

11.17

# Refugee Definition and Persecution

RAIO Training

1

# Agenda for Today

4 SiMPLe Components  
of the Legal Definition of Persecution

## Seriousness

Why does this component matter?

Harm must be sufficiently serious to rise to the level of persecution - not mere harassment or discrimination.

What was the harm?

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Ask yourself:

Cumulatively and taking into consideration the applicant's individual circumstances, was the harm suffered serious enough to rise to the level of persecution?

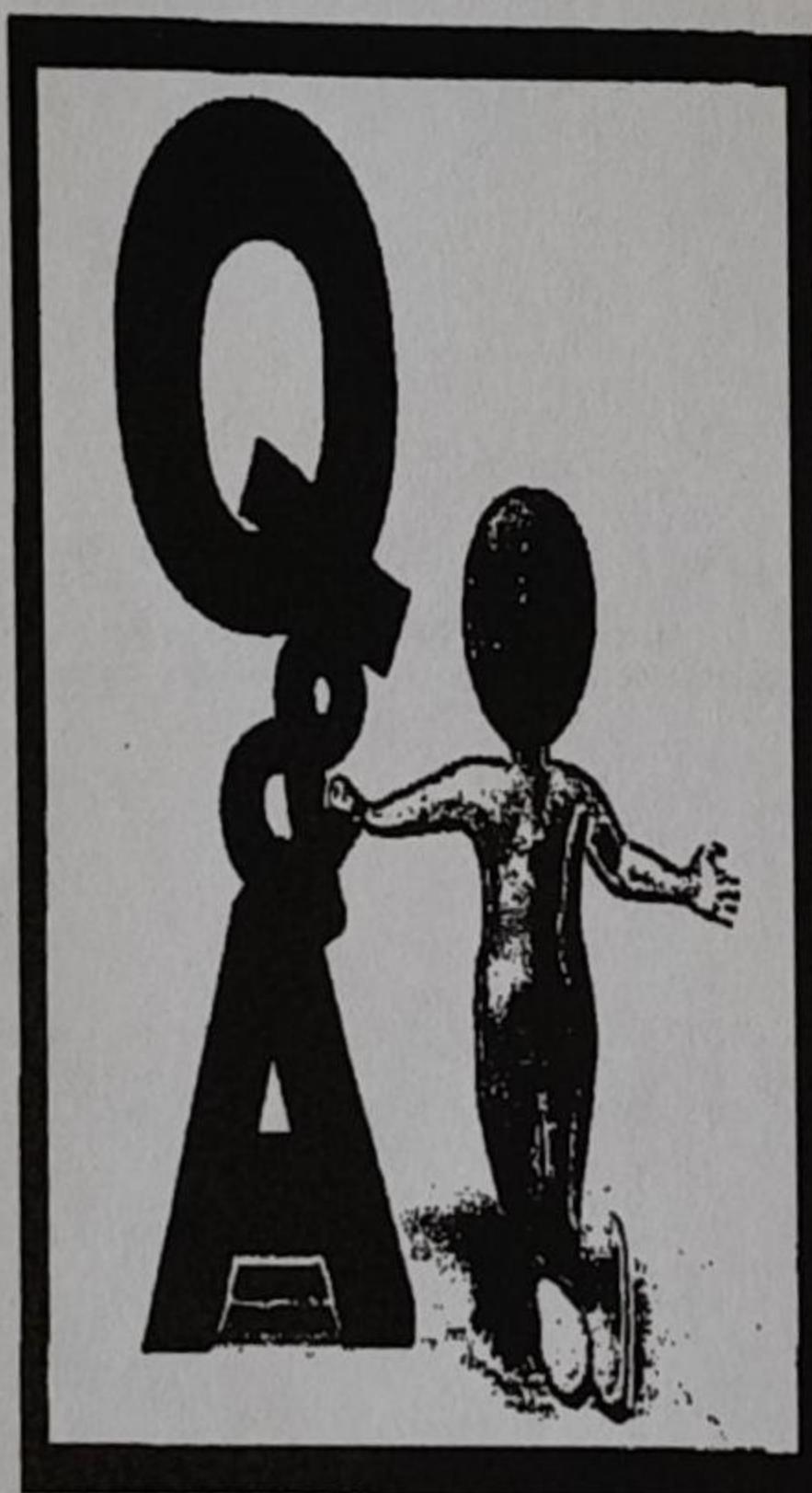
Yes  No

## Motivation

# Agenda for Today

P.670 Persecutor (gov)

No need to inquire applicant sought protection from police



❖ Type answer into Q and A box

P.629 unable or unwilling to return

P.635 simple (Mnemonic) → persecution

P.648 (血害次數不限, 一次严重就可) → persecution

P.649 Cyclically may → persecution

P.650 Non-physical harm (inability to practice religion)

P.664 harass → persecution (accumulate/increase in severity)

AILA Doc. No. 19111509. (Posted 11/15/19)

confiscation of property + constant surveillance 606

# Plain Language Version

Any person who:

- ✓ is outside his or her country of nationality or, if stateless, his or her country of last habitual residence
- ✓ is unable or unwilling to return
- ✓ because of persecution or a well-founded fear of persecution
- ✓ on account of
- ✓ race, religion, nationality, membership in a particular social group or political opinion.

# Coercive Population Control

1. A person who has been forced to:

- ✓ abort a pregnancy
- ✓ undergo involuntary sterilization

2. A person who has been persecuted for:

- ✓ failure or refusal to undergo such a procedure
- ✓ for other resistance to a coercive population control program

Shall be deemed to have been persecuted on account of **political opinion**.

计划生育归为政治

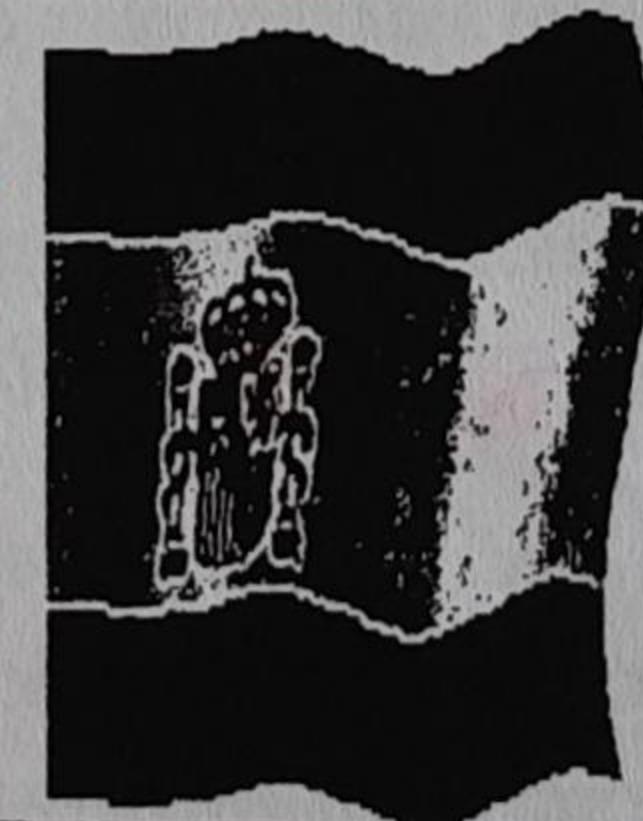
# Matter of B-R-,

26 I&N Dec 119 (BIA, May 3, 2013)



- On appeal **Applicant** did not contest that he was a native and citizen of Venezuela and a citizen of Spain from his father's Spanish citizenship.
- **Applicant** argued that he only needed to show a well-founded fear in Venezuela.
- **BIA held** that refugee definition requires that applicant have a fear of persecution in each country of citizenship or nationality.

如果有双重国籍，那么每个国家都要被 persecuted.



# North Koreans



- Even though **North Koreans** might be entitled to South Korean citizenship do **not** treat as a **dual national unless** the individual already availed himself or herself of the rights of citizenship in South Korea



- Firm Resettlement

23

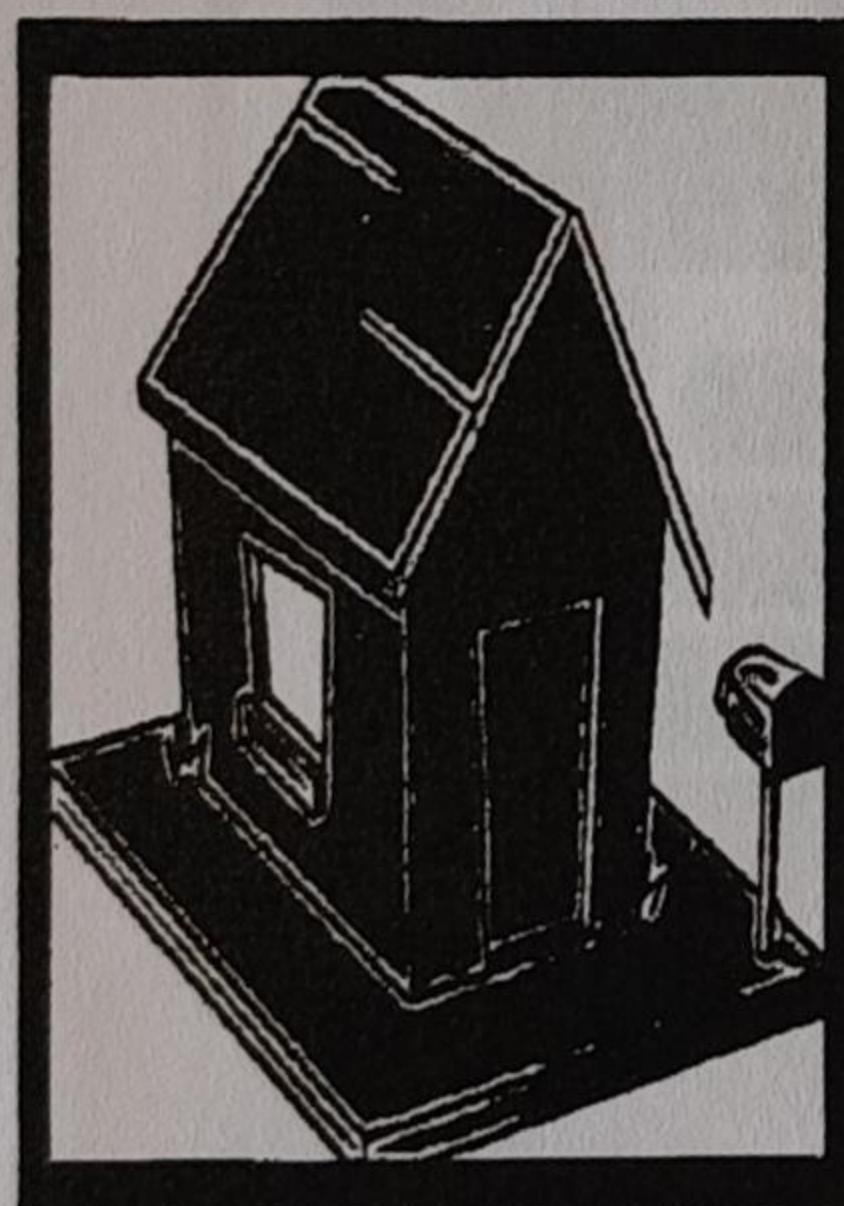
**Permanent residence** in a country does not necessarily confer citizenship. But **firm resettlement bar** may apply.

- Citizenship

**Citizenship** requires applicant to demonstrate persecution or well-founded fear.

# "Last Habitual Residence"

## Place of General Abode



- **Principal, actual, dwelling place** in fact, without regard to intent
- Length of time can be a factor (*Paripovic v. Gonzales*)
- Can habitually reside somewhere even though **not** firmly resettled
- There is **only one country of last habitual residence** in your adjudication of a claim

27

# Unable or Unwilling to Return

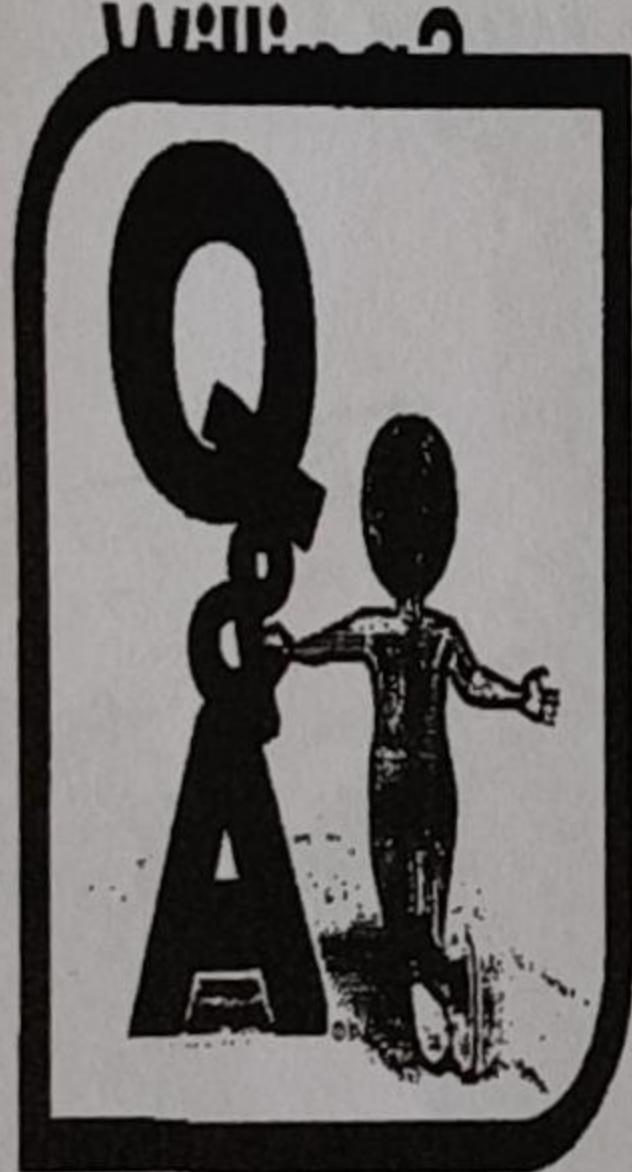
Unable

Unwilling



# Return to Home Country

o Able and



Consider -

- If the applicant has left and then
1. returned to his or her home
  2. country does the return  
automatically mean the
  3. Precautions taken upon  
applicant does not meet the part  
of the refugee definition that
  4. when happened to  
unwilling or unable to return?  
applicant, if anything

30

# Persecution - Term of Art



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# Legal Definition

## Four Components



- o Seriousness
- o Motivation
- o Persecutor
- o Location

# A Mnemonic Device - "Simple"

# S i M P L e

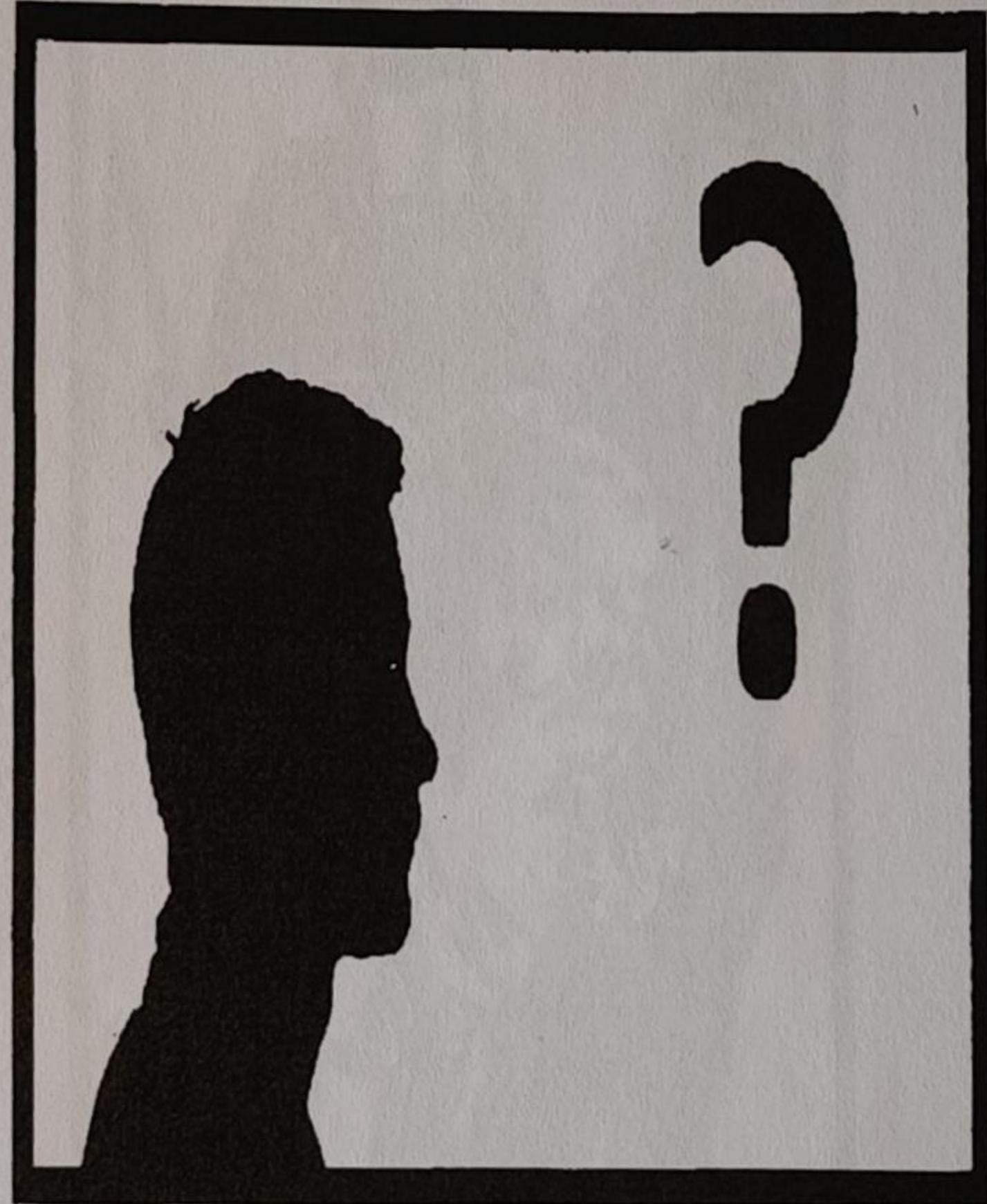
Seriousness

Motivation

Persecutor

Location

# Motivation



What must be motivating the  
persecutor?

36

# Mixed Motivation



# Practical Exercise

- o S - 45 day detention, beatings with heavy stick leading to a broken rib, broken skull and cut finger, psychological harm from being held in a colorless room, placed in coffin (implied death threat)
- o M - not explicit but he states he's a member of a democratic political party. I've given it to you in the description that he was imprisoned on account of his political activities on behalf of Kurdish rights. **Nexus: Political opinion**
- o P - Iranian government
- o L - Iran (place of nationality)



# Practical Exercise

Any person who:

- ✓ is outside his or her country of nationality or, if stateless, his or her country of last habitual residence
- ✓ is unable or unwilling to return
- ✓ because of persecution or a well-founded fear of future persecution
- ✓ on account of
- ✓ race, religion, nationality, membership in a particular social group or political opinion.

# A sampling

- A threat to life or freedom or other serious violation of human rights (UNHCR Handbook).
- "Infliction of harm or suffering upon those who differ in a way regarded as offensive" (9th Cir., Kovac)
- "The use of significant physical force against a person's body, or the infliction of comparable physical harm without direct application of force, or nonphysical harm of equal gravity" (7th Cir., Stanojkova)

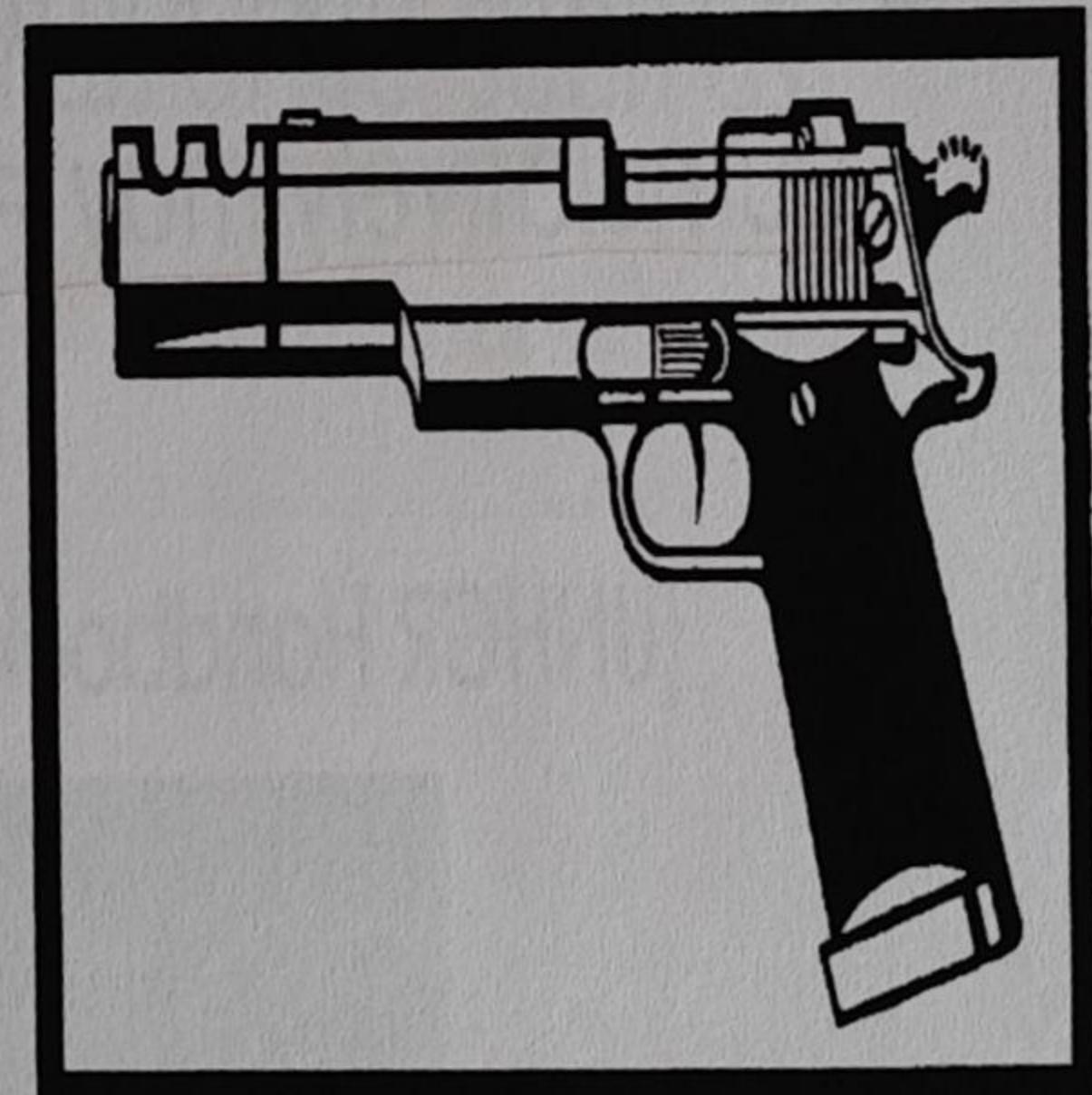
46

## No Set Number of Acts or Incidents Needed

自害次数不限

- o One act alone  
may be enough

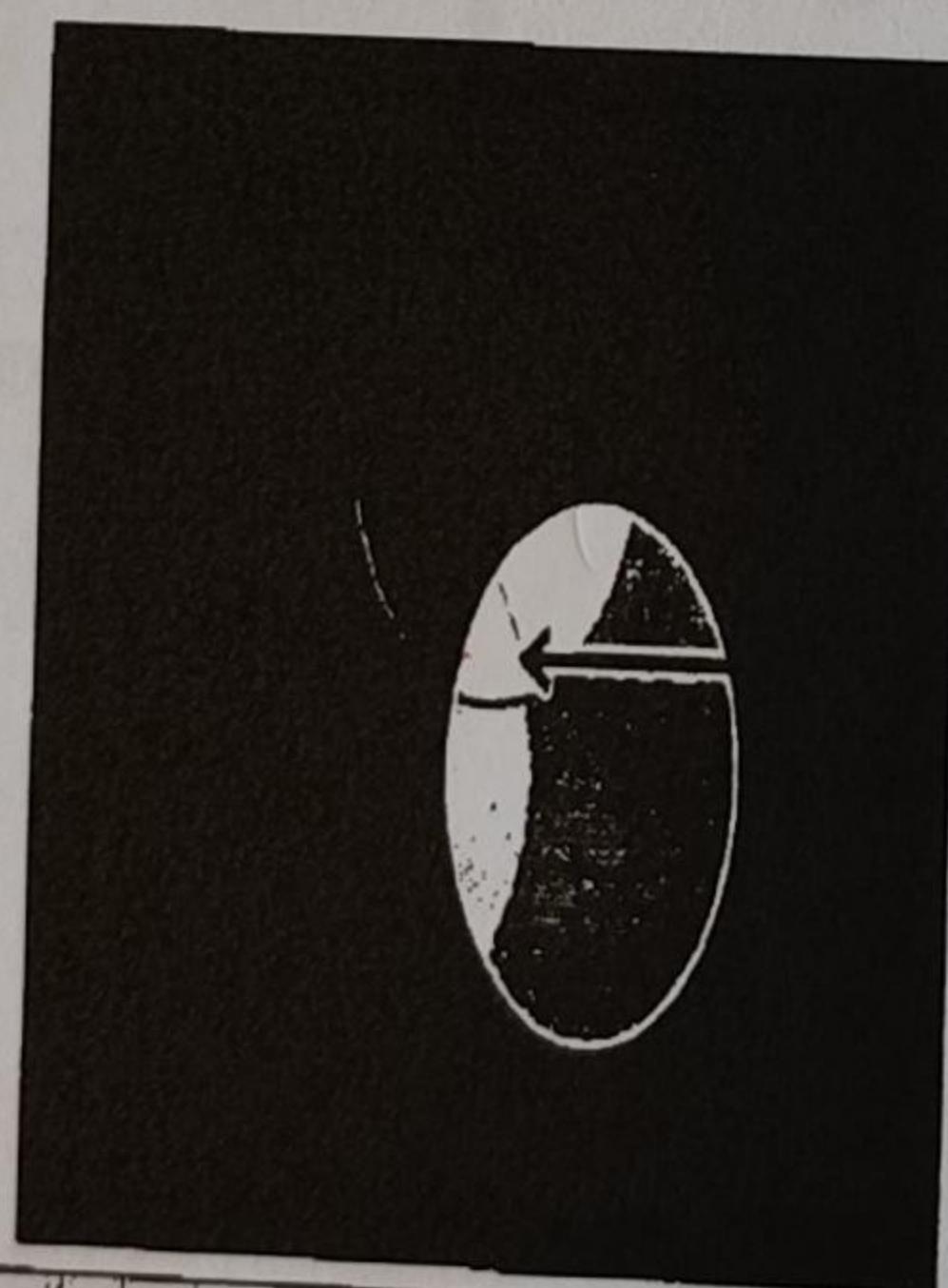
一次严重就勾勾



# Cumulative Effect

- Acts which separately ≠ persecution,  
cumulatively may = persecution

(UNHCR Handbook and Matter of O-Z- & I-Z-)



persecution

# Non-Physical Harm Can Amount to Persecution

- Severe economic disadvantage
- Deprivation of essentials of life, such as
  - Liberty
  - Food
  - Housing
  - Employment
- Psychological harm
- Inability to practice religion

## Economic Harm=Persecution if

- Deliberately imposed
- Severe
- Economic disadvantage or deprivation of essentials of life
- Factors considered in Matter of T-Z-, included:
  - Loss of housing
  - Loss of health benefits
  - Loss of food rations
  - Confiscation of property

# Psychological Harm

- Alone, may amount to persecution
- Look at psychological characteristics of applicant
- Age and past trauma suffered are relevant

# Examples of mental harm amounting to torture – if caused by

- Infliction or threatened infliction of severe physical pain
- Administration or threatened administration of mind altering substances
- Threat of imminent death (e.g. mock execution = torture)
- Threat that another person will be subjected to death or physical pain or suffering / mind altering substances

# Harm to a Third Person

- o Harm to a third party may be intended to  
harm applicant emotionally
- o Look to intent of persecutor

<https://www.youtube.com/watch?v=6vgVfqsHqhQ>



What was the harm suffered?

# Threats Alone

To Determine if a Threat or Threats Rise to Level of Persecution, ask about:

- Nature of threat
- Attempts to act on threat
- Attempts to harm in other ways
- Harm to family or others similarly situated
- Emotional harm suffered from threats

# Discrimination / Harassment

- o May rise to level of persecution if they accumulate or increase in severity
- o Consider –
  - ✓ how long did the harassment or discrimination last?
  - ✓ which human rights were affected?
  - ✓ how was the applicant affected?
  - ✓ what was the cumulative effect?
  - ✓ was there an escalation over time?

# Acts of Discrimination which May Amount, Cumulatively, to Persecution

- Restrictions on right to earn livelihood
- Restrictions on education
- Interference with privacy, family, home, correspondence
- Substandard housing
- Passport denial
- Constant surveillance
- Pressure to become informer
- Confiscation of property

## Arrests and Detention - factors

- o Length of detention
- o Legitimacy of government action
- o Mistreatment during detention
- o Judicial processes or due process rights accorded

# Identifying the Persecutor

- o Government actors

- o Must show on account of protected ground
- o Harm must rise to level of persecution
- o No need to inquire whether applicant sought protection from police

- o Non-government actors

- o Gov't unable or unwilling to control
- o Look at country conditions / applicant's circumstances

# Past Persecution in Nutshell

Past persecution is a basis for asylum and refugee status – INA § 101(a)(42):

"The term "refugee" means (A) any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . ."