

**U.S. Immigration and Customs Enforcement  
Homeland Security Investigations Training**

**HSI Academy  
Legal Division**



**Fifth Amendment: Self-Incrimination**

**Student Guide**

**XXXXXX**

**HSI Special Agent Training**

**6<sup>th</sup> Edition (2018)**

**ENFORCEMENT LAW COURSE**

## Fifth Amendment: Self-Incrimination

### INTRODUCTION

#### I. Motivation

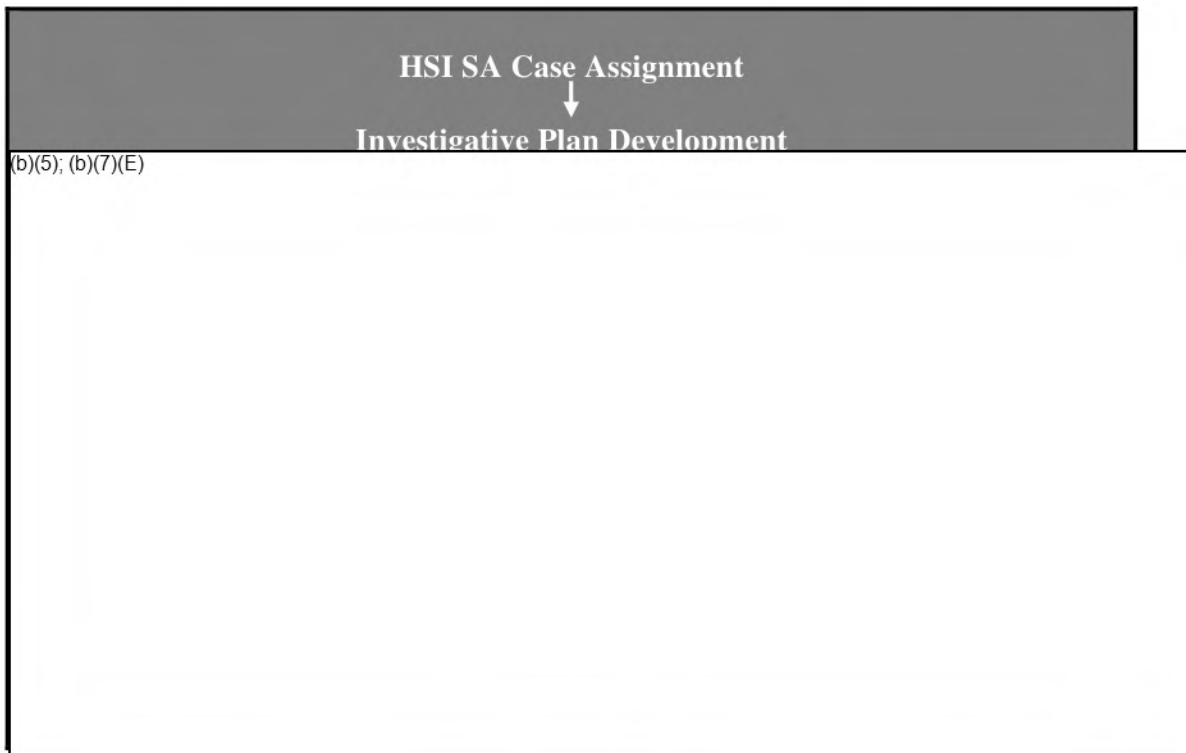
As a Special Agent, much of what you do leads to criminal prosecution. Just as there are laws and policies regulating the lawful manner to collect physical evidence, there are laws and policies governing how one lawfully collects statements. During this lesson we will explain how to lawfully collect a statement for use in a criminal prosecution in compliance with the Self-Incrimination Clause mentioned in the Fifth Amendment.

#### II. Review of the Past

Up to this point we have discussed the lawful means to collect a wide variety of physical evidence, the methods employed to do so, and how to avoid various pitfalls when collecting such evidence. This lesson looks at the evidence collection process in terms of collecting evidence in the form of statements. One of the most powerful pieces of evidence can be the spoken word.

#### III. Advance Organizer of Main Ideas

Review the investigative process through evidence collection using the HSI SA case assignment graphic.



(b)(5); (b)(7)(E)

The cornerstone of the protections mentioned in the Fifth Amendment is the Due Process Clause. Another significant protection within the Fifth Amendment centers on what is referred to as the Self-Incrimination Clause. During this session we will explain how *Miranda* applies when collecting a statement for use in a criminal prosecution in compliance with the Self-Incrimination Clause.

#### IV. Agenda

We will define and discuss custody and interrogation in the context of *Miranda*. Next, we will cover if a subject has waived or invoked his rights. Then, we will examine the differences between administrative and *Miranda* warnings. Finally, you will be given practice scenarios that require you to determine if a subject's statements were voluntary and/or admissible in court.

#### V. Objectives

**Terminal Performance Objective** – Given an interview scenario, determine if the subject's statements are voluntary and/or admissible in court; according to the Fifth Amendment's Self-Incrimination Clause and the Supreme Court's *Miranda* decision.

EPO	OBJECTIVE
1	Identify Fifth Amendment protections that impact the taking of a statement and distinguish Voluntary Statements from the <i>Miranda</i> protocol; and determine if a subject is in custody for <i>Miranda</i> purposes.
2	Distinguish between interrogation and non-interrogation for <i>Miranda</i> purposes.
3	Determine if a subject has waived his rights after <i>Miranda</i> warnings are provided.
4	Determine if a subject has invoked his rights to silence and/or counsel after <i>Miranda</i> warnings are provided.
5	Explain the purpose of an administrative warning and how it differs from a <i>Miranda</i> warning.

## INSTRUCTION

### I. Identify Fifth Amendment protections that impact the taking of a statement and distinguish Voluntary Statements from the Miranda protocol; and determine if a subject is in custody for Miranda purposes. (EPO 1)

#### A. Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- 
1. *Right to presentment or indictment of grand jury when accused of a crime.*
  2. *Right to be free from being placed in jeopardy twice for the same crime (double jeopardy).*
  3. *Right against being compelled in a criminal case to be a witness against oneself (right against self-incrimination).*
  4. *Right to due process when deprived of life, liberty, or property.*
  5. *Right to be free from the taking of private property for public use, without just compensation.*
- 

#### B. Fifth Amendment Basics

1. There are two rights protected in the Fifth Amendment that impact how the SA takes statements for use in criminal prosecutions.
  - a. **Right to Due Process** – Protects the right to be treated fairly in the criminal justice system (Fundamental Fairness). The Supreme Court has held that it is *fundamentally unfair* to use statements in court that are involuntarily collected.
  - b. **Right against being compelled in a criminal case to be a witness against oneself (Self-Incrimination)** – Protects the right to not be forced to testify against oneself in a criminal case. The Supreme Court has held that it is unlawful to use a compelled or involuntarily collected statement from by the accused as evidence in the accused's

criminal trial. It is also unlawful to force the accused to be a witness in the accused's criminal trial.

2. These two protections tend to overlap with one another and it can become very confusing when trying to apply them in the field.

### C. Voluntary Statements

1. *Bram v. United States*, 168 U.S. 532 (1897) – the right against self-incrimination pre-dates the Fifth Amendment protection. The concept originated as a protest to the inquisitorial and manifestly unjust methods of interrogating accused persons. The Court stated that, if an accused person is asked to explain his apparent connection with a crime under investigation, *the ease with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him in a corner, and to entrap him into fatal contradictions, . . .*, made the system so odious as to give rise to a demand for its abolition. Specifically, the common law rule recognized that coerced confessions and/or statements are inherently untrustworthy and to be admissible, a confession must be free and voluntary. [*See also, Brown v. Walker*, 161 U.S. 591 (1896)].

**Bram Voluntariness Test** – Was the statement extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of any improper influence. This test has typically been used by the Court to determine whether a statement is involuntary in violation of the Fifth Amendment's Self-Incrimination Clause.

2. *Brown v. Mississippi*, 297 U.S. 278 (1936) – the Court created a separate voluntariness test. This test, though, was created to determine whether the taking of the statement violated the Fifth Amendment's Due Process protections.

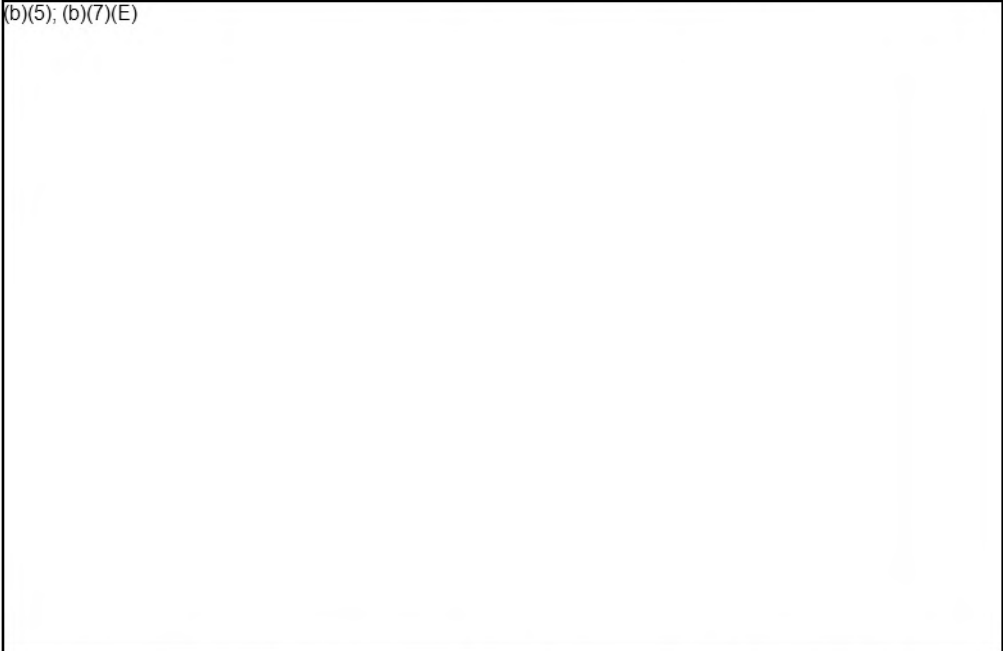
**Due Process Voluntariness Test** – When looking at the totality of facts and circumstances surrounding the taking of the statement (including the characteristics of the accused and the details of the interrogation), did law enforcement overbear the defendant's will to resist? [*To be explained further in the Due Process legal training block*].

3. Voluntary Statement must be:
  - a. freely and voluntarily made and

- b. not the result of threats or violence and
- c. not the result of direct or implied promises and
- d. not the result of improper influence and
- e. not the result of overbearing the defendant’s will to resist.

4. (b)(5); (b)(7)(E)

5.



D. Self-Incrimination Clause – “No person shall be...compelled in a criminal case to be a witness against oneself.”

- 1. It is unlawful to:
  - a. Compel/force a criminal defendant to take the witness stand and testify in his own criminal trial; and,
  - b. Use an accused’s statement made outside the trial setting to convict that accused when the statement is deemed involuntarily taken in violation of the Fifth Amendment’s Self-Incrimination Clause.
- 2. Statements taken in violation of the Self-Incrimination protection within the Fifth Amendment will be considered involuntary and will not be allowed in court and any evidence stemming from an involuntary statement will be suppressed as fruit of the poisonous tree.
- 3. On the other hand, if deemed voluntary, the statement still may be precluded from court if it was collected in violation of the *Miranda* protocol.

**Self-Incrimination Clause**

(b)(5); (b)(7)(E)

- E. *Miranda v. Arizona*, 384 U.S. 436 (1966)
1. Supreme Court determined that rights protected within the Fifth (silence) and Sixth (counsel) Amendments had been placed in jeopardy due to official overbearing. The Court reiterated the traditionally recognized methods of overbearing one's will to resist (inherently coercive):
    - a. threats or violence, and
    - b. direct or implied promises, and
    - c. improper influence
  2. The *Miranda* Court then identified a fourth method of obtaining a statement that qualified as potentially inherently coercive:
    - a. ***Statements obtained during custodial interrogation.***
    - b. Reason: When one is subjected to custodial interrogation, the officer cannot ensure that the statements taken were the product of the accused's free choice (voluntary).
    - c. Therefore, procedural safeguards were needed to dispel the compulsion inherent in custodial surroundings; otherwise, no statement obtained in such a setting could truly be the product of one's free choice (voluntary) and would have to be deemed collected in violation of the Fifth Amendment.
    - d. The procedural safeguards are part of the *Miranda protocol* and referred to as *Miranda Warnings*.
- F. *Miranda* protocol
1. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from **custodial interrogation** of the

subject/accused unless the prosecution demonstrates that they used **procedural safeguards** to secure the privilege against self-incrimination.

2. **Custodial Interrogation** means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.
3. **Procedural safeguards** are to be explained before initiated and must advise the subject or accused that he has:
  - a. a right to remain silent
  - b. anything he says can and will be used against the individual in court
  - c. a right to consult with and have present during questioning counsel, and
  - d. a right to counsel free of charge if he is indigent.
4. The subject or accused can **waive these rights** if the waiver is **voluntarily, knowingly, and intelligently** made by the person giving the statement.
5. If the subject or accused refuses, at any time before or during questioning, the **interrogation will have to stop**.

G. Determine if a subject is in custody for *Miranda* purposes

**5<sup>th</sup> Amendment – Self-Incrimination Clause – Voluntary Statement**

*Miranda Applied*

(b)(5); (b)(7)(E)



H. How to apply the protocol in the field. Ask and answer each question in turn.

(b)(5); (b)(7)(E)

- 1.
- 2.
- 3.
- 4.
- 5.

I. Custody defined – The *Miranda* Court’s definition of custody has been modified by the definition discussed below. See, *Thompson v. Keohane*, 516 U.S. 99 (1995).

1. *Miranda* definition – Questioning by law enforcement officers after a person has been taken into **custody or otherwise deprived of his freedom of action in any significant way.**
2. Since *Miranda*, the Supreme Court has further refined the definition of custody in *Thompson v. Keohane*:

[T]wo discrete inquiries are essential to the [*custody*] determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene has been set and the players’ lines and actions are reconstructed, the court must apply an objective test to resolve “*the ultimate inquiry*”: [*was*] *there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.*

(b)(5); (b)(7)(E)

J. The custody determination involves a three-step process:

(b)(5); (b)(7)(E)

- K. Factors that courts consider when determining custody include:
1. The extent to which the person is confronted with evidence of guilt
  2. The duration of the detention
  3. The manner and scope in which pressure is being applied
  4. The location of the interrogation
  5. The time of day
  6. The number of officers involved
  7. The degree and manner of force used
  8. The information provided to the subject about the reason for the interrogation
  9. Subject's Age – On June 11, 2011, the Supreme Court ruled that the subject's age (especially when under 18) may be considered in the determination whether that person is in custody for *Miranda* purposes. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).
  10. Nature of the questions asked

**Note:** (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

- L. Demonstration: Custody determination away from the border

(b)(5); (b)(7)(E)

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(b)(5) ; (b)(7)(E)

of the Freedom of Information and Privacy Act

(b)(5); (b)(7)(E)

M. Encounters at the border

(b)(5); (b)(7)(E)

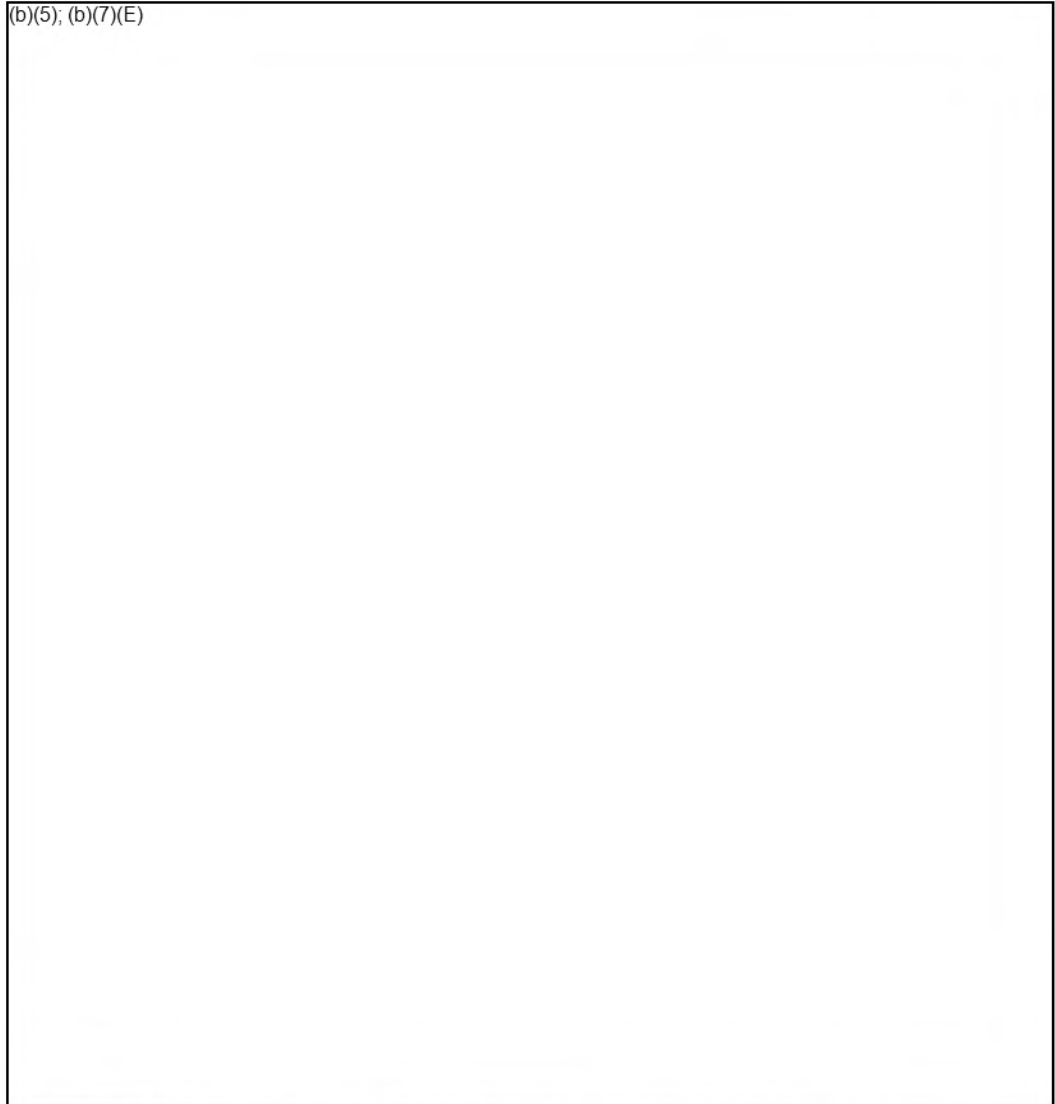
1.

(b)(5); (b)(7)(E)

2.

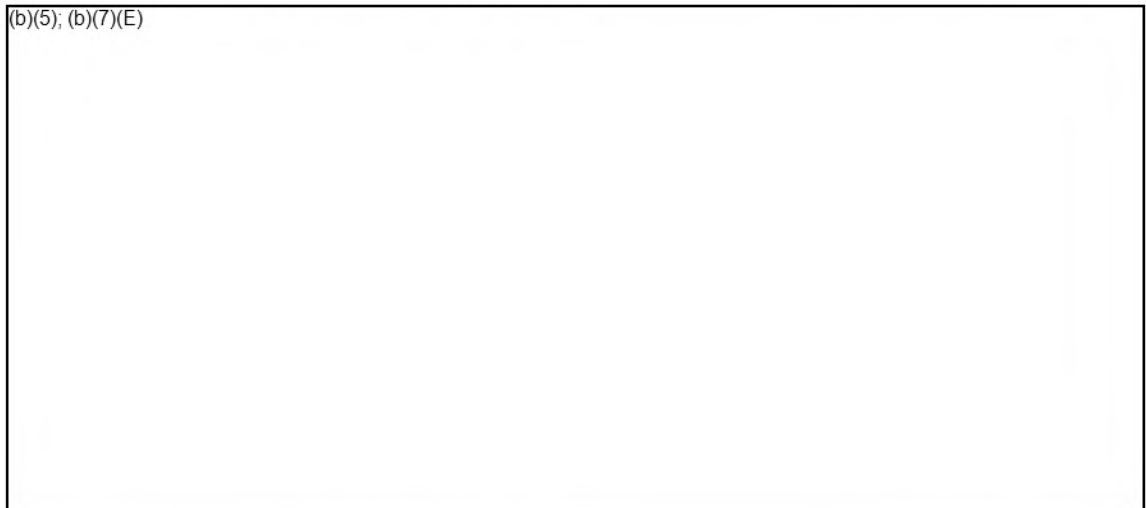
(b)(5); (b)(7)(E)

3.



N. How does the SA determine whether the person is in custody for *Miranda* purposes when questioned at the border?

(b)(5); (b)(7)(E)



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(b)(5) ; (b)(7)(E)

of the Freedom of Information and Privacy Act

(b)(5); (b)(7)(E)

4. ICE Policy: Invasive Personal Searches/Detentions at the Border – By policy (Personal Search Handbook, CIS HB 3300-04B, Revised July 2004), anyone subject to a partial body, x-ray, body cavity search, and/or detention for monitored bowel movement is in custody for *Miranda* purposes.
- O. Demonstration: Custody determination at the border

(b)(5); (b)(7)(E)

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(b)(5) ; (b)(7)(E)

of the Freedom of Information and Privacy Act



(b)(5); (b)(7)(E)

Apply the test.

(b)(5); (b)(7)(E)

**II. Distinguish between interrogation and non-interrogation for *Miranda* purposes. (EPO 2)**

**5<sup>th</sup> Amendment – Self-Incrimination Clause – Voluntary Statement**

***Miranda* Applied**

(b)(5); (b)(7)(E)

A. Interrogation defined - The original definition of interrogation used by the Supreme Court in *Miranda* has been replaced by the definition discussed in *Rhode Island v. Innis*, 446 U.S. 291 (1979). See below.

1. The *Miranda* Court defined interrogation as “questioning initiated by law enforcement officers.”
2. In *Rhode Island v. Innis*, the Court expanded the definition to include, not only express questioning, but also any words or actions on the part of the police (other than those words or actions normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response (that is, any response, whether inculpatory or exculpatory, that the prosecution may seek to introduce at trial), from the subject, rather than the intent of the police.

(b)(5); (b)(7)(E)

3. **Questions** – (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

4. **Words** – (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

5. **Actions** – (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

- B. Volunteered statements – Any statements a subject makes without any prompting from the SA will be admissible at trial.

**Example:** (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E)

- C. Biographical questions exception – Routine “booking questions” or biographical questions have been found to fit into this exception. Questions concerning identity and physical characteristics such as name, age, address, height, weight, and so on, are not interrogation. In addition, general informational questions, routine inspectional questions, and requests for personal history are part of a legitimate administrative inquiry; meaning, they are not being asked in order to get an incriminating response, and not interrogation. In the same manner, statements made to an arrestee that are normally attendant to arrest are not interrogation, even if they produce an incriminating response.

**Example:** (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E)

- D. Public safety exception – The public safety exception states that *Miranda* warnings are not required when an officer asks a subject, who is in custody, questions prompted by an objectively reasonable concern for the public safety regarding an immediate danger and the information sought is necessary to protect public safety. Public safety includes protecting the general public, officers, victims, and subjects.

1. Public safety exception test – The test is whether a reasonable officer given the same facts and circumstances would believe that the information sought is necessary to protect public safety.
2. DHS policy (DHS Memorandum, Public Safety Custodial Interrogation of Certain Terrorism Suspects, October 22, 2010) *See SDR 5<sup>th</sup> SI-1*, which states that HSI personnel are to use all lawful and appropriate means to gather terrorist threat information. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

3. The types of questions that would be appropriate under these circumstances would include:

(b)(5); (b)(7)(E)

4. (b)(5); (b)(7)(E)
- 5.

**Example**

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

E. Demonstration

(b)(5); (b)(7)(E)

IV. Determine if a subject has waived his rights after *Miranda* warnings are provided. (EPO 4)

See, ICE Form 73-025 (09/09) Statement of Rights [See SDR 5<sup>th</sup>SI-2]. See also SDR 5<sup>th</sup>SI-3 Record of Sworn Statement in Criminal Proceeding Form I-263B; SDR 5<sup>th</sup>SI-4 Record of Sworn Statement Form I-263A; SDR 5<sup>th</sup>SI-5 Witness Sworn Statement Form I-263W, SDR 5<sup>th</sup>SI-6 Interviewing Techniques Handbook, OI HB 10-03, April 28, 2010 and SDR 5<sup>th</sup>SI-7 Interview and Interrogation reference. See also, SDR 5<sup>th</sup>SI-8 Side-by-side comparison of 263B, 215B, and 73-025.

**5<sup>th</sup> Amendment – Self-Incrimination Clause – Voluntary Statement**

***Miranda Applied***

(b)(5); (b)(7)(E)

- A. Waivers: *Miranda* stated, “[I]f the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant *knowingly and intelligently waived* his privilege against self-incrimination and his right to retained or appointed counsel.”
1. This determination involves a *two-part inquiry*:
    - a. The relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception; [the uncoerced choice] and,
    - b. The waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon that right [the level of comprehension of the right waived].
  2. If, based on a totality of the circumstances, the individual makes an uncoerced choice with an appropriate level of comprehension of the right waived, the court will find the waiver voluntary, knowing, and intelligent.
  3. Express waivers – An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could, and generally does, constitute a valid waiver.
  4. Implicit waivers – Waivers can be established even absent formal or express statements of waiver (“implicit waiver”). An implied waiver will serve as a legitimate waiver as long as the defendant’s silence is coupled with an understanding of his rights and then the defendant follows a course of conduct indicating waiver.

<b>Example:</b>	(b)(5); (b)(7)(E)
(b)(5); (b)(7)(E)	

(b)(5); (b)(7)(E)

5. Partial waivers – Subjects can agree to waive their rights to discuss certain topics, while at the same time invoking their rights as to others. Such limitations are a prerogative of the subject and the interrogation can continue so long as the limits established by the subject are honored.
6. Breaks in interrogation – If the subject waives the rights outlined in the *Miranda* warnings and a break in interrogation occurs of such length that the subject’s appreciation of the warnings is reasonably likely to decrease, the warnings should be read again.

B. Demonstration

(b)(5); (b)(7)(E)

**IV. Determine if a subject has invoked his rights to silence and/or counsel after *Miranda* warnings are provided. (EPO 4)**

**5<sup>th</sup> Amendment – Self-Incrimination Clause – Voluntary Statement**

(b)(5); (b)(7)(E)

**A. Invocation of right to remain silent**

1. According to *Miranda*, “[O]nce warnings have been given, the subsequent procedure is clear. If the individual indicates *in any manner* (since *Miranda* the Court has interpreted this as *unambiguously and clearly*), at any time prior to or during questioning, that he wishes to remain silent the interrogation must cease.
2. Any person who desires the protection of the Self-Incrimination Clause privilege must claim it at the time he relies on it.

Exceptions:

- a. A criminal defendant need not take the stand and assert the privilege at his own trial.
- b. A witness’ failure to invoke the privilege against self-incrimination must be excused where governmental coercion makes his forfeiture of the privilege involuntary. One example of such a situation is a subject exposed to custodial interrogation. Hence, *Miranda* said that the only lawful way for a subject to give up his privilege against self-incrimination requires suitable warnings before interrogation.



- c. Silence alone is not a proper invocation of the protection.

**Example:** (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

**Note:** (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

- 3. If the subject makes a *clear, unambiguous, and timely* invocation to silence, he should not be interrogated.

**Example** (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

- 4. When clearly exercised, however, the choice to remain silent must be “scrupulously honored.”

5. (b)(5); (b)(7)(E)

6.

(b)(5); (b)(7)(E)

B. Invocation of right to counsel

1. According to *Miranda*, “[O]nce warnings have been given, the subsequent procedure is clear...If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.”
2. *Edwards Rule* – When a subject invokes his right to counsel during custodial interrogation, the interrogation must cease; except, if the accused *initiates* further communication, exchanges, or conversations with the SA. *Edwards v. Arizona*, 451 U.S. 477 (1981).
3. *Minnick Rule* – Once the subject states that he wants a lawyer, the interrogation must stop **until an attorney is present**. *Minnick v. Mississippi*, 498 U.S. 146 (1990).
4. Ambiguous request for counsel – The court will first determine whether the individual expressed his desire for, or clearly asserted his right to counsel, and if so, the court will then assess whether he initiated further discussions with police and knowingly and intelligently waived that right.

Example:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

- 5. Subject initiates communication, exchange, or conversation with police – A subject will **not** be found to have initiated such dialogue where the “initiation” is preceded by actions or comments by the SA that equate to interrogation or are construed as attempts to induce the subject into “waiving” his right to counsel. Further, not all statements or actions by a subject can be interpreted as willingness to resume interrogation. For example,

(b)(5); (b)(7)(E)

- 6. Right to re-approach one who has invoked his right to counsel – *Shatzer* permits law enforcement to re-approach a subject 14 days after an initial request for counsel has been made as long as the subject has been released from custody.

(b)(5); (b)(7)(E)

- 7. *Edward/Minnick/Shatzer* Rule summary: Once the subject requests an attorney pursuant to *Miranda*, no further custodial interrogation can take place unless:
  - a. Less than 14 days: The subject initiates further communications, exchanges or communications and waives his right to the presence of counsel during interrogation; or,

- b. The subject is “released from custody” and the SA waits 14 days before re-approaching the subject.

(b)(5); (b)(7)(E)

D. Demonstration

(b)(5); (b)(7)(E)

**V. Explain the purpose of an administrative warning and how it differs from a *Miranda* warning. (EPO 5)**

A. Administrative warnings (Form I-214A)

- 1. General – If you are not seeking information to criminally prosecute an alien, but rather merely plan to obtain a statement for use at the alien’s removal hearing, the interview, including the sworn statement, should proceed pursuant to standard processing methods used for administrative (civil) removal. *Miranda* warnings are not required in such circumstances.

2. However, aliens arrested on administrative immigration violations must receive a different set of warnings, referred to as Administrative warnings. 8 C.F.R. 287.3(c).

B. Content of administrative warnings

(b)(5); (b)(7)(E)

C. Differences between administrative warnings and *Miranda* warnings:

1. (b)(5); (b)(7)(E)
- 2.
- 3.
- 4.
- 5.
- 6.

D. While the I-213 serves as the basis for removal, it is the I-214A that contains the Administrative Warnings. The I-214A is required when a NTA is issued.

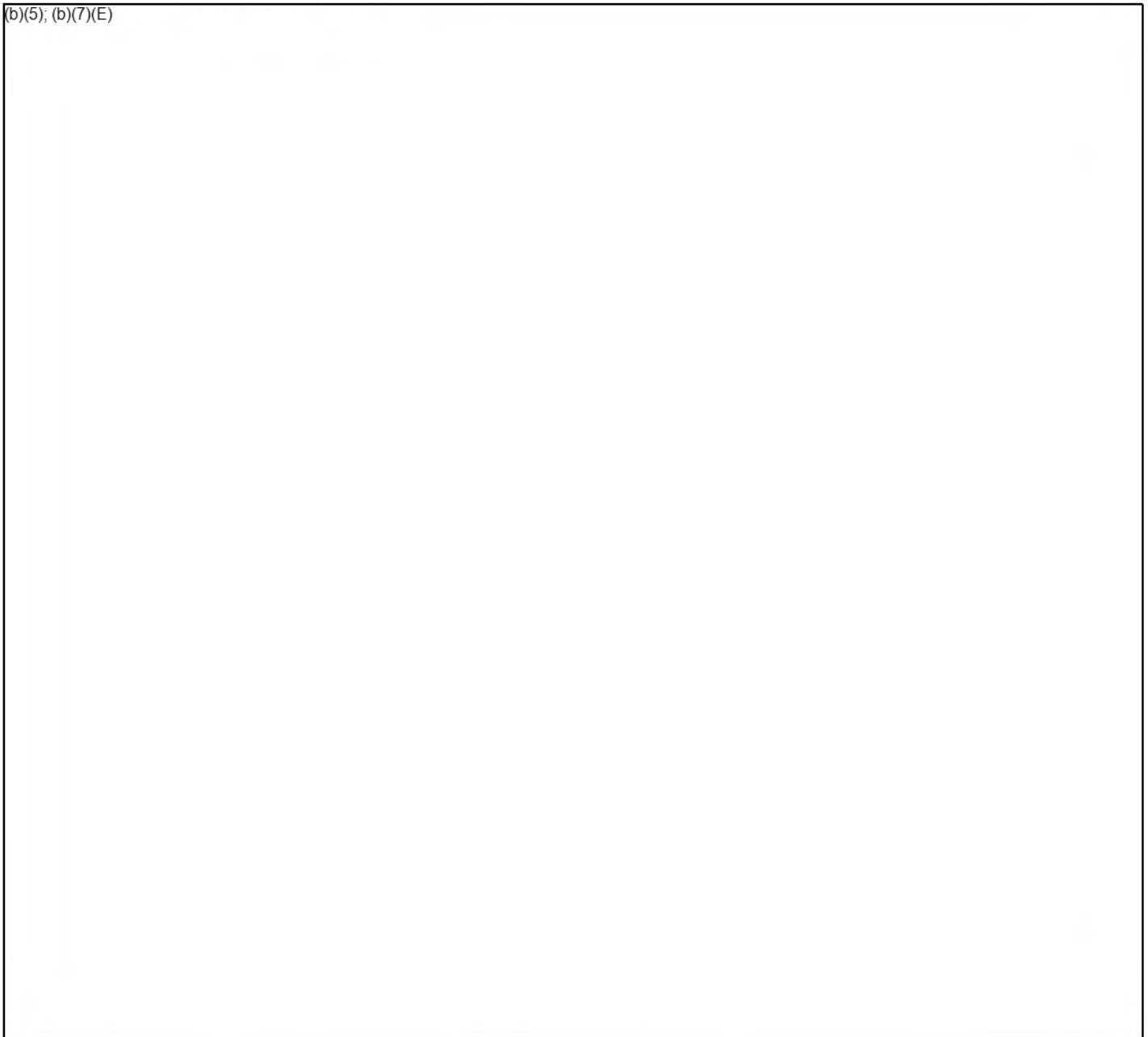
E. Demonstration

(b)(5); (b)(7)(E)



**VI. Student Practice**

(b)(5); (b)(7)(E)



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(b)(5) ; (b)(7)(E)

of the Freedom of Information and Privacy Act

(b)(5); (b)(7)(E)





## CONCLUSION

### I. Summary of Main Ideas

<p><b>5<sup>th</sup> Amendment – Self-Incrimination Clause – Voluntary Statement</b></p> <p><i>Miranda Applied</i></p>
<p>(b)(5); (b)(7)(E)</p>

### II. Integration

In this lesson, we addressed the Fifth Amendment’s Self-Incrimination Clause. More specifically, we examined the impact of the *Miranda* decision and how it applies in determining if you have custody of a subject and if you have interrogated a subject. We also discussed how a subject can waive or invoke rights after receiving *Miranda* warnings. This lesson was the last in the evidence collection process, and your next lesson will focus on post-arrest obligations and will detail your legal responsibilities during the criminal prosecution process.

### III. Objectives

**Terminal Performance Objective** – Given an interview scenario, determine if the subject’s statements are voluntary and/or admissible in court; according to the Fifth Amendment’s Self-Incrimination Clause and the Supreme Court’s *Miranda* decision.

EPO	OBJECTIVE
1	Identify Fifth Amendment protections that impact the taking of a statement and distinguish Voluntary Statements from the <i>Miranda</i> protocol; and determine if a subject is in custody for <i>Miranda</i> purposes.

<b>2</b>	Distinguish between interrogation and non-interrogation for <i>Miranda</i> purposes.
<b>3</b>	Determine if a subject has waived his rights after <i>Miranda</i> warnings are provided.
<b>4</b>	Determine if a subject has invoked his rights to silence and/or counsel after <i>Miranda</i> warnings are provided.
<b>5</b>	Explain the purpose of an administrative warning and how it differs from a <i>Miranda</i> warning.

#### **IV. Motivation**

As a HSI Special Agent, a substantial component of your job consists of obtaining statements. In addition to ensuring you comply with the 5<sup>th</sup> Amendment's Due Process Clause, you must also act in accordance with the Self-Incrimination Clause.

#### **V. Test or Final Activity**

You will be tested on your knowledge of the 5<sup>th</sup> Amendment, more specifically, how the Self-Incrimination Clause impacts statements and rights of subjects, on the legal multiple-choice examination. However, your ability to address these legal questions can be tested when you conduct an interview or interrogation.

#### **5<sup>th</sup> SI Lesson Student Drive Reference Index**

- 5<sup>th</sup>SI-1: DHS Memorandum, Public Safety Custodial Interrogation of Certain Terrorism Suspects, October 22, 2010)
- 5<sup>th</sup>SI-2: Statement of Rights, Form 73-025 (09/09)
- 5<sup>th</sup>SI-3: Record of Sworn Statement in Criminal Proceedings, DHS Form I-263B
- 5<sup>th</sup> SI-4: Record of Sworn Statement, Form I-263A
- 5<sup>th</sup>SI-5: Witness Sworn Statement Form I-263W
- 5<sup>th</sup>SI-6: Interviewing Techniques Handbook, OI HB 10-03, April 28, 2010
- 5<sup>th</sup>SI-7: Interviews and Interrogation
- 5<sup>th</sup>SI-8: Side-by-side comparison