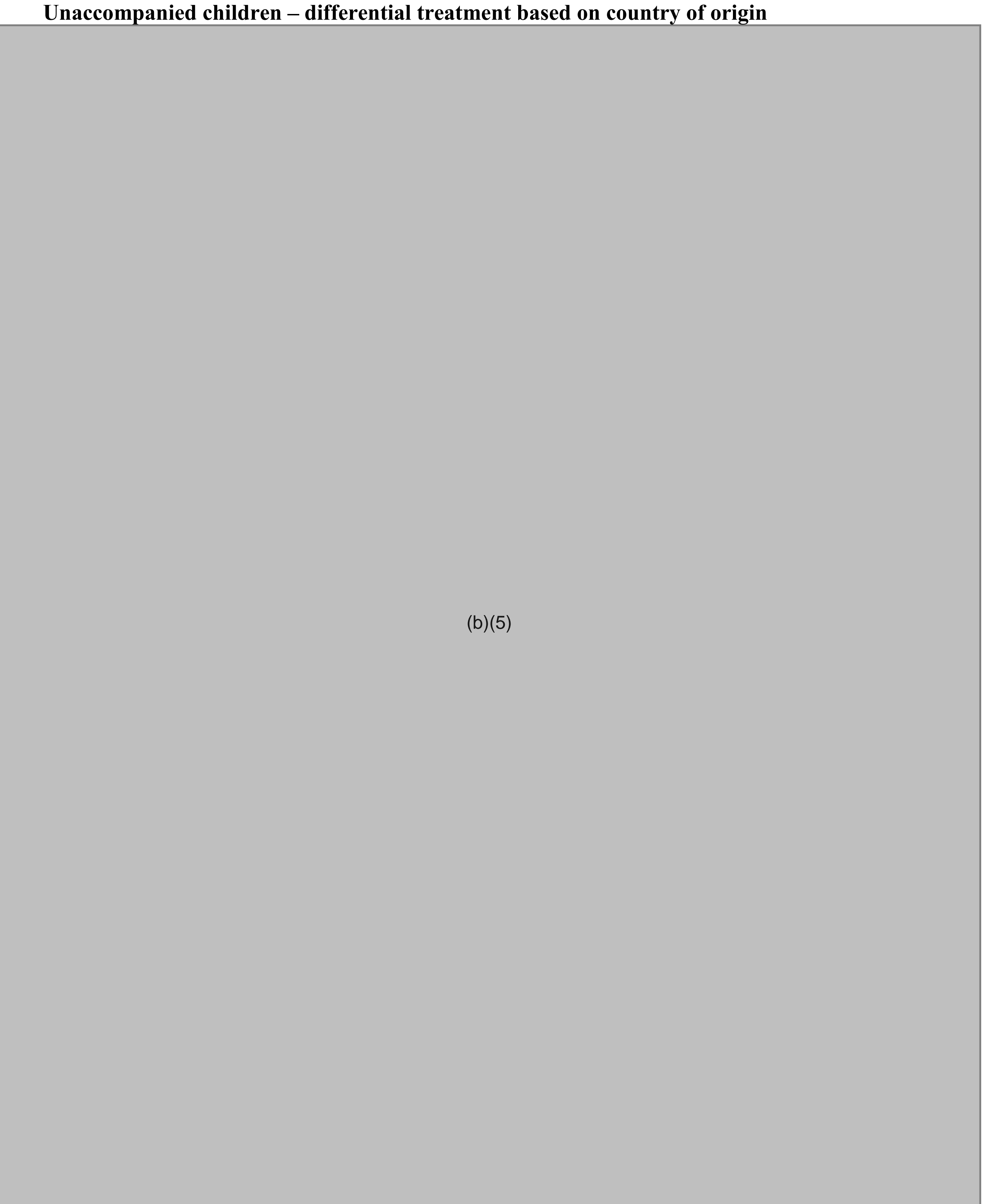
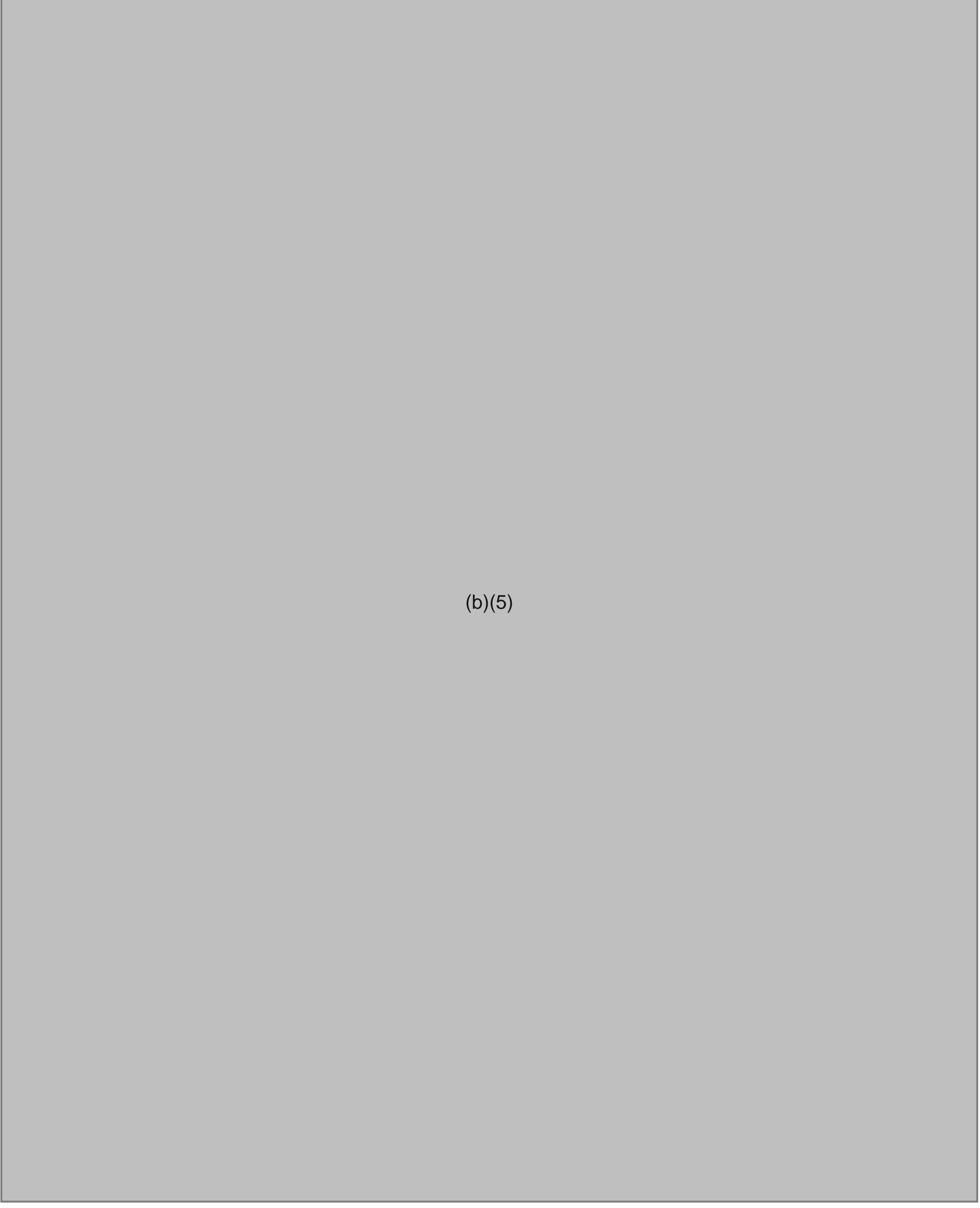
Unaccompanied children – differential treatment based on country of origin



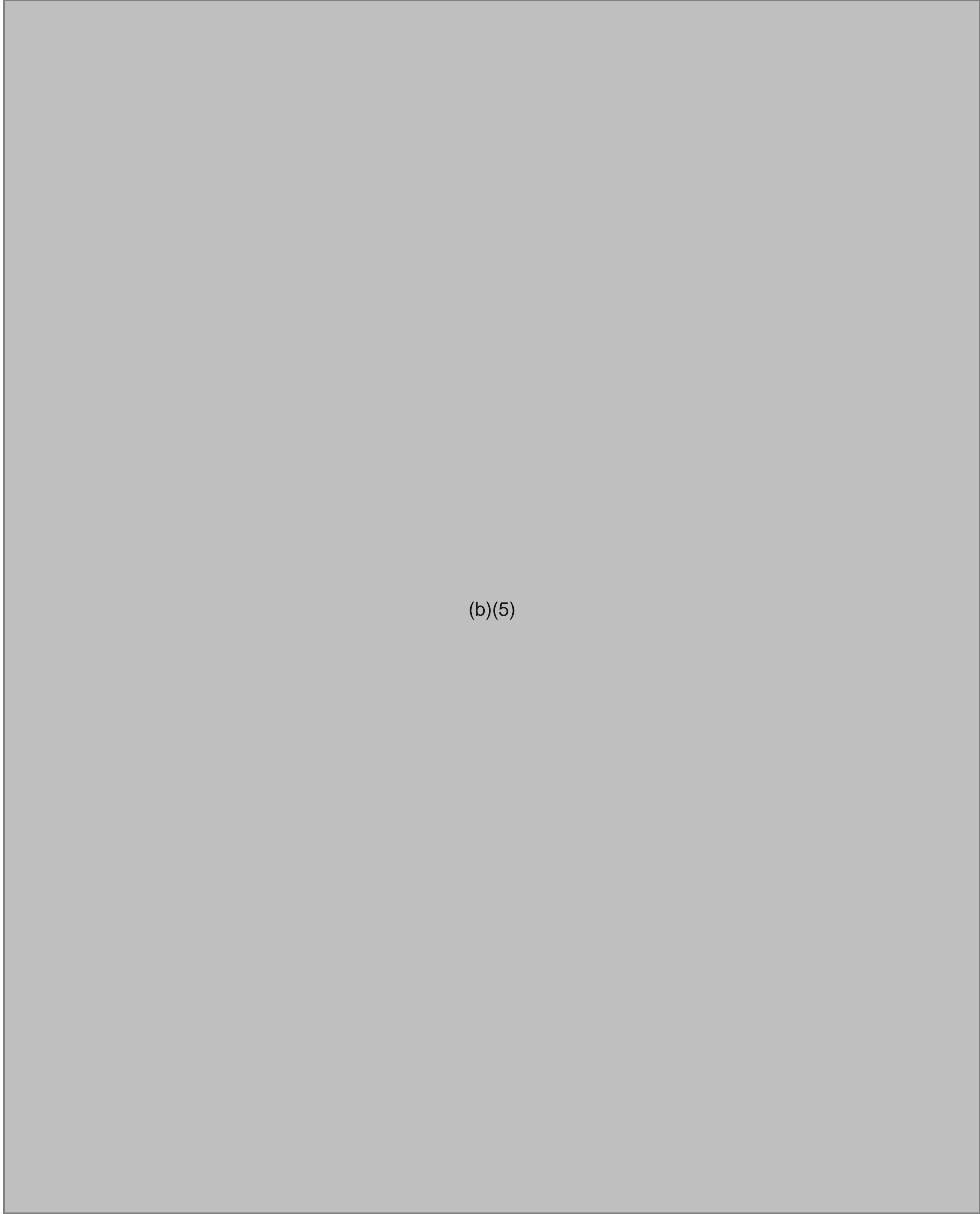
8/8/2014 4pm

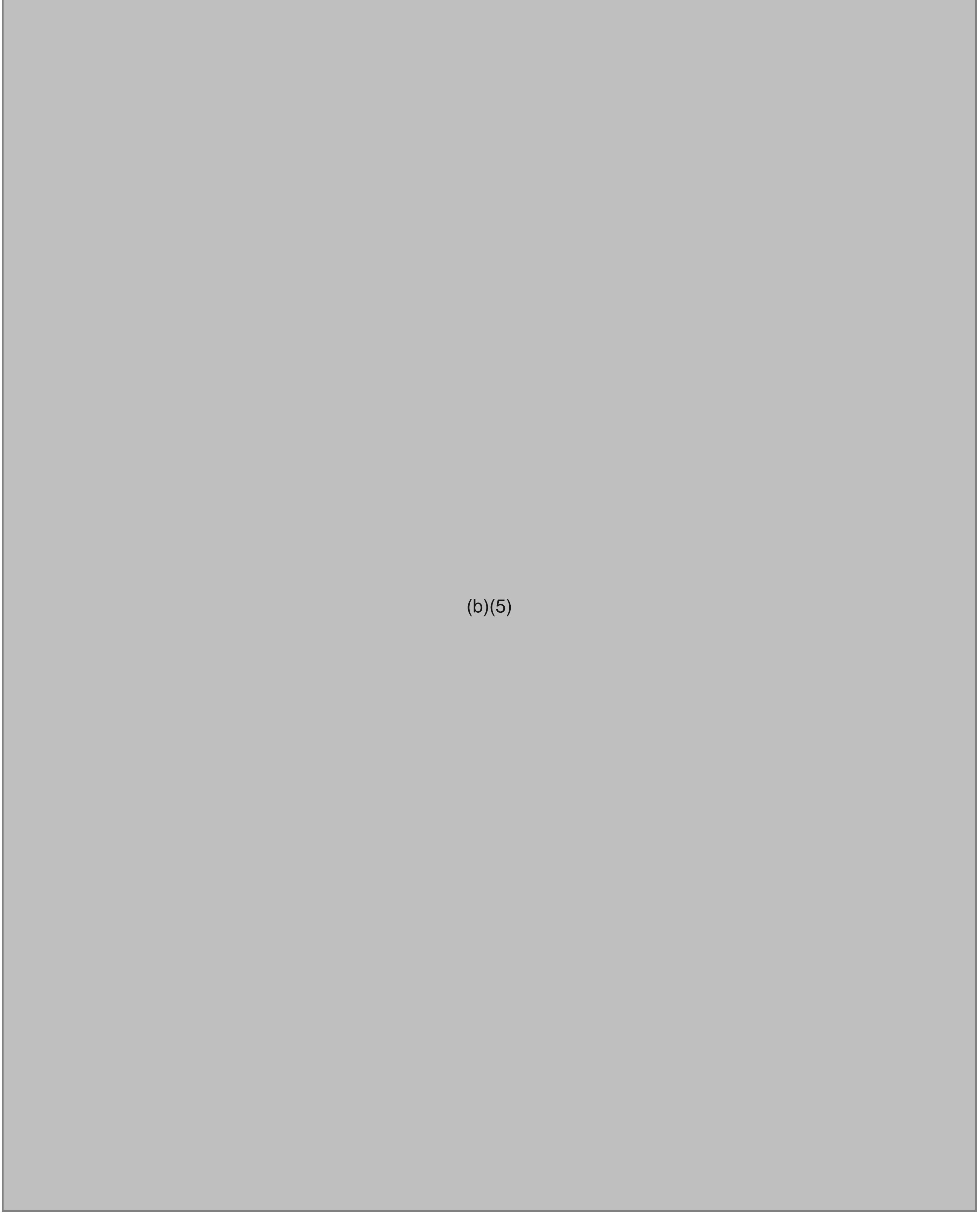


8/8/2014 4pm

(b)(5)

Removals to Haiti



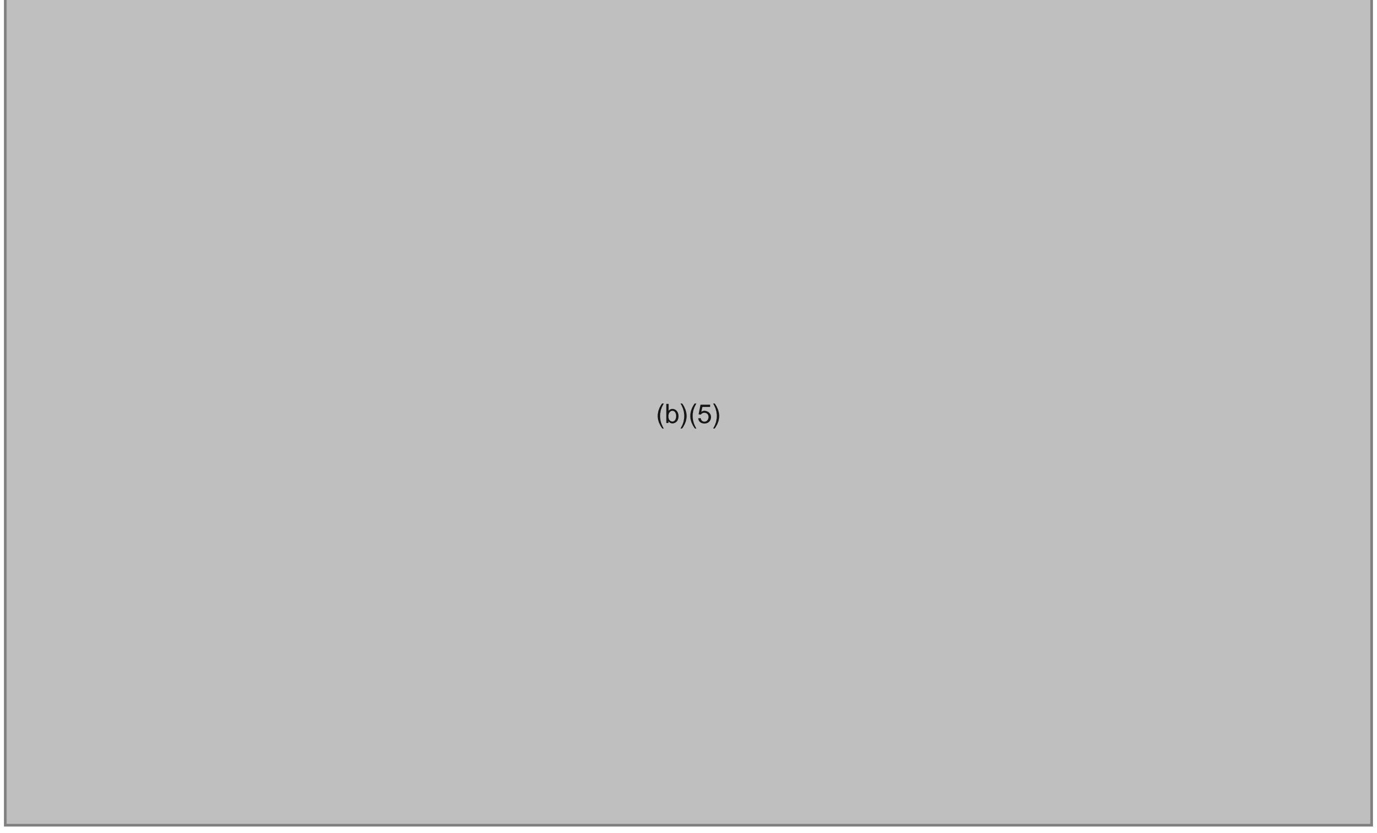

(b)(5)

M. Terrorism

(b)(5)

DHS-011-0000001-0000255

IF NEEDED:



From: (b)(6), (b)(7)(c)
To:
Subject: FW: DHS CERD Q&As
Date: Tuesday, November 04, 2014 11:15:40 AM
Attachments: CERD 2014 Hard QA - DHS draft 08-08 4pm.docx

From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 11:15 AM
To: (b)(6), (b)(7)(c)
Subject: FW: DHS CERD Q&As

FYI

(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6), (b)(7)(c)
Cell: 202-904-(b)(6), (b)(7)(c)
Email (b)(6), (b)(7)(c)

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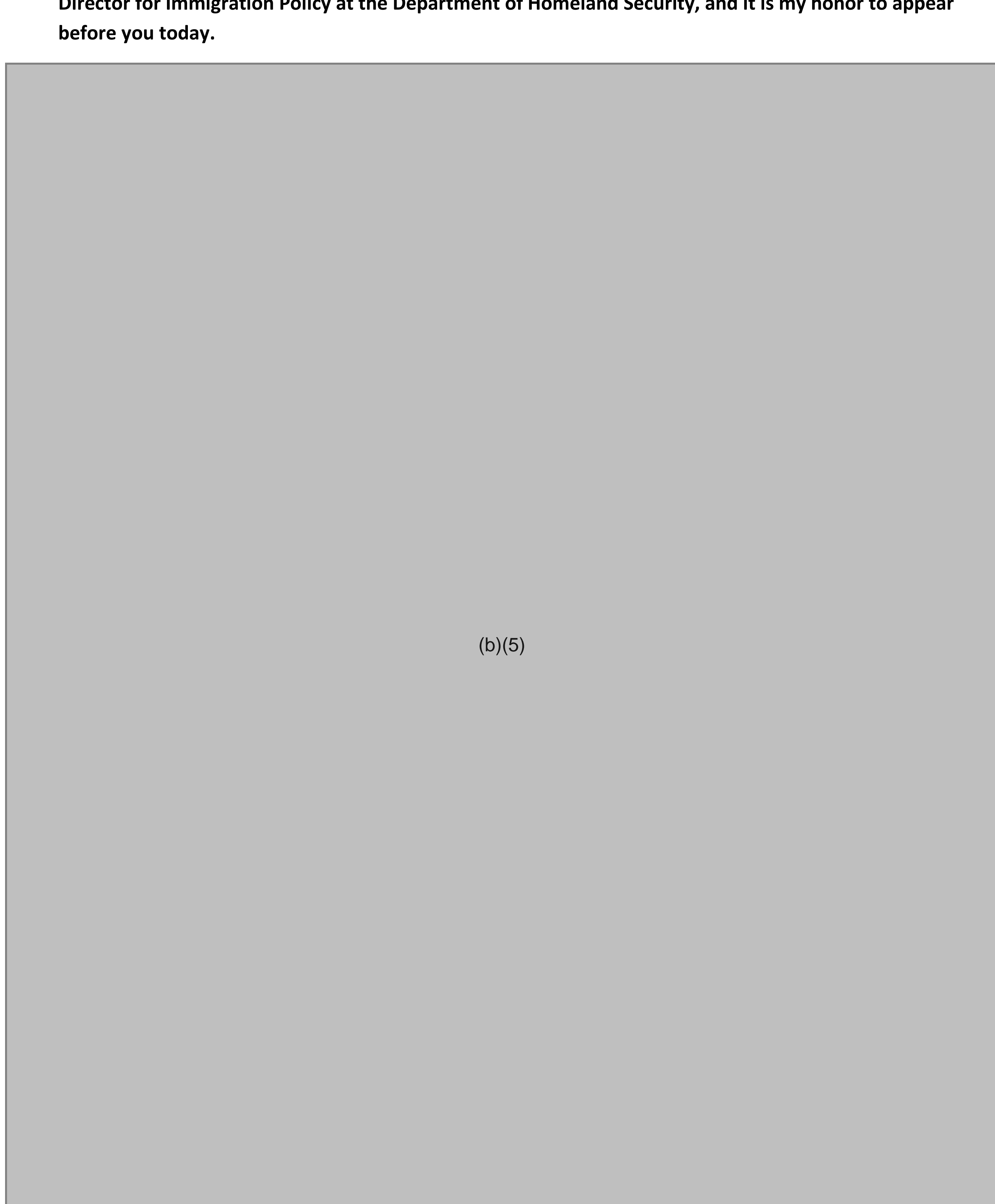
From (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 4:56 PM
To: Ow, Alanna; (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
Subject: FW: DHS CERD Q&As

Alanna (b)(6), (b)(7)(c)

Here's an updated Table of Contents fo(b)(6), (b)(7)(c) 4pm version, for your use.

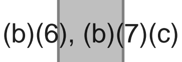
Mr. Chairperson, distinguished Members of the Committee, my name is Alanna Ow. I am the Principal Director for Immigration Policy at the Department of Homeland Security, and it is my honor to appear before you today.



(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: docs
Date: Tuesday, November 04, 2014 11:15:57 AM
Attachments: CERD responses - Venture.docx
DHS CERD responses - OW.docx

From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 11:13 AM
To (b)(6), (b)(7)(c)
Subject: FW: docs



I think we made some further tweaks to these docs, but this will give you an idea of how much detail we provided on the questions.

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732(b)(6), (b)(7)(c)
Cell: 202-904(b)(6), (b)(7)(c)
Email (b)(6), (b)(7)(c)

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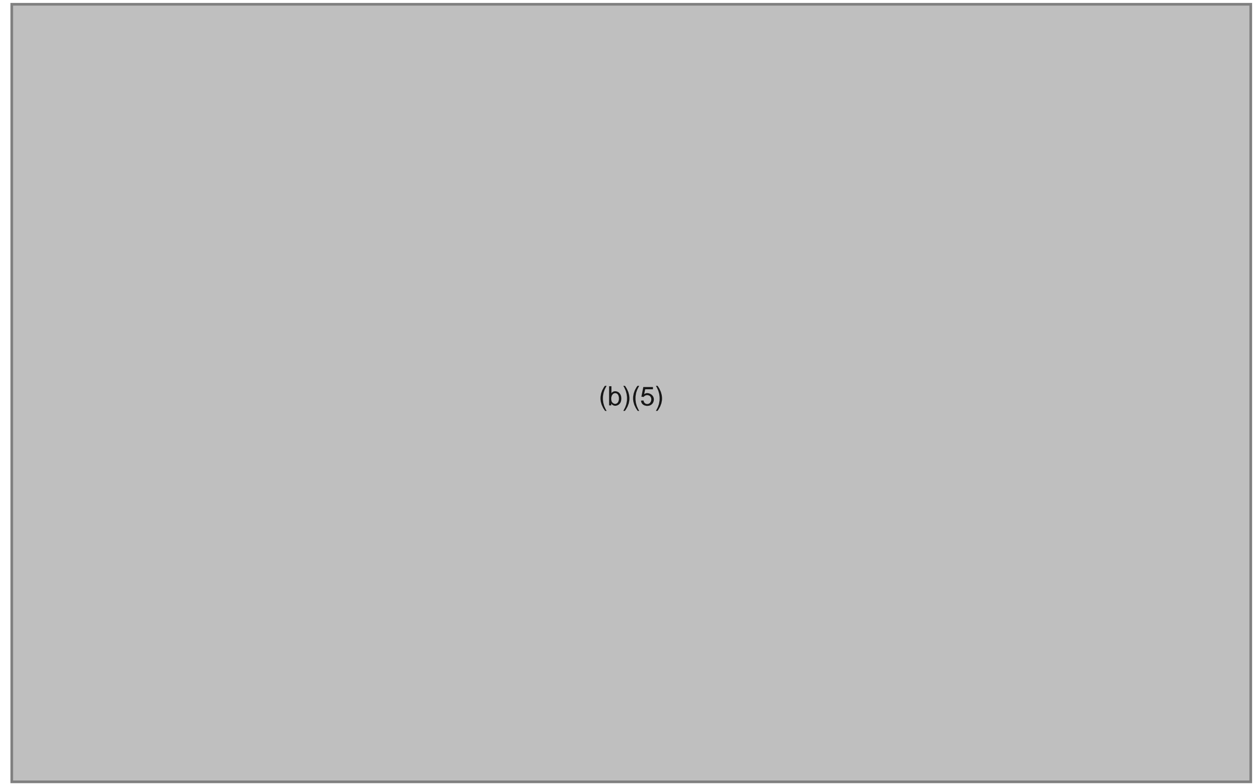
From: (b)(6), (b)(7)(c)
Sent: Wednesday, August 13, 2014 6:38 PM
To: (b)(6), (b)(7)(c) Ow, Alanna
Subject: docs

Expedited Removal – key points
Longer answer at VI.C.5

What ER is:

(b)(5)

DHS-011-0000001-0000261


(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: Expedited removal 1-pager
Date: Friday, November 07, 2014 5:17:15 PM
Attachments: Expedited Removal.docx

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Friday, November 07, 2014 05:15 PM Eastern Standard Time
To (b)(6), (b)(7)(c)
Cc
Subject: Expedited removal 1-pager

This didn't have to be reduced much from VI.C.5 but it's 1.5 pages.

(b)(6), (b)(7)(c)

Pages 117 through 122 redacted for the following reasons:
- -
(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: Geneva?
Date: Friday, November 07, 2014 9:44:13 AM

I need another one pager. See below.

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Friday, November 07, 2014 09:37 AM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Geneva?

All:

Please see below.

"Civil society representatives will raise sexual assault in immigration detention plus concerns about conditions of detention for children."

(b)(6), (b)(7)(c)

Can you draft a one-pager on sexual assault in immigration detention.

(b)(6), (b)(7)(c)

Can you have CBP draft a one-pager on expedited removal and protection screening.

Thanks,

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

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From: (b)(6), (b)(7)(c)

Sent: Friday, November 07, 2014 9:06 AM
To: (b)(6), (b)(7)(c)
Subject: FW: Geneva?

FYI

(b)(6), (b)(7)(c)
202-447(b)(6), (b)(7)(c) (desk)
202-738(b)(6), (b)(7)(c) (cell)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 06, 2014 8:49 AM
To: (b)(6), (b)(7)(c)
Subject: Geneva?

If you're still planning to go next week, I look forward to seeing you there.

Civil society representatives will raise sexual assault in immigration detention plus concerns about conditions of detention for children.

You'll hear about refoulement concerns too. Here's the language from the HRW shadow report to the Committee:

VI. Immigration Enforcement Abuses

Current US border screening practices do not meet the obligation to ensure that individuals are not returned or refouled to a place where there are substantial grounds for believing they are at risk of torture (article 3).
In response to Question 42 of the Committee's List of Issues Prior to Reporting

The US government's system of screening of noncitizens at the border fails to adequately identify people who may be at risk of torture if deported. Under US law authorizing "expedited removal," border guards are charged with asking people apprehended at the border if they are afraid to return to their countries. If border crossers report that they are afraid, they should be referred to an asylum officer to assess their need for international protection. Recent deportees to Honduras told Human Rights Watch that they had told US border guards they feared returning, but were not referred for further assessment and were rapidly deported. These individuals said that they had fled death threats, rape, and violent assaults in their home country and feared similar harm or worse upon their return. A 2005 study by the US Commission on International Religious Freedom found that the process of expedited removal, as then implemented, failed to screen for those in need of international protection.
Despite past criticisms of the program, the Department of Homeland Security has expanded geographically the use of expedited removal. The number of people deported via expedited removal has grown from 84,020 in 2005 to 174,048 in 2012. Despite this expansion, many protection gaps remain unaddressed. Because there is no right to government-appointed counsel

in immigration matters in the United States, those in danger of refoulement often must represent themselves in complex proceedings.

Recommendations
The Committee should urge the United States to end its use of expedited removal for border crossers who are likely to have international protection concerns.
The Committee should urge the United States to ensure protection under the Convention by considering providing appointed counsel to indigent people who are faced with removal to their countries of origin in cases where they claim a fear of persecution or torture upon return.

--

Safe travels and hope to talk with you soon.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Advocacy Director, US Program
Human Rights Watch
1630 Connecticut Avenue NW, Suite 500
Washington, DC 20009
202-612 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: IAHCR Oct 2014 opening remarks
Date: Monday, November 03, 2014 11:25:38 AM
Attachments: IAHCR Oct 2014 opening remarks -Mack-DHS.docx

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Monday, November 03, 2014 11:25 AM
To: (b)(6), (b)(7)(c)
Subject: IAHCR Oct 2014 opening remarks

As discussed, here was (b)(6), (b)(7)(c) speech last Monday at the Inter-American Commission. It can all be repurposed for CAT.

(b)(6), (b)(7)(c)

Inter-American Commission on Human Rights
Thematic Hearing: "Situation of Human Rights of Migrant and Refugee Children and Families in the United States"
October 27, 2014, 9 a.m.

Prepared Remarks of (b)(6), (b)(7)(c)
Officer for Civil Rights and Civil Liberties
United States Department of Homeland Security

Distinguished Commissioner, petitioners, Secretariat staff, and colleagues, on behalf of the United States Department of Homeland Security, or DHS, I welcome the opportunity to participate in today's hearing. I am (b)(6), (b)(7)(c) the Officer for Civil Rights and Civil Liberties at DHS. My Department houses most of the government agencies involved in our immigration system, including U.S. Customs and Border Protection, or CBP; U.S. Immigration and Customs Enforcement, or ICE; and U.S. Citizenship and Immigration Services, or USCIS. In carrying out our diverse missions, including protecting human rights, securing the border, and facilitating lawful trade and immigration, my office ensures that civil and human rights remain at the core of what the Department works to secure.

As the Commission is aware, during the spring and summer of 2014, the United States experienced a humanitarian crisis along the southwestern border, particularly in the Rio Grande Valley of Texas, as tens of thousands of unaccompanied children and adults traveling with children crossed the border. In the immediate crisis, we focused on getting those adults and children, many of

whom had undertaken an extremely dangerous journey, into a safe and secure environment to be processed. While DHS is, by law, only to hold children for up to 72 hours outside of exceptional circumstances, the spring and summer did present exceptional circumstances. Accordingly, some children did remain in DHS custody for more than three days, while we undertook a significant, government-wide response to address the humanitarian crisis that included the establishment of a Unified Coordination Group that brought the assets of multiple federal agencies to bear on the urgent situation. This group included the departments of Homeland Security, Health and Human Services, State, Justice, Defense, and the General Services Administration. Since August, the volume of unaccompanied children and adults with children apprehended near the border has substantially diminished, our capacity to process them has expanded, and unaccompanied children are now expeditiously transferred to the custody of the Department of Health and Human Services, generally in less than one day.

Under U.S. law, an unaccompanied child is one under 18 years old, who has no lawful immigration status and no parent or legal guardian within the United States available to provide care and legal custody. Unaccompanied children are inherently vulnerable, so we place a high priority on identifying any protection concerns. Under the Trafficking Victims Protection Reauthorization Act of 2008, whenever DHS encounters an unaccompanied child from a contiguous country—

including Mexico—the child is screened to identify victims of human trafficking and to determine whether the child has a fear of persecution if returned to his or her home country. As a matter of policy, DHS conducts that same screening of all unaccompanied children, regardless of country of origin.

Unaccompanied children from contiguous countries who do not present any such protection concerns, and who are determined to have the capacity to do so, may be allowed to voluntarily withdraw their application for admission to the United States, at which time they are returned. For children from Mexico, the manner of return is governed by local agreements between the U.S. Border Patrol and local Mexican government entities, and generally involves a transfer of the children to appropriate Mexican officials, including child welfare officials where available, at a designated place at a designated time each day.

All unaccompanied children who remain in the U.S. are transferred to the Department of Health and Human Services for care and custody. While they are with DHS, for a period of less than 72 hours apart from times of exceptional circumstances, requirements for their care are given by federal and state law and a litigation settlement known as the *Flores* agreement.

As you know, the Department has also opened facilities in Artesia, New Mexico and Karnes City, Texas, to detain adults traveling with children who recently crossed the border. At these facilities, asylum officers and immigration

courts are available to conduct credible fear and reasonable fear interviews with individuals in these centers, providing them the opportunity to put forth claims for asylum and other forms of protection to the extent available under the law. The Department remains committed to safe, appropriate facilities for housing this important and vulnerable population, and to ensuring appropriate consideration of viable claims to relief. At the same time, we recognize that, for individuals *without* a viable protection claim who cross the border illegally, it is our responsibility to see them returned safely to their home countries.

While the government does not fund counsel for individuals in immigration proceedings, my Department and the Departments of Justice and Health and Human Services have taken numerous steps to support and encourage *pro bono* counsel and accredited non-attorney representatives to provide representation.

Since the beginning of this crisis, the U.S. government has taken numerous other steps to respond to humanitarian needs and assure both appropriate treatment in custody, and appropriate consideration and adjudication of claims to humanitarian protection under our refugee and asylum laws and commitments. These include:

- Re-launching a Dangers of the Journey awareness campaign, to discourage parents from putting their children's lives at risk by sending them on a dangerous journey to the US border;

DHS-011-0000001-0000277

  - Opening new processing centers, increasing CBP's capacity to appropriately house children and adults following apprehension;
  - Expanding efforts to prosecute criminal human smuggling organizations;
  - Reassigning immigration judges and attorneys to prioritize the cases of these recent entrants, including consideration of claims for asylum or other protection; and
- As a matter of policy, the Administration supports providing legal services to unaccompanied children, and has sought funding from Congress to provide it. In the interim, through a Department of Justice grant program, enrolling lawyers and paralegals in the "justice AmeriCorps" national service program to provide legal services to unaccompanied children.

Again, I thank you for this opportunity and appreciate your attention to these critical issues.

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: FW: Need
Date: Thursday, November 13, 2014 10:58:15 AM

(b)(6), (b)(7)(c) Asylum grants or positive credible fear (or something else)?

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:56 AM
To: (b)(6), (b)(7)(c)
C (b)(6), (b)(7)(c)
Subject: FW: Need

Good Morning,

We need the grant rate for UACs and families in detention asap. Can any of you help me? Or know who I should refer to?

Thanks!

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:54 AM
To: (b)(6), (b)(7)(c)
Subject: Need

Grant rate for UACs and families in detention asap.

Questions from the ACLU's CAT Shadow Report

2. Since the issuance of the Special Task Force's recommendations, in how many transfers has the U.S. government used diplomatic assurances? Has the U.S. government conducted any extrajudicial transfers, with or without the use of assurances?

4. Please describe U.S. minimum standards for the content and use of assurances, including under what circumstances the U.S. government regards post-return monitoring as "required for the transfer to proceed." Does the United States rule out the use of assurances for the transfer of individuals to countries that: systematically violate human rights standards; have previously breached diplomatic assurances; or refuse to provide "consistent, private access to the individual who has been transferred, with minimal advance?"

6. In light of mounting evidence that border officers do not consistently ask noncitizens about fear of torture if returned to their country, what steps is the U.S. government taking to ensure that asylum seekers are asked about their fears and referred to an asylum officer?

7. What processes are in place to monitor border officers' compliance with U.S. obligations under Article 3 and to censure officers who routinely disregard those obligations?

20. What steps has the U.S. government taken to decrease its use of mandatory and prolonged detention and ensure that all immigration detainees have the opportunity to seek individualized review of that detention?

21. Since 2013, pursuant to court order in Rodriguez v. Robbins, immigrants detained more than six months within the region of the Ninth Circuit have been given bond hearings before an immigration judge. Approximately one quarter of all immigration detainees are held in facilities within the region of the Ninth Circuit. A growing number of trial courts outside the Ninth Circuit have adopted the Ninth Circuit approach. Why hasn't the U.S. government adopted a nationwide, uniform rule that extends the Ninth Circuit rule to all regions of the country?

22. Why has the U.S. government failed to fully utilize alternatives to detention to limit the expansion of prolonged detention?

23. Why isn't the U.S. government treating someone previously detained but then released on bond or placed on alternatives to detention, as a detained case? If such a case (where the individual was initial detained) were to continue as a detained case and not automatically transferred to the non-detained docket, that would be an efficient way to move along both the detained and non-detained cases, which face significant backlogs.

24. What steps is the US government taking to ensure PREA regulations are fully and immediately implemented in all facilities housing immigration detainees?

25. What steps is the US taking to fully and independently monitor and investigate complaints of sexual assault, particularly against children and transgender detainees?

26. What steps has the US taken to ensure that its directive on solitary confinement in immigration detention is uniformly and properly enforced in all facilities housing immigration detainees?

27. What steps has ICE/DHS taken in response to the September 2014 complaint re Karnes sexual abuse complaint? Have any of the families detained in Karnes (as of September 30, 2014) been deported from

the U.S.? What assurances/safeguards has the US government taken to ensure that none of the victims or witnesses to the alleged Karnes sexual abuse is deported? Has ICE screened Karnes detainees for U visa relief? Has ICE permitted non-profits to screen mothers detained at Karnes (as of September 30, 2014) for U visa relief?

30. Why has the U.S. government expanded its use of family detention, rather than investing in currently available effective, less costly, and more humane alternatives to administrative immigration detention?

31. How is the U.S. government responding to complaints of abuse of immigrants in its custody and what steps are being taken to investigate complaints and sanction and correct abuse?

32. What steps is the U.S. government taking to ensure that immigrants in detention, including children, are provided with necessary in-person psychological, medical, and social services?

33. What is the U.S. government doing to ensure adults and children in detention can secure legal representation?

34. Will the U.S. government commit to ending its no-bond policy for detained mothers and children who are entitled to an individualized determination of the need to detain before losing their liberty?

Prolonged and Indefinite Immigration Detention

I. Issue Summary

Every year, the US government detains hundreds of thousands of individuals in administrative immigration detention. Some of these individuals, who include asylum-seekers, longtime residents, children, and people with disabilities, are detained for months or years while their immigration cases and any subsequent appeals proceed. Moreover, many detainees are subject to "mandatory detention" and never receive the most basic element of due process: a bond hearing to determine if their detention during the pendency of their cases is even necessary. As a result, many detainees are subjected to prolonged detention even though they have substantial challenges to removal and pose no significant danger to public safety or flight risk.

The Department of Homeland Security (DHS) subjects four main categories of individuals to prolonged detention without individualized review and the opportunity to be released. First, individuals are subject to mandatory detention because they are allegedly removable on certain criminal grounds (which can be as minor as shoplifting or turnstile jumping). These individuals receive *no* review of whether their detention is warranted based on flight risk or danger. The second category consists of individuals detained upon arrival in the United States, including asylum seekers who have established a "credible fear" of persecution and are mandatorily detained during their proceedings. Such individuals only receive a paper review of their detention by the detaining agency (DHS), not a custody hearing or any custody review by an independent and impartial decision-maker.[1] The third category consists of individuals detained pending judicial review of their removal orders. However meritorious their cases may be, or how long their detention extends, DHS takes the position that these individuals are not entitled to independent review of their detention by an immigration judge. Finally, DHS subjects individuals with final orders of removal to mandatory detention even if their removal cannot be effectuated. In 2001, the US Supreme Court in *Zadvydas v. Davis* struck down the government's policy of indefinitely detaining such individuals, holding that it raised serious constitutional problems.[2] However, subsequent federal regulations permit the continued detention, without temporal limit, of individuals who are not "cooperating" (for example, by procuring a travel document) or if DHS finds them to be "specially dangerous" because of a mental disability and their criminal history.[3] In all these cases, individuals are subject to prolonged, potentially indefinite administrative detention, in the absence of periodic, independent review of their case and personal circumstances.

II. Human Stories

Errol Barrington Scarlett is a longtime lawful permanent resident from Jamaica who has lived in the United States for over thirty years. After his release from incarceration for a drug possession offense, Mr. Scarlett returned to his family and found employment with his

brother's real estate business. A year and a half later, Mr. Scarlett was summoned to a DHS office, charged with removability based on his drug possession conviction, and was summarily detained without a bond hearing. Mr. Scarlett remained in mandatory detention for the next five years. In 2009, Mr. Scarlett filed a pro se habeas petition in federal court, which granted his petition and ordered a bond hearing, where Mr. Scarlett ultimately won his release.[4]

Lobsang Norbu, a Buddhist monk from Tibet, fled China after he had been arrested, incarcerated, and tortured on the basis of his religious and political beliefs. Upon arrival in the US, he sought asylum and was immediately placed in immigration detention pending adjudication of his claim. Although the American Tibetan community pledged to provide him lodging and ensure his appearance at any hearings, DHS denied his request for release on parole, a decision that DHS claims is unreviewable by an immigration judge. As a result, Mr. Norbu spent approximately 14 months in detention before he ultimately won asylum and was released.

Amadou Diouf suffered 20 months of detention while litigating the denial of his motion to reopen his removal proceedings on the basis of his prima facie eligibility for adjustment of status. The only process Mr. Diouf was provided during his detention was a file review by ICE, after which he received ICE's decision to continue his imprisonment: a single, boilerplate sentence. Mr. Diouf won his release only after filing a habeas action in district court, after which an immigration judge ordered his release on $5,000 bond.

III. CAT Position

The Committee against Torture has earlier recognized that all persons deprived of their liberty are entitled to certain basic guarantees, including the right to challenge the legality of their detention.[5] Individuals in immigration detention in the United States, however, are unable to meaningfully challenge their detention, even when it becomes prolonged in nature, when the US government refuses to provide a bond hearing where the individual's detention can be evaluated and reviewed. For this review, the Committee asked the US government to describe steps taken to ensure that immigration laws are not used to detain individuals with more limited protections than exist in the criminal justice setting.[6] In response, the US government defended the constitutionality of pre-deportation detention and observed that "[a]liens subject to mandatory detention under the immigration laws, may [] file petitions for writs of habeas corpus to challenge the legality of their detention. In addition, an alien may challenge in a hearing before an immigration judge the propriety of his or her inclusion in the category of aliens subject to mandatory detention under 8 U.S.C. 1226(c). 8 C.F.R. 1003.19(h)(2)(ii)."[7]

IV. U.S. Government's Response

Notably, the US government did not address its practice of subjecting many other classes of noncitizens to prolonged detention, including asylum seekers detained at the border and individuals seeking judicial review of their removal orders. Moreover, the avenues of review

cited in the US response are complex, often slow, and not easily accessed by most immigration detainees, who are overwhelmingly not represented by a lawyer, may not speak or read English or have significant formal education, and lack familiarity with the US legal system. Furthermore, detainees' ability to challenge their placement in mandatory detention before the immigration judge is largely rendered meaningless by the highly onerous standard applied by the government in those hearings (called "*Matter of Joseph*" hearings), which requires the detainee to show that the government is "substantially unlikely" to prevail on the charges of removal—in effect, that those charges are frivolous. The standard used by the US government is not required by the statute or regulations, and results in the mandatory detention of countless individuals who have substantial challenges to removal, including claims to relief that would permanently entitle a noncitizen to remain in the United States.

V. Other UN and Regional Human Rights Bodies Recommendations

Under human rights law, detention must have a legal basis and justification, and that its "nature and duration" must be related to its purpose, a principle also recognized under U.S. Supreme Court jurisprudence.[8] The UN Human Rights Committee has previously addressed immigration detention and declared that detention is arbitrary "if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of *proportionality* becomes relevant in this context."[9] Detention becomes arbitrary under human rights law when it "manifestly cannot be linked to any legal basis."[10] The Human Rights Committee explicitly stated that meaningful review of the "lawfulness of detention" under Article 9(4) of the ICCPR "must include the possibility of ordering release, [and] is not limited to mere compliance of the detention with domestic law."[11] In its April 2014 concluding observations on the United States, the Human Rights Committee expressed its concern with the mandatory detention of immigrants in the United States "for prolonged periods of time without regard to the individual case" and recommended that the United States review its mandatory detention policies.[12] The U.N. Special Rapporteur on the Human Rights of Migrants earlier concluded that the U.S. immigration detention system lacked necessary safeguards to ensure that detention was not "arbitrary" within under the ICCPR and called upon the US to "revise regulations to make clear that asylum-seekers can request [their] custody determinations from immigration judges."[13] Finally, the Committee on the Elimination of Racial Discrimination similarly raised concerns with prolonged mandatory detention and called upon the U.S. to undertake "thorough and individualized assessment for decisions concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters."[14]

VI. Recommended Questions

1. What steps has the U.S. government taken to decrease its use of mandatory and prolonged detention and ensure that all immigration detainees have the opportunity to seek individualized review of that detention?

2. Since 2013, pursuant to court order in *Rodriguez v. Robbins*, immigrants detained more than six months within the region of the Ninth Circuit have been given bond hearings before an immigration judge. Approximately one quarter of all immigration detainees are held in facilities within the region of the Ninth Circuit. A growing number of trial courts outside the Ninth Circuit have adopted the Ninth Circuit approach. Why hasn't the U.S. government adopted a nationwide, uniform rule that extends the Ninth Circuit rule to all regions of the country?

3. Why has the U.S. government failed to fully utilize alternatives to detention to limit the expansion of prolonged detention?

4. Why isn't the U.S. government treating someone previously detained but then released on bond or placed on alternatives to detention, as a detained case? If such a case (where the individual was initial detained) were to continue as a detained case and not automatically transferred to the non-detained docket, that would be an efficient way to move along both the detained and non-detained cases, which face significant backlogs.

VII. Suggested Recommendations

1. The U.S. government should construe the general immigration detention statutes to require a bond hearing before an immigration judge for all individuals detained more than six months, where the government must justify continued detention. The U.S. government should issue an affirmative policy rule implementing a six-month bond hearing rule nationwide.

2. The U.S. government should provide bond hearings to all detainees who are seeking federal court review of a removal order and have in the meantime obtained a judicial stay of removal.

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[1] *See* 8 C.F.R. § 1003.19(h)(2)(i)(B) (providing that immigration judges lack jurisdiction to conduct bond hearings for "arriving aliens").
[2] *Zadvydas v. Davis*, 533 US 678 (2001).
[3] 8 C.F.R. §§ 241.1, 241.4.
[4] *See Scarlett v. DHS*, 632 F. Supp. 2d 214 (W.D.N.Y. 2009).
[5] U.N. Comm, Against Torture, *General Comment No. 2, Implementation of article 2 by States parties* ¶13 (Jan. 24, 2008), U.N. Doc. CAT/C/GC/2.
[6] U.N. Comm. Against Torture, *List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America* ¶9 (Jan. 20, 2010), U.N. Doc. CAT/C/USA/Q/5.
[7] U.S. Dep't of State, *Third to Fifth Periodic Reports of the United States to the Committee Against Torture* ¶65 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.
[8] International Covenant on Civil and Political Rights (ICCPR) art.9; U.N. Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, Annex 1 (Jan. 21, 1992), U.N. Doc. E/CN.4/1992/20; *Jackson v. Indiana*, 406 US 715, 738 (1972).
[9] U.N. Human Rights Comm., A v. Australia Communication No. 560/1993 ¶9.2 (Apr. 30, 1997), U.N. Doc. CCPR/C/59/D/560/1993 (emphasis added).
[10] UN Comm'n on Human Rights, *Report of the Working Group on Arbitrary Detention* (Jan. 21, 1992), U.N. Doc. E/CN.4/1992/20.
[11] *Supra*, n. 9 at para. 9.5.
[12] U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee United States of America* ¶15 (2014), U.N. Doc. CCPR/C/USA/CO/4/.

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[13] U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante Mission to the United States of America* ¶¶122-23 (Mar. 5, 2008), U.N. Doc. A/HRC/7/12/Add.2.
[14] U.N. Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination United States of America* ¶18 (Aug. 29, 2014), U.N. Doc. CERD/C/USA/CO/7-9.

Conditions of Confinement in US Immigration Detention Facilities

I. Issue Summary

Every day, tens of thousands of noncitizens are administratively detained in jails and prisons throughout the United States. Despite years of advocacy and some additional oversight, these detention facilities, generally run by Immigration and Customs Enforcement (ICE), continue to continue to be plagued by inhumane conditions, including over-use of solitary confinement and sexual assault. In short-term custody cells and facilities, run by Customs and Border Protection (CBP) along the US border, adults and unaccompanied children have been subjected to abuse, harassment, and mistreatment.

Sexual assault

Sexual assault and abuse against detained immigrants, including children and LGBT[1] and trans individuals, is not a new crisis.[2] The Government Accountability Office examined 215 allegations of sexual abuse and assault in ICE detention facilities from October 2009 through March 2013 and found that detainees face challenges in reporting abuse. [3] Even when detainees do report it, many local ICE offices fail to inform headquarters.[4] In 2013, the US government extended the protections of the Prison Rape Elimination Act (PREA)[5] to immigration detainees (although final regulations were not issued until 2014).[6] However, these protections have not been fully implemented; notably, privately-owned contracted detention facilities and local jails have not been required to fully and immediately comply with PREA's standards.[7] Moreover, despite these reforms, abuse and mistreatment of vulnerable immigrant populations continues. For example, the US government continues to detain trans female detainees in men's facilities, placing them in predictable danger.[8]

As recently as September 30, 2014, a complaint was filed with DHS and ICE demanding the immediate investigation of and swift response to widespread allegations of sexual abuse and harassment at one of the newest family detention centers in Karnes City, Texas.[9] The Karnes facility, which opened in August 2014, currently holds over 500 women and children, many of whom have fled violence and persecution in Central America, and is privately operated by the The GEO Group, Inc. The complaint cites abuse allegations such as removing female detainees from their cells late in the evening and early morning hours for the purpose of engaging in sexual acts in various parts of the facility, calling detainees their "novias," or "girlfriends" and requesting sexual favors from female detainees in exchange for money or promises of assistance with their pending immigration cases, and kissing, fondling, and/or groping female detainees in front of other detainees, including children.[10]

Unaccompanied children are particularly vulnerable to abuse and face unique barriers in reporting that abuse due to their immigration status, language, social, and cultural barriers. Even before the recent increase in the numbers of unaccompanied migrant children in Department of Health and Human Services (HHS) custody, there were many documented cases of sexual abuse

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of these children by staff.[11] Under the Violence Against Women Reauthorization Act of 2013, HHS, which is responsible for the care and welfare of unaccompanied minors in removal proceedings, is required to implement regulations protecting children from sexual assault. To date, however, it has failed to do so; and yet, as these cases of abuse demonstrate, HHS lacks transparent and effective monitoring and investigatory systems for the incredibly vulnerable children in its care. [12]

Short-term custody at the US border

While in short-term custody, unaccompanied children have been subjected in inhumane treatment by CBP upon arrival in the United States. In June 2014, the ACLU and several advocacy organizations filed a complaint with the Department of Homeland Security (DHS) regarding the abhorrent treatment of unaccompanied minors at border patrol stations.[13] The complaint, based on 116 cases, found that "approximately one in four children included in this complaint reported some form of physical abuse, including sexual assault, beatings, and the use of stress positions by CBP officials. More than half of these children reported various forms of verbal abuse, including racially- and sexually-charged comments and death threats. . . . Children consistently reported being held in unsanitary, overcrowded, and freezing-cold cells, and roughly 70 percent reported being held beyond the legally mandated 72-hour period." These complaints are not new, nor are they unique to children; in 2011, the organization No More Deaths documented over 30, 000 incidents of abuse against children in CBP custody and several other organizations have issued reports in recent years with similar allegations of abuse and inhumane treatment in CBP custody.[14] However, DHS oversight agencies have generally failed to respond to or meaningfully investigate complaints of abuse, resulting in a growing culture of impunity.[15]

Solitary confinement

The ACLU has long been concerned about the widespread use of solitary confinement in immigration detention, which mirrors the use of solitary confinement in US prisons and jails generally. In March 2013, The New York Times reported that on any given day, more than 300 immigrants are held in solitary in just the 50 largest immigration detention facilities – and nearly half of those are isolated for 15 days or more. The United Nations Special Rapporteur on Torture has described solitary confinement of 15 days or more as amounting to torture, because of the risk of permanent psychological harm from such extended isolation.[16] Immigration detention facilities have often used solitary as a punishment for minor offenses, as well as to "protect" especially vulnerable populations like youth, LGBT people, and persons with mental disabilities.[17]

In September 2013, in response to pressure from Congress and NGOs, U.S. Immigration and Customs Enforcement (ICE) released a new policy directive regulating the use of solitary confinement in ICE detention, which applies to all ICE detention facilities nationwide. The new policy substantially increases ICE's monitoring of the use of solitary confinement and sets

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important limits on its use, especially for vulnerable populations, such as individuals with mental disabilities and alleged victims of sexual assault.[18] Although it does not bring ICE's policies fully in line with the guidance of the UN Special Rapporteur on Torture – for example, it does not set specific limits on the duration of solitary confinement – the policy directive will represent a major step forward if strictly enforced. In a worrisome sign, however, ICE has not provided public information on how the directive is being implemented or to what extent the more than 250 private, local and government facilities where ICE detains immigrants are complying with it. Indeed, in April 2014, the ACLU filed suit in Washington State over ICE's use of solitary confinement to retaliate against detainees who went on hunger strike to express concerns about national immigration policy and raise public awareness about the conditions of their confinement.[19]

II. Human Stories

In July 2014, Marichuy Leal Gamino, a transgender woman, was sexually assaulted at the Eloy Detention Center, a for-profit immigration detention facility in Eloy, Arizona. The ACLU has received reports that Ms. Gamino was encouraged to live in solitary confinement for her own safety, a practice that inflicts lasting psychological damage and stigma on the individual.

D.G. is a 16-year-old Central American girl who was detained by CBP. When CBP officers searched her, they violently spread her legs and touched her genital areas forcefully, making her scream. D.G. was detained with both children and adults and described the holding cell as ice-cold and filthy, with bright fluorescent lights left on all day and night.[20]

In March, 2014, several hundred detainees at the Northwest Detention Center in Washington State initiated a hunger strike to express concerns with national immigration policy and to raise awareness about the conditions of their confinement. Beginning on March 27, ICE began placing individuals in solitary confinement, for 23 hours a day, in retaliation for their support of the hunger strikes. The individuals represented by the ACLU were placed in solitary confinement after corrections officers entered their living area and invited approximately 20 detainees to meet and to discuss the reasons for the hunger strike. ACLU clients and other detainees who volunteered to attend the meeting were immediately placed in handcuffs and placed in isolation.

III. CAT Position

In 2006, the Committee expressed its concern with the number of documented cases of sexual assault on detainees, including those in US immigration detention and detainees "of differing sexual orientation."[21] The Committee recommended that the United States "ensure that all allegations of violence in detention centers are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including

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appropriate compensation."[22] The Committee also recommended that the US government "promptly, thoroughly and impartially" investigate all allegations of cruel or degrading treatment by law enforcement personnel.[23] For this review Committee requested that the United States describe steps to prevent, investigate, and punish sexual assault in all detention centers and information regarding the success of these measures in preventing sexual assault of detainees.[24] The Committee also requested information on detention of children.[25]

In 2006, the Committee also recommended that the United States review its use of prolonged isolation on detainees given the "effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment."[26] The Committee similarly requested the US explain the steps it has taken vis-à-vis prolonged isolation of detainees for this review.[27] The Human Rights Committee also recently recommended that the US "impose strict limits on the use of solitary confinement" and prohibit its use against juveniles and individuals with serious mental disabilities.[28]

IV. U.S. Government's Response

With respect to sexual assault, the US government contends that the Department of Homeland Security (DHS) takes seriously any allegations of sexual assault in immigration detention facilities, and points to the 2013 proposed standards issued by DHS.[29] It further points to the Directive on Sexual Abuse and Assault Prevention and Intervention and an agency-wide Prevention of Sexual Assault (PSA) Coordinator, both introduced in 2012 by Immigration and Customs Enforcement, the division of DHS that has custody over most immigration detainees.[30] ICE's Performance-Based National Detention Standards also include standards for reporting, monitoring, and investigating sexual abuse in its detention facilities.[31] These standards, while providing long-overdue minimal immigration detention standards, are not uniformly or universally implemented.[32] The US response also contends that "the needs" of unaccompanied migrant children are "promptly met" but did not discuss allegations of abuse or maltreatment.[33]

Although the Committee's questions on solitary confinement were directed at the use of supermax prisons for criminal detainees, the recommendation and observations apply equally to the isolation of immigration detainees. The US response, however, did not acknowledge the use of solitary confinement on immigration detainees.[34]

V. Recommended Questions

1. What steps is the US government taking to ensure PREA regulations are fully and immediately implemented in all facilities housing immigration detainees?

2. What steps is the US taking to fully and independently monitor and investigate complaints of sexual assault, particularly against children and transgender detainees?

3. What steps has the US taken to ensure that its directive on solitary confinement in immigration detention is uniformly and properly enforced in all facilities housing immigration detainees?

4. What steps has ICE/DHS taken in response to the September 2014 complaint re Karnes sexual abuse complaint? Have any of the families detained in Karnes (as of September 30, 2014) been deported from the U.S.? What assurances/safeguards has the US government taken to ensure that none of the victims or witnesses to the alleged Karnes sexual abuse is deported? Has ICE screened Karnes detainees for U visa relief? Has ICE permitted non-profits to screen mothers detained at Karnes (as of September 30, 2014) for U visa relief?

VI. Suggested Recommendations

1. Ensure that all facilities where immigrants are detained have fully implemented PREA and other federal regulations to prevent sexual assault, limit the use of solitary confinement, and protect transgender and LGBT detainees.

2. Institute regular monitoring and audits of all facilities used for administrative detention of immigrants, and publicly report on each facility's compliance, to ensure that detention conditions are humane and that federal regulations are uniformly and consistently implemented.

3. Terminate the ICE-GEO contract for the Karnes family detention facility, and release all families detained at Karnes on reasonable bond or place them on alternatives to detention.

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[1] SHARITA GRUBERG, CENTER FOR AMERICAN PROGRESS, DIGNITY DENIED: LGBT IMMIGRANTS IN U.S. IMMIGRATION DETENTION (Nov. 2013), *available at* http://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf . A June 2011 report from the ACLU of Arizona documented extensive harassment, discrimination, and abuse of LGBT immigrant detainees at Immigration and Customs Enforcement (ICE) facilities throughout Arizona. ACLU OF ARIZONA, IN THEIR OWN WORDS 22-23, 25 (2011), *available at* http://www.acluaz.org/sites/default/ files/documents/detention%20report%202011.pdf.

[2] Government documents obtained by the ACLU revealed nearly 200 allegations of sexual abuse and assault at detention facilities across the country between 2007 and 2012. Press Release, ACLU, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees Is Widespread National Problem* (Oct. 19, 2011), http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse.

[3] GOVERNMENT ACCOUNTABILITY OFFICE, IMMIGRATION DETENTION: ADDITIONAL ACTIONS COULD STRENGTHEN DHS EFFORTS TO ADDRESS SEXUAL ABUSE, GAO-14-38 (2013), *available at* http://www.gao.gov/assets/660/659145.pdf.

[4] *Id.*

[5] National Standards To Prevent, Detect, and Respond to Prison Rape, 28 C.F.R § 115.42 (2012).

[6] Press Release, U.S. Dep't of Homeland Security, *DHS Announces Finalization of Prison Rape Elimination Act Standards* (Feb. 28, 2014), http://www.dhs.gov/news/2014/02/28/dhs-announces-finalization-prison-rape-elimination-act-standards.

[7] *See, e.g.,* Zack Ford, *Transgender Woman Says Immigration Detention Officials Told Her To Pretend Her Rape Was Consensual*, THINK PROGRESS (Aug. 5, 2014), http://thinkprogress.org/lgbt/2014/08/05/3467761/transgender-immigration-rape/. *See generally* American Bar Association, Letter to Secretary Napolitano, American Bar Association Comments on *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*, 77 FR 75299 (Dec. 19,2012); DHS Docket No. ICEB-2012-0003, Feb 26, 2013, *available at*

http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013feb26_abuseinconfinementfacilities_l.authcheckdam.pdf; National Immigrant Justice Center, "U.S. Department of Homeland Security's Sexual Assault Regulations Take Effect Today," (May 6, 2014), *available at* http://www.immigrantjustice.org/press_releases/us-department-homeland-security%E2%80%99s-sexual-assault-regulations-take-effect-today#.VCLsTkjD8iA (and observing that one of their clients, a father of seven and long-time U.S. resident who was raped when housed with criminal inmates, might not have been protected by PREA even after this announcement, depending on when the contract between ICE and the jail was renegotiated).

[8] *Supra*, n. 1; Letter to Secretary Napolitano from the ACLU et. Al, RE: Comments on *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*, 77 FR 75299 (December 19, 2012), Feb. 26, 2013, *available at* http://www.justdetention.org/Group_comment_on_DHS_PREA_NPRM.pdf.

[9] Press Release of the Mexican American Legal Defense Fund, *MALDEF and Other Groups File Complaint Detailing Sexual Abuse, Extortion, and Harrassment of Women at ICE Family Detention Center in Karnes City*, Sep. 30, 2014, *available at* http://www.maldef.org/news/releases/maldef_other_groups_file_complaint_ice_family_detention_center_karnes_city/.

[10] Complaint to Department of Homeland Security, U.S. Immigration and Customs Enforcement, Karnes County Residential Center, and The GEO Group, Inc., Regarding Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center (Sep. 30, 2014), *available at* http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf.

[11] Susan Carroll, Crossing Alone: Children Fleeing Violence Land in a Shadowy System (Houston Chronicle May 24, 2014) which found 100 reported cases of staff on youth sexual abuse between March 2011 and March 2013, *available at* http://www.houstonchronicle.com/news/investigations/article/Crossing-alone-Children-fleeing-to-U-S-land-in-5503127.php

[12] *See* Letter to Secretary Sylvia Mathews Burwell, U.S. Department of Health and Human Services, (Sept. 18, 2014), *available at* https://www.aclu.org/sites/default/files/assets/14_9_18_letter_to_hhs_secretary_burwell_re_prea_final.pdf.

[13] Complaint to Department of Homeland Security, Office of Civil Rights and Civil Liberties and Office of Inspector General, Regarding Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection (June 11, 2014) ("OCRCL/OIG complaint"), *available at* http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf.

[14] *See* Women's Refugee Commission, *Forced From Home The Lost Boys and Girls of Central America* (October 2012), *available at* http://bit.ly/1idNuUo ; No More Deaths, *Crossing the Line Human rights Abuses of Migrants in Short-Term Custody on the Arizona/Sonora Border* (2008) *available at* http://bit.ly/1uFDsTJ No More Deaths, *A Culture of Cruelty Abuse and Impunity in Short-Term U.S. Border Patrol Custody*,(2011,) *available at* http://bit.ly/1prrx9z; Florence Immigrant and Refugee Rights Project, *Seeking Protection, Enduring Prosecution The Treatment and Abuse of Unaccompanied Undocumented Children in Short-term Immigration Detention* ,(2009) *available at* http://bit.ly/1prrCKx; Betsy Cavendish and Maru Cortazar, Appleseed, *Children at the Border The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (2011) *available at* http://bit.ly/1mt5hbi.

[15] The Office of Inspector General did recently respond to the complaint on behalf of unaccompanied minors, after investigating 16 of the 116 cases and finding the claims could not be substantiated. DHS Office of Inspector General, Memorandum, *Oversight of Unaccompanied Alien Children*, Aug. 28, 2014, *available at* http://www.oig.dhs.gov/assets/pr/2014/Sig_Mem_Over_Unac_Alien_Child090214.pdf. The ACLU and its partners, however, have concerns with the thoroughness and handling of this investigation with respect to the cases reviewed thus far. Moreover, from 2009 to 2011, No More Deaths and partner organizations filed 75 CRCL complaints regarding CBP abuses, but did not receive a response from the agency in a single case. No More Deaths, *A Culture of Cruelty*, *supra*, at 8. The American Immigration Council recently found that 97 percent of the 809 abuse complaints filed against Border Patrol agents between January 2009 and January 2012 resulted in the classification "no action taken." American Immigration Council, *No Action Taken Lack of CBP Accountability in Responding to Complaints of Abuse*, at 8 (2014), *available at* http://bit.ly/1ozFIdd. Approximately 60 of these complaints involved abuse of immigrant children, including one case in which a child reported that an agent "hit him on the head with a metal flashlight 20 times, kicked him five times, and pushed him down a hill." Damien Cave, "Complaints of Abuse by Border Agents Often Ignored, Records Show," New York Times, May 5,2014, *available at* http://nyti.ms/1iTzDY5.

[16] Ian Urbina and Catherine Rentz, "Immigrants Held in Solitary Cells, Often for Weeks," *The New York Times*, March 23, 2013, *available at* http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html.

[17] *See generally*, American Civil Liberties Union, Stop Subjecting Immigration Detainees to Widespread and Prolonged Solitary Confinement (Apr. 12, 2013), *available at* https://www.aclu.org/blog/defending-targets-discrimination/stop-subjecting-immigration-detainees-widespread-and-prolonged.

[18] ICE, "Review of the Use of Segregation for ICE Detainees," Sept. 4, 2013, *available at* www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

[19] ACLU of Washington, "Lawsuit Challenges Federal Immigration Officials over Placing Hunger Strikers in Solitary Confinement at the Northwest Detention Center," (April 3, 2013), *available at* https://acluwa.org/news/lawsuit-challenges-retaliation-against-hunger-strikers-nw-detention-center.

[20] OCRCL/OIG complaint at 8-9.

[21] Conclusions and recommendations of the Committee against Torture: United States of America, CAT/C/USA/CO/2, July 25, 2006, para 32, *available at* http://www.refworld.org/publisher,CAT,CONCOBSERVATIONS,USA,453776c60,0.html

[22] *Id.* at para 32.

[23] *Id*. at para. 25.

[24] UN Committee against Torture, List of issues prior to the submission of the fifth periodic report of United States of America, CAT/C/USA/Q/5, para. 32 (Jan. 20, 2010),*available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQ%2f3-5&Lang=en.

[25] *Id*. at para. 34.

[26] UN Committee against Torture, Conclusions and Recommendations of the Committee against Torture: United States of America, CAT/C/USA/CO/2, July 25, 2006, para. 16, *available at* http://www.refworld.org/publisher,CAT,CONCOBSERVATIONS,USA,453776c60,0.html.

[27] UN Committee against Torture, List of issues prior to the submission of the fifth periodic report of United States of America, CAT/C/USA/Q/5, para. 37 (Jan. 20, 2010),*available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQ%2f3-5&Lang=en.

[28] UN Human Rights Committee, "Concluding observations on the fourth periodic report of the United States of America," April 23, 2014, para. 20, *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUSA%2fCO%2f4&Lang=en
[29] United States of America Report to the U.N. Committee against Torture, C/USA/3-5 (Aug. 12, 2013), para. 172, *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2f3-5&Lang=en
[30] *Id*. at para. 173.
[31] *Id*. at para. 174.
[32] National Immigrant Justice Center, Press Release, "U.S. Department of Homeland Security's Sexual Assault Regulations Take Effect Today--Thorough Implementation Required to Protect People in Department's Custody," May 6, 2014, *available at* http://www.immigrantjustice.org/press_releases/us-department-homeland-security%E2%80%99s-sexual-assault-regulations-take-effect-today#.VCWxCRatbTo; Testimony of Organizations Supporting LGBT Equality, US Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences," (Feb. 25, 2014), *available at* http://transgenderlawcenter.org/wp-content/uploads/2014/02/2014-Testimony-of-Organizations-Supporting-LGBT-Equality.pdf.
[33] *Id*. at para. 198.
[34] United States of America Report to the U.N. Committee against Torture, C/USA/3-5 (Aug. 12, 2013), *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2f3-5&Lang=en.

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Administrative Family Detention

I. Issue Summary

Every year, the U.S. Department of Homeland Security (DHS) imprisons hundreds of thousands of non-citizens, including children and families, in administrative immigration detention. Families with children can be detained for months while their immigration proceedings go forward in court. An estimated 66,000 unaccompanied children and an additional 66,000 family units have crossed the U.S.-Mexico border since October 2013,[1] in what some observers have termed a refugee crisis and President Obama[2] has recognized as a humanitarian situation. In response, the U.S. government dramatically expanded the detention of immigrant families, though international human rights law strongly disfavors the use of administrative immigration detention, and rejects it completely for children.[3] Prior to this summer, the United States had begun to move away from family detention. In 2009, ICE stopped detaining families at the T. Don Hutto facility in Texas following ACLU litigation and other advocacy challenging the deplorable conditions of confinement and treatment of children there; and until this summer, the administration had reduced its detention of immigrant families to 96 beds at one facility. But in July 2014, the U.S. government reversed course and announced plans to expand family detention, with plans to create up to 6,350 new beds in the near future.[4] Already, the government has opened a new 646-bed family detention facility in New Mexico; [5] another family detention facility, run by a private prison company, opened August 1st in Karnes County, Texas, with almost 600 beds.[6] By early November, the government will open an additional facility – which will eventually have a shocking 2,400 beds – in West Dilly, Texas. It will be run by a private prison company.[7] The majority of the families detained in these facilities are seeking asylum in the United States. However, the U.S. government has imposed a no-bond policy for these mothers and children (including persons who pass credible fear interviews, who would normally be eligible for parole or bond), despite individual circumstances supporting release or supervision in the community rather than jail detention.[8]

Detention harms children's health. Their physical and psychological development suffers during detention, and the harms can be long-lasting. Being held in a prison-like setting, even for a short period of time, can cause psychological trauma for children and increase their risk factor for future mental disorders.[9] According to Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, detention can also exacerbate the trauma experienced by both children and adults who have fled violence in their home countries – precisely the population detained at Artesia and Karnes.[10] Finally, detention damages the family structure in particular by stripping parents of their role as arbiter and decision-maker in the family unit, confusing children and undermining child-rearing.[11] This adds to the already extreme stresses on detained children and erodes their trust in their parents at a time when they need it most.

The U.S. government's expansion of family detention is also troubling given its problematic history at Hutto and on-going complaints regarding conditions of confinement and allegations of abuse by immigration officials. The facilities in Artesia and Karnes have already raised serious concerns among advocates. In September, widespread allegations of sexual abuse and assault of women detained in Karnes were made public[12], and are now under investigation by the U.S. government. Medical experts and child welfare specialists have reported that many children had lost considerable weight after entering Artesia and several displayed symptoms of depression.[13]

Finally, remote detention facilities like Artesia and Karnes impede fair hearings because there are few private or free legal service providers available in those areas to provide representation in incredibly complex legal proceedings, and it is difficult to build cases for legal relief from inside a detention facility.[14]

II. Human Stories

The ACLU and other organizations are currently representing several mothers and children detained at Artesia who experienced severe violence or threats of violence in Central America. While detained in the remote detention facility, their ability to meet with attorneys, access any information about the asylum process, or prepare for their asylum interviews has been significantly curtailed by their detention. For example, as detailed in the complaint:

- Although the law requires detainees to be permitted phone access so they can try to find counsel on their own through family and other contacts, the Artesia families have extremely limited access to telephones. For example, detainees are told they can only make one time-limited telephone call per day. Detainees therefore have to decide between calling their attorney or their family. Moreover, detainees have been routinely told they only have 3 to 5 minutes on the phone with their attorneys.

- While in detention, and with limited access to attorneys, detainees rely upon immigration officials as the near-sole source of information about their proceedings. However, the information they receive is often incomplete, incorrect and sometimes coercive. Mothers have been told to sign forms they don't understand and told they will certainly be deported. The Artesia "law library" does not provide detained families with adequate access to legal materials in Spanish. Indeed, the "library" contains no books at all. Some detainees have been also been refused access to the library.

- Detention officers have also impeded access to attorneys for detainees by prohibiting volunteer attorneys from "providing know your rights information," failing to provide a private place where attorneys can meet with clients, misinformed detainees that an

attorney would actually facilitate their deportation, and allowing insufficient time for attorneys and clients to meet before the client must go forward in an asylum interview.[15]

III. CAT Position

The Committee against Torture has recognized the responsibility of states both to prevent ill-treatment and to provide redress and care for those subjected to torture or ill-treatment. For example, the Committee earlier noted that States have a responsibility to provide rehabilitative services for victims of torture, including "community and family-oriented assistance and services" and recognizing that "victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured."[16] Many of the families arriving in the U.S. seeking asylum have escaped torture and persecution and yet, upon arrival in the U.S., are detained in prison-like facilities and monitored by armed guards. In its second general comment, the Committee also observed that States are responsible preventing ill-treatment of all individuals in their custody, including in detention as well as in institutions providing care for children.[17]

In 2010, the Committee requested that the U.S. government provide information on conditions of detention for children and steps taken to address ill-treatment of detained women, as well as for information regarding inadequate medical care for women in immigration detention.[18] In its responsive 2013 report to the Committee, the U.S. government acknowledged that it detains families in removal proceedings in one facility in Pennsylvania, and stated that the environment in that facility "empowers parents to continue to be responsible for their children, including for their supervision and discipline."[19] With respect to this last point, advocates are concerned that family detention in fact breaks down family structures and relationships because it is the immigration officer who is charge of discipline, meals, and availability of basic sanitation and social services.[20] But more generally, the U.S. response does not address the necessity of family detention, despite the deleterious effects of detention on children and their parents, and in spite of the availability of alternatives to detention. Since the U.S. response was submitted, moreover, the U.S. government has dramatically expanded the use of family detention, even though detention of children, whatever the conditions, is internationally recognized as objectionable.

IV. Other UN and Regional Human Rights Bodies Recommendations

In the United States, the detention of families, including those with young children, is part of a larger scheme of administrative detention for immigrants, one which the Committee on the Elimination of Racial Discrimination recently called upon the United States to reform so that detention decisions were based on an individualized assessment.[21] In recent years, international consensus and human rights law have cautioned against the use of administrative immigration detention, particularly for children detained with or without their families.[22] The United Nations

Working Group on Arbitrary Detention has stated that immigration detention should be abolished and only used as a last resort,[23] and the Committee on the Rights of the Child has called upon States to "expeditiously and completely cease the detention of children on the basis of their immigration status" and that detaining children "constitutes a child rights violation and always contravenes the principle of the best interests of the child."[24] In May 2014, the U.N. Secretary-General expressed particular concern with administrative detention of young immigrant children.[25] Furthermore, the Inter-American Commission on Human Rights, which recently concluded a visit to the U.S.-Mexico border, expressed its "concern that families who are detained following their processing at a border station or a port of entry are generally maintained in detention for the duration of their immigration proceedings, even where a positive credible fear determination has been made by an asylum official."[26] Indeed, detention of families raises tremendous concerns, and, regardless of the particular detention conditions, inhibits access to due process, harms children's mental health, and damages the family structure.[27]

V. Recommended Questions

1. Why has the U.S. government expanded its use of family detention, rather than investing in currently available effective, less costly, and more humane alternatives to administrative immigration detention?

2. How is the U.S. government responding to complaints of abuse of immigrants in its custody and what steps are being taken to investigate complaints and sanction and correct abuse?

3. What steps is the U.S. government taking to ensure that immigrants in detention, including children, are provided with necessary in-person psychological, medical, and social services?

4. What is the U.S. government doing to ensure adults and children in detention can secure legal representation?

5. Will the U.S. government commit to ending its no-bond policy for detained mothers and children who are entitled to an individualized determination of the need to detain before losing their liberty?

VI. Suggested Recommendations

1. Reject the detention of families and children, unaccompanied or with their parents, as an immigration enforcement tool. Abandon the no-bond policy and ensure that every parent and child receive an individualized assessment of the need to detain. Ensure that the detention of families and children is only used as a last resort, for the shortest

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period of time possible. Use and expand the use of alternatives to detention in place of institutional detention.

2. Ensure that administrative detention, when absolutely necessary, comply with all human rights obligations to provide humane treatment and care, including medical, legal, and social services.

3. Investigate all complaints regarding conditions of confinement or abuse, ensure that officers who abuse immigration detainees are held accountable, and revise oversight protocol, training, and other policies to prevent inappropriate conditions of confinement or officer behavior in the future.

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[1] *See* Customs and Border Protection, "Southwest Border Unaccompanied Alien Children (0-17 yr old) Apprehensions," *available at* http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children (accessed Sept. 15, 2014).

[2] Memorandum for the Heads of Executive Departments and Agencies, *Response to the Influx of Unaccompanied Alien Children Across the Southwest Border* (June 2, 2014) (on file with the ACLU).

[3] The United Nations Working Group on Arbitrary Detention has stated that immigration detention should be abolished and until then only used as a last resort (UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, January 18, 2010, para. 58 and 59, *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/102/94/PDF/G1010294.pdf?OpenElement). The Convention on the Rights of the Child, to which the United States is a signatory, requires that the detention of a child be used only as a last resort. (Convention on the Rights of the Child, article 37(b).) The UN Committee on the Rights of the Child clarifies further that "States should expeditiously and completely cease the detention of children on the basis of their immigration status" (Committee on the Rights of the Child, The Rights of All Children in the Context of International Migration (2012), para. 78, *available at* http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf). The UNHCR Executive Committee has stated that "States should refrain from detaining children, and do so only as a measure of last resort and for the shortest appropriate period of time, while considering the best interests of the child" (UN High Commissioner for Refugees (UNHCR), Conclusion on Children at Risk, 5 October 2007, No. 107 (LVIII) - 2007, *available at* http://www.refworld.org/docid/471897232.html).

[4] Statement of Jeh Johnson, Secretary of the U.S. Department of Homeland Security before the Senate Committee on Appropriations, July 11, 2014, *available at* http://www.appropriations.senate.gov/sites/default/files/hearings/SAC%20Hearing%20S1%20Testimony%207-10-14.pdf.

[5] Dara Lind, *Inside the remote, secretive detention center for migrant families*, Vox (July 24, 2014), *available at* http://www.vox.com/2014/7/24/5932023/inside-the-remote-secretive-detention-center-for-migrant-families#interview.

[6] Julia Preston, *As U.S. Speeds the Path to Deportation, Distress Fills New Family Detention Centers*, THE NEW YORK TIMES, (Aug 5. 2014), *available at* http://www.nytimes.com/2014/08/06/us/seeking-to-stop-migrants-from-risking-trip-us-speeds-the-path-to-deportation-for-families.html?smid=tw-share&_r=0; Susan Carroll, *Feds will house immigrant families at detention center near San Antonio*, HOUSTON CHRONICLE (July 18, 2014), *available at* http://www.chron.com/news/article/Feds-will-house-immigrant-families-at-detention-5630925.php

[7] Forrest Wilder, *Feds Set to Open Massive New Family Detention Center in November*, Texas Observer (Sept. 23, 2014), *available at* http://www.texasobserver.org/feds-set-open-massive-new-family-detention-center-november/

[8] John Stanton, "Government Declares Undocumented Immigrant Child, Mother A 'National Security Threat.'" BuzzFeed (Aug. 5, 2014), *available at* http://www.buzzfeed.com/johnstanton/government-declares-undocumented-immigrant-child-mother-a-na. Julia Preston, *In Remote Detention Center, a Battle on Fast Deportations*, New York Times, Sep. 5, 2014, *available at* http://www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html?smid=tw-share&_r=0.

[9] Janet Cleveland, Cecile Rousseau, and Rachel Kronick, Brief Submitted to the House of Commons Standing Committee on Citizenship and Immigration concerning Bill C-31, the *Protecting Canada's Immigration System Act*, "The harmful effects of detention and family separation on asylum seekers' mental health in the context of Bill C-31," (April 2012), pp. 3, 7, *available at* http://www.csssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/Publications_CRF/brief_c31_final.pdf.

[10] Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison The Health Consequences of Detention for Asylum Seekers* (June 2003), *available at* http://www.survivorsoftorture.org/files/pdf/perstoprison2003.pdf.

[11] Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, *Locking Up Family Values The Detention of Immigrant Families* (Feb. 2007), pp. 42, 43, *available at* http://lirs.org/wp-content/uploads/2012/05/RPTLOCKINGUPFAMILYVALUES2007.pdf; Cleveland, Rousseau, & Kronick, *supra* note 6, at 11.

[12] Press Release, *Maldef and Other Groups File Complaint Detailing Sexual Abuse, Extortion, and Harassment of Women at ICE Family Detention Center in Karnes City*, MALDEF, http://www.maldef.org/news/releases/maldef_other_groups_file_complaint_ice_family_detention_center_karnes_city/.

[13] *See generally*, Press Release, Advocates Call For Moratorium On Deportation Of Refugee Women And Children At Artesia Detention Center Until Basic Due Process Needs Addressed, National Immigrant Justice Center (July 24, 2014), http://www.immigrantjustice.org/press_releases/advocates-call-moratorium-deportation-refugee-women-and-children-artesia-detention-ce; American Civil Liberties Union, Letter, ACLU Views on S. 2648, the Emergency Supplemental Appropriations Act, 2014 (July 29, 2014), *available at* https://www.aclu.org/sites/default/files/assets/14_7_29_aclu_letter_to_senate_re_views_on_s._2648_the_emergency_supplemental_appropriatio

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ns_act_2014.pdf.; Dara Lind, *Inside the remote, secretive detention center for migrant families*, Vox News (July 24, 2014), *available at* http://www.vox.com/2014/7/24/5932023/inside-the-remote-secretive-detention-center-for-migrant-families.
[14] Laura W. Murphy, Family detention: A shame and a waste, The Hill (Aug 1, 2014), *available at* http://thehill.com/blogs/congress-blog/civil-rights/214001-family-detention-a-shame-and-a-waste; Eleanor Acer, *Immigrant Families Not Treated Properly*, ALBUQUERQUE JOURNAL, (Aug. 3, 2014), *available at* http://www.abqjournal.com/439865/opinion/immigrant-families-not-treated-properly.html.
[15] *M.S.P.C. v. Johnson*, Case 1:14-cv-01437 (D.D.C. Aug. 22, 2014), *available at* https://www.aclu.org/sites/default/files/assets/filed_complaint_1.pdf
[16] UN Committee against Torture, General comment No. 3, CAT/C/GC/3, para. 13 (Dec. 2012).
[17] UN Committee against Torture, General Comment No. 2, CAT/C/GC/2, para. 15 (Jan. 2008).
[18] Committee against Torture, List of issues prior to the submission of the fifth periodic report of the United States of America (CAT/C/USA/5), paras. 33, 34, 39 (Jan. 20, 2010), *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQ%2f3-5&Lang=en
[19] United States of America Third Periodic Report to the Committee against Torture, para. 199 (August 2013), *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2f3-5&Lang=en.
[20] Detention Watch Network, *Expose & Close Artestia Family Detention Facility, New Mexico*, at 9 (Sept. 2014), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose_close_-_artesia_family_residential_center_nm_2014.pdf.
[21] Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports Of United States of America, para. 1, (August 2014) *available at* http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf.
[22] U.N. High Commission for Refugees UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, (2012) *available at* http://www.unhcr.org/505b10ee9.html, para 54. *See also* Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration* (2012), para 32, *available at*: http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf .
[23] UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, January 18, 2010, para. 59.
[24] U.N. Office of the High Commissioner for Human Rights, Committee on the Rights of the Child, *General Discussion of the Committee on the Rights of the Child in the Context of International Migration*, para. 78 (2012), *available at* http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf.
[25] *In Stockholm, Ban calls for optimizing benefits of journey of hope' for migrants*, *society as a whole*, UN NEWS CENTRE (May 14, 2014), http://www.un.org/apps/news/story.asp?NewsID=47786#.U9eIPFbAjZq.
[26] Inter-American Commission on Human Rights, Press Release, "IACHR Wraps Up Visit to the United States of America," (Oct. 2, 2014) (further noting that a "top concern is the use of a widespread regime of immigration detention, given that the vast majority of families are being automatically detained under the custody of ICE."), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2014/110.asp
[27] Women's Rights Commission & Lutheran Immigration and Refugee Service, LOCKING UP FAMILY VALUES: THE DETENTION OF IMMIGRANT FAMILIES, (2007), *available at http //www.womensrefugeecommission.org/programs/migrant-rights/806-the-detention-of-immigrant-families*.

Life-without-Parole Sentences

I. Issue Summary

Life in prison without a chance of parole is, short of execution, the harshest imaginable punishment. Life without parole (LWOP) is permanent removal from society with no chance of reentry, no hope of freedom. One would expect the U.S. criminal justice system to condemn someone to die in prison only for the most serious offenses. Yet across the United States, at least 3,278 people are serving life sentences without the possibility of parole for nonviolent crimes as petty as siphoning gasoline from an 18-wheeler, shoplifting three belts, breaking into a parked car and stealing a woman's bagged lunch, or possessing a bottle cap smeared with heroin residue. Many thousands more are serving life without parole for other non-homicide offenses, or are serving mandatory sentences of life imprisonment without parole for crimes committed as adults. More than 2,500 other individuals are serving life sentences without the possibility of parole for crimes committed when they were children. These prisoners will languish in prison until they die, irrespective of whether they pose a threat to society or have been rehabilitated.

Human rights law and principles have long required proportionality between the seriousness of the offense and the severity of the sentence. These disproportionately severe sentences violate fundamental rights to humane treatment, proportionate sentence, and rehabilitation, and they constitute a form of cruel, inhuman, or degrading punishment[1] in violation of Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[2]

Rise in Life-without-Parole Sentences

More than 49,000 people—one of every 30 people in prison—are serving life-without-parole sentences in the United States.[3] LWOP is imposed in 49 states, up from 16 in the mid-1990s.[4] Six states and the federal system have abolished parole for prisoners sentenced to life, meaning that all life sentences in these jurisdictions are imposed without the possibility of parole.

The number of people sentenced to life without parole has quadrupled nationwide in the past 20 years, even while violent crime has been declining during that period.[5] Prisoners serving LWOP comprise one of the most rapidly growing populations in the prison system. The rate of growth of the LWOP population has been nearly four times the percentage rise in people serving parole-eligible life sentences.[6]

Not only has the use of life-without-parole sentences exploded, but the punishment is available for a broader range of offenses. In 37 states and in the federal system, a life-without-parole sentence is available for non-homicide offenses, including selling drugs, burglary,

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robbery, carjacking, and battery.[7] In 29 states, a LWOP sentence is mandatory upon conviction of particular crimes, thus denying judges any discretion to consider the circumstances of the crime or the defendant.[8]

Life-without-Parole Sentences for Nonviolent Offenses

According to data collected and analyzed by the ACLU, 3,278 prisoners are serving LWOP for drug, property, and other nonviolent crimes in the United States as of 2012.[9] Nearly two-thirds of prisoners serving LWOP for nonviolent offenses nationwide are in the federal system; of these, 96 percent are serving LWOP for drug crimes. Of the states that sentence people to LWOP for nonviolent offenses, Louisiana, Florida, Alabama, Mississippi, South Carolina, and Oklahoma have the highest numbers of such prisoners, largely due to three-strikes and other habitual offender laws that mandate a LWOP sentence for the commission of a nonviolent crime if the person has previously been convicted of certain prior felonies, which need not be violent or even serious in most of these states.

An ACLU sample study of prisoners serving life without parole for nonviolent offenses found that 21.9 percent of the federal cases reviewed were of people sentenced to LWOP for their first criminal conviction. The overwhelming majority (83.4 percent) of the federal and state LWOP sentences for nonviolent crimes surveyed by the ACLU were mandatory. In these cases, judges had no choice in sentencing due to laws requiring mandatory minimum periods of imprisonment, habitual offender laws, statutory penalty enhancements, or other sentencing rules that mandated LWOP.

As a result of the expansion of the crimes eligible for LWOP sentences to include a greater range of offenses, even people convicted of low-level nonviolent offenses are punished with LWOP sentences, often because of prior convictions. For example, the ACLU documented scores of cases in which people were sentenced to LWOP for nonviolent drug crimes of possession, sale, or distribution, including:

- possession of a crack pipe
- having a single, small crack rock at home
- possession of 32 grams of marijuana with intent to distribute
- acting as a go-between in the sale of $10 of marijuana to an undercover officer
- selling a single crack rock
- verbally negotiating another man’s sale of two small pieces of fake crack to an undercover officer
- having a stash of over-the-counter decongestant pills that could be manufactured into methamphetamine

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In cases documented by the ACLU, the nonviolent property crimes that resulted in life-without-parole sentences include:

- attempting to cash a stolen check
- a junk-dealer's possession of stolen junk metal (10 valves and one elbow pipe)
- possession of stolen wrenches
- stealing tools from a tool shed and a welding machine from a yard
- shoplifting several digital cameras
- shoplifting two jerseys from an athletic store
- taking a television, circular saw, and a power converter from a vacant house
- breaking into a closed liquor store in the middle of the night

The ACLU's research also revealed that there is staggering racial disparity in life-without-parole sentencing for nonviolent offenses in the United States. Nationwide, 65.4 percent of prisoners serving LWOP for nonviolent offenses are Black, 17.8 percent are white, and 15.7 percent are Latino. In the federal system, Blacks were sentenced to LWOP for nonviolent crimes at 20 times the rate of whites. In Louisiana, the ACLU's survey found that Blacks were 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime. The racial disparities range from 33-to-1 in Illinois to 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi.

Life-without-Parole Sentences for Children

More than 2,500 people convicted as children are serving life sentences without the possibility of parole in the United States. Since the 1990's, many states have adopted laws restricting the availability of juvenile courts to children or requiring children to be tried and sentenced as if they were adults.[10] This led to an explosion in the number of children sentenced to life without the possibility of parole. The United States is the only country in the world that imposes sentences of life imprisonment without the possibility of release on children.[11]

In recent years, legal challenges to life-without-parole sentences in the United States have met with a measure of success and resulted in important restrictions on the use of these sentences for persons below 18 years of age, but judicial rulings have fallen short of prohibiting such sentences. In *Graham v. Florida*, the U.S. Supreme Court ruled that life imprisonment without the possibility of release constitutes "cruel and unusual" punishment for non-homicide offenses committed by persons below 18 years of age.[12] In *Miller v. Alabama*, the Court struck down as unconstitutional mandatory sentences of life imprisonment without possibility of parole for children convicted of homicide offenses.[13]

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Significantly, the rulings leave open the possibility of judges imposing LWOP sentences in homicide cases, even where the child played a minimal role such as a "lookout" or accomplice, and courts continue to impose the sentence.[14] While many of the individuals who were sentenced to mandatory terms of life without the possibility of parole for crimes that occurred before they turned 18 may have the opportunity to be resentenced in light of *Miller*, U.S. courts are still free to impose the same life sentence upon rehearing.

Moreover, some courts have refused to give retroactive effect to *Miller v. Alabama*. The highest courts in only seven of the 28 states that required mandatory LWOP sentences for juveniles convicted of homicide offenses have ruled that *Miller v. Alabama* must be applied retroactively, and three states (Pennsylvania, Louisiana, and Minnesota) have refused to hold *Miller* retroactive.[15] In June 2014, the U.S. Supreme Court refused to review a Pennsylvania court decision holding that *Miller* does not apply retroactively, and in May 2014 the Supreme Court denied *certiorari* review of a Louisiana court decision similarly refusing to retroactively apply *Miller*.[16] Most recently, in October 2014, the Supreme Court declined to review an Ohio court decision refusing to retroactively review the mandatory LWOP sentence of a child convicted of murder.[17] Since the *Miller* decision, a majority of the 28 states have not passed legislation to comply with the ruling.[18] Of the 13 states that have passed compliance legislation, many require lengthy minimum time served before parole review (25 to 40 years) and only four allow for resentencing of prisoners currently serving mandatory LWOP sentences for a crime committed as a juvenile. Even in those states where courts have ruled *Miller* applies retroactively, prisoners continue to await resentencing; for instance in Iowa 25 prisoners serving mandatory LWOP sentences for crimes committed as children are still awaiting resentencing.[19]

Some state and federal courts have interpreted the prohibition of mandatory LWOP sentences for children extremely narrowly and ruled that sentences of extreme length, without consideration of their child status and that exceed normal life expectancy—de facto life without parole sentences—are permissible under the U.S. Constitution because they technically are not life without parole sentences.[20] The U.S. Supreme Court is yet to rule on the constitutionality of this issue.[21] There are an unknown number of individuals nationwide serving these de facto life sentences for crimes they committed when they were children.

The Immense Physical and Psychological Toll of Serving Life without Parole

LWOP sentences have profound, negative psychological impacts on prisoners. In interviews with the ACLU, prisoners reported feelings of unremitting hopelessness, loneliness, anxiety, depression, fear, isolation from family and their community, and suicidal thoughts. Many struggle to find purpose or meaning in their lives. Some expressed the wish for death so that their suffering would end, and some reported contemplating or attempting suicide because of the hopelessness of their sentences. Prisoners described the anguish of being separated from family, being unable to be present to parent their children or support aging and ailing parents,

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missing funerals of parents and siblings who died during their incarceration, being forgotten by friends and family, and facing the prospect of growing old and dying in prison without any hope for release.

Prisoners serving LWOP for nonviolent crimes variously described their sentences to the ACLU as "a slow death sentence," "a slow, painful death," "a slow, horrible, torturous death," "akin to being dead, without the one benefit of not having to suffer any more," "like you're…a walking dead," and "like you are a living dead person on a [life] support machine."[22] Libert Roland said of his LWOP sentence for cocaine possession, "It feels like someone or something is suffocating the life out of you slowly…the only relief you have left, the only hope, is to die [a] fast death."[23] Timothy Hartman, who is serving LWOP for armed burglary and has been incarcerated for 13 years, says, "As the years go on, it gets worse. You lose hope, the will to live."[24] He told the ACLU that his sentence has driven him to such profound despair that he has considered suicide, explaining, "So many have no hope—it's turned [us] insane. Mentally, you break…you cannot justify staying alive. It's pointless. You put a human being in a situation so bad, so evil, death is the *only* end."[25]

Imprisonment with no release date causes psychological trauma. Clinical research on the psychological consequences of LWOP and other death-in-prison sentences suggests that the mental health impact of LWOP sentences differs from parole-eligible sentences in which a prisoner has a release date that he or she is likely to reach during his or her lifetime.[26] The Sentencing Project found that a higher percentage of LWOP prisoners suffered from mental illness—primarily serious depression—than parole-eligible prisoners with a life sentence. Studies on the mental health consequences of indefinite detention have found that the indefinite terms of detainees' confinement causes them to develop feelings of hopelessness and helplessness that lead to depressive symptoms, chronic anxiety, despair, and suicidal ideation.[27]

For children, the psychological consequences of LWOP sentences may be exacerbated. Given their stage of growth and development children are less able than adults handle prison environments, especially when they are housed in adult facilities. Psychologically, children are different from adults, making prison time even more difficult for them. They experience time differently—a day for a child feels longer than a day to an adult—and they have a greater need for social stimulation. Consequently, children are psychologically unable to handle indefinite incarceration with the resilience of an adult.[28] Incarceration in adult jails and prisons also place youth at great risk of physical and sexual violence. Youth are over five times as likely to have a substantiated incident of sexual violence,[29] and twice as likely to be physically harmed by staff.[30] Incarceration in adult facilities places tremendous stress on youth and fails to provide adequate mental health services and programming. As a result, youth in adult facilities are eight times more likely to commit suicide than youth in juvenile facilities.[31]

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II. Human Stories

Kevin Ott is serving life without parole for three-and-a-half ounces of methamphetamine. When Ott was on parole for marijuana charges, parole officers found the drug and paraphernalia in a warrantless search of the trailer in which he was living. He was sentenced to mandatory LWOP under Oklahoma's state habitual drug offender law based on prior convictions arising from two arrests, one for having a small amount of meth in his pocket while exiting a bar, and the other for possession and manufacture of marijuana. During his incarceration after both of these arrests, he repeatedly requested treatment for his drug addiction but was denied. Now 50, Ott has served 17 years in prison and has stayed clean despite being ineligible for drug treatment due to the fact that he will never be released from prison. Ott likens his sentence to a "slow death penalty."[32]

Timothy Jackson is serving life without parole for shoplifting a jacket worth $159 from a department store in New Orleans in 1996. Jackson, then 36 years old, worked as a restaurant cook and had only a sixth-grade education. A store security agent followed Jackson, who put the jacket down on a newspaper stand and tried to walk away when he realized he was being followed. At the time, Jackson's crime carried a two-year sentence for a first conviction; it now carries a six-month sentence. Instead, the court sentenced Jackson to mandatory life without parole, using a two-decades-old juvenile conviction for unarmed robbery and two unarmed car-burglary convictions to increase his sentence to LWOP under Louisiana's four-strikes law.[33] Although an appellate court called the sentence "excessive," "inappropriate," and "a prime example of an unjust result,"[34] the Louisiana Supreme Court ruled that judges may not depart from life-without-parole sentences mandated by the habitual offender law except in rare instances.[35] Of his sentence, Jackson says, "A life sentence without parole, it take all hope from a person and their family."[36] Now 52, Jackson has served 16 years in prison and suffers from various health problems, including diabetes, high blood pressure, and blackouts.

Dicky Joe Jackson, a 55-year-old father of three, was sentenced to life without parole for a federal drug conspiracy conviction because he transported and sold methamphetamine to pay for a life-saving bone marrow transplant and other medical treatments for his sick son.[37] After the family's insurance company terminated their coverage for missing a payment, Jackson did not have the financial means to pay for the transplant his then-two-year-old son required. A trucker from Texas, Jackson started carrying methamphetamine in his truck to earn the money from a local drug dealer. He says of his sentence, "It's like someone dying but not being put to rest."[38] He has now served 18 years in prison and told the ACLU, "There's lots of nights in your prayers you ask to not wake up the next day… There's no hope in here for us lifers."[39] He added, "I wish it were over, even if it meant I were dead…. When I lie down at night I think it would be great not to wake up in the morning, then all this would be over."[40]

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Henry Hill was only 16 years old when he was charged for his involvement in a shooting that took place in a Michigan park. In 1980, Henry and a few friends went to a park to confront three other boys they had been feuding with previously. Henry fired several shots in the air with a handgun to scare off other people in the park, but never fired his gun at the victim. Despite the fact that all four bullets found in the victim's body were characteristic of the weapon used by one of Henry's co-defendants, Henry was still charged with first-degree murder for aiding and abetting. After his arrest, Henry was evaluated and found to have the academic ability of a third grader, and the mental maturity of a nine-year-old. The doctor who did his evaluation recommended that Henry remain under the jurisdiction of the Juvenile Court. Based on the charge against him, Henry stood trial as an adult. The trial court had no discretion to consider Henry's juvenile status, mental age or maturity. Michigan law required that the trial court charge and punish Henry as if he were an adult and sentence him as such to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board has no jurisdiction to consider Henry for parole. Henry is now 49 years old and has spent over 30 years—nearly two-thirds of his life—behind bars.

III. CAT Position

The Committee against Torture has stated that sentencing a child to life imprisonment without the possibility of release may in itself amount to cruel, inhuman or degrading treatment. In its July 2006 Concluding Observations following its previous periodic review of the United States, the Committee against Torture expressed its concern about the large number of children sentenced to life imprisonment in the United States.[41] The Committee recommended that the United States "should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment."[42]

IV. U.S. Government's Response

In its periodic report submitted to the Committee in December 2013, the U.S. Government reported on two Supreme Court cases (*Graham v. Florida* and *Miller v. Alabama*) limiting the applicability of juvenile LWOP sentences.[43] The U.S. periodic report fails to mention that some courts have ruled that *Miller v. Alabama* does not apply retroactively. Courts continue to impose the sentence and the reality is that despite *Graham* and *Miller*, at least 2,500 individuals are still serving LWOP for crimes they committed as children.

In its response to the Committee's 2006 Concluding Observations, the U.S. Government took the position that "The Convention does not prohibit the sentencing of juveniles to life imprisonment without parole" and asserted that "The United States, moreover, does not believe that the sentencing of juveniles to life imprisonment constitutes cruel, inhuman or degrading treatment or punishment as defined in United States obligations under the Convention." The U.S. Government further highlighted the reservation it entered at the time it ratified the CAT, stating

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that the United States considers itself bound by the obligation to prevent cruel, inhuman or degrading treatment or punishment under Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the…Constitution of the United Sates."[44] The U.S. Government also asserted that because it did not ratify the Convention on the Rights of the Child, "it is under no obligation to prohibit the sentencing of juveniles to life imprisonment without the opportunity for parole."[45]

Recently, in its May 2014 response to the petitioners' post-hearing Final Observations in the *Henry Hill et al. v. United States of America* case brought by the ACLU before the Inter-American Commission on Human Rights, the U.S. Government took the extraordinary and erroneous position that neither the American Declaration nor international law prohibits the United States from imposing LWOP sentences on juveniles.[46]

V. Other UN and Regional Human Rights Bodies Recommendations

In its April 2014 Concluding Observations on U.S. compliance with the ICCPR, the Human Rights Committee expressed its concern "that a court may still, at its discretion, sentence a defendant to life imprisonment without parole for a homicide committed as a juvenile, and that a mandatory or non-homicide-related sentence of life imprisonment without parole may still be applied to adults."[47] The Human Rights Committee recommended that the United States "should prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed, as well as the mandatory and non-homicide-related sentence of life imprisonment without parole."[48] Concerning racial disparities in sentencing, the Human Rights Committee also recommended that the United States "should continue and step up its efforts to robustly address racial disparities in the criminal justice system, including by amending regulations and policies leading to racially disparate impact at the federal, state and local levels" and by ensuring "the retroactive application of the Fair Sentencing Act and reform mandatory minimum sentencing statutes."[49] In its previous 2006 Concluding Observations of its periodic review of the United States, the Human Rights Committee stated that a categorical prohibition of imposition life-without-parole sentences on children is incorporated in article 24(1) of the ICCPR.[50]

In its August 2014 Concluding Observations, the Committee on the Elimination of Racial Discrimination repeated its concern that "despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary life without parole sentences are still permitted for juveniles convicted of homicide."[51] The CERD Committee reiterated "its previous recommendation to prohibit and abolish life imprisonment without parole for those under 18 at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving

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such sentences."[52] The CERD Committee also expressed concern that racial and ethnic minorities are disproportionately subjected to harsher sentences, including life without parole, and recommended that the United States "amend[] laws and policies leading to racially disparate impact in the criminal justice system at the federal, state and local levels."[53]

In July 2013, the Grand Chamber of the European Court of Human Rights (ECHR) ruled by a vote of 16-to-1 in *Vinter and Others v. the United Kingdom* that life sentences with extremely limited or no possibilities for review and release violate Article 3 of the European Convention for the Protection of Human Rights, which prohibits cruel, inhuman, or degrading treatment or punishment.[54] The court concluded that Article 3 requires that life sentences must incorporate an opportunity for review in which authorities can consider progress toward rehabilitation and other changes in the life of the prisoner that indicate an individual's imprisonment no longer serves a legitimate purpose and that he or she is entitled to conditional release.[55] The prisoners serving LWOP who brought the case had committed serious crimes: one had been convicted of murdering his wife; another of murdering his parents, his adoptive sister, and her children for financial gain; and the third of murdering four people.[56] Even taking into account the seriousness of these crimes, the court ruled that there must be an opportunity for review of the prisoners' life sentences.[57]

VI. Recommended Questions

1. What measures are being undertaken to eliminate or limit the imposition of life-without-parole sentences for nonviolent and non-homicide crimes, and to ensure that people currently serving such sentences are afforded a meaningful opportunity for release?

2. What efforts is the United States making to prohibit and abolish the sentence of life without parole for children, irrespective of the crime committed, and to ensure that all people currently serving life-without-parole sentences for crimes committed as children are resentenced and ensured a meaningful periodic review of their eligibility for release before a parole or review panel?

3. How will the United States eliminate or limit the imposition of mandatory sentences of life without parole for both adults and children and ensure that sentences of life-without-parole are based on an individualized determination that the severity of the sentence is proportionate to the seriousness of the offense?

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VII. Suggested Recommendations

1. Abolish the sentence of life without parole for non-homicide offenses. Congress should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a non-homicide offense. State legislatures should repeal all existing laws or the portions of such laws that either allow for or mandate a sentence of life without parole for a non-homicide offense. Such laws should be repealed for non-homicide offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement. Make elimination of non-homicide LWOP sentences retroactive and require resentencing for all people currently serving LWOP for nonviolent offenses.

2. Abolish the sentence of life without parole for offenses committed by children under 18 years of age. Enable child offenders currently serving life without parole to have their cases reviewed by a court for resentencing, to restore parole eligibility and/or for a sentence reduction.

3. Congress should enact comprehensive federal sentencing reform legislation such as the Smarter Sentencing Act of 2013 or the Justice Safety Valve Act of 2013, which would reduce some mandatory minimum sentences, including mandatory LWOP sentences for drug offenses, and would retroactively apply the Fair Sentencing Act—which reduced the crack/powder cocaine sentencing disparity—to those currently serving LWOP and other excessive and disproportionate sentences for these offenses.

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[1] *See e.g*., REPORT ON THE 1960 SEMINAR ON THE ROLE OF SUBSTANTIVE CRIMINAL LAW IN THE PROTECTION OF HUMAN RIGHTS AND THE PURPOSE AND LEGITIMATE LIMITS OF PENAL SANCTIONS, organized by the United Nations in Tokyo, Japan, 1960 (noting that punishments "prescribed by law and applied in fact should be humane and proportionate to the gravity of the offence").

[2] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment preamble, art. 16, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85.

[3] ASHLEY NELLIS, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 5 (2013).

[4] Only Alaska provides the possibility of parole for all life sentences. Alaska's version of LWOP is a 99-year sentence without the possibility of parole.

[5] ASHLEY NELLIS, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 1, 6 (2013); ASHLEY NELLIS & RYAN S. KING, THE SENTENCING PROJECT, *NO EXIT THE EXPANDING USE OF LIFE SENTENCES IN AMERICA* 10 (2009).

[6] ASHLEY NELLIS, THE SENTENCING PROJECT, THROWING AWAY THE KEY: THE EXPANSION OF LIFE WITHOUT PAROLE SENTENCES IN THE UNITED STATES, 23 FED. SENT'G REP. 1, 27 (2010).

[7] *Id.* at 28.

[8] Those states are Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming. *Id.* at 27.

[9] AMERICAN CIVIL LIBERTIES UNION (ACLU), A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES (Nov. 2013), available at http://www.aclu.org/livingdeath.

[10] Gerard Rainville & Steven Smith, U.S. Dep't of Justice, *Juvenile Felony Defendants in Criminal Courts* (May 2003), Nat'l Crim. Justice Reference Service, NCJ 197961, *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/jfdcc98.pdf; Bureau of Justice Statistics, Nat'l Corr. Reporting Program (2003), *available at* http://www.ojp.usdoj.gov/bjs/abstract/jfdcc98.htm; Patrick Griffin, Patricia Torbet & Linda Szymanski, Nat'l Ctr. for Juvenile Justice & Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, *Trying Juveniles as Adults in Criminal Court An Analysis of State Transfer Provisions* (Dec. 1998), Nat'l Crim. Justice Reference Service, NCJ 172836, *available at* https://www.ncjrs.gov/pdffiles/172836.pdf.

[11] *See* Connie de la Vega, Amanda Solter, Soo-Ryun Kwon, & Dana Marie Isaac, Univ. of San Francisco School of Law, *Cruel and Unusual U.S. Sentencing Practices in a Global Context*, 61 (2012), *available at* http://www.usfca.edu/law/clgj/criminalsentencing.

[12] *Graham v. Florida,* 130 S. Ct. 2011, 2030 (2010)

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CAT SHADOW REPORT SUMMARIES
DHS-pertinent issues

Human Rights Campaign

- LGBTI people are particularly vulnerable to abuse when they enter into institutionalized settings, including immigration detention centers, as recognized by the UN Special Rapporteur on Torture. PREA is a significant step forward, but without consistent, full implementation LGBTI detainees and prisoners will continue to lack adequate protections.
- In September 2013, DHS issued a memo reviewing its use of segregation for ICE detainees. The memo states that "administrative segregation is "non-punitive" and "should only occur when necessary." However, studies have shown that administrative segregation can have lasting emotional and psychological harm on a detainee. This presents an untenable dilemma for many transgender detainees: whether to speak out about a reasonable fear to one's safety and risk being segregated, which, if placed there for too long, can potentially cause lasting emotional and psychological harm.
- The US must fully implement PREA. The real problem is the frustratingly slow pace of policy changes that will help to prevent, and thereby alleviate, the need for redress in the aftermath of a sexual assault, and the lack of education of the unique issues that LGBTI detainees face. Placing a detainee in a housing facility that is based on gender identity should be the primary goal, if that is requested by a detainee. DHS should also develop a consistent policy for the use of alternatives to detention as pertaining to transgender detainees. DHS should limit the use of administrative segregation to situations where safety is in jeopardy and there are no alternatives to detention available.
- Congress should remove the one-year deadline for asylum because it is arbitrary. Many individuals are unaware of this deadline, and the consequences are particularly acute for LGBTI individuals, who often do not know that persecution for being LGBTI can sometimes on its own be a sufficient basis to apply for asylum.

The John Marshall Law School International Human Rights Clinic and **National Immigrant Justice Center, Heartland Alliance** (joint submission)

- This report addresses the mistreatment and abuse that adult immigrant detainees suffer in U.S. detention facilities. It specifically addresses the widespread and deplorable conditions of detention, the use of solitary confinement, and the serious problem of sexual violence in detention, and how these conditions deter asylum seekers from pursuing legal protections in the United States. Included in this report are examples of current practices gathered from detention facilities around the US housing ICE immigrant detainees. The United States' failure to protect the rights of immigrant detainees represents a violation of the CAT Articles 1, 2, 3, 7, 10, 13, 14, 16, as well as United States' obligations under other international and regional human rights instruments and laws. The Committee should urge the US to: ensure detention center conditions are humane; expand alternatives to detention; implement robust regulations to prevent sexual assault in immigration detention; ensure access to counsel for all detainees; and ensure

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that all detainees have meaningful opportunities to express fear of return and seek release from detention.

From: (b)(6), (b)(7)(c)
To:
Subject: FW: Shadow reports- key issues
Date: Tuesday, November 04, 2014 5:30:03 AM
Attachments: ACLU Qs - DHS highlights.docx
CAT Shadow Reports summaries of DHS issues.docx
aclu_cat_shadow_report_2014_v2.pdf

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 01:15 AM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Shadow reports- key issues

Sorry again about the attachment failure on this one yesterday. Here are the highlight documents and the ACLU report itself.

From (b)(6), (b)(7)(c)
Sent: Monday, November 03, 2014 10:40 AM
To (b)(6), (b)(7)(c)
Cc
Subject: Re: Shadow reports- key issues

Sorry about that. I had computer problems this morning and will need to resend tonight, but I'm going to forward the full DOS summaries of the shadow reports (including the non-DHS issues) to tide you over since I can access those on BB.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, November 03, 2014 04:22 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: Re: Shadow reports- key issues

(b)(6), (b)(7)(c)

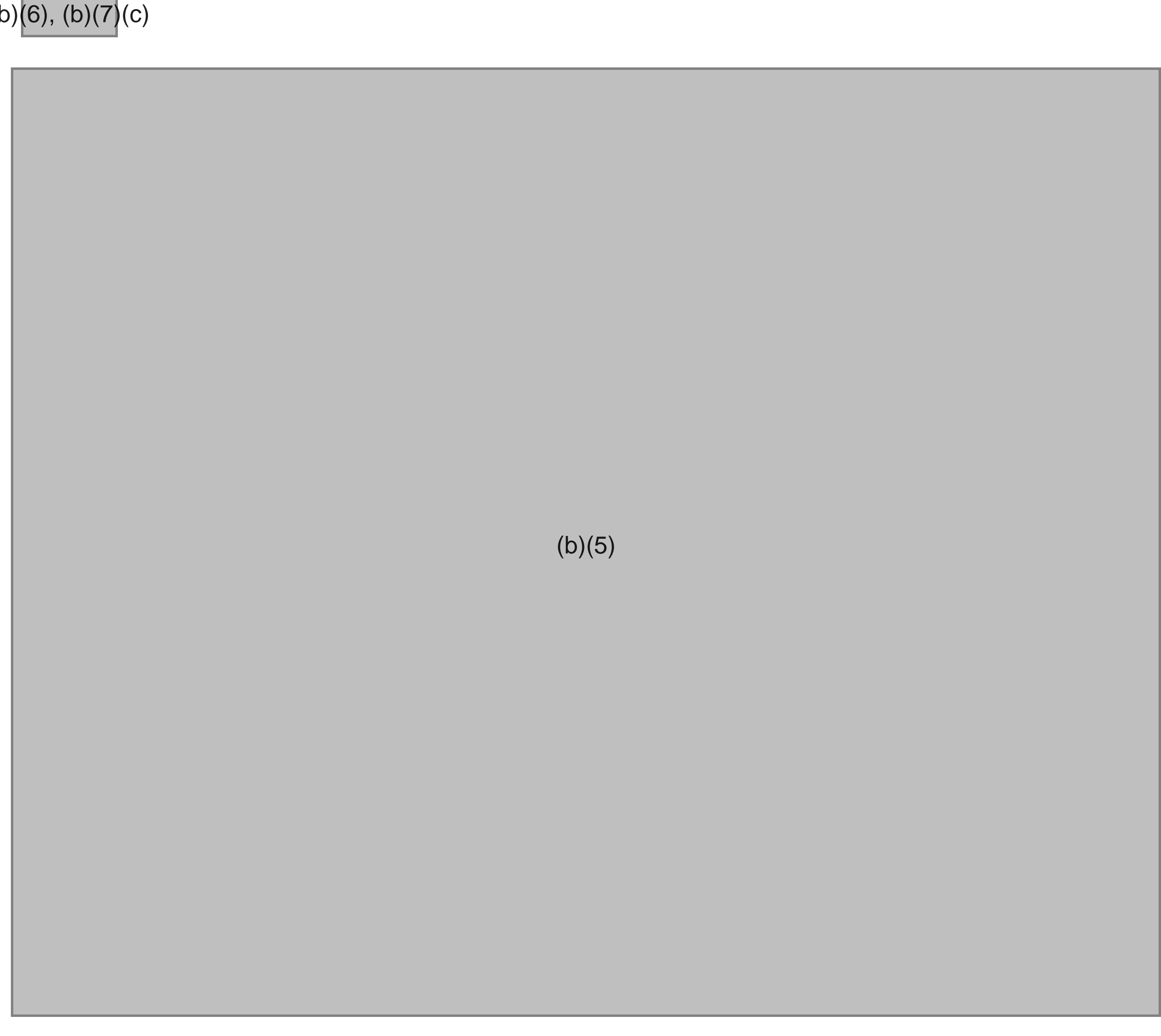
Thanks for pulling this together. Can you send the attachments. They did not go through.

From (b)(6), (b)(7)(c)
Sent: Monday, November 03, 2014 02:07 AM
To (b)(6), (b)(7)(c)
Cc
Subject: Shadow reports- key issues

I culled the key new shadow report questions from two DOS documents – one just from the ACLU's massive report, one from the others. We have answers to many of these, but some are on newer issues where we could use supplemental work.

Here's my effort to capture the themes and the particular tough areas. You should look at the attachments for fuller versions of the questions. Most only require about one new paragraph. (b)(6), (b)(7)(c) I'm afraid almost all of these are in your lane, apart from the CBP questioning ones, which I will work with CBP on Monday.

(b)(6), (b)(7)(c)



(b)(5)

(b)(6), (b)(7)(c)
Senior Advisor & Acting Team Lead, Immigration Section
Office for Civil Rights & Civil Liberties
Department of Homeland Security
(202) 357 (b)(6), (b)(7)(c)
(202) 604
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: UAC numbers
Date: Wednesday, November 12, 2014 10:18:33 AM

We got numbers, please stand down on asking EROLD.

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:18 AM
To (b)(6), (b)(7)(c)
Subject: Fw: UAC numbers

From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:16 AM Eastern Standard Time
To (b)(6), (b)(7)(c)
Subject: UAC numbers

In the highest-apprehension months (May and June), there were over 300 apprehensions per day (10,580 in May, 10,622 in June) on the southwest border; some days were over 300 in the Rio Grande Valley sector alone.

As of September 2014, the lasts month where figures are available, there were on average approximately 80 unaccompanied children apprehended on the southwest border each day, the lowest level since January 2013.

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: FW: Updated Script
Date: Wednesday, November 12, 2014 7:29:42 PM
Attachments: responses to committee version 4.docx

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 06:54 PM Eastern Standard Time
To: (b)(6), (b)(7)(c) Johnson, Tae
Cc:
Subject: Fw: Updated Script

Thank you for your help today supporting the CAT delegation. Attached is the current script for (b)(6), (b)(7)(c) to deliver around 9 am EST (3pm Geneva). Please send any important thoughts/edits around to this whole group ASAP and in any event no later than 7 am EST. Thank you enormously and expect a flurry of extremely short turnaround items between about 10 and 11 Thursday morning.

Please note the delegation's admonition that this is at absolute maximum length.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 06:04 PM
To (b)(6), (b)(7)(c)
Cc
Subject: Updated Script

(b)(6), (b)(7)(c)

Attached is our updated script that Nader will deliver tomorrow. We are at maximum time, please send it to the home team for any show stoppers or inaccuracies. While we can delete/reduce our bullets, we cannot add anything. We are already at the maximum time we have available.

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732(b)(6), (b)(7)(c)

520-249 (b)(6), (b)(7)(c) (cell)

(b)(6), (b)(7)(c)

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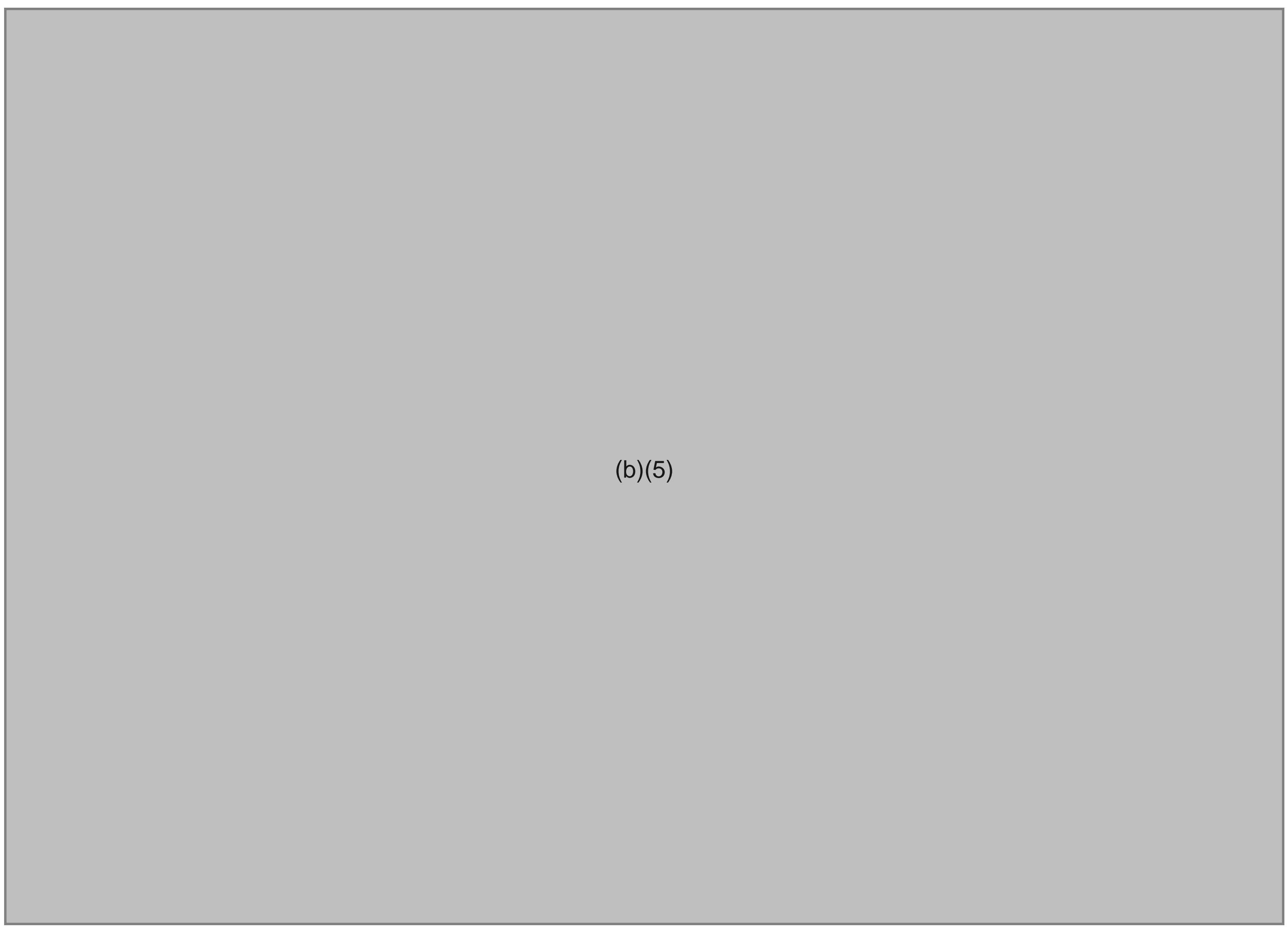
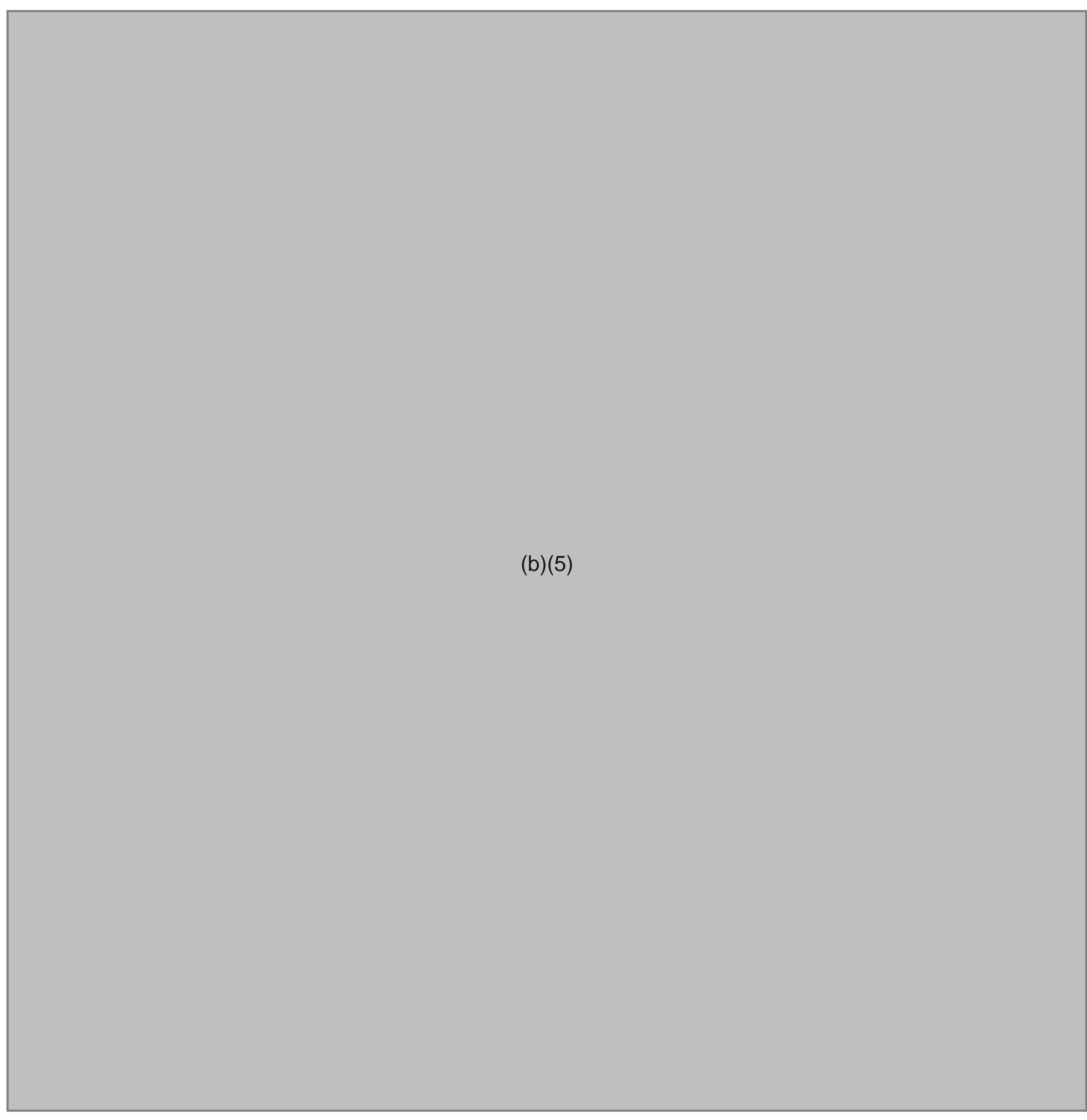
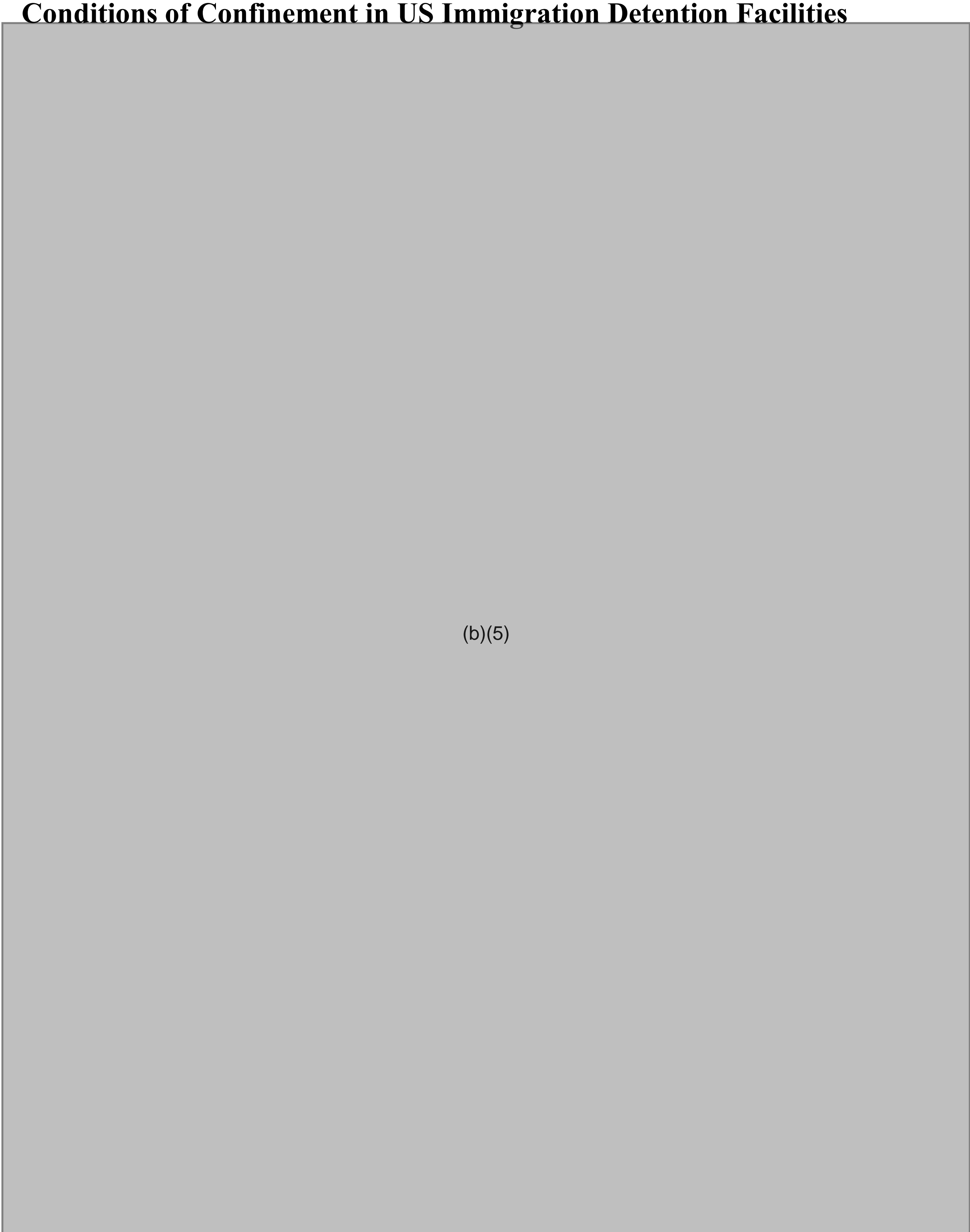

(b)(5)

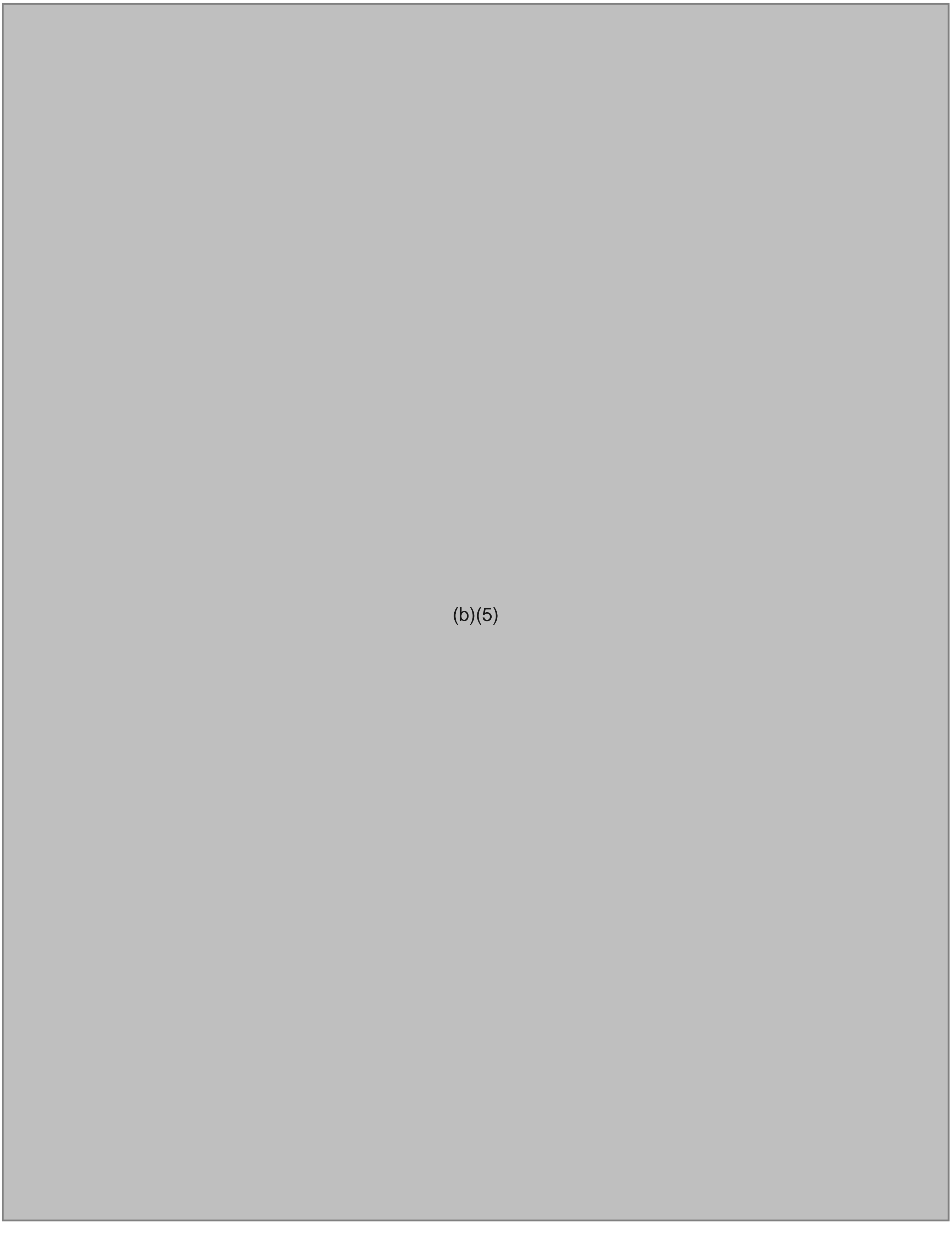
Immigration Detention

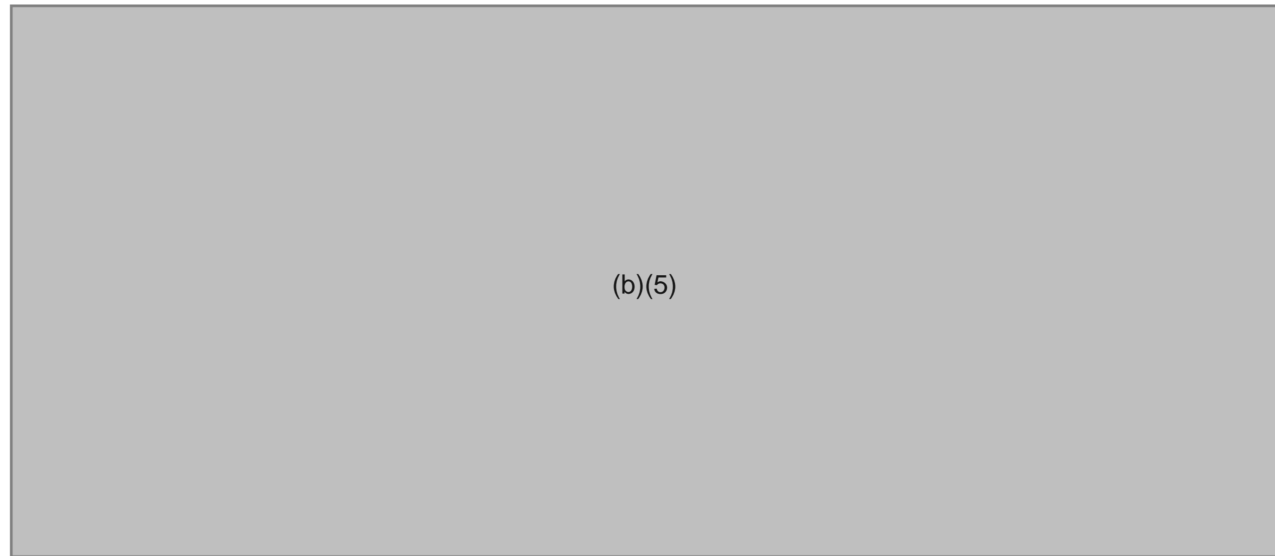


Protection Claims

(b)(5)


(b)(5)


(b)(5)

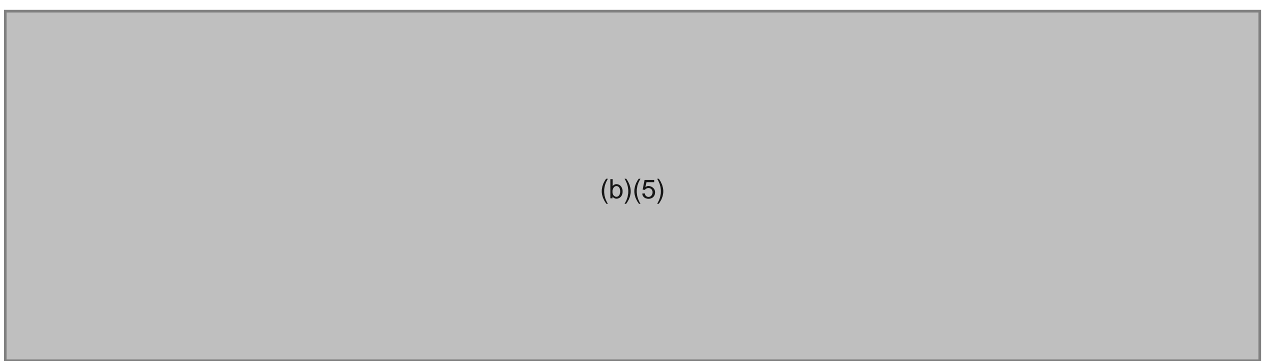

(b)(5)

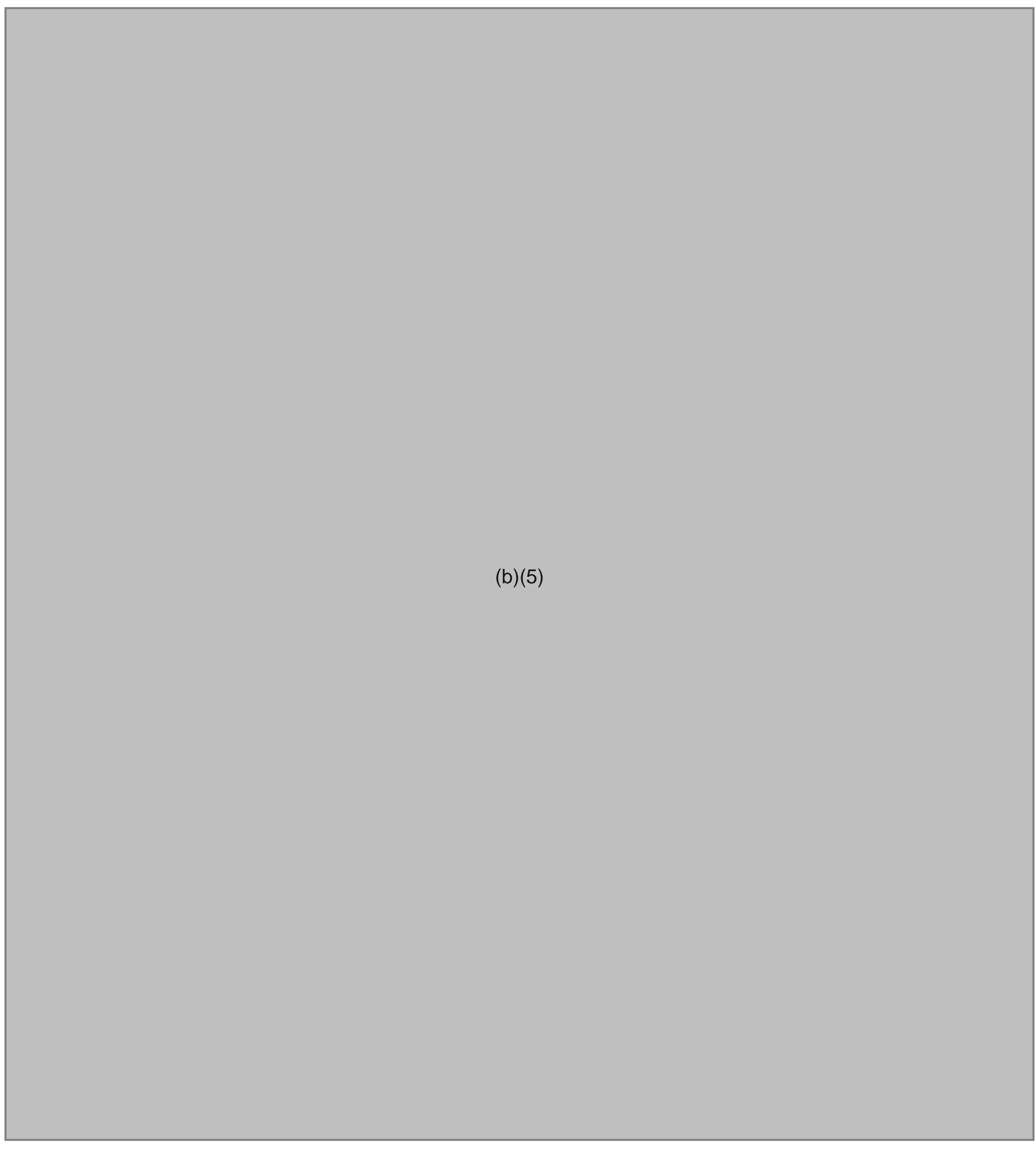
Addressing Complaints of Abuse

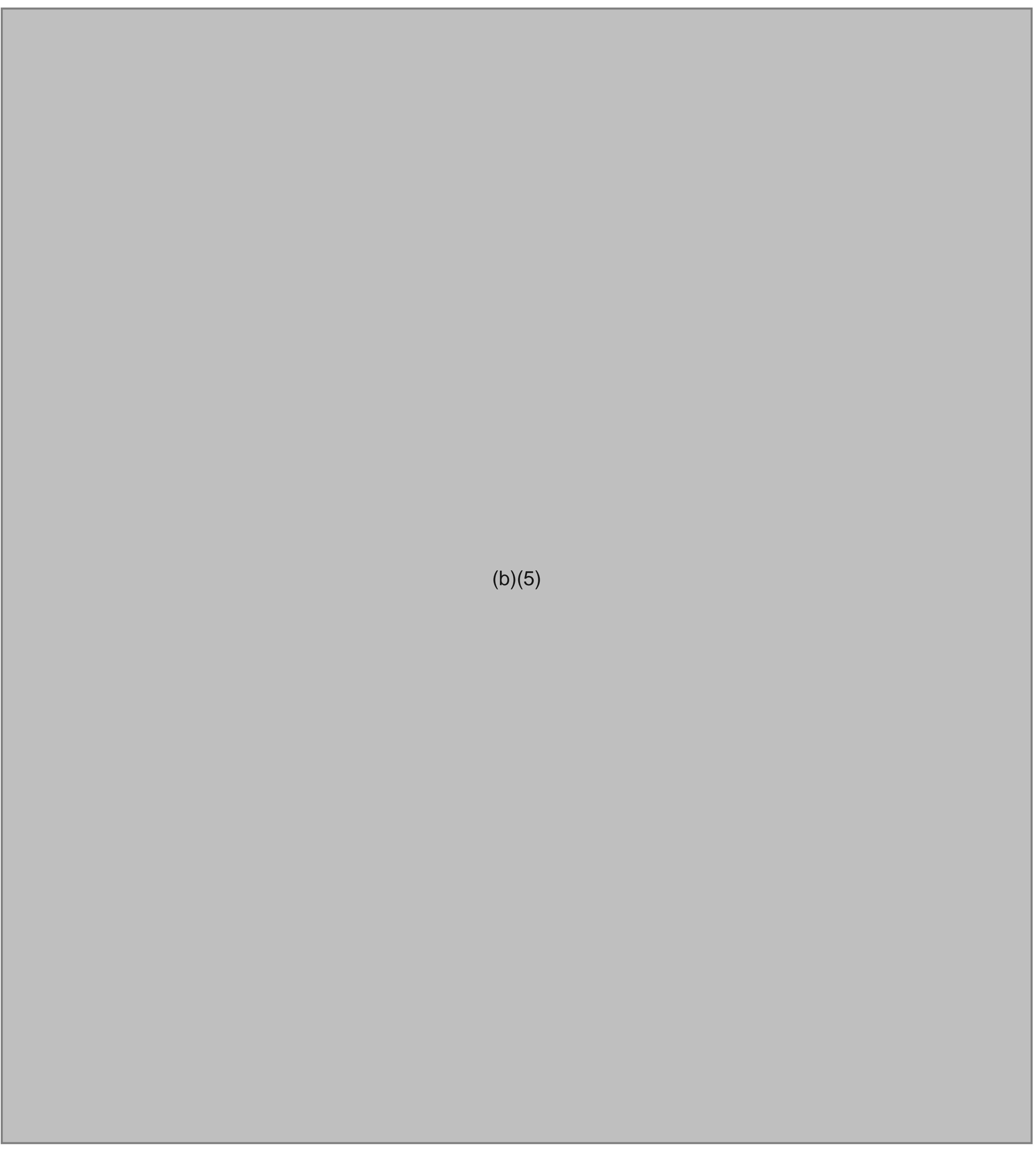
(b)(5)

DHS-011-0000001-0000323

Access to Counsel

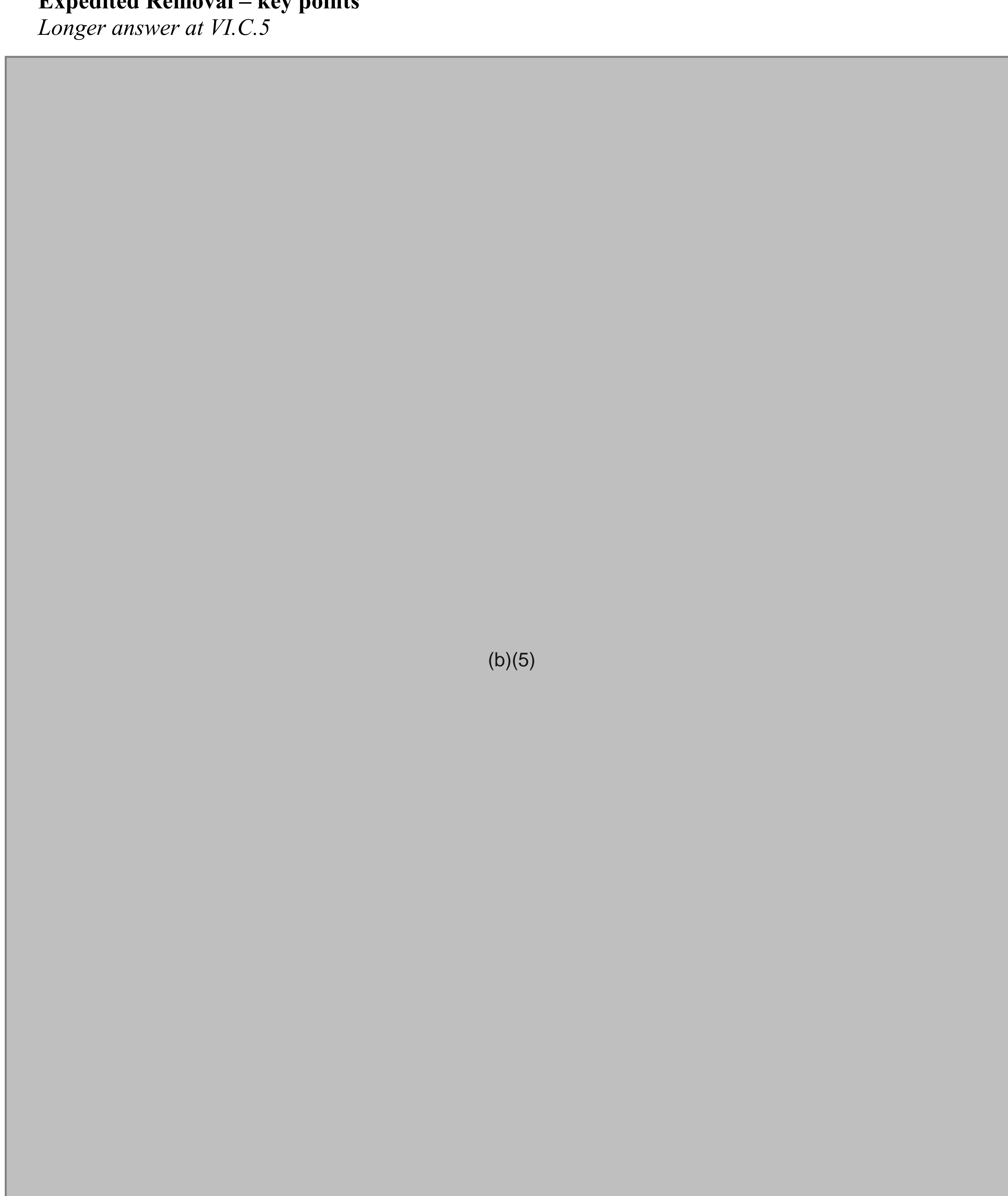


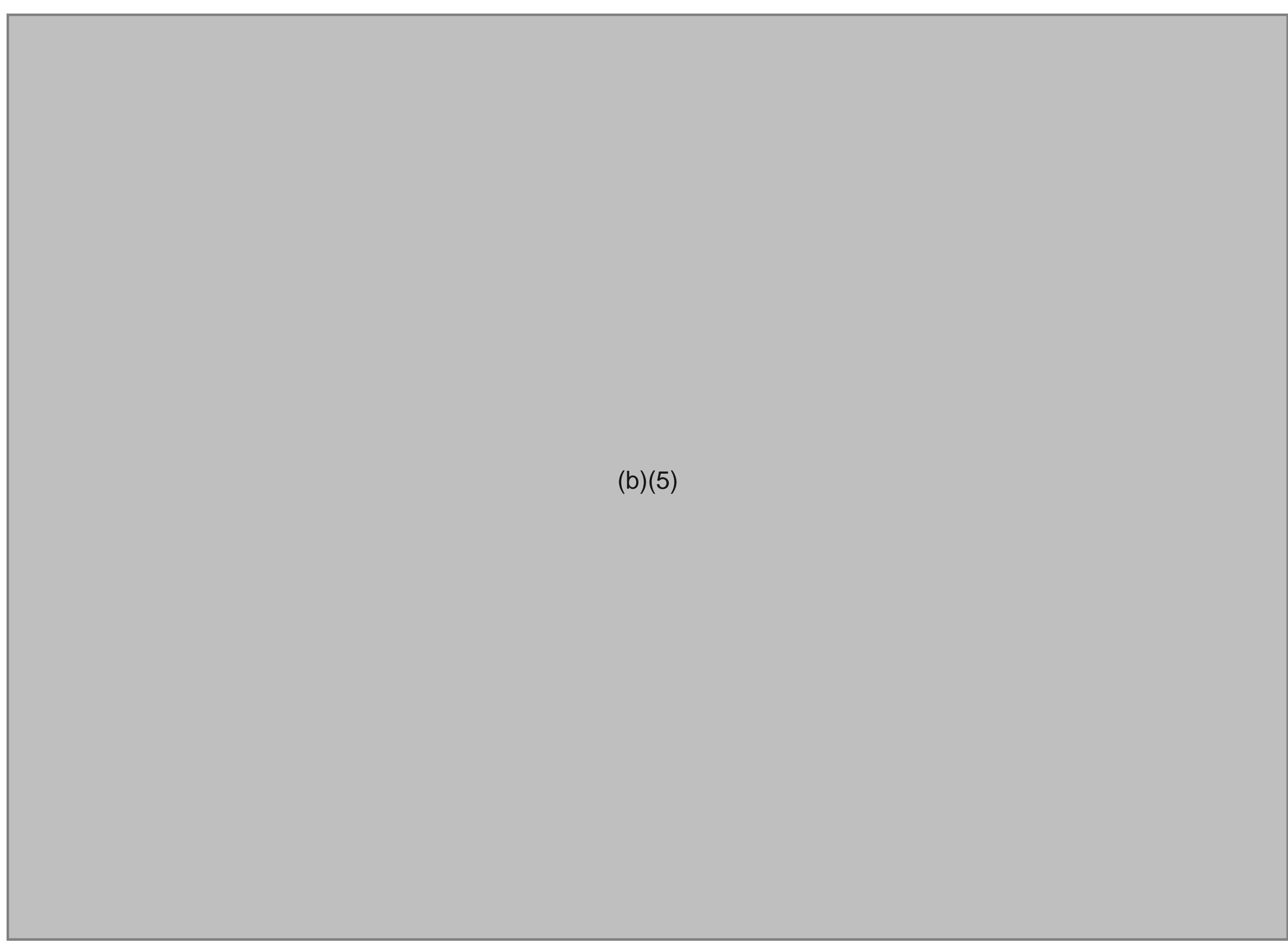

(b)(5)


(b)(5)

Expedited Removal – key points

Longer answer at VI.C.5




(b)(5)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: Mandatory Detention and Rodriguez
Date: Thursday, November 06, 2014 1:28:39 PM
Attachments: Mandatory Detention.docx

(b)(6), (b)(7)(c)

Attached is a one pager on mandatory detention and Rodriguez.

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (cell)
(b)(6), (b)(7)(c)

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Mandatory Detention

- The United States works hard to ensure that undocumented migrants are treated humanely in a manner consistent with the U.S. laws and applicable international obligations.

- Congress enacted mandatory detention in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 in response to evidence that the prior laws were allowing too many criminal aliens to evade removal after being released on bond. The provision generally referred to as the mandatory detention provision, INA § 236(c), applies only to certain categories of criminal and terrorist aliens. Aliens placed in mandatory detention can challenge whether they are properly subject to mandatory detention before an immigration judge.

- In enacting these laws and designating certain individuals to be mandatorily detained, Congress made a judgment about the seriousness of an alien's criminal history or risk of non-removability. Significantly, Congress also enacted provisions in 1996 that gave immigration agencies wide discretion to release most other removable aliens that do not fall under one of the mandatory detention statutes. In reviewing whether such an alien should be released, DHS and the Executive Office for Immigration Review consider such factors as ties to the community, family, health issues, flight risk, criminal history, and individualized factors that bear upon the appropriateness for release.

- U.S. law provides for the mandatory detention of certain aliens pending completion of removal proceedings and then removal from the United States. There is ongoing litigation regarding the scope of application of these laws. *See, e.g.*, *Rodriguez v. Robbins*, Nos. 13-56706, 13-56755 (9th Cir. 2014).

- **U.S. Courts (the Appellate Court in *Rodriguez)* have held that the statute authorizing the Attorney General to take into custody any alien who is inadmissible or deportable by reason of having committed certain offenses for as long as removal proceedings are "pending" cannot be read to authorize mandatory detention of criminal aliens with no limit on the duration of imprisonment.**

- While mandatory detention under the statute authorizing the Attorney General to take into custody any alien who is inadmissible or deportable by reason of having committed certain offenses for as long as removal proceedings are "pending" does not violate due process per se, the statute cannot be read to authorize mandatory detention of criminal aliens with no limit on the duration of imprisonment; the statute's mandatory language must be construed to contain an implicit reasonable time limitation, the application of which is subject to federal-court review.

Possible response If asked why *Rodriguez* hasn't been applied nationwide:

- **The jurisdiction of the Court that decided *Rodriguez* is limited to cover only certain states, namely those states within the 9th Circuit. The Decision in *Rodriguez***

DHS-011-0000001-0000330

is currently under review and believed to be held contrary to Congressional intent.

- Generally, a decision to pursue removal proceedings against a detained alien must be made within 48 hours of the arrest, except for emergencies or other extraordinary circumstances.

- Once the government has initiated removal proceedings, immigration judges are to adjudicate the case in the most expeditious manner possible, while ensuring the due process rights of individuals in proceedings. Aliens eligible for release on bond may seek a bond hearing orally or in writing. Aliens may also challenge a determination of whether they are bond eligible.

- Individuals in the expedited removal process who are referred to USCIS for a credible fear interview are generally subject to mandatory detention pending a determination by an asylum officer and any review of that determination by an immigration judge. See 8 U.S.C. 1225(b)(1)(B)(iii)(IV); 8 C.F.R. §§ 235.3(b)(4)(ii) and 1235.3(b)(4)(ii).

- Congress has mandated that certain aliens be detained without the opportunity for a bond hearing pending a final order of removal, namely certain criminals and terrorists. *See* 8 U.S.C. § 1226(c). In *Demore v. Kim*, the Supreme Court held that mandatory detention during deportation proceedings is constitutionally valid. 538 U.S. 510, 523 (2003). But some courts have noted that lengthy, pre-removal order custody without an individualized hearing may be problematic.

- Absent extraordinary circumstances or the requirements of mandatory detention, ICE policy dictates that individuals should not be detained if they are known to be suffering from serious physical or mental illness, or if they are disabled, elderly, infirm, pregnant or nursing, or demonstrate that they are primary caretakers of children, or if their detention is otherwise not in the public interest.

BACKGROUND

Mandatory detention under Section 1226(c) applies to aliens who are inadmissible on account of having committed a crime involving moral turpitude or a controlled substance offense, on account of having multiple criminal convictions with an aggregate sentence of five years or more of confinement, on account of connections to drug trafficking, prostitution, money laundering, or human trafficking, on account of having carried out severe violations of religious freedom while serving as a foreign government official, or on account of having been involved in serious criminal activity and asserting immunity from prosecution; aliens who are deportable on account of having been convicted of two or more crimes involving moral turpitude, an aggravated felony, a controlled substance offense, certain firearm-related offenses, or certain other miscellaneous crimes; aliens who are deportable on account of having committed a crime of moral turpitude within a certain amount of time since their date of admission for which a sentence of one year or longer has been imposed; and aliens who are inadmissible or deportable because of connections to terrorism.

DHS-011-0000001-0000331

From:	(b)(6), (b)(7)(c)
To:	
Subject:	RE: CAT Questions
Date:	Wednesday, November 12, 2014 10:25:20 AM

Awesome, thanks!

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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-----Original Message-----
From: Dever (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:25 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: CAT Questions

Just in case anyone is curious - ORR responded with numbers (I've already forwarded to (b)(6), (b)(7)(c)

	UAC referrals
May	9431
June	10197
July	5391
Aug	2215
Sep	1520
October	1862
total	30616

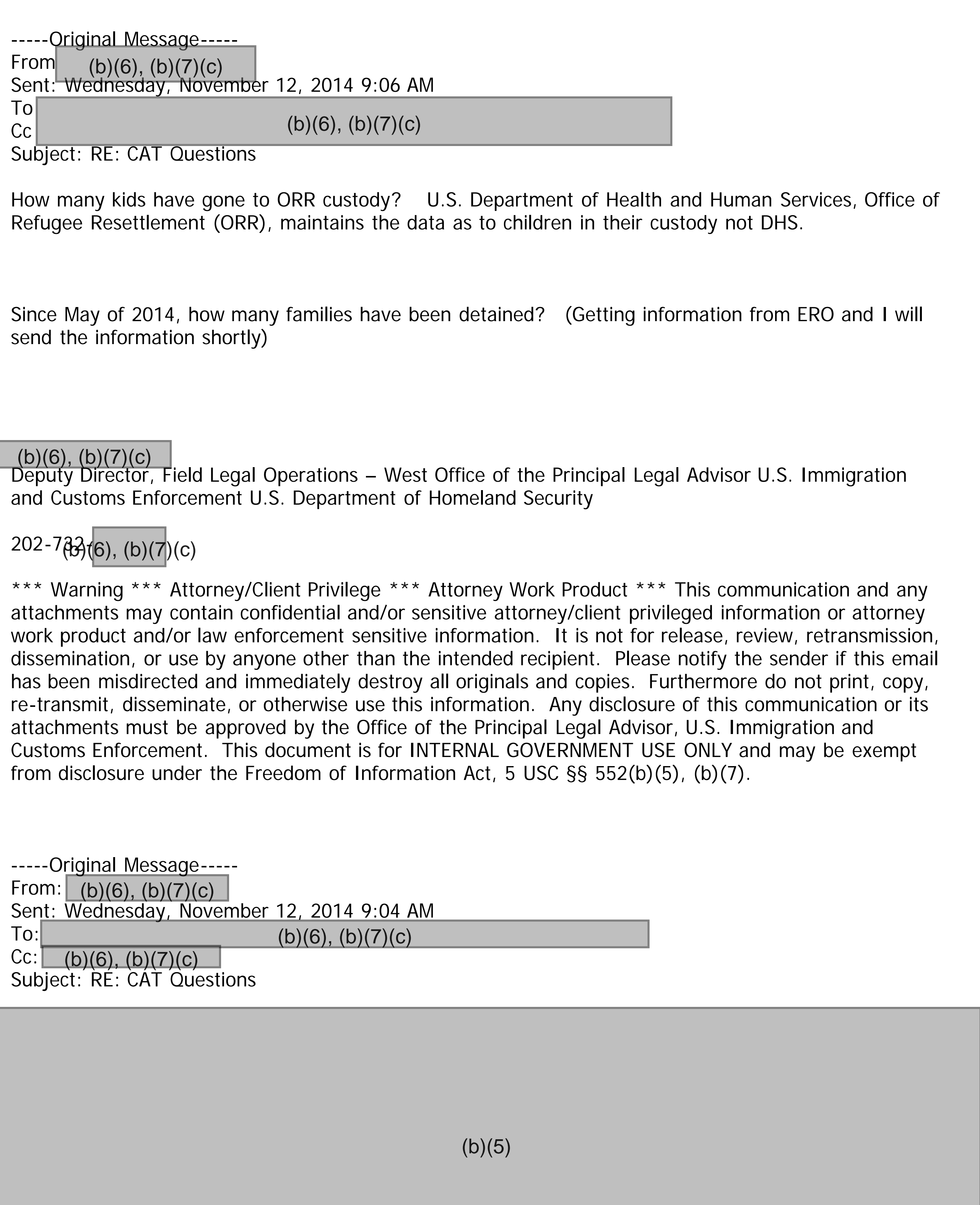
-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 9:08 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: CAT Questions

Thanks!

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 9:06 AM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: CAT Questions

How many kids have gone to ORR custody? U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), maintains the data as to children in their custody not DHS.

Since May of 2014, how many families have been detained? (Getting information from ERO and I will send the information shortly)



(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West Office of the Principal Legal Advisor U.S. Immigration and Customs Enforcement U.S. Department of Homeland Security

202-732-(b)(6), (b)(7)(c)

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 9:04 AM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: CAT Questions

(b)(5)

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-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 8:24 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: CAT Questions
Importance: High

Good Morning All,

As you may know, our delegates (b)(6), (b)(7)(c) are currently representing DHS at the Convention Against Torture (CAT) in Geneva. A committee is asking them questions to which they must respond within a matter of hours. They need answers to the following questions as soon as possible. I've been referred to each of you. I am attaching the Q&A for your reference to the 287g MOA (pg. 252) question. Please get back to me as quickly as you can, if you cannot answer the following questions, a lead on who may be able to help would be greatly appreciated.

-How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers? (b)(6), (b)(7)(c)

-How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the correct number? (b)(6), (b)(7)(c)

-Since May of 2014, how many families have been detained? How many kids have gone to ORR custody? (b)(6), (b)(7)(c)

Thank you,
(b)(6), (b)(7)(c)

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 5:52 AM
To: (b)(6), (b)(7)(c)
Subject: Questions

Need responses to the following:

How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers?

How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the correct number?

Since May of 2014, how many families have been detained? How many kids have gone to ORR custody?

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: RE: CAT Questions
Date: Wednesday, November 12, 2014 9:03:36 AM

(b)(5)

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 8:24 AM
To (b)(6), (b)(7)(c)
Cc
Subject: CAT Questions
Importance: High

Good Morning All,

As you may know, our delegates (b)(6), (b)(7)(c) are currently representing DHS at the Convention Against Torture (CAT) in Geneva. A committee is asking them questions to which they must respond within a matter of hours. They need answers to the following questions as soon as possible. I've been referred to each of you. I am attaching the Q&A for your reference to the 287g MOA (pg. 252) question. Please get back to me as quickly as you can, if you cannot answer the following questions, a lead on who may be able to help would be greatly appreciated.

-How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers? (b)(6), (b)(7)(c)

-How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the correct number? (b)(6), (b)(7)(c)

-Since May of 2014, how many families have been detained? How many kids have gone to ORR custody? (b)(6), (b)(7)(c)

Thank you,
(b)(6), (b)(7)(c)

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 5:52 AM
To: (b)(6), (b)(7)(c)
Subject: Questions

Need responses to the following:

How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers?

How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the correct number?

Since May of 2014, how many families have been detained? How many kids have gone to ORR custody?

From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c) Ramlogan, Riah
Cc:
Subject: RE: DHS CAT Response
Date: Wednesday, November 12, 2014 2:31:31 PM

(b)(6), (b)(7)(c)

We had some edits. The version below is cleared and can be sent back to (b)(6), (b)(7)(c)

> The DHS PREA regulations do not apply directly to contract detention facilities; rather the regulation requires that the relevant standards its sets forth be incorporated into any new contracts, contract renewals, or substantive contract modifications. To date, the standards have been incorporated into four such contacts. As part of its ongoing efforts to promote PREA implementation, ICE is currently updating its 2011 Performance Based National Detention Standards to include the standards set forth in the DHS PREA regulation and plans to pursue contract modifications for detention facilities with an average daily populations of over 150 in the near term.

Thanks,

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732(b)(6), (b)(7)(c)
Blackberry: 20(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: Davis, Mike P
Sent: Wednesday, November 12, 2014 2:16 PM
To (b)(6), (b)(7)(c) Ramlogan, Riah; (b)(6), (b)(7)(c)
Subject: RE: DHS CAT Response

Thanks (b)(6), (b)(7)(c) We'll get back to you shortly.

Mike P. Davis
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

202-732-(b)(6), (b)(7)(c) (O) | 202-904-(b)(6), (b)(7)(c) (M)

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 2:15 PM
To: Davis, Mike P; Ramlogan, Riah; (b)(6), (b)(7)(c)
Subject: DHS CAT Response
Importance: High

Mr. Davis, Ms. Ramlogan, and (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) has requested that the following statement be approved as a response delivered by the DHS delegates at the Convention Against Torture (CAT) in Geneva:

(b)(5)

The DHS team (b)(6), (b)(7)(c) will be delivering this answer in the next few hours and need a response as soon as you can give one. Please let me know if you are okay with the aforementioned statement.

Thank you,

(b)(6), (b)(7)(c) Legal Fellow
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., SW
Mail Stop 5900
Washington, D.C. 20536
(202)732-(b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 2:03 PM
To: (b)(6), (b)(7)(c)
Subject: RE: CAT responses

We revised as follows:

(b)(5)

Can you make sure (b)(6), (b)(7)(c) re okay with this? Thanks.

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:53 AM
To (b)(6), (b)(7)(c)
Subject: CAT responses

We are still waiting for a response as to the detention of families since May 2014. I will get back to you when I get the information.

Responses to the following:

How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers?

(b)(5)

How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the

correct number?

The correct number is 34. 34 MOAs in 17 states (not 18).

Since May of 2014, how many families have been detained? How many kids have gone to ORR custody?

- ORR responded with this chart:

	UAC referrals
May	9431
June	10197
July	5391
Aug	2215
Sep	1520
October	1862
total	**30616**

(b)(6), (b)(7)(c) egal Fellow
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., SW
Mail Stop 5900
Washington, D.C. 20536
(202) 732 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To: Gastelo, Elias S Jr; (b)(6), (b)(7)(c); (b)(6), (b)(7)(c); Davis, Mike P; (b)(6), (b)(7)(c); Stolley, Jim
Subject: RE: Need
Date: Thursday, November 13, 2014 12:03:44 PM

We don't have anything pulled on relief for Ucs. We could do it but not quickly.

(b)(6), (b)(7)(c)
Special Counsel to Director of Field Legal Operations
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement Potomac Center North
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Desk: (202) 732(b)(6), (b)(7)(c)
BB: (202) 30(b)(6), (b)(7)(c)

NOTE NEW EMAIL ADDRESS: (b)(6), (b)(7)(c)

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From: Gastelo, Elias S Jr
Sent: Thursday, November 13, 2014 11:59:09 AM
To: (b)(6), (b)(7)(c)
Davis, Mike P; (b)(6), (b)(7)(c) Stolley, Jim; (b)(6), (b)(7)(c)
Subject: RE: Need

(b)(6), (b)(7)(c)

1. From July 7 to date, Karnes has had no relief grants.
2. From July 7 to date, Artesia has had 23 relief grants. That's a 1% grant rate if you divide the number of grants (23) by the number of removal hearings (1,710).
3. Berks has had 3 relief grants. That's a 1% grant rate if you divide the number of grants (3) by the number of removal hearings (189)

Thanks,

Elias

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:50 AM
To: (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Castelo, Elias S Jr; Stolley, Jim; (b)(6), (b)(7)(c)
Subject: RE: Need

Elias,

Do you have this information, please?

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

202-732 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:03 AM
To: (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Subject: RE: Need

EROLD has no such data. It would be USCIS and EOIR data. That said, FLO may have something. We also got this question separately.

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732 (b)(6), (b)(7)(c)
Blackberry: 202-500 (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:02 AM
To: (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Subject: RE: Need
Importance: High

Adding EROLD and FLO. Do we have info on grant rate for families in detention that can be publicly released?

(b)(6), (b)(7)c needs this ASAP.

Thanks

(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732 (b)(6), (b)(7)(c)
Cell: 202-904 (b)(6), (b)(7)(c)
Email: (b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:58 AM
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Need

Adding Mike and (b)(6), (b)(7)(c)

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:53 AM Eastern Standard Time

To: (b)(6), (b)(7)(c)
Subject: Need

Grant rate for UACs and families in detention asap.

From:
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Need
Date: Thursday, November 13, 2014 11:47:12 AM

---

ask (b)(6), (b)(7)(c)

(b)(7)e

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (cell)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:43:09 AM
To: (b)(6), (b)(7)(c)
Su RE: Need

(b)(6), (b)(7)(c) m sorry, what next document?

From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:42 AM
To: (b)(6), (b)(7)(c)
Subject: RE: Need

cut and paste the next doc in an email.

(b)(7)e

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (b)(6), (b)(7)(c) (cell)
(b)(6), (b)(7)(c) (e-mail)

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From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:31:03 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Need

(b)(6), (b)(7)(c)

(b)(5)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:29 AM
To: (b)(6), (b)(7)(c)
Subject: Try this

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: UAC/family grant rates?
Date: Thursday, November 13, 2014 12:16:26 PM

Would you still like the Q3 public stats or just what we hand out tomorrow?

(b)(6), (b)(7)(c)
Asylum Officer, Operations Branch, Asylum Division
Refugee, Asylum and International Operations Directorate
Department of Homeland Security/U.S. Citizenship & Immigration Services
Desk: (202) (b)(6), (b)(7)(c) BB: (202) (b)(6), (b)(7)(c) Fax: (202) (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 12:14 PM
To
Cc: (b)(6), (b)(7)(c)
Subject: RE: UAC/family grant rates?

The last hearing just gaveled to a close – we don't have anything tomorrow. I was just hoping to see whatever you do share with your stakeholders tomorrow.

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 12:12 PM
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: UAC/family grant rates?

(b)(6), (b)(7)(c)

Sorry we weren't able to get you the data in time. We'll share the Q3 stats, as well as the more complete stats, assuming they clear the Department. What time is the hearing tomorrow?

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 12:04 PM
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: UAC/family grant rates?

Thanks – I'm afraid we don't need them any longer. (b)(6), (b)(7)(c) just finished his last chance to speak. Thank you for the fire drill all the same and we would appreciate your sharing the numbers with us tomorrow.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 12:03 PM
To
Cc: (b)(6), (b)(7)(c)
Subject: Re: UAC/family grant rates?

Hi (b)(6), (b)(7)(c)

We have prepared stats on UACs and credible fear for our quarterly stakeholders meeting occurring tomorrow, but it is pending DHS clearance before public release. We do, however, have old stats already publicly released on UAC asylum filings and credible fear for Oct. 2013 through Q3 of FY14 (b)(6), (b)(7)(c) will send them to you ASAP.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:59 AM
To
Cc (b)(6), (b)(7)(c)
Subject: UAC/family grant rates?

As we sort of expected, the CAT Committee is asking about relief grant rates for UACs and recently apprehended families. Last I spoke with (b)(6), (b)(7)(c) there were no recent releasable numbers. Is there anything you can provide to the delegation? Needed ASAP (minutes not hours or it's not useful.) Thank you!

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Senior Advisor & Acting Team Lead, Immigration Section
Office for Civil Rights & Civil Liberties
Department of Homeland Security
(202) 357 (b)(6), (b)(7)(c) (o)
(202) 604 (c)
(b)(6), (b)(7)(c)

EOIR Response to Request for Statistics, October 28, 2014

What percentage of arriving aliens who are found to have a credible fear are released from custody after posting a bond set by ICE? What is the average bond amount? (ICE, USCIS, and EOIR where they bonded out based on proceedings)

Hearing Location	Vacate - DHS Decision and Credible Fear Decisions	New Amount	No Action	No Bond	Own Recognizance
Artesia	147	106	0	2	0
Berks	0	0	0	0	0
Karnes	91	24	20	0	32
TOTAL	**238**	**130**	**20**	**2**	**32**

A single person can have multiple bond hearings and bond decisions. EOIR does not keep bond amounts in its database and EOIR does not track who USCIS has found to have a credible fear. If USCIS sends to EOIR a list of alien registration numbers associated with those persons for whom they have found credible fear, EOIR can run those A#s against its database to see if immigration judges granted bond for any of the associated persons.

How is the court operating in Artesia? How many cases is OPLA handling there? How many bond hearings have been handled? Who has bonded out and who has not? How many people were held without bond and how many were mandatory detention pursuant to 236(c)? In what time frame are people required to post bond? How many people held at Artesia have been removed? (ICE/EOIR)

Artesia Bond Decisions

Decision	Total
NEW AMOUNT	382
NO ACTION	16
NO BOND	21
NO CHANGE	11
OWN RECOGNIZANCE	4
Total	**434**

As of October 21, 2014, there have been two orders of removal from Artesia.

DHS-011-0000001-0000350

How often does EOIR reverse negative credible fear findings? (EOIR)

Between July 18, 2014 and October 21, 2014, in credible fear reviews for priority cases (those DHS identifies as unaccompanied children, adults with a child or children who are detained, adults with a child or children who are released into DHS's ATD program, and other detained recent border crossers), immigration judges vacated 130 DHS decisions and affirmed 113 DHS decisions for a reversal rate of 53 percent.

Are I-213s provided in advance of a bond hearing to aliens' counsel? (ICE, EOIR may be aware also)

Defer to ICE.

Please provide annual data from USCIS regarding credible fear approval and denial rates of women in detention, and credible fear rates of women from Honduras, El Salvador and Guatemala. Please also provide the corresponding asylum approval/denial rates. (USCIS/EOIR)

EOIR is providing below information that shows the reversal rate of a USCIS credible fear determination broken down by the alien's nationality. In addition, are providing asylum grant and denial rates for individuals from Honduras, El Salvador and Guatemala. Please note, however, that we cannot break down these statistics by sex.

Credible Fear Case Type (CFR)
Detained in Initial Case Completions

Affirmed and Vacated CFR Detained Initial Case Completions - Overall					
IJ Decision	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**
Affirmed - DHS Decision and no Credible Fear	662	852	717	595	1,441
Vacate - DHS Decision and Credible Fear	163	194	91	77	184
Total	825	1,046	808	672	1,625
Associated Reversal Rate	20%	19%	11%	11%	11%

Affirmed and Vacated CFR Detained Initial Case Completions for Honduras					
IJ Decision	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Affirmed - DHS Decision and no Credible Fear	91	73	55	76	265
Vacate - DHS Decision and Credible Fear	15	31	5	13	33
Total	106	104	60	89	298
Associated Reversal Rate	14%	30%	8%	15%	11%

Affirmed and Vacated CFR Detained Initial Case Completions for El Salvador					
IJ Decision	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Affirmed - DHS Decision and no Credible Fear	179	328	190	248	580
Vacate - DHS Decision and Credible Fear	58	63	18	25	75
Total	237	391	208	273	655
Associated Reversal Rate	24%	16%	9%	9%	11%

Affirmed and Vacated CFR Detained Initial Case Completions for Guatemala					
IJ Decision	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Affirmed - DHS Decision and no Credible Fear	83	65	81	91	279
Vacate - DHS Decision and Credible Fear	21	13	4	9	25
Total	104	78	85	100	304
Associated Reversal Rate	20%	17%	5%	9%	8%

DHS-011-0000001-0000352

Asylum Grant Rate - Overall			
	Grants	Denials	Grant Rate
FY 2009	8,800	9,876	47%
FY 2010	8,518	8,335	51%
FY 2011	10,137	9,280	52%
FY 2012	10,711	8,502	56%
FY 2013	9,933	8,823	53%

Asylum Grant Rate - Honduras			
	Grants	Denials	Grant Rate
FY 2009	34	347	9%
FY 2010	56	321	15%
FY 2011	58	421	12%
FY 2012	77	388	17%
FY 2013	92	575	14%

Asylum Grant Rate - El Salvador			
	Grants	Denials	Grant Rate
FY 2009	100	1,049	9%
FY 2010	123	923	12%
FY 2011	137	1,141	11%
FY 2012	158	971	14%
FY 2013	181	1,186	13%

Asylum Grant Rate - Guatemala			
	Grants	Denials	Grant Rate
FY 2009	123	1,034	11%
FY 2010	131	894	13%
FY 2011	145	851	15%
FY 2012	192	823	19%
FY 2013	153	829	16%

DHS-011-0000001-0000353

Recent news reports indicate that 70% of family units fail to appear at ICE offices. Please provide failure to appear rates for family units at ICE offices. Please also provide the failure to appear rate for family units placed in removal proceedings. (ICE/EOIR)

EOIR does not identify cases that are considered part of a "family unit" in its database other than those cases that fall into our priority cases, announced earlier this summer. Two categories of the priority cases identify family units that entered the country on or after May 1, 2014. The information below provides information on priority case family units.

Adults With Children - Detained (AWC/D)* IJ Decisions & In Absentia Orders

Base City	Hearing Location	IJ Decisions	IJ Decisions with an In Absentia Order	Pending Cases
BLOOMINGTON (ST. PAUL), MINNESOTA	BLOOMINGTON JUVENILE	1	1	3
CHARLOTTE, NORTH CAROLINA	CHARLOTTE JUVENILE	1	1	7
DENVER, COLORADO	ARTESIA, NEW MEXICO	225	0	422
HARLINGEN, TEXAS	HARLINGEN, TX	1	1	0
LOS ANGELES, CALIFORNIA	LOS ANGELES, CA	3	3	24
MEMPHIS, TENNESSEE	MEMPHIS, TN	1	1	4
MIAMI, FLORIDA	MIAMI, FLORIDA	1	1	10
SAN ANTONIO, TEXAS	KARNES COUNTY CORRECTION CENTER	15	0	79
YORK, PENNSYLVANIA	BERKS COUNTY (YOUTH)	14	0	58
Total		**262**	**8**	185

Please note that the information below represents decisions for each alien in removal proceedings and does not represent "family units." Also note that there are additional pending cases at facilities not listed above.

Adults With Children - Release on ATD (AWC/ATD)* IJ Decisions & In Absentia Orders

Base City	Hearing Location	IJ Decisions	IJ Decisions with an In Absentia Order	Pending Cases
ATLANTA, GEORGIA	ATLANTA, GEORGIA	218	156	111
BALTIMORE, MARYLAND	BALTIMORE, MD	239	236	737
BLOOMINGTON (ST. PAUL), MINNESOTA	BLOOMINGTON	7	7	1
BLOOMINGTON (ST. PAUL), MINNESOTA	BLOOMINGTON JUVENILE	14	11	140
BOSTON, MASSACHUSETTS	BOSTON, MASSACHUSETTS	32	30	256
BUFFALO, NEW YORK	BUFFALO, NY	3	3	13
CHARLOTTE, NORTH CAROLINA	CHARLOTTE JUVENILE	338	331	250
CHARLOTTE, NORTH CAROLINA	CHARLOTTE, NC	206	205	313
CHICAGO, ILLINOIS	CHICAGO, IL	4	4	34
CLEVELAND, OHIO	CLEVELAND, OHIO - CEL	45	45	101
DALLAS, TEXAS	DALLAS, TX	552	525	687
DALLAS, TEXAS	SOUTHWEST KEY	8	7	11
DENVER, COLORADO	DENVER, CO	34	34	146
HARLINGEN, TEXAS	HARLINGEN, TX	63	38	19
HARTFORD, CONNECTICUT	HARTFORD JUVENILE	54	52	120
HOUSTON, TEXAS	HOUSTON, TEXAS	1,038	992	1,472
KANSAS CITY, MISSOURI	KANSAS CITY, MO	33	31	166
LAS VEGAS, NEVADA	LAS VEGAS JUVENILE	32	32	55
LOS ANGELES, CALIFORNIA	LOS ANGELES, CA	213	203	648
MEMPHIS, TENNESSEE	LOUISVILLE JUVENILE	3	3	0
MEMPHIS, TENNESSEE	LOUISVILLE, KY	14	14	0
MEMPHIS, TENNESSEE	MEMPHIS JUVENILE	59	59	3
MEMPHIS, TENNESSEE	MEMPHIS, TN	151	147	390

DHS-011-0000001-0000355

MIAMI, FLORIDA	MIAMI, FLORIDA	227	217	1,549
NEW YORK CITY, NEW YORK	NEW YORK CITY, NEW YORK	9	9	431
NEWARK, NEW JERSEY	NEWARK, NEW JERSEY	16	15	182
OMAHA, NEBRASKA	OMAHA, NE	25	24	164
PHILADELPHIA, PENNSYLVANIA	PHILADELPHIA, PA	2	2	139
PORTLAND, OREGON	PORTLAND - ADULTS AND CHILDREN	10	10	110
PORTLAND, OREGON	PORTLAND DET	2	2	8
SALT LAKE CITY, UTAH	SALT LAKE CITY	6	6	44
SAN ANTONIO, TEXAS	SAN ANTONIO, TX	197	187	183
SAN FRANCISCO, CALIFORNIA	SAN FRANCISCO, CA	13	12	1,192
SEATTLE, WASHINGTON	SEATTLE, WA	17	12	199
YORK, PENNSYLVANIA	PIKE COUNTY PRISON	1	0	0
Total		**3,885**	**3,661**	**9,874**

Please note that the information below represents decisions for each alien in removal proceedings and does not represent "family units." Also note that there are additional pending cases at hearing locations not listed above.

From: Mills, Kate
To: (b)(6), (b)(7)(c)
Subject: RE: UAC/family grant rates?
Date: Thursday, November 13, 2014 11:45:35 AM
Attachments: Advance stats 10282014.pdf

Attached is from EOIR and below is what USCIS provided the House and Senate Judiciary Committee about 3 weeks ago:

11) Please provide credible fear grant and denial rates by facility. Please break out those cases also that are "decided on the merits"

	Artesia (7/1/14 through 9/30/14)	Berks (7/1/14 through 9/30/14)	Karnes (8/1/14 through 9/30/14)
%age of all referred cases completed by USCIS where credible fear was found	55.2% 392 individuals	77.8% 21 individuals	58.1% 317 individuals
%age of all referred cases completed by USCIS where credible fear was NOT found	37.9% 269 individuals	22.2% 6 individuals	33.0% 180 individuals
%age of all referred cases where applicant CLOSED his/her case, there was no consideration of the merits, and there was no credible fear determination	6.9% 49 individuals	0% 0 individuals	8.9% 49 individuals

15) Please provide annual data from USCIS regarding credible fear approval and denial rates of women in detention, and credible fear rates of women from Honduras, El Salvador and Guatemala. Please also provide the corresponding asylum approval/denial rates.

Female Cases - FY2014

	All Nationalities	Hondurans	Guatemalans	Salvadorans
Asylum Grant Rate	49%	36%	53%	42%
Credible Fear Found Rate	74%	76%	67%	74%

Kate Christensen Mills
Office of Congressional Relations
U.S. Immigration and Customs Enforcement

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:35 AM
To: Mills, Kate
Subject: RE: UAC/family grant rates?

Thank you Ms. Mills,

(b)(6), (b)(7)(c) suggested we reach out to you and that you may have some information or be able to reach someone with information that we could use on the subject.

(b)(6), (b)(7)(c)

From: Mills, Kate
Sent: Thursday, November 13, 2014 11:33 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: UAC/family grant rates?

I'm sorry, that is not information that OCR maintains. Perhaps you meant to send this to another office/individual?

Kate Christensen Mills
Assistant Director for Congressional Relations
U.S. Immigration and Customs Enforcement
(202) 732 (b)(6), (b)(7)(c) main)
(202) 732 direct)
(202) 246 mobile)
(b)(6), (b)(7)(c)

Visit ICE's New Website!

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:11 AM
To: Mills, Kate
Cc (b)(6), (b)(7)(c)
Subject: FW: UAC/family grant rates?
Importance: High

Ms. Mills,

I am attaching a thread – we need an answer asap to this question: What is the Grant rate for UACs and families in detention.

Can you help us or refer us to someone?

Thank you,

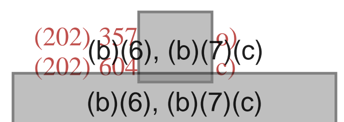
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 10:59 AM
To (b)(6), (b)(7)(c)
Cc
Subject: UAC/family grant rates?
Importance: High

As we sort of expected, the CAT Committee is asking about relief grant rates for UACs and recently apprehended families. Last I spoke with Ted, there were no recent releasable numbers. Is there anything you can provide to the delegation? Needed ASAP (minutes not hours or it's not useful.) Thank you!

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Senior Advisor & Acting Team Lead, Immigration Section
Office for Civil Rights & Civil Liberties
Department of Homeland Security


(202) 357
(b)(6), (b)(7)(c)
(202) 604
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script
Date: Thursday, November 13, 2014 11:15:20 AM

(b)(6), (b)(7)(c)

Here is a link to publicly available testimony on the credible fear process.

http://www.dhs.gov/news/2013/12/12/written-testimony-uscis-ice-and-cbp-house-committee-judiciary-hearing-titled-%E2%80%9Casylum

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732(b)(6), (b)(7)(c)
Cell: 202-904(b)(6), (b)(7)(c)
Email: (b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:12 AM
To (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script

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Sent: Thursday, November 13, 2014 11:07 AM
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script

Is Uscis, cbp and ice training materials publically available? Especially any asylum training material.

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 09:51 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: Re: Updated Script

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(b)(5)

I will check back in by noon your time to see if anything else has come through from the home team.

Break a leg (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 06:04 PM
To (b)(6), (b)(7)(c)
Cc
Subject: Updated Script

(b)(6), (b)(7)(c)

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(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script
Date: Thursday, November 13, 2014 11:12:38 AM

(b)(5)

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:07 AM
To: (b)(6), (b)(7)(c) Davis, Mike P
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To
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Subject: Updated Script

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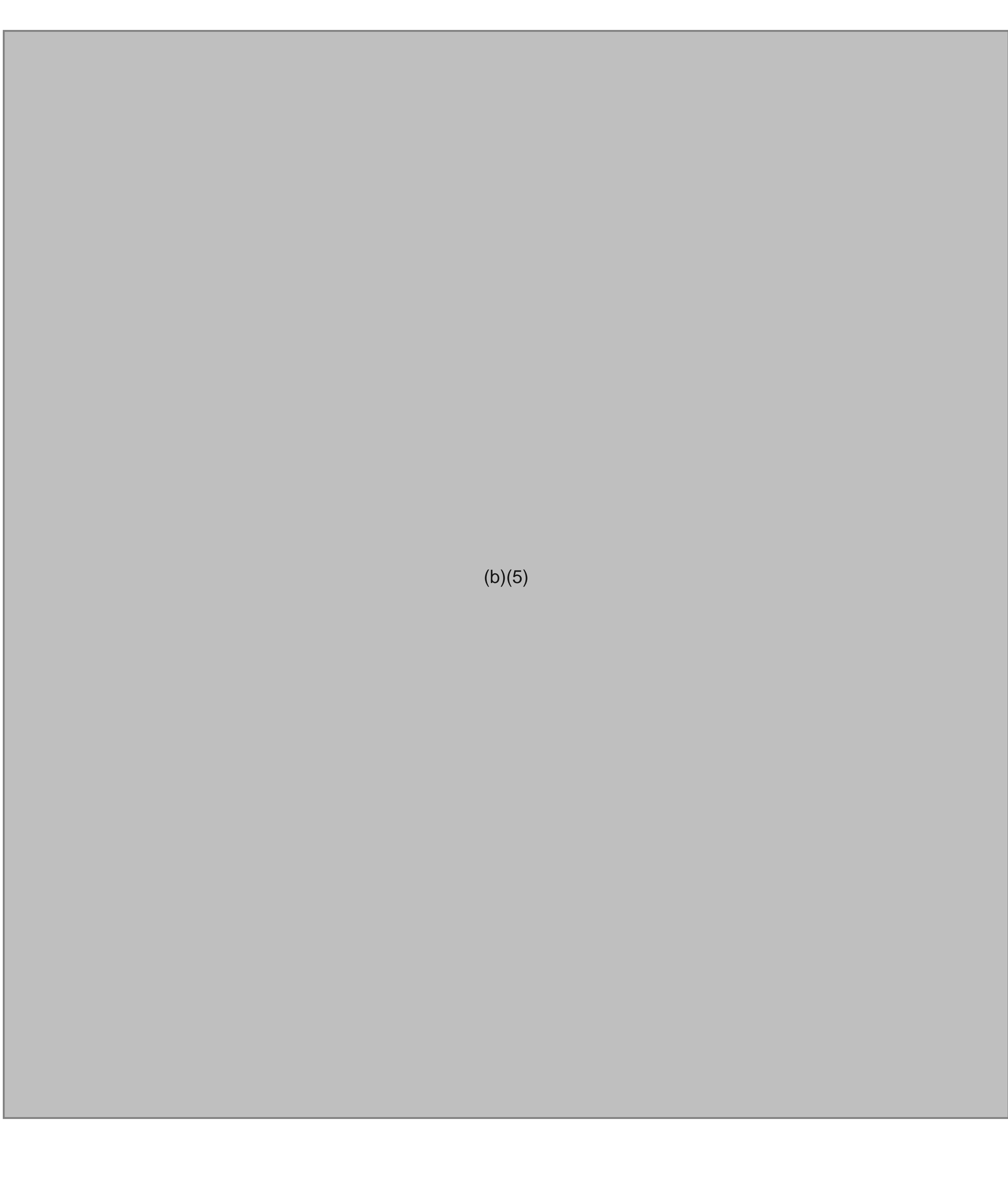
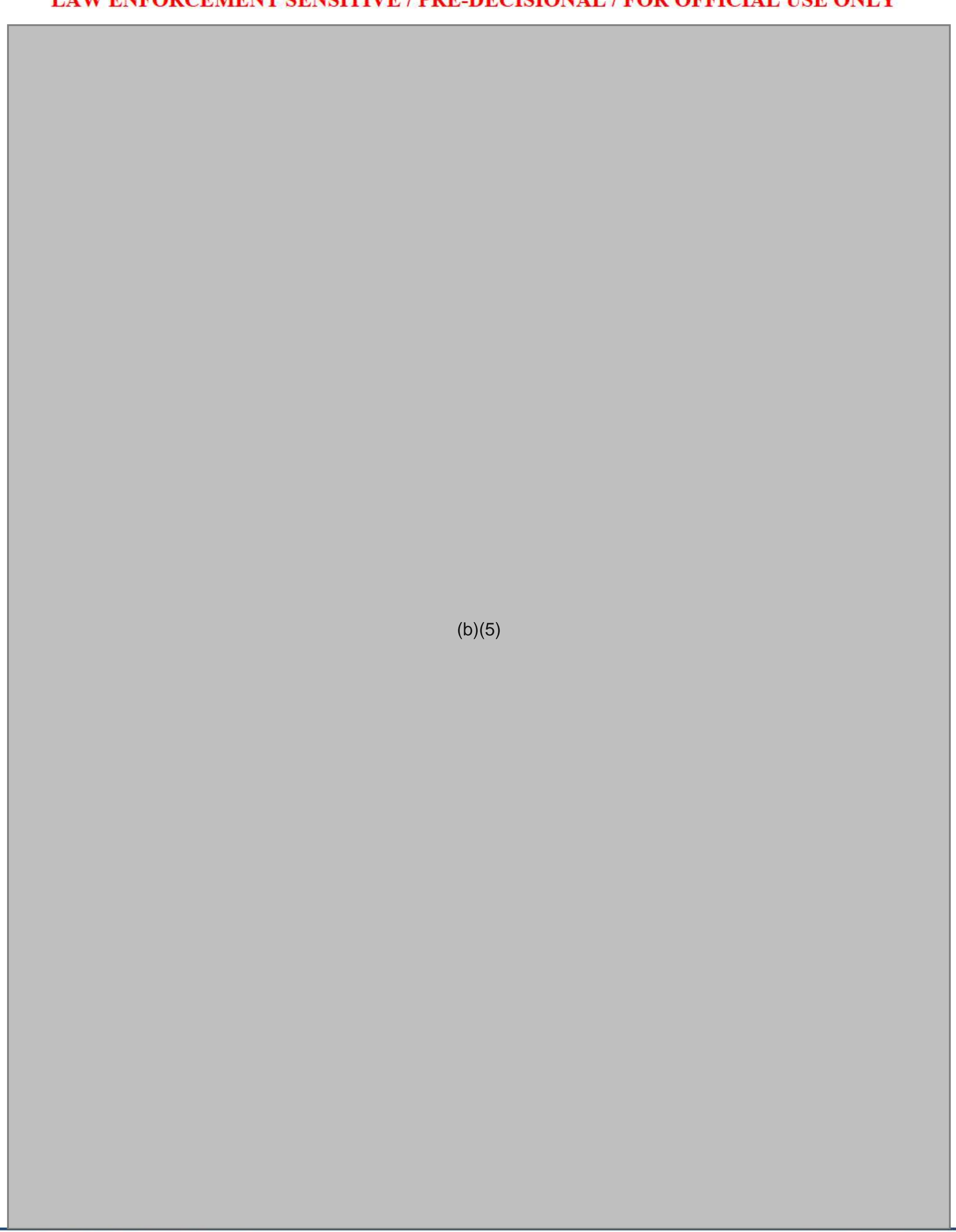
(b)(5)


(b)(5)

(b)(5)

[6] A "case" generally includes more than one individual (e.g., a parent and a child). Daily numbers are current as of 5pm EDT.


(b)(5)

From:	(b)(6), (b)(7)(c)
To:	
Cc:	
Subject:	FW: 11-13-14 Report
Date:	Thursday, November 13, 2014 11:20:53 AM
Attachments:	DHS Leadership UC Call Talking Points (Call Date 11-13-14).doc

(b)(6), (b)(7)(c)

I was able to get some information, but note that these numbers haven't been cleared through any chain for other than internal ICE dissemination so far. From July 7-November 10, 2014, in Artesia, out of 191 negative credible fear hearings (covering 425 individuals), an IJ has reversed an initial negative credible fear determination in 74 cases (165 individuals). During that time period, there have been 10 cases where "relief" was granted (23 people). There are also stats for Karnes and Berks in this report, but it may take me longer to distil it than you have to review this information. Jeannette is simultaneously checking with Kate Mills, who in all likelihood has better access to stats cleared for release.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:11 AM
To (b)(6), (b)(7)(c)
Subject: FW: 11-13-14 Report

As discussed, see attached.

Best Regards,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor
Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement ● U.S. Department of Homeland Security
Desk: (202) 732-(b)(6), (b)(7)(c) ● Cell: (202) 276-(b)(6), (b)(7)(c)
Pamela.Ataii@ice.dhs.gov

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From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script
Date: Thursday, November 13, 2014 11:21:33 AM

On (b)(6), (b)(7)(c) questions:

- I am unaware of any plans to videotape interviews but CBP does have oversight of the process and has been examining the screening process to ensure that screenings are conducted effectively and appropriately. There is an ongoing GAO study (this is public) of screening of contiguous-country UACs under the TVPRA.

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 13, 2014 11:15 AM
To: (b)(6), (b)(7)(c) Davis, Mike P
Subject: RE: Updated Script

(b)(6), (b)(7)(c)

Here is a link to publicly available testimony on the credible fear process.

http://www.dhs.gov/news/2013/12/12/written-testimony-uscis-ice-and-cbp-house-committee-judiciary-hearing-titled-%E2%80%9Casylum

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732 (b)(6), (b)(7)(c)
Cell: 202-904 (b)(6), (b)(7)(c)
Email (b)(6), (b)(7)(c)

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Unaccompanied Children & Families Reference Guide

(Pgs. 99-102 of Q &A; see also Pg. 5 of Inter-American Commission on Human Rights Thematic Hearing: "Situation of Human Rights of Migrant and Refugee Children and Families in the United States")

- The U.S. is committed to developing and implementing policies and procedures that take into account the best interests of children and provide age appropriate care and services for children under its care. This is particularly critical for unaccompanied children who have entered the U.S. illegally and without a parent or legal guardian.

- The DHS has primary responsibility for the immigration custody of children traveling within a family unit who are subject to removal. Many family groups are released on an alternative to detention program pending the outcomes of their immigration cases. ICE has for several years maintained a small family residential program in Leesport, Pennsylvania for families ineligible for release (Berks Family Residential Center). This facility is not a detention-like setting. Following the substantial increase in families arriving at the southwest border in the summer of 2014, the Department has added temporary detention space for families at a federal training facility in Artesia, New Mexico; has converted another ICE facility to house families in Kames County, Texas, and plans to open a new residential center to house families in Dilley, Texas.

- Unless eligible to withdraw their request for admission, or absent special circumstances, unaccompanied children are normally transferred to the care of the HHS Office of Refugee Resettlement within 72 hours after determination that they are unaccompanied children.

- Under U.S. law and DHS policy, custody of such unaccompanied children must be in the least restrictive environment available pending their repatriation or transfer to HHS. Both DHS components interacting with unaccompanied children (U.S. CBP for apprehension and processing, ICE for transport to the HHS facility) work closely to minimize the time such children spend in DHS custody and to reunite them with family whenever possible.

- HHS has legal responsibility for the care and custody of unaccompanied children, in the least restrictive setting, until they can be either repatriated or released to the care of a located family member or a sponsor. While in HHS custody, an unaccompanied child would be housed in one of several types of housing facilities, such as shelters, group homes, and foster care or in therapeutic programs, or in a facility for children who require a more secure environment and monitoring due to delinquency or criminal concerns.

- DHS and HHS collaborate closely to ensure that all unaccompanied children are accommodated in short-term DHS custody and moved to longer term HHS care facilities as quickly as possible.

- The DHS components legally responsible for the apprehension and processing of unaccompanied children are fully committed to hold them only for the shortest amount of time necessary for their immigration processing, as required by law, and to treat them with dignity and respect during their time in DHS custody. These strict policies, procedures and U.S. legal mandates remain in place regardless of numbers of unaccompanied children who enter the U.S.

- (CBP) strives to transfer unaccompanied children for immediate repatriation or to shelter facilities contracted by HHS within 24 hours of determining that they are unaccompanied by a parent or legal guardian, but must do so within 72 hours under federal law. While in CBP short-term custody awaiting HHS/ORR placement, the children have access to food, water, and emergency medical treatment.

- HHS has increased its bed capacity in order to accommodate the increase in the number of children referred by DHS. Children are placed in state licensed shelter and foster care beds, depending on the child's age or any identified special needs.

- The DHS Office of the Citizenship and Immigration Services Ombudsman has published recommendations on how to more expeditiously process asylum applications filed by unaccompanied children and USCIS has implemented changes in response to those recommendations.

- In addition to the requirements of the INA, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 provides certain safeguards aimed at protecting unaccompanied children encountered within the United States or at its borders or ports of entry. The law requires that certain U.S. government agencies develop policies and procedures to protect these children in the United States from traffickers and, when appropriate, to safely repatriate them to their country of nationality or last habitual residence.

- In terms of addressing the larger issue of increased numbers entering the United States, the United States continues to closely track the rising trend of migrants and unaccompanied children who are making the dangerous journey to the United States, primarily from Central America (Guatemala, Honduras, El Salvador), over the last three years. Children leave for a variety of reasons, including to escape violence, to reunite with family members in the United States, or to seek work. We understand that their journey to the United States is a dangerous one.

- Since the beginning of the 2014 increase in unaccompanied children and families , the U.S. government has taken numerous other steps to respond to humanitarian needs and assure both appropriate treatment in custody, and appropriate consideration and adjudication of claims to humanitarian protection under our refugee and asylum laws and commitments. These include:
    - Re-launching a Dangers of the Journey awareness campaign, to discourage parents from putting their children's lives at risk by sending them on a dangerous journey to the US border;
    - Opening new processing centers, increasing CBP's capacity to appropriately house children and adults following apprehension;
    - Expanding efforts to prosecute criminal human smuggling organizations;
    - Reassigning immigration judges and attorneys to prioritize the cases of these recent entrants, including consideration of claims for asylum or other protection; and
    - As a matter of policy, the Administration supports providing legal services to unaccompanied children, and has sought funding from Congress to provide it. In the interim, through a Department of Justice grant program, enrolling lawyers and paralegals in the "justice AmeriCorps" national service program to provide legal services to unaccompanied children.

Pages 229 through 232 redacted for the following reasons:
- -
(b)(5)

ARTESIA RESIDENTIAL CENTER DAILY PAST 24 HOUR UPDATE

JULY 6, 2014

Operational Update:

On Sunday, July 6, the current population at 0700 MDT:

- **192 – Total Population**
  - **189** ER's (80 of 189 claimed Credible Fear)
  - **03** NTA's
  - **84** Family Units
  - **84** Adults
  - **108** Children (49 females/59 males)
  - **59** COB: El Salvador
  - **97** COB: Honduras
  - **34** COB: Guatemala
  - **02** COB: Nicaragua

- On Sunday, July 6, 25 residents arrived at 1430 MDT at AFRC.
  - 12 families out of the 25 residents

Local Outreach:

- On Monday, July 7, a tour of the AFRC is scheduled for management officials from CCA.
- On Tuesday, July 8, ERO will commence weekly meetings with the Mayor of Artesia to discuss updates on the progress of the facility.
- On Wednesday, July 9, a tour of the AFRC is tentatively scheduled for officials from the National Border Patrol Union.
- On Friday, July 11, S1 is tentatively scheduled to tour AFRC.

Facilities/Infrastructure:

- Privacy fencing for securing the entire perimeter of AFRC facility continues with expected completion date of July 11.

ARTESIA FAMILY RESIDENTIAL CENTER – COMPLETE UPDATE
JULY 5, 2014

Operational Update:

- As of COB, Wednesday, June 25, 2014, the Artesia Family Residential Center (AFRC) was in compliance with all of the Life, Health & Safety (LHS) standards and was prepared to receive residents starting Thursday, June 26.

DHS-011-0000001-0000380

The first transport mission of residents into the Artesia Family Residential Center (AFRC) were to begin on Thursday, June 26; pending medical clearance. As CBP processed the individuals, CBP would turn them over to ERO El Paso for transport to Artesia. Approximately, 125 individuals were expected to arrive over the next couple of days.

- On Thursday, June 26, family units were anticipated to arrive, however due to the exposure of chicken pox virus no bodies would be received at AFRC until June 27, at 1300 hours and 1700 MDT.
- On Thursday, June 26, facility staff conducted a role playing exercise that included intake processing, housing placement and a medical emergency drill in order to ensure staff readiness.
- The first transport mission of 50 residents into AFRC arrived approximately at 2230 MDT on June 27.
    - 21 families
- The second transport mission of 19 residents into AFRC arrived at 1830 MDT on June 28.
    - 9 families
- The third transport mission arrived with 40 residents at 2100 MDT on June 28.
    - 18 families
- On Sunday, June 29, 40 residents arrived at AFRC at 1830 MDT, an additional 19 residents arrived at 2130 MDT.
    - 16 families out of the 40 residents
    - 10 families out of the 19 residents
- On Monday, June 30, 24 residents arrived at AFRC at 1930 MDT
    - 10 families out of the 24 residents
- On Tuesday July 1, AFRC staff reported a PREA allegation reference two juvenile male residents. SIR (b)(7)e was submitted through SEN system. Investigation is pending at this time.

Local Outreach:

- On Monday, June 23, ICE ERO, ICE PAO and FLETC met with officials from the City of Artesia and Eddy County. The meeting was structured as a question/answer session, where city and county officials voiced their concerns and ERO/FLETC providing responses. Overall, the meeting was very positive with the County Manager expressing positive support for ICE's efforts at the Artesia Family Residential Center. Present at the meeting were representatives from the following local offices: local Hospital Administrator, Artesia Board of Education, Eddy County Sheriff, Artesia Chief of Police, Artesia Fire Chief, Eddy County Manager, Artesia infrastructure director (public services, waste disposal), head of the Artesia Chamber of Commerce and various city council members.
- On Tuesday, June 24, Artesia FLETC Director Connie Patrick and ERO hosted a walk-through of the facility with the Mayor of Roswell, other Roswell officials, and William J. Gray and Candy Spence Ezzell from the NM House of Representatives. The meeting was confrontational and they voiced displeasure with the comfortable accommodations of the center. Their thought process was that a roof, three meals and shower should be

sufficient. Representative Ezzell indicated that she would be direct and disparaging towards ICE's efforts at the Artesia Family Residential Center in the media.

- The Eddy County Manager and Artesia Mayor provided a site visit to both GEO and CCA contractors on June 24.
- On Tuesday evening, June 24, Director Patrick and ERO participated in a City Council meeting with the Mayor and City Council from the City of Artesia. This meeting was open to the public and media. Questions from the council members were addressed by FLETC and ERO staff, overall the meeting went very well.
- On Wednesday, June 25, FLETC Director Patrick and ERO participated in a teleconference with the New Mexico Governor Susana Martinez. The meeting went well with ERO and FLETC providing information to the Governor and her staff.
- On Wednesday, June 25, ERO held a Q&A session with FLETC Artesia staff. Meeting went well and FLETC staff seemed receptive and positive with ICE's presence.
- On Thursday, June 25, ERO met with Artesia Mayor Phillip Burch. Mr. Burch invited ERO to speak at an Artesia town hall meeting on Tuesday, July 1, Request was approved with DHS.
- On Thursday, June 26, ERO met with Senator Udall staff to discuss security, transportation and accommodations. Meeting went well, ERO was able to provide sufficient responses.
- On Tuesday, July 1, Principal Deputy Assistant Secretary (PDAS) toured AFRC and held a Q&A session with local, state and federal officials.
- On Tuesday, July 1, ERO, FLETC and IHSC attended a community town hall meeting in Artesia.
- The ERO El Paso field office coordinated with the Central American Counsel for a visit.
    - El Sal Consulate Mr. Chacon, visited AFRC on Tuesday, July 1, for a tour and interviewed the El Sal residents.
- On Wednesday, July 2, ERO met with Artesia Police Department Investigations Unit and FLETC Security and finalized protocol for incidents occurring at AFRC.
- On Thursday, July 3, Senator Udall, New Mexico Secretary of Homeland Security Greg Myers, FBI SAC Carol Lee and US Attorney Damon Martinez toured the AFRC.
- On Thursday, July 3, Church World Services Chaplin Duran, met with local Eddy County Pastoral groups and discussed protocol for volunteer services at AFRC.

OCR/Public Affairs:

- FLETC continued to receive numerous media requests from local news outlets and local NGOs. ICE PAO fielded numerous media requests daily.
- Barbara Gonzalez sent the official Artesia Media Plan to DHS for approval. Approval was received on June 25. Media tour would be conducted at Artesia on June 26 at 1030 MDT with various local and national media outlets receiving background and filming the facility.
- On June 26, Barbara Gonzalez and Leticia Zamarripa conducted the ERO – AFRC media tour. There was full market regional presence of more than a dozen media representatives participated in a media tour of the AFRC. Media outlets from El Paso, Texas, Las Cruces, NM, Roswell, NM, Artesia, NM, and AP Reporter (border

DHS-011-0000001-0000382

reporter). The press was appreciative of the transparency by ERO and the ability to tour the center.

Facilities/Infrastructure:

- Privacy fencing securing Dorm 1 and the Dining Room installed and completed.
  - o Dorm 2 and Dorm 3 operational readiness is dependent upon the installation of the privacy fence.
  - o New permanent entry to the family housing section of the facility will begin upon completion of county zoning process; estimated time frame is two weeks. Work will include: curb cut, new entry gate and mobile guard shack. Temporarily, the existing entrance will be utilized. Mobile guard shack was delivered and is in position at the temporary location as of June 21.
  - o Modifications to the dormitories to partition the bathroom and shower completed.
  - o Locks installed on all gates and on medical supply rooms, medical records and nursing triage.
  - o Temporary outside lighting installed.
  - o Laundry services facilitated with a local laundry service. They will provide a daily pick up and drop off (no weekend or holiday service). Next day service will be available for Dorm 1 starting June 26 on a daily basis
  - o Long term solution will be a combination bathroom/laundry facility with a male/female side. Completion date TBD.
  - o On July 3, privacy fencing for Dorm 2 and Dorm 3 securing the perimeter of housing was completed.
- Processing:
  - o Space set up for appropriate flow of traffic for up to 36 individuals, play area for the children, 10 processing stations, welcome video (know your rights) viewing area with pamphlets, reviewing officer space, file room, and property room. There is also an additional room for overflow.
  - o All furniture and signage installed as of June 25.
  - o ERO processing area has two phone sets that were installed, tested and operational on June 28.
  - o Public Health area has seven phone sets that were installed, tested and operational on June 28.
  - o Consulate Support requested by the El Paso field office.
  - o (b)(7)(e) CIS/Asylum officers arrived for detail to Artesia Facility starting Monday, June 30.

- Vehicles:
  - o All vans and SUVs have arrived at the facility.
  - o Mobile Processing Vehicles (MPV) have arrived.
- Supplies:
  - o All supplies necessary for Dorm 1 are ready for the residents.
- Staffing
  - o Detailed staff in place at Artesia and ready for residents.
    - § All detailed officers will be housed at FLETC.

DHS-011-0000001-0000383

- (b)(7)e IHSC staff arrived and ready to provide medical and mental health services starting June 26.
- (b)(7)e HSI Special Agents arrived to assist in the security staffing at the facility.
- (b)(7)e SI Special Agents arrived on Sunday, June 29 to screen residents for indicia of alien smuggling or human trafficking. These interviews assisted with informing HSI's investigative efforts along the SWB.

- Post Orders/SOPs
  - SOPs completed, reviewed and signed Thursday, June 26, by the acting Officer in Charge.
  - Drop boxes for detainee grievances prepared and distributed throughout the facility on June 26.
  - Training completed for all detailed staff on Thursday, June 26, in two shifts to ensure familiarity with post orders and standards.
  - All fire and evacuation plans have been finalized with FLETC as of June 26. Evacuation plans wre printed and posted.
  - Resident handbooks were translated into Spanish and completed on June 27.

- Housing Logistics:
  - Removable shower heads, Master keys, rocking chair removal, posters, picnic tables were completed June 25. Step stools for restroom area will be purchased with the next day and equipment for barber shop in the center housing unit will be procured within the next two weeks.
  - Step ladders for top bunks will be re-evaluated at a later date.
  - Officer station within Dorm 1 completed during the morning of June 26.
  - All rooms are ready to receive residents. Modifications were made to rooms due to size of family.
  - Sanitation and laundry services established with FLETC. All cleaning and setting up of bedding in Dorm 1 completed.
  - A Facility Services 24-hour hotline was established to ensure any facility issues were addressed immediately if they occured within the dorms.

- Food Service:
  - Artesia is prepared to provide sack meal services for residents arriving on June 27.
  - Food service menu has met standards. They will provide three hot meals per day once appropriate staff is on board. Current staff provides hot breakfast and dinner with a cold sack lunch.

OCIO

The Artesia Family Residential Center is now in production and ELP/EPC has begun booking into the facility. The code is AFRC.

- All buildings have full connectivity as of Wednesday, June 25. All three VTCs are up and running. OCIO set up a help line to assist with IT issues, as necessary.
- Law library is set up with two computers, containing LEXIS NEXUS, Word and printing capability.

- Processing was fully operational as of June 25.
- IHSC was fully operational as of June 25, to include MPVs, and medical room.

- All scanners arrived on June 25 and were installed in processing.
- Three fax machines were received and were installed for use by EOIR.
- One fax machine was received and installed in the IHSC medical suite.

- Land line phone lines were installed throughout strategic location. Landlines to be installed at a later date in each housing unit.

IHSC

- IHSC services were ready to accept residents starting June 26.
- As of June 25 office space, three exam rooms, nursing stations, medical intake with a waiting room attached was ready for residents.
- All essential medical supplies were purchased and continued to arrive throughout to supply the facility. Additional vaccines arrived on June 30
- IHSC developed an immunization program and received delivery of immunization on June 26.
- Mental Health services provider arrived and provided training to all ICE staff interacting with ICE detainees.
- (b)(7)e IHSC staff arrived and are ready to provide medical and mental health services on June 26.

OPLA

- All two EOIR courtrooms completed and ready to hold hearings the week of July 7.
- Two rooms have been set aside for consular services and attorney client visitation.
- On Wednesday, July 2, CIS/Asylum officers commenced interviewing credible fear cases.

From: (b)(6), (b)(7)(c)
To:
Subject: FW: AFRC Daily Executive Brief-July 6, 2014
Date: Wednesday, July 09, 2014 10:09:00 AM
Attachments: Artesia Residential Center Daily Past 24 HOUR Update (2).docx

---

The full Artesia daily report is attached, here is the relevant portion:

On Sunday, July 6, the current population at 0700 MDT:

- **192 – Total Population**
  - **189** ER's (80 of 189 claimed Credible Fear)
  - **03** NTA's
  - **84** Family Units
  - **84** Adults
  - **108** Children (49 females/59 males)
  - **59** COB: El Salvador
  - **97** COB: Honduras
  - **34** COB: Guatemala
  - **02** COB: Nicaragua
- On Sunday, July 6, 25 residents arrived at 1430 MDT at AFRC.
  - 12 families out of the 25 residents

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 1:39 PM
To (b)(6), (b)(7)(c)
Cc
Subject: FW: AFRC Daily Executive Brief-July 6, 2014

From: Ramlogan, Riah
Sent: Monday, July 07, 2014 1:00 PM
To: (b)(6), (b)(7)(c)
Subject: FW: AFRC Daily Executive Brief-July 6, 2014

From (b)(6), (b)(7)(c)
Sent: Sunday, July 06, 2014 10:02 PM
To: Winkowski, Thomas; Ragsdale, Daniel H; Homan, Thomas; (b)(6), (b)(7)(c)
Cc: Robbins, Timothy S; Miller, Philip T; (b)(6), (b)(7)(c) Johnson, Tae D; (b)(6), (b)(7)(c)
Ramlogan, Riah; Sekar, Radha C (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pineiro, Marlen; JFRMU
Subject: RE: AFRC Daily Executive Brief-July 6, 2014

From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Date: Wednesday, June 11, 2014 5:16:17 PM
Attachments: Memo - Credible Fear Ability to Testify 02-20-14 (ILPD).doc

---

Thanks (b)(6), (b)(7)(c) Adding others.

From (b)(6), (b)(7)(c)
Sent: Wednesday, June 11, 2014 10:24 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Asylum Division - Credible Fear Ability to Testify 02-20-14

(b)(6), (b)(7)(c)

Attached, please find consolidated comments/edits.

Thanks,
(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 2:57 PM
To (b)(6), (b)(7)(c)
Cc
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

Can you both also review for the mental competency issues and send us your consolidated comments/edits by noon tomorrow as well. Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 5:18 PM
To (b)(6), (b)(7)(c)
Cc
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

Can you review and send us your comments/edits by noon tomorrow? Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)

Sent: Tuesday, June 10, 2014 2:57 PM
To: Davis, Mike P
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

Mike,

I just wanted to verify that our Asylum Officers should NOT include the public charge on the NTAs where an individual has an inability to testify. Is there any situation where we should be adding public charge to the NTAs?

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services
Department of Homeland Security
Tel: 202-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 12:05 PM
To: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

In our pending CF procedures for handling cases where the individual is unable to testify we state that the APSO should not list the public charge allegation on the NTA. Instead they should list the regular ER charges. (b)(5)

(b)(5)

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, February 25, 2014 7:04 PM
To: Davis, Mike P
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14

Hi (b)(6), (b)(7)(c)

As I mentioned yesterday, we're doing a number of procedural updates to our Credible Fear Procedures Manual. You've seen drafts of this in the past, and as this is going through formal concurrence now (finally), I just wanted to make sure that it is still workable on the ICE side. There are two specific ICE issues which are flagged on page 2. 1) Communicating with ICE when encountering an alien unable to testify and 2) Not listing the public charge allegation on the NTA.

Let me know if you want to discuss further. There will be more updates to come on other CF topics, so thanks to you in advance for your consideration! As a preview, the next updates will be regarding possible changes to the I-870 (CF Determination Worksheet) and notification procedures when an APSO becomes aware of ICE or CBP misconduct.

Regards,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services
Department of Homeland Security
Tel: 202-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, February 25, 2014 6:55 PM
To: OCC-Clearance
Cc: (b)(6), (b)(7)(c)
Subject: Asylum Division - Credible Fear Ability to Testify 02-20-14

Hello OCC-Clearance,

Please see the attached memo, *Credible Fear – Aliens Unable to Testify on their own Behalf*, which provides guidance to Asylum Officers when they encounter an alien who appears unable to testify due to a physical or mental condition. It also provides more detailed guidance to assist Asylum Offices in recognizing physical or mental conditions that may affect an alien's ability to testify in the credible fear process. The memo's attachment is a formal update to our Credible Fear Procedures Manual.

Please note, there are two flagged issues where we are confirming procedures with ICE.

Please let me know if you have any questions.

Regards,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services

Department of Homeland Security
Tel: 202.272 (b)(6), (b)(7)(c)

Pages 245 through 249 redacted for the following reasons:
- -
(b)(5)

CFPM

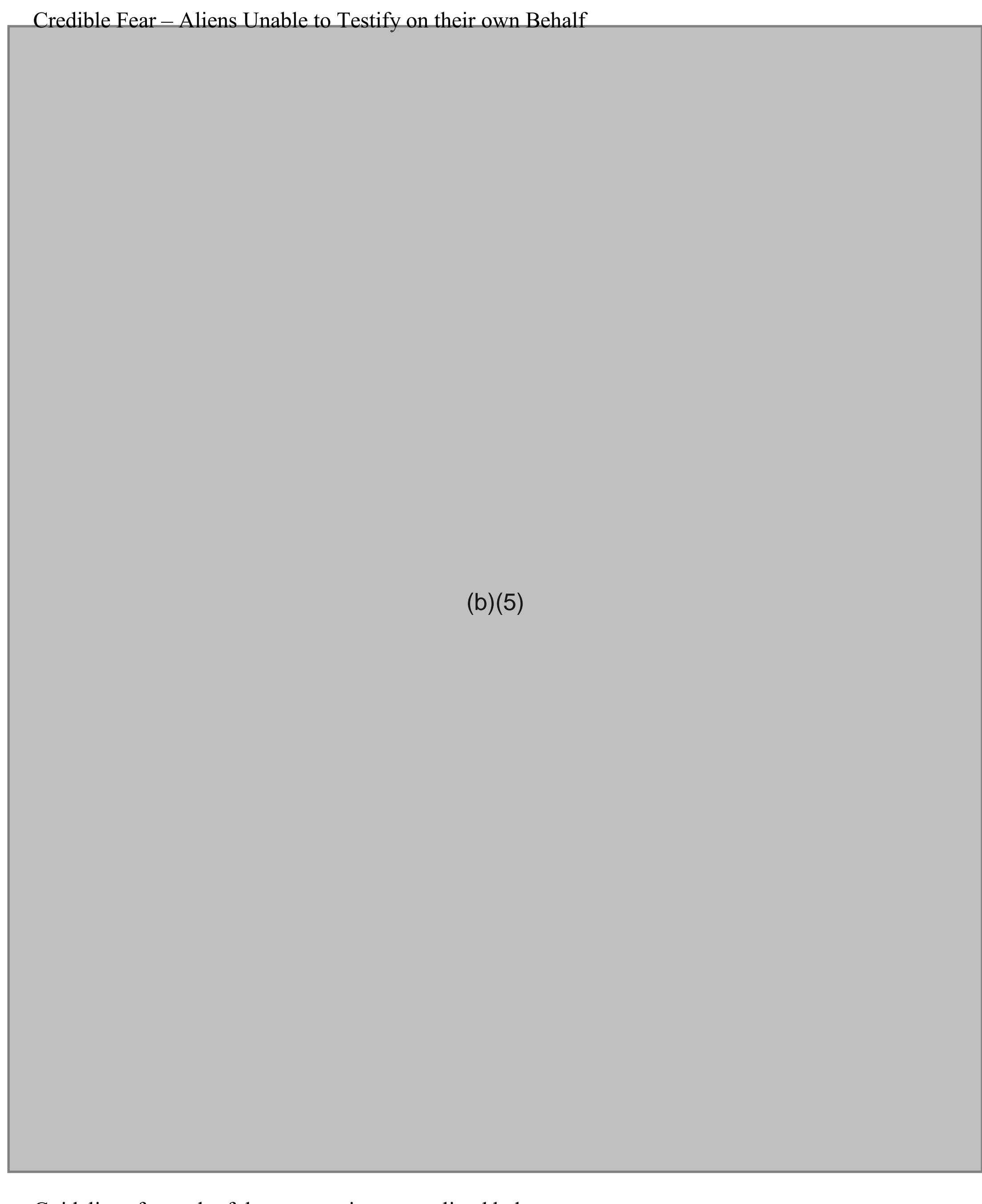
III. The Credible Fear Process

E. APSO Conducts a Credible Fear Interview

10. Aliens Unable to Testify on their own Behalf

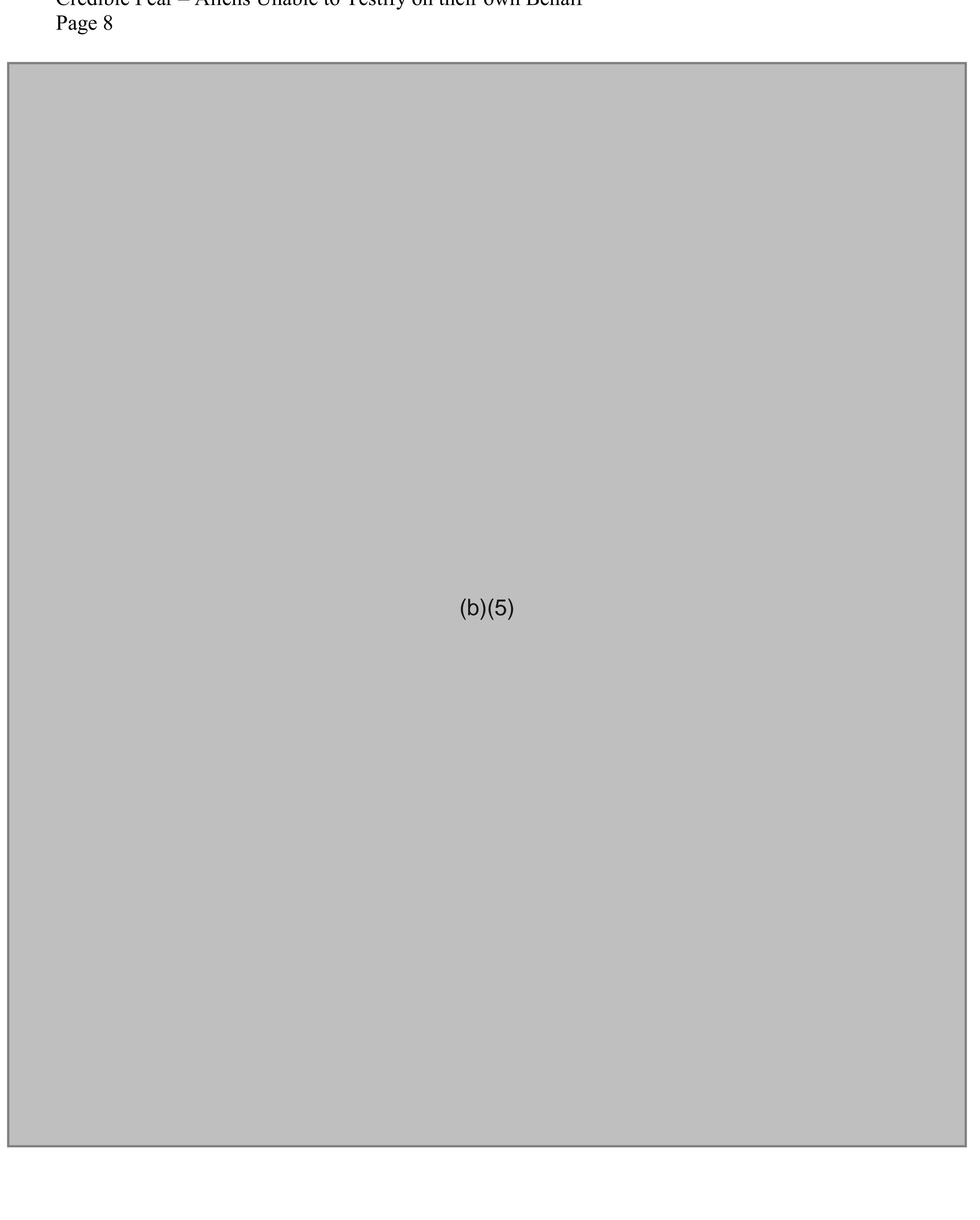
(b)(5)

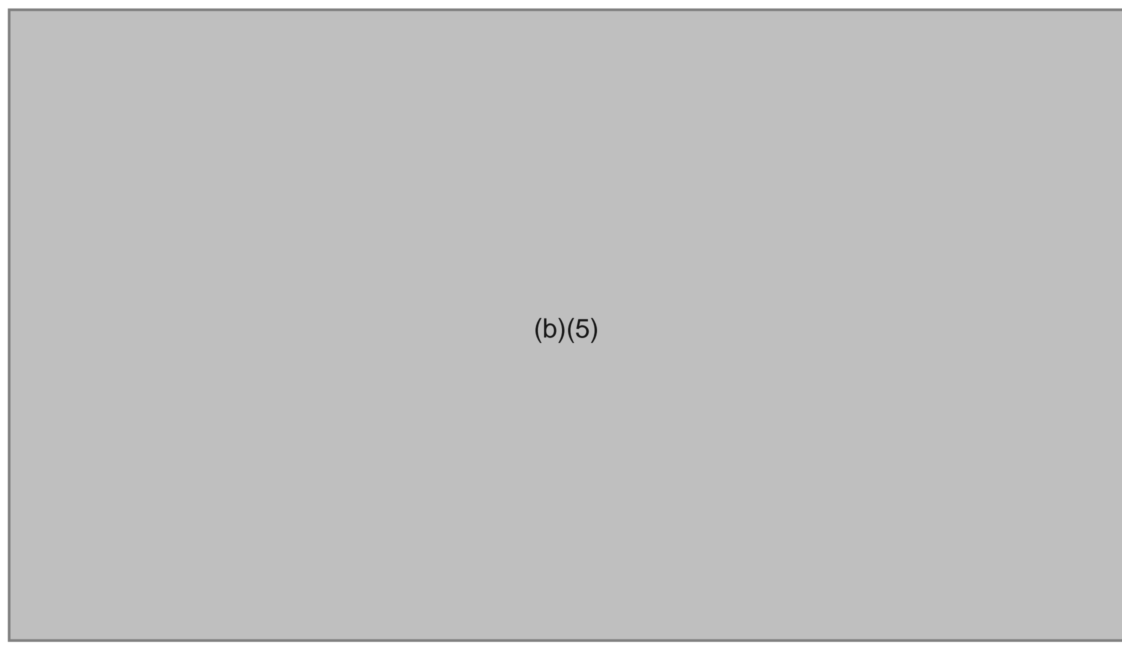
Credible Fear – Aliens Unable to Testify on their own Behalf



Guidelines for each of these scenarios are outlined below.

[5] Matter of E-S-I, 25 I&N Dec. 136 (BIA 2013).


(b)(5)



(b)(5)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: FW: New Tasking for FAMU
Date: Monday, August 18, 2014 4:25:34 PM

(b)(6), (b)(7)(c) Can you briefly review my answers which appear in red below to questions 1, 2, and 3? Thanks.

From: (b)(6), (b)(7)(c)
Sent: Monday, August 18, 2014 1:08 PM
To (b)(6), (b)(7)(c) tolley, Jim (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Cc: Davis, Mike P
Subject: RE: New Tasking for FAMU

Correction on a number.

FLO has the following tasking as get backs:

(b)(6), (b)(7)(c) is it possible for you to address 1, 2, and 3—since you were at this briefing I think? If you weren't please let me know.

I put in the relevant numbers that OPLA can provide and deferred to ERO when necessary.

Please provide responses to the following questions raised as follow-up questions by the House Judiciary Committee Democratic staff following a briefing on August 14, 2014.

1) *After you left, we had a discussion about ICE's policy during bond hearings at Artesia. Several attorneys have explained that ICE is filing the same evidentiary bond packet in every hearing. This packet (which I'm attaching here, FYI) argues that a no bond policy is necessary for deterrence. When we spoke during the briefing* (b)(6), (b)(7)(c) *explained that ICE was not filing the same packet in every hearing, but rather was making individualized determinations of flight risk depending on each individual case. Do you have any idea of the percentage of cases where ICE is using this bond packet?*

(b)(5)

(b)(5)

2) *Explain why OPLA might use many similar sets of information in dealing with many similarly situated respondents, and in this particular situation.*

(b)(5)

3) *Explain how OPLA is offering information specifically pertinent to each person held at Artesia in addition to any broadly used information in dealing with bonds.*

(b)(5)

(b)(5)

4) *Similarly, do you have an idea of the numbers of individuals being released from Artesia?* (b)(5)

5) *Of these people, how many are released on ICE bond and for how much?* (b)(5)

(b)(5)

6) *How many are released on EOIR bond and for how much* (b)(5)

(b)(5)

7) *How many are released on humanitarian parole and for what reasons?* (b)(5)

(b)(5)

Questions?

Let me know,

(b)(6), (b)(7)(c)
Special Counsel to Director of Field Legal Operations
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement Potomac Center North
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Desk: (202) 732 (b)(6), (b)(7)(c)
BB: (202) 309 (b)(6), (b)(7)(c)

NOTE NEW EMAIL ADDRESS: (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: FW: Summary - ICE/NGO Working Group Meeting on AFRC Tour
Date: Tuesday, August 05, 2014 4:37:06 PM
Attachments: No Bond Broadcast (EROLD 8.4.14).docx
image001.gif

(b)(6), (b)(7)(c) this will help you with your blurb.

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Monday, August 04, 2014 02:33 PM Eastern Standard Time
To: Ramlogan, Riah
Cc (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c)
Subject: RE: Summary - ICE/NGO Working Group Meeting on AFRC Tour

Riah-

(b)(5)

Please let me know if you have any comments or if you would like me to send to (b)(6), (b)(7)c to review.

Thanks,

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-(b)(6), (b)(7)(c)
Blackberry: 202-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Monday, August 04, 2014 10:59 AM
To: Ramlogan, Riah

Cc: (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c)
Subject: RE: Summary - ICE/NGO Working Group Meeting on AFRC Tour

Riah-

(b)(5)

I have also made edits to the discussion of bringing these devices into the courtroom so that the policy does not stray into the EOIR lane.

Please let me know if you need anything further on this issue.

Thanks,

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6), (b)(7)(c)
Blackberry: 202-500-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: Ramlogan, Riah
Sent: Monday, August 04, 2014 9:03 AM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c) Davis, Mike P
Subject: Re: Summary - ICE/NGO Working Group Meeting on AFRC Tour

Thanks.

Riah Ramlogan
Deputy Principal Legal Advisor
(305) 970-(b)(6), (b)(7)(c) (cell)
(202) 732- (desk)

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Sent from my BlackBerry Wireless Handheld

From (b)(6), (b)(7)(c)
Sent: Monday, August 04, 2014 08:52 AM
To: Ramlogan, Riah
Cc (b)(6), (b)(7)(c)
Subject: FW: Summary - ICE/NGO Working Group Meeting on AFRC Tour

Riah-

As per your request, below is the read-out from the NGO meeting on Friday. I will get on the cell phone/lap top policy and detention broadcast this morning.

Thanks,

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732 (b)(6), (b)(7)(c)
Blackberry: 202-590 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Friday, August 01, 2014 4:36 PM
To: Homan, Thomas; Robbins, Timothy S; Miller, Philip T; (b)(6), (b)(7)(c) Johnson, Tae D
Cc (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Subject: Summary - ICE/NGO Working Group Meeting on AFRC Tour

EAD Homan et al. Please find below a summary of today's meeting with ICE/NGO Working Group representatives regarding their AFRC observations.

****

ICE/NGO WG Meeting
AFRC Tour Debrief Session
August 1, 2014

Summary of Key Points

Opening Statement from ICE

DAD (b)(6), (b)(7)(c) pening remarks expressed ICE/EROs position on the NGO Working Group's response to their tour of AFRC. ICE values its collaboration with the ICE NGO Working Group and extended the invitation to tour AFRC with the expectation that it would be followed by a dialog to address concerns. It came as a surprise to many at ICE that the groups chose to immediately release press statements that embellished the conditions at AFRC and painted the facility and ICEs efforts in a negative light. Further, ICE is disappointed that media outlets ran stories based on those press statements and that they contained false claims and used images of facilities there were not from AFRC.

DAD (b)(6), (b)(7)(c) xplained that ICE wished to continue collaborative dialogues on AFRC and other family residential centers in use. He also emphasized that many of the policy decisions are not the responsibility of ICE and that ICE is working in earnest and with the residents' needs in mind when it is operationalizing facilities like AFRC. ICE wants to be responsive to their needs and will continue to work to correct deficiencies in all family residential facilities.

The ICE/NGO Working Group members were provided with copies of the AFRC resident handbook, under working group rules to not duplicate/share outside of the working group members. ICE also confirmed two cases of chicken pox at AFRC and that flights out of the facility have been suspended until further notice.

NGO Concerns with Medical Care

- **Medical care is adequate; however more resources need to go into caring for residents' psychological and social health needs.** Residents are already at risk because of past experiences with abuse in home countries, isolation of AFRC increases those risk factors. Concerns were raised about reports of children with suicidal thoughts.
  - ICE is exploring the use of more mental health care providers trained in addressing psycho-social needs of residents.

NGO Concerns with Physical Conditions

- **More female guards are needed, as the majority of residents are female.** This would address issues with lack of privacy and provide a more comfortable venue for residents to discuss personal issues, such as sexual assault/abuse.
  - ICE will take this into consideration when staffing.
- **AFRC staff may be overwhelmed, which may negatively affect how they treat**

detainees. Further, the regular rotation of new staff presents onboarding challenges were critical services to detainees may suffer while staff are getting up to speed.
  - ICE will take this into consideration when staffing.
- **Reports of phones being taken away from residents as punishment.**
  - ICE explained that these accounts are false and there is no policy directing staff to limit phone access as punishment. Further, ICE explained that there have been no disciplinary issues, more cell phones arrived this week for residents to use, and that Talton will set up toll-free land-line phone system in the next few weeks.
- **Lack of daycare options negatively affects residents' ability to participate in legal proceeding, attorney visits, or asylum interviews without their children present.**
  - ICE is exploring the option of using managed child care to ease burden on parents in these situations.
- **Reports of children not eating and losing significant weight.**
  - ICE explained that the menu is being expanded to include more culturally appropriate meals that are more palatable to the residents.
- **Reports of diarrhea and lack of medical care to manage.**
  - ICE explained that there is a "24 hours stomach bug" being spread and that this issue is not uncommon for confided group settings. Further, ICE explained that children are being treated with anti-diarrheal and being given Pedialite.
- **Reports of lengthy or delayed VTC immigration proceedings preventing residents from receiving meals.**
  - ICE explained that all residents have ability to attend meals when the cafeteria is open and that bagged lunches are provided for situations where residents cannot make it to the cafeteria.
- **Questions regarding education of children while housed at AFRC.**
  - ICE explained that classes are being organized that they are expected to begin in the next few weeks.

NGO Concerns with Due Process

- **Concerns regarding residents' awareness of access to legal counsel.** Concerns were expressed as to why incoming residents are not asked whether they would prefer to obtain an attorney for their case.
  - ICE explained that asking about an attorney is not typically asked at intake. ICE also explained that the Know Your Rights Presentation is played daily and that a Legal Orientation Provider program is now active.
- **Concerns regarding attorney use of cell phones and internet while on-site.**
  - ICE explained that it is considering how to best accommodate attorney requests.
- **Concerns regarding the list of available attorneys provided to residents.** Most attorneys volunteering are located in Artesia for short period of time and the list is constantly changing.
  - ICE will work with EOIR to find a solution to streamline the process and ensure residents can be matched with available attorneys and that attorneys have adequate notification of hearings. Installation of the Talton phone system will also provide telephonic access to pro-bono attorneys.

Attendees

ICE Representatives in Person

- DAD (b)(6), (b)(7)(c) ERO Custody Management
- (b)(6), (b)(7)(c) ERO Field Operations
- (b)(6), (b)(7)(c) Office of Principal Legal Advisor
- (b)(6), (b)(7)(c) ERO Custody Management

ICE Representatives on Phone
- AFOD (b)(6), (b)(7)(c) Officer in Charge of AFRC
- (b)(6), (b)(7)(c) Office of Chief Counsel
- [does someone have his name??], ICE Health Services Corps
- (b)(6), (b)(7)(c), ERO Custody Management

NGO Representatives In-person RSVPs
- (b)(6), (b)(7)(c) /Bellevue
- uman Rights Watch
-
- ican Immigration Council
- LIRS
- LC
-
-
- uman Rights First
- , National Immigration Forum
-
- tention Watch Network
- gration Policy Council
- Refugee Service
- RS
- U/Bellevue
- omen's Refugee Commission
- CLINIC
- C
- First Focus

NGO Representatives On-phone RSVPs
- (b)(6), (b)(7)(c) igrant Legal Resource Center
- versity of Texas School of Law
- LA
- INIC
- an Rights First
- NILC
-
- ians for Human Rights
- Coalition
- sity of Minnesota

____

(b)(6), (b)(7)(c)
Deputy Assistant Director
Custody Programs
Office of Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
202.732 (b)(6), (b)(7)(c) Direct
202.431 Cell
(b)(6), (b)(7)(c)

dhs-signature

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Pages 264 through 265 redacted for the following reasons:
- -
(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: Summary of Secretary Johnson"s Visit to Artesia
Date: Monday, July 14, 2014 6:12:26 PM
Attachments: S1_Tour_071114_04.jpg

FYI

From: (b)(6), (b)(7)(c)
Sent: Monday, July 14, 2014 6:08 PM
To
Cc (b)(6), (b)(7)(c)
Subject: FW: Summary of Secretary Johnson's Visit to Artesia

FYI

From: (b)(6), (b)(7)(c)
Sent: Saturday, July 12, 2014 08:45 PM
To: Vincent, Peter S; Ramlogan, Riah; Davis, Mike P; Stolley, Jim; Pincheck, Catherine
Cc: (b)(6), (b)(7)(c)
Subject: Summary of Secretary Johnson's Visit to Artesia

Peter/Riah/Mike/Jim/Catherine:

Yesterday, led by ERO El Paso's DFOD (b)(6), (b)(7)(c) we gave a tour of Artesia to Secretary Johnson, New Mexico Senator Martin Heinrich, and Artesia Mayor Phillip Breach. The Secretary was accompanied by Thomas Winkowski, Thomas Homan, Paul Rosen and around 25 others, including ERO and HSI officers.

The tour began in the processing intake area, where the Secretary asked how many residents were at the facility. He was informed that prior to Friday we had 217, but another 200 residents arrived on Friday, and the total was over 400, and more are arriving this weekend. We will be at full capacity by early next week. The Secretary also wanted to know when removals would start occurring. He was told that the first flight to El Salvador leaves Monday and there will be flights to Honduras and Guatemala later in the week.

We proceeded to the IHSC wing of the facility, where approximately 20 medical staff were on site. There, Dr. Krohmer gave a quick overview of the screening taking place when the residents arrive and some of the illnesses his team has had to treat.

We then moved to the law library. Directly across from the law library, court hearings were taking place via VTEL. I explained to the Secretary, Senator, and Mayor that residents are asked by our officers if they have any fear of being returned. If they do, their case is referred to an asylum officer for a credible fear interview. I introduced the lead asylum officer on site (b)(6), (b)(7)c who had arrived late on Monday. Prior to this detail, he has been the Deputy Director at the Arlington asylum office. He briefly explained what his team does and thanked everyone at Artesia for the collaborative working relationship. I echoed his comments, saying that the working relationship between us, ERO, HSI, EOIR, and the asylum officers has been terrific. I also thanked Mr. Winkowski and Mr. Homan in their leadership in bringing us all together so quickly and setting up the Artesia Facility.

Resuming my explanation of the credible fear process, I explained that negative credible fear cases are sent to me. After review, we file them with EOIR. The cases are heard 1-2 business days later. So far, the immigration judges have upheld all negative credible fear findings. However, we are noticing that residents are starting to change their stories in immigration court from what they told the officers and (b)(5) (b)(5) In any case where the asylum team finds credible fear, the alien is issued an NTA and placed in regular removal proceedings, where they can seek any forms of relief available to them including asylum. The same would be true if a judge found credible fear and reversed an asylum officer's determination, but again, so far that has not happened.

Secretary Johnson asked about bond proceedings. Everyone at Artesia is being held without bond. Expedited removal cases are not eligible for a bond hearing before an immigration judge, but NTAed cases can seek bond redetermination before a judge. The first bond hearing is scheduled for next week. Mr. Winkowski asked if we are letting residents be bonded out. I said that is correct, but that we plan to argue that judges should deny bond because of flight risks. If bond is still set we will take all available options to prevent it, including an appeal in conjunction with pursuing a stay of the judge's decision. (b)(5) (b)(5)

While the Senator was nearby, Secretary Johnson asked me if all of the immigration judges are conducting proceedings by video teleconference, and I told him that they were. The Secretary asked if it would help to get more immigration judges. I told him that any additional manpower, including more judges, would make a big difference. The Secretary asked how many judges are involved and I told him that presently there are three hearing cases from Artesia and we have judges and ICE attorneys detailed to assist with the incoming UACs all across the border. The Secretary, while looking over to the Senator, asked if having ten more judges would help; I said yes.

While the tour then went outside, Secretary Johnson spoke with Paul Rosen, who then asked me to come over. The Secretary asked me about the residents' access to counsel. I told the Secretary (the Senator was again standing next to the Secretary while I spoke) that all residents are getting a list of free legal providers in El Paso and are seeing a "know your rights" video presentation. I also told him that this week I had been working with EOIR's pro bono coordinators, along with the Vera Institute of Justice, Diocesan Migrant and Refugee Services of El Paso, Catholic Charities of Las Cruces. Those organizations are all scheduled to visit next week and will be setting up weekly live "know your rights" presentations. I also told the Secretary that I am putting together a larger list of all free legal service providers, including other New Mexico attorneys who have called and I spoken to about providing pro bono services. This list will be given to all residents. We have set aside space for attorney visitations and set up a process for them to gain access to their clients. I told the Secretary that we are committed to making sure the residents receive all due process, but we also want to ensure these hearings take place as expeditiously as possible. (b)(5) (b)(5) hanked me and our folks for our work on this.

The tour then went through the facility. The doors of the rooms were all open and women and children were walking around. Secretary Johnson said a quick hello but did not engage with any of them. The Secretary and Mayor then met privately for about 10-15 minutes. I believe Mr. Winkowski joined them after a bit. The Mayor felt that he had not received proper notice that this facility was being set up. He also had concerns about any illness the

residents may be bringing and the medical and IHSC side of things. When they came out of the room, the Mayor seemed fine and the Senator and Mayor departed.

The Secretary and a smaller group then had an intel briefing, which I was present for. ERO spoke to him a little more about the details of the facility and some of the challenges. The head of FLETC spoke about how strong our partnership is and that she is committed to making this a success. She said a separate entrance will soon be built for the Artesia facility. Everyday more and more construction is going up. HSI also gave an intel briefing.

We left and the Secretary stood outside with the facility behind him to address a group of about 50 reporters and 12 television cameras. ICE Public Affairs was present, including Barbara Gonzalez, who is always awesome at facilitating things. The Secretary spoke for a few minutes, saying "Our border is not open to illegal immigration. This facility is proof that we will detain you and deport you if you enter illegally." He answered a few questions, then departed along with Mr. Winkowski, Mr. Homan, and Paul Rosen and a few others for Weslaco, Texas.

Afterwards there was a media tour of Artesia which I was not a part of (b)(5)
(b)(5)

Here's a link to an article from the El Paso Times regarding the visit.

http://www.elpasotimes.com/latestnews/ci_26128803/dhs-secretary-visit-artesia-nm-migrant-detention-center

and here's a link to photographs of Artesia:

http://photos.elpasotimes.com/2014/07/11/photos-tour-of-artesia-n-m-immigrant-detention-facility/#2

ERO is doing a terrific job here and they really appreciate the OPLA presence.

(b)(6), (b)(7)(c)
Chief (on detail to Artesia)
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (cell)
(b)(6), (b)(7)(c)

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Pages 270 through 294 redacted for the following reasons:
- -
(b)(5)
(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: FW: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28
Date: Wednesday, October 29, 2014 2:49:47 PM
Attachments: CAT Non-LOW QAs OPLA.docx

Fyi

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 29, 2014 02:44 PM Eastern Standard Time
To (b)(6), (b)(7)(c)
Cc
Subject: FW: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 29, 2014 12:39 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Subject: FW: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

(b)(6), (b)(7)(c)

Do you think this relates to Riah's Geneva trip?

Regards,
(b)(6), (b)(7)(c)
(lah-day---- ah-kin-bola-gee)
Chief, Executive Communications Unit (ECU) | OPLA | ICE | 202-732 (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 29, 2014 12:25 PM
To (b)(6), (b)(7)(c)
Cc: OPLA Tasking
Subject: FW: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

(b)(6), (b)(7)(c)

This Internal Retask – Convention Against Torture at the United Nations in Geneva is due by **1:00 PM today, Wednesday, October 29, 2014.** SES approval is **NOT** required.

Here is the (b)(7)(e) Please note, the PLAnet task was not reopened for this retask.

Background: OPLA was asked to review and comment on the Convention Against Torture at the United Nations in Geneva retask. OES returned a single document from the original task with a specific question related to OPLA's recommendation to remove language.

Previously, EROLD, Chief (b)(6), (b)(7)(c) reviewed the documents for OPLA and provided suggested comments and edits. EROLD noted that this task bears substantial similarity to Convention for the Elimination of Racial Discrimination (CERD) reviewed in June 2014. This recommendation included the elimination of language that EROLD felt was duplicative and the addition of previously cleared language. Due to a limited turnaround deadline, EROLD only recommended the CERD language be included from an OESIMS document.

This retask addresses the removed language, and asks OPLA to consider proposing new language to answer the question. (b)(6), (b)(7)(c) Acting Deputy Chief of ELS, reviewed, recommends leaving the language, and clears.

The attached document will be returned and uploaded into PLAnet for OPLA record.

Recommended Closing: OPLA reviewed the Convention Against Torture at the United Nations in Geneva retask, provides the attached edits for consideration, and clears.

Thank you,

(b)(6), (b)(7)(c)
Associate Legal Advisor
Executive Communications Unit
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(202) 732-(b)(6), (b)(7)(c) (office)

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From (b)(6), (b)(7)(c)
Sent: Wednesday, October 29, 2014 11:32 AM
To (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

(b)(6), (b)(7)(c)

Please see the attached revised version of the document. OPLA originally recommended the language be deleted as duplicative; however, upon review, OPLA recommends most of the language be retained. The updated revisions are included in the edits of the attached document.

Thank you,

(b)(6), (b)(7)(c)
Associate Legal Advisor
Executive Communications Unit
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(202) 732(b)(6), (b)(7)(c)office)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 29, 2014 9:52 AM
To: (b)(6), (b)(7)(c)
Subject: FW: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

OPLA, good morning. The language deleted is in document #2864704 on pages 178 and 179. Do you have some language to formulate response to this proposed question?

(b)(6), (b)(7)(c)
Special Assistant
ICE OPStasking
Office of the Director
U.S. Immigration and Customs Enforcement
(202) 73(b)(6), (b)(7)(c)
Unclass: (b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Tuesday, October 28, 2014 10:20 PM
To
Cc: (b)(6), (b)(7)(c)
Subject: Re: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

ICE:

Thank you for your response. However, item X.C.5 (page 180) appears to have deleted substantially the entire text and provided no substitute text. Can ICE please provide alternative responsive

language?

Sincerely,

(b)(6), (b)(7)(c)
DHS/CRCL/CRCL ExecSec
(202) 357 (b)(6), (b)(7)(c) Phone
(202) 604 Mobile

From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 28, 2014 06:57 PM Eastern Standard Time
To (b)(6), (b)(7)(c)
Cc
Subject: RE: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

(b)(6), (b)(7)(c) see attached.

This response was cleared through the ICE Office of the Director by Deputy Director Daniel Ragsdale.

Regards,

(b)(6), (b)(7)(c)
Office of the Director
U.S. Immigration and Customs Enforcement
Desk: 202.732 (b)(6), (b)(7)(c)
Mobile: 202.903

From: (b)(6), (b)(7)(c)
Sent: Thursday, October 23, 2014 2:29 PM
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: 76353 R&C - URGENT INTERAGENCY TASKING - DUE 10 AM, 10/28

ICE, CBP, USCIS, OIG, Policy, OPA, OGC ExecSecs:

Attached for clearance are consolidated, government-wide talking points in the form of questions and answers for the upcoming hearing on the Convention Against Torture at the United Nations in Geneva. Your component or office is being asked to clear (and where interagency comments remain, provide any available responses) DHS-relevant portions *only* (remarks on other parts are welcomed but not required) by 10am Tuesday, October 28. Consolidated responses are due to DOS by COB that same day so no extensions are possible. We regret the short turnaround but note that the matters directly relevant to DHS are largely taken from previously cleared language and constitute a very small portion of the documents.

Please direct any question to (b)(6), (b)(7)(c) RCL, 202-604 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Sincerely,

(b)(6), (b)(7)(c)
CRCL Executive Secretariat
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
(202) 357 (b)(6), (b)(7)(c) office | (202) 604 (b)(6), (b)(7)(c) mobile

Pages 300 through 302 redacted for the following reasons:
- -
(b)(5)
(b)(5)

From: (b)(6), (b)7)(c)
To: (b)(6), (b)7)(c)
Subject: FW: Updated Bond Declarations
Date: Tuesday, August 26, 2014 4:15:04 PM
Attachments: Scan0268.pdf
HSI Declaration-Traci A Lembke.pdf

All:

As discussed during today's staff meeting, attached are the updated bond declarations.

Best regards,
(b)(6), (b)7)(c)

From: (b)(6), (b)7)(c)
Sent: Thursday, August 07, 2014 5:30 PM
To: Choi, Raphael; McLane, Jo Ann
Cc: (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) Stolley, Jim (b)(6), (b)7)(c)
Subject: Updated Bond Declarations

Raphael, Jo Ann, and all:

Attached are updated declarations from HSI and ERO. Many thanks to (b)(6), (b)7)(c) and (b)(6), (b)7)(c) (b)(6), (b)7)(c) for having Traci Lembke and Phil Miller review and sign these expeditiously.

Please start using these immediately in bond proceedings and discard the prior version. Thank you.

(b)(6), (b)7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)7)(c)
520-249
(b)(6), (b)7)(c)

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From: (b)(6), (b)7)(c)
To:
Cc:
Subject: FW: Urgent Request-Parole of Aliens Subject to ER
Date: Thursday, June 19, 2014 12:55:06 PM
Attachments: White Paper on Authority to Parole ER.DOCX
ER Detention Mandate (OPLA 061814).docx
ER Parole (pre-CF) Release Backgrounder (OPLA 061314).docx

(b)(6), (b)7)(c)

Please review OGC's paper and provide me with your comments/edits by 2 pm. Thanks.

(b)(6), (b)7)(c)

-----Original Message-----
From: Ramlogan, Riah
Sent: Thursday, June 19, 2014 12:49 PM Eastern Standard Time
To (b)(6), (b)7)(c)
Subject: RE: Urgent Request-Parole of Aliens Subject to ER

(b)(6), (b)(7)c (b)(5)
limitation. Attached are a couple documents we have recently prepared on this issue.
I am not certain we can get your document edited by 2 because of our commitments here, but will try to respond to the group.

From: (b)(6), (b)7)(c)
Sent: Thursday, June 19, 2014 12:36 PM
To: Davis, Mike P; Ramlogan, Riah; (b)(6), (b)7)(c)
(b)(6), (b)7)(c)
Cc: (b)(6), (b)7)(c)
Subject: Urgent Request-Parole of Aliens Subject to ER

All:

We have an urgent request from S2 regarding DHS' authority to parole aliens out of custody who are subject to ER. Please see the attached paper. **Please provide any comments/edits by 2pm today**.

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)7)(c)
Cell: 202-360 (b)(6), (b)7)(c)
email: (b)(6), (b)7)(c)

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Pages 307 through 308 redacted for the following reasons:
- -
(b)(5)

From: (b)(6), (b)7)(c)
To:
Cc: Stolley, Jim(b)(6), (b)7)(c)
Subject: FW: USC Memo(b)(6), (b)7)(c)
Date: Tuesday, December 30, 2014 11:38:00 AM
Attachments: USC Memo (b)(6), (b)7)(c)

Forwarding to USC claims box for review

(b)(6), (b)7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732(b)(6), (b)7)(c)
Mobile: (210) 896(b)(6), (b)7)(c)

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From: (b)(6), (b)7)(c)
Sent: Tuesday, December 30, 2014 10:52 AM
To: ILPD-W
Cc: Stolley, Jim; (b)(6), (b)7)(c)
Subject: USC Memo (b)(6), (b)7)(c)

Good morning,

This USC Memo was drafted by OCC El Paso, but according to PLAnet, it was never elevated. OCC El Paso finds a probative claims and recommends that the subject be released from detention in Artesia, NM, which has already happened. Venue has been transferred to Fort Snelling, MN. I want to make sure that the memo is properly vetted.

Thank you.

Kindly,

(b)(6), (b)7)(c)
Department of Homeland Security
Immigration and Customs Enforcement
Office of the Chief Counsel
1 Federal Drive, Suite 1800

Fort Snelling, MN 55111
(612) 84 (b)(6), (b)7)(c)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: RE: AFRC Daily Executive Brief-July 6, 2014
Date: Monday, July 07, 2014 2:14:21 PM

Yes, thanks.

From: (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 1:53 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: AFRC Daily Executive Brief-July 6, 2014

Is this what you're looking for:

As of this morning, 34 family units consisting of 78 aliens have claimed fear of return. This is a correction from the numbers elevated in the daily report last night. Approximately 50 new residents are estimated to arrive at Artesia today.

(b)(6), (b)(7)(c) ssociate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732- (b)(6), (b)(7)(c)
Mobile: (210) 896

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From: (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 1:45 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: AFRC Daily Executive Brief-July 6, 2014

(b)(6), (b)(7)(c)

I just sent you a few emails, please piece them together, but the write up can be short and something along the lines of:

Riah:

(b)(5)

Best regards,
(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 1:36 PM
To: (b)(6), (b)(7)(c)
Subject: RE: AFRC Daily Executive Brief-July 6, 2014

Thanks again, sir. I really appreciate. Just trying to triple check before I report anything up. Can we chat this afternoon and is there anything I can help you with?

From: (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 1:34 PM
To: (b)(6), (b)(7)(c)
Subject: RE: AFRC Daily Executive Brief-July 6, 2014

78 Total, 34 family units. I indicated earlier that there was a correction.

From (b)(6), (b)(7)(c)
Sent: Monday, July 07, 2014 11:21 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: AFRC Daily Executive Brief-July 6, 2014

Officer (b)(6), (b)(7)(c)

Please see the attached report I am forwarding with different numbers from last night. This seems different that the 34 family units only that have claimed credible fear. I've been asked to provide an explanation that can be forward to the ICE Front Office.

Thanks.

Best regards,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Sunday, July 06, 2014 10:02 PM
To: Winkowski, Thomas; Ragsdale, Daniel H; Homan, Thomas; (b)(6), (b)(7)(c)
Cc: Robbins, Timothy S; Miller, Philip T (b)(6), (b)(7)(c) ; Johnson, Tae D; (b)(6), (b)(7)(c)
Ramlogan, Riah; Sekar, Radha C; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pineiro, Marlen; (b)(6), (b)(7)(c)
Subject: RE: AFRC Daily Executive Brief-July 6, 2014

From: (b)(6), (b)(7)(c)
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: Asylum Division - Credible Fear Ability to Testify 02-20-14
Date: Wednesday, June 11, 2014 5:28:47 PM

(b)(6), (b)(7)(c) All,

As per (b)(6), (b)(7)(c) DCLD is separately commenting and, apparently, raising an issue for internal OPLA discussion as to whether the proposed USCIS credible fear policy on the ability to testify also should encompass reasonable fear proceedings. In this regard, I just wanted to make the point that there is an issue separately floating out triggered by some OIL remands as to whether DHS, in contrast to INA 235(b) expedited removal / credible fear proceedings, has the discretion to NTA an alien and place him in regular INA 240 removal proceedings when he is currently in INA 241(a)(5) reinstatement / reasonable fear proceedings. I can go into further detail, if warranted, tomorrow.

Thx (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law & Practice Division
U.S. Immigration & Customs Enforcement
U.S. Department of Homeland Security

Telephone: (202) 732 (b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 11, 2014 5:16 PM
To (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14

Thanks (b)(6), (b)(7)(c) Adding others.

From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 11, 2014 10:24 AM
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: Asylum Division - Credible Fear Ability to Testify 02-20-14

(b)(6), (b)(7)(c)

Attached, please find consolidated comments/edits.

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 2:57 PM
To:
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

Can you both also review for the mental competency issues and send us your consolidated comments/edits by noon tomorrow as well. Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 5:18 PM
To:
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

Can you review and send us your comments/edits by noon tomorrow? Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 2:57 PM
To: Davis, Mike P
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

I just wanted to verify that our Asylum Officers should NOT include the public charge on the NTAs where an individual has an inability to testify. Is there any situation where we should be adding public charge to the NTAs?

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services
Department of Homeland Security
Tel: 202-272-(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 12:05 PM
To (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14
Importance: High

(b)(6), (b)(7)(c)

In our pending CF procedures for handling cases where the individual is unable to testify we state that the APSO should not list the public charge allegation on the NTA. Instead they should list the regular ER charges. When we initially drafted these procedures back in 2009 we worked closely with ICE OPLA and I believe they're the ones who asked us to not include the public charge because it was difficult to uphold in court. Could you please check with (b)(6), (b)(7)(c) to see if this is still the case?

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, February 25, 2014 7:04 PM
To: Davis, Mike P
Cc: (b)(6), (b)(7)(c)
Subject: FW: Asylum Division - Credible Fear Ability to Testify 02-20-14

Hi Mike,

As I mentioned yesterday, we're doing a number of procedural updates to our Credible Fear Procedures Manual. You've seen drafts of this in the past, and as this is going through formal concurrence now (finally), I just wanted to make sure that it is still workable on the ICE side. There are two specific ICE issues which are flagged on page 2. 1) Communicating with ICE when encountering an alien unable to testify and 2) Not listing the public charge allegation on the NTA.

Let me know if you want to discuss further. There will be more updates to come on other CF topics, so thanks to you in advance for your consideration! As a preview, the next updates will be regarding possible changes to the I-870 (CF Determination Worksheet) and notification procedures when an APSO becomes aware of ICE or CBP misconduct.

Regards,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services
Department of Homeland Security
Tel: 202.272 (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, February 25, 2014 6:55 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: Asylum Division - Credible Fear Ability to Testify 02-20-14

Hello OCC-Clearance,

Please see the attached memo, *Credible Fear – Aliens Unable to Testify on their own Behalf*, which provides guidance to Asylum Officers when they encounter an alien who appears unable to testify due to a physical or mental condition. It also provides more detailed guidance to assist Asylum Offices in recognizing physical or mental conditions that may affect an alien's ability to testify in the credible fear process. The memo's attachment is a formal update to our Credible Fear Procedures Manual.

Please note, there are two flagged issues where we are confirming procedures with ICE.

Please let me know if you have any questions.

Regards,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief of Operations, Asylum Division
Refugee, Asylum and International Operations Directorate
US Citizenship and Immigration Services
Department of Homeland Security
Tel: 202.272 (b)(6), (b)(7)(c)

Pages 318 through 320 redacted for the following reasons:
- -
(b)(5)
(b)(5)

From: (b)(6), (b)(7)(c)
To:
Subject: RE: Bonds URGENT
Date: Wednesday, June 18, 2014 1:29:50 PM
Attachments: Authority to Release Aliens on Bond (OPLA 061814).docx

---

Here's the final version for your records.

From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 18, 2014 10:21 AM
To: (b)(6), (b)(7)(c)
Subject: RE: Bonds URGENT

(b)(6), (b)(7)(c)

Attached version contains my additions and overall edits in tracked changes.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 89

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 18, 2014 10:10 AM
To (b)(6), (b)(7)(c)
Subject: RE: Bonds URGENT

(b)(6), (b)(7)(c)

I added citations for DHS parole authority and corrected the formatting here. Please use this version.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)

U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 18, 2014 10:00 AM
To: (b)(6), (b)(7)(c)
Subject: RE: Bonds URGENT

(b)(6), (b)(7)(c)

Here are the sections I've added. Please add to this and take a look at what I included to see if any edits are needed.

Thanks,

(b)(6), (b)(7)(c)

Megan B. Herndon
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 18, 2014 9:19 AM
To: (b)(6), (b)(7)(c)
Subject: FW: Bonds URGENT

(b)(6), (b)(7)(c)

Let's work off of this version. Can you stop by to discuss?

(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Wednesday, June 18, 2014 7:39 AM
To: Vincent, Peter S; Ramlogan, Riah; Davis, Mike P
Cc: Stolley, Jim; (b)(6), (b)(7)(c)
Subject: RE: Bonds URGENT

Peter/Riah/Mike-

We will send you all a one pager later this morning.

(b)(6), (b)(7)(c)

-----Original Message-----
From: Vincent, Peter S
Sent: Wednesday, June 18, 2014 06:52 AM Eastern Standard Time
To: Ramlogan, Riah; Davis, Mike P
Cc: Stolley, Jim; (b)(6), (b)(7)(c)
Subject: Re: Bonds URGENT

Of course, that should be "cut," not "cute," although I am sure that Mike and Q do find some statutory provisions attractive.

Best regards,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Principal Legal Advisor
Senior Counselor for International Policy
202-732-(b)(6), (b)(7)(c)

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From: Vincent, Peter S
Sent: Wednesday, June 18, 2014 06:51 AM
To: Ramlogan, Riah; Davis, Mike P
Cc: Stolley, Jim; (b)(6), (b)(7)(c)
Subject: Re: Bonds URGENT

Right. And cute and paste the Section 235 information and reference to the 2009 Morton memo as well.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor
Senior Counselor for International Policy
202-732(b)(6), (b)(7)(c)

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From: Ramlogan, Riah
Sent: Wednesday, June 18, 2014 06:49 AM
To: Davis, Mike P
Cc: Stolley, Jim; Vincent, Peter S; (b)(6), (b)(7)(c)
Subject: Re: Bonds URGENT

Let's focus on IJ issues but of course note the ICE authority.

Sent from my BlackBerry 10 smartphone.

From: Davis, Mike P
Sent: Wednesday, June 18, 2014 6:30 AM
To: Ramlogan, Riah
Cc: Stolley, Jim; Vincent, Peter S; (b)(6), (b)(7)(c)
Subject: Re: Bonds URGENT

To clarify, are we focused on typical 236(a) bond-outs or should we also include conditions imposed upon any form of release (like OSUP and parole)? And, is this just IJ-focused or should we include DHS's authority to release on bond, too?

Sent via BlackBerry by:

MIKE P. DAVIS
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(202) 732 (b)(6), (b)(7)(c) office)
(202) 904 cell)
(b)(6), (b)(7)(c)

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From: Davis, Mike P
Sent: Wednesday, June 18, 2014 06:24 AM
To: Ramlogan, Riah
Cc: Stolley, Jim; Vincent, Peter S; (b)(6), (b)(7)(c)
Subject: Re: Bonds URGENT

10-4.

Sent via BlackBerry by:

MIKE P. DAVIS
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

(202) 732-(b)(6), (b)(7)(c) (office)
(202) 904- (cell)
(b)(6), (b)(7)(c)

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From: Ramlogan, Riah
Sent: Wednesday, June 18, 2014 06:20 AM
To: Davis, Mike P
Cc: Stolley, Jim; Vincent, Peter S; (b)(6), (b)(7)(c)
Subject: Bonds URGENT

Mike - Please have (b)(6), (b)(7)(c) team do a one pager on bonds. We should have it canned. Also, several weeks ago (b)(6), (b)(7)(c) sent along a declaration that they were using in AZ. We need to look at that first thing this morning. Thanks.

Sent from my BlackBerry 10 smartphone.

From:
To:
Cc:
Subject:
(b)(6), (b)(7)(c)
Date: Tuesday, September 23, 2014 2:56:08 PM

The following are delegated to ICE (Part 2) and include references to 235 or the applicable regulation:

(S) Authority provided by section 235(d) of the INA (8 U.S.C. 1225(d), including but not limited to administering oaths, taking evidence, and requiring by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents.

(T) Authority under the immigration laws, including but not limited to sections 235,236, and 241 of the INA (8 U.S.C. 1225, 1226, and 1231), to issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law, and remove aliens from the United States.

(CC) Authority to take action under 8 C.F.R. 235.8(b) with respect to certain inadmissible aliens. [That is security and related grounds]

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 2:47 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: (b)(6), (b)(7)(c)

Thanks. What does D.O. 7030.2 say about 235 authority specifically?

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 2:39 PM
To: (b)(6), (b)(7)(c)
Subject: FW: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Suggested response below:

(b)(6), (b)(7)(c)

Yes; only CBP officers have authority to inspect or admit aliens pursuant to 8 U.S.C. § 1225(b)(2)(A). ICE has not been delegated authority to admit aliens to the United States. See DHS Delegation 7030.2, Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, part 3 (Nov. 13, 2004) ("Unless specifically provided therein, nothing in this delegation authorizes the Assistant Secretary to . . . admit any alien to the United States . . . .").

Thanks,

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 2:21:54 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Here is a draft response:

(b)(5)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732-(b)(6), (b)(7)(c)
Mobile: (210) 896

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From: (b)(6), (b)(7)(c)

Sent: Tuesday, September 23, 2014 2:04 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Subsection 3 of the delegation to ICE specifically addresses this. Here's a copy of the delegation below. Can you craft a short response, please?

https://www.hsdl.org/?view&did=234774

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 1:44 PM
To (b)(6), (b)(7)(c)
Su (b)(6), (b)(7)(c)

Clarification this is regarding INA section 235(b)(2)(A); 8 USC 1225(b)(2)(A).

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 12:30 PM
To: (b)(6), (b)(7)(c)
Subject: FW: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Can you prepare a response. (b)(5)
(b)(5)

Please send me a response by 3 pm.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 04:10 PM

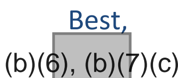
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P
Subject: FW: (b)(6), (b)(7)(c)

Just got the below question regarding (b)(6), (b)(7)(c) and 1252(b)(2)(A) and ICE 's operations (vs. CBP's operations) from DOJ. I would appreciate if you could take a look and provide an answer, maybe by afternoon tomorrow:

(b)(6), (b)(7)(c)

Our new Deputy Asst. Atty General for immigration matters has raised this question. Can you clarify it for us:

1) Quick point of curiosity. By its own terms, 8 U.S.C. 1252(b)(2)(A) deals with the inspection of aliens and the admission of aliens. The plaintiffs in this case, ICE agents, can't even inspect or admit aliens (to my knowledge). My understanding is that this is always done by CBP's Office of Field Operations. Do we know for sure that ICE agents can even inspect or admit aliens? Even if they have legal authority to, they certainly don't do it in practice (I am pretty sure, although I could be wrong).

Best,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282.(b)(6), (b)(7)(c) (office)
202.684.(b)(6), (b)(7)(c) (mobile)
202.282.(b)(6), (b)(7)(c) (facsimile)
(b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 5:06 PM
To: (b)(6), (b)(7)(c)
Cc: Singer, Michael (CIV)
Subject: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Our new Deputy Asst. Atty General for immigration matters has raised this question. Can you clarify it for us:

1) Quick point of curiosity. By its own terms, 8 U.S.C. 1252(b)(2)(A) deals with the inspection of aliens and the admission of aliens. The plaintiffs in this case, ICE agents, can't even inspect or admit aliens (to my knowledge). My understanding is that this is always done by CBP's Office of Field Operations. Do we know for sure that ICE agents can even inspect or admit aliens? Even if they have legal authority to, they certainly don't do it in practice (I am pretty sure, although I could be wrong).

(b)(6), (b)(7)(c)
Civil Division/Appellate Staff
Room 7243, Dept. of Justice
950 Penn. Ave., NW
WDC 20530
(202) 514-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Greetings
Date: Friday, August 08, 2014 12:05:00 PM
Attachments: image001.jpg

Also, this is the second article I've seen in two days that specifically criticizes Matter of D-J- as a decision by former A.G. Ashcroft, and (b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section – Acting Section Chief
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 11:50 AM
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Greetings

Except this was written by (b)(6), (b)(7)(c) legal director at the New Mexico Immigrant Law Center, (b)(5)

(b)(6), (b)(7)(c)
ICE/OPLA/ELD/ILPD
(202) 732 (b)(6), (b)(7)(c) **new office)**
(202) 904- mobile)

From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 11:45 AM
To (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Greetings

(b)(5)

From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 11:42 AM
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Greetings

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 11:23 AM Eastern Standard Time
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: FW: Greetings

(b)(5)

From: Vincent, Peter S
Sent: Friday, August 08, 2014 11:14 AM
To: Ramlogan, Riah; Stolley, Jim; Davis, Mike P; (b)(6), (b)(7)(c)
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Subject: Greetings

An especially misleading article on the Artesia facility.

Children in Jail: What It's Like for Immigrants Held at Artesia Center

Written by Guest on August 6, 2014 in Asylum and Refugee, Border, Children, Department of Homeland Security, Deportation, Immigration and Customs Enforcement with 1 Comment
8-6-2014 photo

By Megan Jordi, legal director at the New Mexico Immigrant Law Center

The rule of law is only a mirage in the remote, dusty town of Artesia, New Mexico, where the Department of Homeland Security (DHS) is holding more than 600 Honduran, Salvadoran, and Guatemalan women and children. The children in the 278 families range from babies to teenagers.

Virtually overnight, DHS turned part of the Federal Law Enforcement Training Center (FLETC) into an immigration jail to house the families crossing the U.S. border from Central America.

New Mexico Immigrant Law Center staff was able to view the Artesia facility and talk to women and children during a recent tour for non-governmental organizations and in subsequent individual interviews. We were shocked by what we've learned.

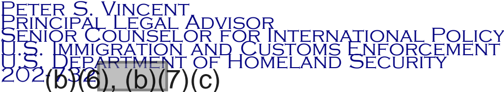
We talked to women as they held babies in their arms or as their children listened and played nearby. These same women go to their credible fear interviews with their children in tow. Traumatized children, especially after a harrowing journey from Central America, should never have to hear their mother's reports of the violence that caused them to flee.

Mothers report their children are not getting adequate medical attention or any mental health services for the trauma they experienced at home, in their trips and in the FLETC jail. And they fear being denied access to the few floating cell phones in the jail if their children misbehave.

DHS euphemistically calls these women and children "residents," but make no mistake, FLETC is a jail. DHS has short-circuited the asylum process, promising quick deportations to send a message to other Central American asylum seekers not to come.

Artesia is 240 miles from Albuquerque, where our office is, and 200 miles from El Paso, Texas. Judges in Arlington, Virginia—1,800 miles away—hold court hearings via videoconference for the families in the Artesia facility.

ICE has provided minimal confidential space for attorneys to meet with potential clients. Officers walked in between the flimsy cubicles where we talked to women and their children, and they used a fax machine a few feet away. Women get little or no notice of when a credible fear interview will be held, sometimes having to go alone even when they have a lawyer. Officials have told them they will be deported, whether they have a lawyer or not. Though asylum claims may be based on government persecution, a Honduran consular official was given open access to FLETC and has told women they will be quickly deported.
Deportations of the women and children before lawyers could begin to provide presentations for them about their rights. The American Immigration Lawyers Association, Diocesan Migrant and Refugee Services, and other NGOs and private attorneys from New Mexico and far away states are making a valiant attempt to provide know your rights presentations and pro bono representation to the detainees. But it's an unfair fight when DHS's clearly announced goal is accelerated proceedings and quick deportations.
ICE—making an all-purpose "national security argument"—has set a policy of no bond or high bond for those who pass a credible fear interview, even if they present no flight risk or risk to public safety. As a result, the women and children face little possibility of release during the whole asylum process. The government cites a reprehensible post-9/11 ruling by Attorney General John Ashcroft that used wholesale and exaggerated national security claims to justify denying bonds to Haitians who arrived by boat as its justification for this policy.
Federal officials argue in affidavits submitted in opposition to bond requests that "[d]etention is especially crucial in instances of mass migration," claiming that "the likelihood of low or no bond" is one of the reasons the women and children fled to the U.S. But that disingenuous argument ignores the conditions of violence and fear that spurred the flight from Central America.
Jailing babies on the basis of national security is shameful. The women and children at FLETC should be released and given a fair chance to present their asylum cases.


Peter S. Vincent
Principal Legal Advisor
Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
202-(b)(6), (b)(7)(c)

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CAT 2014 Delegation Resource Materials

Substantive Materials

- The Convention Against Torture (CAT)
- Reservations, Understandings, and Declarations of the U.S. on the Convention
- Links to the Travaux for the Convention
- 1988 Transmittal Package for the Convention (please see attachments)
- SFRC Hearing Transcript on the Convention (see attachments)
- SFRC Report on the Convention (including 1989 update to the 1988 Transmittal Package) (see attachments)
- 1999 Report to the Committee and accompanying materials, including:
  - Concluding Observations (see attachments)
- 2005 Report to the Committee and accompanying materials, including:
  - Annexes
  - Transcripts (partial)
  - Concluding Observations
  - Comments on Concluding Observations (see attachments)
- 2013 Report to the Committee
- CAT Committee List of Issues for 2013 report (dated 1/20/2010)
- Document containing summaries of civil society shadow reports (Please see attachments)
- All civil society shadow reports

Administrative Materials (see attachments)

- Geneva Schedule for 11/10-11/14
- List of Committee Members with names and bios
- List of USG Delegation Members with names and bios
- Seating Chart for presentation and for consultation (for each day)
- Presentation Tips
- Contact List (including DC contacts during the week of 11/10-11/14)
- Administrative information sheet, including:
  - Hotel information
  - Relevant contact numbers
  - Address for Mission and Palais

Presentation Materials (NOT YET FINALIZED)

- All Opening statements
- All Q/As (which will also indicate which agency will be responding to which questions)
- Home Base Points
- Interagency-Cleared Press Guidance

CAT SHADOW REPORT SUMMARIES

Ad-Hoc Work Group – Minnesota Re: US Compliance with Human Rights Treaties (co-sponsored by several organizations)

- For national incidents of police misconduct such as the Michael Brown case and local Minnesota examples, local officials fail to provide, and indeed actively interfere with, a prompt and impartial investigation of reported police misconduct under Articles 12 and 16 of the CAT. By routinely inserting local police department personnel into such investigations, local authorities increase the public perception of bias and lack of objectivity. An additional root cause of police misconduct at the local level is the failure of the US government to ensure education as required by Articles 10 and 16 of the CAT. The US should authorize an independent national human rights institution to develop a national plan of action and comprehensively coordinate and advance implementation of the CAT and other human rights treaties at all levels of US government.
- *Addendum* [*separate document*]: We have just learned that DOJ has just concluded a nine-month review of the Minneapolis Police Department's oversight and discipline process. Based on the draft findings and recommendations, it is clear that DOJ continues to fail to take reasonable steps to ensure that reports of brutality and ill-treatment by law enforcement are independently, promptly, and thoroughly investigated and that perpetrators are prosecuted and appropriately punished. The DOJ should have educated local officials about their obligations regarding police misconduct under the CAT and other ratified human rights treaties.

The Advocates for Human Rights (endorsed by a number of organizations)

- The administration of the death penalty in the US raises serious concerns that condemned prisoners are experiencing severe pain and suffering while being executed, in violation of US obligations under the CAT. Shortages of lethal injection drugs and of qualified medical personnel willing to participate in executions have prompted states to experiment with drugs obtained from unregulated sources, new drugs not previously used in lethal injections, and execution teams without sufficient medical training. States have attempted to shield these decisions from public examination by passing secrecy laws, which prevent prisoners from raising legal challenges to execution methods. The 2013 CAT report was submitted before several recent executions in which condemned prisoners apparently suffered severe pain [*see p. 8-11 of report for info on specific executions*], and so the report contains no new information on the substantial evidence that severe pain and suffering (CIDTP) occurs under these new protocols. [*See p. 11-12 of report for specific questions and recommendations.*]

The Advocates for Human Rights and **Detention Watch Network** (joint submission)

- The US immigration system, while generous in many respects, is riddled with systemic failures to protect human rights and meet obligations under the CAT and other international human rights treaties. The US regularly fails in its Article 3 *non-refoulement* obligation. Some violations result from the statutory framework itself, while others are a

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matter of administrative policy, agency practice, or lack of accountability for individual bad actors. Of particular concern is the US response to the recent influx of Central Americans, which has resulted in the *refoulement* of children and families with bona fide claims for relief under the CAT. The adjudication mechanisms in response to this influx do not afford migrants a fair hearing focused on a determination of credible fear of torture or other harms which could be grounds for protection. Detainees lack access to counsel; many are subject to mandatory removal (deportation) without a discretionary hearing; and the US relies on summary deportation procedures. Provision of information about legal rights is limited and inadequate. Further, the US dramatically fails to meet CAT Article 16 obligations to prevent CIDT within its vast immigration detention system. The ICE penal model is inappropriate for individuals detained on alleged civil status violations. There are no legally enforceable detention standards. Because of the penal nature of the facilities, detainees are routinely subject to CIDT. Detainees are at risk of sexual violence; subject to prolonged isolation; and denied access to necessary medical and mental health care with life-threatening consequences. ICE should cease the practice of detaining asylum-seekers as a deterrent to migration; ensure that any detention of asylum-seekers is consistent with international standards and only used as a last resort; and seriously consider community-based alternatives to detention. The US should immediately implement enforceable, rights-respecting detention standards in all facilities detaining non-citizens, including short-term facilities and contracted private, state, and local jails and prisons. Independent monitoring of CBP detention conditions should also be allowed.

Advocates for Informed Choice

- Americans born with intersex conditions face a wide range of violations of their sexual and reproductive rights, as well as rights to bodily integrity and individual autonomy. Various human rights bodies have recognized that the medical treatment of people with intersex conditions rises to the level of human rights violations. Despite the international outcry, these procedures are still occurring in the US today. Further, when people with intersex conditions become the subjects of research, there are not always adequate protections in place, resulting in human experimentation. Enforcement agencies should investigate possible violations of, and take actions to enforce, laws prohibiting FGM, involuntary sterilization, and unethical human subjects research to protect children with intersex conditions. US courts should recognize gender normalizing surgery and involuntary sterilization performed on intersex children as violations of their federal civil rights and offer intersex plaintiffs comprehensive remedies for these harms.

Advocates for U.S. Torture Prosecutions (prepared with the International Human Rights Clinic at Harvard Law School)

- In August 2014, President Obama conceded that the US tortured people as part of its so-called war on terror, and evidence continues to emerge that civilian and military officials at the highest levels created, designed, authorized, and implemented a sophisticated international criminal program of torture. Yet the US has shielded those responsible for the torture program, and seems not to have criminally investigated senior officials. We

recommend that the US should promptly and impartially prosecute senior military and civilian officials responsible for authorizing, acquiescing, or consenting in any way to acts of torture committed by their subordinates.

- The US has gone to great lengths to block other efforts to secure accountability, belying any good faith commitment to upholding its CAT obligations. The US has blocked or failed to cooperate with pertinent criminal proceedings in foreign courts; repeatedly blocked attempts at redress in civil courts; and shielded torture psychologists from professional liability.

Alkarama Foundation

- We conducted a survey between July and September 2014 on a representative sample of individuals living in Yemen, to evaluate the level of PTSD symptoms among civilians. We found strong common patterns of anxiety, stress, paranoia, insomnia, and other specific trauma symptoms across gender and age. We conclude that the very simple fact of living under drones has psychological consequences that derive from the constant fear of being killed or having a relative be killed. The lack of transparency in the US legal framework governing the use of drones is a root cause of these PTSD symptoms. This constant fear and anxiety is so protracted and severe that it amounts to CIDT under the CAT. We argue that a parallel can be drawn between the atmosphere of secrecy and uncertainty in which civilians in Yemen live constantly and the Human Rights Committee's jurisprudence on mental suffering on death row. We argue that the CAT applies to drone operations carried out by US forces in Yemen; the US has effective control over the regions where they carry out drone operations; and the US is responsible for the trauma inflicted on the civilian population in Yemen living under drones.

American Civil Liberties Union (ACLU) – Advance Comments for Consultation

- Among the many wrongs that continue unabated at GTMO is continued indefinite detention, without charge or trial, including of detainees who were tortured by the US while under the effective control of the US. For instance, Mohammed al-Qahtani remains in prison without charge or trial and without any meaningful prospect for transfer overseas and release, even though the last convening authority for the military commissions under Bush, Susan Crawford, ordered charges against al-Qahtani dropped because Crawford found that he had been tortured. In making the argument that such detainees are too threatening to transfer overseas and release, the US appears to rely on evidence that would be inadmissible in any federal court because of its inherent unreliability as being derived from coercion. This practice must end, and all detainees who have not been charged with a crime must be promptly resettled or repatriated.
- The Special Task Force established by E.O. 13491 seems to have left the door open to the possibility of transfers, including by US intelligence agencies, outside of established legal procedures, provided transferring agencies receive diplomatic assurances that individuals transferred will not be subject to torture. However, as numerous NGOs have documented, such assurances, even with effective oversight and post-transfer monitoring mechanisms in place, are unreliable and completely ineffective in preventing torture and CIDT. The US should prohibit extrajudicial transfers; establish minimum standards for the contents

of assurances; establish effective post-return monitoring standards and procedures; adopt transparency measures with regard to transfers with assurances; and ensure that all detainees are afforded an opportunity for meaningful judicial review of transfer decisions.

- To date, there has been little accountability for the Bush Administration's torture program. None of the survivors have had his or her day in a US court, and the US has yet to respond to any IACHR petitions, including one filed over six years ago for Khaled El-Masri. A comprehensive, independent, and effective criminal investigation, including into the role of the senior officials who authorized the torture program, is long overdue. The anticipated release of the summary, findings, and conclusions of the SSCI report provides an opportunity for the US to demonstrate its commitment to providing accountability for the previous administration's torture program.
- E.O. 13491 contains a loophole which allows the CIA to operate detention facilities so long as those facilities are used only to hold people on a short-term transitory basis. There is currently no publicly available directive establishing parameters for such "short-term" and "transitory" detention operations. This creates the possibility of continued CIA overseas detention facilities ("black sites") in an altered form. The US should close this loophole; publicly account for the existence of any CIA "short-term" or "transitory" detention facilities, and support federal legislation that permanently bans the CIA from operating any detention facilities or holding any person in its custody and that subjects the CIA to the same interrogation rules as the armed forces.

American Civil Liberties Union (ACLU) – Shadow Report

- The 2013 CAT report lacks concrete info on state and local compliance with CAT.
- The US has failed to adopt legislation making torture a federal crime (which the CAT Committee had recommended in 2000 and 2006).
- Obama Administration has failed to reverse positions from the Bush Administration which have proven inconsistent with the CAT and international law, especially on extraterritoriality. The Bush Administration interpretations of the scope of Arts. 3 and 16 were used to justify abusive US programs that authorized torture, CIDT, and transfers to torture abroad. The Obama Administration has failed to make clear that the USG is no longer fabricating loopholes that the previous Administration used to avoid its obligations.
- <u>*Non-refoulement*: Rendition by US intel agencies and diplomatic assurances:</u>
    - Since the issuance of the Special Task Force's recommendations, in how many transfers has USG used diplomatic assurances? Has USG conducted any extrajudicial transfers, with or without the use of assurances?
    - In compliance with the Special Task Force's recommendation that agencies issue annual reports on the use of assurances, we are aware that DHS has issued at least one report and the DOD has issued three reports. What other agencies have issued these reports, and how many?
    - Please describe US minimum standards for the content and use of assurances, including under what circumstances the USG regards post-return monitoring as "required for the transfer to proceed." Does the US rule out the use of assurances for the transfer of individuals to countries that: systematically violate human rights standards; have previously breached diplomatic assurances; or refuse to

provide "consistent, private access to the individual who has been transferred, with minimal advance?"

  - Please describe US post-return monitoring practices, including the training of monitoring personnel; the frequency and duration of post-return monitoring; and any cases in which returned detainees have reported the breach of assurances against torture, as well as any remedial steps the government has taken in response.
  - The US should establish minimum standards for the contents of assurances, including access to a lawyer and the ICRC, recording of all interrogations, independent medical examination, prohibition of incommunicado detention, and post-return monitoring.
  - The Special Task Force report and annual agency reports should be public.
  - USG should ensure that all detainees have an opportunity for meaningful judicial review of transfer decisions. Clarify USG position on this.
- *Non-refoulement*: Asylum-seekers at the border:
  - A forthcoming ACLU investigation based on interviews with individuals deported at the US border demonstrates the devastating consequences of the expansion of expedited removal without necessary reforms and safeguards. [*See p. 10 of report for findings, and p. 11 for anecdotes*.]
  - In light of mounting evidence that border officers do not consistently ask noncitizens about fear of torture if returned to their country, what steps is the USG taking to ensure that asylum seekers are asked about their fears and referred to an asylum officer?
  - What processes are in place to monitor border officers' compliance with US obligations under Article 3 and to censure officers who routinely disregard those obligations?
  - US should create stronger, independent monitoring of interviews, including periodic audits and video recording of asylum interviews.
- National Security: Lack of transparency and accountability for Bush Admin torture program:
  - There are no assurances that Durham (DOJ) investigated the role of senior officials, although the record is clear that the Bush Admin torture program was devised at the highest levels. Was Durham authorized to investigate senior officials' role in approving the CIA torture program, and did he do so? Has any USG investigation considered criminal responsibility of high-level administration officials or senior military officers in approving and implementing the abuse of detainees held by DOD?
  - Durham recommended that full investigations be opened in two cases (on deaths of Gul Rahman and Manadel al-Jamadi) but DOJ closed both cases without charging anyone.
  - The 2013 CAT report indicates that a series of courts-martial were convened for members of the armed forces. Please provide further details on the outcome of these cases, including the names of the defendants, the charges, and the sentences. Has any member of the armed forces been charged with the war crimes of torture or cruel or inhuman treatment?

- Has the US taken any measures to provide redress (including compensation and rehabilitation) to victims of Bush Admin torture programs outside of the US court system? Any public acknowledgement or apology, including to family members? Please provide statistics.
- It is critical that the SSCI report be released, with only those redactions necessary to protect legitimate and current intelligence sources and methods, to prevent such abuses from ever occurring again.
- ACLU continues to press in FOIA lawsuits for the release of the full SSCI report, the CIA's response, an internal CIA review, and over 2,000 photos of detainee abuse.

- <u>National Security: Detention and trials at GTMO:</u>
  - On al-Nashiri (ECtHR case): his lawyers assert that he has not received adequate medical treatment for the PTSD he suffers as a result of torture.
  - Although the MCA 2009 excludes statements obtained through torture, the statute and rules could permit evidence tainted by torture, such as statements made by the defendant after the torture stopped, and information derived from torture statements.
  - [*See p. 21 of report for the story of a specific GTMO detainee.*]
  - What steps are being taken to increase the transparency and effectiveness of the PRBs, specifically in regard to a detainee's access to evidence used against him?
  - Please describe the standard operating procedures for involuntary feeding presently used by DOD. Provide statistics on hunger striking detainees.
  - What measures has the US taken to ensure that coerced evidence, as discussed in the Special Rapporteur on Torture's recent thematic report, is not admitted as evidence in the military commission trials at GTMO? [*See p. 23 for a summary of the SR's report.*]
  - The US should withdraw the possible imposition of the death penalty as punishment in all military commission cases in which the defendant was subjected to torture or CIDT.
- <u>National Security: Prohibiting secret detention by the CIA:</u>
  - The US should clearly articulate the terms and conditions under which the CIA may continue to operate detention facilities, and ensure that any continued detention operations by the CIA do not amount to incommunicado detention in violation of the CAT.
  - Has the CIA held any person in any "short-term" or "transitory" detention facility since the signing of EO 13491? If so, how many detainees, for what length of time, and in what conditions?
  - Is the CIA authorized to interrogate detainees at short-term or transitory facilities? If yes, is the CIA restricted to interrogation techniques and approaches set out in the Army Field Manual?
- <u>National Security: Interrogation policies:</u>
  - EO 13491 did not end all interrogation techniques that amount to torture or ill-treatment. [*See p. 30-31 of report for a discussion of Appendix M, AFM generally, and DOD policy directives.*]
  - Please provide statistics on the number of detainees on whom techniques in Appendix M (isolation, sleep deprivation, sensory deprivation) have been used

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since January 22, 2009. What measures are in place to prevent interrogators from abusing detainees who are being subjected to "separation" as an interrogation technique? Is there any mechanism for a detainee who is held in isolation to complain about ill-treatment?
    - What procedural safeguards govern the placement of a detainee in segregation under DOD Directive No. 3115.09? What measures are in place to prevent officials from placing a detainee in "segregation" in order to circumvent restrictions on using isolation as an interrogation method? What measures are in place to reduce the risk that interrogators will subject detainees in segregation to torture or other ill-treatment?
- Solitary Confinement:
    - [*See p. 34-36 of report for examples of egregious conditions of solitary.*]
    - Provide statistics on the number of prisoners in solitary in BOP custody, and the number of those continuously held in solitary for more than 15 days.
    - Describe measures required by federal, state, and local governments to limit or regulate the use of solitary on particularly vulnerable detainees.
    - US should support the Solitary Confinement Study and Reform Act of 2014.
- Denial of Access to Justice Under the Prison Litigation Reform Act:
    - USG did not respond to the CAT Committee's 2006 recommendation on PLRA.
    - How many lawsuits alleging torture or CIDTP are dismissed pursuant to the provisions of the PLRA? The PLRA should immediately be repealed.
- Prolonged and Indefinite Immigration Detention; Conditions of Confinement; Administrative Family Detention:
    - [*See p. 46-47, 53, 59-60 of report for human stories of immigrant detainees.*]
    - What steps has the USG taken to decrease its use of mandatory and prolonged detention and ensure that all immigration detainees have the opportunity to seek individualized review of that detention?
    - Why hasn't the U.S. government adopted a nationwide, uniform rule that extends the Ninth Circuit rule in *Rodriguez v. Robbins* to all regions of the country? (Pursuant to court order in that case, immigrants detained more than six months within the 9th Cir have been given bond hearings before an immigration judge.)
    - What steps is the USG taking to ensure PREA regulations are fully and immediately implemented in all facilities housing immigration detainees? What steps is the USG taking to fully and independently monitor and investigate complaints of sexual assault, particularly against children and trans detainees?
    - What steps has ICE/DHS taken in response to the September 2014 Karnes sexual abuse complaint? The ICE-GEO contract at Karnes should be terminated, and all families should be released on reasonable bond or placed on alternatives to detention
    - How is the US ensuring that its directive on solitary confinement in immigration detention is uniformly and properly enforced at all facilities?
    - Will the U.S. government commit to ending its no-bond policy for detained mothers and children who are entitled to an individualized determination of the need to detain before losing their liberty?
- Life-Without-Parole Sentences:

- The number of people sentenced to LWOP has quadrupled nationwide in the past 20 years, even while violent crime has been declining during that period. In 29 states, a LWOP sentence is mandatory upon conviction of particular crimes. More than 2,500 people convicted as children are serving LWOP in the US.
- [*See p. 69-70 of report for human stories of people serving LWOP.*]
- What steps are being taken to eliminate or limit LWOP sentences for non-violent and non-homicide crimes, and to ensure that people serving such sentences are afforded a meaningful opportunity for release?
- What steps are being taken to prohibit and abolish LWOP for children, irrespective of the crime committed, and to ensure that all people currently serving LWOP for crimes committed as children are resentenced and ensured a meaningful periodic review of their eligibility for release?
- How will the US eliminate or limit the imposition of mandatory sentences of life without parole for both adults and children?
- Congress should enact comprehensive federal sentencing reform legislation such as the Smarter Sentencing Act of 2013 or the Justice Safety Valve Act of 2013.

- Death Penalty:
  - [*See p. 77 of report for human stories of the use of the death penalty.*]
  - What measures will the US take to ensure that it will not subject persons under sentence of death to CIDT? What is the scope of the May 2014 DOJ review?
  - The US should fulfill its commitment in the UPR process to study the racial disparities of the death penalty in the United States.
  - The federal government, through the FDA, should ensure that state Departments of Correction do not acquire drugs to use in lethal injection procedures illegally.
  - The federal government should encourage states to disclose the combination of drugs that are being used in lethal injection procedures before the execution is scheduled.
- Racial Profiling:
  - [*See p. 81-83, 87 of report for concerns re FBI racial mapping; TSA profiling; border enforcement; and immigration enforcement.*]
  - [*See p. 84 of report for human stories of racial profiling.*]
  - What steps has the US taken on its commitments (expressed in the UPR process) to strengthen protections against profiling in the context of immigration and border enforcement? How can these efforts be reconciled with the USG's broad claims of authority to conduct warrantless searches in the 100-mile zone of US borders?
  - Will the US commit to making the DOJ Guidance Regarding the Use of Race enforceable and revising it? [*See p. 86-87 for specifics.*]
- Excessive Militarization of Policing:
  - [*See p. 89 for findings of recent ACLU report:* War Comes Home]
  - [*See p. 90-91 of report for human stories.*]
  - What is the current status of President Obama's review of the federal programs that use equipment transfers and funding to encourage aggressive, militaristic enforcement of the War on Drugs by state and local police agencies? Will the Administration implement a moratorium on the 1033 program while the review is

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being conducted? Will President Obama's review be guided by CAT obligations and other human rights commitments?
    - Is there a legitimate role for USG to play in providing free military equipment to state/local law enforcement agencies, in light of the traditional distinction that has been drawn between the military and police? If so, what is the scope of that role?
    - What steps will the USG take to ensure that state and local law enforcement agencies are not making inappropriate use of weapons designed for combat and in violation of US human rights obligations? [*See p. 92 for details.*]
- The ACLU has also endorsed other CAT shadow reports on issues including: sexual violence in the US military; shackling of incarcerated pregnant women; and criminalization of homelessness.

American Friends Service Committee

- Deeply flawed policies focusing on punishment—not healing or rehabilitation—have created a pipeline through which economically disadvantaged persons are funneled into prisons and jails. Incarcerated individuals are frequently exposed to deplorable, cruel, and dangerous conditions of confinement.
- This report provides verbatim testimonials of inhuman conditions under which prisoners are held. The issues addressed include: health care; CIDT regarding confinement conditions; CIDT regarding degrading and cruel acts committed by jail and prison staff; sexual violence committed by prison and jail staff; sexual violence committed by third parties while in the custody of the USG; isolation and solitary confinement (conditions, mental health, and life after isolation); political prisoners and Control Management Units; psychological / "no touch" torture; and reprisals against prisoners for airing grievances.
- The report also includes specific questions and recommendations on the above topics.

American Friends Service Committee; Center for Constitutional Rights; Human Rights Clinic, University of Miami School of Law et al. (joint submission) (endorsed by additional organizations and individuals)

- We address breaches of the CAT that occur in immigration detention facilities and in the deportation process. The use of "expedited removals" raises the specter of *refoulement* of torture survivors and other asylum-seekers. Once in detention, non-citizens may be subjected to discrimination, harassment, sexual or physical violence, prolonged solitary confinement, depression and other mental health effects, and deplorable conditions of confinement. There is inadequate access to medical treatment and mental health services. Detainees face significant barriers in accessing counsel. In some cases, US laws and policies allow for these violations to continue occurring. In other cases, there are simply inadequate protections, training, and oversight to ensure that laws and policies are appropriately implemented. Given the cost-saving and efficiency benefits of alternatives to detention, what is the rationale for continuing to detain non-violent and non-threatening immigrants, particularly given the US international human rights obligations? [*See p. 23-24 of report for specific recommendations.*]

Amnesty International

- [*Very strongly worded; may be worth reading introduction in full (p. 1-4 of report).*] It is highly troubling that President Bush has asserted publicly that he personally authorized conduct that constituted torture and yet no investigation has been carried out into these assertions or other assertions by former officials about the CIA program, and no one at any level of office has been charged or brought to trial for the crimes under international law that are known to have been committed in this program. We are also concerned that the 2013 CAT Report takes the same stance as the previous Administration about the geographic scope of the CAT. The seriousness of this accountability gap has led us to focus a substantial part of our submission on this question. The lack of truth, remedy, and accountability that exists in relation to US conduct in the counter-terrorism context over the past decade represents a very serious challenge to the international human rights system. Without the necessary investigations, prosecutions, reparations, transparency, and legislation, President Obama's executive order prohibiting long-term secret detention and certain "enhanced interrogation techniques" may yet come to be seen as no more than a paper obstacle if and when any future US president decides that torture or enforced disappearance are once again expedient for national security. If impunity is allowed to persist, the US example will be seen as an affront to the rule of law and respect for human rights, including the CAT and other international instruments. The secret detention program was built on "American exceptionalism" and the US's exploitation of its RUDs to the CAT. We are calling for publication of the full SSCI report, and the discourse following publication of the summary should focus on the obligation under international law for accountability and redress, not questions of the effectiveness of the program or whether the CIA had hindered congressional oversight or blindsided DOJ.
- Since US constitutional and statutory law remains open to interpretations incompatible with the prohibition of torture and CIDTP, the US should withdraw all of its reservations to Article 16 of the CAT, and any understandings and declarations which may amount to reservations (including its understanding of Article 1) and fully implement the treaty in national law. The US should enact a federal crime of torture, fully consistent with Article 1 of the CAT, including appropriate penalties. The US should make a declaration under Article 22 of the CAT that it recognizes the competence of the Committee to receive and consider individual communications. The US should ratify the OPCAT and the CPED as soon as possible without any form of reservation.
- On accountability for torture and other violations, impediments such as immunities arising from official statutes, defenses of obedience to superior orders, and any statutory limitation for crimes under international law or grave human rights violations must be removed. The US must assist in investigations or prosecutions undertaken by foreign authorities into torture or other ill-treatment or enforced disappearance, including by supplying all necessary evidence at its disposal and extraditing any alleged perpetrators who it is unable or unwilling to prosecute. The US should declassify all government documents providing authorization or legal clearance or discussion of secret detention, rendition, and enhanced interrogation by the CIA or other agencies.
- Further, the US has not told the Committee of the US's systematic invocation of state secrecy or various forms of immunity under US law to have courts block access to remedy of victims of human rights committed in the RDI programs. The US must amend its laws and practices to fully implement its international law obligations on the right of

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access to remedy for victims of human rights violations. Section 7.2 of the MCA is an obstacle for current and former detainees seeking remedy for various human rights violations they have allegedly endured at the hands of US personnel. The US should amend or repeal Section 7 of the MCA, as well as Sections 5, 6 and 8, and Section 1004 of the DTA 2005. The US must also ensure that all deaths in custody are promptly and impartially investigated, and that there is full accountability and remedy for any wrongdoing found. The US should ensure that the Army Field Manual contains a single set of interrogation rules applicable to all detainees and consistent with its international obligations.

- [*Specific cases and stories of detainees are provided throughout the report.*]
- The second half of our submission takes up other issues of concern, including the widespread use of isolation in maximum security prison units, the use of electro-shock weapons, the death penalty, the use of LWOP against people who were under 18 years old at the time of the crime, the indefinite detention without charge or criminal trial at GTMO, and resort to military commission trials there.

Avon Global Center for Women and Justice at Cornell Law School; American Civil Liberties Union; Equality Now; Global Gender Justice Clinic at Cornell Law School; Military Rape Crisis Center; Service Women's Action Network (joint submission)

- Sexual violence and rape in the US military is perpetrated at alarming rates and violates service members' right to be free from torture and CIDT. Although this is a widespread problem, DOD has been slow to respond. By failing to adequately prevent and address incidents of sexual violence in the US military, DOD fosters a culture of impunity and violates Article 2 of the CAT. It is very problematic to provide commanders in the chain of command with the authority to make key decisions about investigating, prosecuting and punishing sexual violence. Some survivors experience retaliation when they report sexual violence to their commanders. Further, survivors do not have access to federal courts to seek redress. The US then often discriminates against these victims a second time, by denying them disability compensation after they are discharged for mental health conditions that arise from the sexual violence. The US should provide equal access to disability compensation for those veterans who are disabled based on military sexual violence; remove from command the decision of whether to investigate, prosecute, and punish alleged perpetrators; and provide survivors with access to US federal courts.

Berkeley City Council

- We aim to provide information about local compliance with the CAT in Berkeley, California. [*Topics covered: death penalty; reducing sexual violence in detention centers; ensuring that women in detention centers are treated in conformity with international standards; the conditions of detention of children; the sentencing of LWOP for juveniles; the use of electroshock devices; prolonged isolation and other conditions in "super-max" prisons; corporal punishment in schools; domestic violence, rape, and sexual assault; police brutality, use of excessive force, and ill-treatment; racial profiling; counter-terrorism measures.*] [*No questions raised or recommendations made.*]

Black Women's Blueprint (endorsed by several organizations)

- Rape in the US is a systemic crisis, and sexual misconduct by police officers is the second most prevalent form of police crimes. Black women in the US face a particular form of rape-based torture that has its origins in American slavery and the state apparatuses that evolved to protect the interests of the economic elites, white men, and public officials. We call on the DOJ to open an independent federal investigation into incidents of police rape of black women nationally and the Daniel Holtzclaw cases specifically. [*See p. 4-5 of the report for details.*] The US should also allocate resources to train police officers and other public officials and to collect statistical data.

Campaign for Alternatives to Isolated Confinement

- The conditions of solitary confinement are inhumane and violate the US obligations under the CAT. Those subjected to solitary confinement are disproportionately people of color, and people are most often subjected to solitary for non-violent conduct. Prisons, and in turn solitary confinement units, have become de facto mental health centers because appropriate treatment facilities are not available. Solitary should not be used for the "protection" of persons such as transgender prisoners or children in adult prisons. The processes resulting in solitary confinement are often arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. The US should provide comprehensive data on the people in solitary confinement in US prisons, jails, and juvenile detention facilities disaggregated by: age, sex, gender identity, medical and mental health status, pregnancy status, race and ethnicity, length of sentence to solitary, duration of time spent in solitary, and nature of the infraction for which the person was placed in solitary.

Center for Constitutional Rights

- We express concerns about the ongoing arbitrary and indefinite detention of GTMO detainees. Any preventative detention regime requires a mechanism to review the need for continued detention on an ongoing basis, but the judicial process enabling detainees to argue for their release has been rendered utterly ineffective by decisions of the lower courts, and the Periodic Review Board process has only managed to hold hearings for nine of the 70 detainees not already approved for release. The small group of detainees recommended by the task force for prosecution in 2009-2010 are equally caught in a system of uncertainty and delays. The twenty or so detainees on hunger strike have to undergo humiliating and painful force-feeding as well as "forcible cell extraction" and other conditions that seem intended to break the will of the hunger strikers. The harsh conditions also affect the detainees' interactions with their counsel as well as their ability to make informed decisions about their legal cases. The ongoing indefinite detention and current conditions constitute torture and CIDT in violation of Article 1. [*See p. 3 of Executive Summary for specific recommendations.*] While we welcome recent transfers, we raise concerns about one of our clients, Djamel Ameziane, who was transferred in December 2013 to his home country of Algeria, despite his declared fear that he would be ill-treated there. [*See p. 12 of full report for details*.] Does the US expect or intend, before

the end of this year, to transfer Mohammed Al Hamiri, Ghaleb Al-Bihani, Fahd Ghazy, Tariq Ba Odah, or any other Yemeni detainees currently held at GTMO? [*See p. 14-15 of full report for additional recommended questions.*]

Center for Constitutional Rights and **International Federation for Human Rights (FIDH)** (joint submission)

- The use of the death penalty in California and Louisiana violates US obligations under the CAT. [*Lots of detail about these two states as case studies in the report.*] California and Louisiana violate the principle of non-discrimination in the charging, conviction, and sentencing of persons to death. Through their detention policies and the conditions of detention, both states treat prisoners condemned to death in a manner that is, at minimum, CIDT, and in some cases, constitutes torture. The conditions of confinement include extreme temperatures, lack of access to adequate medical and mental health care, overcrowding, and extended periods of isolation. The death penalty should be abolished, and in the interim, states must take positive steps toward eliminating discriminatory charging and sentencing, and ensuring that those already under a sentence of death are not suffering torture or other CIDT.

Center for Constitutional Rights; Legal Services for Prisoners with Children; and **California Prison Focus** (joint submission)

- We are currently litigating *Ashker et al. v. Governor of California et al.*, a federal class action lawsuit that challenges the constitutionality of prolonged solitary confinement at California's Pelican Bay Security Housing Unit. We represent hundreds of prisoners who have been held in solitary confinement for a decade or more, and who have been placed into indefinite SHU confinement as a result of their validation as so-called gang members or associates. Our clients at the Pelican Bay SHU report that they experience unrelenting and crushing mental anguish as a result of the years they have spent under these conditions, and they fear that they will never be released from the SHU. The US must take steps to address the human rights violations inherent in holding tens of thousands of prisoners in solitary confinement. The Committee should ask the US to describe the measures taken to eliminate (or severely limit) the use of prolonged solitary confinement. The US should provide data regarding all individuals in the US held in solitary in jails, prisons, and other detention facilities, along with data about the duration of their confinement in these conditions. Data should include the use of solitary confinement in pre-trial detention, and the use of Special Administrative Measures. The US must develop standards to ensure that actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one's rights as a prisoner plays no role in the decision to confine a prisoner to solitary confinement.

Center for Constitutional Rights, Human Rights Center (University of California, Berkeley), International Human Rights Law Clinic (University of California, Berkeley, School of Law) (joint submission)

- This report presents empirical data drawn from a 2008 study conducted by the reporting organizations regarding the treatment and effects of detention on former GTMO detainees. The findings include the following: The cumulative effect of indefinite detention and abuse experienced by some GTMO detainees constitutes torture and CIDT in violation of Article 1. Former detainees reported post-release mistreatment that constitutes CIDT or torture in violation of Article 3. Former detainees suffered economic, psychological, physical, and social harm as a result of their detention and ill-treatment at GTMO and thus are entitled to fair and adequate compensation under Article 14.
- The USG should establish a comprehensive reintegration program for former detainees, either on its own or under the auspices of the UN. The USG should establish a fair and adequate procedure to compensate former detainees for torture and other ill-treatment.

Center for Reproductive Rights; Women Enabled International; National Latina Institute for Reproductive Health (joint submission)

- Our concerns focus on three groups of women who face multiple forms of discrimination in the US and are disproportionately subjected to severe physical or mental suffering that amounts to torture or ill-treatment in the exercise of their reproductive rights: (1) poor, rural and immigrant women in the Rio Grande Valley of Texas who are denied reproductive health care; (2) immigrant women in detention who are denied access to reproductive health care and subject to shackling; and (3) women and girls with disabilities who are subject to forced or coerced sterilization. Immigrant women of reproductive age are often denied reproductive health care, through a combination of federal and state policies, which threatens their rights to life, health, and freedom from ill-treatment. [*See p. 2–3 of report for individuals' stories.*] The CAT Committee has affirmed that state policies restricting reproductive rights may rise to the level of ill-treatment. [*See p. 6 for specific recommendations*.] [*The second and third parts of the report repeat information from comments submitted and made during the consultation.*]

Columbia Law School Human Rights Institute

- US extradition policy leaves *non-refoulement* determinations to the sole discretion of the State Department, with no substantive judicial oversight. This practice lacks transparency and independent oversight. The US should describe any plans to revisit or abolish the Rule of Non-Inquiry, in line with other common law countries. The US should also indicate what measures are being taken to guarantee the opportunity to challenge decisions of *refoulement* in the extradition context, and to ensure that *refoulement* determinations are subject to adequate review including judicial oversight.

Columbia Law School Human Rights Institute and **The International Association of Official Human Rights Agencies** (joint submission)

- As the CAT Committee has recognized, compliance with the CAT requires effective federal coordination with, and education of, state and local governments. The US lacks institutionalized government entities tasked to encourage, coordinate, and support human rights education, monitoring, or implementation at the federal, state, and local levels. In

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recent years, the federal government has taken some promising steps to improve federal coordination around treaty reporting and to expand outreach and engagement with state and local governments around human rights. Yet these steps are insufficient, and many state and local officials are still unaware of their obligations with respect to treaty implementation. Resource and staffing constraints at the state and local level further impede the promotion and protection of human rights.

- The US should develop a federal focal point for educating state and local governments about human rights and provide tangible resources and support to encourage broader human rights compliance. A national human rights monitoring mechanism is also needed. The US should also indicate how the federal government, including the federal level Interagency Working Group on Human Rights and the Equality Working Group, coordinate with state and local governments including through education, training, and funding.

Correctional Association of New York

- The Correctional Association has had statutory authority since 1846 to visit NY prisons and report its findings and recommendations to the legislature, other state policymakers, and the public. New York State is an example of the need for fundamental reform of the torture of solitary and isolated confinement at the federal, state, and local levels in the US. The Attica and Clinton correctional facilities are stark examples of the extreme lengths of time that large numbers of people spend in solitary confinement. Moreover, the imposition of solitary and isolated confinement is carried out in a racially discriminatory manner. The US should provide comprehensive data on the use of isolated confinement in all federal, state, and local prisons, jails, and detention facilities; provide information on measures currently taken to address the use of solitary confinement in such facilities; and investigate and take remedial action to address the abuse of solitary confinement in state prisons like Attica and Clinton in New York State.

Death Penalty Focus

- International law and practice point out that a prolonged death row detention adds emotional, physical, and psychological torture to the conviction, thus constituting cruel and unusual punishment. As a result, the rejection of prolonged death row detention is becoming customary international law. California's death penalty system is grossly dysfunctional and plagued with excessive delay in the appointment of counsel for direct appeals and habeas corpus petitions, as well as a severe backlog in the review of appeals and habeas petitions before the California Supreme Court. Of the 748 inmates currently on California's death row, more than 40% have been there longer than 19 years. Such lengthy and undue delays are resulting in conditions of torture for hundreds of individuals incarcerated under a sentence of death in the US.

Denver Homeless Out Loud

- Denver's Unauthorized Camping Ordinance makes it a crime for any person to shelter him- or herself from the elements while residing on any public or private property,

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without appropriate permission. This ordinance empowers the Denver Police Department to intervene in a homeless person's survival act of sleeping and to impose criminal sanctions which may constitute CIDT under the CAT. We completed a survey report with the homeless community in Denver six months after the passage of this ordinance, and we found that most respondents had not been able to access dependable indoor shelter. The CAT Committee should issue strong recommendations for remedial actions on the criminalization of homelessness.

Domestic Violence Legal and Appellate Project et al. (joint submission)

- The same acts of gender-based violence that are easily recognized as torture during war, do not have the same cultural recognition attached when these acts are committed in intimate partner relationships or in acquaintance or stranger assault. The Committee should aid the US in reframing how gender-based violence is viewed. For example, due to state action, abused mothers frequently lose custody of their children to the abusive parent which places the children at risk. Women also experience spousal rape, and bias against such victims is pervasive, making it difficult for survivors to access remedies. The US should ensure that victims of gender-based violence are treated respectfully and have adequate resources to care for their basic needs and their children. The US should also hold accountable those who commit gender-based violence and educate the public.

The Family of Israel "Reefa" Hernandez Llach, Dream Defenders, and Community Justice Project of Florida Legal Services (joint submission, also endorsed by the Americas Community Center and Justice for Reefa) [*See also below: Miami Beach Fraternal Order of Police Williams Nichols Lodge #8 submission, responding to the issue raised in this submission*]

- This report addresses the killing of Israel "Reefa" Hernandez Llach, an 18-year-old artist and asylee, at the hands of the Miami Beach Police Department. It details the indignities suffered by his family, friends, and witnesses following his killing, and the lack of accountability for local, state, and federal government agencies for this and numerous analogous incidents. Israel was targeted for the minor offense of a graffiti violation, yet he was intentionally killed by a police officer's unwarranted use of a Taser, which amounts to torture under Article 1 of the CAT. Public officials have shown a clear reluctance to pursue justice for Israel and his family, and a complete lack of action in the prosecution of the officer responsible for his death. In this and similar incidents, the disproportionate impact of excessive force and police brutality on communities of color and immigrant communities in the US is particularly troubling. Members of these marginalized groups also face additional obstacles when seeking redress through the US court system.

The Family of Michael Brown; HandsUp United; Organization for Black Struggle; and **Missourians Organizing for Reform and Empowerment** (joint submission)

- The killing of Michael Brown and the excessive use of force by police officers on peaceful protesters in the weeks following Brown's killings both represent violations of the CAT. A larger probe into the policies and practices of North St. Louis County police

departments and indeed, nationwide, is required to begin addressing discriminatory policing problems. In addition, more concrete steps beyond investigations need to be taken to ensure that law enforcement is held accountable for racial profiling and excessive use of force. Not only do officers need to be prosecuted, but significant reform including more intensive training on racial bias, reporting and monitoring must be implemented to prevent rights abuses like the tragic killing of Michael Brown. Further, Missouri Governor Jay Nixon has not yet called for a state investigation into police violence on the protestors in the wake of Brown's killing, which amounts to state acquiescence in police misconduct and sets a terrifying example of how an excessively militarized police force can commit abuses on individuals with impunity. The militarized response in Ferguson is part of widespread militarization of local police forces across the US, permitted, if not encouraged, by the federal government. What steps has the US taken, or does it plan to take, to:
    - Ensure redress and rehabilitation under Article 14 for Michael Brown and other victims of torture or CIDT during the protests following Brown's murder?
    - Ensure through education and training that similar acts toward racial minorities are not perpetrated by law enforcement in the future, as required by Article 10?
    - Review the constitutionality of statutes across the country regarding the use of force by law enforcement personnel and adopt strict guidelines regarding proportionate use of force?
    - Ensure that military grade weaponry and equipment are not transferred to local police departments?
- [*See p. 9-10 of report for recommendations, both specific to Ferguson and national.*]

The Franklin Law Group, P.C.

- [*Similar information provided at consultation.*] African-American children are at disproportionate risk in foster care to the use of psychotropic medications. The US should require HHS and state and local governments to collect data on the use of psychotropic medications disaggregated by race, ethnicity, age, and gender for children in foster care.

Global Initiative to End All Corporal Punishment of Children

- Children, like adults, have a fundamental right not to be subjected to corporal punishment. However, corporal punishment of children is lawful in the home throughout the US, and it is not universally banned in alternative care settings, day care, schools, or penal institutions. The Committee should express concern at the continued legality of corporal punishment of children in the home and schools and recommend the enactment of legislation at the federal level to prohibit corporal punishment in homes, schools, and other settings, including the passage of the Ending Corporal Punishment in Schools Bill as a matter of priority.

The Human Dignity Council

- This report focuses on "organized stalking" as a human rights violation whose victims are political activists and dissidents. The government is conducting illegal surveillance and

harassment of political, civil, and human rights activists under the guise of the war on terror.

Human Rights Campaign

- LGBTI people are particularly vulnerable to abuse when they enter into institutionalized settings, including immigration detention centers, as recognized by the UN Special Rapporteur on Torture. PREA is a significant step forward, but without consistent, full implementation LGBTI detainees and prisoners will continue to lack adequate protections.
- In September 2013, DHS issued a memo reviewing its use of segregation for ICE detainees. The memo states that "administrative segregation is "non-punitive" and "should only occur when necessary." However, studies have shown that administrative segregation can have lasting emotional and psychological harm on a detainee. This presents an untenable dilemma for many transgender detainees: whether to speak out about a reasonable fear to one's safety and risk being segregated, which, if placed there for too long, can potentially cause lasting emotional and psychological harm.
- The US must fully implement PREA. The real problem is the frustratingly slow pace of policy changes that will help to prevent, and thereby alleviate, the need for redress in the aftermath of a sexual assault, and the lack of education of the unique issues that LGBTI detainees face. Placing a detainee in a housing facility that is based on gender identity should be the primary goal, if that is requested by a detainee. DHS should also develop a consistent policy for the use of alternatives to detention as pertaining to transgender detainees. DHS should limit the use of administrative segregation to situations where safety is in jeopardy and there are no alternatives to detention available.
- Congress should remove the one-year deadline for asylum because it is arbitrary. Many individuals are unaware of this deadline, and the consequences are particularly acute for LGBTI individuals, who often do not know that persecution for being LGBTI can sometimes on its own be a sufficient basis to apply for asylum.

Human Rights Watch

- National Security: The Committee should urge the US to either release GTMO detainees or prosecute them in courts that meet international fair trial standards, not military commissions. The US should give GTMO detainees and their counsel access to all evidence used to justify their detention. The US should give UN special procedures and impartial monitors unhindered access to GTMO. The US should ensure that it is not force-feeding GTMO detainees who are undertaking voluntary hunger strikes and who are competent to refuse medical treatment. The US should create an independent nonpartisan commission to investigate the mistreatment of detainees in US custody; that commission should have full subpoena power, be able to compel the production of evidence, and be empowered to recommend the appointment of a special prosecutor. The US should ensure mechanisms to obtain full redress, compensation, and rehabilitation are accessible to all victims of acts of torture or ill-treatment perpetrated by government officials. The US should not rely on diplomatic assurances for detainee transfers, and should not transfer any detainees to a home or third country until they have had an

opportunity to raise their concerns before an independent arbiter. The US should ensure that decisions to undertake terrorism-related assessments and investigations are not made on the basis of religious behavior, political opinion, or other activity protected by the rights to freedom of expression, religion, and association.

- Criminal Justice: The US should end the isolation of youth and persons with intellectual or psychosocial disabilities. All federal agencies that operate or contract for confinement facilities should be required to prohibit prolonged and indefinite isolation, and to institute meaningful procedures for review and scrutiny of any decision to isolate a person for more than a two-week period. The US should abolish the death penalty and, in the interim, establish a moratorium on carrying out the death sentence.
- Sexual Assault in Confinement: The Committee should urge the US to not weaken the enforcement provisions of PREA. The US should repeal the Prison Litigation Reform Act, or at a minimum remove the requirement to show "physical injury" as a prerequisite to filing a lawsuit about mistreatment in confinement. The US should mandate the application of PREA regulations to all forms of federal and state custody, including all contract facilities, short-term holding facilities, and transport.
- Policing: The US and its constituent states should establish independent oversight bodies that are empowered to review sexual assault investigations for promptness, thoroughness, and impartiality. Survivors of sexual assault should be allowed to have an advocate present, without exception, during all police interviews. The US and its constituent states should act to eliminate rape kit backlogs. The US and its constituent states should improve oversight and accountability mechanisms related to claims of excessive use of force by police. The US should improve data collection efforts on the use of force, including shooting deaths, by law enforcement officers.
- Immigration Enforcement Abuses: The US should end its use of expedited removal for border crossers who are likely to have international protection concerns. The US should ensure protection under the CAT by considering providing appointed counsel to indigent people who are faced with removal to their countries of origin in cases where they claim a fear of persecution or torture upon return.

Idriss Stelley Foundation and **Poor Magazine** (joint submission)

- We raise concerns about how people with disabilities are particularly vulnerable to police violence. National efforts to prevent police brutality have been insufficient, and most interventions only occur after there is an incident that receives public attention. There should be a national accounting of cases of police violence, including killings, and such statistics should include the disability status of the victim. Independent review boards should be created to monitor police protocols and responses to people with disabilities.

Immigrant Defense Project

- The convergence of criminal and immigration law has radically expanded the grounds for deportation and created significant barriers to relief for immigrants and refugees. Over the last several years, there has also been a dramatic increase in the aggressive use of local police to enforce a broken immigration system. We identify four major violations of the CAT: (1) racial profiling; (2) prolonged detention because of ICE detainers; (3) lack

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of access to rehabilitative or diversion programs; and (4) deportation due to the narrow definition of "torture" under US law. Among other recommendations, the US should end disproportionate double punishment by changing the definition of "conviction" under immigration law to comport with the definition of "conviction" under state law. In addition, what measures has USG taken to clarify the "specific intent" requirement for torture and ensure that individuals who have a real risk of torture are not being expelled to countries where they will be subjected to torture? Is the USG considering further reform of its *non-refoulement* procedures to bring them into conformity with the CAT?

International Women's Human Rights Clinic, City University of New York Law School et al. (joint submission)

- In the US there is no constitutional provision or national law prohibiting states from subjecting children to the adult criminal justice system. The majority of children tried in the adult criminal justice system are charged with low-level, non-violent offenses. In addition to the human rights violations inherent in trying and imposing criminal punishments on children, once in the adult system, children in adult jails and prisons face disproportionately high rates of physical and sexual abuse and solitary confinement. Children in adult facilities are much more likely to commit suicide than youth in juvenile facilities. The systematic imposition of adult criminal punishment and detention of children in adult jails and prisons in the US is a grave violation of Articles 2, 10, 11, 12, 13, and 16 of the CAT and a clear violation of minimum international standards of juvenile justice outlined in the Beijing Rules. The US should describe alternative measures being taken to ensure that institutionalization of children is a last resort and that children in conflict with the law receive proper social services from specialized professionals as well as all additional rehabilitation services necessary for recovery. In addition, the US should discuss how the delay in audits will have an effect on states' compliance with PREA, and what incentive states would have to comply with PREA if there were no financial penalties. The US should also reauthorize and strengthen the JJDPA [*see p. 9 of report for details*].

James G. Connell, III (representative of Ammar al Baluchi, a prisoner in GTMO)

- The US seeks to execute six men at GTMO before they can reveal the truth of their torture. Further, the US threatens criminal liability for any doctor, attorney, or other professional who reveals information regarding ill-treatment to anyone outside the Executive Branch. The US policy of classifying all information regarding ill-treatment blocks GTMO prisoners from pursuing any remedy for ill-treatment. For example, the US has prohibited "high-value" GTMO prisoners from communicating with the governments of their states of origin, on the basis that the prisoners might reveal classified information regarding ill-treatment. The US also will not allow counsel for some prisoners to provide answers to questions from international NGOs regarding the conditions of confinement and methods of interrogation during secret detention. US policies also prevent attorneys from collaborating to address the issue of ill-treatment by prohibiting defendants' attorneys in military commissions from providing information about ill-treatment to their counterparts in civilian courts.

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The John Marshall Law School International Human Rights Clinic and **National Immigrant Justice Center, Heartland Alliance** (joint submission)

- This report addresses the mistreatment and abuse that adult immigrant detainees suffer in U.S. detention facilities. It specifically addresses the widespread and deplorable conditions of detention, the use of solitary confinement, and the serious problem of sexual violence in detention, and how these conditions deter asylum seekers from pursuing legal protections in the United States. Included in this report are examples of current practices gathered from detention facilities around the US housing ICE immigrant detainees. The United States' failure to protect the rights of immigrant detainees represents a violation of the CAT Articles 1, 2, 3, 7, 10, 13, 14, 16, as well as United States' obligations under other international and regional human rights instruments and laws. The Committee should urge the US to: ensure detention center conditions are humane; expand alternatives to detention; implement robust regulations to prevent sexual assault in immigration detention; ensure access to counsel for all detainees; and ensure that all detainees have meaningful opportunities to express fear of return and seek release from detention.

Just Detention International

- Sexual abuse remains rampant and poorly handled in many US detention facilities. The perpetrators of this abuse are at least as likely to be corrections staff as other inmates. The adoption of the PREA standards is a significant step toward addressing this abuse. However, six states have refused to adopt the PREA standards and other federal agencies operating detention facilities (HHS, DOD, DOI) have failed to issue their own PREA standards. In the meantime, widespread sexual harassment and abuse of detainees continue to plague facilities run by each of these agencies. We recommend that: DOJ should require every governor to confirm that their state has fully implemented the PREA standards and should consider increasing penalties for non-compliant states; DHS should ensure that all immigration detention facilities are in compliance with PREA; DOD, DOI, and HHS should propose and publish PREA regulations for all of their facilities. The US should ratify OPCAT to provide independent oversight of US detention facilities.

Malcolm X Center for Self-Determination (submitted jointly with the American Friends Service Committee Prison Watch Project and the National Jericho Movement to Free All U.S. Political Prisoners)

- The US continues to criminalize, imprison, and isolate COINTELPRO/Civil Rights Era racial justice activists and human rights defenders. The imprisonment of these indigent, aged, frail, and infirmed human rights advocates reflects continued systemic racial discrimination and suppression of dissent. Although some political prisoners have been exonerated, after serving years for crimes they did not commit, the majority still remain behind bars. They are subject to cruel, inhumane, and degrading conditions, including indefinite prolonged isolation. They are given perfunctory parole hearings resulting in

routine denial of statutory and/or compassionate release, despite exemplary prison records.

- In 2006 and 2007, the BOP secretly created the Communications Management Unit (CMU), a prison unit designed to segregate certain prisoners from the rest of the BOP population. Many prisoners are sent to these isolation units for their constitutionally protected religious beliefs, unpopular political views, or in retaliation for challenging poor treatment or other rights violations in the federal prison system, among them are the COINTELPRO/Civil Rights Era political activists. The HRC has specified that "prolonged solitary confinement" is prohibited as torture under the CAT.

Medical Whistleblower Advocacy Network

- [*Similar information to comments provided at consultation.*] There is a lack of transparency or accountability for mental health cases involving wards of the court. Most states have done little to monitor the professional guardianship industry for wards of the court, resulting in abuse and neglect. Wards of the court are forced to take medications that are "off-label," which is tantamount to human experimentation. The US should improve supervision of the state courts' guardianship system, and should take steps to curtail the "off-label" use of psychiatric medications.

Miami Beach Fraternal Order of Police William Nichols Lodge #8

- [*Note that this submission is in response to the issue raised in the submission by the Family of Israel "Reefa" Hernandez Llach et al.*] Lodge #8 represents Miami Beach police officers including Officer (b)(6), (b)(7)c Officer (b)(6), (b)(7)c lawfully deployed a Taser when Mr. Israel "Reefa" Hernandez ran from the police after committing a crime. Mr. Hernandez's death is a tragic event, but there is no doubt that it was an unintended consequence. This case is still being thoroughly investigated. We do know that Officer (b)(6), (b)(7)(c) did not use any excessive force or break any laws or rules or regulations of the police department while apprehending Mr. Hernandez. This is not a case of police torture but rather a case for medicine and science to review and debate Taser technology.

Midwest Coalition for Human Rights and **The Legal Clinic of the University of Iowa College of Law** (joint submission)

- We raise concerns about issues in the Midwest including: the lack of appropriate punishment or accountability for law enforcement officers who commit torture; the use of prolonged solitary confinement of inmates leading to severe depression and psychosis; sexual abuse and denial of adequate medical care for detained immigrants; lack of accountability and redress for torture by Chicago police; routine and unnecessary use of electroshock devices by law enforcement officers on unarmed and even unresisting subjects; and LWOP for juvenile offenders.

Mothers Against Torture

DHS-011-0000001-0000505

- [*This submission is a collection of letters written by the mothers of Chicago police torture victims, accompanied by photographs and some primary documents and news articles about the cases.*]

National Center for Lesbian Rights

- NCLR is leading a national campaign to end conversion therapy, as a dangerous and discredited practice of attempting to change a person's sexual orientation or gender identity. Every state but two in the US permits parents or legal guardians to engage mental health professionals—licensed and authorized to practice by the state—to attempt to change their child's sexual orientation or gender identity. The nation's leading medical and mental health organizations, including the American Psychological Association, have uniformly found that attempts to change a person's sexual orientation or gender identity lack any scientific basis and present significant risks of physical and mental harm.
- The UN CAT Committee has not made any prior recommendations related to the continuing practice of conversion therapy in the United States. Yet this practice constitutes CIDT under Article 16, causing severe mental harm that can cause life-long mental health issues and lead to suicidality. The U.S. should take steps to end conversion therapy, especially with respect to LGBT youth.

National Conference of Black Lawyers and **Black People Against Police Torture** (joint submission)

- From 1972 to well into the 1990s, over one hundred African-American boys and men were tortured by former Chicago Police Commander Jon Burge and detectives under his command. No less than seven independent investigations and numerous courts have concluded that these detectives committed acts of torture. Coerced statements obtained through this torture were used against the victims for unjustified prosecutions, as a result of which, all were found guilty and sentenced to lengthy prison terms or, in several instances, sentenced to death. Yet until very recently, not a single officer had ever been prosecuted for these acts. Many of these victims continue to languish behind bars. Government officials intentionally failed to prosecute these police officers who engaged in racially motivated torture for over two decades, intentionally allowing the statute of limitations to bar the prosecution of more substantive criminal charges. The Chicago torture victims have a right to reparations as well as the restoration of liberty.

National Consortium of Torture Treatment Programs

- Given the critical importance of rehabilitation for survivors of torture, it is vital the US does everything in its power to fully meet its CAT obligations, in particular Article 14. The US is regarded as a leader in its contributions to supporting the rehabilitation of survivors of torture at the hands of foreign governments both within its borders and around the world. However, the funding provided to US torture treatment centers has been stagnant in recent years and has not been sufficient to meet the demand for these rehabilitative services. A substantial increase in funding for torture rehabilitation programs is required to provide the hundreds of thousands of survivors in the US with

DHS-011-0000001-0000506

services that could help them to be healed and to regain productive lives of dignity. The US should also increase its contribution to the UNVFVT from $5.69 million (in 2013) to $8 million annually and use its leverage as a global leader to encourage peer countries to increase their contributions to the fund to maximize its global reach and impact. The US also neglected to include information in its 2013 CAT report about support for torture rehabilitation programming domestically and abroad, even though detailed information had been included in the Initial Report and the 2005 CAT report. In the future, the US should include specific information on the amount of funding allocated to torture rehabilitation programming, as well as examples of how survivors have benefitted. The US should also endeavor to produce an accurate estimate of the number of torture survivors that are currently living in the US, with breakdowns by state. The US should further ensure that identified survivors of torture who enter the US as refugees are resettled in cities where there are torture treatment centers.

National Jericho Movement to Free All Political Prisoners (submitted jointly with the National Coalition for a Truth & Reconciliation Commission; Malcolm X Center for Self-Determination; Sekou Odinga Defense Committee; and Family & Friends of Dr. Mutulu Shakur)

- The US is in violation of its CAT obligations by continuing to indefinitely incarcerate political prisoners who fought against racial violence and repression, most of whom have been imprisoned for more than 40 years. The US has always been plagued by repressive laws, policies, and racial violence inflicted upon Black people. In particular, repression under the FBI's famous and illegal counter-intelligence program (COINTELPRO) resulted in murders, injuries, false arrests, malicious prosecutions, and dozens of political prisoners who languish in prisons throughout the US. Some of these prisoners endure years of solitary confinement, medical neglect, and physical abuse, and have therefore experienced torture and CIDT at the hands of their captors. These political prisoners, who fought against US apartheid, are no different than the late President Nelson Mandela. The USG should review the findings of the Senate Church Committee hearings on the FBI's illegal counter-intelligence program, investigate all instances of torture and CIDT against those considered political prisoners, and establish a Truth & Reconciliation Commission.
- Concerns about political prisoners have been voiced by the HRC and the CERD Committee, but the CAT review has not directly addressed this issue to date.
- [see appendices for information about specific political prisoners discussed in this report]

National Religious Campaign Against Torture

- The continued widespread practice of holding prisoners, disproportionately people of color, in prolonged solitary confinement in US prisons constitutes torture. The US should make data available on the use of solitary confinement in the BOP, all state departments of correction, and all privately contracted facilities. The US should prohibit the use of solitary confinement for adults in excess of 15 days, and abolish it for youth and individuals with mental illness. An independent body should monitor conditions and statistics of those in solitary confinement. The US should also provide reparations for those who have endured the torture of prolonged solitary confinement.

Natives Seeking Justice

- We advocate for access to information regarding the investigation of Natives tortured and/or murdered, including those tortured by agents of US law enforcement. The US does not investigate murders of Natives as appropriately as it does the murder of non-Natives. This creates an atmosphere of impunity and terror. Many Natives are tortured and murdered by US officials and their actors and agents, including confidential informants and corporate agents working for the US. [*See p. 1 of report for specific case study.*]

The New Orleans Office of the Independent Police Monitor (OIPM)

- The OIPM is an independent agency created by popular referendum in 2008 to provide oversight over the New Orleans Police Department (NOPD). One of the main functions of the OIPM is to monitor the quality and timeliness of NOPD's investigations on cases of excessive use of force, in-custody deaths, and alleged misconduct. We recommend that the 2006 investigation conducted by the US Committee on Homeland Security and Governmental Affairs into the emergency response to Hurricane Katrina should be reopened to address officer-involved shootings and the suspension of constitutional rights. [*See p. 5-10 of report for stories of specific officer-involved shootings that took place during Hurricane Katrina.*] We also recommend that the US should adequately fund local police monitoring bodies and the DOJ Civil Rights Division.

OpenTheGovernment.org

- The Obama Administration has allowed the CIA, and to a lesser extent the military, to conceal information about its treatment of terrorism suspects on national security grounds. This policy of official secrecy about torture and cruelty prevents candid reporting to the Committee and has led to direct violations of the CAT. The best hope for dismantling this secrecy is the declassification of the full SSCI report. [*Similar info in report as CAT consultation.*] The resulting CAT violations include, among others, the right to complain and to redress in Articles 13 and 14. [*See p. 6-8 of the report for stories of specific GTMO detainees' medical conditions and treatment.*] The US should (among other recommendations) release other countries from any agreements to conceal the CIA's RDI program, and refrain from future agreements to classify evidence of torture or cruel treatment.

Puente Human Rights Movement

- Arizona has passed the most egregious laws and immigration policies in the US, specifically targeting and criminalizing immigrants as a measure of immigration enforcement through state-sanctioned attrition. Immigrants in detention are vulnerable to human rights abuses by ICE officials and detention staff. While immigration is a civil proceeding, indefinite incarceration in detention centers appears no different from a prison sentence. [*See p. 2-6 of report for individual stories of abuse and torture in immigration centers.*] Why do USCIS and ICE officials believe that solitary confinement is the best alternative for immigrants who are victims of rape or abuse? Why hasn't the

DHS-011-0000001-0000508

federal government taken action to stop the sexual harassment, rape, and torture of women and LGBT migrants in detention?

REDRESS; International Commission of Jurists; and **World Organization Against Torture (OMCT)** (joint submission)

- We focus on the silencing of "high-value detainees" held at GTMO, who are victims of torture and other ill-treatment, through detention, isolation, and classification of information as a result of US counter-terrorism related policies – a deliberate system to ensure that no information about torture and other ill-treatment committed against these individuals will be released, to secure impunity for perpetrators and to ensure that no redress is achieved. The legal regime in place operates to deny GTMO detainees, including individuals facing capital charges in military commission trials, the rights guaranteed under CAT to complain about and seek redress for torture and other ill-treatment, including the multiple violations arising in the course of enforced disappearance. It also prevents their legal representatives from providing an effective defense, and enhances the risk that statements adduced as a result of torture or other ill-treatment will be introduced as evidence in proceedings. In addition, this legal regime obstructs investigations into torture and other ill-treatment in third countries. To illustrate the practical impact of these issues, we provide details on the case of Mustafa al-Hawsawi, a Saudi national facing trial on capital charges before the military commission. [*See p. 14-17 of the report for details of al-Hawsawi's case.*] The RDI program and subsequent detention of individuals at GTMO involves clear and serious violations of the CAT, many of which are ongoing. Ongoing violations include: violations of Articles 1, 2, 5, 6, 7, 9, 12, 13, 14, 15, and 16. [*See p. 18-25 of report for details of legal analysis – definitely worth looking at. See p. 26-27 of the report for specific recommendations.*]

Survivors Network of Those Abused by Priests (SNAP) and the **Center for Constitutional Rights** (joint submission)

- The fact of widespread and systematic sexual violence against children and vulnerable adults by Catholic clergy around the world is now incontrovertible and even belatedly acknowledged by the Vatican. In the US, these problems are systemic and driven by the church's structure and its nationwide, indeed global, presence. Despite the consistent revelations over decades and calls from victims and advocates, there has been no response from officials at the federal level. In 2003, SNAP urged DOJ to conduct an investigation on this matter and to date there has been no response. Further, while some survivors in the US have been able to bring civil cases and some direct perpetrators have been prosecuted at local levels, the vast majority have been barred from seeking redress by the statute of limitations. We recommend that the US should: ratify the CRC and CEDAW; ensure the right to redress in accordance with Article 14, in particular victims of childhood sexual violence who are often barred by the statute of limitations; establish a commission or public entity to assess and support victims who have been unable to obtain redress elsewhere; work with the Holy See representatives in the US to implement the CAT Committee's concluding observations and recommendations; and investigate the administrative and institutional practices of the Catholic Church in the US.

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Tetuwan Treaty Council of the Grandmothers

- The US violates CAT by indefinitely incarcerating political prisoners who have fought against racial and political violence and repression. Such incarceration makes it easier for the US to coerce and intimidate Indigenous Peoples into subjugation, for the purpose of obtaining land and mineral rights, which rightfully belong to Indigenous Peoples collectively.

Transformative Justice Law Project of Illinois

- Transgender women are harassed, assaulted, and unlawfully arrested by police officers in the US based on their gender identity. In instances of lawful arrest, transgender women are subjected to assaults, destruction of property, humiliation and degradation. While being assumed to be a sex worker is one of the primary reasons transgender women are stopped by police, police also stop them for pretextual reasons such as supposedly violating vague laws that are infrequently enforced against non-transgender people. States should establish policies that disallow police searches in order to determine a person's gender, and gender should be self-determined by the individual being stopped, searched or arrested. States should have an independent system that monitors reports of police brutality against transgender women in order to promote accountability. States should not permit a single police officer to transport transgender arrestees to booking, without another officer or an advocate present in the car. States should provide comprehensive training to law enforcement officers on transgender issues.

T'ruah: The Rabbinic Call for Human Rights

- For most inmates in solitary confinement, their confinement is not part of their sentence for their crime but punishment for a disciplinary infraction, most often non-violent, while incarcerated. In immigration detention and in jails, solitary confinement can be imposed on persons not yet convicted of a crime. We feel compelled to speak out against this form of torture. When will the UN Special Rapporteur on Torture have access to US detention sites where solitary confinement is used? How will the US use independent monitoring to ensure that prolonged solitary confinement is ended in local, state, federal, and privately contracted facilities, and ensure that pretrial detainees are not held in solitary? What mechanisms will the US put in place to assure training in pro-social nonviolent methods and tools for positive alternatives to isolation? [*Repetitive from NRCAT.*]

University of Texas School of Law Human Rights Clinic

- The US continues to violate its CAT Article 16 obligations by failing to prevent and eradicate the CIDT of inmates in Texas Department of Criminal Justice (TDCJ) prisons as well as other state prisons around the nation. In the past seven years, at least 14 inmates have died as a direct result of extreme heat exposure while incarcerate in TDCJ facilities. The TDCJ population numbers about 151,000 inmates across 109 facilities (as of June 2014) and the vast majority of these facilities have insufficient ventilation and no

DHS-011-0000001-0000510

form of air conditioning in the inmates' housing areas, which causes suffering and death among TDCJ inmates. The US should take effective measures to protect Texas inmates from the heat, and the US should adopt a clear standard on maximum permissible temperatures inside facilities. The DOJ should investigate this issue in Texas.

US Human Rights Network (USHRN)

- [*This report is an executive summary of the shadow report submissions compiled by the USHRN on behalf of member and partner organizations. It is organized thematically. All of the submissions that it discusses have been summarized separately herein.*]

USHRN CAT Homelessness Working Group (report drafted by National Center on Homelessness & Poverty, National Coalition for the Homeless, and Southern Legal Counsel, and endorsed by many other organizations)

- Criminalization of homelessness constitutes CIDT in violation of Article 16 and affects more than 3.5 million people in the US annually. This leads to a climate which permits brutal violent crimes against homeless persons to take place. Such violations are particularly severe for people of color, immigrants, LGBT people, and people with disabilities, who are among the most likely to be rendered homeless, and are often subject to the harshest treatment by private actors and police when that occurs.
- For example, the city of St. Petersburg has developed a comprehensive set of ordinances and practices that criminalize homelessness and demonstrate the cruel, inhuman, and degrading "choices" forced upon homeless people.
- HRC Concluding Observations recognized criminalization of homelessness as CIDT and CERD Committee has called for its abolition. CAT Committee expressed concern on this in its List of Issues. USG has already recognized in the U.S. Interagency Council on Homelessness report in 2012, *Searching Out Solutions*, that it may be a violation of CAT and ICCPR obligations, but we need to see improved treatment of homeless people.
- [see p. 6 of the shadow report for a list of 5 questions for the Committee to ask USG]

We Charge Genocide

- We express concerns about the Chicago Police Department (CPD)'s ongoing and pervasive violations of the CAT committed against young people of color. We have collected testimonies of youth who have experienced and witnessed, among other things, the CPD's persistent surveillance and harassment; abusive and unwarranted searches; use of excessive force, including beatings and killings; and sexual assaults. The CPD's conduct constitutes torture and CIDT and occurs at extraordinary rates, disproportionately against minorities, and with impunity. The CPD has yet to institute sufficient systems for preventing, documenting, reviewing, investigating, and providing redress and compensation for police violence against youth in Chicago. We call on the Committee to request and demand a response from the CPD regarding the steps it will take to end this treatment and to fully compensate the individuals, families, and communities impacted by this violence. We also recommend that the DOJ open a pattern and practice investigation into the CPD's treatment of youth of color and seek the entry

of a consent decree that requires the CPD to document, investigate, and punish acts of torture and CIDT, and implement other necessary reforms.

Women's All Points Bulletin (WAPB) Advisory Board

- In the US, transgender persons are harassed and unlawfully arrested and often humiliated or otherwise mistreated at the hands of local police and correctional staff. Medical and mental health standards used in the treatment of transgender individuals continue to needlessly pathologize and discriminate against the transgender community. The lack of sufficient training and education on the needs of transgender patients violates Article 10 of the CAT. Training should be improved in medical, mental health, and penal settings.

World Organization Against Torture (OMCT) and **Global Justice Center** (joint submission)

- We argue that the US's abortion restrictions on foreign assistance deny safe abortion services to women and girls raped in armed conflict. This US policy arises from the overly narrow administrative interpretation and implementation by DOS and USAID of congressionally-imposed restrictions on foreign aid, in particular the Helms Amendment to the Foreign Assistance Act of 1961. These restrictions also act to limit and censor abortion-related speech abroad. We argue that the denial of safe abortion services to war rape victims results in extended and intensified physical and psychological suffering. We also argue that the US abortion restrictions interfere with other State parties' ability to comply with their CAT obligations, because the US is the largest bilateral donor to rule of law and governance programs, family planning and reproductive health programs, and humanitarian assistance. We call on the Committee to reaffirm that the denial of access to safe abortion services violates the CAT (in particular the rehabilitation provision of Article 14) and to recognize that US abortion restrictions on foreign assistance stand in conflict with the CAT. The USG should issue an executive order to address this matter, accompanied by clear guidance to organizations and foreign governments.

Yamasi People

- The Yamasi are an indigenous people in North America, which the US is occupying. The US government, its States, law enforcement; health, education and welfare agencies; penal and community monitoring institutions; and affiliated corporations systematically rape, assault, torture, kidnap, imprison, enslave, torture, incarcerate and murder Yamasi indefinitely as political prisoners of the occupying US government who do not have human rights. The US uses apartheid "Indian Law" and refuses to investigate, prosecute, or respond to any requests relating to the torture of Yamasi. Why does US not hold its officials accountable for torture and other crimes against Yamasi?

Yvette McShan (sister of Leo McShan)

- Leo McShan has been in Pelican Bay State Prison for 31 years, having been convicted of second-degree murder at the age of sixteen. He has been held in isolation for the majority of these 31 years, although he has been in the general population for the last 6 or 8 years.

He was part of the advocacy of the famous hunger strike in Pelican Bay demanding reforms on the use of solitary confinement, among other issues. Leo McShan has survived a system that wanted to destroy him for being an African-American young man.

DHS-011-0000001-0000513

From: (b)(6), (b)(7)(c)
To:
Subject: FW: CAT Administrative Materials and Q&A/Civil Society updates
Date: Friday, October 31, 2014 5:37:56 PM
Attachments: CAT 2014 Delegation Resource Materials (ALL DEL).docx
Documents for CAT Binder (ALL DEL).zip
CAT Shadow Reports Summaries.docx

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Friday, October 31, 2014 05:36 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
F
Subject: CAT Administrative Materials and Q&A/Civil Society updates

Colleagues –

Attached to this email please find an electronic binder of materials for your CAT delegation. It includes a series of substantive and administrative materials, either in linked form or in an attachment, and a TOC to guide you through the documents.

I'm also reattaching an updated list of summaries of the NGO Shadow Reports received to date. This includes reports received earlier this week, which you may not have seen before.

Below, please find the list of new Q/As we have assembled for your agencies' consideration based on these new shadow reports. You have seen most of these before, but new additions are in red. We defer to you on how best to gather information on these topics, but wanted to flag them because we felt that our current Q/As do not fully address these issues. **However, we strongly recommend that you draft Q/As or points on these topics and circulate to the group, or to particular agencies as appropriate, so we can include cleared responses in the full set of Q/As.**

Finally, we have begun receiving RSVPs for our Civil Society Consultation, to be held in Geneva on Tuesday, November 11. These RSVPs, either formal or informal, have included the mother of (b)(6), (b)(7)(c) nd some individuals from Ferguson, MO; DoD defense counsel for individuals detained at Guantanamo; and individuals formerly held at Guantanamo.

Thanks for all your work this week and please let us know if you have any questions about these attachments.

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Adviser
Office of the Legal Adviser
U.S. Department of State
202(b)(6), (b)(7)(c)

Non-LOW Document

1. PROLONGED MENTAL PAIN AND SUFFERING AND "CUMULATIVE EFFECT" (DOJ): Does the United States believe that a "cumulative effect" can help sustained or recurring mental pain and suffering meet the US understanding with regard to "prolonged mental harm"?
2. FEDERAL FOCAL POINT FOR STATE/LOCALS ON HUMAN RIGHTS (STATE): We realize that the US does not have a human rights ombudsperson or centralized human rights office. But who currently serves as the federal focal point for educating state and local governments about human rights, and do you think that this is effective? (Columbia Law School HR Institute)
3. IACHR PETITIONS (STATE): Why has the U.S. not fully responded to IACHR petitions against U.S. officials on behalf of alleged torture victims?
4. SCOPE OF DOJ REVIEW ON LETHAL INJECTIONS (DOJ): What is the scope of the DOJ review on the death penalty and lethal injections? Will the USG assess whether lethal injections, as practiced in the US, violate the Constitution and your CAT obligations?
5. SOLITARY CONFINEMENT EXERCISED IN RACIAL DISCRIMINATORY MANNER (DOJ): We understand that solitary and isolated confinement is carried out in a racially discriminatory manner. What are you doing to address this issue? (Correctional Association of New York)
6. ACCESS TO COUNSEL FOR DETAINEES (DOJ/DHS): Evidence has shown that one of the best ways to prevent mistreatment of individuals in detention is to provide access to counsel for all detained individuals. Please provide information on steps taking in the US to ensure that all detainees have access to counsel. (We already have some info on this point scattered throughout the Q/As, which can be combined into a new Q/A response.)
7. COMMUNICATION MANAGEMENT UNITS (DOJ): The Bureau of Prisons has created a Communication Management Unit program, which allows for inmates in federal prisons to be severely restricted and monitored in terms of their communications both internally and externally. What procedural guarantees are in place to ensure that inmates held in Communication Management Units are protected from human rights abuses, including torture and CIDTP? How restrictive are these units? Is placement in such a unit used as a punitive measure, and can it be used to selectively target inmates who express unpopular political opinions? [NOTE: This could overlap significantly with our Q/As on solitary confinement—we just need to explain this Unit.]
8. REPRISALS AGAINST PRISONERS FOR AIRING GRIEVANCES (BOP): (American Friends Service Committee Shadow): We understand that in some prisons, detainees who air grievances are subject to reprisals by staff/ prison administration. What is the scope of the problem and what are you doing about it?
9. INCARCERATION OF HUMAN RIGHTS DEFENDERS (DOJ): The U.S. continues to incarcerate

civil rights era activists targeted under the COINTELPRO program. When will these inmates, many of whom are now older and infirm, be released?

10. ALTERNATIVES TO DETENTION (DOJ/DHS): What is the U.S. doing to explore alternatives to detention, in both the penal and immigration context?
11. FAMILY DETENTION (DHS): The U.S. has announced recent plans to open new family detention centers for immigrant detainees. Prolonged detention has been reported to have negative consequences for the health of children, and could further entrench a practice of "presumptive detention" of immigrants seeking asylum. Why is the U.S. continuing to expand such facilities?
12. IG INSPECTIONS OF IMMIGRATION FACILITIES (DHS): There have been reports that the Inspector General at DHS will be curtailing unannounced inspections of detention facilities, despite the fact that conditions are alleged to be unsatisfactory. What is the reason for this, and what will DHS be doing to ensure that CIDTP is prevented in these facilities?
13. RELEASE OF SPECIAL TASK FORCE RECOMMENDATIONS ON TRANSFERS (DOJ): Why haven't you publicly released the Special Task Force Recommendations on Transfers? We understand the document is not classified.
14. MILITARIZATION OF STATE AND LOCAL POLICE (DOD/DOJ): What is the current status of President Obama's review of the federal programs that use equipment transfers and funding to encourage aggressive, militaristic law enforcement by state and local police agencies, including at Ferguson, Missouri in the aftermath of the shooting of Michael Brown? Will there be a moratorium on the 1033 program while the review is conducted?
15. SOLITARY CONFINEMENT STUDY AND REFORM ACT OF 2014 (DOJ): Does the Administration support the Solitary Confinement Study and Reform Act of 2014?

LOW Document

1. STATUS OF (b)(6), (b)(7)(c) (DOD): The U.S. has continued to detain (b)(6), (b)(7)(c) at Guantanamo, even though charges against him were dropped because evidence against him had been obtained through torture. Why has his detention continued, despite this? [NOTE: This overlaps significantly with our Q/A on indefinite detention.]
2. RESETTLEMENT AND REHABILITATION PROGRAM FOR GUANTANAMO DETAINEES (SGC/DOJ/DOD): Is the United States considering creating a long-term resettlement and rehabilitation program for former Guantanamo detainees who have been released, but who continue to suffer economic, psychological, physical and social harm as a result of their detention and ill-treatment at Guantanamo?
3. CLASSIFICATION OF INFORMATION ABOUT GUANTANAMO (DOD): How can the US continue to silence high-value detainees held at Guantanamo, through detention, isolation, and classification of information? Is this a deliberate system to ensure that no information about torture and other ill-treatment committed against these individuals will be released?

Noteworthy Points/Allegations in Shadow Reports (don't necessarily need new Q/As)

1. DOD/ODNI: ACLU raises that EO 13491 "contains a loophole which allows the CIA to operate detention facilities so long as those facilities are used only to hold people on a

short-term transitory basis. There is currently no publicly available directive establishing parameters for such “short-term” and “transitory” detention operations. This creates the possibility of continued CIA overseas detention facilities (“black sites”) in an altered form.”

2. DOD: Center for Constitutional Rights/ Berkley Law Center and Clinic claim that “former [Gtmo] detainees reported post-release mistreatment that constitutes CIDT or torture in violation of Article 3.”
3. DHS: ACLU raises points about our screening process at the border for “credible fear,” and also about treatment of UACs.

(b)(6), (b)(7)(c)
Attorney Adviser
Office of the Legal Adviser // Human Rights and Refugees
U.S. Department of State
202-647-(b)(6), (b)(7)(c)

SBU
This email is UNCLASSIFIED.

Pages 371 through 374 redacted for the following reasons:
- -
(b)(5)
(b)(5)

From:
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: IJ Continuing Jurisdiction where UC Fails to File Asylum
Date: Thursday, July 31, 2014 10:42:15 AM
Attachments: Draft memo IJ adjudication asylum kg edits MH edits.doc

---

(b)(6), (b)(7)(c)

Do you have any additional edits to add to mine?

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732-5406
(b)(6), (b)(7)(c)
Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Thursday, July 31, 2014 9:58 AM
To:
Cc: (b)(6), (b)(7)(c)
Subject: RE: IJ Continuing Jurisdiction where UC Fails to File Asylum

Team:

Can you try to address the two attached comments, please. Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, July 31, 2014 8:46 AM
To:
Cc: (b)(6), (b)(7)(c)

Subject: RE: IJ Continuing Jurisdiction where UC Fails to File Asylum

Thanks. Very nicely done!

From (b)(6), (b)(7)(c)
Sent: Wednesday, July 30, 2014 6:25 PM
To (b)(6), (b)(7)(c)
Cc
Subject: IJ Continuing Jurisdiction where UC Fails to File Asylum

(b)(6), (b)(7)(c)

Thanks to (b)(6), (b)(7)(c) taking the lead on this and to (b)(6), (b)(7)(c) for great additions. I have also edited, and this is a clean version for your review (b)(5)

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: RE: MEDIA QUERY: bond for mothers in Artesia
Date: Tuesday, August 05, 2014 5:03:00 PM

(I should note that I pulled this language from the "Authority to Release Aliens on Bond" white paper from June)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 73(b)(6), (b)(7)(c)
Mobile: (210) 89(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 5:01 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: MEDIA QUERY: bond for mothers in Artesia

Great!

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 04:52 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: MEDIA QUERY: bond for mothers in Artesia

How's this:

(b)(5)

(b)(5)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 4:36 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: MEDIA QUERY: bond for mothers in Artesia

Can you draft a short blurb to flip to the media?

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 04:32 PM Eastern Standard Time
To: Davis, Mike P (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
Subject: RE: MEDIA QUERY: bond for mothers in Artesia

Sounds good.

-----Original Message-----
From: Davis, Mike P
Sent: Tuesday, August 05, 2014 04:31 PM Eastern Standard Time
To (b)(6), (b)(7)(c)
Cc

Subject: RE: MEDIA QUERY: bond for mothers in Artesia

(b)(5)

Mike P. Davis
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732 (b)(6), (b)(7)(c) (O) | 202-904 (b)(6), (b)(7)(c) (M)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 4:29 PM
To: (b)(6), (b)(7)(c) Davis, Mike P
Cc:
Subject: RE: MEDIA QUERY: bond for mothers in Artesia

Adding (b)(6), (b)(7)(c) and Mike.

(b)(6), (b)(7)(c) Mike- To (b)(5) (b)(5) What do you think?

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 04:20 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: MEDIA QUERY: bond for mothers in Artesia

See below - looks like something that should be vetted at the HQ level, no?

From (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 2:16 PM
To (b)(6), (b)(7)(c)
Cc:
Subject: MEDIA QUERY: bond for mothers in Artesia

(b)(6), (b)(7)(c)

We (ICE and DHS OPA) received a query from a Los Angeles and DC reporter who say they obtained information regarding AFRC residents NOT being released even though

immigration judges find their cases fit the criteria for credible fear claims.
Reporters claim they have government documents that describe "a blanket policy" of opposing bond, because low or no bond would lead to "more mass migration" and more "human trafficking".

Reporters question the comment I disseminated earlier that read that each case is reviewed on a case by case basis.

I'm looking to draft a Statement for review/approval by ICE OPLA, ICE ERO, ICE OPA and DHS so that I may respond to media queries.

If you'd like, I can call you directly to discuss.
What is your phone number?

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 2:04 PM
To (b)(6), (b)(7)(c)
Cc:
Subject: FW: bond for mothers in Artesia

(b)(6), (b)(7)(c) see email below. This message was sent to the main ICE PIO email…and the DHS PIO email.

(b)(6), (b)(7)(c)
Western Regional Communications Director/Spokesperson
U.S. Immigration and Customs Enforcement (ICE)
Office: 949-360(b)(6), (b)(7)(c)
Cell: 949-337(b)(6), (b)(7)(c)
www.ice.gov

From: (b)(6), (b)(7)(c)
Sent: Tuesday, August 05, 2014 1:02 PM
To (b)(6), (b)(7)(c)
Subject: bond for mothers in Artesia

I am contacting both ICE and DHS media thru this email

I have information that corroborates that mothers with small children detained in Artesia New Mexico, who pass their credible fear interviews and go in front of a judge, are not being released on bond no matter what their individual case.
I have documents from the government that indicate that there is a blanket policy of opposing bond because low or not bond, which has been the practice till now on this cases, leads to "more mass migration" and more "human trafficking".

How does this fit with the whole idea of taking it "case by case" and making individualized determinations?

I need a response before 3 p.m. pacific time

Thanks

--

(b)(6), (b)(7)(c)

IMPREMEDIA/La Opinión

Senior Political and Immigration Writer

(213) 369 (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: RE: New Tasking for FAMU
Date: Monday, August 18, 2014 4:43:39 PM

Thanks.

From: (b)(6), (b)(7)(c)
Sent: Monday, August 18, 2014 4:40 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: New Tasking for FAMU

(b)(6), (b)(7)(c)

I made minor edits below (additions show up in blue but deletions weren't tracked).

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 18, 2014 4:26 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: New Tasking for FAMU

(b)(6), (b)(7)(c) Can you briefly review my answers which appear in red below to questions 1, 2, and 3?

Thanks.

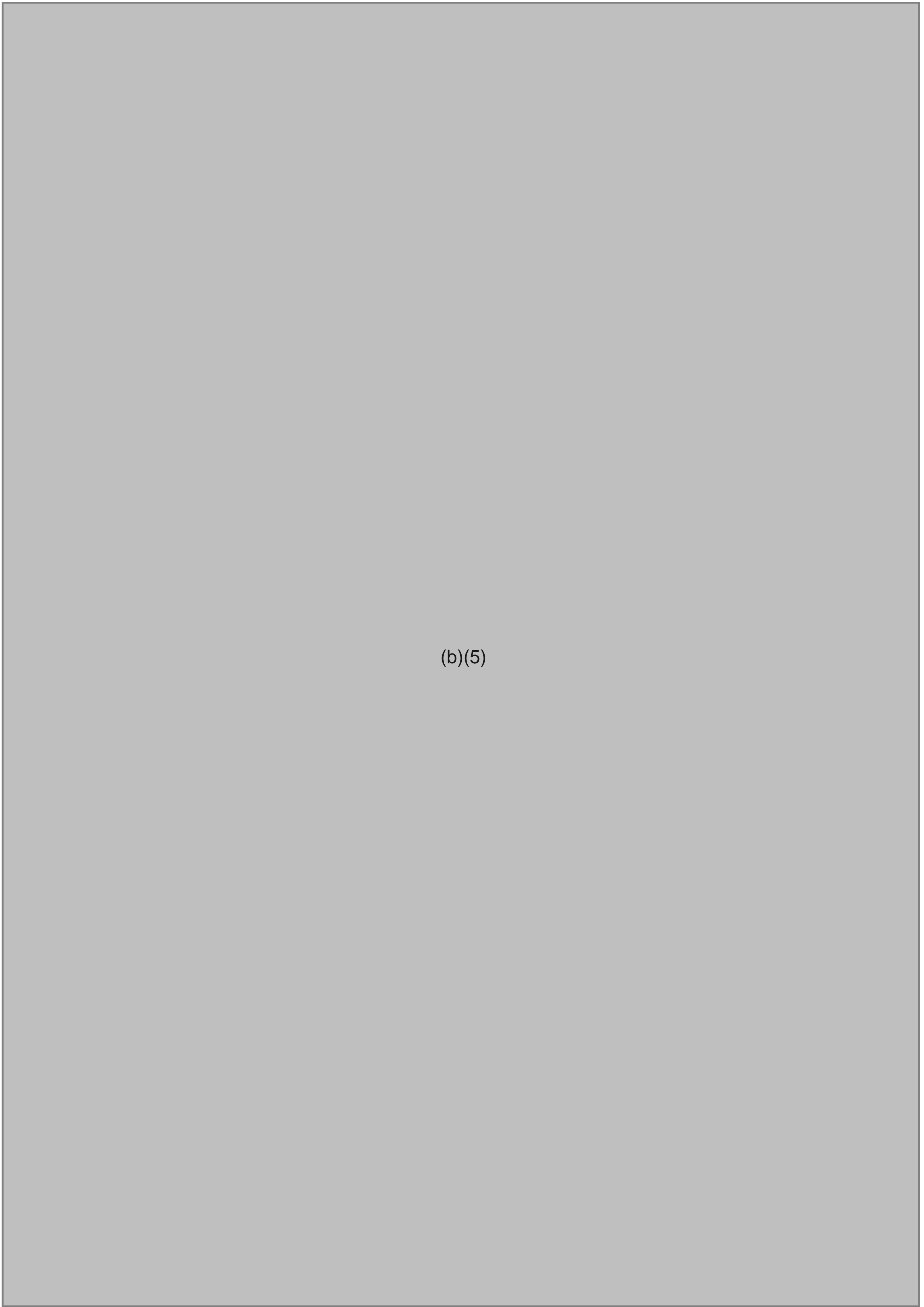
From: (b)(6), (b)(7)(c)
Sent: Monday, August 18, 2014 1:08 PM
To: (b)(6), (b)(7)(c) Stolley, Jim; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Cc: Davis, Mike P

Subject: RE: New Tasking for FAMU

Correction on a number.

FLO has the following tasking as get backs:

(b)(5)


(b)(5)

(b)(5)

Questions?

Let me know,

(b)(6), (b)(7)(c)
Special Counsel to Director of Field Legal Operations
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement Potomac Center North
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Desk: (202) 732 (b)(6), (b)(7)(c)
BB: (202) 300 (b)(6), (b)(7)(c)

NOTE NEW EMAIL ADDRESS (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To:
Subject: RE: Remind me
Date: Tuesday, September 09, 2014 5:42:49 PM

Thanks!

(b)(7)e

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732 (b)(6), (b)(7)(c)
520-249 (cell)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 09, 2014 9:33:43 PM
To: (b)(6), (b)(7)(c)
Subject: RE: Remind me

(b)(5)

Sorry for the delayed response, I was at OIL for a presentation by (b)(6), (b)(7)(c) and am catching up on my emails now.

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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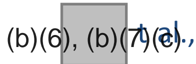
From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 09, 2014 2:54 PM
To (b)(6), (b)(7)(c)
Subject: FW: Remind me

Can you look at the this case and give me you thoughts.

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 09, 2014 02:52 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Subject: Remind me

Outside the cd LA but in the 9th Circuit, is a 235 arriving alien, does Rodriguez apply after 180 days?

From: (b)(6), (b)(7)(c)
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Rodriguez: questions re draft brief (time-sensitive)
Date: Wednesday, June 25, 2014 4:06:29 PM
Attachments: Response to OSG Question 3.docx
17-6-14 Rodriguez Appeal Brief DRAFT CIRCULATION (DHS Consol edits 6 24) - 6 25 dal.docx
Importance: High


(b)(6), (b)(7)(c) et al.,

Please see two attachments. One is the draft response to Q3. Although OSG directed it to both OIL and DHS, I suspect it is really only intended for OIL, (b)(5) (b)(5) (b)(5) Thus, the first half of the 1-page answer simply repeats the prior DHS comments most on point. The second part of the response is new. (b)(5) (b)(5)

The second is a redline of the draft brief. It is the version that (b)(6), (b)(7)(c) forwarded last evening. Then I added a few further edits to Argument sections B.2 and B.3 (a & b), pp 48-57, which are sections that address *Nadarajah* and INA 235(b).

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534- (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 25, 2014 1:28 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Rodriguez: questions re draft brief (time-sensitive)

(b)(6), (b)(7)(c)

Yes, that's still our position. Could you please pull out the salient points of our legal argument into a short succinct paragraph as you suggest, and then we can just attach the memo.

(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Wednesday, June 25, 2014 12:50 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: Rodriguez: questions re draft brief (time-sensitive)

Will do.

(b)(6), (b)(7)(c) et al.,

(b)(5)

Relatedly, (b)(6), (b)(7)(c) called and will look for passages in the brief raising this issue, so we can add comments or edits as appropriate.

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534 (b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Wednesday, June 25, 2014 12:08 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Rodriguez: questions re draft brief (time-sensitive)
Importance: High

(b)(6), (b)(7)(c) (in (b)(6), (b)(7)(c) absence) (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c)

Can you draft a response to OSG third question below?

(b)(6), (b)(7)(c) please work with (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) available to assist as well) and flip me a consolidated ILPD response by 4 pm today. Thanks.

(b)(6), (b)(7)(c)

From: Davis, Mike P
Sent: Wednesday, June 25, 2014 10:44 AM
To (b)(6), (b)(7)(c)
Cc
Subject: FW: Rodriguez: questions re draft brief (time-sensitive)
Importance: High

Can you guys please coordinate in drafting replies to these questions, as follows:

1. (b)(6), (b)(7)(c) Please touch base with FLO on this.
3. (b)(6), (b)(7)(c) Could ILPD please take look at this? I'd like us to push back on Nadarajah if possible.
(b)(6), (b)(7)(c) – Could you please handle this one? (b)(5)

(b)(5)

Mike P. Davis
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732-(b)(6), (b)(7)(c) (O) | 202-904-(b)(6), (b)(7)(c) (M)

From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 25, 2014 9:37 AM
To: Davis, Mike P; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: Rodriguez: questions re draft brief (time-sensitive)
Importance: High

Questions below from OSG on the Rodriguez brief. Please send me your answers as quickly as possible and I will send a consolidated DHS response back to (b)(6), (b)(7)(c) we hinted at a response to question #3 at page 47 of the draft I sent back yesterday, but I think OSG is looking for a more fulsome explanation – (b)(5)

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant General Counsel for Litigation

U.S. Department of Homeland Security
202.447 (b)(6), (b)(7)(c) (office)
202.573 (mobile)
202.282 (fax)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, June 25, 2014 9:26 AM
To (b)(6), (b)(7)(c)
Subject: Rodriguez: questions re draft brief (time-sensitive)

All:

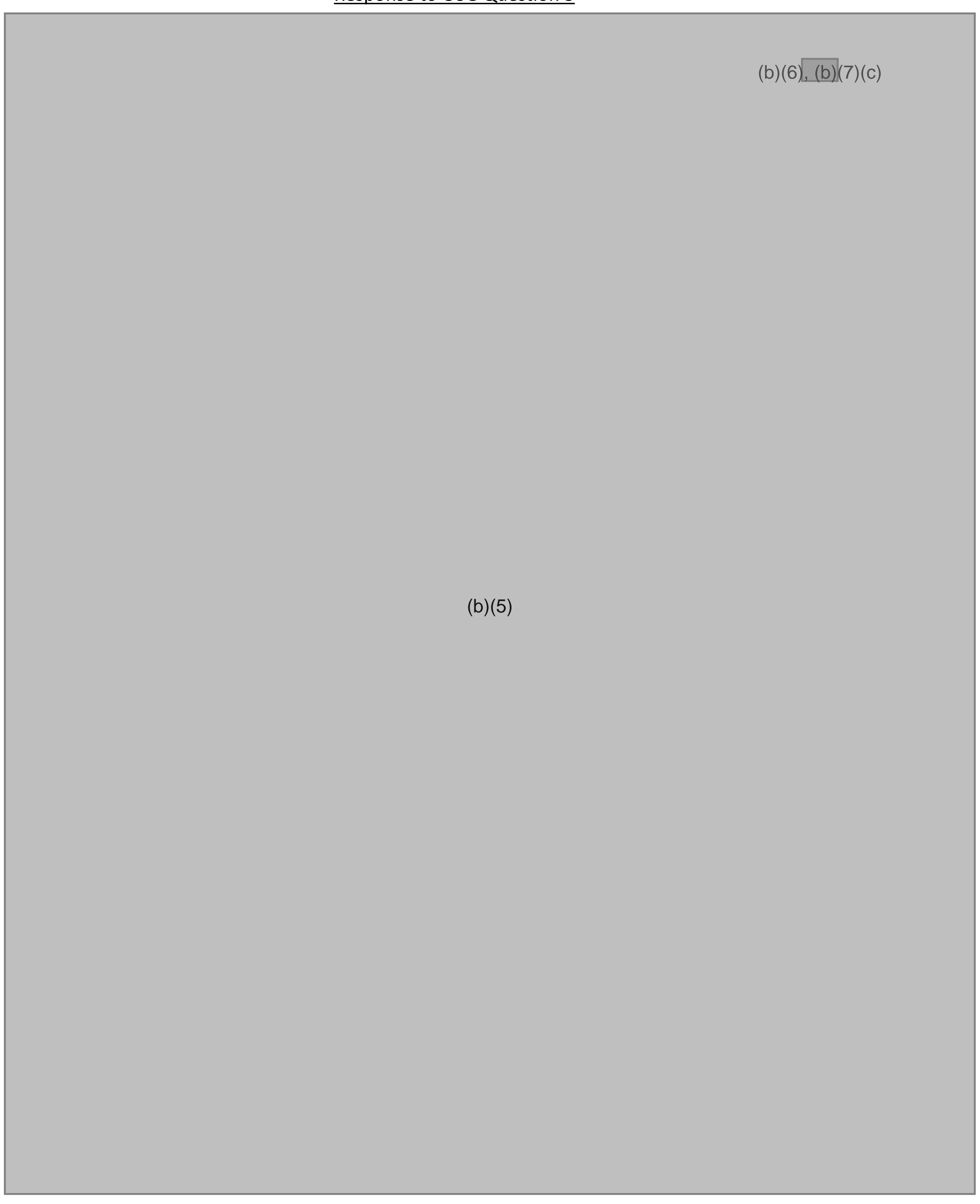
(b)(5)

injunction appeal?

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
e-mail (b)(6), (b)(7)(c)
phone: (b)(6), (b)(7)(c)
fax: (b)(6), (b)(7)(c)

Response to OSG Question 3



(b)(5)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: RE: Urgent Request-Parole of Aliens Subject to ER
Date: Thursday, June 19, 2014 3:42:32 PM

FYI:

62 FR 10312-01 at 10320

Detention Pending a Determination of Credible Fear

A few commenters stated that the provisions of §235.3(b)(4) for detention of aliens awaiting a credible fear determination are too harsh, and asked that the rule be amended to allow for parole of such aliens. However, because section 235(b)(1)(B)(iii)(IV) of the Act requires that an alien in expedited removal proceedings "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed," the Department feels that parole is appropriate only in the very limited circumstances specified in §235.3(b)(4). The interim rule has been amended, however, to clarify that aliens found to have a credible fear will be subject to the generally applicable detention and parole standards contained in the Act. Although parole authority is specifically limited while a credible fear determination is pending under §235.3(b)(4), those found to have a credible fear and referred for a hearing under section 240 of the Act will be subject to the rule generally applicable to arriving aliens in §235.3(c). In addition, §235.3(c) has been amended to retain detention authority for aliens whose admissibility will be determined in exclusion proceedings after April 1, 1997.

From (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 2:07 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Urgent Request-Parole of Aliens Subject to ER

(b)(5)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) (b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 1:56 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Urgent Request-Parole of Aliens Subject to ER
Importance: High

(b)(6), (b)(7)(c) et al.,

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 1:37 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Urgent Request-Parole of Aliens Subject to ER

Team:

Here are our comments so far. Please let me (b)(6), (b)(7)(c) know if you have any additional comments/edits asap. It looks like I need to get this up before 2 pm. Thanks!

From: (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 1:05 PM
To: (b)(6), (b)(7)(c)
Cc:

Subject: RE: Urgent Request-Parole of Aliens Subject to ER

(b)(5)

(b)(6), (b)(7)(c) f all of you could do a quick review as well I'd appreciate it. Please send (b)(6), (b)(7)(c) your comments/edits. I need to circle back with Riah by 2 pm. Thanks!

From (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 12:57 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Urgent Request-Parole of Aliens Subject to ER

Will do

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 12:55 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Urgent Request-Parole of Aliens Subject to ER

(b)(6), (b)(7)(c)

Please review OGC's paper and provide me with your comments/edits by 2 pm. Thanks.

(b)(6), (b)(7)(c)

-----Original Message-----
From: Ramlogan, Riah
Sent: Thursday, June 19, 2014 12:49 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)

Subject: RE: Urgent Request-Parole of Aliens Subject to ER

(b)(6), (b)(7)c (b)(5)

(b)(5) Attached are a couple documents we have recently prepared on this issue.
I am not certain we can get your document edited by 2 because of our commitments here, but will try to respond to the group.

From (b)(6), (b)(7)(c)
Sent: Thursday, June 19, 2014 12:36 PM
To: Davis, Mike P; Ramlogan, Riah (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: Urgent Request-Parole of Aliens Subject to ER

All:

We have an urgent request from S2 regarding DHS' authority to parole aliens out of custody who are subject to ER. Please see the attached paper. **Please provide any comments/edits by 2pm today**.

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)(7)(c)
Cell: 202-360-(b)(6), (b)(7)(c)
email: (b)(6), (b)(7)(c)

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STATEMENT
OF

RONALD D. VITIELLO
Deputy Chief
Office of the Border Patrol
U.S. Customs and Border Protection
U.S. Department of Homeland Security

And

THOMAS HOMAN
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

FOR A HEARING ON
"Unaccompanied Alien Minors"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

June 25, 2014
2141 Rayburn House Office Building

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

Thank you for the opportunity to testify today about our efforts to address the recent rise of unaccompanied children and others crossing our border in the Rio Grande Valley. As you know, Secretary Johnson testified yesterday before the House Committee on Homeland Security about this situation. Our testimony today echoes and reaffirms his comments.

We face an urgent situation in the Rio Grande Valley. Last fiscal year, CBP apprehended more than 24,000 unaccompanied children at the border. By mid-June of this fiscal year, that number has doubled to more than 52,000. Those from Guatemala, El Salvador, and Honduras make up about three quarters of that migration.

As Secretary Johnson said yesterday, this is a humanitarian issue as much as it is a matter of border security. We are talking about large numbers of children, without their parents, who have arrived at our border—hungry, thirsty, exhausted, scared and vulnerable. How we treat the children, in particular, is a reflection of our laws and our values.

Therefore, to address this situation, our strategy is three-fold: (1) process the increased tide of unaccompanied children through the system as quickly as possible; (2) stem the increased tide of illegal migration into the Rio Grande Valley; and (3) do these things in a manner consistent with our laws and values as Americans.

So, here is what we are doing:

First, on May 12th, Secretary Johnson declared a Level IV condition of readiness within DHS, which is a determination that the capacity of CBP and ICE to deal with the situation is full and we need to draw upon additional resources across all of DHS. He appointed Deputy Chief Vitiello to coordinate this effort within DHS.

Second, on June 1st, President Obama, consistent with the Homeland Security Act, directed Secretary Johnson to establish a Unified Coordination Group to bring to bear the assets of the entire federal government on the situation. This Group includes DHS and all of its components, the Departments of Health and Human Services, Defense, Justice, State, and the General Services Administration. Secretary Johnson, in turn, designated FEMA Administrator Fugate to serve as the Federal Coordinating Official for the U.S. Government-wide response. Under Administrator Fugate's supervision, there are now more than 140 interagency personnel and members stationed in FEMA's National Response Coordination Center dedicated to this effort.

Third, we established added capacity to deal with the processing and housing of the children, we are creating additional capacity in places, and we are considering others. To process the increased numbers of unaccompanied children in Texas, DHS has had to bring the children to our processing center at Nogales, Arizona before they are sent to HHS. We are arranging additional processing centers to handle the rise in the RGV. Meanwhile, the Department of Defense (DoD) has provided space at Lackland air base in Texas for HHS to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura,

California for the same purpose. FEMA, DHS, and HHS are working to continue to identify additional facilities for DHS and HHS to house and process the influx of children.

Fourth, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, raising awareness of the Parent Hotline provided by FEMA and operated by HHS, surging staff to manage the intake of CBP referrals to track shelter bed capacity, and facilitate shelter designations. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. (As Secretary Johnson noted yesterday, and we reaffirm today, the Border Patrol and other CBP personnel, as well as personnel from HHS, ICE, FEMA, and the Coast Guard, are doing a remarkable job in difficult circumstances. Not-for-profit groups like the Baptist Child Family Services also have stepped in quickly and are doing a remarkable job housing the unaccompanied children at Lackland, identifying and then placing them consistent with HHS's legal obligations. All of these dedicated men and women deserve our recognition, support and gratitude.)

Fifth, DHS is building additional detention capacity for adults who cross the border illegally in the Rio Grande Valley with their children. For this purpose DHS is establishing a temporary facility for adults with children on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico. The establishment of this temporary facility will help CBP process those encountered at the border and allow ICE to increase its capacity to house and expedite the removal of adults with children in a manner that complies with federal law. Artesia is one of several facilities that DHS is considering to increase our capacity to hold and expedite the removal of the increasing number of adults with children illegally crossing the southwest border. DHS will ensure that after apprehension, families are housed in facilities that adequately provide for their safety, security, and medical needs. Meanwhile, we will also expand use of the Alternatives to Detention program to utilize all mechanisms for enforcement and removal in the RGV Sector. DOJ is temporarily reassigning immigration judges to handle the additional caseload via video teleconferencing. These immigration judges will adjudicate these cases as quickly as possible, consistent with all existing legal and procedural standards, including those for asylum applicants. Overall, this increased capacity and resources will allow ICE to return unlawful migrants from Central America to their home countries more quickly.

Sixth, DHS has brought on more transportation assets to assist in the effort. The Coast Guard is loaning air assets to help transport the children. ICE is leasing additional charter aircraft.

Seventh, throughout the RGV Sector, we are conducting public health screening for all those who come into our facilities for any symptoms of contagious diseases or other possible public health concerns. Both DHS and HHS are ensuring that the children's nutritional and hygienic needs are met while in our custody; that children are provided regular meals and access to drinks and snacks throughout the day; that they receive constant supervision; and that children who exhibit signs of illness or disease are given proper medical care. We have also made clear that all individuals will be treated with dignity and respect, and any instances of mistreatment reported to us will be investigated.

Eighth, working through FEMA's National Response Coordination Center, we are coordinating with voluntary and faith-based organizations to help us manage the influx of unaccompanied children crossing the border. The American Red Cross is providing blankets and other supplies and, through their Restoring Family Links program, is coordinating calls between children in the care of DHS and families anxious about their well-being.

Ninth, to stem the tide of children seeking to enter the United States, we have also been in contact with senior government officials of Guatemala, El Salvador, Honduras, and Mexico to address our shared border security interests, the underlying conditions in Central America that are promoting the mass exodus, and how we can work together to assure faster, secure removal and repatriation. Last week President Obama spoke with Mexican President Peña Nieto about the situation, as has Secretary Kerry. This past Friday, Vice President Biden also visited Guatemala to meet with regional leaders to address the influx of unaccompanied children and families from Central America and the underlying security and economic issues that are causing this migration. The Vice President announced that the U.S. will be providing a range of new assistance to the region, including $9.6 million in additional funding for Central American governments to receive and reintegrate their repatriated citizens, and a new $40 million U.S. Agency for International Development program in Guatemala over 5 years to improve citizen security. An additional $161.5 million will be provided this year under the Central American Regional Security Initiative to further enable Central American countries to respond to the region's most pressing security and governance challenges. Secretary Johnson will travel to Guatemala July 8th-9th. The government of El Salvador has sent additional personnel from its consulate in the U.S. to South Texas to help expedite repatriation to its country.

Tenth, DHS, together with DOJ, has added personnel and resources to the investigation, prosecution and dismantling of the smuggling organizations that are facilitating border crossings into the Rio Grande Valley. Homeland Security Investigations, which is part of ICE, is surging 60 additional criminal investigators and support personnel to their San Antonio and Houston offices for this purpose. In May, ICE concluded a month-long, targeted enforcement operation that focused on the logistics networks of human smuggling organizations along the southwest border, with operations in El Paso, Houston, Phoenix, San Antonio, and San Diego that resulted in 163 arrests of smugglers. ICE will continue to vigorously pursue and dismantle these alien smuggling organizations by all investigative means to include the financial structure of these criminal organizations. These organizations not only facilitate illegal migration across our border, they traumatize and exploit the children who are objects of their smuggling operation. We will also continue to work with our partners in Central America and Mexico to help locate, disrupt, and dismantle transnational criminal smuggling networks.

Eleventh, we are initiating and intensifying our public affairs campaigns in Spanish, with radio, print, and TV spots, to communicate the dangers of sending unaccompanied children on the long journey from Central America to the United States, and the dangers of putting children into the hands of criminal smuggling organizations.

In collaboration with DHS, the Department of State has launched public awareness campaigns in El Salvador, Guatemala, and Honduras, to warn families about the dangers encountered by unaccompanied minors who attempt to travel from Central America to the U.S., and to counter

DHS-011-0000001-0000549

misperceptions that smugglers may be disseminating about immigration benefits in the United States. Our embassies in Central America have collaborated with CBP to ensure both the language and images of the campaign materials would resonate with local audiences. Secretary Johnson has personally issued an open letter (*see* attached) to the parents of those who are sending their children from Central America to the U.S., to be distributed broadly in Spanish and English, to highlight the dangers of the journey, and to emphasize there are no free passes or "permisos" at the other end. We are stressing that Deferred Action for Childhood Arrivals, or "DACA," does not apply to children who arrive now or in the future in the United States, and that, to be considered for DACA, individuals must have continually resided in the U.S. since June 2007. We are making clear that the "earned path to citizenship" contemplated by the Senate bill passed last year will not apply to individuals who cross the border now or in the future; only to those who have been in the country for the last year and a half.

Twelfth, given the influx of unaccompanied children in the Rio Grande Valley, we have increased CBP staffing and detailed 115 additional experienced agents from less active sectors to augment operations there. Secretary Johnson is considering sending 150 more border patrol agents based on his review of operations there this past week. These additional agents allow RGV the flexibility needed to achieve more interdiction effectiveness and increase CBP's operational footprint in targeted zones within its area of operations.

Thirteenth, in early May Secretary Johnson directed the development of a Southern Border and Approaches Campaign Planning effort that is putting together a strategic framework to further enhance security of our southern border. Plan development will be guided by specific outcomes and quantifiable targets for border security and will address improved information sharing, continued enhancement and integration of sensors, and unified command and control structures as appropriate. The overall planning effort will also include a subset of campaign plans focused on addressing challenges within specific geographic areas, all with the goal of enhancing our border security.

Finally, we will continue to work closely with Congress on this problem, and keep you informed. DHS is updating Members and staff on the situation in conference calls two times a week, and we are facilitating site visits to Border Patrol facilities in Texas and Arizona for a number of Members and their staff.

Secretary Johnson has directed his staff and agency leaders to be forthright in bringing him every conceivable, lawful option for consideration, to address this problem. In cooperation with the other agencies of our government that are dedicating resources to the effort, with the support of Congress, and in cooperation with the governments of Mexico and Central America, we believe we will stem this tide. Thank you.

DHS-011-0000001-0000550

Attachment

An open letter to the parents of children crossing our Southwest border

This year, a record number of children will cross our Southern border illegally into the United States. In the month of May alone, the number of children, unaccompanied by a mother or father, who crossed our southern border reached more than 9,000, bringing the total so far this year to 47,000. The majority of these children come from Honduras, El Salvador and Guatemala, where gang and drug violence terrorize communities. To the parents of these children I have one simple message: Sending your child to travel illegally into the United States is not the solution.

It is dangerous to send a child on the long journey from Central America to the United States. The criminal smuggling networks that you pay to deliver your child to the United States have no regard for his or her safety and well-being – to them, your child is a commodity to be exchanged for a payment. In the hands of smugglers, many children are traumatized and psychologically abused by their journey, or worse, beaten, starved, sexually assaulted or sold into the sex trade; they are exposed to psychological abuse at the hands of criminals. Conditions for an attempt to cross our southern border illegally will become much worse as it gets hotter in July and August.

The long journey is not only dangerous; there are no “permisos,” “permits,” or free passes at the end.

The U.S. Government’s Deferred Action for Childhood Arrivals program, also called “DACA,” does not apply to a child who crosses the U.S. border illegally today, tomorrow or yesterday. To be eligible for DACA, a child must have been in the United States prior to June 15, 2007 – seven years ago.

Also, the immigration reform legislation now before Congress provides for an earned path to citizenship, but only for certain people who came into this country on or before December 31, 2011 – two and one half years ago. So, let me be clear: There is no path to deferred action or citizenship, or one being contemplated by Congress, for a child who crosses our border illegally today.

Rather, under current U.S. laws and policies, anyone who is apprehended crossing our border illegally is a priority for deportation, regardless of age. That means that if your child is caught crossing the border illegally, he or she will be charged with violating United States immigration laws, and placed in deportation proceedings – a situation no one wants. The document issued to your child is not a “permiso,” but a Notice To Appear in a deportation proceeding before an immigration judge.

As the Secretary of Homeland Security, I have seen first-hand the children at our processing center in Texas. As a father, I have looked into the faces of these children and recognized fear and vulnerability.

The desire to see a child have a better life in the United States is understandable. But, the risks of illegal migration by an unaccompanied child to achieve that dream are far too great, and the "permisos" do not exist.

Jeh C. Johnson
Secretary of the U.S. Department of Homeland Security

Statement

by

Secretary Jeh C. Johnson
U.S. Department of Homeland Security

Before the

House Committee on Homeland Security

June 24, 2014

Chairman McCaul, Ranking Member Thompson, and Members of the Committee:

Thank you for the opportunity to testify today about our efforts to address the recent rise of unaccompanied children and others crossing our border in the Rio Grande Valley (RGV). With me today to answer questions are Craig Fugate, the Administrator of FEMA, and Ron Vitiello, Deputy Chief of the U.S. Border Patrol.

To be clear, we face an urgent situation in the RGV. Last fiscal year, CBP apprehended more than 24,000 unaccompanied children at the border. By mid-June of this fiscal year, that number has doubled to more than 52,000. Those from Guatemala, El Salvador, and Honduras make up about three quarters of that migration.

On Friday, I traveled to South Texas for the fourth time in six months in office, this time to lead an interagency team to oversee our efforts there. While there we met with officials at McAllen and Lackland to review the situation and hear directly from those on the ground what their needs are. While there I spent time talking with the children again. It was a vivid reminder that this is a humanitarian issue as much as it is a matter of border security. We are talking about large numbers of children, without their parents, who have arrived at our border—hungry, thirsty, exhausted, scared and vulnerable. How we treat the children, in particular, is a reflection of our laws and our values.

Therefore, to address this situation, our strategy is three-fold: (1) process the increased tide of unaccompanied children through the system as quickly as possible; (2) stem the increased tide of illegal migration into the RGV; and (3) do these things in a manner consistent with our laws and values as Americans.

So, here is what we are doing:

First, on May 12th, I declared a Level IV condition of readiness within DHS, which is a determination that the capacity of CBP and ICE to deal with the situation is full and we need to draw upon additional resources across all of DHS. I appointed Deputy Chief Vitiello to coordinate this effort within DHS.

Second, on June 1st, President Obama, consistent with the Homeland Security Act, directed me to establish a Unified Coordination Group to bring to bear the assets of the entire federal government on the situation. This Group includes DHS and all of its components, the Departments of Health and Human Services, Defense, Justice, State, and the General Services Administration. I, in turn, designated FEMA Administrator Fugate to serve as the Federal Coordinating Official for the U.S. Government-wide response. Under Administrator Fugate's supervision, there are now more than 140 interagency personnel and members stationed in FEMA's National Response Coordination Center dedicated to this effort.

Third, we have established added capacity to deal with the processing and housing of the children, we are creating additional capacity in places, and we are considering others. To process the increased numbers of unaccompanied children in Texas, DHS has had to bring the children to our processing center at Nogales, Arizona before they are sent to HHS. We are

arranging additional processing centers to handle the rise in the RGV. Meanwhile, the Department of Defense has provided space at Lackland air base in Texas for HHS to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura, California for the same purpose. FEMA, DHS, and HHS are working to continue to identify additional facilities for DHS and HHS to house and process the influx of children.

Fourth, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, raising awareness of the Parent Hotline provided by FEMA and operated by HHS, surging staff to manage the intake of CBP referrals to track shelter bed capacity, and facilitate shelter designations. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. (Here I must note, from personal observation, that our Border Patrol and other CBP personnel, as well as personnel from HHS, ICE, FEMA, and the Coast Guard, are doing a remarkable job in difficult circumstances. I have also witnessed how the not-for-profit Baptist Child Family Services stepped in quickly and is also doing a remarkable job housing the unaccompanied children at Lackland, identifying and then placing them consistent with HHS's legal obligations. All of these dedicated men and women deserve our recognition, support and gratitude.)

Fifth, DHS is building additional detention capacity for adults who cross the border illegally in the RGV with their children. For this purpose DHS is establishing a temporary facility for adults with children on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico. The establishment of this temporary facility will help CBP process those encountered at the border and allow ICE to increase its capacity to house and expedite the removal of adults with children in a manner that complies with federal law. Artesia is one of several facilities that DHS is considering to increase our capacity to hold and expedite the removal of the increasing number of adults with children illegally crossing the southwest border. DHS will ensure that after apprehension, families are housed in facilities that adequately provide for their safety, security, and medical needs. Meanwhile, we will also expand use of the Alternatives to Detention program to utilize all mechanisms for enforcement and removal in the RGV Sector. DOJ is temporarily reassigning immigration judges to handle the additional caseload via video teleconferencing. These immigration judges will adjudicate these cases as quickly as possible, consistent with all existing legal and procedural standards, including those for asylum applicants. Overall, this increased capacity and resources will allow ICE to return unlawful migrants from Central America to their home countries more quickly.

Sixth, DHS has brought on more transportation assets to assist in the effort. The Coast Guard is loaning air assets to help transport the children. ICE is leasing additional charter aircraft.

Seventh, throughout the RGV Sector, we are conducting public health screening for all those who come into our facilities for any symptoms of contagious diseases or other possible public health concerns. Both DHS and HHS are ensuring that the children's nutritional and hygienic needs are met while in our custody; that children are provided regular meals and access to drinks and snacks throughout the day; that they receive constant supervision; and that children who exhibit signs of illness or disease are given proper medical care. We have also made clear that all

DHS-011-0000001-0000555

individuals will be treated with dignity and respect, and any instances of mistreatment reported to us will be investigated.

Eighth, working through FEMA's National Response Coordination Center, we are coordinating with voluntary and faith-based organizations to help us manage the influx of unaccompanied children crossing the border. The American Red Cross is providing blankets and other supplies and, through their Restoring Family Links program, is coordinating calls between children in the care of DHS and families anxious about their well-being.

Ninth, to stem the tide of children seeking to enter the United States, we have also been in contact with senior government officials of Guatemala, El Salvador, Honduras, and Mexico to address our shared border security interests, the underlying conditions in Central America that are promoting the mass exodus, and how we can work together to assure faster, secure removal and repatriation. Last week President Obama spoke with Mexican President Peña Nieto about the situation, as has Secretary Kerry. This past Friday, Vice President Biden also visited Guatemala to meet with regional leaders to address the influx of unaccompanied children and families from Central America and the underlying security and economic issues that are causing this migration. The Vice President announced that the U.S. will be providing a range of new assistance to the region, including $9.6 million in additional funding for Central American governments to receive and reintegrate their repatriated citizens, and a new $40 million U.S. Agency for International Development program in Guatemala over 5 years to improve citizen security. An additional $161.5 million will be provided this year under the Central American Regional Security Initiative to further enable Central American countries to respond to the region's most pressing security and governance challenges. I will travel to Guatemala on July 8-9. The government of El Salvador has sent additional personnel from its consulate in the U.S. to South Texas to help expedite repatriation to its country.

Tenth, DHS, together with DOJ, has added personnel and resources to the investigation, prosecution and dismantling of the smuggling organizations that are facilitating border crossings into the RGV. Homeland Security Investigations, which is part of ICE, is surging 60 additional criminal investigators and support personnel to their San Antonio and Houston offices for this purpose. In May, ICE concluded a month-long, targeted enforcement operation that focused on the logistics networks of human smuggling organizations along the southwest border, with operations in El Paso, Houston, Phoenix, San Antonio, and San Diego that resulted in 163 arrests of smugglers. ICE will continue to vigorously pursue and dismantle these alien smuggling organizations by all investigative means to include the financial structure of these criminal organizations. These organizations not only facilitate illegal migration across our border, they traumatize and exploit the children who are objects of their smuggling operation. We will also continue to work with our partners in Central America and Mexico to help locate, disrupt, and dismantle transnational criminal smuggling networks.

Eleventh, we are initiating and intensifying our public affairs campaigns in Spanish, with radio, print, and TV spots, to communicate the dangers of sending unaccompanied children on the long journey from Central America to the United States, and the dangers of putting children into the hands of criminal smuggling organizations.

In collaboration with DHS, the Department of State has launched public awareness campaigns in El Salvador, Guatemala, and Honduras, to warn families about the dangers encountered by unaccompanied minors who attempt to travel from Central America to the U.S., and to counter misperceptions that smugglers may be disseminating about immigration benefits in the United States. Our embassies in Central America have collaborated with CBP to ensure both the language and images of the campaign materials would resonate with local audiences. I have personally issued an open letter (*see* attached) to the parents of those who are sending their children from Central America to the U.S., to be distributed broadly in Spanish and English, to highlight the dangers of the journey, and to emphasize there are no free passes or "permisos" at the other end. We are stressing that Deferred Action for Childhood Arrivals, or "DACA," does not apply to children who arrive now or in the future in the United States, and that, to be considered for DACA, individuals must have continually resided in the U.S. since June 2007. We are making clear that the "earned path to citizenship" contemplated by the Senate bill passed last year will not apply to individuals who cross the border now or in the future; only to those who have been in the country for the last year and a half.

Twelfth, given the influx of unaccompanied children in the RGV, we have increased CBP staffing and detailed 115 additional experienced agents from less active sectors to augment operations there. I am considering sending 150 more border patrol agents based on my review of operations there this past week. These additional agents allow RGV the flexibility needed to achieve more interdiction effectiveness and increase CBP's operational footprint in targeted zones within its area of operations.

Thirteenth, in early May I directed the development of a Southern Border and Approaches Campaign Planning effort that is putting together a strategic framework to further enhance security of our southern border. Plan development will be guided by specific outcomes and quantifiable targets for border security and will address improved information sharing, continued enhancement and integration of sensors, and unified command and control structures as appropriate. The overall planning effort will also include a subset of campaign plans focused on addressing challenges within specific geographic areas, all with the goal of enhancing our border security.

Finally, we will continue to work closely with Congress on this problem, and keep you informed. DHS is updating Members and staff on the situation in conference calls two times a week, and we are facilitating site visits to Border Patrol facilities in Texas and Arizona for a number of Members and their staff.

I have directed my staff to be forthright in bringing to me every conceivable, lawful option for consideration, to address this problem. In cooperation with the other agencies of our government that are dedicating resources to the effort, with the support of Congress, and in cooperation with the governments of Mexico and Central America, I believe we will stem this tide. Thank you.

DHS-011-0000001-0000557

From:	(b)(6), (b)(7)(c)
To:	
Subject:	Testimony from leadership this week
Date:	Thursday, June 26, 2014 2:42:38 PM
Attachments:	Homan Testimony June 25 2014.pdf S1 Testimony - June 24, 2014.pdf

All,

Here is testimony from Congressional hearings this week on the situation at the SW Border.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1775 K Street NW
Suite 300
Washington, DC 20006

Tel: (202) 243 (b)(6), (b)(7)(c)
Fax: (202) 296 (b)(6), (b)(7)(c)
Email: (b)(6), (b)(7)(c)

5 August 2014

Subject: UNHCR Visit to Artesia Family Residential Center, August 13-15, 2014

Dear Secretary Johnson:

The United Nations High Commissioner for Refugees (UNHCR) Regional Office in Washington respectfully requests to monitor the situation of asylum-seeker women and children in expedited removal, who are detained at the Artesia Family Residential Center in Artesia, New Mexico.

As you are aware, the U.N. General Assembly mandated UNHCR with ensuring the protection of refugees, asylum-seekers and stateless persons the world over. In carrying out our mandate, UNHCR works alongside partners in government, civil society, and other intergovernmental organizations in more than 125 countries around the world. UNHCR's Regional Office in Washington covers the United States of America and the Caribbean. A principal focus of our work is ensuring access by asylum-seekers to safe territory and to fair and efficient asylum procedures, especially for vulnerable populations such as children and women, among others.

As a follow-up to our most recent confidential report to the U.S. Government on the situation of asylum-seekers in expedited removal, we are currently undertaking a second round of monitoring. Artesia was not initially included among the monitoring visits planned for our 2014 expedited removal monitoring (see attachment); however, given the changed circumstances and the surge in asylum-seeker families being held there, the facility is a new priority for a UNHCR monitoring visit.

We kindly request that the monitoring visit includes a tour of the facility; interviews with individual asylum-seekers; observation of credible fear interviews; hearings before the immigration judges; and meetings with ICE and USCIS staff and leadership at the facility. With proper respect mutually agreed practice, this monitoring would be carried out in the context of our confidential relationship with the US. Government.

Hon. Jeh Johnson
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, DC 20528

Taking into consideration the inherent vulnerability of these women and children, we request to conduct the monitoring as soon as possible, with proposed dates of August 13-15, 2014.

UNHCR greatly appreciates its long-standing and productive relationship with the U.S. Department of Homeland Security and appreciates your consideration of this request. Should you need additional information, please do not hesitate to contact our office directly.

Sincerely,

(b)(6), (b)(7)(c)

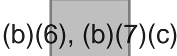
(b)(6), (b)(7)(c)
Regional Representative
UNHCR Regional Office for the United States of America and the Caribbean

Attachment (1)

cc: Mr. Thomas Winkowski, Principal Deputy Assistant Secretary, Immigration and Customs Enforcement, U.S. Department of Homeland Security

Mr. Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security

From:	(b)(6), (b)(7)(c)
To:	
Cc:	
Subject:	FW: CAT Convention - Geneva
Date:	Wednesday, November 12, 2014 1:07:24 PM
Attachments:	Copy of Outcomes of USBP FY14 Arrests through August of Subjects Identified as Family Units 1010014.xlsx



Here is the information from ERO.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

202-732(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 1:06 PM
To (b)(6), (b)(7)(c)
Cc: Miller, Philip T
Subject: FW: CAT Convention - Geneva

(b)(6), (b)(7)(c)

See below.

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 9:20 AM
To: Miller, Philip T
Cc: (b)(6), (b)(7)(c)
Subject: RE: CAT Convention - Geneva

This is current as of August and takes into consideration aliens that were booked into temp. detention locations like hold rooms.

OBP FY14 FMUAs Arrests through August Outcomes		
	Count	Percentage
Taken into Custody	**35,963**	**54.2%**
Released from Custody	34,928	52.6%
FMUAs Currently Detained (as of 9/6/14)	996	1.50%
Other (as of 9/12/14)	39	0.06%
Detained	*39*	0.06%
Not Taken into Custody	**30,303**	**45.66%**
Active Cases	25,272	38.08%
Proceedings Terminated	6	0.01%
Charging Document Canceled	205	0.31%
ICE Removal	**714**	**1.08%**
CBP Returns	**4,523**	**6.82%**
Pending Case Outcomes	**97**	**0.15%**
TOTAL	**66,363**	**100.0%**

From: Miller, Philip T
Sent: Wednesday, November 12, 2014 8:57 AM
To (b)(6), (b)(7)(c)
Subject: FW: CAT Convention - Geneva

Do you have a number?

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 7:47:01 AM
To: Miller, Philip T
Subject: CAT Convention - Geneva

Phil,

Our Chief of ILPD (b)(6), (b)(7)(c) is currently representing DHS at the Convention Against Torture (CAT) in Geneva. A committee is asking them questions to which they must respond within a matter of hours. One of the questions I think you can help us out on, assuming we have a response is:

Since May of 2014, how many families have been detained?

Let me know if we can those numbers.

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

202-732-(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To:
Subject: FW: CAT question
Date: Wednesday, November 12, 2014 1:39:55 PM

(b)(6), (b)(7)(c)

See if this works:

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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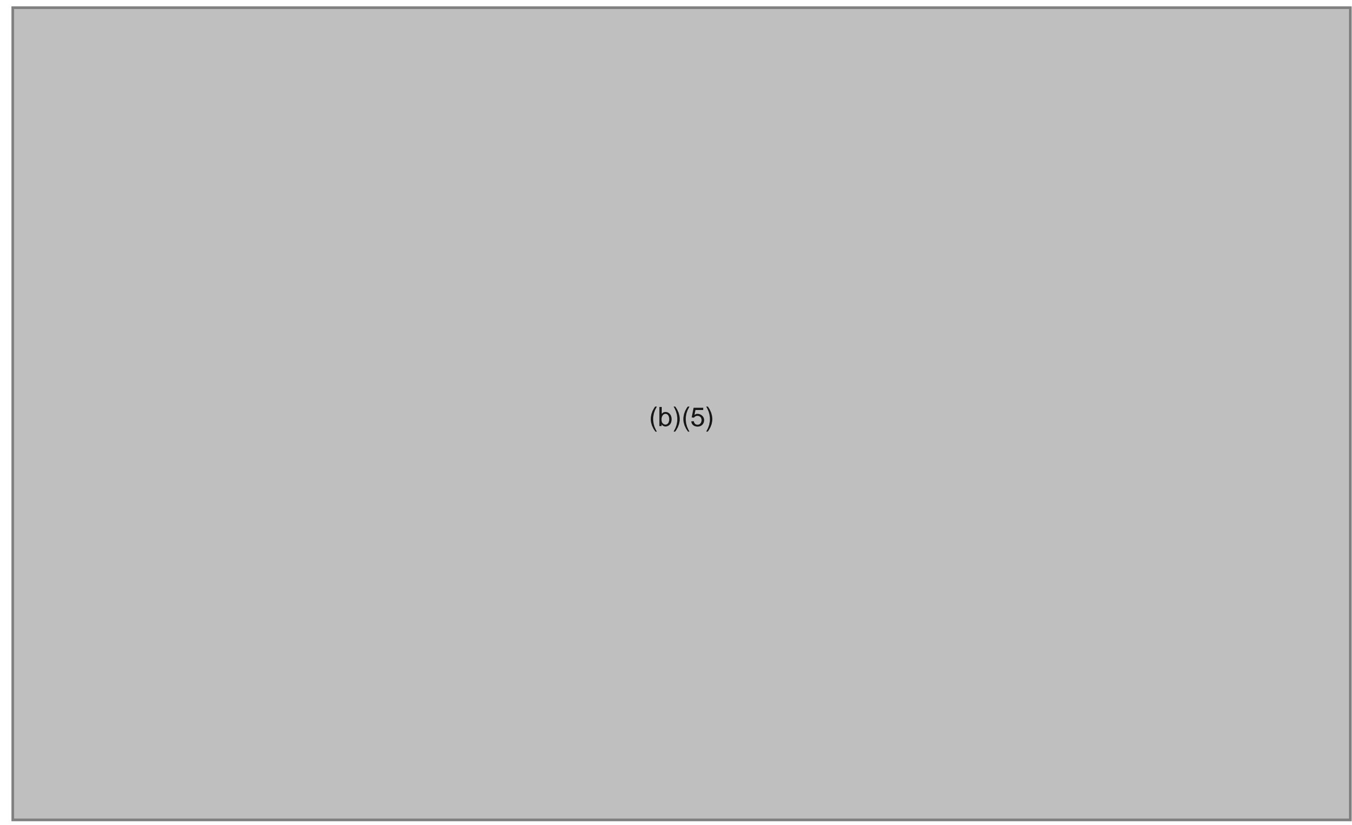
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 1:27 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: CAT question

(b)(6), (b)(7)(c)

Below is the response EROLD proposes with regard to ERO. We are not in a position to obtain details regarding all training on the issue in this short timeframe and would not provide such information even were time to permit us to collect it:

(b)(5)



Thanks,

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-(b)(6), (b)(7)(c)
Blackberry: 202-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 1:10 PM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: CAT question

(b)(6), (b)(7)(c)

I am including (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c) because they emailed me separately asking for the same information. And, I understand that (b)(6), (b)(7)(c) is in the process of writing a response to the inquiry suitable

for dissemination in Geneva.

Attached is the final answer provided to AILA related to the type of training that ICE officers receive on expedited removal and credible fear. I have also included the training information I received from OTD when I was in the process of gathering information in response to the AILA questions attached. If you need more training information, I suggest you reach out to (b)(6), (b)(7)(c) or (b)(6), (b)(7)(c) who are our OPLA folks at FLETC.

Let me know if you should need anything further.

Best Regards,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor
Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement ● U.S. Department of Homeland Security
Desk: (202) 732-(b)(6), (b)(7)(c) ● Cell: (202) 276-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 11:28 AM
To (b)(6), (b)(7)(c)
Subject: RE: CAT question

Thanks (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 11:25 AM
To (b)(6), (b)(7)(c)
Subject: RE: CAT question

I am about to run into a meeting but I will get back to you on this. I should have some useful info in my archives.

Best Regards,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor
Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement ● U.S. Department of Homeland Security

Desk: (202) 732(b)(6), (b)(7)(c) • Cell: (202) 276(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 11:10 AM
To: (b)(6), (b)(7)(c)
Subject: FW: CAT question

(b)(6), (b)(7)(c)

DHS is looking for an answer to the following question:

Can you please try to run down what training ICE agents receive (I think the answers may be different for ERO and HSI) with regard to screening for asylum or other international protection claims?

This is for the CAT meeting in Geneva. Adam thinks you might have some useful information from last year's AILA liaison meeting. If so, I would appreciate any assistance.

Thanks,
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 11:07 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: CAT question

(b)(6), (b)(7)(c)

Can you assist with this? I am in meetings for the next 90 minutes. Check with (b)(6), (b)(7)(c) our responses to the AILA liaison meeting questions from last year. There may be some useful language.

(b)(6), (b)(7)(c)
Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor

U.S. Immigration and Customs Enforcement
Desk: 202-732- (b)(6), (b)(7)(c)
Blackberry: 202-590- (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:57 AM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Subject: FW: CAT question

(b)(6), (b)(7)(c) can you help me address this question?

From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 10:39 AM
To: (b)(6), (b)(7)(c)
Subject: CAT question

Can you please try to run down what training ICE agents receive (I think the answers may be different for ERO and HSI) with regard to screening for asylum or other international protection claims? I have an answer from CBP I can put together with the one from ICE. Thanks.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Senior Advisor & Acting Team Lead, Immigration Section
Office for Civil Rights & Civil Liberties
Department of Homeland Security
(202) 357- (b)(6), (b)(7)(c) (o)
(202) 604- (c)
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
To:
Subject:
Date: Wednesday, November 12, 2014 9:12:37 AM

(b)(6), (b)(7)(c)

You may want to add a bullet to the PREA reply

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 9:04 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: CAT Questions

(b)(5)

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-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 8:24 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: CAT Questions
Importance: High

Good Morning All,

As you may know, our delegates (b)(6), (b)(7)(c) are currently representing DHS at the Convention Against Torture (CAT) in Geneva. A committee is asking them questions to which they must respond within a matter of hours. They need answers to the following questions as soon as possible. I've been referred to each of you. I am attaching the Q&A for your reference to the 287g MOA (pg. 252) question. Please get back to me as quickly as you can, if you cannot answer the following questions, a lead on who may be able to help would be greatly appreciated.

-How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers? (b)(6), (b)(7)(c)

-How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. One bullet says 34 another say 37 MOAs. What's the correct number? (b)(6), (b)(7)(c)

-Since May of 2014, how many families have been detained? How many kids have gone to ORR custody? (b)(6), (b)(7)(c)

Thank you,
(b)(6), (b)(7)(c)

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, November 12, 2014 5:52 AM
To: (b)(6), (b)(7)(c)
Subject: Questions

Need responses to the following:

How many immigration detention centers does PREA apply to? How many does it not apply to? Why doesnt it apply to all detention centers?

How many 287g MOAs are there?
Page 252 of the Q and A is inconsistent. (b)(7)e What's the correct number?

Since May of 2014, how many families have been detained? How many kids have gone to ORR custody?

1. <u>287g numbers</u>: The answer is there are currently 34 active MOAs. (Per ICE, 287(g) program office.

2. <u>UAC numbers</u> – done and previously sent

3. Visits to detention facilities –waiting for ICE but the answer should be that there is ample access for NGOs (b)(5)

(b)(5)

4. Detention facilities

    a. <u>Location of short-term detention facilities</u> – *sent* – they are all public

    b. Oversight of detention facilities – you have these in Q&As. **Are there specifics you need?**

5. Responding to allegations of abuse in detention facilities

    a. How responding – **see Q&As**

    b. Number of complaints (b)(5)

    (b)(5)

(b)(5)

6. Training provided to officers re asylum seekers - still seeking ICE answer. For CBP:

(b)(5)

(b)(5)

7. How many families detained by ICE, (b)(6), (b)(7)(c) **seeking the family detention number. I have asked ORR for updates. For now what we have is**: (b)(5)

(b)(5)

(b)(5)

OBP FY14 FMUAs Arrests through August Outcomes		
	Count	**Percentage**
Taken into Custody	**35,963**	**54.2%**
Released from Custody	34,928	52.6%
FMUAs Currently Detained (as of 9/6/14)	996	1.50%
Other (as of 9/12/14)	39	0.06%
Detained	*39*	0.06%
Not Taken into Custody	**30,303**	**45.66%**
Active Cases	25,272	38.08%
Proceedings Terminated	6	0.01%
Charging Document Canceled	205	0.31%
ICE Removal	**714**	**1.08%**
CBP Returns	**4,523**	**6.82%**
Pending Case Outcomes	**97**	**0.15%**
TOTAL	**66,363**	**100.0%**

8. PREA coverage - (b)(5)

(b)(5)

(b)(5)

(b)(5)

9. Border searches –

(b)(5)

10. Rationale for family detention:

(b)(5)

From: (b)(6), (b)(7)(c)
To:
Cc:
Subject: FW: CAT
Date: Wednesday, November 12, 2014 1:53:57 PM
Attachments: CAT open questions 1.docx

Actually here's the latest and greatest.

Almeida, Corina E

From: Almeida, Corina E
Sent: Saturday, June 14, 2014 10:13 AM
To: Longshore, John P; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx
Attachments: ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx

John, (b)(6), (b)(7)(c)

Attached please find ICE's final DRAFT answers to AILA's questions raised at the ICE/AILA Spring Liaison Meeting (April 10, 2014). AILA raised 31 questions, and ICE Leadership provided responses to each question, including questions re: PD, credible fear interviews, DACA, Parental Rights Directive, deferred action/stays of removal, housing of detainees "hundreds of miles from their legal representatives," U-visas, Risk Classification Assessment Tool, detainers, detainee transfers, phone calls in detention, orders of supervision, classification of courthouses as "Sensitive Locations," DOMA, facilitating the return of lawfully removed aliens, biometrics and security checks in removal proceedings, and STEM/OPT.

You may have already received this document from your chain; however, if you haven't, here it is.

Thx,
Corina

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From: Almeida, Corina E
Sent: Tuesday, June 10, 2014 6:27 PM
To (b)(6), (b)(7)(c)
Subject: ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx

FYI.
~Corina

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Pages 433 through 453 redacted for the following reasons:
- -
(b)(5)

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Wednesday, January 14, 2015 8:22 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: Request re: filing of NTAs in the Dilley box

Thanks for sorting out the source of the problem and working with ERO on this issue. (In the past it was an Asylum Officer issue and harder to correct).

We know how much you have going on and we really appreciate it.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, January 14, 2015 7:43 AM
To: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: FW: Request re: filing of NTAs in the Dilley box

These folks all have court this am. I can be present for their court to serve anything they did not get that they should have gotten. (b)(5) CIS is preparing the documents correctly. I have a meeting with the SDDO to discuss this quality issue.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 4:16 PM
To: (b)(6), (b)(7)(c)
Subject: RE: Request re: filing of NTAs in the Dilley box

Dear DCC (b)(6), (b)(7)(c)

Every email with NTAs that came into the SNA-Dilley box today involved the issue to which I was referring about attaching various documents to a single attachment entitled "NTA." Complicating the matter is that not all attachments appear consistent with the certificate of service. For example:

(b)(6), (b)(7)(c) – CF found and worksheet attached to packet but not served on respondents; no language listed for providing oral warnings.
(b)(6), (b)(7)(c) – CF worksheet attached and noted it was provided with the NTA and warnings in Spanish/Quiche but no CF worksheet included in packet/exists as AO could not speak to them as they speak Achi.
(b)(6), (b)(7)(c) – no worksheet attached but CF found, no indication legal services list provided, warnings in Spanish.
(b)(6), (b)(7)(c) – no legal service list and warnings provided in Quiche but AO memo notes they only speak Achi.

I hope this summary helps a bit.

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303.7(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 2:43 PM
To: (b)(6), (b)(7)(c)
Subject: FW: Request re: filing of NTAs in the Dilley box

(b)(6), (b)(7)(c)

Can you give me the cases you are talking about? It may be what the ERO folks scanned in or USCIS. ERO Scans everything in.

From: Almeida, Corina E
Sent: Monday, January 12, 2015 3:32 PM
To: (b)(6), (b)(7)(c)
Subject: FW: Request re: filing of NTAs in the Dilley box

(b)(6), (b)(7)(c)

Please review the email string below. Is this something you can bring to the attention of USCIS at Dilley? There should be someone doing quality control for the USCIS Adjudicators. Please advise.

Thx,
Corina

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 2:30 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E
Subject: RE: Request re: filing of NTAs in the Dilley box

I like your proposal but we do not have any control over the AOs. The inconsistency is indeed disheartening. I have previously advised everyone to be "mechanical." In other words, if the documents say they are attached – attach them ; if they do not, don't attach them.

We can discuss this later this week. I have several other things going on and cannot take care of this right now. For now, we may have to sort through the emails.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 1:30 PM
To: (b)(6), (b)(7)(c)

Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: Request re: filing of NTAs in the Dilley box

(b)(6), (b)(7)(c) Managers are in a meeting right now, but we definitely need some clarity.

Kathleen, I propose we (b)(5)

(b)(6), (b)(7)(c)

I'm happy to reach out (b)(6), (b)(7)(c) suggest this, but I'll wait for your response. We do, however, need to make a decision on the cases (b)(6), (b)(7)(c) is receiving today, since she has to get those NTAs filed.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) (b)(6), (b)(7)(c)
Fax: (303) (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 1:25 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: Request re: filing of NTAs in the Dilley box

(b)(6), (b)(7)(c)

I have reviewed the NTA packets I received today. Some state an AO worksheet was attached where CF was found, some don't even show that the free legal service list was given, some didn't get an AO worksheet (no finding due to language barrier), and some say the AO worksheet was served on the respondent despite no AO worksheet existing due to a language barrier. So the approach by the asylum (b)(5)

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue

Centennial, CO 80111
303.784(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 12:37 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: Request re: filing of NTAs in the Dilley box

(b)(6), (b)(7)(c)

This sounds like a change in practice. I want to make sure that it is not a change in how the Asylum officer is doing things. Are the notes included as an attachment to the I-286s? If so, we should file them together and it might be best for ERO to scan everything together so we have a complete packet.

Thanks (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784(b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Monday, January 12, 2015 12:00 PM
To: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: Request re: filing of NTAs in the Dilley box

Today, I have received two NTA packets for FAMU-D cases in the Dilley duty box. Initially, I greatly appreciate that the DO sending these NTAs is doing a single email for an entire family unit, which makes it much easier (no need to hunt down riders or wait for subsequent emails to verify the complete number of riders).

However, ERO is sending a single packet entitled "NTA" yet containing all documents regarding the issuance of the NTA (including notes from the AO). I recommend (b)(5)

(b)(5)

Sincerely,

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303.784(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303.784(b)(6), (b)(7)(c)

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Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, January 13, 2015 6:45 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E
Subject: DRAFT SOPS for Dilley Trial Attorney and PLAnet/Filing procedures
Attachments: PLAnet and filing Procedures Dilley 01132015 draft.docx; Trial Attorney responsibilities draft 01132015.docx

All,

I have attached a draft of the procedures for the Dilley Trial Attorney and the PLAnet/filing procedures. We are still working with EOIR, OPLA Dilley, and AILA, so they are not yet final. They address the most common procedures and processes so follow them to the extent they apply: no big changes from the Artesia procedures in effect previously, but they incorporate some procedures that took effect since the last written draft of the Artesia procedures (sent in October 2014). I will try to send a draft of the Duty Attorney procedures, and the procedures for appeals, later this week.

Please let me know if you see errors, or if you have recommended changes.

Thank you.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784(b)(6), (b)(7)(c)
Fax: (303) 784

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Pages 461 through 467 redacted for the following reasons:
- -
(b)(5)

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, January 06, 2015 11:04 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: Dilley Workflows and filing box
Attachments: Dilley Workflows 1-04-15 (KT edits).docx

(b)(6), (b)(7)(c)

This is my first full day back in the office, and I am still going through emails (I was in yesterday for the Executive Action Training, but was still on leave).

I have attached my recommended edits to the most recent version of the Dilley Workflows. Thanks so much for putting these together. As you have said, a work in progress!

I already alerted all of the Denver Attorneys about sending orders etc to the new Dilley filings mailbox – Great idea and thanks for implementing this. Our attorneys were very happy with this change.

Let me know if you have any questions. I am still going through my emails, so feel free to let me know if you need something from me that I might have missed.

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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Pages 469 through 489 redacted for the following reasons:
- -
(b)(5)
(b)(5)

Almeida, Corina E

From: Almeida, Corina E
Sent: Monday, December 15, 2014 2:33 PM
To: (b)(6), (b)(7)(c)
Cc: Hunker, Paul B; Gastelo, Elias S Jr (Elias.S.Gastelo@ice.dhs.gov); McLane, Jo Ann (JoAnn.McLane@ice.dhs.gov); (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Subject: FW: Fifth Circuit Law
Attachments: Asylum Manual by DW Cassidy October 15 2014.docx

(b)(6), (b)(7)(c)

CC Paul Hunker recommended I contact (b)(6), (b)(7)(c) re: our request below. I did, and he forwarded the attachment. Don's brief message appears below.

A huge **THANKS** to (b)(6), (b)(7)(c) and thanks to Paul, as well, for directing us to the right brain... I mean, attorney! ☺)

~Corina

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From: (b)(6), (b)(7)(c)
Sent: Monday, December 15, 2014 2:24 PM
To: Almeida, Corina E
Subject: RE: Fifth Circuit Law

Hi Corina. There was some discussion about jurisdiction the other day at our staff meeting. Several persons commented that it was their recollection that only the (b)(5) (b)(5) I do have my outline, all though it is about 7 weeks behind. It is not divided by jurisdictions. It has a October date in the file name, but it is more up to date than that. I was going to send it out in early November, but was side tracked by some work and did not complete the updates. Attached.

(b)(6), (b)(7)(c)
Associate Legal Advisor
Enforcement and Litigation Directorate
Immigration Law and Practice Division
Immigration Law and Practice - East
U.S. Immigration and Customs Enforcement
Mobile: (281) (b)(6), (b)(7)(c)

Alternate Number: (832) 7(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: Almeida, Corina E
Sent: Monday, December 15, 2014 3:11 PM
To (b)(6), (b)(7)(c)
Subject: FW: Fifth Circuit Law

(b)(6), (b)(7)(c)

Please review the email string below and advise. If it's easier to call me, my direct number is 303-(b)(6), (b)(7)(c)

Thx,
Corina

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From: Hunker, Paul B
Sent: Monday, December 15, 2014 2:10 PM
To: Almeida, Corina E
Subject: RE: Fifth Circuit Law

Hi Corina. No unfortunately I don't have anything that's Fifth Circuit specific. I think (b)(6), (b)(7)(c) outline probably has some Fifth Circuit material but that's all I'm aware of.

Paul

Sent with Good (www.good.com)

From: Almeida, Corina E
Sent: Monday, December 15, 2014 2:26:33 PM
To: McLane, Jo Ann; Gastelo, Elias S Jr; Hunker, Paul B; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: Fifth Circuit Law

Dear friends and colleagues,

As you are aware, on/about January 5, 2015, EOIR Denver and OCC Denver will begin handling immigration court dockets arising from the Dilley Center (BTW: this family detention center is known as the **South Texas Family Residential Center (STFRC) in Dilley, TX**). As you are also aware, our AOR sits in the 10th Circuit's jurisdiction. Attached please find a summary of 10th Circuit protection law (a more detailed explanation about this attachment appears below). By any chance, do any of you have a similar summary related to 5th Circuit protection law? If so, would you please share it with us? Any and all assistance will be extremely appreciated!

Thx,
Corina

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From: (b)(6), (b)(7)(c)
Sent: Friday, December 05, 2014 6:31 PM
To: Almeida, Corina E
Subject: Fifth Circuit Law

Corina,

Could you ask Jo Ann, Elias, or ILPD if they have (or could assist with preparing) a summary of asylum case law specific to the 5th Circuit for us? Although it is not entirely clear, we assume that Fifth Circuit law will be applied because the respondents are detained in the Fifth C(b)(6), (b)(7)(c) requested (b)(6), (b)(7)(c) prepare this summary when the cases were being handled by WAS and the IJ's were in Arlington, so I am assuming that it will be ILPD's position that 5th Circuit law applies.

I attached the summary that (b)(6), (b)(7)(c) prepared in case you would like to forward as a possible model.

Thank you,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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Asylum and Protection Law Manual

Government Attorney Reference Material
(b)(6), (b)(7)(c) Immigration Customs Enforcement, OPLA-ILPD
Edition 2014c

In creating this outline, I began with a 2009 outline maintained by (b)(6), (b)(7)(c) In her outline, (b)(6), (b)(7)(c) took verbatim statements used in brief and case reviews from DOJ and DHS attorneys. They are too numerous to recognize. Because this outline was begun in July 2012 and (b)(6), (b)(7)(c) ended her work in 2009, there is a four-year gap in the updating process. Efforts have been made to fill that gap. Since beginning this manual, I have utilized items from CIS and ICE materials, including case analysis, directives and briefs. I have also incorporated segments from the 1996 edition of Asylum officer's Basic Law Manual, a former project of mine. The Basic Law Manual was the legal keystone for asylum officer in the 80s and 90s.

This outline is not reviewed, proofread or formally approved by DHS. While I have made efforts to have it comport with the current state of the law and DHS policy, anyone using the outline should verify the contents of this outline. If a reader notices errors within the outline, please contact me and I will make the appropriate amendments. Because the law outline is relatively new, there may be more technical errors then I would like, but it is difficult to find them in such a large document. I apologize.

(b)(6), (b)(7)(c)

This outline is updated using Westlaw searches. Additional tools used to find cases for the updates: the case reviews of (b)(6), (b)(7)(c) emails directives, ICE BIA briefs, The OPLA Bulletin, and The OIL Bulletin. This methodology may not find every case.

Generally, I will not be adding unpublished cases or district court cases.

For some reason, there seems to be a glitch in this document I am unable to fix. The pages may not fully show, but may shift to the left showing half pages. It can be corrected by changing the Word view option momentarily.

You can jump around the document between sections using the table of contents or the navigation pane. The navigation pane is particularly useful.

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A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)) (internal punctuation omitted). While findings based on determinations of the credibility of witnesses demand greater deference to the trial court, this does not insulate the findings from review, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985). Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it. *Id.* Where such factors are present, an appellate tribunal may well find clear error even in a finding purportedly based on a credibility determination. *Id.*

A finding was clearly erroneous because it is unsupported by the record. *See United States v. Hinkson,* 585 F.3d 1247, 1262 (9th Cir.2009) (en banc) (factual findings are clearly erroneous when they are without support in inferences that may be drawn from the facts in the record) (quoting *Anderson v. Bessemer City*). *United States v. Reyes-Bonilla*, 671 F.3d 1036, 1044 n.5 (9th Cir. 2012); *Hallquist v. Local 276, Plumbers and Pipefitters Union, AFL-CIO*, 843 F.2d 18, 22 (1st Cir. 1988) (clearly erroneous standard does not shield findings unsupported or arbitrary). *See generally United States v. Sayles*, 296 F.3d 219, 227 (4th Cir. 2002) (holding that a district court finding made in the absence of any evidence constitutes clear error); *United States v. Anton*, 546 F.3d 1355, 1359 (11th Cir. 2008) (a finding unsupported by any evidence is clear error).

In *Aponte v. Holder,* 683 F.3d 6, (1st Cir. 2012), the court found that the Board's summary decision was insufficient for a determination as to whether they relied on facts, law or something in between. Other courts have recognized that when the Board uses a summary decision, the IJ's decision becomes the BIA decision. *Vilchez v. Holder,* 682 F.3d 1195 (9th Cir. 2012).

24 Credible Fear, Reasonable Fear

Credible fear and reasonable fear findings are generally made in a detained setting, but some arriving aliens making credible fear claims could be paroled. Both process relate to persons who would not normally see the IJ prior to removal and include aliens subject to 235 expedited removal, 238(b) administrative removal, 241(A)(5) reinstatements and stowaways. It also includes crewman and visa waiver aliens. *Matter of Kanagasundram*, 22 I&N Dec. 963 (BIA 1999)(visa waiver) *also see Matter of G-D-M-,* 25 I&N Dec. 82 (BIA 2009)(not at issue but crewman with asylum application before IJ). In *Nian v. Holder,* 683 F.3d 1229 (9th Cir. 2012), the court concluded that it could review a crewman asylum-only decision.

Aliens seeking admission who can be removed under the expedited removal program can seek asylum. Pursuant to 8 CFR § 235.2(b)(4), any alien claiming a credible fear will have his processing delayed for a credible fear interview by an asylum officer. Pending the credible fear interview, the alien is to be detained, but parole is possible. If the

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asylum officer finds a credible fear, he will refer the case to an immigration judge for a removal hearing. 8 CFR § 235.6. If the asylum officer determines the alien does not have a credible fear, he will issue and order of removal and refer the case to the immigration judge for a credible fear hearing. The immigration judge has the authority to vacate the removal order and affirm the lack of credible fear.

Section 235 of the Act defines credible fear as being "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208."

Credible Fear hearings are closed to the public unless the alien waives the requirement on the record or in writing. 8 CFR § 1208.30(g)(2)(iii). The Service has exclusive jurisdiction over credible fear determinations, and EOIR has exclusive jurisdiction over review of "credible fear" under INA § 235(b)(1)(B). The Office of International Affairs shall have initial jurisdiction over credible fear determinations under 8 CFR § 208.30 and reasonable fear determinations under 8 CFR § 208.31. 8 CFR § 208.2. If the individual establishes a credible fear then she gets an asylum, withholding and/or CAT determination by being placed in 240 proceedings. A stowaway and visa waiver applicant will not have a full 240 hearing, but an "asylum only" hearing. These hearings are limited to asylum, withholding and CAT. Removability and other relief are not considered. Relevant regulations are at § 1208.2(c).

Aggravated felons being removed under 238(b)(5) and aliens subject to reinstatement are not eligible for asylum, but can seek withholding and CAT. INA § 238(b)(5); 241(a)(5). In these cases the reasonable fear process is used. These determinations apply to aliens removed under INA § 238(b)(non-LPRs with aggravated felony convictions) or whose exclusion, deportation or removal order is reinstated under INA § 241(a)(5), and express a fear of return to the country of removal. *Ortiz-Alfaro v. Holder,* 694 F.3d 955 (9th Cir. 2012)(reinstatement reasonable fear process not subject to jurisdictional review). The standard is a reasonable possibility that the alien can establish CAT or Withholding. The Service has initial jurisdiction and the EOIR has exclusive review authority. 8 CFR § 1208.31(a). The referrals are for "withholding only" proceedings which include CAT.

25 High Seas Interception

The U.S. Supreme Court upheld the administration's policy of intercepting Haitians on the high seas and summarily returning them to their homeland without a hearing. Ruling 8-1, the Court concluded that neither INA § 243(h), nor Article 33 of the United Nations Convention relating to the Status of Refugees prohibited the policy. *Sale v. Haitian Centers Council*, 509 U.S. 155 (June 21, 1993). The Supreme Court held that the narrow legal question in the case came down to the issue of extraterritoriality. Writing for the majority, Justice Stevens concluded that the history of the Refugee Act of 1980 confirmed that INA § 243(h) does not have extraterritorial application.

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Almeida, Corina E

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(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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The Obama Administration's November 2014 Immigration Initiatives: Questions and Answers

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Legislative Attorney

November 24, 2014

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CRS REPORT
Prepared for Members and
Committees of Congress

Summary

On November 20, 2014, President Obama delivered a televised address wherein he broadly described the steps that his administration is taking to "fix" what he has repeatedly described as a "broken immigration system." Following the President's address, executive agencies made available intra-agency memoranda and fact sheets detailing specific actions that have already been taken, or will be taken in the future. These actions generally involve either border security, the current unlawfully present population, or future legal immigration.

The most notable of these actions, for many commentators, are the initiatives to grant "deferred action"—one type of relief from removal—to some unlawfully present aliens who were brought to the United States as children and raised here, or who have children who are U.S. citizens or lawfully permanent resident (LPR) aliens. Previously, in June 2012, then Secretary of Homeland Security Janet Napolitano announced a program—commonly known as Deferred Action for Childhood Arrivals (DACA)—whereby unlawfully present aliens who had been brought to the United States as children and met other criteria could receive deferred action and, in many cases, employment authorization. The eligibility criteria for DACA expressly excluded unlawfully present aliens who were over 31 years of age, or who had entered the United States on or after June 15, 2007. However, aliens who are over 31 years of age, or entered between June 15, 2007, and January 1, 2010, could receive deferred action as part of the 2014 initiative.

Similarly, unlawfully present aliens who have children who are U.S. citizens or LPRs could also receive deferred action and employment authorization pursuant to the November 2014 initiatives, provided they meet specified criteria. These criteria include "continuous residence" in the United States since before January 1, 2010; physical presence in the United States both on the date the initiative was announced and on the date when they request deferred action; and not being an enforcement priority (e.g., not a threat to national or border security).

The announced executive actions—particularly the granting of deferred action and employment authorization to unlawfully present aliens—have revived debate about the President's discretionary authority over immigration like that which followed the announcement of DACA in 2012. In the case of DACA, some argued that the initiative violates the Take Care Clause of the U.S. Constitution, runs afoul of specific requirements found in the Immigration and Nationality Act (INA), or is inconsistent with historical precedents. Others, however, asserted that DACA involves a valid exercise of the executive's prosecutorial or enforcement discretion, is consistent with the INA, and has ample historical precedent. Similar arguments will likely be made as to the November 2014 actions, which affect a significantly larger number of aliens than DACA.

Legal challenges to DACA have generally failed on standing grounds, because the plaintiffs bringing these challenges were not seen as the proper parties to seek judicial relief from a federal court. The one exception to this—the litigation in *Crane v. Napolitano*—resulted in the reviewing federal district court finding that DACA runs afoul of provisions in Section 235 of the INA which some assert require the executive to place unlawfully present aliens in removal proceedings. However, this same federal district court subsequently found that it lacked jurisdiction because the plaintiff immigration officers alleged that they faced discipline by their employer, DHS, if they refused to implement DACA, and such claims are within the jurisdiction of the Merit Systems Protection Board (MSPB), not the court.

The 113th Congress has also considered legislation to defund DACA (e.g., H.R. 5272, H.R. 5316).

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On November 20, 2014, President Obama delivered a televised address wherein he broadly described the steps that his administration is taking to "fix" what he has repeatedly described as a "broken immigration system."[1] Following the President's address, executive agencies made available intra-agency memoranda and fact sheets detailing specific actions that have already been taken, or will be taken in the future.[2] These actions generally involve either border security, the current unlawfully present population, or future legal immigration.

The announced executive actions—particularly the granting of deferred action and employment authorization to some unlawfully present aliens, discussed below (see "Unlawfully Present Population")—have revived debate about the executive's discretionary authority over immigration like that which followed the Administration's June 2012 announcement of the Deferred Action for Childhood Arrivals (DACA) initiative.[3] DACA has permitted some unlawfully present aliens who were brought to the United States as children and raised here to obtain temporary relief from removal and, in many cases, employment authorization. Some have argued that DACA constitutes an abdication of the executive's duty to enforce the laws and runs afoul of specific requirements found in the Immigration and Nationality Act (INA),[4] among other things. Others, however, have maintained that the DACA initiative is a lawful exercise of the discretionary authority conferred on the executive by the Constitution and federal statute.[5] Similar arguments will likely be made as to the November 2014 actions, which affect a significantly larger number of aliens than DACA.

This report provides the answers to key legal questions related to the various immigration-related actions announced by the Obama Administration on November 20, 2014. Because the various documents outlining these actions have been available for a limited period of time, and additional information is expected to be released in the future, these answers are necessarily preliminary. It is anticipated that the report will be updated to reflect further developments.

Other reports discuss related issues, including CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia; CRS Report

[1] For a transcript of the President's address, see http://www.whitehouse.gov/issues/immigration/immigration-action# (last accessed: Nov. 22, 2014).

[2] *See generally* Dep't of Homeland Security (DHS), Fixing Our Broken Immigration System Through Executive Action - Key Facts, Nov. 21, 2014, *available at* http://www.dhs.gov/immigration-action?utm_source=hp_feature&utm_medium=web&utm_campaign=dhs_hp; Dep't of Labor (DOL), Immigration Fact Sheets, *available at* http://www.dol.gov/dol/fact-sheet/immigration/ (last accessed: Nov. 21, 2014).

[3] *See* DHS Secretary Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012 (copy on file with the author).

[4] *See, e.g.*, Crane v. Napolitano, Amended Complaint, No. 3:12-cv-03247-O, filed Oct. 10, 2012 (N.D. Tex.) (lawsuit challenging DACA and arguing that the initiative is, among other things, contrary to specific provisions of the INA and the Executive's constitutional responsibility to "take care" that the laws are faithfully executed); Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 TEX. L. REV. 781 (2013) (arguing that the DACA initiative is inconsistent with the Executive's constitutional duties, and that the President may not purposefully refrain from enforcing federal statutes against broad categories of persons "in ordinary, noncritical circumstances").

[5] *See, e.g.*, Shoba Sivaprasad Wadhia, *In Defense of DACA, Deferred Action, and the DREAM Act*, 91 TEX. L. REV. 59 (2013) (asserting that DACA is a constitutionally justified attempt by the Executive "to enforce congressionally mandated priorities" by focusing limited resources on the removal of aliens designated as a "high-priority" for removal); David A. Martin, *A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws of Kris Kobach's Latest Crusade*, 122 YALE L.J. ONLINE 167 (2012) (arguing that DACA is consistent with the INA and with previous exercises of enforcement discretion by immigration officials).

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R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by Kate M. Manuel and Todd Garvey; CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey; and CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

What actions are being taken by the Obama Administration?

Following the President's televised speech, executive branch agencies and, in two cases, the White House announced dozens of specific actions as to immigration. These actions can be broadly divided into the same three categories noted by the President in his speech: (1) border security, (2) the current unlawfully present population, and (3) future legal immigration.

Border Security

Among the Administration's actions is "implement[ing] a Southern Border and Approaches Campaign Strategy to fundamentally alter the way in which we marshal resources to the border."[6] This will involve the Department of Homeland Security (DHS) commissioning three task forces made up of various law enforcement agencies. These task forces will focus on the southern maritime border, the southern land border and West Coast, and investigations to support the other two task forces. Among the objectives of the new strategy are increasing the perceived risk of engaging in or facilitating "illegal transnational or cross-border activity" (a term which could include the migration of persons); interdicting people who attempt to enter illegally between ports of entry; and preventing the "illegal exploitation of legal flows" (which could include things such as alien smuggling at ports of entry).[7]

Unlawfully Present Population

The Administration also proposes several actions affecting the current population of unlawfully present aliens, which is widely estimated to include some 11 million persons.[8] Arguably the most notable of these actions are the initiatives to grant deferred action—one type of relief from removal—to some unlawfully present aliens who were brought to the United States as children and raised here, or who have children who are U.S. citizens or lawfully permanent resident (LPR) aliens.[9] Previously, in June 2012, then-Secretary of Homeland Security Janet Napolitano announced a program—commonly known as Deferred Action for Childhood Arrivals (DACA)—whereby unlawfully present aliens who had been brought to the United States as children and met other criteria could receive deferred action and, in many cases, employment authorization.[10] The

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[6] DHS Secretary Jeh Charles Johnson, Memorandum, *Southern Border and Approaches Campaign*, Nov. 20, 2014, at 1 (copy on file with the author).

[7] *Id.* at 2.

[8] *See, e.g.*, *Unauthorized Immigrants: How Pew Research Counts Them and What We Know about Them*, Pew Research Center, Apr. 17, 2013, *available at* http://www.pewresearch.org/2013/04/17/unauthorized-immigrants-how-pew-research-counts-them-and-what-we-know-about-them/.

[9] DHS Secretary Jeh Charles Johnson, Memorandum, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents* [sic] *Are U.S. Citizens or Permanent Residents*, Nov. 20, 2014 (copy on file with the author).

[10] *See* DHS Secretary Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012, at 2 (copy on file with the author).

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eligibility criteria for DACA expressly excluded unlawfully present aliens who were over 31 years of age, or who had entered the United States on or after June 15, 2007.[11] However, aliens who are over 31 years of age, or entered the United States between June 15, 2007, and January 1, 2010, could receive deferred action as part of the November 2014 initiative.[12] The 2014 initiative would also extend the duration of grants of deferred action (and work authorization) received by DACA beneficiaries from the current two years, to three years.[13]

In addition, unlawfully present aliens who have children who are U.S. citizens or LPRs will also be eligible for deferred action (and employment authorization) pursuant to the November 2014 initiatives, provided they meet specified criteria.[14] These criteria include (1) "continuous residence" in the United States since before January 1, 2010; (2) physical presence in the United States both on the date the initiative was announced (i.e., November 20, 2014) and when they request deferred action; (3) not being an enforcement priority under the Administration's newly announced priorities, discussed below; and (4) "present[ing] no other factors that, in the exercise of discretion, makes the grant of deferred action inappropriate."[15]

Aliens granted deferred action pursuant to these initiatives—or otherwise[16]—are eligible for employment authorization upon showing "an economic necessity for employment."[17]

Other notable actions as to the current population of unlawfully present aliens include

- revising DHS's priorities for civil immigration enforcement by, among other things, narrowing the scope of aliens who are considered "highest priority" for removal.[18] Under the revised priorities, aliens without legal immigration status who have been in the United States since 2013, and who have not engaged in specified criminal activity or violated a prior order of removal, seem unlikely to be considered a removal priority.
- ending the Secure Communities program and replacing it with another program, known as the Priority Enforcement Program (PEP).[19] PEP will resemble Secure Communities in that Secure Communities also utilized information sharing between various levels and agencies of government to identify potentially

[11] *Id.*

[12] *Exercising Prosecutorial Discretion*, *supra* note 9. *See also* DHS, USCIS, *Executive Actions on Immigration*, last updated: Nov. 20, 2014, *available at* http://www.uscis.gov/immigrationaction.

[13] *Id.* The Administration has, however, noted that a grant of deferred action through DACA could be revoked. *See* U.S. Citizenship & Immigr. Servs. (USCIS), *Consideration of Deferred Action for Childhood Arrivals Process: Frequently Asked Questions*, last updated Oct. 23, 2014, *available at* http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions.

[14] *Exercising Prosecutorial Discretion*, *supra* note 9.

[15] *Id.*

[16] *See* DHS, ICE, *How to Seek Prosecutorial Discretion from ICE*, *available at* http://www.ice.gov/immigrationaction (last accessed: Nov. 21, 2014).

[17] 8 C.F.R. §274a.12(c)(14). Under these regulations, the "basic criteria" for establishing economic necessity are the federal poverty guidelines. *See* 8 C.F.R. §274a.12(e).

[18] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20, 2014 (copies on file with the author). Two earlier memoranda by then-Director of ICE John Morton articulating civil immigration enforcement priorities were expressly rescinded and superseded. *Id.*

[19] DHS Secretary Jeh Charles Johnson, Memorandum, *Secure Communities*, Nov. 20, 2014 (copies on file with the author).

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removable aliens.[20] However, unlike Secure Communities, PEP will focus on aliens who have been convicted of felonies or "significant" misdemeanors, and generally will not entail states and localities holding aliens after they would have otherwise been released for the state or local offense that prompted their initial arrest so that DHS can take custody of them.[21]

- ensuring uniform recognition of grants of "advance parole" by immigration agencies, so that aliens without legal status who depart the United States for another country pursuant to a grant of advance parole are not excluded from the United States upon their return on the grounds that they "departed" the United States and, thus, triggered the 3- and 10-year bars upon the admission of aliens who have accrued more than 180 days of unlawful presence in the United States, discussed below.[22] (Parole is a device which permits an alien to enter the United States without satisfying the criteria for admissibility set forth in INA §212(a). With advance parole, an alien without legal status who is present in the United States is effectively granted a limited assurance, prior to departing the United States for another country, that s/he will be permitted to re-enter the United States upon his/her return.)
- granting "parole in place" or deferred action to some immediate relatives of U.S. citizens and LPRs who "seek to enlist in the Armed Forces," instead of just to qualifying relatives of active Armed Service personnel, the standing Reserves, or veterans of the Armed Services or standing Reserves.[23] (While parole is typically granted to aliens outside the United States who are ineligible for admission under INA §212(a), parole in place entails granting parole to unlawfully present aliens within the United States.)[24]

Legal Immigration

In addition, the Obama Administration announced several actions which it characterizes as "support[ing] our county's high-skilled businesses and workers."[25] Included among these actions

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[20] *Cf.* DHS, ICE, *Secure Communities: The Basics*, *available at* http://www.ice.gov/secure_communities (last accessed: Nov. 23, 2014).

[21] The primary means that DHS had relied upon to request such holds by states and localities—so-called "immigration detainers" (Form I-247)—have recently been the subject of extensive litigation. In March 2014, the U.S. Court of Appeals for the Third Circuit ruled that federal law does not require states and localities to hold aliens who are subject to immigration detainers, and that any attempt to require states and localities to do so would run afoul of the "anti-commandeering" principles of the Tenth Amendment. *See* Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014). More recently, in April 2014, a federal district court found that states and localities must have probable cause to hold an alien pursuant to a detainer; the mere filing of a detainer does not provide the requisite legal authority for such holds. *See* Miranda-Olivares v. Clackamas County, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Or., Apr. 11, 2014). For more information, see generally CRS Report R42690, *Immigration Detainers: Legal Issues*, by Kate M. Manuel.

[22] DHS Secretary Jeh Charles Johnson, Memorandum, *Directive to Provide Consistency Regarding Advance Parole*, Nov. 20, 2014, *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_arrabally.pdf.

[23] DHS Secretary Jeh Charles Johnson, Memorandum, *Families of U.S. Armed Forces Members and Enlistees*, Nov. 20, 2014 (copy on file with the author).

[24] A grant of parole in place could potentially entitle such aliens to other types of relief from removal. *See, e.g.*, INA §245(a), 8 U.S.C. §1255(a) (permitting adjustment to LPR status for certain aliens who have been admitted or paroled).

[25] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies Supporting U.S. High-Skilled Businesses and Workers*, Nov. 20, 2014, at 1 (copy on file with the author). The memorandum also directs USCIS to continue with the promulgation of a proposed rule extending work authorization to the spouses of H-1B visa holders who have been (continued...)

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are as yet-to-be-determined steps to ensure that all immigrant visas authorized by Congress for issuance in a particular year are issued (assuming demand).[26] Previously, delays in processing applications for immigrant visas resulted in some visas going unused (less than 5% of all available immigrant visas in recent years).[27] This, in turn, prompted calls for Congress or the executive to "recapture" unused visas (i.e., to identify unused visa numbers from earlier years and make them available for current use).[28] The Obama Administration's November 20, 2014, action does not purport to recapture previously unused visas. However, it can be seen as an attempt to avoid the perceived need for visa recapture in the future by ensuring that all immigrant visas available for issuance in a year are used. Relatedly, the Administration proposes as-yet-unspecified steps to "improve the system for determining when immigrant visas are available to applicants during the fiscal year," as well as consideration of "other regulatory or policy changes" to "better assist and provide stability" to be beneficiaries of employment-based immigrant visa petitions, including by ensuring that visa petitions remain valid when the alien beneficiary of the petition seeks to change employers or jobs.[29]

Another action involves expanding the duration of any "optional practical training" (OPT) engaged in by foreign nationals studying science, technology, engineering, and mathematics (STEM) fields at institutions of higher education in the United States on non-immigrant F-1 student visas, as well as "expand[ing] the degree programs" eligible for OPT.[30] Foreign nationals studying in the United States on F-1 visas have long been able to request an additional 12 months of F-1 visa status for temporary employment—known as OPT—in their field of study.[31] Regulations promulgated in 2008 permitted students in STEM fields to request an additional 17 months of OPT, for a total of 29 months of OPT.[32] However, only students in STEM fields are eligible for this 17 month extension, and these students can participate in OPT for no more than 29 months. Because any expansion of OPT can be seen, at least by some, as affecting employment opportunities for U.S. persons,[33] the Administration also proposes to "improve" the

(...continued)

approved for an employment-based immigrant visa, as well as the development of proposed guidance to "strengthen and improve" processing of various employment-based non-immigrant visas. *Id.*

[26] *Id.* at 2. Ways to ensure that all available immigrant visas are used each year are also to be explored by the newly established interagency task force on modernizing and streamlining the immigrant visa system, discussed below. *See* President Barack Obama, Memorandum, *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century*, Nov. 21, 2014 (copy on file with the author).

[27] *See, e.g.*, USCIS, *Responding to Your Comments on Visa Numbers, Preference Categories, and Spillover*, Mar. 30, 2010, *available at* http://blog.uscis.gov/2010/03/visa-numbers.html.

[28] *See, e.g.*, Patrick Thibodeau, *Obama's Options for Tech Immigration Take Shape*, COMPUTERWORLD, Aug. 20, 2014, *available at* http://www.computerworld.com/article/2598332/technology-law-regulation/obama-s-options-for-tech-immigration-take-shape.html. The INA provides that any unused employment-based immigrant visas from one year are available for use as family-based immigrant visas the following year, and vice versa. INA §201(c) & (d), 8 U.S.C. §1151(c) & (d). Thus, some have questioned the significance of "recapture" proposals. *See, e.g.*, Numbers USA, Visa "Recapture," *available at* https://www.numbersusa.com/content/files/pdf/Fact%20Sheet%20Visa%20Recapture.pdf (last accessed: Nov. 22, 2014).

[29] *Policies Supporting U.S. High-Skilled Businesses and Workers*, *supra* note 25, at 2.

[30] *Id.* at 3.

[31] *See, e.g.*, Immigration and Naturalization Service (INS), Nonimmigrant Classes: F-1 Academic Students, 52 Fed. Reg. 13223 (Apr. 22, 1987).

[32] *See* DHS, ICE, Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions, 73 Fed. Reg. 18944 (Apr. 8, 2008).

[33] *See* cases discussed *infra* note 125 and accompanying text.

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OPT program by requiring "stronger ties" to degree-granting institutions, and "tak[ing] steps" to ensure that OPT employment is consistent with U.S. labor market protections.[34]

Other actions announced by the Obama Administration include

- making greater use of provisions in INA §203(b)(2)(B), which permit aliens with advanced degrees or "exceptional ability" to obtain an immigrant visa without a sponsoring employer—as is generally required for immigrants who are not sponsored by family members—if their admission is in the "national interest."
- using the authority granted to the Executive in INA §212(d)(5)(A) to "parole" aliens into the United States when there is a "significant public benefit" to permit some inventors, researchers, and founders of start-up enterprises to enter and lawfully remain in the United States without a visa (or counting against the visa caps).[35]
- clarifying and standardizing the meaning of "specialized knowledge" for purposes of the L-1B visa program, which allows companies to transfer certain employees who are executives or managers, or have "specialized knowledge" of the company or its processes, to the United States from the company's foreign operations.
- clarifying what is meant by the "same or similar job" for purposes of INA §204(j), which provides that employment-based immigrant visa petitions remain valid when the alien employee changes jobs or employers so long as the new job is in the "same or similar occupational classification" as the job for which the petition was filed.
- reviewing the so-called PERM program, whereby the Department of Labor (DOL) certifies that the issuance of an employment-based immigrant visa will not displace U.S. workers, or adversely affect the wages or working conditions of similarly employed U.S. workers, to identify methods for aligning domestic worker recruitment requirements with demonstrated occupational shortages and surpluses.
- DOL "certifying"[36] applications for nonimmigrant T visas for aliens who have been victims of human trafficking, as well as certifying applications for nonimmigrant U visas for eligible victims of extortion, forced labor, and fraud in foreign labor contracting that DOL detects in the course of its workplace investigations.

[34] *Policies Supporting U.S. High-Skilled Businesses and Workers*, *supra* note 25, at 2.

[35] While the Executive has generally based determinations as to whether to parole aliens into the United States on "urgent humanitarian reasons," also noted in INA §212(d)(5)(A), there have instances when the Executive considered labor-related factors when granting parole. *See* "A Brief History of the Executive Branch's Parole of Aliens into the United States," in CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia.

[36] The issuance of U visas is generally conditioned, in part, on a designated law enforcement agency "certifying" or corroborating that aliens who are victims of specified criminal offenses have assisted law enforcement or other government officials in the investigation or prosecution of those crimes. Such certification is not required with T visas, but can be helpful in obtaining a T visa.

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- establishing an interagency working group to "streamline" the immigrant visa system, in part, by improving services and reducing employers' burdens.[37]

Other

Other announced actions do not neatly fall into any of the foregoing categories or, in one case, could be said to involve multiple categories. Arguably key among these is the expansion of a preexisting Obama Administration program that provides for "provisional waivers" of the 3- and 10-year bars on the admission of aliens who have accrued more than 180 days of unlawful presence in the United States. Initially, this program reached only spouses, sons, or daughters of U.S. citizens. It will now be expanded to include qualifying relatives of LPRs.[38]

As a general matter, unlawfully present aliens whose spouses or parents are U.S. citizens or LPRs may be eligible for an immigrant visa and adjustment to legal status. Obtaining such an immigrant visa typically requires the alien to leave the United States so that his/her visa application can be processed by U.S. consular officers overseas.[39] However, leaving the country generally triggers the application of the 3- and 10-year bars if the alien has been unlawfully present in the United States for more than 180 days (as most unlawfully present aliens have been).[40] These bars can be waived if denial of the alien's admission would result in "extreme hardship" to the alien's spouse or parents.[41] However, the time required to obtain a waiver after leaving the country and triggering the bar has historically kept many unlawfully present aliens who could "legalize their status" under current law (see "Does granting deferred action to unlawfully present aliens legalize their status?") from doing so. In 2013, the Obama Administration began allowing spouses or children of U.S. citizens to request and obtain provisional waivers of the 3- and 10-year bars to their admission while they are in the United States (they generally still must travel outside the United States for processing).[42] However, the spouses and children of LPRs were ineligible for such provisional waivers until the 2014 actions.

Other actions announced in November 2014 include certain personnel reforms involving immigration and customs officers;[43] promoting naturalization by eligible LPRs;[44] establishing an

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[37] *See generally Policies Supporting U.S. High-Skilled Businesses and* Workers, *supra* note 25; *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century*, *supra* note 26; DOL Secretary Thomas E. Perez, Fact Sheet, *Department of Labor to Pursue Modernized Recruitment and Application Requirements for the PERM Program* (copy on file with the author); DOL Secretary Thomas E. Perez, Fact Sheet, *The Department of Labor's Wage and House Division Will Expand Its Support of Victims of Human Trafficking and Other Crimes Seeking Immigration Relief from DHS* (copy on file with the author).

[38] DHS Secretary Jeh Charles Johnson, Memorandum, *Expansion of the Provisional Waiver Program*, Nov. 20, 2014 (copy on file with the author).

[39] *See generally* CRS Legal Sidebar WSLG385, Provisional Waivers of the Three- and Ten-Year Bars to Admissibility to Be Granted to Certain Unlawfully Present Aliens, by Kate M. Manuel.

[40] INA §212(a)(9)(B)(i)(I)-(II), 8 U.S.C. §1182(a)(9)(B)(i)(I)-(II). The 3-year bar applies to aliens who have been unlawfully present for more than 180 days but less than 1 year. The 10-year bar applies to aliens who have been unlawfully present for 1 year or longer. Longer or permanent bars could apply to certain aliens, depending upon their circumstances. *See, e.g.*, INA §212(a)(9)(A), 8 U.S.C. §1182(a)(9)(A) (certain aliens barred from entry for 20 years).

[41] INA §212(a)(9)(B)(v), 8 U.S.C. §1182(a)(9)(B)(v).

[42] *See* DHS, USCIS, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 Fed. Reg. 536, 542 (Jan. 3, 2013) (noting that DHS initially limited eligibility for provisional waivers to immediate relatives of U.S. citizens "not only because the immigrant visas for this category are always available, but also because it is consistent with Congress' policy choice to prioritize family reunification of immediate relatives of U.S. citizens").

[43] DHS Secretary Jeh Charles Johnson, Memorandum, *Personnel Reforms for Immigration and Customs Enforcement* (continued...)

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interagency task force on "New Americans" to "increase meaningful engagement" between immigrants and the communities where they settle;[45] and establishing an interagency working group to address the interplay of immigration and employment law.[46]

Did the President issue an executive order?

As of November 24, 2014, the President has not issued an executive order regarding these immigration-related actions; nor has he given any indication that he will issue such an order. With the exception of several specific actions announced in two presidential memoranda,[47] all other actions to date—including the granting of deferred action to some unlawfully present aliens—have been announced in intra-agency memoranda or fact sheets made available by executive agencies after the President's televised address. This is arguably consistent with prior actions in the field of immigration and, particularly, prior exercises of discretion in enforcing federal immigration law. For example, the 1990 "Family Fairness" program, discussed below—which gave certain unlawfully present aliens temporary relief from deportation (later known as removal)—was announced in a memorandum from the head of the Immigration and Naturalization Service (INS) to regional officials.[48] Similarly, President Clinton relied on a memorandum to the Attorney General when authorizing deferred enforced departure (DED)—another type of temporary relief from removal—for some unlawfully present aliens from Liberia.[49]

The fact that these actions were announced by means other than an executive order generally would not affect their permissibility. In other words, whether the deferred action initiatives, for example, are permissible depends upon whether the executive has the legal authority to grant this relief, not whether the initiatives were announced by means of an executive order or a memorandum from the Secretary of Homeland Security.

What is the legal authority for the Administration's actions?

Although each specific Administration action involves somewhat different legal authorities, three broad types of legal authority can be said to underlie all these actions: (1) prosecutorial or enforcement discretion; (2) express delegations of authority to the executive by Congress; and (3)

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Officers, Nov. 20, 2014 (copy on file with the author).

[44] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies to Promote and Increase Access to U.S. Citizenship*, Nov. 20, 2014 (copy on file with the author) (directing USCIS to begin accepting credit cards for paying naturalization fees; consider the feasibility of partial waivers of naturalization fees in its next biennial fee study (currently only total waivers are granted); and launch a "comprehensive media campaign" to promote naturalization).

[45] President Barack Obama, Memorandum, *Creating Welcoming Communities and Fully Integrating Immigrants and Refugees*, Nov. 21, 2014 (copy on file with the author).

[46] DOL Secretary Thomas E. Perez, Fact Sheet, *Establishment of Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws* (copy on file with the author).

[47] *See supra* notes 26 and 45 and accompanying text.

[48] *See* INS, Office of the Commissioner, Memorandum, *Family Fairness: Guidelines for Voluntary Departure under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens*, Feb. 2, 1990 (copy on file with the author).

[49] *See* President William J. Clinton, Memorandum for the Attorney General, *Measures Regarding Certain Liberians in the United States*, Sept. 28, 2000 (copy on file with the author).

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the executive's discretion in interpreting and applying immigration law when congressional enactments are "silent or ambiguous" on specific issues.

Prosecutorial or Enforcement Discretion

The judicial and executive branches have repeatedly recognized that the determination as to whether to grant deferred action to an individual alien is a matter of prosecutorial or enforcement discretion.[50] Such discretion has generally been seen as an independent attribute of the executive branch, and does not arise from—or require—an express delegation of authority by Congress.[51] Thus, the fact that Congress has not authorized the executive to grant deferred action to aliens in the circumstances contemplated here (i.e., unlawfully present aliens brought to the United States as children or whose children are U.S. citizens or LPRs) does not, in itself, make such a grant impermissible.[52]

Prosecutorial discretion is generally seen as affording the executive wide latitude in determining when, against whom, how, and even whether to prosecute apparent violations of federal law.[53] However, the Constitution or federal statutes could potentially impose certain constraints upon this discretion, as discussed below (see "Are there constitutional or related constraints upon the executive's discretionary authority over immigration enforcement?" and "What other legal issues might be raised by the Administration's actions?").

Express Delegations of Statutory Authority

In other cases, Congress has expressly granted certain authority to the executive that the Obama Administration would appear to rely upon for specific actions. For example, the definition of *unauthorized alien* in INA §274A(h)(3) has historically been seen to give the executive the authority to grant employment authorization documents (EADs) to aliens who are not expressly authorized to work by the INA. Section 274A(h)(3)'s definition describes an unauthorized alien as an alien who is not "authorized to be ... employed ... by the Attorney General [currently, the

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[50] *See, e.g.*, Hotel & Rest. Employees Union Local 25 v. Smith, 846 F.2d 1499, 1510-11 (D.C. Cir. 1988); Barahona-Gomez v. Reno, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001); Johnson v. INS, 962 F.2d 574, 579 (7th Cir. 1992); Carmona Martinez v. Ashcroft, 118 Fed. App'x 238, 239 (9th Cir. 2004); *Matter of* Yauri, 25 I. & N. Dec. 103 (BIA 2009); *Matter of* Singh, 21 I. & N. Dec. 427 (BIA 1996); *Matter of* Luviano-Rodriguez, 21 I. & N. Dec. 235 (BIA 1996); *Matter of* Quintero, 18 I. & N. Dec. 348 (BIA 1982); ICE Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011, at 2-3; ICE Director John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, Mar. 2, 2011, at 3; ICE Director John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011, at 2; ICE Principal Legal Advisor William J. Howard, *Prosecutorial Discretion*, Oct. 24, 2005, at 2; INS Commissioner Doris Meissner, *Exercising Prosecutorial Discretion*, Nov. 7, 2000, at 2. (Copies of all of these memoranda are on file with the author).

[51] For further discussion as to the basis for the Executive's prosecutorial discretion, see the section titled "Prosecutorial Discretion Generally," in CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by Kate M. Manuel and Todd Garvey.

[52] The INA uses the phrase "deferred action" three times, but only in very specific contexts, none of which are relevant to DACA or the November 20, 2014, initiatives. *See* 8 U.S.C. §1151 note (addressing the extension of posthumous benefits to certain surviving spouses, children, and parents); INA §204(a)(1)(D)(i)(IV), 8 U.S.C. §1154(a)(1)(D)(i)(IV) ("Any [victim of domestic violence] described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization."); INA §237(d)(2), 8 U.S.C. §1227(d)(2) (denial of a request for an administrative stay of removal does not preclude the alien from applying for deferred action).

[53] *See generally* U.S. Department of Justice, *United States Attorneys' Manual*, §9-27.110(B) (2002).

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Secretary of Homeland Security]."[54] The immigration agencies have relied upon this definition in promulgating regulations that permit aliens granted deferred action to receive EADs upon showing "an economic necessity for employment."[55]

Other actions that would appear to involve express delegations of statutory authority include (but are not limited to) (1) paroling into the United States some inventors, researchers, and founders of start-up enterprises on public interest grounds (INA §212(d)(5));[56] (2) granting provisional waivers of the 3- and 10-year bars upon the admissibility of aliens who have accrued more than 180 days of unlawful presence in the United States (INA §212(a)(9)(B)(v)); and (3) permitting aliens with advanced degrees or "exceptional ability" to obtain an immigrant visa without a sponsoring employer if their admission is in the "national interest" (INA §203(b)(2)(B)).

Any exercise of delegated authority must be consistent with the terms of the delegation, as discussed below (see "What other legal issues might be raised by the Administration's actions?"). Questions could also be raised about whether particular exercises of authority are consistent with historical practice, other provisions of the INA, or congressional intent.[57]

Executive Discretion When Statutes Are "Silent or Ambiguous"

In yet other cases, the Obama Administration would appear to be relying upon the deference generally given to the executive in interpreting and applying statutes in taking certain actions. As the Supreme Court articulated in its 1984 decision in *Chevron U.S.A. v. Natural Resources Defense Council*, when "Congress has directly spoken to the issue, ... that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[58] However, where a statute is "silent or ambiguous with respect to a specific issue," courts will generally defer to an agency interpretation that is based on a "permissible construction

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[54] INA §274A(h)(3), 8 U.S.C. §1324a(h)(3).

[55] 8 C.F.R. §274a.12(c)(14). Under these regulations, the "basic criteria" for establishing "economic necessity" are the federal poverty guidelines. *See* 8 C.F.R. §274a.12(e). When first promulgated in 1987, these regulations were challenged through the administrative process on the grounds that they exceeded the INS's authority. *See* INS, Employment Authorization; Classes of Aliens Eligible, 52 Fed. Reg. 46092 (Dec. 4, 1987). Specifically, the challengers asserted that the statutory language referring to aliens "authorized to be ... employed by this chapter or by the Attorney General" did not give the Attorney General authority to grant work authorization "except to those aliens who have already been granted specific authorization by the Act." *Id.* Had this argument prevailed, the authority of the INS and, later, DHS to grant work authorization to beneficiaries of deferred action would have been in doubt, because the INA does not expressly authorize the grant of EADs to such persons. However, the INS rejected this argument on the grounds that the

> only logical way to interpret this phrase is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, and approving of the manner in which he has exercised that authority in this matter, defined "unauthorized alien" in such fashion as to exclude aliens who have been authorized employment by the Attorney General through the regulatory process, in addition to those who are authorized employment by statute.

[56] It should be noted, however, that the determination as to whether to grant parole to individual aliens has sometimes been characterized as an act of prosecutorial discretion. *See, e.g.*, Assa'ad v. U.S. Attorney General, 332 F.3d 1321, 1339 (11th Cir. 2003); *Matter of* Artigas, 23 I. & N. Dec. 99 (BIA 2001) (Filppu, J., dissenting).

[57] For further discussion of constraints based on historical precedent and other factors, see CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia.

[58] 467 U.S. 837, 842-43 (1984).

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of the statute,"[59] on the grounds that the executive branch must fill any "gaps" explicitly or implicitly left by Congress in the course of administering congressional programs.[60]

Among the gaps that Congress could be said to have left in the INA for the executive to fill are (1) what constitutes "extreme hardship" for purposes of the 3- and 10-year bars upon the admission of aliens who have accrued more than 180 days of unlawful presence in the United States; (2) the duration of any OPT for F-1 student visas holders; (3) what steps are to be taken to ensure that all immigrant visas available for issuance in a given year are used; and (4) what constitutes "specialized knowledge" for purposes of the L-1B visa program. The Obama Administration's November 20, 2014, actions can be seen to address all of these "gaps," as well as others not specifically noted here.

Any construction advanced by the executive must, however, constitute a "permissible" and "reasonable" interpretation of the underlying statute in order to be afforded deference by the courts, as previously noted. Also, the executive has no discretion in interpreting or applying the law where Congress has spoken to the precise question at issue.[61]

Are there constitutional or related constraints upon the executive's discretionary authority over immigration enforcement?[62]

The Constitution confers upon the President the responsibility and obligation to "take Care that the Law is faithfully executed."[63] Some of the Obama Administration's immigration actions—including the identification of particular categories of aliens as priorities for removal, and the expanded use of deferred action to afford certain unlawfully present aliens with temporary relief from removal—are primarily premised upon executive assertions of independent constitutional authority.[64] As previously noted, the executive branch is understood to have substantial

[59] *Id.* at 843.

[60] *See, e.g.*, Morton v. Ruiz, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress."). The degree of deference afforded to particular executive branch interpretations can vary depending upon the facts and circumstances of the case, including whether the interpretation is a "formal" one adopted through notice-and-comment rulemaking or case-by-case adjudication. *See, e.g.*, Christensen v. Harris County, 529 U.S. 576, 587 (2000) ("Interpretations such as those in opinion letters - like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant *Chevron*-style deference."). Instead, such "informal" interpretations may be afforded a lesser degree of deference that depends upon various factors including "the degree of the agency's care, its consistency, formality, and relative expertness, and ... the persuasiveness of the agency's position," as well as the "writer's thoroughness, logic, and expertise, its fit with prior interpretations, and any other source of weight." United States v. Mead Corp., 533 U.S. 218, 228, 235 (2001); *see also* Skidmore v. Swift, 323 U.S. 134 (1944).

[61] *See infra* note 88 and accompanying text.

[62] CRS Legislative Attorney Michael John Garcia authored this section of the report, and questions about it should be directed to him. For a more extensive analysis of the parameters of executive discretion in the enforcement federal law, see CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[63] U.S. Const., Art. II, §3.

[64] DOJ, Office of Legal Counsel, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*, Nov. 20, 2014 (copy on file with the author) (characterizing components of the Administration's immigration initiative primarily as an exercise of the Executive's independent discretionary authority). It should be noted, however, that certain actions taken with respect to persons granted deferred action are based on express statutory authority, as previously discussed. *See* "What is the legal authority for the Administration's actions?".

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discretionary authority to determine when and whether to pursue sanctions against apparent violators of federal law, an authority generally referred to as prosecutorial or enforcement discretion.[65] Prosecutorial discretion is most closely associated with executive enforcement of federal criminal law.[66] But the concept of prosecutorial or enforcement discretion is often applicable in civil contexts as well, including with respect to immigration officers' decisions regarding whether to seek the removal of aliens who have entered or remained in the United States in violation of federal immigration law.[67]

A decision not to pursue sanctions against a particular individual is generally understood to be largely shielded from judicial review.[68] Nonetheless, there are recognized limitations to the scope of this discretionary authority.[69] As an initial matter, a general enforcement policy that is promulgated by an agency may not enjoy the same degree of immunity from judicial review as individual determinations not to pursue sanctions in a particular case.[70] Moreover, courts have recognized that agency action must be consistent with congressional objectives underlying the statutory scheme it administers. When adopting a general enforcement policy, an agency may not rely on factors "which Congress has not intended it to consider"[71] and substitute its own policy judgment for that which has been made by Congress. In particular, a general policy of non-

[65] *See generally* DOJ, *United States Attorneys' Manual*, §9-27.110(B) (2002).

[66] *See, e.g.,* Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."); *U.S. Attorneys' Manuel, supra* note 65 (discussing prosecutorial discretion in the criminal context and citing numerous court rulings recognizing the Executive as possessing broad discretionary authority in deciding whether to pursue criminal charges).

[67] *See* Arizona v. United States, 132 S. Ct. 2492, 2498 (2012) ("A principal feature of the removal system is the broad discretion entrusted to immigration officials."); Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 490 (1999) (finding that the various prudential concerns that prompt deference to the executive branch's determinations as to whether to prosecute criminal offenses are "greatly magnified in the deportation context"). *See also* United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950) (noting that immigration is a "field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program").

[68] *See* Heckler v. Chaney, 470 U.S. 821, 831 (1985) (finding that agency's non-enforcement decision was committed to agency discretion and not reviewable under the Administrative Procedure Act, and observing that "This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion....This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement."). A court's determination that agency action is not subject to judicial review does not necessarily constitute an endorsement of the lawfulness of executive action, but may simply be due to the court finding that it lacks a manageable standard or is otherwise ill-equipped to assess the propriety of the action. *See* CRS Report RL30352, *War Powers Litigation Initiated by Members of Congress Since the Enactment of the War Powers Resolution*, by Michael John Garcia (discussing instances where courts have dismissed on procedural grounds legal challenges to military action conducted without statutory authorization).

[69] *See, e.g., Heckler*, 470 U.S. at 831-833 (identifying factors informing the scope of enforcement discretion available to the Executive); Smith v. Meese, 821 F.2d 1484, 1492 n.4 (11th Cir. 1987) ("[T]he exercise of prosecutorial discretion, like the exercise of Executive discretion generally, is subject to statutory and constitutional limits enforceable through judicial review ...") (*quoting* Nader v. Saxbe, 497 F.2d 676, 679 n.19 (D.C. Cir.1974)); *OLC Opinion on Executive Immigration Action, supra* note 64, at 4 ("Immigration officials' discretion in enforcing the laws is not, however, unlimited. Limits on enforcement discretion are both implicit in, and fundamental to, the Constitution's allocation of governmental powers between the two political branches.").

[70] *See* Crowley Caribbean Transport, Inc. v. Pena, 37 F.3d 671, 677 (D.C. Cir. 1994) (distinguishing the non-reviewability of a "*single-shot* non-enforcement decision" from a "*general enforcement* policy," which may be reviewable in some contexts).

[71] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

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enforcement by an agency could potentially be reviewable by a court and found to be an impermissible "abdication" of the agency's statutory responsibilities.[72]

Whether the Obama Administration's November deferred action initiatives constitute a permissible exercise of enforcement discretion will be the subject of heated debate. This debate will likely center upon the Administration's identification of large numbers of unlawfully present aliens as non-priorities for removal, as well as the expansion of its earlier deferred action initiative to additional aliens.[73] On one hand, it could be argued that aspects of these initiatives functionally constitute a blanket policy of non-enforcement of federal immigration statutes, and that this non-enforcement policy represents an abdication of DHS's statutory responsibilities to enforce federal immigration law.[74] The INA contains several grounds of removal which are potentially applicable to aliens who may receive deferred action under the Administration's initiative.[75] Moreover, while federal statute grants immigration authorities the power to provide some unlawfully present aliens with relief from removal, these statute-based forms of relief are limited in scope.[76] It could be argued that the Administration's decision to focus enforcement resources almost exclusively on certain categories of removable aliens, while declining to pursue the removal of a substantial portion of the unauthorized population which does not fall within those categories, constitutes an abdication of its responsibilities under the INA. It might also be argued that, by enabling a sizeable portion of the unlawfully present population to request deferred action (a form of relief that is not expressly authorized by federal statute, except in narrow circumstances[77]) and work authorization, the executive branch is impermissibly substituting its own judgment as to whom should be legally allowed to remain in the United States for that of Congress.

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[72] *See Heckler*, 470 U.S. at 833 n.4 (distinguishing agency non-enforcement decisions which are presumed to be shielded from judicial review from those where "the agency has 'consciously and expressly adopted a general policy' that is so extreme as to amount to an abdication of its statutory responsibilities," and suggesting that judicial review of the latter type of actions could be available under the Administrative Procedure Act because such a decision had not been committed to agency discretion) (*quoting* Adams v. Richardson, 480 F.2d 1159, 1162 (D.C. Cir. 1973) (en banc)).

[73] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 30 (Administration officials estimating that nearly 4 million unlawfully present alien parents of U.S. citizens or LPRs could receive deferred action under the new initiative); Alicia Patterson, *Graphic: What Is President Obama's Immigration Plan?*, N.Y. TIMES, *available at* http://www.nytimes.com/interactive/2014/11/20/us/2014-11-20-immigration.html?_r=0 (last accessed Nov. 23, 2014) (citing 2012 data from the Migration Policy Institute, and estimating that 4.5 million unlawfully present aliens could be eligible for deferred action under the Administration's new initiative, in addition to 1.2 million persons already eligible to obtain deferred action under DACA).

[74] *See, e.g.*, Crane v. Napolitano, Amended Complaint, No. 3:12-cv-03247-O, filed Oct. 10, 2012 (N.D. Tex.) (lawsuit challenging DACA and arguing that the initiative is contrary to certain provisions of the INA and the Executive's constitutional responsibility to that the laws are faithfully executed); *Dream On*, *supra* note 4 (arguing that the DACA initiative is inconsistent with the Executive's constitutional duties, and that the President may not purposefully refrain from enforcing federal statutes against broad categories of persons "in ordinary, noncritical circumstances").

[75] INA §§212(a)(6)(A), 8 U.S.C. §1182(a)(6)(A) (aliens present without admission or parole are generally removable; INA §237(a)(1), 8 U.S.C. §§ 1182(a)(6)(A), 1227(a)(1) (aliens who obtained admission through fraud or misrepresentation, or who overstay or otherwise violate the terms of a nonimmigrant visa, are removable).

[76] For example, under INA §240A, certain removable aliens may obtain cancellation of removal and adjust immigration status if their removal would cause "exceptional and extremely unusual hardship" to certain family members who are U.S. citizens or LPRs. No more than 4,000 aliens may be granted such relief in any fiscal year. 8 U.S.C. §1229b. Some inadmissibility grounds may be waived on account of "hardship" caused to immediate family members who are U.S. citizens or LPRs. *See generally* CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia, at "Waivers of Grounds of Inadmissibility."

[77] *See supra* note 52.

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On the other hand, it could be argued that resource constraints preclude DHS from pursuing the removal of all unlawfully present aliens in the United States,[78] and that the decision to focus resources primarily upon the removal of those who have engaged in criminal activity, pose a threat to public safety, or recently entered the United States is consistent with applicable statutory enactments.[79] Additionally, while the Administration's initiative would grant some unlawfully present aliens legal permission to remain in the United States for a specified period, it would not provide them with legal immigration status, or enable them to acquire benefits they are statutorily barred from receiving.[80] The executive might further dispute arguments that the initiative constitutes a blanket policy of non-enforcement, and note that immigration officers retain ultimate discretion to grant deferred action on a case-by case basis, and that they are not barred from seeking the removal of unlawfully present aliens who have not been identified by DHS as enforcement priorities.[81] It might also be argued that, particularly in light of the long-standing executive practice of granting deferred action and other forms of relief from removal, that Congress has implicitly signaled its approval or acquiescence to the executive's use of these forms of administrative relief, and the INA should not be interpreted to preclude the executive from granting such relief in certain instances.[82] Accordingly, it could be argued that the executive branch's action, while affecting a substantial number of unlawfully present aliens, does not constitute a legally impermissible abdication of its statutory duties.

What other legal issues might be raised by the Administration's actions?

In some cases, specific actions taken by the Obama Administration could potentially be seen to run afoul of the provisions of the INA, in which case the executive action could be found to be impermissible (provided a plaintiff with standing to challenge the executive action were found (see "Who has standing to challenge the Administration's initiatives?")).[83] For example, one federal district court recently found that DACA is contrary to three purportedly "interlocking

[78] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 1, 9 (noting that DHS claims to have the resources to remove fewer than 400,000 unlawfully present aliens—out of a population of approximately 11 million—from the United States each year).

[79] *Id.* at 10-11 (characterizing DHS's announced enforcement priorities as consistent with various provisions of the INA, as well as with recent funding measures, including a provision of the Department of Homeland Security Appropriations Act, 2014, which directs DHS to "prioritize the identification and removal of aliens convicted of a crime by the severity of that crime.").

[80] *See supra* "What is the legal authority for the Administration's actions?" (discussing, among other things, DHS's statutory authority to grant work authorization to aliens present in the United States without legal immigration status).

[81] The memorandum outlining the expanded deferred action initiative expressly states that, although "immigration officers will be provided with specific eligibility criteria for deferred action, ... the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis." *Exercising Prosecutorial Discretion*, *supra* note 9, at 5. Similarly, the memorandum outlining DHS's enforcement priorities does not prohibit enforcement action against aliens not categorized as priorities for removal. *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, *supra* note 18, at 4 ("Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein.").

[82] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 12-20 (discussing historical use of deferred action and claiming that "Congress has long been aware of the practice of granting deferred action, including in its categorical variety, and of its salient features; and it has never acted to disapprove or limit the practice"). *See also* Dames & Moore v. Regan, 453 U.S. 654, 686 (1981) ("Past practice does not, by itself, create power, but 'long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent.... '") (*quoting* United States v. Midwest Oil Co., 236 U.S. 459, 474 (1915)).

[83] *See supra* notes 58-60 and accompanying text.

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provisions" in INA §235 which some assert require that unlawfully present aliens be placed in removal proceedings.[84] These provisions state that

1. any alien present in the United States who has not been admitted *shall* be deemed an applicant for admission;
2. applicants for admission *shall* be inspected by immigration officers; and
3. in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for removal proceedings.[85]

Thus, the district court concluded that DACA runs afoul of the INA because many of the aliens granted deferred action through DACA had never been placed in removal proceedings as required, in the court's view, by INA §235. (This same court, however, later ruled that it lacked jurisdiction over the case.[86] That decision has been appealed, and it is presently unclear whether and how the court's earlier decision construing INA §235 could be seen to restrain any future grants of deferred action.[87])

Similar statutory constraints could potentially be also be implicated in other Obama Administration actions, particularly as executive agencies take action to clarify the meaning and application of certain statutory language. For example, INA §212(a)(9)(B)(v) would appear to preclude DHS—in issuing guidance regarding waivers of the 3- and 10-year bars upon the admission of aliens who have been unlawfully present in the United States for more than 180 days—from granting waivers based on mere "hardship," as opposed to "extreme hardship," or from considering hardship to U.S. citizen or LPR children, as opposed to U.S. citizen or LPR spouses or parents. This is because INA §212(a)(9)(B)(v) expressly refers to waivers

[84] Crane v. Napolitano, No. 3:12-cv-03247-O, 2013 U.S. Dist. LEXIS 57788, *27-*39 (N.D. Tex., Apr. 23, 2013). Others, however, have argued that this interpretation misreads Section 235 and misunderstands the legislative history of these provisions of the INA. *See A Defense of Immigration-Enforcement Discretion*, *supra* note 5. DHS has also attempted to counter this view by noting the Executive has historically not construed Section 235 in this way. Both DOJ/DHS and those who claim it lacks discretion construe the first two provisions of Section 235—aliens present without admission being deemed applicants for admission, and applicants for admission being inspected—as applying to both (1) "arriving aliens" at a port-of-entry and (2) aliens who are present in the United States without inspection. However, DOJ/DHS have differed from proponents of the view that DHS lacks discretion in that DOJ/DHS have construed the third provision—regarding detention for removal proceedings—as applying only to arriving aliens, not aliens who are present without inspection. *See generally* INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10357 (Mar. 6, 1997) (codified at 8 C.F.R. §235.3(c)); INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 444, 444-46 (Jan. 3, 1997). This difference appears to have arisen, in part, because the agencies have emphasized the phrase "aliens seeking admission" in the third provision, and reasoned that only arriving aliens at ports-of-entry can be said to seek admission.

[85] *See* INA §235(a)(1), (a)(3), & (b)(2)(A), 8 U.S.C. §1225(a)(1), (a)(3), & (b)(2)(A). *Shall* has been construed to indicate mandatory agency action in some cases. *See, e.g.*, Lopez v. Davis, 531 U.S. 230, 241 (2001) ("Congress' use of the permissive 'may' in §3621(e)(2)(B) contrasts with the legislators' use of a mandatory 'shall' in the very same section."). However, in other cases, agencies have been seen to have discretion in determining whether to enforce particular statutes that use the word *shall*. *See, e.g.*, *Heckler*, 470 U.S. at 835 (describing a statute which stated that certain food, drugs, or cosmetics "shall be liable to be proceeded against" as "framed in the permissive").

[86] *Crane v. Napolitano*, No. 3:12-cv-03247-O, 2013 U.S. Dist. LEXIS 187005 (July 31, 2013).

[87] Moreover, even if the district court's interpretation were adopted, an argument could be made that the provisions of the INA discussed by the district court require only that arriving aliens be placed in removal proceedings, not that removal proceedings be pursued to a decision on the merits or until the alien is removed, if s/he is found removable.

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> in the case of an immigrant who is the *spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence*, if it is established ... that the refusal of admission to such [an] alien would result in extreme hardship to the *citizen or lawfully resident spouse or parent* of such alien.[88]

Does granting deferred action to unlawfully present aliens legalize their status?

A grant of deferred action does not constitute "legalization," as that term is generally understood. In the immigration context, the term *legalization* is widely used to describe a process whereby persons who are unlawfully present are able to acquire legal status, typically as LPRs.[89] LPRs may generally acquire U.S. citizenship after a period of time if certain conditions are met.[90]

Aliens granted deferred action are generally seen as "lawfully present" for purposes of federal law.[91] This means that they do not acquire additional unlawful presence for application of the 3- and 10-year bars on the admissibility of aliens who have been unlawfully present in the United States for more than 180 days. Aliens granted deferred action may also be eligible for certain things—like the issuance of driver's licenses—that are made available, pursuant to federal, state, or local law, to persons who are "lawfully present" (or "legally residing") in the United States.[92] (See "Will aliens granted deferred action be eligible for public benefits?").

However, lawful presence is not the same as lawful status, and aliens granted deferred action lack lawful status.[93] As such, a grant of deferred action, in itself, will not result in an alien obtaining LPR status, a "green card," or citizenship, or the ability to sponsor family members for immigration benefits. Aliens granted deferred action could potentially have their status legalized by Congress in the future, though, as happened with earlier "groups" of aliens granted temporary relief from removal.[94]

Will aliens granted deferred action be eligible for public benefits?

As a general matter, aliens granted deferred action are not eligible for federal, state, or local public benefits because of the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as amended.[95] PRWORA established a definition of

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[88] 8 U.S.C. §1182(a)(9)(B)(v) (emphases added).

[89] *Cf.* Merriam-Webster Online, Legalize, *available at* http://www.merriam-webster.com/dictionary/legalize (last accessed: Nov. 22, 2014).

[90] *See* INA §311, 8 U.S.C. §1422.

[91] *See, e.g., Frequently Asked Questions, supra* note 13 ("An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present.").

[92] *See generally* CRS Report R43452, *Unlawfully Present Aliens, Driver's Licenses, and Other State-Issued ID: Select Legal Issues*, by Kate M. Manuel and Michael John Garcia; CRS Legal Sidebar WSLG1057, *9th Circuit Decision Enables DACA Beneficiaries—and Other Aliens Granted Deferred Action—to Get Arizona Driver's Licenses*, by Kate M. Manuel.

[93] *See Frequently Asked Questions, supra* note 13 ("[D]eferred action does not confer lawful status ... ").

[94] *See, e.g.,* Cuban Refugees Adjustment of Status Act, P.L.89-732, 80 Stat. 1161 (Nov. 2, 1966) (providing for certain Cuban parolees to become LPRs); Hungarian Refugees Relief Act, P.L. 85-559, 72 Stat. 419 (July 25, 1958) (similar).

[95] P.L. 104-193, tit. IV, §§401-435, 110 Stat. 2261-2276 (Aug. 22, 1996) (generally codified, as amended, in 8 U.S.C. §§1601-1646). For more on PRWORA, see generally CRS Report R43221, *Noncitizen Eligibility for Public Benefits:* (continued...)

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qualified alien that does not include aliens granted deferred action,[96] and generally barred aliens who are not qualified aliens from receiving federal, state, and local public benefits.[97]

Nonetheless, aliens granted deferred action could potentially be eligible for certain benefits—or things sometimes perceived as benefits—because aliens granted deferred action are seen as "lawfully present" (or "legally residing") in the United States. This is, in part, because one Congress cannot bind future Congresses.[98] Thus, despite PRWORA's restrictions upon the receipt of public benefits by aliens who are not included within its definition of "qualified aliens," subsequent Congresses have enacted legislation that provides for aliens' receipt of public benefits that is inconsistent with—and does not use the language of—PRWORA. For example, Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) gives states the option to provide Medicaid and Children's Health Insurance Program (CHIP) coverage to otherwise eligible children and pregnant women "who are lawfully residing in the United States,"[99] a phrase which has been taken to include aliens granted deferred action.[100] The Patient Protection and Affordable Care Act (ACA) of 2010 similarly permits persons who are "lawfully present" to participate in certain health care programs established under the act.[101] However, while *lawfully present* for purposes of ACA has generally been construed in the same way as *lawfully residing* for purposes of CHIPRA,[102] those granted deferred action through DACA have been deemed ineligible for certain benefits under ACA.[103] (As of the date of this report, the Administration does not appear to have formally addressed how aliens granted deferred action through the November initiatives will be treated for purposes of ACA.)

Another reason why aliens granted deferred action may be eligible for state and local benefits, in particular, is that PRWORA expressly contemplates states enacting legislation, subsequent to PRWORA's enactment, that "affirmatively provides" for "unlawfully present aliens" to receive

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[96] *See* 8 U.S.C. §1641(b)(1)-(7) (defining *qualified alien* to encompass: LPRs; aliens granted asylum; refugees; aliens paroled into the United States for a period of at least one year; aliens whose deportation is being withheld; aliens granted conditional entry; and Cuban and Haitian entrants). Certain aliens who have been subject to domestic violence are also treated as qualified aliens for purposes of PRWORA. *See* 8 U.S.C. §1641(c).

[97] *See* 8 U.S.C. §1611(a) (federal public benefits); 8 U.S.C. §1621(a) (state and local public benefits).

[98] *See* United States v. Winstar Corp., 518 U.S. 839, 872 (1996) (quoting, in support of the proposition "that one legislature may not bind the legislative authority of its successors," 1 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not.... Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior upon earth, which the prior legislature must have been, if it's [sic] ordinances could bind the present parliament.").

[99] P.L. 111-3, §214(a), 123 Stat. 56 (Feb. 4, 2009) (codified at 42 U.S.C. §1396b(v)(4)(A)-(B)).

[100] Centers for Medicare & Medicaid Services, *Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women*, July 1, 2010 (copy on file with the author).

[101] *See, e.g.*, P.L. 111-148, §1101(d)(1), 124 Stat. 142 (Mar. 23, 2010) (temporary high risk health insurance pools for uninsured individuals with preexisting conditions); *id.*, at §1312(f)(3), 124 Stat. 184 (health care exchanges).

[102] *See, e.g.*, Department of the Treasury, Health Insurance Premium Tax Credit: Final Regulations, 77 Fed. Reg. 30377, 30387 (May 23, 2012) ("Lawfully present has the same meaning as in 45 CFR 155.20."). Section 155.20 of Title 45, in turn, defines *lawfully present* as qualified aliens; nonimmigrants who have not violated the terms of their status; certain aliens paroled into the United States; and aliens granted deferred action or deferred enforced departure, among others.

[103] *See, e.g.*, Department of Health & Human Servs., Center for Medicaid & CHIP Servs., *Individuals with Deferred Action for Childhood Arrivals*, Aug. 28, 2012 (copy on file with the author).

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state and local public benefits.[104] Numerous states have exercised this authority to enact legislation that makes at least some state or local public benefits available to either unlawfully present aliens or aliens who are not qualified aliens for purposes of PRWORA.[105]

In addition, it is important to note that PRWORA's definition of *public benefit* is limited to

> (A) any grant, contract, loan, professional license, or commercial license provided by [a government] agency ... or by appropriated funds ...; and
>
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by [a government] agency ... or by appropriated funds.[106]

Given this definition, PRWORA has not been seen as barring the provision of certain benefits or services that some might characterize as public benefits—such as driver's licenses[107] or admission to public institutions of higher education[108]—but that are generally not seen as included within the definition of "public benefits" given by PRWORA.

Who has standing to challenge the Administration's initiatives?

The feasibility of legal challenges to the Obama Administration's actions will depend, in part, upon which specific actions are challenged and the legal bases for the challenge. However, regardless of the specifics of individual cases, standing requirements seem likely to pose a significant barrier for any legal challenge.

Standing requirements are concerned with who is a proper party to seek judicial relief from a federal court. They derive from Article III of the Constitution, which confines the jurisdiction of federal courts to actual "Cases" and "Controversies."[109] The case-or-controversy requirement has long been construed to restrict Article III courts to the adjudication of real, live disputes involving parties who have "a personal stake in the outcome of the controversy."[110] Parties seeking judicial relief from an Article III court must generally show three things in order to demonstrate standing: (1) they have suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) the injury is likely to be redressed by a favorable decision.[111]

[104] 8 U.S.C. §1621(d).

[105] *See, e.g.*, Pimentel v. Dreyfus, 670 F.3d 1096, 1101 (9th Cir. 2012) (Washington statute extending food stamp benefits to aliens who lost their eligibility for federal food stamps due to PRWORA); Ehrlich v. Perez, 908 A.2d 1220 (Md. 2006) (Maryland statute providing comprehensive medical care to qualified aliens who had not been present in the United States in that status for the requisite period of time to receive federal means-tested public benefits).

[106] U.S.C. §1611(c)(1) (federal public benefits); 8 U.S.C. §1621(c)(1) (state and local public benefits).

[107] *See* sources cited *supra* note 92.

[108] *See* CRS Report R43447, *Unlawfully Present Aliens, Higher Education, In-State Tuition, and Financial Aid: Legal Analysis*, by Kate M. Manuel.

[109] U.S. Const., art. III, §2, cl. 1.

[110] Baker v. Carr, 369 U.S. 186, 204 (1962).

[111] *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Additional requirements—involving so-called "prudential standing" could also present issues. These requirements are reflected in the rule that plaintiffs must be "within the 'zone of interests to be protected or regulated by the statute or constitutional guarantee'" that they allege (continued...)

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"Taxpayer Standing"

Those whose sole injury is the government's alleged failure to follow the law are generally found to lack standing because this injury is not personal and particularized.[112] This is so regardless of whether the plaintiff alleges that his/her "tax dollars" can be seen as helping to fund the government's allegedly improper action or inaction.

Government Personnel

Government officers and employees, who have taken an oath to uphold the law, are generally found to lack standing so long as their only asserted injury is being forced to violate their oaths by implementing an allegedly unlawful policy or practice.[113] Instead, they must allege some separate and concrete adverse consequence that would flow from violating their oath, and courts have reached differing conclusions as to whether the possibility of being disciplined for obeying—or refusing to obey—allegedly unlawful orders suffices for purposes of standing, or whether such injury is "entirely speculative" and, therefore, lacking imminence.[114] In the case of the ICE officers who challenged DACA, the reviewing district court found that the plaintiffs had standing because of the possibility of such discipline. However, because such discipline constitutes an adverse employment action, the same court subsequently found that the plaintiffs' case is within the jurisdiction of the Merit Systems Protection Board (MSPB), not the court's.[115] (This decision has been appealed to the U.S. Court of Appeals for the Fifth Circuit, and it remains to be seen whether the district court's view as to jurisdiction is upheld.)

Members of Congress

Individual Members of Congress are generally seen to lack standing to challenge executive actions. In *Raines v. Byrd*, the Supreme Court held that, in order to obtain standing, an individual Member must assert either a personal injury, like the loss of his/her congressional seat, or an

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to have been violated in order to be found to have standing. *See, e.g.*, Valley Forge Christian College v. Am. United for Separation of Church and State, 454 U.S. 464 (1982); Assoc. of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150 (1970).

[112] *See, e.g.*, Lance v. Coffman, 549 U.S. 437, 439 (2007) ("A plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in [the] proper application of the Constitution and laws, and seeking relief that no more directly [or] tangibly benefits him than it does the public at large—does not state an Article III case or controversy.") (internal quotations omitted)); Lujan v. Defenders of Wildlife, 504 U.S. 555, 562 (1992) ("[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but is ordinarily 'substantially more difficult' to establish.").

[113] *See, e.g.*, Donelon v. La. Div. of Admin. Law *ex rel.* Wise, 522 F.3d 564 (5th Cir. 2008) (Louisiana Commissioner of Insurance lacked standing to challenge the constitutionality of a state law which he alleged violated the Constitution); Finch v. Miss. State Med. Ass'n, Inc., 585 F.2d 765, 773-75 (5th Cir. 1978) (governor of Mississippi lacked standing to challenge a state law whose enforcement, he believed, would cause him to violate his oath to uphold the federal and state constitutions).

[114] *Compare* Drake v. Obama, 664 F.3d 774, 780 (9th Cir. 2011) ("The notion that [the plaintiff] will be disciplined by the military for obeying President Obama's orders is entirely speculative. He might be disciplined for *disobeying* those orders, but he has an 'available course of action which subjects [him] to no concrete adverse consequences'—he can obey the orders of the Commander-in-Chief.") (emphasis in original)) *with Crane*, 920 F. Supp. 2d at 738-40 (finding that the ICE agents challenging DACA have "suffered an injury-in-fact by virtue of being compelled to violate a federal statute upon pain of adverse employment action," and otherwise satisfy the requirements for standing).

[115] *Crane*, 2013 U.S. Dist. LEXIS 187005.

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"institutional injury" that cannot be addressed by an extant legislative remedy.[116] It is presently unclear what might constitute the requisite "institutional injury," as discussed in CRS Report R43712, *Article III Standing and Congressional Suits Against the Executive Branch*, by Alissa M. Dolan.

State Governments

In several prior cases, states sought to challenge the federal government's alleged failure to enforce immigration law on the grounds that this "failure" imposes costs upon the states, which must provide public benefits and services to aliens who, under this argument, would not have been present within the state had the federal government enforced the INA.[117] Some of these challenges have been rejected on standing grounds.[118] In other cases, the court either "presumed" or did not address the standing requirements,[119] but found that states' challenges presented a nonjusticiable political question.[120] (The political question doctrine embodies the notion that courts should refrain from deciding questions that the Constitution has entrusted to other branches of government.[121])

Economic Competitors

An argument has recently been advanced that U.S. workers whose wages or working conditions are adversely affected by increased competition from aliens permitted to work in the United States could show "competitor standing" and, thus, challenge the Obama Administration's actions.[122] This argument is, in part, based on a June 2014 decision wherein the U.S. Court of Appeals for the District of Columbia Circuit found that U.S. persons working as herders had standing to challenge the DOL's decision to issue certain guidance as to the wages and hours of foreign herders without notice-and-comment rulemaking because DOL's action caused "increased

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[116] 521 U.S. 811 (1997).

[117] *See, e.g.*, Texas v. United States, 106 F.3d 661, 664 (5th Cir. 1997) ("The [plaintiffs'] amended complaint alleges that hundreds of thousands of undocumented immigrants live in Texas as a direct consequence of federal immigration policy. The State alleges that federal defendants have violated the Constitution and immigration laws by failing to reimburse Texas for its educational, medical, and criminal justice expenditures on undocumented aliens. The State seeks an order enjoining federal defendants from failing to pay for these alleged financial consequences of federal immigration policy and requiring prospective payment as well as restitution for the State's relevant expenditures since 1988. These expenditures are estimated at $1.34 billion for 1993 alone."). Other states also made similar claims in the mid-1990s. *See* Arizona v. United States, 104 F.3d 1095 (9th Cir. 1997); California v. United States, 104 F.3d 1086 (9th Cir. 1997); New Jersey v. United States, 91 F.3d 463 (3d Cir. 1996); Padavan v. United States, 82 F.3d 23 (2d Cir. 1996); Chiles v. United States, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 517 U.S. 1188 (1996).

[118] *See, e.g.*, *Texas*, 106 F.3d at 664 (noting that the district court had found the plaintiffs lacked standing); *Crane*, 920 F. Supp. 2d at 745-46 (finding that Mississippi's "asserted fiscal injury is purely speculative because there is no concrete evidence that the costs associated with the presence of illegal aliens in the state of Mississippi have increased or will increase as a result of the Directive or the Morton Memorandum").

[119] *See, e.g.*, *Texas*, 106 F.3d at 664 n.2 ("For purposes of today's disposition we assume, without deciding, that the plaintiffs have standing."); *Florida*, 69 F.3d at 1096 (appellate court noting that the district court did not address the standing issue, and that the appellate court would "suppose" the state has standing to raise its claims).

[120] *See, e.g.*, *Texas*, 106 F.3d at 665; *New Jersey*, 91 F.3d at 469; *Padavan*, 82 F.3d at 27-28; *Chiles*, 69 F.3d at 1097.

[121] *See, e.g.*, Baker v. Carr, 369 U.S. 186, 217 (1962) ("Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it, [among other things].").

[122] *See, e.g.*, Josh Gerstein, *White House Readies Immigration Legal Defense*, POLITICO, Nov. 19, 2014, *available at* http://www.politico.com/story/2014/11/barack-obama-executive-order-immigration-113051.html.

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competition for jobs in their industry."[123] However, this case could potentially be distinguished from a challenge to the Obama Administration's deferred actions, in particular, because the INA expressly requires the executive branch to take certain steps to protect U.S. workers from foreign competition when issuing certain types of nonimmigrant visas, like those at issue in the June decision.[124] There do not appear to be any such requirements as to the executive's determination to issue employment authorization documents to aliens who do not hold employment-based visas.[125]

Is there historical precedent for the Administration's actions?

Competing arguments have been made as to whether there is historical precedent for the Obama Administration's actions, particularly in granting deferred action to certain aliens brought to the United States as children and to the parents of U.S. citizen or LPR children.[126] Such arguments are shaped, in part, by which historical actions are viewed as analogous to the current ones.

The executive has historically exercised its prosecutorial or enforcement discretion, delegated discretion, and/or discretion in interpreting and applying statutes to provide certain relief from removal to individual aliens who share certain characteristics and could, thus, be said to form a group or category.[127] At different times, such relief has been made available under the rubric of parole (or refugee parole), extended voluntary departure (EVD), indefinite voluntary departure (IVD), deferred enforced departure (DED), temporary protected status (TPS), and deferred action. However, the shared name given to such actions can mask important differences in the legal basis for particular grants of discretion, among other things. For example, not all grants of parole to aliens in the 1960s should be seen as exercises of prosecutorial or enforcement discretion since Congress enacted legislation in 1960 that temporarily provided the executive with express statutory authority to parole "refugees" into the United States.[128] Likewise, in some cases,

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[123] Mendoza v. Perez, 754 F.3d 1002, 1011 (D.C. Cir. 2014), *rehearing en banc denied*, 2014 U.S. App. LEXIS 15437 (Aug. 11, 2014). *See also* Int'l Union of Bricklayers & Allied Craftsmen v. Meese, 761 F.3d 798 (D.C. Cir. 1985) (finding that plaintiffs had standing where they alleged three instances wherein aliens were admitted under B-1 visas (for temporary business visitors) to "perform work of which the union members are said to be capable").

[124] *See generally* CRS Report R43223, *The Framework for Foreign Workers' Labor Protections Under Federal Law*, by Margaret Mikyung Lee and Jon O. Shimabukuro.

[125] Thus, the current situation could potentially be said to resemble earlier litigation in which the plaintiffs alleged improper competition from foreign workers, but were found to lack standing to challenge executive actions not involving employment-based visas whose issuance involves protections for U.S. workers. *See, e.g.*, Programmers Guild v. Chertoff, 338 Fed. App'x 239 (3d Cir. 2009) (finding that the plaintiffs lacked standing to challenge the 17-month extension of OPT because nothing in the INA conditioned the entry of aliens into the United States on an F-1 visa "on noninterference with domestic labor conditions"), *cert. denied sub nom.* Guild v. Napolitano, 559 U.S. 1067 (2010); Fed. for Am. Immigr. Reform, Inc. v. Reno, 93 F.3d 897, 899 (D.C. Cir. 1996) (finding that the plaintiffs lacked standing to challenge the Executive's paroling of Cuban nationals into the United States because the INA imposes no employment-related restrictions upon the parole of aliens into the United States).

[126] *Compare* Drew Desilver, *Executive Actions on Immigration Have a Long History*, Pew Research Center, Nov. 21, 2014, *available at* http://www.pewresearch.org/fact-tank/2014/11/21/executive-actions-on-immigration-have-long-history/ *with* David Frum, *Reagan and Bush Offer No Precedent for Obama's Amnesty Order*, THE ATLANTIC, Nov. 18, 2014, *available at* http://www.theatlantic.com/politics/archive/2014/11/the-weak-argument-defending-executive-amnesty/382906/.

[127] *See* Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671, 675 (2004) (prosecutorial discretion not extending to "entire categories" of aliens); *Dream On*, *supra* note 4, at 846 (similar).

[128] *See* Refugee Resettlement Act of 1960, P.L. 86-648, §1, 74 Stat. 504 (July 14, 1960) (providing that, "under the terms of section 212(d)(5) of the Immigration and Nationality Act[,] the Attorney General may parole into the United States, pursuant to such regulations as he may prescribe, an alien refugee-escapee," subject to certain conditions).

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Congress has expressly adopted legislation encouraging the executive to exercise particular forms of prosecutorial or enforcement discretion in certain cases, which could potentially be said to indicate congressional "approval" of the executive's exercise of this authority.[129]

The temporary relief from removal granted to unlawfully present aliens that some have asserted most closely resembles the Obama Administration's deferred action initiatives[130]—particularly in terms of the percentage of the unauthorized alien population affected—are the so-called "Family Fairness" initiatives of 1987 and 1990. In those cases, the Reagan and George H.W. Bush Administrations, respectively, granted indefinite voluntary departure (IVD) and employment authorization to certain immediate relatives of aliens who had legalized their status pursuant to IRCA.[131] (These relatives were themselves ineligible for legalization under IRCA for various reasons.) The Obama Administration's 2014 deferred action initiatives can be likened to the Family Fairness initiatives in that they involve the granting of temporary relief from removal and work authorization to certain unlawfully present aliens based, in part, on humanitarian factors. However, certain differences could also be noted between the current and earlier initiatives, including that (1) the Reagan and Bush Administrations did not establish a centralized process whereby aliens could apply for relief from removal, instead permitting regional officials to grant relief; (2) some aliens who were denied relief through the Family Fairness initiatives were reportedly placed in removal proceedings,[132] something that has not been reported with DACA;[133] and (3) the Family Fairness initiatives were preceded (and followed) by the enactment of legislation legalizing certain unlawfully present aliens, whereas Congress has enacted no such legislation here.[134] How much weight is given to these similarities or dissimilarities may ultimately depend upon one's views as to the permissibility and/or desirability of the current initiatives.

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[129] *See, e.g.*, Department of State Authorization Act, FY1984-1985, P.L. 98-164, §1012, 97 Stat. 1062 (Nov. 22, 1983) (expressing the "sense of the Congress" that the Executive ought to consider persons from El Salvador for EVD).

[130] *But see* Glenn Kessler, *Obama's Claim that George H.W. Bush Gave Relief to "40 percent" of Undocumented Immigrants*, Wash. Post, Nov. 24, 2014, *available at* http://www.washingtonpost.com/blogs/fact-checker/wp/2014/11/24/did-george-h-w-bush-really-shield-1-5-million-illegal-immigrants-nope/.

[131] *See* 1990 Family Fairness memorandum, *supra* note 48; INS, Office of the Commissioner, Family Fairness: Guidelines for Voluntary Departures under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens, Nov. 1987 (copy on file with the author).

[132] *See, e.g.*, IMMIGRATION REFORM AND CONTROL ACT OF 1986 OVERSIGHT: HEARINGS BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, 101ST CONG., 1ST SESS., May 10 & 17, 1989, at 48 (noting that some spouses and children of legalized aliens who applied for relief were "issues Orders to Show Cause ..., which initiate deportation proceedings").

[133] DHS has left open the possibility that aliens who apply, but are ineligible for, relief through DACA could be subject to immigration enforcement actions. *See Frequently Asked Questions*, *supra* note 13 ("Information provided in this request is protected from disclosure ... for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance.") However, it is unclear whether any such actions have been taken.

[134] Both of the Family Fairness initiatives were adopted after the Immigration Reform and Control Act (IRCA) of 1986, P.L. 99-603, 100 Stat. 3359 (Nov. 6, 1986), was enacted, and both preceded the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

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Author Contact Information

(b)(6), (b)(7)(c)
Legislative Attorney
(b)(6), (b)(7)(c) 7-4477

Acknowledgments

CRS Legislative Attorney (b)(6), (b)(7)(c) authored the section of this report addressing whether granting deferred action to certain "categories" of aliens violates the Take Care Clause, or constitutes an abdication of the executive's duties under the INA. He also co-authored prior CRS products on executive discretion as to immigration whose texts have, in some cases, been adapted for purposes of this report.

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Almeida, Corina E

From: Almeida, Corina E
Sent: Thursday, September 18, 2014 9:03 AM
To: (b)(6), (b)(7)(c)
Cc: Choi, Raphael
Subject: Letter to WH
Attachments: WH letter re Artesia.pdf

(b)(6), (b)(7)(c)

Here's the letter. Minutes ago, I spoke with (b)(6), (b)(7)(c) and he informed me that HQ (FLO) has already received a copy of the letter.

~Corina

***** Warning *** Attorney/Client Privilege *** Attorney Work Product *****

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AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 16, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

As the national bar association of more than 13,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) urges you to close the Artesia, New Mexico family detention center immediately and reverse the rapid deportation and detention strategy your Administration is applying to hundreds of children and their mothers who are seeking asylum and protection in the United States.

In response to the humanitarian crisis in Central America that has compelled tens of thousands of mothers and children to flee their home countries, the Department of Homeland Security (DHS) opened a hastily conceived facility in Artesia to detain mothers and children and rush them through the deportation process. Since July, AILA members have responded to the urgent need for– indeed the complete lack of– legal representation at Artesia by travelling at their own expense to this remote facility. Even working 18-20 hours a day, seven days a week, volunteers have barely been able to meet the demand for legal help, serving as many detainees as humanly possible through the AILA Pro Bono Project (Project).

Based on hundreds of interviews with these detained families that our expert lawyers have conducted, AILA has concluded that Artesia is a due process failure and a humanitarian disaster that cannot be fixed and must be closed immediately. Attorneys with long histories of representing clients at remote detention facilities have described Artesia as not just the worst situation they have ever encountered, but something far worse than anything they could have imagined.

Moreover, we are deeply concerned about DHS's continued expansion of family detention– including a new facility in Karnes, Texas with at least 500 beds and a planned 2,400-bed facility in Dilley, Texas. Within months DHS will be detaining nearly 4,000 mothers and children, a forty-fold increase in the use of detention on immigrant families. If these facilities implement the same rapid deportation model as is used in Artesia, hundreds if not thousands of mothers and children who have suffered domestic violence, sexual assault, gang violence and other atrocities protected under U.S. asylum and humanitarian law will be unlawfully repatriated to their home countries. We urge you to stop this from happening.

AILA National Office
1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

DHS-011-0000001-0000679
AILA InfoNet Doc. No. 14091648. (Posted 9/16/14)

Stories abound of injustice at Artesia.

- An 11-year-old U.S. citizen boy was detained at Artesia for 35 days.

- A woman who had been beaten so severely by her partner in Guatemala that she suffered a miscarriage, was deported early one morning without her attorney's knowledge, before she could even finish drafting her declaration to support her case.

- A family of Seventh Day Adventists who had been shot by the gangs for refusing to stop evangelizing was arrested by Customs and Border Protection. The mother and child were sent to Artesia and were initially found not to have a credible fear of asylum. After they received legal counsel and requested reconsideration, an immigration judge rejected the asylum officer's negative finding and found her to have credible fear, allowing her to go forward with her asylum claim. She and the child were granted bond. The father, who was the leader of the church group, had suffered gunshot wounds and was detained in a separate facility. He was also found not to have a credible fear. DHS put him on a plane for deportation while he was still recovering from the wounds. With the intervention of his wife and child's lawyers, he was pulled off the plane and is waiting in detention for reconsideration.

While individuals within the agency, both on the ground and at headquarters, have made valiant efforts to try to resolve the many problems that have interfered with effective representation, the remoteness of the center and the lack of adequate and appropriate resources have conspired to make due process meaningless.

The Administration has publicly stated that detention and rapid deportation are intentionally designed to deter people from coming to the United States. Such aggressive deterrence policies are resulting in the wrongful deportation of legitimate asylum seekers and constitute a violation of U.S. law and U.S. obligations under international law.

Based on our Project attorneys' experience screening and representing mothers and children detained at Artesia, it is clear that most of them would likely qualify as refugees under U.S. law. The Project has opened nearly 300 cases at Artesia, representing more than 400 individual mothers and children. In early September, the first two Project cases to get all the way to the final hearing stage were granted asylum by an immigration judge. Both women experienced severe domestic violence.

But many legitimate asylum claims will never have a chance to be heard. Artesia detainees are subjected to "expedited removal" – the fastest removal procedure at our government's disposal,

AILA National Office
1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org
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with little chance to raise an asylum claim. The detention and rapid deportation strategy being executed at Artesia is even more draconian. The rate at which Artesia asylum officers find that detainees have a "credible fear" of persecution or torture – the first step in mounting an asylum claim in expedited removal – is much lower than the national average. From Artesia's opening on June 27 through early August, the overall grant rate for credible fear determinations at Artesia was 37.8 percent whereas the national grant rate during the month of July was 62.7 percent.

Every day, AILA member attorneys see that the pressure to rush women and children through the deportation process is resulting in the denial of many legitimate asylum claims – both by asylum officers and by judges – without legal foundation. Officers interview families for their credible fear claims less than three days after their arrival, meaning most will receive no legal information or advice from legal counsel before presenting their cases. The speed with which officers are making credible fear decisions is also absurdly fast: 6.4 days on average.

Artesia mothers and children are not even given a fair chance to post bond. Detention officers and immigration judges are misapplying well-established criteria for release: public safety risk and flight risk. Women and children who pose no risk to anyone, who have family members to support them in the U.S., and even who have already been found to be bona fide asylum seekers remain detained at Artesia. In contravention of U.S. and international law, DHS has an across-the-board policy of denying bond or requiring an extremely high bond for these families. DHS attorneys file a pro-forma motion opposing bond in every case that asserts these women and their children constitute national security threats. The average bond amount set by immigration judges nationally is $5,200;[1] at Artesia, bond is usually denied, and when it is granted, it is far above the national average – often prohibitively expensive between $20,000 and $30,000. The detention and bond scheme at Artesia is unprecedented and nothing short of unlawful.

The continued detention of these families is mentally and physically damaging. Detention scars children's physical and psychological development, exacerbates trauma experienced by those fleeing violence and persecution, and damages the family structure by stripping parents of their decision-making role, causing confusion and adding to the already extreme stresses of detention. AILA member volunteers see the effects that detention is having on these families. They describe children who are dehydrated, listless, cold and losing weight. Mothers also report degrading treatment by some of the guards – including being called "piggies" at mealtimes. One

[1] "The bails of the 55,546 individuals released on bond in 2011 averaged $5,162, according to statistics from the federal agency." http://www.chron.com/news/houston-texas/article/Huge-rise-seen-in-ICE-cases-released-on-bail-3432655.php

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1331 G Street NW, Suite 300, Washington, DC 20005
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woman suffering from diarrhea had no choice but to defecate on herself in front of her son because the guard ignored her pleas to be allowed to go to the bathroom.

Every individual facing deportation, regardless of where they came from, deserves basic fairness and humane treatment. We urge you to close Artesia and to abandon your Administration's strategy of detaining and rapidly deporting families.

We would welcome the opportunity to meet with you and your representatives to discuss these matters. Please contact Gregory Chen, Director of Advocacy, gchen@aila.org, 202-507-7615.

Sincerely,

Leslie Holman
President

Crystal Williams
Executive Director

Laura Lichter
Artesia Pro Bono Project
Team Leader
Member, AILA Board of Governors

Stephen Manning
Artesia Pro Bono Project
Team Leader
Member, AILA Board of Governors

CC: Cecilia Munoz, Director, White House Domestic Policy Council
Jeh Johnson, Secretary, Department of Homeland Security
Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security
Eric Holder, Attorney General
Juan Osuna, Director, Executive Office for Immigration Review

AILA National Office
1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

DHS-011-0000001-0000682

WHAT TO DO IF YOU ARE IN EXPEDITED REMOVAL OR REINSTATEMENT OF REMOVAL

WARNING: This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet was originally prepared in 2002 by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit organization that provides free legal services to immigrants detained in Arizona. It was adapted in 2011 to provide more general information for immigrants detained across the country. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or Executive Office of Immigration Review (EOIR) but these agencies have reviewed its content

Immigration law, unfortunately, is not always clear, and the Florence Project's understanding of the law may not always be the same as DHS' interpretation of the law. The Florence Project believes that the information is correct and helpful, but the fact that this booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' interpretation of the law is the same as that expressed in the booklet.

We wrote this booklet for two reasons. One is to help you find out the kind of proceedings you are in. The second is to help you apply for any relief that you may be eligible foreither by yourself if you cannot get a lawyer to represent you, or to help you help your lawyer if you have one.

Who was this pamphlet written for?

There are several legal procedures DHS can use to remove you from the United States. This pamphlet is for individuals who are in **Expedited Removal, Reinstatement of Removal or Administrative Removal**. It does not apply to people in regular removal, deportation, or exclusion proceedings. You can tell what type of proceedings you are in by the document you should have received from DHS that explains the reasons why you may be removed from the U.S.

- If DHS says that you were arrested at or near the border and you received **Form I-860 "Notice and Order of Expedited Removal" or Form M-444 "Information About Credible Fear Interview,"** then you are in **EXPEDITED REMOVAL.**
- If DHS says that you entered the United States illegally after having been deported or removed and you received a **Form I-871"Notice of Intent/Decision**

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to Reinstate Prior Order," then you are in **REINSTATEMENT OF REMOVAL.**

- If DHS says that you have been convicted of an aggravated felony and you do not have lawful permanent residence in the United States, and you received **Form 1-851 "Notice of Intent to Issue a Final Administrative Deportation Order,"** then you are in **ADMINISTRATIVE REMOVAL** proceedings.
- If you received a document called a **Form I-862 "Notice to Appear,"** then you are in regular **removal** proceedings.
- If you received a document called a **Form I-221 "Order to Show Cause,"** then you are in **deportation** proceedings.
- If you received a document, which is numbered at the bottom **"Form I-110"** and/or **"Form I-122,"** then you are in **exclusion** proceedings.

This pamphlet explains what will happen to people in **Expedited Removal, Reinstatementof Removal** and **Administrative Removal**. If you are in regular removal proceedings, please read the other materials available, which explain the removal process and each of the forms of relief from removal more thoroughly.

This pamphlet explains what will happen to people in:

- **Expedited Removal,**
- **Reinstatement of Removal, and**
- **Administrative Removal.**

If you are in regular removal proceedings,

☞ **read the material on removal and other forms of relief.**

EXPEDITED REMOVAL

What is Expedited Removal?

"Expedited Removal" is a process that DHS uses to remove people from the United States (U.S.) who attempt to enter the country without proper documents. When individuals try to enter the U.S. through a border checkpoint, international airport, or shipping port, DHS officers interview them to see if they have valid travel documents and if they are coming for the reasons stated in their documents. If the DHS officer believes that someone is trying to enter the country either by fraud or without proper documents, the officer can refuse the person's entry and order him or her immediately removed from the U.S. After being removed from the country through expedited removal, you are barred from returning to the U.S. for 5 years or longer, although in some cases exceptions may be possible. The DHS officer's decision is final and generally there is no right to speak with an Immigration Judge. In addition, expedited removal may be used for two

groups of individuals encountered within the United States: (1) individuals who arrived by sea and were encountered within two years, and (2) individuals who are encountered within 100 miles of an international land border and within 14 days of entering the country.

There are two situations when you will not be refused entry at the border and there will be some review of your request to enter the U.S. The first is if at the point of entry, you **expressed a fear** of returning to your home country or asked to apply for **asylum or protection under the Convention Against Torture** in the United States. In this situation, you will be given a chance to talk to an asylum officer who will determine whether you have a "credible fear" of returning to your home country. We will explain this process in more detail below.

The **second** is if you claim **some lawful status in the U.S.,** such as U.S. citizenship, lawful permanent residence, or refugee or asylee status in the U.S. In this case, the DHS officer should first try to find proof of your claim in immigration records. If the DHS officer finds proof of your claim to lawful status then he/she will decide if you can enter the country or if you should be placed in regular removal proceedings to have a judge review your case. If no proof is available, then first, you will be required to make a statement regarding your claim of legal status under oath; second, the DHS officer will give you an order of expedited removal; and third, you will have your case reviewed by an Immigration Judge. You will be detained until you speak with the judge. Although in some cases, for example if there is a medical emergency, you may ask DHS for release during this time. If the Immigration Judge affirms the DHS officer's order of expedited removal, you will be removed with no opportunity for further review or appeal.

If you are in Expedited Removal, there will be some review of your request to enter the United States if:

☞ **You fear being returned to your native country**

OR

☞ **You already have lawful status in the United States.**

What happens next if I am someone seeking asylum or protection against torture?
After expressing fear of returnto a DHS officer at the border, international airport or shipping port, you should have a screening interview called a "credible fear interview" during which you will be interviewed by an asylum officer about your fear of returning to your country. This may be because you either suffered persecution or torture in the past or you fear persecution or torture in the future if you return to your home country. At the credible fear interview, the asylum officer will try to determine whether you have a "credible fear" of being returned to your home country, in other words, whether you have

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a significant chance of being granted asylum or protection under the Convention Against Torture.

> **If you expressed a fear of returning to your country or the desire to seek asylum in the United States,**
> **☞ you will have a "credible fear interview" with an asylum officer.**

What is asylum?

Under the laws of the United States, people who flee their countries because they fear **persecution** can apply for asylum and may be allowed to stay in the United States. **Persecution** can be harm or threats of harm to you or your family or to people similar to you. A person also can get asylum if he or she has suffered persecution in his or her country in the past. You only can be granted asylum if at least one of the reasons someone harmed or may harm you is because of your race, religion, nationality, political opinion (or a political opinion someone thinks you have), or the fact that you are part of some particular group.This group could be a village, family, clan, union, political party, religious organization, student or human rights group, or some other threatened group such as homosexuals, people who are HIV positive, women who oppose certain practices in their home countries (such as genital mutilation), or people who oppose their government's policy on birth control and family planning.

However, if the only reason you left your country was to look for work and you do not have any fear of returning or have not been harmed in the past, then you probably do not qualify for asylum.

If you are granted asylum, you will be allowed to stay in the United States legally and to get a work permit. You may later apply to be a lawful permanent resident and, eventually, a U.S. citizen.

There also is protection available in the United States **if you are likely to be tortured by a government officialor someone at the government's request in your country for any reason.** The United States has signed a treaty promising that it will not return anyone who is likely to be tortured in their home country. You may have rights under this treaty if you have this fear. Tell the asylum officer and also your deportation officer if you fear you will be tortured in your home country.

This is just a brief summary of asylum and protection from torture. To learn more about the law and how to prepare your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

Where and when will the credible fear interview take place?

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The interview will take place at the detention center, or, in some cases, at the DHS office, normally at least 48 hours after your arrival. It will last about one to two hours. After your interview, the asylum officer will call you back again, usually about a week after your interview, to give you his or her decision.

What happens after the asylum officer makes his or her decision?

> ☞ **If the asylum officer finds that you have a credible fear of returning to your home country, you will be allowed to stay in the U.S. to apply for asylum before a judge in Immigration Court.**

If the asylum officer determines that you have a credible fear, you have the right to apply for asylum in front of an Immigration Judge. The asylum officer should ask you whether you want to go to court right away or whether you need time to find a lawyer. Because immigration law is very complicated, it is much better to be represented by a lawyer when applying for asylum. If you do not have a lawyer or if you need extra time to get evidence to prove your asylum claim, you should ask for more time before you go to court. Normally you will be given ten days. **If you cannot afford a lawyer,** you can ask DHS for a list of free or low cost legal services organizations in the area where you are detained. To learn more about the law and how to prepare your case, ask for the booklet called **"How to Apply for Asylum or Withholding of Removal."**

> ☞ **If the asylum officer finds that you do not have a credible fear of returning to your home country, he or she will order you "removed" (deported) from the United States.**

If the asylum officer determines that you do not have a credible fear, you will be ordered removed from the United States. You can ask for an Immigration Judge to review your case. Within a week, a judge will interview you to decide whether or not the asylum officer made the right decision. This is not a full asylum hearing, only a review of the asylum officer's credible fear decision and interview notes. This review will either take place in person, or by telephone or video connection. You can ask for an interpreter to help you speak to the judge. You also can ask to have your attorney or legal representative at the hearing. However, he or she only can be with you as a consultant.

If the judge agrees with the asylum officer, you will be ordered removed. You are not allowed to appeal your case to another court. But, if the judge decides that you do have a

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credible fear, you will be allowed to have a full asylum hearing before an Immigration Judge.

If you do not want to apply for asylum and you want to go back to your home country, you should tell the asylum officer. Ask him if you can withdraw your application for admission to the United States.

Who can help me prepare for the credible fear interview?

You should have received a **Form M-444"Information about Credible Fear Interview"** which explains the interview process and your rights. You have the following rights:

- **Outside Contacts:** While in detention, you have the right to contact family members and friends by telephone, usually by calling collect or at your own expense.
- **Consultation:** You may consult with any person that you choose before your interview with an asylum officer or before an Immigration Judge reviews your case. But the government will not provide legal assistance and the consultation cannot unreasonably delay the process.
- **Legal Assistance:** You should use the time before your interview to try to contact a legal representative to assist you. If you cannot afford a lawyer, ask a DHS officer for a list of free or low cost legal services groups in the area where you are detained. You also may want to contact the United Nations High Commissioner for Refugees in Washington, D.C. (toll free) at: 1-888-272-1913, Monday, Wednesday, or Friday from 2:00 to 5:00 p.m. (Eastern Standard Time).

What happens at the credible fear interview?

To establish a credible fear, you have to convince the asylum officer that you have a significant chance of being granted asylum. It is very important that you tell the officer your whole story. First, answer all the officer's questions. Then, if there are parts of your story that the officer did not ask about, tell the officer about those things.

Can someone go with me to the interview?

Anyone you consulted with about your asylum claim can be present at the interview. They also can make a statement on your behalf at the end of the interview.

Is the interview private?

You have the right to have your interview in a private area. If you feel uncomfortable talking to the asylum officer because other people can hear you, you should tell the asylum officer.

DHS-011-0000001-0000688

Will I have an interpreter at the interview?

If you do not speak English, you should ask for an interpreter. DHS must provide one for you. The interpreter will either be at your interview or, more likely, will be connected to you by a speaker phone on the desk next to you. If you understand some English, you should listen carefully to hear whether the interpreter makes mistakes, and you should correct any mistakes. You also can ask for another interpreter if you are not satisfied with the one assigned to you.

How much detail about myself should I tell the asylum officer?

It is very important that you do not leave anything out, even if you do not like to talk about it. DHS must keep the information that you give them confidential.

If you need to tell the asylum officer information that is very personal and difficult to talk about, you may request a female officer and female interpreter or a male officer and male interpreter. You also can ask to speak with the asylum officer alone, without your family, if you wish.

It is important to answer all of the asylum officer's questions truthfully. If you do not tell the truth, it can be used against you now or in the future to deny your claim.

Do I have to stay in detention if I am determined to have a credible fear of return?

You usually have to stay in detention at least until you have your interview with an asylum officer. However, if you are determined to have credible fear, then you may be able to get released from detention on what is called "parole." You should be given a form by DHS called "Parole Advisal and Scheduling Notification,"which tells you the date your request for parole will be considered and the evidence you may present in support of your parole request.To be released on parole you need to have a family member or friend who lives in the U.S. who will allow you to live with him or her. This person should be a lawful permanent resident (have a green card) or a U.S. citizen. If you have such a friend or relative, they should write a sworn statement (called an "affidavit") to DHS promising to support you.

DHS makes the decision about whether you can be released. If you are released, you can go to your immigration court hearings and apply for asylum outside of detention. If you are determined to have a credible fear but you are not released, you can still apply for asylum from inside the detention center.

REINSTATEMENT OF REMOVAL

What is Reinstatement of Removal?

Reinstatement of Removal is a process used by DHS to quickly remove people from the U.S. who have been deported or removed in the past and have reentered the U.S. without permission. It also applies to people who left the United States on their own while under an order of deportation or removal. You are in this type of proceeding if you have been given a document called a **Form I-871"Notice of Intent to Reinstate Prior Order."**

In Reinstatement of Removal, DHS has the power to remove you from the country based on your previous order of deportation or removal. You will not be able to speak with an Immigration Judge.

A DHS officer will make a decision based on DHS records and other documents. A DHS officer will first investigate your case to:

- determine whether you had a **prior order of exclusion, deportation or removal**;
- **confirm your identity** (in some cases, the DHS officer may take your fingerprints to compare with DHS records); and
- **determine whether you illegally reentered the United States.** You should tell the DHS officer if you believe that you entered legally. The officer then can check the relevant entry records.

If the DHS officer decides that you should be put into Reinstatement proceedings, the officer will give you a written notice called **Form I-871 "Notice of Intent/Decision to Reinstate Prior Order."** You have the right to dispute DHS' decision, either by writing down your argument or by talking to the DHS officer. The officer will then make a final decision after reviewing your arguments.

If you are afraid to return to your country or if you want to apply for asylum, you will be given a chance to talk to an asylum officer to determine whether you qualify for an asylum hearing in removal proceedings before an Immigration Judge. If the asylum officer decides that you do not have a reasonable fear of persecution, you may ask that an Immigration Judge review that decision. Otherwise, the decision of the DHS or asylum officer is final. You will not be able to appeal this decision to an Immigration Judge.

Depending on the jurisdiction your immigration case is in, you may be able to challenge your prior removal order in the federal Circuit Court of Appeal if you believe the removal order was issued in error. You may also be able to challenge the DHS officer's finding on any of the three issues listed above. Filing an appeal in federal court is complex and is not covered in this material. You will need a lawyer to assist you, but you must act quickly. You only have 30 days to file an appeal in federal court from the date of the Reinstatement Order.

When do I have the right to challenge reinstatement of removal?

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You can challenge the reinstatement of removal in two extremely limited situations.

First, if you fear you will be harmed or tortured if you return to your home country or if you have suffered harm there in the past, you should tell DHS. You will be given a chance to have an interview with an asylum officer who will determine whether you have a "reasonable fear" of persecution or torture. If the asylum officer determines that you have established that there is a reasonable possibility that you will be persecuted or tortured if removed from the United States, you will be placed in regular "removal" proceedings before an Immigration Judge. You will then be allowed to apply for two different types of protection from removal from the United States. These forms of protection are called withholding of removal and protection under the Convention Against Torture. For more information about the court process, applying for these forms of protection and preparing your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

If the asylum officer decides that you do NOT have a "reasonable fear" of persecution or torture, you have the right to ask that an Immigration Judge review the asylum officer's decision. If the judge agrees with the asylum officer, your case will go back to the DHS for removal from the United States. You cannot appeal the Judge's decision in this situation. But, if the Immigration Judge disagrees with the asylum officer and thinks your fear is reasonable, you will be allowed to apply for withholding of removal and protection under the Convention Against Torture before the Immigration Judge. Again, for more information about the court process, applying for these forms of protection and preparing your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

Second, you also have the right to challenge DHS's claim that you should be in reinstatement proceedings in any of the following situations:

> **You believe that you are a U.S. citizen**. There are various ways to be a U.S. citizen besides being born in the U.S. To learn more about whether you are a U.S. citizen and how to present your claim, ask for the booklet called **"Are You a United States Citizen?"**
>
> **You believe that DHS has the wrong information about you**. If you think that DHS has mistakenly put you into Reinstatement proceedings based on incorrect information it has about you - for example, it has mistaken you for someone else by the same name - tell the DHS officer. It is important to provide as much detailed information as possible to prove the mistake.
>
> **You have a visa ready for you**. If one of your family members has already applied for a visa for you and the visa is both a) approved and b) immediately available, you should try to find a lawyer to assist you and quickly file an Application for Permission to Reapply for Admission Into the U.S. After

DHS-011-0000001-0000691

Deportation or Removal (**Form I-212**). Depending on which jurisdiction you are in, there may be an argument that you should be able to apply for your lawful permanent residency and permission to reenter the United States. This is a complicated argument, and may require going to a federal court. We are not able to explain this process in this booklet and if you are in this situation, try to get advice and assistance from an experienced immigration lawyer. For more information, you can ask for a booklet called **"How to Get Legal Status Through a Family Member."**

You are from Nicaragua, Cuba Guatemala, El Salvador, Haiti, or certain countries in Eastern Europe and you are eligible to apply for relief under theNicaraguan Adjustment and Central American Relief Act (NACARA) orunder the Haitian Refugee Immigration Fairness Act (HRIFA). Originally, the NACARA and HRIFA laws did not apply to individuals who were subject to reinstatement of removal (i.e. they entered the United States illegally after a prior deportation order). However, a law enacted on December 21, 2000, allowed eligible individuals to apply for relief under NACARA or HRIFA even though they had prior deportation orders. Certain Nicaraguans, Cubans, or Haitians may have been able to file a motion to reopen no later than June 19, 2001, if they originally failed to apply for NACARA or HRIFA because they were subject to reinstatement of removal

Also, if you are from Haiti and have been granted Temporary Protected Status (TPS), or have lived in the United States since January 12, 2011, have not been convicted of certain crimes, and applied for TPS by November 15, 2011, DHS may not be able to remove you.

If you are from El Salvador, Guatemala, or certain Eastern European countries, you may be eligible for NACARA even if you are subject to reinstatement. If you have been placed in reinstatement proceedings and you believe that you are eligible for NACARA, you should contact the DHS immediately, as DHS policy is against reinstating an order if the applicant is eligible for NACARA. To learn more about these laws and whether you qualify ask for another booklet called **"How to Apply for Three or Ten Year Cancellation of Removal."**

You believe that you reentered the U.S. legally. If you believe that you reentered the United States legally after being inspected by an immigration officer, tell DHS. Again, provide as much detailed information as possible, such as how and where you entered, the date and time of entry, and any documentation you may have shown the immigration official when you entered the country.

You left the U.S. under an order of voluntary departure. Reinstatement of Removal only applies to people who reenter the United States after an order of deportation or removal. If you left the country with a voluntary departure order

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and then returned illegally, you should not be in reinstatement. Tell DHS. If it can verify that you left through voluntary departure, you will be moved to regular Removal proceedings and you will have the opportunity to speak with a judge.

If any of the above apply to you, tell a DHS officer immediately. Give as much detailed information and proof about your case as possible. Reinstatement proceedings take place very quickly. If you do not have a basis for challenging the reinstatement, you will be removed. If you fear returning to your country, or if you believe that you have been incorrectly put into reinstatement proceedings, you must act fast if you want to find legal assistance or to fight the charges on your own. You should try to contact a lawyer or legal services organization to help you. If you cannot afford a lawyer, you can ask DHS for a list of free or low cost legal services, which may be available near where you are detained.

If you believe that you can challenge the reinstatement of your removal, tell a DHS Officer and look for an attorney immediately to represent you.

ADMINISTRATIVE REMOVAL

What Is Administrative Removal?

No matter how long you have been in this country, if DHS believes that you have been convicted of an aggravated felony and that you do not have lawful permanent resident status in this country, DHS may put you into a special proceeding called **Administrative Removal**. If you are in this type of proceeding, you will be given **Form I-851 "Notice of Intent to Issue Final Administrative Removal Order."**

In Administrative Removal, you will not see an Immigration Judge. Instead, DHS will decide whether you should be ordered removed based on evidence that you have an aggravated felony conviction and that you do not have lawful permanent residence in the U.S. It will make its decision based on its records and other documents.

You should be given information about the charges against you in the Form I-851. You are allowed to review the evidence that DHS uses to make its decision, and you have the right to bring in other information, including documents, written sworn statements ("affidavits"), or other specific materials to challenge the charges. If you disagree with the charge, you will be given 10 days from the date DHS gave you the information (or 13 days if it was mailed to you) to respond to them in writing. In the event you are to be removed, you may indicate in writing the country to which you choose to be deported.

If the DHS officer finds that removability is clearly established by the evidence, the officer shall serve you with a Final Administrative Removal Order. If the officer finds there is not sufficient evidence for a removal order, DHS will terminate Administrative

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Removal proceedings and serve a Notice to Appear to begin regular removal proceedings before an Immigration Judge.

In any event, DHS must maintain a record of the Administrative Removal proceeding in case you want to challenge the final Administrative Removal Order in the federal Circuit Court of Appeal. As stated above, appealing your case in federal court is complex and is not discussed here. To appeal to a federal court, you should get legal assistance.

Do I have the right to challenge administrative removal?

Yes. You have the right to challenge DHS' determination that you should be administratively removed. The two main issues that you can challenge are:

- Whether you, in fact, do have lawful permanent residence or are a U.S. citizen; and
- Whether you have been convicted of an aggravated felony.

What is an aggravated felony?

Immigration law is not the same as criminal law. Many crimes can be aggravated felonies. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law. In the next box are some of the most common aggravated felonies. For the complete list, see volume 8, section 101(a)(43) of the United States Code, or section 10l(a)(43) of the Immigration and Nationality Act.

SOME CRIMES THAT ARE AGGRAVATED FELONIES

- rape
- sexual abuse of a minor
- murder
- firearms offenses, including possession of prohibited firearms
- felony alien smuggling (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- fraud or income tax evasion, if the victim lost over $10,000
- money laundering (of over $10,000)

Certain <u>drug crimes</u> or trafficking in firearms, explosive devices or drugs. <u>Drug trafficking includes</u>:

- transportation, distribution, importation;
- sale and possession for sale;
- **certain cocaine possession offenses** (depending on what circuit court of appeals jurisdiction your case is in);

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- **certain simple drug possession offenses**

Certain crimes for which you received a sentence of one year or more, (whether you served time or not) including any of these:

- theft (including receipt of stolen property)
- burglary
- a crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
- document fraud (including possessing, using, or making false papers) – unless it was a first offense and you did it only to help your husband, wife, child, or parent
- obstruction of justice, perjury, bribing a witness
- commercial bribery, counterfeiting, forgery, trafficking in vehicles with altered identification
- gambling offenses, for which a term of imprisonment of one year or longer *may* be imposed;
- failure to appear if you were convicted of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes listed above.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. DHS may oppose a change to your conviction or sentence if the change is made only to avoid being removed from the United States. To find out more about this, you will need to talk to an experienced immigration lawyer.

Are there other ways to challenge administrative removal?

There are two other situations in which you may be able to challenge your administrative removal.

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You may be able to challenge your removal from the United States if: ☞
1. you have an approved visa through a family petition and the visa is immediately available; OR
2. you fear you will be harmed if returned to your home country.

First if one of your family members has already applied for a visa for you and the visa is both a) approved and b) immediately available, you should tell DHS. You can argue that you should not be put in Administrative Removal because it was not intended for people in this situation. Instead you should ask to be put into regular Removal proceedings where you will have an opportunity to talk to the judge about your visa and whether any of your criminal convictions prevent you from obtaining the visa.

Second if you fear you will be harmed if you return to your home country or if you have suffered harm there in the past, tell DHS. You should be referred to an asylum officer for a reasonable fear determination and ask to apply for "**withholding of removal**" in front of an Immigration Judge. This is a form of protection similar to asylum. See page 4 above for a more complete description of asylum. You also can ask for another booklet called **"How to Apply for Asylum or Withholding of Removal,"** which explains withholding of removal in greater detail and how to prepare your case. If you want to apply for withholding, ask to see a judge or an asylum officer.

Also, **if you fear that you will be tortured by a government official** if returned to your home country, you might qualify for relief from removal to that country. The United States has signed a treaty promising that it will not return anyone to a country where they might be tortured. Tell your deportation officer if you fear you will be tortured in your home country.

The administrative removal procedure is complicated. If you fear returning to your country or if you believe that you have been incorrectly put into administrative removal, you should try to contact an attorney or legal services organization to help you. If you cannot afford an attorney, you can ask DHS for a list of free or low cost legal services, which may be available near where you are detained. This procedure takes place very quickly so you must act fast if you want to find legal assistance or to fight the charges on your own.

If you believe that you can challenge DHS' decision to remove you from the United States,
☞ **tell an Immigration Officer and look for an attorney immediately to represent you.**

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If you do not want to fight the charges and you are willing to accept administrative removal, you should tell DHS. In some cases, you can leave quickly instead of waiting 14 days for the review period to finish.

CONCLUSION

We hope this information is helpful to you and we wish you luck with your case.

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This pamphlet was written by (b)(6), (b)(7)(c) Floy Representative and edited by (b)(6), (b)(7)(c) former Director of the Florence Immigrant and Refugee Rights Project. Funding was provided by the Ford Foundation, the National Association of Public Interest Law, and the Berkeley Law Foundation.

We are grateful to (b)(6), (b)(7)(c) of Catholic Legal Immigration Network (CLINIC) for use of her materials on expedited removal as well as her editorial assistance. We also wish to (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Director of the National Immigration Project of the National Lawyers Guild, (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Senior Legal Counselor, the United Nations High Commissioner for Refugees, for their editorial assistance. Any mistakes are the author's own.

Almeida, Corina E

From: Almeida, Corina E
Sent: Monday, August 25, 2014 12:41 PM
To: (b)(6), (b)(7)(c)
Subject: FW: PD Attorney: FAMU/UAC instructions
Attachments: OCC DEN UAC procedures 21 Aug 2014 draft rev (AK).docx

(b)(6), (b)(7)(c)

Attached a(b)(6), (b)(7)(c) edits. The only other thing is that the date (August 5, 2014) below the title of the document needs to be changed to today (or tomorrow).

Thx,
Corina

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 25, 2014 12:37 PM
To: Almeida, Corina E
Cc: (b)(6), (b)(7)(c)
Subject: RE: PD Attorney: FAMU/UAC instructions

A couple of comments and two small edits. Here you go!

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: Almeida, Corina E
Sent: Monday, August 25, 2014 12:09 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: PD Attorney: FAMU/UAC instructions
Importance: High

Here you go! Thanks a million! ~Corina

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From: (b)(6), (b)(7)(c)
Sent: Thursday, August 21, 2014 6:15 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: PD Attorney: FAMU/UAC instructions

(b)(6), (b)(7)(c)

The calendar has you listed as PD attorney tomorrow so I want to make sure you have the most recent instructions for the UAC/FAMu cases.

I am in the process of updating the written instruction. We have been receiving instructions from HQ on an ongoing basis so I have not finalized the updated instructions. We are waiting additional instructions on a couple of items and I am trying to avoid, as much as possible, sending out too many updates. I have been able to speak with most of the PD team on an individual basis as the changes come up, but you were out of the office and I will be out tomorrow. I have attached the draft, which has updates to date, and highlighted the changes in yellow so you will be aware of the new instructions we have received to date.

Feel free to send any questions to Corina, Don, and me.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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Pages 554 through 558 redacted for the following reasons:
- -
(b)(5)

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Thursday, November 06, 2014 11:48 AM
To: Gastelo, Elias S Jr; Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: FW: Artesia Workflows
Attachments: AFRC Workflows (f) 103114.docx; PLAnet and filing Procedures Artesia (KT Draft 2 - AK 102214) (clean)(KT).docx; Trial Attorney responsibilities draft 101414 (additional rev).docx; Artesia Duty Attorney responsibilities (possible final 110414.docx; Artesia duties bullet form.docx

Elias:

Here are the work flows for the staff at Artesia and Denver relating to the Artesia operations. I(have also included a bullet breakout of the resident Artesia DCC and legal assistant.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Artesia Family Residential Center (AFRC)
Artesia, New Mexico
575-746-(b)(6), (b)(7)(c)
716-(b)(6), (b)(7)(c) Cell

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All,

I have attached the most recent version of the Artesia workflows (b)(6), (b)(7)(c) created and (b)(6), (b)(7)(c) just finalized. They generally outline the procedures for the Artesia docket and importantly identify which duties belong to the Artesia OPLA staff and which belong to OCC Denver. (See section beginning on page 4).

In addition, I have attached OCC Denver's internal procedures, which include additional details.

One of the reasons that I have not distributed a final set of procedures is that there have been frequent changes as these new dockets develop. I have been distributing the drafts as needed, but the attached versions should represent most of the changes up to today.

We anticipate that there will be changes soon to the COV procedures and to the bond appeal procedures, but I decided not to wait until that happens and will send out an amendment as necessary.

Please let me know if you have comments or corrections.

Thanks to everyone for all of your conscientious and hard work on this challenging docket.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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Pages 561 through 565 redacted for the following reasons:
- -
(b)(5)

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Thursday, October 23, 2014 8:49 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: Respondent's motion to reconsider IJ affirmance of negative credible fear

Thanks (b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Thursday, October 23, 2014 8:14 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: Respondent's motion to reconsider IJ affirmance of negative credible fear

(b)(6), (b)(7)(c) reviewed PLAnet and noted that the IJ affirmed the APSO's negative credible fear determination on October 17, 2014. The resident then submitted a motion to reconsider to the APSO pursuant to 8 C.F.R. 1208.30(g)(2)(iv)(A). However, the APSO denied the motion on October 20, 2014. On that same day, the resident - through AILA -filed a motion to reconsider with the IJ.

I have read the resident's motion and declaration. (b)(5)

(b)(5)

(b)(5)

I spoke to ERO and the resident is not scheduled to be removed anytime soon.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)(c) (office)
(520) 3 (BB)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 22, 2014 7:39 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: FW: Respondent's motion to reconsider IJ affirmance of negative credible fear
Importance: High

(b)(6), (b)(7)(c)

It is interesting that the motion was filed with the IJ and not USCIS. Is this alien scheduled for removal?

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 22, 2014 12:25 PM
To: (b)(6), (b)(7)(c)
Subject: FW: Respondent's motion to reconsider IJ affirmance of negative credible fear
Importance: High

Sorry, I forgot to include the A-number in the email:

(b)(6), (b)(7)(c)

Also, please add (b)(6), (b)(7)(c) (same motion to reconsider IJ affirmance of negative fear). This appears to be a new AILA tactic.

(b)(6), (b)(7)(c)
Assistant Chief Counsel
DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303.784 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 22, 2014 12:23 PM
To: (b)(6), (b)(7)(c)
Subject: Respondent's motion to reconsider IJ affirmance of negative credible fear
Importance: High

Dear (b)(6), (b)(7)(c)

This motion to reconsider came into the Artesia Duty box today. It is a motion to reconsider addressed to EOIR requesting that the IJ redetermine his decision affirming the AO's negative credible fear finding. (b)(5) (b)(5) (b)(5) Please advise on how to handle this motion.

Sincerely,

(b)(6), (b)(7)(c)
Assistant Chief Counsel

DHS/ICE/OPLA
Office of Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303.784(b)(6), (b)(7)(c)

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Almeida, Corina E

From:	(b)(6), (b)(7)(c)
Sent:	Thursday, October 16, 2014 9:20 AM
To:	(b)(6), (b)(7)(c)
Cc:	Almeida, Corina E; (b)(6), (b)(7)(c)
Subject:	RE: URGENT: Motion to Re-interview Credible Fear

(b)(6), (b)(7)(c)

(b)(5)

Is this still ERO's position?

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Thursday, October 16, 2014 7:40 AM
To: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: RE: URGENT: Motion to Re-interview Credible Fear

Of course, this does not have to be an issue if the APSO denies the request for reconsideration. I'll talk to her about this also.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868-(b)(6), (b)(7)(c) (office)
(520) (b)(6), (b)(7)(c) (BB)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, October 16, 2014 7:36 AM
To: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: URGENT: Motion to Re-interview Credible Fear

FYI. This involves a request for reconsideration of a negative credible fear determination after IJ review and concurrence pursuant to 8 C.F.R. 1208.30(g)(2)(iv)(A) (1024) ("If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credibility finding that has been concurred upon by the immigration judge after providing notice of its reconsideration to the immigration judge"). The resident claims that she has new evidence that was previously unavailable.

The AILA representative, (b)(6), (b)(7)(c) indicates below, "Per our agreement with ICE, this client should not be removed while her motion is pending." This appears to be something agreed upon prior to my arrival and, quite frankly, makes sense as IJ concurrence and review will be required (if the APSO makes a credibility finding, we will have to proceed in court; if the APSO again finds no fear, we will have to forward a Record of Negative Credible Fear Finding and Request for Review to the IJ pursuant to 8 C.F.R. § 1208.30(g)(2)(i) (2014)).

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868-(b)(6), (b)(7)(c) (office)
(520) (b)(6), (b)(7)(c) (BB)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, October 16, 2014 7:27 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: URGENT: Motion to Re-interview Credible Fear

Yes, we received the RFR last night. Please don't remove her pending a decision.

Thanks,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, October 16, 2014 7:07 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: URGENT: Motion to Re-interview Credible Fear

All,

See attached from AILA.

(b)(6), (b)(7)(c)
AOIC-Removal Management
Artesia Family Residential Center
520-4(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Thursday, October 16, 2014 1:28 AM
To: (b)(6), (b)(7)(c)
Subject: Fwd: URGENT: Motion to Re-interview Credible Fear

Per our agreement with ICE, this client should not be removed while her motion is pending.

Thank you,

(b)(6), (b)(7)(c)
The Law Office of Christina Brown LLC
3900 E. Mexico Avenue, Suite 300
Denver, Colorado 80210
Phone: 303-7(b)(6), (b)(7)(c)
Fax: 303-2(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

---------- Forwarded message ----------
From: (b)(6), (b)(7)(c)
Date: Wed, Oct 15, 2014 at 10:09 PM
Subject: URGENT: Motion to Re-interview Credible Fear
To: (b)(6), (b)(7)(c)
Cc:

Asylum Officer,

Attached please find my G-28 for (b)(6), (b)(7)(c) along with a Motion to Reconsider based on new evidence and Request for a Re-interview for determination of credible fear.

Please note that (b)(6), (b)(7)(c) has an order of removal entered on 10-14-2014 by IJ Livingston in Denver.

--
(b)(6), (b)(7)(c)
Immigration Attorney
Central American Resource Center - CARECEN
3101 Mission Street, Suite 101
San Francisco, California 94110
(b)(6), (b)(7)(c)
415-642(b)(6), (b)(7)(c)

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 15, 2014 12:00 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Upcoming Case

(b)(6), (b)(7)(c)

Can you review the record and follow up with Deanna, if necessary? This may be a case where USCIS changed its previous adverse decision and an NTA issued. The credible fear hearing based on the initial adverse finding should be vacated if that is correct.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 15, 2014 9:15 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E
Subject: Upcoming Case

Good morning, (b)(6), (b)(7)(c) This is just an FYI based on my review of upcoming cases.

On October 17, 2014, (b)(6), (b)(7)(c) a 13-year-old resident, will appear before IJ Livingston for a master calendar hearing. Her mother (b)(6), (b)(7)(c), however, is currently scheduled to appear before IJ Trujillo for review of a negative reasonable fear determination, on October 24, 2014.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) (b)(6), (b)(7)(c) (office)

(520) (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

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Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 4:03 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Credible Fear Review Hearings

Hi (b)(6), (b)(7)(c)

Again, I am kind of caught in the middle, I apologize for all of this. If you want to file these with us, we will schedule them for another credible fear hearing with a Denver IJ ASAP. Thanks (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 3:54 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Credible Fear Review Hearings

That's what the notes in PLAnet indicate (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)(c) (office)
(520) 399 (BB)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 3:50 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; Torres, (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Credible Fear Review Hearings

So, just to make sure I am clear, you are saying you filed a second request for a credible fear review by the IJ, is that correct? And if that is correct, the Arlington court is now saying they never received those. Someone please confirm this for me, thanks (b)(6), (b)(7)(c)

DHS-011-0000001-0000723

From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 2:38 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: Credible Fear Review Hearings

(b)(6), (b)(7)(c) think that the confusion associated with these cases stems from the fact that the IJ did, in fact, review the AO's negative credible fear findings - and affirmed them all. After this event took place, however, the residents requested that the AO revisit their claims pursuant to 8 C.F.R. 1208.30(g)(2)(iv)(A) (1024) ("If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credibility finding that has been concurred upon by the immigration judge after providing notice of its reconsideration to the immigration judge").

The AO subsequently reconsidered her negative credibility findings in all the cases, but came to the same conclusion. Thereafter, pursuant to 8 C.F.R. § 1208.30(g)(2)(i), DHS submitted Records of Negative Credible Fear Findings and Requests for Review to the Arlington court.

A review of PLAnet indicates that DHS served the Arlington court with the aforementioned documents on the following days:

(b)(6), (b)(7)(c) September 9, 2014

(b)(6), (b)(7)(c) September 18, 2014

(b)(6), (b)(7)(c) September 18, 2014

(b)(6), (b)(7)(c) September 24, 2014

Thanks.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868-(b)(6), (b)(7)(c) (office)
(520) (BB)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 11:34 AM

To (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: RE: Credible Fear Review Hearings

(b)(6), (b)(7)(c)

I show the following:

(b)(6), (b)(7)(c)

IJ had credible fear hearing on 7-18-14 affirming DHS decision-no credible fear.

IJ had CF hearing on 7-21-14 affirming DHS decision-no credible fear.

IJ had CF hearing on 7-22-14 affirming DHS decision-no credible fear.

IJ had credible fear hearing on 7-21-14 affirming DHS decision-no credible fear.

If the IJ affirms the DHS decision, that is the end of it. If the IJ vacates the DHS decision then an NTA is filed with the court to start the hearing process. All of these were affirming the DHS decision prior to the September dates you listed below. Are you saying something else was filed on the dates you indicated below? Thanks (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, October 14, 2014 9:37 AM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: Credible Fear Review Hearings

Good morn(b)(6), (b)(7)(c) following up on the status of the cases listed below, which do not appear to have been rescheduled for IJ review yet. The last entry in PLAnet indicates that the Department filed a Record of Negative Credible Fear Finding and Request for Review with the Arlington, Virginia immigration court on these cases, on September 9, 2014 (944), September 18, 2014 (740 and 754), and September 24, 2014 (694). All cases were originally assigned to IJ Hladylowycz.

Thanks for your assistance in this matter.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868(b)(6), (b)(7)(c) (office)
(520) (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 23, 2014 4:26 PM
To: Almeida, Corina E
Subject: FW: Credible Fear - reconsideration procedures

FYI.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, September 18, 2014 4:04 PM
To: (b)(6), (b)(7)(c) Daum, Robert L
Subject: Re: Credible Fear - reconsideration procedures

(b)(6), (b)(7)(c)

I hope all is well. I am adding our ZHN management. I'm sure they can come up with an answer.

Take care,

(b)(6), (b)(7)(c)

From (b)(6), (b)(7)(c)
Sent: Thursday, September 18, 2014 05:25 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Subject: FW: Credible Fear - reconsideration procedures

(b)(6), (b)(7)(c) to bother you with this question; please feel free to forward it on to anyone who may be handling such matters at ZHN or your HQ.

The short version of the question: the regs allow for reconsideration of a negative credible fear finding after the Immigration Judge has concurred with that finding. We received a request (addressed to our Enforcement and Removal Operations Field Office Director) for such reconsideration. The reg at issue refers to the "Service" authority to reconsider; ordinarily, we'd think that for AO matters that reference means the Asylum Office (since our ERO has no expertise in these matters). We'd like to inform the requestor of the correct procedure for seeking reconsideration; any

DHS-011-0000001-0000727

help you can provide would be much appreciated, particularly since I expect more of these in Denver as we transition to handling the Artesia FRC immigration court dockets.

Hope all is well in Houston,

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-784(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, September 11, 2014 2:06 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: Credible Fear - reconsideration procedures

Good afternoon (b)(6), (b)(7)(c)

You visited with our office last year and I hope you are the correct person to whom I should direct this question. If you are not, I would really appreciate your forwarding my inquiry to someone who may be able to assist.

Your office made a negative credible fear finding for an alien (b)(5) and the Immigration Judge concurred with that finding. His attorney has sent the ICE ERO Field Office Director a request for reconsideration under 8 CFR 1208.30(g)(2)(iv)(A). I reviewed the Credible Fear Procedures Manual, and some other USCIS/Asylum Office resources, and could not find any reference to where, or how, an alien would seek reconsideration of a negative credible fear finding, after the Immigration Judge has concurred with that finding.

Could you point me in the right direction? It would be greatly appreciated.

Thanks so much,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784(b)(6), (b)(7)(c)
Fax: (303) 784

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Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 12:47 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E
Subject: RE: Credible Fear Stays

Excell(b)(6), (b)(7)(c)ase do bring up this issue. We'd like to simply direct the alien's counsel on where to send his motion for reconsideration. And am I correct that Houston Asylum is in charge of all AO issues in Artesia (even though it is El Paso ERO)?

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 12:46 PM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c) Almeida, Corina E
Subject: RE: Credible Fear Stays

In your case it would be filed with CIS who is responsible for credible fear reviews. Not sure where that is. I have a meeting with CIS today at 2pm. This is one of the topics. El Paso is the place for stays out of Artesia, but the motions to reconsider are sent directly to the Artesia CIS.. Will let you know.

From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 11:59 AM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c) Almeida, Corina E
Subject: FW: Credible Fear Stays

(b)(6), (b)(7)(c)urely procedural question: who at Houston Asylum do they direct a motion to reconsider to? Is there an established intake procedure for filing such a motion, or a point of contact we could use at ZHN? (The reason I ask is that our Denver ERO received a motion to reconsider a negative credible fear that was upheld by the IJ here; we know that these motions/requests are within the Asylum Office's bailiwick, but we don't know to whom they should be addressed).

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 11:13 AM
To: (b)(6), (b)(7)(c)
Subject: FW: Credible Fear Stays

From: Stolley, Jim
Sent: Monday, September 22, 2014 11:43:48 AM
To: (b)(6), (b)(7)(c) Almeida, Corina E
Cc: (b)(6), (b)(7)(c)
Subject: Re: Credible Fear Stays

I think ERO in Artesia should check with Phil Miller and then tell attys that unless their clients file a proper stay request, they will be removed.
Jim Stolley

Special Advisor to the Deputy Principal Legal Advisor
Office of the Principal Legal Advisor

Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 10:34 AM
To: Stolley, Jim; (b)(6), (b)(7)(c) Almeida, Corina E
Cc: (b)(6), (b)(7)(c)

Subject: RE: Credible Fear Stays

(b)(5)

(b)(6), (b)(7)(c)
Acting Deputy Director
Field Legal Operations
Office of the Principal Legal Advisor

From: Stolley, Jim
Sent: Monday, September 22, 2014 11:32 AM
To: (b)(6), (b)(7)(c) Almeida, Corina E
Cc: (b)(6), (b)(7)(c)
Subject: Re: Credible Fear Stays

Roughly what percentage? 10?
Jim Stolley

Special Advisor to the Deputy Principal Legal Advisor
Office of the Principal Legal Advisor

Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) 843 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 10:30 AM
To: (b)(6), (b)(7)(c) Almeida, Corina E
Cc: (b)(6), (b)(7)(c) Stolley, Jim
Subject: RE: Credible Fear Stays

38 individual cases with motions, 2 of which are still pending.

Roughly 10 cases with multiple motions (with one having 4 motions from 3 separate attorneys).

3 cases have received a second CF interview, received another negative determination from USCIS, and are awaiting IJ review.

The regs do not specify the number of times someone can submit a motion with the service so they could go on forever.

From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 9:21 AM
To: (b)(6), (b)(7)(c) Almeida, Corina E
Cc: (b)(6), (b)(7)(c); Stolley, Jim
Subject: RE: Credible Fear Stays

How many motions are we talking here? (b)(5)

(b)(5)

Thanks,

(b)(6), (b)(7)(c)
Acting Deputy Director
Field Legal Operations
Office of the Principal Legal Advisor

From: (b)(6), (b)(7)(c)
Sent: Monday, September 22, 2014 11:06 AM
To: (b)(6), (b)(7)(c); Almeida, Corina E
Subject: Credible Fear Stays

Hi (b)(6), (b)(7)(c)

When I arrived here, there was a policy that if an attorney filed a motion with CIS Artesia, to reconsider a negative credible fear determination by CIS, Artesia ERO would automatically stay removal until that motion to reconsider was considered by CIS and a decision made. This was so the U.S. would not remove anyone who has a viable claim to asylum.

CIS Artesia is now experiencing multiple motions to reconsider. The AILA attorneys are NOT requesting a stay with CIS El Paso nor are they filing the fee ($100) required for a stay.

ERO Artesia is asking if this policy can be revisited. The regulations do not require a stay of removal unless a stay is issued by CIS. CIS indicates that unless the alien requests a stay through CIS, pays the fee and the stay is granted, they do not recognize a stay.

Artesia ERO wants us to reconsider our blanket policy of staying removal on motions to reconsider credible fear with CIS.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
Immigration and Customs Enforcement
Artesia Family Residential Center
Artesia, New Mexico
575-74(b)(6), (b)(7)(c) Desk
716-316-(b)(6), (b)(7)(c) Cell

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, September 09, 2014 5:41 PM
To: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: EOIR OPPM on credible fear reviews

http://www.justice.gov/eoir/efoia/ocij/oppm97/97-3.pdf

See p. 9-11 for conduct of proceedings. I do not see any updates to this interim guidance c. 1997.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

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DHS-011-0000001-0000734

Almeida, Corina E

From: (b)(6), (b)(7)(c)
Sent: Tuesday, July 22, 2014 1:04 PM
To: (b)(6), (b)(7)(c)
Cc: Almeida, Corina E; (b)(6), (b)(7)(c)
Subject: Credible/reasonable fear review hearings - correction

Pasted below is my message from October 29, 2013. I misstated our policy this morning noting that it applies only to credible fear reviews, and not to reasonable fear reviews. It applies to both. (What it does not apply to is a withholding-only hearing following a finding of reasonable fear, etc.; my mistake in confusing the two):

To all Denver OCC attorneys:

Under longstanding guidance, legacy INS and ICE attorneys have played a very limited role in credible fear and reasonable fear review hearings before the Immigration Judge. With that in mind, under current OPLA guidance we do not need to appear in immigration court for these hearings.

Note that this applies only to Immigration Judge reviews of negative Asylum Officer credible fear/reasonable fear findings. It does not apply to removal proceedings, withholding-only proceedings, asylum-only proceedings, etc.

When a credible fear or reasonable fear review hearing is on the day's docket, please inform that Immigration Judge that the Department will not be appearing for the hearing, and please use that court time to work on our other critical tasks.

If you have any questions, please feel free to give me a call.

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

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Almeida, Corina E

From:	(b)(6), (b)(7)(c)
Sent:	Tuesday, July 15, 2014 8:22 AM
To:	(b)(6), (b)(7)(c) Almeida, Corina E; Anderson, Sandra D; Ardinger, Jo Ellen; Beattie, Patricia A; Brukiewa, Melody A; Cheng, Wen-Ting; Choi, Raphael; Frederick, Kent J; Gastelo, Elias S Jr; (b)(6), (b)(7)(c) Hengerer, Carla J; Hunker, Paul B; (b)(6), (b)(7)(c); Lundgren, Karen E; Marbury, Howard W; McLane, Jo Ann; Miller, Alice M; (b)(6), (b)(7)(c); Owens, Alfie; Padilla, Kenneth; Pincheck, Catherine; (b)(6), (b)(7)(c) Sanchez, Raphael; Stolley, Jim; Ungerman, Leslie; Vroom, Patricia M; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Padilla, Kenneth; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Cc:	(b)(6), (b)(7)c
Subject:	New PLAnet Event Guidance: Credible Fear Review

Hello all,

Once more, PLAnet has gained a new event type and here is the explanation email you all have been eagerly anticipating!

You may notice that the "**Expedited Removal**" Event type in PLAnet has disappeared. It has now become the "**Credible Fear Review**" event type. This event type is meant to be entered to reflect a credible fear review before an IJ. There are two order options for this event type: "Removed-NCF" and "Credible Fear Found".

- You enter "Removed-NCF" when the IJ upholds the negative credible fear finding of the asylum office and the result is an expedited removal order.
- You enter "Credible Fear Found" when the IJ overturns the negative credible fear finding and the result is that the alien is issued an NTA.

EOIR sends these events to PLAnet as a master or a merits hearing. Please create a new event to capture the Credible Fear Review (leaving the entire event sent to us by EOIR blank—which rules it out as a duplicate for reporting purposes).

For FAMILY UNIT cases arising out of Artesia and Berks (and possibly other facilities in the future)—reporting on these cases is mandatory at this time. NOTE: This email does not change current guidance that attorneys NOT attend/participate in these hearings for docket efficiency. This email is solely to reflect how to capture this data in PLAnet and the changes made to existing event types in PLAnet. This data is easily obtainable from ERO and entered into PLAnet without attending the actual hearings.

Please disseminate to your staff as appropriate. If you have any questions, do not hesitate to contact me.

(b)(6), (b)(7)(c)
Special Counsel to Director of Field Legal Operations
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement Potomac Center North
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Desk: (202) 7(b)(6), (b)(7)(c)
BB: (202) 3(b)(6), (b)(7)(c)

NOTE NEW EMAIL ADDRESS: (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
To:
Subject: ER [RE: Chairez]
Date: Friday, August 08, 2014 1:12:00 PM

(b)(6), (b)(7)(c)

How's this? I cut and pasted language from the latest draft of June 2014 White Paper on Parole and ER that I had, and then cleaned it up.

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section – Acting Section Chief
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534 (b)(6), (b)(7)(c)

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From (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 12:49 PM
To (b)(6), (b)(7)(c)
Subject: RE: Chairez

Need something on Ers quickly, one paragraph on who we are ER

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 12:33 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Subject: RE: Chairez

(b)(6), (b)(7)(c)

How does this look?

(b)(6), (b)(7)(c)
Appellate & Protection Law Section – Acting Section Chief
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534-(b)(6), (b)(7)(c)

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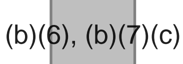
From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 10:34 AM
To: (b)(6), (b)(7)(c)
Subject: FW: Chairez


(b)(6), (b)(7)(c)

This is the email I mentioned yesterday. Am working now on the message to elevate to Riah and Mike.

(b)(6), (b)(7)(c)
Appellate & Protection Law Section – Acting Section Chief
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534-8401

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From: (b)(6), (b)(7)(c)
Sent: Thursday, August 07, 2014 2:49 PM
To (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
Subject: FW: Chairez

(b)(6), (b)(7)(c) talked to the prosecutor in this case who was shocked to learn it was not viewed as a crime of violence. He personally uses this case with some regularity. He is on a gang task force and uses it for drive-by shootings. It is also used as an alternative charge in felony attempted murder and road rage cases.

(b)(6), (b)(7)(c)
Associate Legal Advisor
Enforcement and Litigation Directorate
Immigration Law and Practice Division
Immigration Law and Practice - East
U.S. Immigration and Customs Enforcement
Mobile: (281) 642(b)(6), (b)(7)(c)
Alternate Number: (832) 766(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, August 07, 2014 9:31 AM
To: (b)(6), (b)(7)(c)
Subject: RE: Chairez

Thanks.

(b)(6), (b)(7)(c)
Associate Legal Advisor
Enforcement and Litigation Directorate
Immigration Law and Practice Division
Immigration Law and Practice - East
U.S. Immigration and Customs Enforcement
Mobile: (281) 642(b)(6), (b)(7)(c)
Alternate Number: (832) 766(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, August 07, 2014 9:30 AM
To (b)(6), (b)(7)(c)
Subject: RE: Chairez

(b)(6), (b)(7)(c)

I'll look in to those issues and get back to you.

(b)(6), (b)(7)(c)
Senior Attorney
DHS/ICE/OCC
2975 Decker Lake Dr Stop C
West Valley City, UT 84119
(801) 886 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, August 07, 2014 5:23 AM
To: (b)(6), (b)(7)(c)
Subject: Chairez

(b)(5) Hope you are well otherwise.

(b)(5)

(b)(6), (b)(7)(c)
Associate Legal Advisor
Enforcement and Litigation Directorate
Immigration Law and Practice Division
Immigration Law and Practice - East

U.S. Immigration and Customs Enforcement
Mobile: (281) 642(b)(6), (b)(7)(c)
Alternate Number: (832) 766(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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Press Office
U.S. Department of Homeland Security

Fact Sheet

June 20, 2014
Contact: DHS Press Office, (202) 282-8010

ARTESIA TEMPORARY FACILITY FOR ADULTS WITH CHILDREN IN EXPEDITED REMOVAL

The Department of Homeland Security (DHS) is in the process of establishing a temporary facility for adults with children in expedited removal on the Federal Law Enforcement Training Center's (FLETC) Artesia, N.M. campus. This is part of the whole of government response to the urgent humanitarian situation along the Southwest Border and in the Rio Grande Valley specifically.

- The FLETC Artesia, N.M., campus was selected as a temporary facility because it offers a more appropriate environment for the care and custody of adults with children and is cost-effective.
    - This facility will add approximately 700 additional beds for adults with children.
- This temporary facility will allow U.S. Immigration and Customs Enforcement (ICE) to increase its capacity to house and process these apprehended individuals.
- This facility is one of several that DHS is looking at to increase our capacity to hold and expedite the removal of the increasing number of adults with children illegally crossing the Southwest Border. Doing so will help ensure more timely and effective removals, and deter others from taking the dangerous journey and illegally crossing into the United States.
- The use of this temporary facility at FLETC Artesia is estimated to have minimal or no impact to the ongoing law enforcement training.
- ICE is committed to providing safe, secure and humane care to individuals in detention, including adults with children, who are pending completion of their immigration cases. ICE will do everything possible to ensure that the facility meets the applicable legal standards.
- The addition of this facility and the government's response to this urgent humanitarian situation will in no way diminish the existing rights of individuals in removal proceedings under the Immigration and Nationality Act, including access to asylum and other immigration protections.
- Individuals, including adults with children, illegally entering the United States are subject to removal and are not eligible for Deferred Action for Childhood Arrivals (DACA) or the earned citizenship provisions in the immigration reform bill pending before the Congress. Adults with children should not risk the dangerous journey to illegally enter the United States at the Southwest Border or elsewhere. Too often individuals have tragically perished attempting to cross the border illegally at the hands of criminal smugglers who have no regard for human life.

Vroom, Patricia M

From: (b)(6), (b)(7)(c)
Sent: Friday, June 20, 2014 5:52 PM
To: Gurule, Jon M; (b)(6), (b)(7)(c) Allen, Matthew C; Vroom, Patricia M
Subject: Fw: READOUT OF SECRETARY JOHNSON'S VISIT TO TEXAS

From: Gonzalez, Barbara M
Sent: Friday, June 20, 2014 07:20 PM
To: #ICEOPAALLSTAFF
Subject: FW: READOUT OF SECRETARY JOHNSON'S VISIT TO TEXAS

Barbara Gonzalez
Press Secretary
U.S. Immigration and Customs Enforcement (ICE)
202-732-(b)(6), (b)(7)(c) (office)
305-970- (cell)

Sent from iPhone. Please forgive typos.

-----Original Message-----
From: DHS Press Office
Sent: Friday, June 20, 2014 07:55 PM Eastern Standard Time
To: DHS Press Office
Subject: READOUT OF SECRETARY JOHNSON'S VISIT TO TEXAS

Press Office
U.S. Department of Homeland Security

Press Release

June 20, 2014
Contact: DHS Press Office, (202) 282-8010

READOUT OF SECRETARY JOHNSON'S VISIT TO TEXAS

DHS to Establish Temporary Facility for Adults with Children on the Federal Law Enforcement Training Center's Artesia, N.M. Campus

SAN ANTONIO— Today, Secretary of Homeland Security Jeh Johnson returned to South Texas, and brought with him an interagency team that included White House Domestic Policy Council Director Cecilia Muñoz, the Commandant of the Coast Guard Admiral Paul Zukunft and senior officials from Federal Emergency Management Agency (FEMA), and the Departments of Defense, Justice, and Health and Human Services (HHS). Secretary Johnson and the group traveled to Texas to visit U.S. Customs and Border Protection (CBP)

facilities and Joint Base San Antonio-Lackland, to oversee the ongoing government-wide response to the recent influx of unaccompanied children and adults with children across the Southwest Border.

At the McAllen Border Patrol Station, the senior officials met with Rio Grande Valley Sector Chief Patrol Agent Kevin Oaks and Deputy Chief Patrol Agent Raul Ortiz to discuss challenges and recommended solutions to deal with the influx of unaccompanied children. The group then went to Joint Base San Antonio-Lackland, where they reviewed site operations, and met with HHS officials to discuss the operations at the facility, which is currently housing unaccompanied children.

Over the past few months, CBP has seen a significant increase in the apprehension of unaccompanied children and adults with children from Central America in the Rio Grande Valley area of the Southwest Border. While overall border apprehensions across our entire border have only slightly increased during this time period and remain at near historic lows, the rise in apprehensions and processing of children in the Rio Grande Valley present unique operational challenges for DHS and HHS. CBP has today provided updated apprehension data for the Southwest Border.

As part of the government-wide response to the humanitarian situation along the Southwest Border and in the Rio Grande Valley specifically, DHS today announced that it will establish a temporary facility for adults with children on the Federal Law Enforcement Training Center's Artesia, N.M. campus. The establishment of this facility will allow U.S. Immigration and Customs Enforcement (ICE) to increase its capacity to house and process individuals in a humane manner. This facility is also one of several that DHS is considering at to increase our capacity to hold and expedite the removal of the increasing number of adults with children illegally crossing the southwest border.

At the direction of President Barack Obama and Secretary Johnson, on June 1, a Unified Coordination Group was established to leverage Federal resources to provide humanitarian relief to the ongoing situation. This includes DHS and all of its components, HHS, the Department of Defense, Department of Justice, GSA, and the Department of State. Secretary Johnson appointed FEMA Administrator Craig Fugate to serve as the Federal Coordinating Official for this U.S. Government-wide effort.

During today's trip, Secretary Johnson made this statement: "This is my fourth visit to South Texas since I took office six months ago, and my second dedicated to addressing the recent surge in illegal border crossings here. I met with our personnel and also spoke again with many children who took the long journey from Central America to find a parent or a better life in the United States. Their stories are a vivid reminder that the issue we face is as much a humanitarian one as it is a matter of border security. With the recent surge in interagency resources to deal with the situation, our people are moving the increased numbers of children, families and adults through the process in a safe and humane manner. Our personnel are doing a professional and heroic job. We are adding even more resources to handle the increased numbers. Still, we must stem this new tide of illegal migration. We are building additional detention capacity for adults who are apprehended crossing our border illegally with their children, and will increase the number of expedited removals from among this population, consistent with our laws. Additionally, the Vice President had very productive meetings today with officials from the governments of Mexico, Guatemala, Honduras and El Salvador on this issue. We are sending the message, in Spanish and English, to parents about the dangers of entrusting your child to a criminal smuggling organization to bring them on the long journey to the U.S. We are doing a number of things to address this situation. We are exploring every lawful option to stem the tide and, with the combined efforts of multiple components of our government, the support of Congress, and our partnerships with our allies in Mexico and Central America. I believe we will."

For a Fact Sheet on the Artesia Temporary Holding Facility for Adults with Children in Expedited Removal, visit here.

To view and download a high resolution image from today's trip to Texas, please visit here and here.

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Vroom, Patricia M

From: (b)(6), (b)(7)(c)
Sent: Thursday, July 10, 2014 3:24 PM
To: Allen, Matthew C; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Gurule, Jon M; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Vroom, Patricia M; (b)(6), (b)(7)(c); (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: STATEMENT BY SECRETARY OF HOMELAND SECURITY JEH JOHNSON BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS

From: DHS Press Office
Sent: Thursday, July 10, 2014 12:03 PM
To: DHS Press Office
Subject: STATEMENT BY SECRETARY OF HOMELAND SECURITY JEH JOHNSON BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS

Press Office
U.S. Department of Homeland Security

Press Release

July 10, 2014
Contact: DHS Press Office, (202) 282-8010

STATEMENT BY SECRETARY OF HOMELAND SECURITY JEH JOHNSON BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS

Chairwoman Mikulski, Ranking Member Shelby, and Members of this Committee, thank you for the opportunity to testify today about the Department's efforts to address the recent rise of unaccompanied children and adults with children crossing the southwest border in the Rio Grande Valley in South Texas.

The recent and dramatic rise in illegal migration across our border, from Honduras, El Salvador and Guatemala, presents a major challenge to the United States. Particularly because so many of those crossing our border are children, there is also a humanitarian dimension to this problem, which the U.S. Government is bound and determined to respect. As Americans, we will adhere to domestic and international law, due process, and the basic principles of charity, decency, and fairness. But, in the final analysis, our border is not open to illegal migration.

Our message is clear to those who try to illegally cross our borders: you will be sent back home. We have already added resources to expedite the removal, without a hearing before an immigration judge, of adults who come from these three countries without children. We have worked with the governments of these countries to repatriate the adults quicker. (Indeed, while in Guatemala City two days ago, I personally witnessed a flight of repatriated adults returning home.) Within the last several months, we have dramatically reduced the removal time of many of these migrants. Within the law, we are sending this group back, and we are sending them back quicker.

Then there are adults who brought their children with them. Again, our message to this group is simple: we will send you back. We are building additional space to detain these groups and hold them until their expedited removal orders are effectuated. Last week we opened a detention facility in Artesia, New Mexico for this purpose, and we are building more detention space quickly. Adults who brought their children here expecting to make it to the nearest bus station in the U.S. were surprised that they were detained at Artesia. They will be sent back quickly, with the sad recognition that the large sum of money they paid a criminal smuggling organization to get them to the U.S will go to waste.

Then there are the unaccompanied children. As I have said many times, the long journey for a child, in the custody of a criminal smuggling organization, from Central America to the United States is dangerous. Many of the children are exploited, abused and hurt. Under our laws, an unaccompanied child from Central America must be transferred from the Department of Homeland Security (DHS) to the Department of Health and Human Services (HHS) and placed by HHS in a situation that is in the best interest of the child. But, the removal proceeding against the child continues. Every child will retain the right, like adults, to assert a claim of asylum or seek other protections. But, unless the child has been granted asylum or some other protection in this country – and the vast majority will not – he or she will be sent back and we seek additional resources to do that quickly.

Those who cross our border illegally must know there is no safe passage, and no free pass; within the confines of our laws, our values, and our resources, they will be sent back to their home countries.

I am grateful that the Senate Appropriations Committee included in its fiscal year 2015 DHS Appropriations Bill an additional $164.5 million to address this surge in unaccompanied children. However, given the current dramatic increase in apprehensions and activities associated with unaccompanied children and family groups, the resources necessary to appropriately address this issue are simply not available within the current fiscal year 2014 budget or the proposed fiscal year 2015 appropriation. To effectively address this emerging crisis, the President has requested emergency supplemental appropriations of $3.7 billion to comprehensively address this urgent humanitarian situation, including $1.5 billion for DHS to support more detention and removal facilities and enhanced processes as well as increased activities to disrupt and dismantle the human smuggling organizations that bring these individuals across U.S. borders.

Put plainly, without supplemental funding, in August U.S. Immigration and Customs Enforcement (ICE) will run out of money and DHS would need to divert significant funds from other critical programs just to maintain operations. Likewise, the HHS will be unable to address the influx of children by securing sufficient shelter capacity, leading to more children being held at short term border patrol processing stations for longer periods of time. Going forward, HHS will be unable to set-up more stable, cost-effective arrangements for these children, Border Patrol agents will have to be re-assigned from their border security work to assist at facilities housing children, and ICE will lack the resources needed to sufficiently maintain and expand detention and removal capacity for adults with children who cross the border illegally. Without additional funds, the Department of Justice (DOJ) will be unable to keep pace with its growing caseload, leading to longer wait times for those cases already on the docket. And absent dedicated resources in Central American countries, we will not make progress on the larger drivers of this humanitarian situation. For this reason, supplemental resources are urgently needed to continue forward with the aggressive response that the Administration has deployed to date.

This emergency supplemental request is a direct result of the urgent situation in the Rio Grande Valley. In fiscal year 2013, CBP apprehended approximately 24,000 unaccompanied children at the border. By the end of June of this fiscal year, that number has already doubled to more than 57,000, and it continues to climb. We are preparing for a scenario in which the number of unaccompanied children apprehended at the border could reach up to 90,000 by the end of fiscal year 2014.

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I know that additional money alone will not fully address the challenge we face, and we do not make this request lightly. While building capacity is necessary, we must also ramp up our ability to safely and quickly return the influx of these recent border crossers, which is exactly what we are doing.

As I have previously testified, we have established added capacity to deal with the processing and housing of the children and families and we are actively exploring additional options. To process the increased numbers of unaccompanied children and family groups in Texas, DHS has brought the children to our processing center at Nogales, Arizona before any unaccompanied children are sent to HHS, to whom DHS is mandated by law to transfer custody once they are identified as unaccompanied children. We are also arranging additional processing centers to handle the rise in the RGV, including adding a 1,000 bed processing center in McAllen.

Critically, DHS is also building additional detention capacity for adults who cross the border illegally in the Rio Grande Valley with their children. For this purpose DHS has established a temporary facility for adults with children on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico. The establishment of this temporary facility will help CBP process those encountered at the border and allow ICE to increase its capacity to house and expedite the removal of adults with children in a manner that complies with federal law. Artesia is one of several facilities that DHS will use to increase our capacity to hold and expedite the removal of the increasing number of adults with children illegally crossing the southwest border. DHS is ensuring that after apprehension, families are housed in facilities that adequately provide for their safety, security, and medical needs. Meanwhile, we will continue to expand use of the Alternatives to Detention program to ensure compliance with notices to appear before immigration judges for removal proceedings. DHS has also surged U.S. Citizenship and Immigration Services (USCIS) officers to hear credible fear claims and conduct the screening process. DOJ is temporarily reassigning immigration judges to handle the additional caseload. These immigration judges will adjudicate these cases as quickly as possible, consistent with all existing legal and procedural standards, including those for asylum applicants. Overall, this increased capacity and resources will allow ICE to return certain migrants from Central America to their home countries more quickly.

DHS has brought on more transportation assets to assist in the effort. The Coast Guard loaned air assets to help transport the children and families between CBP facilities. ICE is now leasing charter aircraft to transport unaccompanied children to HHS custody.

Throughout the Rio Grande Valley Sector, we are conducting public health screening for all those who come into our facilities for any symptoms of contagious diseases or other possible public health concerns.

In order to effectuate the safe and timely return of these migrants, we are engaging with senior government officials of Guatemala, El Salvador, Honduras, and Mexico to address our shared border security interests, the underlying conditions in Central America that are promoting the exodus, and how we can work together to assure faster, secure removal and repatriation.

Just yesterday I returned from Guatemala. Joined by SOUTHCOM Commander General John Kelly and Ambassador Thomas A. Shannon, I met with President Otto Fernando Pérez Molina to discuss the urgent situation and to express our commitment to work with Guatemala to stem the flow of individuals, address the root causes of the influx, and to expand the capacity of these countries to receive and reintegrate repatriated migrants.

As a part of these international engagement efforts, the United States has committed foreign assistance resources to improve the capacity of these countries to receive and reintegrate returned individuals and address the underlying security and economic issues that cause migration. This funding will enable El Salvador, Guatemala, and Honduras to improve their existing repatriation processes and increase the capacity of these governments and nongovernmental organizations to provide expanded services to returned migrants. Additional resources will support community policing and law enforcement efforts to combat gang violence and strengthen citizen security in some of the most violent communities in these countries.

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DHS has also added personnel and resources to the investigation, prosecution, disruption, and dismantling of the smuggling organizations that are facilitating border crossings into the Rio Grande Valley. ICE Homeland Security Investigations (HSI) is deploying 60 additional criminal investigators and support personnel to their San Antonio and Houston offices for this purpose, as well as supplementing this with additional intelligence and programmatic support from ICE headquarters. ICE will continue to vigorously pursue and dismantle these human smuggling organizations by all investigative means to include the financial structure of these criminal organizations.

We have increased CBP staffing and detailed 115 additional experienced agents from less active sectors to augment operations there. On June 30, I announced the immediate deployment of 150 U.S. Border Patrol agents to the Rio Grande Valley Sector to augment illegal entry detection efforts while enhancing processing and detention capabilities.

Our plan of action is comprehensive and wide-reaching. However, the measures that we have taken – which have been critical and must be sustained – are and will continue to be costly. Many of these activities were not contemplated at the time Congress passed the fiscal year 2014 DHS appropriations act. With such a dramatic increase in the number of unaccompanied minors and family groups being apprehended, significant additional resources are needed. As a result, the President sent a letter to Congress on June 30, providing an update on the Administration's efforts to address this situation and requesting congressional action on emergency supplemental appropriations legislation to support the following:

- an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers;
- a sustained border security surge through enhanced domestic enforcement, including interdiction and prosecution of criminal networks;
- a significant increase in immigration judges, reassigning them to adjudicate cases of recent border crossers, and establishing corresponding facilities to expedite the processing of cases involving those who crossed the border in recent weeks;
- a stepped up effort to work with our Central American partners to repatriate and reintegrate migrants returned to their countries, address the root causes of migration, and communicate the realities of these dangerous journeys; and
- the resources necessary to appropriately detain, process, and care for children and adults.

Specifically, the President has requested your support on emergency supplemental appropriations legislation providing DHS with $1.5 billion for fiscal year 2014 and 2015 costs related to surge in unaccompanied children and families. Of this amount, $433 million is included for CBP and $1.104 billion is included for ICE.

Of the $433 million included for CBP, $329 million is for operational costs to include care, feeding, and transportation costs of unaccompanied children and family groups. In addition, this amount would provide $35 million for new processing and detention facilities at Nogales and McAllen. Finally, the request supports CBP's efforts to detect and interdict unaccompanied children across U.S. borders, including $29 million for increased CBP support of the Border Security Task Forces, particularly along the Southwest Border, and $39 million for an additional 16,526 flight hours (above the level in the President's FY15 Budget request) and 16 additional crew members for CBP's Unmanned Aircraft Systems.

Of the $1.104 billion included for ICE, $995 million is for operational costs to include the detention, alternatives to detention, prosecution, and removal of family groups, as well as transportation costs of unaccompanied children to HHS custody. Another $109 million is included to support increased efforts to detect, disrupt and dismantle efforts to smuggle unaccompanied children and family groups across U.S. borders.

The requested amount would include $116 million for operational costs associated with the transportation of unaccompanied children to HHS custody, and $879 million for 6,350 additional family unit beds, 23,000

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additional alternatives to detention participants per day, additional prosecution capacity, and related transportation and removal costs for family groups. Finally, the request strengthens ICE efforts to detect and disrupt efforts to smuggle unaccompanied children across U.S. borders, including $46 million for 179 additional members of the Border Security Task Forces, particularly along the Southwest Border, $38 million for additional domestic and international investigations and intelligence support, and $6 million for Operation Torrent Divide.

As the urgent situation presented by the influx of unaccompanied children and families in south Texas continues to evolve, we will look to use every available tool to ensure that we are addressing these challenges and changing circumstances, including the potential use of transfer authority if necessary and appropriate.

Finally, I want to once again thank Chairwoman Mikulski, Ranking Member Shelby, and Members of this Committee for this opportunity to testify and for the strong support that I have received from the Committee since becoming Secretary of the Department of Homeland Security. We are committed to continuing to work closely with the Committee and Congress on this critical issue, and to keep you informed. DHS is updating Members and staff on the situation in conference calls two times a week, facilitating site visits to Border Patrol facilities in Texas and Arizona for a number of Members and their staff, and providing daily updates to the Appropriations Committee on border apprehensions data.

In cooperation with the other agencies of our government that are dedicating resources to the effort, with the support of Congress, and in cooperation with the governments of Mexico and Central America, I believe we can stem this tide and address the broader issues. The requested supplemental funding is critical to enabling the Department to fulfill its mission and address the dramatic surge in unaccompanied children and families in a manner that maintains border security and reflects our laws and values.

Thank you for listening and I look forward to your questions.

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DHS-011-0000001-0000751

Vroom, Patricia M

From: (b)(6), (b)(7)(c)
Sent: Monday, July 14, 2014 1:23 PM
To: Vroom, Patricia M
Subject: FW: FINAL STATEMENT

Categories: Red Category

From (b)(6), (b)(7)(c)
Sent: Monday, July 14, 2014 12:43 PM
To: #ICEOPAFIELDSTAFF
Cc: (b)(6), (b)(7)(c) Gonzalez, Barbara M; (b)(6), (b)(7)(c)
Subject: FW: FINAL STATEMENT

Team –

Please use the below with reporters who are asking about today's flight.

Thanks!
(b)(6), (b)(7)(c)

From: Catron, Marsha
Sent: Monday, July 14, 2014 3:40 PM
To (b)(6), (b)(7)(c)
Subject: FINAL STATEMENT

I got: NBC, ABC (avila), and WSJ.

RTQ
On July 14, a group of adults with children who recently crossed the border were returned to Central America. As President Obama, the Vice President, and Secretary Johnson have said, our border is not open to illegal migration and we will send recent illegal migrants back. We expect additional migrants will be returned to Honduras, Guatemala and El Salvador in the coming days and weeks, based on the results of removal proceedings or expedited removal. These returns are a result of the President's direction to surge resources such as immigration judges and asylum officers to process these cases more quickly.

Likely Q&A
- **How many people were repatriated? To where? When did they come into the US? Were they detained?**
  - Approximately [40] adults with children were returned to Honduras by ICE officials. This is just the initial wave. We expect additional adults with children will be returned to Honduras, Guatemala and El Salvador soon, based on the results of removal proceedings or expedited removal.
  - This group of migrants is in addition to the more than 81,995 migrants from Central American countries who have already been returned this fiscal year, consistent with DHS's enforcement priorities of focusing on national security, public safety, and border security.
  - I do not have specific dates of arrival, but these adults with children were recent border crossers who have been held in ICE custody since their arrival. This is a result of DHS and the Department of Justice working

together to prioritize the cases of recent migrants, including adults with children who recently crossed the border and are held in detention.
    - These individuals were held at the Artesia, New Mexico facility.

- **What due process did these families get?**
    - As required by law, recent border crossers subject to expedited removal are screened for credible fear.
    - Despite the "expedited" nature of these removal proceedings, adults with children maintain important due process rights, including the ability to seek asylum, appeal to an immigration judge the denial of a credible fear finding, and the ability to seek legal representation. ICE is able to move these proceedings expeditiously because it has prioritized these cases and devoted resources such that asylum officers are on site to conduct credible fear screenings, three immigration judges are dedicated to the facility to prioritize hearings via video teleconferencing, and all hearings and screenings are able to be heard and fairly considered on an expedited timetable due to the increase in resources allocated to the Artesia facility.

- **What are these people going back to? What assurances do you have that they are going back to safe environments?**
    - Individuals are turned over to government officials to be received and processed by their home country.
    - The Vice President has been in regular touch with the Presidents of each of the three countries on these issues and they have reaffirmed their commitment to work with us to stem the flow of illegal migration and receive and reintegrate repatriated migrants in the appropriate way. This has also been the subject of Secretaries Kerry and Johnson's engagements.
    - Last week, the Honduran President declared a humanitarian emergency and announced that it would create a revolving fund to coordinate the repatriation and reintegration of children.
    - The governments Guatemala, El Salvador, and Honduras offer their returning citizens basic services that include routine governmental administrative processing, identification, and interviews, as well as standard medical services, transportation, short term subsistence, and reintegration services. Last week, USAID signed a contract with the International Organization for Migration to improve the in-processing in the three countries; personnel are on the ground in these countries now.
    - Our Ambassador/Charge plans to greet the initial flights in each country and observe the process and will meet with host government officials early this week to be briefed on their repatriation plans.
    - The President's supplemental request includes $295 million to support efforts to repatriate and reintegrate migrants to Central America, to help the governments in the region better control their borders, and to address the underlying root causes driving migration, i.e. creating the economic, social, governance, and citizen security conditions to address factors that are contributing to significant increases in migration to the United States.

- **Why were these individuals detained and processed rather than thousands of others who recent arrived?**
    - These operational decision are made on a case by case basis by DHS personnel. As DHS expands its capacity to detain adults with children, more family units who arrive at the border will be placed in expedited removal proceedings and detained during the pendency of their removal proceedings.

- **When will the next flight be? Why just Honduras today?**
    - Adults with children will be returned to their home countries following expedited removal proceedings. The time table and number of removals depends on a number of factors, including processing time and coordination with the home country, among other factors. We continue to work collaboratively with the Governments of Guatemala, Honduras, and El Salvador on repatriating their nationals.

Additional background on repatriation in the three countries:

- *In Guatemala* returnees are moved to a processing center and are registered by the Government of Guatemala. Minors go to a separate facility that was established by the First Lady. The adults can call in-country or to the United States. They are given food and beverages. They are provided bus fare back to their homes. The

process is typically completed within an hour-and-a-half. Guatemala offers the most advanced services of the three countries, and is the most aggressive in trying to improve services for their returning citizens.

- *In El Salvador* returnees receive public health screening, vaccinations, medical services for emergency or chronic conditions, a government interview for human rights compliance, assistance for family reunification, transportation funds, limited food and shelter for those who need time to coordinate living arrangements, and hygiene supplies.
- *In Honduras* immigration officers review the migrants' documents before the deportees leave the plane. The repatriated migrants move to a processing center. There they get their documentation, coffee, hygiene kits, and their property (i.e. luggage). Representatives from the Labor Office are there to help them with employment, and, in a separate office, the National Registry of Persons signs them up for national identification if they don't have any. There is a small medical clinic run by the Ministry of Health. There is a separate office that processes children deported from Mexico. The child welfare agency receives the children and connects them with family members. The people receive a bus ticket and depart. There is also a facility where people can stay if they need to remain overnight. The Government of Honduras is also in the process of repurposing a spacious, comfortable facility near the airport for returning UAC from the United States.

Marsha L. Catron
Deputy Press Secretary
U.S. Department of Homeland Security
O: 202-282 (b)(6), (b)(7)(c)
C: 202-309-
(b)(6), (b)(7)(c)

Vroom, Patricia M

From: (b)(6), (b)(7)(c)
Sent: Monday, July 14, 2014 2:53 PM
To: Vroom, Patricia M
Subject: FW: Summary of Secretary Johnson's Visit to Artesia
Attachments: S1_Tour_071114_04.jpg

FYI

From: (b)(6), (b)(7)(c)
Sent: Saturday, July 12, 2014 08:45 PM
To: Vincent, Peter S; Ramlogan, Riah; Davis, Mike P; Stolley, Jim; Pincheck, Catherine
Cc: (b)(6), (b)(7)(c)
Subject: Summary of Secretary Johnson's Visit to Artesia

Peter/Riah/Mike/Jim/Catherine:

Yesterday, led by ERO El Paso's DFOD Juanita "Janie" Hester, we gave a tour of Artesia to Secretary Johnson, New Mexico Senator Martin Heinrich, and Artesia Mayor Phillip Breach. The Secretary was accompanied by Thomas Winkowski, Thomas Homan, Paul Rosen and around 25 others, including ERO and HSI officers.

The tour began in the processing intake area, where the Secretary asked how many residents were at the facility. He was informed that prior to Friday we had 217, but another 200 residents arrived on Friday, and the total was over 400, and more are arriving this weekend. We will be at full capacity by early next week. The Secretary also wanted to know when removals would start occurring. He was told that the first flight to El Salvador leaves Monday and there will be flights to Honduras and Guatemala later in the week.

We proceeded to the IHSC wing of the facility, where approximately 20 medical staff were on site. There, Dr. Krohmer gave a quick overview of the screening taking place when the residents arrive and some of the illnesses his team has had to treat.

We then moved to the law library. Directly across from the law library, court hearings were taking place via VTEL. I explained to the Secretary, Senator, and Mayor that residents are asked by our officers if they have any fear of being returned. If they do, their case is referred to an asylum officer for a credible fear interview. I introduced the lead asylum officer on site, Antonio Donis, who had arrived late on Monday. Prior to this detail, he has been the Deputy Director at the Arlington asylum office. He briefly explained what his team does and thanked everyone at Artesia for the collaborative working relationship. I echoed his comments, saying that the working relationship between us, ERO, HSI, EOIR, and the asylum officers has been terrific. I also thanked Mr. Winkowski and Mr. Homan in their leadership in bringing us all together so quickly and setting up the Artesia Facility. Resuming my explanation of the credible fear process, I explained that negative credible fear cases are sent to me. After review, we file them with EOIR. The cases are heard 1-2 business days later. So far, the immigration judges have upheld all negative credible fear findings. However, we are noticing that residents are starting to change their stories in immigration court from what they told the officers and we (b)(5) In any case where the asylum team finds credible fear, the alien is issued an NTA and placed in regular removal proceedings, where they can seek any forms of relief available to them including asylum. The same would be true if a judge found credible fear and reversed an asylum officer's determination, but again, so far that has not happened.

Secretary Johnson asked about bond proceedings. Everyone at Artesia is being held without bond. Expedited removal cases are not eligible for a bond hearing before an immigration judge, but NTAed cases can seek bond redetermination before a judge. The first bond hearing is scheduled for next week. Mr. Winkowski asked if we are letting residents be bonded out. I said that is correct, but that we plan to argue that judges should deny bond because of flight risks. If bond is still set we will take all available options to prevent it, including an appeal in conjunction with pursuing a stay of the judge's decision (b)(5)

While the Senator was nearby, Secretary Johnson asked me if all of the immigration judges are conducting proceedings by video teleconference, and I told him that they were. The Secretary asked if it would help to get more immigration judges. I told him that any additional manpower, including more judges, would make a big difference. The Secretary asked how many judges are involved and I told him that presently there are three hearing cases from Artesia and we have judges and ICE attorneys detailed to assist with the incoming UACs all across the border. The Secretary, while looking over to the Senator, asked if having ten more judges would help; I said yes.

While the tour then went outside, Secretary Johnson spoke with Paul Rosen, who then asked me to come over. The Secretary asked me about the residents' access to counsel. I told the Secretary (the Senator was again standing next to the Secretary while I spoke) that all residents are getting a list of free legal providers in El Paso and are seeing a "know your rights" video presentation. I also told him that this week I had been working with EOIR's pro bono coordinators, along with the Vera Institute of Justice, Diocesan Migrant and Refugee Services of El Paso, Catholic Charities of Las Cruces. Those organizations are all scheduled to visit next week and will be setting up weekly live "know your rights" presentations. I also told the Secretary that I am putting together a larger list of all free legal service providers, including other New Mexico attorneys who have called and I spoken to about providing pro bono services. This list will be given to all residents. We have set aside space for attorney visitations and set up a process for them to gain access to their clients. I told the Secretary that we are committed to making sure the residents receive all due process, but we also want to ensure these hearings take place as expeditiously as possible. He seemed glad and thanked me and our folks for our work on this.

The tour then went through the facility. The doors of the rooms were all open and women and children were walking around. Secretary Johnson said a quick hello but did not engage with any of them. The Secretary and Mayor then met privately for about 10-15 minutes. I believe Mr. Winkowski joined them after a bit. The Mayor felt that he had not received proper notice that this facility was being set up. He also had concerns about any illness the residents may be bringing and the medical and IHSC side of things. When they came out of the room, the Mayor seemed fine and the Senator and Mayor departed.

The Secretary and a smaller group then had an intel briefing, which I was present for. ERO spoke to him a little more about the details of the facility and some of the challenges. The head of FLETC spoke about how strong our partnership is and that she is committed to making this a success. She said a separate entrance will soon be built for the Artesia facility. Everyday more and more construction is going up. HSI also gave an intel briefing.

We left and the Secretary stood outside with the facility behind him to address a group of about 50 reporters and 12 television cameras. ICE Public Affairs was present, including Barbara Gonzalez, who is always awesome at facilitating things. The Secretary spoke for a few minutes, saying "Our border is not open to illegal immigration. This facility is proof that we will detain you and deport you if you enter illegally." He answered a few questions, then departed along with Mr. Winkowski, Mr. Homan, and Paul Rosen and a few others for Weslaco, Texas.

Afterwards there was a media tour of Artesia which I was not a part of, (b)(5)
(b)(5)

Here's a link to an article from the El Paso Times regarding the visit.

http://www.elpasotimes.com/latestnews/ci_26128803/dhs-secretary-visit-artesia-nm-migrant-detention-center

and here's a link to photographs of Artesia:

http://photos.elpasotimes.com/2014/07/11/photos-tour-of-artesia-n-m-immigrant-detention-facility/#2

ERO is doing a terrific job here and they really appreciate the OPLA presence.

(b)(6), (b)(7)(c)
Chief (on detail to Artesia)
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732-(b)(6), (b)(7)(c)
520-249- (cell)
(b)(6), (b)(7)(c) (e-mail)

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From: (b)(6), (b)(7)(c)
To:
Subject: FW: 235 v. 236
Date: Monday, January 26, 2015 4:38:22 PM
Attachments: INA Section 235 Mandatory Detention Issue (clean).docx

---

From: Herndon, Megan B
Sent: Tuesday, November 04, 2014 9:31 AM
To: Golparvar, Kuyomars Q
Subject: RE: 235 v. 236

(b)(6), (b)(7)(c)

This version corrects a typo but makes no substantive changes.

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 9:12 AM
To: (b)(6), (b)(7)(c)
Subject: RE: 235 v. 236

Do you have any edits to share? My meeting is coming up in a few minutes.

From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 8:02 AM
To: (b)(6), (b)(7)(c)
Subject: RE: 235 v. 236

(b)(6), (b)(7)(c)

There is some good information here, but I am taking a look and making some necessary edits. I will send my edits over this morning.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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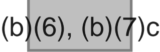
From: (b)(6), (b)(7)(c)
Sent: Monday, November 03, 2014 4:31 PM
To:
Cc: (b)(6), (b)(7)(c)
Subject: FW: 235 v. 236

****SENSITIVE/PRIVILEGED**** PRE-DECISIONAL & DELIBERATIVE****ATTORNEY WORK PRODUCT****ATTORNEY CLIENT PRIVILEGE COMMUNICATION****


(b)(6), (b)(7)c

Here is what Brittany and Alex put together. I have attached a few of the sources that they relied on in preparing this memo. I am heading out in a few, but if there are any questions or things you would like me to add/change, I can do so tonight or first thing in the morning before your 9:00 a.m. meeting. I'll be up early tomorrow, as I am going to go vote at 6 when the polls open so I can log on right after.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Associate Legal Advisor
Immigration Court Practice Section – West
Office of the Principal Legal Advisor
202-732 (b)(6), (b)(7)(c) (office)
202-904 (cell)
(b)(6), (b)(7)(c)

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Date: November 4, 2014

Memorandum For: (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)

Subject: Whether the expedited removal provisions at INA § 235(b)(1) can be applied to subject all aliens present in the United States without having been admitted or paroled to mandatory detention under section 236(c).

(b)(5)

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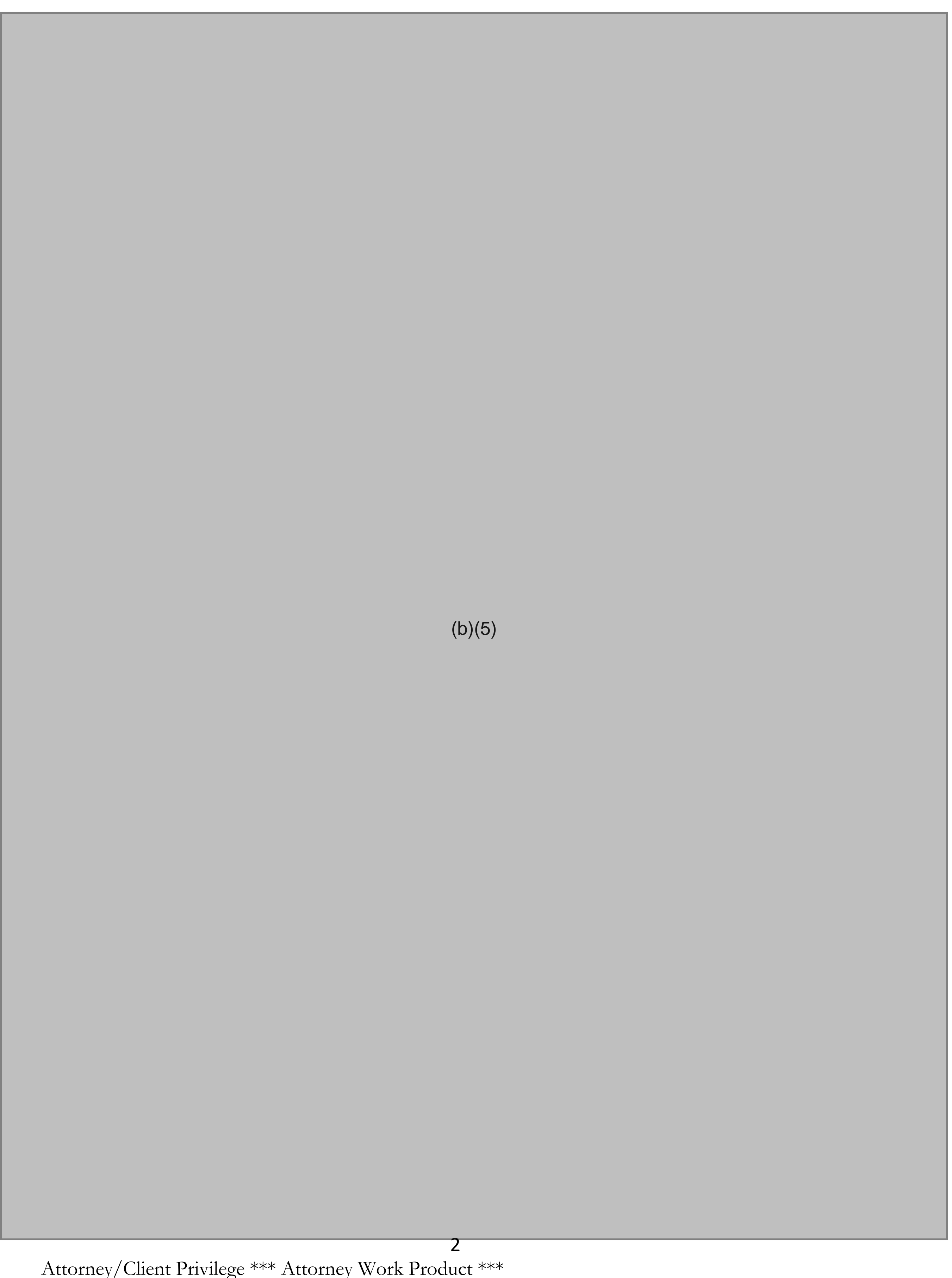

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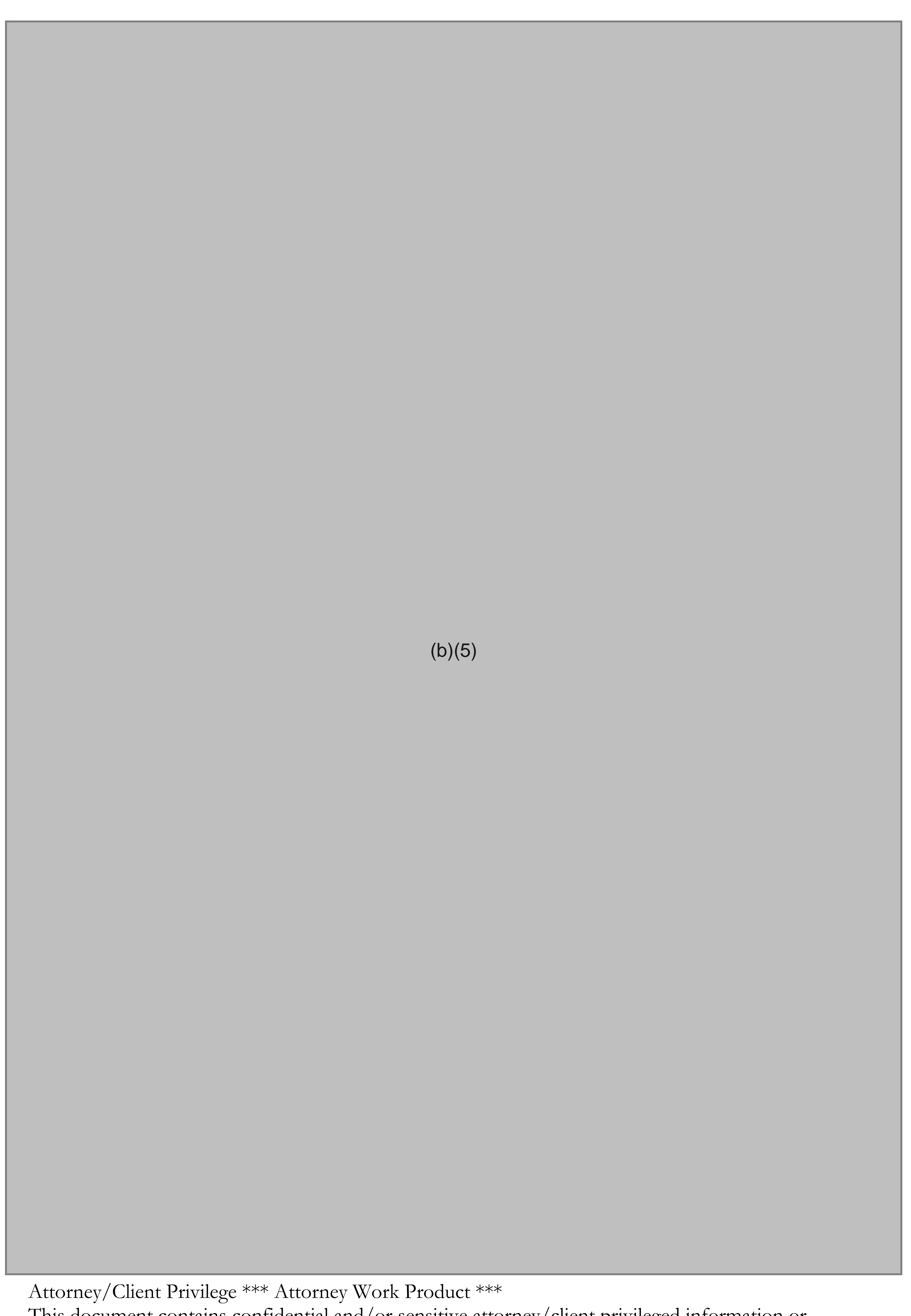

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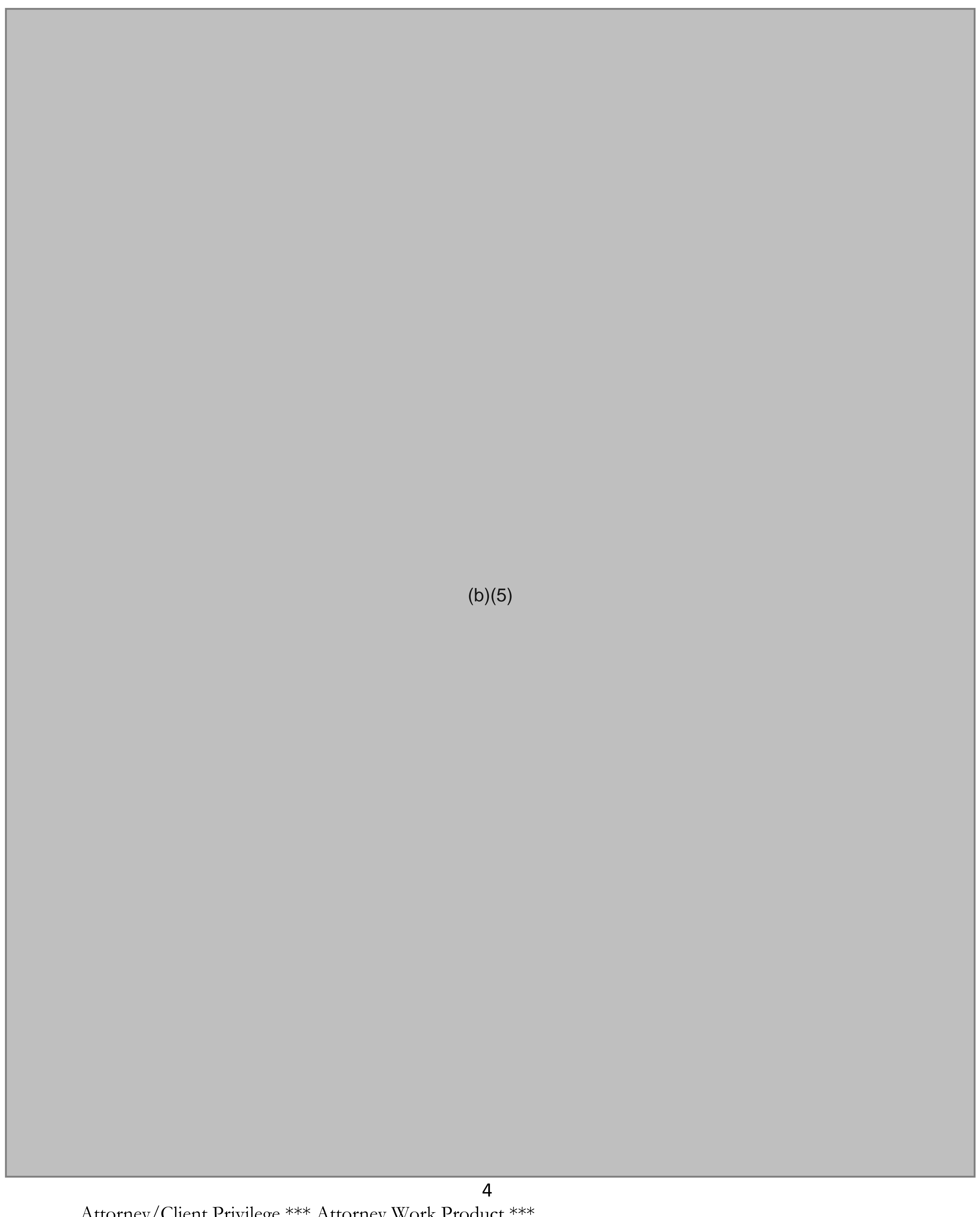

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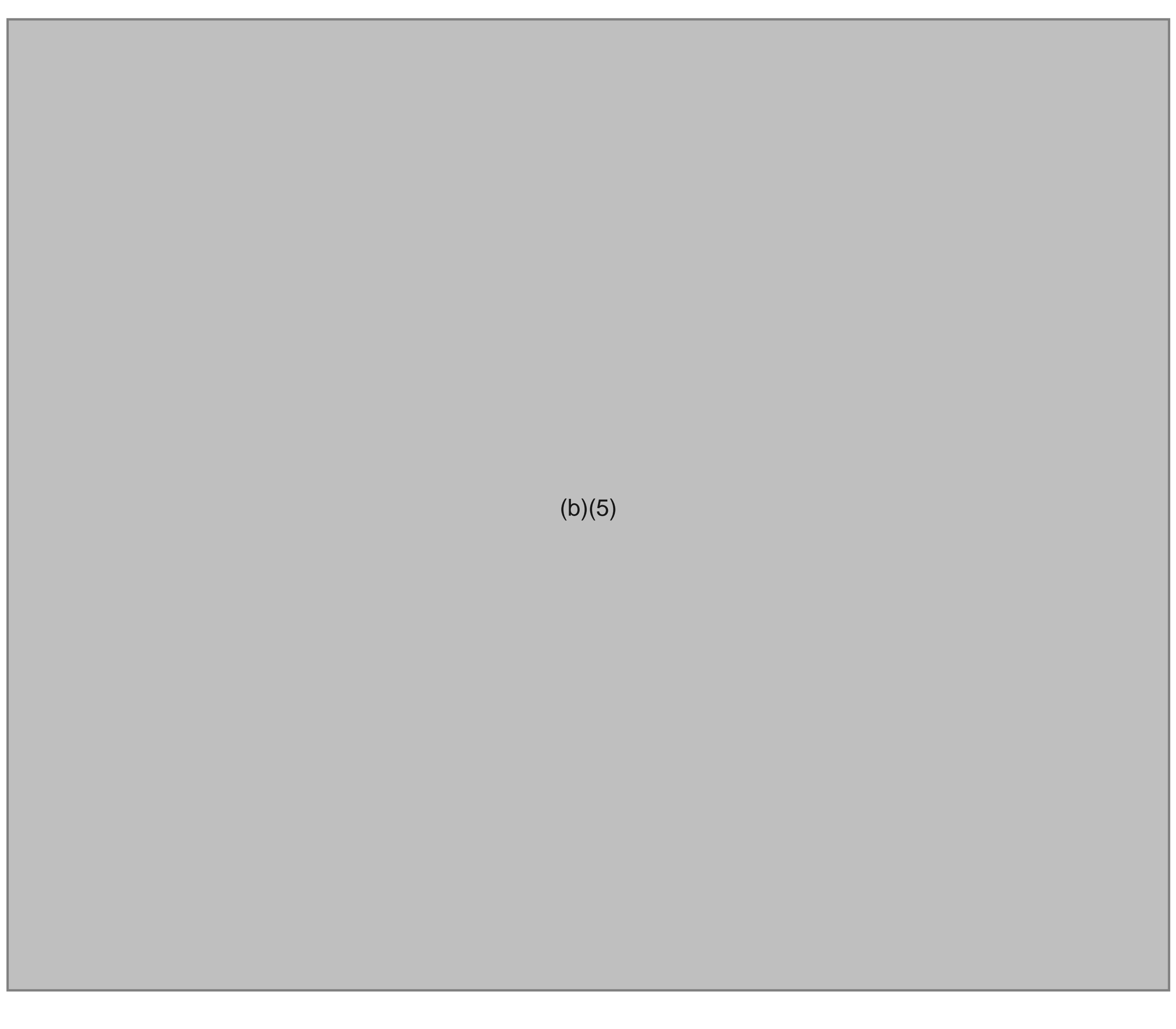
(b)(5)

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From: (b)(6), (b)(7)(c)
To:
Subject: FW: CAT Concluding Observation: right to counsel in expedited removal
Date: Monday, January 26, 2015 4:37:43 PM

From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 25, 2014 9:37 AM
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P; (b)(6), (b)(7)(c)
Subject: RE: CAT Concluding Observation: right to counsel in expedited removal

Thanks (b)(6), (b)(7)(c) Also, Par. 5 references various ICE directives. Are those correct?

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

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 25, 2014 9:22 AM
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P; (b)(6), (b)(7)(c)
Subject: RE: CAT Concluding Observation: right to counsel in expedited removal

Adding (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Thanks for pointing that out. Paragraph 19 currently says "It is also concerned at the recent expansion of family detention with the plan to establish 6,350 additional beds for undocumented migrant families with children." That number is incorrect.

The correct numbers are as follows:

Current capacity:

(1) Artesia – 640 Beds, but only 365 in use;

(2) Berkes – 96 Beds;
(3) Karnes – 532 Beds;
(4) Dilley – Up to 2,400 (but not until May or June)

The range will ultimately be around 3,000.

Thanks to (b)(6), (b)(7)(c) for providing the latest stats.

Best regards,
(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 25, 2014 8:54 AM
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P
Subject: Re: CAT Concluding Observation: right to counsel in expedited removal

(b)(6), (b)(7)(c)

What about the number of family bed report in the conclusion? Are they correct?

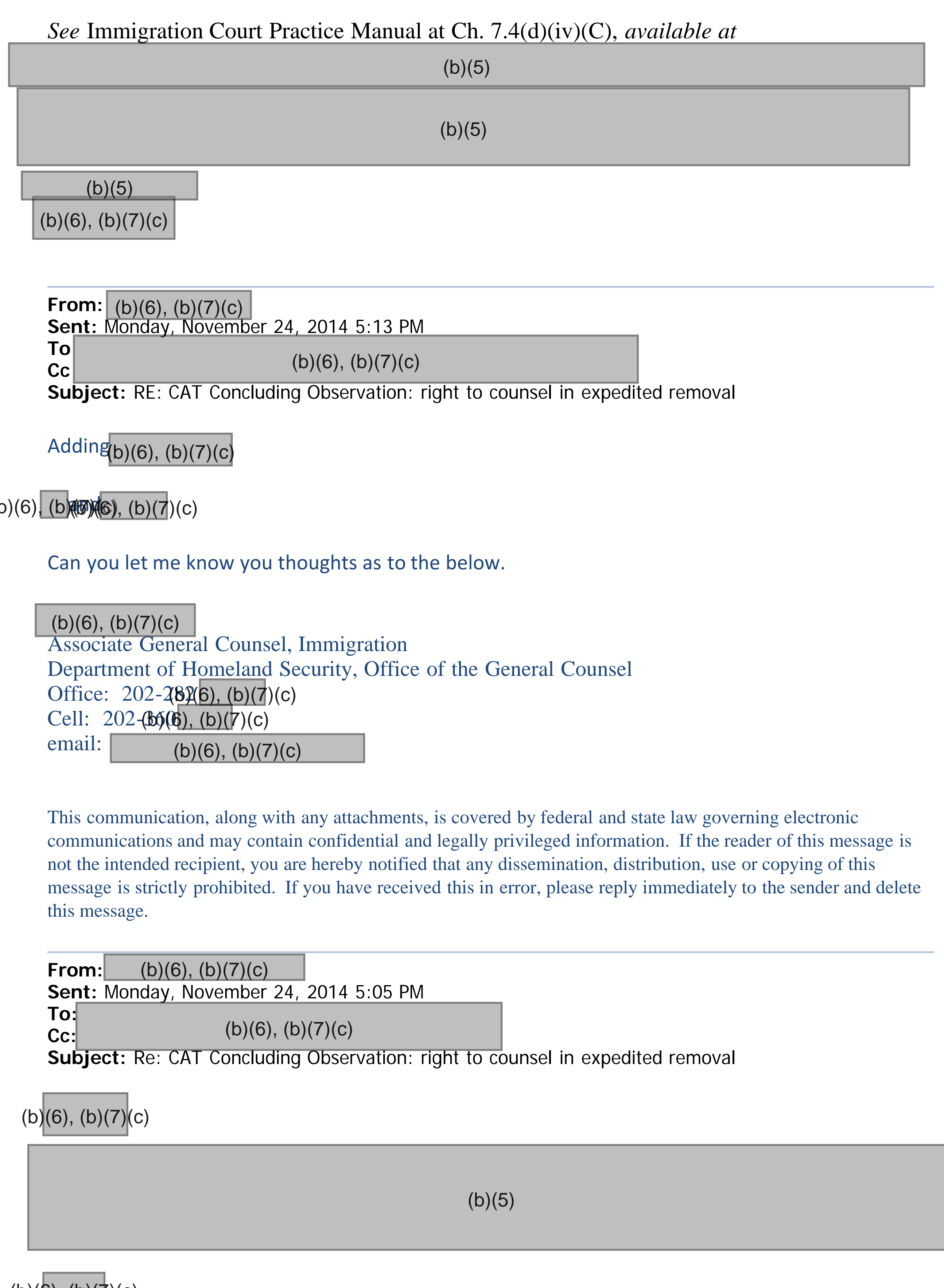
From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 25, 2014 08:43 AM
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P
Subject: RE: CAT Concluding Observation: right to counsel in expedited removal

(b)(5)

(b)(5) (b)(6), (b)(7)(c)
Sent: Tuesday, November 25, 2014 8:24 AM
To: (b)(6), (b)(7)(c)
Cc: Davis, Mike P
Subject: RE: CAT Concluding Observation: right to counsel in expedited removal

(b)(6), (b)(7)(c)

(b)(5)



See Immigration Court Practice Manual at Ch. 7.4(d)(iv)(C), *available at*

(b)(5)

(b)(5)

(b)(5)

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, November 24, 2014 5:13 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: CAT Concluding Observation: right to counsel in expedited removal

Adding (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

Can you let me know you thoughts as to the below.

(b)(6), (b)(7)(c)
Associate General Counsel, Immigration
Department of Homeland Security, Office of the General Counsel
Office: 202-28 (b)(6), (b)(7)(c)
Cell: 202-46 (b)(6), (b)(7)(c)
email: (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, November 24, 2014 5:05 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: Re: CAT Concluding Observation: right to counsel in expedited removal

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, November 24, 2014 04:00 PM
To (b)(6), (b)(7)(c)
Cc
Subject: CAT Concluding Observation: right to counsel in expedited removal

(b)(6), (b)(7)(c)

There is a par in the draft observation that I am not sure is correct. Do individuals have a right to counsel (at no expense to the government) in ER?

I am aware that the D.C. Circuit has held that individuals in expedited removal do not have a right to counsel *at the secondary inspection stage*. *See AILA v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000).

DRAFT Par from the Conclusion:

(b)(5)

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

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From: (b)(6), (b)(7)(c)
To:
Subject: FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return
Date: Monday, January 26, 2015 4:24:34 PM

From (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 5:15 PM
To (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

Yes, I think this hits the mark. Riah and Peter discussing with (b)(6), (b)(7)(c) now; will let you know if we need more.

Best Regards,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor
Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement • U.S. Department of Homeland Security
Desk: (202) 732 (b)(6), (b)(7)(c) • Cell: (202) 276 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, June 10, 2014 5:05 PM
To (b)(6), (b)(7)(c)
Subject: FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

See the broadcast below. Is this the issue that you are thinking of?

(b)(6), (b)(7)(c)
Chief – Detention and Removal Law Section
Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732 (b)(6), (b)(7)(c)
Blackberry: 202-500 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Thursday, April 24, 2014 12:36 PM
To (b)(6), (b)(7)(c)
Cc: Miller, Philip T
Subject: FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

(b)(6), (b)(7)(c)

I think this is the message you are looking for.

v/r

From: (b)(6), (b)(7)(c)
Sent: Tuesday, April 22, 2014 1:04 PM
Subject: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

This message is being sent by Philip Miller, Assistant Director for Field Operations

To: **Assistant Directors, Deputy Assistant Directors, Field Office Directors and Deputy Field Office Directors**

Subject: **Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return**

Please immediately distribute this guidance to your employees.

Aliens issued expedited removal orders by U.S. Customs and Border Protection (CBP) under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (INA) are routinely transferred to U.S. Immigration and Customs Enforcement (ICE) for detention and execution of the expedited removal order. This message serves as a reminder of the custody procedures applicable to such cases and Enforcement and Removal Operations' (ERO) responsibilities where an alien expresses a fear of return *after* issuance of the expedited removal order and transfer to ERO custody. This message does not address cases in which the alien expressed a claim of fear prior to issuance of the expedited removal order and was transferred to ERO custody pending a credible fear interview before U.S. Citizenship and Immigration Services (USCIS). It also does not address cases in which the alien has been determined by USCIS to possess a credible fear and has been referred to the immigration court for removal proceedings under INA § 240.

<u>Detention and Release</u>

As set forth in regulations, an alien who has been issued an expedited removal order "shall be detained pending . . . removal." 8 C.F.R. § 235.3(b)(2)(iii). Aliens subject to an expedited removal order are not detained pursuant to the post-order custody provisions of INA § 241(a)

and are not eligible for release on an order of supervision. Such aliens are may only be released from custody on parole on a case-by-case basis in the limited circumstances where "parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective." 8 C.F.R. § 235(b)(2)(iii).

Fear Claims

The expedited removal regulations provide significant opportunities for aliens to raise a claim of fear *prior* to the issuance of an expedited removal order. The examining officer is required to read to the alien the contents of Form I-867A, which advises that U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country and advises the alien to tell the officer if he or she has fear or concern about being removed from the United States. In addition, the regulations require that the examining officer complete the Form I-867B, which expressly asks: (i) why the alien left his or her home country or country of last residence; (ii) whether the alien has any fear or concern about being returned; and (iii) whether the alien would be harmed, if returned.

There may, nonetheless, be cases in which an alien first indicates an intention to apply for asylum or expresses a fear of return after the expedited removal order is issued and the alien is transferred to ERO custody. This includes any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland. In these cases, ERO must refer the alien for a credible fear interview before a USCIS asylum officer. Similarly, if an alien who is not in ERO custody (e.g., one who has been transferred to the custody of another law enforcement agency), indicates an intention to apply for asylum or expresses a fear of return to ERO, ERO must refer the alien for a credible fear interview before a USCIS asylum officer. ERO should not advise the alien to file an application for asylum directly with USCIS.

Field Officer Directors should consult with their respective Office of the Chief Counsel on any questions regarding the implementation of this guidance.

If you have any concerns regarding this guidance, please contact the ERO Field Operations Staff Officer assigned to your AOR.

Limitation on the Applicability of this Guidance. This message is intended to provide internal guidance to the operational components of U.S. Immigration and Customs Enforcement. It does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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From: (b)(6), (b)(7)(c)
To:
Subject: FW: Expedited Hearing Request (b)(6), (b)(7)(c) Denver
Date: Monday, January 26, 2015 4:27:45 PM
Attachments: image001.jpg
image002.png

From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 4:10 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)c

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 3:44 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c) t al.

(b)(5)

(b)(5)

Elizabeth Thaler, Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 732 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 3:13 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c)

(b)(5)

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) 732 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)

Sent: Monday, August 11, 2014 2:40 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c) It's still not clear to me, if an alien signs the request for a prompt hearing are we required to have the NTA immediately served with the court? If not, what allows us to hold onto it for 60 days?

From (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 2:17 PM
To (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c)

(b)(5)

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 12:59 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) enver

Excellent. Thanks!

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 12:58 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) enver

(b)(5) I will put together an email on why and send it shortly.

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(20 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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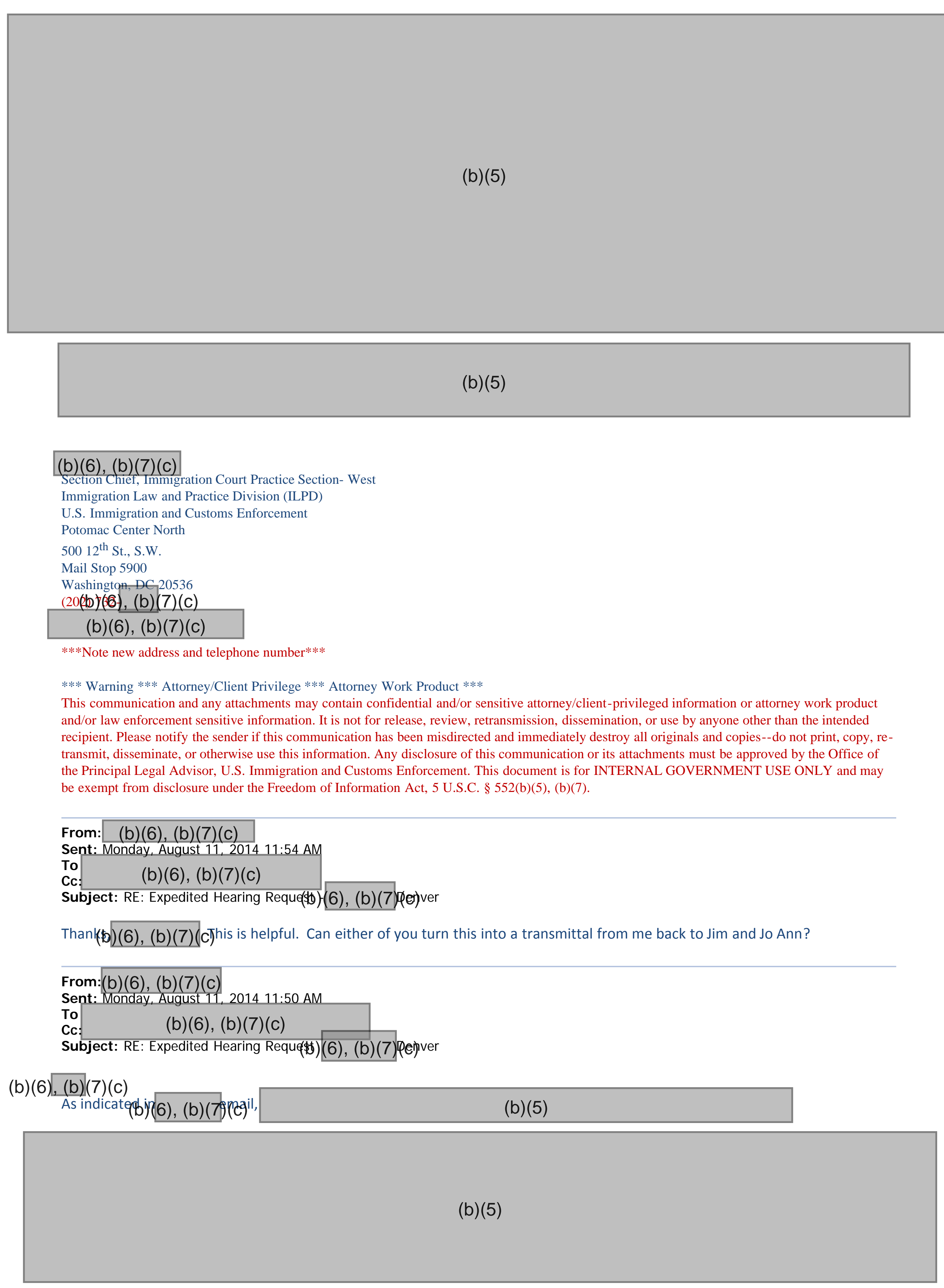
From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 12:52 PM
To (b)(6), (b)(7)(c)
Cc
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Are we in violation of this if we delay filing the NTA by 60 days?

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 12:04 PM Eastern Standard Time
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Jim and Jo Ann,

(b)(5)



(b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(202) (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 11:54 AM
To (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

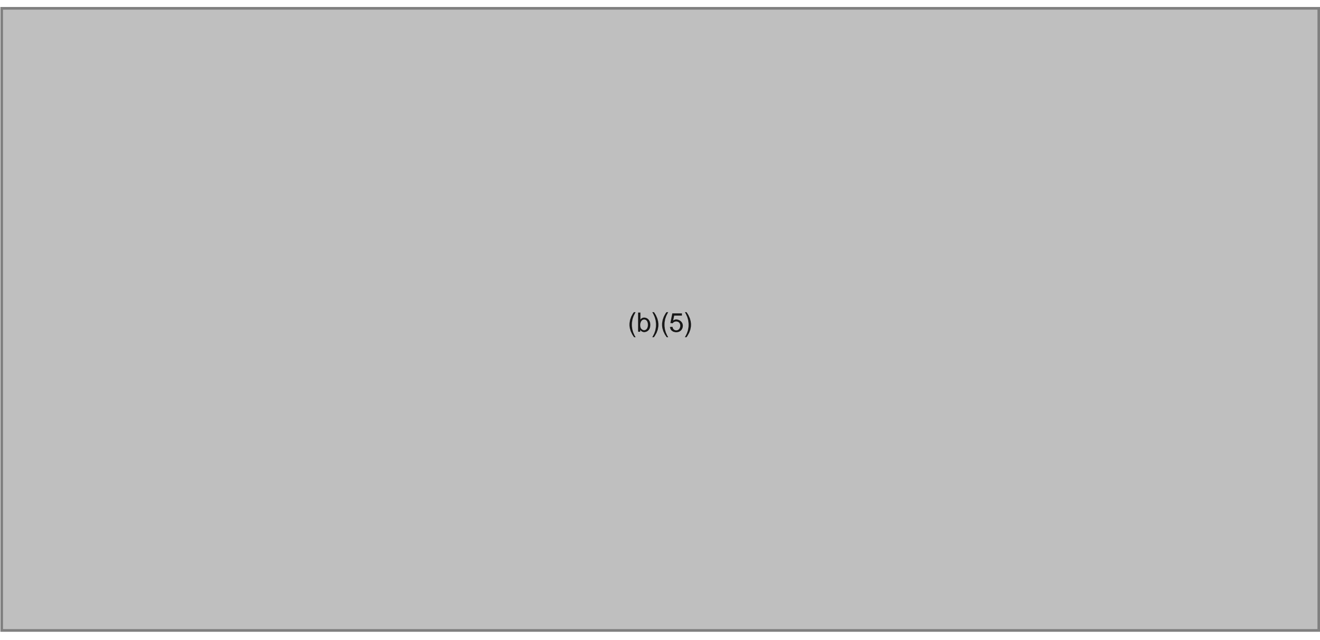
Thanks (b)(6), (b)(7)(c) This is helpful. Can either of you turn this into a transmittal from me back to Jim and Jo Ann?

From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 11:50 AM
To (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c)

As indicated in (b)(6), (b)(7)(c) email, (b)(5)

(b)(5)



(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) 73 (b)(6), (b)(7)(c)
Mobile: (210) 89 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 10:50 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

FYI- from the ICPM:

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
Potomac Center North

500 12th St., S.W.
Mail Stop 5900
Washington, DC 20536
(20(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Note new address and telephone number

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 10:44 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

Yes, or whether it just allows EOIR to schedule the first master calendar hearing less than 10 days after receiving the NTA.

From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 10:43 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

Just to clarify, is this the question we're trying to answer: Whether the "Request for Prompt Hearing" box on pg. 2 of the NTA should be interpreted as a request for an expedited hearing?

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (202) (b)(6), (b)(7)(c)
Mobile: (210) (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 10:31 AM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c)

Can you take a look in the regs or whether there is any caselaw on this? Feel free to tap Peter to assist. Thanks.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Monday, August 11, 2014 10:29 AM
To: Stolley, Jim; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

Sure, we can take a look.

From: Stolley, Jim
Sent: Monday, August 11, 2014 10:27 AM
To (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: Expedited Hearing Request (b)(6), (b)(7)(c) enver

Greetings, gentlemen:
Can ILPD weigh in on this?

Jim Stolley

Director, Field Legal Operations
Office of the Principal Legal Advisor

Acting Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) 843 (b)(6), (b)(7)(c)

From: McLane, Jo Ann
Sent: Friday, August 08, 2014 3:47 PM
To: Stolley, Jim; (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

(b)(5)

Jo Ann McLane
Chief Counsel, San Antonio
DHS-ICE-OPLA
8940 Fourwinds Drive, Room 5045
San Antonio, TX 78239
(210) 967 (b)(6), (b)(7)(c) Desk
(202) 297 Cell
Description: DHS_ice_rv_W

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From: Stolley, Jim
Sent: Friday, August 08, 2014 3:43 PM
To: McLane, Jo Ann; (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Hmmmm

Jim Stolley

Director, Field Legal Operations
Office of the Principal Legal Advisor

Acting Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) 843 (b)(6), (b)(7)(c)

From: McLane, Jo Ann

Sent: Friday, August 08, 2014 3:42 PM
To: Stolley, Jim; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Very much so.

Jo Ann McLane
Chief Counsel, San Antonio
DHS-ICE-OPLA
8940 Fourwinds Drive, Room 5045
San Antonio, TX 78239
(210) 967-(b)(6), (b)(7)(c) esk
(202) 257- cell
Description: DHS_ice_rv_W

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From: Stolley, Jim
Sent: Friday, August 08, 2014 3:41 PM
To: McLane, Jo Ann; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Is this on the increase, Jo Ann?

Jim Stolley

Director, Field Legal Operations
Office of the Principal Legal Advisor

Acting Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) 843-(b)(6), (b)(7)(c)

From: McLane, Jo Ann
Sent: Friday, August 08, 2014 3:39 PM
To: Stolley, Jim; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

As of yesterday we have 470 such requests (b)(5)

(b)(5)

Jo Ann McLane
Chief Counsel, San Antonio
DHS-ICE-OPLA
8940 Fourwinds Drive, Room 5045
San Antonio, TX 78239
(210) 967(b)(6), (b)(7)(c) esk
(202) 257 cell
Description: DHS_ice_rv_W

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From: Stolley, Jim
Sent: Friday, August 08, 2014 3:35 PM
To (b)(6), (b)(7)(c) McLane, Jo Ann
Cc:
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

Agreed.

Jim Stolley

Director, Field Legal Operations
Office of the Principal Legal Advisor

Acting Chief Counsel, Minneapolis/St. Paul
U.S. Immigration and Customs Enforcement
(612) (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 3:32 PM
To: McLane, Jo Ann
Cc: (b)(6), (b)(7)(c) Stolley, Jim
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

Jo Ann,

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

202-732-(b)(6), (b)(7)(c)

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From: McLane, Jo Ann
Sent: Friday, August 08, 2014 3:52 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

cid:image001.png@01CFB31D.F2288900

Jo Ann McLane
Chief Counsel, San Antonio
DHS-ICE-OPLA
8940 Fourwinds Drive, Room 5045
San Antonio, TX 78239
(210) 967 (b)(6), (b)(7)(c) Desk
(202) 297 Cell
Description: DHS_ice_rv_W

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From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 2:48 PM
To: McLane, Jo Ann
Cc: (b)(6), (b)(7)(c)
Subject: RE: Expedited Hearing Request (b)(6), (b)(7)(c) enver

Can you send me a sample?

Thanks,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Deputy Director, Field Legal Operations – West
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

202-732-(b)(6), (b)(7)(c)

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From: McLane, Jo Ann
Sent: Friday, August 08, 2014 3:26 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: FW: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

(b)(6), (b)(7)(c)

We have noticed that people doing the data entry are treating the waiver of the 10 day period on page 2 of the NTA as a request for an expedited hearing. This is not a request for an expedited hearing based on our established procedures. Would it be possible to send out clarification that an expedited hearing request is a special form, not page 2 of the NTA? This is impacting our procedures and the integrity of the data.

Thanks,
Jo Ann

Jo Ann McLane
Chief Counsel, San Antonio
DHS-ICE-OPLA
8940 Fourwinds Drive, Room 5045
San Antonio, TX 78239
(210) 967-(b)(6), (b)(7)(c) Desk
(202) 297-(b)(6), (b)(7)(c) Cell
Description: DHS_ice_rv_W

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From: (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 2:21 PM
To: McLane, Jo Ann; (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)(c)
Subject: FW: Expedited Hearing Request - (b)(6), (b)(7)(c) Denver

This is an example of an expedited hearing request that came in through the mail box. If you click on the link and go to the Documents section, the "expedited request" is simply page 2 of the NTA. There is no other separate request, at least not one that has been uploaded into PLAnet.

Thank you,

(b)(6), (b)(7)(c)
Assistant Chief Counsel
Office of the Chief Counsel- San Antonio

Harlingen Sub-Office
1717 Zoy St.
Harlingen, TX 78552
(956) 389-(b)(6), (b)(7)(c) direct)
(956) (b)(6), (b)(7)(c) cell)
(956) 389- fax)

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From: <KMD (b)(6), (b)(7)(c)
Sent: Friday, August 08, 2014 12:25 PM
To (b)(6), (b)(7)(c)
Subject: Expedited Hearing Request (b)(6), (b)(7)(c) Denver

Dear Harlingen OCC,

An Expedited Hearing Request has been recieved. Please make the neceesary arrangements to accomodate this request.

Link to case record

Sincerely,

PLAnet Support Team

Documents Submitted for FOIA Request dated January 15, 2015: AIC v. DHS (14-8403, SDNY)

Kathleen L. Torres, ICE, OCC-Denver

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Monday, September 29, 2014 3:34 PM
To: (b)(6), (b)(7)c
Cc:
Subject: RE: Credible Fear - reconsideration procedures

Follow Up Flag: Follow up
Flag Status: Completed

Categories: procedure

(b)(6), (b)(7)c I'm so glad you reached out, and I apologize for my tardy response.

The best way for an attorney to request a reinterview, even after the IJ has upheld the asylum office's determination, would be to submit the A#, applicant's name, a G-28 and a document outlining the reasons for the request for reinterview to the asylum.houston@uscis.dhs.gov mailbox. As for the document, we have gotten letters and actual motions, however, we do not require a specific format to consider the request.

Please let me know if you have any additional questions.
(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, September 11, 2014 3:05 PM
To: (b)(6), (b)(7)c
Cc:
Subject: Credible Fear - reconsideration procedures

Good afternoon, (b)(6), (b)(7)c

You visited with our office last year and I hope you are the correct person to whom I should direct this question. If you are not, I would really appreciate your forwarding my inquiry to someone who may be able to assist.

Your office made a negative credible fear finding for an alien (b)(6), (b)(7)(c) and the Immigration Judge concurred with that finding. His attorney has sent the ICE ERO Field Office Director a request for reconsideration under 8 CFR 1208.30(g)(2)(iv)(A). I reviewed the Credible Fear Procedures Manual, and some other USCIS/Asylum Office resources, and could not find any reference to where, or how, an alien would seek reconsideration of a negative credible fear finding, after the Immigration Judge has concurred with that finding.

Could you point me in the right direction? It would be greatly appreciated.

Thanks so much,

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c

Fax: (303) 784(b)(6), (b)(7)(c)
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(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, November 07, 2014 5:03 PM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E; (b)(6), (b)(7)c
Subject: RE: Artesia Aila meeting today

I won't say a word. (b)(5) During the discussion yesterday Laura Lichter became very emotional and kept reminding me that they are here to provide free legal services and not to pay for things like translation services and if they were in Denver or any big city they could find enough attorneys and translation services that would fit into their schedule. Laura Lichter then threated to go to CRCL,r file a civil suit, and maybe even Jim Stolley. I encouraged her to proceed as she wished. She also demanded we provide the lists of everyone in the facility including the new folks coming into the facility including names a numbers and COC.

She then left us and had a meeting with CIS. She demanded that CIS produce lists of people CIS is interviewing, all CIS Artesia statistics that show CIS results of interviews. She accused CIS of being underhanded for conducting interviews of unrepresented residents and insisted CIS only schedule people for interviews AFTER AILA provides CIS the names of folks who are "ready". This may take some time because AILA is understaffed because the U.S. government has decided to place this facility in such a remote area that she can't possibly get to everyone until before CIS schedules them for an interview. She told CIS that CIS officers are not developing the record full enough for AILA during the interviews even when credible fear is found so AILA can get the people on the record early about their stories, (possibly in case they forget their stories). She also demanded that AILA be allowed to use CIS translation services to prepare their clients because she was told, sometimes, CIS allows ERO to use "their translators". She then ranted about how AILA are volunteers and that AILA will is the only organization in Artesia who are looking out for the constitutional and civil rights of the residents, all of which are being violated by all of us I guess. Apparently during this meeting she became belligerent and used profanity while speaking to the chief CIS officer. During our meeting she became emotional but did not use profanity.

(b)(6), (b)(7)c
Deputy Chief Counsel
Artesia Family Residential Center (AFRC)
Artesia, New Mexico
575-746(b)(6), (b)(7)c Desk
716-31(b)(6), (b)(7)c Cell

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From: (b)(6), (b)(7)c
Sent: Friday, November 07, 2014 3:43 PM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E; (b)(5)
Subject: RE: Artesia Aila meeting today

(b)(6), (b)(7)c

(b)(5)

Thanks,

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, November 07, 2014 11:02 AM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E (b)(6), (b)(7)c
Subject: RE: Artesia Aila meeting today

Yes it is indigenous languages and they want to meet out of court to talk to their clients. AILA asked me for a pot of money in the amount of $100,000 to pay for them to bring in these services. I have asked them for a list of languages which they have promised. Yes ICE does have a contract with language services. I am not aware of the $$ of the contract or who actually administers the contract. I do not know if any additional $$ to ICE would be incurred because I don't know if we pay by the event or have a flat rate. Not sure who would have that information. (b)(5)

(b)(5)

(b)(6), (b)(7)c
Deputy Chief Counsel
Artesia Family Residential Center (AFRC)
Artesia, New Mexico
575-746(b)(6), (b)(7)c Desk
716-316(b)(6), (b)(7)c Cell

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From: (b)(6), (b)(7)c
Sent: Friday, November 07, 2014 8:51 AM
To: (b)(5)
Cc: Almeida, Corina E; (b)(6), (b)(7)c
Subject: RE: Artesia Aila meeting today

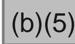
(b)(6), (b)(7)c

Does AILA want translators who speak indigenous languages? I say indigenous because a large number of respondents at Artesia are from Central American countries where indigenous languages are spoken.

Does AILA want translators for attorneys to meet with aliens outside of court? Does not DHS/ICE have a language line they can use? What additional costs would DHS/ICE incur to increase the use of this contract or expand it?

Let me know if you have questions.

Thanks,



From (b)(6), (b)(7)c
Sent: Thursday, November 06, 2014 6:05 PM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E (b)(6), (b)(7)c
Subject: Artesia Aila meeting today

FYI

We meet with AILA today in Artesia. They want the government to provide translation services for their legal representation of individuals with languages other than Spanish. They claim they will provide a list of 24 or so people they represent who require such services.

(b)(6), (b)(7)c
Deputy Chief Counsel
Artesia Family Residential Center (AFRC)
Artesia, New Mexico
575-746(b)(6), (b)(7)c Desk
716-316(b)(6), (b)(7)c Cell

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(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Tuesday, November 04, 2014 4:23 PM
To: (b)(6), (b)(7)(c)
Subject: RE: Rejected filing- DHS Opp to Motion to Reconsider (b)(6), (b)(7)c

Follow Up Flag: Follow up
Flag Status: Completed

Thanks. I did not realize that they admin closed cases after agreeing with AO finding of no CR. Interesting.

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
Fax: (303) 784

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From: (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 3:44 PM
To: Torres, Kathleen I
Cc (b)(6), (b)(7)(c) (b)(6), (b)(7)c
Subject: RE: Rejected filing- DHS Opp to Motion to Reconsider, (b)(6), (b)(7)c

(b)(6), (b)(7)c

The motion to reconsider was a motion to reconsider the IJ's upholding of the negative credible fear determination. I assume the court administratively closed the case after the IJ made that finding, as it was no longer an active case on the docket. I don't see any reason we'd want to recalendar the case- I was simply concerned that the court accepted the respondent's motion, yet rejected ours. However, based on my conversation with the court, I believe it's likely they rejected the original motion.

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
Immigration & Customs Enforcement
Office of the Chief Counsel

12445 E. Caley Avenue
Centennial, CO 80111
303-78(b)(6), (b)(7)c
(b)(6), (b)(7)(c)

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From (b)(6), (b)(7)c
Sent: Tuesday, November 04, 2014 3:40 PM
To: (b)(6), (b)(7)(c)
Cc:
Subject: RE: Rejected filing- DHS Opp to Motion to Reconsider (b)(6), (b)(7)c

Thanks.

You may have already done so, but please update PLAnet. If the signed (PDF) motion is in documents, it can be shredded. Otherwise, please scan to PLAnet, and then shred.

Please investigate the case status, and determine whether a motion to recalendar is appropriate and file it if appropriate.

Is there any information in PLAnet as to why the case was administratively closed? If there is no I 830, and if it looks like the alien is still detained, could you follow up with Mark Murphy, alerting him that case is admin closed and asking if he has any information about the case status?

Let me know if you have any questions.

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784(b)(6), (b)(7)c
Fax: (303) 784

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From (b)(6), (b)(7)(c)
Sent: Tuesday, November 04, 2014 3:32 PM
To (b)(6), (b)(7)c ; Almeida, Corina E (b)(6), (b)(7)c
Subject: Rejected filing- DHS Opp to Motion to Reconsider, (b)(6), (b)(7)c

All,

The court returned our filing to me today in the above-referenced cases. According to the court, the case was administratively closed in Arlington, thus all filings in this case would need to be addressed with Arlington. They could not tell me whether the respondent's original motion was accepted in Arlington, as there are no notes in their system about it.

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
Immigration & Customs Enforcement
Office of the Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303-784 (b)(6), (b)(7)c
(b)(6), (b)(7)c ce.dhs.gov

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(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, October 17, 2014 4:16 PM
To: Almeida, Corina E
Cc: (b)(6), (b)(7)c
Subject: DLL question regarding AO credible fear findings

Hi Corina. Yesterday I spoke to Mallory Lynn, the AFRC APSO, regarding USCIS's decision to find credible fear in gang-based claims. Mallory informed me that USCIS applies the law most favorable to a resident in credible fear cases (this includes the law in *any* jurisdiction) ; it applies the law of the circuit in reasonable fear cases. When I asked Mallory to identify the jurisdiction that has issued a favorable decision regarding gang-based claims, she smiled and indicated that this was not the only consideration; she added that she is not aware of any case law that indicates that a gang cannot be a persecutor. Mallory subsequently explained that most gang-related CF cases at the AFRC involve familial relationships and mixed motives (for example, the brother of a woman leaves a gang. In retaliation, the gang targets the woman and her family).

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)c (office)
(520) (b)(6), (b)(7)c (BB)
(b)(6), (b)(7)c @dhs.gov

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From: Almeida, Corina E
Sent: Wednesday, October 15, 2014 5:20 PM
To: (b)(6), (b)(7)c
Cc:
Subject: RE: DLL question regarding AO credible fear findings

(b)(6), (b)(7)c

Yes, please. Thanks!

~Corina

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From: (b)(6), (b)(7)c
Sent: Wednesday, October 15, 2014 4:53 PM
To: Almeida, Corina E
Cc: (b)(6), (b)(7)c
Subject: DLL question regarding AO credible fear findings

Hi Corina. I just tried to discuss the matter with the on-site APSO, Mallory Lynn. However, she was not available. If you like, I can talk to her tomorrow morning and get her take on the issue.

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)c (office)
(520) 39 (BB)
(b)(6), (b)(7)(c)

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From: Almeida, Corina E
Sent: Wednesday, October 15, 2014 4:43 PM
To: (b)(6), (b)(7)c
Cc:
Subject: FW: DLL question regarding AO credible fear findings

Dear (b)(6), (b)(7)c

I don't know if you're still on detail in Artesia, but I thought I'd start with you. Please review the message below from one of our ICE Assistant Chief Counsel (ACC) who is handling the Artesia docket before an IJ sitting in Denver, Colorado. What, if anything, can you share with us regarding USCIS's finding of CF for gang-based claims? If you believe I should direct my inquiry to someone else, please advise.

Thx,
Corina

Corina E. Almeida
Chief Counsel

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111-6432
P: (303) 784-(b)(6), (b)(7)c
F: (303) 784-

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From: (b)(6), (b)(7)(c)
Sent: Wednesday, October 15, 2014 4:37 PM
To: (b)(6), (b)(7)c Almeida, Corina E
Subject: DLL question regarding AO credible fear findings

(b)(6), (b)(7)c and Corina,

Just wanted to let you know that Judge Livingston today, on the record in one of the bond proceedings, asked me why the asylum office is finding credible fear for gang-based claims, as I continue to argue (and he agrees) that the claims are not cognizable under current Board and 10th Circuit precedent. (b)(5) (b)(5) If you have any guidance on how to address this issue, please let me know.

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
Immigration & Customs Enforcement
Office of the Chief Counsel
12445 E. Caley Avenue
Centennial, CO 80111
303-784-(b)(6), (b)(7)c
(b)(6), (b)(7)c ice.dhs.gov

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To: Almeida, Corina (b)(6), (b)(7)c
Subject: RE: URGENT: Motion to Re-interview Credible Fear

Of course, this does not have to be an issue if the APSO denies the request for reconsideration. I'll talk to her about this also.

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868-(b)(6), (b)(7)c (office)
(520) 399- (BB)
(b)(6), (b)(7)c@dhs.gov

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From (b)(6), (b)(7)c
Sent: Thursday, October 16, 2014 7:36 AM
To: Almeida, Corina (b)(6), (b)(7)c
Subject: URGENT: Motion to Re-interview Credible Fear

FYI. This involves a request for reconsideration of a negative credible fear determination after IJ review and concurrence pursuant to 8 C.F.R. 1208.30(g)(2)(iv)(A) (1024) ("If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credibility finding that has been concurred upon by the immigration judge after providing notice of its reconsideration to the immigration judge"). The resident claims that she has new evidence that was previously unavailable.

The AILA representative, Christina Brown, indicates below, "Per our agreement with ICE, this client should not be [illegible] while her motion is pending." (b)(5)

(b)(5)

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868(b)(6), (b)(7)c (office)
(520) 399 (BB)
(b)(6), (b)(7)c dhs.gov

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(b)(6), (b)(7)c

From:	(b)(6), (b)(7)c
Sent:	Tuesday, July 22, 2014 1:04 PM
To:	Doble Salicrup, Lynn M; Gardzelewski, Ivan E; French (b)(6), (b)(7)(c) (b)(6), (b)(7)c (b)(6), (b)(7)c (b)(6), (b)(7)(c); Martin, Shana L; Paugh, Wayne B; Romero Downes, Christina A; Smith, J Michelle; Canedy, John M; Hall, Matthew R; Hoeppner, Mindy E; Clark, Jeffrey D; Truman, Mike
Cc:	Almeida, Corina E; (b)(6), (b)(7)c
Subject:	Credible/reasonable fear review hearings - correction

Pasted below is my message from October 29, 2013. I misstated our policy this morning noting that it applies only to credible fear reviews, and not to reasonable fear reviews. It applies to both. (What it does not apply to is a withholding-only hearing following a finding of reasonable fear, etc.; my mistake in confusing the two):

To all Denver OCC attorneys:

Under longstanding guidance, legacy INS and ICE attorneys have played a very limited role in credible fear and reasonable fear review hearings before the Immigration Judge. With that in mind, under current OPLA guidance we do not need to appear in immigration court for these hearings.

Note that this applies only to Immigration Judge reviews of negative Asylum Officer credible fear/reasonable fear findings. It does not apply to removal proceedings, withholding-only proceedings, asylum-only proceedings, etc.

When a credible fear or reasonable fear review hearing is on the day's docket, please inform that Immigration Judge that the Department will not be appearing for the hearing, and please use that court time to work on our other critical tasks.

If you have any questions, please feel free to give me a call.

Thanks,
(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
ICE/Denver
303-784(b)(6), (b)(7)c

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(b)(6), (b)(7)c

From: Almeida, Corina E
Sent: Tuesday, July 15, 2014 1:36 PM
To: Canedy, John M; Doble Salicrup, Lynn M; Gardzelewski, Ivan E; Giraitis, Kathleen F; (b)(6), (b)(7)(c) Martin, Shana L; O'Hare, Donald C; Paugh, Wayne B; [illegible] Romero Downes, Christina A; Sinclair, Kirsten M; Smith, J Michelle; (b)(6), (b)(7)c; Clark, Jeffrey D; Greenway, Adam N; Greenway, Adam(USDOJ); Hall, Matthew R; Hoeppner, Mindy E; Truman, Mike
Subject: FW: FYSA - CRS and GAO Reports Related to Unaccompanied Minors
Attachments: CRS Report on Unaccompanied Children June 2014.pdf; GAO Report on Strengthening Collaborative Mechanisms July 2014.pdf

Follow Up Flag: Follow up
Flag Status: Completed

FYI.

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-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Monday, July 14, 2014 5:59 PM
To: OPLA Chief Counsel; OPLA Deputy Chief Counsel
Cc: Stolley, Jim; Longmeyer-Wood, Jennifer L; Hartnett, Sarah L; Pincheck, Catherine
Subject: FYSA - CRS and GAO Reports Related to Unaccompanied Minors

(b)(6), (b)(7)c

Thank you for sharing.

Have a good evening everyone.

Nicole

(b)(6), (b)(7)c
Deputy Director, Field Legal Operations – West U.S. Immigration and Customs Enforcement U.S. Department of Homeland Security

Sent from wireless device.

DHS-011-0000001-0000800

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Unaccompanied Alien Children: An Overview

Lisa Seghetti
Section Research Manager

Alison Siskin
Specialist in Immigration Policy

Ruth Ellen Wasem
Specialist in Immigration Policy

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Summary

The number of unaccompanied alien children (UAC) arriving in the United States has reached alarming numbers that has strain the system put in place over the past decade to handle such cases. UAC are defined in statute as children who lack lawful immigration status in the United States, who are under the age of 18, and who are without a parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. Two statutes and a legal settlement most directly affect U.S. policy for the treatment and administrative processing of UAC: the *Flores Settlement Agreement* of 1997; the Homeland Security Act of 2002; and the Trafficking Victims Protection Reauthorization Act of 2008.

Several agencies in the Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) share responsibilities for the processing, treatment, and placement of UAC. DHS Customs and Border Protection apprehends and detains UAC arrested at the border while Immigration and Customs Enforcement (ICE) handles the transfer and repatriation responsibilities. ICE also apprehends UAC in the interior of the country and is responsible for representing the government in removal proceedings. HHS is responsible for coordinating and implementing the care and placement of UAC in appropriate custody.

Four countries account for almost all of the UAC cases (El Salvador, Guatemala, Honduras, and Mexico) and much of the recent increase has come from El Salvador, Guatemala, and Honduras. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the other three Central American countries accounted for 17%. By the first eight months of FY2014, the proportions had almost reversed, with Mexican UAC comprising only 25% of the 47,017 UAC apprehensions, and UAC from the three Central American countries comprising 73%.

Both the Administration and Congress have begun to take action to respond to the surge in UAC coming across the border. The Administration has developed a working group to coordinate the efforts of the various agencies involved in responding to the issue. It also has opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border. The Administration has also announced plans to provide funding to the affected Central American countries for a variety of programs and security-related initiatives. Relatedly, Congress is considering funding increases for HHS and DHS.

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Background

There has been a large increase in the number of unaccompanied alien children (UAC) apprehended along the Southwest boarder, which has placed a strain on several agencies and their resources. During a recent hearing on the topic, Congressional members, like the Administration, characterized the issue as a humanitarian crisis.[1] Overwhelmingly the children are coming from three Central American countries,[2] and Mexico. They are reportedly coming for economic opportunities, escaping violence in their home countries, and to be reunited with parents or other family members who are living in the United States.[3] Critics of the Obama Administration, however, assert that the recent surge in UAC fleeing their home countries is due to a perception of relaxed U.S. immigration policy towards children.[4]

Unaccompanied alien[5] children (UAC) are defined in statute as children who lack lawful immigration status in the United States,[6] are under the age of 18, are without a parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.[7] They most often arrive at United States ports of entry or are apprehended along the southwestern border with Mexico. Less frequently they are apprehended in the interior and determined to be a juvenile[8] and unaccompanied.[9] Although most of these children are aged 14 or older, recently there has been an increase in the apprehension of UAC under the age of 13.[10]

The report opens with an analysis of the data of the recent surge in UAC crossing the border. It then discusses current policy on the treatment, care, and custody of the population. The

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[1] Senate Judiciary Committee hearing on *Oversight of the Department of Homeland Security*, June 11, 2014. Hereinafter referred to as *Senate oversight hearing.*

[2] Guatemala, Honduras, and El Salvador.

[3] Cecilia Muñoz, the White House Director of Domestic Policy Council, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

[4] Most commonly these critics cite the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), passed by the Senate in 2013, which would allow certain unlawfully present aliens to adjust to a lawful immigration status; and the administrative policy entitled Deferred Action for Childhood Arrivals (DACA), which grants certain aliens who arrived in the United States prior to a certain period as children some protection from removal for at least two years. For an example of these arguments, see U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 113th Cong., 2nd sess., June 11, 2014. For a discussion of S. 744, see CRS Report R43099, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S. 744*, by Ruth Ellen Wasem. For a discussion of DACA, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by Andorra Bruno.

[5] *Alien,* a technical term appearing throughout the Immigration and Nationality Act (INA), refers to a foreign national who is not a citizen or national of the United States.

[6] The child may have illegally entered the country or been legally admitted but overstayed length of admittance (i.e., a visa overstay.)

[7] 6 U.S.C. §279(g)(2).

[8] A juvenile is defined as an alien under the age of 18. 8 CFR §263.3. In this report, the terms "juvenile," "child," and "minor" are used interchangeably.

[9] A juvenile is classified as *unaccompanied* if neither a parent nor a legal guardian is with the juvenile alien at the time of apprehension, or within a geographical proximity to quickly provide care for the juvenile. 8 CFR §236.3(b)(1).

[10] White House, Departments of Homeland Security and Health and Human Services, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

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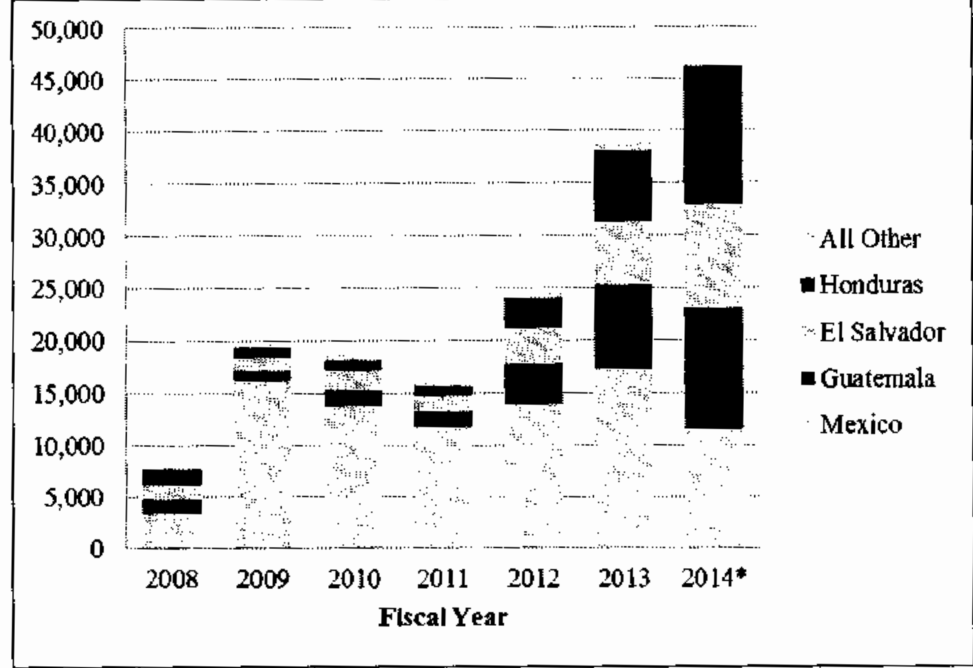
processing and treatment of UAC is detailed, with a discussion of each agency that is involved with the population. The report then discusses both Administrative and Congressional action to deal with the current crisis. As this issue is still emerging, the report concludes with a series of questions related to UAC that remain unanswered.

Scope of the Problem

Overall, the number of UAC apprehended by the Border Patrol has increased significantly over the past five years, and most of the increase comes from three countries: El Salvador, Guatemala, and Honduras.[11] As of the end of May, the Border Patrol apprehended more UAC than in any of the previous five years, and had apprehended almost twice as many UAC as in FY2012.

According to the Administration, in FY2014 there has been an increase in the number of UAC who are girls and the number of UAC who are under the age of 13. Because CRS was unable to get data to illustrate this change, it is unclear whether the increase in girls and in children under 13 in the UAC population is simply because the number of all UAC has increased, or if the number of girls and children under 13 has increased as a proportion of all UAC.

Figure 1. UAC Apprehensions by Country of Origin, FY2008-FY2014



Source: For FY2008-FY2013: U.S. Department of Homeland Security, United States Border Patrol, *Juvenile and Adult Apprehensions—Fiscal Year 2013*. For FY2014, unpublished data provided by Customs and Border Protection to CRS.

Notes: FY2014 figures are October 1, 2013 to May 31, 2014, representing 2/3 of a fiscal year.

[11] Over the past three years, there has been an increase in Border Patrol apprehensions of third-country nationals. While the number of those apprehended from Mexico decreased slightly (from 286,154 to 267,734), the number of apprehended third-country nationals increased almost three-fold from 54,098 to 153,055.

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Nationals of Guatemala, Honduras, El Salvador, and Mexico account for almost all unaccompanied alien children apprehended at the Mexico-U.S. border, as **Figure 1** shows. Flows of UAC from Mexico rose substantially in FY2009 and have remained rather steady. UAC from Guatemala, Honduras, and El Salvador account for the surge beginning in FY2012. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the other three Central American countries accounted for 17%. By the first eight months of FY2014, the proportions had almost reversed, with Mexican UAC comprising only 25% of the 47,017 UAC apprehensions, and UAC from the three Central American countries comprising 73%.

Current Policy[12]

Two laws and a settlement discussed below most directly affect U.S. policy for the treatment and administrative processing of UAC: the Flores Settlement Agreement of 1997; the Homeland Security Act of 2002; and the Trafficking Victims Protection Reauthorization Act of 2008.

During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS)[13] caused a series of lawsuits against the government that eventually resulted in the *Flores Settlement Agreement* (*Flores Agreement*) in 1997.[14] The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC while detained without a parent or legal guardian present.[15] It required that immigration officials detaining minors provide (1) food and drinking water; (2) medical assistance in emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; and (6) separation from unrelated adults whenever possible. For several years following the *Flores Agreement*, criticism continued over whether the INS had fully implemented the regulations that had been drafted.[16]

Five years later, the Homeland Security Act of 2002 (HSA; P.L. 107-296) divided responsibilities for the processing and treatment of UAC between the newly created Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR). The HSA assigned apprehension, transfer, and repatriation responsibilities to DHS. To HHS, the law assigned responsibility for coordinating and implementing the care and placement of UAC in appropriate custody; reunifying UAC with their parents abroad if appropriate; maintaining and publishing a list of legal services available to UAC; and collecting statistical information on UAC, among other things.[17] The HSA also established a statutory definition of UAC as unauthorized minors without the accompaniment of a parent or legal guardian. Despite these developments, criticism that the *Flores Agreement* had not been fully implemented continued.

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[12] William Kandel, Analyst in Immigration Policy, contributed to this section.

[13] The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and its functions were split in the Departments of Homeland Security, Justice and Health and Human Services.

[14] *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997).

[15] See DHS Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

[16] See U.S. Department of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Executive Summary, Report no. I-2001-009, September 28, 2001.

[17] ORR assumed care of UAC on March 1, 2003, and created the Division of Unaccompanied Children's Services (DUCS) for addressing the requirements of this population. P.L. 107-296, Section 462.

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In response to ongoing concerns that UAC who were apprehended by the Border Patrol were not being adequately screened to see if there were a reason that they should not be returned to their home country, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457). The TVPRA directed the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that UAC in the United States are safely repatriated to their country of nationality or of last habitual residence. The section set forth special rules for UAC from contiguous countries (i.e., Mexico and Canada), allowing such children, under certain circumstances, to return to Mexico or Canada without additional penalties, and directing the Secretary of State to negotiate agreements with Mexico and Canada to manage the repatriation process. Unaccompanied alien children from countries other than Mexico or Canada—along with UAC from those countries who are apprehended away from the border—are to be transferred to the care and custody of the Department of Health and Human Services (HHS) and placed in formal removal proceedings. The TVPRA requires that children from contiguous countries be screened within 48 hours of being apprehended to determine whether they should be returned to their country or transferred to HHS and placed in removal proceedings.

Processing and Treatment of UAC Apprehended

Several DHS agencies are involved in apprehending, processing, and repatriating UAC, while the Department of Health and Human Services (HHS) is responsible for the care and custody of UAC. The Executive Office of Immigration Review (EOIR) in the U.S. Department of Justice conducts the immigration removal proceedings.

Customs and Border Protection (CBP) apprehends, processes, and detains the majority of UAC arrested along U.S. borders. Immigration and Customs Enforcement (ICE) physically transports UAC from CBP to HHS Office of Refugee Resettlement (HHS-ORR) custody. HHS-ORR is responsible for detaining and sheltering UAC who are from non-contiguous countries and those from contiguous countries (i.e., Canada and Mexico) for whom there is a concern that they may be victims of trafficking or have an asylum claim, while they await an immigration hearing. U.S. Citizenship and Immigration Services is responsible for the initial adjudication of asylum applications filed by UAC. The Executive Office of Immigration Review (EOIR) in the U.S. Department of Justice conducts the immigration proceedings that determine whether the UAC is allowed to remain in the United States or is deported to his or her home country. If a UAC is ordered removed from the United States, ICE is responsible for returning the alien to his/her home country. The following sections discuss the role of these federal agencies in apprehending, processing, detaining, and repatriating UAC.

Customs and Border Protection

The Office of Border Patrol (OBP)[18] and the Office of Field Operations (OFO)[19] are responsible for apprehending and processing UAC that come through a port of entry (POE) or are found at or

[18] OBP includes the Border Patrol. OBP and the Border Patrol are used interchangeably throughout this section.

[19] The OFO oversees the CBP Officers who provide inspections of travelers and goods that come through a port of entry.

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near the border.[20] UAC that are apprehended between POEs are transported to Border Patrol stations, and if they are apprehended at POEs, they are escorted to CBP secondary screening areas. In both cases, when CBP confirms that juveniles have entered the country illegally and unaccompanied, they are considered UAC and processed for immigration violations, and the appropriate consulate is notified that the juvenile is being detained by DHS.

The Border Patrol apprehends the majority of UAC at or near the border. They also process UAC.[21] With the exception of Mexican and Canadian UAC who meet a set of criteria discussed below, the Border Patrol has to turn UAC over to ICE for transport to HHS-ORR within 72 hours.[22] Up until 2008, the Border Patrol, as a matter of policy and practice, returned Mexican UAC to Mexico under *voluntary departure*.[23] Under this practice, Mexican UAC were removed through the nearest POE and turned over to a Mexican official within twenty-four hours and during daylight.

As mentioned, the TVPRA required the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of HHS, to develop policies and procedures to ensure that UAC are safely repatriated to their country of nationality or last habitual residence. Of particular significance, the TVPRA required CBP to follow certain criteria for UAC that are nationals or habitual residents from a contiguous country (i.e., Canada and Mexico). In these cases, within 48 hours CBP personnel must screen the UAC to determine the following:

- that the UAC has not been a victim of a severe form of trafficking in persons and that there is no credible evidence that the minor is at risk should the minor be returned to his country of nationality or of last habitual residence;
- that the UAC does not have a possible claim to asylum; and
- that the UAC is able to make an independent decision to voluntarily return to his country of nationality or of last habitual residence.[24]

If, after assessing the UAC, CBP personnel determine the minor to be inadmissible under the Immigration and Nationality Act,[25] they can permit the minor to withdraw his application for admission[26] through *voluntary departure* and return the minor to his country of nationality or of last habitual residence.

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[20] When both OBP and OFO are referenced in this section, "CBP" is used.

[21] The processing of UAC includes gathering biographic information such as their name and age as well as their citizenship and whether they are unaccompanied. Border Patrol agents also collect biometrics on UAC and query relevant immigration, terrorist, and criminal databases.

[22] The 72-hour time period was established in statute by the TVPRA.

[23] Voluntary departure is a form of discretionary relief that may be offered to certain aliens in lieu of being subject to formal removal proceedings. Aliens accepting an offer of voluntary departure are not inadmissible in the future under INA §212(a)(9). When granted by the border patrol, the procedure is usually referred to as "voluntary return."

[24] P.L. 110-457, §235(a)(2)(A).

[25] 8 U.S.C. §1101 et seq. Although the screening provision only applies to UAC from contiguous countries, in March 2009 DHS issued a policy that, in essence, made the screening provisions applicable to all UAC. U.S. Congress, Senate Committee on the Judiciary, "Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking," testimony of Acting Deputy Assistant Secretary Kelly Ryan, September 13, 2011.

[26] In this case, the UAC is permitted to return immediately to Mexico or Canada, and does not face administrative or other penalties. 8 U.S.C. §1225(a)(4).

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The TVPRA contains a number of specific safeguards for the treatment of UAC while in the care and custody of CBP and it also provides guidance for CBP personnel on returning a minor to his country of nationality or of last habitual residence. It also requires the Secretary of State to negotiate agreements with the contiguous countries with respect to the repatriation of their UAC. The agreements would serve as a protection from trafficking and, at minimum, are required to include provisions pertaining to (1) the hand-off of the minor children to an appropriate government official; (2) a prohibition against returning UAC outside of "reasonable business hours"; and (3) a requirement that the border personnel of the contiguous countries be trained in the terms of the agreements.

As mentioned, UAC apprehended by the Border Patrol are brought to a Border Patrol facility where they are processed. In 2008, the agency issued a memorandum entitled "Hold Rooms and Short Term Custody."[27] Since the issuance of this policy, non-governmental organizations (NGOs) have criticized the Border Patrol for failing to fully uphold the provisions in current law and the *Flores Agreement*.[28] Indeed, the DHS Office of Inspector General (OIG) issued a report in 2010 that concluded while CBP was in general compliance with the *Flores Agreement* it needed to make improvements in certain areas with respect to its handling of UAC.

The 2010 OIG report, however, did not address whether OBP was in compliance with the TVPRA. As highlighted above, the TVPRA requires CBP personnel to screen UAC from contiguous countries for severe forms of trafficking in persons *and* for fear of persecution if they are returned to their country of nationality or last habitual residence. At least one NGO that conducted a two-year study on UAC[29] asserted in its report that OBP doesn't adequately do this nor do they have training in place for their Border Patrol agents.[30]

Immigration and Customs Enforcement (ICE)

ICE is responsible for the physical transfer of UAC from CBP to HHS-ORR. Additionally, ICE may apprehend UAC in the interior during immigration enforcement actions. ICE is also responsible for representing the government in removal procedures before EOIR. Unaccompanied alien children who are not subject to TVPRA's special repatriation procedures for certain children from Mexico or Canada (i.e., voluntary departure) may be placed in standard removal proceedings pursuant to INA §240. The TVPRA specifies that UAC in standard removal proceedings also are eligible to be granted voluntary departure under INA §240B at no cost to the child. The TVPRA requires that HHS ensure, to the greatest extent possible, that UAC have

[27] UAC are held in "hold rooms" at Border Patrol stations. The 2008 memorandum, which is publically available but redacted, outlines agency policy on the care and treatment of individuals in CBP care and custody. See U.S. Customs and Border Patrol, Memorandum on "Hold Rooms and Short Term Custody," June 2, 2008, http://foiarr.cbp.gov/streamingWord.asp?i=378.

[28] See for example, Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors, by Betsy Cavendish and Maru Cortazar, Appleseed, Washington DC, 2011. Hereinafter referred to as Children at the Border.

[29] See *Children at the Border.*

[30] Relatedly, the 2010 OIG study was unable to determine whether CBP personnel had sufficient training to comply with the provisions in the *Flores Agreement.* Notably, the Appleseed study (*Children at the Border*) included site visits to *ten* Border Patrol facilities as well as site visits to locales in Mexico and interviews with government officials in both countries and minors in custody and who have been repatriated. Whether this limited site visit sample is sufficiently varied to be adequately generalizable to all Border Patrol facilities on the U.S.-Mexico border is unclear.

access to legal counsel; and statute also permits HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children.

ICE is also responsible for the physical removal of all foreign nationals, including UAC, who have final orders of removal or who have elected voluntary departure while in removal proceedings. To safeguard the welfare of all UAC, ICE has established policies for repatriating UAC. The policies include:

- returning the UAC only during daylight hours;
- recording the transfer by making sure that the receiving government official or designee signs for custody;
- returning the UAC through a port designated for repatriation;
- providing the UAC the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.[31]

ICE notifies the country of every foreign national being removed from the Unites States.[32] The ability to affect a removal order is dependent on the ability of the U.S. government to secure travel documents for the alien being removed from the country in question.[33] As a result, the United States is dependent on the willingness of foreign governments to accept the return of their nationals. Each country sets documentary requirements for repatriation of their nationals.[34] While some countries allow ICE to use a valid passport to remove an alien (if the alien is in possession of one), other countries require ICE to obtain a travel document specifically for the repatriation.[35] According to one report, the process of obtaining travel documents can become problematic because countries often change their documentary requirements or raise objections to the return of a juvenile.[36]

Once the foreign country has issued travel documents, ICE arranges transport of the UAC and, if flying, accompanies the UAC on the flight to their home country. The majority of ICE's UAC removals are conducted by commercial airlines. ICE provides two escort officers for each UAC.[37] Mexican UAC are repatriated in accordance with Local Repatriation Agreements (LRA), which

[31] Email from ICE Congressional Relations, May 16, 2014.

[32] A country clearance is the process by which ICE notifies a foreign country, through the U.S. Embassy abroad, that a foreign national is being repatriated. Additionally, when an alien is being escorted by ICE personnel, the country clearance process is used to notify the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

[33] Conversation with Doug Henkel, Associate Director, ICE Removal and Management Division, February 20, 2012.

[34] Depending on the country and depending on where the UAC is housed, the consular officers will conduct in-person or phone interviews. Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

[35] Annex 9 of the Civil Aviation Convention requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

[36] Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

[37] An additional officer is added for each group that exceeds five UAC. The gender of the officers corresponds to the gender of the children being repatriated. Email from ICE Congressional Relations, May 16, 2014.

require notification of the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).[38]

Office of Refugee Resettlement Program[39]

The Unaccompanied Alien Children Program in ORR/HHS provides for the custody and care of unaccompanied alien minors who have been apprehended by ICE or CBP or referred by other federal agencies. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, which made significant reforms to policies on UAC, directed that HHS ensure that the UAC "be promptly placed in the least restrictive setting that is in the best interest of the child."[40] The HSA requires that ORR develop a plan to ensure the timely appointment of legal counsel for each UAC, ensure that the interests of the child are considered in decisions and actions relating to the care and custody of a UAC, and oversee the infrastructure and personnel of UAC residential facilities, among other responsibilities.[41] ORR also screens the UAC to determine if the child has been a victim of a severe form of trafficking in persons, if there is credible evidence that the minor is at risk should the minor be returned to his or her country of nationality or of last habitual residence, and if the UAC has a possible claim to asylum.

ORR arranges to house the child either in one of its shelters or in a foster care situation; or the UAC program reunites the child with a family member. The *Flores Agreement* outlines the following preference ranking for sponsor types: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child's parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.[42] According to ORR, the majority of the youth are cared for through a network of state-licensed ORR-funded care providers that provide classroom education; mental and medical health services; case management; and socialization and recreation. The state-licensed ORR-funded care providers also facilitate the UAC release to family members or other sponsors who are able to care for them.[43]

In making these placement determinations, ORR conducts a background investigation to ensure the identity of the adult assuming legal guardianship for the UAC and that the adult does not have a record of abusive behavior. ORR may consult with the consulate of the UAC's country of origin as well as interview the UAC to ensure they also agree with the proposed placement. If such background checks reveal evidence of actual or potential abuse or trafficking, ORR may require a home study as an additional precaution.[44] In addition, the parent or guardian is required to

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[38] Ibid.

[39] William Kandel, Analyst in Immigration Policy, contributed to this section.

[40] §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(b)(2).

[41] Section 235(c) of the TVPRA and Section 462(b) of the Homeland Security Act of 2002 (HSA, P.L. 107-296) describe conditions for the care and placement of UAC in federal custody.

[42] Flores v. Reno Stipulated Settlement Agreement, 1997, p.10.

[43] Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, Fact Sheet, May 2014, http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf. (Hereinafter ORR UAC Fact Sheet, May 2014.)

[44] Pursuant to the TVPRA of 2008, home studies are required for certain UAC considered especially vulnerable.

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complete a Parent Reunification Packet to attest that they agree to take responsibility for the UAC and provide him or her with proper care.[45]

A juvenile may be held in a secure facility only if he or she is charged with criminal or delinquent actions; threatens or commits violence; displays unacceptably disruptive conduct in a shelter; presents an escape risk; is in danger and is detained for their own safety; or is part of an emergency or influx of minors that results in insufficient bed space at non-secure facilities.[46]

Of the children served, ORR reports that ultimately about 85% are reunified with their families.[47] Between FY2008 and FY2010, the length of stay in ORR care averaged 61 days, and total time in custody ranged from less than one day to 710 days.[48] In a May 2014 fact sheet, ORR reported: "The average length of stay in the program is currently near 35 days."[49] It is important to note that removal proceedings continue even when UAC are placed with parents or other relatives.

Figure 2. UACs in ORR Custody, October 2008 through May 2014

Monthy Referrals

10,000
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0

Oct Jan Apr July Oct Jan Apr July Oct Jan Apr July Oct Jan Apr July Oct Jan Apr July Oct Jan Apr July Oct Jan Apr

Oct. 2008 2009 2010 2011 2012 2013 May 2014

Source: CRS presentation of unpublished data from the Office of Refugee Resettlement.

[45] Office of Refugee Resettlement, Unaccompanied Children's Services, *ORR/DCS Family Reunification Packet for Sponsors (English/Español)*, http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services#Family%20Reunification%20Packet%20for%20Sponsors.

[46] Center for Human Rights & Constitutional Law, *Flores v. Meese: Final Text of Settlement Establishing Minimum Standards and Conditions for Housing and Release of Juveniles in INS Custody*, Exhibit 2 (1997).

[47] ORR UAC Fact Sheet, May 2014.

[48] Vera Institute Study, p. 17.

[49] ORR UAC Fact Sheet, May 2014.

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Figure 2 uses monthly referrals to ORR to illustrate the trends over time and shows a sharp increase in UAC in ORR custody over the past year. Monthly referrals were less than 1,000 until March 2012. By March 2013, monthly referrals to ORR surpassed 2,000 UAC cases, and the number hit 5,527 in March 2014. In May 2014, 9,500 UAC were transferred to ORR. Bear in mind that not all UAC are referred to ORR; for example, some arriving from contiguous countries voluntarily return home.

U.S. Citizenship and Immigration Services

As mentioned, U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC. If either CBP or ICE find that the child is a UAC and transfer the child to ORR custody, USCIS will generally take jurisdiction over the asylum application, even where there may be some evidence that the child reunited with a parent or legal guardian after CBP or ICE made the UAC determination. In addition, USCIS has initial jurisdiction over asylum applications filed by UACs with pending claims in immigration court, with a case on appeal before the Board of Immigration Appeals, or with a petition for review with a federal court as of the date of enactment of the TVPRA (December 23, 2008). The UAC must appear at any hearings scheduled in immigration court even after he or she has filed for asylum with USCIS.

The Executive Office of Immigration Review

The U.S. Department of Justice Executive Office of Immigration Review (EOIR) is responsible for adjudicating immigration cases, including removal proceedings. Generally, during an immigration removal proceeding, the foreign national and the U.S. government present testimony so that the immigration judge can make a determination on whether the foreign national is removable or qualifies for some type of relief from removal (i.e., the alien is permitted to remain in the United States either permanently or temporarily.)

EOIR has specific policies for conducting the removal hearings of UAC to ensure that UAC understand the nature of the proceedings, can effectively present evidence about their cases, and have appropriate assistance. The policy guidelines discuss possible adjustments to create "an atmosphere in which the child is better able to present a claim and to participate more fully in the proceedings." Under these guidelines, the immigration judges are supposed to:

- establish special dockets for UAC so that they are separated from the general population;
- allow child-friendly courtroom modifications (e.g., judges not wearing robes, allowing the child to have a toy, permitting child to testify from a seat rather than the witness stand, allowing more breaks during the proceedings);
- provide courtroom orientations to familiarize the children with the court;
- explain the proceedings at the outset;
- prepare the child to testify; and
- employ child-sensitive questioning.

Under policy, immigration judges should strongly encourage the use of pro bono legal representation if the child is not represented.

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Administrative and Congressional Action

Both the Administration and Congress have begun to take action to respond to the surge in UAC coming across the border. The Administration has developed a working group to coordinate the efforts of the various agencies involved in responding to the issue. It also has opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border. Relatedly, Congress is considering funding increases for HHS/ORR and DHS/CBP.

Administrative Action

The Administration developed a Unified Coordination Group that is comprised of representatives from all of the relevant agencies involved in responding to this issue.[50] Federal Emergency Management Agency (FEMA) Administrator Craig Fugate was named as the Federal Coordinating Official, and will be coordinating the federal response to the UAC issue.[51] Reportedly, the Unified Coordination Group is looking at the large increase in UAC from an incident management perspective. Administrator Fugate's role is to support the lead agencies, CBP and HHS, by bringing in capacity from throughout the federal government so that the lead agencies can focus on their missions.[52]

Reportedly, CBP will maintain primary responsibility for border security operations at and between ports of entry and, working with ICE, provide for the proper care of unaccompanied children when they are temporarily in DHS custody.[53] DHS will continue to coordinate closely with the Departments of Health and Human Services, State, and Defense, the General Services Administration, and other agencies, to ensure a coordinated and fast response within the United States in the short term, and in the longer term to work with the sending countries to undertake reforms to address the causes behind the recent migration trends.[54] DHS is also currently working with the Central American countries on a public education campaign to dissuade UAC from attempting to migrate illegally to the United States.[55]

To deal with the current influx of UAC, HHS/ORR has made use of a network of group homes operated by nonprofit organizations in Texas and other parts of country. These nonprofit organizations have experience providing the types of services that UAC need (e.g., medical,

[50] Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border.

[51] Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

[52] Craig Fugate, Federal Coordinating Administration of the Inter-Agency Unified Coordination Group on UAC, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

[53] ICE is also focusing on dismantling the smuggling organizations who are smuggling UAC into the United States.

[54] Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border.

[55] Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

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nutritional, educational). In addition, HHS has reached out to the Department of Defense (DOD) for additional assistance in housing UAC. DOD has made facilities available in Lackland Air Force Base in San Antonio, TX, and at Naval Base Ventura County in Oxnard, CA. The Lackland facility can hold 1,200 UAC and had 1,000 UAC as of June 3, 2014. The facility in Ventura can hold 600 UAC and was expected to begin operations on June 6, 2014. According to a press report, these facilities are only supposed to be temporary and are not intended to remain open for more than 120 days.[56]

In addition to the aforementioned efforts, the Corporation for National and Community Service (CNCS), which administers AmeriCorps,[57] and the Department of Justice EOIR have created "Justice AmeriCorps." Justice AmeriCorps is a grant program that will enroll approximately 100 lawyers and paralegals as AmeriCorps members to provide legal representation to UAC during removal proceedings.[58]

On June 20, 2014, the Administration announced additional efforts it is taking to address this issue. In its "Fact Sheet: Unaccompanied Children from Central America," the Administration noted that it has partnered with its Central American counterparts in three key areas: "combating gang violence and strengthening citizen security, spurring economic development, and improving capacity to receive and reintegrate returned families and children." (Security and economic issues are believed to be contributing "push" factors that has led to the massive out migration from Guatemala, Honduras, and El Salvador.) In the fact sheet, the Administration announced assistance it will be providing to Guatemala, Honduras, and/or El Salvador to provide support in the areas of reintegration and repatriation of their citizens, to improve security, to provide economic and educational opportunities and anti-gang and crime prevention programs, and to promote "peace, security, stabilization, and other related rule of law programs."[59] The Administration has collaborated with the other Central American governments on campaigns to inform would-be migrants of the danger of relying on human smuggling networks *and* on reinforcing that recently arriving children will not benefit from current Administrative policies[60] or pending legislation.[61] The Administration also announced that it has "enhanced enforcement and removal proceedings."

[56] Leslie Berestein Rojas, "Emergency Shelter for Unaccompanied Migrant Kids Opening in Ventura County," *89.3 KPCC, Southern California Public Radio*, June 5, 2014, http://www.scpr.org/blogs/multiamerican/2014/06/05/16777/emergency-shelter-for-unaccompanied-migrant-kids-o/.

[57] For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*, by Abigail B. Rudman and Benjamin Collins.

[58] Department of Justice and the Corporation for National and Community Service, "Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors," press release, June 6, 2014, http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cncs-announce-new-partnership-enhance.

[59] The Administration also announced additional funding for ongoing bilateral assistance to the three countries for a variety of programs. "Fact Sheet: Unaccompanied Children from Central America," http://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america.

[60] For example, the administrative policy entitled Deferred Action for Childhood Arrivals (DACA) grants certain aliens who arrived in the United States prior to a certain period as children some protection from removal for at least two years.

[61] For example, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) as passed by the Senate would allow certain unlawfully present aliens to adjust to a lawful immigration status.

Congressional Action

In the President's FY2015 budget for the various agencies responsible for the UAC population (i.e., specifically in HHS/ORR and DHS budgets), there wasn't a request for funding increases to help address what has been characterized as a strain on agency resources.[62]

The FY2015 President's budget request for the HHS/ORR program was originally $868 million, which is the same amount that was appropriated in FY2014. However, on May 30, 2014, the Office of Management and Budget updated its cost projections related to the UAC crisis and requested a total of $2.28 billion for FY2015 for the UAC program in the Office of Refugee Resettlement.

The Senate Committee on Appropriations Subcommittee on Labor, Health, and Human Services, and Education and Related Agencies approved the Department of Labor, Health, and Human Services, and Education and Related Agencies FY2015 draft appropriations bill on June 10, 2014. With respect to the UAC program, the subcommittee recommended $1.94 billion, which is $34 million less than the Administration's amended request and a more than $1 billion increase over FY2014 levels. The subcommittee noted the fluidity of the issue and recommended an expansion of HHS transfer authority "to respond to sudden or urgent needs in the future."[63]

For DHS agencies, the Administration's amended request included an additional $166 million for "CBP overtime, contract services for care and support of UAC, and transportation costs."[64] Previously, DHS appropriators criticized the Administration for not requesting additional funding to deal with the crisis;[65] and on June 10, 2014, the House Committee on Appropriations approved the Administration's amended request of $166 million above the budget request.[66]

Policy Challenges

The Administration has recently announced an initiative that is aimed at unifying efforts among the various agencies charged with UAC responsibilities, *and* Congress is considering increasing appropriations for the various agencies involved. These efforts, however, are geared toward responding to the immediate crisis, and there is no way to know whether the numbers of UAC will decrease, increase or level off over the long run. Also, although there is speculation about what is causing the increase in UAC attempting to illegally enter the United States, there is no clear answer to the root causes. A clearer understanding of the factors that make up the "push-

[62] While the Administration did not request an increase in FY2015 funding for the HHS/ORR UAC program, in its FY2014 budget request the Administration requested a $192 million increase and received an almost $492 million increase over the FY2013 levels.

[63] See Untied States Senate Committee on Appropriations, "FY15 LHHS Subcommittee Markup Bill Summary," June 10, 2014.

[64] Executive Office of the President Office of Management and Budget memo to Representative Nita Lowey, May 30, 2014.

[65] See House Subcommittee on DHS Appropriations markup on April 2, 2014, and House Appropriations Committee markup of the DHS appropriations bill on June 10, 2014.

[66] Previously, the House Subcommittee on DHS Appropriations approved $77 million above the budget request for ICE transportation costs.

pull" of this extraordinary migration will aid the Administration and Congress in framing the most effective policy responses.

In addition, it is unknown how many of these children will qualify for asylum or other forms of immigration relief that may allow them to remain in the United States, or if many of them will be returned to their home countries. If, as some observers have noted, many of the UAC have family in the United States, and many of those family members, in turn, are not legally present, it raises thorny policy questions. Not only does it hinge on what is in the "best interests of the child," it also hinges on what is permissible under the Immigration and Nationality Act and other relevant laws.

Author Contact Information

Lisa Seghetti
Section Research Manager
lseghetti@crs.loc.gov, 7-4669

Ruth Ellen Wasem
Specialist in Immigration Policy
rwasem@crs.loc.gov, 7-7342

Alison Siskin
Specialist in Immigration Policy
asiskin@crs.loc.gov, 7-0260

DHS-011-0000001-0000818

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, December 19, 2014 6:29 PM
To: French, Kathleen; (b)(6), (b)(7)(c) (b)(6), (b)(7)c (b)(6), (b)(7)(c) Martin, Shana L; Paugh, Wayne B; Romero Downes, Christina A; Sinclair, Kirsten M
Cc: Almeida, Corina E
Subject: FW: Work flows
Attachments: Dilley Workflows 12-17-14.docx

FYI, as (b)(6), (b)(7)c says – these are a work in progress, but the Workflow identifies where the responsibilities for the various functions rests between our office and the onsite Dilley OPLA staff.

Most of our internal procedures for OCC Denver will remain the same or similar, but when we file, we will specify Dilley in some manner. The court has not yet told us how it would like us to mark the NTAs or filings.

I will review the procedures again when I return from leave.

Thank you.

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784-(b)(6), (b)(7)c
Fax: (303) 784-

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From: (b)(6), (b)(7)c
Sent: Wednesday, December 17, 2014 2:18 PM
To: Almeida, Corina E; (b)(6), (b)(7)c
Subject: Work flows

Check this out, still a work in progress. Feel free to add or subtract

(b)(6), (b)(7)c
Deputy Chief Counsel
South Texas Family Residential Center
1925 W Highway 85

Dilley, Texas 78017
830-378 (b)(6), (b)(7)c Desk
716-316 Cell

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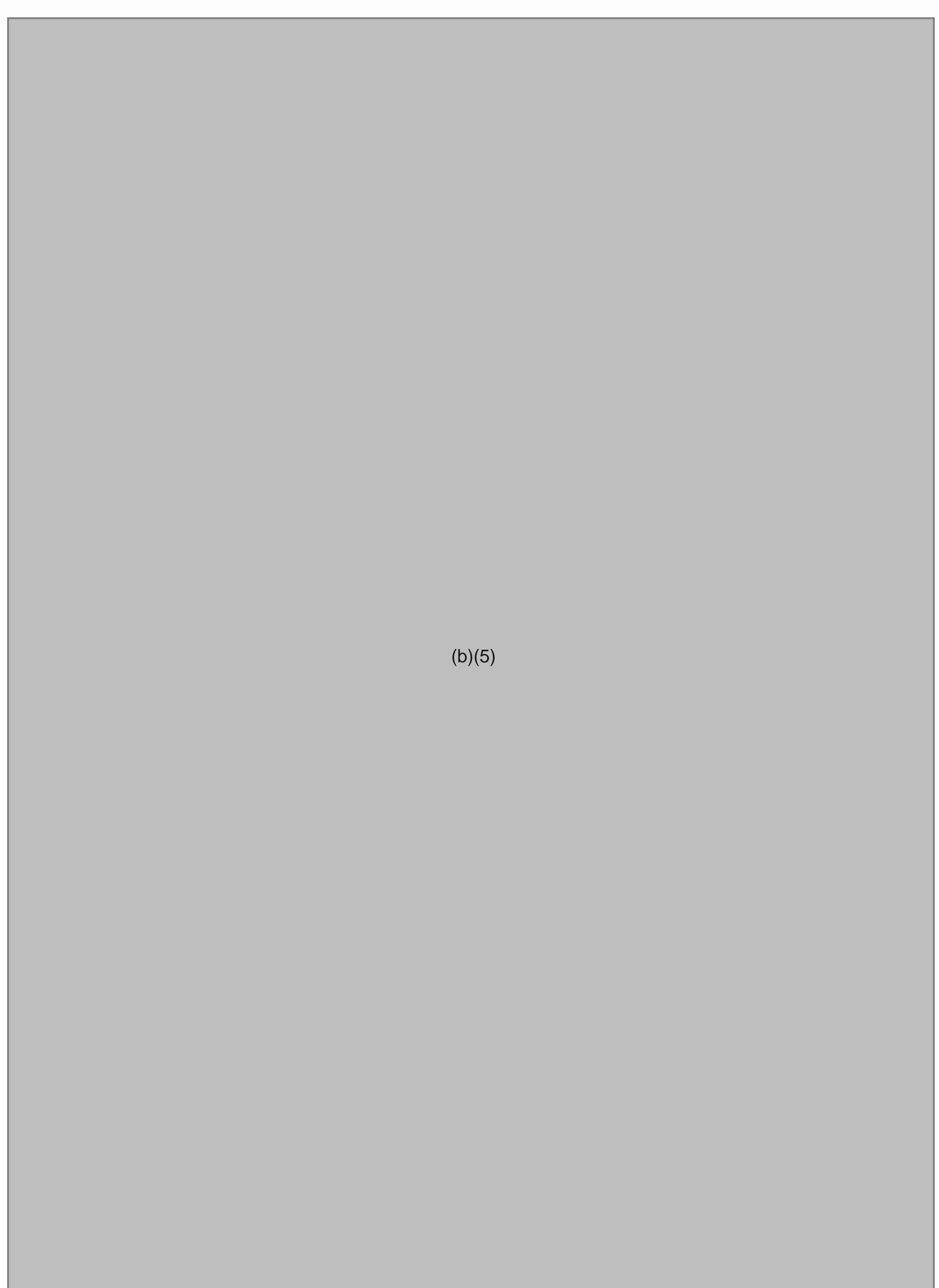
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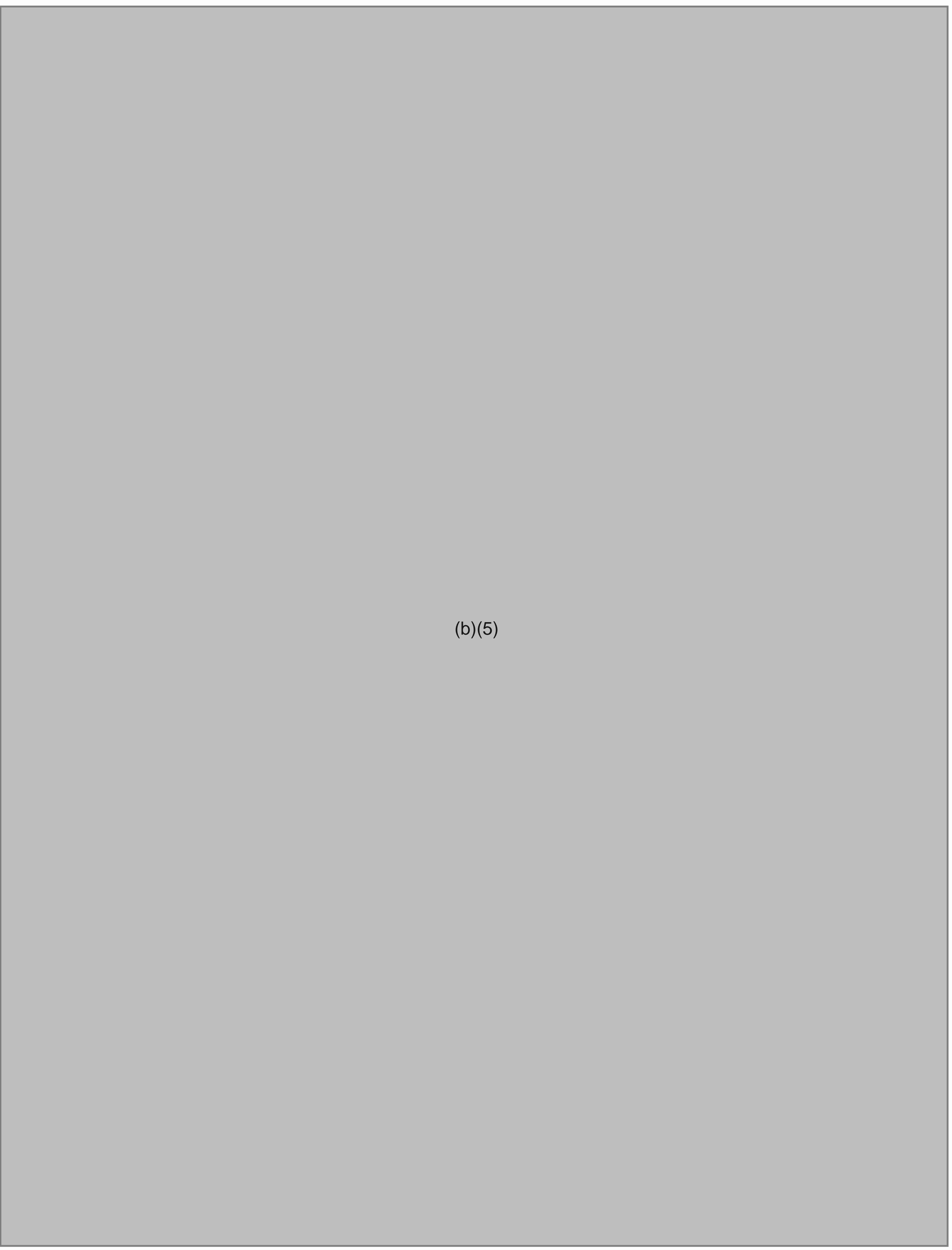

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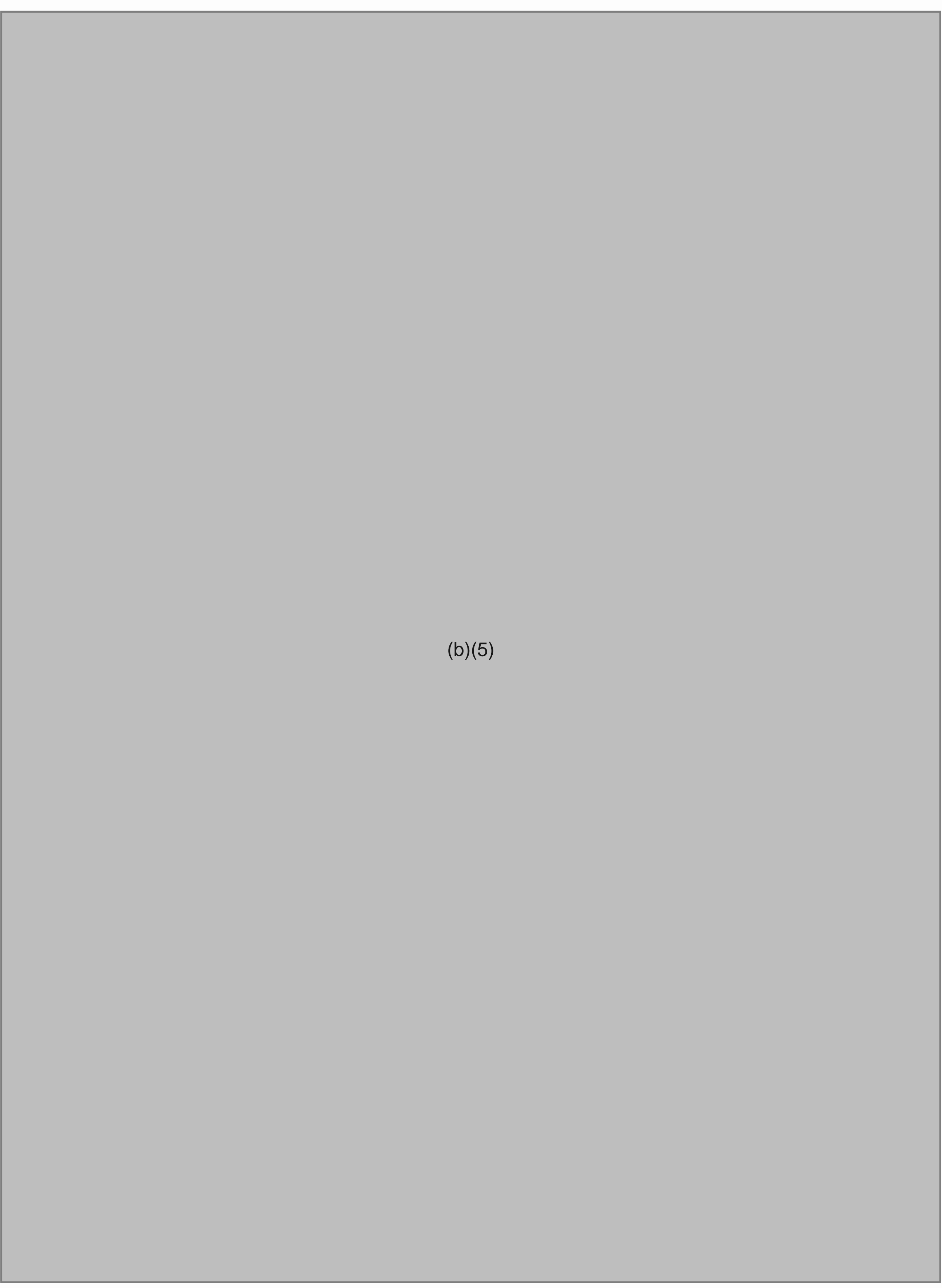
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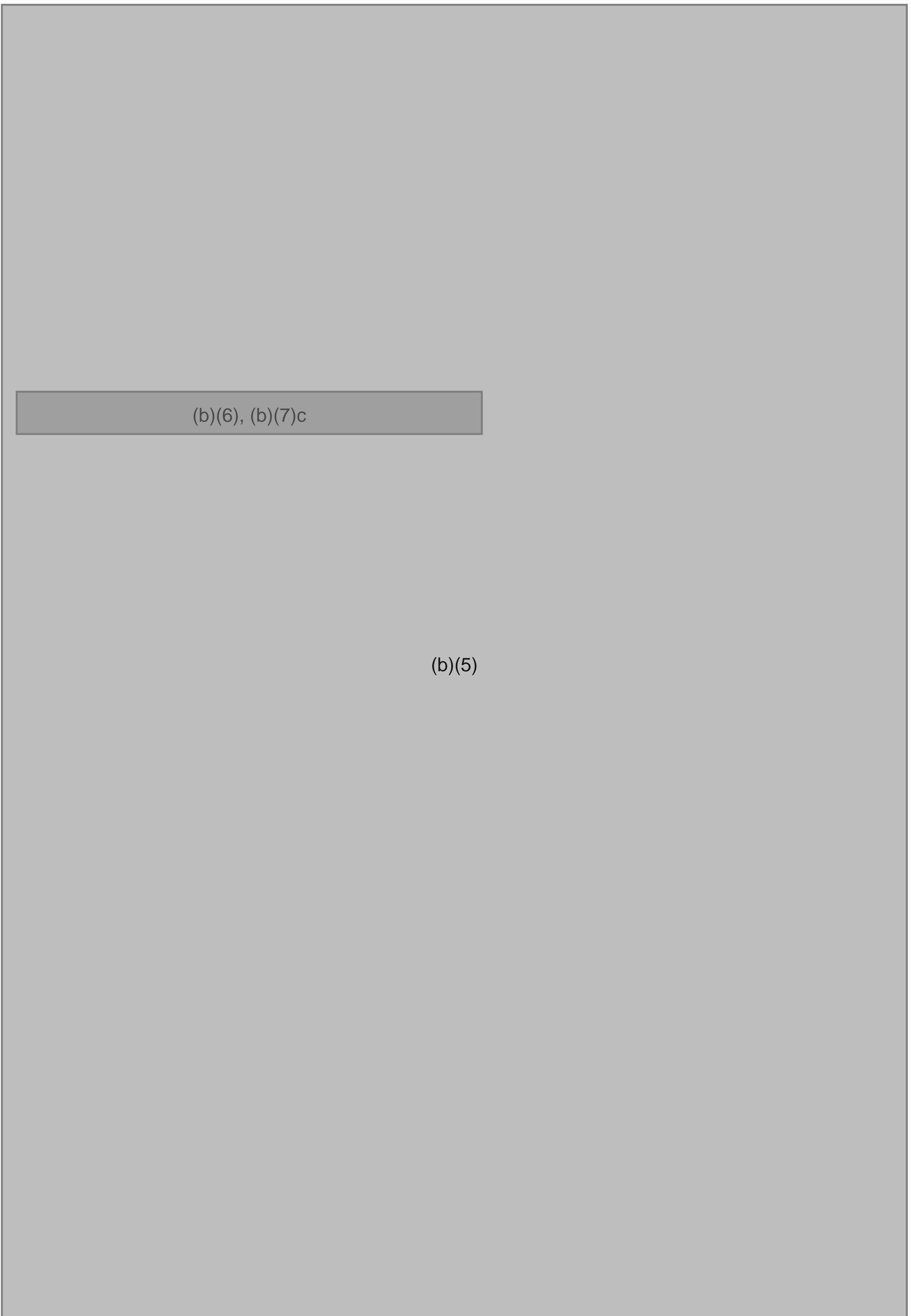
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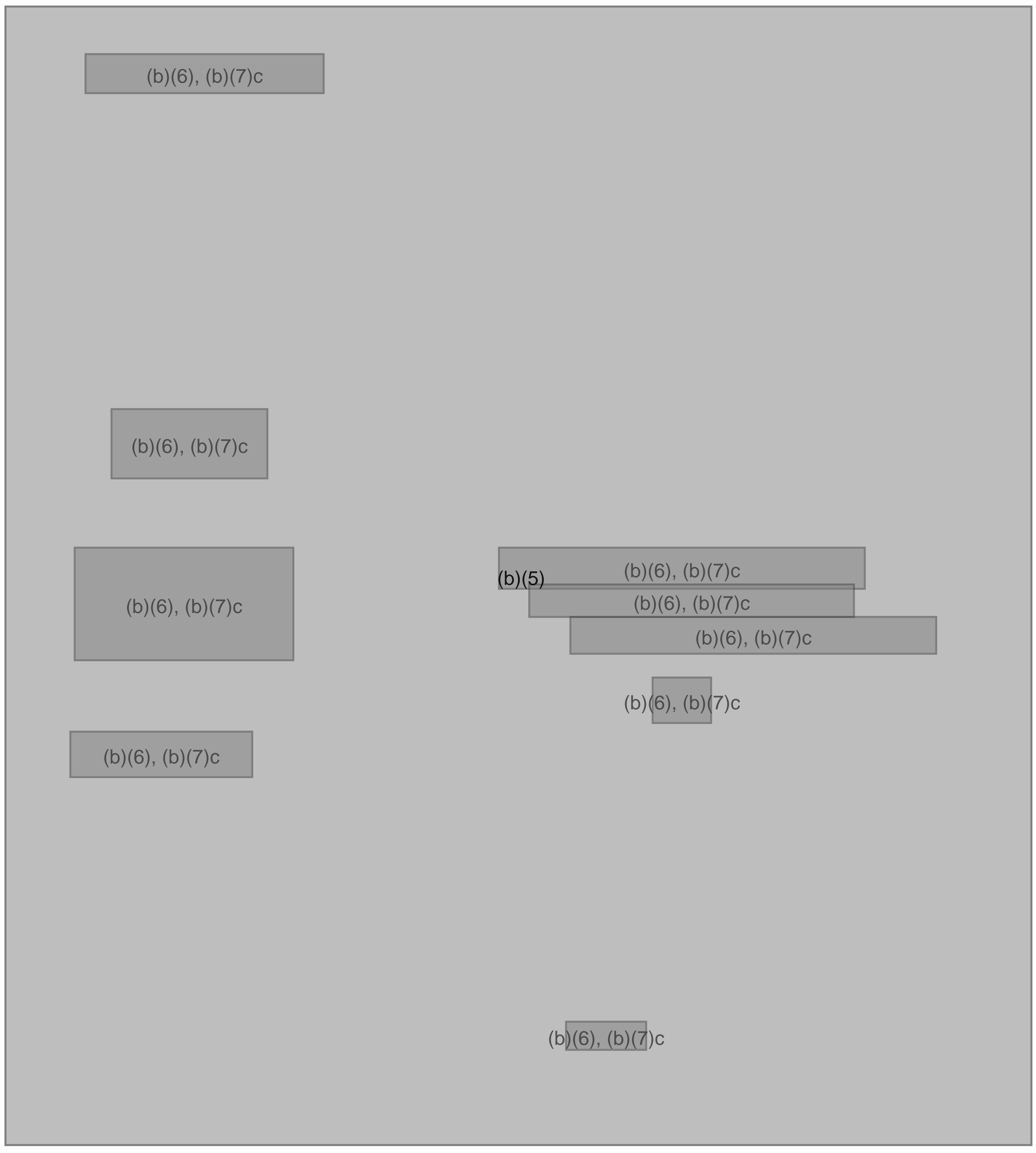
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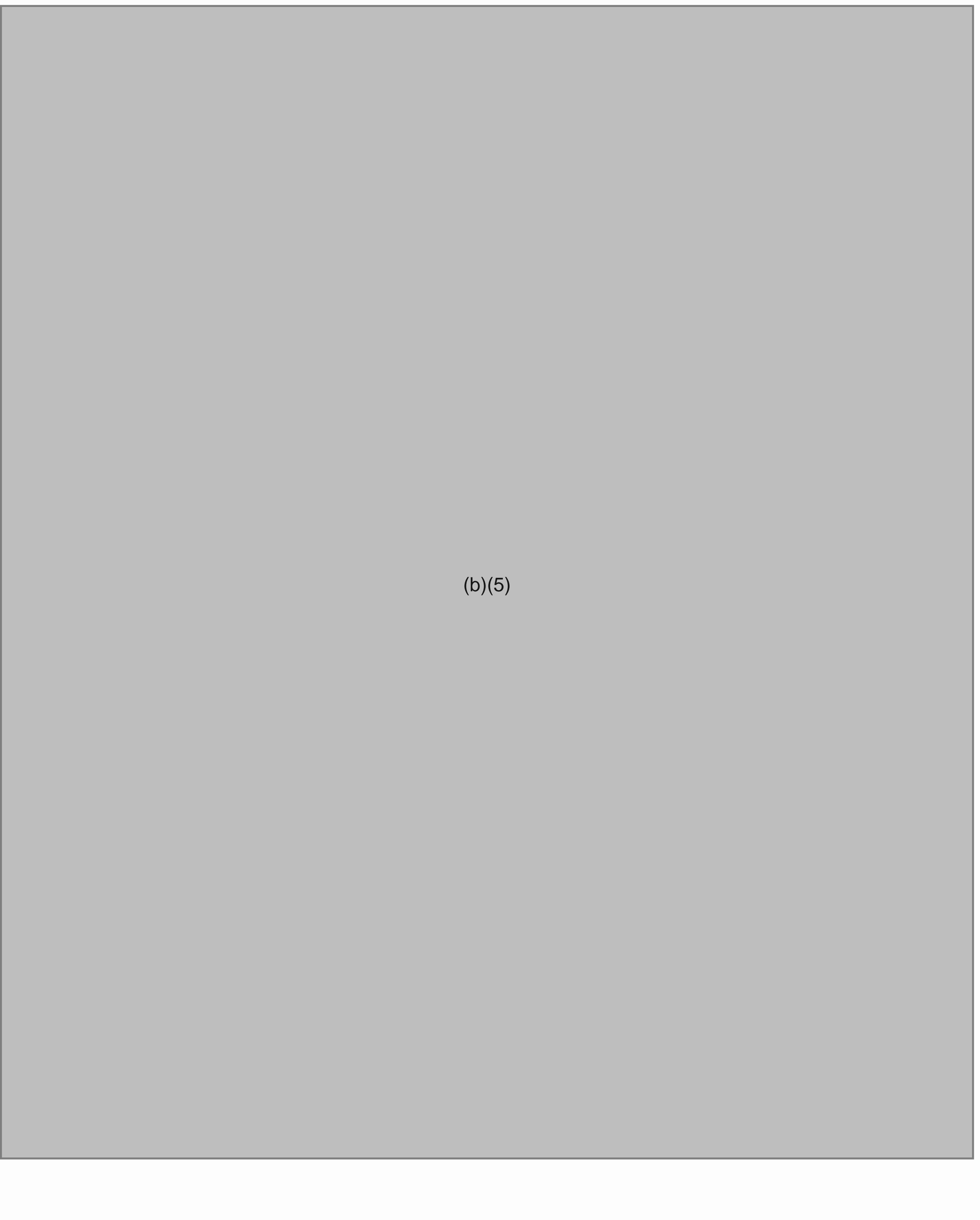
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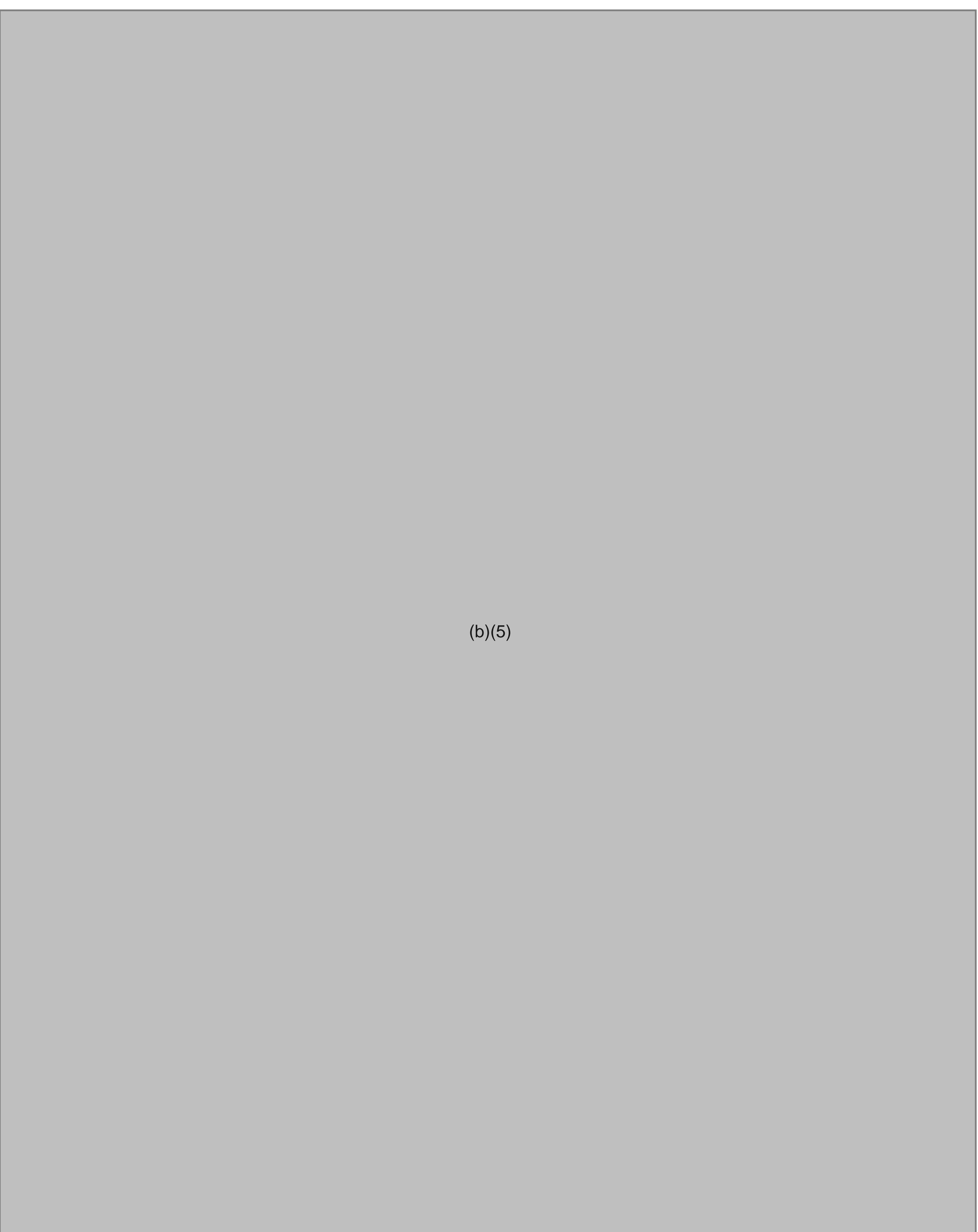
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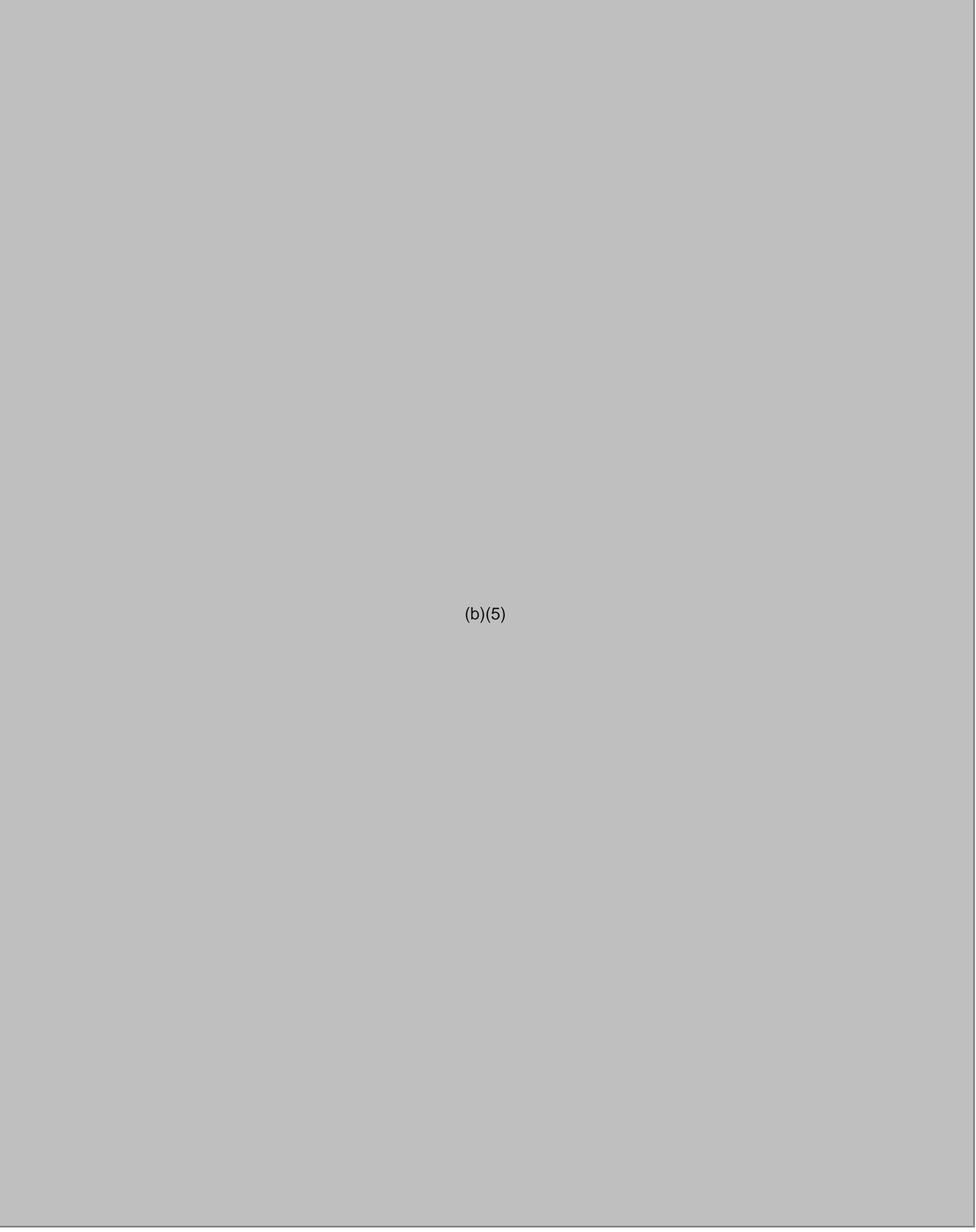
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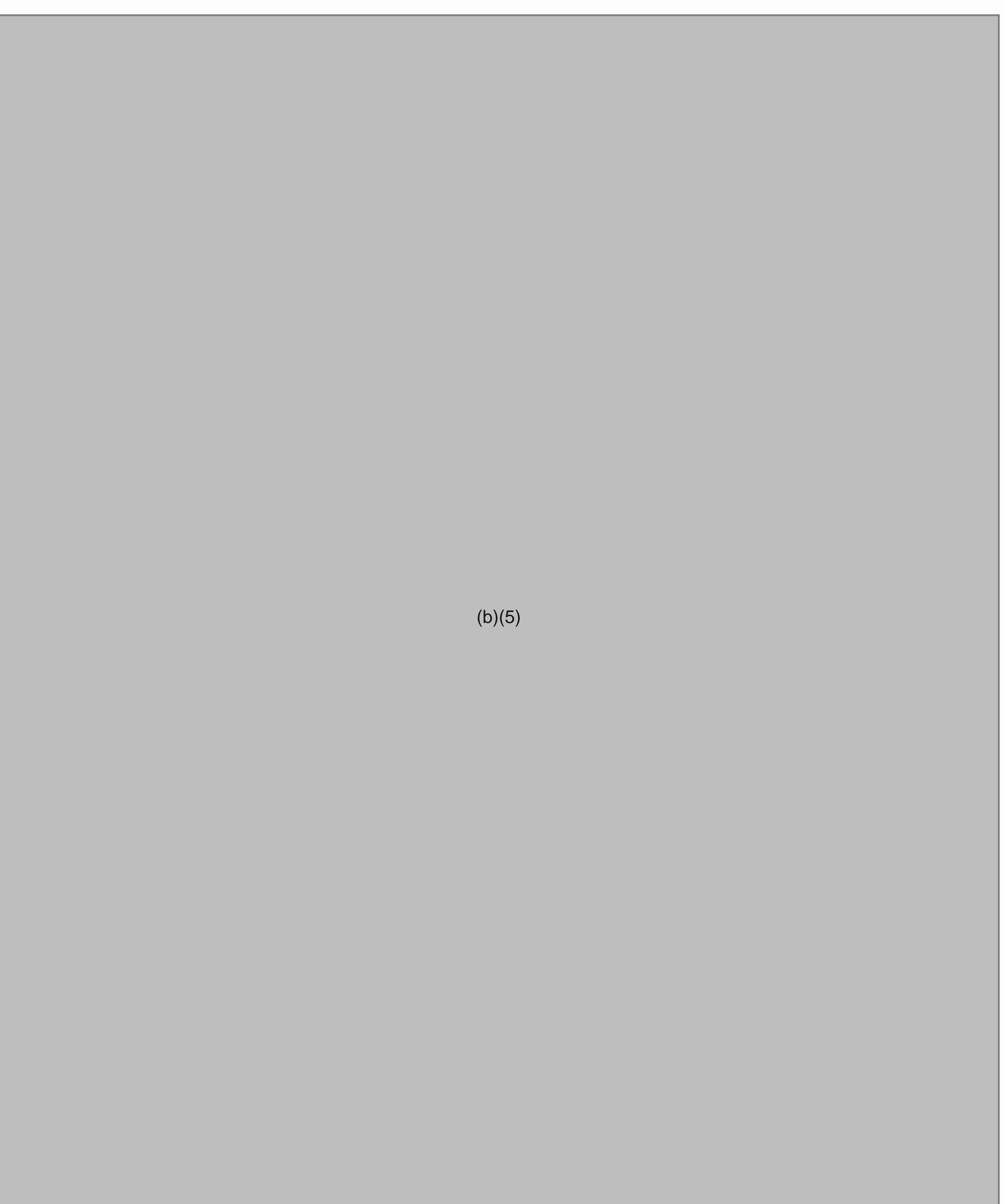

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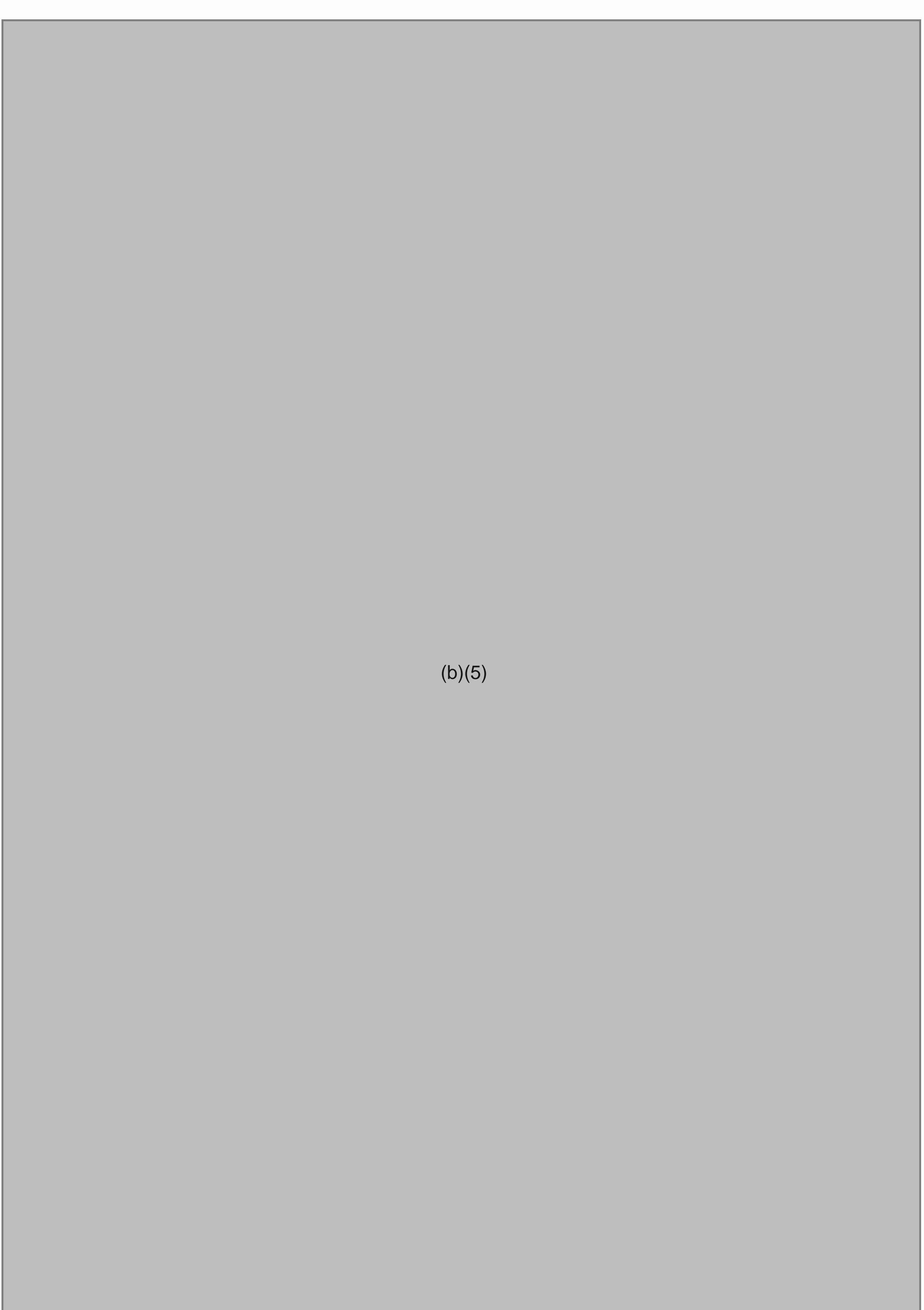

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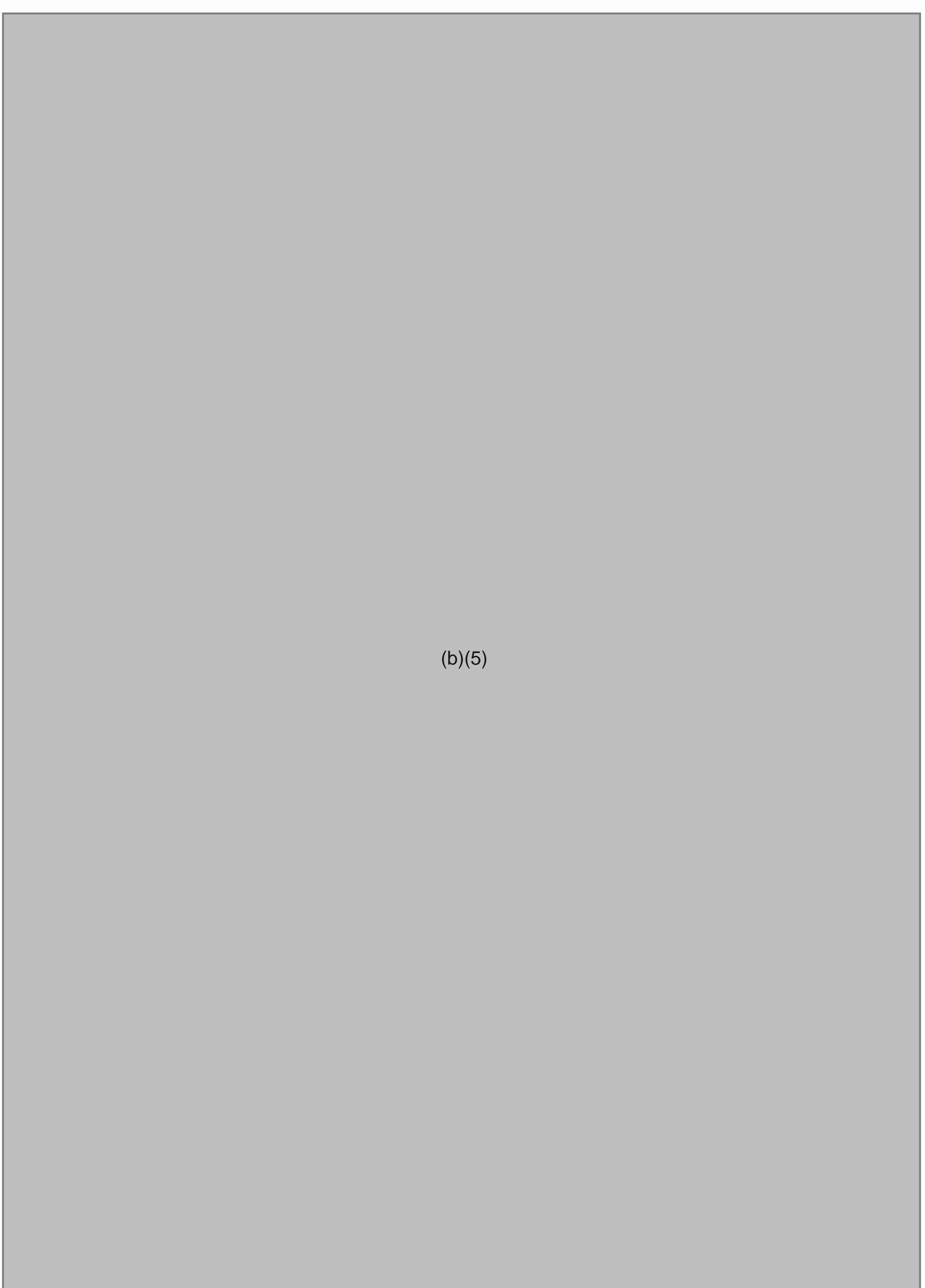
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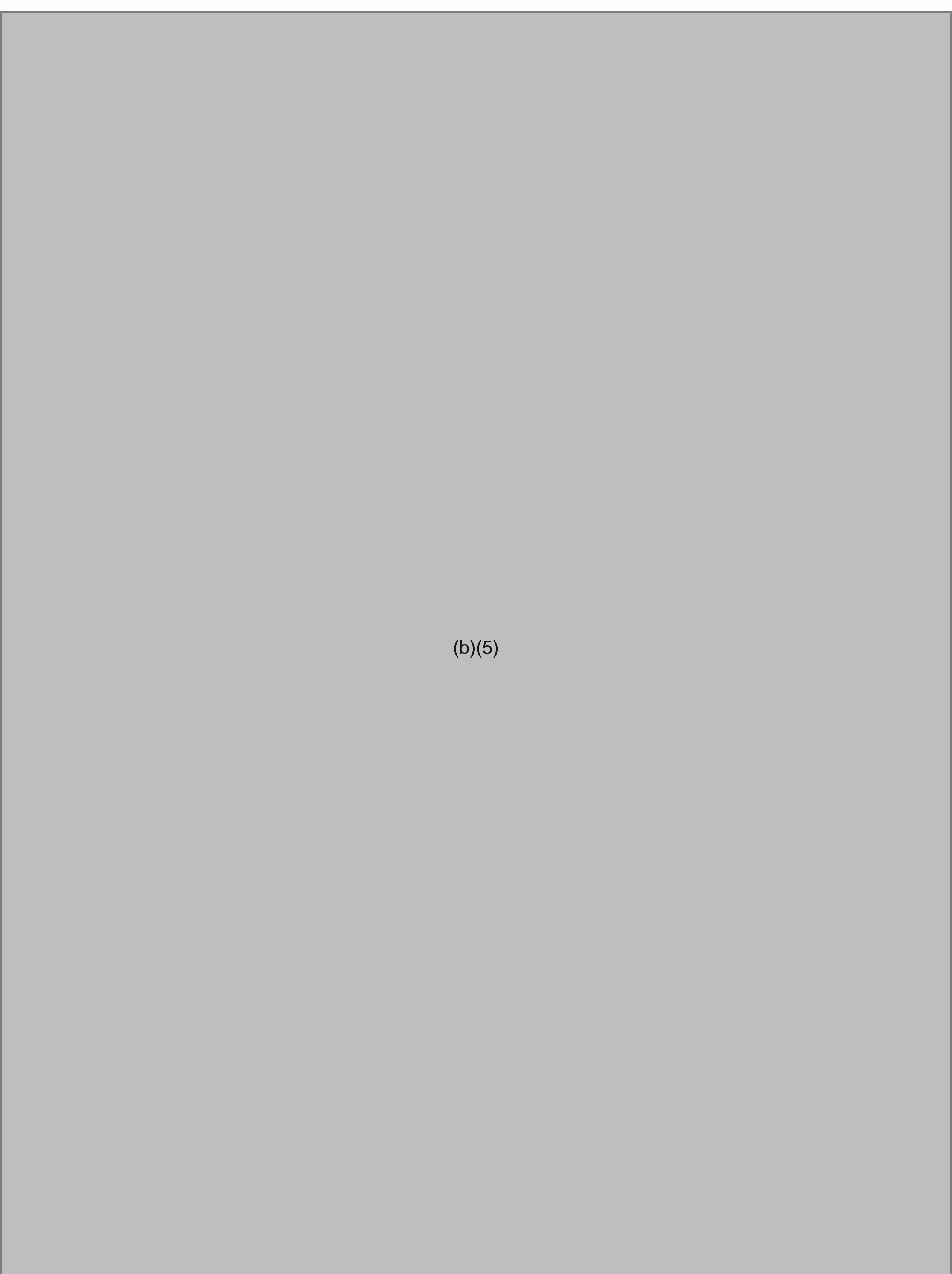

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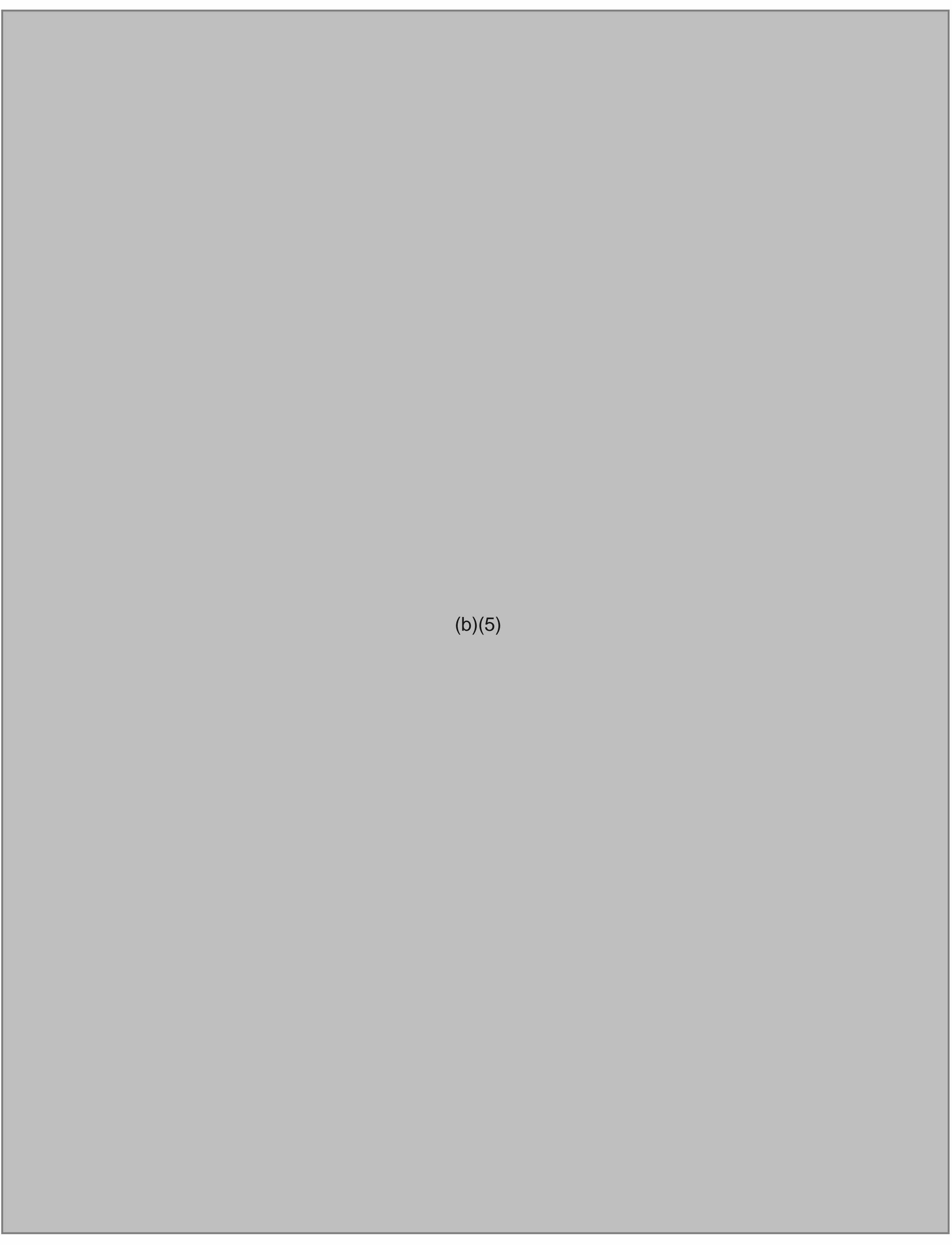
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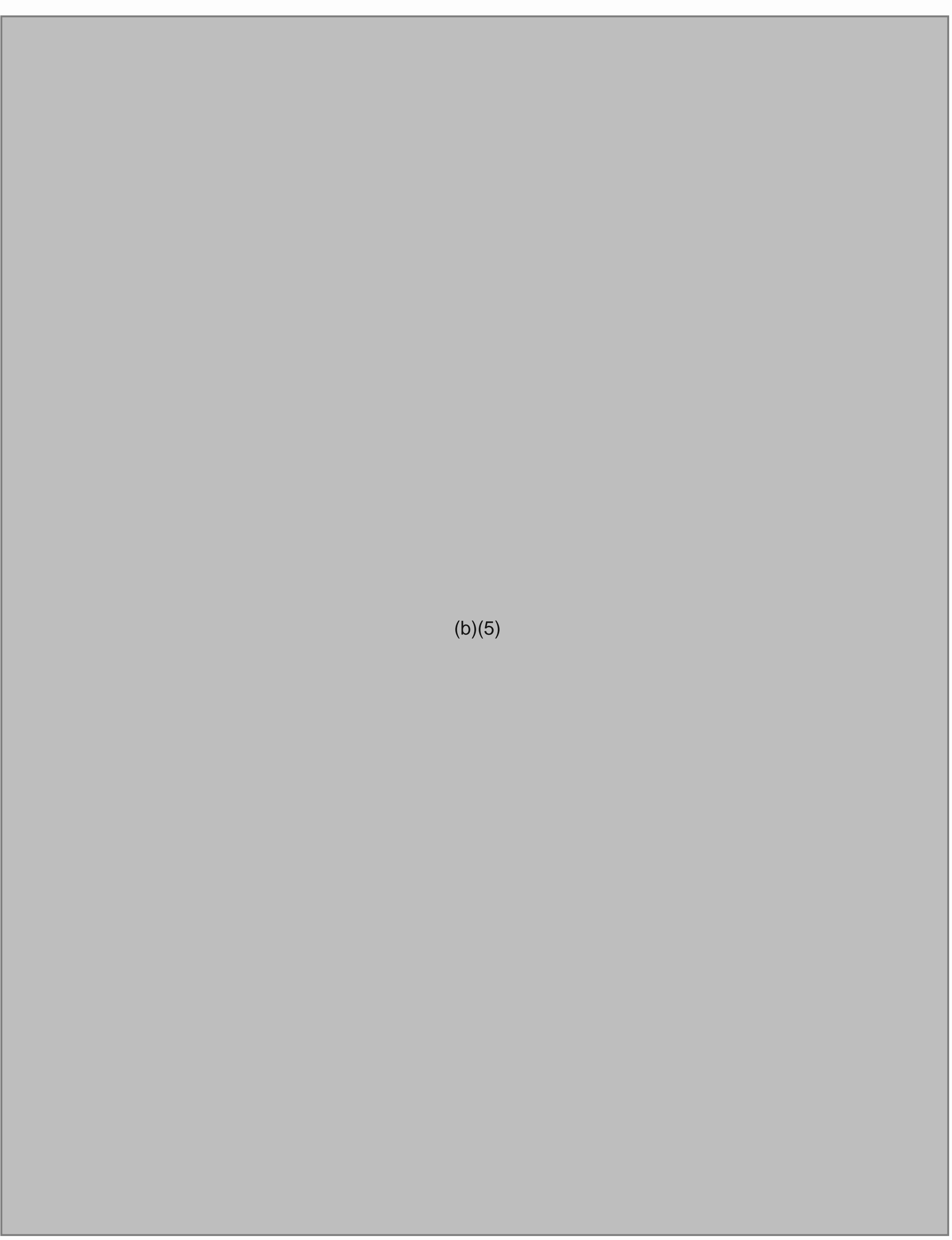
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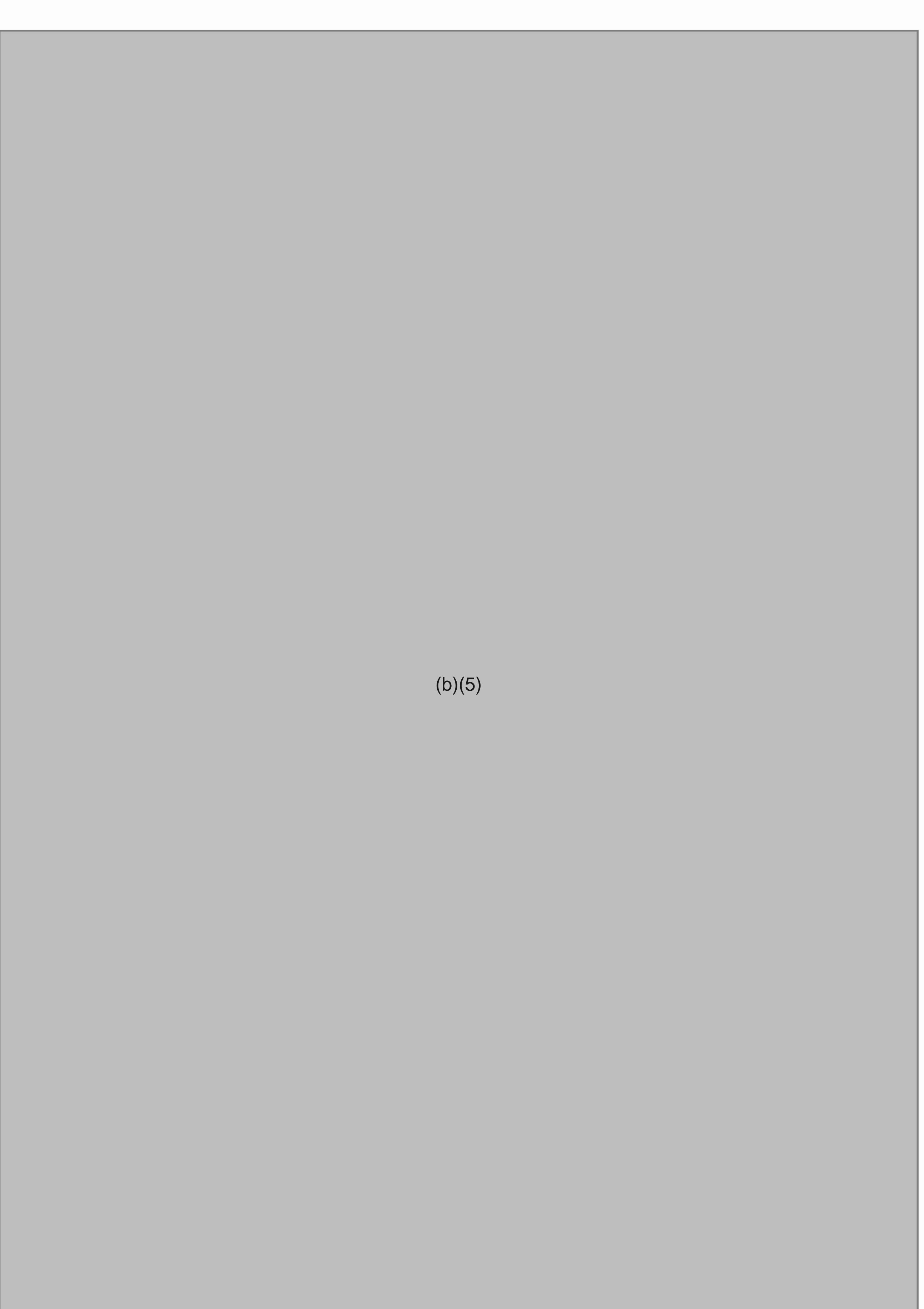
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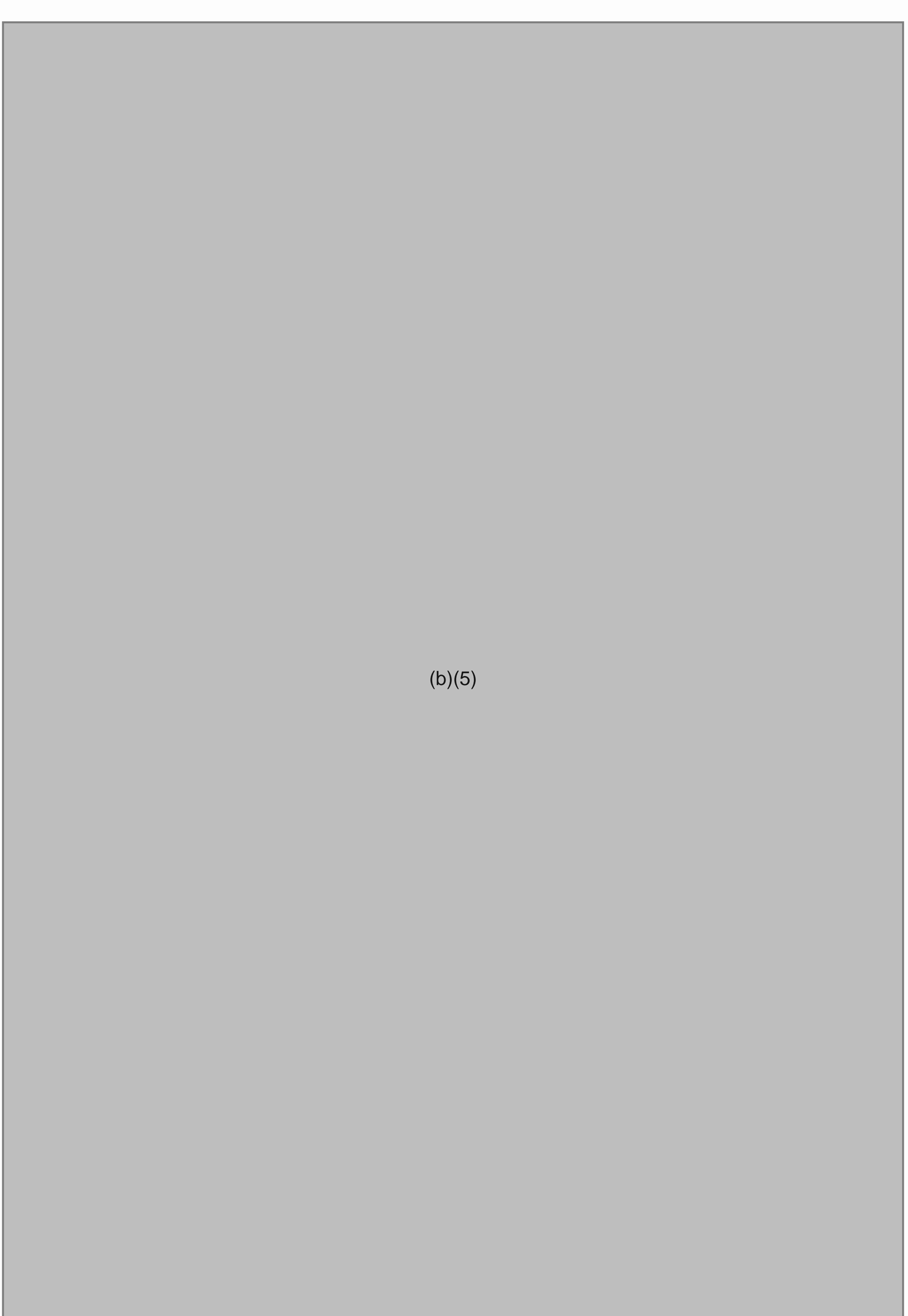

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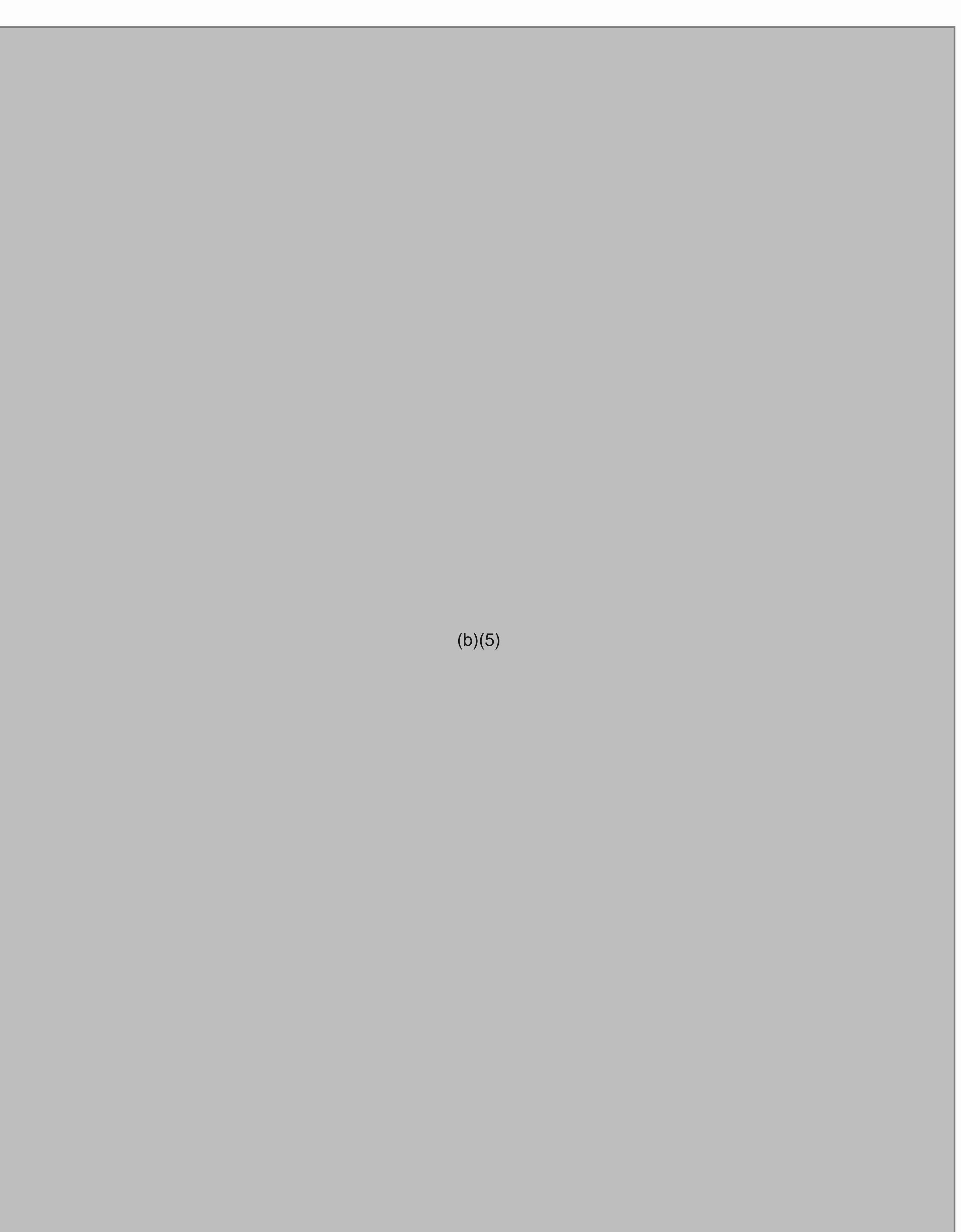
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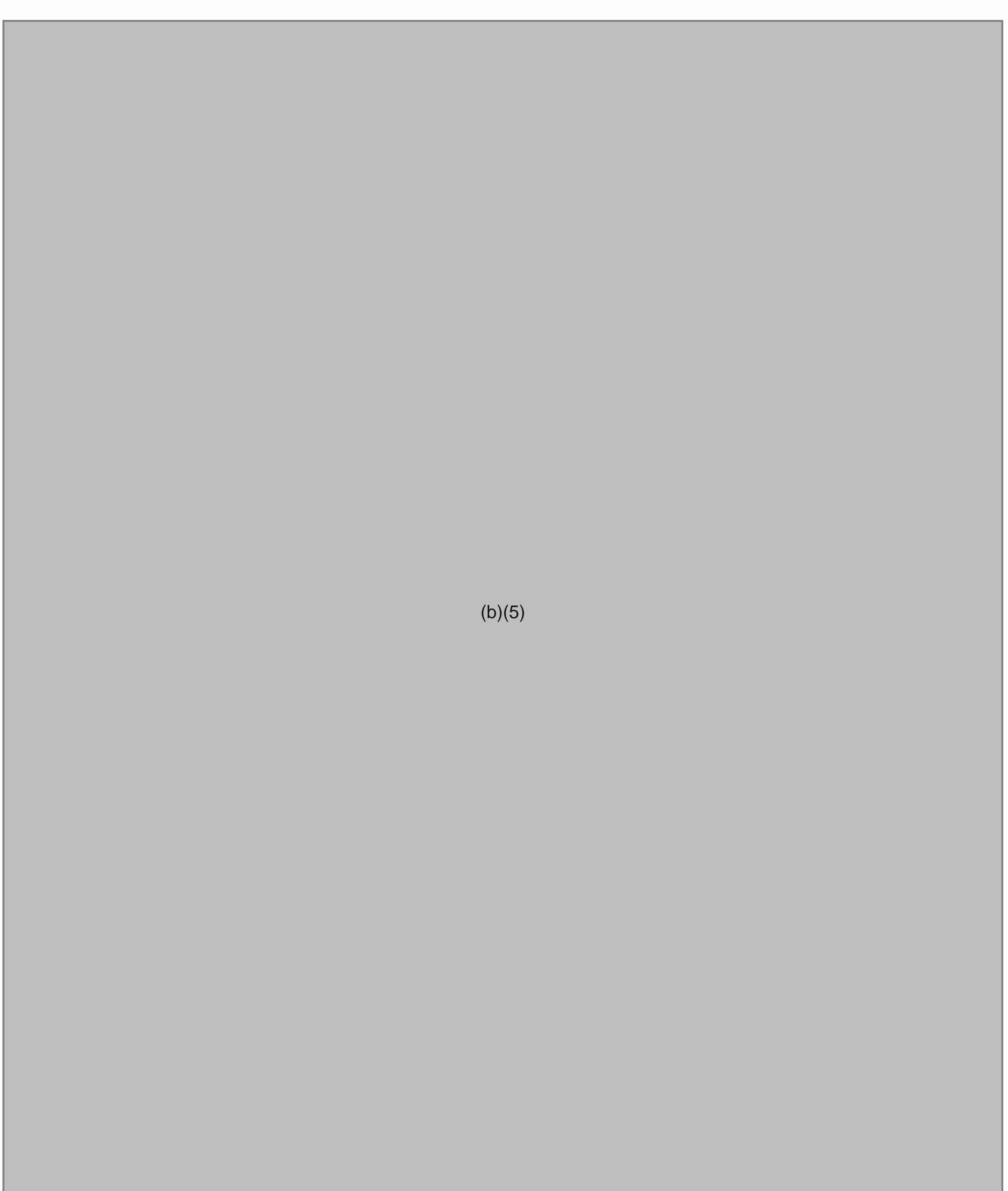
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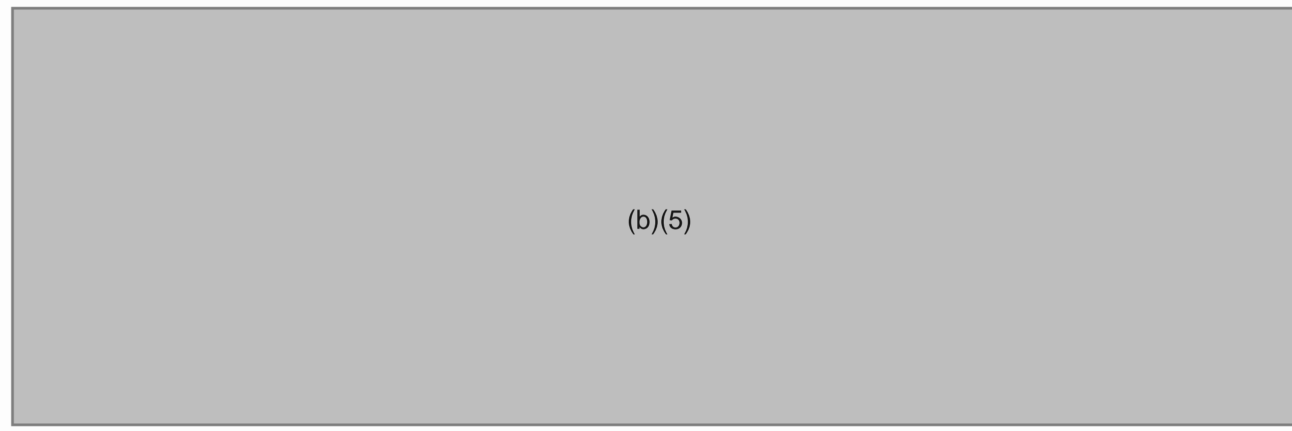
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(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Wednesday, November 05, 2014 4:50 PM
To: Doble Salicrup, Lynn M; (b)(6), (b)(7)(c) (b)(6), (b)(7)c (b)(6), (b)(7)(c) B; Paugh, Wayne B; Romero Downes, Christina A; Sinclair, Kirsten M
Cc: Almeida, Corina E; (b)(5)
Subject: Artesia Workflows
Attachments: AFRC Workflows (f) 103114.docx; PLAnet and filing Procedures Artesia (KT Draft 2 - AK 102214) (clean)(KT).docx; Trial Attorney responsibilities draft 101414 (additional rev).docx; Artesia Duty Attorney responsibilities (possible final 110414.docx

Categories: Red Category

All,

I have attached the most recent version of the Artesia workflows that Mark initiated and Arnold just finalized. They generally outline the procedures for the Artesia docket and importantly identify which duties belong to the Artesia OPLA staff and which belong to OCC Denver. (See section beginning on page 4).

In addition, I have attached OCC Denver's internal procedures, which include additional details.

One of the reasons that I have not distributed a final set of procedures is that there have been frequent changes as these new dockets develop. I have been distributing the drafts as needed, but the attached versions should represent most of the changes up to today.

We anticipate that there will be changes soon to the COV procedures and to the bond appeal procedures, but I decided not to wait until that happens and will send out an amendment as necessary.

Please let me know if you have comments or corrections.

Thanks to everyone for all of your conscientious and hard work on this challenging docket.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
Fax: (303) 784

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Artesia OCC Procedures

Revised 10-31-2014

Start Time

Work hours, including start and end times, are to be determined by the DCC detailed to the Artesia Family Resident Center (AFRC). The overtime funding stream for Artesia OPLA support staff is 4BA8CCO9100UCF. Instructions on how to load the labels into WebTA are contained on the internal Artesia Shared drive.

1. Staffing:

OPLA's presence at the AFRC consists of a Deputy Chief Counsel (DCC) and a legal assistant. These two individuals work with OCC-Denver, as well as with detailed ERO and ICE Health Service Corps (IHSC) personnel, to ensure that legal, court, and PLAnet-related issues are addressed in a timely manner.

2. Duties and responsibilities:

The **Deputy Chief Counsel** detailed to the AFRC is responsible for:

A. Representing OCC-Denver/OPLA during meetings with ERO, IHSC, and AILA at the AFRC.

B. Representing OCC-Denver/OPLA during scheduled tours of the AFRC (these tours include, for example, non-profit organizations, ICE VIPs, etc.).

C. Preparing Significant Case Reports (SCR) or Alert Notifications, when necessary, and in compliance with the Deputy Principal Legal Advisor's November 28, 2012 memorandum entitled, "Revised Guidance on Reporting and Handling Matters of Interest of Significance." These reports should be forwarded to OCC-Denver's Chief Counsel for review and submission to OPLA HQ.

D. Coordinating with the Denver immigration court to address issues of mutual interest, including, but not limited to, identification of cases that have not been docketed in a timely manner, identification of last-minute case additions to the court calendar, etc.

E. Assisting ERO in resolving court-related issues and/or timely reporting to EOIR issues that impact or may impact immigration court proceedings (i.e., VTC-related connectivity issues, non-appearance of residents due to medical issues, etc.).

F. Ensuring that the AFRC VTC courts are stocked with the necessary documents and forms (including, but not limited to, OCC-Denver bond packets, biometric sheets, applications for relief, list of free legal service providers, post-order instructions, etc.).

DHS-011-0000001-0000842

Artesia OCC Procedures
Revised 10-31-2014

2. Duties and responsibilities (continued):

The **Deputy Chief Counsel** detailed to the AFRC is responsible for:

G. Responding to all requests for information or documents from the A-file, including FOIA requests; inquiries regarding conditions of confinement, including inquiries pertaining to medical treatment and changing conditions of detention.

H. Notifying IHSC of medical care complaints raised in immigration court proceedings and providing OCC-Denver with IHSC's response.

I. Coordinating with ERO to ensure that internal policies associated with the release of residents diagnosed with certain medical conditions are applied consistently.

J. Notifying ERO of detention-related complaints raised in immigration court proceedings and providing OCC-Denver with ERO's response.

J. Forwarding daily reports (including the AFRC Population Breakdown Report, the AFRC Daily Report, and the AFRC Milestone Report) to OCC-Denver Chief Counsel Corina Almeida and Deputy Chief Counsel Kathleen Torres, OCC-Denver's AFRC POC.

K. Forwarding NOH's and immigration judge orders (including those related to IJ reviews of negative credible fear determinations) to ERO for service on residents.

L. Providing support to OCC-Denver whenever necessary.

M. Comparing daily court calendar with orders received to ensure that all orders have been received.

N. Preparing daily report regarding bond-outs and forwarding to the OPLA HQ manager.

The **Legal Assistant** detailed to the AFRC is responsible for uploading into PLAnet all case-related documents, and recording certain actions taken. As part of his/her responsibilities, the legal assistant will:

A. Upload all documents sent to the Artesia ICE OPLA Filings mailbox (including, but not limited to, private bar motions for bond and supporting documents, motions to reopen/reconsider, applications for relief and supporting documents; and, requests for copies of A-files); **the Legal Assistant should enter the appropriate color code in the status box next to each document, and update it as necessary**. Because both offices will be looking at, and opening, the same emails, in order to avoid confusion, OCC-Denver will use the checkmark to note when it has completed the task associated with an email. Neither office will use the "flags" because they override the checkmarks.

DHS-011-0000001-0000843

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2. Duties and responsibilities (continued):

As part of his/her responsibilities, the **Legal Assistant** will:

B. Upload all documents generated by ERO and/or USCIS, including NTAs (and associated documents), Form I-863s (and associated documents), credible fear and reasonable fear-related documents (including APSO packets); Form I-830s, etc.

C. Upload all Notices of Hearing (NOH) and Immigration Judge-generated orders (except orders on the merits, which are uploaded by OCC-Denver), including those related to IJ reviews of negative credible fear determinations.

D. Upload all OCC-Denver-prepared documents forwarded to the AFRC for service on residents, unless OCC Denver has already uploaded the documents into PLAnet.

E. Ensure that ERO completes background checks in a timely manner, and that results are uploaded into PLAnet (and memorialized in the notes section). As part of these duties, the Legal Assistant shall also annotate in PLAnet OPLA's efforts to comply with 8 C.F.R. § 1003.47 ("**BCR prepared and forwarded toERO**"), and when OPLA receives completed BCRs from ERO ("**BCR checks completed and cleared by ERO. Background Check Registry scanned in PLAnet.**").

F. Print documents contained in A-files, in response to requests for information, including FOIArequests, and provide them to the AFRC Deputy Chief Counsel for final review and delivery. These documents include: the NTA; Form I-286, Notice of Custody Determination; Notice of Credible Fear Hearing; Form I-296, Notice to Alien Ordered Removed/Departure Verification; Form I-860, Notice and Order of Expedited Removal; Form I-869, Record of Negative Credible Fear Finding; Form I-863, Notice of Referral to Immigration Judge; List of Free Legal Services Providers; Form I-870, Record of Determination/Credible Fear Worksheet; Credible Fear Q&As; Credible Fear Background and Identity Checklist; Case Status Inquiry Sheet; Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1); Form I-213, Record of Deportable/Inadmissible Alien; any docs submitted by the resident in the past; Spanish language certificate of birth; and, copies of identification documents from the country of origin.

G. Download the following week's court calendars and check PLAnet to ensure that cases listed for hearings have been created in the system; if they are, ensure that the left and right-hand side of the A-files have been scanned in the PLAnet Documents section and labeled as follows: A-file right-hand side; A-file left-hand side. If a case has not been created in PLAnet, the Legal Assistant shall obtain the A-file from ERO and follow

DHS-011-0000001-0000844

2. Duties and responsibilities (continued):

As part of his/her responsibilities, the **Legal Assistant** will:

the instructions contained in Part 4 below (Creating New Cases in PLAnet), and scan and upload the left and right hand side of the A-file, the legal assistant will obtain the A-file from ERO and scan it into PLAnet.

H. Forward the next day's court calendar via email to the Artesia Daily Docket group e-mail by 4:00 p.m.

I. Forward the next day's court calendar via separate email to the AILA POC (currently Christina Brown - cbrownlawoffice@gmail.com) by 4:00 p.m.

OCC-Denver is responsible for:

A. Representing the Department before the Denver immigration court in all cases involving AFRC residents.

B. Updating daily court actions in PLAnet, except those pertaining to RF and CF cases.

C. Responding to requests for PD, motions to reopen/reconsider, DHS's position on certain motions (including motions to continue), or on the merits of a case.

D. Submitting change of venue motions to the Denver immigration court, with the I-830 attached.

E. Providing the AFRC Legal Assistant with bundled and scanned copies of NOHs, bond and removal orders (including orders related to IJ reviews of negative credible fear determinations), COV decisions, and, bond packets.

F. Providing the AFRC DCC with daily ANM DEN FAMU reports (for submission to OPLA HQ).

G. Coordinating with HQ AFRC POC regarding cases where appeal has been reserved by DHS.

H. Ensuring that all Form I-862s and I-863s are properly completed prior to filing with the Denver Immigration Court.

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Artesia OCC Procedures
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3. Access to Denver Calendars and Required Actions:

(b)(6), (b)(7)c of the Denver immigration court emails the court calendar to the AFRC Legal Assistant and Deputy Chief Counsel on a daily basis.* Independent access to the Denver immigration court calendar may be made as follows:

Log in to: https://ocmscasesearch.dhs.gov/ijcalendar (you should save this link as a favorite).

Enter a **Start** and **End** date; click on the arrow on the right hand side and select the **Court Name** by location; click on the arrow on the right hand side and select the **Calendar Type** (all, individual, or master); and, click on the box that reads "**Search EOIR IJ Calendar**."

The Immigration Judge's assigned to hear AFRC cases are:

IJ (b)(6), (b)(7)c
IJ

The Denver EOIR POCs and their contact information are as follows:

(b)(6), (b)(7)c Supervisor) ((b)(6), (b)(7)c
Administrato
EOIR VTC ov

The general number for the immigration court is (303) 844-(b)(6), (b)(7)c

(b)(6), (b)(7)c emails final court calendars to the AFRC DCC and legal assistant every day at approximately 2:00 p.m. Unless she and/or other Denver EOIR personnel notify the AFRC DCC and/or legal assistant via email of any changes, the calendars received in the afternoon (for use on the following day) are final. Denver EOIR will generally not make amendments and there is no need to check and print calendars again in the morning (this action will, in fact, provide inaccurate information).

The address for the **Denver immigration court** is as follows:

1961 Stout Street, # 3-101
Denver, Colorado 80294

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AFRC Courtroom VTC Numbers

IP	ISDN Meeting Room	Model	Bldg.	Rm.	Description	Judge
10.54.106.171	202-736-3055	PolyComm 4000	169A	CR #1	Court Room 1	LIVINGSTON
10.54.106.172	202-736-3050	PolyComm 4000	169A	CR #2	Court Room 2	TRUJILLO
10.54.106.170	202-7363041	PolyComm 4000	131A	CR#3	Court Room 3	
DHCP	202-736-9332	PC VTC	131A	CR#4	Court Room 4	
10.54.106.173	202-736-3056	PolyComm 4000	171B		Attorney Visitation	
DHCP	N/A	PC VTC	171B		Attorney Visitation	

Denver EIOR VTC Numbers

IP	ISDN Meeting Room	Model	Bldg.	Rm.	Description	Judge
	240-453-3139				Court Room A	LIVINGSTON
	240-453-3140				Court Room B	TRUJILLO
	240-453-3141				Court Room C	

Artesia OCC Procedures
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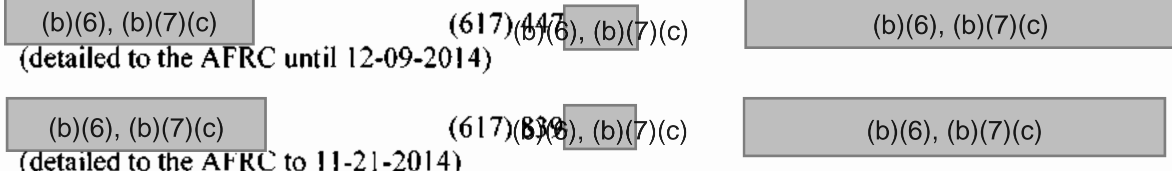
3. Access to Denver Calendars and Required Actions (continued):

Upon receipt of the court calendars, the AFRC legal assistant will forward them via email to the Artesia Daily Docket group e-mail. This email includes the names of several individuals detailed to the AFRC and requires periodic updates. On October 31, 2014, the individuals on the email are as follows:

Elias S. Gastelo (b)(6), (b)(7)(c) HQ Chief Counsel
Corina E. Almeida (b)(6), (b)(7)(c) CC, OCC-Denver
Kathleen L. Torres (b)(6), (b)(7)(c) DCC, OCC-Denver
Arnold Eslava-Grunwaldt (b)(6), (b)(7)(c) Artesia DCC
(b)(6), (b)(7)(c) (b)(6), (b)(7)(c) ACC, OCC-Denver
(b)(6), (b)(7)(c) Artesia AFOD
(b)(6), (b)(7)(c) sia AFOD
Artesia SDDO
rtesia SDDO
)O
(b)(6), (b)(7)(c) rt Officer
Court Officer
(b)(6), (b)(7)(c) Operations (p.m. shift)
ERO Detention Operations (p.m.
ntion Operations (p.m. shift)
ion Operations (a.m. shift)

If a case is calendared, but the residents have bonded out of the ARFC, the AFRC Legal Assistant should check PLAnet and confirm that a copy of a Form I-830 has been uploaded to the Documents section. If the document has not been uploaded, the AFRC Legal Assistant should contact ERO, obtain a copy, and upload it into PLAnet. The AFRC Legal Assistant should also notify the AFRC Deputy Chief Counsel, who will provide notice of such actions to OCC-Denver's AFRC POC.

AFRC COURT OFFICERS


(b)(6), (b)(7)(c) (617) 447 (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
(detailed to the AFRC until 12-09-2014)

(b)(6), (b)(7)(c) (617) 839 (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
(detailed to the AFRC to 11-21-2014)

Artesia OCC Procedures

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The AFRC court officers are included in the Artesia Daily Docket group e-mail and will receive a copy of the next day's court schedule at 4:00 p.m. (or as soon as EOIR forwards them to the AFRC DCC and/or Legal Assistant). At the conclusion of court hearings, these officers will provide the calendars (with results of the day's court activities) to the AFRC Legal Assistant. The AFRC Legal Assistant and the Deputy Chief Counsel will use these calendars to review and mark off orders received from OCC-Denver ACCs, check orders for accuracy, and ensure that they are forwarded to the proper ERO personnel for service on residents. Discrepancies should be elevated to the Denver ACC for correction (copying Chief Counsel Almeida and Deputy Chief Counsel Torres).

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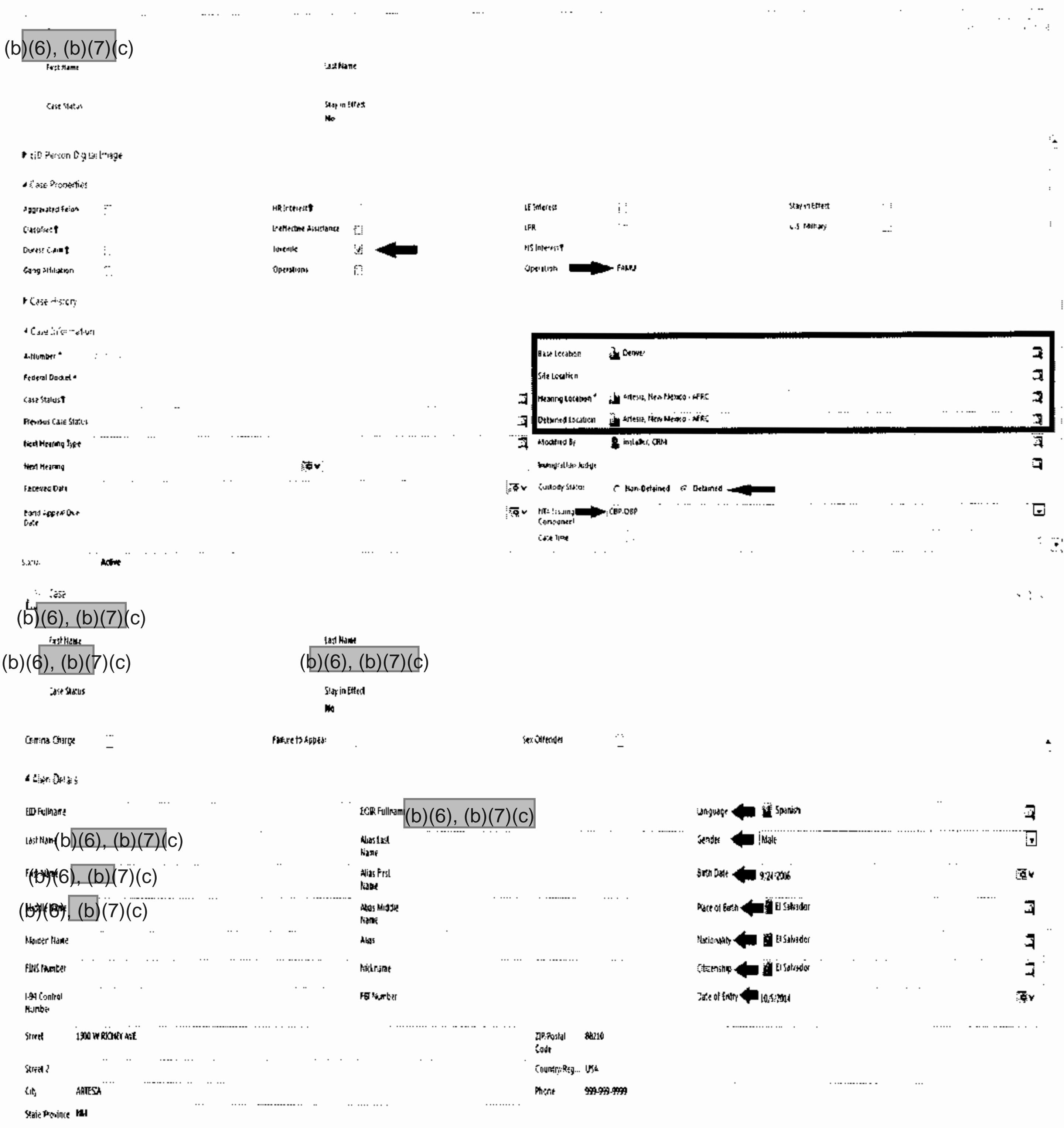
4. Creating New Cases In Planet

(b)(7)(e)



NOTE: As of September 29, 2014, the base location should be Denver (not El Paso).

5. Creating the Credible Fear/Reasonable Fear Event Type in PLAnet.

(b)(7)(e)

6. Miscellaneous Procedures (continued).

Immigration Judge Orders - Hearing Notices in General

If the AFRC Deputy Chief Counsel discovers that an order contains incorrect information, he/she should contact via email the OCC-Denver attorney who appeared in court (copying OCC-Denver's Chief Counsel and Deputy Chief Counsel Torres), and request his/her assistance in having EOIR correct the order.

Form I-830s

ERO at the AFRC forwards Form I-830s to the Artesia ICE OPLA Filings Mailbox, as well as the AFRC Deputy Chief Counsel and Legal Assistant. Upon receipt of these forms, the AFRC Legal Assistant will check them for accuracy and, if necessary, notify the AFRC Deputy Chief Counsel (who will contact ERO and request corrections). If the Form I-830s contain accurate information, the AFRC Legal Assistant should upload them in PLAnet and change the custody status in each case to "Non-Detained." The AFRC legal Assistant should also include the following language in the Notes section: "Alien has bonded out, I-830 served on OCC-Denver" or "Released OR, I-830 served on OCC-Denver."

OCC-Denver will serve the Form I-830 on the Denver immigration court, generally coupled with a motion to change venue. If OCC-Denver takes such action, it will annotate in PLAnet that it filed a COV motion with an attached Form I-830, and include a copy of the motion in the Documents section. If OCC-Denver does not concurrently file a Form I-830 with a COV motion, it will annotate this fact in PLAnet and scan the copy separately.

Change of Venue

When OCC-Denver submits COV motions to the Denver Immigration Court, it will include the following notation in PLAnet: "COV motion completed and served on EOIR." Upon receipt of the COV order, OCC-Denver will upload it in PLAnet and note that the court granted COV to ______; OCC-Denver will then forward the order via email to the ICE OPLA Filings Mailbox, and the AFRC Deputy Chief Counsel and Legal Assistant. ERO will include the COV order in the residents' A-file and forward it to the appropriate location.

6. Miscellaneous Procedures (continued).

Background Checks and BCRs

The AFRC Deputy Chief Counsel will maintain an updated list of cases scheduled for merits hearings, and will provide the AFRC Legal Assistant with advanced notice of upcoming cases. The Legal Assistant will, in turn, prepare Background Check Registry forms and provide them to SDDO (b)(6), (b)(7)(c) (detailed to the AFRC until December 10, 2014), who will forward them to the appropriate DO for action. As part of these duties, the Legal Assistant shall also annotate in PLAnet OPLA's efforts to comply with 8 C.F.R. § 1003.47 ("**BCR prepared and forwarded to ERO**").

Following review of existing guidance, including a 2005 memorandum entitled "Guidance on Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals," OCC-Denver has determined that it can meet the requirements contained in 8 C.F.R. § 1003.47 by having ERO run fingerprint checks (using the alien's FBI number, which is generated after his/her initial fingerprinting) and SQ-11 checks. Per the 2005 guidance, FBI Name Checks are not one of the required checks for purposes of the EOIR regulations, and are discretionary (except in the case of special interest cases, which can be dealt with on a case by case basis).*

Upon receipt of completed Background Check Registry Form, the Legal Assistant shall scan the document into PLAnet, and include the following language in the Notes section: "**BCR checks completed and cleared by ERO. Background Check Registry scanned in PLAnet.**"

If an Immigration Judge grants relief and OCC-Denver waives appeal, it will - within three days of the decision - forward a copy of the completed Background Check Registry, as well as a copy of the Immigration Judge's order, to USCIS in Denver. OCC-Denver should also provide the AFRC Deputy Chief Counsel and Legal Assistant with a copy of the completed Background Check Registry Form, for inclusion in the resident's A-file.

*OCC-Denver Chief Counsel Almeida has contacted AILA member (b)(6), (b)(7)(c) and requested that she (and other attorneys with ties to AILA who represent residents at the AFRC) closely follow the handout entitled, "Instructions for Submitting Applications in Immigration Court and Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services." These handouts/instructions are available in the AFRC immigration courts, and are provided to residents and/or their counsel when they indicate and intent to apply for relief.

DHS-011-0000001-0000854

6. Miscellaneous Procedures (continued).

Complaints Received Regarding Custody Issues/Treatment.

The AFRC Deputy Chief Counsel will notify Chief Counsel Almeida and Deputy Chief Counsel Torres via email of any custody and/or medical treatment complaints received, and will conduct follow-up as appropriate. The AFRC Deputy Chief Counsel will annotate Planet, as appropriate, regarding these issues and update Chief Counsel Almeida and Deputy Chief Counsel Torres as soon as possible.

OCC-Denver is responsible for addressing complaints or concerns related to case litigation.

If an OCC-Denver attorney becomes aware of a custody and/or medical treatment complaint in the course of a hearing, he/she should notify the AFRC Deputy Chief Counsel via email as soon as possible. The AFRC Deputy Chief Counsel will, in turn, contact ERO and/or IHSC, provide each with notice of the complaint, and request a timely update on actions taken. Upon receipt of this update, the AFRC Deputy Chief Counsel will prepare and forward an email to the OCC-Denver attorney who initially contacted him/her (and copy Chief Counsel Almeida and Deputy Chief Counsel Torres), and update PLAnet.

Requests to USCIS to Reconsider Negative Credible Fear Determination

On occasion, residents will request that USCIS reconsider its negative credible fear determination following Immigration Judge concurrence, pursuant to 8 C.F.R. 1208.30(g)(2)(iv)(A) (1024) ("If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credibility finding that has been concurred upon by the immigration judge after providing notice of its reconsideration to the immigration judge").

When this occurs, the AFRC Deputy Chief Counsel should remind ERO that it has agreed to place a "Z" hold on such residents until the AFRC APSO provides notice of his/her decision to accept or deny the motion for reconsideration. If the APSO denies the motion for reconsideration and there is no stay in place (or any other impediments to removal), ERO may proceed with removal. However, if the APSO elects to accept the motion to reconsider for review, ERO should consider not taking any action to remove the resident, regardless of whether there is a stay in place or not. Indeed, if the APSO

6. Miscellaneous Procedures (continued).

Requests to USCIS to Reconsider Negative Credible Fear Determination

makes another negative credible fear determination, she will forward her findings to the Immigration Judge for review. This will require ERO to make the resident available for a hearing. If, on the other hand, the APSO makes a credible fear determination, it will prepare a charging document and place the alien in removal proceedings. This will also require ICE to make the resident available for hearings.

NOTE: The decision to stay removal is an ERO decision. The AFRC automatic stay policy for Motions to Reconsider negative credible fear determinations is under review as of September 26, 2014 by ERO HQ.

The AFRC Deputy Chief Counsel should ensure that the AFRC APSO keeps him/her updated on the status of any motions to reconsider, as well as any related decisions.

Reasonable Fear

For reinstatement cases:

If a mother does not have any reasonable fear, reinstate her and place the minor in 240 removal proceedings. If detention **space is available,** keep both in custody until the minor's hearing is completed. However, if, in the interim, an Immigration Judge orders the minor released on bond and the minor's family posts it, ERO should release both parties (OSUP the parent).

If a mother does not have a reasonable fear, reinstate her and place the child in 240 proceedings. If there is **no detention space** available, OSUP the mother and OR the child - and proceed with the child's case in a non-detained docket.

If a mother has a reasonable fear, detain her and place her in withholding only proceedings, and place the minor in 240 removal proceedings. However, if the Immigration Judge subsequently orders the minor released on bond and the minor's family posts it, ERO should release both parties (OSUP the parent).

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6. Miscellaneous Procedures (continued).

IJ Grants of Relief

DHS will consider OPLA's February 12, 2004 memorandum entitled "Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed" when making its determination regarding appeal, as well as the release of a resident pending appeal.

FOIA Requests and General Requests for Information

AILA Attorney (b)(6), (b)(7)(c) will, on occasion, request copies of client A-files via e-mail to the AFRC Deputy Chief Counsel or through the Artesia OPLA Filings mail box. On these occasions, Attorney (b)(6), (b)(7)(c) will attach a Form G-28. Upon receipt of these requests, the AFRC Deputy Chief Counsel will ensure that the Form G-28 is properly filled out, and thereafter request that the AFRC Legal Assistant copy specific documents of the A-file. These include:

- NTA;
- Form I-286, Notice of Custody Determination;
- Notice of Credible Fear Hearing;
- Form I-296, Notice to Alien Ordered Removed/Departure Verification;
- Form I-860, Notice and Order of Expedited Removal;
- Form I-869, Record of Negative Credible Fear Finding;
- Form I-863, Notice of Referral to Immigration Judge;
- List of Free Legal Services Providers;
- Form I-870, Record of Determination/Credible Fear Worksheet;
- Credible Fear Q&A's;
- Credible Fear Background and Identity Checklist;
- Case Status Inquiry Sheet;
- Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1);
- Form I-213, Record of Deportable/Inadmissible Alien;
- any docs submitted by the resident in the past;
- Spanish language certificate of birth; and,
- Copies of identification documents from the resident's country of origin.

The AFRC Legal Assistant will then annotate the following in PLAnet: "FOIA documents copied and forwarded to DCC."

Following review of the copied documents (and after ensuring that specific information - such as FBI numbers on Form I-213's - are blacked out), the AFRC Deputy Chief Counsel should serve them in person to AILA Attorney (b)(6), (b)(7)(c). The AFRC Deputy Chief Counsel should then place a notation in PLAnet regarding his/her actions, and identify the documents that he/she delivered to AILA.

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Artesia OCC Scan and Shred Guidelines

6. Miscellaneous Procedures (continued).

The following may be shredded after they are scanned into PLAnet:

- All Motions and Motions Responses.
- EOIR Orders granting motions to withdraw, motions to substitute counsel, motions allowing respondent's counsel to appear telephonically, motions to continue, motions to extend briefing schedule.
- EOIR Orders for Prehearing Statements.
- Exhibits, unless they include original documents.
- EOIR rejection notices
- BIA receipt notices for the filing of an appeal or a motion to reopen with the BIA can be discarded without scanning after confirming that PLAnet reflects the filing of an appeal. Select "Update EOIR" data to confirm. Otherwise, make manual entry for "Appeal Filed," or for "Motion Filed," after verifying date on BIA website, and then the receipt notice can be shredded.
- Motions for stays filed with the federal appeals court in connection with a Petition for Review. The Petition for Review itself can be noted in PLAnet, and then shredded because Petitions for Review follow a standard format, and do not need to be scanned. Since OIL may ask for our position on a stay motion, or assistance in responding to a stay motion, the motions for stay should be scanned and then shredded.
- Respondent's Written Pleadings.
- Hearing Notices.
- EOIR Form 33, Change of Address Forms (But not change of address on Form AR-11; these are DHS forms).
- EOIR-E-28s AND G-28s.
- BIA briefing schedules and transcripts.

When any of the following original orders/documents are received in Denver, the original will be shredded after the order is emailed to Artesia and uploaded into PLAnet; however, a copy will be placed in the A file by the Artesia OPLA staff:

- Orders granting change of venue.
- Orders granting or denying relief.
- Bond orders.
- Orders terminating a case or administratively closing a case.
- Orders severing cases that had previously been consolidate.
- Notices of Appeal
- BIA decisions on appeal

DHS-011-0000001-0000858

Artesia OCC Procedures
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IMPORTANT PHONE NUMBERS

HQ Chief Counsel

Elias Gastelo (915) 203 (b)(6), (b)(7)(c) (cell)

Denver OCC

General Number: 303-784 (b)(6), (b)(7)(c)

CC Corina Almeida (303) 784- (b)(6), (b)(7)(c) (desk) (303) 472- (b)(6), (b)(7)(c) cell)
DCC Kathleen Torres (303) 784 (desk) (303) 257 cell)
(b)(6), (b)(7)(c) (303) 784

Denver EOIR Numbers

General Number: (303) 844 (b)(6), (b)(7)(c)

Denver EOIR POC: (b)(6), (b)(7)(c) (Supervisor) (303)784- (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (Court Administrator) (303) 844- (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (EOIR VTC issues) (720) 351- (b)(6), (b)(7)(c)

Artesia AILA Representative

(b)(6), (b)(7)(c) (303) 249- (b)(6), (b)(7)(c)

FLETC –Artesia Attorney

(b)(6), (b)(7)(c) (578) 7846 (b)(6), (b)(7)(c)

AFRC POCs

(b)(6), (b)(7)(c) (AFOD/AOIC) (832) 435 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (AFOD) (704) 323 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (SDDO) (520) 483 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (SDDO) (402) 981 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) (SDDO) (816) 210 (b)(6), (b)(7)(c)

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ERO ARTESIA

Supervisors	Departure	Duty
(b)(6), (b)(7)(c) (575) 746-(b)(6), (b)(7)(c) X 6217 Desk (213) 494-(b)(6), (b)(7)(c) cell	11/21//2014	SDDO/Detained
(b)(6), (b)(7)(c) (575) 746-(b)(6), (b)(7)(c) X 6219 Desk (402) (b)(6), (b)(7)(c) cell	12/10/2014	SDDO/Detained
(b)(6), (b)(7)(c) No desk phone (816) 210-(b)(6), (b)(7)(c) cell	12/23/2014	SDDO/Detained
(b)(6), (b)(7)(c) (781) 389-(b)(6), (b)(7)(c) cell	12-06-2014	SDDO/Special Projects
(b)(6), (b)(7)(c) (312) (b)(6), (b)(7)(c) cell	12/5/2014	DOS/Detention

Deportation Officer		Duty
(b)(6), (b)(7)(c)	12/05/2014	Docket 000-199
(b)(6), (b)(7)(c)	12/09/2014	Docket 200-399
(b)(6), (b)(7)(c)	12/05/2014	Docket 400-599
(b)(6), (b)(7)(c)	12/12/2014	Docket 600-799
(b)(6), (b)(7)(c)	12/05/2014	Docket 800-999
(b)(6), (b)(7)(c)	12/09/2014	Docket FOU/Travel

[illegible]	[illegible]	Duty
(b)(6), (b)(7)(c)	11/10/2014	Staff Resident Comm.
(b)(6), (b)(7)(c)	12/05/2014	Staff Resident Comm.
(b)(6), (b)(7)(c)	11/20/2014	Compliance
(b)(6), (b)(7)(c)	11/20/2014	Consulate Liaison/VTC POC
(b)(6), (b)(7)(c)	12/13/2014	APSO Liaison/Stats

ERA	[illegible]	Duty
(b)(6), (b)(7)(c)	12/09/2014	Guatemala
(b)(6), (b)(7)(c)	12/10/2014	El Salvador
(b)(6), (b)(7)(c)	12/12/2014	Honduras
(b)(6), (b)(7)(c)	12/09/2014	Pulling Court Files

DHS-011-0000001-0000861

SENSITIVE/PRIVILEGED***ATTORNEY WORK PRODUCT***[1]

Summary of Trial Attorney responsibilities for Artesia Docket

1. To the extent practicable, follow unit prosecution plan, and when a case is set for a merits hearing, submit necessary evidence, and identify yourself as AIC.

2. Review Artesia calendar and obtain docket for days you are assigned to court. Each trial attorney is responsible for submitting bond packets for cases where he/she will be appearing when the case is set for a bond hearing. The procedures for submitting bond packet are set forth in the SOPs for Submission of Bond Evidence contained in the instructions entitled "PLAnet and Filing Requirements." Other evidence will follow normal unit prosecution rules.

3. Following the am and pm hearings, obtain CF/RF decisions from court, and scan into a bundle and email with others orders (see #4 below) to the current Artesia contact list, copying Corina, Kathleen, (b)(6), (b)(7)(c) Artesia OPLA will input decisions, but include the CF/RF numbers on your FAMU ACC Report (see #6 below).

4. Immediately following the am and pm hearings, scan **hearing notices** into one bundle, and **orders/decisions including RF/CF decisions** into another bundle, and email to the current Artesia OPLA contact list, with a copy to Corina, Kathleen, (b)(6), (b)(7)(c) No PLAnet entries or scanning is required by Denver OCC, but they must be emailed immediately after the morning and afternoon dockets. Artesia OPLA will upload the hearing notices and orders into PLAnet.[2] **Upload final merits decisions only** into PLAnet and send to contact list below (copying Corina, Kathleen, (b)(6), (b)(7)(c) n a separate email.

5. Complete PLAnet notes for all MC, Bond, and merits cases. They must be completed on the same day as the hearing.

6. At the end of the court day, complete the FAMU ACC Report for Artesia Docket in Denver and email directly to the HQ Manager in charge of the Artesia docket (currently Elias Gastelo), with a copy to Corina, Kathleen (b)(6), (b)(7)(c) and the Artesia OPLA manager. These must be mailed as soon as practicable after completing your daily docket, but in no event later than 8:00 a.m. the following day. If you cannot compete the report before you leave, please email Corina, Kathleen, (b)(6), (b)(7)(c) to let us know that you will submit it the next morning so we know we can leave for the day.

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[2] Contact list will change frequently so be alert for possible changes.

November 5, 2014

7. No later than 5:00 p.m. on the next work day following the hearing, send a list of bond decisions for which DHS has reserved appeal in an email (include only information pertaining to reserved appeals in bond cases) to Corina, Kathleen, (b)(6), (b)(7)(c)

At the present time[3], please follow the following format for reporting the reservation of appeal:

For a bond appeal where DHS recommends appeal:

(b)(6), (b)(7)(c) -On10/6/14, IJ Trujillo set the bond in this case (as a family unit) at **$3,000.00**. Appeal reserved. Appeal is due 11/5/14.

If you have a strong recommendation for appeal, please include a short explanation as to why the particular decision is a good candidate for appeal.

For a bond appeal where DHS recommends against appeal[4]:

(b)(6), (b)(7)(c) —On10/6/14, IJ Trujillo set the bond in this case (as a family unit) at **$3,000.00**. Appeal reserved. Appeal is due 11/5/14.
DEN OCC does not recommend appealing this bond order. The lead respondent has many relatives in the United States with lawful status, including a USC mother. The USC mother recently filed a petition on behalf of the lead respondent. She also has at least one sibling in the United States with LPR status. The respondent was clear about where she would be residing if released from custody.

8. If an IJ grants relief, please reserve appeal unless it is clear that there are no appealable issues.[5] Remember to serve the post-order instructions. In each case, in addition to entering your standard PLAnet notes, include a clear note in PLAnet summarizing the IJ's decision, the relevant evidence, and your recommendation for or against appeal, and the basis for your recommendation. Because the aliens are detained, decisions regarding appeal should be made as expeditiously as possible. Please send an email immediately following the hearing to Corina, Kathleen, (b)(6), (b)(7)(c) with the A number, the due date for appeal, your recommendation, and include your PLAnet summary note so it can be forwarded to HQ for a decision as to whether appeal will be authorized. As a reminder, as stated in paragraph 5, above, upload the order and send a copy to the current OPLA Artesia contact list in a separate email.

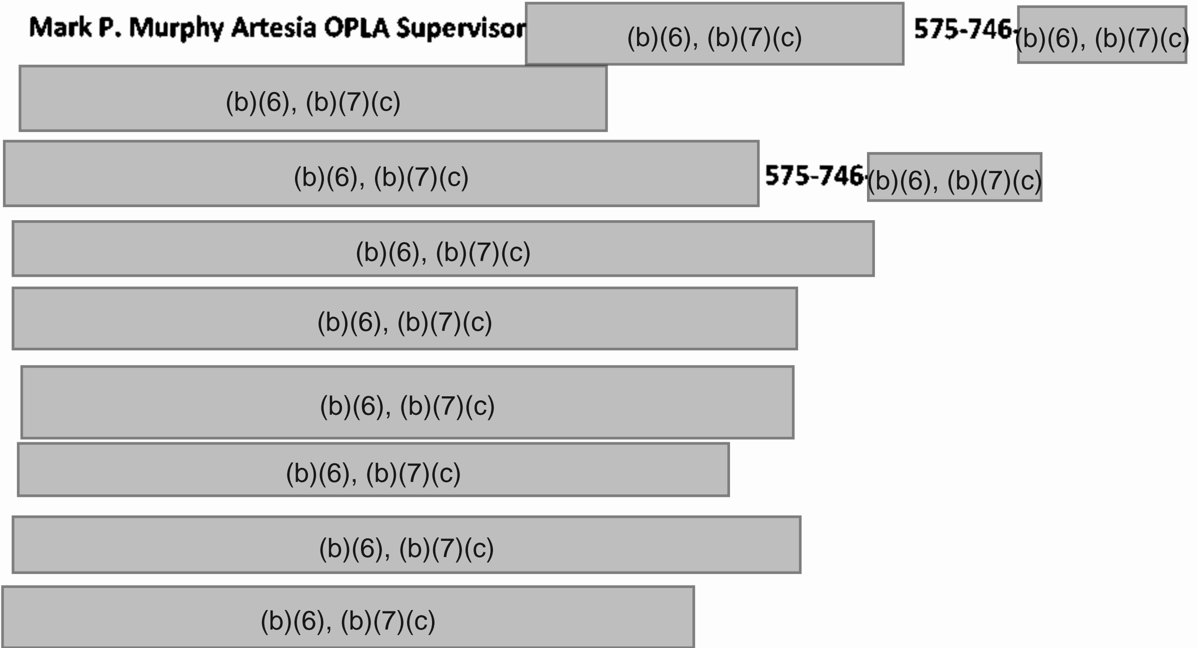
9. Reminder: as with all detained cases, DHS is not allowed to request continuances except in exceptional circumstances. Late submission of evidence by the respondent will virtually never be an exceptional circumstance. Request a short recess to review the evidence. Note that, although the IJs

[3] The HQ manager changes frequently so the format may change.
[4] For example, there may be instances in a case where we reserved appeal due to the low bond amount, but where there are humanitarian factors that would militate against appeal.
[5] DHS does not reserve appeal in every case where the alien is granted relief. However, please ensure that reasons for waiving appeal are clearly explained in PLAnet.

require the respondents to submit evidence 5 days before the hearing, we have an informal agreement with AILA that we will accept evidence 3 days before the hearing.

10. Artesia OPLA will prepare the BCRs. Note, in some instances, the "Name Check" section may be blank, or state that there is no record, and/or, the Fingerprint Check section may state "No Records on File." You may still proceed with the hearing and report to the IJ that background checks are clear. (We have set up special procedures for BCRs in Artesia to expedite the process). Remember to confirm the alien address at the time of the hearing. When an alien is granted relief and the IJ's order becomes final, Denver OCC will complete the BCR, scan it into PLAnet, email a copy to the Artesia OPLA contact list and email a copy to the USCIS Denver Attorney Request box. (For now, we are trying to avoid having to locate the USCIS office where the alien will reside so we will send to the same box where we send all BCRs).

At the present time (11/5/2014 the contact list for mailing <u>DENVER EOIR IJ orders</u> (Bond, Credible Fear Review, Asylum Grants, Denials) **<u>, hearing notices, and BCRs (copying Corina, Kathleen,</u>** (b)(6), (b)(7)(c) **<u>and</u>** (b)(6), (b)(7)(c)



Mark P. Murphy Artesia OPLA Supervisor (b)(6), (b)(7)(c) **575-746-**(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) **575-746-**(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

THE CONTACT LIST CHANGES FREQUENTLY SO BE ALERT FOR CHANGES.

SENSITIVE/PRIVILEGED***ATTORNEY WORK PRODUCT***[1]

Summary of Artesia Duty Attorney responsibilities

1. Monitor Artesia mailbox and review/file NTAs, I-863s, and Motions to COV with I-830 in accordance with filing procedures (in separate document entitled "PLAnet and Filing Procedures") until 3:00 p.m. Note that, as of November 4, 2014, we are required to notify the OCC to which the case will be transferred of the filing of the Motion for Change of Venue. We are in the process of establishing notification procedures, but for now, use the contact list that is being sent out with these procedures.

2. Handle all routine motions, requests for PD, or requests for DHS's position, and evidence submissions that come into the Artesia duty box before 3:00. (See instructions entitled "PLAnet and Filing Procedures"). Responses to motions will not typically be due the same day, but since the respondents are detained, please try to file as soon practicable. At this point, we are treating as routine: motions to reconsider or redetermine bond (unless it is a motion for subsequent bond redetermination,[2] these should be flagged for Kathleen, (b)(6), (b)(7)(c) with a request that the motion be assigned), motions to continue, and motions for telephonic appearance, as well as motions that would be considered routine under our standard practice. Many motions do not require an opposition, but note DHS's non-opposition in PLAnet. Non-routine or substantive motions (these will be rare) should be assigned to the attorney with most connection to case in accordance with our standard unit prosecution plan. (*e.g.,* AIC, last MC attorney, dependent on availability). If the attorney is unavailable, the motion should be handled by the (same day) Artesia Duty Attorney.

At the present time, Artesia OPLA has agreed to handle all requests for documents from the Afile and all inquiries/complaints regarding conditions of confinement, including those pertaining to medical conditions or changing conditions of detention. Let me know if there is an inquiry or email that does not fit into one of these categories. Also, if you respond to an email in the Artesia ICE OPLA Filings inbox, please copy the OPLA Artesia staff member covering the box (now (b)(6), (b)(7)(c) to make sure we do not duplicate efforts.

3. Put a checkmark on the email, after completing a task to indicate that the related task has been completed. (OPLA Artesia will use color-coded boxes to mark their work. For this reason, please only use the checkmark.)

4. Review any orders received on motions and input information into PLAnet. (See instructions entitled "PLAnet and Filing Procedures"). These may be given to you directly by the court or sent to the

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[2] Please check PLAnet to confirm whether a motion for an initial or subsequent bond determination because it is often unclear from the motion itself.

Artesia filings mailbox from the JBB). Email IJ orders on motions to the current Artesia OPLA contact list for hearing notices/orders as soon as practicable on the day of receipt. (They can be bundled unless they terminate or administratively close a case, in which case they should be sent in a separate email with the appropriate subject heading). Artesia OPLA will upload the orders into PLAnet.

5. Artesia OPLA will upload any evidence submission received in the box, but enter an Event Type note in PLAnet noting the receipt of evidence in the lead case.

6. Please let me know if the Denver Duty, Motions, or PD Attorney is sending emails directly to you instead of to the Artesia ICE OPLA mailbox. We are trying to have everything go to one central email box.

7. In the event an attorney handling one of the Artesia dockets becomes unavailable the attorney assigned as Artesia Duty Attorney will generally be assigned to cover the court docket.

At the present time (11/4/2014), the contact list for mailing all <u>DENVER EOIR IJ orders</u> <u>and hearing notices (copy Corina, Kathleen,</u> (b)(6), (b)(7)(c)

Mark P. Murphy Artesia OPLA Supervisor (b)(6), (b)(7)(c) **575-746**(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) **575-746**(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

THE CONTACT LIST CHANGES FREQUENTLY SO BE ALERT FOR CHANGES.

Unaccompanied Children (UC) and Family Unit (FAMU) Procedures, including procedures involving Adults with Children (AWC)

Denver Office of Chief Counsel
(Revised)

A. UC NTA FILING PROCEDURES

Under current nationwide procedures, OCC, not ERO, is to file the NTA with the Immigration Court. The files are being sent to ERO, and the docket officer will then place them with the other new NTAs for the PD attorney.[1] For now, the PD attorney or assigned File Intake Attorney will process the new NTA filings, regardless of how the files are transferred to this office (although we expect most to be sent to us through ERO). We will need to make a "packet" for filing of the NTA with the court. The NTA filing process should be completed the same day the file is received to the extent practicable.

1. Create a packet for filing the NTA with the court. The packet should include:

- Cover sheet (Attached)
- NTA, reflecting service on alien or sponsor/guardian[2] :
  (1) stamp on first page of NTA, or handwrite: "Original to EOIR" and the date the packet is prepared; and
  (2) write the applicable identifying code "UC" in red ink on the upper right hand corner, above the "Notice to Appear" header (sample attached to previous instructions), to assist EOIR in processing the NTAs. The UC
  Code is for unaccompanied children who entered the United States after May 1, 2014.[3]
- Discharge Notification Form (DNF), or other similar acceptable form.[4] If a form is not in the file, check PLAnet Documents to see if one has been saved to PLAnet and print out the form. Verify that the child's address (should be sponsor's address) appears to be correct and is located in Colorado. If a DNF is not in PLAnet, or in the file, please send Alison and Christy an email

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[1] Some of these are inadvertently being filed by ERO. If you see one, please let Don or Kathleen know so we can follow up with ERO, and please follow PLAnet/scanning/file processing instructions for these files as well to the extent practicable.

[2] At the present time, the court in the NTA should be identified as "TBD" (to be determined). However, you may see some where San Antonio (SNA) or Phoenix or another court is identified. We have been told that EOIR HQ has agreed that those identifying other courts will be accepted as well. In addition, for many of the NTAs, the signature block for personal service is not signed by the juvenile or the sponsor/guardian. If the agency has signed the certificate indicating that there has been personal service, we are filing the NTAs. Please note the lack of a signature in PLAnet because the juvenile or sponsor's failure to sign should be evaluated in asking for an *in absentia* order.

[3] This code, and the May 1, 2014 cutoff date, are for EOIR processing purposes only.

[4] We have already seen two acceptable variations in the recognized form. Permissible forms are attached to the cover email. An I-830 may also be acceptable in some instances, especially if accompanied by an I-831 notifying the alien of the change in court (this would have to be served on the alien). Please consult with Kathleen or Don if the form does not match the samples.

DHS-011-0000001-0000867

(copying Kathleen and Don) as they will have to request a DNF from HHS. Note, there are separate instructions below regarding PLAnet entries for these forms below.

2. Make a copy of entire NTA packet for the A file, and place all NTA filings in a separate folder for each day's mail run so when they are window-filed by one of the FOB attorneys, EOIR can readily identify them. At this time, the guidance is that there is no need to serve the alien. EOIR will notify the alien of the new court location and hearing date.

3. PLAnet entries, scanning, file processing:

- Scan and save DNF or equivalent (no requirement to scan NTA or cover sheet), if not already in PLAnet, and appropriately name the document when saving to PLAnet. Document Type is "Immigration Court." In addition, make an Event Type note: "UAC-DNF-Req. Rec." Make this entry even if an I-830 is used as a substitute, but in the notes state that an I-830 was filed with the NTA.
- Scan and save any expedited hearing request, if not already in PLAnet, and make appropriate Event Type note, using drop-down "UAC-EH Req." The "Action" section will be left blank. This entry is only to be used if there is a request from the alien through ORR for an expedited hearing and does **not** include requests made on the second page of the NTA.
- Make an Event Type note using drop down "NTA review" and identify appropriate Action (*e.g.,* "NTA-Legally Sufficient").
- Make Event Type note using "UAC-NTA-Filed," identifying date as date NTA packet is completed and placed in EOIR filing folder. (We recognize that in most instances, the packet will be window-filed the next day, but we will use the date the packet is completed). The "Action" section will be left blank as there is currently no appropriate drop-down selection.
  Add the hearing location in the UAC-NTA-Filed Event Type note, and in the "Case Information" section (base and hearing location), if necessary.
- In the "Case Properties" section, (1) verify that the "Operation" box contains the designation "UAC," and make the entry if it does not[5]; and (2) make sure the "Juvenile" box is checked.
- In the "Case Information" section, identify the issuing component, which will usually be "CBP OPB."
- In the "Alien Details" section, please ensure that date of entry has been populated and add that information if it is missing. At this point, we are not correcting information that has been populated by another component.
- You will have at least two Event Types for all cases: "NTA Review" and "UAC-NTA-Filed." In many instances, you will have a third Event Type: "UAC-DNF-Req. Rec. And, in some instances, you will have a fourth Event Type: "UAC-EH Req."
- For now, we are not completing a PD review for UC cases, but there will be one for "Family Unit" cases, discussed below.
- ****NOTE, even when we are not filing the NTA (*e.g.,* COV from another AOR) make sure that the "Juvenile" box is checked for **all** juveniles, and that the "UAC" designation is in the Operation box for **all** UCs. (HQ is tracking all juvenile and UC cases, even those that do not involve a recent entrant UC). The juvenile box may be unchecked when the alien is no longer a juvenile; however, the UAC designation will remain in the Operation box.

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[5] This section may already be populated with a notation "UAC-HHS Cases." This annotation was created in order to track all cases that HHS designated to OPLA as UAC cases. We have not been instructed to use this notation, but do not amend the notation if it has been entered by another office.

- NFTS files to LI 1991 – UC/AWC and place file in designated area in file room.

4. Notice to ERO

Because of the high volume of cases at the border, cases are not uniformly being entered into EARM. For all NTA filings (including those that we received from ERO), please make a copy of the front page of the NTA and place it in the box on the front bookcase labelled "ERO/UAC/New NTA." ERO will pick up the copies and make the EARM entries.

5. Rejected Filings

We have set up a box in the hallway for filings rejected by EOIR. Please put any rejected filings that come to your attention in the box. We are still evaluating what action should be taken in these cases.

6. Check OPLA DNF Mailbox daily. Identify those that are relevant to our AOR by the subject line (should contain A number and base city of AOR where child was released to the sponsor). Request the file, if necessary, and note request in PLAnet as well as the fact that the request was received and reviewed. Please request the file to be sent to your attention and track whether the file has been received. When file is received, review and file NTA and update PLAnet in accordance with current instructions. When complete, mark the email (which will remain in the OPLA DNF mailbox) as "complete" and move it into the archived folder entitled "Complete." Because there will be some delay between the time we request the file, and complete the NTA filing, we need a way to easily track those that have been requested because they will remain in the mailbox. To avoid having to review the entire list every day, please ensure that you order the file for the day you serve as PD attorney, and annotate PLAnet that the request has been received and reviewed. We will assume that everything that predates the date you serve as PD attorney has been taken care of, or is process. We do not expect there to be very many of these cases, and we have been advised that we will receive additional guidance from HQ in the future.

B. RECENT ENTRANT FAMILY UNIT PROCEDURES.

1. At the present time, Family unit NTAs are being filed by ERO, unless the family unit comprises unaccompanied minors (*e.g,* two siblings). Where the family unit comprises unaccompanied minors, OCC will file the NTA, and the procedures will be the same as those in other UC cases.

- EOIR has requested that the front page of the NTAs for family members be marked in red in the upper right hand corner with the appropriate identifying code (sample attached to cover email)[6]:

  AWC/D – Adult(s) with children who entered the United States after May 1, 2014, and are being detained by DHS.
  AWC/ATD – Adults(s) with children who entered the United States after May 1, 2014—Family Units who are released from custody and subject to a form of supervision or reporting.[7]

[6] EOIR has also created a code - RBC/D – for individual adult recent border crossers who entered the United States after May 1, 2014, and are being detained by DHS. This code will need to be added to any NTA in this category.
[7] At this time, ATD refers to cases that are on ERO's ATD docket only. This information is found in the "Case Overview" section of the EID information in PLAnet, or in EARM.

- We will request ERO to add this notation when it files NTAs. However, in the event that the notation is not on the NTA, we will need to develop procedures to alert the court that the NTA pertains to one of these groups.

2. For all family units, use the Connections Tab in PLAnet, and ensure that date of entry in "Alien Details" field is correctly completed. (General instructions for Connections were attached to previous instructions).

- The Connections need to be created initially in the lead file. The "Connections" PLAnet entries for family units should be as follows:

  Adult(s) with children (AWC): *One* Parent/guardian should always be lead and case to which the other family members' (including other parent) cases are connected. Under "Role," identify children as "child" and spouse as "Spouse." Spouse includes any partnership relationship. **Sibling(s) or other family units.** Create Connections in whatever case is identified as lead. For Connections entry for other family members, under "Role," use "Family."

3. Cases originating from Artesia, Karnes, or Berks (or family facilities to be designated in the future):

- For each family member, create an Event Type note for "Case Prep IJ" and Action: PD review.

  For all family members where the alien entered after October 1, 2013[8]: 1) insert the term "FAMU" In "Operation" box[9]; 2) ensure hearing and base locations are identified as "Denver" or "SLC"; 2) identify issuing component in "Case Information" section; and 3) ensure that "Juvenile" box is checked where applicable; and 4) email DENREC to update NFTS to reflect lead/rider.

  In lead case only, 1) complete PD review, using standard PD note as appropriate; and 2) insert phrase "FAMU Artesia," "FAMU Karnes," or "FAMU Berks" into event note.

  In both lead and rider files, include a note flagging that there are lead and rider files (*e.g.,* for lead file: "705 is lead, 704 is rider"; and for rider file: "See, lead, 705").

4. Cases not originating from Artesia, Karnes, or Berks (or family facilities designated in the future):

- For each family member, create an Event Type note for "Case Prep IJ" and Action: PD review.

  For all family members: 1) insert the term "FAMU" In "Operation" box; 2) ensure hearing and base locations are identified as "Denver" or "SLC"; 2) identify issuing component in "Case Information" section; and 3) ensure that "Juvenile" box is checked where applicable.

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[8] The October 1, 2013 date is the Department's cutoff date for FAMU cases and is distinct from EOIR's May 1, 2014 cutoff date for its priority dockets.

[9] Do not delete any preexisting reference to "UAC," if there is one. Instead, also insert the term "FAMU" in the Operations Box, separated by one space from the term "UAC."

In lead case only, 1) complete PD review, using standard PD note as appropriate; and 2) insert phrase "FAMU 2014" into event note (for those who may enter in 2015, we will use the phrase "FAMU 2015").

In both lead and rider files, include a note flagging that there are lead and rider files (*e.g.,* for lead file: "705 is lead, 704 is rider"; and for rider file: "See, lead, 705").

5. **NFTS files to LI-1991 – UC/AWC**, and file in designated area in file room.

C. CHANGE OF VENUE ORDERS for both UCs and Family Units

1. **If one has not already been created, create Event Type note for Motion**, and Action: MTN to Change Venue, and in the Order box, select "Granted." (Note, although in many cases there will not actually have been a motion for COV filed, this is the only way a change of venue can be input into PLAnet).

2. **Review "Case Information" to verify that Base and Hearing locations are identified as Denver or SLC**, and change if necessary, and add issuing component information if available.

3. **If a family unit is involved, use instructions for family member cases above in Part B to extent applicable, including those pertaining to completion of PD review.**

4. **For UCs, verify that "Operation" box contains the annotation "UAC," and that the "juvenile" box is checked.**

5. **Route Order to Marshall for scanning**, noting that order should be routed to file after scanning.

6. **Prepare, file, and serve motion to advance and consolidate for FAMU cases or motion to place on UC docket for UC cases. (Template previously provided in email from Kathleen dated 11/4/2014). Properly complete PLAnet entries.**

7. **NFTS files to LI-1991 -UC/AWC**, and return file to designated filing area.

D. CREDIBLE FEAR REVIEWS

1. **Create Event Type for "Credible Fear Reviews."** There are two Order options for CF reviews: "Removed-NCF" and "Credible Fear Found." Use these Order options for CF/RF reviews before the IJ. We must be able to differentiate expedited removal orders, which result from an IJ decision upholding the negative credible fear finding of the Asylum Office, from removal orders we receive in our master and merits hearings.

2. **Important Note**: EOIR will continue to identify the hearings as Master Calendar hearings (or maybe even merits hearings). Ignore the EOIR entry and leave the hearing Event populated by EOIR blank. Make all entries regarding CF reviews in the Event Type "Credible Fear Reviews." Otherwise, there is a risk of double-counting.

Please let Don or Kathleen know immediately if you identify any problems processing these cases, or if you have any questions.

DHS-011-0000001-0000872

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 10:49 AM
To: (b)(6), (b)(7)c
Subject: RE: Expedited Removal inquiry

Follow Up Flag: Follow up
Flag Status: Completed

(b)(5)

(b)(6), (b)(7)c
Deputy Chief Counsel
ICE/Denver
303-784(b)(6), (b)(7)c

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From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 10:14 AM
To: (b)(6), (b)(7)c
Subject: RE: Expedited Removal inquiry

This is the only guidance I am aware of. It outlines when ERO should use ER for aliens paroled for prosecution, stating that it should be used for arriving aliens who are paroled in for the purpose of prosecution. Is there more recent guidance?

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784(b)(6), (b)(7)c
Fax: (303) 784

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From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 9:46 AM
To: (b)(6), (b)(7)c
Subject: FW: Expedited Removal inquiry

That's not what I understood ...

(b)(6), (b)(7)c
Deputy Chief Counsel
ICE/Denver
303-784-(b)(6), (b)(7)c

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From: DEN Duty Attorney
Sent: Thursday, October 09, 2014 9:44 AM
To: (b)(6), (b)(7)c
Cc: (b)(6), (b)(7)c
Subject: RE: Expedited Removal inquiry

(b)(6), (b)(7)c
I am unaware of this change but let me check just to be sure.
Thanks,

- Wayne

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111-6432
Ph: (303) 784-(b)(6), (b)(7)c
Fax: (303) 78

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From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 9:35 AM
To: DEN Duty Attorney
Cc (b)(6), (b)(7)c
Subject: Expedited Removal inquiry

Good Morning,

I was just informed OCC was informed yesterday that Expedited Removals can now be generated from this AOR, for cases Paroled In for the limited purpose of prosecution.

I get several cases a year releasing from Federal Prison that may fall into this category and would probably be removed quicker if this is the case.

Is this correct? Can I now process these cases as Expedited Removals?

Thank you.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 10:14 AM
To: (b)(6), (b)(7)c
Subject: RE: Expedited Removal inquiry
Attachments: expedited_removal_authority 2011 guidance.pdf

This is the only guidance I am aware of. It outlines when ERO should use ER for aliens paroled for prosecution, stating that it should be used for arriving aliens who are paroled in for the purpose of prosecution. Is there more recent guidance?

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
Fax: (303) 784

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From (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 9:46 AM
To: (b)(6), (b)(7)c
Subject: FW: Expedited Removal inquiry

That's not what I understood ...

(b)(6), (b)(7)c
Deputy Chief Counsel
ICE/Denver
303-784 (b)(6), (b)(7)c

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From: DEN Duty Attorney
Sent: Thursday, October 09, 2014 9:44 AM
To: (b)(6), (b)(7)c
Cc:
Subject: RE: Expedited Removal inquiry

(b)(6), (b)(7)c
I am unaware of this change but let me check just to be sure.
Thanks,

- Wayne

(b)(6), (b)(7)c
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111-6432
Ph: (303) 784 (b)(6), (b)(7)(c)
Fax: (303) 784 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)c
Sent: Thursday, October 09, 2014 9:35 AM
To: DEN Duty Attorney
Cc: (b)(6), (b)(7)c
Subject: Expedited Removal inquiry

Good Morning,

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I get several cases a year releasing from Federal Prison that may fall into this category and would probably be removed quicker if this is the case.

Is this correct? Can I now process these cases as Expedited Removals?

Thank you.

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

APR 5 2011

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

FROM: Gary Mead
Executive Associate Director

SUBJECT: Strategic Use of Expedited Removal Authority

Expedited removal (ER), authorized by section 235(b) of the Immigration and Nationality Act (INA), is a valuable enforcement tool that enhances the ability of immigration officers to make the best use of limited agency resources. Expedited removal may be used for two categories of aliens, as follows: (1) "arriving aliens," as defined by 8 C.F.R. § 1.1(q), which includes aliens paroled into the United States, and (2) "certain other aliens" designated by the Department of Homeland Security (DHS) who are present without admission or parole and are unable to establish continuous physical presence in the United States for the two years immediately preceding the determination of inadmissibility. To date, DHS has extended that designation to aliens who are present in the United States without having been admitted or paroled and are *encountered within 100 air miles of any international land border and cannot establish that they were present in the United States for more than 14 days prior to the encounter*. See 69 Fed. Reg. 48877 (Aug. 11, 2004) (emphasis added).

Consistent with the agency's enforcement priorities, Field Office Directors and their senior staff are encouraged to identify ways to use ER within their respective areas of responsibility. ERO personnel are reminded that they should not use ER on the following classes of aliens:

- Unaccompanied minors;
- Asylees, refugees, and lawful permanent residents;
- Crewmen or stowaways;
- Members of the class settlement in American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991);
- Aliens who may be eligible for cancellation of removal under section 240A of the Act; and
- Natives or citizens of Cuba.

Furthermore, ERO officers must refer aliens who assert to have a credible fear for a credible fear interview. This is true even if the alien initially denied a credible fear and asserts it later in the process.

ERO officers should screen incarcerated aliens to determine if ER is appropriate. The determination should include whether the incarcerated alien is an "arriving alien" or an alien present without admission or parole who was encountered by an immigration officer within 100 miles of an international land border within 14 days of the date they entered.

Finally, ERO officers should use ER for all arriving aliens paroled into the United States for prosecution, regardless of how long they have been present in the United States. However, ER should be used for an arriving alien paroled for reasons other than prosecution only if the parole has expired or been terminated and the alien has been continuously present in the United States for less than one year.

Questions concerning the scope of expedited removal authority may be directed to the local Office of the Chief Counsel.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Tuesday, September 30, 2014 8:50 AM
To: (b)(6), (b)(7)c
Subject: RE: Artesia issues

(b)(6), (b)(7)c

That should be "your" office. Thanks for catching that. I need to slow down.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
Fax: (303) 784

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From: (b)(6), (b)(7)c
Sent: Tuesday, September 30, 2014 8:48 AM
To: (b)(6), (b)(7)c
Subject: RE: Artesia issues

(b)(6), (b)(7)c See below. Can you confirm the email below. Your office or **ours** (our little makeshift hut in the middle of nowehere).

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)c (office)
(520) 39 (BB)
(b)(6), (b)(7)c dhs.gov

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From: (b)(6), (b)(7)c
Sent: Tuesday, September 30, 2014 8:27 AM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E
Subject: RE: Artesia issues

(b)(6), (b)(7)c

This list is great, and let us know what time would work for you. I am working on the BCR/print issue as well. I think the process that had been in place had a couple of gaps. I will try to have more information before we speak.

In addition to the issue I mentioned yesterday (about what documents ERO includes with the NTA and I-863 packet), the other issue I would like to discuss is whether we could transfer the duty of uploading the credible fear/reasonable fear decisions to our office since our office does not appear at the hearings and is not involved in that process. Your office is already inputting the notes into PLAnet for these decisions. Although we do not appear at the hearings, we should still be able to pick up the decisions from the court and bundle them and send them in an email in the same manner as we send the IJ decisions on bond and the hearing notices.

Thanks,

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
Fax: (303) 784

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From: (b)(6), (b)(7)c
Sent: Tuesday, September 30, 2014 7:58 AM
To: (b)(6), (b)(7)c

Cc: Almeida, Corina E
Subject: Artesia issues

Good morning (b)(6), (b)(7)c I want to discuss a few issues with you sometime today or tomorrow (I meet with AILA reps this afternoon. So, it may be better to table our discussion until tomorrow). The issues are as follows:

(b)(5)

OK. I have to go to the morning meeting. I'll talk to you soon.

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel - Arizona
3250 N. Pinal Parkway Avenue
Florence, Arizona 85132
(520) 868 (b)(6), (b)(7)c (office)
(520) 399 (BB)
(b)(6), (b)(7)c dhs.gov

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(b)(6), (b)(7)c

From: Almeida, Corina E
Sent: Thursday, September 18, 2014 9:12 AM
To: (b)(6), (b)(7)c
Subject: FW: Letter to WH
Attachments: WH letter re Artesia.pdf

FYI.

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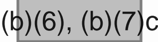
From: Almeida, Corina E
Sent: Thursday, September 18, 2014 9:03 AM
To: (b)(6), (b)(7)c
Cc:
Subject: Letter to WH


(b)(6), (b)(7)c

Here's the letter. Minutes ago, I spoke with Ken Padilla, and he informed me that HQ (FLO) has already received a copy of the letter.

~Corina

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AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 16, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

As the national bar association of more than 13,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) urges you to close the Artesia, New Mexico family detention center immediately and reverse the rapid deportation and detention strategy your Administration is applying to hundreds of children and their mothers who are seeking asylum and protection in the United States.

In response to the humanitarian crisis in Central America that has compelled tens of thousands of mothers and children to flee their home countries, the Department of Homeland Security (DHS) opened a hastily conceived facility in Artesia to detain mothers and children and rush them through the deportation process. Since July, AILA members have responded to the urgent need for– indeed the complete lack of– legal representation at Artesia by travelling at their own expense to this remote facility. Even working 18-20 hours a day, seven days a week, volunteers have barely been able to meet the demand for legal help, serving as many detainees as humanly possible through the AILA Pro Bono Project (Project).

Based on hundreds of interviews with these detained families that our expert lawyers have conducted, AILA has concluded that Artesia is a due process failure and a humanitarian disaster that cannot be fixed and must be closed immediately. Attorneys with long histories of representing clients at remote detention facilities have described Artesia as not just the worst situation they have ever encountered, but something far worse than anything they could have imagined.

Moreover, we are deeply concerned about DHS's continued expansion of family detention– including a new facility in Karnes, Texas with at least 500 beds and a planned 2,400-bed facility in Dilley, Texas. Within months DHS will be detaining nearly 4,000 mothers and children, a forty-fold increase in the use of detention on immigrant families. If these facilities implement the same rapid deportation model as is used in Artesia, hundreds if not thousands of mothers and children who have suffered domestic violence, sexual assault, gang violence and other atrocities protected under U.S. asylum and humanitarian law will be unlawfully repatriated to their home countries. We urge you to stop this from happening.

AILA National Office
1331 G Street NW, (b)(6), (b)(7)(c) Washington, DC 20005
Phone: 202 (b)(6), (b)(7)(c) Fax: 202 (b)(6), (b)(7)(c) www.aila.org

DHS-011-0000001-0000885
AILA InfoNet Doc. No. 14091648. (Posted 9/16/14)

Stories abound of injustice at Artesia.

- An 11-year-old U.S. citizen boy was detained at Artesia for 35 days.

- A woman who had been beaten so severely by her partner in Guatemala that she suffered a miscarriage, was deported early one morning without her attorney's knowledge, before she could even finish drafting her declaration to support her case.

- A family of Seventh Day Adventists who had been shot by the gangs for refusing to stop evangelizing was arrested by Customs and Border Protection. The mother and child were sent to Artesia and were initially found not to have a credible fear of asylum. After they received legal counsel and requested reconsideration, an immigration judge rejected the asylum officer's negative finding and found her to have credible fear, allowing her to go forward with her asylum claim. She and the child were granted bond. The father, who was the leader of the church group, had suffered gunshot wounds and was detained in a separate facility. He was also found not to have a credible fear. DHS put him on a plane for deportation while he was still recovering from the wounds. With the intervention of his wife and child's lawyers, he was pulled off the plane and is waiting in detention for reconsideration.

While individuals within the agency, both on the ground and at headquarters, have made valiant efforts to try to resolve the many problems that have interfered with effective representation, the remoteness of the center and the lack of adequate and appropriate resources have conspired to make due process meaningless.

The Administration has publicly stated that detention and rapid deportation are intentionally designed to deter people from coming to the United States. Such aggressive deterrence policies are resulting in the wrongful deportation of legitimate asylum seekers and constitute a violation of U.S. law and U.S. obligations under international law.

Based on our Project attorneys' experience screening and representing mothers and children detained at Artesia, it is clear that most of them would likely qualify as refugees under U.S. law. The Project has opened nearly 300 cases at Artesia, representing more than 400 individual mothers and children. In early September, the first two Project cases to get all the way to the final hearing stage were granted asylum by an immigration judge. Both women experienced severe domestic violence.

But many legitimate asylum claims will never have a chance to be heard. Artesia detainees are subjected to "expedited removal" – the fastest removal procedure at our government's disposal,

with little chance to raise an asylum claim. The detention and rapid deportation strategy being executed at Artesia is even more draconian. The rate at which Artesia asylum officers find that detainees have a "credible fear" of persecution or torture – the first step in mounting an asylum claim in expedited removal – is much lower than the national average. From Artesia's opening on June 27 through early August, the overall grant rate for credible fear determinations at Artesia was 37.8 percent whereas the national grant rate during the month of July was 62.7 percent.

Every day, AILA member attorneys see that the pressure to rush women and children through the deportation process is resulting in the denial of many legitimate asylum claims – both by asylum officers and by judges – without legal foundation. Officers interview families for their credible fear claims less than three days after their arrival, meaning most will receive no legal information or advice from legal counsel before presenting their cases. The speed with which officers are making credible fear decisions is also absurdly fast: 6.4 days on average.

Artesia mothers and children are not even given a fair chance to post bond. Detention officers and immigration judges are misapplying well-established criteria for release: public safety risk and flight risk. Women and children who pose no risk to anyone, who have family members to support them in the U.S., and even who have already been found to be bona fide asylum seekers remain detained at Artesia. In contravention of U.S. and international law, DHS has an across-the-board policy of denying bond or requiring an extremely high bond for these families. DHS attorneys file a pro-forma motion opposing bond in every case that asserts these women and their children constitute national security threats. The average bond amount set by immigration judges nationally is $5,200;[1] at Artesia, bond is usually denied, and when it is granted, it is far above the national average – often prohibitively expensive between $20,000 and $30,000. The detention and bond scheme at Artesia is unprecedented and nothing short of unlawful.

The continued detention of these families is mentally and physically damaging. Detention scars children's physical and psychological development, exacerbates trauma experienced by those fleeing violence and persecution, and damages the family structure by stripping parents of their decision-making role, causing confusion and adding to the already extreme stresses of detention. AILA member volunteers see the effects that detention is having on these families. They describe children who are dehydrated, listless, cold and losing weight. Mothers also report degrading treatment by some of the guards – including being called "piggies" at mealtimes. One

[1] "The bails of the 55,546 individuals released on bond in 2011 averaged $5,162, according to statistics from the federal agency." http://www.chron.com/news/houston-texas/article/Huge-rise-seen-in-ICE-cases-released-on-bail-3432655.php

AILA National Office
1331 G Street NW, Suite (b)(6), (b)(7)(c) Washington, DC 20005
Phone: 202.(b)(6), (b)(7)(c) Fax: 202.783.(b)(6), (b)(7)(c) www.aila.org

woman suffering from diarrhea had no choice but to defecate on herself in front of her son because the guard ignored her pleas to be allowed to go to the bathroom.

Every individual facing deportation, regardless of where they came from, deserves basic fairness and humane treatment. We urge you to close Artesia and to abandon your Administration's strategy of detaining and rapidly deporting families.

We would welcome the opportunity to meet with you and your representatives to discuss these matters. Please contact Gregory Chen, Director of Advocacy, gchen@aila.org, 202-507-7615.

Sincerely,

Leslie Holman
President

Crystal Williams
Executive Director

Laura Lichter
Artesia Pro Bono Project
Team Leader
Member, AILA Board of Governors

Stephen Manning
Artesia Pro Bono Project
Team Leader
Member, AILA Board of Governors

CC: Cecilia Munoz, Director, White House Domestic Policy Council
Jeh Johnson, Secretary, Department of Homeland Security
Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security
Eric Holder, Attorney General
Juan Osuna, Director, Executive Office for Immigration Review

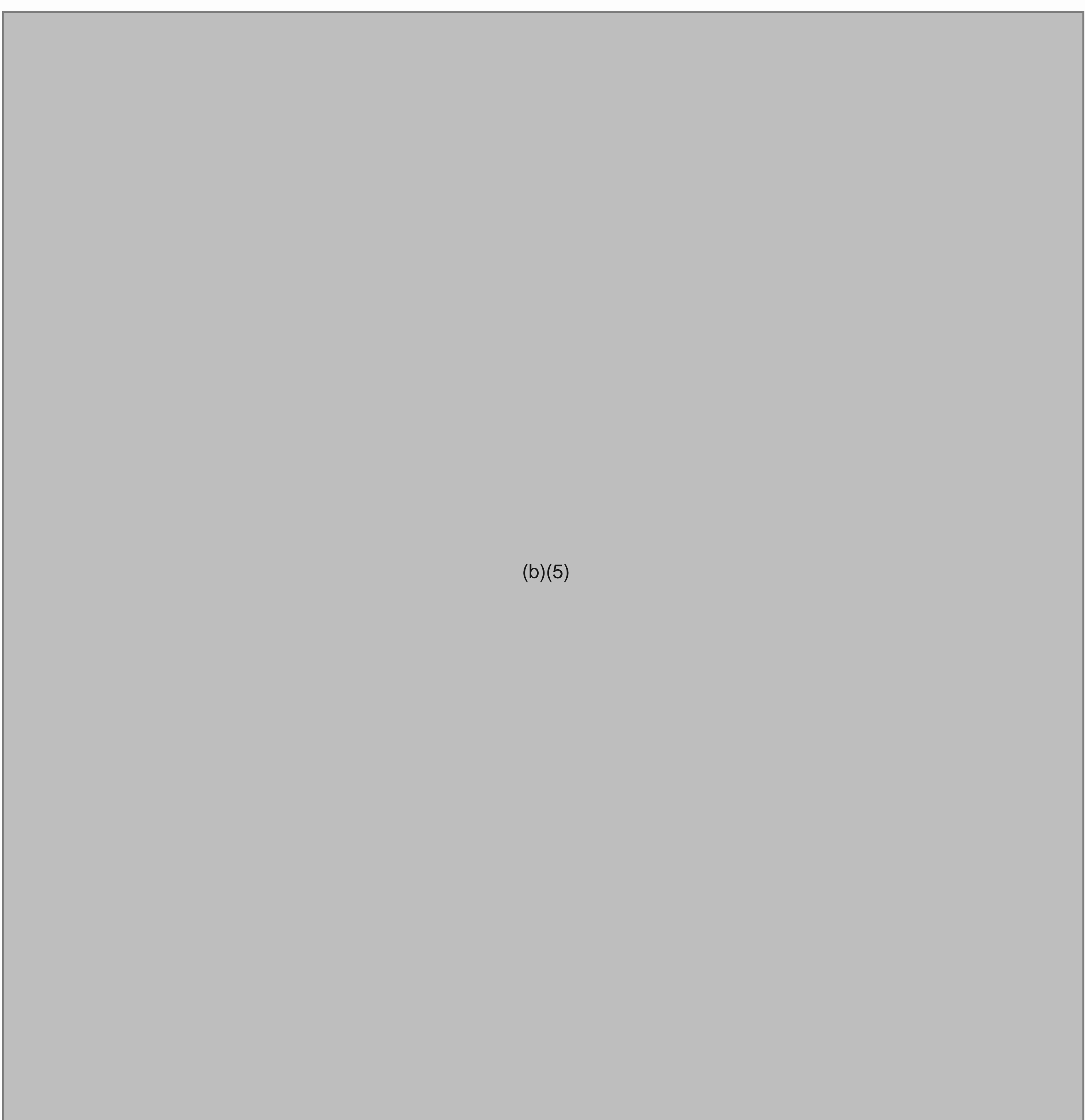
AILA National Office
1331 G Street NW (b)(6), (b)(7)(c) Washington, DC 20005
Phone: 202-507 (b)(6), (b)(7)(c) Fax: 202-783 (b)(6), (b)(7)(c) www.aila.org

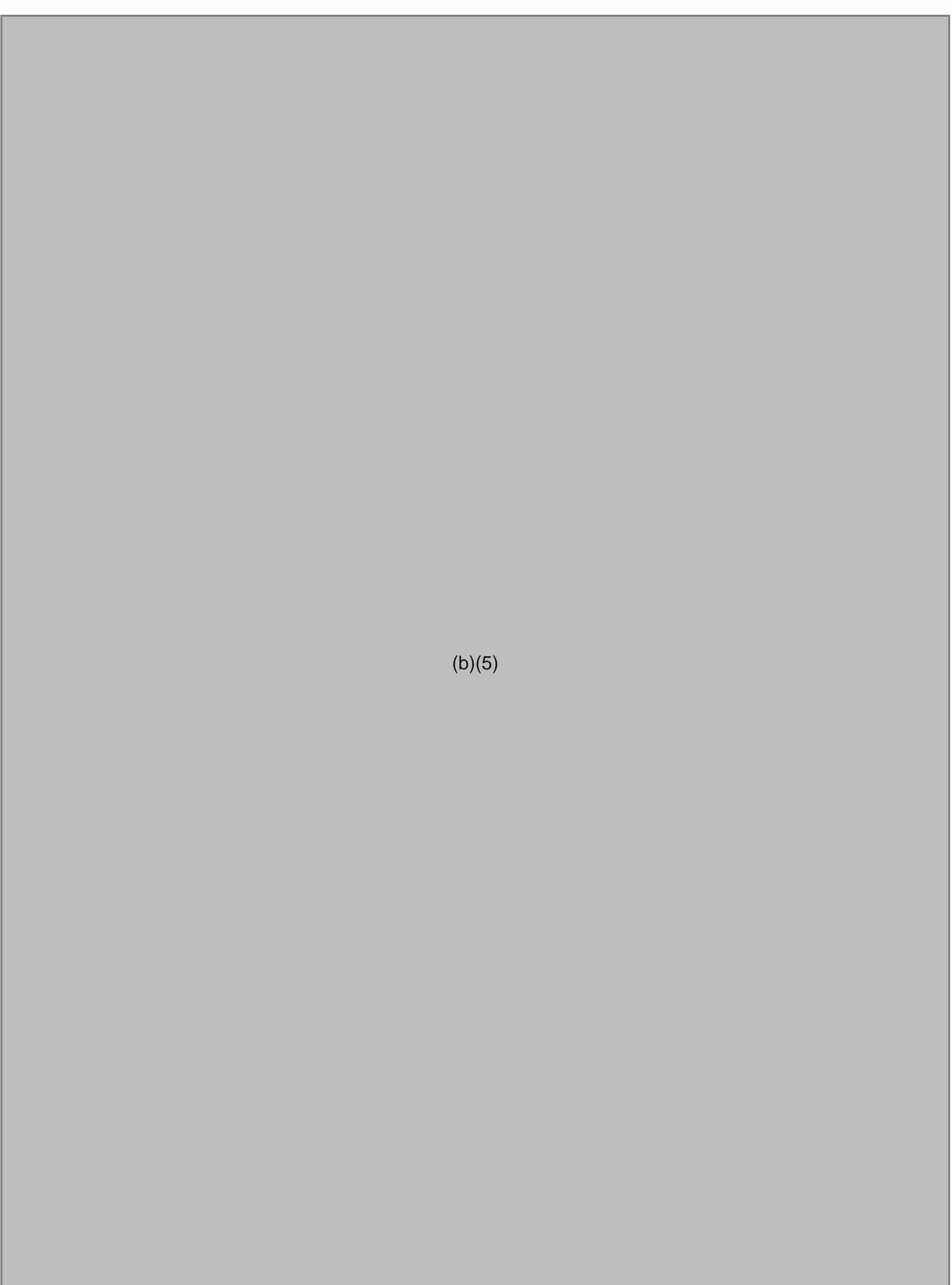
DHS-011-0000001-0000888

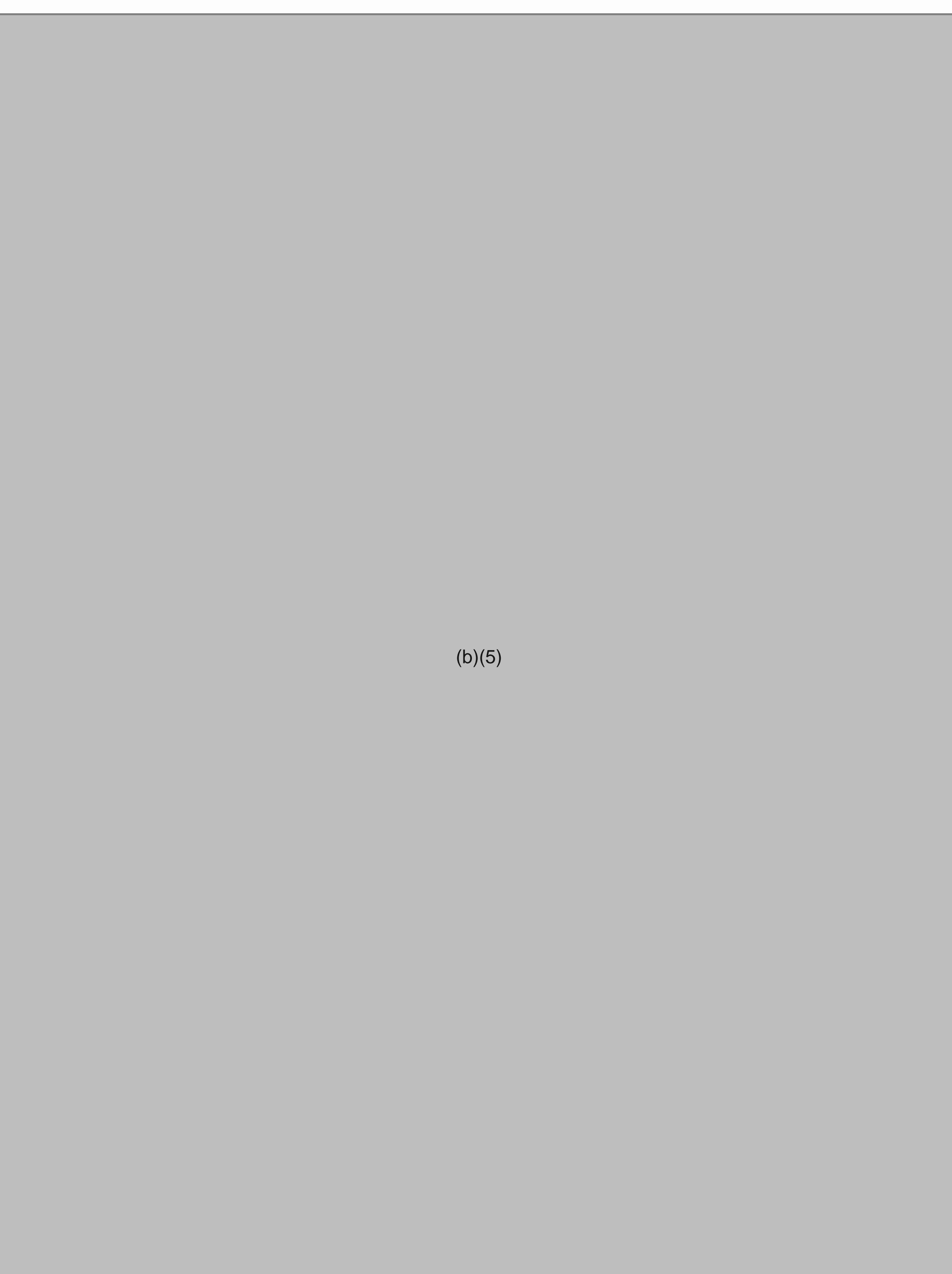
Unaccompanied Children (UC) and Family Unit (FAMU) Procedures, including procedures involving Adults with Children (AWC)

Denver Office of Chief Counsel

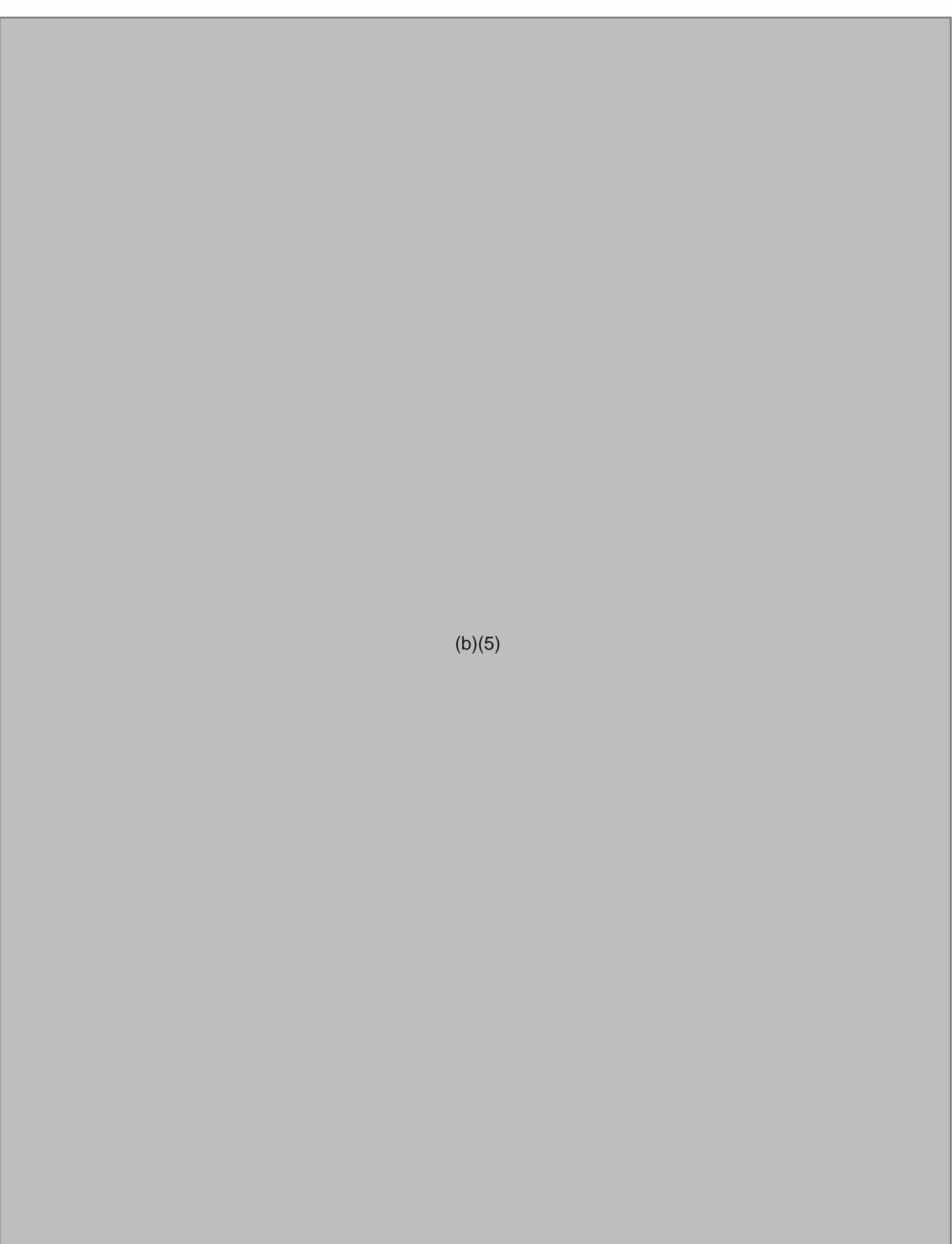
August 27, 2014 (Revised)



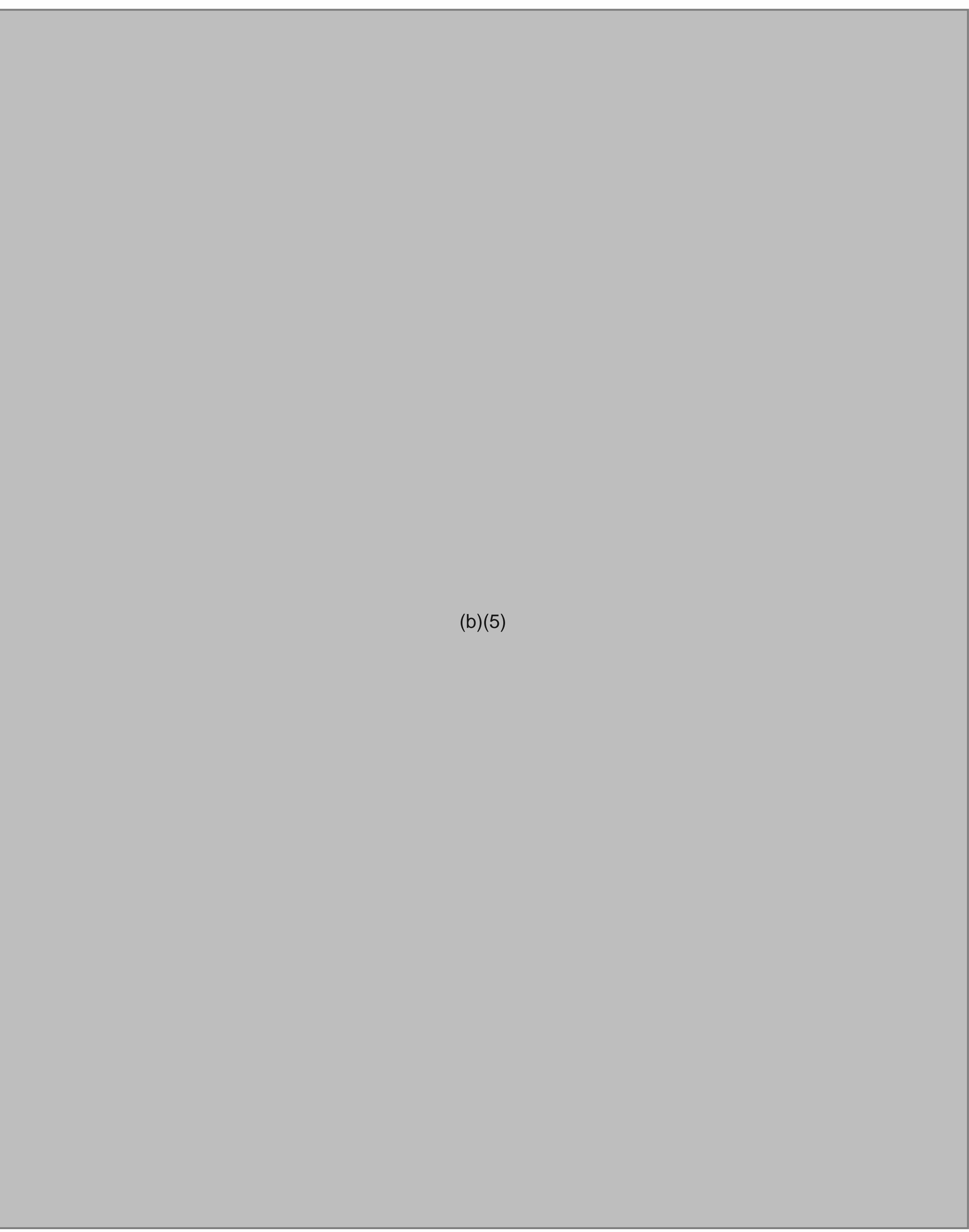

(b)(5)


(b)(5)

DHS-011-0000001-0000891



DHS-011-0000001-0050892



DHS-011-0000001-0060893

(b)(6), (b)(7)c

From: Almeida, Corina E
Sent: Friday, July 25, 2014 9:26 AM
To: (b)(6), (b)(7)(c)
Cc: (b)(6), (b)(7)c
Subject: FW: UC and FAMU processing
Attachments: Annotation of NTA for UC (sample).docx; OCC DEN UAC procedures 21 Jul 2014 rev (cor)(1).docx

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

(b)(6), (b)(7)(c)

Below please find our advice/recommendations to ERO. We anticipate DFOD Lynch will disseminate relevant information about UCs and FAMUs to his staff.

~Corina

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From: (b)(6), (b)(7)c
Sent: Thursday, July 24, 2014 7:27 PM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E; (b)(6), (b)(7)c
Subject: UC and FAMU processing

(b)(6), (b)(7)c

As promised, I wanted to pass onto you some of the information we have received regarding the UC cases, especially as it relates to how they will be processed by the courts and our office.

Our office has been directed to file the NTAs for UCs, and have a set of procedures in place for processing them. I have attached a copy for your information, but would appreciate it if you would not distribute it further at this time. We would appreciate your informing your officers to forward any files for UCs with unfiled NTAs to our office.

It is our understanding that ERO will continue to file the NTAs for family units (FAMUs) or for adult recent entrants. We understand through our chain of command that EOIR has set up a process to flag these recent entrant cases and has

requested all DHS components to place the following annotations in red ink on the very upper right hand corner of the front page of the NTA when filing the NTA. (I have attached the sample we were given for the UCs). The "red ink" markings are as follows:

UC –Unaccompanied child who entered the United States after May 1, 2014.

AWC/D – Adult(s) with children who entered the United States after May 1, 2014 and are being detained by DHS—in other words Family Units that are being detained.

AWC/ATD – Adult(s) with children who entered the United States after May 1, 2014—Family Units who are released from custody and subject to a form of supervision or reporting.

RBC/D – Individual adult recent border crossers who entered the United States after May 1, 2014 and are being detained by DHS.

This coding is designed to expedite EOIR's processing of these cases so I wanted to pass on this information for your consideration as you may wish to pass on EOIR's request to your officers. As I understand the current process, your officers are then forwarding all of these files to our office and placing them on the "New NTA" shelf so we can perform our prosecutorial discretion reviews. It is also my understanding that they are also placing all change of venue cases on the same shelf.

OCC has been sent several Credible Fear (CF) files in error. These are cases where the alien was released on OR before the CF interview was held. The Houston Asylum Office has asked us to return these files to Denver ERO in order to make sure that the Asylum Office has been notified of the need for a CF interview. We have already sent these files to the appropriate docket officer so the officers will have the files for "call-ups" or if the alien appears with questions. We do not know whether the Houston Asylum office has been notified in these cases, or whether your office is the appropriate office to do so, but we are passing on the information we received. The A-numbers for the cases we received are: (b)(6), (b)(7)c Unless you wish us to proceed otherwise, we will continue to forward any of these files to the assigned docket officer.

Let Corina (b)(6), (b)(7)c or me know if you have any questions.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784-(b)(6), (b)(7)c
Fax: (303) 784-

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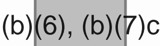
(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, July 24, 2014 7:27 PM
To: (b)(6), (b)(7)c
Cc: Almeida, Corina E; (b)(6), (b)(7)c
Subject: UC and FAMU processing
Attachments: Annotation of NTA for UC (sample).docx; OCC DEN UAC procedures 21 Jul 2014 rev (cor)(1).docx


(b)(6), (b)(7)c

As promised, I wanted to pass onto you some of the information we have received regarding the UC cases, especially as it relates to how they will be processed by the courts and our office.

Our office has been directed to file the NTAs for UCs, and have a set of procedures in place for processing them. I have attached a copy for your information, but would appreciate it if you would not distribute it further at this time. We would appreciate your informing your officers to forward any files for UCs with unfiled NTAs to our office.

It is our understanding that ERO will continue to file the NTAs for family units (FAMUs) or for adult recent entrants. We understand through our chain of command that EOIR has set up a process to flag these recent entrant cases and has requested all DHS components to place the following annotations in red ink on the very upper right hand corner of the front page of the NTA when filing the NTA. (I have attached the sample we were given for the UCs). The "red ink" markings are as follows:

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Let Corin (b)(6), (b)(7)c or me know if you have any questions.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
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12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784 (b)(6), (b)(7)c
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Annotation of NTA --SAMPLE:

U.S. Department of Homeland Security

uc
Notice to Appear

In removal Proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: FIN #:

DOB: File No:

Event No:

In the Matter of:

Respondent: ____________________ currently residing at

(Number, Street, City and ZIP code)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States, who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

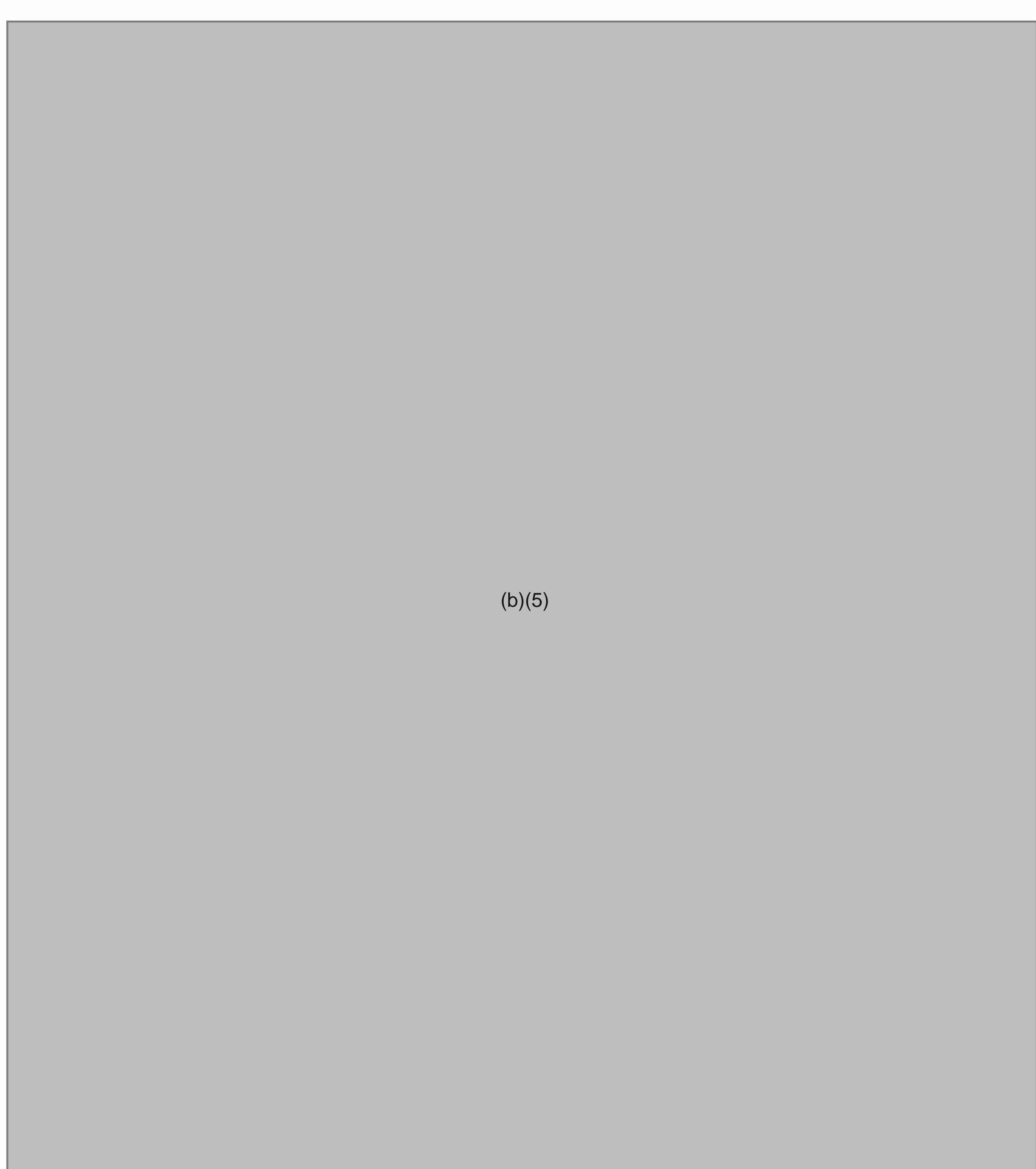
The Department of Homeland Security alleges that you:

SAMPLE

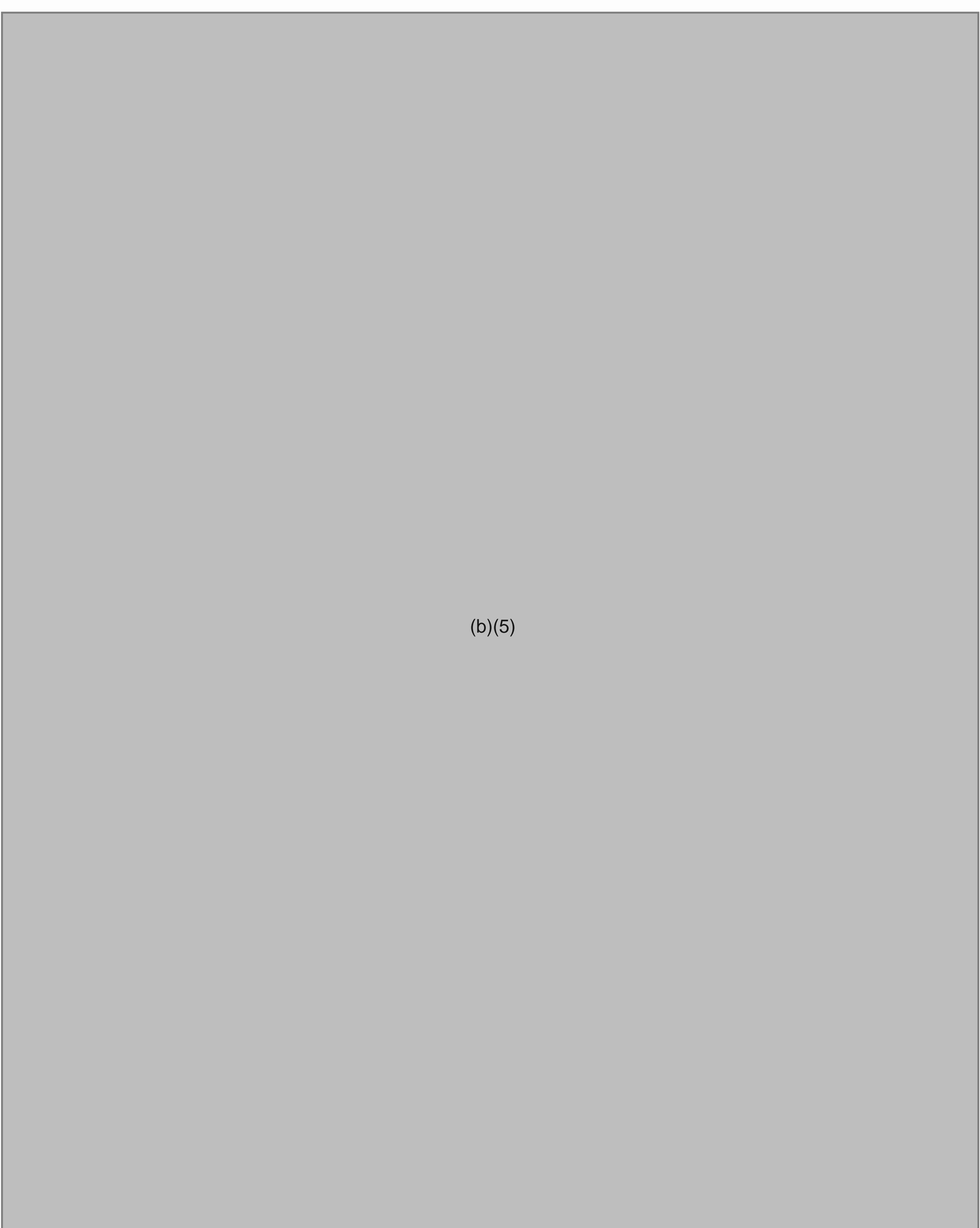
Unaccompanied Children (UC) and Family Unit (FAMU) Procedures, including procedures involving Adults with Children (AWC)

Denver Office of Chief Counsel

July 21, 2014 (Revised)



DHS-011-0000001-0000899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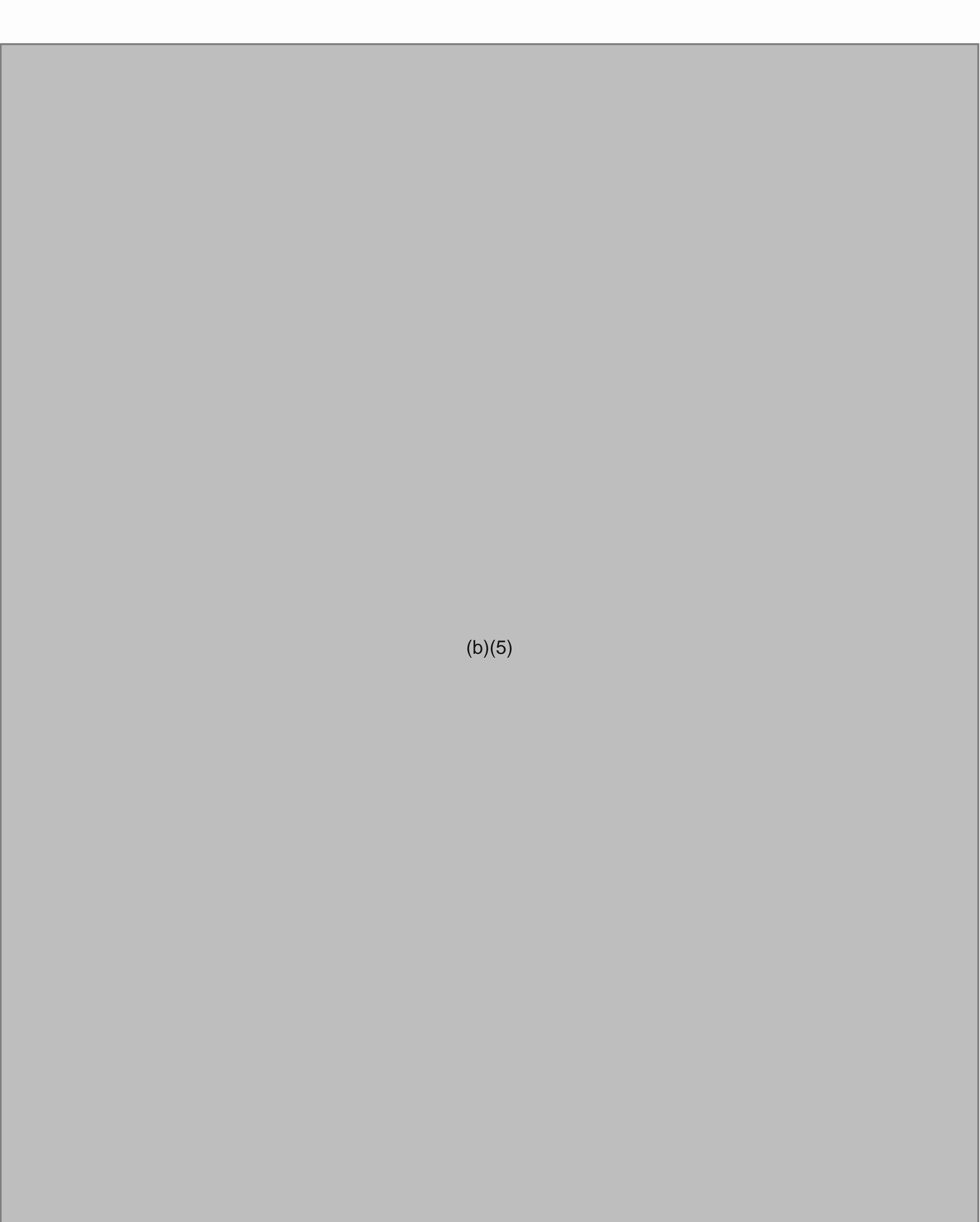
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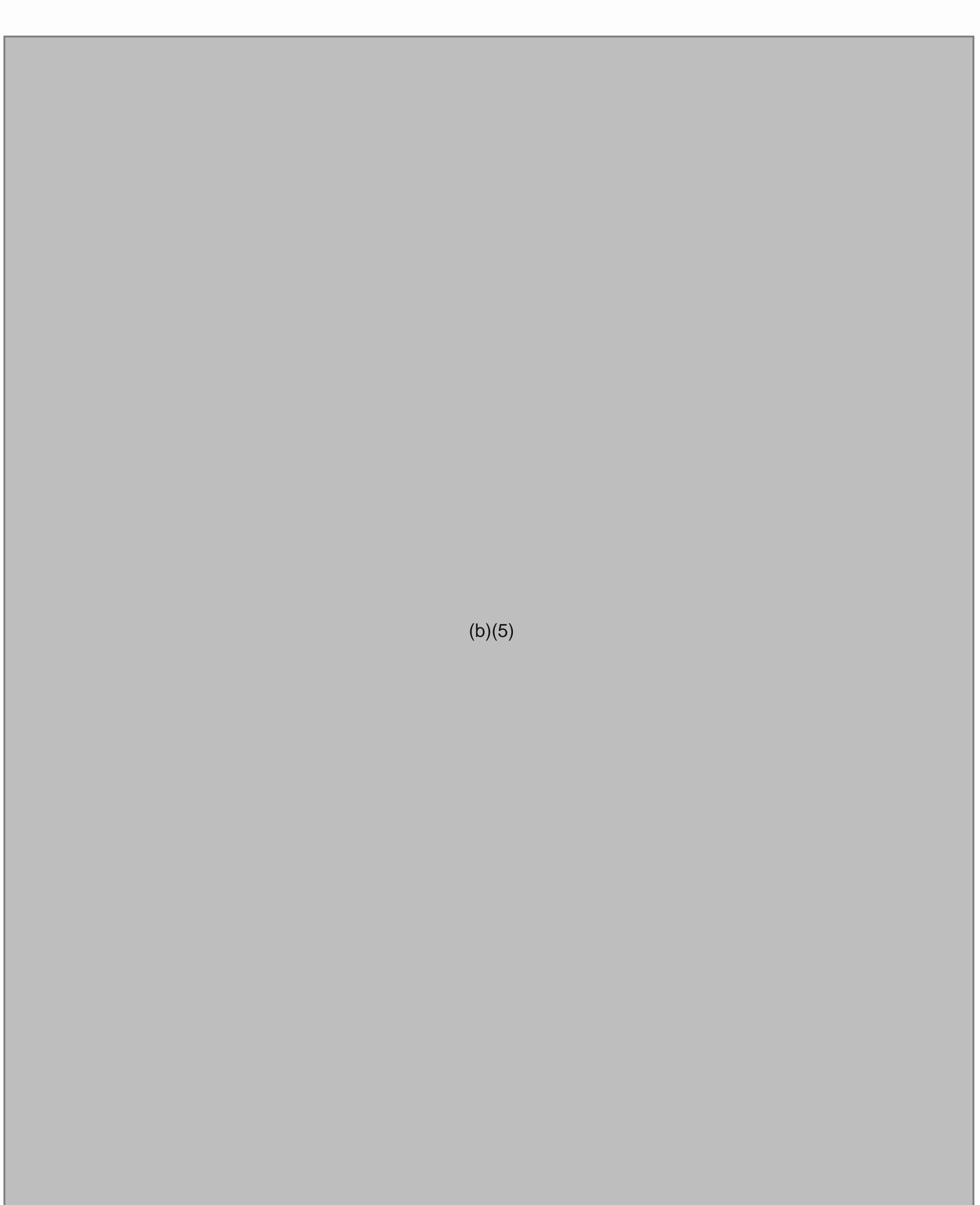

DHS-011-0000001-0000902

(b)(5)