



U.S. Citizenship  
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Services

HQRAIO 120/12a

## Memorandum

MAY 28 2013

TO: All Asylum Office Staff

FROM: Ted Kim  
Acting Chief, Asylum Division

SUBJECT: Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children

### I. Purpose

This memorandum provides updated guidance and procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Offices on determining jurisdiction in applications for asylum filed by unaccompanied alien children (UACs) under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, which was signed into law on December 23, 2008, and became effective on March 23, 2009. These procedures modify the current procedures found in Section III.C of the March 25, 2009, memorandum Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children. These procedures are effective on June 10, 2013, and apply to any USCIS decision issued on or after that date. These updated procedures will be incorporated into the Affirmative Asylum Procedures Manual. The decision letters used by Asylum Offices in UAC cases will not change with the exception of the UAC Decision Notice for Non-Eligibility (updated version attached). All Asylum Offices will receive train-the-trainer instruction from Headquarters and are responsible for conducting field training prior to June 10.

### II. Determination as to whether the applicant is a UAC

USCIS typically does not have jurisdiction to accept a Form I-589, *Application for Asylum and for Withholding of Removal*, filed by an applicant in removal proceedings. Section 235(d)(7)(B) of the TVPRA, however, places initial jurisdiction of asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. Therefore, USCIS must determine whether an applicant in removal proceedings is a UAC.

Prior to the issuance of this guidance, Asylum Offices made independent factual inquiries under the UAC definition to support their determinations of UAC status, which was assessed at the time of the UAC's filing of the asylum application. In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), had already made a determination of UAC status after apprehension, as required for the purpose of placing the individual

in the appropriate custodial setting. Effective June 10, in those cases in which either CBP or ICE has already made a determination that the applicant is a UAC, and that status determination was still in place on the date the asylum application was filed, Asylum Offices will adopt that determination without another factual inquiry. Unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, Asylum Offices will adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

#### A. Cases in which a determination of UAC status has already been made

In cases in which CBP or ICE has already determined that the applicant is a UAC, Asylum Offices will adopt that determination and take jurisdiction over the case. Asylum Offices will see evidence of these prior UAC determinations in A-files or in systems on the Form I-213, *Record of Deportable Alien*; the Form 93 (the CBP UAC screening form); the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Initial Placement Form<sup>1</sup>; the ORR Verification of Release Form; and the encounters tab in the ENFORCE Alien Removal Module (EARM) (see attached samples). In these cases the Asylum Office will no longer need to question the applicant regarding his or her age and whether he or she is accompanied by a parent or legal guardian to determine UAC status. If CBP or ICE determined that the applicant was a UAC, and, as of the date of initial filing of the asylum application, that UAC status determination was still in place, USCIS will take initial jurisdiction over the case, even if there appears to be evidence that the applicant may have turned 18 years of age or may have reunited with a parent or legal guardian since the CBP or ICE determination. Generally, an Asylum Office should not expend resources to pursue inquiries into the correctness of the prior DHS determination that the applicant was a UAC.

Although Asylum Offices will no longer need to make independent factual inquiries about UAC status in cases in which another DHS entity has already determined the applicant to be a UAC, these cases will still receive headquarters quality assurance review as juveniles per the Quality Assurance Referral Sheet. Upon receiving headquarters concurrence, Asylum Offices should follow the guidance in the March 25, 2009, memorandum referenced above regarding handling the case upon entry of a final decision.

#### B. Cases in which a determination of UAC status has not already been made

##### 1. UACs not in removal proceedings

For applicants not in removal proceedings who apply for asylum with USCIS via the affirmative asylum process, who have not been determined previously to be a UAC by CBP or ICE, and who appear to be UACs, Asylum Offices will continue to make UAC determinations not for the purpose of determining jurisdiction but for the purposes of determining whether the applicant is subject to the 1-year filing deadline<sup>2</sup> and whether the Asylum Office must notify HHS that it has discovered a UAC<sup>3</sup>. Asylum Offices should examine whether the applicant was a UAC at the time of filing the asylum application for purposes of determining whether the 1-year filing deadline applies and whether the applicant was a UAC at the time of the interview (i.e., when "discovery" takes place) for purposes of notifying HHS. Previously issued guidance on examining an applicant's age and unaccompanied status continue to apply to these determinations.

<sup>1</sup> After apprehending an individual and determining that he or she is a UAC, CBP or ICE transfers him or her to a facility run by the Office of Refugee Resettlement (ORR), which is part of the Department of Health and Human Services (HHS).

<sup>2</sup> See section 235(d)(7)(A) of the TVPRA.

<sup>3</sup> See section 235(b)(2) of the TVPRA.



## 2. UACs in removal proceedings

For applicants in removal proceedings where CBP or ICE has not already made a determination that the applicant is a UAC,<sup>4</sup> Asylum Offices will need to make UAC determinations for the purpose of determining whether USCIS has jurisdiction over the case. Asylum Offices should examine whether the applicant was a UAC on the date of initial filing of the asylum application for the purpose of determining USCIS jurisdiction.

If the Asylum Office is the first federal government entity to make a determination that the individual is a UAC and the individual remains a UAC at the time of the asylum interview, then the Asylum Office will notify HHS that it has discovered a UAC. This obligation to notify HHS upon "discovery" of a UAC is separate from the issue of jurisdiction over the asylum application. Where another federal government entity has already made a UAC determination, that entity is the one that "discovered" the UAC, and it is not therefore USCIS's obligation to notify HHS in those cases. Previously issued guidance on examining an applicant's age and unaccompanied status continue to apply to these determinations.

## III. Credible and reasonable fear screening processes

In the credible and reasonable fear screening processes Asylum Offices will generally accept CBP and ICE determinations that individuals were not UACs, unless the Asylum Office discovers evidence indicating that the individual is currently a UAC, in which case the Asylum Office will make a new determination of UAC status and communicate such determination to CBP or ICE as appropriate.<sup>5</sup> If the Asylum Office is the first federal government entity to make a determination that the individual is a UAC and the individual remains a UAC at the time of the credible fear or reasonable fear interview, then the Asylum Office will notify HHS that it has discovered a UAC.

If you have any questions concerning the guidance contained in this memorandum, please contact Kimberly Sicard at 202-272-1623 or [kimberly.r.sicard@uscis.dhs.gov](mailto:kimberly.r.sicard@uscis.dhs.gov).

Attachments (9):

1. UAC Decision Notice for Non-Eligibility (updated decision letter, internal use only)
2. DHS UAC Instruction Sheet
3. Form I-213, *Record of Deportable Alien* (internal use only)
4. Form I-213, *Record of Deportable Alien* (internal use only)
5. Form 93, the CBP UAC Screening Form (internal use only)
6. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Initial Placement Form (internal use only)

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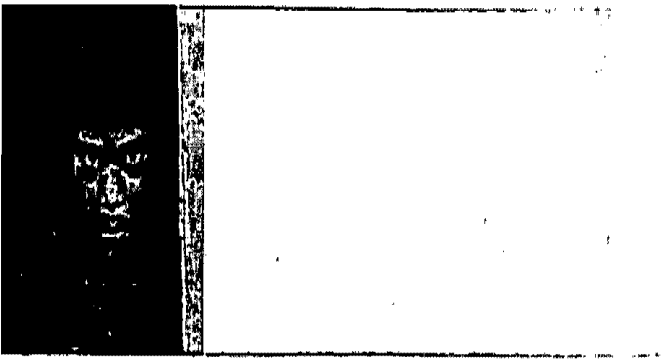
<sup>4</sup> This situation would most likely occur when a child was accompanied at the time of service of the charging document but later became unaccompanied. If the child appeared or claimed to be a UAC in immigration court and expressed an interest in applying for asylum, the ICE trial attorney would give the child a UAC Instruction Sheet so that the child could file an asylum application with USCIS. The Asylum Office would then need to make a determination of UAC status in order to determine whether USCIS has jurisdiction over the case. The ICE trial attorney giving the applicant the UAC Instruction Sheet does not constitute a determination by DHS of UAC status.

<sup>5</sup> Section 235(a)(5)(D) of the TVPRA provides that any UAC whom DHS seeks to remove, except for a UAC from a contiguous country subject to certain exceptions, shall be placed in removal proceedings; therefore, Asylum Offices generally should not encounter UACs in the credible and reasonable fear screening processes.

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7. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Verification of Release Form (internal use only)
8. Screen shot of the encounters tab in EARM (internal use only)
9. Screen shot of the encounters tab in EARM (internal use only)



# Updated Procedures for Determining Initial Jurisdiction Over UAC Asylum Applications



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Photograph by Hiram A. Ruiz, courtesy of the US Committee for Refugees,

# OBJECTIVES

1-Understand the updated procedures for determining whether USCIS has jurisdiction over an asylum application filed by a UAC.

2-Identify where to locate evidence of prior CBP or ICE UAC determinations.

3-Understand what to do in cases in which CBP or ICE has not made a previous UAC determination.



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# BACKGROUND

- CBP and ICE determine whether a minor is a UAC upon apprehension to determine who will have physical custody over the minor.
- UACs are issued NTAs and placed in removal proceedings.
- ICE directs UACs who wish to apply for asylum to file Form I-589 with USCIS and gives them UAC Instruction Sheet.



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# BACKGROUND

- Up until now, Asylum Officers have been making independent factual inquiries under the UAC definition to determine whether an asylum applicant was a UAC at the time of filing their asylum application, even where DHS had already made a UAC determination.
- Under the current procedures, AOs spend time during the asylum interview asking questions about the applicants' age and making difficult inquiries into the availability of a parent or legal guardian.





# NEW PROCEDURES

- Effective June 10, 2013, USCIS will adopt a previous CBP or ICE determination that an applicant is a UAC and take jurisdiction over the asylum case.
- USCIS will accept a previous UAC status determination and take jurisdiction, as long as that UAC status determination was still in place at the date of initial filing of the asylum application.
- USCIS will accept this previous determination even if there is evidence that would not support a new determination applicant is a UAC (e.g., turned 18 years old or reunited with a parent) after being deemed a UAC by CBP or ICE.
- AOs will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant files the initial application for asylum.



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# NEW PROCEDURES

- This change in procedure will save valuable time and resources for Asylum Officers and minimize the number of cases returned to EOIR. This change will also allow AO's to focus on the asylum eligibility part of the determination.
- By taking jurisdiction over the case, the UAC will get a non-adversarial interview and a decision by USCIS on the merits.
- All UAC cases will still require HQ review as juveniles in accordance with the Quality Assurance Referral Sheet.



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# PENDING CASES

- This change applies to all asylum applications in which USCIS has not issued a final decision as of June 10, 2013.
- All pending cases where we found no jurisdiction must be re-examined for jurisdiction based on a previous CBP or ICE UAC status determination.
- If USCIS finds jurisdiction, the case must be re-evaluated based on the merits and revised from a memo-to-file into an assessment.
- Asylum Offices should schedule a follow-up interview if the record is not adequately developed to decide the case on the merits.



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# REFERRED CASES

- If USCIS already referred a case based on lack of jurisdiction before June 10<sup>th</sup>, we will not accept motions to reopen or reconsider the case based on the new procedures.
- AAPM Section III.M, Motions to Reopen and Reconsider, states:

“An Asylum Office Director, or his or her designee, need only consider a motion to reopen or reconsider for a case that has received a *Final Denial* from an Asylum Office. Because referred cases have not received a final decision, they are not entitled to reconsideration”.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

- Form I-213: Record of Deportable Alien
- Form 93: CBP UAC Screening Form
- ORR UAC Initial Placement Referral
- ORR Verification of Release Form
- EARM: Encounters Tab

*\*\*\*The ICE UAC Instruction Sheet is NOT by itself  
evidence of a prior UAC determination\*\*\**



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form I-213: Record of Deportable Alien

**UNACCOMPANIED JUVENILE:**

.....  
2.5.5.....

**FUNDS IN POSSESSION:**

.....

Mexican Peso 20.00

2.5.5

**RECORDS CHECKED:**

.....

CIS Negative

CLAIM Negative

IAPIS Negative

**NARRATIVE:**

.....

**NOTE:**

Subject is an unaccompanied juvenile.

**ENCOUNTER/ALIENAGE:**

Subject, [REDACTED] (A# [REDACTED]), DOB: [REDACTED], was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form I-213: Record of Deportable Alien

### TRAVEL INFORMATION:

[REDACTED] stated that she traveled from her home in El Salvador to Chiapas, Mexico then to Altar, Sonora, Mexico by bus. She then crossed the U.S./Mexico International Boundary illegally on foot.

### DISPOSITION:

[REDACTED] is being served with a Warrant of Arrest/Notice to Appear, and placed in removal proceedings, per Section 212(a)(6)(A)(i) of the INA. She is an unaccompanied juvenile.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form 93: CBP UAC Screening Form

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection

### UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name:

A NUMBER (if any)

A

#### Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?

Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

#### Human Trafficking

**Definition:** Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## ORR UAC Initial Placement Referral Form

UAC Initial Placement Referral Form

See Footer for Instructions - Updated, 3/25/08

Processing Officer's Name	Email Address	Desk Phone	Cell Phone

### UAC Information

First Name	Middle Name	Last Name	DOB	
Additional Names Used:				
Gender	Country of Birth	Immigration Status	A#	FINS #
	EL SALVADOR	NTA Issued		

### Entry and Apprehension Information

	City and/or Location Code	ST	Date	Time	Type
Entry	SASABE	AZ	12/17/2010	10:00 AM	Entered Without Inspection
Apprehension	SASABE	AZ	12/18/2010	3:00 PM	N/A
Current Location	TUCSON	AZ	N/A	N/A	Processing Center

UAC apprehended with: (Choose more than one if applicable)	Please provide the following for all relatives apprehended with the AUC, if more space is needed, use the <i>Referral Notes</i> section at the bottom of the page.		
	Name	A#	Relationship to UAC
<input type="checkbox"/> Parent(s)			
<input type="checkbox"/> Other Related Adult(s)			
<input type="checkbox"/> Related Minor(s)			
<input type="checkbox"/> Smuggler(s)			
<input type="checkbox"/> Non-Related Individual(s)			
<input checked="" type="checkbox"/> Alone			



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## EARM: Encounters Tab

Person	Encounters	Supporting Info	Case Summary	Actions/Decisions	ATD	Bonds	Comments	Scheduling	Print
Encounter Details		<a href="#">EOIR Look Up</a>							

Subject Information		
FINS:	Criminal Type: <b>N/A</b>	Role:
A-Number:	Agg Felon: <b>N - Not an Aggravated Felon</b>	Role Comment: <b>N/A</b>
Control Name:	Primary Citizenship: <b>GUATEMALA</b>	Processing Disposition: <b>Warrant of Arrest/Notice to Appear</b>
First Name:	Hair: <b>BLK</b>	INS Status: <b>Inadmissible Alien</b>
Middle Name: <b>N/A</b>	Eyes: <b>BRO</b>	POE: <b>HIDALGO, TX</b>
Maiden: <b>N/A</b>	Complexion: <b>MED</b>	Entry Date: <b>12/04/2010</b>
Nickname: <b>N/A</b>	Race: <b>W</b>	Entry Class: <b>PWA Mexico</b>
Living?: <b>N/A</b>	Origin: <b>N/A</b>	Apprehension Date: <b>2010-12-04 05:40:00.0</b>
Sex: <b>M</b>	Date of Birth:	Apprehension Location: <b>HIDALGO, TX</b>
Marital Status: <b>Single</b>	Age: <b>20</b>	
SSN: <b>N/A</b>	Age at Encounter: <b>17</b>	
Juvenile Verified: <b>Y</b>	Height: <b>64</b>	
Occupation: <b>CHILD</b>	Weight: <b>130</b>	

**I-213 Narrative** NOTE: Subject is an unaccompanied juvenile. Subject made contact with [REDACTED] via phone [REDACTED] ENCOUNTER/ALIENAGE: Subject, [REDACTED] DOB: [REDACTED] was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was determined to be a citizen and national of Guatemala with no immigration documents. Subject entered the United States at a place not designated as a port of entry by the Attorney General of the United States and or the Secretary of Homeland Security, the successor, thus subject was not admitted, inspected, or named



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# CASE EXAMPLE

- Juan was apprehended by CBP and is in removal proceedings. His asylum interview with USCIS was on May 23, 2013. The Asylum Officer found no jurisdiction based on the previous UAC determination guidelines and wrote a memo-to-file. QAT reviews the file on Monday, June 10, 2013 before sending it to HQ for review. What should QAT do with Juan's case?
- What happens if the record is not sufficient to decide the case on the merits?



# CASE EXAMPLE

- Claudia was apprehended by CBP and placed in removal proceedings. Her asylum interview with USCIS is on June 16, 2013. When preparing for the interview, the Asylum Officer finds Form I-213, which states, “subject is an unaccompanied juvenile” and an ORR Initial Placement Referral Form in the file.
- Does USCIS have jurisdiction over Claudia’s asylum case?
- Does USCIS still have jurisdiction even if Claudia is 20 years old by the time she filed Form I-589?





# CASE EXAMPLE

- Jaime was apprehended, placed into removal proceedings, and transferred to ORR custody when he was 17 years old. When Jaime turned 18, ICE took him into custody and affirmatively terminated the prior UAC determination.
- Does USCIS have jurisdiction over Jaime's asylum case?



# IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE

## IF APPLICANT IS IN REMOVAL PROCEEDINGS

- Asylum Officer determines if the applicant was a UAC on the date of the initial filing of the asylum application to establish if USCIS has jurisdiction and if the 1-year filing deadline applies.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determinations using previous guidance on examining the applicant's age and unaccompanied status.



# CASE EXAMPLE

- Leo and his father were apprehended at the border by CBP in 2012 and placed in removal proceedings. His father was removed to their home country shortly after. Leo tells the IJ that he wants to apply for asylum and that he is unaccompanied.
- Does USCIS have jurisdiction over Leo's asylum application if he was 16 years old when he filed Form I-589?
- What happens if the Asylum Officer finds out during the interview that Leo has been living with his mother in the United States since 2012?
- What happens if Asylum Officer finds that USCIS does not have jurisdiction?





# IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE

## IF APPLICANT IS NOT IN REMOVAL PROCEEDINGS

- Asylum Officer examines whether the applicant was a UAC on the date of the initial filing of the asylum application to determine if 1-year filing deadline applies.
- Jurisdiction is not at issue in these affirmative applications.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determination using previous guidance on examining the applicant's age and unaccompanied status.



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# CASE EXAMPLE

- Jenny entered the United States in 2009 and has been living with her teenage friends in Texas since then. She was never apprehended and has never been in removal proceedings. She files Form I-589 with USCIS in 2013 at the age of 17.
- Does USCIS have jurisdiction over Jenny's asylum case?
- Does the Asylum Officer need to determine if Jenny is a UAC? Why or why not?





# CREDIBLE & REASONABLE FEAR

- UACs should be placed in Section 240 removal proceedings and should not be subject to expedited or administrative removal.
- If the evidence indicates that a UAC was mistakenly put through the APSO process, the officer must make a UAC determination and communicate the findings to ICE or CBP as appropriate.







# SUMMARY

- The new procedures are effective June 10, 2013. All AOs in the field need to be trained by this date.
- USCIS will accept a previous CBP or ICE determination of an asylum applicant's UAC status and take jurisdiction over the asylum case if that determination was still in place on the date of filing.
- If CBP or ICE have NOT made a previous UAC determination, USCIS must determine whether the applicant is a UAC using previously issued guidance.





# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

**RAIO Combined Training Course**

### **WELL-FOUNDED FEAR**

**TRAINING MODULE**

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***WELL-FOUNDED FEAR**

## Training Module

**MODULE DESCRIPTION:**

This module discusses the definition of a **refugee** as codified in the Immigration and Nationality Act and its interpretation in **administrative** and judicial case law. The primary focus of this module is the **determination** as to whether an applicant has established a reasonable possibility of suffering future harm in the country of **nationality** or last habitual residence.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

During an interview you (the Officer) will **be** able to elicit relevant information to correctly determine if an applicant has a **well-founded** fear of future persecution.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain the legal standard required to **establish** a well-founded fear of persecution.
2. Distinguish between the subjective and **objective** elements of well-founded fear.
3. Summarize the four basic criteria **necessary** to establish a well-founded fear of future persecution.
4. Analyze factors to consider in **determining** whether internal relocation is reasonable.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Discussion
- Practical Exercises

**METHOD(S) OF EVALUATION**

- Observed Practical Exercises
- Multiple Choice Exam

## REQUIRED READING

1. *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).
2. United Nations High Commissioner for Refugees, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*. HCR/GIP/03/03 (10 February 2003).
3. United Nations High Commissioner for Refugees, *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. HCR/GIP/03/04 (23 July 2003).

### Division-Specific Required Reading - Refugee Division

### Division-Specific Required Reading - Asylum Division

### Division-Specific Required Reading - International Operations Division

## ADDITIONAL RESOURCES

### Division-Specific Additional Resources - Refugee Division

### Division-Specific Additional Resources - Asylum Division

### Division-Specific Additional Resources - International Operations Division

## CRITICAL TASKS

SOURCE: The Tasks listed below are from the Asylum Division's 2001 Revalidation. These tasks will need to be modified to reflect the results of the RAIO Directorate – Officer Training Validation study.

Task/ Skill #	Task Description
001	Read and apply all relevant laws, regulations, procedures, and policy guidance.
006	Determine applicant's identity and nationality.
012	Identify issues of claim.

024	Determine if applicant is a refugee.
SS 8	Ability to read and interpret statutes, precedent decisions and regulations.
SS 13	<p>Ability to analyze complex issues.</p> <p>Knowledge of the relevant sections of the Immigration and Nationality Act (INA)</p> <p>Knowledge of the relevant sections of 8 Code of Federal Regulations (CFR)</p> <p>Knowledge of <del>if you</del> is case law that impacts RAIO</p> <p>Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening)</p> <p>Knowledge of who has the burden of proof</p> <p>Knowledge of different standards of proof</p> <p>Knowledge of the criteria for refugee classification</p> <p>Knowledge of the criteria for establishing a well-founded fear (WFF)</p> <p>Knowledge of the procedures and guidelines for establishing an individual's identity</p> <p>Skill in identifying issues of a claim</p>

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>

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

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

## 1 INTRODUCTION

The refugee definition at INA § 101(a)(42) states that an individual is a refugee if he or she establishes past persecution or a well-founded fear of future persecution on account of a protected characteristic. An applicant can establish eligibility for refugee resettlement or asylum even if he or she has not actually suffered persecution in the past. The requirements for an applicant to establish eligibility based on past persecution are discussed in the RAIO Training Modules, *Refugee Definition* and *Definition of Persecution and Eligibility Based on Past Persecution*. The requirements needed to establish that persecution or feared persecution is "on account of" any of the five protected grounds in the refugee definition are discussed in the RAIO Training Module, *Nexus and the Five Protected Grounds*.

This module discusses the elements necessary to establish a well-founded fear of future persecution and how to elicit testimony regarding each of these elements.

To correctly determine whether an applicant's fear is well-founded, you must have a firm understanding of: 1) the subjective and objective elements of well-founded fear; 2) the four-part *Mogharrabi* test;<sup>1</sup> and 3) the reasonable possibility standard of proof.

## 2 WELL-FOUNDED FEAR: BURDEN OF PROOF<sup>2</sup>

The burden of proof is on the applicant to establish that he or she is a refugee as defined in the refugee definition. Credible testimony alone may be sufficient to meet the

<sup>1</sup> *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987).

<sup>2</sup> For information on establishing a well-founded fear based on Coercive Population Control, see ASM Supplement – Coercive Population Control.

applicant's burden. As such, you, the officer, have a duty to elicit sufficient testimony to make the determination whether the applicant is eligible for asylum or refugee status.

An applicant for asylum or refugee status may qualify as a refugee either because he or she suffered past persecution or because he or she has a well-founded fear of persecution on account of a protected ground.

In asylum processing, if an applicant establishes past persecution, he or she shall be presumed to have a well-founded fear of future persecution on the basis of the original claim.<sup>3</sup> The burden of proof then shifts to the officer to rebut the presumption that the applicant has a well-founded fear of future persecution. That presumption may be rebutted if an Asylum Officer finds that there has been a fundamental change in circumstances to such an extent that the applicant no longer has a well-founded fear of persecution or the applicant could avoid future persecution by relocating to another part of his or her home country. See ASM Supplement – Presumption Raised By Past Persecution.

The same is not true in overseas refugee processing. In refugee processing, an applicant may be admitted as a refugee if he or she establishes past persecution on account of a protected ground, regardless of changed circumstances or the possibility of internal relocation.<sup>4</sup>

An applicant who is claiming a well-founded fear of persecution based on coercive population control must establish more than a generalized fear that he or she will be persecuted. As this scenario is not often seen in the overseas refugee context, information regarding this issue is located in the ASM Supplement – Coercive Population Control.

In either the asylum or refugee context, an applicant can show he or she is a refugee based solely on a well-founded fear of future persecution without having established past persecution.

### 3 ELEMENTS OF WELL-FOUNDED FEAR

To establish a well-founded fear of persecution within the meaning of the refugee definition, an applicant must show that he or she has: 1) a subjective fear of persecution; and, 2) that the fear has an objective basis.<sup>5</sup>

#### 3.1 Subjective Element

<sup>3</sup> 8 C.F.R. § 208. See ASM Supplement – Presumption Raised By Past Persecution.

<sup>4</sup> INA § 101(a)(42).

<sup>5</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, para. 38 (2011).

The applicant satisfies the subjective element if he or she credibly articulates a genuine fear of return.<sup>6</sup> As the *UNHCR Handbook* notes, when evaluating whether an applicant's fear is subjective, it is important to keep in mind the applicant's background, personal beliefs, sensitivities, societal status, and personality:

since psychological reactions of different individuals may not be the same in identical situations. One person may have strong political or religious convictions, the disregard of which would make life intolerable; another may have no such strong convictions. One person may make an impulsive decision to escape, another may carefully plan his departure.<sup>7</sup>

Fear has been defined as an apprehension or awareness of danger.<sup>8</sup> Fear of famine or natural disaster, without more, fails to meet this element as does general dissent, disagreement with a government, the desire for more personal freedom, or an improved economic situation.<sup>9</sup>

A genuine fear of persecution must be the applicant's primary motivation in seeking refugee or asylum status.<sup>10</sup> However, it need not be the only motivation.<sup>11</sup> An applicant may fear persecution *and* desire more personal freedom or economic advantage.

It is important to remember that just because an applicant exhibits courage in the face of danger this does not negate his or her genuine fear of persecution.<sup>12</sup>

### *Examples*

An applicant continued to protest against the government after an arrest, despite a lengthy detention.

An applicant returned to her country after fleeing, in the hopes that the situation had improved, even though she was tortured there in the past.

### *Relevant Questions*

Would the applicant be able to go back to his or her country? Why? Why not? Has the applicant ever gone back to his or her country? Why? Why not? (As a last resort, if

<sup>6</sup> See *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).

<sup>7</sup> *UNHCR Handbook*, para. 40.

<sup>8</sup> *Matter of Acosta*, 19 I. & N. Dec. 211, 221 (BIA 1985); *UNHCR Handbook*, para. 39.

<sup>9</sup> *UNHCR Handbook*, para. 39; *Matter of Acosta*, 19 I. & N. Dec. 211, 221 (BIA 1985).

<sup>10</sup> *Matter of Acosta*, 19 I. & N. Dec. 211, 221 (BIA 1985).

<sup>11</sup> *UNHCR Handbook*, para. 39.

<sup>12</sup> *Smolnikova v. Gonzales*, 422 F.3d 1037, 1050 (9th Cir. 2005), citing *Singh v. Moschorak*, 53 F.3d 1031, 1034 (9th Cir. 1995).

applicant does not respond) Is the applicant afraid to go back? Why? Why not? What does the applicant think would happen if he or she were to return to his or her country?

### 3.2 Objective Element

In *Cardoza-Fonseca*, the Supreme Court concluded that the standard for establishing the likelihood of future harm in asylum is lower than the standard for establishing likelihood of future harm in withholding of deportation: "One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place."<sup>13</sup>

*Cardoza-Fonseca* points to the following example to illustrate:

In a country where every tenth adult male is put to death or sent to a labor camp, "it would be only too apparent that anyone who has managed to escape from the country in question will have 'well-founded fear of being persecuted' upon his eventual return."<sup>14</sup>

The determination of whether a fear is well-founded does not ultimately rest on the statistical probability of persecution, which is almost never available, but rather on whether the applicant's fear is based on facts that would lead a reasonable person in similar circumstances to fear persecution.<sup>15</sup>

An applicant must establish the likelihood of future persecution by the reasonable possibility standard of proof, i.e., that a reasonable person in the applicant's circumstances would fear persecution upon return to his or her country of origin. The reasonable possibility standard is more generous than a "more likely than not" standard.<sup>16</sup>

## 4 THE *MOGHARRABI* TEST

<sup>13</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987); see also *INS v. Stevic*, 467 U.S. 407 (1984).

<sup>14</sup> *INS v. Cardoza-Fonseca*, at 431, citing to 1 A. Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).

<sup>15</sup> See *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987); *Guevara Flores v. INS*, 786 F.2d 1242 (5th Cir. 1986); *M.A. v. U.S. INS*, 899 F.2d 304, 311 (4th Cir. 1990). See also *Lolong v. Gonzales*, 484 F.3d 1173, 1178 (9th Cir. 2007) (en banc) (to establish that her fears are objectively reasonable the applicant must provide evidence that is credible, direct, and specific); *Zheng v. Gonzales*, 475 F.3d 30 (1st Cir. 2007) (the applicant's fears found not objectively reasonable, despite her personal opposition to China's coercive population control policies, because her circumstances were no different from those of other Chinese women of marriageable age and she intended to abstain from sex until marriage).

<sup>16</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

*Matter of Mogharrabi* lays out a four-part test for determining well-founded fear. To establish a well-founded fear of future persecution, the applicant must establish the following elements:<sup>17</sup>

1. Possession (or imputed possession of a protected characteristic)
2. Awareness (the persecutor is aware or could become aware the applicant possesses the characteristic)
3. Capability (the persecutor has the capability of punishing the applicant)
4. Inclination (the persecutor has the inclination to punish the applicant)

This is sometimes referred to as “PACI” (pronounced “pah’-chee”) for the first letter in each element.

#### 4.1 Possession (or Imputed Possession) of a Protected Characteristic

The applicant must establish that the characteristic falls within one of the protected grounds listed in the refugee definition. For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*. The applicant must establish that he or she possesses or is believed to possess the characteristic the persecutor seeks to overcome.<sup>18</sup> Although *Mogharrabi* states that the applicant must establish that the persecutor seeks to overcome the characteristic by means of punishment, more recent case law holds that the persecutor need not intend to punish or have any malignant intent toward the applicant.<sup>19</sup>

##### *Relevant Questions*

Why is the applicant afraid of returning to his or her country? What does the persecutor not like about the applicant? Why would someone want to harm the applicant in his or her country? If harmed in the past, why did the persecutor harm applicant? What is the applicant's protected characteristic? How are others with the applicant's protected characteristic treated? What did the persecutor say to the applicant? Why would the persecutor think the applicant has a protected characteristic?

#### 4.2 Awareness

The applicant must establish that the persecutor is aware or could become aware that the applicant possesses (or is believed to possess) the characteristic.

<sup>17</sup> *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987) modifying *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).

<sup>18</sup> *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

<sup>19</sup> See *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996); see also *Pitcherskaia v. I.N.S.*, 118 F.3d 641 (9th Cir. 1997).

The applicant must establish that there is a reasonable possibility that the persecutor could become aware that the applicant possesses the characteristic; mere speculation that the persecutor could become aware is insufficient.<sup>20</sup>

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

### *Relevant Questions*

How would someone know that the applicant had the protected characteristic? How could someone recognize the applicant as someone with the protected characteristic? If you were in the applicant's country, how would you know the applicant was someone with the protected characteristic? How would the persecutor know that the applicant had returned to his or her country?

## 4.3 Capability

The applicant must establish that the persecutor has the capability to persecute the applicant because he or she possesses a protected characteristic, or because the persecutor believes the applicant possesses a protected characteristic. Some factors to consider in evaluating capability include:

- whether the persecutor is a governmental entity and, if so, the extent of the government's power or authority
- whether the persecutor is a non-governmental entity, and if so, the extent to which the government is able or willing to control it<sup>21</sup>
- the extent to which the persecutor has the ability to enforce his or her will throughout the country

### *Relevant Questions*

Who is the persecutor? If the persecutor is a part of a government, what role does the persecutor play within the government? How much authority does the persecutor have? If the persecutor is part of the government, can the applicant seek protection from another government entity within the country? Why or why not? If the persecutor is a non-government actor, would the government be able to or want to protect the applicant? Did the applicant report the non-governmental actor to the police? Would the police or government offer any protection to the applicant?

<sup>20</sup> See *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985); *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

<sup>21</sup> For additional information, see RAO Training modules, *Refugee Definition* and *Definition of Persecution and Eligibility Based on Past Persecution* (section on *Entity the Government is Unable or Unwilling to Control*).



During the interview, you will need to ask the applicant questions about the persecutor's capability to persecute him or her. You may use country of origin information<sup>22</sup> to help you determine the capability of the persecutor to harm the applicant if the applicant is having difficulty answering your questions regarding capability.

#### 4.4 Inclination

The applicant must establish that the persecutor has the inclination to persecute him or her. Note that the applicant does not need to establish that the persecutor is inclined to *punish* the applicant, i.e., that the persecutor's actions are motivated by a malignant intent.<sup>23</sup>

##### *Relevant Questions*

If many months or years have passed, does the applicant think the persecutor would still want to harm him or her? Why? Why not? Does the applicant know anyone with his or her protected characteristic who has returned to the home country? What happened to the person who returned? Does the applicant know anyone in the same circumstances who remained in the home country? If so, what, if anything, has happened to that person in the home country? What does the applicant hear about the treatment of others possessing the applicant's protected characteristic in the home country now?

Similar to documenting the capability of the persecutor, you will need to ask the applicant questions about whether the persecutor would be inclined to persecute the applicant. If the applicant is unable to answer questions regarding whether the persecutor is inclined to persecute him or her, you may use country of origin information to help you determine the persecutor's inclination to persecute the applicant.<sup>24</sup> Factors to consider when evaluating inclination include any previous threats or harm from the persecutor and the persecutor's treatment of individuals similarly situated to the applicant. The motive of the persecutor is discussed in detail in the RAIO Training Module, *Nexus and the Five Protected Grounds*.

## 5 PATTERN OR PRACTICE

### 5.1 General Rule

The applicant need *not* show that he or she will be singled out individually for persecution, if the applicant shows that:

<sup>22</sup> For additional information, see RAIO Training module, *Country of Origin Information*.

<sup>23</sup> *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996); *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

<sup>24</sup> As noted above, although *Mogharrabi* states that the applicant must establish that the persecutor seeks to overcome the characteristic by means of *punishment*, more recent case law holds that the persecutor need not intend to punish or have any malignant intent. See *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996) and *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

- There is a pattern or practice of persecution on account of any of the protected grounds against a group or category of persons similarly situated to the applicant.<sup>25</sup>
- The applicant belongs to or is identified with the persecuted group, so that a reasonable person in the applicant's position would fear persecution.<sup>26</sup>

## 5.2 "Pattern or Practice" of Persecution

There is no established definition of "pattern or practice." You must evaluate claims of well-founded fear based on a pattern or practice of persecution on a case-by-case basis. The Court of Appeals for the Eighth Circuit has interpreted "pattern or practice" to mean something "on the order of organized or systematic or pervasive persecution," but held that it does not require a showing of persecution of all the members of the group.<sup>27</sup>

The Ninth Circuit has held that even if there is no systematic persecution of members of a group, persecution of some group members may support an applicant's fear of being singled out in the future, if the applicant is similarly situated to those members. The court explained:

if the applicant is a member of a 'disfavored' group, but the group is not subject to systematic persecution, this court will look to (1) the risk level of membership in the group (i.e., the extent and the severity of persecution suffered by the group) and (2) the alien's individual risk level (i.e., whether the alien has a special role in the group or is more likely to come to the attention of the persecutors making him a more likely target for persecution).<sup>28</sup>

The Ninth Circuit went on to state, "[t]he relationship between these two factors is correlational; that is to say, the more serious and widespread the threat of persecution to the group, the less individualized the threat of persecution needs to be."<sup>29</sup>

<sup>25</sup> 8 C.F.R. § 208.13(b)(2)(iii)(A).

<sup>26</sup> 8 C.F.R. § 208.13(b)(2)(iii)(B).

<sup>27</sup> See *Makonnen v. INS*, 44 F.3d 1378, 1383 (8th Cir. 1995); *Feleke v. INS*, 118 F.3d 594 (8th Cir. 1997); see also *Lie v. Ashcroft*, 396 F.3d 530 (3d Cir. 2005) (adopting Eighth Circuit's definition of "pattern or practice" of persecution), *Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005) (applying the Eighth Circuit standard in upholding the IJ's finding that the applicant failed to establish a pattern or practice of persecution in Indonesia against Chinese Christians). See also *Meguenine v. INS*, 139 F.3d 25, 28 (1st Cir. 1998) (to establish a pattern or practice of persecution the applicant must submit evidence of "systematic persecution" of a group); *Mitreva v. Gonzales*, 417 F.3d 761, 765 (7th Cir. 2005) (citing case examples, and noting that "courts have interpreted the regulation to apply only in rare circumstances").

<sup>28</sup> *Sael v. Ashcroft*, 386 F.3d 922, 925 (9th Cir. 2004); *Mgoian v. INS*, 184 F.3d 1029, 1035 n. 4 (9th Cir. 1999); citing to *Kotas v. INS*, 31 F.3d 847, 853 (9th Cir. 1994); see also *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996).

<sup>29</sup> *Mgoian* at 1035; see also *Kotas* and *Singh*.

The First, Third, and Seventh Circuits have rejected the Ninth Circuit's use of a lower "disfavored group" standard where there is insufficient evidence to establish a "pattern or practice" of persecution.<sup>30</sup>

### 5.3 Group or Category of Individuals Similarly Situated

There is no established rule regarding the type of group or category with which the applicant must be identified. The group could include a few individuals or many. However, the members of the group or category must share some common characteristic that the persecutor seeks to overcome and that falls within one of the protected grounds in the refugee definition.<sup>31</sup>

#### *Relevant Questions*

How were others similarly situated to the applicant treated in the applicant's home country? How were others treated, with whom the applicant was associated? How would the applicant be seen as connected with this group? How does the persecutor treat people who are seen as belonging to this group? Have other people in this group who also fled returned to the home country? How have they been treated? What has happened to them?

You should also consult country conditions reports to determine whether the applicant belongs to a group at risk of harm and the extent to which that group is at risk.

## 6 PERSECUTION OF INDIVIDUALS CLOSELY RELATED TO THE APPLICANT

### 6.1 Objective Evidence Supporting Fear

The persecution of family members or other individuals closely associated with the applicant may provide objective evidence that the applicant's fear of future persecution is well-founded, even if there is no pattern or practice of persecution of such individuals. On the other hand, continued safety of individuals similarly situated to the applicant may, in some cases, be evidence that the applicant's fear is not well-founded.<sup>32</sup>

<sup>30</sup> *Lie v. Ashcroft*, 396 F.3d 530 (3d Cir. 2005) (finding that violence against Chinese Christians in Indonesia is not sufficiently widespread to constitute a "pattern or practice" of persecution); *Firmansjah v. Gonzales*, 424 F.3d 598, 607 n.6 (7th Cir. 2005) (noting that the court has not recognized a lower threshold of proof based on membership in a "disfavored group" where the evidence is insufficient to establish "pattern or practice"); *Kho v. Keister*, 505 F.3d 50, 55 (1st Cir. 2007) (noting that the disfavored group analysis creates a threshold for relieving applicants of the need to establish individualized persecution that is not found in the regulations).

<sup>31</sup> See, *Meguenine v. INS*, 139 F.3d 25 (1st Cir. 1998) (Applicant failed to establish well-founded fear based on pattern or practice of individuals similarly situated to him, because evidence indicated that those targeted were not persecuted because of the characteristic they shared with the applicant, but rather a characteristic the applicant did not possess – prominent opposition to Islamic fundamentalists).

<sup>32</sup> See *Matter of A-E-M-*, 21 I. & N. Dec. 1157 (BIA 1998); but see *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994) (remanded to the BIA, in part, for the Board to consider evidence that others similarly situated to the applicant were also being subjected to violence by government forces).

## 6.2 Connection Must Be Established

The applicant must establish a connection between the persecution of the family member or associate and the harm that the applicant fears.<sup>33</sup>

### *Example*

An applicant's sister was arrested because she was a member of the same opposition party as the applicant. The sister and the applicant lived in the same city. The applicant learned of the arrest through continued contact with family in the home country. The sister's arrest must be considered in evaluating the applicant's claim. On the other hand, if the facts were different and the applicant did not live in the same city as her sister, had little contact with her, and had no association with her political party, the sister's arrest must still be considered, but might not be enough to establish a well-founded fear.

## 7 THREATS MAY BE SUFFICIENT WITHOUT HARM

Serious threats made against an applicant may constitute past persecution even if the applicant was never physically harmed.<sup>34</sup> A threat (anonymous or otherwise) may also be sufficient to establish a well-founded fear of persecution, depending on all of the circumstances of the case. There is no requirement that the applicant be harmed in the past or wait to see whether the threat will be carried out. The fact that an applicant has not been harmed in the past is not determinative of whether his or her fear of future persecution is well founded. However, the evidence must show that the threat is serious and that there is a reasonable possibility the threat will be carried out.<sup>35</sup>

Threats must be evaluated in light of the conditions in the country and the circumstances of the particular case. Anonymous threats could be a result of personal problems unrelated to any of the protected characteristics in the refugee definition. On the other hand, death squads may use anonymous threats to terrorize those over whom they seek control. The fact that a threat is anonymous does not necessarily detract from the seriousness of the threat. Further inquiry should be made regarding the circumstances and content of the threat to evaluate whether it provides a basis for a well-founded fear. In

<sup>33</sup> See *Matter of A-K-*, 24 I. & N. Dec. 275, 277-78 (BIA 2007) (the applicant was not eligible for withholding of removal, based on a fear that his daughters would be subjected to FGM, as he did not establish a pattern of persecution tied to him personally).

<sup>34</sup> *Salazar-Paucar v. INS*, 281 F.3d 1069, 1074 (9th Cir. 2002), amended by *Salazar-Paucar v. INS*, 290 F.3d 964 (9th Cir. 2002). For additional information, see RAIO Training modules, *Refugee Definition* and *Definition of Persecution and Eligibility Based on Past Persecution*.

<sup>35</sup> *Matter of Villalta*, 20 I&N Dec. 142 (BIA 1990); *Kaiser v. Ashcroft*, 390 F.3d 653, 658 (9th Cir. 2004); *Arteaga v. INS*, 836 F.2d 1227 (9th Cir. 1988); *Sotelo-Aquije v. Slattery*, 17 F.3d 33 (2d Cir. 1994); *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994).

many cases, the content of an anonymous threat sheds light on the identity of the source of the threat.<sup>36</sup>

In determining whether a threat or threats establish a well-founded fear of persecution, you should elicit information from the applicant about all of the circumstances relating to the threat. Factors to consider may include:

- whether others have received similar threats, and what happened to those individuals
- the authority or power of the individual or group that made the threat
- any activities that may have placed the applicant at risk
- country of origin reports

## 8 SIGNIFICANT LAPSE OF TIME BETWEEN OCCURRENCE OF EVENT(S) AND FLIGHT

### 8.1 General Rule

A significant lapse of time between the occurrence of incidents that form the basis of the claim and an applicant's departure from the country may be evidence that the applicant's fear is not well-founded.<sup>37</sup> The lapse of time may indicate that:

- the applicant does not possess a genuine fear of harm
- the persecutor does not possess the ability or the inclination to harm the applicant

### 8.2 Possible Exceptions

There may be valid reasons why the applicant did not leave the country for a significant amount of time after receiving threats or being harmed, including:

- lack of funds to arrange for departure from the country
- time to arrange for the safety of family members

<sup>36</sup> See, e.g., *Aguilera-Cota v. INS*, 914 F.2d 1375 (9th Cir. 1990); *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994); *Gajlius v. INS*, 147 F.3d 34 (1st Cir. 1998); *Kaiser v. Ashcroft*, 390 F.3d 653, 658 (9th Cir. 2004); *Canales-Vargas v. Gonzales*, 441 F.3d 739, 744-745 (9th Cir. 2006) (finding that the timing of threats – two or three weeks after the applicant publicly denounced the Shining Path guerrillas – was circumstantial evidence sufficient to establish the Shining Path as the source of the threats).

<sup>37</sup> See *Castillo v. INS*, 951 F.2d 1117 (9th Cir. 1991); *Lie v. Ashcroft*, 396 F.3d 530 (3d Cir. 2005) (upholding BIA's determination that applicant did not establish a subjective fear of future persecution when she had remained in Indonesia for two years after the robbery that formed the basis of her claim to asylum).

- belief that the situation would improve,
- promotion of a cause within the home country
- temporary disinclination or inability by the persecutor to harm the applicant

### 8.3 Factors to Consider

To evaluate the weight to be given to this issue, it is important to consider all circumstances,<sup>38</sup> including:

#### **The amount of time the applicant remained**

A relatively short period, such as weeks or months, may not be significant, whereas years could be significant, depending on the circumstances. You must ascertain whether the length of time has a significant impact on the applicant's claim.

#### **The reason for the delay**

There may have been a lack of opportunity to escape or the applicant may have had other legitimate reasons for deciding to remain in the country. On the other hand, an applicant may provide reasons that are not consistent with his or her alleged reasons for leaving the country.

#### **The applicant's location during that time**

Whether the applicant remained near the place of persecution, or went into hiding, or moved to a distant location within the country, may have a bearing on the issue. If an applicant remained in the area where the persecutor could easily locate the applicant, you must elicit additional testimony as to why the applicant did so, as well as reasons why the persecutor did not continue his or her activities against the applicant.

#### **The applicant's activities during that time**

It may be relevant to determine whether the applicant went into hiding or assumed his or her normal routine. If the applicant made attempts to reduce his or her vulnerability to persecution, and believed that those attempts would be effective, this could explain the delay. If the applicant did not change his or her daily routine, you should explore whether the applicant continued to remain vulnerable to the possibility of persecution.

#### **The persecutor's activities during that time, if known**

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<sup>38</sup> See *Gonzales v. INS*, 82 F.3d 903, 909 (9th Cir. 1996) (finding that the applicant's stay in Nicaragua for 3 years after the first threat did not undermine her claim of a well-founded fear where the threats were repeated, applicant took steps to protect herself, and a pattern of violence against her family members made her fear well-founded).

If the persecutor suspends persecutory activities during the time in which the applicant remained in his or her country, this could explain the delayed departure.

## 9 RETURN TO COUNTRY OF FEARED PERSECUTION

### 9.1 Effect on Well-Founded Fear Evaluation

Depending on the circumstances, an applicant's return to the country of feared persecution may indicate that the applicant does not possess a genuine (subjective) fear of persecution or that the applicant's fear is not objectively reasonable. However, return to the country of feared persecution does not necessarily defeat the claim.<sup>39</sup>

The regulations at 8 C.F.R. § 208.8(b) address the effect of return to the home country in the context of an asylum seeker. Please see the ASM Supplement – Return to Country of Feared Persecution for further information on this topic. While there is no equivalent regulation governing overseas refugee adjudications, return to the country of feared persecution in this context may affect whether the applicant has a well-founded fear of persecution. RAD Supplement – Return to Country of Feared Persecution. For additional information, see RAI0 Training modules, *Refugee Definition and Definition of Persecution and Eligibility Based on Past Persecution*.

In the overseas refugee context, an applicant need **only** establish either past persecution or a well-founded fear of future persecution.

### 9.2 Factors to Consider

#### Why Did Applicant Return?

In evaluating the weight to be given to an applicant's return, you must consider the reason the applicant returned. There may be one or more compelling reasons for an applicant to return. For example, the Ninth Circuit held that the fact that applicant returned to the country of feared persecution to get her child, whose custodian had died, did not undercut the genuineness of her fear.<sup>40</sup>

#### What Happened Upon Return?

<sup>39</sup> Procedurally, an applicant with a pending asylum application who leaves the United States without advance parole is presumed to have abandoned his or her asylum claim, regardless of the country he or she travels to. 8 C.F.R. § 208.8(b). The presumption is generally overcome by the applicant's appearance at the asylum office. Return to country of feared persecution is also addressed in the RAI0 Training module, *Refugee Definition and Past Persecution*. In this section, you should focus on how the applicant's return factors into the analysis of well-founded fear.

<sup>40</sup> *Rodriguez v. INS*, 841 F.2d 865 (9th Cir. 1987); see also *Damaize-Job v. INS*, 787 F.2d 1332 (9th Cir. 1986) (Applicant's return to country of feared persecution because he wanted to help his uncle and sister who had been arrested was not inconsistent with a well-founded fear).

It is also important to consider what happened to the applicant after he or she returned to the country of feared persecution. Threats or harm experienced upon return would strengthen the applicant's claim that he or she faces a reasonable risk of persecution. However, the ability to return to and remain safely in the country of feared persecution would undercut the reasonableness of the applicant's fear, particularly if the applicant remained there a significant amount of time and lived openly (not in hiding).

### *Examples*

- An applicant returned to his home country of Lebanon to attend to his dying father. Out of fear of persecution, he cut short his visit and returned to the United States before his father's funeral. Four years later, he returned to Lebanon to attend to his dying mother. Because a fear of persecution, the applicant delayed this visit and by the time he arrived in Lebanon his mother had already died. The court concluded that these two return visits were not substantial evidence that the applicant's fear of persecution was not well-founded.<sup>41</sup>
- A Rwandan applicant provided "reasonable explanations" for remaining in school in her home country and several return trips to her home country after she fled, according to the First Circuit Court of Appeals.<sup>42</sup> The court noted that all members of her immediate family had been killed and she returned at the urging of a close friend, a nun, who was not aware that she had been raped in Rwanda and who believed that the applicant would no longer be a target after her father's death. The court also relied on the fact that the applicant had no means of financial or emotional support, except for the nun, and her only means of obtaining an education was through the free education offered at the National University of Rwanda. Upon return, the applicant changed her name, but was soon discovered. She also returned later to obtain her transcript so that she might be able to attend school in the United States. The court concluded that "[f]aced with no viable means of support otherwise, people take risks in the face of their fears."<sup>43</sup>

## 10 POSSESSION OF TRAVEL DOCUMENTS

### 10.1 General Rule

Possession of a valid national passport and other official travel documents is not a bar to refugee status. However, possession of such documents may be considered in evaluating whether the applicant is at reasonable risk of harm from the government, because it may be evidence that the government is not inclined to harm the applicant. This would only be relevant when the government is the persecutor.

<sup>41</sup> *Karouni v. Gonzales*, 399 F.3d 1163 (9th Cir. 2005).

<sup>42</sup> *Mukamusoni v. Ashcroft*, 390 F.3d 110, 125 (1st Cir. 2004).

<sup>43</sup> *Mukamusoni v. Ashcroft*, 390 F.3d at 126.



## 10.2 Factors to Consider

To evaluate the weight to be given to the applicant's possession of travel documents, the circumstances surrounding the acquisition of the documents should be elicited and considered. Factors to consider include:

- Whether the passport-issuing or exit control agency is separate from the branch of government that seeks to harm the applicant and whether that agency is aware of the applicant's situation<sup>44</sup>
- Whether the applicant obtained the documents surreptitiously (e.g., through a bribe or with the help of a friend)
- Whether the government issued the documents so that the applicant would go into exile
- Whether the applicant obtained the documents prior to the incidents that gave rise to the applicant's fear

## 11 REFUGEE SUR PLACE

### 11.1 Definition

UNHCR defines a "refugee *sur place*" as a "person who was not a refugee when he left his country, but who becomes a refugee at a later date."<sup>45</sup> An individual may become a refugee due to circumstances arising in the country of origin after the individual left, or due to actions the individual took while outside his or her country.<sup>46</sup>

### 11.2 Analysis

To evaluate a claim, you should apply the *Mogharrabi* four-pronged test, just as in any other claim of well-founded fear. A common issue that arises in such cases is whether there is a reasonable possibility the persecutor could become aware that the applicant possesses a characteristic that the persecutor seeks to overcome, or might impute the characteristic to the applicant.

### 11.3 Factors to Consider

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<sup>44</sup>See *Khup v. Ashcroft*, 376 F.3d 898, 905 (9th Cir. 2004) (finding that IJ erred in failing to consider Khup's explanation that he obtained the passport through a broker to whom he paid a large sum of money and IJ failed to explore how the applicant was able to renew the passport).

<sup>45</sup> *UNHCR Handbook*, para. 94.

<sup>46</sup> *UNHCR Handbook*, paras. 94-96: Refugees "sur place;" See *Kyaw Zwar Tun v. INS*, 445 F.3d 554 (2d Cir. 2006) (finding error where the IJ failed to consider whether the applicant's political activities since coming to the US, even if not motivated by actual political beliefs, established a well-founded fear of persecution).

- The visibility of the applicant's activities outside the country of feared persecution (e.g., does the applicant attend or speak at small and large rallies, give money to an organization, is the applicant active online or in social media, or has the applicant been exposed by the press?)
- The extent of the feared persecutor's network outside the country of feared persecution (e.g., does the applicant's government closely monitor nationals abroad?)
- The persecutor's opinion of those who have resided in other countries (e.g., is the applicant's government suspicious of those who have resided in countries viewed as political opponents?)

### *Examples*

An Iranian national had an altercation with an Iranian official at the Iranian Interests Section of the Algerian Embassy in the United States. The applicant accused the official of robbing Iran and being a religious fascist. In response, the official pulled a gun and threatened the applicant. The BIA found that a reasonable person in the applicant's situation would fear persecution on account of political opinion, because the applicant's opposition to the authorities was known to an Iranian official, and it was not disputed that the Iranian regime persecutes its opponents.<sup>47</sup>

## 12 INTERNAL RELOCATION

### 12.1 Countrywide Scope of Feared Persecution

The threat of feared persecution must exist throughout the country where persecution is feared, unless it is unreasonable for the applicant to relocate within the country. If the applicant can *reasonably* relocate to another part of the country to avoid future persecution, then the applicant's fear of persecution is not well-founded.<sup>48</sup> When determining whether internal relocation is an option, apply the reasonableness test explained below.

A countrywide threat of persecution is not required to establish past persecution. It is not logical to state that a person was or was not harmed countrywide in the past. If an applicant suffered persecution on account of a protected ground, then the applicant is a refugee, irrespective of whether the persecutor would have had the ability to harm the applicant if the applicant had relocated within the country.

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

<sup>47</sup> *Matter of Mogharrabi*, 19 I. & N. 439 (1987); see also *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992).

<sup>48</sup> 8 C.F.R. § 208.13(b)(3)(i)

1. Determine if an applicant could avoid future persecution by relocating to another part of the applicant's home country.<sup>49</sup> If you find that an applicant will not be persecuted in another part of the country, then,
2. Determine if an applicant's relocation, under all circumstances, would be reasonable<sup>50</sup>

### *Examples*

- In some countries, it would be unreasonable to require a single woman to relocate to areas where she has no family or social safety net.
- For an applicant with a disability, it would be unreasonable to expect the applicant to relocate to an area that lacks appropriate medical care.
- Where relocation is inconvenient because the applicant lacks social connection such as family and friends, it may nonetheless be reasonable to expect the applicant to relocate if the applicant has sufficient funds, the applicant could obtain employment, and where he or she could integrate into the new area without difficulties.
- It could be reasonable to expect an applicant to relocate to a safe area of his country, even though he does not fluently speak the dialect used in that location.

## 12.2 Government or Government-Sponsored Persecutor

In cases in which the feared persecutor is a government or is government-sponsored, you must presume that there is no reasonable internal relocation option. This presumption may be overcome if you show by a preponderance of the evidence that the applicant could avoid future persecution by relocating to another part of the applicant's country and that it would be reasonable to expect the applicant to relocate.<sup>51</sup>

## 12.3 Non-Governmental Persecutor or Entity

If the persecutor is a non-governmental entity, the applicant must demonstrate that there is no reasonable internal relocation option. Analyze the facts according to the two-step test for internal relocation. First, determine if the applicant could avoid future persecution by relocating to another part of the country. If the applicant would not face persecution in another part of the country, then determine if, under all circumstances, it would be reasonable to expect the applicant to relocate.

### *Examples*

<sup>49</sup> 8 C.F.R. § 208.13(b)(2)(ii).

<sup>50</sup> 8 C.F.R. § 208.13(b)(2)(ii).

<sup>51</sup> 8 C.F.R. § 208.13(b)(3)(ii).

- If the persecutor is a rebel group that has control of, and access to, a substantial part of the country, then the applicant could not avoid future persecution by relocating. On the other hand, if the persecutor is a local rebel group whose scope of power is limited to a remote area of a country, the applicant might not have a well-founded fear in another part of the country. In addition, if the applicant has the support of family in an area where the rebels are inactive, or the government has effectively protected individuals from rebel threats in other parts of the country, it might be reasonable to expect the applicant to relocate.
- If the persecutor is a nationally known religious leader that has *de facto* power and access to large parts of the country, then the applicant could not avoid persecution by relocating to another part of the applicant's home country and your inquiry would end there. On the other hand, if the persecutor is a local religious leader whose scope of power is limited to a remote area of the country, the applicant might not have a well-founded fear in another part of the country. In this situation, you should move on to the second step of the test and determine if it would be reasonable, under all circumstances, to expect the applicant to relocate.

#### 12.4 Considerations in Evaluating When Internal Relocation Is Reasonable

If the fear of persecution is not countrywide, you must determine whether it would be reasonable for the applicant to relocate within the country of feared persecution. In determining reasonableness, you should consider the following factors. These are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

##### Whether the Applicant Would Face Other Serious Harm

Other serious harm means harm that may not be inflicted on account of one of the five protected grounds in the refugee definition, but is so serious that it equals the severity of persecution. Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as other serious harm.

This factor may overlap with the other factors described below

##### Any Ongoing Civil Strife

There may be a civil war occurring in parts of the country, making it unreasonable for the applicant to relocate.

##### Example

The only place where the persecutor has no authority is within the war-torn area; or the applicant would have to travel through unsafe areas to try to get to a place not controlled by the persecutor.

##### Administrative, Economic, or Judicial Infrastructure

There may be circumstances under which aspects of the infrastructure may make relocation difficult. Depending on the circumstances, such infrastructure may make it very difficult for an individual to live in another part of the country.

*Example*

In certain situations, the fact that women may not have the same legal rights as men may hinder an applicant's ability to relocate; or a member of a particular tribe may be unable to live safely among other tribes because of social and cultural constraints in the country.

**Geographical Limitations**

There may be situations in which geographical limitations, such as mountains, deserts, jungles, etc., would present barriers to accessing a safe part of a country. Or, there may be cases in which the only safe places in a country are places in which an individual would have difficulty surviving due to the geography (e.g., an uninhabitable desert).

**Social and Cultural Constraints**

You may consider factors such as age, gender, health, and social and familial ties. The applicant may also possess a characteristic that would readily distinguish the applicant from the general population and affect his safety in the new location. The applicant may speak a dialect or have a physical appearance unique to a minority group or to a certain part of the country that would make it difficult for the applicant to integrate into the new area. An applicant's high or low profile status may also affect his or her ability to safely relocate to another part of the country. There may be other social or cultural constraints that make it unreasonable for the applicant to relocate.

*Example*

In some countries a woman may be unable to live safely or survive economically without a husband or other family members.

**Other Factors**

Any other factors specific to the case that would make it unreasonable for the applicant to relocate should be considered.

**12.5 Applicant Relocated before Leaving the Country of Feared Persecution**

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

whether the applicant was able to live a relatively normal life in that location or was forced to live in hiding; whether the persecutor knew of the applicant's relocation; and the length of time the applicant lived in the new location.

### 13 COUNTRY OF ORIGIN INFORMATION<sup>52</sup>

Information regarding the conditions in an applicant's country is critical in evaluating whether the applicant's fear of future persecution is well-founded. You are required to keep abreast of country of origin information and to research available information in evaluating claims.

### 14 CONCLUSION

The main component of determining whether an applicant's fear is well-founded is the 4-part *Mogharrabi* test. In order to establish that a well-founded fear exists, the applicant must establish that the likelihood of future persecution on account of a protected ground is a reasonable possibility.

### 15 SUMMARY

#### *Elements of a Well-Founded Fear*

To establish a well-founded fear of persecution, the applicant must show that the fear is genuine (the subjective basis) and that it has an objective basis in fact.

#### *No Requirement of Past Harm*

There is no requirement that the applicant have suffered harm in the past to establish a well-founded fear of future persecution.

#### *Objective Basis for Fear*

The requirement of an objective basis is met if the applicant establishes that the fear of persecution is reasonable; i.e., that there is a reasonable possibility of suffering persecution in the future.

#### *The Mogharrabi Test*

If an applicant establishes all four prongs of the *Mogharrabi* test, as modified by *Matter of Kasinga and Pitcherskaia v. INS*<sup>53</sup>, the fear of persecution is well-founded. The elements of the four-prong test are 1) applicant possesses (or is believed to possess) a

<sup>52</sup> For additional information, see RAIO Training module, *Country of Origin Information*.

<sup>53</sup> See *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); see also *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997)

protected characteristic; 2) persecutor is aware or could become aware that applicant possesses the characteristic; 3) persecutor is capable of persecuting applicant; and 4) persecutor is inclined to persecute applicant.

### *Pattern or Practice*

An applicant does not need to show that he or she will be singled out if there is 1) a pattern or practice of persecution of a group or category of individuals similarly situated to the applicant, and 2) the applicant belongs to or is identified with the group or category of persons such that a reasonable person in the applicant's position would fear persecution.

### *Persecution of Family Members or Close Associates*

Persecution of family members or others associated with the applicant may be objective evidence that the applicant's fear is well founded. However, the applicant must establish some connection between such persecution and the persecution the applicant fears.

### *Threats*

Threats (anonymous or otherwise) may be sufficient to establish a well-founded fear if the applicant establishes that there is a reasonable possibility the threats will be carried out. If the threat is anonymous, you should consider all possible sources of the threat, the content of the threat, circumstances surrounding the threat, and country conditions information.

### *Applicant Remains in Country after Threats or Harm*

A significant lapse of time between the incidents that give rise to the claim and the applicant's departure from the country may indicate that the fear is not well-founded. However, the reasons and circumstances for delayed departure must be considered.

### *Return to Country of Persecution*

An applicant's return to the country of feared persecution generally weakens the applicant's claim of a well-founded fear of persecution. Consideration must be given to the reasons the applicant returned and what happened to the applicant once he or she returned. Return to the country of feared persecution does not necessarily defeat an applicant's claim.

### *Possession of Travel Documents*

Possession of valid travel documents does not preclude eligibility for refugee or asylum status, but may indicate that the applicant's government does not have the inclination to harm the applicant. All of the circumstances surrounding acquisition of such documents must be considered.

### ***Refugee Sur Place***

An applicant may become a refugee **due** to events that occur while the applicant is outside his or her country. These events may be changed circumstances in the applicant's country, or actions the applicant takes while outside of his or her country that put him or her at risk if the applicant returns to **the** country.

### ***Internal Relocation***

A fear is not well-founded if the applicant could avoid future persecution by relocating to another part of his or her country, and, under all the circumstances, it would be reasonable to expect the applicant to **do** so. You must consider whether the persecutor is the government or is government-sponsored; the extent of the authority of the persecutor; and any factors that may make it un**rea**sonable for the applicant to relocate. In the Asylum context, the burden of proof **shifts** to the officer to show that **the** applicant could reasonably relocate to avoid future **persecution** if past persecution has **been** established or if the persecutor is the government or is government-sponsored.

### ***Country of Origin Information***

You must consider current conditions in the applicant's country to **evaluate** whether an applicant's fear of future persecution **is** well-founded.



**PRACTICAL EXERCISES**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**RAD Supplement – Return to Country of Feared Persecution**

**Returns in the Iraqi Context**

**Response to Query**

**Date:** May 15, 2009

**Subject:** Returns Guidance

**Keywords:** Returns, Iraq, Well-Founded Fear, Objective Fear

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**Query:** To what degree do voluntary returns to Iraq (or other countries of claimed persecution) undercut claims of a well founded fear of future persecution?

**Response:**

While the voluntary return to the country of claimed persecution may indicate that an alien is willing and able to return, it does not in and of itself preclude the establishment of eligibility for refugee status. **The reasons motivating the**

temporary return, including the intent and circumstances surrounding such, are the most critical factors in determining if an applicant is unable or unwilling to return or if his/her return calls into question the credibility of the applicant's past persecution or well-founded fear claim. In all of these cases, you should weigh the reasons for the applicant's return, with what happened to the applicant previously and the circumstances of the return (why they returned, what activities they engaged in upon return, what happened during the return, the length of the return).

According to the April 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection needs of Iraqi Asylum-Seekers*, "the situation in Iraq has further evolved, with important improvements in the overall security situation in many parts of the country." This improvement in conditions may help to explain why we're seeing so many applicants traveling back and forth frequently. UNHCR goes on to say that "the developments and improvements all have to be seen in context. Conditions can still be unpredictable, with several set-backs occurring, and there are major uncertainties and risks remaining." "It is UNHCR's assessment that the improvement of the situation in Iraq does not yet constitute fundamental changes sufficient to allow a general application of the cessation clauses of Articles 1C(5) or (6) of the 1951 Convention." Therefore, the UNHCR believes that the conditions/reasons that made these individuals refugees still exist.

Here are some factors to consider when addressing the return issue:

1) Has the applicant suffered past persecution?

The refugee definition requires an applicant to demonstrate either actual past persecution or a well-founded fear of future persecution. An applicant may also establish both actual past persecution and a well-founded fear of persecution; however, it is only required that one or the other be established to be eligible for refugee status.

Regarding returns, if past persecution is established, you would want to look at whether the return calls into question the credibility of the past persecution.

For example: the applicant returns to the same place the past persecution took place.

Some sample questions to ask would be: Did he/she live openly? How long did he/she return for? Why did he/she return? Did any incidents of harm occur during the return?

Based on these responses, you would want to evaluate if it is plausible that the applicant would return. Does it call into question the past persecution?

For example: The applicant responds that he/she returned to Iraq every 3 months for a 1 month period to continue operating his/her business. The applicant's claim

is that he was threatened and beaten at his place of business, and told he would be killed if he continued to sell his goods to the Americans. The return calls into question whether the past persecution claim is credible, particularly, if no incidents occurred during his/her regular returns. In such cases, the credibility issue should be well documented in the Assessment.

If the applicant returned but did not go to the same place/undertake same activities/live openly, the act of returning is less likely to call into question the past persecution.

2) Why did the Applicant Return? What are the Conditions of the Return/Stay in Iraq?

Family: In general, returns for family or personal reasons such as picking up a child whose custodian died, visiting an old or sick parent, or some other family emergency will not be cause for concern. You should, nevertheless, briefly ask about the circumstances surrounding return: length of stay, if applicant went back to the same area, if so, were they in hiding, were there any incidents upon return. These cases should be adjudicated on a case-by-case basis.

Economic reasons: Consider whether the applicant went back to his/her old job or are running the same business as before—this could be problematic because it seems the alleged persecutor could easily identify/find the applicant. Look at where the applicant's job is – for example, if it is in the Green Zone where there may be more protection, such a return may not be cause for concern. Would want to consider how destitute the family is in country of asylum. We know that applicants are struggling to make ends meet, so this should be taken into account. If an applicant goes back numerous times to pick up checks, etc, may want to ask if anyone else could pick it up for them, how it is they continue to get paid if not working, if they have sought assistance or work in country of asylum, etc. Then evaluate based on those responses.

Education: Would want to determine if the student could study in country of asylum. (Refugee children generally receive basic schooling.) For return, how long did the applicant stay? Is the educational institution the same they always attended? Is it near the place from which they claim a fear or at a more distant location? Where did the applicant live during the return? How did they manage to stay safe? Did they go and take exams and immediately flee again? Did they go to pick up their diploma?—couldn't anyone else have done that for them? If other members of the family experienced past persecution, how was applicant able to stay and study? Did any incidents of harm occur during the return/stay in Iraq?

Certain scenarios that will generally undermine a well-founded fear claim: returns for vacation or to establish new business contacts. NOTE: If the applicant has a credible past persecution claim, such a return generally will not adversely

affect his/her eligibility.

3) Who has returned?

If it is the derivatives that are traveling back and forth, they are not the ones that need to establish well founded fear, rather it is the PA. As such, a return by a derivative is generally not problematic, but you should consider if their travel calls into question any claimed persecution of the PA.

Is the PA returning on his/her own or with the whole family? Does the whole family remain in Iraq except for the PA? How are they surviving? Did any incidents of harm occur during the return/stay in Iraq?

4) Have the most Concrete Reasons for Denial been Addressed/Documented?

In general, if making a denial for Returns it should be a strong denial, because this is the kind of denial that someone reviewing an RFR might review and given country conditions think the applicant does have a WFF, thus overturning or sending for reinterview. If the returns signal a credibility issue with the applicant, it's probably better to deny on credibility.

Also, if there are multiple cross-referenced cases with this issue being denied on credibility issue, the credibility issue should be referenced on each, in case they are reviewed separately by someone doing RFRs. You can always say, "see SY-xxxxx for credibility analysis" to alert a future reviewer that this person was part of a family unit and more information is available. This would be useful for the x-refed cases SY-107144-147, in which an entire family was denied, although the major reasons for the denial are in the mother's case. If any of the adult children's cases was reviewed without the mother's case on hand, the reviewer might be inclined to send the case for reinterview. However, when looked at as a family unit, there would be much less of this tendency since the mother's denial is described most fully

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**ASM Supplement – Coercive Population Control**

**Establishing an Objective Fear Based on Violation of  
Coercive Population Control Policies**

An applicant claiming a well-founded fear of persecution under China's coercive family planning policy as a result of the birth of two or more children, or any other violation, must demonstrate more than a generalized fear that he or she will be persecuted. To demonstrate that his or her fear is objectively reasonable the applicant needs to establish a personal risk of being singled out for persecution or that there is a pattern or practice of persecution of those similarly situated to him or her in the area where he or she resides.<sup>54</sup>

In *Matter of J-H-S-* the Board found that because there are so many provincial and local variations in the application and enforcement of China's national family

<sup>54</sup> *Matter of J-W-S-*, 24 I. & N. Dec. 185 (BIA 2007).

planning program that, to meet his or her burden of proof, the applicant must show:

1. the details of the applicable family planning policy in the locality where he or she resides<sup>55</sup>
2. that he or she is in violation of the local policy
3. that the violation of the policy would be punished in the local area where he or she lives in a way that would give rise to an objective fear of future persecution<sup>56</sup>

The three part analysis elaborated in *Matter of J-H-S-* must be applied on a case-by-case basis and is to be used to determine whether the applicant has a well-founded fear of persecution in all instances involving the birth of a second or subsequent child, regardless of whether the applicant's children were born in China or abroad.<sup>57</sup>

#### Use of Country Conditions Specific to Applicant's Local Area of Residence

You must consult country conditions reports for the local area (provincial or municipal) where the applicant resides in order to determine the specific policies that apply to each case.<sup>58</sup>

Relevant considerations that may be used to determine whether there has been a

<sup>55</sup> *Matter of J-H-S-*, 24 I. & N. Dec. 196 (BIA 2007).

<sup>56</sup> *Matter of J-H-S-*, 24 I. & N. Dec. at 199. See also, *Matter of J-W-S-*, 24 I. & N. Dec. 185 (BIA 2007) (evidence did not establish a national policy requiring forced sterilization upon birth of second child overseas, and evidence was insufficient to show that in Fujian Province, any sanctions for out of plan births would rise to the level of persecution); *Matter of J-H-S-* (evidence did not demonstrate that the birth of a second child would violate family planning policy in Fujian province); see also *Huang v. U.S. INS.*, 421 F.3d 125 (2d Cir. 2005) (well-founded fear of persecution not established where country conditions show that local Fujian province authorities are lax in the enforcement of the one-child policy and frequently allow the birth of a second child in situations such as the applicant's where the firstborn child is a girl.); *Matter of C-C-*, 23 I. & N. Dec. 899 (BIA 2006) (Violation of policy not established where Chinese policy allows individuals to apply for the birth of a second child four years after the birth of the first child, and the applicant's second child was born six years after her firstborn).

<sup>57</sup> See *Matter of J-H-S-* at 202 (the evidence did not demonstrate that in Fujian province enforcement mechanisms would be triggered after the birth of a second child to someone, such as the applicant, whose first child was female).

<sup>58</sup> *Matter of J-W-S-* at 194 (well-founded fear not established where country conditions evidence did not support the applicant's claim that he would be sterilized upon return to Fujian province with two children born in the US. The evidence showed that, at most, the applicant and his wife would be subjected to 'sanctions and penalties' the severity of which would not rise to the level of persecution.). See *Matter of C-C-*, at 900-903 (the affidavit of demographer John Aird, submitted by the applicant as a source of country conditions evidence, was insufficient to show that the Chinese government has an established national policy of sterilizing returning Chinese citizens who have had more than one child while living abroad because the affidavit was generalized, not based on personal knowledge, did not specifically address situations of individuals similarly situated to the applicant, and the 2005 State Department country report contradicted the affidavit); *Yu v. US Att'y Gen.*, 513 F.3d 346 (3d Cir. 2008) (affirmed *Matter of C-C-* regarding the Aird affidavit).



violation of the local coercive planning policy include:

1. the gender of the children
2. the spacing between the children's births
3. the parents' marital status
4. whether or not the parents are government employees

For example, in *Matter of S-Y-G-*, the BIA denied a motion to reopen asylum proceedings based on the birth of a second child in the U.S.<sup>59</sup> The BIA held that the applicant's reproductive behavior may not be viewed as violating the family planning policies in Fujian Province because she was not a government employee, and there was a seven-year interval between the birth of her two children. The BIA also found that even if the applicant did violate the local family planning policy, any sanctions would likely be economic sanctions that would not rise to the level of persecution.

#### **ASM Supplement – Return to Country of Feared Persecution**

As a procedural matter, the regulations provide that an asylum applicant who returns to the country of feared persecution with a grant of advance parole is presumed to have abandoned his or her claim. This presumption is overcome if there are compelling reasons for the applicant's return to that country. In addition, even if the presumption of abandonment is not overcome by compelling reasons for the return, events that occurred during the time that the applicant was in his country could be the basis for a new claim. Procedurally, the applicant whose experiences upon return provide the basis for a new claim would not be required to submit a new I-589, but would be required to testify about events that occurred during the return to the country of feared persecution.<sup>60</sup>

An applicant's return to the country of feared persecution, and the events that occur during that return, may not lead to a procedural finding that the asylum application was abandoned; however, the return to the country of persecution raises substantive questions regarding whether or not the applicant has a well-founded fear of return to that country.

<sup>59</sup> *Matter of S-Y-G-*, 24 I. & N. Dec.247 (2007).

<sup>60</sup> For additional information, see RAIO Training module, *Refugee Definition and Past Persecution*.

**ASM Supplement – Presumption Raised by Past Persecution**

**General Rule**

If past persecution on account of a protected characteristic is established, then the applicant is a refugee and

1. it is presumed that the applicant has a well-founded fear of future persecution on the basis of the original claim
2. unless it is established by a preponderance of the evidence that
  - i. there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or
  - ii. the applicant could avoid future persecution through internal relocation and under all the circumstances it would be reasonable for the applicant to do so<sup>61</sup>

**Explanation (Burden Shift)**

This means that once the applicant has established past persecution, the Asylum Officer must presume that the applicant's fear of future persecution is well founded. This is a presumption that may be rebutted. In order to rebut the presumption, however, the burden of proof shifts to the officer to establish by a preponderance of the evidence that the fear of future persecution is no longer well-founded.

The officer must weigh all available evidence to determine whether a preponderance of the evidence shows that there has been a fundamental change in circumstances such that the applicant's fear of persecution is no longer well-founded, or the applicant could reasonably avoid future persecution through internal relocation. This will require a thorough knowledge and understanding of current country conditions in the applicant's country and the circumstances of the individual applicant.<sup>62</sup>

**Consideration Regarding Source of Persecution**

The presumption raised by a finding of past persecution applies only to a fear of future persecution based on the original claim of persecution and does not apply to

<sup>61</sup> 8 C.F.R. § 208.13(b)(1). For additional information, see RAIO Training module, *Evidence Assessment*.

<sup>62</sup> The Asylum Officer should consider not only country conditions, but other aspects of the applicant's circumstances, as well, to evaluate whether a preponderance of the evidence establishes that the applicant's fear of persecution is not well founded. See section X1.D., *Fundamental Changes Must Affect Applicant's Situation*, below.

fear of persecution on account of a different basis, unrelated to the past persecution.<sup>63</sup>

As the Attorney General clarified in *Matter of A-T-*, “on the basis of the original claim” means that the future persecution feared is “on account of the same statutory ground” on which the applicant suffered past persecution. In other words, the presumption applies when a fear of future persecution arises from the same protected characteristic on account of which applicant was targeted for past persecution.<sup>64</sup>

The applicant does not have to fear that he or she will suffer the identical type of harm in the future that he or she suffered in the past in order to retain the presumption of future persecution so long as the fear of any future harm is on account of the original basis for persecution.

The BIA has made clear that a change in regime does not automatically shift the burden of proof back on an applicant to show well-founded fear of persecution from the changed regime or its successor. (See discussion below regarding what constitutes a change in circumstances sufficient to overcome the presumption.)<sup>65</sup>

#### Fundamental Changes Must Affect Applicant’s Situation

The fundamental change in circumstances may relate to country conditions in the applicant’s country or to the applicant’s personal circumstances. However, the change must directly affect the risk of harm the applicant fears on account of the protected ground in order to overcome the presumption.

The BIA has emphasized that simply demonstrating a change, such as a change in regime, cannot substitute for careful analysis of the facts of each applicant’s individual circumstances.<sup>66</sup> Similarly, the First Circuit has held that the “abstract” materials indicating fundamentally changed circumstances “do not automatically trump the specific evidence presented by the applicant.”<sup>67</sup>

<sup>63</sup> 8 C.F.R. § 208.13(b)(1); See *Matter of A-T-*, 24 I. & N. Dec. 617 (A.G. 2008) (vacating *Matter of A-T-*, 24 I. & N. Dec. 296 (BIA 2007)), *Matter of N-M-A-*, 22 I. & N. Dec. 312 (BIA 1998); see *Hasalla v. Ashcroft*, 367 F.3d 799, 804 (8th Cir. 2004).

<sup>64</sup> See *Matter of A-T-* at 622; cf., *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007) (finding that the presumption of well-founded fear does not operate only as to the exact same harm experienced in the past.); *Bah v. Mukasev*, 529 F.3d 99, 115 (2d Cir. 2008) (identical harm not required to rebut the presumption, “the government must show that changed conditions obviate the risk to life or freedom related to the original claim, e.g. persecution on account of membership in [the] particular social group.”)

<sup>65</sup> *Matter of N-M-A-*, 22 I. & N. Dec. 312, 320 (BIA 1998).

<sup>66</sup> *Matter of N-M-A-*, 22 I. & N. Dec. 312 (BIA 1998).

<sup>67</sup> *Fergiste v. INS*, 138 F.3d 14, 19 (1st Cir. 1998); See also *Rios v. Ashcroft*, 287 F.3d 895, 901 (9th Cir. 2002) (DHS “is obligated to introduce evidence that, on an individualized basis, rebuts a particular applicant’s specific grounds

For example, a despot may be removed from a seat of government, but still wield enough influence to pose a threat to an applicant, or a new government may harbor the same animosities towards an applicant as the old regime.<sup>68</sup> Those types of changes would not rebut the presumption of well-founded fear. The determinative issue is whether the changes are such that the particular applicant's fear of persecution is no longer well-founded.

Evidence that an applicant may still be at risk despite a change in circumstances includes, but is not limited to, evidence that the applicant or individuals similarly situated to the applicant continued to be threatened on account of the protected characteristic after circumstances have changed.<sup>69</sup>

### Forced Sterilization Does Not Constitute a Change in Circumstances

In *Matter of Y-T-L*, the BIA considered whether the fact that an asylum applicant had been forcibly sterilized could constitute a change in circumstances such that the applicant's fear of future persecution would no longer be well founded.<sup>70</sup> The BIA found that the intent of Congress in amending the definition of a refugee, coupled with the "permanent and continuing" nature of the harm suffered by one forcibly sterilized, prevents finding a fundamental change in circumstances based on an act of forced sterilization, even when a long period of time has passed since the sterilization.

### Female Genital Mutilation and Fundamental Change in Circumstances

#### 1. Attorney General Decision: *Matter of A-T*

The Attorney General (AG) vacated the BIA's decision which held that female genital mutilation was a fundamental change in circumstances.<sup>71</sup> The AG found that the BIA had made several errors of law and fact. As in all cases in which the applicant demonstrates past persecution, in claims involving FGM the government has the burden of rebutting the presumption of well-founded fear by establishing evidence of fundamental change in circumstances (or that the applicant can relocate). The AG noted in *Matter of A-T*, that the applicant was subjected to FGM on account of membership in a particular social group, not on account of FGM; FGM was the harm suffered not the original basis on account of which the

for his well-founded fear of future persecution. Information about general changes in the country is not sufficient."); *Berishaj v. Ashcroft*, 378 F.3d 314, 327 (3d Cir. 2004); *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008).

<sup>68</sup> See *Mihavlov v. Ashcroft*, 379 F.3d 15, 23 (1st Cir. 2004).

<sup>69</sup> See e.g., *Gallius v. INS*, 147 F.3d 34 (1st Cir. 1998).

<sup>70</sup> *Matter of Y-T-L*, 23 I. & N. Dec. 601 (BIA 2003); see also *Qu v. Gonzales*, 399 F.3d 1195, 1203 (9th Cir. 2005) (adopting *Matter of Y-T-L*); *Zhang v. Gonzales*, 434 F.3d 993, 1001-1002 (7th Cir. 2006) (same).

<sup>71</sup> *Matter of A-T*, 24 I. & N. Dec. 617, 622-623 (A.G. 2008) (vacating in part *Matter of A-T*, 24 I. & N. Dec. 296 (BIA 2007)).

applicant was persecuted. Hence, to rebut the presumption of well-founded fear the government had to show that there had been a fundamental change of circumstances such that the applicant no longer had a well-founded fear of suffering any other harm, including the possible repetition of FGM, on the basis of membership in the particular social group for which she was persecuted.

For most claims based on the infliction of FGM the protected characteristic asserted is membership in a particular social group, and the particular social group is often defined as some subset of women who possess (or possessed) the trait of not having undergone FGM as required by the social expectations under which they live. In many cases, after having been subjected to FGM in the past, the applicant will no longer be a member of the particular social group on account of which she was persecuted. Therefore, having undergone FGM removes the applicant from the particular social group for which she was targeted, and will often constitute a fundamental change in circumstances such that the applicant's fear of harm on the basis of the original claim no longer will be well-founded.

The Attorney General's decision in *Matter of A-T-* makes it clear that the fact that a woman has been subjected to FGM in the past does not preclude a valid claim that she retains a well-founded fear of future persecution if it is established that she would be subject to additional FGM (for example, it may be the practice of a woman's tribe to subject her to a second infibulation after she has given birth; or it may be that the first time she was subject to FGM the procedure was not performed to the extent required by her culture).<sup>72</sup> The possibility of re-infibulation should be considered in determining whether there has been a fundamental change in circumstances.

The Attorney General's holding in *Matter of A-T-* controls in all jurisdictions. Note that the Attorney General decision is consistent with and relies in part on the Second Circuit's holding discussed below.

## 2. The Federal Courts:

### i. Second Circuit: *Bah v. Mukasey*

In *Bah v. Mukasey*, the Second Circuit court held that the infliction of FGM does not, without more, relieve the government of the burden of establishing a fundamental change in circumstances.<sup>73</sup> First, women could be subjected to the repetition of FGM and, additionally, the woman could be subjected to other forms of harm on account of the protected characteristic for which she was subject to FGM. The court stated that "Nothing in the regulations suggest that the future

<sup>72</sup> United States Department of State, Office of the Under Secretary for Global Affairs, Office of the Senior Coordinator for International Women's Issues, *Female Genital Mutilation (FGM)*, p.6 (Washington, DC; Feb. 1, 2000, updated June 27, 2001).

<sup>73</sup> *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008).

threats to life or freedom must come in the same *form* or be the same *act* as the past persecution.” (Emphasis in the original.)

The Second Circuit’s finding in *Bah v. Mukasey* is precedent law for the Second Circuit; all other circuits need to apply the Attorney General’s decision in *Matter of A-T-*.

ii. Ninth Circuit: *Mohammed v. Gonzales*

In its decision in *Matter of A-T-*, the BIA rejected the Ninth Circuit’s finding in *Mohammed v. Gonzales*, 400 F.3d 785 (9<sup>th</sup> Cir., 2005) that female genital mutilation constituted a permanent and continuing act of persecution, such that “the presumption of well-founded fear in such cases cannot be rebutted.” *Mohammed v. Gonzalez*, at 801. The Attorney General’s decision vacating the Board’s decision in *Matter of A-T-* did not specifically address the “permanent and continuing” persecution theory. His analysis, however, makes clear that past FGM can be *part of* a fundamental change in circumstances that rebuts the presumption of well-founded fear, implicitly rejecting the Ninth Circuit’s theory that such a presumption can never be rebutted. Moreover, as the Attorney General’s opinion sets forth a comprehensive analysis of such claims that has never been rejected by the Ninth Circuit or other Circuit courts, it remains the controlling precedent for cases involving past FGM. Accordingly, officers should not rely upon a “permanent and continuing” persecution theory in FGM cases as such reliance would be inconsistent with the controlling precedent set forth by the Attorney General in *Matter of A-T-*. The severity of any ongoing harm to an applicant, however, may be considered in determining whether to grant asylum based on the severity of the past persecution.

iii. Rebuttal of well-founded fear and consideration of granting asylum in the absence of a well-founded fear

If it is found that there has been a fundamental change in circumstances such that the presumption of well-founded fear is rebutted in a case where the applicant was subjected to FGM, you then need to consider whether it is appropriate to grant asylum in the absence of a well-founded fear either based on the severity of the past persecution or because of a reasonable possibility that the applicant would suffer other serious harm upon return.<sup>74</sup> This issue was addressed by the BIA in *Matter of S-A-K- and H-A-H-*.<sup>75</sup>

For discussion of factors to consider in determining whether past is harm sufficiently severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear, and discussion of *Matter of S-A-K- and H-A-H-* where the

<sup>74</sup> 8 C.F.R. 208.13(b)(1)(iii).

<sup>75</sup> *Matter of S-A-K- and H-A-H-*, 24 I. & N. Dec. 464 (BIA 2008). See also *Matter of N-M-A-*, 22 I. & N. Dec. 312 (BIA 1998).

BIA found that discretion should be exercised to grant asylum based on the severity of the persecution to a mother and daughter who were subjected to FGM, see RAIO Training module, *Refugee Definition and Past Persecution*.

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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## Response to Query

Date: April 10, 2014

Subject: Offers of Firm Resettlement

Keywords: Firm Resettlement, Offer of Resettlement

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### Query: When does an offer of resettlement trigger the firm resettlement bar?

**Response:** The officer should follow the four-step analysis set forth by the Board of Immigration Appeals (BIA) in the Matter of A-G-G. The analysis will help the officer determine whether the firm resettlement bar has been triggered. Please note that the bar does not apply if the applicant did not enter the potential country of firm resettlement as a consequence of flight.

- 1) Officer Burden – It is the officer's burden to show direct evidence or, if direct evidence is not available, indirect evidence of an offer of permanent resettlement. Passports or permanent resident permits from the country of asylum are examples of direct evidence of an offer of permanent resettlement. Nationality or marriage laws suggesting a mechanism for citizenship may serve as indirect evidence of an offer of permanent resettlement in some cases.
- 2) Rebuttal – The applicant has the opportunity to rebut any direct or indirect evidence of an offer of permanent resettlement by showing that such an offer has not, in fact, been made or that he or she would not qualify for it. Additionally, the officer may find rebuttable evidence while reviewing country conditions, such as citizenship laws. An applicant may show, for example, that her potential path to citizenship (through marriage and nationality laws) includes legal requirements that she does not meet. Additionally, the examination of citizenship laws may show that the offer is not currently available even though the applicant may be eligible to apply for citizenship after a certain time period has passed.
- 3) Weigh the Totality of Evidence – The officer will consider the totality of the evidence presented and make a determination as to whether the applicant has received an offer of permanent resettlement. When considering the circumstances related to an apparent offer, the officer should keep in mind that the evidence of an offer must either be direct evidence or, in the absence of direct evidence, indirect evidence of sufficient clarity and force (not mere speculation).
- 4) Exception – If the totality of the evidence shows firm resettlement, the burden shifts to the applicant to show that an exception applies. The officer will need to consider whether the conditions of resettlement are overly restrictive. For example, if the applicant is unable to work, study, or move about the country freely, the officer may conclude that the

conditions of resettlement are overly restrictive. In such a case, the applicant would not be considered firmly resettled.

Analyses of recently encountered scenarios are provided below:

#### Scenario 1 – Iraqis in Jordan

- Example A (not resettled): An Iraqi refugee in Jordan married a Jordanian citizen 1 year ago. She does not have permanent residence in Jordan. In order to derive Jordanian citizenship through marriage, she must be married to a Jordanian citizen for 5 years. She is not firmly resettled now, because she is not even eligible to apply for citizenship for another four years. Thus, the citizenship law allowing for Jordanian naturalization through marriage, which is indirect evidence of an offer, was rebutted when the applicant showed that she is not actually eligible to apply for another four years. Under the totality of the circumstances analysis, she has not received an offer of permanent resettlement, so is not firmly resettled.
- Example B (resettled): An Iraqi refugee in Jordan married a Jordanian citizen 5 years ago. If there is no other rebuttable evidence (not related to the time requirement), she does have an immediate offer of permanent resettlement as she is eligible now to apply for citizenship. Unless she can demonstrate that an exception applies as described in paragraph 4 above, the firm resettlement bar would apply.

#### Scenario 2 – Iraqi Turkmen (Turcoman) in Turkey

- Example 1 (not resettled): An Iraqi citizen of Turcoman (Turkmen) ethnicity fled to Turkey 1 year ago. Country conditions show that the applicant is eligible to apply for Turkish citizenship on an expedited basis as an ethnic Turk. However, the applicant testifies that his arrest for the theft of a car makes him ineligible under the “good moral character” requirement for citizenship. Based on this rebuttable evidence, the applicant does not have an offer of permanent resettlement and, therefore, is not firmly resettled. His apparent criminal activity should be explored, as it could lead to an inadmissibility finding.
- Example 2 (resettled): An Iraqi citizen of Turcoman (Turkmen) ethnicity fled to Turkey 1 year ago. Country conditions show that the applicant is eligible to apply now for Turkish citizenship on an expedited basis as an ethnic Turk. Unless there is other rebuttable evidence, the applicant does have an offer of permanent resettlement. The applicant would need to show that an exception based on restrictive conditions of resettlement applies, as described in paragraph 4 above, in order to overcome the firm resettlement bar.

#### Scenario 3 – Congolese Tutsis in Rwanda

- Example 1 (not resettled): A Congolese refugee in Rwanda is of Tutsi origin. Rwanda's Nationality Law stipulates that a person with "Rwandan origin" has the legal right to acquire Rwandan citizenship. However, the UNHCR office in Rwanda indicates that grants of citizenship based on this heritage link are highly controlled in practice, making it very difficult even to file an application. Moreover, other Congolese Tutsi similarly situated to the applicant who have applied for citizenship under this law have been rejected. The applicant may have the legal right to apply for citizenship, but there is evidence which tends to show he is not able to access this right. Therefore, the applicant has not received an offer of permanent resettlement, so he is not firmly resettled.
- Example 2 (dual citizen): A Congolese refugee in Rwanda applies for Rwandan nationality based on his heritage. His application has been approved. In this scenario, the applicant has acquired a second nationality, so the case must be assessed as a dual national case. Accordingly, his refugee claim needs to be assessed vis-a-vis both DRC and Rwanda.



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**FIRM RESETTLEMENT**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***FIRM RESETTLEMENT**

## Training Module

**MODULE DESCRIPTION:**

This module provides an overview of the firm resettlement bars for asylum and refugee resettlement. The module addresses the similarities and differences between these two bars and their exceptions. This module also includes an explanation of the BIA's four-step framework for analyzing evidence under the firm resettlement bar.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

You (the officer) will be able to evaluate whether an asylum or refugee applicant is firmly resettled in a third country and articulate appropriate reasons supporting the firm resettlement determination.

**ENABLING PERFORMANCE OBJECTIVES**

1. Identify the three requirements of the asylum and refugee firm resettlement bars and their exceptions.
2. Distinguish between the exceptions to the firm resettlement bars for asylum and refugee adjudications.
3. Apply the firm resettlement bars to determine eligibility for asylum or refugee resettlement.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Class Discussion
- Practical Exercises

**METHOD(S) OF EVALUATION**

- Multiple Choice Exam
- Observed Practical Exercises

**REQUIRED READING**

1. *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

**ADDITIONAL RESOURCES**

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**Critical Tasks**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
ILR23	Knowledge of bars to immigration benefits (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (3)
RI1	Skill in identifying issues in a claim (4)
RI9	Skill in identifying inadmissibilities and bars (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM3	Skill in applying eligibility requirements to information and evidence (5)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

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

## 1 INTRODUCTION

An applicant is barred from asylum and refugee resettlement to the United States if the applicant was firmly resettled in a third country.<sup>1</sup> The definitions of firm resettlement for asylum and refugee resettlement are similar, but differ in several ways. This module provides an historical overview of the firm resettlement provision, the statutory and regulatory authority for the bars, the elements of and exceptions to the firm resettlement bars, the burden of proof, and the BIA's four-step framework for analyzing firm resettlement in *Matter of A-G-G*.<sup>2</sup>

## 2 HISTORICAL OVERVIEW

Firm resettlement as a bar to protection has its origins in the 1946 Constitution of the International Refugee Organization which excluded from the refugee definition individuals who had acquired a new nationality or who had become "firmly established" in another country. Later, the bar is found in two clauses of the 1951 United Nations Convention relating to the Status of Refugees. The Refugee Convention states that the Convention ceases to apply to an individual who "has acquired a new nationality, and enjoys the protection of the country of his new nationality."<sup>3</sup> The Convention also excludes from protection an individual "who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."<sup>4</sup>

<sup>1</sup> Refugee: INA § 207(c)(1); 8 C.F.R. § 207.1(b); Asylum: INA § 208(b)(2)(A); 8 C.F.R. 208.13(c), 208.15.

<sup>2</sup> *Matter of A-G-G*, 25 I. & N. Dec. 486 (BIA 2011).

<sup>3</sup> United Nations Convention Relating to the Status of Refugees, art. 1C(3), adopted July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954).

<sup>4</sup> United Nations Convention Relating to the Status of Refugees, art. 1E.

The firm resettlement bar has been part of U.S. refugee law since the 1940s, beginning as a mandatory bar in the Displaced Persons Act of 1948. In a 1957 revision of the INA, the firm resettlement bar was dropped from the Act. Courts, however, continued to use firm resettlement as a negative discretionary factor. For example, § 203(a)(7) did not contain an explicit firm resettlement bar, but the Supreme Court held that it was a factor that could be considered in determining whether the applicant was seeking refugee status “as a consequence of his flight to avoid persecution.”<sup>5</sup>

The Refugee Act of 1980 made firm resettlement a statutory bar to refugee status, but not to asylum.<sup>6</sup> Interim regulations were issued soon after that made firm resettlement a bar in affirmative asylum cases. When the final asylum regulations were adopted in 1990, firm resettlement was made a bar to asylum in both affirmative and defensive cases. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress codified firm resettlement as a statutory bar to asylum.<sup>7</sup>

### 3 SOURCES OF AUTHORITY

The firm resettlement bars in refugee and asylum adjudications are similar in many aspects, but have somewhat different statutory and regulatory language. The side-by-side comparison below will assist you in applying the law according to the type of case you are adjudicating.

#### 3.1 Statutes

Both of these statutory provisions require that the firm resettlement have occurred prior to admission to or arrival in the United States.

<u>Refugee</u>	<u>Asylum</u>
<p>INA § 207(c)(1) Admission by Attorney General of Refugees</p> <p>“[T]he Attorney General may . . . admit any refugee who is not firmly resettled in any foreign country . . .”</p>	<p>INA § 208(b)(2)(A)(vi) Exceptions</p> <p>An applicant is ineligible for asylum if the applicant “was firmly resettled in another country prior to arriving in the United States.”</p>

#### 3.2 Regulatory Definitions

<sup>5</sup> *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 56 (1971).

<sup>6</sup> INA § 207(c)(1).

<sup>7</sup> For a detailed history of the firm resettlement bar, see *Matter of A-G-G-*, 25 I. & N. Dec. 486, 489-94 (BIA 2011).

Both the refugee and asylum definitions of firm resettlement in the regulations require entry into a third country (i.e., a country other than the United States and the applicant's country of nationality or last habitual residence, if stateless). A refugee applicant, however, must have entered the country *as a consequence of flight* for the bar to apply. The asylum firm resettlement bar does not have this requirement.

<u>Refugee</u>	<u>Asylum</u>
<p>8 C.F.R. § 207.1(b) Firmly Resettled</p> <p>A refugee is considered to be "firmly resettled" if he/she <b>has</b> been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has travelled to and entered that country <b>as a consequence of his/her flight</b> from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.</p>	<p>8 C.F.R. § 208.15 Definition of Firm Resettlement</p> <p>An alien <b>is</b> considered to be firmly resettled <b>if</b>, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement.</p>

### *Example*

Applicant, a citizen of Country X, enters Country Z for business, and Country Z offers her permanent residency. For asylum purposes, Applicant is firmly resettled in Country Z if she entered into and received an offer of permanent residency there **after** becoming a refugee. For refugee purposes, she is not firmly resettled if she **did not** enter Country Z as a consequence of her flight from persecution from Country X. In this example, she entered Country Z for business purposes only.

Both definitions of firm resettlement require that the status offered or received must be permanent, not temporary.

### 3.3 Case Law

Throughout its history, the firm resettlement bar has had many variations. Courts have applied it as a mandatory bar, as a discretionary bar, and as a bar to refugee resettlement only. Courts have also applied this bar prior to and after the issuance of the current regulations. Not surprisingly, courts have applied several different, and at times conflicting, approaches for determining if an individual had been firmly resettled. In May 2011, the BIA addressed these differences in a precedent decision called *Matter of*

*A-G-G*.<sup>8</sup> In this decision, the BIA announced a new four-step framework for deciding firm resettlement cases that first focuses exclusively on the existence of an offer.<sup>9</sup> For this reason, you should not rely on case law issued prior to May 2011 that conflicts with the holding in *Matter of A-G-G* and does not follow the BIA's new approach.

This BIA's new four-step framework is described in the Analysis section, below. In brief, the steps are as follows:

1. The officer bears the burden of presenting prima facie evidence of an offer of firm resettlement, relying on direct or, if direct is not available, indirect evidence.
2. If there is prima facie evidence, the applicant must be given the opportunity to rebut such evidence.
3. The officer must weigh the totality of the evidence and make a determination whether the evidence of an offer of firm resettlement has been rebutted.
4. If the officer finds the applicant was firmly resettled, the burden shifts to the applicant to establish an exception applies.

#### 4 THREE REQUIREMENTS OF FIRM RESETTLEMENT

As shown in comparison chart below, the asylum and refugee firm resettlement bars below have three common elements and one main difference. Both require entry into a third country, an offer or receipt of a status, and the status must be permanent (not temporary). The main difference is that the bar only applies to a refugee applicant if the entry into the third country was a consequence of flight from persecution.

In contrast, for an asylum applicant, the entry into the third country does not have to be as a consequence of flight from persecution. In the asylum context, the firm resettlement bar applies when, after becoming a refugee and prior to arriving in the United States, the applicant entered a third country with, or while in that country received, an offer of permanent resettlement.

<u>Refugee</u>	<u>Asylum</u>
1. Entry into a <b>Third Country as a Consequence of Flight</b> 2. Offer or Receipt of	1. Entry into a Third Country <b>Prior to Arriving in the United States, (but only after events have occurred that would make the applicant a</b>

<sup>8</sup> *Matter of A-G-G*, 25 I&N Dec. 486 (BIA 2011).

<sup>9</sup> *A-G-G*, 25 I&N Dec. at 501.

3. Permanent Status or Citizenship in Third Country	refugee)  2. Offer or Receipt of  3. Permanent Status or Citizenship in Third Country
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#### 4.1 Entry into a Third Country

The first requirement of both firm resettlement bars is that the applicants must have entered the third country. An offer or receipt of a permanent status alone, without a physical entry into the third country while that status is available, would not meet the first element of the firm resettlement bar.<sup>10</sup>

For the firm resettlement bar to apply, refugee applicants must have entered the third country as a consequence of flight.<sup>11</sup> When interviewing a refugee applicant, you should ask the refugee applicant why he or she entered the third country.

For asylum applicants, the bar applies if the applicant became a refugee and either entered the third country with the offer, or if after entry to the third country the refugee received the offer, any time prior to their arrival in the United States.<sup>12</sup> If you are interviewing an asylum applicant, there is no requirement under the firm resettlement bar that the applicant have entered the third country as a consequence of his or her flight from persecution.<sup>13</sup> The reason for entry into the third country is relevant, however, in determining whether the “no significant ties” exception applies. See Exceptions, below.

#### 4.2 Offer or Receipt

The offer or receipt of a permanent (not temporary) status, such as permanent residency or citizenship can be a more complex determination. As explained below in the section on Analysis, you should look for direct evidence of an offer or receipt of a status. The most probative form of direct evidence would be objective documentation indicative of the applicant’s ability to stay indefinitely in the third country. You may look to circumstantial (or indirect) evidence, but *only if* direct evidence is not available.<sup>14</sup>

#### *Example*

<sup>10</sup> 8 C.F.R. §§ 207.1(b); 208.15.

<sup>11</sup> 8 C.F.R. § 207.1(b).

<sup>12</sup> 8 C.F.R. § 208.15.

<sup>13</sup> For additional information, refer to *Elements of Firm Resettlement*, above.

<sup>14</sup> *Matter of A-G-G-*, 25 I. & N. Dec. 486, 502 (BIA 2011).

Applicant credibly testifies to you that he fled persecution from Iraq, his country of citizenship, was granted refugee status by the Danish government and subsequently entered Denmark. Applicant presents you with a permanent residence permit issued to him by the Danish government. The residence permit is direct evidence of an offer of permanent resettlement or some type of permanent resettlement.<sup>15</sup>

### *Example*

Applicant credibly testifies to you that he fled persecution from Iraq, his country of citizenship, and moved to the Netherlands to reunite with his parents and other family members. Applicant has resided in the Netherlands for the past 7 years. He attended school and later worked as a translator there. He arrived in the United States through the assistance of a smuggler who kept his Iraqi passport and all other direct evidence of his status in the Netherlands. In this situation, you may rely on indirect evidence, such as length of stay and employment in determining whether this is evidence indicating an offer.

#### 4.2.1 Acceptance of Offer *Not* Required

The existence of an “offer” of some form of permanent resettlement may establish that an applicant was firmly resettled.<sup>16</sup> The regulations do not further require that the applicant actually accept the offer in order for the firm resettlement bar to apply.

#### 4.2.2 Existence of Legal Mechanisms to Obtain Permanent Status

The existence of a legal mechanism to obtain permanent status in the third country may be sufficient evidence to establish an offer of firm resettlement, and is not contingent on whether the applicant applies for the status.<sup>17</sup> You should give an applicant the opportunity to explain why he or she would not qualify for or be granted the permanent status.<sup>18</sup>

### *Example*

Applicant credibly testifies that he fled his native Somalia due to persecution, entered South Africa and was granted asylum. The South African government issued him a Certificate of Exemption entitling him to asylum for a two-year period of exemption ending on 6/24/00 and a letter from South Africa’s

<sup>15</sup> These are the basic facts of *Ali v. Reno*, 237 F.3d 591, 595 (6th Cir. 2001).

<sup>16</sup> 8 C.F.R. §§ 207.1(b) and 208.15.

<sup>17</sup> *Matter of A-G-G*, 25 I. & N. Dec. at 502-03, noting that *Matter of Soleimani*, 20 I. & N. Dec. 99 (BIA 1989), would be decided differently under the BIA’s new framework and that the Israel’s Law of Return would be indirect evidence of an offer of firm resettlement and that the applicant in that case would have to show that she would not have been eligible for or granted an offer, or that one of the exceptions applied.

<sup>18</sup> *Matter of A-G-G*, 25 I. & N. Dec. at 502-03.



Department of Home Affairs. The letter indicates, "If by 6/24/00, you do not wish to leave South Africa, the onus rests on you to contact the Department for a review of your refugee status or to otherwise legalize your continued stay in South Africa before the expiry date of your Certificate. Failure to do so may render you liable to prosecution."<sup>19</sup>

Is this direct evidence of an offer of permanent resettlement or some type of permanent resettlement?

This example is from the Third Circuit case of *Abdille v. Ashcroft*. In this case, the BIA found that the Certificate of Exemption represented an offer of some type of permanent resettlement, reasoning that Abdille's refugee status "does not simply terminate" at the end of the two year period.<sup>20</sup> The Third Circuit disagreed with the BIA, finding that the offer of asylum status had an explicit expiration date and that the Department letter made clear Abdille would be subject to prosecution should he choose to remain in South Africa after the asylum status expiration date. The Third Circuit remanded for further evidence of South African immigration law and practice to determine whether there was an offer of some type of permanent resettlement. The Court reasoned that there might be evidence indicating that "provisions of the Aliens Control Act ease the burden on an alien applying for official permanent resident status if that alien has already received asylum, or that as a matter of immigration practice, two-year refugees like Abdille routinely receive a form of permanent status if they apply for such status prior to the expiration of the two-year exemption period."<sup>21</sup> No such evidence, however, was presented.

#### 4.2.3 Class-based Offers of Resettlement

A class-based, non-individual offer of resettlement, such as by operation of the law of the offering country, could trigger application of the firm resettlement bar, if the applicant has entered that country.<sup>22</sup> The mere possibility that an individual might receive permanent refuge through a third country's asylum procedures, however, is not enough to constitute an offer of permanent resettlement.<sup>23</sup>

#### 4.2.4 Residence Permits

Residence permits are issued by governments on a variety of bases and may not necessarily be an offer of permanent residence or some type of permanent resettlement. For more on this topic, see section on Permanent Status, below.

<sup>19</sup> These are the basic facts of *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001).

<sup>20</sup> *Id.* at 488.

<sup>21</sup> *Id.* at 489.

<sup>22</sup> *Matter of A-G-G-*, 25 I. & N. Dec. at 502, citing with approval *Elzour v. Ashcroft*, 378 F.3d 1143, 1152 (10th Cir. 2004)(observing that "a third country's offer of permanent resettlement may consist of providing a defined class of aliens a process through which they are entitled to claim permanent refuge.")(emphasis added).

<sup>23</sup> *Elzour*, 378 F.3d at 1152.

direct evidence is not available, by circumstantial evidence of an offer of some type of permanent resettlement.

### *Examples*

- Applicant is a citizen of Country A and fled to Country R as a result of persecution. Country R offered Applicant legal permanent resident status. Applicant lived in Country R for one day and then left Country R. She then went to Country S. Even though Applicant only lived in Country R for one day, her short time in Country R does not mean the firm resettlement bar does not apply to her. The pertinent issue is whether Country R offered her the right to stay indefinitely in that country.
- Applicant is a citizen of Country 1 and entered Country 2 illegally where he worked and lived illegally with his family for 30 years, sent his children to public school and rented an apartment. He resided in Country 2 without any legal immigration status, but was never arrested by the authorities for his illegal immigration status or deported from Country 2. Although a 30-year residence in a country is a long length of stay, this does not mean he is firmly resettled in Country 2.<sup>31</sup> In this example, you must take into consideration that Applicant entered Country 2 illegally and resided there without any immigration status or offer of an immigration status.

Length of stay is also a factor to consider in determining whether the “no significant ties” exception applies to an asylum applicant. Under that exception, an asylum applicant is not firmly resettled if entry into the third country was a necessary consequence of flight, the applicant remained there only as long as needed to arrange onward travel, and the applicant did not establish significant ties there.<sup>32</sup>

### **4.3.3 Minors**

To determine whether an individual was firmly resettled when the individual was a minor, you must first determine whether there is any direct evidence of the individual’s status in the third country. If there is no direct evidence, you may consider indirect evidence, including whether the individual’s parents were firmly resettled and whether the individual, as a minor, lived with his or her parents in the country where the parents firmly resettled. If the individual resided with his or her parents, the parents’ firm resettlement would be evidence indicating (or *prima facie* evidence of) the individual’s firm resettlement. If the minor was not in his or her parents’ custody and control, then it would be unreasonable to use evidence of the parents’ firm resettlement to determine the

<sup>31</sup> As the BIA noted in *Matter of A-G-G-*, only the host country can grant the right to lawfully and permanently reside there; thus, indirect evidence of an offer, such as length of residence, should only be examined when there is no direct evidence. 25 I. & N. Dec. at 501. Permanent resettlement is not a right that can be gained through adverse possession. *Id.* citing with approval, *Abdille v. Ashcroft*, 242F.3d 477, 487 (3d Cir. 2001).

<sup>32</sup> For additional information, see *No Significant Ties Exception*, below.

child's situation.<sup>33</sup> Derivatives (children and spouses) of asylees and refugees are not subject to the firm resettlement bar. See the section, *Derivatives of Refugees and Asylees*, below.

#### 4.3.4 Residence Permits

Residence permits are issued by governments on a variety of bases and may not necessarily be an offer of permanent residence or some type of permanent resettlement.

##### *Example*

Applicant is a citizen of Country A. He was persecuted on account of his religion in Country A and went to Country B on a work residency stamp in his passport which expired in 3 years. He lived with his brother in a house and worked in Country B for 2 years, and then he went to Country C. Is the work residency stamp an offer of permanent residence or some type of permanent resettlement? Though he lived in Country B for 2 years, had family ties to the country, had work authorization and housing, you must elicit testimony to determine whether the residency permit constitutes an offer of permanent residence, some other type of permanent resettlement, or the right to stay indefinitely in the country.

Here are sample questions:

- Does the document, on its face, indicate Applicant is able to stay in the country indefinitely?<sup>34</sup>
- Did Applicant ever renew this permit?
- How difficult is it to renew? (or "What did he have to do to renew this permit?")
- If Applicant lost his job, what would happen?
- How long could Applicant work in the position he had? Is it a physically demanding job? Could he retire and remain in that country?
- What are the conditions of the permit?

<sup>33</sup> *Khoshfahm v. Holder*, 655 F.3d 1147, 1153 (9th Cir. 2011)(imputing a parent's intent to a child residing with a parent), citing *Saucedo-Arevalo v. Holder*, 636 F.3d 532, 532-33 (9th Cir. 2011)(listing cases); *Yang v. INS*, 146 F.3d 1114 (9th Cir. 1998). In *Yang*, the applicant, who fled Laos with his family when he was 4 years old, came to the United States as a tourist. When he was 19, he applied for asylum in the U.S. To determine whether the applicant was firmly resettled in France when he was a minor, the Court looked to the status of the applicant's parents when they lived in France. Note that *Yang* was decided prior to *Matter of A-G-G-*, which requires that you first must consider direct evidence and, only if there is no direct evidence, you may consider indirect evidence.

<sup>34</sup> If so, this would be direct evidence under *Matter of A-G-G-*, 25 I. & N. Dec. 486, 501 (BIA 2011). If not, you may consider indirect evidence.

- Could his employer terminate this permit?

**Caveat:** For both refugee and asylum interviews, you must first determine whether after the Applicant became a refugee, the Applicant was potentially firmly resettled. If the potential firm resettlement occurred and ended prior to the events that made the Applicant a refugee, the firm resettlement bar does not apply.

**Caveat:** For a refugee resettlement interview, you must first determine whether Applicant entered Country B as a consequence of flight. You should ask Applicant the reasons he went to Country B and not automatically assume his sole reason was for work. For an asylum interview, whether Applicant entered Country B as a consequence of flight is not relevant in determining if Applicant meets the definition of firm resettlement; it is relevant in determining if an exception to firm resettlement for asylum is met. In an asylum adjudication, you should consider whether Applicant entered Country B as a consequence of flight; if he remained only as long as necessary to arrange onward travel; and he did not establish significant ties there.<sup>35</sup>

## 5 EXCEPTIONS TO FIRM RESETTLEMENT

If an applicant meets an exception to the firm resettlement bar, then the applicant is not barred from refugee or asylum status on this basis. The subsections below compare and contrast the exceptions that are available. There is one exception for refugee applicants and two for asylum applicants.

### 5.1 Restrictive Conditions

Both exceptions allow an applicant to establish that the conditions in the third country are so restrictive as to deny resettlement, and both definitions have the same factors to consider when determining restrictive conditions.

<u>Refugee</u>	<u>Asylum</u>
<p>8 C.F.R. § 207.1(b)</p> <p>Applicant must establish that the <i>conditions</i> of his/her residence in that country are <i>so restrictive</i> as to deny resettlement.</p>	<p>8 C.F.R. § 208.15(b)</p> <p>An applicant who establishes:</p> <p>(b) that the <i>conditions</i> of his/her residence in that country were so substantially and consciously <i>restricted by the authority</i> of the country of refuge that he or she was</p>

<sup>35</sup> See 8 C.F.R. § 208.15(a) and the section *Exceptions to Firm Resettlement*.

	not in fact resettled.
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Refugee	Asylum
<p><b>8 C.F.R. § 207.1 (b)</b> lists these restrictive conditions factors:</p> <ul style="list-style-type: none"> <li>• whether permanent or temporary <b>housing</b> is available to the refugee</li> <li>• the nature of <b>employment</b> available to the refugee in the foreign country;</li> <li>• other <b>benefits</b> offered or denied to the refugee by the foreign country which are available to other residents, such as                             <ul style="list-style-type: none"> <li>➤ right to <b>property</b> ownership</li> <li>➤ <b>travel documentation</b></li> <li>➤ <b>education</b></li> <li>➤ <b>public welfare</b></li> <li>➤ <b>citizenship</b></li> </ul> </li> </ul>	<p><b>8 C.F.R. § 208.15 (b)</b> lists these restrictive conditions factors:</p> <ul style="list-style-type: none"> <li>• the type of <b>housing</b>, whether permanent or temporary made available to the refugee</li> <li>• the types and extent of <b>employment</b> available to the refugee</li> <li>• <b>conditions</b> under which other residents of the country live <b>and</b>, the extent to which the refugee:                             <ul style="list-style-type: none"> <li>• received permission to hold <b>property</b></li> <li>• to enjoy other rights and privileges, such as                                     <ul style="list-style-type: none"> <li>➤ <b>travel documentation</b> that includes a right of entry or reentry</li> <li>➤ <b>education</b></li> <li>➤ <b>public relief</b></li> <li>➤ <b>naturalization</b></li> </ul> </li> </ul> </li> </ul>

The restrictive conditions exception for refugee applicants is somewhat broader than the exception for asylum applicants. For the exception to apply to a refugee applicant, the applicant may show that either government or non-governmental actors in the third country created conditions “so restrictive as to deny resettlement.”<sup>36</sup> The asylum applicant is limited to showing “the authority of the country of refuge” substantially and

<sup>36</sup> 8 C.F.R. § 207.1(b). Unlike the asylum regulation, the refugee firm resettlement regulation does require that the government impose the restrictive conditions.

consciously restricts the conditions of his or her residence. In *Matter of D-X- & Y-Z-*, the BIA held that the Chinese asylum applicants failed to demonstrate any restrictive conditions in Belize.<sup>37</sup> The male applicant was working with his residence permit and the female applicant made no claim that she was ineligible to work with hers; both had also left Belize and legally reentered with their residence permits. The court noted that the female applicant also did not claim harassment, discrimination or persecution in Belize and that the male applicant was also not aware of any restrictions placed on his residence.<sup>38</sup>

Restrictive conditions, which might establish an exception for both refugee applicants under 8 C.F.R. 207.1(b) and asylum applicants under 8 C.F.R. 208.15(b), include the following:

- Formal government policy to limit the rights of non-citizen residents, including refugees
- Inability of government to ensure that individuals receive the above benefits
- Withholding by government of refugee's travel documentation
- Threats or harm by a persecutor in the country of resettlement, causing the individual to fear for his or her safety (this "continuing fear" may so limit the individual's ability to function that he or she is unable to obtain the benefits of firm resettlement).

Note: **Continuing fear** by itself is not enough to show a lack of firm resettlement. The fear must be objective, must cause a restriction on the applicant's resettlement conditions (e.g., restriction of housing, employment, education), and the applicant must show that the government is responsible or that the host country is unable or unwilling to afford the applicant protection from the persecutor.

Indirect evidence of an offer tends to overlap with the factors considered to determine whether conditions of resettlement are so restrictive as to deny resettlement. Under the four-step framework in *Matter of A-G-G-*, you must divide your analysis into offer and post-offer components.

### **Example**

Applicant is a citizen of Country 1 and flees from persecution to Country 2 where he is unable to get a job because prospective private employers hate people from Country 1 and discriminate against them by not hiring them. For a refugee resettlement interview, you would take this factor into consideration to determine if Applicant was firmly resettled. However, for an asylum interview, you would

<sup>37</sup> *Matter of D-X- and Y-Z-*, 25 I&N Dec. 664, 668 (BIA 2012).

<sup>38</sup> *Id.*

not take this into consideration because private actors, not the host government, discriminated against Applicant.

## 5.2 No Significant Ties

As mention above, the second exception applies only to asylum applicants and its requirements are displayed in the box below.

### Asylum Only Exception

8 C.F.R. § 208.15(a) - An asylum applicant is not firmly resettled if the applicant establishes that:

- entry into country was a necessary consequence of his/her flight from persecution
- he or she *remained only as long as was necessary* to arrange onward travel
- he or she did *not* establish *significant ties* in that country

In a recent case interpreting this exception, the BIA found that two Chinese asylum applicants failed to show that they only remained in Belize as long as necessary to arrange for onward travel because both traveled in and out of Belize during their stay.<sup>39</sup> One applicant returned from Belize to China to marry and the other traveled to the United States on a visitor's visa. Both applicants then voluntarily returned to Belize for a time before applying for asylum in the United States.

## 6 ANALYSIS

In 2011, the BIA announced a new four-step framework for deciding firm resettlement cases which first focuses exclusively on the existence of an offer.<sup>40</sup> After reviewing the decisions of the circuit courts, the BIA found that there were two broad methods that the courts had been using to analyze firm resettlement; the "direct offer approach" and the "totality of the circumstances approach." The Board found that both approaches allowed for direct and indirect evidence to be considered. Notably, the BIA declined to give equal weight to direct and indirect evidence under the new framework. The Board noted that indirect evidence included evidence such as a country's residence laws, length of residence in the country, and the applicant's intent to remain there. The Board found that giving this kind of indirect evidence equal weight with direct evidence "was inconsistent with the fact that only the government of the country in question can grant a person the right to lawfully

<sup>39</sup> *Matter of D-X- & Y-Z-*, 25 I&N Dec. 664, 667-68 (BIA 2012).

<sup>40</sup> *Matter of A-G-G-*, 25 I&N Dec. 486, 501 (BIA 2011).

and permanently reside there, and that such a right cannot be gained through adverse possession.”<sup>41</sup>

## 6.1 Four-Step Framework

### Step One: Evidence Indicating (or *Prima Facie* Evidence of) an Offer

The officer bears the burden of presenting evidence indicating an offer of firm resettlement. You do this through first securing and producing direct evidence of governmental documents indicating the applicant’s ability to stay in a country indefinitely.

Direct evidence may include:

- evidence of refugee status
- a passport
- a travel document

You may next consider indirect evidence, but only if direct evidence is not available. The indirect evidence must have “a sufficient level of clarity and force” to establish that the applicant is able to “permanently reside” in the country.<sup>42</sup> Indirect evidence may include:

- immigration laws or refugee process of the third country
- length of the individual’s stay
- individual’s intent to settle
- familial ties
- business or property connections
- social and economic ties
- receipt of government benefits
- education opportunities
- possession of rights given to people with an official status (right to work and enter and exit the country)
- access to permanent housing

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<sup>41</sup> *Matter of A-G-G-*, 25 I&N Dec. at 501, citing with approval, *Abdille v. Ashcroft*, 242 F.3d 477, 487 (3d Cir. 2001).

<sup>42</sup> *Matter of A-G-G-*, 25 I. & N. Dec. 486, 502 (BIA 2011).



**Best Practices:**

The applicant may testify that he or she received asylum from a third country and present documentation to you. It is incumbent upon you to review the evidence carefully and determine whether the grant of asylum was an offer of permanent resettlement. You may elicit pertinent testimony and review country condition information. As illustrated in the example above, documentation of a grant of asylum status does not necessarily constitute direct evidence of an offer of permanent residence or some type of permanent resettlement.

**Step Two: Rebuttal by Applicant**

If there is evidence indicating an offer to stay in the third country indefinitely, the applicant can rebut the evidence of an offer by showing that such an offer has not, in fact, been made or that he or she would not qualify for it. The applicant must make this showing by a preponderance of the evidence.

**Example**

Applicant is a Peruvian national and entered Venezuela illegally where he lived and worked for 14 months. After one year of living in Venezuela, Applicant paid a man to place a Venezuelan resident stamp in his passport. Applicant explains to you that he needed this resident stamp in order to secure a U.S. visa. He received a U.S. tourist visa, entered the United States where he was admitted as a tourist, and then returned to Venezuela where he was admitted with his resident visa. In total, he entered the United States twice with a tourist visa and was readmitted to Venezuela with his resident stamp twice.

This is the fact pattern of *Salazar v. Ashcroft*.<sup>43</sup> The court held that the Government readily met its burden that Salazar's Venezuelan resident stamp was facially valid given that he was readmitted twice to Venezuela with this stamp. However, Salazar was unable to rebut the presumption of firm resettlement. "Salazar produced no evidence that, beyond mere payment for the stamp (to an unidentified man), the stamp was not valid or that any irregularities would result in the eventual invalidation of the stamp by the Venezuelan government."<sup>44</sup> The Court upheld the Immigration Judge's decision that Salazar had been firmly resettled in Venezuela.

Under the four-step framework of *Matter of A-G-G-*, such an applicant could have rebutted the evidence indicating that the residency stamp was fraudulent and that Venezuela had offered or given him permanent residency, but the applicant produced no

<sup>43</sup> *Salazar v. Ashcroft*, 359 F.3d 45 (1st Cir. 2004).

<sup>44</sup> *Id.* at 51.

rebuttal evidence. Similarly, in *Matter of D-X- & Y-Z-*, the applicants failed to show that their permits to reside in Belize, which they claimed were fraudulently obtained, were not issued by the Belize government, as they had successfully traveled outside of Belize and reentered using the permits.<sup>45</sup> As a result, the court held that they were unable to rebut the evidence indicating (or *prima facie* evidence of) firm resettlement.<sup>46</sup>

### Step Three: Totality of Circumstances

You must then weigh the totality of the evidence presented and make a determination as to whether the applicant has rebutted the evidence of firm resettlement. Keep in mind that the evidence of firm resettlement must either be direct evidence or, in the absence of direct evidence, indirect evidence of sufficient clarity and force (not mere speculation). If the applicant fails to rebut the evidence, the applicant should be found to have received an offer of permanent resettlement.

### Step Four: Applicant's Burden to Show Exception

If the applicant is found to have received an offer of permanent residence, the burden shifts to the applicant to establish, by a preponderance of the evidence, that an exception to firm resettlement applies pursuant to 8 C.F.R. §§ 207.1(b), 208.15(a) and (b). See *Exceptions to Firm Resettlement*, above. If the applicant is able to meet his or her burden of proof that an exception applies, the applicant may be granted asylum or refugee status.

Restrictive conditions, which might establish an exception for both refugee applicants under 8 C.F.R. 207.1(b) and asylum applicants under 8 C.F.R. 208.15(b), include the following:

- Formal government policy to limit the rights of non-citizen residents, including refugees.
- Inability of government to ensure that individuals receive the benefits listed in Step One above.
- Withholding by government of refugee's travel documentation
- Threats or harm by a persecutor in the country of resettlement, causing the individual to fear for his or her safety (this "continuing fear" may so limit the individual's ability to function that he or she is unable to obtain the benefits of firm resettlement) The applicant must also show that the government is responsible or that the host country is unable or unwilling to afford the applicant protection from the persecutor.

## 6.2 Burden of Proof

<sup>45</sup> *Matter of D-X- & Y-Z-*, 25 I&N Dec. 664, 666-67 (BIA 2012).

<sup>46</sup> *Id.*

It is always the applicant's burden to establish eligibility as a refugee, and your burden to elicit testimony. As the adjudicator, you bear the initial burden of producing evidence indicating (or *prima facie* evidence of) firm resettlement.<sup>47</sup>

If you meet this initial burden, the burden shifts to the applicant to show by a preponderance of the evidence that an offer has not in fact been made or that he or she would not qualify for it.<sup>48</sup> Then, you will consider the totality of the evidence presented to determine whether the applicant has rebutted the evidence of an offer of firm resettlement.<sup>49</sup> If you find that the applicant was firmly resettled in a third country, the burden shifts to the applicant to show by a preponderance of the evidence that an exception applies.<sup>50</sup> The BIA has issued a decision with a new framework for adjudicating cases using these shifting burdens of proof. For more details, see Four-Step Framework, above.

The burden of proof required for the applicant to establish such facts is a preponderance of the evidence, meaning that the applicant must show that it is more likely than not that he or she rebutted the *prima facie* evidence or that he or she is eligible for an exception.<sup>51</sup> Where the burden of proof has shifted to the applicant, but the applicant has no resources to produce the necessary evidence, it is still your duty to elicit testimony, request additional documentation which is reasonable for the applicant to obtain, and research pertinent country conditions.

BIA case law establishes that "foreign law is a matter to be proven by the party seeking to rely on it."<sup>52</sup> In some instances, the applicant seeks the benefit of foreign law and consequently bears the burden of producing evidence of the foreign law.<sup>53</sup> In other instances, you bear this burden where you are relying on foreign law.<sup>54</sup>

<sup>47</sup> *A-G-G*, 25 I&N Dec. at 501

<sup>48</sup> *A-G-G*, 25 I&N Dec. at 503.

<sup>49</sup> *A-G-G*, 25 I&N Dec. at 503.

<sup>50</sup> *A-G-G*, 25 I&N Dec. at 503.

<sup>51</sup> For additional information about the burden of proof and standard of proof, see RAIO Training Module, *Evidence*.

<sup>52</sup> *Matter of Soleimani*, 20 I&N Dec. 99, 106 (BIA 1989).

<sup>53</sup> *Sadeghi v. INS*, 40 F.3d 1139 (10th Cir. 1994).

<sup>54</sup> In *Matter of Soleimani*, 20 I&N Dec. 99, 106 (BIA 1989), legacy INS relied on the BHRHA's reference to Israel's Law of Return to establish the asylum applicant had been offered resettlement in Israel. The BIA rejected this, stating, "However, there is nothing in the record, beyond the BHRHA's perfunctory reference to its existence, documenting the nature and purpose of Israel's Law of Return or the specific provisions of that law. Absent any such documentation, the Board cannot find that the respondent had been offered permanent resettlement in Israel within the meaning of the firm resettlement concept. There exists no evidence that the respondent would be eligible for an offer of resettlement under any such law and no evidence regarding the extent of any restrictions or conditions that may be placed on offers of resettlement under that law. Foreign law is a matter to be proven by the party seeking to rely on it, and the INS has submitted nothing of record regarding Israel's Law of Return." *But see Matter of A-G-G*, 25 I&N Dec. 486, 502-03 (BIA 2011) (stating that *Matter of Soleimani* would be decided differently if considered under the new *A-G-G*- framework and noting that the Law of Return would be indirect evidence of an

**Example**

You are adjudicating a refugee resettlement application in Damascus, Syria. The applicant shows you his passport with the UAE residence stamp. There is sufficient evidence that as a consequence of his flight from persecution in Iraq, the applicant entered the United Arab Emirates with a UAE residence stamp. The burden of proof now shifts to the applicant to rebut the presumption of firm resettlement or to show that he meets one of the exceptions to firm resettlement. You should elicit testimony regarding the UAE residence stamp.

Here are some sample questions:

- How did you obtain this residence stamp from the UAE?
- Does it have any restrictions? Is there anything you must do, or must not do because you have this stamp?
- Did you use this resident stamp to travel?
- Does it have an expiration date?
- What do you have to do to renew this?
- Did you ever try to renew it?

**6.3 Issues to Consider****6.3.1 Firm Resettlement and Dual Nationality**

Firm resettlement and dual nationality may overlap in your refugee or asylum adjudication. Here are a few points to keep in mind:

- Firm resettlement may include, but does not require, citizenship. Firm resettlement does require entry into the third country and an offer of permanent status.
- Dual nationality does require citizenship, but does not require entry or presence in the third country and may not be based on a mere offer of citizenship.
- An applicant who is a dual national must establish that he or she meets the definition of a refugee as to both countries of nationality in order to be eligible for refugee resettlement or asylum.
- An applicant who is found to be firmly resettled in a third country does not need to establish that he or she is a refugee as to the country of firm resettlement, but the

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offer and that the applicant would have to present rebuttal evidence that she was ineligible for or would not have been granted an offer or that one of the exceptions applied.).

applicant must establish that he or she is eligible for an exception to the firm resettlement bar to be eligible for asylum or refugee status.<sup>55</sup>

### 6.3.2 Derivatives of Refugees and Asylees and I-730 Beneficiaries

The firm resettlement bar does not apply to the spouse and children of refugees and asylees who are derivatives of the principal applicant. Such individuals are eligible for derivative asylum and refugee status, regardless of whether they are firmly resettled in a third country.<sup>56</sup>

#### *Example*

Mohammad fled country X after he learned that he was sought by the police for attending an anti-government rally. He fled directly to the United States. While his application for asylum was pending, his wife Sharifa and their two children moved to country Y where Sharifa's family lived. Although they were not citizens of country Y, Sharifa and the children were offered the possibility of becoming citizens there. They did not accept the offer. Thereafter, Mohammad's application for asylum was approved by the United States, and he filed an I-730 for Sharifa and the children. The offer of firm resettlement for Sharifa and the children does not factor into the determination of their eligibility as beneficiaries under an I-730 petition.

## 7 CONCLUSION

Firm resettlement is a bar to both asylum and refugee resettlement. The definitions of firm resettlement for these two forms of protection are similar, but differ in several ways. In both, an applicant is not barred by firm resettlement where the potential firm resettlement in a third country ended prior to becoming a refugee. Both also require entry into a third country and an offer or receipt of permanent residency or some other type of permanent resettlement. The refugee bar requires that an applicant entered the third country as a consequence of his or her flight from persecution. There is no such requirement for asylum applicants.

Both firm resettlement bars have an exception for individuals who are subject to restrictive conditions in the third country either by the government or, for refugee applicants only, non-government actors. Asylum applicants have a second exception to the firm resettlement bar if they entered into the third country as a consequence of flight from persecution, stayed only as long as necessary to arrange for onward travel and established no significant ties to the third country.

<sup>55</sup> For additional information, refer to *Exceptions* section and *Applicant's Burden to Show Exception* section, above.

<sup>56</sup> 8 C.F.R. § 207.7; 8 C.F.R. § 208.21(a).

In response to conflicting decisions by courts, in 2011 the BIA established a four-step framework for adjudicating the firm resettlement bar which focuses first on the existence of an offer and gives greater weight to direct evidence of whether the applicant was offered or received a permanent status in the third country.

## 8 SUMMARY

### 8.1 Historical Overview

The firm resettlement bar has its origins in the 1946 Constitution of the International Refugee Organization and the 1951 Convention relating to the Status of Refugees. This bar appeared in U.S. law as early as 1948. It fluctuated between being a mandatory and a discretionary bar. Firm resettlement was added as a mandatory statutory bar to refugee resettlement in 1980 and as a mandatory statutory bar to asylum in 1996.

### 8.2 Sources of Authority and Requirements of Firm Resettlement

The statutory firm resettlement bars are found at INA § 207(c)(1)(refugee resettlement) and INA § 208(b)(A)(vi)(asylum). The regulations, found at 8 C.F.R. § 207.1(b)(refugee resettlement) and § 208.15 (asylum), define firm resettlement for each form of protection. Each definition requires entry into a third country and an offer or receipt of some type of permanent resettlement. The main difference between the two definitions is that for refugee resettlement applicants, the entry into the third country must be as a “consequence of flight” from persecution. The asylum firm resettlement bar does not have this requirement, but for the firm resettlement analysis to apply, the applicant must receive an offer of firm resettlement after becoming a refugee. Over the years, courts have interpreted the firm resettlement bar in different ways. To reconcile these differences, the BIA issued a precedent decision in 2011, *Matter of A-G-G-*, which sets forth a four-step framework for deciding firm resettlement cases.

An offer need not be accepted for the firm resettlement bar to apply. The existence of a legal mechanism, or a class-based offer, for obtaining permanent status may be sufficient evidence to establish an offer of permanent resettlement. The status must be permanent, not temporary. Loss of permanent status does not necessarily remove the firm resettlement bar. In the absence of direct evidence, if minors are under their parents’ custody and control, the parents’ firm resettlement is evidence indicating the minors’ firm resettlement in the third country.

### 8.3 Exceptions to Firm Resettlement

Both firm resettlement bars have an exception based on restrictive conditions in the country of resettlement. Under the restrictive conditions exceptions, you may consider the following factors: housing, employment, and rights to property ownership, travel documentation, education, welfare and citizenship. For asylum purposes, you may only consider the conditions imposed by the government in the third country. For refugee

resettlement, you may consider conditions imposed by both government and non-government actors.

Asylum applicants are also eligible for an exception based on the lack of significant ties in the third country. To meet this exception, asylum applicants must show they entered the third country as a consequence of flight, remained there only as long as necessary to arrange onward travel, and did not establish significant ties to that country.

#### 8.4 Analysis and the Four-Step Framework of *Matter of A-G-G-*

In 2011, the BIA in *Matter of A-G-G-* established a four-step framework for adjudicating the firm resettlement bar which focuses exclusively on the existence of an offer. The BIA also held that adjudicators must look first to direct evidence in determining whether an offer has been made and may only consider indirect evidence if no direct evidence is available. The framework has the following four steps:

##### 1. *Prima Facie* Evidence of an Offer (Officer's Burden)

You bear the burden of presenting *prima facie* evidence of (or evidence indicating) an offer of firm resettlement. You do this through first securing and producing direct evidence of governmental documents indicating the applicant's ability to stay in the country indefinitely. Direct evidence may include: a passport, a travel document, or evidence of refugee status. You may consider indirect evidence only if direct evidence is not available and only if the indirect evidence is of sufficient clarity and force (not mere speculation).

##### 2. Rebuttal (Applicant's Burden)

If you present *prima facie* evidence of firm resettlement, the burden shifts to the applicant to rebut that evidence by showing that an offer has not, in fact been made or that he or she would not qualify for it.

##### 3. Totality of Circumstances (Officer Must Weigh)

You must then weigh the totality of the evidence presented and make a determination as to whether the applicant has rebutted the evidence of firm resettlement by a preponderance of the evidence.

##### 4. Exception (Applicant's Burden)

If the applicant is found to have received an offer of permanent residence, the burden shifts to the applicant to establish by a preponderance of the evidence<sup>57</sup> that an exception applies.

#### 8.5 Burden of Proof

<sup>57</sup> See *Burden of Proof* section, above.

It is always the applicant's burden to establish eligibility as a refugee and your burden to elicit testimony. As the adjudicator, you bear the initial burden of producing evidence indicating (or *prima facie* evidence of) firm resettlement. The burden then shifts to the applicant to show by a preponderance of the evidence that an offer has not in fact been made or that the applicant would not qualify for it. The burden of proof required for the applicant is a preponderance of the evidence, meaning the applicant must show it is more likely than not that he or she rebutted the evidence indicating firm resettlement.

#### **8.6 Issues to Consider**

When making a firm resettlement determination, careful consideration should be given to issues regarding dual nationality. Also, the firm resettlement bar does not apply to derivatives of principal applicants and I-730 beneficiaries.



**PRACTICAL EXERCISES****Practical Exercise # 1**

- **Title: Iraqi Applicant**
- **Student Materials:**

After reviewing the facts and interview notes below, determine the following:

- Is the applicant firmly resettled in Australia for purposes of a refugee resettlement adjudication?
- Is the applicant firmly resettled in Australia for purposes of an asylum adjudication?

Applicant credibly testified to the following at his DHS interview: he is a native of Iraq where he worked in the Green Zone as an interpreter for the American Army. He began receiving threatening text messages on his cell phone because he worked for the Americans. His employment ended, and he relocated to another area in Iraq where he worked under the Ministry of Trade. For work related matters, he travelled to Australia and remained there from 10/08 – 2/10. He joined his family in Jordan. He feels personally targeted especially since the word spread in his Iraqi neighborhood that he had travelled to Australia and had been working with U.S. forces, which is considered treason according to certain extremist groups.

Here is an excerpt of the interview notes:

Q: How long in Australia?

A: 10/08 – 2/10

Q: Doing there?

A: Went to Australia on a training course as Ministry of Trade Iraqi Government employee from Nov. 3-28, 2008.

Q: Sought asylum?

A: Yes, I applied when course ended.

Q: Result?

A: Granted permanent residency in Australia on 4/23/2009.

Q: Right to live and work indefinitely in Australia?

A: Yes

Q: Right to apply for Australian citizenship?

A: After 4 years residency in Australia can apply

Q: What was your granted status in Australia called?

A: Protection Visa Class XA

Q: Have you applied for wife and children to immigrate to Australia?

A: Yes

Q: Result?

A: Australian gov't will not provide financial support to bring wife and kids to Australia

Q: Do you have the right to bring them to Australia though?

A: Yes

Q: Why seek resettlement in USA?

A: Because there is financial support to get there, and my father has applied for resettlement to U.S. and has had DHS interview and awaiting response

### Practical Exercise # 2

• Title: Iranian Applicant

• Student Materials:

After reviewing the facts below, determine the following:

- Is the applicant firmly resettled in the UAE for purposes of a refugee resettlement adjudication?
- Is the applicant firmly resettled in the UAE for purposes of an asylum adjudication?
- For asylum cases, is there a requirement that the applicant entered the host country as a consequence of flight from persecution?
- Is the applicant's work residency permit – an offer of permanent resettlement or some other type of permanent resettlement?

Applicant credibly testified to the following at her DHS interview: She is a native of Iran. Her parents separated, and she moved with her mother to the UAE as a

dependent on her mother's UAE employee residence permit. Applicant lived in UAE as a resident from 2002-2005 where she worked, owns property for which she receives rent, and generally lived without any restrictions. Applicant came to the U.S. on a visa to work with Voice of America, and on the radio as a journalist, she discussed the political situation in Iran. Applicant's mother cancelled Applicant's UAE residence permit.

**OTHER MATERIALS****Firm Resettlement Case Law****2012**

Matter of D-X- and Y-Z-, 25 I&N Dec. 664 (BIA 2012).

**2011**

Matter of A-G-G-, 25 I&N Dec. 486 (BIA 2011).

**2001**

Abdille v. Ashcroft, 242 F.3d 477 (3d Cir. 2001).

Ali v. Reno, 237 F.3d 591 (6th Cir. 2001).

**1998**

Vang v. INS, 146 F.3d 1114 (9th Cir. 1998).

**1994**

Sadeghi v. INS, 40 F.3d 1139 (10th Cir. 1994)

**1989**

Matter of Soleimani, 20 I&N Dec. 99, 106 (BIA 1989)

**1971**

Rosenberg v. Yee Chien Woo, 402 U.S. 49 (1971).

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p><b><u>RAD Supplement</u></b></p> <p><b>Module Section Subheading</b></p>
---

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>ASM Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

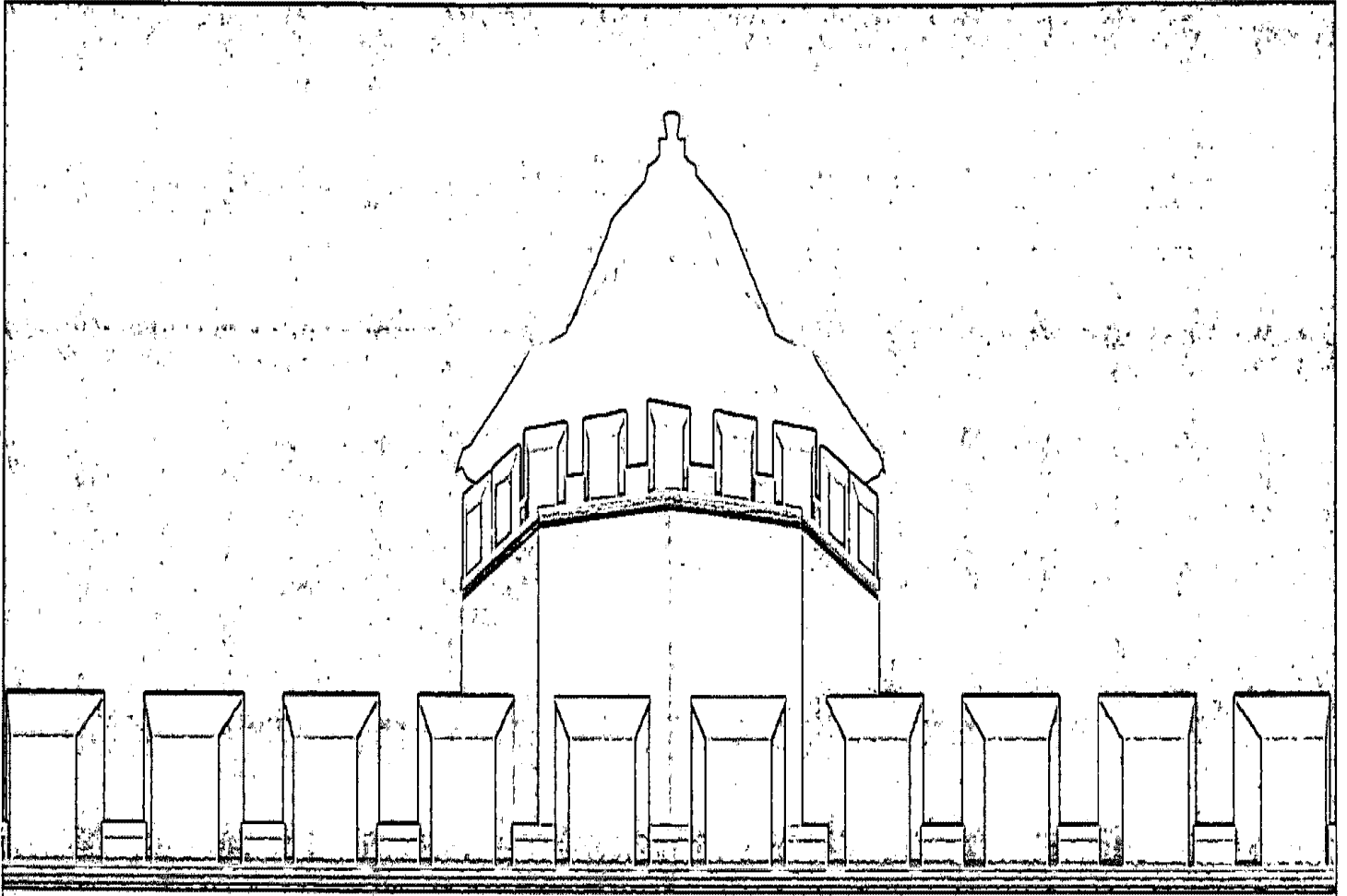
- 1.

**ADDITIONAL RESOURCES**

- 1.

**SUPPLEMENTS**

<b><u>IO Supplement</u></b>
<b>Module Section Subheading</b>

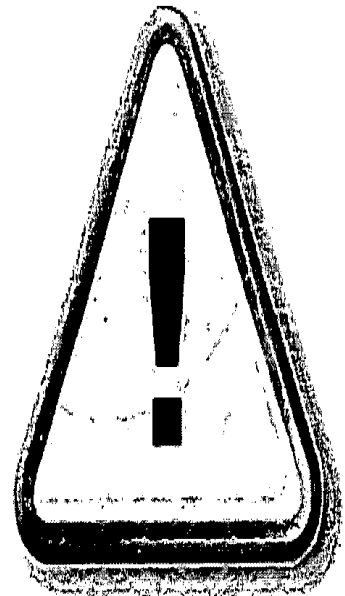


# Firm Resettlement





# Firm Resettlement

8 CFR Sec. 207.1(b) Firmly resettled. A refugee is considered to be "firmly resettled" if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his/her flight from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.



# Firm Resettlement

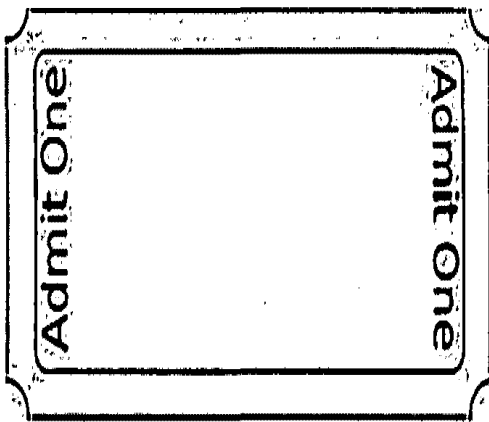
- 1) Entry into 3<sup>rd</sup> country *as a consequence of flight*  

- 2) Offer or Receipt of  

- 3) Permanent Status or Citizenship  
("ability to stay indefinitely")

**Exception: Restrictive Conditions**

# 4-step framework: Matter of A-G-G

1. The officer has the burden to show direct or indirect evidence indicating offer
2. Applicant has the burden to rebut any **direct** evidence of offer (with *indirect* evidence, skip to step 3)
3. The officer considers totality of evidence and determines if applicant is firmly resettled
4. If firmly resettled, applicant has the burden to establish and officer has the duty to elicit testimony regarding “restrictive conditions” exception

# The offer: Matter of A-G-G



The existence of a legal mechanism to obtain permanent status in the 3<sup>rd</sup> country may be sufficient evidence to establish an offer, **and is not contingent on whether the applicant applies for the status.**

However, officer must elicit if applicant would meet all requirements and be eligible for the status.

A single female fled Afghanistan to Germany in 1996 due to fear of persecution by the Taliban. She was granted asylum by the German government. She was able to find work, housing, to attend school and to travel in and out of Germany. However, she later left Germany because the cold weather made her feel sick and because the jobs she was able to find as a waitress required that she handle pork, which is against her religion. She has been referred to the USRAP as a woman-at-risk. Is she firmly resettled?

A male Iraqi refugee applicant is married to a Lebanese national and is living in Lebanon. He can legally work and his children can attend school due to his wife's status as a citizen. Is he firmly resettled?

**IV. BARS AND INADMISSIBILITIES**

<p><b>A. PERSECUTOR BAR</b> Has it been determined that the applicant or any derivative ever ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion?</p>	<p><input type="checkbox"/> Yes—Explain Below <input checked="" type="checkbox"/> No</p>
<p><b>B. FIRM RESETTLEMENT BAR</b> Has it been determined that the applicant ever firmly resettled in a foreign country after leaving the country of nationality?</p>	<p><input checked="" type="checkbox"/> Yes—Explain Below <input type="checkbox"/> No</p>
<p><b>C. INADMISSIBILITY</b> Has it been determined that the applicant or any derivative is inadmissible to the U.S.?</p>	<p><input type="checkbox"/> Yes—Explain Below (Cite specific provision). <input checked="" type="checkbox"/> No—Explain Below (As required).</p>
<p><b>D. CARRP</b> Has it been determined that there is a national security concern for the applicant or any derivative which requires further vetting?</p>	<p><input type="checkbox"/> Yes—Explain Below <input checked="" type="checkbox"/> No—Explain Below (As required).</p>

Explanation: PA had received asylum in Ecuador after flight to Ecuador. PA was found to be firmly resettled in Ecuador. PA was able to secure appropriate employment & housing & to enroll children in school, & had not been pursued by Colombian persecutors into Ecuador. PA had suffered abuse from common-law Colombian partner in Ecuador; however, Ecuadorian authorities had shown willingness to protect the PA by jailing the ex-partner & issuing a restraining order against him.

(use additional pages as needed)

# The Path to Firm Resettlement

## Three Requirements

### 1. Entry into Third Country



for Refugees only – must be a consequence of flight from persecution  
for Asylum Seekers – any time prior to entry into United States, but only after events which caused the person to be a refugee

### 2. Offer or Receipt of



for Refugees and Asylum-Seekers – offer alone is enough

### 3. Permanent Status or Citizenship



for Refugees and Asylum-Seekers – status must be permanent, akin to LPR status or citizenship  
for Refugees and Asylum-Seekers – loss of permanent status does not necessarily remove bar

= **Firm Resettlement**

### Exceptions

#### For **Restrictive Conditions**

look at, among other things:

Housing  
Employment  
Property Ownership  
Travel Documentation  
Education  
Public Welfare  
Naturalization

#### **Restrictive Conditions**

-for Refugees by host gov't or non-gov't actors  
-for Asylum-Seekers by host gov't only

#### **No Significant Ties**

- for Asylum Seekers **only**, and only if stay was consequence of flight  
stayed only as long as necessary  
no significant ties

## Four-Step Framework under Matter of A-G-G: Focus Exclusively on Offer

1. Officer's burden to show **Prima Facie Evidence** of (or Evidence Indicating) **Offer of Permanent Resettlement** (Direct Evidence or, if none, Indirect)
2. Applicant's burden to **Rebut** *Prima Facie* Evidence of **Offer**
3. Officer considers **Totality of Evidence**
4. If officer decides Applicant is Firmly Resettled, Burden shifts to Applicant to Show **Exception** Applies





## U.S. Citizenship and Immigration Services

### Response to Query

**Date:** January 6, 2016

**Subject:** Harm to a Family Member or Third party

**From:** Refugee Affairs Division, Policy Branch

**Keywords:** Past Persecution, Harm, Harm to Third Person

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**Query:** How do you determine whether harm to a family member or a third party contributes to a finding of past persecution of the principal applicant (PA)?

**Response:** Harm to an applicant's family member, or another closely associated third party, generally may constitute persecution of the applicant on account of a protected ground if:

- The harm to the applicant is serious (often it is psychological harm) **AND**
- The persecutor's intent in harming the family member or third party is to target the applicant on account of a protected characteristic, either individually, or as part of the applicant's family or other group to which the applicant belongs.

#### Severity of the Harm:

The harm to the applicant must be serious. There is no requirement for the applicant to witness the harm to the family member (or third party); however, witnessing the harm may intensify the severity of the harm to the applicant, as may the applicant's belief that his or her actions or status caused the persecutor to harm the family member (or third party).

Persecution may be established by credible threats that the family member (or third party) would be imminently subjected to death or severe physical pain or suffering, if such threats are intended to target the applicant and if they cause the applicant serious harm.

Further questioning may be necessary to elicit a sufficient level of harm to applicants given different levels of education or maturity, as well as varying regional, cultural, historical and educational circumstances. For example, in areas where most members of the PA's ethnicity or clan suffered deaths, rape and other violence, the PA may not initially articulate such harm to a family member as seriously affecting his or her own mental and/or physical health.

Establishing nexus to an individual by showing nexus to a group of which he/she is a part:

The RAIO Lesson Plan on Past Persecution was restructured to clarify that an applicant can establish that he is targeted on account of a protected ground by showing that he is part of a group that is targeted on account of that shared protected ground. The prior guidance stated: “[H]arm to a family member or third party will not constitute persecution of the applicant, unless the intent in harming the third party is to target the applicant, the applicant’s family, or the applicant’s ethnic group on account of a protected characteristic.”

The revised guidance now states:

“[H]arm to a family member or third party will not constitute persecution of the applicant, unless the intent in harming the third party is to target the applicant, the applicant’s family, *or all members of a group to which the applicant belongs* on account of a protected characteristic” (emphasis added).

Persecutor’s motivations with respect to the third party:

When a persecutor harms a third party in order to target an applicant on account of a protected ground, that third party may often share the applicant’s protected trait, or may be part of a group that shares that trait. But it is not required in order to establish nexus. The focus of analysis should be on whether the persecutor is targeting the applicant on account of the applicant’s protected trait. For example, a group of political dissidents’ children are abducted from the common school they are known to attend, and the abductors might torture the children in order to persecute the parents on account of the parents’ shared political opinions. If one of the parents in that scenario were an applicant, he could show that the torture of his child was intended to harm him on account of a protected ground. It would not matter that his child was too young to have a political opinion of his own (i.e., that the third party harmed in order to persecute the applicant did not share the applicant’s protected trait).

Relevant to the revision of the Past Persecution Lesson Plan described above, this applicant would not have to show evidence that the abductors identified him individually and knew which child was his. The applicant could establish that he was targeted on account of his political opinion as a part of a group of dissidents so targeted.

The following examples provide guidance on when harm to a family member or another closely associated third party should be considered persecution of the applicant.

- **PERSECUTION:** The wife of a political dissident is abducted and killed as a way of teaching her husband, the applicant, a political lesson.
- **NOT PERSECUTION:** The applicant’s relative is targeted solely because of the relative’s protected characteristic (not the applicant’s characteristic).
  - Example 1: The applicant’s LGBT brother is beaten by skinheads in front of the applicant because the brother is gay. The applicant is not gay or active in LGBT issues, and the perpetrators ignored the applicant during the attack on his brother.
  - Example 2: The applicant’s daughter received death threats when she converted to Christianity after getting married. The applicant is a Muslim and he has not experienced any harm because of his daughter’s conversion.

Harm which does not constitute persecution may nonetheless contribute to a well-founded fear of future persecution.

As with any refugee case, an applicant with a well-founded fear of persecution may establish eligibility for refugee resettlement even if past persecution is not established. Harm to a family member or another third party close to the PA which does not constitute persecution of the PA may nonetheless provide evidence that the PA's fear of future persecution is well-founded.

Marking the Assessment:

Past serious harm to a family member or another, closely associated third party, which the PA articulates as also causing harm to himself or herself should be marked on Part III.A.1 of the assessment regardless of whether or not there is a nexus to the PA's protected characteristic and the harm suffered by the PA would rise to the level of persecution.

Examples:

1. PA's brother harmed, but there is no nexus to the PA.

III. INA §101(A)(42)—APPLICANT'S CLAIM	
<b>A. Past Persecution</b>	
1. Does the applicant claim to have been harmed or mistreated in his/her country(ies) in the past? If no, go to Part III.B. If yes, identify the perpetrator(s) of, and describe, the harm or mistreatment: Perpetrator(s): <u>NEIGHBORHOOD THUGS.</u> Harm/Mistreatment: <u>PA'S BR RECEIVED ANTI-CHRISTIAN THREATS. PA'S BR BEATEN</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is the claimed harm or mistreatment on the basis of one of the five protected grounds? If no, go to Part III.B. If yes, designate applicable ground(s): <input type="checkbox"/> Race <input type="checkbox"/> Religion <input type="checkbox"/> Nationality <input type="checkbox"/> Membership in a Particular Social Group <input type="checkbox"/> Political Opinion Specify Characteristic(s): <u>NO NEXUS TO PA. BR CONVERTED TO CHRISTIANITY, PA IS BUDDHIST.</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Does the claimed harm or mistreatment rise to the level of persecution? If no, explain below:	Yes <input type="checkbox"/> No <input type="checkbox"/>

2. PA's brother is harmed on account of a shared nexus (religion); however, PA unable to show that the harm rises to the level of persecution.

III. INA §101(A)(42)—APPLICANT'S CLAIM	
A. Past Persecution	
1. Does the applicant claim to have been harmed or mistreated in his/her country(ies) in the past? If no, go to Part III.B. If yes, identify the perpetrator(s) of, and describe, the harm or mistreatment: Perpetrator(s): <u>POLICE</u> Harm/Mistreatment: <u>PA'S BROTHER BEATEN AND THREATENED.</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is the claimed harm or mistreatment on the basis of one of the five protected grounds? If no, go to Part III.B. If yes, designate applicable ground(s): <input type="checkbox"/> Race <input checked="" type="checkbox"/> Religion <input type="checkbox"/> Nationality <input type="checkbox"/> Membership in a Particular Social Group <input type="checkbox"/> Political Opinion Specify Characteristic(s): <u>BOTH PA AND BROTHER CONVERTED TO CHRISTIANITY.</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Does the claimed harm or mistreatment rise to the level of persecution? If no, explain below: <u>PA IS UNABLE TO ARTICULATE THAT THE HARM TO HIMSELF RISES TO THE LEVEL OF PERSECUTION.</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

3. PA's mother harmed, and a nexus is established to a protected characteristic of the PA.

III. INA §101(A)(42)—APPLICANT'S CLAIM	
A. Past Persecution	
1. Does the applicant claim to have been harmed or mistreated in his/her country(ies) in the past? If no, go to Part III.B. If yes, identify the perpetrator(s) of, and describe, the harm or mistreatment: Perpetrator(s): <u>JANJAWED PARAMILITARY</u> Harm/Mistreatment: <u>MOTHER KILLED (IN FRONT OF PA)</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is the claimed harm or mistreatment on the basis of one of the five protected grounds? If no, go to Part III.B. If yes, designate applicable ground(s): <input checked="" type="checkbox"/> Race <input type="checkbox"/> Religion <input type="checkbox"/> Nationality <input type="checkbox"/> Membership in a Particular Social Group <input type="checkbox"/> Political Opinion Specify Characteristic(s): <u>PA AND MO BOTH ETHNIC FUR. (JANJAWED USED ETHNIC SLURS DURING ATTACK)</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Does the claimed harm or mistreatment rise to the level of persecution? If no, explain below:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>



**U.S. Citizenship  
and Immigration  
Services**

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**NEXUS –  
PARTICULAR SOCIAL GROUP**

**TRAINING MODULE**

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***NEXUS – PARTICULAR SOCIAL GROUP**

## Training Module

**MODULE DESCRIPTION:**

This module discusses a part of the refugee definition as codified in the Immigration and Nationality Act (INA), the “on account of” five protected grounds, specifically membership in a particular social group (PSG) and its interpretation in administrative and judicial case law. The primary focus of this module is the determination as to whether an applicant has established that past harm suffered or future harm feared is on account of membership in a particular social group.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

Given a request to adjudicate either a request for asylum or a request for refugee status, the officer will be able to apply the law (statutes, regulations and case law) to determine whether an applicant is eligible for the requested relief.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain factors to consider in determining whether persecution or feared persecution is on account of membership in a particular social group.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Discussion
- Practical Exercises

**METHOD(S) OF EVALUATION****REQUIRED READING**

Division-Specific Required Reading - Refugee DivisionDivision-Specific Required Reading - Asylum DivisionDivision-Specific Required Reading - International Operations Division

## ADDITIONAL RESOURCES

1. Matter of C-A, 23 I&N Dec. 951 (BIA 2006).
2. Matter of Acosta, 19 I&N Dec. 211, 233-34 (BIA 1985)
3. Lynden D. Melmed, USCIS Chief Counsel. Guidance on Matter of C-A, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007). Matter of Acosta, 19 I&N Dec. 211, 233-34 (BIA 1985)
4. Brief of the Department of Homeland Security In re: Rodi Alvarado-Pena, filed with the Attorney General of the United States, February 19, 2004 (2004 DHS brief in R-A-).
5. United Nations High Commissioner for Refugees, Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. HCR/GIP/02/02, 7 May 2002, 5 pp.
6. Phyllis Coven. INS Office of International Affairs. Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Gender Guidelines), Memorandum to all INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p. See also RAO Training Module, Gender-Related Claims
7. Rosemary Melville. INS Office of International Affairs. Follow Up on Gender Guidelines Training. Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 7 July 1995), 8 p.
8. Paul W. Virtue. INS Office of General Counsel. Whether Somali Clan Membership May Meet the Definition of Membership in a Particular Social Group under the INA, Memorandum to Kathleen Thompson, INS Office of International Affairs (Washington, DC: 9 December 1993), 7 p.
9. Dea Carpenter, USCIS Deputy Chief Counsel, Guidance on Demiraj v. Holder, 631 F.3d 194 (5th Cir. 2011), Memorandum to Ted Kim, Acting Director, Asylum Division (Washington, DC: February 23, 2012).



**Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

Task/ Skill #	Task Description
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR9	Knowledge of policies and procedures for processing lesbian, gay, bisexual and transgender (LGBT) claims (3)
ILR10	Knowledge of policies and procedures for processing gender-related claims (3)
ILR14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence) (5)
RI1	Skill in identifying issues of claim (4)
RI2	Skill in identifying the information required to establish eligibility (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
11/06/2013	6.Summary (of 4/30/2013 edition)	Revised last sentence of paragraph 1 of Summary and corrected corresponding footnote # 114; added an additional sentence as clarification.	J.Kochman

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

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

## 1 INTRODUCTION

The refugee definition at INA §101(a)(42) states that an individual is a refugee if he or she establishes past persecution or a well-founded fear of future persecution on account of one or more of the five protected grounds. All of the elements of the refugee definition are reviewed in the RAIO Training Module, *Refugee Definition*. The requirements for an applicant to establish eligibility based on past persecution are discussed in the module, *Persecution*. The elements necessary to establish a well-founded fear of future persecution are discussed in the module, *Well-Founded Fear*. The analysis of the persecutor's motive and the requirements needed to establish that persecution or feared persecution is "on account of" race, religion, nationality, or political opinion are discussed in the module, *Nexus and the Protected Grounds* (minus PSG).

This module provides you with an understanding of the requirements needed to establish that persecution or feared persecution is "on account of" membership in a particular social group (PSG).

The nexus analysis for PSG claims is fundamentally the same as it is for cases involving the other protected characteristics; you must determine:

1. whether the applicant possesses or is perceived to possess a protected characteristic;
- and
2. whether the persecution or feared persecution is on account of that protected characteristic.

## 2 DOES THE APPLICANT POSSESS A PROTECTED CHARACTERISTIC?

The first question is the starting point for all protected grounds – whether the applicant possesses, or is perceived to possess, a protected characteristic (membership in a particular social group). For cases based on membership in a particular social group, the analysis is expanded, requiring you to identify the characteristics that form the particular social group and explain why persons with those characteristics form a particular social group within the meaning of the refugee definition. This part of the analysis is generally not required with other protected characteristics, of which there tends to be a common understanding or usage among those applying this area of law.

To determine whether the applicant belongs to a group which may be considered a particular social group, you should first consider any precedent decisions analyzing similar facts and rely on any such decisions in reaching a conclusion. If there is no precedent decision on point, you should analyze the facts using the principles set forth below to determine whether the group constitutes a particular social group.

## 2.1 Is the Applicant a Member of a Particular Social Group?

### Definition

The BIA has established a two-prong test for evaluating whether a group meets the definition of a particular social group.<sup>1</sup>

First, the group must comprise individuals who share a common, immutable characteristic – such as sex, color, kinship ties, or past experience – that members cannot change or a characteristic that is so fundamental to the member's identity or conscience that he or she should not be required to change it.<sup>2</sup>

Second, the group must be recognizable and distinct in the society. To determine whether a group is recognizable and distinct, you must examine the shared trait asserted to define the group. Evidence that the society in question distinguishes individuals who share that common trait from individuals who do not possess that trait can establish that the group is recognizable and distinct in the society.<sup>3</sup>

A group cannot be considered a particular social group within the meaning of the refugee definition if it fails to meet either of the two prongs set forth in *Matter of C-A-* for evaluating whether a particular social group exists. A group of individuals who share characteristics that meet the first prong of the test is not “a particular social group” within the meaning of the refugee definition if the group fails to meet this social “distinction” or “visibility” prong. Similarly, even when a group of individuals is socially recognizable

<sup>1</sup> *Matter of C-A-*, 23 I&N Dec. 591 (BIA 2006).

<sup>2</sup> *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985).

<sup>3</sup> *Matter of C-A-*, 23 I&N Dec. 591 (BIA 2006). The Eleventh Circuit has had occasion to review the BIA's “social visibility” element set out in *Matter of C-A-* and found that requirement to be a reasonable interpretation of the INA. *Castillo-Arias v. U.S. Attorney General*, 446 F.3d 1190, 1198 (11<sup>th</sup> Cir. 2006).

and distinct, it must still be established that the group's members share a trait that meets the first prong in order to qualify as a particular social group. Both prongs are required.

### 2.1.1 Step One: *Acosta* - Immutable Characteristic May Be Unchangeable or Fundamental

The BIA explained that the common, immutable characteristic that defines the group is one that either cannot be changed, or is so fundamental to each member's identity or conscience that it ought not be required to be changed. Under this definition, membership in the particular social group becomes comparable to the other four protected characteristics.<sup>4</sup> By interpreting "persecution on account of membership in a particular social group" in this manner, the BIA reasoned that it was preserving "the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required, to avoid persecution."<sup>5</sup>

Membership in a particular social group may be imputed to an applicant who, in fact, does not possess the unchangeable or fundamental characteristic.

#### *Unchangeable Characteristics*

Unchangeable characteristics are attributes that literally cannot be changed. Some examples of characteristics that cannot be changed include innate ones, like gender, race, ethnicity, skin color, and family relationships.<sup>6</sup> Some of these characteristics are biological attributes of a person. Others might be past experiences that cannot be changed because a person cannot change the past.

#### *Fundamental Characteristics*

Fundamental characteristics are traits or beliefs that a person should not be required to change because they are fundamental to the individual's identity or conscience. In analyzing this type of claim, you should consider both how the applicant experiences the trait as part of his or her identity and whether the trait is fundamental from an objective point of view. With regard to the latter, you may consider whether human rights norms suggest the characteristic is fundamental. Some examples of shared beliefs or characteristics that are fundamental to an individual's identity or conscience include being lesbian or gay or not having had FGM. In contrast, even though an applicant may consider being a member of a terrorist or criminal organization as being fundamental to his or her identity or conscience, there is no basic human right to pursue such an association.<sup>7</sup>

<sup>4</sup> *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985).

<sup>5</sup> *Id.*

<sup>6</sup> See *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

<sup>7</sup> See *Arteaga v. Mukasey*, 511 F.3d 940, 946 (9th Cir. 2007) (the court noted, "we would be hard-pressed to agree with the suggestion that one who voluntarily associates with a vicious street gang that participates in violent criminal

When the membership in a particular social group is only imputed to the applicant, and the applicant does not in fact possess this trait, the subjective component of this analysis does not apply. Because the applicant in such a case does not actually possess the trait, it is not relevant to enquire whether it is actually fundamental to his or her identity. In such a case, you should assess the objective component to determine fundamentality.

### *Assumption of Risk Considerations*

In some cases the applicant's voluntary assumption of an extraordinary risk of serious harm in taking on the trait that defines the group may be evidence of fundamentality.<sup>8</sup> An applicant's decision to assume significant risks can, in some cases, provide evidence that the belief or trait is so fundamental to the applicant's identity or conscience.<sup>9</sup> The relevance of an applicant's voluntary assumption of risk must be considered on a case-by-case basis. Not all individuals assume the risk of a particular activity because the activity is fundamental to their identities.<sup>10</sup> For example, an individual may assume the risk of a particular activity for monetary gain.<sup>11</sup>

#### **2.1.2 Step Two: *Matter of C-A*- "Group Must Be Socially Distinct"**

In *Matter of C-A*-, the BIA held that a cognizable social group must be perceived as distinct in society.<sup>12</sup> Essentially, the social "visibility" or "distinction" element requires that the group be distinct within the society. This requirement can be met by showing that the society in question differentiates between people who possess the shared belief or trait and people who do not.

Evidence of distinction within a society includes special provisions in the law of the country of origin, evidence that members of the group are afforded special privileges or given special responsibilities, or any other evidence to show that the members of the group are treated differently. Evidence that members of the group are harmed by either the government or private actors can be evidence that they share a distinct trait, but you should be careful to avoid defining a particular social group by the harm they suffer.<sup>13</sup>

The BIA reasoned that the inclusion of this element ensures that "particular social group" is defined in a way that does not dilute the refugee definition by becoming a "catch-all"

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activity does so for reasons so fundamental to "human dignity" that he should not be forced to forsake the association").

<sup>8</sup> See Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006).

<sup>13</sup> See section on Other Requirements for Valid Social Groups, below.



protected ground for all forms of mistreatment, including mistreatment motivated solely by personal reasons.<sup>14</sup>

Applying this reasoning in *Matter of C-A-*, the BIA found that the group composed of “non-criminal informants” did not constitute a particular social group within the meaning of the refugee definition because such a group lacks social distinction. The BIA pointed out that confidential informants, by their very nature, operate in secret.<sup>15</sup>

In addition to finding that the group composed of “non-criminal informants” is not a particular social group in *Matter of C-A-*, the BIA found that two other possible group formulations, “non-criminal informants working against the Cali drug cartel” and “former non-criminal informants working against the Cali drug cartel,” did not constitute particular social groups because they did not meet the social “distinction” requirement, i.e., members of these groups did not share a trait or traits distinguishable within Colombian society.<sup>16</sup>

In contrast, a particular social group may be comprised of “[c]ivilian witnesses who have the ‘shared past experience’ of assisting law enforcement against violent gangs that threaten communities in Guatemala”<sup>17</sup> or witnesses “who testified in court against gang members” in El Salvador.<sup>18</sup>

### **The group does not have to self-identify as a group to be socially distinct**

It is not necessary for a group to identify itself explicitly as a group in order for the social visibility or distinction requirement to be met. Group members may hide their identity or may not associate with each other in order to avoid persecution. Thus, a group may not appear cohesive and may not display the traditional hallmarks of a group that shows its existence openly. If the society in question distinguishes people who possess the immutable or fundamental trait from others because of their shared belief or characteristic, then the group is socially visible or distinct.<sup>19</sup>

### **Social distinction must be evaluated in context**

<sup>14</sup> *Matter of C-A-*, 23 I&N Dec. at 960 (citing to UNHCR *Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. HCR/GIP/02/02, 7 May 2002, 5 pp.).

<sup>15</sup> *Matter of C-A-*, 23 I&N Dec. at 960.

<sup>16</sup> *Id.*

<sup>17</sup> *Garcia v. Att’y Gen. of U.S.*, 665 F.3d 496, 504 and fn. 5 (3d Cir. 2011) (distinguishing case from *Matter of C-A-* because aid to law enforcement in this case was public, not confidential).

<sup>18</sup> *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (finding that the BIA erred in applying its own precedents in deciding whether Henriquez-Rivas was a member of a particular social group, citing to language in *Matter of C-A-* that those who testify against cartel members are socially visible).

<sup>19</sup> *Id.* at 956-57.

In *Matter of A-M-E- & J-G-U*, the BIA indicated that determining whether a group has a shared characteristic with required social visibility must be “considered in the context of the country of concern and the persecution feared.”<sup>20</sup>

In that case, the BIA reviewed country conditions to evaluate whether, in context, the proposed particular social group shared socially distinct characteristics. The BIA found that the applicants did not establish the existence of a particular social group because the proposed particular social group – “affluent Guatemalans” – did not share a common trait that was socially distinct in Guatemalan society.<sup>21</sup> A review of country of origin information for Guatemala demonstrated that “affluent Guatemalans” were not at greater risk of criminality or extortion in particular. Instead the country of origin information demonstrated that criminality is pervasive in all Guatemalan socio-economic groups. The report indicated that impoverished Indians were also subjected to both crimes. For the same reason the BIA also rejected the following possible formulations of the group: “wealth,” “upper income level,” “socio-economic level,” “the monied class,” and “the upper class.” The BIA specifically noted, however, that wealth- or class-based social groups must be analyzed in context, and that, under some circumstances, such groups might qualify as particular social groups.<sup>22</sup> These concepts are discussed in more detail in the section, Groups Based on Wealth or Affluence, below.

#### “Particularity”

The Board has also discussed considerations relating to “particularity” for social group analysis. USCIS interprets “particularity” not as a separate, independent requirement, but as part of the “social distinction” inquiry. To be socially distinct, a particular social group must have well-defined boundaries, such that it is generally clear to members of the society in question that individuals who possess a particular trait are distinguished from individuals who do not possess the trait. A particular social group must be defined with particularity such that “the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized in the society in question as a discrete class of persons.”<sup>23</sup> The definition of the group must provide a benchmark for determining who the members of the group are so that membership may be delimited or ascertained. Particular social groups defined in terms that are amorphous, indeterminate, subjective, inchoate, or variable will fail the particularity requirement, because it is difficult to determine who is a member of these groups.<sup>24</sup>

<sup>20</sup> *Matter of A-M-E- & J-G-U*, 24 I&N Dec. 69, 74 (BIA 2007). Compare with *Tapiero de Oréjuela*, 423 F.3d 666, 672 (7th Cir. 2005), discussed below.

<sup>21</sup> See also *Donchev v. Mukasey*, 553 F.3d 1206 (9th Cir. 2009) (“friends of Roma individuals or of the Roma people” not a socially distinct group because country conditions did not show that the Bulgarian government and society placed restrictions on the applicant’s freedoms due to his friendship with Roma people, and members of the group, such as the applicant’s family members, were not viewed or treated by Bulgarian society in a uniform manner).

<sup>22</sup> *Matter of A-M-E- & J-G-U*, 24 I&N Dec. at 75 fn 6.

<sup>23</sup> *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008).

<sup>24</sup> *Matter of A-M-E- & J-G-U*, 24 I&N Dec. at 76.

For example, in *Matter of A-M-E- & J-G-U-* the BIA found that the group composed of “affluent” or “wealthy” Guatemalans failed as a particular social group because the group was too amorphous and indeterminate.<sup>25</sup> The BIA reasoned that the concept of wealth, in an impoverished nation such as Guatemala, can be defined to include a broad range of individuals, from those in the top echelons of wealth to those who are relatively comfortable, and that group members could encompass as little as 1% or as much as 20% of society. Given these circumstances, the BIA found the proposed group definition to be inchoate and variable. The proposed group was indeterminate and, therefore, the applicants failed to establish the particularity required in defining a *particular* social group.<sup>26</sup>

Similarly, in *Matter of C-A-*, the BIA found that the Colombian applicants’ proposed particular social group of “noncriminal informants” was too loosely defined to meet the refugee definition’s particularity requirement.<sup>27</sup> The BIA indicated that a group constituted of “noncriminal informants” could have a variable membership that might encompass *any* noncriminal informant who passed information concerning the various guerilla groups or drug cartels to either the Colombian government or any competing faction or cartel.

### 2.13 Other Requirements for Valid Particular Social Groups

#### **A social group cannot be defined by terrorist, criminal, or persecutory activity or association, past or present**

Under general principles of refugee protection, the shared characteristic of terrorist, criminal, or persecutory activity or association, past or present, cannot form the basis of a particular social group.<sup>28</sup>

Two federal courts have found that “former gang members” may constitute a particular social group. For cases arising within the jurisdiction of the Sixth and Seventh Circuits,

<sup>25</sup> *Id.*

<sup>26</sup> See also *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008) (group composed of “male children who lack stable families and meaningful adult protection, who are from middle and low income classes, who live in territories controlled by the MS-13 gang, and who refuse [gang] recruitment” lacks particularity because the meaning of the various terms used to define the group are too amorphous and subject to different interpretations).

<sup>27</sup> *Matter of C-A-*, 23 I&N Dec. at 957.

<sup>28</sup> Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007). See, e.g., *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (“Whatever its precise scope, the term ‘particular social groups’ surely was not intended for the protection of members of the criminal class in this country....”). See also *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007) (current or former gang membership does not give rise to a particular social group due to gang members’ criminal activities).

asylum officers must follow these rulings.<sup>29</sup> See Asylum Supplement – Former Gang Membership as a Particular Social Group.

### Avoid Circular Reasoning

The particular social group in which the applicant claims membership should generally not be defined exclusively by the harm that the applicant asserts as the persecution feared.<sup>30</sup> Circular reasoning may not be used to describe the group. The particular social group must exist independently from the persecution suffered or feared that is being asserted as the basis of the claim.

### Example

An applicant was raped and beaten by Salvadoran guerrillas. She argued that she faced harm in the future as a member of the particular social group “women previously battered and raped by Salvadoran guerrillas.” The court rejected her claim finding that there was no indication she would face future harm on the basis of her membership in this particular social group. The court found that she was not more likely to be harmed than any other young woman in El Salvador.<sup>31</sup> Note that the applicant was not a member of the group at the time the harm occurred.

This is not to say, however, that a PSG can never be defined with reference to harm. If, for example, women who have been raped are viewed as distinct by society in a particular country, and ostracized or otherwise treated differently because of their past experience, that treatment might then be considered to be on account of their membership in a particular social group based on the past experience of harm. In such cases, the immutable characteristic of the applicant having been raped has motivated the persecutors to ostracize her (or even to rape her again, but this time on account of her status as a rape victim)..

Another example of past harm forming the basis of a valid particular social group is the *Lukwago v. Ashcroft* case, involving a Ugandan man who was forcibly recruited by the Lord’s Resistance Army (LRA) as a child. He claimed past persecution based on his membership in the particular social group of “children from Northern Uganda who are abducted and enslaved by the LRA.” The Third Circuit rejected the past persecution claim, holding that the LRA was motivated to recruit the applicant by a desire to grow its ranks, and not by his membership in the proposed particular social group. The applicant was not a member of the group at the time he was recruited. However, the court held that

<sup>29</sup> *Urbina-Mejia v. Holder*, 597 F.3d 360, 365-67 (6th Cir.2010) (holding that former gang members of the 18th Street gang have an immutable characteristic and are members of a “particular social group” based on their inability to change their past and the ability of their persecutors to recognize them as former gang members); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

<sup>30</sup> But see *Lukwago v. Ashcroft*, 329 F.3d 157, 178-79 (3d Cir. 2003)(finding that former child soldiers who have escaped LRA enslavement are a valid social group).

<sup>31</sup> See *Gomez v. INS*, 947 F.2d 660, 663-4 (2d Cir. 1991).

the applicant might be able to present a claim based on his well-founded fear of future persecution on account of a similar particular social group. Since the experience of having been a child soldier for the LRA is immutable, and former child soldiers are treated differently in Ugandan society, it forms a valid particular social group with regard to well-founded fear. If the applicant could show that the Ugandan government or LRA is motivated to harm him because of his status as a former child soldier who escaped involuntary servitude, he would satisfy the nexus requirement.<sup>32</sup>

#### 2.1.4 General Principles for Formulating Particular Social Groups

##### No size limitation

There are no maximum or minimum limits to the size of a particular social group. Valid particular social groups may contain only a few individuals or a large number of people.

##### No voluntary associational relationship needed

The BIA has found that voluntary association is not a required component of a particular social group under the BIA test for establishing a particular social group, but can be a shared trait that defines a particular social group so long as the two-pronged test of *Matter of C-A-* is met.<sup>33</sup> In order to satisfy the requirements of *Matter of C-A-*, the voluntary association must be fundamental to the identity or conscience of the member, and it must be a trait that distinguishes the group members from others in society. Thus, a voluntary association should be analyzed as any other trait asserted to define a particular social group.

##### Cohesiveness or homogeneity is not required

Cohesiveness or homogeneity of group members is not a required component of a particular social group.<sup>34</sup> It is not necessary that group members be similar in all or many aspects. What is required is that they share the characteristics or beliefs that form the basis of the particular social group.

##### Avoid overly broad and narrowly defined groups

Courts have held that a particular social group should not be defined so broadly as to make it difficult to distinguish group members from others in the society in which they live, nor so narrowly that what is defined does not constitute a meaningful grouping.<sup>35</sup>

<sup>32</sup> *Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003) (asylum granted on remand).

<sup>33</sup> *Matter of C-A-*, 23 I&N Dec. 951, 956 (BIA 2006). See *Hernandez-Montiel* clarifying *Sanchez-Trujillo*; but see *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994); *Raffington v. INS*, 340 F.3d 720, 723 (8th Cir. 2003).

<sup>34</sup> *Matter of C-A-*, 23 I&N Dec. at 957. See also *UNHCR Guidelines On International Protection: "Membership of a Particular Social Group"*, para. 15.

<sup>35</sup> See *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1575-1577 (9th Cir. 1986); *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991); *Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003); *Raffington v. INS*, 340 F.3d 720, 723 (8th Cir. 2003).

DHS has taken the position that “these decisions should not be read to mean that a group must be small in order to qualify as a particular social group. Rather, the best reading of these cases is that a social group is ‘overbroad’ if it is broadly defined by general traits that are not the specific characteristic that is targeted by the persecutors.”<sup>36</sup> In other words, groups that are defined too broadly may be cognizable, but the claims based on such groups may fail the “on account of” requirement. To avoid overly broad or too narrowly defined particular social groups, you should analyze groups by the specific beliefs and characteristics that motivate the persecutor.

### **Consider all relevant information, including country of origin information**

You should look at all relevant information, including the applicant’s individual circumstances, the circumstances surrounding the events of persecution, and country of origin information, before making your determination. Country of origin information indicating that the immutable characteristic reflects social distinctions is relevant when analyzing whether a group constitutes a particular social group.<sup>37</sup> For example, in a country that operates in a caste system, members of a particular caste may be found to be members of a particular social group and may be targeted for harsh treatment.

### **3 IS THE PERSECUTION OR FEARED PERSECUTION “ON ACCOUNT OF” THE APPLICANT’S PARTICULAR SOCIAL GROUP MEMBERSHIP?**

To determine whether an applicant has been persecuted, or has a well-founded fear of persecution, *on account of* his or her membership in a particular social group, you must elicit and consider all evidence, direct and circumstantial, relevant to the motive of the persecutor.<sup>38</sup>

You must keep this step in the analysis distinct from your determinations of 1) whether a particular social group exists, and 2) whether the applicant is a member of the group. After you determine that there is a valid particular social group, and the applicant is a member of that group, you must analyze the record for evidence that any persecution suffered or feared is on account of the applicant’s membership in the particular social group. This step in the process is the same analysis that you must conduct with any of the four other protected grounds.

<sup>36</sup> 2004 DHS brief in *R-A-* at 22. See also *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (holding that the particular social group could be defined as Somalian females because 98% are subjected to FGM).

<sup>37</sup> See *Castellano-Chacon v. INS*, 341 F.3d 533, 548 (6th Cir. 2003) (noting that a society’s reaction to a group may provide evidence that a particular social group exists, so long as the persecutors’ reaction to the members of the group is not the central characteristic of the group); see also *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991) (“A particular social group is comprised of individuals who possess some fundamental characteristic in common which serves to distinguish them in the eyes of a persecutor – or in the eyes of the outside world in general.”).

<sup>38</sup> For a more complete discussion of “on account of,” see On Account of (Nexus) – Analyzing Motive section, above. The “on account of” inquiry is similar, and is controlled by *Elias-Zacarias*, regardless of which protected characteristic is being considered.

## 4 PRECEDENT DECISIONS (SPECIFIC GROUPS)

Below are summaries of precedent decisions that have identified certain groups that are particular social groups and other groups that were found not to be particular social groups based on the facts of the case. These examples are not an exhaustive list. Since this area of law is evolving rapidly, it is important to be informed about current cases and regulatory changes.

### 4.1 Family Membership

The Ninth Circuit has found that immediate members of a certain family constitute the “prototypical example” of a particular social group.<sup>39</sup> In analyzing whether a specific family group qualifies as a particular social group, the shared familial relationship should be analyzed as the common trait that defines the group.<sup>40</sup>

The right to have a relationship with one’s family is protected by international human rights norms, and thus is fundamental. Also, familial relationships are for the most part immutable, in that they cannot be changed.

When formulating the particular social group, you must assess whether the society in question distinguishes individuals who share the familial relationship from individuals who do not. The question here is not generally whether a specific family is well-known or visible in the society. Rather, the question is whether the society views the degree of relationship shared by group members as so significant that the society distinguishes groups of people based on that type of relationship.<sup>41</sup>

In most societies, for example, the nuclear family would qualify as a particular social group, while those in more distant relationships, such as second or third cousins, would not. In other societies, however, extended family groupings may have greater social significance, such that they could meet the social “distinction” element. You should carefully analyze this issue in light of the nature and degree of relationship within the family group and pay close attention to country of origin information about social attitudes toward family relationships.

The First Circuit has held that a nuclear family constitutes a particular social group. The court found a link between the harm the applicant experienced and his family membership, and concluded that the harm experienced was persecution on account of the applicant’s membership in a particular social group (his nuclear family).<sup>42</sup>

<sup>39</sup> *Sanchez-Trujillo*, 801 F.2d at 1576; see also *Matter of Acosta*, 19 I&N Dec. 210, 232 (BIA 1985).

<sup>40</sup> See Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: 01/12/2007).

<sup>41</sup> See *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008) (“family members” of Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang” not a particular social group as the familial relationship was not defined with particularity).

<sup>42</sup> *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993).

The Fourth Circuit found that “family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses” is a viable particular social group where evidence showed that street gang members often intimidate their enemies by attacking those enemies’ families. The court found that “[t]he family unit – centered around the relationship between an uncle and his nephew – possesses boundaries that are at least as ‘particular and well-defined’ as other groups whose members have qualified for asylum,” thus meeting the particularity requirements of *S-E-G*.<sup>43</sup>

The Ninth Circuit has found that family membership constitutes a particular social group where there is a sufficiently strong and discernible bond between the family members, such that the relationship becomes the foreseeable basis for persecution.<sup>44</sup>

The Seventh Circuit found that parents of Burmese student dissidents share a common, immutable characteristic sufficient to constitute a particular social group.<sup>45</sup>

It is important to keep in mind that it is the family membership itself that forms the basis for the particular social group. This means that a case that at first glance may appear to be a personal dispute may satisfy the nexus requirement with regard to family members.

### *Example*

An Albanian man testified against a human trafficker, who escaped. The witness was then severely attacked and left for dead by the trafficker’s associates, but survived. The witness’ wife and children were then subject to death threats by the trafficker’s associates. The associates targeted the wife and children on account of their close familial relationship to their husband and father.

## 4.2 Clan Membership

A clan is an extended family group that has been found to be a particular social group. The BIA held that membership in a Somali sub-clan may form the basis of a particular social group.<sup>46</sup> In 1993 the Immigration and Naturalization Service (INS) Office of the General Counsel issued a legal opinion that a Somali clan may constitute a particular social group. Although extended family groups may not always be recognized as

<sup>43</sup> *Crespin-Valladares v. Holder*, 632 F.3d 117, 125-26 (4th Cir. 2011) (reversing BIA’s rejection of particular social group comprised of family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses).

<sup>44</sup> See *Lin v. Asheroft*, 377 F.3d 1014, 1028 (9th Cir. 2004); *Estrada-Posadas v. INS*, 924 F.2d 916, 919 (9th Cir. 1991) (finding that an extended family relationship of 2nd cousins living far apart does not satisfy the requirements of a particular social group).

<sup>45</sup> See *Lwin v. INS*, 144 F.3d 505 (7th Cir. 1998); see also *Iliev v. INS*, 127 F.3d 638, 642 (7th Cir. 1997) (recognizing that family could constitute a particular social group).

<sup>46</sup> *Matter of H-*, 21 I & N Dec. 337 (BIA 1996).



particular social groups, in the Somali context, a clan is a discrete group, whose members are linked by custom and culture.<sup>47</sup> Clan members also are usually identifiable within their countries of origin as members of their clan.

### 4.3 Gender

In *Matter of Acosta* the BIA indicated that gender alone may form the basis for a particular social group.<sup>48</sup> In a later gender-related persecution case, *Matter of Kasinga*, the BIA held that gender, in conjunction with other characteristics, formed the basis of a particular social group. The BIA granted asylum to the applicant, who feared persecution on account of her membership in the particular social group defined as “young women of the Tchamba-Kunsuntu Tribe who have not had female genital mutilation, as practiced by that tribe, and who oppose the practice.”<sup>49</sup>

Though some circuits have discussed gender as a basis of a particular social group, few have found an individual to be eligible for asylum on the basis of a particular social group defined solely by the applicant’s gender. While a particular social group based solely on an applicant’s gender, for example “Kenyan women,” is likely a valid particular social group, it is unlikely that a persecutor would single out a person for harm solely because of his or her gender. A persecutor is more likely to be motivated by a person’s gender in combination with some other characteristic he or she possesses, such as a person’s social status in a domestic relationship.

In *Fatin v. INS*, the Third Circuit indicated that while the applicant had established that the group of Iranian women may well satisfy the *Acosta* definition of a “particular social group,” she had not demonstrated that she had a well-founded fear based solely on her gender.<sup>50</sup> Similarly, the Eighth Circuit in *Safae v. INS* rejected the applicant’s particular social group of Iranian women as overly broad “because no factfinder could reasonably conclude that all Iranian women had a well-founded fear of persecution based solely on

<sup>47</sup> *Matter of H-*, 21 I & N Dec. 337 (BIA 1996); *Malonga v. Mukasey*, 546 F.3d 546 (8th Cir. 2008) (concluding that Lari ethnic group of the Kongo tribe is a particular social group for purposes of withholding of removal; members of the tribe share a common dialect and accent, which is recognizable to others in Congo, and members are identifiable by their surnames and by their concentration in southern Congo’s Pool region); see also Paul W. Virtue, INS Office of General Counsel, *Whether Somali Clan Membership May Meet the Definition of Membership in a Particular Social Group under the INA*, Memorandum to Kathleen Thompson, Director, Refugee Branch, OIA (Washington, DC: 9 December 1993).

<sup>48</sup> For further information, see RAI0 Training Module, *Gender-Related Claims*; OCC Response to RAI0 Query: *PSGs within the context of Afghan Women at Risk* (Jan. 3, 2012); *Matter of Acosta*, 19 I & N Dec. 211 (BIA 1985).

<sup>49</sup> *Matter of Kasinga*, 21 I & N Dec. 357 (BIA 1996).

<sup>50</sup> *Fatin v. INS*, 12 F.3d 1233, 1240-41 (3d Cir. 1993) (the court held that the applicant failed to establish that she belonged to the social group of “Iranian women who refuse to conform to the government’s gender specific laws and social norms” based on her testimony that she would find these objectionable and would avoid compliance if she could, in part because she did not testify that she would either refuse to comply with the gender-specific laws, such as wearing the chador, or that to comply with such laws would be so abhorrent to her beliefs that it would amount to persecution).

their gender”<sup>51</sup> and proceeded to consider a particular social group which could satisfy the nexus requirement and which was defined by not only nationality and gender, but also by opposition to Iranian customs relating to dress and behavior.

The Ninth Circuit held that an applicant established that she was subjected to FGM on account of her membership in the particular social group of “Somalian females.” In reaching this conclusion, the court reasoned that an applicant’s gender is an immutable characteristic that satisfies the *Acosta* definition of a particular social group. The court found support for its conclusion that the applicant’s nationality and gender were the motivating characteristics for the FGM, because FGM “in Somalia is not clan specific, but rather is deeply imbedded in the culture throughout the nation and performed on approximately 98 percent of all females.”<sup>52</sup> The Eighth Circuit has also held that “Somali women” constitute a particular social group in an FGM case.<sup>53</sup>

Similarly, the Tenth Circuit held that both gender and tribal membership are immutable characteristics. In responding to concerns that, if gender alone is recognized as a social group (and stating parenthetically that it certainly is one) half a population could be eligible for asylum, the court explained that the focus should be on whether members of that group are sufficiently likely to be persecuted “on account of” their membership. While acknowledging that gender alone could form a particular social group, the court analyzed the case with respect to a particular social group defined as female members of the Tukulor Fulani tribe.<sup>54</sup>

An even more narrowly tailored particular social group that more appropriately describes the characteristic that is being targeted would be “Somali females who have not been subject to FGM as practiced in their society.” It is likely Somali women who have undergone FGM as required by the relevant cultural expectations are not targeted for FGM. Rather it is only those who have not yet undergone it in the way required by their culture who are targeted. In most FGM cases, you should consider whether the trait of “not having undergone FGM as practiced in their society” should be included in the social group definition.

For more on particular social groups and FGM, see the Female Genital Mutilation (FGM) section below.

In *Perdomo*, the Ninth Circuit remanded the case to the BIA to consider whether “women in Guatemala” constitute a particular social group. The court noted that country of origin information reflects a high incidence of murder of women in Guatemala and the non-responsiveness of the Guatemalan government.<sup>55</sup>

<sup>51</sup> *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994).

<sup>52</sup> *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005).

<sup>53</sup> *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007).

<sup>54</sup> *Niang v. Gonzales*, 422 F.3d 1187, 1199-1200 (10th Cir. 2005).

<sup>55</sup> *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010). This case is still pending at the BIA on remand.

Gender-based claims have also been raised by young male applicants fearing recruitment by government or opposing forces engaged in civil strife.<sup>56</sup> In a series of cases arising out of the conflict in El Salvador, the Ninth Circuit considered whether young Salvadoran men could establish eligibility for asylum based on their fear of recruitment as combatants in that country's civil war. In *Chavez v. INS*, the Court found that the applicant's "status as a 'young urban male' [was] not specific enough for political asylum."<sup>57</sup>

#### 4.4 Female Genital Mutilation (FGM)

There have been a number of cases involving forced FGM in which eligibility for asylum was based on membership in a particular social group related to gender, or gender plus another characteristic, such as tribe and/or opposition to FGM.

##### Examples from case law

###### *Matter of Kasinga*

As discussed above, in *Matter of Kasinga*, the BIA found the applicant eligible for asylum based on her fear of persecution on account of membership in the particular social group defined as "young women of the Tchamba-Kunsuntu Tribe who have not had female genital mutilation, as practiced by that tribe, and who oppose the practice." The separate concurring opinions in *Kasinga* emphasized that opposition to the practice was not a necessary component to the particular social group. Later decisions by the BIA and federal courts analyzing similar fact patterns do not focus on the applicant's opposition to the practice in the formulation of the particular social group. The applicant's opposition to the practice, of course, would be highly relevant to the analysis of whether FGM would be persecution to the applicant.<sup>58</sup>

###### *Niang v. Gonzales*

In *Niang v. Gonzales*, the Tenth Circuit held that being targeted for FGM because of one's membership in the group of female members of the Tukulor Fulani tribe would constitute persecution on account of membership in a particular social group. The Tenth Circuit noted that the particular social group could be defined as gender alone, as gender is an immutable characteristic. In responding to concerns that, if gender alone is recognized as forming a social group (and stating parenthetically that it certainly is one), half a population could be eligible for asylum, the Court explained that the focus should be on whether members of that group are sufficiently likely to be persecuted "on account of" their membership. While acknowledging that gender alone could form a particular

<sup>56</sup> See *Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986).

<sup>57</sup> *Chavez v. INS*, 723 F.2d 1431, 1434 (9th Cir. 1984).

<sup>58</sup> *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008).

social group, the Court analyzed the case with respect to a particular social group defined as female members of the Tukolor Fulani tribe.<sup>59</sup>

### *Mohammed v. Gonzales*

In *Mohammed v. Gonzalez*, the Ninth Circuit held that an applicant established that she was subjected to FGM on account of her membership in the particular social group of Somali females. In reaching this conclusion, the court reasoned that an applicant's gender is an immutable characteristic that satisfies the *Acosta* definition of a particular social group.<sup>60</sup>

### Framework for analysis

Caselaw has taken a variety of approaches to defining a particular social group in cases involving FGM. As stated in the Attorney General's decision on certification in *Matter of A-T*, the framework for analyzing such cases depends in critical ways on how the group is formulated.<sup>61</sup> In many cases, the best formulation of the particular social group may be "females [of the applicant's tribe or nationality] who have not yet undergone FGM as practiced in their culture," because it more appropriately identifies the characteristic motivating the persecutor. For example, the Somali female in *Mohammed* was subject to FGM, not simply because she was a female, but because she was a female who had not already undergone FGM as practiced in her culture. The particular social group of "Somali females," is broader than the group targeted.

Thus, in most FGM cases, officers should consider whether the relevant social group should be defined as some subset of women who possess (or possessed) the trait of not having undergone FGM as required by the social expectations under which they live. This would not preclude a valid claim by a woman previously subjected to FGM who fears FGM in the future, if she can establish that she would be subject to additional FGM (for example, it may be the practice of a woman's tribe to subject her to a second infibulation after she has given birth; or the first time she was subject to FGM the procedure was not performed to the extent required by her culture).

### Eligibility Based on Feared FGM of Children

In *Matter of A-K*, the BIA made clear that an applicant cannot establish eligibility for asylum based solely on a fear that his or her child would be subject to FGM if returned to the country of nationality. The persecution an applicant fears must be on account of the applicant's protected characteristic (or perceived protected characteristic). When a child is subjected to FGM, it is generally not because of a parent's protected characteristic.

<sup>59</sup> *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10<sup>th</sup> Cir. 2005).

<sup>60</sup> *Mohammed v. Gonzales*, 400 F.3d 785, 796 (9<sup>th</sup> Cir. 2005).

<sup>61</sup> *Matter of A-T*, 24 I&N Dec. 617 (A.G. 2008).

Rather, the FGM is imposed on the child because of the *child's* characteristic of being a female who has not yet undergone FGM as practiced by his or her culture.<sup>62</sup>

If the child of an opponent of FGM were specifically targeted for FGM in order to harm the parent because of the parent's opposition to FGM, it might be possible to establish a nexus to the parent's membership in a particular social group defined as parents who oppose FGM, if that group, viewed in the applicant's society, meets the requirements to be considered a particular social group.

#### 4.5 Opponents of Cultural Practices or Social Norms

Individuals who oppose or refuse to conform to a cultural practice or social norm enforced in a region or country may, in certain circumstances, constitute a particular social group. This is an area that often overlaps with other protected grounds, such as political opinion and religion.<sup>63</sup>

##### 4.5.1 Female Genital Mutilation (FGM)

In *Kasinga*, the BIA held that women of a particular tribe in Togo who had not been subject to FGM and opposed it constituted a particular social group. However, the government argued, and concurring opinions emphasize, the importance of the applicant's status as a woman who had not experienced the procedure and de-emphasize the importance of her opposition to the practice with respect to the particular social group definition.<sup>64</sup> Later decisions by the BIA and federal courts analyzing similar fact patterns do not focus on the applicant's opposition to the practice in the formulation of the particular social group. The applicant's opposition to the practice, of course, would be highly relevant to the analysis of whether FGM would be persecution to the applicant.

The Ninth and Tenth Circuits have held that opposition to FGM is not required to establish persecution on account of membership in a particular social group where evidence shows that the persecutor was motivated by the applicant's gender, tribal or clan membership, or nationality. The Tenth Circuit in *Niang* indicated that its holding was not intended to indicate "that an *adult's* voluntary submission to FGM necessarily constitutes persecution."<sup>65</sup>

<sup>62</sup> *Matter of A-K*, 24 I&N Dec. 275 (BIA 2007).

<sup>63</sup> See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000) (citing the holding in *Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996) that "dress and conduct rules pertaining to women may amount to persecution if a woman's refusal to comply is on account of her religious or political views").

<sup>64</sup> *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) Concurring opinion by Board member Filppu, joined by Heilman, and concurring decision by Board member Rosenberg.

<sup>65</sup> *Mohammed v. Gonzales*, 400 F.3d 785, 797 n.16 (9th Cir. 2005); *Niang v. Gonzales*, 422 F.3d 1187, 1200 (10th Cir. 2005) (emphasis added) (finding that because the applicant's gender and her membership in the Tukulor Fulani tribe are immutable characteristics and thus meet the *Acosta* definition of a particular social group, she was not required to provide evidence of opposition to FGM).

Evidence of “submission” or “opposition” could be relevant, however, to the analysis of whether FGM is persecution. Consistent with USCIS analysis of “persecution” generally, you should determine whether the harm (FGM) was objectively serious harm that was or would be experienced as serious harm by the applicant. FGM is widely recognized as a serious human rights abuse, and is clearly objectively serious harm. Where the applicant also experienced or would experience it as serious harm it constitutes persecution. This does not require “opposition,” although opposition could certainly be one way of showing that the applicant experienced FGM as serious harm. Where an applicant underwent FGM at an early age, when she was too young to form a view of whether she experienced it as serious harm or not, the applicant’s testimony on her perception as an adult of the FGM may serve as evidence on this point.

#### 4.5.2 Gender-Specific Dress Codes

Where refusal to abide by gender-specific dress codes could result in severe punishment or consequences, an applicant may establish that treatment resulting from his or her noncompliance amounts to persecution on account of membership in a particular social group.

Both the Third Circuit in *Fatin* and the Eighth Circuit in *Safaie* stated that Iranian women who would refuse to conform to the country’s gender-specific laws may constitute a particular social group. However, neither applicant in the cases before those courts established that she was a member of such a group, because each applicant failed to demonstrate that she would refuse to comply with the gender-specific laws.<sup>66</sup>

In *Fatin* the Third Circuit found the applicant to be a member of the particular social group of “Iranian women who find their country’s gender-specific laws offensive and do not wish to comply with them.”<sup>67</sup> The Court examined whether, for this applicant, compliance with the laws would be so abhorrent to her that wearing the chador would itself be tantamount to persecution. Because the applicant testified that she would only try to avoid compliance and did not testify that wearing the chador would be abhorrent to her, the Court concluded that the applicant had not established that her compliance with the gender-specific laws was so abhorrent to her such that it could be considered persecution.

Similarly, the Seventh Circuit in *Yadegar-Sargis v. INS* considered whether an applicant who established her membership in the particular social group of “Christian women in Iran who do not wish to adhere to the Islamic female dress code” would suffer persecution by her compliance with the dress code. Looking to *Fatin* for guidance, the court found that because the applicant did not testify that compliance with the dress code violated a tenet of her Christian faith and testified that she was not prevented from attending church or practicing her faith when she complied with the dress code, the

<sup>66</sup> *Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993); *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994).

<sup>67</sup> *Fatin v. INS*, 12 F.3d at 1241-1242.

evidence could be interpreted such that the dress requirements were “not abhorrent to [the applicant’s] deepest beliefs.”<sup>68</sup> The issue in this case did not turn on whether the group constituted a particular social group, but rather on whether forced compliance with dress codes constituted persecution.

#### 4.6 Sexual Orientation

Persecution on account of sexual orientation constitutes persecution on account of membership in a particular social group. The BIA found that a homosexual male in Cuba who was harmed on account of his homosexuality was persecuted on account of his membership in a particular social group.<sup>69</sup>

The Ninth Circuit has held that gay men with female sexual identities in Mexico constitute a particular social group.<sup>70</sup> The court held that the applicant’s female identity was immutable because it was an inherent characteristic.

The Third Circuit, in *Amanfi v. Ashcroft*, recognized that harm suffered or feared on account of an applicant’s *perceived* homosexuality, even where the applicant is not homosexual, could be sufficient to establish past or future persecution on account of an imputed membership in a particular social group.<sup>71</sup>

For more information, see RAIO Training Module, *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*.

#### 4.7 Unions

In *Matter of Acosta*, a case that involved a member of a Salvadoran taxi cooperative, the BIA considered a social group with the defining characteristics of “being a taxi driver in San Salvador and refusing to participate in guerrilla-sponsored work stoppages.” The BIA found that neither characteristic was immutable, because the members of the group could either change jobs or cooperate in work stoppages. However, the BIA did not address whether being a member of a cooperative or union membership is a characteristic an individual should not be required to change.

In *Carranza-Hernandez v. INS*, the Second Circuit found that an individual who had established a fear on account of his union activities was eligible for asylum, although it did not specify which protected ground union activities would fall under, and made no specific finding on particular social group.<sup>72</sup>

<sup>68</sup> *Yadegar-Sargis*, 297 F.3d 596, 604-605 (7th Cir. 2002).

<sup>69</sup> *Matter of Toboso-Alfonso*, 20 I & N Dec. 819 (BIA 1990) (designated by the Attorney General as a precedent decision on June 16, 1994); see also *Boer-Sedano v. Gorzales*, 418 F.3d 1082, 1089 (9th Cir. 2005).

<sup>70</sup> *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000).

<sup>71</sup> *Amanfi v. Ashcroft*, 328 F.3d 719, 730 (3d Cir. 2003).

<sup>72</sup> *Carranza-Hernandez v. INS*, 12 F.3d 4 (2d Cir. 1993). The INS did not raise the particular social group issue in appeal before BIA.

The Fifth Circuit, while **not** specifically holding on the issue, indicates in *Zamora-Morel v. INS* that a trade union **may** constitute a particular social group. The court held that the applicant was not persecuted and did not have a well-founded fear *on account of* his membership in the union, analyzing the case as if the union was a particular social group.<sup>73</sup>

Depending on the facts, cases involving union membership, labor disputes, or union organizing also may be analyzed under political opinion.

#### 4.8 Students, professionals, and landowners

Courts have held that particular social groups of students are either not cognizable particular social groups,<sup>74</sup> or that the harm applicants suffered was not on account of their membership in student groups.<sup>75</sup> These holdings do not preclude a finding that a specific, identifiable, group of students could constitute a particular social group.

The First Circuit recognized that persons associated with a former government, members of a tribe, and educated or professional individuals could be members of a social group.<sup>76</sup>

The Seventh Circuit found that the “educated, landowning class” in Colombia who had been targeted by the Revolutionary Armed Forces of Colombia (FARC) constituted a particular social group for asylum purposes. The court distinguished the situation in Colombia from other situations where the risk of harm flowing from civil unrest affects “the population in a relatively undifferentiated way” and found that members of this group were the “preferred victims” of the FARC.<sup>77</sup>

The court further distinguished this group from groups based solely on wealth, a characteristic that had been rejected as the basis of a particular social group when considered alone by the BIA in *Matter of V-T-S*, because it included the members’ social position as cattle farmers, their level of education, and their land ownership. These shared past experiences were of a particular type that set them apart in society such that the FARC would likely continue to target the group members, even if they gave up their land, cattle farming, and educational opportunities.<sup>78</sup>

<sup>73</sup> *Zamora-Morel v. INS*, 905 F.2d 833 (5th Cir. 1990).

<sup>74</sup> *Civil v. INS*, 140 F.3d 52 (1st Cir. 1998) (social group of pro-Aristide young students is not cognizable because it is overbroad).

<sup>75</sup> *Matter of Martinez-Romero*, 18 I&N Dec. 75 (BIA 1981).

<sup>76</sup> *Ananeh-Firempong v. INS*, 766 F.2d 621 (1st Cir. 1985)

<sup>77</sup> *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 672 (7th Cir. 2005), citing *Ahmed v. Ashcroft*, 348 F.3d 611, 619 (7th Cir. 2003).

<sup>78</sup> *Id.* Cf. *Matter of A-M-E- & J-G-U*, 24 I&N Dec. 69 (BIA 2007) (finding that the group of “affluent Guatemalans” was not sufficiently distinct in society to constitute a particular social group. Country conditions indicated that “affluent Guatemalans” were not at greater risk of criminality or extortion in particular.) See section on “Wealth or Affluence,” below for further discussion and comparison to the “landowner” particular social group.



## 4.9 Ancestry

The BIA found that “Filipinos with Chinese ancestry” could define a particular social group, because of the immutability of the characteristic.<sup>79</sup> Note that this protected characteristic can also be appropriately analyzed under the nationality or race protected grounds.

## 4.10 Age

The BIA noted in *Matter of S-E-G-* that a particular social group may be valid where the age of the members is one of the shared characteristics. The BIA stated that although age is not strictly immutable, it may give rise to a particular social group since “the mutability of age is not within one’s control and ... if an individual has been persecuted in the past on account of an age-described particular social group, or faces such persecution at a time when that individual’s age places him within the group, a claim for asylum may still be cognizable.”<sup>80</sup> In other words, in the context of age-based particular social groups, you should consider the immutability of age at the time of the events of past persecution or at the time the applicant expresses a fear of future persecution.

Several older BIA and Circuit Court cases addressed the validity of using age, in conjunction with other characteristics, as the basis for a particular social group. They rejected cases involving young, urban males who feared either conscription by the military or forcible recruitment by guerrillas.<sup>81</sup> In those cases the persecutors targeted the young men because they are desirable combatants. It appears that the courts rejected the claims because of the applicants’ failure to establish the requisite motive (“on account of”), and not because of their failure to establish membership in valid particular social groups.

More recently, the Third Circuit, in *Lukwago v. Ashcroft*, noted that age changes over time, “possibly lessening its role in personal identity.” The court further noted that children as a class represent a large and diverse group, thus the class is not particular enough to satisfy the social-distinction prong.<sup>82</sup> Nevertheless, age did make up an important component in the particular social group based on the applicant’s shared past experience in *Lukwago*. The court held that “former child soldiers who escaped [Lord’s Resistance Army] enslavement” were a particular social group at risk of persecution by the LRA and the Ugandan government.<sup>83</sup>

<sup>79</sup> *Matter of V-T-S*, Int. Dec. # 3308 (BIA 1997).

<sup>80</sup> *Matter of S-E-G-*, 24 I&N Dec. 579, 583-84 (BIA 2008).

<sup>81</sup> *Matter of Vigil*, 19 I&N Dec. 572 (BIA 1988); *Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986); *Matter of Sanchez and Escobar*, 19 I. & N. Dec. 276 (BIA 1985). See also *Civil v. INS*, 140 F.3d 52 (1st Cir. 1998).

<sup>82</sup> *Lukwago v. Ashcroft*, 329 F.3d 157, 171-172 (3d Cir. 2003); see also *Escobar v. Gonzales*, 417 F.3d 363 (3d Cir. 2005) (indicating that “youth,” as well as “poverty” and “homelessness,” are too vague and all encompassing to be characteristics that set the parameters for a particular social group under the INA in concluding that “Honduran street children” do not constitute a particular social group).

<sup>83</sup> *Lukwago v. Ashcroft*, 329 F.3d at 174-75.

#### 4.11 Employment in Either Law Enforcement or the Military

When an applicant asserts membership in a particular social group that involves either past or present service as a police officer or soldier, you must first determine whether, in the context of the applicant's society, persons employed, or formerly employed, as police officers or soldiers form a particular group.

Note, however, that often claims by persons employed, or formerly employed, as police officers or soldiers may also be analyzed under another protected ground, such as actual or imputed political opinion, depending on the facts of the case.

##### 4.11.1 Former Military/Police Membership

The BIA recognized in both *Matter of C-A-* and *Matter of Fuentes* that former military leadership is an immutable characteristic that may form the basis for a particular social group under some circumstances. Similarly, while holding that the dangers arising solely from the nature of employment as a policeman in an area of domestic unrest do not support a claim, the Board indicated in *Fuentes* that former service in the national police is an immutable characteristic that, in some circumstances, could form the basis for a particular social group. In order to satisfy the definition of a particular social group, the applicant also must demonstrate that the purported social group has a distinct, recognizable identity in society to meet the "social distinction" test established in *Matter of C-A-*.<sup>84</sup>

If the applicant has established membership in a particular social group of former police officers or soldiers, the "on account of" inquiry may be especially difficult and may require special scrutiny. An applicant would also have to demonstrate that the persecution suffered or feared is on account of the social status that attaches to the applicant by virtue of his or her former service in order to succeed on the claim.

For example, if the persecutor targets a former police officer principally out of reprisal for the former officer's role in disrupting particular criminal activity, the persecution would not be considered to be on account of the applicant's membership in a group of "former police officers." Harm inflicted on a former police officer or soldier in order to seek revenge for actions he or she took in the past is not on account of the victim's status as a former police officer or soldier.

<sup>84</sup> *Matter of C-A-*, 23 I&N Dec. at 959; *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988); see also *Estrada-Escobar v. Ashcroft*, 376 F.3d 1042, 1047 (10th Cir. 2004) (finding that the rationale of *Fuentes* applies to threats from terrorist organizations resulting from an applicant's work as a law enforcement official targeting terrorist groups because the threat was received as a result of the employment, not the applicant's political opinion)

See, Lynden D. Melmed, USCIS Chief Counsel. *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007).

### 4.11.2 Current Military/Police Membership

Current service as a soldier or police officer, under some circumstances, could define a particular social group if that service is so fundamental to the applicant's identity or conscience that he or she should not be required to change it. The applicant would also have to demonstrate that the purported social group has a distinct, recognizable identity in the society. If these requirements are met, it is possible that an applicant could establish a cognizable social group in such circumstances.<sup>85</sup>

Even if membership in a particular social group is established in such a case, however, the determination that the persecution was or will be "on account" of the particular social group is especially difficult. The determination requires special scrutiny.

Harm inflicted on a police officer or soldier in order to prevent or frustrate the performance of his or her duties is not on account of the applicant's membership in a group of current "police officers" or "soldiers." Such a claim would therefore fail on the "on account of" element, even if the applicant has established membership in a group that constitutes a particular social group.

It is only where the harm is inflicted because of the applicant's status, rather than to interfere with his or her performance of specific duties, that the nexus requirement may be met. This is a particularly difficult factual inquiry. One factor that may assist in making this determination is whether the harm inflicted on the applicant or threats occur while the applicant is on official duty, as opposed to once the applicant has been taken out of combat or is no longer on duty.

### 4.11.3 Federal Court and BIA Interpretations

The Ninth Circuit also has held that the general risk associated with military or police service does not, in itself, provide a basis of eligibility. The Ninth Circuit, as does the BIA, recognizes a distinction between *current* service and *former* service when determining the scope of a cognizable social group.<sup>86</sup>

It is important to note that the fact of current service does not preclude eligibility. A police officer or soldier may establish eligibility if he or she can show that the persecutor is motivated to harm the applicant because the applicant possesses, or is perceived to possess, a protected characteristic. The following passage from *Cruz-Navarro*, is instructive:

<sup>85</sup> See, Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007).

<sup>86</sup> *Cruz-Navarro v. INS*, 232 F.3d 1024, 1029 (9<sup>th</sup> Cir. 2000); *Velarde v. INS*, 140 F.3d 1305 (9<sup>th</sup> Cir. 1998) (former bodyguard of daughters of Peruvian President threatened by Shining Path. Threats referred to specific acts the applicant engaged in); see also *Duarte de Guinac v. INS*, 179 F.3d 1156 (9<sup>th</sup> Cir. 1999) (suffering while in military on account of applicant's race, not participation in military).

*Fuentes*, therefore, does not flatly preclude “police officers and soldiers from establishing claims of persecution or fear of persecution.” [citing *Velarde* at 1311] Rather, *Fuentes* suggests that persecution resulting from membership in the police or military is insufficient, by itself, to establish persecution on account of membership in a particular social group or political opinion.<sup>87</sup>

The Seventh Circuit has not adopted the distinction between current and former police officers set forth in *Fuentes*. In dicta, the Court expressed disapproval of any reading of *Fuentes* that would create a *per se* rule that dangers encountered by police officers or military personnel during service could never amount to persecution. However, in the case before it, the Court upheld the BIA’s determination that the dangers the applicant experienced while serving as a military and police officer arose from the nature of his employment and were not on account of a protected characteristic.<sup>88</sup>

#### 4.12 Groups Based on “Wealth” or “Affluence”

In *Matter of A-M-E- & J-G-U-*, the BIA found that groups defined by wealth or socio-economic levels alone often will not be able to establish that they possess an immutable characteristic, because wealth is not immutable.<sup>89</sup> Wealth is, however, a characteristic that an individual should not be required to change, and therefore could be considered fundamental within the meaning of *Acosta*. In evaluating groups defined in terms of wealth, affluence, class, or socio-economic level, however, you must closely examine whether the proposed group can be defined with enough particularity to make it socially distinct. In the context of the facts established in *Matter of A-M-E & J-G-U-*, the BIA rejected various particular social group formulations involving wealth and socio-economic status for failure to establish social distinction. The BIA stressed that this analysis must take into account relevant country of origin information. Considering Guatemalan country conditions, the BIA found a variety of groups failed as particular social groups, including groups defined by “wealth,” “affluence,” “upper income level,” “socio-economic level,” “the monied class,” and “the upper class.”<sup>90</sup>

The BIA, however, did not reject altogether the possibility that a group defined by wealth could constitute a particular social group. The court noted that these types of social groups must be assessed in the context of the claim as a whole. For example, the Board opined that such a group might be valid in a case where persecutors target individuals within certain economic levels.<sup>91</sup>

<sup>87</sup> *Cruz-Navarro v. INS*, 232 F.3d 1024 (9<sup>th</sup> Cir. 2000)

<sup>88</sup> *Ahmed v. Ashcroft*, 348 F.3d 611, 616 (7<sup>th</sup> Cir. 2003).

<sup>89</sup> *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007); See also *Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007)(upholding *Matter of A-M-E*); *Davila-Mejia v. Mukasey*, 531 F.3d 624 (8th Cir. 2008) (adopting the social distinction component and rejecting as not socially distinct and lacking particularity the group defined as ‘family business owners in Guatemala.’).

<sup>90</sup> *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 73.

<sup>91</sup> *Id.* at 75, n. 6.

The BIA's emphasis on social context is consistent with the Seventh Circuit's approach in *Orejuela*, where members of the "educated, landowning class" in Colombia were recognized as members of a particular social group.<sup>92</sup> Although affluence was a shared trait for this group, group members also shared a distinctive social status (albeit one derived in significant part from affluence and the attributes of affluence) that made them preferred targets of the FARC. The significance of this social status was evident when the claim was viewed in the context of the country conditions that showed that the FARC is a "leftist guerilla group that was originally established to serve as the military wing of the Colombian Communist Party" and that membership in a economic class, not merely "wealth," was an important motivating factor for them.

When encountering claims involving particular social groups based in whole or in part on wealth, you must assess the viability of the particular social group asserted in each case and carefully consider relevant country of origin information and other relevant evidence to determine if the group constitutes a particular social group as defined by the BIA and other courts.<sup>93</sup>

#### 4.13 Non-Criminal Drug Informants

The BIA found that the group of "non-criminal informants," as well as two other possible group formulations, "non-criminal informants working against the Cali drug cartel" and "former non-criminal informants working against the Cali drug cartel," do not constitute particular social groups because, under the record facts in that case, they lack social visibility.<sup>94</sup>

#### 4.14 Civilian Witnesses

In contrast, a particular social group can be comprised of "[c]ivilian witnesses who have the 'shared past experience' of assisting law enforcement against violent gangs that threaten communities in Guatemala"<sup>95</sup> or witnesses "who testified in court against gang members" in El Salvador.<sup>96</sup> The public nature of the past experience in those cases resulted in social distinction under the facts of the cases.

#### 4.15 Drug Traffickers

<sup>92</sup> *Tapiero de Orejuela*, 423 F.3d 666 (7th Cir. 2005).

<sup>93</sup> See *Davila-Mejia v. Mukasey*, 531 F.3d 624, 629 624 (8th Cir. 2008) ("competing family business owners" not a particular social group because it lacked social visibility to be perceived as a group by society).

<sup>94</sup> *Matter of C-A-*, 23 I & N Dec. 951, 961 (BIA 2006).

<sup>95</sup> *Garcia v. Att'y Gen. of U.S.*, 665 F.3d 496, 504 and fn. 5 (3d Cir. 2011) (distinguishing case from *Matter of C-A-* because aid to law enforcement in this case was public, not confidential).

<sup>96</sup> *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (finding that the BIA erred in applying its own precedents in deciding whether Henriquez-Rivas was a member of a particular social group, citing to language in *Matter of C-A-* that those who testify against cartel members are socially visible).

In *Bastanipour*, an applicant was convicted of trafficking in drugs in the United States and faced removal to Iran. He claimed a well-founded fear because the Iranian government executes individuals who traffic in illegal drugs. The Seventh Circuit held that:

[w]hatever its precise scope, the term “particular social groups” surely was not intended for the protection of members of the criminal class in this country, merely upon a showing that a foreign country deals with them even more harshly than we do. A contrary conclusion would collapse the fundamental distinction between persecution on the one hand and the prosecution of nonpolitical crimes on the other. We suppose there might be an exception for some class of minor or technical offenders in the U.S. who were singled out for savage punishment in their native land, but a drug felon sentenced to thirty years in this country (though Bastanipour’s sentence was later reduced to fifteen years) cannot be viewed in that light.<sup>97</sup>

#### 4.16 Criminal Deportees

In *Elien v. Ashcroft*, the First Circuit upheld a finding by the BIA that a group defined as “deported Haitian nationals with criminal records in the United States” does not qualify as a particular social group for the purposes of asylum. The First Circuit agreed with the BIA that it would be unsound policy to recognize criminal deportees as a particular social group, noting that the BIA had not extended particular social group to include persons who “voluntarily engaged in illicit activities.”<sup>98</sup>

#### 4.17 Persons Returning from the United States

The Ninth Circuit has held that “returning Mexicans from the United States” does not constitute a valid particular social group.<sup>99</sup> The applicant in that case pointed to reports of crime against Americans on vacation, as well as Mexican who had returned to Mexico after living in the United States, to support the fear of harm based on membership in the proposed social group. The court held that the group was not defined with sufficient particularity to be a cognizable social group.<sup>100</sup>

#### 4.18 Tattooed Youth

The Sixth Circuit has found that group of “tattooed youth” does not constitute a particular social group under the INA. The court found that having a tattoo is not an innate characteristic and that “tattooed youth” are not closely affiliated with one another.

<sup>97</sup> *Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992) (citations omitted).

<sup>98</sup> *Elien v. Ashcroft*, 364 F.3d 392(1st Cir. 2004); see also *Toussaint v. Attorney General of U.S.*, 455 F.3d. 409, 417 (3<sup>rd</sup> Cir. 2006) (adopting the reasoning of the First Circuit in ruling that criminal deportees to Haiti do not constitute a “particular social group”).

<sup>99</sup> *Delgado-Ortiz v. Holder*, 600 F.3d 1148 (9th Cir. 2010).

<sup>100</sup> *Id.* at 1151-1152.

Further, the court stated that “the concept of a refugee simply cannot guarantee an individual the right to have a tattoo.”<sup>101</sup>

#### 4.19 Individuals Resisting Gang Recruitment

In *Matter of S-E-G-*, the BIA rejected a proposed particular social group defined as “Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities,” because it lacked “well-defined boundaries” that make a group particular and, therefore, lacked social visibility.<sup>102</sup>

#### 4.20 Gang Members

The Ninth Circuit found that “tattooed gang members” is not a particular social group, because the group is not defined with particularity. The court also found that neither former nor current gang membership constitutes a valid particular social group.<sup>103</sup>

A group defined as “gang members” is not a particular social group, despite having the shared immutable trait of past-experience and arguably being able to establish the social distinction prong, because the group’s shared experience stems from criminal activity.<sup>104</sup> Groups based upon criminality do not form the basis for protection, because the shared trait is “materially at war with those [characteristics] we have concluded are innate for purposes of membership in a social group.” To find otherwise, said the court, would pervert the humanitarian purpose of refugee protection by giving “sanctuary to universal outlaws.” The court also found that “participation in criminal activity is not fundamental to gang members’ individual identities or consciences.”<sup>105</sup>

The court also analyzed whether current gang membership gives rise to a particular social group using the Ninth Circuit’s alternate “voluntary association” test. The court found that current gang membership does not constitute a particular social group, because the gang association is for the purpose of criminal activity. Thus, it is not an association that is fundamental to human dignity; i.e., it is not the kind of association that a person should not be required to forsake. Therefore current gang members are not members of a particular social group on the basis of their gang membership.<sup>106</sup>

<sup>101</sup> *Castellano-Chacon v. INS*, 341 F.3d 533, 549 (6th Cir. 2003).

<sup>102</sup> *Matter of S-E-G-*, 24 I&N Dec. 479 (BIA 2008). See also *Santos-Lemus v. Mukasey*, 542 F.3d 738 (9th Cir. 2008) (relying on *Matter of S-E-G-* the court found that “young men in El Salvador resisting gang membership” failed as a particular social group because the group lacked social distinction and lacked particularity).

<sup>103</sup> *Arteaga v. Mukasey*, 511 F.3d 940, 945 (9th Cir. 2007).

<sup>104</sup> *Id.* at 945-946.

<sup>105</sup> *Id.* at 946.

<sup>106</sup> *Id.*

The applicant also failed to establish a particular social group of “former” gang members. Disassociation from a gang does not automatically result in the creation of a new social group. Citing to *In re A-M-E-*, the court found that “non-association” and “disaffiliation” are unspecific and amorphous terms, even if qualified with the word “tattooed,” as in “former tattooed gang members.”

#### 4.21 Former Gang Members

Two federal courts have found that “former gang members” may be a particular social group. This is not consistent with USCIS and RAIO policy, which is that a PSG may not be based on criminal activity, past or present.<sup>107</sup> However, for cases arising within the jurisdiction of the Sixth and Seventh Circuits, Asylum Officers must follow these rulings.<sup>108</sup> See Asylum Supplement – Former Gang Membership as a Particular Social Group.

#### 4.22 Individuals with Physical or Mental Disabilities

In an opinion later vacated and remanded by the Supreme Court, the Ninth Circuit held in *Tchoukhrova v. Gonzales* that Russian children with serious disabilities that are long-lasting or permanent constitute a particular social group. The court reserved the question of whether individuals with disabilities from any country would constitute a particular social group, but found that in Russia, children with disabilities constitute a specific and identifiable group, as evidenced by their “permanent and stigmatizing labeling, lifetime institutional[ization], denial of education and medical care, and constant, serious, and often violent harassment.”<sup>109</sup>

The Supreme Court vacated the Ninth Circuit’s opinion in *Tchoukhrova v. Gonzales*, so this opinion is no longer precedent. However, the concerns with the case that were raised on appeal were unrelated to the formulation of the particular social group. The particular social group formulation in the Ninth Circuit’s opinion is consistent with USCIS’s interpretation. The Asylum Division has granted asylum to persons with disabilities when the applicant established that he or she was persecuted in the past or would be persecuted in the future on account of his or her membership in a particular social group, defined as individuals who share those disabilities. The proper analysis is whether 1) the disability is immutable; and 2) persons who share that disability are socially distinct in the applicant’s society. You must also carefully analyze the persecution aspect of the claim. A country’s inability to provide medical care does not

<sup>107</sup> See, e.g., *Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992) (“Whatever its precise scope, the term ‘particular social groups’ surely was not intended for the protection of members of the criminal class in this country...”).

<sup>108</sup> *Urbina-Mejia v. Holder*, 597 F.3d 360, 365–67 (6th Cir.2010) (holding that former gang members of the 18th Street gang have an immutable characteristic and are members of “particular social group” based on their inability to change their past and the ability of their persecutors to recognize them as former gang members); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

<sup>109</sup> *Tchoukhrova v. Gonzales*, 404 F.3d 1181, 1189 (9th Cir. 2005), *reh’g and reh’g en banc denied*, 430 F.3d 1222 (9th Cir. 2005), *vacated*, 127 S.Ct. 57 (U.S. 2006).



constitute persecution. Such inability may be a factor, however, in determining if an asylum applicant would suffer “other serious harm.” See RAI0 Training Module *Past Persecution*, Asylum Supplement – Exercise of Discretion to Grant Based on Past Persecution, No Well-Founded Fear.

In *Raffington v. INS*, the Eighth Circuit found that the groups of “mentally ill Jamaicans” or “mentally ill female Jamaicans” do not constitute a particular social group. The court based its conclusion that the members of the group are not “a collection of people closely affiliated with each other, who are actuated by some common impulse or purpose.”<sup>110</sup> While being closely affiliated or actuated by a common impulse or purpose is not a requirement for the particular social group formulation, the court did not analyze the facts using the immutability and social distinction framework. The claim mainly failed for the applicant’s failure to establish that she had a well-founded fear of persecution.

In a subsequent case, the Seventh Circuit held that mental illness can form the basis of a valid particular social group, disagreeing with the BIA’s finding that mental illness is not a basis for a particular social group in that case because it is not immutable.<sup>111</sup>

#### 4.23 Homeless Children

In *Escobar v. Gonzales*, the Third Circuit held that Honduran “street children” do not constitute a particular social group. In reaching its conclusion, the court identified the three main characteristics of the proposed particular social group – poverty, homelessness, and youth – and found that the characteristics were too vague and not particular enough to form a particular social group under the INA.<sup>112</sup>

#### 4.24 Small-Business Owners Indebted to Private Creditors

The Tenth Circuit held in *Cruz-Funez v. Gonzales* that being indebted to the same creditor is not the kind of group characteristic that a person either cannot change or should not be required to change.<sup>113</sup> Therefore, the court concluded that the applicants in that case could not establish that they were members of a legally cognizable particular social group.

## 5 CONCLUSION

You must determine whether or not persecution or feared persecution is “on account of” one or more of the five protected grounds in the refugee definition, race, religion, nationality, membership in a particular social group, or political opinion.

<sup>110</sup> *Raffington v. INS*, 340 F.3d 720, 723 (8th Cir. 2003) (citing *Safaie v. INS*, 25 F.3d 636 (8th Cir. 1994)).

<sup>111</sup> *Kholyavskiy v. Mukasey*, 540 F.3d 555 (7th Cir. 2008).

<sup>112</sup> *Escobar v. Gonzales*, 417 F.3d 363 (3d Cir. 2005).

<sup>113</sup> *Cruz-Funez v. Gonzales*, 406 F.3d 1187, 1191 (10th Cir. 2005).

To properly determine whether persecution is on account of a protected ground, you must understand 1) the “on account of” requirement, which involves the motive of the persecutor, and 2) the parameters of the five grounds for refugee status listed in the refugee definition.

While the burden of proof is on the applicant to prove a nexus to a protected ground, you must elicit sufficient information from the applicant about any possible connection to protected grounds so that you are able to make a determination.

## 6 SUMMARY

A particular social group is a group of persons who share a characteristic, such as similar background, habits, or social standards. The shared characteristic must be either unchangeable or so fundamental to the individual’s conscience or identity that the individual should not be required to change it. Except in a few limited circumstances, the particular social group must also have social distinction. Evidence that the society in question distinguishes individuals who share that common trait or belief from individuals who do not possess that trait or belief can establish that the group is recognizable and distinct in the society. Several circuit courts have rejected the Board’s application of a social visibility or recognizability requirement in cases before them on petition for review.<sup>114</sup> Those decisions, however, question the way the Board applied social visibility or recognizability in those cases and do not preclude the interpretation of precedent as imposing a social distinction requirement as set out in this lesson plan.

Except in limited circumstances, a social group cannot be defined by terrorist, criminal, or persecutory activity or association, past or present.<sup>115</sup> In addition, the particular social group should generally not be defined exclusively by the harm that the applicant asserts as the persecution feared.<sup>116</sup> Circular reasoning may not be used to describe the group. The particular social group must exist independently from the persecution suffered or feared that is being asserted as the basis of the claim.

<sup>114</sup> *Valdiviezo-Galdamez v. Att’y Gen. of U.S.*, 663 F.3d 582 (3d Cir. 2011); *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

<sup>115</sup> The Sixth and Seventh Circuit have held that former gang membership can form the basis of a particular social group. *Urbina-Mejia v. Holder*, 597 F.3d 360, 365–67 (6th Cir. 2010) (holding that former gang members of the 18th Street gang have an immutable characteristic and are members of a “particular social group” based on their inability to change their past and the ability of their persecutors to recognize them as former gang members); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

<sup>116</sup> *But see Lukwago v. Ashcroft*, 329 F.3d 157, 178-79 (3d Cir. 2003) (finding that former child soldiers who have escaped LRA enslavement are a valid social group).

**PRACTICAL EXERCISES**

Practical exercises will be added at a later time.

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

There are no “Other Materials” for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 3.
- 4.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**RAD Supplement**

**Particular Social Groups Based on Gender and the Issue of “Women at Risk”**

In the context of refugee processing, UNHCR regularly submits “women at risk” Priority 1 referrals to theUSRAP. Simply because a refugee applicant has been found to be a woman at risk for the purposes of determining whether she should be granted access to theUSRAP does not constitute a finding that she is a member of a particular social group for purposes of making the refugee determination. In fact, a determination that a woman is a “woman at risk” for purposes ofUSRAP access has no bearing on the adjudication of her refugee claim.

For further analysis, see RAIOTraining Module, *Gender-Related Claims*; OCC Response to RAIO Query: *PSGs within the context of Afghan Women at Risk*

### SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

- 1.
- 2.

#### ADDITIONAL RESOURCES

- 1.

#### SUPPLEMENTS

##### ASM Supplement - Former Gang Membership as a Particular Social Group in the Sixth and Seventh Circuit

The Sixth and Seventh Circuits have held that former gang membership can form the basis of a particular social group.<sup>117</sup> The Seventh Circuit case involved a Salvadoran man who joined a street gang in El Salvador when he was fourteen. He remained a member of the gang until he came to the United States at age twenty-three. In the Sixth Circuit, the court held that a Honduran man who was a former member of the 18<sup>th</sup> Street gang was a member of a particular social group.

In contrast to the Ninth Circuit's decision in *Arteaga*, the Seventh Circuit held that former gang membership is consistent with the BIA's precedent holding that former military service is an immutable characteristic (*Matter of Fuentes*). The court held that the applicant was "a member of a specific, well-recognized, indeed notorious gang . . . that is neither unspecific nor amorphous." **Note:** This case is only binding on asylum adjudications originating in the Seventh Circuit.

<sup>117</sup> *Urbina-Mejia v. Holder*, 597 F.3d 360, 365–67 (6th Cir.2010) (holding that former gang members of the 18th Street gang have an immutable characteristic and are members of "particular social group" based on their inability to change their past and the ability of their persecutors to recognize them as former gang members); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

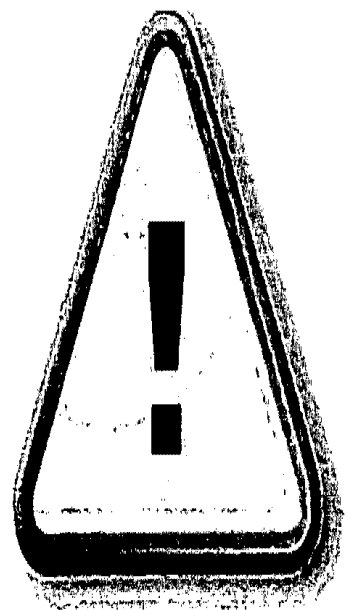
# FIRM RESETTLEMENT

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# Firm Resettlement

8 CFR Sec. 207.1(b) Firmly resettled. A refugee is considered to be "firmly resettled" if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his/her flight from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.



# Firm Resettlement

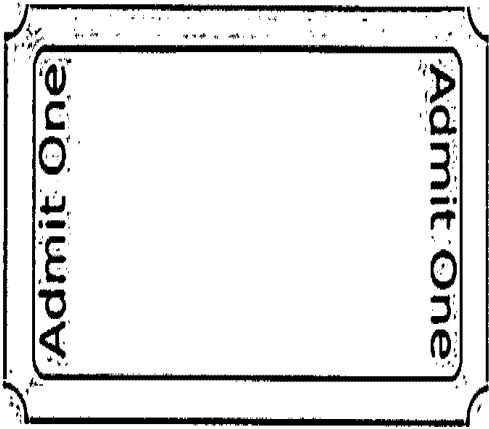
- 1) Entry into 3<sup>rd</sup> country *as a consequence of flight*  

- 2) Offer or Receipt of  

- 3) Permanent Status or Citizenship  
("ability to stay indefinitely")

**Exception: Restrictive Conditions**

# 4-step framework: Matter of A-G-G

1. The officer has the burden to show direct or indirect evidence indicating offer
2. Applicant has the burden to rebut any **direct** evidence of offer (with *indirect* evidence, skip to step 3)
3. The officer considers totality of evidence and determines if applicant is firmly resettled
4. If firmly resettled, applicant has the burden to establish and officer has the duty to elicit testimony regarding “restrictive conditions” exception

# The offer: Matter of A-G-G



The existence of a legal mechanism to obtain permanent status in the 3<sup>rd</sup> country may be sufficient evidence to establish an offer, and **is not contingent on whether the applicant applies for the status.**

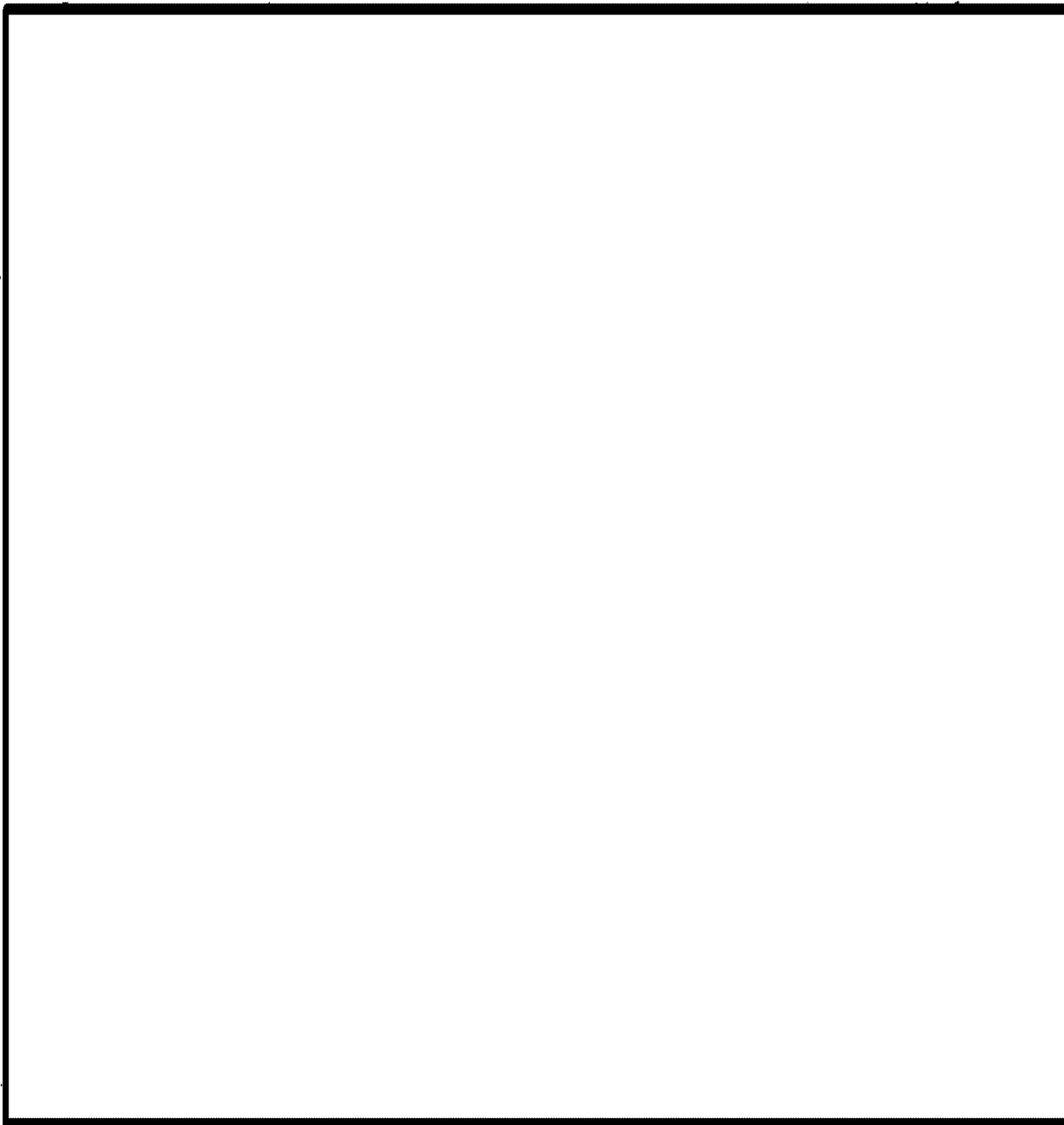
However, officer must elicit if applicant would meet all requirements and be eligible for the status.

A single female fled Afghanistan to Germany in 1996 due to fear of persecution by the Taliban. She was granted asylum by the German government. She was able to find work, housing, to attend school and to travel in and out of Germany. However, she later left Germany because the cold weather made her feel sick and because the jobs she was able to find as a waitress required that she handle pork, which is against her religion. She has been referred to the USRAP as a woman-at-risk. Is she firmly resettled?

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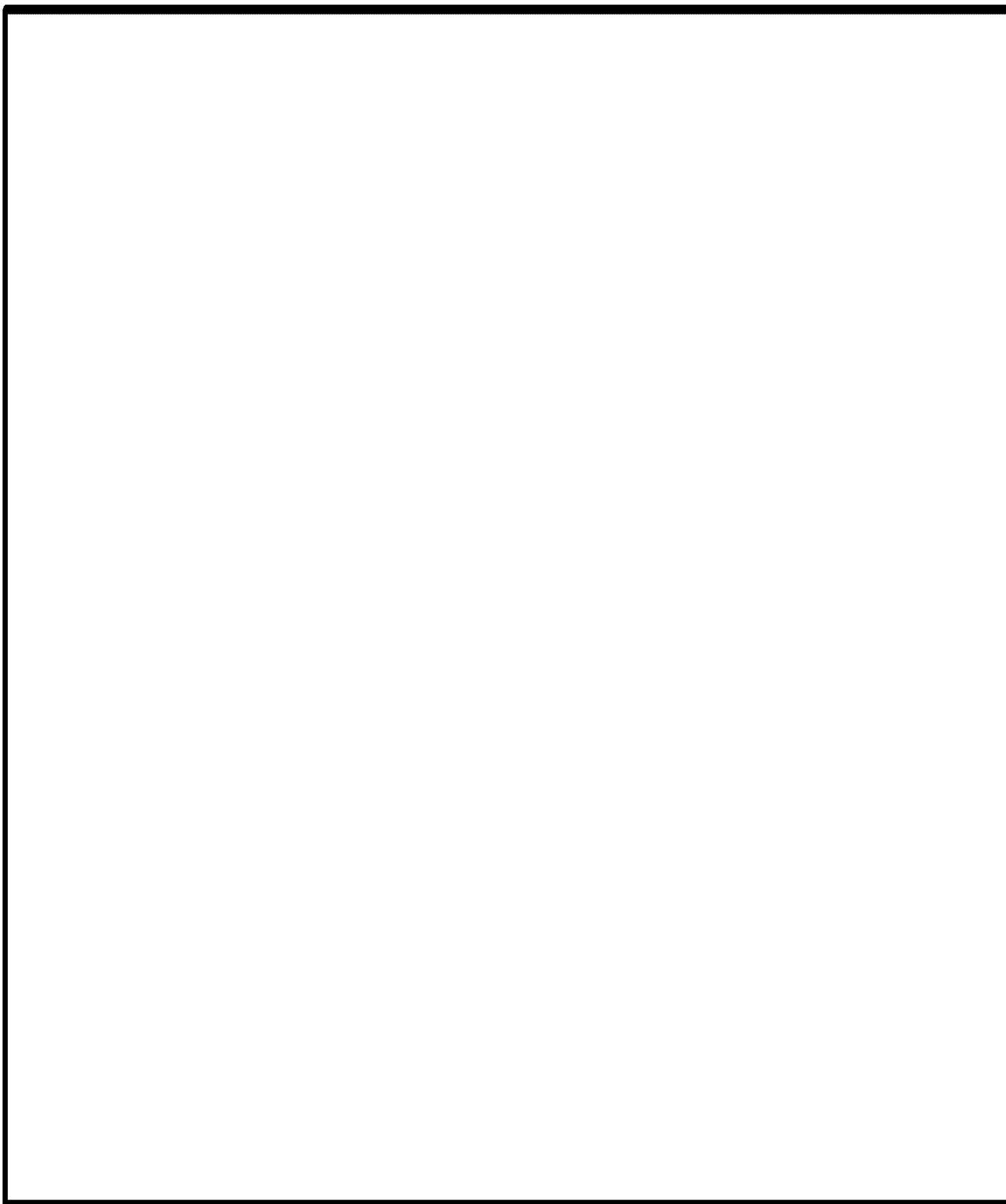


# PERSECUTOR BAR

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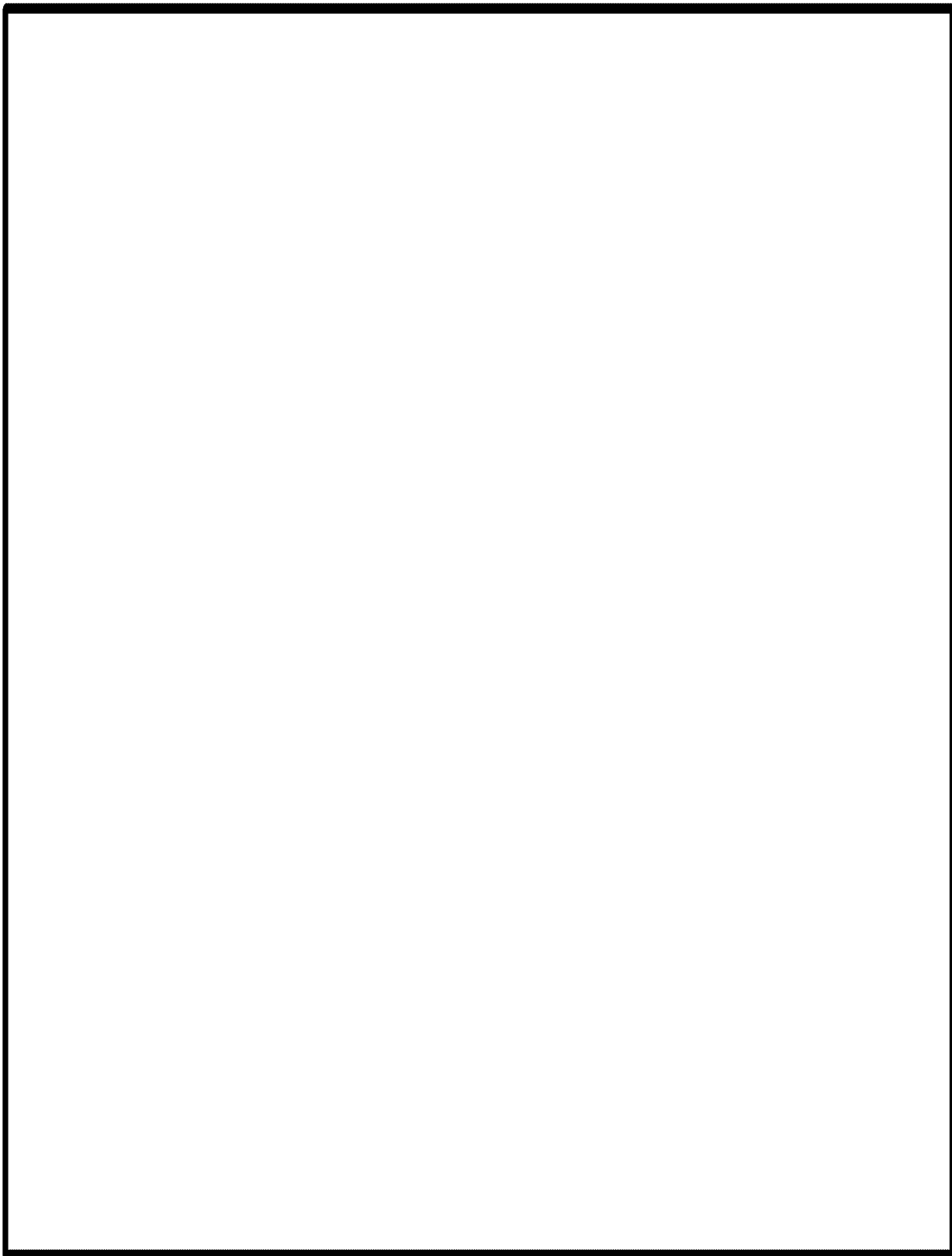


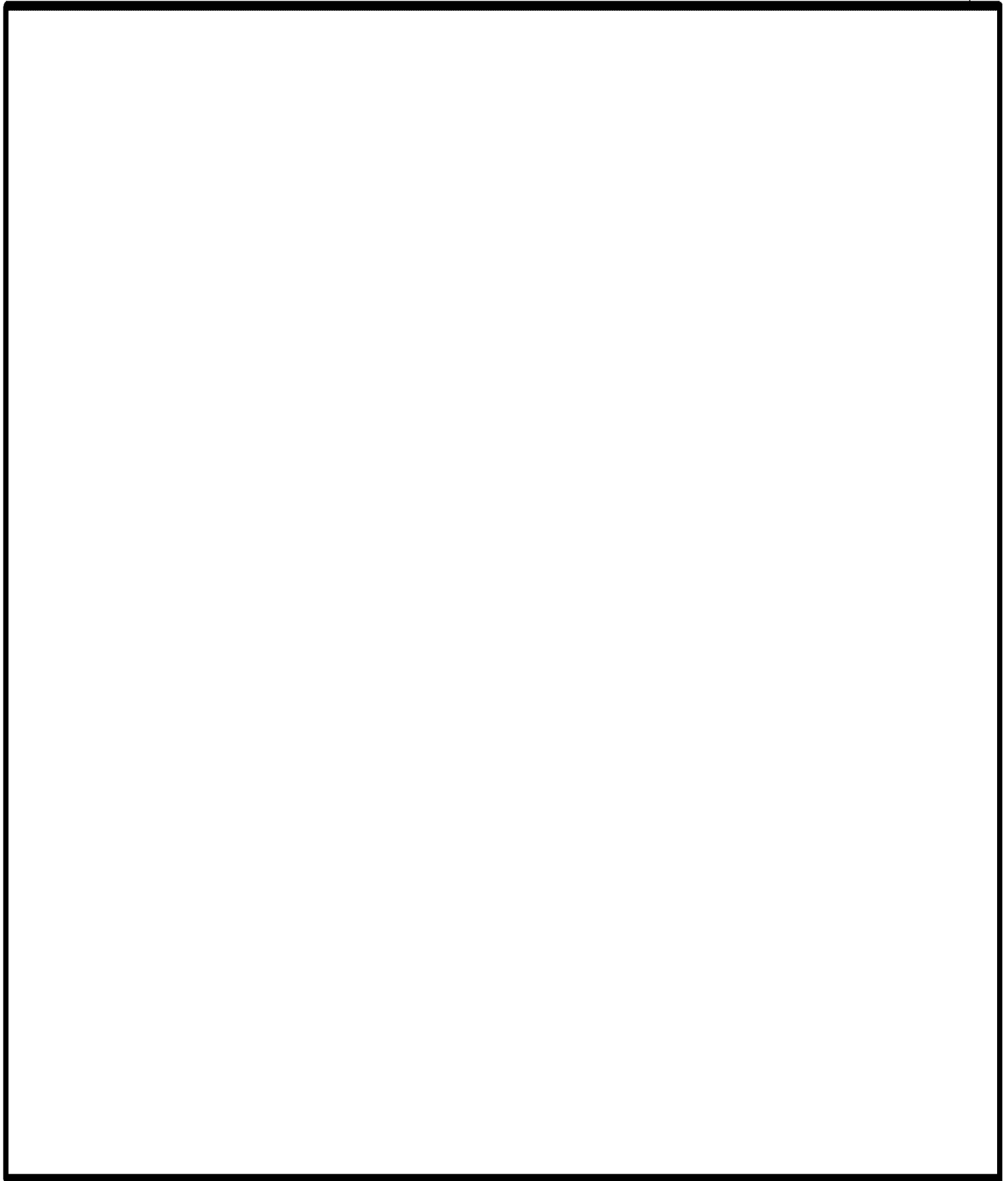
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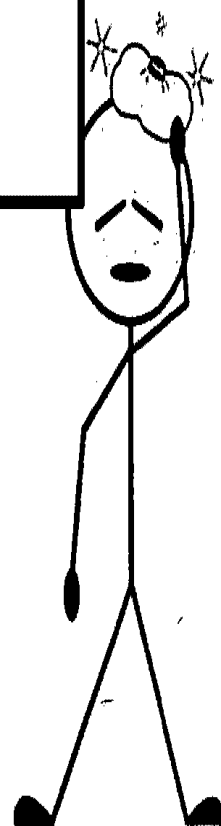
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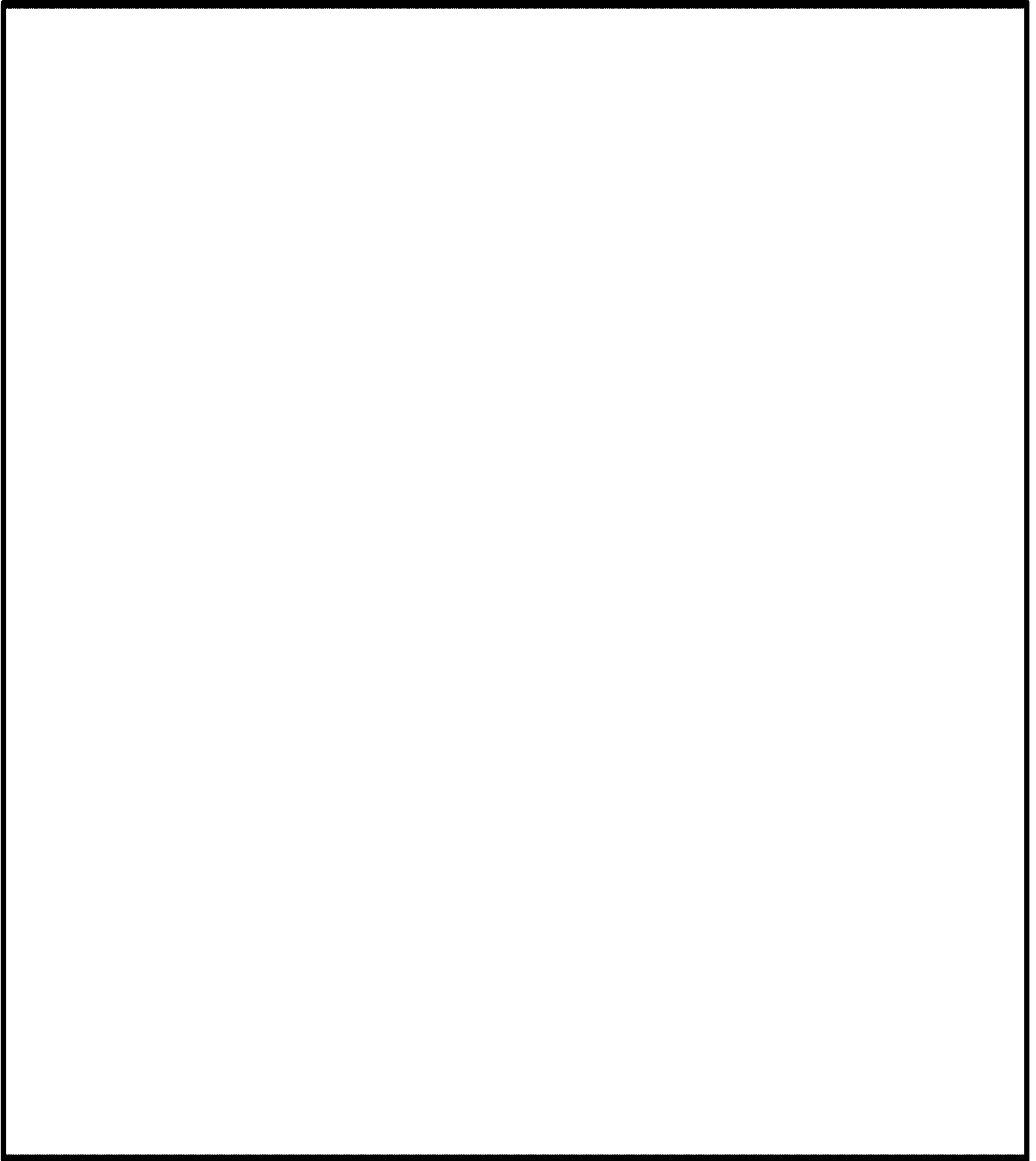


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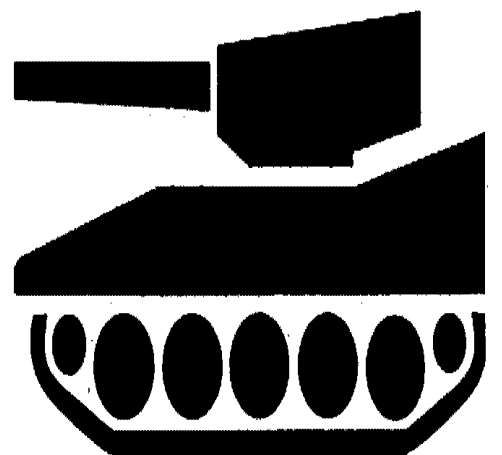
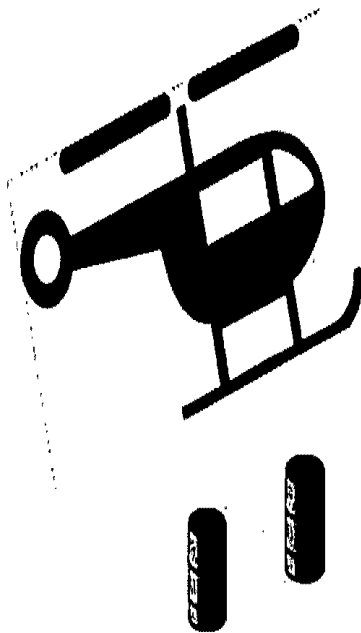
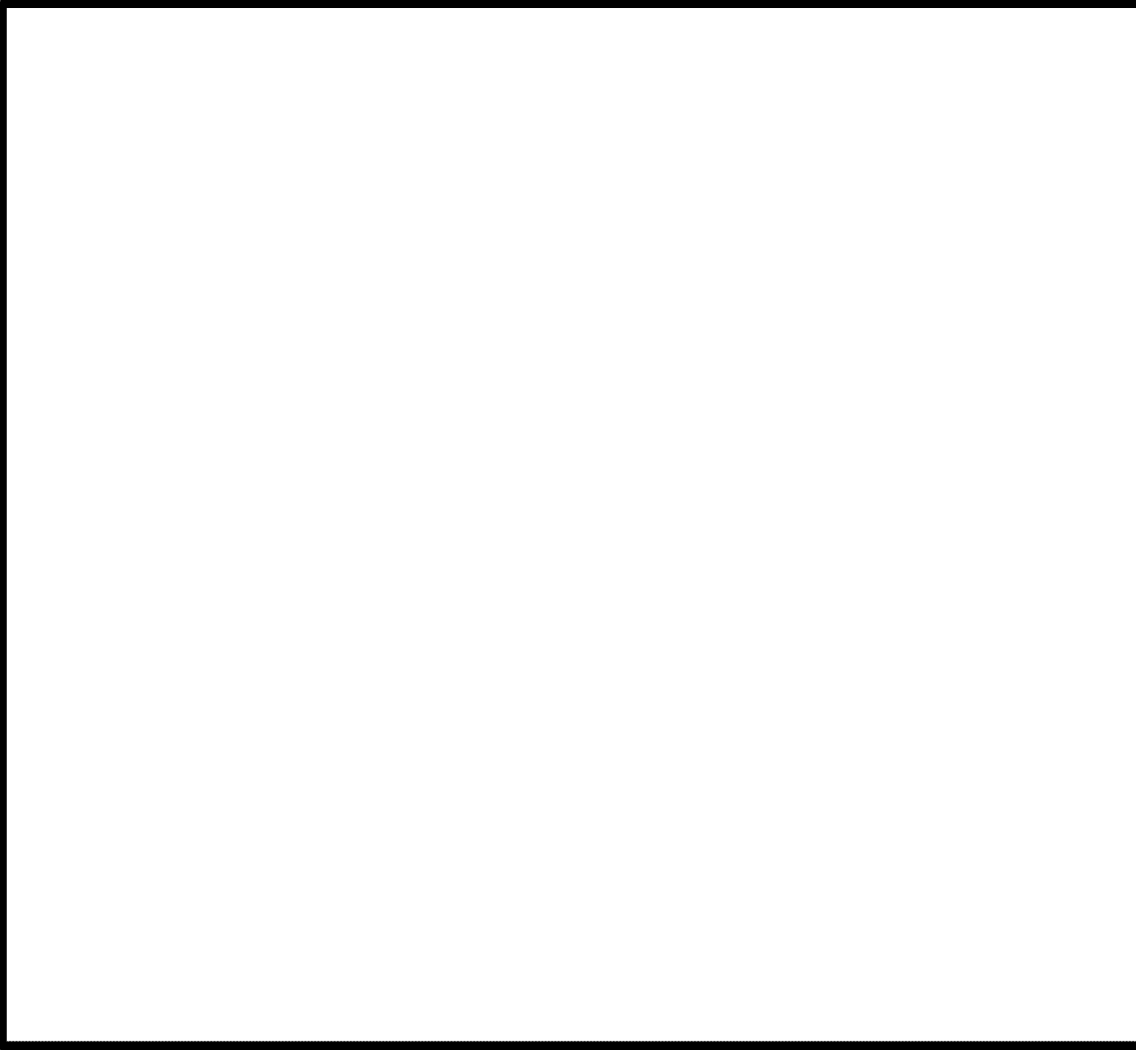


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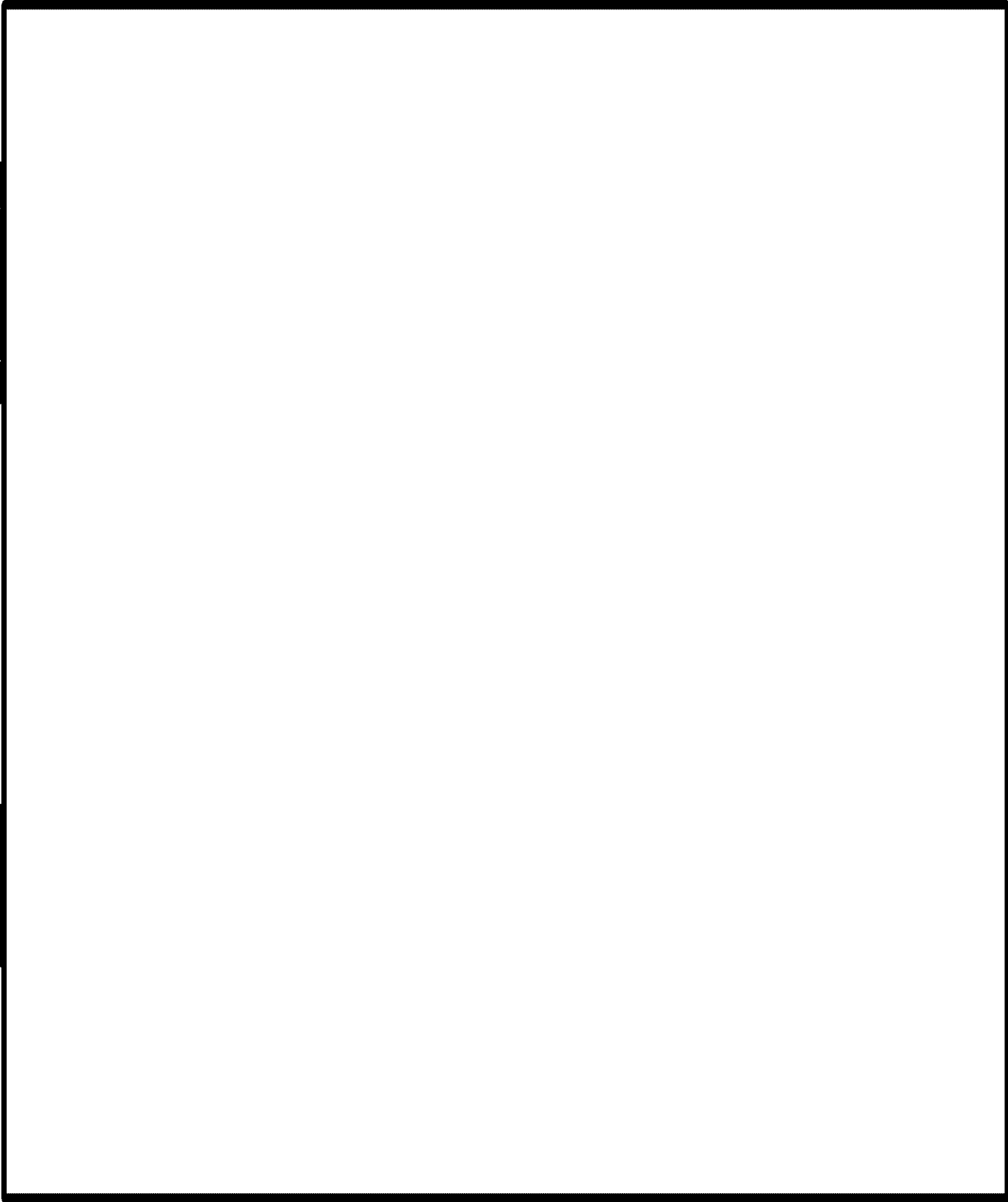
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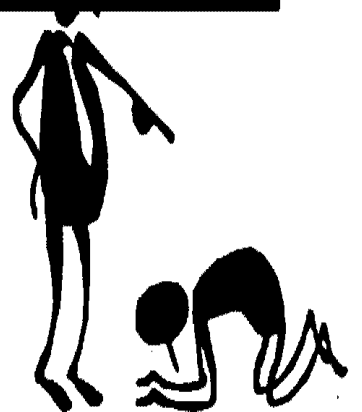
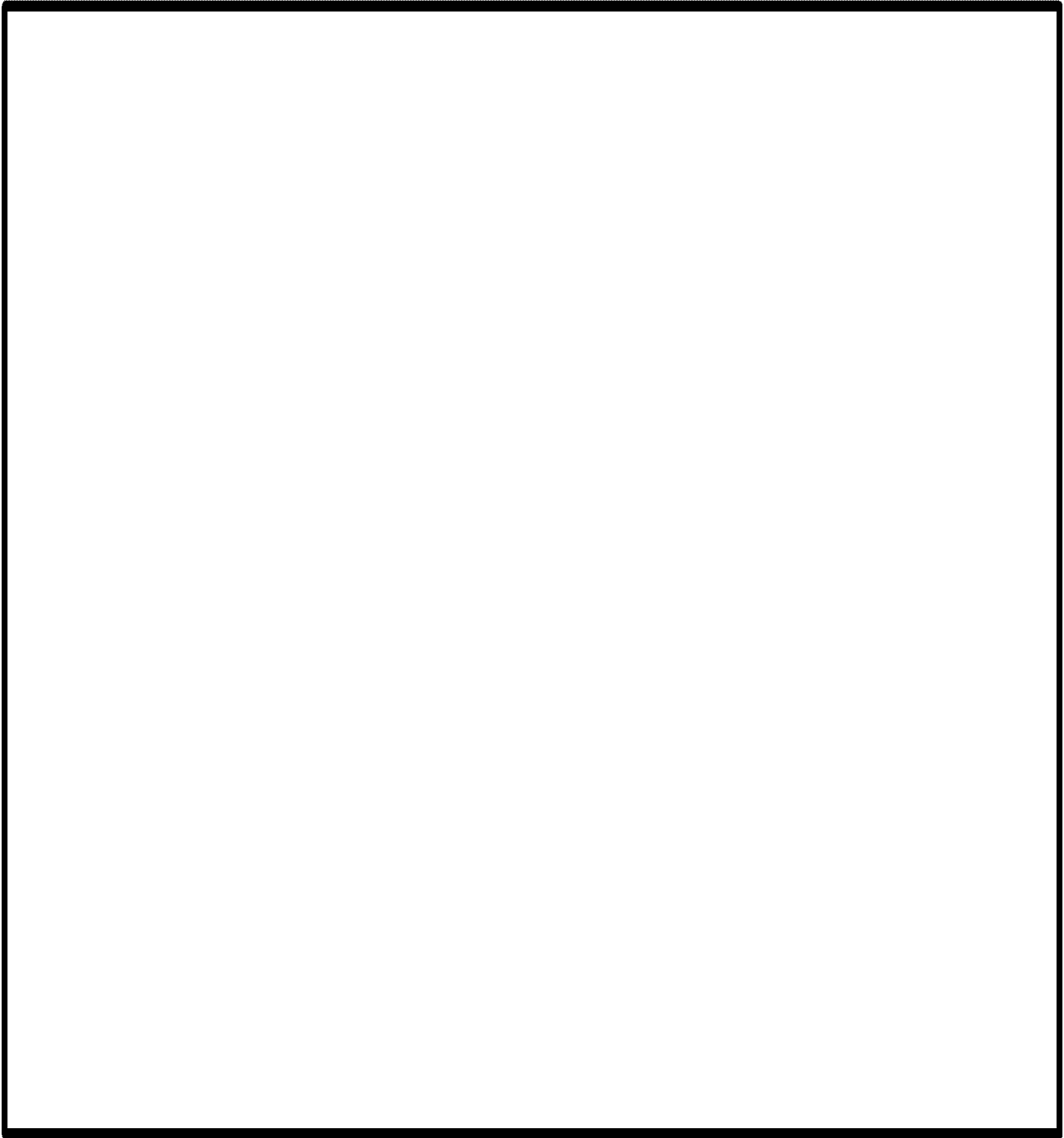


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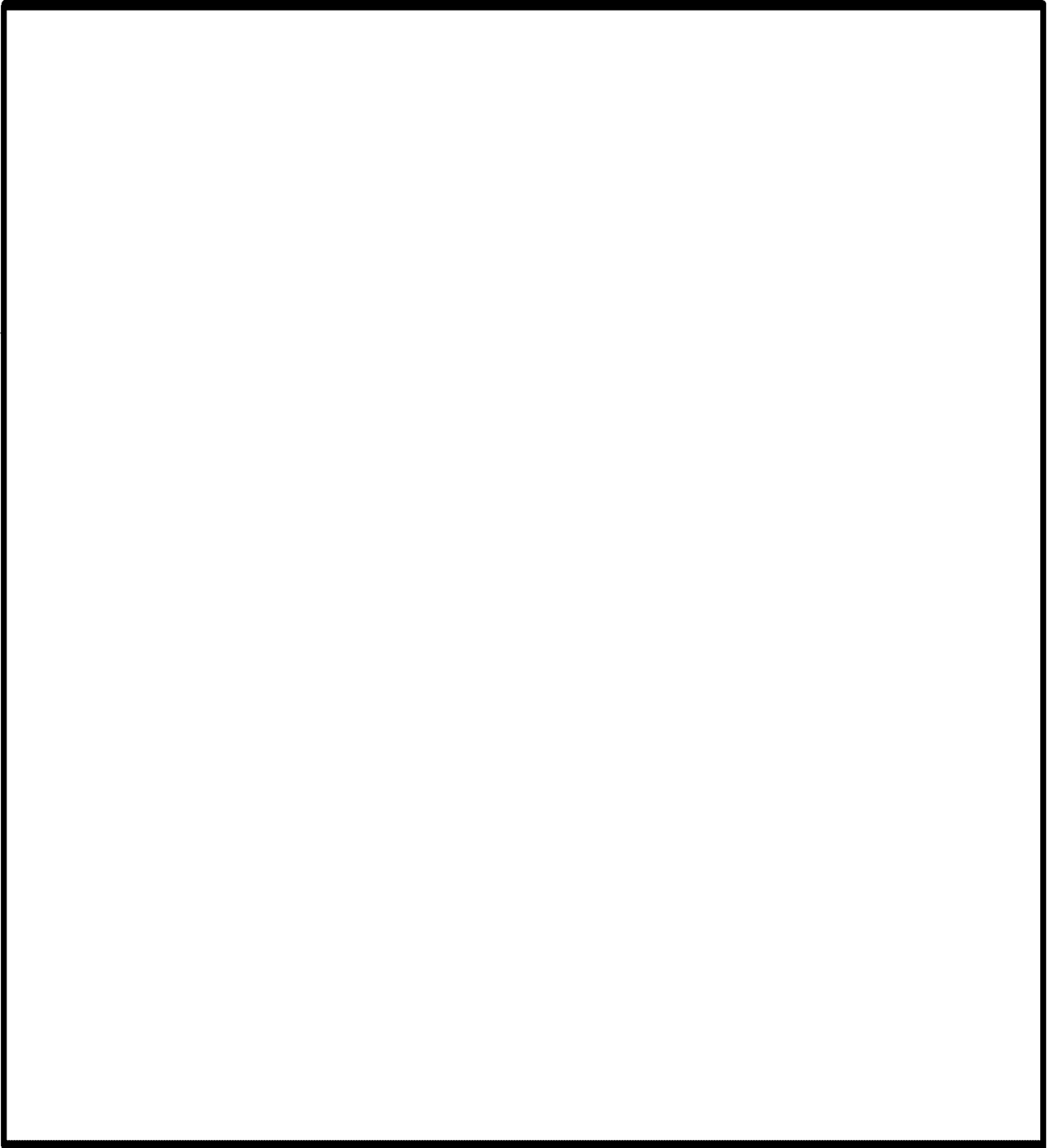
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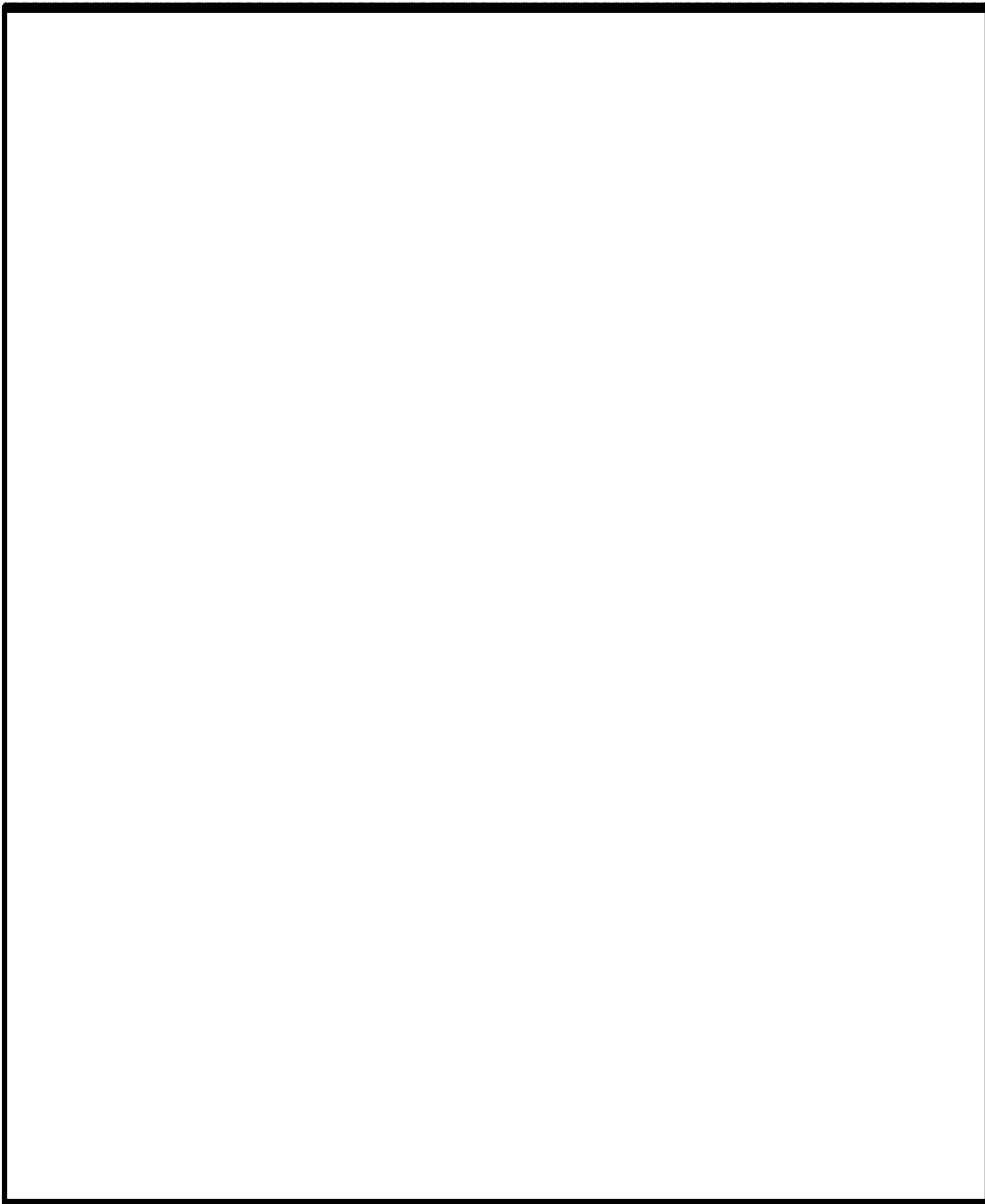
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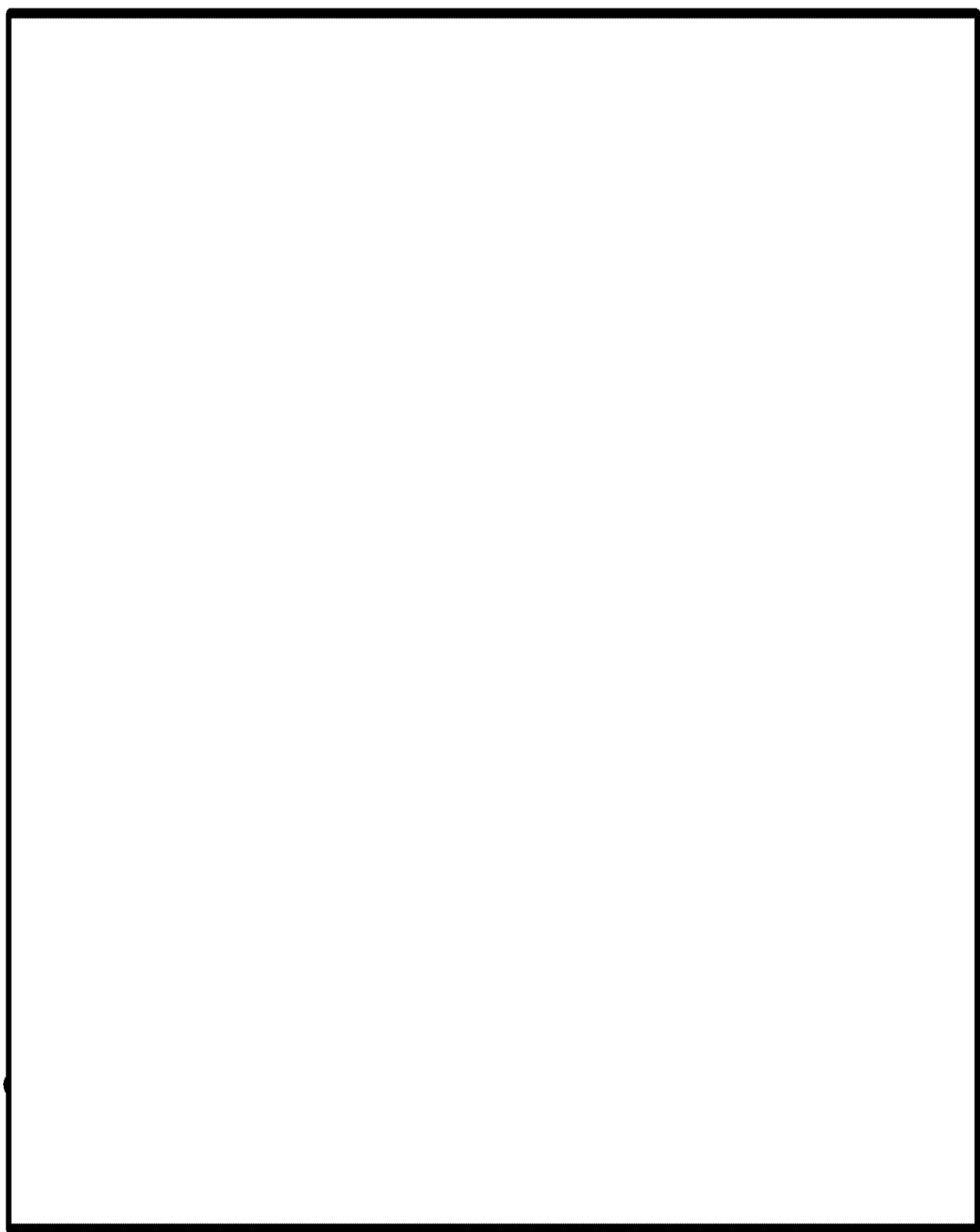


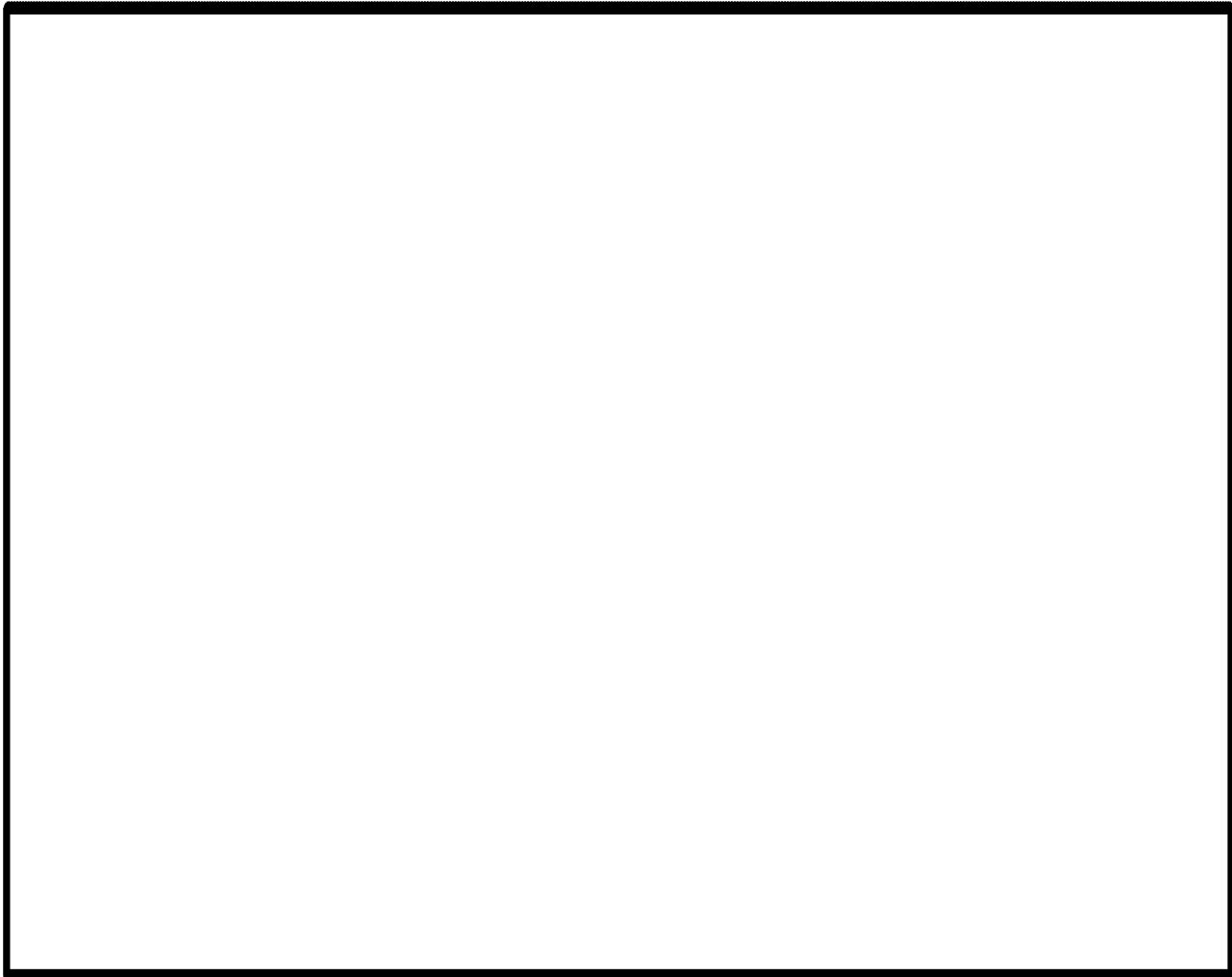
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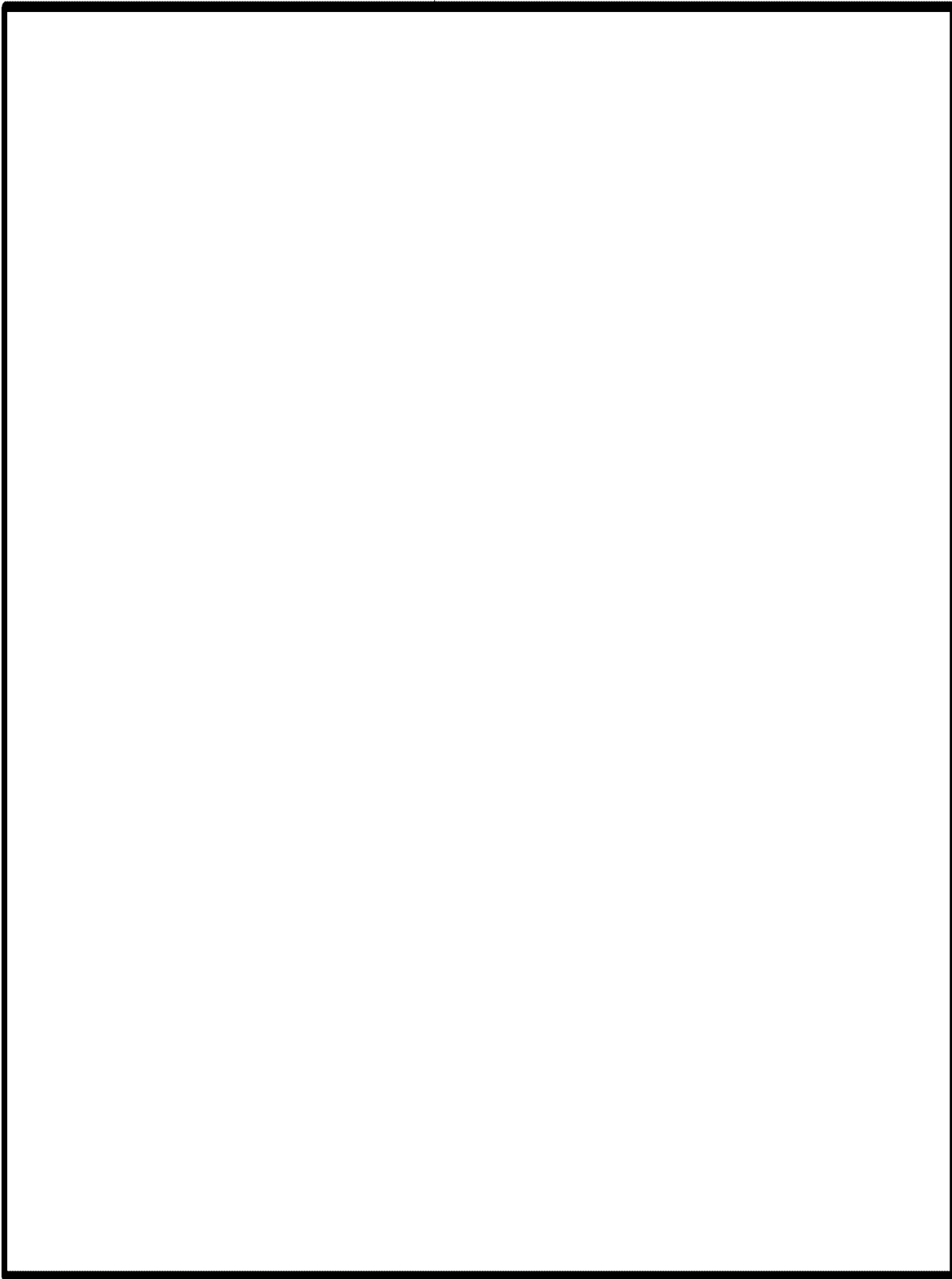


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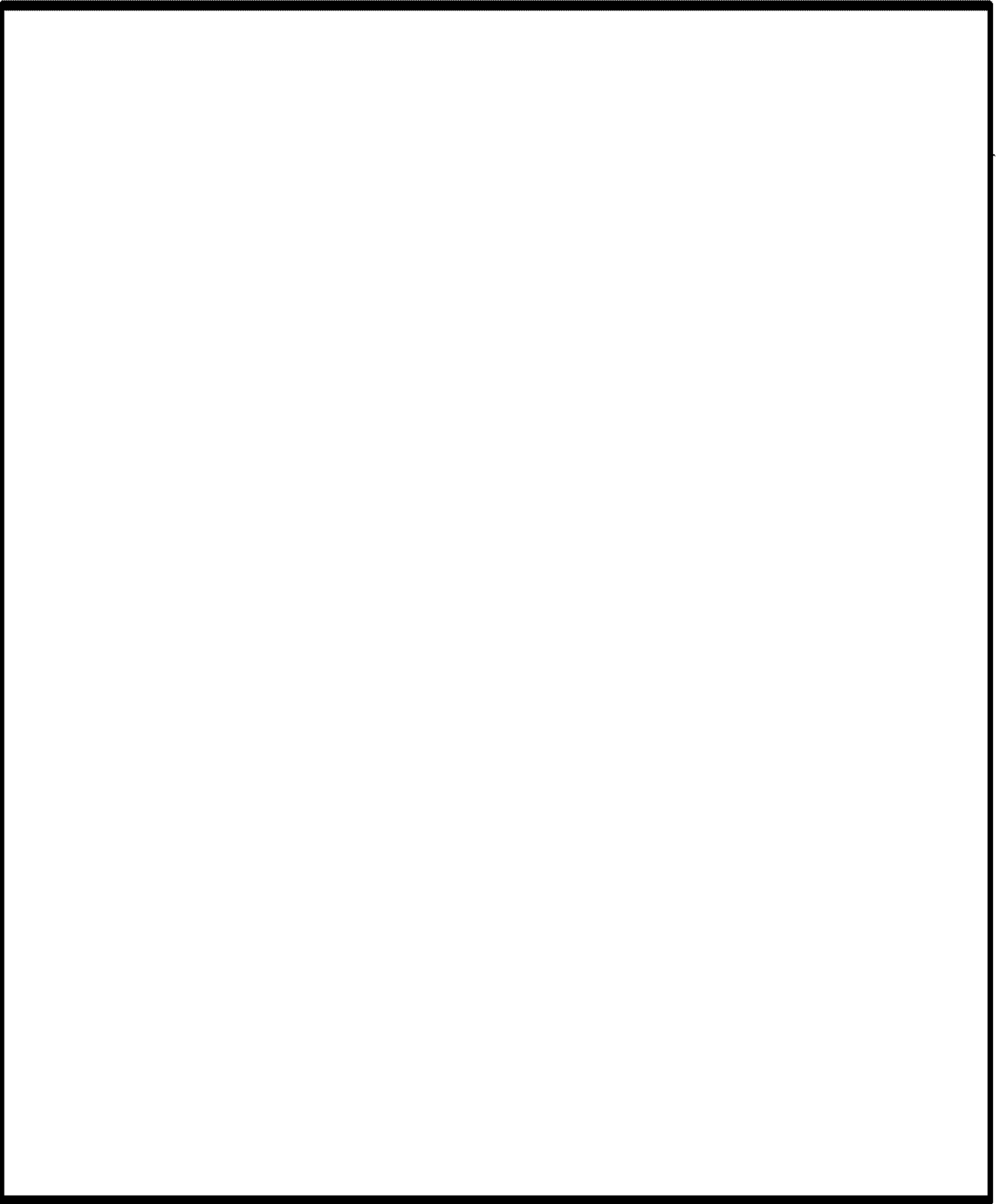


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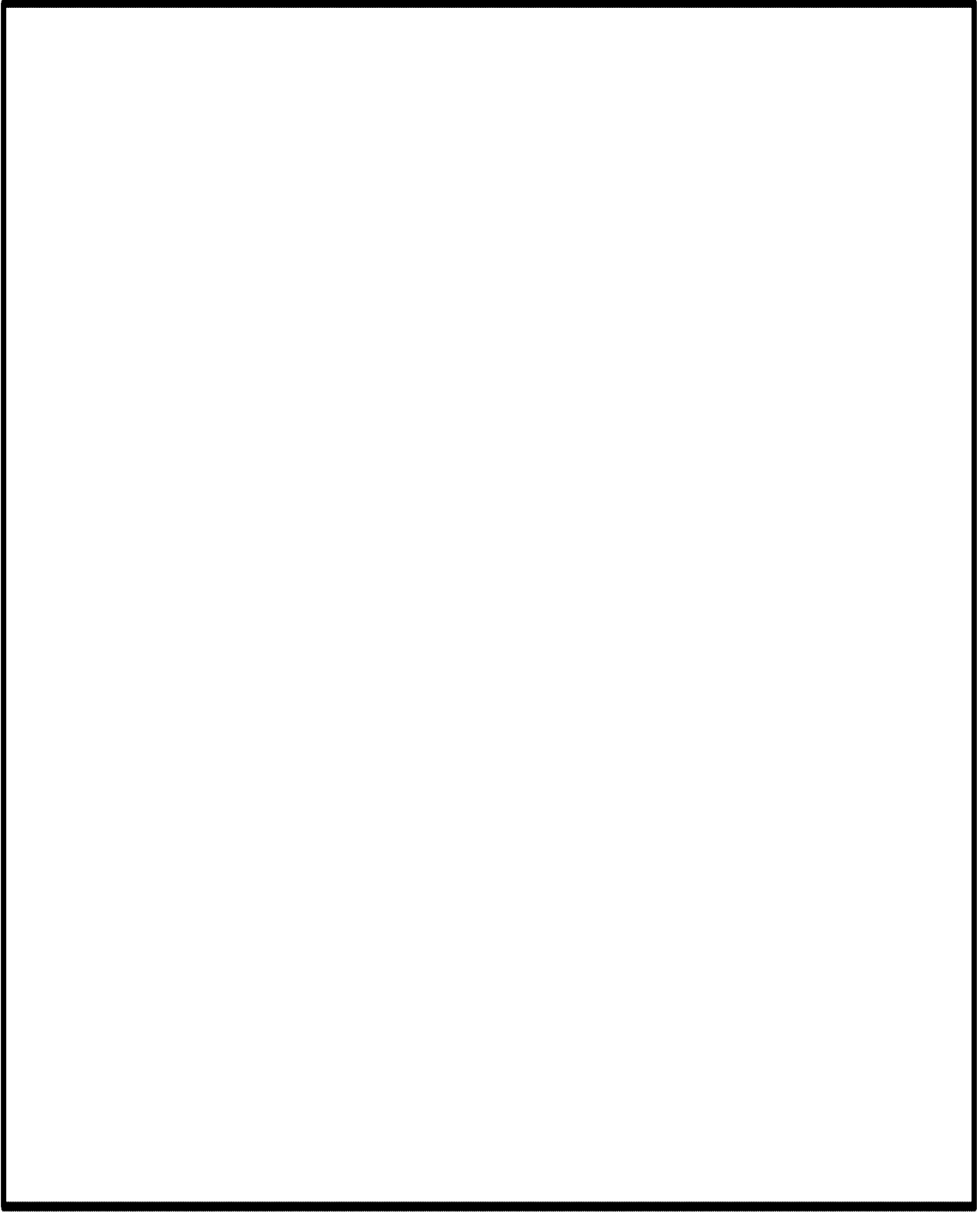
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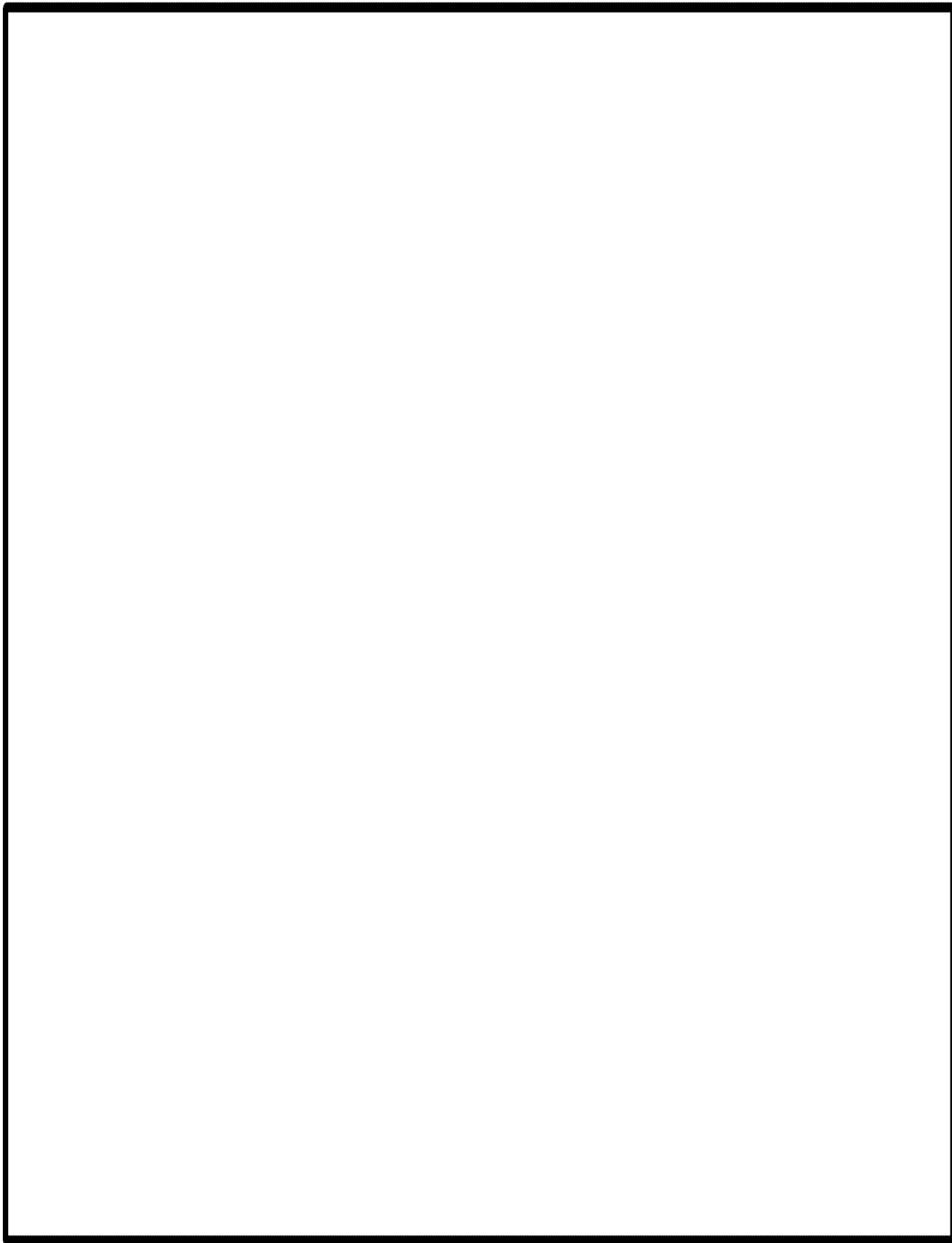
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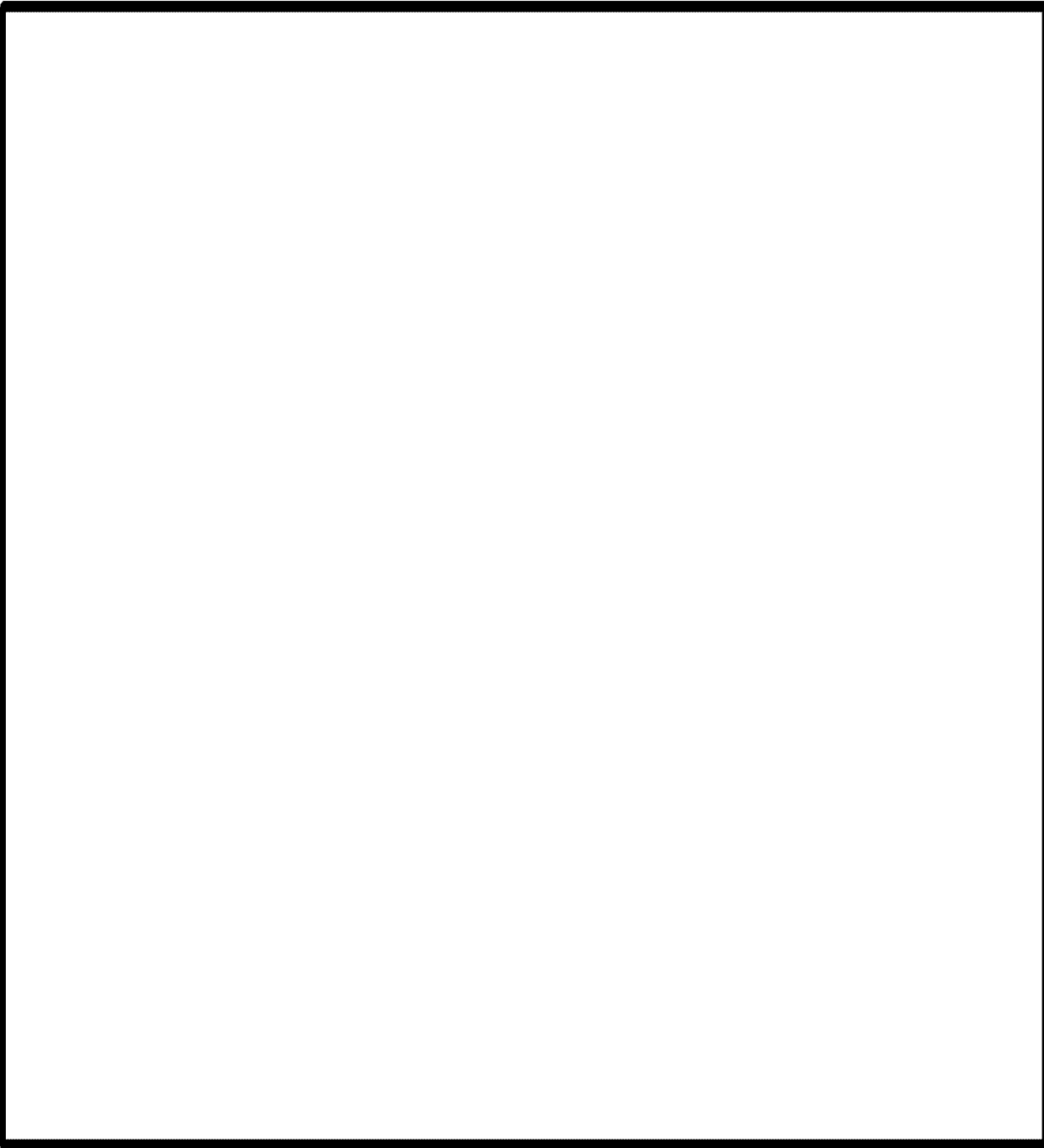


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# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### RAIO Combined Training Course

# DEFINITION OF PERSECUTION AND ELIGIBILITY BASED ON PAST PERSECUTION

## TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

**DEFINITION OF PERSECUTION AND ELIGIBILITY BASED ON  
PAST PERSECUTION**

Training Module

**MODULE DESCRIPTION**

This module discusses the definition of persecution and the determination as to whether an act constitutes persecution.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

When adjudicating a request for asylum or refugee resettlement, you will correctly apply the law to determine eligibility for asylum in the United States or resettlement in the United States as a refugee.

**ENABLING PERFORMANCE OBJECTIVES**

1. Distinguish between government and non-government agents of persecution.
2. Explain factors to consider in determining whether an act(s) is sufficiently serious to constitute persecution.
3. Explain factors to consider when deciding whether an applicant is eligible for asylum or refugee status based on past persecution alone.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Discussion
- Group and individual practical exercises

**METHOD(S) OF EVALUATION**

- Multiple-choice exam

**REQUIRED READING**

- 1.
- 2.

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

**ADDITIONAL RESOURCES**

1. UNHCR Handbook
2. Matter of Chen, 20 I&N Dec. 16 (BIA 1989)
3. Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996) (en banc)
4. Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997).
5. Matter of T-Z-, 24 I&N Dec. 163 (BIA 2007)
6. Stanojkova v. Holder, 645 F.3d 943 (7th Cir. 2011)
7. Haider v. Holder, 595 F.3d 276, 288 (6th Cir. 2010).

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR6	Knowledge of U.S. case law that impacts RAIO (4)
ILR19	Knowledge of criteria for past persecution (4)
ILR20	Knowledge of the criteria for refugee classification (4)
ILR21	Knowledge of the criteria for establishing a well-founded fear (WFF)(4)
ILR23	Knowledge of bars to immigration benefits (4)



DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM3	Skill in applying eligibility requirements to information and evidence (5)
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)

**SCHEDULE OF REVISIONS**

Date	Section (Number and Name)	Brief Description of Changes	Made By
1/20/14	Throughout document	Fixed links, added recent case law examples	RAIO Training

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

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

## 1 INTRODUCTION

This is one in a series of modules on eligibility for asylum and refugee status. This module provides an overview of the definition of persecution and eligibility based on past persecution.

Other RAIO Training modules on asylum and refugee eligibility discuss:

- the basic elements of the refugee definition (*Refugee Definition*)
- eligibility based on fear of future persecution (*Well-Founded Fear*)
- the motive of the persecutor and the five protected grounds in the refugee definition (*Nexus and the Five Protected Grounds; Nexus: Particular Social Group*)
- the burden of proof and evidence (*Evidence*)
- the role of discretion (*Discretion*)
- participation in the persecution of others on account of a protected ground (*Analyzing the Persecutor Bar*)
- entry into and permanent status in a third country (*Firm Resettlement*)

In addition, for asylum adjudications, one of the Asylum Lesson Plans discusses mandatory reasons to deny asylum. For overseas refugee adjudications, the RAIO Training module, *Grounds of Inadmissibility* discusses reasons an applicant may be inadmissible to the United States and the availability of waivers. The RAD *Access* module discusses available means to access the U.S. Refugee Admissions Program.

## 2 PAST PERSECUTION

An applicant may establish that he or she is a refugee based on either past persecution or a well-founded fear of future persecution.<sup>1</sup>

The regulations implementing USCIS's discretionary authority to grant asylum, generally require a well-founded fear of persecution. If an applicant establishes past persecution, a rebuttable presumption of a well-founded fear of future persecution is created.<sup>2</sup> Well-founded fear is presumed unless the officer establishes that a fundamental change in circumstances has occurred, such that the applicant no longer has a well-founded fear, or that the applicant could reasonably avoid future persecution by relocating to another part of his or her country of nationality.<sup>3</sup> If the persecutor is the government or is government-sponsored or the applicant has been persecuted in the past, there is a rebuttable presumption that internal relocation is not reasonable, unless you establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.<sup>4</sup> Asylum applicants who suffered past persecution but who no longer have a well-founded fear of future persecution may be granted asylum based on being unable or unwilling to return to the country due to the severity of the past persecution or if there is a reasonable possibility that the applicant will face other serious harm upon return.<sup>5</sup>

In the overseas refugee processing context, there is no equivalent regulatory guidance on past persecution at 8 C.F.R. § 207. In the absence of such regulatory guidance, a plain language interpretation of the term refugee as defined in INA § 101(a)(42) is followed in overseas refugee processing. If an applicant credibly establishes that the harm he or she suffered in the past rose to the level of persecution on account of a protected ground, the past persecution, in and of itself, establishes the applicant's eligibility. A rebuttable presumption is neither created nor necessary. Nonetheless, as a matter of policy, refugee officers will always assess an applicant's well-founded fear of future persecution regardless of whether or not he or she has established past persecution.<sup>6</sup>

<sup>1</sup> INA § 101(a)(42)

<sup>2</sup> INA § 208; INA § 101(a)(42); 8 C.F.R. § 208.13(b)(1).

<sup>3</sup> For additional information, see Eligibility Based on Past Persecution, below, and RAIO Training module, *Discretion*.

<sup>4</sup> 8 C.F.R. § 208.13(b)(3)(ii).

<sup>5</sup> 8 C.F.R. § 208.13(b)(1)(iii); For additional information on granting asylum in the absence of a Well-Founded Fear, see RAIO module, *Discretion*.

<sup>6</sup> See Refugee Affairs Division (RAD), Refugee Application Assessment: Standard Operating Procedures (SOP) (requiring officers to elicit testimony and assess well-founded fear even where applicants have demonstrated past persecution).

In contrast, the UN refugee definition focuses primarily on well-founded fear, rather than past persecution. The cessation clauses of the 1951 Convention, however, do provide that a refugee who no longer fears future persecution should be given protection due to compelling reasons arising from previous persecution.<sup>7</sup>

### 3 PERSECUTION

#### 3.1 General Elements

##### Severity of Harm

To establish persecution, an applicant must show that the harm that the applicant experienced or fears is sufficiently serious to amount to persecution. The degree of harm must be addressed before you may find that the harm that the applicant suffered or fears can be considered “persecution.”

##### Motivation

An applicant also must prove that the persecutor’s motivation in harming, or seeking to harm him or her, is on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.<sup>8</sup> Proving motivation is discussed in more detail in RAIO Training module, *Nexus and the Five Protected Grounds*. You should separate the analysis of motivation from the evaluation of whether the harm rises to the level of persecution, in order to make the basis of your decision as clear as possible.

##### Persecutor

The applicant must show that the entity that harmed, or is threatening, the applicant (the persecutor) is either an agent of the government or an entity that the government is unable or unwilling to control.<sup>9</sup>

##### Location

Only harm suffered in the country of nationality or, if stateless, the country of last habitual residence, may be considered in a finding of past persecution, for the purpose of establishing eligibility. Harm suffered in the United States or a third country may be considered as evidence of a well-founded fear if the applicant can establish a connection between the persecutor and his or her country of origin.<sup>10</sup>

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<sup>7</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, Article 1C, paras. (5) and (6), incorporated by reference into the 1967 Protocol relating to the Status of Refugees.

<sup>8</sup> For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>9</sup> For additional information, see section, Identifying a Persecutor.

<sup>10</sup> See 8 C.F.R. § 208.13(b)(1); *Costa v. Holder*, 733 F.3d 13, 15 (1st Cir. 2013).

**Example**

Applicant testifies to being the victim of domestic violence while living in the United States. Because applicant has filed a complaint against her spouse, the spouse has been removed to his country of nationality and now the applicant claims to fear additional harm from her spouse if returned to the same country as her spouse. In such a situation the applicant would not be considered to have suffered past persecution, but you would consider the violence suffered in the United States as evidence in your analysis of well-founded fear.

**3.2 Whether the Harm Amounts to Persecution****3.2.1 Board of Immigration Appeals (BIA) Decisions**

In an often-cited BIA decision, the BIA defined persecution as harm or suffering inflicted upon an individual in order to punish the individual for possessing a belief or characteristic the persecutor seeks to overcome.<sup>11</sup>

The BIA later modified this definition and explicitly recognized that a “punitive” or “malignant” intent is not required for harm to constitute persecution.<sup>12</sup> The BIA concluded that persecution can consist of objectively serious harm or suffering that is inflicted because of a characteristic (or perceived characteristic) of the victim, regardless of whether the persecutor intends the victim to experience the harm as harm.<sup>13</sup>

Additionally, the BIA has found that the term “persecution” encompasses more than physical harm or the threat of physical harm so long as the harm inflicted or feared rises to the level of persecution.<sup>14</sup> Non-physical harm may include “the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.”<sup>15</sup>

**3.2.2 Guidance from the Department of Justice**

In a proposed rule providing guidance on the definition of persecution, the Department of Justice indicated its approval of the conclusion in *Kasinga* that the existence of persecution does not require a malignant or punitive intent.<sup>16</sup> The Department also

<sup>11</sup> *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), modified by *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987).

<sup>12</sup> *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996); *Picherskaia v. INS*, 118 F.3d 641, 646 (9th Cir. 1997).

<sup>13</sup> *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996); for additional information, see RAO Training module, *Nexus and the Five Protected Grounds*.

<sup>14</sup> *Matter of T-Z-*, 24 I&N Dec. 163, 169-71 (BIA 2007).

<sup>15</sup> *Matter of T-Z-*, 24 I&N Dec. at 171, citing *Laipenienks v. INS*, 750 F.2d 1427 (9th Cir. 1985).

<sup>16</sup> U.S. Department of Justice, *Asylum and Withholding Definitions*, 65 Fed. Reg., 76588, 76590, Dec. 7, 2000. This proposed rule did not become a regulation but indicates the agency’s view on the topic.



emphasized that the victim must experience the treatment as harm in order for persecution to exist. Thus, under this reasoning, in a case involving female genital mutilation, whether the applicant at hand would experience or has experienced the procedure as serious harm, not whether the perpetrator intends it as harm, is a key inquiry.

### 3.2.3 Federal Court Decisions

Persecution encompasses more than just physical harm. The Supreme Court has held that persecution is a broader concept than threats to “life or freedom.”<sup>17</sup>

The U.S. Court of Appeals for the Ninth Circuit has defined “persecution” as “infliction of suffering or harm upon those who differ . . . in a way regarded as offensive” and “oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate.”<sup>18</sup> Such harm could include severe economic deprivation.<sup>19</sup>

Similarly, the Seventh Circuit described persecution as “punishment or the infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate.”<sup>20</sup> The term “persecution” includes actions less severe than threats to life or freedom. Non-life threatening violence and physical abuse also fall within the definition of persecution.<sup>21</sup> However, “actions must rise above the level of mere ‘harassment’ to constitute persecution.”<sup>22</sup> More recently, the Seventh Circuit has faulted the BIA for failing to distinguish “. . . among three forms of oppressive behavior” that an applicant might experience: discrimination, harassment, and persecution.<sup>23</sup> The court offered the following definitions, in the absence of an agency definition:

- Discrimination “refers to unequal treatment, and is illustrated historically by India’s caste system and the Jim Crow laws in the southern U.S. states.”<sup>24</sup>
- Harassment “involves targeting members of a specified group for adverse treatment, but without the application of significant physical force.”<sup>25</sup>
- Persecution is “the use of significant physical force against a person’s body, or the infliction of comparable physical harm without direct application of force (locking a

<sup>17</sup> *INS v. Stevic*, 467 U.S. 407, 428 fn. 22 (1984).

<sup>18</sup> *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969); *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985).

<sup>19</sup> *Kovac*, 407 F.2d at 107.

<sup>20</sup> *Tamas-Mercea v. Reno*, 222 F.3d 417, 424 (7th Cir. 2000).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Stanojkova v. Holder*, 645 F.3d 943 (7th Cir. 2011).

<sup>24</sup> *Id.* at 947-48.

<sup>25</sup> *Id.* at 948.

person in a cell and starving him would be an example), or nonphysical harm of equal gravity,” such as refusing to allow a person to practice his religion or pointing a gun at a person’s head.<sup>26</sup>

The court then went on to distinguish between harassment and persecution as being the difference “between the nasty and the barbaric, or alternatively between wishing you were living in another country and being so desperate that you flee without any assurance of being given refuge in any other country.”<sup>27</sup>

The First Circuit has described persecution as an experience that “must rise above unpleasantness, harassment and even basic suffering.”<sup>28</sup> There is no requirement that an individual suffer “serious injuries” to be found to have suffered persecution.<sup>29</sup> However, the presence or absence of physical harm is relevant in determining whether the harm suffered by the applicant rises to the level of persecution.<sup>30</sup>

Serious threats made against an applicant may constitute persecution even if the applicant was never physically harmed.<sup>31</sup> Under some circumstances, a threat may be sufficiently serious and immediate to constitute persecution even if it is not explicit.<sup>32</sup> Consider the following issues to explore when evaluating whether a threat is serious enough to rise to the level of persecution:

- Has the persecutor attempted to act on the threat?<sup>33</sup>
- Is the nature of the threat itself indicative of its seriousness?<sup>34</sup>
- Has the persecutor harmed or attempted to harm the applicant in other ways?<sup>35</sup>
- Has the persecutor attacked, harassed, or threatened the applicant’s family?<sup>36</sup>

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000).

<sup>29</sup> *Asani v. INS*, 154 F.3d 719, 723 (7th Cir. 1998); *Mihaley v. Ashcroft*, 388 F.3d 722, 730 (9th Cir. 2004); *Sanchez-Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223 (11th Cir. 2007).

<sup>30</sup> *Ruiz v. Mukasey*, 526 F.3d 31, 37 (1st Cir. 2008).

<sup>31</sup> *Salazar-Paucar v. INS*, 281 F.3d 1069, 1074 (9th Cir. 2002), amended by *Salazar-Paucar v. INS*, 290 F.3d 964 (9th Cir. 2002).

<sup>32</sup> *Aldana-Ramos v. Holder*, 757 F.3d 9, 17 (1st Cir. 2014).

<sup>33</sup> *Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000) (death threats alone may constitute persecution).

<sup>34</sup> *Garrovillas v. INS*, 156 F.3d 1010, 1016 (9th Cir. 1998) (three letters within three months containing death threats constituted persecution).

<sup>35</sup> *Mejia v. U.S. Att’y Gen.*, 498 F.3d 1253, 1257-58 (11th Cir. 2007).

- Has the persecutor carried out threats issued to others similarly situated to the applicant?<sup>37</sup>
- Did the applicant suffer emotional or psychological harm as a result of the threat(s)?<sup>38</sup>

The federal courts, as well as the BIA, have held that cumulative instances of harm, considered in totality, may constitute persecution on account of a protected characteristic, so long as the discrete instances of harm were each inflicted on account of a protected characteristic.<sup>39</sup>

You should evaluate the entire scope of harm experienced and feared by the applicant to determine if he or she was persecuted and fears persecution.

### 3.2.4 Guidance from the UNHCR Handbook

The UNHCR Handbook explains the following:<sup>40</sup>

- A threat to life or freedom, or other serious violation of human rights on account of any of the protected grounds is always persecution.
- Other, less serious harm may constitute persecution depending on the circumstances.
- Acts that do not amount to persecution when considered separately can amount to persecution when considered cumulatively.

### 3.2.5 General Considerations

#### Individual Circumstances

It is important to take into account the individual circumstances of each case and to consider the feelings, opinions, age, and physical and psychological characteristics of the applicant in determining whether the harm suffered or feared rises to the level of persecution.<sup>41</sup> For example, one may hold passionate political or religious convictions, the hindrance of which would cause great suffering; while another may not have such strong convictions.<sup>42</sup>

<sup>36</sup> *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997); *Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000); *Sanchez Jimenez v. U.S. Atty Gen.* 492 F.3d 1223, 1233 (11th Cir. 2007).

<sup>37</sup> *Garrovillas v. INS*, 156 F.3d 1010, 1016 (9th Cir. 1998).

<sup>38</sup> For additional information, see section on *Psychological Harm*.

<sup>39</sup> *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000); *Singh v. INS*, 94 F.3d 1353, 1360 (9th Cir. 1996); *Korablina v. INS*, 158 F.3d 1038, 1045 (9th Cir. 1998); *Matter of O-Z-& I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998); cf. *Mihalev v. Ashcroft*, 388 F.3d 722, 728 (9th Cir. 2004).

<sup>40</sup> UNHCR Handbook, paras. 51-55.

<sup>41</sup> *Id.* at para. 52.

<sup>42</sup> *Id.* at para. 40.

## Age

In assessing whether harm rises to the level of persecution, you should determine the age of the applicant at the time the harm occurred and determine if age is a factor that should be considered.<sup>43</sup> For example, the effect of similar circumstances might be more severe on a child or an elderly person than they may be on others. Harm that may not rise to the level of persecution for an adult may be persecution if the harm is inflicted on a child. In considering whether past harm suffered by a child rises to the level of persecution, it is important to take into account a child's young age and dependence on family and community.<sup>44</sup>

## No Set Number of Incidents Required

There is no minimum number of acts or incidents that must occur in order to establish persecution.<sup>45</sup> One serious incident or threat may constitute persecution, or there may be several incidents or acts, which considered together, constitute persecution.

### 3.3 Human Rights Violations

Violations of "core" or "fundamental" human rights, prohibited by international law, may constitute harm amounting to persecution. These rights include freedom from:<sup>46</sup>

- arbitrary deprivation of life
- genocide
- slavery
- torture and other cruel, inhuman, or degrading treatment
- prolonged detention without notice of and an opportunity to contest the grounds for detention
- rape and other severe forms of sexual violence

Torture can take a wide variety of forms. It can include severe physical pain by beating or kicking, or pain inflicted with the help of objects such as canes, knives, cigarettes, or metal objects that transmit electric shock. Torture also includes the deliberate infliction of

<sup>43</sup> *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006); *Ordonez-Quino v. Holder*, 760 F.3d 80, 93 (1st Cir. 2014).

<sup>44</sup> For additional information, see RAIO Training module, *Children's Claims*.

<sup>45</sup> See, e.g., *Vaduya v. INS*, 131 F.3d 689, 690 (7th Cir. 1997); and *Lunaj v. Gonzales*, 462 F.3d 574, 577 (6th Cir. 2006).

<sup>46</sup> See Guy S. Goodwin-Gill, *The Refugee in International Law Second Edition* (New York: Oxford University Press, 1998), pp.68-9; and James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1992), p. 109.

severe mental suffering.<sup>47</sup> Torture will always rise to the level of persecution. Keep in mind, however, that for purposes of asylum or refugee status, as opposed to protection under the Convention Against Torture, torture must have been inflicted on account of one of the five protected grounds. Convention Against Torture protection is available in immigration court removal proceedings, see Asylum Lesson Plans on Credible Fear and Reasonable Fear.

Other fundamental rights are also protected by customary international law, such as the right to recognition as a person in the law, and the right to freedom of thought, conscience, and religion or belief.<sup>48</sup> Deprivation of these rights may also constitute persecution.<sup>49</sup>

### Examples

- The BIA has found that the enforcement of coercive family planning policy through forced abortion or sterilization is a violation of fundamental human rights. Forced abortion or sterilization deprives the individual of the right to make individual or conjugal decisions regarding reproductive rights.<sup>50</sup>
- The Third Circuit has stated that compelling an individual to engage in conduct that is abhorrent to that individual's deepest beliefs may constitute persecution.<sup>51</sup>
- UNHCR guidelines on religious-based refugee claims indicate that forced compliance could constitute persecution "if it becomes an intolerable interference with the individual's own religious belief, identity, or way of life and/or if noncompliance would result in disproportionate punishment."<sup>52</sup>

## 3.4 Discrimination and Harassment

<sup>47</sup> J. Herman Burgers & Hans Danielius, *A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1988), pp. 117-18. For additional information, see RAIIO Training module, *International Human Rights Law* (section on *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).

<sup>48</sup> Guy S. Goodwin-Gill, *The Refugee in International Law Second Edition* (New York: Oxford University Press, 1998), p.69.

<sup>49</sup> For additional information, see RAIIO Training module, *The International Religious Freedom Act (IRFA) and Religious Persecution Claims*.

<sup>50</sup> See *Matter of S-L-L*, 24 I&N Dec. 1, 5-7 (BIA 2006), (en banc), overruled on other grounds by *Matter of J-S*, 24 I&N Dec. 520 (AG 2008); *Matter of Y-T-L*, 23 I&N Dec. 601, 607 (BIA 2003); UNHCR, *UNHCR Note on Refugee Claims Based on Coercive Family Planning Laws or Policies* (Geneva: Aug. 2005).

<sup>51</sup> *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).

<sup>52</sup> UNHCR, *Guidelines on International Protection: Religion-Based Refugee Claims Under Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, (HCR/GIP/04/06, 28 April 2004), para. 21.

Less preferential treatment and other forms of discrimination and harassment generally are not considered persecution.<sup>53</sup> Where discriminatory practices or instances of harassment accumulate or increase in severity to the extent that they lead to consequences of a substantially prejudicial nature, adverse actions that would themselves constitute only discrimination or harassment may, cumulatively, rise to the level of persecution.<sup>54</sup>

The Second Circuit Court of Appeals has indicated that differentiating between harassment and persecution can be a matter of degree and that adjudicators must consider the context in which mistreatment occurs.<sup>55</sup> A minor beating may constitute only harassment when inflicted by a non-governmental entity. In the context of an arrest or detention by a government official, however, a minor beating, if inflicted on account of a protected characteristic, may rise to the level of persecution.

The fact that a non-citizen does not enjoy all of the same rights as citizens in the country of last habitual residence is generally, by itself, not harm sufficient to rise to the level of persecution.<sup>56</sup>

### *Examples*

- Discrimination did not rise to the level of persecution against an Armenian living in Russia when it included merely harassment and pushing by Russian officers because of ethnicity and being denied a job because “there were no jobs for Armenians.”<sup>57</sup>
- An Egyptian Coptic Christian claimed that his career as a medical doctor would suffer because of discrimination against Christians. The Ninth Circuit found that this level of discrimination was insufficient to amount to persecution.<sup>58</sup> In contrast, the inability to practice medicine through the invalidation of a medical degree does amount to persecution when it is on account of the applicant’s ethnicity.<sup>59</sup>

### *General Factors to Consider*

Some relevant questions to consider in determining whether the discrimination and harassment of the applicant amount to persecution are:

<sup>53</sup> See UNHCR Handbook, paras. 54-55; *Stanojkova v. Holder*, 645 F.3d 943, 947-948 (7th Cir. 2011); *Matter of A-E-M-*, 21 I&N Dec. 1157, 1159 (BIA 1998); *Matter of V-F-D-*, 23 I&N Dec. 859, 863 (BIA 2006); *Baka v. INS*, 963 F.2d 1376, 1379 (10th Cir. 1992); *Mikhailevitch v. INS*, 146 F.3d 384, 390 (6th Cir. 1998).

<sup>54</sup> *Ivanishvili v. USDQJ*, 433 F.3d 332, 342 (2d Cir. 2006).

<sup>55</sup> *Beskovic v. Gonzales*, 467 F. 3d 223, 226 (2d Cir. 2006).

<sup>56</sup> *Ahmed v. Ashcroft*, 341 F.3d 214, 217 (3d Cir. 2003); *Najjar v. Ashcroft*, 257 F.3d 1262, 1291 (11th Cir. 2001); *Faddoul v. INS*, 37 F.3d 185, 189 (5th Cir. 1994).

<sup>57</sup> *Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000).

<sup>58</sup> *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir.1995); cf. *Mansour v. Ashcroft*, 390 F.3d 667 (9th Cir. 2004).

<sup>59</sup> *Stserba v. Holder*, 646 F.3d 964, 976 (6th Cir. 2011).

- Was the harm actually persecution, not merely discrimination or harassment?
- How long has the discrimination or harassment lasted?
- Which human rights were affected?
- How has the discrimination or harassment affected the particular applicant?
- How many types of discriminatory practices or how much harassment has been imposed on the applicant, cumulatively?
- Has there been any escalation over time in the frequency or seriousness of the discrimination or harassment or has it remained at the same level over time?

Some significant factors to consider in determining whether discrimination and harassment amount to persecution include:

- serious restrictions on the right to earn a livelihood<sup>60</sup>
- serious restrictions on the access to normally available educational facilities
- arbitrary interference with a person's privacy, family, home, or correspondence
- relegation to substandard dwellings
- exclusions from institutions of higher learning
- enforced social or civil inactivity
- passport denial
- constant surveillance
- pressure to become an informer
- confiscation of property
- the accumulation and type of discriminatory practices or harassment that have been imposed on the applicant

Generally none of these factors, by themselves, would be considered to rise to the level of severity necessary to constitute persecution, but may, on a case by case basis, be deemed to rise to the level of persecution. Each case must be judged individually based on the unique facts of that claim.

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<sup>60</sup> See, e.g., *Gormley v. Ashcroft*, 364 F.3d 1172, 1179 (9th Cir. 2004) (in rejecting claim, court relied on fact that South African government provided unemployment compensation to couple laid off pursuant to affirmative action).

### 3.5 Arrests and Detention

In evaluating whether a detention is persecution, consider:

- length of the detention
- legitimacy of the government action
- mistreatment during the detention
- judicial processes or due process rights accorded<sup>61</sup>

Generally, a brief detention without mistreatment will not constitute persecution. Prolonged detention is a deprivation of liberty, which may constitute a violation of a fundamental human right and amount to persecution. Similarly, multiple brief detentions may, considered cumulatively, amount to persecution. Evidence of mistreatment during detention also may establish persecution.<sup>62</sup>

#### *Examples*

- A Chinese Christian was arrested during an underground religious service, detained for seven days, and repeatedly beaten. On one occasion, he was chained to an iron bar outside in the rain for several hours, causing him to become ill. The Eleventh Circuit Court of Appeals held that the evidence compelled the conclusion that the harm the applicant suffered rose to the level of persecution.<sup>63</sup>
- A Kosovar Albanian was interrogated on three occasions by Serbian police. One time, during a 24-hour detention, he suffered an injury to his hands caused by the police. The Seventh Circuit held that substantial evidence supported a finding that the applicant had not suffered past persecution.<sup>64</sup>
- A 16-year old Chinese girl was detained for two days by police, during which time she was pushed and her hair was pulled, she was expelled from school, and her home was ransacked by police. The Seventh Circuit held that substantial evidence supported a finding that the applicant had not suffered past persecution.<sup>65</sup>

<sup>61</sup> For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>62</sup> *Asani v. INS*, 154 F.3d 719, 723 (7th Cir. 1998) (the court instructed the BIA on remand to apply the correct persecution standard and questioned the BIA, using the incorrect standard applied, "If having two teeth knocked out and being deprived of sufficient food and water are not 'serious injuries' or 'physical harm,' what is?")

<sup>63</sup> *Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1237-1239 (11th Cir. 2013).

<sup>64</sup> *Prela v. Ashcroft*, 394 F.3d 515, 518 (7th Cir. 2005).

<sup>65</sup> *Mei Dan Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004).



- A Chinese national was detained at a police station for three days, during which time he was interrogated for two hours and hit on his back with a rod approximately ten times, causing him pain and temporary red marks, but not requiring any medical treatment. The Ninth Circuit found that the facts did not compel a finding of past persecution.<sup>66</sup>
- A Bulgarian Christian was detained by police twice, each for two days, and on a third occasion was beaten by police in her home, resulting in a miscarriage of her pregnancy. The Seventh Circuit found that treatment suffered by the applicant was so severe as to compel a finding of past persecution.<sup>67</sup>
- A Bulgarian of Roma descent was detained by police for ten days, during which time he was beaten daily with sandbags and forced to perform heavy labor. The applicant suffered no significant bodily injury. The Ninth Circuit found that treatment suffered by the applicant was so severe as to compel a finding of past persecution.<sup>68</sup>

### 3.6 Economic Harm

To rise to the level of persecution, economic harm must be deliberately imposed and severe.<sup>69</sup> Severe economic harm must be harm “above and beyond [the economic difficulties] generally shared by others in the country of origin and involve more than the mere loss of social advantages or physical comforts.”<sup>70</sup>

In *Matter of T-Z-*, the Board held that adjudicators should apply the following test in determining whether economic harm amounts to persecution: whether the applicant suffered or faces a “deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.”<sup>71</sup> An applicant, however, need not demonstrate a total deprivation of livelihood or a total withdrawal of all economic opportunity in order to demonstrate harm amounting to persecution.<sup>72</sup>

In this decision, the BIA highlighted some factors to consider in assessing whether the fines and job loss at issue amounted to persecution,<sup>73</sup> including

<sup>66</sup> *Gu v. Gonzales*, 454 F.3d 1014, 1021 (9th Cir. 2006).

<sup>67</sup> *Vladimirova v. Ashcroft*, 377 F.3d 690, 693 (7th Cir. 2004).

<sup>68</sup> *Mihalev v. Ashcroft*, 388 F.3d 722, 730 (9th Cir. 2004).

<sup>69</sup> See *Minwalla v. INS*, 706 F.2d 831, 835 (8th Cir. 1983); *Ambati v. Reno*, 233 F.3d 1054, 1060 (7th Cir. 2000); *Guan Shan Liao v. INS*, 293 F.3d 61, 69-70 (2d Cir. 2002).

<sup>70</sup> *Matter of T-Z-*, 24 I&N Dec. 163, 173 (BIA 2007).

<sup>71</sup> *Matter of T-Z-*, 24 I&N Dec. 163, 173 (BIA 2007). See also *Vicente-Elias v. Mukasey*, 532 F.3d 1086 (10th Cir. 2008) (adopting *Matter of T-Z-* standard on economic persecution); *Borca v. INS*, 77 F.3d 210 (7th Cir. 1996) (holding that total economic deprivation is not required to establish persecution).

<sup>72</sup> *Matter of T-Z-*, 24 I&N Dec. at 173.

<sup>73</sup> *Id.* at 173-75.

- the applicant's and his or her household's earnings
- the applicant's net worth
- other employment available to the applicant
- loss of housing
- loss of health benefits
- loss of school tuition and educational opportunities
- loss of food rations
- confiscation of property, including household furniture and appliances
- any other relevant factor

In *Vincent v. Holder*, the Sixth Circuit held that the burning of the applicant's house was "sufficiently severe and targeted to constitute persecution," relying on *T-Z*'s holding that a large-scale confiscation of property may in itself constitute persecution.<sup>74</sup> In contrast, in *Yun Jian Zhang v. Gonzales*, the Seventh Circuit held that the partial destruction of the applicant's house was not severe economic harm where damage could be repaired, particularly given that the applicant worked in construction; the applicant continued to be gainfully employed; the family found shelter at his in-laws' home; and the government did not continue to harm him or his family.<sup>75</sup>

In *Zhen Hua Li v. Att'y Gen. of U.S.*, the Third Circuit held that a fine worth eighteen months' salary, combined with being blacklisted from any government employment and from most other forms of legitimate employment, the loss of health benefits, school tuition, and food rations, and the confiscation of his household furniture and appliances, would constitute the deliberate imposition of severe economic disadvantage that could threaten his family's freedom, if not their lives.<sup>76</sup> In *Mu Ying Wu v. U.S. Att'y Gen.*, on the other hand, the Eleventh Circuit held that substantial evidence supported a finding that a fine that would amount to about 60 to 100 per cent of the applicant's family's annual income, which could be paid in installments or which the applicant could avoid paying by forgoing free medical care and public education for her children, would not, without any additional harm, rise to the level of persecution.<sup>77</sup>

<sup>74</sup> *Vincent v. Holder*, 632 F.3d 351, 355 (6th Cir. 2011), citing *T-Z*, 24 I&N Dec. at 174.

<sup>75</sup> *Yun Jian Zhang v. Gonzales*, 495 F.3d 773, 777-78 (7th Cir. 2007).

<sup>76</sup> *Zhen Hua Li v. Att'y Gen. of U.S.*, 400 F.3d 157, 166-69 (3d Cir. 2005).

<sup>77</sup> *Mu Ying Wu v. U.S. Att'y Gen.*, 745 F.3d 1140, 1157 (11th Cir. 2014).

Applying the BIA's standard in *Matter of T-Z-*, the Eighth Circuit has held that being relegated to low-level jobs despite advanced schooling did not amount to severe economic deprivation. Because private employment remained available, the economic discrimination was not sufficiently harsh so as to constitute persecution.<sup>78</sup>

An applicant's loss of employment as a result of a government-sponsored employment program instituted to correct past discrimination is not sufficient to support a finding of past persecution on account of a protected characteristic where the government provided considerable unemployment compensation to the applicant, and other similarly situated individuals were able to maintain or regain employment.<sup>79</sup> On the other hand, a program of state-sponsored economic discrimination against a disfavored group within the society that could lead to extreme economic harm may amount to past persecution.<sup>80</sup>

### 3.7 Psychological Harm

#### 3.7.1 Psychological Harm Alone May Be Sufficient to Constitute Persecution

You should always consider evidence, including the applicant's testimony, that the events he or she experienced caused psychological harm.<sup>81</sup> Psychological harm alone may rise to the level of persecution.<sup>82</sup> Evidence of the applicant's psychological and emotional characteristics, such as the applicant's age or trauma suffered as a result of past harm, are relevant to determining whether psychological harm amounts to persecution.

#### 3.7.2 Under The Convention Against Torture, Severe Mental Harm Alone May Be Sufficient to Constitute Torture

Under the Convention Against Torture, severe mental suffering may constitute torture under certain circumstances.<sup>83</sup> Some examples of mental suffering that fall within this definition of torture, and thus would be considered serious enough to rise to the level of persecution, include:

<sup>78</sup> *Beck v. Mukasey*, 527 F.3d 737, 741 (8th Cir. 2008).

<sup>79</sup> *Gormley v. Ashcroft*, 364 F.3d 1172 (9th Cir. 2004).

<sup>80</sup> *Hinri v. Ashcroft*, 378 F.3d 932, 937 (9th Cir. 2004) (finding that Palestinian applicants were members of a persecuted minority who, due to Kuwaiti state-sponsored economic discrimination, would be subject to denial of right to work, attend school, and to obtain drinking water if returned to Kuwait).

<sup>81</sup> For additional information, see RAIO Training module, *Interviewing Survivors of Torture*.

<sup>82</sup> *Ouk v. Gonzales*, 464 F.3d 108, 111 (1st Cir. 2006) ("a finding of past persecution might rest on a showing of psychological harm"); *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004) ("Persecution may be emotional or psychological, as well as physical."). The Fourth Circuit held that in withholding of removal cases only, which are not at issue in asylum or refugee adjudications, psychological harm alone cannot amount to persecution. *Niang v. Gonzales*, 492 F.3d 505, 512 (4th Cir. 2007).

<sup>83</sup> See 136 Cong. Rec. at S17, 491-2 (daily ed. October 27, 1990); UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465; and 8 C.F.R. § 208.18.

- mental harm caused by the intentional infliction or threatened infliction of severe physical pain or suffering
- administration or threatened administration of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality
- threat of imminent death
- threat that another person will imminently be subjected to death or severe physical pain or suffering.

### 3.7.3 Other Forms of Mental Harm May Be Sufficient to Constitute Persecution

Other forms of mental harm that amount to persecution, but may not amount to torture include:

- receipt of threats over a prolonged period of time, causing the applicant to live in a state of constant fear
- being forced to witness the harm of others<sup>84</sup>
- forced compliance with religious laws or practices that are abhorrent to an applicant's beliefs

For example, the Ninth Circuit found in *Mashiri v. Ashcroft* that the emotional trauma suffered by a native of Afghanistan living in Germany was sufficiently severe to amount to persecution. The cumulative harm resulted from watching as a foreign-owned store in her neighborhood was burned, finding her home vandalized and ransacked, running from a violent mob that attacked foreigners in her neighborhood, reading in the newspaper about a man who lived along her son's path to school who shot over the heads of two Afghan children, and witnessing the results of beatings of her husband and children.<sup>85</sup>

The U.S. Court of Appeals for the Third Circuit has indicated that forced compliance with laws that are deeply abhorrent to a person's beliefs may constitute persecution. For example, being forced to renounce religious beliefs or to desecrate an object of religious importance might be persecution if the victim holds strong religious beliefs.<sup>86</sup>

## 3.8 Sexual Harm

### 3.8.1 Rape and Other Sexual Abuse

<sup>84</sup> See *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004); *Khup v. Ashcroft*, 376 F.3d 898, 904 (9th Cir. 2004). But see *Shoaira v. Ashcroft*, 377 F.3d 837, 844 (8th Cir. 2004) (upholding a finding that the emotional harm suffered did not rise to the level of persecution).

<sup>85</sup> *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004).

<sup>86</sup> *Fatin v. INS*, 12 F.3d 1233, 1241-42 (3d Cir. 1993).

Rape and other severe forms of sexual harm constitute harm amounting to persecution, as they are forms of serious physical harm.<sup>87</sup> Rape is regarded as a “form of aggression constituting an egregious violation of humanity,” which can constitute torture.<sup>88</sup>

You should also consider less severe sexual harm when determining whether harm amounts to persecution.<sup>89</sup> You must examine the entire circumstances of the case before you, including any resulting psychological harm, the social or cultural perceptions of the applicant as a victim of the sexual harm, and other effects on the applicant resulting from the harm.

### *Example*

The applicant was stopped by the police several times and three times was stripped and twice threatened with sodomy by a gun barrel. In overturning the IJ’s decision, the court stated, “[m]ost egregiously, the IJ failed to consider the significance of the sexual humiliation that occurred on three occasions. This court has previously noted that abuse of this nature can make all the difference.”<sup>90</sup>

### 3.8.2 Female Genital Mutilation or Female Genital Cutting

The practice of female genital mutilation (FGM), also known as female genital cutting (FGC), is objectively a sufficiently serious form of harm to constitute persecution.<sup>91</sup> Generally, in determining whether FGM is persecution to the applicant, you should consider whether the applicant experienced or would experience the procedure as serious harm.<sup>92</sup> The BIA in *Matter of S-A-K- & H-A-H-* recognized that FGM imposed on a young child constituted past persecution.<sup>93</sup> The BIA held that she and her mother had suffered an atrocious form of persecution that resulted in continuing physical pain and discomfort and that they merited humanitarian asylum based on the severity of their harm.<sup>94</sup>

<sup>87</sup> See Memorandum from Phyllis Coven, INS Office of International Affairs, to INS Asylum Officers and HQASM Coordinators, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women*, (26 May 1995), p.9.

<sup>88</sup> See UNHCR, *Guidelines on International Protection: Gender Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/02, 7 May 2002), para. 9; *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1097-98 (9th Cir. 2000); *Lopez-Galarza v. INS*, 99 F.3d 954, 959 (9th Cir. 1996); and *Zubeda v. Ashcroft*, 333 F.3d 463, 472 (3d Cir. 2003).

<sup>89</sup> See, e.g., *Angoucheva v. INS*, 106 F.3d 781, 790 (7th Cir. 1997).

<sup>90</sup> *Haider v. Holder*, 595 F.3d 276, 288 (6th Cir. 2010).

<sup>91</sup> See *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996)

<sup>92</sup> U.S. Department of Justice, *Asylum and Withholding Definitions*, 65 Fed. Reg. 76588, 76590, Dec. 7, 2000. The proposed rule did not become a regulation but represents the agency’s view on the topic.

<sup>93</sup> *Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464, 465 (BIA 2008)

<sup>94</sup> *Id.* at. 465-66.

Even in countries that have prohibited the practice of FGM, the government may condone, tolerate, or be unable to protect against the practice. The fact that a state has enacted a law prohibiting FGM does not necessarily indicate that the government is willing and able to protect an applicant.<sup>95</sup>

### 3.9 Harm to Family Members or Other Third Parties

Harm to an applicant's family member or another third party may constitute persecution of the applicant where the harm the applicant suffers is serious enough to amount to persecution and where the persecutor's motivation in harming the third party is to harm the applicant.<sup>96</sup> The BIA has held that emotional harm may rise to the level of persecution where a person "persecutes someone close to an applicant, such as a spouse, parent, child or other relative, with the intended purpose of causing emotional harm to the applicant, but does not directly harm the applicant himself."<sup>97</sup> For example, the wife of a political dissident may be abducted and killed as a way of teaching her husband a political lesson.

An applicant may suffer severe psychological harm from the knowledge that another individual has been harmed in an effort to persecute the applicant.<sup>98</sup> The harm may be intensified if the applicant feels that his or her status or actions led the persecutor to harm the family member or if the applicant witnessed the harm to the family member.<sup>99</sup> The witnessing of harm to a family member or third party will not constitute persecution of the applicant, unless the intent in harming the third party is to cause harm to the applicant, the applicant's family, or all members of a group to which the applicant belongs on account of a protected characteristic.<sup>100</sup> Furthermore, as explained above, harm that would constitute torture will always rise to the level of persecution, and the definition of torture under U.S. law includes threats that another person would be imminently subjected to death or severe physical pain or suffering.<sup>101</sup>

<sup>95</sup> For additional information, see section, *Entity the Government is Unable or Unwilling to Control*.

<sup>96</sup> See Memorandum from Joseph Langlois, Director, Asylum Division, INS Office of International Affairs, to Asylum Office Directors, et al., *Persecution of Family Members*, (30 June 1997).

<sup>97</sup> *Matter of A-K-*, 24 I&N Dec 275 (BIA 2007); see also *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013) (finding that the emotional harm an applicant suffered from the death of her child constituted persecution where doctors had denied the child medical treatment because of the mother's race and the parents' religion).

<sup>98</sup> For additional information, see RAIIO Training module, *Interviewing - Survivors of Torture*.

<sup>99</sup> See Memorandum from Joseph Langlois, Director, Asylum Division, INS Office of International Affairs, to Asylum Office Directors, et al., *Persecution of Family Members*, (30 June 1997).

<sup>100</sup> See *N.L.A. v. Holder*, 744 F.3d 425, 432-433 (7th Cir. 2014) (holding that a direct threat to an applicant's family member may cause suffering that constitutes persecution of an applicant where the threat is intended to target the entire family); *Panoto v. Holder*, 770 F.3d 43, 47 (1st Cir. 2014) (finding that the harm an Indonesian Christian applicant suffered when a bomb was planted at her church and, within six months, she witnessed a fellow Christian passenger being brutally murdered during a ferry highjacking by an anti-Christian group could constitute persecution of the applicant on account of her religion).

<sup>101</sup> 8 C.F.R. § 208.18(a)(4)(iv); see also Section 3.3, Human Rights Violations.

For example, if a persecutor severely assaults an applicant's spouse and indicates that the harm was motivated by the applicant's political activity, the applicant may be able to establish that he was persecuted on account of his political opinion. However, psychological harm suffered by an applicant based on the harm to a family member would not constitute persecution if the family member was targeted solely because of the family member's own protected characteristic rather than the protected characteristic(s) of the applicant. In the latter case, the harm was not directed at the applicant.

#### 4 IDENTIFYING A PERSECUTOR

Inherent in the meaning of persecution is the principle that the harm that an applicant suffered or fears must be inflicted either by the government of the country where the applicant fears persecution, or by a person or group that the government is unable or unwilling to control.<sup>102</sup>

The UNHCR Handbook, para. 65 provides context:

Persecution is normally related to the action taken by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizable fractions of the population do not respect the religious beliefs of their neighbors. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

##### 4.1 The Government

In cases in which the applicant was harmed or fears harm by the government, the applicant must establish the following:

- the harm or feared harm was on account of a protected characteristic
- the harm or feared harm is sufficiently serious to rise to the level of persecution
- the persecutor or feared persecutor is an agent or agents of the government

The Court of Appeals for the Ninth Circuit has stated that where a government agent is responsible for the persecution, it is unnecessary to consider whether the applicant sought protection from the police or other government entity.<sup>103</sup>

<sup>102</sup> See *Matter of Villalita*, 20 I&N Dec. 142, 147 (BIA 1990); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); and *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (en banc).

<sup>103</sup> *Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004).

## 4.2 Entity the Government Is Unable or Unwilling to Control

### 4.2.1 General Principles

An applicant may establish that he or she has suffered or will suffer persecution by a non-government actor if the applicant demonstrates that the government of the country from which the applicant fled is unable or unwilling to control the entity doing the harm.<sup>104</sup> The applicant is not required to show direct government involvement or complicity with the non-government actor.

In determining whether a government is unable or unwilling to control the entity that harmed or seeks to harm the applicant, you should address whether:

- there were reasonably sufficient governmental controls and restraints on the entity[ies] that harmed the applicant
- the government had the ability and will to enforce those controls and restraints with respect to the entity that harmed the applicant
- the applicant had access to those controls and constraints
- the applicant attempted to obtain protection from the government and the government's response, or failure to respond, to those attempts<sup>105</sup>

### 4.2.2 Guidance from Federal Courts

In determining whether a government is unable or unwilling to protect, the Ninth Circuit Court of Appeals looks at both general country conditions and the applicant's specific circumstances:

While the acts of persecution were not perpetrated directly by government officials, the widespread nature of the persecution of ethnic Armenians documented by the State Department Country Report, combined with the police officer's response when Mr. Andriasian turned to him for help, clearly establishes that the government of Azerbaijan either could not or would not control Azeris who sought to threaten and harm ethnic Armenians living in their country.<sup>106</sup>

A number of courts have explained that the requisite connection to government action or inaction may be shown in one of the following three ways:

- evidence that government actors committed or instigated the acts

<sup>104</sup> See *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004); *Nabulwala v. Gonzales*, 481 F.3d 1115, 1118 (8th Cir. 2007).

<sup>105</sup> *Surita v. INS*, 95 F.3d 814, 819-20 (9th Cir. 1996); *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007).

<sup>106</sup> *Andriasian v. INS*, 180 F.3d 1033, 1042-43 (9th Cir. 1999).



- evidence the government actors condoned the acts
- evidence of an inability on the part of the government to prevent the acts<sup>107</sup>

The First Circuit has further explained that the applicant must demonstrate more than “a general difficulty preventing the occurrence of particular future crimes” and that “where a government is making every effort to combat violence by private actors, and its inability to stop the problem is not distinguishable from any other government’s struggles, the private violence has no government nexus and does not constitute persecution.”<sup>108</sup>

#### 4.2.3 Efforts to Gain Government Protection or an Explanation of Risk or Futility

To demonstrate that the government is unable or unwilling to protect a refugee or asylum applicant, the applicant must show that he or she sought the protection of the government, or provide a reasonable explanation as to why he or she did not seek that protection.<sup>109</sup>

Reasonable explanations for not seeking government protection include evidence that the government has shown itself unable or unwilling to act in similar situations, that the applicant would have increased his or her risk by affirmatively seeking protection, or that the applicant was so young that he or she would not have been able to seek government protection.<sup>110</sup>

In determining whether an applicant's failure to seek protection is reasonable, you should consult and consider country of origin information, in addition to the applicant's testimony.

#### *Examples*

- An Indian Muslim applicant was shot by Hindu extremists during the 2002 riots in Gujarat. While he was in the hospital, a police officer visited him and advised him not to tell anyone the truth about what had happened. The applicant remained in India for four years without ever formally reporting the incident to the police or seeking help from state or federal authorities. He explained that based on what the police officer had told him, he believed that reporting would be futile. Considering country conditions evidence indicating that the Indian government was making significant and often successful efforts to apprehend perpetrators of anti-Muslim violence in Gujarat, the

<sup>107</sup> *Roman v. INS*, 233 F.3d 1027, 1034 (7th Cir. 2000) (citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000)); *Harutyunyan v. Gonzales*, 421 F.3d 64, 68 (1st Cir. 2005); *Shehu v. Gonzales*, 443 F.3d 435, 437-38 (5th Cir. 2006).

<sup>108</sup> *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007); *Khan v. Holder*, 727 F.3d 1, 7 (1st Cir. 2013) (citing *Burbiene v. Holder*, 568 F.3d 251, 255-56 (1st Cir. 2009).

<sup>109</sup> *Roman v. INS*, 233 F.3d 1027, 1035 (7th Cir. 2000).

<sup>110</sup> See *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000); *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1057 (9th Cir. 2006); and *cf. Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

Seventh Circuit held that substantial evidence supported the conclusion that the Indian government was not unwilling or unable to protect him at the time.<sup>111</sup>

- A Colombian applicant who was threatened and attacked several times by the Revolutionary Armed Forces of Colombia (FARC) because of her political activity did not report any of the incidents to the police. The BIA concluded that she had not established that the Colombian government was unwilling or unable to protect her because she did not seek protection from law enforcement. The Eleventh Circuit Court of Appeals held that the BIA erred in its decision because it failed to address the applicant's argument that her testimony and country conditions evidence established that reporting the attacks to law enforcement would have been futile.<sup>112</sup>

#### 4.2.4 Unwilling to Control

There may be situations in which the government is unwilling to control the persecutor for reasons enumerated in the refugee definition (the government shares, or does not wish to oppose, the persecutor's opinion about the applicant's protected characteristic).<sup>113</sup> However, there is no requirement that the government's unwillingness to protect the applicant be motivated by any protected characteristic.<sup>114</sup>

A government may be unwilling to intervene in what are perceived to be domestic disputes within a family, or in disputes between tribes, or in a dispute that involves societal customs.<sup>115</sup> You may need to evaluate country conditions information concerning relevant laws and the enforcement of those laws, as well as the applicant's testimony, to determine if the government is unwilling to control the persecutor.

Evidence that the government is unwilling to control the persecutor could include a failure to investigate reported acts of violence, a refusal to make a report of acts of violence or harassment, closing investigations on bases clearly not supported by the circumstances of the case, statements indicating an unwillingness to protect certain victims of crimes, and evidence that other similar allegations of violence go uninvestigated.<sup>116</sup>

#### 4.2.5 Unable to Control

<sup>111</sup> *Vahora v. Holder*, 707 F.3d 904, 908-909 (7th Cir. 2013).

<sup>112</sup> *Lopez v. U.S. Att'y Gen.*, 504 F.3d 1341, 1345 (11th Cir. 2010).

<sup>113</sup> UNHCR Handbook, para. 65.

<sup>114</sup> *Doe v. Holder*, 736 F.3d 871, 878 (9th Cir. 2013).

<sup>115</sup> UNHCR, *Guidelines on International Protection: Gender Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/02, 7 May 2002), paras. 9, 15 and 19.

<sup>116</sup> *Mashiri v. Ashcroft*, 383 F.3d 1112, 1121 (9th Cir. 2004).

No government can guarantee the safety of each of its citizens or control all potential persecutors at all times. In order for you to find that the government was “unable to control” a non-governmental persecutor when the applicant was harmed, the applicant “must show more than just a difficulty controlling private behavior. Rather, the applicant must show that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims.”<sup>117</sup> Where the state has made reasonable efforts to control the persecutor or protect the applicant, the harm the applicant suffered does not constitute persecution.<sup>118</sup> However, generalized evidence that the government has attempted to control a private persecutor does not preclude you from finding, based on the applicant’s testimony and the record as a whole, that the government was unable or unwilling to control the persecutor in an applicant’s individual case.<sup>119</sup> In most cases, the determination of whether a government is unable to control the entity that harmed the applicant requires careful evaluation of the most current country of origin information available, as well as an evaluation of the applicant’s circumstances.

### Examples

- A Pakistani applicant received death threats from the Taliban after he urged people in his community to oppose them, and his house was attacked with a grenade. He reported the incidents to the police, and they investigated and took statements from witnesses, but they did not apprehend the perpetrators. The First Circuit upheld the BIA’s determination that the applicant had not demonstrated the Pakistani government’s inability to control the persecutors because law enforcement officials had made reasonable efforts to protect him and, according to country conditions evidence, had had some success in combating the Taliban in his area; although the government had not “eradicated” the threat the Taliban posed, a reasonable factfinder could conclude that it was willing and able to control them.<sup>120</sup>
- A Mexican applicant was kidnapped and beaten by the Los Zetas drug cartel because of his own activities opposing Los Zetas while in the Mexican armed forces. The Ninth Circuit held that the BIA’s determination that the Mexican government was willing and able to control the persecutors was in error because it failed to consider significant evidence in the record that the Mexican government’s efforts to control the persecutor had been

<sup>117</sup> *Gutierrez-Vidal v. Holder*, 709 F.3d 728, 732-733 (8th Cir. 2013) (citations omitted); *see also Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005) (holding that the state must provide “protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct”).

<sup>118</sup> *Khan v. Holder*, 727 F.3d 1, 7 (1st Cir. 2013).

<sup>119</sup> *See N.L.A. v. Holder*, 744 F.3d 425, 441-442 (7th Cir. 2014) (holding that the BIA erred in relying solely on country conditions reports indicating that some parts of the Colombian government have recently engaged in efforts to control the FARC and ignoring applicants’ testimony that the police were not willing to help them in their particular situation).

<sup>120</sup> *Khan*, 727 F.3d at 7.

unsuccessful; instead, it had focused solely on the government's willingness.<sup>121</sup>

A government in the midst of a civil war, or one that is unable to exercise its authority over portions of the country may be unable to control the persecutor in areas of the country where its influence does not extend.<sup>122</sup> An evaluation of how people similarly situated to the applicant are treated, even in portions of the country where the government does exercise its authority, is relevant to the determination of whether the government is unable to control the entity that persecuted the applicant.

In order to establish that he or she is a refugee based on past persecution, the applicant is not required to demonstrate that the government was unable or unwilling to control the persecution on a nationwide basis.<sup>123</sup> The applicant may meet his or her burden with evidence that the government was unable or unwilling to control the persecution in the specific locale where the applicant was persecuted.

## 5 ELIGIBILITY BASED ON PAST PERSECUTION

### 5.1 In the Refugee Context: Past Persecution is Sufficient

Overseas, if an applicant for classification as a refugee credibly establishes that the harm he or she suffered in the past rose to the level of persecution, and that the harm was on account of a protected ground, the past persecution, in and of itself, establishes the applicant's eligibility for refugee status. However, officers must still elicit testimony on and assess whether or not an applicant has a well-founded fear of persecution on account of any of the five protected grounds.<sup>124</sup>

### 5.2 In the Asylum Context: Presumption of Well-Founded Fear

In the asylum context, if an applicant has established past persecution on account of a protected characteristic, the applicant is not required to separately establish that his or her fear of future persecution is well-founded.<sup>125</sup> It is presumed that the applicant's fear of future persecution, on the basis of the original claim, is well-founded, and the burden of proof shifts to USCIS to establish by a preponderance of the evidence that,

<sup>121</sup> *Madrigal v. Holder*, 716 F.3d 499, 506-507 (9th Cir. 2013).

<sup>122</sup> *Matter of H-*, 21 I&N Dec. 337, 345 (BIA 1996).

<sup>123</sup> *Mashiri v. Ashcroft*, 383 F.3d 1121, 1122 (9th Cir. 2004).

<sup>124</sup> See RAD Refugee Application Assessment SOP. RAD requires assessment of both past persecution and well-founded fear for several reasons, including situations of split credibility, where the applicant is found not credible on past persecution, but demonstrates a credible, well-founded fear of future persecution. See RAIO Lesson Plan, *Credibility*.

<sup>125</sup> 8 C.F.R. § 208.13(b)(1); see *Matter of A-T-*, 24 I&N Dec. 617 (AG 2008)

- due to a fundamental change in circumstances, the fear is no longer well-founded
- or
- the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.<sup>126</sup>

If USCIS does not meet this burden, the applicant's fear is well-founded. A well-founded fear of persecution on the basis of the original claim means fear of persecution on account of the protected characteristic on which the applicant was found to have suffered past persecution. If USCIS is able to rebut the presumption of well-founded fear, the applicant may still be granted asylum, in the exercise of discretion, based on severe past persecution, or other serious harm. For more information, see [\[ASM Supplement 1\]](#)

## 6 CONCLUSION

An applicant must meet all the elements of the refugee definition in order to establish eligibility for protection as a refugee or asylee. Unlike the international definition, the definition of refugee in the INA allows an applicant to establish eligibility by a showing of past persecution, without having to establish a well-founded fear of persecution in the future. In order to show past persecution the applicant must establish that he or she has suffered harm in the past that rises to the level of severity necessary to constitute persecution, that the harm was inflicted on account of a protected characteristic, and that the agent of harm was either a part of the government, or an entity that the government was unable or unwilling to control.

## 7 SUMMARY

### 7.1 Persecution

To establish persecution, an applicant must prove that the harm he or she experienced was inflicted by the government or an entity the government was unable or unwilling to control.

To establish persecution, the level and type of harm experienced by the applicant must be sufficiently serious to constitute persecution.

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<sup>126</sup> For further information refer to RAIO Training module, *Well-Founded Fear and Matter of A-T-*, 24 I&N Dec. 617 (AG 2008).

There is no single definition of persecution. Guidance may be found in precedent decisions, the UNHCR Handbook, and international human rights law. The determination of whether an act or acts constitute persecution must be decided on a case-by-case basis, taking into account all the circumstances of the case including the physical and psychological characteristics of the applicant.

Serious violations of core or fundamental human rights that are prohibited by customary international law almost always constitute persecution. Less severe human rights violations may also be considered persecution. Discrimination, harassment, and economic harm may be considered persecution, depending on the severity and duration of the harm. The harm may be psychological, such as the threat of imminent death, the threat of infliction of severe physical pain or suffering, or the threat that another person will imminently be subjected to death or severe physical pain or suffering.

Acts that in themselves do not amount to persecution may, when considered cumulatively, constitute persecution.

## 7.2 Eligibility Based on Past Persecution

In the overseas refugee context, an applicant is eligible for refugee status if he or she establishes past persecution on account of one of the five protected grounds. There is no requirement that the applicant have an on-going fear of future persecution. Also, if the past harm is found to have risen to the level of persecution, there is no additional requirement that the harm be particularly severe and compelling in order to grant status on past persecution alone.

In the asylum context, after an applicant has established eligibility through past persecution, you must still consider whether there is a well-founded fear. In this inquiry the burden of proof is on the government to show by a preponderance of the evidence that a well-founded fear no longer exists. If you can show that the applicant no longer has a well-founded fear, the application should be denied or referred as a matter of discretion unless the applicant can show that there are compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution, or that there is a reasonable possibility they would face other serious harm if returned.

PRACTICAL EXERCISESPractical Exercise # 1

- Title: *Persecution Exercise*
- Student Materials:

**Fact Pattern:**

You are the parent of a sixteen year old girl. She attends the local public high school and is a member of the marching band. She is also involved with several extra-curricular activities. She has a 3.8 grade point average and has already been accepted to several distinguished universities.

One activity that she participates in is a student club known as Students for Civic Responsibility, and she is one of the main organizers. Another is Students for Social Change, and she is the Secretary of this club. These clubs have been very active in holding information fairs on a wide range of issues, such as police violence, spouse abuse, corruption in local government, and environmental concerns. These clubs are regularly contributing articles and letters to the local paper, have their own websites, and produce their own monthly newsletters.

One winter day you returned home from work, and your daughter did not come home from band practice at the normal time that she usually arrives home. After a delay of about 40 minutes, you begin to call a few of her friends. They tell you that band practice was cancelled due to the band director's illness, and that there were no after-school activities. The last person you talk to tells you that he saw your daughter talking to some police officers at the parking lot of the school, but his bus pulled away before he could see what happened. You call the school, but at this late hour, there is no answer.

You then call the local police station to find out if there was some problem involving your daughter, and if they know where she is. The duty officer at the station tells you that he does not have any record of any incident involving your daughter, and that there was no incident at the school that day. When you explain that your daughter was last seen talking to police officers at the school, the duty officer tells you that he has no record of the police being at the school that day. You then request to make a missing persons report, but are advised that you must wait 48 hours after the disappearance before they will take a report.

You call all of the other area police departments, but you are told the same thing. You call every person that you can think of that might know of your daughter's

whereabouts, explaining the situation, and asking them for more leads. All of your leads turn up dry.

It is now about 10:00 PM. You get in your car and begin driving throughout the neighborhood, starting with the high school, and working your way out. You drive until 2:00 AM, and then return home. No one is at home and there are no messages on your answering machine. You call out from work the next morning, and repeat the whole process. You finally get the police to accept a missing persons report early. You contact the local television news station and ask for help. They tell you to call them the next day, just in case she shows up.

On the third day you call out from work again and continue to look for your daughter. Once again, there is no luck.

The same on the fourth day. But on the fourth night you get a telephone call at 1:00 AM and you hear your daughter crying and begging you in a shaken voice to pick her up outside the Municipal Building. You speed to the building and find your daughter huddled in a phone booth. You make sure that she is not physically injured, and take her home.

After calming her, you are able to talk to her about what happened. She tells you that the police came to the school and stopped her when she came out of the school. Once they verified her identity, they told her that there was a family emergency, and that she must accompany them to the station. Once at the station, she was handcuffed without explanation, and taken by two men in dark suits to a car, and was driven to another building about an hour away. She was placed in a solitary cell. The men did not talk to her at all, despite her plea for an explanation. She was given two meals each day, and her cell had a sink and faucet with potable water. On the last night, she was taken from her cell, again without explanation, and dropped off in front of the municipal building. She saw the telephone booth and called home. She has no idea who the men were or why she was held for four days.

The next day you call the police and demand an explanation, but they tell you that they do not know what you are talking about. You call a reporter at the local television station and try to explain the situation, but the reporter tells you that, without more information, he cannot help you. In the meantime, your daughter refuses to leave the house, and is afraid to be alone.

Finally, one day you get an anonymous telephone call and the caller tells you that they know that your daughter was under the custody of the FBI. You call the nearest FBI office and demand an explanation. You are simply told that it is none of your business, and that if you persist, you might need several days in a cell.

**Discussion:**

1. Would you conclude that your daughter was a victim of persecution? If so,



why? If not, why not?

### Practical Exercise # 2

- **Title:** *Matter of H- - Past Persecution*
- **Student Materials:**

#### **Fact Pattern:**

The applicant is a native of Somalia and an undisputed member of the Darood clan and the Marehan subclan, an entity which is identifiable by kinship ties and vocal inflection or accent. For 21 years Somalia had been ruled by Mohammed Siad Barre, a member of the Marehan subclan, which constitutes less than 1 percent of the population of Somalia. In December of 1990, an uprising was instituted by members of the other clans, which ultimately caused Mohammed Siad Barre to relinquish his power and to flee the capital city of Mogadishu on January 21, 1991.

As a result of favoritism that had been shown to members of the Marehan subclan during the course of Mohammed Siad Barre's often brutal regime, the clans which rebelled against this regime sought to retaliate against those who had benefited from the regime. The applicant's father, a businessman who had greatly benefited from his membership in the Marehan subclan, was murdered at his place of business in Mogadishu on January 12, 1991, by members of the opposition United Somali Congress, composed mostly of members of the Hawiye clan. The applicant's family home, located in the Marehan section of the city, was targeted 2 days later by the same group. During the course of that attack, the applicant's brother was shot. He was later murdered at the hospital to which he had been brought for the treatment of his injury.

On January 13, 1991, 1 day after the attack on the applicant's home, he fled Mogadishu with his step-mother and younger siblings to a smaller town, Kismayu, which was a stronghold of the Darood clan. Approximately 1 month later, that town was attacked by the United Somali Congress. As a result, the applicant, who was not with his family at the time, was rounded up and detained without charges along with many other Darood clan members. During the course of his 5-day detention, the applicant was badly beaten on his head, back, and forearm with a rifle butt and a bayonet, resulting in scars to his body which remain to the present. A maternal uncle of the applicant, who was a member of the United Somali Congress, recognized him and assisted in his escape, driving him approximately 40 kilometers in the direction of Kenya.

**Discussion:**

1. Is the applicant **unwilling** or **unable** to return to his/her country due to past harm or mistreatment? Yes  No
2. If no, go to Question 3. If yes, identify the perpetrator(s) of, and describe, harm or mistreatment.

Perpetrators:

3. Harm/Mistreatment:

4. Does the claimed harm or mistreatment rise to the level of persecution? If no, explain. Yes  No

**Practical Exercise # 3**

- **Title:** *Applicant Testimony and Interview Notes – Past Persecution*
- **Student Materials:**

**Fact Pattern:**

The Applicant testified that before fleeing his country, he resided with his son and his Russian wife in the Ukrainian city of Kharkiv. On February 12, 1992, he attended a political rally at which he gave a short speech promoting democracy and unification with Russia. Immediately after he finished his speech, someone grabbed him and began to beat him. He recognized the insignia on the clothing of his attacker as a symbol of "Rukh," a nationalistic, pro-Ukrainian independence movement. The Applicant required stitches on his lip and eyebrow from the beating. That evening, he discovered a leaflet from Rukh in his pocket, with the message "Kikes, get away from Ukraine." He testified that he began to receive similar anti-Semitic leaflets at home in his mailbox or slipped under the door. The record contains one of the leaflets he received in 1993.

In March 1992, a month after the attack at the rally, the Applicant's apartment was vandalized. The door had been broken down, furniture was ripped open, some of his possessions were stolen, others were smashed, and a half dozen leaflets from Rukh were left at the scene. The leaflets warned that "kikes" and "Moskali," a derogatory term for Russian nationals living in Ukraine, should leave Ukraine to the Ukrainians.

On January 3, 1993, the Applicant was attacked on his way home from work. He heard a voice saying, "Sasha, we've been waiting for you for quite some time." He

was thrown to the ground and kicked. During the beating, the attackers repeatedly warned him to take his "Moskal" wife and "mixed" son out of Ukraine. He sustained a rib injury from the attack.

On July 3, 1993, the Applicant and his son were physically assaulted at a bus stop near their home by four men who were calling them derogatory names and making anti-Semitic remarks. The Applicant was pushed to the ground, and when his son tried to come to his aid, the assailants picked him up and dropped him on the pavement. The beating left bruises on the Applicant's torso, and his son sustained an injury to his right knee, which required surgery.

The Applicant also recounted the abuse his son endured at school on account of his Jewish background. In 1991, his class was required to read nationalist literature promulgated by Rukh. In December of that year, he was dragged into a corner by some classmates who made anti-Semitic comments and beat him. Also, in December 1993, he was cornered in the men's room by his classmates and forced to remove his pants to show that he had been circumcised. He did not return to school after this incident.

The Applicant testified that he reported the burglary as well as the January 1993 and July 1993 assaults to the police. He testified that the police promised to "take care of [it]" on each occasion, but that no action was ever taken.

**Practical Exercise #4**

- **Title:** *Eligibility – Discussion of Discrimination or Harassment Persecution*
- **Student Materials:**

**Fact Pattern 2-a:**

Applicant is a 50-year-old male native and citizen of Egypt who entered the United States in 1990, and was admitted as a visitor.

Applicant credibly testified that he is a Coptic Christian. Applicant was a successful accountant in Cairo and owned his own business. He was the only Christian business owner in a building with approximately 15 businesses. Because of Applicant's social standing, fundamentalist Muslims tried to force him to convert to Islam; they felt that it would be a great success if a successful businessman converted to Islam. Fundamentalist Muslim religious leaders visited Applicant several times at his office and to tell him how much he could benefit by becoming Muslim. Applicant expressed his Christian beliefs and asked the religious leaders to leave him alone. He accused them of being fanatics. The Muslim religious leaders

then organized a Muslim boycott of Applicant's business. As a result, Applicant lost approximately 40% of his clientele. Other business owners in the building began to pray in front of Applicant's door making it difficult for clients to come and go. Whenever they encountered Applicant, the other business owners would degrade Applicant's religion. One day Applicant found that the sign for his business had been smashed. Applicant learned from a friend that the Muslims who smashed the sign arranged with the police to accuse Applicant of defaming Islam if he reported the incident. Therefore, Applicant was afraid to report the incident to the police. Applicant was also afraid to hang another sign identifying his business. Shortly after this, Applicant's car was vandalized.

Applicant used to attend Church regularly. However, because of the harassment he and other congregants experienced, Applicant began to attend church less frequently. Stones and feces were thrown at his church. Muslims standing outside would call out pejorative names and degrade the Christian religion. As a result, Applicant and his family no longer felt it was safe to go to church.

Because of the decrease in business, Applicant found it more difficult to support his family. He also worried about his children who were often taunted at school because of their religion. He feared the situation for Christians would only deteriorate. Therefore, he brought his family to the United States and applied for asylum.

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution.
2. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect, taking into account the severity and duration of discriminatory actions and/or harassment.
3. What additional information could be elicited to better evaluate the claim?

### Fact Pattern 2-b:

Applicant is a 31-year-old female citizen of Belarus. Applicant credibly testified that she was often humiliated at school because of her Pentecostal religion. As an adult, Applicant continued to be harassed because of her religion. Applicant and her husband often held prayer meetings in their home. Their neighbors, who accused them of participating in a cult and practicing magic, would throw trash and waste in front of Applicant's door and would threaten to call the police, which they often did. When the police arrived, they would push people around and threaten to exile Applicant and her husband if they did not stop praying. On one occasion when a neighbor called the police in 1989, the police roughly pushed the congregants and destroyed some of Applicant's property. Applicant was eight months pregnant at

the time. The police told the congregants that if they did not stop praying, they would be detained.

Applicant had difficulty finding and retaining employment. Her employers dismissed her after learning that the police were often summoned to her home because she held prayer meetings there.

Applicant received inadequate medical care when she was once hospitalized for removal of a tumor. One of the nurses knew Applicant was Pentecostal. She told the other nurses, who then neglected to care for Applicant. Applicant was often left waiting for long periods of time before nurses would respond to her calls for assistance to get to the bathroom, and several times Applicant was not brought meals when other patients were fed. Two times, nurses neglected to give her pain killers at the prescribed time.

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect, taking into account the severity and duration of discriminatory actions and/or harassment. Also consider the individual characteristics of Applicant (would it make a difference whether or not she were pregnant when pushed?)
2. What additional information could be elicited to better evaluate the claim?

### Fact Pattern 2-c:

Applicant is a 28-year old male from Russia. Applicant credibility testified that he is Jewish, though he has never practiced his religion and does not believe in any one religion. Because he is Jewish, he experienced discrimination in Russia. For example, he was not admitted to a university and could not pursue his dream to study Russian literature. He was admitted to a technical school for machinery and technology, where he learned the trade of machinist. Applicant stated that he had difficulty obtaining employment as a machinist and eventually found work as a cashier. Applicant was never given any raises and was generally harassed at work. For example, his supervisor would tell him that he was not correctly doing his work, even though Applicant followed all the instructions his supervisor gave him. Applicant came to the United States to visit an aunt. He now wants to remain in the United States where he can pursue his life-long dream of studying Russian literature.

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past

amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider cumulative effect, taking into account the severity and duration of discriminatory actions and/or harassment. Consider also individual characteristics of Applicant.

2. What additional information could be elicited to better evaluate the claim?

**Fact Pattern 2-d:**

Applicant is a 25-year old citizen of Russia. When Applicant was in primary school, she was the only Jew in her class. The teacher often hit Applicant's hands with a wooden pointer without giving her a reason. She was too young to understand at the time, but she now believes she was treated this way because she is Jewish. None of the other children were treated the same way. Applicant's parents moved her to another school, where she had problems with other students. They made fun of her and taunted her, making pejorative nicknames out of her last names, because she is Jewish. Applicant was moved to a different school. Applicant had difficulties with her feet and received a note from a physician explaining that she should not participate in physical exercises and competition. Her teacher did not believe that she had problems with her feet and said the note was only an excuse from a Jewish doctor. Applicant was forced to participate in a physical competition and, as a result, was hospitalized for several months as doctors tried to heal her feet.

Applicant did not receive good grades at the university, even though she prepared better than other students. Because she did not receive good grades, Applicant was not entitled to a stipend. She believes she was given poor grades, because she is Jewish. Since she could not obtain a stipend, she was forced to attend night school so that she could earn money during the day. She was not able to pass one class, even though she prepared for it. The professor explained that she would not pass the Applicant, because Applicant is Jewish. In 1987, Applicant was expelled from school, because she complained about receiving a lower grade than a student who was not as prepared as she was. When the faculty later changed, Applicant was readmitted. As a result of these set-backs, it took Applicant seven years to graduate from university, even though the average time for completion was four years.

From 1986 to 1988, Applicant worked as an assistant teacher. She felt that other teachers isolated her and made it difficult for her to work with the children by speaking poorly to her in front of the children. Applicant told a teacher that her grandfather was on the ritual committee at the main Moscow synagogue. This exacerbated the poor treatment she had been receiving. Because Applicant felt she could not do her job in that atmosphere, she quit her job. She then worked as a teacher at a different school until she left Russia.

One evening as Applicant was returning home from a friend's house, she was stopped by three men. They pushed her and made pejorative comments such as

"You Jews should get out of Russia." They spoke in general about Jews and also said, "Pamiat will show you," indicating that they were associated with the anti-Semitic group, Pamiat. A man walked near-by, and his presence frightened the three men. They ran away, leaving Applicant frightened, but unharmed.

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect, taking into account the severity and duration of discriminatory actions and/or harassment.
2. What additional information could be elicited to better evaluate the claim?

### Fact Pattern 2-e:

Applicant is a 48-year old male citizen from Belarus. Applicant credibly testified that he was born and raised in Minsk, where he attended the Polytechnic Institute. After graduation, he was certified as an electrical engineer. Applicant interviewed for a position as an electrical engineer at the Enterprise of Refrigeration and was told to report to personnel to complete an application. At the personnel office, Applicant's internal passport was checked. He was then told that there was no position available. Applicant believes he was told this because his internal passport revealed that he is Jewish. Applicant took another job as an electrician and continued to work as an electrician for approximately twenty years until he came to the United States in 1991. Applicant's job required him to travel quite a bit. At one time, he was required to spend two months to the Gomel Region, where radiation from Chernobyl was still very high. When Applicant asked why he, as opposed to other employees, was sent to that region, he was told, "Go to Israel, there is no radiation there. You should be thankful that with your passport, you are able to keep this job."

Applicant's wife worked as an accountant. After Applicant's wife married Applicant, she stopped receiving the promotions she had been receiving every year prior to the marriage.

In the last three or four years that the Applicant lived in Minsk, his family received threatening letters in the mail box once or twice a month. The letters said, "Dirty Jews, go to Israel."

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider cumulative effect, taking into

account severity and duration of discriminatory actions and/or harassment.

2. What additional information could be elicited to better evaluate the claim?

**Fact Pattern 2-f:**

Applicant is a 38-year old male citizen of Romania. Applicant credibly testified that he is a woodcarver and had his own studio and business in Romania. In 1986, Applicant organized the people in his town to strike to protest the building of a chemical plant near the town. Applicant publicly spoke out against the government – accusing the local politicians of corruption and failure to represent the people's interest. Applicant began receiving anonymous letters stating that if he did not stop speaking out against the government, his home and studio would be burned. Applicant's wife was fired from her government job. Undercover government agents began to watch Applicant and would go to his studio about two or three times a week. When the undercover agents went to Applicant's studio, they would linger inside, asking him questions about what he did and how much money he made, and would watch the people who entered his studio. Sometimes, the agents would remain at the studio all day, making it difficult for Applicant to work. Customers, who feared the agents, stopped coming to Applicant's studio. This continued for several months before Applicant left Romania.

**Discussion**

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider cumulative effect, taking into account the severity and duration of discriminatory actions and/or harassment.
2. What additional information could be elicited to better evaluate the claim?

**Practical Exercise #5**

- **Title:** *Eligibility – Discussion of Past Persecution*
- **Student Materials:**

**Fact Pattern 3-a:**

Applicant is a 40 year old female native and citizen of India. Applicant credibly testified that she is Muslim, but lived in a predominantly Hindu neighborhood. During Muslim-Hindu riots that erupted after the destruction of a mosque by



fundamentalist Hindus, Applicant remained hidden in her bedroom, praying for protection of her son, who had been out in the street when the rioting erupted. The riots occurred during the month of Ramadan and Applicant was fasting, as prescribed by her religious beliefs. As Applicant prayed, a Hindu mob burst into the house and pulled Applicant out into the streets. They removed from Applicant's head the scarf that she wore over her head whenever in the company of men and began making obscene gestures at her. Several men then dragged a beaten teenager and threw him at her feet. She recognized the teenager as her son. The leader of the mob thrust a piece of cooked pork into Applicant's hand and ordered her to eat it. At first Applicant refused, because she was prohibited by her religious beliefs from eating pork and she was also prohibited from eating prior to sundown during the month of Ramadan. The leader struck Applicant's son with a bamboo stick, then threatened to beat her son even more if she did not eat the pork. Despite the religious prohibition, Applicant ate the pork to save her son from further abuse. Satisfied, the leader of the mob led the mob on to find their next victim.

### Discussion

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect.
2. What additional information could be elicited to better evaluate the claim?

### Fact Pattern 3-b:

Mr. Z is a citizen of Poland. From 1974 to February 1982, he worked as a manager of a livestock farm owned by the Polish government. At the end of 1981, he refused to sign an oath of loyalty to party officials. Soon after this refusal, the police arrested and interrogated Mr. Z three times. He was not physically mistreated on any of these occasions. In February of 1982, he was dismissed from his job. He was not given a reason. He then started his own business, a fox farm. He was again arrested in April of 1982 and interrogated about his association with Mr. M, a Solidarity member to whom he had loaned money. Although Mr. Z had loaned Mr. M money, he was not himself involved in the activities of Solidarity. Beginning in June of 1982 and continuing until December of 1984, the police would summon Mr. Z every two to three months and interrogate him over a period of three to five hours, primarily about his relationship to Mr. M, but also about his own activities. He was not physically harmed during any of these detentions. Mr. Z's final detention occurred in 1984, while he was in Warsaw selling fox furs. He was detained for 36 hours but released once the police determined that his papers were in order. Although the police spoke harshly to the applicant, he was not physically harmed during this detention. When Mr. Z returned home after this detention, he found that his apartment had been searched and some money and foxes confiscated. He left Poland shortly thereafter and entered the United States on a tourist visa.

**Discussion**

1. Discuss issue of whether the harm Applicant experienced in the past amounts to persecution. Which rights were affected? How seriously? Consider each incident and then consider cumulative effect.
2. What additional information could be elicited to better evaluate the claim?

**Fact Pattern 3-c:**

Applicant is a 42-year-old male native and citizen of Peru. Applicant credibly testified that he lived in the city of Lima, where he worked at a bank. He owned and his wife managed a small dairy farm outside the city. In early 1988, he attended a public rally for the Democratic Action (AD) party at the invitation of his uncle, a political activist. At the rally, Applicant was challenged by a police officer who demanded his identification and questioned him about his supposed membership in *Sendero Luminoso* (SL). Applicant denied membership in SL. Applicant's wife testified that her husband may have been questioned because his uncle has a history of political activism for the opposition AD party and had often been harassed by the police.

In the weeks following the rally, Applicant was questioned repeatedly at his home and work by police officers concerning his supposed affiliation with SL. On three occasions he was taken from home by the police for further interrogation at the police station. The interrogation sessions at the police station lasted from 3 to 5 hours. During these interrogations, Applicant was initially pressured by slaps in the face with a wet cloth, and then the abuse progressed to blows with closed fists. At the bank where Applicant worked, police officers periodically appeared and kept watch on him while he worked, causing consternation among his co-workers and his supervisor. Applicant insisted that he had no relation to SL and the police were unable to come up with any evidence to link him to the terrorist group.

On May 15, 1988, two men attempted to abduct Applicant's son as he was leaving school. They were deterred by alarms which Applicant's wife and other parents raised. Applicant's wife believes the abductors were policemen. This incident caused Applicant to take precautionary measures. He sent his wife and son to live with his grandparents in another city and began planning the family's departure from Peru.

Applicant testified further that the employees of his dairy farm learned that he was under suspicion as an SL member. Some of the employees were SL members or sympathizers. They took advantage of the situation to invite him to join SL. He said he wanted nothing to do with the SL because he opposed their Communist ideology. Shortly after his departure from Peru in September of 1988, Applicant's dairy was burned by a mob shouting "Long Live *Sendero Luminoso*!"

**Discussion**

1. Does the harm Applicant suffered from the police amount to persecution?
2. Does the harm Applicant suffered from the SL amount to persecution? Discuss which rights have been violated and the degree of harm Applicant suffered from each event and cumulatively.
3. What additional information could be elicited to better evaluate the claim?

**Practical Exercise #6**

- **Title:** *Eligibility – Discussion of Persecution*
- **Student Materials:**

**Fact Pattern 4-a:**

Vladimir is a 43-year old native of Lviv, Ukraine, where he owns a small bookstore. He started the bookstore because no one would hire him for employment because his father is ethnic Turkmen. Vladimir's name and distinct facial features make him stand out among Ukrainians and reveal his ethnicity.

Starting five years ago, policemen came to his store demanding that he pay them approximately \$100.00 monthly to make sure that "nothing would happen" to his store. Although the amount represented a severe hardship to him, he paid it because he was afraid what might happen if he did not.

Five months ago, the policemen told him that his mandatory monthly donation was increased to \$500.00. He told them that he was barely able to pay \$100.00. They warned him to consider the consequences. He had no money to pay the demanded amount. The policemen returned after one week, and severely beat him with sticks, and kicked him with their steel-toed boots. They left him alone, bleeding and unconscious in the back of his store. Luckily, he was found by an off-duty employee, who returned to the store having forgotten her keys.

Vladimir returned to the store after a month of recuperation. After he returned to work, he re-arranged the window display to feature a book critical about the Ukrainian role in the Nazi holocaust during World War II. The book had been discussed at the Orthodox Church he attends.

The following morning, before Vladimir opened the store, a large crowd gathered outside and chanted, "No more Jews." A few minutes later, several men in the crowd broke the storefront glass and destroyed all the books in the new display.

They then proceeded to set the business on fire, which completely destroyed the building.

When Vladimir arrived, he was stunned by the chaotic scene. A policeman passing through the area observed the commotion and quickly came to the scene. When the policeman inquired as to the cause of the trouble, the people in the crowd told him that it was because of the displayed books. The policeman observed the activity for a few minutes and then hit Vladimir on the head several times with his nightstick. Vladimir lost consciousness. "That should do it," the policeman said before returning to his vehicle and driving away.

Vladimir was hospitalized for 2 days to recover from the beating. After he was released, he went to visit the site of his store, and he saw the store had been totally destroyed by fire. On its site was a huge sign, stating "Ukrainians yes, Jews no."

### Discussion

1. Discuss whether the harm Vladimir experienced in the past amounts to past persecution.
2. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect, taking into account the severity and duration of discriminatory action and/or harassment.
3. What additional information could be elicited to better evaluate the claim?

### Fact Pattern 4-b:

The applicant, Laurita Tong, is a 24-year old Chinese ethnic female native of Indonesia. She has lived her entire life in Jakarta. Three years ago, she completed her university studies with a bachelor's degree in Travel and Tourism. Her family owns a successful travel agency in Jakarta, where she works.

Laurita is Catholic by birth and attends church whenever she can – usually twice a month and on most holy days.

On April 14, 2004, she was walking to work when a native Indonesian man, who was sitting on the steps of his house, stared at her as she walked by. Each day thereafter, he stared at her as she walked to work. Laurita was convinced that he was giving her the "evil eye," and that horrible things would happen to her. The windows of his house were covered with pictures of Muslim religious leaders.

On May 2, 2004, a group of native Indonesians blew up the church that Laurita attends. These people often harassed the churchgoers on Sundays and told them that they would be cursed unless they converted to Islam. Laurita became afraid to attend church after that happened.

On May 12, 2004, Indonesian natives raped Laurita's best friend, Melanie. The men told her that she should "go back to China."

On May 27, 2004, Laurita was leaving a shoe store when a native Indonesian man grabbed her roughly and yelled, "I hate you rich Chinese. Give me all your money, or I'll kill you now." Laurita handed over her purse, and the man ran away.

After these events, Laurita suffered from severe anxiety and depression. She was afraid to leave her house because she was worried what would happen to her. She did not leave her house until June 2, 2004, when she left Indonesia. Her father gave her an airplane ticket for Seattle, where she arrived the same day.

### Discussion

1. Discuss whether the harm experienced by Laurita in the past amounts to persecution.
2. Which rights were affected? How seriously? Consider each incident and then consider the cumulative effect, taking into account the severity and duration of each act.

### Fact Pattern 4-c:

Applicant, Lin Xiang, is a 25-year old female native and citizen of China. For two years, she has worked as a bookkeeper at the Fujian Electronics Cooperative, a private business, which has received subsidies from the Chinese government. During the last three months, Lin and most of the other 314 workers have not received any pay because of unexpected financial shortages.

Lin became increasingly outraged. She wrote and printed a pamphlet explaining that the owners of the business had recently bought new homes, luxury vehicles, and even enjoyed vacations in Monte Carlo. She included a photo of one of the owner's homes in her pamphlet. Because of her position at the company, she had personal knowledge of the financial circumstances of the business.

Lin went out late one night in February to distribute the pamphlets into random mailboxes in several apartment buildings. She distributed the pamphlets in a similar manner each night for ten nights. On the tenth night, she was walking in a different neighborhood with about 75 pamphlets in her backpack when a policeman asked her what she was doing out on the street at 1:10 a.m. She replied that she came outside to walk because she could not sleep. He inquired as to what she carried in her backpack, and she told him she had documents from her work. He insisted on inspecting the documents, and after he did so, he angrily chastised her for lying and for disturbing the public social order. He then handcuffed her and brought her to the local Public Security Bureau.

Upon arrival at the Public Security Bureau, Lin was required to identify herself.

and to explain what she had **been** doing. She explained that **she** had not been paid since December, and that she **did** not have enough food to **feed** her little girl. The police asked Lin who **employed** her and who put her up to distributing the pamphlets. Lin told the police that she does not get paid for her work and that everything she does is **accomplished** on her own.

The investigator angrily **stated**, "I don't believe you. I **want** you to examine yourself, and understand the **damage** you have done," he said. **Then**, he grabbed her and struck her on her back **with** an electric baton. She **was** released without conditions after 24 hours **without** further harm. However, as a **result** of the electric shock, she suffered a miscarriage in her third month of **pregnancy**.

After her release, she **received** notice that she was **terminated** from her employment. She sought other **employment**, but was unable to **find** any job because of her "bad record."

She became despondent, and **realized** that she could no longer **live** in China.

### **Discussion**

1. Does the harm **experienced** by the applicant constitute **persecution**?
2. What facts support **your** conclusion?
3. What additional **information**, if any, would help **evaluate** this claim?

### **Practical Exercise #7**

#### **Alternative Exercise For Any of the PEs Above With Multiple Fact Patterns**

- **Title:** *House of Commons Debate*

- **Introduction**

The participants of the face-to-face session are challenged in the *House of Commons* debate to react to **stimulating** positions. A panel **chairman** facilitates the debate and a jury is **responsible** for the judgment concerning the content of the arguments. The nature of the **positions** and the role of the panel **chairman** guarantee a lively discussion, in which "pro's" and "con's" surface **very** quickly. Per round you need approximately 45 **minutes**.

- **Output**

The output of the *House of Commons* debate is an overview of all possible arguments pro and con of the position. Because of the competitive element in the debate all participants are stimulated to actively contribute and take turns.

- **Method**

**Preparation**

The debate will be based on any of the fact patterns from the practical exercises above, seeking subject matter that will be stimulating, controversial and interesting for all participants. The group will be split into three teams and for each fact pattern used, one team will be assigned the role of supporter of the applicant's claim, one group will be assigned to oppose the applicant's claim, and the third group will act as a jury. This will not take more than 5 minutes.

**Tasks**

Every group prepares, in separate rooms, for the coming debate. In approximately 10 minutes, each group collects arguments for the defense of the group's stand in the debate. The participants prepare themselves both on the content of the arguments and on the presentation of the arguments.

**Organization**

The debate will be facilitated by a panel chairman. Next to this, there is the jury group, who will observe and judge the debate and the debaters.

**OTHER MATERIALS**

There are no Other Materials for this module.



**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the lesson plan referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<b><u>RAD Supplement</u></b>
<b>Module Section Subheading</b>

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the lesson plan referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. 8 C.F.R. § 208.13(b)

**ADDITIONAL RESOURCES**

1. Memorandum from Joseph E. Langlois, Director, Asylum Division, INS Office of International Affairs, to Asylum Office Directors and Deputy Directors, Change in Instruction Concerning One Year Filing Deadline and Past Persecution, (15 March 2001) (HQ/IAO 120/16.13).
2. Memorandum from Joseph E. Langlois, Director, Asylum Division, INS Office of International Affairs, to Asylum Office Directors, et al., Persecution of Family Members, (30 June 1997).
3. Memorandum from David A. Martin, INS Office of General Counsel, to Management Team, et al., Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (21 Oct. 1996) (HQCOU 120/11.33-P).
4. Memorandum from David A. Martin, INS Office of General Counsel, to Asylum Division, Legal Opinion: Palestinian Asylum Applicants, (27 Oct. 1995) (Genco Opinion 95-14).
5. Memorandum from David A. Martin, INS Office of General Counsel, to John Cummings, Acting Assistant Commissioner, CORAP, Legal Opinion: Application of the Lautenberg Amendment to Asylum Applications Under INA Section 208, (6 Oct. 1995) (Genco Opinion 95-17).
6. Memorandum from Rosemary Melville, Asylum Division, INS Office of International Affairs, to Asylum Office Directors, et al., Follow Up on Gender Guidelines Training, (7 July 1995) (208.9.9).

7. Memorandum from Phyllis Coven, INS Office of International Affairs, to Asylum Officers and HQASM Coordinators, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women*, (26 May 1995).
8. T. Alexander Aleinikoff. "The Meaning of 'Persecution' in United States Asylum Law," *International Journal of Refugee Law* 3, no. 1 (1991): 411-434.
9. UNHCR, *Note on Refugee Claims Based on Coercive Family Planning Laws or Policies* (Aug. 2005).

## SUPPLEMENTS

### ASM Supplement - 1

#### **Exercise of Discretion to Grant Based on Past Persecution, No Well-Founded Fear**

If past persecution on account of a protected characteristic is established, then the applicant meets the statutory definition of refugee: Regulation and case law provide guidelines on the exercise of discretion to grant asylum to a refugee who has been persecuted in the past, but who no longer has a well-founded fear of persecution.<sup>127</sup>

#### • **Granting Asylum in the Absence of a Well-Founded Fear**

Regulations direct that the adjudicator's discretion should be exercised to deny asylum to an applicant whose fear of future persecution is no longer well founded,<sup>128</sup> unless either of the following occurs:

- "The applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution."<sup>129</sup>
- "The applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country."<sup>130</sup>

#### • **Severity of Past Persecution**

When evaluating when to exercise discretion to grant asylum based on past

<sup>133</sup> INA 101(a)(42)

<sup>128</sup> 8 C.F.R. § 208.13(b)(1)(iii)

<sup>129</sup> 8 C.F.R. § 208.13(b)(1)(iii)(A)

<sup>130</sup> 8 C.F.R. § 208.13(b)(1)(iii)(B)

persecution alone, the factors you should consider include:

- duration of persecution
- intensity of persecution
- age at the time of persecution
- persecution of family members
- conditions under which persecution was inflicted
- whether it would be unduly frightening or painful for the applicant to return to the country of persecution
- whether there are continuing health or psychological problems or other negative repercussions stemming from the harm inflicted
- any other relevant factor

• **BIA Precedent Decisions**

Several BIA decisions provide guidance on the circumstances in which persecution has been so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear.

***Matter of Chen***

In *Matter of Chen*, the BIA held that discretion should be exercised to grant asylum to an applicant for whom there was little likelihood of future persecution. The applicant in that case related a long history of persecution suffered by both himself and his family during the Cultural Revolution in China. As a young boy (beginning when he was eight years old) the applicant was held under house arrest for six months and deprived of an opportunity to go to school and later abused by teachers and classmates in school. The applicant was forced to endure two years of re-education, during which time he was physically abused, resulting in hearing loss, anxiety, and suicidal inclinations. In finding that the applicant was eligible for asylum based on the past persecution alone, the BIA considered the fact that the applicant no longer had family in China and that though there was no longer an objective fear of persecution, the applicant subjectively feared future harm.<sup>131</sup>

*Matter of Chen* is a leading administrative opinion on asylum eligibility based on past persecution alone; however, the case does not establish a threshold of severity of harm required for a discretionary grant of asylum. In other words, the harm does not have to reach the severity of the harm in *Matter of Chen* for asylum to be granted based on past persecution alone. However, if the harm described is comparable to the harm suffered by Chen, an exercise of discretion to grant asylum

<sup>131</sup> *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

may be warranted.

***Matter of H-***

In *Matter of H-*, the BIA did **not** decide the issue of whether the applicant should be granted asylum in the absence of a well-founded fear, but remanded the case to the IJ to decide whether a grant of asylum was warranted. The BIA held that “[c]entral to a discretionary finding in past persecution cases should be careful attention to compelling, humanitarian considerations that would be involved if the refugee were to be forced to return to a country where he or she was persecuted in the past.”<sup>132</sup>

***Matter of B-***

In *Matter of B-*, the BIA found that an Afghani who had suffered persecution under the previous Communist regime was no longer at reasonable risk of persecution. Nevertheless, the BIA held that discretion should be exercised to grant asylum based on the severity of the persecution the applicant had suffered in the past – a 13- month detention, during which time the applicant endured frequent physical (sleep deprivation, beatings, electric shocks) and mental (not knowing the fate of his father who was also detained and separation from his family) torture, inadequate diet and medical care, and integration with the criminal population – and the on-going civil strife in Afghanistan at the time of decision.<sup>133</sup>

***Matter of N-M-A-***

In *Matter of N-M-A-* the BIA found that a grant of asylum in the absence of a well-founded fear was not warranted where the applicant’s father was kidnapped, the applicant’s home was searched twice, and the applicant was detained for one month (during which time he was beaten periodically and deprived of food for three days). In reaching that conclusion, the BIA noted that the harm was **not** of a great degree, suffered over a great period of time, and did not result in severe psychological trauma such that a grant in the absence of a well-founded fear was warranted.<sup>134</sup>

***Matter of S-A-K- and H-A-H-***

In *Matter of S-A-K- and H-A-H-*, the BIA held that discretion should be exercised to grant asylum to a mother and daughter who had been involuntarily subjected to FGM based on the severity of the persecution they suffered. Some of the factors the Board considered in finding that the persecution was severe were: the applicant’s daughter was subjected to FGM at an early age and was not anesthetized for the procedure; the mother nearly died from an infection she developed after the procedure; both mother and daughter had to have their vaginal opening reopened

<sup>132</sup> *Matter of H-*, 21 I&N Dec. 337, 347 (BIA 1996).

<sup>133</sup> *Matter of B-*, 21 I&N Dec. 66 (BIA 1995).

<sup>134</sup> *Matter of N-M-A-*, 22 I&N Dec. 312 (BIA 1998).

later on in their lives, in the case of the mother about five times; mother and daughter continued to experience medical problems related to the procedure (e.g., the mother experienced great pain and the daughter had difficulty urinating and cannot menstruate); and the mother was beaten because she opposed having her daughters subjected to FGM.<sup>135</sup>

• **Federal Court Decisions**

A comparison of the decisions above with the federal cases below will help you understand the application of this standard.

***Eighth Circuit – Reyes-Morales v. Gonzales***

The court upheld the BIA's the denial of asylum finding that the applicant did not establish that the past persecution he suffered was sufficiently serious to warrant a discretionary grant of asylum in the absence of a well-founded fear.<sup>136</sup> In this case, members of the Salvadoran military beat the applicant to unconsciousness, resulting in a physical deformity and several scars.<sup>137</sup> The applicant's friend was killed during the same incident. On review, a federal court cannot disturb a discretionary ruling by the BIA unless it is arbitrary or capricious.

***Third Circuit – Lukwago v. Ashcroft***

The court held that although forcible conscription of a child by a guerrilla group may constitute persecution, it was not on account of a protected ground. The severity of past harm cannot provide the basis for a grant of asylum in the absence of a well-founded fear if the applicant has not established that the harm was inflicted on account of a protected ground.<sup>138</sup>

• **"Other Serious Harm"**

Even where the past persecution suffered by an applicant does not rise to the higher level of severe persecution, a grant in the absence of a well-founded fear may be justified where there is a reasonable possibility that an applicant who suffered past persecution may face other serious harm upon return.<sup>139</sup>

<sup>135</sup> *Matter of S-A-K- and H-A-H-*, 24 I&N Dec. 464 (BIA 2008).

<sup>136</sup> For additional federal cases, see *Lal v. INS*, 255 F.3d 998, 1009–10, as amended by *Lal v. INS*, 268 F.3d 1148 (9th Cir. 2001); and *Vongsakdy v. INS*, 171 F.3d 1203, 1206–07 (9th Cir. 1999).

<sup>137</sup> *Reyes-Morales v. Gonzales*, 435 F.3d 937, 942 (8th Cir. 2006).

<sup>138</sup> *Lukwago v. Ashcroft*, 329 F.3d 157, 173–74 (3d Cir. 2003).

<sup>139</sup> 8 C.F.R. 208.13(b)(1)(iii)(B)

By “other serious harm,” the Department means harm that may not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but that is so serious that it equals the severity of persecution.<sup>140</sup>

In considering whether there is a reasonable possibility of other serious harm, you should focus on current conditions that could severely affect the applicant, such as civil strife and extreme economic deprivation, as well as on the potential for new physical or psychological harm that the applicant might suffer.<sup>141</sup> Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as “other serious harm.”

Two federal courts that have considered this regulation have noted that the following circumstances might qualify as “other serious harm:”

- harm resulting from the unavailability of necessary medical care<sup>142</sup>
- debilitation and homelessness due to unavailability of specific medications<sup>143</sup>

In *Matter of T-Z-* the BIA found that to rise to the level of persecution and, thus, be considered “serious” economic disadvantage, the harm must be not just substantial but “severe,” and deliberately imposed.<sup>144</sup> When analyzing whether economic disadvantage constitutes “other serious harm,” you need to determine if the harm is “serious.” In making that determination, you need to focus your analysis on whether the economic disadvantage feared is “severe” as required by *Matter of T-Z-*, but you do not need to find that the economic harm will be deliberately imposed. The deliberate imposition requirement of *Matter of T-Z-* is not required in the context of analyzing “other serious harm” because in that context the harm feared does not necessarily have to be volitionally imposed by a persecutor on account of a protected characteristic but can be the result as well from non-volitional situations and events such as, for example, natural disasters.

#### • **Additional Humanitarian Factors**

To the extent that the revised regulations changed the parameters governing the exercise of discretion to grant asylum in the absence of a well-founded fear, the current regulations supersede discussions of discretion contained in precedent decisions rendered prior to December 6, 2000.

For example, in *Matter of H-*, the BIA indicated that on remand the Immigration

<sup>140</sup> 65 FR 76121 at 76127; *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

<sup>141</sup> *Matter of L-S-*, 25 I. & N. Dec. 705 (BIA 2012).

<sup>142</sup> *Pllumi v. Att'y Gen. of U.S.*, 642 F.3d 155, 162 (3d Cir. 2011).

<sup>143</sup> *Kholiyavskiy v. Mukasey*, 540 F.3d 555, 577 (7th Cir. 2008).

<sup>144</sup> For additional information, see section on Economic Harm.

Judge could consider humanitarian factors independent of the applicant's past persecution, such as age, health, or family ties, when exercising discretion to grant asylum.<sup>145</sup> However, in the supplemental information to the final rule, the Department of Justice specifically stated that it did not intend for adjudicators to consider additional humanitarian factors unrelated to the severity of past persecution or other serious harm in exercising discretion to grant asylum in the absence of a well-founded fear.<sup>146</sup> Thus, under the current rules, humanitarian factors such as those that the BIA referenced in *Matter of H-* are considered in the exercise of discretion analysis only if they have a connection to either the severity of past persecution or to other serious harm that the applicant may suffer.

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<sup>145</sup> *Matter of H*, 21 I&N Dec. 337, 347 (BIA 1996).

<sup>146</sup> 65 FR 76121 at 76127.



**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the lesson plan referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.

**ADDITIONAL RESOURCES**

- 1.

**SUPPLEMENTS**

<b><u>IO Supplement</u></b>
<b>Module Section Subheading</b>

# Past Persecution and Well-Founded Fear: Part III

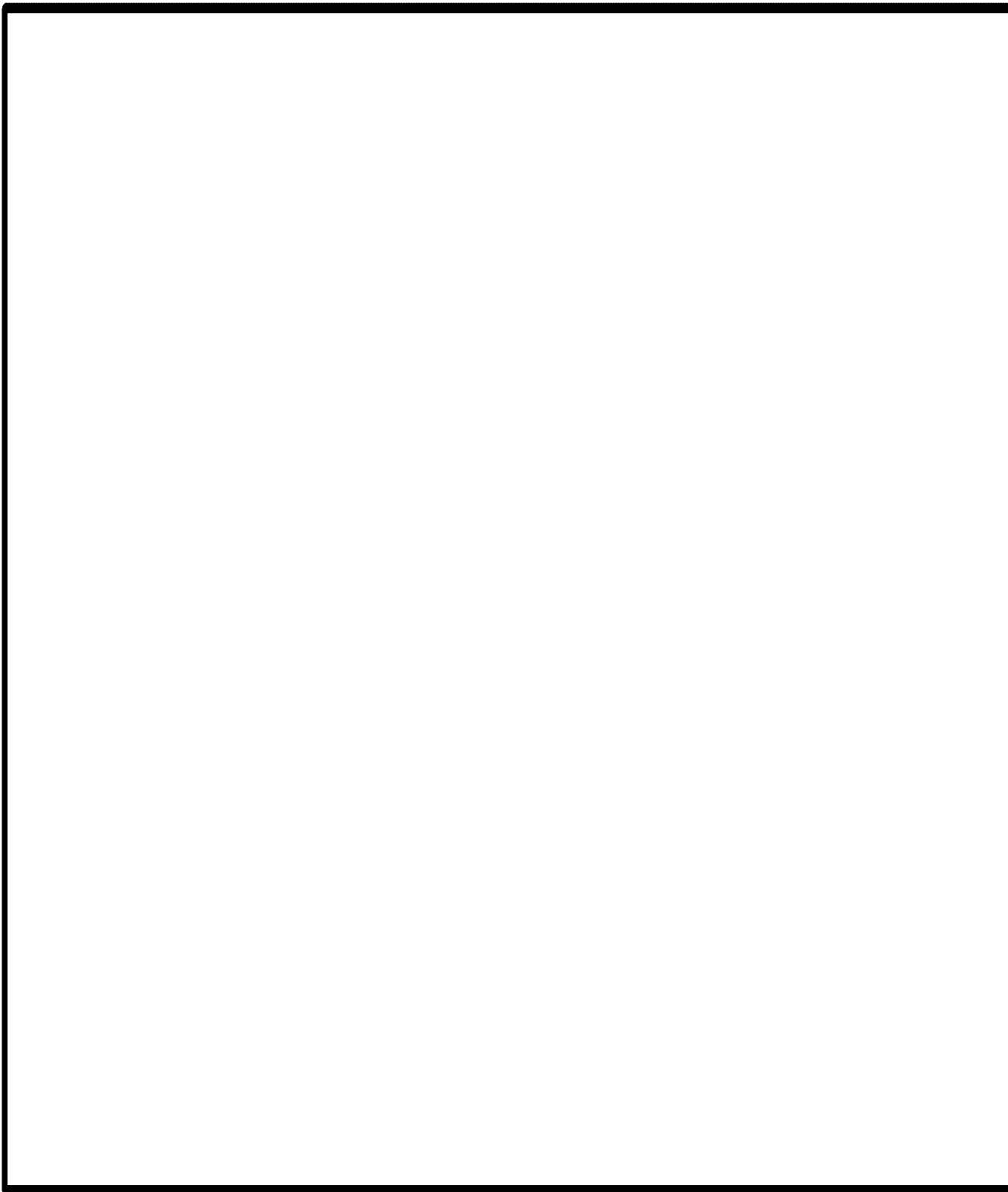
Eva Garon and Christie Valentine, Refugee Officers



U.S. Citizenship  
and Immigration  
Services

July 2015  
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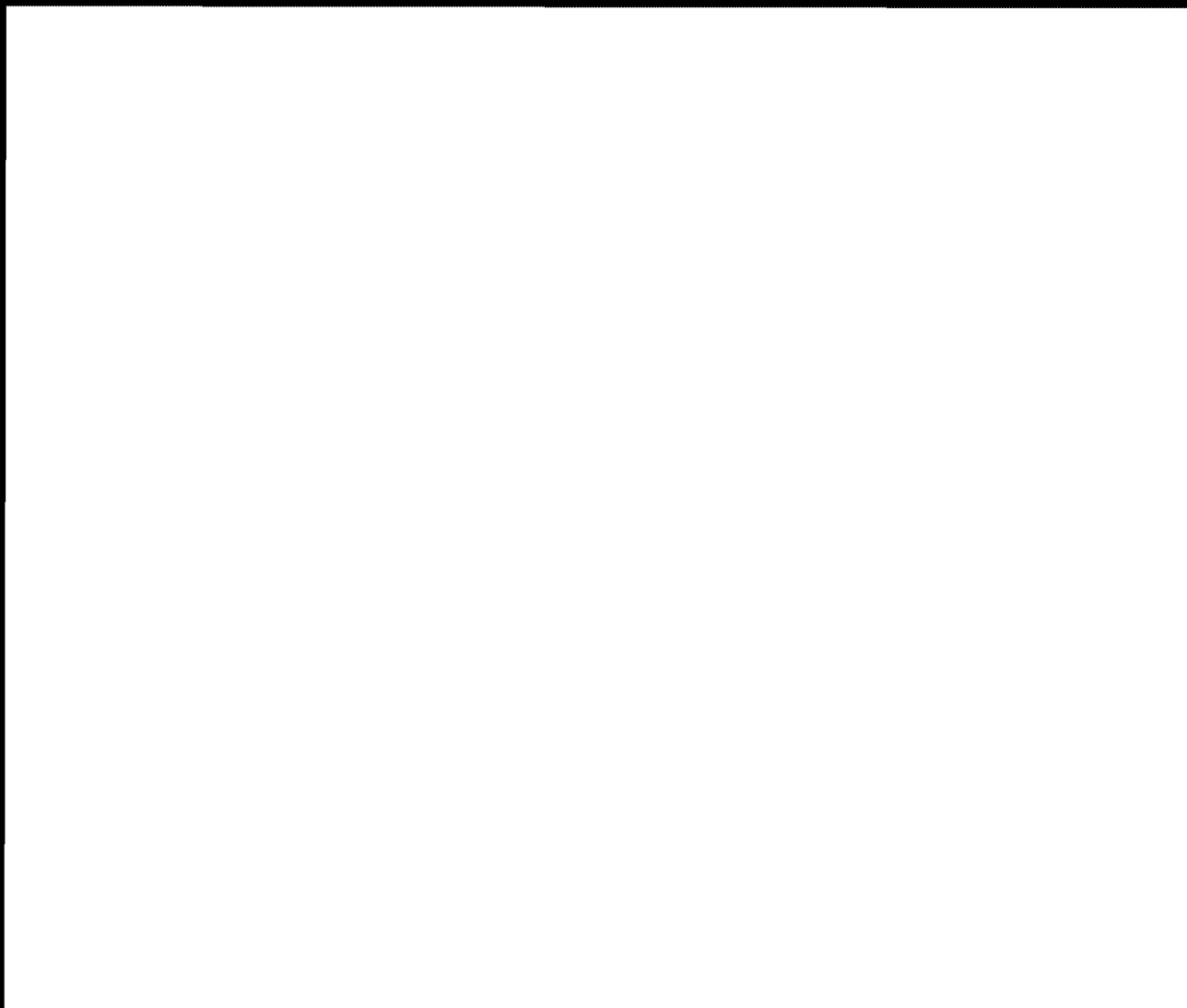
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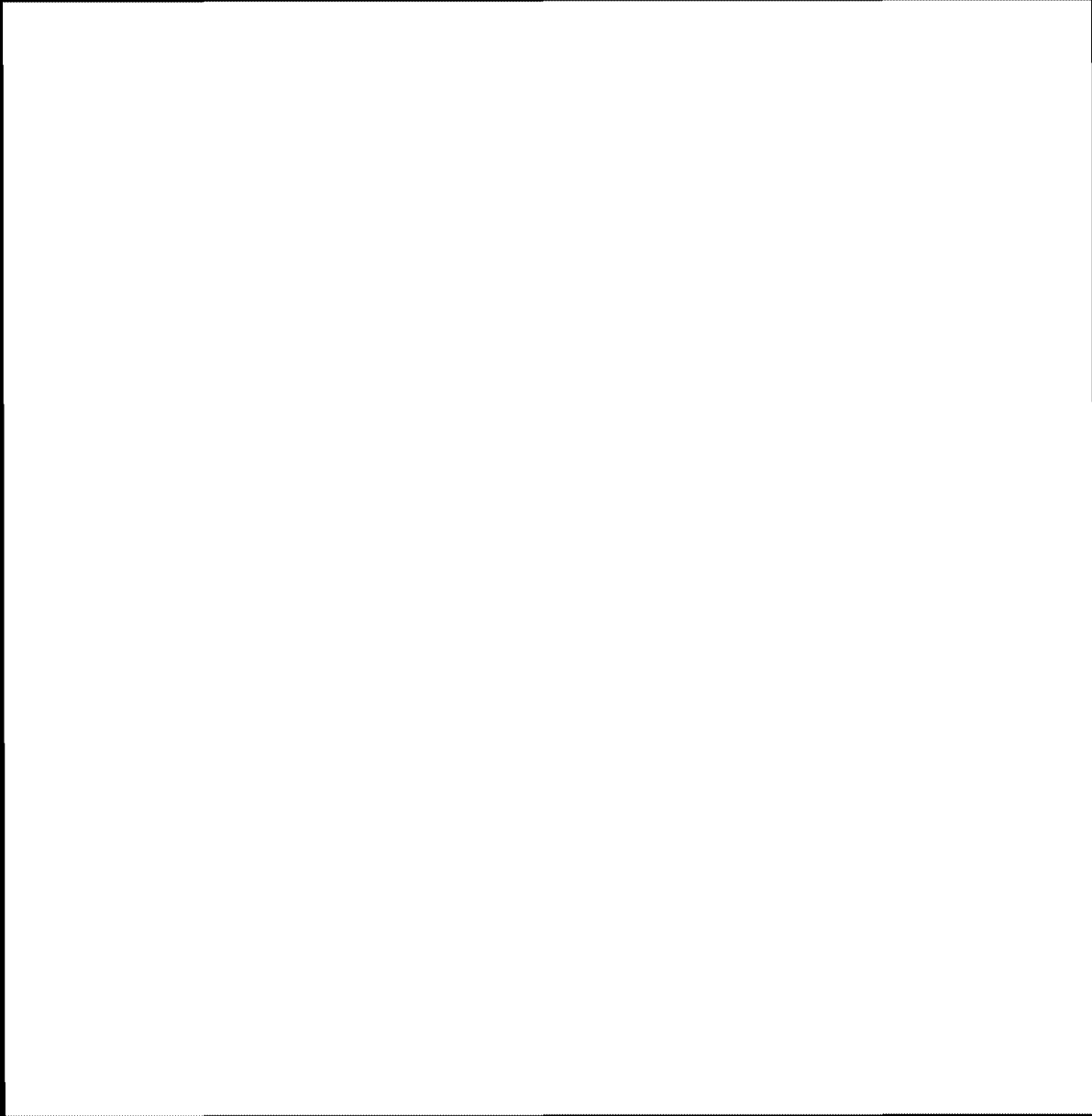
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# Past Persecution

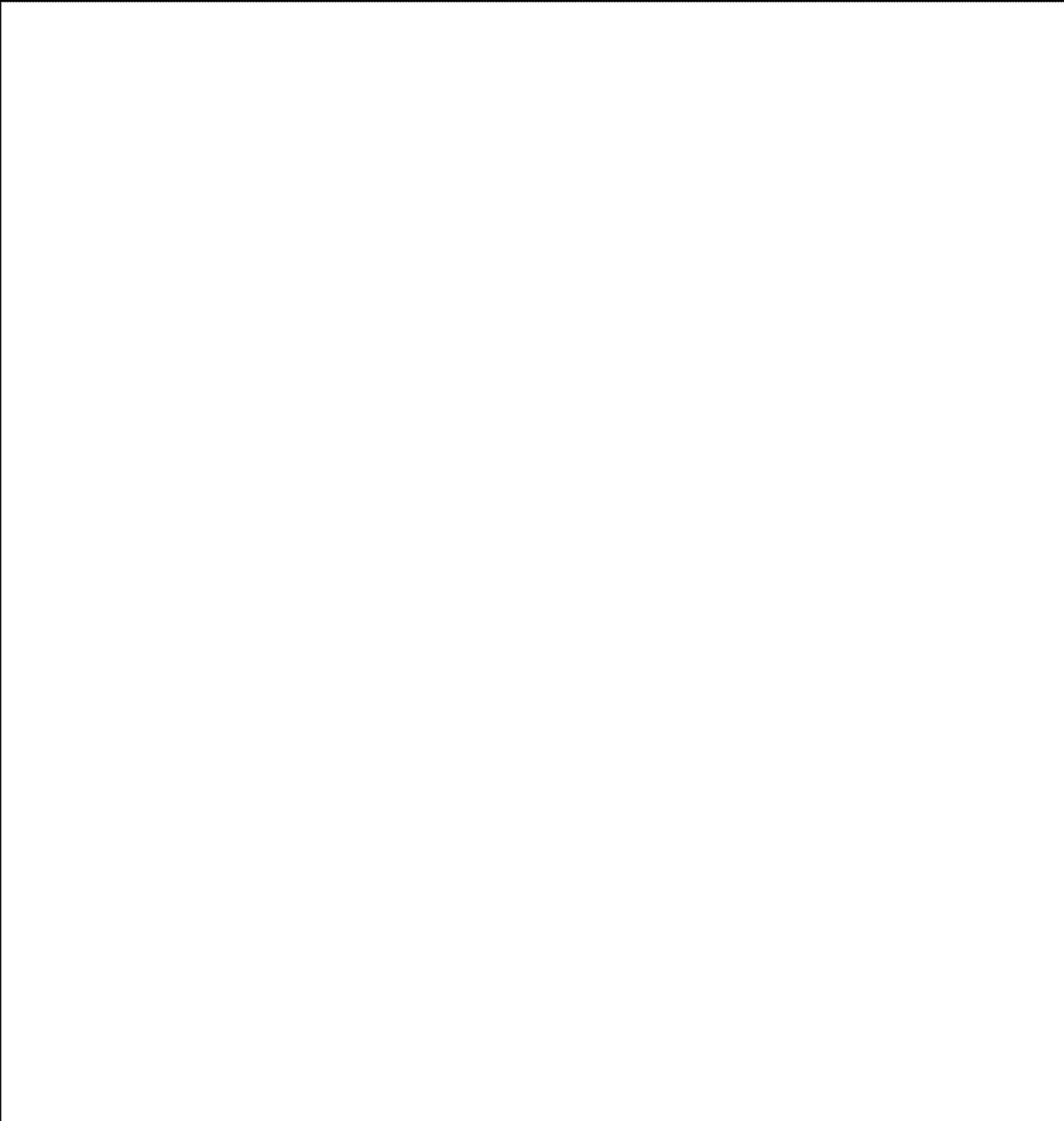
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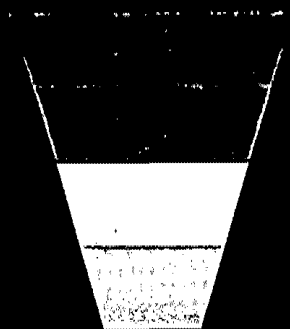
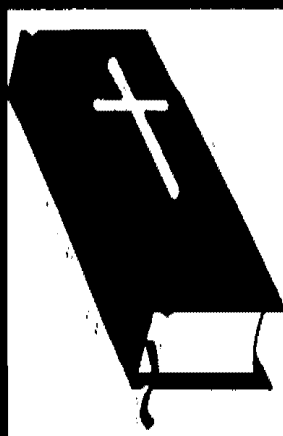
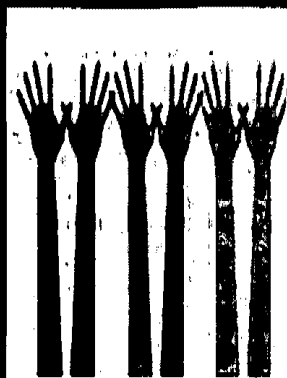


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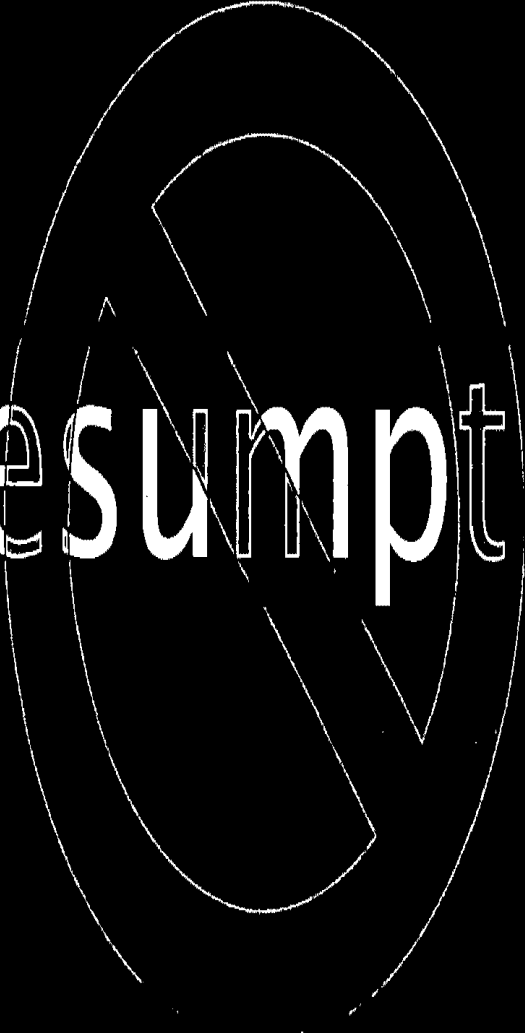
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# Nexus



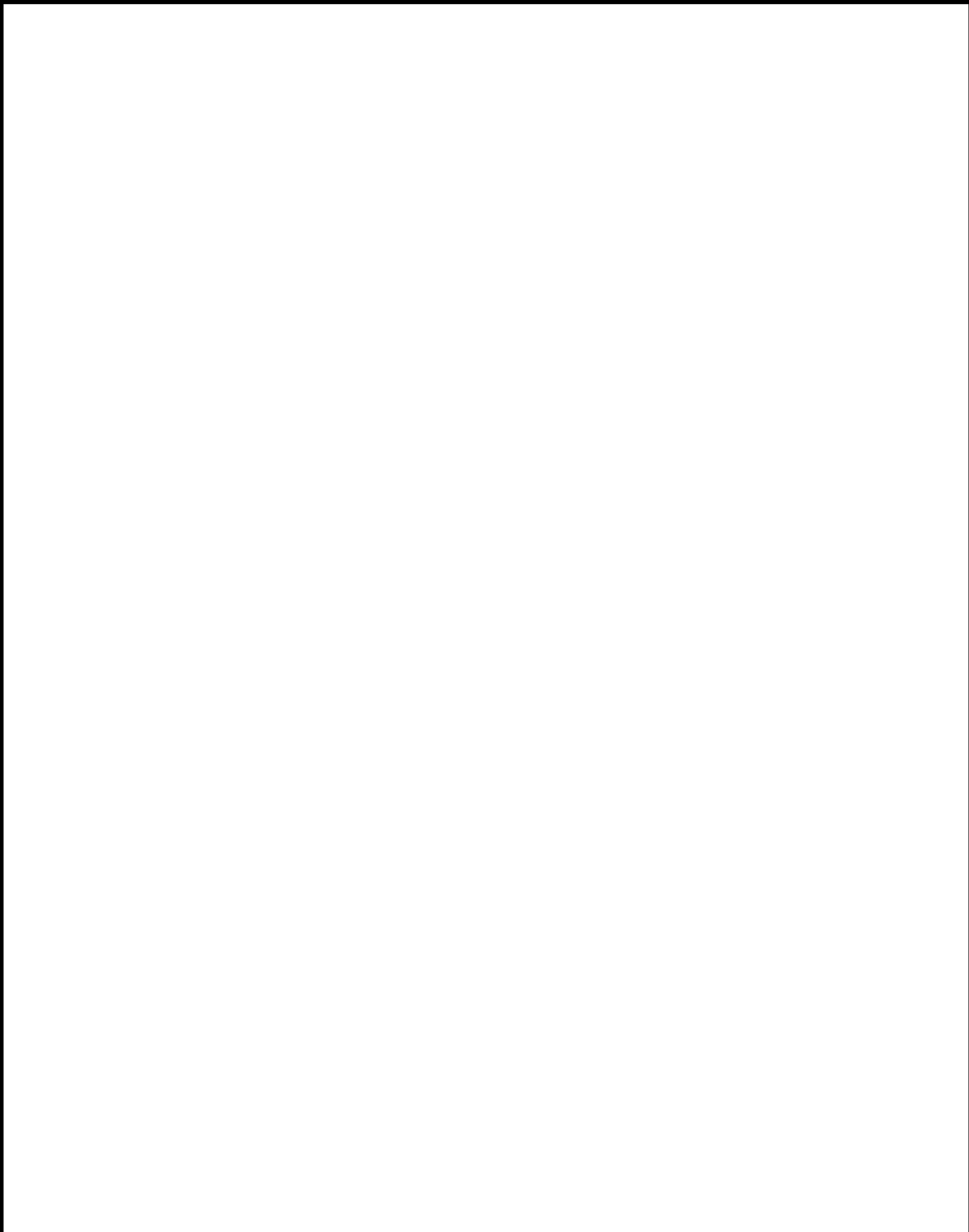
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# Presumption?

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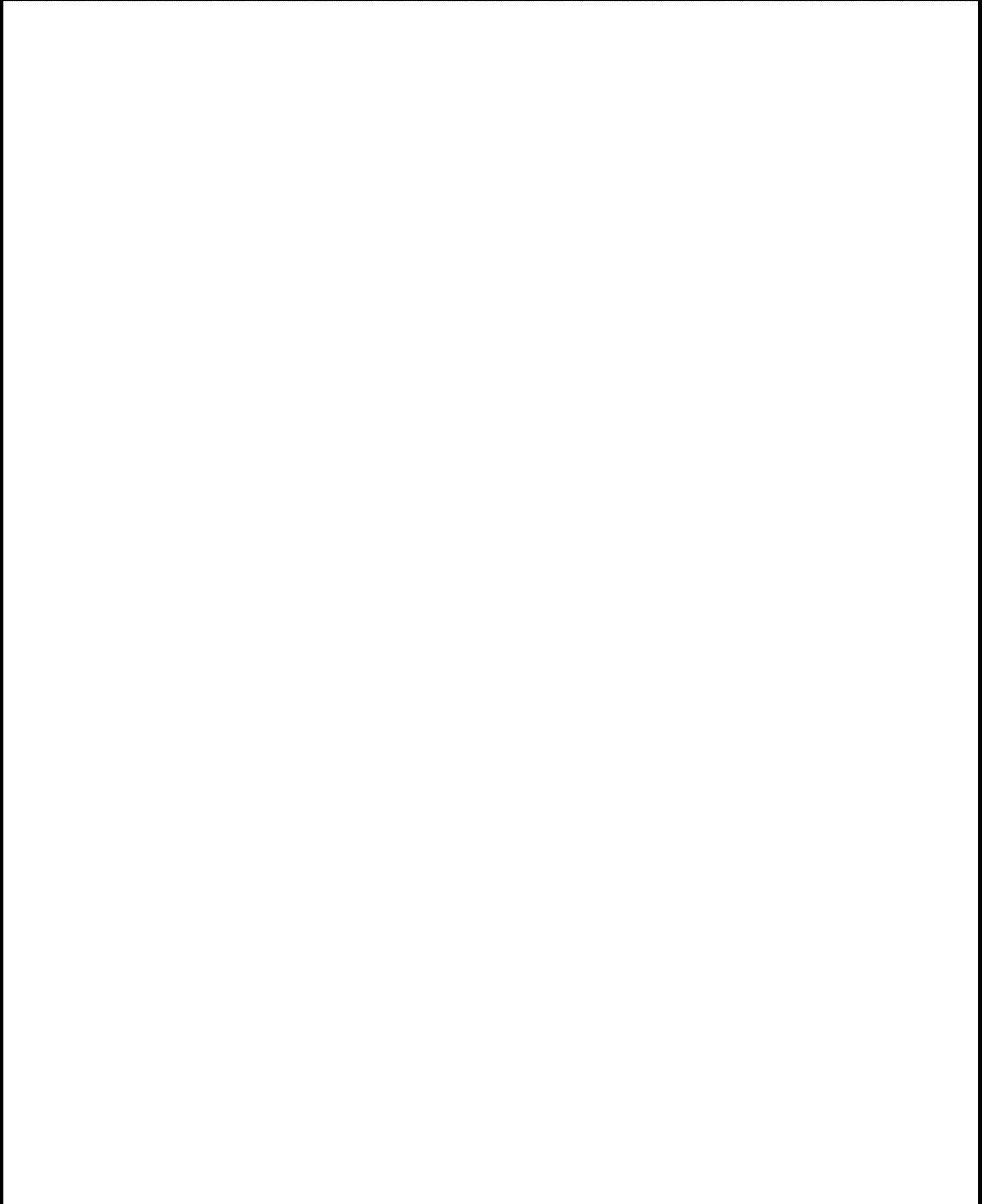
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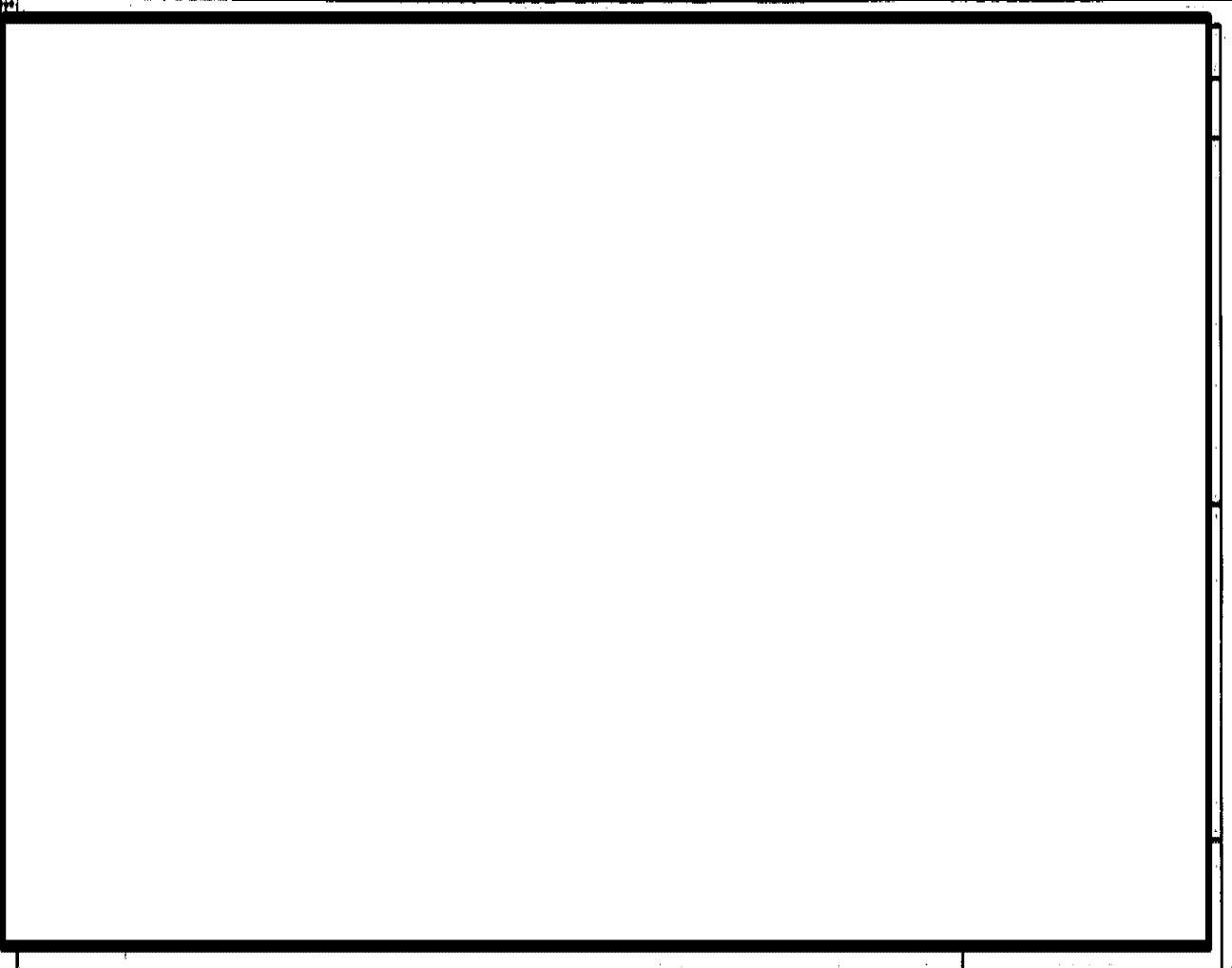


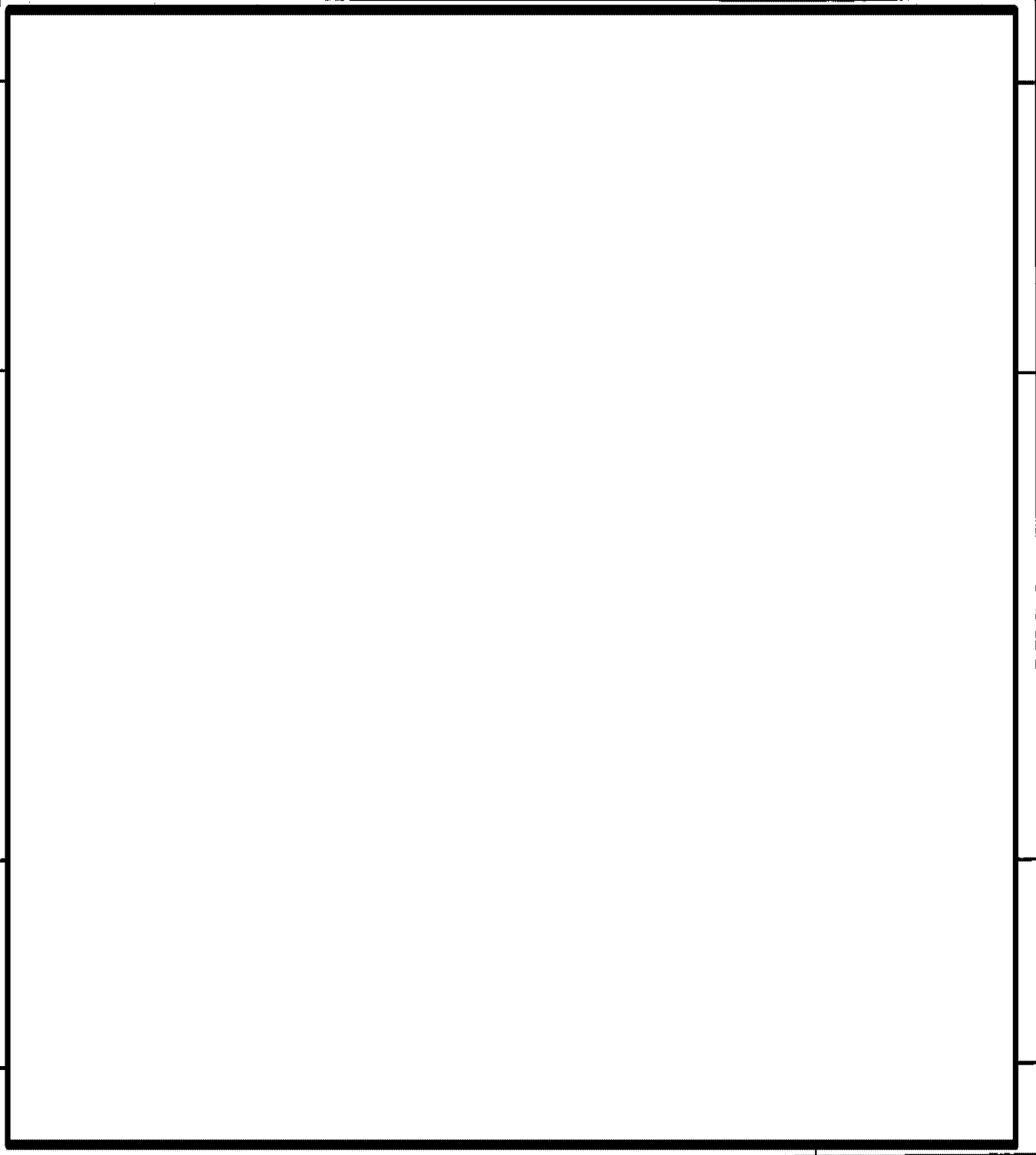
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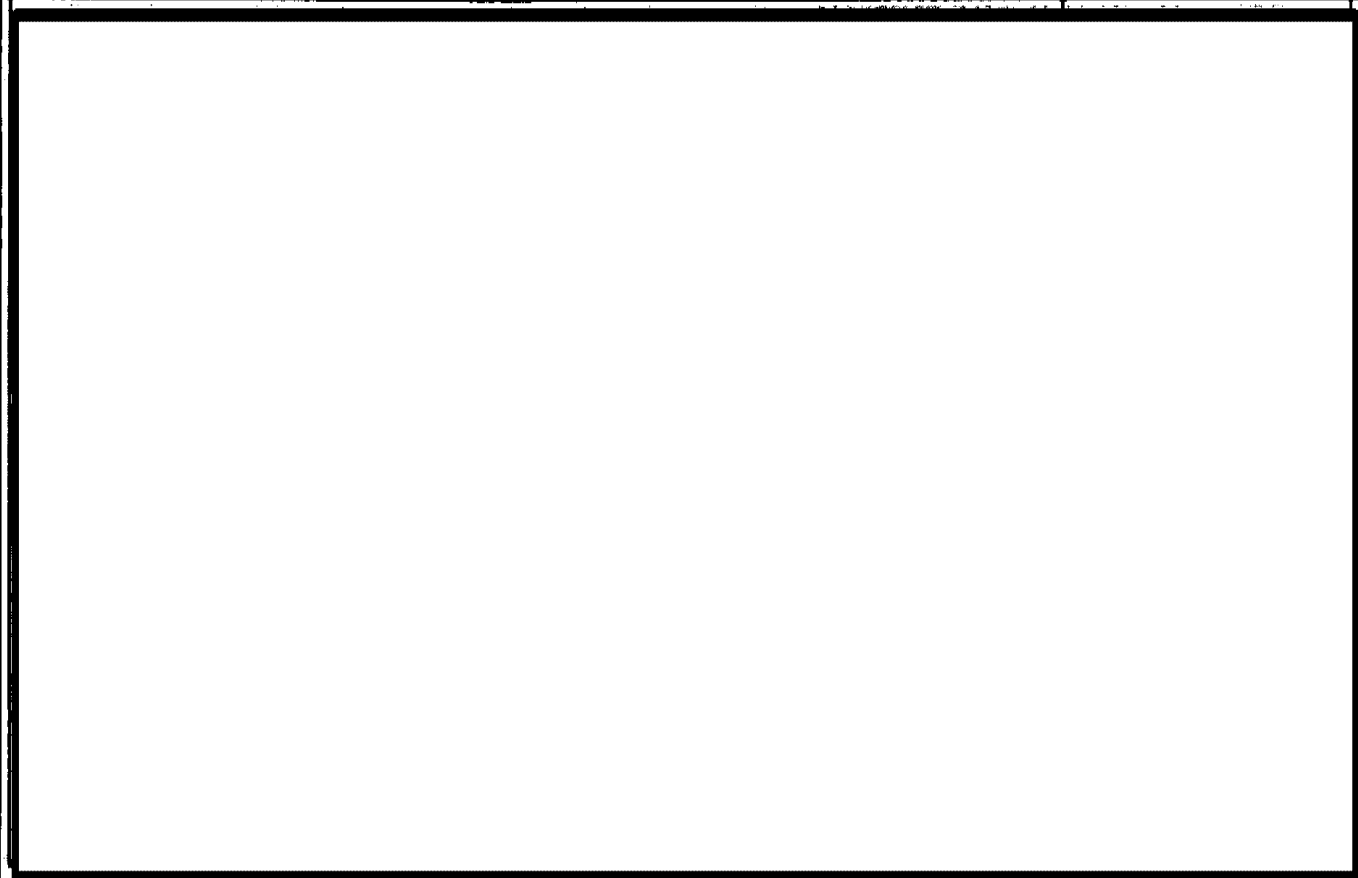


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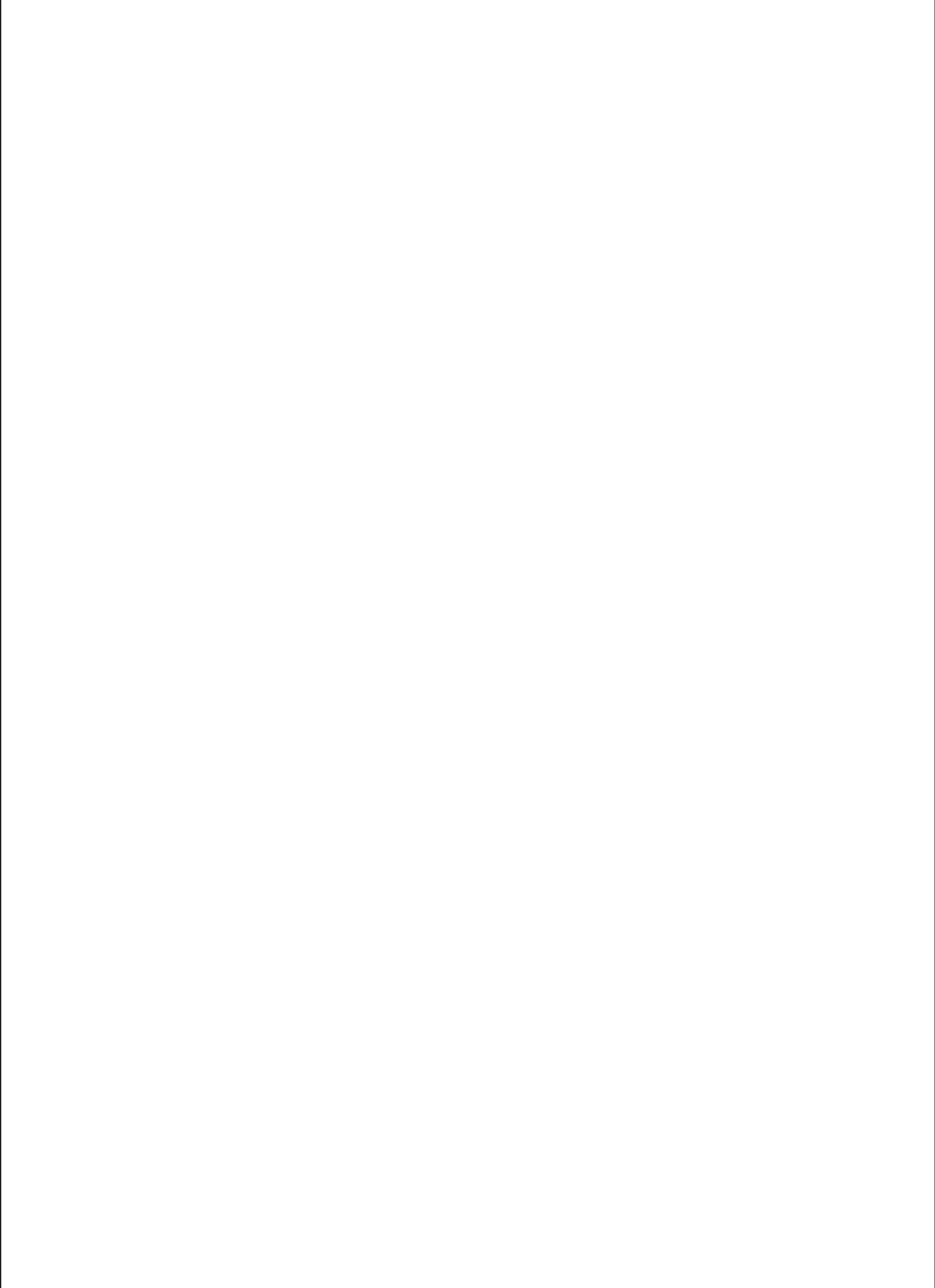












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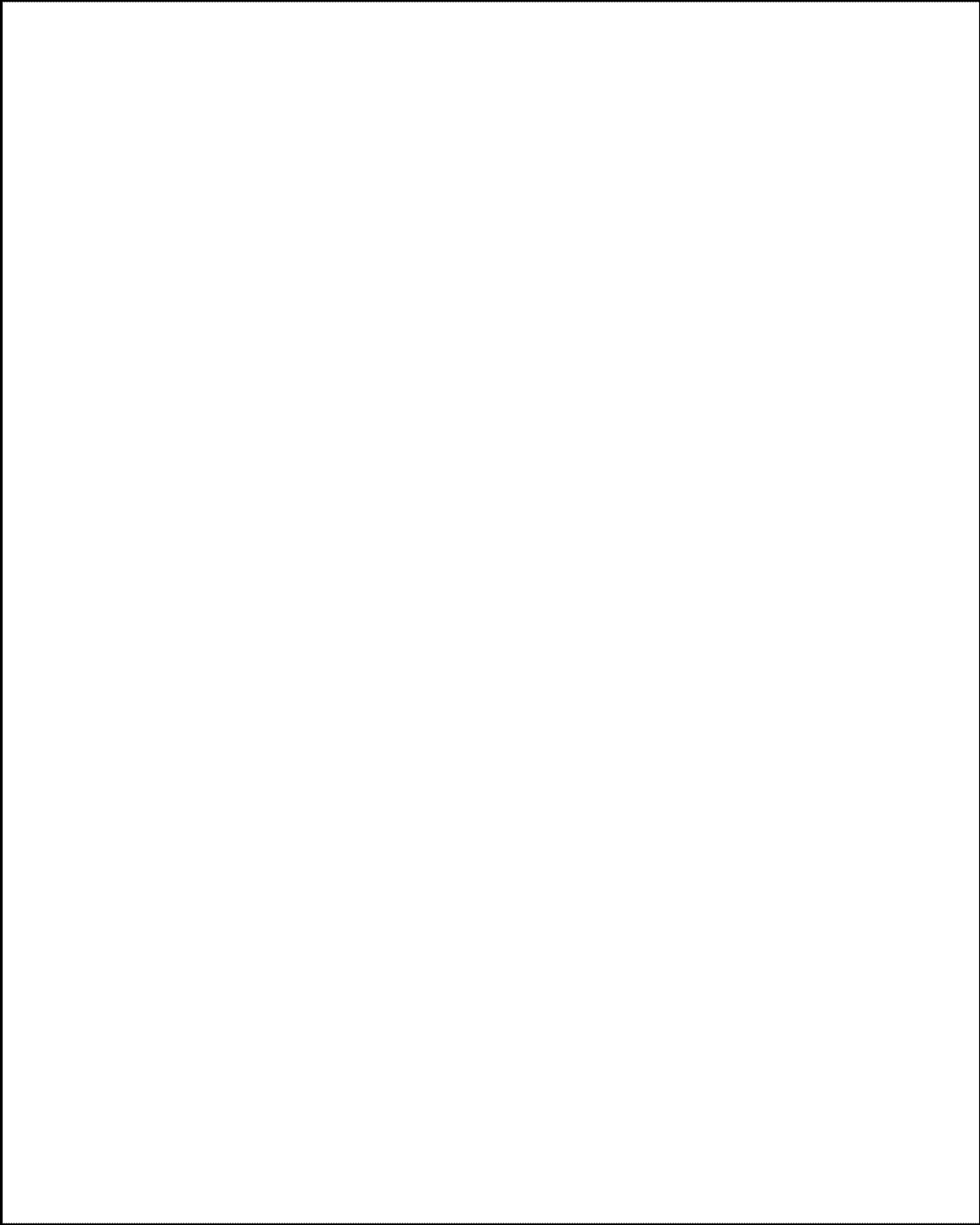
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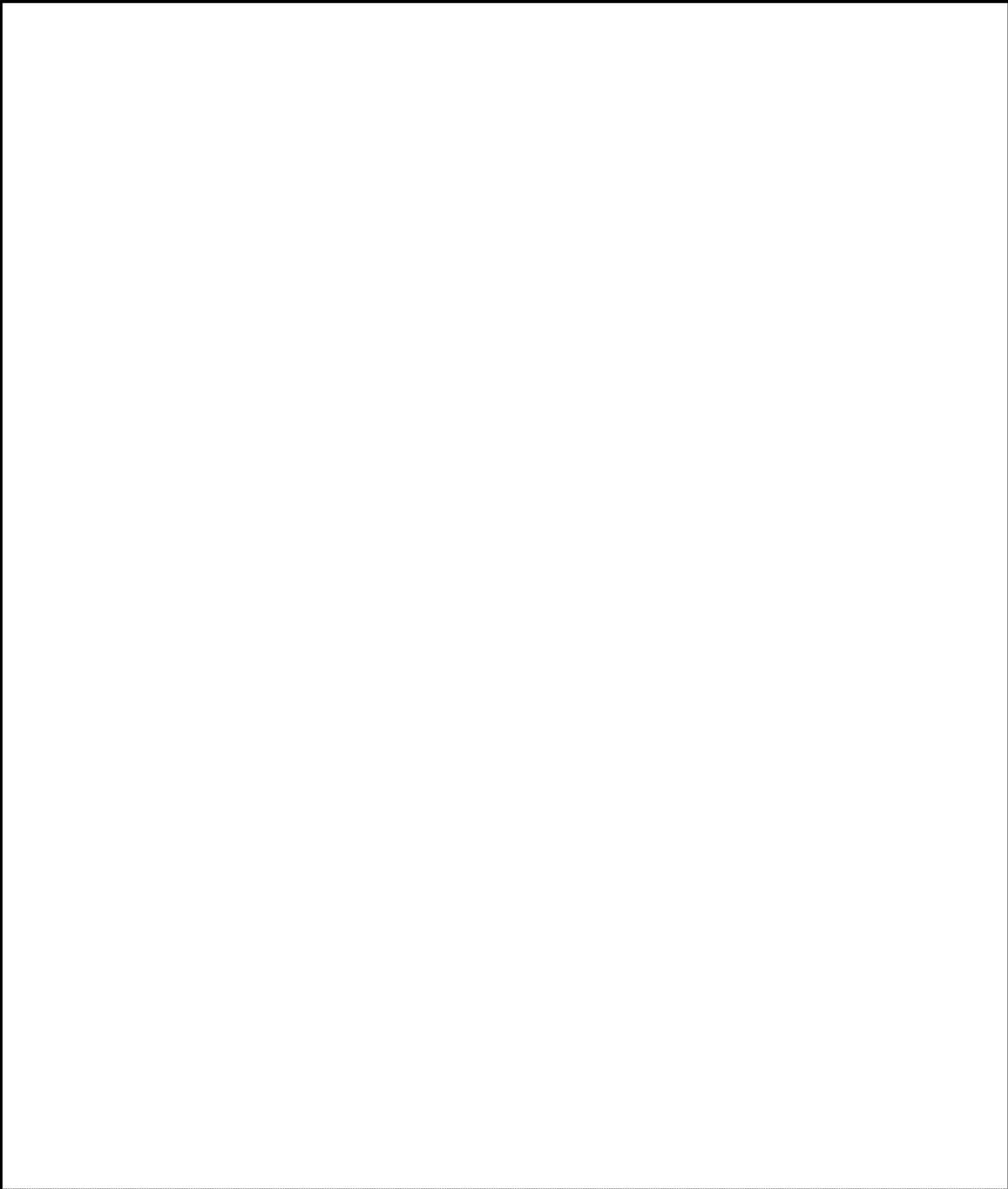
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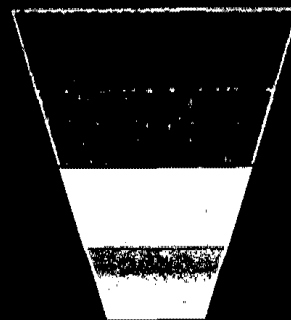
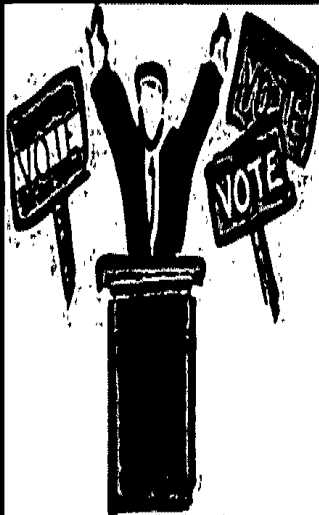
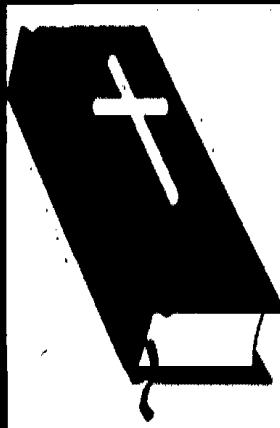
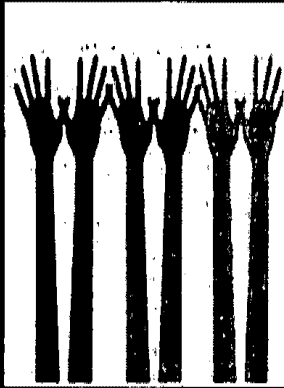


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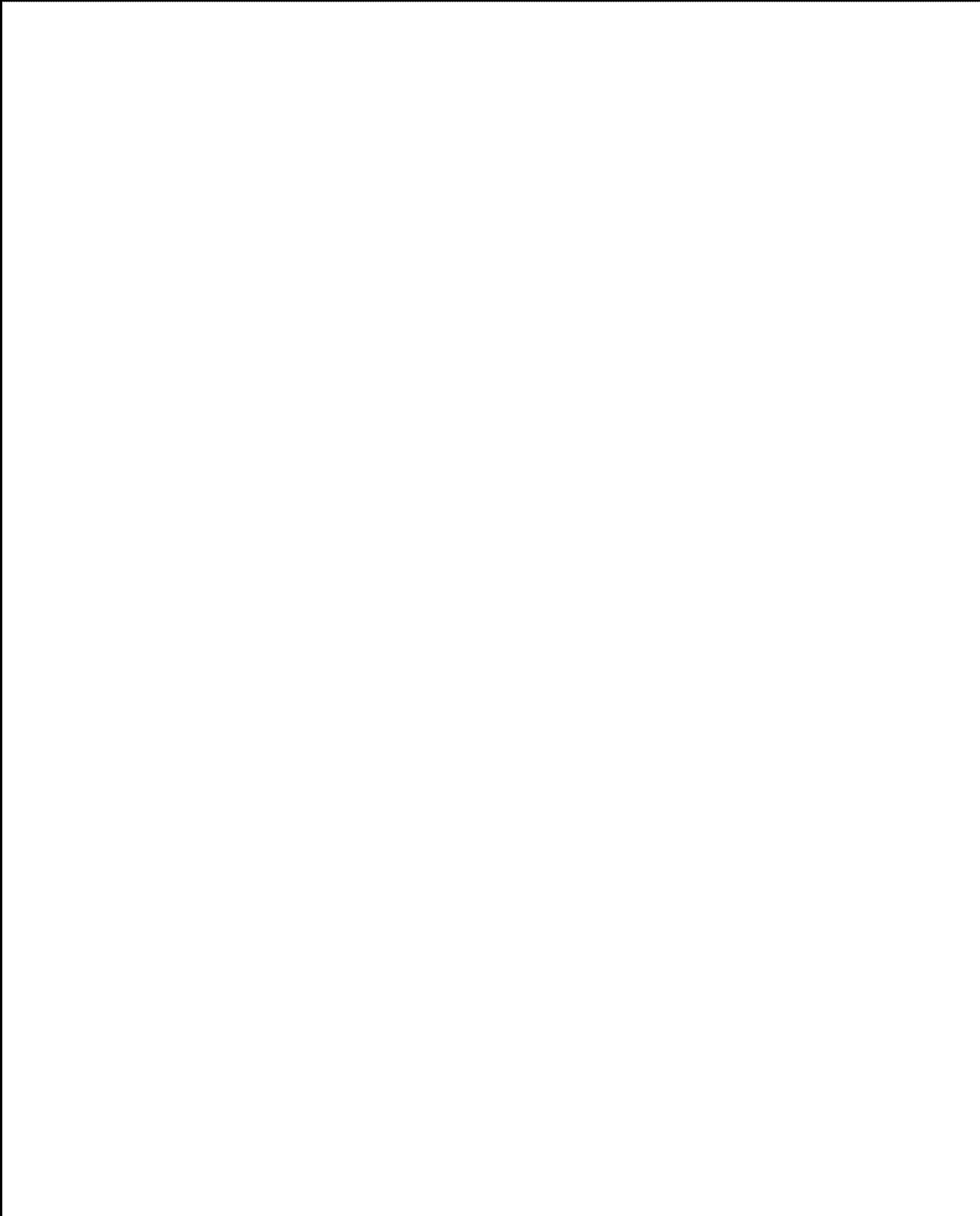
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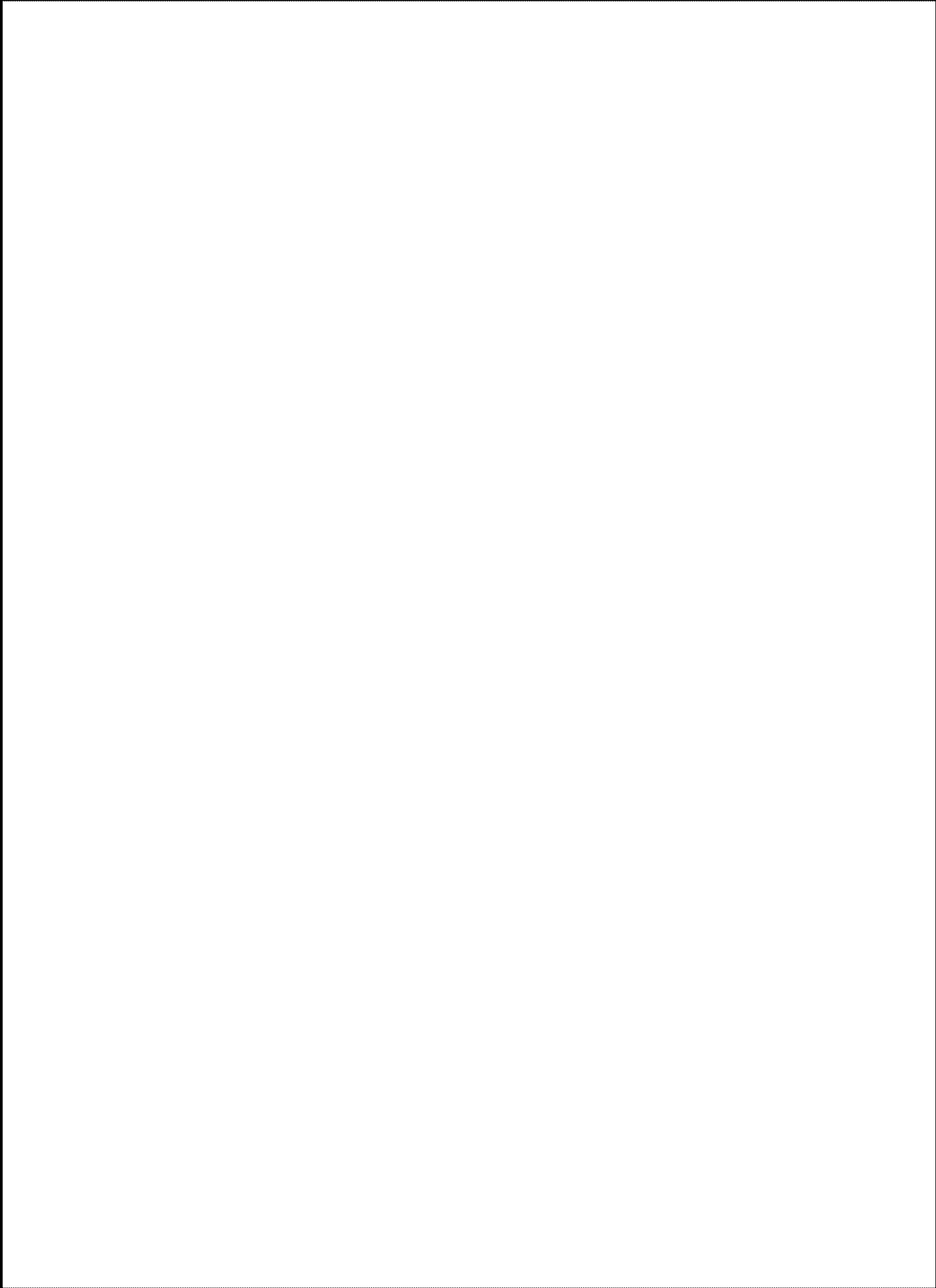


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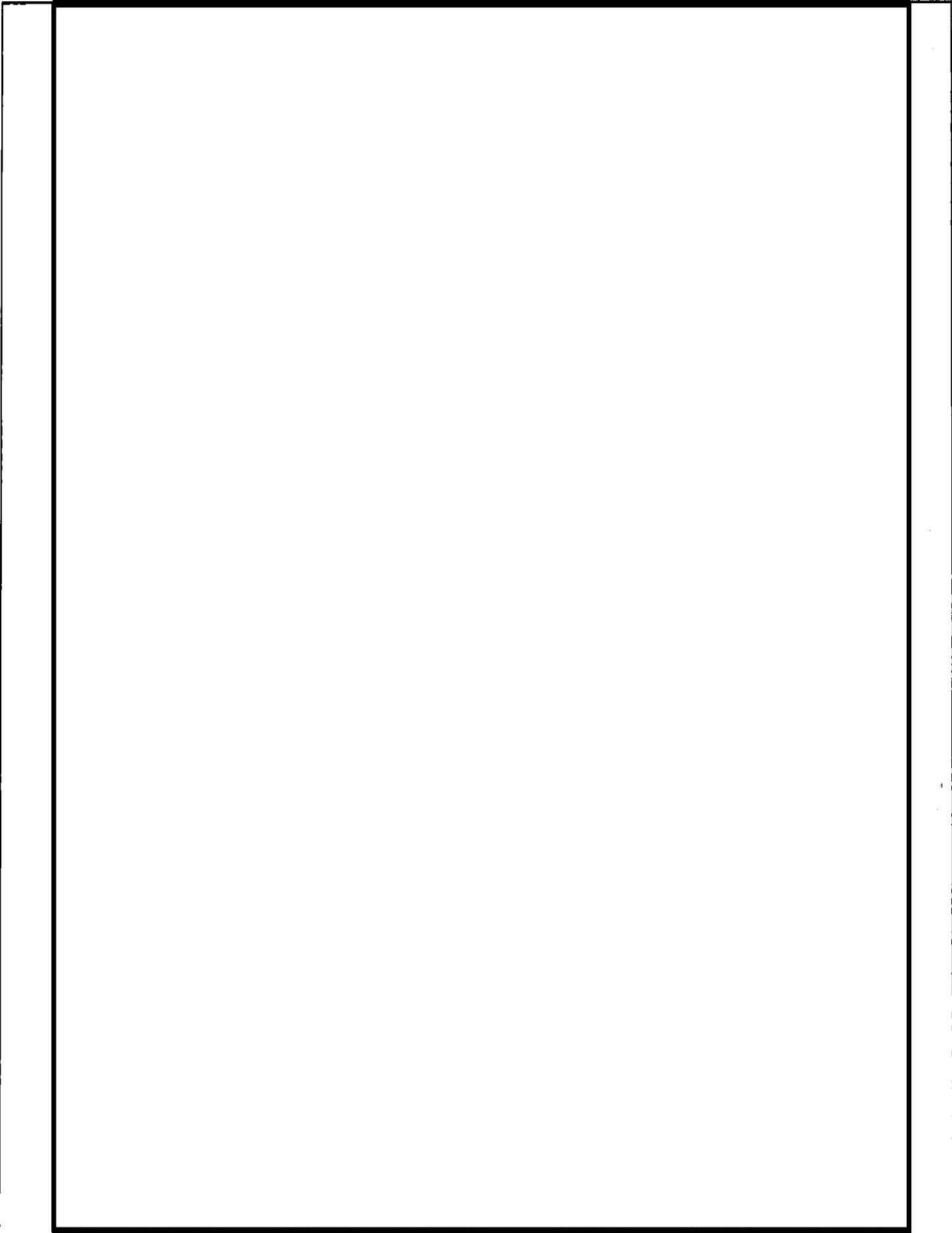




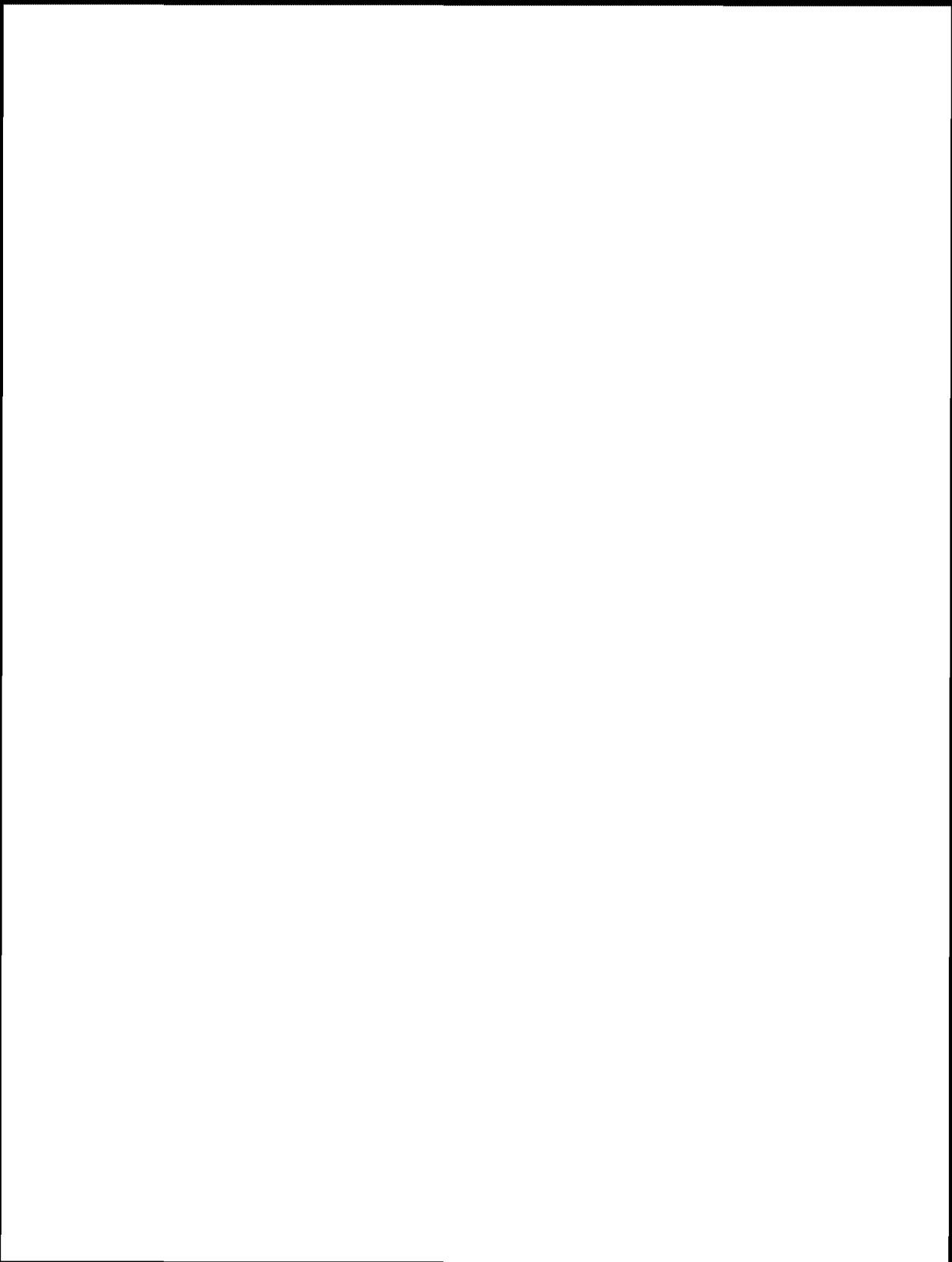
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## Response to Query

Date: May 29, 2013

Subject: PSGs within the context of sexual and gender based violence against Congolese women.

Keywords: country conditions, PSG, women-at-risk, Congolese women, DRC, sexual and gender based violence, abduction, social ostracism

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**Query: Under what circumstances might Congolese women be found eligible for refugee protection as members of a particular social group (PSG)?**

**Response:** Three specific types of fact patterns have emerged during interviews with Congolese women-at-risk: 1) Claims involving sexual assault, rape, and sexual and gender based violence (SGBV) 2) Claims involving women being abducted by armed groups and forced to be “bush wives”, and 3) Claims involving Congolese women without effective familial protection. Outlined below are considerations that were recommended in that specific context for analysis of possible PSG-based claims. However, guidance for analysis in forming these types of PSGs may also be applicable in other contexts as similar fact patterns emerge elsewhere.

### General information on PSG

(1) The members of a particular social group must share a common, immutable characteristic, which may be an innate one, such as sex, color, or kinship ties, or a shared past experience, such as former military leadership, but it must be one that members of the group either cannot change, or should not be required to change, because it is fundamental to their individual identities or consciences. *Matter of Acosta*, 19 I&N Dec. 211, 233-24 (BIA 1985).

(2) The social “visibility” or “distinction” of a claimed social group is an important consideration in identifying the existence of a “particular social group” for the purpose of determining whether a person qualifies as a refugee. One way to meet this requirement is to establish that the society in question distinguishes people who have the trait from people who do not have the trait in significant ways. *Matter of C-A-*, 23 I&N Dec. 591 (BIA 2006).

(3) The group cannot be defined by terrorist, criminal or persecutory activity or association, past or present.

(4) The particular social group in which the applicant claims membership cannot be defined by the harm that the applicant experienced (for evaluating past persecution) or fears (for evaluating well-founded fear). Circular reasoning should not be used to describe the group. The particular social group must have existed before the persecution began. However, if women who were sexually assaulted or raped by militants in the DRC are viewed distinctly by elements of society in that country, and ostracized or otherwise treated differently because of their past experience, that treatment might then be considered to be on account of their membership in a particular social group based on the past experience of harm. The harm the women may fear on this

account (whether it be social ostracism, repeated SGBV or other harm) is distinct from the past experience of the initial SGBV that defines the group.

### **Past Persecution on Account of Another Protected Ground**

This guidance addresses PSG analysis in cases where an applicant is persecuted on account of a PSG that is defined by an applicant's experience of past harm. Of course, if that past harm is serious enough to be persecution and was inflicted on account of a different protected ground (e.g., actual or imputed political opinion or ethnicity), that past harm may be analyzed as past persecution on account of that other ground. In cases where there is not clear evidence of nexus between that initial past harm and a protected ground, however, exploration of these PSG theories may be appropriate.

### **Social status and PSG:**

An individual's social status can be a characteristic that may define a particular social group.

Factors which may help define social status in the Congolese context:

- Gender
- Age
- Ethnicity
- Role within a domestic relationship
- Status as a female without relationships necessary for support within Congolese society
- Urban or rural background
- A combination of these or other traits

### **(1) Guidelines for analysis of claims involving sexual assault, rape, and sexual and gender based violence (SGBV):**

#### PSG:

Congolese women who have been sexually assaulted, raped, or are the victim of SGBV and now face familial and social ostracism, other stigmatization, and/or other harm as a result of these experiences. Officers should look at what traits create the social status that causes an applicant to be subject to harm as a result of sexual assault, rape, or SGBV.

For past persecution or well-founded fear cases, persecution is objectively serious harm that is also experienced as serious harm by the applicant (i.e. subjectively serious harm).

#### Lines of questioning to pursue include:

- Has the applicant who survives sexual assault, rape or SGBV been blamed, ostracized, or rejected by their family or community?
- Has the applicant been abandoned by their husband or other family members or ejected from their homes?
- Was the applicant subject to rape or sexual assault in front of family or community members in an attempt by the perpetrator to increase social isolation of the victim?
- Was the applicant left without effective familial protection after the sexual assault, rape or SGBV?

- Did the applicant not seek medical treatment after the sexual assault, rape or SGBV due to the stigma involved?
- Was a child born of the rape? Is the child also socially ostracized?
- How does the applicant view herself after her experience(s) of sexual assault, rape or SGBV?
- Does she devalue or stigmatize herself or feel that others devalue or stigmatize her?
- Does society view the applicant as socially distinct because she experienced sexual assault, rape or SGBV?

Past Persecution:

Is there testimony or other evidence that allows the officer to conclude that the applicant has suffered sexual assault, rape or SGBV? Has the applicant faced social and familial ostracism as a result of these experiences? Has the applicant faced additional, repeated sexual assault, rape or SGBV as a result of the social status created by the initial harm? Has the applicant experienced other harm that rises to the level of persecution? If so, document how these additional harms rise to the level of persecution.

Well-Founded Fear:

In evaluating whether the feared future harm rises to the level of persecution, the interviewing officer may consider:

- What harm would the applicant suffer on account of being sexually assaulted, raped, or experiencing other SGBV in the DRC?
- Would she be socially distinct as a victim of sexual assault, rape or SGBV and face social or familial ostracism?
- Would the applicant be more vulnerable to further instances of sexual assault, rape or SGBV based on her past experiences of SGBV?
- Would the applicant be more vulnerable to other types of harm?
- Do country conditions indicate that the police or judicial system are able and willing to protect women, in particular women who are known to be victims of past sexual assault, rape or SGBV from future instances of harm?

**(2) Guidelines for analysis of claims involving women abducted by armed groups and forced to be “bush wives”<sup>1</sup>:**

PSG:

Congolese women who have been abducted by armed groups and forced to be “bush wives” who face familial and social ostracism, other stigmatization, and/or other harm as a result of their abduction.

Lines of questioning to pursue include:

- How long was the applicant held in captivity?

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<sup>1</sup> The term “bush wife” refers to women and girls who have been abducted by a militia or armed group and forced into “marriage”, including domestic and sexual servitude while being held against their will in isolated and remote locations.

- How old was the applicant when she was abducted?
- Was the applicant sexually assaulted or raped or the victim of other SGBV during her abduction?<sup>2</sup>
- What other duties was the applicant forced to perform for her abductors?<sup>3</sup>
- Is the applicant now identified with or associated with the armed group by others in her family or community?
- Was a child born to the applicant during or after her abduction?
- How is the applicant recognized as a “bush wife”?
- Is the applicant stigmatized by others as a result of her abduction and role as a “bush wife”?

#### Past Persecution:

Is there testimony or other evidence that allows the officer to conclude that the applicant has been abducted and forced to be a “bush wife”? Has the applicant experienced familial and social ostracism or other stigmatization as a result of her abduction? Has the applicant faced any other kinds of harm (e.g., additional rape, sexual assault, SGBV or other harm) because of the stigma of having been a “bush wife”? If so, does it rise to the level of persecution?

#### Well-Founded Fear:

In evaluating whether the feared future harm rises to the level of persecution, the interviewing officer may consider:

- What harm would the applicant suffer on account of having been abducted and forced to be a “bush wife” in the DRC?
- Is the applicant particularly vulnerable to subsequent abductions if she returns? Could the applicant be targeted for further SGBV or other harm because of her perceived association with a particular militia or armed group?
- Does the social distinction of the applicant as a former “bush wife” subject the applicant to social and familial stigmatization?
- Could the applicant be subjected to further instances of sexual assault, rape or SGBV based on her designation as a “bush wife”?
- Do country conditions indicate that the police or judicial system are able and willing to protect women from future instances of harm, particularly women who share the applicant’s experience as a forced “bush wife”?

### **(3) Guidelines for analysis of claims involving Congolese women without effective familial protection:**

#### PSG

<sup>2</sup> Please note that forced sexual activity is not material support.

<sup>3</sup> The interviewing officer must do a complete TRIG analysis to ensure that no inadmissibilities apply as a result of activities performed during the applicant’s abduction. When an applicant has been forced to be a “bush wife”, certain activities such as cooking, cleaning, washing clothes or any other similar chores would be considered material support. Relevant questions should be asked to establish whether the applicant acted under duress.



Congolese women without effective familial protection who face social ostracism, other stigmatization, and/or other harm because they lack familial protection.

Lines of questioning to pursue include:

- Has the applicant been ostracized or rejected by their community because she lacks effective familial protection?
- Under what circumstances did the applicant become separated from other family members?
- Has the applicant faced sexual assault, rape, or SGBV because she lacks effective familial protection?
- Has the applicant faced other harm because she lacks effective familial protection?
- How does the applicant view herself because she lacks effective familial protection? Does she devalue or stigmatize herself or feel that others devalue or stigmatize her?
- Does society view the applicant as socially distinct because she lacks effective familial protection?
- How are women living alone in refugee or IDP camps perceived?

Past Persecution

Is there testimony or other evidence that allows the officer to conclude that the applicant has been subject to harm on account of her lack of effective familial protection? What forms has this harm taken? Are they serious enough to be considered persecution? Officers should look at what traits create the social status that causes an applicant to be subject to harm if she were to return to Congo without effective familial protection.

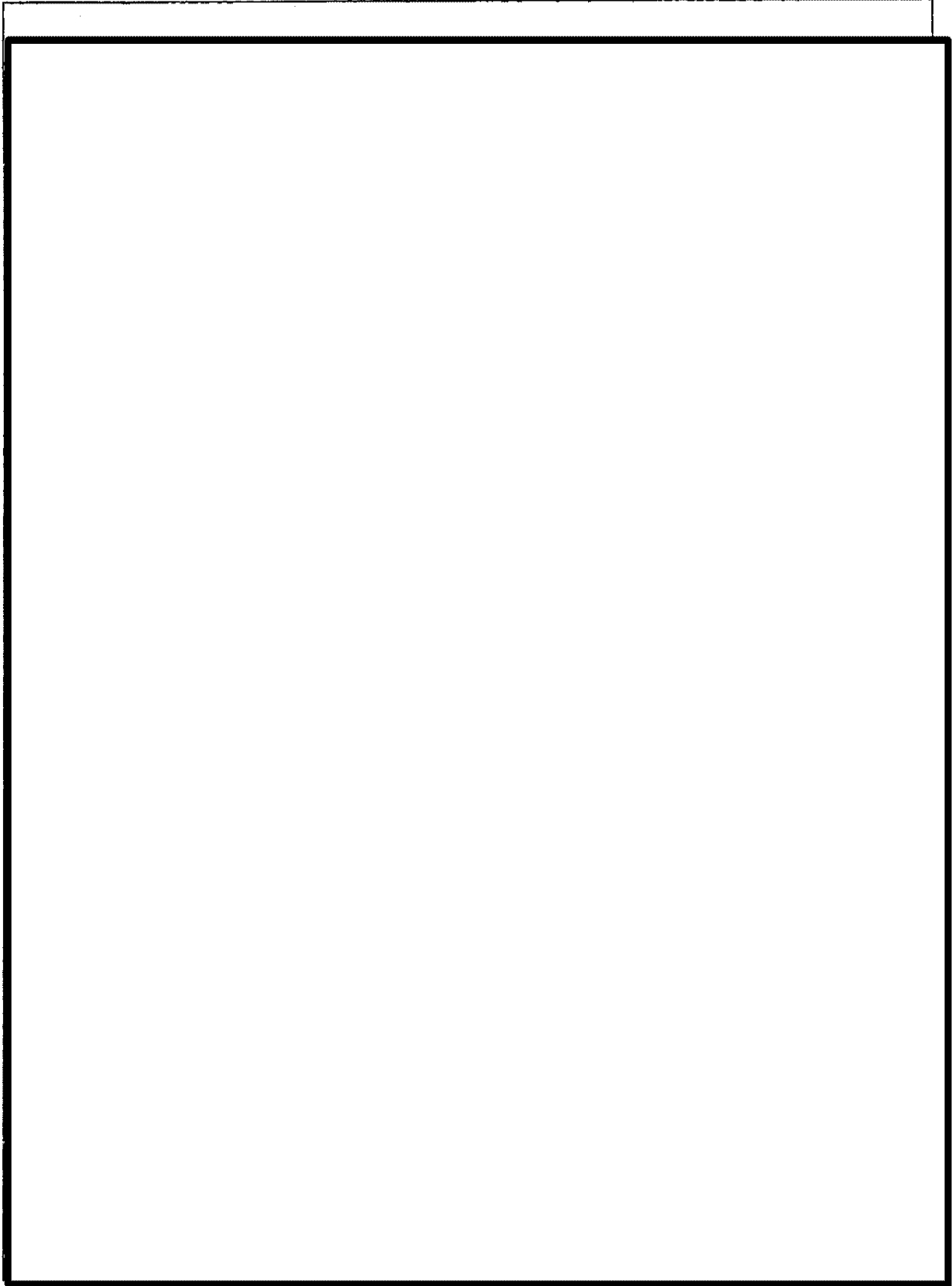
Well-Founded Fear

In evaluating whether the feared future harm rises to the level of persecution, the interviewing officer may consider:

- What harm would the applicant suffer on account of being a Congolese woman without effective familial protection returning to DRC?
- Would she be at risk for sexual assault, rape, SGBV or other harm on account of her lack of familial protection?
- Would the applicant or her children face abduction or forced marriage without familial protection?
- Would the applicant face severe restrictions on her ability to work that would deprive her of any reasonable means of subsistence?
- Do country conditions indicate that the police or judicial system are able and willing to protect women from future instances of harm, particularly women who share the applicant's experience as a forced "bush wife"?

# Step-by-Step Persecutor Bar Guide

(b)(7)(e)



**Please note: this guide is a starting point and should not be used as a substitute for all necessary lines of questioning and follow-up questions during your adjudication.**



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**INTERVIEWING SURVIVORS OF  
TORTURE AND OTHER SEVERE  
TRAUMA**

**TRAINING MODULE**

RAIO Directorate – Officer Training / RAIO Combined Training Course

**INTERVIEWING SURVIVORS OF TORTURE AND OTHER SEVERE  
TRAUMA**  
Training Module

**MODULE DESCRIPTION**

This lesson provides background information on torture, including what is meant by the term “torture,” the motives and methods of torturers, and the recovery of survivors. The lesson focuses primarily on the effects of torture and severe trauma and how these effects can affect the interview process. Through discussion and practical exercises, you will gain exposure to effective interviewing techniques and the effects of secondary trauma.

Note: This lesson plan was originally developed in 1995 for use in training new Asylum Officers, and has changed little since that time. It is based on the experiences of the authors in their work with refugees, and was reviewed by several experts in the field of working with survivors of torture and other severe trauma, and who have continued to conduct training for RAIO, including Dr. Allan Keller, Dr. Antonio Martinez, Dr. Andrea Northwood, and Dr. Pamela Elizabeth. In addition, two individuals who work with survivors, one a survivor herself, gave invaluable input into the development of this lesson plan; they requested that their names not be included, however. The mock interview practical exercise that is used during the training is based on mock interview exercises developed by the clinical staff of the Bellevue-NYU Program for Survivors of Torture. Our thanks also to the staff at the Center for Victims of Torture in Minneapolis for their support of RAIO training efforts, and to all who have contributed to these training materials, to the day-long training that is conducted for new officers at RAIO, and to trainings on this topic that are conducted in the RAIO field offices.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

Given the field situation of interviewing an applicant for asylum (and witnesses, if any), the asylum officer will be able to elicit in a non-adversarial manner all relevant information necessary to adjudicate the asylum or refugee request and to issue documents initiating removal proceedings.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain how different factors can impede communication during an interview with a survivor of torture.
2. Identify symptoms of Post-Traumatic Stress Disorder or other trauma-related conditions.
3. Explain how interview techniques may be used to help elicit testimony from a survivor of torture or other serious trauma.
4. Recognize secondary trauma as it may arise in RAIO adjudications.

### INSTRUCTIONAL METHODS

- Lecture/Presentation
- Discussion
- Practical exercise

### METHOD(S) OF EVALUATION

Written test

### REQUIRED READING

- 1.
- 2.

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

### ADDITIONAL RESOURCES

1. Aron, Adrienne; Corne, Shawn; Fursland, Anthea; Zelwer, Barbara. Committee for Health Rights in Central America (CHERICA). "The Gender-Specific Terror of El Salvador and Guatemala; Post-traumatic Stress Disorder in Central American Refugee Women," *Women's Studies International Forum* (Vol. 14, Nos. 1/2, 1991), p. 37-47.
2. Basoglu, Metin, M.D., PhD. "Prevention of Torture and Care of Survivors - an Integrated Approach," *JAMA* (Vol. 270, No. 5, August 1993), p. 606-608; 611.

3. Center for Victims of Torture. *Post-Traumatic Stress Disorder* (Minneapolis, MN: December 1996), 1 p.
4. Eisenman, David P., M.D. *Identifying Survivors of Traumatic Human Rights Abuses*. Lecture (Hagerstown, MD: Public Health Service Annual Conference, 4 November 1996), p. 5-7.
5. Martín-Baró, Ignacio. *Writings for a Liberation Psychology*, (Cambridge, MA: Harvard University Press, 1994), p.110-115.
6. Martinez, Antonio, Ph.D.; Fabri, Mary, Psy.D. "The Dilemma of Revictimization: Survivors of Torture Giving Testimony," (p. 3-4).
7. Physicians for Human Rights. *Examining Asylum Seekers*.
8. Randall, Glenn R. and Ellen L. Lutz. "Approach to the Patient," *Serving Survivors of Torture* (Washington, DC: American Association for the Advancement of Science, 1991), p. 58-68.
9. Rovner, Sandy. "The Torture of the Refugee, Why Judges Don't Believe," *Washington Post* (Washington, DC: 2 September 1996).
10. Salimovich, Sofia, Elizabeth Lira and Eugenia Weinstein. "Victims of Fear," *Fear at the Edge: State Terror and Resistance in Latin America* (Berkeley, CA: University of California Press, 1992), p. 77-79.
11. Swiss, Shana, M.D. and Joan E. Giller, MA, MB, MRCOG, "Rape as a Crime of War - A Medical Perspective," *JAMA* (Vol. 270, No. 5, 4 August 1993), p. 612-615.
12. United Nations. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (June 1987). (Included in lesson, International Human Rights Law)
13. Weschler, Lawrence. *A Miracle, A Universe: Settling Accounts with Torturers* (Penguin, 1990).

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR11	Knowledge of policies and procedures for processing claims from survivors of torture (3)
ITK5	Knowledge of strategies and techniques for communicating with survivors of torture and other severe trauma (4)
IR2	Skill in interacting with individuals who have suffered trauma (e.g., considerate, non-confrontational, empathetic) (4)
SMC2	Skill in recognizing and managing secondary trauma (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>

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

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

Officers in the RAIO Directorate conduct interviews primarily to determine eligibility for immigration benefits or requests; to corroborate information provided by applicants, petitioners, and beneficiaries; and/or to establish whether a person understands the consequences of his or her actions.

The modules of the RAIO Directorate – Officer Training Course and the division-specific training courses constitute primary field guidance for all officers who conduct interviews for the RAIO Directorate. The USCIS Adjudicator's Field Manual (AFM) also provides guidance for officers when conducting interviews, particularly for officers in the International Operations Division. There may be some instances where the guidance in the AFM conflicts with guidance provided by the RAIO Directorate. If this is the case, you should follow the RAIO guidance. Further guidance regarding interviews for specific applications will be discussed during division-specific trainings.

In this module, the term "interviewee" is used to refer to an individual who is interviewed by an officer in the RAIO Directorate for an official purpose.

## 1 INTRODUCTION

This lesson covers the definition of torture, the motives and methods of torturers, and the recovery of survivors. The lesson also discusses the effects of torture and severe trauma and how these effects can affect the interview process. The lesson offers interviewing techniques and discusses how you may be affected by secondary traumatization.

## 2 OVERVIEW

## 2.1 The Global Situation

Torture victims are male, female, adults, children. The practice of torturing individuals is not limited to a particular political ideology; it is an abuse of power that covers the entire range of the political spectrum. Torture of prisoners is routine in many countries. Torture may occur while individuals are serving sentences for having committed crimes, are incarcerated pending judicial hearings, are detained without being formally charged, or are in the informal custody of another person (or persons) who have control over them.<sup>1</sup>

## 2.2 Common Experiences of Torture Survivors

In many cases, the experiences of torture survivors are similar in that usually the victims have been abruptly taken away from their familiar "world," held in captivity where they were tortured, then escaped or were released. The specter of the tortured individual instills terror in the community. The victim is stigmatized, often ostracized.

In addition, torture survivors have all experienced a loss of control. Usually when faced with danger, an individual can fight or run; torture victims cannot do either of these and have no control over their lives and fate. This loss of control and helplessness often remain with the survivor long after the experience, as does the sense of estrangement and isolation.

## 2.3 Treatment Centers

Because of the widespread use of torture and the problems encountered by survivors of torture, treatment centers for survivors have been increasing around the world in recent years, and the mental health field is learning more about the psychology of survivors of torture. There are several centers in the United States; a few of them are the "Center for Victims of Torture" in Minneapolis, the "Bellevue/NYU Program for Survivors of Torture" in New York, "The Marjorie Kovler Center for the Treatment of Survivors of Torture" in Chicago, and "Survivors International" in San Francisco.

## 2.4 Sensitivity to Torture Survivors

RAIO officers are not expected to be psychologists, but you can be sensitive to persons who have experienced torture and understand how the experience of torture can potentially inhibit applicants from fully expressing their claim.

## 3 DEFINITIONS

Article 1, United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 27 June 1987, states:

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<sup>1</sup> Note that the UN definition of torture, cited below, limits the definition to that which is performed by or with the consent of a public official.

“For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>2</sup>

(Adopted and opened for signature, ratification, and accession by General Assembly resolution 39/46 of 10 December 1984; entry into force on 26 June 1987; ratified by the US Senate in 1990; US became a party in 1994.)

The World Medical Association, in its “Declaration of Tokyo,” (1975), defines torture in the following manner:

“For the purpose of this declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.”

A more descriptive definition of torture is offered by Elena O. Nightingale, M.D., Ph.D, in *The Problem of Torture and the Response of the Health Professional*, Health Services for the Treatment of Torture and Trauma Survivors, J. Gruschow & K. Hannibal, Eds., (Washington, DC: American Association for the Advancement of Science, 1990), p. 8-9:

“Torture is the deliberate infliction of pain by one person on another--that is the unique feature of torture. It is very different from the trauma that is suffered from a natural event, such as an earthquake or flood...<sup>3</sup>

“There are at least four characteristics of torture that seem to be quite consistent. First, at least two persons are involved--a perpetrator and a victim, and often, though not always, they are face-to-face. Second, the torturer has complete physical control over the victim. This is important because the helplessness of the victim[s] remains with [them] long after the torture episode is over. Third, pain and suffering are an integral part of torture, but the main purpose is not really pain and suffering but rather humiliation and breaking of the will. Therefore, there are means of torture that do not involve physical pain and suffering, including sensory deprivation, continuous noise, light, hunger, cold, and so on. Finally, torture is a purposeful, systematic activity. In addition to breaking the will of the victim, the intent is to obtain information or a confession, to punish the victim, or

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<sup>2</sup> This definition of torture is for purposes of the Convention. Since only states are parties to the Convention, the focus is on severe harm inflicted by officials or individuals acting in official capacity.

<sup>3</sup> See also the article by Lira Salimovich noted above in the Additional Resources section of this lesson.

to intimidate the victim and others. That is, the purpose is not only to destroy the person who is being tortured, but to have that person be a lesson to others so they will not do whatever the government that sanctions torture feels is not in its interests. And that's a very important component. The torture we are speaking about is the systematic government-sanctioned use of torture that is for political purposes."

## 4 MOTIVES OF TORTURERS

"[T]he body [is] abused to gain access to the mind."<sup>4</sup>

Torturers attempt to destroy the political opposition in order to gain or maintain power. Although the immediate goal of torturers in some cases is to extract information, obtain a confession, or to destroy the person as a participant in or leader of a group that the torturers oppose, in most cases the goal is to give an example for others; it is a means of destroying the emotional, spiritual, social, and political well-being of a group or community.

Torturers attempt to:

- destroy the personality of the victim
- weaken the individual, the family, the community, and/or the society
- create a climate of fear or apathy

Torture leaves the survivor as well as the family and community of the survivor feeling afraid, vulnerable, humiliated, intimidated, and isolated. Distrust among community members may also develop, diminishing supportive community ties.

## 5 FORMS OF TORTURE

### 5.1 Overview

Against all professional ethics, medical personnel and psychologists have sometimes assisted in torture, devising methods of torture that maximize the long-term effects of torture and do not leave physical signs. Medical personnel are often present when victims are being tortured to assure that the victims do not die. Their presence makes them culpable of crimes against humanity; it does not legitimize the acts being performed.

Though some methods of torture leave no physical marks, they may have devastating physical, neurological, and psychological effects, disabling the person for life.

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<sup>4</sup> Amnesty International. "Treatment of Survivors of Torture," John Denford. *A Glimpse of Hell - Reports of Torture Worldwide* (London: 1996), p. 155.

## 5.2 Methods

Torture can take many forms including:

- Psychological torture (e.g., threatening to harm or kill the victim or relatives of the victim; mock executions; witnessing or hearing the torture of others; forced nudity); most victims are subjected to some form of psychological torture
- Sensory deprivation (e.g., depriving the victim of food, sleep, light, and protection from the elements) or sensory overload (e.g. loud noises, glaring lights)
- Sexual violence (men, women, and children are all victims of sexual violence)<sup>5</sup>
- Electric shocks to all parts of the body (most frequently to the genitalia)
- Beatings / Physical assault (the majority of torture victims are subjected to beatings)
- Burning the victim
- Forcing the body into contorted positions or forcibly stretching it beyond normal capacity
- Non-therapeutic administration of drugs

The most common forms of torture are beatings and psychological torture.

## 6 THE EFFECTS OF TORTURE AND OTHER FORMS OF SEVERE TRAUMA

### 6.1 Overview

Torture can have lasting physical and psychological effects. The most debilitating long-term effects of torture, however, tend to be psychological rather than physical. Symptoms affect a high percentage of survivors. This is also true of other forms of traumatic abuse, such as witnessing the assault, mutilation, or murder of others; experiencing the burning or bombing of communities; forced separation from loved ones; and other exposure to horrific sights or events.

### 6.2 Physical Effects

There are many possible physical effects of torture. Physical effects include (but are not limited to) the following:

- Musculoskeletal pain
- Loss of use of body mobility (due to nerve damage, muscle damage, etc.)

<sup>5</sup> Sexual violence other than rape can also have lasting psychological effects.

- Loss of complete use of certain body functioning
- Loss of vision
- Hearing loss
- Headaches
- Pregnancy
- Sexually transmitted diseases
- Scars (most forms of torture, however, do not leave lasting scars)

### 6.3 Psychological Effects

The psychological effects (and corresponding symptoms) of torture and other forms of severe trauma can include the following.<sup>6</sup>

#### Emotional

- blunted affect, or restricted affect (psychic numbing, showing no emotion or inappropriate emotion)
- depression
- panic disorders / panic attacks
- phobias
- anxiety
- suspiciousness; distrust
- detachment
- feelings of isolation / alienation
- feelings of guilt, shame, humiliation, worthlessness, or helplessness
- loss of confidence
- lack of interest in previously enjoyable activities
- anger (at those who perpetrated the trauma or those who were exempted)
- thoughts of death or suicide

#### Psychosomatic

- headaches
- pains for which there is no medical explanation

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<sup>6</sup> The following list is one of several ways of categorizing the effects of trauma on survivors.

- nervousness
- insomnia or hypersomnia
- gastrointestinal complaints; diarrhea
- fainting
- sweating
- weakness; fatigue
- loss of appetite; weight loss or gain
- nightmares
- flashbacks
- reliving the physical pain of what happened

### **Behavioral**

- substance abuse
- aggressive behavior
- irritability
- withdrawal
- sexual dysfunction

### **Mental**

- confusion
- loss of concentration
- loss of memory
- mental dullness
- attention blocking
- recurring thoughts of the traumatic event(s)

It is important to note that although most psychological effects of torture are universal, some may vary somewhat across cultures, and some may be culture specific. For example, to a Tibetan Buddhist, body fluids are considered to have a spiritual energy and are not replenishable.<sup>7</sup> A form of torture which has been used against Tibetans is drawing blood and discarding it in an inappropriate manner. This can have severe psychological effects on the individual; his or her energy and spirit is irreversibly depleted.

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<sup>7</sup> Eisenman, Dr. David. Associate Medical Director, Bellevue/NYU Program for Survivors of Torture. Interview, 17 December 1997.



Many of these psychological effects (as well as certain physical effects) can lead to a deterioration of the family structure and community ties. Social functioning of the individual is often impaired; this affects parenting skills, the ability to interact as a family member or part of a community, and the ability to hold a job and support oneself and one's family. The socioeconomic functioning of the entire community may suffer, as the effects of torture and other forms of severe trauma have a far-reaching impact on the community as well as the individual.

#### 6.4 Post-Traumatic Stress Disorder (PTSD)

Although reactions to torture and other forms of severe trauma differ among individuals and cultures, the most common conditions are depression and "Post-Traumatic Stress Disorder" (PTSD). According to "The Dilemma of Revictimization: Survivors of Torture Giving Testimony" by Antonio Martinez, Ph.D., and Mary Fabri, Psy.D.,

"The dynamics of the disorder are best understood by the interaction between two factors: the painful intrusive memories of the trauma, and the defenses used to ward off these memories. **The questioning during investigations, hearings, etc. is an extremely emotional event for the survivor. The story is rarely recounted without an actual sensory reliving of the experience (physical pain, tastes, sounds, and smells). It is not simply a recollection of events.**" (emphasis added)

#### 6.5 Other Factors

There are other issues which may compound the effects of torture and other forms of severe trauma on survivors.

1. The survivor may be overwhelmed by grief or bereavement due to separation from and/or loss of loved ones that has occurred as a secondary consequence of his or her torture.
2. The survivor may experience an overwhelming sense of guilt, especially if he or she survived while others continued to be tortured or were killed after the survivor was freed, or if their torture was due to their association with the survivor. Survivors may feel that they were somehow to blame for their own torture or for the torture of others.
3. Survivors who have resettled in a country other than their own face difficulties adjusting to unfamiliar customs and a new language. They may also feel that they do not fit into the new environment. Their established position in their family and society may have been greatly altered by their resettlement, and they may feel a loss of purpose in their lives, especially if it is difficult for them to get and keep a job, and if economic survival is problematic for them.

4. Uncertain immigration status in the country of refuge can be very stressful for a survivor and can add greatly to his or her feeling of instability and uncertainty. The survivor may fear being deported and returned to the country where the abuse occurred. Waiting for a decision on a request for asylum or refugee status can be very stressful; being denied can have profound negative effect on a survivor.
5. The survivor may have a physical disability as a result of the torture / trauma that he or she experienced. He or she may also, as noted above, be especially susceptible to illness.

## **7 TRIGGERS**

As noted above, torture and other severe trauma can leave lasting psychological effects on survivors. Often, symptoms appear after a latency period and do not usually subside merely with the passing of time. A survivor may appear to be adjusting fairly well, only to have symptoms triggered without warning.

There are many possible triggers: an event may trigger painful memories or an individual may remind the survivor of the torturer. Even sounds and smells can trigger symptoms.

The implications for the interview are great. Recollections of the traumatic events, such as are required in the interview, can be expected to trigger symptoms. If the survivor was interrogated, the mere experience of the interview can remind the survivor of being interrogated where his or her life was dependent upon the whim of the interrogator. Uniformed security guards, a particular manner of questioning or particular questions, certain objects in the interview room or office environment, etc., can trigger memories of the trauma and cause “flashbacks” for the survivor. A survivor may be very fearful of symptoms being triggered during the interview.

## **8 RECOVERY FOR SURVIVORS OF TORTURE AND OTHER FORMS OF SEVERE TRAUMA**

### **8.1 Overview**

Individuals heal in a variety of ways and at different rates. Individuals never fully recover from an experience of torture; rather, it is a question of healing as much as possible from the pain and trying to regain stability and normalcy in life.

### **8.2 Factors Affecting Recovery**

It is difficult to predict how a particular individual might heal from a torture experience. Psychologists have found, however, that the situations listed below may help in recovery.

**Certain situations can help in recovery**

- **the survivor was an activist and was abused due to his or her activism**
  - Such individuals tend to recover more easily than someone who was tortured merely to serve as an example or to get at others in the community.
- **the survivor holds strong religious beliefs**
- **the survivor is able to seek legal redress for the past abuse (for himself or herself, or to help others)**
- **the survivor has access to rehabilitation**
- **the survivor is in a supportive environment where he or she can be productive**
  - Being in an environment that is permanently safe where there is no threat of future harm is important in recovery. Having regularized his or her immigration status in the country of resettlement can add greatly to the feelings of safety and security of a survivor.
  - Being able to continue with normal family, social, and work-related functions without being viewed by others as having been somehow diminished by the past experiences can help in recovery.
  - In some instances, peers/the community may view the survivor as having been strong to have survived.
  - Having someone who is easily accessible with whom the survivor feels comfortable talking about the experience can also help in recovery.
  - The survivor has family with him or her in exile and/or is assured that his or her family is safe.
- **certain cultural values can have a positive impact<sup>8</sup>**
  - A survivor's belief in "karma" may help him or her to release feelings of revenge or anger toward the perpetrator: suffering is part of one's fate that one must accept; the perpetrator cannot escape his or her own fate because of his or her actions so justice will eventually prevail.

**Certain situations can have a negative impact on recovery**

- **certain cultural values can adversely affect recovery**

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<sup>8</sup> Cultural factors can also have a negative impact; see the section immediately below.

- For example, women who have been sexually abused in cultures which view such women as responsible for their own abuse have an especially difficult time accepting what happened to them and overcoming their shame.
- culture differences or “culture shock” – difficulty living in a culture that is different from one’s own – can have a negative impact on recovery
- lack of economic resources can also have a negative impact on recovery
- bias and discrimination (such as anti-immigrant bias) can have an adverse impact on the recovery of those survivors who resettle in a country other than their own, or in an area that is culturally different from their own
- uncertain future can negatively impact recovery
  - An uncertain future can negatively affect a survivor’s rate of recovery. Survivors who are under the surveillance of their torturers may not know if or when they may be forced to again undergo torture. Even if survivors have resettled in another country and are out of immediate harm’s way, their future may still be uncertain if they have no legal status in the country of resettlement or if their immigration status is pending.

## 9 HOW TRAUMA-RELATED CONDITIONS CAN INTERFERE WITH THE INTERVIEW PROCESS

### 9.1 Overview

If an applicant is suffering from Post-Traumatic Stress Disorder or other trauma-related conditions, your ability to gather information on which to base a decision may be affected.<sup>9</sup>

An interview - even a job interview - can be a stressful experience for any individual. An interview as crucial to an individual’s future as a refugee or asylum interview, by its very nature, is very stress-producing. Symptoms of trauma-related conditions are often exacerbated in stressful situations. Therefore, the interview can be extremely difficult for a survivor of torture or other severe trauma.

Undergoing questioning about the events that occurred can be very emotional for the survivor. The survivor can actually relive sensory experiences, such as sounds, smells, and physical pain. Various factors such as contact with persons in uniform (e.g. immigration inspectors, border patrol agents) or being questioned in a particular manner may trigger symptoms of Post-Traumatic Stress Disorder because this can remind the survivor of the individuals who harmed him or her. The survivor may feel robbed of

<sup>9</sup> See also Section 7 *Triggers*.

power, vulnerable, and defenseless, as he or she felt during the torture experience. The survivor may react in a variety of ways during the interview.

## 9.2 Effect on Interview Process

Often, the symptoms of PTSD that may be triggered in the survivor during the interview are experienced internally and he or she will not discuss this with those present. These symptoms, however will have an impact on the survivor's ability to portray his or her claim.

### Survivor may avoid discussing events

A survivor may use avoidance as a means of coping. He or she may do whatever necessary to avoid thinking about the events due to the humiliation and the emotional pain evoked. He or she may not wish to discuss the details of the experience with others, may not sleep to avoid having nightmares, or may isolate himself or herself from others to avoid talking about past events. A survivor may also avoid contact with others from his or her country who may remind him or her of the experience. A survivor also may avoid such contact because they are fearful that "spies" associated in some way with their abusers may have "infiltrated" their community. (This is not an unrealistic fear, as there have been cases in which government agents from countries have developed ties to communities in resettlement countries in order to report information back to their governments on the activities of certain individuals.)

A torture survivor may be more willing to discuss the physical symptoms resulting from the experience(s) than the psychological symptoms.

### Survivor may have difficulty remembering events

A survivor may have suffered brain damage as a result of abuse such as blows to the head and other forms of trauma. This may lead to cognitive problems and an inability to remember certain things.

Additionally, a survivor may have an emotional remembrance of what happened but may not remember the details. He or she may experience intense fears and anticipation of going through the experience but may not be able to remember what it was that happened. This may be due to:

- defensive techniques to avoid reliving the events, which include
  - denial that events occurred
  - minimizing the events
  - blocking memory of the events

- dissociation (temporarily forgetting that the event occurred; this may be manifested by blank looks or stares, as well as losing track of questions or forgetting what one was about to say)
- overstimulation of the brain during the occurrence of the traumatic events so that the brain did not store all of the information
- confusion or distortion of memory due to anxiety (e.g., mixing up names and/or dates)

### **Survivor may respond in unpredictable ways**

- He or she may lose composure. The question and answer format of the interview conducted by a stranger may remind the survivor of being interrogated and questioned for the “truth,” and then punished for telling the truth or for lying. The survivor may see the interview as determining whether he or she will live or die. Even waiting to be interviewed may remind the survivor of waiting to be taken to be tortured.
- A torture survivor may manifest a wide variety of emotions when recounting past events. He or she may laugh at what appears to be inappropriate moments or may cry hysterically. The survivor may remember the details of the event(s) but be emotionally detached and recount events as if merely reciting a memorized story without any emotion at all.
- A torture survivor may avoid answering questions or may change the subject because he or she may be afraid of having an emotional outburst or a dissociation experience.
- A torture survivor may have difficulty following or tracking your questions or difficulty answering questions coherently. This can be due to severe concentration difficulties as a result of the memory problems listed previously.
- A torture survivor may avoid eye contact. Eye contact may be difficult for a torture survivor due to the experience of having been constantly watched while being detained and undergoing torture.
- A torture survivor may be unresponsive to questions you pose, even if he or she knows the answers and could speak extensively on the topic.

### **Survivor may distrust the interviewing officer and may therefore avoid revealing certain information**

A torture survivor may have a distrust of others, particularly persons in positions of power or authority (e.g., asylum or refugee officers). (Survivors may also distrust even family members and friends.) The survivor may be fearful of what you will do with the

information obtained at the interview, and so may not fully disclose to the officer the experiences he or she had.

Often, a distrust of others helped survivors escape further abuse and survive in their countries. Therefore, survivors may attempt to protect themselves by distrusting others in other situations as well.

The effects listed above can also have an impact on interactions other than at the interview.<sup>10</sup> Individuals who work with survivors in a counseling capacity are often not able to elicit all that happened to the survivor during the first few counseling sessions. In addition, a survivor may not have explained everything about the claim to his or her representative prior to the interview.

## **10 INTERVIEWING SURVIVORS OF TORTURE AND OTHER SEVERE TRAUMA**

### **10.1 Interview Techniques**

At every interview there is a potential for retraumatizing an applicant who may be a survivor of torture or other severe trauma. You must be aware of the effects of trauma on certain applicants and use this awareness in formulating interview strategies. You may have to modify your interview techniques to adapt to certain situations. Unfortunately, you will not always know who is a survivor and who is not a survivor. As noted above, some applicants will not fully disclose all information about their past to you. You should therefore treat each applicant as a possible survivor and attempt to be as sensitive as possible during all interviews.

Interview techniques that may be helpful include the following.

#### **Treat the applicant with humanity**

The manner in which you approach the applicant and the interview can greatly affect the way in which the applicant will respond and be able to express his or her claim at the interview.

You should attempt to build rapport as soon as he or she meet the applicant and should find some way to connect with the applicant about issues not related to the torture experience. Setting the tone at the beginning of the interview can assist you in eliciting the necessary information throughout the interview and can assist the applicant in relating his or her claim.

#### **Try to help the person feel safe and in control**

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<sup>10</sup> Consider the implications for the interview.

- You should recognize the power differential that exists between the applicant and yourself and take care not to exploit it.
- You should explain the purpose and process of the interview, including the fact that you will be taking notes and the reason for taking notes. In this way, a survivor will know what he or she can expect during the interview, thus relieving some of the anxiety of the unknown.
- If the claim involves sexual abuse and you are not the same sex as the applicant, you can give the applicant an opportunity to be interviewed by an officer of the same sex, if one is available.<sup>11</sup>
- You should start with easy topics in order to establish rapport.
- You can ask open-ended questions that give the applicant some control over the information he or she must give.
- You can acknowledge how difficult it may be for the applicant to answer certain questions; he or she can give the applicant permission to let you know when something is too difficult.
- You can acknowledge that an event may have been particularly traumatic for an applicant (e.g., “That must have been very difficult for you.”)
- You can elicit sufficient detail to establish credibility and gain an understanding of the basis of the claim without probing too deeply into all the details of a painful experience.
- Questions such as “Was your life different after your experience?..... How?” can also give you further insight into the nature of the event as well as an understanding of the long-term effects of the experience on the applicant.
- If the applicant does not speak English, and it is necessary for you to discuss issues with the interpreter, attorney or legal representative, depends on the applicant's file, or anyone else at the interview, you should have translated to the applicant what he or she is discussing. This keeps the applicant informed of what is going on and can diminish the loss of control the applicant may feel.<sup>12</sup>
- You should respect a survivor's need to protect himself or herself during the interview and should respect the survivor's need to have a sense of control during the interview.

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<sup>11</sup> Sometimes just giving the applicant the opportunity to be interviewed by someone else can relieve some of the applicant's stress about the interview as it indicates that the asylum officer is sensitive to and understanding of the applicant's situation.

<sup>12</sup> For additional information, see RAIIO Training module, *Interviewing – Working with an Interpreter*.



This is a major issue for survivors, as their control has been completely stripped from them in many situations; thus lack of control can be very unnerving.

### **Be thorough but sensitive**

- You should **explain** to the applicant the process and roles of the individuals at the interview to **reduce** the feeling of anxiety.
- You can ask **broader**, open-ended questions in the beginning of the interview to give the applicant a **feeling** of control, then go back for details.
- You should not **speak** in a loud voice, should avoid changes in mood or attitude toward the applicant, should avoid reacting with **disbelief**, and should avoid being confrontational **or** argumentative with the applicant.
  - It is important to remember that there is a range of behavior that a survivor may exhibit when **confronted** with discrepancies in his or her story. Some survivors may be able to **explain** in a rational manner the **discrepancy**, while others may become more **confused**. This may have very little to do with an attempt to fabricate a claim.
- You should **approach** the interview as a means of **gathering** information rather than an interrogation, and should convey that message to the applicant by your manner.
- You should **allow** the applicant to ask questions or ask for clarification; the officer should rephrase **questions** that appear to be confusing or not understood by the applicant.

### **Remember the purpose of the interview**

- You should be **knowledgeable** in human rights conditions in the applicant's country so that he or she **can** ask relevant questions and **avoid** unnecessary questions.
- You should **give** the applicant time to recompose **himself** or herself if necessary during the **interview**, and to **relate** the account of **his** or her experiences in a manner that is the most **comfortable** for the applicant.
  - At times after **asking** a question, it may be **appropriate** to allow the applicant several **seconds** of silence to organize his or her thoughts and determine how to answer a **particularly** difficult question. Although you may feel a need to fill in the silence by **asking** additional questions, it may **be** more beneficial to allow for some silence at **particular** times during interview.<sup>13</sup>

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<sup>13</sup> For additional information, see **RAIO** Training module, *Eliciting Testimony*.

- If an interview with a survivor of torture is particularly long or difficult, you can give the applicant an opportunity to take a break, get water, etc.
- You can emphasize mutual goals you and the applicant have.
- You should respond non-defensively if an applicant exhibits suspiciousness or distrust.

It is important to keep in mind that you will not be aware of what the applicant is going through during the interview and that you cannot change the manner in which the applicant presents himself or herself. Rather, you must be aware of how you are conducting the interview, and adapt your own behavior whenever necessary to be able to effectively elicit the applicant's claim.

## 10.2 Documentation

Documentation of a survivor's experience from his or her country is usually not available; persons who practice torture usually do not leave written accounts of their actions, and physicians and psychologists who might provide treatment and/or documentation may themselves be harmed if caught.<sup>14</sup> In addition, many in the medical profession may not be trained in recognizing the signs of torture. Furthermore, a survivor may be afraid to go to a doctor if a doctor was present during and involved in the torture. Although survivors are often not able to seek medical or psychological attention, some are able to obtain care and documentation of their abuse.

Documentation of physical symptoms and conditions, however, may not necessarily be able to verify the cause of the symptoms or conditions.

## 11 EFFECTS ON INDIVIDUALS WHO ARE CLOSE TO OR WHO WORK WITH SURVIVORS

### 11.1 Secondary Trauma

The term "secondary trauma" (also called "vicarious trauma") is used to refer to the psychological and physiological effects experienced by individuals who work with or are close to trauma survivors. Symptoms of secondary trauma mimic the symptoms of PTSD. Secondary trauma is a normal reaction and is experienced in varying degrees by most individuals who are in constant contact with survivors of trauma.

### 11.2 Family Members of Survivors

Secondary trauma may affect family members of the survivor as well as individuals who were closely associated with the survivor, such as a friend or colleague who escaped

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<sup>14</sup> See the articles by Adrienne Aron and Sandy Rovner, noted in the Additional Resources section of this module. See also the sample letters from medical personnel referred to in the Additional Resources section of this module.

being tortured. (This is important to note when interviewing an applicant who is related to or closely associated with someone who was a victim of torture or other severe trauma.)

### 11.3 Care-Givers and Others

Secondary trauma can affect individuals who work intensely or frequently with survivors, including service providers such as doctors, nurses, social workers, and mental health care providers.

Although asylum and refugee officers do not have the same in-depth contact with torture survivors that certain service providers have, you may still be affected by the stress from continually interviewing applicants who have undergone hardships and may be survivors of torture or other forms of trauma. You must recognize how this stress may be affecting them, and should address problems that may arise as a result.

### 11.4 Interactions with Others

Secondary trauma can have an effect on your interactions with others and your work performance, decreasing objectivity, tolerance, patience, and the ability to listen dispassionately to others. You may overreact or react with disbelief and sarcasm to stories of torture or other forms of abuse and may develop a decreased sense of personal accomplishment.

### 11.5 Prevention

There are various ways you can prevent or treat secondary trauma, including getting regular physical exercise, adequate sleep, and proper nutrition. Taking breaks and being assigned to different types of tasks can also help. It is also important to have a supportive environment of family and friends with whom to discuss feelings. In addition, a service provider who is suffering from secondary trauma can share his or her experiences with co-workers who are likely to understand what he or she is going through.

## 12 SUMMARY

Torture is practiced in many countries. It affects persons of all ages, including children.

### Motive of Torturers

- To give an example to others
- A means of destroying the emotional, spiritual, social, and political well-being of a group or community
- Torturers attempt to:
  - destroy the personality of the victim

- weaken the individual, the family, the community, and/or the society

### **Forms of Torture**

Torturers use a variety of methods of torture that leave long-lasting psychological damage but that do not usually leave lasting physical evidence.

- Psychological torture
- Sensory deprivation / Sensory overload
- Sexual violence
- Electric shocks
- Beatings
- Burns
- Forcing the body into contorted positions or forcibly stretching it beyond normal capacity
- Non-therapeutic administration of drugs

### **Effects of Torture and Other Trauma**

Symptoms affect a high percentage of survivors. Symptoms exhibited by applicants suffering from trauma-related conditions may be physical or psychological and include:

- Emotional
- Psychosomatic
- Behavioral
- Mental

Such symptoms can affect the asylum officer's ability to elicit necessary information.

Post-Traumatic Stress Disorder (PTSD) and depression are the most common long-term reactions to torture and other forms of severe trauma.

Often, symptoms appear after a latency period and they do not usually subside merely with time. Symptoms may be "triggered" without warning at any time. The rate of recovery for survivors varies from individual to individual and a variety of factors can influence the rate of recovery. However, survivors never fully recover from a torture experience.

An applicant suffering from PTSD or other trauma-related condition may

- avoid discussing events
- have difficulty remembering events

- respond in unpredictable ways
- avoid revealing certain information

### **Interviewing Survivors of Torture**

Asylum officers need to be aware of the possible symptoms of trauma-related conditions and elicit information in the most effective and sensitive way possible.

- Treat the applicant with humanity
- Try to help the applicant feel safe / in control
- Be thorough but sensitive
- Remember the purpose of the interview

### **Effects on Individuals who are Close to or Who Work with Survivors**

Individuals who work with trauma survivors, as well as family members and others who are close to trauma survivors may experience secondary trauma, the symptoms of which are similar to those of PTSD.

**PRACTICAL EXERCISES**

**Materials for Practical Exercises will be handed out at the training.**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

**There are no Other Materials for this module.  
Any additional materials will be handed out at the training.**

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**There are no IO Supplements**

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p><b><u>RAD Supplement</u></b></p> <p><b>Module Section Subheading</b></p>
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**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**There are no IO Supplements**

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>ASM Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**There are no IO Supplements**

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p><b><u>IO Supplement</u></b></p> <p><b>Module Section Subheading</b></p>
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# U.S. Citizenship and Immigration Services

## **RAIO DIRECTORATE – OFFICER TRAINING**

### **RAIO Combined Training Course**

# **INTERVIEWING – WORKING WITH AN INTERPRETER**

**TRAINING MODULE**

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

## **INTERVIEWING – WORKING WITH AN INTERPRETER**

### **Training Module**

#### **MODULE DESCRIPTION**

This module describes the role and responsibilities of an interpreter, and how to communicate effectively through the use of an interpreter.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

When interviewing in the field, you will recognize when an interpreter is necessary, and will work with an interpreter effectively to communicate with an interviewee.

#### **ENABLING PERFORMANCE OBJECTIVES**

1. Explain the role and responsibilities of the interpreter in the interview.
2. Identify signs of misinterpretation during the interview.
3. Explain techniques for corrective action when you encounter misinterpretation problems.
4. Explain ways to facilitate proper interpretation during the interview.
5. Explain strategies for effective communication through an interpreter.

#### **INSTRUCTIONAL METHODS**

- Interactive Presentation
- Discussion
- Practical Exercises

#### **METHOD(S) OF EVALUATION**

- Written exam

- Practical exercise exam

## REQUIRED READING

None

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

## ADDITIONAL RESOURCES

Collopy, Dree K, “Lost In Translation: Why Professional Interpreters are Critical to the Fairness of Asylum Interviews,” *Immigration Law Today* 27, no. 3, May/June 2008, pp.12-22, <http://www.aialoads.org/ilt/2008/May-June08ILTFullText.pdf>, accessed 25 November 2015.

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ITK8	Knowledge of policies, procedures, and guidelines for working with an interpreter (4)
ITS9	Skill in interviewing through an interpreter (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/25/2015	Throughout document	Corrected links and minor typos	RAIO Training

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

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

Officers in the RAIO Directorate conduct interviews primarily to determine eligibility for immigration benefits or requests; to corroborate information provided by applicants, petitioners, and beneficiaries; and/or to establish whether a person understands the consequences of his or her actions.

The modules of the RAIO Directorate – Officer Training Course and the division-specific training courses constitute primary field guidance for all officers who conduct interviews for the RAIO Directorate. The USCIS Adjudicator's Field Manual (AFM) also provides guidance for officers when conducting interviews, particularly for officers in the International Operations Division. There may be some instances where the guidance in the AFM conflicts with guidance provided by the RAIO Directorate. If this is the case, you should follow the RAIO guidance. Further guidance regarding interviews for specific applications will be discussed during division-specific trainings.

In this module, the term "interviewee" is used to refer to an individual who is interviewed by an officer in the RAIO Directorate for an official purpose.

## 1 INTRODUCTION

This module is part of a series of interviewing modules that discuss various topics including the basic principles and components of conducting a non-adversarial interview, how to elicit information through various question types and techniques, and the proper procedures for taking notes. This module provides information on procedures governing the use of interpreters, the role of interpreters in the RAIO context, factors that may affect the integrity of interpretation, and how to facilitate communication through an interpreter. The ability to communicate with an interviewee through an interpreter is one of the many skills you must develop as an officer. Please refer to the other interviewing modules for additional guidance on conducting RAIO interviews.

- Interviewing – Introduction to the Non-Adversarial Interview
- Interviewing – Note-Taking
- Interviewing – Eliciting Testimony
- Interviewing – Interviewing Survivors of Torture

As an officer in the RAIIO Directorate, you will conduct different types of non-adversarial interviews in the course of your duties.

Although some interviewees you encounter will speak English well enough to proceed with the interview in English, many interviewees will need the assistance of an interpreter in order to communicate during the interview. Accurate interpretation is crucial in these interviews.

The main goal in conducting an interview is to elicit testimony from the interviewee so that you are able to determine eligibility for the benefit sought, or for some other purpose as noted above. The interpreters you encounter may be professionally trained interpreters, but in many cases, they will be friends or family members who have not had formal training to be an interpreter and may not have interpreted previously. Regardless of the interpreter's level of experience and/or training, it is your responsibility to ensure that everyone present understands the procedures for facilitating interpretation during the interview and that the interpretation contributes to the primary goal of effectively eliciting relevant information during the interview.<sup>1</sup>

Very often the terms “interpret” and “translate” are used interchangeably; however, for the purpose of this module it is important to understand the distinction between these two processes. The main difference between interpret and translate is the medium: “interpret” involves oral communication; “translate” involves written text.

Interpreting is essentially the art of orally conveying information from one language to another. The interpreter listens to a speaker in one language, grasps the content of what is being said, and then restates in another language what was said, using wording that is as close as possible to the original statement while still maintaining the meaning of what was said.

In this module, the terms “interpretation,” “interpret,” and “interpreter” refer to oral communication. Interpreters utilized in the RAIIO Directorate usually provide only interpretation; on occasion, however, they may be asked to translate written

<sup>1</sup> For additional information on the interview process, see RAIIO Training module, *Interviewing: Introduction to the Non-Adversarial Interview*.

documents from another language into English and vice versa.

## 2 IDENTIFYING THE NEED FOR AN INTERPRETER

### 2.1 Language Ability of the Interviewee

The individuals you interview will have varying degrees of English language proficiency. When the interviewee cannot speak English well enough to fully understand you or to express himself or herself, you will need to conduct the interview utilizing an interpreter. The interpreter must be proficient in both English and the interviewee's native language, or another language in which the interviewee is fluent. [ASM Supplement – 1]

Some interviewees can speak English well enough to be interviewed in English without utilizing an interpreter. Nonetheless, many will need an interpreter during the interview to fully comprehend the information conveyed and questions asked and to provide testimony. Even an interviewee who is competent in English may feel more comfortable being interviewed in his or her native language. There may be times when it appears that the interviewee speaks English and should proceed with the interview in English; however, in almost all cases, it is in the applicant's best interest to conduct the interview in the language he or she can most fully express himself or herself.

### 2.2 Interpreters Utilized for RAIO Interviews

The U.S. Government provides interpreters for some but not all RAIO interviews where the interviewees are not proficient in English. These interpreters are professional interpreters or USCIS staff members who are fluent in the interviewee's language. At USCIS offices overseas, USCIS employees, including Locally Engaged Staff (LES), serve as interpreters due to local security protocols or the unavailability of competent interpreters. Each division has specific procedures providing guidance on who can serve as an interpreter. [RAD Supplement - 1, ASM Supplement -2, IO Supplement – 1].

For certain USCIS interviews conducted overseas, Resettlement Support Centers (RSC's), under contract with the Department of State (DOS), and on occasion the United Nations High Commissioner for Refugees (UNHCR), provide interpreters. [RAD Supplement - 1].

USCIS does not provide interpreters for non-English speaking interviewees at affirmative asylum interviews. Accordingly, interviewees are required to bring their own interpreter to the interview. In addition, during affirmative asylum interviews, the Asylum Division utilizes professional interpreter monitors (via telephone). Their function is not to interpret, but to monitor the quality of the interpretation provided by the interviewee's interpreter to ensure that the interpretation is accurate, complete, adequate, and neutral.<sup>2</sup>

<sup>2</sup> For additional information on Asylum Division procedures governing the use of interpreter monitors, see Affirmative Asylum Procedures Manual Section II.J.4(b) and Memorandum from Joseph E. Langlois, Chief, USCIS

The Asylum Division does, however, provide professional interpreters (via telephone) during credible fear and reasonable fear interviews.

### 2.3 Conducting an Interview if you are Fluent in the Interviewee's Language

Ideally, the services of a disinterested person should be employed as an interpreter.<sup>3</sup> However, in some circumstances, if you are fluent in a language that the interviewee speaks, you may conduct the interview in that language without utilizing an interpreter. If you conduct an interview in the interviewee's language without an interpreter, you do not have to be sworn in but you should note in the record the language in which you conducted the interview.

If there are others present at the interview who do not speak the interviewee's language (e.g., an attorney or family member), it is important that the other parties understand everything that occurs while they are present in the interview. Even though you may speak the interviewee's language, using an interpreter may be the best way to assure that all present understand what takes place during the interview. Each division has procedures on when an officer can conduct an interview in a language other than English. Within the Asylum Division, this can only be done if your language ability has been certified by the Department of State. Refer to your division's procedures for specific guidance. [RAD Supplement – 2, ASM Supplement – 3, IO Supplement – 2].

### 2.4 Verifying the Identity of the Interpreter

At the onset of most interviews, you will request identification from the interpreter. Each RAIO division has specific procedures regarding verifying the identity of the interpreter and the documentation that is needed. Because the interpreters used by the Refugee Affairs Division are usually hired by the UNHCR or the RSCs, officers interviewing during RAD circuit rides are not required to check the identity documents of the interpreters. Officers in the Asylum and International Operations divisions should make a copy of the identification document(s) provided by the interpreter to retain as part of the record. [RAD Supplement – 3, ASM Supplement – 4, IO Supplement – 3].

## 3 ROLE OF THE INTERPRETER

### 3.1 Interpreter's Role is Crucial

In an interview requiring an interpreter, the role of the interpreter is crucial. Misinterpretations can impede your ability to elicit accurate information and therefore can lead to incorrect determinations of eligibility or dissemination of incorrect

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Asylum Division, to Asylum Office Directors, et al., *Award of Interpreter Services Contracts and Guidance on Use of Interpreter Services*, (HQRAIO 140/12) (23 May 2011).

<sup>3</sup> USCIS Adjudicator's Field Manual, Section 15.7 "Use of Interpreters" (Rev. March 5, 2010).

information. Interpretation during the interview should be a collaborative effort between you and the interpreter to ensure that the interpretation is accurate.

Due to the inherent complexities of interpretation and communicating in a second language, the interpreter may not be able to restate information word for word.<sup>4</sup> The interpreter is, in many ways, a “filter” through which information is passed. It is your responsibility to ensure that the interpreter understands and performs his or her role, which is to interpret as close as possible the meaning of the words and concepts being communicated.

If, at any point during the interview, there are indications that the interpreter is not able to interpret effectively, you should work with the interpreter to evaluate whether he or she is capable of continuing and take appropriate action as described below.

### 3.2 Advising the Interpreter of His or Her Role

It is important to explain the roles of all parties present, including the interpreter, at the beginning of the interview to mitigate any confusion and to manage expectations. When the interpreter, interviewee, and attorney or witness(es), if applicable, understand their role in the interview process, there is a higher likelihood that the interview will go smoothly. By explaining clearly what you expect of the interpreter, you will be better able to maintain control of the interview and identify and address any problems that may arise with the interpretation. [RAD Supplement – 4]

Some interpreters may have a great deal of experience interpreting or may have interpreted at RAIO interviews previously. Such interpreters may be aware of the general mechanics of the process and the interpreter's role. Individual interviewing styles vary from officer to officer, however, and interpreters should not assume that one interview will be conducted in the same manner as a previous interview. Therefore, you should still always explain to both inexperienced and experienced interpreters the rules for interpreting.

As you explain to the interpreter his or her role and the accompanying “ground rules” for interpreting, you should have the interpreter interpret to the interviewee your explanation. This will help the interviewee understand how the interpretation should take place as well as address the goal of keeping the interviewee informed at all times of what is transpiring during the interview. The following chart outlines the ground rules for interpreting during any interview conducted by RAIO staff.

## INTERPRETER GROUND RULES

<sup>4</sup> For additional information, see RAIO Training module, *Cross-Cultural Communication*.

<b>The Interpreter <u>Should</u> Do the Following:</b>	
1	<p><b><i>Keep all information discussed by all parties at a USCIS interview confidential [RAD Supplement – 5, ASM Supplement – 5, IO Supplement – 4].</i></b></p>
2	<p><b><i>Interpret verbatim (word for word) as much as possible</i></b></p> <ul style="list-style-type: none"> <li>• Use your (the officer’s) and the interviewee’s choice of words, rather than using <del>the</del> interpreter’s choice of words, while maintaining the meaning of what was said.</li> <li>• Advise you if <del>certain</del> terminology cannot be interpreted verbatim and therefore needs a lengthy interpretation in order to accurately convey <del>the</del> meaning of what was said.</li> <li>• Use the same person that you and the interviewee use. For example:           <p style="margin-left: 40px;"><b>You:</b> What did you do next?</p> <p style="margin-left: 40px;"><b>Interpreter (to interviewee):</b></p> <p style="margin-left: 80px;">(proper): What did you do next?</p> <p style="margin-left: 80px;">(not proper): He asked what you did next.</p> <p style="margin-left: 40px;"><b>Interviewee:</b> I went to the U.S. Embassy to request a visa.</p> <p style="margin-left: 40px;"><b>Interpreter (to you):</b></p> <p style="margin-left: 80px;">(proper): I went to the U.S. Embassy to request a visa.</p> <p style="margin-left: 80px;">(not proper): He went to the U.S. Embassy to request a visa.</p> </li> <li>• Another way of <del>thinking</del> about this is that the interpreter is, in effect, an echo, <del>interpreting</del> everything that she or he hears, not selectively interpreting what he or she chooses to interpret.</li> </ul>
3	<p><b><i>Interpret the interviewee’s responses to your questions even if the</i></b></p>

	<i>responses do not appear to answer the questions</i>
4	<i>Inform you if he or she does not understand what you have said</i>
5	<i>Inform you if he or she does not understand something the interviewee has said and that he or she needs to ask the interviewee for clarification</i>
6	<p><i>Advise you or the interviewee if the length of a question or response would pose difficulties for him or her to interpret</i></p> <p>You and/or the interviewee can then break the statement/question into shorter chunks of information for the interpreter to convey.</p>
7	<i>Interpret all conversations that take place between you and him or her during the interview so that the interviewee is aware at all times of what is transpiring during the interview</i>
8	<i>Advise you if the interviewee expresses any confusion about your question or statement</i>

<b>The Interpreter Should <u>NOT</u> do the following:</b>	
1	<i>Engage in private conversations with the interviewee during the interview</i>
2	<p><i>Attempt to explain the meaning of anything that is said during the interview, including your questions and statements, even if the interviewee appears confused.</i></p> <p>It is the interpreter's role to simply interpret the questions asked and the responses provided.<sup>5</sup> He or she should inform you if the interviewee appears confused at any time during the interview. This will then allow</p>

<sup>5</sup> For additional information on follow-up questions to clarify confusion by the interviewee, see RAIO Training module, *Interviewing – Eliciting Testimony*.



	you to clarify any confusion with follow up questions.
3	<i>Condense or elaborate upon what you say or what the interviewee says</i>
4	<i>Attempt to answer for the interviewee or explain the meaning of what the interviewee says</i>
5	<p><i>Begin the interview ahead of you; it is you, not the interpreter who begins, directs, and concludes the interview.</i></p> <p>When interpreters interpret for multiple interviews, they become familiar with the interview procedures and so may proceed without the officer directing them. As the interviewing officer, you must maintain control of the interview and ensure that the interpreter does not proceed without your direction.</p>
6	<i>Allow any personal biases and opinions to affect the interpretation during an interview</i>

Explain to the interpreter that these ground rules are necessary because the interview is important to the interviewee and the officer and that these rules enable the interviewee and officer to communicate fully and avoid any misunderstanding. The interpreter may be more likely to follow instructions if he or she understands the rationale for them.

### 3.3 Interpreter's Oath

As stated in the Adjudicator's Field Manual Chapter 15.7, interpreters interpreting before a USCIS officer must be placed under oath. "He or she should be placed under oath to interpret and translate all questions and answers accurately and literally."<sup>6</sup>

All USCIS officers must, at a minimum, comply with the *AFM 15.7* requirements as stated above. Each division within RAIO has developed guidance with regard to the specific wording of the interpreter's oath and the context in which it is used. Officers in the RAIO Directorate should follow any additional division-specific guidance when administering the oath and, where applicable, signing an Interpreter's Oath form prior to the interview. [RAD Supplement - 6, ASM Supplement- 6, IO Supplement – 5]. If the

<sup>6</sup> USCIS Adjudicator's Field Manual, Section 15.7 "Use of Interpreters" (Rev. March 5, 2010).

interpreter used is an employee of USCIS or DHS, he or she need not be sworn in. He or she should, however, be identified for the record.<sup>7</sup>

As stated above, the Asylum Division utilizes telephonic interpreter monitors for affirmative asylum, reasonable fear, and credible fear interviews. Asylum Officers are required to administer an oath to the interpreter monitor at the beginning of the interview. [ASM Supplement – 6].

## 4 COMPETENCY OF THE INTERPRETER

### 4.1 General

In order to achieve the goals of the interview, you and the interviewee must be able to understand each other. When an interpreter is involved, the interpreter's ability to effectively interpret is crucial to the success of the interview. The interpreter must be proficient in both English and the interviewee's native language (or another language in which the interviewee and interpreter are fluent). During the interview, there may be indicators leading you to determine that the interpreter is not competent and you should stop the interview. It is best if you make this determination as early as possible during the interview for a variety of reasons including time constraints and/or the limited availability of other interpreters.

### 4.2 Indicators of Misinterpretation During the Interview

There are a number of indicators that can signal that there may be miscommunication between the individuals at the interview and/or that the interpreter is having difficulty interpreting. These indicators include:

- The response to a question you ask does not answer the question, or the response only partially answers the question.
- Words you recognize without interpretation (e.g., proper names, English words) are not interpreted.
- The interpreter uses more words to interpret a question or response than appears to have been required.
- The interpreter uses very few words to interpret a lengthy question or response by either the interviewee or officer.
- There is back and forth dialogue between the interpreter and interviewee, without explanation from the interpreter.

<sup>7</sup> USCIS Adjudicator's Field Manual, Section 15.7 "Use of Interpreters" (Rev. March 5, 2010).

- The interviewee indicates non-verbally that he or she is confused or doesn't understand, such as not responding or looking surprised or confused. Keep in mind, however, that non-verbal expressions can be culturally bound, so what may indicate confusion in one culture may indicate something different in another culture.<sup>8</sup>

You need to be alert continually for any signs of miscommunication during the interview and to clarify with the interpreter immediately if problems arise. As the interviewing officer, you are responsible to look for signs of inaccurate, incomplete, inadequate, or biased interpretation by the interpreter, and to address these problems if they occur. When using a telephonic interpreter, you will not be able to see signs of miscommunication and must remain alert and listen carefully for verbal indicators of miscommunication.

#### 4.3 Determining the Interpreter's Competency

The indicators listed in the section above should alert you to potential problems with the interpretation during the interview. [ASM Supplement – 8]. You may need to stop the interview due to an interpreter's lack of competency. The decision to stop the interview is left to your discretion; however, before stopping the interview you should first make every reasonable effort to resolve any interpretation problems or issues. Once you make a determination that the interpreter is not competent, you should consult with your supervisor, if necessary, and then stop the interview. Generally, you should determine that an interpreter is not competent if you encounter the following:

- The interpreter is not sufficiently competent in English and/or the interviewee's language, and is not able to accurately interpret during the interview; and/or
- You have good reason to believe that the interpreter is providing answers to the interviewee, altering or embellishing answers, or changing the questions you ask, and when working with the interpreter, you are not able to resolve these issues.

#### 4.4 What to Do Once You Have Stopped the Interview Due to the Interpreter's Incompetence or if Another Interpreter is Not Available

Each division has specific procedures you must follow once you have determined that an interpreter is not competent or that the interviewee is unable to continue in English and an alternate interpreter is unavailable. [RAD Supplement – 7, ASM Supplement – 9, IO Supplement – 7]. This includes guidance on stopping the interview, rescheduling the interview, providing written notice if applicable, stopping the "clock" (in the Asylum context), etc.

<sup>8</sup> For additional information, see RAIO Training module, *Cross-Cultural Communication* (under development; please refer to RAD and ASM lesson plans on this topic).

## 5 FACTORS THAT MAY AFFECT THE ACCURACY OF INTERPRETATION AT THE INTERVIEW

There are a number of reasons why the quality and accuracy of interpretation at an interview may be impaired. These reasons are outlined below. It is important that you are aware of these factors and their impact on the interpretation during the interview in order to mitigate, as much as possible, any negative impact on the communication between you and the interviewee.

### 5.1 Interpreters at the Interview are Often Not Professionally Trained

The interpreter may or may not have had professional training as an interpreter or experience interpreting or translating. Even if an interpreter has prior experience interpreting or translating, he or she may not fully understand the role of an interpreter and how to best interpret during an interview in the RAIO context.

### 5.2 The Interpreter and the Interviewee May Not Have Met Prior to the Interview

In some cases, the interviewee and interpreter may be meeting for the first time at the interview. Therefore, the interviewee and interpreter may be unfamiliar with one another's accent, pronunciation, mannerisms, etc. Generally, the less familiar an interpreter is with the interviewee, the more challenging it is for the interpreter to interpret. There may be several ways of interpreting a particular word or phrase, some of which may be more appropriate to a particular situation. (Think of a thesaurus, which lists numerous synonyms for one word.) When interpreting, the interpreter chooses his or her words in a "split second." Once the interpreter has chosen the words to use, it may be difficult later for him or her to change or correct the choice of words. If an interpreter is familiar with the interviewee as well as the interviewee's country and culture, the interpreter will be more capable to make these split second determinations to interpret particular words or phrases. Conversely, the less time an interpreter has spent with an interviewee, the more challenging it will be for the interpreter to accurately make these decisions.

On the other hand, an interpreter who knows the interviewee and his or her culture and background may think he or she knows in advance what the interviewee is going to say, and may not listen as intently as an interpreter who does not know the interviewee.

### 5.3 The Interpreter May Not be Sufficiently Competent in English

The interpreter's English language proficiency may vary in quality from excellent to poor. For example, a Spanish speaker, for whom English is not his or her native language, may mistakenly interpret the Spanish word, "*embarazada*," (pregnant in Spanish) as "embarrassed." Even if an interpreter is competent in English, English is not the native language of the interpreter in most cases. Therefore, the interpreter may not completely understand certain subtleties of the English language. Furthermore, some terms that may be used in an interview, such as "threatened," "torture," "organization,"

etc., may not be among the words in a non-native English speaker's English vocabulary. In addition, an interpreter may not be familiar with or understand the various accents of officers, which may create an additional layer of difficulty for the interpreter.

#### 5.4 The Interpreter May Encounter the Inherent Difficulties of Interpreting from One Language to Another

It is not always possible to interpret verbatim (word for word) from one language to another and retain the meaning of what is being said. The structure and syntax of one language can vary considerably from another language. Consider the simple sentence, "I am thirsty." In the French language, one would say, "*J'ai soif*," which means, "I have thirst." In the Mòoré language, spoken in Burkina Faso, one would say "*Ko yuud n tar mam*," which means, "Thirst has me."

Word order can be essential to the meaning of a phrase or sentence; changing the word sequence can change the meaning. For example, in Spanish, when the word order of "*un amigo viejo*" which means "a friend who is old," changes to "*un viejo amigo*" the meaning becomes "a longtime friend."

When colloquial expressions, sayings, and idioms are interpreted verbatim, the meaning of what was said can be altered or may not make sense. Consider the Spanish, "*me costó un ojo de la cara*," which is interpreted word for word into English as, "it cost me an eye from the face," rather than the familiar English equivalent, "it cost me an arm and a leg."

Rather than interpret word for word, an interpreter must interpret meaning for meaning to accurately convey what is being said. This involves knowledge of the subtleties of the interviewee's language and English. Because interpreters vary in their knowledge of the subtleties of languages used and in their ability to interpret meaning for meaning, you should always be vigilant for signs of misinterpretation.

#### 5.5 The Interviewee and Interpreter May be Communicating Through a Second Language

It is important to determine the native languages of both the interviewee and the interpreter, and the language they will be using to communicate during the interview and how proficient both are in that language. The interviewee and interpreter may be communicating through a language that is a second language for one or both of them. For example, the native language of many I-730 beneficiaries from the People's Republic of China is Fuzhou and their second language is Mandarin, which they may not speak as well as Fuzhou. Often, the interpreter for such cases is proficient in Mandarin but does not speak Fuzhou. Because the interviewee may have only a rudimentary understanding of Mandarin, it may be challenging to elicit information from him or her.

Therefore, it is important to determine at the beginning of the interview the native languages of the interviewee and interpreter. You can do this by asking the interviewee

and interpreter **what** their native language is or by asking "What language do you understand best?" or "What language do you speak at home?"

## 5.6 The Interviewee and Interpreter May Speak Different Versions of the Same Language

Although an interviewee and interpreter may speak the same language, they may have learned different versions of that language and/or speak with different accents. This may be the case if they are from different socio-economic groups, from different parts of the same country, or from different countries that speak the same language. Even within the English language there are inconsistencies in terminology among different regions in the U.S. or different English-speaking countries, as the following example illustrates.

<u>British English</u>	<u>American English</u>
Lift	Elevator
Flat	Apartment
Chemist	Pharmacist
Boot	Trunk
Football	Soccer
Jumper	Sweater

Such minor inconsistencies in terminology, as well as variations in usage between different versions of a language, can lead to subtle differences in interpretation, which can impact the outcome of an interview. Consider the possible effect at an interview of the following:

- The word "*ahorita*" in the Dominican Republic means "in a little while;" in Mexico it means "right now."
- A Spanish language interpreter who is not from Guatemala may not understand the term for "civil patrol" expressed by a Guatemalan interviewee and may interpret it as "military."

## 5.7 Cultural Factors Can Influence Interpretation<sup>9</sup>

Interviewees and interpreters are usually from a culture that is different from the culture of the officer who is conducting the interview. Therefore, the exchange of information through an interpreter is not only being interpreted from one language to another, but also from one culture to another. If the interviewee and the interpreter are also from different cultural backgrounds, there is an additional cultural layer through which the information must pass.

<sup>9</sup> For additional information, see RAIIO Training module, *Cross-Cultural Communication*.

For example, it may be taboo for an interpreter to openly discuss rape in his or her culture. During the interview, if the applicant discusses a rape that he or she experienced, the interpreter may feel uncomfortable and may therefore substitute the word “harm” for “rape.”

## 5.8 The Interpreter’s Personal Opinions or Biases Can Influence Interpretation

Interpreters are rarely neutral. In some circumstances, they may have a certain disposition toward you or the interviewee. They may also bring biases, preconceived ideas, or personal opinions to the interview. Examples of this are listed below.

The interpreter may:

- Try to impress you with his or her knowledge of English or country conditions, and may add editorial comments about the interviewee’s country
- Want to distance him or herself from the interviewee if he or she feels that the interviewee is of a lower socio-economic group or if he or she believes the interviewee may be fabricating a claim
- Want to put his or her country and culture in a favorable light so may not interpret the abuse the interviewee suffered at the hands of the authorities as graphically as the interviewee’s depiction
- Want to help the interviewee so may not interpret some information accurately because he or she may think that it could have negative consequences for the interviewee
- Want you to know that he or she is acquainted with the interviewee and that the interviewee is a “good person”

Whatever the reason, the interviewee’s testimony may be distorted by the interpreter. Often, the interpreter is not consciously aware of his or her personal opinions or biases and how these can affect the interview.

You must remain vigilant to the possible presence of these factors and take appropriate steps to control the interview when necessary. This applies to all interviews, even asylum interviews where an interpreter monitor is present and the effects these factors may have on communication during the interview may be lessened by the presence of the interpreter monitor.

## 6 WAYS TO FACILITATE INTERPRETATION THROUGH AN INTERPRETER

There are certain inherent difficulties in interpreting from one language to another and in working with an interpreter. Everyone has a particular way of speaking in which he or she incorporates accent, speech patterns, rates of speech, and other personal behavior. Some ways of speaking can be easy for an interpreter to understand while others may

pose problems. There is also a cultural filter through which information is exchanged.<sup>10</sup> In addition, as explained earlier in this module, there are a variety of other factors that may adversely impact the interpretation of information exchanged during the interview.

The following are the steps in the communication process during an interview when working through an interpreter.<sup>11</sup>

- You ask a clearly-worded question.
- The interpreter correctly understands the question.
- The interpreter correctly interprets the question.
- The interviewee correctly understands the interpreted question.
- The interviewee answers the question.
- The interpreter correctly understands the answer.
- The interpreter correctly interprets the answer.
- You understand the interpreted answer.
- You correctly record the answer.

Miscommunication during any of these steps can lead to incorrect information being relayed, with the potential for affecting the outcome of the interview. It is your responsibility as an officer within RAIO to develop interviewing skills that can facilitate accurate interpretation. Incorporating the techniques listed in this module and other RAIO training modules can assist you in developing these skills.

### 6.1 Address the Interviewee Directly and Maintain Eye Contact

Face the interviewee when speaking and direct questions and comments to him or her. Stay focused throughout the interview on the interviewee, not the interpreter, and make eye contact with the interviewee. Keep in mind, however, that some interviewees may not maintain eye contact with you due to cultural norms.<sup>12</sup> Do not tell the interpreter to ask the interviewee something or refer to the interviewee in the third person.

#### *Example*

<sup>10</sup> For additional information, see RAIO Training module, *Cross-Cultural Communication*.

<sup>11</sup> European Asylum Curriculum, Submodule 1, *Introduction*. Unit 1.2: *Challenges and Definitions*, “The difficulty of obtaining evidence.”

<sup>12</sup> For additional information, see RAIO Training module, *Cross-cultural Communication* (under development; please refer to RAD and ASM lesson plans on this topic).



Proper: What did you do next? (looking at the interviewee)

Not proper: Ask her what she did next. (looking at the interpreter)

## 6.2 Explain the Interpreter’s Role to the Interviewee

As noted above, the interview is an exchange of information between you and the interviewee, with the interpreter acting only as a conduit through which information is passed. You should explain this to the interviewee at the beginning of the interview when you explain the role of the interpreter. Tell the interviewee that although you do not speak the interviewee’s language, you will still communicate with him or her during the interview, utilizing an interpreter. You should also explain to the interviewee that the interpreter has no influence upon the outcome of the case and that anything discussed during the interview will remain confidential. With a few exceptions, neither you nor the interpreter may disclose any aspect of the interview to anyone else. [RAD Supplement - 5].<sup>13</sup>

## 6.3 Make Sure the Interpreter’s Physical Placement During the Interview is Appropriate

The presence of an interpreter at an interview can sometimes create a “distance” between you and the interviewee. It is your job to ensure that the interviewee understands that the interview is in effect an exchange of information between you and him or her. The physical placement of the interpreter during the interview can reduce this distance. The interpreter is a secondary participant, and should not sit between you and the interviewee. He or she may sit beside the interviewee or next to you. If you decide to have the interpreter sit next to you during the interview, maintain proper security measures by ensuring that the interpreter cannot view the computer screen (if you are using a computer), or any documents or handwritten notes.<sup>14</sup>

## 6.4 Have all Conversations between You and the Interpreter Interpreted to the Interviewee

If it is necessary to discuss an issue with the interpreter (e.g., the manner of interpretation), you should explain to the interviewee what you are discussing with the interpreter. That is, you should have the interpreter interpret for the interviewee what you said to the interpreter, and the interpreter’s response, if any. This procedure should also be followed when necessary to discuss something with the representative, or anyone else present at the interview. This will avoid confusion about what the interpreter should interpret and will reinforce to the interpreter that the interviewee must be aware of all that transpires during the interview. Additionally, this keeps the interviewee informed at all times of what is occurring during the interview.

<sup>13</sup> For additional information on confidentiality provisions, see *Interpreter Ground Rules* above.

<sup>14</sup> For additional information on precautionary measures to take when taking notes during an interview, see RAIO Training module, *Interviewing – Note-Taking*.

## 6.5 Be Conscious of Your Speech Patterns

Be aware of your particular speech patterns and consider how they may impact the interpretation during the interview. Ask yourself, “Do I speak quickly? Do I speak softly? Do I change thoughts in mid-sentence? Do I mumble? Do I frequently use idiomatic expressions?” Pay attention to the circumstances under which your speech patterns change (e.g. when confused, irritated, tired) and how they change. Once you have identified any speech patterns that may impede effective interpretation, you can work to avoid these patterns during the interview.

## 6.6 Choose Words Carefully and Avoid Idioms

You should be conscious of the language you use. Carefully choose words that have clear meanings and are easily understood. Certain idiomatic expressions used in English may be familiar only to native speakers of the language or to someone who has lived in the U.S for some time. For example, if you asked a refugee applicant, “Did you keep tabs on your family after you fled your village?” he or she may not understand what you mean, as “keeping tabs on” is an idiom that most likely would only be familiar to an English speaker in the U.S.

## 6.7 Avoid the Use of Certain Pronouns Whenever Possible

When speaking to the interviewee through an interpreter, avoid to the extent possible using certain pronouns. Questions such as “What did he do?” or “What did they do?” may seem clear to you, but the interpreter or interviewee may be using a different referent for “he” and “they.” It is better to use words that denote relationships rather than certain pronouns (e.g., “What did your brother do?”) or to refer to specific individuals by name or position (e.g., “What did the policeman do then?”).<sup>15</sup>

Even though interpreters are advised to interpret using the same person as the officer and the interviewee (see the section above, *Advising the Interpreter of His or Her Role*), interpreters occasionally interpret the interviewee’s statements into the third person referring to the interviewee – as well as anyone to whom the interviewee refers — as “he” or “she.” If you and the interpreter use pronouns frequently during the interview, it can become confusing to the interviewee, as he or she may not understand who is being discussed.

Similarly, when terms such as “he” or “they” are used by the interviewee, clarify to whom the interviewee is referring. Simply ask, “When you said ‘she,’ who did you mean?”

### *Example*

Interviewee: He reported him, but he escaped before they caught him.

<sup>15</sup> For additional information, see RAIO Training module, *Interviewing – Eliciting Testimony*.

You: When you say ‘He reported him,’ who do you mean?

**6.8 Speak Clearly, and, When Necessary, Speak Slowly**

You may find that, especially at the beginning of an interview, you need to adjust your rate of speech and enunciate more clearly than usual until the interpreter is somewhat familiar with the particular characteristics of your speech and accent. When speaking to an interviewee, you should not combine two words together in spoken American English, such as the following, as they may not be easily understood by the interpreter.

**Examples:**

<u>Avoid:</u>	<u>Say:</u>
gonna	going to
wanna	want to
goin’	going
whaddaya	what do you
whad’ja	what did you
‘n’	and

Think of the difficulty that non-native English speakers may have when trying to interpret the words listed above if they run together. Therefore, be conscious of your speech patterns and enunciate each word clearly.

**6.9 Keep Questions Clear and Simple, Asking Specific Questions One at a Time**

Avoid asking the interviewee several questions at once, such as: “Please tell me why you are abandoning your permanent resident status at this time and if you understand what the consequences of abandonment are.” Ask one question at a time and allow the interviewee to completely respond before asking the next question.

**6.10 Break Down What is Said at the Interview into Reasonable Amounts of Information**

As noted in the section above, *Role of the Interpreter*, break down what you say into reasonable amounts of information to facilitate accurate interpretation. If the interviewee is giving lengthy responses, you can stop him or her at what appear to be natural pauses so the interviewee can give shorter statements that the interpreter can interpret more easily. Assure the interviewee that he or she will be allowed an opportunity to finish, and then make sure you honor this assurance.<sup>16</sup> You should work with the interpreter to find the comfortable rhythm for him or her to interpret.

<sup>16</sup> For additional information, see RAIO Training module, *Interviewing – Introduction to the Non-Adversarial Interview*.

### 6.11 Repeat the Question/Statement Slowly or Rephrase it if the Interpreter does not Appear to Understand

Repeat the question/statement if the interpreter or interviewee does not appear to understand. Rephrase the question if, after repeating the question, the interpreter or interviewee still does not understand.

### 6.12 Provide Pen and Paper to the Interpreter if Necessary

Some interpreters are more effective in interpreting if they have a pen and paper they can use to jot down key terms said by the interviewee or the officer. Providing pen and paper to the interpreter may also be useful if you want a person's name, location, or other information spelled out for you during the interview. You should collect all interpreter notes after the interview and follow your division's procedures regarding proper placement and handling of interpreter notes.

### 6.13 Resolve all Communication Problems as Quickly as Possible

Periodically, particularly at the beginning of an interview, you should ask the interpreter if he or she has any difficulty understanding you, if you are speaking too quickly, or if you are saying too much at one time. An interpreter may state that he or she understands you when in fact this is not the case. Due to embarrassment, pride, loss of face, etc., the interpreter may be reluctant to admit that he or she cannot understand what you are saying. Therefore, as noted above, you must watch for signs that the interpreter may be having difficulty understanding and interpreting, and you must try to resolve any problems immediately.

If it appears that there is a problem in communication, speak to the interpreter and the interviewee immediately about what you perceive to be a problem. Ask the interviewee if he or she understands the interpreter and ask the interpreter if he or she understands both you and the interviewee.

To ascertain whether the interpreter has understood a question you asked the interviewee, ask the interpreter to repeat the question back to you in English. You can also ask the interpreter to repeat back to you in English what he or she said to the interviewee.

### 6.14 Remind the Interpreter of His or Her Role When Necessary

At times, the interpreter may forget his or her role during the interview. He or she may begin to condense what the interviewee says, engage in a lengthy discussion with the interviewee when something is not clear, provide a lengthy explanation to contextualize an answer to help you understand the answer, etc. At such times, you need to tactfully remind the interpreter of his or her role and responsibilities, as noted above under *Advising the Interpreter of His or Her Role*.

### 6.15 Be Certain that all Parties Remain in the "Communication Loop"

When an interpreter is present, the **interview** involves an exchange of information among three people: in general, the **interviewing officer** asks questions, the **interviewee** provides responses, and the **interpreter** relays information between the officer and the interviewee. On occasion, the **legal representative** or other parties present at the interview may also participate in the process.

It is critical that throughout the interview, all parties present understand everything that is communicated – everyone needs to **remain** in the “communication loop.” There may be times when you are **tempted** to stop using the interpreter, particularly if you have some fluency in the **interviewee’s** language, or if the interviewee understands some English. You should avoid **communicating** in this way with the interviewee or any other person at the interview, however, without using the interpreter. All parties involved must understand all that **transpires** during the interview in order to perform their respective duties in the interview process.

## 7 CONCLUSION

Your responsibility is to ensure that **everyone** at the interview understands one another. Although you will encounter some **interviewees** who speak English well enough to proceed with the interview in English, most interviewees will need the assistance of an interpreter. Accurate **interpretation** is essential in any interview in which an interpreter is utilized. As the interviewing officer, you are responsible for ensuring that all participants at the interview, including the interpreter, understand their role in the interview process, and that the interpreter is utilized **properly** throughout the interview. You are also responsible for ensuring that all interactions during the interview are interpreted correctly to everyone present. To do so, pay **attention** to your speech patterns and modify them as appropriate, and watch for any factors impeding communication and take corrective action so miscommunication does not continue to occur. Your objective is to elicit the information you need **from** the interviewee in the most efficient manner while maintaining control of the interview in a manner that is conducive to communication.

## 8 SUMMARY

### 8.1 Identifying the Need for an Interpreter

#### 8.1.1 The Language Ability of the Interviewee

- The individuals you interview will have a varying degree of English language proficiency.
- Whether you use an interpreter or not, it is always in the interviewee’s best interest to conduct the interview in the language in which the interviewee can most fully express himself or herself.

- An interviewee should not be required to participate in an interview in a language other than the interviewee's primary language.

### 8.1.2 Interpreters Utilized for RAIO Interviews

- USCIS provides interpreters for some, but not all RAIO interviews.
- For Refugee interviews, the interpreters are provided by the RSC, and sometimes by UNHCR.
- For affirmative asylum interviews, interviewees are required to provide their own interpreter; the quality of the interpretation is telephonically monitored by a professional interpreter.
- For credible fear and reasonable fear interviews, the Asylum Division utilizes professional interpreters via telephone.
- At USCIS Offices overseas, USCIS employees, including Locally Engaged Staff (LES), may serve as interpreters when required.
- Please refer to your division's procedures and requirements regarding who can serve as an interpreter.

### 8.1.3 Conducting an Interview if You are Fluent in the Interviewee's Language

- If you are fluent in a language that the interviewee speaks, you may, in certain circumstances, conduct the interview in that language without utilizing an interpreter.
- Refer to your division's procedures for specific guidance on when you may conduct an interview in a language other than English.

### 8.1.4 Verifying the Identity of the Interpreter

- If your RAIO division requires verifying the identity of the interpreter this should be done at the beginning of the interview. You should:
  - Request identification from all parties at the interview, including the interpreter.
  - Make a copy of the identification collected from all parties at the interview to retain as a part of the record.

## 8.2 Role of the Interpreter and Interpreter Ground Rules

- At the beginning of the interview, explain the role of the interpreter and the role of each person who is present.
- During the interview, the interpreter should:

- Keep all information discussed at the interview confidential—please see your division procedures for specific guidance.
- Interpret verbatim (word for word) as much as possible.
- Interpret the interviewee’s responses to your questions even if the responses do not appear to answer your questions.
- Inform you if he or she does not understand what you have said.
- Inform you if he or she does not understand something the interviewee has said and needs to ask the interviewee for clarification.
- Advise you or the interviewee if the length of a question or response makes it difficult for him or her to interpret.
- Interpret all conversations that take place between you and him or her during the interview.
- Advise you if the interviewee expresses any confusion about your question or statement
- During the interview, the interpreter should **not**:
  - Engage in private conversations with the interviewee.
  - Explain anything to the interviewee if the interviewee is confused or does not understand.
  - Condense or elaborate upon what you or the interviewee says.
  - Attempt to answer for the interviewee or explain what the interviewee says.
  - Begin the interview ahead of you.
  - Allow any interpersonal biases and opinions to affect the interpretations during an interview.

### 8.2.1 Interpreter’s Oath

- The Adjudicator’s Field Manual Section 15.7 requires that interpreters in a USCIS interview must be placed under oath.
- Please refer to your division’s procedures for placing an interpreter under oath.

### 8.3 Competency of the Interpreter

- If you think the interpreter is not competent, it is best to make this determination as early as possible during the interview.

### 8.3.1 Signs of Misinterpretation during the Interview

- You must be continually alert throughout the interview for signs of miscommunication, which include, but are not limited to:
  - Interviewee's response does not answer the question, or only partially answers a question
  - Words that you recognize without interpretation (ex. proper names or English words) are not interpreted
  - Interpreter uses many more words to interpret a question or response than appear to have been required
  - Interpreter uses very few words to interpret a lengthy question or response
  - Back-and-forth dialog between the interpreter and interviewee occurs without explanation from the interpreter
  - Interviewee indicates non-verbally that he or she is confused or doesn't understand
- You should also determine the interpreter is incompetent if you encounter any these circumstances:
  - The interpreter is not sufficiently competent in English and/or the interviewee's language and is not able to accurately interpret during the interview
  - You have good reason to believe that the interpreter is providing answers to the interviewee, altering or embellishing answers, or changing the questions you ask, and in working with the interpreter, you are not able to resolve these issues
- If you determine that the interpreter is not competent, stop the interview and follow division-specific procedures or guidance.

### 8.4 Factors that May Affect the Accuracy of Interpretation at the Interview

- Many factors may affect the accuracy of interpretation during an interview, including:
  - Interpreters may not be professionally trained
  - The interpreter and the interviewee may not have met prior to the interview
  - The interpreter may not be sufficiently competent in English



- The difficulties inherent in interpreting from one language to another
- The interviewee or the interpreter may be communicating through a second language rather than a native language
- The interviewee and the interpreter may speak different versions of the same language
- There may be cultural factors present that influence the interpretation
- The interpreter's personal opinions or biases may influence the interpretation

### 8.5 Ways to Facilitate Interpretation through an Interpreter

- There are a number of ways in which you can facilitate the interpretation during an interview, such as:
  - Address the interviewee directly and maintain eye contact
  - Explain the interpreter's role to the interviewee
  - Make sure the interpreter's physical placement during the interview is appropriate
  - Have all conversations between you and the interpreter interpreted for the interviewee
  - Be conscious of your speech patterns
  - Choose your words carefully and avoid the use of idioms
  - Avoid the use of pronouns whenever possible
  - Speak clearly, and when necessary, speak slowly
  - Keep your questions clear and simple, and ask questions one at a time
  - Break down what you say during the interview into reasonable amounts of information
  - Repeat the question/statement slowly or rephrase it if the interpreter does not appear to understand
  - Resolve all communication problems as quickly as possible
  - Remind the interpreter of his or her role when necessary
  - Be certain that all parties remain in the "communication loop"

**PRACTICAL EXERCISES**

There are no student materials for Practical Exercises 1 – 10.

Please note that there are a number of potential practical exercises, but not all will be used. Your instructor has discretion to choose the practical exercises that will suit the needs of the class.

**Practical Exercise # 11**

- **Title:** *Foo Chow, Not Mandarin*

- **Student Materials:**

*He v. Ashcroft*, 328 F.3d 593 (9<sup>th</sup> Cir. 2003)\*

\* For AOBTC students, if the link to Westlaw does not work, please see the case located in your training folder.

OTHER MATERIALSOther Materials – 1

## Adjudicator's Field Manual

## 15.7 Use of Interpreters

Following are guidelines for interviews requiring the use of interpreters:

- If the person being questioned exhibits difficulty in speaking and understanding English, arrangements should be made for use of an interpreter even though the person may be willing to proceed without an interpreter. Any doubt should be resolved in favor of the use of an interpreter.
- Ideally, the services of a disinterested person should be employed as an interpreter. However, in the exercise of judgment, a witness, friend, or relative of the subject may be utilized as an interpreter, depending upon the issues involved and the possibility of adverse action against the subject.
- If the interpreter used is an employee of USCIS or DHS, he or she need not be sworn. He or she should, however, be identified for the record.
- If the interpreter is not a USCIS or DHS employee, he or she should be identified and questioned as to his ability to speak and translate into English the language of the person being questioned, and vice versa. Also, he or she should be placed under oath to interpret and translate all questions and answers accurately and literally.

The interpreter's oath should be administered as follows:

"Do you solemnly swear (or affirm) that in connection with this proceedings you will truthfully, literally, and fully translate the questions asked by me into the \_\_\_\_\_ language and that you will truthfully, literally, and fully translate answers to such questions into the English language?"

If a verbatim record is made, the oath should be shown in the record.

- The subject's attorney or representative should not be utilized as an interpreter in his client's behalf although under some circumstances an exception to this may be made if the interests of the Government will not

be prejudiced.

- The record should show that the interpreter and the person being questioned have conversed in the latter's language and that they understand each other. This is especially important when questioning persons whose native language has many dialects, such as Chinese. The record should also indicate what language and dialect is being used in the questioning.
- The subject should be informed at the beginning of the questioning that he should advise the adjudicator if he fails to understand the interpreter.
- It is desirable in taking a verbatim record in a complex case to check from time to time to ensure that the interpreter and the person being questioned understand each other. Such checks should be noted in the record.
- In using an interpreter it is imperative that the adjudicator instruct the interpreter in his or her duties.
- It is essential that the interpreter be strictly limited to furnishing verbatim interpretations. For example, if the subject answers, "I don't understand the question", the answer is to be given by the interpreter. Under no circumstances is the interpreter to attempt an explanation of his own. The interpreter must understand that he or she acts only as a voice, nothing else. Constant guard is needed to overcome the natural impulse of an interpreter to attempt to explain or clear up questions asked. The adjudicator will lose control of the situation and be unaware of what is transpiring unless he or she insists that the interpreter repeat verbatim the answer the subject makes. If any explanation is required, it is the function of the adjudicator and not of the interpreter to rephrase or change the question. In this manner the adjudicator knows exactly what is being adduced and is not being given a summary by the interpreter of what the witness says. The interpreter should never be permitted to say, "He says". He or she is to repeat by translation into the appropriate language the exact question or answer as it was expressed initially.
- The adjudicator should not permit conversations or explanations, and should not accept a reply such as "He says, No" after a lengthy conversation between the interpreter and the subject.

The interviewer must remain alert to the possibility that shades of meaning may be missed.

USCIS Adjudicator's Field Manual, Section 15.7 "Use of Interpreters" (Rev. March 5, 2010).

### SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

1. USCIS Refugee Affairs Division, *Standard Operating Procedures: Introduction, Section 3 "Explain the Role of the Interpreter"*, 19 August 2009.
2. Memorandum from Barbara L. Strack, Chief, USCIS Refugee Affairs Division, and Joanna Ruppel, Chief, USCIS International Operations Division, to Refugee Affairs Division, Overseas Staff, *Information Consent Form For Use in Refugee Interviews*, (120/6) (17 June 2009).

#### ADDITIONAL RESOURCES

Program announcement from Terry Rusch, Director, Office of Admissions, Bureau of Population, Refugees and Migration, Dept. of State, to US Refugee Coordinators and Overseas Processing Entities, *Program Announcement 2005-01: Revised Guidance on Confidentiality of State Department Refugee Records*, (12 Oct. 2004).

#### SUPPLEMENTS

##### RAD Supplement – 1

##### **2.2 Interpreters Utilized for RAIO Interviews**

The Resettlement Support Centers (RSCs) provide interpreters for most USCIS Refugee Interviews and I-730 interviews. The RSC seeks to recruit dispassionate interpreters who have no interest in US resettlement. The RSC provides an orientation for the interpreters used at USCIS interviews, including the requirement to interpret accurately and completely and the confidential nature of the interview. The RSC makes every effort not to use interpreters from the same refugee camp population or urban refugee population as the population being interviewed; however, this may not be possible at times in particular locations or in certain circumstances. For example, an interpreter may be used from the refugee camp population or urban refugee population if the interview site is very remote and there

are no interpreters available in the local population, or if the interviewee's language is not spoken widely outside the interviewee's ethnic group. For these same reasons, it may not be possible to find an interpreter in the local population who is not interested in resettlement to the US, and at some interview locations, the interpreters themselves may be applicants to the USRAP.

### RAD Supplement – 2

#### **2.3 Conducting an Interview if You are Fluent in the Interviewee's Language**

Currently RAD has no written policy governing its officers interviewing in a language other than English. Certain RAD Officers were hired for their Spanish language skills and are conducting refugee interviews in Spanish throughout the Americas region.

### RAD Supplement – 3

#### **2.4 Verifying the Identity of the Interpreter**

No procedure exists for verifying the identity of the interpreter at refugee interviews conducted overseas

### RAD Supplement – 4

#### **3.2 Advising the Interpreter of His or Her Role**

Often in refugee interviews conducted by RAD or IO staff, the same pool of interpreters is utilized for a particular circuit ride or group of interviews. Generally, at the beginning of a circuit ride at a given location, a meeting is coordinated by the division's team leader with the interpreters and the officers who will conduct the interviews. During this meeting, introductions are made and the role and responsibilities of the interpreter are explained. On such circuit rides, the division's team leader may place the entire interpreter pool under oath at the beginning of the circuit ride or on a daily basis. Therefore there is no need to swear in the interpreter at each refugee interview; however, you should still briefly explain at the beginning of each interview the interpreter's role and that the interpreter has been advised to keep all information from the interview confidential for the benefit of the

interviewee who may not understand the roles of all parties present.

You should:

[e]xplain that the role of the interpreter is to interpret faithfully to the best of his or her ability the statements and questions made by the officer and the applicant, without adding, changing, or omitting any statements. Inform the applicant that the interpreter does not adjudicate the case or make any decision regarding the refugee status determination. Advise the applicant that if at any point in the interview he/she does not understand the interpreter to let you know. If you determine that the applicant and interpreter do not understand each other, the team leader should be consulted to find a capable interpreter.

USCIS Refugee Affairs Division, *Standard Operating Procedures: Introduction. Section 3 "Explain the Role of the Interpreter"*, 19 August 2009.

Officers are not discouraged from placing the interpreter under oath at each interview, however, as it may help to put the interviewee at ease in discussing sensitive matters.

## RAD Supplement – 5

### 3.2 Advising the Interpreter of His or Her Role

#### 6.2 Explain the Interpreter's Role to the Interviewee

**Interpreter Ground Rules # 1: Keep all information discussed by all parties at a USCIS interview confidential**

Regarding confidentiality of the refugee interview, the officer should explain during the interview introduction that the oral, written, and documentary information the applicant submits to the United States Refugee Admissions Program (USRAP) remains within the USRAP and is not disclosed to the government of the stated country of persecution. If an interpreter is used, indicate that the interpreter also understands the applicant's testimony is confidential.<sup>17</sup> In addition, the officer should explain that he or she will ask the applicant to sign a Release of Information Consent Form, although signing the form is voluntary. The

<sup>17</sup> Applicants may be hesitant to disclose information if they believe it is not confidential for a variety of reasons. For example, applicants may have information that could cause others to harm them. They may fear for the lives of others that are still within their native country. Also, descriptions of past events may be of a highly personal nature.

form will be used to facilitate sharing of information between USCIS and UNHCR, other USG entities, and other resettlement countries. USCIS Refugee Affairs Division, *Standard Operating Procedures: Introduction, Section 3 "Explain Confidentiality."* 19 August 2009.

### RAD Supplement – 6

#### **3.3 Interpreter's Oath**

The interpreter must be placed under oath ("Do you solemnly swear or affirm that you will interpret all statements made during the interview completely and truthfully and that you will keep all information confidential?") If the same interpreter is used for more than one interview, the interpreter only needs to be placed under oath prior to the first interview.<sup>18</sup>

Some persons may have objections to using the term "swear" or object to raising their right hand. The officer should adapt the oath to accommodate such objections, ensuring that the interpreter understands that he or she is promising, under the law, to completely and truthfully interpret and to keep the information in the interview confidential (e.g., using "affirm" rather than "solemnly swear" in the following: "Do you affirm that you will interpret all statements made during the interview completely and truthfully and that you will keep all information confidential?"). USCIS Refugee Affairs Division, *Standard Operating Procedures: Introduction, Section 8 "Administer the Oath"*, 19 August 2009.

### RAD Supplement – 7

#### **4.4 What to Do Once You Have Stopped the Interview Due to the Interpreter's Incompetency or if the Interpreter is Not Available**

At your discretion, and in consultation with a Team Leader or supervisor, you may stop an interview so that the RSC can provide a competent interpreter. The Team Leader and the RSC will make every reasonable effort to resolve the interpretation problem to avoid rescheduling due to the difficulty of rescheduling refugee interviews.

<sup>18</sup> Some supervisors or team leaders may choose to swear in all interpreters at the beginning of a circuit ride or at the beginning of each work week or work day.



**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. USCIS Refugee, Asylum, and International Operations Directorate, Asylum Division, *Affirmative Asylum Procedures Manual* (AAPM), Section II.J.
2. Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Award of Interpreter Services Contracts and Guidance on Use of Interpreter Services*, (HQRAIO 140/12) (23 May 2011).

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**ASM Supplement – 1**

**2.1 Language Ability of the Interviewee**

**8 CFR 208.9(g):**

An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 208.10.

**ASM Supplement – 2**

## 2.2 Interpreter Utilized Used for Asylum Interviews

An interpreter in the Asylum Division must meet the following qualifications:

- Must be fluent in both English and a language in which the applicant is fluent;
- Must be 18 years of age;
- Must not be the applicant's attorney or representative, or a witness testifying on behalf of the applicant (an employee of the attorney, such as a paralegal, may serve as the interpreter); and
- Must not be a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence.

There are no other regular requirements regarding who can serve as an interpreter. The immigration status of the interpreter is not a bar (for example, the interpreter may be another asylum applicant) nor is the interpreter's relationship to the applicant (the interpreter may be a family member), as long as the interpreter meets the requirements listed above.

Please note that there are fewer requirements for interpreters in ABC/NACARA interviews.

For ABC/NACARA case interpreters, the interpreter:

- May be under age 18
- May be a country representative or employee.

For additional information, see Asylum Division lesson plans, *American Baptist Churches (ABC) Settlement Agreement and Suspension of Deportation and Special Rule Cancellation of Removal under NACARA*.

## ASM Supplement – 3

### 2.3 Conducting an Interview if You are Fluent in the Interviewee's Language

#### *Conducting an Interview in a Language Other than English*

Each asylum office has a local policy on whether an AO may conduct an asylum interview in a language other than English in accordance with the below guidance. If the local policy allows an AO to conduct interviews in a language other than English, the AO must be certified by the Department of State (DOS).

An applicant who is not fluent in English is required to bring an interpreter with him/her to the asylum interview. Depending upon local policy and with the asylum applicant's approval, an AO who has been certified by the Department of State can either conduct the interview in the applicant's language, if the applicant agrees, or use the services of the interpreter. The AO must make a clear notation in the interview notes that the interview was conducted in a language other than English and indicate the language used by the AO. If the AO conducts an interview in the applicant's language, it is preferable that a competent interpreter be present during the interview to monitor the level of understanding between the Asylum Officer and applicant.

Because 8 CFR 208.9(g) requires an applicant who is not competent in English to bring an interpreter to an asylum interview, as a general rule, asylum applicants are required to bring interpreters regardless of whether there are asylum office personnel available to conduct interviews in languages other than English. Nevertheless, the asylum office Director maintains the discretion to allow qualified asylum office personnel to conduct or assist in the conducting of an interview in the applicant's preferred language, with the applicant's consent, if there are extraordinary circumstances for doing so, such as (but not limited to) the disqualification of an interpreter through no fault of the applicant combined with the applicant's having traveled a very long distance for the interview, etc.

See *Affirmative Asylum Procedures Manual*, Section II.J.11, "Conducting an Interview in a Language Other than English."

#### ASM Supplement – 4

### 2.4 Verifying the Identity of the Interpreter

#### **8 CFR 208.9(c):**

The Asylum Officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

#### **Affirmative Asylum Procedures Manual Section II.J.4.a.iii:**

Like asylum applicants, interpreters are not required to present identity documents in order to interpret for an asylum applicant. Regulations give an AO the authority to verify the identity of the interpreter, which is best accomplished through the review of identity documents. However, an AO may not terminate or reschedule an interview if the interpreter is lacking identity documents, or presents identity documents that the AO does not wish to accept. Local asylum office policy dictates

whether an AO should photocopy any identity documents of an interpreter, or whether the AO should indicate on the *Record of Applicant and Interpreter Oaths* the type of identity documents, if any, the interpreter provided. AOs must base an individual's ability to interpret on interpretation skills and not on questions of identity.

There may be instances where an AO believes that the issue of an individual's identity is material to his/her ability to interpret. The AO must consult with the SAO in these circumstances. Only the Asylum Office Director or his/her designee has the authority to dismiss/bar an individual from interpreting in an office.

See *Affirmative Asylum Procedures Manual*, Section II.J.4.a.iii, "Identity."

### ASM Supplement – 5

#### 3.2 Advising the Interpreter of His or Her Role

**Interpreter Ground Rules # 1: *Keep all information discussed by all parties at a USCIS interview confidential***

Asylum Officers must inform applicants of the confidential nature of the interview. Regulations prohibit disclosure of information pertaining to an alien's application for asylum, without the written consent of the applicant. Some information may be given to some other government officials; however, they are required to keep this information confidential. Even the fact that an applicant has applied for asylum is confidential.

See 8 C.F.R. § 208.6 and Memorandum from Bo Cooper, INS Office of the General Counsel, to Jeffrey Weiss, Director, INS Office of International Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, (HQCOU 120/12.8) (21 June 2001).

#### **Confidentiality Requirements**

When information contained in or pertaining to an asylum application is disclosed to a DOS employee, the USCIS or DHS officer must inform the DOS employee of the confidentiality requirements of 8 C.F.R. 208.6. Confidentiality requirements for asylum applications and the Department of State are discussed in more detail in Memorandum from Bo Cooper, INS Office of the General Counsel, to Jeffrey Weiss, Director, INS Office of International Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, (HQCOU 120/12.8) (21 June 2001), and in Memorandum from Joseph E. Langlois, Director, Asylum Division, to Asylum Office Directors and Deputy Directors, *Fact Sheet on Confidentiality*, (HQASM 120/12.8) (15 June 2005), including the

attached fact sheet, *Federal Regulations Protecting the Confidentiality of Asylum Applicants*. See also 8 C.F.R. 208.6(b).

Asylum Officers should be familiar with exceptions to the confidentiality procedures as provided by regulation (information on asylum applicants can be disclosed to other federal entities and state and local governments when there is an action arising out of the asylum adjudication (8 C.F.R. § 208.6(c)) and explained in Asylum Division policy.

### ASM Supplement – 6

#### **3.3. Interpreter's Oath**

The interpreter must fill out an Interpreter's Oath form (sworn statement) at the beginning of the interview. The Asylum Officer must explain the meaning of this document to the interpreter and have the interpreter explain the meaning of the document to the applicant.

By signing the interpreter's oath form, the interpreter swears to "truthfully, literally, and fully interpret the questions asked by the Asylum Officer and the answers given by the applicant." Should a concern arise that an interpreter is not fulfilling that oath, the Asylum Officer should follow procedures set out in the *Affirmative Asylum Procedures Manual*, Section II.J.4.a.iii, "Improper Conduct."

See also *Affirmative Asylum Procedures Manual* for a copy of the Interpreter's Oath.

ASM Supplement – 7

**3.3. Interpreter Monitor's Oath**

At the beginning of the interview, the Asylum Officer explains to the applicant, through the applicant's interpreter, that a contract interpreter will be monitoring the interview to ensure the accuracy of interpretation by the applicant's interpreter. The Asylum Officer should also remind the contract interpreter, in the presence of the applicant, of the confidentiality requirements of the interview and should inform the applicant that the interpreter has pledged to keep any and all information the applicant provides during the interview confidential. See Affirmative Asylum Procedures Manual, Section II.J.4.b.iv, "Role of the Contract Interpreter."

The Asylum Officer will administer an oath to the interpreter monitor in which he or she will swear or affirm:

1. to immediately report to the Asylum Officer any errors in interpretation;
2. to notify the Asylum Officer if he or she is unable to monitor in a neutral manner due to bias against the applicant because of race, religion, nationality, membership in a particular social group, or political opinion; and
3. that he or she understands the matters discussed during the interview are confidential.

The Asylum Officer's notes must reflect that the oath was administered to the interpreter monitor.

Should concerns arise that the interpreter monitor is not fulfilling the oath, the Asylum Officer should follow the procedures set out in the Affirmative Asylum Procedures Manual, as well as any local asylum office procedures that may apply. Affirmative Asylum Procedures Manual, Section II.J.4.b.iv, "Role of the Contract Interpreter." and Affirmative Asylum Procedures Manual, Section II.J.4.b.v.a, "Introduction and Orientation."

For further information on procedural requirements pertaining to the use of interpreter monitors in Asylum interviews, including the oath requirement, refer to Affirmative Asylum Procedures Manual, Section II.J.4.b.v.a, "Introduction and Orientation" and any additional local asylum office procedures that may apply.

ASM Supplement – 8

**4.3 Determining the Interpreter's Competency**

If the interpreter monitor frequently corrects the interpretation provided by the applicant's interpreter, this may be an indication that the primary interpreter is not competent to interpret at the interview or is abusing his or her role. However, the asylum officer must verify that the interpreter monitor understands that his or her monitoring role is not to call attention to minor mistranslations that do not affect the applicant's meaning, but to alert the Asylum Officer if the primary interpreter fails to provide adequate, accurate, and neutral interpretation. "If the interpreter monitor frequently interjects, the Asylum Officer must determine whether frequent interjections occur because the applicant's interpreter has abused his or her role, or whether the contract interpreter misunderstands his or her role as a monitor, and take appropriate action." See *Affirmative Asylum Procedures Manual*, Section II.J.4.b.iv, "Role of the Contract Interpreter."

Despite the use of an interpreter monitor, the Asylum Officer retains the duty of determining the primary interpreter's competency. The Asylum Officer may rely on information given by the interpreter monitor to arrive at a decision regarding the primary interpreter's competency; however, this duty cannot be delegated to the interpreter monitor.

See also Memorandum from Joseph E. Langlois, Chief, Asylum Division, to Asylum Office Directors, et al., *Award of Interpreter Services Contracts and Guidance on Use of Interpreter Services*, (HQRAIO 140/12) (24 February 2010).

ASM Supplement – 9

**4.4. What to Do Once You Have Stopped the Interview Due to the Interpreter's Incompetency or if the Interpreter is Not Available**

Problems with Applicant's Interpreter

If, based on information provided by the contract interpreter, the Asylum Officer determines, and a Supervisory Asylum Officer concurs, that the applicant's interpreter has abused his or her role, or if the applicant's interpreter is not competent to interpret, the Asylum Officer should terminate the interview. The interview will be rescheduled at the fault of the applicant, and the 150-day clock will be stopped.

Written Notice Provided to Applicants who Fail to Bring a Competent Interpreter

As with applicants who do not bring an interpreter, the Asylum Office must give the applicant written notice explaining the consequences of failing to provide a competent interpreter. For purposes of employment authorization, the 150-day clock will be stopped until such time as the applicant appears for the rescheduled interview.

### APPLICANTS WITHOUT INTERPRETERS

#### Stopping the Interview

If the applicant has not provided an interpreter and the Asylum Officer determines that the applicant does not understand the questions and/or cannot express the claim, the Asylum Officer must stop the interview. There may be times when the applicant wishes to proceed in English even though his or her English is not proficient enough. Due to the potential for misunderstandings, however, the Asylum Officer must terminate the interview if he or she determines there are difficulties in communication.

#### Rescheduling the Interview

At the Asylum Officer's discretion and in consultation with a supervisor, the Asylum Officer may reschedule the interview so that the applicant can return with an interpreter, or the Asylum Officer may refer the case to the Office of the Immigration Judge. See *Affirmative Asylum Procedures Manual*, Section II.J.4.a.v, "Abuse of the Interpreter's Role."

An applicant's failure without good cause to provide a competent interpreter may result in ineligibility for employment authorization. Therefore, all applicants should be given a second chance to provide a competent interpreter if he or she has failed to bring an interpreter, or if the interview is terminated due to problems with an applicant's interpreter. However, the interview can only be rescheduled once and the applicant must bring a different, competent interpreter to the rescheduled interview. In order to discourage solicitation at Asylum Offices, applicants should not be permitted to return to the waiting room to seek alternate interpreters. See 8 C.F.R. §§ 208.7(a)(4), 208.9(g), 208.10.

#### Written Notice

If an applicant does not provide an interpreter, the Asylum Office must give the applicant written notice explaining the consequences of failing to bring a competent interpreter. This must be given to all non-Mendez and non-ABC asylum applicants who appear without a competent interpreter. (There are certain provisions regarding interpreters for Mendez and ABC applicants that do not apply with other asylum applicants.)

Similarly, if an affirmative asylum interview is rescheduled due to interpreter



problems, the Asylum Officer must complete the form, *Rescheduling of Asylum Interview – Interpretation Problems*. *Affirmative Asylum Procedures Manual*.  
Note: There is a special notice for ABC applicants.

The “CLOCK”

For purposes of work authorization, if the asylum application was filed on or after January 4, 1995, the 150-day processing “clock” will be tolled (stopped) between the dates of the first scheduled interview and the rescheduled interview.

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. Overseas Processing of Asylee and Refugee Derivatives: Form I-730 Beneficiaries (“Visas 92/93”), Version 1.0, September 30, 2010.
2. Please see Required Reading list in Supplement A – Refugee Affairs Division. IO employees will be responsible for all Refugee Affairs Division information.

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**IO Supplement – 1**

**2.2 Interpreters Utilized for RAIO Interviews**

International Operations field guidance regarding the use of an interpreter during I-730 interviews indicates:

Subject to local field office policy, the beneficiary may be required to bring his or her own interpreter. In posts that will not allow anyone other than the beneficiary into the interviewing facility, interpreters may be provided by the OPE or other Embassy-endorsed organization. As noted, USCIS LES staff may serve as interpreters when required.

Overseas Processing of Asylee and Refugee Derivatives: Form I-730 Beneficiaries (“Visas 92/93”), Version 1.0, September 30, 2010.

**IO Supplement – 2**

**2.3 Conducting an Interview if You are Fluent in the Interviewee's Language**

Currently, IO has no written policy governing its officers interviewing in a language other than English. IO officers should refer to local office procedures.

**IO Supplement – 3**

**2.4 Verifying the Identity of the Interpreter**

Refer to local office procedures.

**IO Supplement – 4**

**3.2 Advising the Interpreter of His or Her Role**

**Interpreter Ground Rules # 1: Keep all information discussed by all parties at a USCIS interview confidential**

International Operations Division procedures provide the following guidance on privacy and confidentiality requirements:

Confidentiality issues mandated in 8 CFR 208.6 apply to the beneficiaries of I-730 petitions, whether they are following-to-join asylees or refugees. (See Appendix L, *Asylum Confidentiality Memos*: Joseph E. Langlois, *Fact Sheet on Confidentiality*, Memorandum to Asylum Office Directors and Deputy Directors, June 15, 2005, plus attachments; and Cooper, Bo., INS Office of the General Counsel, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, Memorandum to Jeffrey Weiss, Director, Office of International Affairs, June 21, 2001).

Asylum information is protected from disclosure to a third party, including a beneficiary of an approved Form I-730. The confidentiality regulations governing asylum applications are equally applied to refugee applications as a matter of policy. While information contained within the petitioner's asylum or refugee case records may provide the interviewer with pertinent questions, *the interviewing officer must exercise caution in revealing protected information contained in the petitioner's refugee or asylee case record.* (See Section III.B, *Confidentiality Issues*, for further guidance).

Each officer conducting Visas 92/93 interviews must, to the maximum extent possible given office limitations, provide suitable interviewing space that allows for privacy.

Overseas Processing of Asylee and Refugee Derivatives: Form I-730 (V92/93)-  
Section I(H): Privacy/Confidentiality, Version 1.0, September 30, 2010.

## IO Supplement – 5

### 3.3 Interpreter's Oath

International Operations field guidance provides regarding interpreter oaths indicates:

#### ii. Interpreter

The officer must also place the interpreter under oath, including LES or OPE staff serving as interpreters. They are similarly bound to the confidentiality provisions associated with Visas 92/93 cases. Before proceeding with the interview, the officer should ensure that the interpreter answers affirmatively the following questions:

- Are you here today at the request of [beneficiary being interviewed]?
- Do you speak and understand both English and the [language spoken by the beneficiary] fluently and know from talking with [the beneficiary] that you understand each other?
- Do you solemnly swear/affirm to truthfully, literally and fully interpret the questions asked by me and the answers given by [the beneficiary]?
- Do you understand that you must translate every word as precisely as possible and not summarize, paraphrase, reduce, expand, or change the content of [beneficiary's name]'s testimony to me?
- Do you understand that DHS may choose to collect, retain, and verify the identity information you have provided?
- Do you understand that you must keep all information discussed during this interview confidential?

Overseas Processing of Asylee and Refugee Derivatives: Form I-730 (V92/93),  
Section III(C)(3)(c)(ii): "Interpreter," Version 1.0, September 30, 2010.

IO Supplement – 7

**4.4. What to Do Once You Have Stopped the Interview Due to the Interpreter's Incompetency or if the Interpreter is Not Available**

Refer to local office procedures.



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**CROSS-CULTURAL  
COMMUNICATION AND OTHER  
FACTORS THAT MAY IMPEDE  
COMMUNICATION AT AN  
INTERVIEW**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***CROSS-CULTURAL COMMUNICATION AND OTHER FACTORS  
THAT MAY IMPEDE COMMUNICATION AT AN INTERVIEW**

## Training Module

**MODULE DESCRIPTION**

Through interactive communication exercises, this module describes how cultural differences may create barriers to effective communication and provides techniques for recognizing and overcoming those barriers.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

Given the field situation of interviewing an applicant for asylum or refugee status (and witnesses, if any), you will be able to elicit in a non-adversarial manner all relevant information necessary to adjudicate the asylum request and to issue documents initiating removal proceedings, if required.

Given written and role-play asylum and refugee scenarios, the trainee will correctly identify inter-cultural issues that may create barriers to communication.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain factors that may impede communication at an interview.
2. Explain issues that may arise in interviewing individuals from different cultures.
3. Explain techniques for effective communication across cultural barriers.

**INSTRUCTIONAL METHODS**

- Interactive presentation, practical exercises, discussion

**METHOD(S) OF EVALUATION**

- Multiple choice exam



**REQUIRED READING**

- 1.
- 2.

**Division-Specific Required Reading - Refugee Division****Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES**

1. Kalin, Walter. "Troubled Communication: Inter-cultural Misunderstanding in the Asylum Hearing," *International Migration Review*, guest editor: Dennis Gallagher (Summer, 1986), p. 230-239.
2. Lawyers Committee for Human Rights. *Guidelines for Immigration Lawyers Working with Interpreters: Extending Legal Assistance Across Language Barriers* (New York, NY: June 1995), 5 p.
3. Rubin, Joan and Thompson, Irene. *How to be a More Successful Language Learner: Toward Learner Autonomy* (Boston, Massachusetts: Heinle & Heinle Publishers, 1994), p. 37-41.

**Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
C3	Skill in <b>tailoring</b> communications to diverse audiences (e.g., cross-cultural, management) (4)
IR3	Skill in <b>responding</b> to cultural behavior in an appropriate way (e.g., respectful, accepting of cultural differences) (4)
ITK6	Knowledge of principles of cross-cultural communications (e.g., obstacles, sensitivity, techniques for communication) (4)

### SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
05/10/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	LGollub, RAIO Training
11/23/2015	Throughout document	Corrected broken links and minor typos	RAIO Training

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

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

In this module, the term "interviewee" is used to refer to an individual who is interviewed by an officer in the RAI0 Directorate for an official purpose.

## 1 INTRODUCTION

This lesson explains how communicating through a second language, cultural factors, stress, and "personal agendas" can affect the interview process. The lesson also includes ways that you, the interviewing officer, can minimize the negative effects that these factors can have at an interview.

## 2 COMMUNICATING ACROSS A SECOND LANGUAGE<sup>1</sup>

### 2.1 Overview

English is not the first language of most of the interviewees you will encounter. Although some interviews are conducted entirely in English, at most interviews there is an interpreter who interprets what the interviewee says into English and what you say into a language the interviewee can understand. Not only does this increase the time spent conducting the interview, but it also creates a situation in which miscommunication can occur.

Interpreting from one language to another is not simply a word-for-word interpretation. The language structure and vocabulary of a culture evolve as an expression of what is necessary and important in that culture; therefore, language and culture are closely

<sup>1</sup> This section of the lesson plan is based in part on a presentation entitled, "Dimensions of Language and Culture," by Susan Rauffer (currently the Director at the Newark Asylum Office) as part of studies in World Issues at the Experiment in International Living (World Learning), Brattleboro, VT and used with the author's permission.

intertwined. Although there are literal translations between languages for many words, there are many other words in some languages that do not have lexical equivalents in other languages and which need to be translated by multiple words or phrases. (For example, Alaska natives have many different words for “snow.” A translation into English using only the word “snow” would not capture the exact meaning of what had been said.) In addition, communication does not involve merely the spoken word; tone of voice, “body language,” and other factors contribute to the message that is conveyed.

You need to be aware of the potential for miscommunication when a second language is used, and to attempt to keep the possibility of miscommunication at a minimum.

## 2.2 Communication

Communication can be broken down into two components, verbal and non-verbal.

### *Verbal*

- Linguistic
  - vocabulary
  - grammar
- Paralinguistic
  - manipulation of speech: e.g., volume of speech, rate of speech, pitch/tone, stress
  - extra-speech sounds: e.g., groans, sighs, laughter, crying, whistling, and other sounds such as “huh” and “uh”

### *Non-verbal*

- Movements that substitute for language, i.e. body language
  - facial expressions (smiles, frowns, etc.)
  - eye contact
  - body movement
  - posture
  - physical distance
  - use of environment (tapping fingers on tabletop, drawing, etc.)
  - touching
  - use of silence; timing

### *Written language*

For purposes of this training, we will not discuss written language; whenever non-verbal communication is discussed below, it refers only to body language.

## 2.3 Verbal Communication - Linguistic

### 2.3.1 The Danger of Mistranslation

“The enormous danger of failing to communicate in the modern world is dramatically illustrated by the circumstances surrounding the bombing of Hiroshima. There is evidence that the first atom bomb might never have been dropped if a Japanese translator had not erred in the translation of one word. The word *mokusatsu*, used by the Japanese cabinet in their reply to the Potsdam surrender ultimatum was rendered ‘ignore’ rather than correctly, ‘withholding comment pending decision.’ Thinking the Japanese had rejected the ultimatum, the Allies went ahead with the nuclear bombardment.”<sup>2</sup>

### 2.3.2 The Development of Language

People develop and build for themselves a language to meet their specific needs. This language acts as a grid through which the individual perceives the world. This also constrains the ways in which the individual categorizes and conceptualizes different phenomena. Examples of ways in which different languages have evolved include the following.

#### *Tense*

Although English has several past tenses, it does not have the same specific past tenses that some other languages may have. For example, Sukima, a Tanzanian language, has the following past tenses which English does not have.

- Immediate past - Used when something happened less than 2 hours ago.
- Proximate past - Used when something happened this morning.
- Intermediate past - Used when something happened two days ago.
- Remote past - Used when something happened any time more than two days ago.

Some languages may have past and future tenses, but these tenses may not always be used in everyday speech. Instead, a “time” word may be used with a present tense verb. (e.g., Khmer [Cambodian]-speakers often do not use the marker for past or future tenses when conversing, but rather use the present tense along with a time-marking word such as “last year,” “tomorrow,” “in a while,” “next week,” etc., to denote the past or future. This is sometimes done in English also: “I’m leaving tomorrow.”)

#### *Person*

- English - I, you (singular and plural)

<sup>2</sup> Frank M. Grittner, *Teaching Foreign Languages*, Harper and Row, NY, 1977, p. 33, citing to Lincoln Kinnear Barnett, *The Treasure of Our Tongue*, New York, Knopf, 1964, p. 292.

- French - one form of “I”, two forms of “you”
- Thai - several forms of “I” and “you”, the use of which depends on the sex of the speaker, his or her relation to the other person, and the situation; in addition, there are forms of “I” and “you” which are used **only** by the king and royal family

### *Gender*

- English - no gender (one form of “the”)
- Spanish - masculine and feminine (the = **el**, la)
- French - masculine and feminine (the = **le**, la)

### *Use of terms<sup>3</sup>*

- In Moré, spoken in Burkina Faso, cold, hunger, or thirst “has” a person. (“Cold has me.”)
- In the Ama-Zulu culture, women are not **allowed** to mention the names of certain of their husband’s relatives. **Instead**, they **must** use a substitute, often a descriptive term. For example, a woman cannot refer to her husband’s brother by name but rather might call him “younger father” or “small father,” or “the father of \_\_\_\_ (naming one of his children).”
- Even the words that form **the** names cannot be used. For example, Chief Buthelezi’s father’s name was “Mathole Mnyama” **which** means “calf” (Mathole) and “dark” or “black” (Mnyama). **Not only** is the chief’s wife not able to refer to her father-in-law by his name, but she also **cannot** use the words for “calf,” “black,” or “dark,” or even “nyama” which means “meat.” If she wants to refer to a black dress, for example, she must use another term such as “color like night.”

Differences between languages such as those noted above can create problems when the exchange of information must **be** done through an interpreter.

## 2.4 Verbal Communication - Paralinguistic

### **Manipulation of Speech**

The way people manipulate their speech may convey a message. Consider the implications if an interviewee’s manipulation of speech regarding the following issues is misinterpreted at an interview.

<sup>3</sup> For additional information on the use of terminology between different versions of languages, see RAIO Training module, *Interviewing – Working with an Interpreter*.



***Pitch (tone)***

Pitch is not very important in English; it usually remains constant during speech. In other languages such as Chinese, Lao, Vietnamese, Thai, words may be determined by the pitch. For example in Mandarin, the word “ma” has different meanings, depending on the tone used.

- ma (high tone, level) = mother
- ma (high tone, rising) = jute
- ma (low tone, rising) = horse
- ma (low tone, falling) = scold

In Thai, depending on the tone used, “kow” can have several meanings, including “rice,” “white,” and “I.”

***Stress***

Stress is more important in English than pitch and usually affects sentences rather than individual words. Consider the meaning of the following sentence with the stress falling on different words: “The military put my brother in jail.”

Stress in some languages affects individual words. For example, placing the stress on different parts of the following Spanish word alters the meaning of the word.

- te'rmino - terminal
- term'ino - I finish
- termino' - he finished

***Volume of speech***

Volume of speech can indicate anger, surprise, distress, etc. The situation, setting, and culture often dictate the appropriate volume.

***Rate of speech***

When someone speaks quickly it may indicate nervousness, or it may be that the person's normal speech is fast. Likewise, there may be various reasons why someone might speak slowly.

***Extra-speech sounds***

When and how extra-speech sounds such as groans, laughter, etc., are used is usually culturally determined. For example, when it is appropriate to laugh or cry is often determined by one's culture. This has implications for interviews as interviewees may laugh or cry at what may appear to you to be inappropriate moments.

## 2.5 Non-Verbal Communication

Non-verbal communication is very often culturally determined. The individuals within a culture usually know the meanings of the non-verbal signals in their own culture. The same signals, however, can have very different meanings in other cultures.

The next section of this lesson discusses non-verbal communication across cultures. Please also refer to the background reading for information on this topic.

## 3 INTER-CULTURAL COMMUNICATION

### 3.1 Overview

In addition to bringing other languages to the interview, interviewees bring their cultural backgrounds.<sup>4</sup> You also bring your own cultural background to the interview and view things through your own cultural perspective.

The individuals you interview will be from many different cultural backgrounds. Most will be from a cultural background that is different from your own. Although there are many similarities between cultures, there are also many differences, and these differences can affect the interview process.

It is impossible to understand the cultural norms of all the people you will encounter. Anthropologists and others spend many years immersed in other cultures and still are not able to learn all the nuances of the culture. You can, however, become sensitive to some of the potential problems that you may encounter and which are related to cultural differences, and learn techniques that you can use when interviewing persons from other cultures.

### 3.2 No Two People Are Alike

Even two people within the same culture will not react exactly the same in similar situations. One's ways of interacting with people and coping with situations are developed by prior experiences, family background, age and sex, culture, etc. No two people are alike – not even people who are from the same family and who share a common culture.

We bring to every situation our “personal baggage” of how we expect others to act and think.<sup>5</sup> We sometimes misinterpret the words and actions of others because we unconsciously expect that the meanings behind their words and actions are the same as

<sup>4</sup> Each person at the interview - interpreter, legal representative, etc. - brings his or her cultural background to the interview.

<sup>5</sup> For additional information on “Personal baggage,” see RAIO Training module, *Interviewing – Introduction to the Non-Adversarial Interview*.

our own meanings if we were in a similar situation. Misunderstandings arise, feelings are hurt, and problems are encountered due to such misinterpretations. Even when we make a conscious effort to be sensitive to other cultures, we may still miscommunicate because of the difficulty in picking up on the cultural cues of others.

In the RAIO context, the consequences of misinterpretation at an interview can be grave.

### 3.3 Inter-Cultural Miscommunication

#### Perceptions of other cultures

Most people have had little or no training in inter-cultural interactions. Therefore, in an encounter with someone from a culture other than our own, we rely on our assumptions about how other persons from our own culture act, as well as on our perceptions of how individuals from the other culture act.

These perceptions are formed by what we have heard or learned in school, through the media, and through other vicarious experiences, as well as any actual contact with persons from the other culture. We may have developed ideas about persons from certain cultures that have little basis in actual fact.

In addition, we have fewer points of common reference with someone from a different culture than we have with someone from our own culture and we may find it difficult to understand someone with whom there are only a few or no common points of reference.

Our "personal baggage" is sometimes magnified when dealing with persons from other cultures because we often know very little about their cultures, and may have misconceptions about them.

Both interviewers and interviewees (as well as others at an interview) bring with them to the interview culturally based perceptions of the world.

#### Cultural perceptions at an interview

Interviewees also have preconceived ideas of immigration officers.

Culture dictates certain behavior. You need to keep constantly in mind that you cannot assume that an interviewee's actions and words have the same meanings as they have in your culture.

#### Examples

- Certain body language may differ from culture to culture. Many hand gestures used in one culture to beckon people, to point to people or objects, to indicate agreement, to wave, etc., can have different meanings in other cultures, some of which are very insulting. Ways of non-verbally indicating "yes" and "no" also vary from culture to

culture. What may be a gesture to indicate affirmation may indicate a negative response in another culture.

- The physical distance between two people who are engaged in conversation differs from culture to culture. In some cultures, a foot of space is sufficient between two people; in other cultures, much more space is needed for the people involved to feel comfortable.
- The amount of physical contact also varies from culture to culture. For example, in some cultures, individuals of the same sex who are not romantically involved hold hands when walking or talking. In other cultures, this is rarely done.
- Sitting so that the sole of your shoe faces someone is considered very rude in some cultures, whereas in other cultures, this is not an issue.
- Time is measured differently and holds different importance in various cultures. Time in some cultures may be measured in terms of planting seasons rather than months, weeks, and days as it is in other cultures. Being on time for all functions is highly valued in some cultures while in others, it is expected that people will arrive after the announced starting time for events, especially social functions such as parties.
- Women's roles vary greatly from one culture to another. In some cultures, very few women hold positions of authority, power, and respect in the workforce; in other cultures, women have a more active role in this area. In certain cultures, many women have little contact with men other than male family members and defer to men; in other cultures, women interact openly and freely with men.
- People's reactions to grief differ widely from individual to individual as well as from culture to culture.<sup>6</sup> Some people may have difficulty speaking about the death of a loved one without crying while other people may be able to discuss events surrounding the death of a loved one without exhibiting any outward signs of emotion.
- "Saving face" rules many of the actions of people from some cultures; people may do the utmost possible to avoid losing face or putting someone else in a situation where that person would lose face. In other cultures, being "forthright" in interactions often takes precedence over saving face.
  - For example, if an individual is asked to give directions to a location but does not know how to get to the location, he or she may point the questioner in a particular direction in order to avoid not being able to give assistance.

<sup>6</sup> A particular reaction to grief may also indicate that the applicant is suffering from Post-Traumatic Stress Disorder or other trauma-related condition. For additional information, see RAIO Training module, *Interviewing Survivors of Torture*.

- Gift-giving is a way of assuring that things get done in some cultures; gifts are expected and are given to thank people for performing a service or act, or in anticipation of a particular service or act. In other cultures, such practices may be viewed as inappropriate or may be seen as a form of bribery. In addition, in some cultures, if you admire a possession of someone, you may receive it as a gift; not accepting it may offend the giver.
- Eye contact varies from culture to culture. What may be considered a normal length of time for eye contact in one culture, may, in another culture, be termed “staring” and considered rude, causing the other person to feel uncomfortable.
- In some cultures, the left hand is only used for bathroom functions, and so giving or receiving anything with the left hand is considered extremely rude.

### Application of knowledge of cultural differences

There are many such examples, and it would be impossible to list or understand all of them. The point is not to try and learn about every situation and cultural nuance, but to recognize that our expectations about how people react and what they say are often culture-bound. It is not uncommon for individuals to make judgments based on preconceived ideas of cultures. You must try as much as possible to recognize and put aside any preconceived ideas about how people act and the meanings of their actions in order to avoid making decisions based on cultural misperceptions.

## 4 STRESS AND PERSONAL AGENDAS

### 4.1 Stress

People deal with stressful situations in ways that vary in degree of intensity. For example, a job interview, taking a test, becoming a parent, and the death of a loved one are all stressful situations. An interview before a U.S. government official involving a possible benefit, can be a stressful situation for all of the individuals involved. Each person responds to stress differently and has developed personal mechanisms for handling stress, and you and the interviewees bring this to the interview. For example:

#### *Interviewee*

- Future depends on the interview
- Is nervous about an interview with a government official
- Is dealing with an unfamiliar environment
- Is worried about communicating through an interpreter (concerned that information may not be communicated correctly)

- May be apprehensive about retelling painful or humiliating experiences (See RAIIO Training module, *Interviewing – Interviewing Survivors of Torture or Other Severe Trauma*.)
- May be concerned about forgetting important information or becoming confused
- May be suffering from Post-Traumatic Stress Disorder or other trauma-related condition, in which case his or her stress level may be heightened

### *Officer*

- Concerned you may not get all of the necessary information (especially if you are new to the position)
- Concerned about time pressure—the next interviewee may have arrived

### *Interpreter*

- Has heavy responsibility to interpret accurately
- May not speak English or the interviewee's language well
- May be under time pressure to interpret for another interviewee or to leave quickly in order to be on time for work
- May also have experienced trauma; the interviewee's story may trigger symptoms in the interpreter relating to his or her own trauma

### *Representative (trusted adult in the context of children's interviews), etc.*

- Concerned that the interviewee will have difficulty answering questions due to the stress of the interview or because the interviewee may be suffering from Post-Traumatic Stress Disorder, etc.
- Afraid of surprises: interviewee tells you something that the legal representative has not yet heard
- May have another appointment – anxious to complete interview
- Concerned you will not elicit all pertinent information

### **How people react to stress**

Each person brings to the interview his or her individual ways of reacting to and dealing with stress. This can interfere with the interview process. Some of the ways people react to stress include:

- Change in voice and speech patterns
- Forgetfulness
- Need to feel in control

- Deference to authority
- Defensiveness

In stressful situations, individuals may easily remember the least important things and forget what is most important. This addition to the dynamic of the interview can result in miscommunication and misunderstanding.

## 4.2 Agendas

In addition to the interview being stressful for all concerned, each person has a personal “agenda” which, whether an appropriate or inappropriate agenda, may impede open communication. Agendas may be conscious or unconscious.

### *Applicant*

- To get the story out; not to forget anything; to avoid discussing particularly painful or humiliating experiences
- To convince the interviewer to grant the requested benefit
- In the case of fraud, to present a convincing claim which is untrue—not to get caught in a lie

### *Officer*

- To finish the interview in an established amount of time
- Not to overlook any procedural points
- Not to miss any important facts
- To focus on the important issues and not spend time on non-relevant topics
- Not to let previous interviews have an impact on your approach to the current interview
- In cases where you suspect a lack of credibility or fraud, to remain neutral in tone, demeanor, and attitude

### *Interpreter*

- To interpret correctly
- To understand all of the interviewer’s words without having to ask for clarification and appearing not to know English well
- To help the applicant present a good claim
- To please the person who hired him or her
- To project a professional image

- To avoid losing face

### ***Representative***

- To present the applicant in a favorable light
- To make sure the applicant doesn't forget to relate any important information
- To notice if any points are missed by the interviewer
- To be allowed to make comments on behalf of the applicant
- To distance himself or herself from fraud if he or she discovers fraud during the interview; to help cover-up the fraud if he or she is involved in the fraud

## **4.3 How Stress and Personal Agendas Can Negatively Affect the Interview Process**

Agendas may help both you and the interviewee get out all of the important information. There are often situations, however, in which stress and agendas can have an adverse impact on an interview.

The individuals at the interview are often overwhelmed by dealing with the stressful environment of the interview and may be too intently focused on pursuing their personal agendas. This can result in the following:

- Material facts of testimony missing
- Inaccuracy in interpretation or the appearance of inaccuracy
- Appearance of incredibility on the part of the interviewee, such as nervous demeanor and inconsistent testimony or appearance of inconsistent testimony
- Attention not entirely focused on questions and/or responses and therefore what is said is not accurately heard and understood
- "Pushiness" to get points across
- Impatience; non-adversarial nature of the interview is jeopardized

## **4.4 Ways to Minimize the Negative Effects of Stress and Personal Agendas**

You are in control of the interview; the interviewee has little control over how stressful the interview is. Therefore, you need to be aware of your actions during the interview and adapt your behavior to fit the situation in order to minimize as much as possible the negative effects of stress and personal agendas. To this end, you can:

1. Attempt to put the interviewee and others at ease at the beginning of the interview.
2. Assure the interviewee that he or she will be given a full opportunity to present his or her claim.



3. Explain the process of the interview and the roles of each person so that everyone will know what to expect.
4. Focus on the interviewee and listen to what he or she is saying.
5. Have patience when the interviewee does not answer a question. Keep in mind the variety of factors that may have prevented the interviewee from hearing or understanding the questions. Remember that although the interview process may become routine for you, it is not routine for the interviewee and others who may be present. You may need to give the interviewee a few seconds of silence to organize his or her thoughts.<sup>7</sup>
6. Recognize your own agendas, such as the need to get all the information within a certain amount of time, but do not let that interfere with your ability to listen to the interviewee. Consciously set aside inappropriate agendas.
7. Use your time wisely during the interview so you do not feel rushed near the end of your time: structure and pace the interview, and avoid discussing information that is irrelevant to the interview at hand.

## 5 OTHER FACTORS THAT MAY IMPEDE COMMUNICATION AT AN INTERVIEW

### 5.1 Additional Factors

There are a number of other factors that may impede communication at an interview:

- The interviewee may be suffering from Post-Traumatic Stress Disorder or other trauma-related condition that may impair his or her ability to follow your questioning, to answer questions, and to relate his or her story in a credible manner.<sup>8</sup>
- The interviewee may be experiencing physical discomfort or impaired cognitive ability due to torture or other abuse he or she experienced (or may have a physical condition unrelated to such abuse but which may cause physical pain or discomfort).
- The environment of the interview may not put the interviewee at ease during the interview. For example:
  - The interviewee may not feel comfortable disclosing information to you because he or she is of the same or different sex as you
  - The interpreter may be someone to whom the interviewee feels uncomfortable telling parts of his or her story

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<sup>7</sup> For additional information on the use of silence during the interview, see RAIO Training modules, *Interviewing – Eliciting Testimony* and *Interviewing Survivors of Torture*.

<sup>8</sup> For additional information, see RAIO Training module, *Interviewing Survivors of Torture*.

- You or the physical environment may remind the interviewee of the place where he or she was abused in his or her country at the hands of a government official
- Something about the interviewee or his or her story may trigger a response in you that may distract you momentarily from your task of conducting a non-adversarial interview.

## 6 CONCLUSION

You cannot possibly be aware of all of the factors that impede communication at a particular interview; each interview is unique, and each interviewee is unique. What you can do, however, is to be aware that a number of factors may impede communication, and when communication appears to be impaired, you should attempt to discern what the problem may be and attempt to alleviate it.

## 7 SUMMARY

### Communicating Across a Second Language

Although some interviews are conducted entirely in English, there is usually an interpreter who interprets what the interviewee says into English and what you, the interviewing officer, say into a language the applicant can understand. Interpreting from one language to another is not simply a word-for-word interpretation between two languages.

Although there are literal translations between languages for many words, there are many other words in some languages that do not have lexical equivalents in other languages and that need to be translated by using more than one word. In addition, communication does not involve merely the spoken word; tone of voice, “body language” and other factors contribute to the message that is conveyed. You need to be aware of the potential for miscommunication when a second language is used, and to attempt to keep the possibility of miscommunication at a minimum.

### Inter-Cultural Communication

Culture plays an especially important role in the communication at an immigration interview. There are many differences between cultures regarding body language, physical closeness, views of time, women’s roles, reactions to grief, etc.

Because of the many differences between individuals, it is often difficult to determine how someone will react in a given situation. We often misinterpret the meanings of the words and actions of others because we assign our own meanings to their words and actions, and our meanings may not be the same as theirs. You need to keep in mind the effects of culture in evaluating an interviewee’s behavior.

### **Stress and Personal Agendas**

Interviews with a U.S. government official are stressful situations, and the individuals at an interview bring with them the methods they have devised for dealing with stress, any personal agendas they may have, their cultural backgrounds, and their “personal baggage.” In addition, an interviewee may be affected by trauma experienced in his or her country or during the flight from the country. All of these factors influence the behavior of the individuals at an interview, and may impede communication.

You must attempt to reduce the stress of the others at the interview and recognize the existence of possible agendas in order to assist the flow of communication. You also need to recognize your own ways of dealing with stress and personal agendas and minimize any negative effect your own stress and agendas may have on the interview process.

## PRACTICAL EXERCISES

There are several practical exercises that will be conducted during this class. The materials for the exercises will be distributed during class.

### Practical Exercise # 1

- Title:
- Student Materials:

**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

There is no RAD Supplement for this module.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>RAD Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT B – ASYLUM DIVISION**

There is no Asylum Supplement for this module.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>ASM Supplement</u></b> <b>Module Section Subheading</b></p>
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**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

There is no IO Supplement for this module.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<b><u>IO Supplement</u></b>
<b>Module Section Subheading</b>





U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**INTERVIEWING –  
ELICITING TESTIMONY**

**TRAINING MODULE**

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

**ELICITING TESTIMONY**

Training Module

**MODULE DESCRIPTION**

Through discussion and practical exercises, this training module instructs students on how to elicit information from an interviewee in a non-adversarial manner: how to probe appropriately to elicit necessary information, the types of questions to ask, and questioning techniques to use.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

During a non-adversarial interview, you (the Officer) will be able to elicit all relevant information to properly adjudicate the petition or application, or to act on a request.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain how to elicit biographical information from an interviewee.
2. Explain how to elicit information pertaining to eligibility for an immigration benefit or request.
3. Explain how to elicit information pertaining to possible mandatory bars, inadmissibility grounds, or discretionary grounds for denial or referral.
4. Explain different questioning techniques and when it is appropriate to use them.
5. Explain how to ask follow-up questions to obtain additional information for the adjudication.

**INSTRUCTIONAL METHODS**

Interactive presentation, discussions, practical exercises

**METHOD(S) OF EVALUATION**

- Written exam
- Practical exercise exam

## REQUIRED READING

None

## ADDITIONAL RESOURCES

1. Amina Memon, Christian A. Meissner and Joanne Fraser, "The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years," *Psychology, Public Policy and the Law* 16, no. 4, 2010, pp. 340-372. Available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1057&context=christian\\_meissner](http://works.bepress.com/cgi/viewcontent.cgi?article=1057&context=christian_meissner).
2. Ronald P. Fisher & R. Edward Geiselman, "The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence," *International Journal of Law and Psychiatry* 33, 2010, pp.321-328. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1696130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1696130).

### Division-Specific Additional Resources - Refugee Division

### Division-Specific Additional Resources - Asylum Division

### Division-Specific Additional Resources - International Operations Division

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR28	Knowledge of policies and procedures for processing claims for individuals with disabilities (3)
ITS1	Skill in identifying the most appropriate interview technique (e.g., yes/no, open-ended) (4)
ITS2	Skill in organizing and sequencing interview questions to elicit information (4)
ITS3	Skill in framing interview questions and requests for information (4)
ITS4	Skill in asking appropriate follow-up interview questions (4)
ITS5	Skill in maintaining control of interviews (4)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK6	Knowledge of principles of cross-cultural communication (e.g., obstacles, sensitivity, techniques for communication) (4)
RI2	Skill in identifying the information required to establish eligibility (4)
C1	Skill in communicating with others in a direct manner (4)
C2	Skill in communicating difficult or contentious information with concerned parties (e.g., attorney, applicant, supervisor) (4)
C4	Skill in active listening (4)
C5	Skill in recognizing and reacting to non-verbal cues (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
09/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/25/2015	Throughout document	Corrected links and minor typos	RAIO Training

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

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

Officers in the RAIO Directorate conduct interviews primarily to: determine eligibility for immigration benefits or requests; corroborate information provided by applicants, petitioners, and beneficiaries; and/or establish whether a person understands the consequences of his or her actions.

The modules of the RAIO Directorate – Officer Training Course and the division-specific training courses constitute primary field guidance for all officers who conduct interviews for the RAIO Directorate. The USCIS Adjudicator's Field Manual (AFM) also provides guidance for officers when conducting interviews, particularly for officers in the International Operations Division. There may be some instances where the guidance in the AFM conflicts with guidance provided by the RAIO Directorate. If this is the case, follow the RAIO guidance. Further guidance regarding interviews for specific applications will be discussed during division-specific trainings.

In this module, the term "interviewee" is used to refer to an individual who is interviewed by an officer in the RAIO Directorate for an official purpose.

## 1 INTRODUCTION

This module is part of a series of interviewing modules that discuss various topics, including the basic principles and components of conducting a non-adversarial interview, the proper procedures for taking notes, and considerations when conducting an interview through an interpreter. This module describes how to elicit information in a non-adversarial manner through the use of various question types and questioning techniques. Please refer to the other interviewing modules for additional guidance on conducting RAIO interviews.

- Interviewing – Introduction to the Non-Adversarial Interview

- Interviewing – Note-Taking
- Interviewing – Working with an Interpreter
- Interviewing – Interviewing Survivors of Torture

As an officer in the Refugee, Asylum, and International Operations (RAIO) Directorate, you will conduct different types of interviews. The Code of Federal Regulations, 8 C.F.R. § 208.9(b), requires that Asylum Officers conduct interviews in a non-adversarial manner. Although this regulation applies specifically to asylum adjudications, as a matter of policy, RAIO directs that all officers in the RAIO Directorate must conduct all interviews in a non-adversarial manner.

Conducting an interview may appear to be straightforward – you ask questions and the interviewee answers them. Conducting a truly effective interview, however, takes a great deal of skill. You must be aware at all times of the direction in which the interview is proceeding, and, when necessary, change the direction by adjusting your questioning techniques so that you can elicit material information from the interviewee.

It is your responsibility to control the exchange of information during an interview. You must encourage the interviewee to speak freely, ensure that you and the interviewee understand each other, keep the interviewee focused on relevant issues, and make certain that you gather all of the information that you need in the timeframe allotted. Although you can control only your own actions, the manner in which you conduct the interview and interact with the interviewee will affect how he or she reacts and will affect his or her ability to provide the information you need.

## 2 GOALS IN ELICITING TESTIMONY

The main goal in conducting almost all of the interviews conducted by the RAIO Directorate is to elicit testimony from the interviewee to determine eligibility for a benefit, or for some other purpose as noted above. Depending on the type of interview, you will use information you have learned from several sources to guide the interview. These sources may include an application and supporting documents, information from U.S. Government databases, and country of origin information.

### 2.1 Give the Interviewee the Opportunity to Be Heard

Give the interviewee an opportunity to provide in his or her own words information bearing on eligibility for a benefit. Also, give the interviewee an opportunity to provide additional information that is not already in the record so that you will have a complete understanding of the events that form the basis for the application or request.

### 2.2 Address Credibility Concerns

Address any concerns you may have regarding the interviewee's credibility or information that is lacking in the record, and give the interviewee an opportunity to address concerns regarding implausible testimony, lack of detail, and/or internal and external inconsistencies.<sup>1</sup> There may be inconsistencies:

- within the application and supporting documentation

*Example*

The applicant claimed on the application that his date of birth is December 10, 1947; the marriage certificate which he submitted with his application indicated that his date of birth is April 18, 1947.

(Note that you must make changes to the application if necessary. See RAIO Training module, *Interviewing – Introduction to the Non-Adversarial Interview*.)

- between the application (including supporting documentation) and the applicant's oral testimony

*Example*

During the interview, the applicant stated that he was never arrested but the application states that he was detained by the authorities for attending a political rally.

- between the applicant's claim and country of origin information

*Example*

The applicant stated she joined a political party in 1988, but the pre-interview country of origin research conducted by the officer indicates that the party did not come into existence until 1990.

- within the applicant's testimony

*Example*

At the beginning of the interview, the applicant claimed that he worked until he left his country; later in the interview, the applicant claimed that he was in hiding for three months prior to leaving his country.

## 2.3 Determine Whether the Interviewee Is Subject to Any Bars or Grounds of Inadmissibility

<sup>1</sup> For additional information on assessing credibility, see RAIO Training module, *Credibility*.

Determine whether the interviewee participated in any activities that would result in:

- a mandatory bar
- being found inadmissible to the United States
- a discretionary denial/referral

### 3 OFFICER'S DUTY TO ELICIT TESTIMONY

When someone applies for an immigration benefit, it is his or her burden to establish eligibility. For some benefits, such as the I-601 Application for Waiver of Ground of Inadmissibility, applicants establish eligibility exclusively through documentary evidence. For other benefits, such as asylum or refugee status, credible testimony alone may be enough to satisfy that burden. In cases requiring an interview, although the burden is on the applicant to establish eligibility, equally important is your obligation to elicit all pertinent information.

During your pre-interview preparation, you will have gathered evidence such as information about the interviewee from the application, case file, and U.S. Government databases, and in the case of refugee or asylum interviews, you will also have gathered information from country of origin resources. The interview is your opportunity to further develop the record by gathering testimonial evidence. The quality of that testimonial evidence depends on your ability to elicit information from the interviewee. [RAD Supplement – Officer's Duty to Elicit Testimony; ASM Supplement – Officer's Duty to Elicit Testimony; IO Supplement – Family Based Petitions; IO Supplement – Intercountry Adoption Forms; IO Supplement – Naturalization Forms; IO Supplement – Travel Documents]

#### 3.1 Eliciting Testimony = Fully Exploring Issues

Eliciting testimony means more than asking routine questions and receiving responses. In the refugee and asylum context, you have the affirmative duty to “elicit all relevant and useful information bearing on the applicant's eligibility” for the form of relief sought.<sup>2</sup> This is applicable in the IO context as well. “Eliciting” testimony means fully exploring an issue by asking follow-up questions to expand upon and clarify the interviewee's responses before moving on to another topic. An answer to one question may lead to additional questioning that is necessary to have a complete picture of the events that occurred.

If you move on to another line of inquiry without allowing the interviewee the opportunity to provide relevant information, important information may remain undisclosed.

<sup>2</sup> 8 C.F.R. § 208.9(b); UNHCR Handbook, paras. 196 and 205(b)(i)

### 3.2 Going Beyond the Information in the Application

Applications, petitions, and other requests for action generally contain biographic and historical information about the applicant/beneficiary that can assist you in making your determinations. Although you must verify all of the information contained in the application, petition, or request, do not merely ask the interviewee the same questions that are listed on the form. An application, petition, or request only outlines the minimum information required to establish eligibility. You must expand upon the information that the interviewee has already provided by asking follow-up questions. The interviewee's responses will enable you to develop a complete picture of the interviewee's request and whether the interviewee is eligible for the benefit he or she seeks.

### 3.3 The Interviewee May Not Know What Is Important to Disclose

As the interviewing officer, you should not limit the inquiry to what the interviewee may believe is important. The interviewee is not likely to be familiar with U.S. immigration laws and regulations and what is necessary to establish eligibility for a benefit. In addition, he or she will not be familiar with the interview process. You, however, are the authority on relevant law, what is necessary to establish eligibility, and the interview process. Therefore, you must help the interviewee understand the process so that he or she can focus on and provide the information necessary for you to make a determination.

#### *Example*

A refugee or asylum applicant believes that the authorities wish to harm him because of his religious beliefs. During the interview, however, the officer elicits information that indicates that the authorities also wish to harm the applicant because of his ethnic background, or because his religious activities are viewed as a form of political opinion which could lead to an additional ground of eligibility for status.

### 3.4 Vague or Non-Responsive Answers

For a number of reasons, an interviewee may give a vague or non-responsive answer to a question you ask. If this happens, you should not simply move forward to another line of inquiry; instead, you must ask follow-up questions to expand upon and clarify the interviewee's statements. It is your duty to fully and fairly develop the record by eliciting information from the interviewee, probing for additional information, and following up on the interviewee's statements.

## 4 TYPES OF QUESTIONS USED IN INTERVIEWS

There are many different ways you can ask questions during an interview. The types of questions you use will vary within each interview as well as from interview to interview. Some types of questions may be more effective than others, depending on characteristics of the applicant such as age, education, and effects of trauma, as well as the kind of

information you are eliciting from the interviewee. Additionally, there are some types of questions that you should avoid in the RAIO context. You must be familiar with various types of questions, be aware of the effectiveness of the specific questioning techniques and when to use them, and be able to change the types of questions you use to fit the circumstances of each interview.

Educators and linguists have categorized questions in a number of different ways. For the purpose of RAIO interviews, we use the question types described below, some of which may overlap in certain ways. These question types are categorized according to how they are used in the RAIO context.

#### *Most frequently used question types*

- Open-ended questions
- Closed-ended questions

#### *Question types to use with caution in limited circumstances*

- Multiple choice questions
- Leading questions

#### *Question types to avoid in non-adversarial interviews (discussed below at 6.14 and 6.15)*

- Compound questions
- Loaded questions

### **4.1 Open-Ended Questions**

As the term suggests, an open-ended question is framed to give the interviewee an opportunity to provide a full answer in his or her own words. It may also provide the interviewee the opportunity to expand on a statement made earlier in the interview. Open-ended questions generally begin with interrogative words such as “what,” “why,” and “how,” and elicit descriptive/factual information, such as a factual account of a situation or event, or an opinion rather than a simple “yes” or “no” response.

#### *Examples*

- “What happened then?”
- “Why do you think [the persecutor] wanted to harm you?”
- “Why did you go into hiding?”

- “Why did the authorities arrest you?”
- “Is there anything else you would like to add? Is there anything that you feel is important for me to know that we did not discuss?”
- “How did the child become an orphan?”
- “How did you meet your spouse?”
- “Why do you want to give up your permanent residency?”
- “Describe what your spouse/child does for work in the United States.”

### *Effect*

The use of open-ended questions can assist you in obtaining information and putting the interviewee at ease. Asking open-ended questions demonstrates to the interviewee your willingness to listen to his or her responses, and such questions usually yield more information than most other types of questions. Allowing a complete response may expand on the information originally included in the application or in a statement by the interviewee, and requires you to listen carefully in order to identify all key issues. In such circumstances, the interviewee may raise other important points that you will need to pursue with additional lines of questioning.

Because open-ended questions can elicit a lengthy response, such questions may lead the interviewee to give information that you do not need. Unless carefully worded, some open-ended questions can be overly broad or even confusing and the interviewee may not know how to reply if, in his or her mind, there could be many possible responses. Therefore, you must pay attention to how you craft open-ended questions so it will be clear to the interviewee what you are asking and so that you elicit information in a controlled way.

### *Examples*

- “What is the last thing that happened that made you decide to leave home?”
- “How did you decide to marry your wife?”

Research on interview techniques has shown that carefully framed open-ended questions can provide more accurate information with more detail than other types of questions. The research further indicates that if the interviewer uses open-ended questions and encourages the interviewee with occasional prompting questions, the most detail is elicited and the information provided is most accurate.<sup>3</sup>

<sup>3</sup> Amina Memon, et al., “The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years,” *Psychology, Public Policy and the Law* 16, no. 4, 2010, pp. 340-372; Ronald P. Fisher and R. Edward

*Examples*

- “Tell me more about ...”
- “You mentioned a weapon earlier while you were telling me about being kidnapped. Tell me more about that weapon.”

**4.2 Closed-Ended Questions**

Unlike open-ended questions, closed-ended questions normally elicit the simple answer “yes” or “no” or a very brief statement or limited information. These questions allow you to obtain specific information in a short amount of time when a lengthy response is not needed.

Closed-ended questions that elicit a “yes” or “no” response usually begin with “did,” “does,” “do,” “is,” “are,” “was,” “were,” “has,” or “have.”

*Examples*

- “Did the military know you were involved with the rebels?”
- “Did you go to the police for help?”
- “Have you ever been arrested?”
- “Were you in contact with either of the birth parents prior to filing the petition?”
- “Does anyone else over the age of 18 reside in your household?”

Closed-ended questions that elicit limited information generally result in a brief reply and do not encourage the applicant to explain the circumstances surrounding the information in the reply.

*Examples*

- “What is the name of your political party?”
- “How many members are there in your local union?”
- “When did you become aware that you were in danger?”
- “When did you last see the child’s birth father?”

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Geiselman, “The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence,” *International Journal of Law and Psychiatry* 33, 2010, pp. 321–328.



*Effect*

Closed-ended questions are helpful when your primary purpose is to confirm information already provided. When you are reviewing information on the application with the interviewee, specific closed-ended questions can be appropriate. Closed-ended questions can also be used to probe into answers elicited by open-ended questions. Sometimes, an interviewee may not provide certain information unless it is specifically requested. In such circumstances you should alternate between open- and closed-ended questions as appropriate.

Keep in mind that closed-ended questions limit the information you can elicit. Because it allows the interviewee to reply only briefly, and does not encourage him or her to explain the circumstances surrounding the information in the reply, you will often need to ask additional questions to clarify the facts and gain a full perspective. For example, the question: "How many members are there in your local union?" may fail to elicit the fact that there were 38 original members, but 6 were arrested during a military raid and now there are 32 members remaining.

### 4.3 Multiple Choice Questions

A multiple choice question requires the interviewee to choose between two or more options. There are two kinds of multiple choice questions: "limited options" and "open options."

A "limited options" multiple choice question gives the interviewee a few options from which he or she can choose as a response.

*Example*

"When you left your village, did you tell anyone you were going or did you leave without telling anyone?"

*Effect*

A "limited options" multiple choice question can help point the interviewee in a particular direction by limiting his or her response options. As the name suggests, however, this type of question may limit an interviewee's response by suggesting to the interviewee that only one of the options presented is the appropriate response. By limiting the possible responses in this way, the interviewer may miss information that the interviewee would otherwise have offered. In the example above, the interviewee has only two options – to indicate that he or she did or did not tell anyone about leaving. It does not elicit an alternative answer such as, "I told one of the soldiers that I could no longer live under their tyranny, but I did not actually tell him that I was leaving." Therefore, when using "limited options" questions, you should understand their limitations and word them carefully.

An “open options” multiple choice question can help focus the interviewee on the information you are seeking by opening up a number of possible responses or by indicating to the interviewee the type of answer you are trying to elicit.

*Example*

Q: Then what happened?

A: The policeman hit me.

Q: How did the policeman hit you?

A: I don't understand.

Q: Did the policeman hit you with an open hand, a closed fist, his foot, or with an object?

A: He hit me with the butt of his gun.

*Effect*

An “open options” multiple choice question can be useful in focusing an interviewee and can help move along the interview, particularly if the interviewee is having difficulty forming a response. Although there is less potential for limiting an interviewee's response than when using “limited options” questions, you should still word “open options” questions carefully so as not to suggest an answer to the interviewee.

#### 4.4 Leading Questions

A leading question is a question that is phrased in a way that suggests or elicits a particular answer. If you ask a question in a way that suggests the answer, the interviewee may give you the answer he or she thinks you want to hear, not the facts as they occurred.

On the other hand, in limited circumstances, a leading question can be useful when it is used to confirm something that the interviewee has already stated. Leading questions can focus the interviewee's answer in a particular direction, and may be helpful when you are trying to guide the interviewee to the appropriate point in his or her story in order to develop his or her testimony.

*Example (appropriate leading question)*

"Do you still live at 123 Main Street in Hoboken?"

*Effect*

Leading questions can speed up the interview process in an appropriate manner, particularly when confirming biographical information or when you want to make sure you understand what the interviewee has said. Gathering information using the question

above is faster than asking, "Where do you live?" Using the leading version of this question, however, would be inappropriate if you have questions or doubts about the interviewee's address.

*Example (inappropriate leading question)*

"Since Christians were harmed in Iraq, do you think you'll be harmed because you're Christian?"

*Effect*

Leading questions such as the one above may persuade the interviewee to give a specific answer, even though it may not be the answer the interviewee wants to give. You must remember that your task is to elicit information from the interviewee, not provide it for him or her.

*Example (inappropriate leading question)*

"They didn't really harm you, did they?"

*Effect*

This question, if asked during an asylum or refugee interview, suggests that you have decided, before the interview is concluded, that the interviewee did not experience past persecution. Instead, an open-ended question such as, "What happened before you left your country?" would elicit a response without suggesting an answer.

During an interview, you are in a position of authority and power. Most interviewees are unfamiliar with the interview process, and want you to see them in a favorable light. If you ask a question in a way that suggests the answer, the interviewee may give you the answer he or she thinks you want to hear, not the facts as they occurred.

In general, leading questions during non-adversarial interviews should be avoided, because interviewees are more likely to fully disclose information if they are asked open-ended questions that elicit a full range of possible answers.

## 5 PROBING / FOLLOWING UP

Probing or following up is **crucial** during an interview. If responses are not followed up with further questioning, you may discover after the interview that you do not have all the information needed to make an appropriate decision on credibility and the applicant's eligibility for the benefit sought.

It may be necessary to probe or follow up with whoever is present at the interview, including the principal interviewee, a family member, the attorney or legal representative (if one is present), or any others present.

The response to one question you ask may lead to additional questions that elicit more information about a particular topic or event. Probing for details and clarification is often done by beginning with open-ended questions, then following up on particular issues raised in the interviewee's responses by asking additional open-ended questions, closed-ended questions, or other types of questions.

Probing and following up should become second nature to you as an interviewing skill. This requires that you remain alert and intellectually engaged during the interview process. When probing for details, you should always maintain a neutral tone and give the interviewee an opportunity to respond with more detail or to clarify his or her statements. Let the interviewee know that you are attempting to understand fully what he or she is trying to convey.

You will ask follow-up questions to obtain additional information and further develop the record. This often involves probing to thoroughly understand the circumstances surrounding an event and its relevance to the purpose of the interview. You should base your follow-up questions on what the interviewee has already told you. For example, if the interviewee says she was threatened, ask questions to determine what the threat consisted of, when the threat occurred, who made the threat, and how it was made.

It is important to keep in mind the nature of the particular event as it may dictate the type of questions to ask and the extent to which probing is appropriate. For example, in a refugee case where the applicant has been sexually abused, you may decide to follow up on specific details related to the circumstances surrounding abuse (e.g., the time of the attack(s), the location, the number of people involved), but asking for details about the abuse itself is not necessary. Such questions could further traumatize the applicant and would not affect a determination on eligibility.<sup>4</sup>

You will need to ask follow-up questions in a number of circumstances. Consider the following:

### **5.1 Elicit Additional Facts Bearing On Eligibility**

It is your role to make decisions and legal determinations based on facts. The additional information you obtain through follow-up questions helps you develop the factual record, which, in turn, helps you determine eligibility. A refugee or asylum applicant who fears persecution must establish, through direct or circumstantial evidence, the motive of the person he or she fears. The applicant may not know, or may not be able to articulate the motive of his or her persecutor and generally will not be able to make legal conclusions. For example, an interviewee whose claim involves domestic violence may not be able to explain clearly why he or she was abused. Questions such as "What were you doing or

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<sup>4</sup> For additional information, see RAIO Training module, *Interviewing Survivors of Torture and Other Severe Trauma*.

saying at the time of the attack?” or “What did [your attacker] say to you when he or she was hitting you?” may help to clarify the motive of the persecutor. Asking follow-up questions will assist you in determining the facts necessary to make these legal decisions.

## 5.2 Clarify Terms or Phrases

You will often need to clarify the meaning of a term or phrase the interviewee uses by asking follow-up questions.

### *Examples*

- If an interviewee uses a term such as “tortured,” “mistreated,” or “detained,” that has a number of interpretations, you must determine exactly what the interviewee means.
- If the interviewee says that he or she was “hit,” it may be appropriate to ask the following:
  - “How did your attacker hit you?”
  - “What did the attacker hit you with?”
  - “Where on your body did the attacker hit you?”
  - “Please describe what happened.”
  - If an interviewee claims that the child she or he wants to adopt was “abandoned,” you may need to ask:
    - “What were the circumstances that led to the birth mother giving up the child?”
    - “Where did the birth mother leave the child?”
    - “With whom did the birth mother leave the child?”

## 5.3 Clarify Statements

Sometimes you will need to clarify statements that appear to be illogical or that may have several meanings.

### *Examples*

- When asked how many children the interviewee had, she states that she is the mother of five children; however, she may also have several step-children that she is not including because she did not give birth to them, or she may be including children who are deceased.

- An interviewee may state that he came into the United States without inspection at Los Angeles. He may mean that he crossed the border at San Ysidro, but the only city he knows is Los Angeles; or he may have been a stowaway who arrived at the port in Los Angeles; or he may have arrived at the airport with false documents.

Ambiguous statements such as these must be clarified.

#### 5.4 Connect Statements Made at Different Points in the Interview

You may need to connect statements the interviewee made at one point in the interview with statements he or she made at another point in the interview, asking follow-up questions about the relationship between the two statements.

##### *Example*

An interviewee states at the beginning of the interview that she has two brothers in the military. Later she states that guerrillas targeted her house when they raided her village but that she does not know why they targeted her house. It would be appropriate to probe further to determine whether there is any connection between her brothers' membership in the military and the guerrillas' attack on her house.

Appropriate follow-up questions include:

- Did the guerrillas say anything during the attack?
- Did they attack other houses?
- Why do you think they targeted certain houses, in addition to your house?
- How were the households that were not attacked different from the households that were attacked?

In asking such follow-up questions, you should avoid leading questions, such as:

- Did the guerrillas attack your house because your brothers were in the military?

#### 5.5 Resolve Possible Inconsistencies

There may be inconsistencies within the interviewee's verbal testimony or between the interviewee's testimony and documents he or she submitted, including the application, or there may be other inconsistencies.<sup>5</sup> Prior to the interview, you must review carefully all documents submitted by the interviewee, being alert for any possible inconsistencies in

<sup>5</sup> For additional information, see RAIO Training modules, *Credibility and Evidence*.

the information within the documents, which may raise lines of questioning that you must pursue. During the interview, you should compare the information the interviewee provides with those documents and you should be alert to possible conflicting statements within the interviewee's testimony.

### *Examples*

- At the beginning of the interview, an interviewee states that he entered the country of first flight in June 1995 after escaping from prison. Later in the interview, the interviewee submits an arrest document from his country of origin that is dated July 1, 1995. You must determine the reason for the discrepancy in dates. It is possible that the interviewee actually traveled to the country of first flight in July and made a mistake when giving the date, that the interpreter misinterpreted<sup>6</sup> the dates, or that the arrest document is false.
- On the application the interviewee gives January 12, 2010 as his date of marriage. During the interview he says he was married in December 2009. Upon further questioning, he explains that the marriage contract between the two families was signed and recorded with the government in December, but they held the party for the families and community on January 12.
- Applicant stated at the beginning of the interview that she had four children, listed their names, and stated that three were in the Central African Republic and one was in Uganda. Later in the interview, she stated that all of her close relatives had fled Uganda. You would need to ask probing questions to clarify these conflicting statements.

## 5.6 Address Vague or Non-Responsive Testimony

You must always follow up on vague or non-responsive answers. If the interviewee's answer is vague, does not directly answer the question, or does not answer the question at all, this may indicate that you, the interpreter, or the interviewee has not communicated clearly. On the other hand, it may indicate that the interviewee is not being forthright or is fabricating a claim.<sup>7</sup>

### *Examples*

- The interviewee testifies to having attended high school at a boarding school in Tehran for five years. You ask the interviewee the school address, but the interviewee says he does not know the address. You then follow up by asking, "You testified to attending and residing at this school for five years. Is there a reason you do not know the address?" (Note: In some locations, such as rural

<sup>6</sup> For the definition of "interpret" and "translate," see Other Materials.

<sup>7</sup> For additional information, see RAIO Training module, *Credibility*.

villages, there may not be street addresses. See RAIO Training module, *Cross-Cultural Communication*.)

- When you ask the interviewee questions, he does not answer completely; rather, he gives vague responses and his wife answers for him, sometimes correcting or contradicting what he has said. When you advise that you want only the husband to respond to the questions you ask him, you find out that there is an issue with the language of interpretation: the interpreter only speaks Mandarin. The husband's first language is Cantonese, however, and he does not speak Mandarin well. Because his wife speaks both Mandarin and Cantonese, she has been responding for her husband.
- The interviewee testifies to having served as an active member of an opposition political party for the past ten years. When you ask the interviewee the name of the political party, he responds with an acronym, OLF. When you ask what the letters stand for in the full name of the party, he cannot answer. You then follow up by asking, "You testified to having been an active member of this political party for the past ten years. It seems that someone who is an active member of a political party for ten years would know the full name of their party. Can you explain why you do not know the full name of the party?"

When following up on vague or non-responsive answers you must be particularly careful about your tone of voice, being sure to refrain from using a hostile or confrontational tone.

### 5.7 Ask Questions in Relation to Country of Origin Information

For protection-related interviews, a thorough knowledge of country of origin information is essential in order to ask appropriate follow-up questions. Officers who are well-versed in country of origin information will be better able to ask relevant follow-up questions and will be less likely to miss important facts.

## 6 GUIDELINES FOR ELICITING TESTIMONY

You will have to draw on a range of question types and interviewing techniques to elicit all necessary information in an impartial manner within time constraints, while remaining in control of the interview. This section includes a number of techniques to keep in mind when interviewing.<sup>8</sup>

### 6.1 Prepare for the Interview

<sup>8</sup> For additional information on interview best practices, see RAIO Training module, *Interviewing – Introduction to the Non-Adversarial Interview*.



Before beginning an interview, review the application, the supporting documents, security check information, as well as country of origin information if necessary. This review can provide a basis for determining initial lines of questioning as well as specific questions to ask during the interview. It may be helpful to create a timeline in your notes to refer to during the interview, particularly if the interviewee discusses multiple and/or overlapping events. Additionally, adjudicative aids from your Division may be referenced to help prepare for your interview. [ASM Supplement – Sample Checklists] You should go into the interview with a mental or written outline of the issues raised in the application that you need to develop during the interview.

While thorough pre-interview preparation allows you to identify questions to ask during the interview, it should not prevent you from exploring additional issues that arise during the interview.

## 6.2. Establish Rapport

Research has shown that a good relationship between the interviewer and interviewee is key to getting sufficient and accurate information during an interview.<sup>9</sup> During your introduction, while you explain the purpose of the interview, the roles of those present, and while you verify biographical sections of the application, make every effort to establish rapport with the interviewee and others present. You can continue to build on this rapport as you enter the substantive phases of the interview.

## 6.3 Be an Active Listener

In addition to assisting you in gathering the information you need, being an active listener can help build rapport with the interviewee.

### 6.3.1 Listen Carefully

It is imperative that you pay attention and listen to what the interviewee is saying so that you do not miss important information or relevant lines of questioning. If you are mentally preparing your next question or focusing on taking notes as the interviewee is testifying, you may miss key elements in the interviewee's answer that would affect your choice of question or questioning technique.

### 6.3.2 Maintain Appropriate Eye Contact

Make non-confrontational eye contact with the interviewee. Look at the interviewee rather than the interpreter when asking questions. Keep in mind, however, that eye contact may have different meanings in different cultures, and with different types of

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<sup>9</sup> Amina Memon, et al., "The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years," *Psychology, Public Policy and the Law* 16, no. 4, 2010, pp. 340-372; Ronald P. Fisher and R. Edward Geiselman, "The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence," *International Journal of Law and Psychiatry* 33, 2010, pp. 321-328.

interviewees. When interviewing survivors of torture or severe trauma, for example, eye contact may appear confrontational. Always be mindful of cultural cues, and adapt your eye contact to the situation.<sup>10</sup>

### **6.3.3 Show Interest**

Engage the interviewee by showing interest in what he or she is saying. Convey your interest to the interviewee through appropriate posture and facial expressions. During the interview, you should avoid slouching, fidgeting, looking at people passing by the office, or reading the application when the interviewee is speaking. Keep your facial expressions open and neutral.

Encourage the interviewee to continue speaking when appropriate. General leads or prompts, such as “go on” or “and then?” let the interviewee know you are listening and that you are following what he or she says, allowing him or her to elaborate. This type of encouragement also indicates that you are engaged in the interview even while taking notes.

### **6.3.4 Use the Interviewee’s Words and Terms**

Repeating what the interviewee said can encourage him or her to continue a narrative or explanation. Further, it can help the interviewee refocus if he or she becomes confused or goes off on a tangent.

Using the interviewee’s words also can help build rapport by showing the interviewee that you are focusing on their statement.

#### *Example*

“You said the soldiers ‘came in the tea shop while [your] husband and parents were out in the fields.’ When they came in, what did they say to you?”

### **6.4 Be Patient and Flexible**

As noted above, you must not show impatience or discouragement when encountering a confused, non-responsive, or evasive interviewee. The interview can be a stressful situation for the interviewee and others at the interview. Cultural and language barriers may be substantial. Information can be easily misunderstood, especially when an interpreter is involved. You must be patient and prepared to repeat or rephrase questions or to ask the interviewee to repeat his or her answers.

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<sup>10</sup> For additional information, see RAIIO Training modules, *Cross-Cultural Communication and Interviewing - Interviewing Survivors of Torture and Other Severe Trauma*.

It is inappropriate to show frustration by your tone of voice or by making statements such as “Just answer the question!” Even saying, “Could you please ...?” depending on the tone, may still convey frustration. Also be aware of your body language and other non-verbal cues as they may reflect emotions such as impatience, more clearly than your words.

Sometimes, a few seconds of silence can give the interviewee an opportunity to collect his or her thoughts and determine how to answer a particularly difficult question. You may feel a need to fill in the silence by asking additional questions. However, waiting a reasonable time for the applicant to respond is likely to result in better responses. If the interviewee is clearly formulating an answer, give him or her the time to do so. Silence can seem to last longer in our minds. As you gain more experience, silence will become a useful tool.

Keep in mind that interviews unfold in unpredictable ways and at various speeds. You must be flexible so that you can pursue lines of questioning that may come up. Allow enough time for the lines of questioning to develop fully, adapting your questioning to fit the situation.

## 6.5 Have All Interactions Interpreted to the Interviewee

There may be times when you need to discuss certain issues with the attorney or representative, interpreter (if one is present), or someone else at the interview. During interviews in which an interpreter is present, the interpreter is the conduit through which information is relayed to and from the interviewee. Conversations with the interpreter or any other person present that are not interpreted isolate the interviewee and create distance between you and the interviewee, thereby thwarting the ultimate goal of eliciting sufficient relevant testimony to determine eligibility. Ensure that what is discussed is interpreted so the interviewee is aware of all that transpires during the interview and to avoid confusion and foster a sense of inclusion on the part of the interviewee.<sup>11</sup>

## 6.6 Keep Questions Simple

Use questions that are clear, short, and simple:

- “Who are you afraid of?”
- “What do you think would happen to you if you returned?”
- “Why?”

Avoid using double negatives in your questions, as it can confuse the interviewee and interpreter.

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<sup>11</sup> For additional information on eliciting testimony through an interpreter, see RAIO Training module, *Interviewing – Working with an Interpreter*.

**Example (of a poorly-worded question)**

“Isn't it true that you didn't leave your town until you found out that you were unemployed and unable to locate a job?”

Be mindful of the various types of questions and the effect they have and use various questioning techniques purposefully to fully elicit from the interviewee the relevant information bearing on their eligibility for the benefit sought.

When working with an interpreter, if you need to ask a long question or a question for which you need to give an explanation before the interviewee responds, break up your question or statements into shorter phrases that can be easily interpreted.

**Example**

1. Mr. Abdul, I need to change the subject now. (Pause for interpreter)
2. I want to begin discussing your military history. (Interpret)
3. I will be asking you about each part of your military service, (Interpret)
4. what your duties were, (Interpret)
5. and where you were stationed. (Interpret)
6. Are you ready? (Interpret)
7. When did you first join the military? (Interpret)

**6.7 Use Language That is Easy for the Interviewee to Understand<sup>12</sup>**

The interviewees you encounter will have varied levels of English language ability, education, knowledge of the U.S. immigration process, and knowledge of colloquial English terms. Words such as *adjudicate*, *well-founded fear*, and *inadmissibility* may not be clear to the interviewee or interpreter. Therefore, you must use words and terms that will not be misunderstood by the interviewee and others present at the interview.

Furthermore, on October 13, 2011, the U.S. Government implemented the *Plain Writing Act of 2010*. This law requires, in part, that federal agencies draft and issue documents in language that the public can understand. Although this law concerns written communication, the principles outlined in it are relevant to verbal communication with the public, including your interviews.

<sup>12</sup> For additional information on using language that is easy to understand, see RAIO Training module, *Interviewing – Working with an Interpreter*.

## 6.8 Repeat or Rephrase Questions

At times it may become necessary to repeat a question due to a non-responsive or unclear answer from the interviewee. When the interviewee appears confused by an initial question, the wording of that question may be the source of the problem. Think of a way to restate the question or to approach the subject in a different way rather than asking the same question again. Rephrasing may help the interviewee better understand what you are asking.

### *Example*

Q: "Were you ever arrested?"

A: (silence, long pause)

Q: "Have you ever had any problems with the police?"

or

Q: "Have you ever been stopped or detained by any authorities?"

When you don't understand what the interviewee has said, say so. Just as it is important for an interviewee to explain when he or she has not understood a question, it is also critical for you to let the interviewee know when you don't understand something he or she has said. Of course, this should be done in a polite manner. This will give the interviewee an opportunity to clarify what he or she has said.

Keep in mind that the interviewee wants you to understand his or her testimony. Rarely will asking an interviewee to repeat or rephrase an answer due to your confusion be problematic.

### *Example*

Q: "Why did you join the student group?"

A: "We met at school."

Q: "The group met at school?"

A: "Yes"

Q: "And what was the reason you joined the group?"

### *Example*

Q: “Did you ever have any problems with the Guatemalan army (interpreted as *ejercito*)?”

A: “No.”

Q: “Did you ever have any problems with soldiers (interpreted as *soldados*)?”

A: “Yes. They came to our village and took my husband and the other men. Then they came back to me and...”

### 6.9 Repeat or Summarize the Interviewee’s Testimony

Repeating what the interviewee said can ensure that you do not misunderstand or miss any information.

When you summarize what you heard, the interviewee is given an opportunity to point out any misunderstandings or information that was missed. Summarizing parts of the testimony also brings together the important points of the discussion and gives each participant at the interview an organized picture of what was said. When summarizing, omit irrelevant issues and organize the pertinent information presented.

#### *Example*

“What I heard you say was . . . Is that correct?”

### 6.10 Ask the Interviewee to Repeat Your Question Back to You

If an interviewee's response does not answer your question, a technique you can use is to ask the interviewee or interpreter to repeat your question back to you so you can be certain it was understood. This technique should be used sparingly. While it serves to ensure accurate understanding, it does cause a delay, and if done many times in one interview, it can lead to confusion.

#### *Example*

“Your answer makes me think you did not understand what I am asking. Can you repeat my question so that I am sure we are discussing the same topic?”

### 6.11 Place the Events in Time or Sequence

Putting events in proper sequence can help you and the interviewee discuss the events and helps you assess the impact of the events on the claim. Knowing when and the sequence in which events occurred can affect the determination of eligibility as well as the assessment of the interviewee’s credibility. You should ask questions that facilitate understanding the order in which the events took place.

#### *Examples*

- "When did the arrest happen?"
- "Was this before or after the birth of your oldest child?"
- "What led up to the attack?"

Recollection of exact dates or a sequence of events can be difficult, particularly if the event was traumatic.<sup>13</sup> It is often easier to recall events in relation to one another than to recall events in isolation. If the interviewee has difficulty responding to: "What month did you desert the army?" you could try rephrasing the question to: "Had the airstrikes begun when you deserted?"

It is important to keep in mind that perceptions of time vary from culture to culture. A question asking for a specific time or date may not be understood by an interviewee whose culture places little value on specific hours and dates. In addition, some interviewees may want to explain what they feel to be the most important events first rather than relate a story in chronological order.

Ask for the time of an event by asking the time relative to other events, such as in what season the event occurred, or if the event took place before or after a holiday, rainy or dry season, birth of a child, death, planting or harvesting, etc. In addition, asking the question several different ways may help you elicit all of the necessary information.<sup>14</sup>

#### *Examples*

- "You told me you were stationed north of Kirkuk in 1977 or 1978 but you can't recall which months. Do you remember if the weather was cold or hot?"
- "Was your son old enough to attend school when your husband left home?"

However, in situations where you suspect fraud, it may be useful to elicit testimony out of order to determine whether the interviewee's testimony is internally consistent. This does not mean that it is appropriate to try to trick the applicant. Asking questions out of sequence is an appropriate method of verifying credibility only if the applicant has demonstrated ability during previous portions of the interview to appropriately handle such questioning. It may be inappropriate to draw a negative credibility inference when the interviewee has previously demonstrated, for example, that she is from a culture

<sup>13</sup> For additional information, see RAIO Training module, *Interviewing – Interviewing Survivors of Torture and Other Severe Trauma*.

<sup>14</sup> For additional information on culturally-based perceptions of time, see RAIO modules, *Credibility* and *Cross-Cultural Communication*.

where time references are not significant.<sup>15</sup> It is important to remember to always remain professional and impartial, even when suspecting fraud.

### 6.12 Consider the Cultural Background of the Interviewee

Be mindful of the fact that even among people who share a common language, words, expressions, and gestures can have different meanings in different cultures or countries, and perceptions can vary from culture to culture. Even within one country or culture, an interviewee from a remote, indigenous population likely would not describe his or her experiences using the same words, with the same meanings, as an interviewee from a city. Furthermore, interpreters using the precise dialect of the interviewee or sharing the interviewee's cultural background will not always be available.<sup>16</sup>

### 6.13 Be Aware of the Use of Pronouns and Other Ambiguous Terms

"What did they do then?" may seem clear to you, but the interviewee or interpreter may be unclear about the use of ambiguous terms such as "they" and "then." Which "they" is being referred to: the traffickers, the interviewee's family, members of the opposition party, or the children? Moreover, "then" is an imprecise time marker and may be misunderstood. It is important to be specific when asking questions.

#### *Example*

"After the police tore down your banner, what happened next?"

Relationship terms such as "your sister," titles such as "the police inspector," or actual names of persons should be substituted for pronouns such as "he" or "they" to avoid confusion. Similarly, it is important to clarify with the interviewee what he or she means by the terms "he" or "they."

#### *Examples*

- "You said 'they' hit you. When you say 'they,' who do you mean?"
- "When you say the birth parents relinquished the child to 'them,' are you referring to the prospective adoptive parents or are you referring to the orphanage?"
- "When you say 'they' were all witnesses at your wedding, do you mean your family, your husband's family, or someone else?"

### 6.14 Do Not Use Compound Questions

<sup>15</sup> For additional information, see RAIO Training module, *Evidence Assessment*.

<sup>16</sup> For additional information, see RAIO Training module, *Cross-Cultural Communication* (under development; see ROTC and AOBTC lesson plans on this topic).



Compound questions are several questions asked together. In everyday conversation, individuals who speak the same language and know each other may use compound questions without miscommunication. They reframe questions and statements in mid-thought, combine related ideas, or ask multiple questions without pausing. At an immigration interview, however, a second language and an interpreter are often involved, as well as different cultures. These are all “filters” through which the exchange of information occurs. Asking compound questions at an immigration interview can lead to critical misunderstandings. Officers asking compound questions do so unwittingly, as they do with normal conversation. You should make every effort to avoid asking compound questions.

*Examples (to be avoided)*

- “What were your experiences in jail, such as how long you were detained, the conditions of the jail, and what happened to you while you were there?”
- “How were you threatened and why, if you were so fearful for your life after receiving the threats, did you wait six months to leave the country?”
- “Can you tell me the name and current location of your spouse, what she does for work there, and what she’s told you about the city in which she currently lives?”
- “Do you know what prompted your father to leave China and why is he not identified as your parent on the household registry you submitted?”

The use of compound questions can result in several unfavorable outcomes including the following:

- Questions are not interpreted completely.
- Confusion and misunderstandings occur because the answer to one question may be interpreted as the answer to a different question.
- The interviewee and the interpreter can easily become confused and not know what to answer.
- The interviewee’s confusion could cause you to determine that the interviewee is not credible.

Ask each part of a compound question, or a series of questions, separately to minimize confusion or the appearance of inconsistencies. Writing your interview notes in a question and answer format can help you avoid asking compound questions.

Clear and concise questions are more likely than compound questions to withstand the filters of interpreters and cultural differences and will cause less confusion for all parties

during the interview process. Compound questions may compromise an interview and must be avoided.

### **6.15 Do Not Use Loaded Questions**

A loaded question conveys a bias or a personal judgment, usually negative, of the interviewing officer, or it presupposes information or facts that have not yet been established.

#### *Examples (to be avoided)*

- “Why didn’t you stay and protect your family instead of leaving them to fend for themselves?”
- “Why in the world did you do that?”
- “If you really weren’t complicit with the regime, why did you return?”

Loaded questions put people on the defensive and impede the open flow of communication. An interviewee who feels defensive may be reluctant to openly relate his or her experiences. Asking questions that reveal your personal biases undermines your control of the interview. For all of these reasons, loaded questions must not be used during interviews.

### **6.16 Keep the Interview Focused**

Keeping the interview focused is important so that you can gather all of the relevant information necessary to make a decision within time constraints.

#### **6.16.1 Focus on Relevant Details**

When you begin an interview, you should have a plan of what information you need to elicit. Of course, your plan may change as the interview progresses, but having a plan will help you to focus on the relevant information you need to elicit.

#### **6.16.2 Thoroughly Address Each Issue Before Moving On**

As issues come up during the interview and you recognize additional lines of questioning that you want to pursue, you may be tempted to move to another topic without fully exploring the first topic. As noted in RAIO Training module, *Interviewing – Introduction to the Non-Adversarial Interview*, it is a good practice to keep a notepad or some other method of quickly recording questions or lines of questioning that come to mind that you want to ask later so you do not forget to ask, and you can remain on point on one topic until you have all the information you need before moving on.

#### **6.16.3 Help the Interviewee Understand What Is Relevant**

An interviewee’s perception of what information is important may differ from yours. The interviewee may not feel it is necessary to include certain details and may omit information that can assist you in determining whether the interviewee is eligible for a benefit. He or she is already familiar with the information and may not realize that you need to know additional details surrounding particular events. An interviewee also may jump from one thought to another. In such cases, you may need to focus the interviewee on a single topic or point. The interviewee may be confused by your attempt to focus on something that he or she feels is not important. It is your responsibility to help the interviewee focus his or her testimony on information that is relevant to the purpose of your interview.

### *Examples*

- “In order to help reach a decision in your case, it is important that we discuss what happened when you went to the Prosecutor’s Office on March 15, 2008.”
- “I understand that the home invasion was a traumatic event for your family. However, to make the right decision, I need to get a few more details about the call you received afterwards. What specifically did the caller say?”
- An interviewee at an I-730 refugee follow-to-join interview may think that his previous military history is irrelevant since the purpose of the interview is to confirm the family relationship. The information is important, however, because it could show that the interviewee assisted or engaged in the persecution of others, in which case the interviewee would not meet the legal definition of a refugee.

### 6.16.4 Keep the Interviewee on Point

To conduct efficient interviews, focus your questioning on topics that are relevant to the purpose of the interview. If the interviewee keeps returning to topics you consider irrelevant or that you believe already were covered, you should explore the topic enough to determine its relevance. If it is relevant, you should either explore the issue or explain to the applicant that you will return to the subject later. However, if you determine it is irrelevant, acknowledge the interviewee’s concern and explain what information you actually need.

#### *Example*

**Q:** Right now, I am asking about an incident in your village outside of Mosul. You continue to tell me about what happened to your father in Diyala. How does your father’s situation relate to the incident in the village?

**A:** Because my father was a deacon at St. Paul’s church, the Iraqi Islamic State sent a message to the church to tell all of us in our home village that we are not wanted in Iraq unless we convert. Most of the members of St. Paul’s are people who migrated to Diyala from our village and many come back here for safety because Diyala is so dangerous.

Q: I see. Tell me about the message to the church. Then we will come back to what happened in the village.

Some interviewees may try to explain in detail information about their country or relate a complete history of their family. In such cases, provide assurance to the interviewee that you are aware of the situation in the particular country and would like the interviewee to focus on details that relate specifically to the application or request. You can also assure the interviewee that you will be eliciting all the information that you need.

### *Examples*

- “Sir, I understand your explanation of the ‘South Azeri movement’ in Iran and how important it is to you. I also have country condition background information about it. Right now, though, I would like you to talk about what actions the Iranian government took when you participated in the meeting with other ‘South Azeris’ two years ago.”
- “I see that your grandfather was very influential in your life. However, right now I would like you to tell me when you became politically active yourself.”
- “Information about your arrest is important. Before we discuss that, however, I would like to learn more about how you became involved in your political party.”

Although trying to refocus an interviewee may sometimes be difficult, you must remain professional and non-adversarial at all times, while keeping control of the interview.

## 6.17 Use Time Efficiently

Time is limited in all interviews. Managing your time can also help you keep the interview focused. You must efficiently use the time available by asking questions that will elicit the information you need. Ideally, the interviewee should be doing most of the talking and you should be actively listening and noting the interviewee's responses. When the interviewee raises topics that are not material to the purpose of the interview, politely redirect the interview.

### *Examples*

- “I’m sorry, I know you are trying to answer the question, but I’d like you to tell me what the soldier said to you.”
- “That’s interesting, but what I’m asking is...”

Keep in mind, however, that if the interviewee digresses or does not answer the questions posed, this may be an indication that the interviewee is not being truthful. In such situations, you may need to take time to ask additional questions to further assess credibility.

Your time management during the interview will evolve as you gain experience and familiarity with the types of interviews you conduct. Keep the interview focused on eligibility.

### 6.18 Consider Past Trauma

Interviewees who are survivors of torture or other severe trauma may have difficulty responding to questioning during an interview. The trauma he or she experienced may distract the interviewee to such an extent that it may be difficult for the interviewee to testify about certain incidents or experiences. You need to take this into consideration when interviewing.<sup>17</sup>

#### *Examples*

- “I understand that you have difficulty remembering what happened while you were imprisoned, but please tell me what you do remember.”
- “I understand that you’d prefer not to talk about what happened; but it is very important to your case. Everything you tell me is completely confidential. Did the police hurt you after they arrested you?”

### 6.19 Pay Attention to Transitions

Be aware of how you shift from one topic to another and what effect these shifts have on the interviewee’s testimony. In most cases, the transition should be smooth and clear. Remember that the interviewee probably does not know the law and the important issues to the same extent as you. A smooth transition will aid efforts to elicit information.

#### *Example*

Changing focus from a discussion of what happened at the hospital after the interviewee was beaten to what happens to similarly situated people may confuse the interviewee. A statement such as, “We have talked about the events at the hospital; now I want to ask you some questions about what happens to other people who have been attacked” can help the interviewee make the transition to the new topic of future harm.

### 6.20 Ask Questions about Events in Relation to Known Country of Origin Information

Being well-versed in country of origin information allows you to ask relevant follow-up questions for a variety of adjudications. The more you know about the interviewee’s country of origin, the less likely you will be to miss important facts. Awareness of country of origin information also assists you in conducting the interview with cultural

<sup>17</sup> For additional information, see RAIO Training module, *Interviewing Survivors of Torture and Other Severe Trauma*.

sensitivity, may assist you in putting the interviewee at ease during the interview, and may assist you in determining credibility.<sup>18</sup>

### 6.21 Avoid Making Assumptions

Avoid jumping to conclusions by making assumptions without knowing all of the facts.

#### *Examples*

- The interviewee states that he was a member of an opposition political party and that he was arrested at a party rally at which he was the main speaker. You might assume that the interviewee was arrested because he voiced his political opinion at the rally. It may be possible, however, that the interviewee was arrested because his party did not apply for the necessary permission to hold the rally or that he and others in the rally became violent and attacked the houses of opposing party members who lived nearby.
- In an interview for an I-407, Abandonment of Lawful Permanent Resident Status, an LPR states that she has been outside the United States for more than one year. You should not assume that she has abandoned her status. Instead, elicit testimony regarding the circumstances and reason for her departure from the U.S. including whether she has applied for and been granted a reentry permit.

Assumptions about what an interviewee may know, such as “all Christians know the Bible,” may keep you from probing more deeply into an interviewee’s eligibility, or may lead you to determine incorrectly that the interviewee is not credible.

### 6.22 Resolve Inconsistencies

You must let the interviewee know if you have noticed a material inconsistency or if you are trying to better understand his or her testimony. Always remain impartial and give the interviewee an opportunity to respond with more detail or clarify his or her statements. When following up on inconsistencies or vague, non-responsive, or contradictory answers, you must be particularly careful about your tone of voice. Be sure to refrain from using a hostile or confrontational tone. Always remain professional, impartial, and in control of the interview.

#### *Example*

“When you were explaining your situation to UNHCR, you said the Mai Mai entered your house, took your parents outside, then killed your father and raped your mother. Now you said something different, that the Mai Mai took your father

<sup>18</sup> For additional information, see RAIO Training module, *Researching and Using Country of Origin Information*.

and brother away and you have not seen them since. Can you help me understand the difference in what you said happened to your father?"

(Note: If an interpreter is involved, this example would most likely be interpreted to the interviewee in three chunks of information, conforming to the principle noted above under, "Keep Questions Simple," to keep your questioning clear, short, and simple.)

### 6.23 Develop a Library of Interviewing Best Practices

As you gain more experience, you will develop your own interview style and you will recognize best practices that work for you. Talking with other officers can also help increase your repertoire of interviewing skills.<sup>19</sup>

## 7 CONCLUSION

You have the affirmative duty "to elicit all relevant and useful information bearing on the applicant's eligibility."<sup>20</sup> 8 C.F.R. § 208.9(b) requires that Asylum Officers conduct interviews in a non-adversarial manner. Although this regulation applies only to Asylum Officers, it is RAIO policy for officers in the RAIO Directorate to conduct all interviews in a non-adversarial manner.

The goal of RAIO interviews is for the interviewee to confirm, correct, or elaborate on information that is in the application and supporting documentation so that you can make a determination on eligibility for the benefit he or she seeks. The interview allows you to address inconsistencies and other credibility concerns and gives the interviewee an opportunity to address those issues. The interview also allows you to determine whether the interviewee participated in any activities that would result in a mandatory bar or a ground of inadmissibility, or establish a basis for a discretionary denial or referral.

You may apply a wide range of interviewing techniques to achieve these goals, many of which are discussed in this module. Officers who remain flexible and alert will generally elicit the most useful and relevant information. When implementing the techniques for eliciting testimony, remember: engage the interviewee; put the interviewee at ease by using a non-adversarial tone; maintain control of the interview; and always be professional.

The key to a successful interview is to:

- Prepare

<sup>19</sup> For additional suggestions and best practices for developing interviewing skills, see RAIO Training module, *Interviewing – Introduction to the Non-adversarial Interview*.

<sup>20</sup> 8 C.F.R. § 208.9(b).

- Establish rapport
- Review relevant documentation
- Use appropriate questioning techniques
- Listen actively
- Ask probing questions
- Follow up thoroughly
- Clarify inconsistencies

## 8 SUMMARY

### 8.1 Officer's Duty to Elicit Testimony

While the burden is on the applicant to establish eligibility for a benefit, equally important is your obligation as the interviewing officer to elicit all pertinent information. The interview is your opportunity to further develop the record by gathering testimonial evidence. The quality of that testimonial evidence depends on your ability to elicit information from the interviewee.

### 8.2 Types of Questions Used in Interviews

There are many ways you can ask questions during an interview. The types of questions you use will vary within each interview as well as from interview to interview. Some types of questions may be more effective than others, depending on the kind of information you are eliciting from the interviewee.

#### *Open-Ended Questions*

An open-ended question helps put the interviewee at ease and is framed to give the interviewee the opportunity to provide a full answer in his or her own words. It often begins with "why" or "how." An open-ended question gives some control to the interviewee and may lead to a lengthy response; therefore, you must take care to always keep the interviewee focused on what is relevant to the proceedings.

#### *Closed-Ended Questions*

Closed-ended questions elicit a brief specific statement or a yes or no answer. Closed-ended questions help you maintain control as the interviewing Officer. These questions can be helpful when you are trying to confirm information that was already provided and when eliciting specific information. In combination with open-ended questions, closed-ended questions assist you in directing the flow of the interview and obtaining certain specific facts.

#### *Multiple Choice Questions*



A multiple-choice question can be either “limited options” or “open options.”

A “limited options” question gives the interviewee a choice of a few possible responses. An “open options” question provides suggestions about the type of information you need, rather than providing specific responses from which to choose.

### *Leading Questions*

A leading question is a question that is phrased in a way that suggests a particular answer is expected. Leading questions must be worded and used carefully and judiciously, taking care not to “create” the interviewee’s testimony.

## 8.3 Probing / Following Up

No reply or issue should be left in doubt when you finish the interview. Remain alert throughout the interview and be prepared once you have asked a question and received a response to follow up on the information you received until you have obtained the information necessary to make a proper determination. Asking follow-up questions and probing for information during an interview is *crucial*. You will need to ask follow-up questions throughout the interview and, in particular, in order to:

- Elicit additional facts bearing on eligibility
- Clarify terms or phrases
- Clarify statements
- Connect statements the interviewee made at different points in the interview
- Resolve possible inconsistencies
- Address vague or non-responsive testimony
- Ask questions in relation to country of origin information

## 8.4 Guidelines for Eliciting Testimony

- Prepare for the interview.
- Establish rapport.
- Be an active listener.
- Be patient and flexible.
- Have all interactions interpreted to the interviewee.

- Keep questions simple.
- Use language that is easy to for the interviewee to understand.
- Repeat or rephrase questions.
- Repeat or summarize the interviewee's testimony.
- Ask the interviewee to repeat your questions back to you.
- Place the events in time or sequence.
- Consider the cultural background of the interviewee.
- Be aware of the use of pronouns and other ambiguous terms.
- Do not use compound or loaded questions.
- Keep the interview focused.
- Use time efficiently.
- Consider past trauma.
- Pay attention to transitions.
- Ask questions about events in relation to known country of origin information.
- Avoid making assumptions.
- Resolve inconsistencies.
- Develop a library of interviewing best practices.

PRACTICAL EXERCISES

### OTHER MATERIALS

#### “Interpret” vs. “Translate”

Very often the terms “interpret” and “translate” are used interchangeably; however, for the purpose of this module it is important to understand the distinction between these two processes. The main difference between interpret and translate is the medium: “interpret” involves oral communication; “translate” involves written text.

Interpreting is essentially the art of orally conveying information from one language to another. The interpreter listens to a speaker in one language, grasps the content of what is being said, and then restates in another language what was said, using wording that is as close as possible to the original statement while still maintaining the meaning of what was said.

In this module, the terms “interpretation,” “interpret,” and “interpreter” refer to oral communication. Interpreters utilized in the RAIO Directorate usually provide only interpretation; on occasion, however, they may be asked to translate written documents from another language into English and vice versa.

For additional information, see RAIO Training module, *Interviewing – Working with an Interpreter*.

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. RAIO Training Module—ASM Supplements
2. Interviewing Adjudicative Aid (see below)

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**ASM Supplement – Officer’s Duty to Elicit Information**

During an asylum interview, the Asylum Officer must elicit testimony in order to answer the following questions:

- Who is the applicant?
- Who are the family members included in the application?
- How and when did the applicant enter the United States?
- Why did the applicant leave his or her country?
- Did the applicant suffer past persecution? (Focusing on past harm and/or threats, if any.)
- Does the applicant fear future persecution?
- What are the motives of the past or potential future persecutor in harming the applicant?
- Is the applicant afraid to return, and if so, why? (Focusing not only on the experiences of the applicant, but also on the experiences of others similarly situated, and any other serious harm.)

- Who does the applicant fear? (Who is the persecutor?)
- Is the persecutor a governmental actor or a person or entity that the government is unable or unwilling to control?
- Is the feared persecution country-wide?
- Did the applicant participate in any activity that would make him or her ineligible for asylum or warrant a discretionary denial/referral?

**ASM Supplement – Interviewing Adjudicative Aids**

This adjudicative aid is not intended to be fully exhaustive of all avenues of exploration and all issues that may arise during an interview. The purpose of this aid is to serve as a reminder of key elements in preparing for and conducting an asylum interview.

**PRE-INTERVIEW preparation/review of file**

- \_\_\_ note who is included/family relationships/ages
- \_\_\_ is file complete?
- \_\_\_ necessary forms (I-589, fingerprints, photos)
- \_\_\_ dependents' A-files included
- \_\_\_ G-28 on file? signed by applicant and representative?
- \_\_\_ any indication file is not in jurisdiction?
- \_\_\_ note claimed entry date, status of applicant, and filing date
- \_\_\_ review claim
- \_\_\_ review relevant documents
- \_\_\_ quick country of origin information review
- \_\_\_ general timeline of key events

- \_\_\_ check for any special status (e.g., *ABC*, *Mendez*)
- \_\_\_ computer systems check
- \_\_\_ does file review raise the possibility there may be another A-file associated with the applicant?

## CONDUCTING THE INTERVIEW

### • Introduction

- \_\_\_ purpose of interview
- \_\_\_ confidentiality
- \_\_\_ process (including roles of those present)
- \_\_\_ interpreter
- \_\_\_ interpreter's form, role
- \_\_\_ representative
- \_\_\_ G-28, waiver if representative is not present
- \_\_\_ role
- \_\_\_ dependents
- \_\_\_ verify (and dismiss during interview if appropriate)

### • Oath

- \_\_\_ applicant
- \_\_\_ interpreter, and interpreter monitor if being used
- \_\_\_ witnesses

### • Verify basic biographic and entry information (check I-589 and documents)

- \_\_\_ address, biographical information (use "post-it" on front of file as reminder to update RAPS if necessary)
- \_\_\_ date, place, manner of entry
- \_\_\_ documents
- \_\_\_ verify and note if from original
- \_\_\_ compare for consistency (copy at end of interview if necessary)
- \_\_\_ determine who prepared I-589 and if applicant is aware of contents of application
- \_\_\_ annotate changes on the I-589

### • Testimony

- \_\_\_ other countries lived in and status there
- \_\_\_ reason for claim (cover all possible grounds)
- \_\_\_ identify persecutor and issues of state protection
- \_\_\_ mandatory bars, other reasons for ineligibility, inadmissibility or discretionary denial

- \_\_\_ go to Q&A format if there is derogatory information
- \_\_\_ compare with I-589, documents, and country of origin information
- \_\_\_ probe credibility
- \_\_\_ question applicant about reason for any discrepancies/inconsistencies
- \_\_\_ question applicant about any circumstances surrounding any delay in filing

• **Closing statement/questions**

- \_\_\_ applicant
- \_\_\_ representative

• **Conclusion**

- \_\_\_ sign/date I-589
- \_\_\_ explain any corrections to applicant
- \_\_\_ copy documents and certify if from original or copy
- \_\_\_ advise applicant how s/he will be informed of decision (pick-up, mail)

• **Immediate POST-INTERVIEW tasks**

Update RAPS

- \_\_\_ MODA - (check CSTA screen to be sure case is assigned to you)
- \_\_\_ VIST - status
- \_\_\_ PUSH - pick-up date
- \_\_\_ MOVE - new address
- \_\_\_ I-589 - biographical information



**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

Caveat: Some of the form types below contain example questions for eliciting specific testimony. The example questions may or may not apply to a specific interview scenario, and are not intended to be all-inclusive.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**IO Supplement – Family Based Petitions**

• **Form I-730, (Visa 92/Visa 93) Refugee/Asylee Relative Petition**

**Purpose:** To verify the family relationship between the interviewee and the Petitioner in the U.S.

**People Interviewed:** The beneficiary residing overseas.

**Basic information the Officer should elicit:**

- Who is the interviewee?
- How is the interviewee related to the Petitioner?
- For following spouse – elicit information on marriage dates and associated history; compare with I-589 or I-590.
- Does the interviewee know why the Petitioner left their country?

- *CAUTION reminder: 8 CFR 208.6 confidentiality continues to apply, per regulation (for asylum) and per policy (for refugee) in the following-to-join interview.*
- Question example: Do you know the date your relative (spouse, parent etc.) departed country X? To your knowledge, did your relative depart with a visa? Do you know the purpose of your relative's departure from country X? Officer should document any discrepancies.
- Is the interviewee subject to any grounds that would make them inadmissible or bar them from following-to-join status or admission to the United States as a refugee or derivative asylee?

• **Form I-130, Petition for Alien Relative**

Please note: I-130s are typically a paper based adjudication; however interviews may be conducted by USCIS when the bona fides of the relationship are in question.

Purpose: To verify the family relationship between the interviewee and the Petitioner.

People Interviewed: The beneficiary and occasionally the petitioner residing overseas

Basic information you should elicit:

- Who is the interviewee?
- How is the interviewee related to the Petitioner?
- Have the interviewee and Petitioner submitted sufficient evidence to establish the claimed relationship?
  - If relevant (with beneficiary and Petitioner attending interview together), you may interview the relatives separately to assess credibility and bona fides.
- Verify marital and divorce history.
- Verify birth/parental information.
- Can the interviewees provide sufficient biographical details about one another?
- Example question: Tell me about your spouse's family – how many

siblings does he/she have? What is the name of the oldest/youngest sibling? What are the names of your spouse's parents? Are both parents alive? Where do they live?

- Do the interviewees provide consistent and detailed information regarding their courtship?
  - Example question: When and where did you first meet? Tell me what happened? Where were you living at the time? (if relevant) What is the name of the person who introduced you to each other?
- Do the interviewees provide consistent and detailed information regarding their living arrangements?
  - Example question: (if relevant) Describe the home/apartment? Suggest interviewee draw a quick floor plan. (if relevant) Does couple sleep in same bed – who sleeps on what side?
- Is the beneficiary-interviewee subject to any grounds that would make them inadmissible for admission to the United States as a conditional or legal permanent resident?

### IO Supplement – Intercountry Adoption Forms

The following are forms that you may or may not interview to process an adoption case. There is no requirement that an interview be conducted on any of the following forms associated with an intercountry adoption. Local guidance and case specific facts dictate whether these forms are verified through a face to face interview with the prospective adoptive parents or through a paper adjudication. For the purpose of intercountry adoptions, an interview may be conducted individually or by a combination of the following individuals: Department of State Official, USCIS Officer, Consular Officer, and/or FSN.

- **Form I-600A, Application for Advance Processing of Orphan Petition**

Purpose: To determine eligibility/suitability of prospective adoptive parents (PAPs) to adopt.

People Interviewed: Prospective adoptive parents (PAPs)

Basic information **the** you must elicit:

- Verification of the PAPs identities, marital status and countries of citizenship.
- Verification of the required home study requirements.
- What is the name and contact information of the organization or individual assisting the PAPs in locating or identifying a child?
- Do the P APs plan to travel abroad to locate or adopt a child? When do they intend to depart and to where will they travel?
- Will the child come to the U.S. for adoption after compliance with the pre-adoption requirements, if any, of the State of proposed residence?
- Will the child be adopted abroad after having been personally seen and observed by the P APs?
- Where do the P APs intend to file their Form I-600 petition after being matched with a child?
- How many children do the P APs intend to adopt?
- Have the P APs submitted a valid and complete home study conducted by an adoption agency or individual certified to conduct home studies?
- Have the P APs paid the correct fees associated with the application?
- Do the P APs have current fingerprint clearances?

• **Form I-600, Petition to Classify Orphan as an Immediate Relative**

Purpose: To establish eligibility of the child as an orphan already adopted or coming to the U.S. for adoption.

People Interviewed: Prospective adoptive parents; see also other parties in Form I-604 section below.

Basic information **you** should elicit:

- Verification of the P APs identities, marital status and countries of citizenship.
- Verification of the child beneficiary's identity, gender, DOB and POB.

- How did the beneficiary become an orphan?
- If the child has only one parent, what happened to the other parent, is the remaining parent capable of providing for the child and has the remaining parent in writing irrevocably released the child for emigration and adoption?
- Has the child been adopted abroad by the PAPs or do the PAPs intend to adopt the child in the U.S.?
- Have pre-adoption requirements, if any, of the child's proposed State of residence been met if required for Form I-600 processing? If not, will they be met later? (Pre-adoption requirements only apply: 1) when the child is coming to the U.S. for adoption, 2) if the unmarried PAP or both married PAPs did not personally see the child prior to or during the adoption proceeding, and 3) if the adoption abroad was not full and final.)
- Does the child have any special needs, physical, emotional or otherwise?
- Who has legal custody of the child?
- Name of attorney abroad, if applicable.
- What is the name and contact information of the organization or individual assisting the PAPs in this case?
- What is address where the child will reside in the U.S.?
- What is the present address of the child?
- Any additional information available to locate the child?
- Location of the U.S. Embassy or consulate where the application for visa will be made.
- Have the PAPs submitted a valid and complete home study conducted by an adoption agency or individual certified to conduct home studies? Or evidence of a valid Form I-600A approval?
- Have the PAPs paid the correct fees associated with the petition, if any?
- Do the PAPs have current fingerprint clearances?
- Have there been any significant changes in the PAP household since the Form I-600A was approved (or since the last home study submitted to USCIS)?
- Are there any new children or adult household members residing in the

PAPs home since the Form I-600A was approved (or since the last home study submitted to USCIS)?

- Have the PAPs moved or changed residences since the Form I-600A was approved (or since the last home study submitted to USCIS)?

• **Form I-604, Determination on Child for Adoption**

Purpose: To determine if the child is eligible to be classified as an orphan, and verify the documentary evidence submitted with the Form I-600, *Petition to Classify Orphan as an Immediate Relative*.

People Interviewed: Orphanage, hospital, police, government officials, birth parents, or anyone with knowledge of the child's origins.

Basic information you must elicit (as appropriate):

- How was the child presented to the orphanage?
- Where are the birth parents?
- Did the birth parents relinquish the child voluntarily?
- Identification of individual/entity with legal custody of the child.
- Testimony to verify that the child meets the regulatory definitions of an orphan (i.e. abandonment, desertion, disappearance, loss, separation, or relinquishment by qualifying sole or surviving parent).
- Evidence of child-buying.

**IO Supplement – Naturalization Forms**

• **Form N-400, Application for Naturalization (for active-duty military and their family members)**

Purpose: To ensure that a lawful permanent resident meets the qualifications for citizenship.

People Interviewed: Lawful permanent residents: Active duty member of the

military, spouse of an active duty member of the military, or child of an active duty member of the military.

Basic information you should elicit:

- Verification of the identity of the interviewee.
- Does the interviewee have their green card with them?
- Verify all information on N-400 and N-445 is accurate.
- Does the interviewee have a criminal history?
- Has the interviewee met the good moral character requirements?
- Evaluate the interviewee's ability to read, write and speak English.
- Evaluate the interviewee's knowledge of civics.
- Verify the interviewee's loyalty to the United States.

• **Form I-407, Abandonment of Lawful Permanent Resident Status**

Purpose: To ensure that the interviewee is freely relinquishing permanent resident status and understands the consequences of abandonment.

People Interviewed: Lawful permanent residents wishing to relinquish status.

Basic information the you should elicit:

- Verify the identity of the interviewee.
- Has the interviewee brought their green card for relinquishment? If not, where is it?
- What was the interviewee's date and place of last departure from the United States?
- What is the interviewee's intended or actual residence abroad?
- Is the interviewee voluntarily, willingly, and affirmatively abandoning permanent residency?
- Why does the interviewee want to abandon permanent residency?
- Does the interviewee reserve the right to appear before an immigration

judge to determine admissibility at a later date?

- Does the interviewee waive their right to a hearing before an immigration judge at a later date?
- Does the interviewee fully understand the consequences of abandoning lawful permanent residence?

### IO Supplement – Travel Documents

#### • Boarding Letters

**Purpose:** To ensure that a lawful permanent resident meets the criteria for the issuance of a boarding letter.

**People Interviewed:** Lawful permanent residents whose LPR cards have been lost, stolen, destroyed, or are in possession of an expired LPR card.

**Basic information you should elicit:**

- Verification of the identity of the interviewee.
- What are the circumstances prompting the request for a boarding letter?
- Where did the interviewee travel to? What was the purpose of interviewee's travel outside the United States?
- How long has the interviewee been outside of the United States? If relevant, ask for documentary corroboration.
- If relevant, has the interviewee abandoned their residence in the United States? If relevant, can the interviewee present corroborating documentary evidence of continued U.S. residence?
- Has the interviewee made previous requests for a boarding letter? When? Where? And under what circumstances?
- Determine if interviewee has corroborating documentary evidence substantiating the request for boarding letter. If not, why not?
  - Includes, but not limited to, police statement/letter (for stolen LPR card).
  - Statement from medical professional if medically related (for applicant or immediate family member).



- Does the interviewee continue to be admissible to the United States?
- What arrangements has the interviewee made, if any, for return travel to the United States? If relevant, ask for documentary corroboration.

• **Form I-131, Application for Travel Document**

- Refugee Travel Document (RTD):

People Interviewed: persons classified as refugees or asylees, or refugees or asylees who obtained LPR status and whose travel documents have been lost, stolen, destroyed, or are in possession of expired travel documents.

Basic information the you should elicit:

- Verify the identity of the interviewee.
- What are the circumstances prompting the request for a RTD?
- Has the interviewee made previous requests for a RTD? When? Where? And under what circumstances?
- Where did the interviewee travel to? What was the purpose of the interviewee's travel outside the United States?
- How long has the interviewee been outside of the United States? If relevant, ask for documentary corroboration.
- Did the interviewee return to the country of feared persecution? If so, why and for how long?
- Does the interviewee have any legal immigration status in any other country besides the United States?
- If relevant, has the interviewee abandoned their residence in the United States? If relevant, can the interviewee present corroborating documentary evidence of continued U.S. residence?
- If relevant, determine if interviewee has corroborating documentary evidence supporting the request for RTD. If not, why not?
  - Includes, but not limited to, police statement/letter (for stolen documents).
  - Statement from medical professional if medically related (for applicant

or immediate family member).

- Does the interviewee continue to be admissible to the United States? Or, if asylee, has the interviewee become subject to any bars for asylum?
- What arrangements has the interviewee made, if any, for return travel to the United States? If relevant, ask for documentary corroboration.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. RAIO Training Module-RAD Supplements
2. Sample Checklists (under development)

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**RAD Supplement – Officer’s Duty to Elicit Information**

The basic information the Refugee Officer needs to elicit during the interview must answer the following questions:

1. Who is the applicant?
2. How and when did the applicant leave his or her country of nationality or last habitual residence?
3. Why did the applicant leave his or her country? Did he or she ever return?
4. Is the applicant afraid to return, and if so, why? (Focus not only on the experiences of the applicant but also on the experiences of others who are similarly situated.)
5. Is the applicant subject to any grounds that would make him or her ineligible for refugee status or admission to the United States?



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### RAIO Combined Training Course

# INTERVIEWING – INTRODUCTION TO THE NON-ADVERSARIAL INTERVIEW

## TRAINING MODULE

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RAIO Directorate – Officer Training / RAIO Combined Training Course

**INTERVIEWING – INTRODUCTION TO THE NON-ADVERSARIAL  
INTERVIEW**

**Training Module**

**MODULE DESCRIPTION**

This module describes the main components of an interview for all RAIO adjudications.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

During an interview, you (the Officer) will be able to elicit in a non-adversarial manner all relevant information to properly adjudicate a claim or request.

**ENABLING PERFORMANCE OBJECTIVES**

1. Distinguish adversarial from non-adversarial interview methods.
2. Conduct an interview in a professional manner.
3. Identify the components of an interview for RAIO adjudications.
4. Explain the purpose of the interview for RAIO adjudications.
5. Explain the responsibilities and roles of all parties involved in the interview.
6. Demonstrate the “Introduction” component of an interview during the mock interview scenario.
7. Explain confidentiality provisions that apply to the interview and adjudication.
8. Administer oath to interviewees and interpreters during the mock interview.
9. Advise the interviewee of post-interview procedures and what to expect next in the process.

**INSTRUCTIONAL METHODS**

- Interactive presentation
- Practical exercises

#### **METHOD(S) OF EVALUATION**

- Multiple Choice Exam
- Mock Interview Exam

#### **REQUIRED READING**

##### **Division-Specific Required Reading - Refugee Division**

##### **Division-Specific Required Reading - Asylum Division**

##### **Division-Specific Required Reading - International Operations Division**

#### **ADDITIONAL RESOURCES**

1. Memorandum from Bo Cooper, INS Office of the General Counsel, to Jeffrey Weiss, Director, Office of International Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, HQCOU 120/12.8 (Jun. 21, 2001).
2. Fisher, Ronald P. and Geiselman, R. Edward. “The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence,” *International Journal of Law and Psychiatry* 33, 2010, pp. 321–328.
3. Memorandum from Joseph E. Langlois, Director, Asylum Division, to Asylum Office Directors and Deputy Directors, *Fact Sheet on Confidentiality*, HQASM 120/12.8 (Jun. 15, 2005).
4. Memon, Amina; Meissner, Christian A.; and Fraser, Joanne. “The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years,” *Psychology, Public Policy and the Law* 16, no. 4, 2010, pp. 340–372.

##### **Division-Specific Additional Resources - Refugee Division**

##### **Division-Specific Additional Resources - Asylum Division**

##### **Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ITK1	Knowledge of policies, procedures and guidelines for conducting non-adversarial interviews (e.g., confidentiality, conditions) (4)
ITK3	Knowledge of the roles and responsibilities of parties involved in the interview process (4)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK9	Knowledge of procedures and guidelines for administering oaths (4)
ITS6	Skill in conducting non-adversarial interviews (4)
ITS8	Skill in confronting applicant with credibility issues (4)
IR1	Skill in interacting with others in a professional manner (e.g., respectful, courteous) (4)
IR4	Skill in building rapport with others (4)
SCM1	Skill in maintaining a professional demeanor in stressful situations (e.g., potentially dangerous encounters, emergency situations, threats to personal safety) (4)
SCM3	Skill in identifying potential sources of conflict (4)
SCM4	Skill in managing situations involving conflict (4)



**SCHEDULE OF REVISIONS**

Date	Section (Number and Name)	Brief Description of Changes	Made By
06/06/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	MMorales, RAIIO Training
10/01/2013	Throughout document	Corrected bad links due to move of RDOT Curriculum Library	LG, RAIIO Training
01/10/2015	Throughout document	Fixed links	RAIO Training
11/25/2015	Throughout document	Corrected links and minor typos	RAIO Training

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

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

Officers in the RAIO Directorate conduct interviews primarily to determine eligibility for immigration benefits or requests; to corroborate information provided by applicants, petitioners, and beneficiaries; and/or to establish whether a person understands the consequences of his or her actions.

The modules of the RAIO Directorate – Officer Training Course and the division-specific training courses constitute primary field guidance for all officers who conduct interviews for the RAIO Directorate. The USCIS Adjudicator's Field Manual (AFM) also provides guidance for officers when conducting interviews, particularly for officers in the International Operations Division. There may be some instances where the guidance in the AFM conflicts with guidance provided by the RAIO Directorate. If this is the case, you should follow the RAIO guidance. Further guidance regarding interviews for specific applications will be discussed during division-specific trainings.

In this module, the term "interviewee" is used to refer to an individual who is interviewed by an officer in the RAIO Directorate for an official purpose.

## 1 INTRODUCTION

This is the first in a series of interviewing modules that discuss various topics including how to elicit testimony, the proper procedures for taking notes, and considerations when conducting an interview through an interpreter. This module outlines the basic principles and components of conducting a non-adversarial interview. Please refer to the other interviewing modules for additional guidance on conducting RAIO interviews.

- Interviewing – Eliciting Testimony

- Interviewing – Note-Taking
- Interviewing – Working with an Interpreter
- Interviewing – Interviewing Survivors of Torture

The following is a non-exhaustive list of immigration benefits, petitions, protection determinations, and other immigration-related requests you may encounter as an officer in the RAIO directorate:

- G-646 Sworn Statement of Refugee Applying for Admission into the United States
- I-130 Petition for Alien Relative
- I-131 Application for Travel Document
- I-407 Abandonment of Permanent Resident Status
- I-589 Application for Asylum and Withholding of Removal
- I-590 Registration for Classification as Refugee
- I-600 Petition to Classify Orphan as Immediate Relative
- I-604 Determination on Child for Adoption
- I-730 Refugee/Asylee Relative Petition
- I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (NACARA)
- N-400 Application for Naturalization (Military Naturalizations)
- Boarding letters
- Credible fear determination
- Reasonable fear determination

## 2 AUTHORITY

The following provides the authority on interviewing for all officers who conduct interviews for the RAIO Directorate.

- 8 C.F.R. § 103.2(b)(9) gives the authority to USCIS to require that an applicant, petitioner, sponsor, beneficiary, or other individual appear for an interview.
- 8 C.F.R. § 208.9(b) requires that Asylum Officers conduct interviews in a non-adversarial manner. Although this regulation applies only to Asylum Officers, as a matter of policy, officers in the RAIIO Directorate must conduct all interviews in a non-adversarial manner.
- 8 C.F.R. § 207.2(b) requires that each applicant 14 years and older appear in person before an Immigration Officer for an inquiry under oath to determine his or her eligibility for admission as a refugee.
- INA § 287(b) gives the authority to USCIS officers to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States:

### 3 PURPOSE OF THE INTERVIEW

The main purpose of the interview is to elicit and provide information related to eligibility for an immigration benefit or for some other official purpose. The interview also provides an opportunity for the interviewee to ask questions that he or she may have and to present relevant information [ASM Supplement – Purpose of the Interview].

#### 3.1 Elicit Information

The main reasons that you will elicit information during an interview are to:

- Verify the identity of those present at the interview.
- Determine whether to proceed with the interview (which may depend on jurisdiction, the availability of an interpreter, the presence of an attorney of record, or other factors).
- Determine eligibility for a benefit being sought (if the interview relates to an application for a benefit).
- Determine whether the interviewee is subject to any bars or grounds of inadmissibility.
- Evaluate the credibility of the interviewee.
- Identify whether fraud may be involved.

Eliciting testimony involves more than simply asking questions and receiving responses. You will likely need to actively draw out information from the interviewee that has a bearing on the purpose of the interview, such as an interviewee's eligibility for a benefit.<sup>1</sup>

### 3.2 Provide Information

In addition to obtaining information during the interview, you also provide information to the interviewee and to others who may be present, such as derivative family members, interpreters, and in some circumstances, witnesses or the interviewee's representative. The information you provide includes:

- The purpose of the interview and the interview process
- The roles and responsibilities of all persons involved in the interview
- What the interviewee can expect to happen after the interview

If the interviewee has questions, you will also provide information in response to those questions.

## 4 IMPORTANCE OF THE INTERVIEW

The importance of the interview cannot be overstated.

- The interview is an important part of your adjudication or determination and is one of the main tools you use to gather the information necessary to make a correct decision.
- The interview may be the only opportunity for you to elicit and clarify information upon which to base a decision.
- The decision you make, based on the information you gather at the interview, may have serious consequences.
  - Your decision may affect whether the interviewee is reunited with close family members.
  - In the protection context, an interviewee wrongly found ineligible for the benefit sought may eventually be returned to the country from which he or she fled and may thereby face persecution or even death.
  - Your decision regarding the grant of an immigration benefit could have implications for U.S. national security.

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<sup>1</sup> For additional information, see RAIO Training module, *Eliciting Testimony*.

- Interviewees may shape their opinion of the U.S. Government based on their interactions with you. While you may not remember every person you interview, this interview may be a pivotal point in an interviewee's life, and he or she will likely remember you and his or her impression of you and the U.S. Government for years to come.

Because of the importance of the interview, you must conduct yourself in a professional manner at all times, treating the interviewee with respect and courtesy. You must constantly strive to conduct organized, focused, and well-planned interviews.

## 5 THE PARTICIPANTS AND THEIR ROLES

A number of individuals may be present at an interview, each with a different role. The roles of the possible participants, outlined below, are discussed throughout this module.

### 5.1 The Officer

You are a representative of the U.S. Government and as such, you must project a competent, professional, and courteous image, and uphold the integrity of the U.S. immigration system. With this in mind, you are to conduct non-adversarial interviews in the manner described throughout this module.

Officers within RAIO include:

- Refugee Affairs Division (RAD): Refugee Officers, Supervisory Refugee Officers, Fraud Detection and National Security (FDNS) Officers, and officers from other USCIS components who are detailed to RAD to conduct refugee interviews. (Note: guidance in this module also applies to non-officers, such as Office of Chief Counsel [OCC] attorneys, who are detailed to RAD to conduct refugee interviews)
- Asylum Division: Asylum Officers (including Senior Asylum Officers and Training Officers), Supervisory Asylum Officers (including Asylum Office Directors; Deputy Directors), and FDNS Officers
- International Operations Division: Adjudications Officers, Overseas Adjudications Officers, Overseas Adjudications Specialists, and Supervisory Adjudications Officers (including Field Office Directors, District Directors, Deputy District Directors, and Branch Chiefs), and FDNS Officers

In most cases, when conducting interviews, you are both the fact-finder and the decision-maker. You control the direction, pace, and tone of the interview and have a duty to elicit all relevant testimony.

### 5.2 The Interviewee



The interviewee may be the principal applicant, a derivative family member, or witness in the case. The interviewee's role is to provide testimony and, when appropriate, other evidence.<sup>2</sup>

### 5.3 The Interpreter

The interpreter's role is to accurately interpret between the language of the interviewee and the language of the officer (English). The interpreter is not a witness and should not offer testimony, nor should the interpreter attempt to clarify the officer's or interviewee's statements or questions.<sup>3</sup>

### 5.4 The Representative

An applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.<sup>4</sup> In addition, whenever an examination is required, the person involved has the right to be represented by an attorney or representative.<sup>5</sup> This does not provide any applicant for admission the right to representation, in either primary or secondary inspection or in an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody.<sup>6</sup>

The representative must file a properly completed Form G-28 Notice of Entry of Appearance as Attorney or Accredited Representative or Form G-28I Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, which must be signed by the applicant or petitioner.

Because of the non-adversarial nature of the process, described below, the role of the representative during the interview is minimal. You control the interview and will ask most of the questions. You may allow the representative to comment or ask questions during the course of the interview to clarify specific points. After your last question, you should give the attorney an opportunity to offer a closing statement. You have the discretion to limit the length of the closing statement, or in rare circumstances, require that a statement be submitted in writing instead.<sup>7</sup>

### 5.5 Other Participants

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<sup>2</sup> 8 C.F.R. § 208.9(b).

<sup>3</sup> For additional information, see RAIO Training module, *Interviewing — Working with an Interpreter*.

<sup>4</sup> 8 C.F.R. § 103.2(a)(3).

<sup>5</sup> 8 C.F.R. § 292.5(b).

<sup>6</sup> Memorandum from Grover Joseph Rees III, INS Office of the General Counsel, to Jan C. Ting, Office of International Affairs, Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing (Nov. 9, 1992).

<sup>7</sup> 8 C.F.R. § 208.9(d).

In some interviews the applicant has another person present. In the case of children, this may be a “trusted adult” who participates in order to help the child feel at ease.<sup>8</sup> In interviews of children or individuals with disabilities who may be unable to state their claim, a “trusted individual” may assist by testifying about the applicant’s circumstances.

## 6 THE NON-ADVERSARIAL NATURE OF THE INTERVIEW

It is well established that a non-adversarial approach in which the interviewer builds rapport is the most effective interview style for eliciting credible information.<sup>9</sup>

A non-adversarial proceeding is one in which the parties are not opposing each other. It differs from an adversarial proceeding, such as civil and criminal court proceedings, in which parties oppose each other by advocating their mutually exclusive positions before a neutral arbiter until one side prevails and the other side loses. A removal proceeding before an immigration judge is generally an adversarial proceeding because the Immigration and Customs Enforcement (ICE) attorney represents DHS in removal proceedings.<sup>10</sup>

In conducting an interview for an immigration benefit as well as other RAIO interviews, you are usually the only person who questions the interviewee. With a request for a benefit, the primary intent of USCIS is to determine whether the principal interviewee qualifies for a benefit. It is not the role of the interviewer to oppose the principal interviewee’s request or application. Because the process is non-adversarial, it is inappropriate for you to interrogate or argue with any interviewee. You are a neutral decision-maker, not an advocate for either side. In this role you must effectively elicit information from the interviewee in a non-adversarial manner, to determine whether he or she qualifies for the benefit.

Additionally, RAIO interprets the term “non-adversarial interview” to encompass not only the manner of questioning as described above, but also the tone and atmosphere in which you must conduct interviews. It is your job to maintain a neutral and professional demeanor even when confronted with interpretation problems, a difficult or challenging interviewee or representative, or an interviewee whom you suspect is being evasive or untruthful. Your personal feelings about the participants in the interview should not affect the quality of your interview or your decision.

<sup>8</sup> Memorandum from Jeff Weiss, INS Office of International Affairs, to Asylum Officers, Immigration Officers, and Headquarters Coordinators (Asylum and Refugees), *Guidelines for Children’s Asylum Claims*, 120/11.6 (Dec. 10, 1998); for additional information, see RAIO Training module, *Children’s Claims*.

<sup>9</sup> Amina Memon, et al., “The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years,” *Psychology, Public Policy and the Law* 16, no. 4, 2010, pp. 340–372; Ronald P. Fisher and R. Edward Geiselman, “The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence,” *International Journal of Law and Psychiatry* 33, 2010, pp. 321–328.

<sup>10</sup> USCIS, Adjudicator’s Field Manual (AFM), *Appendix 15-2 Non-Adversarial Interview Techniques*.

The non-adversarial nature of the interview allows the applicant to present a claim in an unrestricted manner, within the inherent constraints of an interview before a government official. An interview before a government official may be intimidating to an applicant for various reasons, including, but not limited to, the following:

1. Prior negative experiences with authority figures
2. Trauma from sudden flight from the country of origin, or other causes
3. Perceived or real differences between the applicant's culture and the culture of the government official conducting the interview
4. Fear of sharing information of a highly personal or sensitive nature

## 7 THE COMPONENTS OF AN INTERVIEW

Although you will develop your own interview style, the following components are required components of every officer's interviews:

- Pre-Interview Preparation
- Introduction
- Oath
- Verification of Basic Biographical Information
- Testimony
- Closing Statement/Comment/Questions by Interviewee and/or Representative
- Conclusion

### 7.1 Pre-Interview Preparation

Preparing for the interview helps you identify the issues to focus on and to formulate meaningful questions to ask during the interview to gather the facts needed to support your decision. Before each interview you must analyze the case and assess the evidence in the record by reviewing the file, performing security checks, and, in many instances, reviewing relevant country of origin information.

As you review the file, you should read the application and any accompanying statements and supporting documents. You should also cross-check names and aliases of the principal interviewees and dependents against other documents in the file and available databases. In addition, you must be alert to indications that you will need to follow special procedural guidance or modify your questioning techniques; for example, when interviewing children, possible trafficking victims, or individuals who may pose a threat to national security [ASM Supplement – Pre-Interview Preparation].

This preparation helps you to establish the chronology of events of a case, determine lines of questioning, and, where relevant, identify gaps, inconsistencies, or potential bars you will need to address during the interview<sup>11</sup> [IO Supplement – Pre-Interview Preparation].

As noted below in *Interviewing Tips*, an outline or checklist of the main points you want to address in the interview may be helpful. You may create such a checklist yourself for each case or use common checklists created by each division. Before a refugee or asylum interview, you could write a chronology of events leading to the interviewee's departure from his or her country and refer to it during the interview. If using an outline, checklist, or chronology, be sure that it does not distract you from asking necessary follow-up questions during the interview or from actively listening to and evaluating the interviewee's responses or questions.

It is essential that the interviewee appreciate the importance and seriousness of the proceedings. Therefore, the setting in which the interview takes place must be orderly and official in appearance.<sup>12</sup>

Before beginning an interview, you should take particular care to remove from the interview area all files and documentation relating to other interviewees. This ensures confidentiality and prevents documents from being placed in the wrong file.

## 7.2 Introduction to the Interview

The introduction to the interview includes greeting the parties and explaining what will happen during the interview. You will develop your own style for handling the introduction. Your manner during the introduction sets the tone for the interview. The introduction is your best opportunity to establish rapport<sup>13</sup> with the interviewee. Your introduction should help put the interviewee at ease, thus facilitating the flow of information and allowing you to elicit the information that you need throughout the interview. Whatever approach you choose, you must conduct the entire interview in a non-adversarial manner.

### Greet the Parties

You should greet the interviewee and any other participants present at the interview and establish the identities of all parties. You should introduce yourself and any other

<sup>11</sup> See also European Asylum Curriculum (EAC) #6 – Interview Techniques, Sub-module 1: Conducting the Interview, Unit 1.1 Preparation of the Case, “Case preparation.”

<sup>12</sup> USCIS, Adjudicator's Field Manual (AFM), Chapter 15.2 *Interview Environment*.

<sup>13</sup> For additional information on establishing rapport, see RAIO Training module, *Interviewing - Eliciting Testimony*.

participants who may not know each other. Before escorting the interviewee to your interview space, verify the identity of the interviewee and any dependents, as well as that of the interpreter when appropriate. In situations where the interviewee is escorted by another person to your interview space, do this as soon as the interviewee arrives.

### **Determine Who Will Be Present During the Interview**

You have the discretion to decide who will be present at the interview.

- **Dependents**

Dependents may remain with the principal interviewee during the interview at your discretion. In certain types of cases, dependents must be interviewed individually. In these situations, you should interview the dependents separately, apart from the principal interviewee and other dependents. When it is not required that dependents be interviewed separately or offer testimony, you should defer to the principal interviewee's preference as to whether their dependents remain present during the interview. However, in protection interviews it is generally better to interview the principal applicant without dependents present, as noted below.

In interviews where the principal applicant is unable to testify due to disability or incapacity, it is permissible for a third party to testify on his or her behalf.<sup>14</sup>

- **Sensitive Topics**

As noted above, you should defer to the interviewee's preference when determining whether dependents will remain in the interview. However, after the interview has begun, an interviewee may be reluctant to request that dependents leave the room. You should therefore be alert for signs that an interviewee may be uncomfortable discussing certain issues with others present. In some cases (e.g., involving domestic violence or sexual abuse), you may ask to speak with the interviewee alone first to determine whether the interviewee would prefer to be interviewed without the dependents present.

In protection interviews it is best to make it your practice to interview the principal applicant without dependents present. Even if topics under discussion do not appear to be sensitive, it is usually troubling for children to see their parent display her or his vulnerabilities and an inability to protect them. Furthermore, many men feel reluctant to express personal fears in front of their families, and if their dependents remain in the interview, you may not adequately elicit all of the applicant's concerns.

Some interviewees may request that a relative or friend be present at the interview for moral support. You may allow such individuals to remain. In particular, children may have a "trusted adult" present during the interview. However, you must also explain to any accompanying individual that he or she is not the interviewee's representative, and

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<sup>14</sup> For additional information on specific procedures, refer to Division procedure manuals.

that he or she must not become involved in the interview process. You should also watch for any red flags which may suggest problems or irregularities with the relationship between the “trusted adult” and the child, and should consult your supervisor if you suspect any wrongdoing on the part of the “trusted adult” or other accompanying adult. See also “Trafficking or Other Forms of Coercion,” below.

- **Validity of Family Relationships**

In some interviews, you will have to determine whether the relationship between the primary applicant and a relative listed on the application form is genuine.

**Example**

In the adjudication of a Form I-590, *Registration for Classification as Refugee*, where the primary applicant has listed seven minor dependent children, you may interview some of the children separately to ensure that they are in fact part of the same family unit. If you believe that some or all of the relationships are not as claimed on the I-590, it is best to interview each child separately, so that blame for a denial does not fall on one or two children, who may be harmed as a result.

- **Trafficking or Other Forms of Coercion**

You may become concerned that the interviewee is in a vulnerable situation in relation to another party present at the interview. These are sensitive situations, and you must proceed with caution. While you may attempt to interview an interviewee apart from a suspected trafficker who may represent himself or herself as a party to the interview (such as a guardian, companion, or interpreter), you must also ensure that you are not violating the interviewee’s right to representation or exposing the interviewee to possible reprisal from the trafficker. In such situations you should seek supervisory guidance before separating an interviewee from another party to the interview.<sup>15</sup>

- **National Security Risks**

If you discover during your interview preparation or during the interview that the interviewee may have provided support to a terrorist group or may have been involved in a terrorist activity or in another act that could negatively impact public safety or national security, contact your supervisor.<sup>16</sup>

**Explain the Purpose of the Interview**

You must explain that the purpose of the interview is to:

<sup>15</sup> For additional information, see RAIO Training module, *Detecting Possible Victims of Trafficking*.

<sup>16</sup> For additional information, see the specific procedures for your division and RAIO Training module, *National Security: Terrorism Related Inadmissibility Grounds*.

- Give the interviewee an opportunity to explain why he or she submitted the application or requested the benefit.
- Allow the interviewee to present evidence of eligibility.
- Allow you to gather necessary information from the interviewee and any witnesses.
- Provide information to the interviewee concerning the application process.

### Explain Confidentiality

All asylum and refugee interviews are confidential.<sup>17</sup> Asylum confidentiality standards are formalized in the regulations. In the asylum context, absent the applicant's consent, you are generally prohibited from disclosing information contained in or pertaining to any asylum application to individuals other than the applicant. This includes acknowledging the existence of an asylum application. This restriction on disclosure does not apply to releasing information to the applicant's representative. The regulation also has exceptions on the prohibition on disclosure for certain U.S. Government officials and certain U.S. courts with a need to know the information.<sup>18</sup> Confidentiality provisions for asylum applicants contained in 8 C.F.R. § 208.6 also apply to the beneficiaries of I-730 petitions, whether they are following-to-join asylees or refugees. They also generally govern the disclosure of information related to credible fear and reasonable fear determinations, as well as to applications for withholding or deferral of removal under Article 3 of the Convention Against Torture, which are encompassed within the asylum application.<sup>19</sup>

As a matter of policy, adjudications in the refugee context follow the same confidentiality guidelines as asylum, with one limited exception:

- When a credibility issue arises based on conflicting testimony by family members who are part of the same case or a cross-referenced case, information provided by one family member should be shared with another family member to give the applicant(s) an opportunity to explain the discrepancies.

<sup>17</sup> Immigration and Nationality Act (INA) § 245A(c)(5); Memorandum from Barbara L. Strack, Chief, Refugee Affairs Division and Joanna Ruppel, Chief, International Operations Division, USCIS, to Refugee Affairs Division, *Information Consent Form for Use in Refugee Interviews*, 120/6 (Jun. 17, 2009).

<sup>18</sup> The Secretary may disclose asylum related information. Only your supervisor or upper management may decide whether an exception on the prohibition on disclosure exists. For additional information, refer to the *Identity and Security Check Procedures Manual* (ISCPM).

<sup>19</sup> See *Asylum Confidentiality Memos*: Memorandum from Joseph E. Langlois, Director, Asylum Division, to Asylum Office Directors and Deputy Directors, *Fact Sheet on Confidentiality*, HQASM 120/12.8 (Jun. 15, 2005); and Memorandum from Bo Cooper, INS Office of the General Counsel, to Jeffrey Weiss, Director, Office of International Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, HQCOU 120/12.8 (Jun. 21, 2001).

You are required to safeguard information and may not disclose it unless one of the exceptions to the disclosure restrictions applies. You must know if any prohibitions on disclosure exist for the benefit being adjudicated, and inform interviewees of the applicable confidentiality provisions.

Interviewees may be hesitant to disclose information if they believe it is not confidential because:

- Descriptions of past events may be highly personal.
- Interviewees may fear harm to themselves or others as a result of disclosing certain information.
- Interviewees may fear for the lives and safety of family members and friends.

Remember that many interviewees are from countries where the government does not value or protect the privacy of its citizens. Therefore, it may be difficult for some interviewees to understand the term “confidentiality.” In the overseas refugee context, officers are provided specific language to assist the applicant in understanding confidentiality and what it means to waive confidentiality or otherwise disclose information under certain circumstances.<sup>20</sup>

### **Explain Other Aspects of the Interview Process**

You can help alleviate some of the interviewee’s nervousness by explaining the process of the interview so that the interviewee will know what to expect. The interviewee should be informed that:

- It is important that you and the interviewee understand each other.
- The interviewee must answer your questions truthfully and to the best of his or her knowledge.
- The interviewee must tell you if he or she does not know the answer to a question, rather than guess at or supply an answer he or she thinks you want to hear.
- It is crucial that the interviewee understand each question and if he or she does not understand a question, he or she must let you know so that you may clarify it. (Due to cultural barriers or fear of authority figures, many interviewees will not ask for clarification when they do not understand your question.)
- He or she should not ask the interpreter for help or clarification, because the interpreter’s role is only to interpret what each party says.

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<sup>20</sup> See Memorandum from Barbara L. Strack, Chief, Refugee Affairs Division and Joanna Ruppel, Chief, International Operations Division, USCIS, to Refugee Affairs Division, *Information Consent Form for Use in Refugee Interviews*, 120/6 (Jun. 17, 2009).



- You will take notes during the interview to remember what was said during the interview.
- The interviewee may ask questions at any time during the interview.
- All the information in the notes is also confidential and will not be shared with unauthorized individuals.
- You will allow the interviewee time at the end of the interview to make any additional statements, including information that you did not ask about that he or she thinks is important and would like to add.
- You will carefully consider the information the interviewee provides to determine eligibility for the benefit.
- At the end of the interview, you will tell the interviewee how he or she will be notified of the decision on the case.

### **Advise the Interpreter**

The interpreter's role is to interpret as accurately as possible what the officer and interviewee say during the interview. You must advise the interpreter that he or she is a conduit of communication and must not add nor detract from your statements or the interviewee's statements. Officers in the RAIO Directorate should follow their division-specific guidance when advising interpreters about confidentiality requirements and their oath to interpret truthfully and accurately.<sup>21</sup> [RAD Supplement – Interpreters for Refugee Interviews]

### **If a Representative Is Present at the Interview**

If a representative is present, you must:

- Review form G-28 Notice of Entry of Appearance as Attorney or Accredited Representative or form G-281 Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States to verify that it has been properly executed;<sup>22</sup> or
- If the representative and/or the interviewee have not signed the form, ask them to do so at the interview; or
- If no form is in the file, ask the representative to submit one before beginning the interview.

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<sup>21</sup> For additional information, see RAIO Training module, *Interviewing – Working with an Interpreter*.

<sup>22</sup> 8 C.F.R. § 292.4.

You also must verify that the representative at the interview is the same person who signed the G-28 or G-28I. If the representative present is not the representative listed on the G-28, follow the guidance below.

- If the representative appearing at the interview is from the same office as the representative who submitted the G-28, he or she must sign the form and correct any information on it, as appropriate.
- If the representative appearing at the interview is not from the same office as the representative who submitted the G-28, he or she must submit a new G-28.

You must clarify with the interviewee whether the new representative is representing him or her for purposes of the interview only or is replacing the original representative, in which case you should annotate the original G-28 to reflect the change in representation.

If the representative has submitted a G-28 or G-28I but is not present, you must inform the interviewee that he or she has a right to have a representative present at the interview. If the interviewee wishes to proceed without the representative, the interviewee must sign a waiver form before the interview can be conducted. If the interviewee does not wish to proceed without the representative, you must reschedule the interview.

#### *Cooperative Relationship Between the Representative and the Officer*

You and the representative are not adversaries. Therefore, some actions that may be appropriate for attorneys in an adversarial setting may not be appropriate in the non-adversarial interview, where you and the representative share a cooperative role in developing and clarifying the merits of the interviewee's claim.

In certain instances it may be appropriate for the representative to comment during the course of the interview to clarify issues. Such comments may be helpful and should not be discouraged. However, you must retain control of the interview. If the representative repeatedly interrupts or otherwise disrupts the interview, ask the representative to refrain from interrupting and explain that he or she will have an opportunity at the end of the interview to ask questions and make comments.

If you encounter a representative who is unaware of the non-adversarial nature of the interview, you may need to advise the attorney of his or her role in this proceeding. In doing so, you must always conduct yourself professionally.

You must inform the representative that he or she will be allowed to make a closing statement, comment on the evidence presented, and ask the interviewee additional questions. You have the discretion, however, to limit the length of the statement or request that it be submitted in writing, in lieu of an oral statement at the end of the

interview.<sup>23</sup> You also have the discretion to have the attorney suggest questions for you to ask rather than allowing the attorney to question the interviewee directly.

### 7.3 Oath

Interviewees and witnesses must be placed under oath before testifying. You must place all interviewees under oath before asking any questions related to the claim or application. You, the interviewee, and the interpreter should stand during the administration of the oath unless physically unable to do so.

The oath should be administered in a way that impresses upon the interviewee the importance of the occasion and the testimony he or she is about to give. A suggested explanation of the oath follows:

“I am now going to place you under oath. This means that I am going to ask you to vow or promise to tell the truth. Once you are placed under oath, I will expect that what you tell me will be the truth to the best of your knowledge.”

The Refugee Affairs Division has developed specific language for the oath [RAD Supplement – Oaths].

The fact that the interview is being conducted under oath or affirmation should be recorded in the interview notes. If a verbatim question-and-answer statement is taken, the exact wording of the oath or affirmation should be included in the statement [ASM Supplement – Oath].

If an interpreter is present, you must administer a separate oath to the interpreter.

### 7.4 Verification of Basic Biographic Information

You must verify with the interviewee all of the biographical information on the application form. Techniques for gathering this information are elaborated in RAIO Training module, *Interviewing – Eliciting Testimony*.

#### Review the Form

You must verify and, if necessary, update or correct information on the form. Someone other than the interviewee may have completed the form, or information about the interviewee may have changed since the form was filed. As a result, some of the information on the form may not be correct [RAD Supplement – Review the Application Form]. Please keep in mind that the interviewee may not be aware of all of the information that has been submitted on his or her behalf. Any corrections must be made in red ink and numbered. At the end of the interview, the interviewee must provide a signature to confirm all changes made to the form.

<sup>23</sup> 8 C.F.R. §208.9(d).

You must be certain that the form contains the interviewee's full and correct name, plus any aliases (RAD, see Standard Operating Procedure for Form I-590). Aliases are any other names the interviewee has used, including maiden names, nicknames, hyphenated names, abbreviated names, baptismal names, and alternate order of first and last names. You must also note any variation in birth date that the interviewee has used. Different calendars and cultural practices can lead to confusion about dates of birth. You must confirm all dates in addition to places of birth, address, and entry information, and you must confirm that all other biographical information on the form is current and correct.

You must also compare information on the form with other documentation in the file and documents presented by the interviewee at the interview, such as birth certificates, marriage and divorce certificates, death certificates, school records, baptismal certificates, and passports. If the interviewee has dependents, verify that the biographical information for each is also correct.

### Review Documents

The interviewee may submit documents with his or her application or petition and may bring additional documents to the interview.

Although interviewees are not always required to submit identity documents, you must ask the interviewee and dependents if they have such documents. Examples include identity documents from the interviewee's country, the United Nations High Commissioner for Refugees (UNHCR), the United States, or other governmental sources.

If the interviewee does not have identity documents, and he or she is from a population that ordinarily possesses identity documents, you should ask the interviewee to explain why he or she does not have these documents.

If the interviewee submits an original document with copies of the document, you should retain the copies for the file, write or stamp on the copies "original seen and returned," and sign and date each copy below this statement.<sup>24</sup>

Similarly, if the interviewee presents an original document for which there are copies in the file, you should write or stamp on the file copies that the "original was seen and returned" and sign and date the file copies. If the interviewee has only photocopies of a document, you should write on the copies retained for the file "from photocopy," and sign and date each one. You should also inquire as to why the applicant does not possess the original document.

Guidance on how to proceed if you encounter a document that appears to be fraudulent is provided in RAIO Training module, *Fraud*.

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<sup>24</sup> For additional information, see RAIO Training modules, *Evidence* and *Fraud*.

## Correct the Form

Any corrections to the form must be made in red ink on the record copy of the form, crossing out the original information so that it is still legible. This includes corrections to a personal statement attached to the Form I-589 in asylum processing and the Resettlement Support Center (RSC) case history attached to the Form I-590 in overseas refugee processing.

At the beginning of the interview, you should ask the interviewee and the interviewee's representative, if any, if they would like to make any corrections on the personal statement or RSC Case History.

The corrections must be numbered so that they can be explained to the interviewee before he or she signs the form at the end of the interview to verify that the application form is accurate. If the interviewee does not alert you to any corrections before the interview begins, and his or her testimony is inconsistent with information on the form, you must address material credibility concerns with the interviewee. However, it is important to remember that the applicant may not have prepared this form and may not be fully aware of its contents.<sup>25</sup>

## 7.5 Testimony

Because this is a non-adversarial proceeding and you are the fact-finder in the case, you are responsible for eliciting all relevant information from the interviewee.<sup>26</sup> Although you must cover all of the information requested in the application form, you should not simply ask the interviewee the same questions as those on the form. Instead, you should use a variety of techniques that provide the interviewee an opportunity to speak in his or her own words.<sup>27</sup>

### Allow Applicant to Clarify Inconsistencies

If any of the information in the form conflicts with the interviewee's interview testimony, or if you notice inconsistencies within the interviewee's interview testimony, you must give him or her an opportunity to explain the discrepancies. You must correct the application form when necessary, advising the interviewee of the corrections.

You must pursue all relevant lines of questioning, until you are certain that you have sufficient pertinent information to make a determination on the interviewee's claim. You must also allow the interviewee to ask questions as appropriate and to submit additional documents at the interview in support of his or her claim.

<sup>25</sup> For additional information, see RAIO Training modules, *Credibility and Evidence*.

<sup>26</sup> 8 C.F.R. § 208.9(b); UNHCR Handbook, para. 196.

<sup>27</sup> For additional information on methods and issues related to eliciting testimony, see RAIO Training module *Interviewing – Eliciting Testimony*.

You must learn to distinguish between the likelihood that the interviewee is confused and the possibility that his or her non-responsiveness is an attempt to receive a benefit by fraud. If the interviewee does not appear to understand your question, you should ascertain whether there is a problem with the interpretation or with your phrasing of the question. However, if the interviewee appears to understand your question and is being evasive or non-responsive, or presents inconsistent or implausible testimony, you must confront the interviewee and give him or her an opportunity to explain. Proper confrontation of an interviewee is not hostile or challenging. By confronting an interviewee, you merely make the interviewee aware of your concerns, and provide the opportunity to address them.<sup>28</sup>

## 7.6 Closing Statement/Comment/Questions by Interviewee and/or Representative

As noted above, at the end of the interview, you should allow the interviewee and, if present, the representative, to make final comments or ask questions after you have finished asking your questions.

### Signatures on Form

You and the interviewee must sign the record copy of the form. You must note the corrections made to the form, explain them to the interviewee, and inform the interviewee that, by signing the application, he or she is affirming that all the information in the form is true and correct as of the date of the interview.

### Requests to Submit Additional Documents

In certain cases, you may request that the interviewee submit additional documentation as evidence in support of his or her claim.<sup>29</sup>

### Explanation of the Next Steps in the Process

In most cases, you will not inform the interviewee of the decision at the end of the interview. Instead, you will advise the interviewee as to how he or she will receive the decision. These procedures vary, depending on the form type and interview location.

### Exit Procedures

At every interview location, you must follow local exit procedures at the conclusion of the interview. Before beginning your first interview, you should be familiar with the local procedures. For example, in most locations a waiting area is set apart from the interview spaces and other offices. You may be required to escort the interviewee back to the waiting area rather than allow the interviewee to find his or her own way back

<sup>28</sup> For additional information, see RAIO Training modules, *Credibility and Evidence*.

<sup>29</sup> For additional information, see RAIO Training module, *Evidence*.

unescorted. In other locations it may be standard procedure to allow the interpreter, when present, to escort the interviewee back to the waiting area.

## 8 OUTSIDE FACTORS THAT CAN AFFECT THE INTERVIEW

Multiple factors may interfere with your ability to conduct the interview or may affect the interviewee's ability to testify.

### 8.1 Stress

An immigration interview, no matter what type, can be a stressful situation for all of the individuals involved. People respond to stress in different ways and develop personal mechanisms for handling stress. These factors can affect both you and the interviewee during an interview.

You, as the interviewing officer, may have days when you are distracted by personal issues or other professional issues. You must recognize your own distractions and minimize their effect on the interview.

The interviewee may find the interview stressful for a number of reasons. He or she may be:

- Anxious because his or her future may depend on the outcome
- Anxious about the unknown (not knowing what will happen during the interview)
- Concerned that he or she will not be able to answer the questions asked
- Fearful of dealing with a government official or being in an unfamiliar environment
- Concerned about communicating through an interpreter
- Worried about forgetting important information
- Concerned that his or her application or request may be denied
- Apprehensive about retelling painful or humiliating experiences
- Suffering from a physical ailment such as dementia, or a trauma-related condition such as Post-Traumatic Stress Disorder (PTSD)<sup>30</sup>

All of these factors have the potential to increase the interviewee's level of stress or otherwise impede the smooth flow of the interview.

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<sup>30</sup> For additional information, see RAIO Training module, *Interviewing Survivors of Torture and Other Severe Trauma*.

The interpreter, representative, witness, or other participants in the interview may have their own concerns, such as their ability to interpret correctly, or to represent or testify on behalf of the interviewee in such a way as to assist the interviewee most effectively. In some cases, those accompanying the interviewee may have an ulterior motive to commit fraud on behalf of the interviewee.

You are responsible for monitoring your stress level as well as identifying and mitigating the stressors that may affect all other participants at the interview.

## **8.2 Time Constraints**

As the interviewing officer, you are obligated to collect as much relevant information as possible within the time period allocated by your division or local office to conduct an interview. The tasks and time involved in completing a particular interview may increase when:

- A complicated story takes additional time to fully elicit
- A potential bar or ground of inadmissibility needs to be explored
- Several dependents on the case require interview and processing, and/or
- A dependent must be added or deleted

To accomplish all of the required tasks successfully, you must work expeditiously within predetermined time constraints. Always be mindful of the need to gather enough information to make a legally sufficient adjudication.

## **8.3 Your Personal Experiences**

During the interview, you should not allow your personal life experiences and biases to influence you either in favor of or against the interviewee. You should never approach the interview with a preconceived notion of the outcome.

# **9 INTERVIEWING BEST PRACTICES**

The following tips may help you to maintain control and elicit all necessary information at the interview.<sup>31</sup>

## **9.1 Be Organized**

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<sup>31</sup> For additional information, see RAIO Training Modules, *Cross-cultural Communication and Interviewing – Working with an Interpreter*.



As you prepare for the interview, create an organized environment that will help you capture all of the information you need. You and the interviewee must remember a significant amount of information; the fewer distractions, the easier it will be.

Your desk should be clean and free of clutter, including papers from other files, with only those items that are necessary for processing the case visible to the applicant. Have all supplies and necessary papers (notepad, checklists/outlines) within easy access during the interview. This will remove unnecessary distractions and allow you and the interviewee to concentrate on the interview. It is also helpful to have a box of tissues nearby in case the interviewee becomes emotional during the interview.

### **Use an Outline or Checklist**

Before you begin conducting interviews, ask your supervisor if he or she recommends an outline or checklist that other officers have used. Another option is to prepare your own outline or checklist based on Standard Operating Procedures (SOP) for different form types. For example, for protection interviews, your outline or checklist might include background, past harm, possession of a protected characteristic, awareness, capability, inclination, military service, firm resettlement, and whether mandatory bars or grounds of inadmissibility apply. Using an outline or checklist may prevent omissions of important lines of questioning. Even experienced officers sometimes forget to ask certain questions. You should review the outline or checklist before the interview and look at it again before ending the interview to ensure that everything has been covered.

Outlines or checklists are merely the starting point for the information you must elicit during the interview. They should not be used as a substitute for all necessary lines of questioning and follow-up questions during your adjudication. Do not let an outline or checklist distract you from asking necessary follow-up questions during the interview or from actively listening to and evaluating the interviewee's responses or questions.

### **Develop Time Management Skills**

Before adjudicating a new form type, you should learn about the adjudication, both from procedures manuals and from experienced colleagues who are able to adjudicate the same form efficiently. You can learn methods that streamline the process without negatively affecting the quality of the adjudication. Your colleagues can help you to develop interviewing skills that will allow you to quickly and efficiently gather all relevant information needed for a legally sufficient adjudication.

### **Record Questions as They Arise as a Reminder to Ask Them Later in Interview**

During the interview, jot down questions that arise but are not appropriate to ask at that moment, as a reminder to ask those questions when it is appropriate. This allows you to

focus on what the interviewee is saying, rather than on the question you plan to ask later. Use a notepad or piece of paper at the side of the desk, or create a place on your computer document to jot down any specific questions or lines of questioning that come to mind that you want to ask later. Refer to these notes later in the interview to be reminded of the additional questions that you need to ask.<sup>32</sup>

### **Have a Map or Atlas at Hand**

The interviewee may be able to identify important locations on a map, such as where he or she lived, moved, or traveled. Keep in mind, however, that some interviewees may never have seen a map and may not know how to read one. In addition, some interviewees may never have traveled beyond their villages or towns. Their view of “distance” may be confined to the distance between their home and their field or the market. Furthermore, such interviewees may not measure distance in terms of miles or linear measurements, but rather according to another form of measurement, such as the length of time it takes to arrive at a destination, or landmarks along the way.

## **9.2 Interview, Don’t Interrogate**

Your questioning must be done in a professional, non-threatening, and non-accusatory manner.

### **Treat the Interviewee with Respect**

As an officer in the RAIO Directorate, you should treat the interviewee with respect regardless of his or her eligibility for the benefit being sought. Similarly, you must treat the interviewee with respect even if he or she is not forthcoming with information during the interview, or does not seem to understand the process. You cannot know all of the factors that motivated the interviewee to apply for the benefit he or she is seeking, or what events have transpired in the interviewee’s life before this moment. For these reasons, you should treat every interviewee with respect and consideration.

You must not show impatience or incredulity, even though you may have heard similar stories from many interviewees or you find the interviewee’s testimony implausible.

Even the most self-possessed officer may feel annoyed if it appears that an interviewee is not being truthful during an interview, but you must refrain from expressing emotions such as annoyance either verbally or non-verbally.

### **Maintain a Neutral Tone throughout the Interview**

It is important that you always maintain a neutral tone, even when frustrated. You occasionally may be frustrated with interviewees who are long-winded, discuss issues

<sup>32</sup> For additional information, see RAIO Training module, *Interviewing - Note Taking*.

irrelevant to the claim, are confused by your questions, or appear to be fabricating a claim.

### **Be Non-Judgmental and Non-Moralistic**

Some information you gather during an interview may shed a negative light on the interviewee. How an interviewee reacts to or handles a particular situation may differ from how you think the situation should have been handled. The interviewee may have left family members behind in difficult or dangerous circumstances, or the interviewee may belong to an organization for which you have little respect.

Although you may feel offended by some interviewees' actions, you must put personal feelings aside and avoid passing moral judgments on interviewees in order to make neutral, legally sound decisions.

### **Create a Comfortable Atmosphere**

Create an atmosphere in which the interviewee can freely express his or her claim. You should attempt to put the interviewee at ease at the beginning of the interview and continue to do so throughout the interview. Physical discomfort may also impede communication. If the interviewee has been testifying for an extended period of time, it may be appropriate to suggest that you take a break to use the restroom or get a drink of water.

### **Treat Each Interviewee as an Individual**

Although many claims may be similar, each claim must be evaluated on its own merits, and each interviewee must be treated as an individual. You must approach each interviewee without any predisposition to grant or deny the benefit sought.

### **Be Mindful of Potential Biases**

Everyone develops individual preferences, biases, and prejudices based on personal life experiences. This influences how you view others and how you perceive circumstances, either negatively or positively. You must make continual efforts to become aware of instances in which this can influence your approach to interviews, either positively or negatively, such that it becomes "personal baggage."

The following types of biases encountered in other interview settings, such as job applicant interviews, may also apply in a RAIO interview setting.

- **Halo effect:** The interviewee's strength in one area causes you to view the other areas positively without fully considering or exploring them.
- **First impression:** The interviewee is judged before having a fair chance to respond to your questions.

- **Stereotype:** Because you perceive the interviewee as fitting into a certain category, you believe that he or she is not qualified for the benefit.
- **Similarity:** Your decision on eligibility is muddled after confusing the interviewee's personal similarity to yourself with his or her qualifications for the benefit.
- **Contrast:** Your judgment in the interviewee's case is based on how well others answered questions in previous interviews.
- **Excessive harshness:** You focus unfairly only on the negative factors in the interviewee's case, disregarding all strengths in his or her claim.

Being aware will allow you to recognize how your biases may interfere with the interview process. You must make an effort to prevent "personal baggage" from negatively affecting your ability to interview in a non-adversarial and neutral manner.

### **Have Patience**

Remember that although the interview process may become routine for you, it is not routine for the interviewee and may not be routine for others present. You should take time to explain the process and allow time for the interviewee to gather his or her thoughts.

### **Ensure That All Parties to the Interview Remain Non-Adversarial**

If, during the course of the interview, the interviewee or any other party to the interview becomes agitated, shouts, or otherwise loses composure, you must re-establish order. Calmly and in a moderate tone of voice remind the parties that this is a non-adversarial interview, and that this applies to all parties. If this does not defuse the situation, you should not continue the interview until the problem can be resolved. You may need to ask a colleague or supervisor to intercede. Under no circumstances should you respond in kind to anger or frustration from the interviewee, representative, interpreter, or other participant at the interview, as this will only exacerbate the problem.

### **Do Not Intimidate, Harass, or Embarrass the Interviewee**

Your tone of voice and facial expressions must remain neutral throughout the interview process. You must not argue against the interviewee's statements, raise your voice, use rapid-fire questioning, roll your eyes, or use a hostile, deprecating, or incredulous tone with any interviewee.

You may be tempted to do all of these with some interviewees if you notice serious credibility problems during an interview. If the interviewee does not appear to understand your question, you should ascertain whether there is a problem with the interpretation or with the way in which you articulated the question. However, if the interviewee appears to understand your question and is evasive or non-responsive, or presents inconsistent or implausible testimony, you must probe the interviewee's credibility by confronting him

or her with the specific credibility problem and by giving him or her an opportunity to explain.

Confronting an interviewee does not require you to challenge or become hostile toward the interviewee. Rather, confronting an interviewee merely makes him or her aware of your specific concerns and gives the interviewee the opportunity to address the concerns.<sup>33</sup>

The non-adversarial nature of the interview allows the interviewee to present a claim in as unrestricted a manner as possible, within the inherent constraints of an interview before a government official. An interview with a government official may be intimidating to an interviewee. Interviewees may feel vulnerable and threatened during an interview with you, as a representative of the U.S. Government, because of:

- Negative experiences with authority figures
- Differences between the interviewee's culture and yours
- Fear of exposing highly personal or sensitive information
- Trauma due to a variety of reasons, including sudden flight from the country of persecution
- Fear of an agent or trafficker who smuggled the interviewee, if the interviewee was trafficked

### 9.3 Maintain Control of the Interview

During the entire interview, you must not only remain alert to information from the interviewee, but must also be aware of more general factors affecting the flow of communication.

#### Promote Effective Exchange of Information

To the extent that it is possible, try to eliminate factors that limit or prevent an effective exchange of information during the interview. If the interviewee appears to be uncomfortable disclosing part of the claim in front of family members, you may ask family members to wait in the waiting room. If the interpreter is having difficulty interpreting a question, think of a different way to ask the question or obtain the information. Always be on the lookout for anything you can do that can facilitate the flow of information.

#### Keep the Interview Focused

<sup>33</sup> For additional information, see RAIO Training module, *Evaluating Evidence*.

In order to conduct efficient interviews, you should limit questions to topics that are relevant to the purpose of the interview.

#### 9.4 Practices to Avoid

- Do not over-empathize with the interviewee.
- Do not ask questions that are not relevant to the adjudication in question.
- Do not eat, drink, answer the phone, or engage in other personal behavior during the interview.

## 10 CONCLUSION

You play multiple roles in the adjudication process. As both the fact finder and neutral decision-maker, you must elicit testimony from the applicant, maintain a neutral tone throughout the process, and create an atmosphere in which the interviewee can freely express his or her claim. The interview is your opportunity to probe into all material elements of the interviewee's claim to determine eligibility for the benefit sought. You must develop strong interviewing skills that allow you to elicit expeditiously and efficiently all necessary testimony to make a decision.

Although you will develop your own style over time, for each interview you must:

- Thoroughly prepare, including file review, country of origin research, security checks, and electronic data base searches, before inviting the interviewee into your office
- Greet the parties and establish rapport
- Explain the interview process
- Place parties under oath, as necessary
- Verify identity, address, contact, and all biographical information on the forms
- Correct errors or update information that may have changed since the form was completed
- Elicit testimony regarding the claim and ask all relevant follow-up questions
- Confront the interviewee with material credibility issues and allow him or her an opportunity to explain
- Allow the interviewee and representative to make final comments and ask questions to provide information not already covered during interview

- Sign the application form and obtain all necessary signatures
- Advise the interviewee of the decision notification process

## **11 SUMMARY**

### **11.1 Authority**

The following authorizes USCIS officers to conduct interviews:

- 8 C.F.R. § 103.2(b)(9) gives the authority to USCIS to require that an applicant, petitioner, sponsor, beneficiary, or other individual appear for an interview.
- 8 C.F.R. § 208.9(b) requires that Asylum Officers conduct interviews in a non-adversarial manner. Although this regulation applies only to Asylum Officers, as a matter of policy, officers in the RAIO Directorate must conduct interviews in a non-adversarial manner.
- 8 C.F.R. § 207.2(b) gives the authority to USCIS to require that each applicant 14 years and older appear in person before an Immigration Officer for an inquiry under oath to determine his or her eligibility for admission as a refugee.
- INA § 287(b) gives the authority to USCIS officers to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through or reside in the United States.

### **11.2 The Purpose of the Interview**

#### **11.2.1 To Gather Information**

At an interview you elicit information to:

- Verify the identity of those present at the interview
- Determine whether to proceed with the interview, based on factors such as jurisdiction and availability of accurate interpretation
- Evaluate credibility and determine eligibility for the benefit being sought
- Determine whether the interviewee is subject to any bars or grounds of inadmissibility

#### **11.2.2 To Provide Information**

At an interview you provide information to the interviewee about:

- The purpose of the interview and the interview process
- The roles and responsibilities of all persons involved in the interview
- What the interviewee can expect to happen during and after the interview

### 11.3 Importance of the Interview

- The interview, as the basis for your determination, may be the only opportunity for you to obtain accurate and complete information from the interviewee.
- The interview may be the only opportunity for you to elicit and clarify information upon which to base a decision.
- The decision you make, based on the information you gather at the interview, may have serious consequences.
- Interviewees may shape their opinion of the U.S. Government based on their interactions with you.

### 11.4 The Participants and Their Roles

#### *The Officer*

You are a representative of the U.S. Government and must project a competent, professional, and courteous image, and uphold the integrity of the U.S. immigration system.

#### *The Interviewee*

The interviewee may be a principal applicant, a derivative family member, or a witness in the case.

#### *The Interpreter*

The interpreter's role is to accurately interpret between the language of the interviewee and English.

#### *Other Parties*

Other parties may be present at the interview, depending on the circumstances. For example, some children or applicants with disabilities may need the assistance of a relative or guardian to present their claim.

### 11.5 The Components of an Interview

- Pre-Interview Preparation



- Introduction
- Oath
- Verification of Basic Biographical Information
- Testimony
- Closing Statement/Comments/Questions by Interviewee and/or Representative
- Conclusion

### 11.6 Interviewing Tips

- **Be organized**
  - Use an outline or checklist to ensure that all necessary information is covered.
  - Develop time-management skills.
  - Record questions as they arise as a reminder to ask them later in interview.
  - Have a map or atlas at hand.
- **Interview, don't interrogate**
  - Treat the interviewee with respect.
  - Maintain a neutral tone throughout the interview.
  - Be non-judgmental and non-moralistic.
  - Create a comfortable atmosphere.
  - Treat each interviewee as an individual.
  - Be mindful of potential biases.
  - Have patience.
  - Ensure that all parties to the interview remain non-adversarial.
  - Do not intimidate, harass, or embarrass the interviewee.
- **Maintain control of the interview**
  - Promote effective exchange of information.
  - Keep the interview focused.
  - Treat the applicant with respect.
  - Maintain a neutral tone throughout the interview.
  - Be non-judgmental and non-moralistic.
  - Create an atmosphere in which the interviewee can freely express his or her claim.

- Treat each interviewee as an individual.
- Be mindful of potential biases.
- Have patience.
- Practices to avoid
  - Do not over-empathize with the interviewee.
  - Do not ask questions that are not relevant to the adjudication in question.
  - Do not eat, drink, answer the phone, or engage in other personal behavior during the interview.

**PRACTICAL EXERCISES**

There are no Practical Exercises for this module.

**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**RAD Supplement – Interpreters for Refugee Interviews**

The Resettlement Support Centers (RSCs) provide interpreters for most USCIS Refugee Interviews and I-730 interviews. The RSC seeks to recruit dispassionate interpreters who have no interest in U.S. resettlement. The RSC provides an orientation for the interpreters used at USCIS interviews, including the requirement to interpret accurately and completely and maintain the confidential nature of the interview. The RSC makes every effort not to use interpreters from the same refugee camp population or urban refugee population as the population being interviewed; however, this may not be possible at times in particular locations or in certain circumstances. For example, an interpreter may be used from the refugee camp population or urban refugee population if the interview site is very remote and there are no interpreters available in the local population, or if the interviewee's language is not spoken widely outside the interviewee's ethnic group. For these same reasons, it may not be possible to find an interpreter in the local population who is not interested in resettlement to the United States, and at some interview locations, the interpreters themselves may be applicants to the United States Refugee Admissions Program (USRAP).

**Interpreter's Oath**

The interpreter must be placed under oath ("Do you solemnly swear or affirm that you will interpret all statements made during the interview completely and truthfully and that you will keep all information confidential?") If the same interpreter is used for more than one interview, the interpreter needs to be placed

under oath only prior to the first interview. The interviewee should be told during the introduction or at the time of his or her oath that the interpreter has already taken an oath to interpret completely and keep all information confidential.

The interpreter should generally stand and raise his or her right hand when taking the oath. However, some interpreters may have objections to using the term “swear” or object to raising their right hands. The officer should adapt the oath to accommodate such objections, ensuring that the interpreter understands that he or she is promising, under the law, to interpret completely and truthfully and to keep the information in the interview confidential (e.g., using “affirm” rather than “solemnly swear” in the following: “Do you affirm that you will interpret all statements made during the interview completely and truthfully and that you will keep all information confidential?”). USCIS Refugee Affairs Division, Standard Operating Procedures: Introduction, Section 8 “Administer the Oath,” 19 August 2009.

#### RAD Supplement – Oaths

The Refugee Affairs Division has instituted several requirements for administering the oath to an applicant, including standard language. Applicants must stand and raise their right hand for the administration of the oath. An exception may be made if the applicant is elderly or incapacitated. The officer administering the oath should also stand and raise his or her right hand. As some applicants may have religious objections to using the term “swear” or “so help me God,” the required oath for applicants is:

“Do you solemnly swear or affirm that the statements you are about to make will be the truth, the whole truth, and nothing but the truth?”

Some applicants may have objections to using the term “swear” or object to raising their right hands. The officer should adapt the oath to accommodate such objections, ensuring that the applicant understands that he or she is promising, under the law, to tell the truth. USCIS Refugee Affairs Division, Standard Operating Procedures: Introduction, Section 8 “Administer the Oath,” 19 August 2009.

#### RAD Supplement – Review the Application Form

See Pilot Standard Operating Procedure for Form I-590: Registration for

Classification as a Refugee (October 30, 2015).

### SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

1. Memorandum from Bo Cooper, INS Office of the General Counsel, to Jeffrey Weiss, Director, Office of International Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, HQCOU 120/12.8 (Jun. 21, 2001).
2. Memorandum from Joseph E. Langlois, Director, Asylum Division, to Asylum Office Directors and Deputy Directors, *Fact Sheet on Confidentiality*, HQASM 120/12.8 (Jun. 15, 2005).

#### ADDITIONAL RESOURCES

None

#### SUPPLEMENTS

##### ASM Supplement – Purpose of the Interview

In this lesson, students will learn about the purpose, components, and non-adversarial nature of the asylum interview, as well as the roles of the representative and the applicant. The lesson will also cover eliciting the basic biographical information on the I-589, such as date and place of birth and information pertaining to entry into the United States.

##### **Definition**

At asylum interviews (unlike defensive proceedings before an immigration judge, the Board of Immigration Appeals, or the Federal courts) there is no government official present arguing in opposition to the asylum applicant. Neither the Asylum Officer nor the representative cross-examines the applicant and witnesses (if any), as in defensive proceedings. The Asylum Officer is not an advocate for either side; rather, the Asylum Officer is a neutral decision-maker.



**ASM Supplement -Pre-Interview Preparation**

• **Review file and DHS computer systems to:**

- Determine **who** is included in the application
- Determine **which** version of the I-589 the applicant submitted
- Ascertain **whether** the file is complete

If the file is missing any documents, such as photographs or photocopies of documents, the Asylum Officer should request that the applicant provide the missing documents.

The Asylum Officer should also determine whether there is a “Notice of Entry of Appearance as Attorney or Representative” (Form G-28) in the file and whether it is properly completed.

If there is no G-28 in the file, but if it appears that the applicant is represented, the Asylum Officer should ask the representative and applicant to complete a G-28 during the interview.

- Determine **whether** there is any indication that the application is not within the jurisdiction of the Asylum Office.
- Determine **when** the applicant claims to have entered the United States and when he or she filed the asylum application.

The Asylum Officer should be prepared to inquire into whether the applicant’s I-589 was filed in timely fashion, i.e., within one year of the last arrival into the United States, and whether an exception to that filing requirement may apply.

- Become familiar with the applicant’s background and claim.

The Asylum Officer must read the information on the I-589 and review any supporting documents.

An applicant may have submitted extensive background information on country of origin information. It is not necessary to review all of the information prior to the interview, as this can be very time-consuming. However, the Asylum Officer must look through the information and read any information that specifically pertains to the applicant or his or her claim.

- Identify issues to cover during the interview.

A review of the file allows the Asylum Officer to identify lines of questioning and

specific questions to ask during the interview.

- Determine whether the applicant may be in any “special status” (e.g., ABC, Mendez).

The procedures for handling certain cases, such as cases involving ABC class members, are different from other cases. Asylum Officers must be aware at the outset of the interview whether the case is governed by special procedures, in order to follow correct procedures.

- **Review country of origin information**

If the Asylum Officer is unfamiliar with country of origin information relevant to the applicant’s claim, the Asylum Officer should quickly look up basic conditions in that country, referring to the electronic database Refworld, annual Department of State human rights reports, or information in the office library. A review of country of origin information can assist the Asylum Officer to focus on relevant elements of a claim and disregard that which is irrelevant.

- **Review procedures, if necessary**

The Asylum Officer may find it necessary to review specific procedures prior to interviewing some applicants (e.g., ABC cases, sensitive cases), if he or she is unfamiliar with the particular procedures involved in interviewing these applicants.

### **ASM Supplement – Oath**

Applicants and any witnesses must be placed under oath prior to giving testimony. Some applicants may have religious objections to using the term “swear.” Other applicants may object to the phrase “so help me God.” The Asylum Officer must adapt the oath to accommodate the applicant, ensuring that the applicant understands that he or she is promising, under the law, to tell the truth.

The applicant must also sign a statement acknowledging that he or she swears or affirms to tell the truth and understands the penalties for misrepresentation. The applicant should not be made to sign the form without a brief explanation of the significance of the oath and the acknowledgement of the penalties for misrepresentation.

The interpreter must sign a statement (interpreter’s oath), which puts the interpreter under oath. At the Asylum Officer’s discretion, he or she may administer the oath to the interpreter in addition to having him or her sign the interpreter’s oath.

The interpreter monitor must also be placed under oath. The oath given to the interpreter monitor should be translated for the applicant by the applicant’s

interpreter.

- **Oaths if you suspect a national security risk**

If you have identified an individual who may be a national security risk, you must use Q&A format and take his or her testimony as a sworn statement [see RAIO Training module, *Interviewing – Note Taking*; AOBTC Lesson Plan, *Mandatory Bars to Asylum and Discretion*].

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**IO Supplement - Pre-Interview Preparation**

The following are examples of tools used in the interview process:

- Revised NCTC Check Requirements for Visas 92/93
- Naturalization NQP5 Checklists



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**GUIDANCE FOR ADJUDICATING  
LESBIAN, GAY, BISEXUAL,  
TRANSGENDER, AND INTERSEX  
(LGBTI) REFUGEE AND ASYLUM  
CLAIMS**

TRAINING MODULE

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## **GUIDANCE FOR ADJUDICATING LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) REFUGEE AND ASYLUM CLAIMS**

### **Training Module**

#### **MODULE DESCRIPTION:**

This module provides guidelines for adjudicating and considering immigration benefits, petitions, protections, or other immigration-related requests by lesbian, gay, bisexual, transgender, and intersex, (LGBTI) individuals. The module addresses the legal analysis of claims that involve LGBTI applicants as well as related interviewing considerations.

#### **FIELD PERFORMANCE OBJECTIVE(S)**

When interviewing in the field, you (the Officer) will elicit all relevant information from an LGBTI applicant to properly adjudicate and consider the immigration benefit, petition, protection, or other immigration-related request before you.

#### **INTERIM PERFORMANCE OBJECTIVES**

1. Summarize the developments in U.S. law that focus on LGBTI applicants.
2. Describe the types of harm that may be present in refugee and asylum claims involving LGBTI issues.
3. Describe how membership in a particular social group is analyzed when looking at the refugee or asylum claims involving LGBTI issues.
4. Identify factors to consider when evaluating evidence presented by LGBTI applicants.
5. Identify factors that may hinder an interview of an LGBTI applicant.
6. Identify methods and techniques to put an LGBTI applicant at ease during an interview.

7. Use sensitive questioning and listening techniques that aid in eliciting information from LGBTI applicants.

### **INSTRUCTIONAL METHODS**

- Interactive presentation
- Discussion
- Practical exercises

### **METHOD(S) OF EVALUATION**

- Multiple-choice exam
- Observed practical exercises

### **REQUIRED READING**

1. *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 - 23 (1990).
2. *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. United Nations High Commissioner for Refugees (UNHCR), Protection, Policy, and Legal Advice Section. Division of International Protection Services. Geneva, November 21, 2008, *available at* <http://www.unhcr.org/refworld/docid/48abd5660.html>.
3. Memorandum from Don Neufeld, Acting Associate Director, Domestic Operations and Lori Scialabba, Associate Director, Refugee, Asylum, and International Operations, *Adjudication of Petitions and Applications Filed by or on Behalf of Transsexual Individuals* (January 14, 2009).
4. Memorandum from William R. Yates, Associate Director for Operations, USCIS, *Adjudication of Petitions and Applications Filed by or On Behalf Of, or Document Requests by, Transsexual Individuals* (April 16, 2004).

#### **Division-Specific Required Reading - Refugee Division**

#### **Division-Specific Required Reading - Asylum Division**

#### **Division-Specific Required Reading - International Operations Division**

### **ADDITIONAL RESOURCES**

1. LGBTI-related Case Law



2. Immigration Equality, *Immigration Equality Asylum Manual*, available at <http://www.immigrationequality.org/issues/law-library/lgbth-asylum-manual/>.
3. Immigration Equality, *Immigration Equality Draft Model LGBT Asylum Guidance*, (2010), available at <http://www.immigrationequality.org/wp-content/uploads/2011/07/ImEq-Draft-Model-LGBT-Asylum-Guidance-2010.pdf>.
4. Human Rights Watch, *They Wanted Us Exterminated: Murder, Torture, Sexual Orientation, and Gender in Iraq*, August 17, 2009, available at <http://www.hrw.org/node/85050>.
5. Matt McAllester, "The Hunted," *New York Magazine*, October 4, 2009, available at <http://nymag.com/news/features/59695>.
6. Jason Burke and Afif Sarhan, "How Islamist Gangs Use Internet to Track, Torture and Kill Iraqi Gays," *The Guardian*, September 13, 2009, available at <http://www.guardian.co.uk/world/2009/sep/13/iraq-gays-murdered-militias>.
7. *Statement by the President on the UN Human Rights Council Resolution on Human Rights, Sexual Orientation, and Gender Identity*. The White House, Office of the Press Secretary, June 17, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/06/17/statement-president-un-human-rights-council-resolution-human-rights-sexu>.
8. Memorandum from David A. Martin, INS General Counsel, *Seropositivity for HIV and Relief From Deportation*, (Feb. 16, 1996).
9. International Gay and Lesbian Human Rights Commission (IGLHRC) *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa* (2011), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/484-1.pdf>.
10. Daniel Ottoson, The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State Sponsored Homophobia: A World Survey of Laws Prohibiting Same-Sex Activity between Consenting Adults* (2010), available at [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2010.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf).
11. American Psychiatric Association, *Therapies Focused on Attempts to Change Sexual Orientation: Reparative or Conversion Therapies Position Statement*, March 2000, available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200001.aspx>.
12. Victoria Neilson, *Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims*, 16 *Stanford Law & Policy Review* 417 (2005), available at <http://www.immigrationequality.org/wp-content/uploads/2011/08/Neilson-Website-Version-Lesbian-article.pdf>.

13. Ellen A. Jenkins, *Taking the Square Peg Out of the Round Hole: Addressing the Misclassification of Transgender Asylum Seekers*, 40 Golden Gate U.L. Rev. (2009), available at <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=2008&context=ggulre> v.

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

SOURCE: The Tasks listed below are from the Asylum Division's 2001 Revalidation. These tasks will need to be modified to reflect the results of the RAIO Directorate – Officer Training Validation study.

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR9	Knowledge of policies and procedures for processing lesbian, gay, bisexual and transgender (LGBT) claims (3)
ILR14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
ILR20	Knowledge of the criteria for refugee classification (4)
ILR21	Knowledge of the criteria for establishing a well-founded fear (WFF) (4)
ILR22	Knowledge of the criteria for establishing credibility (4)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK5	Knowledge of strategies and techniques for communicating with survivors of torture and other severe trauma (4)
ITK6	Knowledge of principles of cross-cultural communication (e.g., obstacles, sensitivity, techniques for communication) (4)
ITK8	Knowledge of policies, procedures and guidelines for working with an interpreter (4)
RI1	Skill in identifying issues of claim (4)
RI2	Skill in identifying the information required to establish eligibility (4)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
ITS3	Skill in framing interview questions and requests for information (4)
ITS4	Skill in asking appropriate follow-up questions (4)
ITS6	Skill in conducting non-adversarial interviews (4)
ITS8	Skill in confronting applicant with credibility issues (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>

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

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

## 1 INTRODUCTION

It has been over 20 years since Fidel Armando Toboso Alfonso, a gay man from Cuba, was granted withholding of deportation in the United States based on his sexual orientation.<sup>1</sup> The *Toboso-Alfonso* decision paved the way for hundreds of lesbian, gay, bisexual, and transgender individuals as well as individuals with intersex conditions (LGBTI) to obtain refugee and asylum status in the United States. Recently, the United Nations marked another “significant milestone in the long struggle for equality, and the beginning of a universal recognition that LGBT[I] persons are endowed with the same inalienable rights – and entitled to the same protections – as all human beings”<sup>2</sup> by passing a Resolution on Human Rights, Sexual Orientation, and Gender Identity. The increasing number of refugee and asylum (protection) claims related to LGBTI and HIV-positive status has resulted in the need for greater awareness of the issues involved in these claims and training on their adjudication.<sup>3</sup>

Interviews with LGBTI or HIV-positive refugee and asylum applicants require the individual “to discuss some of the most sensitive and private aspects of human identity and behavior”<sup>4</sup> – sexual orientation, gender identity, and life-threatening illness. These topics may be particularly difficult for applicants to discuss with government officials and may also be uncomfortable for the interviewer to discuss.<sup>5</sup>

<sup>1</sup> *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 - 23 (1990).

<sup>2</sup> *Statement by the President on the UN Human Rights Council Resolution on Human Rights, Sexual Orientation, and Gender Identity*. The White House, Office of the Press Secretary, June 17, 2011.

<sup>3</sup> *UNHCR Guidance Note On Refugee Claims Relating to Sexual Orientation and Gender Identity*, paragraph 12, UNHCR, Geneva, 20 November 2008.

<sup>4</sup> *Immigration Equality Draft Model LGBT Asylum Guidance*, Immigration Equality 2010.

<sup>5</sup> *See Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

All Officers in the RAIO Directorate should be familiar with the contents of this training module as it constitutes primary field guidance for interviewing LGBTI applicants and analyzing their claims. This module seeks to: 1) increase awareness about the issues sexual minorities face; 2) foster discussion about LGBTI issues; and, 3) provide consistent legal and interview guidance regarding these issues.

The RAIO LGBTI Training Module is the result of a collaborative effort between USCIS and non-governmental organizations (NGOs).

The module first addresses the legal issues you, the Interviewing Officer, must consider when analyzing cases and making protection determinations. Second, because establishing eligibility for refugee and asylum status presents its own challenges, the module covers the factors you must take into account when interviewing LGBTI individuals. Third, the module addresses proper techniques for assessing credibility.

### *A Note about Terminology*

The terminology involving LGBTI issues is still evolving. For purposes of this module, the term "sexual minorities" and the acronym "LGBTI" are used interchangeably as umbrella terms to refer to issues involving sexual orientation, gender identity, and intersex conditions. The following are some essential LGBTI definitions. For a more comprehensive set of definitions, please click the hyperlink to the [LGBTI Glossary](#) located in the "Other Materials" section of this module.

The use of the term homosexual is limited in this module. It has a somewhat derogatory connotation within the LGBTI community as it has historically been used in a medical context to describe being gay or lesbian as an illness.<sup>6</sup>

Sexual orientation is the emotional, physical, and romantic attraction a person feels towards another person.<sup>7</sup> The term gay is used to mean men who are attracted to men. The term lesbian is used to mean women who are attracted to women, although homosexual women also sometimes use the term gay to describe themselves. The term heterosexual or straight is used to mean men or women who are attracted to the opposite sex. The term bisexual is used to mean men or women who are attracted to both sexes.

Gender is what society values as the roles and identities of being male or female. Sex is the assignment of one's maleness or femaleness on the basis of anatomy and reproductive organs. Gender and sex are assigned to every individual at birth. Gender identity is an individual's internal sense of being male, female, or something else. Since gender

<sup>6</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>7</sup> For more information about sexual orientation, see American Psychological Association (APA), *Answers to Your Questions: A Better Understanding of Sexual Orientation and Homosexuality*, (2008), available at <http://www.apa.org/pubinfo/answers.html>.



identity is internal, one's gender identity is not necessarily visible to others. Gender expression is how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.<sup>8</sup> Transgender is a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth. Some transgender people dress in the clothes of the opposite gender; others undergo medical treatment, which may include taking hormones and/or having surgery to alter their gender characteristics.

Intersex refers to a condition in which an individual is born with a reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit typical definitions of male or female. The conditions that cause these variations are sometimes grouped under the terms "intersex" or "DSD" (Differences of Sex Development). Individuals with these conditions were previously referred to as "hermaphrodites," but this term is considered outmoded and should not be used unless the applicant uses it. These conditions may be apparent at birth, may appear at puberty, or may be discovered in a medical examination. Intersex is not the same as transgender, although an intersex person may identify themselves as transgender. Keep in mind that an intersex person may identify as male or female, and as lesbian, gay, bisexual, or heterosexual.<sup>9</sup>

Transgender is a gender identity, not a sexual orientation. Thus, like any other man or woman, a transgender person may have a heterosexual, bisexual or homosexual sexual orientation.

It is also important to be familiar with the issues and terminology related to the Human Immunodeficiency Virus (HIV) and AIDS. USCIS has encountered claims from applicants who fear persecution because they were incorrectly perceived as gay, based on the fact that they were HIV-positive. We have also encountered claims where the persecutor incorrectly assumed that the applicant was HIV-positive based on the fact that the applicant was gay or was perceived to be gay. Because such claims involve overlapping and related issues, they are being addressed within the same module.

A person who was exposed to HIV and developed anti-bodies to the virus is HIV-positive.<sup>10</sup> AIDS, or Acquired Immunodeficiency Syndrome, describes people with HIV who have either experienced certain infections or whose T-cells (infection fighting blood cells) have dropped below 200. Not everyone who is HIV-positive has AIDS, but everyone who has AIDS is HIV-positive.<sup>11</sup> HIV is not spread by casual contact. It is

<sup>8</sup> For more information on transgender identity, see [http://transequality.org/Resources/NCTE\\_TransTerminology.pdf](http://transequality.org/Resources/NCTE_TransTerminology.pdf) and [http://transequality.org/Resources/NCTE\\_UnderstandingTrans.pdf](http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf) (National Center for Transgender Equality.)

<sup>9</sup> For more information on intersex conditions, see the Advocates for Informed Choice website at [www.aiclegal.org](http://www.aiclegal.org).

<sup>10</sup> For more information about HIV see <http://www.gmhc.org/learn/hivaids-basics>, (Gay Men's Health Crisis website).

<sup>11</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, Immigration Equality 2004.

only spread through contact with bodily fluids primarily through sex or sharing intravenous needles.

## 2 LEGAL ANALYSIS – OVERVIEW

This module does not expand the statutory definition of a refugee. The legal criteria used to evaluate an LGBTI applicant's eligibility for asylum or refugee status are the same criteria used in all other protection adjudications. However, because LGBTI applicants' experiences are often different from those of others, it is useful to discuss how these experiences fit into the legal framework of established refugee and asylum law.

## 3 LEGAL ANALYSIS – NEXUS AND THE FIVE PROTECTED GROUNDS

As explained in greater detail in the RAIO training module, *Nexus and the Five Protected Grounds*, to be eligible for asylum or refugee status, the applicant must establish that the persecution suffered or feared was or will be motivated "on account of" his or her actual or imputed possession of a protected characteristic. This is known as the nexus requirement and it applies equally to LGBTI applicants. The type of harm that may constitute persecution in the context of LGBTI claims will be discussed later in this module.

Depending on the facts of the case, claims relating to sexual orientation and gender identity are primarily recognized under membership in a particular social group (PSG) but may overlap with other grounds, in particular religion and political opinion.<sup>12</sup>

The nexus analysis first requires consideration of whether the persecutor perceives the applicant as possessing a protected characteristic (either because the applicant does possess it or because the persecutor imputes it to the applicant); then whether the persecutor acted or would act against the applicant because of the persecutor's perception of that protected characteristic.

### 3.1 Membership in a Particular Social Group – Defining the Group

When deciding if the persecutor perceives in an applicant an actual or imputed characteristic that can define a cognizable PSG, you must first identify the characteristics that the persecutor perceives; then explain why individuals with those characteristics form a PSG within the meaning of the refugee definition. This is often referred to as "framing the PSG."

#### 3.1.1 Possession or Imputed Possession of a Protected Characteristic

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<sup>12</sup> See *Matter of S-A-*, 21 I & N Dec. 1050; *Pitcherskaia v. INS*, 118 F.3d 641 (9<sup>th</sup> Cir. 1997).

To determine whether a group to which the applicant belongs may be considered a PSG, first determine whether there are any precedent decisions that analyze similar facts and rely on any such decisions to reach a conclusion. As mentioned previously, in 1990, the Board of Immigration Appeals (BIA) in *Matter of Toboso-Alfonso*, recognized persons identified as homosexuals by the Cuban Government as a PSG.<sup>13</sup> Toboso-Alfonso was a gay man who was subjected to detention and forced labor by the Cuban government for being gay.

Four years later, the U.S. Attorney General designated *Toboso-Alfonso* "as precedent in all proceedings involving the same issue or issues."<sup>14</sup>

While the BIA has not specifically ruled on claims by other sexual minorities, many U.S. Circuit Courts of Appeals have. Claims involving actual or imputed sexual minority status may qualify under the PSG category and may involve applicants who:

- identify as gay or lesbian<sup>15</sup>
- are viewed as a sexual minority, regardless of whether the persecutor or society involved distinguishes between sexual orientation, gender, and sex.
- are transgender<sup>16</sup> (note that even if a transgender applicant identifies as heterosexual, he or she may be perceived as gay or lesbian)
- are "closeted" gays and lesbians
- test positive for HIV, regardless of their sexual orientation<sup>17</sup>
- are viewed as "effeminate" or "masculine" but identify as heterosexual
- are not actually gay but are thought to be gay by others<sup>18</sup>
- are from throughout the world, not just Cuba<sup>19</sup>

For a comprehensive list of court cases involving LGBTI asylum and refugee issues, click LGBTI-Related Case Law found in the "Other Materials" section of this module.

### 3.1.2 Particular Social Group – Immutable or Fundamental Characteristic

To determine if an applicant is a member of a PSG, you must decide whether:

<sup>13</sup> See *Toboso-Alfonso*.

<sup>14</sup> Attorney General, Order number 1895 (June 19, 1994).

<sup>15</sup> See, e.g., *Karouni v. Gonzales*, 399 F.3d 1163 (9<sup>th</sup> Cir. 2005); *Pitcherskaia v. INS*, 118 F.3d 641 (9<sup>th</sup> Cir. 1997); *Nabulawala v. Gonzales*, 481 F.3d 1115 (8<sup>th</sup> Cir. 2007).

<sup>16</sup> *Hernandez-Montiel v. INS*, 225 F.3d 1088 (9<sup>th</sup> Cir. 2000).

<sup>17</sup> *Seropositivity for HIV and Relief From Deportation*, Memorandum. David A. Martin, INS General Counsel. (Feb. 16, 1996).

<sup>18</sup> *Amanfi v. Ashcroft*, 328 F.3d 719 (3<sup>rd</sup> Cir. 2003).

<sup>19</sup> This will depend on country of origin information. LGBTI claims are put forward from all over the world.

the group is comprised of individuals who share a common, innate characteristic – such as sex, color, kinship ties, or past experience – that members cannot change,

or

whether the group is comprised of individuals who share a characteristic that is so fundamental to the members' identity or conscience that they should not be required to change it.<sup>20</sup>

Sexual orientation, gender identity, and having an intersex condition can be classified as either innate or fundamental. They are characteristics that an individual cannot change about him or herself or should not be required to change.<sup>21</sup> Most experts agree that sexual orientation - whether heterosexual, lesbian, or gay - is set in place early in life and is highly resistant to change. Also keep in mind that it has been over 30 years since the American Psychiatric Association (APA) revised its Diagnostic and Statistical Manual (DSM) to remove any references to homosexuality being an illness or a diagnosable mental disorder.<sup>22</sup> In the case of a transgender person, he or she either cannot change or should not be required to ignore the inner feelings that his or her gender identity does not match his or her biological sex at birth. Even if these traits could somehow be changed, they are traits that are so fundamental to a person's identity that he or she should not be required to change them.

Harm imposed because an applicant was mistakenly perceived as belonging to a sexual minority may also qualify as "on account of" a protected ground.

### 3.1.3 Particular Social Group – Visibility

When analyzing the PSG issue, you must not only make a finding regarding immutability or fundamentality, you must also determine social visibility or social distinction, i.e., whether the actual or imputed characteristic is "easily recognizable and understood by others to constitute a social group."<sup>23</sup> Some adjudicators mistakenly believe that social visibility or distinction requires that the applicant "look gay or act gay." See *Burden of Proof and Evidence, Credibility-Plausibility* section below. In this context, social visibility or distinction does not mean visible to the eye. Rather, this means that the society in question distinguishes individuals who share this trait from individuals who do not.

<sup>20</sup> *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

<sup>21</sup> See *Matter of Toboso-Alfonso* at 822.

<sup>22</sup> *Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM-II*, 6<sup>th</sup> Printing, page 44, Position Statement (retired). American Psychiatric Association, 1973.

<sup>23</sup> *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006).

In *Matter of C-A-*, the BIA lists men recognized as homosexuals by the government as an example of a social group that involves a characteristic that is "highly visible and recognizable by others in the country in question."<sup>24</sup> Although *C-A-* was discussing the PSG as formulated in *Toboso-Alfonso*, which involved the applicant's registration as a homosexual by the Cuban government, formal registration or recognition by a government is not required for a PSG.

For purposes of the "social visibility" analysis, you must examine the evidence, including country conditions, to determine whether the society in question distinguishes sexual minorities from other individuals in a meaningful way. While government registration of individuals as homosexuals would establish social visibility, it would not be required. Information about discriminatory attitudes or behavior toward sexual minorities would also be an example of evidence of social visibility.

### Possible PSG Formulations

It is important to remember that, in order to conduct an accurate assessment of nexus, a PSG should not be formulated too broadly or too narrowly. Rather, it should refer to the trait that the persecutor perceives the applicant to possess.

Because LGBTI claims involve individuals with a variety of characteristics, and because the persecutors in given cases may perceive the applicants' traits in a variety of ways, the appropriate PSG formulation will depend on the facts of the case, including evidence about how the persecutor and the society in question view the applicant and people like the applicant.

Consider the following as possible ways to formulate the PSG:

- Sexual minorities in Country X. This may be an appropriate PSG in cases where the persecutor in question perceives any sexual minority as "outside the norm" but does not necessarily distinguish between orientation, gender, and sex. It might also be appropriate where there are a variety of traits involved in the claim, but the persecutor's animus toward those different traits stems from a more general animus toward all sexual minorities. This might be the case, for example, in a situation where an applicant has an intersex condition or has undergone Sex Reassignment Surgery (SRS) in the United States after having been harmed in the past for simply being perceived as gay. This prevents the need to analyze past and future harm for two separate PSGs when past and future harm are both based on the applicant's sexual minority status. (Example: "sexual minorities in Mexico" in lieu of "transgender Mexican women perceived as homosexual Mexican men cross dressing as women.");
- Gay, lesbian, transgender, or HIV-positive (choose one) / men or women

<sup>24</sup> *Matter of C-A-* at 960.

(choose one) / from Country X (choose one) (Example: “Lesbian women from Uganda.”); or

- Men or women (choose one) / from Country X (choose one) / imputed to be gay, lesbian, transgender, or HIV-positive (choose one) (Example: “men from Ghana imputed to be gay.”)

## 3.2 “On Account Of”/Nexus

### 3.2.1 The Persecutor’s Motive and the Applicant’s Experience

The “on account of” requirement focuses on the motivation of the persecutor. The persecutor in most LGBTI cases seeks to harm the individual based on the individual’s perceived or actual sexual orientation, on the persecutor’s belief that the applicant transgresses traditional gender boundaries, or on the persecutor’s more general animus toward sexual minorities of any kind. In some situations, the persecutor may have been trying to “cure” the applicant of his or her sexual orientation or gender identity.<sup>25</sup> Most persecutors may not have been making the distinction between gay, lesbian, bisexual, transgender, intersex, or HIV-positive. They may simply have harmed or want to harm the applicant based on their perception that the applicant is gay or a sexual minority that is “outside the norm.”

The applicant must provide some evidence, direct or circumstantial, that the persecutor is motivated to act against the applicant because he or she possesses or is believed to possess one or more of the protected characteristics in the refugee definition.<sup>26</sup> For example, in an LGBTI claim, you would consider evidence that the persecutor harmed or tried to correct the applicant because the persecutor knows or believes the applicant belongs to a sexual minority.

This evidence may include the applicant’s testimony regarding:

- what the persecutor said or did to the applicant
- what the persecutor said or did to others similar to the applicant
- the context of the act of persecution (for example, if the applicant was attacked in a gay bar or while holding hands with a same-sex partner)
- reliable Country of Origin Information (COI) that corroborates such testimony

It is critical that you ask the applicant questions about what the persecutor may

<sup>25</sup> *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Pitcherskaia v. INS*.

<sup>26</sup> *Elias-Zacarias*, 502 U.S. 478 (1992).

have said to him or her when the harm was inflicted or when the threats were made.

As with other types of refugee or asylum claims, there is no malignant intent required on the part of the persecutor, as long as the applicant experiences the abuse as harm.<sup>27</sup> State and non-state actors may inflict harm on LGBTI persons with the intention of curing or treating them, for example, through what is effectively medical abuse or forced marriage.<sup>28</sup> (See *Types of Harm That May Befall Sexual Minorities, Forced Psychiatric or Other Efforts to "Cure" Homosexuality* below.)

### 3.2.2 Prosecution vs. Persecution

The U.S. Supreme Court has made it clear that intimate sexual activity between consenting adults is a constitutionally protected activity.<sup>29</sup> This Constitutional principle, while not directly applicable to the analysis of an asylum claim, is consistent with the recognition that punishing conduct or sexual activity between consenting adults of the same sex is tantamount to punishing a person simply for being gay. If a law exists in another country that prohibits intimate sexual activity between consenting adults, enforcement of the law itself may constitute persecution and not simply prosecution.

## 4 LEGAL ANALYSIS – PERSECUTION AND ELIGIBILITY BASED ON PAST PERSECUTION

In evaluating whether harm constitutes persecution in an LGBTI-related case, you should consider the same factors as in any other protection case. The relevant considerations are: 1) does the harm rise to the level of persecution; and 2) is the persecutor the government or an individual or entity from which the government is unable or unwilling to provide reasonable protection?

Because the amount of harm that rises to the level of persecution is discussed in detail in the RAIO training module, *Refugee Definition, Definition of Persecution, and Eligibility Based on Past Persecution*, this section focuses on the types of harm directed at sexual minorities.

In asylum processing, if the applicant establishes past persecution on account of one of the five protected grounds, he or she is presumed to have a well-founded fear of persecution in the future. The burden then shifts to USCIS to show that there has been a fundamental change in circumstances or that the applicant can reasonably relocate within the country of origin. If USCIS does not meet this

<sup>27</sup> *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

<sup>28</sup> *Pitcherskaia v. INS*.

<sup>29</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

burden, it must be concluded that the applicant's fear is well-founded.

To be eligible for resettlement as a refugee in the United States, an applicant must establish either past persecution or well-founded fear of persecution on account of a protected ground.<sup>30</sup> Therefore, in general, a refugee applicant who is found to have suffered past persecution but who does not have a well-founded fear of future persecution is still able to establish that he or she meets the refugee definition. There is no rebuttable presumption or burden shifting as there is in asylum processing.

#### 4.1 Types of Harm That May Befall Sexual Minorities

The types of harm directed at LGBTI applicants vary and include the same types of harm that are directed at other applicants. LGBTI individuals, however, may be more vulnerable to some types of harm than other applicants and may be subject to harm unique to them.<sup>31</sup>

When considering whether harm will amount to persecution, you must not only consider the objective degree of harm or whether the harm rises to the level of persecution, but also whether the applicant personally experienced or would experience the act(s) as serious harm.<sup>32</sup> You must evaluate the opinions and feelings of each applicant individually. Because each case is unique and each applicant has his or her own psychological makeup, interpretations of what amounts to persecution vary widely.<sup>33</sup>

While discrimination is often a fundamental part of claims made by LGBTI individuals, applicants also frequently reveal having experienced serious physical and sexual violence. These incidents of harm must be assessed in their totality. They must be analyzed in light of prevailing attitudes with regard to sexual orientation and gender identity in the country of origin.<sup>34</sup>

#### Violation of Fundamental Rights

<sup>30</sup> INA § 101(a)(42)

<sup>31</sup> UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity.

<sup>32</sup> See RAO training module, *Refugee Definition, Definition of Persecution, and Eligibility Based on Past Persecution*, "Whether the Harm Experienced Amounts to Persecution, General Considerations, Individual Circumstances."

<sup>33</sup> *Id.* and UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paragraphs 40, 51, and 52, reedited Geneva, January 1992.

<sup>34</sup> UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, paragraph 12.



Being compelled to abandon or conceal one's sexual orientation or gender identity, where this is instigated or condoned by the state, may amount to persecution.<sup>35</sup> LGBTI persons who live in fear of being publicly identified often conceal their sexual orientation in order to avoid the severe consequences of such exposure - including the risk of incurring harsh criminal penalties, arbitrary arrests, physical and sexual violence, dismissal from employment, and societal disapproval.

### Criminal Penalties

In some countries, homosexuality is criminalized and, "if discovered by the authorities, a lesbian or gay man may be arrested or imprisoned based on her or his sexual orientation."<sup>36</sup>

In some countries, individuals accused of consensual sex with a member of the same sex may be subject to prosecution and even death.<sup>37</sup> For example, in Mauritania any Muslim male who engages in a sexual act with another male is subject to death by stoning; in Kenya, the Penal Code explicitly states that engaging in a consensual sexual act between two men is a felony and punishable by up to imprisonment for five years.<sup>38</sup>

In other countries, there may not be laws that actually prohibit homosexuality, but authorities may still persecute people because of their sexual orientation.<sup>39</sup> Thus, applicants have been arrested, detained, beaten, sexually assaulted, and/or forced to pay bribes by police or army officials because of their sexual orientation, even if a non-discriminatory legal basis is used as a pretext for the action.<sup>40</sup>

### Rape and Sexual Violence

Because LGBTI people are often perceived as undermining gender norms, they are at heightened risk for sexual violence in many countries.<sup>41</sup> Rape and sexual assault are types of harm that rise to the level of persecution.<sup>42</sup> Other types of sexual violence, for example being forced to perform sexual acts upon another, may also constitute

<sup>35</sup> *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993); See also, *Karouni v. Gonzales* (9th Cir. 2005) and UNHCR *Sexual Orientation Guide Note*, paragraph 12.

<sup>36</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, Immigration Equality 2004.

<sup>37</sup> <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119115.htm>

<sup>38</sup> *State Sponsored Homophobia: A World Survey of Laws Prohibiting Same-Sex Activity between Consenting Adults*. Daniel Ottoson. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 2010.

<sup>39</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>40</sup> *Maldonado v. Attorney General*, 188 Fed. Appx. 101, 103 (3d Cir. 2006). See also *Nowhere to Turn: Blackmail and Extortion Of LGBT People in Sub-Saharan Africa*. International Gay and Lesbian Human Rights Commission IGLHRC.

<sup>41</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>42</sup> *Nabulwala v. Gonzales*.

persecution.<sup>43</sup> Some applicants may have been raped as a measure to “correct” their behavior or status or as a means of punishing them for being gay or “outside the norm.”

### Beatings, Torture, and Inhumane Treatment

Many LGBTI people are subjected to severe forms of physical violence. An applicant may have been the victim of repeated physical violence that the police never investigated or that the police themselves perpetrated.<sup>44</sup> Many applicants have been seriously harmed by members of their own family.<sup>45</sup>

Claims made by LGBTI persons often reveal exposure to physical and sexual violence, extended periods of detention, medical abuse, the threat of execution, and honor killing. Generally, these are acts of harm that would rise to the level of persecution.

LGBTI individuals can also experience other forms of physical and psychological harm, including harassment, threats of harm, vilification, intimidation, and psychological violence that can rise to the level of persecution, depending on the individual circumstances of the case and the impact on the particular applicant.

### Forced Medical Treatment

The case of an individual with an intersex condition may involve the applicant's fear or history of non-consensual surgery and other non-consensual medical treatment. In other cases, the applicant's fear may involve the lack of medical care in their home country.

### Forced Psychiatric Treatment or Other Efforts to “Cure” Homosexuality

Many cultures see homosexuality as a disease, a mental illness, or a severe moral failing. Forced efforts to change an individual's fundamental sexual orientation or gender identity would generally rise to the level of persecution.<sup>46</sup> The American Psychiatric Association (APA) has stated that efforts to “convert” gay people to being heterosexual are unethical and ineffective.<sup>47</sup> Forced institutionalization, electroshock, and forced drug injections could constitute persecution. It is important to remember that there is no requirement that harm be inflicted with the intent to harm the victim.<sup>48</sup> Rather, you should assess whether it is objectively serious harm and was experienced as serious harm by the applicant.

<sup>43</sup> *Ayala v. U.S. Atty Gen.*, 605 F.3d 941 (11 Cir. 2010).

<sup>44</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>45</sup> *Ixtlilco-Morales v. Keisler*, 507 F.3d 651 (8th Cir. 2007). See also *Nabulwala v. Gonzales*

<sup>46</sup> *Pitcherskaia v. INS*.

<sup>47</sup> *Therapies Focused on Attempts to Change Sexual Orientation: Reparative or Conversion Therapies Position Statement*. American Psychiatric Association, March 2000.

<sup>48</sup> See *Matter of Kasinga* and *Pitcherskaia v. INS*.

## Discrimination, Harassment, and Economic Harm

Many LGBTI people are disowned by their families if their sexual orientation or transgender identity becomes known.<sup>49</sup> It is important to consider such mistreatment within the context of the applicant's culture. In many countries it is virtually impossible for an unmarried person to find housing outside of his or her family home. Likewise, in many cultures it would be impossible for a woman to find employment on her own. In such cultures, being disowned by one's family in and of itself could be found to rise to the level of persecution, since it would have such severe consequences.

Some applicants may have been threatened by neighbors or had their property vandalized. Others may have been repeatedly fired from jobs and found it impossible to engage in any form of employment once their sexual orientation became known. While being fired from a job generally is not considered persecution, if an individual can demonstrate that his or her LGBTI status would make it impossible to engage in any kind of gainful employment, this may constitute persecution. For example, in many countries transgender people face such severe discrimination that the only way they can survive is by engaging in prostitution.

Discrimination and harassment may amount to persecution if cumulatively they are sufficiently severe.<sup>50</sup> This may be the case, for example, where an LGBTI person is consistently denied access to normally available services in his or her private life or workplace, such as education, welfare, health, and access to the courts.

## Forced Marriage

LGBTI persons may be unable to engage in meaningful relationships, be forced into arranged marriages, or experience extreme pressure to marry.<sup>51</sup> They may fear that failure to marry will reveal them to be LGBTI to their family and to the public at large. Societal and cultural restrictions that require them to marry individuals in contravention of their sexual orientation may violate their fundamental right to marry and may rise to the level of persecution.<sup>52</sup> For instance, a lesbian who has no physical or emotional attraction to men and is forced to marry a man may experience this as persecution. Likewise, a gay man who is in no way attracted to women who is forced to marry a woman may experience this as persecution.

## Gender-Based Mistreatment

<sup>49</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>50</sup> *Kadri v. Mukasey*, 543 F.3d 16 (1st Cir. 2008); *Matter of T-Z*, 24 I&N Dec. 163, 169-71 (BIA 2007) (adopting the standard applied in *Matter of Laipenieks*, 18 I&N Dec. 433 (BIA 1983), rev'd on other grounds, 750 F.2d 1427 (9th Cir. 1985).

<sup>51</sup> *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* at paragraph 13.

<sup>52</sup> *Id.*

Lesbians often experience harm as a result of their gender as well as their sexual orientation. The types of harm that a lesbian may suffer will frequently parallel the harms in claims filed by women in general more closely than the harms in gay male asylum claims.<sup>53</sup> Likewise, before “coming out,” transgender men are generally raised as girls and may experience the same types of harm. In many parts of the world persecution faced by lesbians may be less visible than that encountered by gay men. Lesbians and transgender women may be particularly vulnerable to rape by attackers who wish to punish them for their sexual identity. This can include retaliation by former partners or husbands.

Transgender individuals may be more visible and may be viewed as transgressing societal norms more than gay men or lesbians. Therefore, they may be subject to increased discrimination and persecution.<sup>54</sup>

## 4.2 Agents of Persecution

The second step in the analysis of whether harm constitutes persecution is to determine if the agent of persecution is the government or a nongovernment actor. It is well established that an applicant can qualify for refugee or asylum status whether the persecutor is the government or an individual or entity from whom the government is unable or unwilling to provide reasonable protection. In LGBTI cases this may include governmental agents of persecution such as the police, military, or militias. Family, relatives, neighbors, and other community members are examples of non-governmental agents of persecution.

## 4.3 Internal Relocation

The issue of internal relocation arises when determining whether an applicant has established a well-founded fear or, in the context of asylum, whether the presumption of a well-founded fear is rebutted by the reasonable possibility of internal relocation. In the asylum context, once an applicant has established past persecution, the burden then shifts to the Government to show that internal relocation is reasonable. In cases where the persecutor is a government or government sponsored, there is a presumption that internal relocation is not reasonable. In some cases there may be evidence to rebut that presumption, such as, for example, evidence that the government's authority is limited to certain parts of the country.<sup>55</sup> Homophobia, “whether expressed in laws or people’s attitudes and behavior, often tends to exist nationwide.”<sup>56</sup> A law of general application, such as a penal code that criminalizes homosexual conduct, which is enforceable in the

<sup>53</sup> See Victoria Neilson, *Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims*, 16 Stanford Law & Policy Review 417 (2005).

<sup>54</sup> Ellen A. Jenkins, *Taking the Square Peg Out of the Round Hole: Addressing the Misclassification of Transgender Asylum Seekers*, 40 Golden Gate U.L. Rev. (2009).

<sup>55</sup> *Id.*

<sup>56</sup> UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* at paragraph 33.

place of persecution, would normally also be enforceable in other parts of the country of origin.<sup>57</sup>

Where a nongovernmental actor is the persecutor, the government's inability or unwillingness to protect the applicant in one part of the country may also be evidence that it is unwilling or unable to do so in other parts of the country.<sup>58</sup> It is not reasonable to expect an applicant to suppress his or her sexual orientation or gender identity through internal relocation. He or she should not have to depend on anonymity to avoid the reach of the persecutor. While a major capital city "in some cases may offer a more tolerant and anonymous environment, the place of relocation must be more than a 'safe haven.'" The applicant must also be able to access a minimum level of political, civil, and socioeconomic rights.<sup>59</sup> Thus, he or she must be able to access the protection in a genuine and meaningful way. The existence of LGBTI-related nongovernmental organizations does not in itself provide protection from persecution.

## 5 LEGAL ANALYSIS – WELL-FOUNDED FEAR

LGBTI-specific issues may also arise in cases where the applicant has not experienced past persecution but may nevertheless have a well-founded fear of persecution. Because well-founded fear is discussed in detail in the AOTC and ROTC *Well-Founded Fear* lessons, this section focuses on common well-founded fear issues raised in LGBTI claims.

### 5.1 Objective Elements

An applicant may qualify for asylum or refugee status even if he or she was not persecuted in the past but has a well-founded fear of future persecution. To establish well-founded fear, the applicant must have a subjectively genuine fear and an objectively reasonable fear of return.

The existence of certain objective elements in a particular claim will not necessarily undermine the applicant's subjective fear or credibility. For example, just because a country permits an LGBTI organization to exist or allows an annual public LGBTI event does not mean that LGBTI people are free from ongoing violence and harm in that country.

Some countries with laws that state that their citizens and nationals are guaranteed religious, political, or other freedoms often do not enforce these protections. Similarly some countries have anti-discrimination laws that seemingly protect LGBTI individuals, but in reality the laws are not enforced or are openly flouted.

<sup>57</sup> *Id.*

<sup>58</sup> UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* at paragraph 34.

<sup>59</sup> *Id.*

## 5.2 Fear of Future Persecution

LGBTI applicants who were forced to conceal their sexual orientation in their home countries in order to avoid harm might not have experienced injuries that rise to the level of persecution.<sup>60</sup> These applicants need not show that the persecutor knew about their sexual orientation before leaving, only that the persecutor may become aware of it if they return.

## 5.3 Refugees *Sur Place*

A *sur place* claim for refugee status may arise as a consequence of events that have occurred in the applicant's country of origin since his or her departure, or as a consequence of the applicant's activities since leaving his or her country of origin. This may also occur where he or she has been "outed" to members of his or her family back home or where his or her LGBTI status or views on sexual orientation have been publicly expressed, for example by taking part in advocacy campaigns, demonstrations, or other human rights activism on behalf of LGBTI individuals.

Additionally, LGBTI applicants might have left the country of origin for a reason other than their sexual orientation, for example to pursue employment and educational opportunities in the United States and have "come out" after arrival in the country of asylum or first asylum. These applicants may qualify for refugee or asylum status if they can demonstrate a well-founded fear of future persecution.

You should carefully consider whether the applicant's sexual orientation or gender identity may come to the attention of the authorities or relatives in the country of origin and the ensuing risk of persecution. Keep in mind that in making this analysis, it is not appropriate to assume that an individual who is lesbian, gay, or bisexual could "go back in the closet" or that a transgender individual who is living in their "corrected gender" could go back to "passing."<sup>61</sup>

As with all claims based solely on a fear of future persecution, the claim must meet the four elements in the *Mogharrabi* test. See *RAIO training module Well-Founded Fear*.

In the asylum context, there are some one-year filing deadline issues that may arise specifically in the context of LGBTI *sur place* claims. See *Asylum Supplement - One-Year Filing Deadline* below.

## 6 INTERVIEW CONSIDERATIONS

It is important to create an interview environment that allows applicants to freely discuss the elements and details of their claims and to identify issues that may be related to

<sup>60</sup> UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* at paragraph 23.

<sup>61</sup> *Id.*

sexual orientation or imputed sexual orientation. Like most gender-based claims, LGBTI claims involve very private topics that are difficult for applicants to talk about openly. LGBTI applicants may hesitate to talk about past experiences and may be afraid they will be harmed again because of their actual or perceived sexual orientation or gender identity. For many, it will be very difficult to talk about something as private as sexual orientation, gender identity, or HIV-positive status. Furthermore, you, yourself may feel uncomfortable discussing some of these issues. It is therefore especially important for you to create an interview environment that is open and non-judgmental.<sup>62</sup>

This section should be considered along with the guidance contained in the RAIIO *Interviewing* modules, which also address issues related to sexual minorities.

The following may help you interact more meaningfully with LGBTI applicants during an interview.

## **6.1 Pre-Interview Considerations**

### **6.1.1 File Review**

Before the interview, when you review each file, be mindful of any LGBTI-related issues in the claim. Due to the delicate and personal issues that surround sexual abuse, sexual orientation, and gender identity, some applicants may have inhibitions about disclosing past experiences to an interviewer of a particular sex. Some LGBTI applicants may be more comfortable discussing their experiences with Officers of a particular gender, particularly in cases involving rape, sexual abuse, or other sexual violence.

To the extent that personnel resources permit, an applicant's request for an interviewer of a particular sex should be honored. If a pre-interview review of the file indicates that the case may involve sensitive LGBTI-related issues, you may consult with your supervisor or team leader prior to the interview to evaluate whether it would be more appropriate for an Officer of a different sex to conduct the interview.

### **6.1.2 How the Presence of Family and Relatives May Affect the Interview**

For a variety of reasons, the presence of relatives may help or impede an applicant's willingness to discuss LGBTI-related persecutory acts or fears. For example:

- The applicant's relatives may not be aware of the harm he or she experienced. He or she may wish that the relative remain unaware of those experiences or may be ashamed to say what he or she has experienced or fears in front of a relative. In addition, the applicant's claim may be based, in part, on fear of the relative who is present.

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<sup>62</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

- Or, the applicant may want a family member or significant other present during the interview. Sometimes having a loved one present can provide support to the applicant when recounting traumatic events.<sup>63</sup>

Therefore, to the extent possible, the choice of whether to be interviewed alone or with a relative present should be left to the applicant. The applicant should be asked his or her preference, when possible, in private, prior to the interview.

If the applicant elects for the relative to be present at the interview, you should exercise sound judgment during the interview, determining whether the presence of the relative is impeding communication. If it appears that relative's presence is interfering with open communication, the relative should be asked to wait in the waiting room.

In some cases, an applicant will bring a partner to the interview to testify as corroboration of the applicant's sexual orientation or gender identity. If you feel that this corroboration would be helpful, the partner should be permitted to testify. Note: in the Asylum context, an Officer may exercise discretion and request that the witness's testimony be submitted in writing.

### 6.1.3 How the Presence of Interpreters May Affect the Interview

Interpreters play a critical role in ensuring clear communication between you and an LGBTI applicant. The actions of an interpreter can affect the interview as much as those of the interviewing Officer. As in all interviews, you should confirm that the applicant and the interpreter fully understand each other.

As explained in greater detail in the RAIO training module *Working with an Interpreter*, an applicant's testimony on sensitive issues such as sexual abuse may be diluted when received through the filter of an interpreter. The applicant may not feel comfortable discussing such LGBTI issues with an interpreter of the same nationality, ethnicity, or clan, etc.

The same holds true for the interpreter; even if the applicant feels comfortable using a particular interpreter, the interpreter may be inhibited about discussing LGBTI-related issues or using certain terms. For example, the interpreter may substitute the word "harm" for "rape" because the interpreter is not comfortable discussing rape due to cultural taboos.<sup>64</sup>

### 6.1.4 Reviewing Biographical Information with the Applicant

For transgender applicants, it is best to ask at the beginning of the interview what pronoun the applicant feels more comfortable with and to ask if there is a name he or she prefers using. For example, if an individual with a female appearance, who has described

<sup>63</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>64</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.



her claim as based on transgender identity, has filled in the biographical information of the application form with an obviously male name, you should ask if there is a name she would prefer that you use.

One of the biographical information questions on the forms is "gender." Since this issue may be sensitive and go to the heart of the applicant's claim, it may be better to come back to this question at the end of the interview after the applicant has described the steps he or she has taken to "transition," rather than at the beginning of the interview. The early part of the interview should be devoted, in part, to putting the applicant at ease. If you immediately question the legitimacy of the "gender" box that he or she has checked off, the applicant may be uncomfortable for the rest of the interview.

When going through the biographical information on the application form at the beginning of the interview, it is appropriate for you to inquire whether the applicant has legally changed his or her name. If yes, you can request the legal name change documents. If no, you should explain why it is necessary to use the legal name on the form, but that during the interview you will refer to the applicant by the name that the applicant feels most comfortable using.<sup>65</sup>

**Note:** If the applicant provides any new name or gender information, additional database systems may need to be updated and further security checks may be required. Please refer to USCIS and division procedures for updating name and gender information.

## 6.2 Suggested Techniques for Eliciting Testimony

### 6.2.1 Setting the Tone and Putting the Applicant at Ease

While you must conduct all of your interviews in a non-adversarial manner, it is crucial when interviewing LGBTI applicants that you set a tone that allows the applicant to testify comfortably and that promotes a full discussion of the applicant's past experiences. You must conduct the interview in an open and nonjudgmental atmosphere designed to elicit the most information from the applicant.

You should be mindful that for many people there is no topic more difficult to discuss with a stranger than matters relating to sexual orientation, gender identity, and serious illness.<sup>66</sup> Furthermore, many applicants have been physically and sexually abused, harassed, tormented, and humiliated over many years because of their actual or perceived sexual orientation or gender identity.

Asking questions about difficult or private issues is a sensitive balancing act you

<sup>65</sup> *Adjudication of Petitions and Applications Filed by or On Behalf Of, or Document Requests by, Transsexual Individuals.* William R. Yates, Associate Director for Operations. U.S. Citizenship and Immigration Services. Washington DC, 16 April 2004.

<sup>66</sup> *See Immigration Equality Draft Model LGBT Asylum Guidance, 2004.*

face in all interviews. On the one hand, you need to obtain detailed testimony from the applicant. On the other hand, you do not want to badger or traumatize the applicant. The most important thing to understand is that this may be a difficult topic for the applicant to talk about and to be respectful in discussing sexual orientation, gender identity, and serious illness.<sup>67</sup>

You can help alleviate some of the applicant's reluctance to discuss some of these issues by incorporating the following suggestions into your interviews:

**Remind the applicant that the interview is confidential.** It can also help to ease the applicant's nervousness if you explain confidentiality to the interpreter in the presence of the applicant.

**Be particularly sensitive when questioning the applicant about past sexual assault.** Applicants may be reluctant to talk about actual or perceived sexual orientation or to disclose experiences of sexual violence. This may be especially true for LGBTI applicants who are not "out of the closet" or where the applicant was sexually assaulted. In many societies, sexual assault is seen as a violation of community or family morality for which the victim is held responsible. The combination of shame and feelings of responsibility and blame for having been victimized in this way can seriously limit an LGBTI applicant's ability to discuss or even to mention such experiences.<sup>68</sup>

**Explore all relevant aspects of the claim, even if they make you particularly uncomfortable.** While you must be sensitive as you interview an applicant regarding such delicate topics, at the same time you must not shy away from your duty to elicit sufficient testimony to make an informed adjudication. This may include instances involving sexual violence. It is critical that you ask all necessary and relevant follow-up questions to help the applicant develop his or her claim.<sup>69</sup>

It is important to remember that in the PSG analysis, the relevant inquiry is not whether the applicant actually possesses the protected trait. Rather, it is whether the persecutor believes the applicant possesses the trait (either because the applicant does possess it or because the persecutor imputes it to the applicant). Thus, the issue is not whether the applicant actually is LGBTI, but whether the persecutor believes that he or she is, either because the applicant is or because the persecutor imputes it to the applicant.

It is not necessary to probe the details of the applicant's personal life beyond what is necessary to make this specific determination. So, once you have established

<sup>67</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>68</sup> See RAIO Training Module, *Gender Related Claims*.

<sup>69</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

that the persecutor perceives the applicant to have a protected trait, further inquiry into the specific nature of the applicant's LGBTI status is not necessary to establish inclusion in a PSG.

**Try to use the same language that the applicant has used in his or her own application.** If an applicant refers to himself as "gay," you should use this term, rather than "homosexual" and vice versa. The most important thing is to understand what a difficult topic this may be for the applicant to discuss and to be respectful.<sup>70</sup>

**Do not assume that being a sexual minority is a lifestyle or a choice.** This will help you avoid asking questions in a way that may put the applicant on the defensive and result in the applicant holding back information rather than imparting it.<sup>71</sup>

**Become familiar with the legal issues, terminology, and questioning techniques specific to the LGBTI community.** You can use this information to help the applicant tell his or her own story.

**Be mindful that the applicant and the interpreter may not be familiar with many of these issues or terms.** While many LGBTI individuals in the United States embrace their LGBTI identity and have a language to talk about these issues, for many LGBTI individuals who come from countries where topics of sexuality are taboo, the way that applicants express themselves may be different from what an interviewer would expect from an LGBTI person in the United States.<sup>72</sup>

The fact that an applicant may be uncomfortable with these terms may be a result of the fact that he or she comes from a culture where there is no word for homosexuality or transgender identity. It may be a result of his or her own ingrained homophobia from growing up in a culture where such terms were the equivalent of insults.<sup>73</sup>

**Become well-versed in country of origin information.** This allows you to ask relevant follow-up questions. The more you know about the applicant's country of origin, the less likely you will be to miss important facts. Additionally, awareness of country conditions may also assist you in conducting the interview with cultural sensitivity and may help you put the applicant at ease during the interview. If the applicant notices that you took the time to try to understand the situation he or she faces in the country of origin as an LGBTI individual, he or she may be more inclined to talk in detail about his or her experiences and fears.

## 6.2.2 Explore all possible grounds

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

Many LGBTI applicants may not know that their sexual orientation, gender identity, HIV-positive status, or intersex condition is the basis for a protection claim and may be reluctant to talk about these topics because they are so private. This is especially true where applicants are not represented. They may only put forward the elements of their past experiences that their family or members of their communities recommend.

For example, an applicant from Colombia appears before you for an interview. The majority of claims you have adjudicated from Colombia involve fear of the FARC. The applicant tells you about all of the instances when he has had contact with the FARC. At the end of the interview you have already begun to analyze the case and despite being credible, your assessment is that the applicant has not established nexus, past persecution, or well-founded fear.

When you ask the applicant if there is any other reason he fears returning to Colombia, he appears to have something more to say, but hesitates. You suspect that there may be an issue that the applicant has not put forward. In this situation it would be appropriate to try to explain to the applicant that there is more than one ground for asylum or refugee status.

“Refugee (or Asylum) status is a case-by-case determination made based on an individual's unique circumstances and is not just for people fleeing because of political opinion. Individuals who are afraid to return because of their religion, sexual orientation, clan membership, or because of domestic violence may also be eligible. Are there any other circumstances affecting you that you would like to tell me about?”

It is important to remember that the applicant would still be required to provide credible testimony regarding past harm and/or fear of future harm on account of one of the five protected grounds.

### 6.2.3 Sample Questions

The following are appropriate types of questions to elicit testimony and assess credibility in LGBTI cases. Please note that these questions are intended as starting points and should not be used as a substitute for all necessary lines of inquiry and follow-up questions during your adjudication. In other words, it is good to have a general outline of questions you need to ask or questions you need the answers to, but not a script. Remember, credible testimony alone may be enough and, other than reliable country of origin information, is often the only other evidence the applicant submits to you.

#### *Sexual Orientation*

#### **Appropriate Lines of Inquiry**

The most common LGBTI claims are based on sexual orientation and involve gay men, and to a lesser extent lesbian women. If the applicant was aware that he or she was lesbian, gay, or bisexual while in the country of origin, he or she should be able to describe his or her personal experiences as well as the lives of gay people in general.<sup>74</sup> The applicant should be able to describe what it was like coming to terms with his or her sexual orientation. Likewise, the applicant should be able to describe his or her first relationship, and the harm he or she suffered or fears in the home country. Keep in mind that this might only be true if the person is "out."

Ask the applicant about his or her experiences in the home country and his or her awareness of the lives of other lesbian, gay, or bisexual people there.<sup>75</sup> These questions focus on the possession or perceived possession of a protected characteristic. You must also ask about past harm and fear of future harm.

The following are some suggested questions when adjudicating claims that involve the applicant's sexual orientation:<sup>76</sup>

- When did you first realize you were gay (or lesbian or bisexual)?
- Did you tell anyone?
- Why/why not?
- If yes, when?
- How did they react?
- Did you know other gay people in your home country?
- If yes, how were they treated?
- Did you hear about other gay people in your home country?
- If yes, how were they treated?
- Have you met any other gay people?
- Where?
- Does your family know you're gay?
- If yes, what was their reaction when you told them?
- Have you ever been in a relationship?
- How did you and your partner meet?
- Are you still together/ in touch?

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<sup>74</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

- How do lesbian [or gay, or bisexual] people meet one another in your country?
- Were you involved in any LGBTI organizations in your country?
- Are you involved in any LGBTI organizations here?
- When you say people in your country want to kill people like you, can you explain what you mean by “people like you?”

### **Inappropriate Lines of Inquiry**

The applicant's specific sexual practices are not relevant to the claim for asylum or refugee status. Therefore, asking questions about "what he or she does in bed" is never appropriate.<sup>77</sup> If the applicant begins to volunteer such information, you should politely tell him or her that you do not need to hear these intimate details in order to fairly evaluate the claim.

### ***Transgender Identity***<sup>78</sup>

#### **Appropriate Lines of Inquiry**

A transgender applicant may identify as straight, lesbian, gay, or bisexual and that gender identity has to do with the person's inner feelings about his or her sexual identity.<sup>79</sup> Most transgender people consider themselves to be male or female. Therefore do not think of "transgender" as a gender. Male to female (M to F) transgender individuals were assigned the male gender at birth and consider themselves to be female. They are called transgender women.<sup>80</sup>

Female to male (F to M) transgender individuals were assigned the female gender at birth and consider themselves to be male. They are called transgender men.<sup>81</sup>

Start off with easy questions and gradually ease into asking the more sensitive ones; be cognizant not to put words in the applicant's mouth. It is important to remember that being transgender involves an overall dissatisfaction with the gender assigned at birth; it is not about having one particular surgery. In many cases it will be appropriate to ask the applicant about the steps he or she has taken to transition gender.<sup>82</sup> This question should be framed as one question among many that elicits the applicant's expression of his or

<sup>77</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>78</sup> For further reading see *Immigration Law and the Transgender Client*, available at <http://www.immigrationequality.org/issues/law-library/trans-manual/>

<sup>79</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>80</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>81</sup> *Id.*

<sup>82</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

her transgender identity, such that it is perceived by the persecutor and the society in which the applicant lived.<sup>83</sup>

The most important thing to remember is to be respectful and nonjudgmental. If you feel that it is necessary to ask a question that the applicant may perceive as intrusive, you should explain why the answer to the question is legally necessary. If you are confused about the applicant's self-identification, you should respectfully admit to feeling confused and ask the applicant to explain in his or her own words.<sup>84</sup>

The following are some suggested questions that, depending on the facts, may be appropriate when adjudicating a claim that involves the applicant's gender identity:<sup>85</sup>

- When did you first realize you were transgender? Or: When did you first realize that although you were born as a male (female) you felt more like a female (male)?
- How did you realize this?
- Did you know other transgender people in your country? Or: Did you know other people who felt like you in your country?
- If yes, how were they treated?
- Did you hear about other transgender people in your country?
- If yes, how were they treated?
- When did you begin to transition from a man to a woman or woman to a man?
- What steps have you taken to transition?
- Do you now live full-time as a man (or woman?) When did you begin to live full-time as a man (or woman)?
- Does your family know you're transgender?
- If yes, how did they react when they found out?

Many transgender applicants will not have begun to live full-time in their corrected gender until they have come to the United States.<sup>86</sup> In many cases, a person may discuss past mistreatment in terms of perceived sexual orientation. In these cases, it is appropriate to ask questions that pertain to sexual orientation as well as gender identity.

### **Inappropriate Lines of Inquiry**

If an applicant testifies that he or she was not accepted in his or her home country because "people think I look like a girl, but I'm a guy," do not follow up by asking "So,

<sup>83</sup> *Id.*

<sup>84</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>85</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>86</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

what are you?" Furthermore, do not put words in the applicant's mouth by asking such questions as: "You haven't had any surgery or anything like that, right? So you're a male who looks effeminate?"<sup>87</sup>

If the applicant has not indicated that he or she was harmed or fears being harmed for being gay, do not begin by asking the applicant if he or she is homosexual. It is important to remember that gender identity and sexual orientation are two different issues. A transgender applicant may also be gay, lesbian, or bisexual, but that is not necessarily the case. It is also important to remember that even if the applicant is heterosexual, he or she may be perceived as homosexual because he or she does not fit the societal norms for his or her gender. Instead, focus on the problems the applicant experienced in the country of origin and address the issue of sexual orientation later, if necessary.

This approach also ensures that your questioning is tailored to eliciting information that allows you to determine what trait the persecutor, and the society in question, perceives in the applicant. Since this is the evidence required to analyze the nexus requirement and the social distinction of the relevant social group, lines of questioning that focus on what the applicant experienced and how he or she was or would be viewed will likely be the most effective.

### *HIV Status*

#### **Appropriate Lines of Questioning**

You should be mindful that HIV is a very serious illness and that many individuals, especially those from countries with fewer treatment options, see an HIV diagnosis as a death sentence. It is therefore imperative for you to be extremely sensitive in asking about the applicant's HIV status.<sup>88</sup>

If an applicant's case is based in whole or in part on his or her HIV-positive status, you will need to ask questions about this. It is appropriate to ask about the applicant's state of health, current treatment regimen, and the availability of treatment in the home country.<sup>89</sup>

In some cases, the applicant's HIV status may be directly related to the persecution, for example, where a lesbian was raped and believes this was her only possible risk for HIV exposure. If the applicant's HIV status is related to the harm the applicant suffered, it will be relevant for you to ask questions about this as well.

Many cases involve an applicant's fear of harm based on the fact that his or her HIV-positive status may lead community members to assume, whether correctly or not,

<sup>87</sup> *Id.*

<sup>88</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>89</sup> *Id.*



that he or she is gay.<sup>90</sup> If a claim is not based on the applicant's sexual orientation or gender identity and HIV status is not mentioned, it is not appropriate for you to ask the applicant if he or she is HIV-positive.

Some cases will involve an applicant's fear of violence, stigma, and extreme discrimination based on his or her HIV-positive status. In other instances, the applicant's primary fear may be the lack of medical care in his or her home country.

It is important to keep in mind that if an applicant's case is based on sexual orientation or gender identity and is not based on his or her HIV status, that you should not presume that he or she is HIV-positive.

### **Inappropriate Lines of Questioning**

Generally, the risk factor for HIV infection is not relevant to the applicant's claim, so it is not appropriate to ask the applicant how he or she thinks that he or she contracted HIV.<sup>91</sup>

In some asylum cases, an applicant's HIV status may also be relevant to a one-year filing deadline exception, for example, if the applicant was extremely ill during his or her first year in the United States or the applicant may not have been diagnosed until several years after entering the United States. (*See Asylum Supplement One-Year Filing Deadline*, below).

### ***Intersex Conditions***

#### **Appropriate Lines of Inquiry**

When questioning applicants with intersex conditions, use the same type of sensitive questioning techniques suggested for sexual orientation, transgender identity, and HIV-positive status claims.

Some intersex people will never have heard of anyone else like themselves, but others will. There are some intersex conditions that run in families or are more common in certain populations. Where the condition is known in a given culture, an applicant should be able to describe how people like them are treated. Where the condition is known to run in a family (but not throughout the culture), the entire family may face stigma, or family members may be on the lookout for signs of the condition in order to keep the family secret. For example, Androgen Insensitivity Syndrome (AIS) is an inherited condition. People with this condition will have a typical-looking female body, but will be infertile and will have only a shallow vaginal opening or none at all. Female relatives of an affected woman may be carriers and can pass it on to their children. Normally it is not discovered until puberty when the girl does not menstruate.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

Many persons with intersex conditions may have difficulty understanding and articulating their own physical conditions and medical history. Therefore, some of these questions may be more appropriate for parents or families of young intersex children who face persecution.

The following are some suggested questions that, depending on the facts, may be appropriate when adjudicating a claim that involves the applicant's intersex condition:

- When did you first learn about your condition?
- How did you learn about it?
- Did you tell anyone?
- Why/why not?
- If yes, when?
- How did they react?
- Does your family know about your condition?
- If yes, how did they react when they found out?
- Did you go to a doctor or other medical professional?
- Have you ever received medical treatment for your condition?
- What were you told about your condition?
- How much do you understand about your condition?
- Did you know other people with similar conditions in your country? Or did you know other people like you in your country?
- If yes, how were they treated?

## 7 EVIDENCE ASSESSMENT

As explained in greater detail in the RAIO training modules *Eliciting Testimony* and *Evidence Assessment*, while the burden of proof is on the applicant to establish eligibility, equally important is your duty to elicit all relevant testimony. Establishing eligibility means the applicant must establish past persecution or a well-founded fear of future persecution based on actual or imputed (perceived) sexual orientation or gender identity. Your duty includes always recognizing the non-adversarial nature of the adjudication, applying interviewing techniques that best allow you to elicit detailed testimony from an LGBTI applicant, and diligently conducting relevant country of origin information research.

In addition to the applicant's testimony, reliable country of origin information may be the only other type of evidence available to you when you make your decision in a case involving LGBTI applicants. It is important to remember that reliable information

regarding the treatment of LGBTI individuals may sometimes be difficult to obtain and that the absence of such information should not lead you to presume that LGBTI individuals are not at risk of mistreatment.

## 7.1 Credibility Considerations During the Interview

If an applicant is seeking refugee or asylum status based on his or her sexual orientation, gender identity, intersex condition, or HIV-positive status, he or she will be expected to establish that the persecutor views the applicant as a sexual minority or HIV-positive, either because the applicant actually has such status or because the persecutor imputes it to him or her. Under either basis, the critical point to establish is what trait the persecutor perceived in the applicant.

Credible testimony alone may be enough to satisfy the applicant's burden. Sexual minority or imputed sexual minority claims tend to rely heavily on the applicant's own testimony to establish all of the elements of the claim. Therefore, your job will be to fully and fairly elicit all testimony with regard to the harm the applicant suffered or fears based on his or her actual status as a sexual minority or perceived status as a sexual minority.

### 7.1.1 Plausibility

The fact that an applicant testifies about events that may appear unlikely or unreasonable does not mean it is implausible that the events actually occurred. You must take care not to rely on your views of what is plausible based on your own experiences, which are likely to be quite different from the applicant's.

#### What if the Applicant is Married or Has Children?

An applicant may have gotten married in his/her home country and/or have children.<sup>92</sup> This, by itself, does not mean that the applicant is not gay. "Many applicants describe enormous social pressure to marry and being forced into a marriage by their family or society. Other applicants, while grappling with their sexual identity, have tried to lead a heterosexual life and 'fit in' within their society."<sup>93</sup>

Even in the United States, it is not uncommon for lesbians or gay men to marry people of the opposite sex in an effort to conform to societal norms.<sup>94</sup> While some lesbians and gay men may feel that they have always known their sexual orientation, many others do not come to terms with their sexual identity until much later in life.

<sup>92</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

If you have concerns about the credibility of an LGBTI applicant who is married, it may be appropriate to ask the applicant a few questions surrounding the reasons for marriage. If the applicant is able to provide a consistent and reasonable explanation of why he or she is married and/or has children, that portion of the testimony should be found credible.

### What if the Applicant Does Not Appear to be Familiar With LGBTI Terminology?

While most Americans are accustomed to reading and hearing about LGBTI issues in the news, these terms may be unfamiliar to applicants from other cultures. “Some countries do not even have words for different sexual orientations other than homophobic slurs. The fact that an applicant may be uncomfortable with these terms may be a result of his or her own ingrained homophobia from growing up in a country where such terms were the equivalent of vile curses.”<sup>95</sup> Therefore, you should not assume that it is implausible for an applicant to be gay, lesbian, or transgender if he or she is not familiar with LGBTI terms.

### What if The Applicant Does Not “Look” or “Act” Gay?

Some applicants with LGBTI-related claims will not “look” or “act” gay.<sup>96</sup> If an applicant provides detailed testimony about his or her experiences in the country of origin,<sup>97</sup> it would be inappropriate for you hold against the applicant the fact that he or she does not fit your notion for how LGBTI people should look or behave.

While there are some individuals who identify as gay who may also consider themselves effeminate and some individuals who identify as lesbian who may also consider themselves masculine, many men who identify as gay will not appear effeminate and many women who identify as lesbians will not appear masculine<sup>98</sup>

For some LGBTI people, the harm they suffer, especially in their youth before accepting their LGBTI identity, may be related to their feminine characteristics (for males) or their masculine characteristics (for females). Regardless of whether the applicant was “out” at the time he or she was harmed, this harm should be considered related to their LGBTI status.<sup>99</sup>

<sup>95</sup> *Id.*

<sup>96</sup> *Shahinaj v. Gonzales*, 481 F.3d 1027 (8th Cir. 2007), remanding case to new Immigration Judge in part because IJ had improperly relied on his own stereotypes and found an Albanian applicant’s claim to be gay not credible because he did not exhibit gay “mannerisms”, “dress” or “speech.”; *Razkane v. Holder*, 562 F.3d 128 (10th Cir. 2008), rejecting IJ’s finding that applicant’s appearance was not gay enough for persecution to be likely to occur; See also *Ali v. Mukasey*, 529 F.3d 478 (2nd Cir. 2008), rejecting IJ’s conclusion that a “dangerous criminal” could not be identified as a “feminine . . . homosexual” in his native Guyana.

<sup>97</sup> (See Credibility-Detail below for appropriate credibility considerations).

<sup>98</sup> See *Hernandez-Montiel v. INS*, 225 F.3d 1088 (9th Cir. 2000).

<sup>99</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

In some cases, an applicant will testify that he or she was harmed or fears future harm because his or her appearance makes his or her LGBTI identity apparent, that is, he or she fits the accepted stereotype for LGBTI people in his or her culture. Cultural signals about a person's sexual orientation or gender identity may vary between individuals from other countries and your own. Thus, an applicant may tell you that he or she appears obviously LGBTI, but the applicant may not fit stereotypes you have formed of LGBTI people according to your own cultural norms.

Whether or not an applicant claims that his or her LGBTI identity is apparent, it is appropriate for you to elicit testimony about why the applicant fears harm. For example, in many countries, the fact that a person is unmarried or childless after young adulthood may make him or her suspect. In other countries, the only way for LGBTI people to meet other LGBTI people is to go to gay clubs, or parks, which may put them at risk of exposure. For transgender applicants, having identity documents that do not match their name or outward gender appearance, may put them at risk. (See *Interviewing Considerations* above for appropriate lines of questioning to determine credibility.)

As discussed above, it is important to remember that transgender identity and sexual orientation are distinct concepts. While it may be obvious from the appearance of some transgender individuals that they are transgender, other transgender individuals may "pass," or blend in quite well as their corrected gender. By way of contrast, transgender people who are at the beginning of their transition also may not "look transgender."<sup>100</sup> In these cases, as in other categories of protection cases, you should not base your decision on the applicant's outward appearance. Instead, you should elicit relevant testimony about the applicant's identity and, if appropriate, request corroborating evidence.

### What if Country of Origin Information Does Not Address LGBTI Issues?

The fact that little or no corroboration of mistreatment against LGBTI individuals is included in reports that generally address human rights violations does not render the applicant's claim of past harm or fear of future harm implausible in light of country of or inconsistent with country of origin information.<sup>101</sup> The weight to be given to the fact that country conditions information fails to corroborate a claim will depend on the specific allegations, the country, and the context of the claim.

## 7.12 Consistency

### Claims Not Initially Put Forth

An LGBTI individual may initially assert a claim based on another protected ground such as political opinion or religion and later reveal that he or she was harmed or fears harm based on his or her sexual orientation. This may be because the applicant was reluctant

<sup>100</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

<sup>101</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

to talk about his or her sexual orientation or gender identity or because he or she was unable to articulate a connection to a particular protected ground.

There may be situations where the applicant does not initially put forward a claim based on sexual orientation or gender identity but does so later on. For example, a newly arrived applicant may not feel comfortable or safe revealing his or her sexual orientation or gender identity to an Immigration Officer during primary or secondary inspection or an Asylum Officer during a Credible Fear interview at the Port of Entry. Then, he or she may subsequently reveal this information on his or her asylum application.

In the case of Dominic Moab, a gay asylum seeker from Sierra Leone, the IJ denied the case and the BIA affirmed, in part because Mr. Moab “failed to mention his homosexuality to the immigration officers at the airport or to the examining official during his credible fear interview.”<sup>102</sup> The Seventh Circuit remanded the case, finding that the BIA had not considered the fact that, for several reasons, “airport interviews are not always reliable indicators of credibility.”

In overseas refugee processing, an applicant may not initially tell the referring agency, such as UNHCR or the Resettlement Support Center (RSC) about being gay or transgender, but then subsequently tell the USCIS Interviewing Officer about his or her LGBTI status. If you are confronted with such a scenario, do not automatically assume the applicant is not credible but follow the guidance above about what information the application should generally be able to relay.

It is important to take into account all of the factors mentioned in this module in assessing the applicant's ability to articulate his or her claim. When exploring these claims, remember that the applicant may have other grounds upon which he or she may qualify for refugee status or asylum. If a claim can clearly be established on another ground, that may form the basis for the decision.

As with all other credibility determinations, you must give the applicant the opportunity to explain any inconsistencies or omissions in his or her case. In a situation where an applicant does not initially mention his or her sexual orientation or gender identity and later does as a basis for protection, you would ask for an explanation:

“Help me understand. Why do you tell me this now, but did not mention it to the Officer at the airport? Or to UNHCR or the RSC?”

### Seemingly Inconsistent Use of LGBTI Terms

If the application form states in one place that the applicant is bisexual, but he or she testifies that he or she is homosexual, do not assume this is a contradiction and do not

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<sup>102</sup> *Moab v. Gonzales*, 500 F. 3d 656, 657 (7<sup>th</sup> Cir. 2007).

pursue a line of questioning such as: “Homosexual? Your application says bisexual. Well, which is it homosexual or bisexual?”

### 7.1.3 Detail

An essential component of an LGBTI claim is that the applicant must establish that the persecutor perceived him or her to be a sexual minority. This perception can be based on the applicant’s actual status, or on a status imputed to the applicant. Where the persecutor’s perception is based on a status that the applicant in fact has, appropriate details about the applicant’s experience as LGBTI may help to substantiate the claim.

It is important to remember however, that the ultimate legal question is whether the persecutor targets the victim because the persecutor perceives a protected trait in the victim. Questions about the applicant’s sexual orientation should be filtered through that lens. The purpose of establishing LGBTI is to show why the persecutor perceived this trait in the individual. In a claim based on imputation of the protected trait, the reasons why the persecutor viewed the applicant as having that trait will be different, and it would be those different reasons that the applicant would have to establish.

As with any other type of refugee or asylum case, an applicant’s detailed, consistent, credible testimony may be sufficient to prove his or her sexual orientation.

The applicant should be able to describe his or her “coming out” experience. He or she should be able to explain when he or she first began to feel attracted to members of the same sex, if and when he or she first engaged in a romantic or sexual relationship with a member of the same sex, how this made him or her feel, whether he or she told other people or kept this aspect of his or her identity secret, etc.<sup>103</sup>

Acceptable lines of questioning to develop the applicant’s claim and to test credibility are listed above in *Sample Questions*.

## 7.2 Country of Origin Information

Country of origin information on LGBTI issues can sometimes be more difficult to find than on other issues.<sup>104</sup> You should not conclude that if these issues are not mentioned that no problems exist. Many organizations that report on human rights issues lack sufficient contacts within local LGBTI communities to know what LGBTI individuals experience in their countries, or do not have the resources to investigate and/or monitor all types of human rights violations in a particular country.

Often the countries where homosexuality is most taboo have the least country conditions information available. In many countries, for example those with conservative, religious

<sup>103</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2004.

<sup>104</sup> See *Id.*

governments, there is little or no mention of the existence of LGBTI citizens in any media. This may also be true in countries with antidemocratic, authoritarian governments, where LGBTI groups may not be allowed to exist.

Where there is a lack of sufficiently specific country of origin information, you may have to rely on the applicant's testimony alone to make your decision.<sup>105</sup>

Useful resources in gathering information LGBTI claims include:

- The AsylumLaw.org Sexual Minorities and HIV status website at [http://www.asylumlaw.org/legal\\_tools/index.cfm?category=116&countryID=233](http://www.asylumlaw.org/legal_tools/index.cfm?category=116&countryID=233)
- The *International Gay and Lesbian Human Rights Commission* at <http://www.iglhrc.org/cgi-bin/iowa/home/index.html>
- The Amnesty International *Out Front* program at [www.amnestyusa.org/outfront](http://www.amnestyusa.org/outfront)
- The International Lesbian and Gay Association (<http://ilga.org/>) website, which contains a legal survey where you can search legal codes and country conditions.
- The Human Rights Watch LGBT division and HIV division at [www.hrw.org/en/category/topic/lgbt-rights](http://www.hrw.org/en/category/topic/lgbt-rights)
- Refugee, Asylum, and International Operations Directorate (RAIO) Virtual Library at <http://raiovl/docushare/dsweb/HomePage>
- Council on Global Equality at <http://www.globalequality.org/>
- UNHCR's Ref World at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

### 7.3 Corroborating Evidence

In some situations, where it is necessary to establish that the persecutor perceived a protected trait in the applicant, you may ask the applicant to provide evidence that corroborates his or her sexual orientation, gender identity, or HIV-positive status. Pursuant to amendments to INA section 208 made by the REAL ID Act of 2005, an applicant for asylum must provide this evidence unless he or she does not have the evidence and cannot reasonably obtain the evidence. Although the REAL ID Act amendments to INA section 208 do not directly apply to overseas refugee processing, which is governed by INA section 207, you may ask the applicant to produce corroborating evidence if it is reasonably available and is necessary for the adjudication of the claim.

<sup>105</sup> UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*.



It is very important to remember, however, that because of the different ways overseas refugee and asylum applicants obtain interviews with USCIS, the evidence that refugee applicants can reasonably obtain compared with the corroborating evidence some asylum seekers can reasonably obtain varies greatly.

### Corroborating Sexual Orientation

You may ask the applicant to provide evidence that corroborates his or her sexual orientation as a means of establishing that the persecutor perceived or would perceive the protected trait in the applicant. The applicant must provide this evidence unless he or she does not have the evidence and cannot reasonably obtain the evidence. Again, it is important to remember that the evidence refugee applicants can reasonably obtain varies greatly compared with the evidence some asylum applicants can reasonably obtain. Examples include a letter from a current or ex-partner; a letter from a friend with whom the applicant has discussed his or her sexual orientation; a letter from a family member; proof that he or she is involved in an LGBTI political or social organization; or a psychological evaluation, etc.<sup>106</sup>

There may be situations where the applicant will not be able to provide any corroboration, for example, if he or she is no longer in contact with an ex-partner in his or her country, where his or her family has disowned him or her, and where he or she does not yet know any LGBTI people in the United States or the country of first asylum. As in any other case, the applicant should not automatically be denied for lack of corroboration. Rather, it is reasonable for you to question the applicant about why corroboration is unavailable, and factor this explanation into your decision-making process.

### Corroborating Transgender Identity

Again you may ask the applicant to provide evidence that corroborates his or her transgender identity as a means of establishing that the persecutor perceived or would perceive the protected trait in the applicant. The applicant's detailed, consistent, credible testimony may be sufficient to establish this status. The applicant should be able to describe his or her "coming out" process as a transgender individual. That is he or she should be able to explain when he or she first started to feel "different" or uncomfortable with the gender he or she was assigned at birth; ways in which his or her behavior and feelings differed from gender norms; steps he or she has taken to express the gender that he or she feels comfortable with, etc.

It may be appropriate to elicit information about what steps the applicant has taken in his or her transition but remember how personal and difficult it will be for the applicant to talk about these issues.

<sup>106</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance*, 2010.

A number of transgender individuals receive necessary medical treatment to help their outward appearance correspond with their internal identity. Bear in mind, however, that the treatment plan for every transgender person is different. There is not a single surgery which transforms a transsexual from one gender to another. If a transgender applicant is receiving treatment from a medical doctor or mental health professional (such as counseling, hormones, implants, or other surgeries), it is reasonable to expect corroboration of this treatment.<sup>107</sup>

Many transgender individuals do not receive ongoing treatment, however. Some transgender individuals self-administer hormones, while others identify with their chosen gender without undergoing any medical treatment as part of their transition. Many others would like to access transition-related medical care but cannot, because of immigration status or lack of financial resources. In any event, an applicant should be able to corroborate any treatment he or she has received from a medical professional or explain why such corroboration is not available.<sup>108</sup>

### Corroborating HIV-Positive Status

An applicant who is requesting refugee or asylum status in whole or in part based on being HIV-positive, should generally be able to provide some external corroboration that he or she is HIV-positive, such as a letter from a doctor or the results of an HIV test. You may ask for such corroboration as a means of determining that the persecutor did or would perceive this trait in the applicant. Again, this expectation may vary in the context of overseas refugee processing.

## 8 CONCLUSION

Adjudicating LGBTI refugee and asylum claims presents certain unique challenges. It is important to remember to be sensitive to the issues, familiar with the terminology, and familiar with relevant country of origin information. By definition, these claims involve the most private of matters – sexual orientation, gender identity, and sometimes serious illness. Always remain respectful and nonjudgmental, don't be afraid to acknowledge your discomfort to yourself and to the applicant. Familiarize yourself with the legal nuances involved in these types of cases and do your best to elicit all relevant details without re-traumatizing the applicant or being insensitive.

## 9 SUMMARY

### 9.1 LGBTI and HIV Terminology

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<sup>107</sup> See *Immigration Equality Draft Model LGBT Asylum Guidance, 2010*.

<sup>108</sup> *Id.*

Becoming familiar with relevant terminology helps you become more aware of the nuances involved in adjudicating LGBTI refugee and asylum claims. It is important to be familiar with the terminology but also to keep in mind that the applicant may come from a culture where sensitivity to these issues is not as high as in other countries and may not be familiar with the terms himself or herself. The terms "sexual minorities" and LGBTI are used in this module interchangeably to refer to issues that involve sexual orientation and gender identity.

## 9.2 Legal Analysis – Nexus and the Five Protected Characteristics

LGBTI refugee and asylum claims are primarily analyzed under the ground membership in a PSG. Sexual orientation, gender identity (or the right to live in one's "corrected gender"), and having an intersex condition can be classified as either innate or so fundamental to an individual's identity that the individual should not be required to change them. Social visibility does not require that the trait be literally visible to the eye.

Ways to formulate the PSG have included "sexual minority from Russia," "gay man from Columbia," "lesbian from Iran," or "transgender female from Mexico." Ask questions about what the persecutor may have said to him or her and about the circumstances surrounding the harm inflicted on or threats made against the applicant.

## 9.3 Legal Analysis – Types of Persecution

The two questions you must ask yourself to determine whether the applicant suffered or fears persecution are: 1) did the harm rise to the level of persecution; and, 2) did the applicant experience the incident as harm? Examples of harm that LGBTI applicants may have faced or fear and that may rise to level of persecution include: physical and sexual violence; execution; imprisonment; forced marriage; long-term, systemic discrimination; threats of violence and to "out" the applicant; and forced psychiatric treatment.

Lesbians may have suffered the harms that befall many women in addition to harms that befall members of the LGBTI community. Transgender individuals may be more visible and may be more commonly viewed as transgressing societal norms than gay men or lesbians. They may be subjected to increased discrimination and persecution.

## 9.4 Legal Analysis – Well-Founded Fear

The fact that LGBTI organizations are permitted to hold a parade once a year or the mere existence of LGBTI organizations does not mean that LGBTI people are free from ongoing violence and harm in that country.

An applicant who was forced to conceal his or her sexual orientation or gender identity in the home country in order to avoid harm and did not suffer harm that rose to the level of persecution may still qualify for refugee or asylum status if he or she has a well-founded fear of future persecution. In some cases, the experience of having to conceal sexual

orientation or gender identity may itself result in suffering severe enough to constitute persecution. Some LGBTI applicants come to the United States for work or study and subsequently "come out" to themselves and to others.

### 9.5 Legal Analysis – One-Year Filing Deadline (asylum only)

In many instances an individual does not "come out" as lesbian, gay, bisexual, or transgender until he or she is in the country where he or she sees that it is possible to live an open life as an LGBTI person. If an individual has recently "come out" this may qualify as an exception to the one-year filing deadline based on changed circumstances.

An individual may qualify for a one-year exception based upon serious illness, for example being diagnosed as HIV-positive.

LGBTI individuals who suffer from internalized homophobia and transphobia or who may have been subjected to coercive mental health treatment to "cure" them in their home countries may find it especially difficult to access the mental health treatment they may need to proceed with their applications. Also many LGBTI asylum seekers in the United States live with extended family members or with members of the very community they fear.

### 9.6 Interviewing Considerations

It is important to create an interview environment that allows applicants to freely discuss the elements and details of their claims. LGBTI claims involve very private topics that are difficult for the applicants to talk openly about and may sometimes make you uncomfortable.

You may help to set the applicant at ease by reminding him or her that the interview is confidential. You may also specifically remind the interpreter, in the presence of the applicant, that the interpreter must also keep all information confidential.

The early part of the interview should be devoted, in part, to putting the applicant at ease, while reviewing the biographical information on the application. For transgender applicants, it may be better to come back to the question about "gender" at the end of the interview as this issue may be sensitive and go to the heart of the claim.

It is important to conduct the interview in an open and nonjudgmental atmosphere. Try to use the same language that the applicant has used. For example if the applicant refers to himself as gay, you should use this term rather than homosexual and vice versa. Become familiar with the legal issues, terminology, and country of origin information to help the applicant to his or her own story.

Keep in mind that while you have familiarized yourself with LGBTI-related terms neither the applicant nor the interpreter may be as familiar with them as you are. You may then have to adjust the formulation of your questions accordingly.

It is never appropriate to ask questions about the applicant's specific sexual practices or about "what he or she does in bed." If the applicant begins to testify graphically about sexual practices, you should politely tell him or her that you do not need to hear these intimate details in order to fairly evaluate the claim.

If the applicant was "out" as lesbian, gay, or bisexual in the home country, he or she should be able to provide details about his or her experiences there; his or her awareness of the lives of other gay people there; what it was like coming to terms with his or her sexual orientation; and, if relevant, to describe his or her first relationship.

Keep in mind that sexual orientation and gender identity are two different concepts. A transgender applicant may identify as straight, lesbian, gay, or bisexual. Being transgender involves an overall dissatisfaction with the gender assigned at birth; it is not about having one particular surgery. If you were confused about an applicant's self identification, you should respectfully admit to feeling confused and asked the applicant to explain in his or her own words.

When interviewing an applicant who is HIV-positive be mindful that it may be appropriate to ask about the applicant's state of health, current treatment regimen, and the availability of treatment in the home country. DO NOT ask the applicant where he or she may have contracted HIV.

## 9.7 Burden of Proof and Evidence – Credibility

An applicant's credible testimony may be the only evidence available for you to take into consideration when adjudicating LGBTI-related refugee and asylum claims. If the applicant is seeking refugee status or asylum based on his or her sexual orientation, gender identity, or HIV-positive status, he or she will be expected to establish that the persecutor perceived this protected trait in him or her. In some cases, the reason for the persecutor's perception is that the applicant is actually gay, lesbian, or bisexual, transgender, or HIV-positive. In other cases, where the applicant does not identify as gay, lesbian, or bisexual but is only imputed to be, he or she will need to establish the other reasons why he or she was perceived that way.

The fact that an applicant was married or has children does not mean that it is impossible that the applicant is gay. Even in the United States, it is not uncommon for lesbians or gay men to marry people of the opposite sex in an effort to conform to societal norms.

Do not assume that an applicant must conform to a particular stereotype in order to be lesbian or gay. A man may identify as gay and not appear or consider himself effeminate. A woman may identify as lesbian and not appear or consider herself masculine. This does not mean that it is not plausible that he or she is gay or lesbian.

If an applicant does not initially tell the first official he or she comes into contact with about his or her sexual orientation or gender identity and subsequently reveals this in his

or her claim, do not automatically assume that the applicant is not credible. Instead follow the guidance about what testimony such an applicant should reasonably be expected to provide and try to elicit that information.

#### **9.8 Burden of Proof and Evidence – Country of Origin Information**

For various reasons, detailed, reliable country of origin information may be difficult to obtain. This does not render the applicant's claim of past harm or fear future harm implausible in light of or inconsistent with country of origin information.

**PRACTICAL EXERCISES**

NOTE: Practical Exercises will be added at a later date.

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS****LGBTI Terminology/Glossary**<sup>109</sup>

There are a number of terms that may be used by LGBTI applicants in their protection claims. Although not all LGBTI applicants will use these terms, it will be important for you to be familiar with these terms prior to conducting an interview. The glossary is divided into sections that distinguish between sexual orientation terms and gender identity terms, and also includes medical and legal terms. This glossary is comprised of terms generally used by the LGBTI community and others in the United States.

Please note: The definition of the term intersex sometimes overlaps with sexual orientation, gender identity, and medical issues and is therefore found in its own separate section.

**Sexual Orientation Terms**<sup>110</sup>

**Bisexual** – (noun or adjective) a man or woman who has an enduring emotional and/or physical attraction to both sexes. It is important to understand that although bisexual individuals may feel attraction to members of either sex, they cannot “choose” whom (or which gender) to feel attracted to any more so than a heterosexual or homosexual individual can.

**“Closeted”** – (adjective) describes a person who keeps his or her sexual orientation secret. Also, “living in the closet.”

**“Come Out”** – (verb) the process by which an individual comes to terms with his or her sexual orientation. For most people this process first involves self-acceptance (“coming out” to one’s self) and then may involve telling other people (“coming out” to others.) It is important to remember, however, that some people choose not to “come out” to others for fear of their safety. Some people realize as children that they are lesbian or gay, whereas others may not come out to themselves until they are adults. Many lesbian and gay people enter into opposite sex marriages before coming to terms with their sexual orientation.

**Gay** – (adjective) a man who has an enduring emotional and/or physical attraction to men. Some women who are attracted to women use the term gay to describe themselves as well.

<sup>109</sup> Immigration Equality and HIAS Refugee Trust of Kenya.

<sup>110</sup> For more general information about sexual orientation, see <http://www.apa.org/pubinfo/answers.html> on the American Psychological Association website.



**Heterosexual** – see “Straight” below

**Homosexual** – (noun or adjective) an individual who has an enduring emotional or physical attraction to members of the same sex. This term is often considered clinical with a slightly derogatory connotation within the LGBTI community.

**Homophobia** – (noun) deeply ingrained feelings of prejudice toward lesbian, gay and bisexual people; the irrational fear, based upon myths and stereotypes, of homosexuals or those perceived to be homosexual.

**Lesbian** – (noun or adjective) a woman who has an enduring emotional or physical attraction to women; homosexual women also sometimes use the term “gay” to describe themselves.

**“Out”** – (verb) the involuntary disclosure of a person’s lesbian or gay sexual orientation. For example, an applicant may say, “My cousin saw me with my partner and then he ‘outed’ me to the whole community.”

**Sexual Orientation** – (noun) an umbrella term that describes an individual’s enduring romantic and/or physical attraction to those of a particular sex; an aspect of human identity developed in the early stages of a person’s life that is highly resistant to change.

**Straight** – (noun) (also heterosexual) or an individual’s enduring romantic and/or physical attraction to individuals of the opposite sex.

### **Gender Identity Terms<sup>111</sup>**

**Birth Sex** – (noun) the gender that an individual was assigned at birth which is usually indicated on his or her original birth certificate.

**“Corrected Gender”** – (noun) the gender with which a transgender individual identifies. For example, for an MTF transgender woman, female would be her “corrected gender.”

**FTM** – (noun) a female to male transsexual; that is, an individual assigned the female gender at birth who now identifies as male. Also referred to as a transgender man or transman.

**Gender** – (noun) the social construction of what society values as the roles and identities of being male or female; assigned at birth to every person; does not always align with gender identity.

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<sup>111</sup> For more information about transition see the World Professional Association for Transgender Health website <http://www.wpath.org/documents/Med%20Nec%20on%202008%20Letterhead.pdf>

**Gender Identity** – (noun) a person’s inner sense of being male or female, both, or neither, resulting from a combination of genetic and environmental influences.

**Gender Roles** – (noun) what a given society considers “masculine” or “feminine” behaviors and attitudes; how individuals express their assigned gender or the gender they identify with. For example, a traditional gender role for a man is to be competitive, athletic, and aggressive. A traditional gender role for a woman is to want to have and take care of children. Gender roles in many societies have expanded in recent years for both men and women.

**Heterosexism** – (noun) the assumption that everyone is or ought to be heterosexual and that a person’s gender identity will be fixed at birth in accordance to his or her birth sex.

**Hormone Therapy** – (noun) one medical step that a transgender person may take to transition. For transgender men this involves taking testosterone. For transgender women this involves taking estrogen.

**MTF** – (noun) a male to female transsexual, that is an individual assigned the male gender at birth who now identifies as female. Also referred to as a transgender woman or transwoman.

**“Passing”** – (verb) a transgender person living in his or her corrected gender without it being readily apparent that he or she is transgender.

**Sex** (noun) – biological maleness or femaleness; the division of male and female on the basis of reproductive organs.

**Sex Reassignment Surgery (SRS)** – (noun) refers to any of more than two dozen potential surgeries that a transgender person may undergo. Not all transsexuals choose or can afford SRS. This is a preferred term to “sex change operation.”

**Transgender**<sup>112</sup> – (noun) an umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth or the stereotypes associated with that sex. The term may include transsexuals and others who do not conform to gender stereotypes. Many people who fit the definition of “transsexual” below, continue to refer to themselves as transgender. Transgender is a gender identity, not a sexual orientation. Thus, like any other man or woman, a transgender person may have a heterosexual, bisexual, or homosexual orientation.

**Transition** – (verb) the process of changing a gender expression from one gender to another. This process may be very different for different people. It may involve “coming

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<sup>112</sup> National Center for Transgender Equality, *Teaching Transgender*, January 2009, available at [http://transequality.org/Resources/NCTE\\_Teaching\\_Transgender.pdf](http://transequality.org/Resources/NCTE_Teaching_Transgender.pdf).

out” as transgender to one’s self and to others; living in one’s chosen gender; changing legal documents; and/or accessing necessary medical treatment.

The medical treatment that transgender people receive is specific to each individual. There is no one specific procedure that changes a person’s gender. Rather, medical transition is a process which may include any number of possible treatments such as: hormone therapy, electrolysis, and surgeries such as, hysterectomy, mastectomy, and genital reconstruction.

**Transsexual** – (noun) is a term used for people who seek to live in a gender different from the one assigned to them at birth. They may seek medical treatment to “transition.” It is important to note, however, that being “transsexual” does not necessarily mean that a person has undergone any particular surgery or treatment.

**Transvestite or “Cross-Dresser”** (noun) - means an individual who chooses to wear clothes generally associated with the opposite sex. Sometimes this is related to transgender identity, and sometimes it is not. Note, however, that Spanish language articles often refer to transgender people as “travestis” which translates to “transvestites.” “Transvestite” is considered an outmoded term and should not be used by the interviewer unless the applicant himself or herself uses it.

**Transphobia** (noun) – deeply ingrained feelings of prejudice toward transgender people; the irrational fear, based on myths and stereotypes, of people who are transgender or are perceived to be a transgender person.

### Intersex Terms

**Intersex**<sup>113</sup> (noun, adjective) – Intersex refers to a condition in which an individual is born with a reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit typical definitions of male or female. The conditions that cause these variations are sometimes grouped under the terms “intersex” or “DSD” (Differences of Sex Development). These conditions include androgen insensitivity syndrome, some forms of congenital adrenal hyperplasia, Klinefelter’s syndrome, Turner’s syndrome, hypospadias, and many others. Individuals with this condition were previously referred to as “hermaphrodites,” but this term is considered outmoded and should not be used unless the applicant uses it.

### Legal Terms

**Civil Union** – formal recognition of committed same-sex relationships recognized by some states and foreign countries. Similar to but not the same as marriage. Civil unions confer many of the same rights, benefits, and privileges enjoyed by opposite sex marriages such as estate planning or medical decisions.

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<sup>113</sup> For more information on intersex issues, see the Advocates for Informed Choice website, [www.aiclegal.org](http://www.aiclegal.org)

**Domestic Partnership** – A civil or legal contract recognizing a partnership or a relationship between two people which confers limited benefits to them by their employer.

**Sodomy Laws** – laws that prohibit consensual, adult, private, noncommercial sex. Used mostly against gays and lesbians.

### **Medical Terms Related to HIV**

**AIDS or Acquired Immunodeficiency Syndrome** - is the medical term used for people with the HIV virus who have either experienced certain opportunistic infections (such as PCP pneumonia or Kaposi's Sarcoma), or whose T-cells (infection fighting blood cells) have dropped below 200.

**CD4 Count or T-Cell Count** – this is a test used to measure the well-being of the immune system of an individual who is HIV-positive. People with healthy immune systems generally have between 800-1200 T-cells. If T-cells drop below 200, a person is considered to have AIDS.

**HIV-Positive** <sup>114</sup> – means that a person has been exposed to the Human Immunodeficiency Virus (HIV) and developed anti-bodies to the virus. Once a person has tested positive for HIV, he or she will always test positive for HIV, regardless of his or her health.

Not everyone who is HIV-positive has AIDS, but everyone who has AIDS is HIV-positive. HIV is transmitted through the transfer of bodily fluids from an infected individual to an uninfected individual. People are primarily infected with HIV through sexual contact which involves the exchange of bodily fluids; from sharing intravenous drug paraphernalia; during childbirth and breast-feeding; and from receiving contaminated blood transfusions. There is no risk of HIV transmission from casual contact, such as shaking hands or sharing a drinking glass.

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<sup>114</sup> For more information about HIV see <http://www.gmhc.org/> on the Gay Men's Health Crisis website.

**LGBTI-Related Case Law**<sup>115</sup>**2011**

Castro – Martinez v. Holder, 641 F.3d 1103 (9th Cir. 2011) (amended by Castro – Martinez v. Holder, WL 6016162, Dec. 5, 2011 (9<sup>th</sup> Cir. 2011) (gay man from Mexico)

**2010**

Todorovic v. Att’y Gen. of the U.S., 621 F.3d 1318 (11th Cir. 2010) (gay man from Serbia)

Ayala v. Att’y Gen. of the U.S., 605 F.3d 941 (11th Cir. 2010) (gay, HIV+ man from Venezuela)

Eneh v. Holder, 601 F.3d 943 (9th Cir. 2010) (man living with AIDS from Nigeria)

Aguilar-Mejia v. Holder, 616 F.3d 699 (7th Cir. August 6, 2010) (HIV+ man from Mex./Guatemala)

**2009**

N-A-M- v. Holder, 587 F.3d 1052 (10th Cir. 2009) (M to F transsexual woman from El Salvador)

Martinez v. Holder, 557 F.3d 1059 (9th Cir. 2009) (gay man from Guatemala)

Pangilinan v Holder, 568 F.3d 708 (9th Cir. 2009) (transsexual woman from the Philippines)

Manani v. Filip, 552 F.3d 894 (8th Cir. 2009) (HIV+ woman from Kenya)

**2008**

Razkane v. Holder, 562 F.3d 1283 (10th Cir. 2008) (gay man from Morocco)

Bromfield v. Mukasey, 543 F.3d 1071 (9th Cir. 2008) (gay man from Jamaica)

Eke v. Mukasey, 512 F.3d 372 (7th Cir. 2008) (gay man from Nigeria)

Bosede v. Mukasey, 512 F.3d 946 (7th Cir. 2008) (HIV+ man from Nigeria)

Ali v. Mukasey, 529 F.3d 478 (2nd Cir. 2008) (gay man from Guyana)

Kadri v. Mukasey, 543 F.3d 16 (1st Cir. 2008) (gay man from Indonesia)

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<sup>115</sup> In descending order by year.

## 2007

Jean-Pierre v. Att'y Gen. of the U.S., 500 F.3d 1315 (11th Cir. 2007) (HIV+ man from Haiti)

Morales v. Gonzales, 478 F.3d 972 (9th Cir. 2007) (transgender woman from Mexico)

Nabulwala v. Gonzales, 481 F.3d 1115 (8th Cir. 2007) (lesbian woman from Uganda)

Shahinaj v. Gonzales, 481 F.3d 1027 (8th Cir. 2007) (gay man from Albania)

Ixtlilco-Morales v. Keisler, 507 F.3d 651 (8th Cir. 2007) (gay man from Mexico)

Moab v. Gonzales, 500 F.3d 656 (7th Cir. 2007) (gay man from Liberia)

Lavira v. Att'y Gen. of the U.S., 478 F.3d 158 (3d Cir. 2007) (HIV+ man from Haiti)

Joaquin-Porras v. Gonzales, 435 F.3d 172 (2d Cir. 2006) (gay man from Costa Rica)

## 2006

Ornelas Chavez v. Gonzalez, 458 F.3d 1052 (9th Cir. 2006) (transgender woman from Mexico)

Maldonado v. Att'y Gen. of the U.S., 188 Fed. Appx. 101, 103 (3d Cir. 2006) (unpublished)(gay man from Argentina)

## 2005

Salkeld v. Gonzales, 420 F.3d 804 (8th Cir. 2005) (gay man from Peru)

Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005) (gay man with AIDS from Mexico)

Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005) (gay, HIV+ man from Lebanon)

Kimumwe v. Gonzales, 431 F.3d 319 (8th Cir. 2005) (gay man from Zimbabwe)

Galicia v. Ashcroft, 396 F.3d 446 (1st Cir. 2005) (gay man from Guatemala)

## 2004

Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004) (gay man with female sexual identity from El Salvador)

Gebremaria v. Ashcroft, 378 F.3d 734 (8th Cir. 2004) (HIV+ woman from Ethiopia)

Molathwa v. Ashcroft, 390 F.3d 551 (8th Cir. 2004) (gay man Botswana)

**2003**

Amanfi v. Ashcroft, 328 F.3d 719 (3rd Cir. 2003) (man imputed to be gay from Ghana)

**1990-2000**

Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000) (gay man with female sexual identity from Mexico)

Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997) (lesbian woman from Russia)

Matter of Toboso-Alfonso, 20 I&N Dec. 819 (BIA 1990) (gay man from Cuba)

### SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

*Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV) Infection from Definition of Communicable Disease of Public Health Significance.*

Centers for Disease Control and Prevention (CDC) and U.S. Department of Health and Human Services (HHS). 74 FR 56547-62 (Nov. 2, 2009). Final rule, January 4, 2010, available at <http://www.cdc.gov/immigrantrefugeehealth/laws-regs/hiv-ban-removal/final-rule.html>.

#### ADDITIONAL RESOURCES

See Additional Resources listed at the beginning of this module.

#### SUPPLEMENTS

There are no RAD supplements for this training module.



**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

See Required Reading listed at the beginning of this module.

**ADDITIONAL RESOURCES**

See Additional Resources listed at the beginning of this module.

**SUPPLEMENTS**

**ASM Supplement – 1**

**Legal Analysis – One-Year Filing Deadline**

This module does not alter the legal criteria used to evaluate the one-year filing deadline. There are, however, some factual scenarios that may arise specifically in the context of LGBTI claims that are useful to discuss within the legal framework of established guidance on the one-year filing deadline.

**Changed Circumstances Specific to LGBTI Applicants**

**Changed Country Conditions**

As with any other type of asylum claim, if conditions in the applicant's country of origin have changed substantially, this may form the basis for an exception to the one year filing deadline.<sup>116</sup> For example, a fundamentalist government may have just come to power and instituted criminal sanctions for consensual homosexual activity.

**“Coming Out” as LGBTI**

<sup>116</sup> See Victoria Neilson and Aaron Morris, *The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal*, 8 *New York City Law Review* 233 (Summer 2005), available at <http://www.asylumlaw.org/docs/sexualminorities/GayBar091798.pdf>.

In many instances an individual does not feel comfortable accepting himself or herself as LGBTI until he or she is in a country where the applicant can see that it is possible to live an open life as an LGBTI person. If an individual has recently “come out” as lesbian, gay, bisexual, or transgender, this may qualify as an exception based on changed circumstances.

### Recent Steps in Gender Transitioning

As noted above, transitioning from the gender assigned at birth to the gender with which the applicant identifies is a process which may involve many steps. At some point during this process, the applicant may realize that he or she could no longer “pass” as his or her birth gender and therefore may become more fearful of returning to his or her country of origin. For example, a transgender woman (MTF) may have recently had breast implants which would now make it impossible to “pass” as male.

### Recent HIV Diagnosis

Some individuals will apply for asylum **only** after they have been diagnosed with HIV. For some applicants, the claim will be based wholly on his or her HIV status and the fear of persecution upon return to the country of origin. For other individuals who may also be LGBT, the HIV diagnosis may be “the last straw,” causing the applicant to realize that returning to the country of origin would be a “death sentence.” Many countries do not have confidentiality laws protecting HIV status, so some LGBT people fear that their HIV status could become widely known. In many countries, being HIV-positive is equated with being LGBT, and so their LGBT identity would become known.

In *Manini v. Filip* 552 F.3d 894, (8<sup>th</sup> Cir. 2009), a Kenyan woman entered the U.S. in October 2001; was diagnosed with HIV in January 2003, and filed affirmatively for asylum in May 2004. The Asylum Office accepted her recent HIV diagnosis as a “changed circumstance,” but found that the 16 month delay in filing after the diagnosis fell outside the “reasonable period of time” required by law. The BIA upheld the decision and the Eight Circuit found that it lacked jurisdiction to review the one year issue. See also *Ixtlilco-Morales v. Keisler*, 507 F.3d 651 (8<sup>th</sup> Cir. 2007), where the Eight Circuit also accepted the applicant’s recent HIV diagnosis as a changed circumstance but upheld the BIA and IJ decisions to deny the case on other grounds.

The following are some suggested lines of questioning when adjudicating a claim that involves the applicant’s HIV status:<sup>117</sup>

- When did you learn that you are HIV-positive?

<sup>117</sup> *Id.*

- How did you feel when you received your diagnosis?
- Does your family know that you're HIV-positive?
- How did they react?
- Have you experienced any HIV-related symptoms?
- Have you ever been hospitalized because of HIV?
- Are you taking any HIV-related illnesses?
- When did you begin taking them?
- Do you experience any side effects from the medications?
- Have you ever seen a mental health provider, because of your diagnosis?

### Extraordinary Circumstances Specific to LGBTI

#### HIV-Positive Status

Applicants who are HIV-positive may exhibit life-threatening symptoms and require hospitalization. An individual may qualify for a one year exception based upon serious illness. Additionally, many individuals living with HIV experience extreme depression and other mental health issues as a result of their diagnosis which may affect the applicant's ability to timely file and/or may affect what period of time is "reasonable" to file after an HIV diagnosis.

#### PTSD or Other Mental Health Issues

As with any other asylum seekers, LGBTI applicants may suffer from Post Traumatic Stress Disorder (PTSD) or other mental health issues which make it difficult to file within a year of entry into the United States. LGBTI individuals who suffer from internalized homophobia and transphobia, or who have been subjected to coercive mental health treatment to "cure" them in their home countries, may find it especially difficult to access the mental health treatment that they may need to proceed with their applications.

Many LGBTI individuals will have fled to the United States leaving behind a partner. Under current immigration law, there is no way for a refugee or asylee to sponsor a same-sex partner for immigration benefits, so the applicant may also be dealing with the possible permanent loss of a partner by coming to the United States.

Example: The applicant, a transgender male from Honduras, suffered severe and continuous sexual and other physical abuse for many years as well as familial and societal discrimination and ostracism on account of his sexual orientation. He last entered the US in 2003 but did not file for asylum until 2009. The applicant credibly explained that he felt isolated and was afraid to come forward sooner.

because he was ashamed and fearful of ostracism by friends and colleagues and society in general. According to medical reports he submitted, he suffered from PTSD as a result of the years of trauma he suffered in Honduras. His PTSD can be seen as an extraordinary circumstance related to the delay in filing during the year after he arrived; the 5-year delay afterwards may also be considered reasonable based on that medical condition.<sup>118</sup>

#### Severe Family or Community Opposition or Isolation

Many LGBTI people who arrive in the United States stay with extended family members or with other members of their community. Being surrounded by family or community members may make it impossible for the LGBTI applicant to timely file for fear that if the family member learns of the applicant's LGBTI identity, he or she will be thrown out of the home, the applicant's family at home will be told, and/or the applicant and his or her family will be disgraced.

Extreme isolation within a particular immigrant community may qualify as an exception. It is common for foreign nationals who have newly arrived in the United States to be steered to immigration attorneys from within their own cultural community. While some applicants may be aware that they can seek asylum in the United States based on their political beliefs or religion, many foreign nationals (and, indeed, many U.S. immigration attorneys) are not aware that sexual orientation or transgender identity might form the basis of an asylum claim.<sup>119</sup> This problem may be compounded for LGBTI individuals who come to the U.S. and immediately take up residence in an immigrant community with people from their own country. Often an LGBTI applicant would be fearful of disclosing his or her LGBTI status to any community member, and so might be informed by an immigration attorney that his or her only option to legalize would be to marry.

For example, a gay Tunisian man who was admitted to the United States on a non-immigrant visa is helped by men from Egypt and other Arab immigrant communities to find housing and employment. These men are not aware that the applicant is gay and tell him that asylum is generally not a means for legalizing one's status in the United States. It is not until the applicant meets a gay man from the United States that he becomes aware that he may be a refugee under U.S. law.

<sup>118</sup> See AOBTC One-Year Filing Deadline lesson plan, Section VII, Credibility, Subsection B, Totality of the Circumstances, Subsection c, Extraordinary Circumstances.

<sup>119</sup> See Explore All Possible Grounds in Section 6, Interview Considerations, and Claims Not Initially Put Forward in Section 7, Burden of Proof and Evidence above.



**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

See Required Reading listed at the beginning of this module and Required Reading in the RAD Supplement.

**ADDITIONAL RESOURCES**

See Additional Resources listed at the beginning of this module.

**SUPPLEMENTS**

There are no IO supplements for this module.

# Overview of Refugee Inadmissibility Grounds – Supplement to I-602 Refugee Waiver Training

International Operations Division Training  
December 2014



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# Field Performance Objectives

- Officers will be able to identify the grounds of inadmissibility in INA § 212(a) that apply to principal and derivative refugee applicants, including I-730 derivative refugee beneficiaries.
- Officers will be able to recognize the inadmissibility grounds that:
  - do not apply to refugees and their derivatives;
  - Are non-waivable, mandatory bars to refugee admissibility;
  - May be waived on humanitarian grounds, family unity reasons, OR in the public interest of the United States (INA § 207(c)(3). See accompanying Form I-602 training presentation.



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# Please Note:

This presentation is only an Overview of the refugee inadmissibility grounds and should be reviewed in conjunction with the other training materials on principal refugee and derivative refugee adjudications generally.



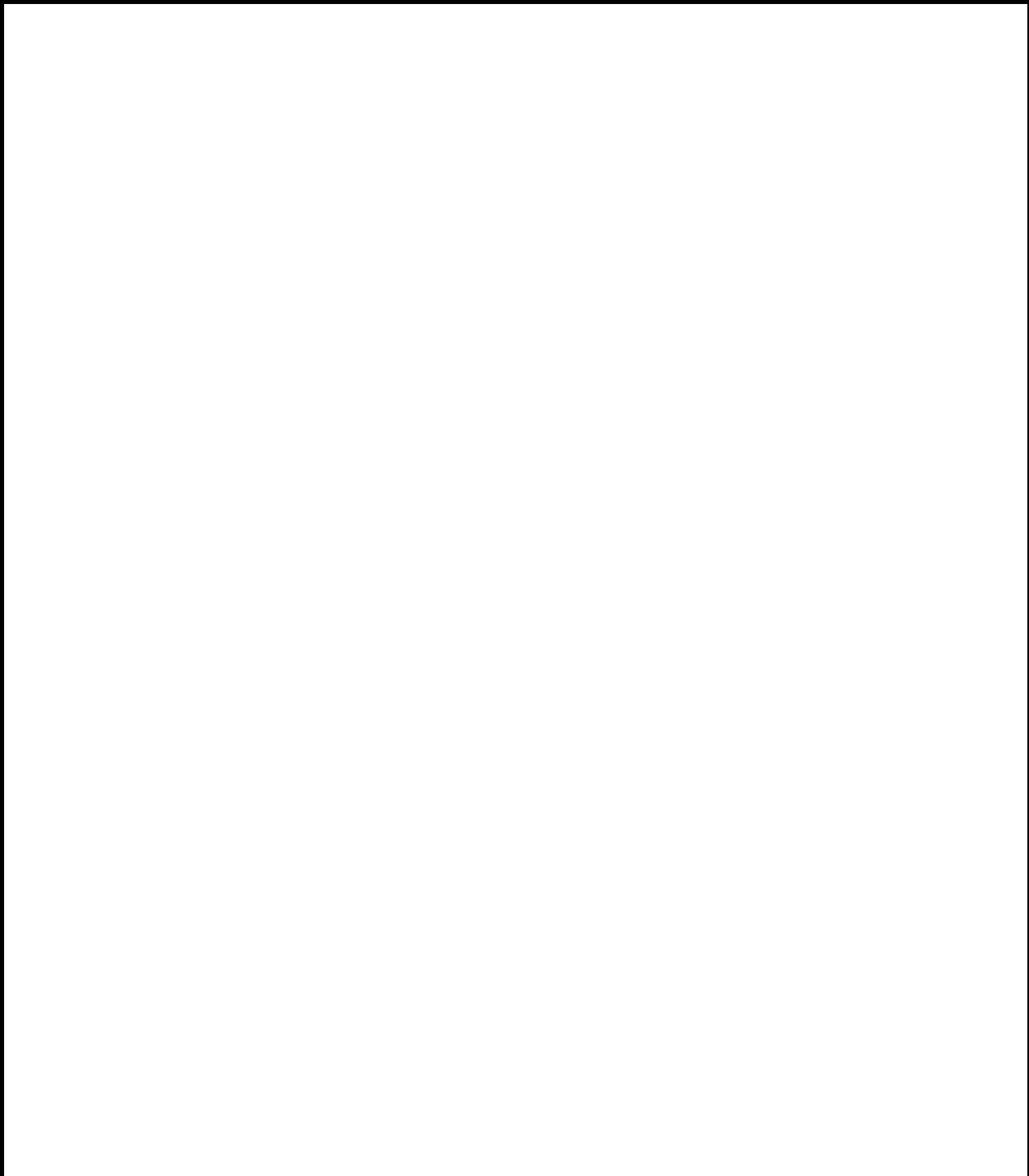
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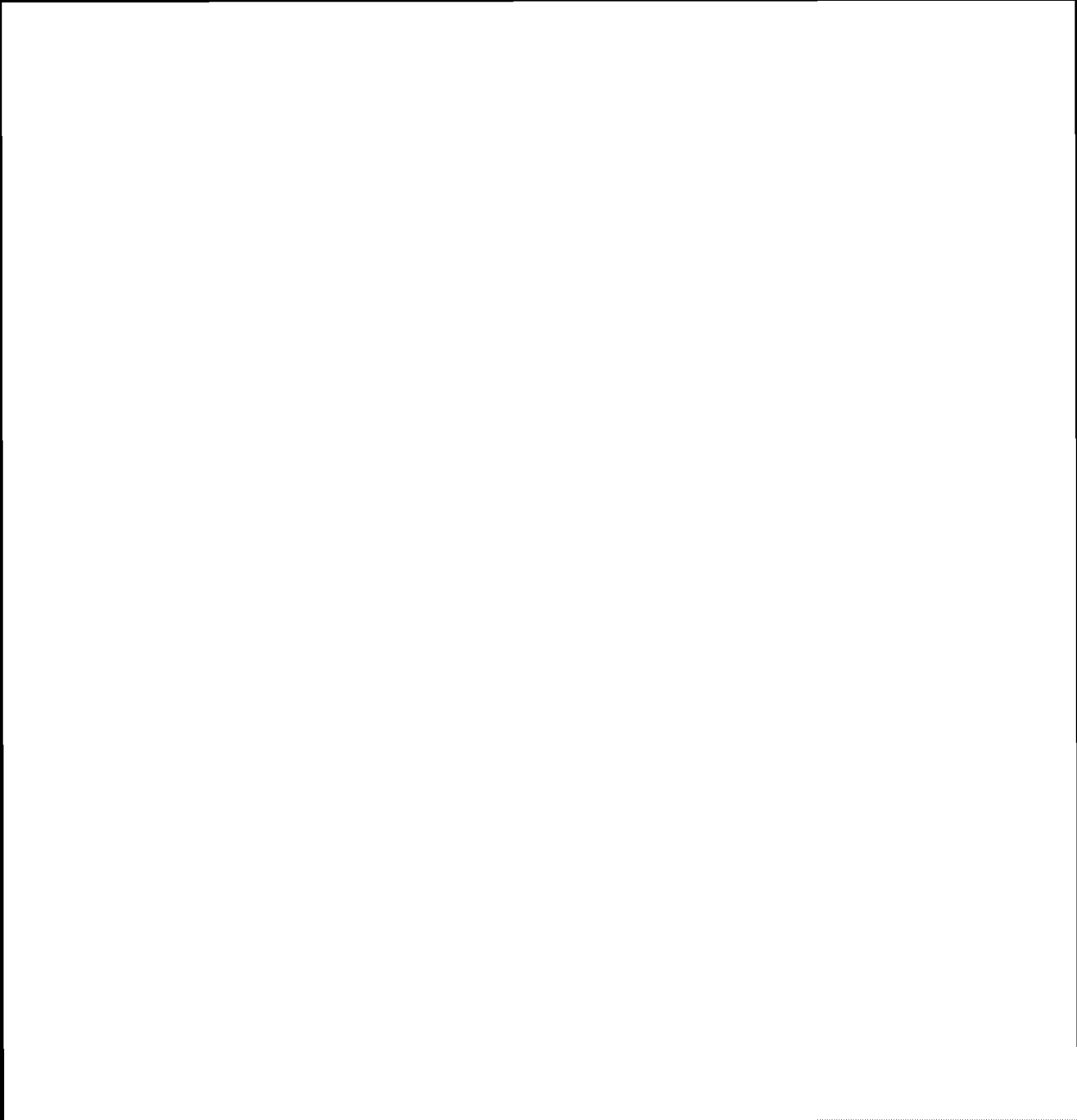
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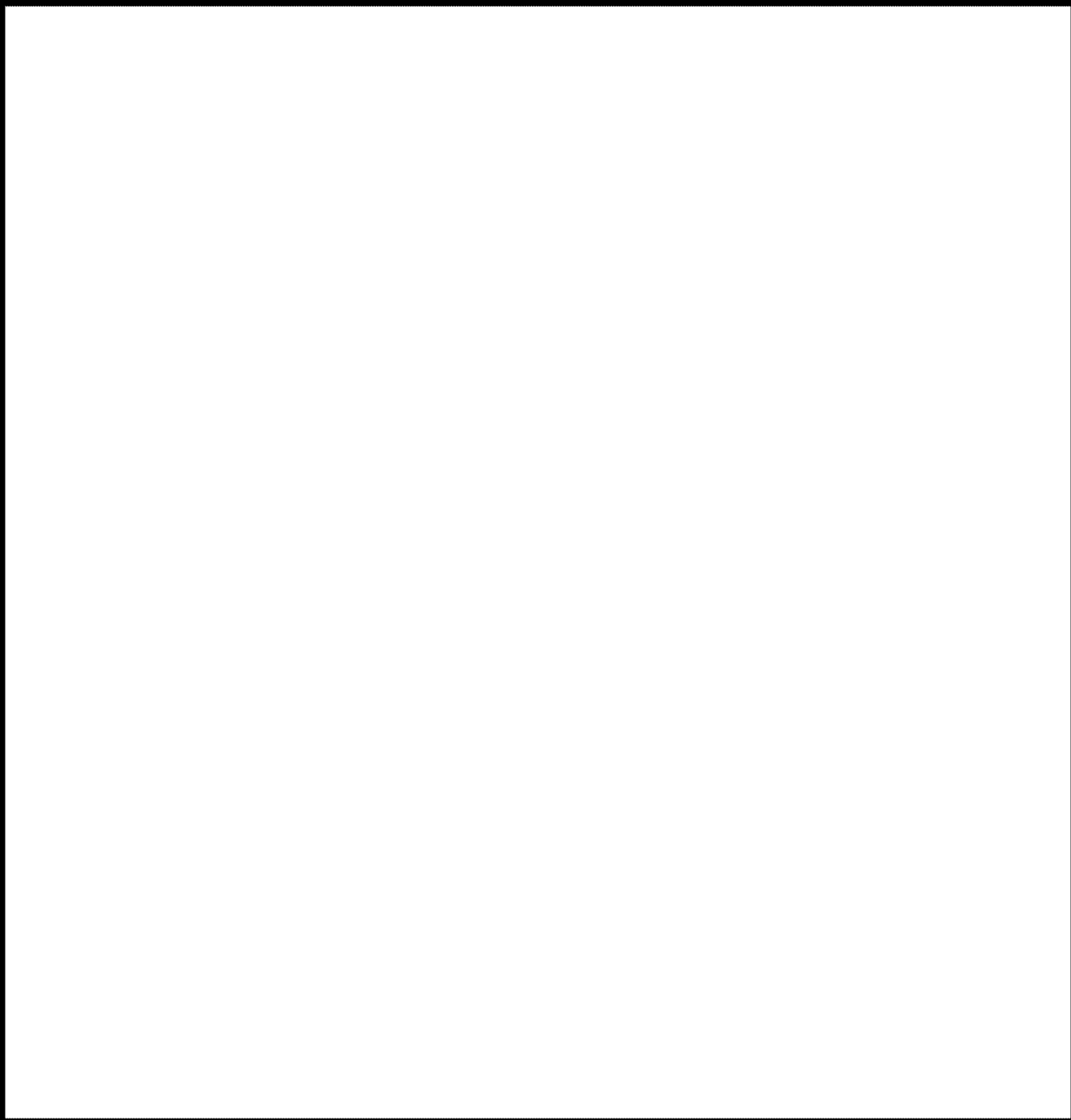


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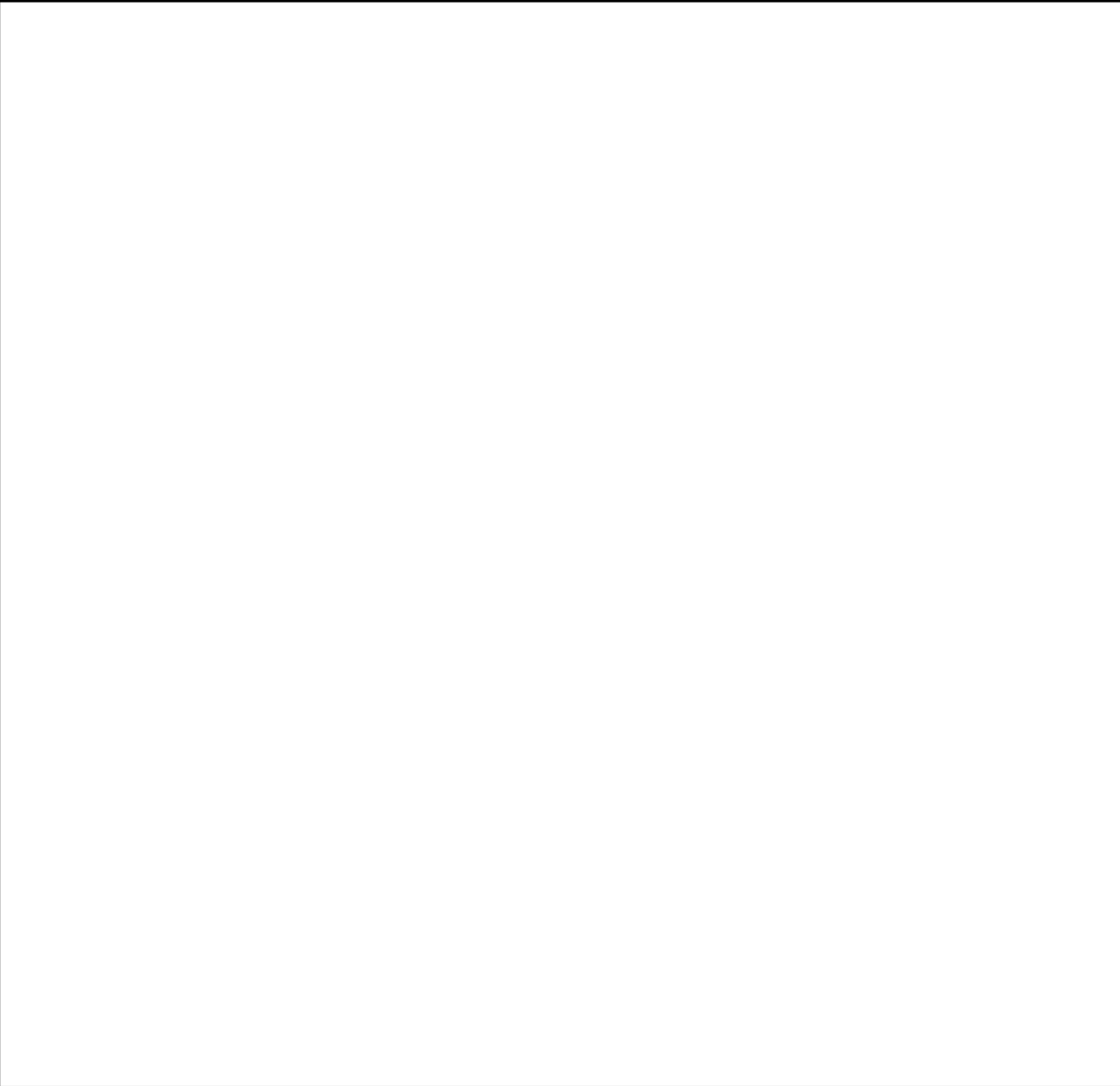
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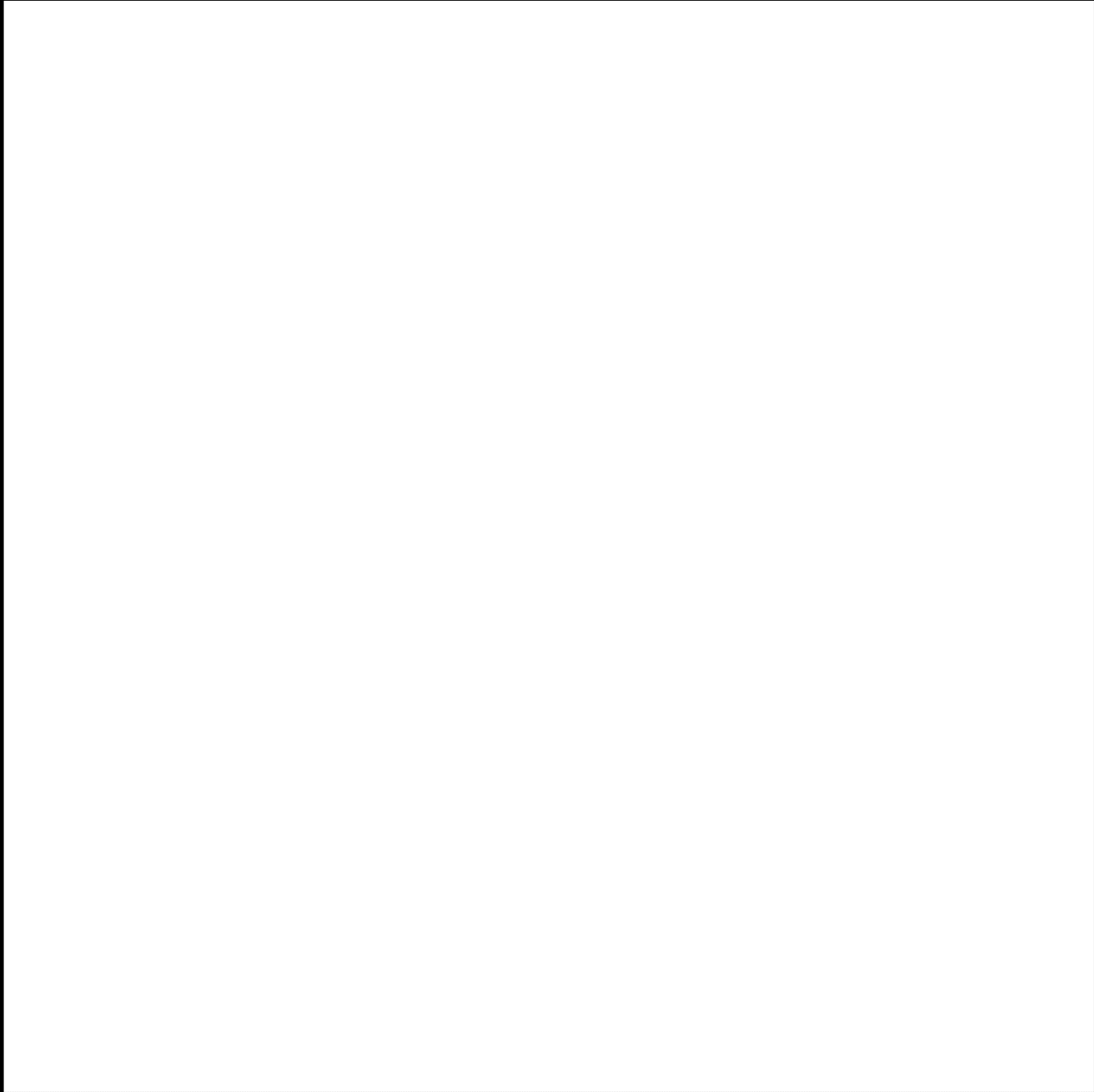
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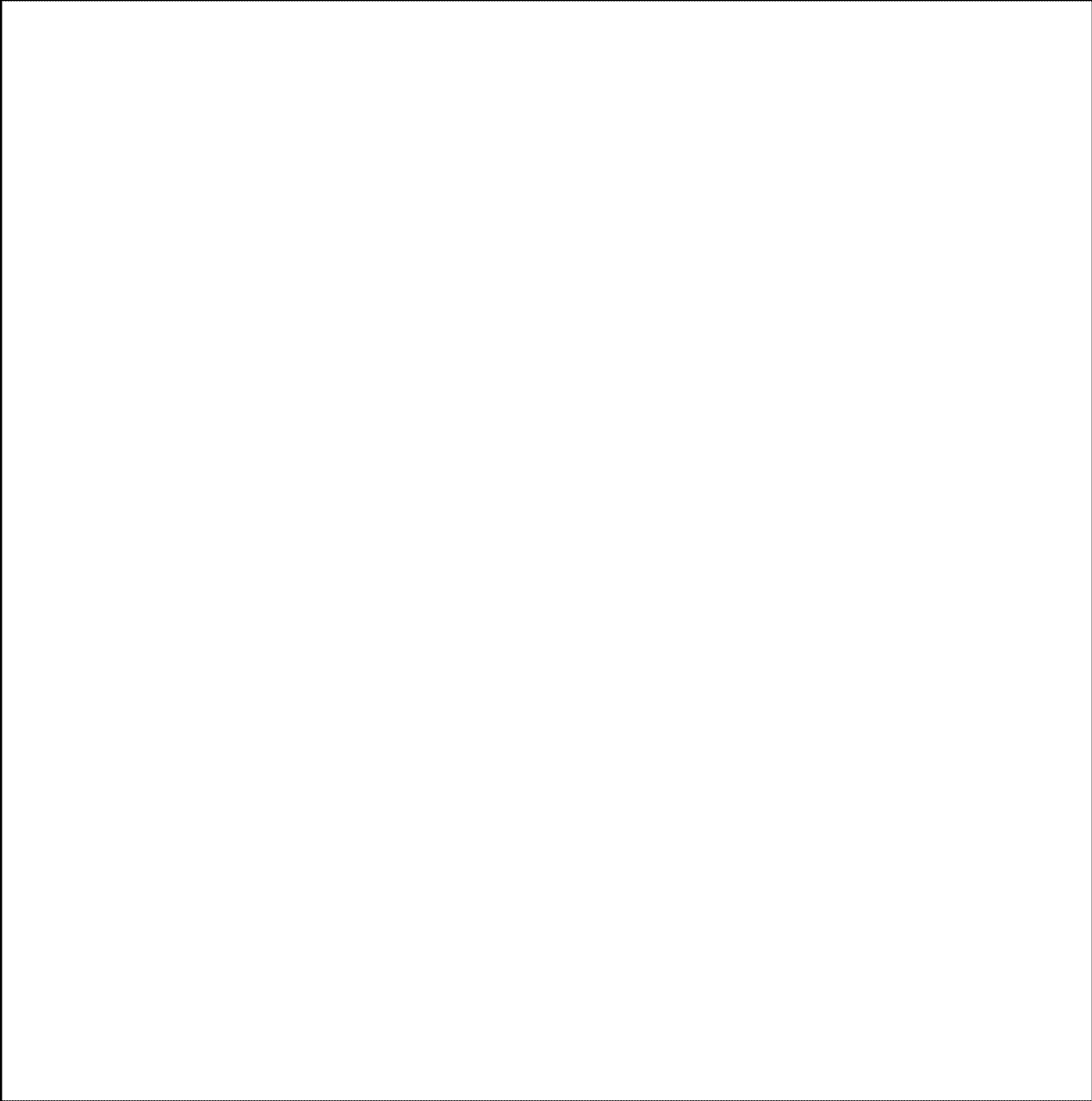


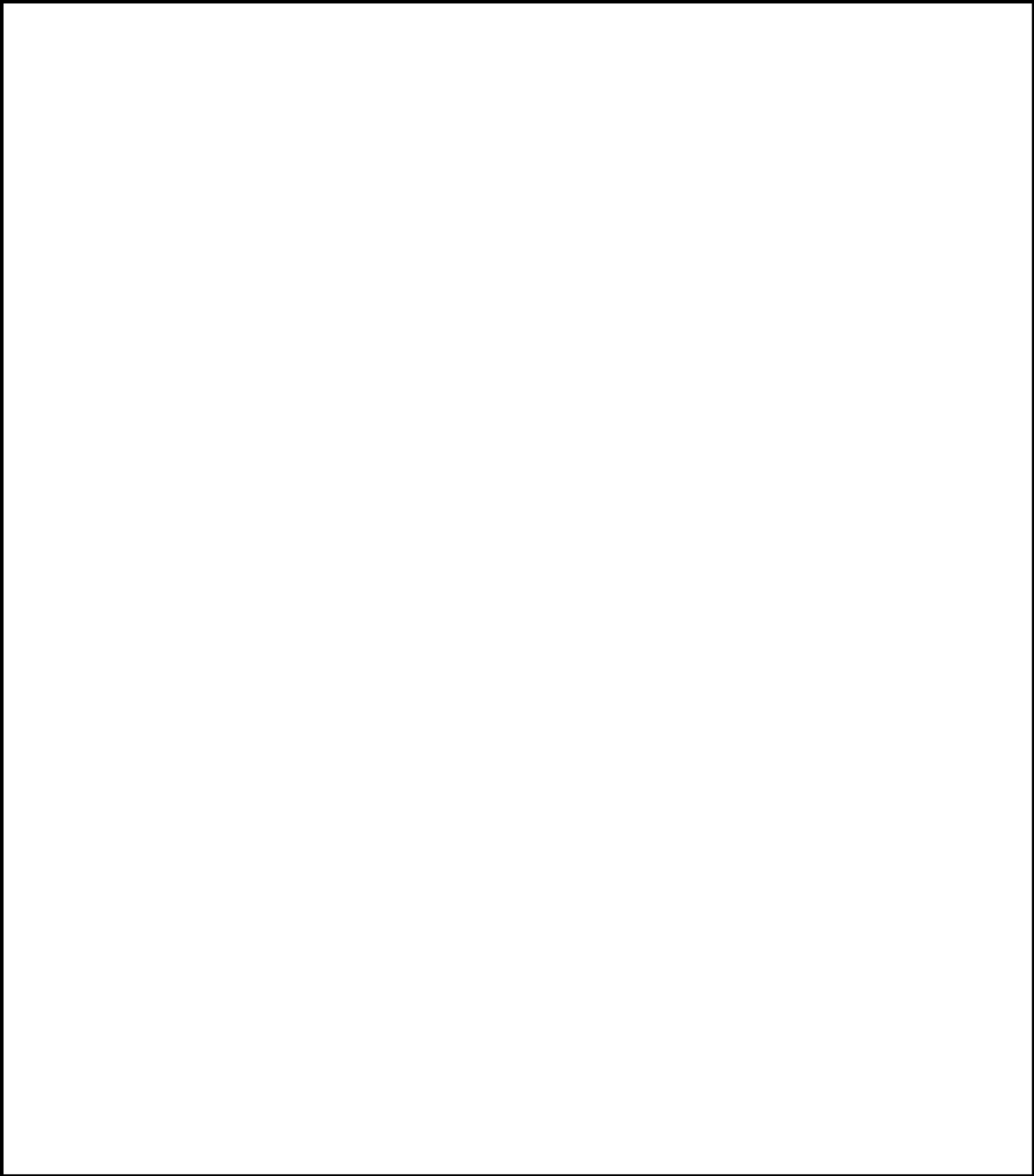
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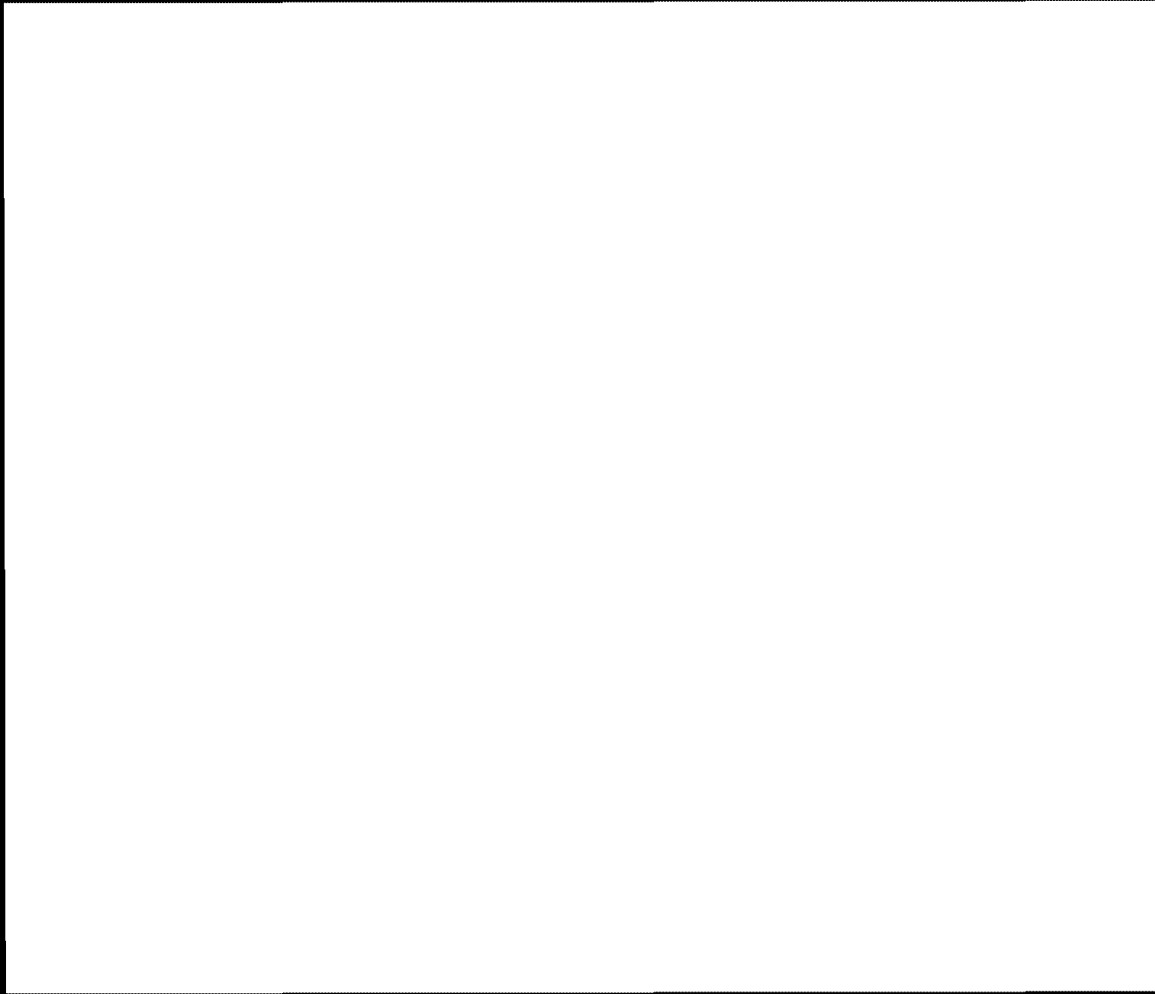




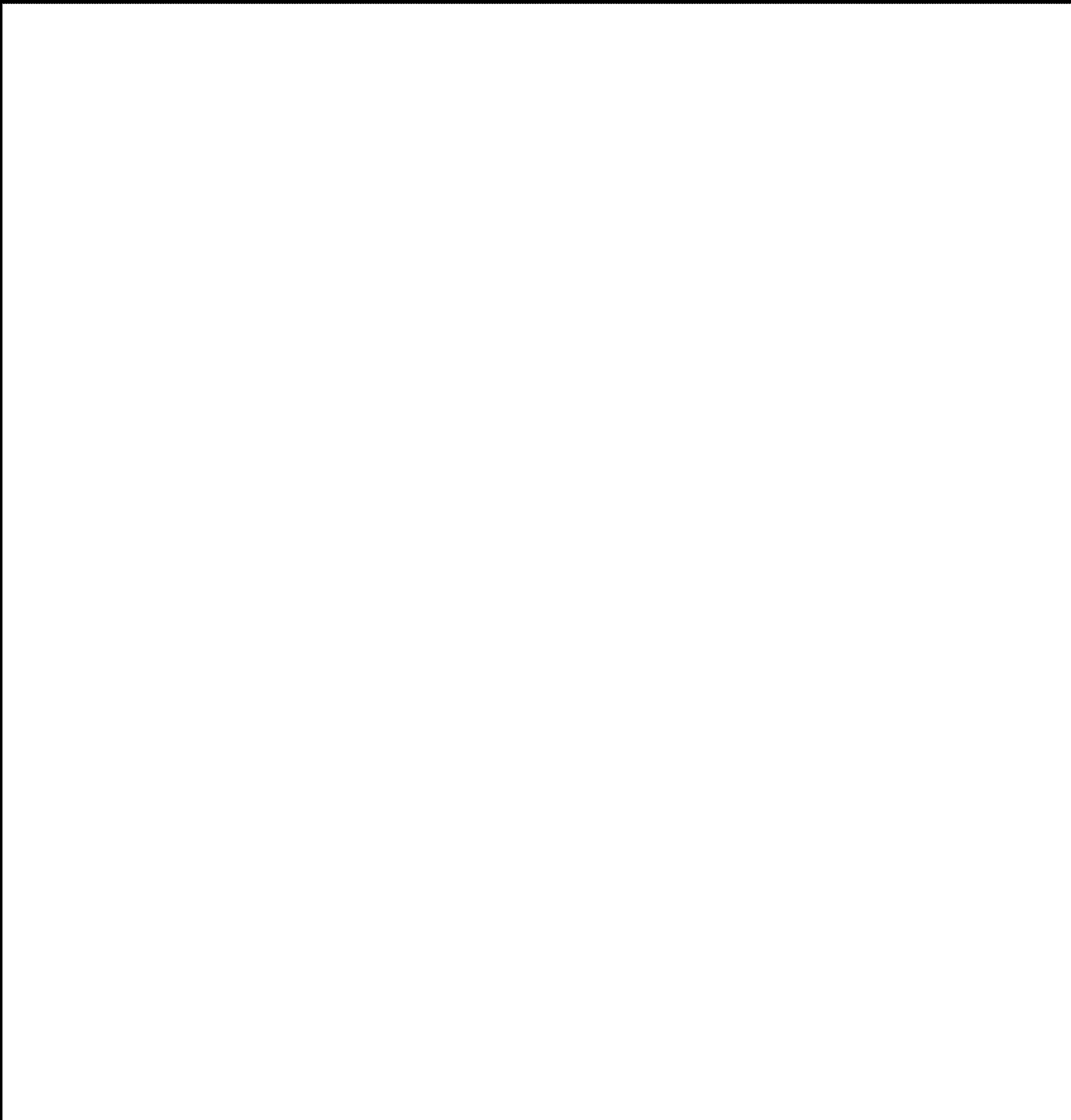


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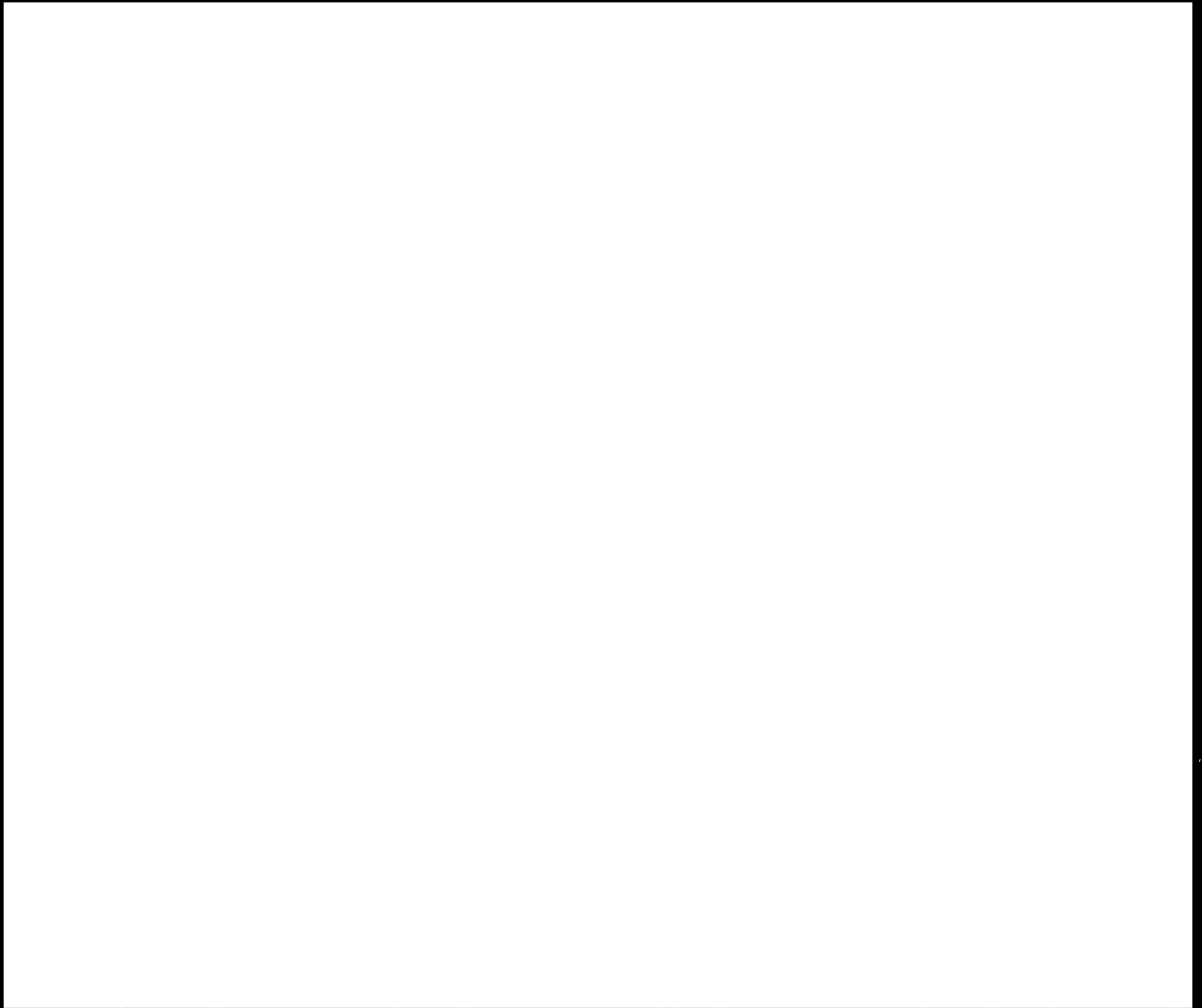




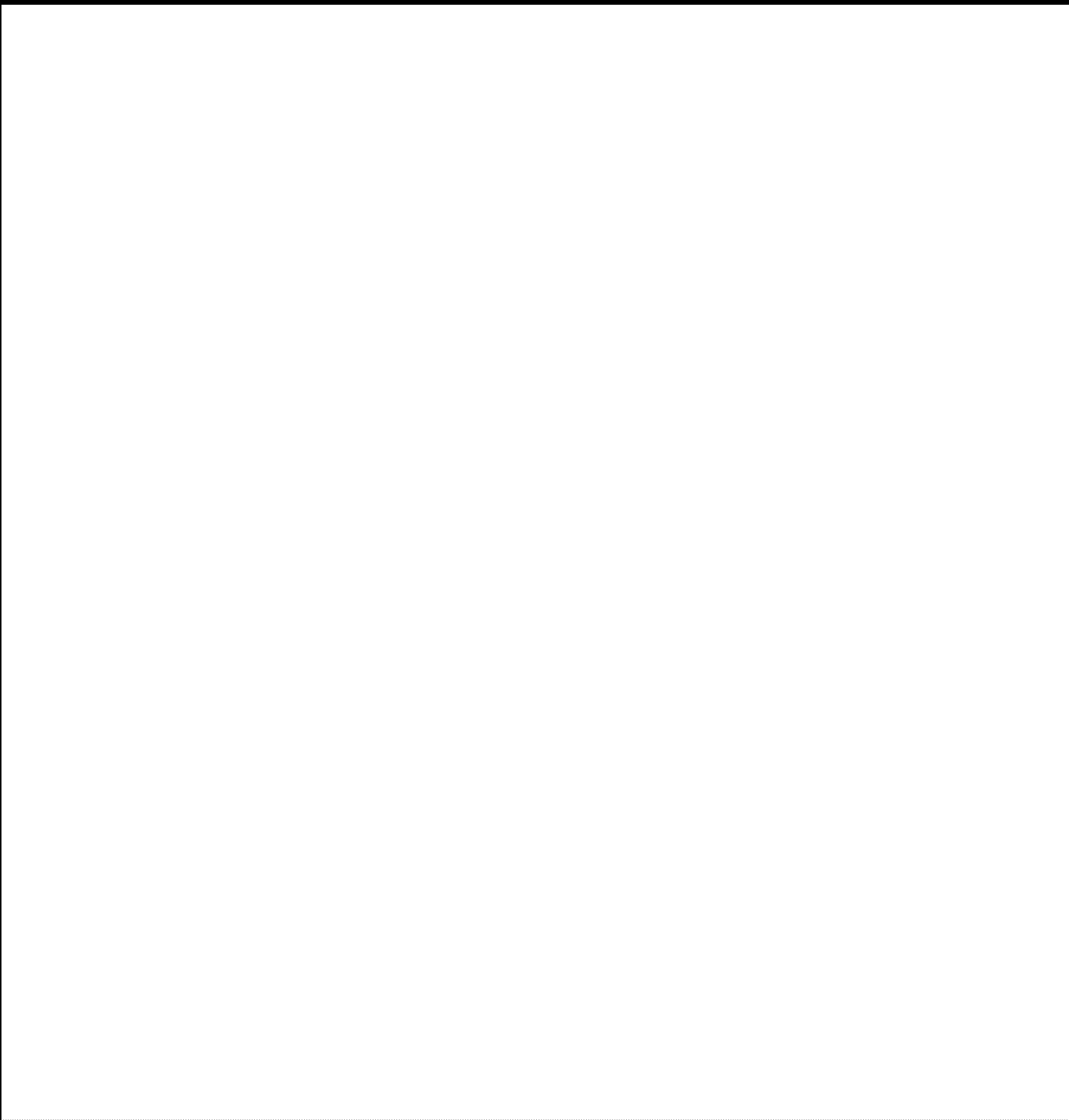
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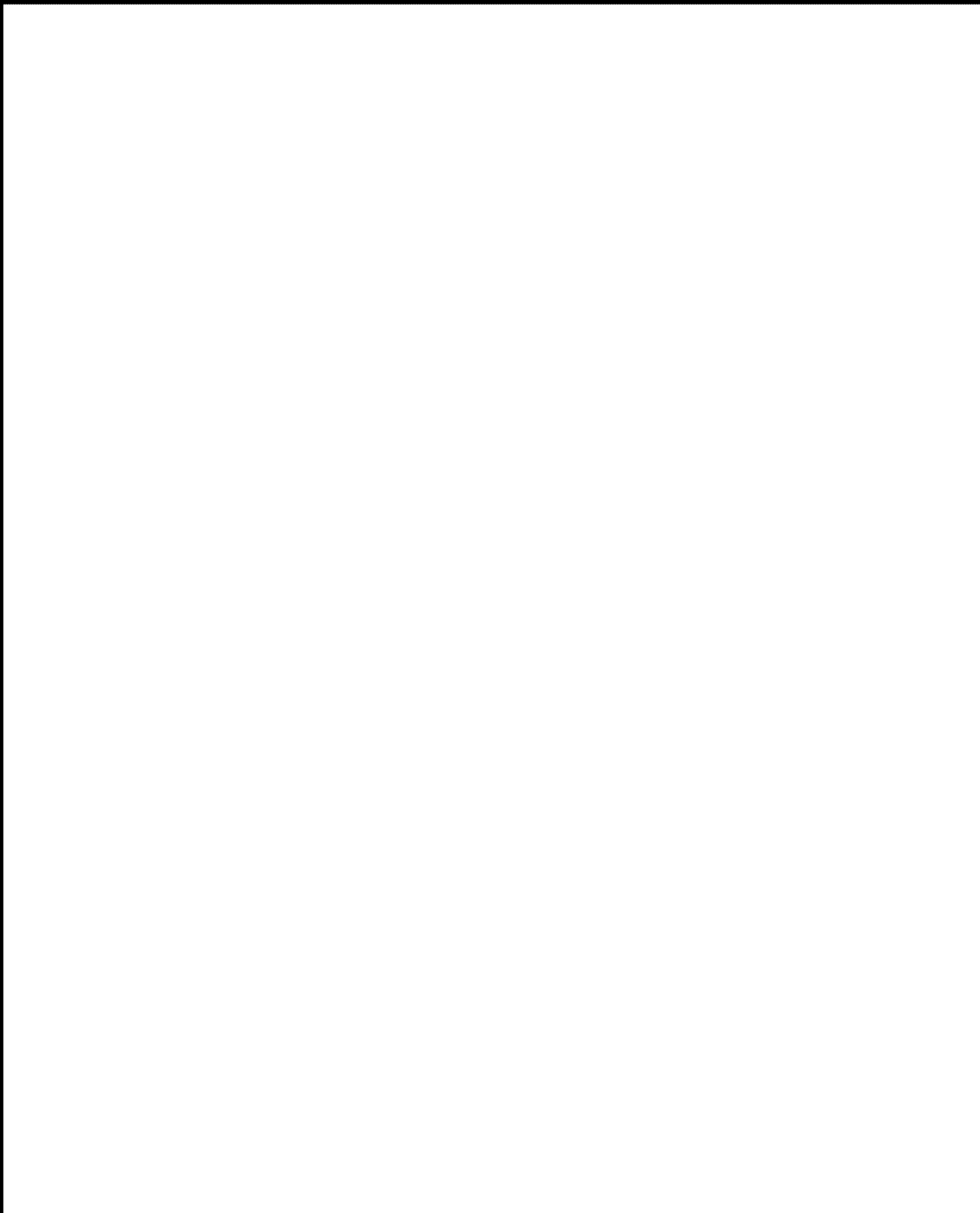


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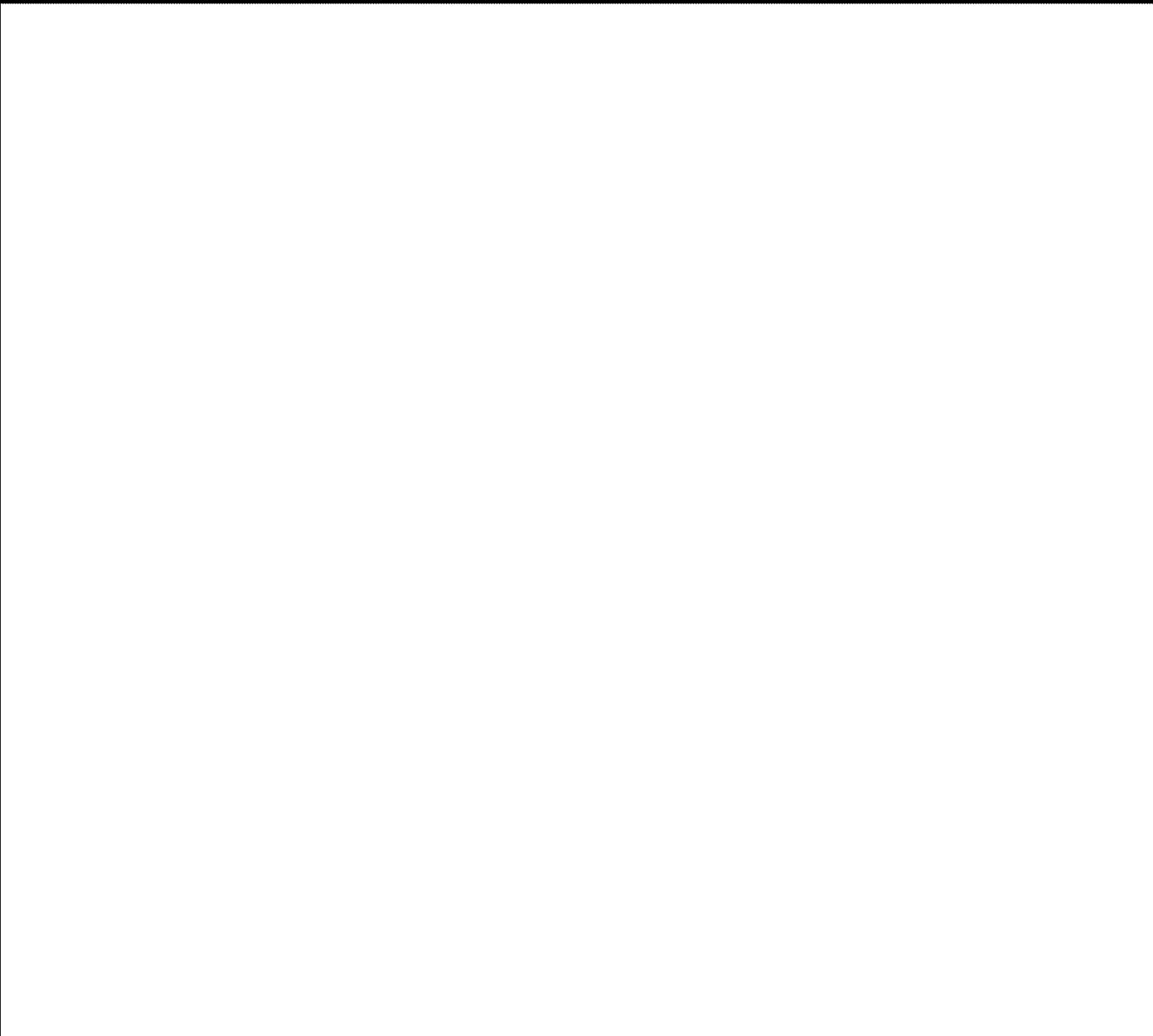


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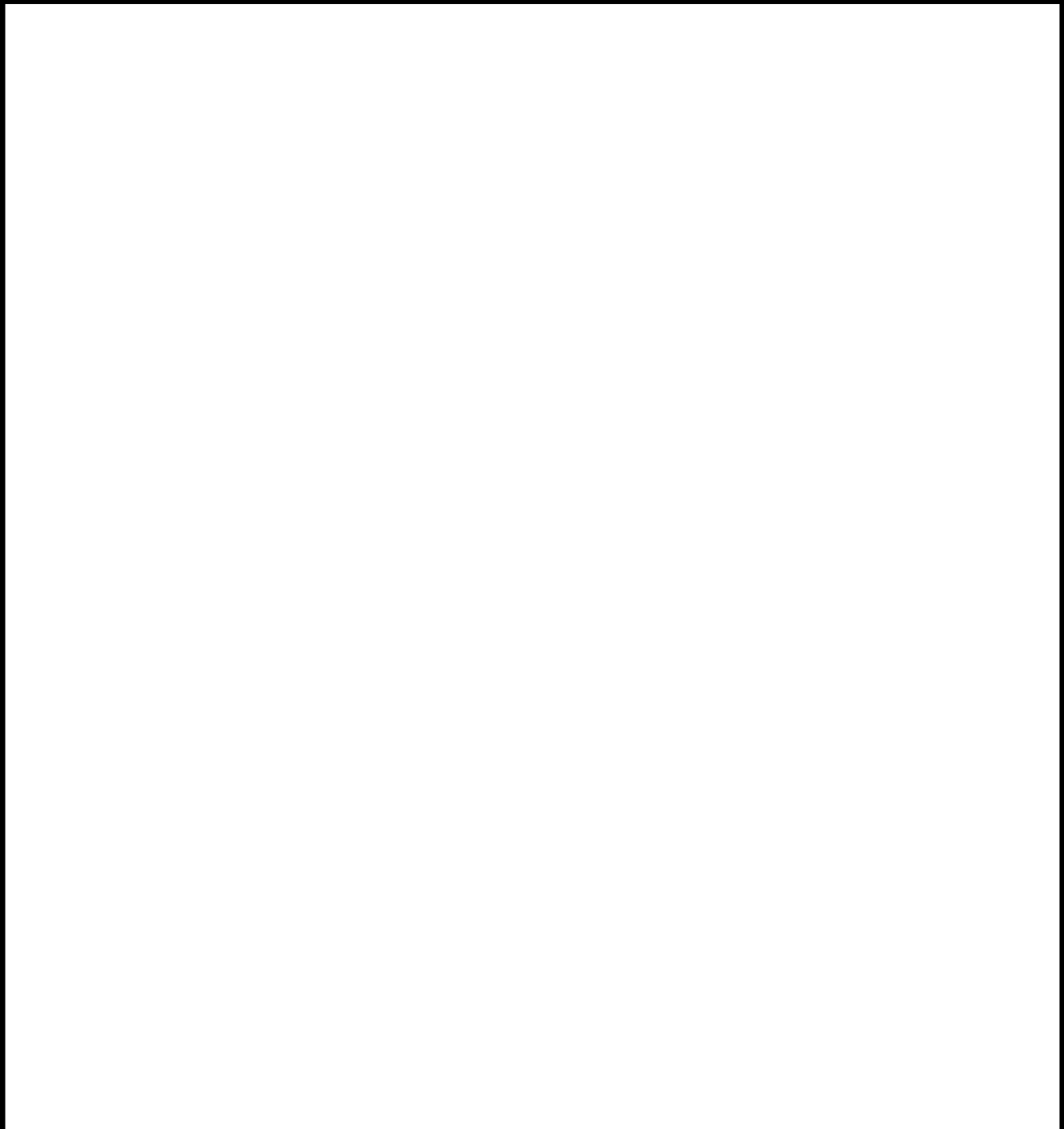
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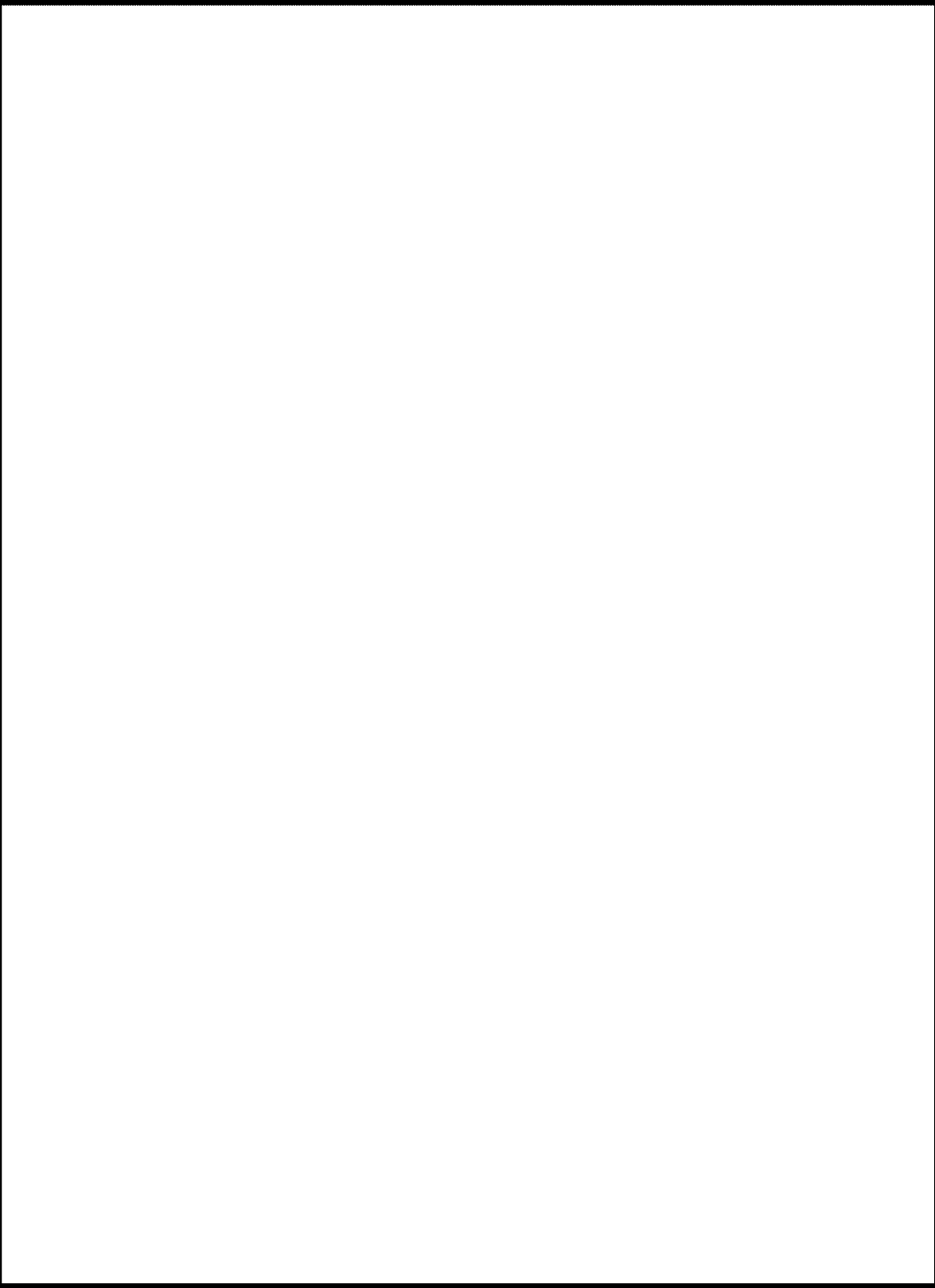


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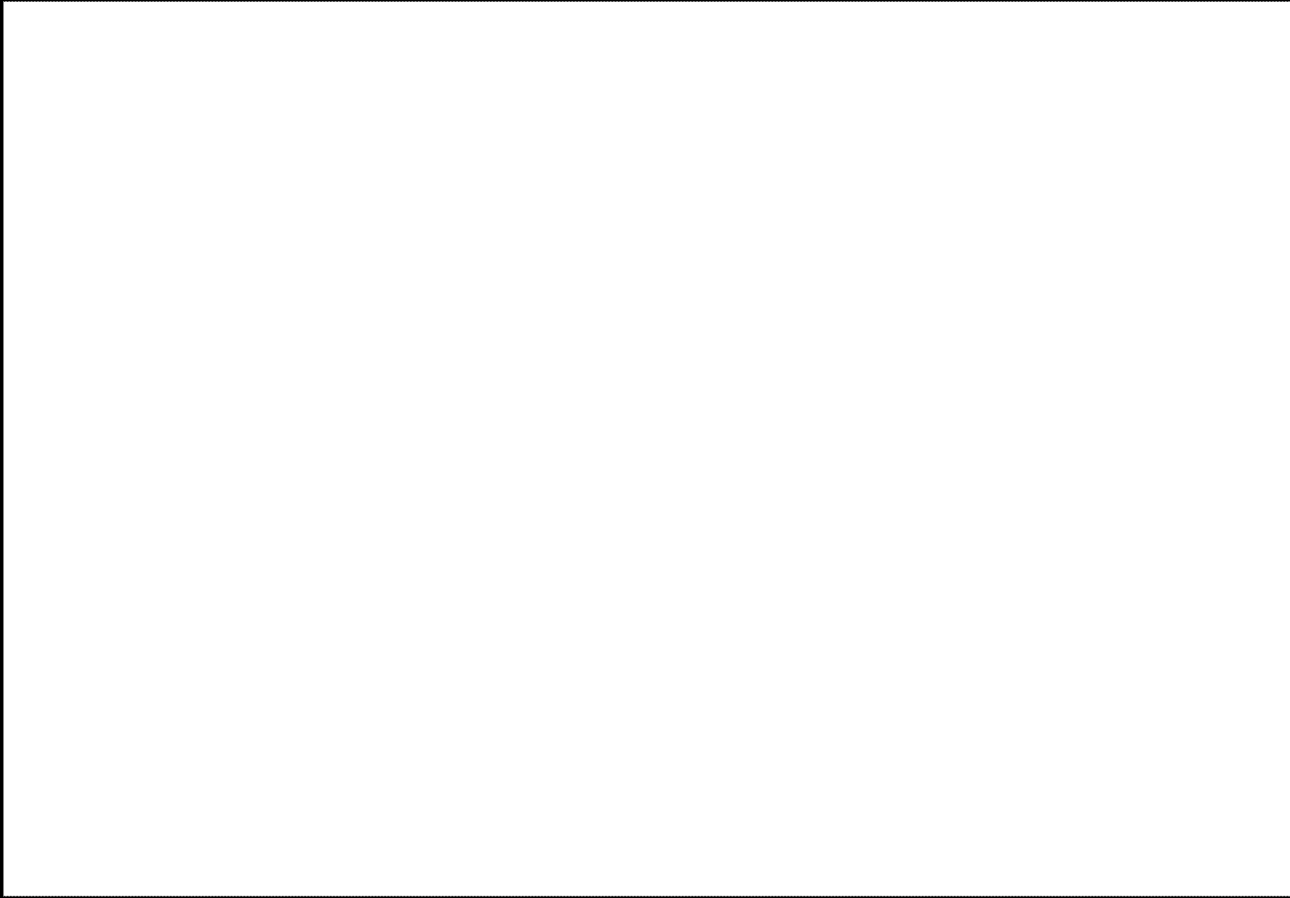
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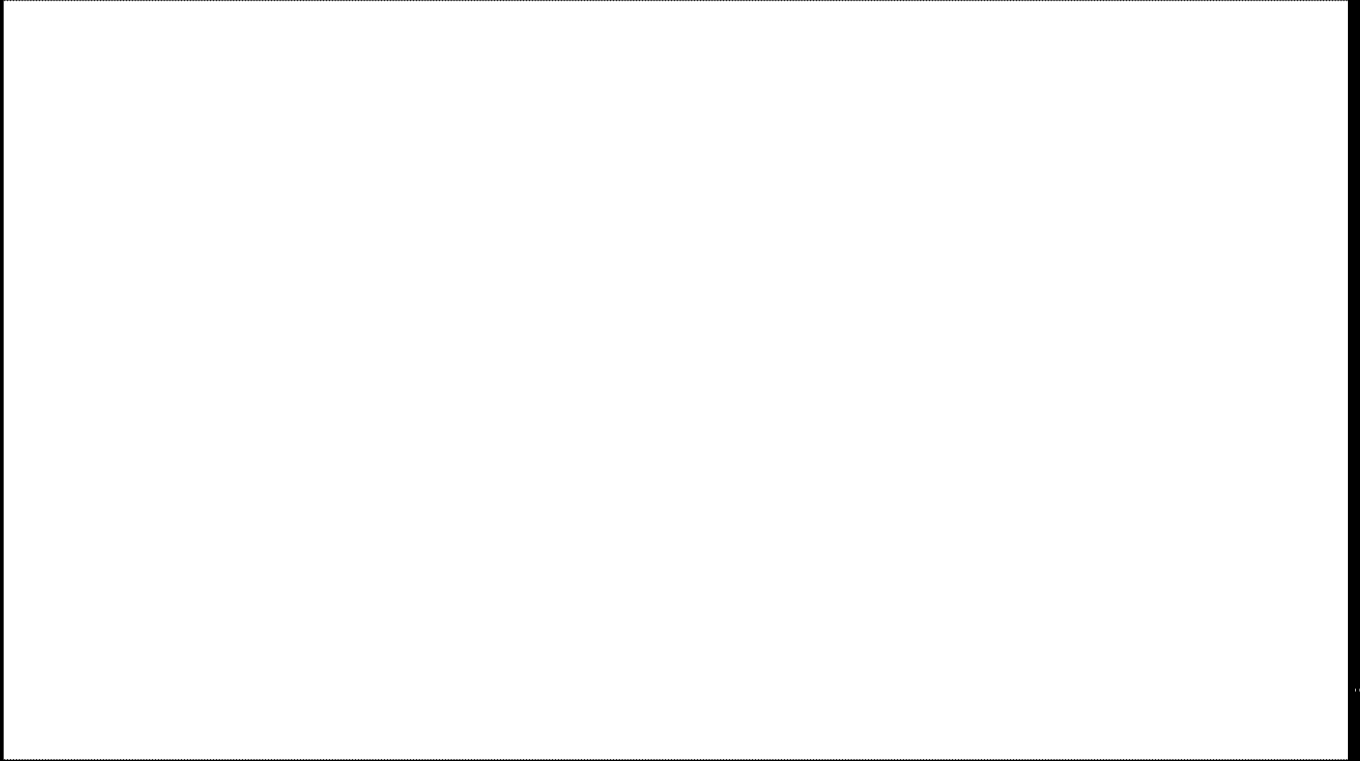
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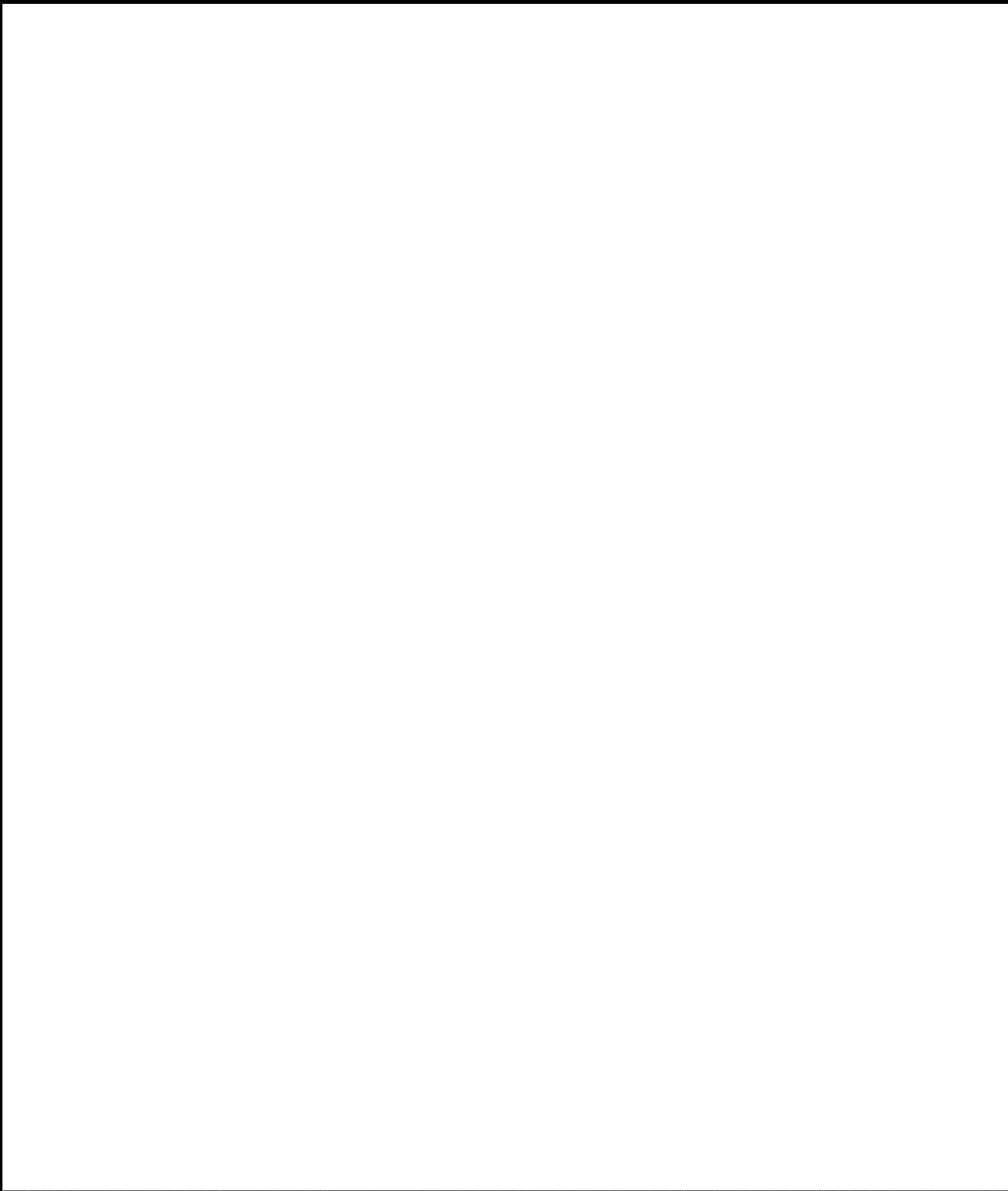


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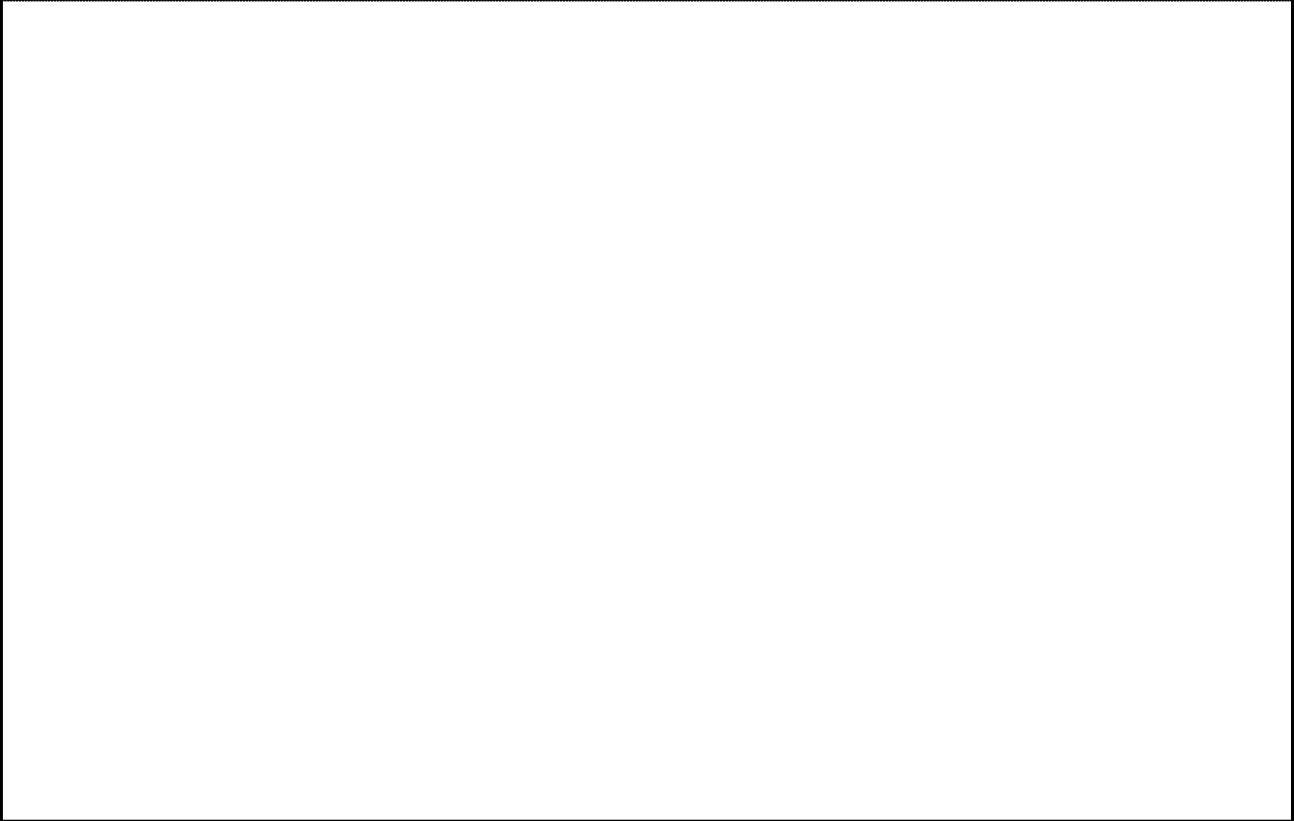


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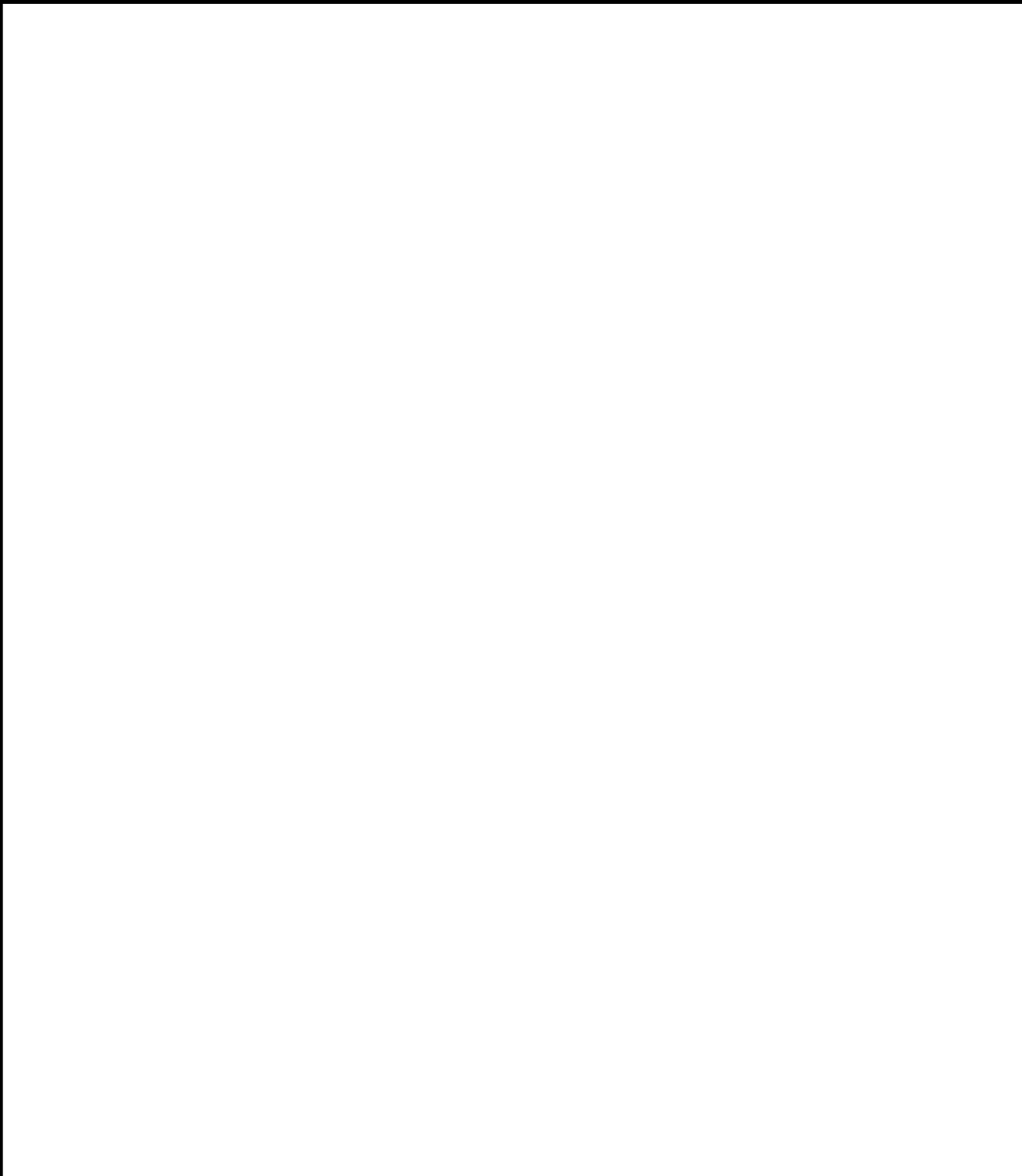
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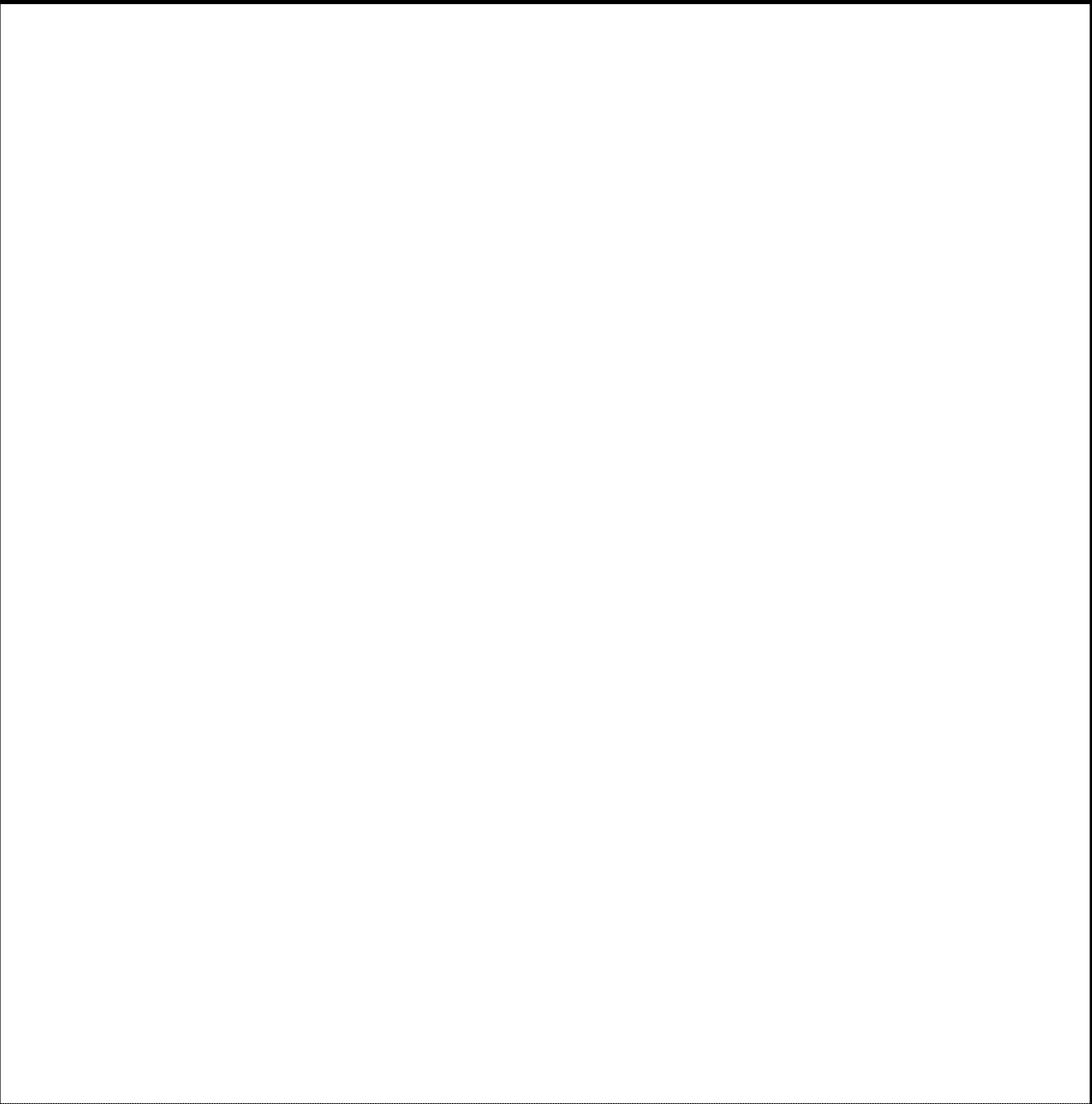


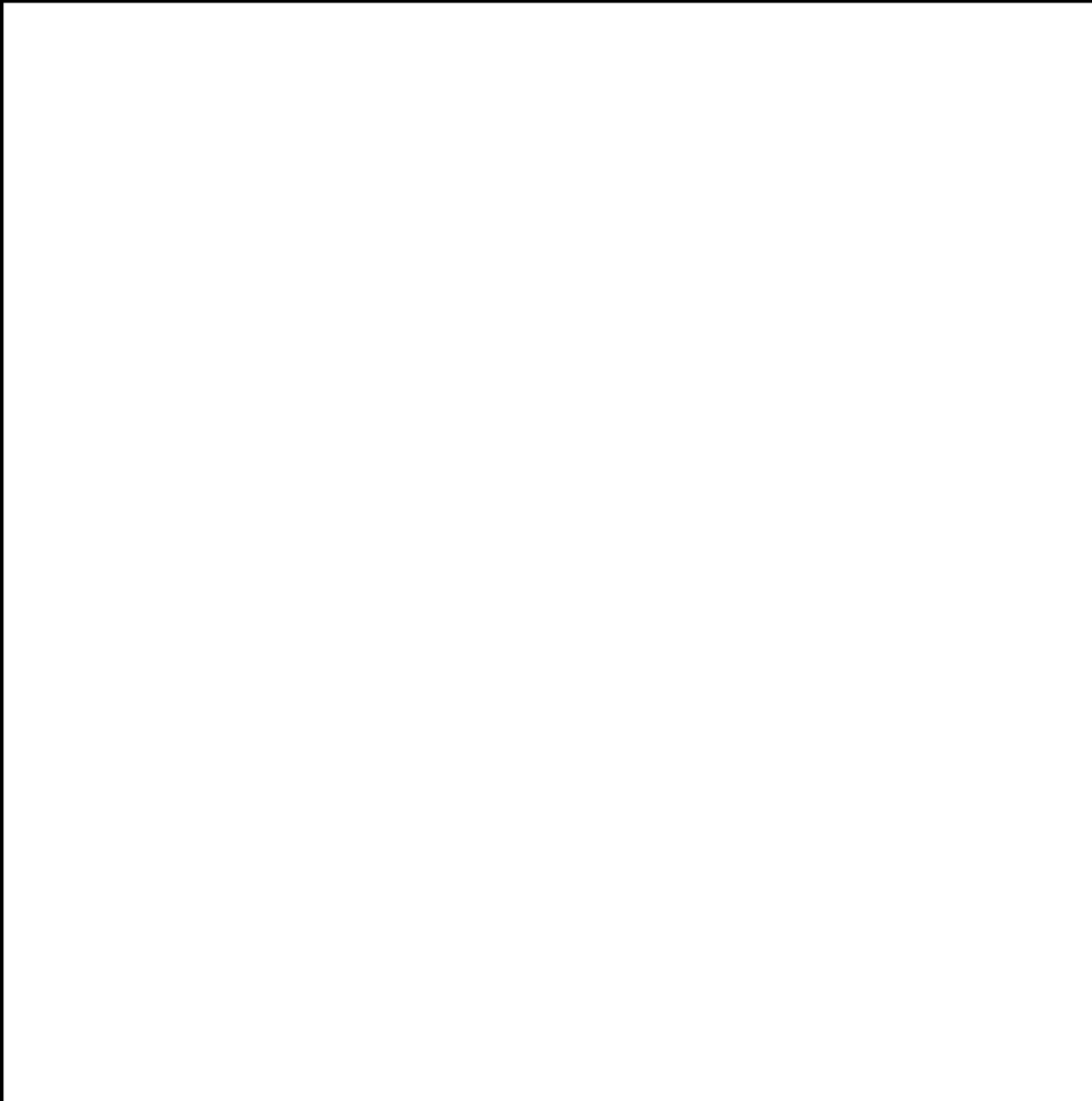
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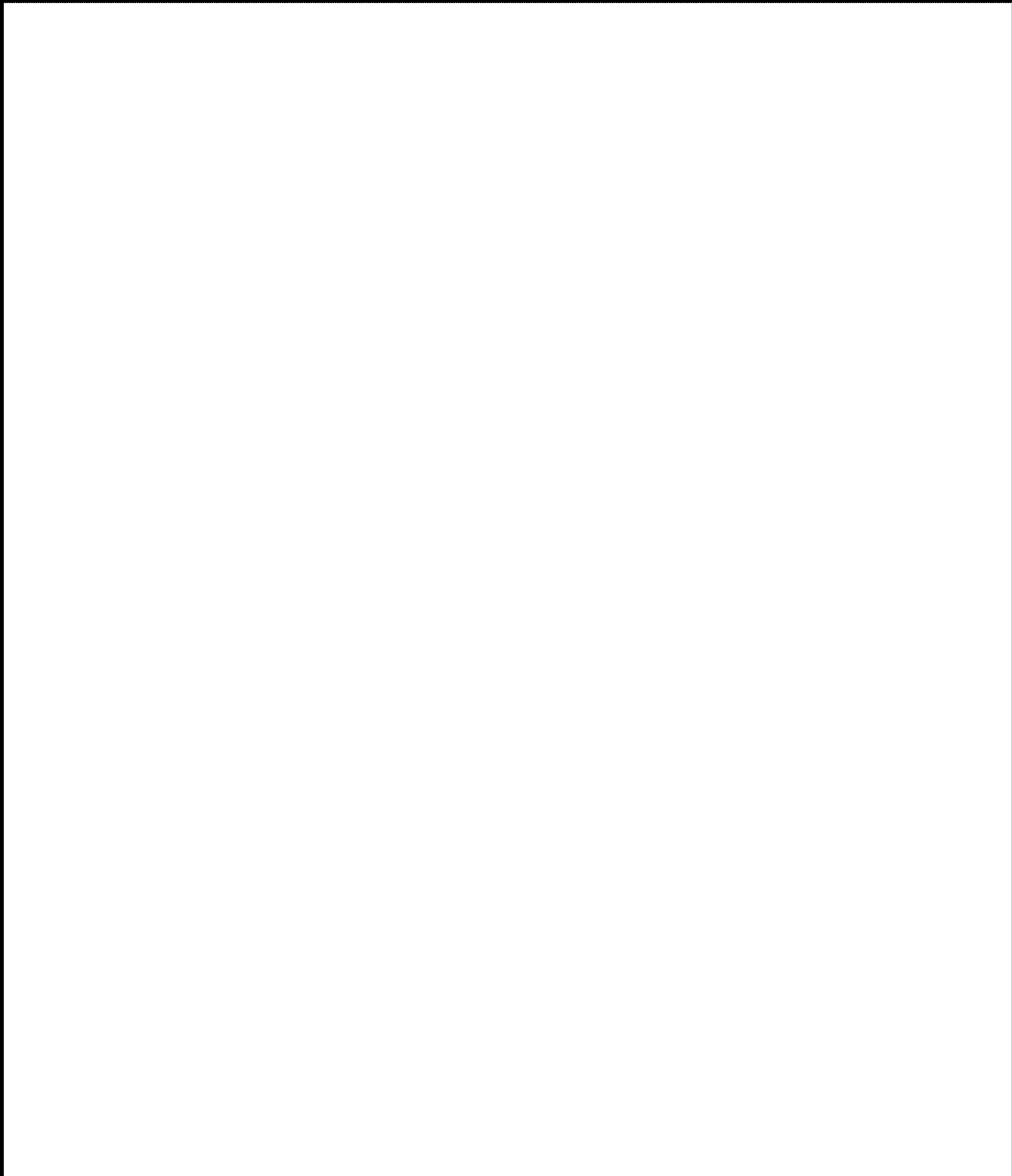


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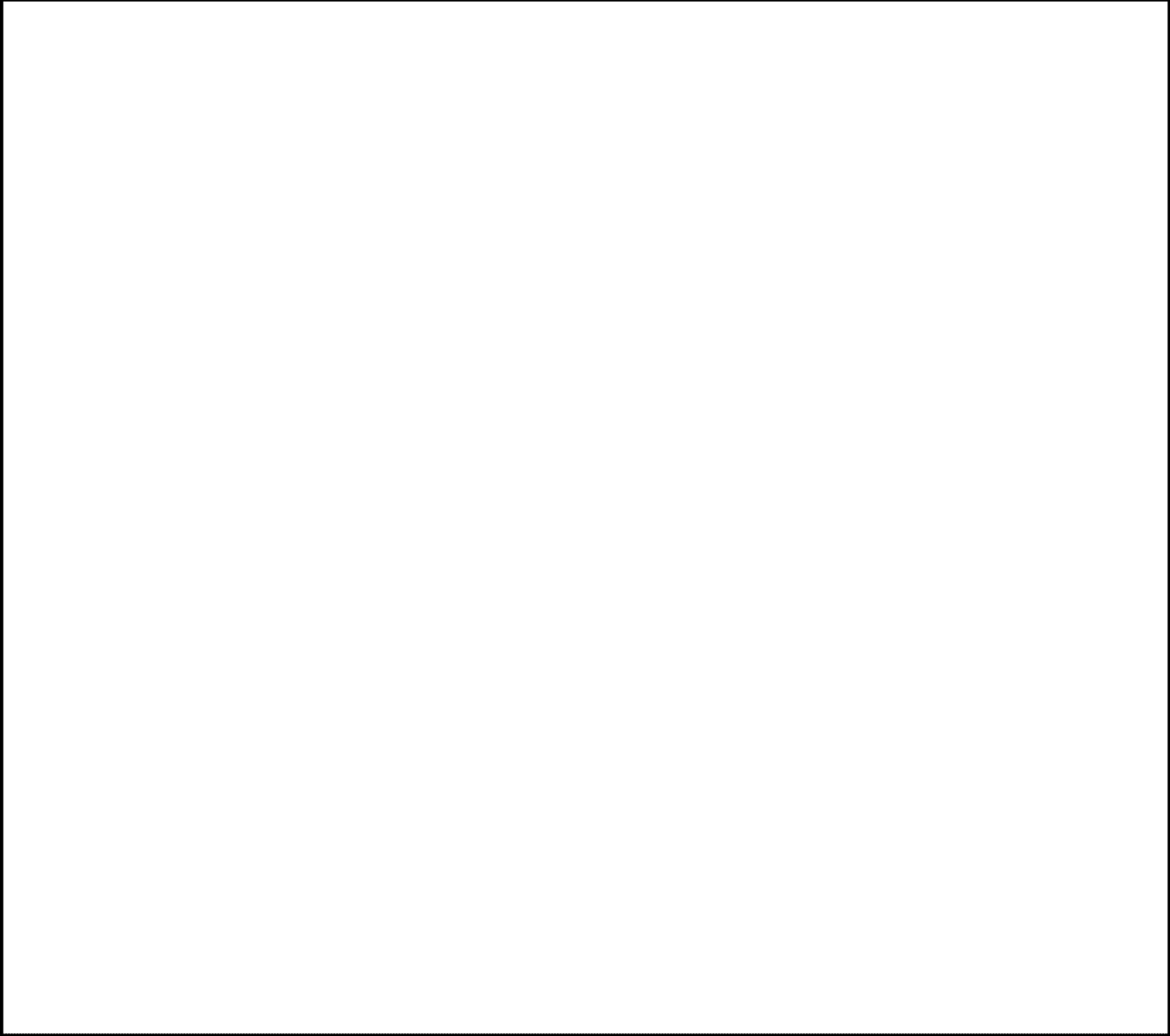








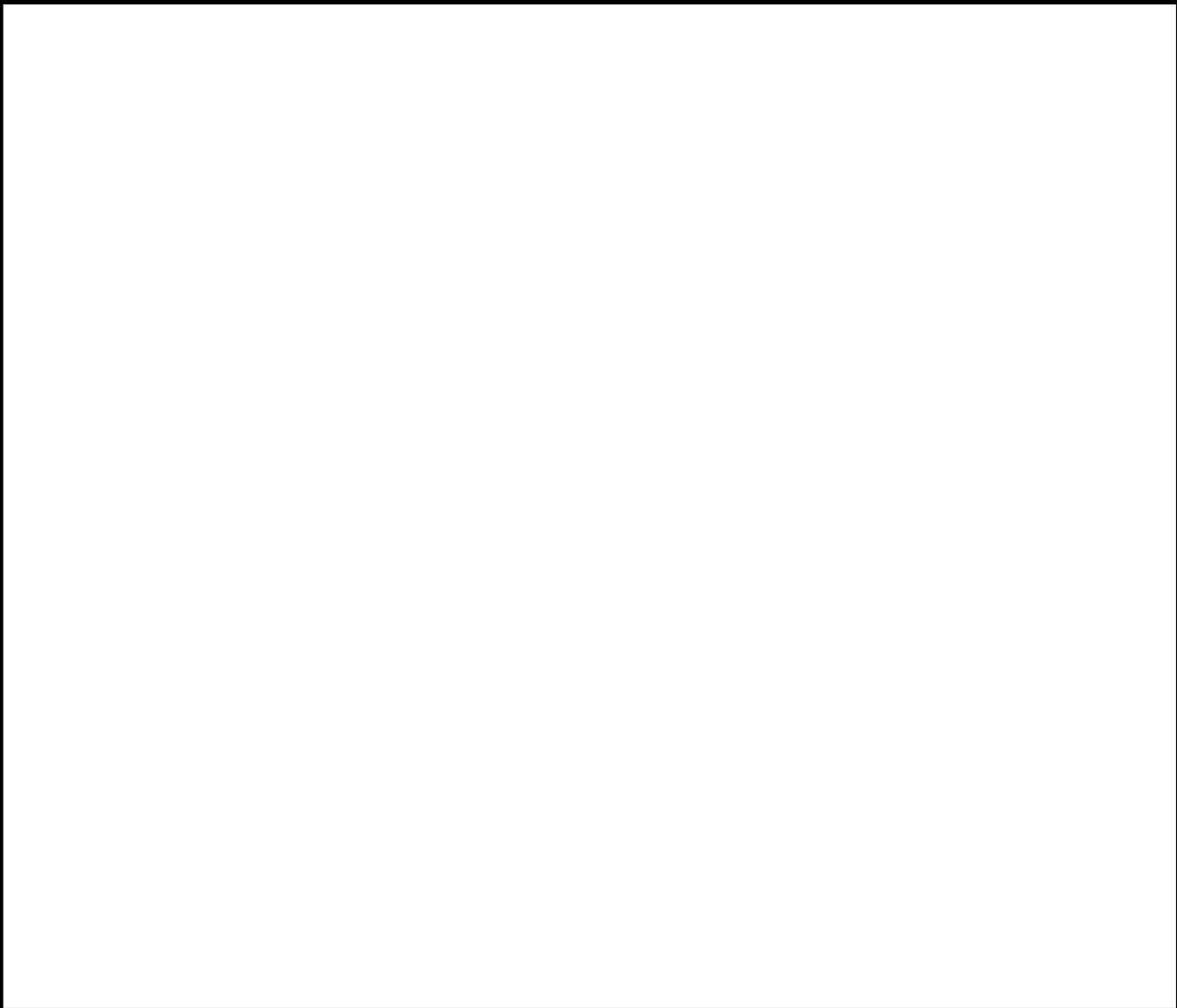
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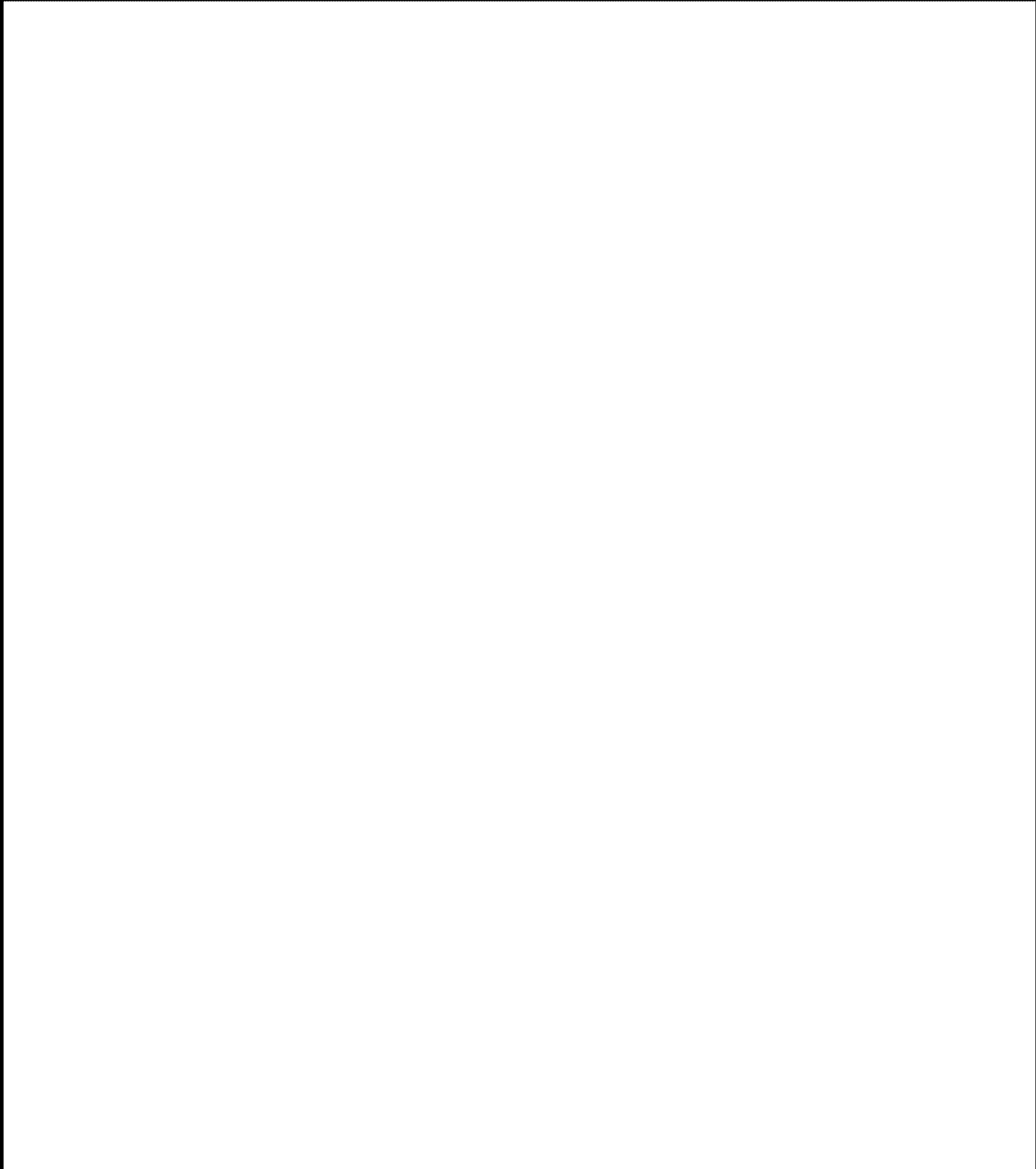
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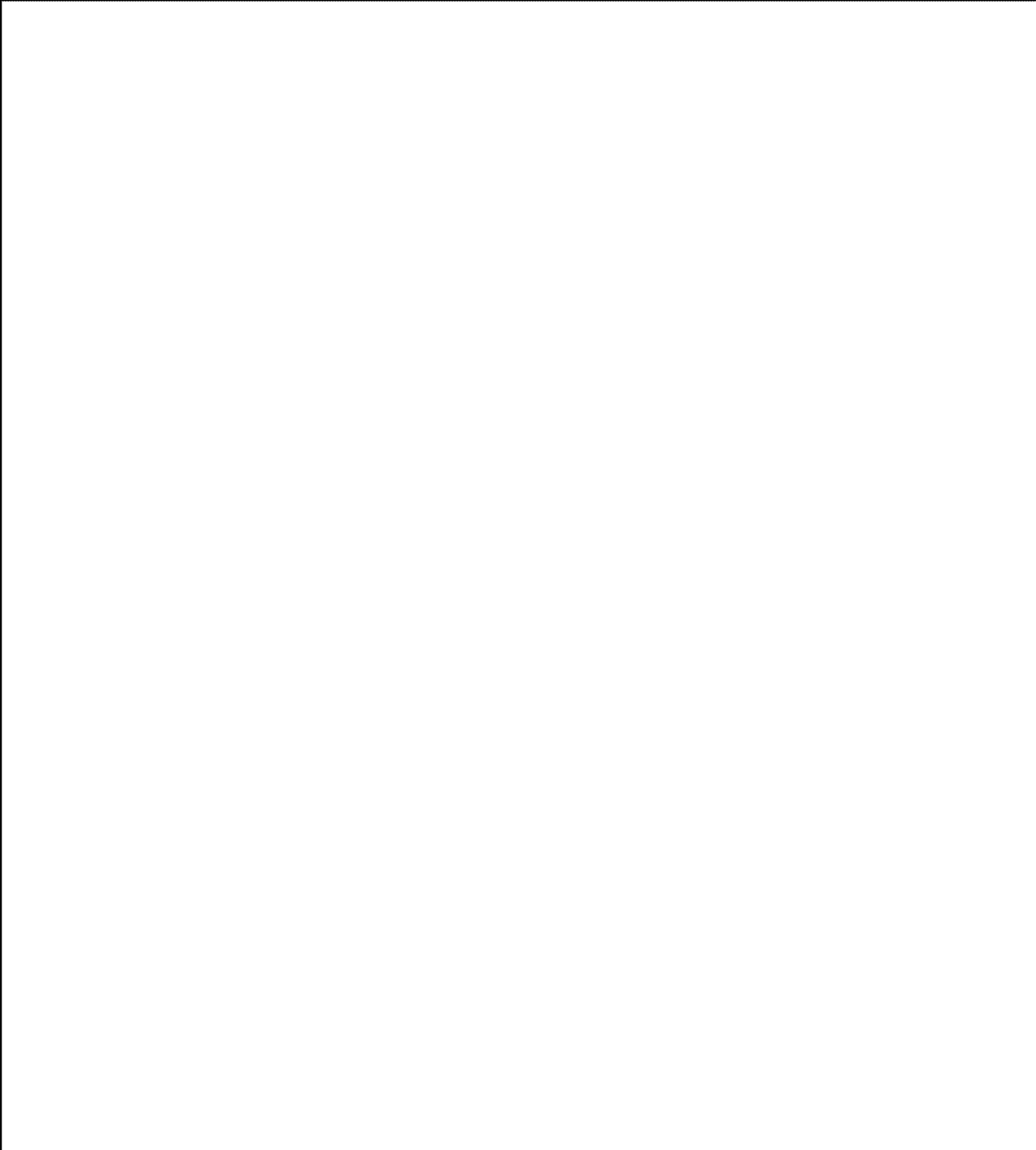


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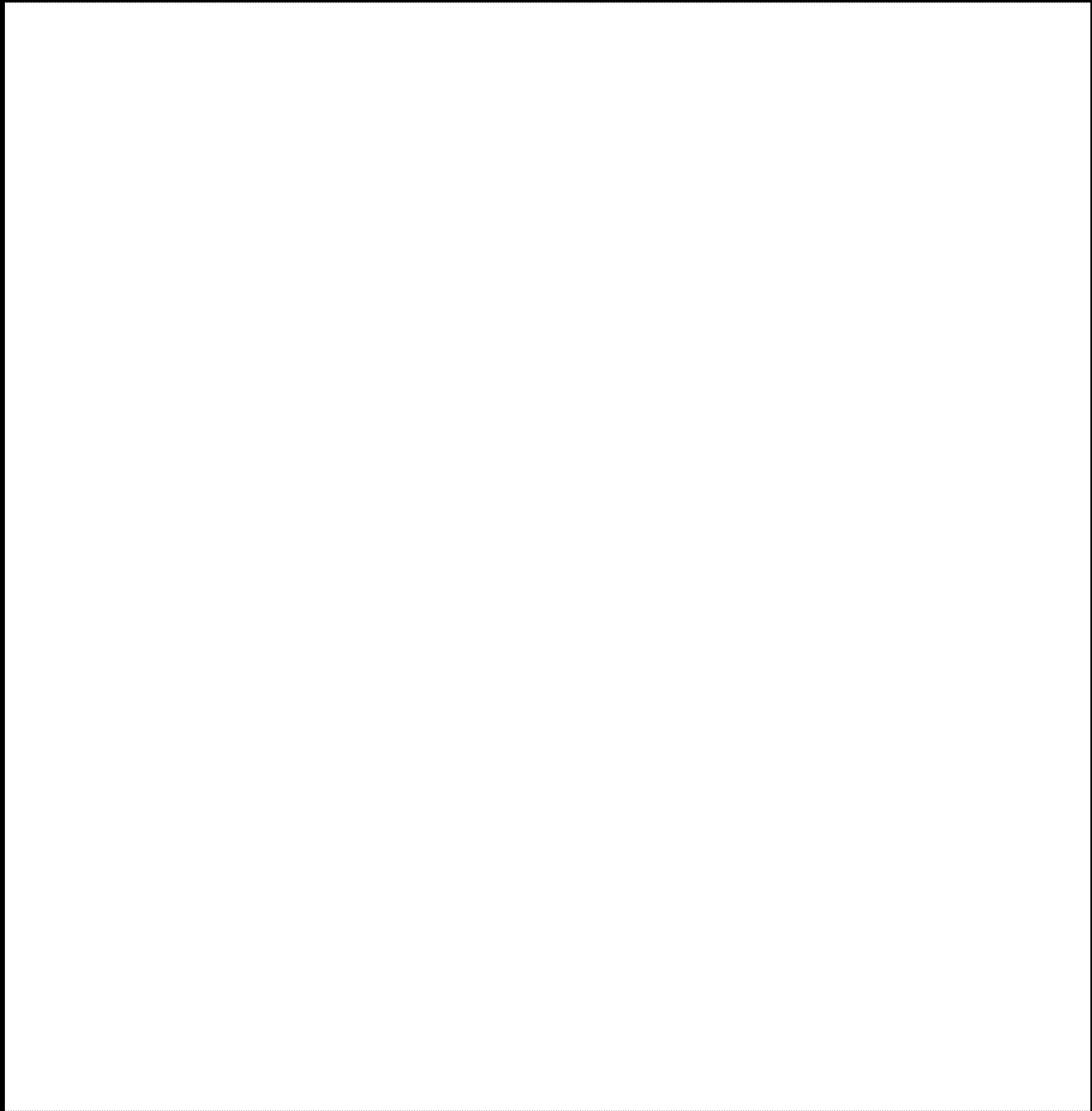




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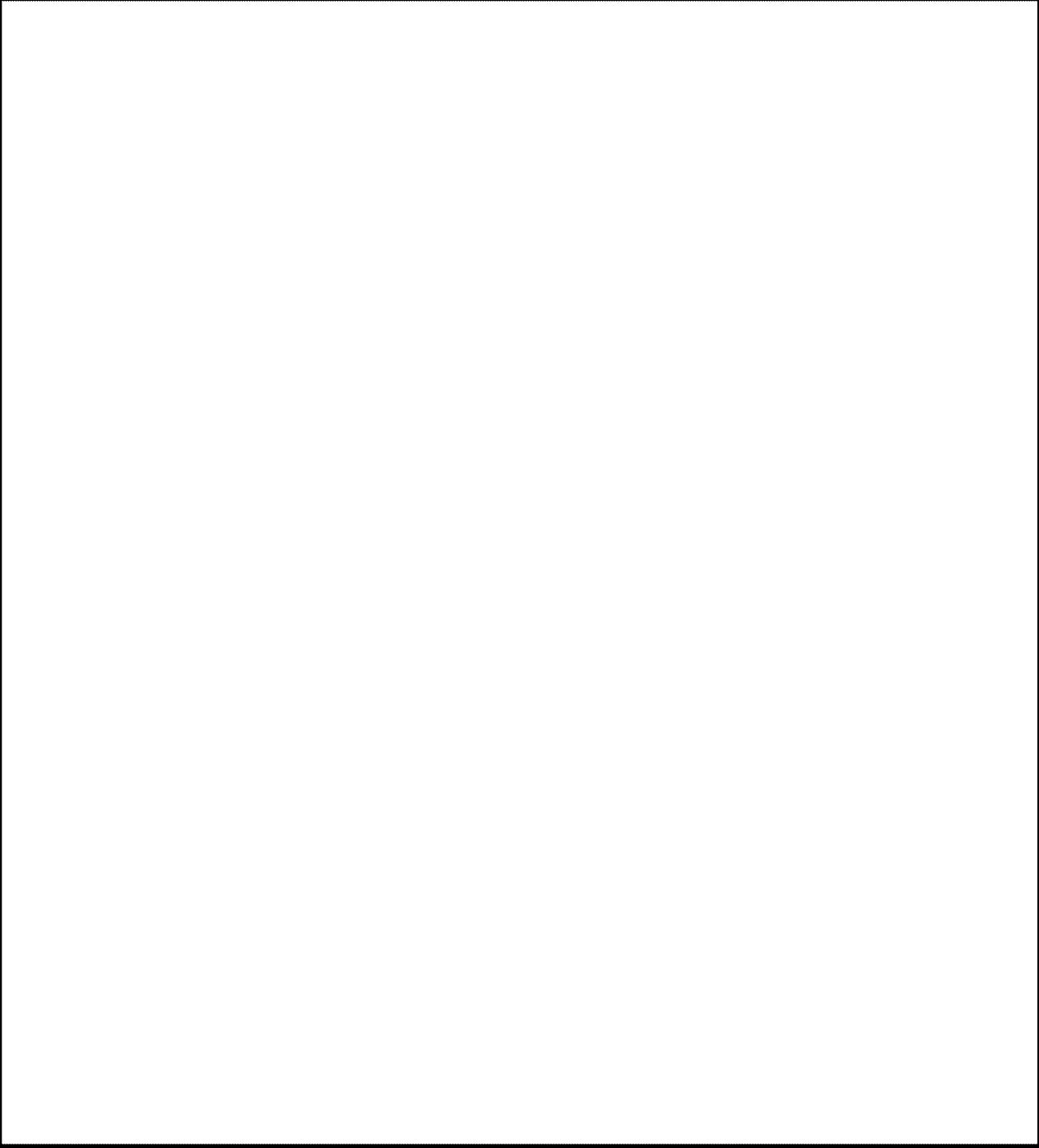
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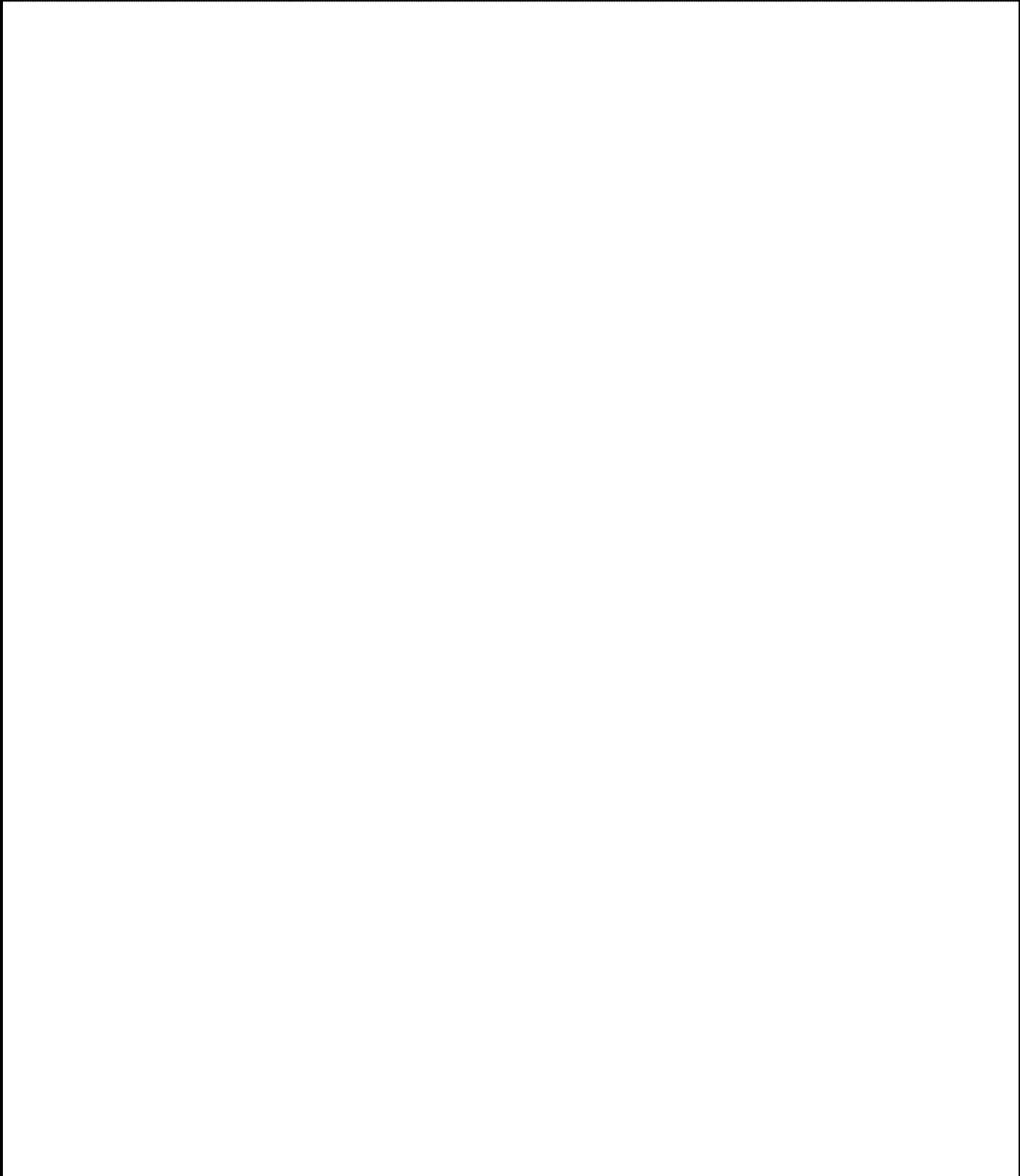


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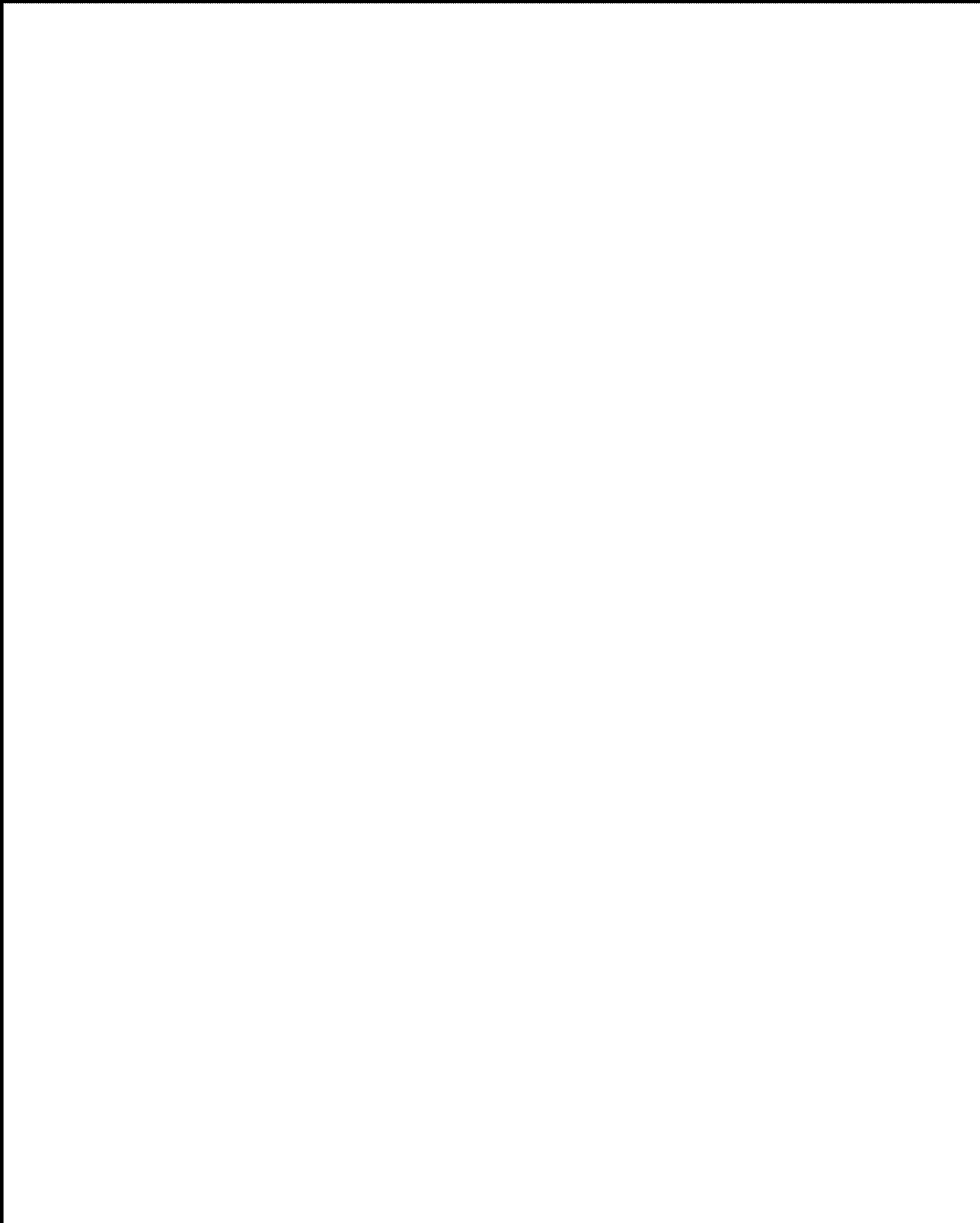


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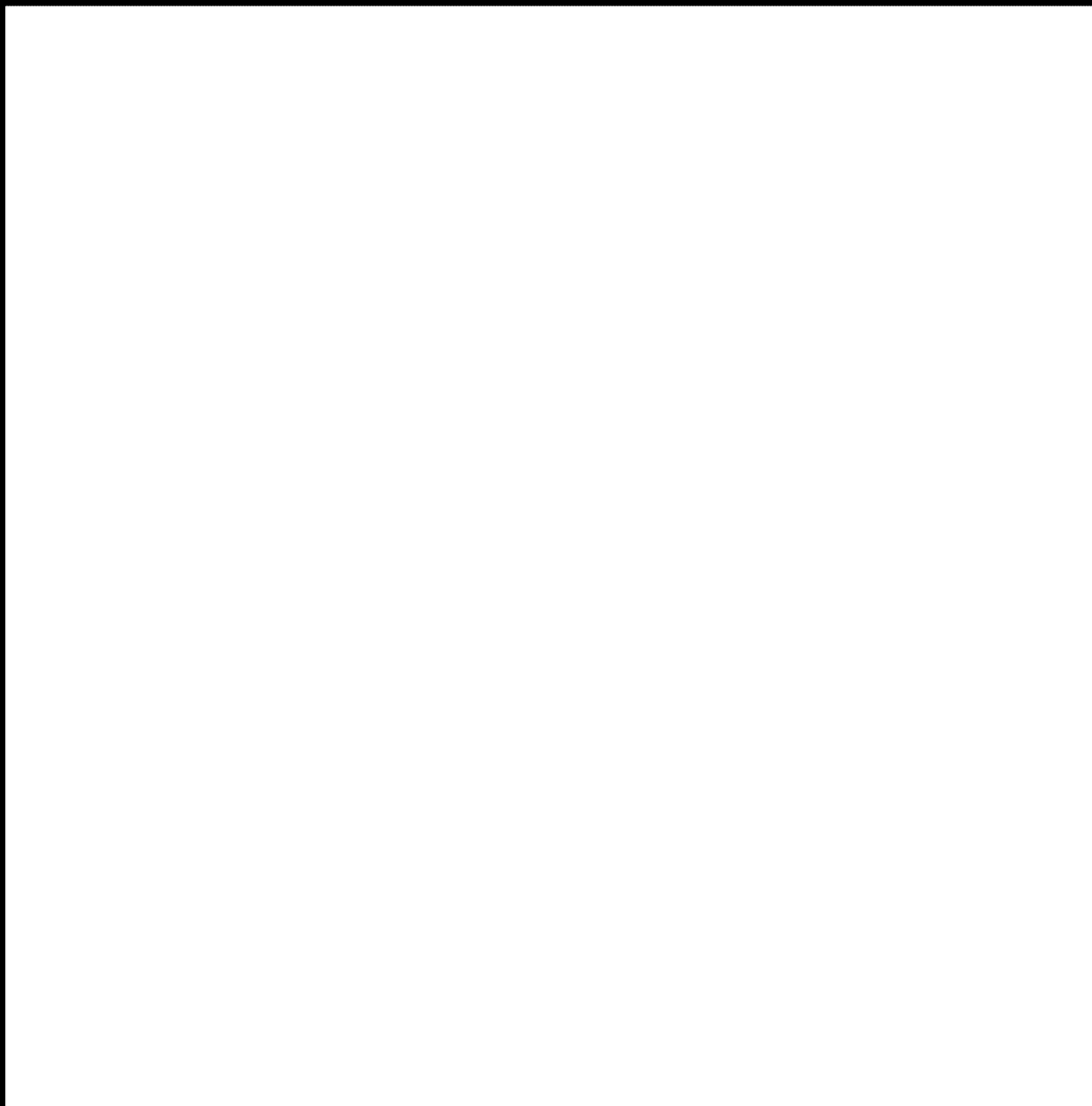


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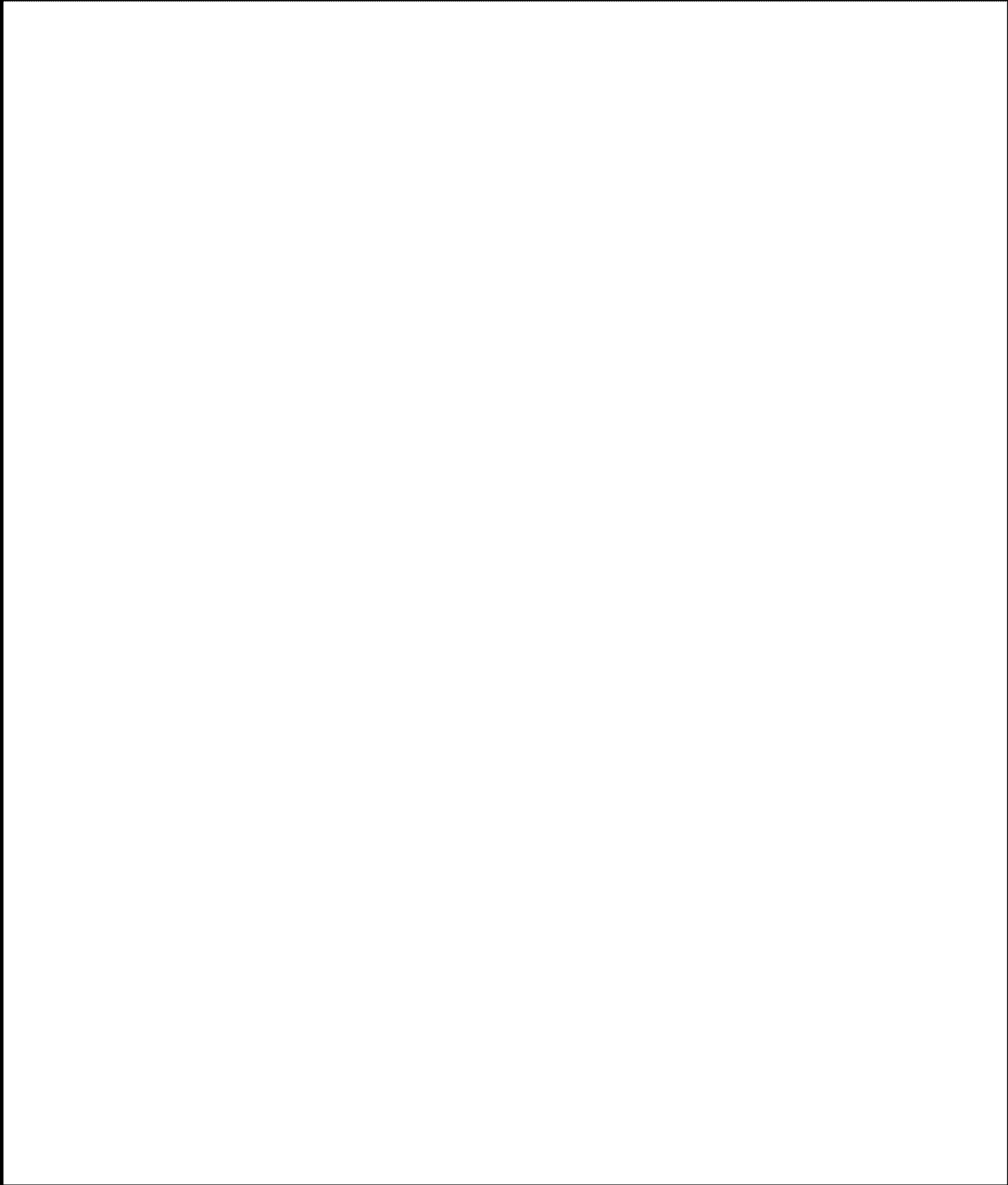


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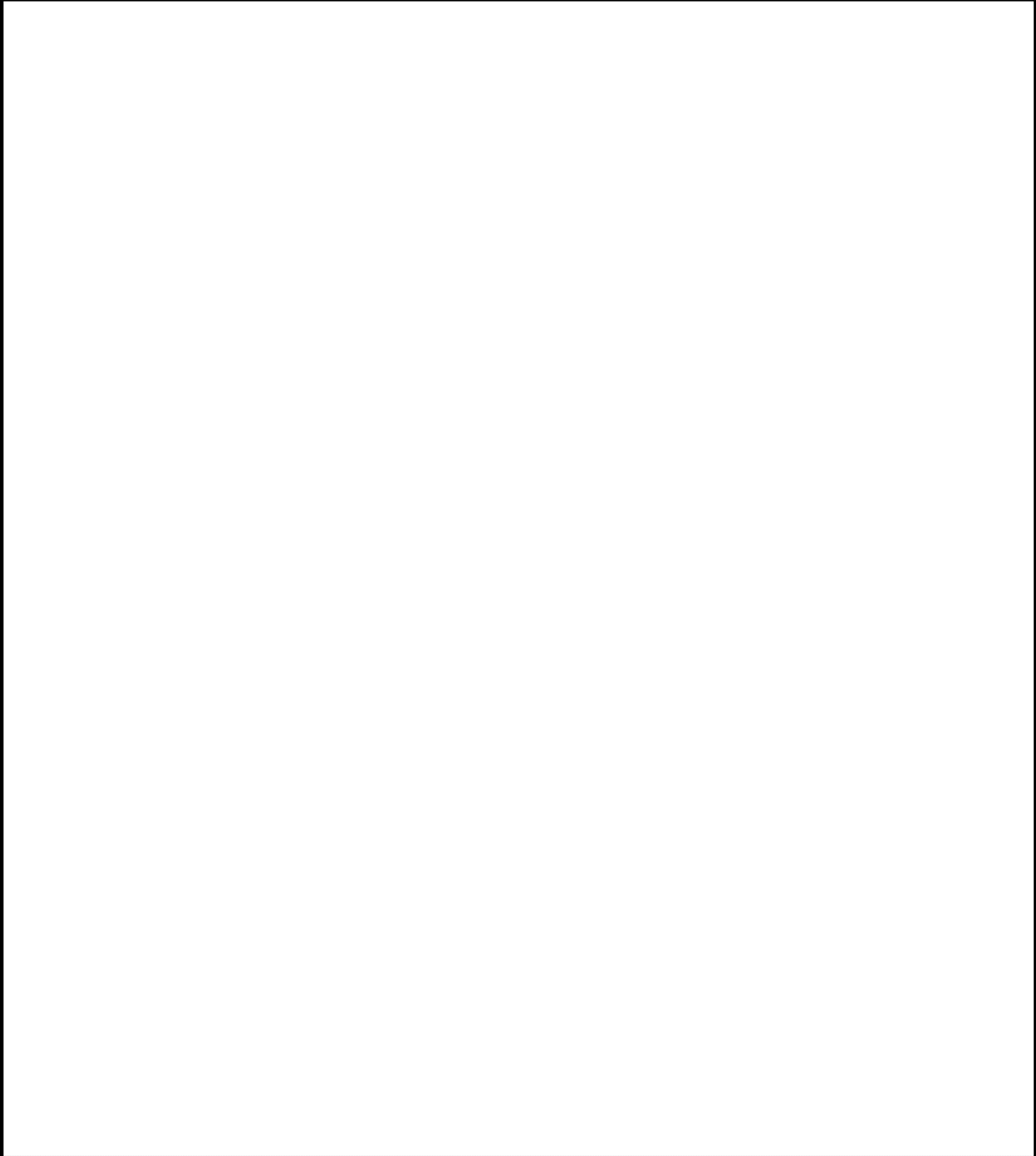
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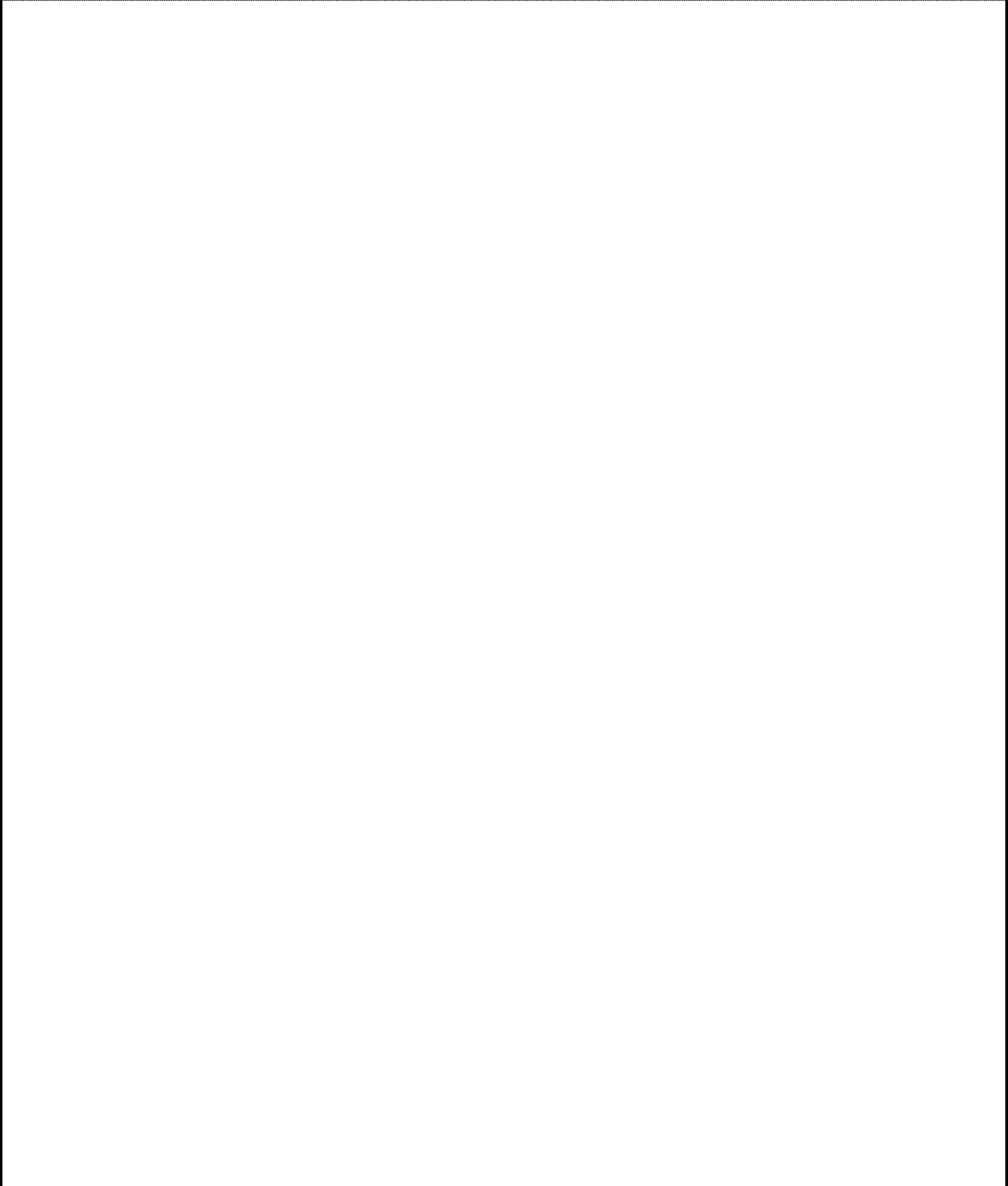


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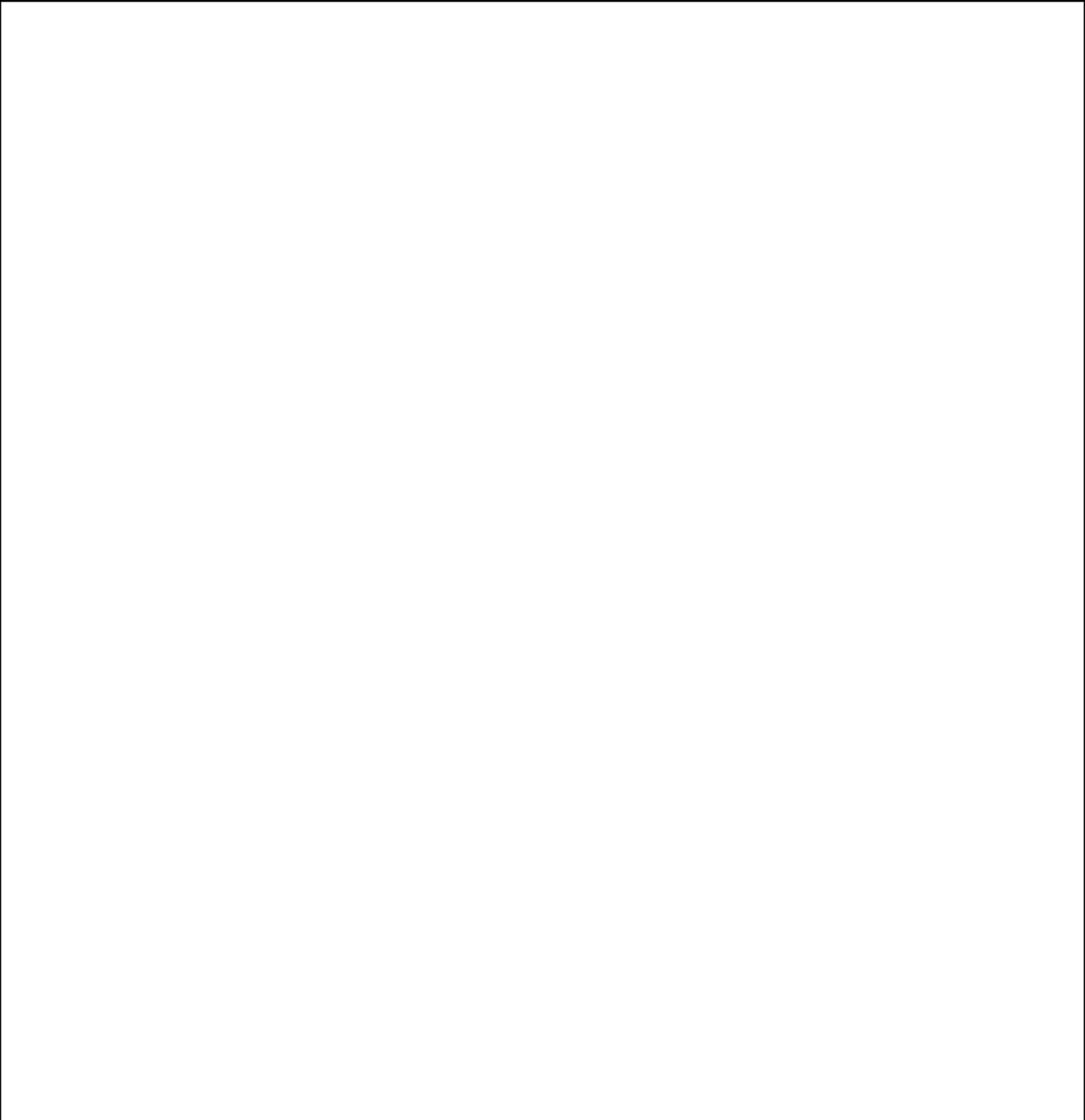
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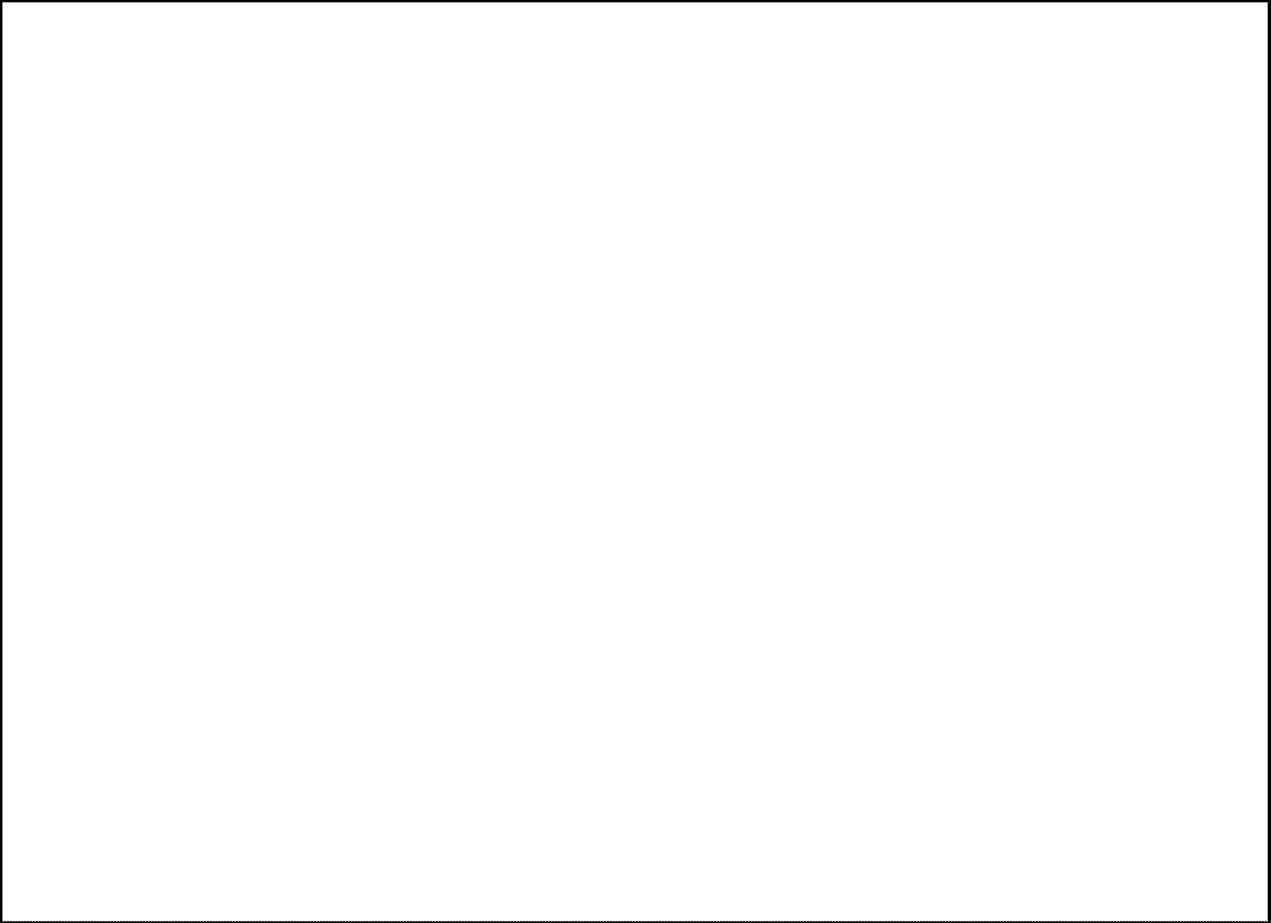


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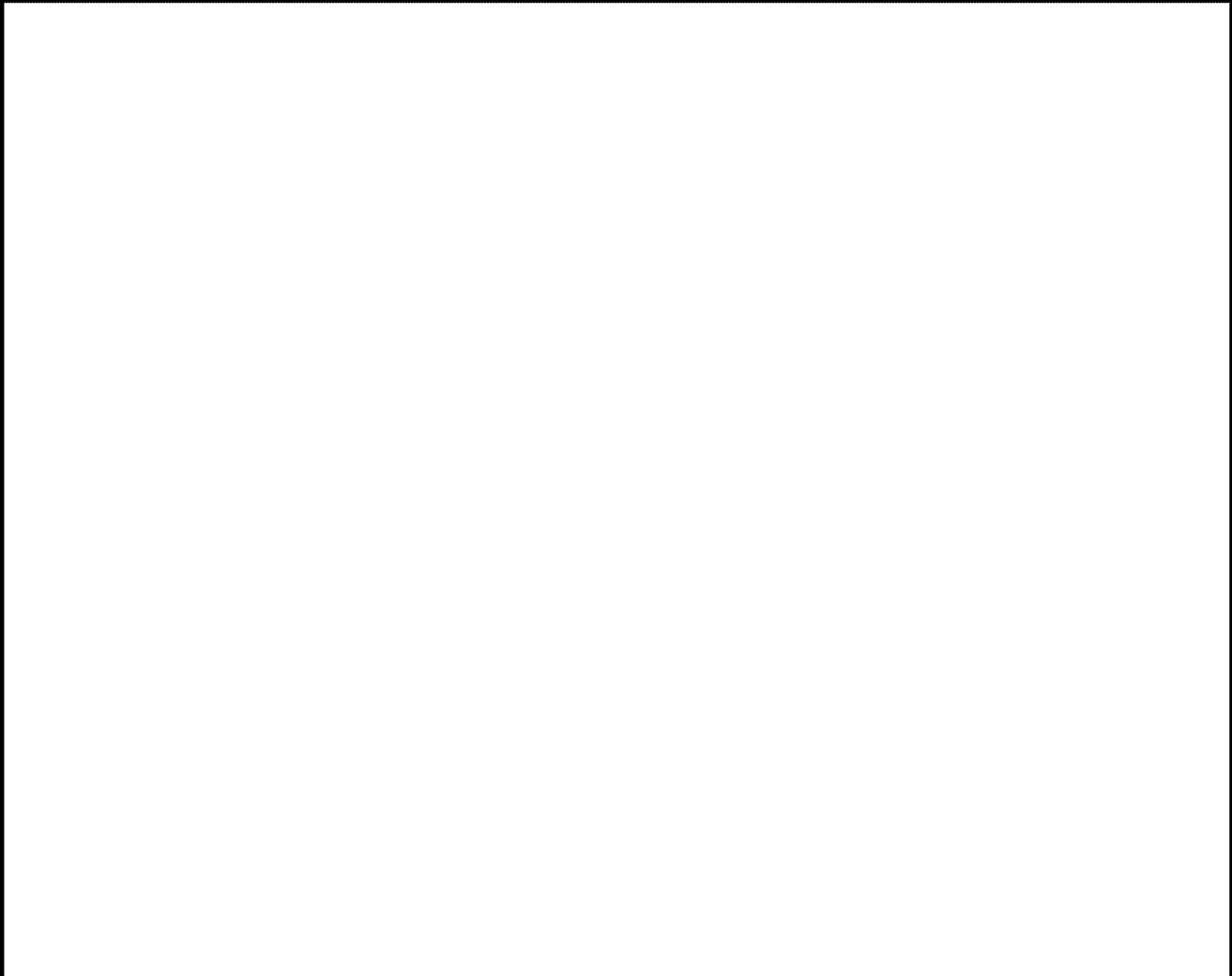


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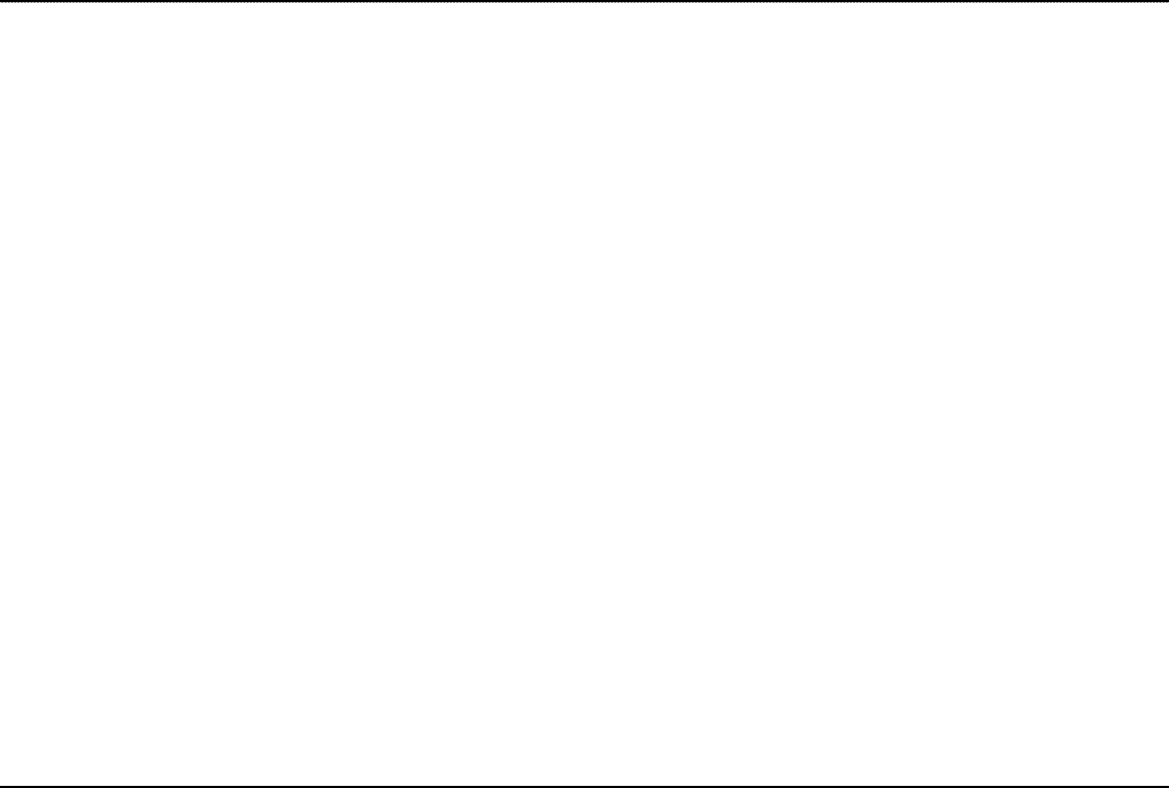




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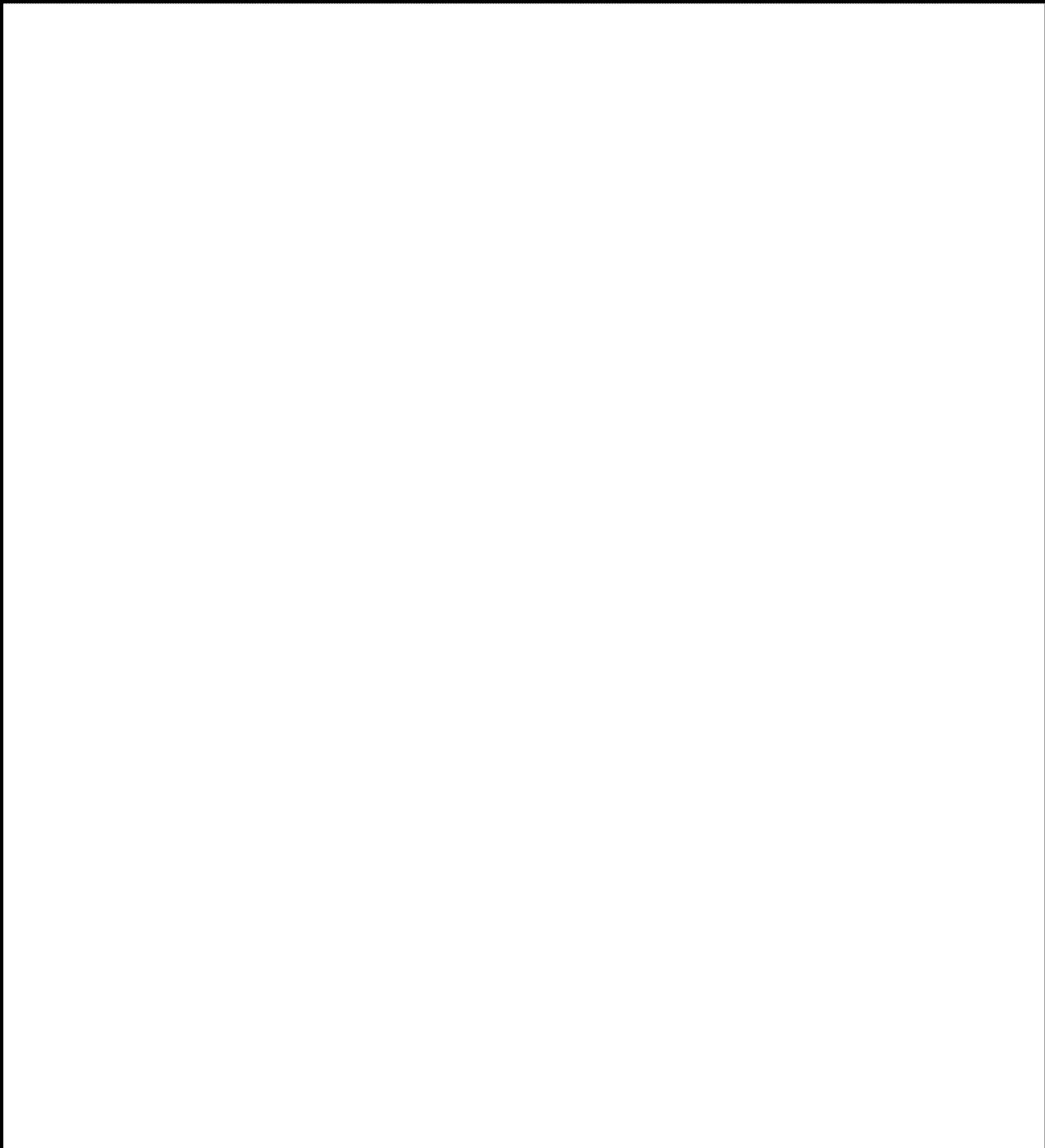
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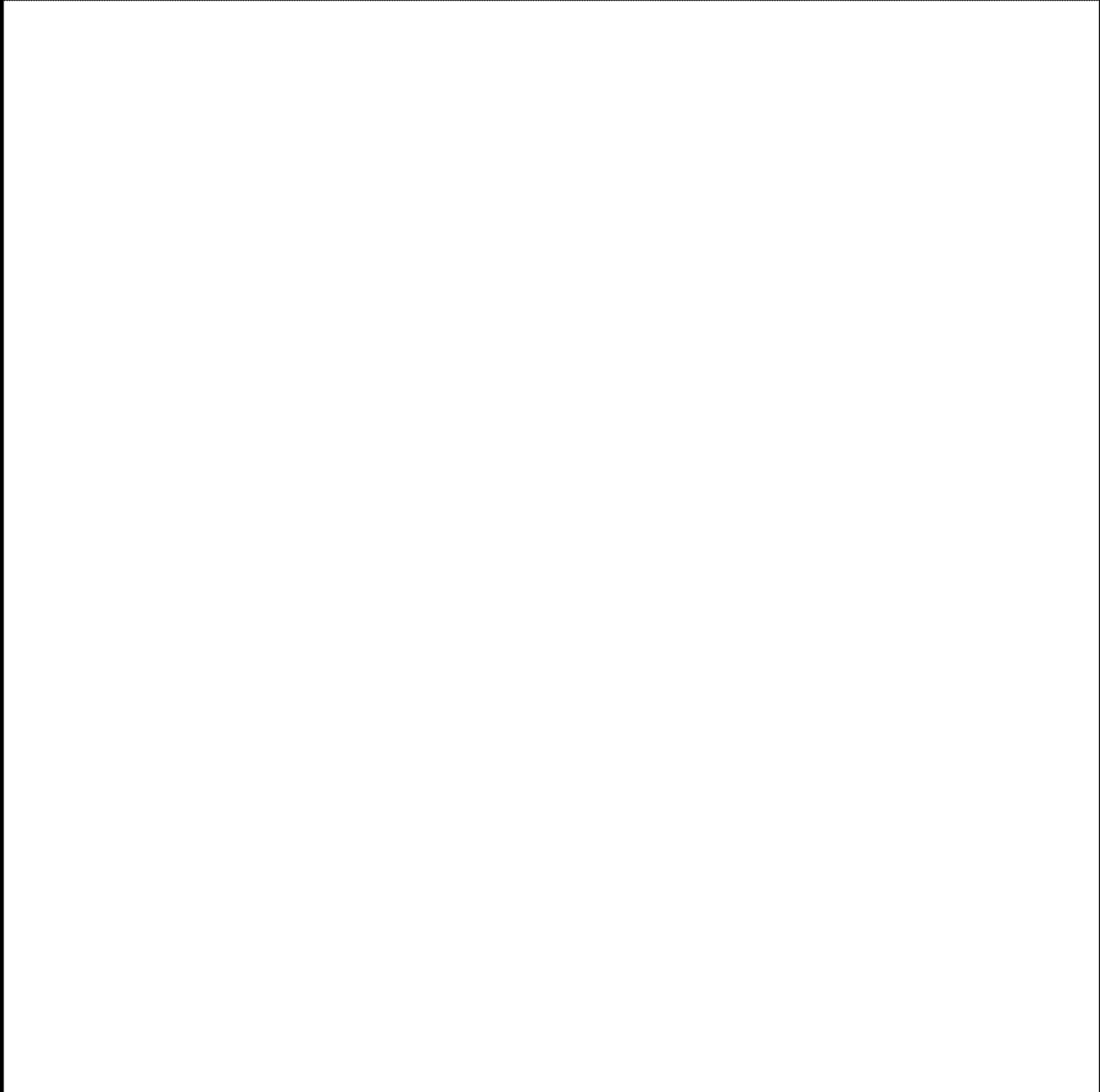
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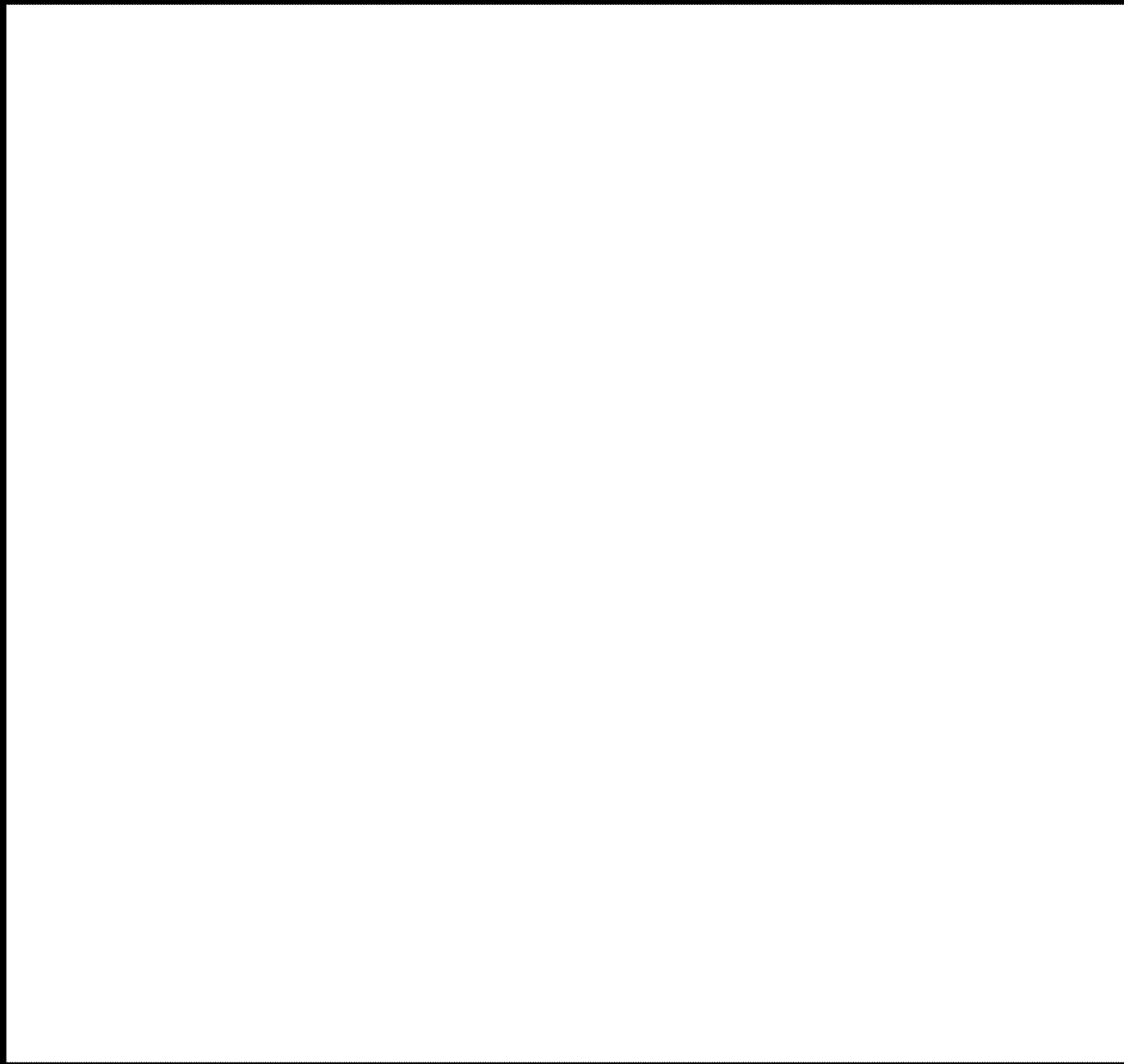


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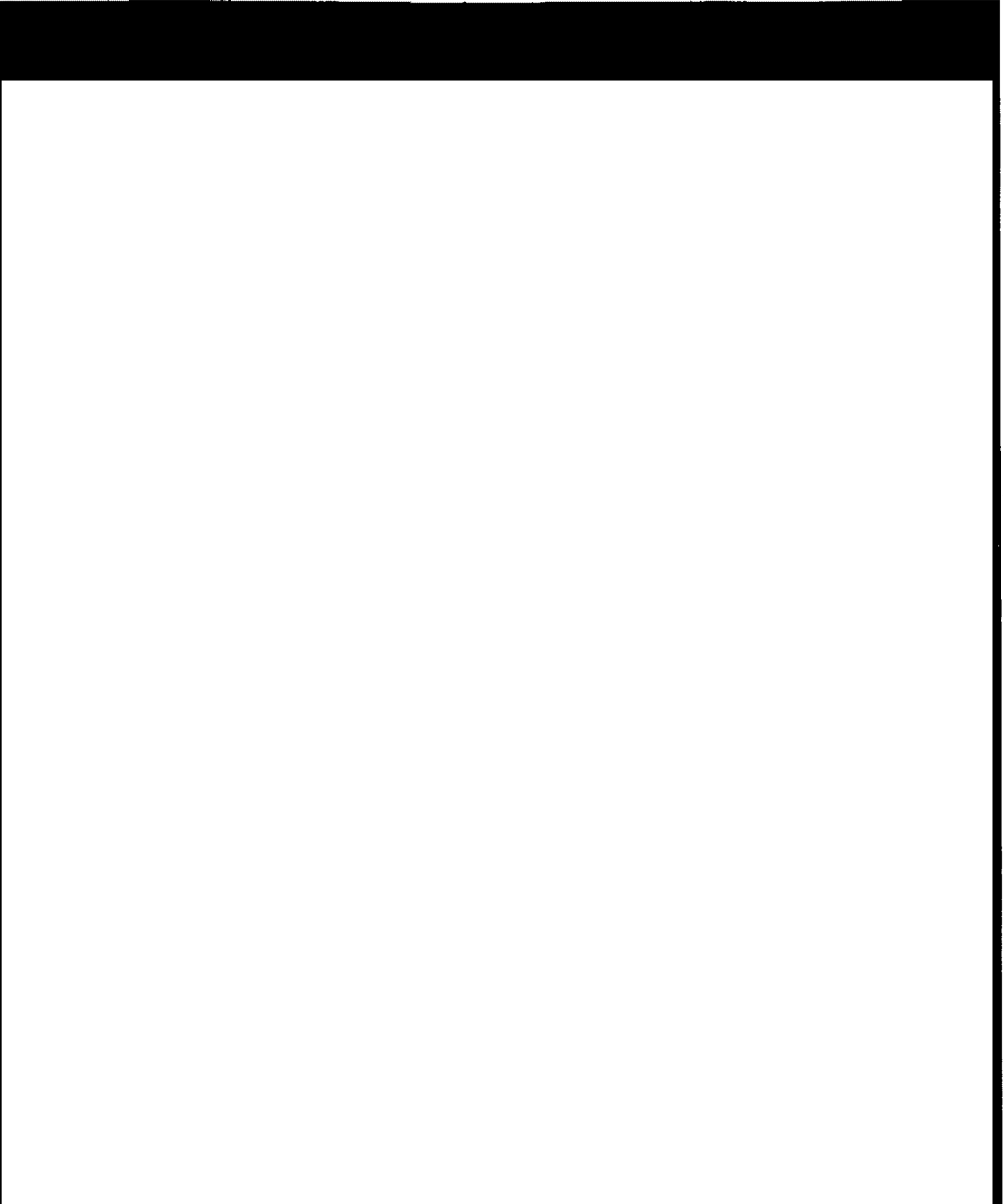




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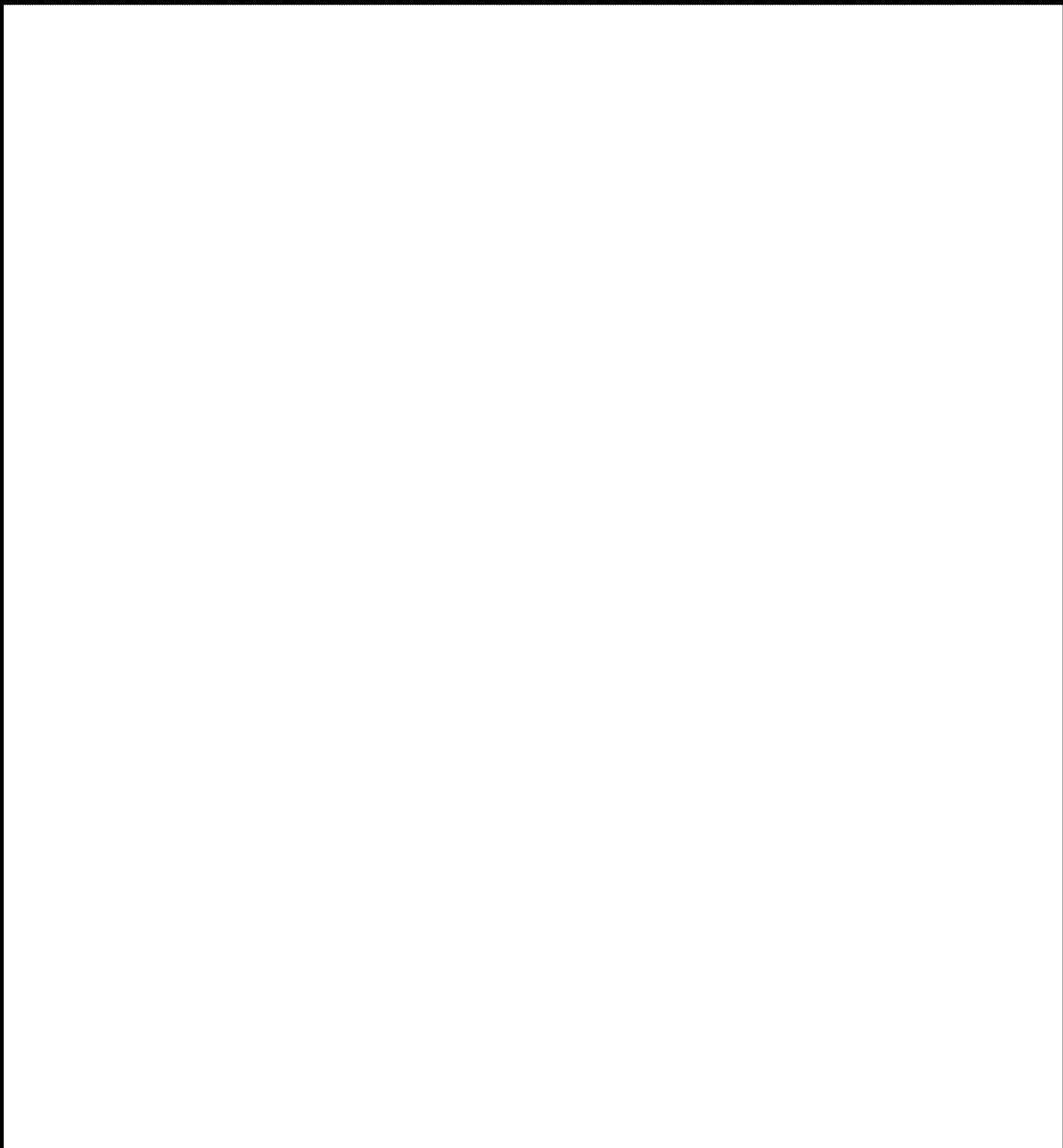


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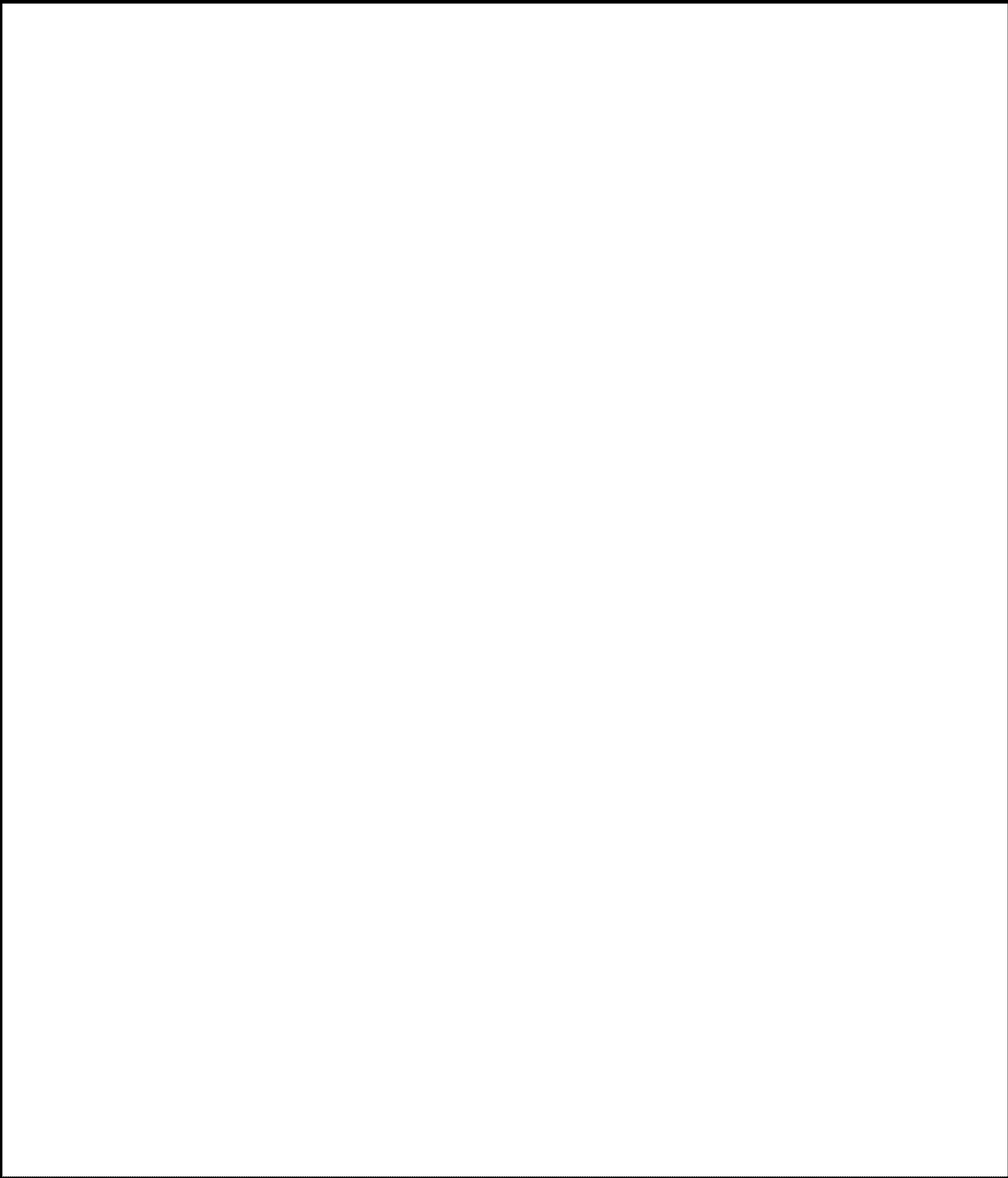




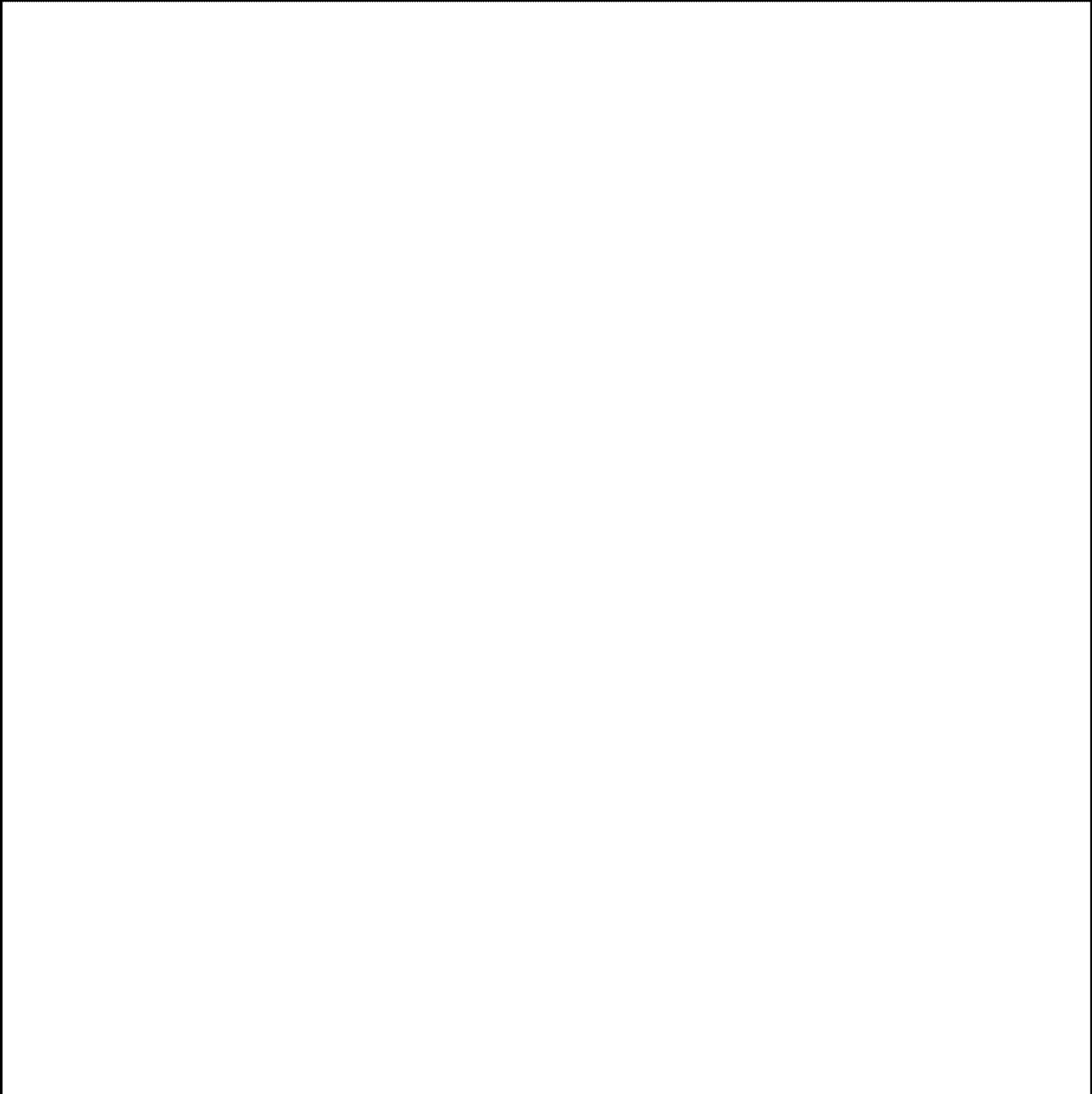
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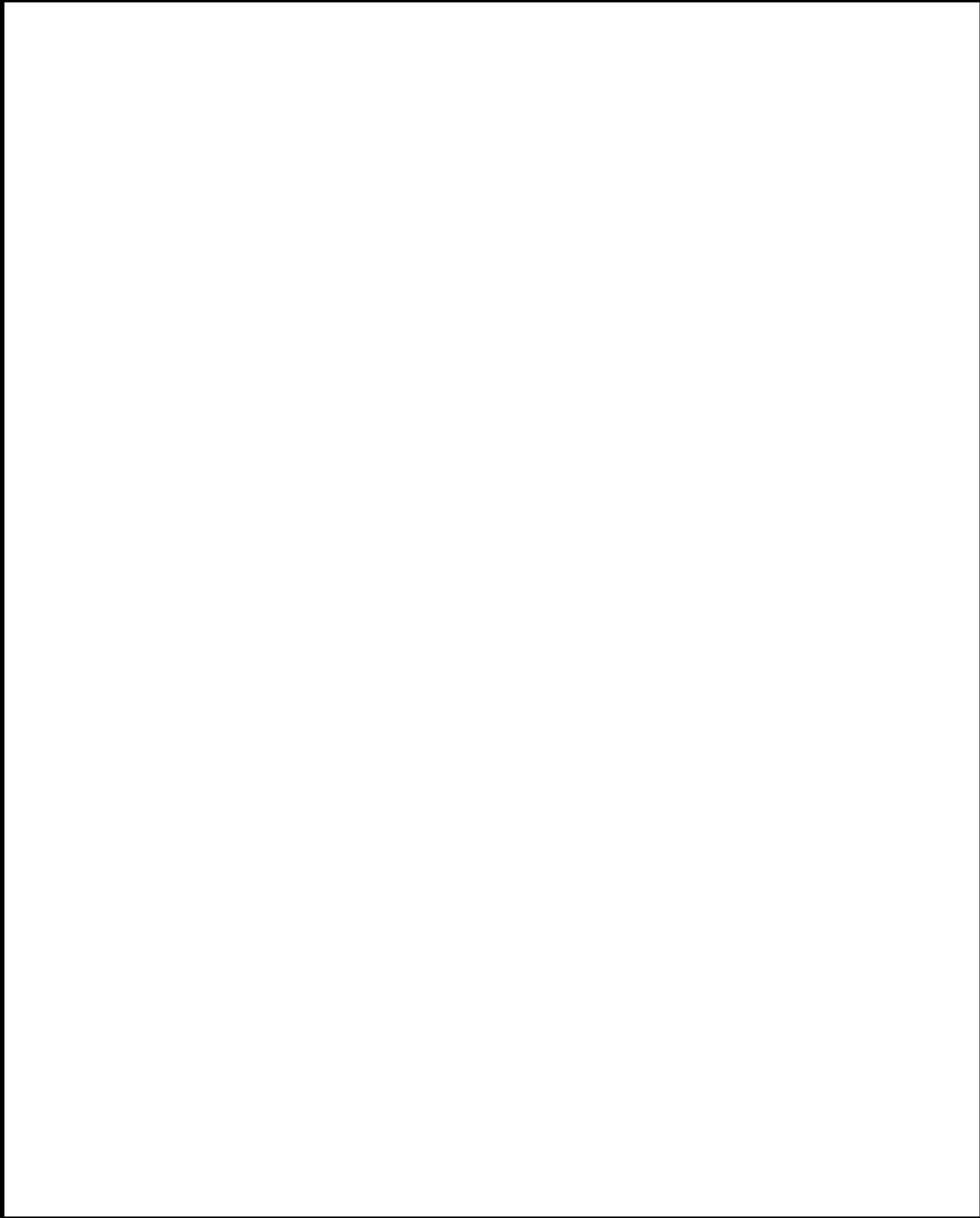
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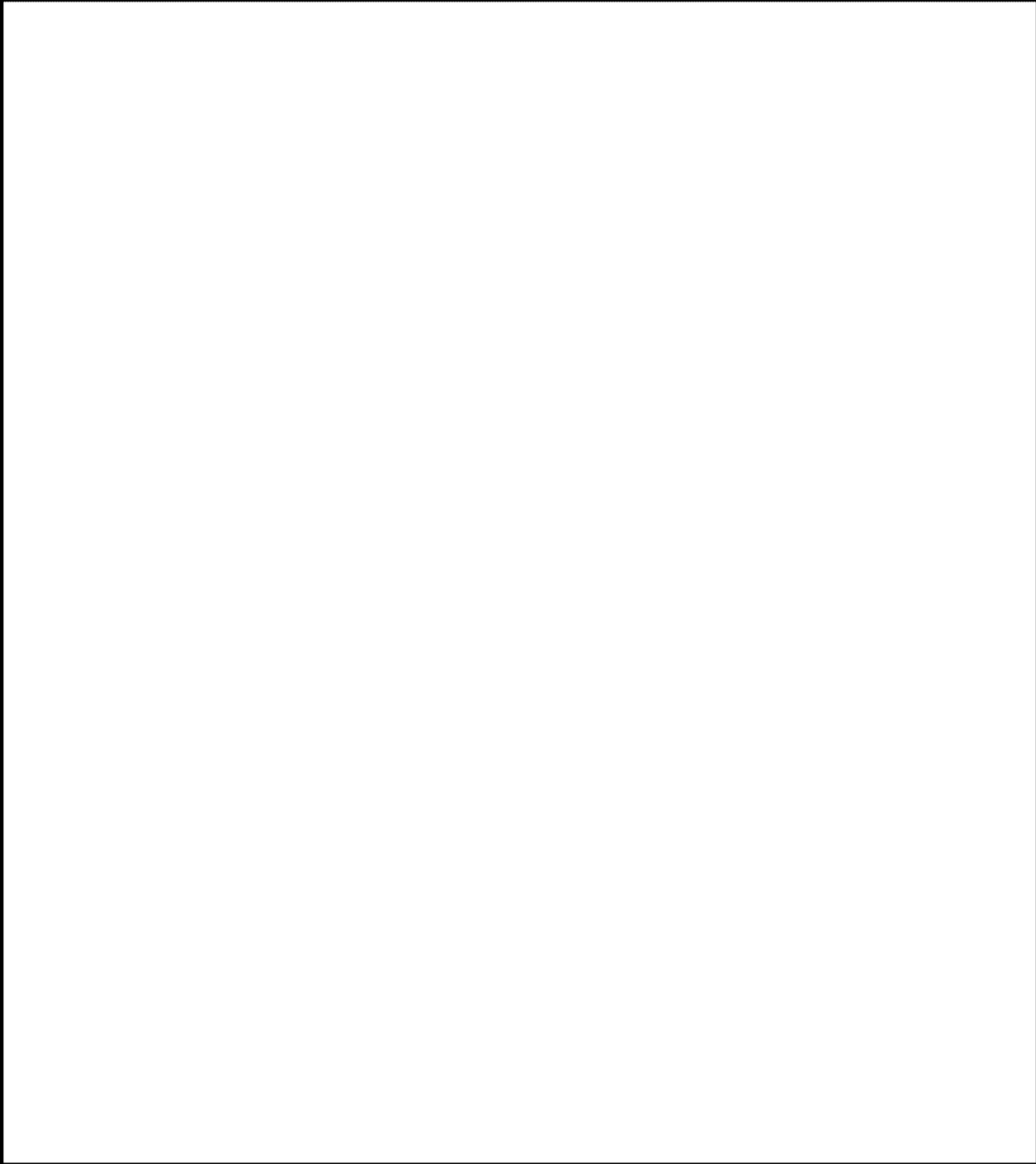


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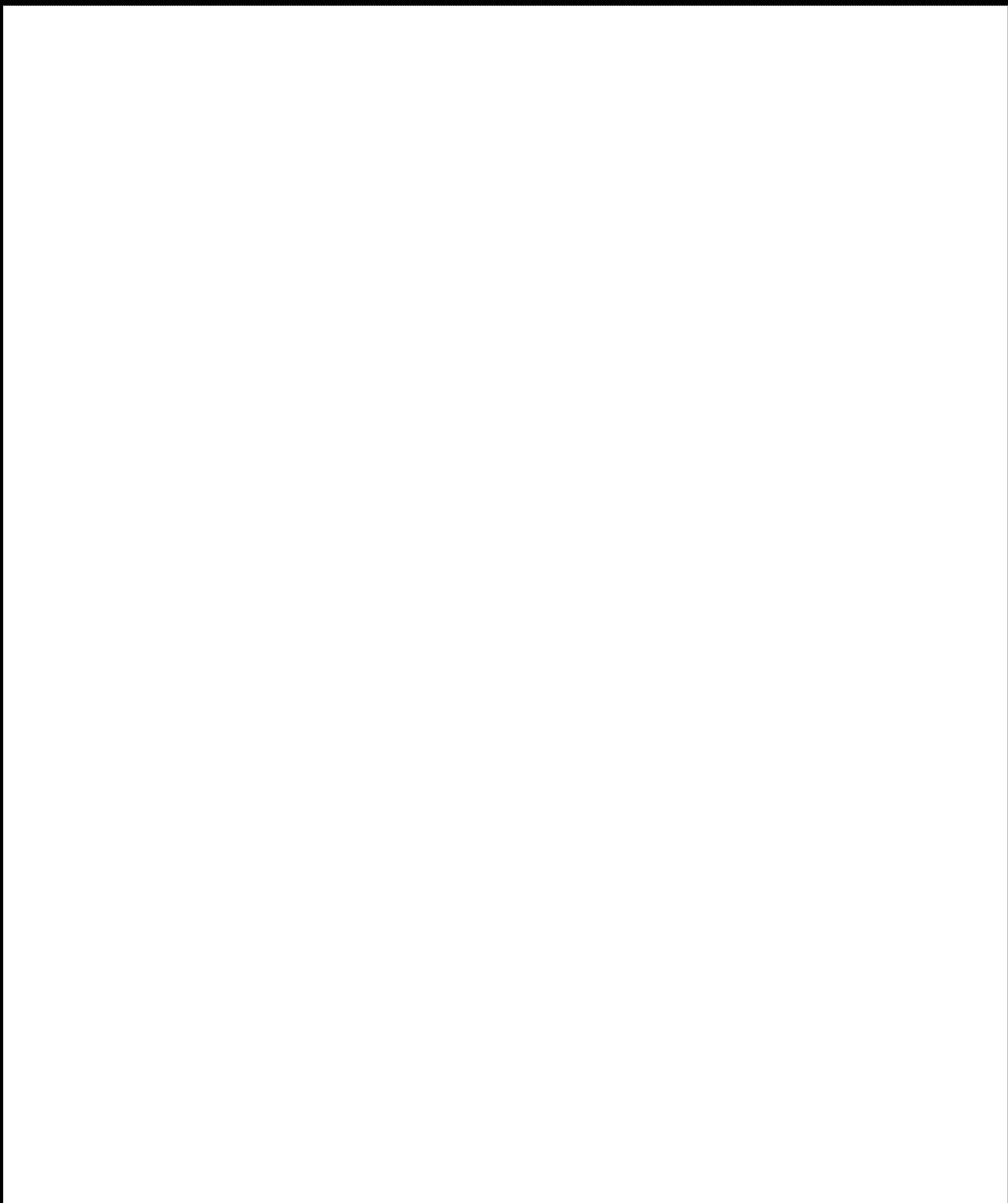
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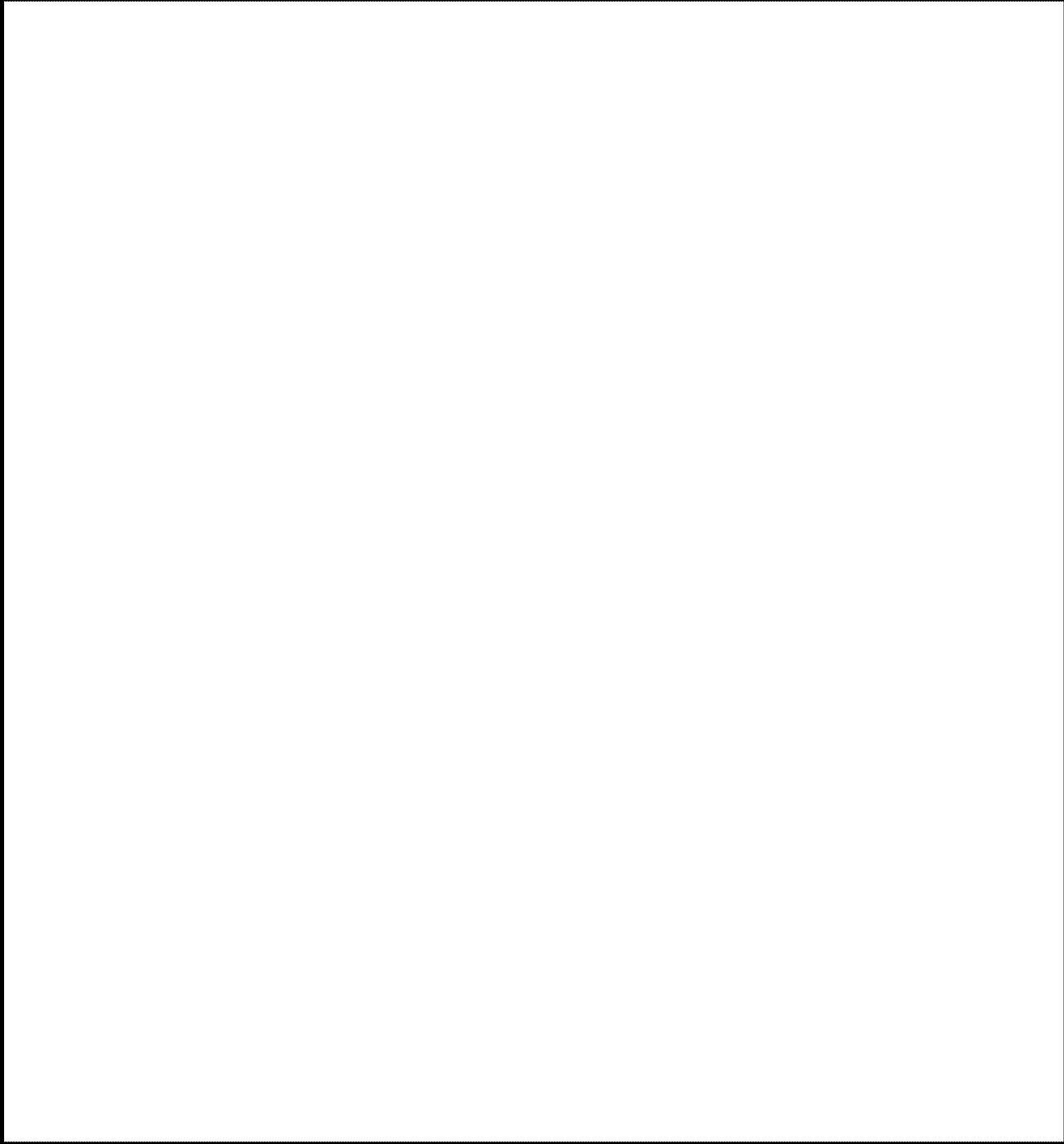
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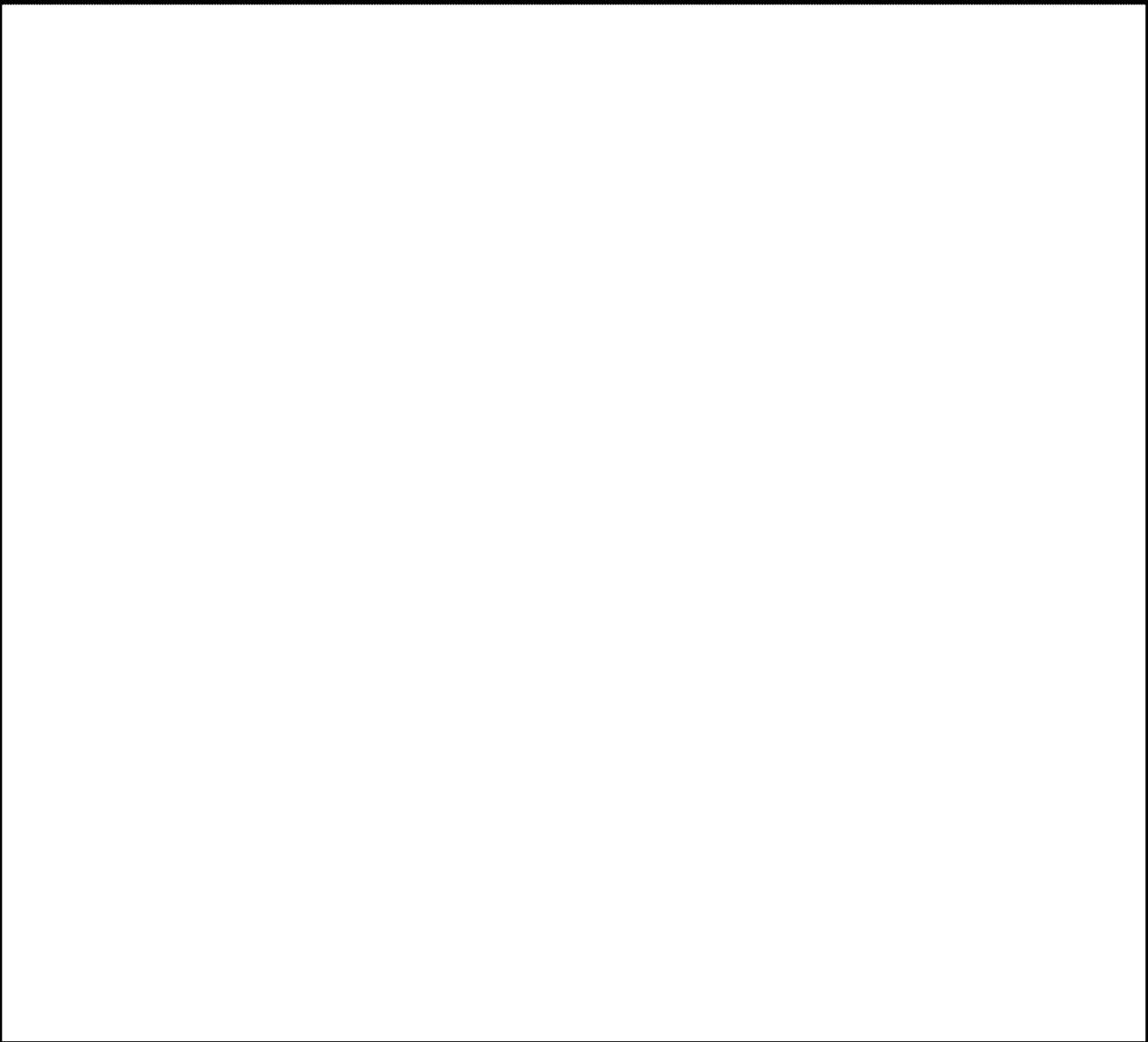
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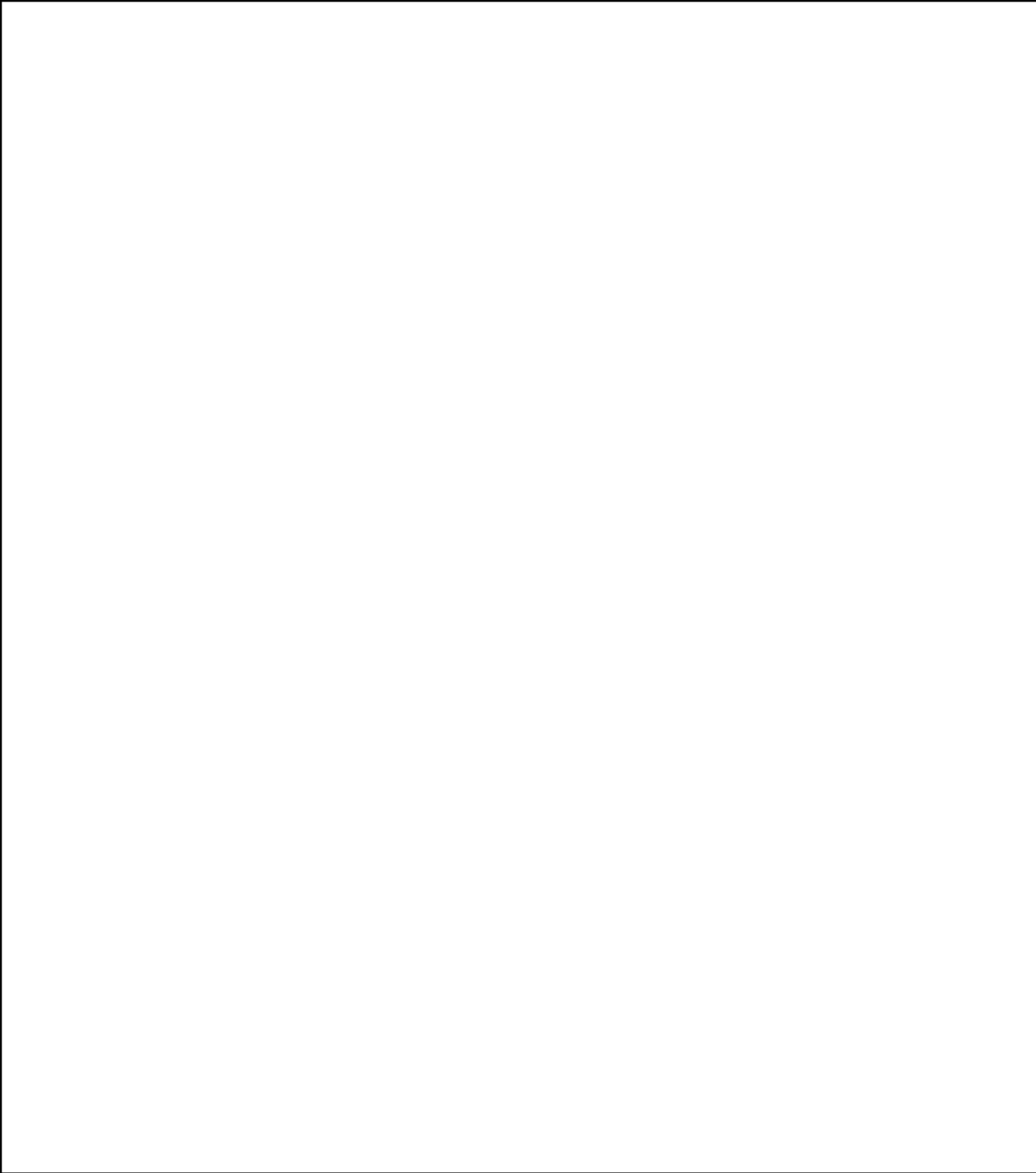


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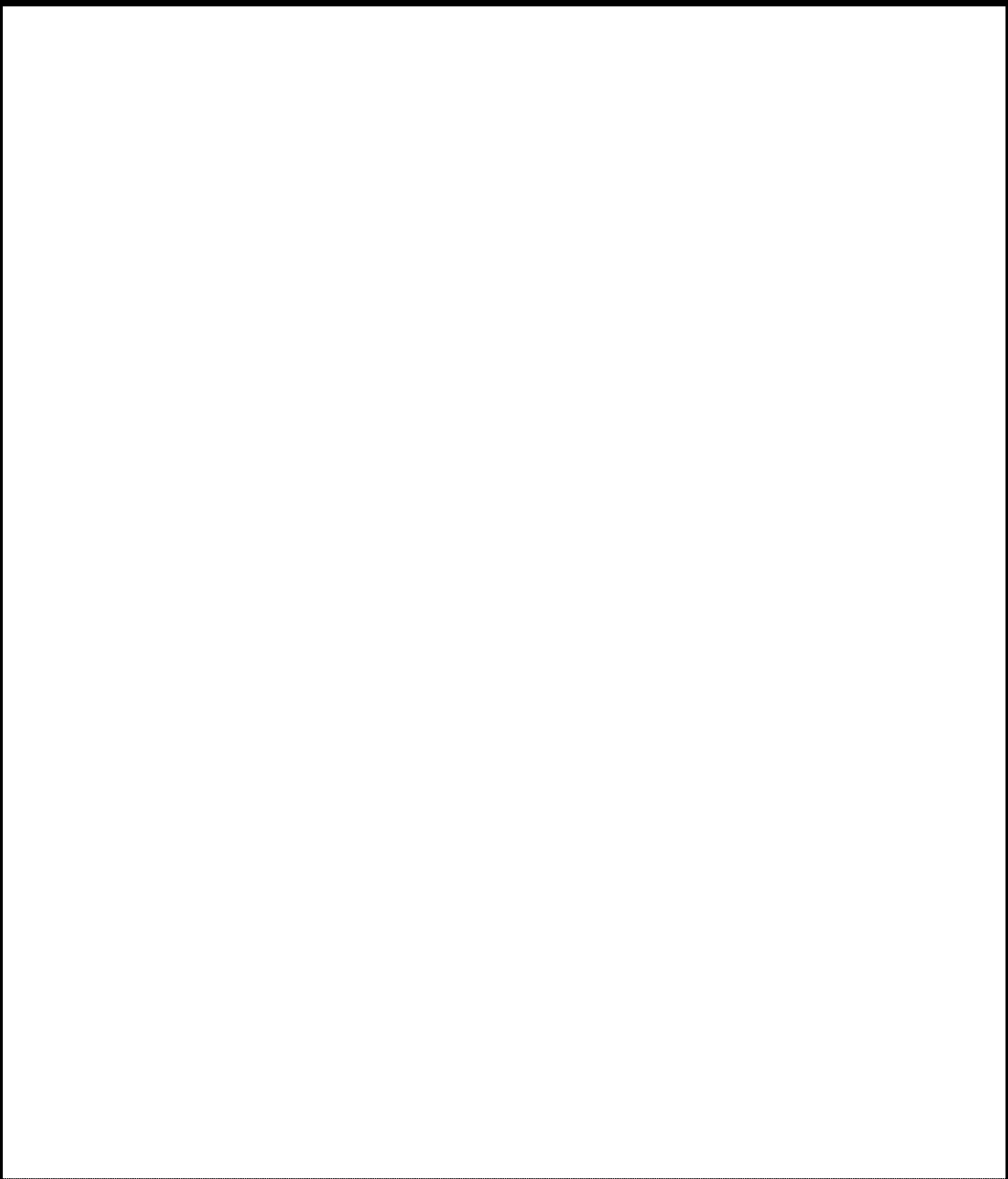


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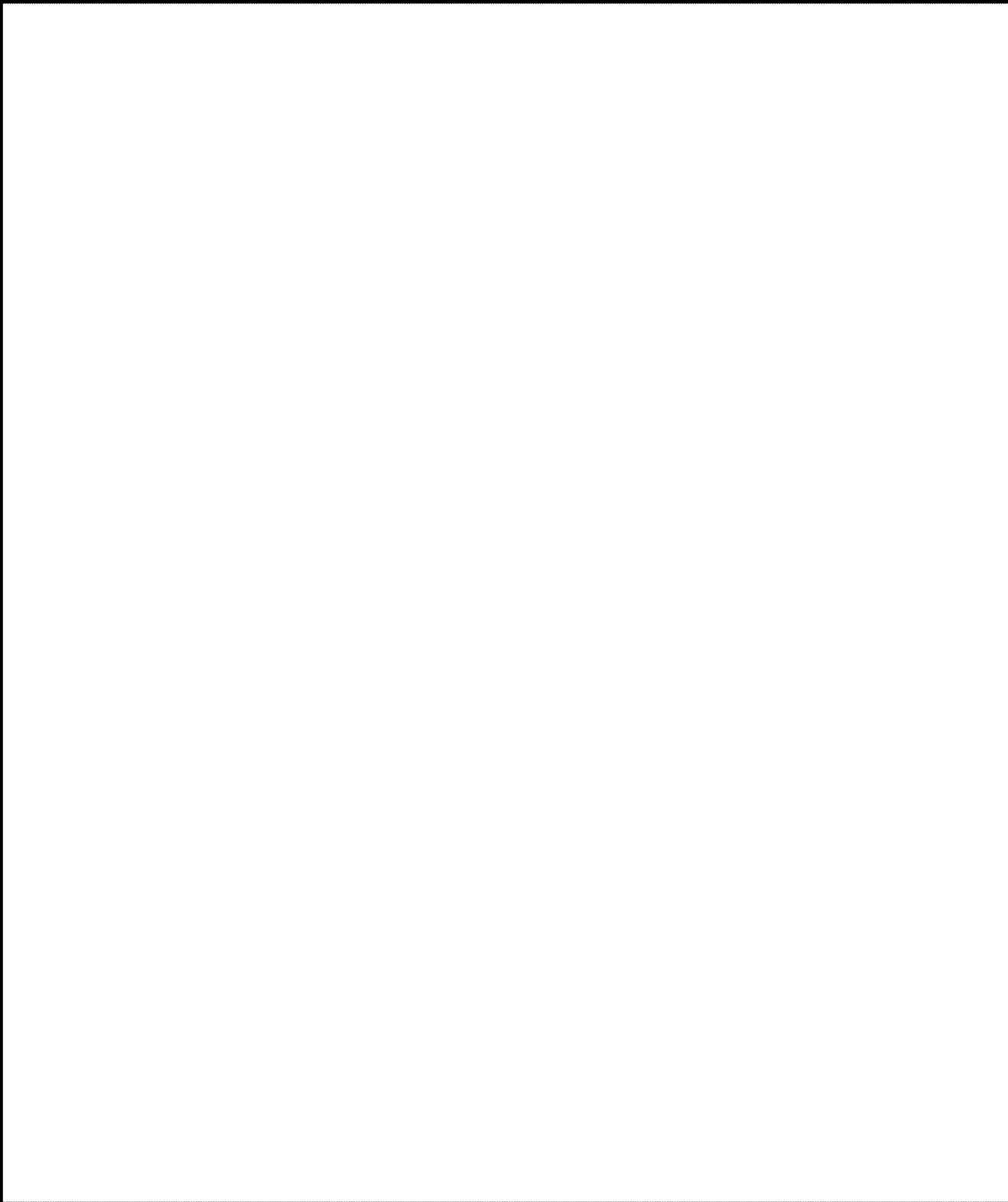
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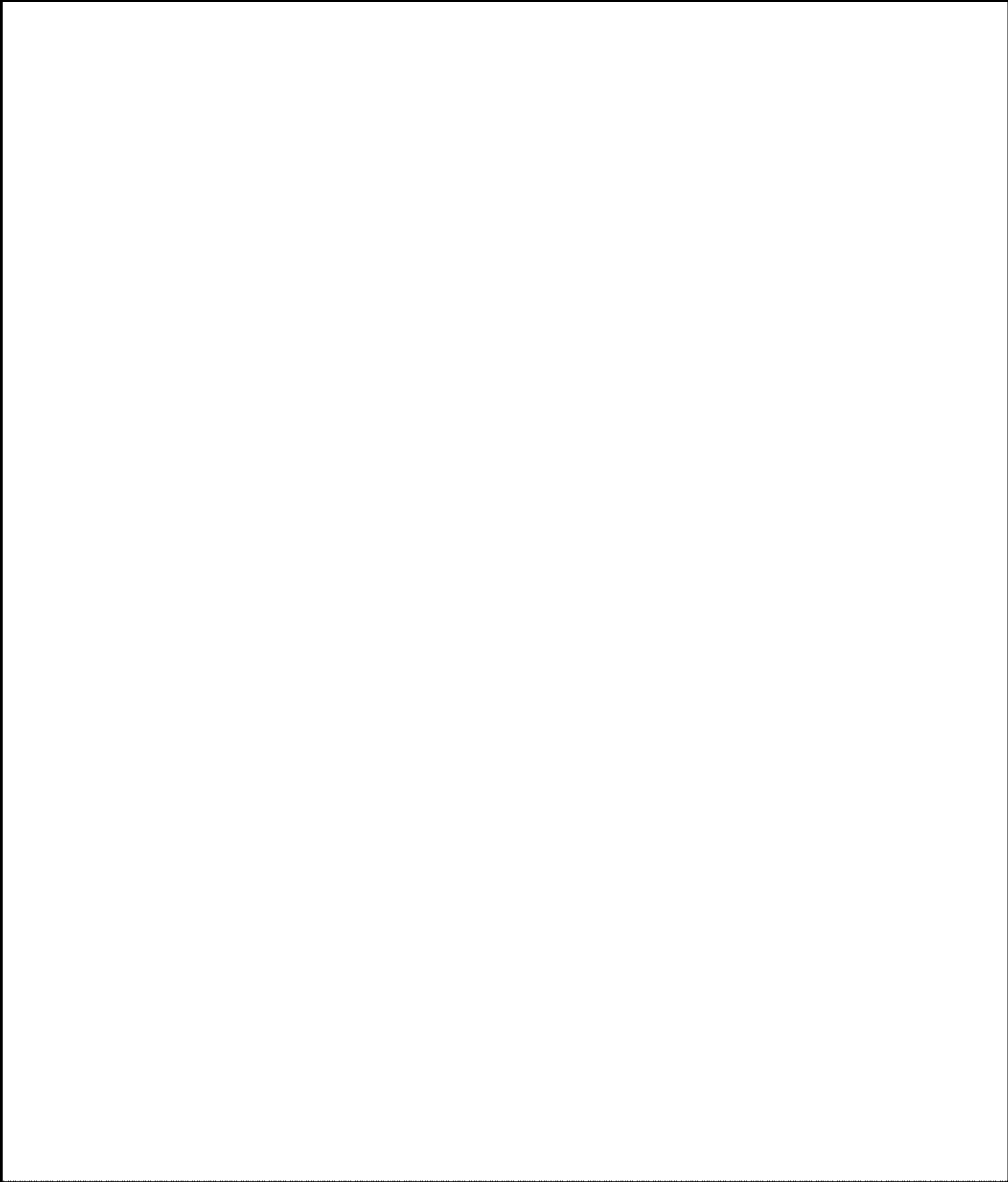
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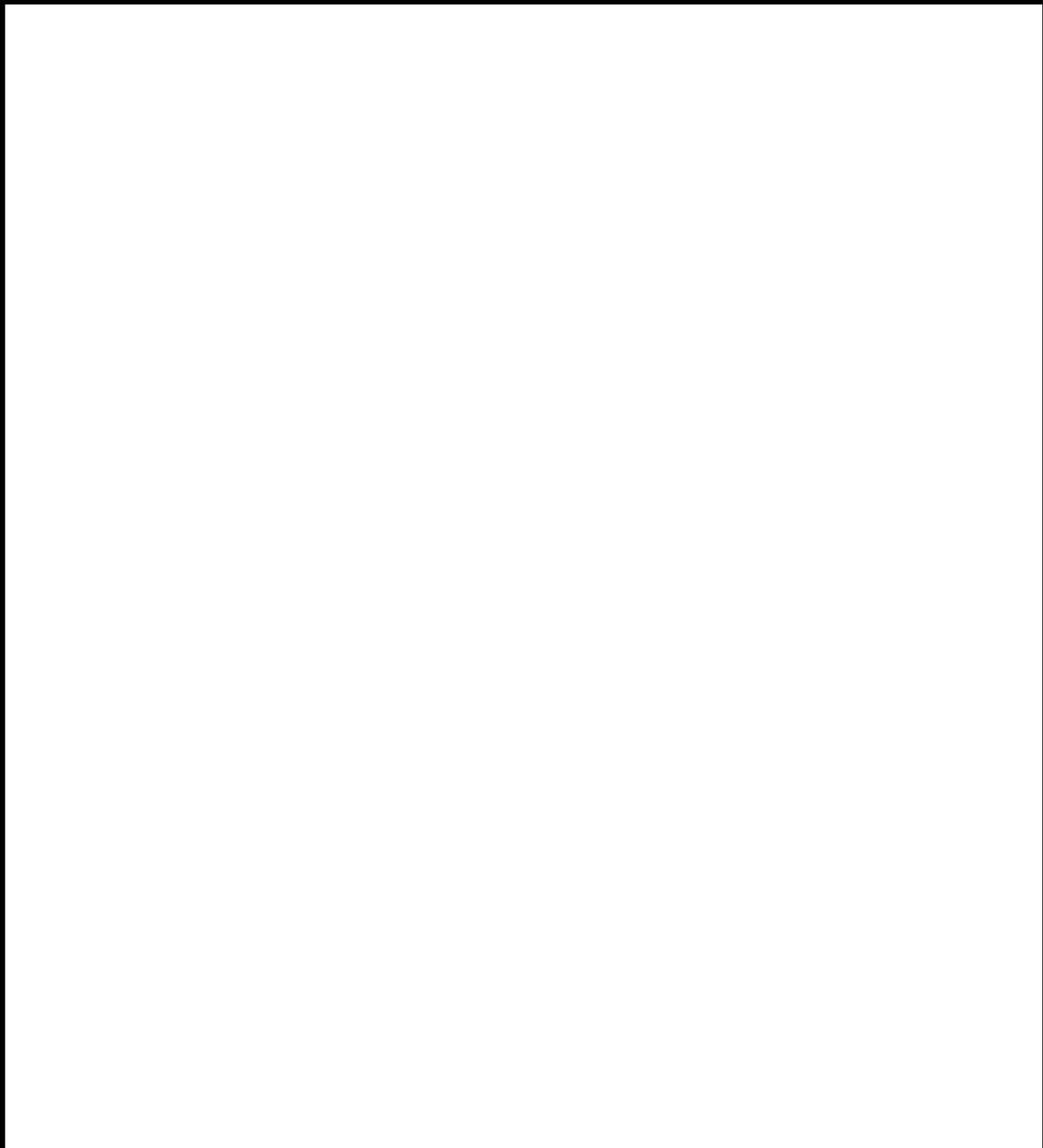
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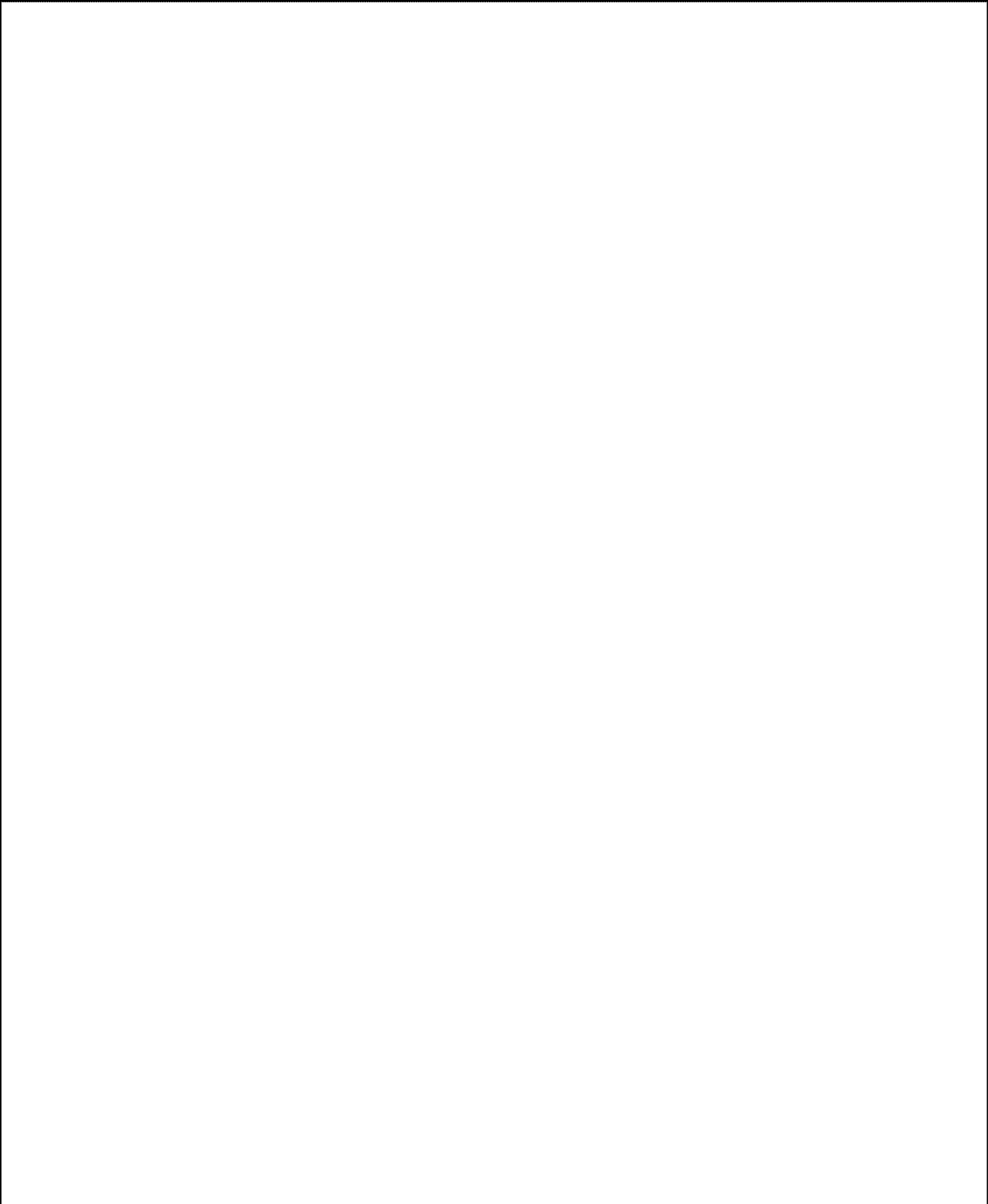


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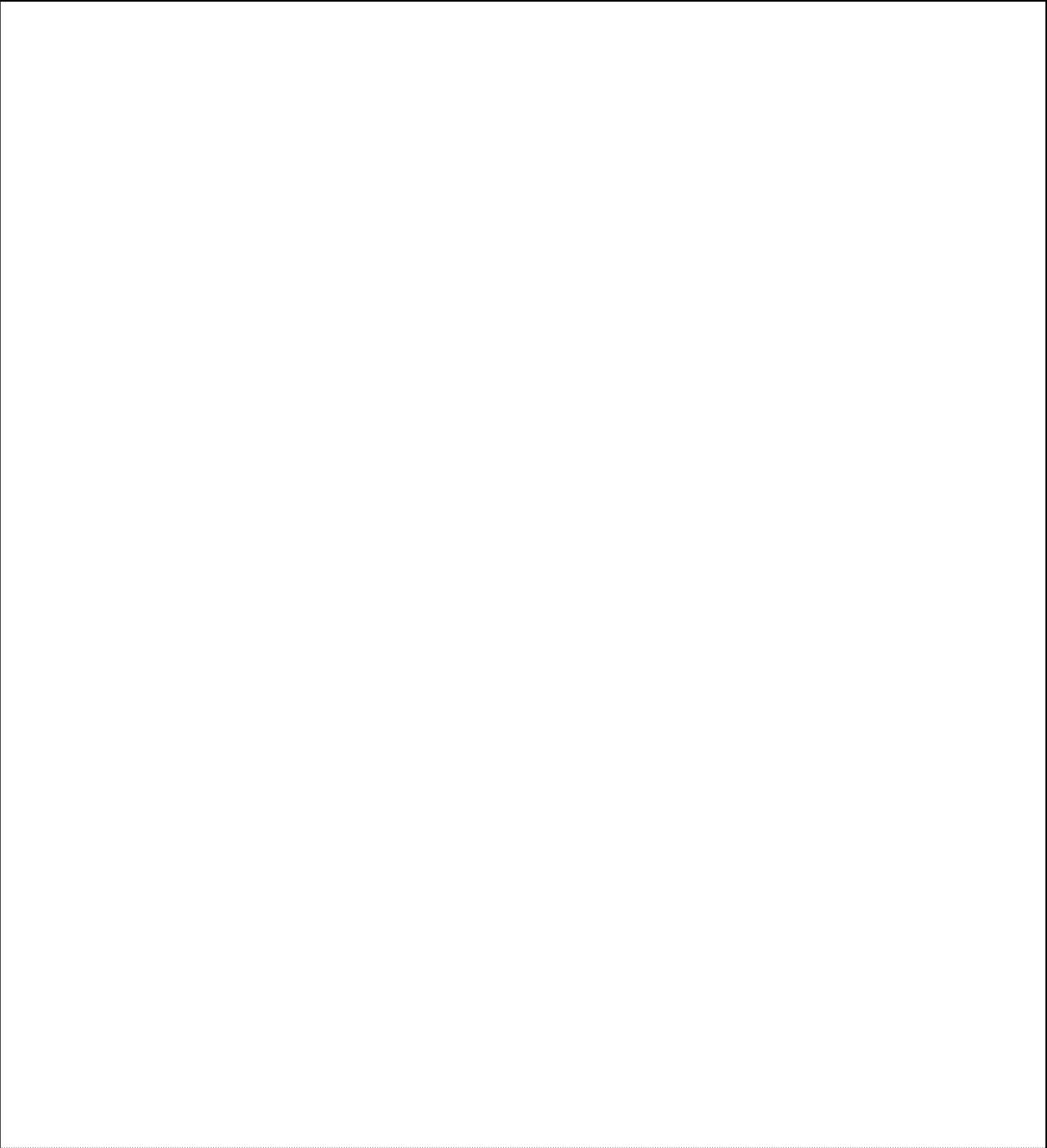


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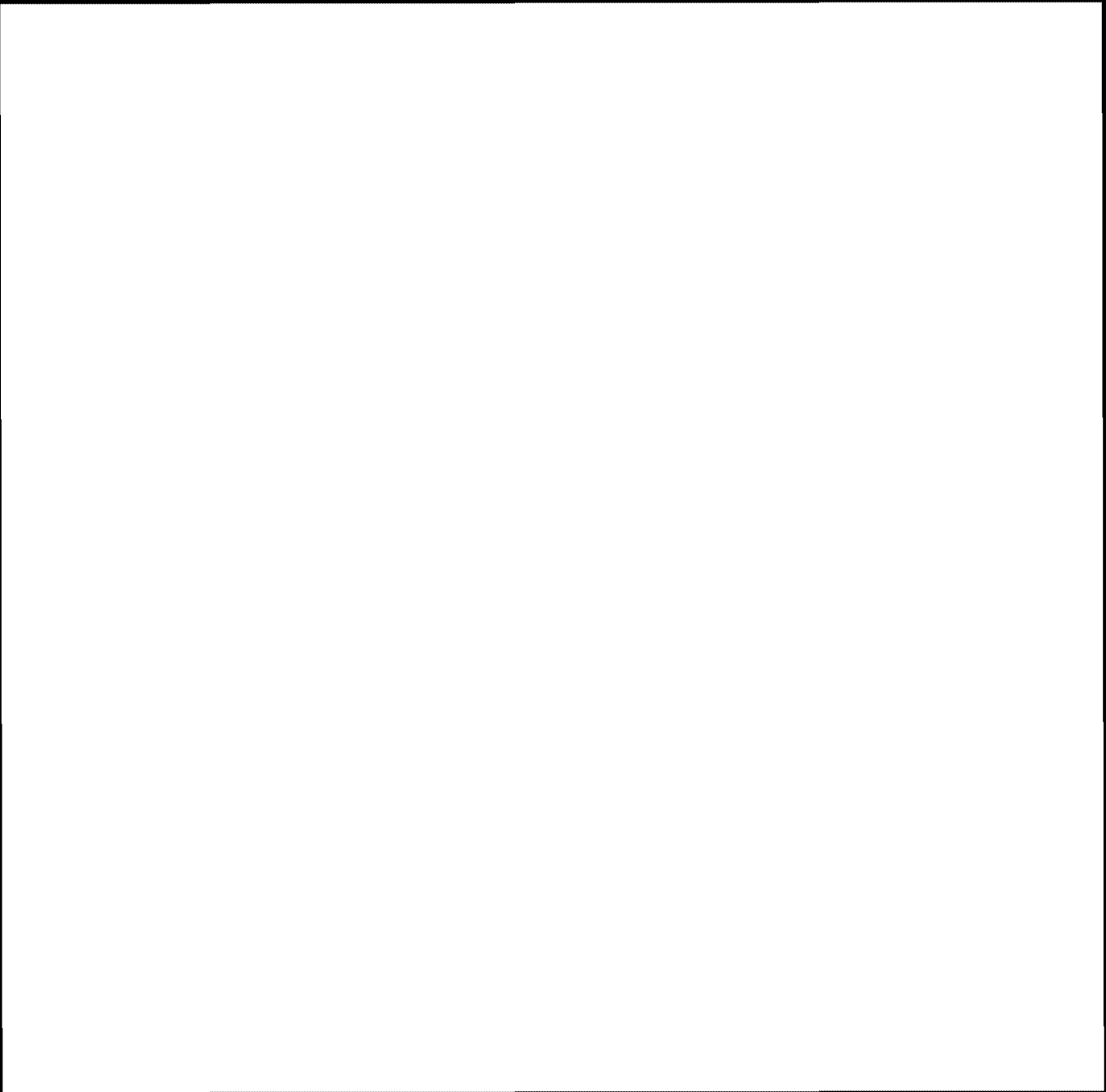
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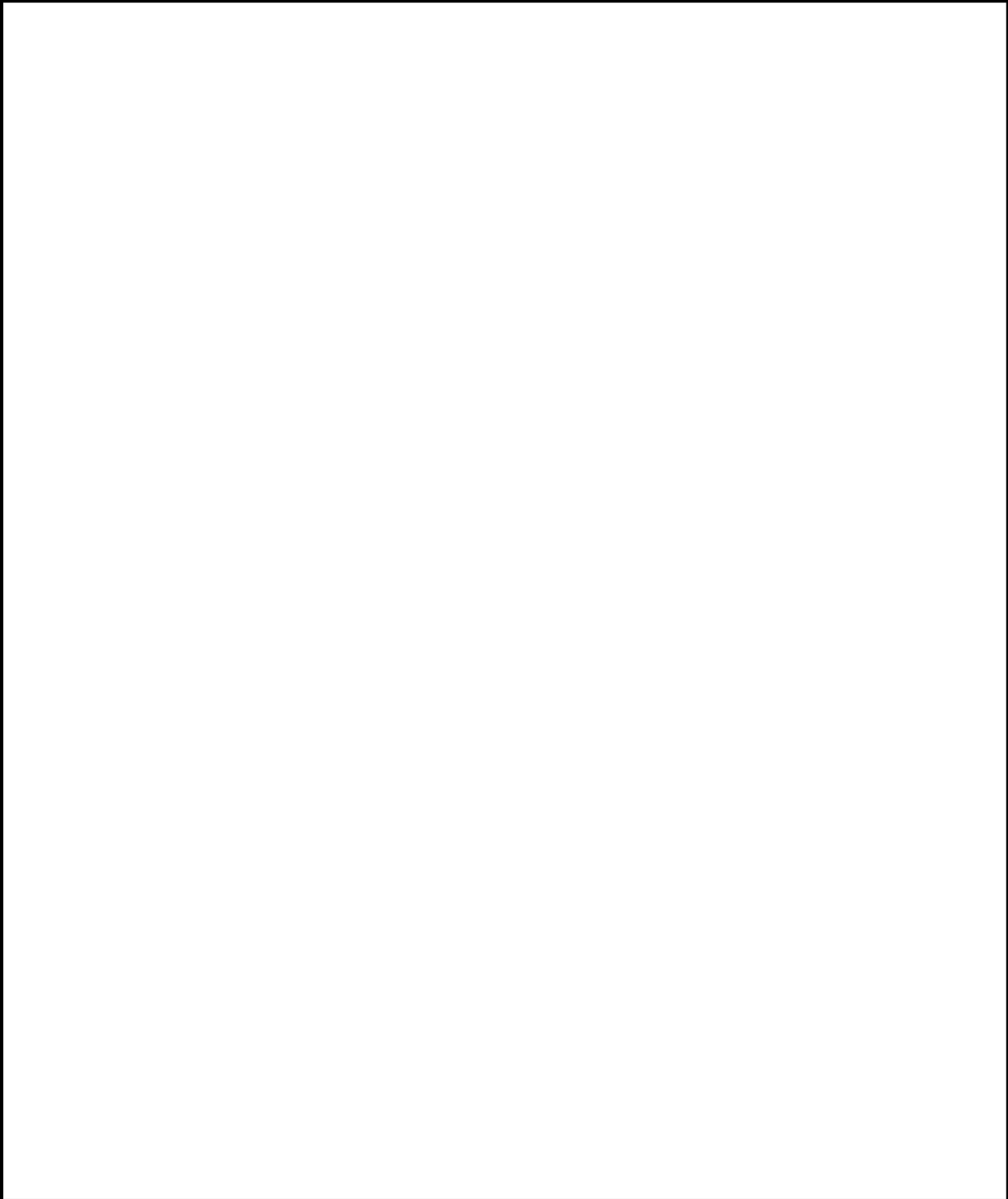
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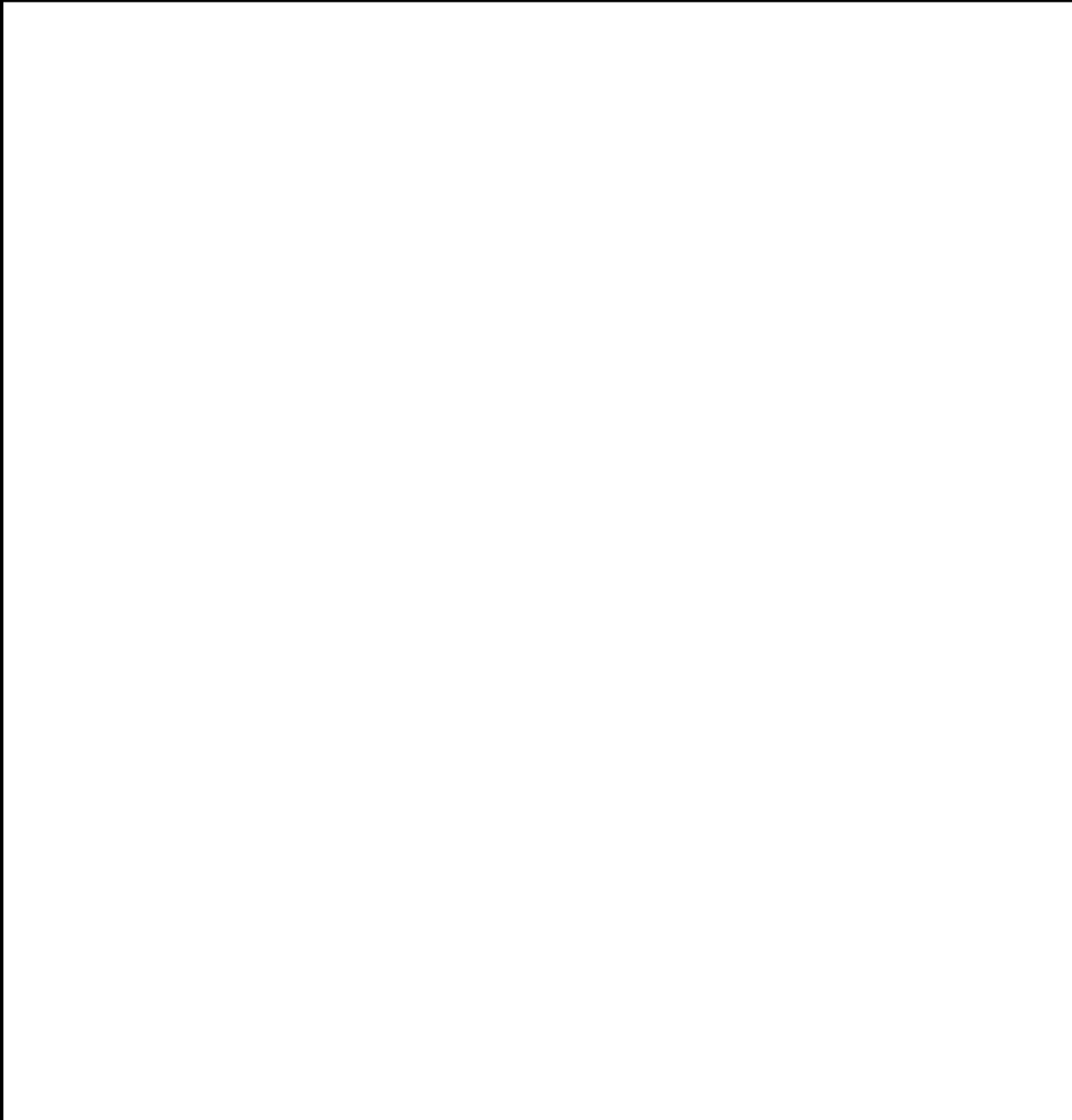


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# About this Presentation

- Authors: OCC, Training and Knowledge Management Division; Alice Smith, Associate Counsel, Refugee and Asylum Law Division
- Date of last revision: December 2014
- This presentation is current only as of the date of the last revision.
- OCC Cleared 12/12/2014
- This presentation contains no sensitive Personally Identifiable Information (PII)
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.



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# U.S. Citizenship and Immigration Services



# U.S. Citizenship and Immigration Services

## REFUGEE AND ASYLUM OVERVIEW

Course 210/211

# Terminal Performance Objective

Given field situations involving persons requesting information regarding benefits related to asylum or refugee status, the officer will provide information to such persons, referring them for processing according to INA, 8 CFR, Policy Guidance .



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July 2010

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## Enabling Performance Objectives (EPO)

- EPO #1** Identify applicable sections of the Immigration and Nationality Act (INA) and Title 8, Code of Federal Regulations (8 CFR) that relate to refugees (INA § 207) and asylum (INA § 208).
- EPO #2** Identify the eligibility requirements for asylum and refugee applications.
- EPO #3** Identify the differences between the “asylee” and “refugee” classifications.
- EPO #4** Identify ancillary benefits available to aliens classified as an asylee or refugee.



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# Statistics

As referenced from the United Nations Commissioner of Refugees (UNHCR) and the Worldwide Refugee Admissions Processing Systems (WRAPS):

At the end of 2008:

- forcibly displaced individuals worldwide totaled approx. 42 million
- Total refugees accepted for resettlement worldwide was 88,800.
- Pakistan hosts the largest number of un-resettled refugees with 1.8 million individuals



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Between FY 08- FY 09, US allocated 80,000 refugee entries

In FY 08 -60,108 refugees were allowed entry and resettlement into the U.S.

Top three countries:

- Burma- 18,139
- Iraq- 13, 823
- Bhutan- 5,320



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## Top Three states with resettlement of refugees include:

- California- 9,472
- Texas- 5,113
- Florida-3,715



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There is no limit or cap, for the granting of Asylum status in the U.S. FY 08-09 22, 930 individuals granted asylum.

Top three countries:

- China 5, 459
- Columbia, 1,646
- Haiti, 1,237



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# Refugee Definition

## INA §101(a)(42) Core Components \*

Unable or unwilling to return to country of nationality (or if without a country of nationality, the country of last habitual residence) because  
of:

▪ Past Persecution

OR

▪ Fear of Future Persecution

On Account of:

- Race
- Religion
- Nationality
- Membership in Particular Social Group
- Political Opinion

\* NOTE: See INA §101(a)(42) for additional exceptions



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# Definition of Persecution

- No precise definition of persecution --we only have guidance
- Generally, serious harm or suffering
- May be mental or physical harm
- May be cumulative (series of discriminatory acts that rise to the level of persecution)
- Must be on account of one of the 5 protected grounds



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# WHO is the PERSECUTOR?

▫ Government

OR

▫ Entity the government cannot or will not control



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# Refugee Admissions Program

INA § 207 --

(special humanitarian concerns /admissible  
/not firmly resettled)

8 C.F.R. Part 207



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# Refugee Admissions Program

- Who is eligible for consideration?
- How is this determined?

**HOW MANY** refugees to be admitted, **WHERE** these refugees are from, and **WHO** can be interviewed is jointly decided by the President and Congress.



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# Refugee Admissions Program

## Annual Consultation Process:

The President determines, after consultation with Congress:

--Admissions Ceiling

FY2008: 80,000

--Groups of Special Humanitarian Concern

--Family-Based



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# Application, Interview & Processing

- What to file

  - I-590 (Registration for Classification as a Refugee)  
(if 14 years & older—additional requirements)

- How to file

  - Overseas Processing Entities (OPEs) assist refugees

- Confidentiality

- Interview by USCIS



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# Application, Interview & Processing

## ▫ Eligibility

- must meet definition of "Refugee"
- cannot be "Firmly Resettled"
- must be admissible

## ▫ Travel to U.S.

- sponsorship assurance
- admitted as "refugee"

## ▫ Termination

- If found not to be a refugee at time of admission



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# Asylum Process

- INA & Regulations

INA § 208 / 8 C.F.R. Part 208

- Who can apply?

- Any asylum seeker – while physically present in the U.S. or port of entry
- regardless of immigration status
- no limit to number who can apply annually



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# Asylum Process (cont'd)

## Restrictions on Filing:

- 1-Year Filing Deadline (some exceptions)
- Prior Denial by IJ or BIA
- Safe 3rd Country

## Filing an I-589:

- Affirmative vs. Defensive



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# Asylum Eligibility

## ▫ Eligibility

must meet definition of “Refugee”

discretionary benefit

-- precedent case law

-- mandatory bars

## ▫ If Not Eligible

If applicant in lawful status – Denial

If applicant Not in lawful status – Referral to IJ



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# Confidentiality

Federal regulations at 8 C.F.R § 208.6 generally prohibit disclosure of information about an asylum applicant or application to a third party, with the exception of other U.S. government officials or contractors in certain situations.

- No disclosure without written consent
- Even the fact that an individual applied is confidential



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# What Are Some Differences Between Asylum & Refugee Processing?



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# Asylum vs. Refugee Processing

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) was established in 1951. The major international instruments that form the basis for international refugee protection are:
  - The 1951 UN Convention relating to the Status of Refugees;
  - The 1967 UN Protocol relating to the Status of Refugees.



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## Asylum vs. Refugee Processing (cont'd)

2. The Refugee Act of 1980 defined the term “refugee” in U.S. law and brought the United States law into compliance with international law. It established politically and geographically neutral adjudication standards for refugees and asylees.

3. Congress created 2 programs:

- U.S. Refugee Admission (USRAP) for refugees outside the U.S.;

and

- U.S. Asylum Program for refugees inside the U.S.



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## Asylum vs. Refugee Processing (cont'd)

4. INA section 101(a)(42) defines the term "refugee" under U.S. law as any person unable or unwilling to return to his or her country of nationality or last habitual residence 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



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# Asylum vs. Refugee Processing (cont'd)

## 5. Two Programs

### A. Refugee Admissions Program – refugees outside the U.S.

- INA section 207
- Refugees file on Form I-590

To be eligible, the individual must:

- fall within a processing priority
- meet the definition of refugee
- be admissible to the U.S.
- not be firmly resettled
- and cannot be someone who qualifies as the immediate relative of a U.S. citizen or qualifies as a special immigrant, unless in public interest



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# Asylum vs. Refugee Processing (cont'd)

## B. Asylum Program – refugees inside the U.S. or at POE

- INA section 208
- File on Form I-589
- Can apply despite immigration status
- Certain restrictions on filing



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## Asylum vs. Refugee Processing (cont'd)

- Asylum may be granted in the exercise of discretion to any such alien who meets the definition of "refugee," except where a statutory ground for mandatory denial applies.
- Asylum Officers adjudicate applications filed affirmatively
- Immigration Judges adjudicate applications filed defensively



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## Asylum vs. Refugee Processing (cont'd)

6. Both programs provide protection to aliens who meet the definition of a refugee, but there are significant differences in the location and identification of the applicants, the number of individuals authorized to receive such protection each year, and the requirements for adjustment to lawful permanent resident status.



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## Accompanying / Follow to Join Derivatives

- Aliens granted asylum or refugee status may petition for accompanying or follow-to-join derivative spouse and/or unmarried children under 21
- Form I-730, Refugee/Asylee Relative Petition is filed with Nebraska Service Center or Texas Service Center, depending on the petitioner's residence
- No filing fee



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## Accompanying / Follow to Join Derivatives (cont'd)

- Must be filed by principal alien within appropriate time limit
  - Within two years of being admitted as a refugee or granted asylum
  - The 2 year filing period can be waived at the discretion of the Service for humanitarian reasons

### Considerations for waiver:

- Acceptable: petitioner's mental incapacity or medical condition (with corroborating evidence), petitioner was recently made known of family's appearance, petitioner thought beneficiary was deceased.
- Unacceptable: petitioner's financial situation, family living in hostile conditions, means to immigrate.



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## Accompanying / Follow to Join Derivatives (cont'd)

- Evidence of petitioner's status must be submitted.
- Evidence of the claimed relationship and the beneficiary's photograph must be submitted.
- The beneficiary must be eligible for asylum or refugee status
  - The beneficiary cannot have been previously granted asylum or refugee status.
  - Asylees: the beneficiary must not be barred from receiving asylum.
  - Refugees: the beneficiary must be admissible to the U.S.



## Accompanying / Follow to Join Derivatives (cont'd)

- The beneficiary must be eligible to be classified as a spouse or child and relationship must have existed at the time the petitioner was granted asylum or was admitted as a refugee
  - CSPA protection applies
  - If the beneficiary was not previously claimed by the petitioner, the burden of proof is on the petitioner to explain why the beneficiary was not previously claimed, and submit clear and convincing evidence of relationship.
- Once the beneficiary's petition is approved, the beneficiary becomes eligible to apply for ancillary benefits



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## Ancillary Benefits – Employment

- Refugees or Asylees filing for Adjustment of Status under 8 C.F.R 209
  - Not eligible for work authorization under 8 C.F.R. 274a.12 (c)(9) – only for applicants applying for adjustment of status under 8 C.F.R. 245



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## Ancillary Benefits – Employment (cont'd)

### Refugees

- Authorized employment incident to status
- I-94 stamped upon entry to indicate employment authorized
- May apply for a document evidencing employment authorization (EAD)
- File I-765 under 8 C.F.R. 274a.12(a)(3)
  - Filing fee not required for initial Employment Authorization Document (EAD)
  - Application processed by the Nebraska Service Center



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## Ancillary Benefits – Employment (cont'd)

### Asylees (Asylum Granted)

- Authorized employment incident to status
- EAD issuance differs depending on granting authority for asylum application (Immigration Judge vs. Asylum Officer)
- May apply for a document evidencing employment authorization (EAD)
- File I-765 under 8 C.F.R. 274a.12(a)(5)
  - Filing fee not required for initial Employment Authorization Document (EAD)
  - Application processed by the Nebraska Service Center



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## Ancillary Benefits – Employment (cont'd)

### Pending Asylum Application

- Eligible while I-589 is pending final decision
- Must apply for employment authorization
- Form I-589 must be pending at least 180 days prior to EAD approval – aliens may file for consideration after 150 days
- File I-765 under 8 C.F.R. 274a.12(c)(8)
  - Filing fee not required for initial Employment Authorization Document (EAD)
  - Application processed by the Service Center having jurisdiction over the applicant's state of residence



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## Ancillary Benefits – Travel Abroad

- Refugee Travel Document
  - Authorized under 8 C.F.R. 223.2(b)(2) for an alien in valid Refugee or Asylee Status
  - Also authorized under this section if the alien is a lawful permanent resident as a direct result of asylee or refugee status
  - Travel may not exceed one year



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## Ancillary Benefits – Travel Abroad (cont'd)

- Refugee Travel Document - continued
  - Must file Form I-131, Application for Travel Document to the Nebraska Service Center
  - Special Consideration: asylum status may be terminated if the Government determines the alien voluntarily returned to the protection of the country of claimed persecution.
    - Revocation is not automatic
    - May call into question entitlement to protection



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# Ancillary Benefits – Adjustment of Status

- Refugees

- Required to file to the Service one year after entry to determine admissibility under Section 212 of the Act.

- 8 C.F.R. 209.1(a)

- No fee for filing Form I-485
  - Medical examination may be required
  - Application is adjudicated by the Nebraska Service Center



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# Ancillary Benefits – Adjustment of Status cont'd

- Asylees
  - May file to the Service one year after having been granted asylum in the U.S. - 8 C.F.R. 209.2(a)
  - Filing fee required
  - Medical examination may be required
  - Application is adjudicated by the Nebraska Service Center or Texas Service Center, depending on applicant's residence



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# Ancillary Benefits – Adjustment of Status cont'd

## ▫ Interview Requirement

The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status.

8 C.F.R. 209.1(d) ; 209.2(e)



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# U.S. Citizenship and Immigration Services



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# Asylum/Refugee Law - Eligibility

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## Overview



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## Definition of a Refuge



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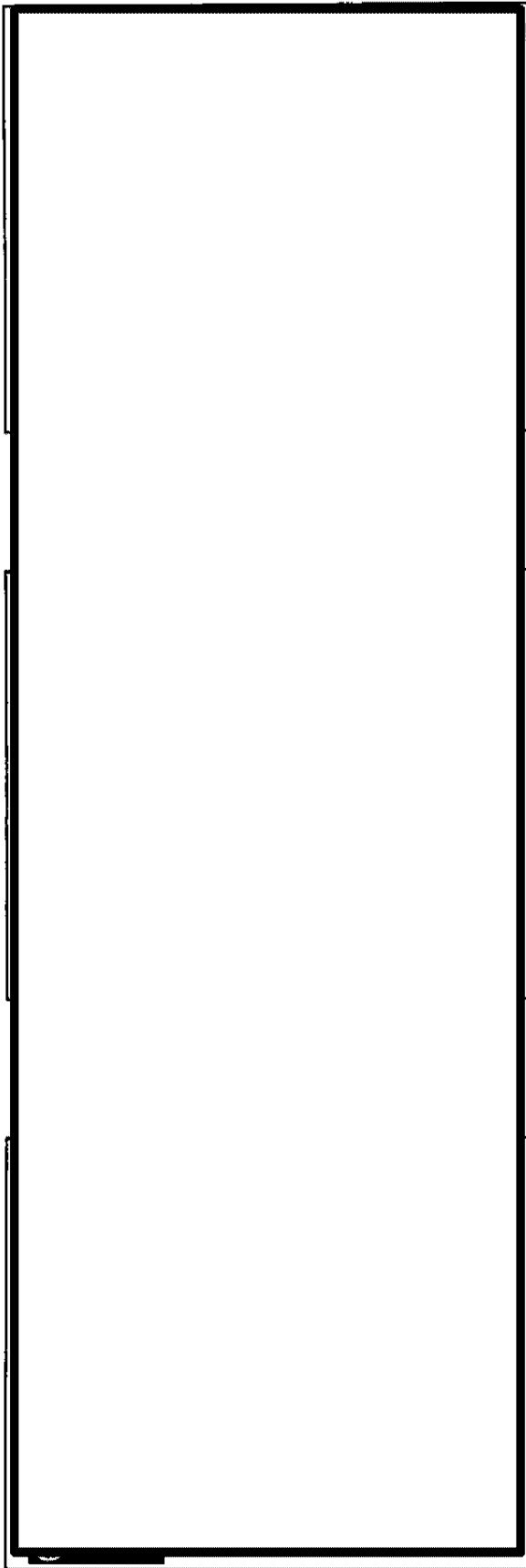
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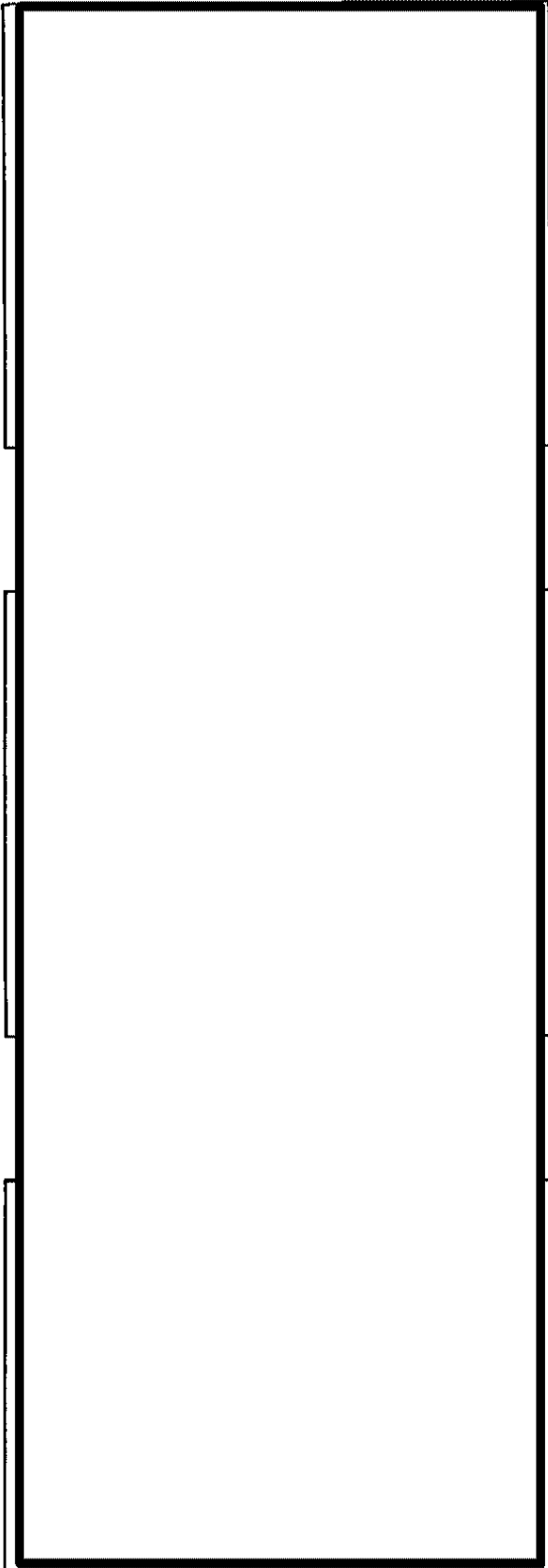


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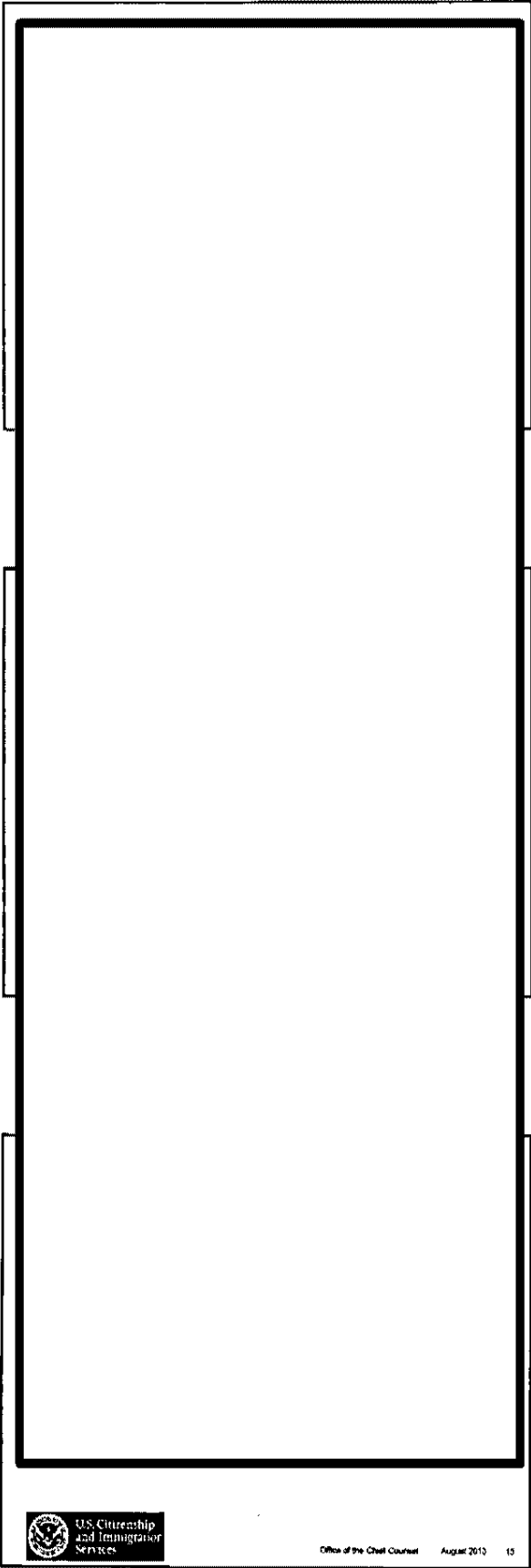
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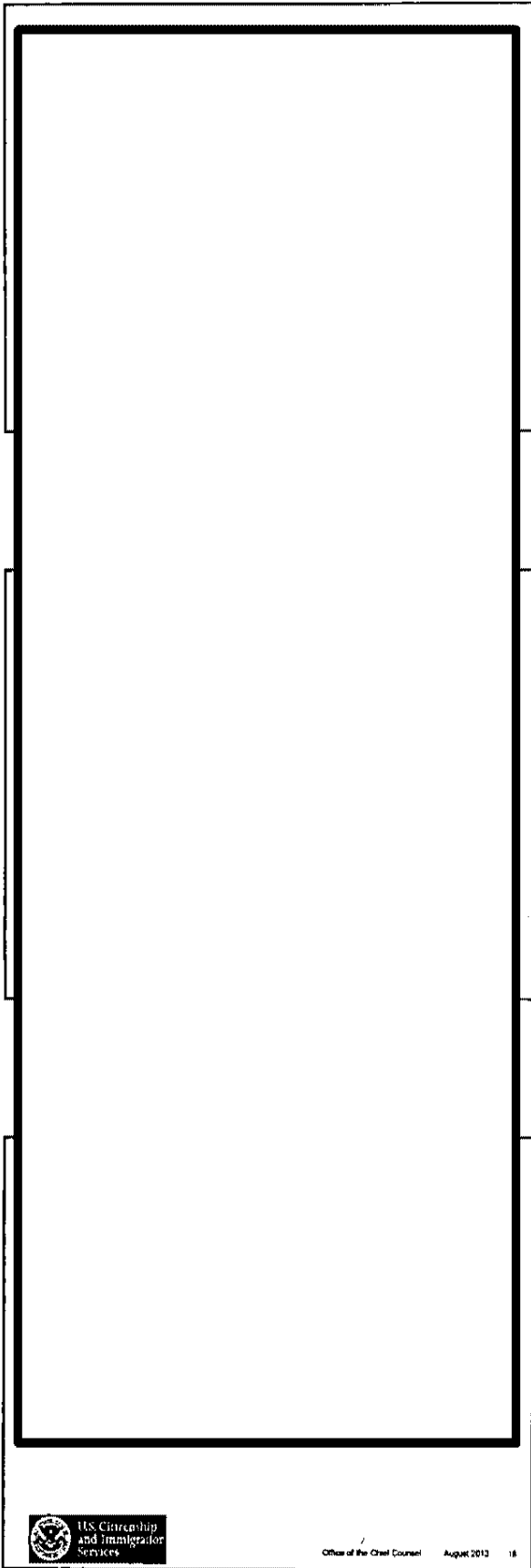
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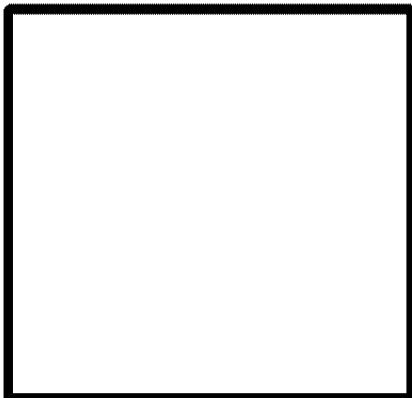
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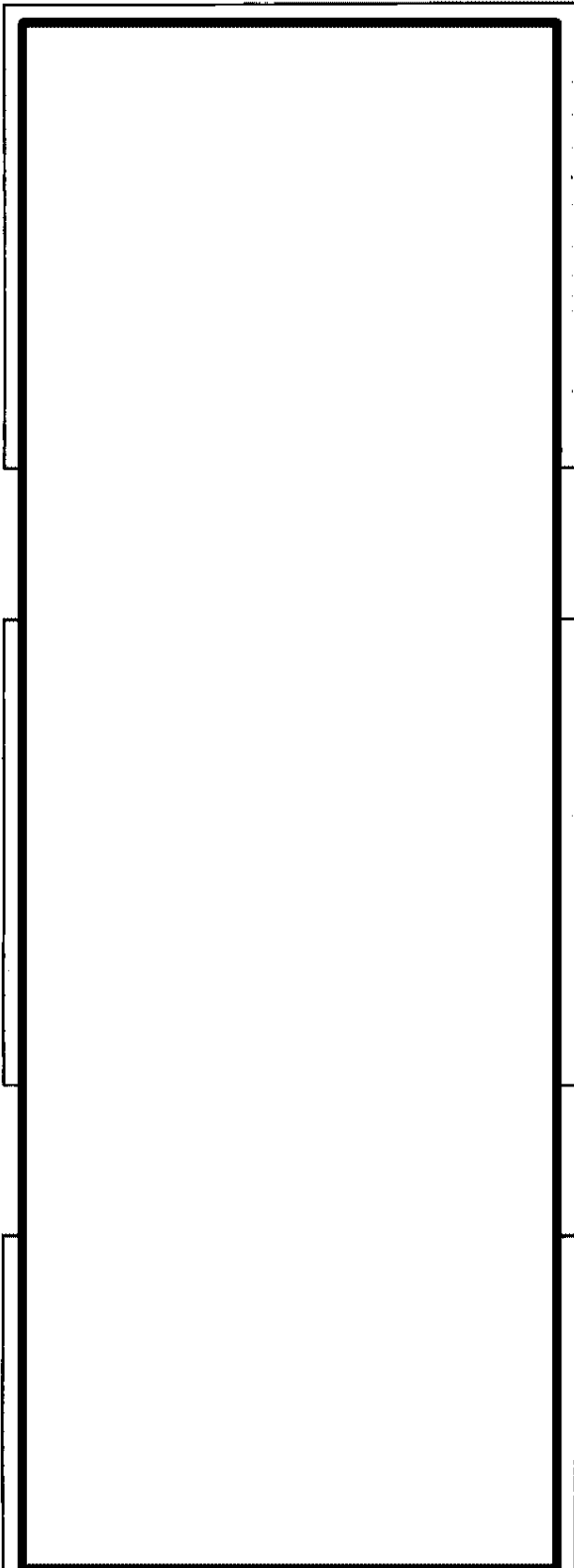
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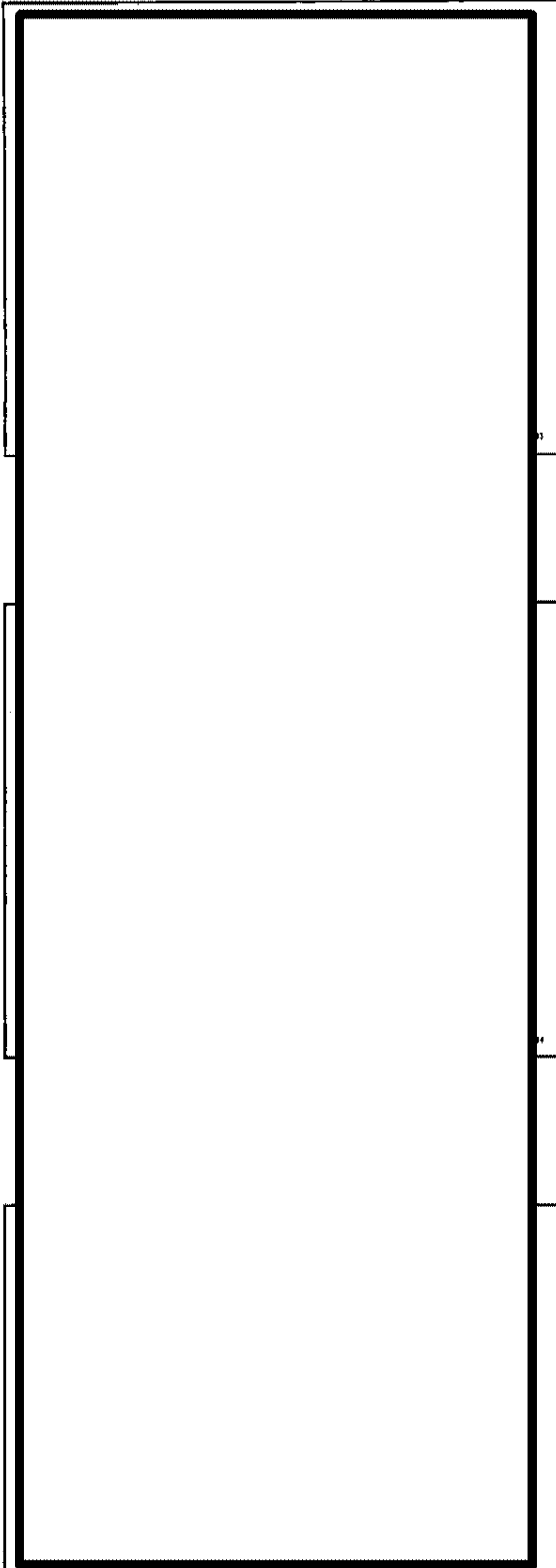
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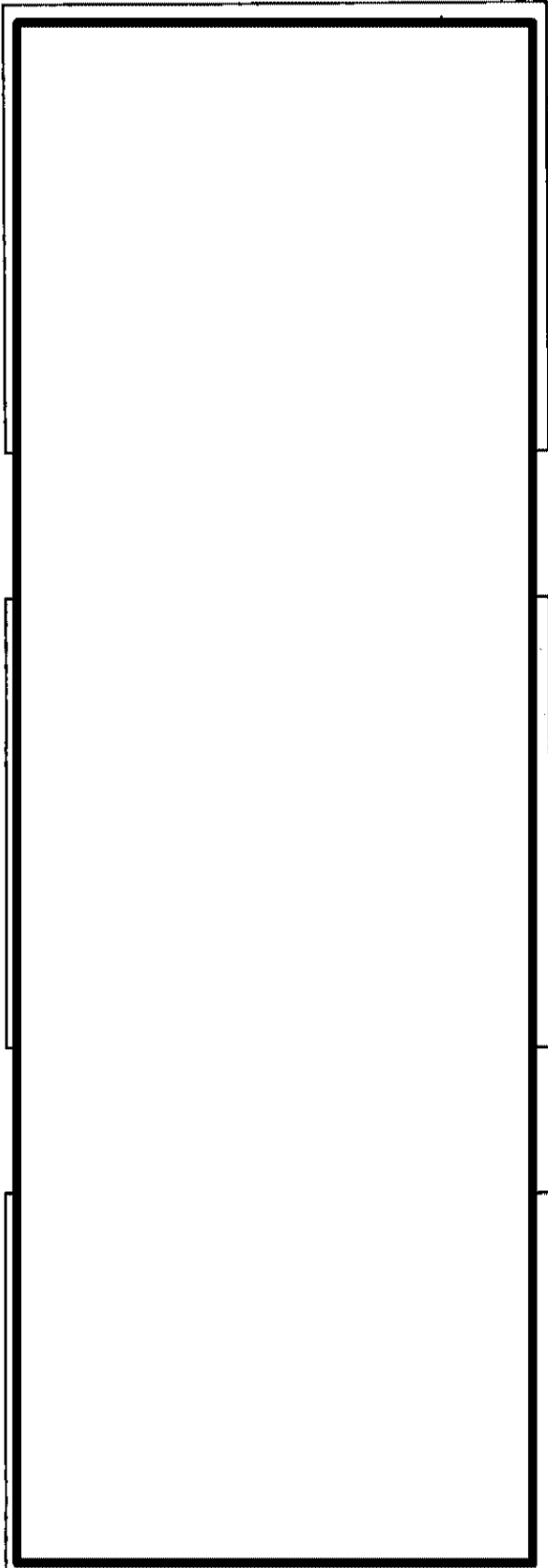


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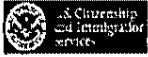
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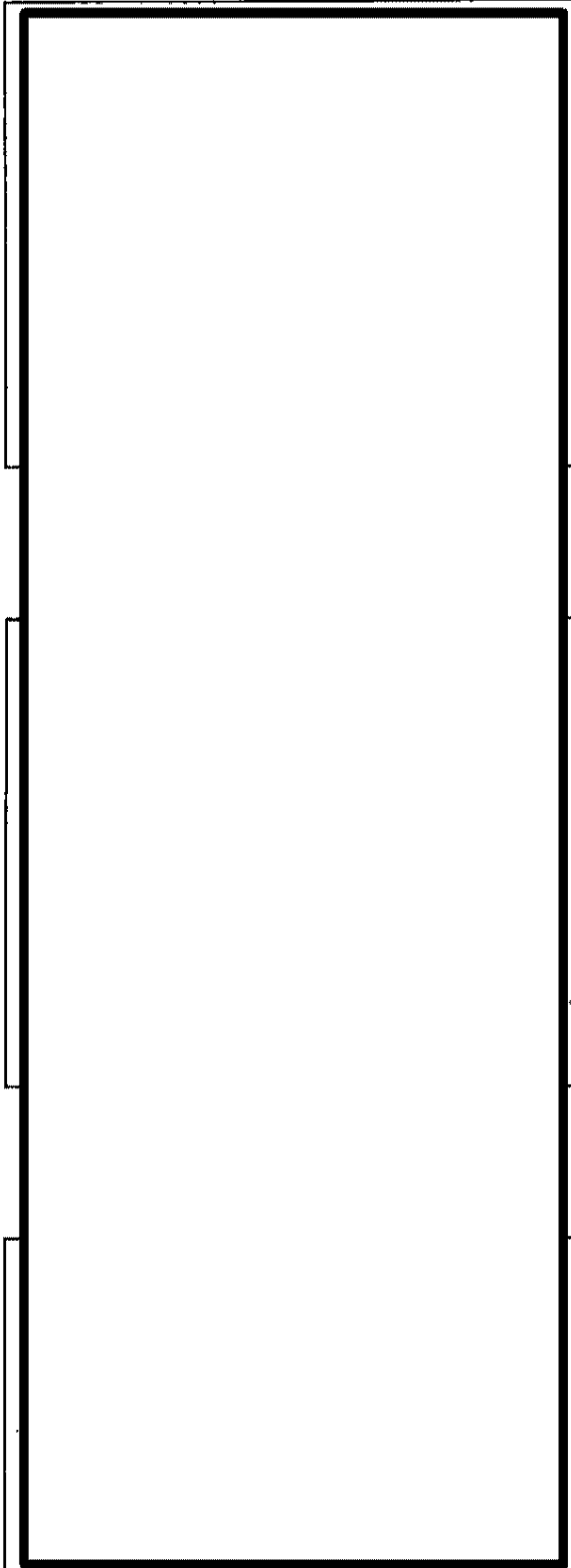
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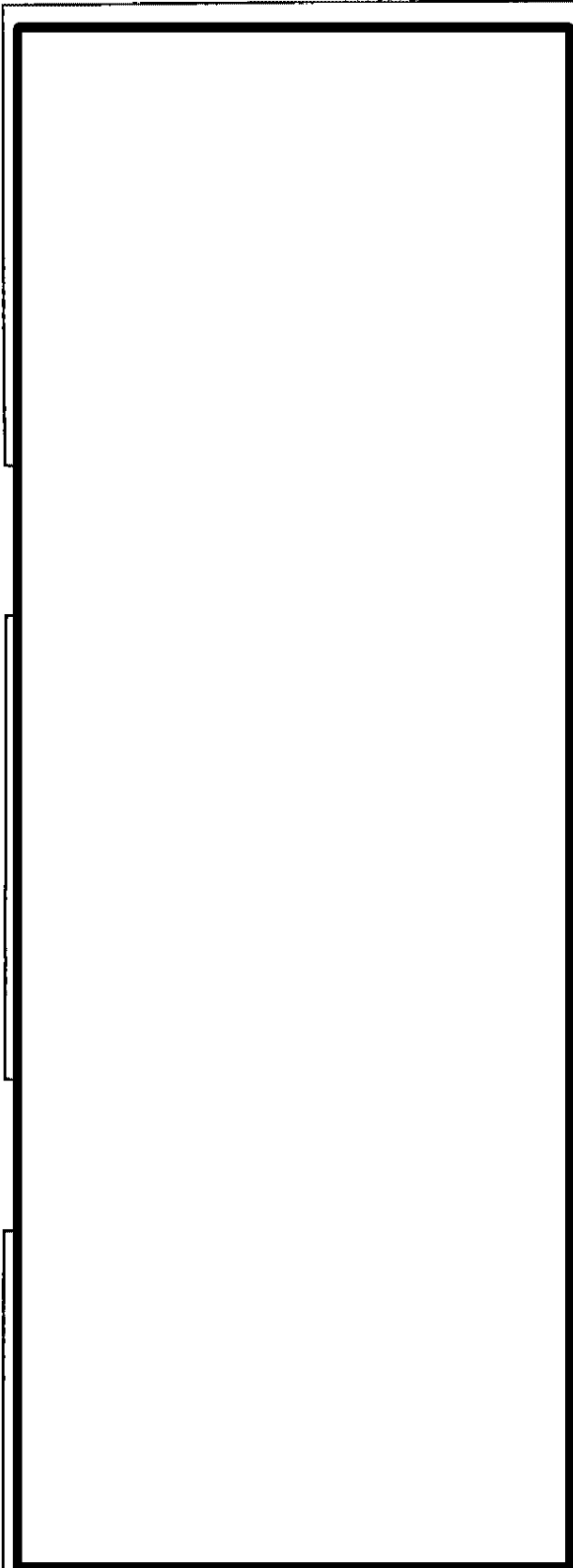
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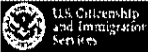
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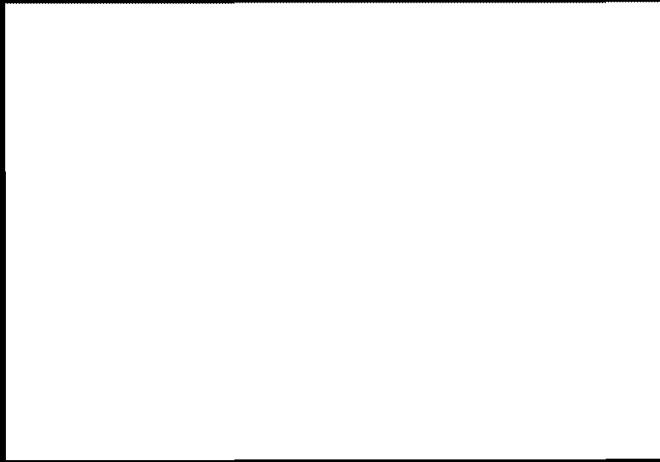


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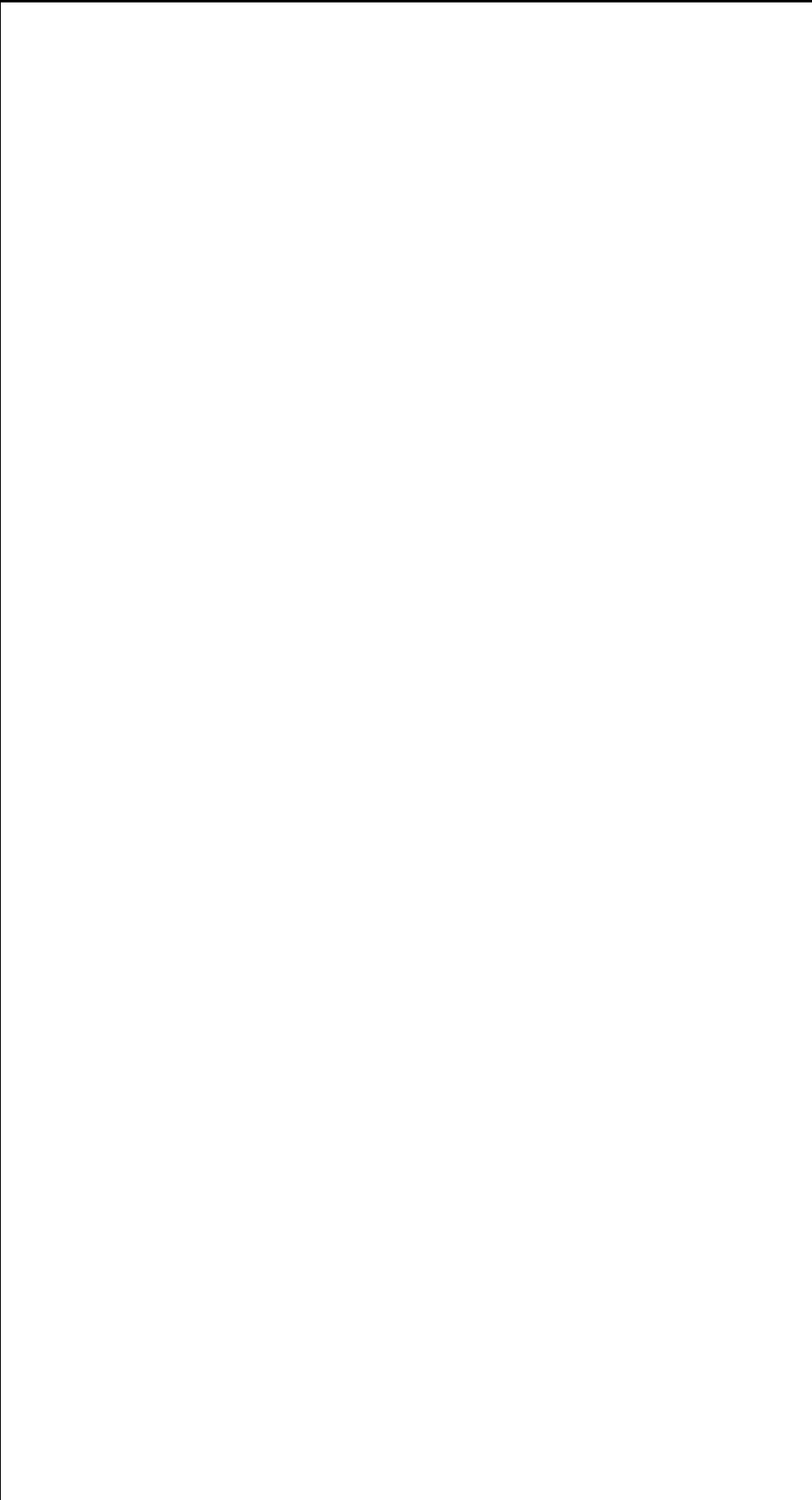
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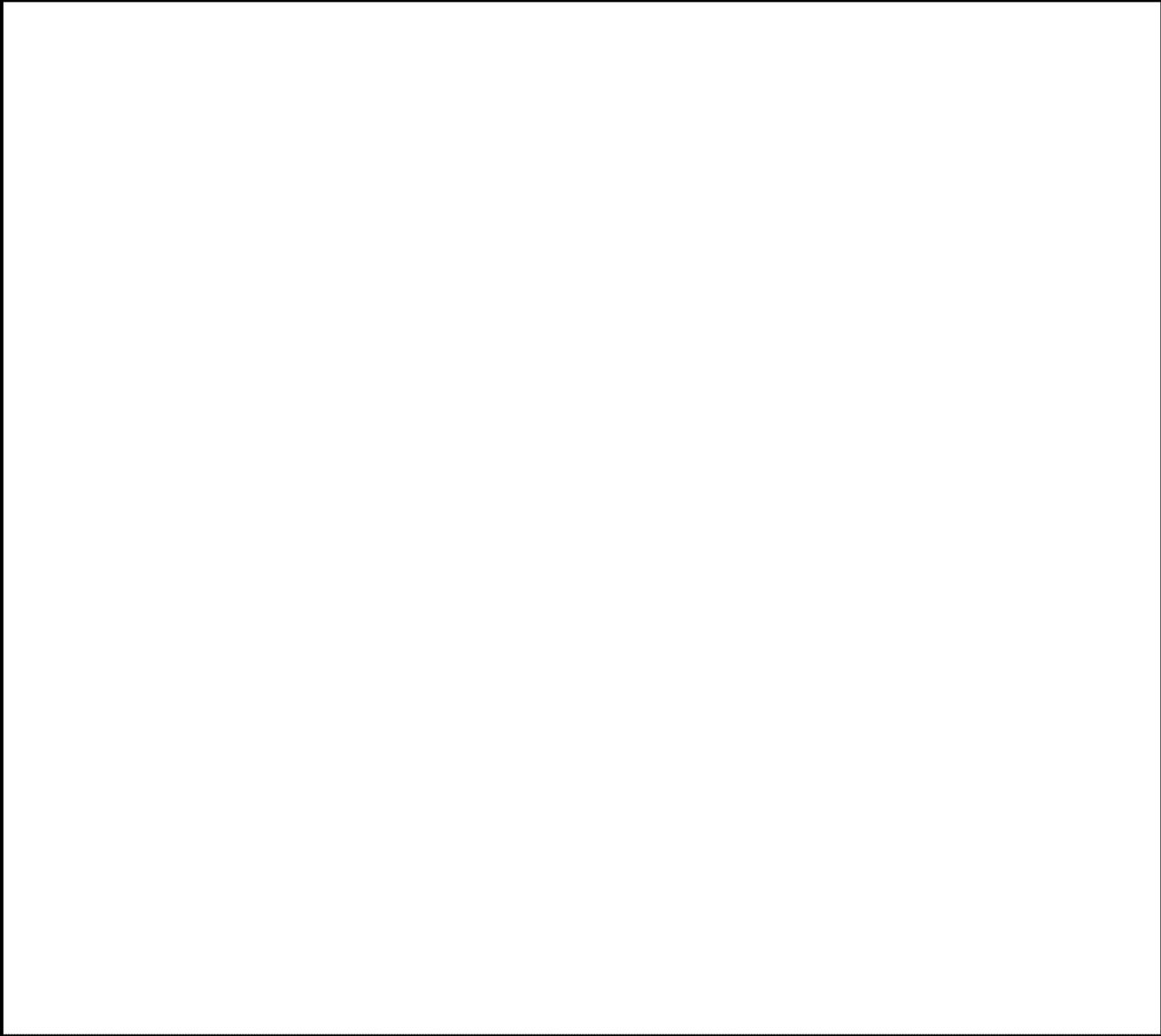
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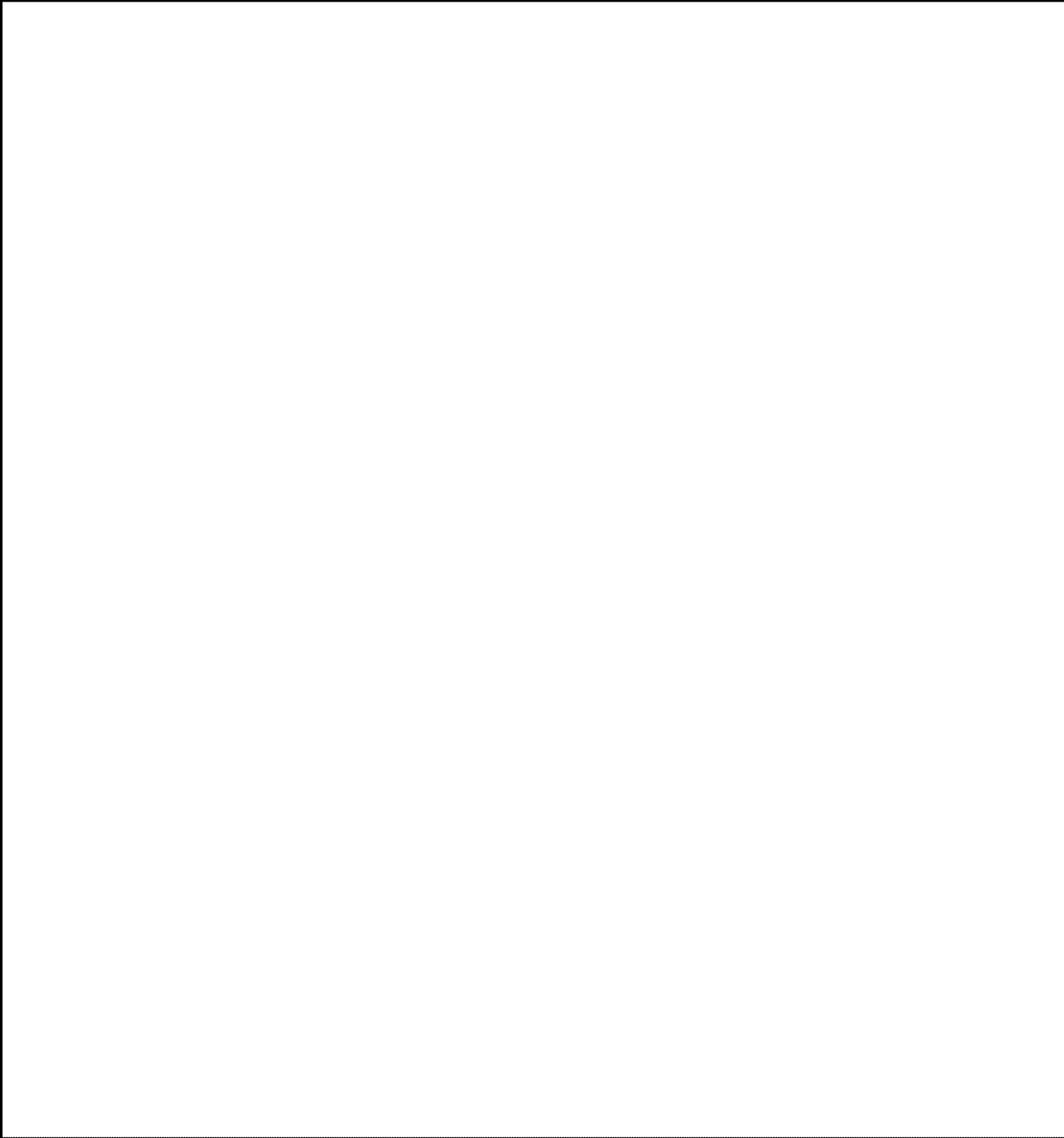


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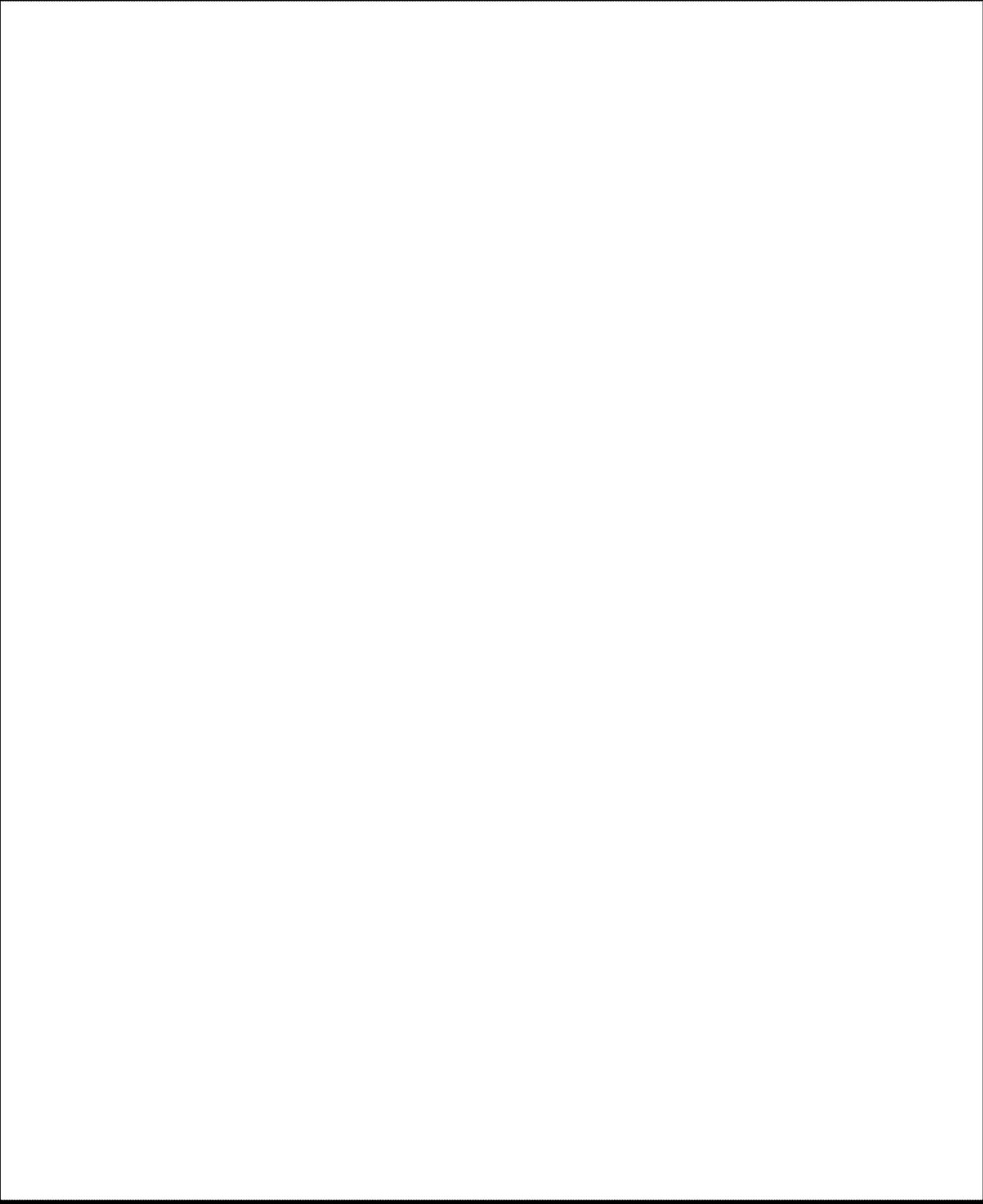


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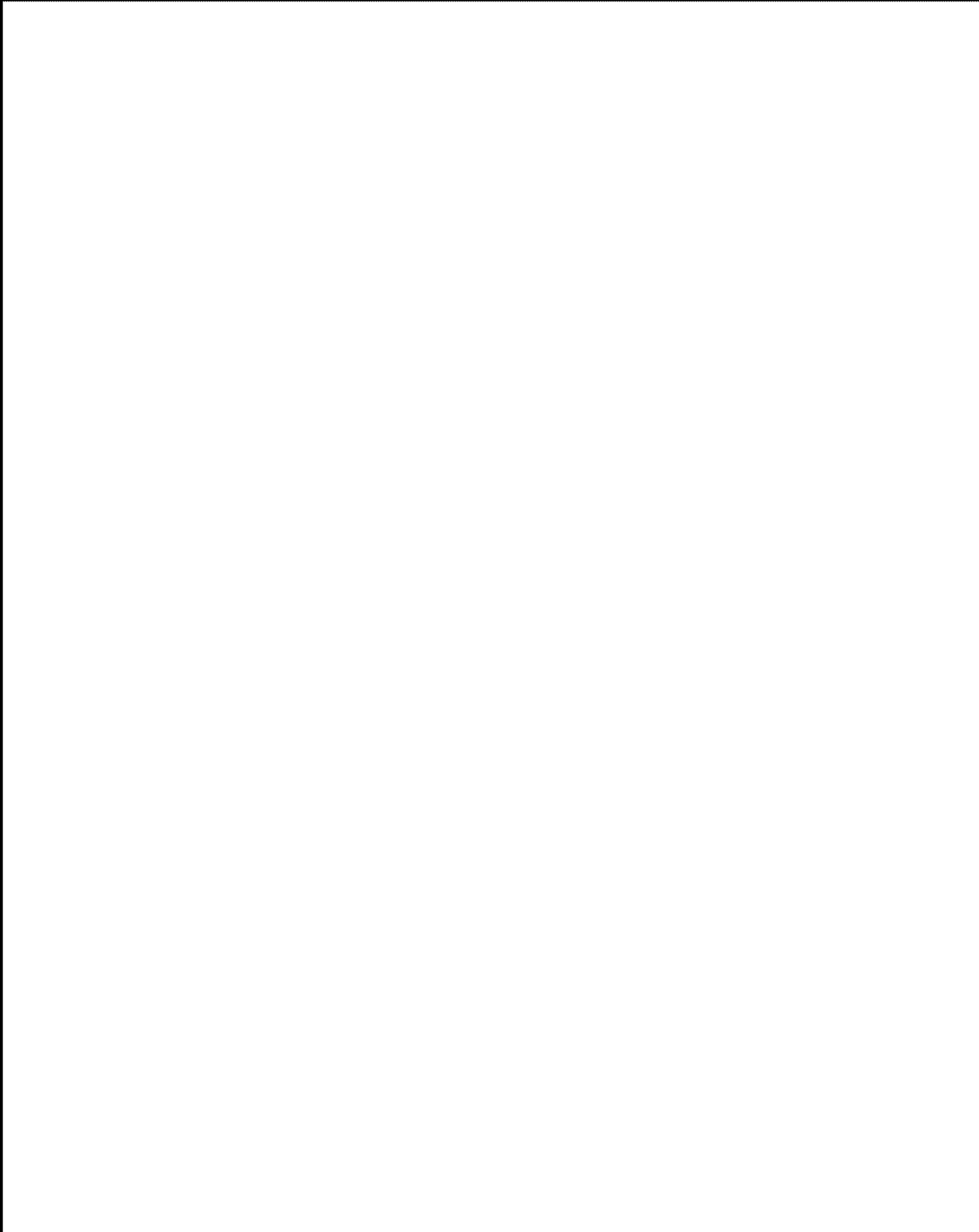
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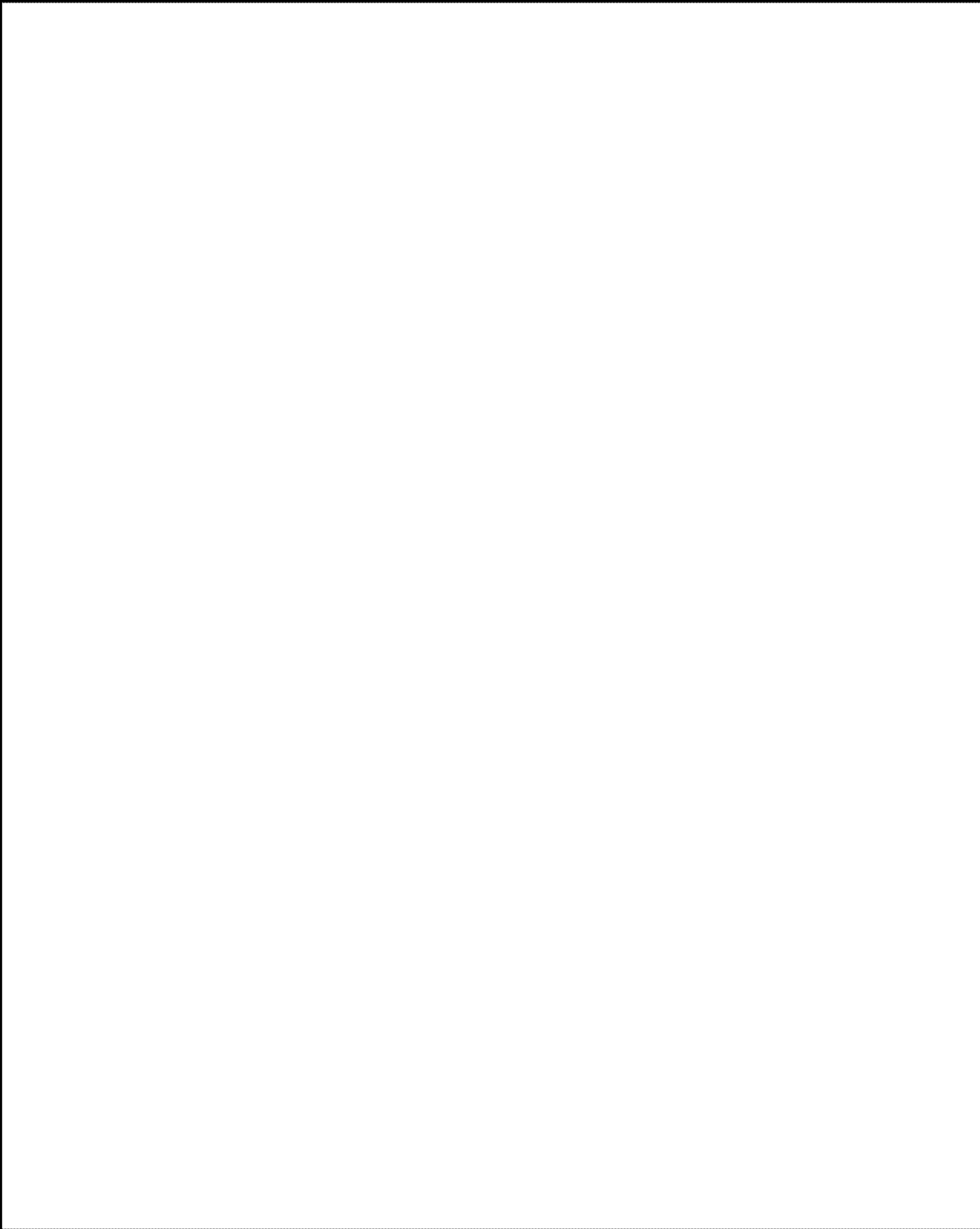
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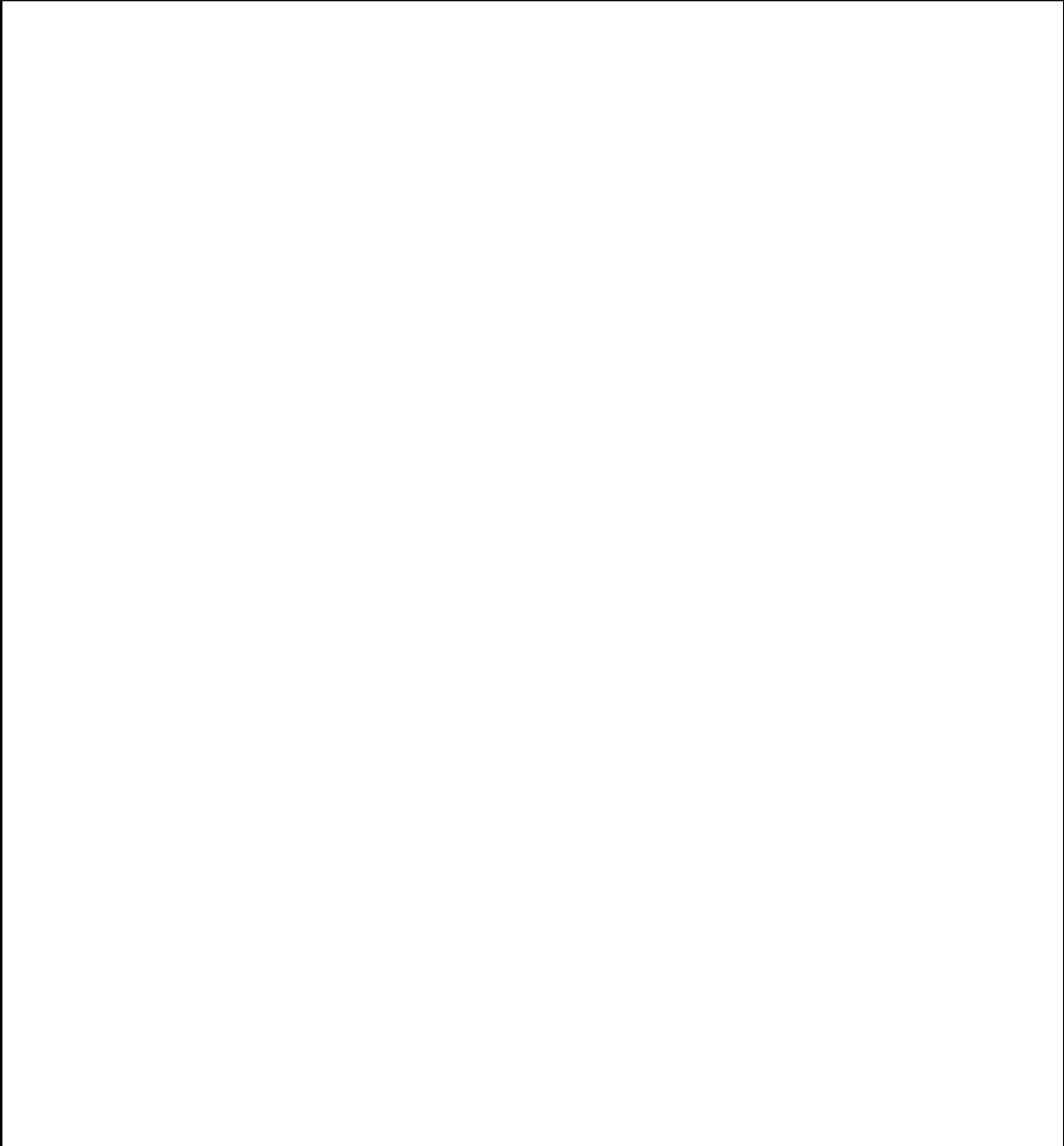


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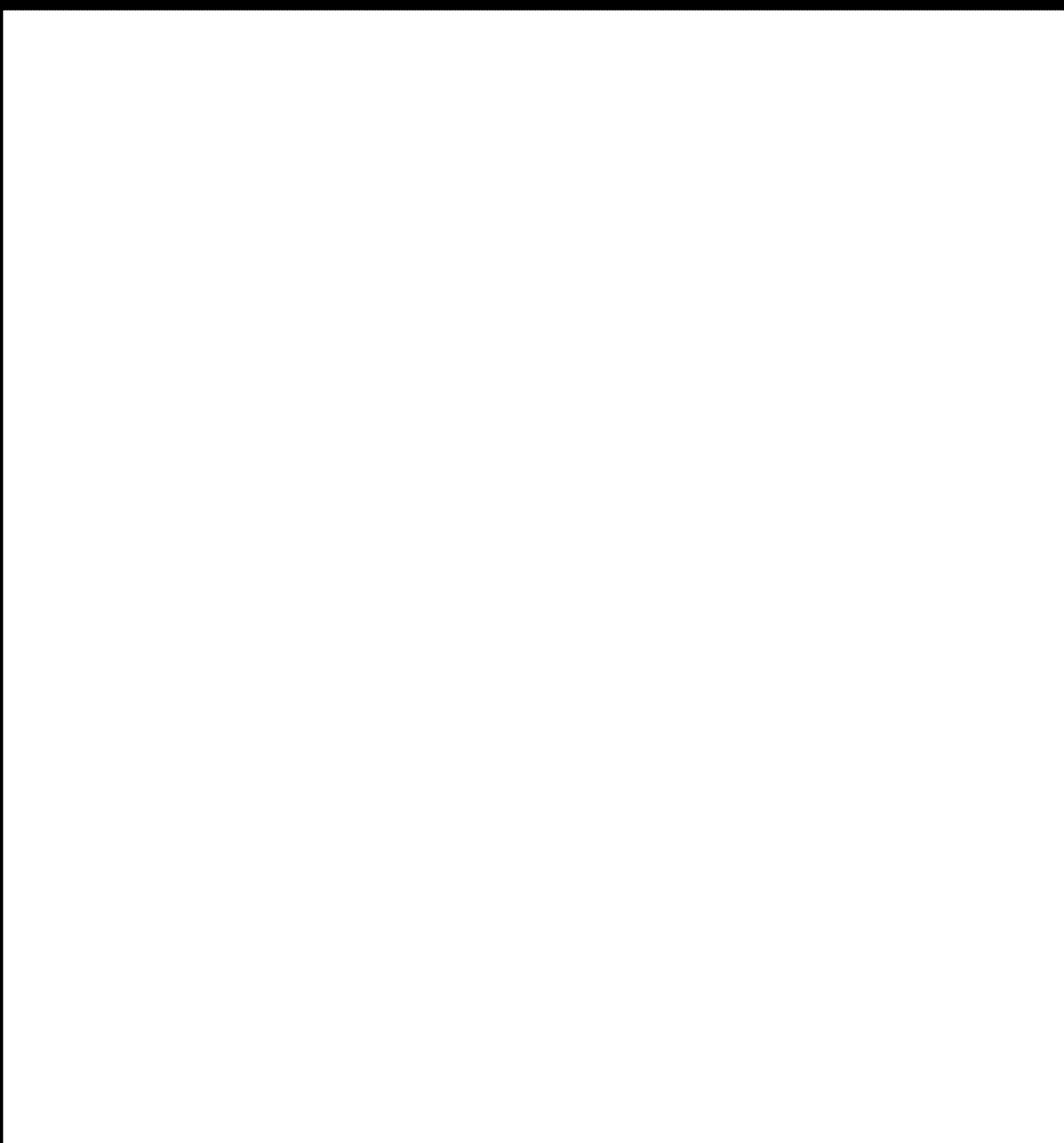


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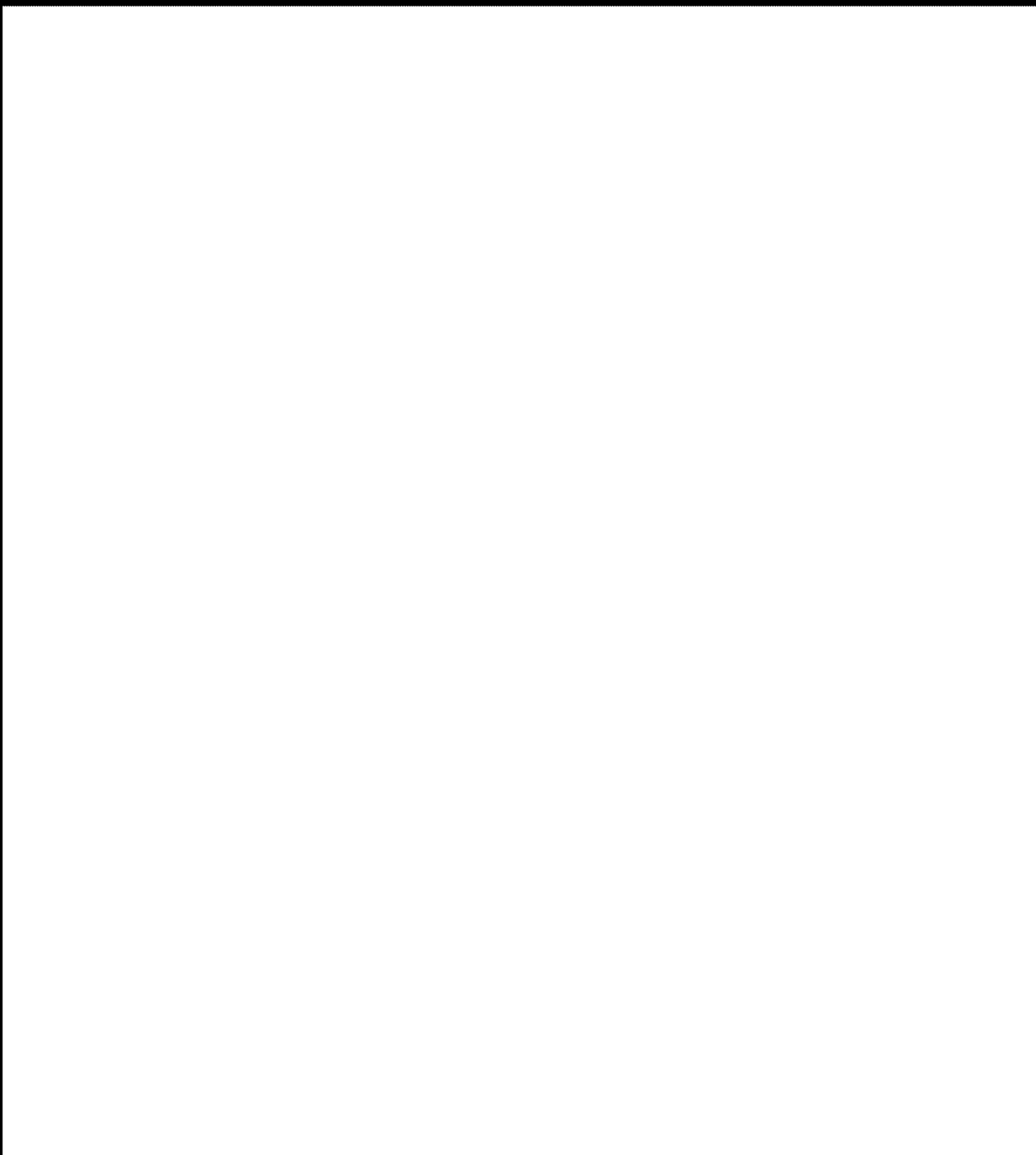


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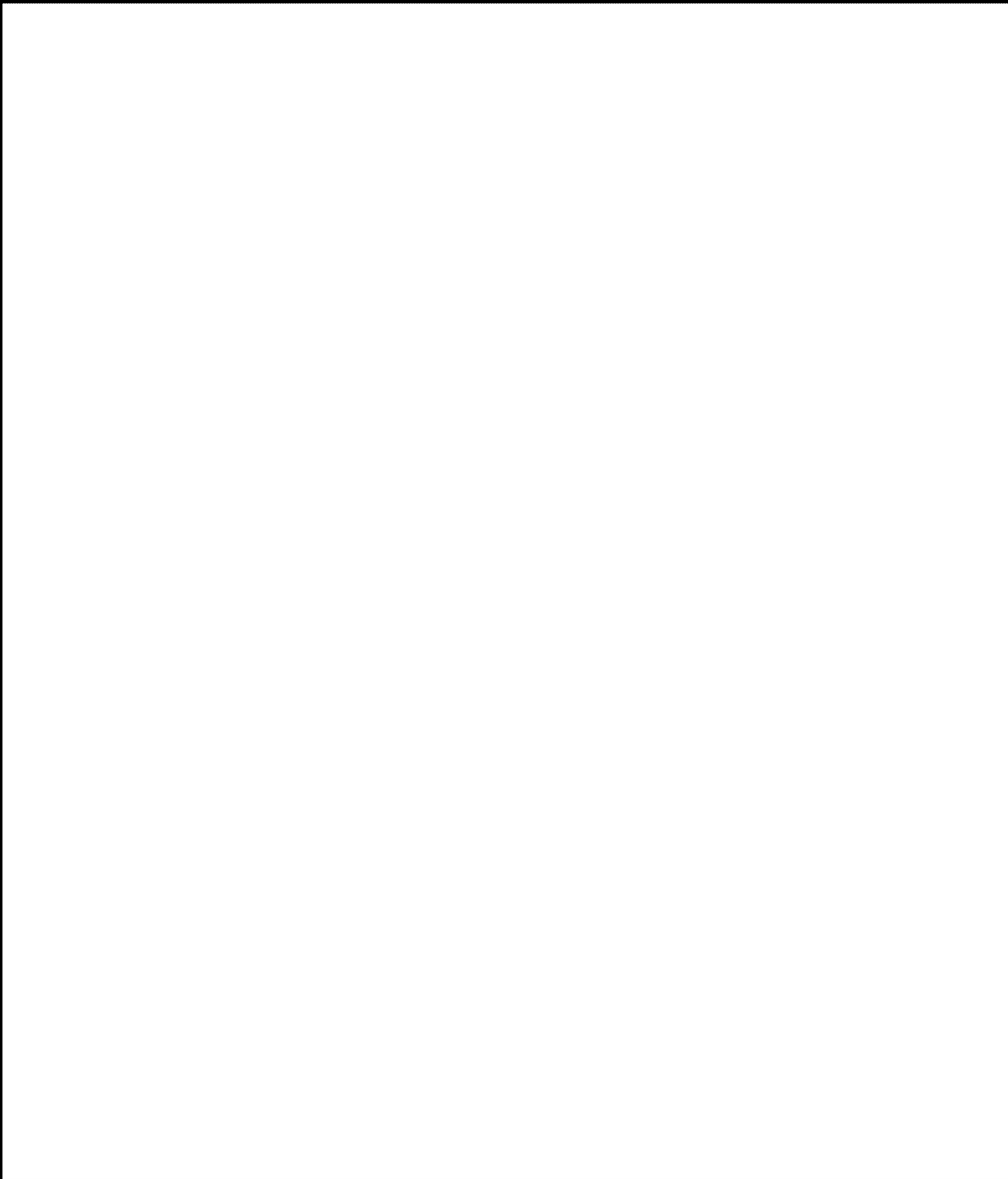
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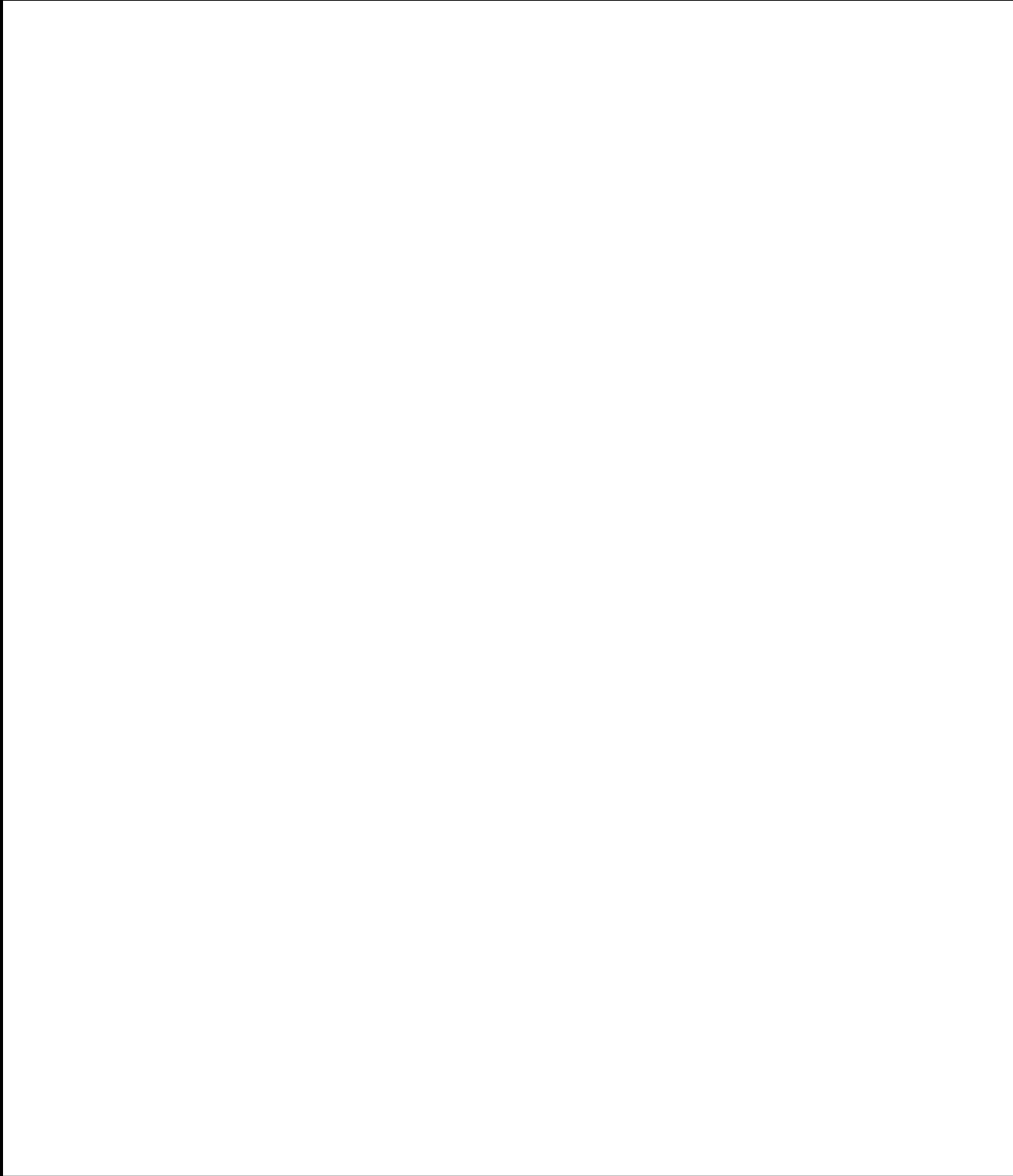
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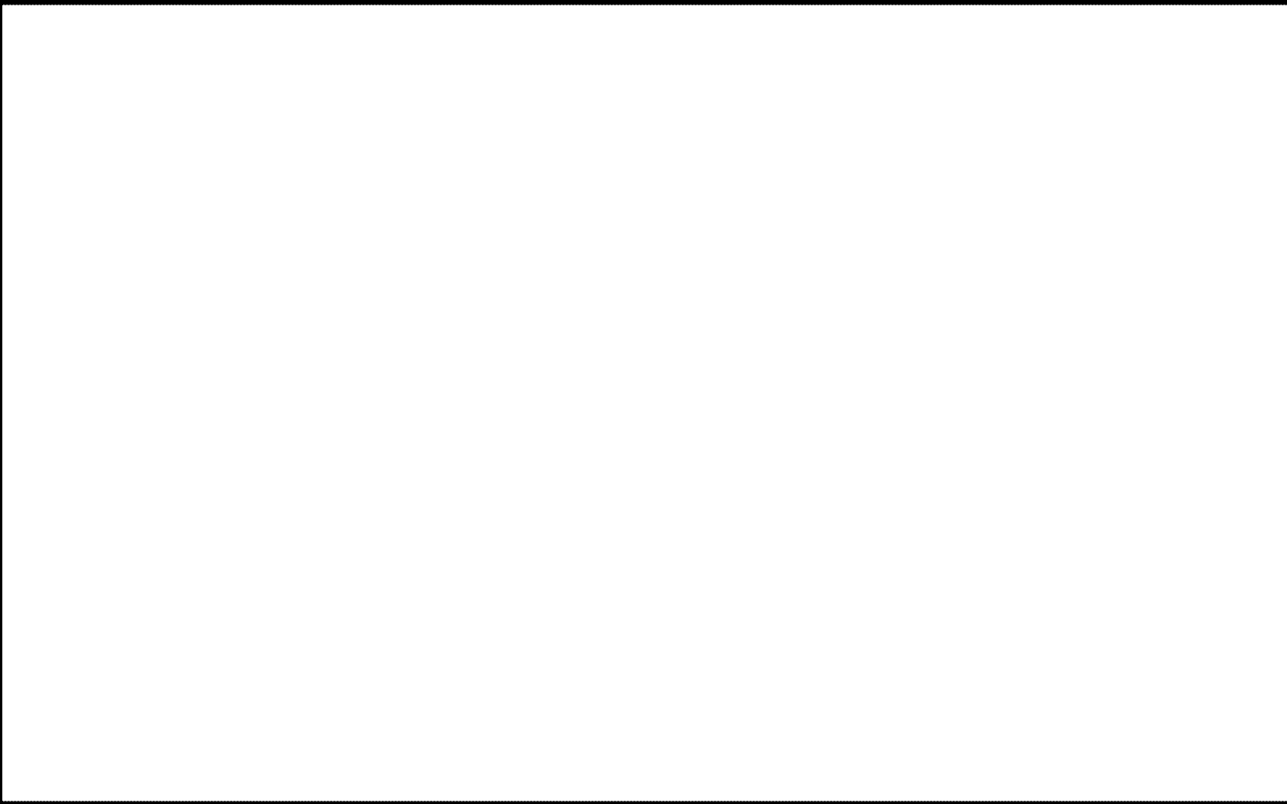
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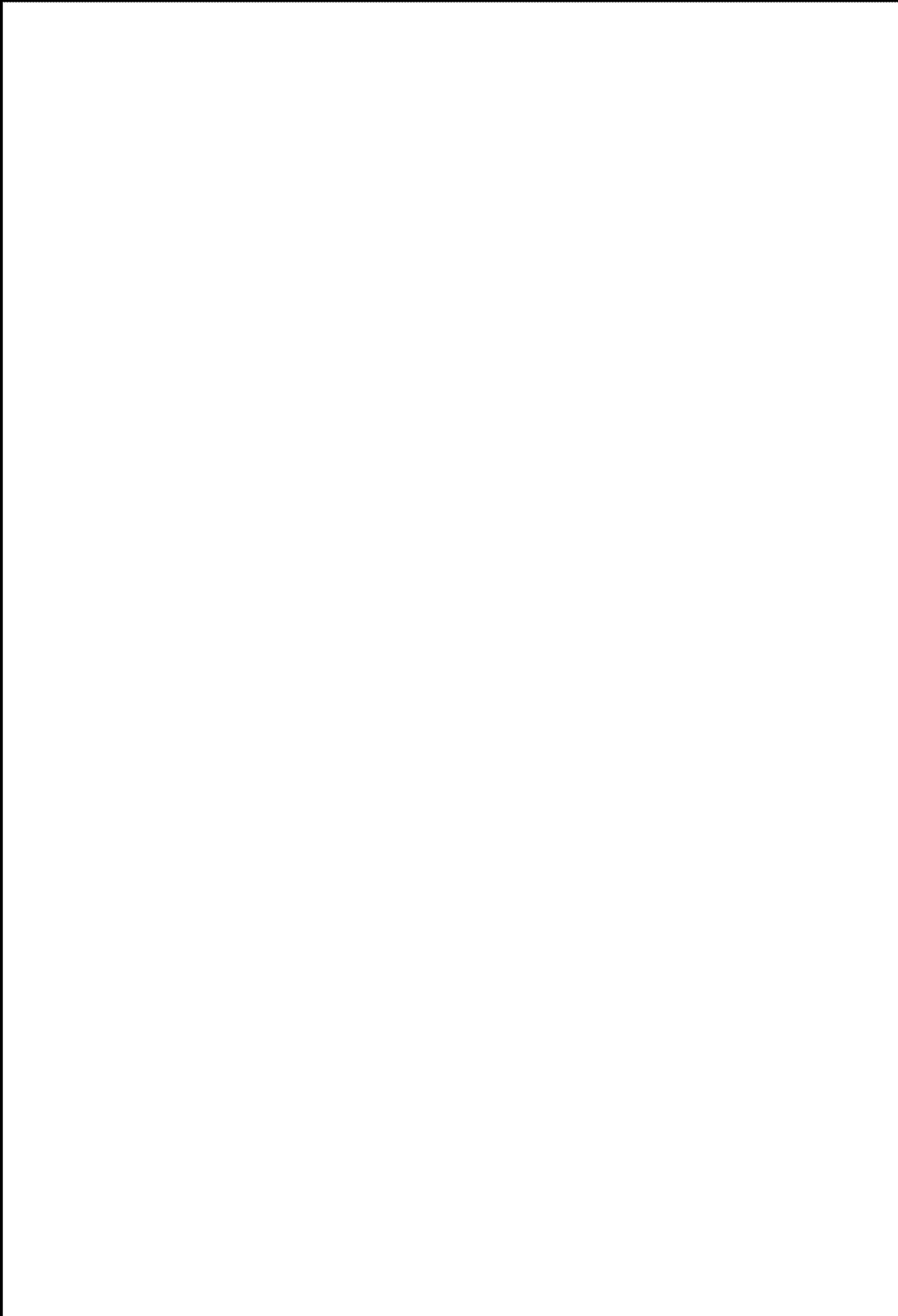


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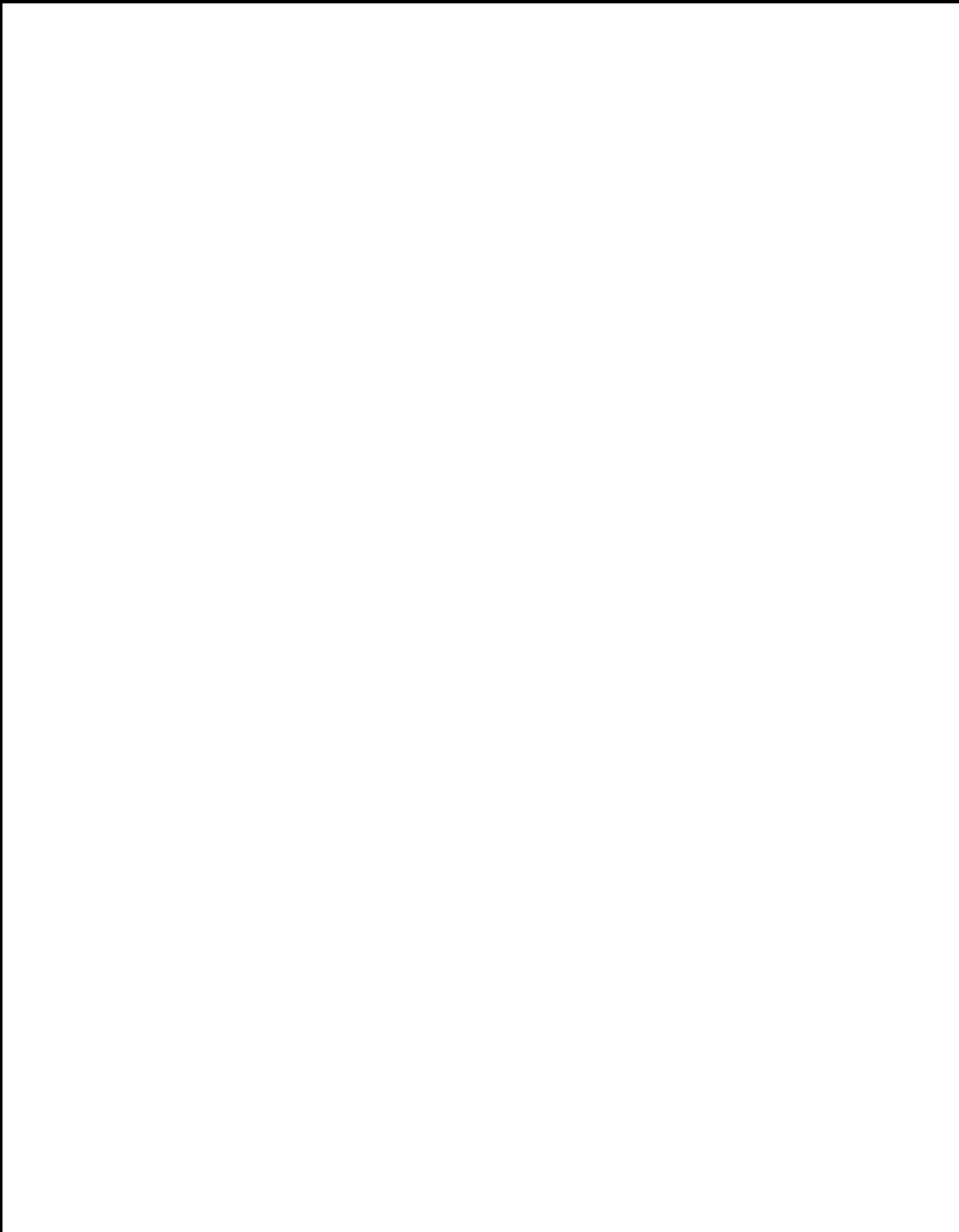




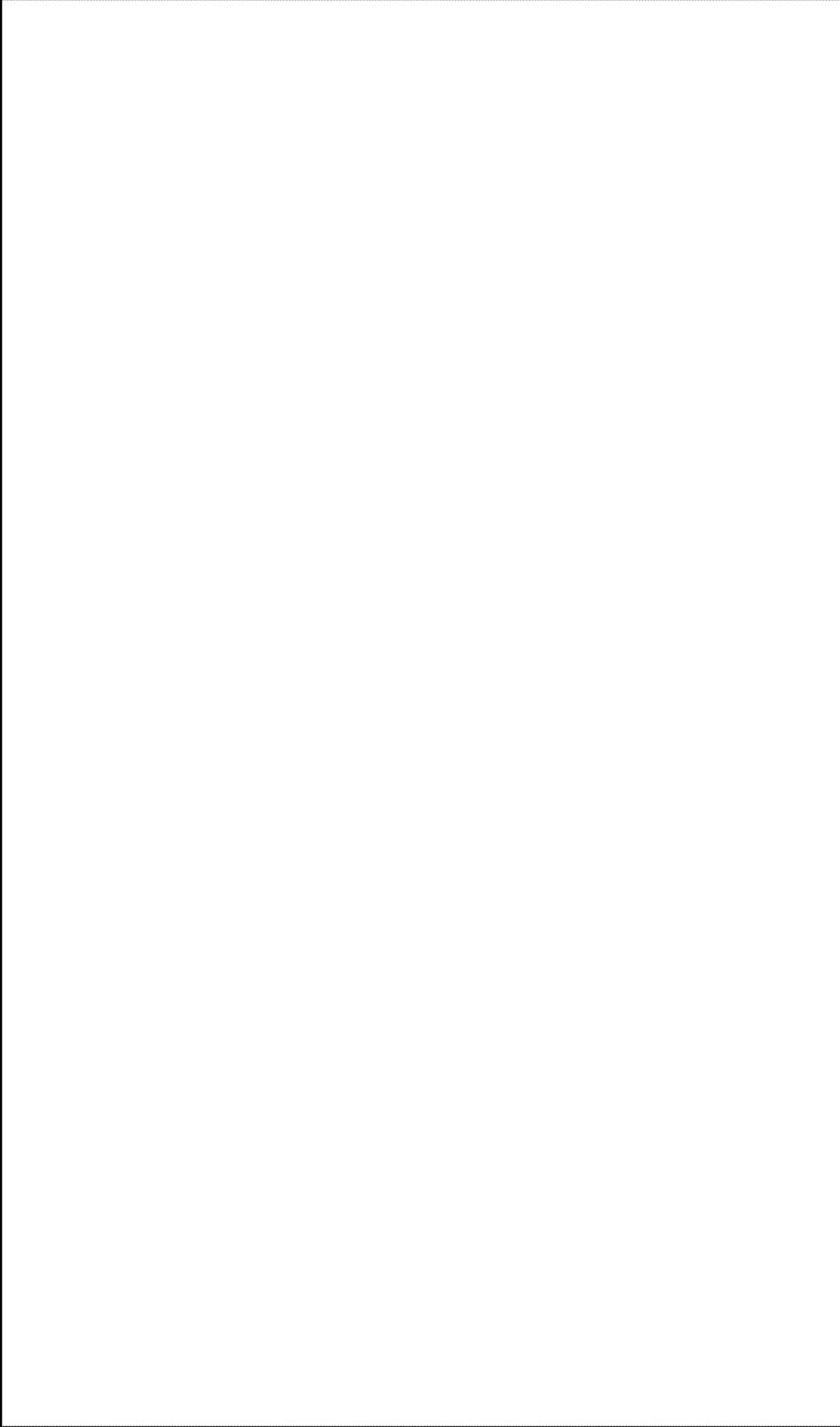
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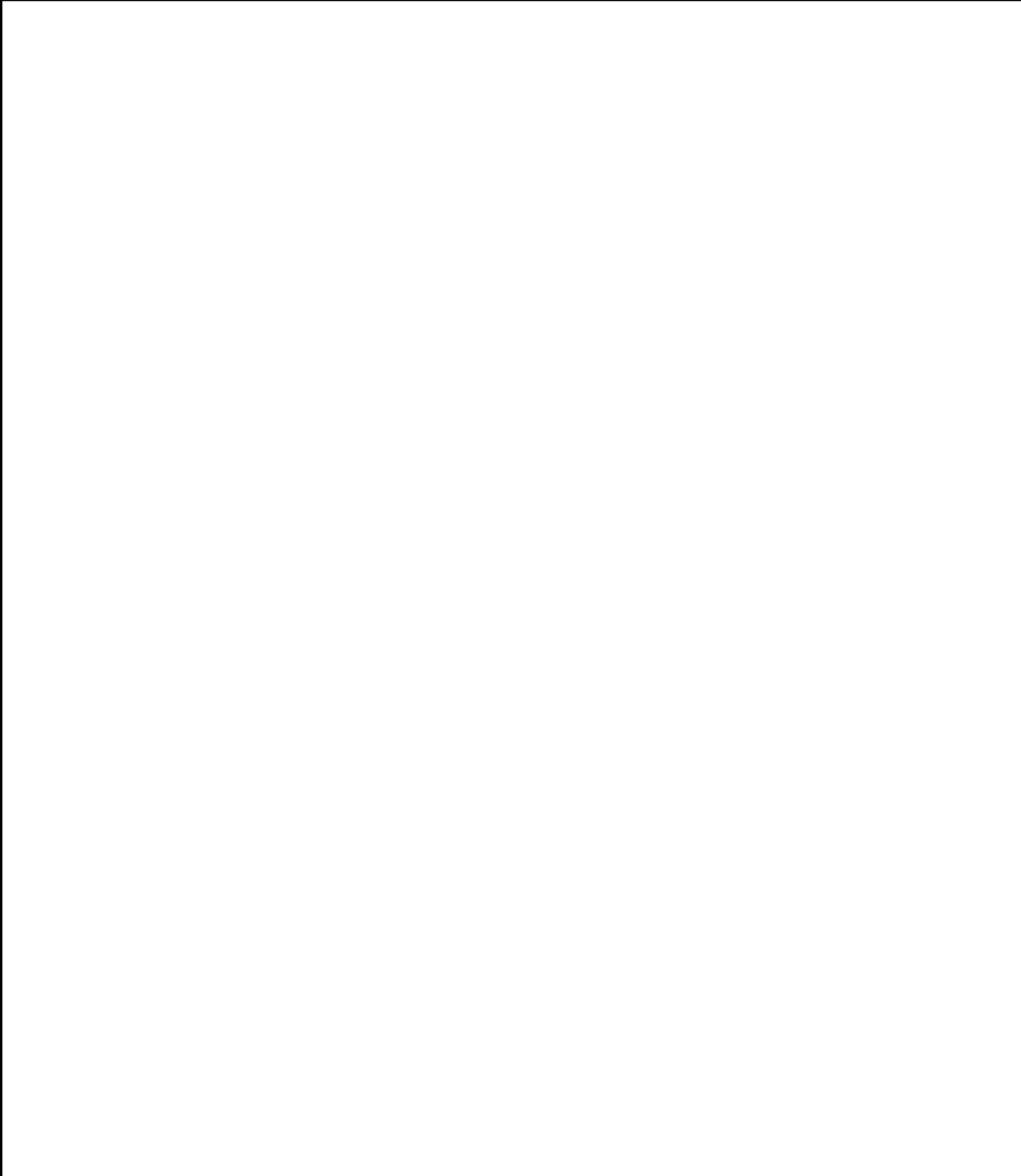
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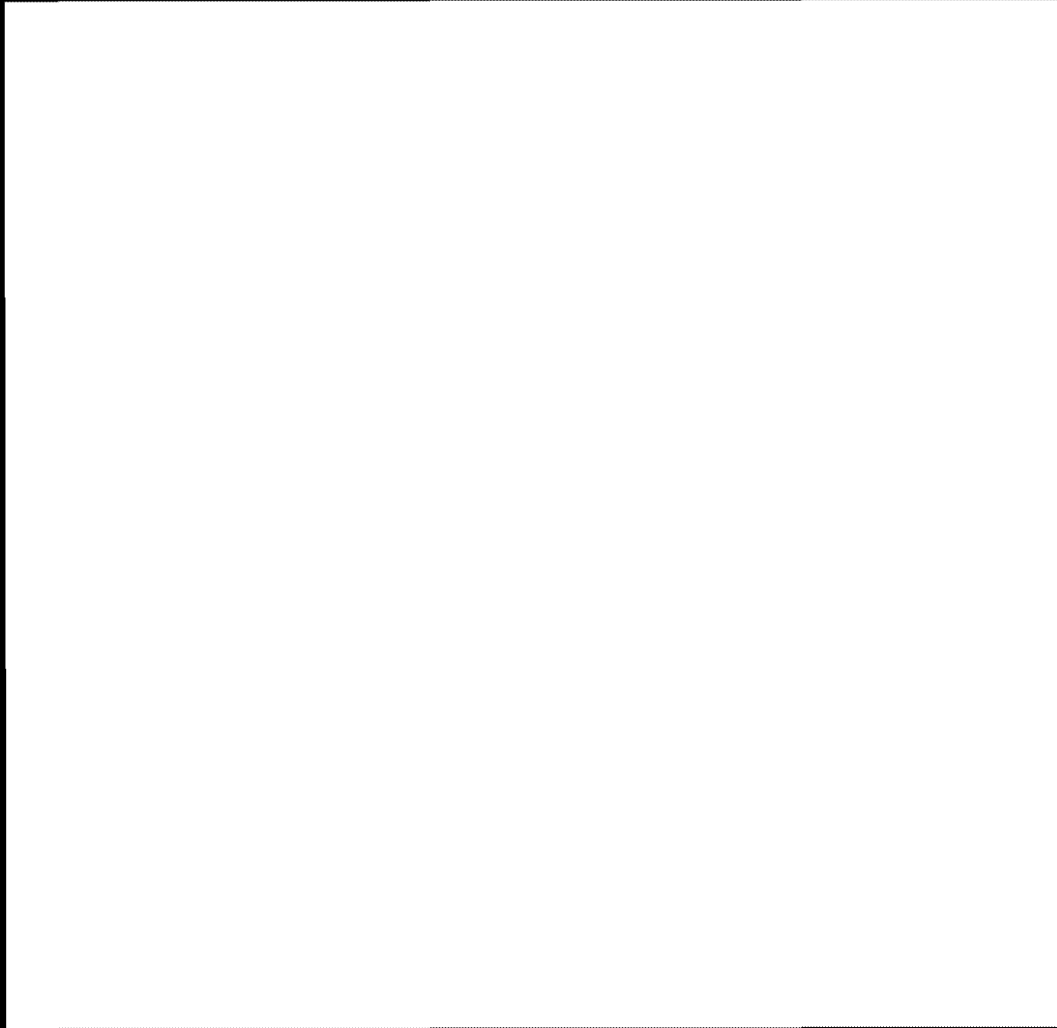


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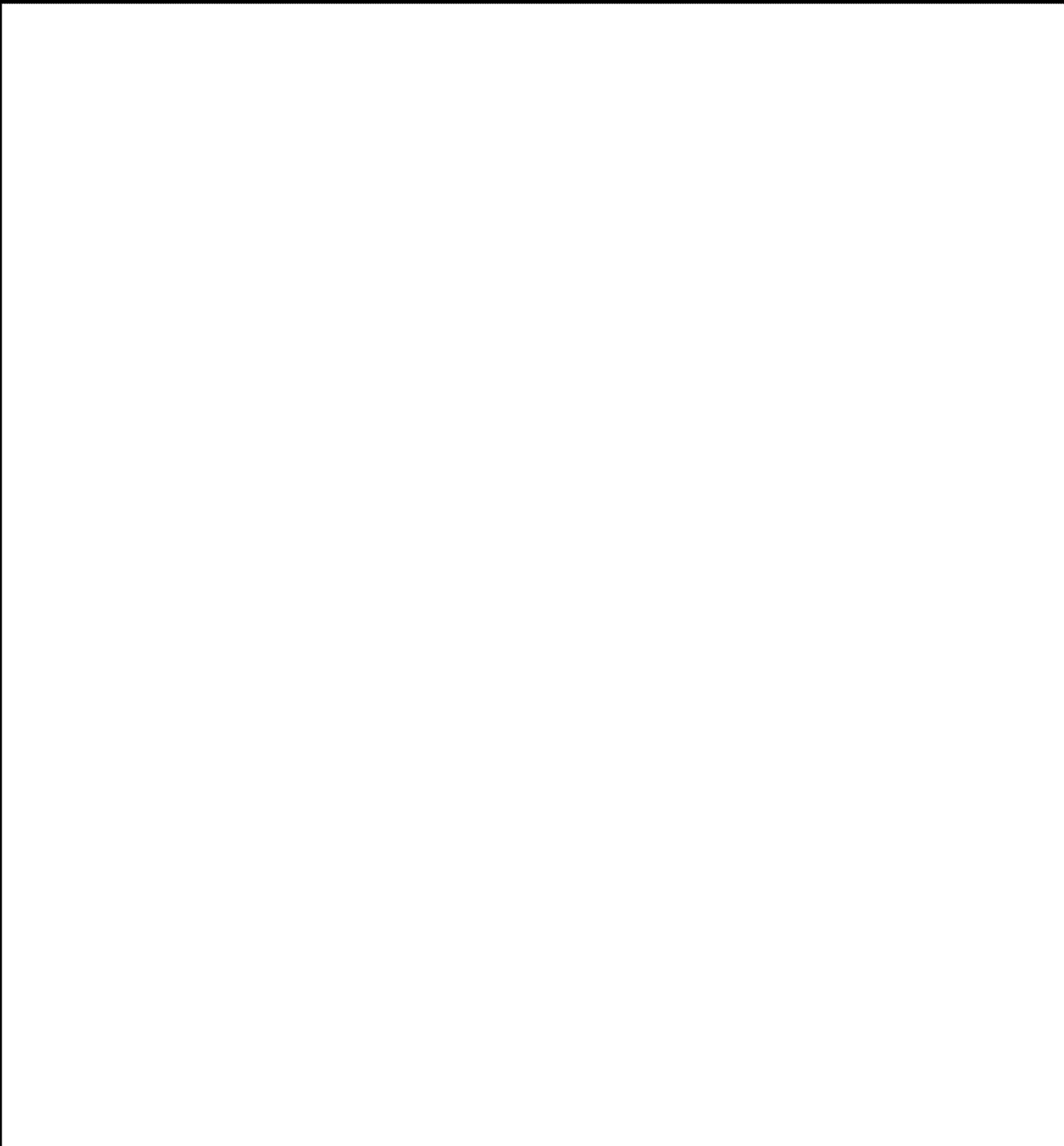




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# U.S. Citizenship and Immigration Services

# Orphan Adoption Adjudications Advanced Training

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- This presentation provides a general overview of key elements of the immigration process for adopted children. It is not a substitute for the actual U.S. immigration laws and regulations, nor is it a comprehensive summary of these laws and regulations. In the case of any inconsistencies between this presentation and the laws and regulations, the language of the laws and regulations governs.



# Course Objectives

To provide training to adjudicators on advanced orphan processing related issues as well as adoption law updates



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# Overview of Presentation

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# Relevant Authorities

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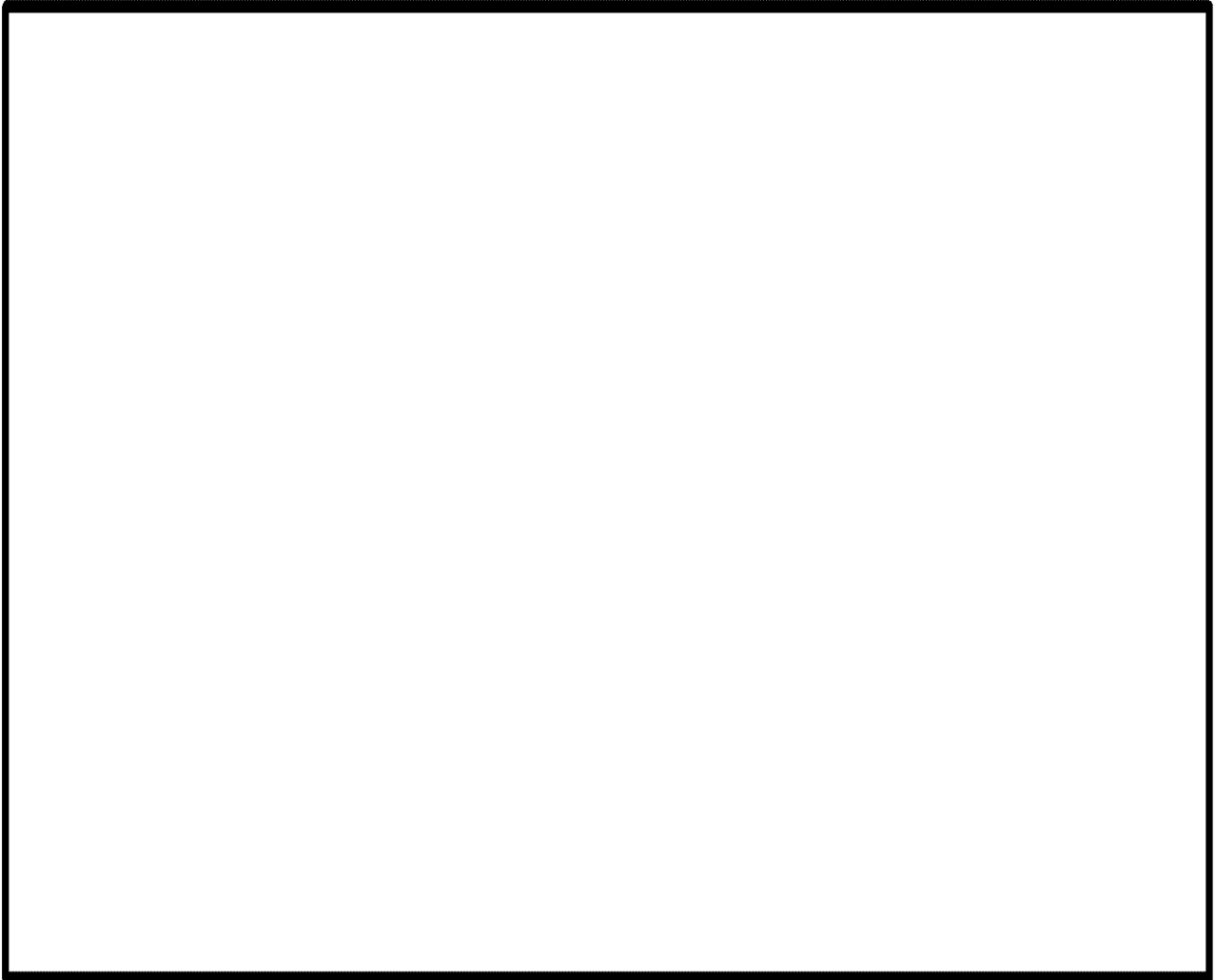
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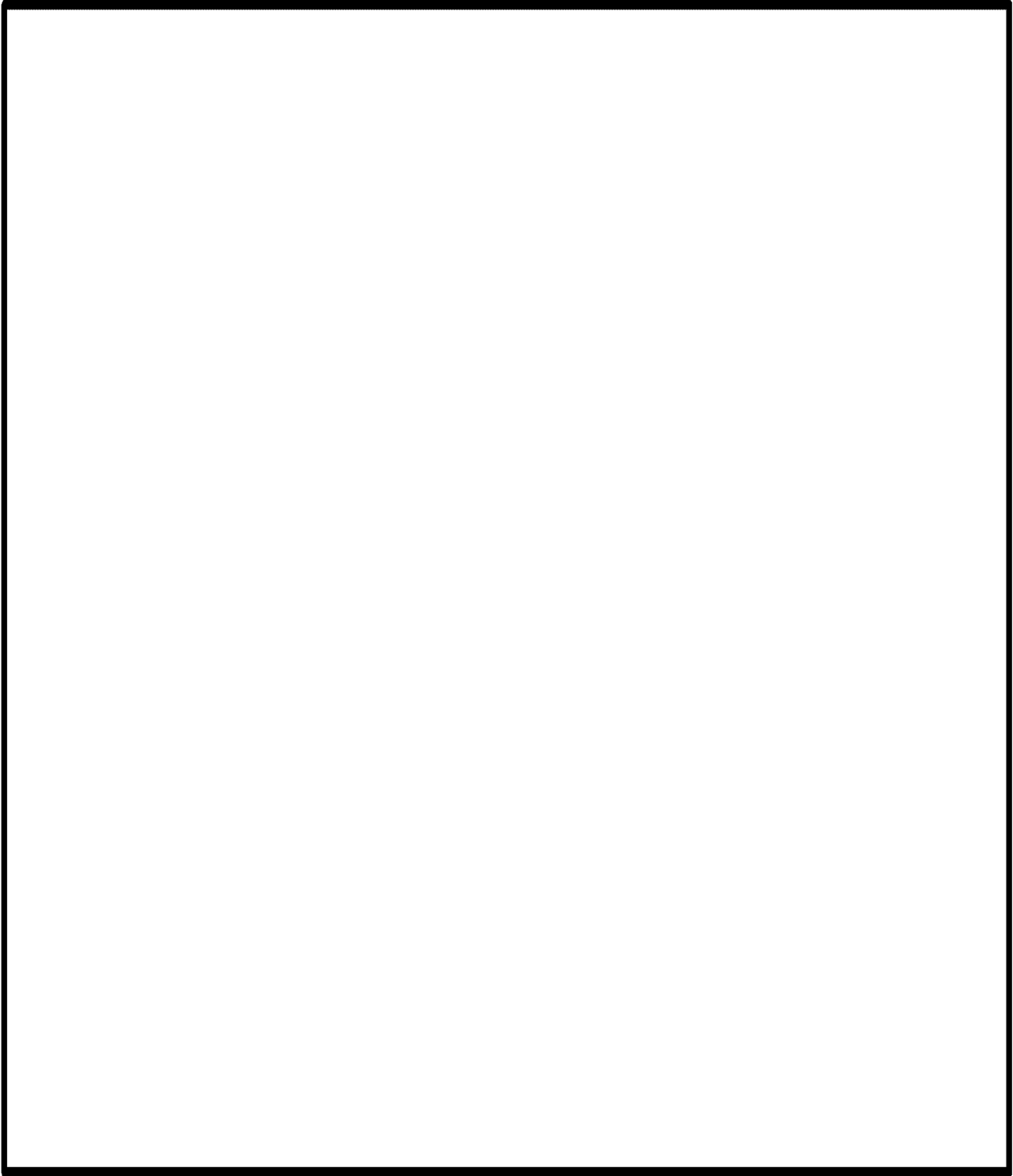
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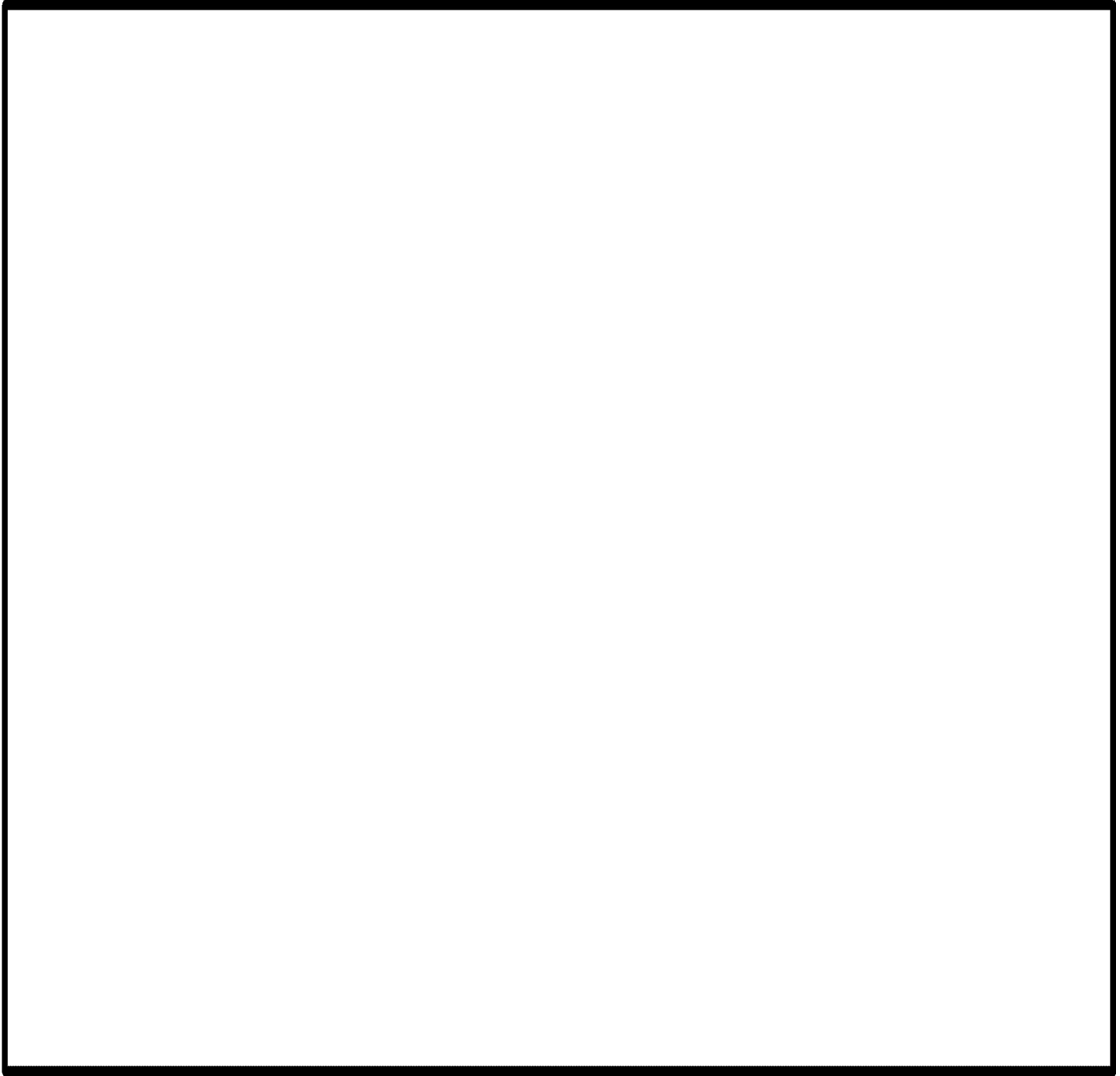
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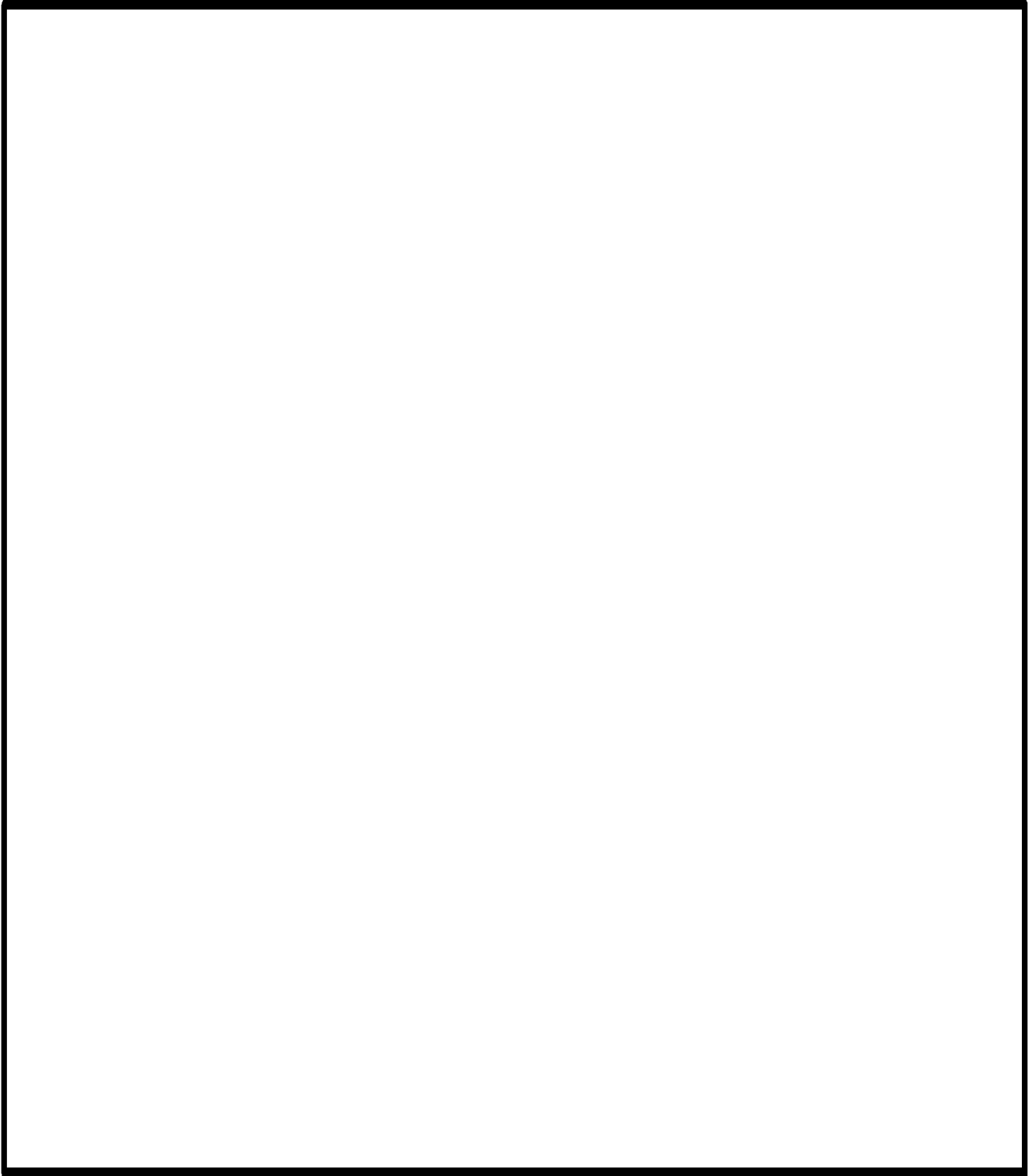


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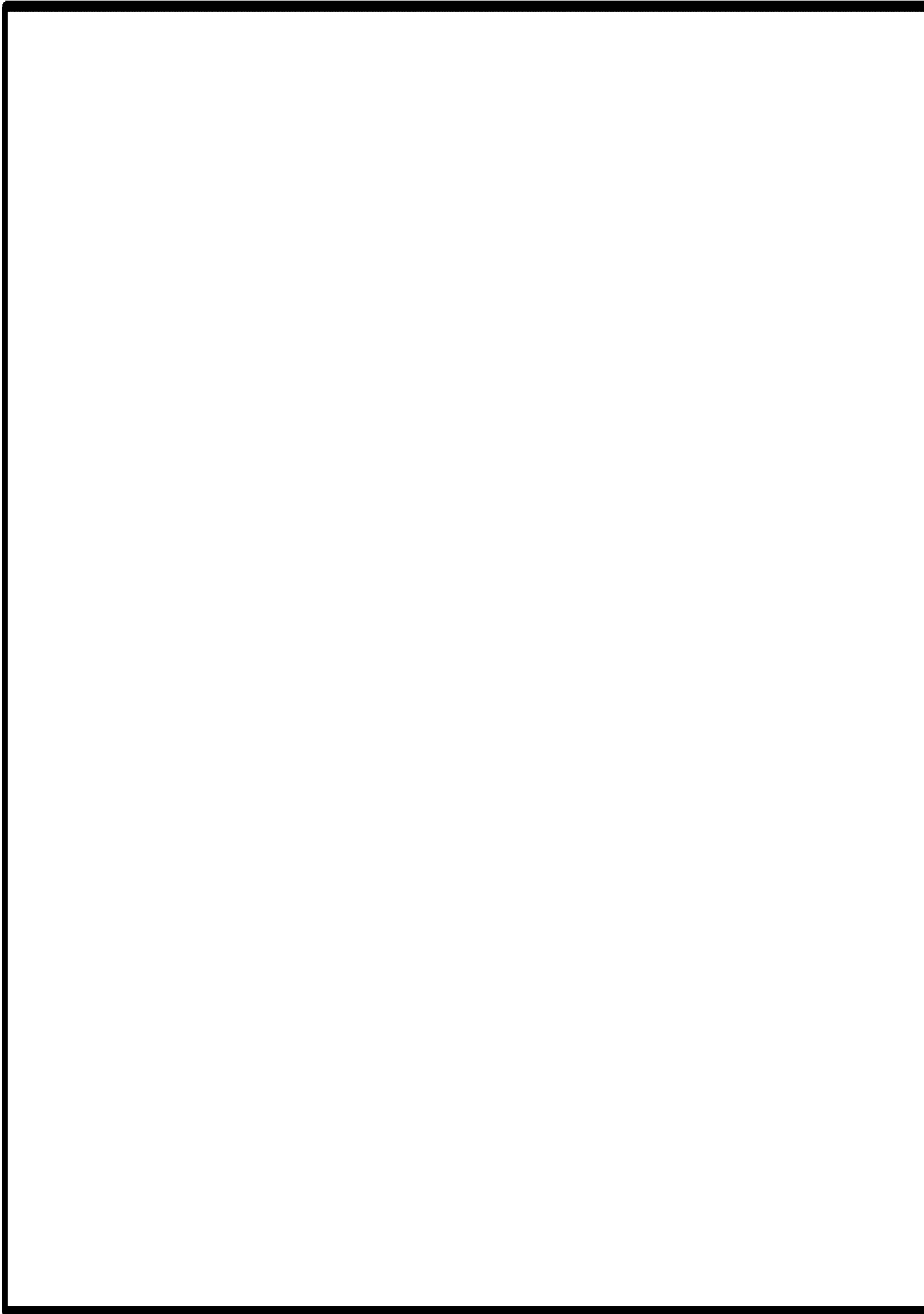
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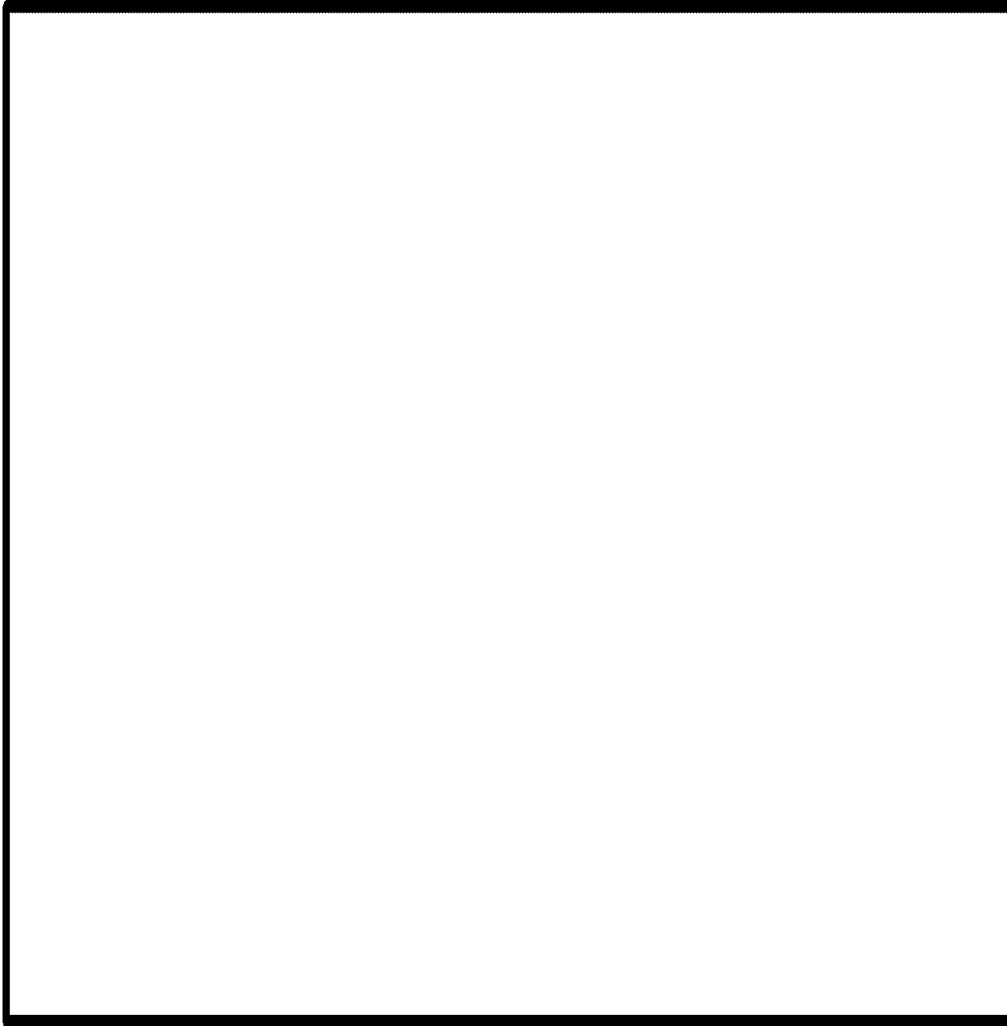
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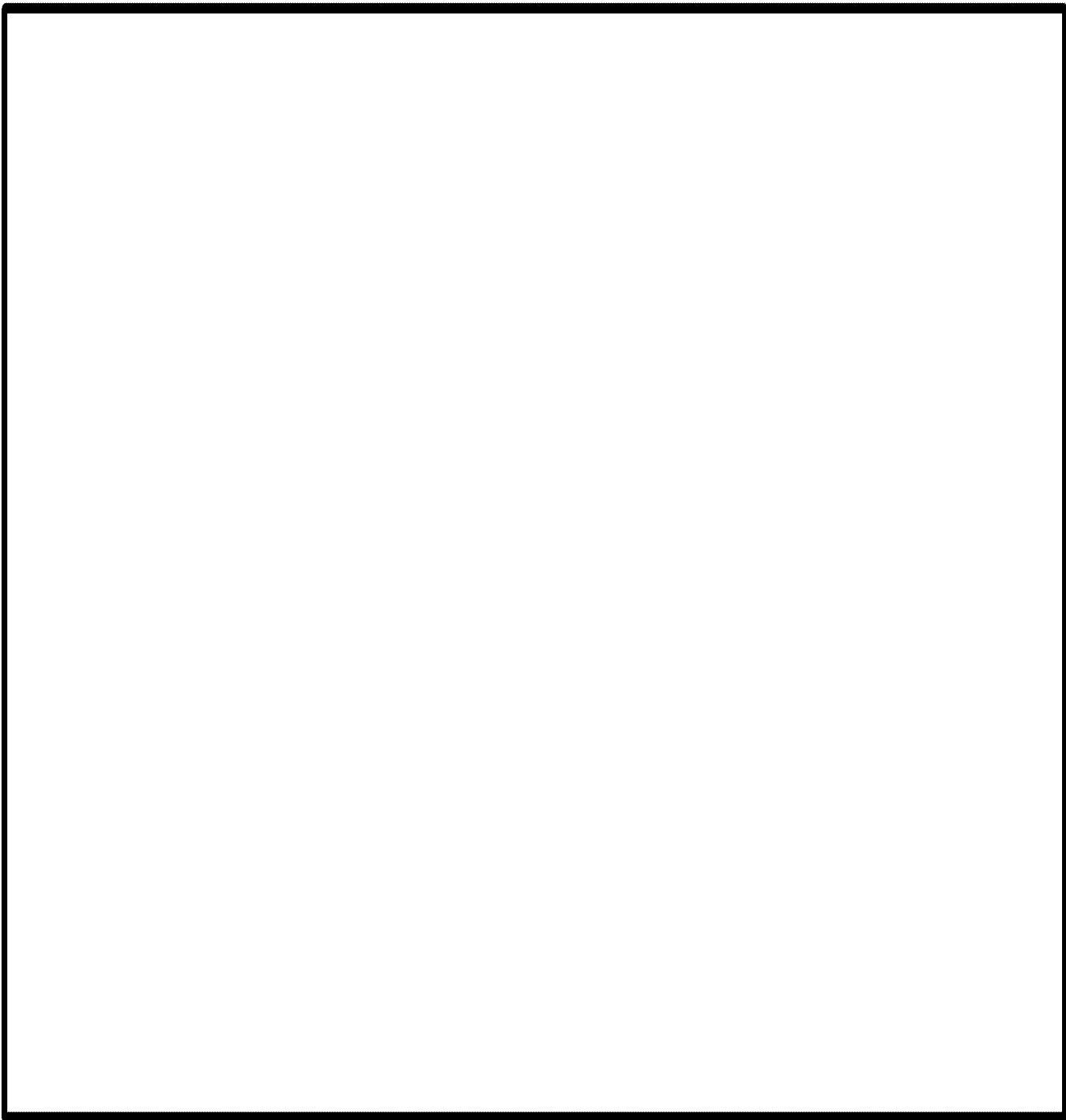
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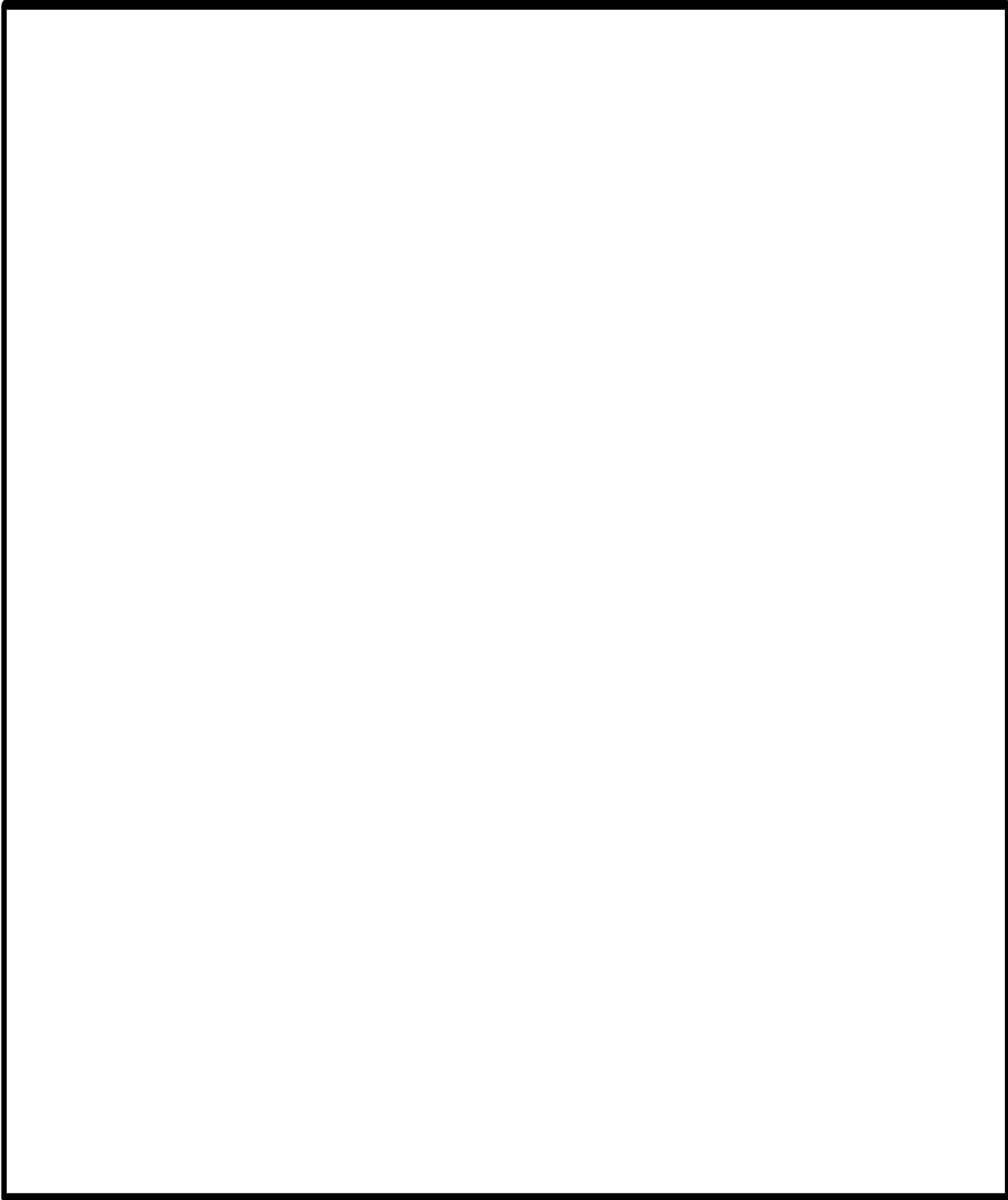
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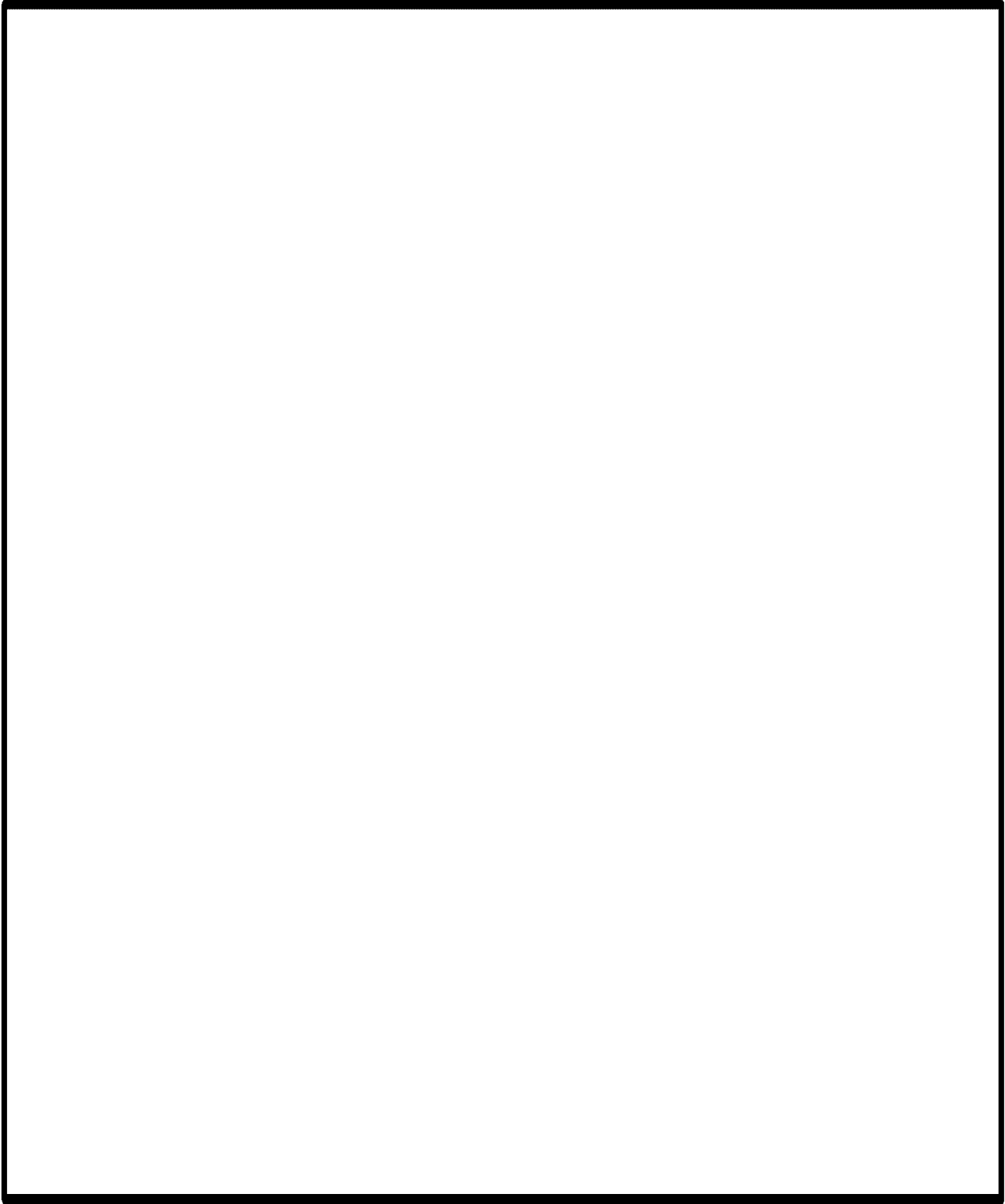
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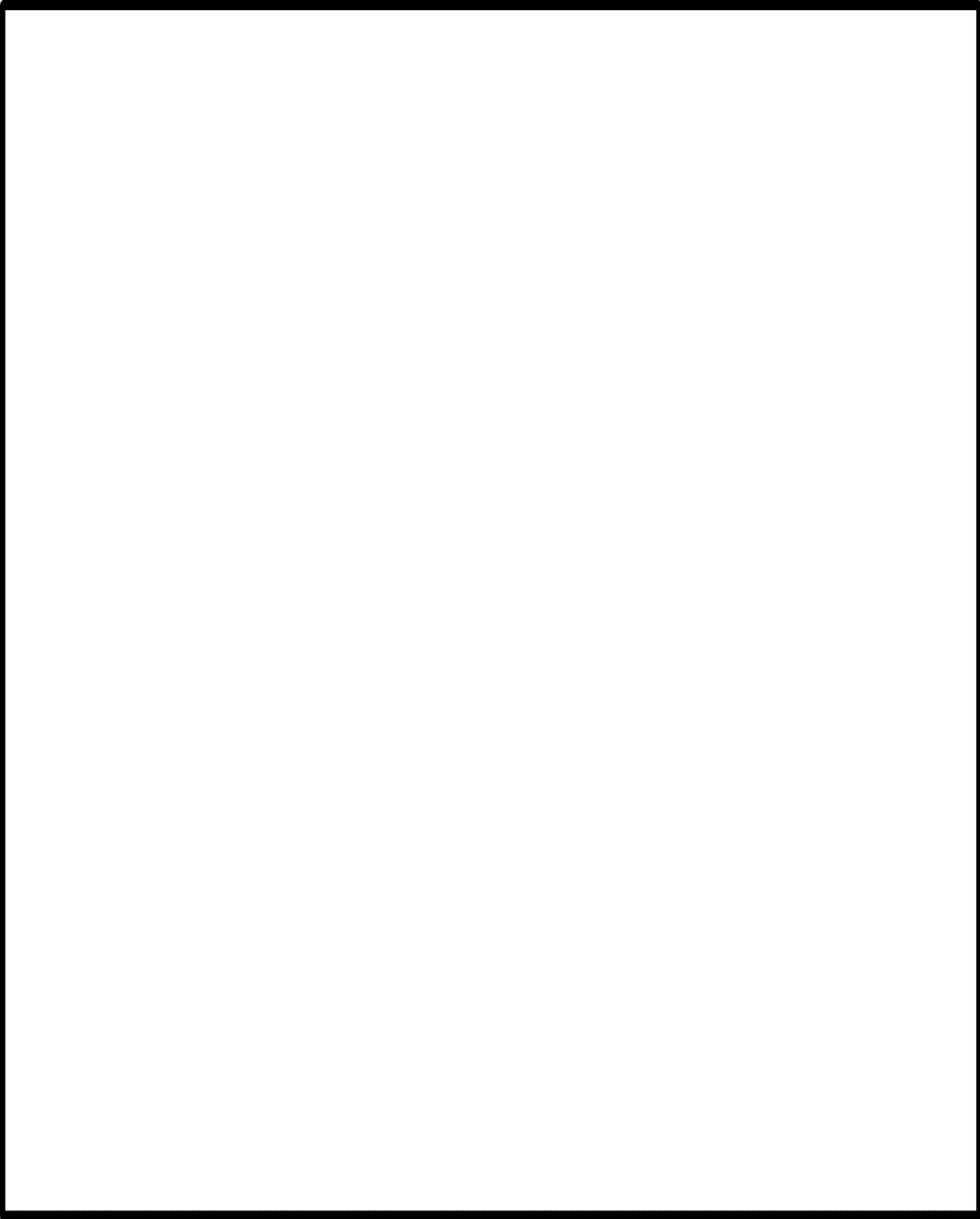
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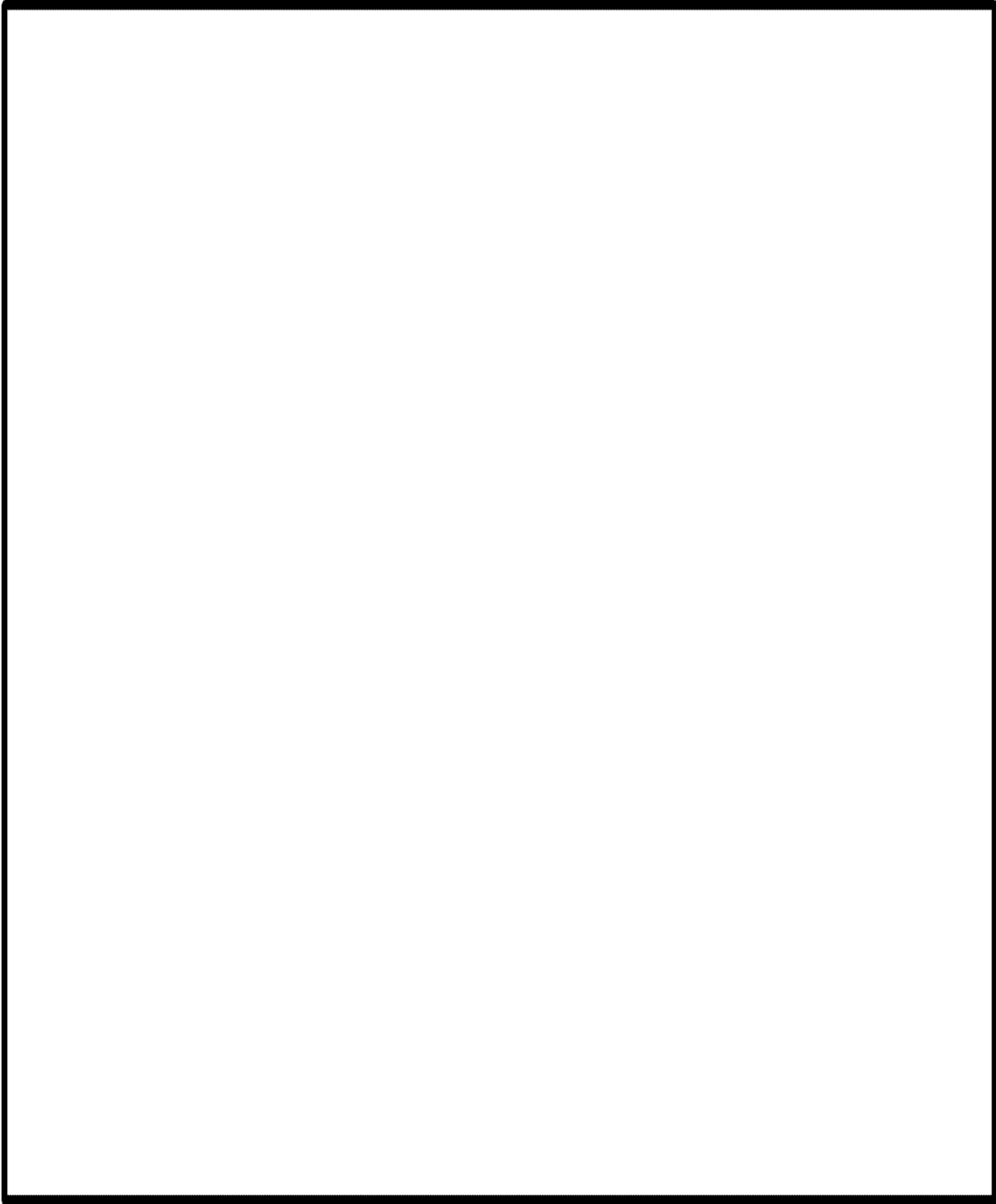
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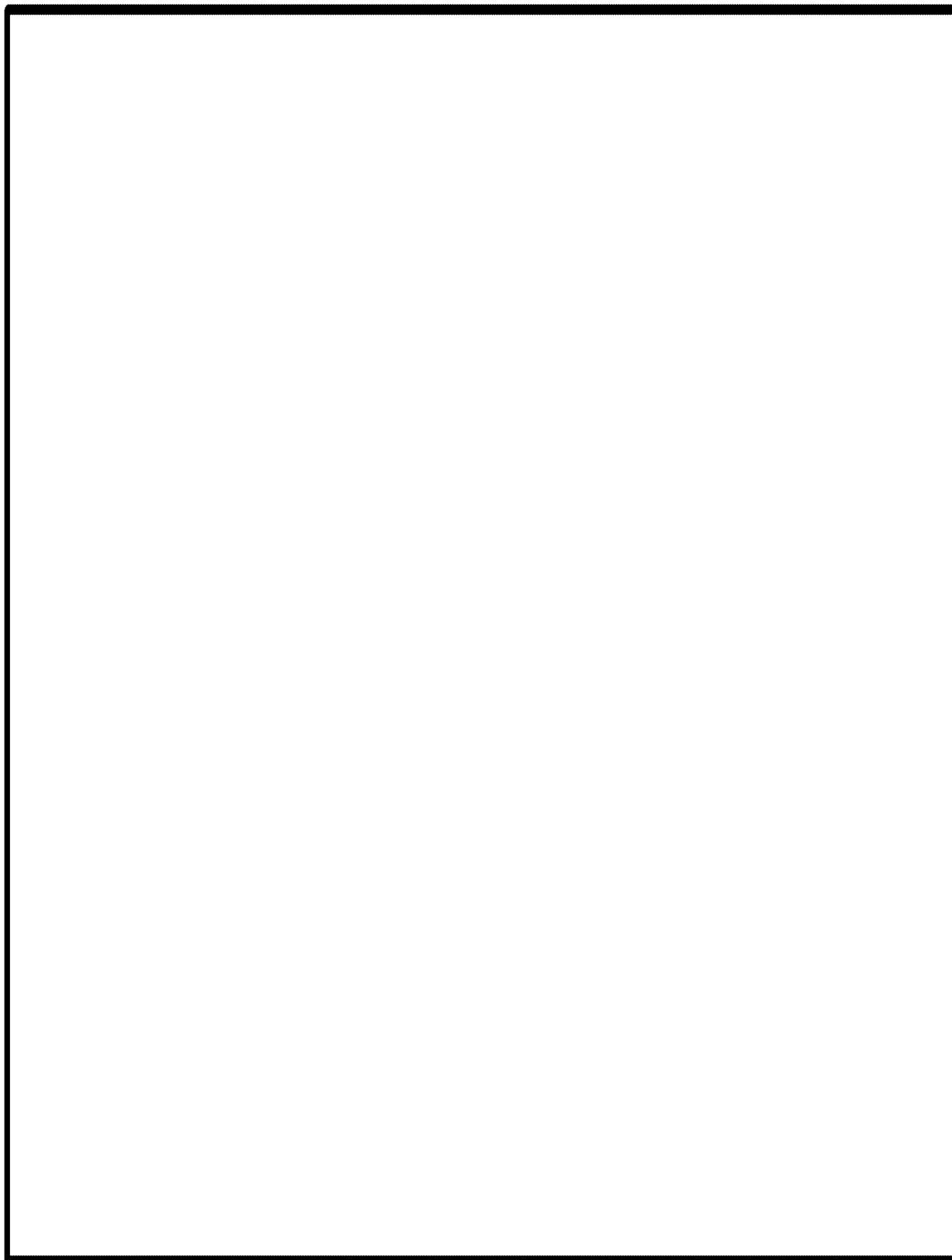


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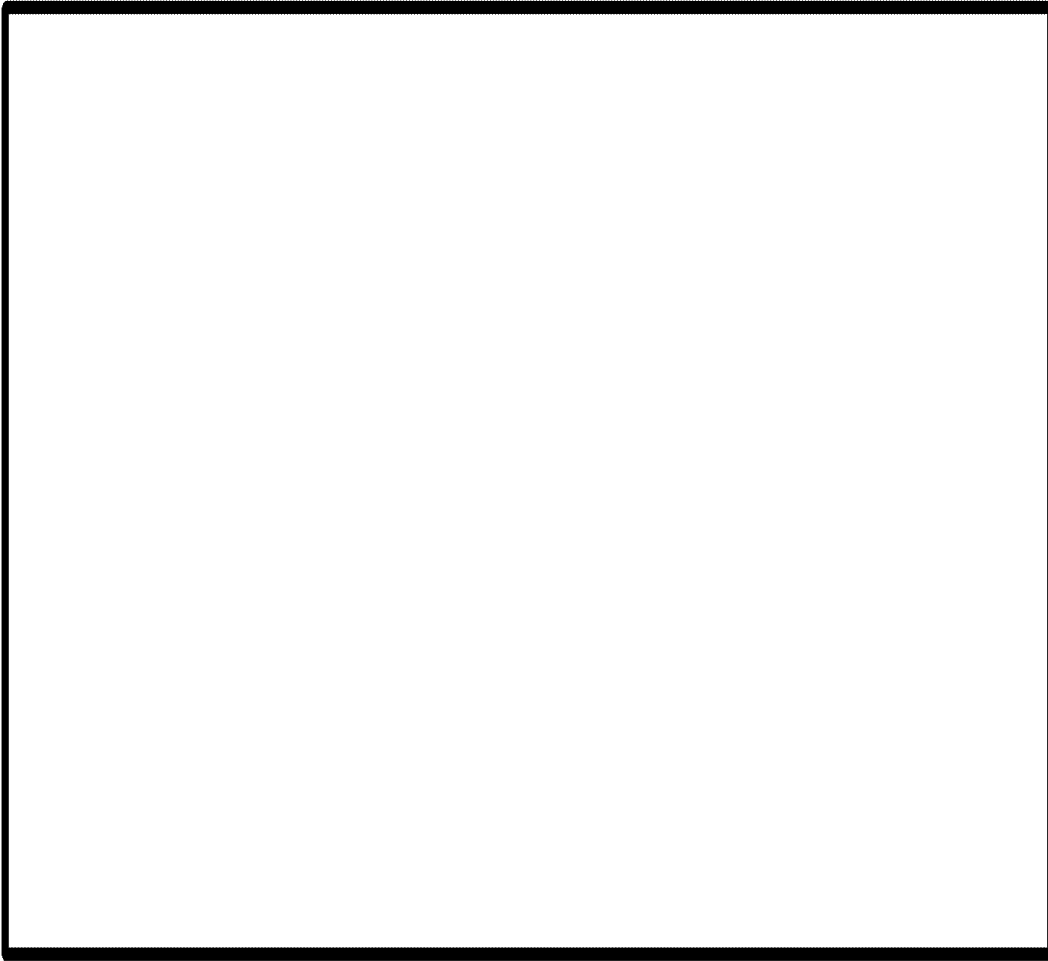
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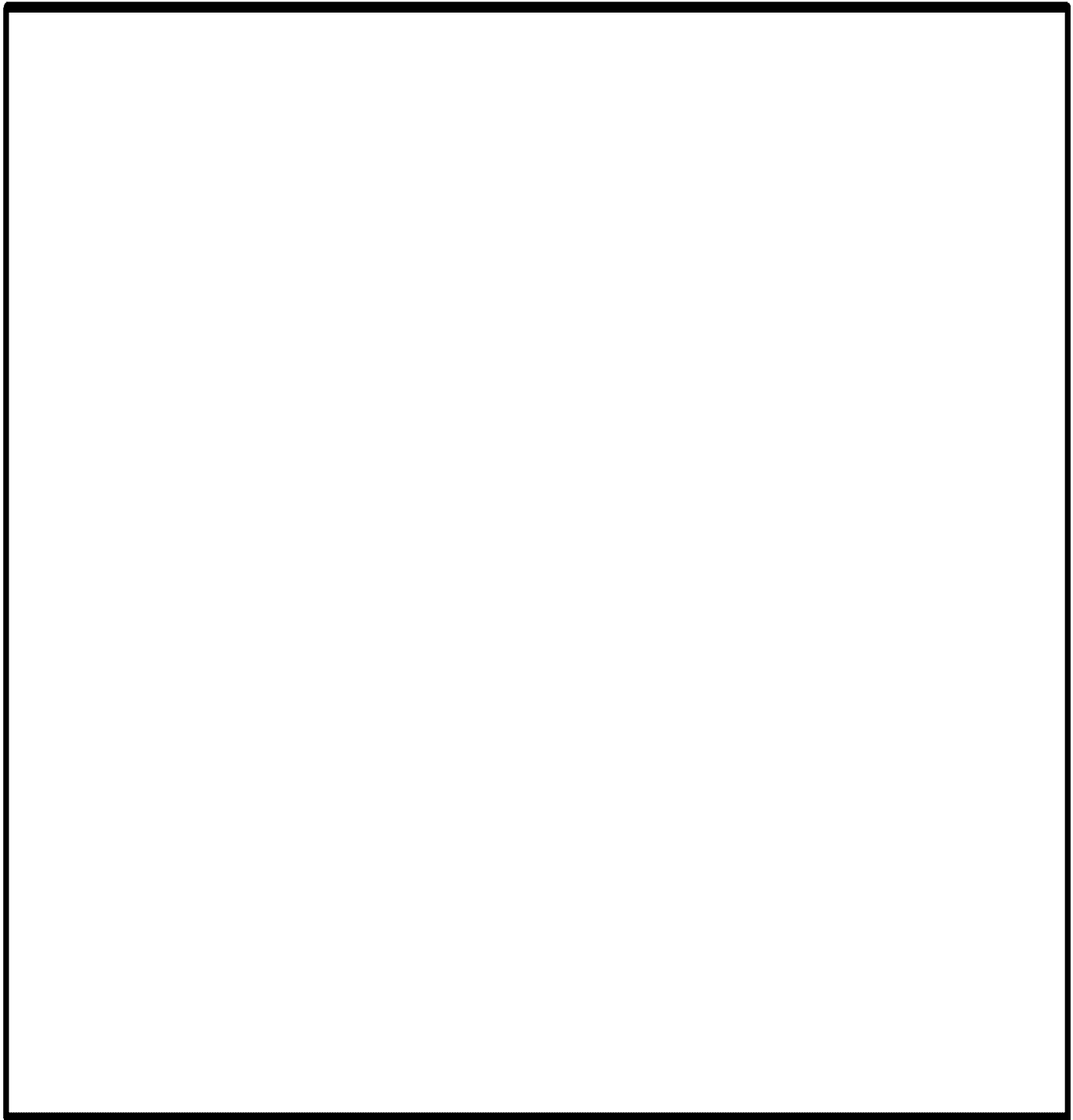
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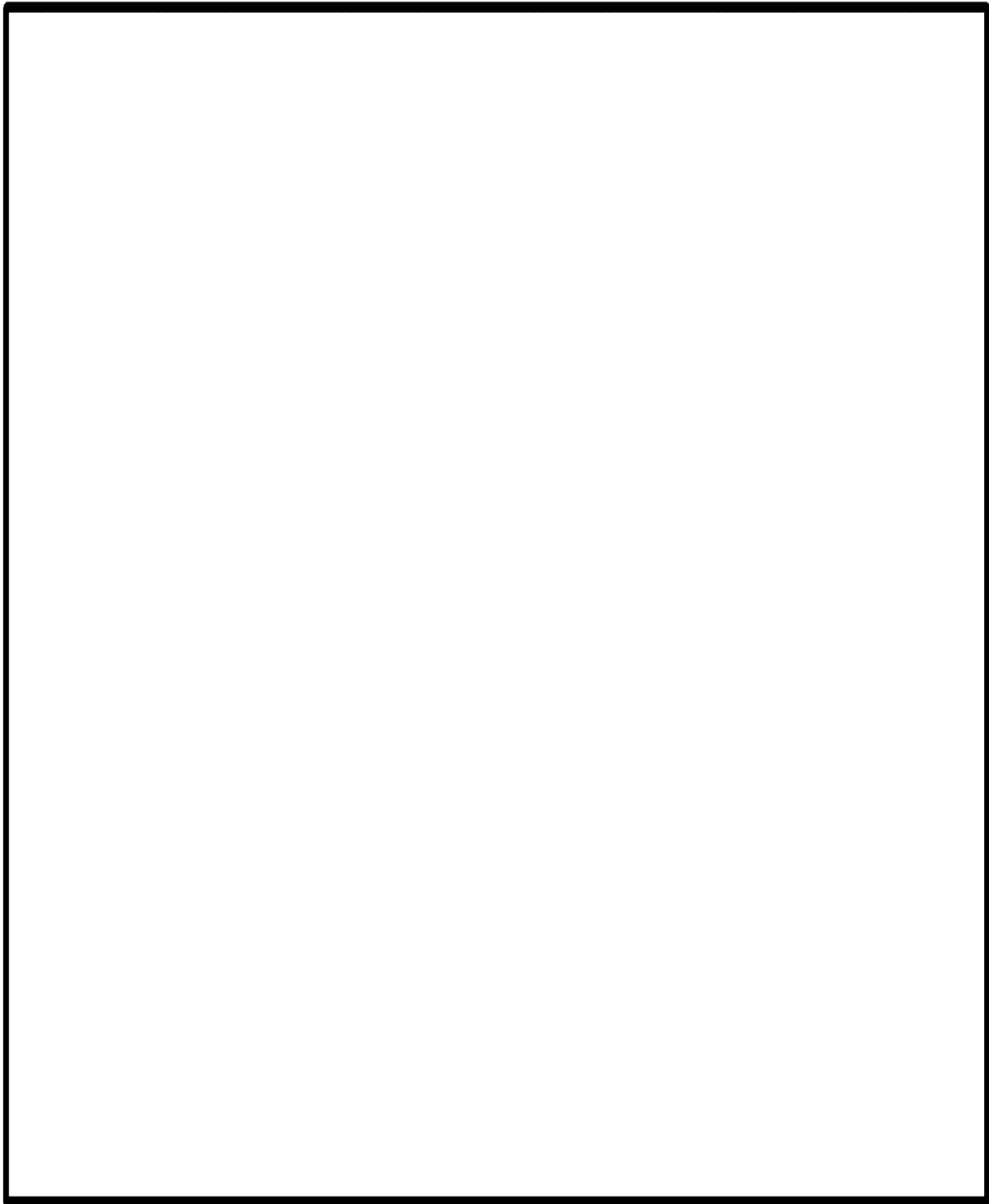
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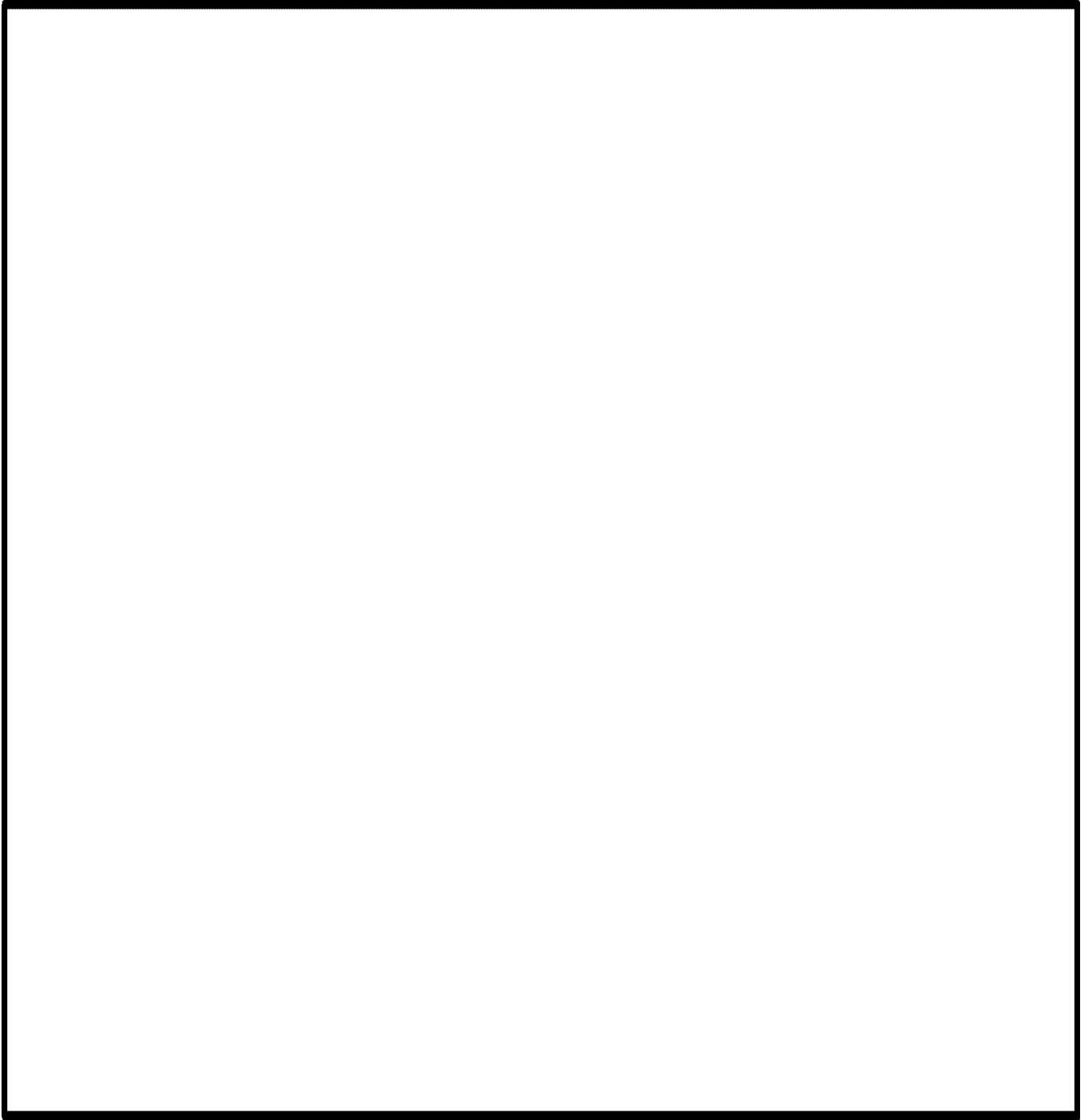
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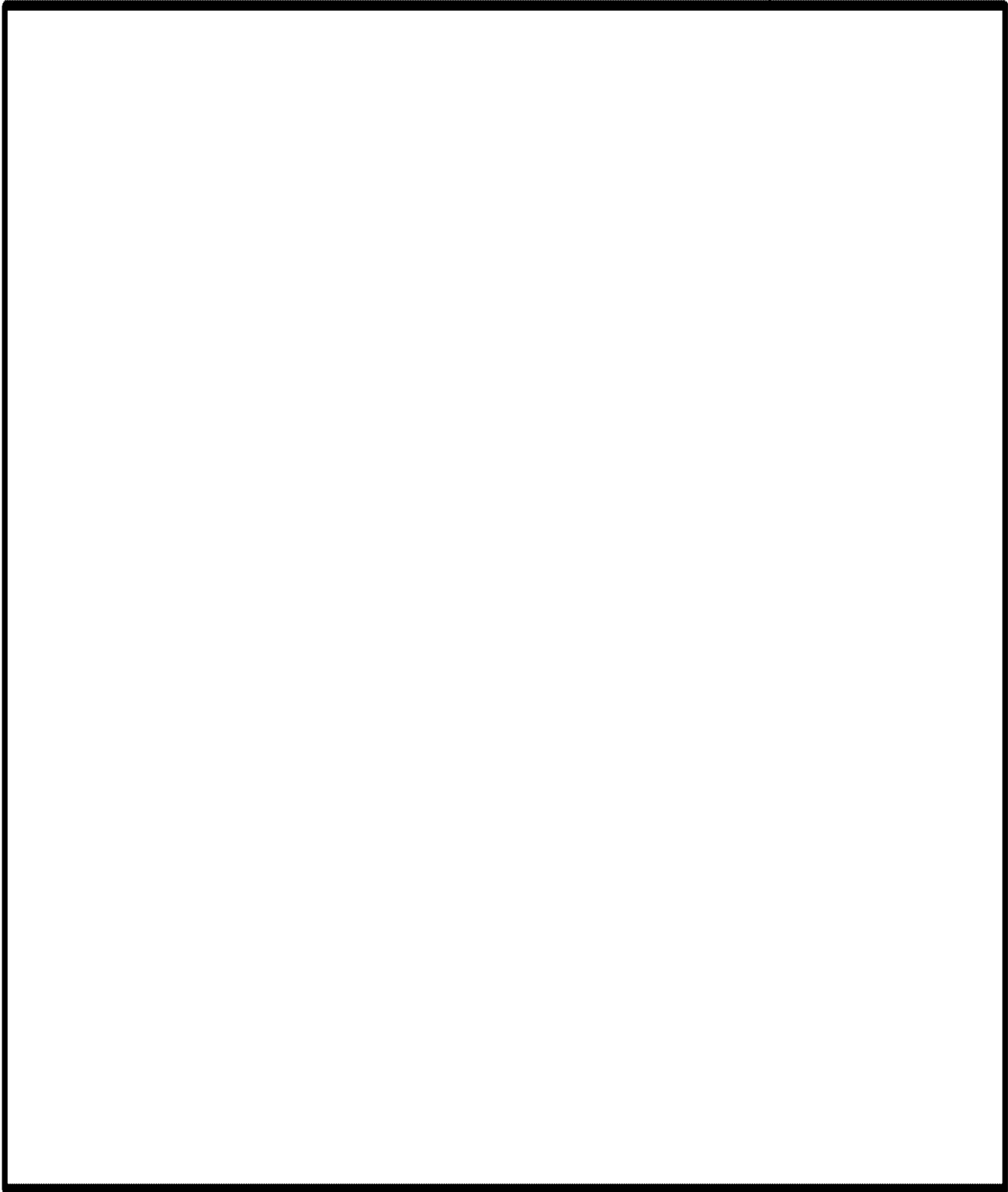
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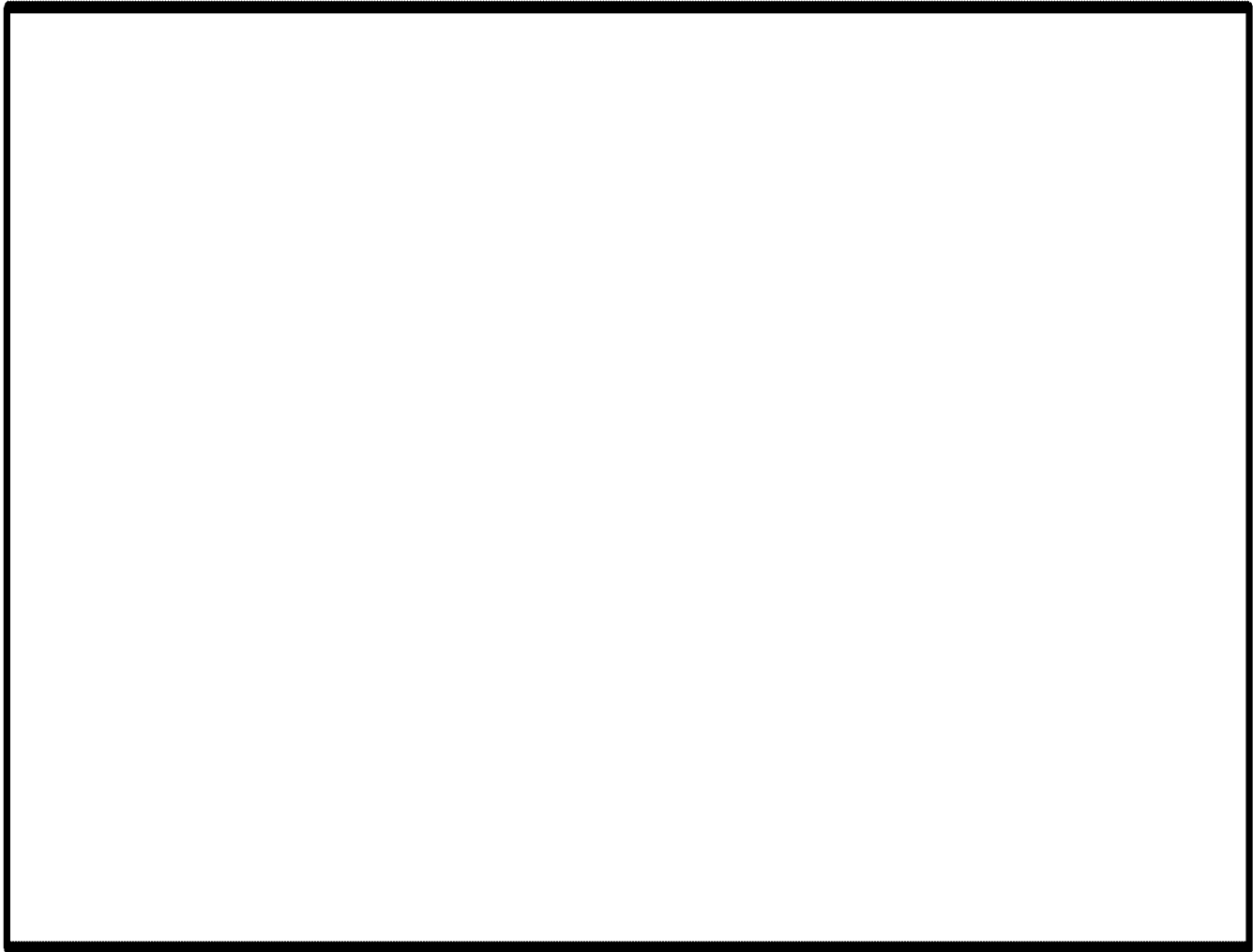
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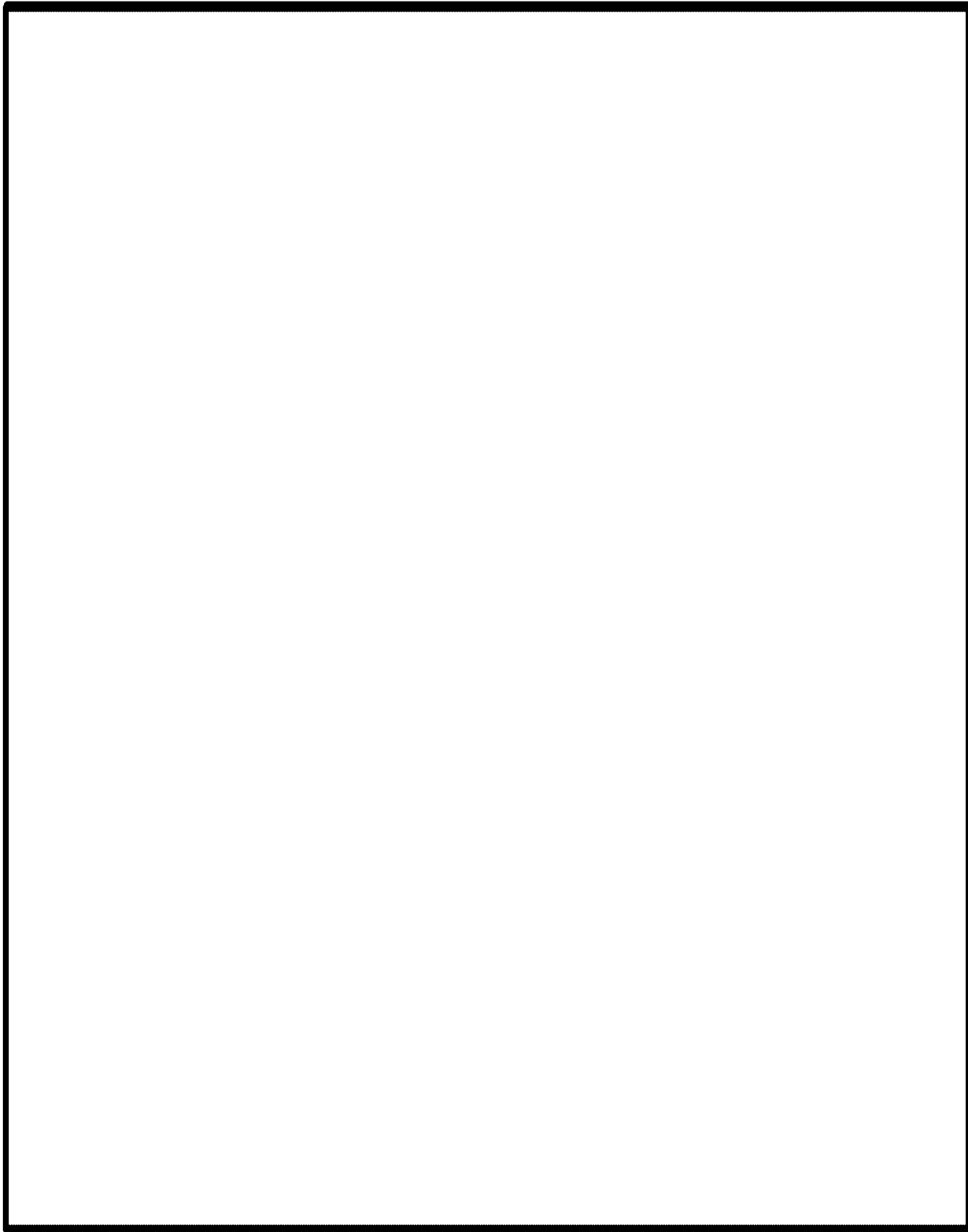


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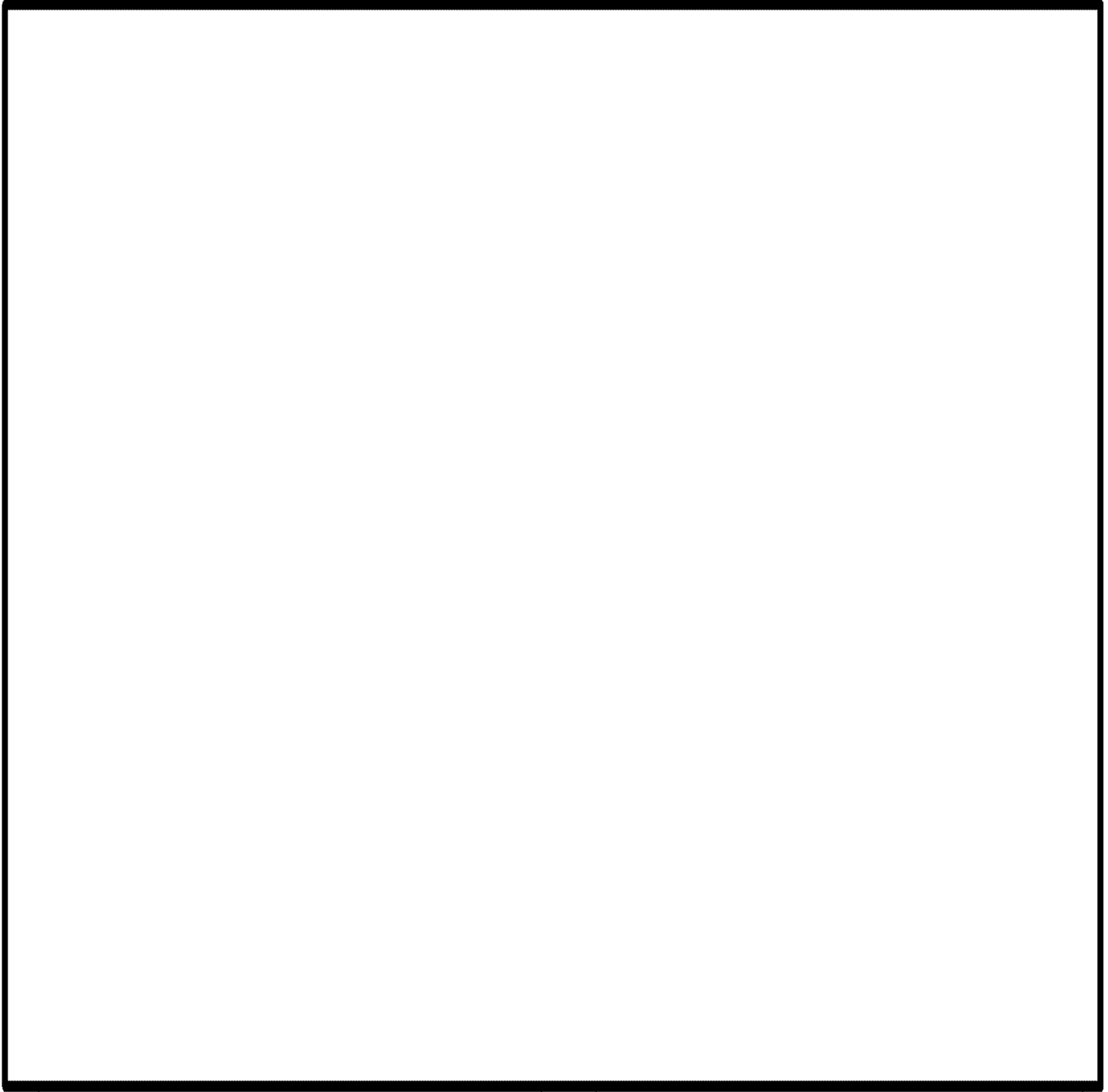


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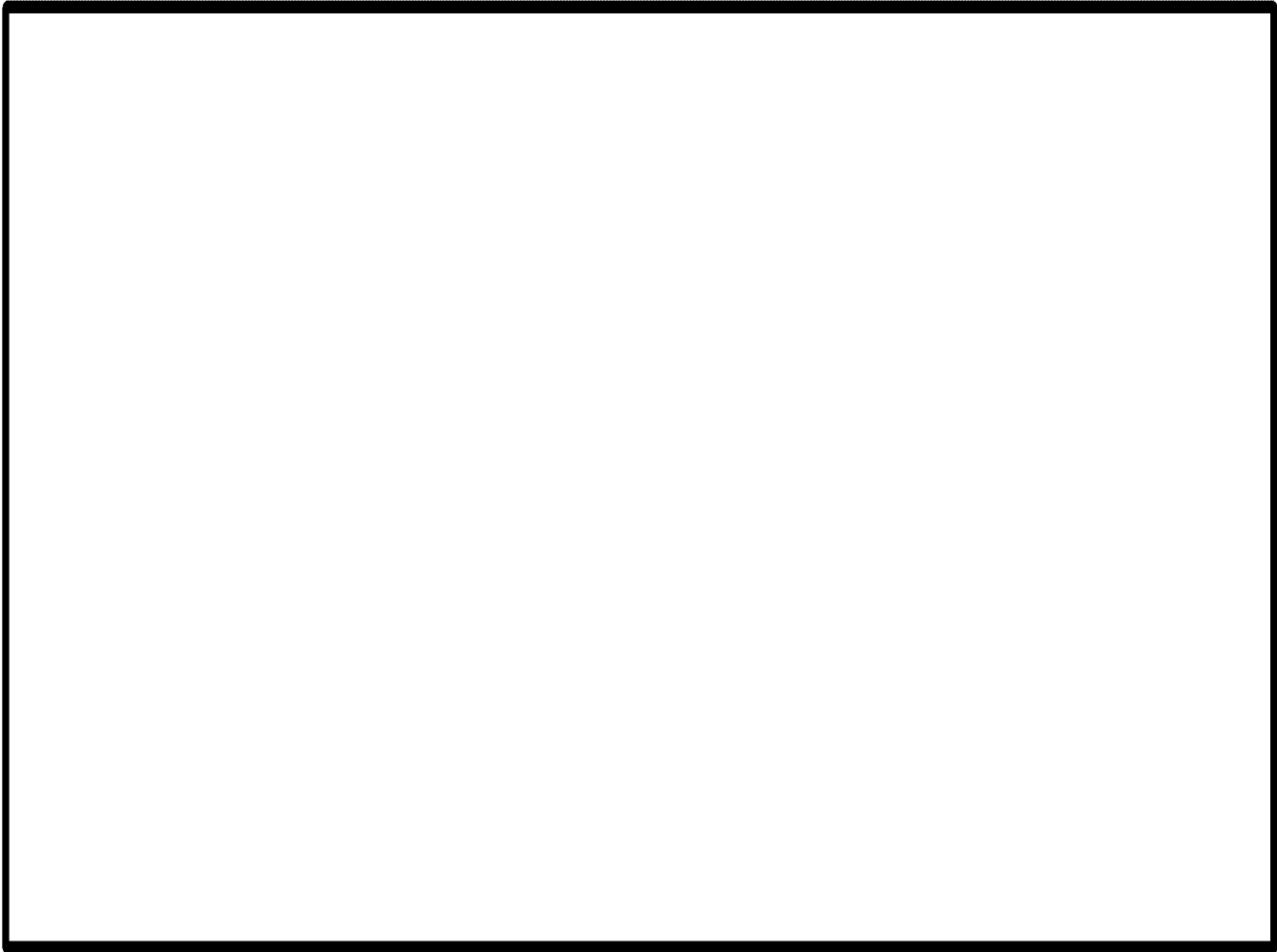
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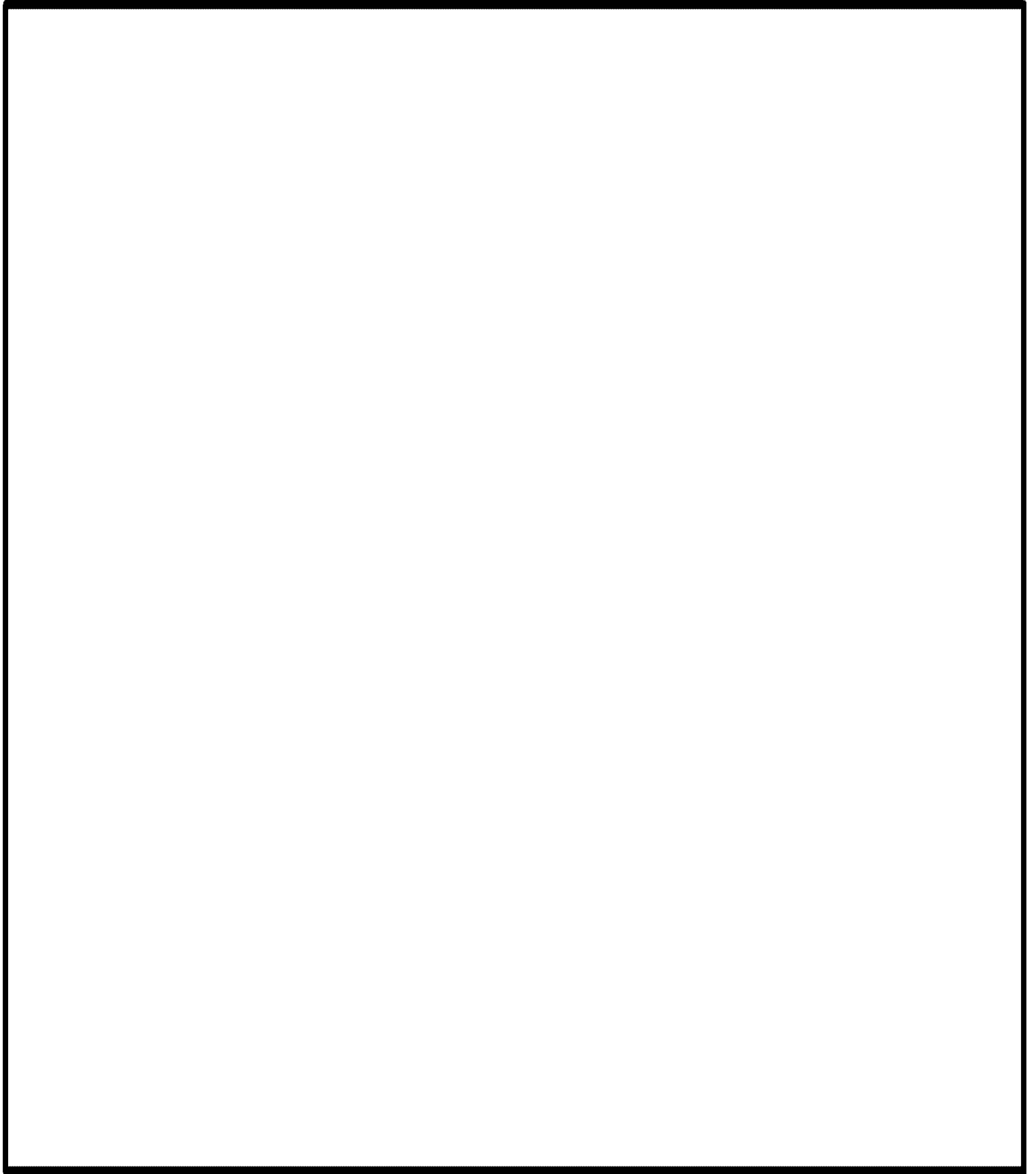
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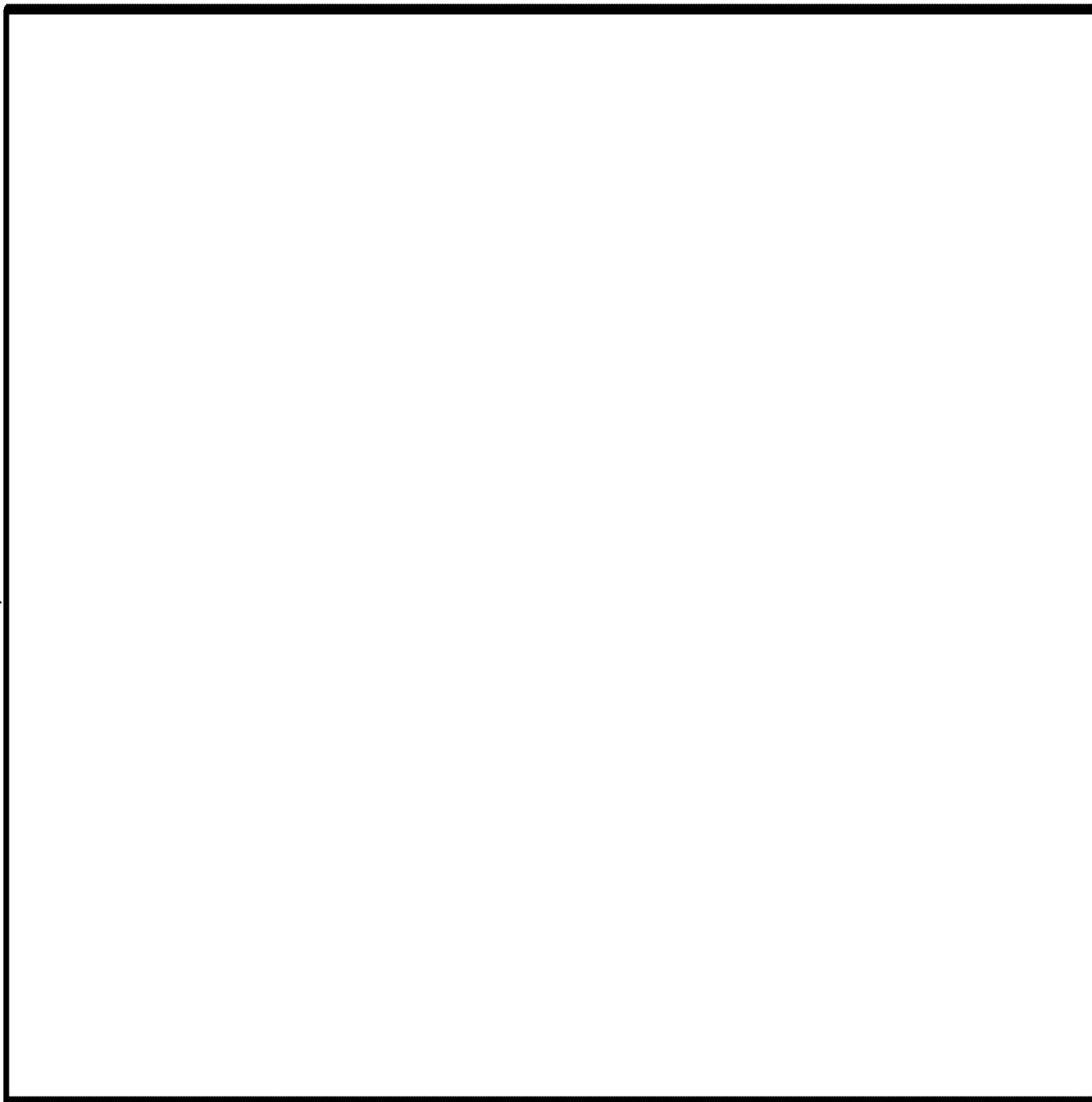
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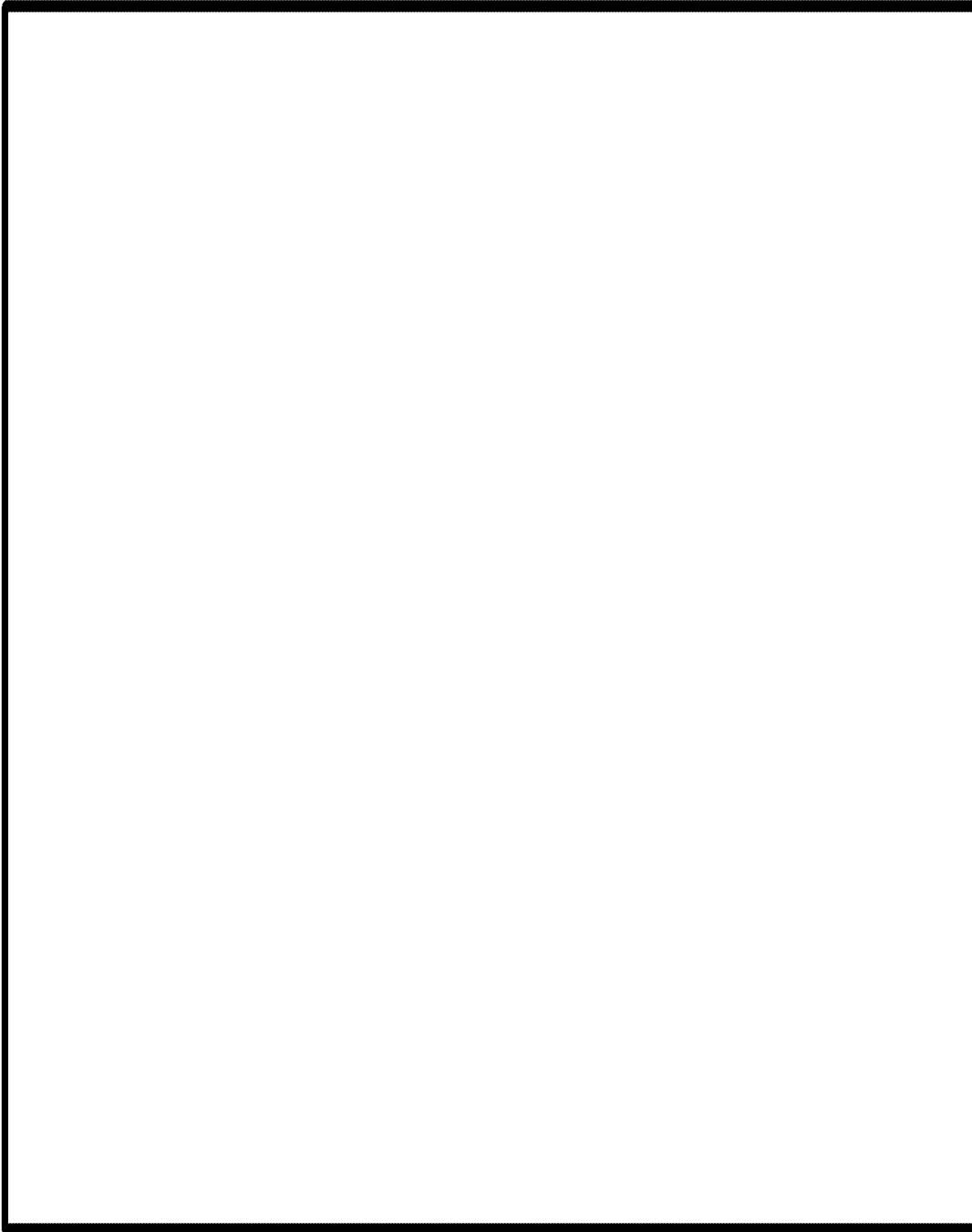
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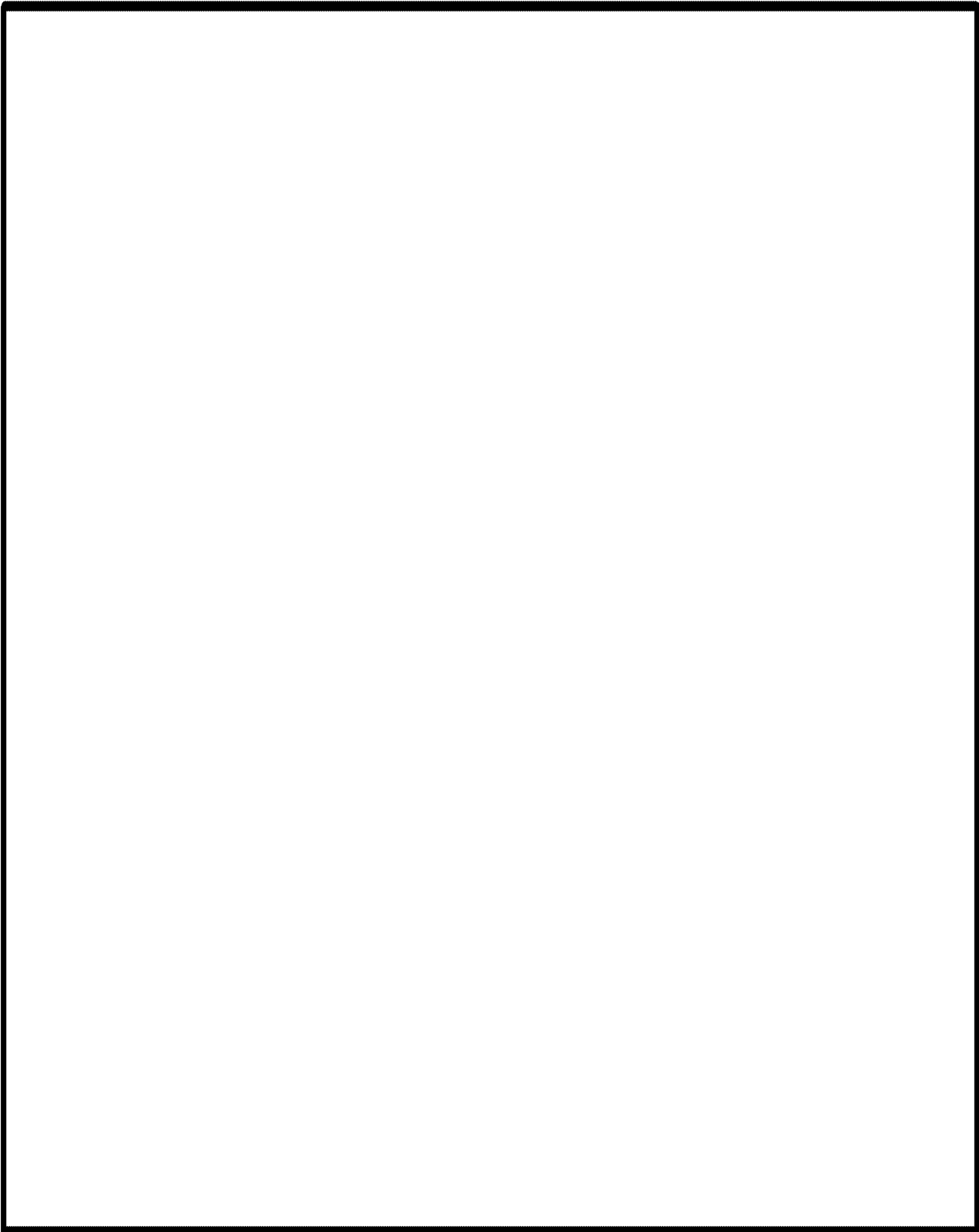
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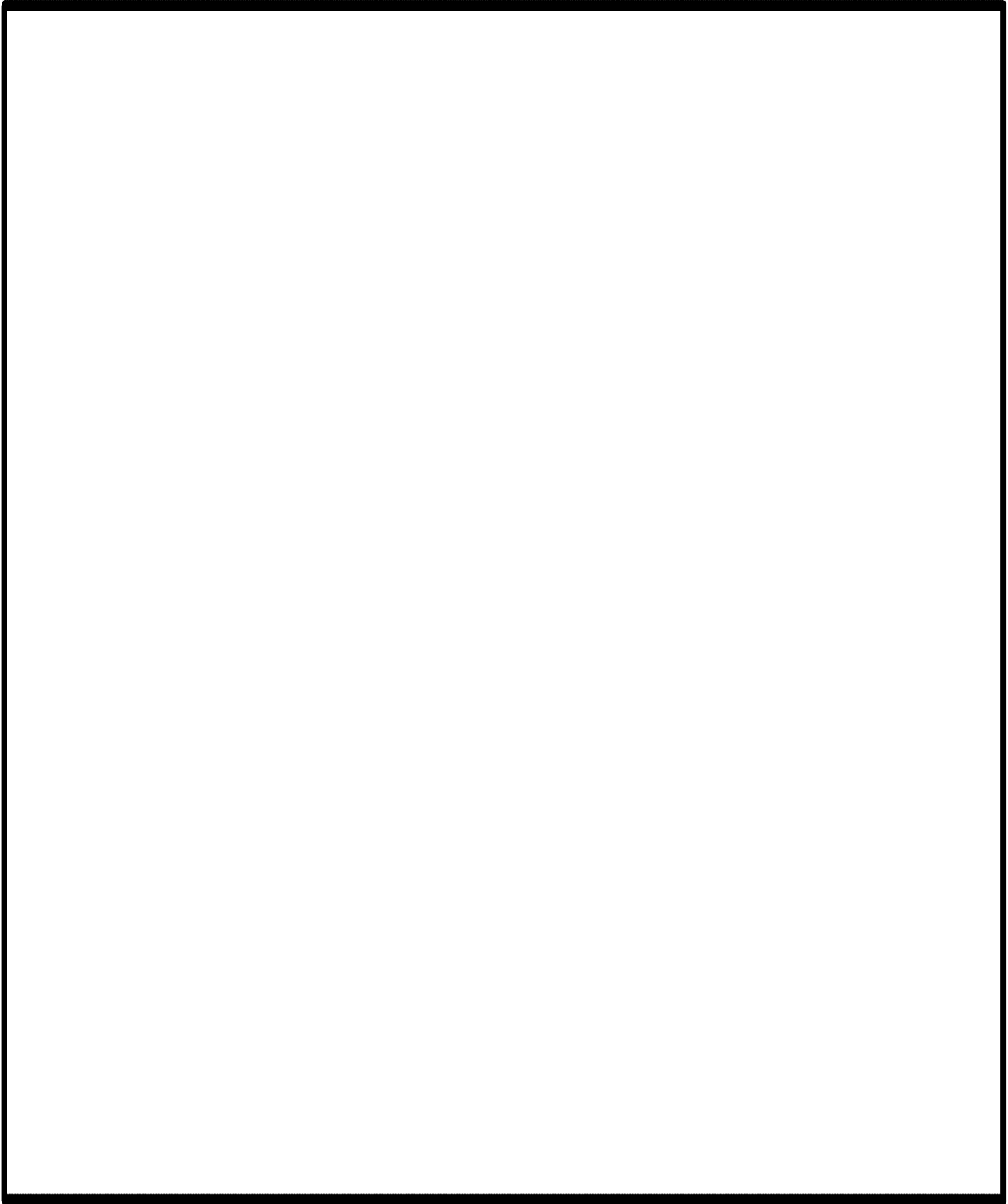
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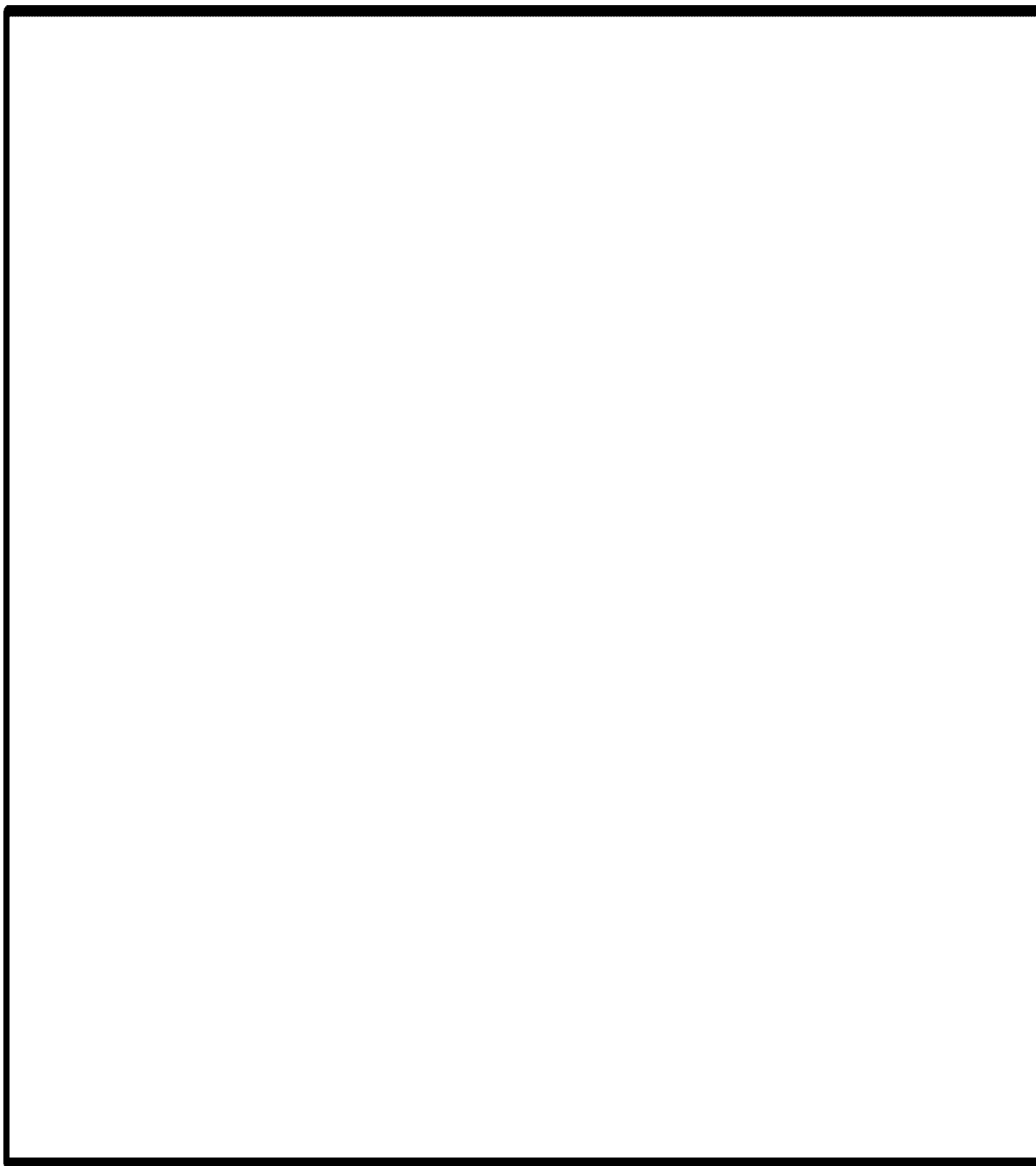
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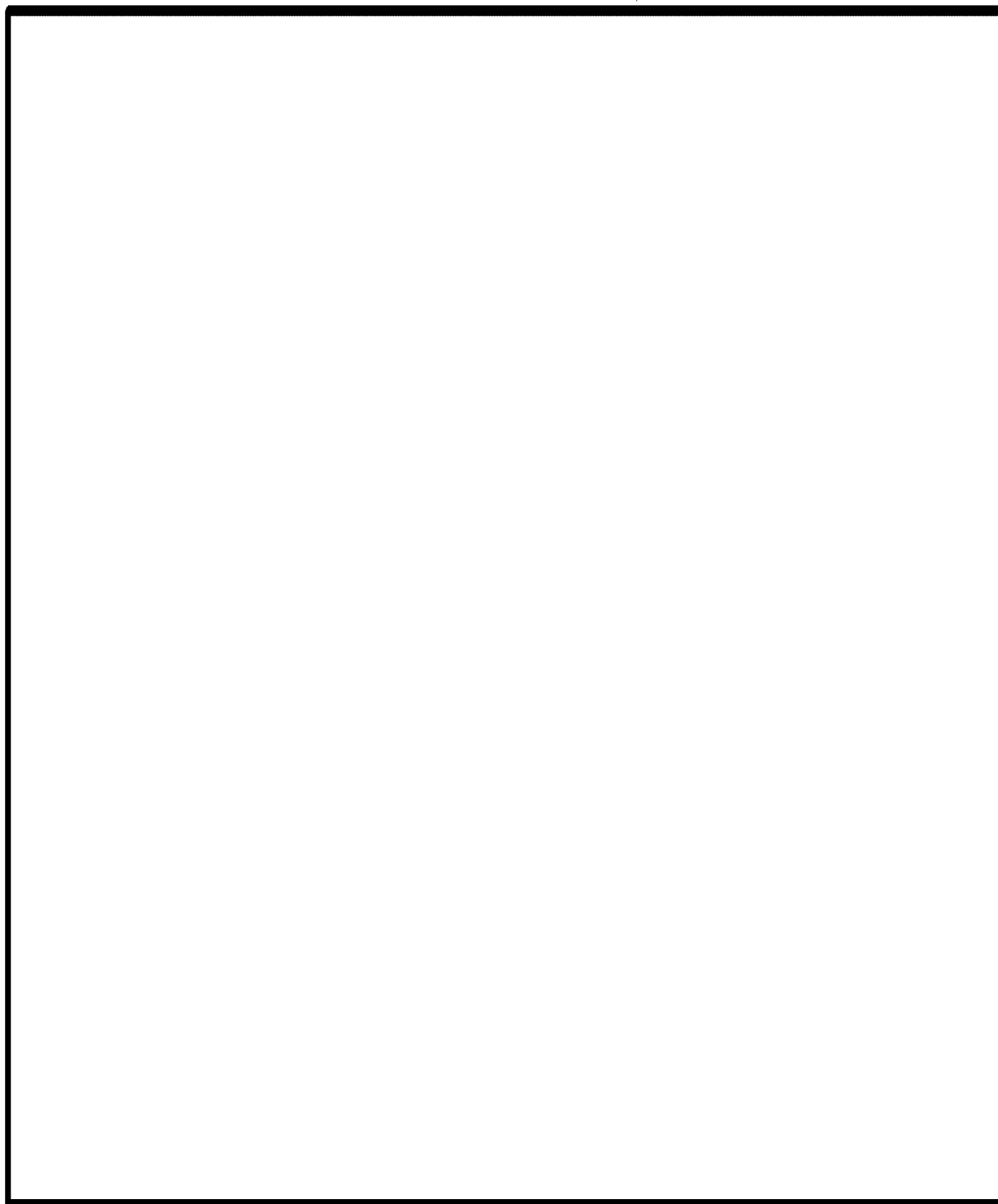
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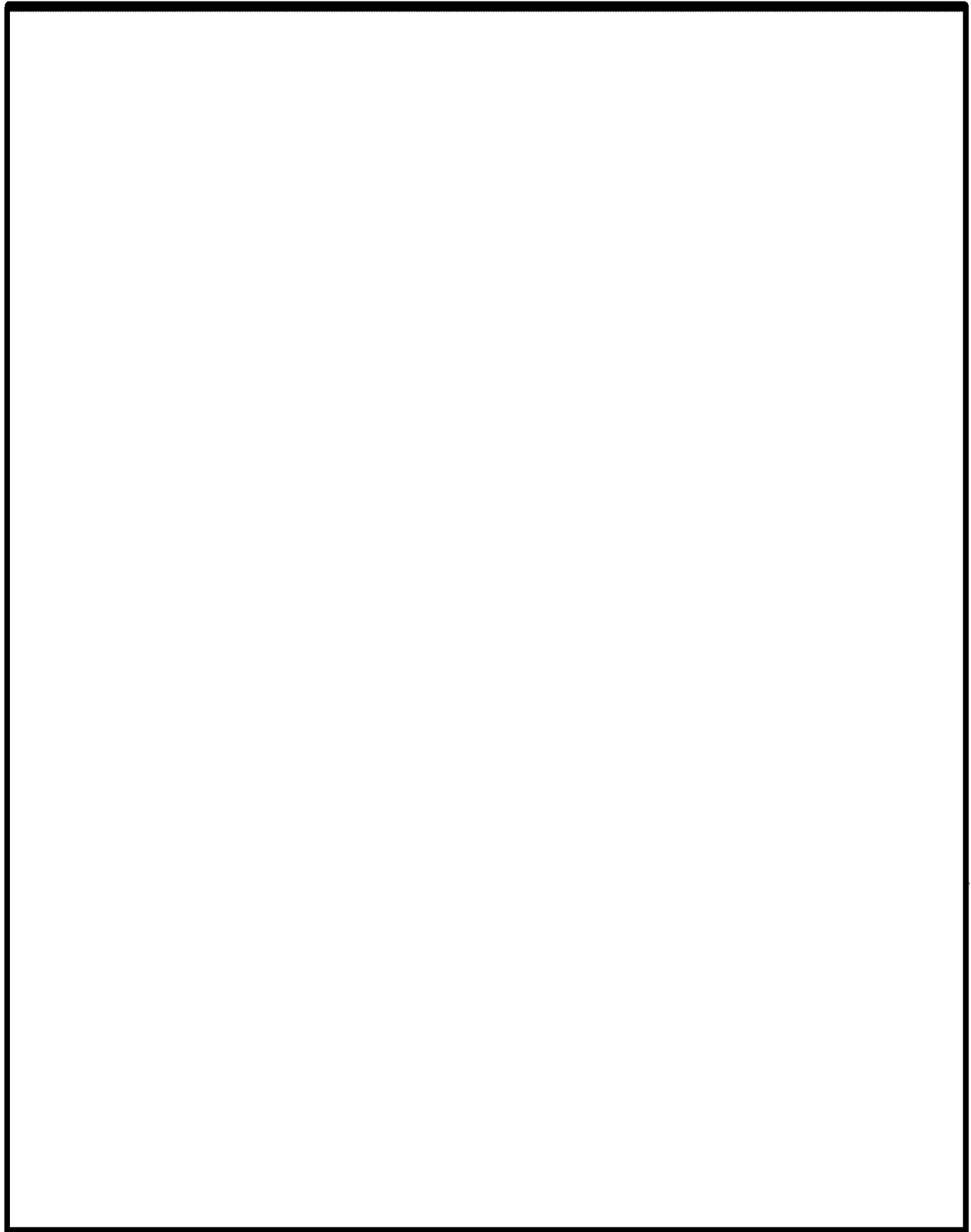
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# Asylum/Refugee Law – Exceptional Circumstances

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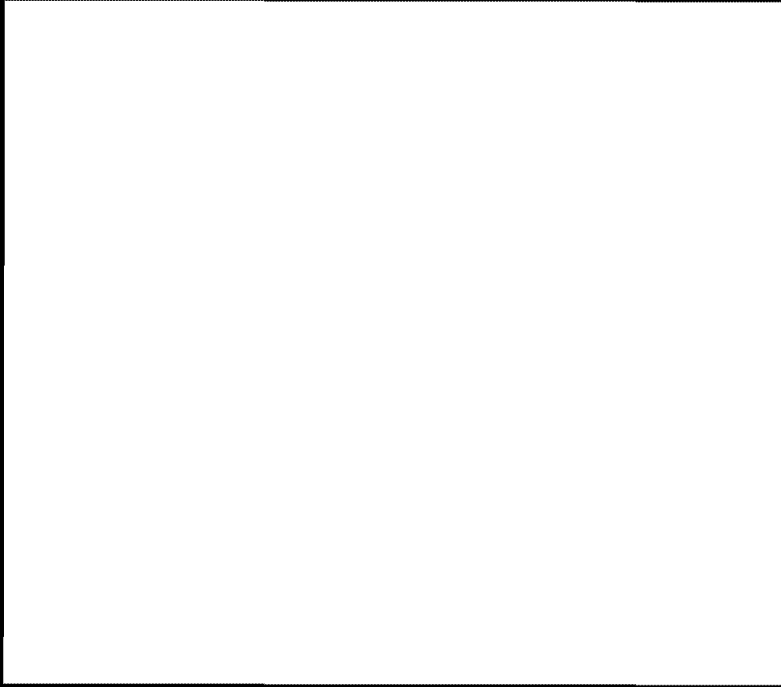


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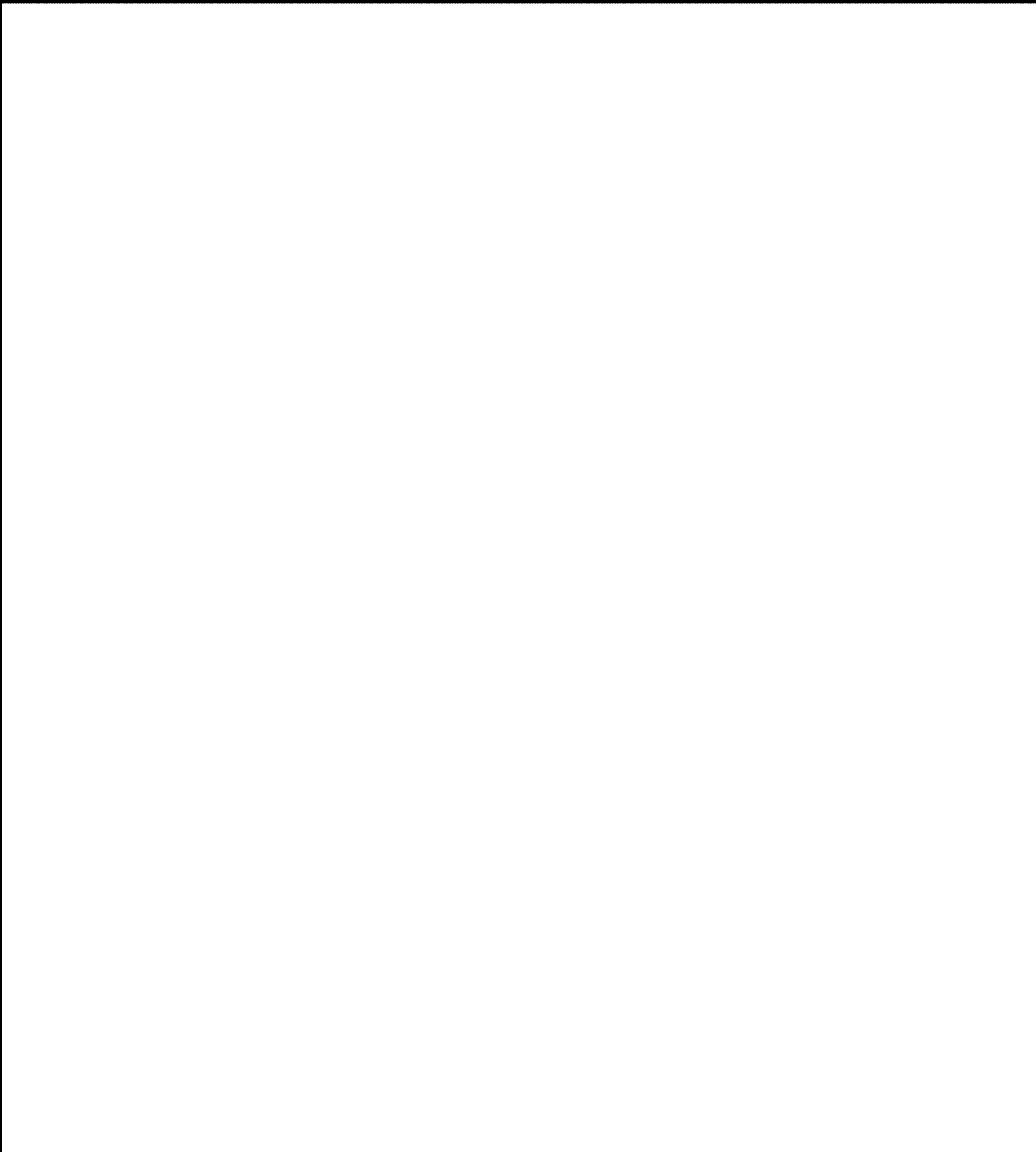
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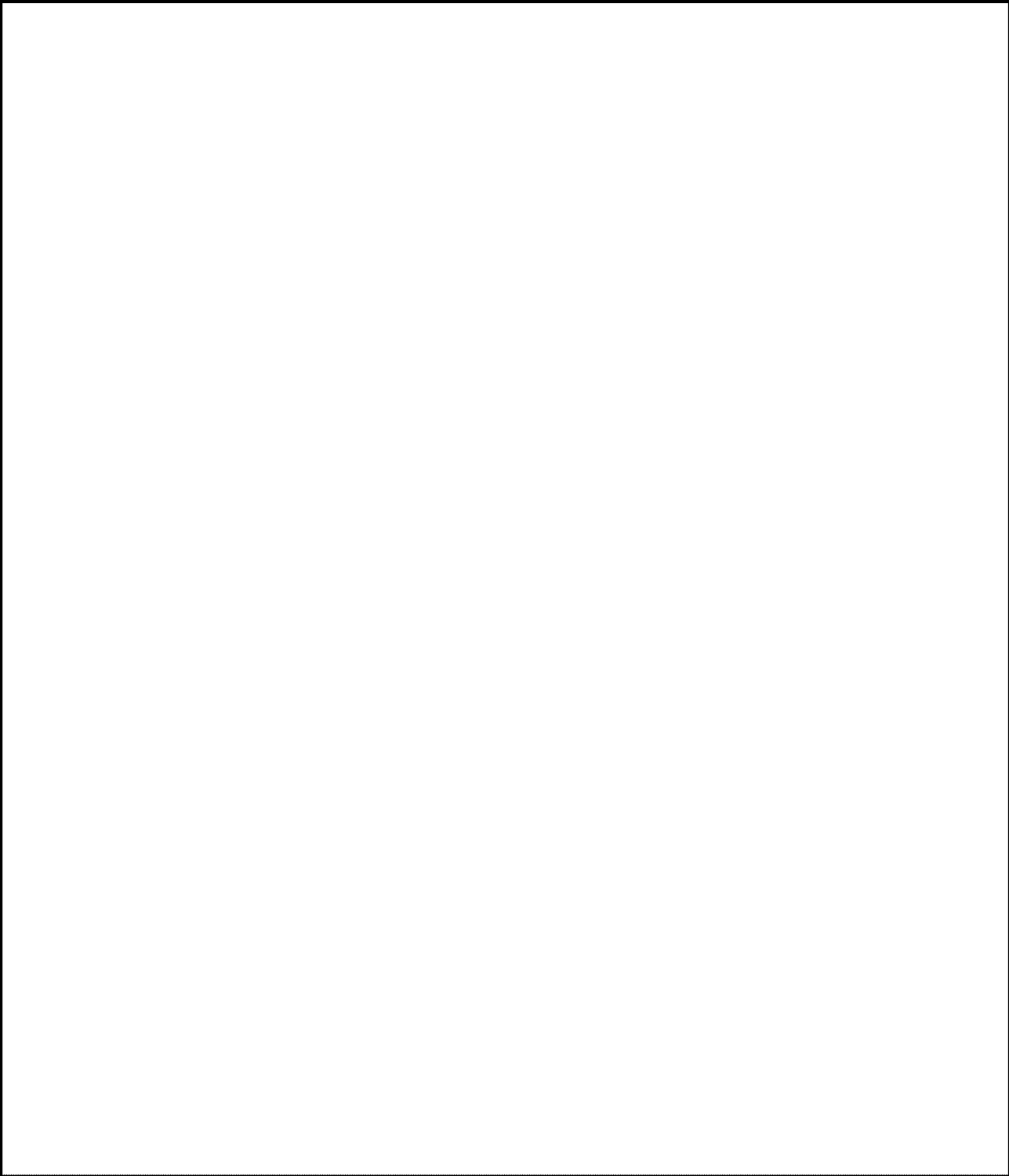
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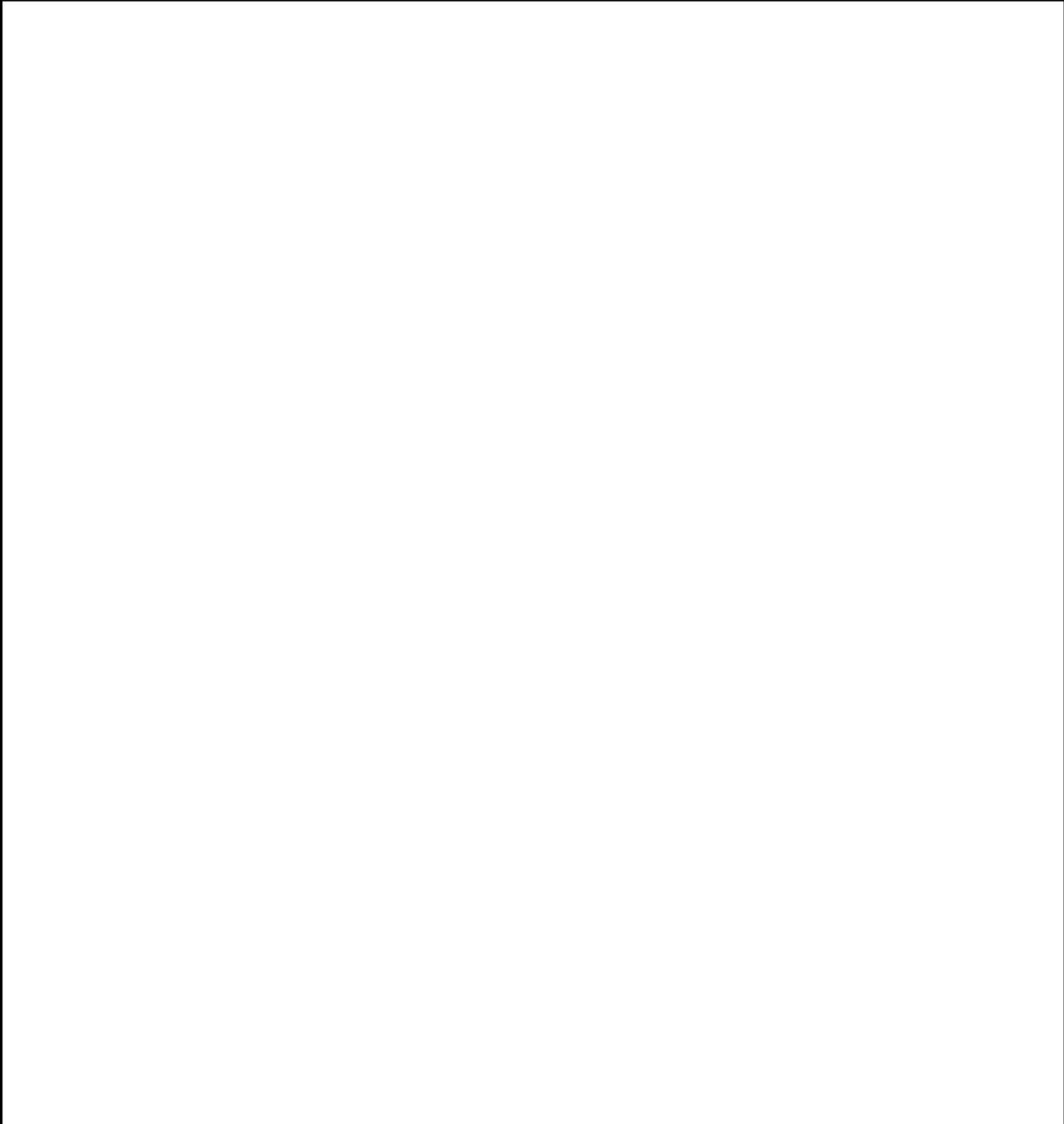
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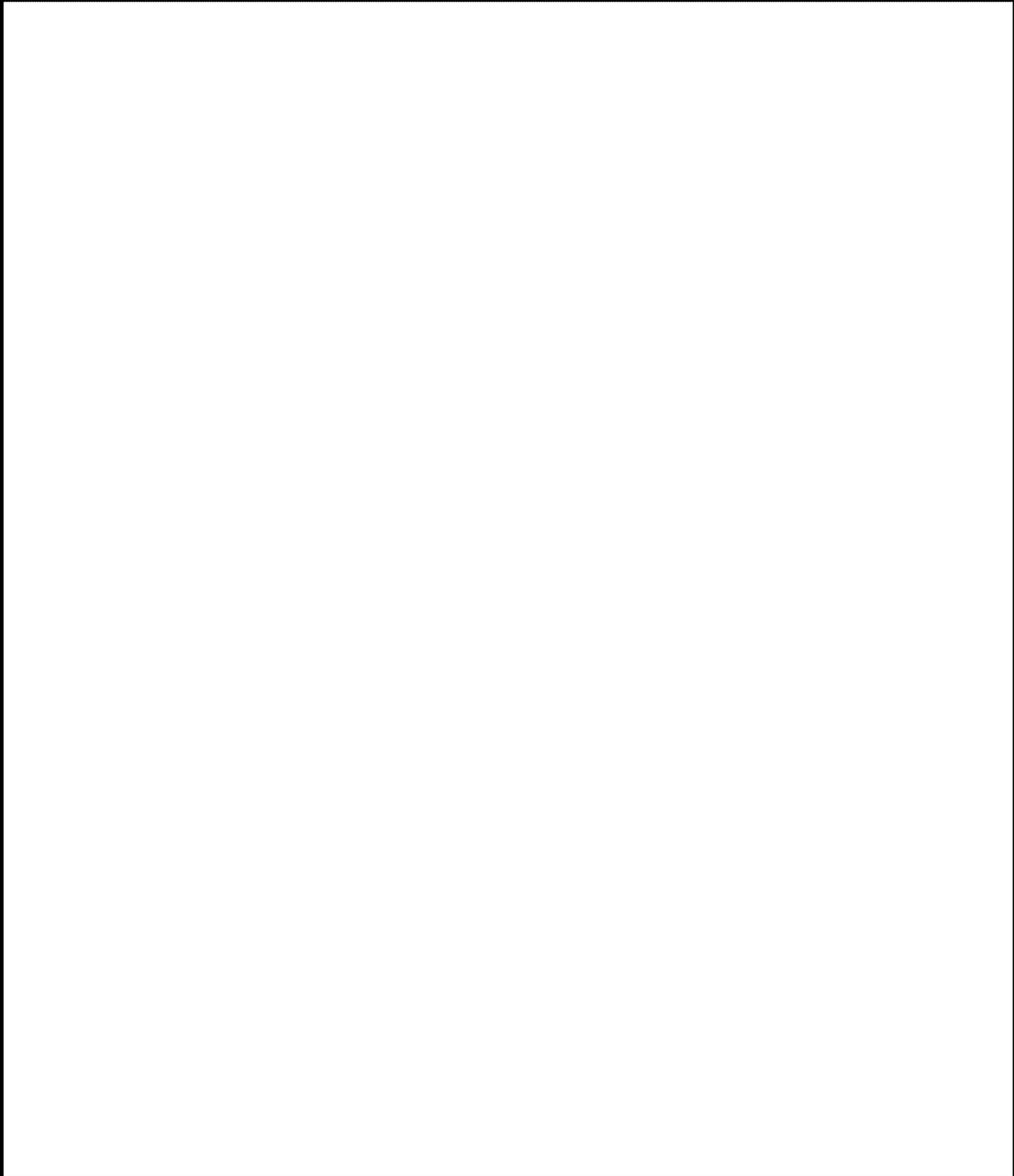


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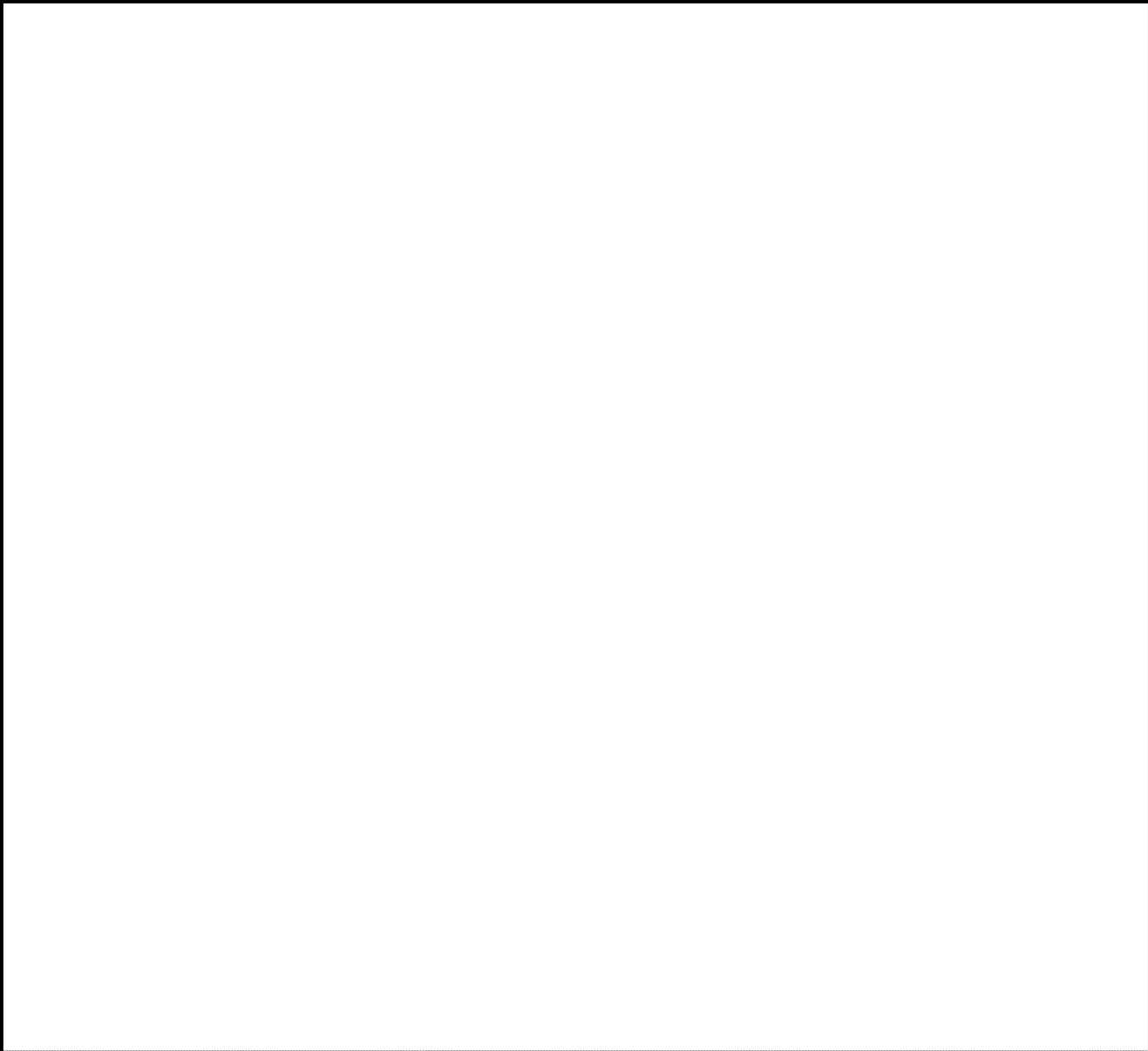
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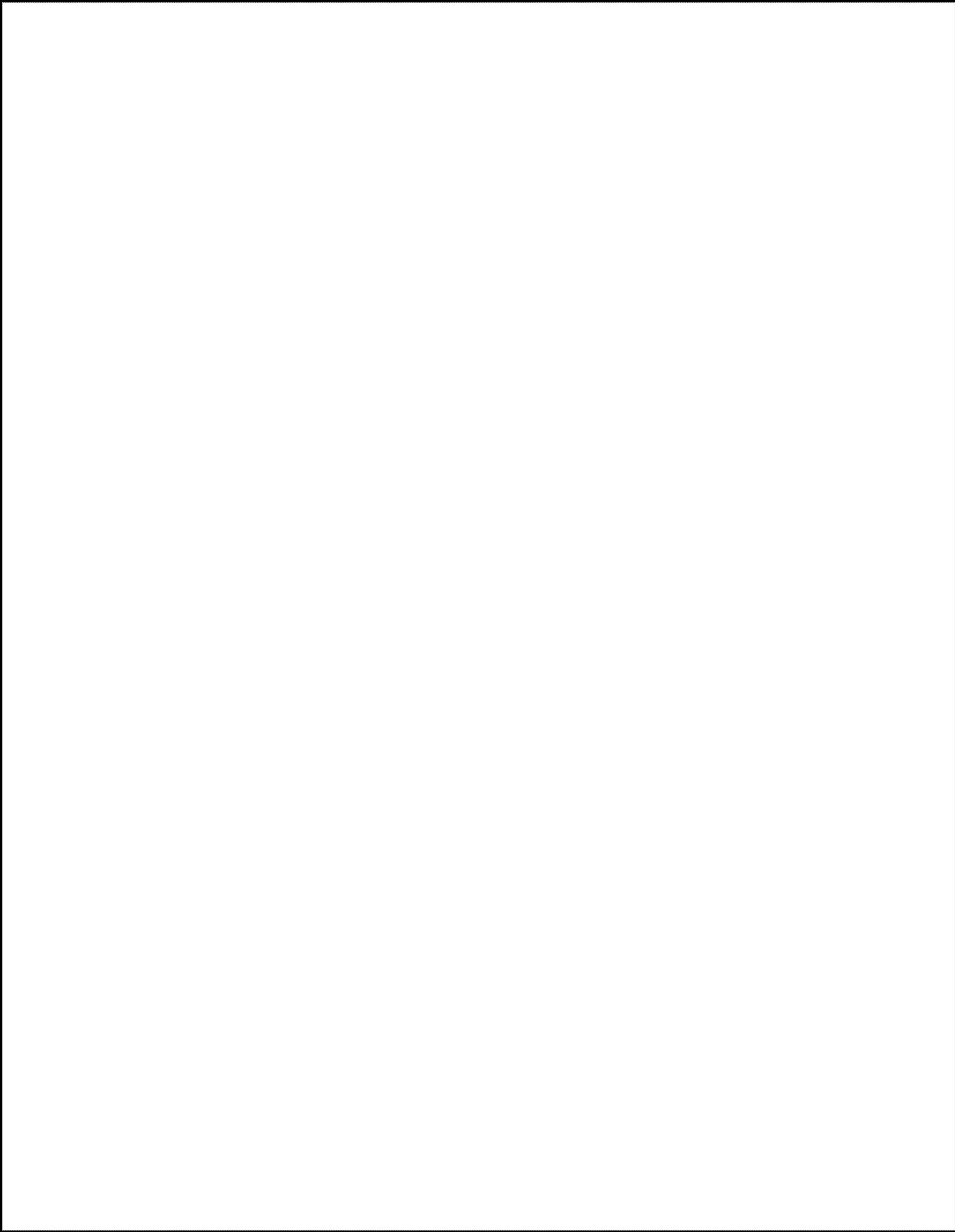


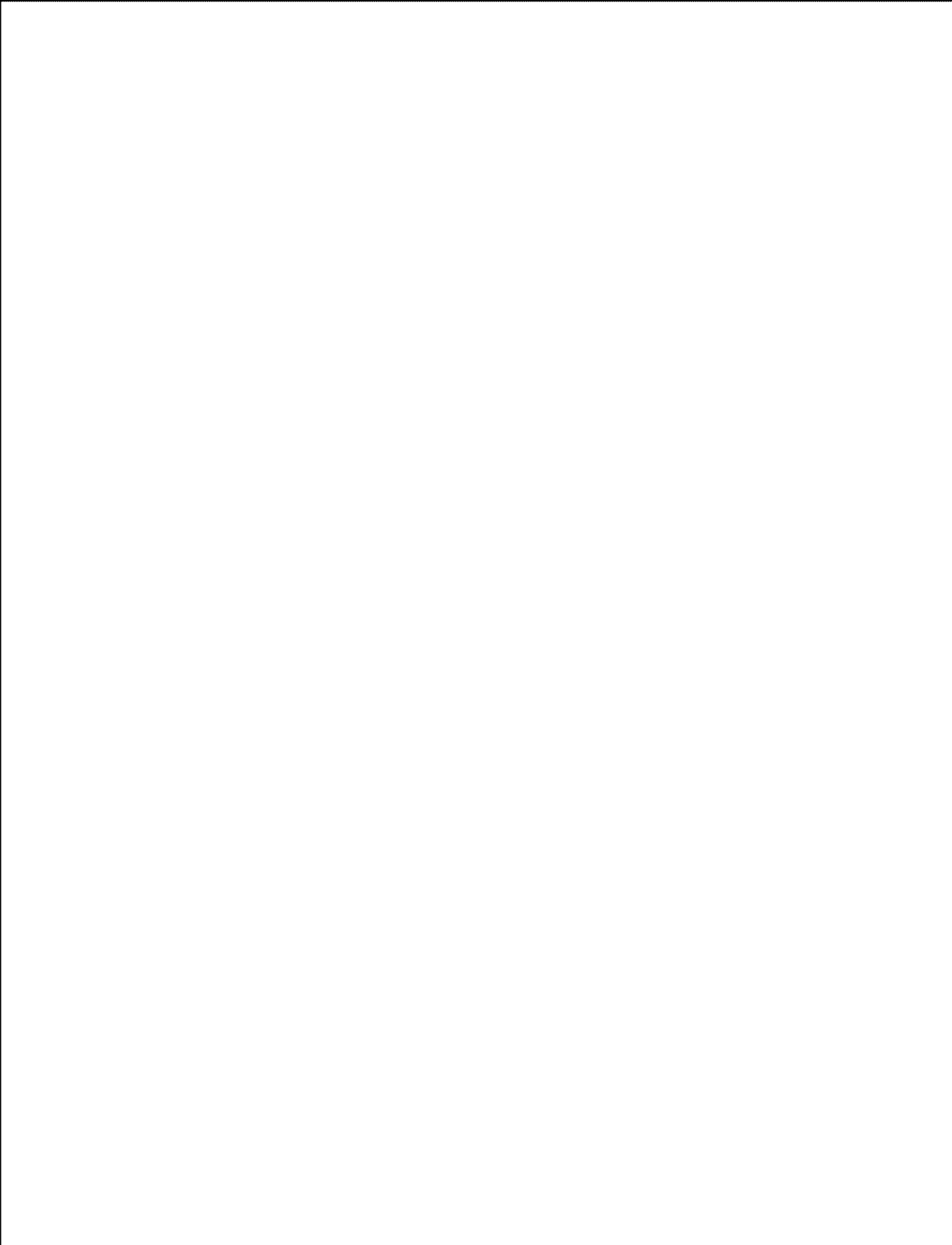
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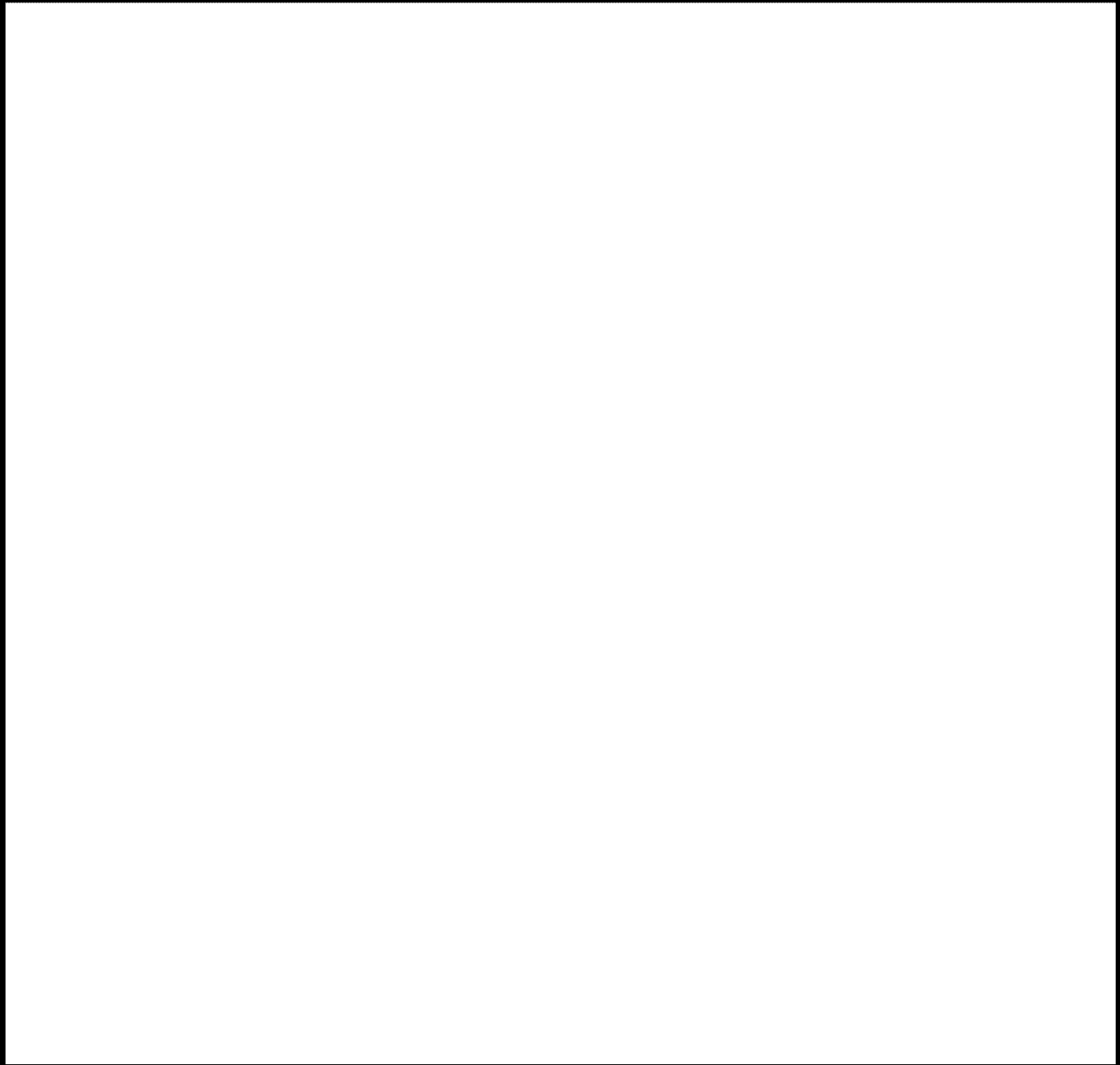
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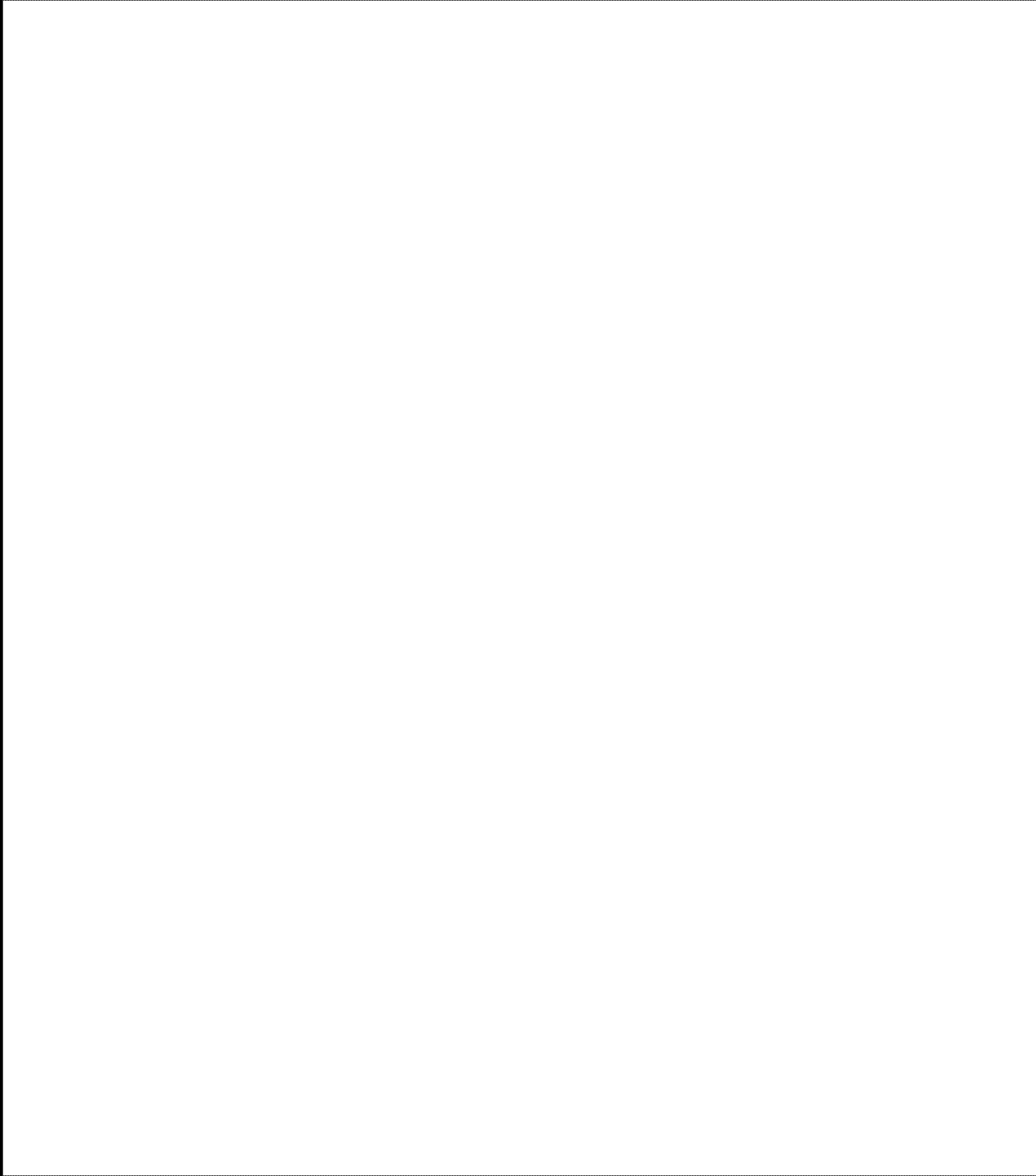


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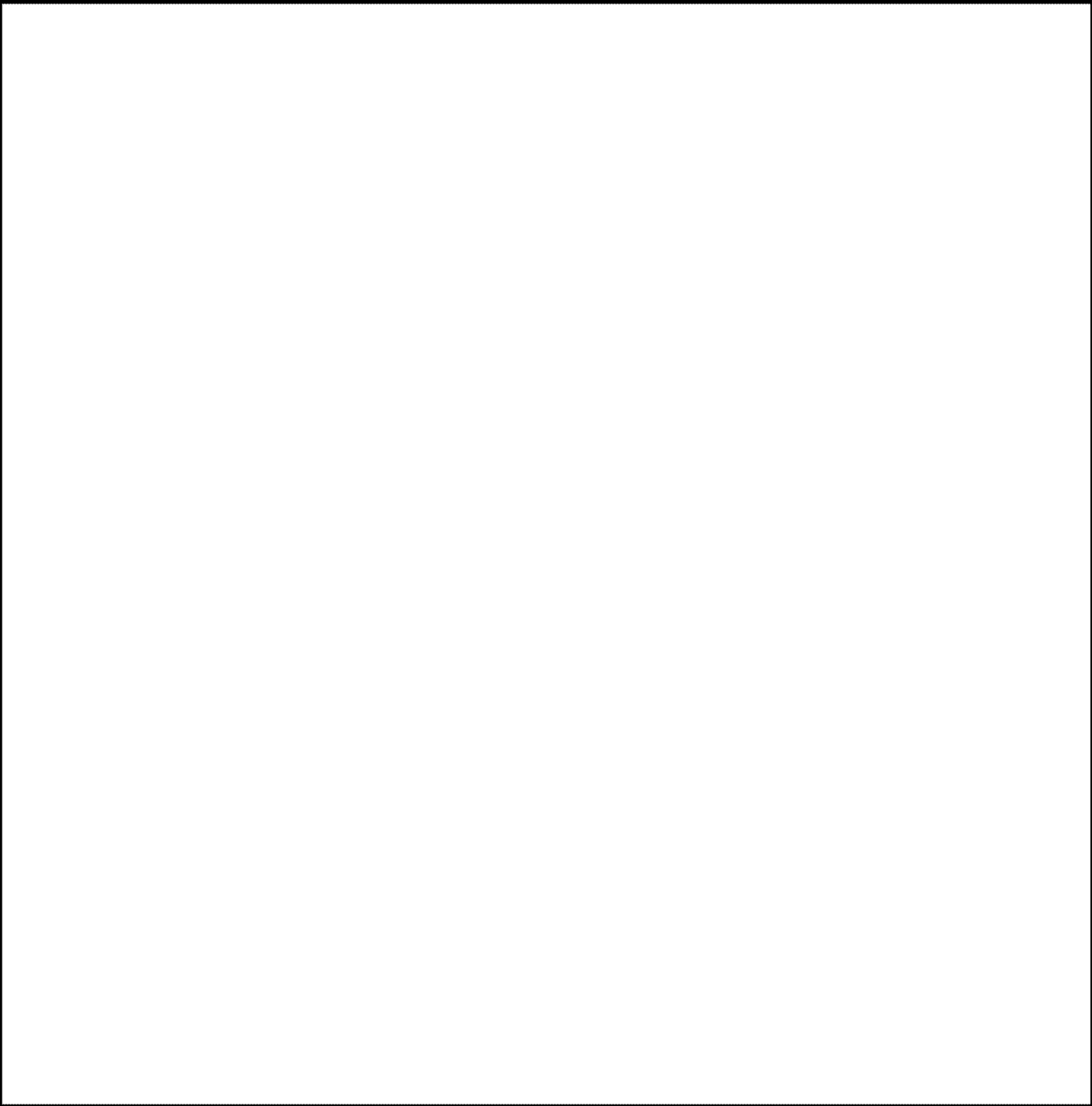
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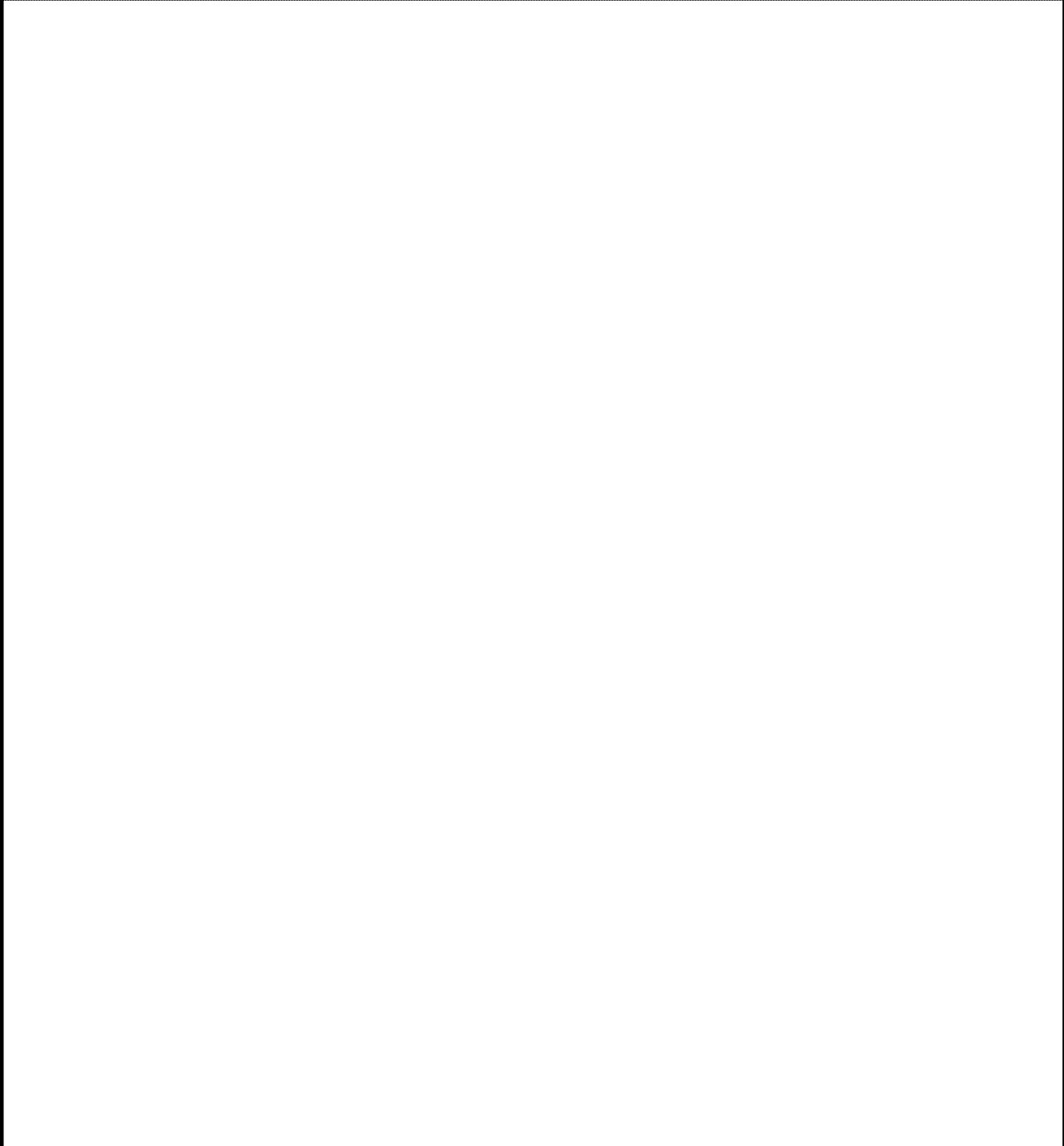
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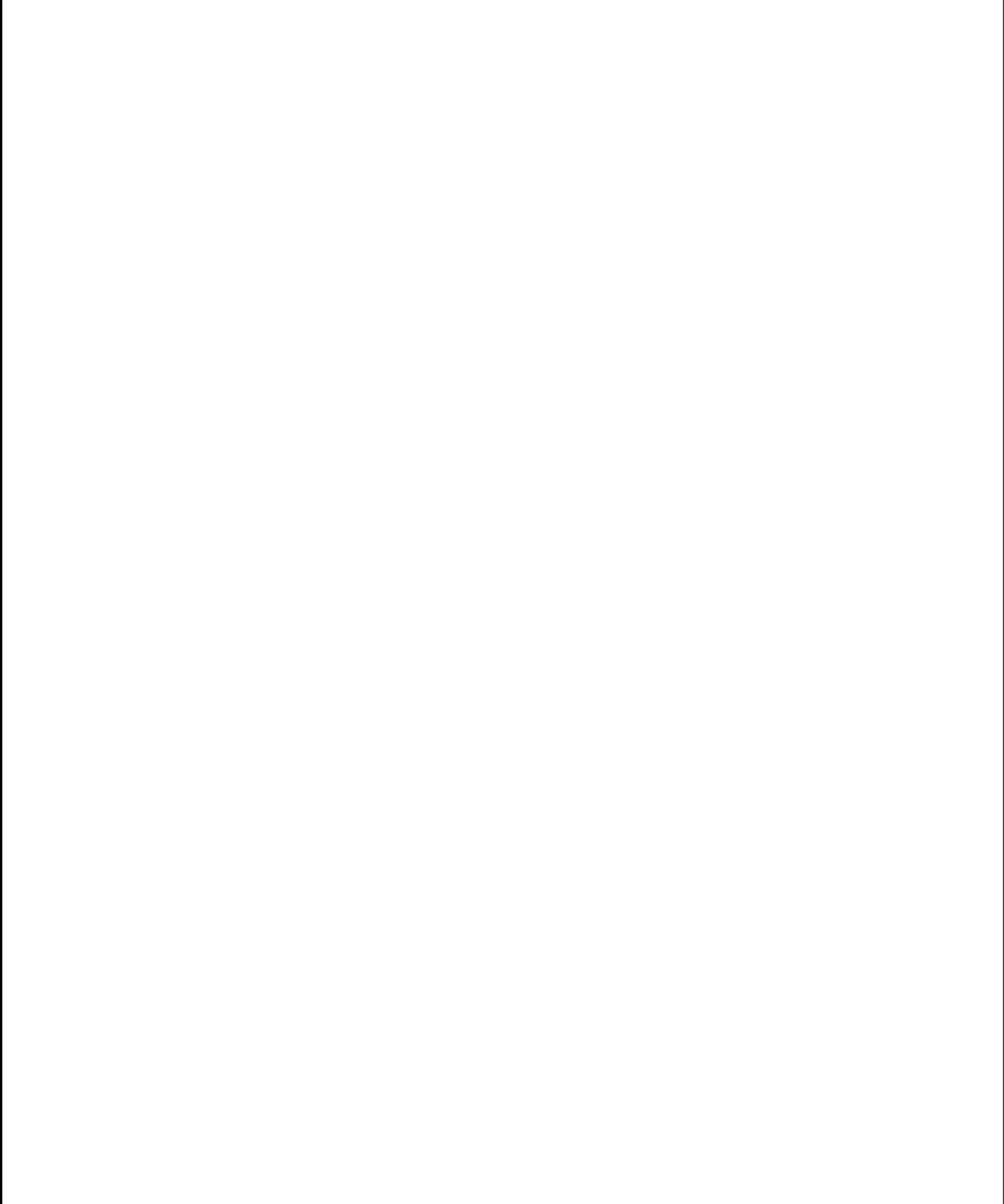


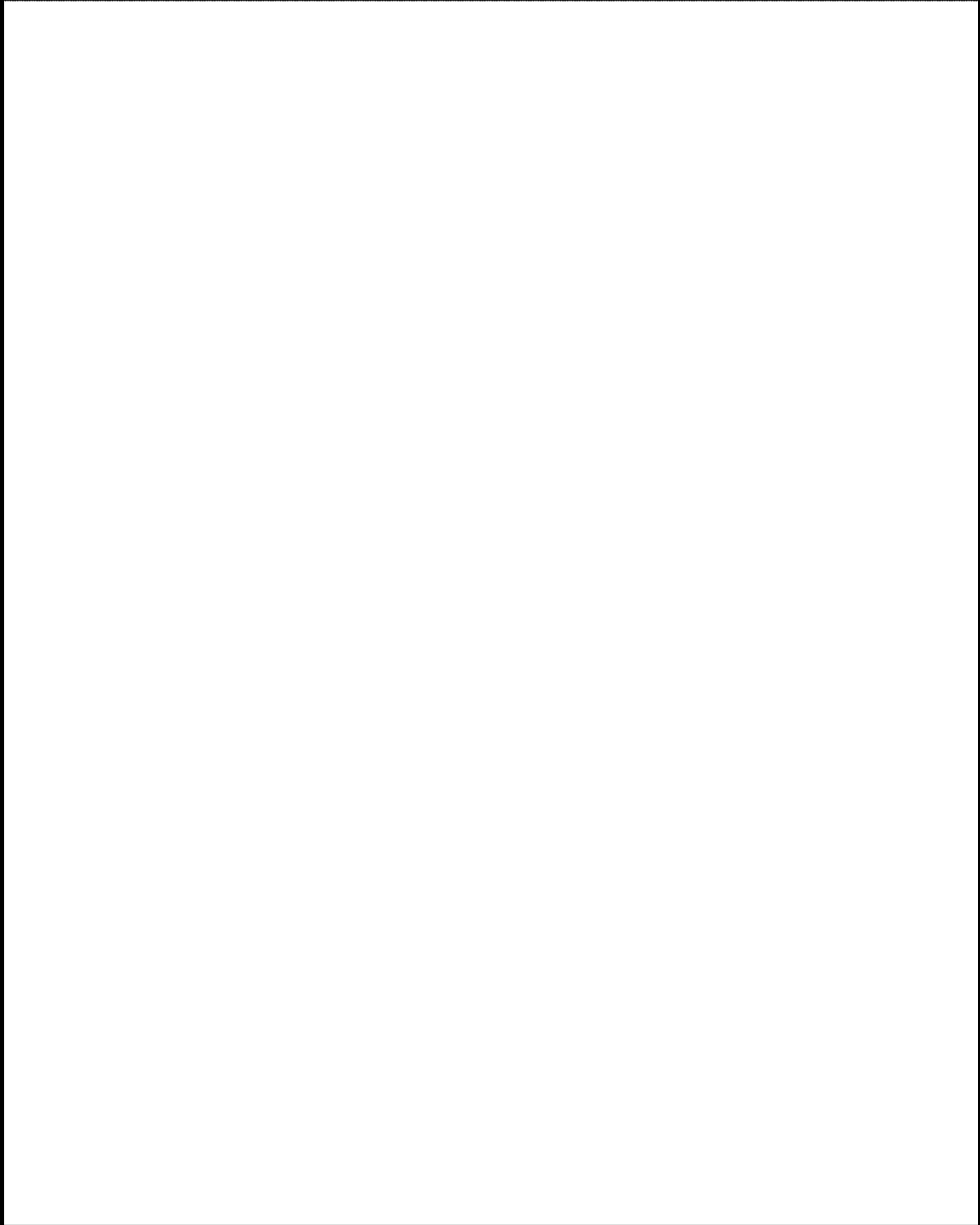


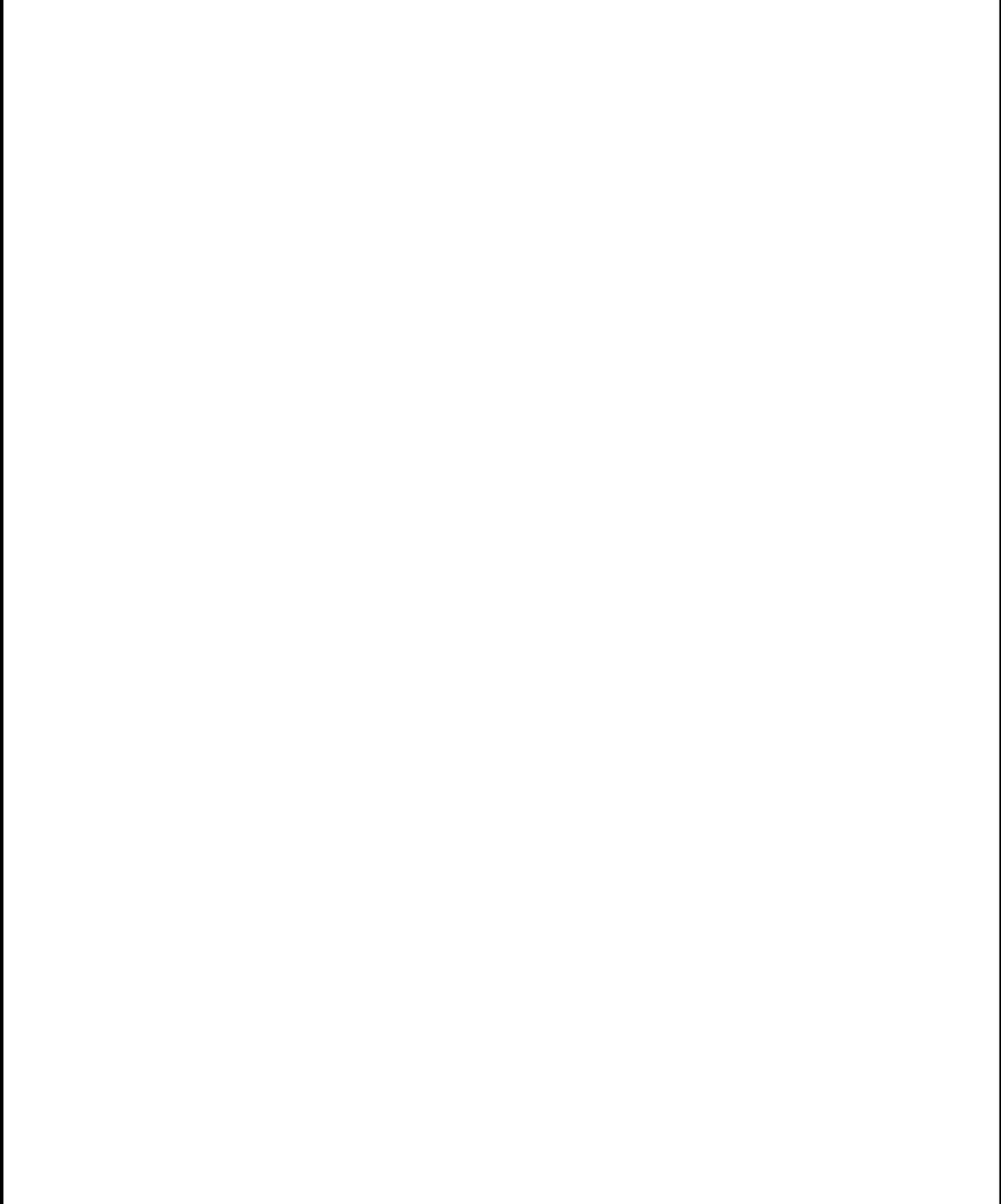
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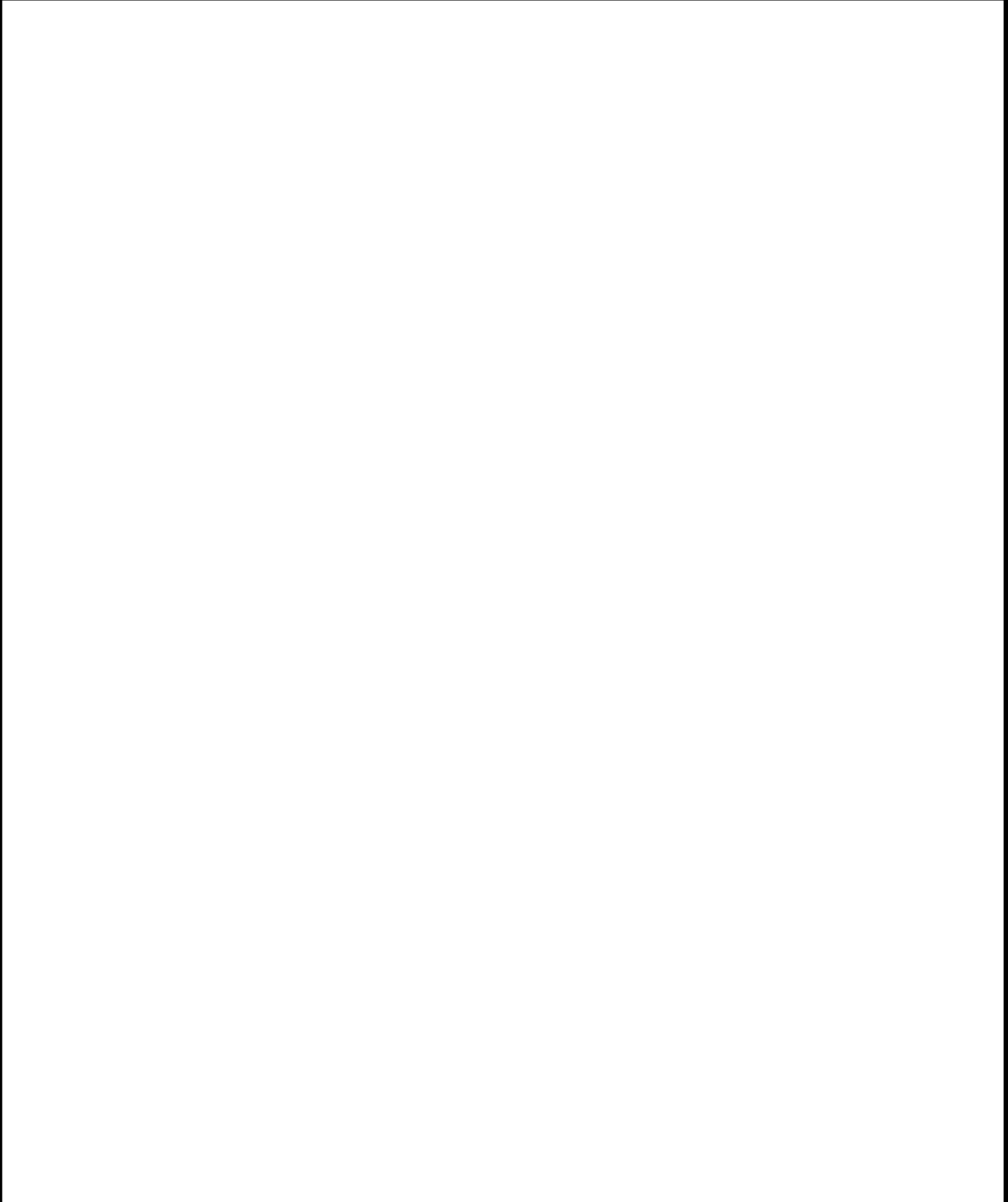


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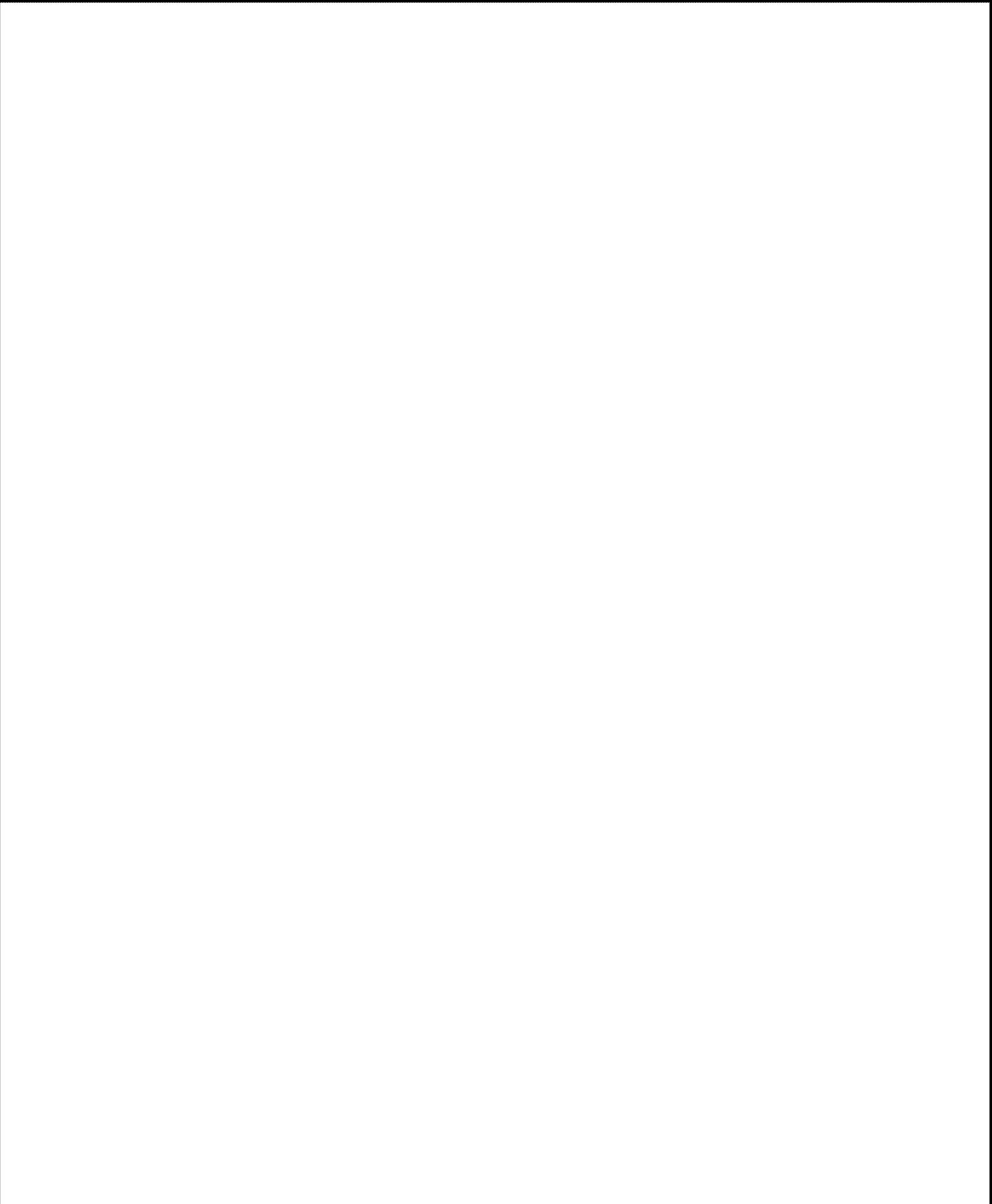
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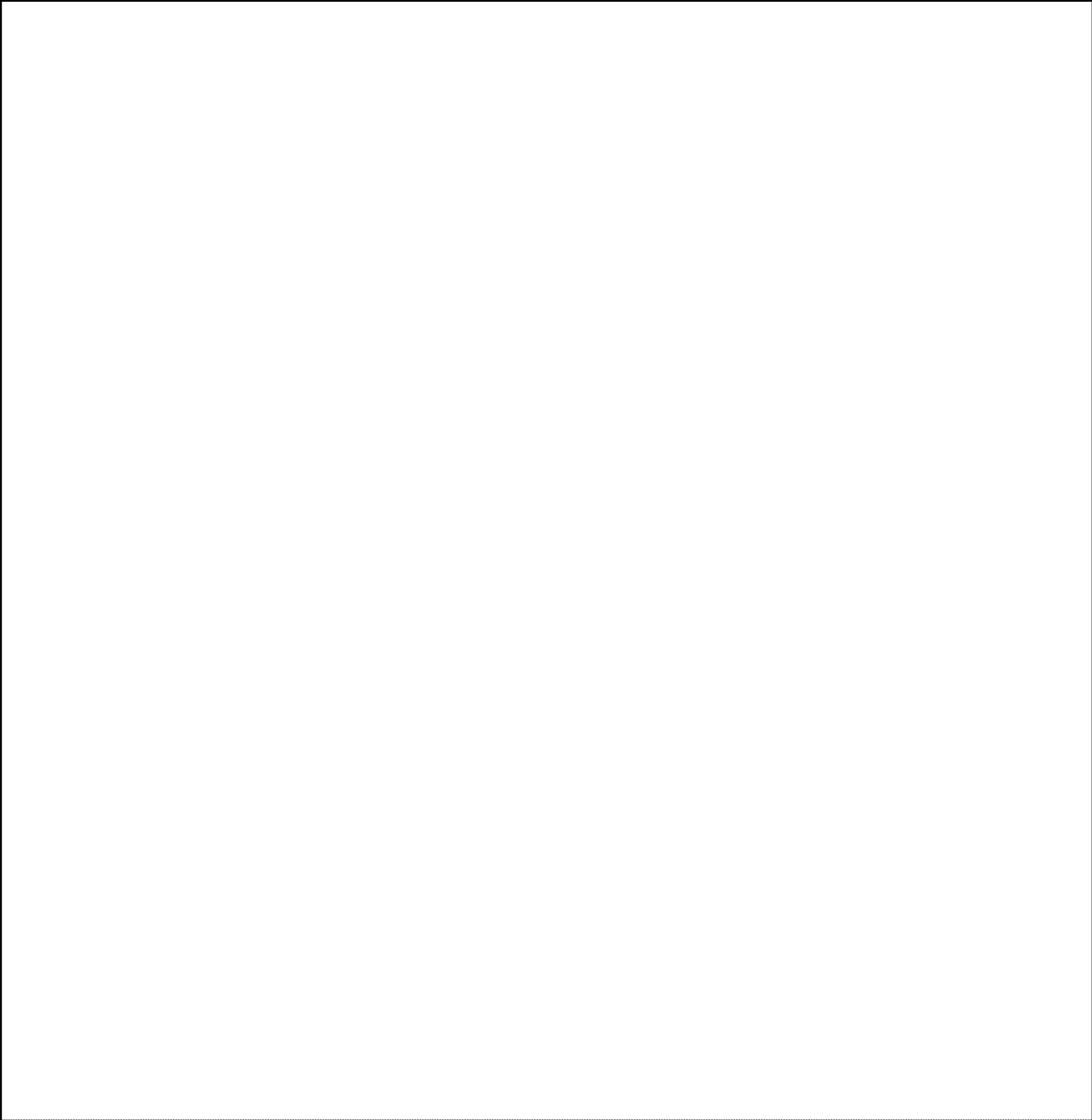
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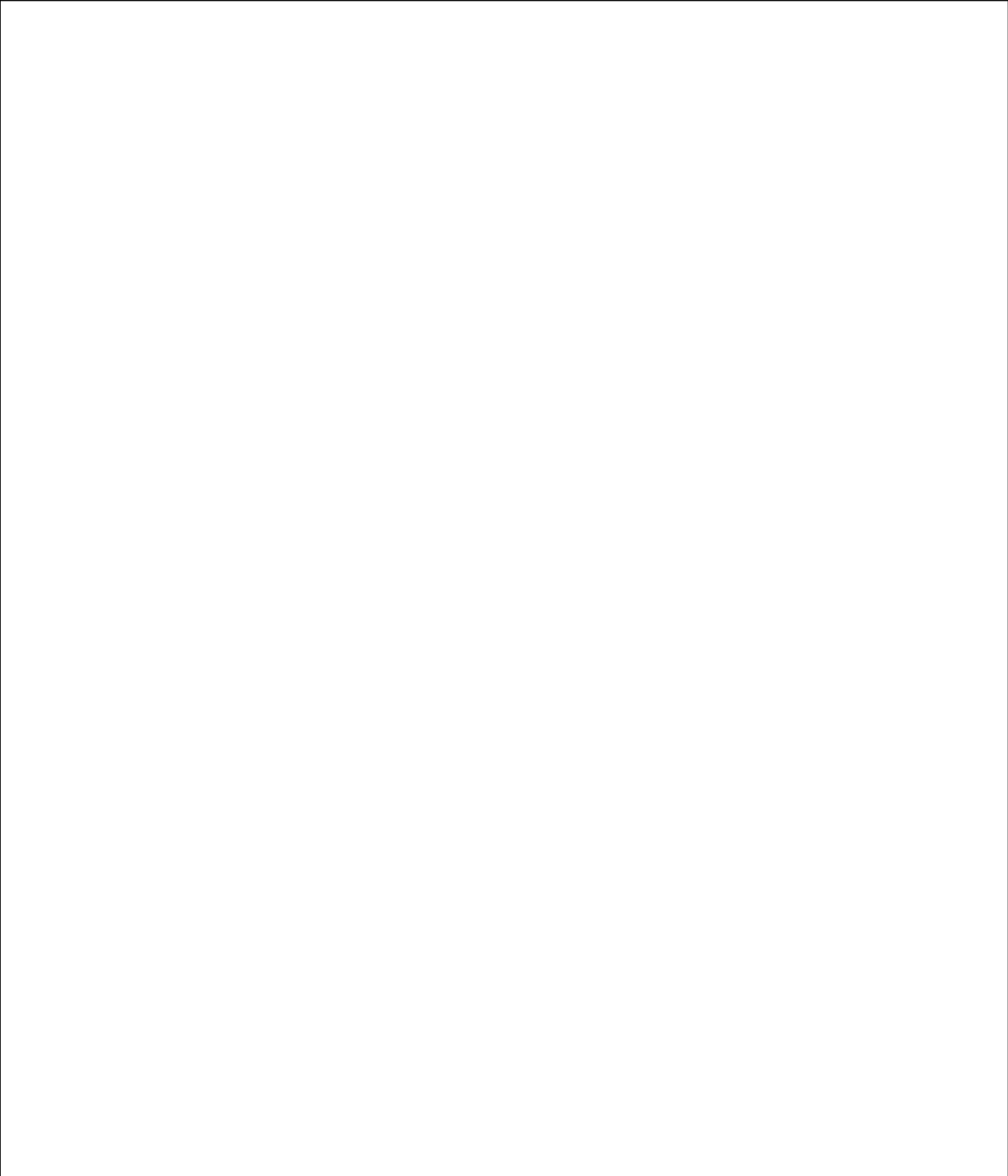




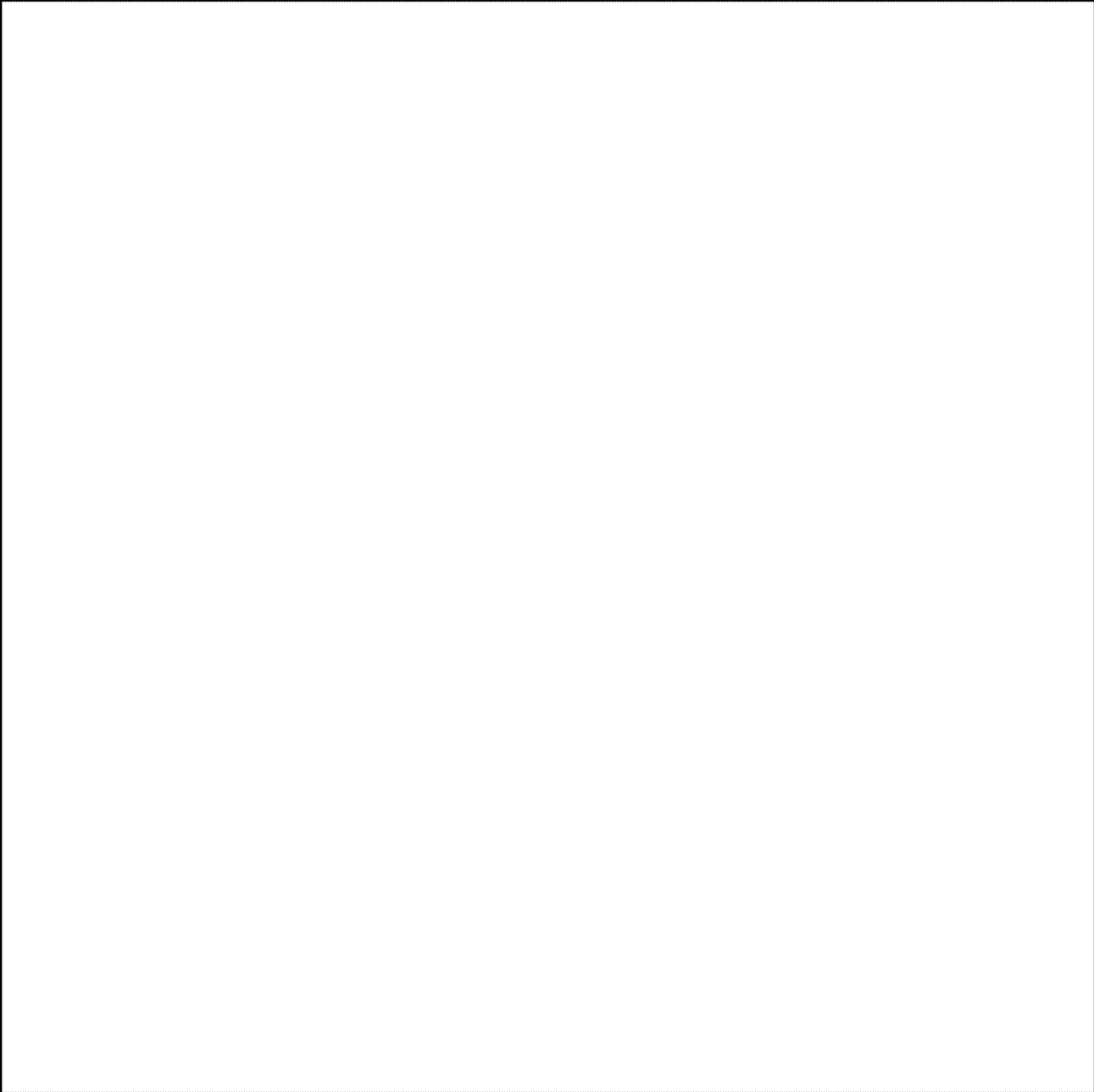
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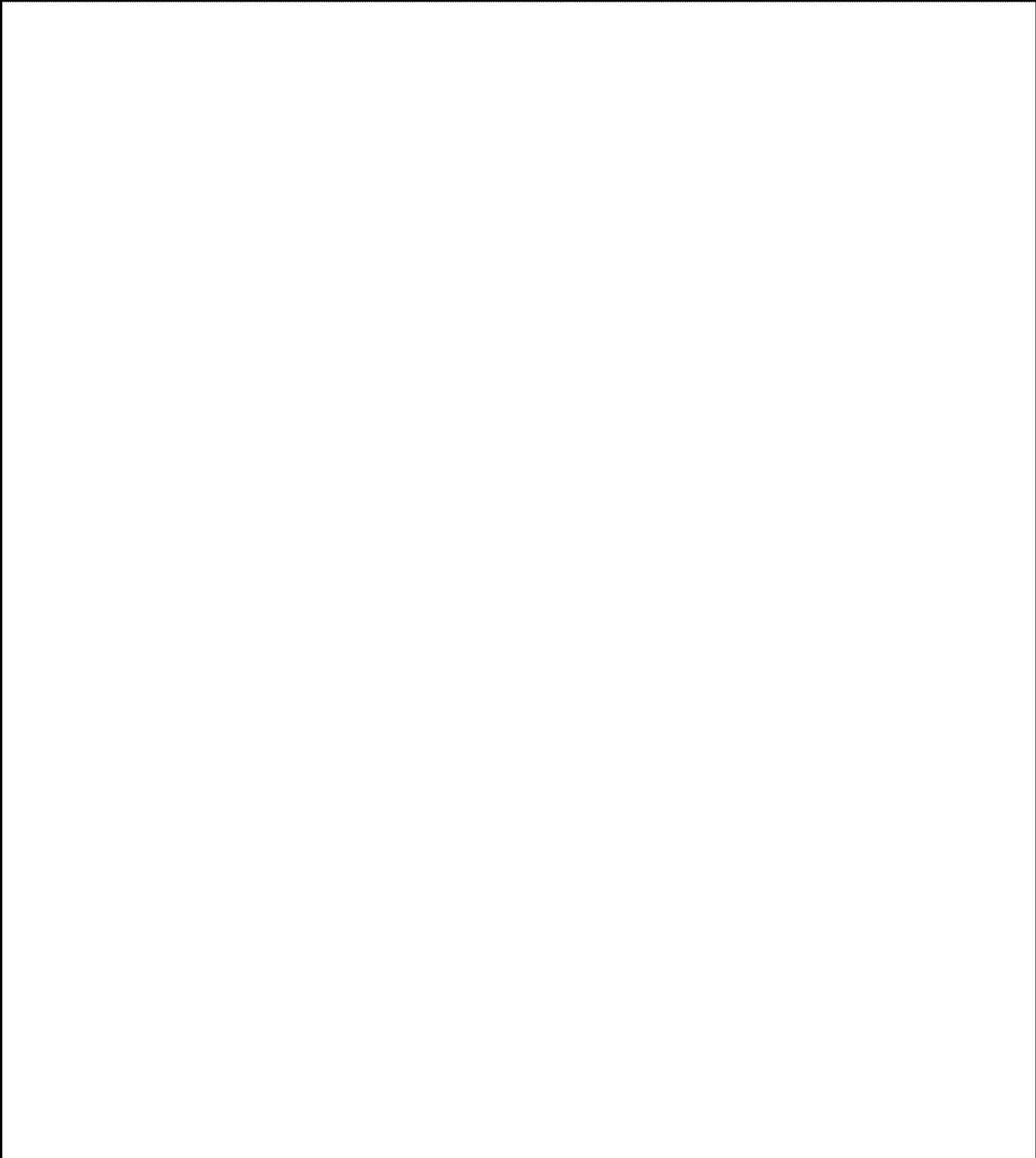
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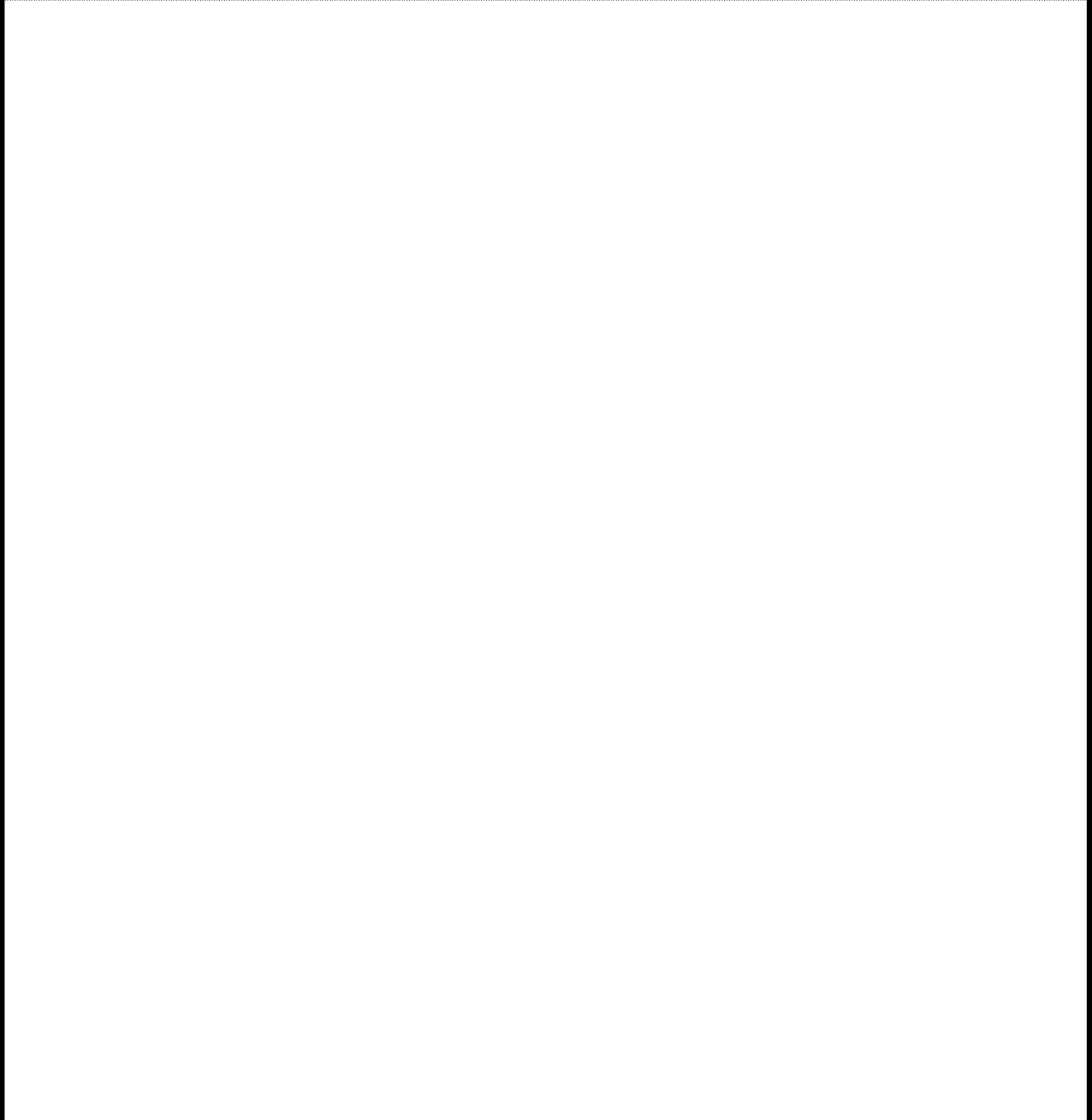
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# Conclusion



# About this Presentation

- Author(s): Ethan Nasr, Associate Counsel, OCC/RALD
- Date of last revision: October 04, 2013
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# U.S. Citizenship and Immigration Services























# U.S. Citizenship and Immigration Services

## *BASIC*

### REFUGEE AND ASYLUM OVERVIEW

### INSTRUCTOR GUIDE

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July 2010

**SYLLABUS**

**COURSE TITLE:** Refugee and Asylum Overview

**COURSE NUMBER:** 210/211

**COURSE DATE:** July 2010

**LENGTH AND METHOD OF PRESENTATION:**

Lecture	Lab	P.E.	Total	Program
2:00	0:00	0:00	2:00	BASIC

**DESCRIPTION:**

This lesson provides an overview of the laws, regulations, and eligibility requirements pertaining to the overseas refugee program and the affirmative asylum adjudication process. The lesson explains the procedures for processing asylum and refugee applications and discusses the jurisdictional distinctions between these two programs. The lesson provides an overview of ancillary benefits available in conjunction with asylum and refugee processing.

**TERMINAL PERFORMANCE OBJECTIVE (TPO):**

Given field situations involving persons requesting information regarding benefits related to asylum or refugee status, the officer will provide information to such persons, referring them for processing according to regulations, policy and operational instructions.

**ENABLING PERFORMANCE OBJECTIVE (EPOs):**

EPO #1: Identify applicable sections of the Immigration and Nationality Act (INA) and Title 8 Code of Federal Regulations (8 C.F.R.) that relate to refugees and asylum.

EPO #2: Identify the eligibility requirements for asylum and refugee applications.

EPO #3: Identify the differences between the "asylee" and "refugee" classifications.

EPO #4: Identify ancillary benefits available to aliens classified as an asylee or refugee.

**STUDENT SPECIAL REQUIREMENTS:** None.

**METHOD OF EVALUATION:** Written examination/Multiple choice - open book

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## OUTLINE OF INSTRUCTION

### I. INTRODUCTION

The purpose of this lesson is to provide an overview of the laws, regulations and eligibility requirements pertaining to asylum and refugee status. This lesson also explains the procedures for processing asylum and refugee applications and discusses the jurisdictional distinctions between these two programs. Ancillary benefits associated with refugee aliens are also discussed.

The overarching mission of both the Asylum Division and the Refugee Affairs Division is to provide protection to refugees, while combating fraud and protecting national security. To achieve that goal, the divisions enhance program integrity by ensuring legally sound and timely decisions, and preventing fraud and abuse of the system.

### II. PRESENTATION

#### A. EPO #1: Identify applicable sections of the Immigration and Nationality Act (INA) and Title 8 Code of Federal Regulations (8 C.F.R.) that relate to refugees and asylum.

##### 1. Statistics

According to the Office of the United Nations High Commissioner for Refugees (UNHCR) there are approximately 11.4 million refugees worldwide under the care of UNHCR.

##### 2. The definition of "Refugee"

To be eligible for refugee or asylum status, an individual must meet the statutory definition of "refugee," found in § 101(a)(42) of the INA.

##### 3. INA § 101(a)(42) states the following:

"The term 'refugee' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, 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, or

"(B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has



a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

“The term ‘refugee’ does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

“For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.”

4. The definition of persecution.

a. A person may be a refugee based on past persecution or a well-founded fear of future persecution. To show well-founded fear, the applicant must establish a reasonable possibility of persecution.

b. Persecution is not defined by treaty, statute, or regulation.

1) There is no universally accepted definition of persecution, only guidelines from various sources, including the UNHCR Handbook, precedent decisions, and international human rights law.

c. The persecution must be on account of one of the five protected grounds:

1) Race,

2) Religion,

3) Nationality,

4) Membership in a particular social group, or

5) Political opinion

**B. EPO #2: Identify the eligibility requirements for asylum and refugee applicants.**

1. Refugee Processing – INA § 207

a. Overview

- 1) INA § 207 gives the Attorney General (now the Secretary of Homeland Security) the statutory authority to admit, in his or her discretion, any refugee who is not firmly resettled in a third country, who is determined by the President to be of special humanitarian concern, and who is admissible as an immigrant.
  - a) This authority has been delegated to USCIS.
- 2) There is an annual admissions ceiling, determined by the President after consultations with Congress, on the number of persons who may be admitted to the U.S. as refugees during a fiscal year.
- 3) The consultation process also determines who may be eligible for consideration under the U.S. Refugee Admissions Program (USRAP) by designating nationalities of special humanitarian concern and by establishing processing priorities. Admissions under INA § 207(a) shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.
- 4) Special legislation alters the refugee adjudication process in certain areas. The Lautenberg Amendment reduced the evidentiary standard for certain categories of individuals processed overseas.
  - a) The Lautenberg Amendment mandated that the Attorney General identify categories of Vietnamese, Laotian, Cambodian, and former Soviet (specifically Jews, Evangelical Christians, Ukrainian Catholics and Orthodox) individuals, who are likely targets of persecution.

#### Application and Interview Process

After proper referral to the USRAP, refugee applicants are pre-screened by Overseas Processing Entities (OPEs), who assist the applicant in preparing a Form I-590 (Registration for Classification as Refugee). Every case member requires a Form I-590. 8 CFR 207.2(a)

Each applicant shall submit to a medical examination as required by sections 221(d) and 234 of the Act. 8 CFR 207.2(c)

Each applicant must be sponsored by a responsible person or organization. 8 CFR 207.2(d)

- b) Applicants 14 years of age and older must also submit a Form G-325C (Biographical Information), are required to provide answers under oath to

the Form G-646 (Sworn Statement of Refugee Applying for Entry into the United States), and must also be fingerprinted. 8 CFR 207.2(a)

2 Overseas Processing Entities (OPEs) usually assist in prescreening applicants, preparing forms, and presenting cases to USCIS for adjudication.

- c) These OPEs are under contract to the Department of State (DOS).
- d) The role of the OPE varies in locations where the U.S. operates in-country programs.

#### Confidentiality

- e) As a matter of policy, the regulations under 8 C.F.R. 208.6 prohibiting disclosure of information pertaining to an alien's application for asylum, credible fear determination, or reasonable fear determination are likewise applied to an alien's application or status as a refugee. This provision contains certain enumerated exceptions.
- 5) The applicant is interviewed by a USCIS officer, in a non-adversarial setting, under oath. The burden of proof for establishing a claim to refugee status rests with the applicant.
- 6) Applicants found eligible for refugee status must be medically cleared and must receive a sponsorship assurance prior to traveling to the United States. A sponsorship assurance ensures that a refugee will receive resettlement assistance during the first 30 days after his or her arrival.
- 7) The spouse and unmarried minor children of a refugee shall be entitled to the same status if accompanying or following to join the refugee, provided they are admissible to the United States as immigrants under INA §212, and are not otherwise ineligible under INA §101(a)(42), as persecutors. There is no requirement that they establish an independent refugee claim.

#### b. Access to the U.S. Refugee Admission Program

- 1) Access to the U.S. Refugee Admission program (the ability to be interviewed and considered for admission as a refugee) is determined through the processing priorities.
- 2) Unless it is in the public interest, regulations prohibit refugee processing for individuals who qualify as immediate relatives of a U.S. Citizen or as a special immigrant.

#### c. Ineligibility for Approval



1) Firm resettlement in a Third Country

- a) Aliens who are firmly resettled in a third country may not be granted refugee status under INA §207.
- b) A refugee is considered to be 'firmly resettled if he or she has been "offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his/her flight from persecution."

2) Inadmissibility grounds

- a) Refugees must be admissible as immigrants, or granted a waiver of inadmissibility, to be granted refugee status under INA §207.
- b) However, not all inadmissibility grounds found in INA § 212(a) apply to refugees. The following grounds do not apply to refugees:
  - 1. INA § 212(a)(4) [public charge];
  - 2. INA § 212(a)(5) [labor certification]; and
  - 3. INA § 212(a)(7)(A) [documentary requirements].
- c) Refugees may file for a waiver of an inadmissibility ground on Form I-602. Waivers may be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The Attorney General may waive all other exclusion grounds except for:
  - 1. INA § 212(a)(2)(C) [drug trafficking];
  - 2. INA § 212(a)(3)(A) [national security];
  - 3. INA § 212(a)(3)(B) [terrorist activity];
  - 4. INA § 212(a)(3)(C) [adverse foreign policy consequences]; and
  - 5. INA § 212(a)(3)(E) [participants in Nazi persecution or genocide].

d. Refugee Admission to the U.S.

- 1) Refugees typically enter the United States within 4 months from the approval date of Form I-590.

- 2) At the port of entry, the refugee's I-94 is endorsed with the following:  
"Admitted as a Refugee pursuant to § 207 of the Act for an indefinite period of time. If you depart the U.S. you will need prior permission to return. Employment authorized."
- 3) From the port of entry, the refugee's travel packet is forwarded to the Files Control Office (FCO) with jurisdiction over the refugee's place of residence.
- 4) A refugee (or asylee) who wishes to temporarily travel abroad must be in possession of a valid Refugee Travel Document (Form I-571) to return to the U.S.

Applicants need to complete Form I-131 (Application for Travel Document) for this purpose.

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e. Termination of Refugee Status

- 1) Refugee may be terminated by the Attorney General if it is determined that the alien was not in fact a refugee within the meaning of the INA § 101(a)(42) at the time of the alien's admission. See 8 C.F.R. 207.9.
- 2) The district director under whose jurisdiction the alien is found shall have the authority to terminate refugee status of such an alien.
- 3) If a final determination to terminate refugee status is made, the alien may not appeal the decision and the district director shall place the alien in removal proceedings.

2. Asylum Processing – INA § 208

a. Overview

- 1) Statutory Authority. Under the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) has the authority to grant asylum to aliens who meet the definition of a refugee.

a) A refugee is:

*...any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of 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... [forced abortion, involuntary sterilization, or persecution for*

*resistance to coercive population control programs constitute persecution on account of political opinion].*

- b) An alien who meets the definition of a refugee may not be granted asylum if he or she:
  - 1. Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
  - 2. has been convicted of a particularly serious crime;
  - 3. has committed a serious nonpolitical crime outside the United States;
  - 4. poses a danger to the security of the United States;
  - 5. is described in particular inadmissibility or removability grounds relating to terrorism; or
  - 6. was firmly resettled in another country prior to arriving in the United States.

## 2) Regulatory Framework

- a) Asylum is a discretionary benefit. DHS is **not** required to grant an alien, even if the alien meets the definition of a refugee and is otherwise eligible for asylum.
- b) The Attorney General (AG) may grant asylum in the exercise of discretion to an applicant who meets the definition of "refugee" in §101(a)(42). This authority has been delegated to the DHS for purposes of the affirmative asylum program.
- c) The administrative regulations that establish the procedure for an alien present in the U.S. or at a land border or port of entry to apply for asylum are found at Title 8 of the Code of Federal Regulations (8 C.F.R.) § 208. These regulations govern not only basic asylum procedures, but also substantive eligibility issues such as burden of proof, standard of proof, and mandatory grounds for denial.
- d) The regulations delineate how DHS will exercise its discretion to grant asylum to refugees. For example, an asylum applicant who meets the definition of a refugee based on past persecution, but no longer has a well-founded fear of persecution or can avoid persecution by relocating internally in the country of nationality will generally not be granted asylum, unless the applicant demonstrates compelling reasons for being

unwilling or unable to return to the country arising out of the severity of the past persecution; or the applicant establishes that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country

- e) Unlike refugee adjudications, there is no yearly limit on the number of persons who can be granted asylum status.

b. Application and Interview Process

1) Jurisdiction

- a) Regulations provide that an asylum seeker may apply for asylum any time while physically present in the United States or at a port of entry, regardless of the individual's immigration status. However, asylum applications must be filed within one year after the alien's arrival into the United States, unless the applicant can demonstrate "changed circumstances" that materially affect eligibility for asylum or "extraordinary circumstances" that are directly related to the failure to timely file for asylum within one year.
- b) Affirmative applications for asylum are filed with the appropriate USCIS Service Center by mail. Asylum Officers either grant affirmatively filed applications or refer them to the Office of the Immigration Judge, Executive Office of Immigration Review (EOIR).
- c) Defensive applications. An alien may file an application for asylum in defensive proceedings before an Immigration Judge after institution of removal, deportation or exclusion proceedings.

2) Jurisdiction of Asylum Offices

- a) The jurisdiction of an asylum office to adjudicate a particular asylum application is determined by the place of residence of the asylum applicant.
- b) Most applicants within an asylum office's jurisdiction are interviewed at the asylum office's home office.
- c) However, those applicants who live far from the home office are scheduled to be interviewed at a USCIS field office closer to the applicant's residence. These locations are called "circuit ride" locations.

3) Who May Be Included in the Asylum Application

- a) Principal applicant.



1. Any alien physically present in the United States or who arrives in the United States, irrespective of immigration status may apply for asylum.
2. The principal applicant is the individual within the case who is claiming to be a refugee eligible for asylum.

b) Dependents

1. The applicant's spouse and children who are physically present in the United States may be included in the request for asylum.
2. To be included, a child must be under 21 years of age and unmarried at the time of filing and at all times prior to final adjudication of the claim.
3. The spouse and children of an alien granted asylum may be granted the same status, even if the spouse and children do not appear to meet the eligibility requirements on their own.
4. However, a spouse or child cannot be granted asylum if he or she is subject to one of the mandatory bars listed above, with the exception of firm resettlement.

c) Even the fact that an applicant has applied for asylum is confidential.

4) What to File and Where

- a) Completed Form I-589 (Application for Asylum and for Withholding of Deportation), with any additional supporting material and evidence of relationship to any dependents included in the application, in triplicate (original plus two copies).
  1. Documents that are not in English must be accompanied by a certified translation into English.
  2. Form G-28, Notice of Entry of Appearance as Attorney or Representative for Principal Applicant and each dependent, if the Applicant is represented by an attorney or representative.
- b) The Form I-589 must be filed, in most cases, by mail with the appropriate USCIS Service Center. Certain applications, however, may be filed with the Asylum Office, the Immigration Judge, the Board of Immigration Appeals, or the District Director.

1. The Service Center is responsible for receiving and receipting the Form I-589; creating new Alien-file (A-file) and/or matching with existing A-files where they exist; entering the biographical information from the Form I-589 into the Refugee Asylum and Parole System (RAPS) and; forwarding the A-file to the appropriate asylum office within 21-days of receipt of the complete Form I-589.
- c) The Service Center schedules all applicants for biometrics (signature and photograph) collection at a USCIS Application Support Center (ASC).
  - d) Asylum Offices schedule interview. Most interviews are scheduled automatically by RAPS according to established priorities. Interviews can be manually scheduled at the discretion of the Asylum Office Director.
    1. After an interview is scheduled in RAPS, the system automatically generates an interview notice, which will be mailed to the applicant (and the representative of record, if applicable), no less than 18 days before the scheduled interview date.
    2. The majority of cases are interviewed within 43 days after the filing date. Applicants interviewed at a circuit ride location are generally interviewed more than 43-days after filing.
- c. Restrictions on Filing
- 1) Only an asylum officer, immigration judge, or the Board of Immigration Appeals (BIA) can make a determination on whether a restriction to filing applies.
  - 2) One-year filing deadline
    - a) Asylum applications must be filed within one year after the alien's arrival in the U.S., unless the applicant can demonstrate "changed circumstances" that materially affect eligibility for asylum or "extraordinary circumstances" for failing to apply for asylum within one year.
    - b) The one-year deadline is calculated from the date of the alien's last arrival in the U.S. or April 1, 1997, whichever is later.
  - 3) Prior denial of an asylum application makes an alien ineligible to apply for asylum, unless the applicant demonstrates "changed circumstances" that materially affect eligibility for asylum.
    - a) The denial must have been made by an immigration judge or the BIA. Therefore, an applicant who received a final denial from an asylum office

is not precluded from filing a subsequent asylum application, even if there have been no changed circumstances.

4) Safe Third Country

- a) An asylum applicant who may be returned to a “safe third country,” other than the country of nationality (or last habitual residence, if the applicant is stateless) is ineligible to apply for asylum.
- b) A “safe” country is one that has entered into a bilateral or multilateral agreement with the United States so that an applicant will not be returned to a country where his or her life or freedom would be threatened on account of one of the five grounds and where the applicant will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection. At this time there is only one bilateral agreement in effect, between the US and Canada. That agreement is limited in scope and generally will not cover affirmative asylum applications from individuals who have transited through Canada.

d. Adjudication Process

- 1) Asylum Officers are responsible for adjudicating (affirmatively filed) Form I-589 applications after conducting a non-adversarial interview and researching any relevant legal issues and country conditions information necessary to properly evaluate eligibility for asylum.
- 2) Grant of Asylum – If the applicant establishes eligibility for asylum, the Asylum officer prepares a written assessment (decision) and either:
  - a) A recommended approval letter when the results of identity and security checks for the principal applicant and all dependents are incomplete, or when the asylum office has only a working file or temporary file (not the A-file). (An applicant who is recommended for approval is eligible for employment authorization.); or
  - b) Final approval letter and Form I-94 (Arrival Record/Departure Record) when the results of all identity or security checks for the principal applicant and all dependents are current and complete. After final approval, the asylee may petition for his or her spouse and children not already included in the asylum application to join him or her by filing Form I-730 (Refugee/Asylee Relative Petition).

3) Referrals

- a) If the decision is not to grant asylum and the applicant is not in lawful status, the officer prepares:

1. an assessment to refer;
  2. a referral notice; and
  3. charging documents (Form I-862 - Notice to Appear).
- b) If an asylum applicant is referred to an Immigration Judge, the applicant shall have an opportunity to present his or her claim anew (de novo), as well as request other forms of relief.
- 4) Denials – Notice of Intent to Deny (NOID)
- a) If the decision is not to grant asylum and the applicant is maintaining valid immigrant, nonimmigrant or Temporary Protected Status (“in-status”), then the asylum officer prepares a NOID, which the applicant will have an opportunity to rebut in writing.
  - b) The applicant may not appeal the Asylum Officer’s final decision.
- 5) In most cases, the applicant returns to the Asylum Office to pick up the final decision to grant or the referral.
- a) In more than 75% of the cases, a decision is served on the applicant within 60-days after filing.
  - b) If the determination is to refer, the applicant is also served with documents initiating removal proceedings.
- e. Termination of Asylum Status
- 1) Asylum does not convey a right to remain permanently in the United States and may be terminated under certain circumstances.
  - 2) Any grant of asylum can be terminated if there is a showing of fraud in the alien’s application such that he or she was not eligible for asylum at the time it was granted.
  - 3) For an application filed on or after April 1, 1997, asylum may be terminated if the alien:
    - a) no longer meets the definition of a refugee due to a fundamental change in circumstances;
    - b) meets the conditions of one of the mandatory bars for asylum under INA § 208(b)(2);

- c) may be removed pursuant to a safe third country agreement; or
  - d) has acquired a new nationality and enjoys the protection of that country.
- 4) For an application filed before April 1, 1997, asylum may be terminated if the alien:
- a) no longer has a well-founded fear of persecution due to a change of country conditions in the alien's country of nationality or last habitual residence; or
  - b) has committed any act that would have been grounds for a mandatory denial of asylum under 8 C.F.R. § 208.13(c)(2).

f. Confidentiality

Federal regulations at 8 C.F.R § 208.6 generally prohibit disclosure of information about an asylum applicant or application, to a third party with the exception of other U.S. government officials or contractors in certain situations.

- 1.) No disclosure without written consent
- 2) Even the fact that an individual applied is confidential

**C. EPO #3: Identify the differences between the “asylee” and “refugee” classifications.**

1. The UNHCR was established in 1951. The major international instruments which form the basis of international refugee protection are:
  - a. the 1951 UN Convention relating to the Status of Refugees;
  - b. the 1967 UN Protocol relating to the Status of Refugees.
2. The Refugee Act of 1980 defined the term “refugee” in U.S. law and established politically and geographically neutral adjudication standards for refugees and asylees.
3. Congress created two programs:
  - a. U.S. Refugee Admission (USRAP) for refugees outside the U.S.
  - b. the Asylum Program for refugees inside the
4. U.S. INA § 101(a)(42) defines the term refugee under U.S. law as any person unable or unwilling to return to his or her country of nationality or last habitual residence...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. Forced abortion or sterilization, or persecution for refusal to submit to such, or for other resistance to a

coercive population control program is persecution on account of political opinion (nexus).

5. Two Programs

- a. INA § 207 governs the application process of refugees outside the U.S. Refugee applications are filed on Form I-590. To apply, an individual must fall within a processing priority and cannot be someone who qualifies as the immediate relative of a U.S. citizen or qualifies as a special immigrant, unless it is in the public interest to process him or her as a refugee. To be eligible, an individual must establish that he or she is of special humanitarian concern to the U.S., meet the definition of "refugee", must be admissible to the U.S., and must not be firmly resettled.
  - b. INA § 208 governs the application process of refugees inside the U.S. Asylum applications are filed on Form I-589 with the USCIS Service Center by mail. Any alien who is in the U.S. or who arrives in the U.S. may apply for asylum despite his or her immigration status. There are certain restrictions on filing an asylum application. Asylum may be granted in the exercise of discretion to any such alien who meets the definition of "refugee", except where a statutory ground for mandatory denial applies. Asylum Officers adjudicate affirmative applications for asylum. Immigration Judges adjudicate defensive asylum applications.
6. Though both the asylum process and U.S. Refugee Admissions Program provide protection to aliens who meet the definition of a refugee, there are significant differences in the location and identification for each, the number of individuals authorized to receive such protection each year, and the requirements for permanent resident status.

**D. EPO #4: Identify ancillary benefits available to aliens classified as an asylee or refugee**

1. Accompanying / Following to Join Derivatives

Aliens granted asylum or refugee status may petition for accompanying or follow-to-join derivative spouse and/or unmarried children under 21

- a. Form I-730, Refugee/Asylee Relative Petition is filed with Nebraska Service Center or Texas Service Center, depending on the petitioner's residence
- b. No filing fee
- c. Must be filed by principal alien within appropriate time limit
  - 1) Within two years of being admitted as a refugee or granted asylum

- 1) Aliens will mistakenly apply for employment authorization under 8 C.F.R. 274a.12(c)(9) because they have filed Form I-485, Application to Register Permanent Residence or Adjust Status.
- 2) "C9" category is only for those with a pending I-485 filed pursuant to 8 C.F.R. 245

b. Employment authorization for refugees

- 1) Refugees are authorized to hold employment incident to their status as a refugee.
- 2) Upon arrival at a designated POE, the alien's Form I-94, Arrival/Departure Record is stamped "Employment Authorized" and serves as immediate proof of the alien's eligibility to work.
- 3) Refugees may apply for an Employment Authorization Document (EAD) as evidence of employment by submitting Form I-765, Application for Employment Authorization pursuant to 8 C.F.R. § 274a.12 (a)(3)
  - a. There is no filing fee required for the initial EAD.
  - b. Applications for this category are processed by the Nebraska Service Center

c. Employment authorization for asylees

- 1) Asylees are authorized to hold employment incident to their status as an asylee.
- 2) EAD issuance differs depending on the granting authority for the asylum application
  - a. An Asylum Office will generate an EAD through an automated process upon approval of asylum.
  - b. Asylees granted asylum by an Immigration Judge are provided instructions how to appear before USCIS.
- 3) Asylees may apply for an Employment Authorization Document (EAD) as evidence of employment by submitting Form I-765, Application for Employment Authorization pursuant to 8 C.F.R. § 274a.12 (a)(5)
  - a. There is no filing fee required for the initial EAD.

- b. Applications for this category are processed by the Nebraska Service Center
- d. Employment authorization for aliens with a pending Form I-589, Application for Asylum and Withholding of Removal
  - 1) Aliens awaiting a final decision on their request for asylum in the United States are eligible to receive employment authorization once /their Form I-589 has been pending at least 180 days.
  - 2) Aliens may submit a Form I-765 for consideration once 150 have lapsed since filing Form I-589
  - 3) Since the alien's status as an asylee has not yet been decided, employment authorization is not automatic and an alien must apply for authorization by submitting Form I-765, Application for Employment Authorization pursuant to 8 C.F.R. § 274a.12 (c)(8)
    - a. There is no filing fee required for the initial Employment Authorization Document (EAD).
    - b. Applications for this category are processed by the Service Center having jurisdiction over the applicant's residence.

### 3. Refugee Travel Document

- a. Unless they have a valid, unexpired Advance Parole document, aliens in a valid refugee or asylee status wishing to travel abroad must apply for and receive a Refugee Travel Document under 8 C.F.R. § 223 in order to return to the United States. An alien shall be accorded the immigration status endorsed in his or her refugee travel document unless he or she is no longer eligible for that status, or he or she applies for and is found eligible for some other immigration status.
- b. Lawful Permanent Residents (LPRs) who gained their permanent residence status as a result of first being an asylee or refugee may also apply for a Refugee Travel Document.
- c. Approval of an application is solely at the discretion of USCIS. Refugee Travel Documents are valid for only one year and may not be extended.
- d. Must submit Form I-131, Application for Travel Document to the Nebraska Service Center, accompanied by supporting evidence to establish the alien is in a valid refugee or asylee status.



- 1) The application **must** be filed prior to departing the United States. Departure from **the** U.S. before a decision is made on an application for a reentry **permit** or refugee travel document shall not **affect** the application.
  - 2) Procedures set **forth** in 8 C.F.R. § 223.2(b)(2)(ii) allow an individual to apply for a **discretionary** grant of a refugee travel document outside the United States or at a Port of Entry if the individual did not **know** about the requirement or **had** to depart due to urgent humanitarian need.
- e. Special Consideration: **Return** to a country of feared persecution **may** affect the alien's entitlement to **protection** under U.S. and international **law**; however, such actions **do not** result in automatic revocation of **asylum** or refugee status.
- 1) Alien may be **found** to have returned to the protection of **his** or her country of **nationality**.
  - 2) Travel patterns **could** suggest a fundamental change in **circumstances** in the country the **alien** fled.

#### 4. Registering permanent residence **by** refugees

- a. Every alien in the U.S. **who** is classified as a refugee under 8 CFR 207 must submit an application for **permanent** residence 1 year after entry to determine admissibility under **Section** 212 of the Act. (8 C.F.R. § 209.1)
- b. There is no filing fee for **refugees** to file Form I-485.
- c. Form I-485, Application **to** Register Permanent Residence or **Adjust** Status is submitted to the **Nebraska** Service Center, along with the following required initial evidence.
  - 1) Proof of physical **presence** in the United States for one **year** after refugee admission
  - 2) Birth certificate **or** acceptable secondary evidence
  - 3) Fingerprint fee (**ages** 14 and older)
  - 4) A Form I-693, **Report** of Medical Examination and **Vaccination** Record may be **required** if there were previous medical **grounds** of inadmissibility **noted** at the time of arrival in the United **States** or if refugee status **was** gained by an approved I-730, Refugee/**Asylee** Relative Petition.

5) The Vaccination Supplement to Form I-693 is required of all applicants.

5. Adjustment of status to permanent resident by asylees

- a. Asylees may file for adjustment of status one year after asylum in the United States was approved. (8 C.F.R. § 209.2(a))
- b. All applicable filing fees must be submitted with the application
- c. Form I-485, Application to Register Permanent Residence or Adjust Status is submitted to the Nebraska Service Center or Texas Service Center, depending on the applicant's residence, along with required initial evidence.
  - 1) Proof of physical presence in the United States for one year after grant of asylum
  - 2) Birth certificate or acceptable secondary evidence
  - 3) Fingerprint fee (ages 14 and older)
  - 4) A Form I-693, Report of Medical Examination and Vaccination Record Supplemental are required to determine whether any grounds of inadmissibility under section 212 of the Act apply.

6. Interview Requirement for adjustment of status by refugees or asylees

The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status.

8 C.F.R. 209.1(d); 209.2(e)

**III. REFERENCES**

- A. INA §§ 207 – 209, § 245, §274A
- B. 8 C.F.R. Parts 207 – 209, Part 223, Part 245, Part 274a.12

**IV. APPLICATION**

- A. Practical Exercise

**V. TRAINING AID PACKET**

- A. Refugee Flowchart
- B. Practical Exercise Key

**BASIC 210/211 REFUGEE AND ASYLUM  
PRACTICAL EXERCISE KEY**

Note : There are two practical exercises for this module. One attached to the PG and one can be found in the TAP. Instructor should become familiar with both and determine which would be most beneficial to the class.

Divide the class into four groups, and inform each group that they will be the “subject matter experts” in the following areas:

1. Asylum Eligibility
2. Refugee Eligibility
3. Refugee/Asylee Adjustment of Status
4. Refugee/Asylee Ancillary Benefits (travel docs, I-730s, I-765s)

Allow ten to fifteen minutes for the groups to study the materials. Write “Group 1”, “Group 2,” etc. on the board, and explain that each group of subject matter experts starts out with ten points. Each team will be asked the same number of questions. An incorrect or incomplete answer will result in one point being deducted from that group’s total. The goal is to end with the most points.

Ask the following questions:

1. (Group 1) Amadou, a native and citizen of Ghana, testifies in his asylum interview that he came into the U.S. without inspection from Canada and applied for asylum three months later. He testifies credibly that he was jailed and beaten repeatedly by the military in Ghana because of his support for a political party that opposes the current President of Ghana.

Is Amadou eligible for a grant of asylum? Why or why not?

**Answer:** Amadou may be eligible for asylum. U.S. has a “safe third country” bilateral agreement with Canada that applies in certain limited situations that arise in the context of expedited removal actions. Since Amadou entered the U.S. without inspection it does not appear based on the fact pattern above that he would be covered by the safe third country agreement with Canada.

2. (Group 2) Amina, a Somali woman who had suffered terrible persecution in Somalia, was residing in a UNHCR refugee camp in Kenya for two years when she met and married Arturo, a young Italian man who had been assigned to the camp as an international relief worker. She moved with him to Rome where she lived and worked for several years as a permanent resident. The marriage did not work out, and following her divorce from Arturo she returned to Kenya and submitted an I-590 with all required documents requesting refugee status in the U.S.

Is Amina firmly resettled in Italy?

**Answer:** Amina may or may not be eligible for refugee status but further inquiry would be need to be made into whether Amina was firmly resettled in Italy. The Refugee Officer would need to explore whether Amina entered Rome, Italy “as a consequence of flight” as required under 8 CFR 207.1(b). The exact laws of Italy for permanent residence for spouses of Italian citizens would need to be identified to make a determination of firm resettlement. Amina’s divorce may effectively terminate the residence status.

3. (Group 3) Abubacar, a native of Sierra Leone, was admitted to the U.S. as a refugee on February 9, 1999. In violation of INA Section 209(a)(1), he did not present himself for examination for admission to the United States as an immigrant until November 25, 2008, when his I-485 packet was received at the Nebraska Service Center.

Is Abubacar ineligible for permanent residence based on his failure to comply with INA 209(a)(1)? If he is eligible, what is the effective date of his permanent residence?

**Answer:** INA 209(a)(1) states that refugees “shall, at the end of such year period [following admission as a refugee], return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant . . .” However, there are no enforcement mechanisms for this provision. If otherwise eligible, his date of permanent residence will be February 9, 1999 (the date of his admission as a refugee).

4. (Group 4) Endah, an Indonesian citizen of Chinese ethnicity, has been in the U.S. for three years maintaining F-1 student status at Harvard University, where she has a 3.9

grade point average. Two years ago, she applied for asylum and was denied by the Asylum Office because she was found not to have a well-founded fear of persecution in Indonesia. Recently, there have been anti-Chinese riots in Jakarta, her home town, and she has re-applied for asylum.

Is Endah ineligible for asylum based on her previous denial?

**Answer:** Endah's previous denial does not preclude her from applying for or being granted asylum, since the previous denial was issued by the asylum office and not by an IJ or the BIA. Also, the recent anti-Chinese riots might constitute changed circumstances affecting her eligibility.

5. (Group 1) Kalungi, a native and citizen of Uganda, applied for asylum on March 1, 2008. On April 15, 2008, he married Katarina, a Danish citizen who was in the U.S. and had overstayed her B-2 status. At his asylum interview on June 1, Kalungi added his spouse Katarina to his asylum application. Kalungi was granted asylum on June 6, 2008.

Is Katarina eligible for asylum status?

**Answer:** Yes. As long as the spousal relationship existed on the date of approval, a spouse who is physically present in the U.S. is eligible for derivative asylum regardless of citizenship.

6. (Group 2) Bratislav, a Serbian man, was residing in a refugee camp in Croatia with his wife and children, who were granted refugee status. During his refugee interview, Bratislav informs the refugee officer that he had been involuntarily inducted into the Serbian army in the early 1990s and had been a member of a Serbian army unit that was sent to Kosovo. His unit was ordered to "eliminate" a number of unarmed ethnic Albanian men who were suspected of advocating independence for Kosovo.

Should Bratislav be granted refugee status along with his family?

**Answer:** If Bratislav is the principle applicant then the entire family would be denied asylum. INA 207(c)(2)(A) excludes spouses and children from derivative refugee eligibility if the spouse or child is a persecutor. If Bratislav is a dependent on his wife's asylum application then Bratislav would be ineligible but the family may be approved.

7. (Group 3) Maria, a native and citizen of Farlandia, was granted asylum ten years ago because the Dictator for Life Gonkilya of Farlandia had begun a campaign to identify

and kill all members of Maria's ethnic group. Two years ago the Gonkilya was overthrown and a new, democratic government which respects the rights of all Farlandia citizens is now in power. Maria recently applied for adjustment of status under INA Section 209.

Is Maria eligible to adjust status?

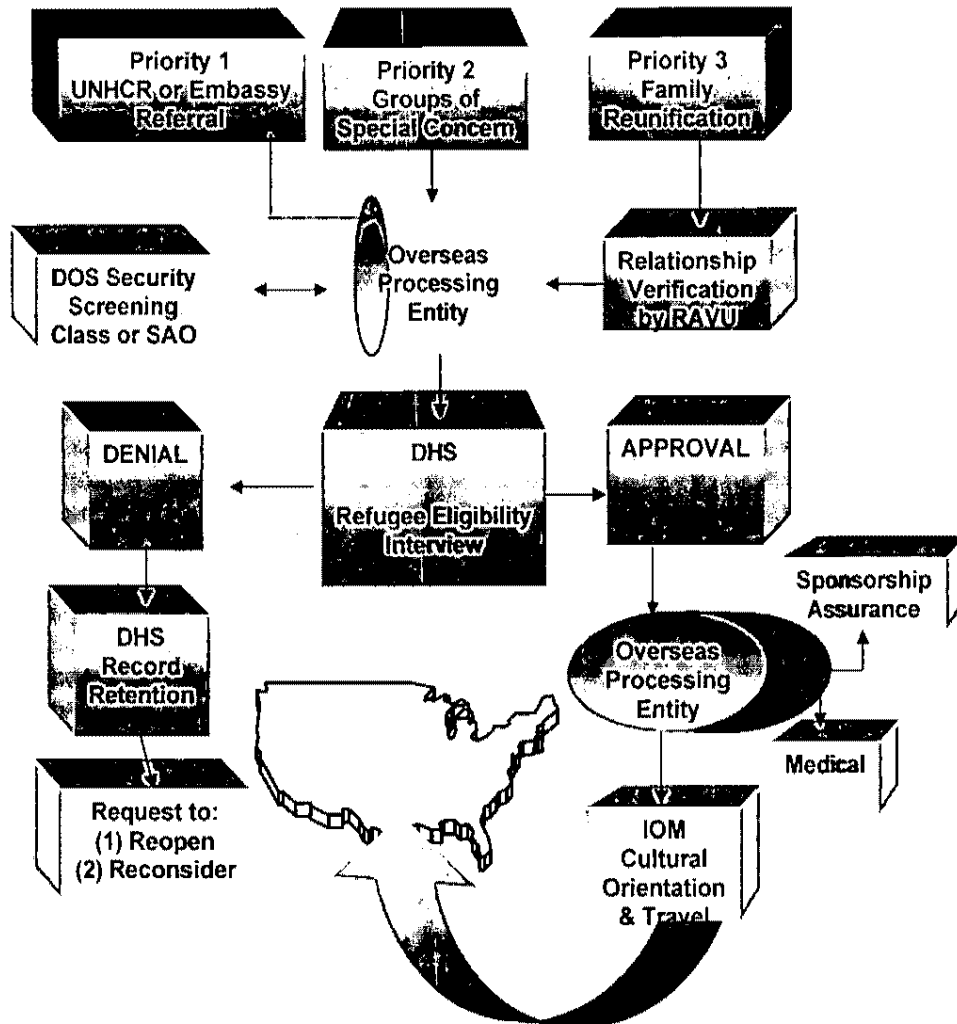
**Answer:** In this case the nexus would be nationality or particular social group. Societal attitudes towards Maria's ethnic group are pivotal to whether she is eligible for asylum or not. After only two years the laws may or may not be providing adequate protection to Maria's ethnic group. If there have been multiple elections with peaceful transfer of power in Farlandia with government made up of mixed ethnic groups, than Maria no longer has a well-founded fear of persecution in Farlandia and thus no longer satisfies the definition of "refugee" as required by INA Section 209(b)(3). If the Farlandia government is unable to control factions targeting Maria's ethnic group than her well-founded fear of persecution in Farlandia continues to be relevant.

8. (Group 4) Mya, a native of Burma, resided in a refugee camp in Thailand for several years. She had never been married, and she was finally granted refugee status on September 13, 2008. On September 26, 2008, she married Than, a young Burmese man she had met in the refugee camp. On November 3, 2008, she arrived in New York where she was admitted as a refugee. On January 18, 2009, Mya submitted an I-730 for Than with proof of the marriage.

Can the I-730 be approved?

**Answer:** Yes. Spouses and children of refugees are eligible for derivative following to join status if the relationship existed prior to the principal refugee's admission to the U.S. 8 C.F.R. 207.7(c).

A. Refugee Flowchart



# Asylum/Refugee Law - Eligibility

August 2013

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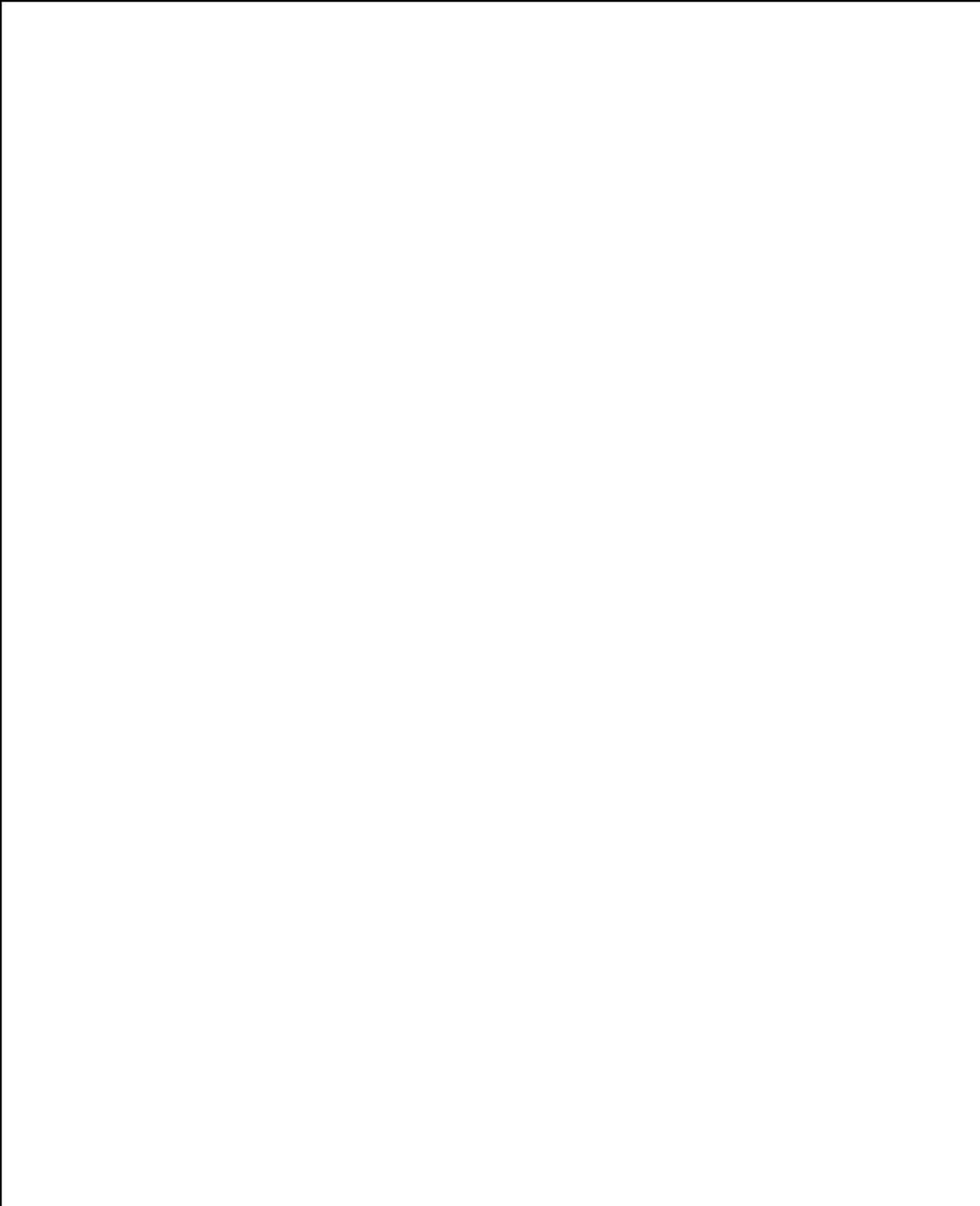
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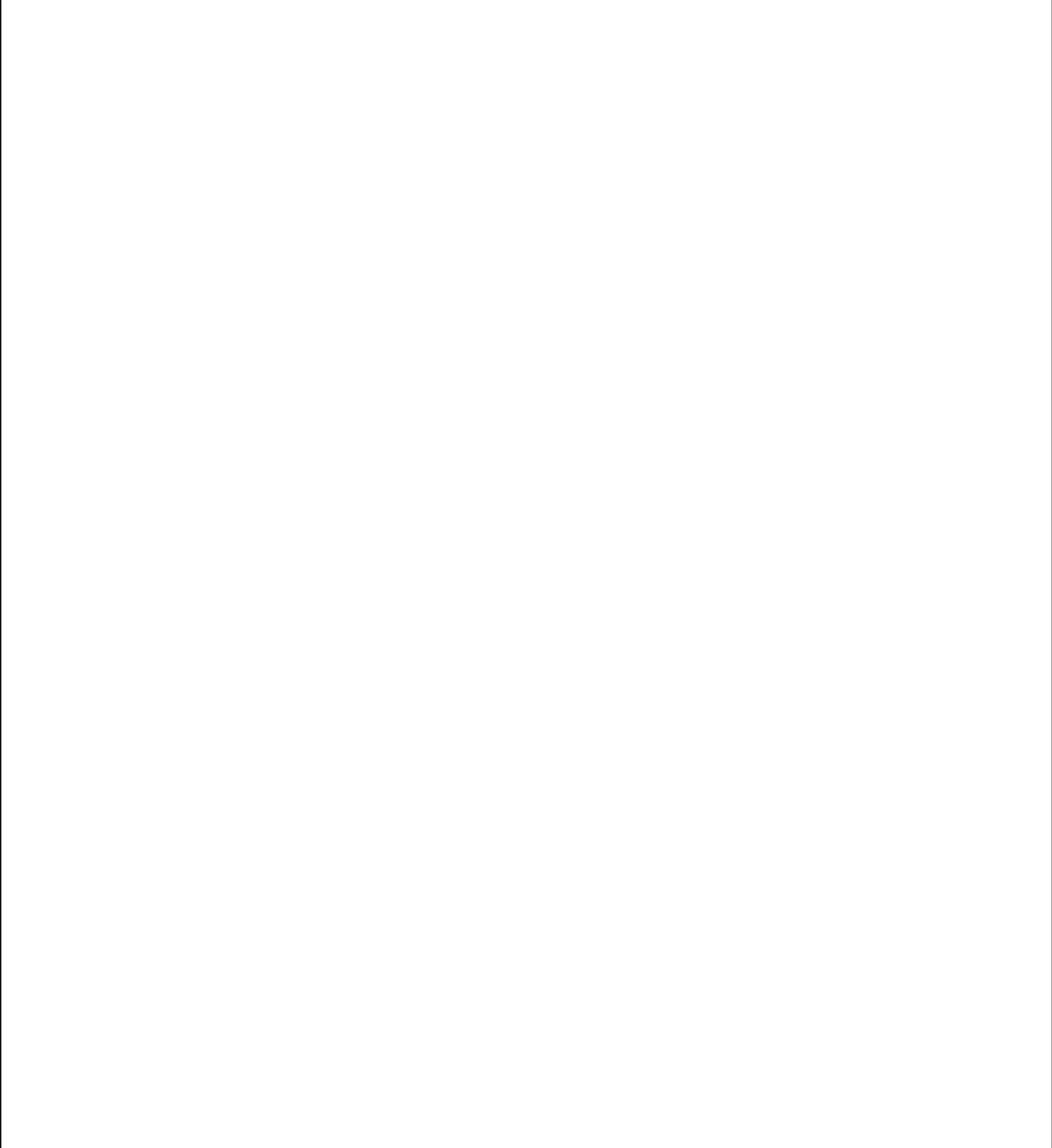
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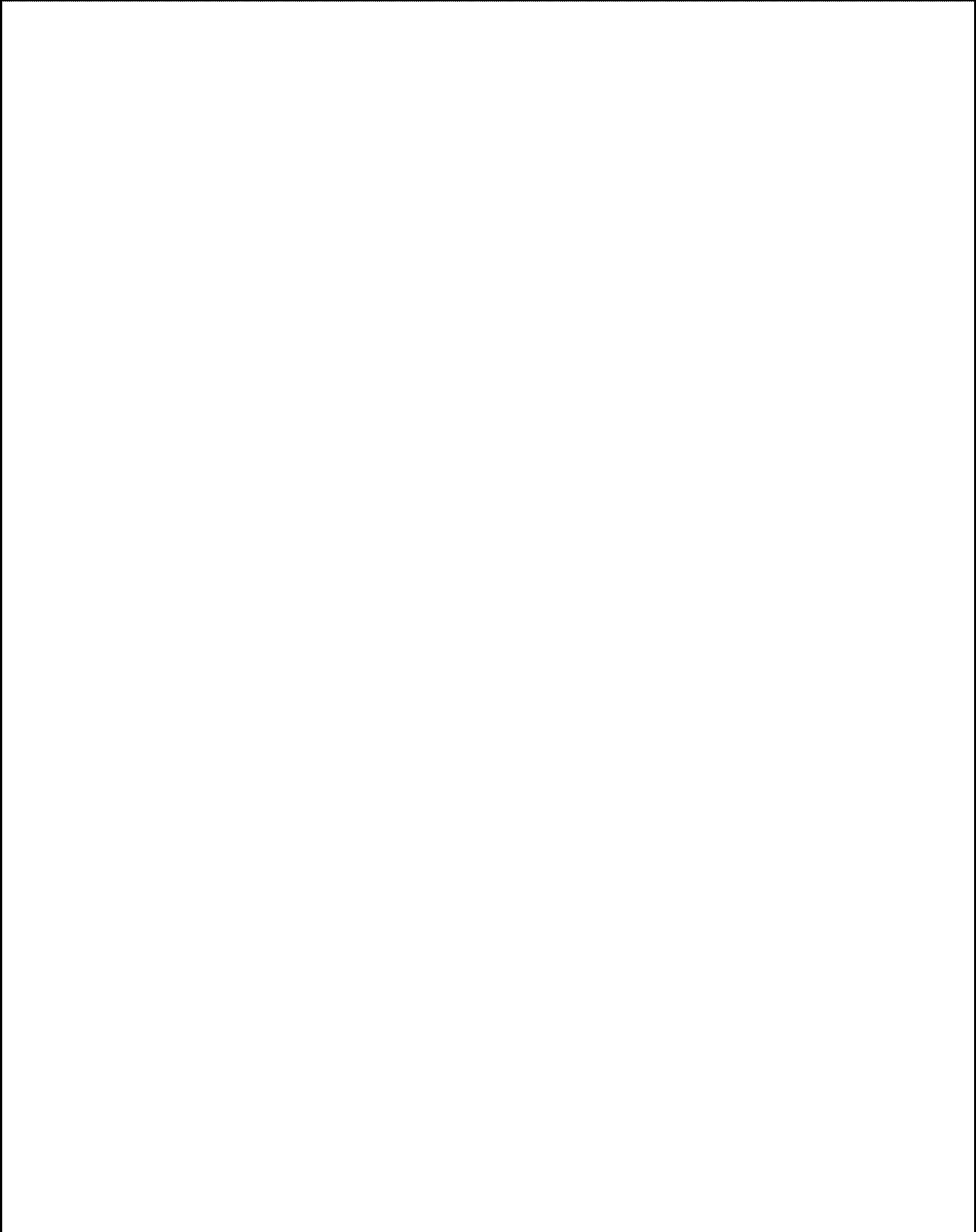
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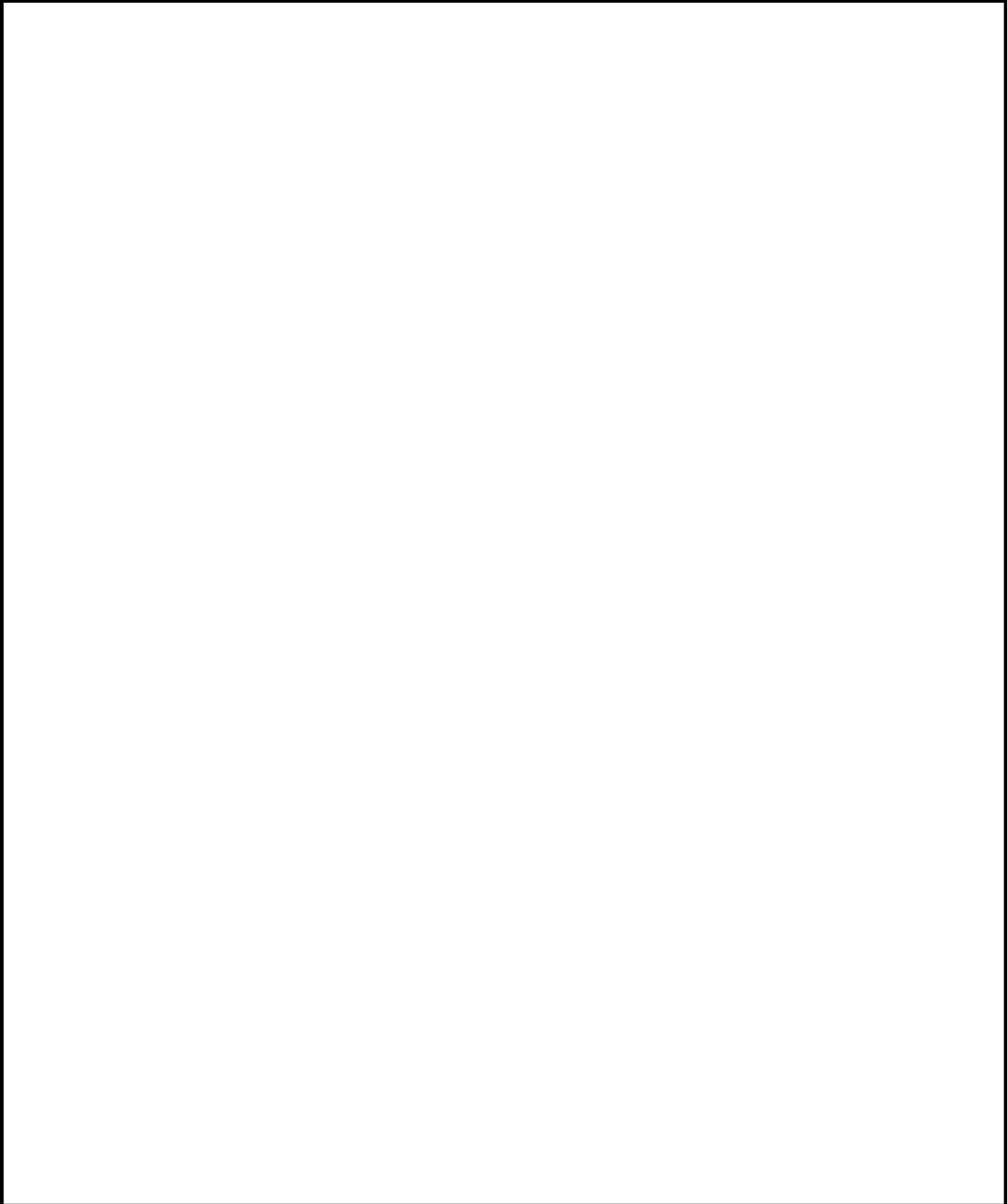


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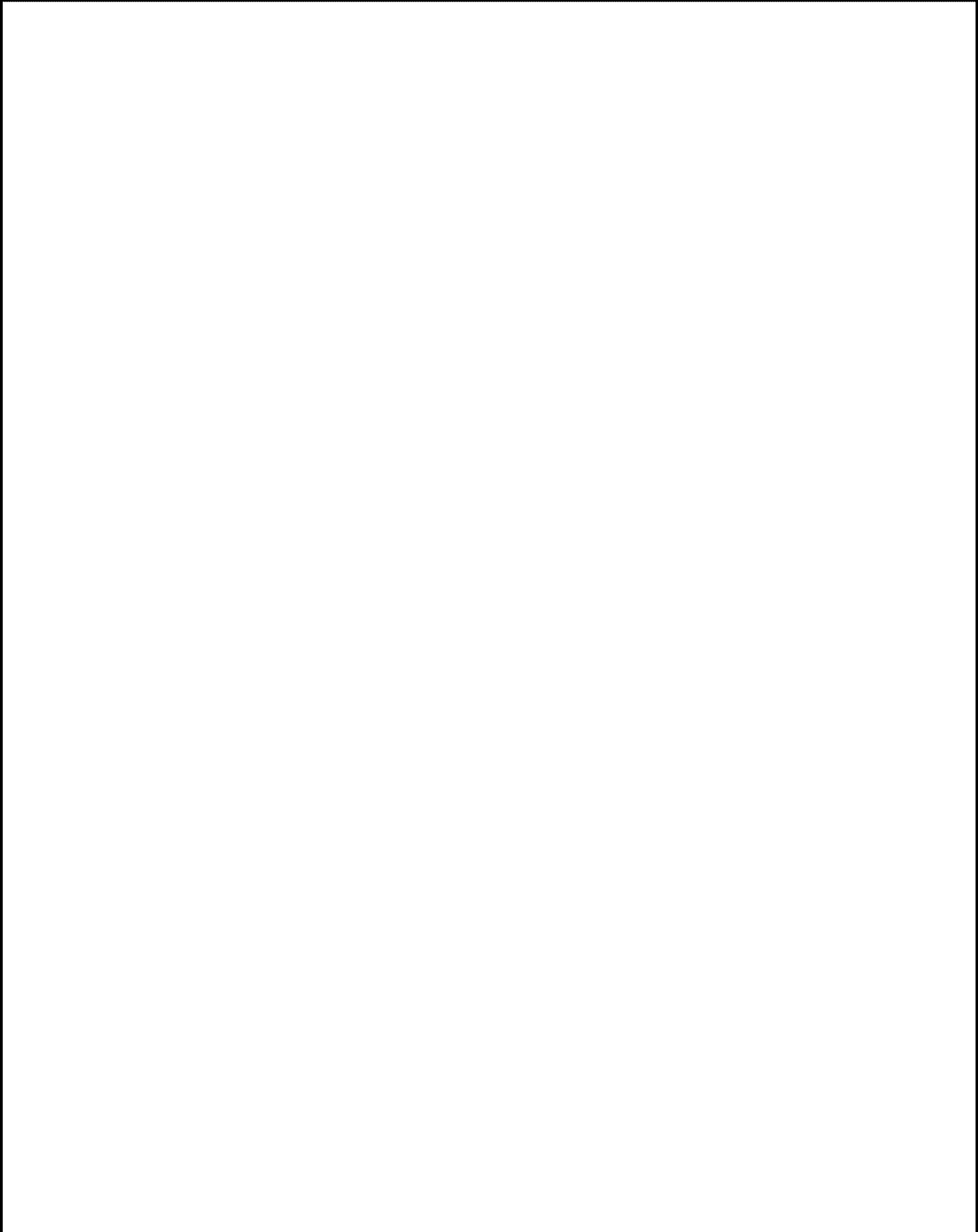
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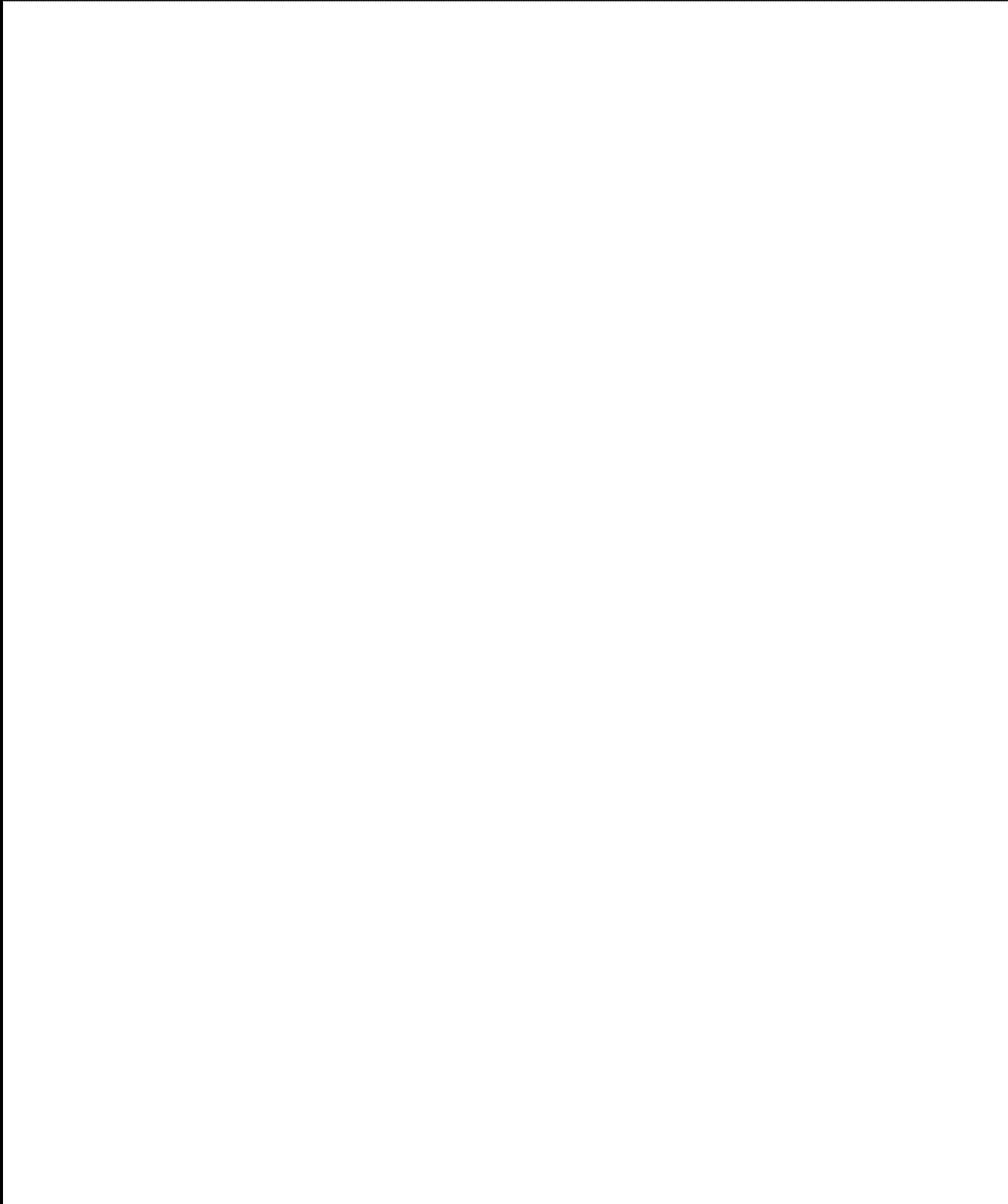


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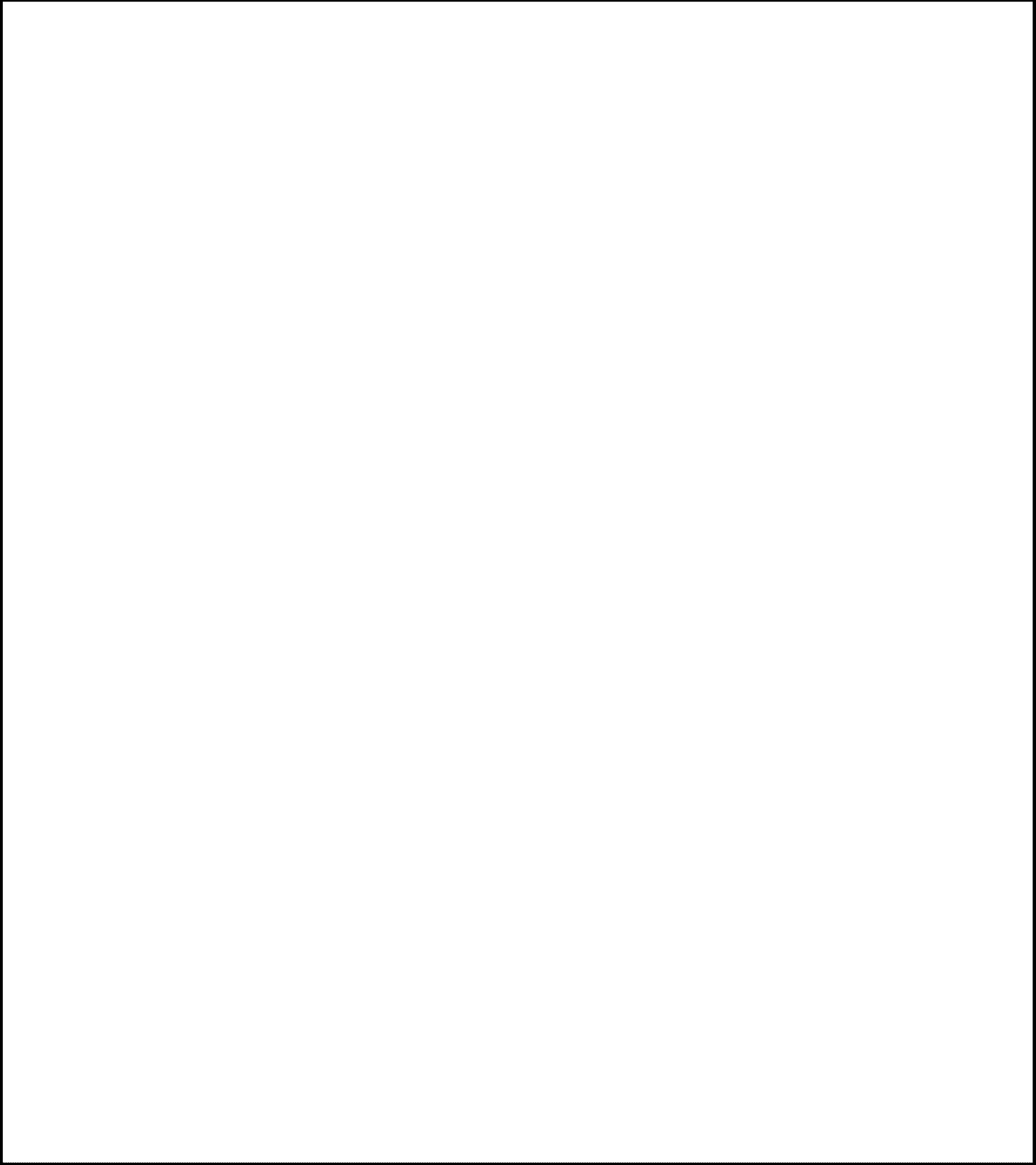


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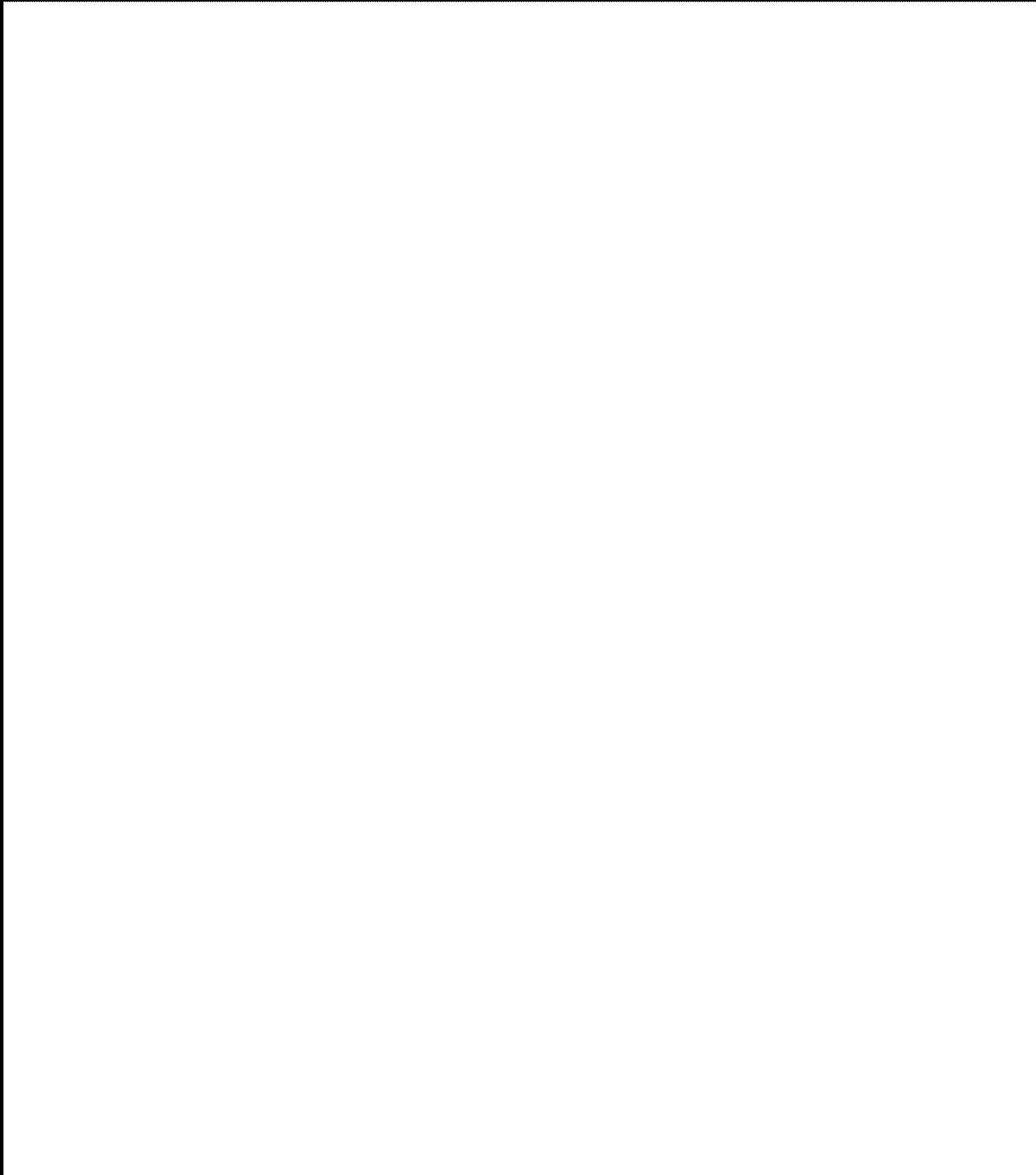


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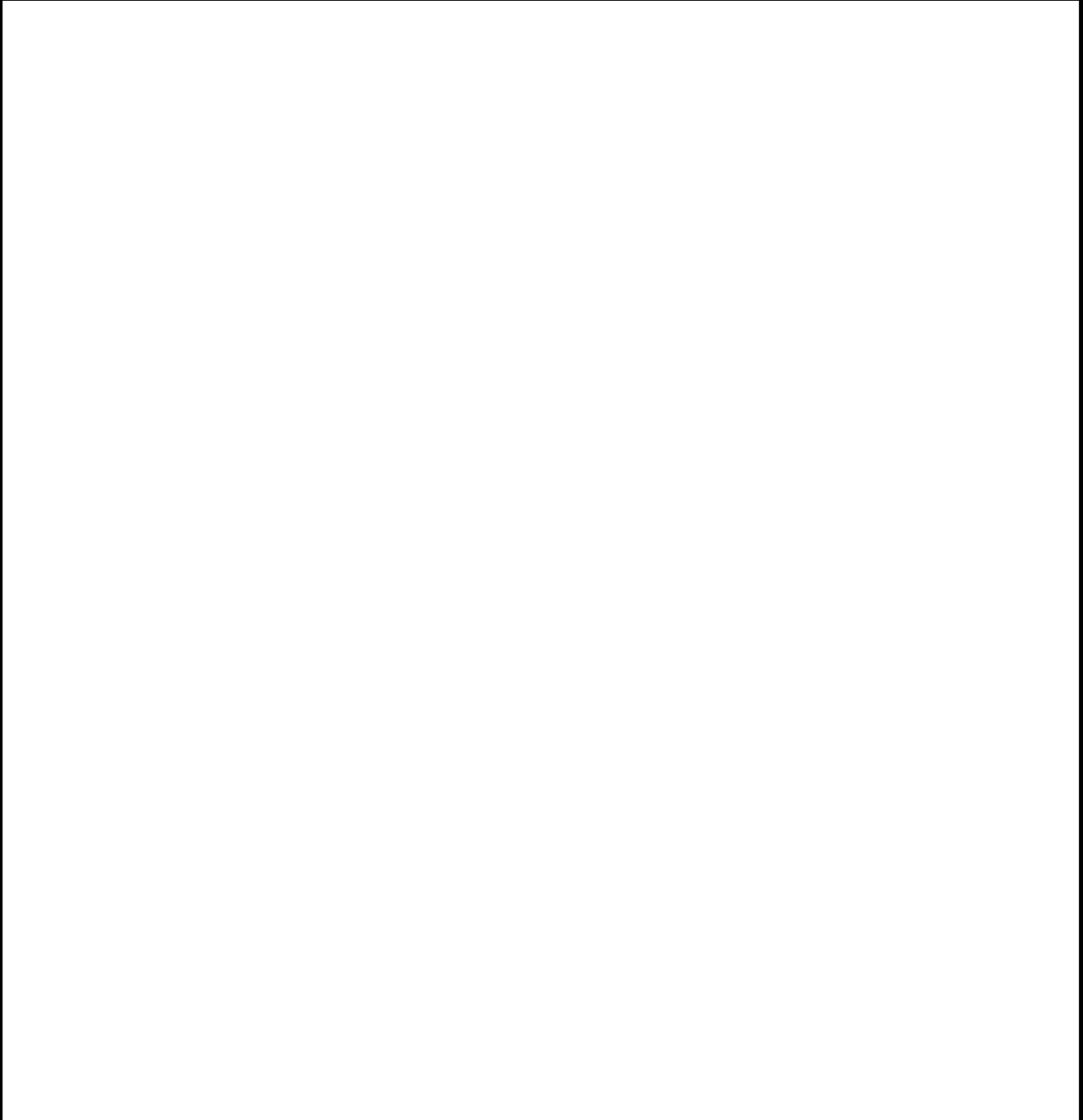


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# International Operations Division Officer Training



Mandatory Bars and Non-waivable  
grounds of inadmissibility  
regarding I-730s



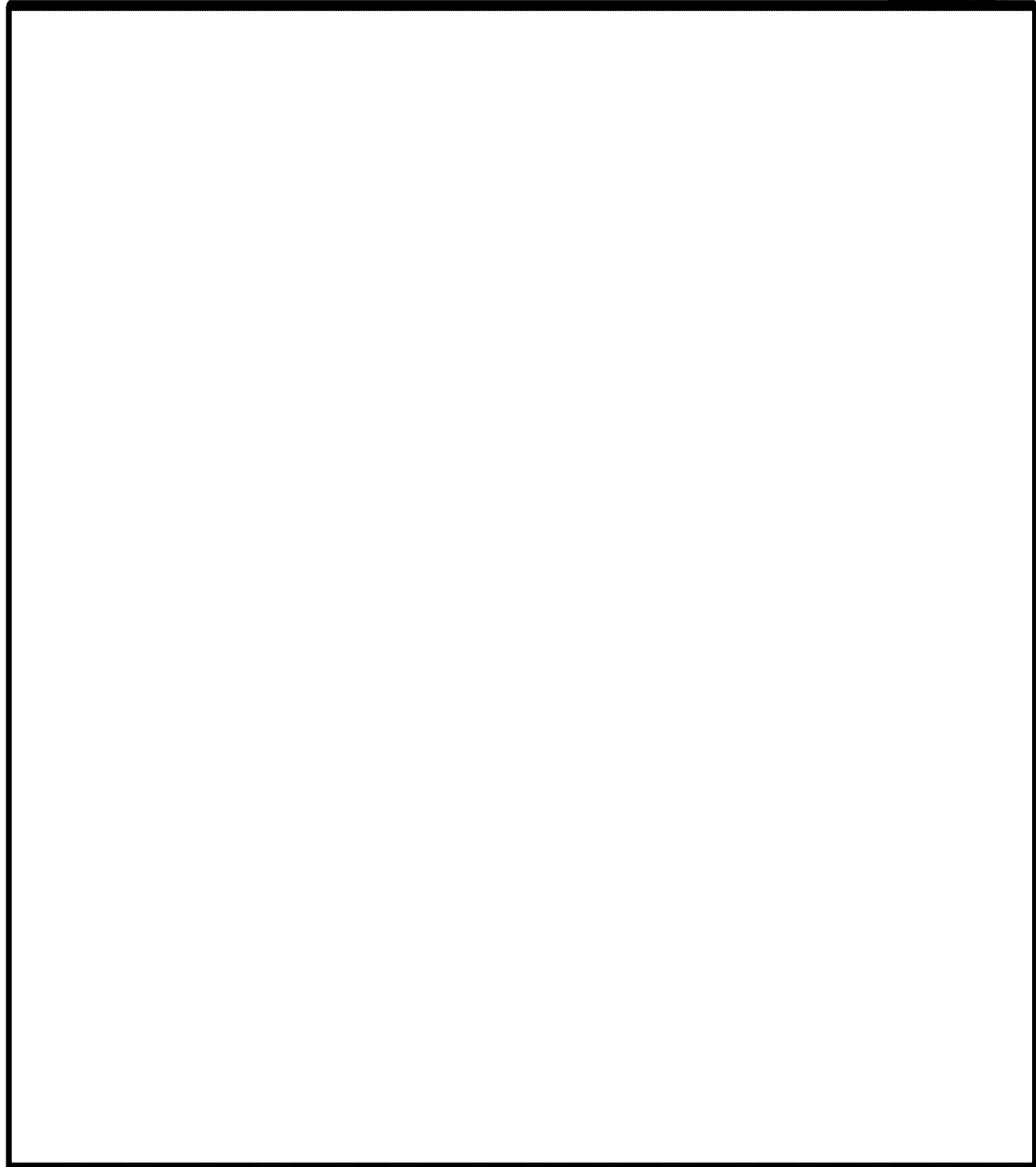
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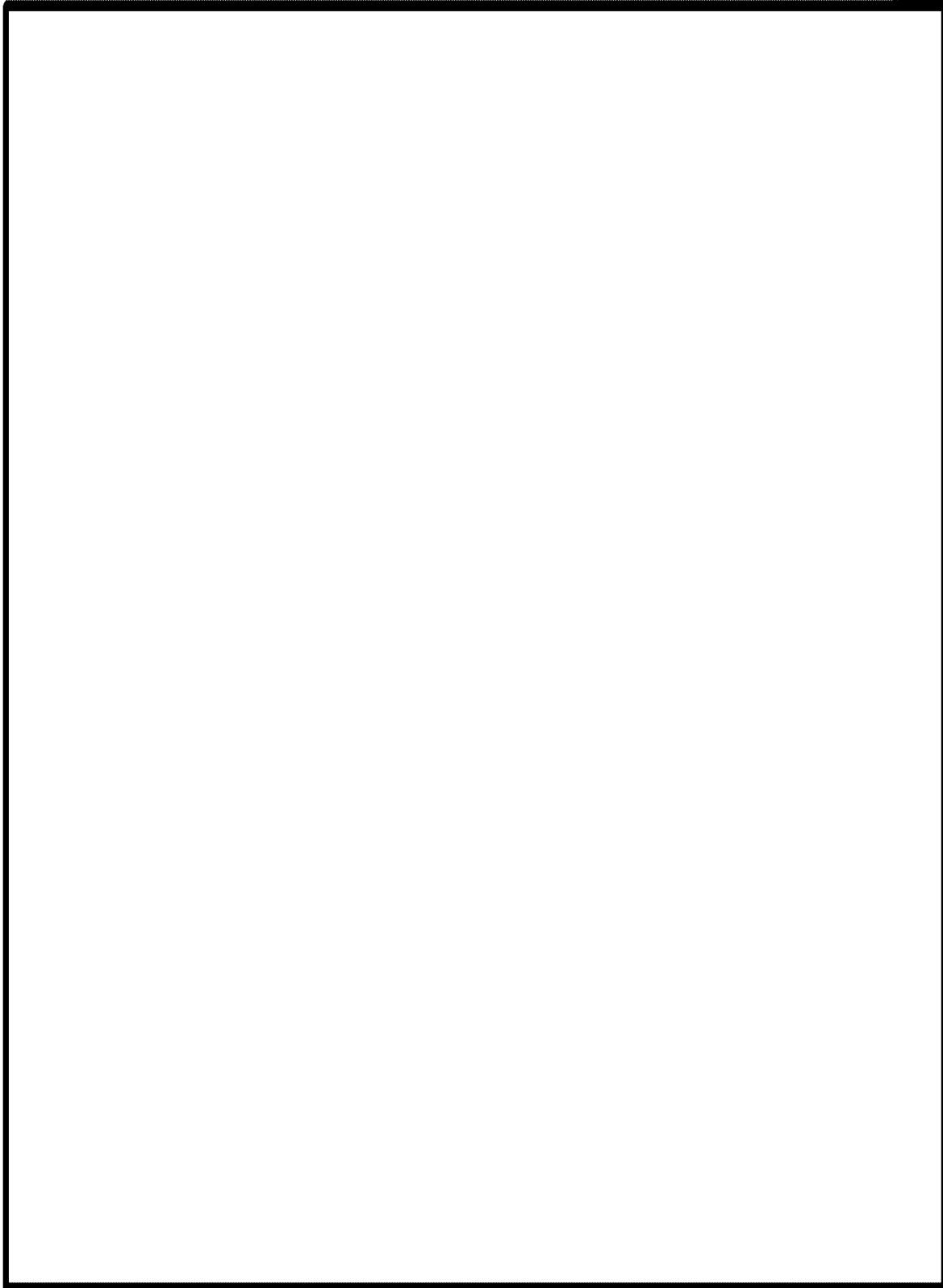
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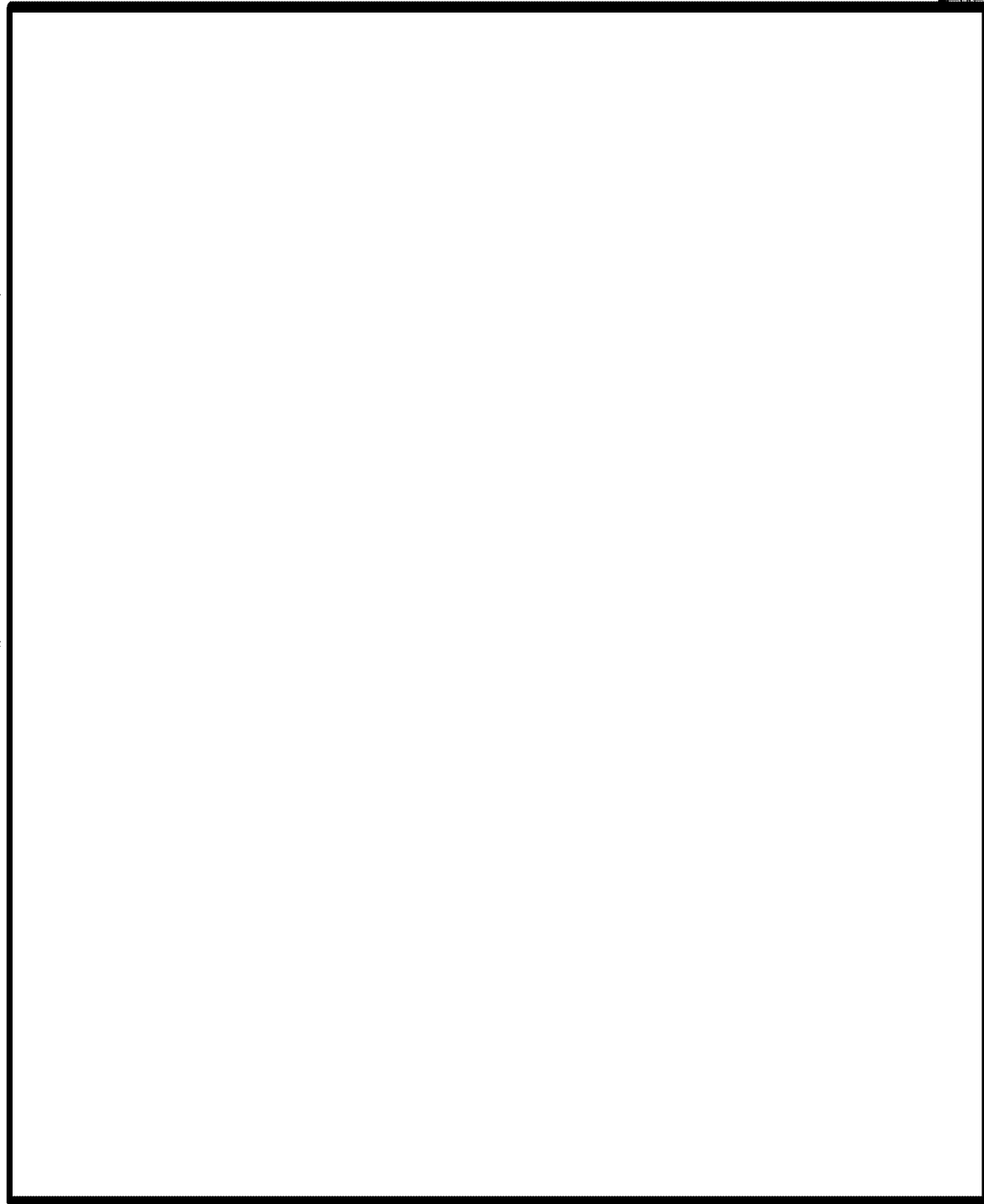


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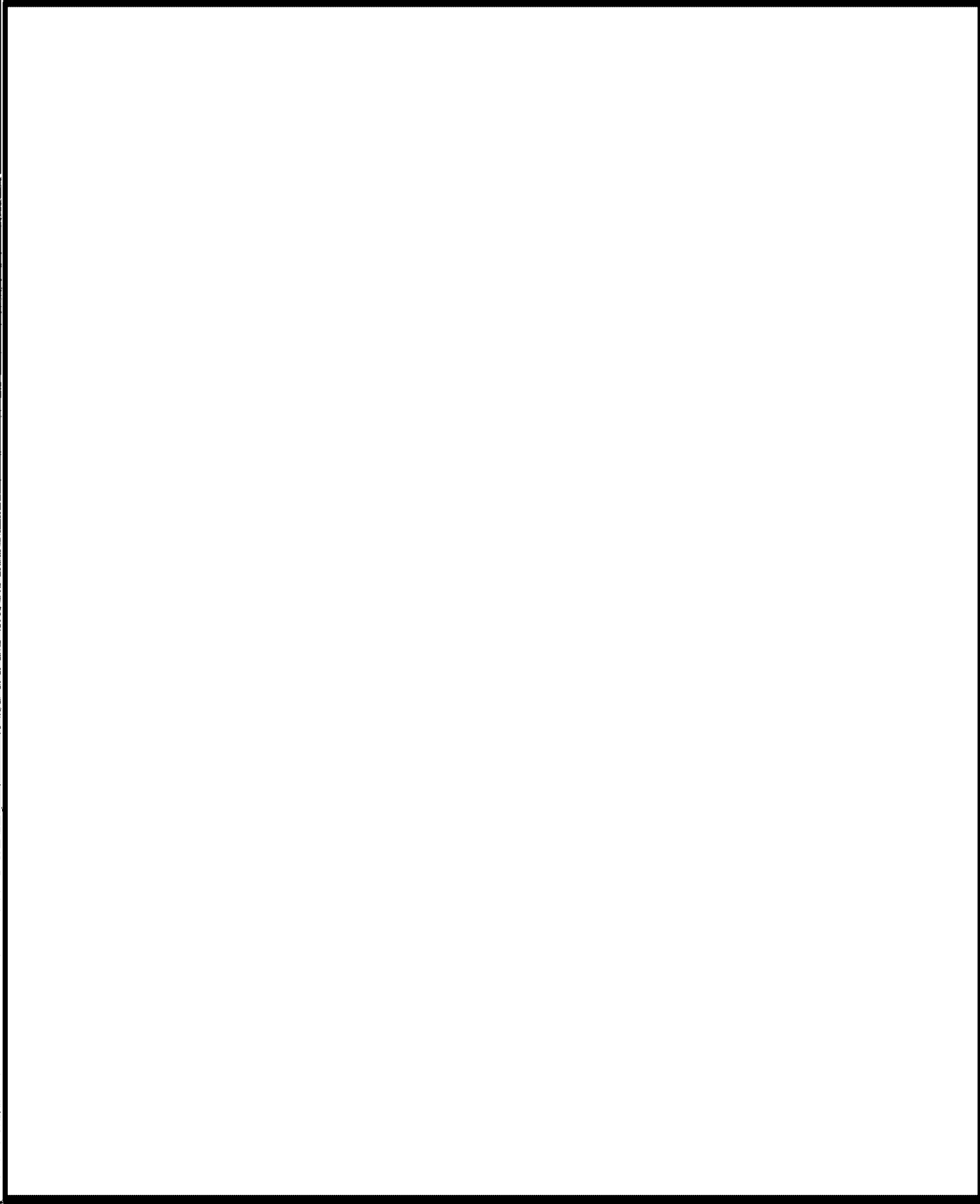
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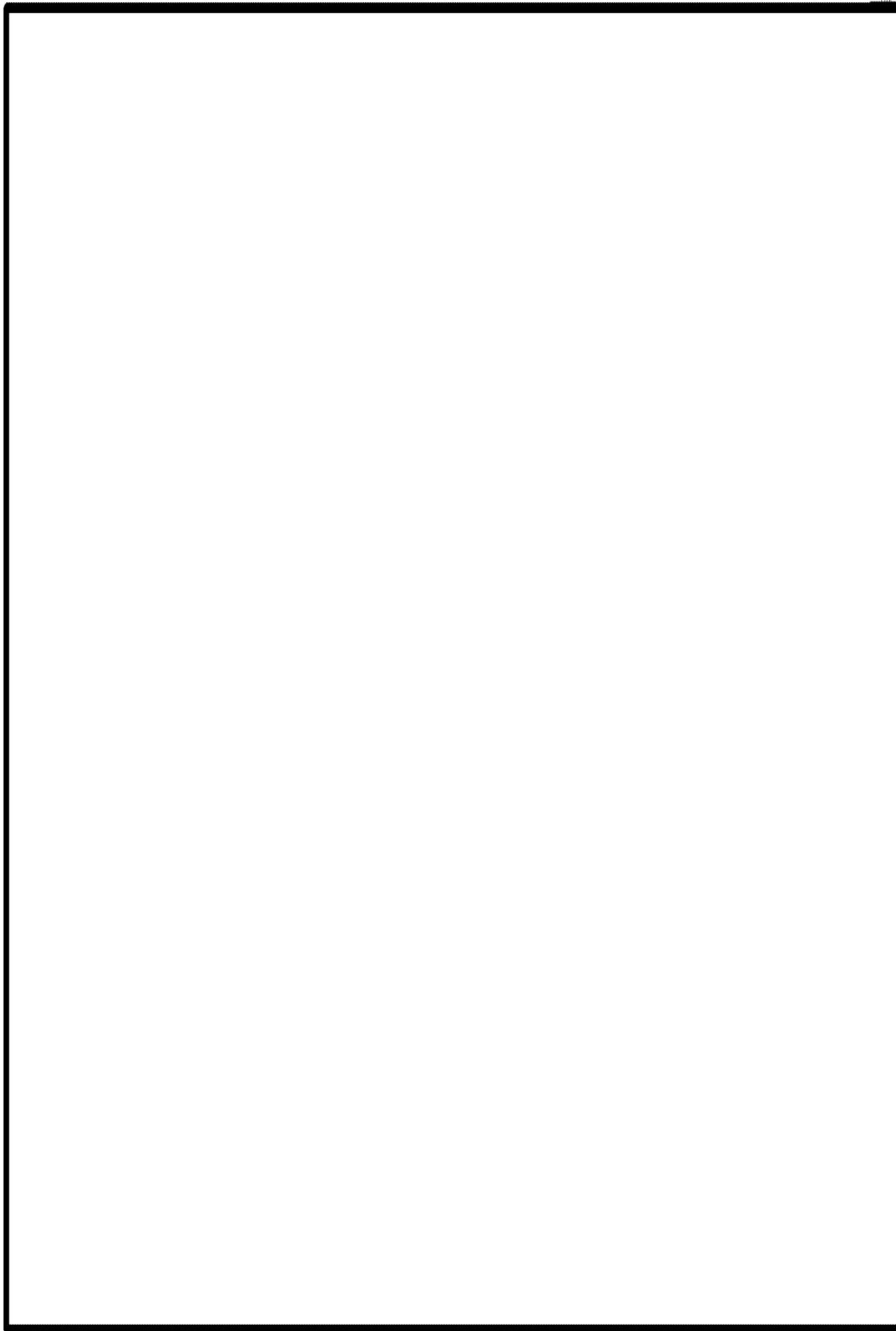
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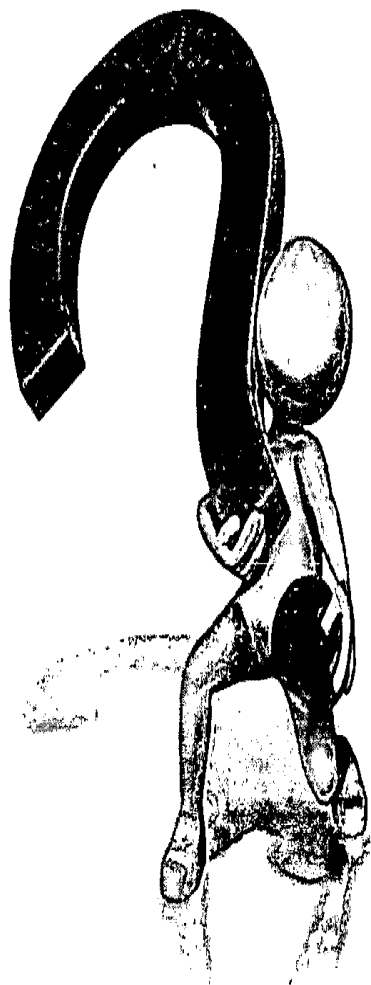
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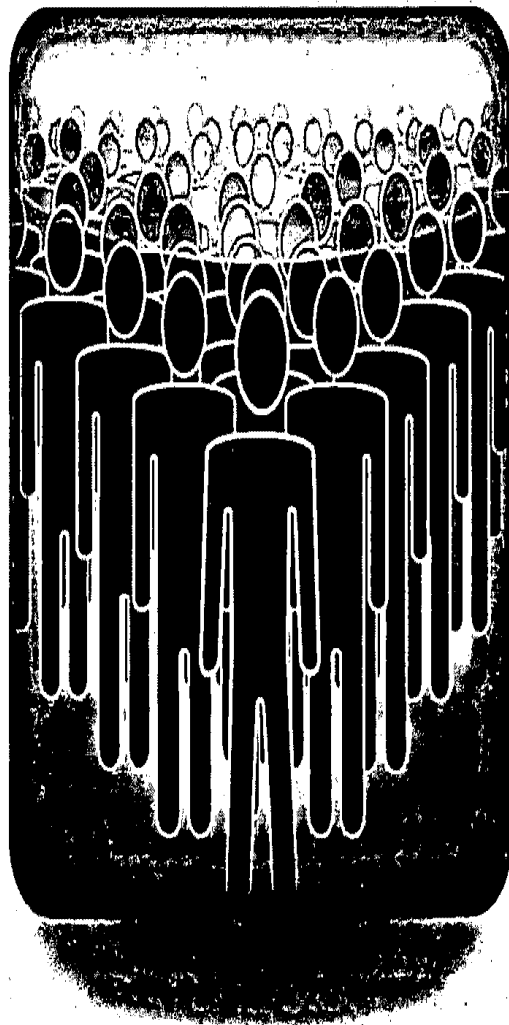
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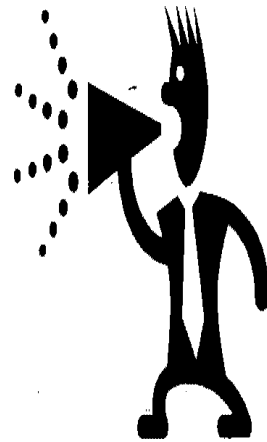
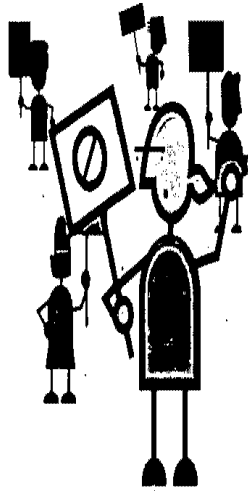
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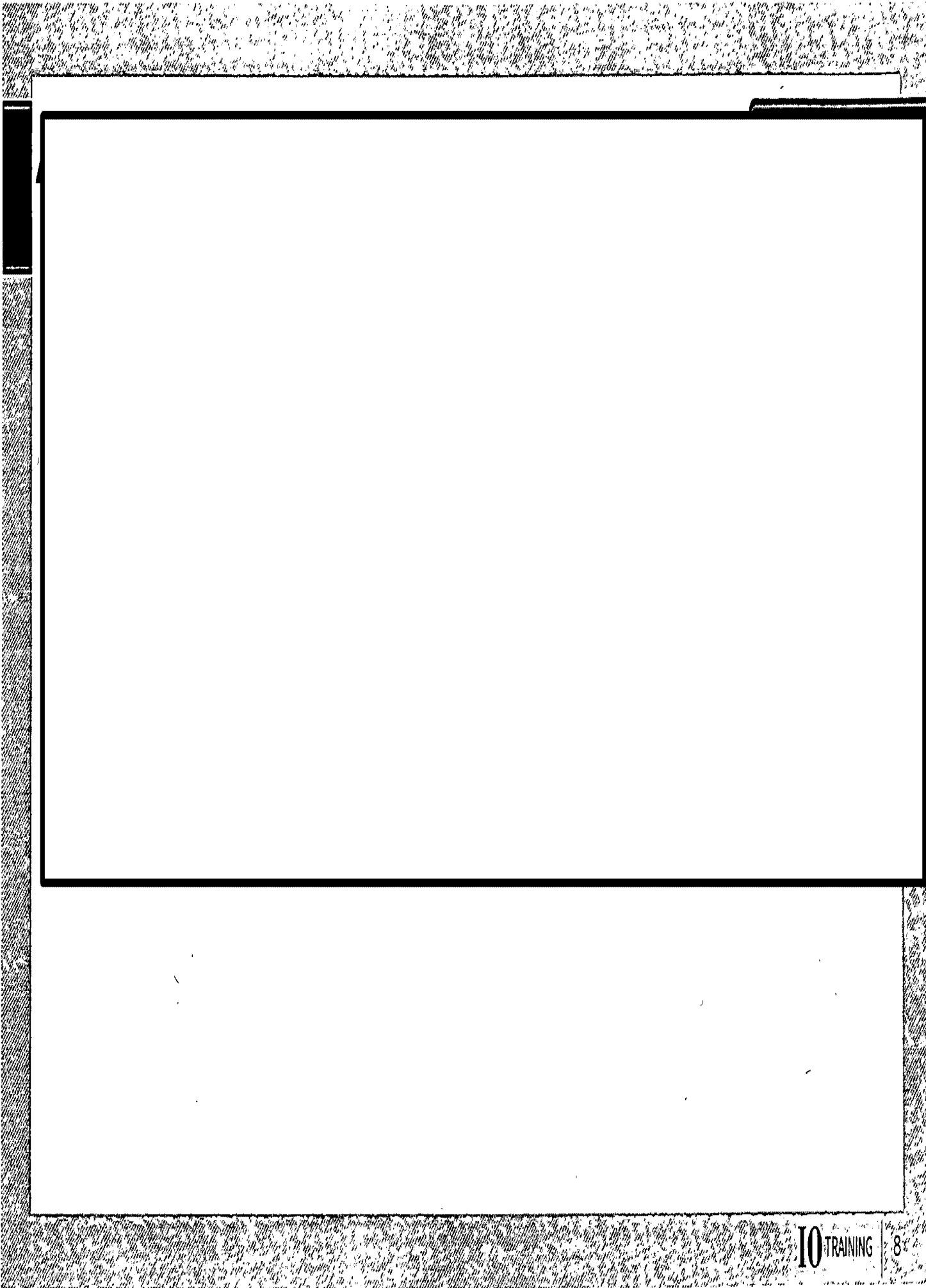
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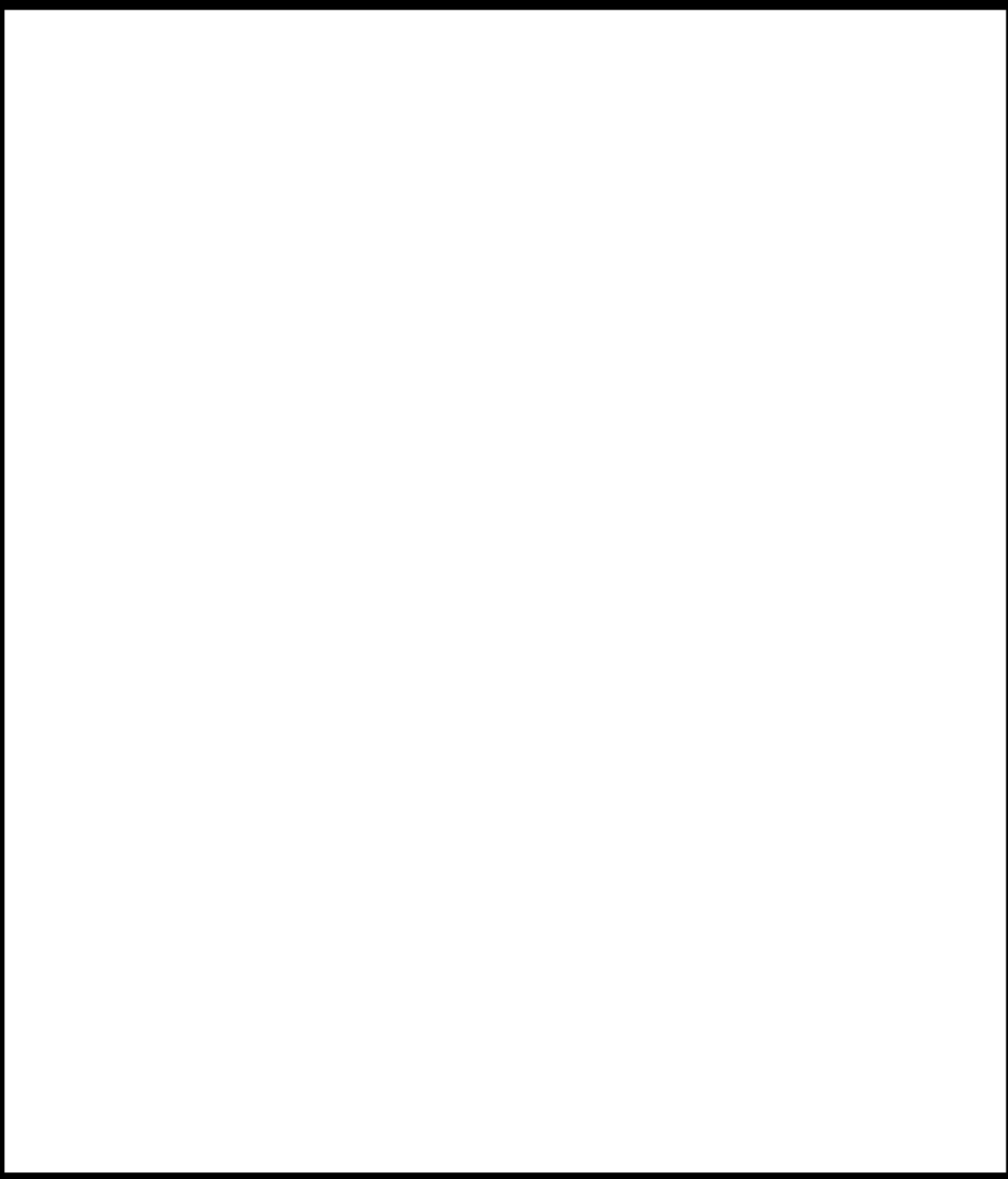


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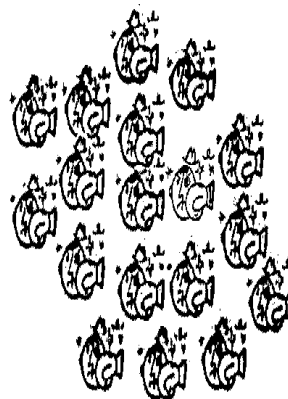
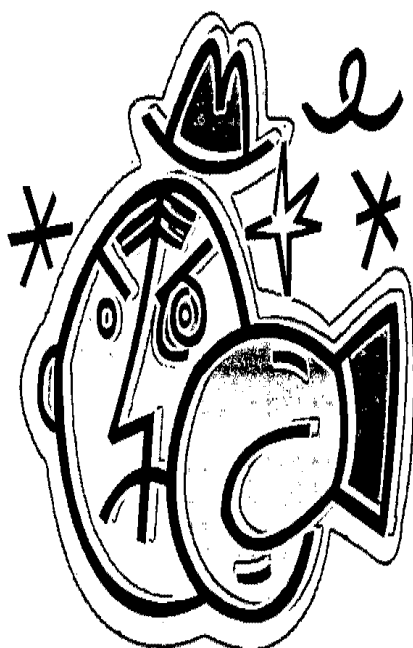




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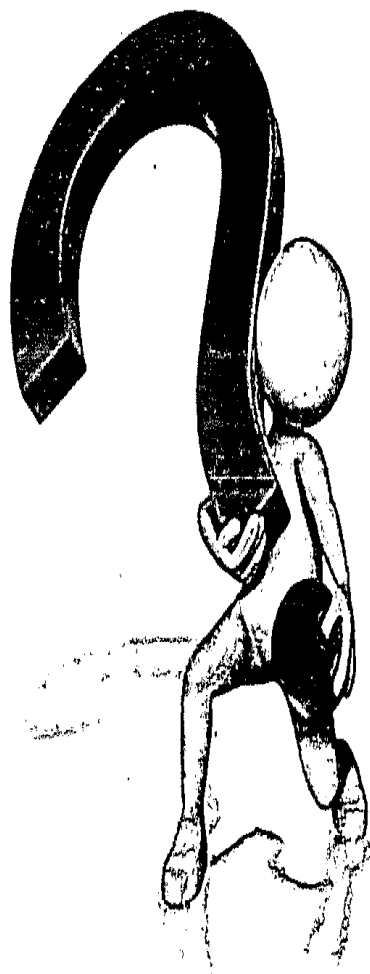
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- Author: OCC Refugee and Asylum Law Division
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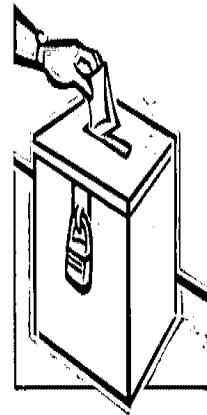
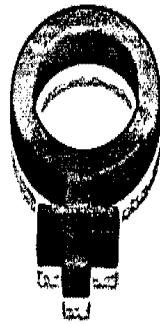
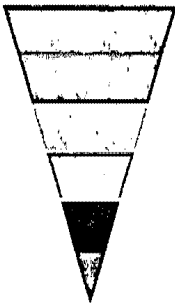
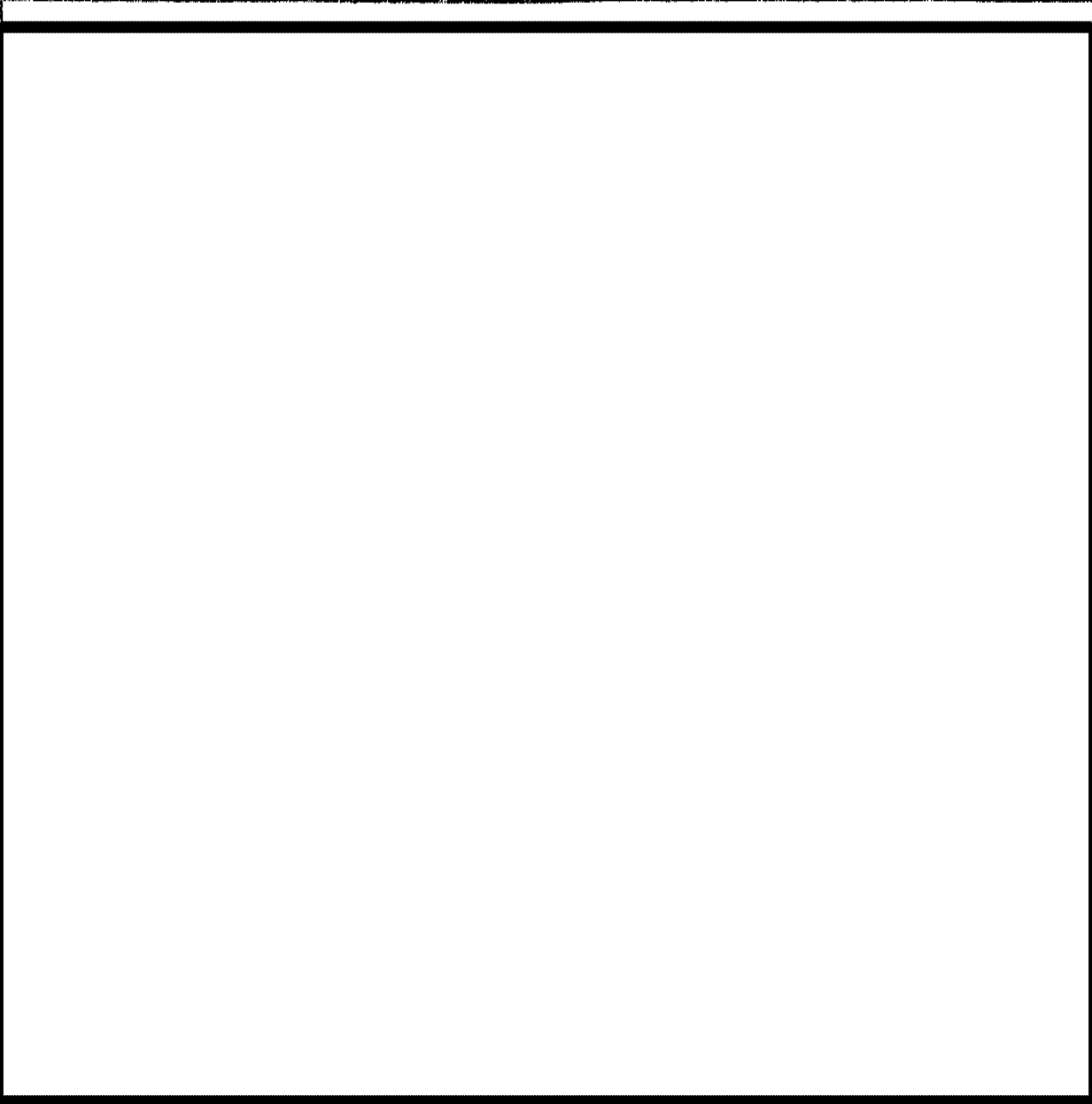
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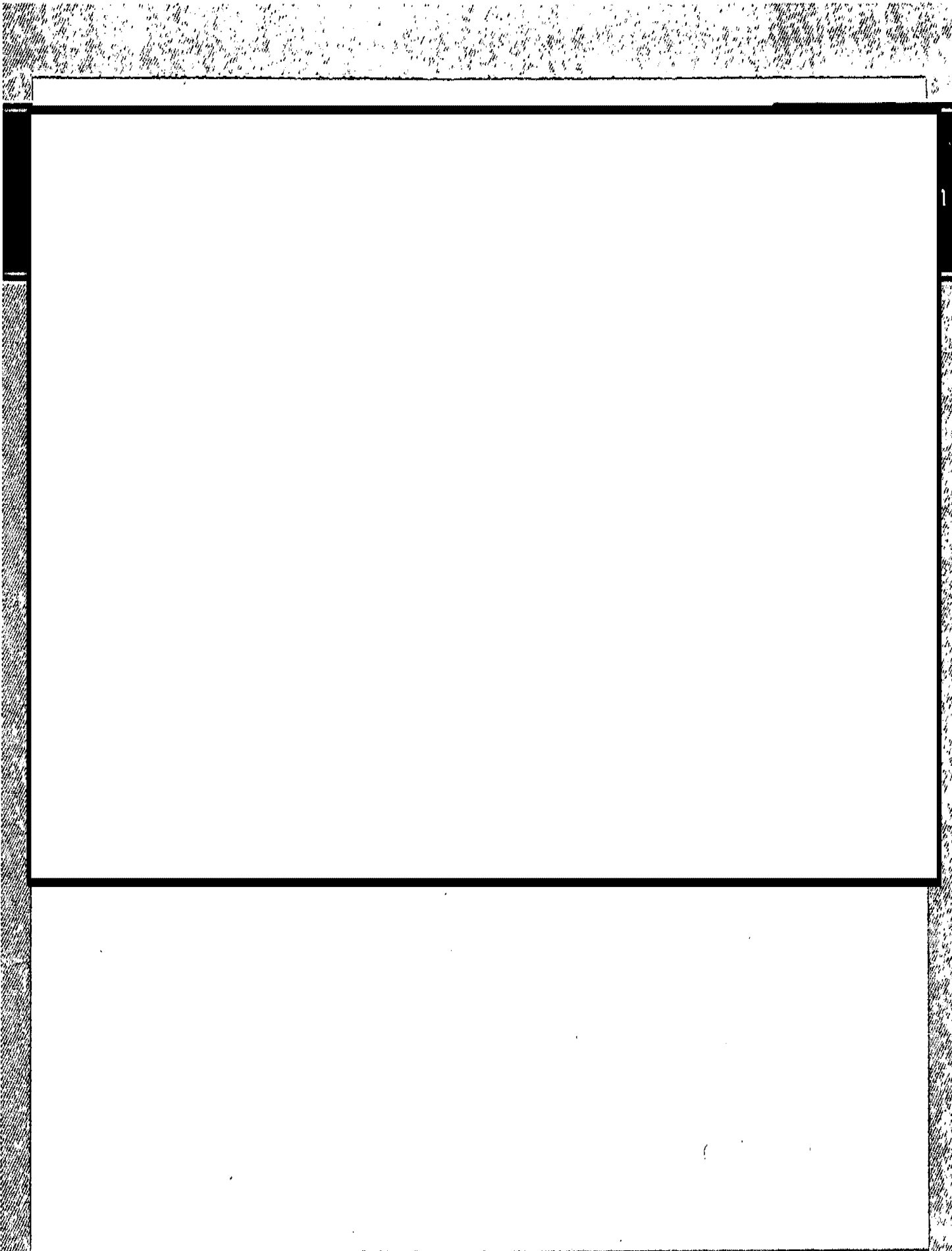


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# Summary

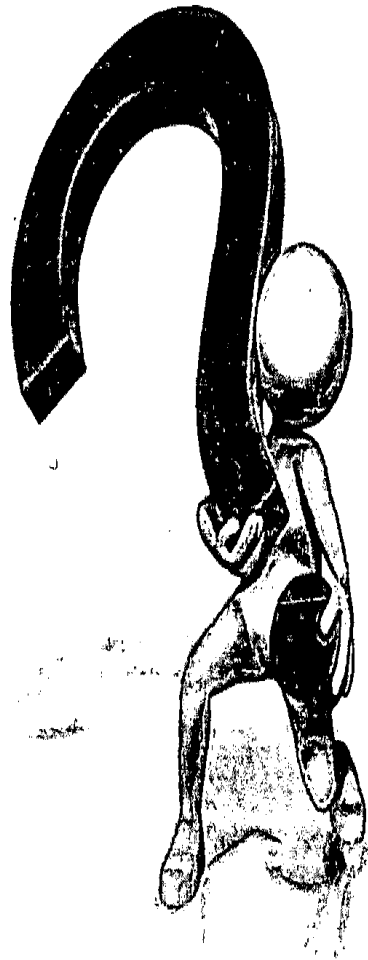
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# About this Presentation



- ⌄ Author: Jessika Croizat, Refugee and Asylum Law Division using materials previously developed by Suzanne Sinclair-Smith, International Operations Division, and Regina Germain, Asylum Division, of the Refugee, Asylum and International Operations Directorate , USCIS
- ⌄ Date of last revision: August 8, 2014
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# U.S. Citizenship and Immigration Services

## Student Interviewing Exercise: Persecution

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*Handout for the beginning of small group interview*

### **INSTRUCTIONS:**

Review the attached fact pattern and begin to formulate a plan for the questions you will ask the applicant regarding past harm. You will have about 15 minutes to ask the applicant questions to:

1. Identify any claimed harm (or lack of harm) experienced.
2. Identify the perpetrator(s)/actor(s)/entity that harmed the applicant, if any.
3. Determine if the claimed harm rises to the level of persecution.

### **Please Note**

For the purposes of this particular exercise, focus on determining whether the harm was serious enough to rise to the level of persecution. Assume the applicant is credible.

## Legal Standard(s)

To establish persecution, an applicant must show that the harm that the applicant experienced ... is sufficiently serious to amount to persecution. ... The term "persecution" encompasses more than physical harm or the threat of physical harm so long as the harm inflicted ... rises to the level of persecution. Non-physical harm may include severe economic or psychological harm and the deprivation of liberty or other essentials of life, such as food, housing, and employment... Acts that do not amount to persecution when considered separately can amount to persecution when considered cumulatively.

- RAIO Lesson Plan, *Definition of Persecution and Eligibility Based on Past Persecution*

## The Application

The application before you indicates that the applicant is a 22 year-old student, native and citizen of Cameroon, who fled Cameroon about six months ago.

The applicant has been an active member of the UFDC opposition party for several years. As a member of the UFDC, the applicant distributed flyers, attended weekly meetings, helped fundraise for the party, and tried to help sensitize the youth.

The police arrested the applicant twice. The first time was about two years ago at a rally outside the main stadium in Yaoundé. The second time was about a year later while the applicant distributed flyers in a suburb of Yaoundé. During each period of detention, the police interrogated the applicant about the applicant's activities. The first arrest resulted in a detention that lasted about three days. The second time the applicant was arrested the applicant was detained for about one week before escaping.

After escaping, the applicant went into hiding and fled Cameroon about three months later.

## The Supporting Documentation

The applicant submitted the following documents in support of the application:

- A Cameroonian passport.
- A membership card from the Yaoundé branch of the UFDC.
- A U.S. State Department Human Rights Report that indicates that the Cameroonian government jails opposition party members for their activism and that the police arrested dozens of protesters at a rally in Yaoundé two years ago.

## Student Decision Making Exercise: Persecution

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*Writing exercise to be handed out after the small group interview*

### **INSTRUCTIONS:**

Read through the applicant's information below and complete the questions. This was the information given to the person role-playing the applicant. The information should be similar to what your group elicited from the applicant during the interview.

### **BIOGRAPHIC INFORMATION**

You are a 22 year-old (male or female, you choose) student from Cameroon.

### **MEMBERSHIP IN THE UFDC (L'UNION DES FORCES DEMOCRATIQUES DU CAMEROUN) AND ACTIVITIES**

You joined the UFDC because a cute classmate in college invited you to your first meeting on campus. You became caught up in further activities of the party in part because of your youthful idealism, and in part to impress the classmate. As such, you are not terribly knowledgeable about the structure or platform of the party.

### **THE ARRESTS**

You were arrested by the police on two occasions.

#### The First Arrest

About two years ago, you were arrested at a rally outside the main stadium in Yaoundé. While you were being arrested, you resisted and tried to run away. The police grabbed you, pushed you to the ground, and treated you roughly as you struggled with them. Others were arrested but you did not know them. They dragged you to a police car and took you to a jail, where you were held in a crowded cell with about 20 others. The cell was approximately 20' x 30'. You were given bread and water twice a day. You were not charged with a crime and were not permitted contact with anyone outside of the jail.

You were interrogated once a day for about 30 minutes. Two armed guards were present during the interrogations; one sitting at a table and one standing next to you. They yelled at you and asked you questions about your activities with the party. They slapped you one or two times in the face with an open palm during each interrogation. They did not physically harm you in any other way. After three days they released you with a warning to cease your activities.

You were sufficiently scared to stop your activities for a few months. But after a while you decided it was safe to attend meetings again.

### The Second Arrest

About a year after your first arrest, you were passing out flyers in a suburb of Yaounde. The vice-president of your student chapter at school had given you about 200 flyers at a meeting the previous week. You don't really recall what the flyers said exactly, but it was something about how change is necessary and that corruption must be stopped. Two uniformed officers began questioning you and placed you under arrest. You did not resist, and they did not physically harm you.

During the second period of detention, you were placed in a smaller cell with about four or five others; you didn't know them. Again you were given bread and water twice a day. You were not officially charged and you were not permitted to contact anyone outside the jail.

You were taken for interrogation twice in the same type of room with the same amount of guards. The interrogating officers knew who you were and became increasingly agitated with you. The questions were much more pointed about the people you worked with and what the plans of the party were. They asked you for and you gave them the names of the local leaders of the student chapter, but beyond that you were able to tell them little about the party's plans and activities.

### The Escape

After about a week, a uniformed guard came to your cell in the middle of the night and woke you. He led you through a series of corridors. He opened the door, and there was a car waiting for you. Your uncle, a wealthy and well-connected businessman, had arranged for your escape. For the next three months, you stayed in about three or four different locations until you were able to leave Cameroon. You think your uncle arranged for your passport, visa, and flight.

### **Exercise:**

Please answer the following questions using the information provided as well as the information elicited in the interview:

1. What harm, if any, did the applicant suffer?
2. Did the harm suffered in any single incident rise to the level of persecution? – explain your answer with reference to what evidence establishes the facts and how those facts relate to the severity of harm requirement.
3. Do all the incidents, taken together, rise to the level of persecution? – explain your answer with reference to what evidence establishes the facts and how those facts relate to the severity of harm requirement.
4. What is the significance of the fact that the police were the agents of harm?

Name:

Group Color:

### **Persecution Small Group Writing Exercise**

Please answer the following four questions using the information provided as well as the information elicited in the interview.

When you are finished, please upload this exercise to your student dropbox on the ECN using the naming convention: **Last Name, First Name\_Persecution Sm Grp**

1. What harm, if any, did the applicant suffer?
2. Did the harm suffered in any single incident rise to the level of persecution? – explain your answer with reference to what evidence establishes the facts and how those facts relate to the severity of harm requirement.
3. Do all the incidents, taken together, rise to the level of persecution? – explain your answer with reference to what evidence establishes the facts and how those facts relate to the severity of harm requirement.
4. What is the significance of the fact that the police were the agents of harm?



## Egyptian Coptic Christian

The applicant indicated that he is a 71-year-old male native and citizen of Egypt. The applicant's parents and grandparents were also Coptic Christians. He is identifiable in Egyptian society as a Christian because his religion is listed on his national identification card and birth and marriage certificates; by his gold wedding band (the wedding bands of married Islamic men are silver); through his association with his wife who is also a Christian and does not wear a veil; and by his paternal surname. The applicant and his family were the only Christian residents in their 13-unit apartment building. His Muslim neighbors called him infidel, left trash at his door, threw dirty water on his laundry, encouraged their children to throw rocks at him, and marked a black x on the wall near his door, a known signifier to Islamic extremists that a Christian resides there. The applicant was also warned by Muslim neighbors that if he did not leave the neighborhood they would burn his house down. In late 2014, on four occasions while parked near his home, the tires of his car were slashed and the body of the car was scratched. Although he does not know the identity of the perpetrators, he believes them to be Islamic extremists who targeted his car because there was a cross hanging from the rearview mirror, and because in his neighborhood it is well known he is a Christian and that this was his car. After the third incident he removed the cross because he feared extremists would place a bomb under his car. He specifically feared this because once in 2014 he was attending church and the car of a church member that was parked on the street behind the church exploded. No one was injured. When the applicant reported the repeated damage of his vehicle to police and told them he believed Islamic extremists were to blame, the police told him they have more important things than him to worry about.

In April 2015, on his way home from shopping, the applicant was attacked by a Muslim extremist, a 17-year-old male who lived near him. His attacker said to him, "the infidel has arrived, you don't know anything about God," and punched him in the face. The applicant did not report the attack to the police because he believes the police fear the extremists and would not help him, as they had failed to help him when he sought police help when his car was vandalized.

### **DISCUSSION:**

1. Does the harm experienced by the applicant constitute persecution?
2. Was the harm suffered by the applicant on account of a protected ground in the refugee definition, and if so, which one (s)?
3. What facts support your conclusion?
4. What additional information, if any, would help evaluate this claim?

## Student Interviewing Exercise: Nexus

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*Handout for the beginning of small group interview*

### **Instructions**

Review the attached fact pattern and begin to formulate a plan for the questions you will ask the applicant regarding nexus to a protected ground. You will have about 15 minutes to ask the applicant questions to:

1. Identify whether a protected ground is at issue in this case.
2. Determine whether the harm inflicted on the applicant was on account of a protected ground.

### **Please Note**

For the purposes of this particular exercise, focus on determining whether the harm the applicant suffered and the harm he or she fears was inflicted on any of the five protected grounds. Assume the applicant is credible. Your questions and analysis must be based solely on the testimony elicited during today's session.

## Relevant Legal Standard(s)

The persecution the applicant suffered in the past, or fears in the future, must be “on account of” at least one of the five protected grounds. This means the applicant must establish that the persecutor was, or will be, motivated to target the applicant because of his or her race, religion, nationality, membership in a particular social group, or political opinion. The persecutor may be motivated to target the applicant because the applicant actually possesses a protected belief or characteristic, or because the persecutor wrongly believes that the applicant possesses a protected belief or characteristic.

- RAIO Lesson Plan, *Nexus and the Five Protected Grounds*

## The Application

The application before you indicates that the applicant is a 33-year-old native and citizen of Guatemala who left Guatemala in 2013.

The applicant is married and has two daughters. He or she lived in the United States from 2006 to 2011. After returning to Guatemala, the applicant operated a corner store.

According to the application, two armed, masked gang members attacked the applicant at home on December 11, 2012. The applicant was beaten and threatened with death. The applicant was also robbed of 200 *quetzales*.

The applicant later found out that his or her young niece was shot and killed at her home on the same day. He or she fled Guatemala two months later.

## The Supporting Documentation

The applicant submitted the following documents in support of his or her application:

- A Guatemalan national ID card.
- A death certificate indicating that an 18-year-old woman who shares one of the applicant's surnames died from a gunshot wound in Santa Rosa de Lima, Guatemala on December 11, 2012.
- A U.S. State Department Human Rights Report that indicates that there is a high level of violent crime in Guatemala, often attributed to organized criminal gangs, and that journalists, trade unionists, members of indigenous groups, and environmental activists are frequently targeted.

## Student Decision Making Exercise: Nexus

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*Writing exercise to be handed out after the small group interview*

### **INSTRUCTIONS:**

Read through the applicant's information below and complete the questions. This was the information given to the person role-playing the applicant. The information should be similar to what your group elicited from the applicant during the interview.

### **BIOGRAPHIC INFORMATION**

You are a thirty-three-year-old (male or female, you choose) native and citizen of Guatemala. You are ethnically Ladino, a practicing Catholic, and you speak only Spanish. You are married, and you have two daughters: a twelve-year-old and a ten-year-old. You and your spouse came to the United States for work in 2006, leaving your children in Guatemala with your parents. In 2011, you returned to your hometown of Santa Rosa de Lima, Guatemala, where you operated a small corner store.

### **YOUR INVOLVEMENT WITH THE ANTI-MINING COMMITTEE**

You returned to Guatemala because your mother told you that your younger daughter was frequently ill with gastrointestinal problems, and you wanted to be home to help take care of her. After you arrived, you began hearing that many children in your neighborhood were experiencing health problems because the water supply had been contaminated by a new silver mine, operated by a Canadian company and subsidized by the national and local governments, in the nearby town of San Rafael las Flores.

You heard that many people in nearby communities had begun protesting the mining company's activities, and you started talking to your neighbors about ways you might be able to get involved. In May 2012, you and five of your neighbors (including your seventeen-year-old niece and the junior priest at your church) formed a committee to oppose the mining projects in your area.

The committee had regular meetings at members' houses, encouraged other members of the community to support it, and participated in several protests in San Rafael and the departmental capital, Cuilapa, against the mining company and the local government's support of its activities. On one occasion in September 2012, you and about thirty other people blocked a road, and the police forced you to move by threatening you with arrest. Otherwise, though, you had no problems during the protests themselves. Your niece was especially active, making connections with national environmentalist youth organizations and encouraging them to support you.

## **THE ATTACK**

On the evening of December 11, 2012, before a scheduled meeting of your committee, you were attacked at your home by two armed, masked men. They rode up to your house on motorcycles and kicked in your door. One of the men pointed his gun at you and threatened to shoot you if you resisted or tried to run away, and the other one punched you in the face, knocked you to the ground, and began kicking you. They demanded that you tell them the names of all the people in your committee and that you stop causing trouble. You agreed to their demands, but you were very afraid that you would be killed. The attack lasted for ten minutes, and the attackers fled when three of the other committee members arrived at your house to pick you up. They took your wallet containing 200 quetzales.

Although the attackers did not identify themselves and you do not know who they were, you believe they were connected to the mining company or its supporters. You have heard rumors that some of the security guards employed by the company have connections with violent criminal gangs.

You later found out that your niece had been shot and killed on the same evening. A neighbor had witnessed two masked men on motorcycles riding up to her house, and you believe that these were probably the same people who attacked you.

## **THE AFTERMATH**

Although you were not seriously injured in the attack, your face was bruised, and you went to the doctor because you found it very painful to open and close your mouth. The doctor told you that the nerves in your face had been damaged and prescribed you painkillers. Now, over a year later, you continue to experience some jaw pain.

Your sister reported both attacks to the police, but as far as you know, they did not investigate either attack. No one was ever arrested for your niece's murder, and you believe that the police did not do anything both because they are generally ineffective and because the local government supports the mining projects.

You stopped participating in the committee and the protests against the mining company after the attack because you were afraid of what would happen to you. Two months later, your priest received a written death threat from an anonymous source. You became even more afraid, and you decided to leave Guatemala on February 27, 2013.

**Exercise:**

Please answer the following questions using the information provided above and the information you elicited during your interview:

1. Which of the five protected grounds is **most** likely to be the basis of this applicant's claim for asylum or refugee status? What, specifically, are the protected characteristics or beliefs?
2. Does the applicant actually possess the protected characteristic identified above? Explain your answer with reference to the facts established by the evidence in this scenario.
3. Is there a nexus between the harm the applicant suffered and the protected characteristic (actual or imputed) you have identified? Explain your answer with reference to the evidence, both direct and circumstantial, that supports your conclusion regarding the claimed persecutor's motive.
4. Is it possible that the claimed persecutor in this case was motivated to harm the applicant by factors other than the protected ground you have identified? If so, what factors? Explain your answer with reference to the evidence that would support finding a different or additional motive and/or additional evidence that you would want to gather to make a determination.

### Practical Exercise #1

The applicant is a 28-year-old male who was born and raised in Iran. He is married and has two very young children. He is Baha'i as is his whole family. As a result of government prohibitions on the practice of his faith, he has been unable to openly practice his religion since birth. Because religious instruction in the Baha'i faith is not allowed, the applicant has only been able to receive religious instructions from his parents. He believes that if he stays in Iran he will never be able to become a true practitioner of his religion.

The applicant testified that his inability to openly practice his religion is a source of significant emotional distress for him because he does not have a community of believers with whom to share his beliefs and from whom he can learn. He feels like a "fake" because he has not had the courage to openly practice his religion for fear of being arrested, tortured, or executed. He also cannot share his religion with others and teach them about his religion as it is forbidden to do so. The applicant is particularly concerned that his two children, aged 3 and 5 years, will never be able to have religious training except for the imperfect religious training that he can give them. He wants his children to grow up as Baha'i and have a much better knowledge of the Baha'i religion than he has; most importantly, he wants them to grow up openly practicing their religion.

#### **Questions:**

1. Name some of the religious freedom violations this applicant has encountered.
2. Has the applicant suffered past persecution? Why? Why not?
3. Does the applicant have a WFF of future persecution?

### Practical Exercise

The applicant, a 55-year-old male from China, testified that he is a practicing Buddhist; he never had any difficulty practicing his religion except that the nearest temple was quite far from his home. He decided that he wanted to build a temple in his neighborhood. He had never had difficulties with the government until he started building the temple. He applied for a permit to build the temple in May 2004, as required for all new construction, but learned that he could not get the permit because there was a year's delay in issuing building permits. He decided to proceed with construction without a permit because a temple was needed in the neighborhood. Nearly four weeks after he started construction, authorities from the New Building Construction Bureau showed up at the work site and told him that he had to cease construction immediately and explained why having a building permit was important. At first he thought that he would comply with the order but changed his mind as he thought that religious buildings should not be subjected to the permit requirement. He therefore decided to proceed with the construction. When government officials learned that he was continuing with the construction, he was arrested at the worksite and taken to the local police department. He was asked why he was persisting in building without a permit. He told them that it was important for Buddhists in his area to have a new temple, that the permit requirement should not apply to the building of such an important building as a temple, and that the wait for the permit was just too long. He told the police officers questioning him that he would continue building regardless of what he was told, whereupon he was slapped and thrown to the floor. The officers told him that he would "find out what it meant not to follow an official directive" and punched him on his arms and legs. After he was struck, he was asked once again if he was going to persist in building and he told them that he would think about it. The police officers lost patience with him and began to strike him with a strap and had him kneel on the ground for several hours while intermittently beating him or striking him with the strap. The applicant was detained for two weeks until he agreed to cease building the temple. He believes that the reason why he was arrested was because he did not have a permit.

Country conditions for China show that Buddhism is one of five religions recognized by the government, and that Buddhists who are not Tibetan Buddhists are largely able to practice their religion without government interference. The applicant is not a Tibetan Buddhist.

#### **Questions:**

1. Has the applicant suffered harm on account of religion?
2. How do you analyze religious persecution claims involving laws of general applicability?
3. Would your analysis change if the applicant testified that the police officers told him that religious believers are insolent, and always try to get away with breaking the law?
4. What appears to be the primary motivation for harm?



### Practical Exercise

Applicant is a 21 year-old native and citizen of Morocco. She was schooled for 3 years and knows how to write her name, but she is otherwise illiterate.

The applicant claims that she was a victim of her father's escalating physical and emotional abuse, which arose primarily out of differences between her and her father, i.e., the father's beliefs, particularly pertaining to women, and her more modern views. Her father beat her at least once a week using his hands, his feet, or a belt. She notes that her father did not mistreat her two brothers.

On one occasion, when she was 14 years old, the applicant wore a short skirt outside her home. When she returned home, her father verbally reprimanded her, heated a straight razor, and burned those portions of her thighs that had been exposed while she was wearing the skirt. He told her that he was taking this action to scar her thighs so that, in the future, she would not be tempted to wear what he considered improper attire. The applicant stated that she and her mother were afraid to go to the hospital after the incident, so her mother went to the local pharmacy and procured an ointment to treat the burns.

On another occasion, the applicant went to a pay phone to make a call. On her way to the telephone, a young man stopped her to ask for directions and they engaged in a short conversation. Upon observing this interchange, her father came into the street, shouted at her and the individual with whom she was conversing, and beat both of them. He used a ring he was wearing to beat the applicant in the face, particularly her forehead, the area between her eyebrows, and the bridge and top of her nose. She testified that she bled from the beating. Thereafter, the applicant's father compelled her to remain in the house in order to prevent subsequent casual conversations with strangers. She was forbidden to attend school and was prohibited from other activities physically located outside her home. The applicant stated that her father believes that "a girl should stay at home and should be covered or veiled all the time."

One evening in 1997 the applicant sneaked out of the house to visit some girl friends. That night while she was asleep, her father entered her bedroom and asked whether she had gone out that day. Knowing that he had forbidden her to leave the house, the respondent lied about her outing. Her father showed her that, unbeknownst to her, he had been marking the soles of her shoes with chalk and was thereby monitoring her activities. He said that he knew she had left the house and had lied about it. He then slapped, punched, and kicked her and pulled her hair.

The applicant stated that she did not consider requesting police protection or seeking any other kind of governmental intervention because her mother's previous efforts in that regard had proven unproductive. According to the applicant, she twice attempted to commit suicide in Morocco, and on two other occasions she attempted to run away in an

effort to escape her circumstances. After at least one of the suicide attempts, she had her stomach pumped in a hospital and was unconscious for 3 days.

The report of the United States Department of State that is contained in the record confirms that "few women report abuse to authorities" because the judicial procedure is skewed against them, as even medical documentation is considered insufficient evidence of physical abuse, and women who do not prevail in court are returned to the abusive home.

**Questions:**

1. Did the applicant's mistreatment rise to the level of persecution?
2. Can mistreatment by a family member provide a basis for refugee status?
3. Would your analysis change if you were told the father was Muslim?
4. Can mistreatment by a person with the same protected characteristic provide a basis for refugee status?
5. Is there a nexus between the harm and a protected ground?

AO: \_\_\_\_\_

Name of Applicant:

Name of Interpreter:

Date: October 2009

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**Preparer**

Did an attorney help you prepare your application?

No.

Did someone help you?

Yes.

Who helped you?

\_\_\_\_\_

Who is this person?

It's a sister at my church.

Did someone read the application to you in your language?

Yes.

When you reviewed your application, was everything correct and true?

No.

Which parts of the application are incorrect?

She failed to fill out the fact that my wife was persecuted in our country.

Are there any other parts of the application that are incorrect?

No.

Is this the English version of your written statement?

Did you review the English version of your written statement?

When you reviewed your written statement, was everything correct and true?

**Reason(s) for Claim**

Does your wife live at this apartment also?

Yes.

When did you start living at this apartment?

Since June 2.

Of which year?

This year.

When did your wife start living at this apartment?  
Since this year, June 2.

You started living at Broad Street together?  
Yes.

(During I-589 review)  
Where did you live after 10/2008? I  
lived at Broad Street

Earlier you told me that you started living on Broad Street in June 2009?  
No, that's my wife's arrival date. Since September 1, 2008, I started living on Broad  
Street

Earlier you told me that you started living on Broad Street in June 2009. Then you told me  
that you started living on Broad Street on September 1, 2008. Then you told me that you  
lived at the address on Main Street until October 2008. Can you explain?  
I lived at the Main Street address until October 31, 2008. Then, I moved and started to live  
at Broad Street starting September 1, 2008.

Until when did you live on Main Street? 2008  
August 31.

Did you tell me earlier that you lived on Main Street until October 2008?  
I remember I stayed on Main Street until August 2008 and then I moved to the Broad  
Street address until September 2008.

Why did you tell me earlier that you started living on Broad Street in June 2009?  
My understanding was that June 2, was the date my wife came to the states. As I  
remember the question since when my wife and I started living together.

Can you explain to me why you said June 2, when I asked when you started living at the  
apartment on Broad Street?  
Could you ask the question again one more time?

When I asked you when you started living at the apartment you said June 2. Can you  
explain why you said you started living there on June 2, 2009 when you claim that you  
started living there August 2008?  
As I recall, the question was since when my wife and I started living together at this  
address. I didn't know the question was for me to start living at that address. (strange)

You stated that you left China in October 2007, is this correct?

Yes.

Why did you leave China in October 2007? I came to the states for research work.

Were there any other reasons why you left China?

No.

And you filed for asylum on September 11, 2009, is this correct?

Yes.

Why did you wait until September 2009 to file your asylum application?

Because I was afraid to return to China to get persecuted there.

Why did you wait until September 2009 to file your asylum application?

Because before, I did not wish to stay in the United States, I wanted to go back to China.

Why do you believe that you will be harmed if you returned to China?

Because I joined a Christian church in the United States and this church is considered a cult or evil religion in China.

When did you join this church?

May 2008.

May 2008 was the first time you attended this church?

Yes.

How often did you attend this church since May 2008? I attended the church regularly every Sunday.

When did you start realizing that you would be harmed in China if you returned because of your participation in this church?

Approximately in February or March 2009.

How did you realize that you might be harmed if you returned to China?

Because this year, I started to search the locations of my church in China so that I can attend the church there.

How did you realize that you might be harmed if you returned to China?

Because I found on the internet that some of the brothers and sisters of my church in China were arrested.

Approximately when did you find this news on the internet?  
This year, month of February.

Where on the internet did you find this news?  
Chinaaid.org. Boxun.com

When had you planned to return to China?  
Since I came to the United States, I planned to go back to China.

Approximately when did you plan to go back to China? If  
February this year, I planned to go back to China.

Why did you plan to return February of this year?  
My original plan was to stay here for two years and then go back to China. By February of  
this year, my contract was almost terminated. At that time, I planned to go back to China.

What do you mean that your contract was almost terminated?  
My contract was until September of this year.

Why did you plan to return to China in February of this year if your contract was not  
terminated until September?  
Oh, I need to go back six months prior to the termination of my contract to go back to my  
old school or university to discuss the future plan.

Why did you have to go back six months prior to the termination of your contract?  
I needed to discuss with the university about my future work there with them. I cannot  
just go back and all of a sudden get back to my work there.

Was it agreed in the contract that you had to go back to China six months prior to the  
termination?  
I think you, interpreter, did not translate clearly my thoughts. Can I repeat what I just  
said?

Yes.  
I needed to go back six months prior to the termination so that I could discuss with my  
original university about my work in the future.

If you returned to China six months prior, did you plan on returning to the United States? It  
all depends. I might come back. I might not come back.

So it was important for you to return six months prior to termination of your contract?

I only planned only to get back to the original university so we could both plan for my future work. It's not that I wanted to go back. I must go back six months prior so I could plan ahead of time, or make plans for the next semester.

Did you ever go back to China?

No.

What about the articles that you read on the internet made you afraid to return to China? The most frightening was that in the year 2008, there were four hundred students arrested in Beijing and Hwangjo at university campus. I worked at university environment and I was so afraid.

Why were the students arrested at these universities?

Because these students were the sisters and brothers of my church.

What do you mean "of your church"?

My church is called local church and these students were all the sisters and brothers of local church.

What is the name of your church?

It's called Local Church.

Local Church is the name of the church?

Yes. In the United States, it's called Local Church.

Does it have the same name in China?

The discriminating name by the Chinese government is Shouters.

What is the official name of the church in China?

The official name of our church there is also Local Church.

Can you tell me more about the Shouters? - How it is this church in China and the United States?

In the United States, there are a lot of local churches. The local church was established in 1930 in China. The founders were Ni Twa Shung and Li Chang Sho. By 1949, when China was liberated and this church was named anti-government church. Then Ni Twa Shung was arrested and put in jail. He died in jail in the 1970s. Li Chang Sho came to the United States through Hong Kong and Taiwan.

This church was considered anti-government since 1949?

Since 1949, the church was considered anti-government and 1980s, it was considered a cult.

Is the church well-known in China?

Whether it is well-known, I don't know. I just found that there were a lot of arrests made by my brothers and sisters.

If this church was considered anti-government since 1949, were you aware that the government opposed this church at the time you started participating?

I didn't know that when I joined the church. However, in February this year, I started to know.

When you joined the church in May 2008, no one told you about the church's reputation in China?

Nobody told me anything. The brothers and sisters are mostly from Taiwan and Hong Kong but very few are from mainland China.

Wouldn't members of the church know that the church was considered a cult in China?

Could you repeat your question please?

If you were able to know that shouters were being arrested and harmed in China through the internet, isn't this public knowledge?

Before I joined this church, during the first period, I was approached by a person who was named Tan. He was a preacher. I thought all Christians religion was the same, one church.

What is the difference between Shouters and other Christians?

The Bible used at our church was edited by Ni and Li, and it's called additional recovery version. When we pray, we pray out loud calling our Lord Jesus Christ. And this calling out loud way of praying makes me feel good because I feel the Holy Spirit is entering my body and makes me very excited.

Are there any other differences between Shouters and other Christians?

I hadn't been to any other churches so I don't know the facts about other churches. I only know these two main differences.

I am aware that even certain Christians are being arrested and harmed in China. You weren't aware of the Shouters' reputation in China?

When I was in China, I had never approached any church. And I thought the Chinese government did not persecute churches.

Did you ever tell your church members in the United States that you planned to return to China?

When I first joined the church, I very seldom talked about myself. I was approached by various people there to preach and give me the gospel.



How many members here in the United States have?  
Altogether, there are over 300 people.

But you attended this church every week?

At the beginning, it's not every week. Sometimes, weekly and sometimes once every other week. But after I was baptized, I went there almost every week.

Earlier when I asked you how often you attended the church, you told me you attended regularly every Sunday. Why are you telling me now that you went there almost every week?

After I was awakened, then I went to church every Sunday regularly.

But you also told me that after you went there almost every week even after you were baptized. Can you explain?

Without specific reason, I will go every week. Unless I was so sick that I could get up, then I did go. (strange)

Did you meet any people while you attended the church?

Yes.

Did you make any good friends while you attended the church?

There are a lot of good friends.

Did you tell any of your church friends at any time that you planned to return to China?

Yes.

When did you tell your friends that you planned on returning to China?

January of this year.

How did they respond?

They told me that you go back to China, you have to be careful.

Why did they say that you had to be careful?

They said that this church in China is not registered. It's kind of a house church.

What does it mean if the church is not registered?

The registration process is needed for the church. Churches need to do this with the Chinese government.

If the church is not registered with the Chinese government, what happens?

If it's not registered, it's considered not recognized. Then, sometimes the gathering will be considered illegal.

Were you aware in January 2009 that the church was not registered or considered illegal in China?

I did not quite believe at that time.

What do you mean that you did not believe?

Because the church is good and the people at the church are good and it should have been recognized by the government.

But the church members here told you to be careful if you returned to China, is this correct?

Yes.

When they told you to be careful in January, were you afraid to return to China at that time?

No, I wasn't afraid.

Why weren't you afraid?

Because I thought the church was good and the Chinese government shouldn't be bad to this church, so I wasn't afraid at that time.

If people were telling you to be careful, why weren't you afraid?

Because I felt that the Chinese government did recognize Christian religion.

Why did you feel that the Chinese government recognized Christian religion?

Because according to the Constitution, the religious belief is free. It has freedom.

When your church members told you to be careful in January, did you do any research then?

Not that time, but since February I started to search the internet.

In February, was that when you started to become afraid of returning to China?

At first, I was halfway believe and halfway disbelieve.

Why didn't you completely believe if you read it on the news?

I didn't see many articles Christians- the churches being persecuted there.

When did you become afraid of returning to China?

When I see more and more articles, I started to become more and more concerned or afraid.

At what point did you realize that you were afraid of returning to China?

Around April of this year.

How many articles did you read regarding your local church?

I found that there are over 20 articles about Shouters being persecuted. I also ran into an article between Ye Shao Wen and a US ambassador. After I read this article, I became a firm believer that my church was being persecuted by the government in China.

You stated that you had planned to return to China in February 2009, is this correct? At the beginning of my trip to the states I planned to stay 2 years. In February 2009, I planned to prepare for future work. This February, I did preparation work, for future work. Only preparation.

You told me earlier that you planned on returning to China in February 2009 to prepare for future work in China?

When I came to the States, I planned to stay two years.

But you told me earlier that you had to return to China six months prior in order to prepare for your future work?

I did not plan on returning to China six months prior to my contract termination. I only said that I planned on returning to China. The interpreter misinterpreted my thoughts. My wording. (review)

Were you harmed or threatened in any way in China before you came to the United States in October 2007?

No.

When did you become a Christian?

August 2008.

Why August 2008?

At the beginning, I did not believe.

You stated that you were baptized?

Yes.

When were you baptized?

October 12, 2008.

Why did you wait two months to be baptized?

Even though I became a believer, but still, it's not a hundred percent. Still half doubt and half believe.

What did you doubt at the time?

My education received in China was no God.

How did you come to believe that there was a God?

I read the Holy Bible. There are a lot of things- a lot of things are unexplainable using the no God philosophy approach.

What do you mean?

According to the old belief I received in China, everything was being evolved or developed. However, how come the heaven and earth and all the creatures are so wonderful, I could not figure it out.

As someone who studied biology, biochemistry, science, did you study evolution?

Well, I did believe in evolution. And also I taught evolution in China. However, there are still a lot of things unexplainable and they were based on hypotheses principle only.

Can you describe what problems you had with evolution?

Human beings, according to evolution, evolved from apes. However, there is no proof to that and it was only based on hypothesis. And there is no way to explain that.

As someone who taught and studied evolution, can you give me a more in depth explanation of the problems you had with evolution?

The main problem with evolution is that there are a lot of theories are based on hypothesis, there is no proof or evidence and sometimes it is far from truth than we know. This is the major problem with evolution.

I understand, but can you tell me with more detail what problems you had with evolution?

For instance, according to evolution, the formation of the earth was a huge explosion. This huge explosion is only a hypothesis, there is no proof or evidence at all. Another problem for instance with the creatures or biology, the creatures were originated from water and then later on developed on land base. And then from simple entity to complex entity, however, there are a lot of fossils proving that these creatures are from land only. Not evolved from water type.

Can you give me an example?

On Himalaya Mountain in China, there was a kind of fossil evidencing the origin to be land base not from water.

Can you give me more detail about this fossil?

The discovery of this fossil at this time was a challenge to the theory of evolution.

Anything else?

The entire universe is running in a very systematic way and it couldn't be explained by the theory of evolution. For instance, the movement of the stars must have been made by God, it couldn't have come out of the evolution.

ASSESSMENT TO REFER

NAME: COUNTRY: China DATE:  
FILE NUMBER: ASYLUM OFFICER:  
LOCATION: REVIEWING SAO:

The applicant indicated that he is a 42-year-old male native and citizen of China who entered the United States at New York, NY on October 18, 2007, and was admitted as a nonimmigrant J-1 exchange visitor with authorization to remain until September 30, 2009.

The applicant fears that he will be harmed by Chinese authorities on account of his Christian religion as a "shouter."

The applicant has filed his asylum application on September 11, 2009, more than one year after he entered the United States. However, the applicant qualifies under an extraordinary circumstance exception: maintaining lawful status. The applicant testified that he worked as a post-doctorate research associate from October 2007 until September 30, 2009. The applicant filed his asylum application on September 11, 2009 while in lawful status, but failed to maintain such status before he appeared at his asylum interview on October 27, 2009. Because the applicant filed his asylum application while he maintained lawful status, he has established an extraordinary circumstance exception that exempts him from the one-year filing deadline. Thus, the applicant is eligible to apply for asylum.

The applicant testified that he became a "shouter" Christian in August 2008, while residing in the United States. The applicant stated he started attending the "Local Church" since May 2008 and continued to attend church meetings every week. The applicant stated that he began to share the gospel with his wife, who remained in China. The applicant testified that on one occasion, he shipped a Bible to his wife in May 2008. The applicant also attempted to share the gospel with his colleagues in China in June 2008. The applicant stated that due to his influence, his wife became a Christian in August 2008. The applicant testified that he was baptized on October 12, 2008. The applicant indicated that his wife was arrested and detained by Chinese government officials in October 2008 while she was reading the Bible and evangelizing to others. However, the applicant did not become aware of her arrest and detention until February 2009. The applicant stated that in February 2009, he began to prepare for his return to China because his employment contract was to expire in September 2009. At this time, the applicant found internet articles that described the arrests of "shouter" Christians by the Chinese government. The applicant testified that in April 2009, he became convinced that he would be arrested and harmed by the Chinese government on account of his Christian religion if he were to return to China. The applicant's wife entered the

United States on June 2, 2009. The applicant and his wife applied for asylum on September 11, 2009. The applicant testified that he was not harmed or threatened by the Chinese government prior to his departure on October 18, 2007.

The applicant's testimony was found not credible for the following reasons:

- His testimony regarding how often he attended the Local Church in the United States was internally inconsistent and lacked sufficient detail. The applicant testified that since May 2008, he attended the Local Church "regularly, every Sunday." However, the applicant subsequently testified that he attended the church "sometimes, weekly and sometimes, once every other week. But after [he] was baptized, [he] went there almost every week." When given an opportunity to explain the inconsistency, the applicant answered, "After I was awakened, then I went to church every Sunday regularly." The applicant's explanation is not reasonable in light of the fact that he testified that he attended church "almost every week" after he was baptized. This inconsistency is relevant for it calls into question whether the applicant attended the Local Church in the United States and is a "shouter" Christian.
- His testimony regarding how he became a Christian lacked sufficient detail. The applicant testified that he became a Christian after he recognized that there were certain problems with the theory of evolution. Although the applicant was able to provide examples of the problems he had observed, he was unable to articulate why he deemed the theory of evolution as insufficient. For example, the applicant indicated that "a kind of fossil [was found] on the Himalaya mountain in China, evidencing the origin to be land base and not from water." When asked to provide a detailed explanation regarding the fossil, the applicant was unable to provide supplemental information and simply stated: "The discovery of this fossil at this time was a challenge to the theory of evolution." The applicant's explanation is not reasonable in light of the fact that the applicant: 1) has taught the theory of evolution as an associate professor at Shanghai University and Shanghai Jiao Tong University in China for approximately ten years; and 2) has a Ph.D. degree in biology. This lack of detail is relevant for it calls into question whether the applicant is a "shouter" Christian.

As the applicant's testimony was not credible in material respects, he has failed to meet his burden of establishing that he is a refugee as required by 8 CFR § 208.13.

For the foregoing reasons, the applicant is not eligible for asylum status in the United States.

Assessment is to refer to the Immigration Judge.

## **Gender Related Claims: Hypo #2**

The applicant indicated that he is a 37-year-old male native and citizen of Bulgaria who entered the United States at Washington DC on April 15, 2011 and was admitted on a B-2 visa valid until April 4, 2012.

The applicant credibly testified that he knew that he felt he was not born with the right gender when he was three years old; the boys didn't want to play with him and the girls also didn't want to play with him because he felt that he was different and he ended up playing by himself. However, applicant didn't fully know he was transgender until he was 25 years old.

Applicant tried to speak to his parents about his identity at the age of 12 but he was mocked and insulted. Applicant wasn't aware of hormone replacement therapy until his mid-twenties but he knew that testosterone was for men and he started abusing steroids to achieve a masculine effect.

Applicant's non-conformance between his identity documents and his gender appearance was the source of various incidents of public humiliation in school, including being called out and mocked in front of an auditorium of law school classmates by the dean. Applicant was also detained by police briefly during a practical law school training exercise at a police station because the police kept insisting he was using his wife's passport, even though the passport said he was single.

In 1993, applicant was dating a woman, Aysehel, who later got romantically involved and married a powerful politician named Ahmed, founder and leader of the Movement for Rights and Freedoms in Bulgaria. Aysehel divorced Ahmed two months after the wedding. In Ahmed's resulting anger, he paid a journalist to write articles about applicant and Aysehel labeling them both as lesbians. Ahmed also phoned applicant and threatened to kill him and that he was capable of kidnapping him to sell him as a prostitute in Western Europe.

Applicant visited the U.S. on business in March 2010 for a weeklong business trip but he did not apply for asylum during this trip because he didn't know asylum was available based on his transgender identity and he didn't attempt to stay in the U.S. because he had ten employees for his graphic/web company and wasn't financially prepared to leave Bulgaria before closing/selling his business.

- 1. *Why has the persecutor targeted the applicant?***
- 2. *Do any of the reasons relate to traits possessed or attributed to the applicant?***
- 3. *Do those traits form a PSG?***

## FACT PATTERN PSG - 1

The applicant is a Tanzanian national who suffers from severe bi-polar disorder. He suffered a mental breakdown when his mother died while he was attending the University of Dar es Salaam. He was forced to leave school as a result. During his manic episodes, the applicant believes he has super-human powers. He is visibly erratic and often walks into busy intersections to direct traffic because he believes he has the ability to prevent traffic accidents. In 2003, Tanzanian officials who witnessed his erratic behavior took him to a hospital in Dar es Salaam. The admission to this hospital was the beginning of the applicant's many years of violent abuse and torture in Tanzanian asylums and prisons. His hands and feet were tied by nurses for five to seven hours a day four days per week. As the applicant's condition worsened, his treatment became more inhumane. He was bound and beaten with leather straps for eight hours per day five to six days per week. In prison, guards beat him with a club on his elbows and feet four days per week. The beatings were so severe he could not walk. In prison he was treated worse than the other prisoners, but similar to other mentally ill prisoners.

In Tanzanian culture, severe mental illness with visibly erratic behavior is seen as a manifestation of demonic possession. Tanzanians label people with visibly severe mental illness as "mwenda wazimu," which means demon-possessed. An expert witness who testified in the applicant's case stated that even medical professionals in Tanzania believe that severe mental illness accompanied by erratic behavior is caused by demonic possession. The nurses and prison guards who violently abused the applicant referred to the applicant as "mwenda wazimu."

The applicant fears similar violent abuse if he is returned to Tanzania.

### DISCUSSION:

1. What is the harm the applicant fears? Does it constitute persecution?
2. Is the harm the applicant fears on account of membership in a particular social group?

Explain.

3. What other information would you like to know? What questions would you ask the applicant?



## Student Interviewing Exercise: Credibility

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*Handout for the beginning of small group interview*

### **INSTRUCTIONS:**

Review the attached fact pattern and begin to formulate a plan for the questions you will ask the applicant regarding his claim. You will have about 20 minutes to ask the applicant questions to determine if, taking into account all factors as a whole, the applicant's testimony is detailed, consistent, and plausible in light of logic.

Remember the required steps for assessing credibility:

1. Identify whether there are flaws in consistency, detail, and/or plausibility in the applicant's testimony.
2. Determine if the flaws are material to the claim; if so, determine to which specific elements of the claim, *e.g.*, past harm or possession of a protected characteristic.
3. If the flaws are material to the claim, you must confront the applicant with your concern(s).
4. Ask the applicant to explain.
5. Assess whether the response is reasonable.

Also, your questions and analysis must be based **solely** on the testimony elicited during today's session, not on any answers provided by the applicant in other small group exercises.

### **Relevant Legal Standard(s)**

An applicant's testimony is credible if it is detailed, consistent, and plausible. Therefore, a clear and well-articulated basis for a negative credibility finding should accurately describe significant material flaws in consistency, detail, and/or plausibility.

- RAIO Lesson Plan, *Credibility*

### **The Application**

The applicant is a forty year-old (male) native and citizen of Iraq.

The applicant is a Sunni Muslim, who speaks Arabic, finished 9 years of formal education and worked as a contractor on different construction projects in association with U.S. military forces and foreign organizations including the United Nations.

The applicant did not serve in the Iraqi military, avoiding the draft in the 1990s. Due to the applicant's employment and affiliation with the Americans, Al-Qaeda in Iraq sent him a letter in 2005 threatening his life. The applicant received three threats between 2005 and 2009. On December 20, 2009, four men in a vehicle approached the applicant and his wife where they tried to kidnap him.

The applicant later moved to a different neighborhood, a Shiite neighborhood, to remain safe until he was kidnapped on January 23, 2011. His family paid a ransom of \$53,000 for his release. After being released, the applicant stayed in hiding until his departure.

### **The Supporting Documentation**

The applicant submitted the following documents in support of the application:

- An Iraqi passport, issued on September 5, 2009.
- A letter from Al-Qaeda in Iraq dated December 2005.
- A letter from the Department of Defense attesting to applicant's employment as a contractor with the U.S. Government and other international organizations.

You conducted Country of Origin Information Research and found:

- A U.S. Department of State Human Rights Report that indicates the area in Northern Iraq is primarily controlled by the Kurdish government, a people who are primarily Sunni Muslims who speak Kurdish dialects, a language related to Persian.

- A report, *Saddam Hussein's Baath Party, Inside an Authoritative Regime*, Joseph Sassoon (2012), indicates the Iraqi Government (the Baath Party) were actively seeking deserters, would offer rewards for information about deserters and punish families in lieu of deserters during the 1990s. The report also stated:
  - During the regime of former Iraqi leader Saddam Hussein, conscription was linked to the educational level of the conscripts. Holders of a high school diploma or lower were forced to spend three years in the army whereas university students only had to spend half that time (18 months) in military service. Holders of higher degrees, such as a masters or a doctorate, only had to do six months. Most of Saddam Hussein's army was composed of conscripts.
  - It was also possible to avoid military service in Hussein's era by paying for exemption – although usually this cost a lot and it was only very wealthy Iraqis who could avoid conscription.

## Student Decision Making Exercise: Credibility

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*Writing exercise to be handed out after the small group interview*

### **INSTRUCTIONS:**

Read through the applicant's information below and complete the questions. This was the information given to the person role-playing the applicant. The information should be similar to what your group elicited from the applicant during the interview.

### **BIOGRAPHIC INFORMATION**

You are a forty year-old (male) native and citizen of Iraq. You were born on December 15 in Baghdad. You are a Sunni Muslim. You finished 9 years of formal education and worked as a contractor on different construction projects in association with U.S. military forces and foreign organizations including the United Nations.

### **YOUR INVOLVEMENT WITH THE IRAQI MILITARY**

You avoided the military draft by not registering your name at a military recruitment center when you were living in Baghdad. As a student you did not have to complete your military service. You avoided your mandatory military service by living with a relative in Northern Iraq near Erbil in 1992. You returned to your neighborhood in Baghdad after two years.

### **YOUR FEAR OF RETURNING TO IRAQ**

Due to your employment and your affiliation with Americans, Al-Qaeda in Iraq sent you a letter in December 2005. The letter contained a bullet and stated that you should quit your job with the Americans, that you are a spy, that you are a traitor and that you should leave Iraq. You received these threats three times between 2005 and 2009, although you don't remember the exact dates. You received another threat on December 15, 2009 with the same message. On December 20, 2009, four men in an Opel approached you and your wife, where they told you to get out of your vehicle and to get into their car. You refused and sped away. They chased you until you reached your house and shot you in the hand. You suspect that these men were members of Al-Qaeda in Iraq because they were yelling at you about your work with the Americans. Four days later, on Christmas Eve, your brother who worked with you was kidnapped and hasn't been seen since. No ransom was called for your brother. You believe he has been killed.

As a result of the threats and your brother's kidnapping, you moved from a Sunni neighborhood to a Shiite neighborhood. You claimed to be Shiite to your neighbors. Eventually, you were discovered to be Sunni and that you work as a contractor for the Americans. You are unsure how your past was learned. Members of the Jaish al-Mahdi (JAM)

kidnapped you on January 23, 2011 while you were near your home. The JAM militia members identified themselves as members of JAM and accused you of being Sunni and working with the Americans. The JAM found \$3000 on you and ransomed you to your family for an additional \$50,000.

### **YOUR ESCAPE**

Your mother was able to secure the money as she was worried that her only remaining son would be killed. You were detained for about 10 hours for one day. During your detention you were slapped on your face and your identification was taken. You believe they confirmed that you are Sunni from your name.

### **Exercise:**

Please answer the following questions using the information provided as well as the information elicited in the interview:

1. What credibility concerns, if any, are found in the application?
2. For each of the credibility concern(s), what type of credibility concern(s) was presented, if any?
3. For each of the credibility concern(s), was the credibility concern(s) material (relevant) to the claim? Give a brief explanation of your response.
4. During the course of the interview, did you inform the applicant of your credibility concern(s) and ask the applicant to explain your credibility concern(s)?
5. Was the applicant's explanation(s) reasonable to overcome the credibility concern(s)? Give a brief explanation of your response.
6. Considering all the factors, do you find the applicant credible?

Name:

Group Color:

### **Credibility Small Group Writing Exercise**

Please answer the following six questions using the information provided as well as the information elicited in the interview.

When you are finished, please upload this exercise to your student dropbox on the ECN using the naming convention: **Last Name, First Name\_Credibility Sm Grp**

1. What credibility concerns, if any, are found in the application?
2. For each of the credibility concern(s), what type of credibility concern(s) was presented, if any?
3. For each of the credibility concern(s), was the credibility concern(s) material (relevant) to the claim? Give a brief explanation of your response.
4. During the course of the interview, did you inform the applicant of your credibility concern(s) and ask the applicant to explain your credibility concern(s)?
5. Was the applicant's explanation(s) reasonable to overcome the credibility concern(s)? Give a brief explanation of your response.
6. Considering all the factors, do you find the applicant credible?

## Student Interviewing Exercise: Well-Founded Fear

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*Handout for the beginning of small group interview*

### INSTRUCTIONS:

Review the attached fact pattern and begin to formulate a plan for the questions you will ask the applicant regarding whether the applicant has a well-founded fear of persecution. You will have about 15 minutes to ask the applicant questions to determine if the:

1. applicant possesses, or is believed to possess a protected characteristic;
2. persecutor is aware or could become aware that the applicant possesses the characteristic;
3. persecutor has the capability of harming the applicant; and,
4. persecutor has the inclination to target the applicant.

### PLEASE NOTE:

For the purposes of this particular exercise, **assume that the applicant did not establish past persecution**, and focus on determining whether the applicant has met the four elements of the *Mogharrabi* test (listed above). Assume the applicant is credible. Also, your questions and analysis must be based **solely** on the testimony elicited during today's session.

## Relevant Legal Standard

To establish a well-founded fear of future persecution, the applicant must establish the following elements (also known as the *Mogharrabi* test):

1. Possession, or imputed possession, of a protected characteristic;
2. Awareness -- the persecutor is aware or could become aware the applicant possesses the characteristic;
3. Capability – the persecutor has the capability of harming the applicant; and,
4. Inclination – the persecutor has the inclination to target the applicant.

RAIO Lesson Plan, *Well-Founded Fear*

## The Application

The application before you indicates that the applicant is a 24-year old male/female, native and citizen of Burma, who fled Burma in 2009, and has been living in Malaysia ever since.

The applicant is a member of the Chin ethnic group and practices Christianity. The applicant has never personally interacted with the Burmese military but on multiple occasions s/he was forced to hide in the jungle with their family because the village was alerted that the military was coming.

In November 2009, the applicant heard that the military was arresting villagers in nearby villages and forcing them to porter. The applicant and other villagers in their community were afraid that their village would be targeted next, so the applicant and the other villagers – about 100 people in total – all decided to leave. They slept in the jungle, trying to travel in such a way that they would avoid being discovered by military patrols. The applicant left Burma on November 18, 2009 and has never returned since his/her departure.

## The Supporting Documentation

The applicant submitted the following documents in support of the application:

- UNHCR registration document



## Student Decision Making Exercise: Well-Founded Fear

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*Writing exercise to be handed out after the small group interview*

### **INSTRUCTIONS:**

Read through the applicant's information below and complete the questions. This was the information given to the person role-playing the applicant. The information should be similar to what your group elicited from the applicant during the interview.

### **BIOGRAPHIC INFORMATION**

You are a twenty-four year old (male or female, you choose) native and citizen of Burma. You are single and have no children. You are a member of the Chin ethnic group and practice Christianity. In 2009, your father died of malaria. You continued living on the family farm in a village that is entirely Chin and Christian with your mother.

### **YOUR KNOWLEDGE OF THE MISTREATMENT OF CHIN PEOPLE**

You know that the Burmese government has oppressed the Chin people for many years. The government is controlled by Burmese Buddhists, and it is difficult for people who are not Burmese or Buddhist to get jobs. In your area, the Burmese military takes the Chin people and puts them to work either building roads (forced labor) or carrying goods between villages (this practice is known as portering). You have never personally interacted with the Burmese military but on multiple occasions you were forced to hide in the jungle with your family because the village was alerted that the Burmese military were coming. You hid four or five times during this time with other members of your village who were of portering age (anyone over age 14).

The Chin National Army (CNA) formed many years ago to fight for the rights of the Chin people. You never had contact with the CNA before you decided to leave Burma and do not know much about what they do, but you know that the Burmese military destroys entire villages where they think that people support the CNA and confiscates the villagers' land. Your father was not a CNA member, but people in his village did support the CNA, and you have heard that many years ago, he and his family frequently gave CNA members rice and shelter. A couple of years before you were born, the Burmese military destroyed your father's village because the CNA had attacked a nearby checkpoint. Your father and his fellow villagers ran into the bush and escaped during that incident.

### **YOUR ESCAPE**

In November 2009, you heard that the military was arresting villagers in nearby villages and forcing them to porter. You and other members of your village were afraid that your village would be targeted next, so you and the other villagers – about 100 people in total – all decided to leave. You slept in the jungle, trying to travel in such a way that you would avoid being discovered by military patrols. You ended up breaking from the larger group and met a smuggler who arranged for you to go Rangoon where you were later smuggled across the Burmese border at Kawthoung into Thailand on November 18, 2009. The smuggler later took you in Malaysia where you arrived on November 20, 2009.

### **YOUR FEAR OF RETURNING TO BURMA**

Based on rumors you have heard from your friends in Malaysia, you think that the Burmese government probably burned down your village and confiscated your land. You have also heard that in another village, a few kilometers away, the military came in, burned down the church and all the Bibles, and raped Christian women.

You believe that the Burmese military would recognize you as Chin because your main language is Chin Hakha language and although you speak Burmese, you have an accent. You cannot go back to Burma because you would have no place to live and you do not have your identification card. You think the Burmese military might hurt you, but you do not know what they might do.

### **Exercise:**

Please answer the following questions using the information provided above and the information you elicited during your interview. If you feel like you need country conditions information to fully answer these questions, please conduct COI research and refer to the sources you find in your response.

1. Evaluate the subjective element of the well-founded fear analysis. How does the applicant's background impact on your assessment of the subjective element?
2. Does the applicant pass the Mogharrabi test? Write an analysis of each of the 4 factors.
3. Can the applicant reasonably relocate to a different part of the country to avoid future persecution? Please explain your answer.

## FACT PATTERN #1 – FIRM RESETTLEMENT

The applicant is a thirty-five-year-old native and citizen of the Comoros, a small country whose population is 98% Sunni Muslim. She is an active member of the small Shia Muslim community. Although she is aware that Shia Muslims have suffered some historical discrimination, the applicant never personally experienced discrimination or other harm because of her religion when she was growing up in the Comoros.

In 1997, the applicant left the Comoros to attend university in France. She remained there on a student visa for thirteen years, ultimately obtaining several advanced degrees. After she obtained a doctorate in engineering, she was offered a job at a top engineering firm in Canada, which admitted her as a permanent resident in December 2010. She remained in Canada for a year before accepting a job as a researcher at the University of New Hampshire and coming to the United States on a J-1 nonimmigrant visa in January 2012.

In January 2013, the Comorian government banned the practice of any religion other than Sunni Islam. A few Shia Muslims were arrested, and Shia mosques and cultural institutions were closed.

The applicant travelled to Canada for a few days in February 2013 to renew her U.S. visa. Canadian immigration officials warned her that she had to physically reside in Canada for at least one more year before June 2014, or her residence would be terminated. She returned to the United States to resume her job. Her Canadian status was revoked in July 2013, when it became impossible for her to fulfill the residency requirement.

In April 2013, a coup attempt against the Comorian government failed. The Comorian government, blaming the coup attempt on Iranian-funded mercenaries, arrested several Shia religious leaders. The applicant called into a popular Internet radio program, criticized the Comorian government's actions, and encouraged members the Shia community to continue practicing their religion. The applicant's mother and brother were summoned to the police station the next day and threatened with arrest if they did not tell the applicant to stop "inciting rebellion." In August 2013, after the applicant called into the same radio program to criticize the Comorian government again, her nephew was arrested and charged with illegal religious practice, and her brother was given a warrant for her arrest.

The applicant applied for asylum in the United States in October 2013. She fears that she will be harmed because of her religion or her political beliefs if she returns to Comoros, and she cannot return to Canada or France because she no longer has any status there.

1. Is the applicant firmly resettled in France?
2. Is the applicant firmly resettled in Canada?
3. Would your determination be different if the applicant were applying for refugee status outside the US?
4. If you feel you do not have enough information to make these determinations, what other information would you need? What questions would you ask the applicant?

## FACT PATTERN #2 – FIRM RESETTLEMENT

The applicant is a 46-year-old native and citizen of Iraq. He was raised in a Sunni Muslim family in Baghdad, though he does not practice his religion and identifies as agnostic. He owned a store selling construction materials, and after the U.S. invasion of Iraq in 2003, he did a lot of business with American contractors in Iraq.

In November 2004, the applicant received a phone call from an anonymous individual who demanded that the applicant "cease his support of the Americans" and pay them \$50,000 to "fight the invading troops." The applicant refused and hung up the phone. Two days later, he received a letter from "the people of Fallujah" again demanding \$50,000 and threatening to kill him or kidnap his children if he did not comply with their demands. The applicant recognized this group as one that had been responsible for the murders of two other Iraqis who had worked with American contractors.

A few weeks later, the applicant and his family travelled to Cairo, Egypt, on a business visa, because he was afraid of remaining in Iraq and because he already had significant business contacts in Egypt. The applicant renewed this visa a few times, but because he was concerned about losing his status if his business failed and the situation in Iraq was continuing to deteriorate, he applied for refugee status with UNHCR Cairo in June 2006. He was given a positive refugee status determination in December 2007 and a "blue card," valid for three years, authorizing him to remain in Egypt. He renewed the "blue card" once and remained in Egypt until June 2012, when he entered the United States on an L-1 nonimmigrant visa. He applied for asylum in the United States in February 2013.

Country conditions evidence indicates that Egypt does not return UNHCR-recognized refugees to Iraq and that the "blue card" is indefinitely renewable. Refugees are provided with monetary assistance and may access basic social services, such as education and health care. However, they may not apply for permanent resident status or own land in Egypt, and they forfeit their access to social services if they leave Egypt. It is difficult for them work legally; in order to obtain work permits, they must demonstrate that no Egyptian is available to do the job for which they have been hired. The applicant testifies that he has not been able to obtain a work permit and has only been able to make money to support his family by continuing to run his business in Iraq.

The applicant remains afraid to return to Iraq because of his imputed political opinion as a supporter of the U.S. invasion and because he believes his agnostic religious beliefs will make him the target of Muslim extremists.

1. Is the applicant firmly resettled in Egypt?
2. Would your determination be different if the applicant were applying for refugee status outside the US?
3. If you feel you do not have enough information to make this determination, what other information would you need? What questions would you ask the applicant?

Name:

Group Color:

### Well Founded Fear Small Group Writing Exercise

Please answer the following questions using the information provided above and the information you elicited during your interview. If you feel like you need country conditions information to fully answer these questions, please conduct COI research and refer to the sources you find in your response.

When you are finished, please upload this exercise to your student dropbox on the ECN using the naming convention: **Last Name, First Name\_WFF Sm Grp**

1. Evaluate the subjective element of the well-founded fear analysis. How does the applicant's background impact on your assessment of the subjective element?
2. Does the applicant pass the Mogharrabi test? Write an analysis of each of the 4 factors

P –

A –

C –

I –

3. Can the applicant reasonably relocate to a different part of the country to avoid future persecution? Please explain your answer.
4. (OPTIONAL) Do any of the terrorism-related grounds of inadmissibility apply to this applicant? Please explain your answer.

**From:** [Asylum Officer]  
**Sent:** April 2016  
**To:** [Research Unit]  
**Subject:** China COI on LGBT issues

Hey [RU]

[...] I'm writing from there with a question about a case I have. The applicant has a pretty strong past persecution claim on account of his sexual orientation, but I am having a bit of trouble tracking down good COI to use in support of a presumption not rebutted/fear still well-founded analysis. Does anything come to mind that you've seen that might be a good source to use? Any help will be much appreciated.

Thanks in advance,  
[AO]

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**From:** [Research Unit]  
**Sent:** April 2016  
**To:** [Asylum Officer]  
**Subject:** Re: China COI on LGBT issues

Hi [AO]

[...]

I think that this source quoted below is a fair and typical summary of human rights reporting on the situation for LGBT persons in China, the quoted text being the gist of a longer, China-specific section.

Being LGBT in Asia: China Country Report from the U.N. Development Program (2014):

While LGBT people in China face stigma and discrimination in China, this does not tend to lead to hate-based violence. In China, stigma and discrimination are expressed in seemingly mild but pervasive ways, such as in close surveillance of activities or behaviour, and the rigorous disapproval of non-conforming sexual or gender practices from one's parents, relatives, friends, colleagues and acquaintances.

[...]

The development of the LGBT community and organizations is relatively mature in major cities, especially regional hubs, such as Beijing, Shanghai, Guangzhou and Chengdu. In these locations, there are more opportunities for LGBT individuals to have active social interaction, engage in a variety of activities, and have easier ways of contacting each other. Such locations also witness a more tolerant social environment, more organizational resources and less risk involved in public advocacy. Nowadays, a few LGBT organizations exist also in second and third-tier cities but they are of a smaller scale. However, the fewer number of openly LGBT organizations and a lack of social tolerance in these cities, still mean that the exposure of one's sexual orientation could bring about severe consequences including discrimination, ostracism and persecution from one's families and social networks. As a result, in such places LGBT activities are primarily limited to the Internet, where anonymity is ensured. There is

still no systematic data on LGBT organizations and communities in rural areas and in the western parts of China (such as in the provinces or autonomous regions of Tibet, Qinghai, Gansu, Xinjiang).

[...]

Criminal affairs related to LGBT people

Lack of proper legal protections leads to the majority of discrimination cases to go unreported and unnoticed. This relates especially to cases of extortion and violence towards members of the LGBT community (especially transgender sex workers) and between intimate sexual partners, as well as from public authorities, such as the security department. Victims of violence and extortion often do not report these cases to the police for fear of being further victimized.

Hong Kong's South China Morning Post devotes quite a bit of coverage to LGBT issues in Hong Kong and elsewhere in Asia, for example lack of protection from domestic violence. I might suggest making a Google Custom Search for SCMP and seeing if you can find anything discussing the situation in mainland PRC, although I'm confident in light of the quote above that the situation is not (generally speaking) better there than in Hong Kong.

Also, there was an article in today's NYT about a gay marriage court case in China, although this probably does not relate to your applicant's claim.

I hope this helps.

[RU]

# Using Country Conditions Information in RAIO Adjudications

## Practical Exercises (Face-to-Face Training: CT 16/17)

These are possible answers to the questions presented in the three practical exercises used in our training. They are not intended as “perfect answers” or even “the right answers” for these scenarios (which, after all, are hypothetical and made up). But they do illustrate the skills that the exercises are meant to help you develop as RAIO Officers.

### Practical Exercise 4:

#### *Sample questions:*

- (a) Are you a member of any political party in Indonesia? COI indicates that there is currently fighting between political parties in Aceh, in particular between two parties supported by former Free Aceh Movement participants. (“In Aceh, a power struggle between two political parties whose members were once part of the Free Aceh Movement led to shootings, grenade attacks, and destruction of property.” – Freedom House, *Freedom in the World 2015 – Indonesia*) **Issue Addressed:** Well-founded fear
- (b) You said that you were attacked by Aceh’s police and the Indonesian military last April because you support the Free Aceh Movement. What is the role, if any, of the Movement in Aceh’s politics today? COI indicates that after the Helsinki Peace Agreement of 2005 the Free Aceh Movement (formerly a militant movement fighting the government of Indonesia) transitioned to party politics (initially primarily the Aceh party). See *From Insurgency to Bureaucracy: Free Aceh Movement, Aceh Party, and the New Face of Conflict*, *Stability: International Journal of Security and Development* (2012). This source and others indicate that the Free Aceh Movement ceased to exist after the HPA, so it is necessary to assess what, if any, political views and affiliations the Applicant actually possesses in 2015. **Issue Addressed:** Primarily credibility. The assertion that Applicant was a supporter (in 2015) of the Free Aceh Movement would appear, at least initially, to be inconsistent with the fact that the Movement no longer exists. Other concerns may also be raised if the Applicant considers himself to be part of an insurgent movement that ended over a decade ago.
- (c) When did you begin to be a supporter of the Free Aceh Movement? What activities did you engage in as a supporter during the period during which the Free Aceh Movement existed? The Free Aceh Movement was involved in acts of violence during its insurgency, which lasted almost 30 years. Amnesty International in its 2015/2016 report indicated that “the [2005 Helsinki Peace Agreement] ended a 29-year conflict during which between 10,000 and 30,000 people were killed, many of them civilians.” In the 2005 Country Reports on Human Rights Practices, the Department of State said that, “in Aceh, prior to the August 15 peace agreement, rebels



committed killings and kidnappings. **Issues Addressed:** Terrorism-Related Inadmissibility Grounds. Persecutor Bar.

- (d) In our research we were unable to find documentation of a protest that took place on the date and in the place you mentioned? Also, while police have intervened in demonstrations, for example attempting to prevent the display of the banned Free Aceh Movement flag, we could not find evidence recent attacks by the Aceh security forces or the Indonesian military on supporters of the former-Free Aceh Movement. Do you have any evidence that the demonstration you mentioned took place or that there have been attacks on former GAM supporters by government forces? *Thousands Rally in Indonesia for Separatist Flag*, South China Morning Post, April 4, 2013; *Rebel Flag Flies Over a Province, and Indonesia Wants It Torn Down*, New York Times, April 14, 2013; *Islands in focus: Aceh students protest web blocking*, Jakarta Post, April 7, 2015  
**Issues Addressed:** Credibility and well-founded fear.

### **Practical Exercise 5:**

#### *Sample analyses:*

- (a) A preponderance of the evidence establishes a reasonable possibility that the government of China would be *inclined* (within the PACI framework) to persecute the Applicant. She testified that her local authorities are sensitive to matters involving religion and that word of her conversion to an unfamiliar religion (Christianity) would raise suspicions against her as an individual. That this could well result in her persecution is established by country conditions indicating that local officials do with unknown frequency detain or even sentence worshippers and leaders of unregistered house churches. *See, Sources: Protestant 'House Churches' in China*, RAIIO Research Unit, Sept. 4, 2014; International Religious Freedom Report for 2014 – China, U.S. Department of State (“Other religious groups, such as Protestant groups unaffiliated with the official patriotic religious association or Catholics professing loyalty to the Vatican, are not permitted to register as legal entities.”). The Applicant credibly testified that she would not be willing to attend “state churches”, as she refers to churches affiliated with institutions sanctioned by China’s State Association for Religious Affairs (*see* DOS above). Therefore, there is a reasonable possibility that the government will be inclined to persecute her.
- (b) A preponderance of the evidence does not establish a reasonable possibility that the government of China would be *inclined* (within the PACI framework) to persecute the Applicant. Since the Applicant converted to Christianity in the U.S., there can be no evidence of how the local authorities in her home city in Xinjiang Province would be inclined to treat her. While participants in unregistered house churches are sometimes detained or even sentenced – and likely more often than reported (there were 1470 detentions and 10 sentences of longer than one year in 2013-14 according to the International Religious Freedom Report for 2014 – China, U.S. Department of State), still with an estimated 45 million Protestants and over 3 million Catholics associating with or worshipping in unregistered churches (Pew Research, 2012, *see* DOS above) it cannot be found that someone in Applicant’s position faces a reasonable possibility of confronting a government inclined to persecute them. Furthermore, Applicant’s testimony reveals a sensitivity on her part to factors that could put her at risk for drawing the ire of local authorities and expresses (albeit in a different context) a disposition to “not push things too far.”

# Using Country Conditions Information in RAIO Adjudications

## Practical Exercises (Face-to-Face Training: CT 16/17)

These practical exercises will be completed during today's session. You will work in groups of 3-5 and have approximately 10 minutes to complete each exercise. These exercises will build on the country conditions research that you conducted during the Distance Training, so you will need to be able to refer to your previous work. After you have completed the exercise, you will be asked to report on your conclusions, so it may be helpful to designate one member of your group to take notes on your discussion and to record your findings.

**Practical Exercise 3:** Refer to the scenario used in Distance Training Exercise 1 (Bangladesh). Read/skim the two sources of pertinent information identified in the presentation. Consider: What biases, if any, do you detect in each source? Identify parts of the text that suggest bias or lack thereof. What use could appropriately be made of each source in an adjudication, taking into account possible biases?

**Practical Exercise 4:** Refer to the scenario used in Distance Training Exercise 2 (Indonesia). Based on the country conditions information you found during Distance Training, come up with 3 or 4 questions that you would ask the Applicant during a RAIO interview. For each question:

- (a) Identify the legal issue(s) that the testimony would help you address (WFF, credibility, TRIG, etc.)
- (b) Explain how specific sources of country conditions information led you to formulate the question as you did.

**Practical Exercise 5:** Refer to the scenario used in Distance Training Exercise 3 (China). Refer also to the excerpted interview notes provided on the following page. Based on the interview notes *and* the country conditions information that you identified, analyze whether or not a preponderance of the evidence establishes that the government would be *inclined* (within the PACI framework) to persecute the applicant. Be sure to explain how *both forms of evidence* figure into your analysis.

## **Practical Exercise 5: Excerpted interview notes**

AO: Who exactly are you afraid would persecute you in China?

Applicant: The local police in my city in Xinjiang.

AO: Why?

Applicant: Because I have become a Christian.

AO: How would they know you are a Christian?

Applicant: I will feel the need to tell those close to me about my religion and word will get out.

AO: Why will those close to you reveal your religion to the police?

Applicant: I'm not saying they will do it on purpose. But there are no Christians in my city (or hardly any) so people will talk about what I say just because it's unusual.

AO: But you said that you would participate in a house-church. How are you going to do that if there are hardly any Christians in your city?

Applicant: Well, there might be enough Christians for a house-church in the whole city. I don't know. But if there is no house church, I would try to start one if I found any interest at all.

AO: Are you afraid of other persecutors besides the government?

Applicant: No. All the people close to me are Muslims, but not overly strict. I would share my faith but not push things too far.

AO: What makes you think the police would persecute you then?

Applicant: They are sensitive to anything that involves religion. They are not familiar with Christianity and unfamiliar things make the police especially nervous. They don't want any incidents. They might not do anything to me, but it would be a great risk for me to go back home.

AO: Could you live safely elsewhere in China?

Applicant: I really don't know about that. But I think that house-church Christians are persecuted all over China. And I have been convinced that I should not worship in the state churches.

## **FACT PATTERN 2 – Asylum Case - I-589, Application for Asylum and for Withholding of Removal**

The applicant was born in Muqdadiah, Iraq, in 1979. He entered the Iraqi military academy in November 1997. He was trained in infantry skills, tank and helicopter operation, and explosives. Then, in his third year, he decided to pursue further training in order to become a member of the Republican Guard. After his graduation in November 2000, he was assigned to the Special Forces Academy in Baghdad, where he spent another year. While in Baghdad, he received further training in explosives work, including arming and disassembling bombs, sniper skills, parachuting, and other weapons training.

After completing his training, the applicant testified that he was "handpicked to join Saddam's Republican Guard as a personal bodyguard to Saddam and his family." He was sworn to secrecy for seven years while he "traveled the country protecting Saddam and the dictator's family." The applicant stated that he "spent long days on guard inside Saddam's palaces," chatted with Saddam," and "when Saddam ordered him to restrict someone's entry, he did it." The applicant stated that he had nothing to do with intelligence or the killing of Saddam's enemies.

The applicant remained at the Mosul base until March 2003, when the United States invaded Iraq. A few weeks before coalition forces entered into the country, he was ordered to move to a neighborhood called Hayy at-Tahrir in the north of Baghdad, where he was ordered to secure the area and clear it in the event that Saddam Hussein arrived. He was subsequently injured by U.S. forces during a firefight in which his entire platoon was killed. He was then taken to a neighborhood resident's home to recover and returned to his family home. Approximately three months later, after spending some time working in a friend's electronics store, he saw a poster produced by the coalition forces recruiting soldiers for the newly-formed Iraqi Army. He decided to volunteer in June 2003. During this time, he fought alongside Special Forces soldiers as a captain in the newly organized Iraqi Army and was stationed at a forward operating base in Muqdadiah. Other Iraqi soldiers working with U.S. coalition forces wore black masks to hide their identities, but he did not because he was proud of the good job they were doing.

Several months later, the applicant began to receive threatening notes and phone calls. Then, on December 15, 2005, the applicant's brother was confronted by individuals he believed to be anti-U.S. insurgents who told him to tell the applicant that he should stop collaborating with U.S. forces or he would be killed. Ten days later, on December 25, 2005, the applicant was ambushed while driving to his family home. Four men blocked the road and opened fire on the applicant, hitting him several times. The applicant testified that two of his assailants wore Iraqi Army uniforms and masks, and the other two were dressed in black uniforms associated with anti-U.S. insurgents operating in the area.

While in the hospital following the ambush, the applicant was told that threatening notes had been left at his home, stating that the writers would continue trying to kill him. The notes stated that al-Tawhid wal-Jihad, an insurgent group in Iraq, was responsible for the attack. The applicant had been responsible for the capture of several well-known insurgent figures in Iraq, including some who were associated with al-Tawhid wal-Jihad. After several months in the hospital, he was transported by the U.S. Army to Germany and then on to the United States for further medical treatment. Since arriving in the U.S., he has received an additional threatening note on the doorstep of his home in Georgia. Also, after he left Iraq, the applicant's uncle and 8 cousins were beheaded in late August 2007 after receiving threats that they should disavow the applicant because the Koran stated bad guys like him should be killed.

The applicant believes that if he returns to Iraq, he will be targeted by insurgent forces who view him as a collaborator with the U.S. and coalition forces.

Tier III definition and individuals who have engaged in activities on behalf of a listed entity would likely have engaged in terrorist activity.

**List 3 - Terrorist Activity Defined, INA § 212(a)(3)(B)(iii)**

Terrorist Activity is unlawful activity that involves any of the following:

- (I) The hijacking or sabotaging of any conveyance (including an aircraft, vessel or other vehicle);
- (II) The seizing or detaining and threatening to kill, injure or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained;
- (III) A violent attack on an internationally protected person as defined in 18 U.S.C. § 1116(b)(4); or upon the liberty of such a person;
- (IV) An assassination;
- (V) The use of any—
  - (a) biological agent, chemical agent, or nuclear weapon or device, or
  - (b) explosive, firearm or other weapon or dangerous device (other than for personal monetary gain), with intent to endanger the safety of one or more individuals or to cause substantial damage to property;
- (VI) A threat, attempt, or conspiracy to do any of the foregoing.

**List 4 - Engaging in Terrorist Activity Defined, INA § 212(a)(3)(B)(iv). Note that aliens who “engage in terrorist activity” are inadmissible (see List 1).**

Section 212(a)(3)(B)(iv) defines engaging in terrorist activity. “Engage in terrorist activity” means, in an individual capacity or as a member of an organization—

- (I) to commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity (see List 3);
- (II) to prepare or plan a terrorist activity (see List 3);
- (III) to gather information on potential targets for terrorist activity (see List 3);
- (IV) to solicit money or other things of value for:
  - (aa) a terrorist activity (see List 3);
  - (bb) a designated terrorist organization (see List 2 (I) and (II));
  - (cc) an undesignated terrorist organization (see List 2 (III)) unless “the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization.”
- (V) to solicit any individual to:
  - (aa) engage in terrorist activity (“to engage in conduct otherwise described in this subsection”) (see List 4).
  - (bb) become members of a designated terrorist organization (see List 2 (I) and (II));
  - (cc) become members of an undesignated terrorist organization (see List 2 (III)) unless “the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;”
- (VI) to commit an act which the person knows or reasonably should know affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives, or training:
  - (aa) for the commission of a terrorist activity (see List 3);
  - (bb) to any individual who the actor knows or reasonably should know has committed or plans to commit a terrorist activity (see List 3);
  - (cc) to a designated terrorist organization (see List 2 (I) and (II)) or a member of such an organization;
  - (dd) to an undesignated terrorist organization (see List 2 (III)) or to a member of such an organization unless “the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.”

**List 5 - Association with Terrorist Organizations, INA § 212(a)(3)(F)**

INA § 212(a)(3)(F) makes inadmissible an alien who either the Secretary of State or Attorney General (in consultation with the other) determines meets **both** of the following criteria:

- (a) the alien has been associated with a terrorist organization (see List 2); **and**
- (b) while in the U.S., intends to engage in activities which could endanger the welfare, safety, or security of the U.S.

This rarely used section requires both an association with a terrorist organization and an **intention to cause harm**. The harm need not occur in the United States, but it must endanger the welfare, safety or security of **the United States**. The authority to find an alien inadmissible under this section can only be exercised by the Secretary of State or the Secretary of Homeland Security.

### Does harm rise to the level of persecution?

(1) Narciso was born in the mountains several weeks premature, shortly after his pregnant mother fled from Guatemalan government forces that had attacked her ancestral village, burned the village to the ground, and massacred its inhabitants, including several of Narciso's close relatives. The newborn child was severely malnourished throughout the first few months of his life because his mother was too malnourished to breastfeed. Fearing more attacks by government forces, the family, just months after the massacre, fled to Mexico. They did not have lawful status there. As a result Narciso was unable to attend school and had difficulty obtaining employment. In addition, he was often sick and frequently had nightmares.

(2) Juan's family and other families were targeted by the Guatemalan army's campaign against Mayan Indians. When he was seven years old, Juan's sister, her husband, and her mother-in-law were fatally shot by Guatemalan soldiers. While Juan did not witness any murders, he saw many corpses, including the bullet-ridden body of his cousin lying on the ground. The army's campaign resulted in his father selling their land and the family's relocation to a one-room home in a nearby town where they struggled to survive. When the family returned to the village after a year away, they found that the house was full of bullet holes and the family's animals were unrecoverable.

(3) Kolya was subjected to regular "discrimination and harassment [that] pervaded his neighborhood" and his school. The harm included being regularly mocked and urinated on by other school children for being Jewish, being forced by his teachers to stand up and identify himself as a Jew on a quarterly basis, and being called slurs and being physically abused in his neighborhood.

(4) Two Mayan Indian brothers from Guatemala fled to Mexico in 1982 at the ages of seven and nine due to the Guatemalan army's arrival in their village. They witnessed the beating of their father by soldiers in front of their mother, and the flight of their brother who was later killed by the army on suspicion of being a guerilla sympathizer.

(5) Lucy, a Chinese national, had been forcibly taken to the Village Committee Office and interrogated by police and pressured to confess involvement in Falun Gong. She was 16 years old. On two occasions, police and guards pulled her hair, causing her to cry, and pushed her to the ground. She was detained for two days. The police reported Lucy's arrest to her school and she was expelled. One month later, the police searched Lucy's home and questioned her and her mother, pushing her mother to the floor.

Use the Step-by-Step Persecutor Bar Checklist to analyze the highlighted scenario. Is the applicant subject to the persecutor bar? What else would you want to know before making a decision?

### **Scenario 1**

The applicant assisted with ultrasounds and other prenatal examinations, participated in live-birth deliveries, cared for newborns, and provided recovery care to women who had undergone forced abortions. She did not participate in the abortion procedure itself, but she did participate in examinations that were sometimes used to determine the position of the fetus so that a forced abortion could be performed without threatening the life of the mother.

### **Scenario 2**

The applicant worked voluntarily, was paid, and fully understood the forced abortion policy. She was responsible for watching over detained, pregnant women locked in rooms before their scheduled forced abortions. She monitored confined women to ensure they did not escape. She was provided with a rod or baton that she did not use. She thought that forced abortions were limited to women who were one or two months pregnant and released a woman who was eight months pregnant.

### **Scenario 3**

For 10 years, the applicant provided the Marcos regime with intelligence about the leftist New People's Army and other anti-Marcos communist groups. The applicant testified that the information he gathered on these individuals led to their torture, imprisonment, and death. He testified that he never actually tortured or harmed any person.

### **Scenario 4**

The applicant gathered intelligence information and passed it up the chain of command. For example, she gathered information on whether a particular professor at a university had communist tendencies. She also listened to and transcribed telephone conversations of designated individuals. When she heard that other factions of the military engaged in human rights violations, she reported her concerns to superiors.

### **Scenario 5**

The applicant was head constable in the local police department in Punjab during a period when considerable violence erupted between Sikh separatist militants and the authorities. The department engaged in legitimate police activities but also systematically arresting without cause Sikhs accused of being militants. The applicant admits that he brought suspects into the police station where they were wrongfully beaten by others. He also went on nighttime raids that led to false charges and beatings of innocent Sikhs.

### **Scenario 6**

During his military service, the applicant was stationed as a soldier along the border of his country. From country of origin information (COI), you know that civilian members of an ethnic minority were shot in mass executions in a group of nearby villages during the exact time period when the applicant was serving. You also know from COI that a larger war was taking place along the border at that time in which the applicant's army was defending itself against incursions from a neighboring country's army. The applicant's duties were purely administrative, and although he had had weapons training and was stationed close to the front, he never carried or handled a weapon at any time throughout his military service.

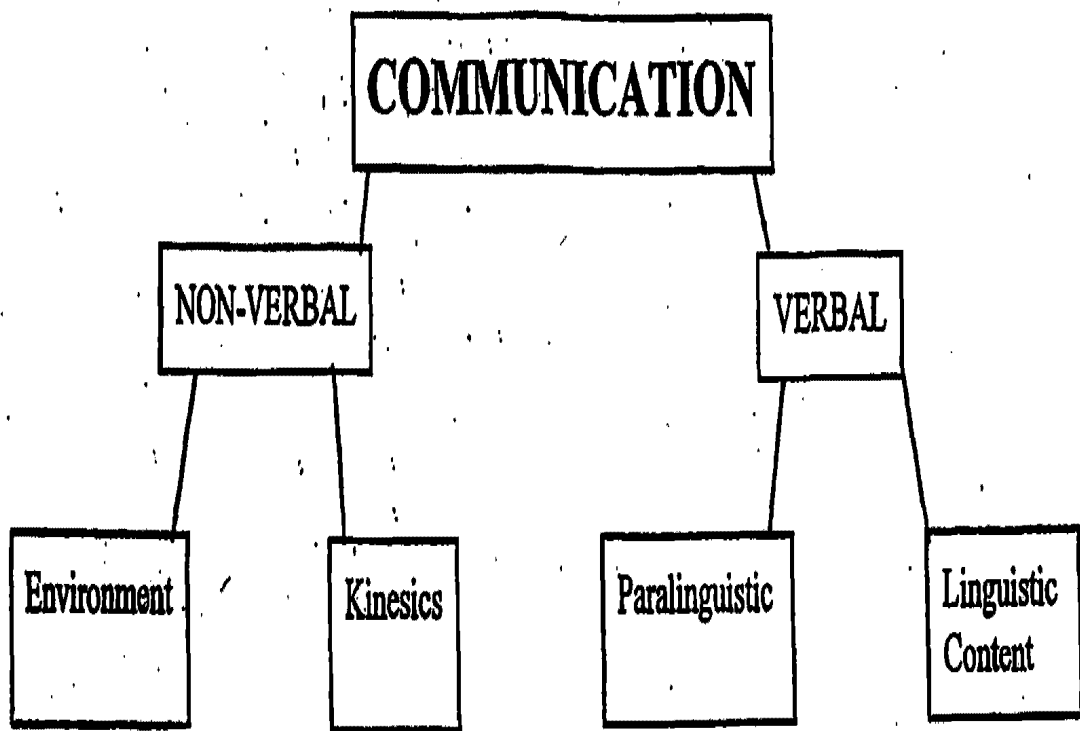


## Separating Fact from Assumption

A college teacher had just completed making up the final examination and had turned off the lights in the office. Just then, a tall, dark, broad figure appeared and demanded the examination. The professor opened the drawer. Everything in the drawer was picked up and the individual sped away. The Dean was notified.

Check the appropriate answer (F = fact; A = assumption)

1. A figure appeared after the professor turned off his office lights.  
 F    A
2. The thief was tall, dark, and broad.  
 F    A
3. The tall, dark man demanded the examination.  
 F    A
4. The man who opened the desk drawer was the professor.  
 F    A
5. The figure picked up the contents of the drawer and sped away.  
 F    A
6. Someone opened a drawer.  
 F    A
7. Someone took the examination.  
 F    A
8. Although the exam was taken, the story does not state what else was also included in the drawer.  
 F    A
9. The thief demanded the exam from the professor.  
 F    A
10. The following events were included in the story: someone demanded the exam, a desk drawer was opened, its contents were picked up, and a man sped out of the building.  
 F    A



props  
setting

facial expressions  
movement  
timing/silence  
eye contact  
posture  
gestures  
proxemics

manipulation  
"extra-speech"

grammar  
vocabulary

# I-589, Application for Asylum and for Withholding of Removal

**START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.**

**NOTE:** Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

## Part A: Information About You

1. Alien Registration Number(s) (A-Number) (if any) 7X XXX XX3	2. U.S. Social Security Number (if any)
---	---

3. Complete Last Name Ebai	4. First Name Elisabeth	5. Middle Name
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6. What other names have you used (include maiden name and aliases)?  
None

7. Residence in the U.S. (where you physically reside) 123 Oak St	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City Bethesda	State MD	Zip Code
------------------	-------------	----------

8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City	State	Zip Code
------	-------	----------

9. Gender:  Male  Female    10. Marital Status:  Single  Married  Divorced  Widowed

11. Date of Birth (mm/dd/yyyy) 01/01/1984	12. City and Country of Birth Cameroon
--	---

13. Present Nationality (Citizenship) Cameroon	14. Nationality at Birth Cameroon	15. Race, Ethnic, or Tribal Group Bassa	16. Religion Christian
---	--------------------------------------	--	---------------------------

17. Check the box, a through c, that applies:    a.  I have never been in Immigration Court proceedings.  
b.  I am now in Immigration Court proceedings.    c.  I am not now in Immigration Court proceedings, but I have been in the past.

18. Complete 18 a through c.  
a. When did you last leave your country? (mmm/dd/yyyy)    01/01/2011    b. What is your current I-94 Number, if any?

c. List each entry into the U.S. beginning with your most recent entry.  
List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)

Date	01/01/2011	Place	Washington, D.C.	Status	B-2	Date Status Expires:	06/30/2011
Date		Place		Status			
Date		Place		Status			

19. What country issued your last passport or travel document? Cameroon	20. Passport #    N 1234567 Travel Document #	21. Expiration Date (mm/dd/yyyy) 09/01/2015
--	--	--

22. What is your native language (include dialect, if applicable)? Bassa	23. Are you fluent in English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	24. What other languages do you speak fluently?
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<b>For EOIR use only.</b>	<b>For USCIS use only. Decision:</b>						
	<table style="width:100%"> <tr> <td>Interview Date: _____</td> <td>Approval Date: _____</td> </tr> <tr> <td>Asylum Officer ID#: _____</td> <td>Denial Date: _____</td> </tr> <tr> <td></td> <td>Referral Date: _____</td> </tr> </table>	Interview Date: _____	Approval Date: _____	Asylum Officer ID#: _____	Denial Date: _____		Referral Date: _____
Interview Date: _____	Approval Date: _____						
Asylum Officer ID#: _____	Denial Date: _____						
	Referral Date: _____						



## Part A: II: Information About Your Spouse and Children

Your spouse  I am not married. (Skip to **Your Children** below.)

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Date of Birth (mm/dd/yyyy)		4. U.S. Social Security No. (if any)	
5. Complete Last Name			6. First Name		7. Middle Name		8. Maiden Name
9. Date of Marriage (mm/dd/yyyy)			10. Place of Marriage			11. City and Country of Birth	
12. Nationality (Citizenship)			13. Race, Ethnic, or Tribal Group			14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 16 to 24.) <input type="checkbox"/> No (Specify location): _____							
16. Place of last entry into the U.S.		17. Date of last entry into the U.S. (mm/dd/yyyy)		18. I-94 No. (if any)		19. Status when last admitted (Visa type, if any)	
20. What is your spouse's current status?		21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No		23. If previously in the U.S., date of previous arrival (mm/dd/yyyy)	
24. If in the U.S., is your spouse to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

**Your Children.** List all of your children, regardless of age, location, or marital status.

I do not have any children. (Skip to Part A. III., Information about your background.)

I have children. Total number of children: \_\_\_\_\_

(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth			10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location): _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							



**Part A. II: Information About Your Spouse and Children (Continued)**

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							



**Part A-III. Information About Your Background**

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

2. Provide the following information about your residences during the past 5 years. List your present address first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Oak St	Bethesda	MD	USA	1/11	present
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

3. Provide the following information about your education, beginning with the most recent.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
University of Buea	University	Buea, Cameroon	9/01	6/06

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Atangu, Miriam	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Father Ebai, Lawrence	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling Ebai, Rita	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



## Part B: Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part I: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- |                                      |  |
|--------------------------------------|--|
| <input type="checkbox"/> Race        | <input checked="" type="checkbox"/> Political opinion            |
| <input type="checkbox"/> Religion    | <input type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention           |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

No  Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

The police arrested me because of my activities with and support of the SCNC. I was beaten and chained up. The government does not want activists like me to have a voice.

- B. Do you fear harm or mistreatment if you return to your home country?

No  Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

The government headed by President Biya will continue to arrest and torture me due to my involvement with the SCNC and its secessionist cause.



**Part B. Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

No  Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

No  Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I have been a member of SCNC since I was at University. I am still a member.

B. Do you or your family members continue to participate in any way in these organizations or groups?

No  Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I have been a member of SCNC since I was at University. I am still a member.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

No  Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

The police and government in Cameroon torture political prisoners; some do not come out alive. I would be arrested and tortured if I returned to Cameroon, because I am a known supporter of the SCNC's agenda.





**Part C: Additional Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

No  Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?  No  Yes

B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

No  Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

I had a transit stop in Brussels for approximately four hours.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

No  Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



**Part C: Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

No       Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

No       Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

No       Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



**Part D. Your Signature**

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name. Elisabeth Ebai	Write your name in your native alphabet.
---	--

Did your spouse, parent, or child(ren) assist you in completing this application?  No  Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent, or child(ren) prepare this application? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Signature of Applicant (The person in Part A.1.)

[ \_\_\_\_\_ ]

Sign your name so it all appears within the brackets

\_\_\_\_\_ Date (mm/dd/yyyy)

**Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child**

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer Daniel Taku	
Daytime Telephone Number ( 301 ) 555-5555		Address of Preparer: Street Number and Name 4321 Marina Dr	
Apt. No.	City Silver Spring	State MD	Zip Code



**Part F: To Be Completed at Asylum Interview, if Applicable**

**NOTE:** You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Asylum Officer

**Part G: To Be Completed at Removal Hearing, if Applicable**

**NOTE:** You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Immigration Judge



A-Number (If available)	Date
Applicant's Name	Applicant's Signature

**List All of Your Children, Regardless of Age or Marital Status**  
 (NOTE: Use this form and attach additional pages and documentation as needed. If you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



**Additional Information About Your Claim to Asylum**

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

*NOTE: Use this as a continuation page for any additional information requested. Copy and complete as needed.*

Part \_\_\_\_\_

Question \_\_\_\_\_

[Large empty rectangular box for providing additional information]



# I-589, Application for Asylum and for Withholding of Removal

**START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.**

**NOTE:** Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

## Part A: Information About You

1. Alien Registration Number(s) (A-Number) (if any) 7X XXX XX3		2. U.S. Social Security Number (if any)	
3. Complete Last Name Ebai		4. First Name Emmanuel	5. Middle Name
6. What other names have you used (include maiden name and aliases)? None			
7. Residence in the U.S. (where you physically reside) 123 Oak St		Telephone Number ( )	
Street Number and Name		Apt. Number	
City Bethesda	State MD	Zip Code	
8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):		Telephone Number ( )	
Street Number and Name		Apt. Number	
City	State	Zip Code	
9. Gender: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	10. Marital Status: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		
11. Date of Birth (mm/dd/yyyy) 01/01/1984	12. City and Country of Birth Cameroon		
13. Present Nationality (Citizenship) Cameroon	14. Nationality at Birth Cameroon	15. Race, Ethnic, or Tribal Group Bassa	16. Religion Christian
17. Check the box, a through c, that applies: a. <input checked="" type="checkbox"/> I have never been in Immigration Court proceedings. b. <input type="checkbox"/> I am now in Immigration Court proceedings. c. <input type="checkbox"/> I am not now in Immigration Court proceedings, but I have been in the past.			
18. Complete 18 a through c. a. When did you last leave your country? (mmm/dd/yyyy) <u>01/01/2011</u> b. What is your current I-94 Number, if any? _____ c. List each entry into the U.S. beginning with your most recent entry. <i>List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)</i> Date <u>01/01/2011</u> Place <u>Washington, D.C.</u> Status <u>B-2</u> Date Status Expires: <u>06/30/2011</u> Date _____ Place _____ Status _____ Date _____ Place _____ Status _____			
19. What country issued your last passport or travel document? Cameroon	20. Passport # <u>N 1234567</u>	21. Expiration Date (mm/dd/yyyy) <u>09/01/2015</u>	
22. What is your native language (include dialect, if applicable)? Bassa	23. Are you fluent in English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	24. What other languages do you speak fluently?	
<b>For EOIR use only.</b>	<b>Action: For USCIS use only. Decision:</b>		
	Interview Date: _____	Approval Date: _____	
	Asylum Officer ID#: _____	Denial Date: _____	
	Referral Date: _____		



## Part A. II. Information About Your Spouse and Children

Your spouse  I am not married. (Skip to Your Children below.)

1. Alien Registration Number (A-Number) <i>(if any)</i>		2. Passport/ID Card No. <i>(if any)</i>		3. Date of Birth <i>(mm/dd/yyyy)</i>		4. U.S. Social Security No. <i>(if any)</i>	
5. Complete Last Name			6. First Name		7. Middle Name		8. Maiden Name
9. Date of Marriage <i>(mm/dd/yyyy)</i>			10. Place of Marriage			11. City and Country of Birth	
12. Nationality <i>(Citizenship)</i>			13. Race, Ethnic, or Tribal Group			14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes <i>(Complete Blocks 16 to 24.)</i> <input type="checkbox"/> No <i>(Specify location):</i> _____							
16. Place of last entry into the U.S.		17. Date of last entry into the U.S. <i>(mm/dd/yyyy)</i>		18. I-94 No. <i>(if any)</i>		19. Status when last admitted <i>(Visa type, if any)</i>	
20. What is your spouse's current status?		21. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>		22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No		23. If previously in the U.S., date of previous arrival <i>(mm/dd/yyyy)</i>	
24. If in the U.S., is your spouse to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No							

**Your Children.** List all of your children, regardless of age, location, or marital status.

I do not have any children. *(Skip to Part A. III., Information about your background.)*

I have children. Total number of children: \_\_\_\_\_

**(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)**

1. Alien Registration Number (A-Number) <i>(if any)</i>		2. Passport/ID Card No. <i>(if any)</i>		3. Marital Status <i>(Married, Single, Divorced, Widowed)</i>		4. U.S. Social Security No. <i>(if any)</i>	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth <i>(mm/dd/yyyy)</i>
9. City and Country of Birth			10. Nationality <i>(Citizenship)</i>		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes <i>(Complete Blocks 14 to 21.)</i> <input type="checkbox"/> No <i>(Specify location.)</i> _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. <i>(mm/dd/yyyy)</i>		16. I-94 No. <i>(if any)</i>		17. Status when last admitted <i>(Visa type, if any)</i>	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No							





**Part A - II: Information About Your Spouse and Children (Continued)**

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							



**Part A, III, Information About Your Background**

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

2. Provide the following information about your residences during the past 5 years. List your present address first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Oak St	Bethesda	MD	USA	1/11	present
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

3. Provide the following information about your education, beginning with the most recent.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
University of Buea	University	Buea, Cameroon	9/01	6/06

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Atangu, Miriam	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Father Ebai, Lawrence	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling Ebai, Rita	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



## Part B: Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part I: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- |                                      |  |
|--------------------------------------|--|
| <input type="checkbox"/> Race        | <input checked="" type="checkbox"/> Political opinion            |
| <input type="checkbox"/> Religion    | <input type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention           |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

No  Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

The police arrested me because of my activities with and support of the SCNC. I was beaten and chained up. The government does not want activists like me to have a voice.

- B. Do you fear harm or mistreatment if you return to your home country?

No  Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

The government headed by President Biya will continue to arrest and torture me due to my involvement with the SCNC and its secessionist cause.



**Part B. Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

No  Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

No  Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I have been a member of SCNC since I was at University. I am still a member.

B. Do you or your family members continue to participate in any way in these organizations or groups?

No  Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I have been a member of SCNC since I was at University. I am still a member.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

No  Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

The police and government in Cameroon torture political prisoners; some do not come out alive. I would be arrested and tortured if I returned to Cameroon, because I am a known supporter of the SCNC's agenda.



**Part C. Additional Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

No  Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?  No  Yes

B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

No  Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

I had a transit stop in Brussels for approximately four hours.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

No  Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



**Part C: Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

- No       Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

- No       Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

- No       Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



**Part D. Your Signature**

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name. Emmanuel Ebai	Write your name in your native alphabet. (
--	---

Did your spouse, parent, or child(ren) assist you in completing this application?  No  Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent, or child(ren) prepare this application? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Signature of Applicant (The person in Part A.I.)

[ \_\_\_\_\_ ]

Sign your name so it all appears within the brackets

\_\_\_\_\_ Date (mm/dd/yyyy)

**Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child**

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer Daniel Taku	
Daytime Telephone Number ( 301 ) 555-5555		Address of Preparer: Street Number and Name 4321 Marina Dr	
Apt. No.	City Silver Spring	State MD	Zip Code



**Part F: To Be Completed at Asylum Interview, if Applicable**

**NOTE:** You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Asylum Officer

**Part G: To Be Completed at Removal Hearing, if Applicable**

**NOTE:** You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Immigration Judge





A-Number (If available)	Date
Applicant's Name	Applicant's Signature

**List All of Your Children, Regardless of Age or Marital Status**  
 (NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



**Additional Information About Your Claim to Asylum**

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

**NOTE:** Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part \_\_\_\_\_

Question \_\_\_\_\_

[Large empty rectangular area for providing additional information]



## INFORMATION ON EMMANUEL EBAI

My name is Emmanuel Ebai. I am 28 years old. I am an Anglophone from Southwest Region (formerly Southwest Province).

I became a member of the Southern Cameroons National Council (SCNC) in 2004 when I was a university student. SCNC is a non-violent group that advocates for self-determination and secession of the southern Anglophone region of Cameroon. I have been an SCNC Coordinator in my zone since 2007. I made and distributed flyers and posters, acted as one of the liaisons between the central committee and my zone, and prepared rally sites and speakers.

Shortly after becoming Coordinator, I was arrested while at a rally. Many at the rally were arrested with me. I was detained seven days, beaten, and on one occasion I was forced to jump onto small stones with my bare feet. After my release I continued with my activities as Zone Coordinator, but was very careful so that I would not be detected.

On April 1, 2008 six police entered and searched my home, finding SCNC flyers and documents. I was arrested and detained for five weeks. During that time they beat my feet with a baton, and chained me to the wall of my cell. After I was released I spent one week in the hospital.

In 2009, while I was traveling home from a peace march in Bamenda, police boarded and searched the bus on which I was riding. They found and confiscated the SCNC T-shirts that I had been carrying and attempting to sell at the march for fundraising. I was arrested and detained for two weeks. I was beaten on the feet with a rubber stick and forced to lie chained up in the sun for two hours every day.

In November 2010, I was served with convocation from the local police, requesting my presence at the station. No reason was given. I was afraid what would happen to me, so I did not go to the station. However, the police must have issued a warrant for me, because in December 2010 I was arrested when three gendarmes appeared at my home. They confiscated SCNC materials and they beat me in front of my little sister. At the station, they beat my legs. For four days I was locked in a cell with bright lights and water on the floor. When an officer came to check on me, I was unable to stand up as my legs were extremely swollen and painful. I was taken to the hospital. After a few days I escaped from the hospital and went to Douala and made arrangements to leave Cameroon with the assistance of SCNC lawyers. On January 1, 2011....

[RAD version – ...I escaped to Lagos Nigeria, where I have an uncle, and registered with UNHCR. I have been in Nigeria since then.]

[ASY version – ...I entered the United States as a B-2 visitor.]

I am very afraid to return to Cameroon. It is not safe for me as long as the government continues to arrest and torture SCNC supporters working to secure our independence.

## INFORMATION ON ELISABETH EBAI

My name is Elisabeth Ebai. I am 28 years old. I am an Anglophone from Southwest Region (formerly Southwest Province).

I became a member of the Southern Cameroons National Council (SCNC) in 2004 when I was a university student. SCNC is a non-violent group that advocates for self-determination and secession of the southern Anglophone region of Cameroon. I have been an SCNC Coordinator in my zone since 2007. I made and distributed flyers and posters, acted as one of the liaisons between the central committee and my zone, and prepared rally sites and speakers.

Shortly after becoming Coordinator, I was arrested while at a rally. Many at the rally were arrested with me. I was detained seven days, beaten, and on one occasion I was forced to jump onto small stones with my bare feet. After my release I continued with my activities as Zone Coordinator, but was very careful so that I would not be detected.

On April 1, 2008 six police entered and searched my home, finding SCNC flyers and documents. I was arrested and detained for five weeks. During that time they beat my feet with a baton, and chained me to the wall of my cell. After I was released I spent one week in the hospital.

In 2009, while I was traveling home from a peace march in Bamenda, police boarded and searched the bus on which I was riding. They found and confiscated the SCNC T-shirts that I had been carrying and attempting to sell at the march for fundraising. I was arrested and detained for two weeks. I was beaten on the feet with a rubber stick and forced to lie chained up in the sun for two hours every day.

In November 2010, I was served with convocation from the local police, requesting my presence at the station. No reason was given. I was afraid what would happen to me, so I did not go to the station. However, the police must have issued a warrant for me, because in December 2010 I was arrested when three gendarmes appeared at my home. They confiscated SCNC materials and they beat me in front of my little sister. At the station, they beat my legs. For four days I was locked in a cell with bright lights and water on the floor. When an officer came to check on me, I was unable to stand up as my legs were extremely swollen and painful. I was taken to the hospital. After a few days I escaped from the hospital and went to Douala and made arrangements to leave Cameroon with the assistance of SCNC lawyers. On January 1, 2011....

[RAD version – ...I escaped to Lagos Nigeria, where I have an uncle, and registered with UNHCR. I have been in Nigeria since then.]

[ASY version – ...I entered the United States as a B-2 visitor.]

I am very afraid to return to Cameroon. It is not safe for me as long as the government continues to arrest and torture SCNC supporters working to secure our independence.

# RAIO Combined Training

## MINI MOCK

Student #1

## MINI MOCK INTERVIEWS

### STUDENT #1 – General Instructions

The packet of information you will receive contains materials for an interviewing exercise. All of the students in the class will be organized into pairs. You and your partner will interview each other. You may talk with other students who have the same role as you, but do not talk about your role with your partner or anyone else who has the opposite role.

#### 1<sup>st</sup> INTERVIEW:

You are an asylum or refugee applicant/role-player. You'll play the role of an applicant from Cameroon. Your partner will interview you. You will receive the following documents and information for this applicant:

- (If you are female, use the following):
  - Information sheet about female Cameroonian applicant, Elisabeth Ebai
  - I-589 or I-590 for female Cameroonian applicant, Elisabeth Ebai
- (If you are male, use the following):
  - Information sheet about male Cameroonian applicant, Emmanuel Ebai
  - I-589 or I-590 for male Cameroonian applicant, Emmanuel Ebai
- Country conditions information on Cameroon

Please read the "Ground Rules for Applicants/Role-players" provided in the packet.

#### 2<sup>nd</sup> INTERVIEW:

You will interview an applicant from Iraq. Your partner will portray the applicant. You will receive the following documents and information for this applicant:

- I-589 or I-590 for female Iraqi Applicant, Maria Matti Yaqub (will be used by female student/role-player)
- I-589 or I-590 for male Iraqi applicant, Behnam Matti Yaqub (will be used by male student/role-player)
- Country conditions information on Iraq

Please read the "Ground Rules for Officers" provided in the packet.

Conduct a complete interview, taking notes according to your Division's requirements and the guidance in the RAIO Lesson Plan on Interviewing – Note Taking. Your notes will be evaluated by an instructor. Keep your notes and the packet and bring them to class; they will be used in a later session.

## MINI MOCK INTERVIEWS

### GROUND RULES FOR OFFICERS/INTERVIEWERS

- **Documents:** Applicant will not have pre-prepared documents such as birth certificates, passports, driver's licenses, social security cards, etc. Ask for documents as you normally would in an interview, but the role-player will improvise his or her response. If you are presented with any documents, for the purpose of this exercise, accept them as complete and valid.
- **Applicant "Cheat Sheet":** Please ignore the fact that during the interview, your partner playing the role of the applicant may refer to their I-589 or I-590 and an information "cheat sheet" for answers to certain questions.
- **Eliciting Testimony:** The goal of this exercise is to practice the use of interviewing techniques to elicit all material evidence during the interview. Because you will be interviewing someone playing the role of an applicant, there may be many questions to which the "applicant" does not know the answer. Do not let this minimize the experience that you can gain in asking creative questions and following up on important lines of questioning.
- **Credibility:** For the purposes of this exercise, please assume that the applicant is credible.
- **Persecutors/Fraud/Bars:** If you encounter an issue that you believe may constitute a mandatory bar for persecutors that may require a sworn statement, Q&A note-taking, or other special procedure done in your office, you may disregard that procedure for this exercise. Take regular notes, covering all issues. An examination of the bars is not the focus of this interview.
- **Discussions with other Officers:** In conversations with other asylum officers who interviewed students playing the same role as your applicant, you may discover that the facts of the case were presented differently in other interviews. Do not let this concern you. We anticipate that each student role-player will play the role of the applicant differently and, thus, variations in the facts of the case are inevitable.

## MINI MOCK INTERVIEWS

### GROUND RULES FOR APPLICANTS/ROLE-PLAYERS

- **Stay in role as much as possible.** You may improvise if necessary, within the character. Because the goal of this exercise is to provide experience in eliciting testimony, some careful improvisation will provide the student conducting the interview an opportunity to develop follow-up questions. Please review your role and prepare for it as much as possible in order to make the case as realistic an experience as possible for your partner. Try to remain in role; this is the first time that you and your partner will have to conduct a complete interview during the training, so please give the "officer" a good opportunity to practice his or her interviewing skills.
- The interviewing officer has the duty to elicit from you the details of your claim. Although you should testify as naturally as possible, pace yourself with pauses that force the officer to use his or her interviewing skills to get you to open up. Remember, though, the officer may be somewhat inexperienced and the idea is not to make it unnaturally difficult or tricky.
- **Documents:** If you are asked for documents, you may improvise your response as to whether you have the document or not. Officers are instructed to accept as valid any prop document or identification you present.
- **Credibility:** The scenario is to be done in a credible manner, i.e., the applicant is supposed to be telling the truth. It is therefore important for the role-player to review the application form and the information about the country in order to portray as credible an applicant as possible. You may, however, have your papers with you during the interview and refer to them when necessary.

If there are any discrepancies on the application and the officer asks why there is a mistake, explain that the preparer must have written it down incorrectly, but that you are now giving the officer the true and correct information.

- **Country conditions information** is provided in the packet. Please review this information, as it provides background information relevant to the role you will be playing.



# I-589, Application for Asylum and for Withholding of Removal

**START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.**

**NOTE:** Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

## Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) 7X XXX XX3	2. U.S. Social Security Number (if any)
---	---

3. Complete Last Name Yaqub	4. First Name Behnam	5. Middle Name Matti
--------------------------------	-------------------------	-------------------------

6. What other names have you used (include maiden name and aliases)?  
None

7. Residence in the U.S. (where you physically reside) 123 Elm St	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City El Cajon	State CA	Zip Code
------------------	-------------	----------

8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City	State	Zip Code
------	-------	----------

9. Gender:  Male  Female    10. Marital Status:  Single  Married  Divorced  Widowed

11. Date of Birth (mm/dd/yyyy) 01/01/1988	12. City and Country of Birth Baghdad, Iraq
--	--

13. Present Nationality (Citizenship) Iraq	14. Nationality at Birth Iraq	15. Race, Ethnic, or Tribal Group Chaldean	16. Religion Christian
---	----------------------------------	---	---------------------------

17. Check the box, a through c, that applies: a.  I have never been in Immigration Court proceedings.  
b.  I am now in Immigration Court proceedings.    c.  I am not now in Immigration Court proceedings, but I have been in the past.

18. Complete 18 a through c.  
a. When did you last leave your country? (mmm/dd/yyyy) 01/01/2011    b. What is your current I-94 Number, if any? \_\_\_\_\_  
c. List each entry into the U.S. beginning with your most recent entry.  
*List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)*

Date <u>01/01/2011</u>	Place <u>Los Angeles CA</u>	Status <u>B-2</u>	Date Status Expires: <u>06/30/2011</u>
Date _____	Place _____	Status _____	
Date _____	Place _____	Status _____	

19. What country issued your last passport or travel document? Iraq	20. Passport # <u>N 1234567</u> Travel Document # _____	21. Expiration Date (mm/dd/yyyy) <u>01/01/2015</u>
--	--	---

22. What is your native language (include dialect, if applicable)? Arabic	23. Are you fluent in English? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	24. What other languages do you speak fluently? Chaldean Neo-Aramaic
--	---	---

<b>For EOIR use only.</b>	<b>Action: For USCIS use only. Decision:</b>	
	Interview Date: _____	Approval Date: _____
	Asylum Officer ID#: _____	Denial Date: _____
		Referral Date: _____



## Part A. II: Information About Your Spouse and Children

Your spouse

I am not married. (Skip to Your Children below.)

1. Alien Registration Number (A-Number) <i>(if any)</i>	2. Passport/ID Card No. <i>(if any)</i>	3. Date of Birth <i>(mm/dd/yyyy)</i>	4. U.S. Social Security No. <i>(if any)</i>
5. Complete Last Name	6. First Name	7. Middle Name	8. Maiden Name
9. Date of Marriage <i>(mm/dd/yyyy)</i>	10. Place of Marriage	11. City and Country of Birth	
12. Nationality <i>(Citizenship)</i>	13. Race, Ethnic, or Tribal Group	14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes <i>(Complete Blocks 16 to 24.)</i> <input type="checkbox"/> No <i>(Specify location):</i>			
16. Place of last entry into the U.S.	17. Date of last entry into the U.S. <i>(mm/dd/yyyy)</i>	18. I-94 No. <i>(if any)</i>	19. Status when last admitted <i>(Visa type, if any)</i>
20. What is your spouse's current status?	21. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>	22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	23. If previously in the U.S., date of previous arrival <i>(mm/dd/yyyy)</i>
24. If in the U.S., is your spouse to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No			

**Your Children.** List all of your children, regardless of age, location, or marital status.

I do not have any children. *(Skip to Part A. III., Information about your background.)*

I have children. Total number of children: \_\_\_\_\_

*(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)*

1. Alien Registration Number (A-Number) <i>(if any)</i>	2. Passport/ID Card No. <i>(if any)</i>	3. Marital Status <i>(Married, Single, Divorced, Widowed)</i>	4. U.S. Social Security No. <i>(if any)</i>
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth <i>(mm/dd/yyyy)</i>
9. City and Country of Birth	10. Nationality <i>(Citizenship)</i>	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes <i>(Complete Blocks 14 to 21.)</i> <input type="checkbox"/> No <i>(Specify location.)</i>			
14. Place of last entry in the U.S.	15. Date of last entry in the U.S. <i>(mm/dd/yyyy)</i>	16. I-94 No. <i>(if any)</i>	17. Status when last admitted <i>(Visa type, if any)</i>
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No			



**Part A II. Information About Your Spouse and Children (Continued)**

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth			10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth			10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth			10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							



**Part A, III, Information About Your Background**

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
Hayy al Ghadeer, Str. #22, Bld 22	Baghdad		Iraq	1/88	1/11

2. Provide the following information about your residences during the past 5 years. List your present address first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Elm Way	El Cajon	CA	USA	1/11	present
Hayy al Ghadeer, Str. #22, Bld 22	Baghdad		Iraq	1/88	1/11

3. Provide the following information about your education, beginning with the most recent.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
St. Elia Catholic School for Boys	Secondary	Baghdad, Iraq	9/03	6/07

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)
Arabic Children's Hospital	accounts assistant	01/09	01/11

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Gorgees, Wassan	Baghdad, Iraq	<input type="checkbox"/> Deceased El Cajon, CA
Father Yaqub, Basim	Baghdad, Iraq	<input type="checkbox"/> Deceased El Cajon, CA
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



**Part B: Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part I: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- |  |  |
|--|--|
| <input type="checkbox"/> Race                | <input type="checkbox"/> Political opinion                       |
| <input checked="" type="checkbox"/> Religion | <input type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality         | <input checked="" type="checkbox"/> Torture Convention           |

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

- No       Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

Members of the group known as The Islamic State of Iraq threatened me by phone and in person, and accused me of being a traitor. They threatened me, telling me to leave or convert or I would be killed. I was almost killed when they shot at me.

B. Do you fear harm or mistreatment if you return to your home country?

- No       Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

Muslim extremists including The Islamic State of Iraq will kidnap or kill me, because I am a Christian, and they believe we are traitors and infidels.



**Part B. Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

No  Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

No  Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I am a Chaldean Christian. I have been an active member in my church until approximately a year ago when it became too dangerous to attend.

B. Do you or your family members continue to participate in any way in these organizations or groups?

No  Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I am still a Chaldean Christian, and I attend the St. Peter Chaldean Cathedral in El Cajon, CA.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

No  Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

Muslim extremists including The Islamic State of Iraq will kill or torture me, because I am a Christian, and they believe we are traitors and infidels.



**Part C. Additional Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

No  Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?  No  Yes

B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

No  Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

We had a transit stop in Dubai for approximately four hours.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

No  Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



**Part C: Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

No  Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

No  Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

No  Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.





**Part D. Your Signature**

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name. Behnam Yaqub	Write your name in your native alphabet.
---	--

Did your spouse, parent, or child(ren) assist you in completing this application?  No  Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent, or child(ren) prepare this application? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Signature of Applicant (The person in Part A.I.)

[ \_\_\_\_\_ ] \_\_\_\_\_

Sign your name so it all appears within the brackets Date (mm/dd/yyyy)

**Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child**

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer Daniel Sadik	
Daytime Telephone Number ( 619 ) 555-5555		Address of Preparer: Street Number and Name 1234 Bay Drive	
Apt. No.	City San Diego	State CA	Zip Code



**Part F: To Be Completed at Asylum Interview, if Applicable**

**NOTE:** You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Asylum Officer

**Part G: To Be Completed at Removal Hearing, if Applicable**

**NOTE:** You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_ to \_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Immigration Judge



A-Number (If available)	Date
Applicant's Name	Applicant's Signature

**List All of Your Children, Regardless of Age or Marital Status**  
 (NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



**Additional Information About Your Claim to Asylum**

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

**NOTE:** Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part \_\_\_\_\_

Question \_\_\_\_\_

[Large empty rectangular box for providing additional information]



# RAIO Combined Training

## MINI MOCK

Student #2

## MINI MOCK INTERVIEWS

### **STUDENT #2 – General Instructions**

The packet of information you will receive contains materials for an interviewing exercise. All of the students in the class will be organized into pairs. You and your partner will interview each other. You may talk with other students who have the same role as you, but do not talk about your role with your partner or anyone else who has the opposite role.

#### **1<sup>st</sup> INTERVIEW:**

You will interview an applicant from Cameroon. Your partner will portray the applicant. You will receive the following documents and information for this applicant:

- I-589 or I-590 for female Cameroonian Applicant, Elisabeth Ebai (will be used by female student/role-player)
- I-589 or I-590 for male Cameroonian applicant, Emmanuel Ebai (will be used by male student/role-player)
- Country conditions information on Cameroon

Please read the “Ground Rules for Officers” provided in the packet.

Conduct a complete interview, taking notes according to your Division’s requirements and the guidance in the RAIO Lesson Plan on Interviewing – Note Taking. Your notes will be evaluated by an instructor. Keep your notes and the packet and bring them to class; they will be used in a later session.

#### **2<sup>nd</sup> INTERVIEW:**

You are an asylum or refugee applicant/role-player. You’ll play the role of an applicant from Iraq. Your partner will interview you. You will receive the following documents and information for this applicant:

- (If you are female, use the following):
  - Information sheet about female Iraqi applicant, Maria Matti Yaqub
  - I-589 or I-590 for female Iraqi applicant, Maria Matti Yaqub
- (If you are male, use the following):
  - Information sheet about male Iraqi applicant, Behnam Matti Yaqub
  - I-589 or I-590 for male Iraqi applicant, Behnam Matti Yaqub
- Country conditions information on Iraq

Please read the “Ground Rules for Applicants/Role-players” provided in the packet.

## MINI MOCK INTERVIEWS

### GROUND RULES FOR OFFICERS/INTERVIEWERS

- **Documents:** Applicant will not have pre-prepared documents such as birth certificates, passports, driver's licenses, social security cards, etc. Ask for documents as you normally would in an interview, but the role-player will improvise his or her response. If you are presented with any documents, for the purpose of this exercise, accept them as complete and valid.
- **Applicant "Cheat Sheet":** Please ignore the fact that during the interview, your partner playing the role of the applicant may refer to their I-589 or I-590 and an information "cheat sheet" for answers to certain questions.
- **Eliciting Testimony:** The goal of this exercise is to practice the use of interviewing techniques to elicit all material evidence during the interview. Because you will be interviewing someone playing the role of an applicant, there may be many questions to which the "applicant" does not know the answer. Do not let this minimize the experience that you can gain in asking creative questions and following up on important lines of questioning.
- **Credibility:** For the purposes of this exercise, please assume that the applicant is credible.
- **Persecutors/Fraud/Bars:** If you encounter an issue that you believe may constitute a mandatory bar for persecutors that may require a sworn statement, Q&A note-taking, or other special procedure done in your office, you may disregard that procedure for this exercise. Take regular notes, covering all issues. An examination of the bars is not the focus of this interview.
- **Discussions with other Officers:** In conversations with other officers who interviewed students playing the same role as your applicant, you may discover that the facts of the case were presented differently in other interviews. Do not let this concern you. We anticipate that each student role-player will play the role of the applicant differently and, thus, variations in the facts of the case are inevitable.

## MINI MOCK INTERVIEWS

### GROUND RULES FOR APPLICANTS/ROLE-PLAYERS

- **Stay in role as much as possible.** You may improvise if necessary, within the character. Because the goal of this exercise is to provide experience in eliciting testimony, some careful improvisation will provide the student conducting the interview an opportunity to develop follow-up questions. Please review your role and prepare for it as much as possible in order to make the case as realistic an experience as possible for your partner. Try to remain in role; this is the first time that you and your partner will have to conduct a complete interview during the training, so please give the "officer" a good opportunity to practice his or her interviewing skills.
- The interviewing officer has the duty to elicit from you the details of your claim. Although you should testify as naturally as possible, pace yourself with pauses that force the officer to use his or her interviewing skills to get you to open up. Remember, though, the officer may be somewhat inexperienced and the idea is not to make it unnaturally difficult or tricky.
- **Documents:** If you are asked for documents, you may improvise your response as to whether you have the document or not. Officers are instructed to accept as valid any prop document or identification you present.
- **Credibility:** The scenario is to be done in a credible manner, i.e., the applicant is supposed to be telling the truth. It is therefore important for the role-player to review the application form and the information about the country in order to portray as credible an applicant as possible. You may, however, have your papers with you during the interview and refer to them when necessary.

If there are any discrepancies on the application and the officer asks why there is a mistake, explain that the preparer must have written it down incorrectly, but that you are now giving the officer the true and correct information.

- **Country conditions information** is provided in the packet. Please review this information, as it provides background information relevant to the role you will be playing.



## INFORMATION ON BEHNAM MATTI YAQUB

My name is Behnam Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group Islamic State of Iraq. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of the Islamic State of Iraq. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the Islamic State of Iraq members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was shot at/kidnapped while he was at the liquor store. Fortunately my father was not harmed, but it was frightening for us all. In the store, we found a ransom note stating that we had to pay \$10,000 for our father's return. The note was signed Islamic State of Iraq. Fortunately, my mother and I had some savings and we were able to pay the ransom when a masked man came to get it the next night. My father who had been badly beaten was released after we paid the ransom.

That same month, the Islamic State of Iraq seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

## INFORMATION ON BEHNAM MATTI YAQUB

My name is Behnam Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group Islamic State of Iraq. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of the Islamic State of Iraq. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the Islamic State of Iraq members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was shot at while he was at the liquor store. Fortunately my father was not harmed, but it was frightening for us all. That same month, the Islamic State of Iraq seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

## INFORMATION ON MARIA MATTI YAQUB

My name is Maria Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group al Qaeda. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to Hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of al Qaeda. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the al Qaeda members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was kidnapped while he was at the liquor store. My father did not come home from work that night, we were all very worried. Later that night my mother received a phone call from an unknown man using my father's mobile phone. He told her we would have to pay \$10,000 for my father's return. He instructed us to deliver the money to a street in the Doura neighborhood, which is an area in Baghdad controlled by al Qaeda. Fortunately, my mother and I had some savings and I delivered the money two days later. My father who had been badly beaten was released after we paid the ransom. If we hadn't paid the ransom, I'm sure he would have been killed.

That same month, al Qaeda seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

## INFORMATION ON MARIA MATTI YAQUB

My name is Maria Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group Islamic State of Iraq. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of the Islamic State of Iraq. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the Islamic State of Iraq members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was shot at while he was at the liquor store. Fortunately my father was not harmed, but it was frightening for us all. That same month, the Islamic State of Iraq seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

# I-589, Application for Asylum and for Withholding of Removal

**START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.**

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

## Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) 7X XXX XX3	2. U.S. Social Security Number (if any)
---	---

3. Complete Last Name Ebai	4. First Name Elisabeth	5. Middle Name
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6. What other names have you used (include maiden name and aliases)?  
None

7. Residence in the U.S. (where you physically reside) 123 Oak St	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City Bethesda	State MD	Zip Code
------------------	-------------	----------

8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):	Telephone Number ( )
--	-------------------------

Street Number and Name	Apt. Number
------------------------	-------------

City	State	Zip Code
------	-------	----------

9. Gender:  Male  Female

10. Marital Status:  Single  Married  Divorced  Widowed

11. Date of Birth (mm/dd/yyyy) 01/01/1984	12. City and Country of Birth Cameroon
--	---

13. Present Nationality (Citizenship) Cameroon	14. Nationality at Birth Cameroon	15. Race, Ethnic, or Tribal Group Bassa	16. Religion Christian
---	--------------------------------------	--	---------------------------

17. Check the box, a through c, that applies: a.  I have never been in Immigration Court proceedings.  
b.  I am now in Immigration Court proceedings. c.  I am not now in Immigration Court proceedings, but I have been in the past.

18. Complete 18 a through c.  
a. When did you last leave your country? (mmm/dd/yyyy) 01/01/2011 b. What is your current I-94 Number, if any? \_\_\_\_\_

c. List each entry into the U.S. beginning with your most recent entry.  
List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)

Date	Place	Status	Date Status Expires:
01/01/2011	Washington, D.C.	B-2	06/30/2011
_____	_____	_____	_____
_____	_____	_____	_____

19. What country issued your last passport or travel document? Cameroon	20. Passport # N 1234567	21. Expiration Date (mm/dd/yyyy) 09/01/2015
	Travel Document #	

22. What is your native language (include dialect, if applicable)? Bassa	23. Are you fluent in English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	24. What other languages do you speak fluently?
---	---	---

For EOIR use only.	Action:	For USCIS use only.	Decision:
	Interview Date:	_____	Approval Date: _____
	Asylum Officer ID#:	_____	Denial Date: _____
			Referral Date: _____



**Part A: II. Information About Your Spouse and Children**

Your spouse  I am not married. (Skip to Your Children below.)

1. Alien Registration Number (A-Number) <i>(if any)</i>		2. Passport/ID Card No. <i>(if any)</i>		3. Date of Birth <i>(mm/dd/yyyy)</i>		4. U.S. Social Security No. <i>(if any)</i>	
5. Complete Last Name			6. First Name		7. Middle Name		8. Maiden Name
9. Date of Marriage <i>(mm/dd/yyyy)</i>			10. Place of Marriage			11. City and Country of Birth	
12. Nationality <i>(Citizenship)</i>			13. Race, Ethnic, or Tribal Group			14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes <i>(Complete Blocks 16 to 24.)</i> <input type="checkbox"/> No <i>(Specify location):</i> _____							
16. Place of last entry into the U.S.		17. Date of last entry into the U.S. <i>(mm/dd/yyyy)</i>		18. I-94 No. <i>(if any)</i>		19. Status when last admitted <i>(Visa type, if any)</i>	
20. What is your spouse's current status?		21. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>		22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No		23. If previously in the U.S., date of previous arrival <i>(mm/dd/yyyy)</i>	
24. If in the U.S., is your spouse to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No							

**Your Children.** List all of your children, regardless of age, location, or marital status.

I do not have any children. *(Skip to Part A. III., Information about your background.)*

I have children. Total number of children: \_\_\_\_\_

*(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)*

1. Alien Registration Number (A-Number) <i>(if any)</i>		2. Passport/ID Card No. <i>(if any)</i>		3. Marital Status <i>(Married, Single, Divorced, Widowed)</i>		4. U.S. Social Security No. <i>(if any)</i>	
5. Complete Last Name			6. First Name		7. Middle Name		8. Date of Birth <i>(mm/dd/yyyy)</i>
9. City and Country of Birth			10. Nationality <i>(Citizenship)</i>		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes <i>(Complete Blocks 14 to 21.)</i> <input type="checkbox"/> No <i>(Specify location.)</i> _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. <i>(mm/dd/yyyy)</i>		16. I-94 No. <i>(if any)</i>		17. Status when last admitted <i>(Visa type, if any)</i>	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No							





**Part A, II. Information About Your Spouse and Children (Continued)**

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



**Part A, III. Information About Your Background**

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

2. Provide the following information about your residences during the past 5 years. List your present address first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Oak St	Bethesda	MD	USA	1/11	present
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

3. Provide the following information about your education, beginning with the most recent.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
University of Buea	University	Buea, Cameroon	9/01	6/06

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
 (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Atangu, Miriam	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Father Ebai, Lawrence	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling Ebai, Rita	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



**Part B: Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- Race
- Political opinion
- Religion
- Membership in a particular social group
- Nationality
- Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

- No
- Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

The police arrested me because of my activities with and support of the SCNC. I was beaten and chained up. The government does not want activists like me to have a voice.

B. Do you fear harm or mistreatment if you return to your home country?

- No
- Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

The government headed by President Biya will continue to arrest and torture me due to my involvement with the SCNC and its secessionist cause.



**Part B: Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

No  Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

No  Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I have been a member of SCNC since I was at University. I am still a member.

B. Do you or your family members continue to participate in any way in these organizations or groups?

No  Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I have been a member of SCNC since I was at University. I am still a member.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

No  Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

The police and government in Cameroon torture political prisoners; some do not come out alive. I would be arrested and tortured if I returned to Cameroon, because I am a known supporter of the SCNC's agenda.



**Part C: Additional Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

No  Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?  No  Yes

B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

No  Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

I had a transit stop in Brussels for approximately four hours.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

No  Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



**Part C. Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

No       Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

No       Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

No       Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



**Part D. Your Signature**

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name. Elisabeth Ebai	Write your name in your native alphabet.
---	--

Did your spouse, parent, or child(ren) assist you in completing this application?  No  Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent, or child(ren) prepare this application? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Signature of Applicant (The person in Part A.I.)

[ \_\_\_\_\_ ]

Sign your name so it all appears within the brackets

\_\_\_\_\_ Date (mm/dd/yyyy)

**Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child**

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer Daniel Taku	
Daytime Telephone Number ( 301 ) 555-5555		Address of Preparer: Street Number and Name 4321 Marina Dr	
Apt. No.	City Silver Spring	State MD	Zip Code



**Part F. To Be Completed at Asylum Interview, if Applicable**

**NOTE:** You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_\_ to \_\_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Asylum Officer

**Part G. To Be Completed at Removal Hearing, if Applicable**

**NOTE:** You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are  all true or  not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_\_ to \_\_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Immigration Judge





A-Number (If available)	Date
Applicant's Name	Applicant's Signature

**List All of Your Children, Regardless of Age or Marital Status**  
 (NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



**Additional Information About Your Claim to Asylum**

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

**NOTE:** Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part \_\_\_\_\_

Question \_\_\_\_\_

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# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### RAIO Combined Training Course

## CHILDREN'S CLAIMS

### TRAINING MODULE

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**RAIO Directorate – Officer Training / RAIO Combined Training Course****CHILDREN'S CLAIMS****Training Module****MODULE DESCRIPTION:**

This module provides guidelines for adjudicating children's claims. Issues addressed include guidelines for child-sensitive interview techniques and considerations for the legal analysis of claims involving child applicants. While the legal analysis sections specifically address refugee and asylum claims, other sections, including those that address child development and procedural issues, are relevant to claims made by children for other immigration benefits.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

When interviewing in the field, you (the Officer) will apply adjudicative and procedural guidance in issues that arise in claims made by children, in particular unaccompanied children.

**ENABLING PERFORMANCE OBJECTIVES**

Examine the development of international law that protects the rights of children and children seeking refugee or asylum status.

Describe procedural considerations when working with child applicants.

Apply child-sensitive questioning and listening techniques that facilitate eliciting information from children.

Describe how persecution must be analyzed when looking at a claim of a child refugee or asylum-seeker.

Describe how nexus must be analyzed when looking at a claim of a child refugee or asylum-seeker.

**INSTRUCTIONAL METHODS**

Interactive presentation

Discussion  
Practical exercises

## METHOD(S) OF EVALUATION

Written exam

## REQUIRED READING

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paras. 181–188, 213–219, Annex 1.

UNHCR, *Guidelines on International Protection No.8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (December 22, 2009), HCR/GIP/09/08, 28 pp.

UNHCR, *Resettlement Handbook*, Section 5.2, Children and Adolescents, Department of International Protection (July 2011), pp. 184-194.

UNHCR, *Children – BID Guidelines Information Sheet* (3 pp.) (June 2008).

### Division-Specific Required Reading - Refugee Division

### Division-Specific Required Reading - Asylum Division

### Division-Specific Required Reading - International Operations Division

## ADDITIONAL RESOURCES

Brief of American Medical Association, et al., *Roper v. Simmons*, 543 U.S. 551 (2005).

(Canadian Guidelines) Immigration and Refugee Board of Canada, *Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* (Ottawa: 30 Sept. 1996), hereinafter “Canadian Guidelines.”

Carr, Bridgette A., “Eliminating Hobson’s Choice by Incorporating a ‘Best Interests of the Child’ Approach into Immigration Law and Procedure.” *Yale Human Rights and Development Law Journal* 12, Spring 2009, pp.120–159.

Memorandum from Bo Cooper, INS General Counsel, to Doris Meissner, Commissioner, *Elian Gonzalez*, (3 Jan. 2000).

- Duncan, Julianne, *Best Interest Determination for Refugee Children: An Annotated Bibliography of Law and Practice*, United States Conference of Catholic Bishops, 15 October 2008.
- Geidd, Jay, "Inside the Teenage Brain," Frontline, PBS, January 2002.
- Memorandum from Joseph E. Langlois, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).
- Lustig, Stuart L., MD, MPH, et al., *Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force*, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.
- Lutheran Immigration and Refugee Service (LIRS), *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*, June 1998.
- National Organization for Victim Assistance, "Children's Reaction to Trauma and Some Coping Strategies for Children," *Issues of War Trauma and Working with Refugees: A Compilation of Resources*, edited by Susan D. Somach, 56–62, Washington, DC: Center for Applied Linguistics Refugee Service Center, 1995.
- Office of Refugee Resettlement, Office of Health and Human Services, Unaccompanied Minors Program.
- Perry, Nancy W. and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," *Creighton Law Review*, 18, 1985, pp. 1369–1426.
- UN General Assembly, *Convention on the Rights of the Child*, G.A. Resolution 44/25, UN GAOR 20 Nov.1989.
- UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997).
- UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994).
- UNHCR, *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries 2001-2003* (Geneva: July 2004).
- Walker, Anne Graffam, "Suggestions for Questioning Children," *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*, Lutheran Immigration and Refugee Service, 63–64. Baltimore, MD: LIRS, 1998.

Memorandum from William R. Yates, Associate Director for Operations, USCIS, to Regional Directors, et al., The Child Status Protection Act – Children of Asylees and Refugees, (HQOPRD 70/6.1) (17 August 2004).

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

Task/ Skill #	Task Description



**SCHEDULE OF REVISIONS**

Date	Section (Number and Name)	Brief Description of Changes	Made By
8/21/2014	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/30/2015	Section 8.4, Nexus to a Protected Ground	Modified recommended PSG formulations for FGM and forced marriage	RAIO Training

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- Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.
- For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

## 1 INTRODUCTION

The purpose of this module is to familiarize the student with guidelines for adjudicating children's refugee and asylum claims. The module will cover U.S. law and international guidance that bears on this issue, the procedural adjustments you must make when interviewing children, and the legal issues that must be considered when analyzing cases and making determinations.

The unique vulnerability and circumstances of children prompted USCIS and legacy INS to issue guidance relating to this vulnerable population. On Human Rights Day 1998, INS issued the *Children's Guidelines*, providing guidance on child-sensitive interview procedures and legal analysis of the issues that commonly arise in children's cases.

The *Children's Guidelines* resulted from a collaborative effort of INS and U.S. governmental and non-governmental organizations (NGOs), individuals, and the Office of the United Nations High Commissioner for Refugees (UNHCR). The Women's Commission for Refugee Women and Children was instrumental in the development of the guidance.

Changes in regulations and case law over the years have superseded much of the legal guidance set forth in the *Children's Guidelines*. However, guidance has been developed, and is provided in this module, based on current procedures and legal analysis that incorporate the principles of child-sensitive protection that were previously set forth in the *Children's Guidelines*.

A memorandum issued by RAIO's Asylum Division in 2007 serves as a resource on interviewing procedures for children.<sup>1</sup> It addresses the need to explore guardianship and parental knowledge and consent issues, which can assist in identifying unaccompanied children who may be victims of trafficking or other abuse.

During the last twenty years, the topic of child refugees and asylum seekers has drawn increasing attention from the international community. Human rights violations against children take a number of forms, such as abusive child labor practices, trafficking in children, rape, domestic violence, female genital mutilation, forced marriage, forced prostitution,<sup>2</sup> and forced recruitment. Psychological harm may be a particularly relevant factor to consider. The effects of harm inflicted against a child's family member may also be a relevant factor to consider.

## 2 INTERNATIONAL GUIDANCE

As the issue of children as refugees and asylum-seekers has moved only relatively recently into the forefront of immigration law, relevant U.S. case law is somewhat scarce.<sup>2</sup> In the absence of case law, or when case law does not specifically address an issue, international instruments can provide helpful guidance and context on human rights norms.

The following international instruments and documents contain provisions specifically relating to children.<sup>3</sup> They recognize and promote the principle that children's rights are universal human rights.

### 2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations (U.N.) General Assembly on December 10, 1948.<sup>4</sup> The UDHR sets forth a collective understanding of the rights that are fundamental to the dignity and development of every human being. Most relevant to your work are Article 14, which provides for the right to apply for asylum, and Article 25(2), which refers to the special care and assistance required for children. The rights contained in the UDHR have been expanded upon in international covenants and elsewhere, including the International Covenant on Civil and Political Rights, to which the United States is a Party.

<sup>1</sup> See Joseph E. Langlois, USCIS Asylum Division, *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 14 August 2007), Section II.

<sup>2</sup> In addition to the sources cited below, the information in this section of the module derives from section I., Background and International Guidance, of the *Children's Guidelines*.

<sup>3</sup> See RAIO modules on International Human Rights Law and Overview of UNHCR and Concepts of International Protection.

<sup>4</sup> Universal Declaration of Human Rights. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

## 2.2 Convention on the Rights of the Child

Many of the components of international policy regarding children derive from the U.N. Convention on the Rights of the Child (CRC).<sup>5</sup> Adopted by the United Nations in November 1989, the CRC codifies standards for the rights of all children.

Article 3(1) of the CRC provides that “the ‘best interests of the child’ should be the primary consideration” in all actions involving children.<sup>6</sup> The “best interests of the child” principle holds that the state is ultimately responsible for ensuring that the basic needs of children are met and that the fundamental rights of children are protected. The internationally recognized “best interests of the child” principle is a useful measure for determining appropriate interview procedures for children, but it does not play a role in determining substantive eligibility for immigration benefits under the U.S. law. Additionally, under Article 12(1), children’s viewpoints should be considered in an age and maturity-appropriate manner.<sup>7</sup>

Because the United States has signed but not ratified the CRC, its provisions, including those noted above, provide guidance only and are not binding on adjudicators.<sup>8</sup> However, having signed the CRC, the United States is obliged under international treaty law to refrain from acts that would defeat the object and purpose of the Convention.

On December 23, 2002, the United States ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.<sup>9</sup> The Optional Protocol calls for States Parties to prohibit and create criminal penalties for the sale of children, child prostitution, and child pornography.

Additionally, the United States ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on January 23, 2003.<sup>10</sup> In violation of current international standards that establish a minimum age for participation in armed conflicts, children under age eighteen are forcibly recruited by state-sanctioned armies or private militias to participate in military combat in some countries. Among other things, the Optional Protocol calls for States Parties to ensure that children under eighteen years of age do not take a direct part in hostilities, sets out safeguards for those under eighteen years of age who are voluntarily recruited into their nation’s armed forces, and prohibits

<sup>5</sup> Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. G.A.O.R., Nov. 20, 1989.

<sup>6</sup> CRC, Article 3.

<sup>7</sup> CRC, Article 12.

<sup>8</sup> Vienna Convention on the Law of Treaties, Art. 18(a), signed May 23, 1969, entered into force January 27, 1980.

<sup>9</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

<sup>10</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

non-governmental armed groups from recruiting or using persons under eighteen years of age as soldiers. In 2008, the Child Soldiers Accountability Act became U.S. law, providing criminal and immigration penalties for individuals who recruit or use child soldiers.<sup>11</sup>

### 2.3 The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention)

The Hague Adoption Convention establishes internationally agreed upon rules and procedures for adoptions between countries that have a treaty relationship under the Convention. The goal of the Convention is to protect the best interests of children, and also to protect birth parents and adoptive parents involved in intercountry adoptions.

The Hague Adoption Convention applies to all intercountry adoption initiated on or after April 1, 2008, by a U.S. citizen habitually resident in the United States seeking to adopt and bring to the United States a child habitually resident in any Convention country.

You will not see Hague applications or petitions because the USCIS National Benefits Center currently processes all Hague forms (Form I-800A and Form I-800). The U.S. Department of State grants final Form I-800 approval and issues the necessary Hague Adoption or Custody Certificates in the child's country of origin.

### 2.4 The United Nations High Commissioner for Refugees (UNHCR)

#### 2.4.1 ExCom Conclusions

Over the years, the Executive Committee of the High Commissioner's Program<sup>12</sup> (or "ExCom") has adopted a number of conclusions concerning refugee children. Safeguarding the wellbeing of refugee children has long been a high priority of the UNHCR and the United States.

#### **UNHCR ExCom Conclusion No. 47**

In 1987, the Executive Committee issued its first conclusion devoted exclusively to children – Conclusion No. 47.<sup>13</sup> This Conclusion urged action to address the human rights and needs of children who are refugees, highlighted the particular vulnerability of unaccompanied and disabled refugee children, and highlighted the need for action by UNHCR to protect and assist them. Conclusion No. 47 condemned specific violations of

<sup>11</sup> Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008). See Asylum Supplement, Bars to Applying for Asylum, below, for more detail on the CSAA.

<sup>12</sup> For additional information on the Executive Committee, see RAIO module, *UNHCR Overview*.

<sup>13</sup> UN High Commissioner for Refugees, Conclusion on Refugee Children, 12 Oct. 1987. No. 47 (XXXVIII) - 1987.



basic human rights, including sexual abuse, trafficking of children, acts of piracy, military or armed attacks, forced recruitment, political exploitation, and arbitrary detention. The document also called for national and international action to prevent such violations and assist the victims.

Conclusion No. 47 also emphasized that all action taken on behalf of refugee children must be guided by the principle of the "best interests of the child."<sup>14</sup>

#### **UNHCR ExCom Conclusion No. 59**

In Conclusion No. 59, issued in 1989, the Executive Committee reaffirmed and expanded upon the need for particular attention to the needs of refugee children, particularly in regards to access to education.<sup>15</sup> It also drew special attention to the needs of unaccompanied minors, emphasizing the need to develop legal methods to protect them from irregular adoption and forced recruitment into armed forces.

#### **UNHCR ExCom Conclusion No. 107**

The Executive Committee issued Conclusion No. 107 on Children at Risk in 2007. It recognizes that children should be prioritized in receiving refugee protection and assistance.<sup>16</sup> It also calls for UNHCR, Member States, and others to identify children at heightened risk due to the wider protection environment and individual circumstances, and to work to prevent such heightened risks.

### **2.4.2 UNHCR Policies and Guidelines**

UNHCR has enacted policies and issued several sets of child-related guidelines in recent years.

#### **Policy on Refugee Children**

UNHCR's *Policy on Refugee Children*, issued in 1993, points out that children's needs are different from adults' due to their developmental needs, their dependence, including in legal matters, and their vulnerability to harm.<sup>17</sup> Thus, governmental actions relating to children must be "tailored to the different needs and potentials of refugee children," to avoid the tendency to think of refugees as a uniform group.

#### **Refugee Children: Guidelines on Protection and Care**

<sup>14</sup> See section on Convention on the Rights of the Child, above.

<sup>15</sup> UNHCR, *Conclusion on Refugee Children*, 13 Oct. 1989. No. 59 (XL), 1989.

<sup>16</sup> UNHCR, *Conclusion on Children at Risk*, 5 Oct. 2007. No. 107 (LVIII), 2007.

<sup>17</sup> UNHCR, *Policy on Refugee Children*, EC/SCP/82 (August 6, 1993).

In 1994 UNHCR issued *Refugee Children: Guidelines on Protection and Care*, incorporating international norms relevant to the protection and care of refugee children.<sup>18</sup> These Guidelines adopt a human rights perspective using the articles in the CRC to set UNHCR's standards. For the survival and development of children, UNHCR endorses a "triangle of rights:" the "best interests" rule, a policy of non-discrimination towards all refugee children, and age-appropriate participation of children in issues affecting their lives.

### **Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum**

In 1997, UNHCR published the *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.<sup>19</sup> The purpose of these Guidelines is threefold:

- to increase awareness of the special needs of unaccompanied children and the rights reflected in the CRC;
- to highlight the importance of a comprehensive approach to child refugee issues; and
- to stimulate internal discussion in each country on how to develop principles and practices that will ensure that the needs of unaccompanied children are met.

The Guidelines emphasize that all children are "entitled to access to asylum procedures, regardless of their age," and that the asylum process should be prioritized and expedited for children's cases. UNHCR recommends that adjudicators take into account "circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability." It also notes that children may face child-specific persecution, such as recruitment of child soldiers, forced labor, trafficking of children for prostitution, and female genital mutilation. Finally, UNHCR recommends that where there is "doubt as to the veracity of the account presented or the nature of the relationship between caregiver and child,...the child should be processed as an unaccompanied child."

### **UNHCR Guidelines on Determining the Best Interests of the Child**

The *Best Interests Determination (BID) Guidelines* set forth the formal process that UNHCR has established to determine the best interests of refugee children confronted with major decisions regarding their care or durable solutions, such as the possibility of voluntary repatriation, local integration, or resettlement.<sup>20</sup> UNHCR commits to undertake

<sup>18</sup> UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994).

<sup>19</sup> UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997).

<sup>20</sup> UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008.

a BID in three contexts: (1) identification of the most durable solution for unaccompanied and separated refugee children; (2) temporary care decisions for unaccompanied and separated refugee children in certain exceptional circumstances; and (3) decisions which may involve separating a child against his or her will from parents.

### **UNHCR'S Guidelines on International Protection No. 8: Child Asylum Claims**

In 2009 UNHCR issued its *Guidelines on International Protection No. 8*, addressing child asylum and refugee claims.<sup>21</sup> The Guidelines provide substantive and procedural guidance on making determinations on children's claims, highlighting the specific rights and protection needs of children during this process and also addressing the application of the exclusion clauses (bars to protection) to children. Recommending a child-sensitive interpretation of the 1951 Refugee Convention, the Guidelines point out that the definition of a refugee has traditionally been interpreted in light of adult experiences, which has led to incorrect assessments of the refugee and asylum claims of children.

### **UNHCR's Framework for the Protection of Children**

Reflecting the priority it places on safeguarding the wellbeing of children of concern and an evolution in its policy and practice, in 2012 UNHCR published *A Framework for the Protection of Children*.<sup>22</sup> It focuses on prevention and response to child abuse, neglect, violence and exploitation, building on UNHCR's policy and guidelines on the protection of children and relevant Executive Committee conclusions.

## **3 U.S. LAW**

### **3.1 Definition of "Child"**

The definition of the term "child," "minor," or "juvenile" for immigration purposes may differ depending on the context in which it is used.

- Under the CRC, eighteen years has been almost universally recognized as the legal age of adulthood.<sup>23</sup> Most laws in the United States recognize eighteen-year-olds as legal adults.<sup>24</sup> Under federal immigration law, however, there are a number of different statutory and regulatory provisions that govern specific contexts and set

<sup>21</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08.

<sup>22</sup> UNHCR, *A Framework for the Protection of Children*, 26 June 2012.

<sup>23</sup> CRC, Article 1.

<sup>24</sup> Child Welfare Information Gateway, *Determining the Best Interests of the Child: Summary of State Laws*, U.S. Department of Health and Human Services' Administration for Children and Families, Washington, DC, 2005.

out specific definitions and categories of children.

Following are some of the different contexts and definitions:

- The INA defines a “child” as “an unmarried person under twenty-one years of age”<sup>25</sup> for purposes of eligibility for most immigration benefits under the INA, including derivative refugee or asylum status. In the case of a derivative, the child would not be the principal applicant, but rather would have derivative status based on a parent’s refugee or asylum claim. *See* Derivative versus Independent Status, below.
  - Refugee and IO officers adjudicate Refugee/Asylee Relative Petitions (Form I-730) for children up to age twenty-one.<sup>26</sup>
  - An unmarried child of a principal applicant granted asylum may receive a derivative grant of asylum if the child was under twenty-one at the time the application was filed.<sup>27</sup>
- For purposes of determining admissibility, “juvenile” is a term used in INA section 212 when discussing exceptions to criminal responsibility for persons under eighteen years of age.<sup>28</sup>
- DHS regulations also use the term “juvenile” to describe an individual under eighteen for purposes of determining detention and release and parental notification.<sup>29</sup>
- DHS regulations use the term “minor under the age of 14” for the following purposes:
  - A parent or legal guardian may sign for a person who is under fourteen (8 C.F.R. 103.5a(c)).
  - Service of any DHS document shall be made upon the person with whom the minor under fourteen lives, and if possible upon a near relative, guardian, committee, or friend (8 C.F.R. 103.5a(c) and 236.2).
- The Homeland Security Act of 2002<sup>30</sup> introduced a new term – “unaccompanied alien child” (or “UAC”) – to define a child who has no lawful immigration status in the United

<sup>25</sup> INA § 101(b)(1); INA § 101(c)(1).

<sup>26</sup> INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208; Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).

<sup>27</sup> *Id.*

<sup>28</sup> INA § 212(a)(2)(A)(ii).

<sup>29</sup> *See* 8 C.F.R. § 236.3.

<sup>30</sup> *Homeland Security Act of 2002*, Section 462, 6 U.S.C. § 279(g)(2).

States, has not attained eighteen years of age, and has no parent or legal guardian in the United States available to provide care and physical custody. This definition is discussed further in the Asylum Supplement. The Asylum Division has initial jurisdiction over the asylum claims filed by UACs, including those who are in immigration court proceedings.<sup>31</sup>

- When adjudicating children's refugee and asylum applications, the following definitions are helpful to know. For the Asylum Division, a "minor principal applicant"<sup>32</sup> is a principal applicant who was under eighteen years of age at the time of filing an asylum application. In the refugee context, such applicants are generally referred to as unaccompanied refugee minors (URMs) or Unaccompanied or Separated Children (UASCs).

You will review all refugee and asylum claims for principal applicants under eighteen using this Training Module. However, for purposes of derivative determinations, this Training Module applies to all individuals under the age of twenty-one.

Barring unusual circumstances, under USCIS procedures and policies, children age fourteen and above are able and expected to sign their own applications and other documents. If available, a parent signs on behalf of children younger than fourteen.<sup>33</sup>

### 3.2 Derivative versus Independent Status

Much of this module will focus on children applying independently as principal applicants for refugee or asylum status. Many will be unaccompanied or separated children. As principal applicants, they must establish that they are refugees. However, officers will also adjudicate claims in which a parent is the principal applicant and a child has derivative status.

Under the statute and DHS regulations, the child of a refugee or asylee is usually afforded the same status as his or her parent,<sup>34</sup> unless the child is ineligible for protection.<sup>35</sup>

<sup>31</sup> See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

<sup>32</sup> Although most minor principal applicants are also UACs, some are accompanied by a parent or legal guardian (or have lawful immigration status in the United States) but are filing independently.

<sup>33</sup> 8 C.F.R. § 103.2

<sup>34</sup> 8 C.F.R. §§ 207.7 and 208.21(a).

<sup>35</sup> For additional information, see RAIO Training modules, *Persecutor Bar, Grounds of Inadmissibility, and National Security*.

You should follow the guidance covered in this Training Module when interviewing child beneficiaries. While the guidance covered in this Training Module is particularly relevant for children who raise independent claims, the procedural sections of this Training Module are useful for *all* cases involving children and young adults.

Refugee and International Operations Officers may adjudicate Refugee/Asylee Relative Petitions (Form I-730) filed for children outside of the United States who are derivative beneficiaries of refugees or asylees. This topic will be covered separately during the Refugee Division Officer Training Course. Asylum Officers will also adjudicate claims in which a child is included as a derivative applicant on a parent's claim.

While derivative status is statutorily available to children and spouses, there is no statutory or regulatory right of parents to be eligible for derivative status in the refugee and asylum context. The parent applicant must establish eligibility in his or her own right.<sup>36</sup>

### **Children Who Turn Twenty-One Years of Age before the Interview**

Under the INA, as amended by the Child Status Protection Act of 2002 (CSPA), an unmarried child of a principal applicant may qualify as a beneficiary on a petition or as a derivative on an application if the child was under twenty-one at the time of filing the petition or application.<sup>37</sup> Children who turn twenty-one after the date of filing, but before the adjudication are not ineligible for beneficiary or derivative status on that basis.

For refugee and asylum purposes, there is no requirement that the child have been included as a dependent on the principal applicant's application at the time of filing. The child must be included prior to the adjudication.

If, however, the child turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless the petition or application was pending on August 6, 2002.<sup>38</sup>

### **Children Who Turn Twenty-One Years of Age before Adjustment**

The CSPA also amends INA section 209(b)(3) to allow dependents who are the subjects of pending adjustment petitions who turn twenty-one on or after August 6, 2002, to

<sup>36</sup> *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007).

<sup>37</sup> INA §§ 201(f); 207(c)(2)(b); 208(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208. See also Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).

<sup>38</sup> William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al. (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

continue to be classified as children for adjustment purposes (which avoids the need to file an independent petition).<sup>39</sup>

As noted above, if an individual turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless an application was pending with then-INS on August 6, 2002. While the Domestic Operations Directorate of USCIS issued revised guidance on the CSPA for family and employment-based petitions, which eliminated the requirement for a pending application on the CSPA effective date, this guidance memo does not apply to applications for children of refugees and asylees.<sup>40</sup> As a result, a dependent of a refugee or asylee who turned twenty-one years of age and whose principal's adjustment petition was adjudicated prior to the enactment of the CSPA lost his or her ability to adjust as a dependent of the principal applicant. While he or she did not lose the refugee or asylum status already granted, the former derivative does not gain the ability to adjust to legal permanent resident status as a principal applicant. In such situations, a *nunc pro tunc* (retroactive approval) procedure is permitted, although the need for such an adjudication will become increasingly rare as more time passes.

### **Child Applying as Derivative of One Parent in Refugee and Asylum Claims**

If a child seeking refugee or asylum status is with one parent, USCIS does not need a parental release from the absent parent. However, in some circumstances for overseas cases, the Resettlement Support Center does require such a release based on the laws or regulations of the host country. Such a requirement does not affect the USCIS adjudication. *See* RAD Supplement regarding married children.

## **4 CHILD DEVELOPMENT**

### **4.1 General Considerations**

The needs of a child applicant are best understood if the applicant is regarded as a child first and an applicant second.<sup>41</sup> Child applicants will generally approach the interview and adjudication process from a child's perspective, not as applicants for a legal status before a government official.

<sup>39</sup> INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208.

<sup>40</sup> William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al, (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

*See also* USCIS Asylum Division, Affirmative Asylum Procedures Manual; "INS Discusses Adjustment of Status Issues For Children of Asylees," 69 Interpreter Releases 847 (1992).

<sup>41</sup> Jacqueline Bhabha and Wendy A. Young, "Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers," 75 Interpreter Releases 757, 760 (1 June 1998). (hereinafter Bhabha and Young)

Most of the information in this section is taken from the Lutheran Immigration and Refugee Service (LIRS) publication, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*.<sup>42</sup> This information, however, is applicable to any interview with a child.

Children's ages and stages of development affect their ability to apply for refugee and asylum status or other benefit and to articulate their claim and respond effectively in an interview.

#### 4.2 Developmental Stages

Children worldwide develop physical, mental, and emotional capacity in universal stages, although culture and environment affect the outward display of the child's abilities and may cause delays in growth. According to these universal stages:

Children ages five and younger are fully dependent on their caretakers in all realms.

Between ages six and twelve, children begin to gain independent skills and the emotional, mental, and physical capacity to manage some life issues on their own.

At about age twelve, children begin to develop increasing ability to navigate on their own emotionally, physically, and mentally.<sup>43</sup>

Adverse circumstances may delay a child's development, sometimes permanently. Severe malnutrition or illnesses affect growth if they occur at crucial developmental stages. For example, a child lacking nutrition at certain stages may miss developmental milestones. We may see this effect in stunted growth or other outward physical manifestations.<sup>44</sup>

While general developmental stages have been studied for many years, new techniques that were developed during the 1990's now help researchers understand much about brain development that was poorly understood previously. The National Institute of Mental Health (NIMH) has funded longitudinal brain development studies from early childhood through young adulthood using non-invasive techniques.<sup>45</sup>

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<sup>42</sup> LIRS, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development* (June 1998) hereinafter LIRS.

<sup>43</sup> Child Development Institute, "Stages of Social-Emotional Development In Children and Teenagers."

<sup>44</sup> *Id.*

<sup>45</sup> National Institute of Mental Health, *Brain Development During Childhood and Adolescence Fact Sheet*, Science Writing, Press & Dissemination Branch, 2011.



A child's ability to participate in an interview will vary based on a number of factors in the child's development.

#### 4.3 Factors that Influence Development

At each stage in development, numerous factors interact to shape the child's personality and abilities.<sup>46</sup> Factors influencing development are:

- chronological age;
- physical and emotional health;
- physical, psychological, and emotional development;
- societal status and cultural background;
- cognitive processes;
- educational experience;
- language ability; and
- experiential and historical background.

#### 4.4 Factors that Accelerate or Stunt Development

Some children may seem to be much older or much younger than their chronological age. A number of environmental and experiential factors can stunt or accelerate dramatically the development of a child.<sup>47</sup> They include, but are not limited to:

- chaotic social conditions;
- experience with forms of violence;
- lack of protection and caring by significant adults;
- nutritional deficits;
- physical disabilities; and
- mental disabilities.

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<sup>46</sup> LIRS, pp. 6-7.

<sup>47</sup> LIRS, p. 7.

#### 4.5 Effects of Stress and Violence

Children who experience stress or emotional disturbances are more severely affected in their ability to reason or to control impulses than children who do not have such experiences.

Children who have been separated from parents and other traditional caretakers, even in non-violent situations, may be so severely traumatized that their mental and emotional development is delayed. When children are exposed to violence and war even while with protective adults, all aspects of their development are affected. If children are unprotected by parents or other competent adults during such situations, they are profoundly affected. Children who witness their parents or other caretakers harmed or killed are themselves deeply harmed. Children who are forced to harm others are also profoundly traumatized.<sup>48</sup>

#### 4.6 Culture and Development

Culture affects the appearance of maturity of children in complex ways. The norms of the group determine the type of education and productive work a child participates in or whether the child remains at home or spends periods with groups of youth. Many other factors determine how various developmental stages are expressed. Additionally, children's development is interrupted by the factors that caused them to flee their homes.<sup>49</sup>

Children may act younger than their age if they are from a culture in which deference and respect to adults is a valued norm. They may, therefore, develop or express independent opinions only after reaching a culturally specified older age.

##### *Example*

Among Bhutanese refugee families, even adult children who continue to live with their parents are not expected to form independent political or social opinions but are expected to follow the guidance of their father who speaks for the whole family. When a young man marries and moves out of his father's home, he is expected to begin interacting with other men and offer opinions on community matters.

<sup>48</sup> Graça Machel, *UN Study on the Impact of Armed Conflict on Children*, UN GAO A/51/306 (3 August 1996); UN Children's Fund (UNICEF), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (April 2009).

<sup>49</sup> Stuart L. Lustig, MD, MPH, et al., *Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force*, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.

Children may act older than their chronological age if they are the oldest child in a family and have been expected to manage complex household obligations, such as caring for the safety of younger children.

*Example*

A Congolese refugee girl of fourteen was culturally expected to assume the role of head of family after the death of her parents. She managed to survive and escape with two younger siblings. The younger siblings exhibited age-appropriate development of self-care and independence. The fourteen year old, on the other hand, because of her experience as caretaker, appeared to be a much older teen.

#### 4.7 Preconceptions

Children will bring to the interview a unique set of preconceived notions that could hinder your attempts to elicit information. Such preconceptions may include the ideas that:

- **All governments are corrupt**

The child may be arriving from a country where he or she has already had extensive interaction with or knowledge of a corrupt government.<sup>50</sup> Such a child may assume that the fraud, abuse of authority, and mistreatment of the citizens he or she witnessed in the country of origin is just as pervasive in the United States.

- **Others still at home will be harmed**

Especially when a child comes from a country in which informants and their family members are harmed, the child may not understand that the U.S. government has no interest in harming, or doing anything to bring about the harm of, his or her relatives still in the country of origin.<sup>51</sup>

- **He or she should feel guilty for fleeing**

It is not uncommon for any refugee or asylum applicant to experience “survivor’s guilt” for having fled to a country of asylum, especially when family members were left behind.<sup>52</sup>

- **Others will be privy to the testimony**

<sup>50</sup> LIRS, p. 35.

<sup>51</sup> LIRS, p. 36.

<sup>52</sup> LIRS, p. 36.

Many young people do not understand that in the setting of interviews conducted by RAIO officers, confidentiality protections generally prevent USCIS from sharing information with others without the applicant's consent. This misconception is most likely to hinder an interview when an applicant feels shame as a result of his or her mistreatment, most commonly in cases of sexual abuse.

You must earn the trust of the child applicant in order to dispel these preconceptions and put the applicant at ease.<sup>53</sup>

## 5 PROCEDURAL CONSIDERATIONS

The majority of children who appear before you do so as a dependent of a parent who has filed an application or petition for an immigration benefit. However, this Training Module provides useful guidance for all individuals under the age of twenty-one and regardless of whether they are derivative or independent applicants.

While this Training Module is particularly relevant for children who raise independent refugee or asylum claims, the procedural sections may be useful for all cases involving children and young adults. Although young people between the ages of eighteen and twenty-one will be interviewed much in the same manner as adults, you should bear in mind that an applicant whose claim is based on events that occurred while under the age of eighteen may exhibit a minor's recollection of the past experiences and events.

### 5.1 Officers in the RAIO Directorate

All officers in the RAIO Directorate are trained on interviewing children and adjudicating their claims in the event that they are called upon to interview a child. It is in the child's best interests to be interviewed by an official who has specialized training in children's claims. To the extent that personnel resources permit, RAIO should attempt to assign officers with relevant background or experience to interview children.

### 5.2 Interview Scheduling

RAIO should make every effort to schedule siblings' interviews with the same officer and in the same time period, provided that such cases are identified in advance of the interviews. In cases where siblings are interviewed by different officers, the officers should consult with one another about the claims and, to the extent possible, should be reviewed by the same supervisory officer.

### 5.3 USCIS Initial Jurisdiction for Unaccompanied Alien Children's Asylum Cases

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<sup>53</sup> See section 6, *Interview Considerations*.

For asylum procedural considerations, see ASM Supplement – Procedural Considerations.

## 6 INTERVIEW CONSIDERATIONS

Child applicants may be less forthcoming than adults and may hesitate to talk about past experiences in order not to relive their trauma. RAIO has designed the following procedures with children's behavior and cognitive ability in mind to help you interact more meaningfully with children during an interview.

### 6.1 Presence of a Trusted Adult at the Interview

It is usually appropriate for a trusted adult to attend an interview with the minor applicant in order to establish the interview conditions most likely to elicit a full story.<sup>54</sup> A child's lack of experience in talking with government officials can make testifying difficult, particularly when discussing traumatic events. A trusted adult is a support person who may help to bridge the gap between the child's culture and the environment of a USCIS interview. The function of the adult is not to interfere with the interview process or to coach the child during the interview, but to serve as a familiar and trusted source of comfort. As appropriate, you may allow the adult to provide clarification, but you should ensure that those children able to speak for themselves are given an opportunity to present the claim in their own words.

The policy of allowing a trusted adult to participate in this process does not mean to suggest that the trusted adult serve as a substitute for a guardian or legal representative, neither is there a requirement that a trusted adult or legal representative be present at the interview. The child may be accompanied at the interview by both a trusted adult and a legal representative.

When conducting an interview of a child in the presence of an adult, you should assess whether the child is comfortable speaking freely in front of the adult. In order to ascertain the child's level of comfort with the adult, you may initially bring the child into the interview room alone, and ask if the child would like for the accompanying adult to be present. This approach will generally work best with adolescents. Where warranted, you may additionally ask the child at the end of the interview if he or she has anything to add in private. If at any point during the course of the interview you determine that the child is uncomfortable or afraid of the adult, you should continue the interview without that person. Given concerns regarding human trafficking, particularly in children, attention to the nature of the relationship between the child and the adult is particularly important.

<sup>54</sup> See UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994) p. 102; and RAIO Training Module, *Interviewing - Introduction to the Nonadversarial Interview*, Sec.5.5: "In some interviews the applicant has another person present. In the case of children, this may be a "trusted adult" who participates in order to help the child feel at ease."

As appropriate and with the consent of the child, you are encouraged to interview the trusted adult, if any, in order to confirm his or her relationship to the child, any guardianship arrangement, and the adult's legal authority to speak on behalf of the child.<sup>55</sup> The adult may also have information about parental knowledge of and consent to the application. The trusted adult may also be able to provide information on the child's claim where the child's age at the time of harm or interview prevents him or her from fully detailing events. Where inconsistencies arise between the applicant's and the adult's testimony, an opportunity must be given to the child to reconcile inconsistencies apparent at the interview. Note that it is not a requirement that a witness or trusted adult be present at the interview.

## 6.2 Guardianship, Parental Knowledge, and Consent

If a child appears at the interview without a parent or guardian, you should inquire into the location of the child's parents, and whether the parents are aware of the child's whereabouts and that the child has applied for an immigration benefit.<sup>56</sup>

You should elicit information about issues of guardianship and parental knowledge of and consent to the application. Questions of guardianship may be particularly important for unaccompanied minors because whether or not there is a parent or legal guardian informs your decision of whether to categorize the applicant as an unaccompanied minor or unaccompanied alien child (in the asylum context) or unaccompanied refugee minor (in the refugee context). Attention must be paid to the child's capacity to apply as a principal applicant, the parents' knowledge of the child's application, and the identity and trustworthiness of the guardian, if any. Additionally, the information you elicit is useful in identifying any potential conflict of interest and informing policy-making.

Below are questions and issues that you should take into account when conducting an interview with a minor principal applicant. These questions provide a general framework for exploration of issues of guardianship and parental knowledge and consent. Interview notes should reflect the below-requested information. A minor principal applicant's inability to demonstrate a guardianship arrangement or parental knowledge and consent does not foreclose the adjudication or approval of the application. If there is a concern regarding parental notification and confidentiality, or a concern for the child's welfare and/or safety, please contact your division's Headquarters for further guidance.

- With whom is the child living?

<sup>55</sup> See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

<sup>56</sup> *Id.*

- Did anyone accompany the child to the interview?
- Is there a guardianship arrangement (for purposes of the unaccompanied minor definition, guardianship refers to a formal – legal/judicial – arrangement)?
- If there is an adult caregiver but not a legal guardian, what arrangements has the adult made to provide for the child?
- Is there one or more living parent?
- Do the parents know that the child is applying for an immigration benefit?

### 6.3 Conducting a Non-Adversarial Interview

Although all interviews with child applicants are to be conducted in a non-adversarial manner, it is crucial when interviewing children that the tone of the interview allows the child to testify comfortably and promotes a full discussion of the child's past experiences.<sup>57</sup> Research into child development and particularly brain and cognitive development has shed light on obstacles to children's ability to encode and recall information and best practices that help overcome those obstacles.<sup>58</sup>

In many cases, girls and young women may be more comfortable discussing their experiences with female officers, particularly in cases involving rape, sexual abuse, prostitution, and female genital mutilation.<sup>59</sup> To the extent that personnel resources permit, offices should have female officers interview such applicants.

### 6.4 Working with an Interpreter

Interpreters play a critical role in ensuring clear communication between you and the child, and the actions of an interpreter can affect the interview as much as those of an officer.<sup>60</sup> As in all interviews, you should confirm that the child and the interpreter fully understand each other. You should also confirm that the child understands the role of the interpreter. This is particularly important in cases where the interpreter does not have the child's best interests at heart, such as when there is a possibility that the private

<sup>57</sup> 8 C.F.R. § 208.9(b).

<sup>58</sup> For additional information, see *European Asylum Curriculum*, Module 6.1 "Interviewing Children," May 2011 (Unit 3.2 discusses the Dialogical Communication Method); and Michael E. Lamb; et al., "Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol," *Child Abuse & Neglect* 31, no.11-12, Nov.-Dec. 2007, pp. 1201-1231.

<sup>59</sup> See Phyllis Coven, INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women* (Gender Guidelines), Memorandum, May 26, 1995, p. 5.

<sup>60</sup> For additional information, see RAIO module, *Interviewing - Working with an Interpreter*.

interpreter is part of a trafficking ring. In cases where the child appears to be uncomfortable with the interpreter, or where the interpreter does not appear to be interpreting correctly, you should stop the interview and reschedule with a different interpreter.

The identity of the interpreter is especially significant when children have been victims of sexual violence.<sup>61</sup> In such situations, or when children have suffered abuse within the family, children may be very reluctant to share such information if the interpreter is of the opposite gender or if the interpreter is a parent, relative, or family friend. Every effort should be made to make sure that the child is comfortable testifying through the interpreter.

## 6.5 Building Rapport

The child may be reluctant to talk to strangers due to embarrassment or past emotional trauma.<sup>62</sup> You may have to build rapport with the child to elicit the child's claim and to enable the child to recount his or her fears and/or past experiences. Where the child finds you friendly and supportive, the child is likely to speak more openly and honestly.

You must be culturally sensitive to the fact that applicants are testifying in a foreign environment and may have had experiences leading them to distrust persons in authority. A fear of encounters with government officials in countries of origin may carry over to countries of reception.<sup>63</sup> This fear may cause some children to be initially timid or unable to fully tell their story.<sup>64</sup>

You may be able to overcome much of a child's timidity or nervousness with a brief rapport-building phase during which time neutral topics are discussed, such as general interests, family, pets, hobbies, and sports. You may wish to ask family members or the attorney about the child's interests before the interview to ease conversation. This rapport-building phase also permits you to assess the child's ability to answer questions.

Once the child appears comfortable, you should make a brief opening statement before beginning the formal interview.<sup>65</sup> You can explain in very simple terms in the opening statement what will happen during the interview and the roles that you, the applicant,

<sup>61</sup> See Gender Guidelines, p. 5; and RAIO Training module, *Interviewing - Working with an Interpreter*.

<sup>62</sup> LIRS, p. 45.

<sup>63</sup> UNHCR Handbook, para. 198.

<sup>64</sup> LIRS, p. 38; Nancy W. Perry and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," *Creighton Law Review* (vol. 18, 1985), pp. 1369-1426, reprinted in Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (Charlottesville, Virginia: Lexis, 1997), pp. 584-585 (hereinafter Perry and Teply).

<sup>65</sup> For an example of an opening statement to be used in interviews of children, see ASM Supplement – Sample Opening Statement for Children.



interpreter, and/or attorney will play. Knowing what to expect will help ease the child applicant's anxiety.<sup>66</sup>

The tone of the opening statement is intended to build trust and to assure the child that you will be asking questions to help you understand his or her claim. The statement gives children permission to tell you when they do not understand a question. Children need to know that it is permissible for them to tell adults when they either do not understand a question or do not know an answer. Children also need to be reassured that, unless the child consents, embarrassing or traumatic events from the past generally will not be shared with others, including family members, friends, or individuals from their home country.<sup>67</sup>

## 6.6 "Reading" the Applicant

During the interview you must take the initiative to determine whether the child understands the process and the interview questions. You should watch for non-verbal cues, such as puzzled looks, knitted eyebrows, downcast eyes, long pauses, and irrelevant responses. While these behaviors may signal something other than lack of comprehension, they may also signal that a child is confused.<sup>68</sup> In such circumstances, you should pause, and if no appropriate response is forthcoming, rephrase the question.

Correspondingly, you should expect the child to be attuned to your body language. Children rely on non-verbal cues much more than adults to determine whether they can trust the person.<sup>69</sup> You should be careful neither to appear judgmental nor to appear to be talking down to the child.

## 6.7 Explaining How to Respond to Questions

Children in some cultures are taught to listen to adults but not to speak in their presence. Other children may have spent time in school or other environments where providing answers to questions is expected and responding with "I don't know" is discouraged.

If necessary, you may explain to the child how to use the "I don't know" response.<sup>70</sup>

### *Example*

<sup>66</sup> LIRS, pp. 45-46.

<sup>67</sup> See 8 C.F.R. § 208.6 on disclosure to third parties.

<sup>68</sup> LIRS, pp. 46-47.

<sup>69</sup> *Id.* at 27; Perry and Teply, p. 1380.

<sup>70</sup> *Id.* at 50.

Officer: If I ask you the question, 'How many windows are in this building?' and you don't know the answer to that question, you should say, 'I don't know.' Let's practice that. 'How many windows are in this building?'

Child: I don't know.

This approach helps to ensure that the child understands when to provide an "I don't know" response. This approach could also be used to let the child know that it is also fine to respond "I don't understand" when a question is not clear.

## 6.8 Reassuring the Applicant

If at any time during the course of the interview the child begins to feel uncomfortable or embarrassed, you should offer verbal reassurances. You may empathize with the child by saying, "I know that it's difficult to talk about this, but it is important for me to hear your story."<sup>71</sup> Additionally, a simple expression of interest (e.g., "I see" or "uh-huh") may be enough for the child to continue.

You may also shift the focus of the questioning to a non-threatening subject until the child regains his or her confidence. Reassurance, empathetic support, carefully framed questions, encouragement, and topic-shifting are crucial techniques for facilitating interviews of children.

- Note, however, that it is important not to interrupt a child in the middle of a narrative response. See General Rules below in section on Child-Sensitive Questioning and Listening Techniques.

## 6.9 Taking Breaks

You should take the initiative in suggesting a brief recess when necessary. Sometimes a child's way of coping with frustration or emotion is "to shut down during the interview, to fall into silence, or respond with a series of 'I don't know' and 'I don't remember' responses."<sup>72</sup> Many children may not take the initiative to request a recess if needed. A young child, for example, may stop answering questions or cry rather than interrupt you with a request to go to the bathroom or rest. The responsibility may fall to you to monitor the child's needs.

## 6.10 Concluding the Interview

<sup>71</sup> Perry and Teply, p. 1381, citing John Rich, MD. *Interviewing Children and Adolescents* (London: MacMillan & Co., 1968), p. 37.

<sup>72</sup> Symposium: Child Abuse, Psychological Research On Children As Witnesses: Practical Implications Forensic Interviews And Courtroom Testimony, 28 PAC. L.J. 3 (1996), p. 70, (hereinafter Symposium).

As the interview draws to a close, you should return to a discussion of the **neutral topics** with which the interview began. This approach will help to restore the child's sense of security at the conclusion of the interview.<sup>73</sup> As with all cases, you should ask the child if he or she has any final questions or anything to add and inform the child of the next steps in the application process.

### 6.11 Child-Sensitive Questioning and Listening Techniques

Children may not understand questions and statements about their past because their cognitive and conceptual skills are not sufficiently developed. Your questions during the interview should be tailored to the child's age, stage of language development, background, and level of sophistication. A child's mental development and maturity are important considerations when determining whether the child has satisfied his or her burden to establish eligibility for an immigration benefit, including that he or she meets the definition of a refugee.<sup>74</sup> In order to communicate effectively with a child applicant, you must ensure that both the officer and the child understand one another.

You should take care to evaluate the child's words from the child's point of view. Most children cannot give adult-like accounts of their experiences and memories, and you should be conscientious of age-related or culturally-related reasons for a child's choice of words.

#### *Example*

The phrase "staying awake late" may indicate after 10 p.m. or later to you, while the phrase could mean early evening for a child.<sup>75</sup>

Children's perceptions of death can cloud their testimony concerning such matters. Children may not know what happened or may feel betrayed by an adult who has died, and some may not understand the permanence of death.<sup>76</sup> Even older children may not fully appreciate the finality of death until months or years after the event.

#### *Example*

Instead of saying that a relative died or was killed, a child may state that the individual "went away" or "disappeared," implying that the individual may return.

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<sup>73</sup> UNHCR, *Interviewing Applicants for Refugee Status* (1995), p. 48.

<sup>74</sup> UNHCR Handbook, para. 214.

<sup>75</sup> Perry and Teply, p. 1383.

<sup>76</sup> Perry and Teply, p. 1419, citing R. Kastenbaum. "The Child's Understanding of Death: How Does it Develop?" *Explaining Death to Children* (E. Grollam, ed. 1967), p. 98.

Proper questioning and listening techniques will result in a more thorough interview that allows the case assessment to be more complete and accurate. The following techniques should help you elicit more thorough information.

<b>GENERAL INTERVIEWING AND LISTENING RULES</b>	
You should endeavor to:	
1	<ul style="list-style-type: none"> <li>• <b>Use short, clear, age-appropriate questions.</b><sup>77</sup></li> <li>• <b>Example:</b> "What happened?" as opposed to "What event followed the arrest?"</li> </ul>
2	<ul style="list-style-type: none"> <li>• <b>Avoid using long or compound questions.</b><sup>78</sup></li> <li>• <b>Example:</b> "What time of year did it happen?" and "What time of day did it happen?" as opposed to "What time of year and what time of day did it happen?"</li> </ul>
3	<ul style="list-style-type: none"> <li>• <b>Use one- or two-syllable words in questions; avoid using three- or four-syllable words.</b><sup>79</sup></li> <li>• <b>Example:</b> "Who was the person?" as opposed to "Identify the individual."</li> </ul>
4	<ul style="list-style-type: none"> <li>• <b>Avoid complex verb constructions.</b><sup>80</sup></li> <li>• <b>Example:</b> "Might it have been the case....?"</li> </ul>

<sup>77</sup> *Symposium*, p. 40.

<sup>78</sup> Ann Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (Washington, DC: ABA Center on Children and the Law, 1994), pp. 95-98 reprinted in *LIRS*, p. 63. (hereafter Walker); and *Symposium*, p. 40.

<sup>79</sup> *Symposium*, p. 40 (note that this technique is generally more important when conducting the interview in English without an interpreter).

<sup>80</sup> *Symposium*, p. 40.

5	<ul style="list-style-type: none"> <li>• Ask the child to define or explain a term or phrase in the question posed in order to check the child's understanding.<sup>81</sup></li> </ul>
6	<ul style="list-style-type: none"> <li>• Ask the child to define or explain the terms or phrases that he or she uses in answers, and then use those terms.</li> <li>• <b>Example:</b> If a child says that his father "disappeared," ask him what he means by "disappeared," and then use that term in questions involving that event.</li> </ul>
7	<ul style="list-style-type: none"> <li>• Use easy words, not complex ones.<sup>82</sup></li> <li>• <b>Example:</b> "Show," "tell me about...," or "said" instead of "depict," "describe," or "indicate."</li> </ul>
8	<ul style="list-style-type: none"> <li>• Tolerate pauses, even if long.<sup>83</sup></li> </ul>
9	<ul style="list-style-type: none"> <li>• Ask the child to describe the concrete and observable, not the hypothetical or abstract.<sup>84</sup></li> </ul>
10	<ul style="list-style-type: none"> <li>• Use visualizable, instead of categorical, terms.<sup>85</sup></li> <li>• <b>Example:</b> Use "gun," not "weapons."</li> </ul>
11	<ul style="list-style-type: none"> <li>• Avoid using legal terms, such as "persecution."<sup>86</sup></li> <li>• <b>Example:</b> Ask, "Were you hurt?" instead of "Were you persecuted?"</li> <li>• <b>Example:</b> Explain, "Asylum is a way to stay in the United States if</li> </ul>

<sup>81</sup> Walker, reprinted in LIRS, p. 63; Symposium, p. 40.

<sup>82</sup> Walker, reprinted in LIRS, p. 63.

<sup>83</sup> Perry and Teply, p. 1380.

<sup>84</sup> Symposium, p. 40.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

	there are people who hurt or want to hurt [you] back home and [you are] afraid of returning.” <sup>87</sup>
12	<ul style="list-style-type: none"> <li>• <b>Avoid using idioms.</b></li> <li>• Idioms are phrases that mean something other than what the words actually say. Such phrases could be difficult for both the interpreter and the child applicant.</li> <li>• <b>Example:</b> Ask, “Do you understand?” not, “Is this over your head?”</li> </ul>
13	<ul style="list-style-type: none"> <li>• <b>Use the active voice instead of the passive when asking a question.</b><sup>88</sup></li> <li>• <b>Example:</b> Ask, “Did the man hit your father?” instead of “Was your father hit by the man?”</li> </ul>
14	<ul style="list-style-type: none"> <li>• <b>Avoid front-loading questions.</b><sup>89</sup></li> <li>• Front-loading a question places a number of qualifying phrases before asking the crucial part of the question.</li> <li>• <b>Example:</b> “When you were in the house, on Sunday the third, and the man with the gun entered, did the man say...?”</li> </ul>
15	<ul style="list-style-type: none"> <li>• <b>Keep each question simple and separate.</b><sup>90</sup></li> <li>• <b>Example:</b> The question, “Was your mother killed when you were 12?” should be avoided. The question asks the child to confirm that the mother was killed and to confirm his or her age at the time of the event.</li> </ul>

<sup>87</sup> Christopher Nugent and Steven Schulman, “Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children,” 78 No. 39 INTERPRETER RELEASES 1569, 1575 (2001).

<sup>88</sup> *Symposium*, p. 40.

<sup>89</sup> *Id.*

<sup>90</sup> *LIRS*, p. 47.

16	<ul style="list-style-type: none"> <li>• <b>Avoid leading questions.</b></li> <li>• Research reveals that children may be more highly suggestible than adults and are more likely to answer according to what they think the interviewer wants to hear.<sup>91</sup> Leading questions may influence them to respond inaccurately.</li> </ul>
17	<ul style="list-style-type: none"> <li>• <b>Use open-ended questions to encourage narrative responses.</b></li> <li>• Children's spontaneous answers, although typically less detailed than those elicited by specific questioning, can be helpful in understanding the child's background.<sup>92</sup> Try not to interrupt the child in the middle of a narrative response.</li> </ul>
18	<ul style="list-style-type: none"> <li>• <b>Explain any repetition of questions.</b></li> <li>• Make clear to the child that he or she should not change or embellish earlier answers.<sup>93</sup> Explain that you repeat some questions to make sure you understand the story correctly. "Repeated questions are often interpreted (by adults as well as children) to mean that the first answer was regarded as a lie or wasn't the answer that was desired."<sup>94</sup></li> </ul>
19	<ul style="list-style-type: none"> <li>• <b>Never coerce a child into answering a question during the interview.</b><sup>95</sup></li> <li>• Coercion has no place in any USCIS interview. For example, you may never tell children that they cannot leave the interview until they answer your questions.</li> </ul>
20	<ul style="list-style-type: none"> <li>• <b>Accept that many children will not be immediately forthcoming about events that have caused great pain.</b></li> </ul>

<sup>91</sup> *Id.* at 26; Perry and Teply, pp. 1393-1396.

<sup>92</sup> LIRS, p. 47.

<sup>93</sup> Walker, reprinted in LIRS, p. 64; Symposium, p. 23.

<sup>94</sup> Walker, reprinted in LIRS, p. 64.

<sup>95</sup> Symposium, p. 41.

## 7 CREDIBILITY CONSIDERATIONS

You must be sensitive to the applicants' cultural and personal experiences irrespective of the applicant's age. This becomes critical when assessing whether testimony is credible.<sup>96</sup> The task of making an appropriate decision when interviewing children, including making a credibility determination, requires that you be aware of the following issues involving the testimony of children.

### 7.1 Detail

Children may not know the specific details or circumstances that led to their departure from their home countries. Children may also have limited knowledge of conditions in the home country, as well as their own vulnerability in that country.

For both developmental and cultural reasons, children cannot be expected to present testimony with the same degree of precision as adults.<sup>97</sup> More probing and creative questions are required.

#### *Example*

The child may not know whether any family members belonged to a political party. You should probe further and ask the child whether his or her parents attended any meetings and when the meetings were held. You should also make an inquiry into the location of the meetings, other people who attended the meetings, and whether the people had any problems. The child's knowledge of these matters may support a conclusion regarding the family's political association, despite the fact that the child may not know the details of the association.

### Measurements of Time and Distance

Children may try to answer questions regarding measurements of distance or time without the experience to do so with any degree of accuracy. You must make an effort to ascertain the child's quantitative reasoning ability.

#### *Example*

You should determine the child's ability to count before asking how many times something happened.<sup>98</sup>

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<sup>96</sup> For additional information, see RAIO modules, *Cross-Cultural Communication and Credibility*.

<sup>97</sup> *Canadian Guidelines*, p. 8.

<sup>98</sup> *Symposium*, p. 41.



Even older children may not have mastered many of the concepts relating to conventional systems of measurement for telling time (minutes, hours, calendar dates).

Not only is imprecise time and date recollection a common problem for children owing to their cognitive abilities, it can also be a product of their culture.<sup>99</sup> The western mind typically measures time linearly, in terms of successive – and precise – named days, months, and years. Many cultures, however, note events not by specific date but by reference to cyclical (rainy season, planting season, etc.) or relational (earthquakes, typhoons, religious celebrations, etc.) events.

### *Example*

In response to the question, “When were you hurt?” it may not be uncommon for a child to state, “During harvest season two seasons ago” or “shortly after the hurricane.” These answers may appear vague and may not conform to linear notions of precise time and named dates, but they may be the best and most honest replies the child can offer.

Even in those cultures where time is measured by a calendar, it may not comport to the Gregorian calendar used in the western world.

### *Examples*

Many Guatemalans still use the Mayan calendar of twenty-day months. In certain Asian cultures, a baby is considered to be “one” on his or her date of birth thereby causing, to the western mind at least, a one-year discrepancy between the child’s age and date of birth.

In many Latin cultures, two weeks is often “15 days” because the first and last days are counted.

Certain Asian cultures count the first day or year, adding one day or year to the time of the event.

### **“I don’t know” Responses**

In certain cultures, “I don’t know” is used when an individual has no absolute knowledge but has an opinion about the truth of the matter in question.

### *Example*

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<sup>99</sup> For additional information, see RAIO module, *Cross-Cultural Communication*.

A child may respond "I don't know" when asked who killed his or her parents, but upon further inquiry may state that everyone in his or her home village believes that it was government forces. You should generally probe further regarding these opinions. The child's awareness of community opinion may provide information about the issue in question even though the child may initially state "I don't know."

## 7.2 Demeanor

The term "demeanor" refers to how a person handles himself or herself physically – for example, maintaining eye contact, shifts in posture, and hesitations in speech. A child may appear uncooperative for reasons having nothing to do with the reliability of his or her testimony.

### *Example*

Different cultures view expressions of emotion differently. An individual raised in the United States might question the credibility of a child who, without crying or expressing emotion, is able to retell how his or her parents were killed in front of him. It could be, however, that the child was raised in a culture that deems improper any expression of emotion in front of an authority figure. Trauma, discussed below, may also affect demeanor.

### **Trauma**

You should be careful when interpreting certain emotional reactions or psychiatric symptoms as indicators of credibility. Children who have been subjected to extreme abuse may be psychologically traumatized. Lengthy confinement in refugee camps, repeated relocation, or separation from family can also greatly impact the psychological well-being of children. Children who are separated from their families due to war or other violence are placed at even greater psychological risk than those children who remain in the care of parents or relatives.

Any applicant, regardless of age, may suffer trauma that may have a significant impact on the ability of an applicant to present testimony.<sup>100</sup> Symptoms of trauma can include depression, indecisiveness, indifference, poor concentration, avoidance, or disassociation (emotionally separating oneself from an event). A child may appear numb or show emotional passivity when recounting past events of mistreatment. A child may give matter-of-fact recitations of serious instances of mistreatment. Trauma may also cause memory loss or distortion, and may cause applicants to block certain experiences from their minds in order not to relive their horror by retelling what happened. Inappropriate laughter or long pauses before answering can also be a sign of trauma or embarrassment.

<sup>100</sup> For additional information, see RAI0 module, *Interviewing Survivors of Torture*.

These symptoms can be mistaken as indicators of fabrication or insincerity, so it is important for you to be aware of how trauma can affect an applicant's behavior.

### **Age and Developmental Considerations**

In reviewing a child's testimony, you should consider the following:

- the child's age and development at the time of the events
- the child's age and development at the time of the retelling
- the child's ability to recall facts and communicate them

### **Other Considerations**

You may encounter gaps or inconsistencies in the child's testimony. The child may be unable to present testimony concerning every fact in support of the claim, not because of a lack of credibility, but owing to age, gender, cultural background, or other circumstances.<sup>101</sup> See section on Detail, above.

You should keep the following in mind:

- the impact of the lapse of time between the events and the retelling
- the difficulty for all individuals in remembering events that took place many years earlier; children who may have been very young at the time of an incident will have greater difficulty in recalling such events
- the needs of children with special mental or emotional issues
- the limited knowledge that children may have of the circumstances surrounding events

### **Example**

A child may not know the political views of his or her family, despite the fact that his parents were among the most visible individuals in the opposition party. When asking follow-up questions, you learn that the applicant was seven years old when his parents were assassinated and the relatives who raised him were reluctant to share any information about his parents' activities.

- the role of others in preparing children for interview

All children have been coached to some degree. Some children may have been coached by a human trafficker or an ill-informed adult to tell a particular story, which the child repeats at the interview in order not to anger the adult. The fact that a child begins to tell a fabricated story at the interview should not foreclose further inquiry, and you should

<sup>101</sup> For additional information, see RAIO module, *Credibility*; see also Bhabha and Young.

undertake a careful and probing examination of the underlying merits of the child's case.<sup>102</sup> Quite often a child does not intend to deceive when making a fabrication or exaggeration; rather the statement may serve another purpose for the child such as to avoid anticipated punishment, to be obedient to the perceived authority figure (perhaps a legal representative, trusted adult, or you), to please others, or to protect a family member or friend.

### 7.3 Evidence

In evaluating the evidence submitted to support the application of a child seeking refugee or asylum status, adjudicators should take into account the child's ability to express his or her recollections and fears, and should recognize that it is generally unrealistic to expect a child to testify with the precision expected of an adult. The *UNHCR Handbook* advises that children's testimony should be given a liberal "benefit of the doubt" with respect to evaluating a child's alleged fear of persecution.<sup>103</sup> In the concurring opinion to *Matter of S-M-J*, "the benefit of the doubt" principle in asylum adjudications is described thus:

[W]hile the burden of proof is borne by the asylum applicant, our law does not include a presumption that an applicant is unbelievable. If as adjudicators we intentionally or subjectively approach an asylum applicant and presume an individual to be a liar rather than a truth teller, we violate not only our duty to be impartial, but we abrogate the statute and regulations which govern our adjudications.<sup>104</sup>

A child, like an adult, may rely solely on credible testimony to meet his or her burden of proof; certain elements of a claim, however, such as easily verifiable facts that are central to the claim, may require corroborating evidence.<sup>105</sup> A child, through his or her advocate or support person, is expected to either produce such documentation or offer a reasonable explanation as to why those documents cannot be obtained. What is reasonable will depend on the child's individual circumstances, including whether or not the child is represented and the circumstances of his or her flight. Additionally, a child who has been in contact with his or her family may have greater access to documentation than a child who has had no contact with family members.

Given the above-noted considerations of issues that may arise in children's cases, all efforts should be made during the interview to present the applicant with adverse information and to give the applicant an opportunity to provide an explanation.

<sup>102</sup> *LIRS*, p. 51.

<sup>103</sup> *UNHCR Handbook*, para. 219.

<sup>104</sup> *Matter of S-M-J*, 21 I&N Dec. 722, at 739 (BIA 1997) (Rosenberg, L., concurring).

<sup>105</sup> *INA* § 208(b)(1)(B)(ii); see *Matter of S-M-J*, 21 I&N Dec. at 725.

Where adverse information is discovered after the interview, the office should consider scheduling a re-interview in order to give the applicant an opportunity to address the issue. It is inappropriate to rely on adverse information that the applicant has not had an opportunity to address.

Given the difficulties associated with evaluating a child's claim, you should carefully review relevant country conditions information.<sup>106</sup> While the onus is on the child, through his or her advocate or support person, to produce relevant evidence, including both testimony and supporting material where reasonable to expect it, you should also supplement the record as necessary to ensure a full analysis of the claim.<sup>107</sup>

Apart from the child's testimony, you may consider other evidence where available, including:

- Testimony or affidavits from family members or members of the child's community
- Evidence from medical personnel, teachers, social workers, community workers, child psychologists, and others who have dealt with the child

### *Example*

A report from a child psychologist who has interviewed the child may indicate that the child suffers from post-traumatic stress, a conclusion that could support your determination regarding past or future persecution.

- Documentary evidence of persons similarly situated to the child (or his or her group), physical evidence, and general country conditions information.

## 8 LEGAL ANALYSIS

### 8.1 Introduction

This section will focus on the particular legal issues you may encounter when adjudicating the claim of a child who has filed his or her own refugee or asylum application. This section does not create new law or alter existing law, nor does it attempt to address all the legal issues that may arise in adjudicating a child's refugee or asylum claim. Instead, it identifies particular issues relevant to children that you may encounter

<sup>106</sup> For additional information, see RAIO module, *Country Conditions Research; Matter of S-M-J-*, 21 I&N Dec. at 726.

<sup>107</sup> In a 2010 First Circuit case, the diverging views of the majority opinion and the dissenting opinion illustrate how the credibility and persecution determination can be impacted based on whether or not the adjudicator accepts evidence from a myriad of sources in a child's asylum case. *Mejilla-Romero v. Holder*, 600 F.3d 63 (1st Cir. 2010), *vacated and remanded by Mejilla-Romero v. Holder*, 614 F.3d 572 (1st Cir. 2010) (expressly citing to the need for the case to be adjudicated under the INS Children's Guidelines on remand).

and places those issues within the context of U.S. and international law and UNHCR guidance.

Unlike the child who is a derivative applicant under the parent's application, the child who has filed a separate application must provide evidence about his or her own story, frequently without the support of familiar adults. The child may not even fully understand why or how the events leading to the application came about.

In order to be granted protection, the child applicant must establish that he or she meets the definition of a refugee contained in the Immigration and Nationality Act, irrespective of age.<sup>108</sup> The *UNHCR Handbook* equally states, "[t]he same definition of a refugee applies to all individuals, regardless of their age." Consequently, the best interests principle, while useful for procedural and interview considerations, does not replace or change the refugee definition in determining substantive eligibility.

While the burden of proof remains on the child to establish his or her claim for protection, when assessing eligibility, you must consider the effects of the applicant's age, maturity, ability to recall events, potentially limited knowledge of events giving rise to the claim, and potentially limited knowledge of the application process.<sup>109</sup> You should also attempt to gather as much objective evidence as possible to evaluate the child's claim to compensate for cases where the applicant's ability to testify about subjective fear or past events is limited. Given the non-adversarial nature of the adjudication and the special considerations associated with adjudicating a child's claim, a close working relationship with the child's representative and support person may be necessary to ensure that the child's claim is fully explored.

## 8.2 Persecution

As in all refugee and asylum cases, you must assess whether the harm that the child fears or has suffered is serious enough to constitute "persecution" as that term is understood under the relevant domestic and international law.<sup>110</sup>

### Harm that Rises to the Level of Persecution

Given the "variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary."<sup>111</sup> The harm a child fears or has suffered may still qualify as persecution despite

<sup>108</sup> INA §§ 101(a)(42)(A); 208(a)(2); *UNHCR Handbook*, para. 213.

<sup>109</sup> See section V.F., Evidence, for more on the child's burden of proof; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (Geneva: February 1997), p. 10.

<sup>110</sup> For additional information, see RAIO modules, *Refugee Definition and Past Persecution*.

<sup>111</sup> *UNHCR Handbook*, para. 52; see also *Bhabha and Young*, pp. 761-62.

appearing to be relatively less than that necessary for an adult to establish persecution.<sup>112</sup> This is because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed.

As in all cases, adjudicators should analyze persecution as objectively serious harm that the applicant experienced or would experience as serious harm. The persecution determination relates to the harm or suffering imposed on an applicant by the persecutor, rather than only to the individual acts taken by the persecutor. In the cases of adults, this distinction is not usually determinative. But it can be important in some children's cases. A child who has very limited ability to remember, understand and recount the discrete actions of the persecutor can still establish that those actions imposed on him objectively serious harm that he experienced as serious harm. (Of course, having established persecution, the applicant must also establish that the persecutor imposed the persecution on the applicant on account of a protected ground, which may require additional evidence about the persecutor's actions, whether in the form of the applicant's testimony or some other type of evidence, such as testimony of others or country conditions.)

In *Mendoza-Pablo v. Holder*, the Court of Appeals for the Ninth Circuit considered the harms suffered by Mendoza-Pablo as a part of his family in assessing whether the events of his childhood constituted persecution and concluded that "the BIA's ruling that Mendoza-Pablo did not suffer past persecution because his exposure to persecution was 'second-hand' reflects an incorrect view of the applicable law."<sup>113</sup> The court noted that case law made it clear that an infant can be the victim of persecution, even in the absence of present recollection of the actions and events that imposed the persecution, citing to *Benjamin v. Holder*, 579 F.3d 970, 972 (9th Cir. 2009) (the harm suffered as a result of enduring genital mutilation as a five-day-old infant constitutes persecution).<sup>114</sup>

Mendoza-Pablo was born in the mountains several weeks premature, shortly after his pregnant mother fled from Guatemalan government forces that had attacked her ancestral village, burned the village to the ground, and massacred its inhabitants, including several of Mendoza-Pablo's close relatives. The court noted that the specific attack was documented in credible human rights sources as part of a "fierce and largely one-sided civil war with insurgent groups predominantly of Mayan ethnicity."<sup>115</sup> The newborn child suffered serious harms as a result. The court declined to isolate the initial acts taken by the persecutors in the applicant's village from their direct consequences for the applicant.

<sup>112</sup> See Marina Ajdukovic and Dean Ajdukovic, "Psychological Well-Being of Refugee Children," *Child Abuse and Neglect* 17:6, 843 (1993); Betty Pfefferbaum, "Posttraumatic Stress Disorder in Children: A Review of the Past 10 Years," *J. Am. Acad. Child Adolesc. Psychiatry*, 36:11, at 1504-05.

<sup>113</sup> *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1315 (9th Cir. 2012).

<sup>114</sup> *Benjamin v. Holder*, 579 F.3d 970, 972 (9th Cir. 2009).

<sup>115</sup> *Mendoza-Pablo*, 667 F.3d at 1310.

Rather it viewed those initial acts as directly imposing a broader set of harms on the applicant (premature birth and early malnourishment with their ongoing health consequences, forced flight and permanent deprivation of home, etc.). These were harms which the persecutors imposed on the applicant and which the applicant did experience, regardless whether he had memory of the initial actions.

In *Jorge-Tzoc v. Gonzales*, the Court of Appeals for the Second Circuit noted, "Jorge-Tzoc was a child at the time of the massacres and thus necessarily dependent on both his family and his community . . . This combination of circumstances [displacement - initially internal, resulting economic hardship, and viewing the bullet-ridden body of his cousin] could well constitute persecution to a small child totally dependent on his family and community."<sup>116</sup>

Jorge-Tzoc's family and other families were targeted by the Guatemalan army's campaign against Mayans. When he was seven years old, Jorge-Tzoc's sister, her husband, and her mother-in-law were fatally shot by Guatemalan soldiers. While Jorge-Tzoc did not witness any murders, he saw many corpses, including the bullet-ridden body of his cousin lying on the ground. The army's campaign resulted in his father selling their land and the family's relocation to a one-room home in Quiche where they struggled to survive. When the family returned to the village after a year away, they found that the house was full of bullet holes and the family's animals were unrecoverable.

The Seventh Circuit held in *Kholyavskiy v. Mukasey* that the adjudicator should have considered the "cumulative significance" of events to the applicant that occurred when he was between the ages of eight and thirteen.<sup>117</sup> The applicant was subjected to regular "discrimination and harassment [that] pervaded his neighborhood" and his school. The harm included being regularly mocked and urinated on by other school children for being Jewish, being forced by his teachers to stand up and identify himself as a Jew on a quarterly basis, and being called slurs and being physically abused in his neighborhood.

Additionally, the Ninth Circuit held in *Hernandez-Ortiz v. Gonzales*, "[A] child's reaction to injuries to his family is different from an adult's. The child is part of the family, the wound to the family is personal, the trauma apt to be lasting...[I]njuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child."<sup>118</sup>

Hernandez-Ortiz involved two Mayan brothers from Guatemala who fled to Mexico in 1982 at the ages of seven and nine due to the Guatemalan army's arrival in their village,

<sup>116</sup> *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006).

<sup>117</sup> *Kholyavskiy v. Mukasey*, 540 F.3d 555, 571 (7th Cir. 2008).

<sup>118</sup> *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042 (9th Cir. 2007).





two days. The police reported Liu's arrest to her school and she was expelled. One month later, the police searched Liu's home and questioned her and her mother, pushing her mother to the floor.

In holding that the evidence did not compel a finding that Liu suffered harm rising to the level of persecution, the court stated, "age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution... There may be situations where children should be considered victims of persecution though they have suffered less harm than would be required for an adult. But this is not such a case. Though a minor, Mei Dan was near the age of majority – she was sixteen – at the time the events took place. Whatever slight calibration this may warrant in our analysis is insufficient to transform her experiences with the Chinese authorities from harassment to persecution."

### **Types of Harm that May Be Imposed on Children**

The types of harm that may be imposed on children are varied. In addition to the many forms of persecution adults may suffer, children may be particularly vulnerable to sexual assault, forced marriage, forced prostitution, forced labor, severe abuse within the family, and other forms of human rights violations such as the deprivation of food and medical treatment.<sup>122</sup> Cultural practices, such as female genital mutilation (FGM), may constitute persecution. When considering whether a cultural practice will amount to persecution, not only must the adjudicator consider whether the harm is objectively serious enough to rise to the level of persecution, but also whether the applicant subjectively experienced or would experience the procedure as serious harm. For example, if an individual applicant welcomed, or would welcome, FGM as an accepted cultural rite, then it is not persecution to that applicant. Existing case law does not definitively address how to determine whether FGM imposed in the past on a young child, who did not have the capacity to welcome or reject the practice, constitutes past persecution. However, since FGM is clearly serious harm objectively, you should consider FGM under such circumstances as persecution unless the evidence establishes that the child did not experience it as serious harm. An adult applicant's testimony about her own subjective experience as a young child, both of the event itself and her later experiences of the direct consequences, should be given significant weight. If, for example, an adult applicant testifies that she underwent FGM as a child but does not consider it to have been serious harm, then it generally would not be considered persecution. Alternatively, an adult applicant's testimony that she considers the FGM she underwent as a child to be serious harm generally would suffice to establish her subjective experience of persecution.

Fundamental rights of children are listed in the CRC. They include the right to be registered with authorities upon birth and acquire a nationality (Art. 7.1), to remain with

<sup>122</sup> Bhabha and Young, pp. 760-61.

one's family (Art. 9.1), to receive an education (Art. 28), and to be protected from economic exploitation (Art. 32).<sup>123</sup> Where such rights are denied, the impact of these harms on the child must be explored in order to determine whether the violations, considered individually or cumulatively, amount to persecution.

### Identification of the Persecutor – Private versus Public Actors

Children's claims may often involve forms of harm that have not traditionally been associated with government actors. Harms such as child abuse, forced labor, or criminal exploitation of children are often inflicted by non-state actors. Where a nexus to a protected ground can be established, the applicant must demonstrate both that the private persecutor has the requisite motivation to persecute and that the government is unable or unwilling to protect the child from the alleged persecutor.<sup>124</sup>

The fact that a child did not seek protection in his or her country of origin does not necessarily undermine his or her case. You must explore what, if any, means the child had of seeking protection. Depending on the age and maturity of the child, he or she may be able to contribute some personal knowledge of the government's ability to offer protection, but it is far more likely that you will have to rely on objective evidence of government laws and enforcement. Special attention should be paid to the child's ability to affirmatively seek protection and government efforts to address criminal activities relating to children.<sup>125</sup>

Reasonable explanations for why a child did not seek protection include evidence that:

- The applicant was so young that he or she would not have been able to seek government protection,
- The government has shown itself unable or unwilling to act in similar situations, or
- The applicant would have increased his or her risk by affirmatively

<sup>123</sup> Convention on the Rights of the Child.

<sup>124</sup> See Matter of V-T-S-, 21 I&N Dec. 792 (BIA 1997); Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996); Matter of Villalta, 20 I&N Dec. 142 (BIA 1990); see also RAIO module, *Persecution*.

<sup>125</sup> See Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding that testimony and country conditions indicated that it would be unproductive and possibly dangerous for a young female applicant to report father's abuse to government); Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006) (holding that reporting not required if applicant can convincingly establish that doing so would have been futile or have subjected him or her to further abuse); see also Ixtlilco-Morales v. Keisler, 507 F.3d 651, 653 (8th Cir. 2007) (agreeing with a BIA finding that the applicant was too young to seek government protection); cf. Castro-Perez v. Gonzales, 409 F.3d 1069, 1072 (9th Cir. 2005) (applicant failed to show that government was unwilling or unable to control the harm).

seeking protection.

### 8.3 Well-founded Fear of Future Persecution

#### General Considerations<sup>126</sup>

Child-specific issues also arise in determining whether a child has a well-founded fear of persecution.<sup>127</sup> A well-founded fear of persecution involves both subjective and objective elements, meaning that an applicant must have a genuine fear of persecution and that fear must be objectively reasonable. For children, however, the balance between subjective fear and objective circumstances may be more difficult for an adjudicator to assess. The *UNHCR Handbook* suggests that children under the age of sixteen may lack the maturity to form a well-founded fear of persecution, thus requiring the adjudicator to give more weight to objective factors.<sup>128</sup> “Minors under 16 years of age...may have fear and a will of their own, but these may not have the same significance as in the case of an adult.” You must evaluate the ability of a child to provide information “in the light of his [or her] personal, family and cultural background.”<sup>129</sup>

The Sixth Circuit, in *Abay v. Ashcroft*, acknowledged the Children's Guidelines' reference to the *UNHCR Handbook* on the subject of a child's subjective fear. In *Abay*, the Sixth Circuit court overturned an Immigration Judge's finding that the nine-year-old applicant expressed only a “general ambiguous fear,” noting that young children may be incapable of articulating fear to the same degree as adults.<sup>130</sup>

On the other hand, a child may express a subjective fear without an objective basis. In *Cruz-Diaz v. INS*, the Fourth Circuit noted that the seventeen-year-old petitioner who had entered the United States two years prior had a subjective fear of persecution but had not established an objectively reasonable fear with a nexus to one of the protected grounds.<sup>131</sup>

#### Personal Circumstances

You should examine the circumstances of the parents and other family members, including their situation in the child's country of origin.<sup>132</sup>

<sup>126</sup> For additional information, see RAIO module, *Well-Founded Fear*.

<sup>127</sup> *Matter of Acosta*, 19 I&N Dec. 211, 224 (BIA 1985); *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987); see also RAIO module, *Well-Founded Fear*.

<sup>128</sup> *UNHCR Handbook*, para. 215.

<sup>129</sup> *UNHCR Handbook*, para. 216.

<sup>130</sup> *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004).

<sup>131</sup> *Cruz-Diaz v. INS*, 86 F.3d 330, 331 (4th Cir. 1996) (per curiam).

<sup>132</sup> *UNHCR Handbook*, para. 218.

*Family as similarly situated*

You may be able look to the child's family as individuals similarly situated to the applicant. A well-founded fear of persecution may be supported by mistreatment of a child's family in the home country. The First Circuit Court of Appeals concluded that evidence of mistreatment of one's family is probative of a threat to the applicant.<sup>133</sup> Conversely, if the child's family does not relocate and is not harmed, the likelihood of an objectively reasonable fear may be reduced. The failure to relocate may nonetheless be overcome when it is due to a parent's conflict of interest rather than a decreased threat to the child.<sup>134</sup> Where there appears to be a conflict of interest between the child and the parents, you "will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt."<sup>135</sup>

*Family's intentions*

If the child was sent abroad by his or her parents or family members, the circumstances of that departure are relevant to the child's refugee or asylum application. "If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution...", that may suggest that the child has such a fear as well.<sup>136</sup> On the other hand, a family's actions toward a child – abandonment, neglect, or selling a child into slavery – may support a child's fear of persecution at the hands of relatives.

*Child's arrival*

The circumstances of a child's flight and arrival in a second country may provide clues as to whether the child has a well-founded fear of persecution.<sup>137</sup> If the child arrives in the company of other refugees who have been found to have a well-founded fear of persecution, this may, depending on the circumstances, help to establish that the child's fear is well-founded.

**Internal Relocation**

<sup>133</sup> *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985); see also *UNHCR Handbook*, para. 43; *Matter of A-E-M-*, 21 I&N Dec. 1157 (BIA 1998).

<sup>134</sup> *Bhabha and Young*, 764.

<sup>135</sup> *UNHCR Handbook*, para. 219.

<sup>136</sup> *UNHCR Handbook*, para. 218.

<sup>137</sup> See 8 C.F.R. § 208.13(b)(2); *UNHCR Handbook*, para. 217.

It is generally not reasonable to expect a child to internally relocate by himself or herself; however, you should examine whether circumstances show that internal relocation would be reasonable.<sup>138</sup>

#### 8.4 Nexus to a Protected Ground

Regardless of the nature or degree of harm the child fears or has suffered, that harm must be on account of one of the five protected grounds contained in the definition of a refugee. Children, like adults, may raise one or more protected grounds as the basis for a refugee or asylum claim. You must explore all possible grounds for refugee or asylum status and should take into account the age and relative maturity of the child in assessing the child's ability to articulate his or her claims.

This Training Module looks briefly at the protected grounds in general and then turns to an analysis of membership in a particular social group because claims based on this ground are frequently novel and analytically complicated. Similarly, RAIO has addressed membership in a particular social group in a separate Training Module.<sup>139</sup>

##### Burden of Proof

As with all claims, the burden falls to the applicant to establish the connection between the past or future persecution and one or more of the five protected grounds. Because children may lack, or have limited access to, the necessary documents or other evidence sufficient to support a finding of nexus to one of the protected grounds, you may have to rely on testimony of the child or of others, solely or in combination with other supporting evidence such as country conditions, to establish these elements.

Although the Board has issued several opinions that emphasize an applicant's burden to produce all accessible documents, testimony alone can be sufficient to establish a claim where the applicant credibly testifies that he or she is unable to procure documents.<sup>140</sup> This distinction may be particularly important in analyzing a child's claim, especially if the child has no legal representation.

##### Inability to Articulate a Nexus to a Protected Ground

<sup>138</sup> Cf. *Lepe-Guitron v. INS*, 16 F.3d 1021, 1025-1026 (9th Cir. 1994) (finding that petitioner's seven-year period of lawful unrelinquished domicile, for purposes of a discretionary waiver of deportation, began on the date his parents attained permanent resident status, as he was a child at the time; and minor's domicile is the same as that of its parents, since most children are presumed not legally capable of forming the requisite intent to establish their own domicile (citing *Rosario v. INS*, 962 F.2d 220, 224 (2d Cir. 1992))).

<sup>139</sup> See RAIO Training Modules, *Nexus and the Protected Grounds* and *Nexus – Particular Social Group*.

<sup>140</sup> See *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); INA § 208(b)(1)(B)(ii); 8 C.F.R. § 208.13(a); see also section 5.6, *Evidence*, and RAIO Training Module, *Evidence*.

Analyzing whether a child applicant has established a nexus to a protected ground in a refugee or asylum claim may be particularly difficult because a child may express fear or have experienced harm without understanding the persecutor's intent. A child's incomplete understanding of the situation does not mean that a nexus between the harm and a protected ground does not exist. The applicant's testimony is only one type of evidence. There must be sufficient evidence to support a finding of nexus, but the applicant's inability to testify about nexus will not preclude an officer from determining that nexus is established by other reliable evidence, whether that is the testimony of others, country conditions, or other relevant evidence.

The persecutor may have several motives to harm the applicant, some of which may be unrelated to any protected ground. There is no requirement that the persecutor be motivated *only* by the protected belief or characteristic of the applicant. Moreover, an applicant is not required to establish that the persecutor is motivated solely by a desire to overcome the protected characteristic.<sup>141</sup> When the child is unable to identify all relevant motives, a nexus can still be found if the objective circumstances support the child's claim of persecution on account of a protected ground.<sup>142</sup>

### No requirement for Punitive Intent

The inherent vulnerability of children often places them at the mercy of adults who may inflict harm without viewing it as such, sometimes to such a degree of severity that it may constitute persecution. The Board of Immigration Appeals has held that a punitive or malignant intent is not required for harm to constitute persecution on the basis of a protected ground.<sup>143</sup> A persecutor may target the applicant on account of a protected characteristic in the belief that he or she is helping the applicant.

Consequently, it is possible that a child's claimed harm may arise from a culturally accepted practice within his or her community. In such cases, an adjudicator must look

<sup>141</sup> *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

<sup>142</sup> INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007); *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996). If you are processing refugee applications overseas, you must determine if a reasonable person would fear that the danger arises on account of one of the five grounds. If you are adjudicating asylum applications under INA § 208, you must determine whether the applicant's possession of one of the five protected grounds is "at least one central reason" motivating the persecutor. See *RAIO Training Module, Nexus and the Protected Grounds* for further discussion. The "one central reason" standard was added to the statute by the REAL ID Act, and applies only to asylum adjudications. The Board has explained, however, that the "one central reason" language should be interpreted consistent with prior Board precedent that allows nexus to be established where the persecutor has mixed motivations. "Having considered the conference report and the language of the REAL ID Act, we find that our standard in mixed motive cases has not been radically altered by the amendments. The prior case law requiring the applicant to present direct or circumstantial evidence of a motive that is protected under the Act still stands." *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214. These are the same cases governing mixed motivation cases in refugee processing, thus the substantive analysis in the two contexts is essentially the same.

<sup>143</sup> *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

carefully at both the degree of harm and whether any of the reasons for inflicting the harm involve a protected ground.

### **Inability to Articulate a Political Opinion**

When a child claims persecution or a well-founded fear of persecution on the basis of political opinion, the age and maturity of the child must be taken into account. A young child may have difficulty articulating a political opinion. Because the level of children's political activity varies widely among countries, however, you should not assume that age alone prevents a child from holding political opinions for which he or she may have been or will be persecuted. The nexus inquiry is focused on the persecutor's state of mind, not the applicant's. The critical question in a political opinion claim is if the persecutor perceives the applicant as having a political opinion (regardless of whether it is a sincere, strong or well-expressed opinion and even regardless of whether the applicant actually has such an opinion) and if the persecutor targets the applicant on account of that perception.

In *Civil v. INS*, the First Circuit affirmed the Board's holding that the young applicant failed to establish a well-founded fear of persecution based on either political opinion or membership in a social group consisting of "Haitian youth who possess pro-Aristide political views."<sup>144</sup> Although the court found sufficient grounds to affirm the underlying decision, it criticized the Immigration Judge's conclusion that "it is almost inconceivable to believe that the Ton Ton Macoutes could be fearful of the conversations of 15-year-old children," noting that the evidence submitted by the petitioner cast serious doubts on the presumption that youth "are unlikely targets of political violence in Haiti." Similarly, in *Salaam v. INS*, the Ninth Circuit overturned a BIA finding of adverse credibility where the BIA held it was implausible that the petitioner had been vice president of a branch of an opposition movement at the age of eighteen.<sup>145</sup>

It may also be possible for a child's claim to be based on imputed political opinion.<sup>146</sup> The adjudicator should carefully review the family history of the child and should explore as much as possible the child's understanding of his or her family's activities to determine whether the child may face persecution based on the imputed political beliefs of family members or some other group with which the child is identified.

### **Membership in a Particular Social Group**

<sup>144</sup> *Civil v. INS*, 140 F.3d 52 (1st Cir. 1998).

<sup>145</sup> *Salaam v. INS*, 229 F.3d 1234 (9th Cir. 2000) (per curiam).

<sup>146</sup> *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996); see *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1076 (9th Cir. 2004) (evidence that every family in a Guatemalan village lost a male member to the guerrillas and that the military raped a woman every eight to fifteen days, based on the mistaken belief that the villagers had voluntarily joined the guerrillas, compelled a finding that the applicant's rape by soldiers was on account of a political opinion imputed to her).



In order to establish eligibility for asylum based on membership in a particular social group, an applicant must establish that the group constitutes a particular social group within the meaning of the refugee definition; that the applicant is a member or is perceived to be a member of that group; and that the persecutor was or will be motivated to target the applicant on account of that membership or perceived membership in the particular social group.<sup>147</sup> The BIA clarified in a 2014 precedent decision that there is a three-prong test for evaluating whether a group constitutes a particular social group:

[A]n applicant . . . seeking relief based on “membership in a particular social group” must establish that the group is

- (1) composed of members who share a common immutable characteristic,
- (2) defined with particularity, and
- (3) socially distinct within the society in question.<sup>148</sup>

Issues of social group that are likely to arise in a child's asylum claim include social groups defined by family membership, social groups defined in whole or in part by age, and social groups defined in whole or in part by gender. The question of whether the group with which the child applicant identifies himself or herself can be considered a particular social group for the purpose of asylum eligibility will be analyzed in the same manner as with adults.

Case law on particular social group continues to evolve. It is discussed in more detail in the RAIO Training Module, *Nexus - Membership in a Particular Social Group*, including the subsection on age as a characteristic. Children's cases, however, often involve complex and/or novel particular social group formulations, and the following points are important to keep in mind when analyzing whether a child has established eligibility for protection based on membership in a particular social group.

<sup>147</sup> *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006); *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985). See also Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007).

<sup>148</sup> *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). The Board in *M-E-V-G-* renamed the “social visibility” requirement as “social distinction,” clarifying that social distinction does not require literal visibility or “outwardly observable characteristics.” 26 I&N Dec. at 238. Rather, social distinction involves examining whether “those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.” *Id.* The Board also clarified that social distinction relates to society's, not the persecutor's, perception, though the persecutor's perceptions may be relevant to social distinction. The Board defined particularity as requiring that a group “be defined by characteristics that provide a clear benchmark for determining who falls within the group.” *Id.* at 239. Membership in a particular social group can be established through “[e]vidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like.” *Id.* at 244.

- Common bases for children's particular social group claims include family membership, gang violence, female genital mutilation, forced marriage, and abuse within the family.
- Other harms faced by children may include trafficking, gender-based violence, rape, forced prostitution, forced recruitment by rebels or para-military, and child exploitation. The appropriate particular social group depends on the facts of the case and may involve the trait of socially recognized lack of effective protection.

### *Example*

A particular social group of "formerly trafficked [nationality]" may be appropriate for certain cases. It is similar to the particular social group of former child soldiers proposed by the Third Circuit in *Lukwago v. Ashcroft*, 329 F.3d 157 (3rd. Cir. 2003), in that group membership is based on a shared past experience. In such cases, in order to avoid circularity, the past experience of trafficking could not qualify the individual for protection (unless, of course, it had been imposed on account of some other protected ground). Instead, harm feared due to the status of having been trafficked could qualify. In terms of evaluating the particular social group for the *Acosta* test, the trait of being formerly trafficked is immutable, and the trait of being a national of a certain country is immutable or fundamental. The group must also have well-defined boundaries, and the assessment would need to include country conditions information indicating that that society distinguishes formerly trafficked individuals from others in society. The nexus analysis would need to be carefully articulated to show that the applicant was or would be harmed on account of the trait of having been trafficked. Whether future harm feared by an applicant on account of this particular social group would rise to the level of persecution would be very fact-dependent. The adjudicator would then need to examine whether the applicant will be targeted on account of his or her status of being formerly trafficked.

### *Example*

While the Third Circuit in *Escobar v. Gonzales*, 417 F.3d 363 (3d. Cir. 2005), found that homeless children who live in the streets in Honduras did not constitute a particular social group in that case, this does not foreclose the possibility of a particular social group involving street children. It would be necessary to examine whether they had faced harm or fear future harm due to their status as street children. As with any particular social group case, it would be necessary to evaluate whether the trait of being a street child is immutable and whether a group of street children is sufficiently discrete and socially distinct. A child's inability to

control whether or not he or she is homeless may be an indication of immutability. Additionally, evidence that street children are targeted for social cleansing by authorities in that country or are subject to specific laws could potentially indicate that the group is discrete and socially distinct.

- Family alone can constitute a particular social group. If a person is targeted because of the family connection, then the particular social group of family is appropriate. This is true even if the original family member on whom the connection is based is not targeted due to a protected ground.<sup>149</sup> The shared familial relationship is the common trait that defines the group. In most societies, the nuclear or immediate family is socially distinct, while in some societies, more extended relationships may also be socially distinct. Possible formulations are “Immediate [or nuclear] family” or “Immediate [or nuclear] family of [X individual].”
- A particular social group for gang recruitment may not succeed where recruitment is conducted in order to fill the ranks of the gang and not on account of a protected ground; youths who resist gang recruitment generally do not constitute a particular social group.<sup>150</sup> Former gang membership also generally does not form the basis of a particular social group,<sup>151</sup> as it is generally agreed that the shared characteristic of terrorist, criminal or persecutory activity or association, past or present, **cannot** form

<sup>149</sup> See, e.g., *Aldana-Ramos v. Holder*, --- F.3d ---, No. 13-2022, 2014 WL 2915920 (1st Cir. June 27, 2014).

<sup>150</sup> *Matter of S-E-G-*, 24 I&N Dec.579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec.591 (BIA 2008) (rejecting two proposed particular social groups related to gang recruitment: (1) “persons resistant to gang membership,” and (2) “young persons who are perceived to be affiliated with gangs.” The finding that gang recruitment does not constitute persecution on account of a protected ground is somewhat analogous to the Supreme Court’s holding in *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (a Guatemalan guerrilla group’s attempt to recruit the respondent to join their group and the respondent’s refusal to do so does not establish a nexus to a protected ground such as political opinion). Neither *S-E-G-* nor *Elias-Zacarias* foreclose the possibility that under different facts, individuals who refuse recruitment or refuse to otherwise cooperate with gangs or guerillas could be members of a particular social group. See *Pirir-Boc v. Holder*, 750 F.3d 1077, 1081 (9th Cir. 2014) (holding that the BIA erred in relying on *S-E-G-* to find that “individuals taking concrete steps to oppose gang membership and gang authority” was not a socially distinct group without conducting an evidence-based inquiry into the facts of the individual case as required under *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)).

<sup>151</sup> In asylum cases arising within some circuits, former gang membership may form a particular social group if the former membership is immutable and the group of former gang members is socially distinct. See *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014); *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009). See also, USCIS Asylum Division Memorandum, *Notification of Ramos v. Holder: Former Gang Membership as a Potential Particular Social Group in the Seventh Circuit* (Mar. 2, 2010). Even where former gang membership may be the basis of a particular social group, you must consider if the applicant is subject to a mandatory bar and whether the applicant merits a favorable exercise of discretion (balancing of factors). For mandatory bars, consider the serious non-political crime bar, as well as the other bars, including terrorist related inadmissibility grounds; also, past gang-related activity may serve as an adverse discretionary factor that is weighed against positive factors.

the basis of a particular social group.<sup>152</sup> Nonetheless, there may be other protected grounds involved in a gang-related case. Always examine whether there are other factors involved in cases where an individual is targeted by gangs, such as political opinion, family connection, LGBT issues, or religion.<sup>153</sup>

- “Females [of the applicant’s tribe or nationality] who are subject to gender-related cultural traditions” may be an appropriate particular social group formulation when the claim is based on FGM. You must assess whether FGM is persecution to an individual applicant, including in cases where FGM is imposed on a young child who does not have the capacity to welcome it as an important rite. As FGM is clearly objectively serious harm, the point of inquiry is the applicant’s perception of it.<sup>154</sup> If the applicant is still a young child who may not have the capacity to form an opinion about FGM, apply standard principles of supplementing the child’s testimony with other evidence, e.g., accompanying adult’s testimony, objective evidence in the form of country conditions reports concerning what the child was or would be subjected to.<sup>155</sup> It is also important to ask whether the applicant fears FGM to a child<sup>156</sup> or

<sup>152</sup> See *Matter of W-G-R-*, 26 I&N Dec. 208, 215 n.5 (BIA 2014); USCIS OCC Memorandum from Lynden Melmed, *Guidance on Matter of C-A-* (Jan. 12, 2007); *Cantarero v. Holder*, 734 F.3d 82, 85-86; *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007).

<sup>153</sup> A decision that could be useful when assessing gang-related claims is *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010). The applicant organized Health Brigades to travel to rural parts of Colombia and offer volunteer health services. The guerrilla group, FARC, demanded she publicly attribute her Health Brigade work to the FARC; she refused and was attacked. Instead of addressing the potential particular social group (which the dissent did address in a concurring opinion), the court found that the facts made it clear that the FARC imputed an anti-FARC political opinion to her, which led to the increasingly violent nature of their persecution of her. In reaching its decision, the court noted, “in certain cases, ‘the factual circumstances alone may constitute sufficient circumstantial evidence of a persecutor’s . . . motives.’”

<sup>154</sup> In *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1315 (9th Cir. 2012), the court noted that an infant can be the victim of persecution, even in the absence of present recollection of the events that constituted the persecution, citing to *Bermyamin v. Holder*, 579 F.3d 970, 792 (9th Cir. 2009) (enduring genital mutilation as a five-day-old infant constitutes persecution). It is reasonable to consider FGM persecution if the applicant currently says it was serious harm. See *Matter of A-T-*, 25 I&N Dec. 4, 5 (BIA 2009) (“It is difficult to think of a situation, short of a claimant asserting that she did not consider FGM to be persecution, where the type of FGM suffered by the respondent, at any age, would not rise to the level of persecution.”).

<sup>155</sup> In *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004), the Sixth Circuit overturned an Immigration Judge’s finding that the 9-year-old applicant expressed only a “general ambiguous fear,” noting that young children may be incapable of experiencing fear to the same degree as adults.

<sup>156</sup> *Kone v. Holder*, 596 F.3d 141, 153 (2d Cir. 2010) (remanding a petitioner’s claim for the BIA to consider whether “a mother who was herself a victim of genital mutilation” experiences persecution when her daughter may “suffer the same fate”); *Abay v. Ashcroft*, 368 F.3d 634, 642 (6th Cir. 2004) (recognizing that a petitioner for asylum and withholding of removal can demonstrate direct persecution based on the harm of “being forced to witness the pain and suffering of her daughter” if she were subjected to FGM); *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007). *A-K-* involved a Senegalese father who feared that his two USC daughters would be subjected to FGM. Note that under *A-K-*, there is no nexus unless the parent fears FGM to their child in order to target the parent for the parent’s protected ground. *Matter of A-K-* does not foreclose the possibility of FGM on a family member due to the applicant’s political opinion constituting persecution to the applicant.

whether an applicant fears FGM to another family member due to the applicant's political opinion.<sup>157</sup>

- “Females [of the applicant's tribe or nationality] who are subject to gender-related cultural traditions” may also be an appropriate particular social group for forced marriage claims. As arranged marriages are an important tradition in many cultures, the issue is whether an individual subjectively experiences or would experience the marriage as serious harm. The analysis acknowledges that the harm from the forced marriage can continue even after the marriage ceremony.

## 8.5 Child-Specific Considerations Concerning Bars and Grounds of Inadmissibility

### Firm Resettlement

The BIA has long held that a parent's resettlement status is imputed to his or her children.<sup>158</sup> The Ninth Circuit has also looked to “whether the minor's parents have firmly resettled in a foreign country before coming to the United States, and then derivatively attribute[d] the parents' status to the minor.”<sup>159</sup> However, this may no longer be the case, and in interpreting whether a child is firmly resettled, you should apply the BIA's framework for analyzing firm resettlement in its 2011 decision, *Matter of A-G-G-*.<sup>160</sup> In this decision, the BIA announced a new four-step framework for deciding firm resettlement cases that first focuses exclusively on the existence of an offer.<sup>161</sup> For this reason, you should not rely on case law issued prior to May 2011 that conflicts with the holding in *Matter of A-G-G-* and does not follow the BIA's new approach. See the RAIO Training Module, *Firm Resettlement*.

### Serious Nonpolitical Crime

In all cases where the question arises as to whether there is reason to believe that an applicant has committed a serious nonpolitical crime, an adjudicating officer must consider an applicant's culpability in determining whether the crime is “serious” within the meaning of the INA. Relevant factors would include: (1) whether and to what extent

<sup>157</sup> An applicant may fear FGM to a family member due to the applicant's possession of a protected trait (political opinion or one of the four other grounds). See *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009) (threat of FGM to petitioner's wife in order to harm petitioner, a former Mungiki member, could constitute persecution to petitioner for having left the Mungiki).

<sup>158</sup> 8 C.F.R. § 208.15; *Matter of Ng*, 12 I&N Dec. 411 (BIA 1967) (holding that a minor was firmly resettled in Hong Kong because he was part of a family that resettled in Hong Kong); *Matter of Hung*, 12 I&N Dec. 178 (BIA 1967) (holding that because parents were not firmly resettled in Hong Kong, the minor child also was not firmly resettled there).

<sup>159</sup> *Vang v. INS*, 146 F.3d 1114, 1116 (9th Cir. 1998) (holding that the parents' status is attributed to the minor when determining whether the minor has firmly resettled in another country).

<sup>160</sup> *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

<sup>161</sup> *A-G-G-*, 25 I&N Dec. at 501.

the applicant acted under duress; (2) the applicant's intent, with age being a relevant factor; and (3) whether and to what extent the applicant knew they were committing a crime. This analytical approach is consistent with the purposes of the serious nonpolitical crime bar, and with basic principles of criminal and protection law. Age becomes a significant factor when this issue arises in a child's claim, as youth may be a relevant factor when assessing culpability.

For additional information regarding grounds of inadmissibility for refugees and bars to applying for or eligibility for asylum, see Division Supplements. See also RAIIO Training Module, *Inadmissibilities*, and the Asylum Division Lesson Plan, *Mandatory Bars to Asylum*.

## 9 OTHER IMMIGRATION STATUSES AVAILABLE TO CHILDREN

For additional information, see ASM Supplement – Other Immigration Statuses Available to Children.

## 10 SUMMARY

### 10.1 International Guidance

It is important to look to international law for guidance when binding U.S. case law does not speak to the relevant issue. International instruments such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and several UNHCR Executive Committee Conclusions and UNHCR published policies provide insight and guidance regarding how to handle protection claims from minors.

### 10.2 Child Development

When interviewing children you must recognize that a child's stage of development can affect the interview – both in tone and content. Children who are in a younger stage of development may not be able to recall facts or analyze issues as well as more mature children or adults. Furthermore, children's perceptions of the world will not conform to those of most adults and could create an obstacle to a smooth interview.

### 10.3 Procedural Considerations

In order to address the unique situation of child applicants, you must make adjustments to their interviews and interview style to facilitate the process. Procedural adjustments include allowing the child to be interviewed by an officer with relevant experience and scheduling the interviews of family members – especially siblings – as close in time as possible.

Other procedural considerations necessary in children's cases include determining whether or not the minor applicant is unaccompanied, determining a minor's capacity to apply for protection, who may be able to speak on the child's behalf, and evaluating any conflicts between the child and the parents' interests.

#### 10.4 Interviewing Considerations

In order to create a child-friendly atmosphere, you must attempt to build a rapport with the child, "read" the child applicant for any sign of anxiety, and guide the child through the interview process. Questions should be posed with the child's mental development and maturity in mind. Whenever possible, officers must accommodate child applicants who would like a trusted adult to be present during the interview. You should ask questions concerning the child's guardianship and parental consent to and knowledge of the refugee or asylum application. While these questions usually do not affect substantive eligibility, they are nonetheless important for evaluating the child's care and custody situation.

Because children are less likely than adults to be able to articulate their claim and obtain supporting documents, you may be required to consider more sources of information to evaluate the objective merit of the claim. This includes taking testimony from other individuals, looking to documentary evidence of individuals similarly situated to the applicant, and taking into account the amount of information that a child of that age can be expected to know and recall.

Children, as adults, are not required to provide corroborating evidence and may rely solely on testimony when the testimony is credible. However, children cannot be expected to present testimony with the same degree of consistency or coherency as adults, and you must consider children's development levels and emotional states when evaluating their testimony.

#### 10.5 Legal Analysis

The definition of a refugee contained in the INA applies to all individuals regardless of their age. Although children do not enjoy a lessened standard for refugee or asylum eligibility, there are considerations that must be taken into account when analyzing children's claims. First, the harm that a child suffered or fears may rise to the level of persecution even when the same harm claimed by an adult would not be considered persecution. Second, though the child may be able to express a subjective fear of persecution, he or she might not be able to articulate the objective reasons for that fear, such that evidence from other sources must be considered on this point. Third, an examination into the circumstances in which a child finds himself or herself – how he or she arrived in a second country, the location of his or her relatives, or the harm that has befallen his or her parents, for example – may reveal facts that support the child's refugee or asylum claim.

A child's inability to understand all of the circumstances surrounding his or her flight creates difficulty in analyzing the nexus of the harm or feared harm to a protected ground. Officers must pay close attention to the objective facts surrounding the child's claim to determine if there is a nexus regardless of the child's ability to articulate one. Many claims raised by children will be on account of membership in a particular social group. The body of case law that discusses the issue of particular social group applies to children just as it does to adults.

Other legal issues that may involve child-specific considerations include the application of some of the bars to refugee status or asylum, or inadmissibilities for refugee applicants.



PRACTICAL EXERCISES

There are no practical exercises for this module.

**OTHER MATERIALS****Sample Opening Statement for Children**

I am glad that you are here today, and that your friend Mr. (Ms.) [name of support person, if any] is here with you. Do you know what we are going to do today? We are going to talk about why you left [name of country of origin], and why you may not want to go back there. As we talk, you and I both have jobs to do. My job is to understand what happened to you. But I need your help. Your job is to help me to understand by telling me as much as you can remember – even the little things.

I will be asking you some questions today. Some questions will be easy for you to answer. But you may not understand other questions. It is okay if you do not understand a question. Just tell me that you do not understand and I will ask the question differently. But please do not guess at an answer or make an answer up.

If you do not know the answer to the question, that is okay too. Just tell me that you don't know the answer. No one can remember everything.

As we talk today, I will write down what we say because what you tell me is important. Do not get nervous about my taking notes. Later, if I forget what we said, I can look it up.

I understand that you may be nervous or scared to tell me about what happened to you. Unless there is some reason it would make you afraid, we will tell your parents about your application if we are able to, but I will not tell anyone else in [name of country of origin] about what you tell me today. Also, none of your friends or other family members will know anything about what you tell me, unless you write a special letter that allows me to share information with them.

Before we start, do you have any questions that you would like to ask me? Or is there anything that you want to tell me? If you think of something while we are talking, let me know. If you have to go to the bathroom or want to stop for a while, also let me know.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. USCIS Refugee Affairs Division, Standard Operating Procedure: Children's Cases (4 January 2011).
2. Memorandum from John W. Cummings, Deputy Director, INS Office of International Affairs, to Overseas District Directors, Guidelines for Children's Refugee Claims, (120/6.4) (30 Jan. 1999).

**ADDITIONAL RESOURCES**

1. Lummert, Nathalie and Margaret MacDonnell, From Identification to Durable Solutions: Analysis of the Resettlement of Unaccompanied Refugee Minors to the United States and Recommendations for Best Interest Determinations, United States Conference of Catholic Bishops, July 2011.
2. UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines (2011).
3. Duncan, Julianne, Current Challenges in the Resettlement of Minors Through UNHCR and the Best Interest Determination Process, United States Conference of Catholic Bishops, June 2003.
4. UNHCR, Guidelines on Determining the Best Interests of the Child (2008).

**SUPPLEMENTS**

**RAD Supplement – Married Minors**

The Refugee Affairs Division and Department of State have independently issued guidance on how to adjudicate refugee cases involving married children.<sup>162</sup> If

<sup>162</sup> Memorandum from Terry Rusch, Director, Office of Admissions Bureau of Population, Refugees, and Migration, Department of State, to Overseas Processing Entities, Program Announcement 2010-03 Guidance on Processing Married Minors (8 Dec. 2009).

UNHCR refers a case involving married minor, you may find a BID in the file under certain circumstances. If no BID is in the case file and you have concerns about the well-being of the married child, you must consult the team leader and request that a BID be done.

The information in this section is taken from Refugee Affairs Division Guidance and Department of State Program Announcement 2010-03.

The following principles apply when processing married minors<sup>163</sup> for the U.S. Refugee Admissions Program (USRAP):

1. In general, **a marriage must be legally valid in the place of celebration.** Camp marriages may be accepted in certain circumstances.<sup>164</sup>
2. **Married minors who are both under age 18 and are traveling without their parents.** United Nations High Commissioner for Refugees (UNHCR) Best Interest Determinations (BIDs)<sup>165</sup> are required for both children. The children are considered unaccompanied minors and may be placed in foster care.
3. **Married minors who are both under age 18 and at least one set of parents is traveling with the couple.** BIDs are not required. The married couple must have their own case, which should be cross-referenced with the parents' case so that they may be interviewed altogether.
4. **Married couple where one spouse is under age 18 and the other spouse is over age 18.** A BID is generally not needed for the minor, even if he/she is not traveling with the parents. A minor questionnaire should be completed by the RSC for the minor spouse.

An officer may request a BID (for UNHCR P1 or P2 referrals) if there are cases which fall outside the norm and the officer would like a closer examination of what is in the best interests of the child. Ex: a BID could be requested for a 16-year-old

<sup>163</sup> Minors are under the age of 18.

<sup>164</sup> If a marriage is invalid based on a failure to comply with formal registration requirements, a marriage may still be valid for immigration purposes if the parties were prevented from formal perfection of the marriage due to circumstances relating to their flight from persecution. Examples of circumstances beyond the couple's control and relating to the flight from persecution would include inability to access host country institutions due to refugee camp policies or conditions, discriminatory government policies or practices, and other consequences of the flight from persecution. A couple who has been prevented from formal perfection of the marriage must also show other indicia of a valid marriage. The relevant considerations may include: holding themselves out to be spouses, cohabitation over a period of time, children born to the union, and the color of a marriage ceremony.

<sup>165</sup> BIDs are required for unaccompanied or separated children referred by UNHCR under Priority 1 or Priority 2.

married to a 50-year-old or where there is some suspicion of abuse.

The UNHCR BID Guidelines do not explicitly address the issue of minors who are married. However, in the absence of guidance in the Guidelines, some UNHCR offices have addressed it and have come up with the following position: A formal BID is not required for unaccompanied and separated children who marry before they turn 18 years, and the marriage has been carried out in accordance with national law and Convention on the Rights of the Child (CRC) standards. Such individuals will no longer be considered unaccompanied or separated children. However, to ensure that the marriage has been carried out in accordance with national law and CRC standards, that the child has not been forced into marriage, and that the case is not one of child trafficking, it is recommended that a best interests assessment be conducted prior to determining the recommended durable solution.

### **RAD Supplement – Standard Operating Procedures for Children's Cases**

Since 2003, refugee adjudications have required that a formal Best Interest Determination (BID) be prepared by UNHCR for each child referred to the United States Refugee Program (USRAP) as a principal applicant.<sup>166</sup> The requirement has been formalized in SOPs for Children's Cases adopted in January, 2011.<sup>167</sup> Officers must review the BID to verify that the child's protection needs are being met in the application and adjudication process.

#### **Key Elements of a Valid BID**

Was the BID prepared by a qualified child welfare professional?

Was the BID signed by the preparer or full BID panel?

Did the BID include a thorough exploration of the child's past and current family situation?

Did the BID provide information on how long the child has been living with the current caregiver?

Did the BID describe the child's relationship with his or her caregiver, including the physical/health, emotional/psychological and economic situation of the child?

Was a diligent search for family carried out (consistent with child and family safety and

<sup>166</sup> Memorandum from Terry Rusch, Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State, to U.S. Refugee Program Processing Entities, *Program Announcement 2001-01 USRP Policy on Resettling Unaccompanied Refugee Minors (URM's)*, (20 November 2002).

<sup>167</sup> USCIS Refugee Affairs Division, *Standard Operating Procedure: Children's Cases*, (4 January 2011).

country conditions)? ①.

### Information To Be Elicited and Recorded in an Interview with a UASC

During the USCIS interview, in addition to the general procedures for conducting a refugee status interview, when interviewing UASCs, Officers should also:

Verify information in BID with child

Determine the capacity of child to have input into her or his claim

Verify parental information to the extent possible. If there is a living parent, the Officer should note the address and phone number (if known) of the child's parent, whether the parent is aware of the child's whereabouts, and whether the parent is aware that the child has applied for refugee status

When interviewing a separated child: ①.

- Determine the validity and bona fides of the child's relationship to the relative, foster parent(s), caregiver(s) or guardian(s)
- Place caregiver(s) under oath
- Note caregiver's name, address, relationship to child, duration of relationship, and whether there is any legal relationship between the two
- Question caregiver as appropriate
- Assess the nature and durability of the relationship between the child and caregiver
- Assess the caregiver's financial ability and commitment to continue to care for the child if resettled together
- Ensure that your interview notes reflect discussion of the above topics
- Ensure that your interview notes reflect that the BID and the RSC minor questionnaire have been seen and reviewed

### Information To Be Included in the Refugee Assessment

After the USCIS interview:

Document clearly in the Assessment whether the Officer concurs with the recommendations in the BID. This concurrence should be noted on page 4 of the Assessment in the Justification section.

If the officer does not concur, an explanation of what the officer recommends should be included.

- Example 1: If a separated child is found to be a refugee, but the officer

has concerns about the current guardian, the officer may conclude that "Child is found to be a refugee; however, case should be returned to UNHCR or the referring entity for resolution of the caregiving arrangement prior to final USCIS approval."

- Example 2: Unresolved custody issues may be addressed by noting, for example: "Child's mother is in refugee camp. BID does not address her whereabouts or why child is not with her. Return case to UNHCR for further inquiry."

### **Officer Responsibility for Child Safety**

The officer must note any of the following:

1. A child is living alone.
2. A child is living with an inappropriate guardian.
3. A child is screened off the case and will now be alone.
4. The officer has any other concern about child safety.

These issues should be reported to the SRO or TL. The SRO or TL will report these concerns to the RSC or UNHCR to ensure the child's safety and continued access to U.S. Refugee Admissions Program, as appropriate.

### **Conflicts between the Child's and Parents' Interests**

In a refugee referral, if parent and child are together, UNHCR normally only recommends permanent separation of a child from the parent(s) if severe abuse or neglect is evident. The BID decision does not determine legal custody of the child.

Although the child welfare laws of the host country typically have mechanisms for a legal decision relating to child custody, in most of the countries in which we are interviewing refugees, the country of first asylum declines to intervene in refugee child/parent conflict, even in cases of severe abuse. In such cases, UNHCR generally asks biological parents to sign a release of custody document in cases in which a biological parent's whereabouts are known and it is safe to do so. Cases in which the biological parent refuses to sign the release of custody and the foster caregiver(s) does not have legal custody of the child should be referred to RAD HQ for resolution and may need to be returned to UNHCR for further inquiry into the custody arrangement.

### **BID Process for Unaccompanied and Separated Refugee Children**

In 2003 the U.S. Department of State announced that the United States abides by the "best interest" rule as stated in the Convention on the Rights of the Child.

Furthermore, the United States relies on the formal Best Interest Determination process of UNHCR to determine a course of action for an unaccompanied refugee child being referred to the USRAP for resettlement.<sup>168</sup>

USCIS has participated in the Vulnerable Minors Working Group with other government departments and agencies as well as concerned NGO's to determine how best to implement U.S. policy in regard to child adjudications. Procedures issued in January, 2011 provide guidance to refugee officers adjudicating cases of unaccompanied and separated children (UASC).<sup>169</sup> In 2011 RAD adopted procedures for all refugee cases in which a child is the principal applicant. These procedures require you to:

1. Determine that the Best Interest Determination (BID) is in the file and is valid;
2. Verify the information in the BID and decide if you concur with the recommendations;
3. Review the BID for each UASC to ensure that child's safety and interests are being considered; and
4. Use child-sensitive methods when eliciting testimony and adjudicating the claim.

<sup>168</sup> Memorandum from Terry Rusch, Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State, to U.S. Refugee Program Processing Entities, *Program Announcement 2001-01 USRP Policy on Resettling Unaccompanied Refugee Minors (URM's)*, (20 November 2002).

<sup>169</sup> USCIS Refugee Affairs Division, *Standard Operating Procedures: Children's Cases* (4 January 2011).



**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997).
2. Matter of A-K-, 24 I&N Dec. 275 (BIA 2007); Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007); Jorge-Tzoc v. Gonzales, 435 F.3d 146 (2d Cir. 2006); Abay v. Ashcroft, 368 F.3d 634 (6th Cir. 2004); Liu v. Ashcroft, 380 F.3d 307 (7th Cir. 2004); Salaam v. INS, 229 F.3d 1234 (9th Cir. 2000); Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000); Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985).
3. Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Staff, Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (HQRAIO 120/12a) (25 March 2009).
4. Memorandum from Ted Kim, Acting Chief, USCIS Asylum Division, to Asylum Office Staff, Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (HQRAIO 120/12a) (28 May 2013).
5. Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., Updated Procedures for Minor Principal Applicant Claims. Including Changes to RAPS (HQRAIO 120/9.7) (14 August 2007).
6. Memorandum from Jeff Weiss, Acting Director, INS Office of International Affairs, to Asylum Officers, Immigration Officers, and Headquarters Coordinators (Asylum and Refugees), Guidelines for Children's Asylum Claims, (120/11.6) (10 Dec.1998).

**ADDITIONAL RESOURCES**

1. American Bar Association, Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States (August 2004), pp. 111

2. Bhabha, Jacqueline and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.*, Harvard University, Cambridge, MA, 2006, pp. 18–23, 108–137, 143–145, 188–191.
3. Bhabha, Jacqueline and Wendy A. Young. “Through a Child’s Eyes: Protecting the Most Vulnerable Asylum Seekers.” Interpreter Releases, Vol. 75, No. 21, 1 June 1998, pp. 757–773.
4. Neal, David L. Chief Immigration Judge, Executive Office for Immigration Review. Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, Memorandum for All Immigration Judges. (Washington, DC, 22 May 2007), 11 pages.
5. Nugent, Christopher and Steven Schulman. “Giving Voice To The Vulnerable; On Representing Detained Immigrant and Refugee Children.” Interpreter Releases, Vol. 78, No. 39, 8 October 2001, pp.1569–1591.
6. UNHCR, *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001–2003* (Geneva, July 2004), 14 pages.
7. Peters, Jean Koh, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (2nd ed. 2001).
8. Symposium: Child Abuse, Psychological Research on Children as Witnesses: Practical Implications Forensic Interviews and Courtroom Testimony, 28 PAC. L.J. 3 (1996), 92 pages. (NOTE: Myers, J., Saywitz, K., & Goodman, G., [1996] Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony. Pacific Law Journal, 28, 3–90.)

## SUPPLEMENTS

### ASM Supplement – Procedural Considerations

With the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Congress gave USCIS initial jurisdiction over any asylum application filed by an unaccompanied alien child (UAC), including those in removal proceedings.<sup>170</sup> This law took effect on March 23, 2009. As a result, UACs filing for asylum who previously would have had their case heard by an immigration judge in the first instance now receive an affirmative interview with

<sup>170</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110-457, Dec. 23, 2008. See Joseph E. Langlois, USCIS Asylum Division, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, Memorandum (Mar. 25, 2009).

you. In conducting the interview of a possible UAC in removal proceedings, you should verify that the applicant was a UAC at the time of filing such that USCIS has jurisdiction over the claim.

In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will have already made a determination of UAC status after apprehension, as required for the purpose of placing the individual in the appropriate custodial setting. In such cases, if the status determination by CBP or ICE was still in place on the date the asylum application was filed, you should adopt that determination without another factual inquiry. Unless there was an affirmative act by the Department of Health and Human Services (HHS), ICE, or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, you should adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, you should make an initial determination of UAC status.

#### **Minor Principal and Unaccompanied Minor Fields in RAPS**

In August 2007, the Asylum Division incorporated a new mechanism in RAPS to capture data on minor principal applicants, both accompanied and unaccompanied.<sup>171</sup> The mechanism allows the Asylum Division to track applicants who are unaccompanied minors and reminds you that modified procedures are in order when handling a minor principal applicant's claim. The ability to gather information on the adjudication of unaccompanied minors' applications assists the Asylum Division in developing or refining policy with regard to these cases.

#### **Definition of Minor Principal, Unaccompanied Minor, and Unaccompanied Alien Child (UAC)**

- **Minor Principal**

A minor principal is a principal applicant who is under eighteen years of age at the time of filing an asylum application.

- **Unaccompanied Minor**

For purposes of making a determination in RAPS as to whether the applicant is an unaccompanied minor, an unaccompanied minor is very similar to an

<sup>171</sup> Joseph E. Langlois, USCIS Asylum Division, *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, Memorandum (Aug. 14, 2007). See the memo for more details about the commands used in RAPS to capture this data.

unaccompanied alien child (UAC). An unaccompanied minor is a child who is under eighteen years of age and who has no parent or legal guardian in the United States who is available to provide care and physical custody.<sup>172</sup> This definition encompasses separated minors, e.g., those who are separated from their parents or guardians, but who are in the informal care and physical custody of other adults, including family members. Note that a child who entered the United States with a parent or other adult guardian but who subsequently left the parent's or guardian's care would be considered an unaccompanied minor.

For purposes of the unaccompanied minor definition, guardianship refers to a formal (legal/judicial) arrangement. If the parent is deceased and there is no legal guardianship arrangement, the child would be considered unaccompanied.

• **Unaccompanied Alien Child (UAC)**

The Homeland Security Act of 2002 defines aUAC as a person under 18 years of age, who has no lawful immigration status in the United States, and who either has no parent or legal guardian in the United States or has no parent or legal guardian in the United States who is available to provide care and physical custody.<sup>173</sup> Other than defining a UAC as a person who has no lawful immigration status in the United States, the term "unaccompanied minor" as adopted in the August 2007 Asylum Division memo is the same as the term "unaccompanied alien child (UAC)." The definition of a UAC is important, as USCIS has initial jurisdiction over asylum applications filed by UACs even if the UAC is in removal proceedings.

**Submission of Juvenile Cases to HQASM for Quality Assurance Review**

Certain asylum claims filed by principal applicants under the age of eighteen or considered an unaccompanied alien child at the time of filing must be submitted to the Headquarters Asylum Division (HQASM) for quality assurance review before

<sup>172</sup> See Section 462 of the Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2) (defining the term "unaccompanied alien child").

<sup>173</sup> Section 462 of the Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2).

they can be finalized.<sup>174</sup> HQASM review is required of certain cases filed by minor principal applicants in the purely affirmative asylum context or by UAC minor principal applicants with pending removal proceedings who are before USCIS by virtue of the TVPRA's initial jurisdiction provision. Asylum Offices should check the most recent version of the Quality Assurance Referral Sheet for the categories of children's cases that require HQASM review.

### Applications from Children without Parental Knowledge or Consent

#### A Child's Capacity to Apply and Who Speaks for the Child

Statutorily, subject to the filing bars, "[a]ny alien who is physically present in the United States or who arrives in the United States," without regard to immigration status, has the right to apply for asylum.<sup>175</sup> Under certain circumstances, however, children may lack the capacity to assert this right to apply for asylum. In the case of young children who lack the capacity to make immigration decisions, you will need to determine who has the legal authority to speak for the child. Generally, the parent will have the authority to speak for the child, unless (as discussed below) there are conflicts between the parent's and child's interests that prevent this.

There is no age-based restriction to applying for asylum. Where an asylum application is submitted on behalf of a child by someone other than the child's parent or legal guardian, however, USCIS need not "process...applications if they reflect that the purported applicants are so young that they necessarily lack the capacity to understand what they are applying for or, failing that, that the applications do not present an objective basis for ignoring the parents' wishes."<sup>176</sup> In the case involving Elian Gonzalez, an application for asylum was filed on behalf of a six-year-old Cuban boy against the wishes of his father in Cuba. INS determined that the child did not have the capacity to seek asylum on his own behalf, and that it was his father who had authority to speak for him in immigration matters.<sup>177</sup> Important to INS's decision was the finding that Elian was not at risk of

<sup>174</sup> Joseph E. Langlois, Chief, Asylum Division, *Issuance of Revised Quality Assurance Referral Sheet and Instructions on Submission of Certain Claims for Quality Assurance Review*, Memorandum (Feb. 9, 2007); John Lafferty, Chief, Asylum Division, *Changes to Case Categories Requiring Asylum Headquarters Review*, Memorandum (Jan. 27, 2014). See also Ted Kim, Acting Chief, Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by UAC*, Memorandum (May 28, 2013), which explained that in cases in which CBP or ICE has already determined that the applicant is a UAC, Asylum Offices will adopt that determination and take jurisdiction over the case. The memorandum clarified that in those cases, if the UAC status determination was still in place on the date of the initial filing of the asylum application, USCIS would take initial jurisdiction over the case even if there appeared to be evidence that the applicant may have turned 18 as of the date of initial filing; and those cases will still receive HQ-QA review as juveniles.

<sup>175</sup> INA § 208(a)(1); 8 C.F.R. § 103.2(a)(2).

<sup>176</sup> Bo Cooper, INS General Counsel, *Elian Gonzalez*, Memorandum (Jan. 3, 2000).

<sup>177</sup> *Gonzalez v. Reno*, 212 F.3d 1338 (11th Cir. 2000).

persecution or torture, that Elian's father had Elian's best interests in mind, and that the father did not have conflicts of interest that would prevent him from representing the child's best interests in immigration matters. The Eleventh Circuit upheld the INS policy, noting that line-drawing on the basis of age is an adequate approach to determining who may individually file for asylum.

In contrast, older children may have the capacity to assert a claim. In *Polovchak v. Meese*, a Seventh Circuit case involving a twelve-year-old boy's grant of asylum counter to his parents' wishes to return to Russia, the court evaluated the applicant's capacity to assert his individual rights as part of the court's procedural due process balancing test: "At the age of twelve, Walter was presumably near the lower end of an age range in which a minor may be mature enough to assert certain individual rights that equal or override those of his parents; at age seventeen (indeed, on the eve of his eighteenth birthday), Walter is certainly at the high end of such a scale, and the question whether he should have to subordinate his own political commitments to his parents' wishes looks very different. The minor's rights grow more compelling with age, particularly in the factual context of this case."<sup>178</sup> While the court was not evaluating capacity to apply for asylum, its findings on age and capacity to assert individual rights are nonetheless instructive in the asylum context. Although the court acknowledged that a child may have the capacity to assert a claim, it found that the parents had a significant liberty interest in being notified of the claim and given an opportunity to participate

#### Confidentiality and Notification of Parents

Federal regulations governing asylum adjudications generally do not permit the disclosure to third parties of information contained in or pertaining to an asylum application without the written consent of the applicant.<sup>179</sup> As a general matter, however, we would notify the parent of a claim by a child when the parent does not seem to be the one submitting the claim. Where a child lacks capacity and a parent or legal guardian has the authority to speak for the child, that parent or legal guardian may not in fact be a third party as a legal matter, so that notification of the parent or legal guardian will not implicate the asylum confidentiality provisions in 8 CFR § 208.6.<sup>180</sup> Further, even in cases where a child has capacity to assert a claim, the parent's liberty interest in directing the interests of their child generally requires notification of and an opportunity to participate in the proceedings, unless such notification would pose a serious risk to the child (such as in cases involving

<sup>178</sup> *Polovchak v. Meese*, 774 F.2d 731, 736-37 (7th Cir. 1985); see also 8 C.F.R. § 103.2(a)(2) (providing that a parent or legal guardian may sign an application or petition of a person under the age of fourteen); 8 C.F.R. § 236.3(f) (providing for notice to parent of juvenile's application for relief).

<sup>179</sup> 8 C.F.R. § 208.6.

<sup>180</sup> See *Polovchak*, 774 F.2d at 735 (noting "the fundamental importance of the parents' interest in the residence, nurture and education of a minor child, then twelve or thirteen").

abuse or where the parent is involved in the persecution). Where a child applies for asylum without the parents' knowledge and/or consent, many complex issues are raised, and the Asylum Office should contact HQASM to coordinate in addressing any issues relating to the child's capacity to apply for asylum, potential conflicts between a child's and the parents' interests concerning the asylum application, or notification of the parent.

### **Affirmative Asylum Process for Unaccompanied Alien Children**

In 2008 the TVPRA made USCIS responsible for adjudicating all asylum claims of unaccompanied alien children (UACs). It was recognized that unaccompanied children would benefit from a non-adversarial interview in lieu of the adversarial process of the immigration courts.<sup>181</sup> Responsibility for adjudicating their protection claims has moved from the immigration courts to the affirmative asylum system of USCIS.

The TVPRA is discussed in detail in the ADOTC since most of its provisions do not apply to children seeking refugee status outside the United States.

### **ASM Supplement – Bars to Applying for Asylum**

#### **One-Year Filing Deadline**

The TVPRA amended the INA to state that the one-year filing deadline does not apply to unaccompanied alien children.<sup>182</sup> As of the TVPRA's effective date of March 23, 2009, when you determine that a minor principal applicant is unaccompanied, you should forego the one-year filing deadline analysis and conclude that the one-year filing deadline does not apply. The one-year filing deadline continues to be applicable for accompanied minor principal applicants (those with a parent or legal guardian) and for adult principal applicants. Additionally, as the unaccompanied alien child definition includes the element that the child may not have lawful immigration status, the one-year filing deadline must still be analyzed for in-status unaccompanied minors.

<sup>181</sup> Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Staff, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, Memorandum (HQRAIO 120/12a) (Mar. 25, 2009).

<sup>182</sup> See INA § 208(a)(2)(E); TVPRA, P.L. 110-457, § 235(d)(7)(A). For additional information, see Asylum lesson plan, One-Year Filing Deadline.

Accompanied minors and in-status unaccompanied minors may qualify for the extraordinary circumstances exception to the one-year filing deadline based on legal disability.<sup>183</sup> While unaccompanied minors are specifically listed in the regulations as an example of a category of asylum applicants that is viewed as having a legal disability that constitutes an extraordinary circumstance for the purposes of the one-year filing deadline, the circumstances that may constitute an extraordinary circumstance are not limited to the examples listed in the regulations. The same logic underlying the legal disability ground listed in the regulations is relevant also to accompanied minors: minors, whether accompanied or not, are generally dependent on adults for their care and cannot be expected to navigate adjudicatory systems in the same manner as adults.

As long as an accompanied minor applicant applies for asylum while still a minor (while the legal disability is in effect), the applicant should be found to have filed within a reasonable period of time. Depending on the circumstances of each case, after reaching the age of 18, the applicant may also establish that he or she has filed within a reasonable period of time.

In *Matter of Y-C-*, petitioner, an unaccompanied fifteen-year-old, attempted to file an asylum application with an Immigration Judge five months after being released from over a year in immigration custody.<sup>184</sup> The Immigration Judge refused to accept the application, but the petitioner successfully filed a second application within one year of being released from custody. The BIA found that the petitioner had established extraordinary circumstances because "he did not, through his own action or inaction, intentionally create these circumstances, which were directly related to his failure to meet the filing deadline." Note that this case was decided before the TVPRA's amendment to the INA to exclude unaccompanied minors from the one-year filing deadline took effect.

### Safe Third Country

As of March 23, 2009, the provision in the INA that allows an individual to be barred from applying for asylum based on a safe third country agreement cannot be applied to an unaccompanied alien child.<sup>185</sup> The Safe Third Country Agreement between the United States and Canada, currently the only safe third country agreement between the United States and another country, already has an exception for unaccompanied minors. Even if future safe third country agreements are created, INA § 208(a)(2)(E), as created by the TVPRA, does not permit a safe third

<sup>183</sup> 8 C.F.R. § 208.4(a)(5).

<sup>184</sup> *Matter of Y-C-*, 23 I&N Dec. 286, 288 (BIA 2002).

<sup>185</sup> See INA § 208(a)(2)(E); TVPRA, P.L. 110-457, § 235(d)(7)(A). See also INA § 208(a)(2)(A); Asylum lesson plan, Safe Third Country Threshold Screening.



country agreement to apply to unaccompanied alien children.

### Serious Nonpolitical Crime

The Child Soldiers Accountability Act of 2008 (CSAA), which was signed into law and became effective on October 3, 2008, creates both criminal and immigration prohibitions on the recruitment or use of child soldiers.<sup>186</sup> Specifically, the CSAA establishes a ground of inadmissibility at section 212(a)(3)(G) of the INA and a ground of removability at section 237(a)(4)(F) of the INA. These parallel grounds set forth that “[a]ny alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code” is inadmissible and is removable.

The statute also requires that DHS and DOJ promulgate regulations establishing that an alien who is subject to these grounds of inadmissibility or removability “shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime,” and is therefore ineligible for asylum pursuant to INA section 208(b)(2)(A)(iii).<sup>187</sup> The regulations are pending publication. In the interim, the Congressional intent in enacting the CSAA, as well as the nature of the serious crime of the use of child soldiers, should be considered in determining whether an applicant is subject to the serious nonpolitical crime bar. It is still an open question whether the statute permits an exemption for children under the age of 15.

## ASM Supplement – Other Immigration Statuses Available to Children

### Special Immigrant Juvenile Status

Special Immigrant Juvenile (SIJ) status provides legal permanent residency under certain conditions to unmarried children present in the United States who are under twenty-one years of age.<sup>188</sup> First, a juvenile must be declared dependent on a state juvenile court or legally committed to, or placed under the custody of, an agency or department of a state, or an individual or entity appointed by a State or juvenile court, and the juvenile court must find the child's reunification with one or both of

<sup>186</sup> Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008); see also Lori Scialabba and Donald Neufeld, USCIS, *Initial Information Concerning the Child Soldiers Accountability Act, Public Law No. 110-340*, Memorandum to Field Leadership (Dec. 31, 2008); CSAA, sec. 2(b)-(c).

<sup>187</sup> CSAA, sec. 2(d)(1). See also Asylum lesson plan, Mandatory Bars to Asylum and RAIO Training Module, *Discretion*.

<sup>188</sup> INA § 101(a)(27)(J).

his or her parents not viable "due to abuse, neglect, or abandonment, or a similar basis found under State law" and must determine that "it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence." Second, the Department of Homeland Security must consent to the grant of SIJ status. In cases where the child is in the custody of the Department of Health and Human Services (HHS), the Secretary of HHS must specifically consent to juvenile court jurisdiction to determine the custody status or placement of an alien.

#### Victims of Trafficking or Criminal Activity

The T visa is available to aliens present in the United States who have been the victims of a severe form of trafficking in persons, who are physically present in the United States on account of such trafficking, and who "would suffer extreme hardship involving unusual and severe harm upon removal."<sup>189</sup> Aliens must comply with governmental requests for assistance in investigation or prosecution of the acts of trafficking, though persons unable to cooperate due to physical or psychological trauma or those under the age of eighteen are exempt from this obligation. After three years of continuous presence from the date of admission as a nonimmigrant, the T visa holder may adjust status.

The U visa is available to aliens who have "suffered substantial physical or mental abuse as a result of having been a victim" of qualifying criminal activity, which violated U.S. law or occurred in the United States.<sup>190</sup> The person must possess information related to the criminal activity and have been helpful or be likely to be helpful in the investigation or prosecution of the criminal activity. Where the person is under sixteen years of age, a parent, guardian, or next friend may possess information and assist in the investigation or prosecution, in the place of the child under sixteen. A U visa holder may adjust status after three years of continuous presence from the date of admission as a nonimmigrant.

### SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

<sup>189</sup> INA § 101(a)(15)(T)(i).

<sup>190</sup> INA § 101(a)(15)(U)(i). See USCIS Adjudicator's Field Manual, chapter 39, for further details.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. Policy Memorandum from the Office of the Director, Guidance for Determining if an Adoption is Valid for Immigration and Nationality Act (INA) Purposes: Updates to Adjudicator's Field Manual (AFM) Chapters 21.4, 21.5, 21.6, 21.10 and 71.1; AFM Update AD12-10 (PM-602-0070) (9 July 2012).
2. Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, concluded at the Hague 29 May 1993, entered into force for the United States April 1, 2008.
3. Memorandum from Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, and Don Neufeld, Acting Associate Director of Domestic Operations, USCIS, to Field Leadership, Intercountry adoption under the Hague Adoption Convention and the USCIS Hague Adoption Convention rule at 8 CFR 204, 213a and 322, (HQDOMO 70/6.1.1-P) (31 October 2008).
4. Memorandum from Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, and Don Neufeld, Acting Associate Director of Domestic Operations, USCIS, to Field Leadership, Acceptance of an I-600A and I-600 after 4/1/2008 for a child habitually resident in a Hague Adoption Convention country – adoptions and grants of custody obtained before April 1, 2008, (14 July 2008).
5. U.S. Department of State's adoption website: [www.adoption.state.gov](http://www.adoption.state.gov)

SUPPLEMENTS

**IO Supplement**

**Adoptions**

Most RAIO adjudications involving adoptions are intercountry adoption applications and petitions, reviewed by Overseas Adjudications Officers. A special unit covers this subject during the IOTC. However, their work is described briefly

here. Additionally, Refugee Officers sometimes have to sort out issues related to the validity of a claimed adoption during their adjudications.

### Intercountry Adoptions

U.S. citizens adopt children from all over the world. International Operations officers adjudicate intercountry adoption cases filed by prospective adoptive parents (PAPs) residing both within and outside the United States.

In general, two separate intercountry adoption processes exist: 1) Orphan processing under INA § 101(b)(1)(F), and 8 CFR section 204.3, and 2) Hague Adoption Convention processing under INA §101(b)(1)(G), and 8 CFR section 204.300. Therefore, PAPs interested in adopting a child from another country must first decide on the specific country from which they will adopt. The procedures and laws USCIS officers apply in intercountry adoptions depend on whether the Hague Adoption Convention governs the adoption.

International Operations officers only adjudicate applications and petitions related to the Orphan process. The USCIS National Benefits Center in Lee's Summit, Missouri currently processes all Hague-related applications and petitions. In both processes, the USCIS officer will determine the prospective adoptive parents' suitability and eligibility to adopt a child and the child's eligibility to immigrate to the United States.

In addition to the two intercountry adoption processes described above, International Operations officers may also adjudicate Immediate Relative petitions on behalf of adopted children under INA § 101(b)(1)(E).

# RAIO DIRECTORATE – OFFICER TRAINING

## RAIO Combined Training Course

# EVIDENCE

## TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***EVIDENCE**

## Training Module

**MODULE DESCRIPTION**

This module discusses burden and standards of proof and describes the types of evidence presented in support of petitions and applications for benefits in the RAIO Directorate.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

You, the officer, will be able to determine whether an applicant establishes eligibility (meets his or her burden of proof) for the requested benefit based on the evidence of record.

**ENABLING PERFORMANCE OBJECTIVES**

1. Determine the proper standard of proof to apply in determining an applicant's eligibility as a refugee under INA § 101(a)(42).
2. Distinguish the applicant's burden of proof from the standards of proof necessary to establish eligibility as a refugee under INA § 101(a)(42).
3. Evaluate evidence presented in an application for protection under INA § 101(a)(42) for reliability and relevance.
4. Evaluate evidence presented in an application for protection under INA § 101(a)(42) to determine if the applicant has met the appropriate standard of proof.

**INSTRUCTIONAL METHODS****METHOD(S) OF EVALUATION****REQUIRED READING**

**Division-Specific Required Reading - Refugee Division****Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES****Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (4)
RI1	Skill in identifying issues of a claim (4)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (3)
DM7	Skill in making legally sufficient decisions (5)
DM9	Skill in making legally sufficient decisions with limited information (5)



## SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
June 6, 2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	MMorales, RAIO Training
August 3, 2015	Throughout document	Reorganization of module, some stylistic edits, updated links	RAIO Training.

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

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

## 1 INTRODUCTION

Your job as an officer in the RAIO Directorate is to review applications and petitions to determine if the applicant or petitioner is eligible for a benefit under the Immigration and Nationality Act (INA), and to adjudicate his or her case in a neutral, unbiased manner. In every decision you make, you will gather and evaluate different types of evidence, including testimony, documents, and country of origin information (COI). Before you begin any adjudication, you must understand the legal requirements that the applicant or petitioner must meet.

This module provides guidance on evidence that you may see as you adjudicate cases. This module also discusses an applicant's burden of proof and the various standards of proof that apply in adjudicating different applications. Some benefits require specific types of documentary evidence to establish eligibility. For example, if a U.S. citizen (USC) wants to petition for his non-citizen mother so that she may apply for an immigrant visa, he must file a Form I-130, Petition for Alien Relative. In support of the petition, he must provide evidence of his citizenship and his relationship to his mother. To prove that he is a USC, he might submit a naturalization certificate or a passport. To prove his relationship to his mother, he would submit his birth certificate.

On the other hand, some benefits such as refugee and asylum status involve individuals who have fled their countries with little or no documentation.<sup>1</sup> In these cases, an interview is required because often testimony is the only evidence the applicant will have to establish large parts of his or her claim.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Module, *Decision Making*. You will identify the relevant legal requirements of

<sup>1</sup> *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *UNHCR Handbook*, ¶ 74 (reissued, Geneva, Dec. 2011).

the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, assign weight to each piece of evidence, and determine whether the applicant's burden of proof has been satisfied according to the appropriate standard of proof.

## 2 TYPES OF EVIDENCE

Generally, you must consider any statement, document, or object that an applicant offers as evidence. An applicant may also present witnesses at an interview. Witness testimony is evidence to be considered and weighed along with all the other evidence presented in the case.<sup>2</sup> See ASM Supplement – Types of Evidence. In addition, any COI materials that you discover in your research and information accessed in any computer databases are also evidence.

In the asylum and refugee context, applicants often face special difficulties presenting evidence. Generally, persecutors do not provide evidence of their persecution or intentions. Additionally, the applicant may have been forced to flee without an opportunity to gather documents, or it may have been dangerous for the applicant to carry certain documents, such as a written threat or identification documents.<sup>3</sup>

Human rights monitors and reporters may have difficulty documenting abuses in some refugee-producing countries that maintain firm control over the press and do not allow human rights monitors access to the country.

When applicants do provide documents, they may not be able to establish the genuineness of the documents.<sup>4</sup> If you believe that the documents are genuine, the evidentiary value should not be discounted merely because the documents are not certified or authenticated.

You must consider and evaluate any evidence submitted by the applicant. In order to create a fair and objective process for adjudicating claims, all evidence must be considered using the analytical framework explained in the RAIO Training Modulé, *Decision Making*. Although you must consider all evidence submitted by the applicant, you do not have to afford all evidence the same weight. You must determine the probative value of each piece of evidence. The circumstances surrounding the evidence and information about the evidence will determine what weight you assign to it. Circumstances that may affect the weight of the evidence include reliability, relevance, content, form, and the nature of the evidence.

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<sup>2</sup> 8 C.F.R. § 208.9(b).

<sup>3</sup> See, e.g., *Aguilera-Cota v. INS*, 914 F.2d 1375, 1380 (9th Cir. 1990) (“The last thing a victim may want to do is carry around a threatening note with him.”)

<sup>4</sup> See *Zavala-Bonilla v. INS*, 730 F.2d 562 (9th Cir. 1984).

Below is a non-exhaustive list of some of the common types of evidence that you might encounter along with some suggestions of ways in which the evidence may be used.

## 2.1 Testimonial Evidence from the Applicant

### The Application Form

The application form supplies basic biographical information about the applicant and provides information about the basis for his or her claim. A review of the application should provide you with an indication of what biographical information may be relevant to the applicant's claim. The form may also contain some information about travel patterns that may be relevant to subsidiary issues such as access to the program in refugee resettlement cases and one-year filing deadline issues in asylum claims. You should read the form carefully to determine what information on the form, beyond the statements of the claim itself, may be relevant. With all applications where there is an interview, you should go over the biographical information with the applicant at the beginning of the interview, making certain that the applicant agrees that the information is correct. This sets a baseline of factual information that you may rely on if inconsistencies or contradictions arise later in the interview.

### Oral Testimony

When conducting an interview, you should make certain that you elicit information on all material aspects of the claim. In many refugee and asylum cases, the oral testimony at the interview, along with the information contained in the application form, will be the most critical evidence you will gather and evaluate to make your decision. It is your duty to elicit as much detail as possible during the interview. In fulfilling your duty you will also be making your post-interview decision-making much easier.

### Written Statements

In some types of cases, such as asylum or waiver cases, applicants will often submit statements with their application describing their claims. These statements will usually be much more detailed than the information provided on the application form, and you should review them very carefully.

All refugee cases will have a referral statement or form through which the applicant is granted access to the U.S. Refugee Admissions Program (USRAP). For refugee cases referred for resettlement consideration by the United Nations High Commissioner for Refugees (UNHCR), a U.S. Embassy or certain Non-Governmental Organizations (NGOs), the referring entity will provide a Resettlement Referral Form (RRF) outlining the applicant's claim. The Resettlement Support Center (RSC) will also interview all applicants and prepare a statement of the refugee claim which will accompany the Form I-590, Registration for Classification as Refugee. The RRF and RSC statement should be reviewed and considered in light of other information in the record and the applicant's testimony.

You should find those sections of the written statement that contain information that directly relates to the applicant's eligibility and compare them to statements in the application form. The statement is useful in helping to identify the material elements of the applicant's claim about which you will question the applicant during the interview.

The written statement might also contain contradictions or may raise inconsistencies when compared to the applicant's oral testimony. Apparent contradictions or inconsistencies that are material or relevant to the applicant's claim and eligibility should be explored in the interview. When evaluating their impact on credibility you should consider the circumstances under which the statements were prepared, whether they were taken under oath, and any other indicia of reliability.

## 2.2 Statements by Other Parties

### Friends and Family (Oral Testimony)

Sometimes a family member or friend testifies under oath at the applicant's interview. Such oral testimony may be material to the applicant's claim and may be considered corroborative evidence.

### Friends and Family (Written Statements)

An application may contain statements written by the applicant's friends or family. Some considerations that you should keep in mind when reviewing such evidence include:

- the type of written statement submitted (*e.g.*, a simple letter, an affidavit, or a sworn statement or declaration made under penalty of perjury);
- how the content of the statement relates to the claim; and
- whether the document was created to support the claim.

In evaluating the content of the statement, you should determine whether the statement was written before or after the applicant started the application process. In the protection context, if the statement was written before the applicant claims to have decided to apply for protection, and the statement contains very specific information about the applicant's claim, you should ask why this information was included in the statement.

Boilerplate statements should be evaluated based on the context in which applicants use them. In some cases boilerplate statements may be used as part of an adverse credibility determination.<sup>5</sup> See RAI0 Training Module, *Credibility*, section on "Similar Claims." If

<sup>5</sup> See *Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006); *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010).

the applicant submits written statements with nearly identical language, you should closely question the applicant about who prepared the statements and under what circumstances. For example, ask the applicant how the people who signed the statements had knowledge of their content. Point out to the applicant the extreme similarity in the documents, and provide the applicant an opportunity to explain why they are so similar. The applicant's answers may help you determine the statements' evidentiary weight and their impact on the overall credibility determination. Bear in mind, however, that the applicant may not necessarily know how or by whom the written statements were prepared or procured, as the applicant may not have personally obtained the documents.

See RAD Supplement – Testimony by Other Refugee Applicants.

### **Experts (Written Reports and Affidavits)**

Applicants sometimes submit supportive documentation in the form of statements, reports, and affidavits written by outside parties such as subject matter experts, members of academia, and physicians. One common type of such evidence is medical reports, which are addressed below at section 2.7. You should always accept such documentation, but the weight you assign it should be based on a number of factors. Since the statement will usually be based on a claimed expertise of the declarant, the statement should give an adequate explanation of that expertise, which usually constitutes some background information about the declarant. The statement should give an indication of what knowledge the declarant has of the specific facts in the case at hand. It may make some connection between the factual information being provided and the applicant's claim. See ASM Supplement – Statements by Other Parties.

## **2.3 Travel Documents**

Any documentation the applicant presents concerning his or her travel is useful. For example, to the extent that the documents give times and places where the applicant has been, you can establish a chronology that may provide evidence of the applicant's eligibility to apply for asylum or his or her access to the refugee program. The most common types of travel documents that an applicant might present are:

### **Passports**

Possession of a valid national passport creates a *prima facie* presumption that the holder is a national of the country of issuance, unless the passport itself states otherwise. A person holding a passport showing him or her to be a national of the issuing country, but who claims that he or she does not possess that country's nationality, must substantiate his or her claim, for example, by showing that the passport is a so-called 'passport of convenience' (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). Generally, the mere assertion by the holder that the passport was issued as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. It is sometimes possible to obtain information



about the significance of a passport from the issuing authority, but only if confidentiality is not violated. If you are unable to obtain reliable, timely information about whether the passport conveys nationality, you must determine the credibility of the applicant's assertion regarding his or her passport in the context of the entirety of his or her testimony.<sup>6</sup>

In addition to proving nationality, passports may also provide information that helps you establish the applicant's travel patterns and places of residence. You should carefully examine a passport with stamps in it that indicate entries and exits from different countries. Sometimes you may find proof that the applicant was not where he or she claimed a specific event happened, when that event occurred. Passports may also provide some evidence of an applicant's profession, and this may be relevant to his or her claim. Finally, passports from third countries may provide evidence of dual nationality or firm resettlement.

### **Refugee Travel Documents**

Possession of a refugee travel document by an applicant can be proof of identity and nationality and that another state party to the Refugee Convention has recognized that person as a refugee. It may also, however, raise the issue of firm resettlement. Like a passport, a refugee travel document may contain stamps for entry and exit from different countries to which the applicant has traveled and can be used to establish a chronology and determine travel patterns.

### **Tickets from Transportation Carriers**

Tickets from airlines and other common carriers provide evidence that may help to map out travel patterns and timelines that could be relevant to part of the applicant's claim. In the asylum context, tickets may also provide evidence relevant to the applicant's eligibility to apply under the one-year filing deadline.

## **2.4 Identification Documents**

### **National Identify (ID) Cards**

An applicant may submit a national ID card as evidence of his or her identity and nationality. These documents can sometimes provide other useful information that you can use in questioning the applicant. For example, national ID cards usually have an issue date. If an applicant submits a national ID card that has an issue date later than the date on which the applicant claims to have left his or her country, ask the applicant how he or she obtained the document.

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<sup>6</sup> UNHCR Handbook, ¶ 93.

## Organizational ID Cards

**(student, employment, union, refugee ID, etc.)**

These types of documents generally should not be used as evidence of identity.; Rather, they are evidence that the holder has been a member of an organization or has held a particular status (student, refugee, etc.) that may be relevant to the claim. Again, such documents, when examined carefully, may also provide evidence beyond mere membership.

## 2.5 Civil Documents Issued by Government Agencies

**(Police reports, household registrations, birth certificates, death certificates, marriage certificates, records from government hospitals, etc.)**

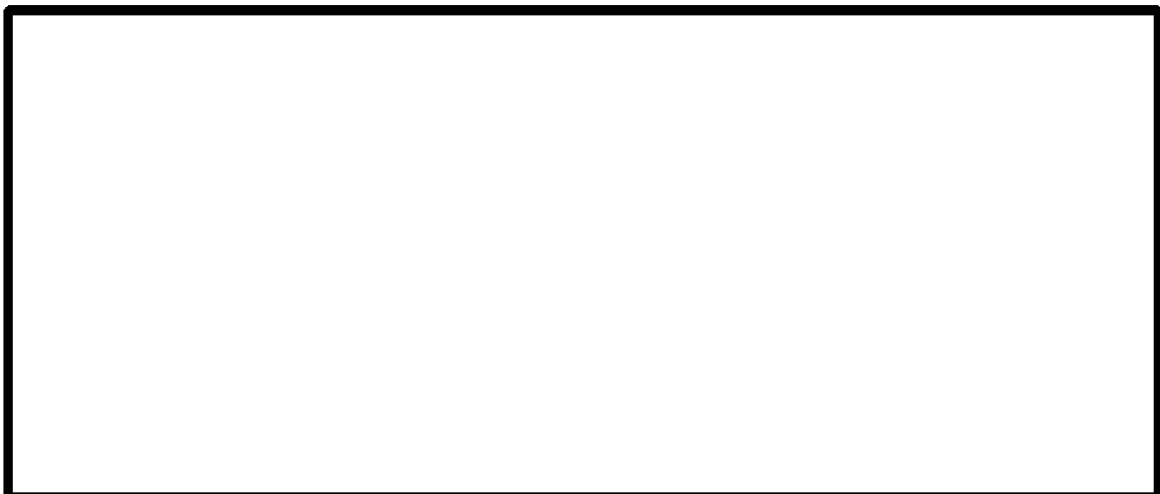
When an applicant submits a document from another country, you should consider carefully what information is contained in the document and its relevance to the applicant's refugee claim or other eligibility criteria.

### *Example*

An applicant submits a police report she received after filing a complaint because she was beaten by an unknown assailant. While the police report is evidence that the applicant was harmed, it is likely that it relates to a number of different elements in the refugee definition, such as whether the applicant suffered past persecution, whether the assault was on account of a protected ground, and whether the government was unwilling or unable to protect her. The police report should prompt you to ask follow-up questions regarding the relevant issues.

2.6

(b)(7)(e)



<sup>7</sup> See RAIO Training Module, *Fraud*.

As with all documentary evidence, records produced by the U.S. government should be evaluated for their probative value. Records produced by public officials in the regular course of their duties should generally be treated as presumptively reliable.<sup>8</sup> The purpose for which and circumstances under which government documents were produced, however, should always be considered and may limit their evidentiary value, particularly in relation to a claim for refugee or asylum status.

For example, interviews of applicants by agents of U.S. Customs and Border Patrol at the airport or port of entry or near the U.S. borders are intended to quickly gather basic information necessary for CBP's operations. They are not designed to elicit the often sensitive and complex facts involved in adjudicating a protection claim, and they often take place under circumstances the applicants may experience as rushed or confusing, and in which they may be reluctant to divulge information relevant to adjudication of a protection claim.

Several courts have indicated that adjudicators must carefully examine these statements and exercise caution before relying on them, particularly in order to impeach an applicant's credibility. The Second Circuit Court of Appeals, for example, has listed four factors officers should consider: (1) whether the record of the interview is verbatim or merely summarizes the person's statements; (2) whether the questions asked were designed to elicit details related to the claim and whether the officer asked follow-up questions that would aid in developing the account; (3) whether the applicant was reluctant to reveal information because of prior interrogation or other coercive experiences in his or her home country; and (4) whether answers to the questions suggested the applicant did not understand English or the translation was not reliable. While these factors are not exhaustive, you should consider them when determining how much weight to accord a record produced in such circumstances.<sup>9</sup>

## 2.7 Medical Evidence

The term "medical evidence" usually refers to a written opinion issued by a medical doctor, a psychiatrist, a psychologist, or other medical expert who produces statements concerning the physical and mental health of an individual. Medical evidence can also be obtained in the form of witness testimony or medical records.

Medical evidence can be presented by the applicant at the time of his or her application. In the asylum context, you may request the applicant to provide it after the interview. It

<sup>8</sup> *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988); see, e.g., *Munoz-Avila v. Holder*, 718 F.3d 976, 979 (7th Cir. 2013); *Kim v. Holder*, 560 F.3d 833, 836 (8th Cir. 2009); *Felczerek v. INS*, 75 F.3d 112, 116 (2d Cir. 1996).

<sup>9</sup> *Ramsameachire v. Ashcroft*, 357 F.3d 169, 180 (2d Cir. 2004); see also *Nadmid v. Holder*, 784 F.3d 357, 360 (7th Cir. 2015); *Balogun v. Ashcroft*, 374 F.3d 492, 505 (7th Cir. 2004); *Balasubramaniam v. INS*, 143 F.3d 157, 162 (3d Cir. 1998).

would be rare for such evidence to be available in an overseas refugee context. The most common scenario where such information is available is when applicants are processed in-country as they often have greater access not just to identity documentation but also to police or medical records which may corroborate claimed harm.

These reports can facilitate the work of decision-makers. To be given full weight, a medical evaluation must be written with objectivity and impartiality. Depending on the case, a medical report produced by the applicant may not necessarily resolve inconsistencies and statements that are found to be not credible. In fact, evidence presented in the medical documentation can sometimes undermine a claim or raise concerns about inconsistencies.

You may request medical evidence when you feel it is necessary to the adjudication. The applicant will either have to provide the evidence or give a reasonable explanation why the evidence is not available.<sup>10</sup> If such evidence is produced in the country where the applicant is applying, the applicant may have access to the evidence. Another consideration concerning the reasonableness of the applicant's ability to produce such evidence is the availability of physicians in the area who are qualified to make such an examination and their willingness to do them at no cost. In general, you should request medical evidence only if the applicant has failed to meet his or her burden of proof and additional corroboration is necessary to meet it.

The Istanbul Protocol<sup>11</sup> establishes internationally accepted guidelines that govern how best to handle medical investigations of allegations of torture. Although there is no specific requirement that medical evidence follow the Istanbul Protocol, it can serve as a guide for adjudicators as to what constitutes well-documented medical evidence. The more closely the medical evidence meets the standards in the Istanbul Protocol, the easier it is to determine the probative value of the evidence.

When medical evidence is submitted, it will most often be submitted to support a claim of past persecution. If an applicant indicates that he or she sought medical treatment in the United States or his country of first refuge because of torture, he or she should be asked to provide some medical documentation or explain why he or she is unable to provide it.

## 2.8 Country of Origin Information<sup>12</sup>

Depending on the adjudication, COI is evidence you can use to help determine whether an individual may be eligible for the requested benefit. COI provides objective evidence

<sup>10</sup> *Matter of S-M-J*, 21 I&N Dec. at 725-26.

<sup>11</sup> United Nations Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, August 9, 1999.

<sup>12</sup> See RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

against which documentation in the record and the testimony of an interviewee can be viewed and evaluated. In some cases, COI may be sufficient to establish a particular fact that is relevant to the adjudication. It is not necessary for an applicant to testify to every fact that the adjudicator finds. In refugee and asylum adjudications, you **must** evaluate the applicant's claim in light of COI. See ASM Supplement – Country of Origin Information.

## 2.9 Other Types of Physical Evidence

In some situations, an applicant may offer as evidence an object other than paper documentation, such as a videotape, compact disc (CD), flash drive, website link, book about the history of a conflict, or a bottle of medicine to substantiate a medical condition. In such instances, you should consult with your supervisor about how to best accept the information associated with this type of evidence.

### Documentary Evidence—Authentication

In affirmative asylum and refugee processing, *authentication is not necessary*. Documents should be accepted and considered as part of the evidence in the record whether authenticated or not. Bear in mind that under the Federal Rules of Evidence, a document may be authenticated by the “[t]estimony of witness with knowledge.”<sup>13</sup> For asylum and refugee purposes, a “witness with knowledge” may be the applicant.<sup>14</sup> If the applicant provides a detailed, plausible, and consistent account of how he or she came into possession of the document, you should consider that document authenticated.

Although authentication is not necessary, you may give more weight to a document that is authenticated than a document that is not authenticated—and the method of authentication may affect the weight given the document.<sup>15</sup> When an applicant submits a document that does not appear to be what it purports to be, in order to completely discredit that documentary evidence you must provide sound, cogent reasons for doing so.<sup>16</sup> Otherwise, the document should be evaluated for its evidentiary value.

Courts have held that the means of authentication found in the immigration regulations are not the only means by which documents may be authenticated, and the trier of fact should give the applicant the opportunity to authenticate documents by alternative means,

<sup>13</sup> Federal Rules of Evidence Rule 901(b)(1), 28 U.S.C.A.

<sup>14</sup> *Zhanling Jiang v. Holder*, 658 F.3d 1118 (9th Cir. 2011)

<sup>15</sup> *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (The method of authentication that the party submitting the evidence utilizes may affect the weight of the evidence, and Immigration Judges “retain broad discretion to accept a document as authentic or not based on the particular factual showing presented), citing *Vatyan v. Mukasey*, 508 F.3d 1179, 1182-83 (9th Cir. 2007))

<sup>16</sup> *Tassi v. Holder*, 660 F.3d 710 (4th Cir. 2011).

found in the Federal Rules of Evidence, if the applicant is unable to authenticate in one of the ways specified in the immigration regulations.<sup>17</sup>

### 3 BURDEN OF PROOF

In all applications for immigration benefits, the applicant bears the burden of proof to establish eligibility for the benefit he or she is seeking.<sup>18</sup> The burden of proof refers to the duty of one party to prove facts that meet the legal standard being applied. An applicant or petitioner for a benefit under the INA must establish (i.e., bears the burden of proof to establish) that he or she meets the requirements for the benefit being sought and is not subject to any bars or other disqualifying factors. This means that the applicant must produce evidence that establishes the facts of the case, and that those facts must meet the relevant legal standard.

Because of the non-adversarial nature of RAIO interviews, while the burden is always on the applicant to establish eligibility, there is a shared aspect of that burden in which you have an equal obligation to help fully develop the record.<sup>19</sup>

#### 3.1 Burdens of “Persuasion” and “Production”

The phrase “burden of proof” might be thought of to encompass the concepts of the “burden of persuasion” and the “burden of production.” The burden of persuasion refers to the burden to convince the adjudicator that the evidence supports the facts asserted.

The burden of production entails the obligation to come forward with the evidence at different points in the proceedings.

In overseas refugee adjudications, there is no time at which the burden of proof shifts away from the applicant. There are, however, situations in which it may be required for the officer to produce some evidence. For example, although it is the applicant’s burden to establish that he or she is **not** firmly resettled, the BIA has held that the government bears the initial burden to produce some evidence indicating that an applicant is firmly resettled.<sup>20</sup>

In asylum adjudications, while the applicant always has the burden of proof to establish eligibility for asylum, there are specific instances when the burden shifts to the government to prove a certain point related to the exercise of discretion when eligibility

<sup>17</sup> *Tassi v. Holder*, 660 F.3d 710, 723 (4th Cir. 2011); *Zhanling Jiang v. Holder* 658 F.3d 1118, 1121 (9th Cir. 2011); *Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 214 n.5(BIA 2010)

<sup>18</sup> INA § 291; *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); UNHCR Handbook, ¶ 196.

<sup>19</sup> 8 C.F.R. § 208.9(b); UNHCR Handbook, ¶ 196.

<sup>20</sup> *Matter of A-G-G-*, 25 I&N Dec. 486, 503 (BIA 2011).

is based on past persecution. However, the burden of persuasion to establish **eligibility** for asylum never shifts and always remains on the applicant. For further information on burden shifting, see ASM Supplements – Applicant’s Burden and Burden Shifting When Past Persecution Found.

### 3.2 Establishing Eligibility (the Applicant’s Burden)

The applicant must establish that he or she meets all of the legal elements of the benefit being sought. It is your responsibility to read and understand the provisions in the statute, any corresponding regulations, and any binding case law applicable in each case you adjudicate. See RAD Supplement – Applicant’s Burden and ASM Supplement – Applicant’s Burden, below.

#### *Example for Refugee Processing*

To establish eligibility for admission as a refugee under INA § 207(c), the applicant must establish that he or she

- is of special humanitarian concern to the United States
- is a refugee, as defined at INA § 101(a)(42)
- is not firmly resettled
- is admissible as an immigrant
- merits a favorable exercise of discretion

#### *Example for Asylum Adjudications*

To establish eligibility for asylum under INA § 208, the applicant must establish that he or she

- is eligible to apply for asylum
- is a refugee within the meaning of § 101(a)(42)(A) of the Act
- is not subject to any mandatory bars to asylum
- merits a favorable exercise of discretion

#### *Example for Adjudication of Orphan Petitions*

To establish eligibility for an orphan petition, adoptive parent(s) must establish that

- at least one of the adoptive parent(s) is a U.S. citizen, and
- the adoptive parent(s) will provide proper parental care to the child, and
- the child is an “orphan” as defined in U.S. immigration law, and

- either the child has been adopted abroad, and that each adoptive parent saw the child in person before or during the adoption or the adoptive parent(s) have legal custody of the child for emigration to the United States and adoption after the child arrives.

### 3.3 Special Consideration in the RAIO Context

The Board of Immigration Appeals (BIA) has recognized that a “cooperative approach” is required in adjudicating asylum requests.<sup>21</sup> This approach also applies to all RAIO adjudications. The BIA explained that this is because the BIA, immigration judges, and USCIS “all bear the responsibility of ensuring that refugee protection is provided where such protection is warranted by the circumstances of an asylum applicant’s claim.”<sup>22</sup>

While the applicant must establish eligibility for the benefit, as part of the cooperative approach you have the duty to elicit sufficient information at the interview. You also have the duty to research COI to properly evaluate whether the applicant is eligible for the benefit he or she applied.<sup>23</sup> The burden is on the applicant to prove his or her claim, but you have a duty to develop the record completely.

### 3.4 Testimony Alone May Be Enough

A refugee or asylum applicant may establish eligibility with testimony alone.<sup>24</sup> If you, as the trier of fact, believe that other evidence is needed to corroborate the otherwise credible testimony of the applicant, you will request the evidence and the applicant must either: 1) provide the evidence or 2) provide a reasonable explanation as to why he or she cannot provide the evidence.<sup>25</sup>

Burden of proof is different from credibility. For each case you adjudicate, you must make a credibility determination that follows the analytical framework in the RAIO Training Module, *Credibility* before deciding whether the applicant must

<sup>21</sup> *Matter of S-M-J*, 21 I&N Dec. 722, 724 (BIA 1997).

<sup>22</sup> *Id.* at 723.

<sup>23</sup> 8 C.F.R. § 208.9(b); *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); and *UNHCR Handbook*, ¶ 196. See also RAIO Training Modules, *Interviewing – Eliciting Testimony* and *Researching and Using Country of Origin Information in RAIO Adjudications*.

<sup>24</sup> See *Matter of Mogharrabi*, 19 I&N Dec. 239, 245 (BIA 1987); *Shrestha v. Holder*, 590 F.3d 1034 (9th Cir. 2010). Note that in the asylum context, under *INA § 208(b)(1)(B)(ii)*, the applicant’s testimony is only sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts sufficient to demonstrate that an applicant is a refugee.” See also *ASM Supplement – Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts”* and RAIO Training Module, *Credibility*.

<sup>25</sup> See *Matter of S-M-J*, 21 I&N Dec. at 725-26.



provide additional evidence to meet his or her burden of proof. In other words, you cannot determine that an applicant has not met his or her burden of proof without first having done a complete credibility analysis.

In asylum cases, an applicant whose testimony you have found not to be credible (or whose testimony you have found to be unreliable for other reasons<sup>26</sup>) may, in some circumstances, meet his or her burden of proof by providing other reliable evidence. If you find that the applicant has not provided credible or reliable testimony, you must consider whether non-testimonial evidence in the record is nonetheless sufficient to meet the applicant's burden of proof.<sup>27</sup>

In both asylum and refugee cases, an applicant's testimony may only be credible in part, but may nonetheless establish his or her eligibility, leading to a "split credibility determination." For example, a refugee may establish eligibility through testimony that, while not credible in regards to past persecution, is credible in regards to the applicant's well-founded fear of persecution or vice versa.<sup>28</sup>

#### 4 STANDARDS OF PROOF

The burden of proof is not the same as the standard of proof. The standard of proof refers to the amount of evidence, or level of proof, required to prove a given fact. There are several different standards of proof that apply during different stages of the adjudication process. *See* chart below.

<sup>26</sup> See *Matter of J-R-R-A-*, 26 I&N Dec. 609, 612 (BIA 2015) (noting, in the case of an applicant whose testimony indicated lack of competency, that an applicant's testimony may be found to be unreliable for reasons other than deliberate fabrication and that the adjudicator "should then focus on whether the applicant can meet his burden of proof based on the objective evidence of record and other relevant issues.")

<sup>27</sup> *Ilunga v. Holder*, 777 F.3d 199, 213 (4th Cir. 2015).

<sup>28</sup> See RAI0 Training Module, *Credibility*, Sec. 6, "Split Credibility Finding." See also Refugee Affairs Division (RAD), *Refugee Application Assessment Standard Operating Procedure (SOP)* (Pilot Jun. 21, 2013) p.19.





Standard of Proof		Refugee	Asylum	Int'l Ops
Beyond any reasonable doubt	Very high			I-130 Adam Walsh Act- no risk to beneficiary
Clearly and beyond doubt	Highly probably true	Admissibility		Admissibility
AND				
Clear and convincing	Firm belief or conviction		Filed within one year	<ul style="list-style-type: none"> <li>o Rebut prior fraudulent marriage</li> <li>o Citizenship of children born out of wedlock</li> </ul>
Preponderance of the evidence	More than 50% chance	<ul style="list-style-type: none"> <li>• Meets refugee definition</li> <li>• Special humanitarian concern</li> <li>• Not firmly resettled</li> <li>• Facts supporting eligibility</li> </ul>	<ul style="list-style-type: none"> <li>• Meets refugee definition</li> <li>• Not subject to any bars</li> <li>• Facts supporting eligibility</li> </ul>	Eligibility for benefits sought
AND				
To the Satisfaction of the adjudicator	Probably true		Exceptions to 1-year rule	
AND				
More Likely Than Not				
Reasonable possibility	One in ten chance	Well-founded fear	Well-founded fear Reasonable fear	Well-founded fear
Significant possibility	Substantial and realistic possibility	Interdictions at sea	Credible fear	

You must evaluate information according to several standards of proof for different types of applications and sometimes even in the course of the adjudication of a single application. These standards will be discussed in more detail during your division-specific courses.

### *Example*

In asylum and refugee processing, an applicant must prove by a preponderance of the evidence that he or she meets the definition of a refugee: that is, that he or she suffered persecution in the past or that there is a reasonable possibility that he or she will be persecuted in the future. When you decide whether an applicant is a refugee based on a fear of future persecution, you use the “reasonable possibility” standard to determine whether the applicant has a well-founded fear of persecution and the “preponderance of the evidence” standard to determine whether the applicant meets all other elements of the refugee definition and whether the facts supporting the applicant’s eligibility are true. You are using two different standards within one adjudication: “preponderance of the evidence” and “reasonable possibility.”

#### 4.1 Beyond any Reasonable Doubt

In criminal cases, the government is required to prove a defendant’s guilt *beyond a reasonable doubt*. “A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.”<sup>29</sup> This standard is used in criminal law and in one situation encountered by RAIO officers: according to the February 8, 2007 policy memo implementing the Adam Walsh Act, where a U.S. citizen filing a petition for an alien relative has been convicted of a specified offense against a minor, he or she must establish that he or she poses “no risk” to the safety and well-being of the beneficiary “beyond any reasonable doubt.”<sup>30</sup>

#### 4.2 Clearly and Beyond Doubt

The *clearly and beyond doubt* standard is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases, and it is comparable to the “clear and convincing” standard explained below. While the evidence submitted to meet the “clearly and beyond doubt” standard must be “stronger and more persuasive” than the evidence necessary to satisfy the lower

<sup>29</sup> O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions* § 12.10 (5th ed. 2000).

<sup>30</sup> See also *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014) (holding that the BIA lacks jurisdiction to review the standard of proof applied by USCIS in Adam Walsh Act determinations).

preponderance of evidence standard of proof, the officer must give the applicant “the same fair and reasonable evaluation of his evidence” and must not presume that the applicant’s evidence is “false or contrived.”<sup>31</sup>

An individual approved for refugee status must prove that he or she is “clearly and beyond a doubt entitled to be admitted” at the time that he or she seeks to enter the U.S. as a refugee, as well as when he or she seeks to become a lawful permanent resident one year later.<sup>32</sup>

Refugee applicants abroad must establish that they are admissible to the United States as immigrants.<sup>33</sup> When you interview a refugee applicant outside of the United States and adjudicate the Form I-590, you are making an initial determination on that applicant's eligibility for admission into the United States as a refugee. An immigration officer at the Port of Entry (POE) will reference your determination when deciding whether to admit the individual into the United States as a refugee.<sup>34</sup> During their USCIS interview abroad and prior to the determination at the POE, all refugees are applicants for admission who must establish their admissibility “clearly and beyond a doubt.”<sup>35</sup> Therefore, you will apply the clearly and beyond doubt standard of proof to the admissibility portion of the refugee status determination.

The “clearly and beyond doubt” standard of proof should not be confused with the “beyond a reasonable doubt” standard used in U.S. criminal courts where the government or prosecutor has the burden of establishing “beyond a reasonable doubt” that the defendant committed the essential elements of the crime of which he or she is accused. The U.S. Supreme Court has said that “we should hesitate to apply [the “beyond a reasonable doubt” standard] too broadly or casually to non-criminal cases.”<sup>36</sup>

### 4.3 Clear and Convincing Evidence

<sup>31</sup> *Matter of Patel*, 19 I&N Dec. 774, 784-85 (BIA 1988) (quoting *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966)).

<sup>32</sup> See INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a); 207.2(b); INA § 209(a)(1); *Matter of Jean*, 23 I&N Dec. 373, 381 (AG 2002).

<sup>33</sup> INA § 207(c)(1).

<sup>34</sup> 8 C.F.R. §§ 207.2(b); 207.4.

<sup>35</sup> INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a). See U.S. Immigration and Naturalization Service Memo., *Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing*, p.1 (Nov. 9, 1992) (confirming that at their interviews with U.S. immigration officers abroad, refugees are considered applicants for admission).

<sup>36</sup> *Addington v. Texas*, 441 U.S. 418, 425-26 (1979).

The *clear and convincing* standard has been defined as a degree of proof that will produce “a firm belief or conviction as to allegations sought to be established.”<sup>37</sup> It is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases.

An applicant for asylum must demonstrate by *clear and convincing evidence* that the application has been filed within one year after the date of the applicant’s arrival in the United States, unless the applicant establishes to the satisfaction of the asylum officer that an exception applies.<sup>38</sup>

#### 4.4 Preponderance of the Evidence

A fact is established by a *preponderance of the evidence* if the adjudicator finds, upon consideration of all the evidence, that it is more likely than not that the fact is true. In other words, there is more than a 50% chance that the fact is true. This is the standard of proof used in most RAIO adjudications.

Determination of whether a fact has been established “by a preponderance of the evidence” should be based on both the quality and quantity of the evidence presented.

In evaluating whether an applicant had met his or her burden of establishing the facts underlying his or her request for asylum, the BIA has explained, “When considering a quantum of proof, generalized information is insufficient. Specific, detailed, and credible testimony or a combination of detailed testimony and corroborative background evidence is necessary to prove a case for asylum.”<sup>39</sup>

#### 4.5 To the Satisfaction of the Adjudicator

The *to the satisfaction of the adjudicator* standard has been interpreted to require a showing similar to that of the “preponderance of evidence” standard, requiring an individual to prove an issue “by a preponderance of evidence which is reasonable, substantial and probative,” or “in his favor, just more than an even balance of the evidence.”<sup>40</sup>

<sup>37</sup> See *Black’s Law Dictionary* (5th Ed.).

<sup>38</sup> INA §§ 208(a)(2)(B)-(D); 8 C.F.R. § 208.4(a)(2)(i)

<sup>39</sup> *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

<sup>40</sup> See *Matter of Barreiros*, 10 I&N Dec. 536, 538 (BIA 1964) (interpreting same standard for rescinding LPR status by establishing that applicant was not eligible for adjustment); *Matter of V-*, 7 I&N Dec. 460, 463 (BIA 1957) (interpreting standard for an alien to establish that a marriage was not contracted for the purpose of evading immigration laws).

An asylum seeker cannot apply for asylum if he or she has previously applied for and been denied asylum by an immigration judge or the BIA, unless the asylum seeker demonstrates to the satisfaction of the Attorney General or the Secretary of Homeland Security changed circumstances that materially affect asylum eligibility. Similarly, an asylum seeker cannot apply for asylum more than one year after the date of arrival in the United States, unless the applicant demonstrates *to the satisfaction of the Attorney General or the Secretary of Homeland Security* changed circumstances that materially affect eligibility, or extraordinary circumstances relating to the delay in filing the application within the required time period.

The standard “to the satisfaction of the adjudicator” places the burden on the applicant to demonstrate that an exception applies. The applicant is not required to establish “beyond a reasonable doubt” or by “clear and convincing evidence” that the standard applies. Rather, this standard has been described in another immigration context as requiring the applicant to demonstrate that the exception applies through “credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment, considering the proof fairly and impartially.”<sup>41</sup>

#### 4.6 More Likely Than Not

The *more likely than not* standard is comparable to the “preponderance of the evidence” standard and the equivalent “to the satisfaction of the adjudicator” standard. While the “preponderance of the evidence” standard requires a greater than 50% likelihood that a fact is true, the “more likely than not” standard requires, in the context in which RAIO officers encounter it, a greater than 50% likelihood that a future event will occur.

To establish eligibility for withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations that implement the Convention Against Torture (CAT), the applicant must establish a set of events and/or conditions, substantiated by a preponderance of evidence, showing that he or she *would be* persecuted or tortured in the country of removal. The Supreme Court has held that this means the applicant must establish that it is “more likely than not” (a greater than 50% chance) that he or she would be persecuted or tortured.<sup>42</sup>

RAIO officers do not adjudicate claims for withholding of removal under INA section 241(b)(3) or protection under the CAT. When conducting credible fear screenings or protection screenings for aliens interdicted at sea, though, refugee and asylum officers determine whether there is a significant possibility that each applicant could establish eligibility for these benefits. Thus, in these processes, officers must decide whether there

<sup>41</sup> See *Matter of Bufalino*, 12 I&N Dec. 277, 282 (BIA 1967) (interpreting the “satisfaction of the Attorney General” standard as applied when adjudicating an exception to deportability for failure to notify the Service of a change of address).

<sup>42</sup> 8 C.F.R. § 208.16(b)(1); *INS v. Stevic*, 467 U.S. 407, 104 S. Ct. 2489 (1984)

is a significant possibility that the applicant will be able to demonstrate that it is more likely than not that he or she will be persecuted or tortured in his or her home country. To adjudicate these cases, therefore, officers must fully understand both the “significant possibility” standard and the “more likely than not” standard.

#### 4.7 Reasonable Possibility

The *reasonable possibility* standard is lower than the “more likely than not” standard. In both asylum and refugee cases, a “well-founded fear of persecution” is established if there is a “reasonable possibility” that the applicant would be persecuted. While an applicant for refugee or asylum status must always establish his or her eligibility for the benefit (and the facts underlying the claim) by a preponderance of the evidence, one element of the refugee definition requires an applicant to show that the level of certainty that he or she would be persecuted in the future meets the “reasonable possibility” standard. In *Matter of Z-Z-O-*, the Board of Immigration Appeals clarified that an adjudicator’s predictions of what events may occur in the future are findings of fact, whereas whether an applicant has established an objectively reasonable fear of persecution based on these facts is a legal determination.<sup>43</sup>

The U.S. Supreme Court decision in *Cardoza-Fonseca* emphasized that “[o]ne can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.” The Court, in dicta, went on to cite favorably a leading authority:

Let us ... presume that it is known that in the applicant's country of origin every tenth adult male person is either put to death or sent to some remote labor camp.... In such a case it would be *only too apparent* that anyone who has managed to escape from the country in question will have ‘well-founded fear of being persecuted’ upon his eventual return.<sup>44</sup>

You should consider whether a preponderance of the evidence shows that a reasonable person in the applicant’s circumstances would fear persecution.

#### 4.8 Significant Possibility

Neither the statute nor the immigration regulations define a *significant possibility*, and the standard is not discussed in immigration case law. RAIO officers apply this standard in the context of credible fear determinations done in expedited removal cases and interdictions at sea. A credible fear of persecution or torture is defined as a “significant

<sup>43</sup> *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-591 (BIA 2015).

<sup>44</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440, 107 S. Ct. 1207, 1213, 1217 (1987)(emphasis added); citing A. Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).



possibility” that the applicant could establish eligibility for asylum or for withholding of removal or deferral of removal under the Convention Against Torture.<sup>45</sup>

The legislative history behind the adoption of the “significant possibility” standard in these contexts indicates that the standard “is intended to be a low screening standard for admission into the usual full asylum [or overseas refugee] process.”<sup>46</sup> On the other hand, a claim that has “no possibility of success,” or only a “minimal or mere possibility of success,” would not meet the “significant possibility” standard.

While a mere possibility of success is insufficient to meet the credible fear standard, the “significant possibility of success” standard does not require the applicant to demonstrate that the chances of success are more likely than not.<sup>47</sup> An applicant will be able to show a significant possibility that he or she could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture if the evidence indicates that there is a substantial and realistic possibility of success on the merits. As such, the standard used in credible fear determinations is necessarily lower than that used in asylum or reasonable fear adjudications. For additional information about the requirements for credible fear determinations, see Asylum Training module: *Credible Fear*.

## 5 METHODOLOGICAL APPROACH

### Gather the Evidence

You will need to gather relevant evidence having bearing on the adjudication. This requires that you conduct required background and security checks and carefully review the file, including the application, any written statement(s) by the applicant or witnesses, and any documents submitted by the applicant. Depending on the adjudication, COI may also be important evidence that you will need to gather.

Another way of gathering evidence is by interviewing the applicant and any witnesses; this is required in certain adjudications including refugee and asylum adjudications. At an interview, in addition to the testimonial evidence, the applicant may offer additional documentary or COI evidence. You must accept all evidence that is offered. How to gather testimonial evidence is discussed in the RAIO interviewing modules, in particular *Interviewing – Eliciting Testimony*.

### Determine Materiality

<sup>45</sup> INA § 235(b)(1)(B)(v); 8 CFR § 208.30.

<sup>46</sup> See 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch).

<sup>47</sup> 142 Cong. Rec. H11071-02 (Sept. 25, 1996) (statement of Rep. Hyde) (noting that the credible fear standard was “redrafted in the conference document to address fully concerns that the ‘more probable than not’ language in the original House version was too restrictive”).

You must first determine whether the evidence is material, i.e., whether it would influence the outcome of the eligibility determination because it relates to a required legal element. The elements of eligibility are discussed in the legal modules for each benefit. For example, in refugee and asylum cases, each piece of evidence that you use in determining eligibility should relate in some way to the applicant's eligibility for the benefit sought. This could be evidence that is offered as proof of some element of the refugee definition such as well-founded fear or nexus. It could also be evidence that a bar does or does not apply to an applicant.

### Evaluate the Quality of the Material Evidence

Once you have determined that evidence is material, you must then determine the quality of that evidence.

The quality of each type of evidence is measured in a different way.

- Testimonial evidence: You must decide whether the testimony is credible, and assess its persuasiveness and probative value. This topic is covered in the RAIO Training Module, *Credibility*.
- Documentary evidence: You must determine the probative value of each piece of evidence. In deciding how much weight to afford evidence, you must consider the reliability, relevance, content, form, and nature of each piece of evidence. This topic is covered in the RAIO Training Module, *Decision Making* as well as during discussions regarding fraud and fraudulent documents.
- COI evidence: You must decide whether the information comes from a reputable source that can be independently corroborated. This topic is covered in the RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

Once you have gathered and evaluated the evidence, you should be ready to apply the law to the facts and make a decision. This topic is covered in the RAIO Training Module, *Decision Making*.

## 6 CONCLUSION

Your role as a RAIO officer is to gather and evaluate the evidence of record, applying the appropriate burdens and standards of proof based on the claim before you.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Training Module, *Decision Making*. You will identify the relevant legal requirements of the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, and assign weight to each piece of evidence.

## 7 SUMMARY

### Evidence

Generally, any statement, document, or object that an applicant offers you **must** be considered as evidence. In addition, any COI materials that you discover in your research and any information accessed in relevant computer databases are also evidence.

Common forms of evidence you may encounter in adjudicating claims include:

- Testimonial evidence, including the applicant's testimony during the interview and the testimony of any witnesses he or she may bring to the interview
- Statements by other parties, including affidavits and letters submitted by family, friends, associates, or outside experts
- Travel documents such as passports and refugee travel documents; these also include tickets and receipts from transportation carriers
- Identity documents, which can include government-issued documents such as a national ID card or driver's license, as well as ID cards issued by other entities, such as an employment or school ID, and membership cards for any type of organization (you must distinguish between those identity documents that may be used to prove identity and those that merely establish the applicant's association with the issuing entity)
- Civil documents issued by government agencies, such as birth certificates, marriage certificates, police records, and death certificates
- U.S. Government records, which include the applicant's A-file, among other documents, as well as records stored in any Government database
- Medical evidence, which may include a statement or an affidavit from a physician who has examined the applicant to corroborate a claim of torture, or may be a regularly kept record from a doctor or hospital indicating that the applicant was a patient or received treatment

### Burden of Proof

While the applicant bears the burden of persuading you that he or she is eligible for the benefit that he or she seeks, you, as the trier of fact, have an affirmative duty to elicit information regarding the claim.

### Standard of Proof

The standard of proof specifies how convincing or probative the evidence must be to meet the burden of proof. The preponderance of the evidence is the most common

standard you will apply in adjudications. The applicant must always establish the facts of his or her case by a preponderance of the evidence; that is, that what he or she is asserting as fact is more likely than not true. The preponderance of the evidence standard will apply unless a different standard is specified in the statute.

Other standards that may apply are:

- “Clear and convincing” standard: used in determining whether an asylum application has been filed within the one-year filing deadline
- “Clearly and beyond doubt” standard: used when determining whether a refugee is admissible
- “To the satisfaction of the adjudicator” standard: used when an applicant is subject to the bar to applying for asylum because he or she has been previously denied by an Immigration Judge or because he or she did not file within the one-year filing deadline; used to establish exceptions to those prohibitions
- “Reasonable possibility” standard: used to determine whether an applicant has a well-founded fear of future persecution and in reasonable fear determinations
- “Significant possibility” standard: used in credible fear determinations and protection screenings for applicants interdicted at sea

### **Structured Approach to Evidence**

First, you must carefully gather the relevant evidence having bearing on the adjudication. Once you have all the evidence, you must determine whether each piece of evidence is material to the applicant’s claim and, if so, to which element of the applicant’s claim it relates. A piece of evidence may be relevant to more than one element of the claim. Finally, you must evaluate the quality of each piece of evidence and assign weight to it before making your decision.

PRACTICAL EXERCISES

Practical Exercise # 1

- Title:
- Student Materials:

OTHER MATERIALS

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**RAD Supplement**

**Applicant's Burden**

In the refugee context, the burden is on the applicant to establish eligibility by showing: that he or she (1) meets the definition of a refugee at INA § 101(a)(42); (2) has access to the U.S. Refugee Admissions Program by being a member of a group designated to be of special humanitarian concern to the United States under INA § 207 ; (3) is not firmly resettled in another country; (4) is admissible as an immigrant under the INA, and (5) merits refugee status as a matter of discretion. The refugee definition excludes those who ordered, incited, assisted, or otherwise participated in the persecution of others.

Because refugee applicants seek admission to the United States, INA § 207(c)(1) requires that they establish their admissibility. INA § 207(c)(3) specifies certain grounds of inadmissibility which do not apply to refugees and other grounds that may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The regulations governing overseas refugee adjudications do not explicitly list "mandatory" grounds for denial as is the case in the asylum regulations. Rather, the statute and regulations specify grounds of eligibility, which, if not met will result in

denial. In other words, cases will be denied where the applicants fail to establish that they have access to the USRAP (because they are not within a group designated to be of special humanitarian concern to the U.S.), have been firmly resettled, do not meet the refugee definition by, for example, having assisted or otherwise participated in the persecution of others, and/or are inadmissible.

In the overseas refugee processing context, applicants are generally not expected to provide evidence beyond testimony. Keep in mind that in many refugee interview settings, the refugees are in camps, set apart from the population of the host country and have limited access to resources. Even when they are integrated into the host population, their precarious status and lack of personal resources may make it very difficult for them to access documents from their home country. However, there may be refugee applicants from countries where corroborating documentation may be routinely available, and thus could be required by the adjudicator. In such cases, the evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Refugee Affairs Division HQ will advise its officers when corroborating documentation should be expected of particular refugee applicant populations, and will provide additional guidance about the consideration of documentary evidence during Pre-Departure Briefings prior to each circuit ride.

### RAD Supplement

#### **Testimony by Other Refugee Applicants**

In some cases there will be family members who have applied for refugee resettlement separately from the applicant, or other individuals who have applied for refugee status based on circumstances that are the same as or significantly similar to those of the applicant. Depending on the circumstances of each case, sometimes the statements made in another claim may be used as evidence in the claim before you. For example, in cases where a child is the principal applicant, the testimony of guardians, family members or other individuals with a close relationship to the child may be considered in the adjudication of the child's claim when the child is too young to articulate, e.g., a nexus to a protected ground. *See generally* RAIO Training Module, *Children's Claims*. The record and testimony of other family members on the same or cross-referenced cases may also be considered when, for example, establishing family relationships material to an applicant's access to USRAP. However, a credibility confrontation based on inconsistencies between family members' testimony could violate confidentiality and place the family members at risk of harm. *See* RAIO Training Module,



*Credibility, section 3.1.2 Consistency.*

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

1. Cianciarulo, Marisa Silenzi. "Terrorism and Asylum Seekers: Why the REAL ID Act Is a False Promise", 43 Harv. J. on Legis. 101, at 13 (Winter, 2006).

**SUPPLEMENTS**

**ASM Supplement**

**Applicant's Burden**

In the asylum context, the burden is on the applicant to establish the following affirmative grounds of eligibility: that he or she (1) is eligible to apply for asylum, (2) is a refugee within the meaning of INA § 101(a)(42)(A), and (3) merits asylum as a matter of discretion.<sup>48</sup>

After an applicant has established eligibility for protection based on the refugee definition, his or her burden of proof is satisfied unless there is evidence that a mandatory ground for denial applies. If the evidence indicates that a mandatory ground for denial of asylum applies, *only then does* the applicant have the burden of "proving by a preponderance of the evidence that he or she did not so act."<sup>49</sup>

<sup>48</sup> INA § 208(a)(2); (b)(1)(B)(i); (b)(2)(A)

<sup>49</sup> 8 C.F.R. § 208.13(c); see 8 C.F.R. § 1240.8(d).

**ASM Supplement**

**Must Weigh All Evidence**

“In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record.”<sup>50</sup>

Thus, an applicant’s testimony may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Other evidence of record” may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is but a component of burden of proof, and not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant’s burden of proof that he or she is eligible for protection and merits a favorable exercise of discretion.

If you “determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”<sup>51</sup>

You have the authority to question any witnesses presented by the applicant.<sup>52</sup>

**ASM Supplement**

**Must Meet the Refugee Definition<sup>53</sup>**

The burden of proof is on the applicant to establish that he or she is a refugee within the meaning of INA § 101(a)(42)(A) and that discretion should be exercised favorably to grant asylum or refugee status.

In order to meet his or her burden, the applicant must present evidence that goes to each element of the refugee definition. The applicant must present evidence to

<sup>50</sup> INA § 208(b)(1)(B)(ii). See also *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

<sup>51</sup> INA § 208(b)(1)(B)(ii).

<sup>52</sup> 8 C.F.R. § 208.9(b).

<sup>53</sup> For a more detailed discussion on this topic, see RAIO Training Module, *Refugee Definition*.

establish that he or she is

- Outside his or her country of nationality or any country in which he or she last habitually resided
- Is unable or unwilling to return to that country
- Is unable or unwilling to avail himself or herself of the protection of 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

The applicant must also present evidence establishing that he or she is eligible to apply for asylum.

In order to establish that the persecutor's motivation for persecuting the applicant falls within the scope of the refugee definition, "the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant."<sup>54</sup>

In evaluating nexus, asylum officers should take care to use the "at least one central reason" language in their assessments.

In addition to meeting the refugee definition, and eligibility to apply, the applicant must establish that he or she merits asylum as a matter of discretion and is not subject to any mandatory bars.

### ASM Supplement

#### Past Persecution<sup>55</sup>

If the applicant establishes that he or she suffered past persecution on account of a protected ground, the applicant has met the burden of establishing that he or she is a refugee.

One of the differences between the refugee definition found in the INA and the

<sup>54</sup> INA §208(b)(1)(B)(i).

<sup>55</sup> For a more detailed discussion of this topic, see RAIO Module, *Definition of Persecution, and Eligibility Based on Past Persecution*.

definition in the United Nations Convention and Protocol relating to the Status of Refugees is that the INA definition defines a refugee as someone who either has experienced past persecution on account of a protected ground, or fears persecution in the future.

### Well-Founded Fear

If the applicant has not established past persecution on account of a protected characteristic, he or she must establish a well-founded fear of future persecution on account of a protected characteristic to meet his or her burden of establishing that he or she is a refugee. This burden includes establishing that it would not be reasonable to expect the applicant to relocate within the country of feared persecution to avoid future persecution.

### **Burden Shifting When Past Persecution Found**

While the burden of proof resides with the applicant to establish eligibility for asylum or refugee status, the regulations provide for two circumstances in the exercise of discretion whether to grant asylum claims in which the burden shifts to USCIS. 8 CFR § 208.13(b) calls for a discretionary referral or denial when:

*... an alien [is] found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:*

*(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or*

*(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.*

The burden of proof shifts to USCIS (you, the adjudicator) to show that either condition exists to rebut the presumption of a well-founded fear of future persecution that arises when the applicant establishes past persecution. The applicant has no further burden of proof unless you are able to prove at least one of the two conditions by a preponderance of the evidence.

If you have shown that the applicant has no risk of future persecution, the burden of proof then shifts back to the applicant to demonstrate that he or she should be granted asylum in the exercise of discretion:

- owing to compelling reasons for being unable or unwilling to return

to the country arising out of the severity of the past persecution; or

- because there is a reasonable possibility that the applicant would suffer other serious harm upon removal to that country.<sup>56</sup>

For more information on the burden shift see RAIO Training Modules, *Discretion and Definition of Persecution, and Eligibility Based on Past Persecution*.

### Mandatory Bars

If the evidence indicates that a ground for mandatory denial of asylum (or “mandatory bar to asylum”) or refugee status may apply, then the applicant must establish by a preponderance of the evidence that the ground for mandatory denial does not apply.

Evidence indicative of a possible bar may be produced either by the applicant or by USCIS, but once such evidence is part of the record, the applicant bears the burden of proof to establish that the bar does not apply.

#### *Example*

After conducting an interview the officer found that Xavier was a refugee because he had suffered persecution during the Rwandan genocide. However, the A-file contains evidence that Xavier was subsequently accused by the Truth and Reconciliation Commission of participating in genocidal acts. Xavier would have to show, by a preponderance of the evidence<sup>57</sup>, that he did not commit those acts.

### ASM Supplement

#### **Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts”**

According to the INA, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts.”<sup>58</sup> To give effect to the plain meaning of the statute and each of the terms therein, an applicant’s testimony must satisfy all three prongs of the “credible, persuasive, and ... specific” test in order to establish his or her burden of proof

<sup>56</sup> 8 C.F.R. § 208.13(b)(1)

<sup>57</sup> See section above, Standards of Proof.

<sup>58</sup> INA § 208(b)(1)(B)(ii).

without corroboration.

Section 208(b)(1)(B)(iii) of the INA addresses the “credible” prong of this test. See RAIO Module, *Credibility* and the ASM Supplements to that Module.

The terms “persuasive” and “specific facts” must have independent meaning above and beyond the first term “credibility.” “Specific facts” are distinct from statements of belief. When assessing the probative value of an applicant’s testimony, the trier of fact must distinguish between fact and opinion testimony and determine how much weight to assign to each of the two forms of testimony.

“In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record.”<sup>59</sup>

Thus, an applicant may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Other evidence of record” may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is only a component of burden of proof, not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant’s burden of proof that he or she is eligible for protection (i.e., has established that he or she suffered past persecution or has a well-founded fear of persecution on account of a protected ground) and merits a favorable exercise of discretion.

If you “determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”<sup>60</sup>

#### ASM Supplement

#### **Statements by Other Parties - Testimony by other applicants for protection in their own cases**

Testimony of Other Asylum Applicants: Because of the confidentiality regulation at 8 C.F.R. 208.6, the testimony given by one asylum applicant in support of his or her claim cannot readily be considered in evaluating the request for asylum of

<sup>59</sup> INA § 208(b)(1)(B)(ii). See also *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

<sup>60</sup> INA § 208(b)(1)(B)(ii)

another asylum applicant. This limitation extends to the testimony of family members, even if the testimony may be conflicting. However, the testimony of an asylum applicant appearing as a witness for another asylum applicant would be evidence to consider. There are certain exceptions in the confidentiality regulation that you may want to explore with a supervisory asylum officer. If questions arise in such cases, the supervisory asylum officer should contact Headquarters.

ASM Supplement

**Country of Origin Information (COI)**

You must conduct research and consider available COI. In addition to information submitted by the applicant, you may consider information obtained from: the Department of State, the RAIO Research Unit, international organizations, private voluntary agencies, academic institutions, and any other credible source, which may include reputable newspapers and magazines. 8 C.F.R. § 208.12. For considerations regarding the reliability of sources, see RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.



**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**IO Supplement**  
**There are no IO Supplements**



# U.S. Citizenship and Immigration Services

## **RAIO DIRECTORATE – OFFICER TRAINING**

### **RAIO Combined Training Course**

# **RESEARCHING AND USING COUNTRY OF ORIGIN INFORMATION IN RAIO ADJUDICATIONS**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

**RESEARCHING AND USING COUNTRY OF ORIGIN  
INFORMATION IN RAIO ADJUDICATIONS**

**Training Module**

**MODULE DESCRIPTION:**

This module provides guidelines on the use of Country of Origin Information (COI) in adjudicating immigration benefits, petitions, protection determinations, and other immigration-related requests. Through demonstrations and computer-based practical exercises, you will gain experience in conducting COI research on the Intranet and Internet for use in adjudications.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

You, the officer, will be able to research relevant country of origin information in order to prepare for, interview (where applicable), and adjudicate requests for asylum (including Credible Fear and Reasonable Fear), refugee status, requests for review (RFR), and other non-protection adjudications in the RAIO directorate.

**ENABLING PERFORMANCE OBJECTIVES**

1. Identify the importance of country of origin information in adjudicating requests for asylum, refugee status, and other immigration benefits.
2. Cite to multiple relevant sources of country of origin information.
3. Assess reliability of country of origin sources that are relevant to the adjudication.
4. Explain when it is necessary to cite country of origin information to support a decision.
5. Identify when country of origin information is material to the claim.

**INSTRUCTIONAL METHODS**

- Interactive Presentation

- Discussion
- Computer-based Practical Exercises

**METHOD(S) OF EVALUATION**

- Practical exercise
- Multiple choice exam

**REQUIRED READING**

1. *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000)

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

**ADDITIONAL RESOURCES**

- 1.
- 2.

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR2	Knowledge of the relevant international human rights conventions related to refugees (2)
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR4	Knowledge of the relevant sections of 8 Code of Federal Regulations (CFR) (4)
ILR5	Knowledge of international human rights laws and principles (2)

ILR6	Knowledge of U.S. case law that impacts RAIO (3)
IRK2	Knowledge of the sources of relevant country conditions information (4)
IRK12	Knowledge of techniques and methodology for conducting research (4)
IRK13	Knowledge of internal and external resources for conducting research (4)
TIS2	Knowledge of the ECN/RAIO Virtual Library (4)
TIS5	Knowledge of Westlaw legal research resource (2)
TIS8	Knowledge of other Internet-based research databases and resources (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
T2	Skill in accessing and navigating ECN/RAIO VL (4)
T3	Skill in accessing and navigating USCIS and other government databases (3)
T4	Skill in accessing and navigating Internet-based research databases and resources (3)
DM1	Skill in applying relevant country conditions information to the claim (5)
DM6	Skill in determining materiality of facts, information and issues (5)
TPM5	Skill in managing resources (4)
TPM6	Skill in organizing case and research materials (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
05/10/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	LGollub, RAIO Training
11/23/2015	Throughout document	Fixed links, typos	RAIO Training

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

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

## 1 INTRODUCTION

Country of Origin Information (COI) plays a fundamental role in the adjudication of immigration benefits, petitions, protection determinations, and other immigration related requests. Such benefits include, but are not limited to: applications for asylum or refugee status, requests for review (RFR's), intercountry adoptions, waivers of inadmissibility and humanitarian parole requests. COI provides objective evidence against which documentation in the record and the testimony of an interviewee can be viewed and evaluated. You can also use COI as part of a framework to help identify whether an individual may be eligible for the requested benefit.

The importance of COI is emphasized in the INA at § 207(f), which specifically provides for the training of U.S. officials adjudicating refugee cases, and by regulation at 8 C.F.R. § 208.1(b) *Training of asylum officers*. [RAD Supplement – Introduction; ASM Supplement – Introduction]

The purpose of this module is to provide guidance on the role of COI in RAIO adjudications, namely:

1. How to properly conduct country of origin research
2. How to use COI to prepare for and conduct an interview
3. How relevant COI may be used when determining eligibility

Most of the language, examples and resources contained in this lesson plan are largely protection-centric, as COI research is primarily conducted and relevant in the asylum and refugee context. However, please note that there are circumstances within the RAIO directorate where COI is used in other contexts such as in adjudication of I-601 Waivers of Inadmissibility, Humanitarian Parole requests and

Intercountry Adoptions as well as other IO form types on a case-by-case basis. For example, officers in the Humanitarian Affairs Branch (HAB) may occasionally use COI to confirm or supplement information provided in a humanitarian parole application that the applicant is unable to receive adequate medical care for his or her medical condition in the country of origin. Additionally, in intercountry adoptions requests, the overseas adjudications officer may research COI to verify the types of civil documents available in a particular country such as birth, marriage, divorce certificates, adoption decrees, and police or prison records. The scope of the research and the manner in which it is used in the adjudication may be different from the asylum or refugee context, but the research tools and methods are similar if not the same. The information provided in Sections 4 and 5 of this lesson plan are applicable to COI in all RAIO adjudications.

Additional information on COI for the specific adjudications referenced above is provided in the IO supplement and will also be provided in division specific training for the International Operations Division.

## **2 IMPORTANCE OF COUNTRY OF ORIGIN INFORMATION**

### **2.1 COI Helps You Elicit Relevant Information and Form Reasoned Decisions**

In almost all types of RAIO interviews, COI is essential to properly:

1. Ask questions to fully develop the interviewee's claim.

Equipped with an understanding of COI, you can better identify the most relevant parts of an interviewee's story, and ask specific, informed questions to develop the appropriate parts of the interviewee's testimony. This is especially true when a confused or inarticulate interviewee has difficulty describing his or her claim. In such situations, COI provides you with a frame of reference that enables you to form pertinent questions relevant to the interviewee's claim.

2. Evaluate the objective or factual basis of the claim and eligibility.

Proper use of COI provides a context for analyzing eligibility during the adjudication. For example, COI may be used to evaluate claims of past persecution and enable you to assess more fully the risk of harm to the interviewee if he or she were to return to his or her own country of origin. Additionally, COI helps you identify interviewees who may be subject to a ground of inadmissibility or the persecutor bar. In the asylum context, country of origin information can help you determine whether an exception to the one-year filing deadline may exist.

3. Assess credibility.

COI helps you ask appropriately probing questions to evaluate credibility. For example, COI may prevent you from erroneously finding an interviewee not credible because the interviewee's experiences are foreign to your own experience of how people and governments behave. Familiarity with COI can also help you uncover fraudulent claims.

## **2.2 COI Helps Promote Consistency**

The use of reliable COI promotes consistency in decision-making not only for you, but across USCIS. Basing decisions on reliable, publicly available information promotes accountability and fairness, and prevents arbitrary decision-making. This enables you to further support your analysis and decision. Additionally, proper use of COI helps the decision withstand public scrutiny and/or appeal of an adverse determination.

## **3 ROLE OF COUNTRY OF ORIGIN INFORMATION IN THE REFUGEE AND ASYLUM PROCESS**

It is imperative to consult COI routinely, even when you believe that you are familiar with the current situation in a country. Conditions in many countries are often volatile and subject to rapid change.

### **3.1 Pre-Interview Preparation**

Prior to an interview, review the file to determine the basis of the claim. The resources available for doing pre-interview preparation and research differ depending on whether you are interviewing at a USCIS office, or another location such as a detention center or an overseas processing site. [RAD Supplement – Pre-Interview Preparation; ASM Supplement – Pre-Interview Preparation]

There are many excellent sources of COI readily available, from DHS intranet sources such as RAIO Research Unit products (papers, query responses, News Summaries, RAIO Research Unit Databases, COI on the RAIO Virtual Library, DHS Library, and others), to materials available on the public Internet. The RAIO Research Unit and other sources of COI are discussed later in this module.

### **3.2 Eliciting Testimony at the Interview**

To ask informed questions during the interview, you must be familiar with conditions in the interviewee's country of origin, or if stateless, his or her last habitual residence. You should consider COI to help substantiate each part of your analysis. [RAD Supplement – Eliciting Testimony at the Interview]

#### **3.2.1 Does the Interviewee Meet the Refugee Definition?**

COI can help you to elicit testimony pertinent to the interviewee's eligibility. For example, COI helps you identify groups at risk.

*Example*

The father of an interviewee from country X "disappeared." Soon after, the interviewee's family began receiving anonymous threats, so they fled their country. When you question the interviewee as to whether his father belonged to any groups or organizations, you learn that the father was an active member of a union. Although the interviewee does not fully understand why his father's union membership is relevant to his claim, your knowledge of "groups at risk" in the interviewee's country leads you to properly elicit details from the interviewee about his father's union membership.

COI will also help you evaluate incidents of past harm. If the interviewee fled his or her country as a result of events that are or have been widely reported in the media or by human rights groups, you will have an objective basis to assess the interviewee's claims of past harm.

To evaluate an interviewee's fear of persecution in the future, you must determine whether the interviewee's fears of future harm are well-founded. COI will help you evaluate whether there is a reasonable possibility that the harm feared by the interviewee could actually occur. COI provides an objective basis to make this assessment.

Therefore, knowledge of the legal refugee standard must be supplemented with COI to interview properly and to adjudicate a request for asylum or refugee status fairly, in an informed, objective, and consistent manner.

COI will also help you evaluate whether there is a pattern or practice of persecution directed against members of a particular group to which the interviewee may belong or a group whose situation is similar to his or her own. If the interviewee has not suffered past persecution, but fears persecution in the future by a non-governmental actor, then COI will help you determine whether the persecution that the interviewee fears exists throughout the interviewee's country of origin. If you determine that a non-governmental actor is not capable of persecuting the interviewee on a countrywide basis, keep in mind that COI must be combined with an evaluation of the interviewee's personal circumstances to make a complete evaluation of whether it would be reasonable for an interviewee to relocate to avoid harm. (See RAIO Training module, *Well-Founded Fear*, for additional guidance.)

**3.2.2 Is the Interviewee Credible?**

Often an interviewee has no documentation or witnesses to corroborate a request for an immigration benefit. Country of origin information provides a context for asking relevant questions and evaluating the interviewee's credibility. The more knowledgeable you are about the interviewee's country and any group to which the interviewee claims to belong,

the better you will be able to formulate questions to probe the interviewee's credibility, where appropriate.

Informed questioning may expose inconsistencies and falsehoods in the interviewee's claim. Informed questioning may also help re-establish credibility when something appears inconsistent or implausible at first impression.

**Example**

An interviewee claims to have suffered persecution because of his active participation in a political party in 2009. Because you know through COI research that national elections were held in the interviewee's country in 2009, you know to elicit information about the interviewee's participation in the elections (e.g., whom he supported, whom he opposed, the names of opposition parties, etc.). You can then check this information for consistency with country reports regarding the election.

You must use caution, however, in evaluating an interviewee's lack of knowledge regarding events or organizations in his or her country. There are varying degrees of membership in parties or organizations, as well as varying levels of communication within organizations. For example, an interviewee may be unaware of the clandestine activities of part of his organization due to a high level of secrecy within the organization. Additionally, the interviewee may be from a rural area that news does not easily reach, and the interviewee's viewpoint may be extremely localized. An interviewee's gender, lack of education, or low socioeconomic status may also play a role in the type of country of origin knowledge the individual has or can reasonably be expected to have.

In conducting research based on the information provided by the interviewee, you may discover that the information available generally corroborates the information given by the interviewee, or, in some instances, may directly contradict the information given by the interviewee. This can be used in the credibility determination. (See RAIO Training module, *Credibility* for additional guidance.)

**3.2.3 Is the Interviewee Possibly Subject to a Bar or Ground of Inadmissibility?**

COI is critical in eliciting testimony about potential bars or grounds of inadmissibility. The interviewee's activities may implicate certain grounds of inadmissibility, such as national security, terrorist activity, criminal activity, torture, trafficking, genocide, and particularly severe violations of religious freedom. The interviewee may also be barred from eligibility for having been a persecutor, if you find that the interviewee ordered, incited, assisted, or otherwise participated in the persecution of others. (See RAIO Training modules, *Persecutor Bar* and *Grounds of Inadmissibility*, for additional guidance.)

### *Examples*

- Through COI, you have learned that many students at an interviewee's former university were informants who caused other students to be arrested and tortured. You should elicit information to determine whether the interviewee participated in or assisted in the persecution of others.
- If you know that the military unit to which an interviewee belonged engaged in persecution of others, that knowledge will make you more effective in eliciting the information necessary to determine whether the interviewee is barred as a persecutor.
- If you know that the opposition group to which an interviewee belonged sometimes engaged in terrorist activities, you will be more effective in eliciting the information necessary to determine whether a terrorism-related ground of inadmissibility applies.
- If there is a question as to whether an interviewee may have been firmly resettled, country of origin research will be helpful in learning about the rights conferred by a particular status granted to an individual and whether those rights are honored in practice. This information will provide an objective basis for you to evaluate whether the interviewee has been firmly resettled. (See RAIO Training module, Firm Resettlement, for additional guidance.)
- You should allow the interviewee to explain conditions, events, groups, or other pertinent information with which you are unfamiliar. You should remain open to the possibility that the interviewee is providing information not available elsewhere. This should not be a substitute, however, for conducting COI research before and, when necessary, after the interview. Use the information provided by the interviewee to help direct your research.

### **3.3 Using COI Research in Decision-Making**

During the interview, COI can help guide you in eliciting testimony relevant to an interviewee's eligibility for the requested benefit. After you complete the interview, you must evaluate the testimony provided by the interviewee in light of COI.

When making a decision, COI may play a critical role in evaluating:

- credibility
- claim of past persecution or fear of future persecution (including evaluating the objective basis for fear, e.g. reasonable possibility)
- nexus to a protected ground
- involvement in acts of persecution

- possible firm resettlement in another country
- availability of internal relocation
- bars and/or grounds of inadmissibility

COI may or may not be relevant to a given case in the following ways:

- Country reports may match in detail
- Country reports may corroborate the broad outlines of the claim but not specific details
- Country reports may contradict or refute the claim directly

### 3.3.1 Country Reports May Match a Claim in Detail

It is unusual for COI to corroborate specifically the details of a claim, even a valid claim. Still, this does happen occasionally, in both valid and fraudulent claims.

#### *Example*

An interviewee claims he was founder and editor of an independent daily newspaper in his country. His application includes claims that his paper was the most influential publication in his country, but its critical reporting landed him and his staff in trouble with the government on numerous occasions. His testimony details several arrests of the interviewee, his wife, and other staff members, as well as numerous closings of the paper by the government. The interviewee testifies that the office was eventually burned to the ground and he and his wife were exiled to another country, where they founded another national daily paper. After a military coup in the second country, he and his wife were deported because of their paper's reporting on the military junta that took power.

In the example above, COI reports corroborated the specific detail of the interviewee's claim, including the interviewee's name, the name of the newspaper that the interviewee had founded, and the events he detailed. Therefore, in this instance, the country reports matched the interviewee's claim in detail.

An interviewee's claim may be a very carefully crafted fraudulent account, or a genuine claim. Either way, you must test credibility and establish the interviewee's identity. The above claim would initially appear to be valid; now you must complete the analysis in light of the interviewee's testimony. For example, did the interviewee adequately relate other information that was material to the claim? Was he consistent and detailed about his role as editor and publisher of a daily paper, his experiences in exile, and his own arrests? In addition, because of the prominence of such a figure, it is logical to expect to find some information about him on an Internet search. An Internet search is not always



possible, depending on the resources available at a given interview site, but if you are able to conduct Internet research, does the information available from reliable sources corroborate his story? See Section 4.3 *Reputable Sources for Internet Research* below for additional guidance on conducting Internet research.

### 3.3.2 Country Reports May Corroborate the Broad Outlines of the Claim, but Not the Specific Details

In most cases, available COI will *generally* corroborate an interviewee's claim, but information on the specific details of the interviewee's claim will not be readily available. COI that generally corroborates an interviewee's claim lends credence to the interviewee's story. If the interviewee's own testimony is plausible, detailed, internally consistent, and corroborated in its broad outlines by COI, further corroboration of specific details is not necessary.

#### *Examples*

A Guatemalan interviewee describes how his remote village is the target of an attack by a local Civil Patrol chief. Because the UN monitoring mission has never visited the area, there are no reports of trouble in the region; however country reports generally indicate that members of the Civil Patrol have carried out human rights abuses against political opponents and others. Additional questioning allows the interviewee to give a credible account of a situation in a region previously unmentioned in human rights or news reports - an account that conforms to a pattern of abuses reported in other areas.

Country of origin information indicates that female genital mutilation (FGM)/female genital cutting (FGC) is widespread in a particular country, but more prevalent in the north. An interviewee claims that FGM/FGC is practiced by her ethnic group, which is from the south. Unless, after further research, you uncover specific reports indicating that the interviewee's southern ethnic group does not practice FGM/FGC, you should accept that COI corroborates the interviewee's claim.

### 3.3.3 Country Reports Directly Contradict or Refute the Claim

When you rely upon COI directly to refute an interviewee's claim, you should use at least two reliable sources.

#### **Credibility**

If COI directly contradicts or refutes the interviewee's claim, the interviewee may not be credible.

#### *Example*

The interviewee claimed to have been an active member of a political party since 2001. Multiple country reports establish that the political party was not formed until 2005. Because country reports directly contradict the interviewee's claim, her claim that she was an active member of that party is not credible.

### **Caveat**

The interviewee should always be given an opportunity to address this type of discrepancy since there may be a good explanation for the contradiction – for example, the party may have been formed in 2005 by the merger of several pre-existing parties, to one of which the interviewee belonged. (See RAIO Training module, *Credibility*, for additional guidance.)

### **Objective fear**

If country reports specifically refute an interviewee's claim that he or she is at risk of persecution, then the fear of future harm may not be reasonable, even if the facts the interviewee related are credible. For asylum adjudications you should explain in the decision that country of origin information does not support the interviewee's claim. In such cases, you should cite two or more reliable country of origin reports when explaining that the interviewee failed to establish a well-founded fear. For refugee adjudications, a specific citation is not required (unless the denial is based solely on COI), but it is encouraged when the report is at hand.

### **Example**

An interviewee fears that, as a member of an opposition party, she is at risk of persecution. However, reliable COI indicates that opposition party members freely express their opinions and are a strong force in the government, and indicates that there have been no reports of threats, arrests, or harassment of opposition leaders for many years.

You must be careful to distinguish between country reports that *generally fail to support* a claim and country reports that *specifically refute* a claim.

Country of origin reports do **NOT** refute a claim when:

- Sources do not address the interviewee's situation
- Sources mention some groups at risk (not including the interviewee's) but do not state specifically that only those groups are at risk
- Sources are not relevant to the interviewee's situation in the time frame of the interviewee's past experiences

In *Galina v. INS*<sup>1</sup>, the Seventh Circuit was highly critical of the BIA for its overreliance and misapplication of COI, which did not specifically refute an asylum-seeker's claim.

### 3.3.4 COI neither Corroborates nor Refutes the Claim

The fact that COI mentions **some** events or human rights abuses directed against **some** groups, but does not mention **particular** events or human rights abuses directed against a **particular** group does not mean that the events or abuses did not occur. Sometimes COI focuses on major problems or particular groups in a country, to the exclusion of others. For example, a report may group together several small minorities by making statements such as "other minorities also experience difficulties." In such cases, it is difficult to determine which minorities are having difficulties.

The weight to be accorded a lack of corroboration in COI reporting depends on the particular case. In some cases, the lack of corroboration may not be given much weight, because the claim is very case-specific and the interviewee comes from a country in which it is difficult for human rights monitors to access information.

The lack of corroboration may be given greater weight if the interviewee fears persecution in a country in which reliable human rights information is easily accessed and the interviewee's claim is based on facts that an officer would reasonably expect to be reported, given the broad range of reporting available about a particular country.

A case may arise in which the interviewee alleges the occurrence of events that you would reasonably expect to be able to find in reports. In such cases, the lack of corroborating reports may cast doubt on the credibility of the claim. However, a lack of corroboration should generally not form the sole basis for a negative credibility determination.

### 3.3.5 Interviewee Presents Unfamiliar COI

You may be the first to hear about human rights abuses or other developments in a country. In many countries, reporters and human rights monitors may be impeded from gathering up-to-date information or may practice self-censorship. Human rights monitors, if there are any, may be paying attention to areas in which violations are more widespread.

#### *Examples*

In 1976, shortly after the Indonesian invasion of East Timor, six Australian journalists disappeared. Between 1976 and 1991 there was virtually no on-the-

<sup>1</sup> *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000).

ground reporting of the human rights situation in East Timor because it was deemed too dangerous for reporters or human rights monitors. What information was available came exclusively from refugees fleeing the country.

In Myanmar (Burma) there are many parts of the country where outsiders, including journalists and human rights monitors, are not allowed.

When an interviewee presents information that is unfamiliar to you, you should elicit as much detail as possible about the circumstances surrounding the events described and evaluate this for consistency with the general information that is available about the interviewee's country.

Testimony by an interviewee, even if it presents events unfamiliar to you, may still be found credible if the interviewee's testimony is detailed, consistent, and generally plausible in light of COI. If you have serious doubts about credibility based on lack of available country of origin information, you should discuss the issue with your supervisor, who may in turn contact the RAIO Research Unit for further assistance.

### 3.4 Citations

In the asylum context, COI must be cited in the written decision *if it is relied upon in making the decision*. [[ASM Supplement - Citations](#)] In the refugee context, COI must be cited if it is the sole basis for a denial. In the IO context, when adjudicating Requests for Review, COI should be cited to the extent possible when explaining the basis of your decision.

## 4 SOURCES OF INFORMATION

### 4.1 RAIO

#### The RAIO Research Unit

The mission of the RAIO Research Unit is to provide officers at RAIO with credible and objective information on human rights and COI to support the timely adjudication of interviewees' claims. In addition, as the primary research body of DHS on human rights-related matters, the Research Unit assists other components of USCIS and DHS with research needs in related areas.

To address criticism and concerns that officers were relying on their own subjective concepts of COI in refugee-producing countries, or on reports motivated by foreign policy considerations, regulations were promulgated in 1990 that required the Director of International Affairs to maintain a human rights documentation center. Pursuant to 8 C.F.R. § 208.1(b), the Resource Information Center (RIC), now referred to as the Research Unit, was founded. The Research Unit gathers and makes available COI from a wide variety of governmental and non-governmental sources, including print and broadcast media, academic journals, human rights monitoring agencies, and refugee

advocacy groups. The Research Unit provides information independent of other government agencies to ensure that foreign policy considerations and other non-objective considerations do not play a role in the adjudication of asylum requests. The Research Unit also regularly liaises with COI units in other countries through country information sharing and participation in the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC). The Research Unit provides this information to RAIO staff via the RAIO Research Unit ECN page.

The Research Unit's workload is divided into geographic regions. Currently, there are six geographic regions, each assigned a dedicated researcher. The Research Unit's researchers are responsible for the following:

- Collecting information about their region from a wide variety of sources
- Disseminating information to the field through training, papers, query responses, and other sources
- Helping to coordinate field trainings on COI and research techniques

The Research Unit serves as a resource to field office staff, providing technical assistance, information dissemination, and responses to questions where COI may be difficult to obtain. For questions involving legal issues, the Research Unit coordinates with the Law Library of Congress (LLOC) Foreign Law Specialists who provide foreign and legislative information services upon request. LLOC responses are posted on the RAIO Research Unit ECN and made available to the field.

In addition to compiling and disseminating research, the Research Unit also liaises with RAIO field offices to train staff on conducting research on country of origin and human rights information, and organizes speaker series of subject matter experts.

When specific COI is needed that cannot be found through the recommended search methods, the Research Unit can be contacted to conduct additional research. Queries for information can be submitted to the Research Unit through [RAIOResearch@uscis.dhs.gov](mailto:RAIOResearch@uscis.dhs.gov).

Specific procedures for contacting the Research Unit may vary among the Divisions, and you should follow the appropriate procedure for your specific office. In general, individual officers do not contact the Research Unit directly. In most instances, an officer should first bring any requests for assistance or information to his or her supervisor, who would then contact the Research Unit, if necessary. [RAIO Supplement – RAIO Research Unit], [ASM Supplement – RAIO Research Unit]

### **The RAIO Library**

The RAIO Library, maintained by RAIO Library Services under the RAIO Performance Optimization branch, in coordination with RAIO Research, provides the following resources for RAIO adjudicators:

- The electronic RAIO Library (EOS) is a full text-searchable repository of reference documents and research databases available to RAIO staff worldwide.
- RAIO's physical library houses more than 100 serials and other publications. In addition to hard copies of many reports that are also commonly available on the Internet, the library contains older human rights reports (early 1990s and before) that are not posted on the Internet, academic journals that are accessed on the Internet, and book-length publications on various countries and topics. The RAIO Library is located at 20 Massachusetts Ave. NW, 6th Floor, Washington, DC.

#### **4.2 Public Sources**

Country of origin information is available from many public sources on the Internet. Generally, you will consult publicly available sources to obtain COI. You should use only public sources, as opposed to sensitive or classified information, when citing COI. Sources include:

- Government reports (e.g., U.S. Department of State, UK Immigration and Nationality Directorate, Danish Immigration Service, etc.)
- Intergovernmental reports (e.g., International Organization for Migration)
- Media reports
- Academic journals
- Non-governmental sources, such as:
  - Refugee advocacy groups
  - Human rights monitoring groups
  - Humanitarian aid agencies
  - Election monitoring groups

##### **4.2.1 Multiple Sources**

All COI should be viewed critically and corroborated by multiple sources whenever possible. You should be aware of what a preponderance of the reporting reflects about a certain region or event before drawing conclusions from a single source.

##### **4.2.2 Current and Historical Reports**

In addition to knowledge of current conditions in the countries that refugee interviewees are from, in many instances you will also need information regarding historical events in order to evaluate a claim properly. An interviewee may present evidence of past events that should be examined in light of both current and historical reporting.

When evaluating claims involving very recent events, you must conduct research using the most current information available, especially when conditions are deteriorating in a country. Conditions in a country of origin rarely improve markedly overnight, but they can deteriorate rapidly. However, if you are seeking to corroborate a specific historical incident, you may need to consult earlier sources -- those from the appropriate time period -- to find the information that you need. Overall, it is important to ensure that the research you conduct for interviews is both current and historically relevant to the issues presented.

#### 4.3 Reputable Sources for Internet Research

Some websites specialize in collecting COI or human rights reports from a variety of sources. In addition to the RAIO Library, the sites are excellent places to start your research.

- **Refworld** is the United Nations High Commissioner for Refugees (UNHCR) catalog of country of origin information.
- **ECOI** is the European Country of Origin Information Network, a collection of materials with a focus on information for asylum and refugee status determinations.

There are other country of origin research collections available online. Some are maintained by universities, like the University of Minnesota and the University of Connecticut, and others are privately managed. Whenever you use information from an online collection, you should use only materials that clearly identify the original author and/or publisher.

Other websites publish their own independently researched, primary source materials. These sources can often provide the most accurate accounts of conditions in a particular country.

- **The U.S. Department of State (DOS)** publishes a variety of reports. Though mostly known for its annual Human Rights Reports, the DOS also releases annual reports on religious freedom, general country background information, fact sheets, visa reciprocity, and document availability. The DOS releases periodic topical reports and oversees the Humanitarian Information Unit (HIU) that drafts reports, maps, and statistics about humanitarian crises all over the world. [IO Supplement - Reputable Sources for Internet Research]

- **Human Rights Watch (HRW)** is a leading human rights organization with representatives worldwide. It regularly publishes reports on violations of international human rights.
- **Amnesty International (AI)** is another prominent human rights organization that releases annual and periodic reports with reliable COI.
- **International Crisis Group (ICG)** is a non-governmental organization (NGO) that reports on conflicts and country of origin information around the world.
- **IHS Jane's** is a subscriber-based intelligence service that produces original reports on foreign governments and NGOs. It is accessible through computers on the DHS network.

There are many other organizations that publish reports detailing conditions in foreign countries, or on specific regions or topics. Some have established international reputations for providing reliable information. All organizations and reports should be evaluated independently for reliability. Links to reliable foreign government Internet sources, such as the Danish Immigration Service and the UK Border Agency, can be found in the RAIO Research Unit's Encyclopedia of Internet Resources on the ECN.

Newspapers, periodicals, and online publications can also serve as source material for COI. Most well-known news organizations have standards to ensure accuracy, and publish retractions when mistakes are made. However, you should distinguish between objective news reporting and opinion pieces, as discussed below in *Assessing Source Reliability*.

## 5 RESEARCH METHODS

### 5.1 Assessing Source Reliability

Any source of information is only as useful as it is reliable. A source of information that distorts facts to promote an agenda or routinely makes factual errors should not be relied upon. If a source generally bases its reporting on the facts as agreed upon by a majority of observers, it gains credibility.

Materials supplied by the RAIO Research Unit may be presumed reliable. All other sources should be evaluated carefully.

### 5.2 Evaluating the Reliability of Unfamiliar Sources

There are many issues that should be considered to determine the reliability of an unfamiliar source.

#### 5.2.1 Agendas



You should consider the agenda of a source when evaluating the facts reported by that source. That a source may have a perspective or bias does not mean that it should be assumed to be factually wrong.

***Example***

The New York-based Committee to Protect Journalists has an agenda to protect journalists, but it is this agenda that motivates the organization to compile a detailed list of journalists who have been attacked and imprisoned.

You should look behind the rhetoric and political objectives that influence an organization's effort in order to distinguish between what the organization's agenda is and whether it makes a good-faith effort to present facts in a credible manner.

**5.2.2 Print and Broadcast Media**

COI obtained from media sources should be reviewed with caution, and you should be aware of the potential for distortion of truth by the media due to censorship, manipulation, and lack of expertise.

- Censorship and manipulation – The media in refugee-producing countries and some countries of first asylum that may be experiencing domestic problems, may be inhibited and cautious due to local censorship and to the local media's practice of portraying the government favorably. The squelching of local media coverage of human rights abuses is common in countries where such issues are prevalent. Similarly, manipulation of the media to further political agendas is common in many refugee-producing countries.
- Lack of expertise – It may be difficult to determine whether the underlying facts of a story are accurate because journalists are often unfamiliar with local law, human rights law, and/or the history or political details of certain conflicts. Journalists may fail to look beyond what was presented to them, and often do not have the time or resources to verify all of the information they receive. Therefore, they may misrepresent an issue out of ignorance.

**5.2.3 Considerations for Unfamiliar Sources**

- Is the information generally consistent with other reporting, or can it be otherwise corroborated?
- Does the author employ a research methodology that can be judged? Are quotes cited in context of the entire document from which they are pulled? How close was the author in time and place to the events described?

- Is the tone of the report balanced or does it sound angry or vindictive? While it is important to consider the tone of the report, remember also to look past the rhetoric and try to determine the facts.
- Is there any information available about the group that prepared the report and does such information indicate any bias on the part of the group?
- If the source is an NGO, what is its philosophy?
- If the source is an intergovernmental or quasi-governmental organization, what is its mandate?
- If the source is a newspaper or magazine, what is its political bent?
- If the source is a government source, what is the government's record in the area of human and civil rights? Can its information be corroborated? Does freedom of the press exist? What, if any, foreign policy considerations may be at play that might influence the reporting on a particular country or region?
- If you are evaluating an unfamiliar website, consider the following:
  - What does the URL tell you about the site?
  - Who is the author/publisher of the site?
  - How current is the information on the site?
  - Does the bias of the author/publisher affect the usefulness of the information?
  - Are there other websites/sources that corroborate the information presented?

### 5.3 Research Tips

There are many useful techniques to follow to make the country of origin research process as effective and efficient as possible.

#### 5.3.1 Become Familiar with the Types of Information Available

Due to time constraints, it is imperative that you become familiar with the wide array of sources that are available and how these sources can be used most efficiently. It is also important that you know which sources to consult in different situations. You should know when it is best to consult the Internet, the Intranet, your office library, or the RAIO Research Unit. [ASM Supplement – Become Familiar with the Types of Information Available]

- Use electronic resources to the greatest extent possible because key terms can be searched easily.
- Use search engines to locate information on the Internet.

- Use the Research Unit's Encyclopedia of Online Resources on the ECN to determine which Internet sites are the most relevant to the type of research you are doing.
- Check the Research Products Collection section of the RAIO Research Unit ECN page for relevant postings on the country and topic being researched.
- Consult specialized databases available on the Internet. Information on these databases will not show up in the results from normal search engines. For example, Westlaw is a specialized database that can be searched for news and journal articles that often cannot be found easily on the Internet. There are other specialized databases that you have access to that may be useful, such as Open Source Center (OSC) and IHS Jane's.
- Other specialized databases are maintained by the Research Unit. These databases include the El Rescate Database covering El Salvador, the Guatemalan Military Database, and other country-specific databases.
- The RAIO Research Unit ECN page also contains the RAIO Research Unit's News Summary Bulletins and other articles and reports that are archived from the Internet. These articles and reports pertain specifically to conditions in the country of origin that may impact adjudications.

### **5.3.2 Focus Your Research**

You should keep in mind what specific COI is needed to enable you to make a decision on the case. You should not spend valuable time reading information that is unrelated to the interviewee's claim. This may best be accomplished by first searching key terms on the Internet or other electronic sources of COI. When searching within an electronic document, be sure to use the "find" (Ctrl+F) function to locate the relevant text quickly in the document. It may also be appropriate to consult the Research Unit when you have encountered too much information and cannot synthesize it for your particular needs. The Research Unit can provide assistance in analyzing and clarifying the information gathered.

### **5.4 Know When to Stop**

At minimum, you must have a general understanding of current conditions in the interviewee's country to make a reasoned decision. However, COI will rarely be the only basis for a decision. When a decision is not based primarily or solely on COI, you should conduct sufficient research to establish the general context of the interviewee's claim and to ensure that your knowledge of conditions in the country is up-to-date.

#### **5.4.1 Save and Reuse Your Previous Research Efforts**

Once you have conducted useful research, you should take a few minutes to organize and store your research so that it can be reused in the future if applicable. This can be done by

bookmarking websites (if able), and/or by creating electronic country folders to store research; however, in relying on archived COI, you must update this resource periodically, as needed.

## 6 CONCLUSION

Knowing how to research COI and when to apply it is important in all stages of the interviewing and decision-making process. Familiarize yourself with the resources available to you. If the COI is from an unfamiliar online site, make sure to assess the source for reliability. Country of origin information provides you with objective evidence to assess an interviewee's application for an immigration benefit. The more background country information you have, the better prepared you will be to elicit testimony and to make decisions.

## 7 SUMMARY

### 7.1 Importance of Country of Origin Information

Knowledge of the legal standards of each immigration benefit which you are responsible for adjudicating must be complemented with knowledge of relevant COI in order to adjudicate fairly, in an informed, objective, and consistent manner.

Knowledge of COI is essential to your being able to:

- Elicit relevant information at an interview
- Evaluate whether an interviewee's claim has an objective, factual basis
- Assess the credibility of the interviewee
- Determine overall eligibility fairly

### 7.2 Role of Country of Origin Information in the Refugee/Asylum Interview Process

It is imperative that you routinely consult COI, even when you believe you are familiar with the current situation in a country. Conditions in refugee-producing countries often are volatile and subject to frequent change.

It is the testimony provided by the interviewee at the interview that you must evaluate in light of COI in order to determine an interviewee's:

1. Credibility
2. Claim of past persecution or fear of future persecution
3. Involvement in acts of persecution

4. Possible firm resettlement in another country
5. Admissibility

### 7.3 Sources of Information

- The RAI0 Research Unit
- The RAI0 Library
- Online collections and databases
- Publicly available sources on the Internet

### 7.4 Research Methods

When conducting country of origin research, it is important to consult a variety of sources to gain as comprehensive an understanding of the country as possible. You should be aware of what a preponderance of the reporting says about a certain area before drawing conclusions about conditions in that area from a single source.

1. Consider the agenda, mandate, or political leaning of a source.
2. Can information provided by a source be corroborated by other reputable sources?
3. If using a media source, consider the political bent (pro-government, opposition), the possibility for manipulation, and the expertise of the reporter.
4. If you are evaluating an unfamiliar website, consider the following:
  - What does the URL tell you about the site?
  - Who is the author/publisher of the site?
  - How current is the information on the site?
  - Does the bias of the author/publisher affect the usefulness of the information?
  - Are there other websites/sources that corroborate the information presented?

PRACTICAL EXERCISESPractical Exercise # 1

- **Title:** Country of Origin Research for Refugee Processing
- **Student Materials:** Computer Lab with Internet and Intranet Access

doing targeted country of origin research in preparation for upcoming circuit ride

Please research the following on the country of nationality that you will be interviewing for your upcoming circuit ride:

- Thailand Circuit Ride:
- Burmese interviewees, mostly ethnic Karen and Karenni and Burmese Muslims
- Malaysia Circuit Ride:
- Burmese interviewees, mostly ethnic Chin
- Nepal Circuit Ride:
- Bhutanese interviewees of Nepali ethnicity
- Turkey and Jordan Circuit Ride:
- Iraqi interviewees of Christian, Shia Muslim, and Sunni Muslim religions, employees or associates of USG and its allies

Among the members of your circuit ride group, divide up the following topics for research and 5 – 10 minute presentation to the class:

1. What kinds of individuals have been persecuted in the interviewee's country of origin?
2. On what grounds have they been persecuted in the country of origin?
3. What is the ethnic breakdown in the country of origin?
4. What is the religious breakdown in the country of origin?
5. Identify 2 significant events that have taken place in the country of origin within the past 2 decades (for example: military campaigns, elections, protests, intrastate conflicts, etc.).
6. What kinds of human rights violations and abuses take place against the

- interviewee population in their country of origin?
7. Who are the persecutors in the country of origin?
  8. What countries border the country of origin?
  9. What potential “terrorist organizations” (as defined in INA 212(a)(3)(B)(vi)) exist in the country of origin or among the specific refugee population to be interviewed?
  10. What is the ability of the government to protect refugee interviewee in country of origin/persecution?
  11. Obtain geography/Maps of country of origin that clarify where abuses or groups at risk are located
  12. Collect Information on characteristics particular to the ethnic or religious group, such as location, language, dress, history
  13. Collect information on potential “persecutors” in the country of origin ○
- Conduct research on the status of these interviewees in the country you will be interviewing them in.

**Practical Exercise #2**

There are no student materials for Practical Exercise #2.

**Practical Exercise #3**

There are no student materials for Practical Exercise #3.

- Practical Exercise #4**
- **Title:** Case Study
  - **Student Materials:** Computer Lab with Internet and Intranet Access

Fact pattern:

Interviewee states that she was a math teacher at a rural school in Colombia. Although she has never been especially involved in trade union activities, her close friend – a teacher at the same school – was. Her friend was kidnapped and killed recently by one of the two militant groups fighting in her area, the FARC or the United Self-Defense Forces of Colombia. She is afraid that she will be similarly targeted.

Conducting a quick 10-minute internet search using keywords such as “Colombia” “trade union” “kidnapping” “FARC” and “United Self-Defense Forces of Colombia” you were able to find COI.

How would you utilize this information in the asylum interview to elicit information material to this interviewee’s claim?

1. List lines of inquiry that you would use in the interview.
2. Suppose that, when you asked the interviewee which group she believes kidnapped her friend and colleague, she replied that (based on what she heard) she believes that it was a left-wing, communist group known as the “United Self-Defense Forces of Colombia”. What would be your initial reaction to this response in terms of evaluating interviewee’s credibility? What follow-up questions would you need to ask to determine whether your initial reaction was appropriate? ○

#### **Practical Exercise #5**

After you read *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000), consider what kind of COI reports would have properly supported the BIA’s decision.



**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**RAD Supplement – 1 Introduction**

The importance of country of origin information is emphasized in the INA at section 207(f).

**INA § 207: Annual admission of refugees and admission of emergency situation refugees.**

(f) Training

(1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.

(2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

**RAD Supplement – 3.1 Pre-Interview Preparation**

**Circuit Ride and Interview Preparation**

It is imperative that you routinely conduct country of origin research in preparation for every circuit ride. You may be interviewing interviewees of the same nationality, or interviewees of numerous nationalities at a particular refugee processing location. It is your responsibility to maintain up-to-date knowledge about the country or countries of origin. Having a manageable collection of country reports available for reference will be useful while on circuit ride.

To gather the most useful collection of country reports for a circuit ride, select reports that provide information on the conditions in the interviewee's country of origin around the time of the interviewee's flight from his or her country as well as information on current conditions in the interviewee's country of origin. When refugee interviewee documentation can be accessed in the WRAPS database in advance of a circuit ride, you may ascertain the nature of the refugee claims presented for interview and more effectively focus your research on the most relevant country of origin information. You should learn as much as possible about ethnic groups, religions, political organizations, elections, demonstrations, attacks, locations, timing of events, etc. that are presented in the claims of the refugee interviewees to focus country of origin research prior to the circuit ride.

When the nature of the refugee claims is not known in advance, it is best to bring along reports that are as comprehensive as possible and address the situation of groups at risk in a country. A glossary of political parties and a timeline of events for countries is often a useful reference to have on hand.

**RAD Supplement – 3.2 Eliciting Testimony at the Interview**

Generally, in refugee processing situations, you are interviewing many interviewees from the same country of origin. Often interviewees at a given processing location may have similar types of refugee claims either because they fled the same area within their home country or because they face similar situations of danger. In such situations, draw on your knowledge of COI gained during pre-departure preparation to evaluate these claims, rather than researching each individual case. However, if you encounter a claim that is unfamiliar or unusual in light of known COI, then additional research will likely be necessary.

**RAD Supplement – 4.1 RAIO Research Unit****Country of Origin Research in Washington, DC**

You will be conducting most of your country of origin research while in Washington, DC at the Refugee Affairs Division office. While in Washington, DC, you will be able to access WRAPS records of refugee interviewees scheduled for an upcoming circuit ride. You should ascertain the nature of the persecution claims from the WRAPS database and focus your research on the ethnic groups, religious groups, and political groups that are presented in the claims. Previously adjudicated cases from certain regions and populations may also help you anticipate the types of claims and issues you might encounter. While knowledge of current conditions in a country is always helpful in evaluating refugee claims, country of origin research should also focus on the time frame of the events that caused interviewees to flee when they did.

Maps, glossaries, timelines of events, and comprehensive reports are ideal country of origin resources to take with you on a refugee detail. Searching the Internet is the most common method for you to access COI. However, many resources are not accessible online. The RAIO Knowledge Management Center contains hardcopy reports and lengthier historic and background publications that may be useful.

RAD has also recently developed Adjudicative Aids for the populations most commonly encountered. The adjudicative aids serve as a great starting point for conducting research because they identify the key issues, red flags, and historical events associated with each population. Research on the issues highlighted in the adjudicative aids will help you elicit testimony and assess credibility because you will have more objective knowledge to weigh against the claims of the interviewee.

You will receive a Pre-Departure Training (PDT) prior to each circuit ride. A portion of the PDT addresses general information about the populations that will be interviewed and the issues that often arise during interviews (e.g. grounds of inadmissibility that seem to be common, armed groups known to be associated with a certain population, etc.).

The PDTs often provide country of origin material to the interviewers, either electronically on CDs or as hard copies. However, the PDT is not meant to replace individual research. Dedicate individual time to conduct research. You may discover that the issues are numerous and complex and some sources like human rights reports may take a significant amount of time to review. The COI sources discussed and distributed during PDT should also be available on the Refugee L:\ drive.

### **Country of Origin Research while on Detail**

Generally speaking, there will be limited time and opportunity to conduct country of origin research while overseas. It is good practice to take country reports with you to reference while on detail. Most worksites have very limited access to the Internet, and often the only opportunity to do Internet research while on a refugee detail will be in the hotel or at a nearby Internet café. At times, however, a novel

issue will arise in a case that will require extra research. All such cases should be discussed with one's team leader and each issue may be handled in a variety of ways: you could be permitted time to do the necessary research; the Team Leader could do the research for the case since he or she generally has more readily available access to the Internet; a query could be sent to the appropriate desk officer at RAD HQ; the Desk Officer could in turn pass these requests on to other members of the RAD Policy and Regional Operations (PRO) Branch, to the RAIO Research Unit, or to outside subject matter experts – for example, DoD – and so on.

As throughout the course of a trip you perform more interviews with the same or similar populations, certain issues may come up repeatedly or you may become aware of particular gaps in your knowledge about country-specific issues that surface regularly in testimony. Thus, you may benefit from conducting additional research on particular issues at intervals throughout the course of a trip, if time permits.

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**ASM Supplement – 1 Introduction**

8 C.F.R. §208.1(b):

The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, torture of persons in other countries, and other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

**ASM Supplement – 3.1 Pre-Interview Preparation**

**When conducting an interview in a USCIS office with ready-access to Intranet and Internet sources**

In preparation for conducting an asylum interview you should review the general government structure, basic political situation, and human rights conditions in the country from which the interviewee fled, or his or her country of last habitual residence. This can be done in a reasonable amount of time by referring to resources available on your desktop computer through the Intranet and the Internet,

as well as an in-house library. Materials gathered and prepared by the RAIO Research Unit, available through the Intranet and in each office's library, can assist in providing the necessary background information. You should develop and maintain an in-depth familiarity with the wide variety of sources so that you can consult the most relevant source in the short time available for pre-interview research.

You should keep in mind that there are some useful sources that may be found only in the local office library. Maintaining a familiarity with the contents of the local office library can enhance your range of useful sources.

If you are unfamiliar with a group to which the interviewee belongs, a word search on the Internet using a reliable search engine, such as Google, or the United Nations High Commissioner for Refugees' Refworld, or of Intranet sources, such as the RAIO Library, may provide basic information that will enable you to ask informed questions at the interview. Bear in mind, however, that information found on the Internet should be evaluated carefully for reliability. Information found on the Internet or via other electronic sources, such as the Intranet or databases, may be out-of-date. In addition, neither the Internet nor other electronic resources can contain information about every group in the world. The fact that a group is not found in the sources consulted does not mean that the group does not exist.

When conducting off-site interviews:

Prior to any circuit ride, you should review files or anticipated claims, when possible, to determine whether they contain claims involving a country or group with which you are unfamiliar. Because many off-site interview locations (such as detention facilities) will not be conducive to conducting country of origin research, you should prepare for these interviews while still in the Asylum Office, where information is accessible. It may be useful to conduct a search of electronic sources for events or groups relating to the claims, print the pertinent pages, and bring them along for the off-site interview. Copies of the annual reports on specific countries done by various human rights and government organizations can be accessed electronically and printed to take to an off-site interview.

### **ASM Supplement – 3.4 Citations**

When you rely upon COI directly to refute an interviewee's claim, you must cite at least two reliable sources.

### **One-Year filing Deadline**

Regardless of the filing date of an application, Asylum Officers are to give all applicants an asylum interview. This includes pre-interview familiarization with general country conditions and post-interview research of specific country conditions relevant to the applicant's situation, where applicable. See also Affirmative Asylum Procedures Manual (AAPM), Section III.P.2. b., November 2007.

When an applicant has established an exception to the one-year filing deadline, Asylum Officers must include a brief analysis of the one-year filing deadline issue in the assessment to grant or refer. The analysis should include the changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances. If the exception(s) established are based on country conditions, country reports must be cited.

The AAPM further instructs that other than for specified exceptions, "an assessment to refer based on the one-year filing deadline must reflect that the officer reviewed country conditions to confirm that there has been no change that materially affects the applicant's eligibility for asylum. When country conditions are relevant to the applicant's asylum eligibility, the assessment must contain at least two country conditions citations to support a finding that the applicant has not established an exception based on changed circumstances. The time period covered by the citations is determined on a case-by-case basis, but generally must cover the period beginning 24 months preceding the filing date, and ending on the date of the decision. It is preferable that the two citations be from different sources; however they may be from the same issuing organization or agency if another source cannot be found. These guidelines have been developed as a minimum safeguard to document that, where required, country conditions have been examined for changed circumstances before an application is referred. Certain cases may require a broader review of country conditions or citations to more than two sources." See AAPM Section III. P.2.c.ii.b, Country Conditions Citations.

#### **Previous Denial of Asylum by EOIR**

In cases involving a previous denial of asylum by EOIR, where the established changed circumstances relate to country conditions, the Asylum Officer must cite to country conditions reports to support the finding. See AAPM, Section III.P.3.f.i.

See Also, Memorandum dated January 4, 2002: *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, issued by Joe Langlois, Director, Asylum Division.

b. Summarize.

It is not necessary to quote extensively from country of origin reports. A summary



of the relevant information relied upon may suffice.

*Example*

Reliable reports indicate that the Egyptian government arrested, detained, and abused Internet bloggers. See: United States Department of State (U.S. DOS). 11 Mar 2008. "Egypt: Country Reports on Human Rights Practices – 2007," Bureau of Democracy, Human Rights, and Labor; <http://www.state.gov/g/drl/rls/hrrpt/2007/100594.htm>, (Accessed 14 Mar 2008).

Note: When using sources in electronic form, where cutting and pasting is available it may be quicker to pick an appropriate selection and quote it directly.

**Be accurate and complete**

The summary must accurately reflect the source quoted. Never use material selectively, take material out of context, distort the overall message of the source, or claim that the source says something that it does not say.

*Example*

A State Department report states that religious freedom is guaranteed by the constitution of country X. The report further states that in practice, violence against Jehovah's Witnesses is common and that the government does not punish perpetrators of such violence. It would be incorrect to make the following statements:

"According to the State Department, religious freedom is guaranteed under the laws of X. [cite]; therefore, it is not reasonable for the interviewee to fear she will be persecuted because she is a Jehovah's Witness."

**Ensure that information is current or chronologically-relevant**

Information relied upon should be current or chronologically-relevant to the events relayed by the interviewee. When citing to an annual human rights report, refer to the latest available edition, unless an earlier version is needed to corroborate past persecution or a specific historical incident.

**ASM Supplement – 5.3.1 Become Familiar with the Types of Information Available**

- Consult your office's library for hard copy reports when information is needed to verify events that occurred prior to the mid-1990s, as these reports are often

not archived on the Internet.

- Consult the RAIO Research Unit, when you are unable to find information on the Internet or in your local library and the information is necessary to arrive at a decision on a case.

#### **ASM Supplement - 4.1 RAIO Research Unit**

The following guidance on contacting the Research Unit is taken from The Asylum Affirmative Procedures Manual, Section II. M. 2, The Country of Origin (COI) Research Section, (p. 38), Revised November 2007:

AOs should discuss with their SAOs the submission of queries to the COI Research Section, as case processing may be delayed in order to complete the research. In addition, AOs should copy their QA/Ts on the submission of queries to the COI Research Section so that QA/Ts are aware of research needs and questions in the office. Queries are best sent by email to [RAIOresearch@dhs.uscis.gov](mailto:RAIOresearch@dhs.uscis.gov). The Asylum Office is responsible for developing a system to distribute to staff COI queries and responses. In addition, the COI Research Section will publish all query responses on the AVL. Access to certain query responses may be limited to certain user groups if the query response contains sensitive information.

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS**

**IO Supplement – 4.4 Reputable Sources for Internet Research**

When adjudicating intercountry adoptions, you should become familiar with the U.S. Department of State’s intercountry adoption site located at [adoption.state.gov](http://adoption.state.gov). Managed by the Office of Children’s Issues (CI) as part of the Bureau of Consular affairs at the Department of State, the website provides up-to-date information about a country’s adoption process, eligibility requirements, adoption statistics, alerts and warnings and more. The USCIS adoption website also contains country updates related to petition processing in certain countries – see [www.uscis.gov/adoption](http://www.uscis.gov/adoption) and select the Country Information tab.

For intercountry adoptions and other IO form types where applicants are required to submit civil documents in support of their applications, the Department of State Reciprocity Tables found [here](#) are very useful. Each country specific page provides detailed information about the government-recognized and authorized entities or agencies within that country for obtaining civic documents such as birth, marriage, divorce certificates, adoption decrees, police, or prison records. The information details the availability of each document, and how and where it can be obtained in that particular country.

Student Name: [Click here to enter text.](#)

<b>RAIO CT Decision Making Exercise</b>		
<b>Elements of the law</b>	<b>Material Facts</b>	<b>Evidence</b>
Outside any country of such person's nationality, or, in the case of a person having no nationality, is outside any country in which such person last habitually resided	<a href="#">Click here to enter text.</a>	<a href="#">Click here to enter text.</a>
unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country	<a href="#">Click here to enter text.</a>	<a href="#">Click here to enter text.</a>
because of persecution or a well-founded fear of persecution	<a href="#">Click here to enter text.</a>	<a href="#">Click here to enter text.</a>
on account of race, religion, nationality, membership in a particular social group, or political opinion	<a href="#">Click here to enter text.</a>	<a href="#">Click here to enter text.</a>



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### RAIO Combined Training Course

## DECISION MAKING

### TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

**DECISION MAKING**

Training Module

**MODULE DESCRIPTION**

This module describes the general factual, legal and analytical considerations involved in constructing legally sufficient decisions.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

Given the field situation in which you have a request to adjudicate, you will be able to identify the relevant legal elements and apply them to relevant evidence to construct legally sufficient determinations and decisions.

**ENABLING PERFORMANCE OBJECTIVES**

1. Identify general writing and style techniques, including USCIS Plain Language principles that improve comprehensibility.
2. Explain the purposes of legal analysis.
3. Distinguish proper from improper factors in legal decision making.
4. Distinguish relevant from irrelevant facts and issues in decision making. Explain the different components of legal decision making.
5. Construct a legally sufficient argument to support a determination or conclusion.

**INSTRUCTIONAL METHODS**

- Interactive presentation
- Practical exercises

**METHOD(S) OF EVALUATION**

- Written Examination
- Practical Exercise Exam

### REQUIRED READING

- 1.
- 2.

#### Division-Specific Required Reading - Refugee Division

#### Division-Specific Required Reading - Asylum Division

#### Division-Specific Required Reading - International Operations Division

### ADDITIONAL RESOURCES

1. Divine, Robert C., Acting Deputy Director, U.S. Citizenship and Immigration Services, Memorandum to Office of Domestic Operations; Office of Refugee, Asylum, and International Operations; and Office of National Security and Records Verification, *Legal and Discretionary Analysis for Adjudication* (May 3, 2006)
2. Administrative Procedure Act, 5 U.S.C. § 557(c)
3. 8 C.F.R. §§ 208.9, 208.19
4. 8 C.F.R. § 207.7(g)
5. Yule Kim, Legislative Attorney, American Law Division, Statutory Interpretation: General Principles and Recent Trends, CRS Report for Congress, (August 31, 2008) available at <http://www.fas.org/sgp/crs/misc/97-589.pdf>.
6. M.H. Sam Jacobson, *Legal Analysis and Communication* (2009).
7. Templin, Benjamin A., LawNerds.com, *Part 2: Learn the Secret to Legal Reasoning* (2003), <http://www.lawnerds.com/guide/irac.html>.

#### Division-Specific Additional Resources - Refugee Division

#### Division-Specific Additional Resources - Asylum Division

#### Division-Specific Additional Resources - International Operations Division



**CRITICAL TASKS**

SOURCE:

Task/ Skill #	Task Description

## SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
02/06/2013	Entire Lesson Plan	Lesson Plan published	RAIO Training
05/10/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	LGollub, RAIO Training
11/23/2015	Throughout document	Corrected links and minor typos	RAIO Training

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

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

## 1 INTRODUCTION

As an officer in the RAIO Directorate, you will make different types of eligibility decisions. Your decisions must be made and communicated in a legally sound, professional, and comprehensible manner. For this reason, you should become familiar with the processes used in legal decision making. Even where your decisions will not result in a written explanation of eligibility, following these processes will assist you in preserving clarity and quality in the adjudication process.

This module provides an overview of the analytical processes for making eligibility determinations. The module does not provide the legal criteria for making such determinations. Instead, the RAIO Training Modules and the division-specific training materials constitute primary field guidance for all officers who make legal eligibility decisions for the RAIO Directorate.

## 2 GENERAL CONSIDERATIONS

Each decision you will make involves the life of an individual. Although you may be under time constraints to complete a decision, each decision you make is an important one and cannot be made lightly. You have a duty to be a neutral, unbiased adjudicator and to give adequate and appropriate consideration to every decision you make.

### 2.1 Definition of Analysis and Legal Analysis

Dictionaries have several definitions of "analysis," all of which involve the breaking down of a complex whole into separate parts for study.

Legal analysis breaks down a determination that an applicant does or does not qualify for a benefit requested into short explanations and conclusions that reveal how you

reached this determination. Legal analysis makes clear to others the rationale behind your determination.

## 2.2 Every Adjudication Involves Legal Analysis

Legal analysis confirms what facts a petitioner or applicant (USCIS “customers”) must establish in order to prove eligibility under the law, and then assesses whether those facts have been established. Sometimes you will adjudicate benefits that do not call for a written explanation of your analysis; however, you should still engage in a careful legal analysis in every case in order to accurately determine each customer’s eligibility for the benefit requested.

You have a duty to follow the law as it is set forth by statute, regulation, policy guidance, precedent decisions, and the USCIS Office of Chief Counsel. You cannot develop your own standards on the basis of what you think the law should be.

## 2.3 Case-by-Case Basis

There are no “magic formulas” to determine whether or not an applicant is eligible for an immigration benefit. Although many claims are similar, they are never identical, and each applicant is unique. Therefore, each request must be evaluated on its own merits.

You should be mindful of the facts of each particular case without allowing previous cases to unduly influence your decision-making. For example, when adjudicating asylum or refugee claims, the fact that one applicant has suffered severe persecution should not prevent you from finding that another applicant, who suffered less severe harm, also suffered persecution. Likewise, a parole applicant who demonstrates a particularly compelling urgent humanitarian need for parole should not prevent you from finding urgent humanitarian need in less compelling cases. Each case must be analyzed on its own facts.

Although each of your decisions must be made on a case-by-case basis, you should strive for consistency in applying the law from one case to another.

## 2.4 Appropriate Considerations

When making a decision, you must consider all relevant evidence and give that evidence the appropriate weight due to it.<sup>1</sup> What is relevant, however, will depend on what benefit the applicant is requesting and what the applicable law indicates he or she must establish in order to prove eligibility for that benefit. [[ASM Supplement](#)]

## 2.5 Inappropriate Considerations

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<sup>1</sup> See RAIO Training Module, *Evidence*.

- Similarities or differences with other cases
- Foreign policy considerations:
  - That the applicant is from a country whose government the United States supports or with which it has favorable relations
  - That the United States government agrees or disagrees with the political or ideological beliefs of the individual
- Your personal opinions and beliefs
  - That you may disagree with the applicant's political ideology
  - That you may not have the same religious beliefs, sexual orientation, or cultural norms
  - Preconceived notions that applicants from a particular country are or are not truthful
  - Personal experience from living or traveling in an applicant's country

(This can help you form lines of questioning, but does not substitute for objective country of origin information)
- Reports on the incidence of fraud by applicants of the same nationality

You will receive information and briefings on fraud and the use of fraudulent documents. This can provide very useful information you can use when interviewing an applicant and reviewing evidence. You should be careful, however, not to raise the standard of proof for an applicant based on incidences of reported fraud for that nationality.

## 2.6 Quality and Quantity

Both quality and quantity are priorities in decision making for the RAIO Directorate. You may sometimes find it difficult to balance these priorities when under time constraints. For example, when doing protection work, you may be unable to research every unfamiliar detail of an applicant's claim, ask every question you might like to ask during an interview, or read all available country of origin reports. You will be required to work within designated timeframes, however, as delays can have negative repercussions for the immigration process, as well as for applicants and their families. It is therefore imperative that you train yourself to identify and focus on the critical legal and factual issues. Doing so will enable you to know when to stop—that is, to know when you have gathered enough evidence to render a decision. This is only part

of the picture, however. You must also become skilled at making well-reasoned, legally sufficient decisions supported by the evidence you have gathered.

## 2.7 The Purpose of Legal Analysis

Legal analysis promotes and ensures timeliness and quality in the decision making process in the following ways:

### *Ensures that Decisions Are Based on Appropriate Factors and the Correct Application of the Law*

The process of explaining a decision encourages you to examine the facts and applicable legal standards and discourages you from jumping to conclusions or relying on “gut feelings.” This process safeguards applicants with genuine claims while prevents others from erroneously being granted relief.

### *Allows for Review that Enhances Quality*

Written legal analysis conveys to the reviewer -- most often your supervisor or someone from quality assurance locally or at headquarters -- the reasons behind your decision. This allows the reviewer to determine if you properly applied the law in your decision and ensures you make consistent and quality decisions.

### *Adds Transparency to the Decision-Making Process*

Written decisions serve to inform USCIS “customers” about the adjudication of their case. Whether part of a written decision or encompassed in a properly completed adjudication form, the rationale for your decision should be set forth so that the customer and any reviewer (such as your supervisor, headquarters, the Administrative Appeals Office (AAO), the Board of Immigration Appeals (BIA), Immigration Judges (IJs), and the federal courts) can understand the rationale for the decision.<sup>2</sup>

### *Provides a Meaningful Opportunity to Respond*

Clear legal analysis can also explain to the applicant why you intend to deny or have denied the applicant’s request for relief. The applicant is then in a much better position to formulate a relevant response or rebuttal that specifically addresses the shortcomings or concerns you have identified. If the applicant understands the reason(s) behind your decision, the applicant can address your specific concerns, rather than merely reiterating the facts already presented, hoping to cover all bases.

## 3 THE LEGAL DECISION MAKING PROCESS

When determining eligibility for a benefit:

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<sup>2</sup> See RAIO Training Module, *Evidence*.



- Know the law to be applied
- Break the law into its elements
- Identify the evidence in the claim
- Evaluate the evidence to determine the facts
- Apply (the elements of) the law to the facts to explain your decision

### 3.1 Begin by Knowing the Law to Be Applied

Before adjudicating, you must understand the law involved. Start by reviewing the relevant statute, regulation, policy guidance, and/or precedent decisions to identify the law that you will be applying. If you are using a template or shell, be sure that it is current.

#### Mandatory vs. Permissive Language

- Mandatory Language: Shall, Must, Required, And
- Permissive Language: May, Either, Or

Seemingly little words can mean a lot, such as those shown above. Their presence can affect how and when the law is to be applied. As in everyday English, the use of the conjunctive “and” in a list ordinarily means that all of the requirements listed must be satisfied, while use of the disjunctive “or” means that only one of the requirements listed need be satisfied. The use of “shall” and “may” also mirrors common usage; ordinarily “shall” is construed as mandatory, and “may” as permissive. These words should also be read in their broader statutory context, in order to determine whether the overall legal directive itself is mandatory or permissive.

The example below illustrates the use of mandatory and permissive terms in the definition of the “disappearance of both parents” under 8 C.F.R. 204.3(b) for orphan cases:

1. both parents have unaccountably or inexplicably passed out of the child's life;
2. [both parents'] whereabouts are unknown;
3. there is no reasonable hope of [both parents'] reappearance; and
4. there has been a reasonable effort to locate [both parents] as determined by a competent authority in accordance with the laws of the foreign-sending country.

The placement of “or” in element 1 indicates that either basis for the parents’ passing from the child’s life will satisfy this particular element (i.e., the parents’

passing can be unaccounted for *or* inexplicable). The placement of “*and*” after element 4 makes it clear that all four of the elements must be present in order to satisfy the legal requirements and establish the “*disappearance of both parents.*”

### 3.2 Break the Law into its Elements

Next, break up the law into its individual elements. The law you apply may follow one of three basic formulas:

1. a legal “test” to be met
2. a set of “factors” to be considered
3. an analytical “framework” to be followed

Keep in mind that these formulas are not mutually exclusive. In fact, it is not uncommon for a particular law to consist of several elements (and even sub-elements), each containing one or more of these formulas. That is, a law may be made up of several elements, and each element could contain a test, a set of factors, or an analytical framework.

#### 3.2.1 A Legal “Test” to Be Met

The law you apply may indicate that all of the enumerated elements must be satisfied, or it may indicate that the existence of one, or some, of them will suffice.

##### *Example*

The Immigration and Nationality Act (INA) defines “stepchild” as an unmarried person under 21 years of age, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.<sup>3</sup>

Required elements of the test to be met:

- unmarried person
- under 21 years of age
- a marriage creating the status of stepchild for this person has occurred
- person had not reached the age of 18 years at the time of such marriage

##### *Example*

You are adjudicating a Form I-600 Petition to Classify Orphan as an Immediate Relative (“orphan petition”) pursuant to INA § 101(b)(1)(F). An

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<sup>3</sup> INA §§ 101(b); 101(b)(1)(B).

issue in the case before you is whether the child beneficiary is an orphan due to the disappearance of his parents.

The Code of Federal Regulations at 8 C.F.R. § 204.3(b) defines “disappearance of both parents” as follows:

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(b) Broken into its Essential Elements:

- Both parents have unaccountably or inexplicably passed out of the child's life;
- [both parents'] Whereabouts are unknown;
- There is no reasonable hope of [both parents'] reappearance; and
- There has been a reasonable effort to locate [both parents] as determined by a competent authority in accordance with the laws of the foreign-sending country.

### 3.2.2 A Set of “Factors” for Consideration

Alternatively, the law may identify a number of factors to weigh or consider when making a particular legal determination. The law may specify that some factors should be given more weight than others, or that each factor is to be evaluated equally. Either way, you must indicate which (if any) factors exist in the case. Often, the law requires you to engage in a “balancing test” or to consider the “totality of the circumstances.”

#### *Example*

Courts have identified various factors for consideration when evaluating whether past threats made against an asylum or refugee applicant constitute persecution. These factors include:

- Does the persecutor have the means to harm?
- Has the persecutor attempted to act on the threat?
- Is the nature of the threat itself indicative of its seriousness?

- Has the persecutor harmed or attempted to harm the applicant in other ways?
- Has the persecutor attacked, harassed, or threatened the applicant's family?
- Has the persecutor executed threats issued to others similarly situated to the applicant?
- Did the applicant suffer emotional or psychological harm as a result of the threat(s)?<sup>4</sup>

### 3.2.3 Following An Analytical "Framework"

The law may also provide a systematic, step-by-step approach that you must follow when analyzing a particular legal issue. To make a proper determination, your legal analysis should reflect that you engaged in each of the steps outlined and did so in the order indicated.

#### *Example*

*Matter of A-G-G*<sup>5</sup> provides a four-step framework that must be followed in order to properly determine whether an asylum applicant is firmly resettled.<sup>6</sup> This analytical framework consists of the following:

- **Step One:** Your burden to present *prima facie* evidence of an offer of permanent resettlement
- **Step Two:** If there is *prima facie* evidence, it is the applicant's burden to rebut such evidence
- **Step Three:** You weigh the totality of the evidence and make a determination whether the evidence of an offer of firm resettlement has been rebutted
- **Step Four:** If you find the applicant was firmly resettled, the burden shifts to the applicant to show an exception applies.

A law is typically comprised of several elements, with each element having one or more sub-elements. Each of these, in turn, may involve a test, a set of factors, or an analytical framework. This may sound complex, but your objective is a simple one.

<sup>4</sup> See RAIO Training Module, *Definition of Persecution and Eligibility Based on Past Persecution*.

<sup>5</sup> *Matter of A-G-G*, 25 I&N Dec. 486 (BIA 2011).

<sup>6</sup> See RAIO Training Module, *Firm Resettlement*.

You need to understand the law you are dealing with, so you can effectively break it into elements and apply those elements to the facts of the case before you. The following example should help clarify this point.

*Example*

*Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987), laid out a four-part test for determining well-founded fear in protection cases. To establish a well-founded fear of future persecution, an applicant must establish all of the following elements.<sup>7</sup>

- Possession (or imputed possession of a protected characteristic)
- Awareness (the persecutor is aware or could become aware the applicant possesses the characteristic)
- Capability (the persecutor has the capability of punishing the applicant)
- Inclination (the persecutor has the inclination to punish the applicant)

Here, we have an overall “test” to be met in order to establish the existence of a well-founded fear. This test involving Possession, Awareness, Capability, and Inclination is sometimes referred to as “PACI.”

The first element of the PACI test is possession. “Possession” consists of sub-elements that an applicant must establish. These include that:

- he or she possesses or is believed to possess a characteristic
- the persecutor seeks to overcome that characteristic, [and]
- the characteristic falls within one of the protected grounds listed in the refugee definition (i.e., race, religion, nationality, membership in a particular social group, or political opinion)

Thus, the element of “possession” involves an additional three-part “test” to be met. Notably, when analyzing the characteristic at issue, further elements comprising the characteristic will likely need to be analyzed (e.g., establishing the existence of a particular social group and the applicant’s membership therein may well involve a combination of test(s), factors and/or an analytical “framework.”)

The third PACI element, “Capability” requires that an applicant establish that the persecutor has the capability to persecute him because he possesses (or is believed to

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<sup>7</sup> See RAIO Training Module, *Well-Founded Fear*.

possess) a protected characteristic. Some factors identified as appropriate for consideration in evaluating capability include:

- whether the persecutor is a governmental entity and, if so, the extent of the government's power or authority;
- whether the persecutor is a non-governmental entity, and if so, the extent to which the government is able or willing to control it; and
- the extent to which the persecutor has the ability to enforce his or her will throughout the country

And while the four-part PACI test is not a strict "framework" in that the sequence of its steps are not rigidly defined, it is often used like one in practice because going through the elements in the order given is both logical and efficient.

### 3.3 Identify the Evidence in the Claim

When adjudicating an application, you may encounter different types of evidence including oral and written testimony and documents.<sup>8</sup> Before engaging in the analysis, review the evidence in the record and, if necessary, conduct country of origin information research or other research to identify the material facts of the case.

**Material facts** are those facts that directly relate to one or more of the required legal elements to be analyzed. They have a direct bearing on the outcome of the decision.<sup>9</sup>

**Relevant evidence** means evidence having a tendency to make the existence of a material fact more or less probable than it would be without the evidence.<sup>10</sup> If the presented evidence does not help to establish or refute a material fact, that evidence is irrelevant. You should not rely on irrelevant evidence in constructing your analysis.

*All* material facts must be considered in your analysis of whether the legal elements have been met. You may never ignore a material fact simply because it makes reaching a decision more difficult or fails to support your opinion about the applicant or his or her eligibility. Similarly, any factual conclusions you draw must be supported by the evidence (or the absence of evidence) in the record. Conclusions that rely on speculative, unsupported, equivocal, or irrelevant evidence should not be part of your analysis.

#### *Example*

Which of the following are *material facts* relating to the "disappearance of both parents," as defined at 8 C.F.R. § 204.3(b)?

<sup>8</sup> See RAIO Training module, *Evidence*.

<sup>9</sup> See Federal Rules of Evidence, Rule 401; see also "Notes of Advisory Committee on Proposed Rules."

<sup>10</sup> Federal Rules of Evidence, Rule 401; see also RAIO Training Module, *Evidence*, section on Types of Evidence.

1. The child's mother is in a refugee camp.
2. No one attempted to locate the child's parents.
3. Records indicate that 18 months ago the child entered the United States without inspection and subsequently returned to the foreign-sending country.<sup>11</sup>

### 3.4 Evaluate the Evidence to Determine the Facts<sup>12</sup>

After identifying the evidence, evaluate it to determine the facts of the claim. You must determine whether any testimony in support of the claim is credible and you must determine whether any documentary evidence is authentic or reliable.

### 3.5 Apply (the Elements of) the Law to the Facts to Explain your Decision

After breaking down the law into specific elements and identifying the material facts to be considered, you are ready to apply the law to the facts and make a decision in the case.

Your analysis should not simply repeat the material facts. Rather, it should incorporate and connect them to the required legal elements.

Compare each individual piece of evidence that is linked to the same material fact. Weighing the different pieces of evidence against each other is a delicate task. You have to determine how pieces of evidence relate to each other. Do they support each other or are they contradictory? Then determine whether enough material facts are supported by evidence to meet the standard of proof for each element of eligibility.

#### 3.5.1 Include the Material Facts, an Explanation, and a Conclusion

Your overall analysis will contain both explanatory statements and conclusions addressing each of the required legal elements. The explanatory statements will include the relevant facts and how the law applies to those facts. Taken together, these will lead to a final determination as to eligibility for the benefit sought.

#### *Examples of complete legal analysis*

Because the applicant was able to live safely in his country for several years without further incident, he failed to establish that the authorities have the inclination to carry out their threats. Therefore, his fear of future persecution is

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<sup>11</sup> 1-material—a parent's whereabouts are not unknown; 2- material—no reasonable effort to locate parents has been made; 3-without more, this is not material – as it is not relevant to a legal element in 8 C.F.R. § 204.3(b) defining “disappearance of both parents.” However, testimony or other evidence might indicate that child was with a parent in the U.S.

<sup>12</sup> See RAIO Training modules: *Evidence; Credibility, Researching and Using Country of Origin Information in RAIO Adjudications; and Fraud.*

not well-founded. (*material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution*)

- The fact that the applicant safely relocated to another part of the country for nearly four years indicates that the guerrillas do not have the inclination or capability to carry out their will on a nation-wide basis. Because the applicant can avoid persecution through relocation and the evidence demonstrates that it is reasonable to expect her to do so, her fear of future persecution is not well-founded. (*material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution*)

#### ***Examples of incomplete legal analysis***

- The applicant was able to live safely in his country for several years after he was threatened. Therefore, the applicant is not eligible for asylum. (*statement of fact and final determination; no analysis*)
- The applicant failed to establish that his fear is well-founded. (*conclusion only*)
- The applicant can avoid persecution within her country. (*conclusion only*)
- The applicant safely relocated to another part of her country. Therefore, she is not eligible for asylum. (*statement of fact, final determination of eligibility; no analysis*)

Being able to determine what to include and what not to include in your decision is important. Include in your decision all of the material facts necessary to come to a conclusion. Do not include facts that are irrelevant to the claim. The reviewer should not be left wondering how you came to your conclusion, or wondering why you included unnecessary facts.

### **3.5.2 Not All Untrue Statements Lead to a Denial**

The fact that an applicant has made untrue statements during an interview raises questions about the veracity of the claim and should be considered. However, not all untrue statements lead to a denial or referral of the application. The untrue statements must be evaluated in light of the totality of the circumstances and all the relevant factors in the case.<sup>13</sup>

#### ***Example***

A Salvadoran citizen told an INS enforcement officer that he was Mexican. When the applicant applied for asylum, he asserted that he was Salvadoran. The Court of Appeals for the Ninth Circuit found that the immigration judge (IJ) erred in

<sup>13</sup> See RAIO Training module, *Credibility*.



finding that the misrepresentation made the applicant ineligible for asylum. The misrepresentation supported the claim for asylum eligibility, because the applicant's misrepresentation to the enforcement officer whom he feared might deport him was consistent with the applicant's testimony that he feared deportation to El Salvador.<sup>14</sup>

Although you should not overly analyze inconsequential evidence that has been submitted, a brief reference to such evidence in your written decision may, in some cases, be useful. Including a brief explanation helps the applicant understand why his submitted evidence was insufficient.

### 3.5.3 IRAC – A Useful Tool to Organize your Analysis<sup>15</sup>

The "IRAC" method is a simple and objective means of organizing your legal analysis in a clear and logical way. In mathematical terms, it is similar to a formula. IRAC has four basic parts:

- Issue
- Rule
- Analysis
- Conclusion

It can be used to organize individual paragraphs or an entire decision. Many USCIS decision templates are based on IRAC.

#### *What is an ISSUE?*

An issue is the legal question presented by the case that must be resolved for a decision to be reached. For example, in a denial, it will be the legal reason that the case is being denied. The issue will arise from the material facts of the case. There can be more than one issue in a case. There will always be a rule to support each issue.

#### *Examples*

- CASE A: You are adjudicating a Form I-130 *Petition for Alien Relative*:  
**ISSUE**: Can a Form I-130 *Petition for Alien Relative* filed by a lawful permanent resident (LPR) grandparent for a foreign-born granddaughter be approved?
- CASE B: You are adjudicating an application for protection from persecution (i.e., an asylum application or application for refugee status):

<sup>14</sup> *Turcios v. INS*, 821 F.2d 1396, 1400-1401 (9th Cir. 1987).

<sup>15</sup> See RAIO Training module, *Reading and Using Case Law*

**ISSUE:** Can past threats, without actual or attempted bodily harm, be sufficiently serious as to constitute past persecution?

**What is a RULE?**

A rule is the applicable law. A rule can come from a statute, regulation, precedent decision, case law, policy memorandum, or other legal authority.

**Examples**

- **CASE A - RULE:** A relative of U.S. citizen (USC) or Legal Permanent Resident (LPR)<sup>16</sup> may be the beneficiary of a Form I-130 Petition for Alien Relative provided she is among the classes of eligible alien relatives enumerated in INA §§ 201(b), 203(a). These provisions identify eligible alien relatives to include:
  - “*immediate family members*,” defined as:
    - the spouse, parent, or child (including adopted orphans) of a U.S. citizen
  - “*family-based preference petition - principal beneficiaries*,” defined as:
    - sons and daughters of USCs;
    - spouses, children, and unmarried sons and daughters of LPRs, and
    - brothers and sisters of USCs;

OR

  - “*family-based preference petition - derivative beneficiaries*,” defined as:
    - dependents (spouse and child(ren)) of principal beneficiaries.
- **CASE B - RULE:** You should evaluate the entire scope of harm experienced by the applicant to determine if he or she was persecuted. U.S. federal courts have identified the following factors for consideration in determining whether past threats are sufficient to constitute persecution:<sup>17</sup>
  - The nature and seriousness of the threat(s);
  - whether the persecutor
    - attempted to act on the threat;

<sup>16</sup> The petitioner in this example was neither a refugee nor asylee, thus, INA §§ 207(c)(2), 208(b)(3) can not apply.

<sup>17</sup> See RAIO Training Module, *Definition of Persecution and Eligibility Based on Past Persecution*.

- attempted to harm the applicant in other ways;
- attacked, harassed or threatened the applicant's family;
- executed threats issued to others similarly situated to the applicant; and
- whether the applicant suffered emotional or psychological harm as a result of the threat(s)

### *What is ANALYSIS?*

Analysis is the application of the rules to the facts. The analysis should include a discussion of the material facts in the record of proceeding and explain how they demonstrate that the issue has been favorably or unfavorably resolved. Analysis is what explains "why," and shows "how" you reached a given conclusion.

### *Examples*

- **CASE A - FACTS:** The petitioner is a lawful permanent resident (LPR) grandparent seeking to petition for her foreign-born granddaughter. The petitioner has presented documentation of the petitioner's LPR status and the claimed relationship. The child has always resided with her married parents in the country of origin; there is no claim of adoption.

**ANALYSIS:** There is no provision under the INA providing for an LPR grandparent to petition for his/her foreign-born grandchild. See INA §§ 201(b), 203(a), 101. Grandchildren of LPRs are not among those listed as "immediate family members," nor are they eligible to receive an immigrant visa as either a primary or derivative beneficiary. Furthermore, there is no indication that the grandparent here has adopted the child in question.

- **CASE B - FACTS:** The applicant has credibly testified that anti-government insurgents controlled much of the countryside near his home. For several years, he volunteered with the local community watch group. Some watch members, including the applicant, reported suspected insurgent activities to regional government officials. The applicant made three such reports, the last of which dealt with the location of an insurgent training camp. Weeks afterward, friends warned the applicant that known insurgents had been asking about him. A month later, insurgents left a letter outside the applicant's home indicating that they knew he was a government supporter and advising him to shut his mouth. The letter also contained a picture of a skull, which the applicant understood to be a death threat. Applicant asserts that several people (one, a watch leader) who received similar letters were later killed. Applicant received two more letters over the next three months: one left on his doorstep, and another tied to a rock thrown through the window of his workplace. The last letter (tied to the rock) warned that the applicant would "not live to report

[them] again.” Upon receiving this letter, the applicant quit his job and went into hiding. He left for the United States two weeks later.

**ANALYSIS:** The applicant received increasingly serious death threats over a period of several months. The threats escalated both in their nature and in the seriousness of the threat made. For example, the initial letters advised applicant to be quiet and only implied physical harm (i.e., a skull image), while the last letter explicitly threatened applicant with assassination. Also, the initial threatening notes were left at the applicant’s home, while the last was delivered to applicant at his work place using violent means that damaged property associated with the applicant. In addition, the insurgents executed comparable threats made against others similarly situated to the applicant. This is evidenced by the fact that others -- including at least one person from applicant’s community watch group -- were killed after receiving similar threatening letters from the insurgents.

### *What is a CONCLUSION?*

A conclusion states the results from the application of the rule to the case facts. It should not introduce new ideas to the decision, but rather should briefly summarize the legal answer to the question posed by the issue in the case.

A conclusion will always elicit the question, “why?” And the “why” should always be explained in your analysis.

### *Examples*

- **CASE A – CONCLUSION:** The Form I-130 Petition for Alien Relative must be denied as a matter of law.
- **CASE B – CONCLUSION:** The threats that the applicant experienced are sufficiently serious as to constitute past persecution.

IRAC can be especially helpful in cases involving multiple issues. In such cases, you should “stack the issues,” dealing with each in turn, so that your analysis is clear and no issue is overlooked. Normally, you should begin with the strongest or most important issue, and conclude with the weakest. This is especially important in denials, where an applicant may seek further review or appeal.

In the absence of a template, a decision with multiple issues generally follows the following structure:

- Introduction and Procedural History
- Case Facts
- Law

- Issue #1 (presented in IRAC format)
- Issue #2 (presented in IRAC format)
- Burden of Proof
- Disposition / Conclusion

## 4 WRITING STYLE

### 4.1 Make Your Written Decision Readable

Individuals who read your decisions should be able to understand them the first time they read them. You have a duty to communicate clearly. Your decisions should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are not only sound principles of writing, these principles are part of U.S. law through the Plain Writing Act of 2010.<sup>18</sup>

Some written decisions are intended for the applicant (e.g., asylum or orphan Notice of Intent to Deny), while others are intended for administrative reviewers who are familiar with the legal standards and terms you use as an officer. Applicants usually have little understanding of the complexities of the law. You must therefore take care when preparing decision documents that will be provided to the applicant. Be sure that the explanations within your legal analysis effectively communicate your ideas using words the applicant will understand.

#### *Example*

It may be sufficient to state in an asylum assessment, “the applicant failed to establish a nexus between the feared harm and a protected ground.” The reviewer of an assessment will know what you mean by “protected ground.” An asylum applicant may have quite a different notion of those two words (picture a piece of land with an armed guard).

In a Notice of Intent to Deny (NOID), it would be better to state, “you failed to make a connection between the harm you fear and a protected characteristic in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).”

You should also avoid using certain legal terminology (“legalese”), such as Latin terms that would be difficult for a lay person to understand.

#### *Example*

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<sup>18</sup> Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (Oct. 13, 2010). For further guidance on plain language principles, see [USCIS’s Plain Language Guide](#) (May 2011).

“Because the applicant failed to establish a well-founded fear of future persecution, *a fortiori*, the applicant failed to establish eligibility for withholding of removal.”

This is better stated using plain language, such as: “Because the applicant failed to establish a well-founded fear of future persecution, he necessarily failed to meet the higher standard of proof required to establish eligibility for withholding of removal.”

#### 4.1.1 Be Focused

Your explanation should not be long and detailed, but rather short and to the point. Avoid repetition. Discuss only facts that have a direct bearing on the case at hand.

#### 4.1.2 Include Objective Analysis, Not Personal Opinions, Assumptions, or Speculation

Your analysis should contain only evidence presented by the applicant, including any relevant statements made by the applicant and other witnesses, and information from reliable sources. Your analysis should be free of your personal opinions, assumptions, or speculations about the applicant or his or her claim.

#### 4.1.3 Use an Explanatory Tone

The purpose of the analysis is to inform, not to argue a point or persuade an adversary. Your analysis should be explanatory, not argumentative in tone.

##### *Examples*

- (*Argumentative*) The fact that the applicant safely relocated to another city in his country where he lived and worked for two years before coming to the United States clearly shows, without a doubt, that it is reasonable for him to relocate within his home country. Therefore, it is manifestly contrary to law to find that the applicant has a well-founded fear of future persecution.
- (*Explanatory*) Because the applicant was able to relocate safely within his country for two years prior to coming to the United States, he has not established a well-founded fear of persecution.

#### 4.2 Use Language that Reflects the Appropriate Legal Standard

Take care to choose words that accurately reflect the law being applied; some words used in common dialogue may have specific legal connotations that may alter the legal meaning of the text.

##### *Examples*

- The word “would” reflects a particular standard of proof in a legal context. It implies a probability that an event will occur (which is the standard of proof for withholding of removal). Compare the following two statements:

“The applicant failed to establish that she would be persecuted if she returned to her country.”

“The applicant failed to establish that there is a reasonable possibility of persecution if she returned to her country.”
- The words “persecution” and “torture” are terms of art, in that they have specific legal meanings. You should not indicate that the harm an applicant suffered is persecution or torture, unless you have concluded that the harm actually meets the legal definition of those terms.

### 4.3 Use Citations Only Where the Source Was Relied Upon in Making a Decision

#### 4.3.1 Citing Case Law

Some RAIO Directorate determinations generally do not contain references to specific precedent decisions. A precedent decision should be cited only if you rely on that decision in formulating a legal conclusion within your decision.

#### 4.3.2 Citing Country of Origin Information<sup>19</sup>

If you rely on a particular country of origin information report in reaching a conclusion in your legal analysis, then that information or report should be cited.

##### *Example*

The applicant claimed to have been threatened because he campaigned and voted for the Freedom Party candidate, Mr. Jones, for President in the 2008 elections. However, country conditions information reports establish that the candidate for the Freedom Party in the 2008 Presidential elections was Ms. Smith.

There should be a citation to the report noted in the above example. The best practice is that the citation should be complete, containing the name of the source, the author, the date and place of publication, the appropriate page numbers, and the URL, if accessed on the Internet. In overseas refugee processing, the citation is only necessary if the country of origin information is the sole basis for a denial and the citation form may be less formal, but should still be complete enough so that the source can easily be checked by a supervisor.

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<sup>19</sup> See RAIO Training module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

You should not rely on anecdotal or other unofficial country conditions information in your written decisions.

## **5 CONCLUSION**

Your adjudication decisions must be made, and where applicable communicated, in a legally sound, professional, and understandable way. Knowing and using proper legal analysis in your decision making will help ensure this goal. Even where a decision does not result in a written explanation of eligibility, adherence to the principles outlined in this module will help you to make quality adjudications that are legally sufficient and clearly communicated. Consistently well-reasoned decisions that rely on appropriate and permissible considerations bolster confidence in, and the integrity of, the RAIO Directorate and the U.S. immigration process.

## **6 SUMMARY**

### **6.1 General Considerations**

Each decision you make is important, as it involves someone's life. You should make decisions in a neutral, unbiased manner according to the law. Using legal analysis, the breaking down of a complex whole into separate parts for study, helps ensure that you give each decision due consideration.

Legal analysis breaks down an eligibility determination into short explanations and conclusions that make clear to others how you reached your final determination. Whether or not you write your decision, you must still engage in careful legal analysis in every case to determine accurately each applicant's eligibility for the benefit.

You must consider the particular facts of each case, and not be unduly influenced by your previous cases. Your duty as an officer is to be neutral and unbiased, and you should strive for consistency in your application of the law from one case to another.

You must apply the law as it is set forth by statute and interpreted by regulation, precedent decisions, and policy guidance. You should consider all relevant evidence and give that evidence the weight due to it. You cannot develop new standards based on what you think the law should be. Nor should your personal opinions and beliefs enter into your decision-making. Other inappropriate considerations include foreign policy concerns, the state of relations (favorable or unfavorable) between the U.S. Government and an applicant's home country, and generalized reports on fraud within the applicant's nationality (although such reports can assist in determining lines of questioning during the interview).

At times, you may find it difficult to balance quality with quantity while under time constraints to complete your cases. For this reason, it is particularly important that you



train yourself to focus on the critical legal and factual issues and to become skilled at making well-reasoned, supportable decisions.

Legal analysis promotes and ensures timeliness and quality by focusing on appropriate factors and the correct application of the law. It allows for review and transparency, and provides a meaningful opportunity, where applicable, for the applicant to respond.

## 6.2 The Legal Decision Making Process

When determining eligibility for a benefit: know the law you are applying, break the law into its elements, identify the evidence in the claim, evaluate the evidence to determine the facts, and apply the law to the facts to explain your decision.

Start your decision making by reviewing the relevant statute, regulation, case, or policy guidance. If you are using a template or shell, make sure that it is current. Determine whether the language in the law is mandatory or permissive and break the law into its elements. The law may follow one of three basic formulas: a legal “test,” a set of “factors” to consider, or an analytical framework to be followed. A law typically consists of several elements, with each element having one or more sub-elements. Each of these in turn may involve a test, set of factors, or an analytical framework. This may sound complex, but your objective is simple: to understand the law.

Next identify the evidence in the claim. In adjudicating an application for a benefit, you may encounter oral testimony, written testimony, and documentary evidence. Before engaging in legal analysis, review the evidence in the record and, if necessary, conduct country of origin research to identify and evaluate the relevant and material facts in the case. You must consider *all* material facts, *i.e.*, those related to the required legal elements, in your decision. You cannot ignore a material fact, nor may you rely on speculative, unsupported, equivocal, or irrelevant evidence in your legal analysis.

Lastly, apply the law to the facts to explain your decision. Compare each individual piece of evidence that is linked to the same material fact. Weighing the different pieces of evidence against each other is a delicate task. Determine if the pieces of evidence support each other or if they are contradictory. Then determine whether enough material facts are supported by evidence to meet the standard of proof. Your overall analysis will contain reference to material facts, explanatory statements, and conclusions. Taken together, these will lead to a final determination on the applicant’s eligibility for the benefit.

The IRAC method is a simple, objective means of organizing your legal analysis in a clear and logical way. It can be used to organize a paragraph or your entire decision.

IRAC has four basic parts:

- Issue – the legal question presented
- Rule – the applicable law
- Analysis – the application of law to facts
- Conclusion – the results of the application of law to facts

### 6.3 Writing Style

Your decisions should be understood the first time they are read. They should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are sound writing principles which ensure compliance with the Plain Writing Act of 2010.

Your decision should be short and to the point. Your analysis should only contain references to the evidence of record and country information from reliable sources.

Use an explanatory tone. The purpose of your analysis and decision is to inform, not to argue a point or persuade an adversary. Choose words that accurately reflect the law and legal standard you are applying. Whenever possible, use plain language rather than legal jargon or "legalese." Choose language the reader will understand.

RAIO Directorate decisions generally do not contain references to precedent case law; however, if you rely on a specific precedent case in formulating your decision, you should cite it. You should similarly cite country of origin information if it is from a reliable source and you rely on it to reach a conclusion within your legal analysis.

PRACTICAL EXERCISES

**OTHER MATERIALS****Other Materials - 1****Adjudicator's Field Manual****General Adjudication Procedures**

The following steps generally apply to all cases processed by the adjudications unit within a service center or local office (including all naturalization and nationality applications). Depending upon local procedures, these steps may be handled by a single adjudicator, or they may be broken down according to task with various tasks being handled by different employees.

...

(e) The Burden of Proof.

The burden of proof in establishing eligibility for an immigration benefit always falls solely on the petitioner or applicant. USCIS need not prove ineligibility.

...

(f) Inspection of Evidence.

The adjudicator can give a petitioner or applicant an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denying any application or petition based on such evidence, USCIS routinely issues a notice of intent to deny (NOID) letter, explaining the nature of the adverse information. The applicant or petitioner may choose to respond in writing or may ask to inspect the record of proceedings prior to submission of a rebuttal.

A NOID must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond may result in a denial. The maximum time to submit a response to a NOID is 30 days. There are no extensions of time beyond the 30 day limit. 8 CFR 103.2(b)(8), (16).

...

(g) Decision: Approval.

If a case is ready for approval, the adjudicator must stamp the action block with his or her approval stamp and approved "security" ink. In some cases, the officer's signature is also required.

Depending upon local procedures, a work sheet for clerical action may be completed, or the adjudicator may update the CLAIMS system to initiate generation of an approval notice to the applicant or petitioner and the attorney of record, if any.

...

(h) Decision: Denial.

If a case is to be denied, the adjudicator must so note the action block and prepare the written denial notice. Denials may consist mainly of "boilerplate" paragraphs explaining the legal basis for the adverse decision or they may be entirely original. [I]n all cases, the specific facts of the individual case must be explained in the decision. If a denial is based on precedent decisions, those decisions should be properly cited in the body of the denial notice.

...

### 10.7 Preparing Denial Orders

(a) General. This paragraph provides basic guidelines to use when preparing a decision to deny an application or petition for a benefit under the Immigration and Nationality Act, or to certify a decision to either the AAO or the BIA.

For many applications and petitions, standardized forms exist, or "canned" paragraphs have been prepared, for assistance in preparing a formal decision. For many other applications and petitions, an individual formal order must be prepared. When using standard forms and "canned" paragraphs, make sure that the language of the form or paragraph is appropriate for the situation involved. It is all too easy to get into the habit of trying to make the situation fit the language of the canned decision. ...

... [omitted: table of standard forms]

Office letterhead may be used for denial notices for application types not specified above.

(b) Elements of a Formal Decision. Use simple language which can be understood by the applicant. Although immigration law can involve complicated legal principles, the decision should be written in clear, simple English so the applicant or petitioner can understand it. Avoid Latin terms and other "legalese" language.

A formal decision should contain five elements, each of which may be one or more paragraphs in length:

- (1) An introduction which describes the benefit being sought
- (2) A description of the criteria which the applicant or petitioner must meet in order to obtain the benefit being sought. This criteria should explain both the statutory requirements and (where appropriate) the discretionary standards and precedents.
- (3) A description of the evidence in the case in question. This includes both the documentation submitted by the applicant or petitioner, and the other evidence which is contained in the case file. If the applicant or petition cannot reasonably be presumed to be already aware of the evidence, he or she must be given an opportunity to rebut the evidence before a decision is made. [ 8 CFR103.2(b)(16)(i) ]
- (4) A discussion of how the evidence in the case fails to meet the criteria for obtaining the benefit. In many cases, there may be more than one reason for the denial, in which case normally all should be discussed. In some cases, however, when the statutory basis for the denial is clear and incontrovertible, a discussion of discretionary issues may be unnecessary.
- (5) A conclusion that informs the applicant or petitioner of the decision to deny and of the reason(s) for it....

...

*[omitted: Notes, appeals forms for inclusion, and Signatory Authority]*

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

USCIS Refugee Affairs Division, *Refugee Application Assessment Standard Operating Procedure (SOP)*, Pilot 11 January 2012

**SUPPLEMENTS**

**RAD Supplement**

**Refugee Application Assessment  
Standard Operating Procedure (SOP)  
[Pilot 01-11-2012]**

**I. BACKGROUND**

The Refugee Application Assessment is a document used to record the refugee application (I-590) adjudication. This tool enables you to confirm the applicant's biographical information, relate the facts obtained during the interview, explain the case analysis, and record your decision. While it has evolved over the years, and different worksheets were developed in various locations, the Refugee Application Assessment becomes the record upon which you base your decisions. The document introduced in this SOP is the most recent version of the worksheet developed by the Refugee Affairs Division, and should be used throughout the world where the worldwide standard is used for refugee adjudications.

**II. PURPOSES**

The Refugee Application Assessment has three main purposes:

**A. Working Aid.** The Refugee Application Assessment is a working aid. It is structured to assist you in conducting a complete and accurate adjudication, and has been organized in a manner that is logical to the interview process, both in the

order of the questioning and the order of the analysis.

**B. Record.** The Refugee Application Assessment is an internal record of the interview and decision-making event. Usually, this document is the only record describing the refugee interview, and it must enable the reader to have a reasonable understanding of what transpired during the dialogue and of your analysis. This document is one of the most important items of record when adjudicating Requests for Review.

**C. Evaluation Tool.** The Refugee Application Assessment acts as a tool for evaluating your performance. This document provides the supervisor with a record of your performance, so that he or she is able to determine the quality of the adjudicator's work product and address any deficiencies that he or she may discover.

### III. GOVERNING PRINCIPLES

There are five important governing principles for the proper use of the Refugee Application Assessment:

**A. Completeness.** You must complete all applicable portions of the Assessment. There are important legal and policy reasons for each item on the Assessment, and although some items may seem unimportant in a particular field environment, they are necessary for the review of your work. Furthermore, an incomplete form could lead a reviewer to conclude that you failed to address the item or were equivocal on the issue. An incomplete Assessment indicates an incomplete adjudication.

**B. Legibility.** You must complete the Assessment in a legible manner. If the Assessment is not legible, it is of little or no value to the reviewing supervisor. An illegible Assessment results in an incomplete record of the adjudication, and if the decision is under challenge, the case could require a new interview.

It is understood that refugee cases must be processed within a short amount of time; however, they are some of the most expensive immigration benefits cases to process. If a decision is challenged and the Assessment is undecipherable or incomplete, the case may require a new interview resulting in a significant increase in the cost of the case.

**C. Professionalism.** You must report the case in a professional manner. The case record should not contain any personal opinions or matters that have no bearing on the adjudication of the case. The Assessment should be prepared in a business-like tone. Inasmuch as this document could be open to examination by numerous persons both within and outside USCIS, particular care should be taken to ensure that your reporting reflects the highest standards of performance.

**D. Legal Sufficiency.** You are bound by your oath to uphold the laws of the United States. Consequently, you must apply the law as it is set forth by statute and



interpreted by regulation and applicable case precedent. You have no authority to develop your own refugee standards or approve or deny an applicant for classification as a refugee other than as INA Section 207(c) dictates. To do so would violate the instructions and policies of the agency. The Assessment should document a sound legal decision.

**E. Consistency in decision-making.** There are no “magic formulas” to determine eligibility for refugee status. Although many claims are similar, they are never identical, and each refugee applicant is unique. Therefore, each request must be evaluated on its own merit. You should be mindful to focus on the facts of each particular case without allowing previous cases to unduly influence the decision-making. For example, the fact that one applicant has suffered severe persecution should not prevent a finding that another applicant, who suffered less severe harm, also suffered persecution. Although each decision must be made on a case-by-case basis, you should strive for consistency in application of the law from one case to another.

...

### C. Section III - APPLICANT'S CLAIM

The purpose of this section is to determine if the *applicant's testimony*, if credible, would establish that he or she is a statutory refugee as defined in INA Section 101(a)(42).

*[omitted: excerpt of Form I-590 – III. INA §101(A)(42)—APPLICANT'S CLAIM]*

The adjudicator should pay particular attention to the instructions that correspond to each question. For example, section III.B.3 states, “If no, explain below.” If the answer to the question was “Yes,” you are not bound to offer any explanation to that question, but may if you believe it is necessary.

In order to establish that an applicant qualifies as a refugee pursuant to INA §101(a)(42), you must select all of the “Yes” options in either Part III-A/Past Persecution or Part III-B/Well Founded Fear of Future Persecution. If you select at least one “No” option in *both* of these sections, the applicant cannot be a refugee pursuant to INA §101(a)(42). Finally, even if you select all of the “Yes” options in Part III-A/Past Persecution, you must elicit applicant testimony regarding well-founded fear and complete Part III-B/Well Founded Fear of Future Persecution.

Note: It is possible to have all “Yes” answers checked and ultimately to decide that an applicant is not a refugee pursuant to INA §101(a)(42) because he or she was found not credible and/or barred as a persecutor.

...

**D. Section IV – BARS AND INADMISSIBILITIES**

The purpose of this section is to consider the various issues that would bar an applicant from being considered a refugee and/or render the applicant inadmissible to the United States. Bars and grounds of inadmissibility should be considered for every applicant on the case, not just the principal applicant. If the persecutor bar or a ground of inadmissibility applies to one of the applicants other than the principal, this should be noted in the explanation space provided.

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

1. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 22: *Decision Writing Part I: Overview & Components, Focusing on the 1st Three Components*, 21 June 2004, available at: [http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57757/Decision\\_Writing\\_Part\\_1\\_Overview\\_and\\_Components\\_31aug10.doc](http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57757/Decision_Writing_Part_1_Overview_and_Components_31aug10.doc)
2. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 23: *Decision Writing Part II: Legal Analysis*, 9 January 2006, available at: [http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57758/Decision\\_Writing\\_Part\\_2\\_Legal\\_Analysis\\_31aug10.doc](http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57758/Decision_Writing_Part_2_Legal_Analysis_31aug10.doc)

**SUPPLEMENTS**

**ASM Supplement**

**Factors that Asylum Officers May Consider**

The determination of whether an individual is eligible for asylum is usually a complex decision that involves consideration of a variety of factors. Factors that may be involved in making the decision are listed below.

Credibility - Evaluation of credibility may require:

- identification of inconsistencies and consideration of explanations for them
- awareness of trauma related symptoms and their potential effect on testimony
- assessment of the applicant's ability to communicate in a second-language

and of potential misunderstandings due to interpretation

- consideration of inter-cultural issues
- evaluation of testimony as it compares to known country conditions
- evaluation of the amount of detail an individual in the applicant's situation reasonably can be expected to provide

Country conditions - An understanding of country conditions may require an evaluation of several aspects of the situation in the country involved, especially when information is sparse or reports are conflicting. Some of the necessary information regarding the applicant's country includes:

- human rights abuses
- structure of the government and roles of the military and/or security forces
- identity of guerrilla forces, separatist groups, and terrorist organizations, and their activities and alliances
- structure and agendas of political organizations or parties
- laws and application of laws
- recent political events

U.S. asylum law - Application of asylum law requires knowledge and understanding of the following:

- statute and regulations
- precedent decisions and their interpretations
- general counsel opinions
- Asylum Division guidance

International human rights law - Application of international human rights law requires knowledge of the human rights protected by international treaties and customary international law, as well as an understanding of the relationship between international law and U.S. law.

ASM Supplement

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

1. International Operations Division Decision Worksheets and decision notice templates are found in the Case and Activities Management for International Operations (CAMINO) and in the various International Operations form-specific Standard Operating Procedures.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;">None</p>
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## Decision Making Practical Exercise

When determining eligibility for a benefit:

1. Know the law to be applied
2. Break the law into its elements
3. Identify the evidence in the claim
4. Evaluate the evidence to determine the facts
5. Apply (the elements of) the law to the facts to explain your decision<sup>1</sup>

The attached file contains information from an application for asylum, under INA section 208. The information provided includes specific statements made by the applicant during the interview as well as a packet of documentary evidence submitted by the applicant. For purposes of determining eligibility for the benefit, the applicant must show that she meets the definition of refugee found at INA §101(a)(42). That is step one.

**In this exercise you are to complete steps three and four above, using the provided form.**

The form already gives you step one and step two. The law to be applied is the refugee definition found at INA 101(a)(42), and the specific elements of the refugee definition are provide in the first column on the form.

Complete the form by identifying what facts have been asserted by the applicant and determine whether or not each fact is related to one or more of the elements you have identified. List the facts in the column to the right of the elements of the refugee definition so that they correspond to the element that they relate to. Facts may correspond to more than element of the law.

Next, identify what evidence is available to help you evaluate the facts. List all discreet pieces of evidence in the column to the right of the facts in the row that corresponds to the facts that it would tend to prove or disprove.

In identifying the facts and the evidence please refer to the discussion of “material facts” and “relevant evidence” found in the lesson plan at page 18. When you identify a “material fact” the table should indicate which element(s) of the law it applies to. When you identify a relevant piece of evidence the table should indicate which “material fact”(s) it applies to.

You do not have to evaluate the evidence to determine the proven facts at this time.

### **EXAMPLE:**

Applicant from Nepal provided a Nepalese passport, written statement, and a hospital record describing his injuries from having been beaten. The applicant’s written statement and testimony state that while growing up Maoists would come to his village and would take over the homes of the villagers, including his family home. The Maoists

<sup>1</sup> See *RAIO Combined Training Course Lesson Module, Decision Making* – pages 12 – 13

would usually stay overnight and sleep wherever they found space inside. During this time the Maoists often tried to convince him to join them. As he grew older, they began to threaten him because he did not join them, telling him that "you have to support the party, and if you don't it will be bad for you." He was never actually told what would happen to him, but was told to "think about what will happen." He knew others who did not support the Maoists had been kidnapped and harmed. When he was old enough to earn money, the Maoists demanded payments from him. Fearing that they would carry out their implicit threats, he paid them four times, over four years. He was not physically harmed until he attended an anti-Maoist political gathering in Kathmandu, after which he was attacked and beaten by Maoists. As a result of the beating he was hospitalized for 5 days. After this he fled Nepal.

Element	Fact	Evidence
because of persecution or a well-founded fear of persecution	<ul style="list-style-type: none"> <li>• Applicant was verbally threatened by Maoists (material)</li> <li>• Applicant was beaten by Maoists (material)</li> <li>• Applicant was hospitalized for treatment of his injuries (material)</li> </ul>	<ul style="list-style-type: none"> <li>• Written statement</li> <li>• Testimony</li> <li>• Medical Documentation</li> </ul>

For the purposes of the exercise below, the applicant's testimony has been split up into specific statements numbered 1 – 14. When indicating applicant's testimony as evidence of a fact, please specify which statement or statements are applicable to which facts (for example, Testimony #2 to refer to testimony about the applicant's parents). Specific facts may be established by more than one specific statement and specific statements may support multiple facts.

Use the Decision Making Exercise form found [here](#). When you have completed the table please save it and upload it to your drop box, naming "[your last name] decision making exercise". Please make certain that you add your name to the document in the appropriate space too.



## Decision Making Exercise – Iraq

The applicant made the following statements at the interview:

1. I am 48 years old, married, and have three children. My family and I are natives and citizens of Iraq. I am Chaldean Catholic, a minority in Iraq that is suffering from widespread persecution. I am afraid of being harmed, kidnapped, tortured, and/or killed if I return to Iraq on account of the threats and the attempts on my life by terrorists and Muslim fundamentalists opposed to my work as a computer and internet service provider. I am also afraid of being targeted solely on account of my Christianity. Terror groups and Muslim extremists have been attacking, kidnapping, threatening, and killing Iraqi Christians throughout the entire country. They have bombed Christian churches in Baghdad and Mosul on several occasions. Until now, the government has been unable to prevent such incidents or punish their perpetrators. The Iraqi security forces cannot adequately defend themselves or their offices throughout the country, let alone defend Iraq's citizens. As a Chaldean Christian, attending church service every Sunday is a central part of my life. I cannot practice my religion without going to church. For example, I cannot partake in the important Sacrament of confession or communion.
2. Both my parents are Iraqi citizens and Chaldean Catholics. I attended primary school in Alqosh, after which my father was transferred to Baghdad to act as a principal at a high school. Thus, I completed my high school education in Baghdad. After high school, I attended the University of Technology, graduating with a bachelor of science in mechanical engineering in 1980.
3. After graduation, I was called to compulsorily military service. I worked as a laboratory technician in the Military Technical College in Baghdad for total three years in separate periods between 1980-1984. I never took part in battle or war. During my time in the military, I received a couple of degrees, a High Grade Diploma in Mechanical Engineering (similar to a master's degree) and a master's degree in sciences from the University of Technology.
4. After my military service ended in 1984, I applied for a job to the Scientific Research Council, in the Ministry of Science and Technology, and was accepted as a researcher at the Astronomy Research Center. I would continue working there until 1992, when I was accepted to the Ph.D. program in Mechanical Engineering. I earned my degree in 1998 and returned to my job and became head of the mechanical department at the Astronomy Research Center.
5. As head of the mechanical department at the Astronomy Research Center, I was making only \$400 a month, which was not enough to provide a good livelihood for my family. So I decided to start a business with my brother and we opened up a computer and internet service

business. It was located in the same building where we both lived. My brother ran the business in the morning and I helped him in the evening and on the weekends.

6. In 1990 I married my wife, also a Chaldean Catholic, and we have first child in 1991. Our second child was born in 1994, and our third and last child was born in 1997.
7. My wife has a Bachelor's of Science in Agriculture Engineering; however, she never worked in her field and chose to stay home and take care of the children. She did, however, volunteer her time to teach Catechism and the Chaldean language at the Parish Church from 1993 until August 1, 2004 under the supervision of the priest, the secretary of Chaldean Patriarchate of Babylon. During the summer holidays, she also taught computer courses at the Church.
8. On August 1, 2004, several churches in Baghdad and Mosul were bombed, killing many Christians. At the time, my family and I had just returned home from mass at Parish Church. The mass at our church ended a little earlier than the other Churches. Luckily, our church was not targeted in those attacks. The bombings were a shock to our Christian community. We stopped attending church service after that because we were afraid. It was difficult for my family and me to miss church services as we were all raised Catholics and were very attached to the Church. My wife had been teaching Catechism and the Chaldean language at the Church since 1993 and my son had been an altar boy since 2000. In addition, by not going to church, my family and I could no longer attend confession or partake in communion and receive the Eucharist, activities which could only take place inside the church in the presence of a priest. Both of these practices are central to our religious faith and are obligations prescribed by our Church. In addition, the Ten Commandments obligate believers to keep holy the Lord's Day, which means that we have to go to church on Sunday.
9. Sometime in May of 2006, our business received a threatening letter that stated that those who worked with the internet were American collaborators and that this was our last warning to stop our internet service. The letter was signed by the Islamic Army in Iraq. I was the one to first read the letter because it was delivered on a weekend and on the weekends I was the one to open up the office. I immediately called some of my friends who owned internet cafés, one of which was located across the street from me, and they told me that they too had received the same exact threatening letter. I immediately closed the shop down for the day, afraid that something is going to happen to our business. Later that month, three internet cafés in Baghdad were bombed, one of which was about half a mile away from my business.
10. On June 3, 2006, I remember it was a Saturday, a bomb exploded in front of our building, which was both our residence and business. I was in the office at the time and my family was upstairs in the apartment. The explosion shattered the windows of our apartment and office, and the shrapnel damaged the inside of the apartment and the office. The lights and electricity went off

immediately. I then ran back into the building and up to the apartment. My family was horrified; at the time of the explosion, my daughter Mariam was using the computer, which was located by the street window. The shattered glass cut her on the arms and forehead. Mariam was in a state of shock and was screaming and weeping. After a while, we calmed her down, and eventually the police came to the building. I gave them a report of what I saw and I told them that I believe that I was the target of the attack because of the threatening letter I received and because of the bombing of the three internet cafés that had received the same threat as me and my brother.

11. After this incident, my brother and I permanently closed down the business. My brother left the country two days after this incident and traveled to Amman, Jordan. I too began to think of leaving the country.
12. Several weeks later my daughter answered a phone call from an anonymous caller who asked to speak with the father of the house. When she asked who he was, he replied, "I am from the Mehdi Army and we will wipe you from the face of the earth." Afraid, my daughter hung up the phone. I was on my way home from my regular work when this happened. As soon as I got home, my wife told me what had happened. They were in a state of panic and acting hysterically. I tried to calm everyone down and told the family that we will leave Baghdad and go to Mosul where my wife's parents were living.
13. I took the family to Mosul and stayed with them until September 1, 2006, when I returned to Baghdad to apply for a visa. When I returned to Baghdad from Mosul, I stayed with my sister Manahal because I was afraid of returning to my apartment.
14. I left Iraq on September 21, 2006, with my family. We flew to the United States.

The following documentary evidence was also submitted

Baptismal Certificate

Chaldean Diocese of Alqosh  
St. George's Parish Church  
Alqosh (Mosul) Iraq

Alqosh 17/11/1958

**CERTIFICATE OF BIRTH, BAPTISM AND CONFIRMATION**

This certifies that [redacted] child of [redacted]  
and [redacted] born in Alqosh, Mosul, Iraq on  
the 4/9/1958 and baptized and confirmed on  
the 17/11/1958.

According to the Rite of the Roman Catholic Chaldean Church  
and as appears from the Baptismal Register of this Church.

The Priest in charge  
R. MORAN S.A.M.

St. George's Church  
Chaldean of Alqosh  
17/11/1958

# Certificate of Iraqi Nationality

(TRANSLATION)



Volume No. 181999/1975

Certificate No. : 364939  
Date : 30/12/1975

Photo  
Affixed  
Sealed

Certificate of Iraqi Nationality

Based on the ascertainment of acquiring by  
(Name) [REDACTED]

Whose Photo is affixed above, the Iraqi  
Nationality according to article (4/A)  
of the law of Iraqi Nationality, he / she has  
been granted this certificate.

-Sgd.-  
Director of Nationality

- 1- Place & Date of Birth of Certificate Bearer Ninevah/1958
- 2- Previous Nationality Iraqi
- 3- Religion Christian
- 4- Identifying Marks None
- 5- Father's Full Name [REDACTED]
- 6- His Birth Place Ninevah
- 7- Mother's Full Name [REDACTED]
- 8- Her Birth Place Ninevah
- 9- Former Nationality of the Father & His Present Nationality Iraqi
- 10- Former Nationality of the Mother & Her Present Nationality Iraqi

Remarks (to be written in Red Ink)

Signature of Certificate Bearer \_\_\_\_\_ (Imprint)  
Left hand finger print.

(625 Pills Rev. Stamp)

TRANSLATED BY Wathiq A. Hindo  
Date: 21 AUG 2004  
WATHIQ A. HINDO

Sworn Translator  
NADIR Bureau for Translation  
Masbah Road Baghdad Iraq Tel: 7196399

وفاق هندو  
مترجم القانوني مهمل  
عضو جمعية المترجمين القانونيين  
مدير ترجمة مكتب ادي وزير العدل  
رقم الهوية 4 / 8 / 81  
المقر: مكتب لغات الترجمة - سوق دجوان  
المنهج - بغداد

University of ... / College of ...  
Custodian of ... / ...  
The signatory is responsible for the ... of the ...

# Marriage Certificate

In the name of Allah the beneficent the merciful

Form No (2)  
File Number: 27/Marriage/90  
Document Number [REDACTED]  
Date 10-16-1990

Republic of Iraq  
Ministry of Justice  
Civil Affairs Court – Alrusafa Branch

“Reformation of the legal system supports the march of the revolution to achieve a society of unity, freedom, and socialism”

## Marriage Covenant

I the judge of the Civil Affairs Court – Alrusafa Branch  
Mr. Mohammed Jamal Al Dine Mohammed recorded the following:

Mr. [REDACTED] and Miss [REDACTED] were both in attendance and proved they are free from diseases based on the attached two medical reports. After verifying their identification and their consent the marriage covenant was established based on a dowry advance ( ) and received ( ).

Based on that the covenant was established and recorded on 10-16-1990

Signature of First Judge  
Mohammed Jamal Al Dine Mohammed

## Civil Status Identification

	Husband	Wife
Certification of Iraqi Nationality	[REDACTED] on 12/30/1975	[REDACTED] on 7/25/1984

# Letter of Recommendation

To whom it may concern  
Sub: Recommendation

I know Dr. [REDACTED] for more than 23 years from the period between 1983 till now. He occupies head of [REDACTED] at the *Ministry of Science and Technology*.

Dr. [REDACTED] is responsible for the research programs in [REDACTED] and especially the [REDACTED] part. He is a practical engineer, respect his work, sincere to his job, highly responsible manager, ambitious and hard working person. I wish to him going well and success.

20.09.2006  
Asad

Dr. [REDACTED]

General Manger Deputy

[REDACTED]  
*Ministry of Science and Technology*

20 /09/2006',

[REDACTED]

Non-Conviction Certificate

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

جمهورية العراق  
مديرية تحقيق الأمانة الجنائية  
مكتب طبع الأصابع  
Republic of Iraq  
C-I-D

No. [Redacted]  
Date: 20/11/2011

الرقم: [Redacted]  
التاريخ: 20/11/2011

شهادة عدم المحكومية  
NON-CONVICTION CERTIFICATE

[Redacted Name]

This is to certify that  
whose photo is affixed above  
has not been convicted for  
any Crime in Iraq

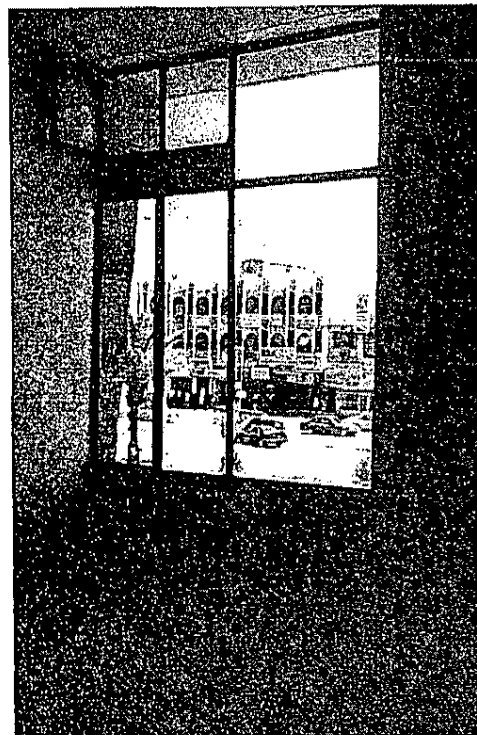
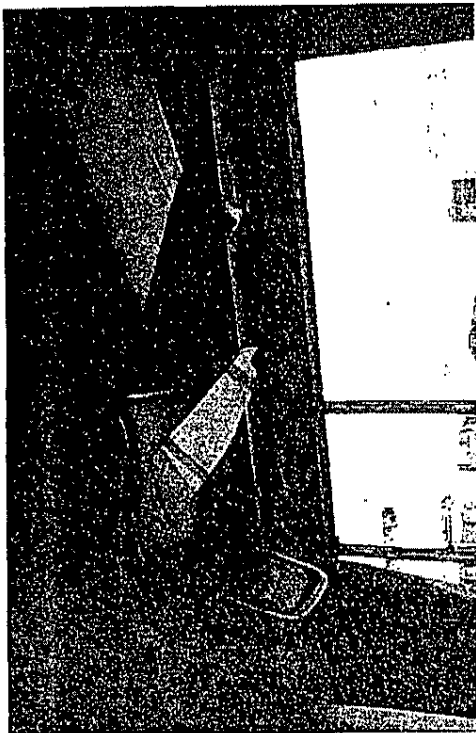
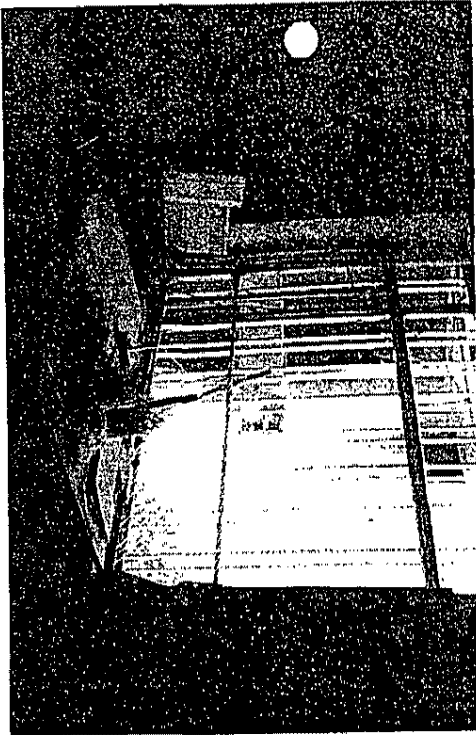
نصلي على ان قسما من صور عود  
المثبتة صورته اعلاه لم يختم اقله  
بأية جريمة جنائية في العتبات

العبد الحقوقي  
منتم سعيد عبد القادر  
مديرية تحقيق الأمانة الجنائية  
Director of criminal  
Identification Department

Stamp: [Redacted]



Photos from Bombing



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# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

**RAIO Combined Training Course**

**DISCRETION**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***DISCRETION**

## Training Module

**MODULE DESCRIPTION**

This module provides guidelines for adjudicating immigration benefits or other immigration-related requests that are subject to the discretion of the Department of Homeland Security (DHS). The module addresses the basis for determining when discretion is warranted and for performing the legal analysis of claims that involve discretion.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

Given a petition or application that requires a discretionary determination, you will be able to weigh discretionary factors properly and articulate your exercise of discretion in a written decision when appropriate.

**ENABLING PERFORMANCE OBJECTIVES**

1. Explain what adjudicative discretion is.
2. Identify the different circumstances that will require an officer to exercise discretion in an adjudication.
3. Apply the positive and negative factors properly in making a decision on a given case.
4. Explain the reasoning for an exercise of discretion.

**INSTRUCTIONAL METHODS**

- Interactive presentation
- Discussion
- Practical exercises

## METHOD(S) OF EVALUATION

Written exam

Practical exercise exam

## REQUIRED READING

1. Divine, Robert C., Acting Director, USCIS. Legal and Discretionary Analysis for Adjudication, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006)
2. Matter of Pula, 19 I&N Dec. 467 (BIA 1987)
3. Matter of Marin, 16 I&N Dec. 581 (BIA 1978)

## ADDITIONAL RESOURCES

Kanstroom, Daniel, Surrounding the Hole in the Doughnut: Discretion and Deference in U.S. Immigration Law, *Tulane Law Review*, Volume 7, Number 3, p. 703 (February 1997).

**Critical Tasks**

Task/ Skill #	Task Description
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)
DM7	Skill in making legally sufficient decisions (5)
DM10	Skill in developing a logical argument to support a determination or conclusion (5)

**SCHEDULE OF REVISIONS**

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/23/2015	Throughout document	Corrected links and minor typos	RAIO Training

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

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

## **1 INTRODUCTION**

Some decisions made by USCIS are mandatory once facts meeting the applicable standard have been established. Other decisions are made in the exercise of discretion after the officer finds facts that establish eligibility.

### **1.1 Decisions That Are Mandatory**

Mandatory decisions involve no discretion, only an inquiry into whether the facts of the case meet the relevant standard. The adjudicator is concerned only with the evidence that establishes eligibility; once the applicant has met his or her burden of proof, the analysis ends. An example of a benefit that is conferred once the applicant establishes eligibility is the approval of Form I-130, Petition for Alien Relative.<sup>1</sup>

### **1.2 Decisions that are made in the Exercise of Discretion**

Although the applicant may have met the burden of proof by showing that he or she is statutorily eligible, statutory eligibility depends on the exercise of discretion. Eligible applicants may be denied a benefit through an officer's exercise of discretion.

#### **1.2.1 Nonexclusive List of USCIS Case Types in which Discretion is Exercised**

- Adjustment of status under Immigration and Nationality Act (INA) §§ 245 and 209(b) (with limited exceptions such as NACARA § 202 and Haitian Refugee

<sup>1</sup> USCIS officers must approve the I-130 Petition for Alien Relative when the qualifying relationship between the petitioner and the alien beneficiary and the individuals' identities have been established. The approved I-130 permits the beneficiary to apply for an immigrant visa from the Department of State. The consular officer then exercises discretion in determining whether to issue the visa. If the I-130 is being adjudicated under INA §245, in the U.S. concurrently with an I-485 application to adjust status, the grant of the I-485 by the USCIS officer would be discretionary.

Immigration Fairness Act (HRIFA)) and creation of record under section 249 (registry)

- Employment authorization (with limited exceptions, such as for asylum applicants)
- Waivers of various inadmissibility grounds and advance permission to return to the U.S., INA §§ 211, 212 and 213
- Extension of nonimmigrant stay and change of nonimmigrant status, INA § 248
- Advance parole and reentry permits, INA §§ 212(d)(5)(A) and 223
- Waiver of labor certification requirement “in the national interest”, INA § 203(b)(2)(B)
- Revocation of visa petitions, INA § 205
- Waiver of joint filing requirement to remove conditions on permanent residence, INA § 216(b)(4)
- Fiancé(e) petitions, INA § 214(d)
- Special Rule Cancellation of Removal for Battered Spouses and Children, INA § 240A(b)(2)(D)
- Furnishing of information otherwise protected by the legalization confidentiality provisions, INA § 245A(c)(5)(C)<sup>2</sup>
- Refugee status, INA § 207
- Asylum, INA § 208

This lesson covers what discretion is, and how it is exercised. As an adjudicator you may have the authority to deny a benefit in the exercise of discretion, but that is not license to deny a benefit for just any reason. As this lesson will explain, there are serious limits on exercising your discretion in making a decision on an application.

## 2 OVERVIEW OF DISCRETION

### 2.1 Definition

As a practical matter, in the immigration context, the Board of Immigration Appeals (BIA) has described discretion as a balancing of “the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether ... relief appears in the best interests of this country.”<sup>3</sup>

<sup>2</sup> See Devine, Robert C., Acting Director, USCIS. *Legal and Discretionary Analysis for Adjudication*, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006).

<sup>3</sup> *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978).

## *Discussion*

For our purposes, a simple definition of discretion is the “[a]bility or power to decide responsibly.”<sup>4</sup> Alternatively, discretion can be defined as, “freedom or authority to make judgments and to act as one sees fit.”<sup>5</sup> Of the two, the second definition is probably what “discretion” is more commonly understood to mean; however, the law imposes restrictions on the exercise of discretion by an adjudicator, which makes the first definition more accurate for our purposes. While discretion gives the adjudicator some freedom in the way in which he or she decides a particular case after eligibility has been established, that freedom is always constrained by legal restrictions. It is the restrictions that define scope of the adjudicator’s power of discretion.

The concept of discretion is not simple, as it implies certain limitations, without explaining just what those limitations are. One commentator has described discretion thus: “like the hole in a doughnut, [it] does not exist except as an area left open by a surrounding belt of restriction.”<sup>6</sup> The rules as to how to exercise discretion are scarce, but there are many restrictions that have been imposed by the courts in order to ensure that the official exercising discretion does not abuse that power. Discretion is defined in a negative manner, by what is impermissible rather than by what is permissible. In addition, in some instances, regulations or policy guidance may elucidate what factors should be considered in discretion.

## **2.2 Two Types of Discretion**

There are two broad types of discretion that may be exercised in the context of immigration law: prosecutorial (or enforcement) discretion and adjudicative discretion. The scope of discretion is defined by what type of discretionary decision is being made. For the purposes of your work with RAIO, you will be involved in exercising adjudicative discretion, but it is important to know about prosecutorial discretion to help you understand the limitations that are placed on you in your exercise of adjudicative discretion.

### **2.2.1 Adjudicative Discretion**

Adjudicative discretion involves the affirmative decision of whether to exercise discretion favorably or not under the standards and procedures provided by statute, regulation, or policy that establish an applicant’s eligibility for the benefit and guide the exercise of discretion. Adjudicative discretion has been referred to as “merit-deciding

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<sup>4</sup> *The American Heritage Dictionary of the English Language*, Fourth Edition Houghton Mifflin Company (2000), available at: <http://www.thefreedictionary.com/discretion> (last visited November 23, 2015).

<sup>5</sup> *Collins English Dictionary – Complete and Unabridged*, HarperCollins Publishers 2003, available at <http://www.thefreedictionary.com/discretion> (last visited November 23, 2015).

<sup>6</sup> Ronald M. Dworkin, *Is Law a System of Rules?*, in *The Philosophy of Law* 52 (R.M. Dworkin ed., 1977).

discretion.”<sup>7</sup> The exercise of discretion is specifically provided in statute for certain benefits. Some mandatory benefits may have a discretionary component, while other types of adjudicative actions may have no discretionary component. In the case of a waiver-of-inadmissibility application, a favorable exercise of discretion on that application, absent any other negative factors, may lead to a mandatory positive decision on the underlying application.

### *Example*

The beneficiary of an I-730 Refugee/Asylee Relative Petition is seeking to join his spouse, who has been resettled in the United States as a refugee. He has an approved I-730, but you find that he had been living in the United States without documentation prior to their marriage and his wife’s resettlement as a refugee and is therefore inadmissible and not eligible for derivative status. He may submit an I-602 Application by Refugee for Waiver of Grounds of Excludability in order to cure that defect in eligibility. Your decision to grant the waiver is discretionary, but once you grant the waiver, the I-730 benefit must be granted.

In general, absent any negative factors, discretionary decisions should be to grant once the applicant has met the requirements of the application or petition.<sup>8</sup> A formal exercise of discretion to deny, rather than to grant, may be appropriate when the applicant has met the requirements of the application or petition, but negative factors have been found in the course of the adjudication and outweigh the positive factors.

However, adjudicative discretion does not allow an adjudicator to grant an immigration benefit in cases where the individual is not otherwise eligible for that benefit. [IO Supplement – Common Forms Requiring Adjudicative Discretion]

### **2.2.2 Prosecutorial Discretion**

Prosecutorial discretion is a decision to enforce—or not enforce—the law against someone made by an agency charged with enforcing the law. The term “prosecutorial” can be deceptive, because the scope of decisions covered by this doctrine includes the decision of whether to arrest a suspected violator and the decision of whether to file a charging document against someone. Prosecutorial discretion is not an invitation to violate or ignore the law. Rather, it is a means to use the agency resources in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Most prosecutorial discretion is exercised by enforcement agencies such as ICE and CBP in the context of their enforcement function (*i.e.*, removal proceedings). Prosecutorial

<sup>7</sup> *INS v. Doherty*, 502 U.S. 314 (1992).

<sup>8</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

discretion may be exercised at different points in the removal process, from the decision of who to detain or release on bond; to issue, or rescind a detainer, or a Notice to Appear (NTA); a decision to join in a motion for relief or benefit; or even to enforce an order of removal.<sup>9</sup>

One example of prosecutorial discretion exercised by some USCIS officers involves the issuance of an NTA, the document that puts an individual into removal proceedings after the denial of a petition or application. In certain situations officers have the authority to exercise their discretion and not issue an NTA, despite the applicant's lack of immigration status. In RAIO, only Asylum Officers issue NTAs. This, however, is not a discretionary action by the Asylum Division. Under current regulations,<sup>10</sup> if an applicant is out of status and asylum is not granted, Asylum Officers do not issue denials, but must refer the case to the immigration court.

### 2.2.3 The Difference between Prosecutorial Discretion and Adjudicative Discretion

As noted earlier, officers have no adjudicative discretion to grant a claim that does not meet eligibility requirements. By contrast, prosecutorial discretion may be exercised before any legal finding and therefore may be exercised in cases of individuals who would be ineligible for any other form of relief.

## 2.3 Who Exercises Discretion?

Each time you render a decision on an application in a situation where the benefit is discretionary, you are doing so in the exercise of discretion. This is not an exercise of your own personal discretion; rather, you are exercising discretion as an official of the U.S. Government.

In the Immigration and Nationality Act (INA), Congress has expressly granted discretion to the Secretary of the Department of Homeland Security in deciding when to grant some benefits. For example, the INA contains provisions such as: "Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee..."<sup>11</sup> Most of the time the grant of discretion is explicit in the statute;<sup>12</sup> in other instances it is implied, based on the language of the statute.

<sup>9</sup> See, e.g., Jeh Johnson, Secretary of Homeland Security, Memo, "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants," (November 20, 2014).

<sup>10</sup> 8 C.F.R. § 208.14(c).

<sup>11</sup> INA § 207(c)(1).

<sup>12</sup> See, e.g., INA § 209(b) (The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—...).

When Congress enacts a law and allows discretion in the enforcement of that law, it usually grants discretion to the head of the agency tasked with enforcing that law. When you exercise discretion in adjudicating an application for a benefit, you are exercising discretion on behalf of the Secretary of Homeland Security. The Secretary's discretionary power is delegated to you, the adjudicator, through DHS and USCIS.

In many cases, such as the waiver provisions in INA § 212, the statute still reads that is the Attorney General's discretion. In most instances, the statute has not been changed since the creation of the DHS and the transfer of many functions from the Department of Justice to DHS. If USCIS has adjudicative authority over the benefit, the statute should be read as conferring the power to exercise discretion on the Secretary of Homeland Security.<sup>13</sup>

The Secretary or the Director may, by regulation, or directive, set how you exercise your discretion in specific instances. For example, in the particular instance of asylum adjudications, regulations provide that when the applicant has met the refugee definition through a showing of past persecution, you must consider whether there is still a well-founded fear of persecution in the future. If you can show, by a preponderance of the evidence, that there is no well-founded fear, the regulations require you to exercise discretion to deny or refer the claim, unless the applicant shows compelling reasons arising from severe past persecution for being unwilling to return or shows that he or she would face other serious harm upon return.<sup>14</sup>

## 2.4 Limits on Discretion

Some clear limitations on the exercise of discretion must be kept in mind at all times, and are described in the following subsections.

### 2.4.1 Eligibility Threshold

There is never discretion to grant a benefit or relief in a case where the applicant has not met the eligibility requirements for the benefit or relief sought. As a legal matter, it is permissible to deny an application as a matter of discretion, without determining whether the person is actually eligible for the benefit.<sup>15</sup> As a matter of policy, however, you should generally make a specific determination of statutory eligibility before addressing the exercise of discretion. If an application is denied as an exercise of discretion, and your decision is overturned, the record necessary for making a decision on eligibility for

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<sup>13</sup> 6 U.S.C. § 275.

<sup>14</sup> 8 C.F.R. § 208.13(b)(1)(i). NOTE: This is a different standard than that used in adjudicating refugee claims. For refugee claims an applicant need establish either past persecution or well-founded future fear. See INA 101(a)(42)(A) and (B).

<sup>15</sup> *INS v. Abudu*, 485 U.S. 94, 105 (1988); *INS v. Bagamasbad*, 429 U.S. 24, 26 (1976).

the benefit will be incomplete if the adjudicator did not establish eligibility prior to the discretionary analysis. Ideally, if you deny the petition or application, the **denial notice** will include a determination on both (1) statutory eligibility grounds and (2) discretionary grounds.

In the case of refugee admissions, to be eligible for refugee resettlement, **the applicant** must first establish that he or she has access to the U.S. Refugee Admissions Program (USRAP), meets the refugee definition, is not firmly resettled and is otherwise admissible to the United States. Most grounds of inadmissibility may be waived for refugee applicants—drug trafficking and certain security and related grounds are the **only** exceptions<sup>16</sup>—but you cannot consider the waiver request until the applicant has first established that he or she has access to the USRAP, is not firmly resettled and meets the definition of refugee. Your decision on the waiver application itself is an exercise of discretion.

#### 2.4.2 Lack of Negative Factors

Absent any negative factors, you will always exercise discretion positively. The fact that an applicant is eligible for a particular benefit is, by itself, a strong positive factor in the weighing process. If there are no negative factors to weigh against that positive factor, denial of the benefit would be an abuse of discretion. This general rule does not apply to waiver adjudications, since the waiver process is predicated on the existence of at least one negative factor.<sup>17</sup>

Discretion gives the adjudicator authority to deny a benefit or a form of relief even when the applicant is eligible according to the law, but that power cannot be exercised arbitrarily or capriciously. When you use discretion to deny a claim, you must explain your reasons clearly and cogently.

### 3 APPLYING DISCRETION

As an adjudicator you have an obligation to evaluate any application that comes before you, but, in the course of your adjudication, you may become aware of negative factors. Discretion is the power that allows you to make a decision to deny the benefit when the applicant is eligible for the benefit, but for other reasons it would not be appropriate to exercise discretion favorably. Discretion is the authority you exercise when weighing any negative factors against the positive factors before you make the final decision on the application.

#### 3.1 Three-Step Process

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<sup>16</sup> See INA § 207(c)(3).

<sup>17</sup> *Matter of Marin*, 16 I&N Dec. 581, 586-87 (BIA 1978).

Generally, the process you follow in rendering a decision on an application, when that application is discretionary, is:

- Find the facts
- Apply the law
- Balance any negative factors against positive factors before making a decision.

The third step is the exercise of discretion.<sup>18</sup> Each of the steps has a role in determining what constitutes a reasonable exercise of discretion.

### 3.1.1 Finding the Facts

Finding the facts is a matter of gathering and assessing evidence. While the focus of fact-finding should be to obtain evidence that will help establish eligibility, you should also elicit information concerning the applicant's background such as family ties that they might have in the United States, any serious medical conditions, or other connections that they have in the community. Part of the reason for eliciting information on the applicant's background is to aid in the exercise of discretion, should it become necessary after eligibility is established. The fact that your discretion has become an issue will generally presuppose some negative factors have emerged in the course of processing the claim, you will need to have some idea of what equities the applicant has in order to properly weigh the factors.

In removal proceedings in immigration court the applicant has an affirmative duty to present evidence showing that a favorable exercise of discretion is warranted for any form of relief where discretion is a factor.<sup>19</sup> In adjudications outside the immigration court, however, there is no such requirement; therefore it is important for you to explore this issue during the interview.

For example, in cases involving possible provision of material support to terrorist groups, where an exemption might be possible, your fact-finding during the interview will be crucial in determining whether an exemption is available and whether to grant the exemption in the exercise of discretion. The testimonial evidence that you elicit during an interview will often be the only evidence upon which to determine "whether the duress exemption is warranted under the totality of the circumstances."<sup>20</sup> Your follow-up

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<sup>18</sup> Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry*. Baton Rouge: Louisiana State University Press, 1969

<sup>19</sup> INA §240(c)(4)(A)(ii).

<sup>20</sup> Scharfen, Jonathan, Deputy Director, USCIS. *Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations*, Memorandum to Associate Directors; Chief, Office of Administrative Appeals Chief Counsel, (Washington, DC: 24 May 2007) at p. 7.



questions during the interview must focus on the nature and the circumstances of the applicant's interactions with the suspected terrorist group.<sup>21</sup>

If there appear to be any negative factors present, you should always ask the applicant directly why he or she feels that he or she deserves to have discretion exercised favorably.

### 3.1.2 Applying the Law

The legal analysis of eligibility may also affect the discretionary determination in your adjudication. If, for example, an applicant for a benefit has been convicted of a crime, it may raise the possibility that the applicant may be inadmissible or, in the case of an asylum applicant, that the applicant is subject to a mandatory bar of asylum for having committed a particularly serious crime.<sup>22</sup> In adjudications where admissibility is an issue, the determination whether a particular crime is an aggravated felony will determine whether a waiver is available to the applicant. In some cases the question of whether a particular crime is an aggravated felony will be easily decided; in others it will require a close legal analysis.

### 3.1.3 Balancing any Negative Discretionary Factors against Positive Factors before Making a Decision

The act of exercising discretion involves balancing any negative factors against positive factors before making a decision. Discretion always consists of a weighing of positive and negative factors. In the immigration context, the goal is generally to "balance the adverse factors evidencing an alien's undesirability as a resident of the United States with the social and humane considerations presented" in support of the alien's residence in the United States<sup>23</sup>. Since most of the benefits conferred by RAIO are based on humanitarian concepts such as family unity and protection from harm, an interviewee's eligibility for a benefit is always the main positive factor under consideration. The analysis of the negative factors should focus on what effect the alien's presence in the United States will have on the general welfare of the community. [RAD Supplement – Balancing Positive and Negative Factors] [Asylum Supplement – Balancing Positive and Negative Factors]

### 3.1.4 Totality of the Circumstances

It is important, when weighing the positive and negative factors, that you do not consider the various factors individually, in isolation from one another.<sup>24</sup> When you consider each

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<sup>21</sup> *Id.*

<sup>22</sup> See INA § 208(b)(2)(A)(ii).

<sup>23</sup> *Matter of Marin*, 16 I&N Dec. 581, 586-87 (BIA 1978).

<sup>24</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

factor individually, without considering how all the factors relate to each other, it becomes difficult to weigh the positive and negative factors properly.

### *Example*

The BIA found that while the applicant's circumvention of orderly refugee procedures can be a serious adverse factor in considering an asylum application, "...it should not be considered in such a way that the practical effect is to deny relief in virtually all cases. This factor is only one of a number of factors which should be balanced in exercising discretion, and the weight accorded to this factor may vary depending on the facts of a particular case."<sup>25</sup> The BIA went on explain some of the factors that may influence how much weight should be given to the circumvention of orderly refugee procedures:

"Instead of focusing only on the circumvention of orderly refugee procedures, the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution should be examined in determining whether a favorable exercise of discretion is warranted.

Among those factors which should be considered are whether the alien passed through any other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States.

In addition, the length of time the alien remained in a third country, and his living conditions, safety, and potential for long-term residency there are also relevant. For example, an alien who is forced to remain in hiding to elude persecutors, or who faces imminent deportation back to the country where he fears persecution, may not have found a safe haven even though he has escaped to another country.

Further, whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum here rather than elsewhere is another factor to consider. In this regard, the extent of the alien's ties to any other countries where he does not fear persecution should also be examined.

Moreover, if the alien engaged in fraud to circumvent orderly refugee procedures, the seriousness of the fraud should be considered. The use of fraudulent documents to escape the country of persecution itself is not a

<sup>25</sup> *Id.*

significant adverse factor while, at the other extreme, entry under the assumed identity of a United States citizen with a United States passport, which was fraudulently obtained by the alien from the United States Government, is very serious fraud." - *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987).

It is clear that all the factors listed by the BIA are interrelated, and it would be difficult to consider any of those factors in isolation from the others and then assign the proper weight to each factor. You must consider all factors together and determine not just whether a particular factor is positive or negative, but how it affects the other factors under consideration. In some cases, one factor will directly cancel out another. A finding that an applicant's safety was in question may directly explain his/her circumvention of orderly refugee procedures. In other cases, a particular positive factor may just act to balance out a particular negative factor. An applicant's having relatives in the U.S. may explain why he or she did not attempt to take advantage of orderly refugee procedures in a third country as he or she passed through on the way to the United States.

### **3.2 Identifying the Factors That May Be Considered in the Exercise of Discretion**

Anything about an applicant's background is potentially a factor to be considered in exercising discretion. However, you must be able to articulate and explain how the factor should be weighed in a particular case. Any facts related to the applicant's conduct, character, family relations in the United States, other ties to the United States, or any other humanitarian concerns are proper factors to consider in the exercise of discretion. Applicants' conduct can include how they entered the United States and what they have done since their arrival—such as employment, schooling, or any evidence of criminal activity. Employment history, schooling, and criminal activity may also be relevant factors to consider. It is important to know what family members the applicant may have living in the United States and the immigration status of those family members. Other ties to the United States may include owning real estate or a business. Other humanitarian concerns may include health issues. For example, if an applicant or a family member has a serious illness, can that applicant or family member obtain adequate treatment if removed?

#### **3.2.1 Favorable Factors That May Be Considered**

Courts have listed a number of factors that may be considered as favorable or positive factors in the exercise of discretion. There can be no exhaustive list of factors, since almost anything about a person's background can be considered. It is important to remember that the applicant's eligibility for the benefit being sought may be the first and strongest positive factor that you should consider. This is especially true in protection cases in which "discretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-

founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors.<sup>26</sup> Other favorable factors that the BIA has identified include:

[S]uch factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if deportation occurs, service in this country's Armed Forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of a genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character (e.g., affidavits from family, friends, and responsible community representatives).<sup>27</sup>

### 3.2.2 Negative Factors That May Be Considered

Like the positive factors, it is impossible to list all of the possible negative factors that you may consider in exercise of discretion. Court decisions have referred to a number of factors that they have considered as negative in the exercise of discretion. As a general rule, any information that raises the possibility that an inadmissibility applies, or, in the case of asylum applications, a bar to asylum might apply, might constitute a negative discretionary factor even if it is determined that the inadmissibility or bar does not apply. You should consider carefully any indication that the applicant might pose a threat to public safety or national security. Any criminal conviction is always a negative factor that will weigh heavily against an applicant. Other negative factors that the BIA has looked at in waiver cases include:

[T]he nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country.<sup>28</sup>

### 3.3 Weighing Positive and Negative Factors

Having established which factors are relevant to your exercise of discretion, the next step is to determine how to weigh them. Some factors are always going to be more important than other factors.

#### 3.3.1 Factors Material to Eligibility Are Given the Most Weight

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<sup>26</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

<sup>27</sup> *Matter of Marin*, 16 I&N Dec. 581, 584-585 (BIA 1978).

<sup>28</sup> *Id.* at 585.

Any factor that is material to the applicant's eligibility for the benefit being sought generally should be given the most weight. The applicant's eligibility for the benefit is, by itself, a factor arguing for the benefit to be granted in the exercise of discretion. If there are no negative factors present, then in most instances, eligibility is **all** that is needed to exercise your discretion to grant a benefit.

However, as an exception to the general rule in the case of asylum, there is regulation that restricts the factors you may look at in a specific circumstance, without regard to underlying eligibility. While an applicant may establish eligibility based on past persecution alone, if you find, by a preponderance of the evidence, that the applicant has no well-founded fear of persecution in the future, regulations instruct you to exercise your discretion negatively to refer the application even when there do not appear to be any negative factors.<sup>29</sup> This instruction arises from the fact that the underlying protection basis for the benefit no longer exists. The same regulation also lists two positive factors that may outweigh the lack of future risk to the applicant. Discretion may still be exercised to grant asylum in the absence of well-founded fear if the past persecution suffered by the applicant was so severe that it would not be humane to return the applicant to the country of persecution.<sup>30</sup> You may also grant in the absence of well-founded fear if you find that the applicant would suffer some other serious harm, not related to the past persecution.<sup>31</sup> Both of the factors that would outweigh the lack of well-founded fear are related to the humanitarian goals of the benefit being sought, but only a grant based on severity of past harm is directly related to the underlying eligibility.

Another exception to the general rule would be an I-601 waiver for the 3 and 10 year bars on re-entry for an alien who was unlawfully present and triggered the bars. For waiver of that ground of inadmissibility, the statute specifies that the only positive factor to be considered is extreme hardship to the qualifying relative even though that might not be directly relevant to the underlying benefit (issuance of an immigrant visa).<sup>32</sup>

## 4 DISCRETION IN DECISION WRITING

### 4.1 Positive Exercise of Discretion

Generally, a positive exercise of discretion does not require a detailed analysis or explanation in the written decision. If no adverse factors at all are present, a simple statement is sufficient, saying that the applicant is eligible, that there are no adverse factors, and that therefore the applicant is granted the benefit in the exercise of discretion.

<sup>29</sup> 8 C.F.R. § 208.13(b)(1)(i) (Discretionary referral or denial).

<sup>30</sup> 8 C.F.R. § 208.13(b)(1)(iii)(A).

<sup>31</sup> 8 C.F.R. § 208.13(b)(1)(iii)(B); see *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

<sup>32</sup> INA §212(a)(9)(B)(v).

You should discuss cases that are less clear cut, particularly those involving criminality or national security issues, with supervisors, who may raise the issue with USCIS counsel; if you do not address the issue in the decision, the file should contain some record of your deliberations. According to USCIS guidance on such cases, “[t]he adjudicator should annotate the file to clearly reflect the favorable factors and consultations that supported the approval in close or complex cases.”<sup>33</sup>

Whether addressing the discretionary issues in the written decision or by making an annotation in the file, you should state the rationale for your decision in a clear manner so that it is easily understandable to anyone reviewing the file.

#### **4.2 Negative Exercise of Discretion**

The written decision must contain a complete analysis of the factors considered in exercising discretion, with a specific and cogent explanation of why you exercised discretion negatively. Your decision will be reviewed, and it is imperative that those who review your decision are able to understand exactly how you reached it.

Negative factors must never be applied in a blanket fashion. Your decision must address negative factors on an individualized basis, applying the totality of the circumstances to the specific facts of the case. The decision should specify both the positive and negative factors that you identified and considered in coming to your decision and should explain how you weighed the different factors.

### **5 CONCLUSION**

Understanding when and how to exercise discretion in your adjudications is important for all officers within the RAIO Directorate. Not all of the adjudications that you make require an exercise of discretion, but when a decision is discretionary it is essential that you understand how to identify the positive and negative factors you must consider and how to weigh those factors. When discretion is called for in your decision making, a careful application of the principles underlying discretion will help ensure that your decision will be legally sufficient and appropriate.

### **6 SUMMARY**

#### **6.1 Discretion Definition**

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<sup>33</sup> Devine, Robert G., Acting Director, USCIS. *Legal and Discretionary Analysis for Adjudication*, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006).

As a practical matter, in the immigration context, the BIA has described discretion as a balancing of “the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether ... relief appears in the best interests of this country.”<sup>34</sup> Congress has provided the Secretary of Homeland Security discretion in making many decisions; the Secretary’s authority to exercise discretion in many instances has been delegated to you, as an officer in USCIS.

## 6.2 Limitations on Discretion

There is no discretion to grant a claim where eligibility has not been established. If the applicant is eligible, however, you may then consider discretionary factors. Absent any identifiable negative factors you will grant the benefit.

## 6.3 Applying Discretion

- Find the facts
- Apply the law
- Balance any negative factors against positive factors before making a decision.

The third step is the exercise of discretion.

## 6.4 Totality of the Circumstances

In considering what factors you may consider in exercising discretion, you must be able to articulate clearly a relationship between a factor and the desirability of having the applicant living in the United States. Remember that the humanitarian concerns present in a particular case should always be considered. If the applicant is eligible for the benefit it should be granted absent any negative factors. When weighing the positive and negative factors you must always consider the totality of the circumstances and not weigh factors in isolation.

## 6.5 Discretion in Decision Writing

If you are exercising your discretion to grant a benefit, and there are no negative factors present, there is usually no need for further analysis. The fact that the applicant has established eligibility and there are no adverse factors is sufficient to justify the decision to grant a benefit. If you are exercising your discretion to deny a benefit, you must provide a complete analysis of your reasoning, specifying the positive and negative factors you considered, so that others reviewing your decision can clearly understand

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<sup>34</sup> *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978).

how you reached it. Negative factors should not be applied in a blanket fashion, but always individualized to particular circumstances of the applicant.



PRACTICAL EXERCISES

There are no student materials for practical exercises.

OTHER MATERIALS

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

None

**SUPPLEMENTS****RAD Supplement – Balancing Positive and Negative Factors**

One of the most common applications of discretion you will be called upon to make is the adjudication of form I-602, Application by Refugee for Waiver of Grounds of Excludability. Refugee Officers may be called upon to adjudicate I-602 Waivers in the course of their normal duties adjudicating I-590 applications (Classification as a Refugee). Authority for International Operations Officers to adjudicate I-602 Waivers is delegated in the regulations.<sup>35</sup> The following is an explanation of the factors you should consider in adjudicating I-602 Waivers.

- First you should make certain that the person filing the application is a refugee. The applicant may be classified as a refugee following an interview by a qualified officer from USCIS, or the applicant may be the immediate relative of a refugee who is entitled to derivative status. In addition to having been classified as a refugee, the applicant must be subject to at least one ground of inadmissibility.
- After the eligibility of the applicant to file form I-602 is established, you must consider the specific sections of 212(a) that apply, keeping in mind that sections 212(a)(4), 212(a)(5), and 212(a)(7)(A) do not apply to refugees pursuant to section 207(c)(3). Also remember that

<sup>35</sup> 8 CFR § 207.3(a).

inadmissibility under sections 212(a)(2)(C), 212(a)(3)(A), (B), (C), and (E) is not eligible for a waiver.<sup>36</sup>

- In considering the application for a waiver you must weigh the positive and negative factors presented. In adjudicating a discretionary waiver application under § 207(c) of the INA, the humanitarian, family unity, or public interest considerations must be balanced against the seriousness of the offense that rendered the applicant inadmissible.
- In making this determination, the officer should recognize that the applicant, if the principal refugee, has established past or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor.
- If an applicant is inadmissible under section 212(a)(2) of the Act because he or she committed a crime involving moral turpitude, the officer should not grant a waiver under section 207(c) of the INA except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an applicant clearly demonstrates that denying refugee status would result in exceptional and extremely unusual hardship. In considering whether the seriousness of the applicant's crime you may look to the definition of "aggravated felony" in the Act.<sup>37</sup> If the conviction seems to fit the definition of an aggravated felony, you should assume that it was a serious crime. If the crime does not meet the definition of aggravated felony, another factor you may consider in making the determination of whether the applicant was convicted of a serious crime is whether the type and circumstances of the crime indicate that the alien will be a danger to the community. In making such a determination you should consider:
  - the nature of the conviction
  - the sentence imposed
  - the circumstances and underlying facts of the conviction
- Positive factors to be considered in exercising discretion might include:
  - Likelihood of well-founded fear
  - Family unity
  - Medical needs of the applicant or family members

<sup>36</sup> INA § 207(c)(3).

<sup>37</sup> INA § 101(a)(43).

- Risk of *refoulement* by the country of first asylum

### SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

None

#### ADDITIONAL RESOURCES

None

#### SUPPLEMENTS

##### ASM Supplement – Balancing Positive and Negative Factors

The most common situation in which you, as an Asylum Officer, will exercise discretion to deny an asylum claim, and a situation that does not require HQ review, involves those cases where eligibility is established by past persecution alone and it is determined that there is an absence of well-founded fear. The regulations provide clear guidance of how you should proceed.<sup>38</sup> This is an explanation of how you should apply that guidance:

1. The applicant has presented evidence that establishes that he meets the requirements of the refugee definition by virtue of having suffered past persecution. The applicant, having proven that he or she suffered persecution in the past has no further burden of proof in establishing eligibility and enjoys a presumption that their fear of persecution in the future is well-founded.
2. You must next consider whether there is evidence that rebuts the presumption of a well founded fear of persecution in the future.<sup>39</sup>

<sup>38</sup> 8 C.F.R. § 208.13(b)(1).

<sup>39</sup> 8 C.F.R. § 208.13(b)(1)(i).

3. First you consider any changed circumstances, having to do with the conditions in the country of persecution, or the applicant's personal situation, that would remove a reasonable possibility of future persecution.<sup>40</sup>
4. Next, you look to see if the applicant can reasonably relocate within his/her country of persecution and thereby avoid any future persecution.<sup>41</sup>
5. If you find that either of those conditions exists, the presumption that the applicant has a well-founded fear of persecution may be rebutted.
6. It is your burden of proof, in rebutting the presumption of well-founded fear that the applicant enjoys, to show by a preponderance of the evidence that the applicant would face no risk of persecution in the future.<sup>42</sup>
7. If you, the officer, are able to show, by a preponderance of the evidence, that the applicant no longer has a well-founded fear of persecution in the future, except in two very narrow circumstances detailed below, you are required to exercise your discretion to deny or refer the application. The basis of this regulation is the fact that the humanitarian concern that underlies the benefit no longer exists. The applicant is no longer in need of protection from persecution. In these cases the lack of risk of persecution is treated as a negative discretionary factor by the regulations.
8. The regulations also require that you consider two possible positive countervailing factors to the discretionary denial/referral of a claim based on past persecution with no well-founded fear. These two countervailing positive factors would allow for a grant of asylum in the absence of well-founded fear.
9. One countervailing factor is if the applicant presents evidence that indicates that there are compelling reasons for being unwilling or unable to return to the country of origin arising out of the severity of the past persecution, you may grant asylum.<sup>43</sup> While the humanitarian concerns that the benefit is meant to address no longer exist, there are other humanitarian concerns to consider as positive factors in weighing discretion.
10. Another countervailing factor is if the applicant presents evidence that he or she

<sup>40</sup> 8 C.F.R. § 208.13(b)(1)(i)(A).

<sup>41</sup> 8 C.F.R. § 208.13(b)(1)(i)(B).

<sup>42</sup> 8 C.F.R. § 208.13(b)(1)(ii).

<sup>43</sup> 8 C.F.R. § 208.13(b)(1)(iii)(A); see also *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

would suffer some other serious harm if returned. While the other serious harm must rise to the level of persecution, no nexus to a protected ground is required.<sup>44</sup> If so, you may grant asylum in the absence of a well-founded fear of persecution.<sup>45</sup> Once again, risk to the applicant is the main positive factor to be considered in the exercise of discretion.

Officers should go through these steps in any case where the applicant is only able to establish eligibility through past persecution.

Remember, in order to rebut the presumption that the applicant has a well-founded fear of persecution after the applicant has established that he or she has suffered persecution in the past, the officer must be able to meet the preponderance of the evidence standard in showing that the applicant no longer has a well-founded fear of persecution. Before proceeding with a discretionary denial/referral based on a lack of well-founded fear in the future, the officer must also consider whether there are compelling reasons for the applicant being unwilling or unable to return to the country of origin arising out of the severity of the past persecution, or whether the applicant would suffer some other serious harm if returned.

<sup>44</sup> *Matter of L-S-*, 25 I&N Dec. 704, 714 (BIA 2012).

<sup>45</sup> 8 C.F.R. § 208.13(b)(1)(iii)(B); see also *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING****SUPPLEMENT A – REFUGEE AFFAIRS DIVISION****ADDITIONAL RESOURCES**

None

**SUPPLEMENTS****IO Supplement – Common Forms Requiring Adjudicative Discretion**

Officers within the International Operations Division will exercise discretion during the adjudication of a variety of immigration benefit requests. Some of the most common requests involving discretion include:

- Form I-601, Application for Grounds of Inadmissibility
- Form I-730, Refugee/Asylee Relative Petition
- Form I-602, Application by Refugee for Waiver of Grounds of Excludability

Additional training on discretion will be provided during the International Operations Division Training Course (IODTC).



QUIZ for Children's Claims Distance Training (ANSWER KEY)

1. When assessing a claim by a child, the definition of a refugee is modified to take into account the vulnerability of children and the best interests principle.
  - a. True
  - b. False

b. False. The definition applies to all individuals regardless of age, and "best interests of child" does not replace definition in determining eligibility. Procedures should always reflect best interests.
2. Officers should acquire as much objective evidence as possible to compensate for cases where a child's subjective fear or accounting of past events is limited.
  - a. True
  - b. False

a. True.
3. Country of origin information does not play as significant a role in the determination of eligibility for a child as it does for an adult.
  - a. True
  - b. False

b. False. See statement #2.
4. A good interviewing technique for children is to interrupt the child's narrative whenever the officer needs more details about an issue that the child has raised that is relevant to the claim.
  - a. True
  - b. False

b. False. Allow a narrative without interruption.
5. During the interview a caretaker may be present to provide the child with moral support and testify about the child's circumstances even when the child does not want the caretaker to be present.
  - a. True
  - b. False

b. False. This may be an indication of abuse, trafficking, or another problem.

6. There are circumstances when harm that rises to the level of persecution for a child may not rise to the level of persecution for an adult.
- a. True
  - b. False
- a. True.
7. A family's intentions in sending a child abroad are not relevant to a determination of whether the child has a well-founded fear of persecution.
- a. True
  - b. False
- b. False.
8. The child's testimony alone may be sufficient to establish his or her claim.
- a. True
  - b. False
- a. True, as it is for all applicants.
9. If an applicant was under the age of eighteen at the time she was subjected to an arranged marriage, that marriage constitutes persecution.
- a. True
  - b. False
- b. False. An arranged marriage, which may be a cultural norm and not perceived as harm, is different from a forced marriage, which would be considered harm. The officer still has to examine whether the applicant, especially if now an adult, perceives it as serious harm; if still a child, supplement record with other testimony & COI.
10. When assessing the applicant's credibility, it is important to take into account that an applicant who is under the age of eighteen is not expected to provide the level of detail that is expected of an adult.
- a. True
  - b. False
- a. True. The minor may not know or remember details, depending on age, trauma, maturity or other developmental issue.

## Quiz for Credibility

1. In *Matter of Kasinga*, the following circumstances particular to the applicant could have been relevant to a credibility determination. Which did not figure into the Board's credibility determination?
  - a. The applicant's age at the time of persecution
  - b. The applicant's level of education**
  - c. The fact that the applicant was detained for a prolonged period by INS
  - d. The applicant's relationship with her Aunt.

**b. – The applicant's level of education. This could be a factor, but the Board did not list it as one of the factors it considered in *Kasinga*.**

2. Which is **NOT** a factor upon which an adverse credibility determination may be based without other credibility issues being present?
  - a. Lack of Detail
  - b. Implausibility
  - c. Demeanor**
  - d. A Material Inconsistency

**c. – In the refugee context, demeanor is generally not considered in credible determinations. In the asylum context, demeanor can be considered in a credibility determination, but an adverse determination cannot be based on demeanor alone without other factors being present present.**

3. Inconsistencies between an applicant's testimony and the testimony of a witness for the applicant is an example of an external inconsistency.
  - a. True
  - b. False**

**b. False - External consistency relates to country of origin information (COI), known facts, and other pieces of evidence provided by the applicant or ascertained by you in the course of your investigation.**

4. According to the analytical framework for credibility determinations, after you have determined that there is a credibility concern, and determined that it is material, you should –
  - a. Ask the applicant if there is an explanation for the credibility flaw

- b. Determine if there is a reasonable explanation for the credibility flaw
- c. Accuse the applicant of lying
- d. **Bring the issue to the applicant's attention**

d. – This is the third step in the analytical framework. Answers a and b are not correct because they follow d, just as d follows the steps given in the body of the question.

- 5. Lack of media reporting, or other COI corroborating events described by an applicant always indicates that the applicant is not credible.

- a. True
- b. **False**

b. – There are many reasons why even events that seem significant may not be reported.

- 6. Considerations of other relevant factors such as demeanor, candor, and responsiveness, in addition to consistency, detail, and plausibility, are limited to asylum adjudications only.

- a. True
- b. **False**

a. – True. Other relevant factors are part of the changes made to INA section 208 by the REAL ID Act, and do not apply to INA section 207.

- 7. Which of the following attempts to inform an applicant of a credibility concern would be unacceptable:

- a. "How is it possible that...?"
- b. "Why can't you tell me more about...?"
- c. **"According to human rights reports I have read, your account of events is entirely wrong."**
- d. "Your I-589 says X, now you are telling me Y..."

c – Officers should never be accusatory.

- 8. In order for an applicant's explanation of a credibility concern to be considered reasonable, it should:

- a. meet the reasonable possibility standard
- b. be supported by corroborating evidence
- c. **plausible, detailed, and consistent**
- d. be to the satisfaction of the adjudicator

**c. – plausible, detailed and consistent – Every aspect of the applicant’s testimony, including explanations of potential credibility issues, should be evaluated for plausibility, detail, and consistency.**

9. When you are basing your credibility analysis on a generalization, such as *falsus in uno falsus in omnibus* (False in one thing, false in all things), a good tool for testing the validity of the generalization is:

- a. temporarily setting your decision aside
- b. engaging in parallel universe thinking
- c. using methodological doubting and believing
- d. using “except when/especially when”

**d. – Except when/especially when is the tool used for testing generalizations.**

10. In interviewing an Egyptian national applicant whose claim is based on his Coptic Christian faith, you find numerous discrepancies between dates given in his written application and the dates he gives you in the interview. What would be a reasonable explanation for those discrepancies?

- a. Coptic Christians use a different calendar from the Gregorian Calendar
- b. The applicant does not speak English and his application was written by an interpreter who was not familiar with the Coptic calendar
- c. The applicant’s memory for dates is faulty
- d. All of the above

**d. – All of the above**

## Quiz for Evidence

1. The first step in the Methodological Approach to Evidence is to:
  - a. **gather relevant evidence**
  - b. determine whether the evidence is material
  - c. determine the quality of that evidence.
  - d. ask the applicant what evidence they plan to submit

**a – Gather relevant evidence is the first step in the methodological approach outlined in the lesson plan.**

2. While the burden of proof is always on the applicant to prove eligibility, a part of that burden is shared by the adjudicator. The shared burden of proof refers to \_\_\_\_\_, but the \_\_\_\_\_ always remains on the applicant.
  - a. the burden of providing evidence / the obligation to always be truthful
  - b. the burden of doing COI research / burden of persuading the adjudicator
  - c. **the burden of producing evidence / burden of persuading the adjudicator**
  - d. the burden of producing evidence / burden of proving that the evidence is material

**c - While the applicant must establish eligibility for the benefit, as part of the cooperative approach you have the duty to elicit sufficient information at the interview. You also have the duty to research COI to properly evaluate whether the applicant is eligible for the benefit he or she applied. The burden is on the applicant to prove his or her claim, but you have a duty to fully develop the record.**

3. In both overseas refugee processing and asylum the applicant has the burden of proving that he or she:
  - a. is of humanitarian concern to the US
  - b. is not barred from applying for the benefit he or she is seeking
  - c. is not subject to any inadmissibilities
  - d. **meets the definition of refugee found at INA § 101(a)(42)**

**d – All refugees and asylees must meet the definition of refugee. Humanitarian concern only applies in refugee resettlement, only asylum is subject to specific bars to applying, and only refugee resettlement is concerned with inadmissibilities.**

4. The burden of proof refers to the responsibility to provide evidence to prove a fact and the standard of proof refers to the quantum of evidence necessary.
  - a. **True**

b. False

5. RAIO officers apply different standards of proof in different parts of their adjudications. The highest level of certainty required by refugee and asylum officers, respectively, is:
- Preponderance of the evidence, and To the satisfaction of the adjudicator
  - Clearly and beyond doubt, and Clear and convincing**
  - Beyond a reasonable doubt
  - Reasonable possibility

**b – Clearly and beyond doubt is the highest level of proof required for refugee officers, while clear and convincing is the highest level of proof required for asylum officers.**

6. While an applicant may establish a well-founded fear by a showing of a reasonable possibility that he would suffer persecution on account of a protected ground, each fact supporting that conclusion must be proven by the higher preponderance of the evidence standard.
- True**
  - False

**a – True. In this context, you are using two different standards within one adjudication: a preponderance of the evidence and a reasonable possibility.**

7. An applicant's possession of a valid national passport is always proof that the applicant is a national of the country of issuance.
- True
  - False**

**b – False. Nationality may be proved by the possession of a valid national passport. Possession of such a passport creates a *prima facie* presumption that the holder is a national of the country of issuance, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim**

8. An applicant submits a police report made after she has reported an attempted rape. The police report:
- is evidence that the applicant was assaulted and might support a finding of past persecution

- b. may be evidence concerning the issue of whether the government was unwilling or unable to protect the applicant
- c. may be evidence that the applicant was persecuted on account of a protected characteristic
- d. All of the above

**d – The police report will always be evidence of an assault and, depending on other factors, may also provide evidence going to the issue of willing and able to protect and may provide evidence that the applicant possesses a protected characteristic.**

9. Documentary evidence that an applicant submits may be authenticated by the applicant's own credible testimony.
- a. True
  - b. False

**a – If the applicant is able to testify to sufficient facts, in a credible manner, that may be sufficient to authenticate the document.**

10. The "significant possibility" standard of proof is defined by:
- a. case law
  - b. the statute
  - c. the regulations
  - d. none of the above

**d – Neither the statute nor the immigration regulations define the "significant possibility" standard of proof, and the standard is not discussed in immigration case law. The legislative history indicates that the standard "is intended to be a low screening standard for admission into the usual full asylum [or overseas refugee] process**



QUIZ for Firm Resettlement Distance Training (Answer Key)

1. If an applicant is considered firmly resettled in a country, he or she must have received or have been offered the right to stay in that country indefinitely.
  - a. True
  - b. False

a. True. Status must be permanent. LP Sec 4.3.
2. The applicant fled persecution in Sudan and was granted asylum in Sweden. You have direct evidence (the applicant's permanent residence card) that he was granted permanent status in Sweden. The card is proof that the applicant was firmly resettled in Sweden.
  - a. True
  - b. False

b. False. The card is direct evidence that the applicant was firmly resettled, but the applicant has the opportunity to rebut the evidence.
3. If you find that the applicant was firmly resettled in Sweden, he is barred from asylum in the United States.
  - a. True
  - b. False

a. True. An applicant who is unable to rebut evidence that he is firmly resettled may nonetheless show that he falls within an exception within the *A-G-G*-framework, but according to the regulations, an applicant who establishes an exception is not firmly resettled.
4. To determine whether an applicant has been firmly resettled, if you have direct evidence (such as a permanent residence card) of an offer of firm resettlement, the next step for you is to consider indirect evidence of firm resettlement.
  - a. True
  - b. False

b. False. The next step is that the applicant has the opportunity to rebut the evidence. You consider indirect evidence of firm resettlement only if there is no direct evidence.
5. Applicants who receive an offer of permanent status from a third country are not subject to the firm resettlement bar to asylum or refugee status if the following is true:
  - a. They never entered the third country
  - b. They were not refugees when they received the offer
  - c. They meet an exception to the bar

- d. Any of the above
6. Applicants who been offered permanent status in a third country may nevertheless be granted refugee status or asylum in the United States if they were subjected to restrictive conditions in the third country, such as government policies restricting the right to work, travel, or own property.
    - a. True
    - b. False
    - a. True. LP Sec. 5. An applicant in this situation is eligible for an exception to the firm resettlement bar.
  7. Spouses and children of refugees/asylees who are derivatives of the principal applicant are barred from refugee status and asylum if they have been firmly resettled in a third country.
    - a. True
    - b. False
    - b. False. LP Sec 6.3.2. The firm resettlement bar does not apply to them.
  8. Firm resettlement is a mandatory statutory bar to both refugee resettlement and asylum.
    - a. True
    - b. False
    - a. True.
  9. The four-step analysis of the firm resettlement bar (consideration of prima facie evidence by officer; rebuttal by applicant; consideration of totality of evidence; consideration of exception) was established by:
    - a. Statute
    - b. Regulation
    - c. Circuit Court case law
    - d. BIA case law
    - d. *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011)
  10. The applicant is unable to return to a third country where he was firmly resettled. The firm resettlement bar may still apply.
    - a. True
    - b. False
    - a. True. LP Sec. 4.3.1. If the applicant had the ability to stay permanently but allowed a travel document to expire, for example, the bar may still apply.

## Quiz for Gender Related Claims (*Answer Key*)

1. Gender related claims only concern female applicants.

- A) True
- B) **False**

**B- False – “...it is important to note that the forms of gender-based persecution described in this lesson can, and often are, inflicted on both females *and* males.” *Introduction to Gender lesson***

2. The human rights of all individuals are guaranteed within international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There was, however, a need for special instruments addressing the rights of women because:

- A) the more general international instruments fail to specify gender as a protected characteristic
- B) the other instruments specifically exclude gender as a factor
- C) **those instruments have not always provided sufficient protection to women due to discriminatory interpretations and applications**
- D) the other instruments were enacted before the women’s rights movement

**C – taken from page 12 in the lesson plan under, International and National Guidelines Relating to Women and Children**

3. The most severe form of Female Genital Mutilation is:

- A) Excision
- B) Concatenation
- C) **Infibulation**
- D) Circumcision

**C – Infibulation (see page 19 of lesson, Types of FGM)**

4. The lesson on Gender Related Claims and various international instruments protecting women have altered the legal criteria used to evaluate an asylum or refugee claim that is gender-based.

- A) True
- B) **False**

**B – False, the lesson plan, in the legal analysis section, states that nothing in the lesson provides guidance that expands on the statutory definition of refugee**

5. In evaluating whether internal relocation is reasonable all of the following are important considerations, EXCEPT:

- A) significant restraints on a woman's right to travel
- B) the applicant comes from a country where women are still economically dependent on men
- C) **the applicant's husband does not want to relocate**
- D) in the applicant's country a woman living outside the protection of her father, spouse, or clan may be vulnerable to attack and/or damaging social stigma

**C – The husband's wishes are not a consideration. The other three choices are specifically mentioned in the lesson. The husband's preferences, without more, would not be a reason for not seeking to relocate internally. For that matter, the woman's preference, without more, would not be sufficient either.**

6. Because of the stigma attached to rape, it is unusual for a woman to have documentary evidence, such as medical or police reports, documenting the rape.

- A) True
- B) False

**A- True It may be unreasonable to expect a woman from a refugee-producing country to have documentation of sexual violence she suffered. Because of strong cultural stigma attached to rape, "women survivors of sexual violence often are reluctant to seek medical assistance or to file police reports, because they do not want it known that they were raped."**

7. What factor that would affect a female applicant's ability to provide detailed testimony is NOT related to gender?

- A) Social constraints may limit access to information
- B) Gender roles
- C) Education level
- D) **Faulty memory**

**D – Faulty memory is a human factor and is not specific to gender.**

8. All gender based claims fall under the particular social group protected ground.

- A) True
- B) False

**B- B – False, in some instances gender may be a factor in political opinion and religious claims**

RAIO CT Distance Training Quiz

INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION

1. IRFA is solely concerned with providing diplomatic and foreign policy mechanisms for the United States to directly address issues of religious freedom and religious persecution and promote religious freedom throughout the world.

- a. True
- b. False**

The answer is false because there was a dual purpose to IRFA: one purpose is described in this question; the other purpose was to address perceived deficiencies in executive agencies in dealing with religious issues around the world. (See LP page 11)

2. IRFA deals with Refugee and Asylum issues

- a. throughout the statute
- b. in title III
- c. in title V
- d. in title VI**

Title VI contains the sections dealing with refugees and asylum, which includes: Section 601 which mandates Asylum Officers, Immigration Judges, and Refugee and Consular Officers use the DOS Annual Report on Religious Freedom and other country of origin information when analyzing claims for asylum or refugee status on account of religion. Section 602 which reforms the refugee adjudication process in several ways one of which is mandating that refugee adjudicators receive the same training as asylum officers. Section 603 which reforms the asylum process in several ways including mandating special training for asylum officers doing APSO. (See LP page 12)

3. UNHCR Guidelines have identified several elements that may apply to religious claims. Those elements are (choose all that apply):

- a. Identity**
- b. Belief**
- c. Preference
- d. Way of life**

UNHCR Guidelines identify Belief, Identity, and Way of life as possible elements of a religious based claim. (See LP page 17)

4. By statute any US official adjudicating a refugee or asylum claim based on religion must consult country conditions in:

- a. The US Commission on International Religious Freedom Annual report
- b. The Department of State Country Reports on Human Rights Practices
- c. **The Department of State International Religious Freedom Report**
- d. All of above

Section 601 of IRFA mandates that the DOS International Religious Freedom Report must be consulted in any claim based on religion. (See LP page 12)

5. In determining credibility, adjudicators may inquire into a claimant's religious beliefs to determine if those beliefs are

- a. Valid
- b. Truthful
- c. Reasonable
- d. **Sincere**

Adjudicators should never question the validity, truthfulness, or reasonableness of a claimant's religious beliefs, but for credibility purposes the adjudicator may explore the sincerity of the claimant's beliefs. (See LP page 18)

6. Which international document was **NOT** referenced by Congress in finding that freedom of religious belief and practice is a universal human right?

- a. Universal Declaration of Human Rights
- b. International Covenant on Civil and Political Rights
- c. **The Mayflower Compact**
- d. The United Nations Charter

The Mayflower Compact does not concern freedom of religious belief or practice. (See LP pages 22 – 24)

7. If an individual is prosecuted based on a violation of a religiously based code of conduct and/or dress, such prosecution will always constitute persecution based on religion.

- a. True
- b. **False**

Prosecution for violation of dress and conduct rules for women in Iran did not amount to persecution on account of religion, where the applicant presented no evidence that the persecutors were aware of her religious beliefs, and she made no showing of disproportionately severe punishment, or pretextual

prosecution – Fisher v. INS, 79 F.3d 955, 961-62 (9th Cir. 1996) (en banc). (See LP page 34)

8. Under the Lautenberg Amendment the following applicant would NOT have a reduced evidentiary burden in establishing eligibility under the refugee definition:

- a. An ethnic Russian Baptist who is a citizen of Armenia, seeking resettlement in the US as a refugee
- b. An Iranian Chaldean Christian who fled to Istanbul and is seeking resettlement in the US as a refugee
- c. **An Iranian Baha'i applying for asylum upon arrival at JFK Airport in NYC**
- d. A Jewish citizen of Azerbaijan, in Moscow, seeking resettlement in the US as a refugee

Choice "c" is correct because Lautenberg only applies to processing under section 207 of the INA and the Iranian would be applying under section 208. (See LP page 31)

9. If an applicant belongs to a particular faith and is persecuted by members of his own faith, this is sufficient evidence that the persecution was not on account of the applicant's religion.

- a. True
- b. **False**

Individuals can be persecuted by members of their own faith because they are viewed as insufficiently devout, or are thought to have violated some religious tenant or norm. That is still persecution on account of their religion. (See LP page 37)

10. Which is currently **NOT** a country of particular concern, as designated by the President of the United States?

- a. Saudi Arabia
- b. Iran
- c. **Afghanistan**
- d. Uzbekistan

C. Afghanistan – current as of January 5, 2014.



QUIZ for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex Refugee and Asylum Claims  
(LGBTI) Distance Training (ANSWER KEY)

1. Sexual orientation is

- a. an individual's internal sense of being male, female, or something else.
- b. the emotional, physical, and romantic attraction a person feels towards another person.
- c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
- d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.
- e. Answer: b - the emotional, physical, and romantic attraction a person feels towards another person. See page 12 of the lesson plan for further details.

2. Claims relating to sexual orientation and gender identity are primarily recognized under membership in a particular social group (PSG) but may overlap with other grounds.

- a. True
- b. False

Answer: a - true. See page 14 of the lesson plan for further details.

3. "Coming out" means

- a) when a person begins to explore one's LGBT status
- b) accepting oneself as LGBT
- c) telling other people that one is LGBT
- d) all of the above

Answer: d - all of the above.

4. Although the Board of Immigration Appeals (BIA) has only published one precedent decision involving the issue of sexual orientation, which of the following individuals might be eligible for asylum or refugee status on account of his or her membership in a particular social group?

- a. A lesbian from Russia
- b. A transgender female from Mexico
- c. An "effeminate" man from Nigeria who is thought to be gay but is not
- d. A man from Guinea who tests positive for HIV, regardless of his sexual orientation
- e. All of the above

Answer: e - all of the above. See page 15 of the lesson plan for further details.

5. Gender identity is

- a. an individual's internal sense of being male, female, or something else.
- b. the emotional, physical, and romantic attraction a person feels towards another person.
- c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
- d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

Answer: a - an individual's internal sense of being male, female, or something else. See page 12 of the lesson plan for further details.

6. A lesbian who has no physical or emotional attraction to men and is forced to marry a man may experience this as persecution.
  - a. True
  - b. False

Answer: a - true. See page 23 of the lesson plan for further details.

7. A male applicant from Saudi Arabia left his country of origin to pursue educational opportunities. He "came out" as gay after arrival in the country of asylum or first asylum. This applicant is ineligible for refugee or asylum status because he did not suffer past harm in Saudi Arabia.
  - a. True
  - b. False

Answer: b - false. The applicant may be eligible if he can demonstrate a well-founded fear of future persecution as a *refugee sur place*. See page 26 of the lesson plan for further details.

8. Gender expression is
  - a. an individual's internal sense of being male, female, or something else.
  - b. the emotional, physical, and romantic attraction a person feels towards another person.
  - c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
  - d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

Answer: c - how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics. See page 13 of the lesson plan for further details.

9. Which of the following is not an appropriate question to ask a male applicant whose claim is based on sexual orientation?
  - a. Have you ever been in a relationship?

- b. When did you first realize you were gay?
- c. Did you know other gay people in your home country?
- d. What kind of specific sexual practices did you engage in?
- e. Did you tell anyone in your home country that you were gay?

Answer: d - the applicant's specific sexual practices are not relevant to the claim for asylum or refugee status. Therefore, asking questions about "what he or she does in bed" is never appropriate. See page 34 of the lesson plan for further details.

#### 10. Transgender is

- a. used to mean men who are attracted to men.
- b. used to mean men or women who are attracted to the opposite sex.
- c. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.
- d. a condition in which an individual is born with a reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit typical definitions of male or female.

Answer: c - a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth. See page 13 of the lesson plan for further details.

RAIO Distance Training  
Nexus Quiz (ANSWER KEY)

1. The definition of a refugee includes the provision that persecution or feared persecution must be on account of a protected ground; these grounds are:
  - a. Race, religion, nationality, membership in a particular social group, and nexus
  - b. Race, ethnicity, nationality, and religion
  - c. Membership in a particular social group, race, religion, nationality, and political opinion
  - d. Race, religion, nationality, and political opinion

c. In slightly unusual order.
2. If an applicant has established that he and other members of his religious community were denied entry to their church on multiple occasions by police, the applicant has established a nexus to a protected ground.
  - a. True
  - b. False

b. False. The applicant would need to establish that the police denied entry because of the applicant's religion, rather than, e.g., for safety or public order.
3. To meet the definition of a refugee, an applicant must establish that the persecutor's sole motivation to harm him or her is on account of one of the protected grounds.
  - a. True
  - b. False

b. False. A persecutor may have mixed motives.
4. To establish nexus to a protected ground, an applicant must establish the persecutor's exact motive in harming him or her.
  - a. True
  - b. False

b. False. The applicant is not required to establish the "exact motive"; an officer may make reasonable inferences based on the applicant's testimony and all the evidence in the record.
5. If an opposition group raises funds for its operations by forcing only its political opponents to give money, the harm (extortion) may be on account of a protected ground.

- a. True
  - b. False
- a. True. P. 41, LP. This is an example of mixed motives – raise money but persecute on account of political opinion.
6. In assessing the persecutor's motivation to harm the applicant, it is more important to look at the persecutor's characteristics than to look at the beliefs and characteristics of the applicant.
- a. True
  - b. False
- b. False. The persecutor must be motivated to persecute because the applicant possesses, or is imputed to possess, a protected belief or trait.
7. Harmful treatment cannot be considered persecution unless it was intended to punish or harm the applicant.
- a. True
  - b. False
- b. False. For example, see *Pitcherskaia v. INS* – authorities detained & beat applicant to "cure" her of her sexual orientation.
8. If a law prohibits all religious groups from meeting on Fridays, but only Muslims meet on Fridays, harm inflicted by this law could be considered to be on account of religion.
- a. True
  - b. False
- a. True. P. 16, LP. Law of general applicability but not neutral in intent.
9. An applicant who has been subjected to forced sterilization is considered to have been persecuted on account of political opinion.
- a. True
  - b. False
- a. True. P. 43, LP, per INA as amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996; considered opposition to coercive population control.
10. Harm inflicted by authorities on an applicant who refused to serve in the military cannot be considered persecution on account of a protected ground.

- a. True
  - b. False
- b. False. P. 37, LP. Depends on facts. Disproportionate punishment (not the normal punishment) may be evidence of a protected ground; if military commits internationally condemned acts, punishment for refusal to commit such acts could be persecution.

RAIO Distance Training  
Persecution Quiz - Answer Key

Question 1:

The four elements of the definition of persecution are: a) severity of harm, b) motivation (on account of a protected ground), c) the actor, either government or nongovernment, and:

- 1) Discrimination
- 2) Physical injury
- 3) Location

See, Section 3.1 – General Elements

Only harm suffered in the country of nationality or, if stateless, the country of last habitual residence, may be considered in a finding of past persecution, for the purpose of establishing eligibility.

Question 2:

UNHCR's Handbook explains a threat to life or \_\_\_\_\_ is always persecution.

- 1) Limb
- 2) Freedom
- 3) Family

See, Section 3.2.4 – Guidance from UNHCR Handbook

Question 3:

According to UNHCR and the BIA, acts that do not amount to persecution when considered separately, may amount to persecution when considered:

- 1) Cumulatively
- 2) Consecutively
- 3) Concurrently

See, Section 3.2.4 – Guidance from UNHCR Handbook

Question 4:

Discrimination and harassment, if inflicted on account of a protected ground:

- 1) Never amount to persecution
- 2) May amount to persecution depending on the cumulative severity of the harm
- 3) Always amount to persecution

See, Section 3.4 – Discrimination and Harassment

Question 5:

Torture, if inflicted on account of a protected ground:

- 1) Never amounts to persecution
- 2) Sometimes amounts to persecution
- 3) Always amounts to persecution

See, Section 3.3 – Human Rights Violations

Torture always rises to the level of persecution. Keep in mind, however, that for purposes of asylum or refugee status, as opposed to protection under the Convention Against Torture, torture must be inflicted on account of one of the five protected grounds.

Question 6:

Economic harm, if inflicted on account of a protected ground:

- 1) Never amounts to persecution
- 2) Sometimes amounts to persecution
- 3) Always amounts to persecution

See, Section 3.6 – Economic Harm

Question 7:

Psychological harm alone may amount to persecution.

- 1) True
- 2) False

See, Section 3.7.1 – Psychological Harm Alone May Be Sufficient to Constitute Persecution

Question 8:



Severe mental harm alone may amount to torture.

- 1) True
- 2) False

See, Section 3.7.2 – Under The Convention Against Torture, Severe Mental Harm Alone May Be Sufficient to Constitute Torture

Question 9:

If the persecutor is a non-government actor, the government must be:

- 1) Unable to control the non-government actor
- 2) Unwilling to control the non-government actor
- 3) Both 1 and 2
- 4) Either 1 or 2

See, generally, Section 4.2 - Entity the Government Is Unable or Unwilling to Control. Bear in mind that the use of the disjunctive “or” means that either condition will suffice, you don’t need both to be true.

Question 10:

Past persecution may be a basis for asylum and refugee status, even if the applicant no longer has a well founded fear.

- 1) True
- 2) False

See, Section 2 – Past Persecution

In the refugee context, an applicant who has been persecuted in the past is eligible for refugee status. In the asylum context, there may be instances where an applicant, having been found eligible based on past persecution, might not be granted asylum as an exercise of discretion as per regulations. The discretionary denial/referral does not mean that the applicant does not meet the refugee definition and hasn’t established refugee status under the law. And there are instances, under the regulations, where even if found to no longer have a well-founded fear, the applicant would be granted.

RAIO Distance Training  
Persecutor Bar Quiz (ANSWER KEY)

1. For the persecutor bar to apply, it is not necessary that there be a nexus between the act and a protected ground, as long as the harm rose to the level of persecution.
  - a. True
  - b. False
  - b. False.**
  
2. A red flag alerting you that the persecutor bar may be an issue will most likely come in the form of the following type of evidence:
  - a. The applicant's own testimony.
  - b. An affidavit from the victim attesting to the persecution.
  - c. All of the above.
  - d. None of the above.
  - a. The applicant's own testimony.**
  
3. If there is evidence in the record that the applicant was in a location during a time period when persecution was being committed, you:
  - a. should ask follow up questions, but do not alert the applicant of your concern.
  - b. shall deny the application, unless the applicant admits that he knew about the persecution.
  - c. can presume that the applicant is subject to the persecutor bar if he or she denies involvement.
  - d. must ask the applicant about what he or she was doing at the time the persecution was occurring.
  - d. must ask the applicant about what he or she was doing at the time the persecution was occurring.**
  
4. If you are struggling about whether to apply the persecutor bar, use this analysis:  
Bad Place + Bad Time = Bad Person.
  - a. True
  - b. False
  - b. False**
  
5. For the persecutor bar to apply, the applicant must have known that the persecution was occurring.
  - a. True
  - b. False
  - a. True**
  
6. The main rationale behind the persecutor bar is to deny refugee or asylum status to those who:
  - a. persecuted others.
  - b. served during wartime.
  - c. pose a national security threat.
  - d. were employed by entities that committed persecution.

a. **persecuted others.**

7. Which of the following scenarios would most likely **NOT** result in the application of the persecutor bar. The applicant:

- a. translated during the beating of the suspected political dissident.
- b. was an inactive, but dues paying, member of the Ba'ath party during the Saddam regime.
- c. used her radio program to urge the Hutu population to, but did not herself, kill ethnic Tutsis.
- d. ordered soldiers to, but did not himself, roundup Jews for transport to Nazi concentration camps.
- b. **was an inactive, but dues paying, member of the Ba'ath party during the Saddam regime.**

8. Although the persecutor bar may sometimes overlap with the ground of inadmissibility related to material support to terrorist organizations, it is best is to keep the two separate in your mind.

- a. True
- b. False
- a. **True**

9. If an applicant was involved in persecuting others but was forced to act against his or her will, you must question the applicant about the duress factors and follow your division's guidance about which cases to put on hold.

- a. True
- b. False
- a. **True**

10. For the persecutor bar to apply, it is not necessary that the harm rose to the level of persecution, as long as there was persecutory intent.

- a. True
- b. False
- b. **False.**

QUIZ for Particular Social Group (PSG) Distance Training (Answer Key; updated 9/11/13)

1. The conclusion as to whether or not a group meets the definition of a Particular Social Group (PSG) must be based on precedent decisions analyzing identical facts on which the decision-maker can rely.
  - a. True
  - b. False

b. False. The decision-maker should consider any precedent decisions, but in each case, the facts must be analyzed to assess whether the PSG is defined by an immutable or fundamental characteristic, socially distinct, and sufficiently particular. LP Sec 2.
2. If an applicant is imputed to be a member of a PSG but does not actually possess the shared trait, it is not relevant to determine whether the trait is fundamental to his or her identity.
  - a. True
  - b. False

a. True. When determining whether the group is a PSG, you must still assess whether the trait is fundamental from an objective point of view, e.g., whether human rights norms suggest the characteristic is fundamental. LP Sec 2.1.1.
3. According to the BIA, social groups based on wealth may never qualify as PSGs.
  - a. True
  - b. False

b. False. While most courts considering conditions in most societies have indicated that a PSG may not be based on wealth alone, the BIA has indicated that depending on the social context and other factors in the definition of the group, some PSGs may be defined, at least in part, by the wealth or class of their members. See *Matter of A-M-E- & J-G-U*. 24 I&N Dec. 69, 74 (BIA 2007). LP Sec 2.1.2.
4. A group defined as "Salvadoran former gang members" may not meet the definition of a PSG because:
  - a. The characteristic of being a former gang member is not fundamental to an individual's identity.
  - b. The number of former gang members in the society in question is not known.
  - c. A shared characteristic of criminal association generally cannot form the basis of a PSG.
  - d. Only current gang members are socially distinct.

c. Re other options: Because the characteristic is unchangeable it does not have to be fundamental; the number of individuals in a protected group is not relevant; society may differentiate both former and current gang members from other members of society. LP Sec. 2.1.3. Note for AOs that this group may be a valid PSG in some circuits.

5. A group of only a few individuals may be a valid PSG.
- True
  - False
- a. True. No size limitations. LP Sec 2.1.4
6. To comprise a valid PSG, group members must be similar in all or many aspects.
- True
  - False
- b. False. There is no requirement for cohesiveness or homogeneity; they must share the characteristics that form the basis of the PSG. LP Sec 2.1.4.
7. The BIA or federal courts have found the following group(s) to constitute a valid PSG:
- Somali clan members
  - Educated landowning class
  - Witnesses who testify against gang members
  - All of the above
- d. See LP Sec. 4; specifically: for option a) *Matter of H-*, BIA, LP Sec.4.2; b) Educated landowning class in Colombia targeted by FARC, *Tapiero de Orejuela v. Gonzales*, 7<sup>th</sup> Cir, LP Sec.4.8; c) *Henriquez-Rivas v. Holder*, 9<sup>th</sup> Cir, LP Sec.4.14
8. Unlike the other four protected grounds (race, religion, nationality, and political opinion), officers do not need to determine nexus (whether persecution is on account of a protected ground) after an applicant has established that he or she is a member of a PSG.
- True
  - False
- b. False. Officers must always determine whether or not persecution is "on account of" one or more of the five protected grounds in the refugee definition. LP Introduction & Conclusion.
9. Former or current military service is an immutable or fundamental characteristic that may form the basis for a PSG.
- True
  - False
- a. True. Former service is unchangeable; current service may be fundamental to an individual's identity. The applicant would also have to demonstrate that the purported PSG has a distinct, recognizable identity in the society. LP Sec 4.11.

10. Country of origin information, including the applicant's individual circumstances, has little or no relevance to the determination of what constitutes a PSG.

- a. True
- b. False

b. False. LP Sec. 2.1.4. For example, it is not possible to assess whether the group is socially distinct unless an officer investigates whether a particular society distinguishes between group members and other members of society.

QUIZ for Refugee Definition Distance Training (Answer Key)

1. Applicants for asylum or refugee status must satisfy the definition of refugee under the Immigration and Nationality Act (INA); however, there is one part of the refugee definition that may NOT apply to all applicants. Choose the statement below that may NOT apply to all.
  - a. Refugees must be outside their country of nationality or habitual residence.
  - b. Refugees must have suffered persecution or have a well-founded fear of persecution.
  - c. Persecution must be on account of race, religion, nationality, membership in a particular social group, or political opinion.
  - d. Persons who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion are excluded from the definition of refugee.
    - a. Refugees may be processed in-country; the other statements apply to all applicants for asylum or refugee status. See INA 101(a)(42)(B). LP Sec 2.1.
2. The internationally accepted definition of a refugee, set forth in the 1951 Convention relating to the Status of Refugees and amended in its 1967 Protocol, was derived from the U.S. refugee definition.
  - a. True
  - b. False
    - b. False. The reverse is true. The INA incorporated the 1951 Convention definition as amended by the 1967 Protocol. LP Sec 2.2.
3. Under the INA, a refugee must establish either past persecution or a well-founded fear of persecution.
  - a. True
  - b. False
    - a. True, unlike the 1951 Convention definition. LP Sec 2.2.1.
4. One of the differences between the U.S. refugee definition and the 1951 Convention definition is that the INA has a specific provision in the definition dealing with coercive population control.
  - a. True
  - b. False
    - a. True. LP sec 2.2.2
5. The first part of the refugee definition requires that a refugee be "outside any country of such person's nationality." In this context, the term "nationality" refers to:
  - a. Citizenship.

- b. The status applicable to a person who owes permanent allegiance to a state.
  - c. The status conferred by a state and recognized by other states if it is supported by a genuine link between the individual and the conferring state.
  - d. All of the above.
- d. There are various definitions of "nationality" in this context. As a protected ground – the term is not the same as above, but instead refers to ethnic, linguistic, or racial groups. LP Sec 3.1.

6. Possession of a passport establishes nationality.

- a. True
- b. False

b. False. It creates a presumption of nationality, unless the passport states otherwise, and the presumption may be rebutted. It may be a "passport of convenience" – for travel; it may have been bought or obtained through misrepresentation. LP Sec 3.2.1.

7. If an applicant is unable to establish his or her nationality,

- a. The applicant is ineligible for asylum or refugee status.
- b. The officer should determine asylum or refugee status based on the country of the applicant's last habitual residence.
- c. The officer is not able to analyze whether the applicant has a well-founded fear.
- d. All of the above

b. There is no requirement to establish nationality to be eligible for asylum or refugee status. LP Sec. 3.2.2.

8. A dual citizen must establish persecution or a well-founded fear of persecution in both countries of nationality to be eligible for asylum or refugee status.

- a. True
- b. False

a. True. LP Sec. 3.3.1.

9. An applicant's residence in a third country after fleeing his or her country of nationality makes that applicant a national or citizen of the third country.

- a. True
- b. False

b. False. The applicant may or may not be firmly resettled, but that is a separate issue. Residency does not equate to citizenship. LP Sec 3.3.3.



10. A refugee or asylum applicant must establish that he or she is both unable and unwilling to return to a country of persecution or feared persecution.

- a. True
- b. False

b. False. An applicant does not need to establish both. LP Sec. 5.

RAIO Distance Training  
Well-Founded Fear Quiz (ANSWER KEY)

1. An applicant must establish that there is a reasonable possibility of future persecution, i.e., that a reasonable person in the applicant's circumstances would fear persecution upon return to his or her country of origin. The reasonable possibility standard is:
  - a. less generous than a "more likely than not" standard.
  - b. more generous than a "more likely than not" standard.
  - c. All of the above.
  - d. None of the above.
  - b. more generous than a "more likely than not" standard.**
  
2. A genuine, subjective fear of persecution must be the only motivation for seeking refugee or asylum status.
  - a. True
  - b. False
  - b. False**
  
3. The applicant was threatened while in her home country, but the manner in which she was threatened did not rise to the level of persecution. In order to establish eligibility based on a well-founded fear of persecution, the evidence must show that:
  - a. the threat is serious.
  - b. there is a reasonable possibility the threat will be carried out.
  - c. All of the above.
  - d. None of the above.
  - c. All of the above.**
  
4. There was a significant lapse of time between the occurrence of events and the applicant's flight. Which of the following would most likely **not** be a factor to consider in your well-founded fear analysis? The:
  - a. reason for the delay.
  - b. applicant's activities during that time.
  - c. mode of transportation used to escape.
  - d. amount of time the applicant remained in the home country.
  - c. mode of transportation used to escape.**
  
5. The elements of the *Mogharrabi* test are:
  - a. Panic, apprehension, concern, fear.
  - b. Possession, alertness, capability, fear.
  - c. Panic, awareness, capacity, inclination.
  - d. Possession, awareness, capability, inclination.
  - d. Possession, awareness, capability, inclination.**

6. A refugee sur place is someone:
- in an overcrowded refugee camp.
  - who is unable to stray from his current location.
  - who no longer fears returning to her country of origin.
  - who left his country and became a refugee at a later date.
  - who left his country and became a refugee at a later date.**
7. There is no past persecution in the case you are considering. The applicant may still establish he or she is a refugee based on a well-founded fear of future persecution.
- True
  - False
  - True.**
8. Under *Mogharrabi*, the applicant must establish that the reason for the persecution was or will be because of:
- race, religion, nationality, marital status, or political opinion.
  - race, religion, nationality, sexual orientation, or political opinion.
  - race, religion, gender, membership in a particular social group, or political opinion.
  - race, religion, nationality, membership in a particular social group, or political opinion.
  - race, religion, nationality, membership in a particular social group, or political opinion.**
9. An applicant returned to the country of feared persecution before her interview with you. You must:
- deny the case, as the fact that the applicant returned means she does not have a genuine fear.
  - approve the case, as she would not be asking for asylum or refugee status if she didn't have a good explanation for the return.
  - ask the applicant why she returned and what happened to her upon her return and, based on her responses determine the reasonableness of her claimed fear.
  - ask the applicant why she returned and what happened to her upon her return and, based on her responses, determine the reasonableness of her claimed fear.**
10. Your applicant claims that she received an anonymous threat of harm. She will not be able to establish a well-founded fear of persecution unless she can identify the alleged persecutor.
- True
  - False
  - False**



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**INTERNATIONAL RELIGIOUS  
FREEDOM ACT (IRFA) AND  
RELIGIOUS PERSECUTION**

TRAINING MODULE

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## **INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION**

### **Training Module**

#### **MODULE DESCRIPTION:**

This module introduces you to the International Religious Freedom Act (IRFA) and the responsibilities that the Act creates for adjudicating protection claims. The training you receive will also be useful in adjudicating immigration benefits, petitions, and other immigration-related requests. Through reading and discussing country conditions information, you will increase your awareness of religious freedom issues around the world. Through discussion and practical exercises, you will learn how to conduct an interview and adjudicate a claim with a religious freedom issue.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

Given a request for protection (an asylum or refugee application, or a reasonable fear or credible fear screening<sup>1</sup>) with a religious freedom issue, you will apply IRFA and case law.

#### **ENABLING LEARNING OBJECTIVES**

1. Summarize the IRFA requirements for RAIO officers.
2. Explain the statutory and regulatory requirements for consideration of protection claims and benefits requests involving religious freedom and religious persecution.
3. Summarize legal rulings that must be followed or that provide guidance when making decisions based on religious freedom or religious persecution.
4. Distinguish between appropriate and inappropriate interview questions involving religious freedom issues

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<sup>1</sup> Reasonable fear and credible fear screenings are processes in which an Asylum Pre-screening Officer determines if an applicant, who is subject to expedited removal, re-instatement of removal, or administrative removal, and who expresses a fear or concern of being removed, has a credible or reasonable fear of persecution or torture.

5. Explain the broad interpretation of “religion” as a protected ground under IRFA and the refugee definition.

### INSTRUCTIONAL METHODS

- Lecture
- Discussion
- Practical exercises

### METHOD(S) OF EVALUATION

Written test

### REQUIRED READING

1. U.S. Department of State, International Religious Freedom Report for 2013 (July 28, 2014), Executive Summary.
2. Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000).
3. Sarhan v. Holder, 658 F.3d 649 (7th Cir. 2011).

#### Division-Specific Required Reading - Refugee Division

#### Division-Specific Required Reading - Asylum Division

#### Division-Specific Required Reading - International Operations Division

### ADDITIONAL RESOURCES

1. U.S. Department of State, International Religious Freedom Reports.
2. U.S. Commission on International Religious Freedom, Annual Reports.
3. International Religious Freedom Act of 1998, P.L. 105-292, 112 Stat. 2787 (Oct. 27, 1998).
4. UNHCR, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (28 April 2004).

5. Lawyers Committee for Human Rights. Testing the Faithful: Religion and Asylum Summary Results of Survey. A Briefing Paper Prepared for the Roundtable on Religion-based Persecution Claims (New York: November 2002).

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
IRL7	Knowledge of International Religious Freedom Act (3)
IRL14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
ILR22	Knowledge of criteria for establishing credibility (4)
ITK6	Knowledge of principles of cross-cultural communications (e.g., obstacles, sensitivity, techniques for communication) (4)
OK11	Knowledge of Department functions and responsibilities, as they relate to RAIO (2)
RI1	Skill in identifying issues of claim (4)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI4	Skill in integrating information and materials from multiple sources (4)
IR3	Skill in responding to cultural behavior in an appropriate way (e.g., respectful, accepting of cultural differences) (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM4	Skill in determining applicant's credibility (5)
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)
ITS3	Skill in framing interview questions and requests for information (4)
ITS6	Skill in conducting non-adversarial interviews
C3	Skill in tailoring communications to diverse audiences (3)



**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
1/28/15	Throughout document	Fixed links and citations; added new case law; deleted references to 2011-2012 COI materials	RAIO Trng

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

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

## 1 INTRODUCTION

The purpose of this module is to introduce you to the International Religious Freedom Act (IRFA) and the proper way to analyze protection claims involving religious freedom issues with the goal of ensuring that religious freedom is respected during the course of interviews and throughout the adjudication process.

Sections 2 and 3 of this module provide an overview of IRFA and a detailed analysis of Title VI, the section of IRFA that is most relevant to you. Sections 4, 5, 6, and 7 of this module discuss the nature of religion and violations of religious freedom, and explore the issues that you should consider when interviewing, analyzing and adjudicating a protection claim or benefit request where religion may be a factor. Finally, Section 8 of this module lists resources you may find useful when deciding claims based on religious freedom.

## 2 OVERVIEW OF IRFA

In 1998, Congress adopted the International Religious Freedom Act (IRFA) in response to growing concerns about the persecution of various religious groups throughout the world. IRFA was signed into law on October 27, 1998.

While IRFA specifically noted Congressional concern for Christians in the Sudan and China, Tibetan Buddhists and Baha'is in Iran, Congress recognized the importance of protecting religious freedom throughout the world. In its findings, Congress cited, among other reasons, the following as a basis for adopting the Act:

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established a law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its

birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.<sup>2</sup>

IRFA seeks to address two different though equally important issues. First, IRFA addresses the issues of religious freedom and religious persecution directly, including a series of diplomatic and foreign policy provisions designed to enhance the ability of the United States to promote religious freedom around the globe. Second, IRFA addresses perceived problems within the Department of State (DOS), the Department of Justice (DOJ), and the former Immigration and Naturalization Service (INS) that may lead to diminished attention to the problems of religious persecution. These latter provisions now apply to the relevant components of the Department of Homeland Security (DHS).

IRFA is divided into seven titles. For this training, Title VI is the most important and will be the focus of this lesson. It is helpful, however, to briefly review the scope of the entire law. The following are the highlights of the provisions in each Title of IRFA. You should read the entire law for a complete understanding of all its provisions.

## **2.1 Title I – Department of State (DOS) Activities**

- Establishes within DOS an Office on International Religious Freedom and an Ambassador-at-Large for International Religious Freedom
- Requires DOS to provide specific training and outreach to Foreign Service Officers, including instruction on internationally recognized human rights and religious freedoms
- Requires DOS to set up a website for religious freedom and to maintain country-by-country lists of prisoners of conscience
- Requires DOS to publish various papers on religious freedom and an annual report that documents religious persecution throughout the world<sup>3</sup>

## **2.2 Title II – Commission on International Religious Freedom**

- Creates a Commission on International Religious Freedom (USCIRF) comprised of nine members from outside the U.S. Government, to monitor religious freedom in other countries, and to advise the U.S. Government on how best to promote religious freedom

## **2.3 Title III – National Security Council (NSC)**

- Creates an NSC Special Advisor to the President on International Religious Freedom

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<sup>2</sup> 22 U.S.C. § 6401(a)(1) (1999).

<sup>3</sup> The annual report may be found on the DOS website for international religious freedom

- Special Advisor serves as a resource for executive branch officials and makes policy recommendations

## **2.4 Title IV – Presidential Actions**

- Provides the President with the power to sanction violators of religious freedom
- Requires the President to designate “countr[ies] of particular concern for religious freedom” if the countries have engaged in or tolerated certain violations of religious freedom<sup>4</sup>

## **2.5 Title V – Promotion of Religious Freedom**

- Requires the United States to promote religious freedom through broadcasts, international exchanges, and foreign service awards

## **2.6 Title VI – Refugee, Asylum, and Consular Matters**

This Title is discussed in detail below in Refugee, Asylum, and Consular Matters under IRFA.<sup>5</sup>

## **2.7 Title VII – Miscellaneous Provisions**

These provisions note that it is the “sense of Congress that transnational corporations operating overseas” should adopt codes of conduct that encourage respect of employees’ religious beliefs and practices.

# **3 REFUGEE, ASYLUM, AND CONSULAR MATTERS UNDER IRFA**

Title VI contains five sections, which you must know in order to adjudicate refugee and asylum claims. A description of each section follows.

## **3.1 Section 601 -Use of Annual Report**

This section specifically mandates Asylum Officers, Immigration Judges, and Refugee and Consular Officers use the DOS Annual Report on Religious Freedom and other country of origin information when analyzing claims for asylum or refugee status on account of religion.<sup>6</sup>

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<sup>4</sup> The President has delegated this authority to the Secretary of State and the countries of particular concern are found on the DOS [website](#).

<sup>5</sup> 22 U.S.C. §§ 6471-6474 (1999). You should read Title VI for the complete provisions in each section. These are just the highlights.

<sup>6</sup> Publication of the annual report is a requirement under Title I.

Furthermore, this section specifically prohibits the denial of a refugee or asylum claim solely because the conditions of religious persecution as stated by an applicant do not appear in the DOS annual report.<sup>7</sup> [ASM Supplement – Use of DOS Annual Report].

### 3.2 Section 602 - Reform of Refugee Policy

This section<sup>8</sup> contains four important components:

1. Mandates training for Refugee Adjudicators that is the same as Asylum Adjudicators' training and that includes country conditions information and information on religious persecution.
2. Mandates training for Consular Officers on refugee law and adjudication, and religious persecution.
3. Requires DOS and DHS to jointly create guidelines to ensure that interpreters and other foreign personnel who come into contact with refugee applicants do not show improper bias on account of an individual's religion, race, nationality, membership in a particular social group, or political opinion.
4. Requires greater scrutiny of the manner in which refugee cases are screened and prepared and interviews are conducted to ensure that the files contain information that is unbiased and accurate.

### 3.3 Section 603 - Reform of Asylum Policy

This section<sup>9</sup> contains three important components:

1. Requires DOS and DHS to jointly create guidelines to ensure that individuals possibly biased against a person's race, religion, nationality, membership in a particular social group, or political opinion are not permitted to act as interpreters between aliens and Inspection or Asylum Officers. This includes interpreters and employees of airlines owned by governments known for persecutory actions.
2. Requires Asylum Officers and any Immigration Officers working in the expedited removal<sup>10</sup> context to receive training on "the nature of religious persecution abroad, including country-specific conditions, instruction on the internationally recognized

<sup>7</sup> See also *Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164 (11th Cir. 2014) (holding that State Department reports cannot be found to undercut evidence presented by an applicant simply because they fail to comment on the facts of an individual application).

<sup>8</sup> 22 U.S.C. § 6472 (1999).

<sup>9</sup> 22 U.S.C. § 6473 (1999).

<sup>10</sup> Persons who are in expedited removal proceedings and express a fear or concern of being removed to the country DHS has designated for removal, must be referred to an Asylum Pre-screening Officer for a credible fear determination.



right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country in the treatment of various religious practices and believers.”<sup>11</sup>

3. Under Section 602, all training mandated for Asylum Officers, must also be provided to officials adjudicating refugee cases.<sup>12</sup>

### **3.4 Section 604 - Inadmissibility of Foreign Government Officials who Have Engaged in Particularly Serious Violations of Religious Freedom**

This section<sup>13</sup> creates a new ground of inadmissibility to prevent religious persecutors from entering the United States. This ground, codified in Section 212(a)(2)(G) of the INA, 8 U.S.C. § 1182(a)(2)(G), and later amended by the Intelligence Reform Act of 2004, makes inadmissible any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section three of IRFA. This inadmissibility ground also includes the spouse and children of any such individual. The inadmissibility ground applies only to aliens seeking admission on or after October 27, 1998, the date of the enactment of IRFA.

In 1999, INS issued a policy memorandum on how to process applications for admission from individuals who may fall within this section of the INA.<sup>14</sup>

### **3.5 Section 605 - Studies on the Effect of Expedited Removal Provisions on Asylum Claims**

The U.S. Commission on International Religious Freedom has the ability to request from the Attorney General a study by the Comptroller General on certain aspects of the expedited removal process.<sup>15</sup>

- On September 1, 2000, the General Accounting Office (GAO)<sup>16</sup> released a report on the expedited removal process as required under IRFA; however, it did not

<sup>11</sup> IRFA also requires that immigration judges receive training on religious persecution.

<sup>12</sup> 22 U.S.C. 6472(a).

<sup>13</sup> Intelligence Reform and Terrorism Prevention Act of 2004 § 7119, PL 108-458, 118 Stat. 3638 (2004) (removing a restriction that the particularly severe violations of religious freedom must have taken place within the 24-month period prior to the inadmissibility determination).

<sup>14</sup> For specific instructions, see Michael A. Pearson, INS Office of Field Operations, Amendment to the Immigration and Nationality Act adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p. Note that if these individuals are in the United States, they are not necessarily precluded from applying for asylum, withholding of removal, or protection under the Convention Against Torture.

<sup>15</sup> 22 U.S.C. § 6474 (1999).

specifically address the issue of how the agency handles the religious-based claims of individuals in the expedited removal process. The GAO report found that the agency was generally in compliance with its expedited removal procedures at selected ports of entry and in compliance with the credible fear process at selected asylum offices.

- The U.S. Commission on International Religious Freedom commissioned a study on asylum seekers in expedited removal, and issued its Report in February 2005. The study sought to answer the following four questions:
  1. Are immigration officers, exercising expedited removal authority, improperly encouraging asylum seekers to withdraw applications for admission?
  2. Are immigration officers, exercising expedited removal authority, incorrectly failing to refer asylum seekers for a credible fear interview?
  3. Are immigration officers, exercising expedited removal authority, incorrectly removing asylum seekers to countries where they may face persecution?
  4. Are immigration officers, exercising expedited removal authority, detaining asylum seekers improperly or under inappropriate conditions?

Based on the problems identified in the study, the Report proposed five recommendations to DHS to ensure that asylum seekers are protected under the expedited removal process.<sup>17</sup> The recommendations were:

- Creating an office authorized to address cross cutting issues related to asylum and expedited removal – in response, DHS created a new position of Special Advisor for Refugee and Asylum Affairs in 2006 and appointed Igor Timofeyev to serve.
- Allowing asylum officers to grant asylum at the credible fear stage – in response, after careful consideration DHS rejected this recommendation due to resource constraints and the potential for a negative impact on some asylum-seekers.
- Establishing asylum detention standards – in response, ICE issued a directive in 2007 to its field components designed to ensure transparency, consistency, and quality in parole decisions.
- Facilitating legal assistance to asylum-seekers – in response DHS cited to its collaboration with DOJ on Legal Orientation Programs for detained individuals and

<sup>16</sup> General Accounting Office. *ILLEGAL ALIENS: Opportunities Exist to Improve the Expedited Removal Process*. GAO/GGD-00-176 (Washington, DC: 1 September 2000) 107p. This agency was renamed the Government Accountability Office in 2004.

<sup>17</sup> U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (Washington, DC: 8 Feb. 2005). The USCIRF Report is available on the USCIRF [website](#). Note that the Congress authorized the Commission to examine how expedited removal was affecting asylum seekers, regardless of whether the claim was based on religion, race, nationality, membership in a particular social group, or political opinion.

to its partnerships with NGOs, notably the Capital Area Immigrants' Rights Coalition.

- Implementing quality assurance procedures to ensure asylum-seekers are not turned away in error – in response, DHS implemented robust quality assurance procedures.

For more on DHS's response, see Stewart Baker letter to U.S. Commission on International Religious Freedom (Nov. 28, 2008).

## 4 THE NATURE OF RELIGION

### 4.1 Identifying Religious Beliefs and Practices

Religion is explicitly listed as one of the five protected characteristics in the refugee definition, and religion has been broadly understood to include freedom of thought and conscience.<sup>18</sup> In IRFA, Congress invoked the understanding of religion found in international instruments, such as the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, and found that freedom of religious belief and practice is a universal human right and fundamental freedom.<sup>19</sup> Defining "religion" to include an individual's thought, conscience, and belief requires for a broad interpretation of this protected ground in the asylum and refugee adjudications.

#### Familiar and Unfamiliar Religions

Religion, as a protected ground, is not limited to familiar, or widely accepted religious beliefs and practices. For purposes of establishing asylum and refugee eligibility, persecution suffered or feared on account of a belief system with which you may not be familiar may be considered persecution "on account of religion." IRFA refers to religious freedom without defining what makes a particular practice or belief a religion, or placing any particular religious group in a position of privilege over any other. While many applicants base their claim to refugee or asylum status on their inclusion in a faith group that is recognizable to the adjudicator (e.g. Hindus, Christians, or Muslims), other individuals may seek protection based upon unfamiliar religious beliefs and practices.<sup>20</sup>

The mere fact that an individual's faith or faith group is not familiar to an adjudicator, or that a particular practice or belief appears to be unusual, does not mean that the particular faith group or set of practices and beliefs are not "religious." "Popularity, as well as verity, are inappropriate criteria."<sup>21</sup> Neither courts nor adjudicators may inquire into the

<sup>18</sup> *Zhang v. Ashcroft*, 388 F.3d 713, 720 (9th Cir. 2004) (per curiam) (citing Paragraph 71 of the UNHCR Handbook).

<sup>19</sup> 22 U.S.C. § 6401(a)(1) - (3) (1999).

<sup>20</sup> See UNHCR *Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. HCR/GIP/04/06, 28 April 2004, Section II.

<sup>21</sup> *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977)

truth, validity, or reasonableness of a claimant's religious beliefs. Therefore, your role is not to determine whether a belief system may be considered a "religion," but to determine whether the applicant has suffered or might suffer persecution on account of those beliefs.<sup>22</sup>

### Denial of Religion

The protected ground of religion also covers an individual's failure or refusal to observe a religion. An individual may also face persecution on account of religion, even if he or she denies that his or her belief, identity or way of life constitutes a "religion."<sup>23</sup>

### Inability to Practice a Religion

The definition of religion and religious freedom necessarily includes the ability to worship and to otherwise practice one's religion. Courts have held that "it is virtually the definition of religious persecution that the votaries of a religion are forbidden to practice it."<sup>24</sup> The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) states that the fundamental right to religious freedom includes "the freedom of a person to . . . manifest it in public or private, in teaching, practice, worship and observance."<sup>25</sup>

### UNHCR Guidance on Religion-Based Claims

A useful way to consider this protected ground is to consider the elements UNHCR has identified for claims based on "religion." UNHCR notes that such claims may involve one or more of the following elements:<sup>26</sup>

- religion as a belief (including non-belief)
- religion as identity
- religion as a way of life

<sup>22</sup> For example, in the First Amendment context, "a religious belief can appear to every other member of the human race as preposterous, yet merit the protections of the Bill of Rights." *Stevens v. Berger*, 428 F. Supp. at 899; see also *Najafi v. INS*, 104 F.3d 943, 949 (7th Cir. 1997) (stating that "determination of a religious faith by a tribunal is fraught with complexity as true belief is not readily justiciable"); *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981).

<sup>23</sup> See *UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. HCR/GIP/04/06, 28 April 2004, para. 9. See *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (per curiam) (holding that Falun Gong practitioner faced persecution on account of his spiritual and religious beliefs, even though Falun Gong does not consider itself a religion).

<sup>24</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

<sup>25</sup> See *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (2011), ¶ 71.

<sup>26</sup> See *UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (2004), at para. 5.

***Belief***

According to UNHCR, a person's "beliefs" may be theistic, non-theistic, and atheistic. They also include a person's convictions or values about "divine," "ultimate reality," or "spiritual destiny." Because of his or her beliefs, a person may be considered a heretic, apostate or a pagan by members of the same religious group.<sup>27</sup>

***Identity***

A religious persecution claim may also be based on the applicant's ancestry, nationality, ethnicity, traditions and rituals and less on the applicant's actual theological beliefs.<sup>28</sup> Persecutors may target religious groups that are different from theirs because they view such groups as a threat to their own identity.

***Way of Life***

Religion, for some individuals, may also be a "way of life" characterized by a manner of dress, observance of religious practices and holidays, dietary restrictions, and other requirements. Such practices may be at the core of the religion for the applicant.

**Resources**

The following sources are useful reference tools for understanding different faith groups around the world:

- CIA World Factbook: [Religions](#)
- Bowker, John (ed.), *The Oxford Dictionary of World Religions*
- Crim, Keith (ed.), *The Perennial Dictionary of World Religions*
- Eederman's Handbook to World Religions
- Hinnells, J.R. (ed.), *Penguin Dictionary of Religions*
- Smith, J.Z., *The Harper Collins Dictionary of Religion*

**4.2 Credibility Considerations in Religious Persecution Cases**

Credibility determinations can be particularly complex in religious persecution cases. You may need to judge the sincerity of the applicant's claimed religious beliefs, but you cannot judge the validity of the belief system itself. Additionally, you may have certain assumptions or biases about religious issues, which must be put aside in order to render a legally sufficient and unbiased credibility determination. The following considerations should be taken into account:

<sup>27</sup> *Id.* at para. 6.

<sup>28</sup> *Id.* at para. 7.

#### 4.2.1 Refrain from Judging the Validity of a Belief System

You should not question the validity of a belief, even if the belief appears to be strange, illogical, or absurd.

##### **Distinguish between the Sincerity of Belief and the Validity of Belief**

You may evaluate whether a belief is sincerely held. In doing so, you should not make disrespectful or disparaging remarks about the belief or about the applicant's adoption of such a belief. If you suspect that an individual adopted a belief system solely for the purposes of trying to obtain asylum or refugee status, you must still evaluate whether the applicant's belief is sincerely held. In your questioning, you may elicit testimony about the sincerity of the belief, but you may not question whether the belief system itself has merit or has merit in comparison to other religions.

##### **Refrain from Judging Credibility based on Knowledge of Religious Tenets**

An individual's lack of knowledge of religious tenets does not necessarily mean the individual does not hold the belief or religious identity in question. Just as no individual's personal religious experience could be summed up in the history of his or her church, the words of a few prayers, or a description of his or her place of worship, a religious identity cannot be verified solely on a test of religious tenets.<sup>29</sup>

Furthermore, any inquiry into the applicant's knowledge of the tenets of his or her religion must take into account "individual circumstances, particularly since knowledge of a religion may vary considerably depending on the individual's social, economic or educational background and/or his or her age or sex."<sup>30</sup> In *Ren v. Holder*, for example, the

<sup>29</sup> See *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005) ("many deeply religious people know very little about the origins, doctrines, or even observances of their faith"); *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006) (reversing an adverse credibility finding based solely on the applicant's lack of detailed knowledge of Christian doctrine where the IJ failed to consider the applicant's self-identification as a religious adherent, his religious activities, and that other Indonesians perceived him to be Christian); *Cosa v. Mukasey*, 543 F.3d 1066, 1069-1070 (9th Cir. 2008) (vacated IJ decision, in part because IJ incorrectly faulted applicant for her inability to explain relationship between Millenism and similar religions, and set up Bible quiz and academic trivia contest); see also David Landau, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, Guidance on Religious Persecution Claims Relating to Unregistered Religious Groups, Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), section VI.

<sup>30</sup> U.N. High Commissioner for Refugees, Religion-Based Refugee Claims Under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees, paras. 28 and 30, U.N. Doc. HCR/GIP/04/06 (Apr. 28, 2004). See also *Yan v. Gonzales*, 438 F.3d 1249, 1252 (10th Cir. 2006) (reversing an adverse credibility finding that relied on the applicant's incorrect responses to a "a mini-catechism" test and failed to consider the applicant's personal experiences with Christianity and his personal circumstances including: "his very personalized notion" of certain doctrinal elements of Christianity, high school level education, that the applicant had only converted to Christianity 5 years earlier, and that the applicant's lack of knowledge regarding when he celebrated Easter could result from the fact that the holiday is celebrated on different days each year.); *Matter of J-Y-C-*, 24 I&N Dec. 260, 265 (BIA 2007) (finding that a Chinese applicant who claimed to be Christian could reasonably have been expected to identify the Bible during an airport interview since the applicant later

Ninth Circuit rejected an adverse credibility determination based, in part, on the applicant's inability to recite The Lord's Prayer.<sup>31</sup> The court held that questioning an applicant on his knowledge of religious doctrine to determine if he is a true believer is "not an appropriate method for determining eligibility for asylum."<sup>32</sup>

1. Recognize that religions are practiced differently around the world

Location, time period, and culture will produce variations in religious beliefs or practices.<sup>33</sup> Religious practices may vary from country to country and even within countries.

*Example*

An officer familiar with the practices of a Protestant church finds unbelievable an applicant's claim that he was baptized in an indoor baptismal font rather than in a natural body of water, as the officer believes is the church custom. However, the applicant lives in a near-Arctic climate in which the temperature of the bodies of water never rises above 45 degrees and baptisms are, therefore, not conducted in natural bodies of water.

2. Recognize that suppression of a religious group affects practice

Many persons who fear harm on account of religion have been forced to practice their faith in secret or not allowed to practice their faith at all. Sometimes these groups have been without a formal leader or religious texts and have simply passed on traditions from one generation to the next. Absent formal religious education, such individuals may not be able to discuss church history or the theological significance of particular practices. Additionally, underground or illegal religious institutions may not adhere to all formal practices of the faith for lack of training, worship or gathering space, materials, or for other reasons.<sup>34</sup>

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testified before the IJ that his experiences with Christianity before coming to the US and while in China included having been given a Bible by a friend who also told him to read it.)

<sup>31</sup> *Ren v. Holder*, 648 F.3d 1079, 1088 (9th Cir. 2011).

<sup>32</sup> *Id.*

<sup>33</sup> <sup>33</sup> U.N. High Commissioner for Refugees, Religion-Based Refugee Claims Under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees (2004), para. 28. Note, however, that "[g]reater knowledge may be expected . . . of individuals asserting they are religious leaders or who have undergone substantial religious instruction." *Id.* at para. 32. See *Mezvrishvili v. U.S. Att'y Gen.*, 467 F.3d 1292, 1295-1297 (11th Cir. 2006) (finding error where an IJ held that the applicant did not demonstrate sufficient knowledge of his religion given that the applicant had been a Jehovah's Witness for only four years and did not represent that he had undertaken active study of the religion for those four years).

<sup>34</sup> See *Huang v. Gonzales*, 403 F.3d 945, 949 (7th Cir. 2005) (rejecting IJ's adverse credibility finding because, among other things, the IJ failed to consider that members of an illegal underground Chinese Catholic church might have to deviate from formal practices); see also *Jiang v. Gonzales*, 485 F.3d 992, 994-995 (7th Cir. 2007) (noting that the IJ had "an exaggerated notion of how much people in China actually should know about Christianity." The court compared the IJ's finding that the applicant could not have been persecuted for being a Christian because he

**Example**

A 35 year-old woman claiming to be Ukrainian Catholic cannot describe how she would receive the Eucharist. This could be explained by the fact that in her rural town there were very few families who were Catholic and they had not had a priest since 1925.

3. Recognize your personal perceptions of a religion may not be accurate

You are not expected to be a theological scholar. Good research on a particular religion, and how it is practiced in a particular region, is crucial to conduct a thorough interview. Even if you are familiar with a religion through personal study or experience, you must be careful when questioning applicants and making credibility determinations.<sup>35</sup> You must not make assumptions, but should instead attempt to verify the applicant's statements with country of origin information.

This is particularly important when the claimant is a member of the same faith group as you. You may be tempted to rely on your personal experiences in the faith to evaluate the testimony of the applicant. It is unlikely, however, that applicants for asylum or refugee status will practice their religion as it is practiced in the United States.

4. Do not judge sincerity based on the applicant's manner of religious practice

You should not assume that the applicant's religious beliefs are not sincere based solely on the manner in which the applicant engaged in religious worship or the applicant's attendance at religious services. Religious practices can vary from country to country, community to community, and even person to person. You may notice, if you practice a religion, that the way you practice it may be different than other members of your family. How a religion is practiced may not be indicative of religious sincerity.<sup>36</sup> For example, attendance or lack of attendance at religious services may be affected by numerous factors, such as the availability of places for religious observance, personal circumstances that may inhibit or prevent religious attendance, fear of serious harm when attending religious services, or personal preferences. The frequency of or lack of attendance at religious services may not be indicative of religious sincerity.

**Religious Beliefs Can Be Imputed to an Applicant**

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could not interpret a Biblical passage to a finding that an individual is not "a baseball devotee because he can't explain the intricacies of the balk rule.").

<sup>35</sup> *Cosa v. Mukasey*, 543 F.3d 1066, 1069 (9th Cir. 2008) (reversing adverse credibility finding because IJ wrongly relied on speculation and conjecture regarding how Millenists dress and behave to fault the applicant's dress and demeanor, and used personal opinion to find that it was "preposterous" that applicant was baptized after only a short period of association with the religion).

<sup>36</sup> See, e.g., *Singh v. Holder*, 720 F.3d 635, 643-644 (7th Cir. 2013) (finding "inappropriate" behavior of IJ who doubted that applicant was Sikh because the applicant did not follow all tenets of Sikhism listed in a Wikipedia entry and noting that "Rather than seeking a verbatim recitation of an encyclopedia article, IJs should listen to a petitioner's personal explanation of religious beliefs... Orthodoxy is no substitute for sincerity.")



An applicant's knowledge of her religion, or the depth of her beliefs, may **not be relevant** if she faces persecution on account of beliefs a persecutor perceives her to hold. An adjudicator must look at the totality of the applicant's circumstances, and **country conditions information**, when assessing whether an applicant has been or **would be persecuted** on account of an imputed religious belief.<sup>37</sup> For example, in *Bastanipour v. INS*, the court found that "[w]hether Bastanipour believes the tenets of Christianity in his heart of hearts or . . . is acting opportunistically (though at great risk to himself) in the hope of staving off deportation would not, we imagine, matter to an Iranian religious judge."<sup>38</sup>

## 5 RIGHT TO RELIGIOUS FREEDOM

In Section 2 of IRFA, Congress acknowledged that freedom of religious belief and practice is a universal human right and a fundamental freedom articulated in numerous international instruments. A review of these international instruments is **important background information**, given IRFA's training requirements for Refugee and Asylum Officers, which includes instruction on the internationally recognized right to freedom of religion. Some of the relevant provisions in the listed international instruments are below.<sup>39</sup>

### 5.1 United Nations Charter

Article 1 of the *United Nations Charter* provides that one of the purposes of the United Nations is to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>40</sup>

### 5.2 Universal Declaration of Human Rights

Article 18 of the *Universal Declaration of Human Rights* states that "[e]veryone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance." The text of this Article is quoted in IRFA.<sup>41</sup>

### 5.3 International Covenant on Civil and Political Rights

<sup>37</sup> For additional information, see RAI0 Training module, *Nexus and the Five Protected Grounds*.

<sup>38</sup> *Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992).

<sup>39</sup> 22 U.S.C. § 6401(a)(2) (1999).

<sup>40</sup> *Charter of the United Nations*. (San Francisco: 26 June 1945).

<sup>41</sup> *Universal Declaration of Human Rights*. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

Article 18 of the *International Covenant on Civil and Political Rights*<sup>42</sup> provides that:

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

#### 5.4 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* reaffirms the provisions in Article 18 of the *International Covenant on Civil and Political Rights*.<sup>43</sup>

#### Religious Discrimination and Intolerance

Article 2 addresses issues of discrimination based on religion or other beliefs and defines religious discrimination and intolerance as follows:

1. No one shall be subject to discrimination by any State, institution, or group of persons on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

#### Parents' Right to Choose Religion

Article 5 addresses the rights of parents to choose the belief or religion in which they desire their children to be raised and the rights of children to have access to education in that belief.

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<sup>42</sup> *International Covenant on Civil and Political Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec. 16, 1966. The text of Article 18(1) is quoted in IRFA.

<sup>43</sup> *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 36/55, UN GAOR, Nov. 25, 1981.

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child serving as the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of others to practice a religion or belief, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care of either of his parents or legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes regarding the religion or belief in which they would have wished their child to be raised, the best interests of the child serving as the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

### **Freedom of Thought, Conscience, Religion, or Belief**

Article 6 states that the right to freedom of thought, conscience, religion, or belief shall include, among others, the following:

1. To worship or assemble in connection with a religion or a belief, and to establish and maintain places for these purposes
2. To establish and maintain appropriate charitable or humanitarian institutions
3. To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief
4. To write, issue and disseminate relevant publications in these areas
5. To teach a religion or belief in places suitable for these purposes
6. To solicit and receive voluntary financial and other contributions from individuals and institutions

7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief
9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels

## 5.5 Other International Instruments

Other international instruments that promote the right to religious freedom include the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter of Human and People's Rights, the American Convention on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe (the "Helsinki Accords").

## 6 VIOLATIONS OF RELIGIOUS FREEDOM ACCORDING TO IRFA

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a *non-exclusive* list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom."<sup>44</sup> The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

The codification of this categorical framework, however, does not mandate a particular result in an individual case. As discussed below in the Religious Persecution section, these violations may or may not constitute persecution, depending upon whether the harm the applicant experienced or fears is sufficiently serious to amount to persecution.

This categorical framework also gives the President a vehicle for identifying and sanctioning violations of religious freedom in other countries.<sup>45</sup>

These categories generally reflect the rights enshrined in the international instruments discussed above, and compose the framework used to determine if countries will be designated as "countries of particular concern for religious freedom."<sup>46</sup>

### 6.1 Particularly Severe Violations of Religious Freedom

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<sup>44</sup> See 22 U.S.C. §§ 6204 (11) and (13).

<sup>45</sup> See section on Religious Freedoms, above.

<sup>46</sup> 22 U.S.C. § 6441.

*Particularly severe violations* are systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment
- Prolonged detention without charges
- Causing the disappearance of persons by the abduction or clandestine detention of those persons
- Other flagrant denial of the right to life, liberty, or the security of person

## 6.2 Violations of Religious Freedom

*Violations of religious freedom* are violations of the internationally recognized right to freedom of religion and religious belief and practice, including violations such as:

Arbitrary prohibitions on, restrictions of, or punishment for:

- Assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements
- Speaking freely about one's religious beliefs
- Changing one's religious beliefs and affiliation
- Possession and distribution of religious literature, including Bibles
- Raising one's children in the religious teachings and practices of one's choice

### *Example*

The government of China requires that unofficial house churches register with the government. Those that refuse to register, on either theological or political grounds, are subject to intimidation, extortion, harassment, detention, and closure of their churches. See 2011 USCIRF Annual Report, "China."

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of an onerous financial penalty
- Forced labor
- Forced mass resettlement
- Imprisonment

- Forced religious conversion<sup>47</sup>
- Beating
- Torture
- Mutilation
- Rape
- Enslavement
- Murder
- Execution

IRFA also identifies

“state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of ‘religious police[,]’ severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, . . . prohibitions against publishing, distributing, or possessing religious literature and materials,” forcing religious believers to meet secretly, and targeting religious leaders by national security forces and hostile mobs, as additional forms of religious freedom violations.<sup>48</sup>

## 7 RELIGIOUS PERSECUTION

### 7.1 Persecution Generally

A variety of harms, ranging from physical abuse to mental suffering may rise to the level of persecution. In certain cases, severe forms of discrimination may constitute persecution.<sup>49</sup> The difference between persecution and discrimination is one of degree, which makes a hard and fast line difficult to draw.<sup>50</sup> Moreover, the Board of Immigration Appeals (BIA) has held that harms and abuses that might not individually rise to the level of persecution may, in the aggregate, constitute persecution.<sup>51</sup> For example, in *Shi v. U.S. Att’y Gen.*, the Eleventh Circuit held that the evidence compelled the conclusion that a Chinese Christian applicant had suffered persecution where he had been arrested during an underground church service, interrogated, detained for a week, and chained to an iron

<sup>47</sup> Being forced to change one’s religion and being prohibited from voluntarily changing one’s religion are both considered violations of religious freedom.

<sup>48</sup> 22 U.S.C. § 6401(a)(4) and (5).

<sup>49</sup> See *Kovac v. INS*, 407 F.2d 102, 105-07 (9th Cir. 1969) (holding that persecution is not limited to physical suffering).

<sup>50</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

<sup>51</sup> *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998)

bar outside in the rain for a night; the Court found it especially significant that the police had confiscated the applicant's religious group's bibles and attempted to force him to abandon his religious principles.<sup>52</sup>

In *Sumolang v. Holder*, the Ninth Circuit found that “[h]arm to a child can amount to past persecution of the parent when that harm is, at least in part, directed against the parent ‘on account of’ or ‘because of’ the parent’s race, religion, nationality, membership in a particular social group, or political opinion” in the context of a religious persecution claim. It noted that, where a child is so young that she lacks the capacity to have a religious belief of her own, harm to the child on account of religion must be understood as intended to punish the parent for the parent’s religious belief.<sup>53</sup>

When determining whether particular harm or abuses constitute persecution, you must consider their impact on the individual applicant. See RAIO Training modules, *Refugee Definition and Persecution*.

## 7.2 Religious Persecution

IRFA lists a wide array of actions that persecuting regimes may take to violate religious freedoms, ranging from severe physical abuse and torture, to various forms of psychological harm. These violations may or may not constitute persecution, depending upon the severity of the harm imposed, and the applicant’s individual circumstances.

### 1. Relevance of inclusion on IRFA list of violations

As noted in “Violations of Religious Freedom According to IRFA,” above, the range of violations listed in IRFA is instructive for determining persecution, given IRFA’s training requirements on the nature and methods of religious persecution practiced abroad.<sup>54</sup> That a particular type of harm is listed in IRFA as a violation of religious freedom does not necessarily mean that the violation rises to the level of persecution. Similarly, the omission from IRFA of a type of harm does not mean that the harm cannot amount to religious persecution under the INA.

In most instances, the serious forms of mistreatment categorized in IRFA as “particularly severe violations of religious freedom,” such as torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges; disappearance by abduction, and other flagrant denial of the right to life, liberty, or the security of persons, will constitute persecution.<sup>55</sup>

<sup>52</sup> *Shi v. U.S. Att’y Gen.*, 707 F.3d 1231, 1236-1237 (11th Cir. 2013).

<sup>53</sup> *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013).

<sup>54</sup> See 22 U.S.C. § 6473(b) & (c).

<sup>55</sup> 22 U.S.C. § 6402(11).

IRFA states that other “severe and violent forms of religious persecution,” include “detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of, or practice of their faith.”<sup>56</sup> Additional violations of religious freedom listed in IRFA, including arbitrary prohibitions on, restrictions of, or punishment for various religious activities, may constitute persecution, depending on the circumstances.<sup>57</sup>

## 2. Restrictions on practicing religion

As noted above, prohibitions on or restrictions of religious beliefs and practices may rise to the level of persecution, even without physical mistreatment. The Seventh Circuit has held that “[i]f a person is forbidden to practice his religion, the fact that he is not imprisoned, tortured, or banished, and is even allowed to attend school, does not mean that he is not a victim of religious persecution.”<sup>58</sup>

Where religious beliefs or practices have been restricted or banned, and the individual has not been physically harmed, the adjudicator must determine the degree of suffering or psychological harm caused by the religious freedom violation. In these cases it will be useful to determine the importance or centrality of the particular practice in the religion or to the individual applicant, in order to assess whether the suffering caused by the restriction amounts to persecution.<sup>59</sup>

## 3. Forced compliance with religious laws or practices that are abhorrent to an applicant’s beliefs

The U.S. Courts of Appeals for the Third and Seventh Circuits have indicated that forced compliance with laws that are “profoundly” or “deeply” abhorrent to a person may rise to the level of persecution.<sup>60</sup> In *Fatin v. INS*, the Third Circuit upheld the denial of asylum to an Iranian applicant who testified that, although she objected to a law requiring that women wear the chador and she did not want to wear it, she would be willing to do so rather than be punished; therefore, the Court reasoned, she had not demonstrated that compliance with the law would be profoundly abhorrent to her. In *Yadegar-Sargis v. INS*, however, the Seventh Circuit cautioned that the refugee definition does not require “that one be willing to suffer martyrdom to be eligible for asylum.”<sup>61</sup>

<sup>56</sup> 22 U.S.C. § 6401(a)(5); see also § 6402(13)(B) (listing the following additional religious freedom violations: interrogation, imposition of an onerous financial penalty, forced labor, forced religious conversion, and mutilation).

<sup>57</sup> 22 U.S.C. § 6402(13)(A).

<sup>58</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997); see also Membership in a Religious Community, below.

<sup>59</sup> For additional information on considering the importance of the feelings, opinions, and physical and psychological characteristics of the applicant, see RAI0 Training modules, *Refugee Definition and Persecution*.

<sup>60</sup> *Fatin v. INS*, 12 F.3d 1233, 1241-42 (3d Cir. 1993); see also *Yadegar-Sargis v. INS*, 297 F.3d 596, 604-05 (7th Cir. 2002).

<sup>61</sup> *Yadegar-Sargis*, 297 F.3d at 603 n.5.



#### 4. Guidance from UNHCR *Handbook*

The UNHCR *Handbook* also provides that various violations of religious freedom, even without physical mistreatment or abuse, can constitute persecution.<sup>62</sup> Religious persecution may include:

1. Prohibition of membership in a religious community
2. Prohibition of worship in private or in public
3. Prohibition of religious instruction
4. Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community

#### 7.3 Agents of Persecution

Religious persecution is not limited to government-sponsored violence; it can also include “[d]iscrimination, harassment, and violence by groups that the government is unwilling or unable to control” as well as acts of persecution by private entities that are either tolerated or outright sponsored by the government.<sup>63</sup>

An applicant may meet the burden of proving that the government is “unable or unwilling” to control nongovernmental entities by specific evidence of government inaction and evidence that generally the government is complicit in, or tacitly approves of the private persecution.<sup>64</sup> See RAIO Training Modules, *Persecution and Well-Founded Fear*.

#### 7.4 No Requirement to Conceal Religious Beliefs

Recognizing that “[o]ne aim of persecuting a religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining population,” you cannot require applicants to conceal their religion upon return in order to avoid persecution.<sup>65</sup> In *Muhur v. Ashcroft*, the Seventh Circuit rejected an Immigration Judge’s determination that a Jehovah’s Witness could not establish a well-founded fear of persecution in Eritrea because she was “not a religious zealot.”<sup>66</sup> The court held that the IJ improperly assumed that one is not entitled to asylum on the basis of religious

<sup>62</sup> See *UNHCR Handbook*, para. 72.

<sup>63</sup> *Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir. 1996)

<sup>64</sup> *Ivanov v. Holder*, 736 F.3d 5 (1st Cir. 2013); see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

<sup>65</sup> *Muhur v. Ashcroft*, 355 F.3d 958, 961 (7th Cir. 2004).

<sup>66</sup> *Muhur v. Ashcroft*, 355 F.3d 958, 960-961 (7th Cir. 2004);

persecution if one can escape the notice of persecutors by concealing one's religion.<sup>67</sup> The Ninth Circuit has also held that forcing an individual to practice his or her religion in hiding is contrary to our basic principles of religious freedom and the protection of religious refugees.<sup>68</sup> In *Kazemzadeh v. U.S. Att'y Gen.*, the Eleventh Circuit adopted a similar approach, finding that being forced to practice a religion underground to avoid punishment is itself a form of persecution.<sup>69</sup>

Cases in which applicants are forced to conceal their religion in order to avoid persecution are distinct from those in which the evidence indicates that the applicant **voluntarily** practices his or her religion in such a way that it is not reasonably likely to come to the attention of the feared persecutors. In such cases, the applicant may not have a well-founded fear of persecution. For example, in *Yi Xian Chen v. Holder*, the Seventh Circuit upheld a determination that an applicant who began practicing Falun Gong in the United States, had never had any problems with the Chinese government, and testified that he planned to practice Falun Gong inside his house or on a nearby farm outside rather than in public did not have a well-founded fear because he was not reasonably likely to draw the Chinese government's attention.<sup>70</sup>

## 7.5 Religious Discrimination

Although serious forms of religious discrimination may constitute persecution, lesser forms of religious discrimination, without more, may not rise to the level of persecution. For example, in *Sofinet v. INS*, a Romanian Seventh Day Adventist claimed that he suffered religious persecution because he was reprimanded for not working on his Sabbath.<sup>71</sup> The U.S. Court of Appeals for the Seventh Circuit held that although the applicant was occasionally reprimanded for failing to work as a police officer on Saturdays, he enjoyed steady employment for the five years between his conversion and his departure from Romania, and he failed to provide any evidence that he sought work that did not require Saturday hours. The Court further added that the totality of the evidence Sofinet presented was insufficient to demonstrate his claimed religious persecution. The Court noted that the evidence highlights only that Sofinet, at worst,

<sup>67</sup> *Id.*; *Antipova v. U.S. Att'y Gen.*, 392 F.3d 1259, 1263-1265 (11th Cir. 2004) (overturning an IJ decision noting with disfavor that the applicant had been subjected to acts of persecution because she "advertised" that she was a practitioner of Judaism by displaying her menorah on a window. The court noted that neither the INA provision on withholding of removal nor the related regulations required the applicant to avoid "signaling" her religious affiliation.).

<sup>68</sup> See *Zhang*, 388 F.3d at 719 (rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret); see also *lao v. Gonzales*, 400 F.3d 530, 532 (7th Cir. 2005) ("[T]he fact that a person might avoid persecution through concealment of the activity that places her at risk of being persecuted is in no wise inconsistent with her having a well-founded fear of persecution.").

<sup>69</sup> *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1354-55 (11th Cir. 2009).

<sup>70</sup> *Yi Xian Chen v. Holder*, 705 F.3d 624, 630 (7th Cir. 2013).

<sup>71</sup> *Sofinet v. INS*, 196 F.3d 742, 744 (7th Cir. 1999).

experienced ridicule, harassment and self-initiated job termination because of his religious beliefs.<sup>72</sup>

Similarly, in *Nagoulko v. INS*, the Ninth Circuit held that occasional disruptions in worship services and other church activities, where the applicant was not prevented from practicing her religion and did not suffer physical violence, did not amount to treatment so extreme as to compel a finding of past persecution.<sup>73</sup>

On the other hand, discrimination or harassment, especially in combination with other harms, may be sufficient to establish persecution if the adverse practices or treatment accumulates or increases in severity to the extent that it leads to consequences of a substantially prejudicial nature. Discriminatory measures that lead to serious restrictions on an individual's right to practice his or her religion could amount to persecution.<sup>74</sup>

In *Krotova v. Gonzales*, a Russian Jewish family presented evidence of sustained economic discrimination and pressure, physical violence and threats against the principal applicant and her close associates, and serious restrictions on the applicant's ability to practice her religion.<sup>75</sup> The court rejected the BIA's determination that the family experienced discrimination, and held that the cumulative impact of the anti-Semitic harms amounted to persecution. The *Krotova* opinion includes a useful discussion comparing cases finding discrimination with cases where the harm constitutes persecution.<sup>76</sup>

## 7.6 Reduced Evidentiary Burden: Lautenberg-Specter Cases in the Refugee Program

Under the Lautenberg Amendment,<sup>77</sup> certain categories of overseas refugee applicants – largely religious minorities from the former Soviet Union, Southeast Asia, and Iran – may establish a well-founded fear of persecution under a reduced evidentiary burden. Specifically, a category member may show a well-founded fear by establishing a “credible basis for concern about the possibility of persecution.” Applicants generally establish a credible basis of concern by showing multiple instances of discrimination in one or more of the following areas:

<sup>72</sup> *Id.* at 747.

<sup>73</sup> *Nagoulko v. INS*, 333 F.3d 1012, 1016-1017 (9th Cir. 2003); see also *Matter of V-F-D-*, 23 I&N Dec 859, 863 (BIA 2006) (holding that discrimination in school, neighborhood and employment opportunities on account of religion did not amount to past persecution).

<sup>74</sup> For additional information on discrimination and harassment, see RAIO Training modules, *Refugee Definition and Definition of Persecution and Eligibility Based on Past Persecution*. See also *UNHCR Handbook, para. 54*.

<sup>75</sup> *Krotova v. Gonzales*, 416 F.3d 1080, 1082 (9th Cir. 2005); see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998) (holding that Ukrainian father and son who experienced anti-Semitic attacks, vandalism, threats and a humiliating incident suffered persecution).

<sup>76</sup> *Krotova*, 416 F.3d at 1084-1087.

<sup>77</sup> The Lautenberg Amendment amended the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. No. 101-167. For a list of Lautenberg category members, please see the Lautenberg Lesson Plan.

- Inability to study or practice religion or cultural heritage
- Denial of access to educational, vocational or technical institutions
- Adverse treatment in the workplace
- Loss of home, job or educational opportunities

Lautenberg-Specter applicants may also establish a credible basis of concern by showing mistreatment against similarly situated individuals or by showing that they suffered harm on account of their request to emigrate. There is no provision in the law for asylum applicants to be covered by the reduced evidentiary burden set forth in the Lautenberg Amendment.

### 7.7 Membership in a Religious Community

Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.<sup>78</sup> Each case requires an analysis of whether the individual suffered or may suffer harm amounting to persecution. Of course, an individual need not show that she will be singled out individually for persecution if she shows that she is included in a group that suffers a pattern or practice of persecution.<sup>79</sup>

### 7.8 Issues with “on Account of” in Religious Persecution Cases

In many countries, politics and religion are intertwined, making the analysis of nexus more complex. In such cases, you must determine whether the applicant was targeted on account of his or her religious beliefs, political opinion, in the course of legitimate government investigation of crimes, or some combination of all three. Motivation of the persecutor is a critical element in the analysis of nexus.<sup>80</sup>

In two separate cases before the BIA, *Matter of R*-<sup>81</sup> and *Matter of K-S*,<sup>82</sup> each respondent based his asylum claim, in part, upon the premise that the Indian authorities persecute Sikhs on account of religion. In *Matter of R*-, the BIA held that harm suffered incidental to the government’s pursuit of Sikh militant separatists was not persecution on account of religion. Likewise in *Matter of K-S*-, the BIA relied heavily on a State Department opinion which stated that the government of India does not take action against individuals solely on account of their membership in the Sikh faith, but against those accused of committing acts of violence.

<sup>78</sup> UNHCR Handbook, para. 73.

<sup>79</sup> See 8 C.F.R. 208.13(b)(2)(iii). For additional information, see also RAIO Training module, *Well-Founded Fear*, section on *Pattern or Practice of Persecution*.

<sup>80</sup> For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>81</sup> *Matter of R*-, 20 I&N Dec. 621, 623-625 (BIA 1992).

<sup>82</sup> *Matter of K-S*-, 20 I&N Dec. 715, 722 (BIA 1993).

In both cases the BIA rejected the notion that the respondents' membership in the Sikh faith was the reason ("on account of") for the harm suffered, because they presented no direct or circumstantial evidence that the authorities were motivated by the respondents' religious beliefs.

### 7.8.1 Conversion

It may be illegal in some countries to convert from one religion to another and the penalties may be severe. In some countries, for example, conversion from Islam to another religion is considered apostasy (renunciation of faith) and may be punishable by imprisonment or death. Punishment for conversion may be considered persecution on account of religion, depending on the degree of the harm threatened or imposed.

### 7.8.2 Prosecution v. Persecution

Cases involving forced compliance with laws of general applicability raise challenging questions of nexus and motive. In general, prosecution for a criminal offense is not persecution, and a government has the right to investigate and punish individuals for violations of legitimate laws. In *Matter of H-M-*, the BIA held that the applicant's prosecution for foreign currency speculation, black market sales, and conspiracy to possess illegal weapons did not constitute persecution.<sup>83</sup> However where a law of "general applicability" punishes individuals because of a protected ground and the punishment for violations of the law rises to the level of persecution, an applicant who has been punished for violating the law may be able to establish past persecution, and an applicant who is reasonably likely to violate the law may have a well-founded fear. For example, in *Karouni v. Gonzales*, the Ninth Circuit Court of Appeals noted that the applicant's feared arrest and detention for violating a law prohibiting same-sex acts would constitute persecution on account of membership in a particular social group defined by his sexual orientation.<sup>84</sup>

### General Considerations

To determine whether punishment for violation of a generally applicable law constitutes religious persecution, you should consider:

- Is the law neutral in intent?
- Is the law neutrally or unequally enforced?
- How does the persecutor view those who violate the law?

<sup>83</sup> See *Matter of H-M-*, 20 I&N Dec. 683 (BIA 1993); *Abedini v. INS*, 971 F.2d 188 (9th Cir. 1992) (holding that prosecution for violation of generally applicable anti-propaganda and conscription laws is not persecution on account of protected ground). For additional information, see also RAI0 Training module, *Nexus and the Five Protected Grounds*.

<sup>84</sup> *Karouni v. Gonzales*, 399 F.3d 1163, 1174 (9th Cir. 2005).

### Laws Based on Religious Principles

Laws that target particular religious beliefs and practices generally are not neutral in intent. When a law criminalizes a particular religious practice, punishment for violation of the law may amount to persecution on account of religion.

#### Examples

Prosecution for the crime of attending religious services, or for providing “illegal” religious instruction to a child, could constitute persecution on account of religion.<sup>85</sup>

Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion or another protected ground.<sup>86</sup>

Punishment for violation of a law that is designed to prevent the commingling of individuals of different faiths, such as laws against interfaith dating or marriage, could amount to persecution on account of religion.<sup>87</sup>

When a civil or criminal law is itself based on religious laws or principles in a country where there is little separation between church and state, the evaluation of the persecutor’s intent may be complex. A thorough understanding of country conditions will help you evaluate how the authorities view individuals who violate religious laws. Keep in mind that Section 601 of IRFA requires Immigration Judges, Asylum, Refugee, and Consular Officers to use the Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution.

### Laws of Neutral Intent that Affect Religious Practices

While laws that require punishment for holding a particular belief would almost always be considered a violation of religious freedom, punishment for violation of laws that proscribe particular actions or practices associated with a religion may or may not be linked to the protected ground of religion.

#### Example

<sup>85</sup> UNHCR Handbook, para. 57

<sup>86</sup> See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000)(granting asylum to a woman with liberal Muslim beliefs who was persecuted by her father who had more orthodox Muslim beliefs); *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011)(although this is a particular social group case, the court noted that “[s]ociety as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the appropriate punishment—in this case, death.”).

<sup>87</sup> *Bandari v. INS*, 227 F.3d 1160, 1168 (9th Cir. 2000)(finding applicant suffered persecution for interfaith dating), citing with approval *Maini v. INS*, 212 F.3d 1167 (9th Cir. 2000)(finding applicants suffered persecution for interfaith marriage).

In *Romeike v. Holder*, the Sixth Circuit Court of Appeals held that prosecution for violating a truancy law by a couple who homeschooled their children in accordance with their religious values did not constitute persecution on account of religion because the law applies equally to all parents, is not intended to target the applicant's religion, and does not impose disproportionately harsh treatment on parents who homeschool for religious reasons.<sup>88</sup>

Some state restrictions on religious practice can be legitimate. It is important, therefore, to focus on the intent or the purpose of the law. Article 18 of the International Covenant on Civil and Political Rights provides that the "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others."<sup>89</sup>

### *Example*

A curfew imposed during a period of civil strife may prevent individuals from attending evening religious services. Because the law was not intended to overcome a characteristic, but rather to protect public safety, no nexus to religion would be established.<sup>90</sup>

### **Unequal or Pretextual Enforcement of the Law or Disproportionately Severe Punishment**

Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. Prosecution that is used as a pretext to harm an individual on account of any of the five protected grounds may constitute persecution. Punishment that is unduly harsh or disproportionately severe, given the nature of the offense committed, may be evidence of pretext.<sup>91</sup>

### *Examples*

A law that prohibits public gatherings on public property without a permit is enforced only against members of one particular religion, but not against other groups. The unequal enforcement is evidence that the persecutor's intent is to punish members of a particular religious group because of their religious beliefs.

In *Ghebremedhin v. Ashcroft*, the Seventh Circuit overturned an Immigration Judge's finding that a Jehovah's Witness who feared that he would be harmed because of his failure to perform national service would not be targeted on

<sup>88</sup> *Romeike v. Holder*, 718 F.3d 528, 533-534 (6th Cir. 2013).

<sup>89</sup> Art. 18 of *International Covenant on Civil and Political Rights (ICCPR)* (16 December 1966).

<sup>90</sup> See also *UNHCR Religion Guidelines*, para. 15 (discussing examples of permissible restrictions, including, for example, prohibition on ritual killings).

<sup>91</sup> *Matter of A-G-*, 19 I&N Dec. 502, 506 (BIA 1987); *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996); *UNHCR Handbook*, para. 57-59.

account of his religion because all Eritreans are required to. According to the Court, the IJ failed to consider evidence both from the applicant's testimony and from country conditions reports that Jehovah's Witnesses are singled out for disproportionately severe treatment, such as extended detention and extreme physical punishment, for their failure to serve.<sup>92</sup>

The Ninth Circuit, in *Bandari v. INS*, considered the claim of an Iranian Christian who had been arrested by police for violating a law that prohibited public displays of affection when he kissed a Muslim girl. The initial stop of the applicant by the police may have been characterized as equal enforcement of a neutral law. The police, however, detained the applicant for several days, beat him, insulted his religion, and sentenced him for violation of a law that prevented interfaith dating. These actions by police demonstrated that the harm the applicant suffered was persecution on account of his religion, rather than prosecution.<sup>93</sup>

### The Persecutor's View of Violators

Where an individual is punished for his or her refusal to comply with a religious law, the persecutor may view the individual as both a law-breaker and as an individual with "improper" religious values. You must, therefore, explore all possible motives, as well as the possibility that the persecutor had mixed motives, when assessing whether the harm the applicant suffered or fears is on account of a protected ground. See Mixed Motives section, below.

### 7.8.3 Refusal to Comply with or Alleged Flouting of Religious Norms

Harm resulting from an applicant's refusal to comply with religious norms may constitute persecution on account of religion. In *Matter of S-A-*, a woman with liberal Muslim beliefs differed from her father's orthodox Muslim views concerning the proper role of women in Moroccan society. As a result of her refusal to share or submit to her father's religion-inspired restrictions and demands, her father subjected her (but not her brothers) to repeated physical assaults, imposed isolation, and deprivation of education. The BIA held that harm inflicted on the applicant by her father because she refused to comply with religious norms amounted to past persecution on account of religion.<sup>94</sup>

Harm to a person who is alleged to have flouted repressive moral norms may also constitute persecution on account of the person's membership in a particular social group. In *Sarhan v. Holder*, the Seventh Circuit noted that honor killings occur where a woman commits the "sin" of going for a walk with a man who is not her husband or relative.<sup>95</sup> The applicant in *Sarhan* was falsely accused of adultery by her sister-in-law and was

<sup>92</sup> *Ghebremedhin v. Ashcroft*, 385 F.3d 1116, 1120 (7th Cir. 2004).

<sup>93</sup> *Bandari v. INS*, 227 F.3d 1160, 1168 (9th Cir. 2000).

<sup>94</sup> *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000).

<sup>95</sup> *Sarhan v. Holder*, 658 F.3d 649, 654 (7th Cir. 2011).



threatened with death by her brother for bringing dishonor to her family. The court found that Jordanian society as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the punishment.<sup>96</sup> The court rejected the BIA's conclusion and the government's argument that this was merely a "personal dispute" between the applicant and her brother. The court held that the dispute is a "piece of complex cultural construct that entitles male members of families dishonored by perceived bad acts of female relatives to kill those women."<sup>97</sup>

#### 7.8.4 Mixed Motives

A persecutor may have more than one motive in seeking to harm an individual. One or more of the persecutor's motives may be a protected ground. There is no requirement that the applicant demonstrate that the protected characteristic is or was the **only** factor motivating the persecutor to harm the applicant.

For example, organized criminal groups may be motivated to harm religious people both to further their criminal goals and because of their religious beliefs. In *Ivanov v. Holder*, the First Circuit Court of Appeals considered the case of a Russian applicant who practiced the Pentecostal faith and volunteered at a drug rehabilitation center run by his church. One night, while the applicant was leaving the center, a group of skinheads involved in drug trafficking beat him, kidnapped him, and detained him for three days in a basement without food and water. The Court rejected the Board's conclusion that the group was motivated solely by the applicant's interference with its drug trade, holding that it failed to consider the possibility that the group had mixed motives given that it also had an "overarching mission" of intolerance toward adherents of "foreign" religions and specifically expressed opposition to the center's religious methods.<sup>98</sup>

A mixed motive analysis for asylum applications filed on or after May 11, 2005 is governed by the REAL ID Act of 2005, which amended INA § 208. Under the amendment, an asylum applicant "must establish that race, religion, nationality, membership in a particular social group, or political opinion, was or will be at least one central reason for persecuting the applicant."<sup>99</sup> See ASM Supplement – Mixed Motives at the end of this module.

Refugee adjudications are governed by case law interpreting the refugee definition, prior to the 2005 amendment. In *Matter of Fuentes*, for example, the BIA held that an applicant does not need to establish the exact motivation of his persecutor, but he does need to establish that a reasonable person would fear the danger arises on account of a protected

<sup>96</sup> *Id.* at 655.

<sup>97</sup> *Id.* at 656.

<sup>98</sup> *Ivanov v. Holder*, 736 F.3d 5, 15 (1st Cir. 2013).

<sup>99</sup> INA §208(b)(1)(B)(i).

ground.<sup>100</sup> See RAD Supplement – Mixed Motives at the end of this module. See RAI0 Training module, Nexus the Five Protected Grounds.

## 7.9 Persecution by Members of Applicant’s Religion

You may encounter cases in which the persecutor belongs to the same religious group as the applicant. This may occur, for example, when the persecutor believes that the applicant is not sufficiently complying with religious tenets. In *Matter of S-A-* (see above, *Refusal to Comply with Religious Norms*), the BIA found that the applicant had been persecuted by her father because her beliefs regarding the proper role of Muslim women differed from his. Both the applicant and her father practiced Islam.<sup>101</sup> Similarly, in *Maini v. INS*, the petitioners argued that despite the fact that the Communist Party Marxist (CPM) of India is comprised of both Sikhs and Hindus, *Maini* and his wife were persecuted on account of their interfaith marriage. The U.S. Court of Appeals for the Ninth Circuit held that “if an applicant can establish that others in his group persecuted him because they found him insufficiently loyal or authentic to the religious, political, national, racial, or ethnic ideal they espouse, he has shown persecution on account of a protected ground. Simply put, persecution aimed at stamping out an interfaith marriage is without question persecution on account of religion.”<sup>102</sup>

## 8 RESOURCE MATERIALS

Title VI of IRFA requires Asylum and Refugee Officers and other immigration officials to consult the Department of State annual report on religious freedom, as well as other country conditions reports, when analyzing claims for asylum or refugee status based on religion. A body of resource materials is available to document the status of religious freedom in the world.

### 8.1 Countries of Particular Concern

The President is required to designate as “countries of particular concern” those countries that have engaged in or tolerated violations of religious freedom. The United States uses sanctions against these countries to encourage them to improve their treatment of religious groups.<sup>103</sup>

### 8.2 The US Department of State Annual Report on International Religious Freedom

<sup>100</sup> *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

<sup>101</sup> *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

<sup>102</sup> *Maini v. INS*, 212 F.3d 1167, 1175 (9th Cir. 2000) (“That a person shares an identity with a persecutor does not foreclose a claim of persecution on account of a protected ground.”).

<sup>103</sup> See U.S. Dep’t of State, “Countries of Particular Concern.”

Each year the Department of State publishes an annual report which provides information on the treatment of religious groups in most countries of the world, much in the same way as the annual *Country Reports on Human Rights Practices*.<sup>104</sup>

### **8.3 U.S. Commission on International Religious Freedom Reports**

Established by the International Religious Freedom Act, the U.S. Commission on International Religious Freedom (USCIRF) monitors the status of religious freedom in other countries and advises the President and Congress on how best to promote religious freedom.

#### **Annual Reports**

Each year the U.S. Commission on International Religious Freedom issues its Annual Report.<sup>105</sup> Mindful of its mandate to make recommendations on how to combat violations of religious freedom in the world, its reports focus on particular countries that it sees as “priorities” in the fight for global religious freedom.

In its annual report, the Commission summarizes its activities over the course of the past year and recommends policies to the United States Government that would promote and protect religious freedom around the world. The Commission also recommends that the State Department designate certain “Tier 1” countries as Countries of Particular Concern and has a “Tier 2” list of countries where the Commission believes that religious freedom conditions do not rise to the statutory level requiring designation as Countries of Particular Concern, but which require close monitoring of the situation.

#### **Individual Country Reports, Hearings, and Testimony**

In addition to its annual report, the Commission periodically publishes reports dealing with particular countries. Quite often, these reports are issued in response to particular issues or violations of religious freedom in a given country.

The Commission also organizes hearings on issues of religious freedom when it determines that greater examination of the situation in a country is required. Human rights monitors, religious scholars, and other interested parties have presented their views to the Commission in such fora.

Finally, Commission members occasionally testify before Congress on issues of religious freedom and concerns regarding threats to that freedom around the world.

### **8.4 Comments on the DOS Annual Report on International Religious Freedom**

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<sup>104</sup> See U.S. Dep’t of State, “Annual Reports to Congress on International Religious Freedom.”

<sup>105</sup> USCIRF, Frequently Asked Questions.

Each year the U.S. Commission on International Religious Freedom responds to the statements made by the Department of State in its *Annual Report*. These comments may be published in a separate report or as part of the USCIRF *Annual Report*. The comments intend to balance the body of material on international religious freedom by pointing out omissions of information and to critique the implementation of policy on international religious freedom.

## **9 SUMMARY**

### **9.1 Overview of IRFA**

IRFA, the International Religious Freedom Act, was enacted on October 27, 1998, to promote religious freedom and call attention to its abuse worldwide. IRFA also created new foreign policy mechanisms for use by the United States to act against religious persecution abroad.

### **9.2 Title VI of IRFA**

Title VI of IRFA speaks directly to the role of Asylum, Refugee, and Consular officers in improving the U.S. government response to religious persecution.

1. Section 601 mandates that immigration judges, asylum officers, and immigration officers refer to the Department of State Annual Report on International Religious Freedom when adjudicating requests for asylum or refugee status.
2. Section 602 requires greater attention to issues of refugee law and religious persecution by those involved in the processing of refugees overseas, including DOS consular officers, immigration officers, and interpreters.
3. Section 603 requires greater scrutiny of the potential biases of those individuals used as interpreters during inspection or interviews. The section also requires training on religious persecution for all those involved in the expedited removal process.
4. Section 604 creates a new ground of inadmissibility for any foreign government official who has been responsible for or has directly carried out severe violations of religious freedom.
5. Section 605 provides the U.S. Commission on International Religious Freedom with the authority to request studies by the Comptroller General on certain aspects of the expedited removal process.

### **9.3 The Nature of Religion**

1. The protected ground of religion is broadly understood, and protects familiar as well as unfamiliar belief systems.

2. The definition of religion includes religious beliefs (and non-belief) and religious practices.
3. Religious beliefs and practices may vary by sect, region, country, and culture, and you must put aside preconceived notions of what can be considered a religion and how religions are practiced across the globe.
4. An individual's religious identity generally cannot be verified by "testing" the applicant on his or her knowledge of the tenets of the religion.

#### **9.4 Right to Religious Freedom**

Internationally-recognized standards regarding religious freedom are codified in various international instruments and cited in IRFA. These instruments, such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, provide invaluable guidance in determining what actions may be considered violations of religious freedom.

#### **9.5 Violations of Religious Freedom**

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a non-exclusive list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom." The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

Whether or not a particular violation of religious freedom (either particularly severe or not) could be considered persecution on account of religion depends upon the degree of harm threatened or imposed, and the applicant's individual circumstances.

#### **9.6 Religious Persecution – General Considerations**

1. Prohibitions or restrictions on religious beliefs and activities can, without physical mistreatment, rise to the level of persecution.
2. Forced compliance with religious laws or practices that are fundamentally abhorrent to a person's deeply held religious convictions may constitute persecution.
3. Persecution by government, as well as by private individuals whom the government is unable or unwilling to control, may establish a religious persecution claim.
4. Adjudicators cannot require an applicant to conceal his religious beliefs upon return in order to avoid persecution.

5. Serious measures of discrimination on account of religion may be sufficient to establish persecution if the adverse practices accumulate or increase in severity leading to consequences of a substantially prejudicial nature. Other forms of religious discrimination, without more, may not be sufficient to establish persecution.
6. Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.
7. The motivation of the persecutor must be examined to determine if:
  - i. the applicant has been targeted or could be targeted
  - ii. the applicant's religion is the targeted characteristic
8. Laws that impose harsh penalties for conversion from one religion to another may constitute persecution on account of religion.
9. Punishment for violation of a generally applicable law affecting religious beliefs or practices may constitute persecution on account of religion. You must analyze the intent and purpose of the law, whether the law is unequally enforced, and how the persecutor views those who violate the law.
10. It is possible for individuals to establish that they have been persecuted on account of their religion by members of the same faith community. For example, an individual could be harmed because he or she is perceived by others to be failing in the faith or to have violated moral norms.

## 9.7 Resource Materials

You have at your disposal a number of tools to aid in the adjudication of cases of claimed religious persecution. IRFA requires you to consider the information contained in the Department of State *Annual Report on International Religious Freedom* when adjudicating asylum and refugee cases. In addition, you may consult other resources, such as the reports and press releases issued by the U.S. Commission on International Religious Freedom.

You must not assume that a religious persecution claim is unfounded because of the absence of information on persecution of a particular group in either of the above-mentioned reports, or the fact that a refugee-producing country is not designated as a country of particular concern.<sup>106</sup>

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<sup>106</sup> *Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164 (11th Cir. 2014).

**PRACTICAL EXERCISES**

[NOTE: Practical Exercises for this module to be added later.]

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

There are no Other Materials for this module.



**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

None

**ADDITIONAL RESOURCES**

1. *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996).
2. *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

**SUPPLEMENTS**

**RAD Supplement – Mixed Motives**

As mentioned in the Mixed Motives section of the module, refugee resettlement adjudications are not governed by the 2005 amendments to the asylum statute. As with asylum adjudications, however, you must explore all possible motives, including mixed motives, when assessing a claim based on an applicant's religious beliefs or practices. An applicant bears the burden of establishing that "a reasonable person would fear that the danger arises on account of" a protected ground.<sup>107</sup> In *Maini v. INS*, for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.<sup>108</sup>

<sup>107</sup> *Matter of S-P-*, 21 I&N Dec. 486, 490, 497 (BIA 1996).

<sup>108</sup> *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

INA §208(b)(1)(B)(i) – REAL ID Act amendment regarding mixed motives for persecution.

**ADDITIONAL RESOURCES**

1. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).
2. *Ndayshimiye v. Att’y Gen. of U.S.*, 557 F.3d 124 (3d Cir. 2009).
3. *Rizal v. Gonzales*, 442 F.3d 84 (2d Cir. 2006).
4. *Huang v. Gonzales*, 403 F.3d 945 (7th Cir. 2005).
5. Elwood, Kenneth J., Deputy Executive Associate Commissioner, INS Office of Field Operations. Implementation of the International Religious Freedom Act of 1998, Memorandum for Jeffrey L. Weiss, Acting Director, Office of International Affairs. (Washington, DC: 5 April 1999), 3 p.
6. Langlois, Joseph E., Deputy Director, Asylum Division. Religious Persecution, [with two attachments: letter to William Bartlett, Office of Asylum Affairs, Department of State, concerning training conducted for Asylum Officers on religious persecution; list of documentation distributed by the Resource Information Center on religious persecution, 1992-1998] Memorandum for Asylum Office Directors. (Washington, DC 5 May, 1998), 12 p.
7. Pearson, Michael A., Executive Associate Commissioner, INS Office of Field Operations. Amendment to the Immigration and Nationality Act (the Act) adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p.
8. Landau, David, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, Guidance on Religious Persecution Claims Relating to Unregistered Religious

Groups, Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), 12 pp.

## SUPPLEMENTS

### ASM Supplement - Mixed Motives

Under INA section 208, as amended by the REAL ID Act of 2005, the applicant must establish that religion, or any other protected ground, was or will be “at least one central reason for the persecution.”<sup>109</sup> In *Matter of J-B-N- & S-M-*,<sup>110</sup> the Board found that amendments added by the REAL ID Act did not radically alter the BIA’s mixed motive analysis. This decision was modified by the Third Circuit in *Ndayshimiye v. Att’y Gen. of U.S.*,<sup>111</sup> which held that the BIA’s interpretation of the “one central reason” standard is in error only to the extent that it would require an asylum applicant to show that a protected ground for persecution was not “subordinate” to any unprotected motivation.

The REAL ID Act changes only apply to asylum applications filed on or after May 11, 2005. For applications filed prior to the REAL ID Act, the applicant bears the burden of establishing that “a reasonable person would fear that the danger arises on account of” a protected ground.<sup>112</sup> In *Maini v. INS*, for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.<sup>113</sup>

### ASM Supplement – Use of DOS Annual Report

Although section 101(a)(3) of the REAL ID Act of 2005, codified at 8 U.S.C. §1158(b)(1)(B)(iii), states that credibility determinations may be based on the consistency of an applicant’s statements with DOS country reports, IRFA prohibits Adjudicators from making an adverse determination based solely on the fact that an applicant’s claims are not mentioned in the DOS annual report.

Section 601 of IRFA requires immigration judges, asylum officers, and refugee and

<sup>109</sup> INA § 208(b)(1)(B)(i). For additional information, see also RAIO Training module, *Nexus the Five Protected Grounds*.

<sup>110</sup> *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

<sup>111</sup> *Ndayshimiye v. Att’y Gen. of U.S.*, 557 F.3d 124 (3d Cir. 2009).

<sup>112</sup> *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996).

<sup>113</sup> *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

consular officers to use the US Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution. Asylum Officers are required to cite the Department of State's Annual Report On Religious Freedom and other reliable country of origin information during the adjudication of an affirmative asylum claim.

**Supplement C**

**International Operations Division International Religious Freedom Act (IRFA) and Religious Persecution**

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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Yes  No

If no, was it someone the government was unwilling or unable to control? (evidence needed)

## Location

Yes  No

### Why does this component matter?

The harm must have happened in the applicant's country of nationality.

### In what country did the applicant suffer the harm?

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### Ask yourself:

Did the harm happen in the applicant's country of nationality?

Yes  No

Put it all together – **Do you have four YES boxes checked?** If yes, you've SIMPLY established persecution.

Student Name: [Click here to enter text.](#)

### RAIO CT Reading Case Law Exercise

(Please note, this is a simplified format, not following the usual IRAC format of a law school brief that is described in your reading.)

#### The facts of the case:

Within the decision the court will describe the relevant facts upon which they based their decision. Do not simply copy and paste the facts found in the decision, but summarize them in your own words.

#### The sources of authority:

Please list any statutes, regulations, or foreign law that the decision maker relied upon in reaching their decision. Also list the major cases that were relied upon.

#### The decision:

How did the court resolve the controversy at issue -- what did the court rule?

#### The reasoning behind the decision:

What explanation did the court give for their decision that would apply to future cases?



## RAIO DT Interview Observation Form

<b>Your name:</b>	Click here to enter text.		
<b>Date of Interview:</b>	Click here to enter a date.	<b>Interview Office:</b>	Choose an item.
<b>Applicant's Country of Nationality:</b>	Click here to enter text.	<b>Applicant's Date of Entry into the US:</b>	Click here to enter text.
<b>State the basis of the claim:</b> <i>(The statement should include what type of harm the applicant fears, who the alleged agent of harm is, and what nexus is involved)</i>			
Click here to enter text.			
<b>Give a short summary of the relevant facts that were elicited during the interview:</b> <i>(the summary should include all the facts that were elicited that are material to the applicant's claim, so they should be facts that are relevant to one or more of the elements of the refugee definition at INA 101(a)(42) – the summary does not have to be in narrative form, just a list of the facts that were elicited during the interview that you think are material to the claim.)</i>			
Click here to enter text.			
<b>Additional Comments or Feedback on the Interview Experience (if you have any):</b>			
Click here to enter text.			



# U.S. Citizenship and Immigration Services

## **RAIO DIRECTORATE – OFFICER TRAINING**

### **RAIO Combined Training Course**

## **DETECTING POSSIBLE VICTIMS OF TRAFFICKING**

### **TRAINING MODULE**

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

## **DETECTING POSSIBLE VICTIMS OF TRAFFICKING**

### **Training Module**

#### **MODULE DESCRIPTION:**

This module provides guidelines for adjudicating requests for benefits by victims of trafficking. Issues addressed include indicators that may demonstrate an individual is a victim of trafficking, specific assistance and benefits available to victims of trafficking as well as guidelines for sensitive interview techniques.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

You will be able to assess whether an interviewee is a victim of trafficking and articulate whether the trafficking-related experience relates to the benefit being sought, and where appropriate, provide trafficking-specific information and/or assistance to the interviewee.

#### **ENABLING PERFORMANCE OBJECTIVES**

1. Define the components of human trafficking.
2. Distinguish between human trafficking and human smuggling.
3. Discuss factors that may indicate that an interviewee has been or is currently a victim of human trafficking.
4. Summarize the rights and forms of immigration relief that may be available to a trafficking victim.
5. Identify factors that may inhibit a victim's ability to fully present his or her claim for protection.
6. Analyze substantive issues related to the past persecution and well – founded fear of persecution specific to victims of trafficking.
7. Describe possible issues affecting benefit eligibility for trafficking victims and traffickers.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Practical Exercises

**METHOD(S) OF EVALUATION**

Written exam  
Practical exercise exam

**REQUIRED READING**

- 1.
- 2.

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

**ADDITIONAL RESOURCES**

- 1.
- 2.

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR12	Knowledge of polices and procedures for processing claims from victims of trafficking (3)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK5	Knowledge of strategies and techniques for communicating with survivors of torture and other severe trauma (4)
RI6	Skill in identifying information trends and patterns (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
IR2	Skill in interacting with individuals who have suffered trauma (e.g., considerate, non-confrontational, empathetic) (4)
IR5	Skill in persuading others and gaining cooperation (4)
IR7	Skill in collaborating and coordinating with external stakeholders (4)
SCM1	Skill in maintaining professional demeanor in stressful situations (e.g., potentially dangerous encounters, emergency situations, threats to personal safety) (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
12/12/12	Entire Lesson Plan	Lesson Plan published	RAIO Training
6/16/14	3.4.3 Human Trafficking Distinguished from Smuggling	Changed "illegal alien" to "undocumented alien" and added three hyperlinks to the footnote on page 24	LG
<b>6/5/15</b>	<b>Asylum supplement</b>	<b>Removed outdated sample assessment</b>	<b>RAIO Training</b>
11/27/15	Throughout document; section 2.2.2, TVPA/TVPRA, section 3.5.2, T visa, section 3.5.3, U visas, ASM supplement	Corrected links; updated references to TIP report for 2015; added references to confidentiality protections for T/U visa applicants and changes from 2013 VAWA/TVPRA reauthorization; updated AAPM language in ASM supplement	RAIO Training

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

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

## 1 INTRODUCTION & OVERVIEW

*"This year's Report places a special emphasis on human trafficking in the global marketplace. It highlights the hidden risks that workers may encounter when seeking employment and the steps that governments and businesses can take to prevent trafficking, including a demand for transparency in global supply chains.*

*The bottom line is that this is no time for complacency. Right now, across the globe, victims of human trafficking are daring to imagine the possibility of escape, the chance for a life without fear, and the opportunity to earn a living wage."*

*John F. Kerry, U.S. Secretary of State<sup>1</sup>*

As an officer in the RAIO Directorate, you may come in contact with interviewees who are victims of human trafficking and individuals who have engaged in the trafficking of human beings. It is crucial that you understand the relevant laws and regulations related to the trafficking of human beings, as well as the procedures for interviewing and adjudicating benefits for both trafficking victims and perpetrators.

Although sometimes incorrectly used interchangeably, the terms "trafficking" and "smuggling" are actually two distinct crimes governed by different bodies of law. While a great deal of international law has been developed regarding trafficking, smuggling continues to remain primarily under domestic jurisdiction, making it easily adaptable to different criminal justice capacities in countries of origin, transit and destination.

<sup>1</sup> U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

### **TRAFFICKING VS. SMUGGLING—THE PRIMARY DIFFERENCES<sup>2</sup>**

The distinctions between smuggling and trafficking are often very subtle and at times the two crimes overlap. A situation that begins as migrant smuggling may develop into a situation of human trafficking. There are four primary differences between trafficking and smuggling:

1. Consent – migrant smuggling, while often undertaken in dangerous or degrading conditions, involves consent. Trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers.
2. Exploitation – migrant smuggling ends with the migrant's arrival at his or her destination, whereas trafficking involves the ongoing exploitation of the victim.
3. Transnationality – smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another state or moved within a state's borders.
4. Source of profits – in smuggling cases profits are derived from the transportation or facilitation of the illegal entry or stay of a person into another country, while in trafficking cases profits are derived from exploitation.

This module focuses on trafficking and:

- Provides a general overview of international and U.S. human trafficking legislation and policy.
- Discusses the elements of a human trafficking crime, trends in trafficking, and rights and benefits accorded to identified victims in the United States.
- Describes how you may encounter a potential victim or perpetrator of trafficking during the course of your work and how it may impact the outcome of the final adjudication.

## **2 INTERNATIONAL AND DOMESTIC LAWS & GUIDELINES REGARDING TRAFFICKING**

<sup>2</sup> *Migrant Smuggling FAQs*, United Nations Office on Drugs and Crime, located at <http://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html>

Concern about human trafficking, both internationally and domestically, has led to the development of a globally coordinated response aimed at combating the practice. One of the first international treaties to address trafficking was the *International Agreement for the Suppression of the White Slave Traffic* signed in 1904. As the first comprehensive international agreement on the subject, the agreement contained several key provisions reflected in current legislation, including:

- identifying trafficking victims at ports of entry and transportation stations
- collecting information from trafficked women
- providing protection and care of indigent victims pending repatriation<sup>3</sup>

## 2.1 International Agreements & Conventions

Since the enactment and implementation of the International Agreement for the Suppression of White Slave Traffic in 1904, countries throughout the world have entered into and adopted various treaties and agreements, as well as developed and implemented new policies and legislation related to human trafficking. The most significant agreement to which the United States is a party is the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children—also known as the Palermo Protocol.

### *United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)*

The establishment of the Palermo Protocol in 2000 brought the issue of trafficking to the forefront of governmental discourse and global consciousness. Calling for a comprehensive international approach to the issue of trafficking in countries of origin, transit, and destination, the Palermo Protocol utilized the “three P” strategy to combat trafficking (prevention, protection, prosecution).<sup>4</sup> The United States subsequently used this approach as the foundation of federal trafficking legislation including the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).

To date, there are 133 parties to the Palermo Protocol, of which 117, including the United States, are signatories. Additional policies and legislation related to trafficking are discussed in further detail below.

## 2.2 United States Laws Related to Human Trafficking

<sup>3</sup> International Agreement for the Suppression of the White Slave Traffic (1904), May 18, 1904, reprinted at <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1904.html>.

<sup>4</sup> United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55<sup>th</sup> Sess., Supp. No. 49 at 60, U.N. Doc A/45/49 (Vol. I)(2001), entered into force Dec. 5, 2003 [Palermo Protocol], preamble, [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf).

### 2.2.1 Thirteenth Amendment & Related Criminal Federal Statutes

Domestic trafficking statutes in the United States are rooted in the prohibition of slavery and involuntary servitude as guaranteed by the Thirteenth Amendment, which states in pertinent part that:

Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Title 18 of the U.S. Code (U.S.C.) houses the specific criminal statutes related to trafficking.

### 2.2.2 Trafficking Victims Protection Act (TVPA) and Trafficking Victims Protection Re-authorization Act (TVPRA)

On October 28, 2000, Congress enacted The Trafficking Victims Protection Act (TVPA), affording certain rights and protections to victims of severe forms of trafficking, including:

- Protection and assistance to trafficking victims;
- Punishment of traffickers; and
- Prevention of trafficking domestically and internationally.

In 2003, 2005, 2008, and 2013 Congress re-authorized the TVPA. Since its re-authorization, the TVPA is now referred to as the Trafficking Victims Protection Re-Authorization Act (TVPRA).

### 2.2.3 Mandate for federal immigration officials

The TVPA (2000) and its subsequent re-authorizations and accompanying regulations specifically outline a mandate for federal immigration officials as part of the U.S. Government-led anti-trafficking efforts and more clearly define our legal responsibilities. For example, the 2008 TVPRA significantly impacted asylum field policy and procedures when the Asylum Division was accorded initial jurisdiction on unaccompanied minor cases, a particularly vulnerable demographic within the U.S. immigrant population.<sup>5</sup>

In July 2010, the Department of Homeland Security (DHS) launched the Blue Campaign – a first-of-its-kind campaign to coordinate and enhance the Department’s anti-human trafficking efforts. The Blue Campaign harnesses and leverages the varied authorities and resources of DHS to deter human trafficking by increasing awareness, protecting victims, and contributing to a robust criminal justice response. The campaign is led by an innovative cross-component steering committee, chaired by the Senior Counselor to the

<sup>5</sup> For additional information, please refer to RAIO module, *Children’s Claims*.

Secretary of Homeland Security, and comprised of representatives from **seventeen** operational and support components from across DHS. The Blue Campaign **mandates** that all USCIS and other DHS personnel receive training on human trafficking issues.

As an officer within the RAIO Directorate, you are responsible for identifying potential victims of trafficking and reporting your findings so that data on such individuals can be tracked. If you are working domestically, your responsibilities may, where appropriate, include providing victims of trafficking with mandated informational materials about the benefits which may be accorded to them as potential victims, and making referrals to the closest law enforcement official charged with investigating and prosecuting trafficking-related crimes within your jurisdiction.

### 3 SEVERE FORMS OF TRAFFICKING IN PERSONS

In order for a victim of trafficking to qualify for trafficking-related immigration relief and other benefits, services, and protections in the United States, she or he must meet the definition under the TVPRA of an individual who has been a victim of a “severe form of trafficking in persons.” The term “severe form of trafficking” implies a legal determination that you, as an officer, are not responsible for making. Rather, as an officer you are responsible for familiarizing yourself with the definition of trafficking to the extent that it will assist you in recognizing when an interviewee may be involved in a trafficking-related situation so you can take appropriate next steps to protect that individual and/or ensure the interviewee receives a fair adjudication.

In addition to this definition, the T visa (trafficking-related immigration relief which is discussed below) has additional eligibility requirements. As an officer within RAIO, you will not need to analyze whether an interviewee meets the criteria for a T visa when you are assessing whether an interviewee is a potential victim of trafficking for RAIO adjudication or protection purposes.

#### 3.1 Definition

Under the TVPRA, the following are listed as severe forms of trafficking in persons:

- **Sex trafficking**, which is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,” in which the commercial sex act is induced by
  - force, fraud, or coercion, or
  - in which the person induced to perform such act has not attained 18 years of age

or

- **Labor trafficking**, which is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through

- the use of force, fraud, or coercion
- for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

A simple way to define human trafficking is all of the activities involved in obtaining or maintaining a person in forced labor or sex service.

Three categories of trafficking victims emerge from this legal definition. They include:

- Minors (under 18) induced into commercial sex
- Individuals age 18 or over involved in commercial sex via force, fraud or coercion
- Children and adults forced to perform labor or other services in conditions of involuntary servitude, peonage, etc. by force, fraud or coercion

This definition applies to any individual who is subjected to trafficking, whether she or he is a foreign national or U.S. citizen.

### No Movement Necessary

Despite popular misconception to the contrary, the movement or transportation of an individual is not a required element of the crime of “trafficking.”

Trafficking is a process comprised of many actions that may occur over a long period of time. During the course of your work with USCIS, you may encounter foreign national interviewees who were trafficked via a range of diverse methods, and who come before you at different points in the spectrum of exploitation. These individuals may have been trafficked in the past, be in a situation of ongoing trafficking/exploitation in the United States or in the third-country where she or he is:

- being interviewed for resettlement
- at-risk for trafficking in the United States or a third country, and/or
- at-risk for being trafficked upon return to his or her home country

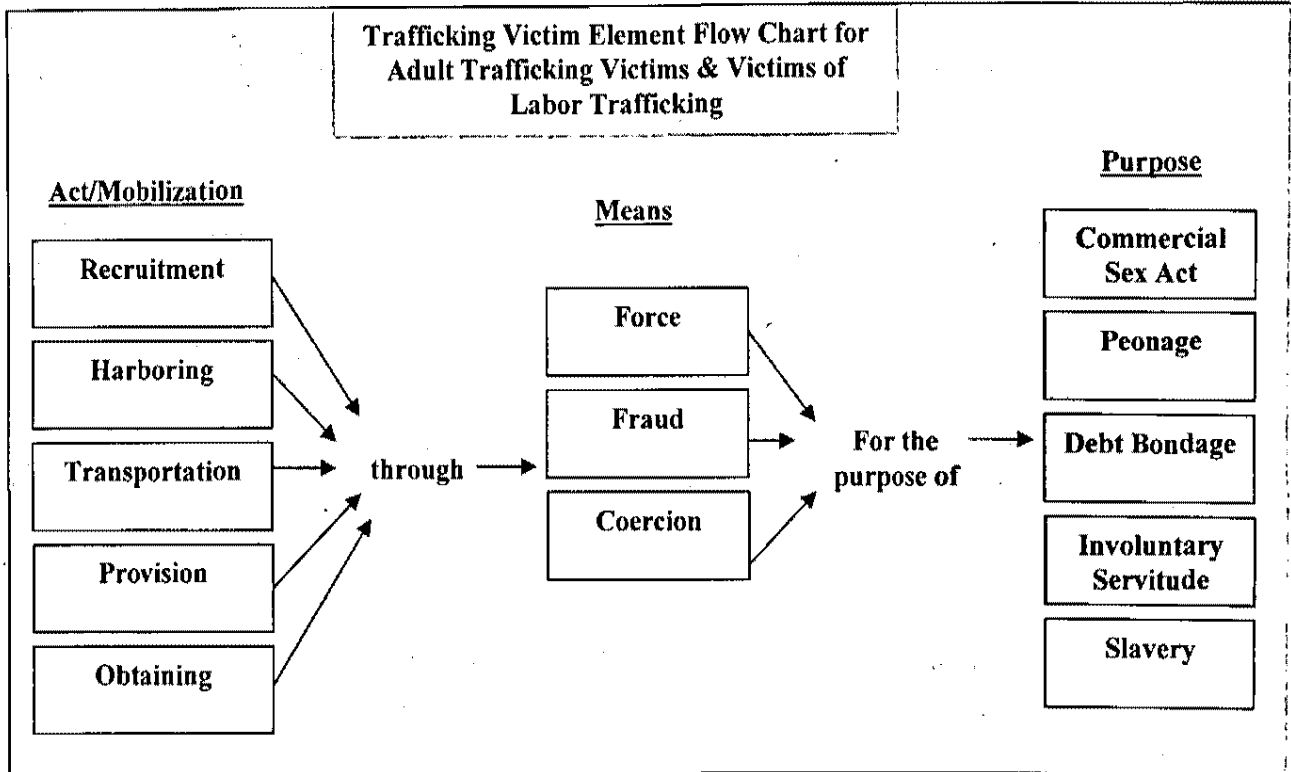
### 3.2 Components<sup>6</sup>

In order to better understand what constitutes a trafficking crime and how to recognize whether an interviewee is involved in a trafficking-related situation, it is helpful to look at the component parts of the definition individually. The chart below provides a visual

<sup>6</sup> The framework used in the following sections is derived from International Organization for Migration (IOM) Counter-Trafficking Training Modules.

framework for you to understand the process of human trafficking. The three components include:

- Act/Mobilization
- Means
- Purpose



### 3.2.1 Act/Mobilization

What act initiated the trafficking process? Was the person recruited, transported, transferred, harbored, or received? Certain acts by the victim or the perpetrator in the initial stages of the human trafficking process may not be self-evident as trafficking acts. Further, the trafficking victim may initially appear to be complicit in the arrangement. An example of this would be if someone responded to an employment advertisement posted by a local employment agency advertising positions abroad (“recruitment”) or voluntarily contracted a smuggler to arrange travel to the United States (“transport”).

It is important to remember that an individual is not excluded from consideration as a victim of trafficking if she or he was initially complicit in their own mobilization into trafficking.

### 3.2.2 Means

What techniques such as force, fraud, or coercion (including non-physical inducements) were employed by the third party in order to induce the individual into trafficking?



Some examples of means of force, fraud, or coercion that traffickers may use to control the victim include but are not limited to: debt bondage from a smuggling agreement; confiscation of passports or other identity documents; use of or threat of violence toward the individual and/or his or her family; the threat of shaming the individual; threats of imprisonment or deportation; control of a victim's money; psychological manipulation; and/or isolation from the public and/or the individual's family.

Collusion, a commonly used method of control, is used where the victim may initially have been complicit in an illegal act but then was subjected to trafficking against his or her will, through force, fraud, or coercion. In these situations, the victim may feel responsible for his or her own situation and believe that she or he will be punished for illegal acts in which she or he participated, resulting in a feeling of hopelessness and a reluctance to break free from the trafficking situation.

Under U.S. law, minors cannot consent to providing commercial sex services. Accordingly, in cases where a victim of sex trafficking was under 18 years of age at the time of the crime, the means through which she or he became a victim need not be analyzed. As long as a third party induced the minor's involvement in the exploitation, a determination of the particular means utilized by a third party to traffic the minor is not required.

### 3.2.3 Purpose

What was the end result? Was the individual exploited or was there intent to exploit? If the individual was exploited, was it through sexual exploitation, forced labor, debt bondage, slavery, or another form of qualifying activity?

As the examples that follow demonstrate, a person may be a trafficking victim "regardless of whether they were born into a state of servitude, were exploited in their hometown, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being subjected to trafficking."<sup>7</sup>

## 3.3 Common Forms of Human Trafficking<sup>8</sup>

In order to fully understand the conditions facing a victim of trafficking, you must bear in mind the full range of potential activities that could constitute trafficking. In the U.S. asylum context, interviewees have disclosed a range of trafficking-related experiences, including forced prostitution, domestic servitude, and child sexual exploitation.

<sup>7</sup> U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

<sup>8</sup> Derived from U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

### Trafficking: Not Just a Sex Crime

Although trafficking is most often associated with the sex trade, RAIO officers should keep in mind that trafficking includes various forms of labor and/or services.

#### 3.3.1 Sex Trafficking

Activities that may constitute sex trafficking:

- pornography: If the individual is induced by force, fraud or coercion to perform the commercial sex act for the purpose of producing the pornography
- sex tourism: An individual who engages in illicit sexual conduct in foreign places<sup>9</sup>
- prostitution: If the individual is induced by force, fraud or coercion to perform commercial sex acts
- military prostitution: Under U.S. law, it is illegal for anyone to engage in, aid or abet, or procure or solicit prostitution in the vicinity of a military or naval camp. In some instances, individuals may be brought to military camps to engage in sex acts against their will<sup>10</sup>

Participation in these activities does not necessarily mean an individual is a victim of trafficking. When the victim is over 18, a third party must be employing fraud, force or coercive techniques to compel a person into sexual services in order for the person to be a victim of trafficking.

#### 3.3.2 Labor Trafficking

Activities that may constitute labor trafficking:

- forced labor
- peonage/bonded labor/debt bondage
- involuntary domestic servitude

Labor trafficking may involve sexual violence being inflicted on the victim but the end result in these forms of exploitation is the labor service.

<sup>9</sup> 18 U.S.C. § 2423.

<sup>10</sup> 18 U.S.C. § 1384.

***Sheldon — From Seasonal Worker to Bonded Laborer<sup>11</sup>***

A recruiter in Jamaica promised Sheldon a visa through the U.S. federal H-2B seasonal worker program. The processing fee was hefty, but the prospect of working in America seemed worth it. Sheldon arrived in Kansas City eager to work, but ended up at the mercy of human traffickers. Along with other workers from Jamaica, the Dominican Republic, and the Philippines, Sheldon cleaned rooms at some of the best-known hotels in Kansas City. The traffickers kept Sheldon in debt, constantly charging him fees for uniforms, transportation, and rent in overcrowded apartments. Often, his paychecks would show negative earnings. When Sheldon refused to work, the traffickers threatened to cancel his immigration status, making him illegal. In May 2009, a federal grand jury indicted the leaders of this trafficking ring, including eight nationals of Uzbekistan, on charges related to forced labor in 14 states.

***Forced labor or involuntary servitude***

Involuntary servitude is defined as:

[a] condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.<sup>12</sup>

In other words, forced labor or involuntary servitude is labor provided against an individual's will. She or he may be obligated to work long hours, under inhumane conditions with little or no pay. The entity exacting the forced labor may use methods such as physical force or the threat of physical force, death threats against the victim or the victim's family, threats to denounce the victim to the police or immigration or another entity that may have authority over the victim (e.g., village elders or parents who have sold the victim), debt repayment obligation (the victim's, the victim's family or ancestors), or other financial obligation scheme.<sup>13</sup>

Because immigrants may be undocumented and may be unfamiliar with the language, culture, authorities, rights and protections afforded to them in a new country, they are particularly vulnerable to these forms of coercion.

***Peonage (Bonded labor, Debt bondage)***

<sup>11</sup> Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

<sup>12</sup> 8 C.F.R. § 21.11 (a).

<sup>13</sup> International Labor Organization, "The Cost of Coercion," *supra*.

“A status or condition of involuntary servitude based on real or alleged indebtedness.”<sup>14</sup>

Peonage is when a bond or debt is used to force or coerce an individual to remain in involuntary servitude. Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment.

In the refugee and asylum context, interviewees often assume the initial cost of employment or cost of passage/entry into the third country. Then, upon arrival, once the individuals are isolated and/or restricted in their ability to control their own circumstances, the traffickers may exacerbate the existing debt by charging exorbitant prices for food, clothing, or other basic life or work-related necessities.

You may also see debt bondage amongst legal, documented immigrants. As many foreign nationals enter the country as temporary guest workers (migrant agricultural workers, domestic servants, teachers, nurses, etc.), they are required to remain with their employers as a condition of their legal status. This has the potential to engender a situation where peonage may be easily created or maintained.

Interviewees may also have a fear of harm based on a debt they absconded from in their home countries. For example, in South Asia, in particular, it is estimated that there are millions of victims working to pay off their ancestors' debts.<sup>15</sup>

### *Involuntary Domestic Servitude*

#### ***Amita — From Domestic Service to Slavery***<sup>16</sup>

Amita came to London from the Middle East as a domestic servant for a family that treated her well and paid her decently. When her employer moved into a high-level job that provided house staff, the family no longer needed Amita. They helped her find work with another family. Amita's new employers took her passport as soon as she arrived and made her sleep on the floor in the living room to prevent her from stealing things and hiding them in her room. They did not pay her or allow her out of the house, and they threatened to report her to the police as an illegal if she tried to run away. Amita worked in the family's house from 6a.m. to 8p.m. After that, she was taken to clean various office buildings until midnight or early morning. One night, the employer's son and his friends were in the house and attempted to rape Amita. After that she decided to run away and managed to escape with the help of a security guard.

<sup>14</sup> 8 CFR § 214.11 (a)

<sup>15</sup> U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015

<sup>16</sup> Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

Domestic workers are vulnerable to exploitative conditions because of the nature of their informal work environment. The victim may work as a household servant or as a caretaker of children and live in the employer's house or in adjoining living quarters.

Victims of such exploitation may voluntarily enter into employer/employee arrangements but their situations may evolve over time, or upon arrival in their new country. They may be forced to remain in situations where they become victims of trafficking through force, coercion and sexual exploitation.

Domestic servants may be subjected to verbal abuse, untreated illnesses, deprivation of food, long hours, and, especially in the case of women and girls, sexual abuse and exploitation.<sup>17</sup> As the exploitation occurs in a private residence and the domestic worker is often secluded from outside observation, this type of trafficking would not easily come to the attention of police or other governmental authorities.

### 3.3.3 Child Trafficking

The age and gender of the trafficking victim are often closely related to the type of trafficking to which they are subjected. Male children are often trafficked to be exploited in forced labor, and illicit activity such as petty crimes and drug trafficking, whereas girls tend to be subjected to sexual exploitation and as forced domestic servants.<sup>18</sup>

A child may become involved in trafficking through any of the following means: the child may have been kidnapped; taken from the street (where the child is homeless); legally or illegally adopted; bought from the parents or caretakers; or been given to the traffickers by the parents or caretakers in order to obtain employment.<sup>19</sup> The victims of such trafficking include the child trafficked, the parents or caretakers (where the child was taken or where false pretenses were used), and even the community from which the child was taken if the traffickers were perceived as legitimate job brokers.<sup>20</sup>

#### *Vipul — A Childhood Lost<sup>21</sup>*

Vipul was born into extreme poverty in a village in Bihar, the poorest state in India. His mother was desperate to keep him and his five brothers from starving, so she accepted \$15 as an advance from a local trafficker, who promised more money once 9-year-old Vipul started working many miles away in a carpet factory. The

<sup>17</sup> U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

<sup>18</sup> *Id.*

<sup>19</sup> It is important to note that a fraudulent intercountry adoption would only constitute trafficking if it resulted in the child becoming a victim of sex trafficking or labor trafficking.

<sup>20</sup> U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

<sup>21</sup> Example derived from the Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

loom owner treated Vipul like any other low-value industrial tool. He forced Vipul and other slaves to work for 19 hours a day, never allowed them to leave the loom, and beat them savagely when they made a mistake in the intricate designs of the rugs, which were sold in Western markets. The work itself tore into Vipul's small hands, and when he cried in pain, the owner stuck Vipul's finger in boiling oil to cauterize the wound and then told him to keep working. After five years, local police, with the help of NGO activists, freed Vipul and nine other emaciated boys.

Types of exploitation<sup>22</sup> to which children in particular might be subjected include the following:

- Labor Exploitation – examples include farming, fishing, domestic servitude, mining, market or street vending, begging, camel jockeying, textile industry, restaurant/hotel work, and shop keeping.
- Sexual Exploitation/Child Sex Trafficking
  - Induced into performance of commercial sex acts.
- Military Conscription/Child Soldiers
  - Victims are often forcibly abducted or “recruited” by government forces, paramilitary organizations, or rebel groups.
  - Victims may be used as combatants, human shields, porters, cooks, guards, servants, messengers, or spies. Young girls may be subjected to forced marriage or forced to have sex with male combatants.
  - Child soldiers of either gender are often sexually abused and are at high risk of contracting sexually transmitted diseases.
- Forced marriage
  - Forced or coerced marriages are used by parents and families for a variety of reasons, such as:
    - to settle debt, receive compensation/dowry, create social ties among families, obtain residency permits, display status, provide inheritance, or to counteract promiscuity.
  - The existence of a forced marriage does not necessarily present a case of human trafficking. When you encounter a case where a minor is married or when an

<sup>22</sup>U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

individual testifies that she or he was married against their will, you should inquire into the terms of the marriage, if there was a bride price and whether conditions of exploitation coupled with one of the three means (force, fraud, or coercion) has been or is being employed. The common forms of exploitation seen in forced marriages may include slavery-like conditions in the form of domestic or sexual servitude.

- Delinquent behavior – carrying out criminal activities for others
  - This may arise in the context of homeless or street children and/or children who live in territories controlled by gangs who are compelled to provide services to local gangs, criminal entities or other third parties in order to survive.

### 3.3.4 “Re-Trafficking”

The term re-trafficking was coined to describe a situation in which a trafficked individual falls victim to further trafficking upon return to his or her home country. Individuals may be re-trafficked by the same trafficker that initially exploited them or another individual. In the refugee and asylum context, the issue of “re-trafficking” may arise in an interviewee’s discussion of their persecutor and fear of future harm if she or he returns to the home country.

Traffickers often target individuals from families, communities and/or countries which are suffering from socioeconomic and other forms of instability. The individual may have been homeless, sold by his or her family or kinship network, or come from a particularly disadvantaged or disfavored group. The government in the victims’ countries may also be unable or unwilling to protect these individuals from the traffickers for a range of reasons, including its own antagonism to a specific population, apathy, lack of resources, and/or general lawlessness and corruption of the security and political authorities in their country.

The same conditions that initially rendered individuals and their communities vulnerable to traffickers likely still exist. After the individual has been trafficked, she or he may suffer from physical and psychological trauma (including shame and humiliation) which left unaddressed could render her or him vulnerable to further manipulations and coercive tactics of the traffickers.

At the practical level, once a trafficker has victimized an individual, it is relatively easy for the trafficker to locate the victim again. The trafficker is likely to have knowledge of or access to the victim’s personal biographical information, his or her family, and even relationships with the authorities in the individual’s home locality and/or country.

## 3.4 Differentiating Human Trafficking from Other Crimes

### 3.4.1 Trafficking Victim Liability for Criminal Activities

Through the course of being trafficked, an individual may be induced to participate in activities which in and of themselves, constitute crimes under U.S. law. The TVPRA absolves trafficking victims of criminal liability for crimes resulting from their being trafficked.

Examples of this include the following: An individual trafficked in the United States for the purpose of sexual exploitation would not be held criminally liable for the sex acts she or he performed while she or he was trafficked. An individual who was transported into the United States and then exploited would not be criminally liable for his or her illegal entry and/or use of invalid documents.

An interviewee with a criminal record involving certain crimes could raise a red flag to you that she or he may be a victim of trafficking.

### 3.4.2 Fraudulent Intercountry Adoption Does Not Constitute Human Trafficking

“Over the past few years, the term ‘trafficking’ has often been used as informal shorthand to refer to any type of inappropriate movement of people across international borders.”<sup>23</sup> This is incorrect and often leads to certain fraudulent intercountry adoptions being mislabeled as child trafficking. In many African countries, including Ethiopia, Sierra Leone, Liberia, Madagascar, and Lesotho, fraudulent intercountry adoptions are officially referred to as trafficking.

However, under U.S. law there is a clear distinction between trafficking in persons and illicit intercountry adoption practices, including child-buying and fraud. Human trafficking is the exploitation of a person for the purposes of forced labor or commercial sex. (Please see Section 3 above for the complete definition of human trafficking.) Children undergoing intercountry adoption may be victims of bad actors engaged in criminal practices or other questionable procedures, but a fraudulent intercountry adoption would only constitute trafficking if the adoption was completed for the purposes of forced labor or commercial sex.

One type of illicit intercountry adoption practice that is most often confused with trafficking is “child-buying.”<sup>24</sup> Since trafficking and child-buying can both involve the giving/receiving of unlawful payments/benefits, many assume that child-buying for adoption is a form of human trafficking. However, that is not always the case. Whereas child-buying is an unacceptable, illegal practice that can occur in the context of an intercountry adoption, it does not necessarily constitute human trafficking under U.S. law. Cases where child-buying occurs during an intercountry adoption, but is not for the purposes of commercial sex or forced labor, would not meet the criteria for trafficking as

<sup>23</sup> Fraudulent Intercountry Adoption Does Not Constitute Trafficking in Persons, Department of State cable 11 STATE 64500 (Jun. 27, 2011)

<sup>24</sup> See 8 C.F.R. § 204.3(i) for non-Hague cases and §§ 204.304 and 204.309(b)(3) for Hague cases.



defined by TVPRA, and under U.S. law would solely be classified as illicit adoption practices.

### **Trafficking v. Child-buying**

If prospective adoptive parents adopt and emigrate a child to the United States using the correct immigration process, there would be no element of child trafficking unless the adoption was for the purpose of forced sex or labor. This is true even if there were concerns of fraud and/or child-buying in connection with the adoption.

For example, if a businessman from Costa Rica paid money to obtain custody of a local villager's daughter, then formally adopted her and moved the child to El Salvador to work in a factory, this may constitute trafficking. Alternatively, if a person connected to an orphanage paid a birth mother in Vietnam to release her child and that child was in turn adopted by a U.S. family, this may meet the definition of child-buying but would not in itself constitute trafficking.

### **3.4.3 Human Trafficking Distinguished from Smuggling**

The terms human trafficking and human smuggling are often used interchangeably when they are, in fact, distinct crimes. Under U.S. law, the crime of smuggling is generally defined as: "the importation of people into the United States involving deliberate evasion of immigration laws." This offense includes bringing undocumented aliens into the United States illegally, as well as the unlawful transportation and harboring of aliens already in the United States. The end result of a smuggling agreement is that the individual arrives in the destination country, and after having paid the smuggler the previously-agreed upon fee, the relationship between the two parties ends. Individuals who have been smuggled may have experienced or witnessed violence, including murder, kidnapping, rape and other crimes, but the presence of these aggravating factors alone does not constitute human trafficking.<sup>25</sup>

#### ***U.S. v. Jimenez-Calderon et al.—Smuggled Into Trafficking***

Between October 2000 and February 2002, Antonia Jimenez-Calderon, Librada Jimenez-Calderon, and their brothers conspired to recruit underage girls from Mexico to perform acts of prostitution in the United States. The brothers would target young girls from poverty-stricken areas in Mexico, and lure them away from their families and communities with false promises of love, marriage, and a better

<sup>25</sup> INA § 274; ICE Office of Investigations Memo "Definitions of 'Human Smuggling' and 'Human Trafficking'", dated December 13, 2004.

life. Once smuggled into the United States the girls were held captive and forced into prostitution in a brothel in New Jersey.<sup>26</sup>

Human trafficking involves an act of compelling or coercing an individual to perform labor services or commercial sex acts. These two crimes are often mistaken for one another. As discussed above (3.2.1 Acts/Mobilization), under the TVPA definition of trafficking, one of many methods a trafficker may use to mobilize an individual to be trafficked is to transport him or her. A trafficker may “smuggle” an individual into another country against his or her will in order to exploit him or her upon arrival, or the trafficker may misrepresent him or herself as a smuggler and then change the terms of the agreement once the individual arrives in the destination country. However, the act of smuggling an individual and/or being smuggled has no direct relationship to the crime of trafficking itself.

**Complicity is not Always a Crime**

An individual’s willingness to be smuggled into another country does not minimize the victimization he or she may experience at the hands of a trafficker.

The chart below highlights the factors that distinguish the crime of smuggling from human trafficking.<sup>27</sup>

	<b>Smuggling</b>	<b>Trafficking</b>
<b>Purpose</b>	Obtain illegal entry into the United States	Recruiting, transporting, harboring or receiving persons by force or coercion for the purpose of exploitation
<b>Consent</b>	Consented to be smuggled	May or may not have consented, or initial consent rendered meaningless by coercive or abusive actions

<sup>26</sup> U.S. v. Jimenez-Calero, Criminal Section Selected Case Summaries, U.S. Department of Justice, located at <http://www.justice.gov/crt/about/crm/selcases.php#humantrafficking>.

<sup>27</sup> INA § 274; ICE Office of Investigations Memo “Definitions of ‘Human Smuggling’ and ‘Human Trafficking’”, dated December 13, 2004.

		of the traffickers
<b>Result</b>	Ends with arrival into the United States	Involves ongoing exploitation

**3.5 Rights and Immigration Relief for Victims of Human Trafficking**

With each re-authorization of the TVPRA, the U.S. Government response to trafficking has become more comprehensive, as has its ability to extend protection to victims and to more aggressively investigate and prosecute these crimes.

Victims of trafficking who are present in the United States, especially undocumented foreign nationals, will likely not be aware that the crimes being committed against them are punishable under U.S. law, and that they have rights and could be eligible for benefits in the United States because of the crimes committed against them. Human traffickers also often use the threat of reporting the victim to immigration authorities as a way of keeping the victim under their control.

In order to provide protection to those who are undocumented and to enable these individuals to participate in law enforcement investigations, immigration law provides specific forms of relief from removal for such victims of severe forms of trafficking and benefits from the U.S. Department of Health and Human Services, similar to the benefits granted to refugees. Trafficking victims may also qualify for other forms of relief available to all qualifying aliens under immigration law, such as asylum or withholding of removal.

During the course of your work, you may encounter interviewees who have received or have pending applications for trafficking-related immigration benefits. It is important for you to understand the significance of these documents only so far as it furthers your understanding of the interviewee’s claim during their adjudication.

The forms of immigration relief available to victims of severe forms of human trafficking include:

- Continued Presence
- T Visa
- U Visa
- Asylum/Withholding of Removal

**3.5.1 Continued Presence (CP)**

CP is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. In order to qualify, the individual must be an identified victim of trafficking who is a potential witness in the investigation or prosecution of the trafficker.

This status allows such victims to remain in the United States temporarily during the ongoing investigation into the human trafficking-related crimes of which they were victims. CP is initially granted for one year and may be renewed in one-year increments. It provides victims a legal means to temporarily live and work in the United States for the duration of the investigation of the trafficking case and/or the adjudication of another form of immigration relief.<sup>28</sup>

Only federal law enforcement officials are authorized to apply for CP on a victim's behalf and applications are submitted to ICE HQ for consideration. If granted, the victim becomes eligible for a work permit and U.S. Department of Health and Human Services benefits.<sup>29</sup>

### 3.5.2 T Visa

The T visa provides a victim of trafficking with four years of legal status in the United States, which can be extended, and the possibility of becoming a Lawful Permanent Resident (LPR). T visa recipients receive work authorization, and may also request advance parole and may seek derivative status for their relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18).<sup>30</sup> A trafficked person may meet the requirements for T visa eligibility if he or she:

- is or was a victim of trafficking, as defined by law
- is in the United States or its territories, or at a port of entry due to trafficking
- complies with any reasonable request from law enforcement for assistance in the investigation or prosecution of the human trafficker
- demonstrates that he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States
- is admissible to the United States or, if inadmissible, qualifies for a waiver

An application for a T Visa is completed on a Form I-914, Application for T Nonimmigrant Status. Click on the link below for more detailed information about eligibility requirements for T visas.

- T Visa Eligibility Requirements

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<sup>28</sup> 22 U.S.C. § 7105(c)(3)

<sup>29</sup> ICE Information Pamphlet, "Continued Presence: Temporary Immigration Status for Victims of Trafficking," <http://www.dhs.gov/xlibrary/assets/ht-uscis-continued-presence.pdf>.

<sup>30</sup> INA § 1101(a)(15)(T)(ii)

The requirements for a T visa, specifically the need to be physically in the United States on account of said trafficking, should not be confused with the definition of a trafficking victim. If you come across a file which contains a T visa application, you should only use the information it contains to elicit more nuanced testimony that substantiates or discredits the interviewee's claim to the extent it is relevant to your adjudication. DHS employees are prohibited by statute from disclosing information related to T visa applicants to anyone outside the Department.<sup>31</sup>

### 3.5.3 U Visa

The U visa provides immigration status to victims of twenty-eight specified serious crimes including trafficking, domestic violence, involuntary servitude, and kidnapping.<sup>32</sup> The U visa affords similar benefits as the T visa, including four years legal status, with the possibility of extension, LPR status after three years if the alien qualifies, work authorization, and advance parole. The individual may also seek derivative status for his or her relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18). Eligibility for a U visa requires that an individual:

- is or was the victim of qualifying criminal activity
- is or has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity
- has information about the criminal activity
- is, was, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime
- was involved in a crime that occurred in the United States or violated U.S. laws
- is admissible, or if inadmissible, able to qualify for a waiver

An application for a U-Visa is completed on a [Form I-918, Petition for U Nonimmigrant Status](#). Click on the link for below for more detailed information about U-visas.

- [U Visa Eligibility Requirements](#)

As with the T visa, if you come across a file which contains a U visa application, you should only use the information it contains to elicit more nuanced testimony to the extent that it substantiates or discredits the interviewee's claim and is relevant to your adjudication. Also as with T visa applicants, DHS employees are prohibited by statute

<sup>31</sup> 8 U.S.C. § 1367(a)(2).

<sup>32</sup> INA § 1101(a)(15)(U)(iii)

from disclosing information related to U visa applicants to anyone outside the Department.<sup>33</sup>

The fact that an individual's legal advocate made the strategic and discretionary decision to apply for a U visa on an individual's behalf in lieu of a T visa is in no way determinative as to whether an individual is a victim of trafficking.

### Two Visas for Trafficking?

The "T" nonimmigrant status, also known as the "T" visa, was created to provide immigration protection to victims of a severe form of human trafficking. The "U" nonimmigrant status, or "U" visa, is designated for victims of certain crimes who have suffered mental or physical abuse because of the crime and who are willing to assist law enforcement and government officials in the investigation of the criminal activity.

Congress created the "T" and "U" nonimmigrant classifications with passage of the TVPA in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while, at the same time, offering protection to victims of such crimes.<sup>34</sup>

#### 3.5.4 Refugee/Asylum/Withholding of Removal/Credible Fear

A victim of trafficking or an individual who fears being trafficked in his or her country of origin may be eligible for refugee or asylum status or withholding of removal as would any other individual who meets the definition of a refugee. The United Nations Office of the High Commissioner for Refugees recognizes that not all victims or potential victims of trafficking fall within the scope of the refugee definition. However, on occasions where trafficking victims do fall within the refugee definition, the international protection community has a responsibility to recognize it as such and afford the corresponding international protection.<sup>35</sup> Click on the link below for specific information about asylum and refugee eligibility for trafficking victims.

- [Eligibility requirements for asylum or refugee status](#)

<sup>33</sup> 8 U.S.C. § 1367(a)(2).

<sup>34</sup> [Fact Sheet: USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity](#).

<sup>35</sup> [Guidelines on International Protection: The Application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked](#), UN High Commissioner for Refugees (UNHCR), 7 Apr 2006, 17 p.

## 4 ENCOUNTERING VICTIMS OF HUMAN TRAFFICKING

The officers and agents of the three DHS front-line agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), are most likely to encounter potential victims of trafficking during the course of their daily work. An ICE agent may encounter a trafficking victim during an investigation or operation, whereas a CBP officer may intercept someone who is being smuggled or who is attempting entry into the United States through a port of entry. Officers within one of the three RAIO divisions may encounter a potential victim of trafficking in the context of the adjudication of a request for an immigration benefit.

Indicators that an interviewee may be a victim of trafficking may surface prior to, during, and/or after the interview adjudication.

### 4.1 “What Does a Human Trafficking Victim Look Like?”

Trafficking victims can include individuals from any country, of any age, gender, nationality, educational background and immigration status. Trafficking may take place in “underground” operations, like illegal brothels, sweatshops, factories, mines, agriculture fields, fishing vessels or private homes. However, trafficking is often carried out in public establishments such as bars, restaurants, nightclubs, casinos, hotels and massage parlors, or in street vending and/or begging.

While a trafficking victim’s experience may be quite unique, there are certain risk factors, patterns and trends in trafficking among different demographics in the population that you interview (within ethnicities, countries of origin, age, and gender) of which you should be aware. This knowledge will assist you in detecting and discerning indicators of trafficking from other concerns for a particular interviewee.

#### Addressing the Myths about Trafficking Victims

- Trafficking is not equivalent to smuggling. It does not require forced movement or border crossing.
- Trafficking does not require physical force, kidnapping, restraint or abuse.
- The consent of the victim is considered irrelevant, as is payment.
- Not all trafficked people have been trafficked for the purposes of sexual exploitation.
- Those who migrate legally can be victims of trafficking.

- Women and children are not the only victims of trafficking.
- Trafficking is not only a problem in Eastern Europe and Southeast Asia.
- Trafficking is not only a problem amongst the uneducated and poor.

## 4.2 Detecting Indicators of Human Trafficking

As discussed above, as an officer in the RAIO directorate you are responsible for detecting indicators that the interviewee before you may have been trafficked or may be at ongoing risk of trafficking, and following appropriate procedures within your division depending on the circumstance.

### 4.2.1 Pre-Adjudication File Review

Prior to the adjudication of a benefit, you may have the opportunity to review the case file.

Documents or database notations that may indicate that the interviewee may be a victim of trafficking include:

- Notations within database records from other agencies regarding investigations, encounters, or contact with informers that indicate that the person has been or is being trafficked. Please keep in mind that such notations may be entered post-USCIS interview but prior to final adjudication.
- Documents from other federal agencies such as DOS, ICE, CBP, etc. that indicate a past encounter with the interviewee indicative of a possible trafficking or smuggling situation.
- Documents from other federal agencies that indicate a past or ongoing investigation or operation regarding trafficking or smuggling.
- Documents or applications for continuing presence or T or U visas present in file.
- Criminal court documents/Database hits that show that the interviewee was arrested for a type of crime in which a trafficking victim might be subjected to exploitation.
- Letters from informants or “snitches.”
- Unusual travel patterns indicated in application documents. Such patterns may indicate possible trafficking or smuggling routes.



- Travel from foreign countries that are known for being a source area for trafficking victims.<sup>36</sup>
- Employment in the United States or abroad that may indicate that interviewee has been or is being exploited.
- School-age children who have not listed attendance in school (minor principal interviewees),
- Background information on the application indicates that the interviewee is from a group in society that would be particularly vulnerable to trafficking and the interviewee's presence in the United States or the country from which he is requesting the benefit does not appear to be logical given that background. An example of this may be an unaccompanied minor with uncertain ties in the United States.

If there are indicators that the interviewee before you has been trafficked, you must still maintain your focus on trying to elicit sufficient testimony related to his or her eligibility for the particular benefit you are adjudicating. You may also provide the interviewee with informational pamphlets to fulfill the TVPRA mandate, as appropriate, taking care to note the circumstances of the interviewee as she or he may be endangered if such pamphlets are provided in the presence of the trafficker. If there are indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor as soon as possible. This may be prior to adjudicating the benefit or even during pre-interview file preparation or during the interview, if appropriate.

Depending on the nature of the evidence and the nature of the situation, your supervisor or Office Trafficking Coordinator may need to contact local ICE or other agents, who may have additional information or desire to be present in the event that you interview the individual. Remember that the necessity to contact law enforcement can arise at any stage of the adjudication process.

#### 4.2.2 Screening for Potential Victims of Trafficking: Suggested Lines of Inquiry

Individuals who have been or are in the process of being trafficked or exploited experience a significant loss of control over their lives and activities. During their testimony, such interviewees may testify regarding an area of their life being controlled by another person. Additionally, human trafficking victims may have visible signs of abuse or exhibit behaviors that are associated with people who have been victimized. Such "red flags" may alert you to the fact that the interviewee is or has been a victim of human trafficking.

<sup>36</sup> Such as countries designated as "Tier 2," "Tier 2 watch list" or "Tier 3" in the DOS TIP reports. See: <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>

The information in the links below was designed to assist you in eliciting further information from interviewees in interviews where a red flag has been raised, so that you can determine with more certainty whether the interviewee is a victim of human trafficking. These lines of inquiry will improve your ability to articulate your concerns about the interviewee's current situation to your office management and in office referrals to law enforcement. You should keep in mind that the lists are not all-inclusive and only serve as a framework for questioning. Every interview will be different as your questions will be tailored to the interviewee based on his or her answers to the questions.

You are not expected to indiscriminately run through lists of questions. You are expected to select a few choice questions that directly relate to the red flag that has been raised in the interview and which would not appear unusual in the course of the interview. You are expected to proceed with questioning in an extremely sensitive manner, taking into account that any individuals accompanying the interviewee may be affiliated with the trafficker.

#### *Suggested Lines of Inquiry by Subject Matter*

- Understanding Asylum Benefits and Process
- Physical health/behavior
- Recruitment/Migration
- Identification
- Working Conditions
- Debt Questions
- Living Environment/Transportation
- Social Ties/Conditions
- Force, Fraud, Coercion
- Minor: Under 18
- Safety Assessment (if interviewee alone and expresses fear)

#### **4.2.3 Other Indicators of Trafficking**

If during the interview you discover indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor prior to concluding the interview. In all cases, follow the procedure for such cases in your particular office.

#### **4.2.4 Interviewing Where the Victim is Accompanied by a Third Party**

If your interviewee is accompanied by a third party who appears potentially suspicious, such as an interpreter, representative, or (in the case of a minor child) a parent or trusted

adult, you do not want to alert them to your suspicions as he/she may be working with the trafficker. Whenever possible, the interviewee should be questioned in regard to the trafficking concerns apart from such persons, preferably using a trusted person who speaks the interviewee's language. Because of the complicated nature of interviewing individuals in these circumstances, you should consult your division's procedures for specific instructions.

### **4.3 Other Adjudication Considerations**

In a case where the trafficking-related experience that an interviewee testifies to relates to the basis of a protection claim, the interviewee is forthcoming about his or her claim, and does not appear to be at ongoing risk, officers apply the facts of the case, including the trafficking-related elements, to the protection-related legal analysis. Identifying and understanding the type of trafficking the victim suffered can inform the questions you ask to elicit more complete testimony.

If an interviewee is not forthcoming about a trafficking experience and you suspect she or he is currently being trafficked, his or her testimony may arouse suspicions as to his or her credibility when, in fact, there may be reasons other than abject fraud for this behavior. For further guidance and considerations, see RAIO Training modules, *Children's Claims, Evidence Assessment, and Interviewing—Interviewing Survivors of Torture and Other Severe Trauma*.

### **4.4 Issues Affecting Benefit Eligibility for Trafficking Victims and Traffickers**

The Immigration and Nationality Act (INA) has various legal provisions that are applicable to interviewees who have committed or been convicted of a crime related to human trafficking. Additionally, sometimes the victim of the trafficking crime may have been forced or coerced into committing acts such as theft, drug trafficking, or prostitution that constitute crimes that might be impediments to obtaining immigration status.

Positive results from a background check and/or police or criminal court documents found in the file regarding criminal offenses such as the ones described above, in addition to being evidence of a possible impediment to an immigration benefit, may be an indication that the person is or has been a victim of human trafficking.

#### **4.4.1 Trafficking Victim**

A victim of trafficking may have been forced to engage in or have been convicted of a criminal act, such as larceny, drug carrier, prostitution, or other illegal vice, and this activity may render him or her subject to criminal or security inadmissibility grounds under INA § 212 (a)(2) and (a)(3)(b). These interviewees may be eligible for exemptions or waivers. If you interview such an individual, be sure to elicit full testimony as to the nature and type of coercion involved in securing the interviewee's participation or support of the criminal activities as this information may not only assist law enforcement, but also may establish the victim's eligibility for an exemption or waiver if necessary.

#### 4.4.2 Trafficker

If your interviewee has demonstrated participation in criminal behavior that indicates she or he has colluded in trafficking crimes, you must review this activity to determine if it is a bar to eligibility for the benefit you are adjudicating, or if a ground of inadmissibility applies.

In addition to being subject to a mandatory bar in the asylum context, an alien who is found to have persecuted others on account of a protected ground may not be considered a refugee under the refugee definition and therefore would not be eligible for refugee status or asylum status within the United States.<sup>37</sup>

#### 4.4.3 Additional Resources

Department of State, Trafficking in Persons Report (TIP)

- An annual report produced by DOS to evaluate foreign governments' responses to trafficking. The TIP report is the premier U.S. Government resource on trafficking trends and includes country-specific narratives that describe the specific at-risk populations and types of trafficking in each country. For the most current report visit [DOS TIP Report](#).

National Human Trafficking Resource Center (NHTRC)

- A Department of Health and Human Services (HHS) funded hotline providing comprehensive resources for victims, government and NGO practitioners on all trafficking-related issues. Hotline number: 1-800-3737-888.

UNHCR Report "Refugee Protection and Human Trafficking"

- A December 2008 report analyzing the interaction of refugee protection and human trafficking. The resource list at the end is a very comprehensive list of legal documents and country-specific reports that have been published on trafficking. <http://www.unhcr.org/publ/PUBL/4986fd6b2.pdf>.

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<sup>37</sup> INA § 101 (a)(42).

**PRACTICAL EXERCISES**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS****Other Materials – 1****Definition of Terms**

**Coercion**: Threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. [\[return\]](#)

**Commercial sex act**: Any sex act on account of which anything of value is given to or received by any person. [\[return\]](#)

**Debt bondage**: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. [\[return\]](#)

**Involuntary servitude**: A condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process. [\[return\]](#)

**Peonage**: A status or condition of involuntary servitude based on real or alleged indebtedness. [\[return\]](#)

**Slavery**: (according to Art. 1, Slavery Convention, 1926 as amended by 1953 Protocol) The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. [\[return\]](#)

**Smuggling**: (according to Article 3(a) of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air): The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

**Trafficking in persons** (according to Article 3 of the Palermo Protocol): The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery,

servitude or the removal of organs. [\[return\]](#)

### Other Materials - 2

#### **T visa Eligibility Requirements**

The eligibility requirements for the T visa can be found at INA § 101(a)(15)(T) and at 8 CFR § 214.11. To be eligible for a T visa, the alien:

- Is or has been a victim of a severe form of trafficking in persons;
- Is physically present in the United States, American Samoa, Northern Mariana Islands, or at a port of entry on account of such trafficking;
- Has complied with a reasonable request for assistance in the investigation or prosecution of acts of trafficking or is under 18 years old or is unable to cooperate with a request for assistance due to physical or psychological trauma;
- Would suffer extreme hardship involving unusual and severe harm upon removal;
- Must be admissible, or if inadmissible under any ground of inadmissibility applicable to T visa applicants, must be eligible for a waiver of inadmissibility; and
- Must merit a favorable exercise of discretion.

Exemptions and waivers exist for T visa applicants and can be found at INA § 212(d)(13)(A) & (B). T visa applicants are not subject to the public charge ground under INA § 212(a)(4) and may be granted a waiver of any other inadmissibility ground, except provisions regarding terrorist activity (212(a)(3)) and miscellaneous grounds such as child abduction and renunciation of U.S. citizenship to avoid taxation (212(a)(10)(C) & (E)), if the activities rendering the alien inadmissible were caused by or incident to the victimization and if the Secretary of Homeland Security considers a waiver grant to be in the national interest.

### Other Materials - 3

### **U Visa Eligibility Requirements**

The eligibility requirements for the U visa can be found at INA §101 (a)(15)(U) and at 8 CFR § 214.14. To be eligible for a U visa, the alien must establish that:

- The alien has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity, which includes trafficking;
- The alien possesses information concerning that qualifying criminal activity (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The alien has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement investigating or prosecuting one of the qualifying criminal activities (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The criminal activity described violated the laws of the United States or occurred in the United States;
- The alien must be admissible, or if inadmissible under any ground of inadmissibility applicable to U visa applicants, must be eligible for a waiver of inadmissibility;
- The alien merits a favorable exercise of discretion.

With the exception of INA § 212(a)(3)(E) (participants in Nazi persecution, genocide, and/or torture), all inadmissibility grounds may be waived under INA § 212(d)(14) if the Secretary of Homeland Security considers that it would be in the public or national interest to do so.

#### **Qualifying Criminal Activities**

- Abduction
- Abusive Sexual Content
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting



- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

#### Other Materials – 4

#### **Eligibility Requirements for Asylum or Refugee Status**

##### ***Harm***

Victims of trafficking are widely known to have experienced harm (physical and emotional coercion, severe forms of labor and sexual exploitation, threats to their life) to a level of severity that would constitute persecution. This harm may be inflicted or condoned by the government of their country, those closely affiliated with branches of their government, or by individuals and/or groups that the government of the country they are fleeing cannot or

does not control.

### *Protected Characteristics*

A central part of the analysis will focus on whether the persecutor selected the individual indiscriminately and then trafficked him or her for purely opportunistic criminal reasons or if the persecutor was motivated to harm the victim on account of one of the five protected grounds possessed by or imputed to the victim. In some countries, traffickers may target members of particular ethnic or political minorities, which would fit under the traditional rubric of the nationality and political opinion protected characteristics.

Victims may be targeted on account of their status as members of a particular social group, which would require evidence from country conditions reports and a proper legal analysis. See RAIIO Training module, *Nexus and the Five Protected Grounds*. Traffickers associated with organized crime or insurgent groups may also have authority or influence over a particular area in a given country such that sub-groups within that area may be considered members of a particular social group. A potential particular social group may be based on an interviewee's status as a victim of trafficking (e.g. "formerly-trafficked COUNTRY females/children/ males") if country conditions reports indicate that trafficking victims who return to their country of origin may be targeted and suffer harm.

Immediately below are sample inquiries relevant to particular social groups that might be used to elicit a possible nexus to a protected ground from a trafficking victim:

- Does the interviewee possess a protected characteristic or could a protected characteristic be imputed to the interviewee?
- Was the perpetrator aware of any such actual or imputed characteristic?
- Does the interviewee know any other persons that were victimized by the feared perpetrator? Did any such victims share common characteristics with the interviewee?
- Did the interviewee know the perpetrator before the harm was committed?
- Is the perpetrator or feared perpetrator a person of power or connected with persons of power in the area in which the interviewee lived?
- Was interviewee targeted as punishment for the protected characteristic? E.g., the interviewee belonged to a rival political group, belonged to particular tribe, minority nationality, minority religion, etc.?
- Does or did the interviewee have shared, immutable or fundamental characteristics that are sufficiently visible within her or his society that facilitated or made trafficking of the victim advantageous?
- Do country conditions indicate that the interviewee is similarly situated to groups that

are selected for harm within her or his country or country of last habitual residence?

- Does the interviewee come from a city/region/country where human trafficking is prevalent? Do populations targeted for trafficking in that country share common characteristics?
- Is the interviewee aware of human trafficking victims who have been returned to their country? Have they had any problems?

**Country Conditions Evidence**

The Department of State Annual Trafficking in Persons Report (and other country conditions reports) outline the demographic groups at risk for trafficking in each country and monitor and evaluate individual government’s efforts to prevent trafficking crimes, protect victims of such crimes, and prosecute those responsible for trafficking others. These resources should be consulted to assist you in making a determination and substantiating your position as to whether the interviewee suffered past persecution or has a well-founded fear of persecution on account of one of the protected characteristics, and whether she or he was targeted by the government or by an entity that the government remains unable or unwilling to control.

**NOTE: As mentioned above, the following lines of suggested inquiry are meant to serve as a guide and not an exhaustive list of interview questions. RAIO officers should always tailor interview questions to the specific facts of each interview.**

<u>Other Materials – 5</u>	
<b>Understanding Benefits and Application Process</b>	
<b>Indicators</b>	<b>Suggested Questions</b>
<ul style="list-style-type: none"> <li>• Interviewee does not understand/ know what she or he is applying for</li> <li>• Interviewee has inconsistencies in his or her story</li> <li>• Interviewee is accompanied by someone who is speaking on his or her behalf</li> <li>• Interviewee uses false identification papers</li> </ul>	<ul style="list-style-type: none"> <li>• Do you know why you are here?</li> <li>• What will happen if you receive the benefit?</li> <li>• Who prepared your application?</li> <li>• Was it read back to you?</li> <li>• Were you given any materials to help you during your interview?</li> </ul>

	<ul style="list-style-type: none"> <li>• If you are granted the benefit, will you be in debt to anyone?</li> <li>• What is your relationship to the person accompanying you?</li> <li>• How did you meet the person accompanying you/interpreter/preparer/attorney/ representative?</li> <li>• Where did you get these documents?</li> </ul>
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<p><b>Other Materials – 6</b></p> <p><b>Physical Health/Behavior<sup>38</sup></b></p>	
Indicators	<u>Suggested Questions</u>
<ul style="list-style-type: none"> <li>• Interviewee exhibits paranoia, fear, anxiety, depression, tension, nervous behavior</li> <li>• Interviewee displays heightened emotionality that in some way is inconsistent with the benefit request being presented</li> <li>• Submissive, tense, nervous behavior and/or avoids eye contact<sup>39</sup></li> <li>• Reluctance to speak in front of people of shared background</li> <li>• Reluctance to speak with someone of</li> </ul>	<ul style="list-style-type: none"> <li>• Do you have any mental or physical health issues? How long? Cause?</li> <li>• Do you feel uncomfortable speaking about any issues in your claim with a male/female officer? Or with me for any particular reason?</li> <li>• How many meals/day do you eat?</li> <li>• Can you eat anytime you want? Is your food locked up?</li> <li>• Do you have to pay for food?</li> <li>• If you pay your employer for food, could you also buy food from anyone else if you want?</li> </ul>

<sup>38</sup> Officers should keep in mind that most, if not all, of these indicators are fairly common in victims of torture/trauma/abuse in the asylum/refugee context.

<sup>39</sup> Although these might be indicators of trafficking, officers should keep in mind that all of these behaviors may be appropriate/expected depending on the culture of the interviewee and be unrelated to trafficking concerns.

<p>opposite or same gender</p> <ul style="list-style-type: none"> <li>• Signs of poor health/ malnourishment.</li> <li>• Visible physical injuries (scars, cuts, bruises, burns)</li> <li>• Tattoos or other marks</li> </ul>	<ul style="list-style-type: none"> <li>• Were you ever hungry?</li> <li>• Do you have to ask permission to eat?</li> <li>• Do you eat together with the people you are living with? Do you eat the same food as the people you are living with?</li> <li>• How did you receive your injuries? Have you seen a doctor for your injuries?</li> <li>• Where did you receive those tattoos or markings? What do they mean?</li> </ul>
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<p><b><u>Other Materials – 7</u></b></p> <p><b>Recruitment/Migration</b></p>	
<p><b>Indicators</b></p>	<p><b><u>Suggested Questions</u></b></p>
<ul style="list-style-type: none"> <li>• Interviewee was recruited for one purpose and forced to engage in another job</li> <li>• Interviewee was brought to the United States against his or her will</li> <li>• Interviewee did not know his or her destination was the United States</li> <li>• Interviewee did not arrange his or her own travel</li> <li>• Interviewee is not informed about means and method of travel from home country</li> </ul>	<ul style="list-style-type: none"> <li>• Why did you come to the United States?</li> <li>• How did you get here?</li> <li>• Who did you come with?</li> <li>• How did you get your passport?</li> <li>• Who arranged your travel?</li> <li>• Who paid for your ticket to come?</li> <li>• Do you owe money for your trip?</li> <li>• Did you incur a debt before you left your country?</li> <li>• If so, how did you pay it?</li> </ul>

	<ul style="list-style-type: none"> <li>• How much did you pay the smuggler?</li> <li>• Who picked you up from the airport?</li> <li>• How did you find out about the job?</li> <li>• What did you expect when you came?</li> <li>• What was it like when you started to work?</li> <li>• What did you end up doing?</li> <li>• Were you scared?</li> </ul>
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<b><u>Other Materials – 8</u></b>	
<b>Identification</b>	
<b>Indicators</b>	<b><u>Suggested Questions</u></b>
<ul style="list-style-type: none"> <li>• Interviewee is not in possession and/or control of his or her documents</li> <li>• Employer is holding interviewee’s identity and/or travel documents</li> </ul>	<ul style="list-style-type: none"> <li>• When you traveled to the United States were you able to keep your identification documents with you or did someone take them from you?</li> <li>• Do you have any papers?</li> <li>• Do you have your passport and identity documents? If not, who has them?</li> <li>• Do you have access to them?</li> <li>• Where are they kept?</li> </ul>

<b><u>Other Materials – 9</u></b>
<b>Working Conditions</b>

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> <li>• Interviewee is not in control of his or her own money</li> <li>• Interviewee expresses lack of freedom to leave working conditions</li> <li>• Interviewee was forced to perform sexual acts as part of employment</li> <li>• Interviewee was forced to work extensive hours without fair compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Are you in school?</li> <li>• Are you working?</li> <li>• What kind of work do you do?</li> <li>• How did you get this job?</li> <li>• Are you paid? How much?</li> <li>• How often?</li> <li>• What are your work hours?</li> <li>• How much do you make per hour?</li> <li>• Do you get overtime pay?</li> <li>• Were you able to discuss how much you were getting paid with your employer?</li> <li>• Do you owe money to your boss or someone else?</li> <li>• What would have happened if you didn't give that person your paycheck?</li> <li>• If you were sick, could you take a day off or stop working?</li> <li>• Can you take days off work?</li> <li>• How much time could you take off?</li> <li>• Has your boss told you that you owe money?</li> <li>• Did anyone ever take your income?</li> <li>• Can you keep your money?</li> <li>• Can you leave your job if you want? Did</li> </ul>

	<p>you ever? Why or why not?</p> <ul style="list-style-type: none"> <li>• Were you able to take breaks when you wanted to?</li> <li>• What happens if you make a mistake at work?</li> <li>• Are there guards at work or video cameras that monitor and ensure no one leaves?</li> <li>• What did you fear would happen if you left?</li> <li>• Are you ever forced to do something you don't want to do?</li> <li>• Did anyone ever threaten to hurt you or your family if you did not work?</li> <li>• Are you afraid of your employer? Why?</li> <li>• Did anyone force you to cook or clean the house?</li> <li>• If you worked outside the home, were you lied to about the type of work you would be doing when you accepted the job?</li> <li>• Did your employer tell you what to say to immigration officials or law enforcement?</li> <li>• Did your employer ever threaten to have you arrested?</li> </ul>
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<b><u>Other Materials – 10</u></b>	
<b>Debt Questions</b>	
<b><u>Indicators</u></b>	<b><u>Suggested Questions</u></b>



<ul style="list-style-type: none"> <li>• Interviewee’s salary is being garnished to pay off debt (Paying off smuggling fee alone is not trafficking but is a red flag.)</li> </ul>	<ul style="list-style-type: none"> <li>• How much money did you have left over after you paid everything you need to pay?</li> <li>• Could you spend your money the way you want to?</li> <li>• Did the person who pays you ever “save” or “hold” money for you?</li> <li>• Do you owe anyone money? If so, who is it and why?</li> <li>• How did you incur the debt?</li> <li>• How long have you had your debt?</li> <li>• Is it increasing? If so how is it increasing and why?</li> <li>• Do you feel it’s difficult to pay off your debt and why?</li> <li>• What do you think will happen to other people in your life if you don’t pay?</li> <li>• Do you have weekly/monthly expenses to your employer? What are they?</li> </ul>
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<p><b><u>Other Materials – 11</u></b></p> <p><b>Living Environment/Transportation</b></p>	
<p><b><u>Indicators</u></b></p>	<p><b><u>Suggested Questions</u></b></p>
<ul style="list-style-type: none"> <li>• Interviewee exhibits lack of knowledge of his or her own whereabouts (jurisdiction)</li> <li>• Interviewee has been harmed or deprived of food, water, sleep, medical care or other life necessities</li> </ul>	<ul style="list-style-type: none"> <li>• Where do you live? (inability to clarify address = indicator)</li> <li>• Who else lives there?</li> <li>• Where do you sleep?</li> </ul>

<ul style="list-style-type: none"> <li>• Interviewee is living at workplace or with employer</li> <li>• Lack of freedom to leave living conditions</li> <li>• Interviewee is always escorted, is never alone</li> </ul>	<ul style="list-style-type: none"> <li>• Can you leave as you wish?</li> <li>• Are you scared to leave?</li> <li>• Do you live in the place <b>where</b> you work?</li> <li>• Do you go to the grocery <b>store</b> by yourself?</li> <li>• What city did you first live in the United States?</li> <li>• How do you get around <b>from</b> place to place?</li> <li>• How much do you usually pay for transportation?</li> <li>• Do you drive? Where did you learn to drive?</li> <li>• Do you go places by yourself?</li> </ul>
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<p align="center"><b><u>Other Materials – 12</u></b></p> <p align="center"><b>Social Ties/Conditions</b></p>	
<p align="center"><b><u>Indicators</u></b></p>	<p align="center"><b><u>Suggested Questions</u></b></p>
<ul style="list-style-type: none"> <li>• Interviewee cannot contact friends and family freely</li> <li>• Interviewee is isolated from their community</li> </ul>	<ul style="list-style-type: none"> <li>• Do you have family or friends in the United States?</li> <li>• Do you spend time with them?</li> <li>• Do you have time to spend with your friends/family?</li> <li>• What do you do with them?</li> <li>• Can you bring friends home?</li> <li>• Do you buy food and clothes on your</li> </ul>

	own? <ul style="list-style-type: none"> <li>• If you are in trouble, who are you most likely to call?</li> </ul>
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<b><u>Other Materials – 13</u></b> <b>Force, Fraud, Coercion</b>	
<b><u>Indicators</u></b>	<b><u>Suggested Questions</u></b>
<ul style="list-style-type: none"> <li>• Interviewee does not have freedom of movement</li> <li>• Interviewee’s friends or family have been threatened with harm if interviewee escapes.</li> <li>• Interviewee has been threatened with deportation or law enforcement action</li> <li>• Unusual distrust of law enforcement</li> <li>• Interviewee was forced to perform acts against his or her will</li> <li>• Interviewee was forced to perform sexual acts against his or her will</li> <li>• Evidence of abuse (physical, mental, sexual)</li> </ul>	<ul style="list-style-type: none"> <li>• Has anyone ever threatened you to keep you from running away?</li> <li>• Has anybody ever hurt you to make you stay?</li> <li>• Has your family been threatened?</li> <li>• Did you ever feel pressured to do something that you didn’t want to do or felt uncomfortable doing? How did you feel pressured?</li> <li>• Did your employer ever take photos of you? What (if anything) did he/she say he/she would do with those photos?</li> <li>• How safe do you feel right now?</li> <li>• Were you allowed to leave the location/building where you live, where you work?</li> <li>• Do you feel like your movement is controlled by someone else?</li> <li>• Was there ever a time you wanted to leave somewhere and you felt you couldn’t? Why did you feel that way?</li> <li>• What do you think would have happened if</li> </ul>

	<p>you left without telling anyone?</p> <ul style="list-style-type: none"> <li>• Were you ever physically <b>hit and/or</b> slapped by your employee/manager or anyone else?</li> <li>• Did you ever see anyone <b>else get hit or</b> slapped by your employer?</li> <li>• Do you feel you were <b>deceived</b> about anything having to do <b>with your current</b> job?</li> <li>• How did you find your <b>job</b>?</li> <li>• What were you told about your <b>job before</b> you started?</li> <li>• Were you ever promised something that did not happen?</li> <li>• Did conditions on your <b>job change over</b> time?</li> </ul>
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<u>Other Materials – 14</u>	
Minor: Under 18	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> <li>• Interviewee is a child and not in school or has significant gaps in schooling</li> <li>• Interviewee does not live with her or his parents</li> <li>• Interviewee provides insufficient information about parental knowledge of benefit application</li> <li>• Interviewee provides insufficient or contradictory information about the</li> </ul>	<ul style="list-style-type: none"> <li>• Are you in school?</li> <li>• How does your parent/guardian/caregiver treat you?</li> <li>• Are there rules/conditions that your caregiver has set?</li> <li>• Are you responsible for obtaining your food or purchasing other items?</li> </ul>

<p>relationship to guardians and/or trusted adults accompanying her or him to the interview</p> <ul style="list-style-type: none"> <li>• Interviewee may be hungry or malnourished or have not reached their full height</li> <li>• Interviewee may have poorly formed or rotten teeth</li> <li>• Interviewee may be attending school sporadically or provides vague testimony on schooling</li> <li>• Interviewee may refer to non-family members with family titles (uncle, aunt, cousin)</li> <li>• Interviewee may display symptoms of disorientation and confusion</li> </ul>	<ul style="list-style-type: none"> <li>• How do you get money to purchase items?</li> <li>• Where do you sleep?</li> <li>• How many people live in the same house?</li> <li>• Who are the other people?</li> <li>• What would happen if you left your caregiver /work without permission?</li> </ul>
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<p align="center"><b><u>Other Materials – 15</u></b></p> <p align="center"><b>Safety Assessment (if interviewee alone and expresses fear)</b></p>	
<p align="center"><b><u>Indicators</u></b></p>	<p align="center"><b><u>Suggested Questions</u></b></p>
<ul style="list-style-type: none"> <li>• Interviewee displays heightened general sense of fear</li> <li>• Interviewee reveals having been physically harmed</li> <li>• Interviewee shares having been deprived of: Food, water, sleep, medical care and/or other life necessities</li> <li>• Interviewee shares having been threatened with harm to him or herself or their family</li> <li>• Interviewee has been threatened with removal or reporting to immigration/ police</li> </ul>	<ul style="list-style-type: none"> <li>• Do you feel safe right now?</li> <li>• Is there anyone you are concerned about?</li> <li>• Anyone who is making you feel uncomfortable or stressed?</li> <li>• What is your understanding of why you are here right now?</li> <li>• How did you get here today?</li> </ul>

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<ul style="list-style-type: none"> <li>• <b><u>Other Materials – 16</u></b></li> <li>• <b>Stages of Trafficking</b></li> </ul> <p>• Four sets of circumstances through which RAIO officers may detect indicators of trafficking and initiate component specific trafficking procedures:</p>	
<ul style="list-style-type: none"> <li>• Ongoing trafficking/At risk</li> </ul>	<ul style="list-style-type: none"> <li>• Officer detects indicators of ongoing trafficking from interviewee in interview and believes the interviewee is currently being exploited.</li> </ul>
<ul style="list-style-type: none"> <li>• Past trafficking</li> <li>• Unrelated to claim</li> <li>• Not in imminent danger in U.S.</li> </ul>	<ul style="list-style-type: none"> <li>• Officer detects indicators of trafficking-related violations from interviewee’s testimony and/or application, trafficking circumstances are unrelated to interviewee’s immigration benefit request, and interviewee is no longer in exploitative situation.</li> </ul>
<ul style="list-style-type: none"> <li>• Past trafficking</li> <li>• Related to claim</li> <li>• Not in imminent danger in U.S.</li> </ul>	<ul style="list-style-type: none"> <li>• Officer detects indicators of trafficking-related violations from interviewee’s testimony and/or application, these violations relate directly to the immigration benefit the interviewee is seeking, and interviewee is no longer in exploitative situation.</li> </ul>
<ul style="list-style-type: none"> <li>• Return to field office/r (Trafficking POC) for follow-up</li> </ul>	<ul style="list-style-type: none"> <li>• Supervisory, Quality Assurance, and/or Headquarters review detects indicators of trafficking through intra-office or HQ case review.</li> </ul>



**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>RAD Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

1. All Supplemental Materials
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**ASM Supplement – 1**

**The TVPRA and Asylum**

As noted earlier, the 2008 TVPRA significantly impacted asylum field policy and procedures when the Asylum Division was accorded initial jurisdiction on unaccompanied minor cases, a particularly vulnerable demographic within the U.S. immigrant population.<sup>40</sup> Further, in the asylum context, USCIS responds to the TVPRA mandate to provide victims of trafficking information on the rights and services afforded to them, by providing informational pamphlets regarding these benefits to interviewees. Asylum Officers will not be trained nor expected to “identify” a victim of trafficking for the purpose of determining his or her eligibility for other forms of immigration relief. Officers may provide potential victims, who are not in imminent risk, with specific, authorized, informational pamphlets that apprise individuals of benefits for which they may be eligible. Officers should not give advice or provide any other information about the interviewee’s situation or claim for asylum outside of giving them these informational materials.

<sup>40</sup> For additional information, please refer to RAIO module, *Children’s Claims*.

The following informational pamphlets are available for dissemination: Department of Justice pamphlet, *Office for Victims of Crime – Funded Grantee Programs to Help Victims of Trafficking*, and USCIS pamphlet, *Immigration Options for Victims of Crime*.

**ASM Supplement – 2**

**Trafficking in the Credible and Reasonable Fear Process**

In the Credible and Reasonable Fear Context, officers will have the opportunity to question the interviewee alone, without a third party present, and may be able to elicit more information from an individual at-risk of ongoing trafficking, without compromising the victim's safety.

**ASM Supplement – 3**

**Trafficking Experiences and One-Year Filing Deadline**

An interviewee may apply for asylum or refugee status with one basis of claim, e.g. political opinion, but may describe a trafficking-related experience, either in his or her country of origin or in the United States, that materially relates to his or her asylum eligibility. One example of this would be an individual who flees persecution in the home country, arrives in the United States without resources, and finds employment as a domestic servant with an employer who controls and exploits them. This individual may become freed several years after arrival in the United States and pursue an asylum benefit at that time. If the adjudicating officer elicits relevant testimony and applies the appropriate trafficking lens to analyze the conditions the interviewee faced upon arrival in the United States, depending on the circumstances, the officer may find an extraordinary circumstance exception to the one-year filing deadline

**ASM Supplement – 4**

**Affirmative Asylum Procedures Manual**

**Section III.B.14. Trafficking Victims<sup>41</sup>**

<sup>41</sup> The language in this supplement was preliminarily cleared by OCC in March 2012.

The Trafficking Victims Protection Act (TVPA) guarantees certain rights, services, and protections to victims of severe forms of trafficking.

The TVPA defines a victim of a severe form of trafficking as a person subject to:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age OR

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

While Asylum Officers are not responsible for making a determination as to an applicant's status as a victim of trafficking, Asylum Officers can play a key role in the protection of victims and in the prosecution of traffickers by detecting indicators of trafficking during an applicant's testimony and bringing cases of possible trafficking victims to the attention of ICE officials.

If the potential victim is a child filing for asylum as a principal applicant, the Asylum Officer should consult Section III.B.1, Children Filing as Principal Asylum Applicants, for additional guidance.

Each Asylum Office Director must designate a Supervisory Asylum Officer (SAO) as the point of contact (POC) for human trafficking matters for their office. This POC will serve as the principal liaison between the asylum field office and the ICE POC during the trafficking referral process outlined below. In the event that the SAO Trafficking POC is unavailable when a trafficking-related situation arises, all SAOs must be trained and prepared to serve as back-up POCs.

The Asylum Officer must differentiate between a suspected current trafficking situation, where the applicant may be in immediate danger because he or she is a possible or self-declared victim of current trafficking, and a possible or self-declared victim of past trafficking.

Asylum Officers encountering possible victims of human trafficking during the course of an asylum adjudication must follow this five step process: 1) detection, 2) notification, 3) referral, 4) information providing, and 5) tracking.

**Step 1- Detection:**

In the course of an asylum interview, an AO should be aware of the indicators of human trafficking. For a reminder of possible indicators of trafficking, please

consult the RAIO Combined Training Trafficking Lesson Plan.

Once an Asylum Officer suspects that an applicant has been or is currently being trafficked, he or she should ask follow-up questions to elicit more information without alerting the applicant or any individuals accompanying the applicant of the concern.

Facts related to the suspected trafficking should be documented in the interview notes. The AO should specifically annotate whether he or she thinks the applicant is currently a victim of trafficking who may be in imminent danger and/or has been trafficked in the past and is no longer in imminent danger.

If the applicant is a minor, the AO should consult Section III.B.1, Children Filing as Principal Asylum Applicants, to ensure that his or her inquiry is child sensitive and that it includes questions concerning the minor applicant's care and custody situation, as well as whether the parents are aware of and approve of the asylum application.

#### **Step 2- Notification:**

Once the Asylum Officer has identified through line of inquiry indicators that an applicant has been or continues to be a victim of trafficking, the Asylum Officer must alert and discuss the suspicion and indicators of trafficking with the designated SAO POC.

The AO should complete the "Victims of Trafficking Memo to File," located at the end of the RAIO Combined Training Trafficking Lesson Plan, and provide an electronic copy to the SAO POC.

If the potential victim is a minor principal applicant, Asylum Office management must be alerted and the case must be reported to the HQASM QA mailbox. See Section III.B.1, Children Filing as Principal Asylum Applicants. HQASM will instruct on whether the Asylum Office should proceed with drafting an assessment and, if necessary, submitting a QA referral packet or whether the Asylum Office should postpone such action while issues related to the minor's care and custody situation are being addressed.

#### **Step 3- Referral:**

The Asylum SAO POC will determine the timing and method of a referral to ICE in the case of a possible victim of trafficking based on whether he or she believes the applicant is currently being trafficked and faces any imminent danger.

In instances where the AO and SAO POC believe the applicant is currently a victim of trafficking and is possibly in danger, referral to ICE is immediate.

The SAO POC makes a referral to ICE by phone while the applicant is still in the Asylum Office.

The SAO POC relays the indicators of trafficking to the ICE agent and together they form a plan for action.

The applicant should not be alerted to the fact that an ICE agent is being called, unless the SAO POC can confirm that the applicant is not in danger and is not accompanied by anyone who poses a risk to the applicant. The timing and method of the ICE response will vary based on the AO's and SAO POC's perception of the imminent risk faced by the applicant. Further, the overall accessibility of ICE units may vary nationwide.

The SAO POC must use the following means, in the order listed below, to ensure an immediate verbal referral to an ICE agent in these situations.

Call the individual field office's pre-established ICE POC, the Supervisor of an ICE Human Trafficking and Smuggling Unit, located in the proximity of the Asylum Office.

If the ICE POC is not responsive, call the ICE National Directory (X- Sector) at 1-800-XSector and ask to speak with the supervisor of the Human Trafficking and Smuggling Unit in that city. If X-Sector does not have that information, the SAO POC should request the duty agent in the closest ICE field office.

If the SAO POC is unable to reach an agent through either of these mechanisms, he or she should contact the Trafficking POC at HQASM.

Note: If the potential applicant is a minor, ICE's internal policy dictates that they respond immediately regardless of whether the individual is in a dangerous situation.

In instances where the AO and the SAO POC do not believe that the applicant is currently being trafficked and is not in imminent danger, the referral to ICE will involve the SAO POC sending the local ICE Assistant Special Agent in Charge (ASAC) a copy of the memo to file via email or fax for his or her records.

If the applicant's case has already been investigated by ICE, there would be no need to refer the case, unless the affirmative asylum interview revealed information

that raised new or additional concerns.

In addition to notifying ICE, the Trafficking Victims Protection Act (TVPA) requires that federal, state, and local officials notify the Department of Health and Human Services (HHS) within 24 hours of the discovery of a person who is under 18 years of age (whether accompanied or not) who may be a victim of a severe form of trafficking in persons. (TVPA § 107(b)(1)(G); 22 USC 7705(b)(91)(G)) This is so that HHS can provide interim assistance to any such individual. If Asylum Officers encounter an asylum applicant under 18 years of age whom they discover may be a victim of a severe form of trafficking in persons, they should inform their office's POC for unaccompanied alien children's issues (UAC POC). The UAC POC must send an e-mail to the HHS Office of Refugee Resettlement (ORR) at [ChildTrafficking@acf.hhs.gov](mailto:ChildTrafficking@acf.hhs.gov) or call 202-205-4582. An e-mail should contain as much of the following information as possible:

**Standard subject line:** USCIS Notification to HHS of Discovery of a Person Who is under 18 Years of Age Who May Be a Victim of a Severe Form of Trafficking in Persons

**Body:**

Pursuant to section 107(b)(1)(G) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), this e-mail serves as notification to the Department of Health and Human Services that U.S. Citizenship and Immigration Services has discovered the following person who is under 18 years of age who may be a victim of a severe form of trafficking in persons:

1. Alien number:
2. Name:
3. Date of birth:
4. Country of citizenship:
5. Residence address:
6. Location of exploitation:
7. Suspected form of trafficking:
8. Represented by:
9. USCIS contact information:
10. Additional notes

An ORR Child Protection Specialist will respond to each notification during regular business hours, Monday through Friday, and will follow up with the reporting official as appropriate. Follow-up will involve facilitating interim and long-term eligibility, where applicable, and providing technical assistance as needed.

**Step 4- Providing Information to Possible Victims of Trafficking:**

Asylum Officers must provide possible victims of trafficking with the following informational pamphlets. These pamphlets outline the trafficking-specific immigration benefits and the contact information of service providers who assist victims of trafficking.

These pamphlets must only be given to an applicant if the AO and the SAO POC are certain that the applicant is no longer at risk of trafficking and/or that the providing of this information to the applicant (who may be accompanied by persons involved in the trafficking) would not put the applicant in danger.

The AO will provide the applicant with the following:

- 1) USCIS "Immigration Remedies for Victims of Violence" brochure;
- 2) DOJ Office of Victims of Crime list of federally funded anti-trafficking non-governmental organizations that operate across the United States;
- 3) HHS National Human Trafficking Resource Center hotline number (National Directory for all trafficking-related referrals): 1-888-373-7888.

**Step 5- Tracking:**

The AO completes the "Victims of Trafficking Memo to File," located at the end of the RAIO Combined Training Trafficking Lesson Plan, places a copy on the right-hand side of the A-file, and provides an electronic copy to the SAO POC.

**Once this has been done, the AO processes the asylum case as usual.**

**ASM Supplement – 5**

**Sample Victims Of Trafficking Memo To File**

Alien number:

Interview Date:

Asylum Officer (name, no.):

Consulted with (SAO, Trafficking POC):

Location:

Adjudication: Affirmative Asylum

Attorney name:

Preparer name:

Preparer address:

Interpreter name:

Applicant full name:

Gender: F

Country: Ethiopia

Age: 45

I. BIOGRAPHIC/ENTRY INFORMATION

Applicant was employed by a Saudi Arabian Family (*NAME*) as a domestic servant from 19xx until she came to the United States on *ARRIVAL DATE*. Applicant used an agency in Ethiopia to contract with this employer as a maid. Applicant entered the United States at Washington D.C. with this family. She told her supervisor that she wanted her passport. When he refused, she told him that she would call the police; so, he gave it to her. While the family rested, she left the house, called her friend in California, and never returned to this family.

II. SOURCE OF TRAFFICKING SUSPICION

Is this a past or present, ongoing trafficking concern? Past trafficking concern

III. WHAT FORMS OF TRAFFICKING DOES THE AO SUSPECT?

Applicant was contracted as a maid to clean the house and help raise the children. However, she was forced to work at any hour of the day and at multiple people's homes. Applicant stated she was not allowed to leave the house alone and could only go with the family. Applicant was also raped repeatedly by a supervisor who was hired to watch over Applicant and the other maids. If Applicant fought back, she stated she would be deported to Ethiopia. At one point she became pregnant as a result of the rapes, and made an excuse to return to Ethiopia to have an abortion. Applicant stated she could not have an abortion in Saudi Arabia, as they would find her at fault for being raped and pregnant.

IV. WHAT ACTIONS HAS THE ASYLUM OFFICE TAKEN?

Applicant was given the brochure of DHS/CIS information about trafficking and a packet of resources of NGOs that may be able to help her. Applicant was also represented by an attorney.



Please include copy of memo to file in A file and send electronically to Office Trafficking POCs NAMES.

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

There are no supplemental materials for the International Operations Division.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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## **Well Founded Fear - Exercise**

Please consider the following questions after viewing the documentary. If practical, engage others in your office in a discussion on these issues:

1. What is your general reaction to the documentary?
2. Some officers in the film had doubts about their final decisions. How do you feel about this? Have your colleagues mentioned to you that they have had similar doubts? Do you think you may have doubts about your final decisions? How will this affect you personally and how you approach your job?
3. What was your impression of the interpreters in the film? How do interpreters affect the interview in general? What can you do if you sense that the interpreter is not doing a "good" job? Are there clues to identifying interpreter skill levels?
4. Do you think it will be difficult to determine the credibility of applicants? Why / why not? How might you determine whether or not an applicant is credible?
5. How does the statement "it depends on who you get" apply to the different officers in this film? How do you feel about this sentiment? How do you think you might fit into this continuum?
6. How did the officers in the film feel about applicants from certain countries? Have you noticed any general attitudes in your office toward applicants from certain countries? What may cause officers to be frustrated with certain applicants? What have been some of your personal experiences with persons of different cultures in your daily life prior to joining RAIO? Do you have expectations of how you will respond during interviews with people from cultures other than your own? Are there any cultures or countries to which you have particularly positive or negative reactions? What can officers do when they sense they are becoming frustrated with an applicant or they perceive frustration in other officers?
7. Consider the various interview techniques portrayed in the film (and in interviews you have observed in your office). Determine what you think your strongest and weakest techniques are and identify those which you think you may need to improve upon.
8. What do we know about pre-disposition based on our own set of life experiences (parent, no children, travel, military service, knowledge of 2<sup>nd</sup> language, interaction with people from different cultures, etc.)? How do you think your life experience will affect you in your job with RAIO?



U.S. Citizenship  
and Immigration  
Services

HQRAIO 120/12a

## Memorandum

JUN 04 2013

TO: Donald Neufeld  
Associate Director, Service Center Operations

FROM: Ted Kim  
Acting Chief, Asylum Division

SUBJECT: Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by  
Unaccompanied Alien Children

### I. Purpose

This memorandum provides updated notification and guidance to the USCIS Service Centers on the handling of I-589 applications for asylum filed by unaccompanied alien children (UACs) under the "initial jurisdiction" provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). These procedures modify the current procedures found in Section III of the April 9, 2009, memorandum, Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children. These procedures are effective on June 10, 2013, and apply to any I-589s received by USCIS on or after that date.

### II. Background

USCIS typically does not have jurisdiction to accept a Form I-589, *Application for Asylum and for Withholding of Removal*, filed by an applicant in removal proceedings. Section 235(d)(7)(B) of the TVPRA, however, placed initial jurisdiction of asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. Effective June 10, 2013, Asylum Offices will adopt a previous determination made by either CBP or ICE that an applicant is a UAC where that determination is in place on the date the applicant files for asylum, without making another factual inquiry into the applicant's age or unaccompanied status, and will take jurisdiction over the asylum case.<sup>1</sup> Asylum Offices will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE, or CBP to terminate the UAC finding before the applicant filed the initial application for asylum. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

<sup>1</sup> See Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. May 28, 2013 (Attached).

### III. Field Guidance

This guidance focuses on the Nebraska Service Center's (NSC) handling of I-589s filed by UACs in removal proceedings. Effective June 10, 2013, the NSC should accept the asylum application of an individual in removal proceedings if any of the following three conditions are met:

- (1) The date of birth listed on the Form I-589 indicates that the applicant is under 18 at the time of filing with USCIS; (or)
- (2) The applicant submits a copy of the UAC Instruction Sheet with the I-589; (or)
- (3) The applicant submits with the I-589 a copy of documentation provided by HHS/Office of Refugee Resettlement (ORR) showing the applicant was in HHS/ORR custody as a UAC, such as the UAC Initial Placement Referral Form or the ORR Verification of Release Form.

In addition, the Asylum Division updated the UAC Instruction Sheet (attached), which the ICE Trial Attorneys disseminate to applicants who appear to be UACs during immigration court proceedings. As a result, the NSC will start receiving the updated UAC Instruction Sheet shortly and should accept both the March 2009 version and the updated version.

The NSC should otherwise follow normal procedures and guidance from the April 9, 2009, memorandum, *Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children*, to verify that the filing is complete and to process the case filing. However, the NSC should reject I-589 applications for lack of jurisdiction where the applicant is in removal proceedings, is 18 or older at the time of filing, **and** has not submitted any of the documents listed in (2) and (3) above.

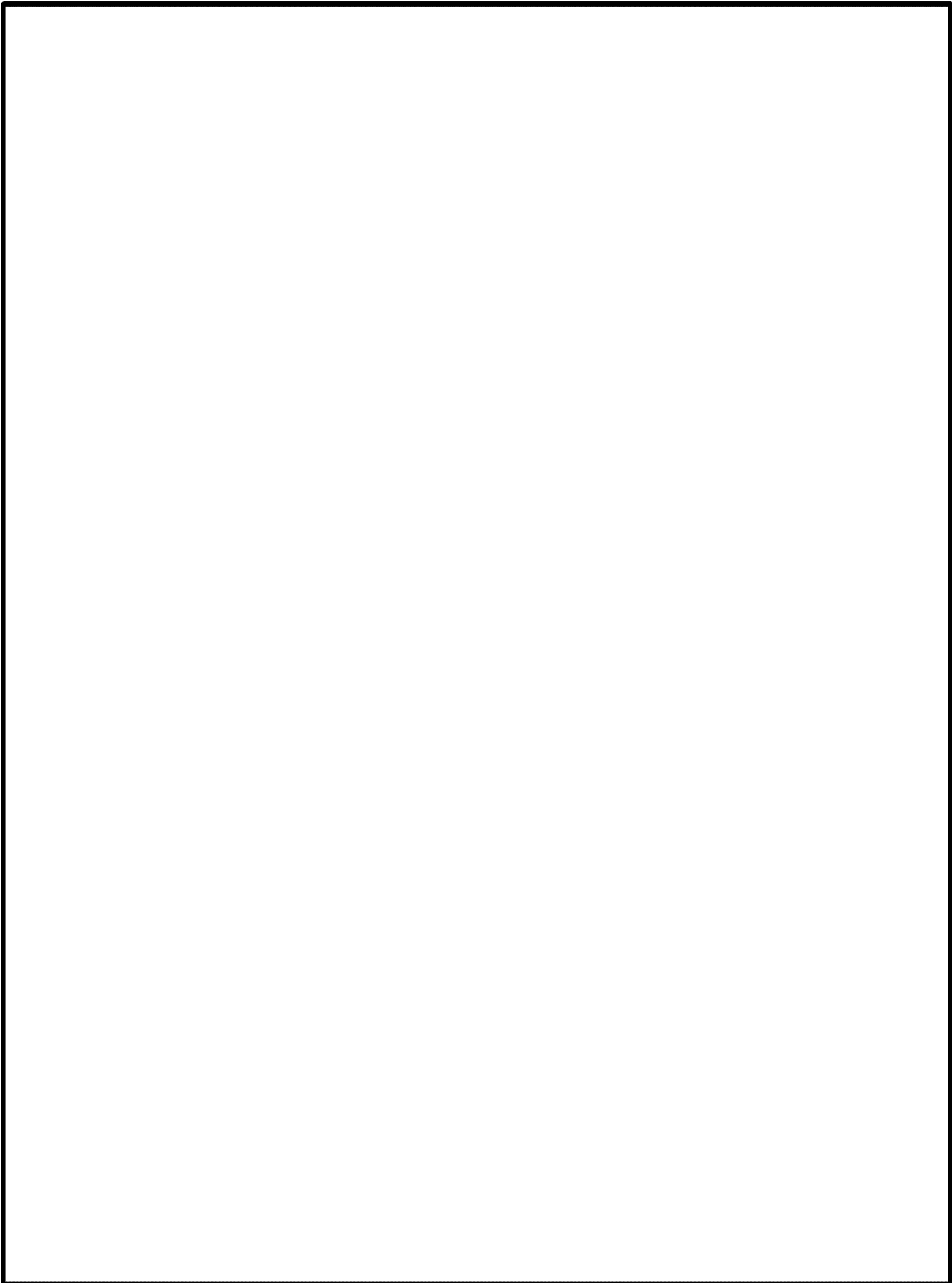
If you have any questions concerning the guidance in this memorandum, please contact your supervisor, who can forward your inquiry to Headquarters Service Center Operations.

#### Attachments (5):

1. Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. May 28, 2013.
2. DHS UAC Instruction Sheet (March 2009 version)
3. DHS UAC Instruction Sheet (June 2013 version)
4. HHS UAC Initial Placement Referral Form (internal use only)
5. HHS ORR Verification of Release Form (internal use only)

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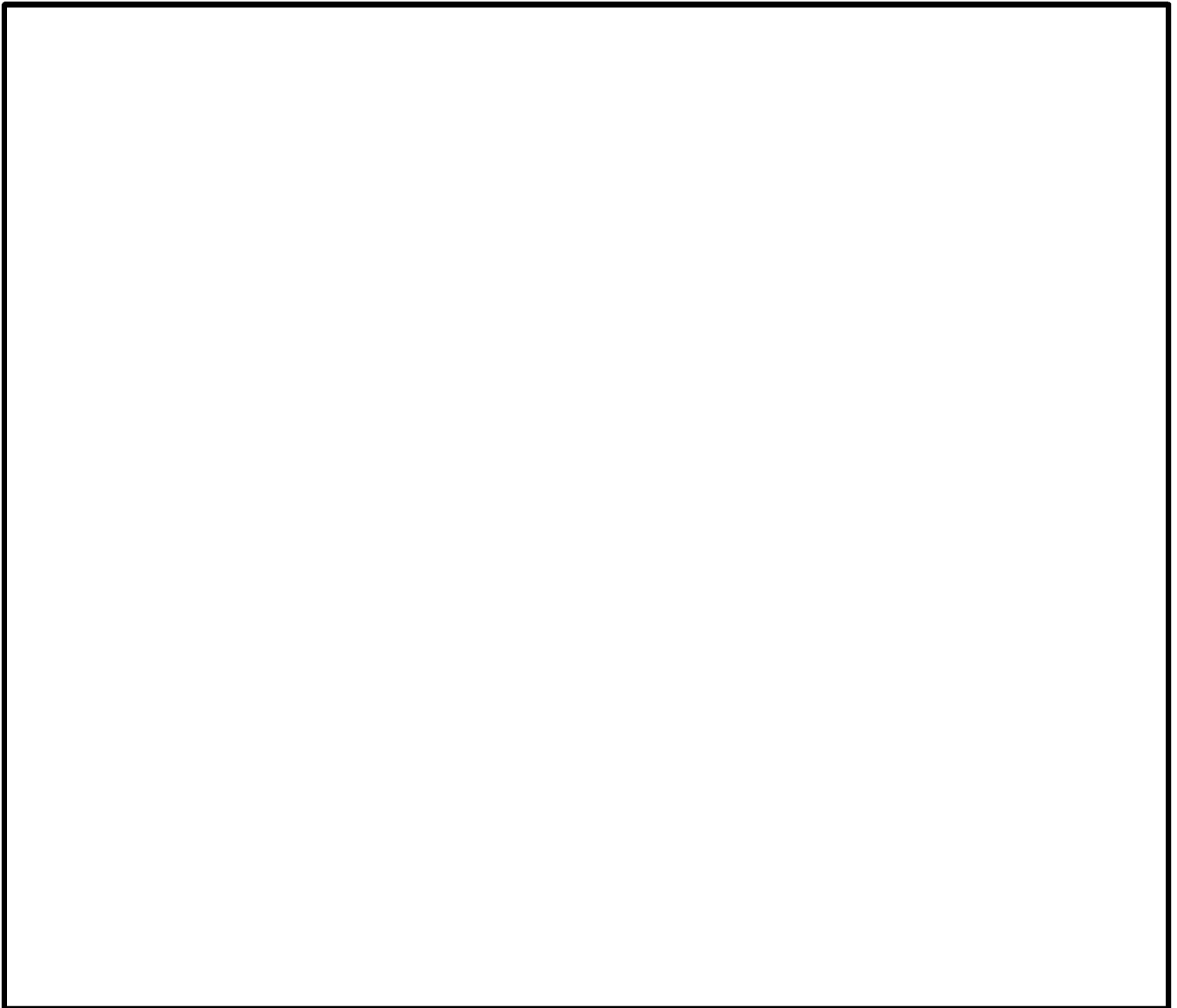
## Lesson Plan Overview



**Method of Evaluation**      Practical exercise exam; written test

**New Critical Tasks**

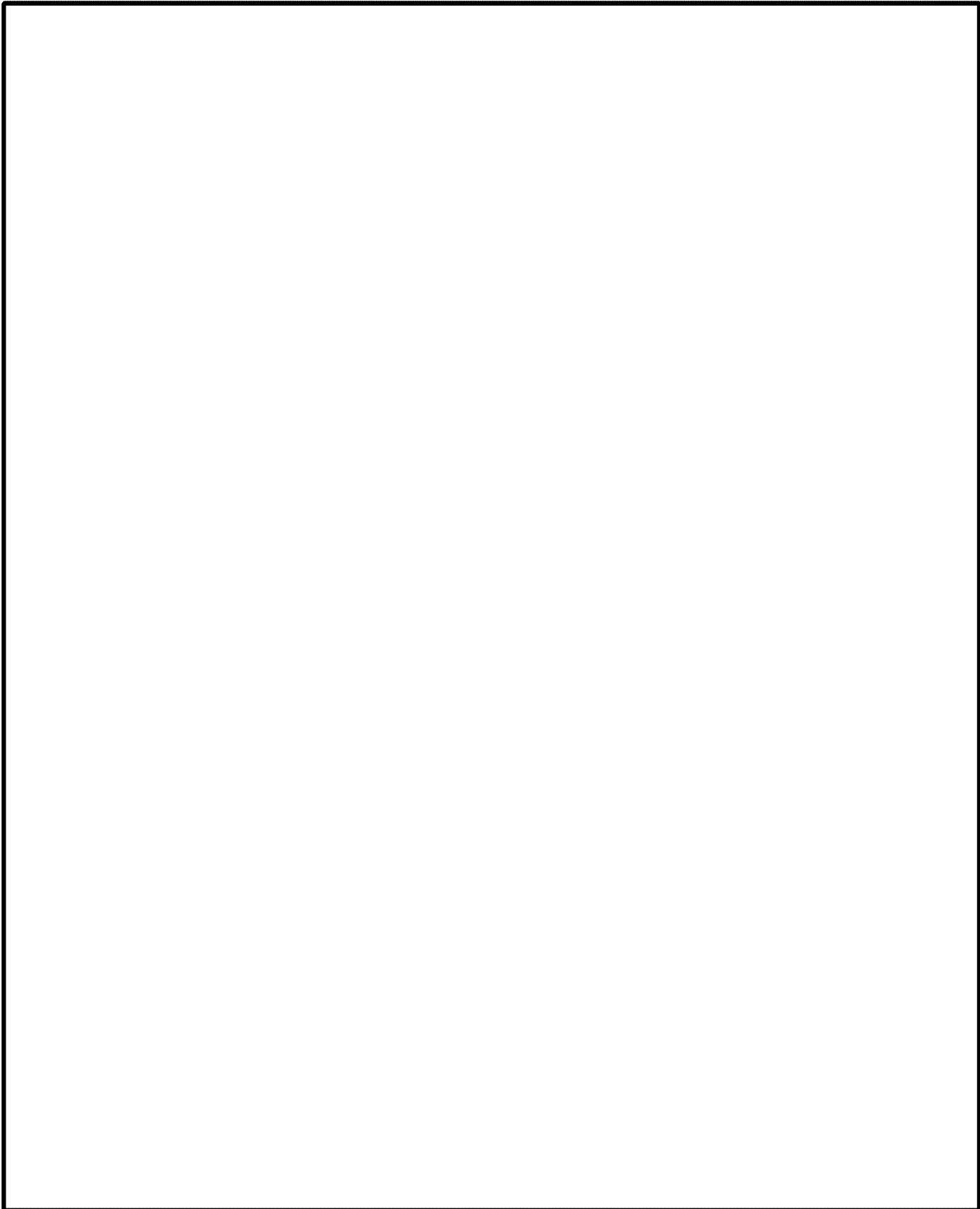
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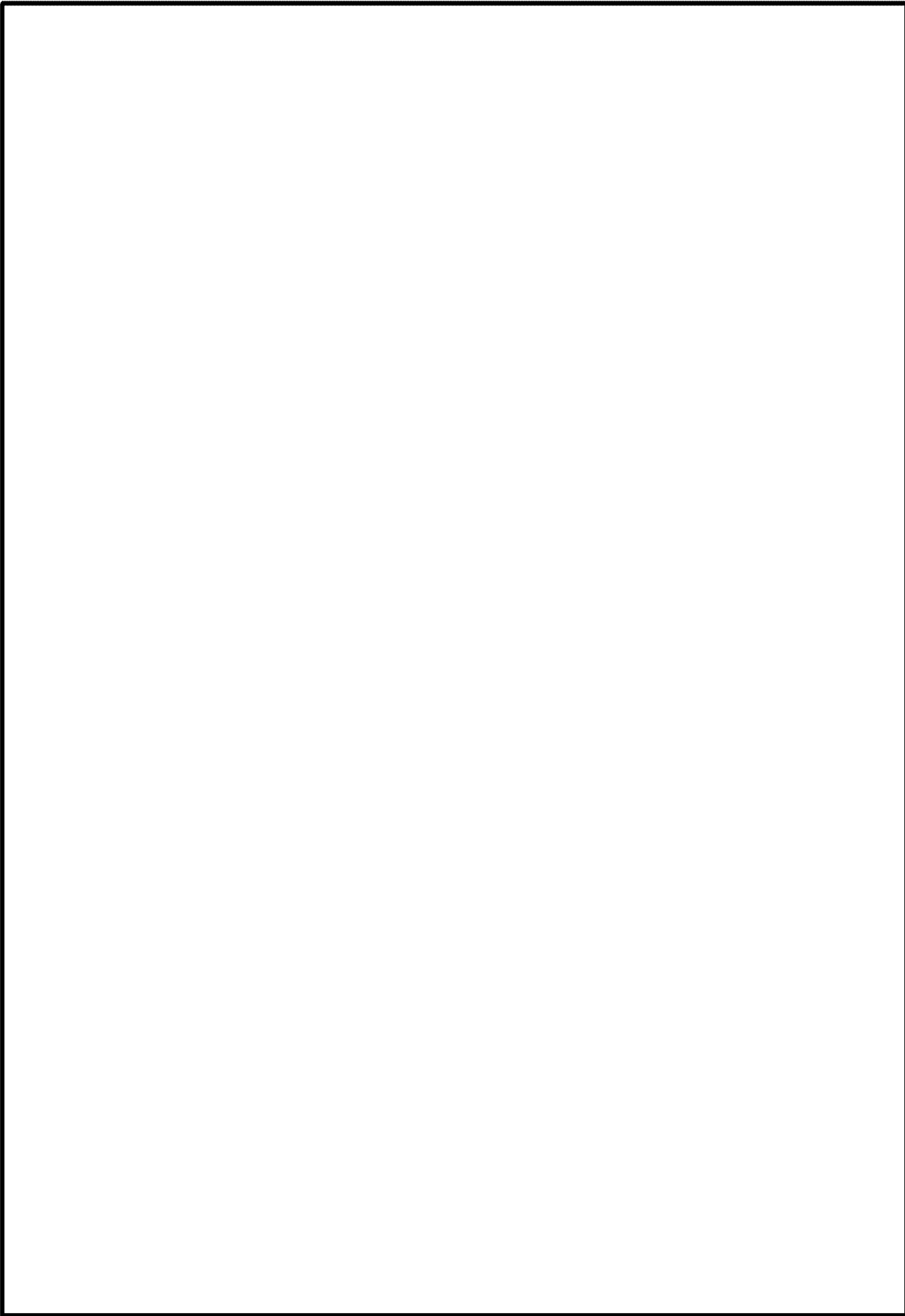
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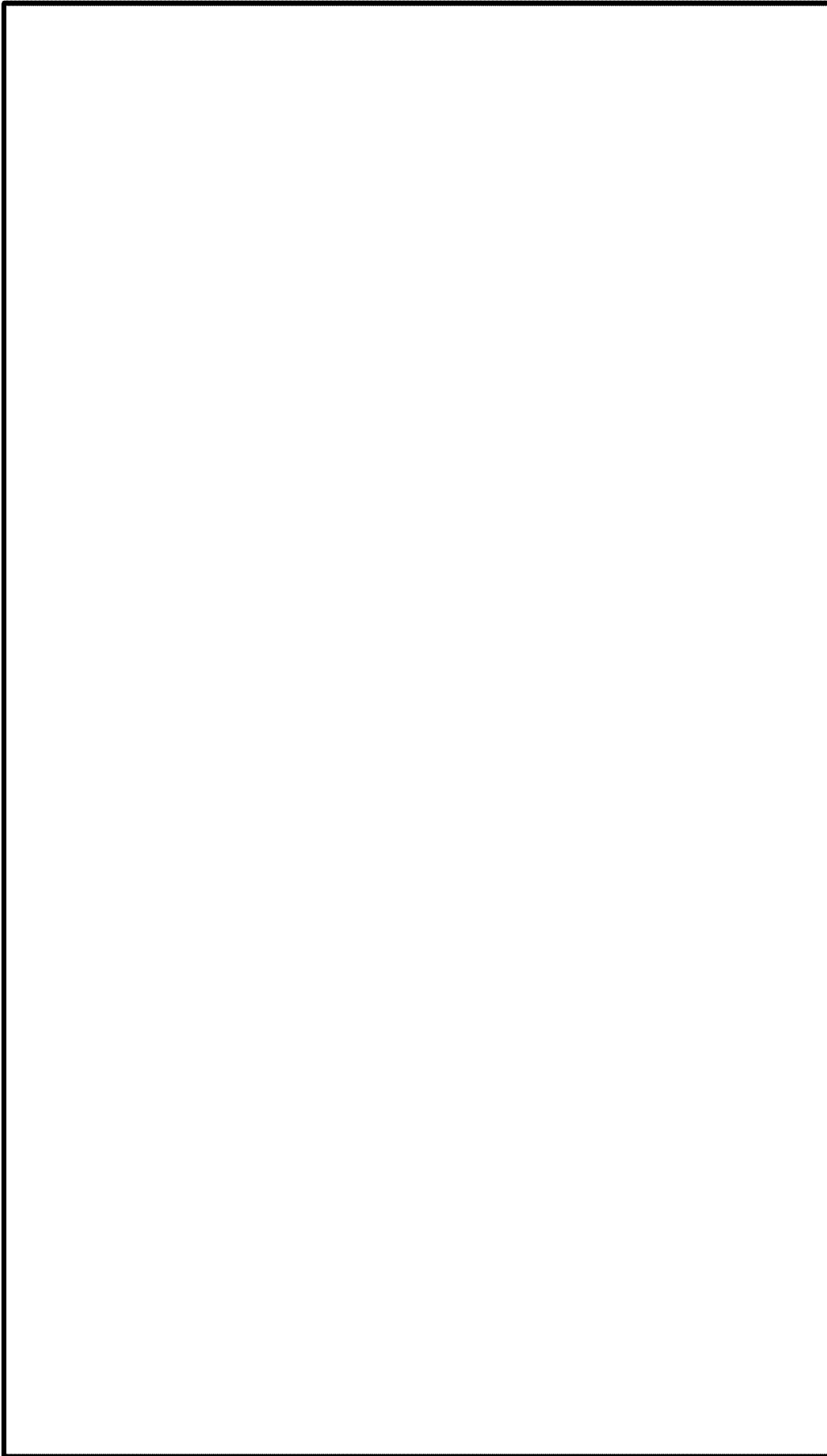
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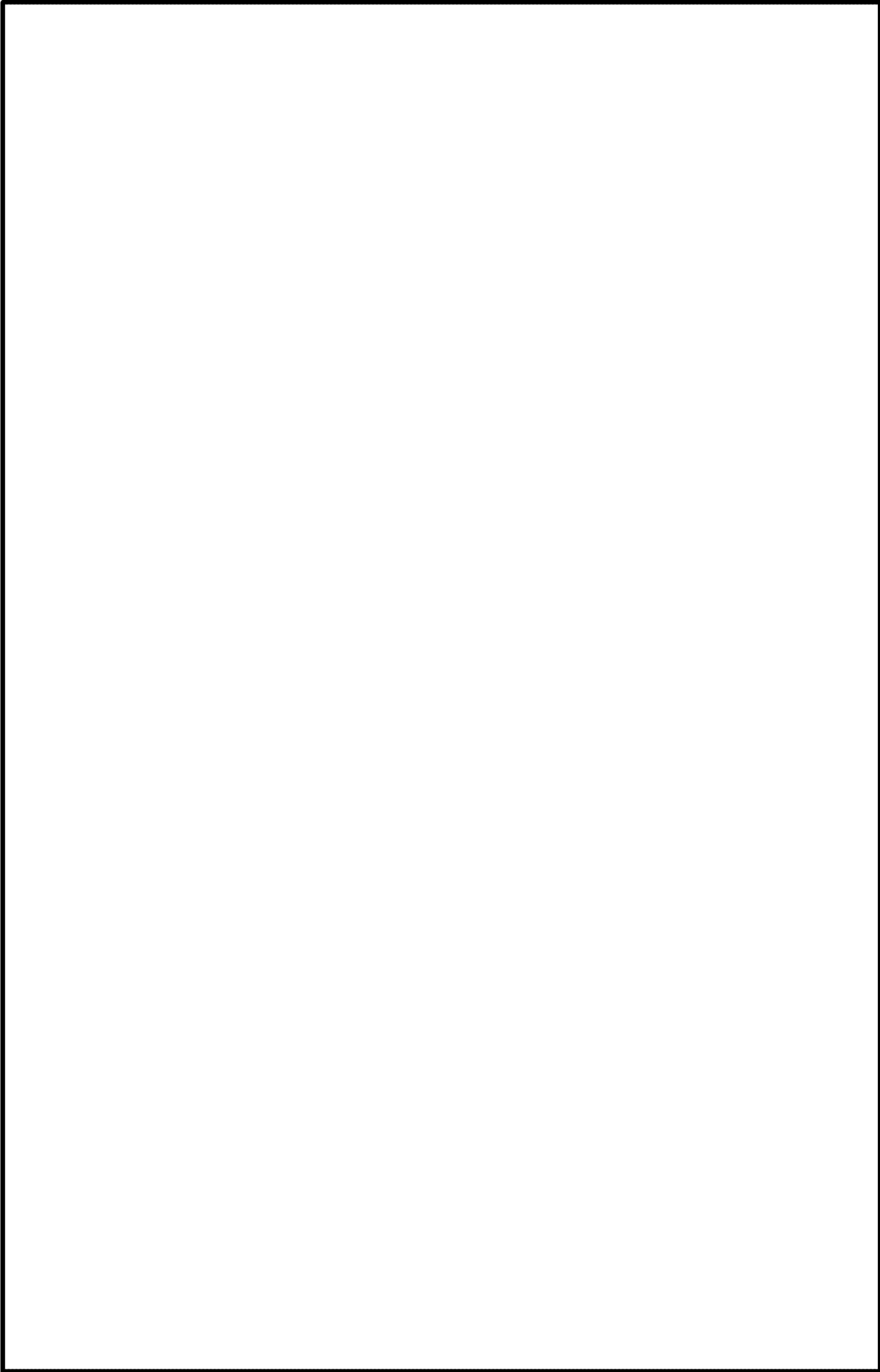
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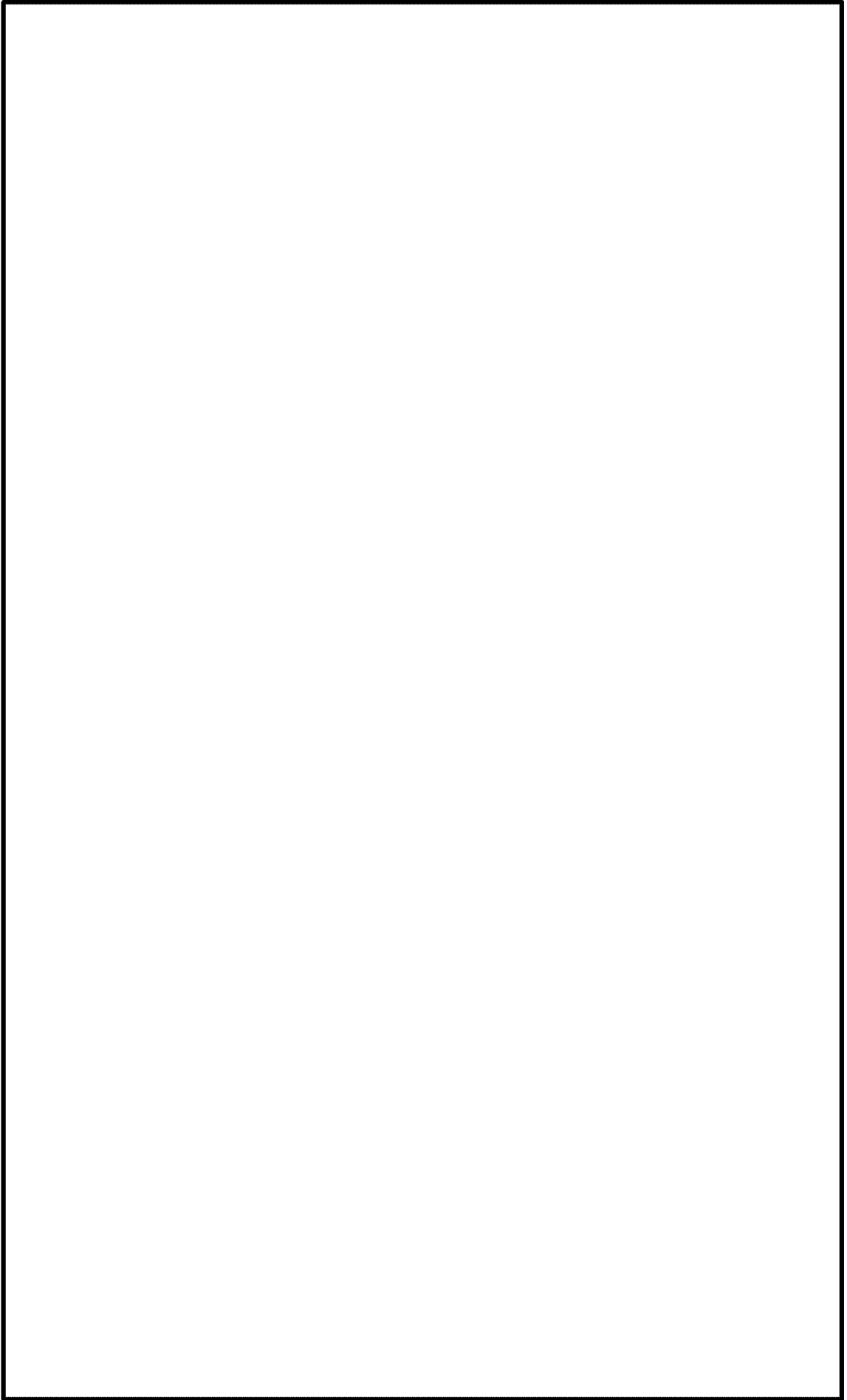




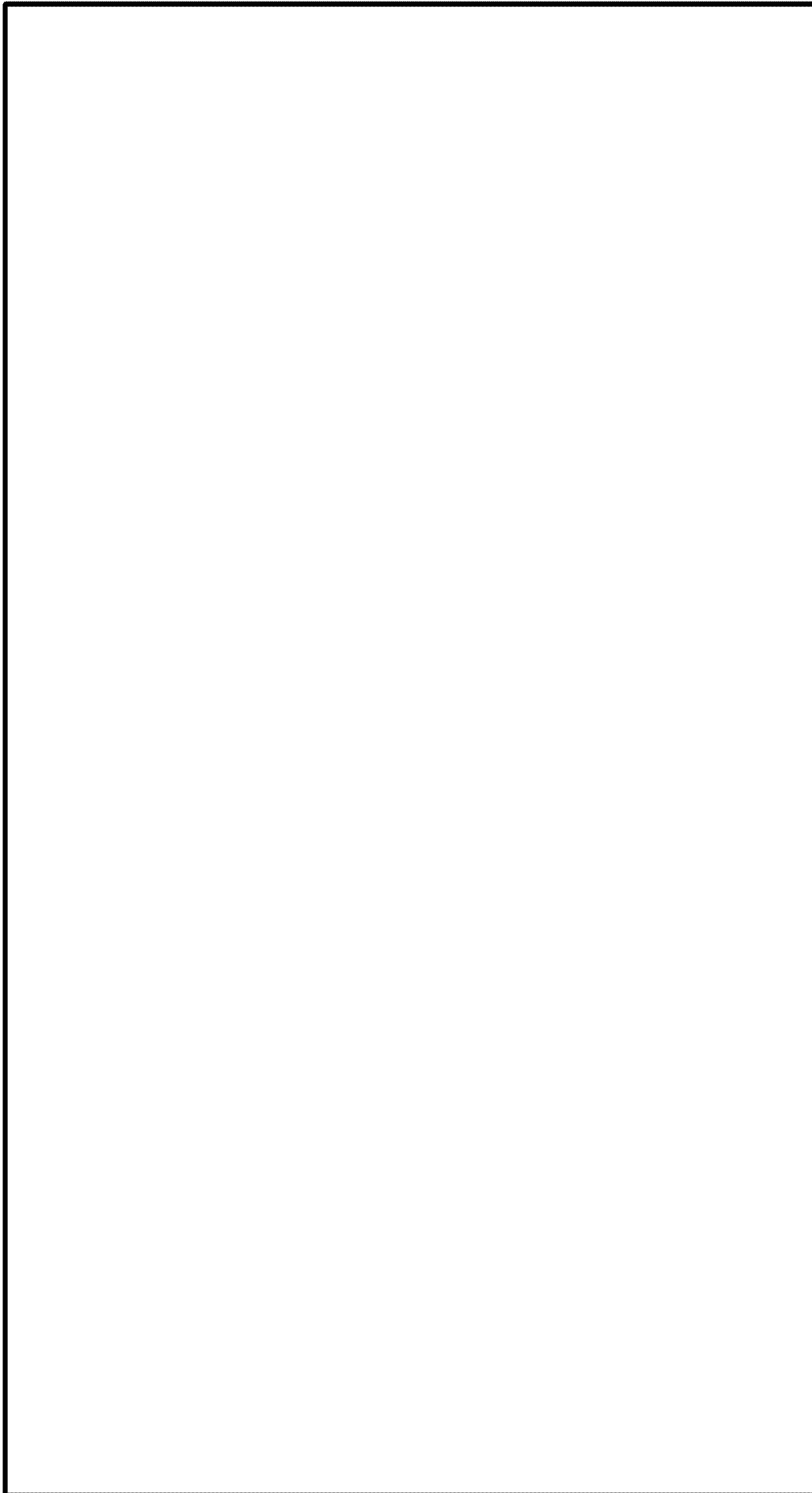
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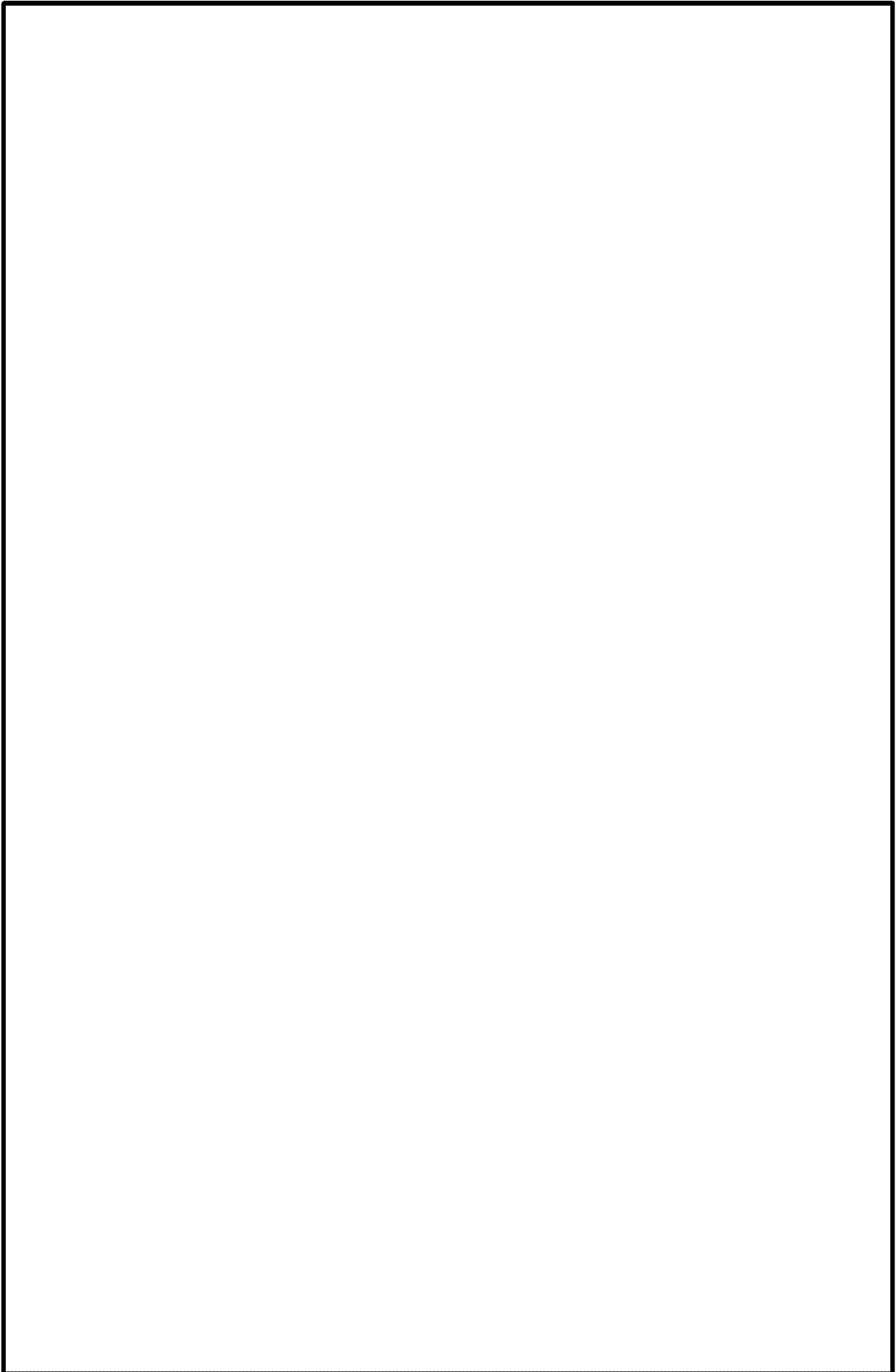
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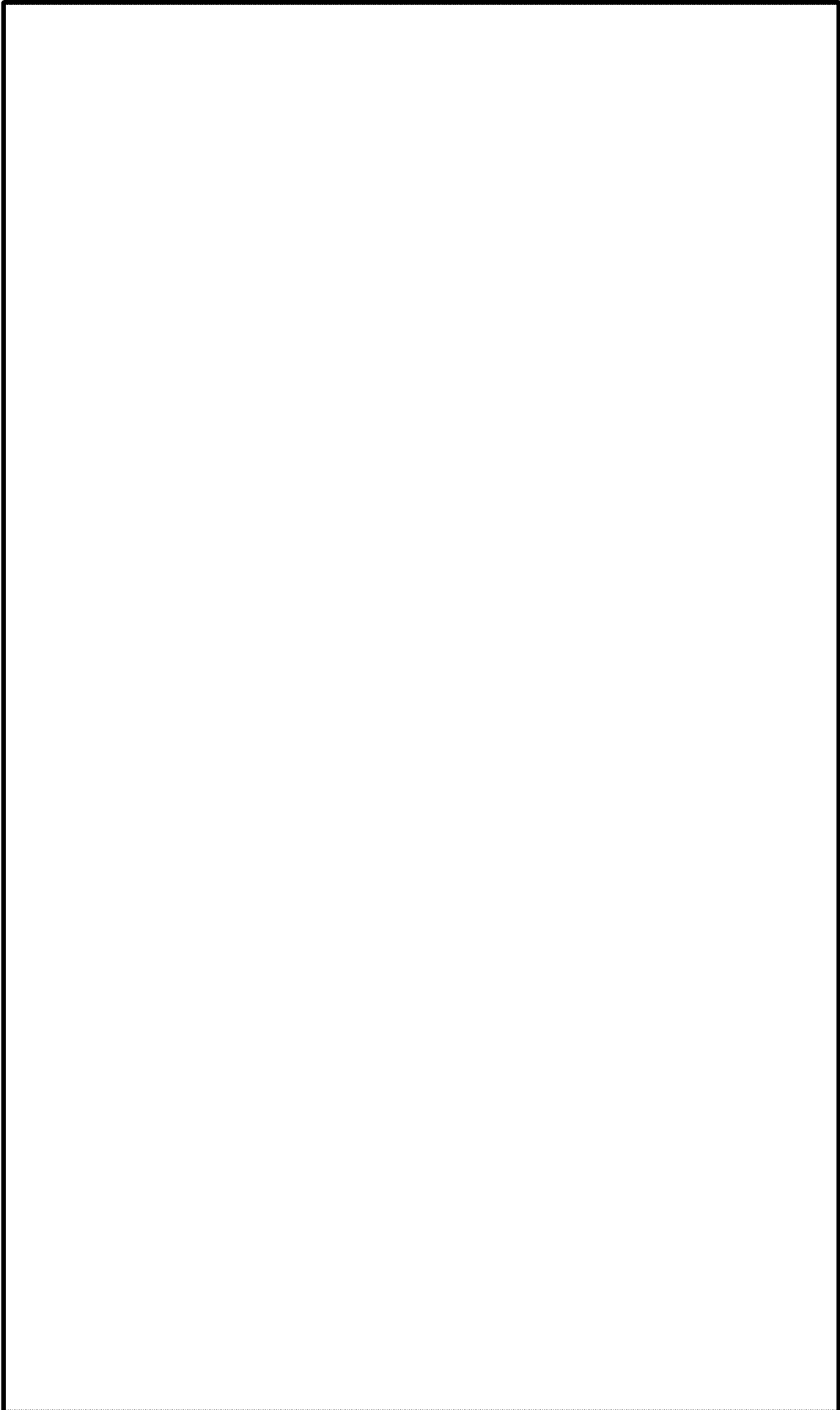


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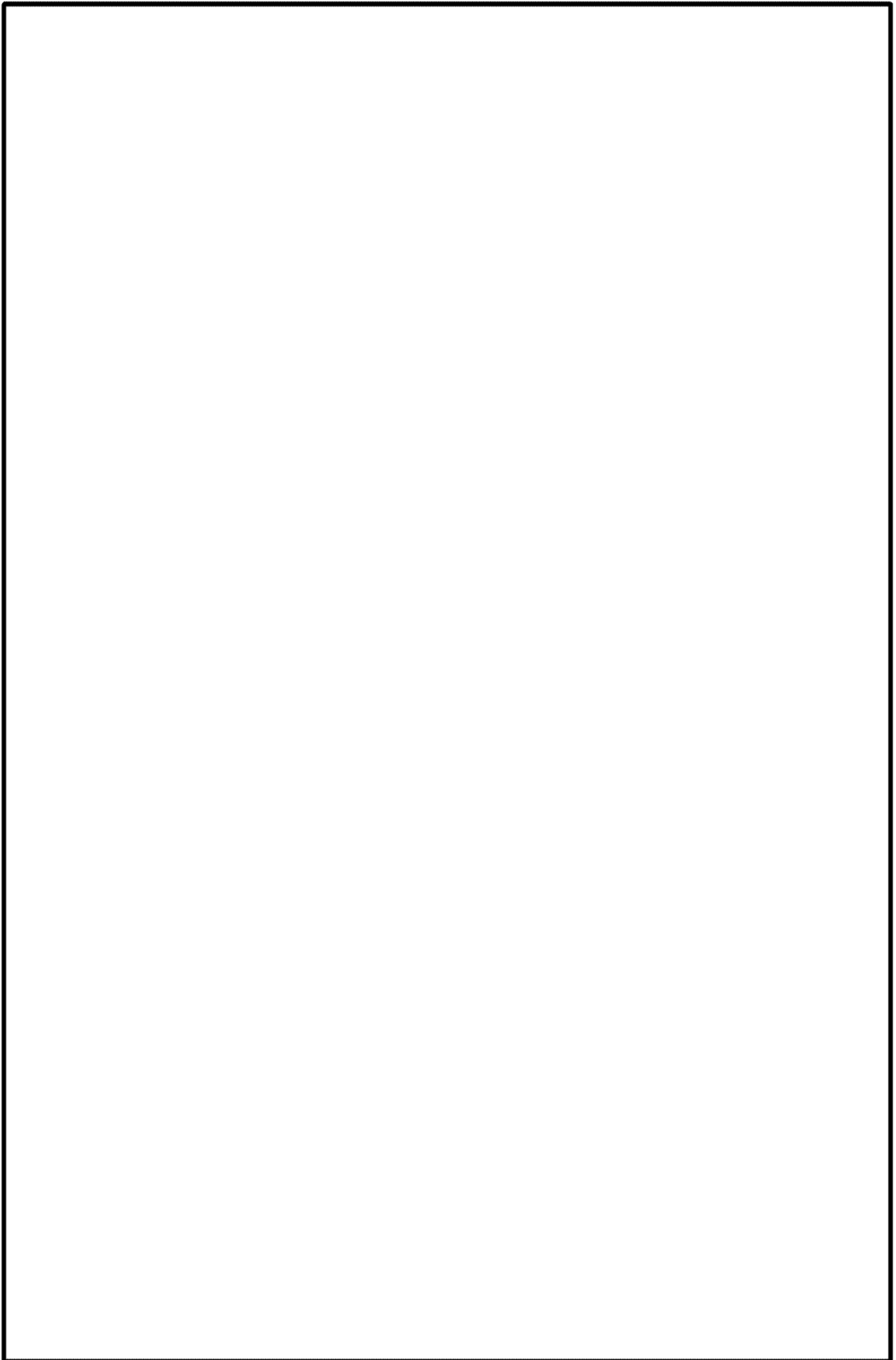




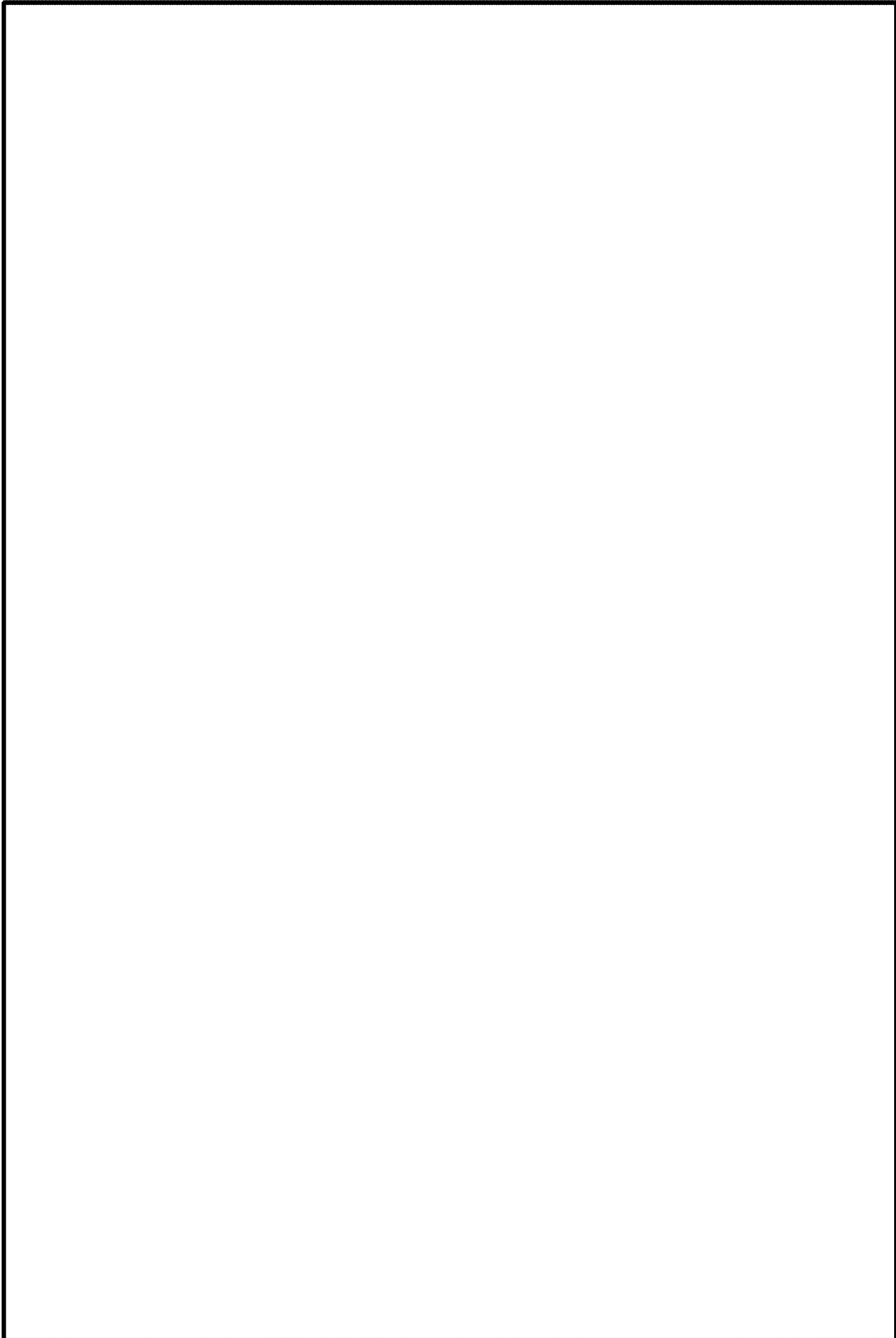
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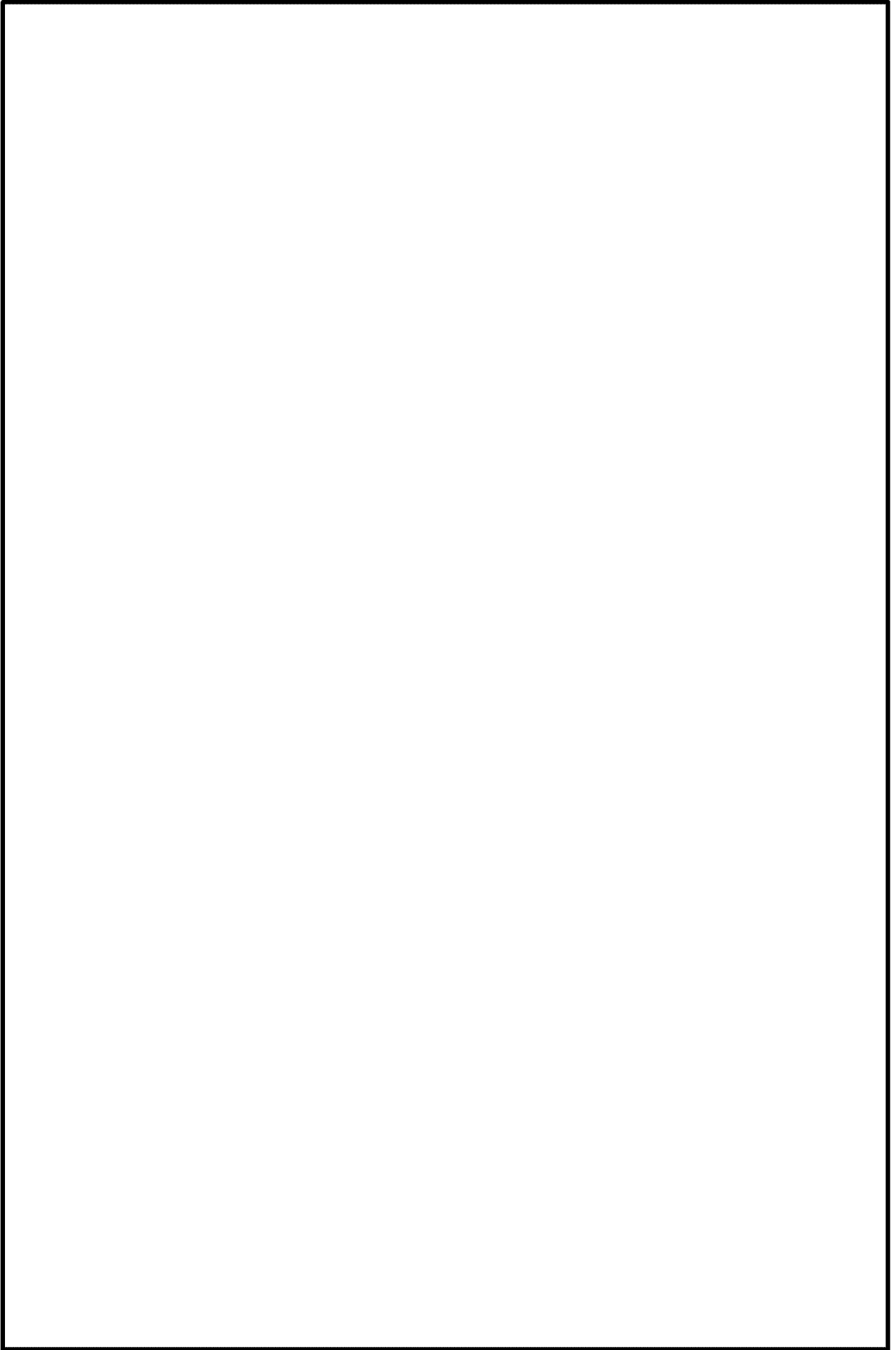
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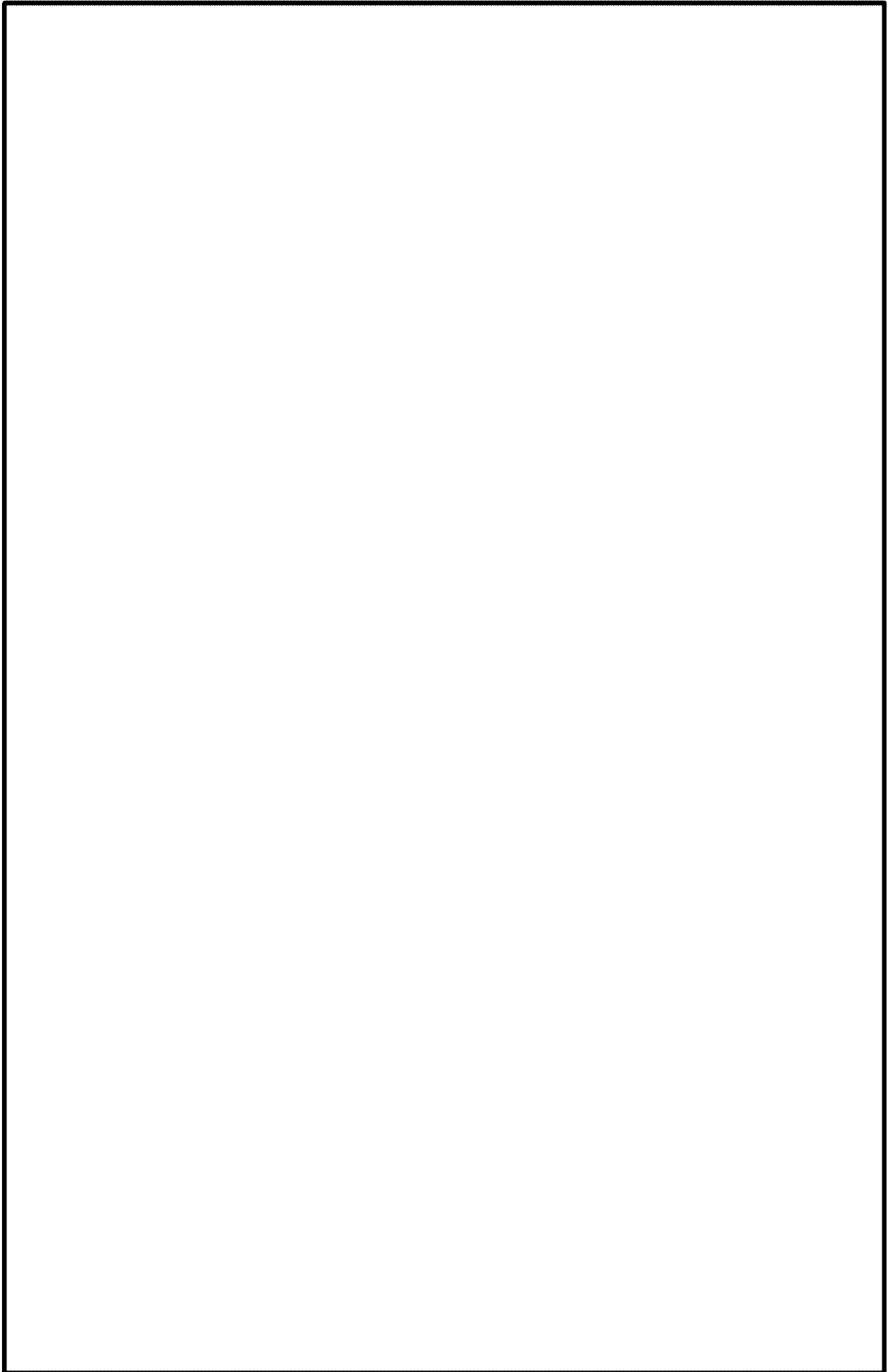
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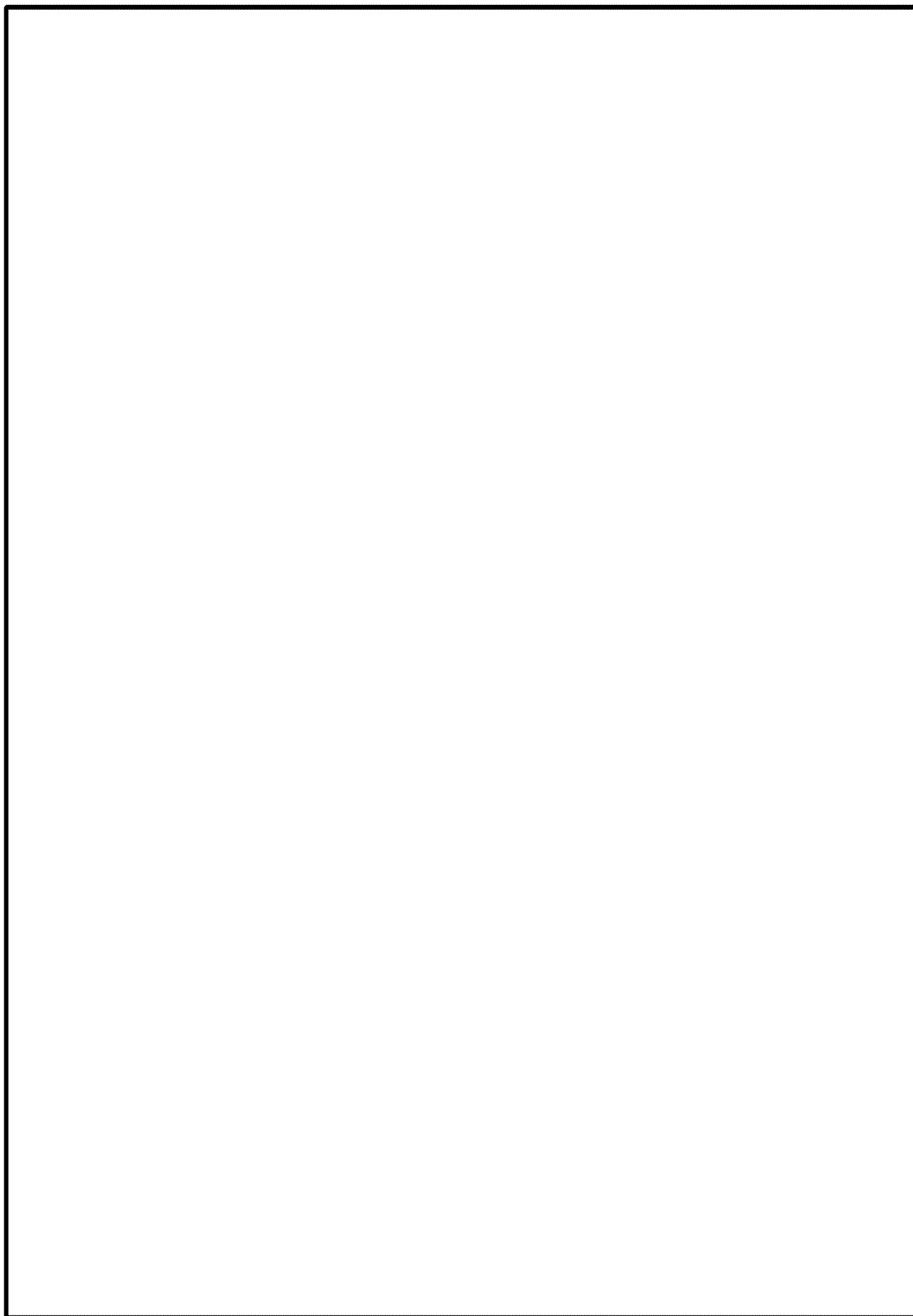


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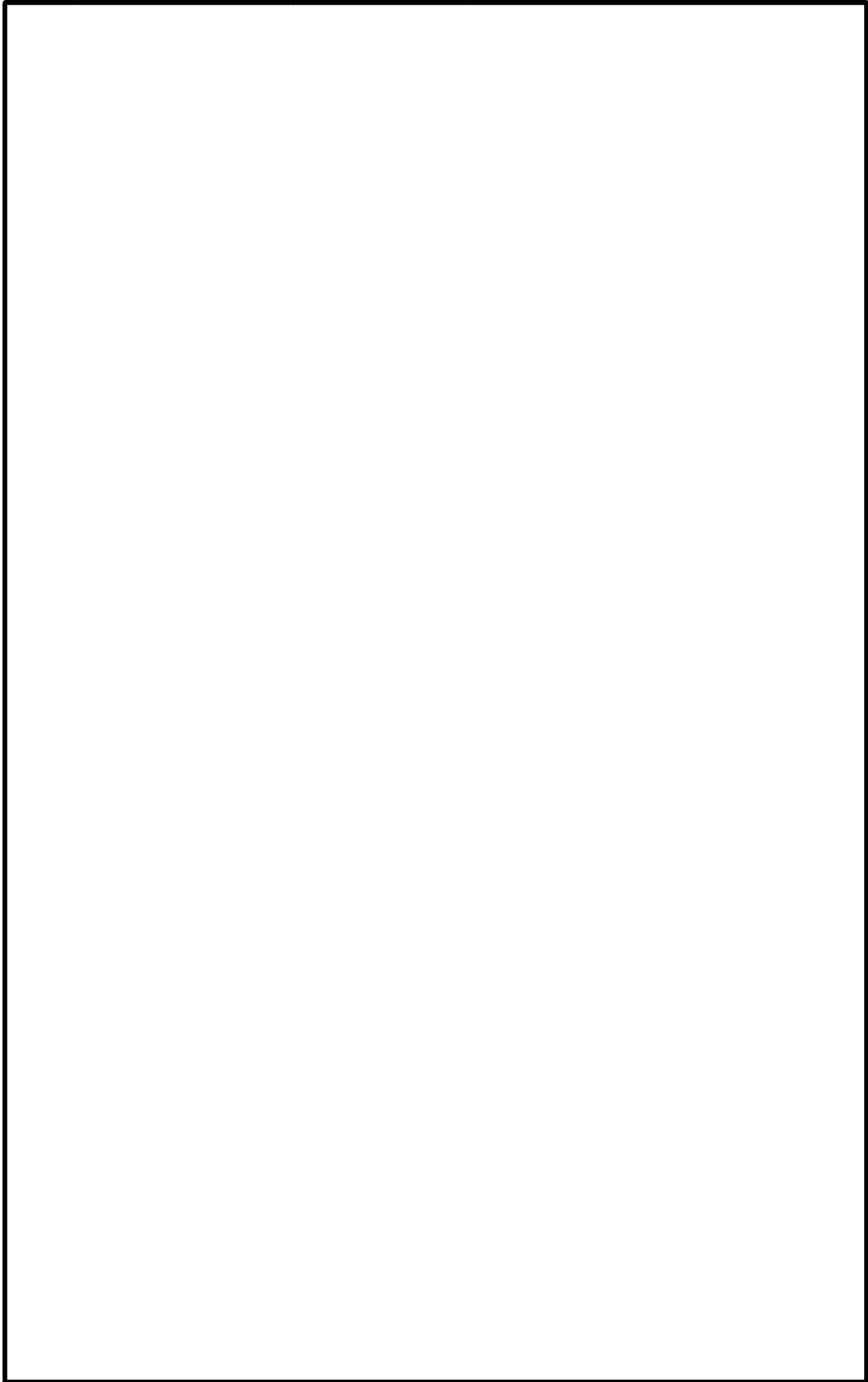


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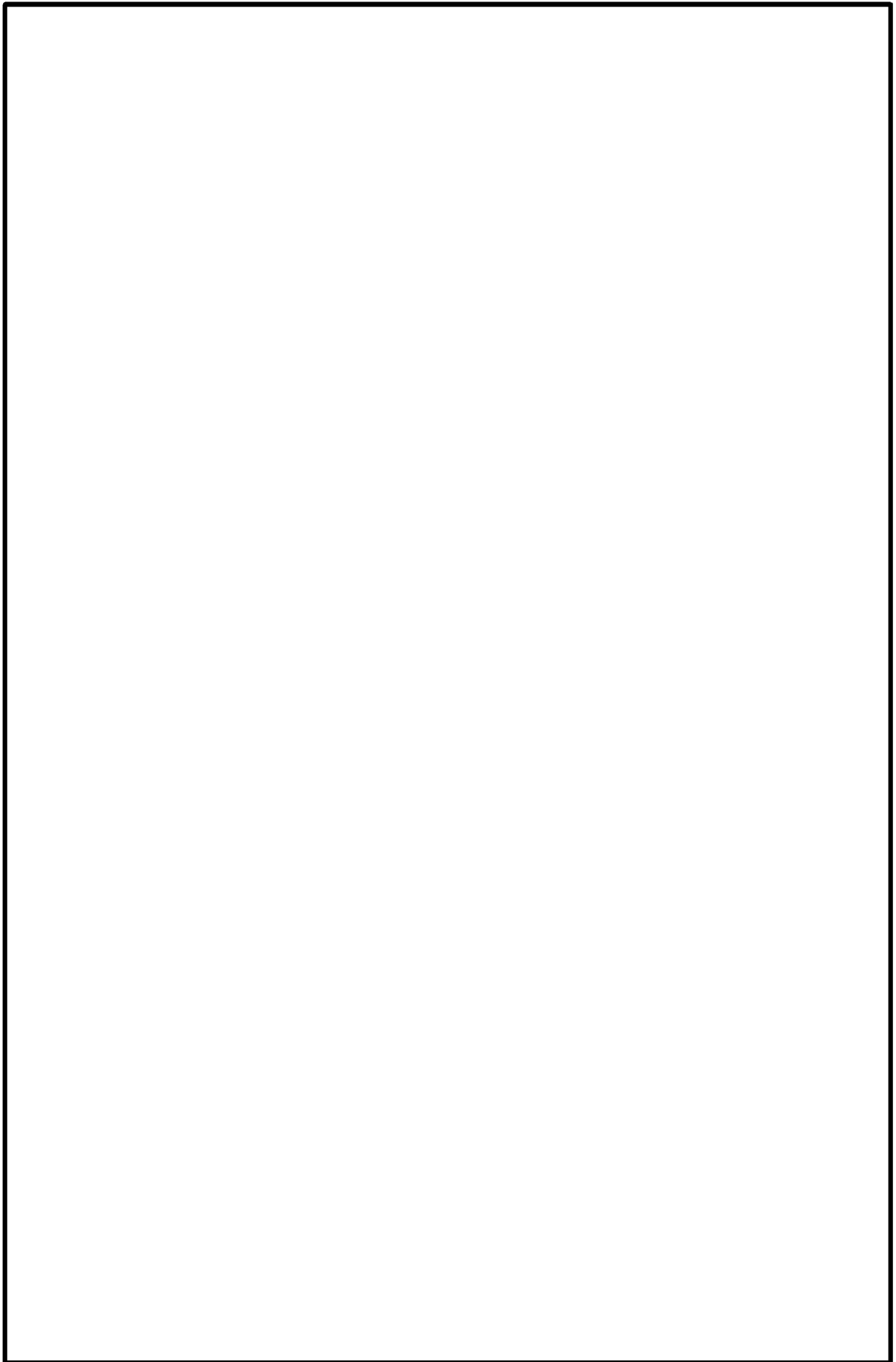




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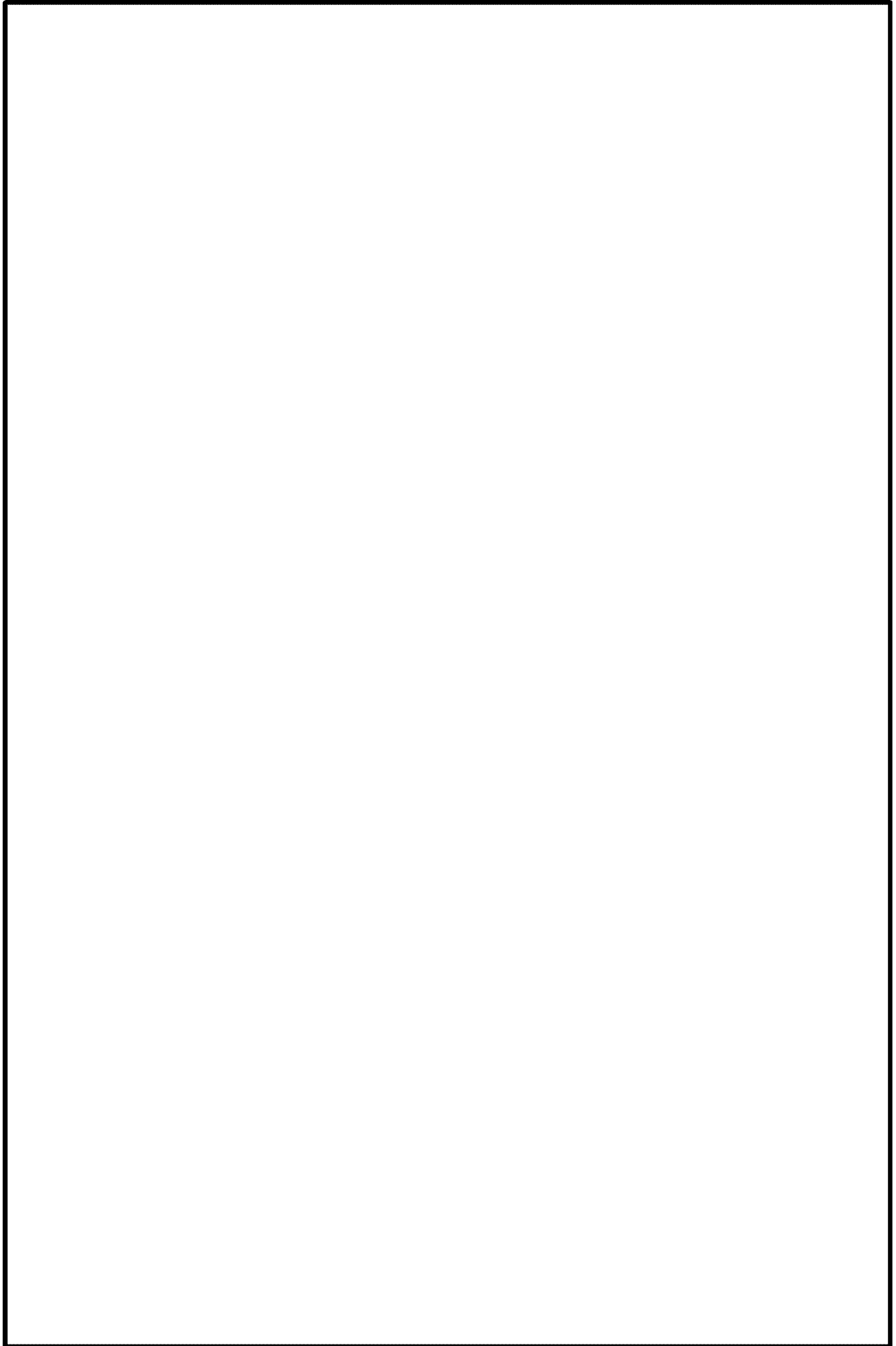


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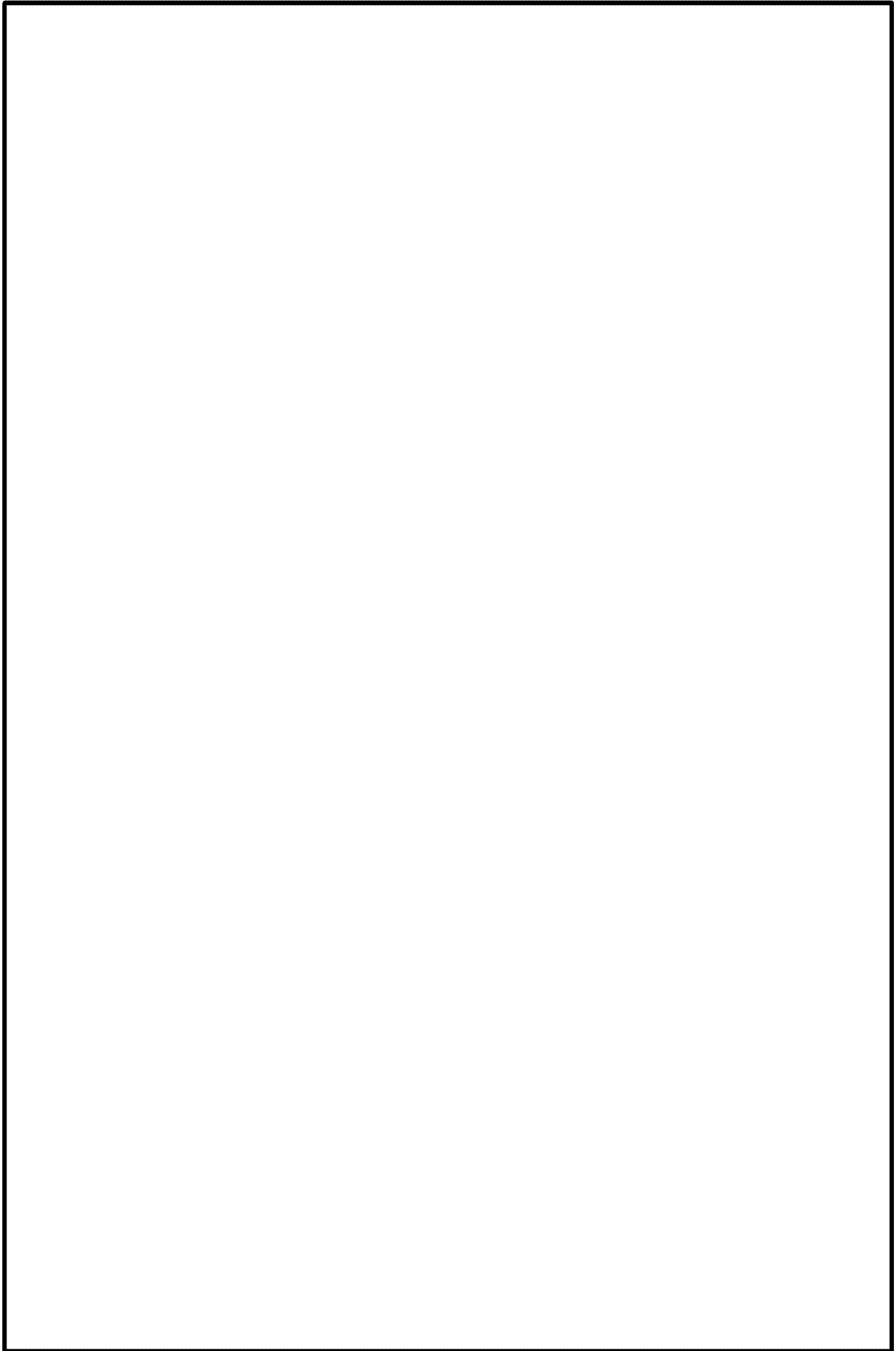




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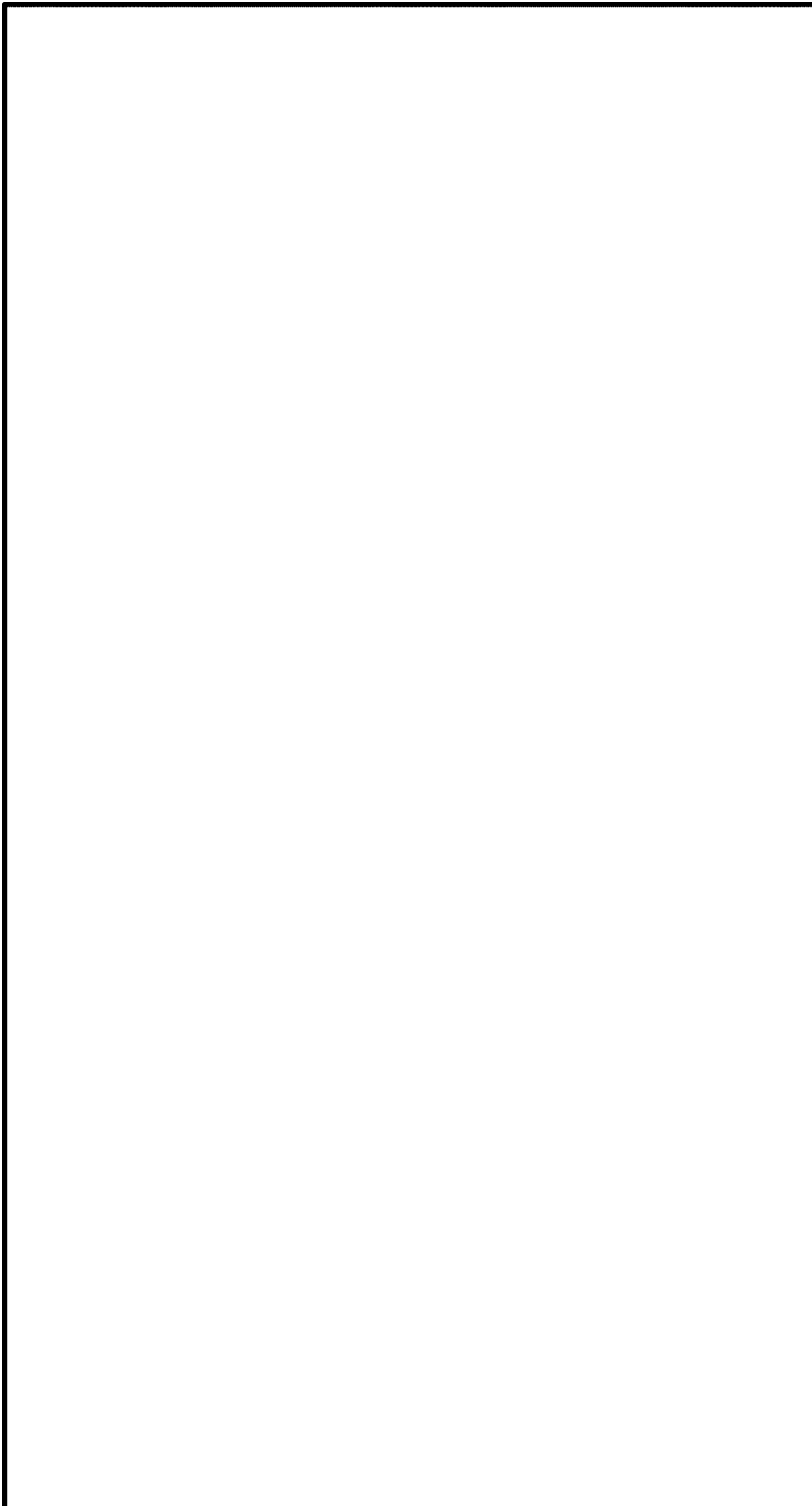


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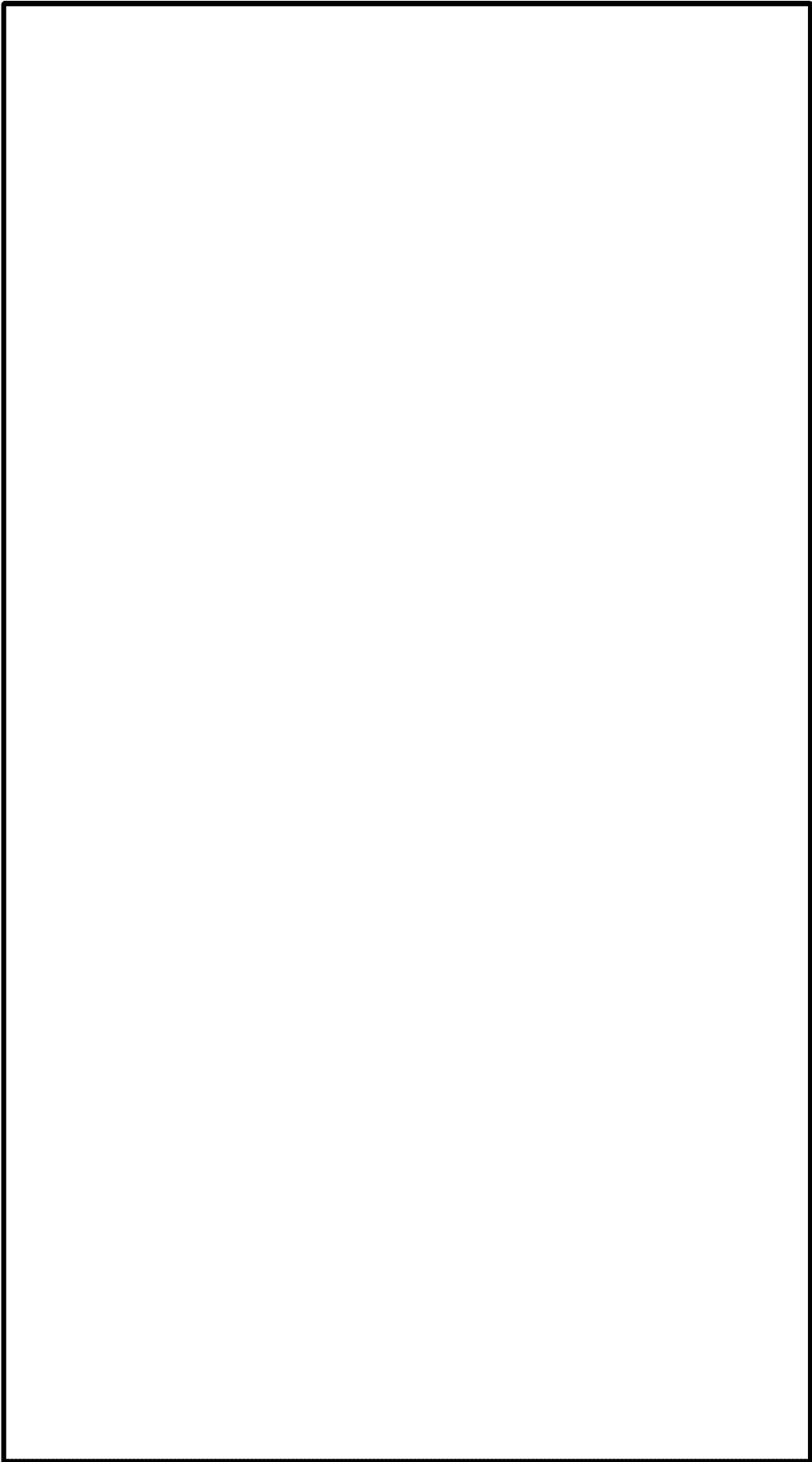




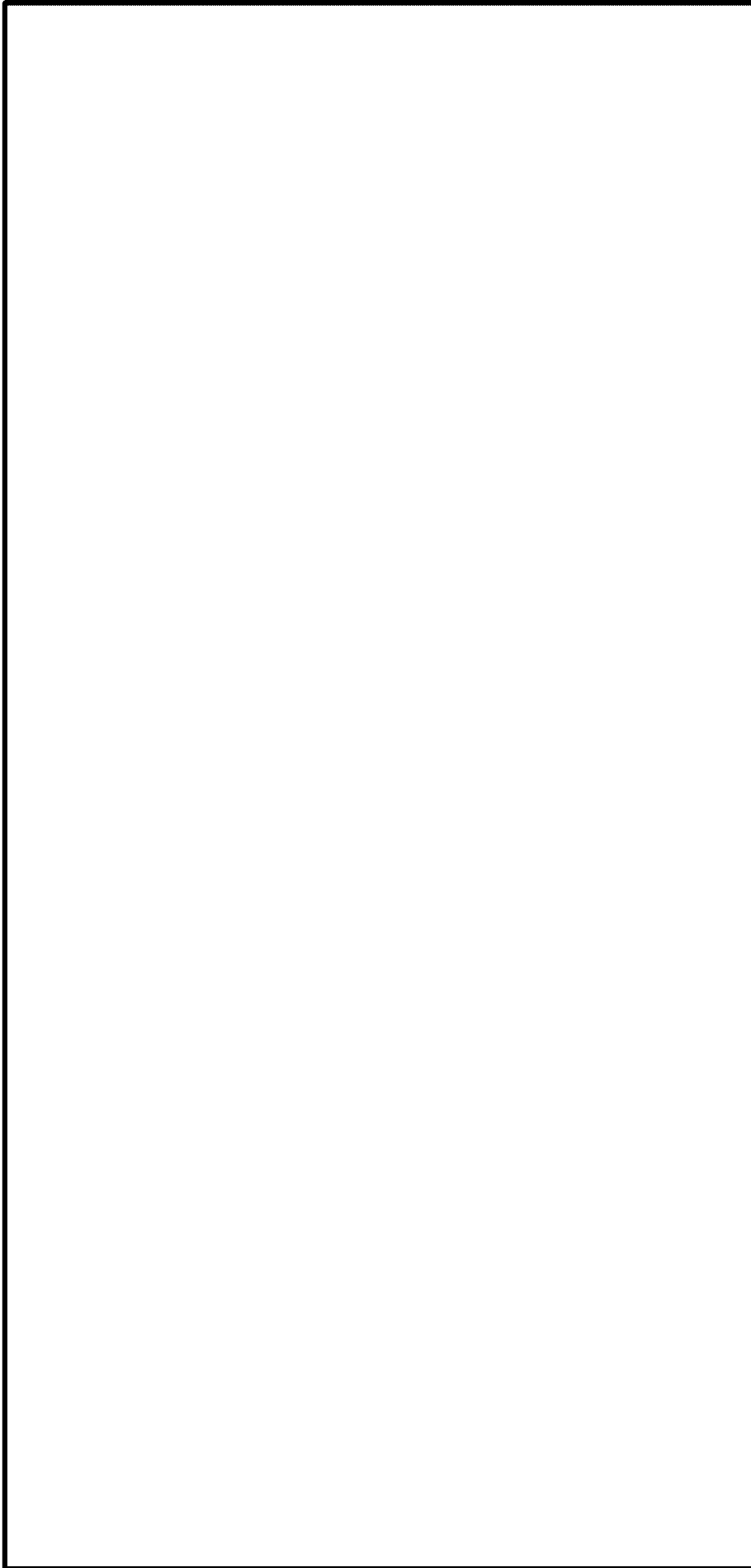
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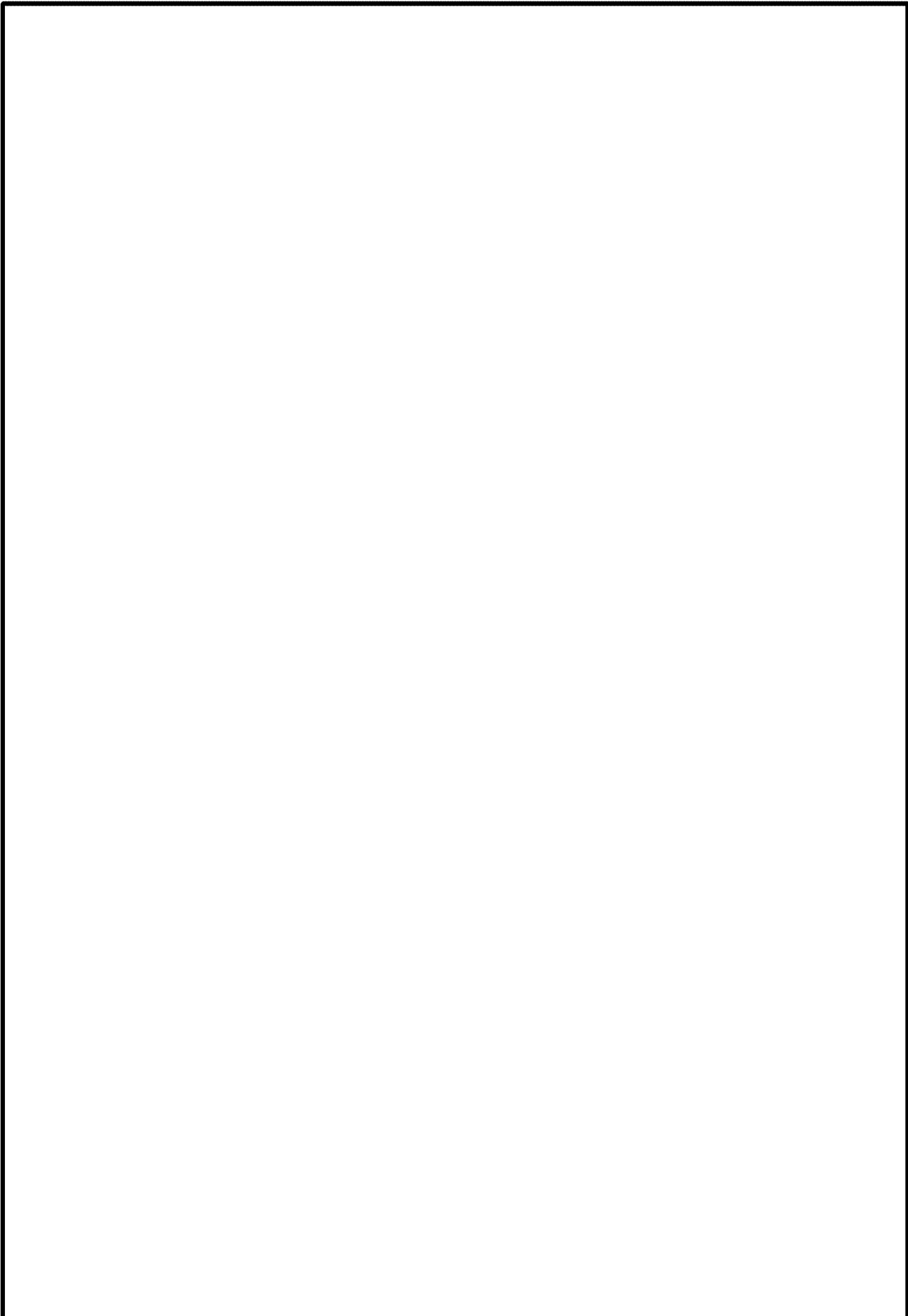


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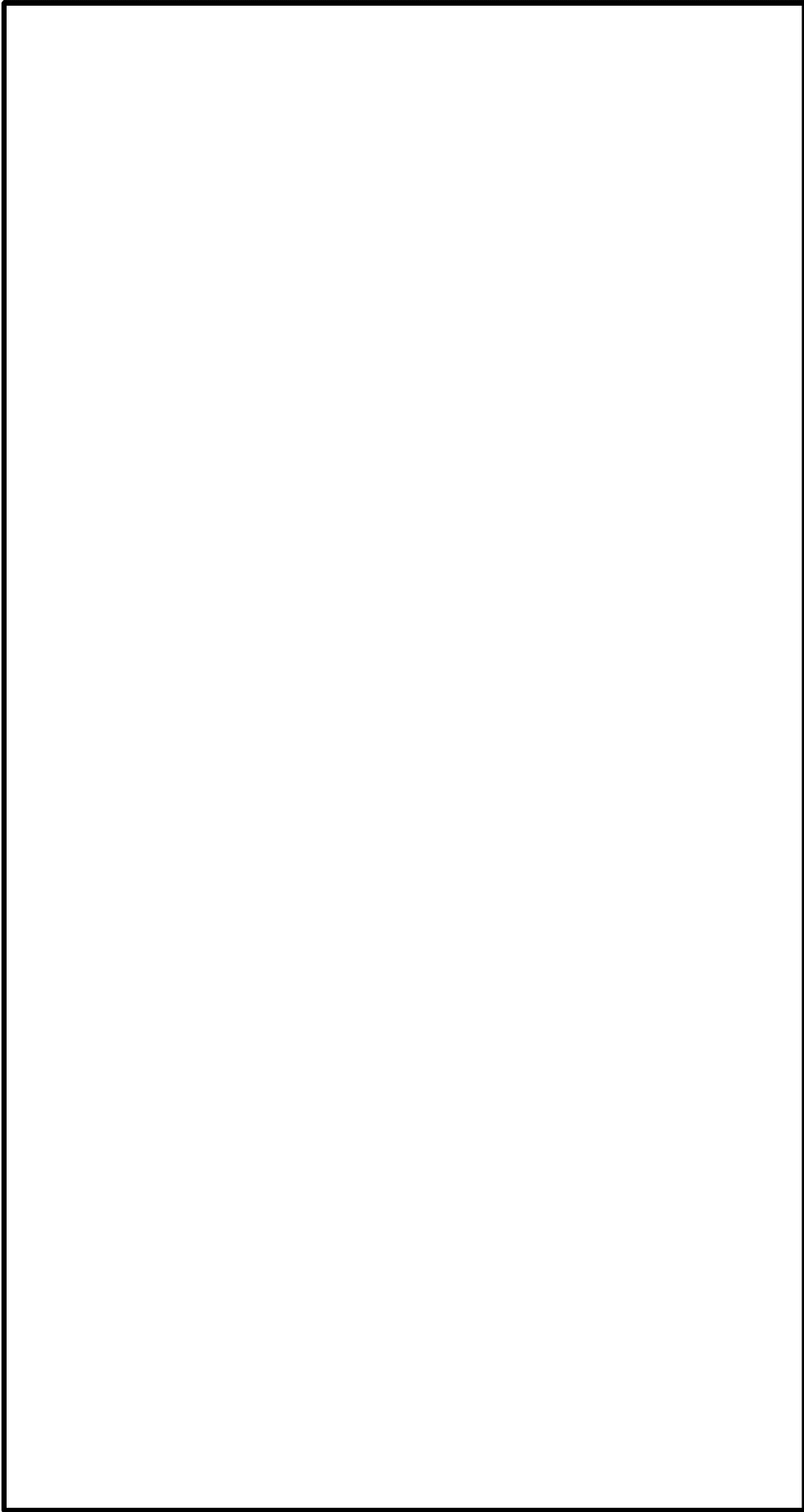


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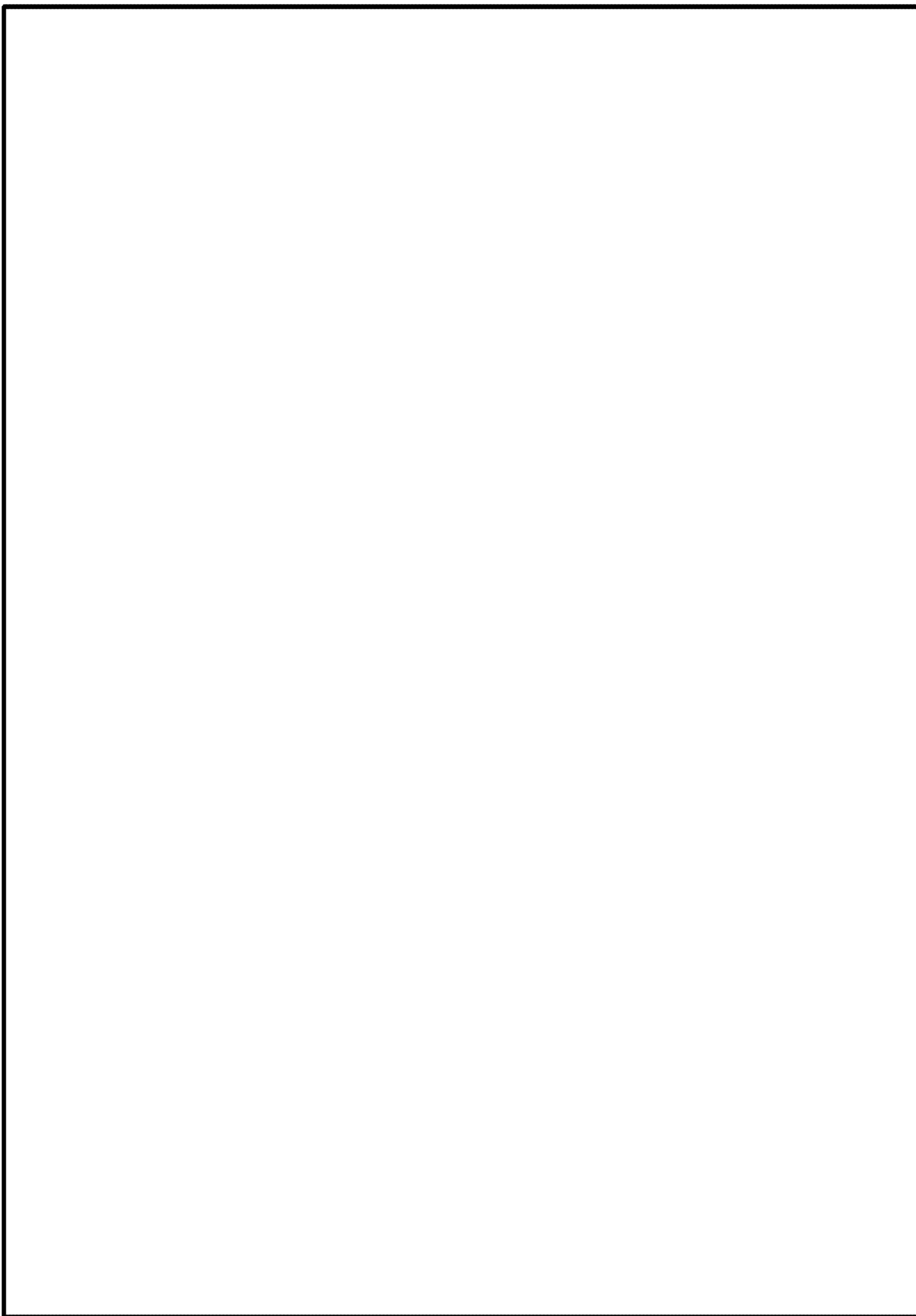


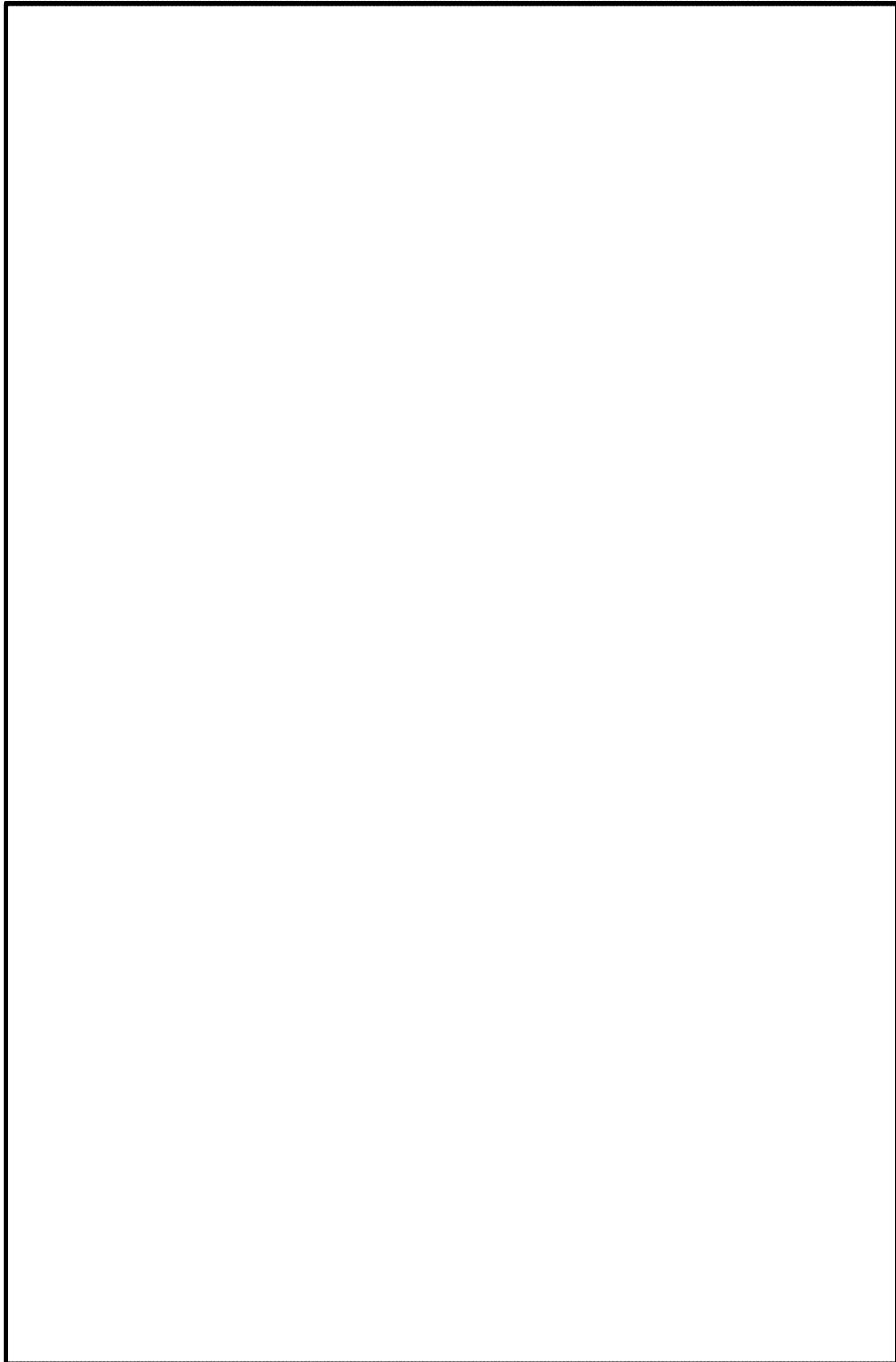


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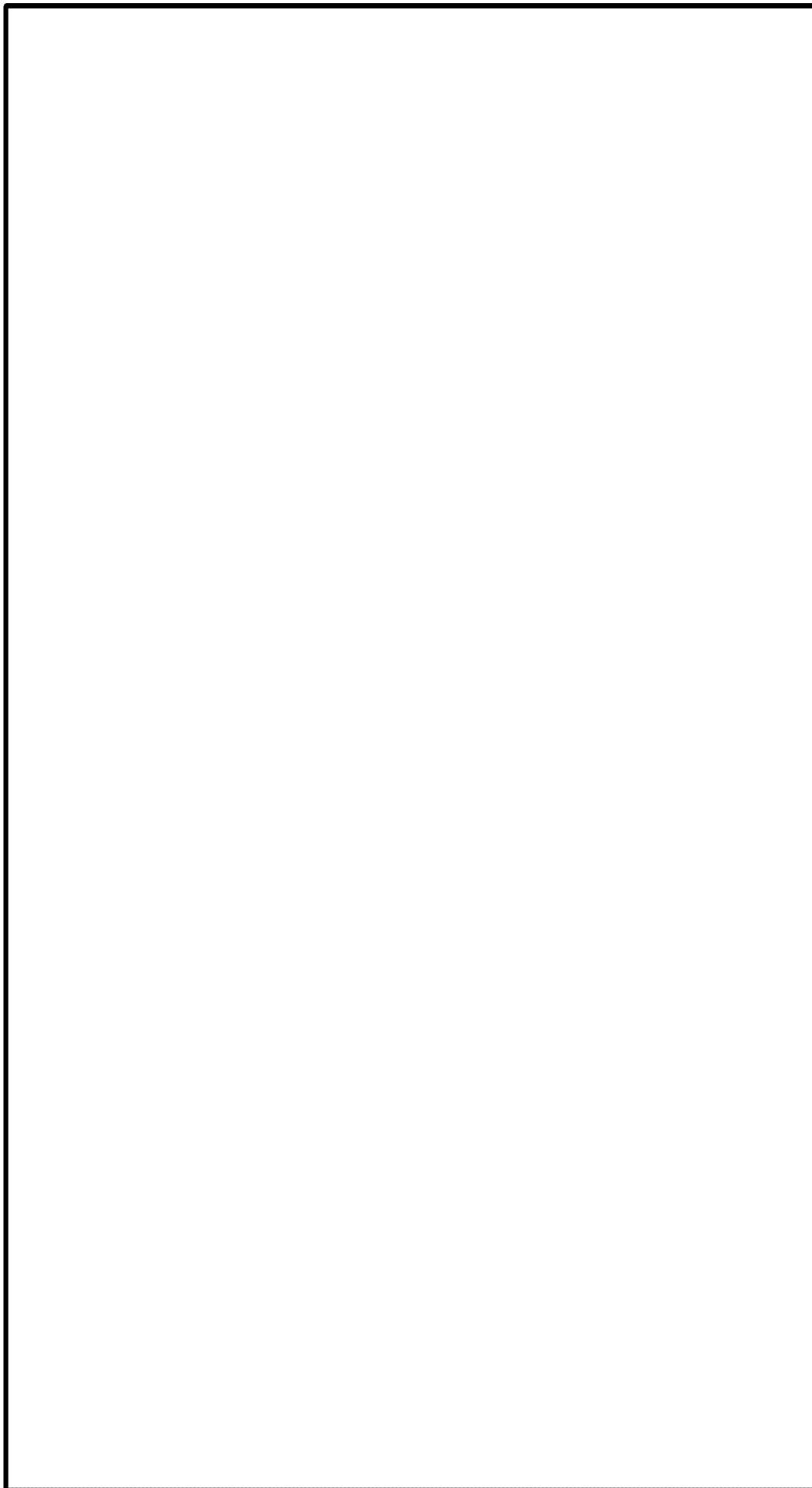


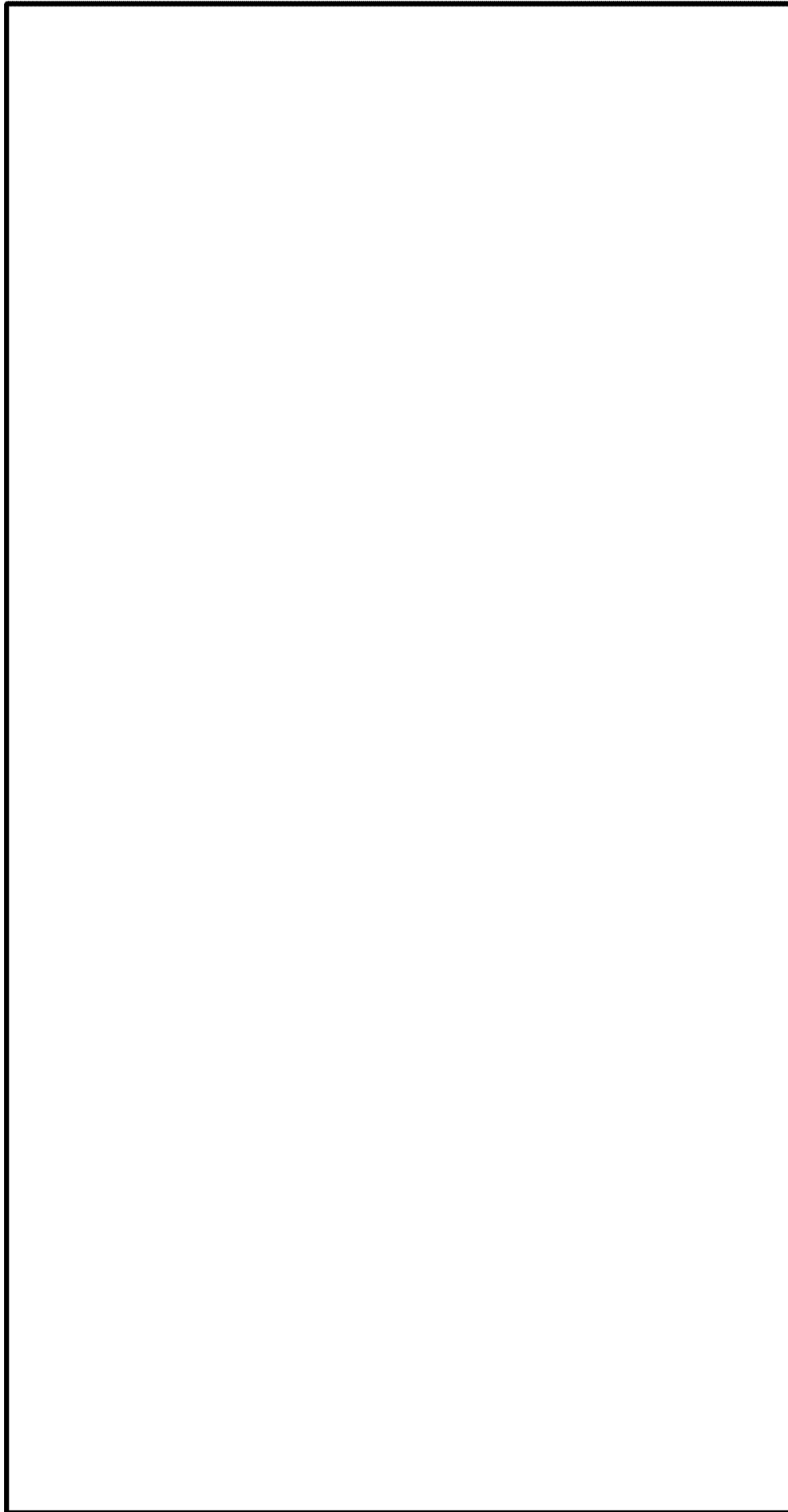
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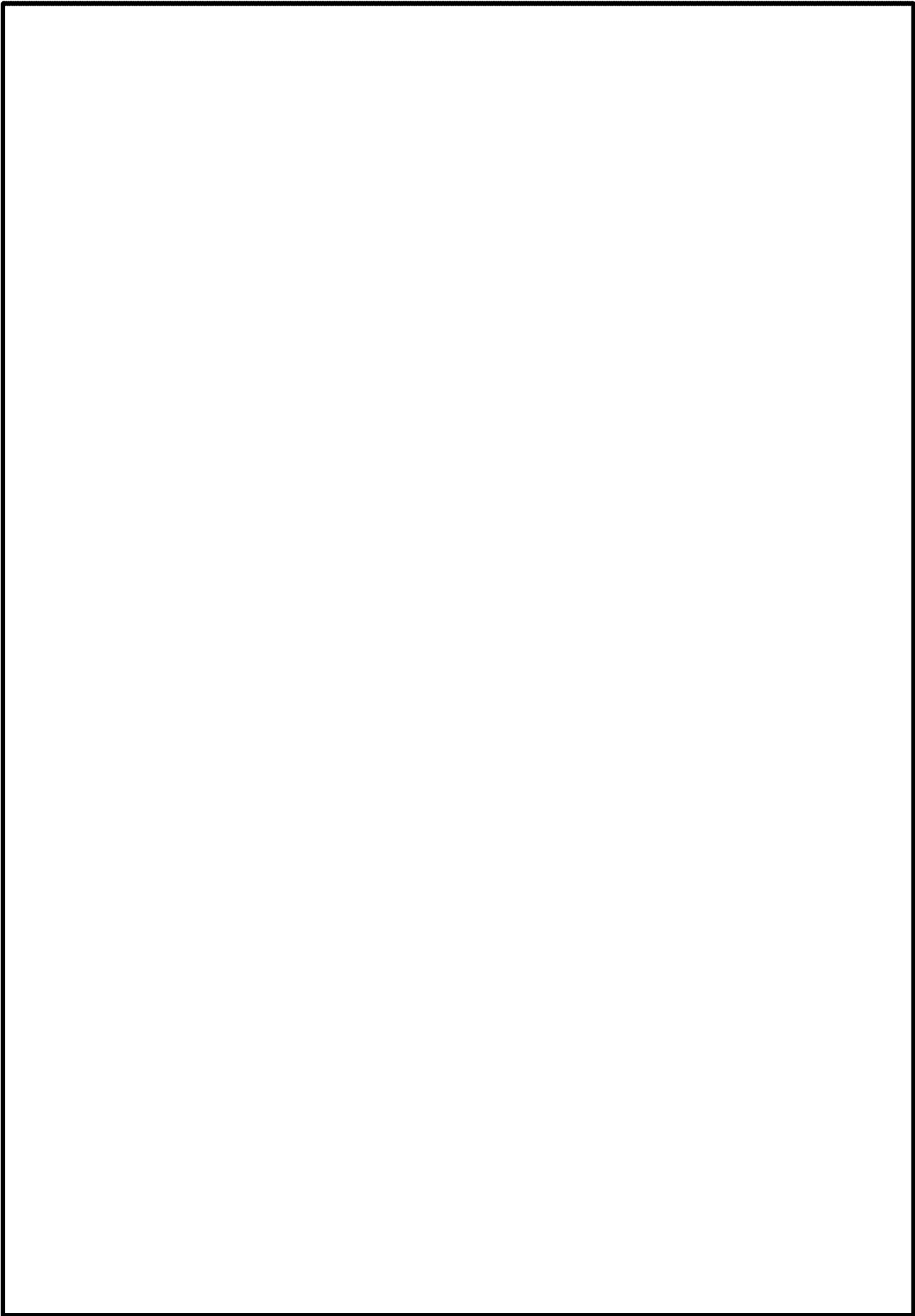




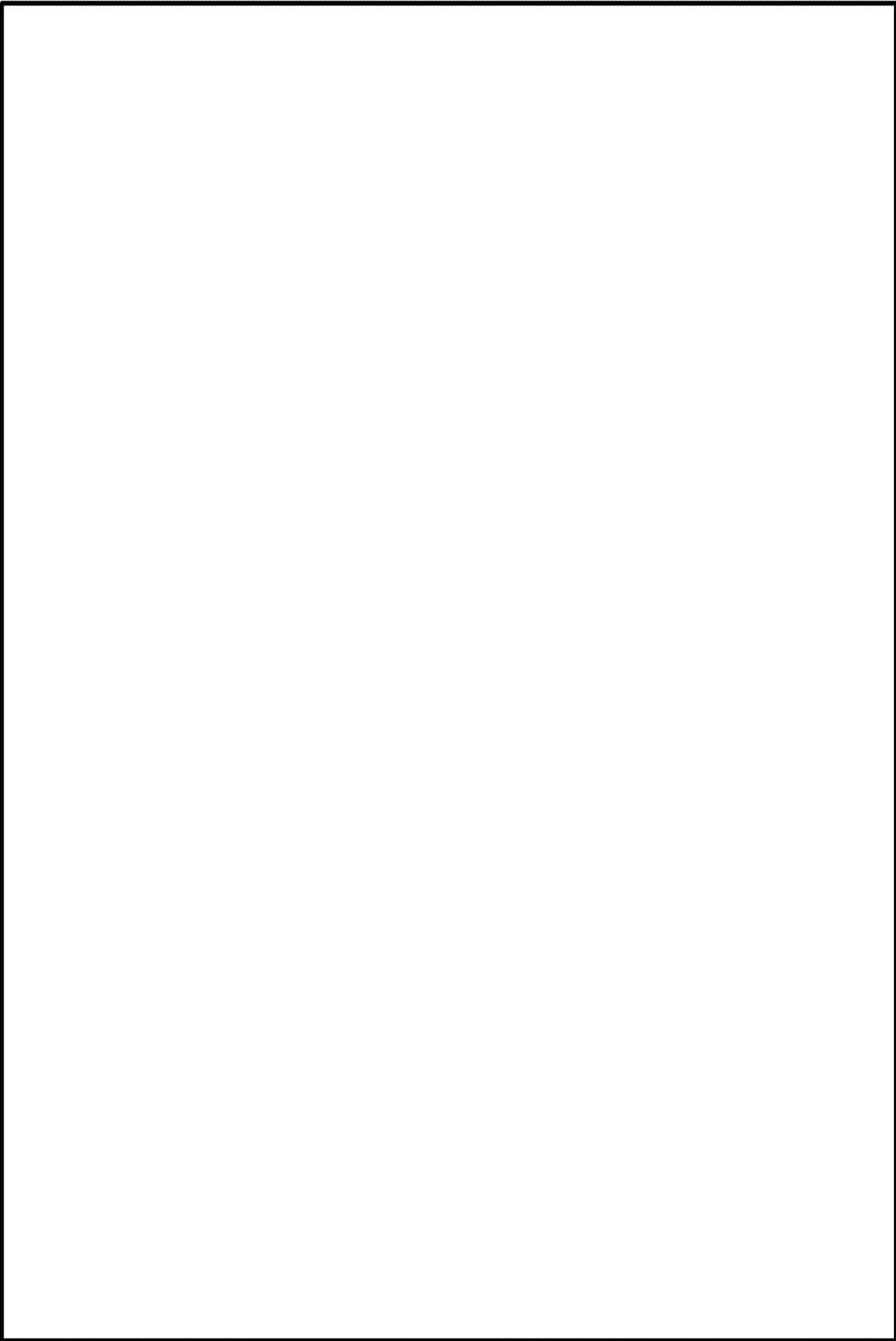
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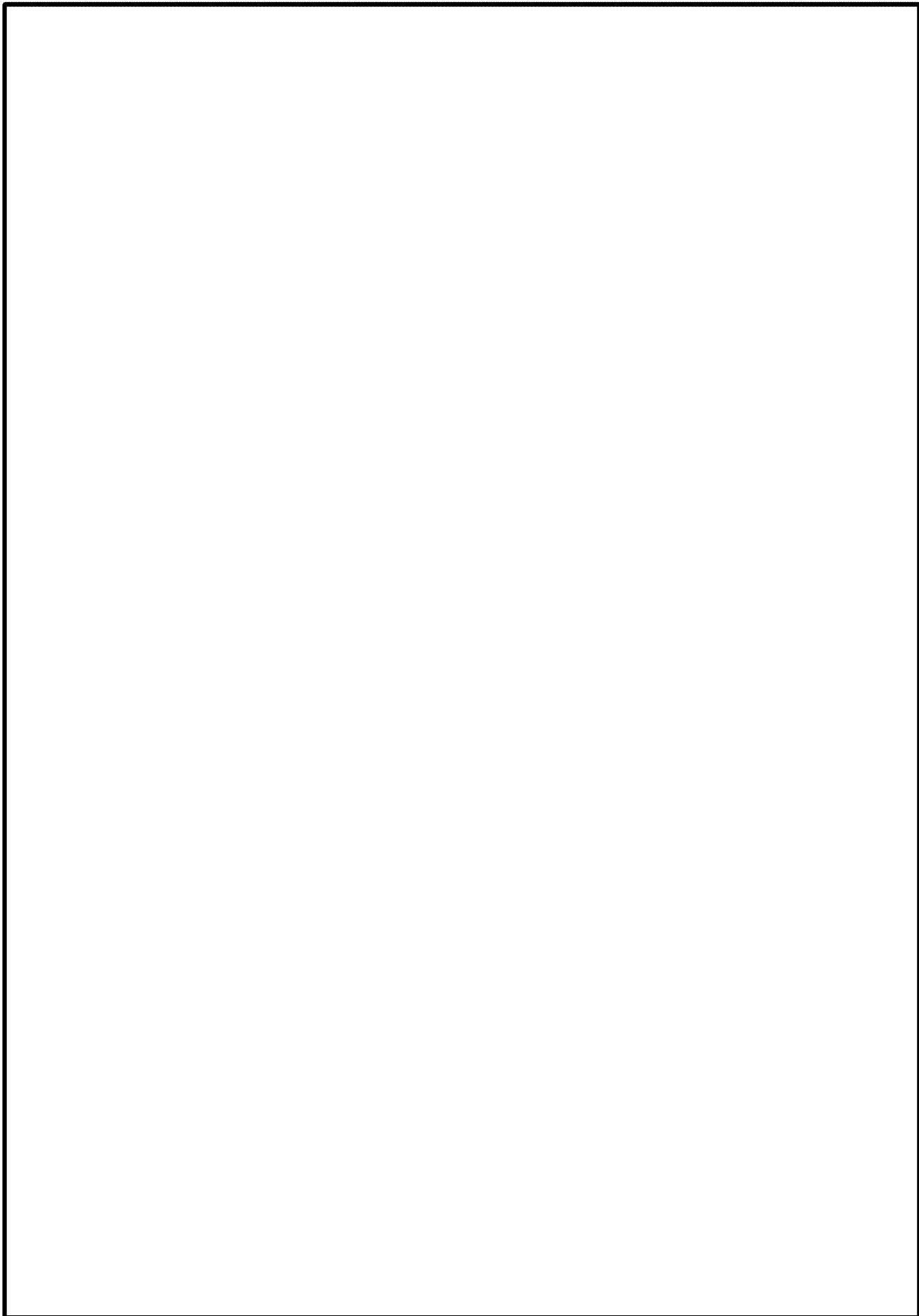
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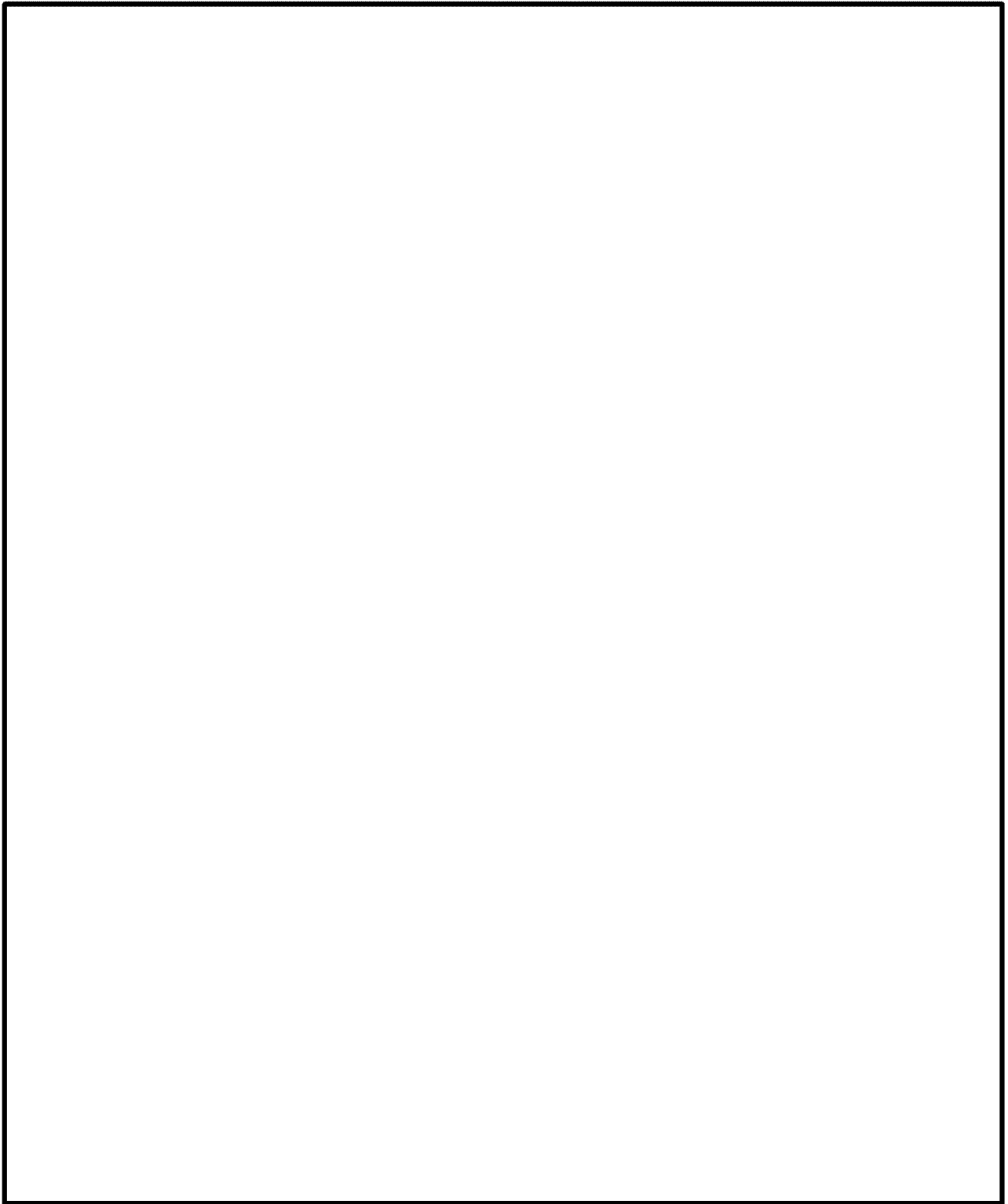
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# RAIO DIRECTORATE – OFFICER TRAINING

## *RAIO Combined Training Course*

### EVIDENCE

#### TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***EVIDENCE**

## Training Module

**MODULE DESCRIPTION**

This module discusses burden and standards of proof and describes the types of evidence presented in support of petitions and applications for benefits in the RAIO Directorate.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

You, the officer, will be able to determine whether an applicant establishes eligibility (meets his or her burden of proof) for the requested benefit based on the evidence of record.

**ENABLING PERFORMANCE OBJECTIVES**

1. Determine the proper standard of proof to apply in determining an applicant's eligibility as a refugee under INA § 101(a)(42).
2. Distinguish the applicant's burden of proof from the standards of proof necessary to establish eligibility as a refugee under INA § 101(a)(42).
3. Evaluate evidence presented in an application for protection under INA § 101(a)(42) for reliability and relevance.
4. Evaluate evidence presented in an application for protection under INA § 101(a)(42) to determine if the applicant has met the appropriate standard of proof.

**INSTRUCTIONAL METHODS****METHOD(S) OF EVALUATION****REQUIRED READING**

**Division-Specific Required Reading - Refugee Division****Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES****Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (4)
RI1	Skill in identifying issues of a claim (4)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (3)
DM7	Skill in making legally sufficient decisions (5)
DM9	Skill in making legally sufficient decisions with limited information (5)

### SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
June 6, 2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	MMorales, RAIO Training
August 3, 2015	Throughout document	Reorganization of module, some stylistic edits, updated links	RAIO Training.

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

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

## 1 INTRODUCTION

Your job as an officer in the RAIO Directorate is to review applications and petitions to determine if the applicant or petitioner is eligible for a benefit under the Immigration and Nationality Act (INA), and to adjudicate his or her case in a neutral, unbiased manner. In every decision you make, you will gather and evaluate different types of evidence, including testimony, documents, and country of origin information (COI). Before you begin any adjudication, you must understand the legal requirements that the applicant or petitioner must meet.

This module provides guidance on evidence that you may see as you adjudicate cases. This module also discusses an applicant's burden of proof and the various standards of proof that apply in adjudicating different applications. Some benefits require specific types of documentary evidence to establish eligibility. For example, if a U.S. citizen (USC) wants to petition for his non-citizen mother so that she may apply for an immigrant visa, he must file a Form I-130, Petition for Alien Relative. In support of the petition, he must provide evidence of his citizenship and his relationship to his mother. To prove that he is a USC, he might submit a naturalization certificate or a passport. To prove his relationship to his mother, he would submit his birth certificate.

On the other hand, some benefits such as refugee and asylum status involve individuals who have fled their countries with little or no documentation.<sup>1</sup> In these cases, an interview is required because often testimony is the only evidence the applicant will have to establish large parts of his or her claim.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Module, *Decision Making*. You will identify the relevant legal requirements of

<sup>1</sup> *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *UNHCR Handbook*, ¶ 74 (reissued, Geneva, Dec. 2011).

the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, assign weight to each piece of evidence, and determine whether the applicant's burden of proof has been satisfied according to the appropriate standard of proof.

## 2 TYPES OF EVIDENCE

Generally, you must consider any statement, document, or object that an applicant offers as evidence. An applicant may also present witnesses at an interview. Witness testimony is evidence to be considered and weighed along with all the other evidence presented in the case.<sup>2</sup> See ASM Supplement – Types of Evidence. In addition, any COI materials that you discover in your research and information accessed in any computer databases are also evidence.

In the asylum and refugee context, applicants often face special difficulties presenting evidence. Generally, persecutors do not provide evidence of their persecution or intentions. Additionally, the applicant may have been forced to flee without an opportunity to gather documents, or it may have been dangerous for the applicant to carry certain documents, such as a written threat or identification documents.<sup>3</sup>

Human rights monitors and reporters may have difficulty documenting abuses in some refugee-producing countries that maintain firm control over the press and do not allow human rights monitors access to the country.

When applicants do provide documents, they may not be able to establish the genuineness of the documents.<sup>4</sup> If you believe that the documents are genuine, the evidentiary value should not be discounted merely because the documents are not certified or authenticated.

You must consider and evaluate any evidence submitted by the applicant. In order to create a fair and objective process for adjudicating claims, all evidence must be considered using the analytical framework explained in the RAI0 Training Module, *Decision Making*. Although you must consider all evidence submitted by the applicant, you do not have to afford all evidence the same weight. You must determine the probative value of each piece of evidence. The circumstances surrounding the evidence and information about the evidence will determine what weight you assign to it. Circumstances that may affect the weight of the evidence include reliability, relevance, content, form, and the nature of the evidence.

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<sup>2</sup> 8 C.F.R. § 208.9(b).

<sup>3</sup> See, e.g., *Aguilera-Cota v. INS*, 914 F.2d 1375, 1380 (9th Cir. 1990) (“The last thing a victim may want to do is carry around a threatening note with him.”)

<sup>4</sup> See *Zavala-Bonilla v. INS*, 730 F.2d 562 (9th Cir. 1984).

Below is a non-exhaustive list of some of the common types of evidence that you might encounter along with some suggestions of ways in which the evidence may be used.

## 2.1 Testimonial Evidence from the Applicant

### The Application Form

The application form supplies basic biographical information about the applicant and provides information about the basis for his or her claim. A review of the application should provide you with an indication of what biographical information may be relevant to the applicant's claim. The form may also contain some information about travel patterns that may be relevant to subsidiary issues such as access to the program in refugee resettlement cases and one-year filing deadline issues in asylum claims. You should read the form carefully to determine what information on the form, beyond the statements of the claim itself, may be relevant. With all applications where there is an interview, you should go over the biographical information with the applicant at the beginning of the interview, making certain that the applicant agrees that the information is correct. This sets a baseline of factual information that you may rely on if inconsistencies or contradictions arise later in the interview.

### Oral Testimony

When conducting an interview, you should make certain that you elicit information on all material aspects of the claim. In many refugee and asylum cases, the oral testimony at the interview, along with the information contained in the application form, will be the most critical evidence you will gather and evaluate to make your decision. It is your duty to elicit as much detail as possible during the interview. In fulfilling your duty you will also be making your post-interview decision-making much easier.

### Written Statements

In some types of cases, such as asylum or waiver cases, applicants will often submit statements with their application describing their claims. These statements will usually be much more detailed than the information provided on the application form, and you should review them very carefully.

All refugee cases will have a referral statement or form through which the applicant is granted access to the U.S. Refugee Admissions Program (USRAP). For refugee cases referred for resettlement consideration by the United Nations High Commissioner for Refugees (UNHCR), a U.S. Embassy or certain Non-Governmental Organizations (NGOs), the referring entity will provide a Resettlement Referral Form (RRF) outlining the applicant's claim. The Resettlement Support Center (RSC) will also interview all applicants and prepare a statement of the refugee claim which will accompany the Form I-590, Registration for Classification as Refugee. The RRF and RSC statement should be reviewed and considered in light of other information in the record and the applicant's testimony.

You should find those sections of the written statement that contain information that directly relates to the applicant's eligibility and compare them to statements in the application form. The statement is useful in helping to identify the material elements of the applicant's claim about which you will question the applicant during the interview.

The written statement might also contain contradictions or may raise inconsistencies when compared to the applicant's oral testimony. Apparent contradictions or inconsistencies that are material or relevant to the applicant's claim and eligibility should be explored in the interview. When evaluating their impact on credibility you should consider the circumstances under which the statements were prepared, whether they were taken under oath, and any other indicia of reliability.

## 2.2 Statements by Other Parties

### Friends and Family (Oral Testimony)

Sometimes a family member or friend testifies under oath at the applicant's interview. Such oral testimony may be material to the applicant's claim and may be considered corroborative evidence.

### Friends and Family (Written Statements)

An application may contain statements written by the applicant's friends or family. Some considerations that you should keep in mind when reviewing such evidence include:

- the type of written statement submitted (*e.g.*, a simple letter, an affidavit, or a sworn statement or declaration made under penalty of perjury);
- how the content of the statement relates to the claim; and
- whether the document was created to support the claim.

In evaluating the content of the statement, you should determine whether the statement was written before or after the applicant started the application process. In the protection context, if the statement was written before the applicant claims to have decided to apply for protection, and the statement contains very specific information about the applicant's claim, you should ask why this information was included in the statement.

Boilerplate statements should be evaluated based on the context in which applicants use them. In some cases boilerplate statements may be used as part of an adverse credibility determination.<sup>5</sup> See RAO Training Module, *Credibility*, section on "Similar Claims." If

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<sup>5</sup> See *Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006); *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010).

the applicant submits written statements with nearly identical language, you should closely question the applicant about who prepared the statements and under what circumstances. For example, ask the applicant how the people who signed the statements had knowledge of their content. Point out to the applicant the extreme similarity in the documents, and provide the applicant an opportunity to explain why they are so similar. The applicant's answers may help you determine the statements' evidentiary weight and their impact on the overall credibility determination. Bear in mind, however, that the applicant may not necessarily know how or by whom the written statements were prepared or procured, as the applicant may not have personally obtained the documents.

See RAD Supplement – Testimony by Other Refugee Applicants .

### **Experts (Written Reports and Affidavits)**

Applicants sometimes submit supportive documentation in the form of statements, reports, and affidavits written by outside parties such as subject matter experts, members of academia, and physicians. One common type of such evidence is medical reports, which are addressed below at section 2.7. You should always accept such documentation, but the weight you assign it should be based on a number of factors. Since the statement will usually be based on a claimed expertise of the declarant, the statement should give an adequate explanation of that expertise, which usually constitutes some background information about the declarant. The statement should give an indication of what knowledge the declarant has of the specific facts in the case at hand. It may make some connection between the factual information being provided and the applicant's claim. See ASM Supplement – Statements by Other Parties.

## **2.3 Travel Documents**

Any documentation the applicant presents concerning his or her travel is useful. For example, to the extent that the documents give times and places where the applicant has been, you can establish a chronology that may provide evidence of the applicant's eligibility to apply for asylum or his or her access to the refugee program. The most common types of travel documents that an applicant might present are:

### **Passports**

Possession of a valid national passport creates a *prima facie* presumption that the holder is a national of the country of issuance, unless the passport itself states otherwise. A person holding a passport showing him or her to be a national of the issuing country, but who claims that he or she does not possess that country's nationality, must substantiate his or her claim, for example, by showing that the passport is a so-called 'passport of convenience' (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). Generally, the mere assertion by the holder that the passport was issued as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. It is sometimes possible to obtain information

about the significance of a passport from the issuing authority, but only if confidentiality is not violated. If you are unable to obtain reliable, timely information about whether the passport conveys nationality, you must determine the credibility of the applicant's assertion regarding his or her passport in the context of the entirety of his or her testimony.<sup>6</sup>

In addition to proving nationality, passports may also provide information that helps you establish the applicant's travel patterns and places of residence. You should carefully examine a passport with stamps in it that indicate entries and exits from different countries. Sometimes you may find proof that the applicant was not where he or she claimed a specific event happened, when that event occurred. Passports may also provide some evidence of an applicant's profession, and this may be relevant to his or her claim. Finally, passports from third countries may provide evidence of dual nationality or firm resettlement.

### **Refugee Travel Documents**

Possession of a refugee travel document by an applicant can be proof of identity and nationality and that another state party to the Refugee Convention has recognized that person as a refugee. It may also, however, raise the issue of firm resettlement. Like a passport, a refugee travel document may contain stamps for entry and exit from different countries to which the applicant has traveled and can be used to establish a chronology and determine travel patterns.

### **Tickets from Transportation Carriers**

Tickets from airlines and other common carriers provide evidence that may help to map out travel patterns and timelines that could be relevant to part of the applicant's claim. In the asylum context, tickets may also provide evidence relevant to the applicant's eligibility to apply under the one-year filing deadline.

## **2.4 Identification Documents**

### **National Identify (ID) Cards**

An applicant may submit a national ID card as evidence of his or her identity and nationality. These documents can sometimes provide other useful information that you can use in questioning the applicant. For example, national ID cards usually have an issue date. If an applicant submits a national ID card that has an issue date later than the date on which the applicant claims to have left his or her country, ask the applicant how he or she obtained the document.

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<sup>6</sup> UNHCR Handbook, ¶ 93.

## Organizational ID Cards

**(student, employment, union, refugee ID, etc.)**

These types of documents generally should not be used as evidence of identity.; Rather, they are evidence that the holder has been a member of an organization or has held a particular status (student, refugee, etc.) that may be relevant to the claim. Again, such documents, when examined carefully, may also provide evidence beyond mere membership.

## 2.5 Civil Documents Issued by Government Agencies

**(Police reports, household registrations, birth certificates, death certificates, marriage certificates, records from government hospitals, etc.)**

When an applicant submits a document from another country, you should consider carefully what information is contained in the document and its relevance to the applicant's refugee claim or other eligibility criteria.

### *Example*

An applicant submits a police report she received after filing a complaint because she was beaten by an unknown assailant. While the police report is evidence that the applicant was harmed, it is likely that it relates to a number of different elements in the refugee definition, such as whether the applicant suffered past persecution, whether the assault was on account of a protected ground, and whether the government was unwilling or unable to protect her. The police report should prompt you to ask follow-up questions regarding the relevant issues.

## 2.6 U.S. Government Records

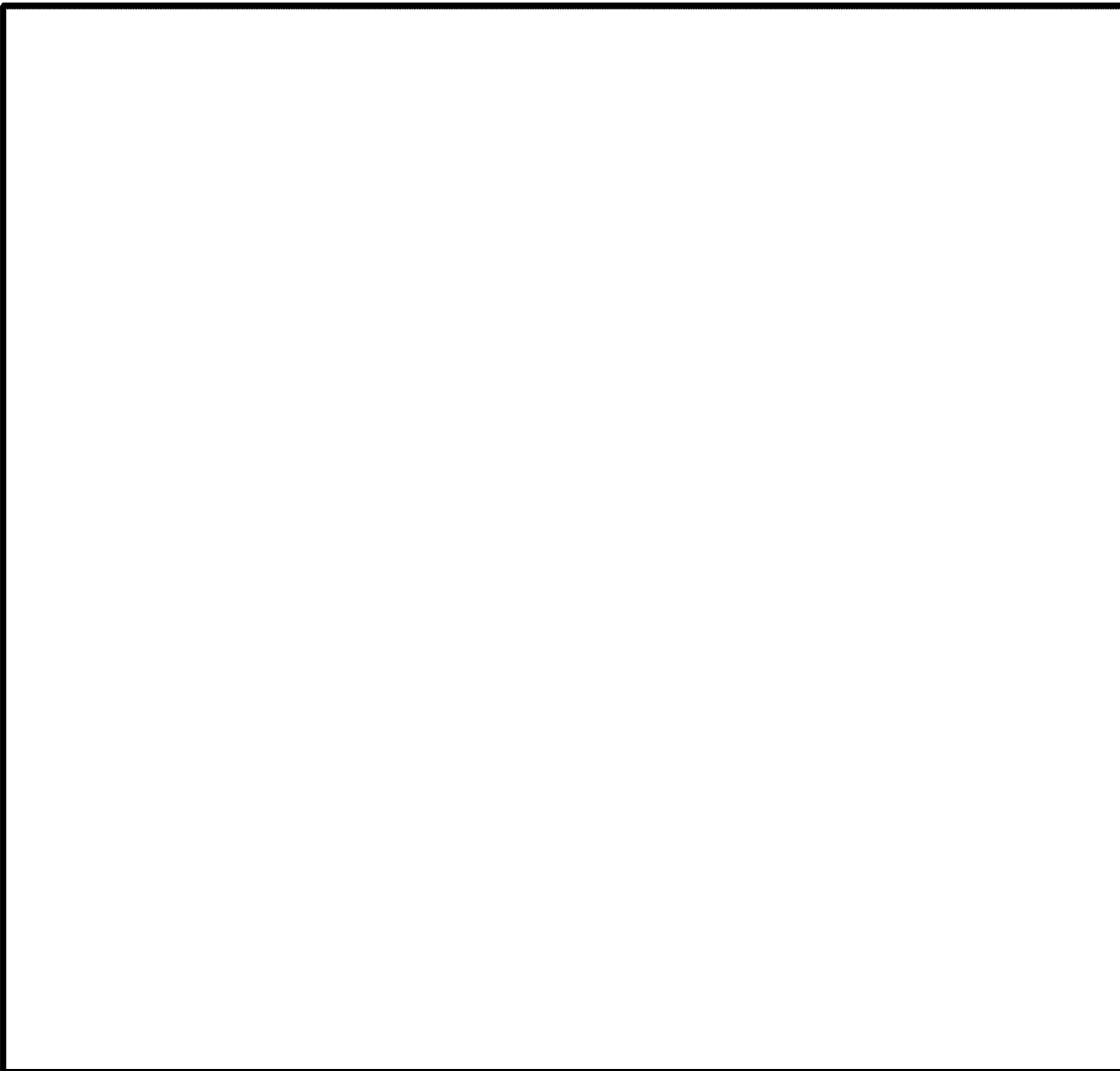
(b)(7)(e)



<sup>7</sup> See RAIO Training Module, *Fraud*.



(b)(7)(e)



## 2.7 Medical Evidence

The term “medical evidence” usually refers to a written opinion issued by a medical doctor, a psychiatrist, a psychologist, or other medical expert who produces statements concerning the physical and mental health of an individual. Medical evidence can also be obtained in the form of witness testimony or medical records.

Medical evidence can be presented by the applicant at the time of his or her application. In the asylum context, you may request the applicant to provide it after the interview. It

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<sup>8</sup> *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988); see, e.g., *Munoz-Avila v. Holder*, 718 F.3d 976, 979 (7th Cir. 2013); *Kim v. Holder*, 560 F.3d 833, 836 (8th Cir. 2009); *Felzcerek v. INS*, 75 F.3d 112, 116 (2d Cir. 1996).

<sup>9</sup> *Ramsameachire v. Ashcroft*, 357 F.3d 169, 180 (2d Cir. 2004); see also *Nadmid v. Holder*, 784 F.3d 357, 360 (7th Cir. 2015); *Balogun v. Ashcroft*, 374 F.3d 492, 505 (7th Cir. 2004); *Balasubramanrim v. INS*, 143 F.3d 157, 162 (3d Cir. 1998).

would be rare for such evidence to be available in an overseas refugee context. The most common scenario where such information is available is when applicants are processed in-country as they often have greater access not just to identity documentation but also to police or medical records which may corroborate claimed harm.

These reports can facilitate the work of decision-makers. To be given full weight, a medical evaluation must be written with objectivity and impartiality. Depending on the case, a medical report produced by the applicant may not necessarily resolve inconsistencies and statements that are found to be not credible. In fact, evidence presented in the medical documentation can sometimes undermine a claim or raise concerns about inconsistencies.

You may request medical evidence when you feel it is necessary to the adjudication. The applicant will either have to provide the evidence or give a reasonable explanation why the evidence is not available.<sup>10</sup> If such evidence is produced in the country where the applicant is applying, the applicant may have access to the evidence. Another consideration concerning the reasonableness of the applicant's ability to produce such evidence is the availability of physicians in the area who are qualified to make such an examination and their willingness to do them at no cost. In general, you should request medical evidence only if the applicant has failed to meet his or her burden of proof and additional corroboration is necessary to meet it.

The Istanbul Protocol<sup>11</sup> establishes internationally accepted guidelines that govern how best to handle medical investigations of allegations of torture. Although there is no specific requirement that medical evidence follow the Istanbul Protocol, it can serve as a guide for adjudicators as to what constitutes well-documented medical evidence. The more closely the medical evidence meets the standards in the Istanbul Protocol, the easier it is to determine the probative value of the evidence.

When medical evidence is submitted, it will most often be submitted to support a claim of past persecution. If an applicant indicates that he or she sought medical treatment in the United States or his country of first refuge because of torture, he or she should be asked to provide some medical documentation or explain why he or she is unable to provide it.

## 2.8 Country of Origin Information<sup>12</sup>

Depending on the adjudication, COI is evidence you can use to help determine whether an individual may be eligible for the requested benefit. COI provides objective evidence

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<sup>10</sup> *Matter of S-M-J*, 21 I&N Dec. at 725-26.

<sup>11</sup> United Nations Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, August 9, 1999.

<sup>12</sup> See RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

against which documentation in the record and the testimony of an interviewee can be viewed and evaluated. In some cases, COI may be sufficient to establish a particular fact that is relevant to the adjudication. It is not necessary for an applicant to testify to every fact that the adjudicator finds. In refugee and asylum adjudications, you must evaluate the applicant's claim in light of COI. See ASM Supplement – Country of Origin Information.

## 2.9 Other Types of Physical Evidence

In some situations, an applicant may offer as evidence an object other than paper documentation, such as a videotape, compact disc (CD), flash drive, website link, book about the history of a conflict, or a bottle of medicine to substantiate a medical condition. In such instances, you should consult with your supervisor about how to best accept the information associated with this type of evidence.

### Documentary Evidence—Authentication

In affirmative asylum and refugee processing, ***authentication is not necessary***. Documents should be accepted and considered as part of the evidence in the record whether authenticated or not. Bear in mind that under the Federal Rules of Evidence, a document may be authenticated by the “[t]estimony of witness with knowledge.”<sup>13</sup> For asylum and refugee purposes, a “witness with knowledge” may be the applicant.<sup>14</sup> If the applicant provides a detailed, plausible, and consistent account of how he or she came into possession of the document, you should consider that document authenticated.

Although authentication is not necessary, you may give more weight to a document that is authenticated than a document that is not authenticated—and the method of authentication may affect the weight given the document.<sup>15</sup> When an applicant submits a document that does not appear to be what it purports to be, in order to completely discredit that documentary evidence you must provide sound, cogent reasons for doing so.<sup>16</sup> Otherwise, the document should be evaluated for its evidentiary value.

Courts have held that the means of authentication found in the immigration regulations are not the only means by which documents may be authenticated, and the trier of fact should give the applicant the opportunity to authenticate documents by alternative means,

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<sup>13</sup> Federal Rules of Evidence Rule 901(b)(1), 28 U.S.C.A.

<sup>14</sup> *Zhanling Jiang v. Holder*, 658 F.3d 1118 (9th Cir. 2011)

<sup>15</sup> *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (The method of authentication that the party submitting the evidence utilizes may affect the weight of the evidence, and Immigration Judges “retain broad discretion to accept a document as authentic or not based on the particular factual showing presented), citing *Vatyan v. Mukasey*, 508 F.3d 1179, 1182-83 (9th Cir. 2007))

<sup>16</sup> *Tassi v. Holder*, 660 F.3d 710 (4th Cir. 2011).

found in the Federal Rules of Evidence, if the applicant is unable to authenticate in one of the ways specified in the immigration regulations.<sup>17</sup>

### 3 BURDEN OF PROOF

In all applications for immigration benefits, the applicant bears the burden of proof to establish eligibility for the benefit he or she is seeking.<sup>18</sup> The burden of proof refers to the duty of one party to prove facts that meet the legal standard being applied. An applicant or petitioner for a benefit under the INA must establish (i.e., bears the burden of proof to establish) that he or she meets the requirements for the benefit being sought and is not subject to any bars or other disqualifying factors. This means that the applicant must produce evidence that establishes the facts of the case, and that those facts must meet the relevant legal standard.

Because of the non-adversarial nature of RAIO interviews, while the burden is always on the applicant to establish eligibility, there is a shared aspect of that burden in which you have an equal obligation to help fully develop the record.<sup>19</sup>

#### 3.1 Burdens of “Persuasion” and “Production”

The phrase “burden of proof” might be thought of to encompass the concepts of the “burden of persuasion” and the “burden of production.” The burden of persuasion refers to the burden to convince the adjudicator that the evidence supports the facts asserted.

The burden of production entails the obligation to come forward with the evidence at different points in the proceedings.

In overseas refugee adjudications, there is no time at which the burden of proof shifts away from the applicant. There are, however, situations in which it may be required for the officer to produce some evidence. For example, although it is the applicant’s burden to establish that he or she is **not** firmly resettled, the BIA has held that the government bears the initial burden to produce some evidence indicating that an applicant is firmly resettled.<sup>20</sup>

In asylum adjudications, while the applicant always has the burden of proof to establish eligibility for asylum, there are specific instances when the burden shifts to the government to prove a certain point related to the exercise of discretion when eligibility

<sup>17</sup> *Tassi v. Holder*, 660 F.3d 710, 723 (4th Cir. 2011); *Zhanling Jiang v. Holder* 658 F.3d 1118, 1121 (9th Cir. 2011); *Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 214 n.5(BIA 2010)

<sup>18</sup> INA § 291; *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); *UNHCR Handbook*, ¶ 196.

<sup>19</sup> 8 C.F.R. § 208.9(b); *UNHCR Handbook*, ¶ 196.

<sup>20</sup> *Matter of A-G-G-*, 25 I&N Dec. 486, 503 (BIA 2011).

is based on past persecution. However, the burden of persuasion to establish eligibility for asylum never shifts and always remains on the applicant. For further information on burden shifting, *see* ASM Supplements –Applicant’s Burden and Burden Shifting When Past Persecution Found.

### 3.2 Establishing Eligibility (the Applicant’s Burden)

The applicant must establish that he or she meets all of the legal elements of the benefit being sought. It is your responsibility to read and understand the provisions in the statute, any corresponding regulations, and any binding case law applicable in each case you adjudicate. *See* RAD Supplement – Applicant’s Burden and ASM Supplement – Applicant’s Burden, below.

#### *Example for Refugee Processing*

To establish eligibility for admission as a refugee under INA § 207(c), the applicant must establish that he or she

- is of special humanitarian concern to the United States
- is a refugee, as defined at INA § 101(a)(42)
- is not firmly resettled
- is admissible as an immigrant
- merits a favorable exercise of discretion

#### *Example for Asylum Adjudications*

To establish eligibility for asylum under INA § 208, the applicant must establish that he or she

- is eligible to apply for asylum
- is a refugee within the meaning of § 101(a)(42)(A) of the Act
- is not subject to any mandatory bars to asylum
- merits a favorable exercise of discretion

#### *Example for Adjudication of Orphan Petitions*

To establish eligibility for an orphan petition, adoptive parent(s) must establish that

- at least one of the adoptive parent(s) is a U.S. citizen, and
- the adoptive parent(s) will provide proper parental care to the child, and
- the child is an “orphan” as defined in U.S. immigration law, and

- either the child has been adopted abroad, and that each adoptive parent saw the child in person before or during the adoption or the adoptive parent(s) have legal custody of the child for emigration to the United States and adoption after the child arrives.

### 3.3 Special Consideration in the RAIO Context

The Board of Immigration Appeals (BIA) has recognized that a “cooperative approach” is required in adjudicating asylum requests.<sup>21</sup> This approach also applies to all RAIO adjudications. The BIA explained that this is because the BIA, immigration judges, and USCIS “all bear the responsibility of ensuring that refugee protection is provided where such protection is warranted by the circumstances of an asylum applicant’s claim.”<sup>22</sup>

While the applicant must establish eligibility for the benefit, as part of the cooperative approach you have the duty to elicit sufficient information at the interview. You also have the duty to research COI to properly evaluate whether the applicant is eligible for the benefit he or she applied.<sup>23</sup> The burden is on the applicant to prove his or her claim, but you have a duty to develop the record completely.

### 3.4 Testimony Alone May Be Enough

A refugee or asylum applicant may establish eligibility with testimony alone.<sup>24</sup> If you, as the trier of fact, believe that other evidence is needed to corroborate the otherwise credible testimony of the applicant, you will request the evidence and the applicant must either: 1) provide the evidence or 2) provide a reasonable explanation as to why he or she cannot provide the evidence.<sup>25</sup>

Burden of proof is different from credibility. For each case you adjudicate, you must make a credibility determination that follows the analytical framework in the RAIO Training Module, *Credibility* before deciding whether the applicant must

<sup>21</sup> *Matter of S-M-J-*, 21 I&N Dec. 722, 724 (BIA 1997).

<sup>22</sup> *Id.* at 723.

<sup>23</sup> 8 C.F.R. § 208.9(b); *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997); and UNHCR Handbook, ¶ 196. See also RAIO Training Modules, *Interviewing – Eliciting Testimony* and *Researching and Using Country of Origin Information in RAIO Adjudications*.

<sup>24</sup> See *Matter of Mogharrabi*, 19 I&N Dec. 239, 245 (BIA 1987); *Shrestha v. Holder*, 590 F.3d 1034 (9th Cir. 2010). Note that in the asylum context, under INA § 208(b)(1)(B)(ii), the applicant’s testimony is only sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts sufficient to demonstrate that an applicant is a refugee.” See also ASM Supplement – Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts” and RAIO Training Module, *Credibility*.

<sup>25</sup> See *Matter of S-M-J-*, 21 I&N Dec. at 725-26.

provide additional evidence to meet his or her burden of proof. In other words, you cannot determine that an applicant has not met his or her burden of proof without first having done a complete credibility analysis.

In asylum cases, an applicant whose testimony you have found not to be credible (or whose testimony you have found to be unreliable for other reasons<sup>26</sup>) may, in some circumstances, meet his or her burden of proof by providing other reliable evidence. If you find that the applicant has not provided credible or reliable testimony, you must consider whether non-testimonial evidence in the record is nonetheless sufficient to meet the applicant's burden of proof.<sup>27</sup>

In both asylum and refugee cases, an applicant's testimony may only be credible in part, but may nonetheless establish his or her eligibility, leading to a "split credibility determination." For example, a refugee may establish eligibility through testimony that, while not credible in regards to past persecution, is credible in regards to the applicant's well-founded fear of persecution or vice versa.<sup>28</sup>

#### 4 STANDARDS OF PROOF

The burden of proof is not the same as the standard of proof. The standard of proof refers to the amount of evidence, or level of proof, required to prove a given fact. There are several different standards of proof that apply during different stages of the adjudication process. *See* chart below.

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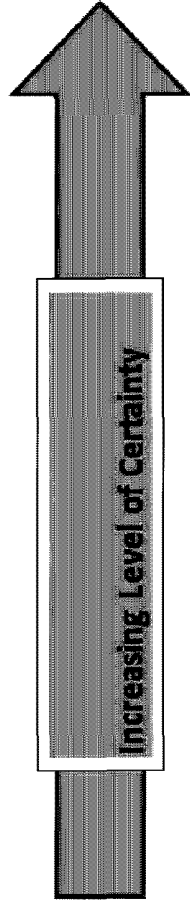
<sup>26</sup> *See Matter of J-R-R-A-*, 26 I&N Dec. 609, 612 (BIA 2015) (noting, in the case of an applicant whose testimony indicated lack of competency, that an applicant's testimony may be found to be unreliable for reasons other than deliberate fabrication and that the adjudicator "should then focus on whether the applicant can meet his burden of proof based on the objective evidence of record and other relevant issues.")

<sup>27</sup> *Ilunga v. Holder*, 777 F.3d 199, 213 (4th Cir. 2015).

<sup>28</sup> *See* RAO Training Module, *Credibility*, Sec. 6, "Split Credibility Finding." *See also* Refugee Affairs Division (RAD), *Refugee Application Assessment Standard Operating Procedure (SOP)* (Pilot Jun. 21, 2013) p.19.







Standard of Proof		Refugee	Asylum	Int'l Ops
Beyond any reasonable doubt	<i>Very high</i>			<b>I-130 Adam Walsh Act- no risk to beneficiary</b>
Clearly and beyond doubt	<i>Highly probably true</i>	Admissibility		<b>Admissibility</b>
AND Clear and convincing	<i>Firm belief or conviction</i>		Filed within one year	<ul style="list-style-type: none"> <li>• Rebut prior fraudulent marriage</li> <li>• Citizenship of children born out of wedlock</li> </ul>
Preponderance of the evidence	<i>More than 50% chance</i>	<ul style="list-style-type: none"> <li>• Meets refugee definition</li> <li>• Special humanitarian concern</li> <li>• Not firmly resettled</li> <li>• Facts supporting eligibility</li> </ul>	<ul style="list-style-type: none"> <li>• Meets refugee definition</li> <li>• Not subject to any bars</li> <li>• Facts supporting eligibility</li> </ul>	<b>Eligibility for benefit sought</b>
AND To the Satisfaction of the adjudicator	<i>Probably true</i>		Exceptions to 1-year rule	
AND More Likely Than Not				
Reasonable possibility	<i>One in ten chance</i>	Well-founded fear	Well-founded fear Reasonable fear	<b>Well-founded fear</b>
Significant possibility	<i>Substantial and realistic possibility</i>	Interdictions at sea	Credible fear	

You must evaluate information according to several standards of proof for different types of applications and sometimes even in the course of the adjudication of a single application. These standards will be discussed in more detail during your division-specific courses.

### *Example*

In asylum and refugee processing, an applicant must prove by a preponderance of the evidence that he or she meets the definition of a refugee: that is, that he or she suffered persecution in the past or that there is a reasonable possibility that he or she will be persecuted in the future. When you decide whether an applicant is a refugee based on a fear of future persecution, you use the “reasonable possibility” standard to determine whether the applicant has a well-founded fear of persecution and the “preponderance of the evidence” standard to determine whether the applicant meets all other elements of the refugee definition and whether the facts supporting the applicant’s eligibility are true. You are using two different standards within one adjudication: “preponderance of the evidence” and “reasonable possibility.”

## 4.1 Beyond any Reasonable Doubt

In criminal cases, the government is required to prove a defendant’s guilt *beyond a reasonable doubt*. “A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.”<sup>29</sup> This standard is used in criminal law and in one situation encountered by RAIO officers: according to the February 8, 2007 policy memo implementing the Adam Walsh Act, where a U.S. citizen filing a petition for an alien relative has been convicted of a specified offense against a minor, he or she must establish that he or she poses “no risk” to the safety and well-being of the beneficiary “beyond any reasonable doubt.”<sup>30</sup>

## 4.2 Clearly and Beyond Doubt

The *clearly and beyond doubt* standard is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases, and it is comparable to the “clear and convincing” standard explained below.

While the evidence submitted to meet the “clearly and beyond doubt” standard must be “stronger and more persuasive” than the evidence necessary to satisfy the lower

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<sup>29</sup> O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions* § 12.10 (5th ed. 2000).

<sup>30</sup> See also *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014) (holding that the BIA lacks jurisdiction to review the standard of proof applied by USCIS in Adam Walsh Act determinations).

preponderance of evidence standard of proof, the officer must give the applicant “the same fair and reasonable evaluation of his evidence” and must not presume that the applicant’s evidence is “false or contrived.”<sup>31</sup>

An individual approved for refugee status must prove that he or she is “clearly and beyond a doubt entitled to be admitted” at the time that he or she seeks to enter the U.S. as a refugee, as well as when he or she seeks to become a lawful permanent resident one year later.<sup>32</sup>

Refugee applicants abroad must establish that they are admissible to the United States as immigrants.<sup>33</sup> When you interview a refugee applicant outside of the United States and adjudicate the Form I-590, you are making an initial determination on that applicant's eligibility for admission into the United States as a refugee. An immigration officer at the Port of Entry (POE) will reference your determination when deciding whether to admit the individual into the United States as a refugee.<sup>34</sup> During their USCIS interview abroad and prior to the determination at the POE, all refugees are applicants for admission who must establish their admissibility “clearly and beyond a doubt.”<sup>35</sup> Therefore, you will apply the clearly and beyond doubt standard of proof to the admissibility portion of the refugee status determination.

The “clearly and beyond doubt” standard of proof should not be confused with the “beyond a reasonable doubt” standard used in U.S. criminal courts where the government or prosecutor has the burden of establishing “beyond a reasonable doubt” that the defendant committed the essential elements of the crime of which he or she is accused. The U.S. Supreme Court has said that “we should hesitate to apply [the “beyond a reasonable doubt” standard] too broadly or casually to non-criminal cases.”<sup>36</sup>

### 4.3 Clear and Convincing Evidence

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<sup>31</sup> *Matter of Patel*, 19 I&N Dec. 774, 784-85 (BIA 1988) (quoting *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966)).

<sup>32</sup> See INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a); 207.2(b); INA § 209(a)(1); *Matter of Jean*, 23 I&N Dec. 373, 381 (AG 2002).

<sup>33</sup> INA § 207(c)(1).

<sup>34</sup> 8 C.F.R. §§ 207.2(b); 207.4.

<sup>35</sup> INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a). See U.S. Immigration and Naturalization Service Memo., *Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing*, p.1 (Nov. 9, 1992) (confirming that at their interviews with U.S. immigration officers abroad, refugees are considered applicants for admission).

<sup>36</sup> *Addington v. Texas*, 441 U.S. 418, 425-26 (1979).

The *clear and convincing* standard has been defined as a degree of proof that will produce “a firm belief or conviction as to allegations sought to be established.”<sup>37</sup> It is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases.

An applicant for asylum must demonstrate by *clear and convincing evidence* that the application has been filed within one year after the date of the applicant’s arrival in the United States, unless the applicant establishes to the satisfaction of the asylum officer that an exception applies.<sup>38</sup>

#### 4.4 Preponderance of the Evidence

A fact is established by a *preponderance of the evidence* if the adjudicator finds, upon consideration of all the evidence, that it is more likely than not that the fact is true. In other words, there is more than a 50% chance that the fact is true. This is the standard of proof used in most RAIO adjudications.

Determination of whether a fact has been established “by a preponderance of the evidence” should be based on both the quality and quantity of the evidence presented.

In evaluating whether an applicant had met his or her burden of establishing the facts underlying his or her request for asylum, the BIA has explained, “When considering a quantum of proof, generalized information is insufficient. Specific, detailed, and credible testimony or a combination of detailed testimony and corroborative background evidence is necessary to prove a case for asylum.”<sup>39</sup>

#### 4.5 To the Satisfaction of the Adjudicator

The *to the satisfaction of the adjudicator* standard has been interpreted to require a showing similar to that of the “preponderance of evidence” standard, requiring an individual to prove an issue “by a preponderance of evidence which is reasonable, substantial and probative,” or “in his favor, just more than an even balance of the evidence.”<sup>40</sup>

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<sup>37</sup> See *Black’s Law Dictionary* (5th Ed.).

<sup>38</sup> INA §§ 208(a)(2)(B)-(D); 8 C.F.R. § 208.4(a)(2)(i)

<sup>39</sup> *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

<sup>40</sup> See *Matter of Barreiros*, 10 I&N Dec. 536, 538 (BIA 1964) (interpreting same standard for rescinding LPR status by establishing that applicant was not eligible for adjustment); *Matter of V-*, 7 I&N Dec. 460, 463 (BIA 1957) (interpreting standard for an alien to establish that a marriage was not contracted for the purpose of evading immigration laws).

An asylum seeker cannot apply for asylum if he or she has previously applied for and been denied asylum by an immigration judge or the BIA, unless the asylum seeker demonstrates to the satisfaction of the Attorney General or the Secretary of Homeland Security changed circumstances that materially affect asylum eligibility. Similarly, an asylum seeker cannot apply for asylum more than one year after the date of arrival in the United States, unless the applicant demonstrates *to the satisfaction of the Attorney General or the Secretary of Homeland Security* changed circumstances that materially affect eligibility, or extraordinary circumstances relating to the delay in filing the application within the required time period.

The standard “to the satisfaction of the adjudicator” places the burden on the applicant to demonstrate that an exception applies. The applicant is not required to establish “beyond a reasonable doubt” or by “clear and convincing evidence” that the standard applies. Rather, this standard has been described in another immigration context as requiring the applicant to demonstrate that the exception applies through “credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment, considering the proof fairly and impartially.”<sup>41</sup>

#### 4.6 More Likely Than Not

The *more likely than not* standard is comparable to the “preponderance of the evidence” standard and the equivalent “to the satisfaction of the adjudicator” standard. While the “preponderance of the evidence” standard requires a greater than 50% likelihood that a fact is true, the “more likely than not” standard requires, in the context in which RAIO officers encounter it, a greater than 50% likelihood that a future event will occur.

To establish eligibility for withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations that implement the Convention Against Torture (CAT), the applicant must establish a set of events and/or conditions, substantiated by a preponderance of evidence, showing that he or she *would be* persecuted or tortured in the country of removal. The Supreme Court has held that this means the applicant must establish that it is “more likely than not” (a greater than 50% chance) that he or she would be persecuted or tortured.<sup>42</sup>

RAIO officers do not adjudicate claims for withholding of removal under INA section 241(b)(3) or protection under the CAT. When conducting credible fear screenings or protection screenings for aliens interdicted at sea, though, refugee and asylum officers determine whether there is a significant possibility that each applicant could establish eligibility for these benefits. Thus, in these processes, officers must decide whether there

<sup>41</sup> See *Matter of Bufalino*, 12 I&N Dec. 277, 282 (BIA 1967) (interpreting the “satisfaction of the Attorney General” standard as applied when adjudicating an exception to deportability for failure to notify the Service of a change of address).

<sup>42</sup> 8 C.F.R. § 208.16(b)(1); *INS v. Stevic*, 467 U.S. 407, 104 S. Ct. 2489 (1984)

is a significant possibility that the applicant will be able to demonstrate that it is more likely than not that he or she will be persecuted or tortured in his or her home country. To adjudicate these cases, therefore, officers must fully understand both the “significant possibility” standard and the “more likely than not” standard.

#### 4.7 Reasonable Possibility

The *reasonable possibility* standard is lower than the “more likely than not” standard. In both asylum and refugee cases, a “well-founded fear of persecution” is established if there is a “reasonable possibility” that the applicant would be persecuted. While an applicant for refugee or asylum status must always establish his or her eligibility for the benefit (and the facts underlying the claim) by a preponderance of the evidence, one element of the refugee definition requires an applicant to show that the level of certainty that he or she would be persecuted in the future meets the “reasonable possibility” standard. In *Matter of Z-Z-O-*, the Board of Immigration Appeals clarified that an adjudicator’s predictions of what events may occur in the future are findings of fact, whereas whether an applicant has established an objectively reasonable fear of persecution based on these facts is a legal determination.<sup>43</sup>

The U.S. Supreme Court decision in *Cardoza-Fonseca* emphasized that “[o]ne can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.” The Court, in dicta, went on to cite favorably a leading authority:

Let us ... presume that it is known that in the applicant's country of origin every tenth adult male person is either put to death or sent to some remote labor camp.... In such a case it would be *only too apparent* that anyone who has managed to escape from the country in question will have ‘well-founded fear of being persecuted’ upon his eventual return.<sup>44</sup>

You should consider whether a preponderance of the evidence shows that a reasonable person in the applicant’s circumstances would fear persecution.

#### 4.8 Significant Possibility

Neither the statute nor the immigration regulations define a *significant possibility*, and the standard is not discussed in immigration case law. RAIO officers apply this standard in the context of credible fear determinations done in expedited removal cases and interdictions at sea. A credible fear of persecution or torture is defined as a “significant

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<sup>43</sup> *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-591 (BIA 2015).

<sup>44</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440, 107 S. Ct. 1207, 1213, 1217 (1987)(emphasis added); citing A. Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).

possibility” that the applicant could establish eligibility for asylum or for withholding of removal or deferral of removal under the Convention Against Torture.<sup>45</sup>

The legislative history behind the adoption of the “significant possibility” standard in these contexts indicates that the standard “is intended to be a low screening standard for admission into the usual full asylum [or overseas refugee] process.”<sup>46</sup> On the other hand, a claim that has “no possibility of success,” or only a “minimal or mere possibility of success,” would not meet the “significant possibility” standard.

While a mere possibility of success is insufficient to meet the credible fear standard, the “significant possibility of success” standard does not require the applicant to demonstrate that the chances of success are more likely than not.<sup>47</sup> An applicant will be able to show a significant possibility that he or she could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture if the evidence indicates that there is a substantial and realistic possibility of success on the merits. As such, the standard used in credible fear determinations is necessarily lower than that used in asylum or reasonable fear adjudications. For additional information about the requirements for credible fear determinations, see Asylum Training module: *Credible Fear*.

## 5 METHODOLOGICAL APPROACH

### Gather the Evidence

You will need to gather relevant evidence having bearing on the adjudication. This requires that you conduct required background and security checks and carefully review the file, including the application, any written statement(s) by the applicant or witnesses, and any documents submitted by the applicant. Depending on the adjudication, COI may also be important evidence that you will need to gather.

Another way of gathering evidence is by interviewing the applicant and any witnesses; this is required in certain adjudications including refugee and asylum adjudications. At an interview, in addition to the testimonial evidence, the applicant may offer additional documentary or COI evidence. You must accept all evidence that is offered. How to gather testimonial evidence is discussed in the RAIO interviewing modules, in particular *Interviewing – Eliciting Testimony*.

### Determine Materiality

<sup>45</sup> INA § 235(b)(1)(B)(v); 8 CFR § 208.30.

<sup>46</sup> See 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch).

<sup>47</sup> 142 Cong. Rec. H11071-02 (Sept. 25, 1996) (statement of Rep. Hyde) (noting that the credible fear standard was “redrafted in the conference document to address fully concerns that the ‘more probable than not’ language in the original House version was too restrictive”).

You must first determine whether the evidence is material, i.e., whether it would influence the outcome of the eligibility determination because it relates to a required legal element. The elements of eligibility are discussed in the legal modules for each benefit. For example, in refugee and asylum cases, each piece of evidence that you use in determining eligibility should relate in some way to the applicant's eligibility for the benefit sought. This could be evidence that is offered as proof of some element of the refugee definition such as well-founded fear or nexus. It could also be evidence that a bar does or does not apply to an applicant.

### **Evaluate the Quality of the Material Evidence**

Once you have determined that evidence is material, you must then determine the quality of that evidence.

The quality of each type of evidence is measured in a different way.

- Testimonial evidence: You must decide whether the testimony is credible, and assess its persuasiveness and probative value. This topic is covered in the RAIO Training Module, *Credibility*.
- Documentary evidence: You must determine the probative value of each piece of evidence. In deciding how much weight to afford evidence, you must consider the reliability, relevance, content, form, and nature of each piece of evidence. This topic is covered in the RAIO Training Module, *Decision Making* as well as during discussions regarding fraud and fraudulent documents.
- COI evidence: You must decide whether the information comes from a reputable source that can be independently corroborated. This topic is covered in the RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

Once you have gathered and evaluated the evidence, you should be ready to apply the law to the facts and make a decision. This topic is covered in the RAIO Training Module, *Decision Making*.

## **6 CONCLUSION**

Your role as a RAIO officer is to gather and evaluate the evidence of record, applying the appropriate burdens and standards of proof based on the claim before you.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Training Module, *Decision Making*. You will identify the relevant legal requirements of the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, and assign weight to each piece of evidence.



## 7 SUMMARY

### Evidence

Generally, any statement, document, or object that an applicant offers you must be considered as evidence. In addition, any COI materials that you discover in your research and any information accessed in relevant computer databases are also evidence.

Common forms of evidence you may encounter in adjudicating claims include:

- Testimonial evidence, including the applicant's testimony during the interview and the testimony of any witnesses he or she may bring to the interview
- Statements by other parties, including affidavits and letters submitted by family, friends, associates, or outside experts
- Travel documents such as passports and refugee travel documents; these also include tickets and receipts from transportation carriers
- Identity documents, which can include government-issued documents such as a national ID card or driver's license, as well as ID cards issued by other entities, such as an employment or school ID, and membership cards for any type of organization (you must distinguish between those identity documents that may be used to prove identity and those that merely establish the applicant's association with the issuing entity)
- Civil documents issued by government agencies, such as birth certificates, marriage certificates, police records, and death certificates
- U.S. Government records, which include the applicant's A-file, among other documents, as well as records stored in any Government database
- Medical evidence, which may include a statement or an affidavit from a physician who has examined the applicant to corroborate a claim of torture, or may be a regularly kept record from a doctor or hospital indicating that the applicant was a patient or received treatment

### Burden of Proof

While the applicant bears the burden of persuading you that he or she is eligible for the benefit that he or she seeks, you, as the trier of fact, have an affirmative duty to elicit information regarding the claim.

### Standard of Proof

The standard of proof specifies how convincing or probative the evidence must be to meet the burden of proof. The preponderance of the evidence is the most common

standard you will apply in adjudications. The applicant must always establish the facts of his or her case by a preponderance of the evidence; that is, that what he or she is asserting as fact is more likely than not true. The preponderance of the evidence standard will apply unless a different standard is specified in the statute.

Other standards that may apply are:

- “Clear and convincing” standard: used in determining whether an asylum application has been filed within the one-year filing deadline
- “Clearly and beyond doubt” standard: used when determining whether a refugee is admissible
- “To the satisfaction of the adjudicator” standard: used when an applicant is subject to the bar to applying for asylum because he or she has been previously denied by an Immigration Judge or because he or she did not file within the one-year filing deadline; used to establish exceptions to those prohibitions
- “Reasonable possibility” standard: used to determine whether an applicant has a well-founded fear of future persecution and in reasonable fear determinations
- “Significant possibility” standard: used in credible fear determinations and protection screenings for applicants interdicted at sea

### **Structured Approach to Evidence**

First, you must carefully gather the relevant evidence having bearing on the adjudication. Once you have all the evidence, you must determine whether each piece of evidence is material to the applicant’s claim and, if so, to which element of the applicant’s claim it relates. A piece of evidence may be relevant to more than one element of the claim. Finally, you must evaluate the quality of each piece of evidence and assign weight to it before making your decision.

**PRACTICAL EXERCISES**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**RAD Supplement**

**Applicant's Burden**

In the refugee context, the burden is on the applicant to establish eligibility by showing: that he or she (1) meets the definition of a refugee at INA § 101(a)(42); (2) has access to the U.S. Refugee Admissions Program by being a member of a group designated to be of special humanitarian concern to the United States under INA § 207 ; (3) is not firmly resettled in another country; (4) is admissible as an immigrant under the INA, and (5) merits refugee status as a matter of discretion. The refugee definition excludes those who ordered, incited, assisted, or otherwise participated in the persecution of others.

Because refugee applicants seek admission to the United States, INA § 207(c)(1) requires that they establish their admissibility. INA § 207(c)(3) specifies certain grounds of inadmissibility which do not apply to refugees and other grounds that may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The regulations governing overseas refugee adjudications do not explicitly list “mandatory” grounds for denial as is the case in the asylum regulations. Rather, the statute and regulations specify grounds of eligibility, which, if not met will result in

denial. In other words, cases will be denied where the applicants fail to establish that they have access to the USRAP (because they are not within a group designated to be of special humanitarian concern to the U.S.), have been firmly resettled, do not meet the refugee definition by, for example, having assisted or otherwise participated in the persecution of others, and/or are inadmissible.

In the overseas refugee processing context, applicants are generally not expected to provide evidence beyond testimony. Keep in mind that in many refugee interview settings, the refugees are in camps, set apart from the population of the host country and have limited access to resources. Even when they are integrated into the host population, their precarious status and lack of personal resources may make it very difficult for them to access documents from their home country. However, there may be refugee applicants from countries where corroborating documentation may be routinely available, and thus could be required by the adjudicator. In such cases, the evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Refugee Affairs Division HQ will advise its officers when corroborating documentation should be expected of particular refugee applicant populations, and will provide additional guidance about the consideration of documentary evidence during Pre-Departure Briefings prior to each circuit ride.

### **RAD Supplement**

#### **Testimony by Other Refugee Applicants**

In some cases there will be family members who have applied for refugee resettlement separately from the applicant, or other individuals who have applied for refugee status based on circumstances that are the same as or significantly similar to those of the applicant. Depending on the circumstances of each case, sometimes the statements made in another claim may be used as evidence in the claim before you. For example, in cases where a child is the principal applicant, the testimony of guardians, family members or other individuals with a close relationship to the child may be considered in the adjudication of the child's claim when the child is too young to articulate, e.g., a nexus to a protected ground. *See generally* RAIO Training Module, *Children's Claims*. The record and testimony of other family members on the same or cross-referenced cases may also be considered when, for example, establishing family relationships material to an applicant's access to USRAP. However, a credibility confrontation based on inconsistencies between family members' testimony could violate confidentiality and place the family members at risk of harm. *See* RAIO Training Module,

*Credibility*, section 3.1.2 Consistency.

### SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### REQUIRED READING

- 1.
- 2.

#### ADDITIONAL RESOURCES

1. Cianciarulo, Marisa Silenzi. “Terrorism and Asylum Seekers: Why the REAL ID Act Is a False Promise”, 43 Harv. J. on Legis. 101, at 13 (Winter, 2006).

#### SUPPLEMENTS

##### ASM Supplement

##### **Applicant’s Burden**

In the asylum context, the burden is on the applicant to establish the following affirmative grounds of eligibility: that he or she (1) is eligible to apply for asylum, (2) is a refugee within the meaning of INA § 101(a)(42)(A), and (3) merits asylum as a matter of discretion.<sup>48</sup>

After an applicant has established eligibility for protection based on the refugee definition, his or her burden of proof is satisfied unless there is evidence that a mandatory ground for denial applies. If the evidence indicates that a mandatory ground for denial of asylum applies, *only then does* the applicant have the burden of “proving by a preponderance of the evidence that he or she did not so act.”<sup>49</sup>

<sup>48</sup> INA § 208(a)(2); (b)(1)(B)(i); (b)(2)(A)

<sup>49</sup> 8 C.F.R. § 208.13(c); see 8 C.F.R. § 1240.8(d).



**ASM Supplement**

**Must Weigh All Evidence**

“In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record.”<sup>50</sup>

Thus, an applicant’s testimony may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Other evidence of record” may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is but a component of burden of proof, and not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant's burden of proof that he or she is eligible for protection and merits a favorable exercise of discretion.

If you “determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”<sup>51</sup>

You have the authority to question any witnesses presented by the applicant.<sup>52</sup>

**ASM Supplement**

**Must Meet the Refugee Definition<sup>53</sup>**

The burden of proof is on the applicant to establish that he or she is a refugee within the meaning of INA § 101(a)(42)(A) and that discretion should be exercised favorably to grant asylum or refugee status.

In order to meet his or her burden, the applicant must present evidence that goes to each element of the refugee definition. The applicant must present evidence to

<sup>50</sup> INA § 208(b)(1)(B)(ii). See also *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

<sup>51</sup> INA § 208(b)(1)(B)(ii).

<sup>52</sup> 8 C.F.R. § 208.9(b).

<sup>53</sup> For a more detailed discussion on this topic, see RAIO Training Module, *Refugee Definition*.

establish that he or she is

- Outside his or her country of nationality or any country in which he or she last habitually resided
- Is unable or unwilling to return to that country
- Is unable or unwilling to avail himself or herself of the protection of 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

The applicant must also present evidence establishing that he or she is eligible to apply for asylum.

In order to establish that the persecutor's motivation for persecuting the applicant falls within the scope of the refugee definition, "the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant."<sup>54</sup>

In evaluating nexus, asylum officers should take care to use the "at least one central reason" language in their assessments.

In addition to meeting the refugee definition, and eligibility to apply, the applicant must establish that he or she merits asylum as a matter of discretion and is not subject to any mandatory bars.

### ASM Supplement

#### Past Persecution<sup>55</sup>

If the applicant establishes that he or she suffered past persecution on account of a protected ground, the applicant has met the burden of establishing that he or she is a refugee.

One of the differences between the refugee definition found in the INA and the

<sup>54</sup> INA §208(b)(1)(B)(i).

<sup>55</sup> For a more detailed discussion of this topic, see RAIO Module, *Definition of Persecution, and Eligibility Based on Past Persecution*.

definition in the United Nations Convention and Protocol relating to the Status of Refugees is that the INA definition defines a refugee as someone who either has experienced past persecution on account of a protected ground, or fears persecution in the future.

### **Well-Founded Fear**

If the applicant has not established past persecution on account of a protected characteristic, he or she must establish a well-founded fear of future persecution on account of a protected characteristic to meet his or her burden of establishing that he or she is a refugee. This burden includes establishing that it would not be reasonable to expect the applicant to relocate within the country of feared persecution to avoid future persecution.

### **Burden Shifting When Past Persecution Found**

While the burden of proof resides with the applicant to establish eligibility for asylum or refugee status, the regulations provide for two circumstances in the exercise of discretion whether to grant asylum claims in which the burden shifts to USCIS. 8 CFR § 208.13(b) calls for a discretionary referral or denial when:

*... an alien [is] found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:*

*(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or*

*(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.*

The burden of proof shifts to USCIS (you, the adjudicator) to show that either condition exists to rebut the presumption of a well-founded fear of future persecution that arises when the applicant establishes past persecution. The applicant has no further burden of proof unless you are able to prove at least one of the two conditions by a preponderance of the evidence.

If you have shown that the applicant has no risk of future persecution, the burden of proof then shifts back to the applicant to demonstrate that he or she should be granted asylum in the exercise of discretion:

- owing to compelling reasons for being unable or unwilling to return

to the country arising out of the severity of the past persecution; or

- because there is a reasonable possibility that the applicant would suffer other serious harm upon removal to that country.<sup>56</sup>

For more information on the burden shift see RAI0 Training Modules, *Discretion and Definition of Persecution, and Eligibility Based on Past Persecution*.

### **Mandatory Bars**

If the evidence indicates that a ground for mandatory denial of asylum (or “mandatory bar to asylum”) or refugee status may apply, then the applicant must establish by a preponderance of the evidence that the ground for mandatory denial does not apply.

Evidence indicative of a possible bar may be produced either by the applicant or by USCIS, but once such evidence is part of the record, the applicant bears the burden of proof to establish that the bar does not apply.

#### ***Example***

After conducting an interview the officer found that Xavier was a refugee because he had suffered persecution during the Rwandan genocide. However, the A-file contains evidence that Xavier was subsequently accused by the Truth and Reconciliation Commission of participating in genocidal acts. Xavier would have to show, by a preponderance of the evidence<sup>57</sup>, that he did not commit those acts.

### **ASM Supplement**

#### **Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts”**

According to the INA, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts.”<sup>58</sup> To give effect to the plain meaning of the statute and each of the terms therein, an applicant’s testimony must satisfy all three prongs of the “credible, persuasive, and ... specific” test in order to establish his or her burden of proof

<sup>56</sup> 8 C.F.R. § 208.13(b)(1)

<sup>57</sup> See section above, Standards of Proof.

<sup>58</sup> INA § 208(b)(1)(B)(ii).

without corroboration.

Section 208(b)(1)(B)(iii) of the INA addresses the “credible” prong of this test. *See* RAIO Module, *Credibility* and the ASM Supplements to that Module.

The terms “persuasive” and “specific facts” must have independent meaning above and beyond the first term “credibility.” “Specific facts” are distinct from statements of belief. When assessing the probative value of an applicant’s testimony, the trier of fact must distinguish between fact and opinion testimony and determine how much weight to assign to each of the two forms of testimony.

“In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record.”<sup>59</sup>

Thus, an applicant may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Other evidence of record” may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is only a component of burden of proof, not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant's burden of proof that he or she is eligible for protection (i.e., has established that he or she suffered past persecution or has a well-founded fear of persecution on account of a protected ground) and merits a favorable exercise of discretion.

If you “determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”<sup>60</sup>

### **ASM Supplement**

#### **Statements by Other Parties - Testimony by other applicants for protection in their own cases**

Testimony of Other Asylum Applicants: Because of the confidentiality regulation at 8 C.F.R. 208.6, the testimony given by one asylum applicant in support of his or her claim cannot readily be considered in evaluating the request for asylum of

<sup>59</sup> INA § 208(b)(1)(B)(ii). *See also* *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

<sup>60</sup> INA § 208(b)(1)(B)(ii)

another asylum applicant. This limitation extends to the testimony of family members, even if the testimony may be conflicting. However, the testimony of an asylum applicant appearing as a witness for another asylum applicant would be evidence to consider. There are certain exceptions in the confidentiality regulation that you may want to explore with a supervisory asylum officer. If questions arise in such cases, the supervisory asylum officer should contact Headquarters.

**ASM Supplement**

**Country of Origin Information (COI)**

You must conduct research and consider available COI. In addition to information submitted by the applicant, you may consider information obtained from: the Department of State, the RAIO Research Unit, international organizations, private voluntary agencies, academic institutions, and any other credible source, which may include reputable newspapers and magazines. 8 C.F.R. § 208.12. For considerations regarding the reliability of sources, see RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**IO Supplement**  
**There are no IO Supplements**

# Questions and Answers

June 10, 2013

## **Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children**

### **Introduction**

U.S. Citizenship and Immigration Services (USCIS) is responsible for initial adjudication of asylum applications filed by Unaccompanied Alien Children (UAC). On December 23, 2008, former President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457. The provisions of the TVPRA that apply to UACs took effect on March 23, 2009. The TVPRA provides USCIS with initial jurisdiction over all asylum applications filed by UACs. Thus, even UACs who have been issued a *Notice to Appear* in immigration court can have their application for asylum heard by USCIS if they were UACs on the date they first filed for asylum. The TVPRA also provides an opportunity for UACs, who did not previously file for asylum with USCIS and who had a pending claim in immigration court, on appeal to the Board of Immigration Appeals, or in federal court, to have their asylum claim heard and adjudicated by a USCIS Asylum Officer in a non-adversarial setting.

Prior to the issuance of this guidance, Asylum Offices made independent factual inquiries under the UAC definition to support their determinations of UAC status, which was assessed at the time of the UAC's filing of the asylum application. In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), had already made a determination of UAC status after apprehension, as required for the purpose of placing the individual in the appropriate custodial setting. Effective June 10, 2013, in those cases in which either CBP or ICE has already made a determination that the applicant is a UAC, and that status determination was still in place on the date the asylum application was filed, Asylum Offices will adopt that determination without another factual inquiry. Unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, Asylum Offices will adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

### **Questions and Answers**

#### **Q. Who is an Unaccompanied Alien Child (UAC)?**

*A.* An Unaccompanied Alien Child (UAC) is a legal term referring to a child who: has no lawful immigration status in the United States; has not attained 18 years of age; and has no parent or legal guardian in the United States, or for whom no parent or legal guardian in the United States is available to provide care and physical custody.



**Q. Who is affected by the updated initial jurisdiction procedures?**

A. The updated procedures affect UACs who are in removal proceedings and wish to apply for asylum. USCIS will now adopt a prior UAC status determination made by CBP or ICE for the purpose of determining USCIS jurisdiction over asylum applications filed by UACs in removal proceedings.

**Q. I was in custody with the Office of Refugee Resettlement (ORR) and was released to a parent or relative. Am I still a UAC?**

A. Under the updated procedures, effective June 10, 2013, USCIS will adopt a prior UAC status determination made by CBP or ICE that was in place on the date you first filed for asylum. If either CBP or ICE found that you were a UAC and transferred you to ORR custody, USCIS will generally take jurisdiction over your asylum application, even where there may be some evidence that you may have reunited with a parent or legal guardian after CBP or ICE determined that you were a UAC.

**Q. I was in custody with the Office of Refugee Resettlement (ORR) and turned 18 years old after I was released. Am I still a UAC?**

A. Under the updated procedures, effective June 10, 2013, USCIS will accept a prior UAC status determination made by CBP or ICE if that status determination was still in place on the date you first filed for asylum. If either CBP or ICE found that you were a UAC and transferred you to ORR custody, and there was no action taken by ICE, CBP or ORR to terminate that UAC finding, USCIS will take jurisdiction over your asylum application.

**Q. I am a UAC and I wish to apply for asylum. However, I was not issued a *Notice to Appear* and have never been in immigration court. Where do I apply?**

A. If you are a UAC who was not issued a *Notice to Appear* in immigration court and you wish to apply for asylum, you can file an asylum application with USCIS. You should follow the general instructions for asylum applicants not in proceedings in immigration court in the Form I-589, *Application for Asylum and for Withholding of Removal*, available at [www.uscis.gov/forms](http://www.uscis.gov/forms).

**Q. I am a UAC who was in ORR custody and was issued a *Notice to Appear* in immigration court. I have not previously filed for asylum. Can I file directly with USCIS or do I have to wait until my hearing date in immigration court?**

A: You can file Form I-589 directly with USCIS before appearing in immigration court. You should submit proof that you were determined to be a UAC with your Form I-589. Evidence that you were in ORR custody as a UAC, such as either the UAC Initial Placement Referral Form or the ORR Verification of Release Form, can show that you were determined to be a UAC. However, **you must attend all scheduled immigration court hearings**. You should inform the immigration judge and the Immigration and Customs Enforcement (ICE) trial attorney that you filed Form I-589 with USCIS and provide the status of your application with USCIS, including whether you have been interviewed or have an interview scheduled. If you have already appeared in immigration court and been provided with a UAC Instruction Sheet, please submit it to USCIS with your asylum application.

**Q. I am in removal proceedings and filed a Form I-589, *Application for Asylum and for Withholding of Removal*, with USCIS. Will ICE and the immigration judge know I applied for asylum?**

A: After you have filed for asylum with USCIS, **you must appear at any hearings scheduled in immigration court**. You should be certain to tell the immigration judge and ICE trial attorney that you have filed an application with USCIS and at your next hearing in immigration court, you may be required to provide a copy of your USCIS receipt notice to the ICE trial attorney.

**Q. If I was issued a *Notice to Appear* and then applied for asylum with USCIS, do I still have to appear in immigration court?**

**A:** Yes. Even while pursuing the asylum claim, you must appear in immigration court if you have a hearing scheduled. At the hearing, ICE may again seek to continue your case to allow USCIS to adjudicate your asylum application.

**Q. What happens if I am in removal proceedings and I do not file a Form I-589, *Application for Asylum and for Withholding of Removal*, with USCIS?**

**A:** If you indicated that you wished to apply for asylum and you fail to file a Form I-589, *Application for Asylum and for Withholding of Removal*, USCIS cannot adjudicate your asylum application and the immigration judge may proceed with your removal proceedings.

**Q. I am a UAC and my asylum application was pending in immigration court, on appeal before the Board of Immigration Appeals, or with a federal court when the TVPRA took effect. May I request that USCIS adjudicate my asylum application?**

**A:** Yes. USCIS also 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). If your case was pending in any of these places and you never filed for asylum with USCIS, you should raise your concerns in the context of those proceedings.

**Q. How do I know if CBP or ICE has made a previous UAC status determination in my case?**

**A:** If you were apprehended by CBP or ICE and transferred to ORR custody, it is most likely because CBP or ICE determined that you were a UAC. An Asylum Officer will know if a previous UAC status determination has been made in your case by examining the documents in your alien file.

**Q. I am an unaccompanied minor in removal proceedings but have never been in ORR custody. May I request that USCIS adjudicate my asylum application?**

**A:** Yes. You can file Form I-589 directly with USCIS. However, **you must attend all scheduled immigration court hearings.** You should inform the immigration judge and the Immigration and Customs Enforcement (ICE) trial attorney that you filed Form I-589 with USCIS and provide the status of your application with USCIS, including whether you have been interviewed or have an interview scheduled. If you have already appeared in immigration court and been provided with a UAC Instruction Sheet, please submit it to USCIS with your asylum application. If CBP or ICE has not made a previous UAC status determination in your case, USCIS will have jurisdiction over your asylum case if you were a UAC at the time that you filed your asylum application. The UAC Instruction Sheet, by itself, is not evidence that CBP or ICE has made a UAC status determination in your case. The Asylum Officer will make this determination by asking you questions regarding your age and unaccompanied status.

**Q. What do I do if I was released from an ORR facility or my address otherwise changed?**

**A:** If you change your address after filing a Form I-589 application, you must:

1. Submit a Form AR-11 (Alien's Change of Address Card) to USCIS; and
2. Submit a Form EOIR-33/IC (Alien's Change of Address Form/Immigration Court) to EOIR.

If the forms are not included in the asylum instruction packet you received from ICE, they are available on the Web at [www.uscis.gov/forms](http://www.uscis.gov/forms) or [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).

**Q. I am currently in ORR custody. Are the procedures any different for me?**

*A:* The procedures for filing for asylum are the same. You should submit proof that you were determined to be a UAC, such as the UAC Initial Placement Referral Form, with your Form I-589. ORR will coordinate with the local asylum office if any interview-related issues arise. For more information on ORR's general implementation of the TVPRA, please see ORR's website at [www.acf.hhs.gov/programs/orr](http://www.acf.hhs.gov/programs/orr).

**Q. I am a minor in removal proceedings and already applied for asylum with USCIS. USCIS sent me a Notice of Lack of Jurisdiction and referred my case to the immigration court. Can I ask USCIS to take back my asylum case based on the updated initial jurisdiction procedures?**

*A:* No. The updated initial jurisdiction procedures only apply to cases in which USCIS has not issued a final decision as of June 10, 2013. If USCIS referred your case to an immigration court for lack of jurisdiction under the previous procedures, you may request asylum again before the immigration judge.

– USCIS –



U.S. Citizenship  
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**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**FRAUD IN THE CONTEXT OF RAIO  
ADJUDICATIONS AND OVERVIEW OF  
THE FRAUD DETECTION AND  
NATIONAL SECURITY (FDNS)  
DIRECTORATE**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

# FRAUD IN THE CONTEXT OF RAIO ADJUDICATIONS AND OVERVIEW OF THE FRAUD DETECTION AND NATIONAL SECURITY (FDNS) DIRECTORATE

## Training Module

### MODULE DESCRIPTION

This lesson is designed to acquaint you (RAIO officers) with the types of fraud that you are likely to encounter in your adjudications and how fraud can affect your adjudications. This lesson also introduces you to the Fraud Detection and National Security Directorate (FDNS), and how FDNS officers may assist you in identifying and verifying fraud indicators in your cases and advise you about patterns of fraud.

### TERMINAL PERFORMANCE OBJECTIVE(S)

Given a request for benefits to adjudicate, you will be able to recognize fraud indicators and determine whether to request assistance from FDNS. Furthermore, when adjudicating a pending immigration benefit, you will be able to identify, verify, and evaluate fraud indicators.

### ENABLING PERFORMANCE OBJECTIVES

1. Provide adjudicators with a general understanding of fraud and USCIS' approach to fraud deterrence
2. Familiarize adjudicators with the fraud referral process
3. Enable adjudicators to identify fraud indicators related to asylum, refugee, identity, and relationships
4. Enable adjudicators to recognize and understand primary fraud detection resources
5. Familiarize adjudicators with FDNS and its role in the adjudication process

## 6. Familiarize adjudicators with the Overseas Verification Program

**INSTRUCTIONAL METHODS**

Presentation, Discussion, Practical Exercises

**METHOD(S) OF EVALUATION**

Multiple Choice Exam

**REQUIRED READING**

1. Written Testimony of Alejandro M. Mayorkas, Director, U.S. Citizenship and Immigration Services, for a Hearing on SAFEGUARDING THE INTEGRITY OF THE IMMIGRATION ADJUDICATION PROCESS, before the House Committee on the Judiciary Subcommittee on Immigration Policy and Enforcement, dated February 15, 2012.
2. Written Testimony of Sarah M. Kendall, Associate Director, Fraud Detection and National Security Directorate, U.S. Citizenship and Immigration Services, for a Hearing on the AFTERMATH OF FRAUD BY IMMIGRATION ATTORNEYS, before the House Committee on the Judiciary Subcommittee on Immigration Policy and Enforcement, dated July 24, 2012.

**Division-Specific Required Reading - Refugee Division****Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES**

1. GAO-02-66: Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems, published January 31, 2002.
2. GAO-06-259: Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud, published March 10, 2006.
3. GAO-16-50: Asylum: Additional Actions Needed to Assess and Address Fraud Risks, published December 2, 2015.

4. Memorandum of Agreement between USCIS and ICE on the Investigation of Immigration Benefit Fraud, entered on September 25, 2008.
5. Fraud Detection Standard Operating Procedures, U.S. Citizenship and Immigration Services, Fraud Detection and National Security, Fraud Detection Branch, March 17, 2011 (hereafter cited as Fraud Detection SOP).

#### **Division-Specific Additional Resources - Refugee Division**

#### **Division-Specific Additional Resources - Asylum Division**

8. Lynden Melmed, Chief Counsel, USCIS. *Authority of Asylum Officers to Retain Fraudulent Documents or Documents Fraudulently Obtained*. Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations, and Greg Smith, Acting Associate Director, National Security and Records Verification. (Washington, DC: November 30, 2007).
9. Joseph E. Langlois, Chief, Asylum Division, RAI0. *Minimum Staffing Requirement for Asylum Office Forensic Document Laboratory Certified Document Instructors*. Memorandum to Asylum Office Directors and Deputy Directors. (Washington, DC: October 2, 2006).
10. William Yates, Associate Director of Operations. *Roles and Responsibilities of FDNS Immigration Officers*. Memorandum to Asylum Directors, Center Directors, District Directors, Regional Directors, and FDU Chiefs. (Washington, DC: April 4, 2005).
11. Don Crocetti, Director, Office of Fraud Detection & National Security. *Implementation of USCIS Anti-Fraud Initiative*. Memorandum to Asylum Directors, Center Directors, Regional Directors, and District Directors. (Washington, DC: September 10, 2004).
12. William Yates, Associate Director of Operations. *Deployment of Immigration Anti-Fraud Officers*. Memorandum to Asylum Office Directors. (Washington, DC: August 3, 2004).

#### **Division-Specific Additional Resources – International Operations Division**

13. Kendall, Sarah M, Associate Director, Fraud Detection and National Security Directorate; Langlois, Joseph E., Associate Director, Refugee, Asylum and International Operations Directorate; Monica, Donald J., Associate Director, Field Operations Directorate; Neufeld, Donald W., Associate Director, Service Center Operations Directorate, Overseas Verification SOP and Operation Guidance, September 26, 2014.



14. Overseas Verification Standard Operating Procedures, USCIS Fraud Detection and National Security Directorate Fraud Division, September 5, 2014. Available at <http://connect.uscis.dhs.gov/org/RAIO/IO/Documents/Overseas%20Verification%20SOP.pdf>
15. Overseas Verification Program: Verification Resources by Country Where USCIS is Present, International Operations Division, Refugee, Asylum, International Operations Directorate, U.S. Department of Homeland Security.
16. International DNA Processing: Suggesting, Collecting, and Interpreting DNA Evidence, September 4, 2014. Version 1.1.
17. Ruppel, Joanna, Chief, USCIS International Operations Division, *Implementation of updated interim DNA Field Guidance, International DNA Processing, Suggesting, Collecting and Interpreting DNA Evidence*, September 4, 2014.
18. USCIS International Operations Division, Asylee/Refugee Following-to-Join Travel Eligibility Standard Operation Procedures (“I-730 Travel Eligibility SOP”), Version 3.1. March 2, 2015.
19. USCIS International Operations Division, Form I-730: Refugee or Asylee Relative Petition Adjudications Standard Operating Procedures, Version 1.0, April 4, 2014

### CRITICAL TASKS

SOURCE:

Task/ Skill #	Task Description
OK9	Knowledge of Fraud Detection and National Security (FDNS) functions and responsibilities
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence
ILR20	Knowledge of different standards of proof
ILR24	Knowledge of policies and procedures for FDNS Overseas Verification
ILR25	Knowledge of policies and procedures for FDNS Fraud Referral
IRK1	Knowledge of the appropriate points of contact to receive FDNS-assistance or guidance
IRK5	Knowledge of fraud detection resources (e.g., ICE Forensic Lab [HSI-FL])
IRK6	Knowledge of strategies and techniques of identifying potential counterfeit and fraudulent documents or information
IRK7	Knowledge of CIS fraud prevention resources
IRK8	Knowledge of document security features

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IRK9	Knowledge of the policies and procedures for reporting benefit fraud
RI6	Skill in identifying information trends and patterns
RI8	Skill in identifying fraud indicators
C5	Skill in recognizing and reacting to non-verbal cues
DM2	Skill in applying legal, policy, and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
3/8/2016	Entire Lesson Plan	Published	RAIO Training

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

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

## 1. INTRODUCTION

Fraud poses a significant challenge to the integrity of U.S. Citizenship and Immigration Services (USCIS) programs. Because you will encounter fraud in the course of your adjudications and because commission of fraud in an application or petition can render an applicant or beneficiary ineligible for the benefit sought, you must understand what is meant by the term "fraud" and how to address fraud when you suspect and/or discover it.

This lesson is designed to acquaint you with the types of fraud that you are likely to encounter and to assist you in understanding how fraud can affect the adjudication of an application for a benefit. However, this lesson is not designed to make you an expert on fraud and its detection. You must consult with your local FDNS Immigration Officers (FDNS IOs) for more specific information on local trends and guidance on how to handle specific instances of fraud you may encounter.

The lesson is divided into two components. The first section discusses the definition and relevance of fraud in RAI0 adjudications, examples of fraud commonly encountered by RAI0 officers, and how to recognize fraud indicators. The second section gives a brief overview of the Fraud Detection and National Security Directorate (FDNS) of USCIS, including working effectively with FDNS officers integrated into each RAI0 division to collectively strengthen the integrity of the program by deterring fraud and preventing national security risks.

### 1.1 Fraud and the RAI0 Directorate

While benefit fraud can occur in all USCIS adjudications, applicants for benefits such as refugee status, asylum, or parole represent unique populations. In many cases, applicants have little or no corroborating documentation, and may rely solely on testimony in support of their claims, which presents unique challenges in identifying fraud. Furthermore, refugees, asylees, and their beneficiaries are eligible to apply for legal permanent resident status and, ultimately, citizenship.

Consequently, identifying indicators of fraud during the asylum and refugee process is essential to prevent an otherwise ineligible individual from becoming a legal permanent resident or U.S. citizen.

While individuals granted humanitarian parole by the International Operations (IO) Division are not eligible for permanent resident status or citizenship, they are permitted to enter the United States temporarily under certain conditions for urgent humanitarian reasons or significant public benefit on a case-by-case basis. Parole applications are generally adjudicated within a short period of time and do not require an in-person interview. Applicants seeking parole must therefore be carefully vetted through criminal and national security background checks and document reviews.

RAIO's international presence at multiple field offices abroad puts the directorate in an advantageous position to detect fraud and national security concerns at the most critical stage—prior to an individual's arrival in the U.S. The directorate's presence abroad also facilitates local verification of documents on behalf of USCIS domestic offices, furthering RAIO's fraud detection and national security capabilities.

Acknowledging and seeking to address these challenges, the Refugee Affairs Division (RAD), the Asylum Division, and IO have instituted the most extensive set of mandatory identity and background checks in USCIS. Each of the RAIO divisions has dedicated HQ staff to develop and expand program policies and procedures to deter fraud and enhance RAIO's ability to identify national security concerns.

## 2. FRAUD OVERVIEW

It is important to understand your role as an officer in the fraud detection and prevention process and how to work most effectively with FDNS IOs in your local offices. In addition to identifying fraud in your adjudications, and determining the impact on eligibility, you play a critical role in the larger fraud prevention efforts of USCIS by referring fraud to FDNS.

### 2.1 Source of Authority

The Secretary of DHS maintains broad authority to administer and enforce the Immigration and Nationality Act (INA) and all other laws relating to naturalization and immigration. The Secretary has delegated to USCIS the authority to conduct interviews and investigate alleged civil violations of the immigration laws.<sup>1</sup> Through this delegated authority, USCIS and U.S. Immigration and Customs Enforcement (ICE) further entered into a written agreement in which

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<sup>1</sup> Department of Homeland Security Delegation Number: 0150.1, dated June 5, 2003.



ICE agreed to take the lead on criminal investigations while USCIS agreed to focus on detecting and combating fraud associated with applications and petitions.<sup>2</sup>

Petitions and applications submitted to USCIS are signed under penalty of perjury and also authorize USCIS to verify information provided on the form to ensure compliance with applicable laws, regulations, and authorities.<sup>3</sup> USCIS has the legal right to verify information provided on applications and petitions and may verify the information before and after a decision is made.

## 2.2 Definition of Fraud

In the USCIS context, fraud is defined as a willful misrepresentation of the truth or concealment of a material fact in order to obtain a benefit for which one would otherwise not be qualified.<sup>4</sup> Fraud in RAO adjudications commonly takes the form of oral or written testimony but may be committed through the concealment or nondisclosure of material<sup>5</sup> facts, through the material falsification or alteration of documentary evidence, or through conduct that amounts to an assertion not in accordance with the truth.<sup>6</sup>

To constitute fraud, the false representation regarding a material fact must have been made:

- knowingly, intentionally and deliberately<sup>7</sup> and

<sup>2</sup> Memorandum of Agreement Between USCIS and ICE on the Investigation of Immigration Benefit Fraud, entered on September 25, 2008.

<sup>3</sup> 8 C.F.R. § 103.1.

<sup>4</sup> See Fraud SOP, p.6. Note that “fraud” as defined in the SOP covers all activities that would render an alien inadmissible under INA § 212 (a)(6)(C)(i), which provides that aliens who seek to procure, have sought to procure, or have procured an immigration benefit by “fraud or willful misrepresentation of a material fact” are inadmissible. As used in this section of the statute, “fraud” also requires that the applicant have had the intent to deceive the official and that the official to whom the misrepresentation is made have believed and acted upon the misrepresentation. See Matter of Kai Hing Hui, 15 I&N Dec. 288, 290 (BIA 1975); Matter of G-G-, 7 I&N Dec. 161 (BIA 1956).

<sup>5</sup> A material fact is one that is significant or essential to the adjudication of the merits of the claim. In other words, a fact is material if it is of such a nature that knowledge of the fact would affect a reasonable officer’s decision-making process in adjudicating the merits of the claim. See Black’s Law Dictionary (10th ed. 2014); see also Kungys v. United States, 485 U.S. 759, 770 (1988) (concluding that a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the decision-making body).

<sup>6</sup> See, e.g., INA § 274(c); Cervantes-Gonzales v. INS, 244 F.3d 1001, 1004 (9th Cir. 2001); Garcia v. INS, 31 F.3d 441, 443 (7th Cir. 1994); Witter v. INS, 113 F.3d 549, 553 (5th Cir. 1997); Matter of Y-G-, 20 I&N Dec. 794, 797 (BIA 1994).

<sup>7</sup> See Matter of G-G-, 7 I&N Dec. 161 (BIA 1956); Matter of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975) (holding that aliens must be fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented facts, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true, to be found inadmissible).

- in order to procure an immigration-related benefit for which the beneficiary is or was not otherwise qualified.<sup>8</sup>

In the course of an interview or case review, you may discover that the individual is or was involved in committing other fraud not directly associated with fraud in the RAIO adjudication context. In such cases, consult with an FDNS officer to determine if the fraudulent information should be passed on to another agency for investigation.

### 2.3 Perpetrators of Fraud

Perpetrators of fraud can be found in and outside of the immigration process. Typical perpetrators of fraud within the immigration process include:

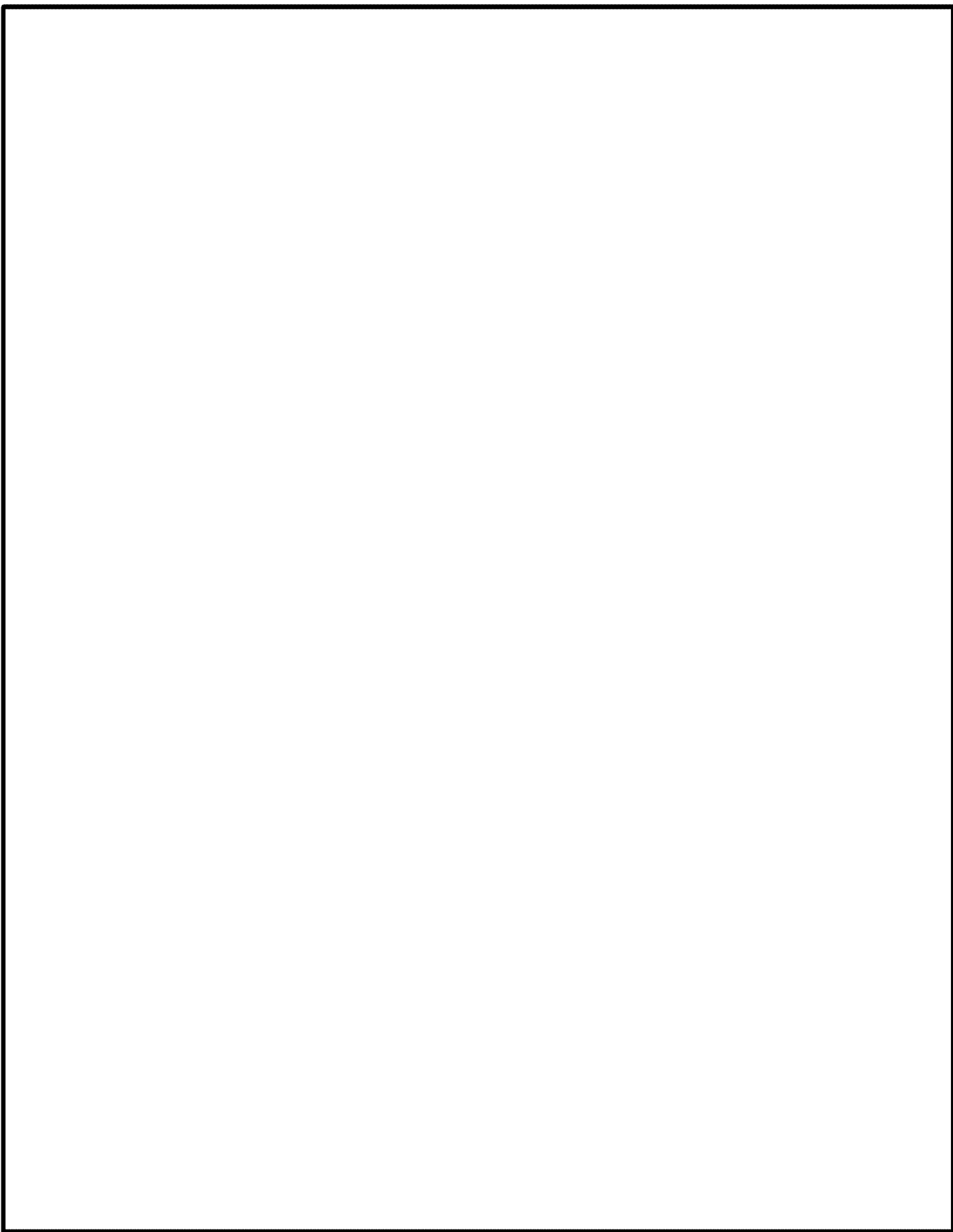
- Direct Recipients of a Benefit
  - A refugee or asylum applicant; Immigrant Visa petitioner
  - Dependents of an applicant; Immigrant Visa beneficiary
- Immigration Service Provider (ISP)
  - Attorney
  - Translator/Interpreter
  - Preparer/Notary

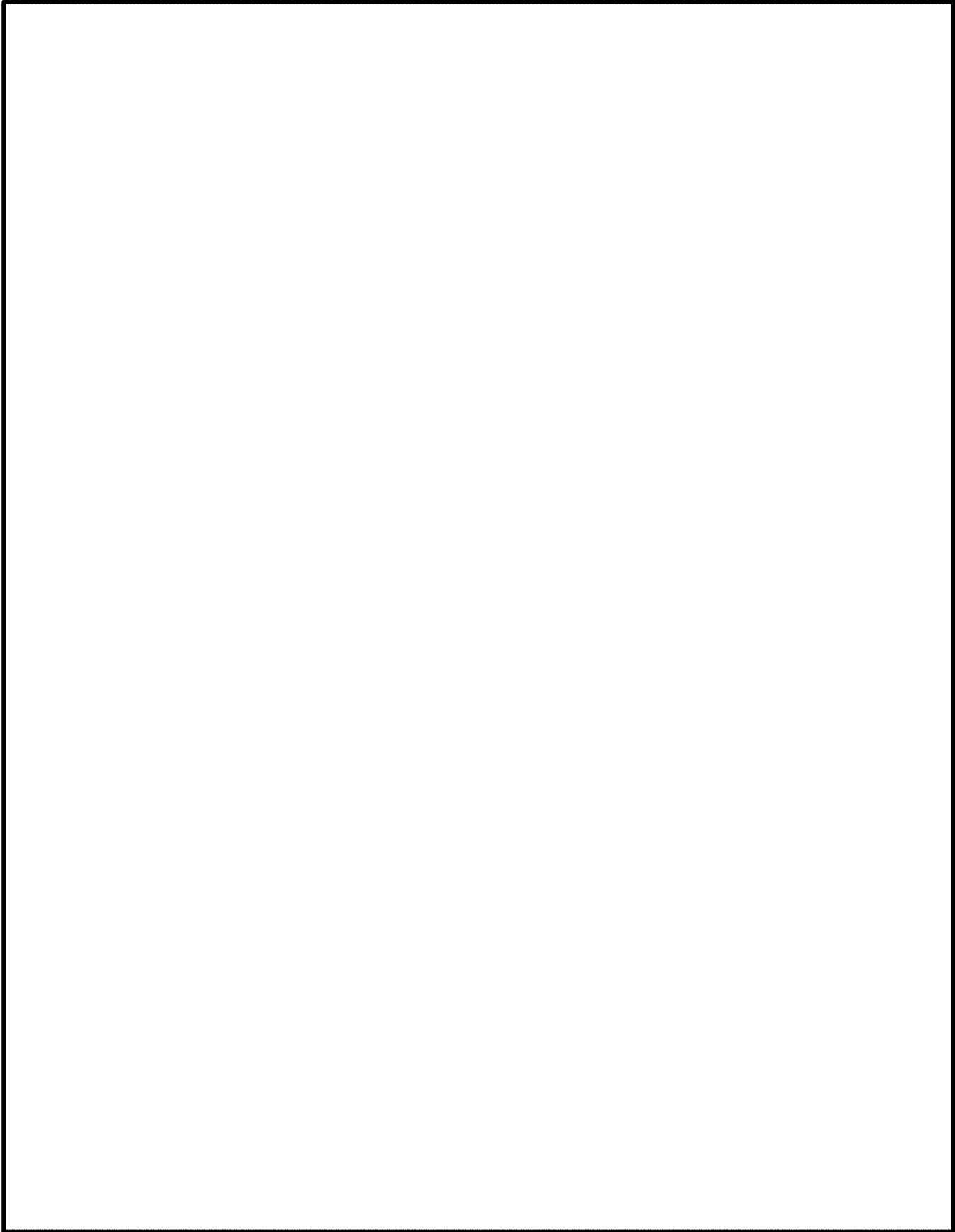
Other perpetrators of fraud outside of the immigration process typically include:

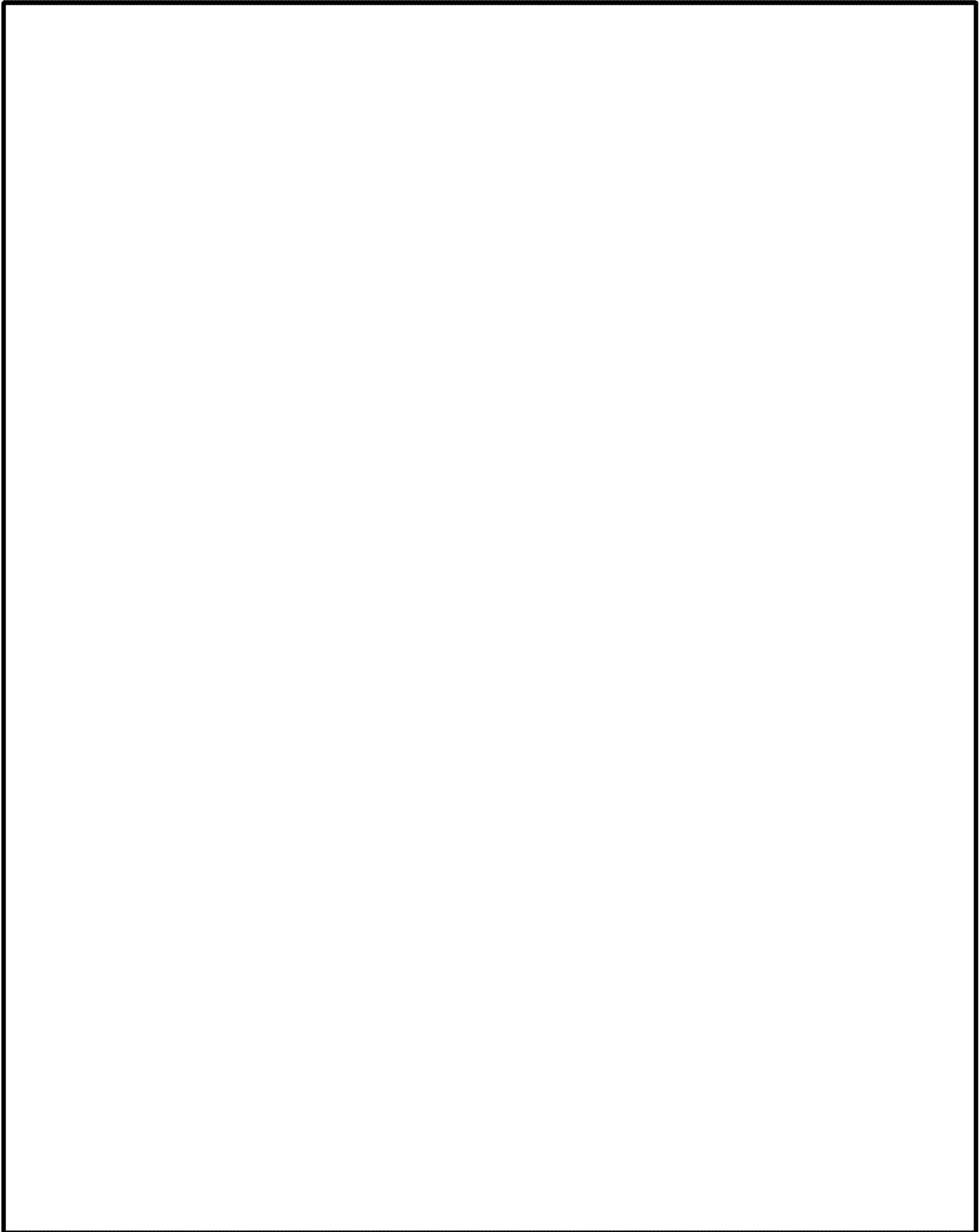
- A document vendor
- A visa facilitator
- A smuggler or middleman
- Other facilitating organizations or officials

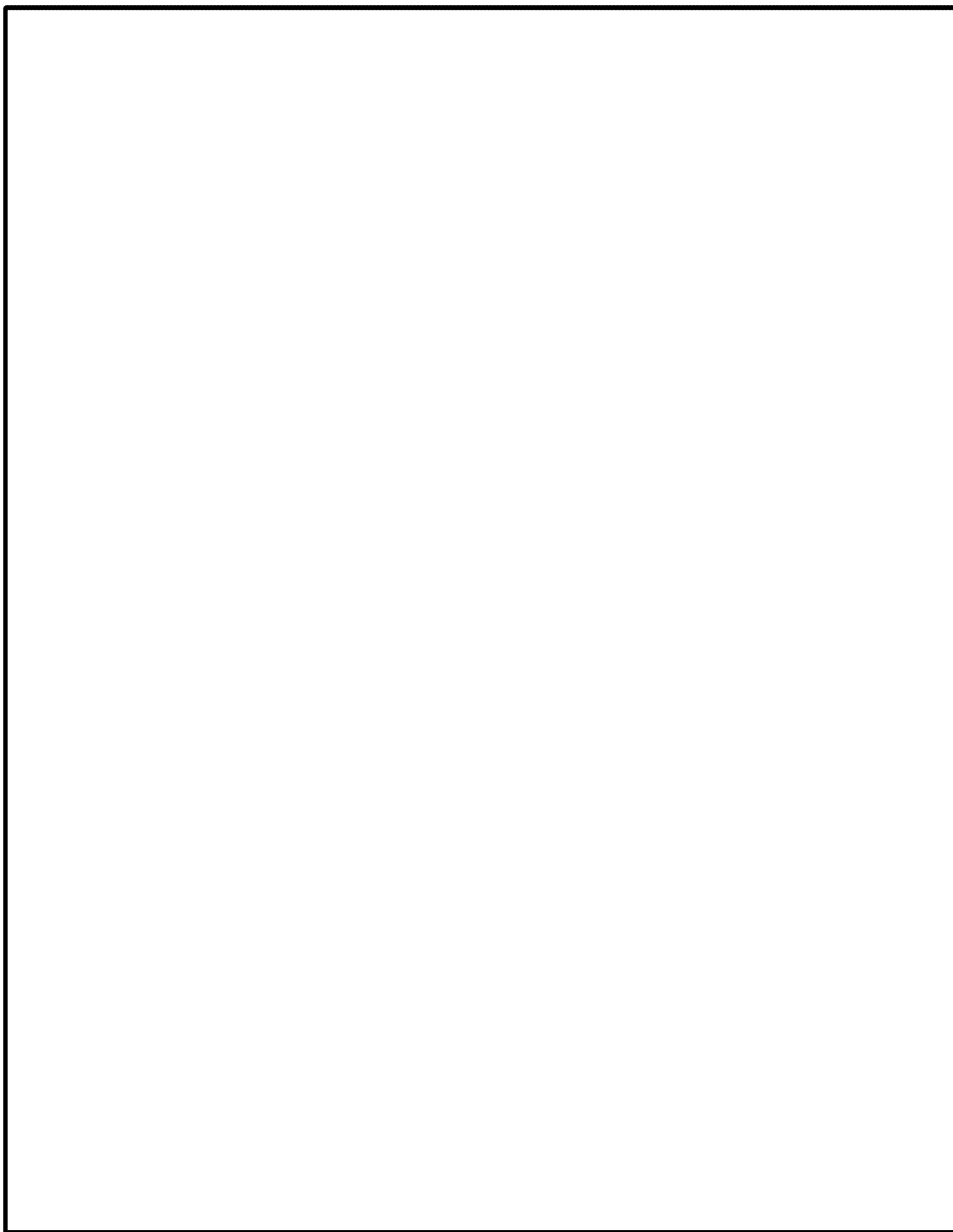
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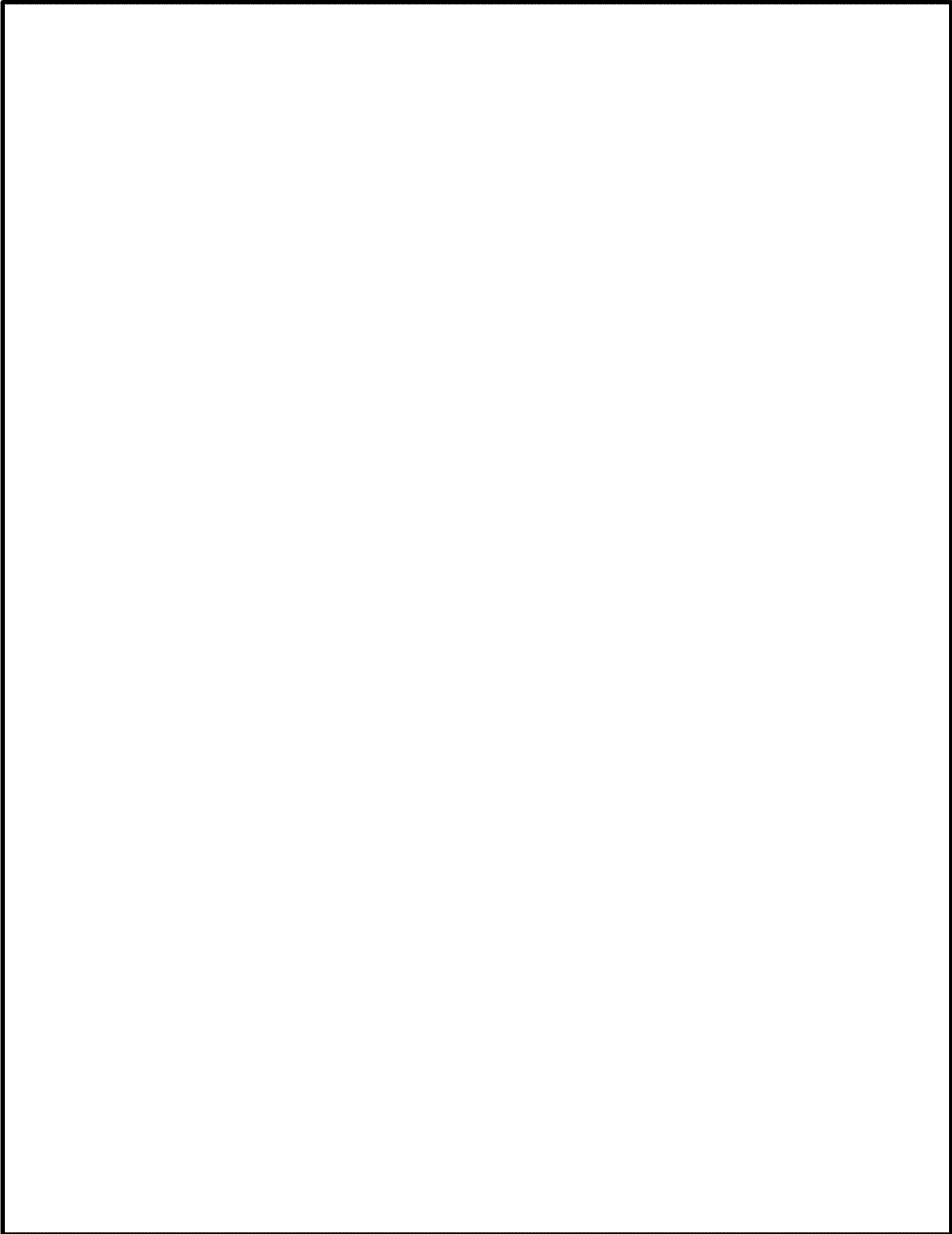
<sup>8</sup> This definition is provided to clarify that not all misrepresentations are considered “fraud” in the USCIS context. When determining whether an applicant’s testimony is credible, it is not necessary for a RAIO officer to decide whether a misrepresentation or concealment of a material fact meets all the elements of the definition of fraud.

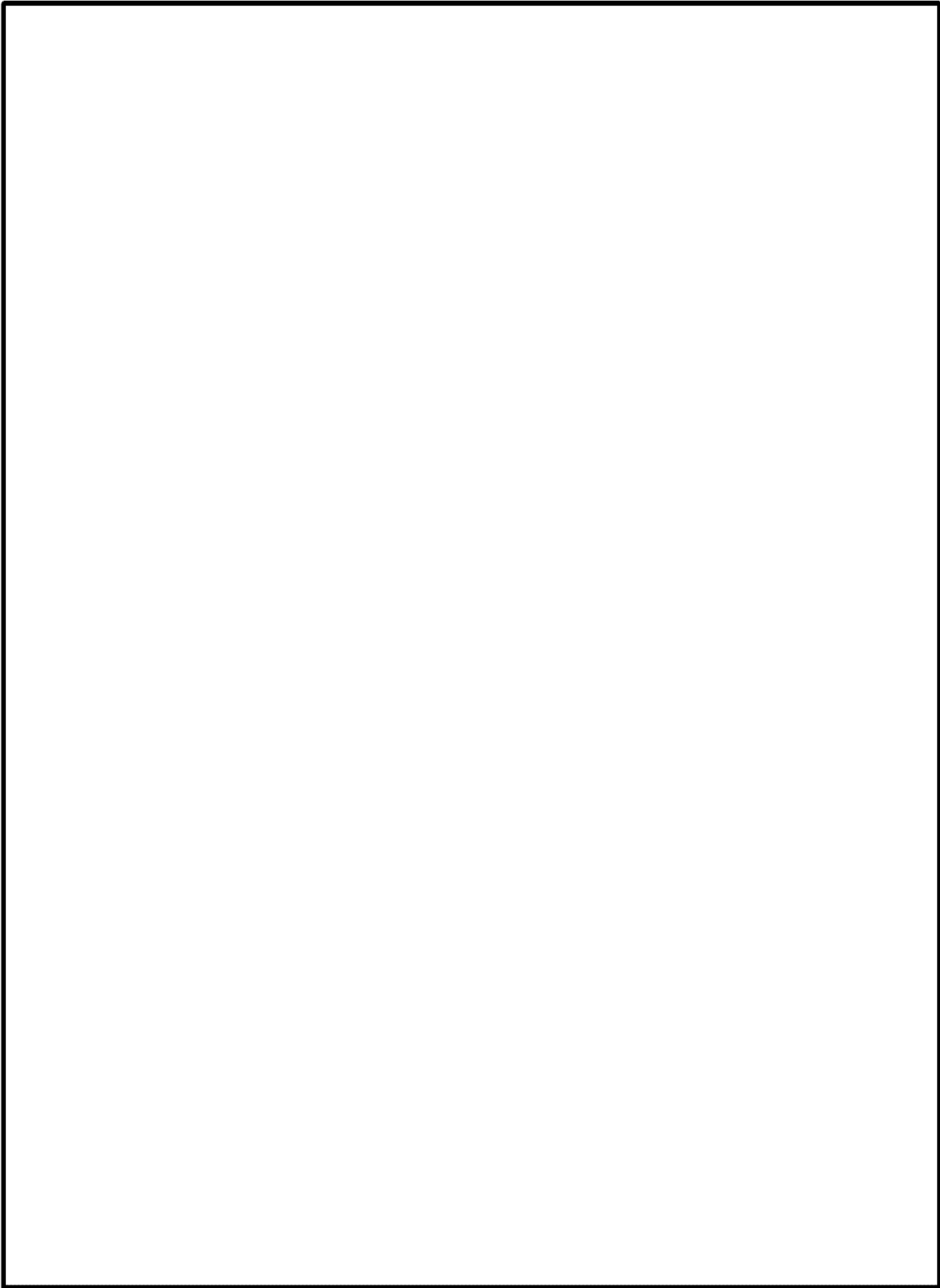




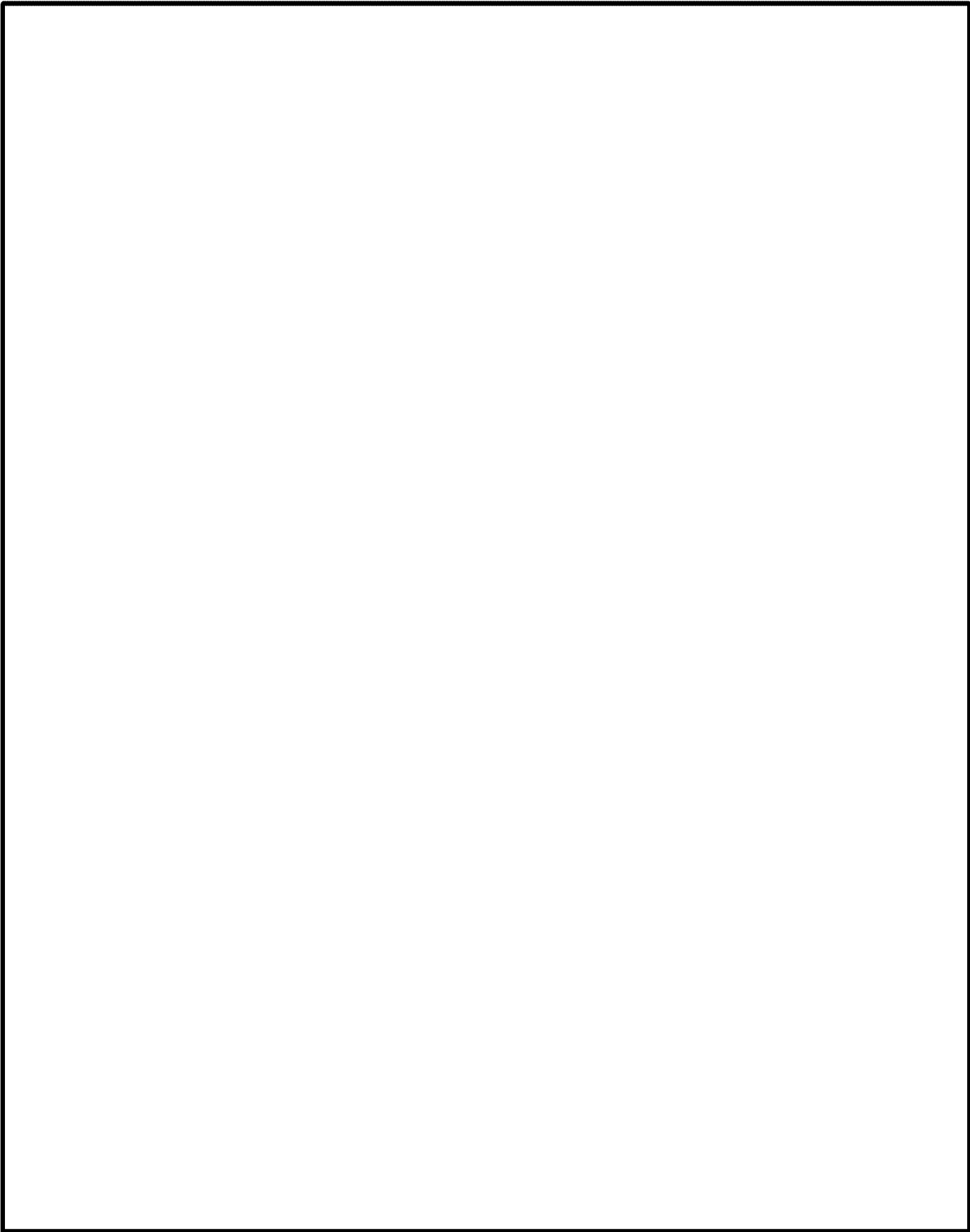


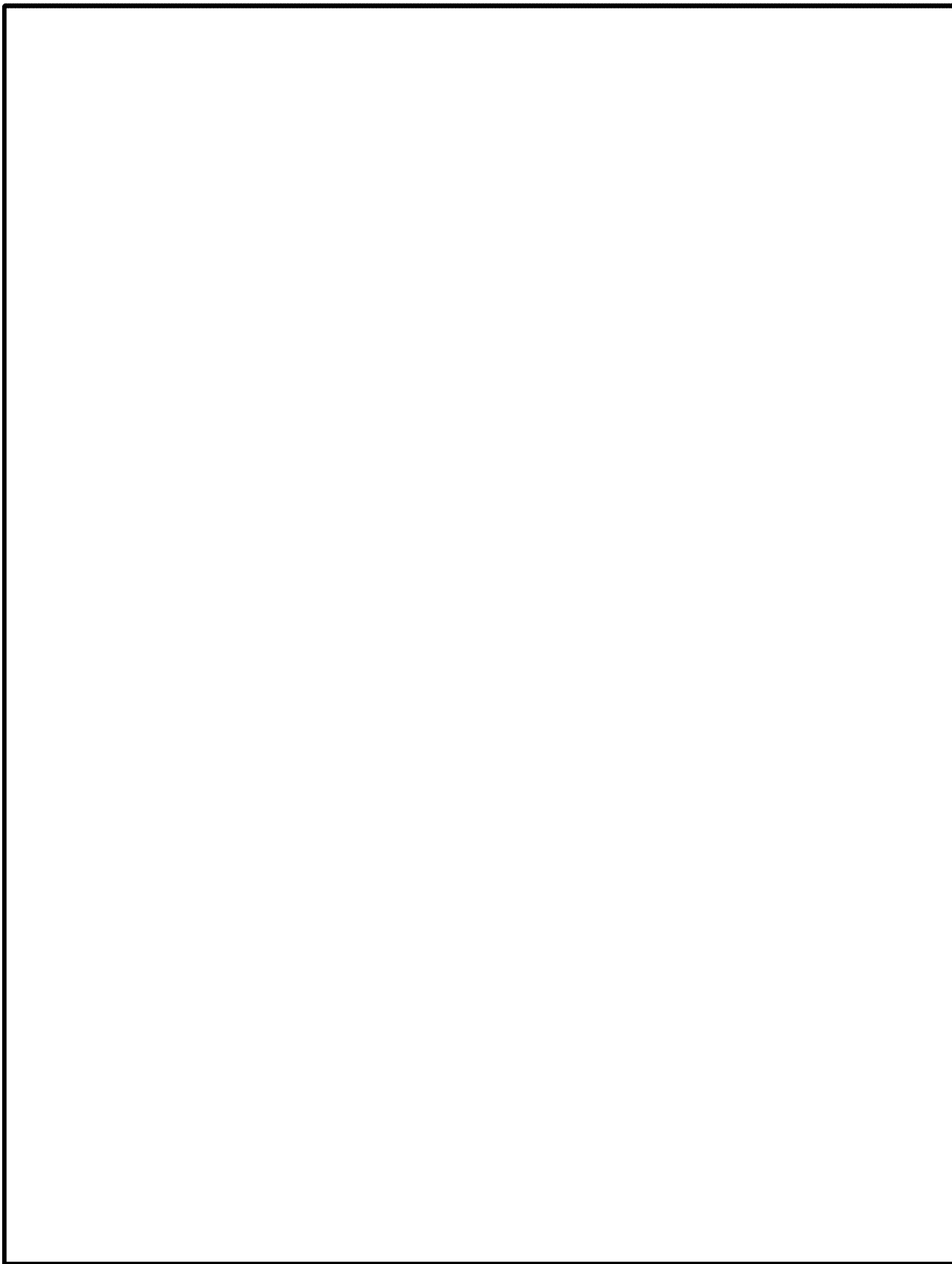




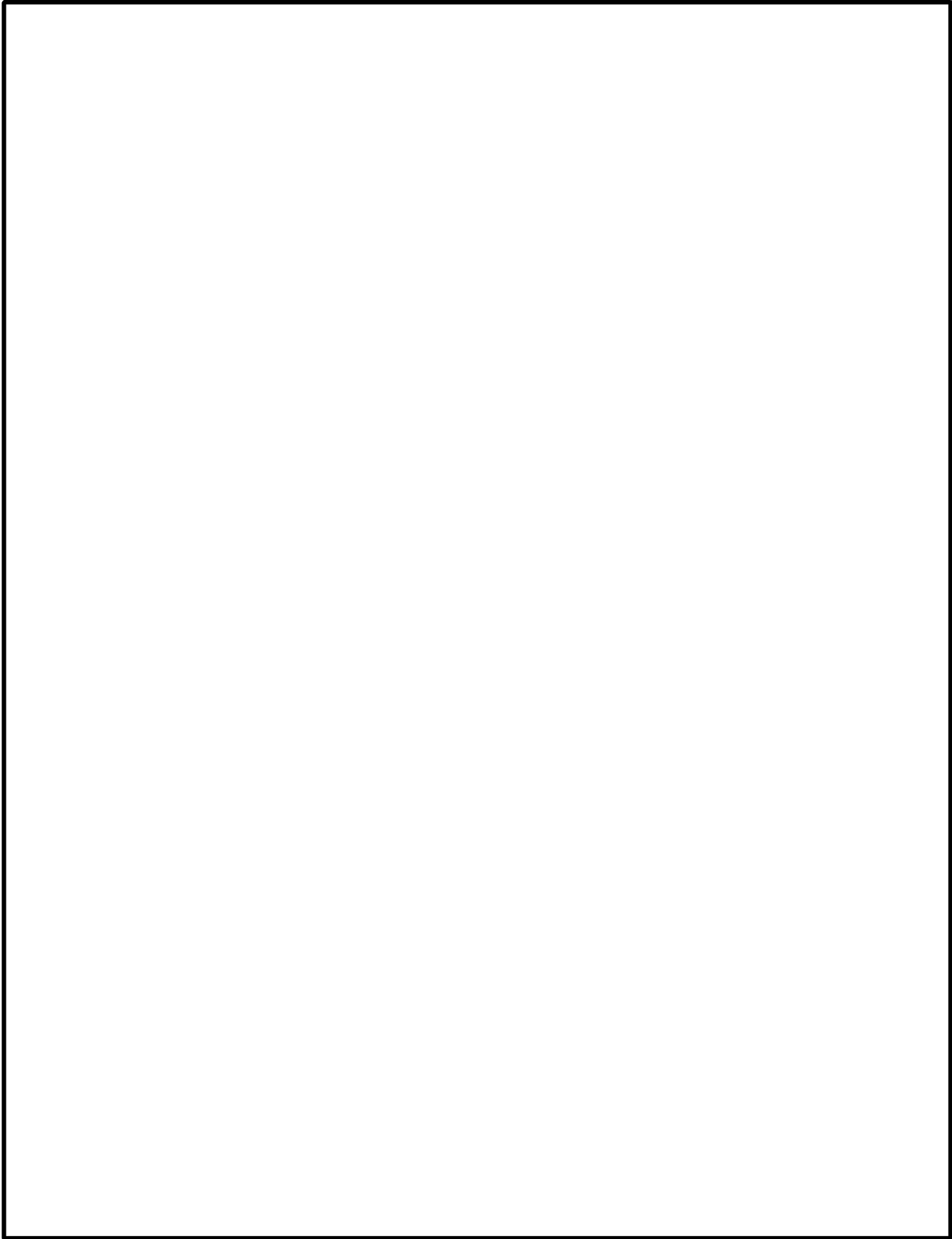








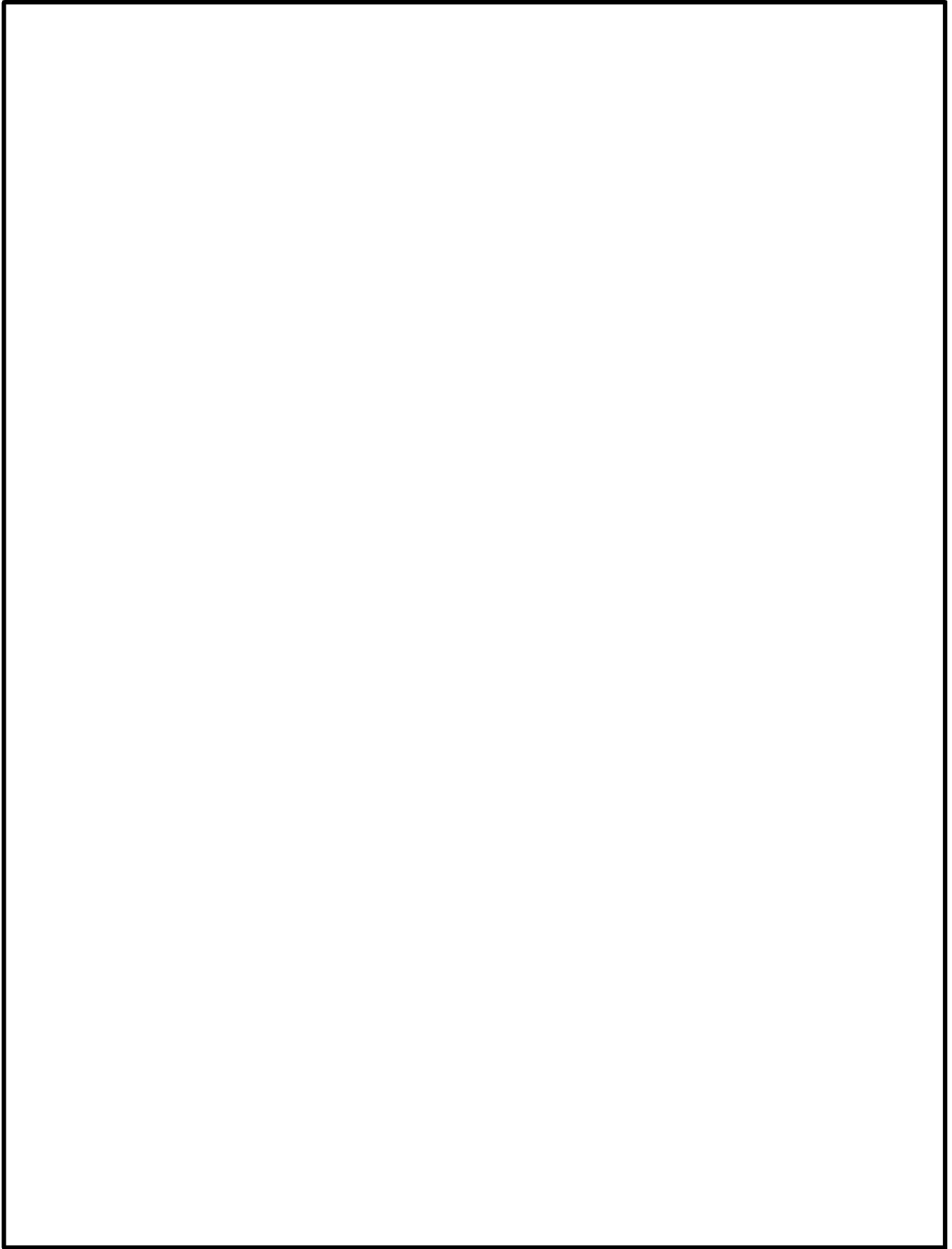
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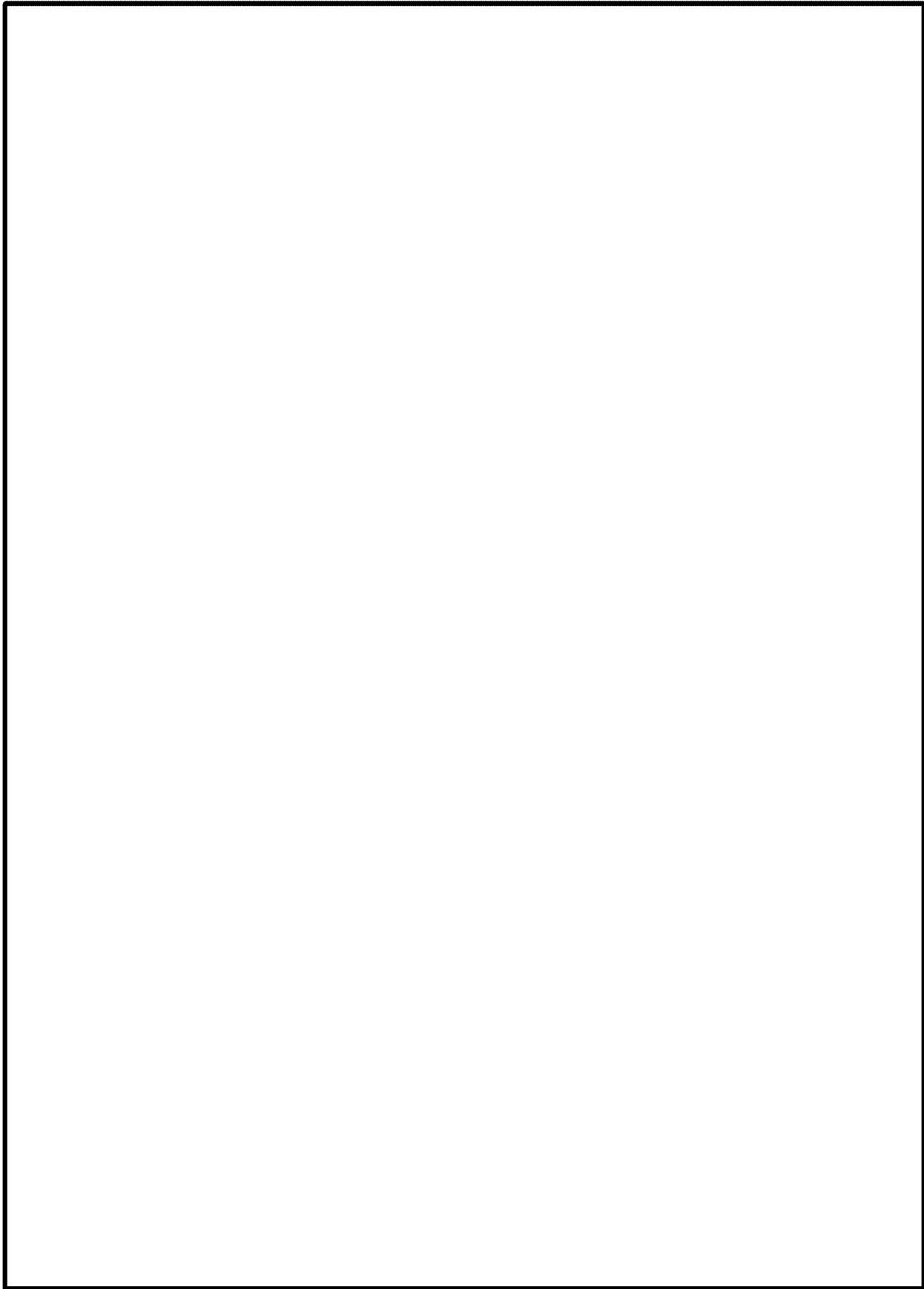




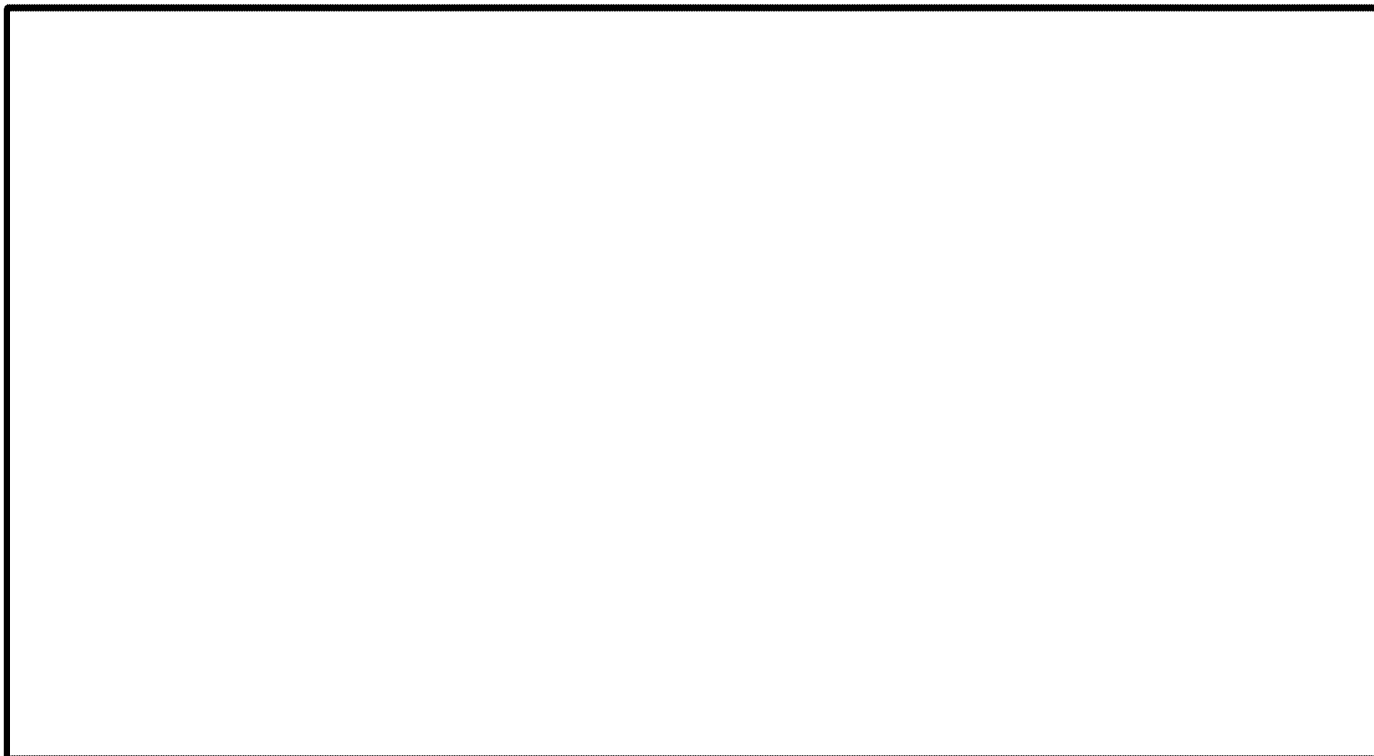












### 3. FDNS OVERVIEW

USCIS was created by statute on March 1, 2003, as a part of the formation of the Department of Homeland Security (DHS). The immigration benefit services functions of the legacy Immigration and Naturalization Service (INS) were assigned to USCIS, while INS's investigations and enforcement functions were assigned to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). This reorganization partially addressed General Accounting Office (now the Government Accountability Office – referred hereafter as GAO) concerns<sup>31</sup> regarding INS' dual and seemingly conflicting service and enforcement missions. However, with this division, USCIS was not delegated any of the investigative, enforcement, and intelligence capabilities necessary to independently prosecute cases of immigration benefit fraud.

In 2004, USCIS created FDNS in accordance with a Congressional recommendation to establish an organization “responsible for developing, implementing, directing, and overseeing the joint USCIS-ICE anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.”<sup>32</sup> FDNS fulfills the USCIS mission of enhancing both national security and the integrity of the legal immigration

<sup>31</sup> GAO-02-66: Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems (issued January 31, 2002).

<sup>32</sup> Conference Report, Fiscal Year 2005 Appropriations Act.

system by: (1) Identifying threats to national security and public safety posed by those seeking immigration benefits; (2) detecting, pursuing, and deterring immigration benefit fraud; (3) identifying and removing systemic vulnerabilities in the process of the legal immigration system; and (4) acting as USCIS's primary conduit for information sharing and collaboration with other governmental agencies. FDNS also oversees a strategy to promote a balanced operation that distinguishes USCIS's administrative authority, responsibility, and jurisdiction from ICE's criminal investigative authority.

Fraud threatens the integrity of the nation's immigration benefits system and may facilitate the entry and continued presence of terrorists, criminals, and others who seek to do us harm. While not every act of fraud is a threat to national security, exploitation of the immigration system poses significant national security concerns. FDNS integrates the efforts of law enforcement, intelligence, and overseas assets in support of USCIS operations and mission-critical functions. By integrating its mission, goals, and objectives throughout USCIS, FDNS promotes process integrity, security, and public safety without compromising operational efficiency.

### 3.1 FDNS Vision and Mission

As a major component of the Department of Homeland Security, USCIS has the mission of "secur[ing] America's promise as a nation of immigrants" while "ensuring the integrity of our immigration system."<sup>33</sup> The ability to detect and deter fraud, and perform screening that identifies threats to national security and public safety are essential components in upholding the integrity of the immigration process. The FDNS Directorate develops and maintains the anti-fraud, screening and background checks, and information-sharing programs needed to accomplish the overall goal of providing the right benefit to the right person at the right time, and no benefit to the wrong person.

FDNS Vision: A legal immigration system providing qualitative and responsive service to its customers, while detecting, deterring, and combating fraud, and screening applicants to ensure benefits are not granted to persons who pose a threat to national security and/or public safety.

FDNS Mission: FDNS will enhance the integrity of the legal immigration system by leading agency efforts to identify threats to national security and public safety, detect and combat immigration benefit fraud, and remove systematic and other vulnerabilities.

### 3.2 Headquarters FDNS Organizational Structure and Core Functions

Within USCIS, Headquarters FDNS (HQFDNS) develops and maintains policies and procedures that govern the detection of fraud and threats to national security or public safety in requests for immigration benefits. HQFDNS also works with other components of USCIS to carry out the

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<sup>33</sup> USCIS Mission Statement.

mission. Field Operations (FOD), Service Center Operations (SCOPS), and Refugee, Asylum, and International Operations (RAIO) Directorate supervise field FDNS officers. HQFDNS develops and implements operational policies and procedures that address fraud and national security concerns in coordination with these directorates. FDNS also works with the Immigration Records and Identity Services Directorate (IRIS) on policies and procedures related to biometric and other security checks. In addition, the USCIS Privacy Office and Office of the Chief Counsel advise FDNS on the privacy and legal considerations of policies and initiatives.

HQFDNS consists of multiple divisions responsible for setting policies related to USCIS' anti-fraud, national security, and public safety activities.<sup>34</sup> Among other functions HQFDNS provides guidance, procedures, and advice to the USCIS operational directorates by:

- Establishing the agency's Fraud Detection Standard Operating Procedures to assist with detecting, deterring, and preventing benefit fraud;
- Maintaining the agency's National Background and Identities Checks Operating Procedures (NaBISCOP) to identify and resolve background checks issues indicating national security or public safety concerns;
- Managing the agency's Controlled Application Review and Resolution Program (CARRP) to handle cases with national security concerns; and
- Representing USCIS within the Intelligence community and assisting USCIS with information sharing regarding fraud and national security concerns.

**3.2.1 FDNS Fraud Division**

The Fraud Division (FD) researches, analyzes, and develops policies, guidance and procedures; provides anti-fraud program support for officers and staff in Service Centers, Regional, District and Field Offices, Asylum Offices, and other HQ components; develops and maintains anti-fraud policies, programs and projects; and oversees liaison activities and FDNS details to the DOS National Visa Center (NVC), DOS Kentucky Consular Center (KCC), ICE Homeland Security Investigations Forensic Laboratory (HSI-FL), ICE Document and Benefit Fraud Task Force (DBFTF), and ICE Identify and Benefit Fraud Unit (IBFU); and manages the Administrative Site Visit and Verification Program (ASVVP).

**3.2.2**

(b)(7)(e)



<sup>34</sup> See [USCIS Connect Page](#) for the FDNS Directorate.





#### 4. RAIIO'S FDNS PROGRAM

RAIO and FDNS have taken important steps to strengthen RAIIO's ability to detect and address fraud, national security concerns, and facilitate information sharing in our globally dispersed operating environment. In 2015, FDNS and RAIIO executed a governance agreement to strengthen the partnership between the directorates and enhance fraud detection and national security operations throughout RAIIO.<sup>35</sup>

RAIO has developed the most extensive set of mandatory identity and background checks in USCIS and the RAIIO divisions have developed and expanded program policies and procedures to deter fraud and further identify national security concerns. RAIIO's international presence also facilitates the local verification of documents on behalf of adjudicators and FDNS teams throughout the operational directorates, benefiting the whole of USCIS. Currently there are FDNS Officers working to support RAIIO within the:

- RAIIO HQ FDNS Branch;
- Refugee Affairs Division's Security Vetting and Program Integrity branch ;
- Asylum HQ and the domestic Asylum Offices; and
- International Operations HQ's Program and Integrity Branch and international field offices.

##### 4.1.1 HQ RAIIO FDNS Branch

RAIO supports strong FDNS programs in each of the three divisions. Because many of our fraud, national security, and information sharing needs require a coordinated approach that is consistent with FDNS mission and guidance, RAIIO created an FDNS branch at the directorate level to enhance effectiveness, promote directorate-wide objectives, and help coordinate the work of RAIIO's operational divisions. These efforts include:

- Facilitating the integration of FDNS policies, programs, and guidance into RAIIO operations and adjudicative programs;
- Managing FDNS-related reporting and information sharing in compliance with RAIIO's unique confidentiality restrictions; and,

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<sup>35</sup> Internal Memorandum of Agreement Between FDNS Directorate and RAIIO Directorate Regarding the Governance Structure for Fraud Detection and National Security Operations, signed by Matthew Emrich and Joseph Langlois (June 17, 2015).

- (b)(7)(e) • Providing technical direction, guidance and support to RAIO personnel on execution of policy relating to fraud detection and national security, and corresponding privacy issues and confidentiality considerations unique to the RAIO Directorate.



#### 4.1.3 Asylum FDNS

The Asylum Division was the first division within the RAIO Directorate to employ FDNS officers to assist with anti-fraud efforts. In August of 2004, each asylum office received one anti-fraud officer initially to handle the fraud workload. As FDNS expanded its role and assumed the lead role in vetting fraud cases and overseeing national security related programs, asylum offices received additional officers and FDNS support staff to assist with this added workload. FDNS officers in the asylum field offices work closely with the local Asylum Fraud Prevention Coordinator and local management in addition to Supervisory Asylum Officers and Asylum Officers. In 2015 the Asylum Division established an FDNS Branch within Asylum Headquarters to develop operational guidance and provide technical support to Asylum FDNS personnel and Asylum Division managers.

#### 4.1.4 International Operations Programs and Integrity Branch (PIB)

The International Operations Division's Programs and Integrity Branch (PIB) provides policy and operational support and oversight related to fraud detection and national security issues, including overseas verification of evidence, security vetting and fraud trend analysis. FDNS officers are assigned to PIB at the headquarters level and to International Operations locations abroad. FDNS officers assigned internationally are primarily dedicated to document verification, an activity that supports adjudications across all USCIS directorates, including RAIO.

Currently, requests for overseas verification (OV) are vetted through International Operations.<sup>36</sup> The process of routing overseas verification requests is done through the FDNS-Data System (FDNS-DS). This process has streamlined the communication between domestic and

<sup>36</sup> See FDNS, Fraud Division, Overseas Verification SOP (September 26, 2014).

international offices and has allowed HQFDNS and RAIO to gain greater insight into the need for and the content of overseas verification requests. International Operations in partnership with FDNS developed the USCIS Overseas Verification SOP<sup>37</sup> so that the agency has a consistent and coordinated approach to fraud verification activities conducted internationally.

The International Operations Division also provides anti-fraud efforts through DNA sample collection abroad and in fraud referrals for I-730 adjudication internationally.

## 4.2 FDNS Officer Roles and Responsibilities

While the RAIO Divisions face different fraud and national security challenges in administering their respective programs, there are common themes that run through the fraud and national security work performed by FDNS officers in all RAIO Division offices.

### 4.2.1 Strengthen National Security

FDNS officers assist in resolving background check hits involving national security and public safety concerns.<sup>38</sup> If the positive hits relate to national security, adjudicators cease adjudication of these cases and transfer them to FDNS officers. FDNS officers resolve the concerns and deconflict with appropriate law enforcement agencies through the CARRP process. Additionally, FDNS officers may perform checks on applicants and beneficiaries by searching in classified databases.

### 4.2.2 Improve Anti-Fraud Capabilities

FDNS officers routinely research fraud leads from RAIO officers. As part of their case research, FDNS officers have access to commercial data brokers and perform thorough searches in these systems in addition to DHS and USCIS systems. FDNS officers investigate perpetrators of fraudulent applications and, if feasible, request that ICE investigate the lead. Under limited circumstances, FDNS officers can assist adjudicators with suspected fraud by submitting overseas verification requests to verify document authenticity or check facts. FDNS officers provide recurring fraud trainings to RAIO officers and inform adjudicators of emerging fraud trends. FDNS officers also coordinate/assist law enforcement agencies in immigration fraud investigations by collecting relevant information and submission of data queries in USCIS systems.

### 4.2.3 Address Public Safety Concerns

FDNS officers also help coordinate with the appropriate division of ICE or other law enforcement agencies when there are matters implicating public safety. An Egregious Public

<sup>37</sup> FDNS, Fraud Division, *Overseas Verification SOP* (September 26, 2014).

<sup>38</sup> See RAIO Training Module, *National Security* for more information.

Safety (EPS) case is defined as any case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of any of the following:

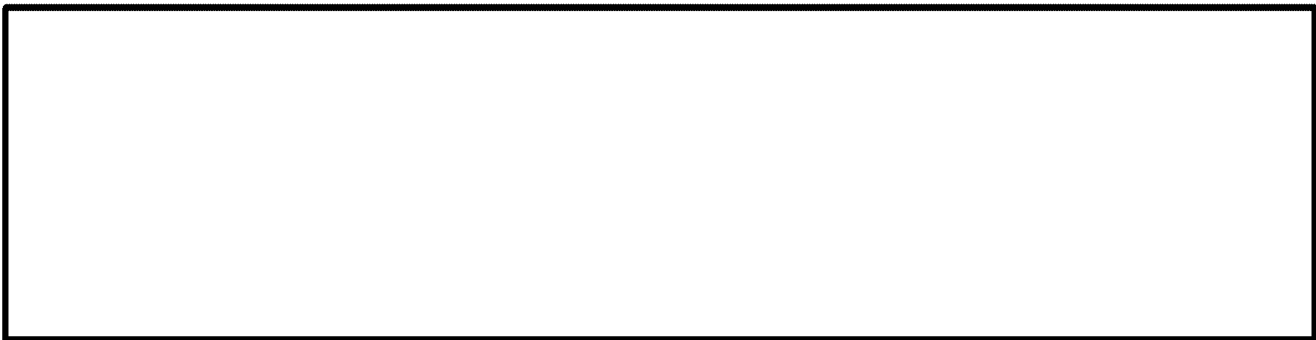
- Murder, rape, or sexual abuse of a minor as defined in INA § 101(a)(43)(A);
- Illicit trafficking in firearms or destructive devices as defined in INA § 101(a)(43)(C);
- Offenses relating to explosive materials or firearms as defined in INA § 101(a)(43)(E);
- Crimes of violence for which the term of imprisonment imposed or where the penalty for a pending case is at least one year as defined in INA § 101(a)(43)(F);
- An offense relating to the demand for or receipt of ransom as defined in INA § 101(a)(43)(H);
- An offense relating to child pornography as defined in INA § 101(a)(43)(I);
- An offense relating to peonage, slavery, involuntary servitude, or trafficking in persons as defined in INA § 101(a)(43)(K)(iii);
- An offense relating to alien smuggling as described in INA § 101(a)(43)(N);
- Human Rights Violators, known or suspected street gang members, or Interpol hits; or
- Re-entry after an order of exclusion, deportation, or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.

### 4.3 How Can Your Local FDNS Officer Support You?

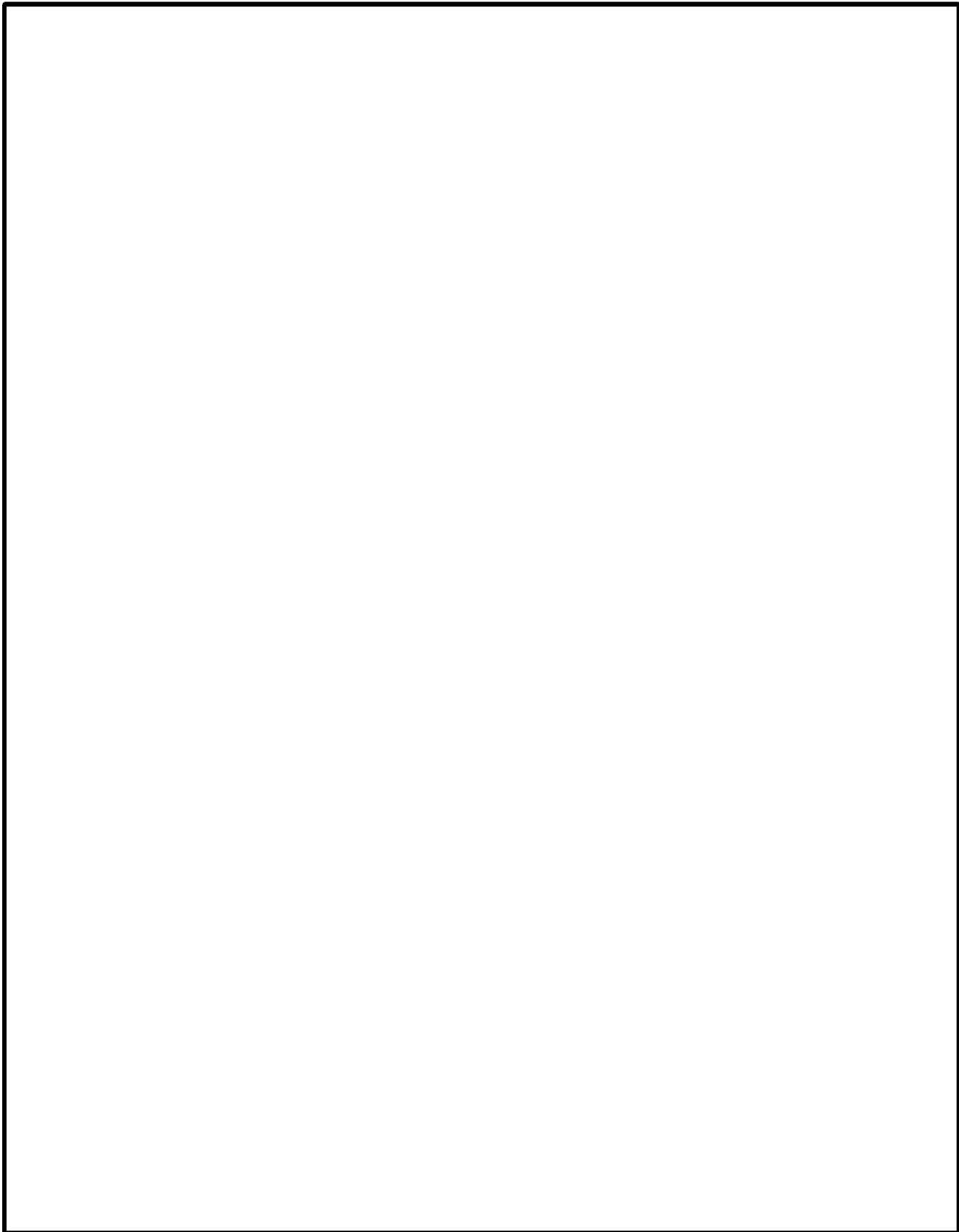
In addition to the functions and duties performed by FDNS officers described in the previous section, there are also functions that are specific to each RAIO Division:

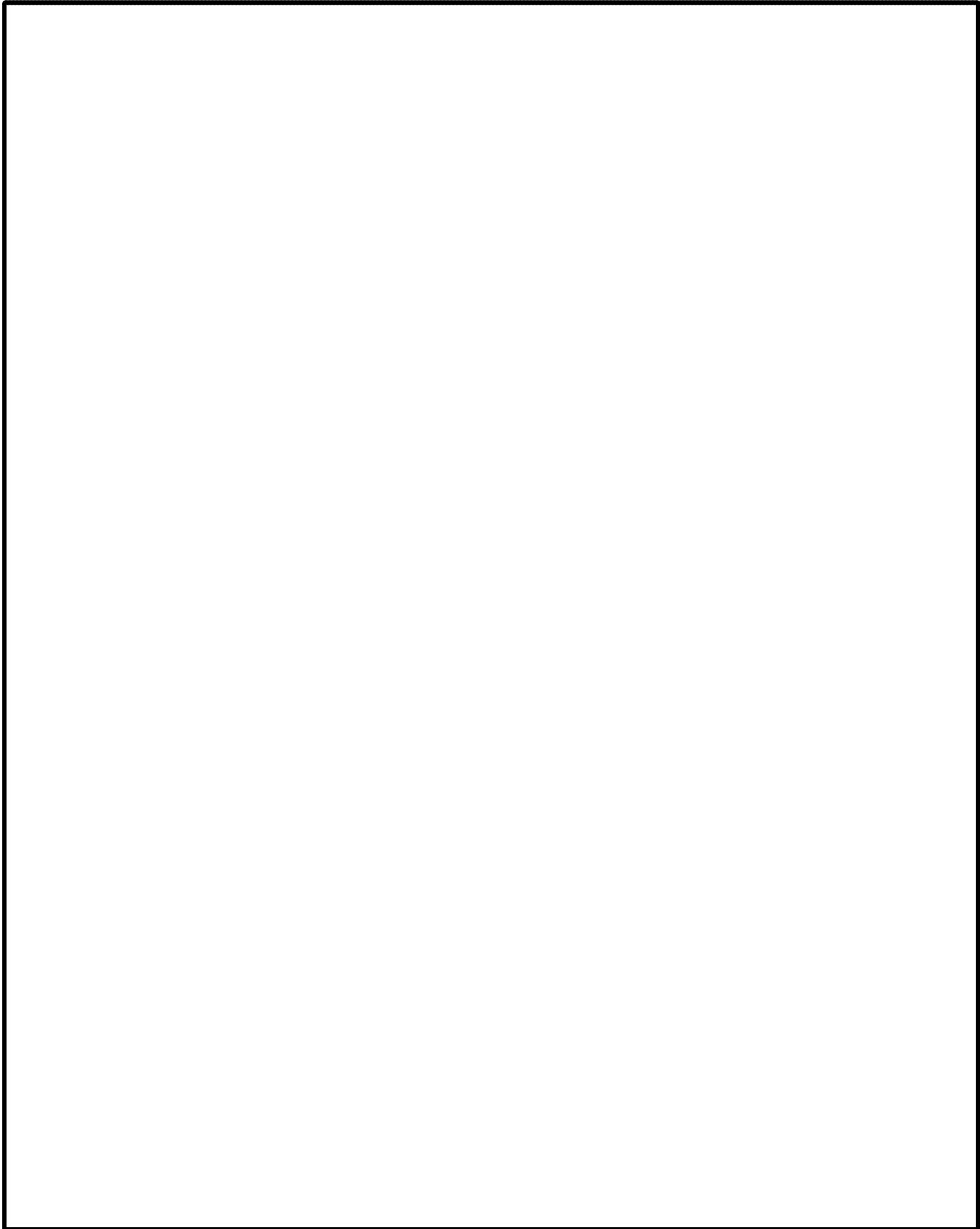
- RAD FDNS officers coordinate with other government agencies and resolve issues related to background checks.
- Asylum FDNS officers may pre-screen applications, identifying fraud, national security, and public safety issues prior to an asylum interview.
- International Operations FDNS officers perform investigations abroad including site visits on behalf of RAIO and domestic offices.

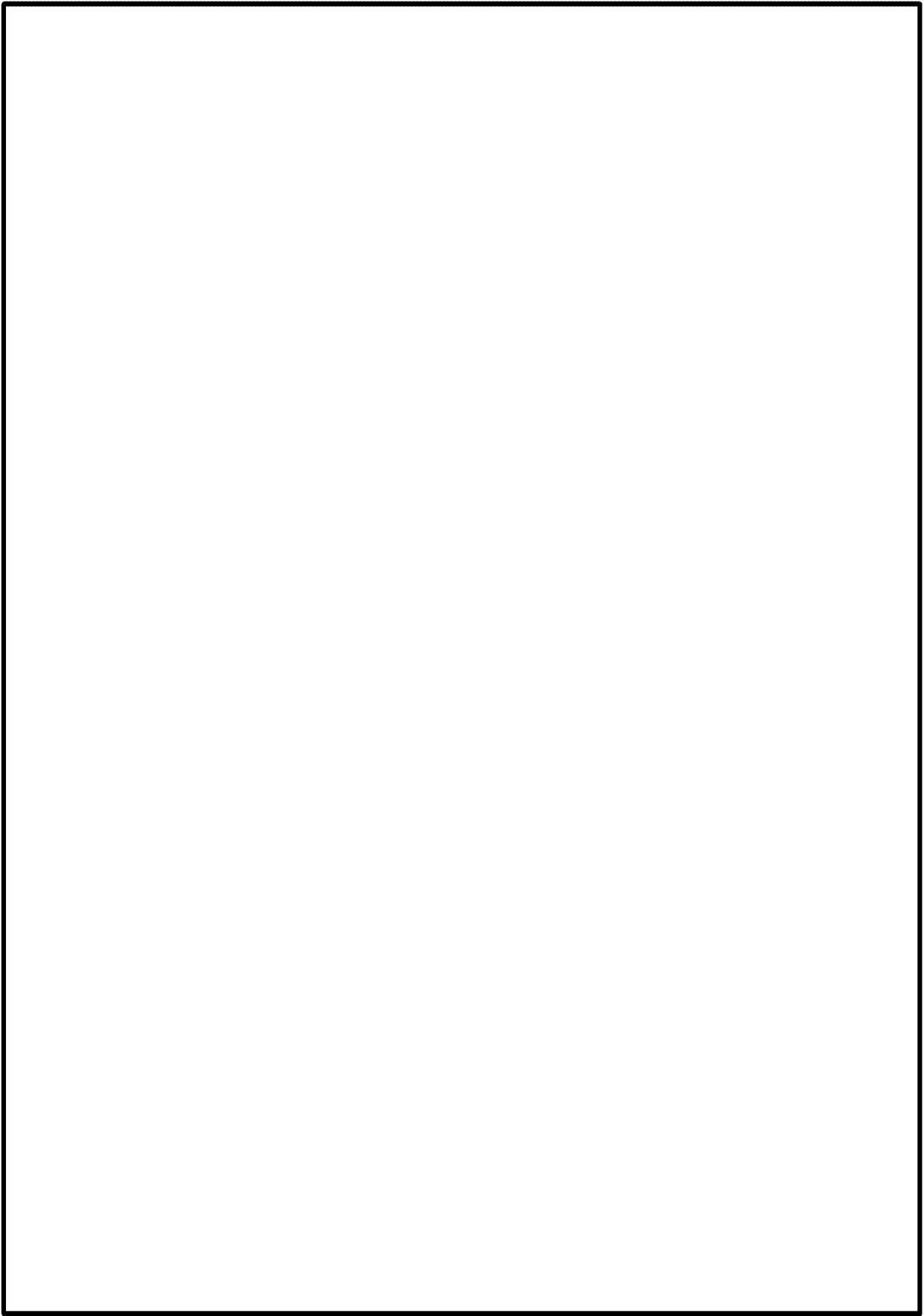
(b)(7)(e) Consult with your supervisor and your respective office's FDNS officers to familiarize yourself with local office procedures on FDNS pre-screening measures and/or ongoing investigations that may aid in the adjudication of your case(s).

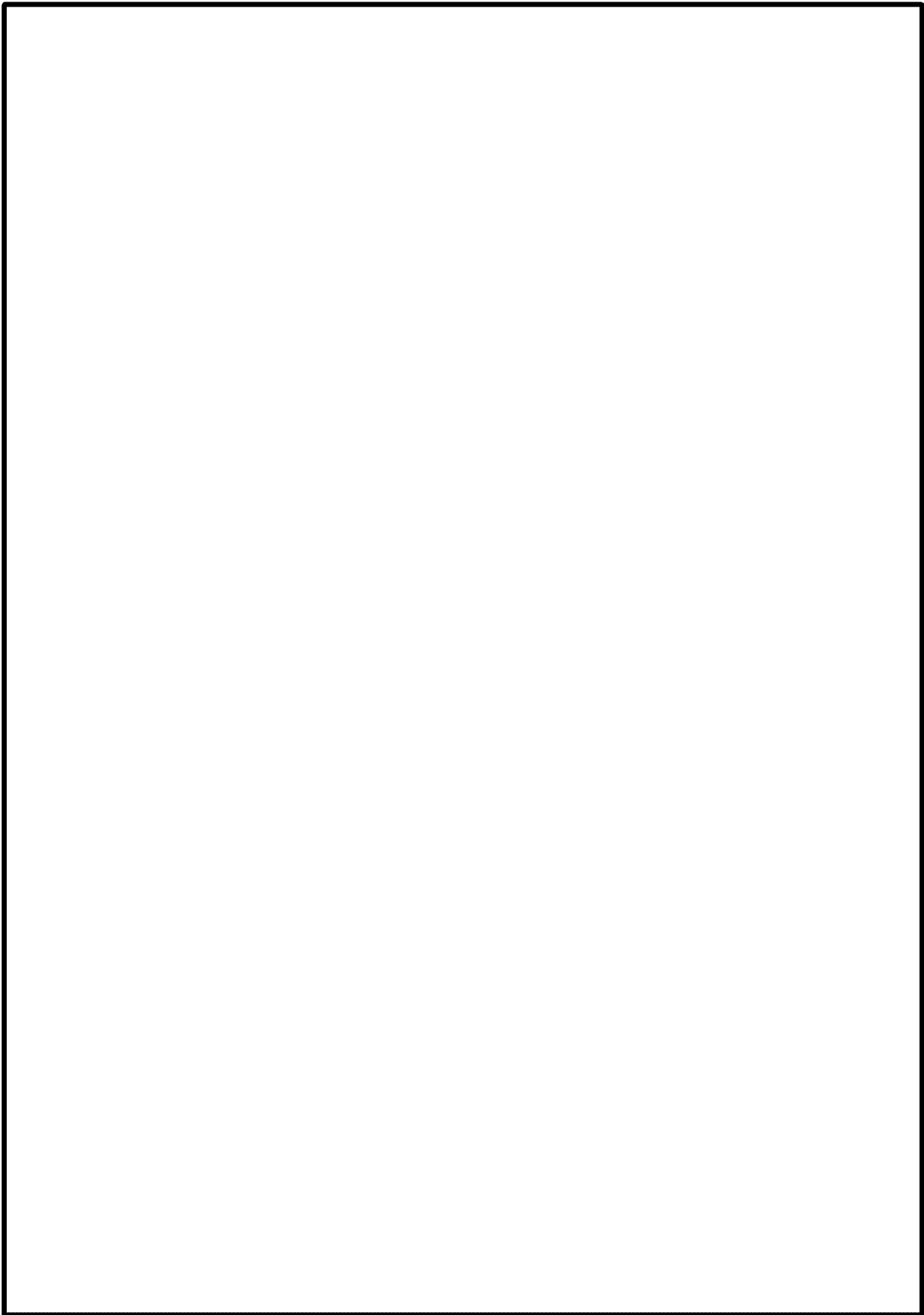


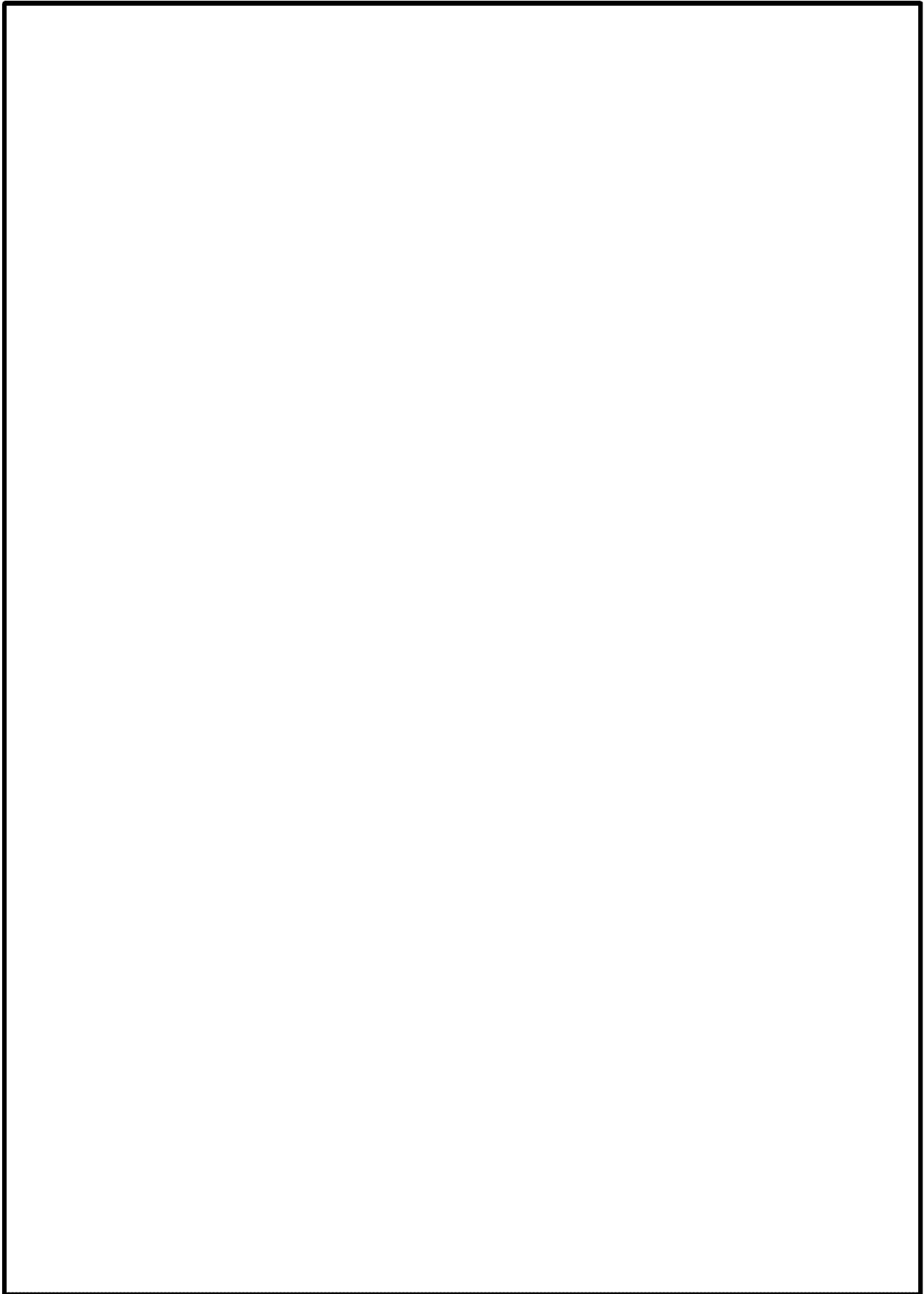




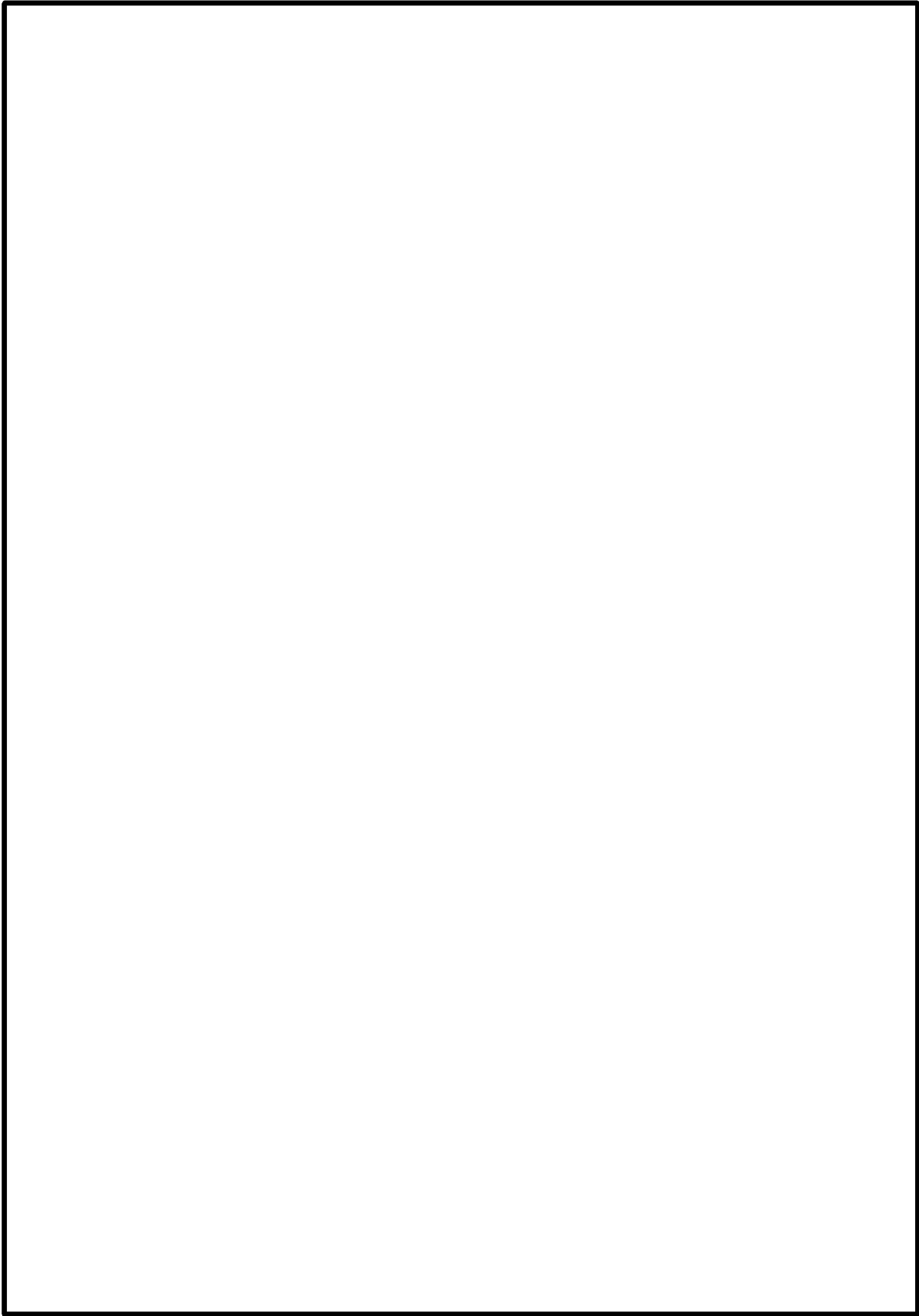


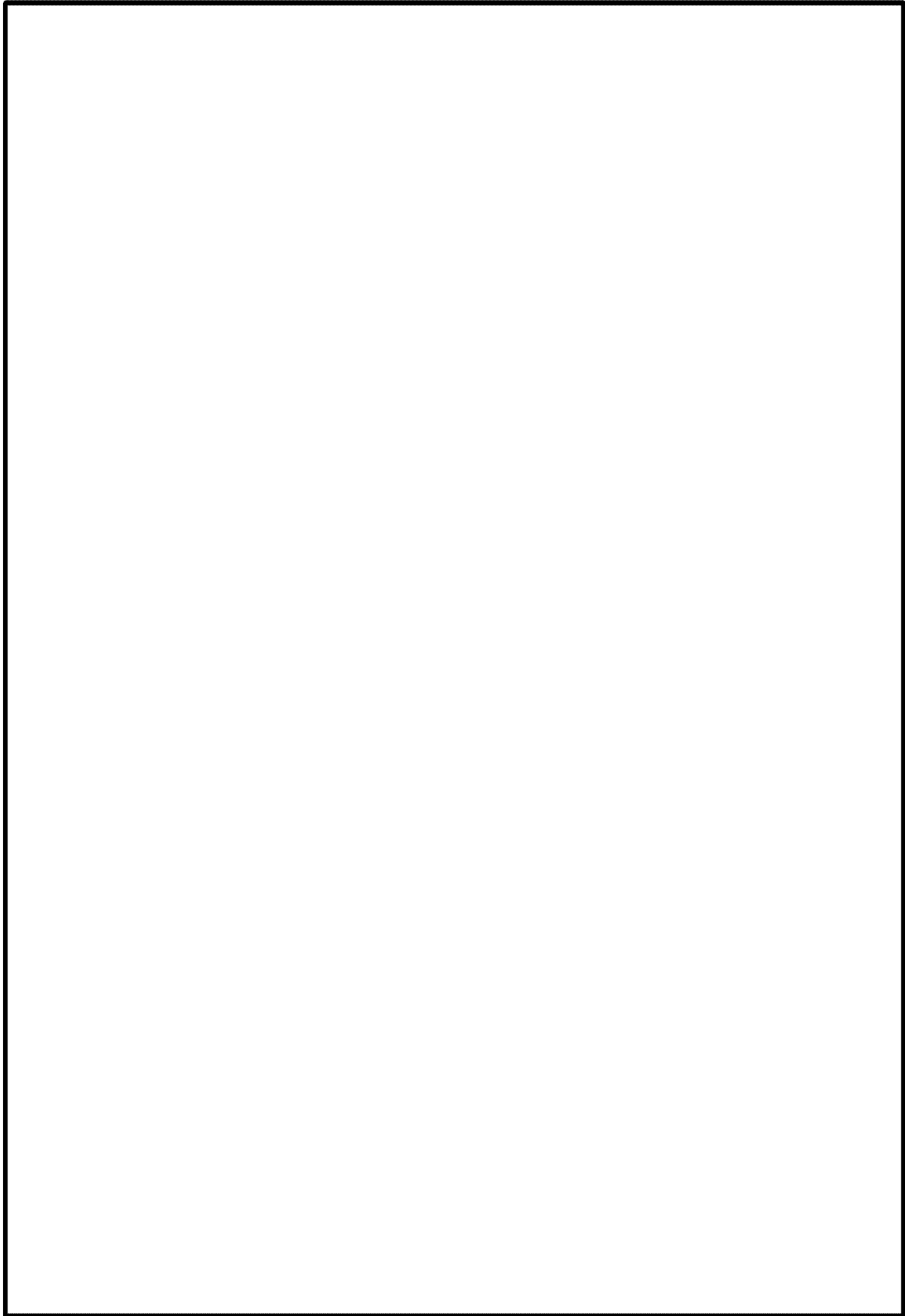


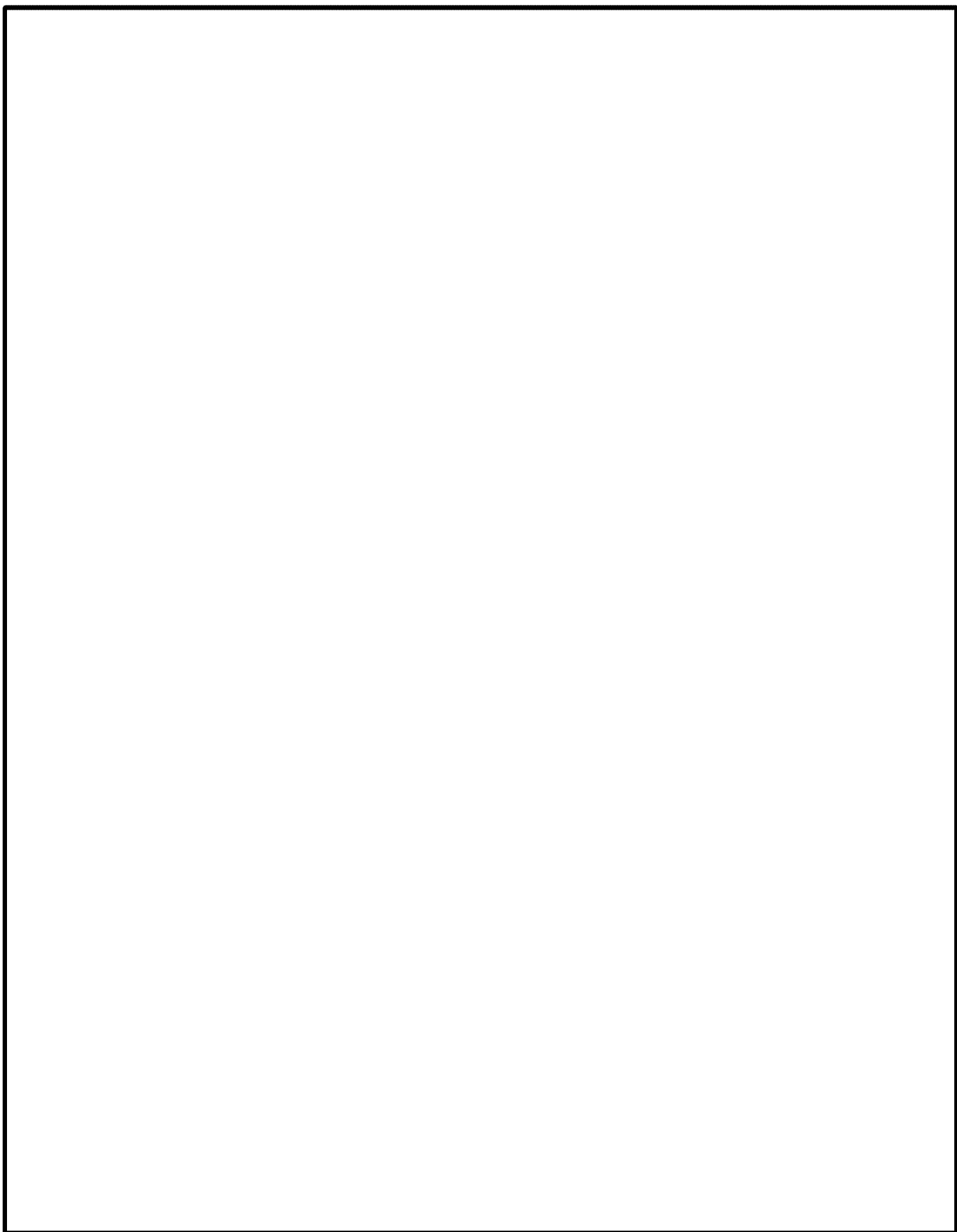




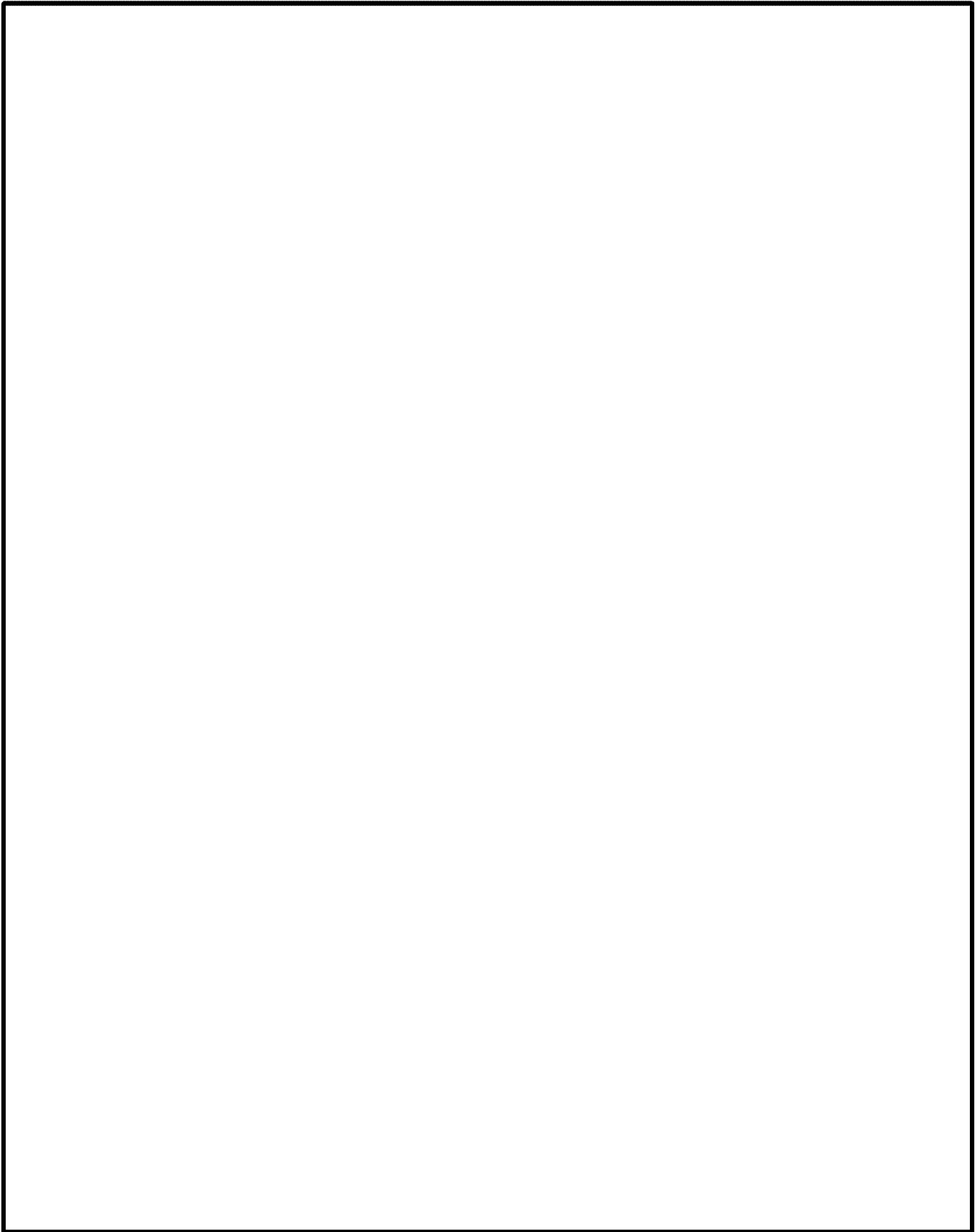
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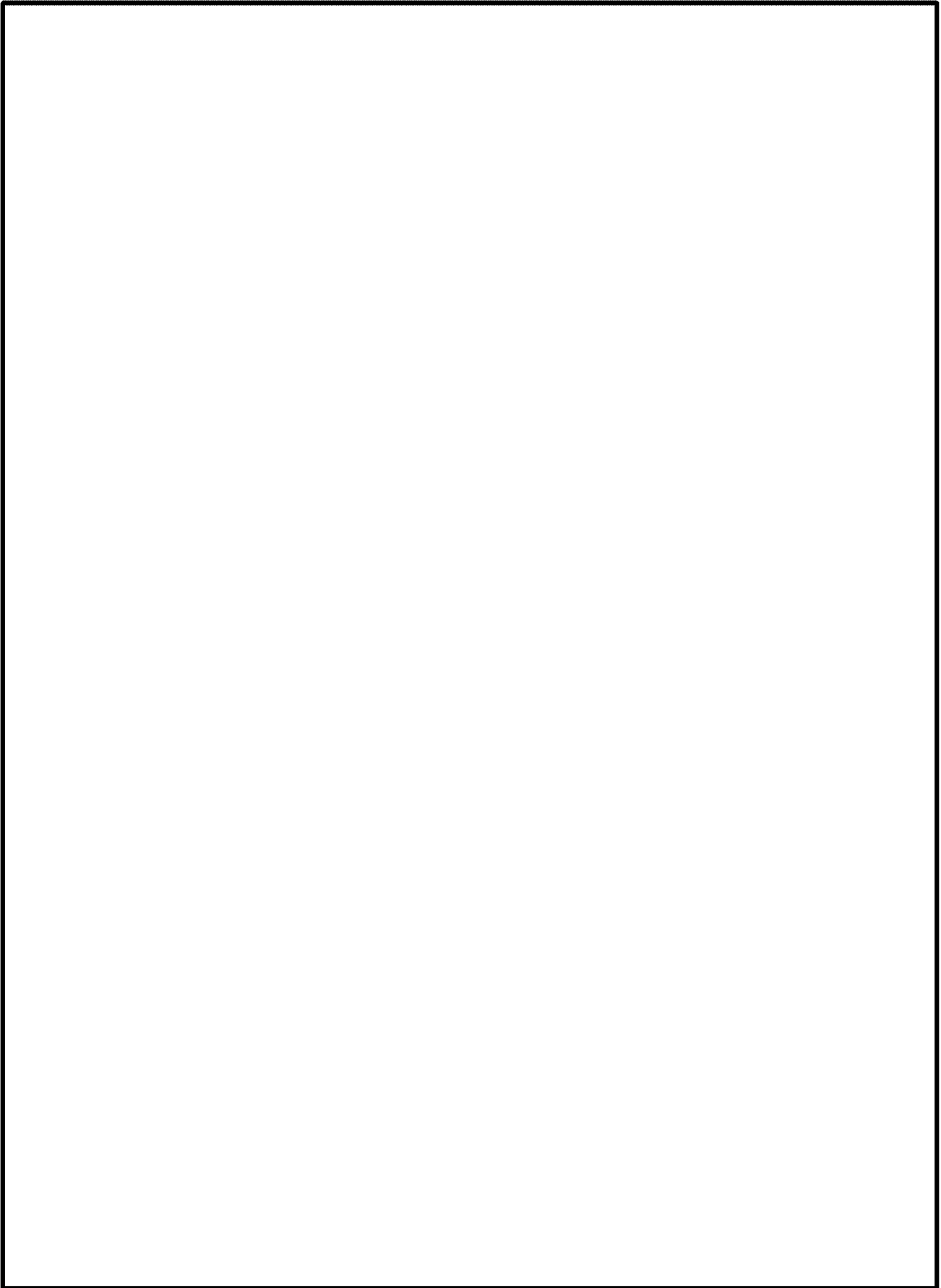


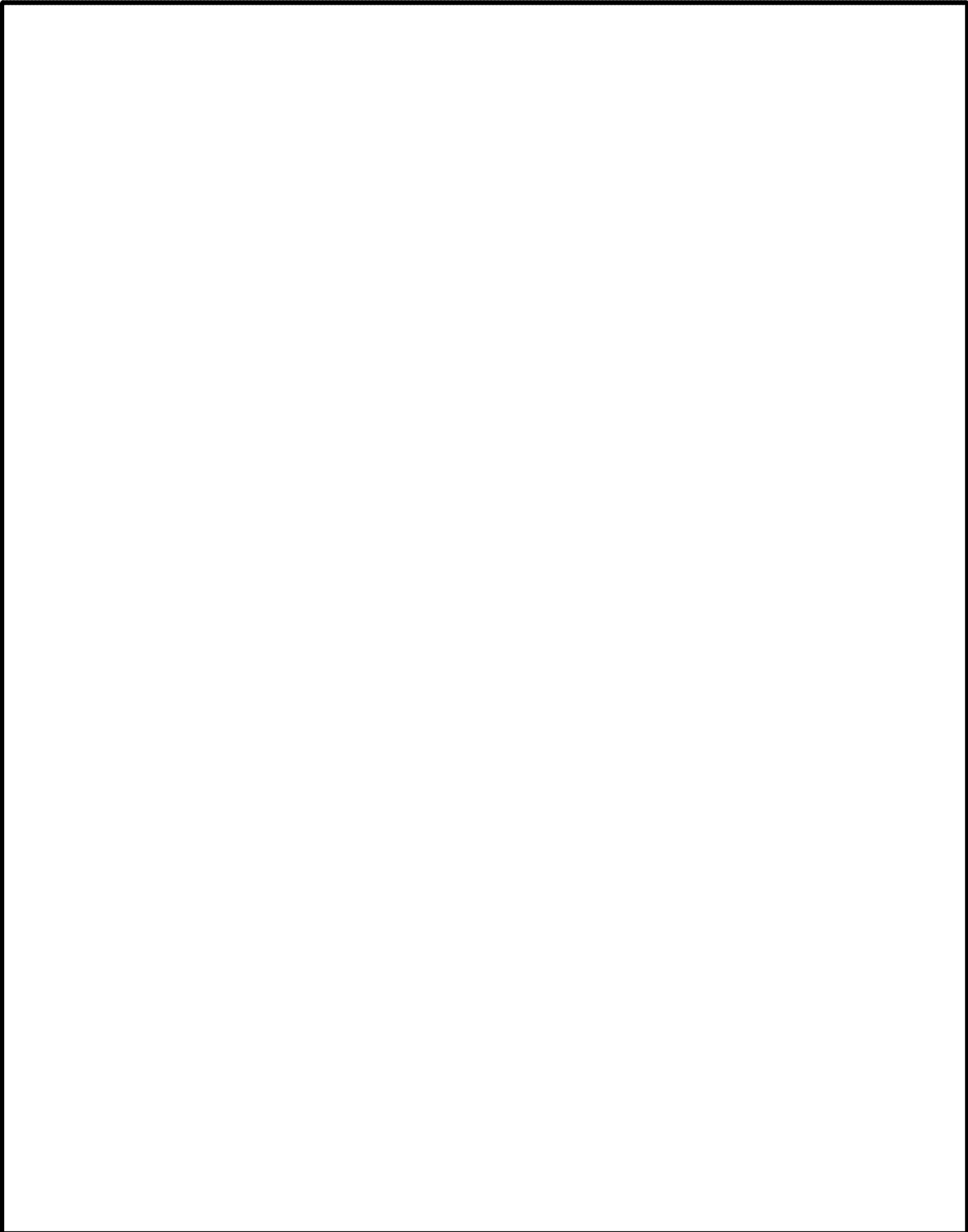


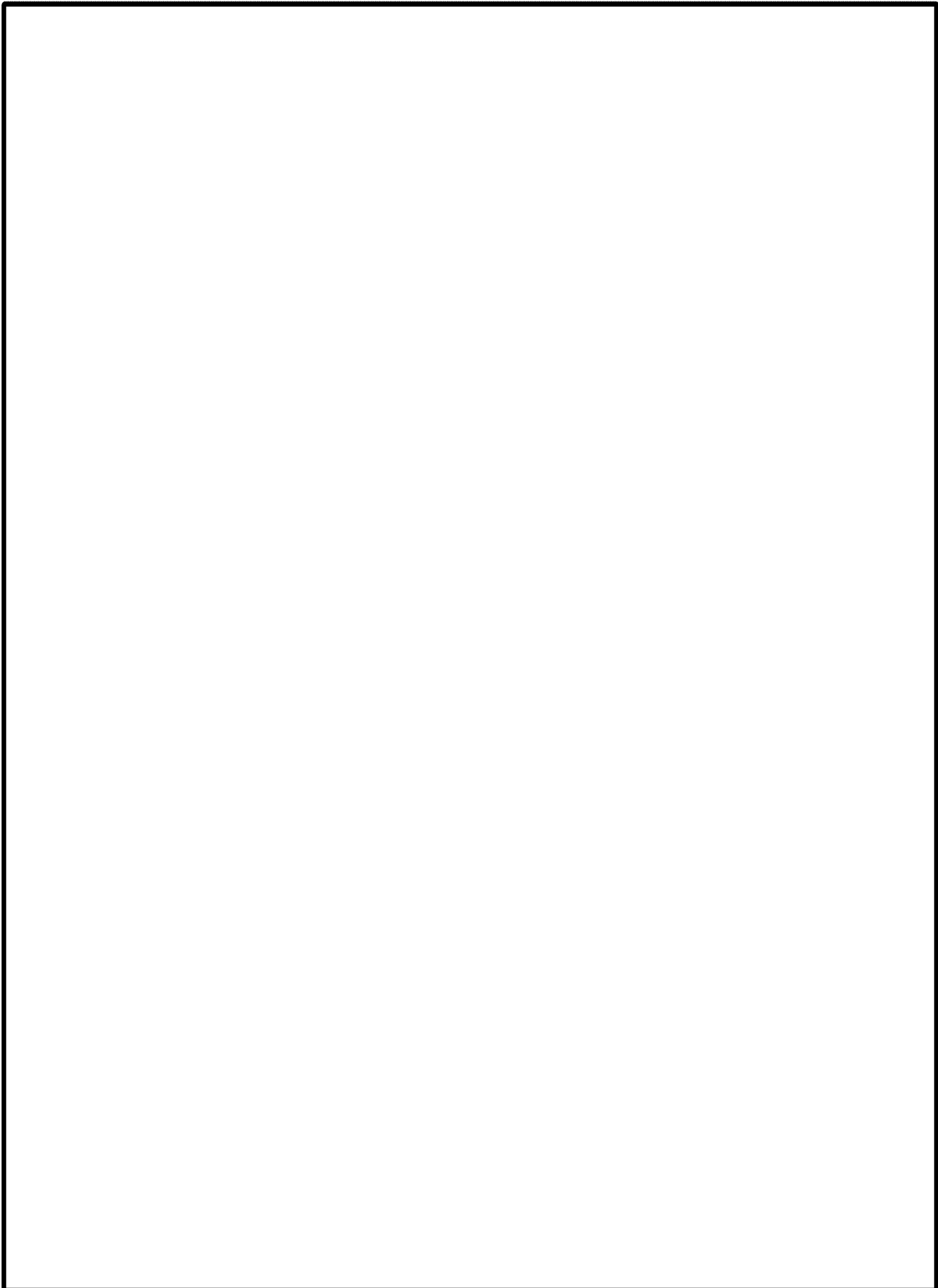


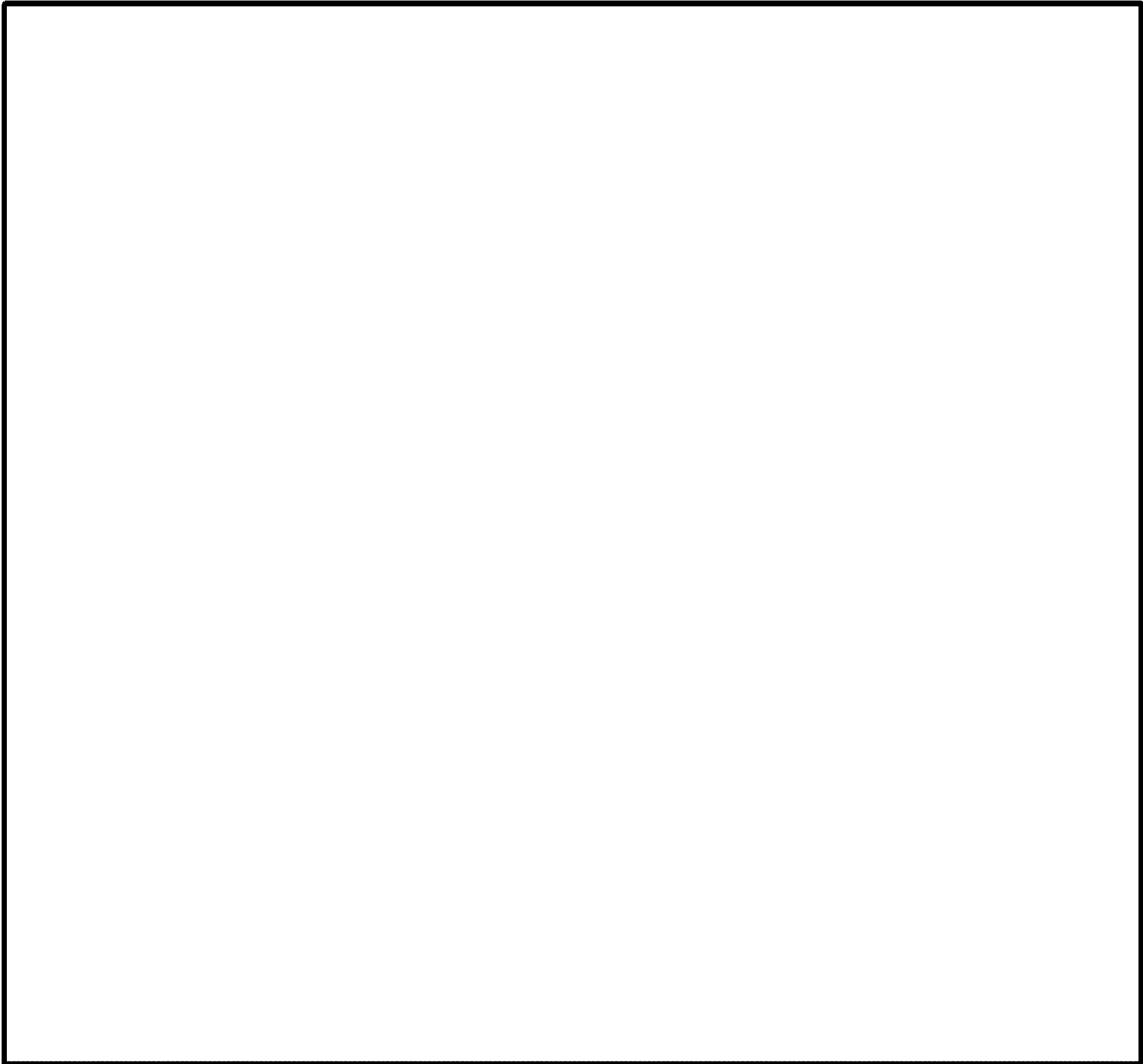












**5. SUMMARY**

Our mission is to administer benefits to those who are eligible for protection while also ensuring the integrity of RAIO’s programs. You play a key role in the adjudications process and in the successful implementation of RAIO’s anti-fraud initiatives. The support available to you not only includes your supervisor and FDNS staff at your office and division, but also the numerous resources RAIO’s FDNS program can access to conduct investigations and verify whether your case involves fraud.

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<sup>50</sup> Adjudicator’s Field Manual (AFM), Chapter 21.2(d)(1)(B)

<sup>51</sup> Aytes, Michael, INS Policy Memorandum, Genetic Relationship Testing: Suggesting DNA Tests, Revisions to the Officers Field Manual (AFM) Chapter 21 (AFM Update AD07-25), March 19, 2008; Adjudicator’s Field Manual (AFM), Chapter 21.2(d)(1): Factors Common to the Adjudication of All Relative Visa Petitions.

You can also take immediate steps to address suspected fraud in your cases, such as carefully reviewing applications/petitions and supporting documentation, and asking detailed questions at the time of the interview about potentially derogatory information. RAIIO officers may submit a fraud referral for any petition or application during any phase of adjudication. Consult with your supervisor and FDNS before, during (if possible), and after your interview to help you address suspected fraud indicators. Complete a fraud referral sheet and continue communicating with FDNS as they conduct system checks and additional research on your case.

Remember that not all inconsistencies in the record indicate the presence of fraud. Always provide the applicant an opportunity to explain any inconsistencies and carefully document the applicant's responses in the record.

When you are able to reasonably articulate the basis for your suspicion, you should make a fraud referral. Even if the suspected and/or identified fraud does not ultimately affect the decision in your adjudication (e.g., the applicant was able to reasonably explain and resolve the fraud concerns with regard to his/her claim) contact FDNS, as the information you obtain may be a basis for a new fraud pattern or trend.

You are in a good position to discover individuals who may be engaging in visa fraud or other benefit fraud. This information may be important to the affected agencies' potential investigation and may result in the successful prosecution of individuals engaging in immigration fraud. You are not alone in fraud prevention and have an extensive network of resources available to you.

**PRACTICAL EXERCISES**

There are no practical exercises for this module.

**OTHER MATERIALS**

There are no other materials for this module.



**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

**ADDITIONAL RESOURCES**

**SUPPLEMENTS**

There is no RAD supplement for this module.

### SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### **REQUIRED READING**

1. Lynden Melmed, Chief Counsel, USCIS. *Authority of Asylum Officers to Retain Fraudulent Documents or Documents Fraudulently Obtained*. Memorandum to Lori Scialabba, Associate Director, RAIIO and Greg Smith, Acting Associate Director, National Security and Records Verification. (Washington, DC: November 30, 2007). 4 p.
2. Ted H. Kim, Acting Chief, Asylum Division, US Citizenship and Immigration Service. *Fact Sheet on Confidentiality and Fact Sheet Attachment*. Memorandum to Asylum Office Directors and Deputy Directors. (Washington, DC: October 18, 2012). 8 p.

#### **ADDITIONAL RESOURCES**

1. Cooper, Bo. INS Office of the General Counsel. *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, Memorandum to Jeffrey Weiss, Director, Office of International Affairs. (Washington, DC: June 21, 2001), 7p.
2. INS Immigration Officer Academy (IOA). *Fraudulent Documents: Counterfeiting (Instructor Guide)*. (Glynco, GA: March 1999).
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11. Reno, Janet. Office of the Attorney General. *FBI Access to INS Asylum Files for Foreign Counterintelligence Purposes*, Memorandum to Director, FBI, and Commissioner, INS (Washington, DC: Nov. 4, 1994), 1 p.
12. Williams, Johnny N. Office of Field Operations. *Interagency Border Inspection System Records Check*, Memorandum to Regional Directors, et al. (Washington, DC: 2 July 2002), 4 p. plus attachment.
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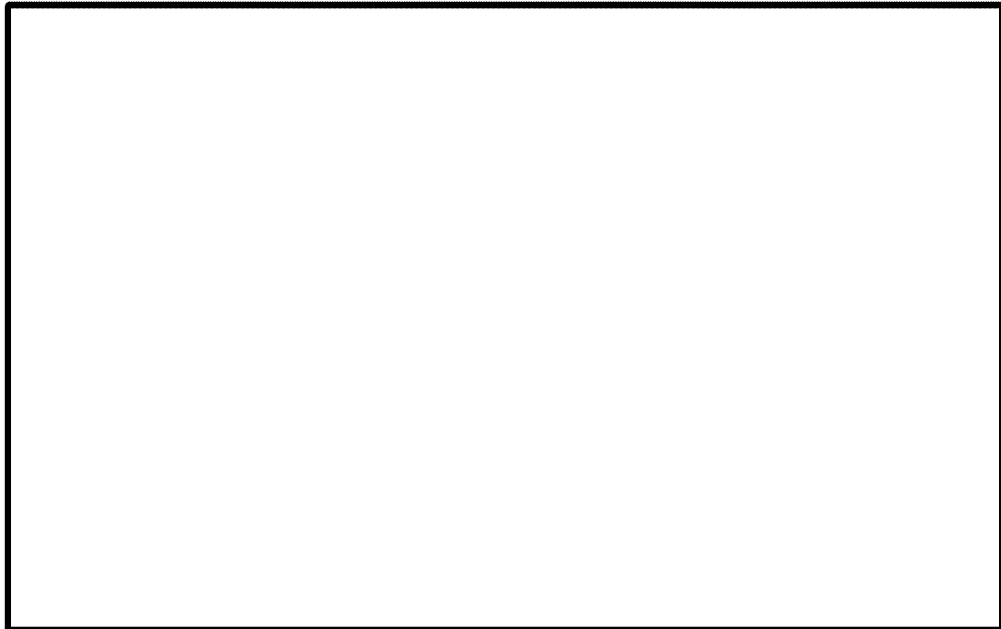
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SUPPLEMENTS

**ASM Supplement – Fraud in Asylum Adjudications**

**Effects of Fraud on An Asylum Claim**

- **Providing fraudulent evidence such as false testimony or fraudulent documents to support an asylum claim has implications for evaluating the applicant’s credibility and whether the applicant has met his/her burden of proof.<sup>52</sup>**
- **An applicant who submits fraudulent evidence should be given the opportunity to explain the submission.**
- **The failure to provide a reasonable explanation may be grounds for an adverse credibility finding.**



(b)(5)

(b)(7)(e)

<sup>52</sup> For further discussion of burden and standards of proof, see RAIO Module, *Evidence*.

<sup>53</sup> See INA § 208(b)(1)(B)(iii).

<sup>54</sup> See INA § 208(b)(1)(B)(ii) (“In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record.”).

**Consequences of Fraud in the Asylum Program**

**Termination of Asylum**

**Source of Authority:** 8 C.F.R. § 208.24

- **When fraud is discovered after asylum has been granted, asylum can generally be terminated if the alien has not yet adjusted to legal permanent resident (LPR) status.**
- **The Prima Facie standard is required to issue a Notice of Intent to Terminate (NOIT).**
- **The burden shifts to USCIS to establish one or more of the termination grounds by a Preponderance of the evidence.**

**Please note: As of 8/7/2012, Asylum Offices operating in the Ninth Circuit (ZLA, ZSF, and ZCH (Idaho Only)) have suspended direct terminations processing until further notice, based on the court decision in *Nijjar v. Holder*, 689 F. 3d 1077 (9th Cir. 2012). Affected offices may still issue a Notice of Intent to Terminate (NOIT) for termination by the Executive Office for Immigration Review (EOIR), in coordination with ICE OPLA.**

**For more information on Termination procedures please see the AAPM III.V Termination of an Asylum Approval.**

## SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

### REQUIRED READING

1. Kendall, Sarah M, Associate Director, Fraud Detection and National Security Directorate; Langlois, Joseph E., Associate Director, Refugee, Asylum and International Operations Directorate; Monica, Donald J., Associate Director, Field Operations Directorate; Neufeld, Donald W., Associate Director, Service Center Operations Directorate, Overseas Verification SOP and Operation Guidance, September 26, 2014.
2. USCIS Fraud Detection and National Security Directorate Fraud Division, Overseas Verification Standard Operating Procedures, September 5, 2014.

### ADDITIONAL RESOURCES

1. International DNA Processing: Suggesting, Collecting, and Interpreting DNA Evidence, September 4, 2014. Version 1.1.
2. Ruppel, Joanna, Chief, USCIS International Operations Division, Implementation of updated interim DNA Field Guidance, International DNA Processing, Suggesting, Collecting and Interpreting DNA Evidence, September 4, 2014.
3. Aytes, Michael, USCIS Policy Memorandum, Genetic Relationship Testing: Suggesting DNA Tests, Revisions to the Officers Field Manual (AFM) Chapter 21 (AFM Update AD07-25), March 19, 2008.
4. Overseas Verification Program: Verification Resources by Country Where USCIS is Present, Version 2.0, October 2, 2015.
5. USCIS International Operations Division, Asylee/Refugee Following-to-Join Travel Eligibility Standard Operation Procedures (“I-730 Travel Eligibility SOP”), Version 3.1, March 2, 2015.
6. USCIS Management Directive No. 140-001, Handling Sensitive and Non-Sensitive Personally Identifiable Information, September 7, 2010.
7. U.S. Department of Homeland Security Privacy Office, Handbook for Safeguarding Sensitive Personally Identifiable Information, March 2012.

**SUPPLEMENTS**

There is no IO supplement for this module. IO-specific procedures and fraud trends are covered in the IODOTC Module, *Identifying and Combating Immigration Fraud Abroad*.



## Lesson Plan Overview

<b>Course</b>	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
<b>Lesson</b>	<b><i>Mandatory Bars to Asylum</i></b>
<b>Rev. Date</b>	May 9, 2013
<b>Lesson Description</b>	This lesson describes prohibitions on applying for asylum, exceptions to those prohibitions, and the circumstances that require denial or referral of an asylum application, even when an applicant establishes that he or she is otherwise eligible for asylum.
<b>Terminal Performance Objective</b>	Given a request for asylum to adjudicate, the asylum officer will be able to determine when an applicant is ineligible to apply for asylum and when a refugee is ineligible for a grant of asylum.
<b>Enabling Performance Objectives</b>	<ol style="list-style-type: none"><li>1. Locate the sections of the INA and regulations that apply to grounds for mandatory denials of asylum. (ACRR3) (AAS6) (ACCR4)</li><li>2. Identify the grounds of ineligibility to apply for asylum, and the exceptions to those grounds. (AIL4)</li><li>3. Indicate who is subject to a mandatory denial or referral of asylum. (ACRR3)</li><li>4. Describe the factors to consider in determining whether an individual is firmly resettled. (ACRR3)</li><li>5. Identify policies and procedures for handling criminal issues. (ACRR3) (CD38)</li></ol>
<b>Instructional Methods</b>	Lecture; discussion; practical exercises
<b>Student Materials/References</b>	Lesson Plans; INA; 8 C.F.R. §208; <i>INS v. Aguirre-Aguirre</i> , 526 U.S. 415 (1999)
<b>Methods of Evaluation</b>	Practical exercise; Written test
<b>Background Reading</b>	<ol style="list-style-type: none"><li>1. <i>Agreement Between the Government of the United States of America and the Government of Canada for the Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries</i> (Dec. 5, 2002), 5 pp.; Final Rule on the Implementation of the Agreement, 69 FR 69480, November 29, 2004, 12 pp.</li><li>2. Walter D. Cadman. Investigations Branch, Office of Field Operations. <i>Investigative Referral of Suspected Human Rights Abusers</i>, Memorandum to District Directors, et al. (Washington, DC: Sept. 28, 2000), 2p.</li></ol>

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6. Michael A. Pearson. Office of Field Operations. *Human Rights Abuse Memorandum of Understanding*, Memorandum to Regional Directors, et al. (Washington, DC: Sept. 29, 2000), 19p.
7. Chris Sale. Office of the Deputy Commissioner. *AEDPA Implementation Instruction #3: The Effects of AEDPA on Various Forms of Immigration Relief*, Memorandum to Management Team (Washington, DC: 6 August 1996), 9 p. plus attachments
8. Jeffrey Weiss. Office of International Affairs. *Processing Claims Filed By Terrorists Or Possible Terrorists*, Memorandum to Asylum Office Directors, HQASM Staff (Washington, DC: 1 October 1997), 2 p.
9. Johnny N. Williams. Office of Field Operations. *Interagency Border Inspection System Records Check*, Memorandum to Regional Directors, et al. (Washington, DC: 2 July 2002), 4 p. plus attachment.
10. James W. Ziglar. Office of the Commissioner. *New Anti-Terrorism Legislation*, Memorandum for Regional Directors and Regional Counsel (Washington, DC: 31 October 2001), 8p.
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13. *Matter of A-G-G-*, 25 I. & N. Dec. 486 (BIA 2011).

## CRITICAL TASKS

1. Knowledge of mandatory bars and inadmissibilities to asylum eligibility (ACRR3)
2. Knowledge of policies and procedures for one year filing deadline (ACRR4)
3. Knowledge of criteria for refugee classification. (CD20)
4. Knowledge of policies and procedures for handling criminal issues (CD38)
5. Skill in analyzing complex issues to identify appropriate responses or decisions (CD127)

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## Presentation

## References

### I. INTRODUCTION

This lesson describes prohibitions on applying for asylum, exceptions to those prohibitions, and the circumstances that require denial or referral of an asylum application, even when an applicant establishes that he or she is otherwise eligible for asylum. Prohibitions on applying for asylum and circumstances that require denial or referral of otherwise eligible applicants are known collectively as “bars.” There are bars to applying for asylum and bars to eligibility for asylum.

This lesson only introduces the bar to applying for asylum more than one year after the date of last arrival (the one-year filing deadline), and the bar to applying based on availability of a safe third country. Both of these subjects are covered in greater detail in the asylum lessons, *One-Year Filing Deadline* and *Safe Third Country Threshold Screening*. This lesson will provide more detailed information on the bar to applying for asylum based on a Previous Denial of an Asylum Claim.

This lesson will also provide a brief review of the bars to eligibility that are covered in RAIO training modules *Analyzing The Persecutor Bar*, *National Security*, and *Firm Resettlement*.

This lesson will provide a more detailed discussion of bars to eligibility based on criminal activity.

You are not required to memorize all of the specific crimes listed as bars to asylum. Rather, you should become familiar with the broad category of crimes that preclude a grant of asylum, and the issues that must be considered when adjudicating the claim of an applicant who may have been involved in criminal activity.

In general, the process for interview of an asylum-seeker does not change when examining the possibility that a mandatory bar applies. However, there are certain instances when the asylum officer must switch to Question-and-Answer, Sworn Statement style interview notes. This is discussed in greater detail in the RAIO training module *Interviewing - Note-Taking*.

### II. OVERVIEW OF BARS

The *1951 Convention relating to the Status of Refugees* gives State signatories the authority to deny protection to certain refugees who are determined to be “persons who are not considered to be deserving of international protection,” and persons deemed “not in need of

1951 Convention  
relating to the Status of  
Refugees, Art. 1.F;  
*UNHCR Handbook*,  
paras. 140, 147-63

international protection.” Specifically, the Convention does not apply to any person with respect to whom there are serious reasons for considering that he or she committed certain crimes (crime against peace, war crime, crime against humanity, or serious nonpolitical crime outside the country of refuge), or has been guilty of acts contrary to the purposes and principles of the United Nations.

In accordance with these provisions, United States law contains provisions that prohibit the granting of asylum (and/or withholding of removal) to certain individuals based on criminal activities and national security reasons. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on September 30, 1996, Congress significantly revised the law relating to eligibility to apply for and to be granted asylum. Prior to the IIRIRA, the only bar to *applying* for asylum was conviction of an aggravated felony. A change occurred with enactment of IIRIRA so that a conviction of an aggravated felony is a bar to being *granted* asylum. Other circumstances discussed below are bars to *applying* for asylum. Consequently, an asylum applicant who applies for asylum on or after April 1, 1997 must first demonstrate eligibility to apply for asylum before the merits of the claim will be adjudicated.

INA § 208(b)(2)(B)(i).  
This is discussed in section IV.B below.

In addition, Congress identified new mandatory bars to eligibility for asylum and codified in statute grounds for ineligibility that previously were found only in regulation.

Because the IIRIRA amendments to section 208 of the INA apply only to asylum applications filed on or after April 1, 1997, three new prohibitions on applying for asylum and the new substantive ineligibility grounds apply only to applications filed on or after April 1, 1997.

#### **A. Overview of Bars to Applying for Asylum**

Pursuant to regulation, only the BIA, an immigration judge or asylum officer may make the determination as to whether an applicant is prohibited from applying for asylum. Therefore, the Service Centers will continue to accept asylum applications in affirmative cases, regardless of whether it appears that an applicant is barred from applying. The applicant will be scheduled for an asylum interview, and an asylum officer will interview the applicant to determine whether a prohibition on filing is applicable, and if so, whether an exception exists.

8 C.F.R. § 208.4(a)(1)

Generally, an asylum seeker cannot apply for asylum on or after April 1, 1997, if any of the following three circumstances apply:

INA § 208(a)(2); 8 C.F.R. § 208.4(a)

- The asylum seeker could be returned to a “safe” third country, pursuant to a bilateral or multilateral agreement.

As will be discussed below, the first bar only

- The asylum seeker submitted an application more than one year after arrival in the United States or after April 1, 1998, whichever is most recent in time.
- The asylum seeker previously has been denied asylum by an immigration judge or the BIA.

applies to certain applicants arriving from Canada, who are seeking credible or reasonable fear interview, and there are exceptions for all three bars.

Conviction of an aggravated felony is a prohibition on filing for asylum applications submitted between November 20, 1990 and April 1, 1997.

## **B. Overview of Mandatory Bars to a Grant of Asylum**

There are six statutory grounds (mandatory bars) that render an applicant ineligible for asylum, even if the applicant may be a “refugee” within the meaning of section 101(a)(42)(A) of the Act.

INA §§ 208(b)(2)(A); Note that the statute provides that the Attorney General may establish by regulation additional limitations on a grant of asylum. INA § 208(b)(2)(C).

Each bar is outlined below, and will be discussed in more detail in the rest of the lesson plan.

- Persecution of others on account of one of the protected characteristics in the refugee definition
- Conviction of a particularly serious crime, including an aggravated felony
- Commission of a serious nonpolitical crime outside the United States prior to arrival in the U.S.
- Reasonable grounds exist for regarding the applicant a danger to the security of the United States
- Participation in terrorist activities or status as a representative of certain terrorist organizations
- Firm resettlement

By definition, a persecutor cannot be a “refugee.” The second sentence of INA § 101(a)(42) specifically excludes persecutors from the refugee definition.

## **III. BARS TO APPLYING FOR ASYLUM**

Only applicants who submit applications for asylum on or after April 1, 1997, are subject to the following bars to applying for asylum.

### **A. Safe Third Country**

INA § 208(a)(2)(A).

If it is determined that the asylum seeker can be removed to a “safe third country,” he or she cannot apply for asylum, unless the Attorney General finds it in the public interest for the applicant to remain in the United States.

Each of the following requirements must be met before this bar can be applied:

1. There must be a bilateral or multilateral agreement for removal with the third country;
2. The applicant’s life or freedom would not be threatened on account of a protected ground in the third country; and
3. The applicant must have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection in the third country.

Please refer to Asylum Lesson Plan, *Safe Third Country Threshold Screening*, for a detailed discussion of the applicability and exceptions related to this bar to filing for asylum.

## **B. One-Year Filing Deadline**

An asylum seeker cannot apply for asylum more than one year after the date of arrival in the United States. The one-year period is calculated from the date of the applicant’s last arrival in the United States or April 1, 1997, whichever is most recent in time. Please refer to Asylum Lesson Plan, *One-Year Filing Deadline*, for a detailed discussion of the applicability and exceptions related to this bar to filing for asylum.

INA § 208(a)(2)(B); 8 C.F.R. § 208.4(a)(2)(ii). The Asylum Division provided a 2-week grace period when this provision was implemented and thus does not refer as untimely any I-589 applications filed before April 16, 1998.

## **C. Previous Denial of Asylum**

An asylum seeker cannot apply for asylum if he or she has previously applied for and been denied asylum by an immigration judge (IJ), or the Board of Immigration Appeals (BIA) (collectively EOIR), unless the asylum seeker demonstrates to the satisfaction of the adjudicator changed circumstances that materially affect asylum eligibility. A previous denial of asylum *by an asylum officer* is not a bar to applying for asylum.

INA §§ 208(a)(2)(C) and (D); 8 C.F.R. § 208.4(a)(3).

See Joseph E. Langlois, Asylum Division, Office of International Affairs. *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, Memorandum to Asylum Office Directors, et al. (Washington, DC:



Jan. 4, 2002).

1. Jurisdiction

In most cases in which an applicant has been denied asylum by an IJ or the BIA, the Asylum Division does not have jurisdiction over a subsequently filed Form I-589, *Application for Asylum and for Withholding of Removal*, because a charging document has been served on the applicant and filed with EOIR. Therefore, unless the applicant left the United States after the denial, the application would fall under EOIR's exclusive jurisdiction under 8 C.F.R. § 208.2(b) and 8 C.F.R. § 208.2(b).

There are five circumstances in which the Asylum Program has jurisdiction over an I-589 filed after an IJ or BIA has denied the applicant asylum. In the first three circumstances, the applicant must have left the United States after having been denied asylum by an IJ or the BIA, returned to the United States, and then submitted the I-589 with USCIS. The last two circumstances relate only to Unaccompanied Alien Children (UACs) and are a result of the *Trafficking Victims Protection Reauthorization Act*.

Note: The "Previous Denial of Asylum" procedures do not apply to an individual who entered the US illegally after having been removed, deported, or excluded, or after having left the US under an order of removal, deportation, or exclusion, and is therefore subject to reinstatement of the prior order. For procedures involving reinstatements of prior orders, see *Affirmative Asylum Procedures Manual*, section III.S, *Reinstatement of Prior Order*.

Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Staff, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* (HQRAIO 120/12a) (25 March 2009).

- a. The applicant was removed from or departed the United States under an order of removal, deportation, or exclusion, and subsequently made a legal entry.

Because the final order was executed, EOIR no longer has jurisdiction and, because the subsequent entry was legal, the applicant is not subject to reinstatement of the final order under INA § 241(a)(5).

- b. The applicant departed the United States after the expiration of a voluntary departure period, thus becoming subject to a removal order and subsequently

made a legal entry; or

- c. The applicant departed the United States before the expiration of a voluntary departure period, and subsequently made a legal or illegal entry.
- d. A UAC in pending removal proceedings, with a case on appeal to the BIA, or with a petition for review in federal court as of December 23, 2008, who has never submitted a Form I-589, may file for asylum with USCIS.
- e. For an individual in pending removal proceedings, with a case on appeal to the BIA, or with a petition for review in federal court as of December 23, 2008, who has previously submitted a Form I-589 while a UAC, USCIS may have initial jurisdiction.

USCIS has jurisdiction because no final order was entered (therefore reinstatement is not an issue), and there has been a departure and re-entry since the applicant was placed in proceedings (therefore, EOIR no longer has exclusive jurisdiction under 8 C.F.R. § 208.2).

Please see the RAIO Module *Children's Claims* and the Asylum lesson *One-Year Filing Deadline* for a more detailed explanation of cases involving Unaccompanied Alien Children.

2. Determination of changed circumstances

a. Definition

The definition of “changed circumstances” applied in the one-year filing deadline analysis is the same as the definition of “changed circumstances” as applied when analyzing whether the applicant may be permitted to apply for asylum after being denied asylum by an IJ or the BIA. The changed circumstances must materially affect the applicant’s eligibility for asylum and may include changes in the country of persecution or changes relating to the applicant in the United States, including changes in U.S. law.

INA § 208(a)(2)(D); 8 C.F.R. § 208.4(a)(4); and *see* Asylum lesson, *One-Year Filing Deadline*, section *Changed Circumstances*

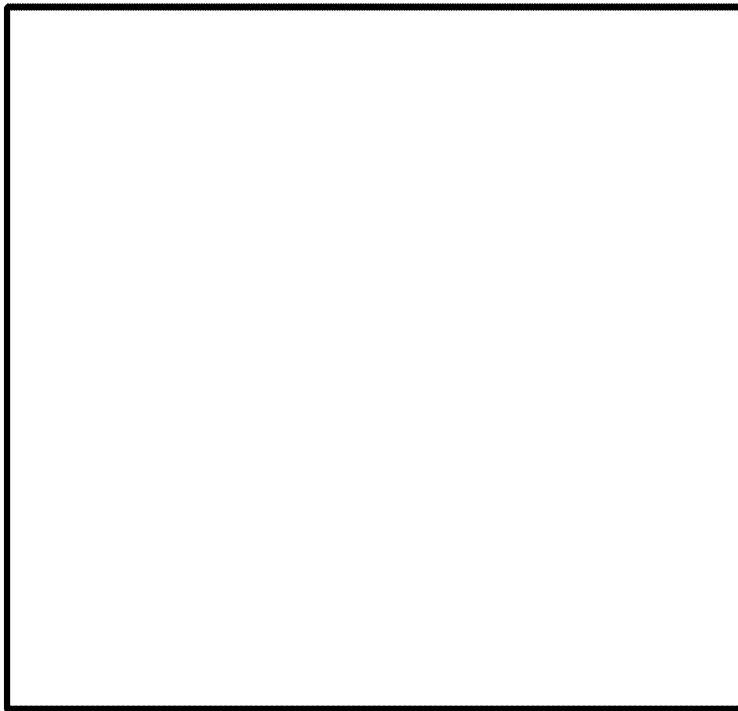
The difference in the analysis is that to overcome the previous denial bar the changed circumstance must have occurred since the applicant was denied asylum by the IJ or BIA.

Note: The one-year filing deadline analysis requires that the changed circumstance have occurred after April 1, 1997.

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b. Standard of proof

The standard of proof for demonstrating this exception is “to the satisfaction of” the adjudicator.

See RAIO module,  
*Evidence.*

3. Review of previous decision

The entire file, including the prior application, supporting documentation, and the previous assessment or decision, must be reviewed prior to making a determination on whether the applicant is eligible to apply for and be granted asylum. Whenever possible, the case should be assigned to the officer who made the original decision.

a. Prior denial by asylum officer

As indicated above, a prior denial by an *asylum officer* is not a bar to applying for asylum. Changed circumstances need not be established for the asylum claim to be considered on its merits. Nevertheless, in such cases, substantial deference should be accorded to prior determinations as to previously established facts, including credibility findings, unless a clear error is present.

b. Prior denial by EOIR

Findings of fact made by EOIR, including credibility determinations, must be upheld and cannot be

reconsidered. The application of law to the applicant's original case also must be upheld, unless the applicant establishes changed law materially affecting his or her eligibility for asylum. The applicant has already had an opportunity to appeal the IJ's decision, and the asylum officer is not in a position to give a new hearing on issues that were or should have been raised on appeal.

4.

(b)(5)

5.

6. One-Year Filing Deadline

Applicants who file an application for asylum on or after April 1, 1997, are subject to the one-year filing deadline rule, including those who were previously denied asylum by an IJ or the BIA. However, please note that the one year filing deadline does not apply to UACs.

INA § 208(a)(2)(B); 8 C.F.R. § 208.4(a).

See RAIO Module: *Children's Claims, Asylum Supplement.*

The analysis of the one-year filing deadline for those who were previously denied asylum will be identical to that for all other applicants.

See generally Asylum lesson, *One-Year Filing Deadline.*

a. Filing timely

As explained above, for the Asylum Division to have jurisdiction over an asylum application filed by an individual who was previously denied asylum by an IJ or the BIA, the individual must have left the United States and made a re-entry subsequent to the denial of asylum.

Section III.C.1., *Jurisdiction*, above, lists the situations when the Asylum Division has jurisdiction over an applicant previously denied asylum.

To determine whether the applicant timely filed, the officer compares the date of the applicant's entry subsequent to the denial of asylum to the date the second asylum application was filed to determine whether the individual filed the application within one year after the date of last arrival.

See Asylum Lesson, *One-Year Filing Deadline*, section IV.

(b)(5)



b. Exceptions to the one-year filing deadline

An applicant previously denied asylum who files an application for asylum more than one year after his or her last arrival may still be eligible for asylum if he or

See Asylum lesson, *One-Year Filing Deadline*, section *Exceptions to the One-*

she can establish eligibility for an exception to the one-year filing deadline.

*Year Rule*

(i) Changed circumstances

If an applicant establishes a changed circumstance that excuses a prior denial of asylum, that same circumstance may qualify as an exception to the one-year filing deadline as well, provided that the changed circumstance occurred on or after April 1, 1997 and the application was filed within a reasonable period of time given the circumstances.

*See Asylum lesson, One-Year Filing Deadline, section Changed Circumstances.*

(b)(5)



*See Asylum lesson, One-Year Filing Deadline, section Changed Circumstances, General Considerations.*

(ii) extraordinary circumstances

Extraordinary circumstances do not provide an exception to the bar to applying for asylum after a

*See Asylum lesson, One-Year Filing*

prior denial. However, if the changed circumstance that overcomes the previous denial bar does not apply as a changed circumstance exception to the one-year filing deadline, the asylum officer must consider whether there are extraordinary circumstances that are material to the filing deadline.

*Deadline, section  
Extraordinary  
Circumstances*

(b)(5)

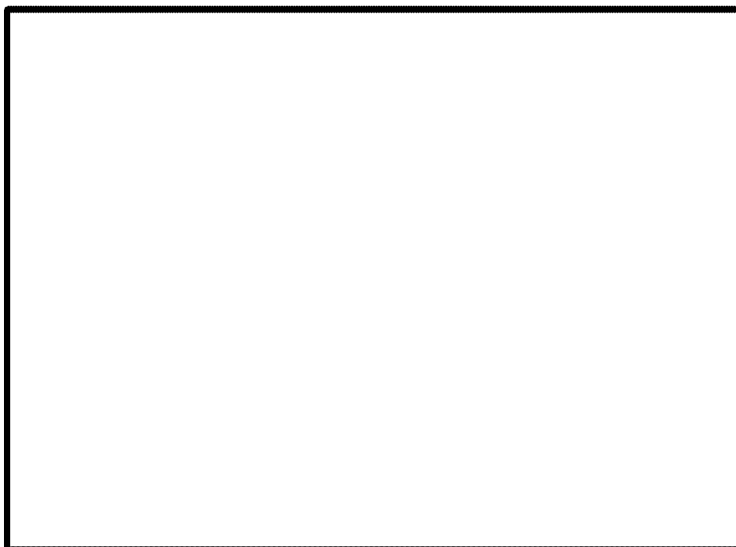


c. Filing within a reasonable period of time

Once an applicant who applied untimely has established the requisite changed or extraordinary circumstances, a determination must be made as to whether the application was filed within a reasonable period of time given those circumstances. This requirement applies equally to applicants previously denied asylum who file more than one year after the date of last entry.

*8 C.F.R. §§  
208.4(a)(4)(ii) and (5);  
See Asylum lesson,  
One-Year Filing  
Deadline, section  
Filing within a  
Reasonable Period of  
Time, Overview.*

(b)(5)



7. Dependents

A denial of the principal applicant's asylum application does not prohibit an included dependent from filing a subsequent, separate asylum application.

*8 C.F.R. § 208.14(f).*

## IV. BARS TO ELIGIBILITY FOR ASYLUM

### A. Persecution of Others

"The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." In addition, the statute specifically prohibits the Attorney General from granting asylum to such a person.

INA § 101(a)(42);  
§ 208(b)(2)(A)(i).

The statutory exclusion of persecutors from the refugee definition means that even if an applicant has been persecuted in the past, or has a well-founded fear of future persecution on account of one of the protected grounds, he or she cannot be said to have "met the definition of a refugee" if he or she is also found to be a persecutor.

It had long been held that the persecutor bar applies even if the alien's assistance in persecution was coerced or otherwise the product of duress. However, the Supreme Court in *Negusie v. Holder* requested that such an understanding be revisited. Specifically, the Supreme Court held that the BIA misapplied the Supreme Court's prior decision in *Fedorenko* (based on a reading of similar language in the Displaced Persons Act) as mandating that whether an alien is compelled to assist in persecution is immaterial for persecutor-bar purposes and remanded the case for agency interpretation of the statute in the first instance. The BIA has yet to issue a decision in the *Negusie* remand. However, DHS and DOJ are jointly developing regulations addressing possible exceptions to the persecutor bar based on duress and other factors. Until the BIA publishes a decision on the issue, or relevant regulatory guidance is issued, cases involving the persecution of others under coercion or duress should be held.

*Matter of Rodriguez-Majano*, 19 I. & N. Dec. 811 (1988) citing, *Fedorenko v. United States*, 449 U. S. 490 (1981).

*Negusie v. Holder*, 555 U.S. 511 (2009).

See the RAIO Module, *Analyzing The Persecutor Bar* for an in-depth discussion on the definition and application of the persecutor bar.

### B. Conviction of Particularly Serious Crime

Asylum may not be granted to an applicant who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community.

INA §  
208(b)(2)(A)(ii).

#### 1. Filing date

This bar applies regardless of the filing date of the asylum application; however, the filing date determines the type of crimes included in this category.

8 C.F.R.  
§§ 208.13(c)(1) and  
(2)(A).



If the application was filed before November 29, 1990, then an aggravated felony is not automatically considered a particularly serious crime.

*See Section IV.B.6.a., Aggravated Felonies, below.*

If the application was filed before April 1, 1997, then the conviction must have occurred in the United States. If the application was filed on or after April 1, 1997, then the conviction may have occurred either inside or outside of the United States.

2. Basic elements

- a. convicted by a final judgment
- b. crime is “particularly serious”
- c. the applicant constitutes a danger to the community

3. Definition of “conviction”

For immigration purposes, a conviction exists if each of the following requirements are met:

INA § 101(a)(48)(A).

- a. a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt; and
- b. the court has ordered some form of punishment, penalty, or restraint on a person's liberty; and
- c. the conviction must be final. A conviction is final, for immigration purposes, if direct appellate review has either been waived or exhausted

*Matter of Polanco*, 20 I&N Dec. 894 (BIA 1994).

If in doubt about the finality of a conviction, a Supervisory Asylum Officer should contact the USCIS Office of Chief Counsel or ICE OPLA, as appropriate.

4. Juvenile convictions

Conviction as a juvenile will not constitute a conviction for a particularly serious crime under the INA, if the applicant is

*Matter of Ramirez-Rivero*, 18 I&N Dec.

under 16 years of age or was tried as a juvenile (while 16 to 18 years of age). However, commission of the crime may be a basis to exercise discretion to deny or refer the asylum request.

135, 137-39 (BIA 1981); *see* RAIO Module, *Discretion*.

5. What constitutes a particularly serious crime

a. aggravated felonies

By statute, all aggravated felonies are considered particularly serious crimes for *purposes of evaluating asylum eligibility*.

Given that the bar to asylum is for a conviction of a “particularly serious crime,” the key inquiry for asylum officers is not whether the offense meets the definition of an aggravated felony, but whether the offense can be considered “particularly serious.” As a practical matter, most particularly serious crimes encountered in asylum interviews will be aggravated felonies.

In order to determine if the particularly serious crime bar is applicable, the asylum officer should first consider whether the conviction is of a crime specifically identified by statute or precedent case law as an aggravated felony or otherwise as a particularly serious crime. If no such identification is available, officers must consider whether the conviction meets the defining characteristics of a “particularly serious crime.” In general, when cases where the issue of a possible bar arises, guidance should be sought from supervisors, headquarters quality assurance and the USCIS Office of the Chief Counsel or ICE Office of the Principal Legal Advisor, as appropriate.

The list of crimes statutorily designated to be aggravated felonies is contained in section 101(a)(43) of the INA. Some are specific crimes, while others are more general (e.g., murder vs. crime of violence). Some crimes are not aggravated felonies unless a sentence of particular length or a certain amount of money is involved. Therefore, it is necessary to consider the sentence in such cases.

Note that it is not important to memorize statutory provisions defining and describing aggravated felonies. Instead, given information that the applicant was arrested, it is critical to acquire as much information as possible about whether there was a conviction, upon what charge or charges that conviction rested and what the sentence was. You should also gather information concerning the

INA § 208(b)(2)(B)(i). *See* Section b, “Other Crimes – general” below. Note: The particularly serious crime discussion contained herein is applicable only to asylum decision-making and is inapplicable to withholding of removal, a topic outside the scope of this lesson.

Prior to IIRIRA, the commission and conviction dates of the crime determined which definition of aggravated felony applied. As a result of IIRIRA, the current definition of aggravated felony at INA § 101(a)(43) applies regardless of commission or conviction date.

circumstances underlying the facts of the crime, but be aware that the aggravated felony determination may, depending on the circumstances, rest solely on the record of conviction (regardless of the underlying facts).

A term of imprisonment for purposes of the INA is defined as including “the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.” Therefore, someone who has been sentenced to a term of imprisonment for a certain term, but whose sentence is deferred if a period of probation is successfully completed, is still considered “sentenced” to that term of imprisonment.

INA § 101(a)(48)(B).

The aggravated felony definition applies to convictions for violations of either state or federal law. It also applies to convictions in violation of a foreign law, so long as the term of imprisonment was completed within the previous 15 years.

INA § 101(a)(43).

(i) Drug related offenses

In assessing whether a state drug related conviction constitutes an aggravated felony under 18 USC § 924(c)(2) the U.S. Supreme Court held that conduct made a felony under state law but a misdemeanor under the Controlled Substances Act (CSA) is not a “felony punishable under the Controlled Substances Act” for INA purposes. A state offense comes within the quoted phrase only if it prohibits conduct punishable as a felony under the CSA.

*Lopez v. Gonzales*, 549 U.S. 47 (2006). Finding that a South Dakota misdemeanor conviction for aiding and abetting another person’s possession of cocaine is not a felony punishable under the CSA and is therefore not a drug trafficking crime within the meaning of 18 U.S.C. § 924(c)(2).

But, the reverse is not true. A state misdemeanor conviction cannot be elevated to an aggravated felony conviction just because the same facts would support felony charges under the CSA. The Supreme Court rejected an attempt to extend *Lopez* where the government argued that “conduct punishable as a felony should be treated as the equivalent of a felony conviction when the underlying conduct could have been a felony under federal law.” The court ruled that even though federal law provides for enhanced sentencing for a simple possession drug offense where there is a prior conviction, a simple possession misdemeanor conviction under state law, where there was no mention of any prior conviction included in the charges, could not be considered an aggravated felony just because the alien

*Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577 (2010).

*could* have been charged as a felon in federal court. The court reasoned that the statute “limits the Attorney General's cancellation authority only when the noncitizen has actually been convicted of a[n] aggravated felony - not when he merely could have been convicted of a felony but was not.” (internal quotation marks omitted).

(ii) “Crime of violence”

In determining whether an offense is a “crime of violence” under 18 USC §16, the Supreme Court held that a statute which punishes negligent or accidental conduct cannot be said to involve the “use” of physical force against the person or property of another, and therefore is not an aggravated felony.

*Leocal v. Ashcroft*, 543 U.S. 1 (2004) holding that a Florida conviction for DUI causing serious bodily injury does not have a *mens rea* requirement, and therefore is not a “crime of violence” under the Act.

In order to determine whether the conviction of a particular offense amounts to a “crime of violence” the officer must look to the requirements of the criminal statute and evaluate whether it includes a *mens rea* requirement. *Mens Rea* is the legal term used for the mental state required for culpability under a statute.

**EXCEPTION:** If an application was filed prior to November 29, 1990, the conviction of an aggravated felony does not constitute a mandatory bar to asylum. Consequently, the asylum officer must analyze the circumstances of the conviction in such cases to determine whether it constitutes a particularly serious crime.

*Matter of A-A-*, 20 I&N Dec. 492 (BIA 1992).

b. other crimes – general

The INA designates that all aggravated felonies are, per se, particularly serious crimes, but does not limit the consideration of what is a particularly serious crime to aggravated felonies. It is important to remember that even after a determination is made that a conviction is for a crime that is not an aggravated felony, the officer must still determine whether the conviction is for a particularly serious crime.

INA § 208(b)(2)(B)(i). *Delgado v. Mukasey*, 546 F.3d 1017 (9th Cir. 2008); *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007).

The determination as to whether a crime (other than an aggravated felony) is “particularly serious” is most often made on a case-by-case basis. The factors to consider are the following:

- (i) the nature of the conviction;
- (ii) the sentence imposed;
- (iii) the circumstances and underlying facts of the conviction; and
- (iv) whether the type and circumstances of the crime indicate that the alien will be a danger to the community.

*Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982); *Matter of B-*, 20 I&N Dec. 427, 430 (BIA 1991); *Matter of L-S-J-*, 21 I&N Dec. 973, 974-75 (BIA 1997); *Mahini v. INS*, 779 F.2d 1419, 1421 (9th Cir. 1986); *Yousefi v. INS*, 260 F.3d 318 (4th Cir. 2001)(criteria valid but not properly applied).

See Section IV.B.7., *Danger to the Community*, below, and note that this element involves somewhat circular reasoning, since conviction of a PSC necessarily leads to a finding that the alien is a danger to the community.

A single conviction of a *misdemeanor* normally is not a particularly serious crime.

*Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988).

*Crimes of violence* are normally particularly serious crimes. The term “crime of violence” means--

18 U.S.C. § 16 (definition).

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Note that a crime does not have to be a crime of violence to constitute a particularly serious crime. In *Matter of R-A-M-*, 25I&N Dec. 657 (BIA 2012), the BIA found that possession of child pornography constituted a particularly serious crime.

## 6. Danger to the community

As a matter of law, an individual who has been convicted in the United States of a particularly serious crime constitutes a danger to the community.

*Matter of U-M-*, 20 I&N Dec. 327 (BIA 1991) (affirmed, *Urbina-Mauricio v. INS*, 989 F.2d 1085 (9th Cir. 1993)); *Choeum v. INS*, 129 F.3d 29 (1st Cir. 1997).

7. Examples

Note: Many of these examples are taken from cases decided before IRIIRA broadened the list of crimes considered aggravated felonies. They remain valid examples of particularly serious crimes but for the most part are also aggravated felonies under IRIIRA.

- a. assault with a dangerous weapon

Note, however, that assault with a deadly weapon was found not to be a particularly serious crime in a case involving a single, misdemeanor offense.

*Matter of D-*, 20 I&N Dec. 827 (BIA 1994); *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988).

- b. drug trafficking

Generally a drug trafficking conviction constitutes an aggravated felony and therefore a particularly serious crime as a matter of law for asylum purposes. Even if there is some question as to whether a particular drug offense constitutes an aggravated felony, it is likely to meet the criteria for a particularly serious crime described above and thus bar the applicant from asylum eligibility.

INA § 101(a)(43)(B); see *Matter of Y-L-, A-G- & R-S-R-*, 23 I&N 270 (AG 2002) drug trafficking is also presumptively a particularly serious crime for purposes of withholding of removal. The Attorney General ruled that the presumption would only be overcome in "the most extenuating circumstances" that were "both extraordinary and compelling."

- c. battery with a dangerous weapon, or aggravated battery

*Matter of D-*, 20 I&N Dec. 827 (BIA 1994); *Matter of B-*, 20 I&N Dec. 427 (BIA 1991).

- d. rape

INA § 101(a)(43)(A); see *Matter of B-*, 20 I&N Dec. 427 (BIA 1991).

- e. sexual abuse of a minor

Sexual abuse or attempted sexual abuse of a minor constitutes an aggravated felony and therefore a particularly serious crime for asylum purposes. Misdemeanor sexual abuse of a minor also has been found to constitute an aggravated felony (and a particularly serious crime for asylum purposes).

INA § 101(a)(43)(A); *U.S. v. Reyes-Castro*, 13 F.3d 377 (10th Cir. 1993); *Matter of Small*, 23 I&N Dec. 448 (BIA 2002).

- f. armed robbery *Matter of D-*, 20 I&N Dec. 827 (BIA 1994); *Matter of L-S-J-*, 21 I&N Dec. 973 (BIA 1997).
- g. theft offenses (including receipt of stolen property) or burglary offenses  
Theft offenses (including receipt of stolen property) or burglary offenses for which the term of imprisonment is at least one year constitute aggravated felonies and therefore particularly serious crimes for asylum purposes. A theft offense, for which alien may be removed, includes the crime of “aiding and abetting” a theft offense. Note that burglary may also constitute a particularly serious crime if it involves a threat to an individual.
- h. kidnapping (aggravated) *Groza v. INS*, 30 F.3d 814 (7th Cir. 1994).
- i. murder and manslaughter  
Murder constitutes an aggravated felony and therefore a particularly serious crime for asylum purposes. Manslaughter (including involuntary) has also been found to be a particularly serious crime.
8. Dependents  
This bar also applies independently to a spouse or child who is included in an asylum applicant's request for asylum and who was convicted of a particularly serious crime. In some cases, a principal applicant may be granted asylum, and a dependent referred or denied because he or she was convicted of a particularly serious crime.

INA § 101(a)(43)(G); *Matter of Garcia-Garrocho*, 19 I&N Dec. 423 (BIA 1986); *Matter of Freniescu*, 18 I&N Dec. 244; *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990).

*Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007) (holding that a conviction under a California statute prohibiting taking a vehicle without consent was a “theft offense,” for which alien could be removed)

*Dor v. Dist. Dir., INS*, 697 F.Supp. 694 (S.D.N.Y. 1988); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992); *Matter of Alcantar*, 20 I&N Dec. 801 (BIA 1994); *Ahmetovic v. INS*, 62 F.3d 48 (2d Cir. 1995).

8 C.F.R. § 208.21(a).

### C. Commission of Serious Nonpolitical Crime

Asylum may not be granted if there are serious reasons to believe that the applicant committed a serious nonpolitical crime outside the United States before arriving in the United States.

INA § 208(b)(2)(A)(iii).

#### 1. Filing Date

This mandatory bar to asylum was added by the IIRIRA and therefore applies only to applications filed on or after April 1,

Previously, this was a mandatory bar to

1997. However, when adjudicating a request for asylum filed before April 1, 1997, the commission of a serious nonpolitical crime may be considered as a serious adverse factor in the exercise of discretion.

withholding of deportation, but not asylum.

*See* RAIO Module, *Discretion*.

## 2. Definition

a. A “serious nonpolitical crime” has been defined as a crime that:

*McMullen v. INS*, 788 F.2d 591, 595 (9th Cir. 1986), *citing* Guy Goodwin-Gill, *The Refugee in International Law*, 60-61 (1983).

(i) was not committed out of genuine political motives,

(ii) was not directed toward the modification of the political organization or structure of the state, and

(iii) in which there is no direct, causal link between the crime committed and its alleged political purposes and object.

b. A “serious nonpolitical crime” need not be as serious as a “particularly serious crime.”

*Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982)

c. Even if the crime was committed out of genuine political motives, it should be considered a serious nonpolitical crime if the act is grossly out of proportion to the political objective or if it is of an atrocious or barbarous nature.

*Matter of E-A-*, 26 I&N Dec. 1, 3, 5 (BIA 2012) (although the applicant and his group never caused any physical injury to anyone, they placed innocent people at substantial risk); *McMullen v. INS*, 788 F.2d 591, 595 (9th Cir. 1986); *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999); *Chay-Velasquez v. Ashcroft*, 367 F.3d 751 (8th Cir. 2004).

## 3. Requirements

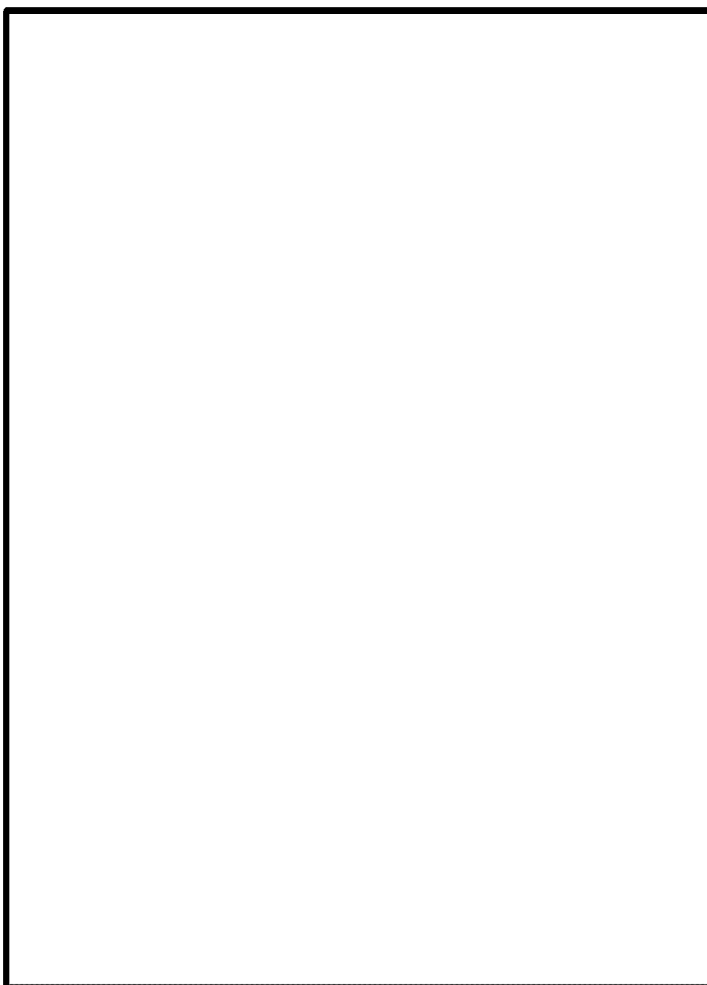
a. There is no requirement that the serious nonpolitical crime resulted in a conviction. The lack of conviction means that this bar can really only be discovered through the interview process, as there will probably not be any documentation. However, the adjudicator needs to find *probable cause* to believe that the crime was committed.

*McMullen v. INS*, 788 F.2d 591, 599 (9th Cir. 1986); *Sindona v. Grant*, 619 F.2d 167, 174 (2d Cir. 1980).



Probable cause means that there is a reasonable basis to believe that the crime was committed.

(b)(5)



*Khouzam v. Ashcroft*, 361 F.3d 161, 164 (2d Cir. 2004).

b. The crime must have been committed outside the United States.

c. The applicant need not have personally carried out the act of harm ("pulled the trigger"). For example, providing logistical and physical support that enables others to carry out terrorist acts against ordinary citizens suffices.

*McMullen v. INS*, 788 F.2d 591, 599 (9th Cir. 1986); *Matter of E-A-*, 26 I&N Dec. 1, 7 (BIA 2012) (noting that the applicant was not a "mere bystander" and that his involvement and participation "materially contributed" to the groups destructive behavior).

#### 4. Recruitment of Child Soldiers

The Child Soldiers Accountability Act of 2008 (CSAA), effective as of October 3, 2008, creates both criminal and immigration prohibitions on the recruitment or use of child soldiers. Specifically, the CSAA establishes a ground of inadmissibility at section 212(a)(3)(G) of the INA and a ground of removability at section 237(a)(4)(F) of the INA.

Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008). *See also* Lori Scialabba and Donald Neufeld, USCIS, *Initial Information Concerning*

These parallel grounds set forth that “[a]ny alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code” is inadmissible and is removable.

*the Child Soldiers Accountability Act, Public Law No. 110-340, Memorandum to Field Leadership (Washington, DC: 31 December 2008). CSAA, sec. 2(b)-(c).*

The statute also requires that DHS and DOJ promulgate regulations establishing that an alien who is subject to these grounds of inadmissibility or removability “shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime,” and is therefore ineligible for asylum pursuant to INA section 208(b)(2)(A)(iii). The regulations remain in the process of being developed and promulgated. In the interim, the Congressional intent in enacting the CSAA, as well as the nature of the serious crime of the use of child soldiers, should be considered in determining whether an applicant is subject to the serious nonpolitical crime bar. Note that the statute does not exempt children from the applicability of this ground, even where they were recruited as children themselves.

CSAA, sec. 2(d)(1). See Asylum lesson, *Guidelines for Children’s Asylum Claims, VI.E.4*. Note: this is accurate at this time of posting; however, this lesson will be superseded by the RAIO training module *Guidelines for Children’s Claims*.

5. Dependents

This bar also applies independently to a spouse or child who is included in an asylum applicant’s request for asylum and who has committed a serious nonpolitical crime outside the United States before arriving in the United States. In some cases, a principal applicant may be granted asylum, while his or her dependent (who committed a serious nonpolitical crime) is denied or referred because he or she is subject to a mandatory bar.

8 C.F.R. § 208.21(a).

**D. Security Risk**

Asylum may not be granted if there are reasonable grounds to believe that the applicant is a danger to the security of the United States.

INA § 208(b)(2)(A)(iv).

See the RAIO module *National Security* for an in-depth discussion on the definition and application of the security risk bar.

**E. Terrorists**

1. Background on terrorist legislation, as applied to asylum adjudication

See Jeffery Weiss, *Asylum Division. Processing Claims Filed by Terrorists or Possible Terrorists*, Memorandum to Asylum Office Directors (Washington, DC: 1 October 1997), 2 p.

The Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA), which came into effect on April 24, 1996, provided that any individual who falls within certain terrorist provisions in the INA is ineligible for asylum, unless it is determined that there are not reasonable grounds to believe that the individual is a danger to the security of the United States.

See Chris Sale. Office of the Deputy Commissioner. *AEDPA Implementation Instruction #3: The Effects of AEDPA on Various Forms of Immigration Relief*, Memorandum to Management Team (Washington, DC: 6 August 1996), 13 p.

The IIRIRA re-designated the sub-clauses of INA § 212(a)(3)(B) and expanded the terrorist grounds for ineligibility for asylum.

The PATRIOT Act of 2001 expanded grounds of inadmissibility based on terrorism, broadened the definition of “terrorist activity,” added two definitions of “terrorist organization,” and added a separate ground of inadmissibility for those who have associated with a terrorist organization. The Act retained the exception to the ineligibility for those individuals who fall under sub-clause (IV) of 212(a)(3)(B)(i).

See Ziglar, James W. Office of the Commissioner. *New Anti-Terrorism Legislation*, Memorandum for Regional Directors and Regional Counsel (Washington, DC: 31 October 2001), pp. 2-3.

The Intelligence Reform and Terrorism Prevention Act of 2004 amended the provisions in INA § 219 for the designation of foreign terrorist organizations by the Department of State.

Intelligence Reform and Terrorism Prevention Act of 2004 § 7119, PL 108-458, 118 Stat. 3638.

The REAL ID Act of 2005 further broadened the categories of individuals who are inadmissible for terrorist activities by including those who have received military-type training from or on behalf of a terrorist organization and broadening the inadmissibility ground regarding espousing terrorist activity to no longer require that the individual hold a “position of prominence.” The statute also limited the affirmative defense to the inadmissibility for “engaging in terrorist activity” through soliciting things of value, soliciting individuals for membership in, or for providing material support for an undesignated terrorist organization to require the alien to “demonstrate by clear and convincing evidence that he did not know, and reasonably could not have known, that the organization was a terrorist organization.”

*REAL ID Act of 2005 §103(a); see RAIO module National Security*

The statute also revised the Patriot Act’s inadmissibility provision for material support to a terrorist organization and added INA § 212(d) to create an inapplicability provision for the material support ground, as well as for individuals or

representatives of terrorist organizations who endorse or espouse terrorist activity.

2. Grounds of ineligibility

INA § 208(b), as amended by the REAL ID Act, prohibits the granting of asylum to anyone who:

INA § 208(b)(2)(A)(v).

a. has engaged in terrorist activity;

INA § 212(a)(3)(B)(i)(I).

b. a consular officer or the Attorney General knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity;

INA § 212(a)(3)(B)(i)(II).

**Note:** An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered to be engaged in a terrorist activity. INA § 212(a)(3)(B)(i)(V).

c. has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

INA § 212(a)(3)(B)(i)(III).

d. is a representative of

INA § 212(a)(3)(B)(i)(IV).

(i) a foreign terrorist organization, as defined in section 212(a)(3)(B)(vi) or

INA § 212(a)(3)(B)(i)(IV)(aa).

(ii) a political, social, or other group that endorses or espouses terrorist activity;

INA § 212(a)(3)(B)(i)(IV)(bb).

e. is a member of a terrorist organization designated under Section 219 of the INA or otherwise designated through publication in the Federal Register under INA Section 212(a)(3)(B)(vi)(II);

INA § 212(a)(3)(B)(i)(V).

e. is a member of a terrorist organization described in INA section 212(a)(3)(B)(vi)(III) (undesigned terrorist organization), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

g. endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

INA § 212(a)(3)(B)(i)(VII);  
INA § 237(a)(4)(B).  
Note that this ground does not require that the

statements be made under circumstances indicating an intention to cause death or serious bodily harm.

- h. has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization

INA § 212(a)(3)(B)(i)(VIII); INA § 237(a)(4)(B); “military-type training is defined in 18 U.S.C. § 2339D(c)(1). Note that an exemption to the terrorist bar exists for those who received military type training under duress.

- i. is the spouse or child of an alien who is inadmissible under INA § 212(a)(3)(B), if the activity causing the alien to be found inadmissible occurred within the past five years unless the spouse or child:

INA § 212(a)(3)(B)(ii).

- (i) did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
  - (ii) the consular officer or the Attorney General has reasonable grounds to believe the spouse or child has renounced the activity causing the alien to be found inadmissible under this section; or

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

INA § 212(a)(3)(F); INA § 237(a)(4)(B).

See the RAIO lesson *National Security* for an in-depth discussion on the definitions of the terms relating to terrorism and the application of the terrorist bar.

## F. Firm Resettlement

An applicant who was firmly resettled in another country prior to arriving in the United States may not be granted asylum.

INA § 208(b)(2)(A)(vi)

Note: This bar does not

apply to derivatives.  
See 8 C.F.R. § 208.21(a).

## 1. History

The firm resettlement bar is founded on two of the cessation clauses of the United Nations Convention Relating to the Status of Refugees. The Refugee Convention states that the convention ceases to apply to an individual who “has acquired a new nationality, and enjoys the protection of the country of his new nationality”, or to an individual “who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.”

United Nations Convention Relating to the Status of Refugees, art. 1, §§ C(3), E, *adopted* July 28, 1951, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

The firm resettlement bar has been part of United States refugee law from its inception, as a mandatory bar in The Displaced Persons Act of 1948. In a 1957 revision of the INA, the firm resettlement bar was dropped from the Act, but US courts continued to apply it as a discretionary factor. After passage of the Refugee Act of 1980, interim regulations were enacted that made firm resettlement a regulatory bar in affirmative asylum cases. When the final asylum regulations were adopted in 1990, firm resettlement was made a regulatory bar for all adjudicators. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress codified firm resettlement as a statutory bar.

A very detailed history of the firm resettlement bar can be found in *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

## 2. Definition

An applicant “is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement.” Note that, in order for the bar to apply, the entry into another nation must be after the events that caused the applicant to be a refugee.

8 C.F.R. § 208.15.

Please refer to RAIO Module, *Firm Resettlement*, for a detailed discussion of the applicability and exceptions related to this bar to eligibility for asylum.

- a. Finally, if the applicant is found to have received an offer of permanent resettlement, the burden shifts to the

applicant to establish, by a preponderance of the evidence, that an exception to firm resettlement applies, pursuant to 8 C.F.R. §§ 208.15(a) and (b). If the applicant is able to meet his or her burden of proof that an exception applies, the applicant may be granted asylum.

### 3. Special Issues

There are a number of issues concerning the application of the firm resettlement bar that have arisen over the years. Some issues that may arise are:

#### a. Length of time spent in the third country

The length of time an applicant spends in a third country does not by itself establish firm resettlement. Firm resettlement occurs only after the applicant has been offered some form of enduring lawful status in that country. However, length of time is a factor to consider, particularly in determining whether the applicant cannot be considered firmly resettled because entry into the third country was a necessary consequence of flight. Refer to section 2.a above.

#### b. Offer of firm resettlement

The Ninth Circuit has held that to meet its burden of proving that an offer of firm resettlement exists the USCIS must present either direct evidence of an offer of permanent resettlement or, if such evidence cannot be obtained, indirect evidence of such an offer. Indirect factors may include the applicant's length of stay in the third country, intent to remain in the country and the social and economic ties developed during such stay. Relying on *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001), the Court indicated that the indirect evidence used to establish firm resettlement must "rise to a sufficient level of clarity and force."

The Third Circuit, in *Abdille v. Ashcroft*, indicated in dicta that non-offer based factors, such as the length of the applicant's residence in a third country or the extent of the applicant's social and economic ties to the country, provide circumstantial evidence of a formal offer of some type of permanent resettlement and can serve as a surrogate for direct evidence of an offer.

The BIA further addressed evidence of firm resettlement in the holding of *Matter of D-X- & Y-Z-*, 25 I&N Dec. 664 (BIA

2012). In this decision, the BIA provides a straightforward approach with a strong presumption of firm resettlement when the applicant provides facially valid documentation of permission to reside and work indefinitely in a country. The decision makes clear that the mere fact that the document was obtained fraudulently does not invalidate the presumption. A number of circuit court cases support that “facially valid” documentation of residence status is enough to establish a presumption of firm resettlement, where there is no evidence that such status would be invalidated by the country of firm resettlement. In *D-X- & Y-Z-*, the female applicant had left and reentered the country where she had fraudulently obtained residence status, using the fraudulently obtained documents. While the Board does not in this decision explicitly discuss the importance of any evidence about whether the irregularities in the document render it vulnerable to invalidation, this case in fact involved evidence that the fraudulently obtained document was not invalidated, as the applicant was able to reenter the country using the documents.

4. Entry into the third country

While the focus of the analysis is on the existence of an offer of permanent residence, the plain language of the regulation makes clear that, in order for the offer to be effective, the applicant must have entered into the country at some point while the offer was available. The offer will be considered effective if, for example, the applicant entered into the country after the offer was made, and while it was still active, or, for example, the offer was made after the applicant initially entered the country, but while the applicant was still there, unless the applicant’s entry into that country was a necessary consequence of his or her flight from persecution and he or she remained in that country only as long as necessary to arrange onward travel without establishing significant ties in that country.

Again, please refer to RAIO Module, *Firm Resettlement*, for a detailed discussion of such special issues as they relate to the firm resettlement bar.

## V. BURDEN AND STANDARD OF PROOF

### A. Mandatory Bars to Applying for Asylum

INA §§ 208(a)(2)(B) and (D); 8 C.F.R. § 208.4(a)(2)(i).



1. One-year filing deadline

The applicant must demonstrate *by clear and convincing evidence* that the application has been filed within 1 year after the date the applicant arrived in the United States,

*or*

demonstrate *to the satisfaction of the Attorney General* (the asylum officer or immigration judge) the existence of changed circumstances that materially affect eligibility for asylum or extraordinary circumstances that resulted in the delay.

Reminder: The one-year filing period is calculated from 4/1/97 or arrival in U.S., whichever is more recent in time. See Asylum Lesson, *One-Year Filing Deadline*, section *Calculating the One-Year Period*.

2. Previous denials

If an applicant has previously been denied asylum by an IJ or the BIA, the applicant must demonstrate *to the satisfaction of the Attorney General* (asylum officer or immigration judge) the existence of changed circumstances that materially affect eligibility for asylum.

INA § 208(a)(2)(D); 8 C.F.R. § 208.4(a).

3. Explanation

The “clear and convincing” standard has been defined as a degree of proof that will produce “a firm belief or conviction as to allegations sought to be established.” It is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard in criminal cases.

See *Black’s Law Dictionary*, 5th Ed.; see RAIO Module, *Evidence*.

To demonstrate “to the satisfaction of the Attorney General” that an exception applies, means that it must be reasonable for the asylum officer to conclude that the exception applies.

**B. Mandatory Bars to Asylum**

If the evidence indicates that a ground for mandatory denial or referral exists, then the applicant has the burden of proving by a *preponderance of the evidence* that the ground does not apply.

8 C.F.R. § 208.13(c); See also *Cheo v. INS*, 162 F.3d 1227 (9th Cir. 1998) (where evidence indicates applicant was firmly resettled, burden is on applicant to establish the contrary); *Maharaj v. Gonzales*, 450 F. 3d 961 (9th Cir. 2006) (the burden shifts to the applicant only when USCIS has presented sufficient evidence that the statutory bar applies).

A fact is established by a preponderance of the evidence, if the adjudicator finds, upon consideration of all the evidence, that it is more likely than not that the fact is true (in other words, there is more than a 50% chance that the fact is true).

*See* RAIO Module, *Evidence*.

## **VI. MANDATORY NATURE OF BARS**

If it is determined that a mandatory bar applies, the asylum officer has no discretion to grant asylum to the applicant, even though the applicant may otherwise be eligible. As the term itself indicates, denial in such cases is mandatory. Therefore, the asylum request must be referred or denied, as appropriate.

When a mandatory bar to asylum applies, the asylum officer does NOT weigh that adverse factor against the risk of future persecution as with the exercise of discretion.

## **VII. DEPENDENTS**

When a principal alien is granted asylum, his or her spouse and/or children, as defined in the Act, also may be granted asylum if accompanying, or following to join, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under 8 C.F.R. § 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997.

8 C.F.R. § 208.21(a).

In other words, with the exception of firm resettlement, all the bars to granting asylum that apply to principal applicants apply equally to dependents. For example, if a dependent was convicted of an aggravated felony, the dependent is barred from a grant of asylum, even if the principal is granted. However, if the dependent was firmly resettled in a third country, the dependent is not barred from receiving a derivative grant of asylum if the principal is granted.

## **VIII. SUMMARY**

### **A. Bars to Applying for Asylum**

The following bars to applying for asylum are applicable only to applications filed on or after April 1, 1997. Only asylum officers, immigration judges, and the Board of Immigration Appeals can determine whether a prohibition on filing applies.

1. The asylum seeker could be returned to a “safe” third country.

There is an agreement between the United States and Canada,

but the agreement only applies to aliens at land border ports of entry and those transiting through one country when being removed by the other country. It does not apply to affirmative asylum adjudications.

2. The asylum seeker waited more than one year after arrival in the United States to apply.

The filing date is calculated from April 1, 1997 or the date of last arrival, whichever is most recent in time. This bar does not apply to UACs nor does it apply if the applicant establishes changed circumstances that materially affect eligibility, or extraordinary circumstances relating to the delay.

3. The asylum seeker previously has been denied asylum by an immigration judge or the BIA.

This bar does not apply if the applicant demonstrates changed circumstances that materially affect asylum eligibility.

#### **B. Mandatory Bars to Eligibility for Asylum**

The following are mandatory bars to a grant of asylum:

1. Persecution of others on account of one of the protected characteristics in the refugee definition
2. Conviction of a particularly serious crime, including an aggravated felony

If the application was filed on or after April 1, 1997, the conviction may have occurred either inside or outside the United States.

3. Commission of a serious nonpolitical crime outside the United States prior to arrival in the United States

This bar does not apply to asylum applications filed prior to April 1, 1997, but may be a basis for a discretionary denial or referral.

4. Risk to the security of the United States

Any case in which the asylum officer believes the applicant may present a risk to the security of the United States must be sent to Asylum Headquarters for review.

5. Engaging in terrorist activities or status as a representative of certain terrorist organizations

An applicant cannot be granted asylum if he or she has engaged, is engaging, or is likely to engage in terrorist activity; has incited terrorist activity indicating an intention to cause death or serious bodily harm; is a representative of either a designated terrorist organization or a group whose endorsement of acts of terrorist activity undermines the efforts of the United States to reduce or eliminate terrorist activities; or has used his or her position of prominence in a country to endorse or espouse terrorist activity.

6. Firm resettlement

An applicant is considered firmly resettled if the applicant, after becoming a refugee, entered into another country with, or while there received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement when in that country.

An applicant was not firmly resettled if entry was necessary to flight, the applicant remained only to arrange onward travel, and the applicant developed no significant ties; or the conditions of residence were substantially restricted.

### **C. Burden of Proof**

1. Prohibition on Filing

The applicant must establish by clear and convincing evidence that he or she applied for asylum within one year after arrival in the U.S., unless an exception applies.

If a bar to filing applies, the applicant must demonstrate to the satisfaction of the adjudicator that an exception applies.

2. Bars to asylum

If the evidence indicates that a ground for mandatory denial of asylum applies, the applicant must prove by a *preponderance of the evidence* that a mandatory bar does not apply.

### **D. Mandatory Nature of Bars**

If it is determined that a mandatory bar applies, the asylum officer has no discretion to grant asylum to the applicant, even though the applicant may otherwise be eligible.

**E. Dependents**

The spouse or child of an asylum applicant cannot be granted derivative asylum status if a mandatory bar, other than firm resettlement, applies to the spouse or child.



U.S. Citizenship  
and Immigration  
Services

HQRAIO 120/12a

## Memorandum

MAY 28 2013

TO: All Asylum Office Staff

FROM: Ted Kim  
Acting Chief, Asylum Division

SUBJECT: Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children

### I. Purpose

This memorandum provides updated guidance and procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Offices on determining jurisdiction in applications for asylum filed by unaccompanied alien children (UACs) under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, which was signed into law on December 23, 2008, and became effective on March 23, 2009. These procedures modify the current procedures found in Section III.C of the March 25, 2009, memorandum Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children. These procedures are effective on June 10, 2013, and apply to any USCIS decision issued on or after that date. These updated procedures will be incorporated into the Affirmative Asylum Procedures Manual. The decision letters used by Asylum Offices in UAC cases will not change with the exception of the UAC Decision Notice for Non-Eligibility (updated version attached). All Asylum Offices will receive train-the-trainer instruction from Headquarters and are responsible for conducting field training prior to June 10.

### II. Determination as to whether the applicant is a UAC

USCIS typically does not have jurisdiction to accept a Form I-589, *Application for Asylum and for Withholding of Removal*, filed by an applicant in removal proceedings. Section 235(d)(7)(B) of the TVPRA, however, places initial jurisdiction of asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. Therefore, USCIS must determine whether an applicant in removal proceedings is a UAC.

Prior to the issuance of this guidance, Asylum Offices made independent factual inquiries under the UAC definition to support their determinations of UAC status, which was assessed at the time of the UAC's filing of the asylum application. In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), had already made a determination of UAC status after apprehension, as required for the purpose of placing the individual

in the appropriate custodial setting. Effective June 10, in those cases in which either CBP or ICE has already made a determination that the applicant is a UAC, and that status determination was still in place on the date the asylum application was filed, Asylum Offices will adopt that determination without another factual inquiry. Unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, Asylum Offices will adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

#### **A. Cases in which a determination of UAC status has already been made**

In cases in which CBP or ICE has already determined that the applicant is a UAC, Asylum Offices will adopt that determination and take jurisdiction over the case. Asylum Offices will see evidence of these prior UAC determinations in A-files or in systems on the Form I-213, *Record of Deportable Alien*; the Form 93 (the CBP UAC screening form); the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Initial Placement Form<sup>1</sup>; the ORR Verification of Release Form; and the encounters tab in the ENFORCE Alien Removal Module (EARM) (see attached samples). In these cases the Asylum Office will no longer need to question the applicant regarding his or her age and whether he or she is accompanied by a parent or legal guardian to determine UAC status. If CBP or ICE determined that the applicant was a UAC, and, as of the date of initial filing of the asylum application, that UAC status determination was still in place, USCIS will take initial jurisdiction over the case, even if there appears to be evidence that the applicant may have turned 18 years of age or may have reunited with a parent or legal guardian since the CBP or ICE determination. Generally, an Asylum Office should not expend resources to pursue inquiries into the correctness of the prior DHS determination that the applicant was a UAC.

Although Asylum Offices will no longer need to make independent factual inquiries about UAC status in cases in which another DHS entity has already determined the applicant to be a UAC, these cases will still receive headquarters quality assurance review as juveniles per the Quality Assurance Referral Sheet. Upon receiving headquarters concurrence, Asylum Offices should follow the guidance in the March 25, 2009, memorandum referenced above regarding handling the case upon entry of a final decision.

#### **B. Cases in which a determination of UAC status has not already been made**

##### **1. UACs not in removal proceedings**

For applicants not in removal proceedings who apply for asylum with USCIS via the affirmative asylum process, who have not been determined previously to be a UAC by CBP or ICE, and who appear to be UACs, Asylum Offices will continue to make UAC determinations not for the purpose of determining jurisdiction but for the purposes of determining whether the applicant is subject to the 1-year filing deadline<sup>2</sup> and whether the Asylum Office must notify HHS that it has discovered a UAC<sup>3</sup>. Asylum Offices should examine whether the applicant was a UAC at the time of filing the asylum application for purposes of determining whether the 1-year filing deadline applies and whether the applicant was a UAC at the time of the interview (i.e., when “discovery” takes place) for purposes of notifying HHS. Previously issued guidance on examining an applicant’s age and unaccompanied status continue to apply to these determinations.

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<sup>1</sup> After apprehending an individual and determining that he or she is a UAC, CBP or ICE transfers him or her to a facility run by the Office of Refugee Resettlement (ORR), which is part of the Department of Health and Human Services (HHS).

<sup>2</sup> See section 235(d)(7)(A) of the TVPRA.

<sup>3</sup> See section 235(b)(2) of the TVPRA.

## 2. UACs in removal proceedings

For applicants in removal proceedings where CBP or ICE has not already made a determination that the applicant is a UAC,<sup>4</sup> Asylum Offices will need to make UAC determinations for the purpose of determining whether USCIS has jurisdiction over the case. Asylum Offices should examine whether the applicant was a UAC on the date of initial filing of the asylum application for the purpose of determining USCIS jurisdiction.

If the Asylum Office is the first federal government entity to make a determination that the individual is a UAC and the individual remains a UAC at the time of the asylum interview, then the Asylum Office will notify HHS that it has discovered a UAC. This obligation to notify HHS upon “discovery” of a UAC is separate from the issue of jurisdiction over the asylum application. Where another federal government entity has already made a UAC determination, that entity is the one that “discovered” the UAC, and it is not therefore USCIS’s obligation to notify HHS in those cases. Previously issued guidance on examining an applicant’s age and unaccompanied status continue to apply to these determinations.

## III. Credible and reasonable fear screening processes

In the credible and reasonable fear screening processes Asylum Offices will generally accept CBP and ICE determinations that individuals were not UACs, unless the Asylum Office discovers evidence indicating that the individual is currently a UAC, in which case the Asylum Office will make a new determination of UAC status and communicate such determination to CBP or ICE as appropriate.<sup>5</sup> If the Asylum Office is the first federal government entity to make a determination that the individual is a UAC and the individual remains a UAC at the time of the credible fear or reasonable fear interview, then the Asylum Office will notify HHS that it has discovered a UAC.

If you have any questions concerning the guidance contained in this memorandum, please contact Kimberly Sicard at 202-272-1623 or [kimberly.r.sicard@uscis.dhs.gov](mailto:kimberly.r.sicard@uscis.dhs.gov).

Attachments (9):

1. UAC Decision Notice for Non-Eligibility (updated decision letter; internal use only)
2. DHS UAC Instruction Sheet
3. Form I-213, *Record of Deportable Alien* (internal use only)
4. Form I-213, *Record of Deportable Alien* (internal use only)
5. Form 93, the CBP UAC Screening Form (internal use only)
6. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Initial Placement Form (internal use only)

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<sup>4</sup> This situation would most likely occur when a child was accompanied at the time of service of the charging document but later became unaccompanied. If the child appeared or claimed to be a UAC in immigration court and expressed an interest in applying for asylum, the ICE trial attorney would give the child a UAC Instruction Sheet so that the child could file an asylum application with USCIS. The Asylum Office would then need to make a determination of UAC status in order to determine whether USCIS has jurisdiction over the case. The ICE trial attorney giving the applicant the UAC Instruction Sheet does not constitute a determination by DHS of UAC status.

<sup>5</sup> Section 235(a)(5)(D) of the TVPRA provides that any UAC whom DHS seeks to remove, except for a UAC from a contiguous country subject to certain exceptions, shall be placed in removal proceedings; therefore, Asylum Offices generally should not encounter UACs in the credible and reasonable fear screening processes.



Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children

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7. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Verification of Release Form (internal use only)
8. Screen shot of the encounters tab in EARM (internal use only)
9. Screen shot of the encounters tab in EARM (internal use only)

## Worley, Jordan P

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**From:** Mura, Elizabeth E  
**Sent:** Friday, April 29, 2016 9:37 AM  
**To:** Aguilar, Kimberly M; Bardini, Emilia M; Boyle, Meghann W; Bundy, Kelsey D; Daum, Robert L; Donis, Antonio; Flanagan, Lisa M; Gadson, Irvin C; Ho, Cheri L; Hong, Marianne X; Hussey, Jedidah M; Isaacson, Mollie; Madsen, Kenneth S; Menges, Patricia A; Papazian, Varsenik L; Radel, David M; Raufer, Susan; Rellis, Jennifer L; Varghese, Sunil R  
**Cc:** RAIO - Asylum HQ; Elliott, John J; Heinrich, Lorie R; Mikesell, Hannah K  
**Subject:** Memo: Updated procedures for interviewing UAC cases in removal proceedings  
**Attachments:** Updated Procedures for Interviewing UAC cases in removal proceedings 042....pdf

Good morning,

This memorandum provides updated guidance and procedures to Asylum Office personnel on conducting interviews concerning asylum applications filed by potential unaccompanied alien children under the initial jurisdiction provision of the TVPRA. In order to make processing of asylum applications more efficient, Asylum Officers no longer need to interview the applicant on the merits of the asylum claim in cases involving individuals in removal proceedings over whom the Asylum Officer finds USCIS lacks jurisdiction because the asylum application was not filed by a UAC.

Please let us know if you have any questions. The memo will be uploaded to the ECN.

Have a nice weekend!

Beth

Elizabeth E. Mura  
Operations Branch Chief - Asylum Division  
Refugee, Asylum and International Operations Directorate  
Dept. of Homeland Security/U.S. Citizenship & Immigration Services  
Desk: (202)272-1013 Mobile:  Fax: (202)272-1681

(b)(6)



U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

*RAIO Combined Training Course*

**NATIONAL SECURITY**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***NATIONAL SECURITY**  
**TRAINING MODULE****MODULE DESCRIPTION:**

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

**TERMINAL PERFORMANCE OBJECTIVE(S)**

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

**ENABLING PERFORMANCE OBJECTIVE(S)**

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

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

## **INSTRUCTIONAL METHODS**

- Interactive presentation
- Discussion
- Practical exercises

## **METHOD(S) OF EVALUATION**

- Multiple-choice exam
- Observed practical exercises

## **REQUIRED READING**

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

### **Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES**

1. See ECN TRIG site under “Guidance” for memos, legal guidance, legislation and other national security-related resources.
2. See TRIG ECN Home Page for TRIG Exemption Worksheet.
3. “Handling Potential National Security Concerns with No Identifiable Records” Memo, Steve Bucher, Associate Director of Refugee, Asylum and International Operations (August 29, 2012).
4. “Updated Instructions for Handling TECS B10 Records” Memo, Office of the Director (May 23, 2012).
5. “Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases” Memo, Office of the Director (November 20, 2011).
6. “Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists” Memo, Office of the Director (July 26, 2011).
7. Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases” Memo, Michael Aytes, Acting Deputy Director (February 13, 2009).
8. “Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns” Memo, Michael Aytes, Acting Deputy Director (February 6, 2009).
9. “Implementation of Section 691 of Division J of the Consolidated Appropriations Act, 2008, and Updated Processing Requirements for Discretionary Exemptions to Terrorist Activity Inadmissibility Grounds” Memo, Michael L. Aytes, Acting Deputy Director (July 28, 2008).
10. “Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns” Memo, Donald Neufeld, Acting Associate Director of Domestic Operations (April 24, 2008) and accompanying Operational Guidance.
11. “Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups” Memo, Jonathan Scharfen, Deputy Director (March 26, 2008).

12. “Collecting Funds from Others to Pay Ransom to a Terrorist Organization” Memo, Dea Carpenter, Deputy Chief Counsel (February 6, 2008).
13. “Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations” Memo, Jonathan Scharfen, Deputy Director (May 24, 2007).
14. Matter of S-K-, 23 I&N Dec. 936 (BIA 2006).
15. Nicholas J. Perry, “The Breadth and Impact of the Terrorism-Related Grounds of Inadmissibility of the INA,” Immigration Briefings (October 2006).

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

### CRITICAL TASKS

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



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

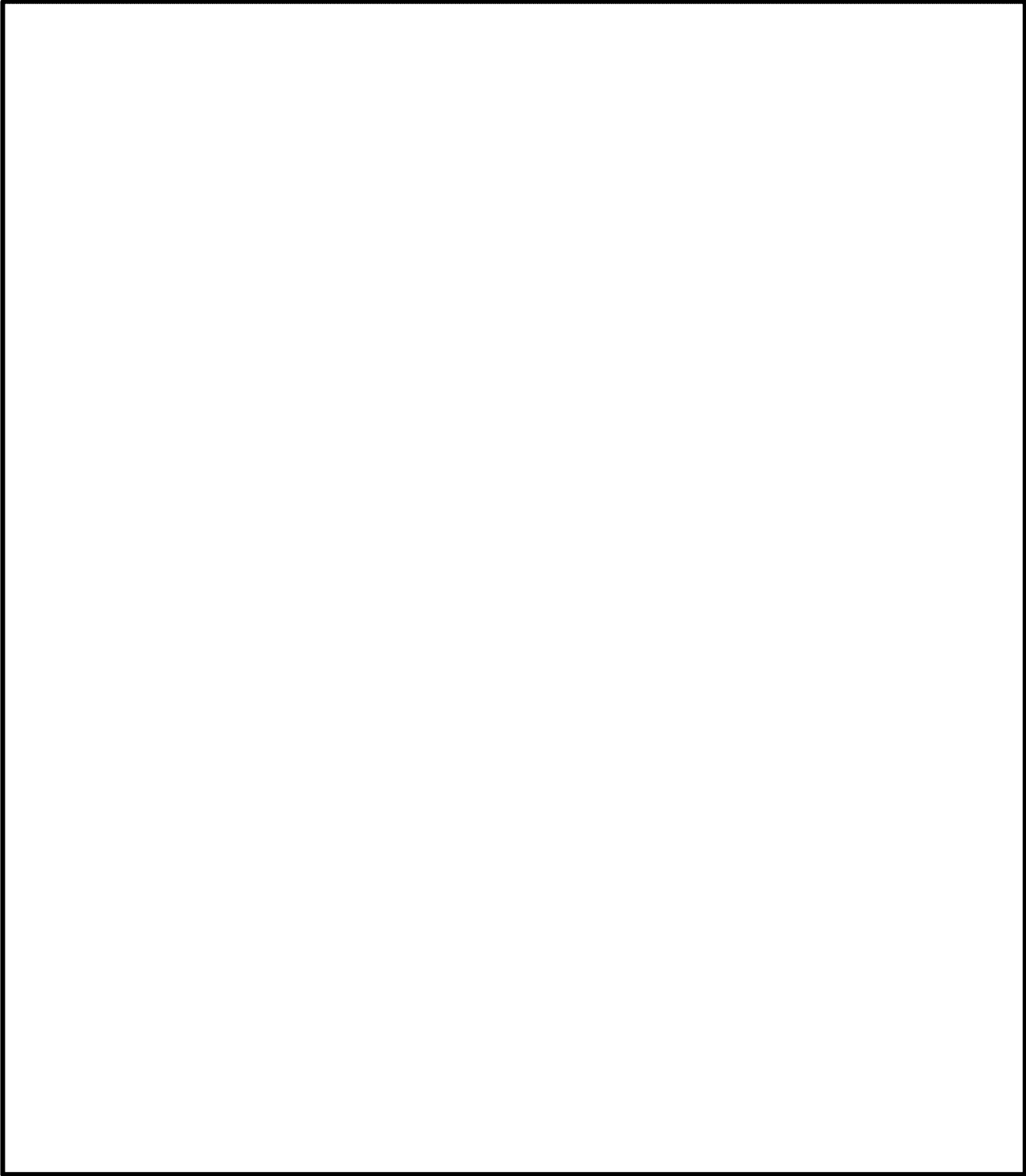
### SCHEDULE OF REVISIONS

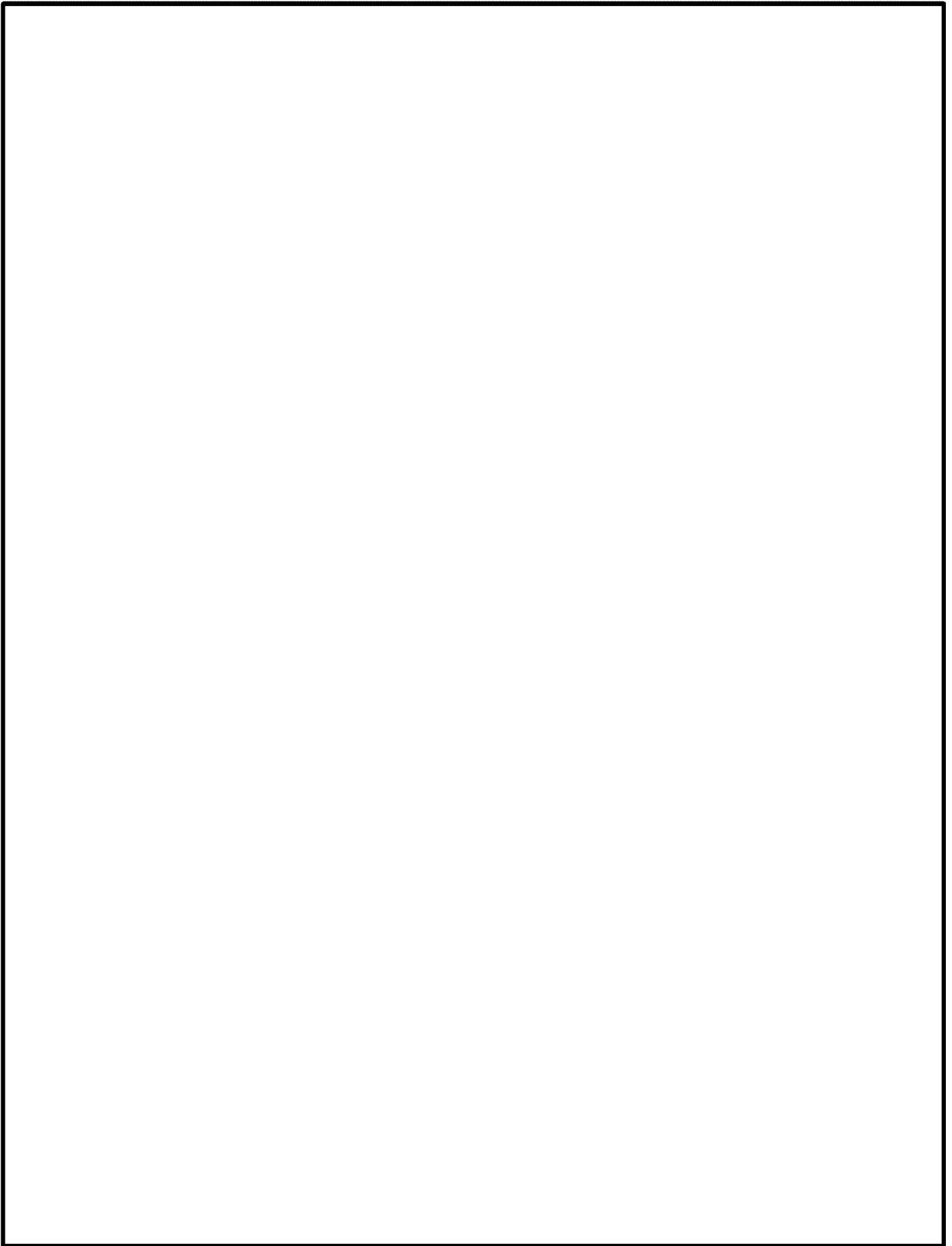
<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
10/26/15	Throughout document	Updated broken links and citations; added new TRIG exemptions; minor formatting changes; added new case law	RAIO Training, RAIO TRIG Program

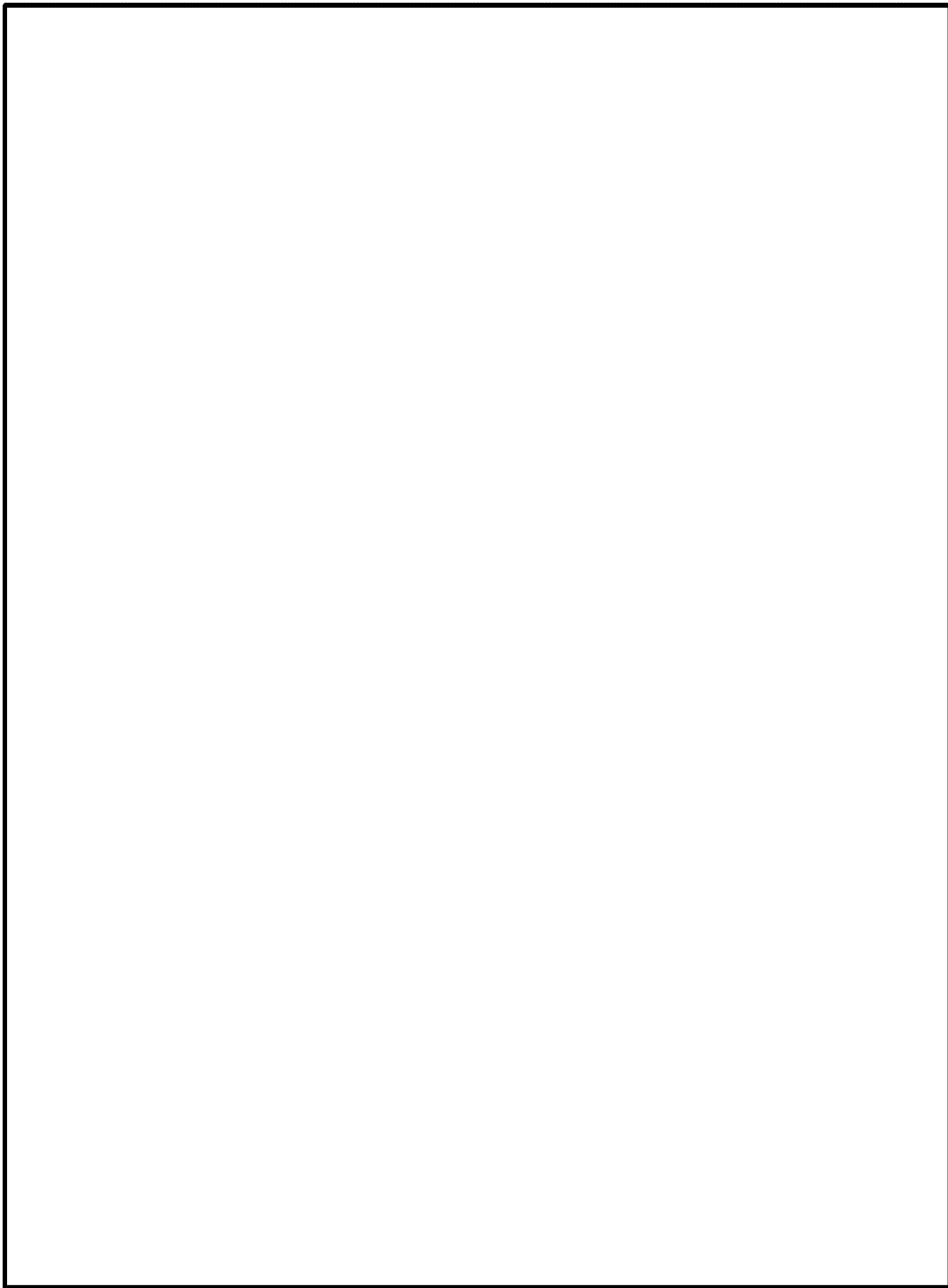
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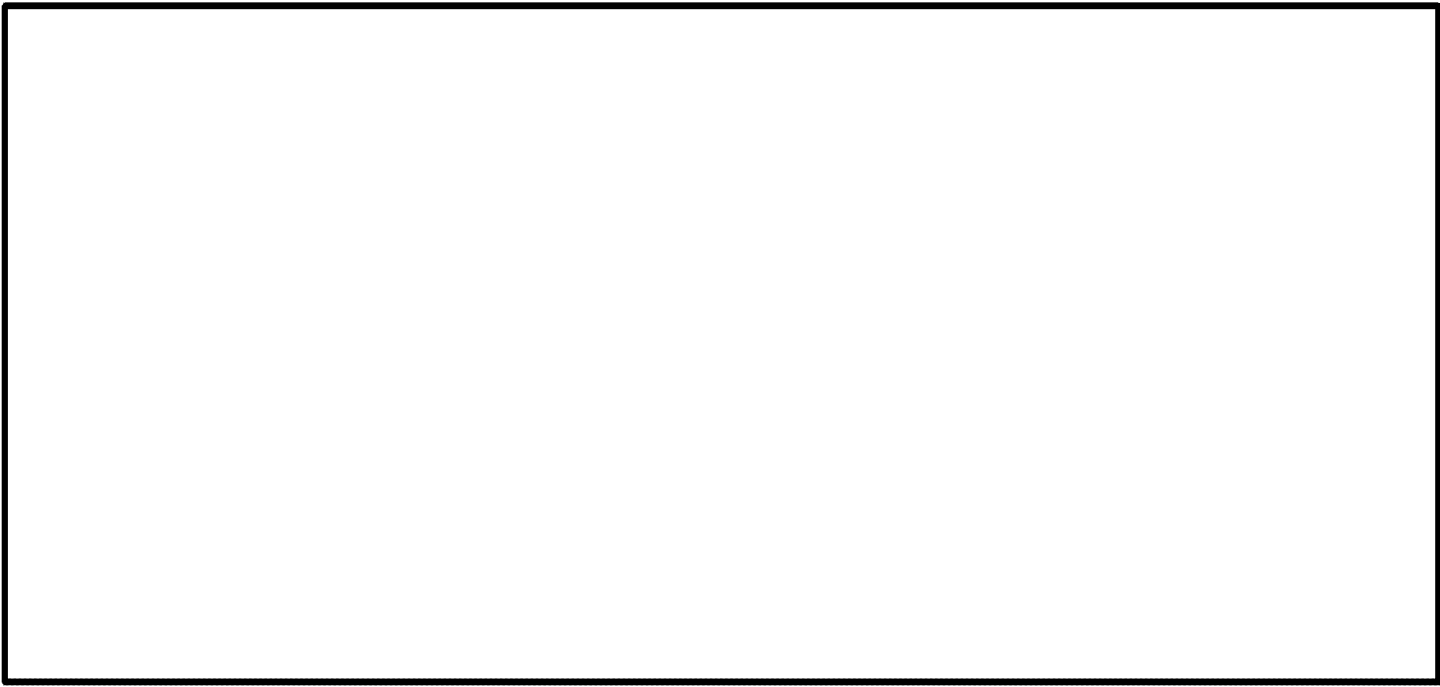
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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible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

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

## 1 INTRODUCTION

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

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

## 2 NATIONAL SECURITY OVERVIEW

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

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

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

### **RAIO Mission**

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

### **RAIO Vision**

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

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



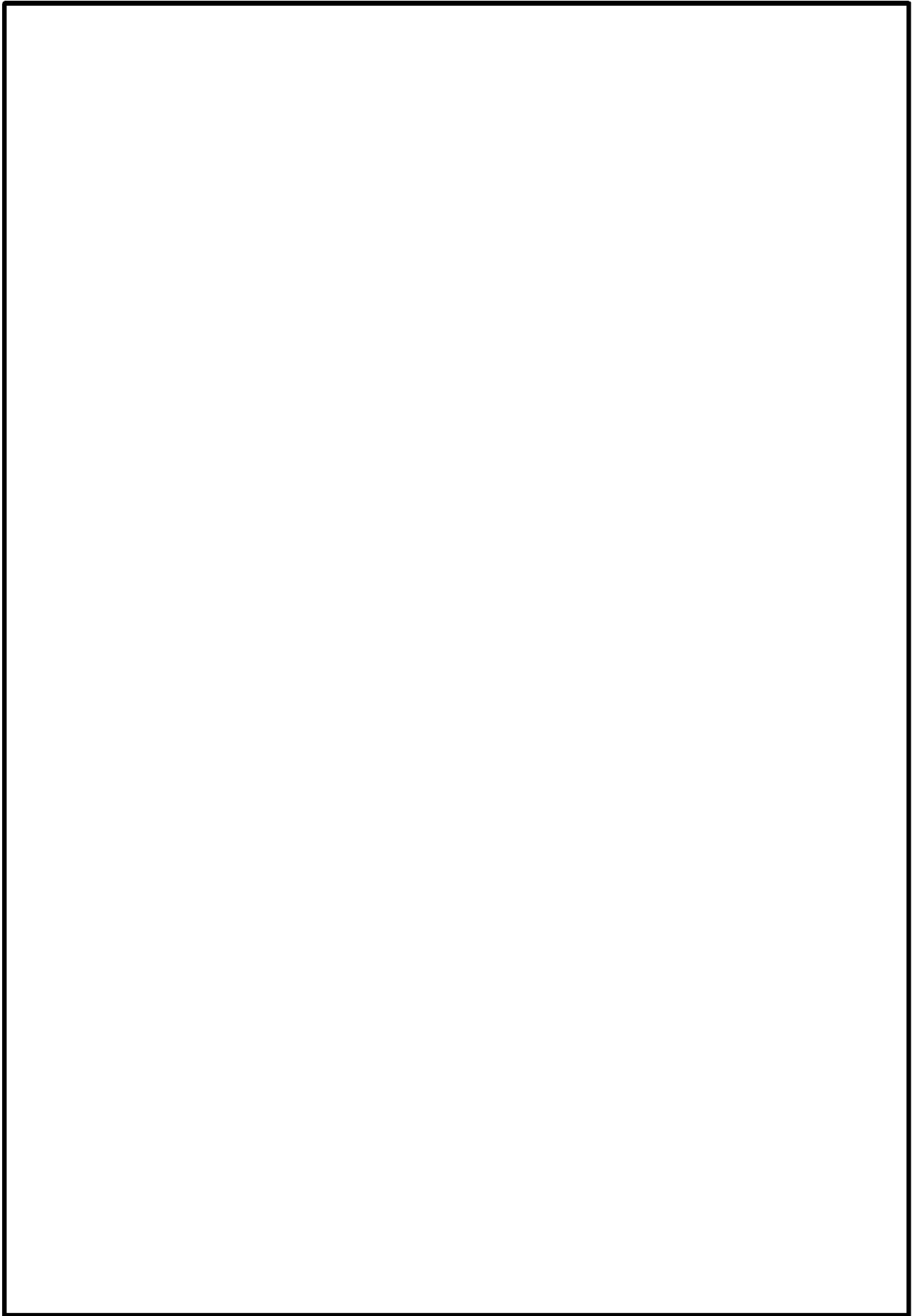
### Security and Terrorism-Related Bars to Asylum

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

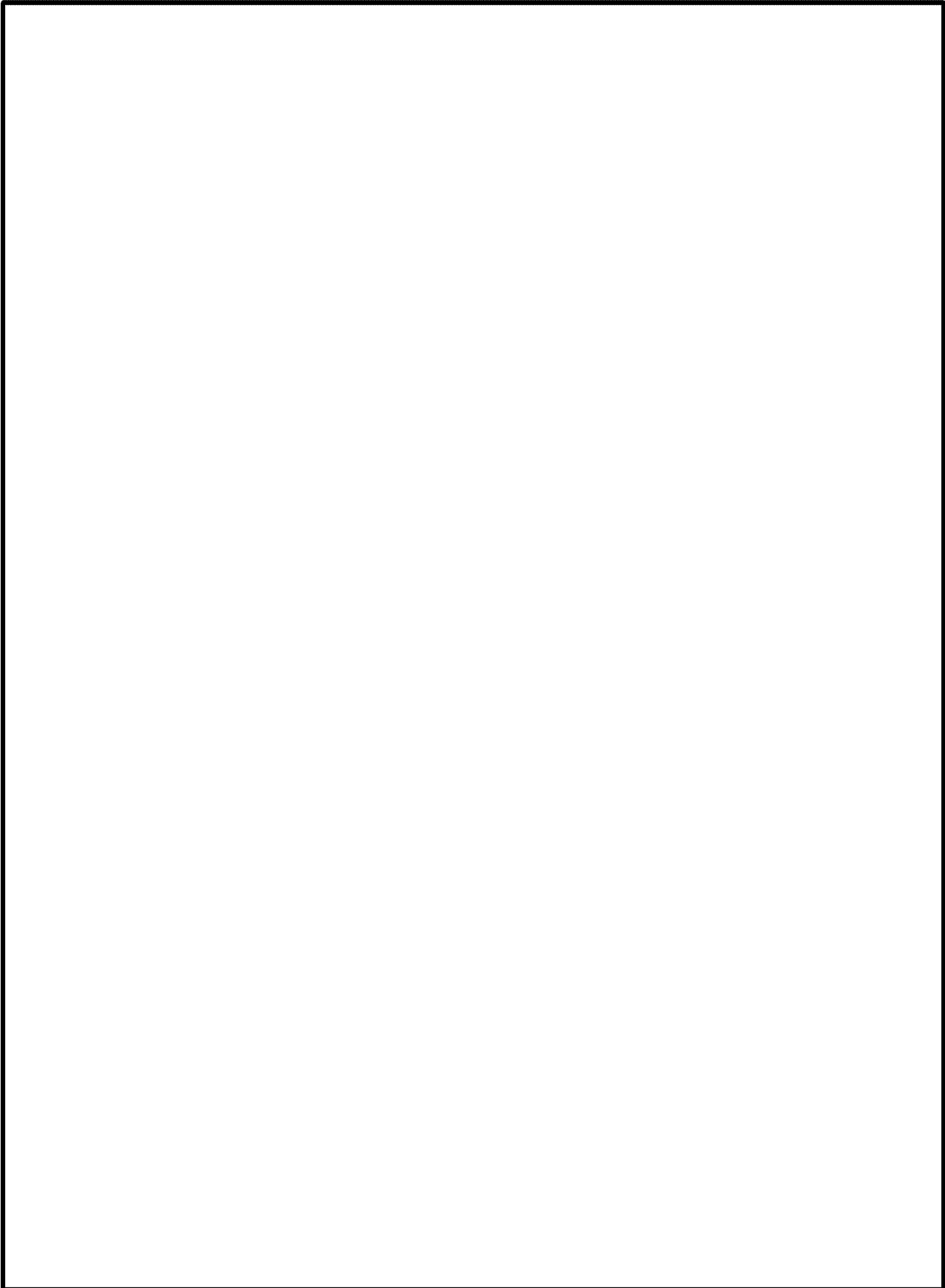
Since a central mission of USCIS is to protect the integrity of the U.S. immigration system, national security matters are a primary consideration in USCIS adjudications. As part of the determination of statutory eligibility for an immigration benefit, you must examine each case for NS concerns and determine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

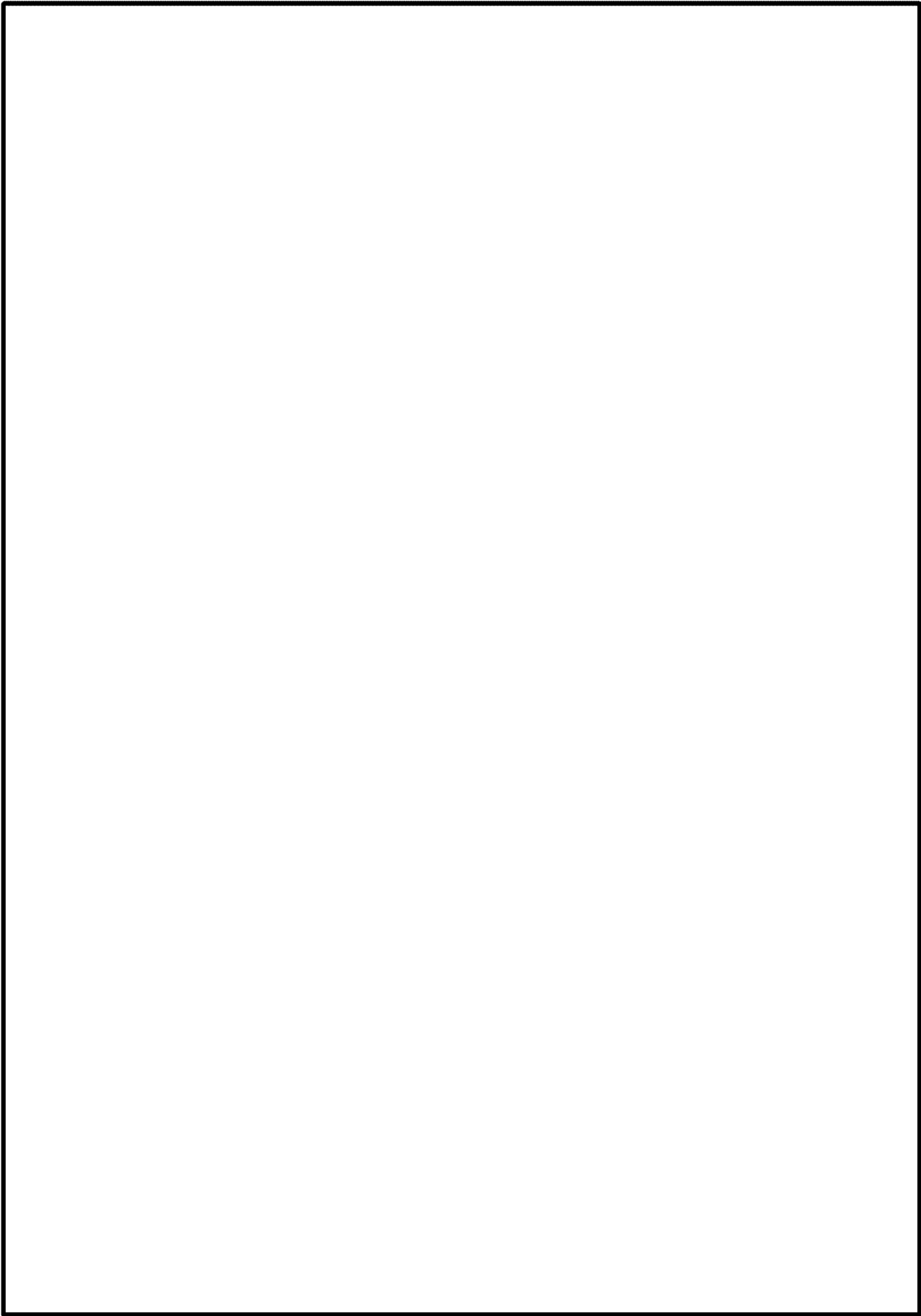
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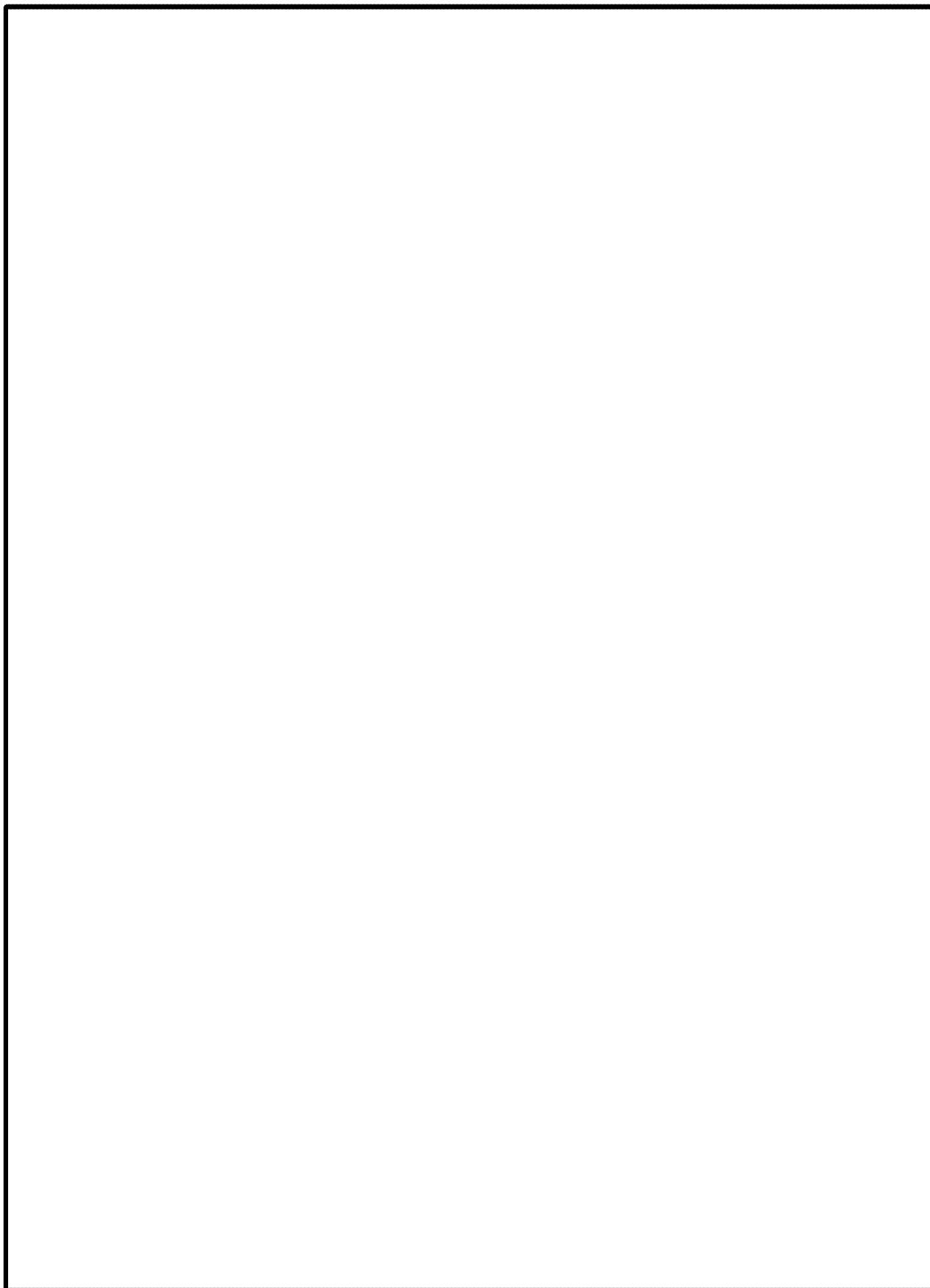
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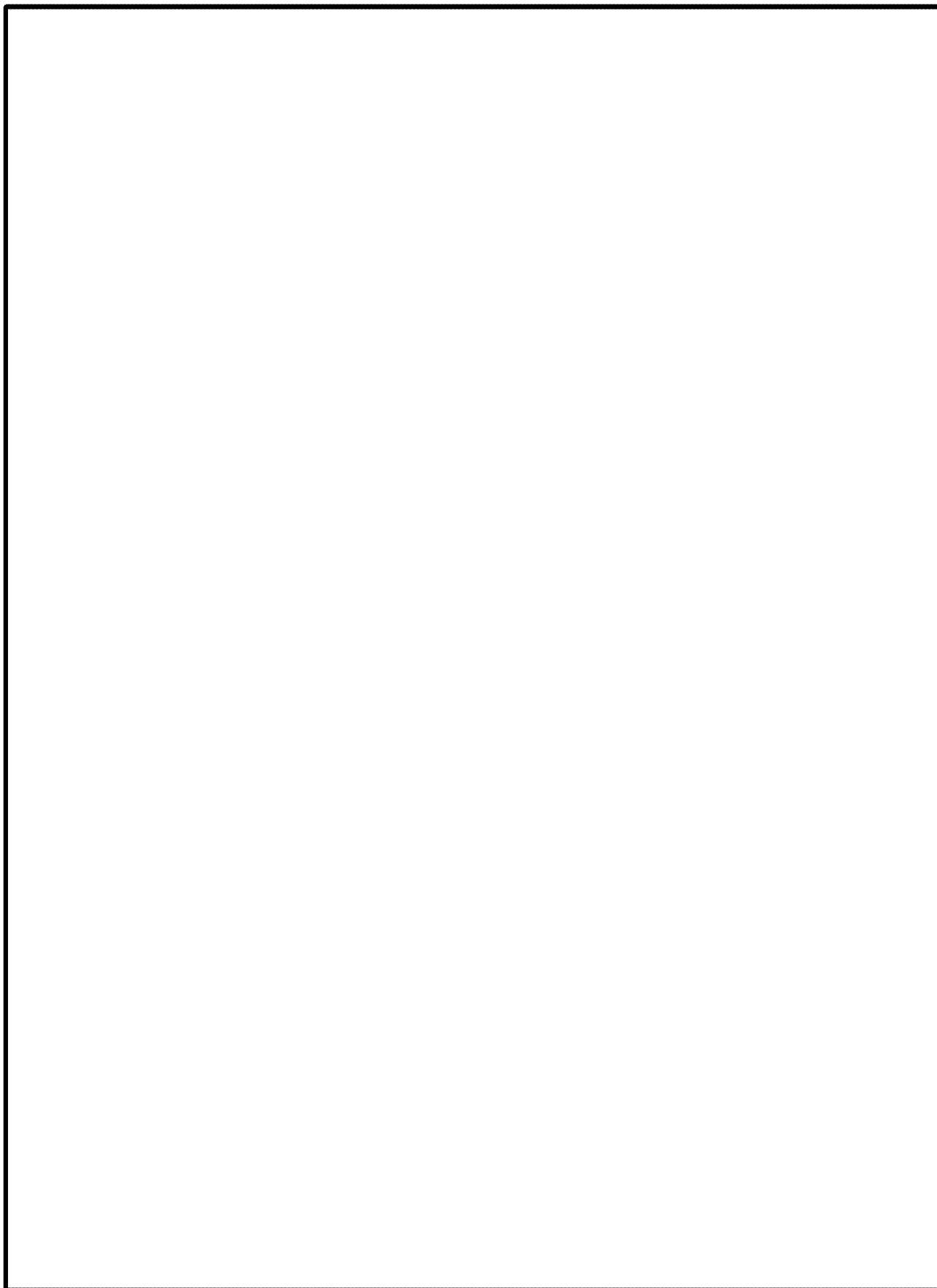






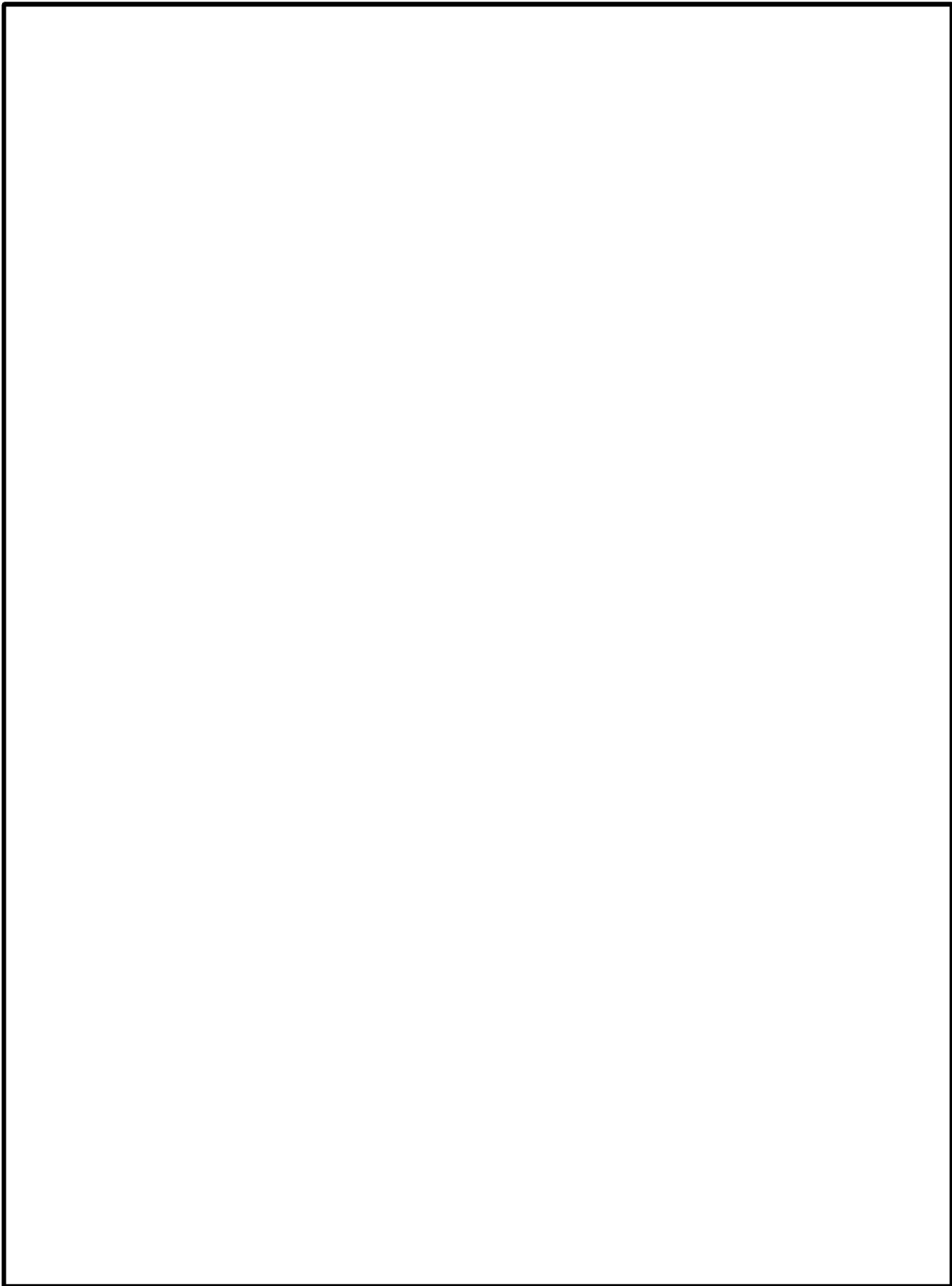


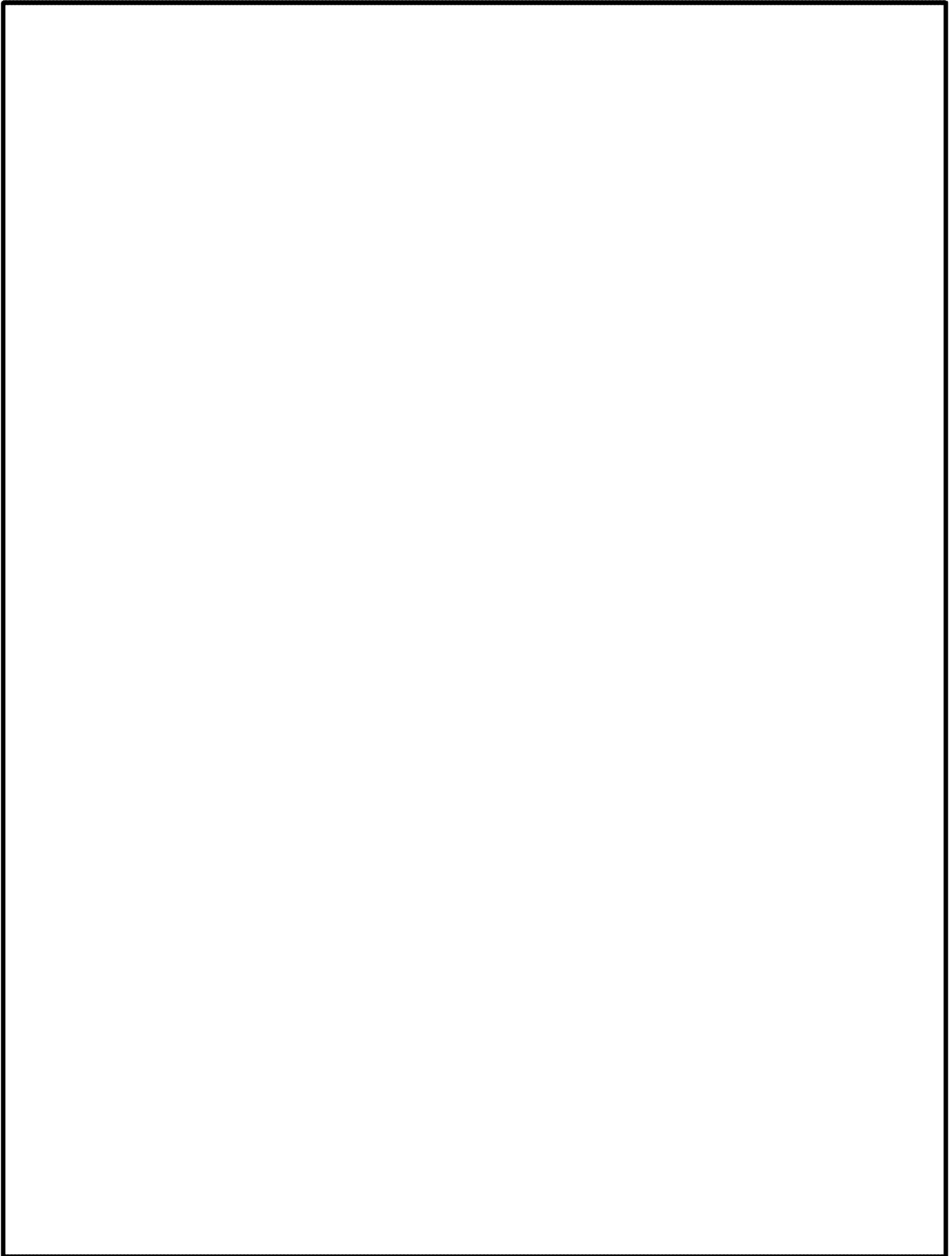


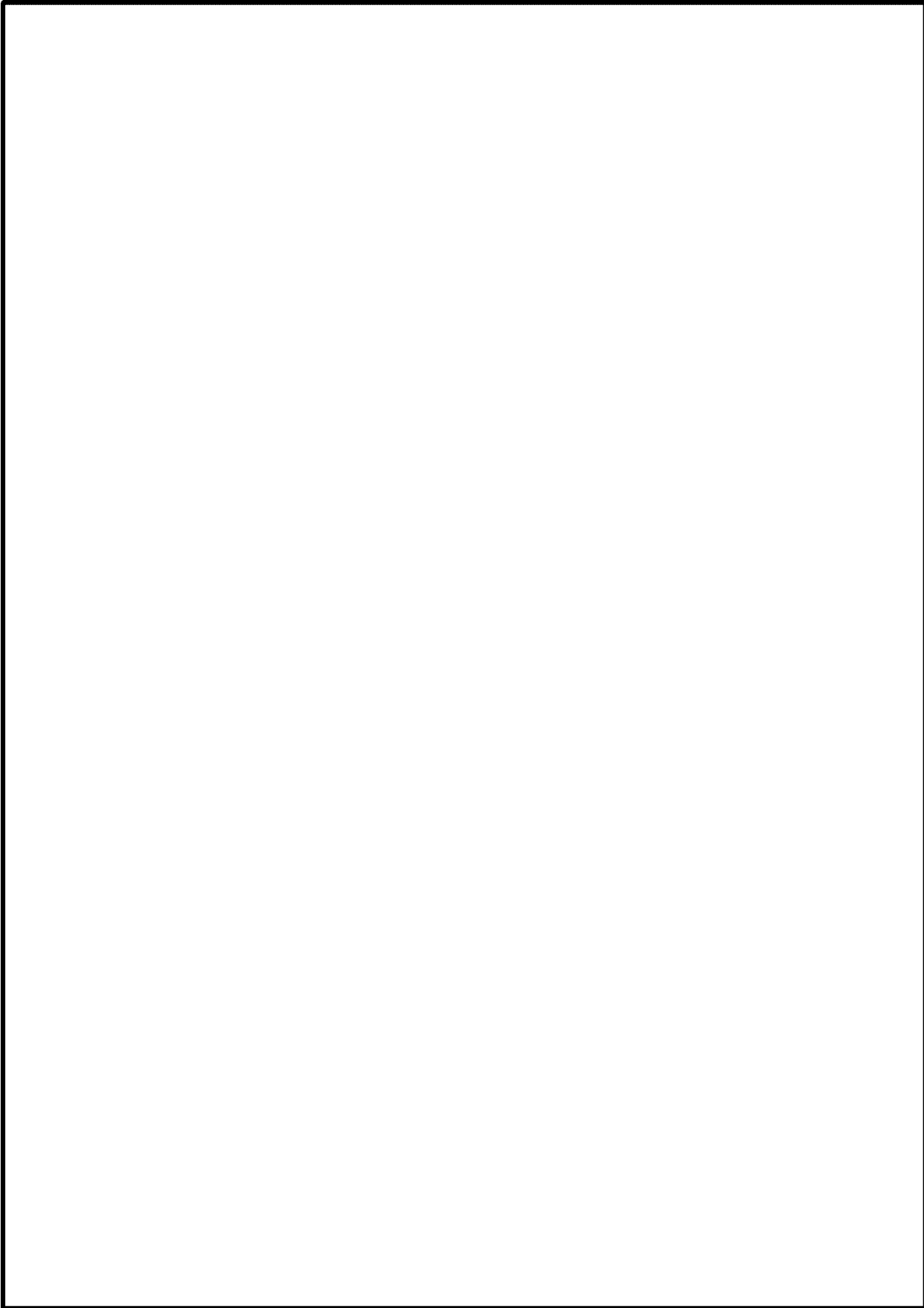


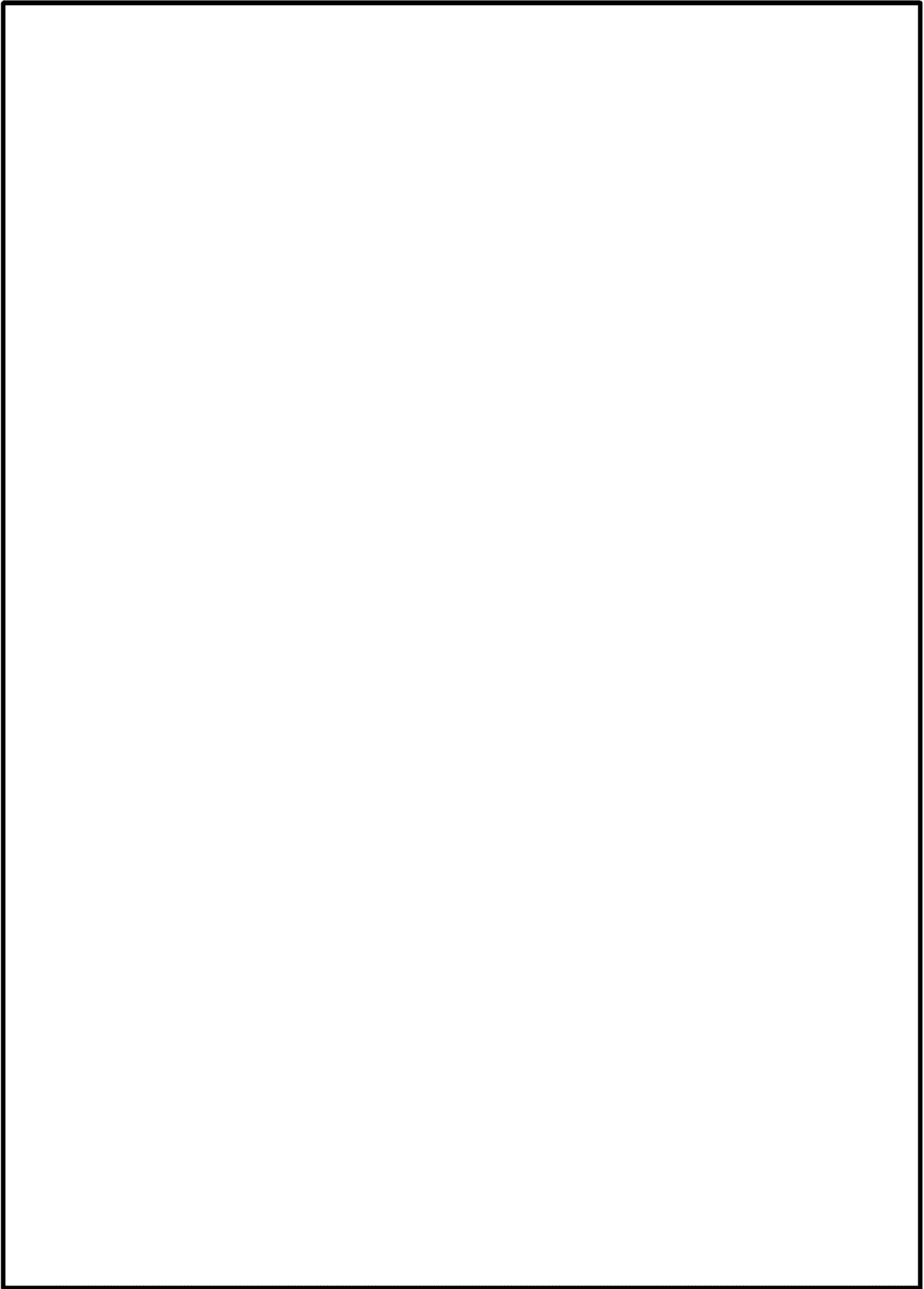




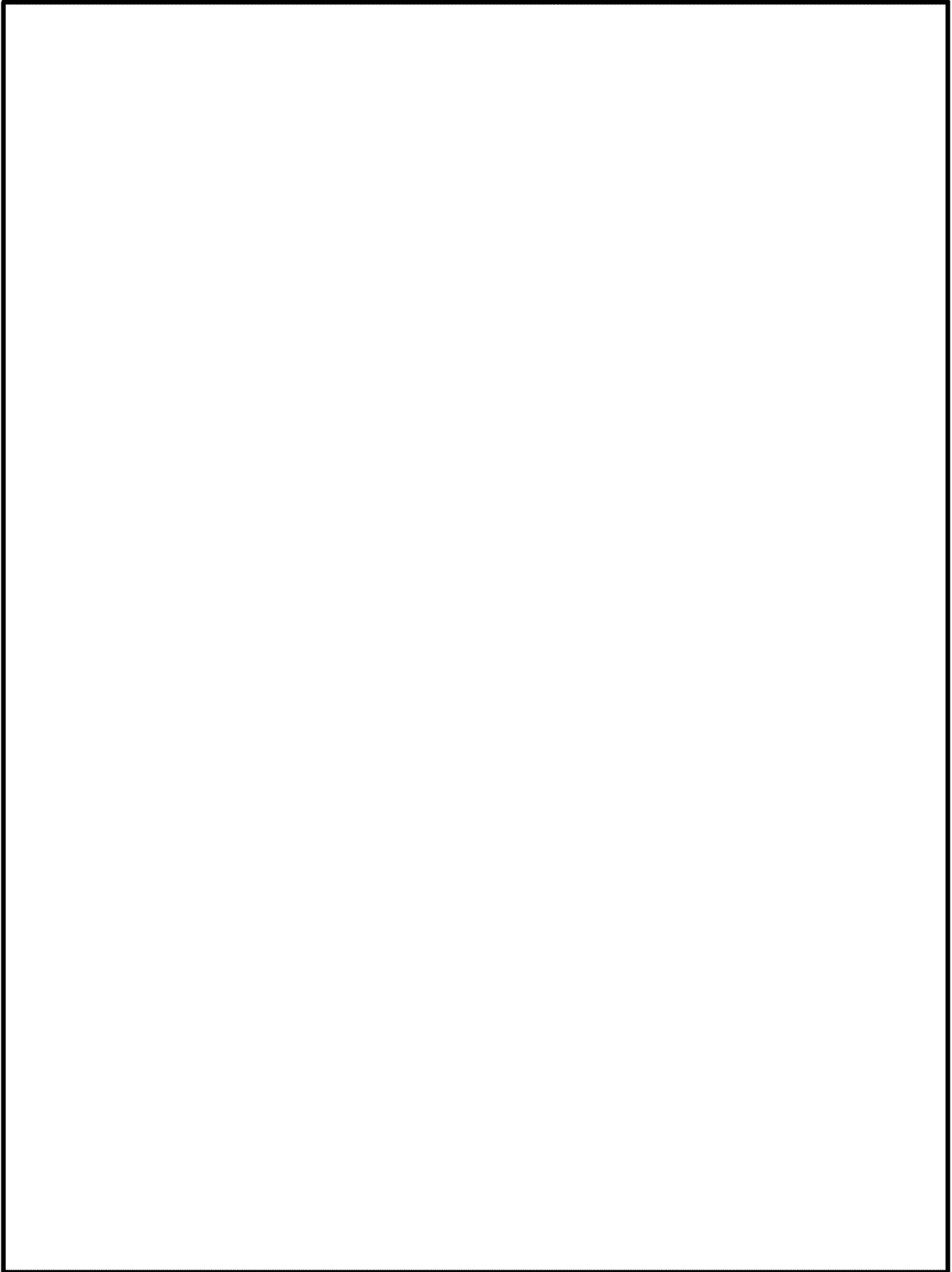


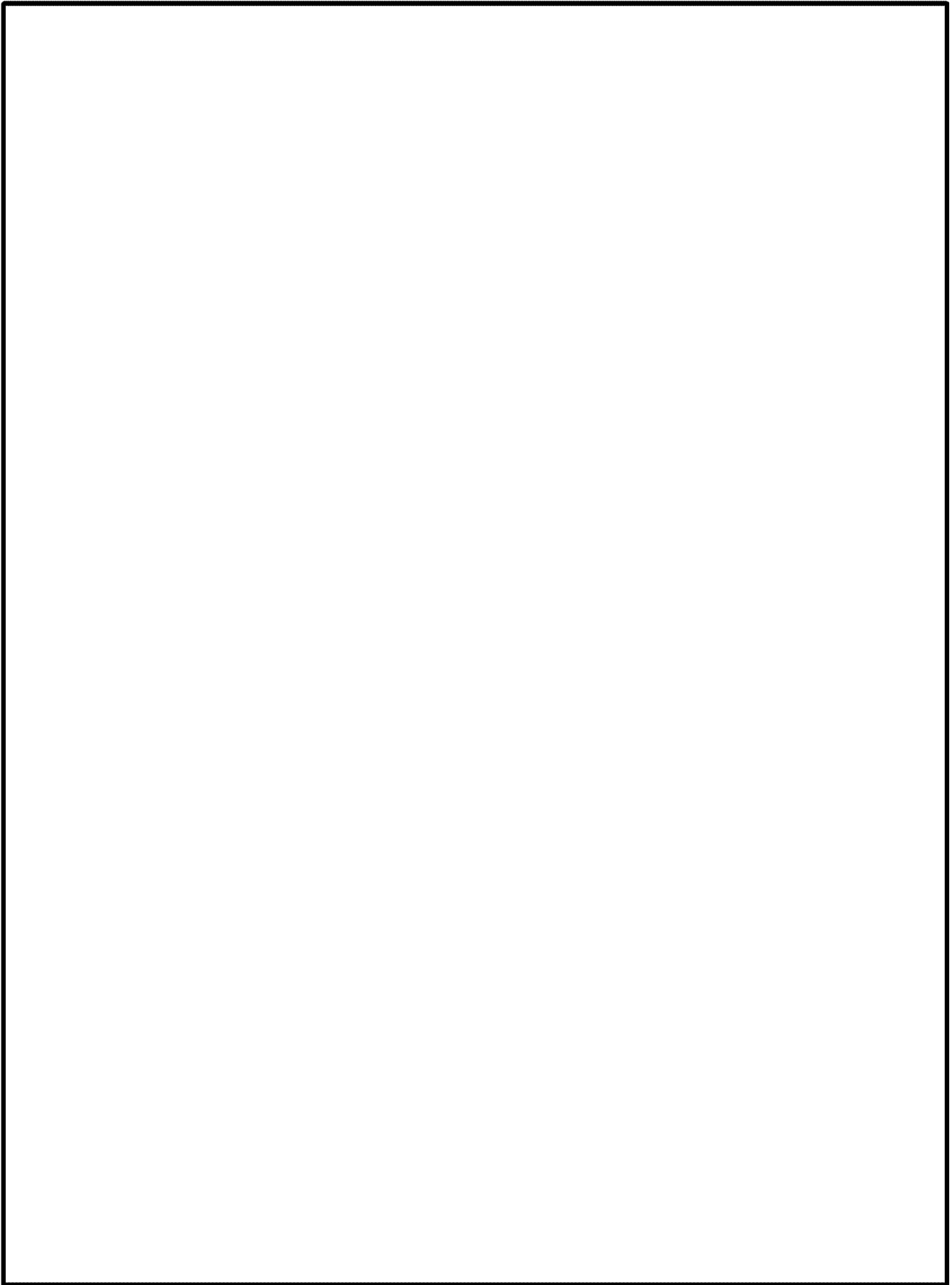


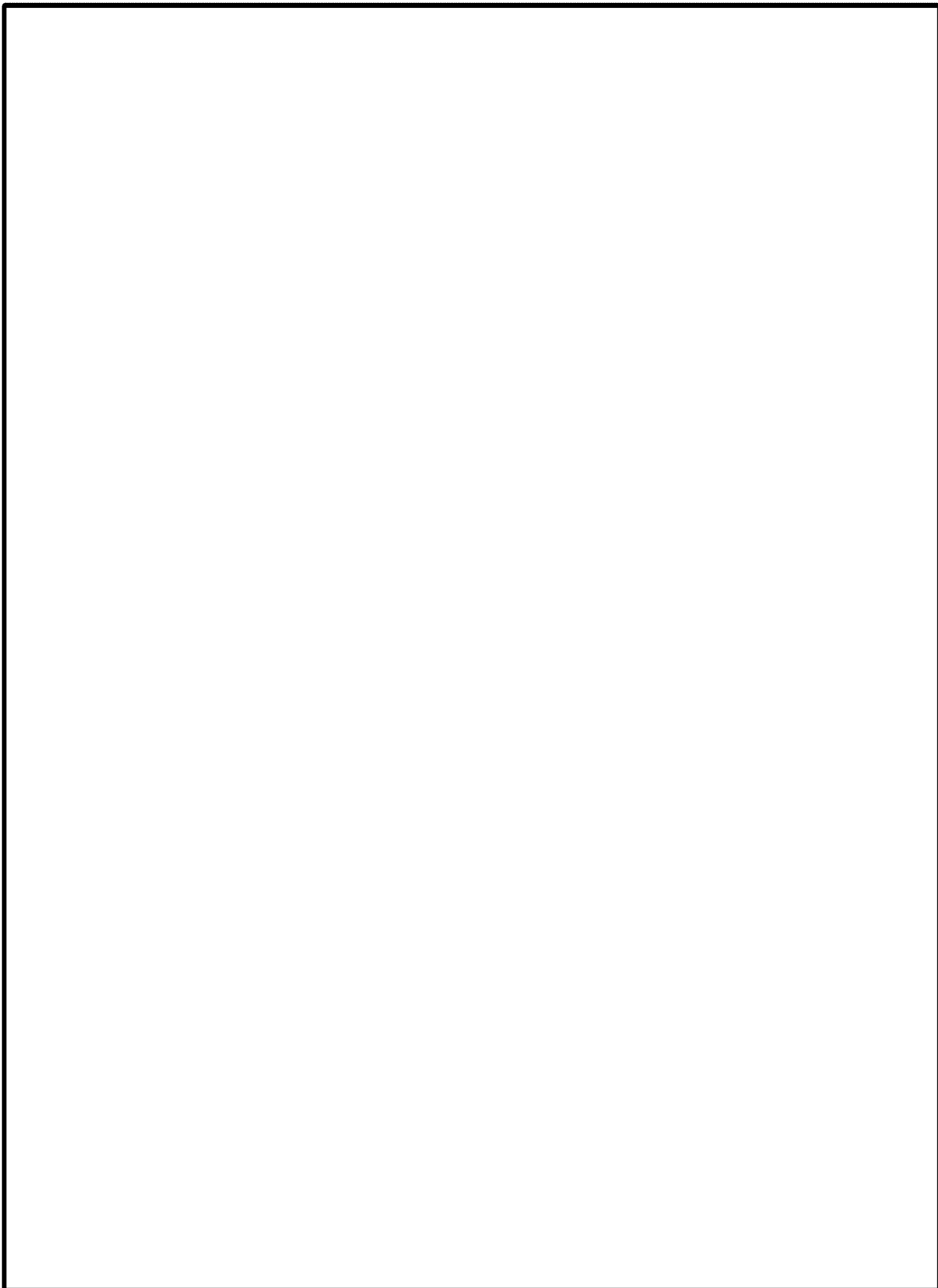


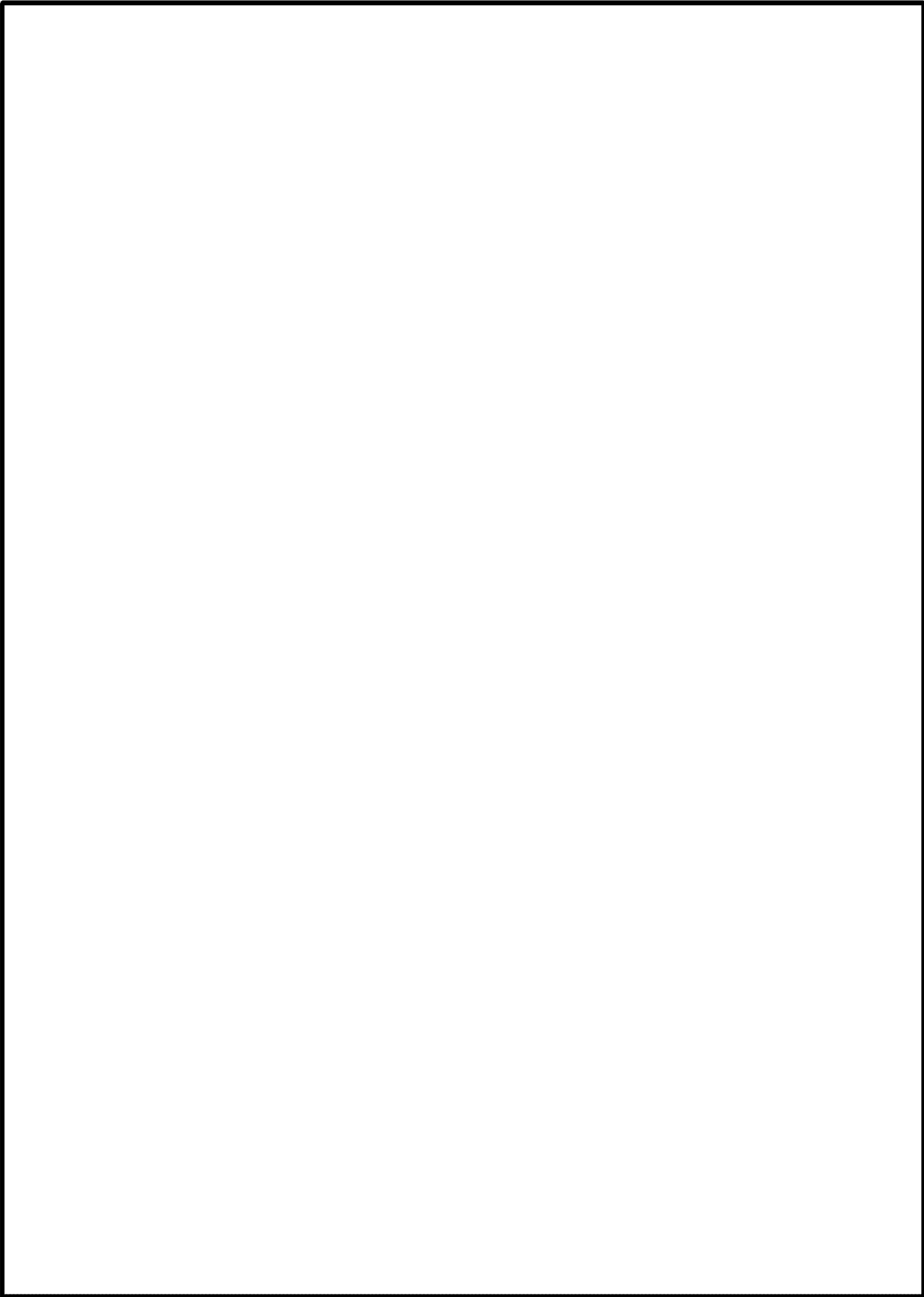


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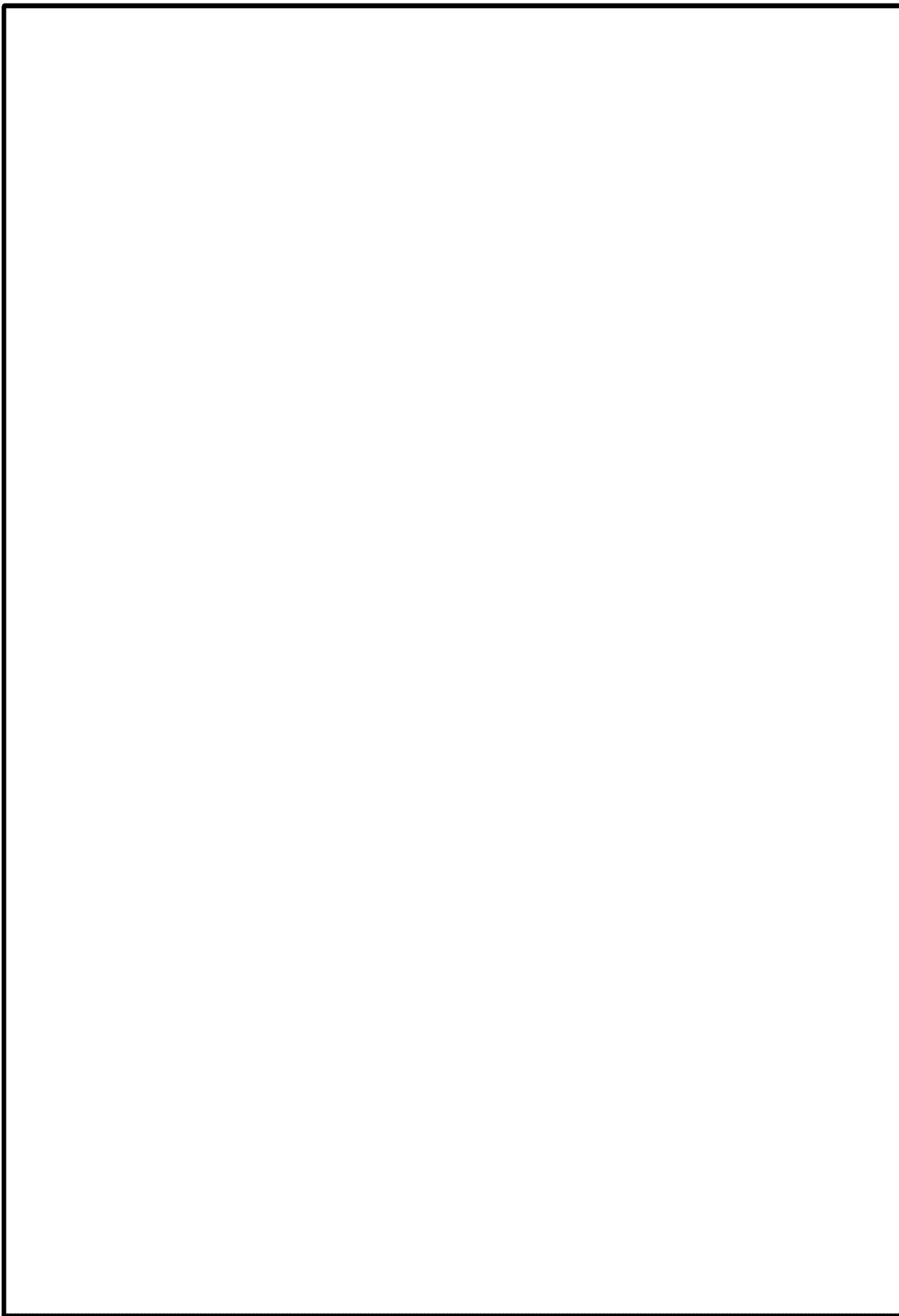


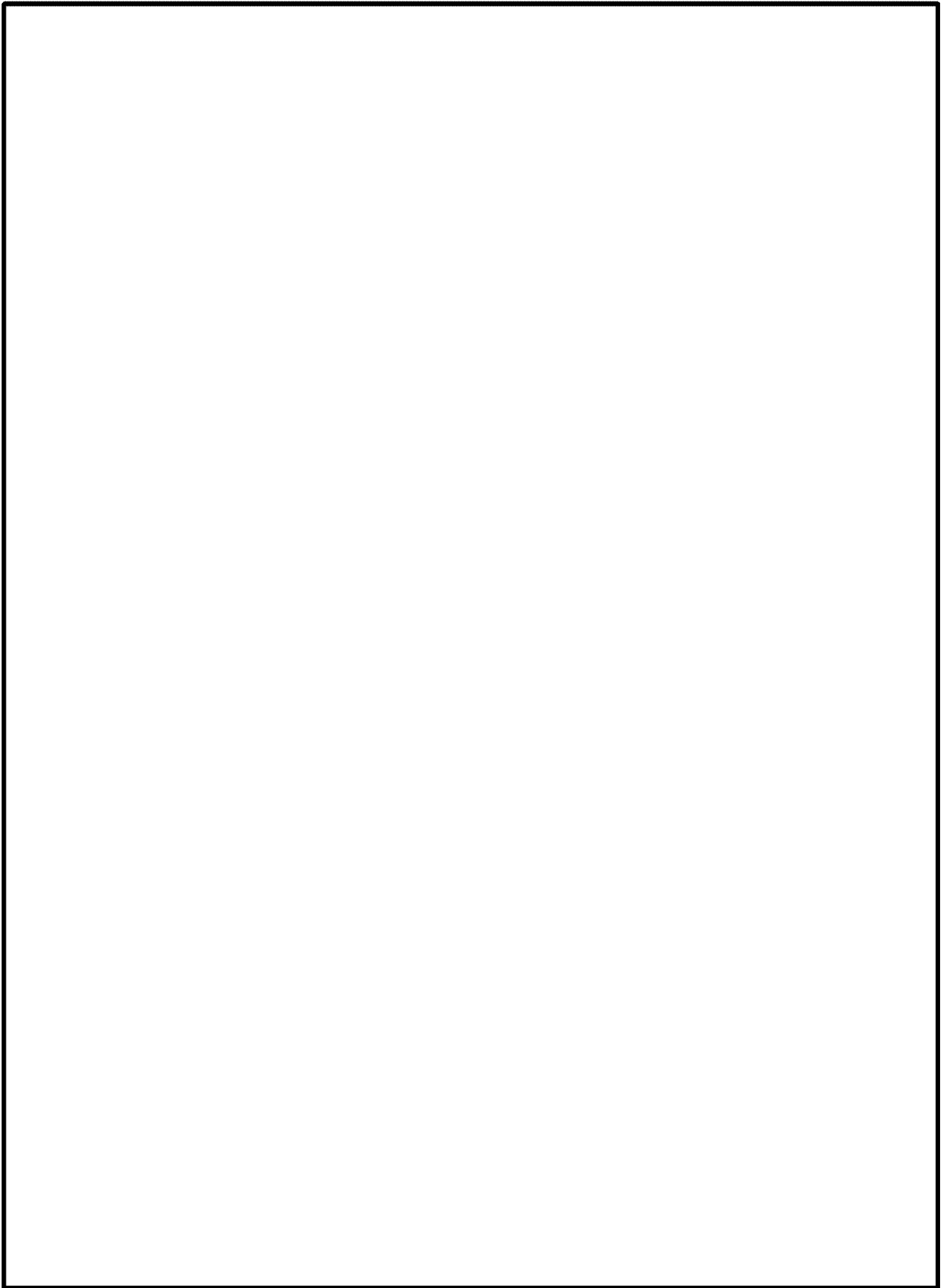


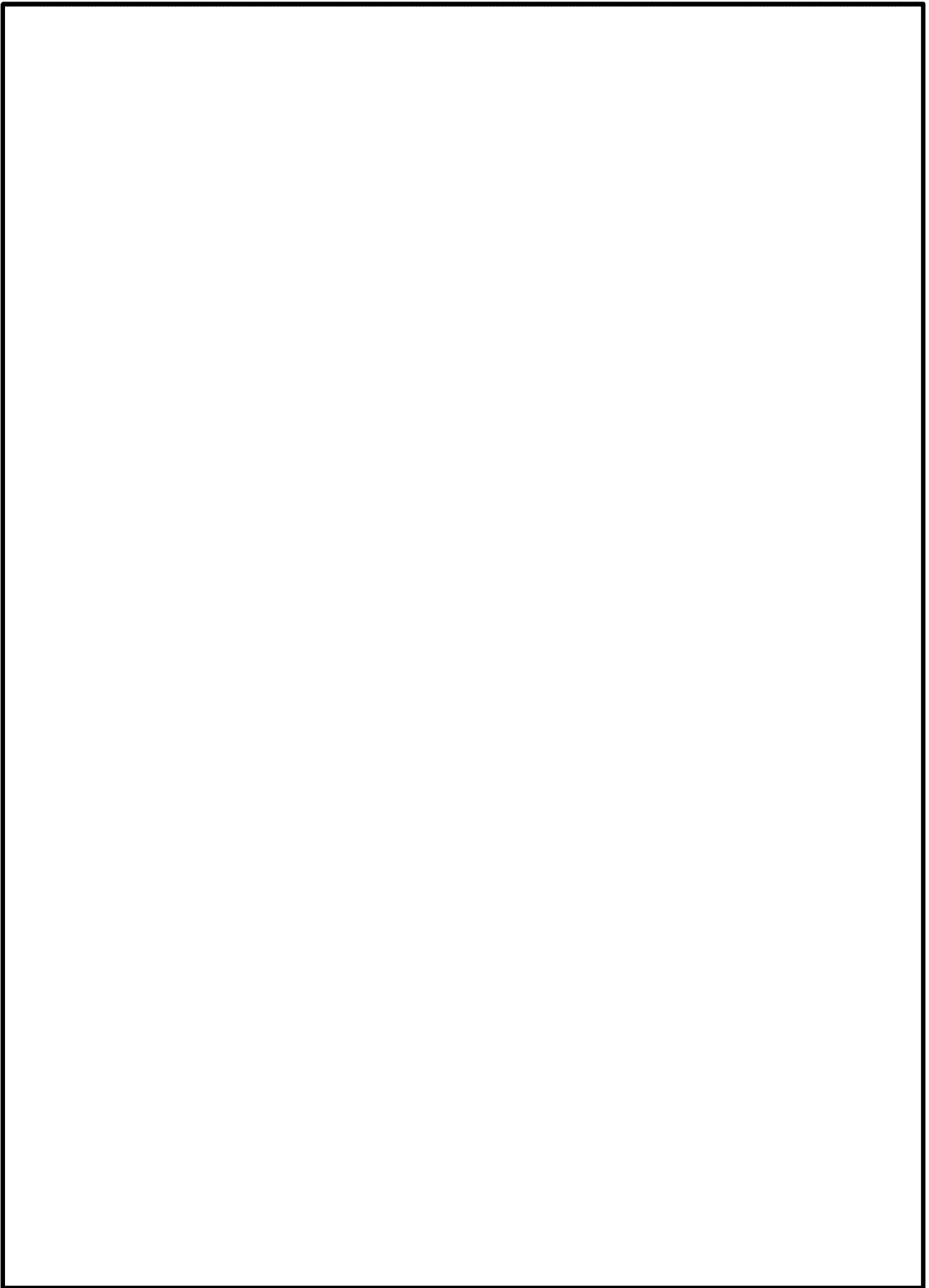


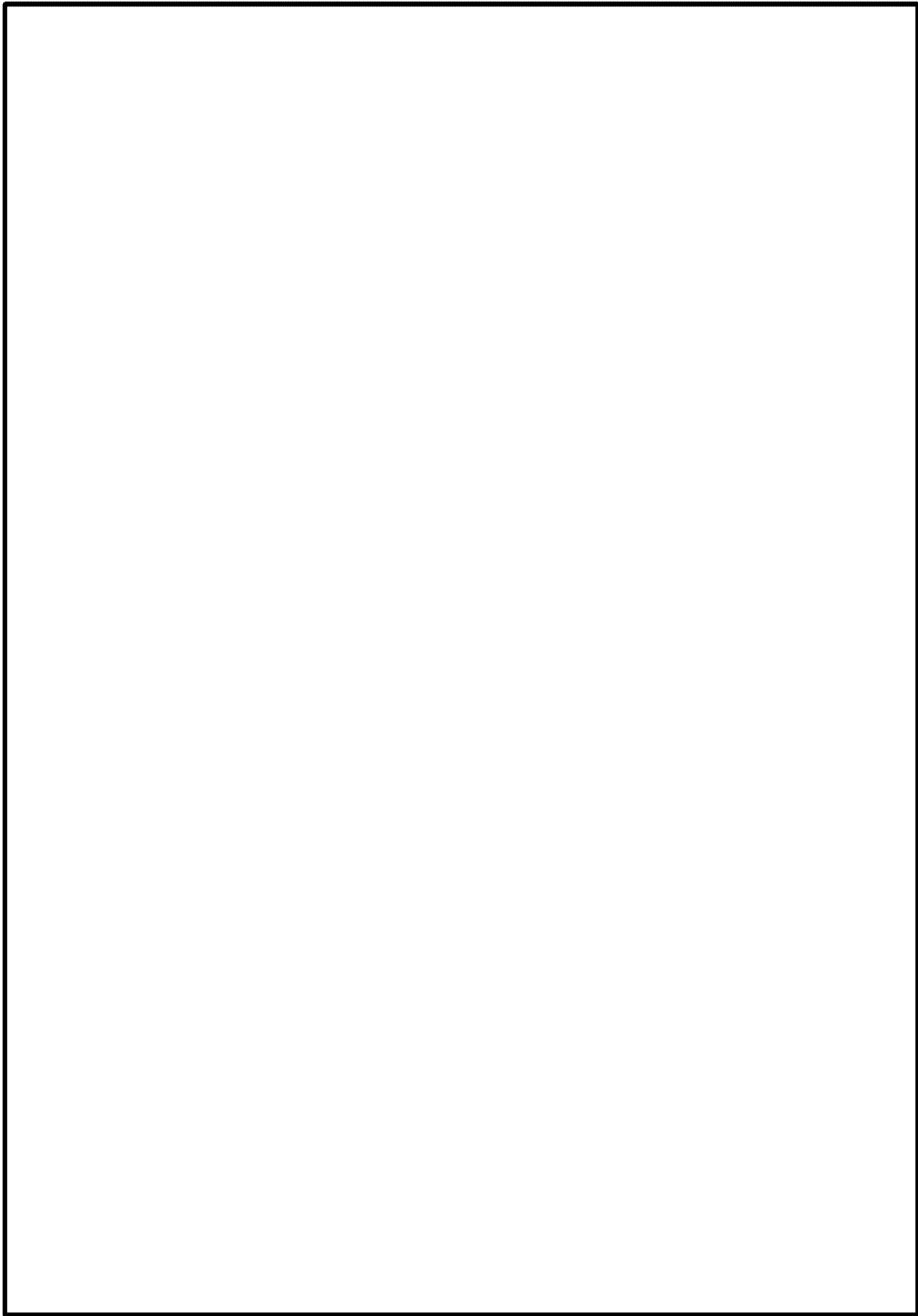


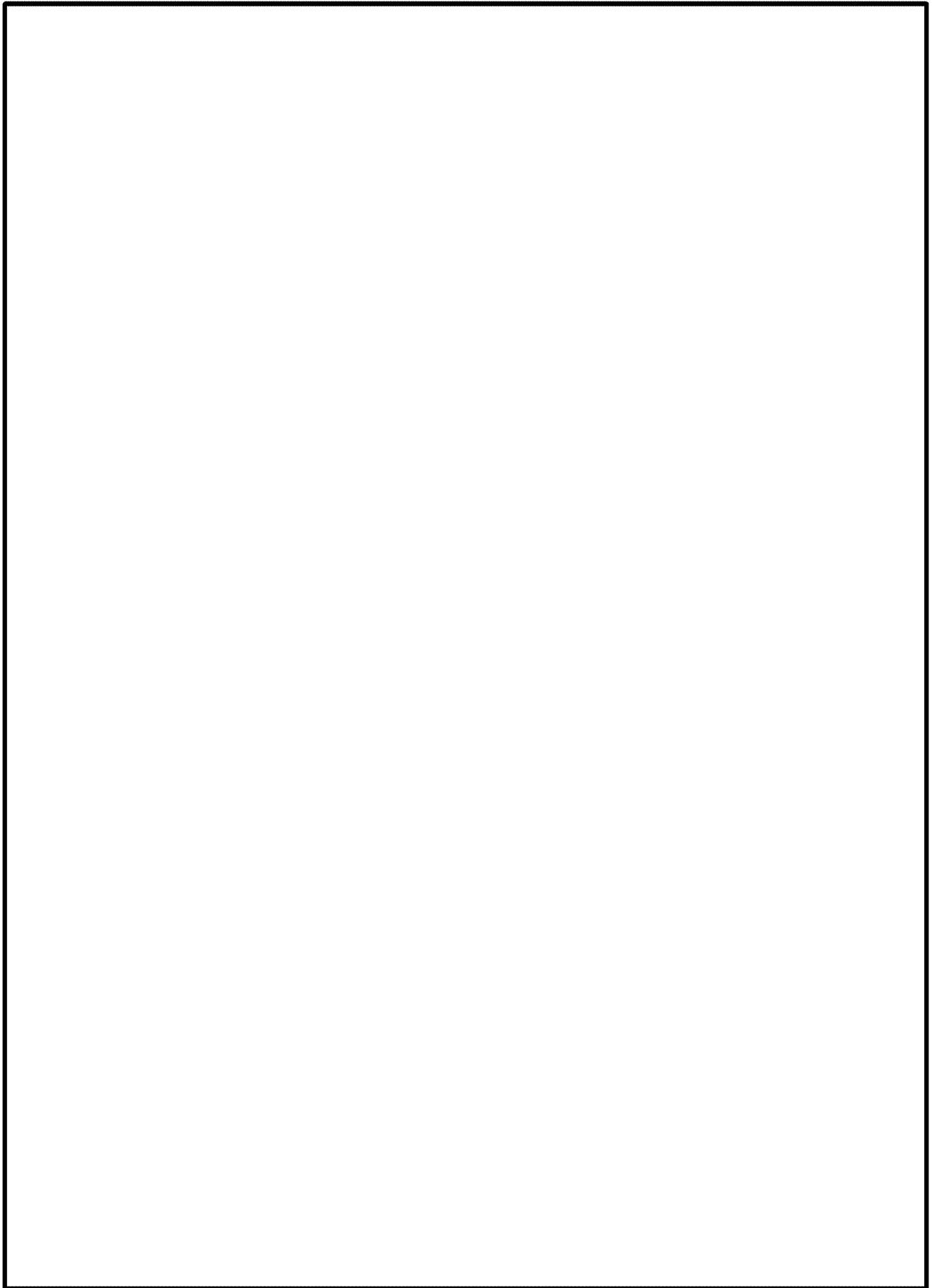


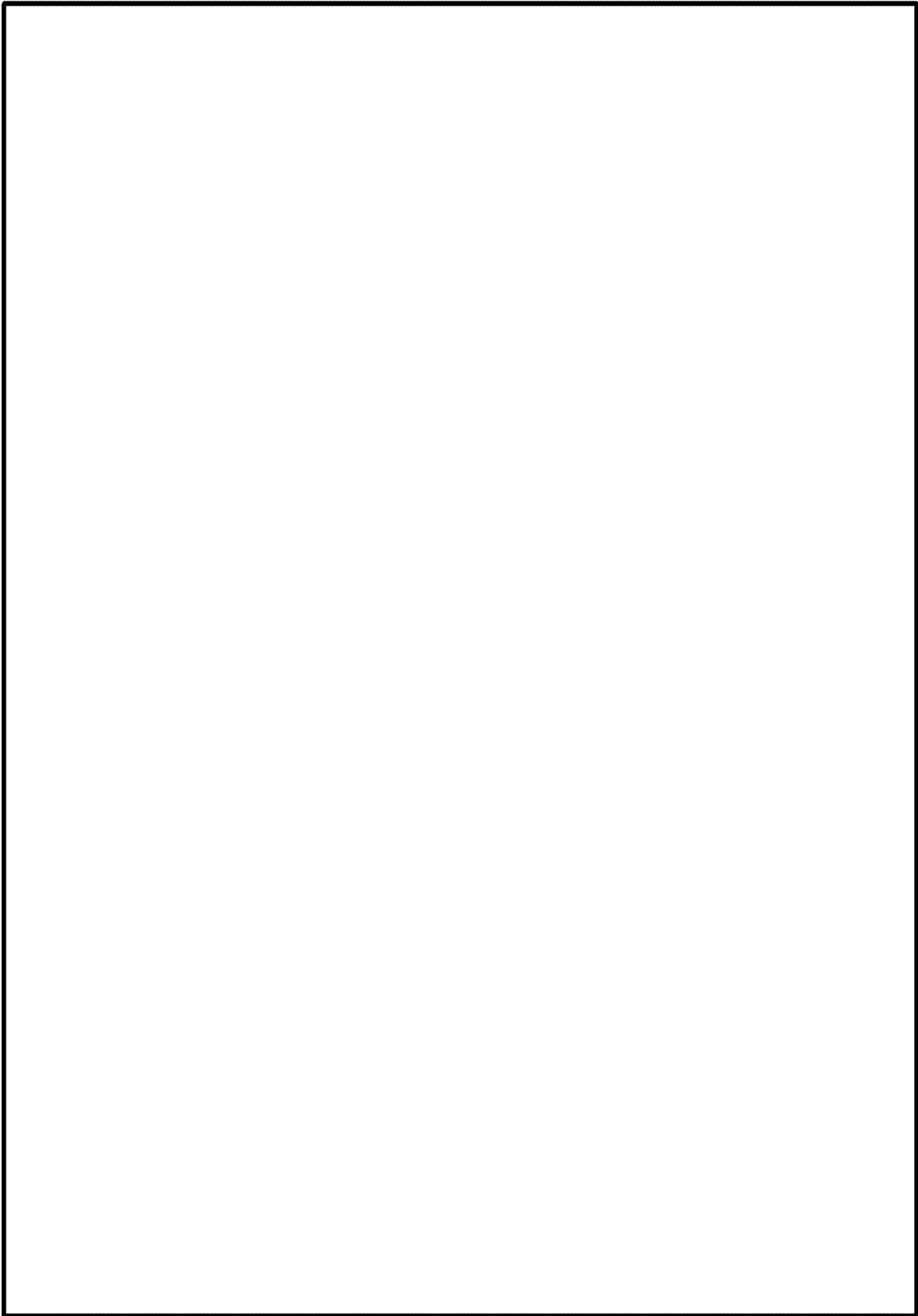


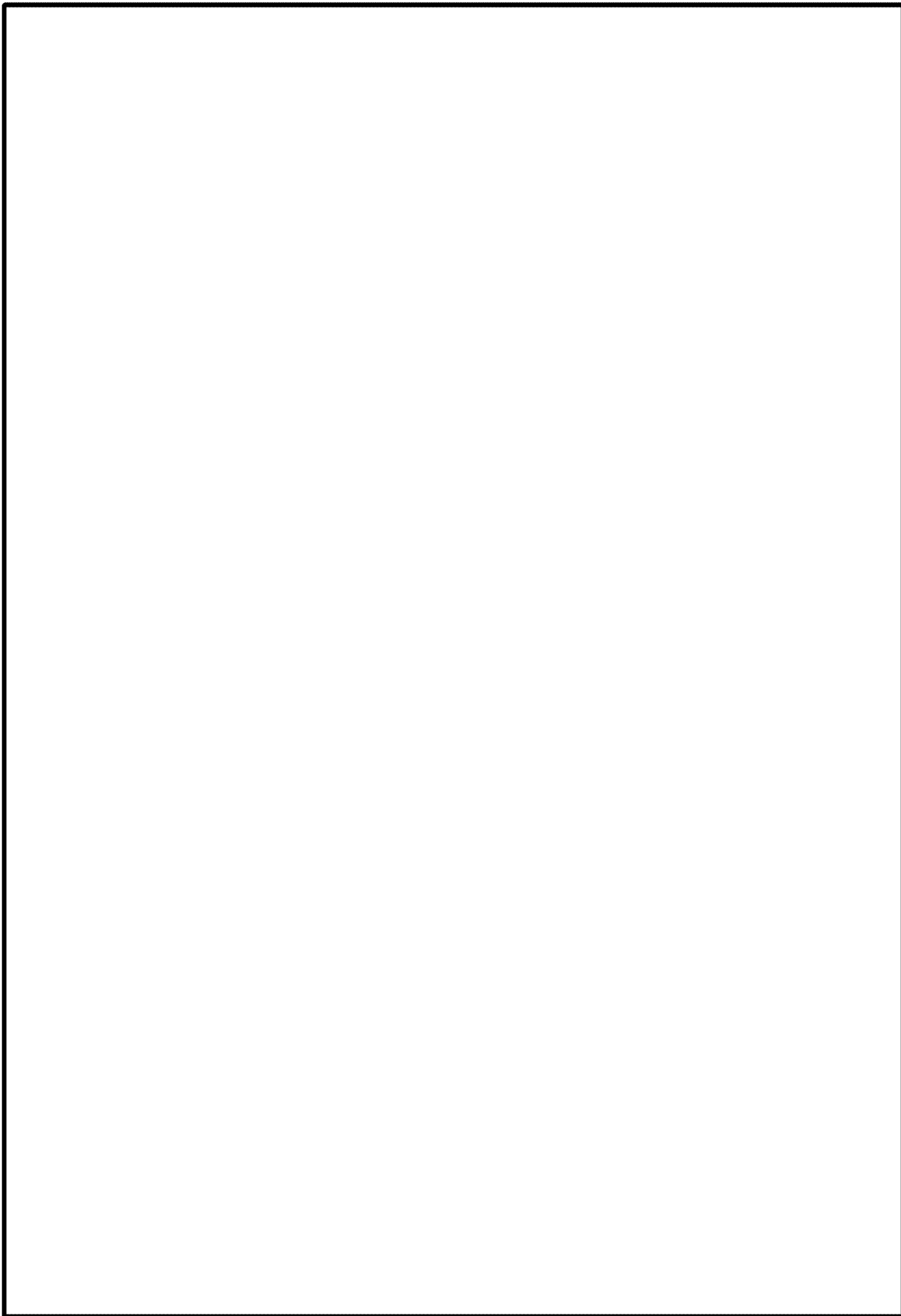


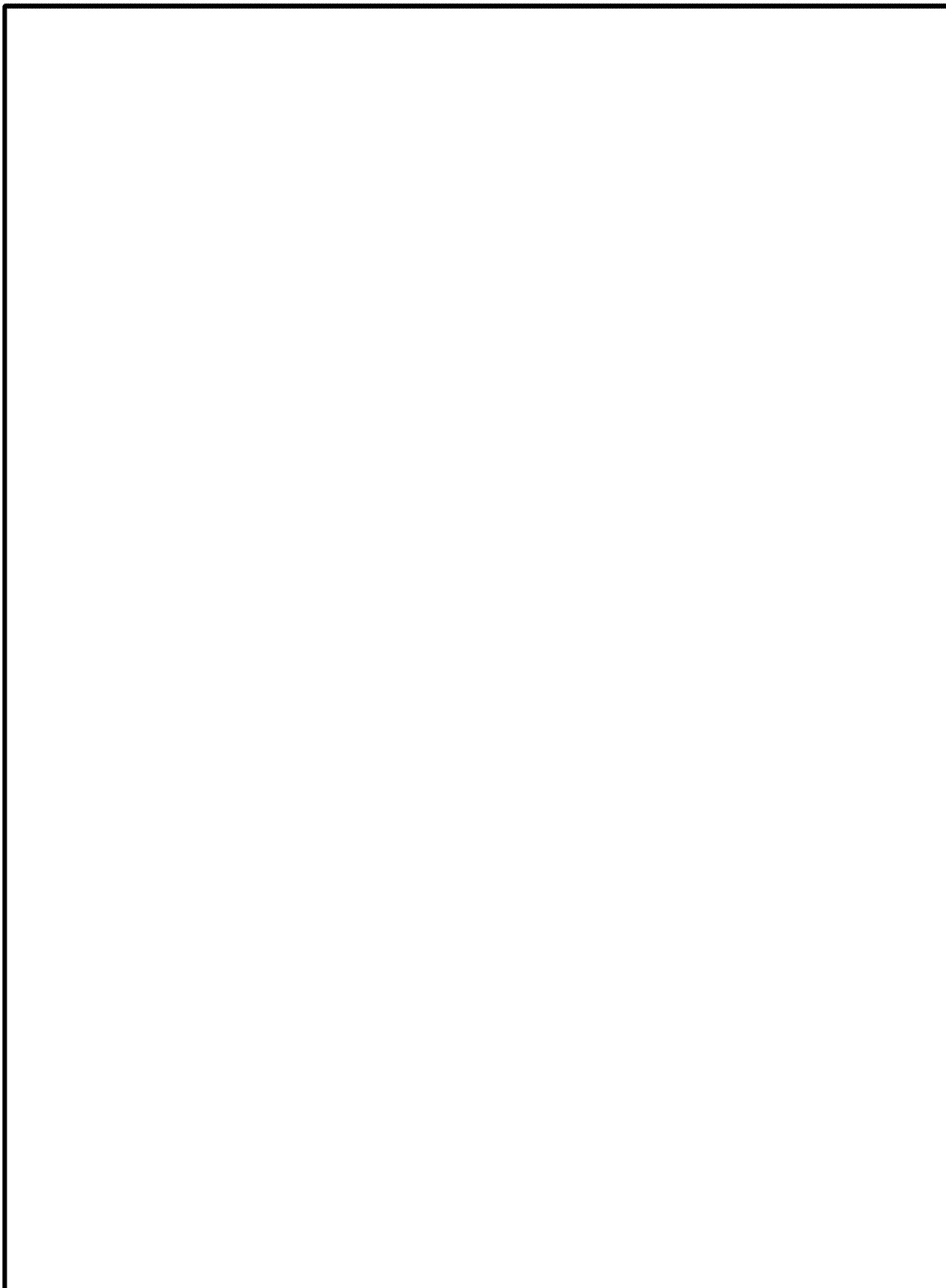






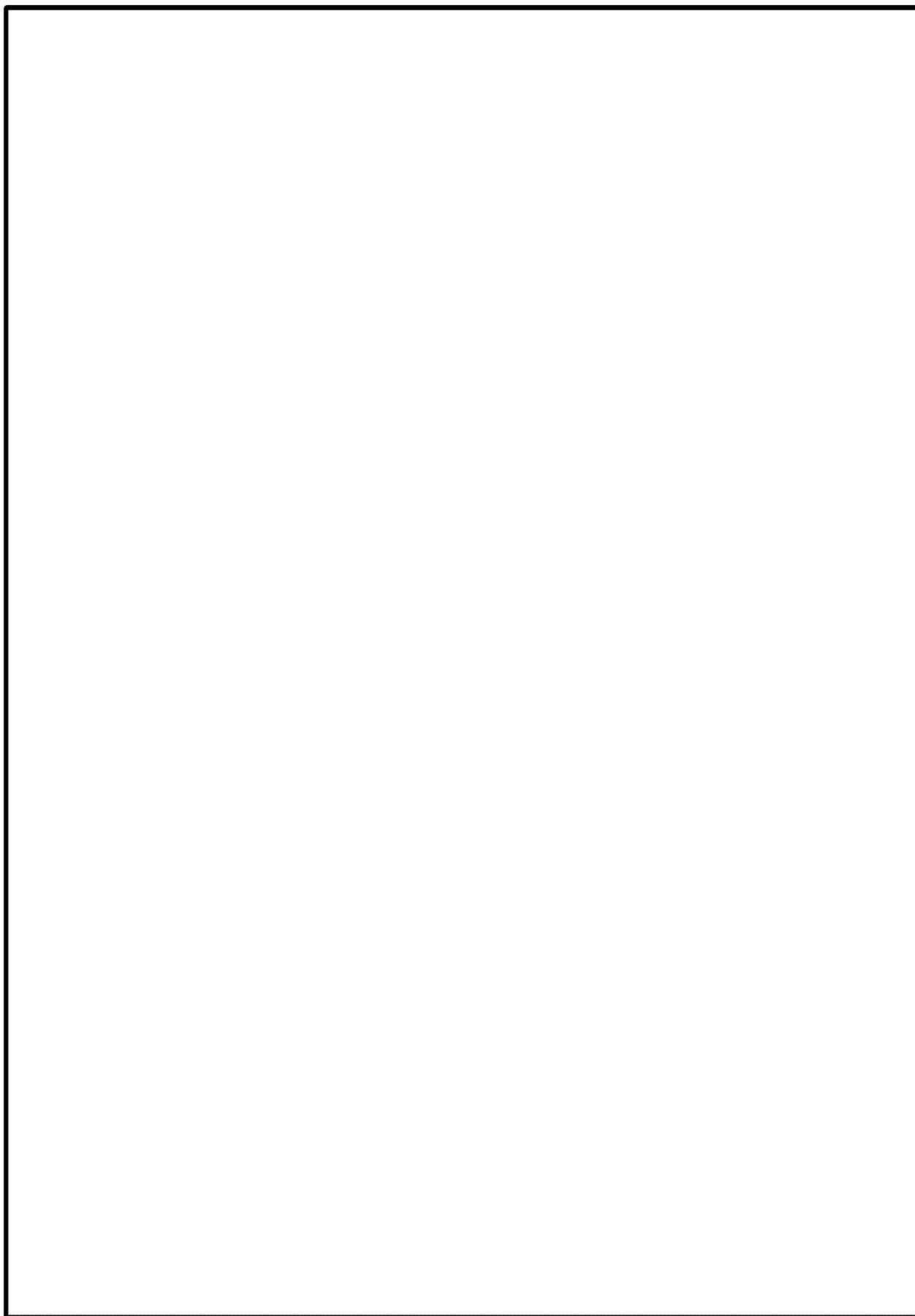


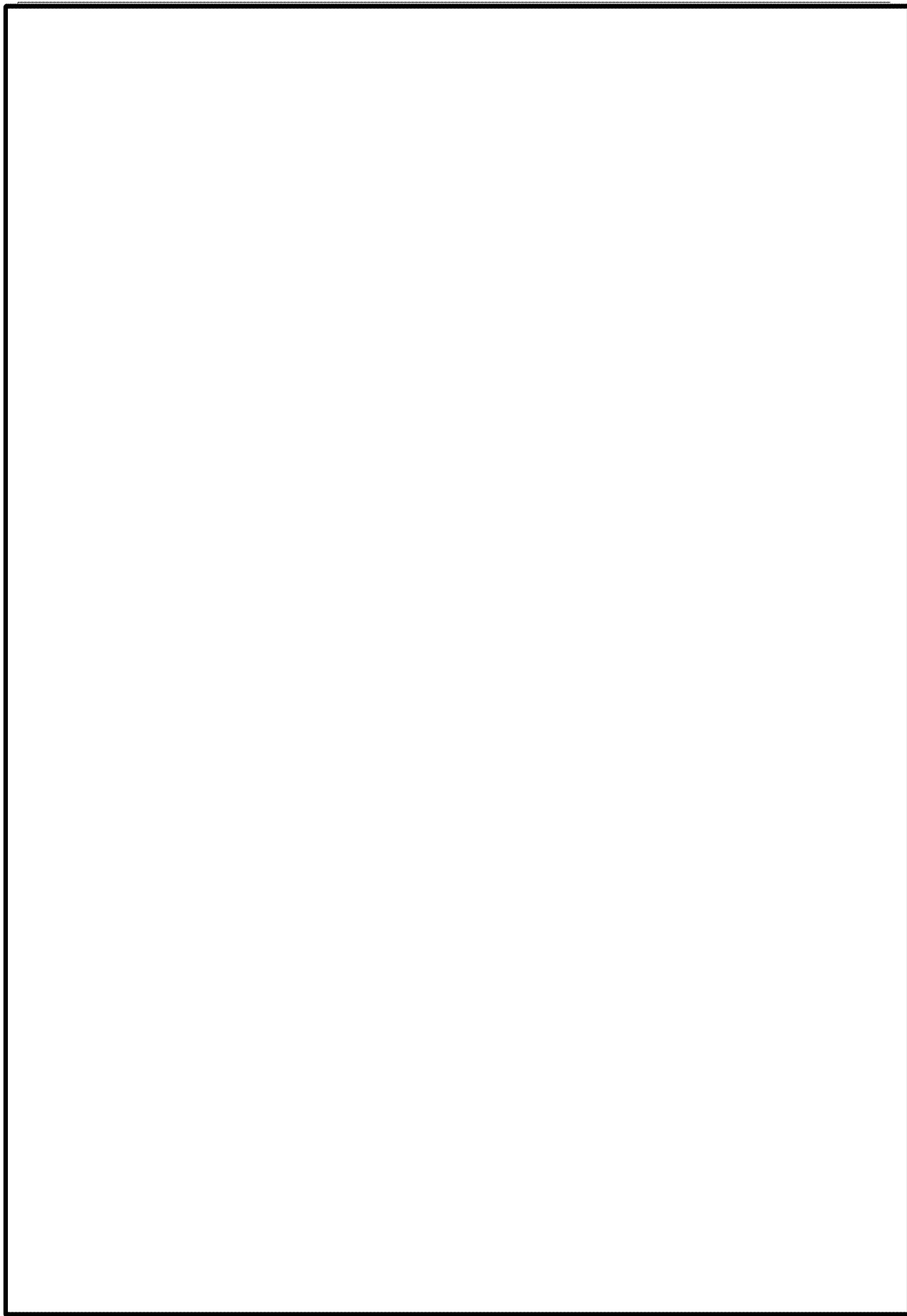




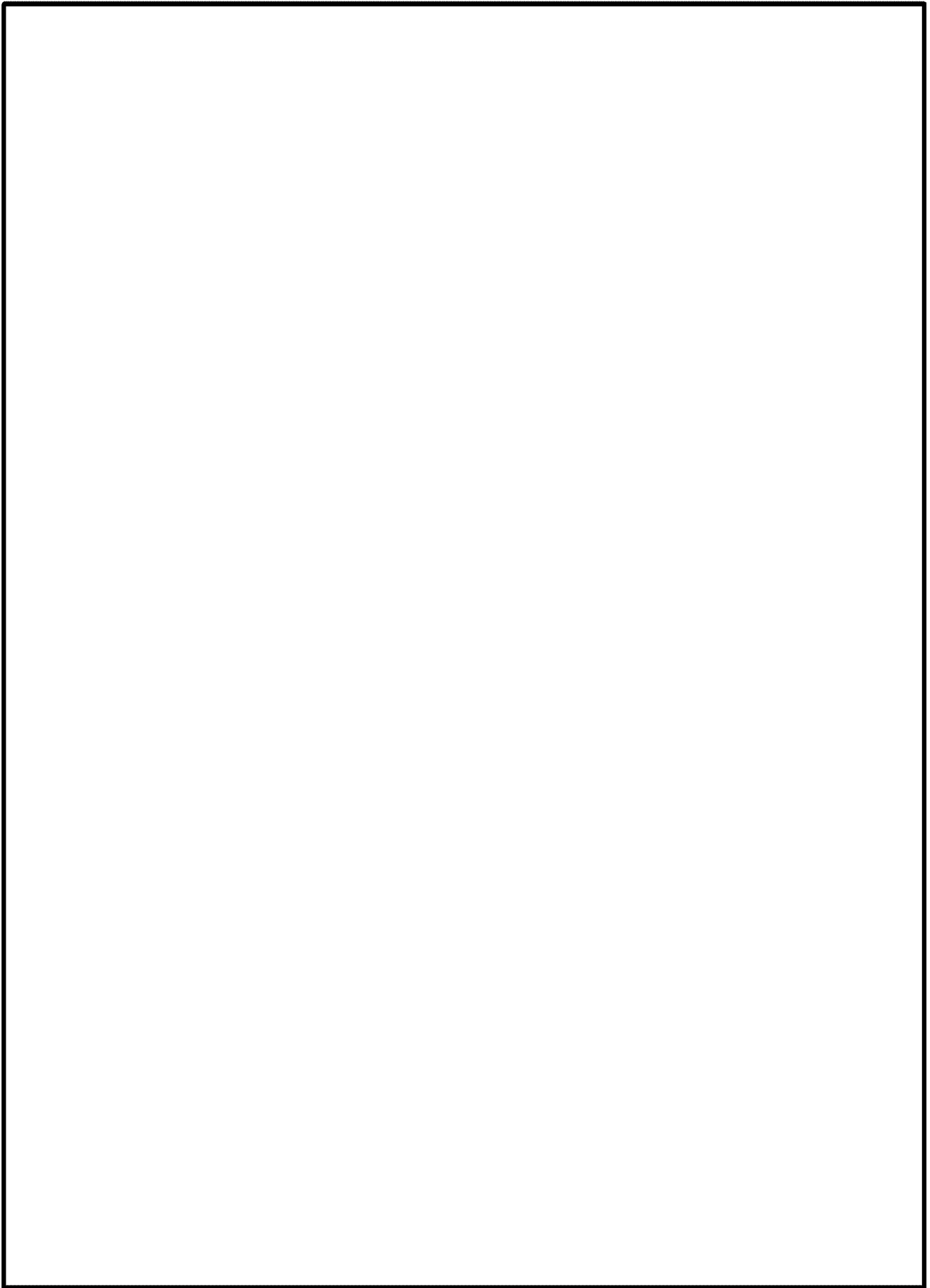


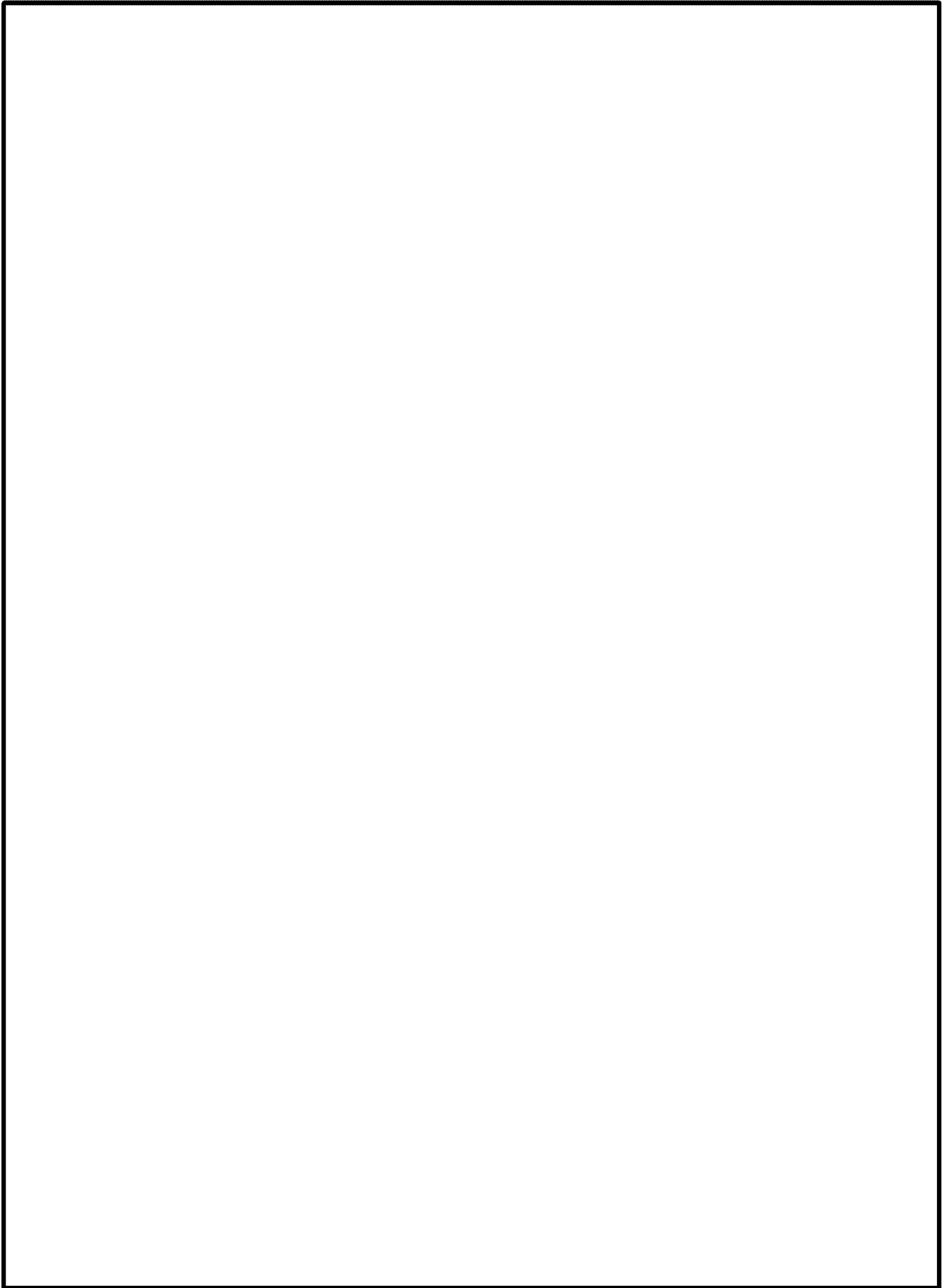




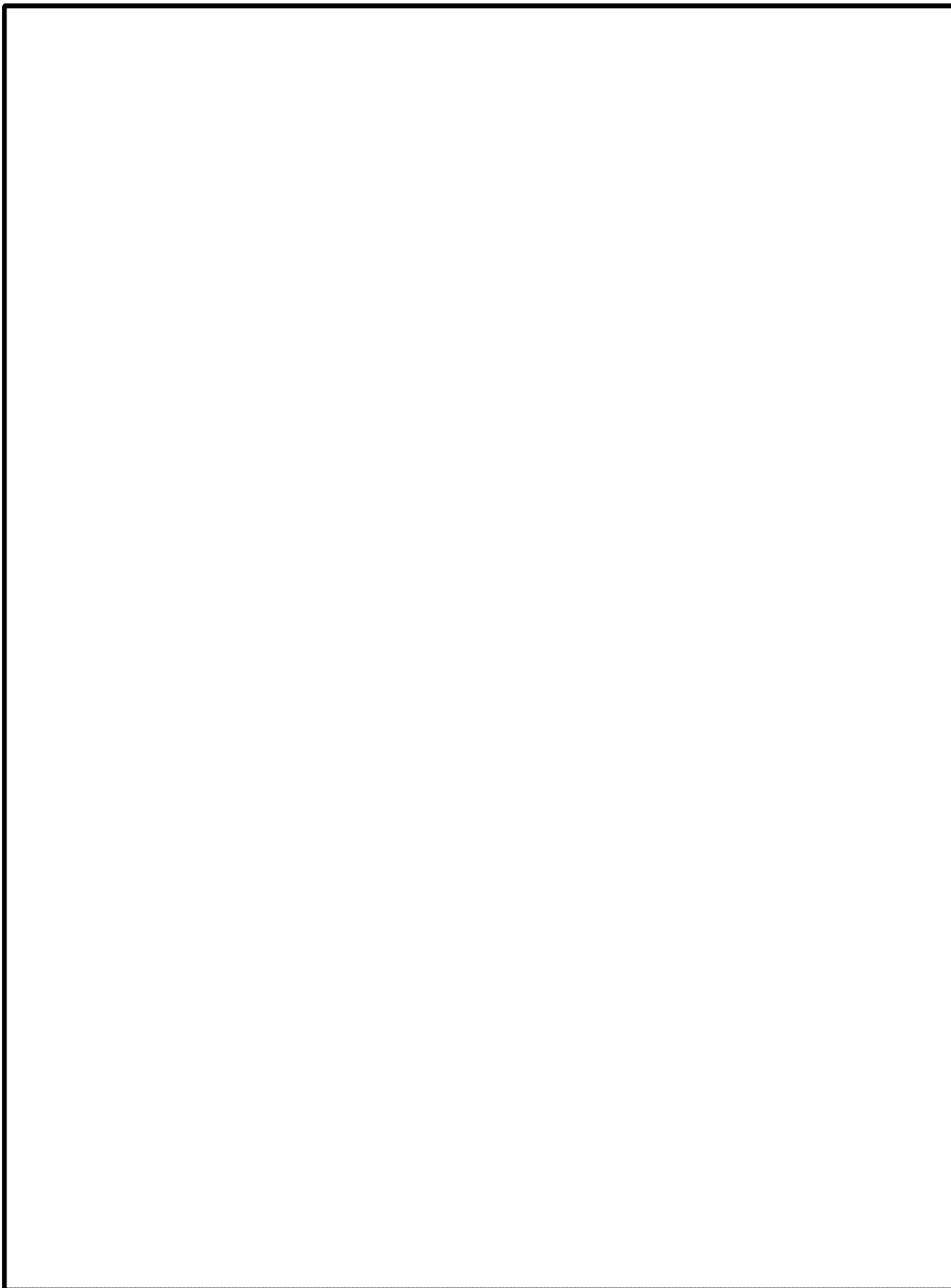




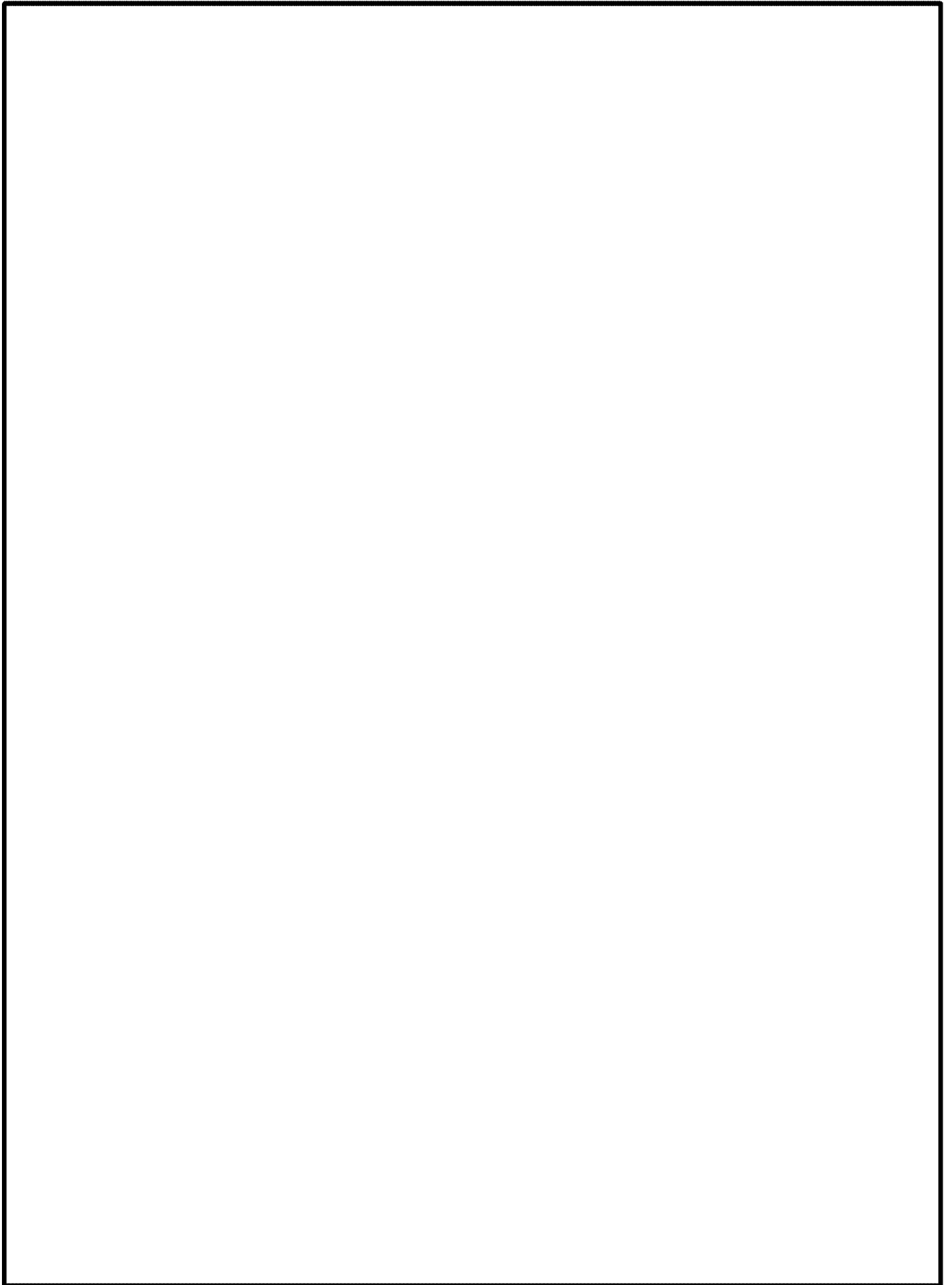


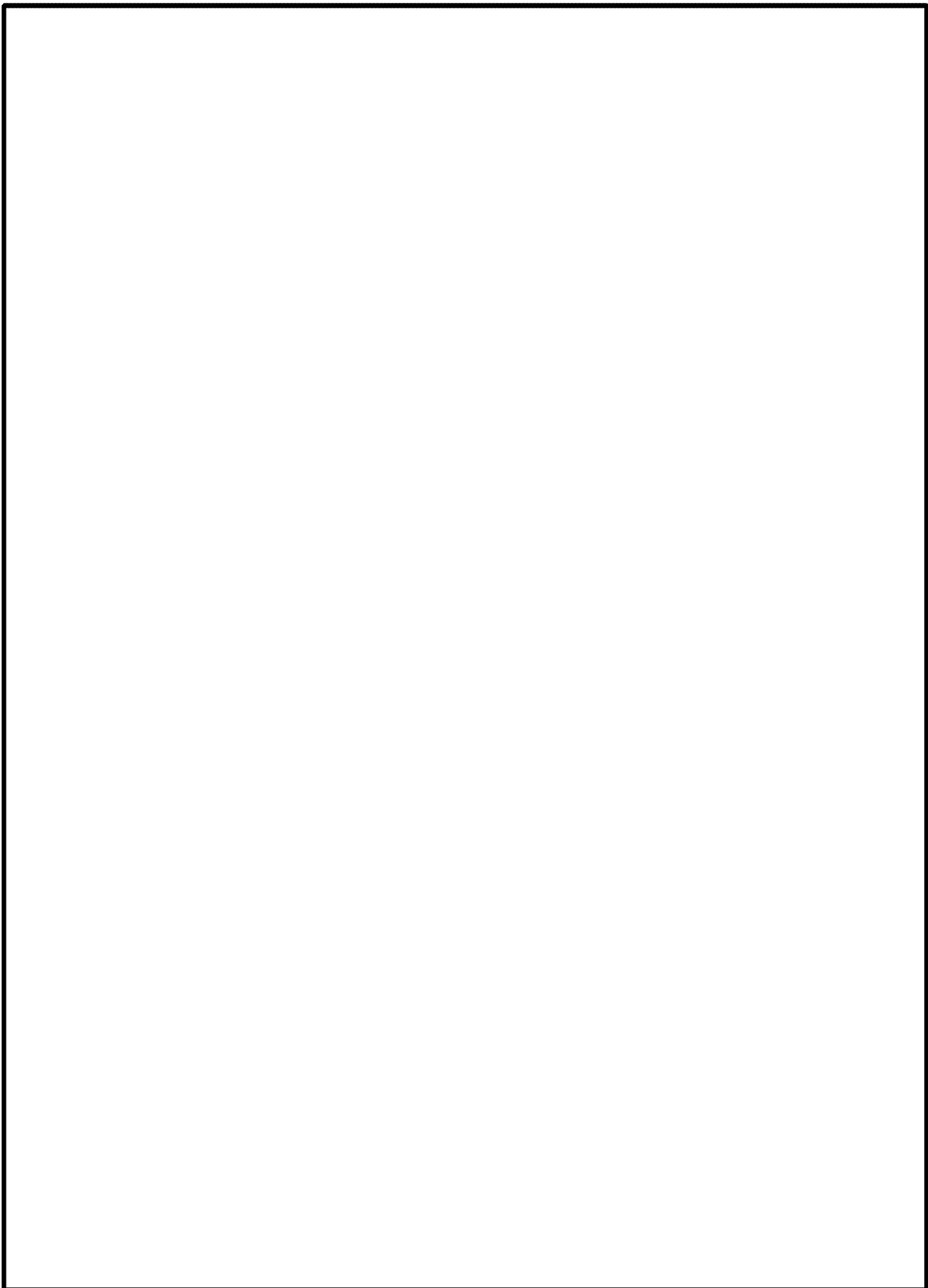


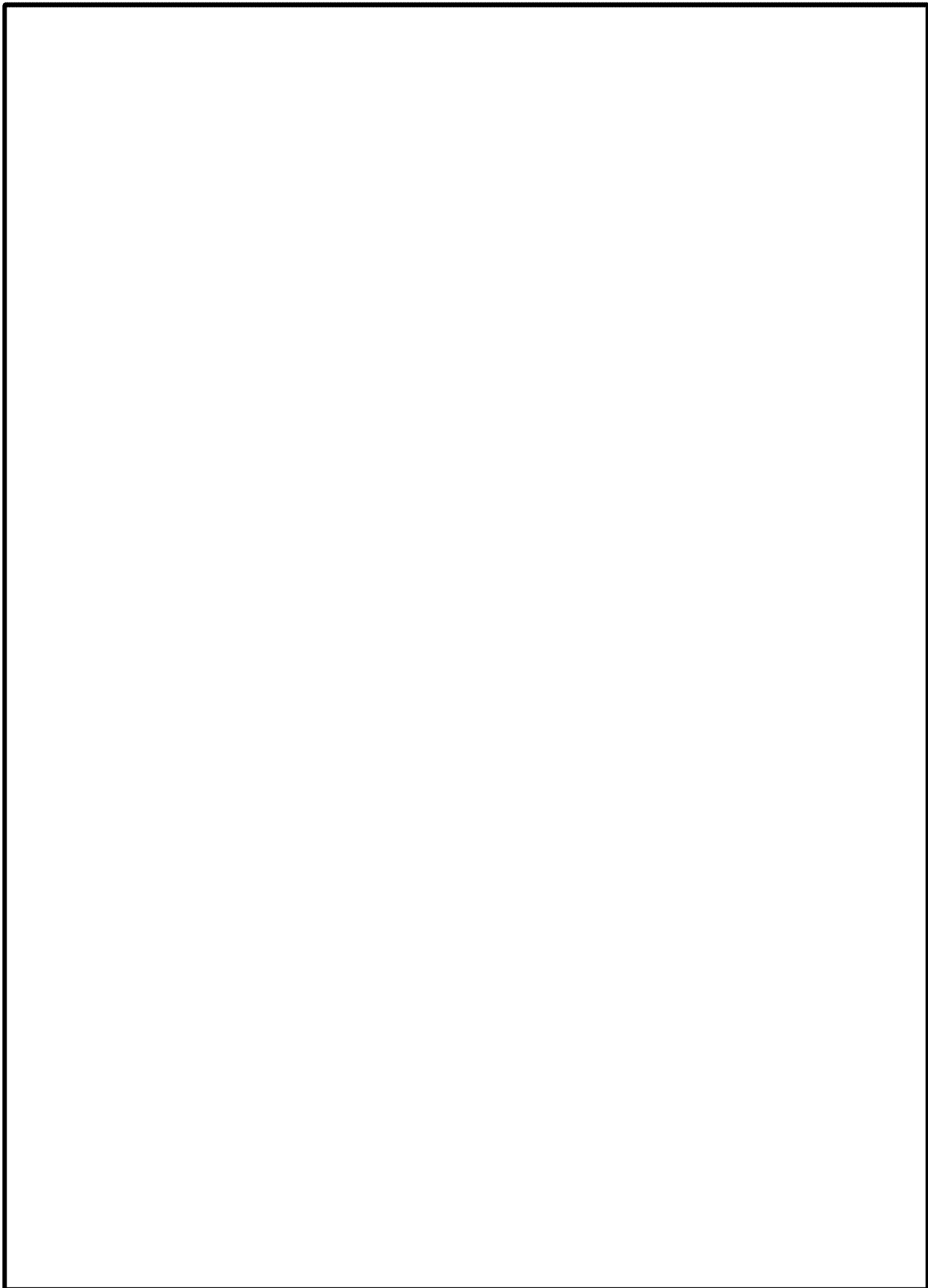


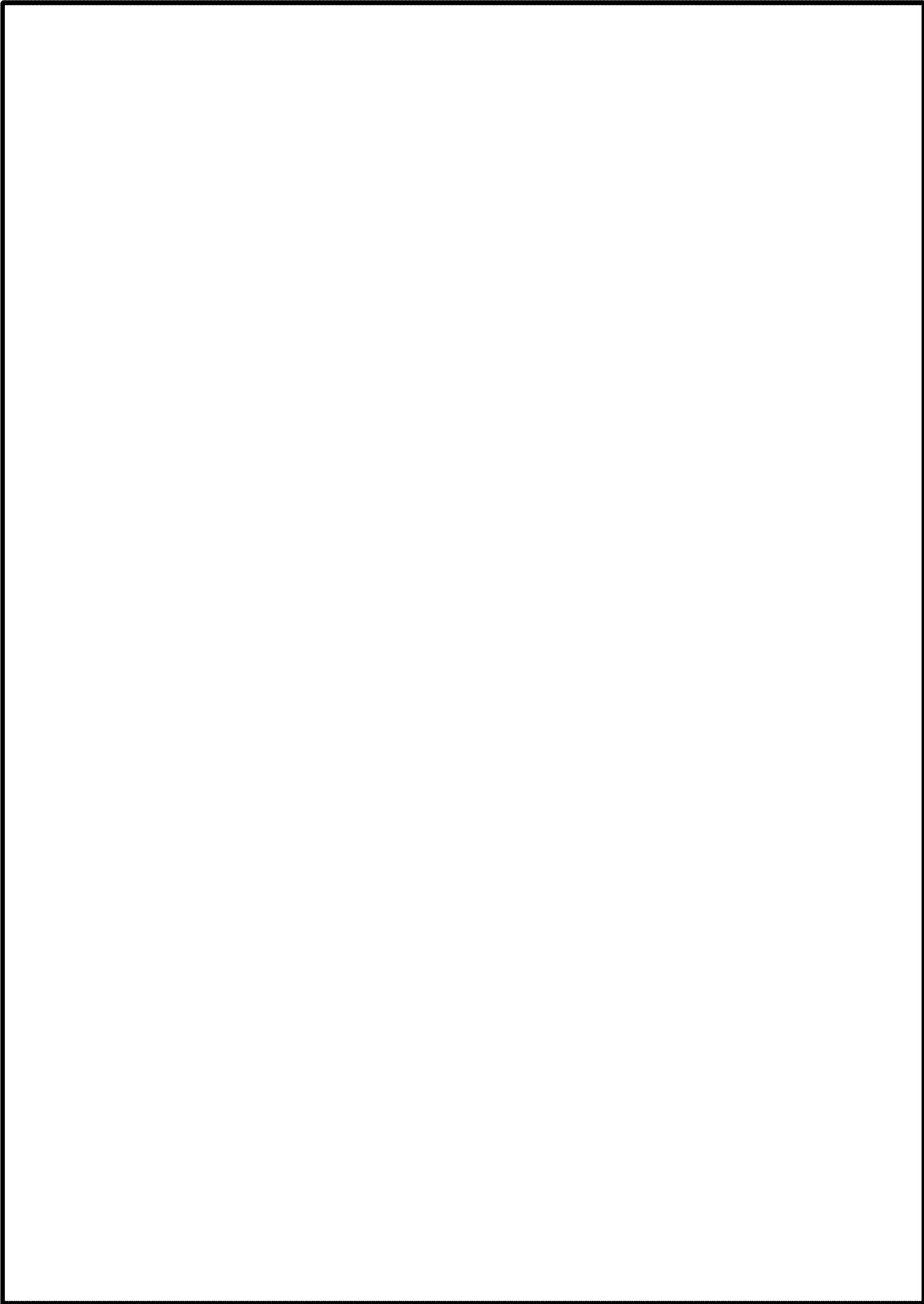


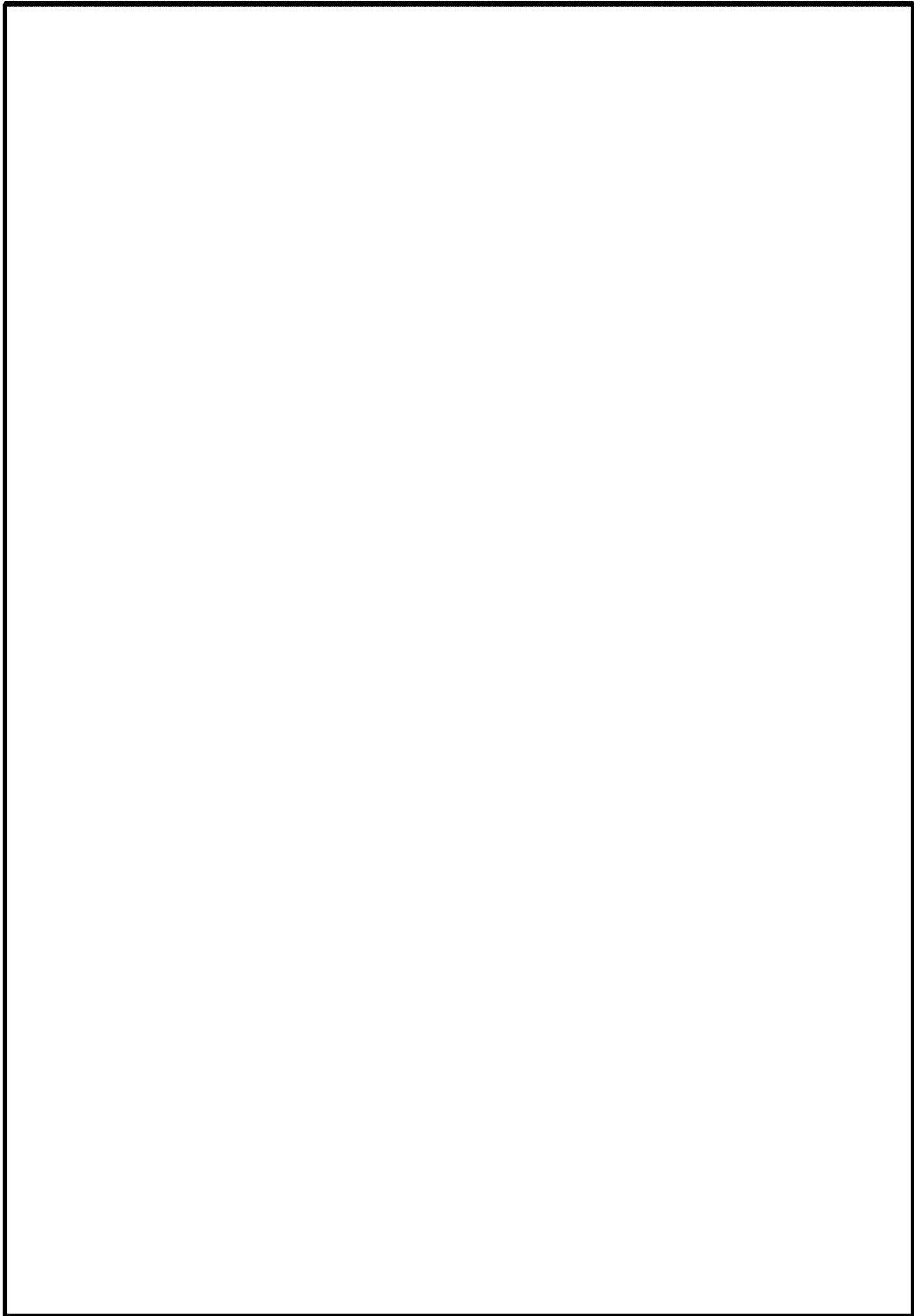




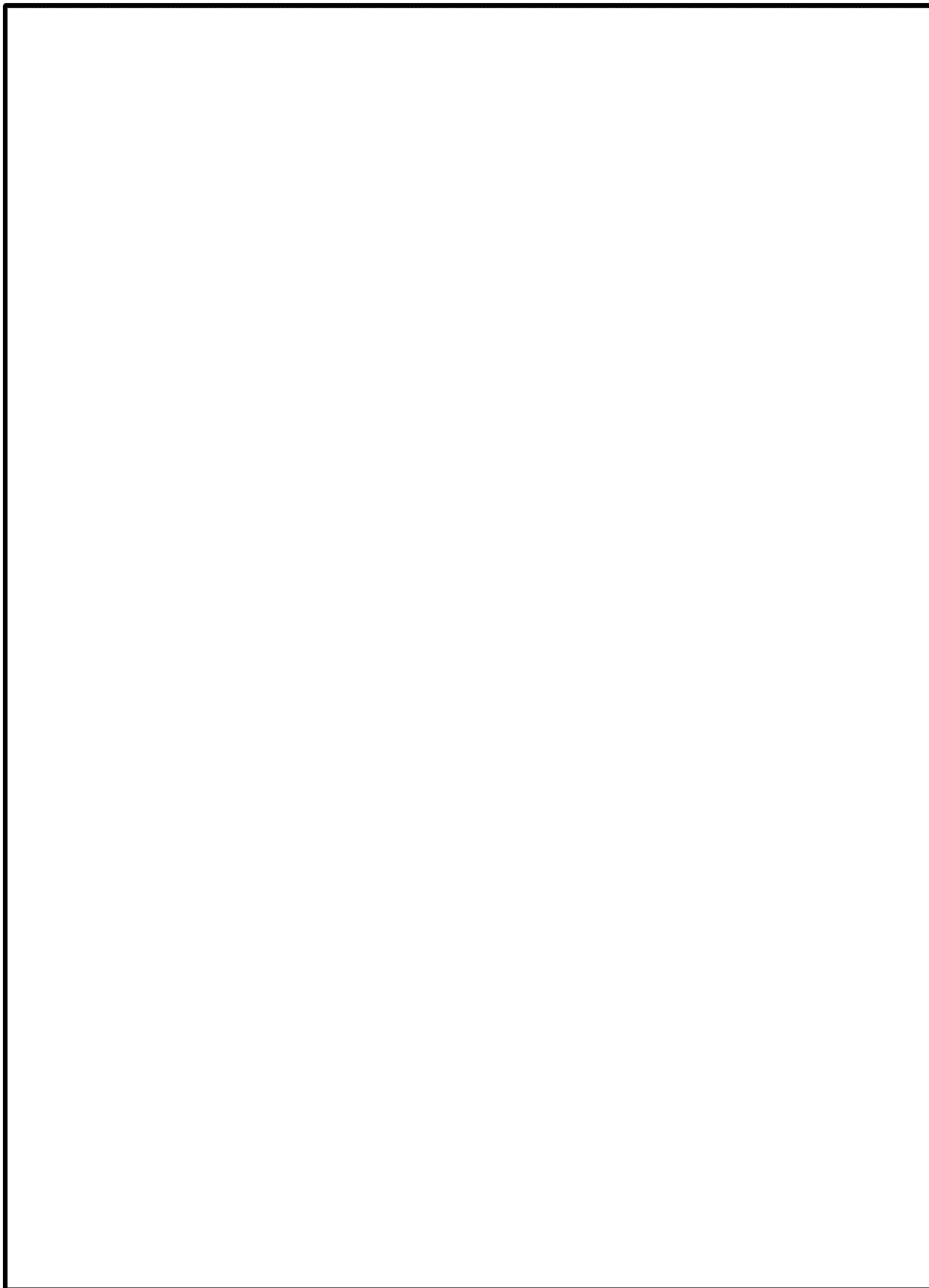


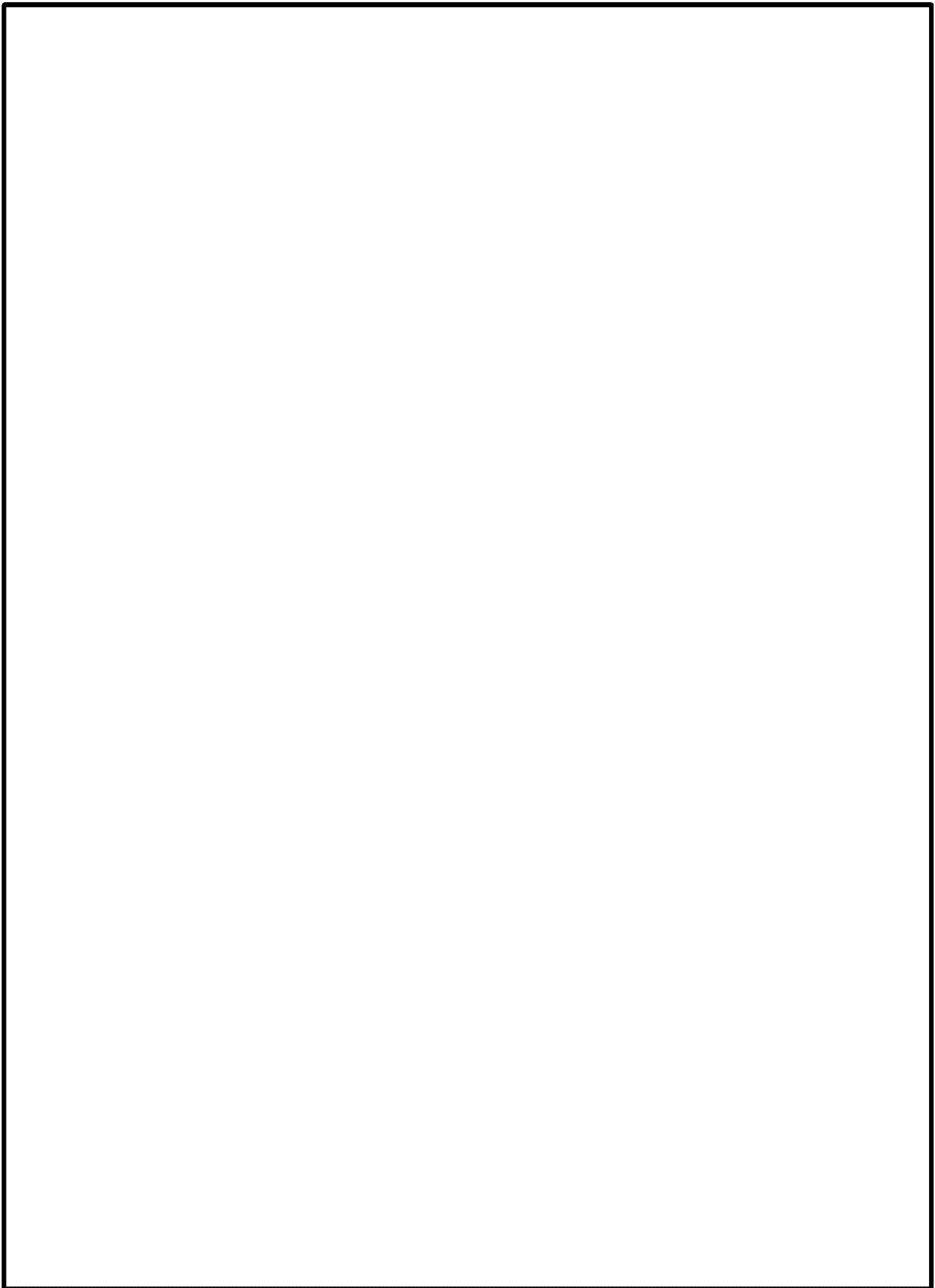


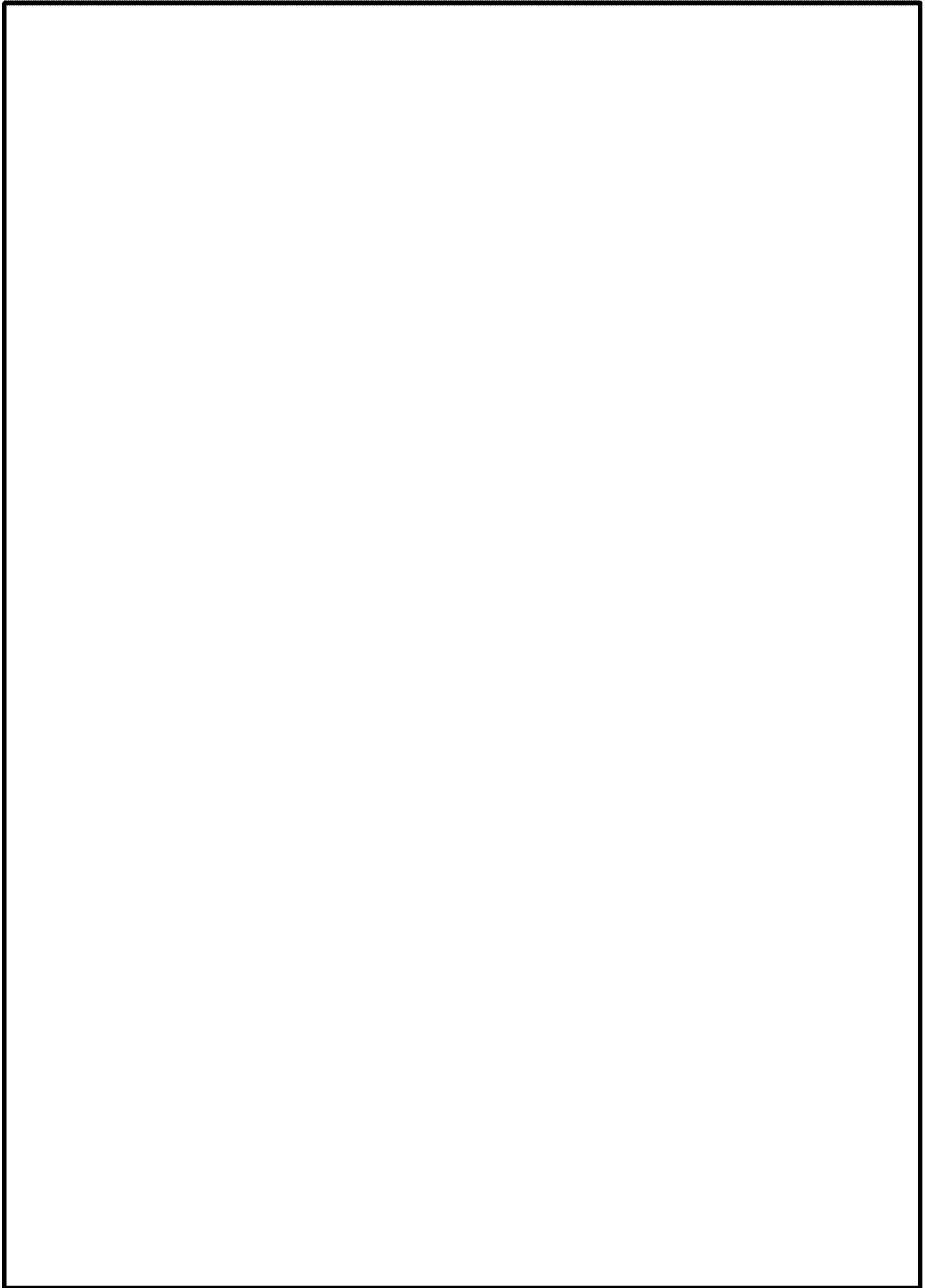




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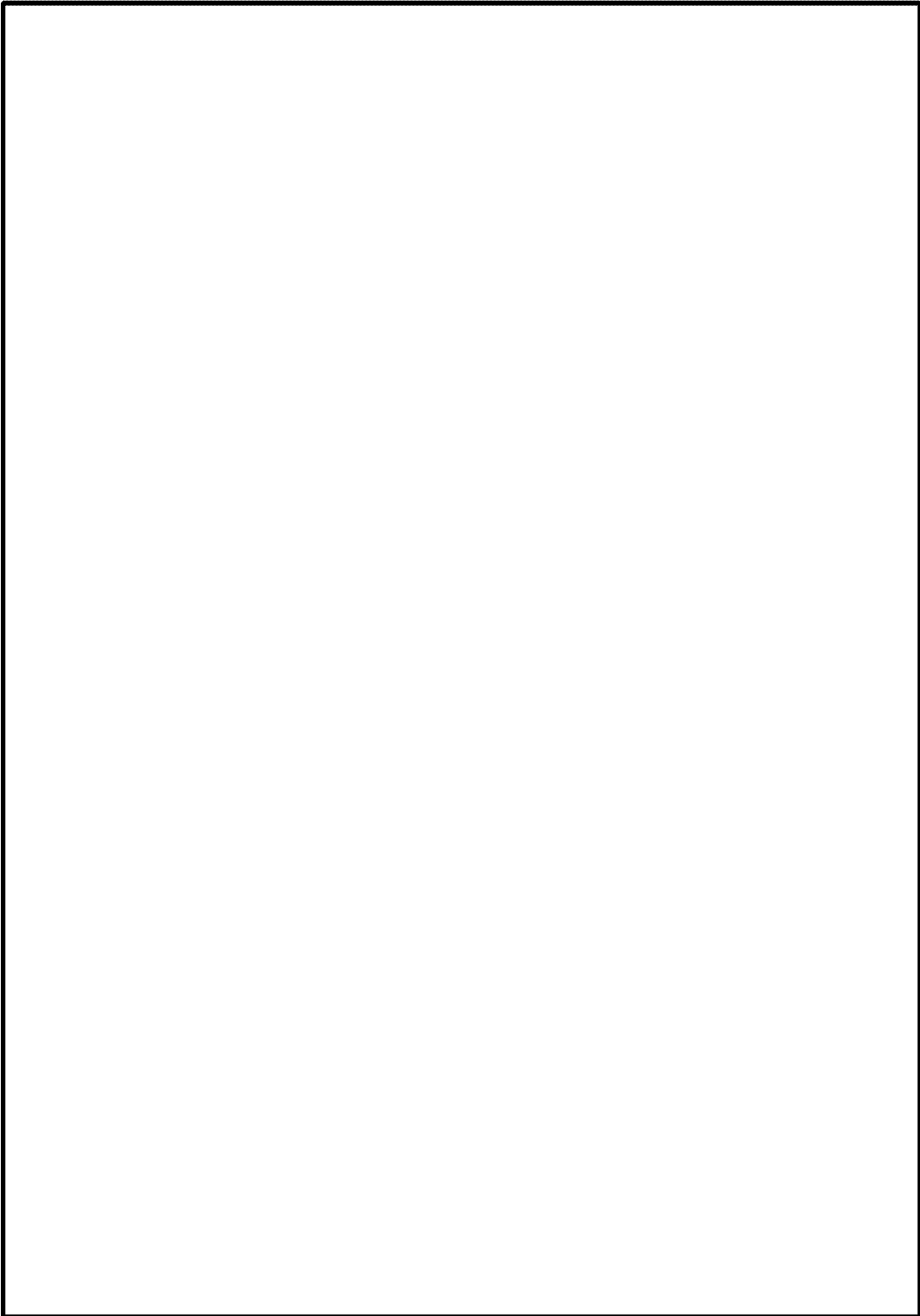


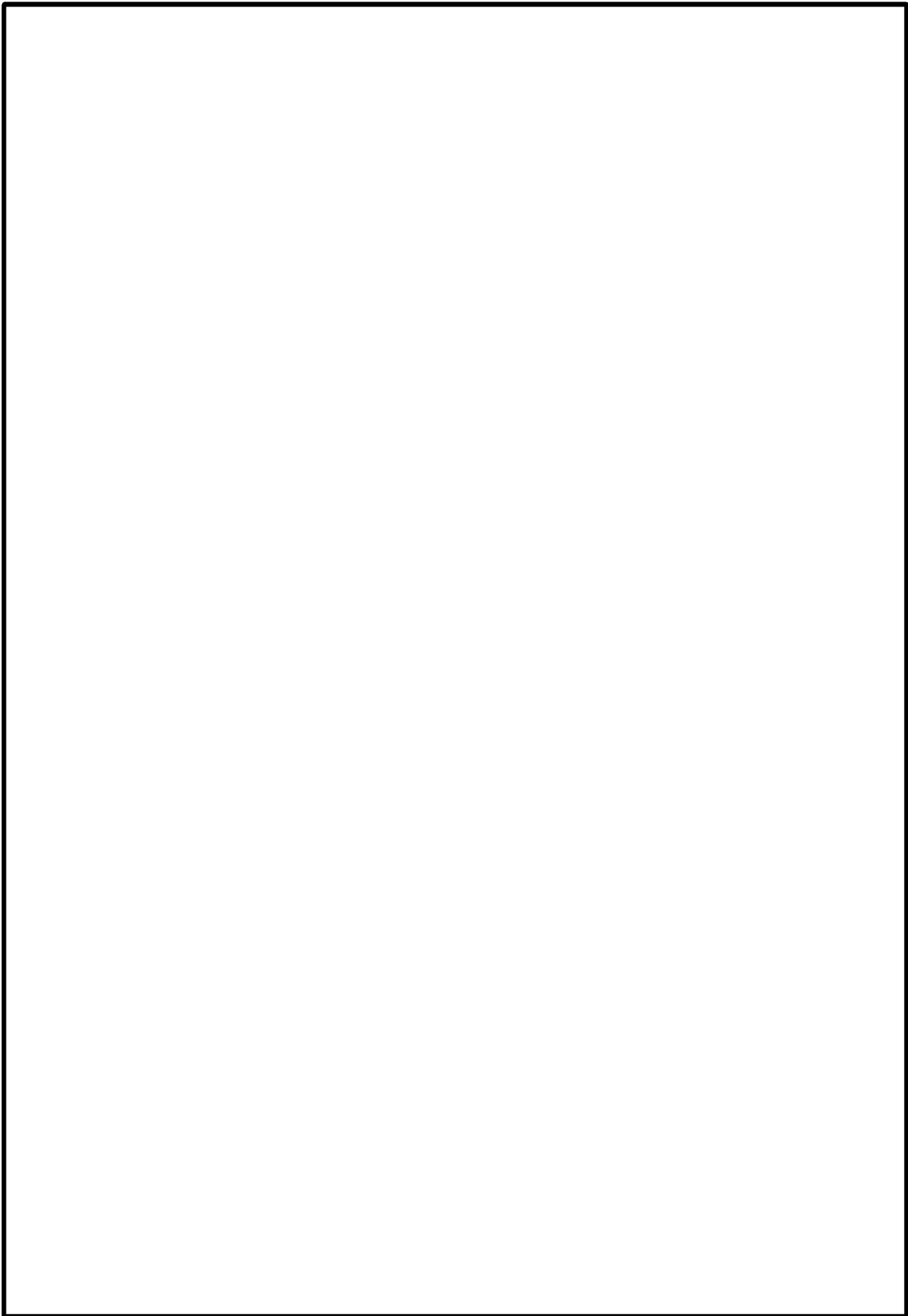


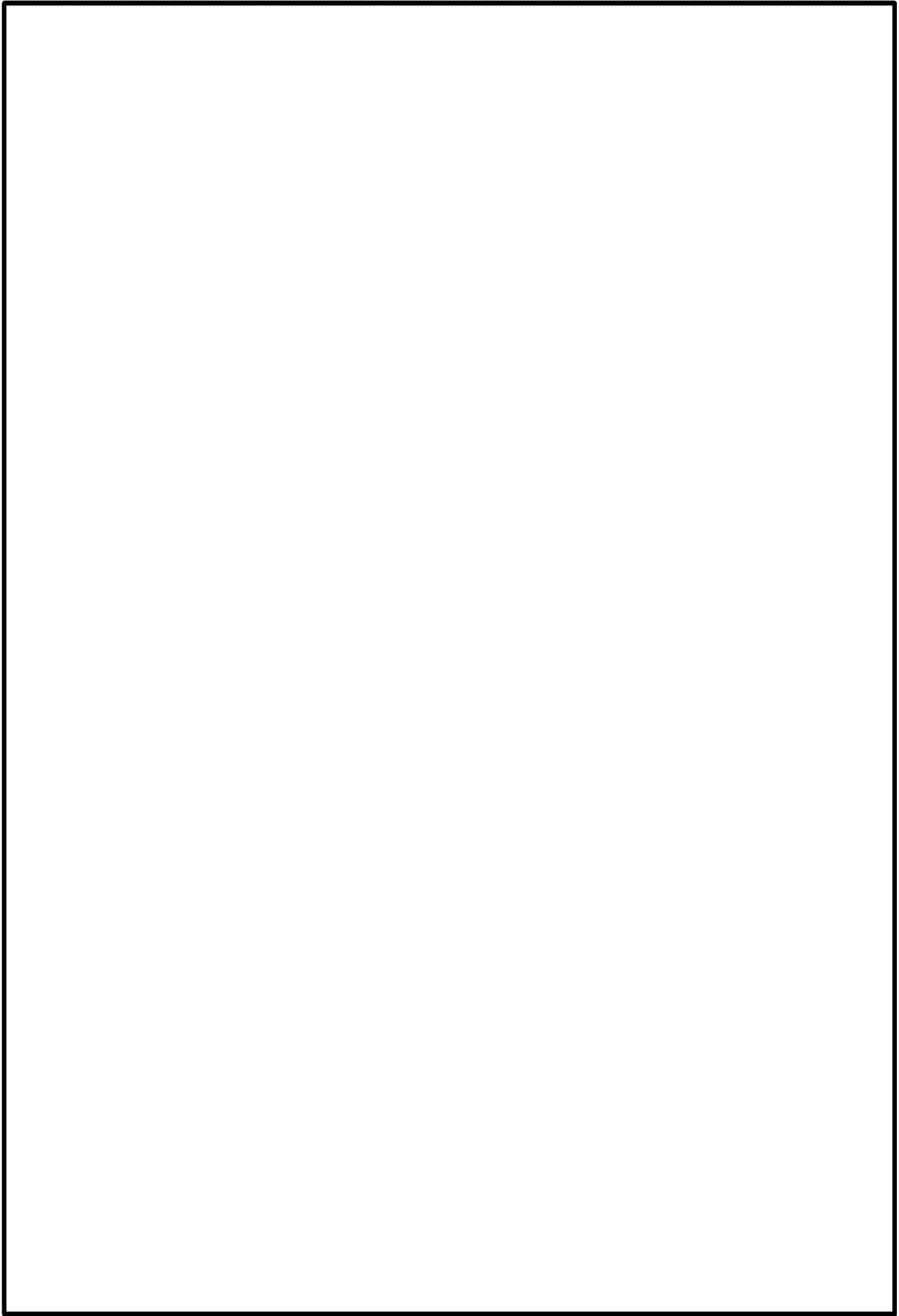




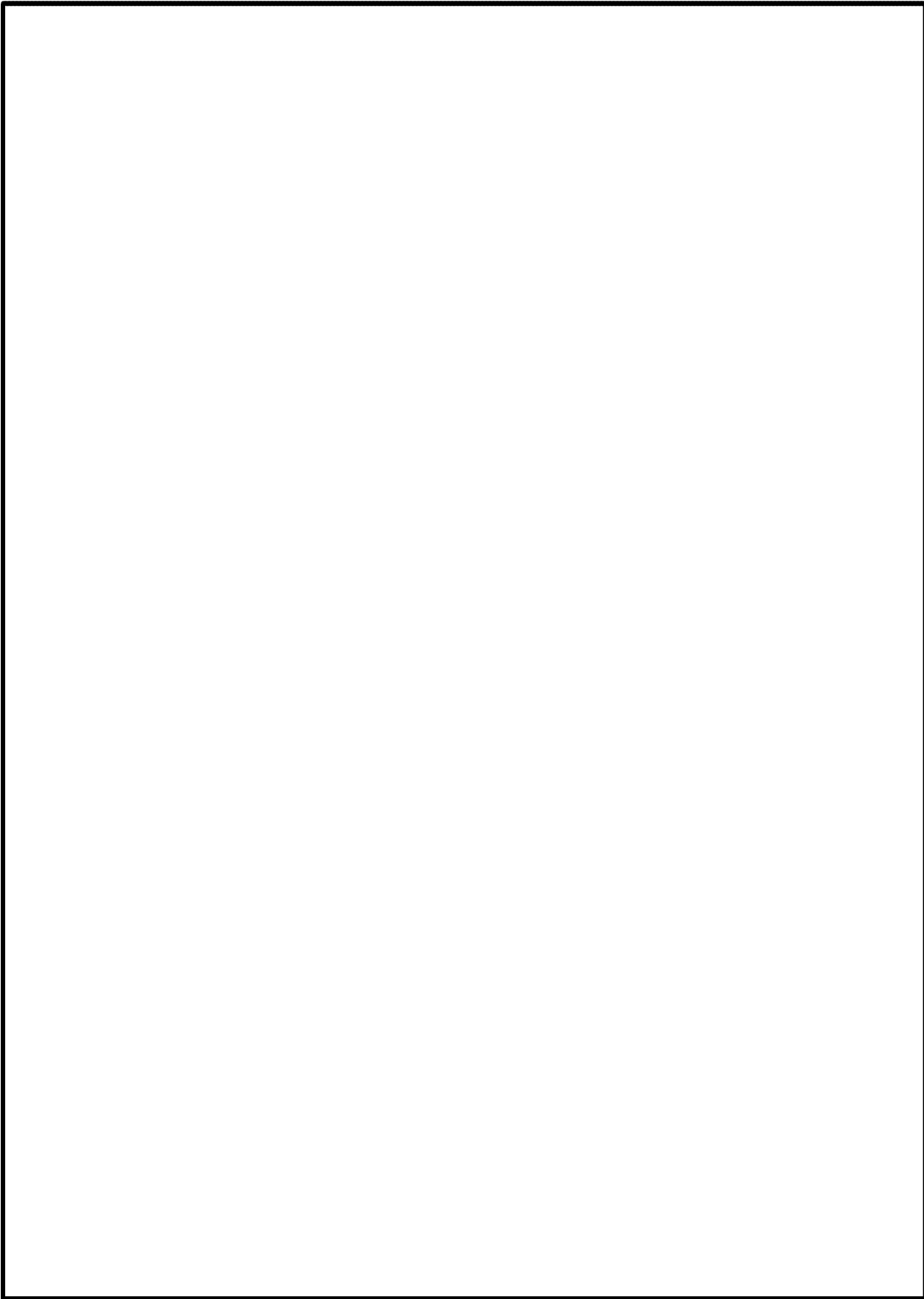
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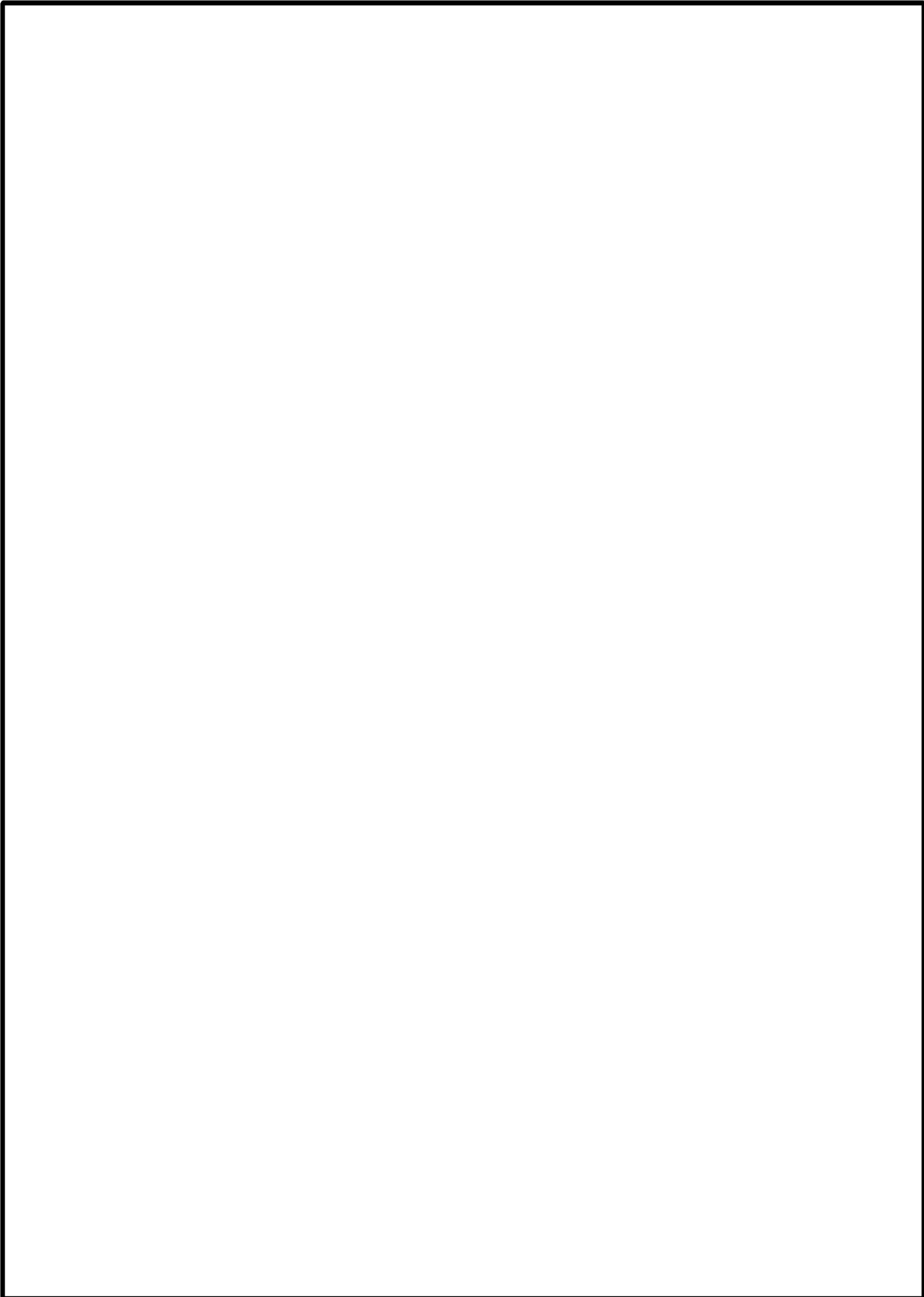


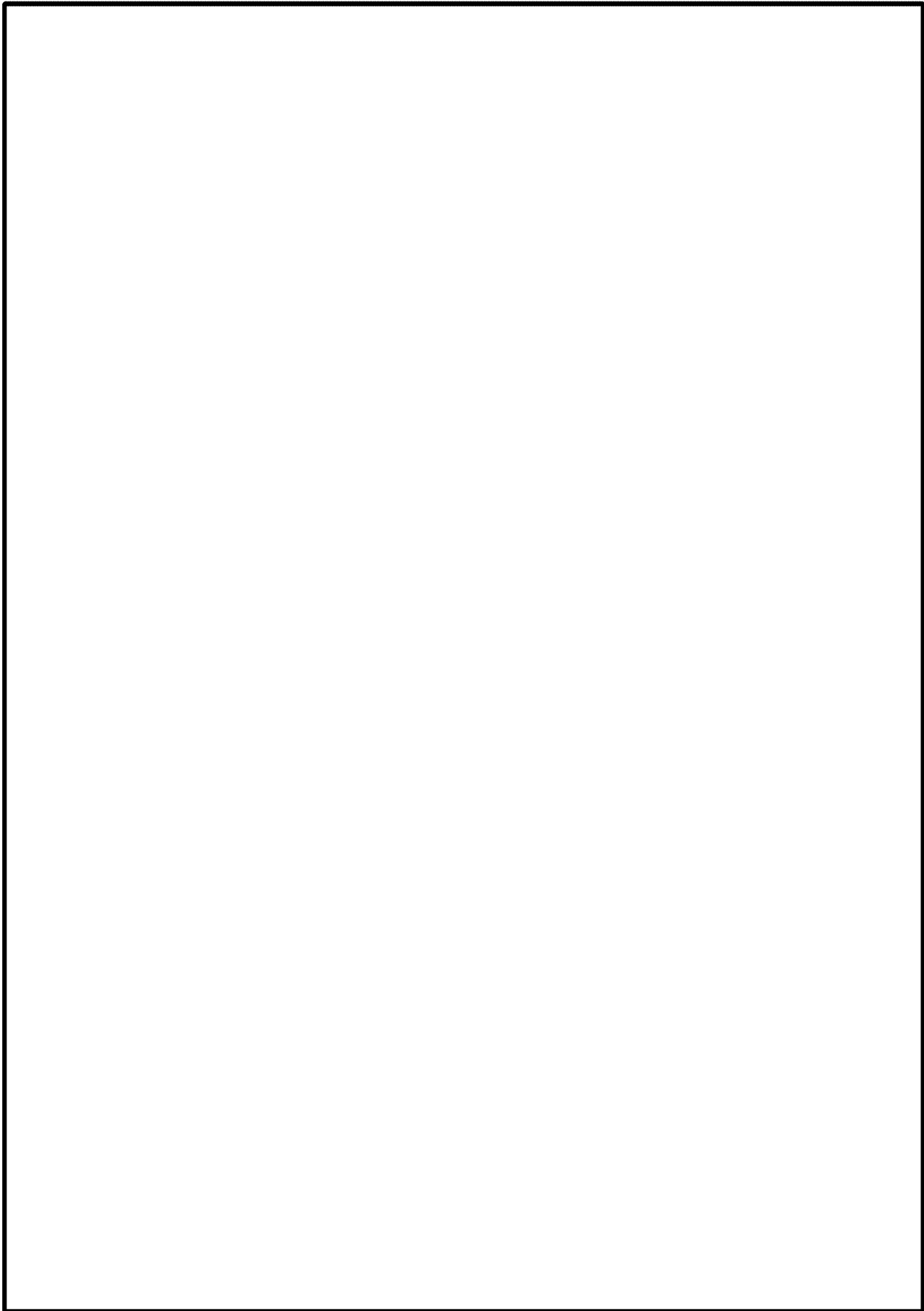




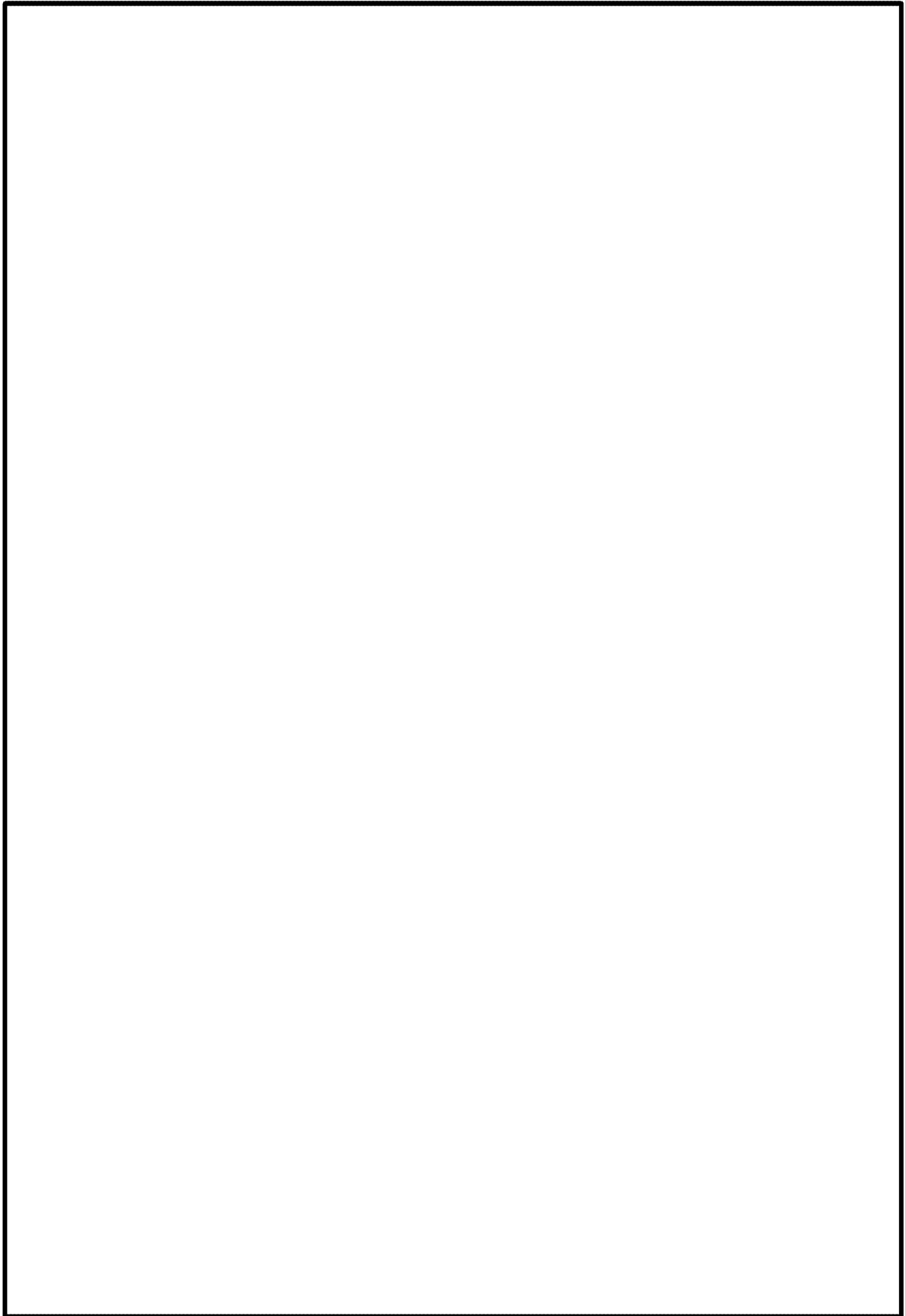




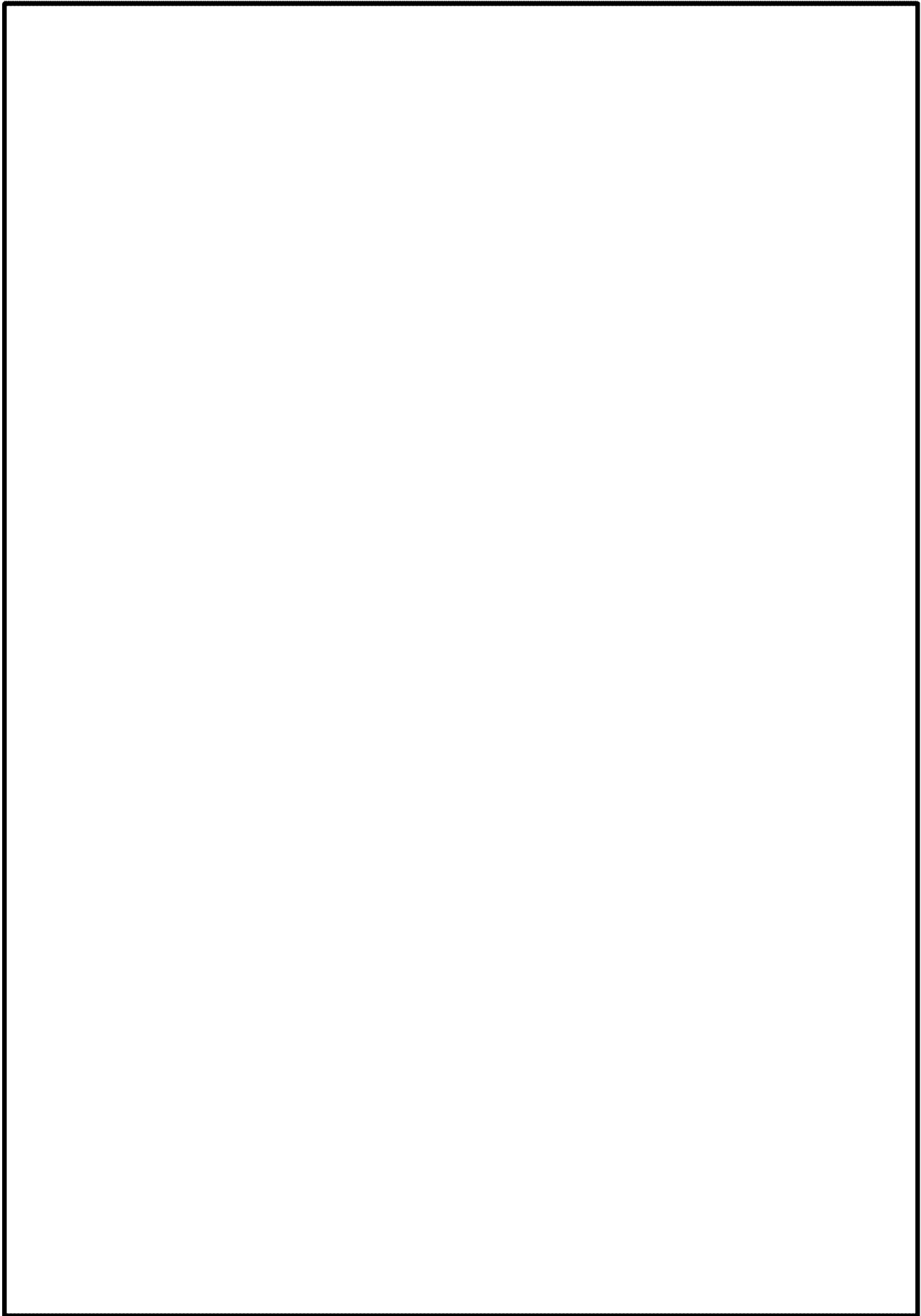


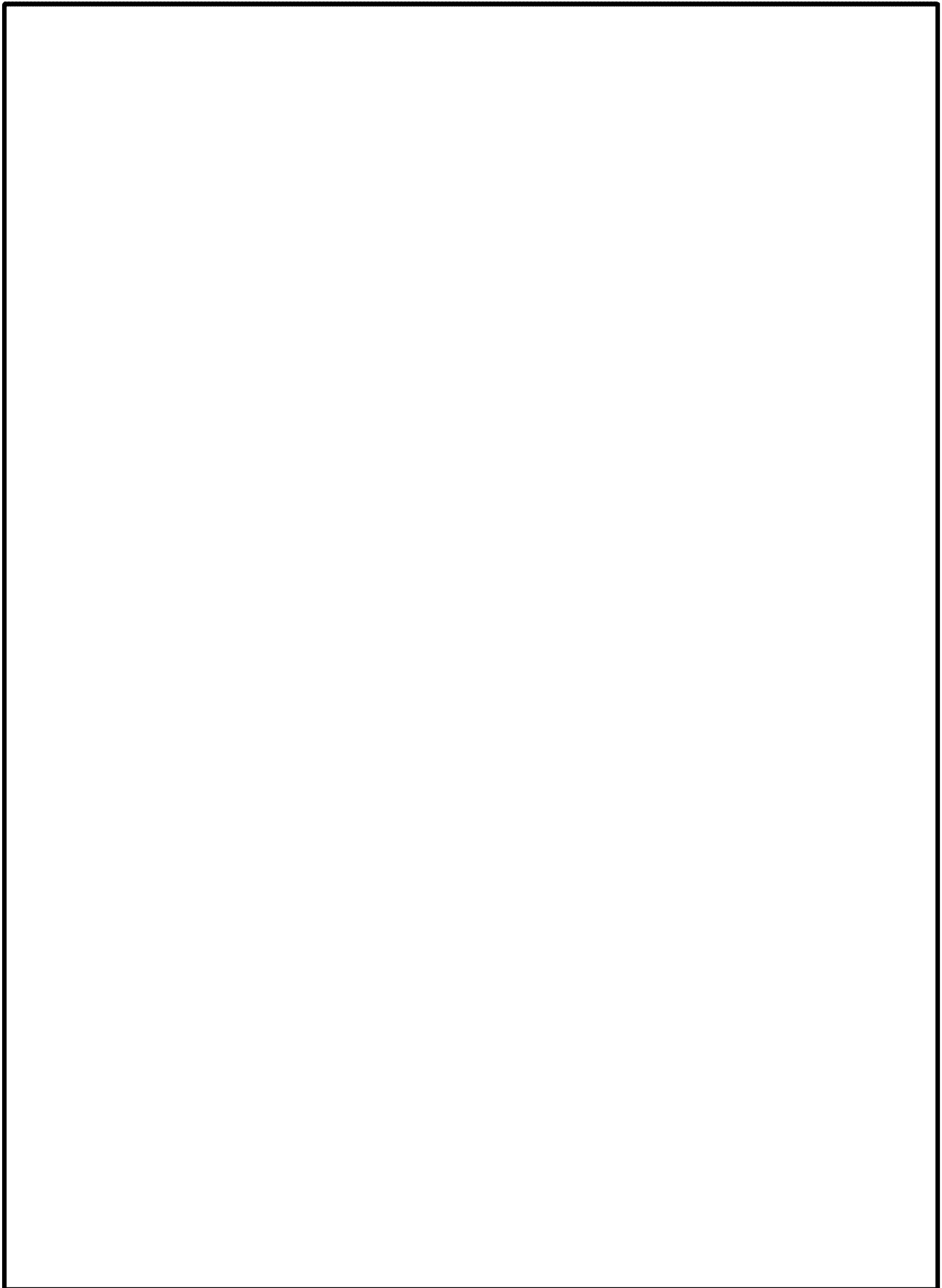


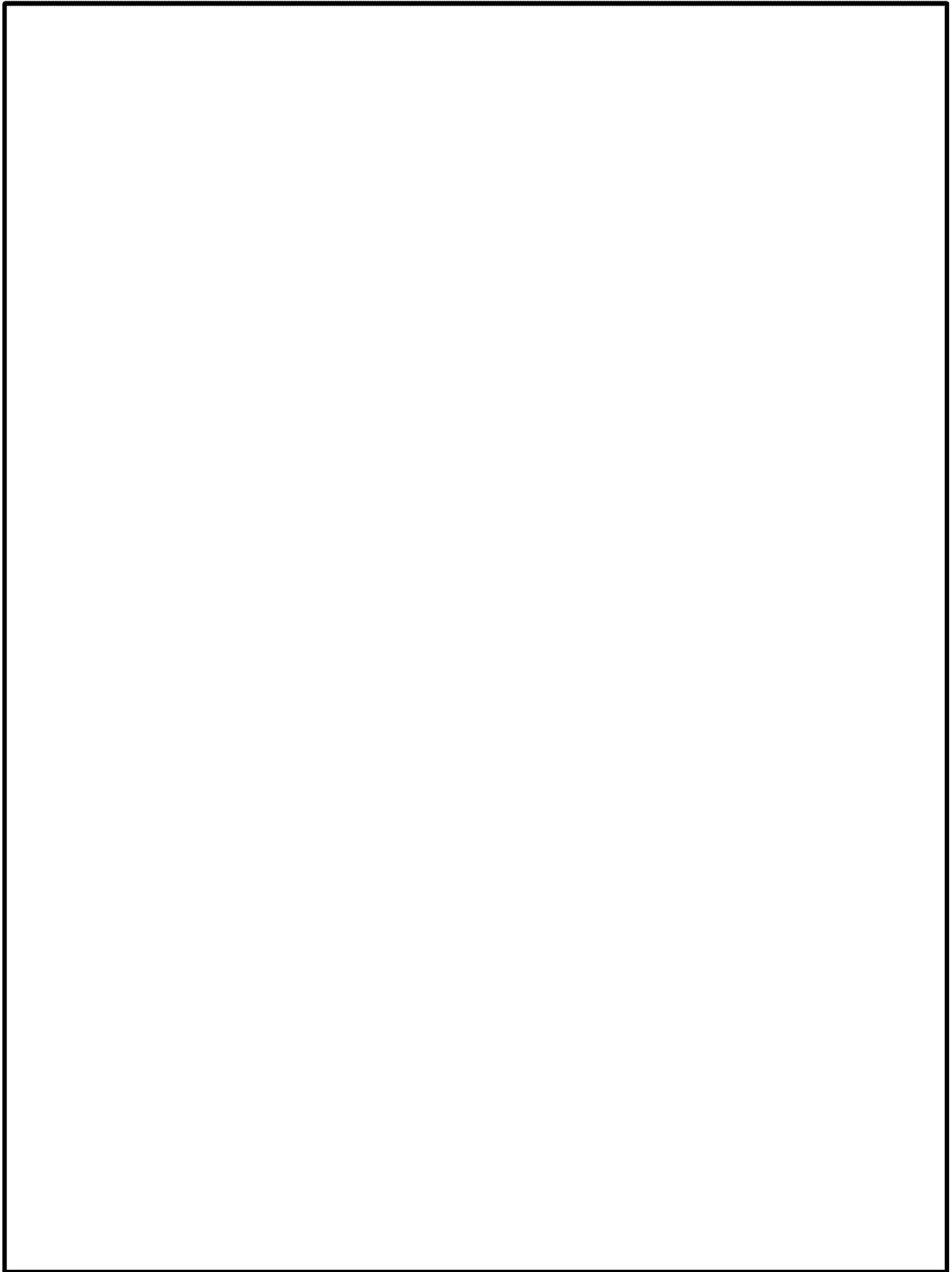


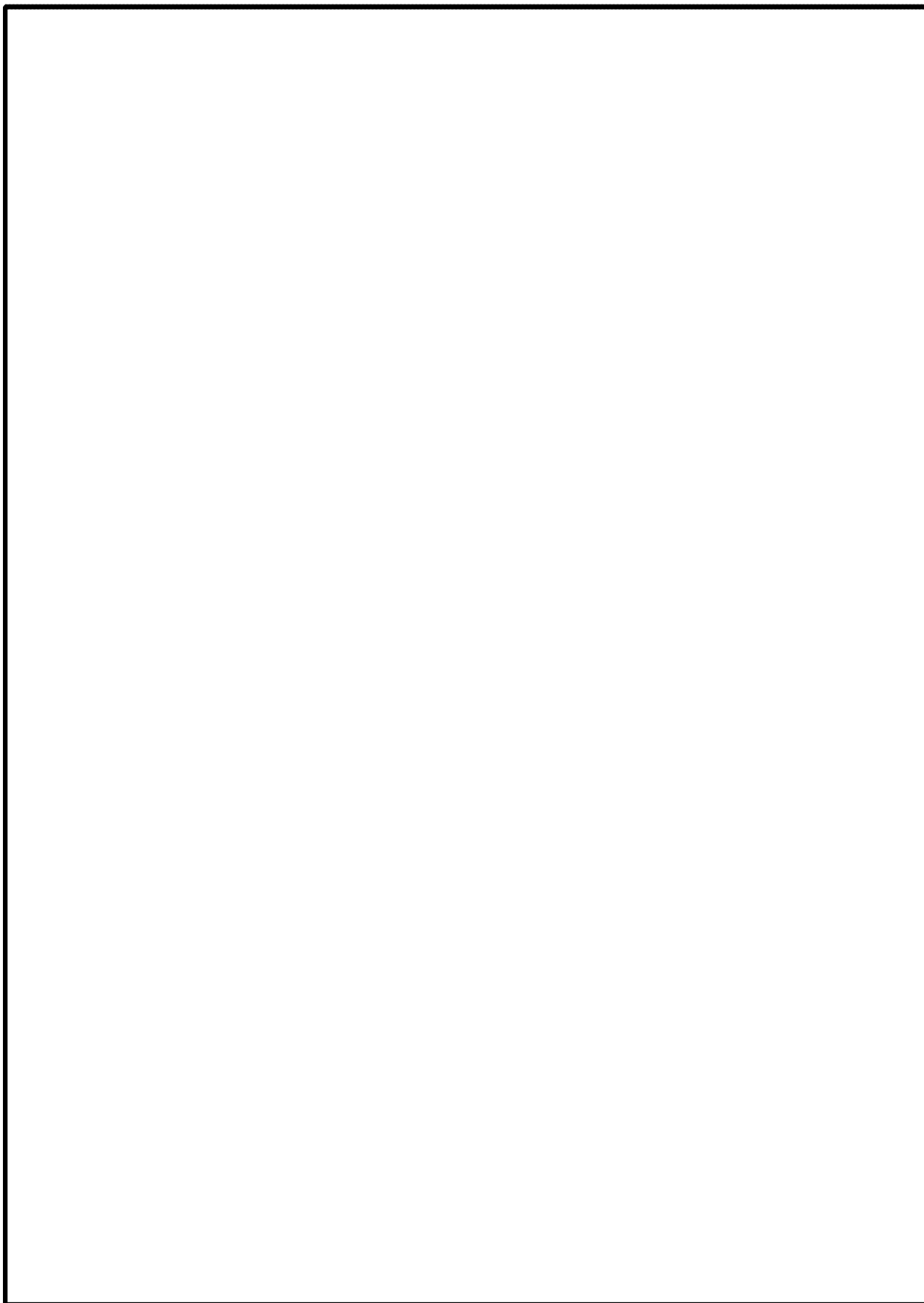


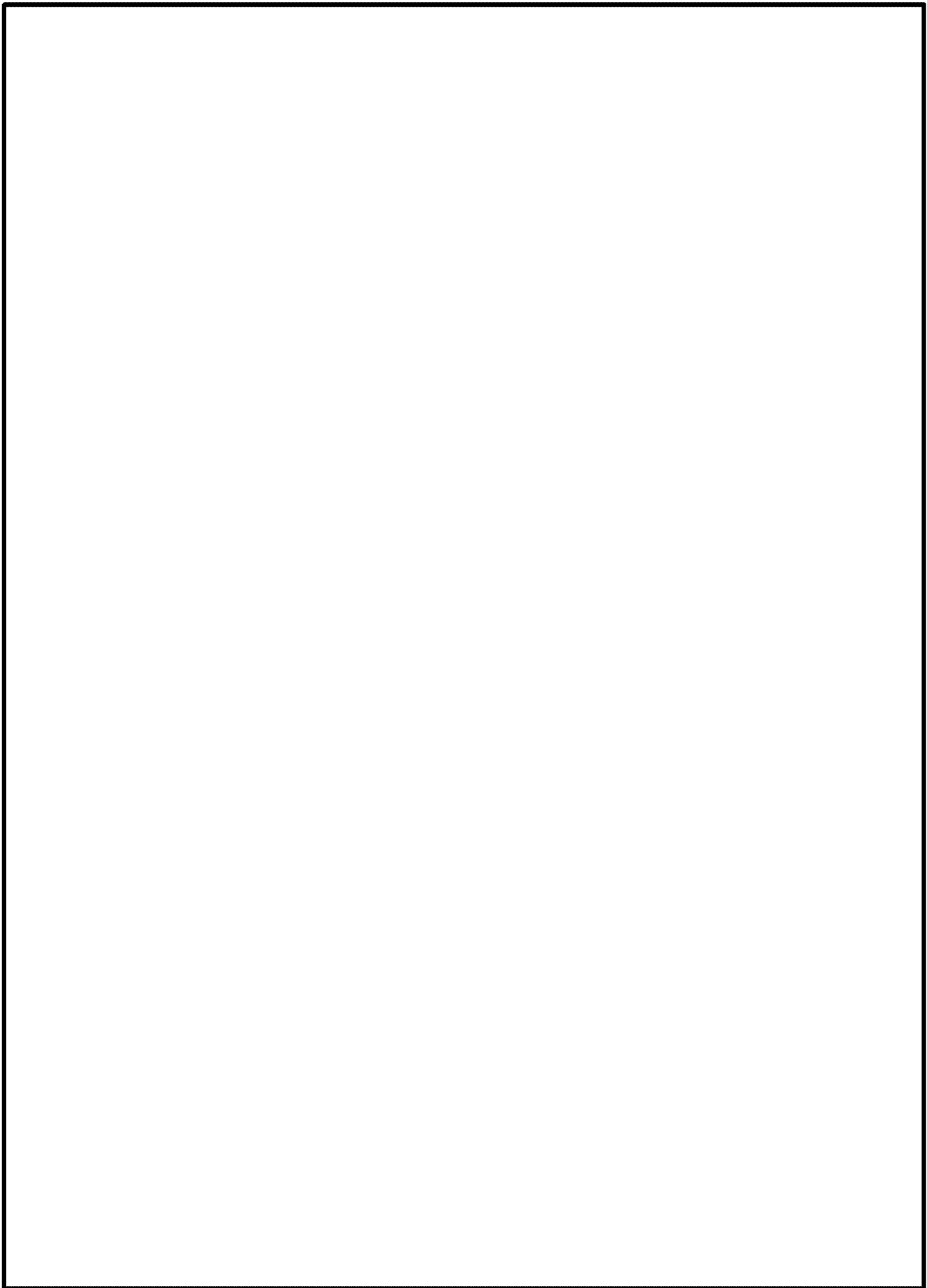


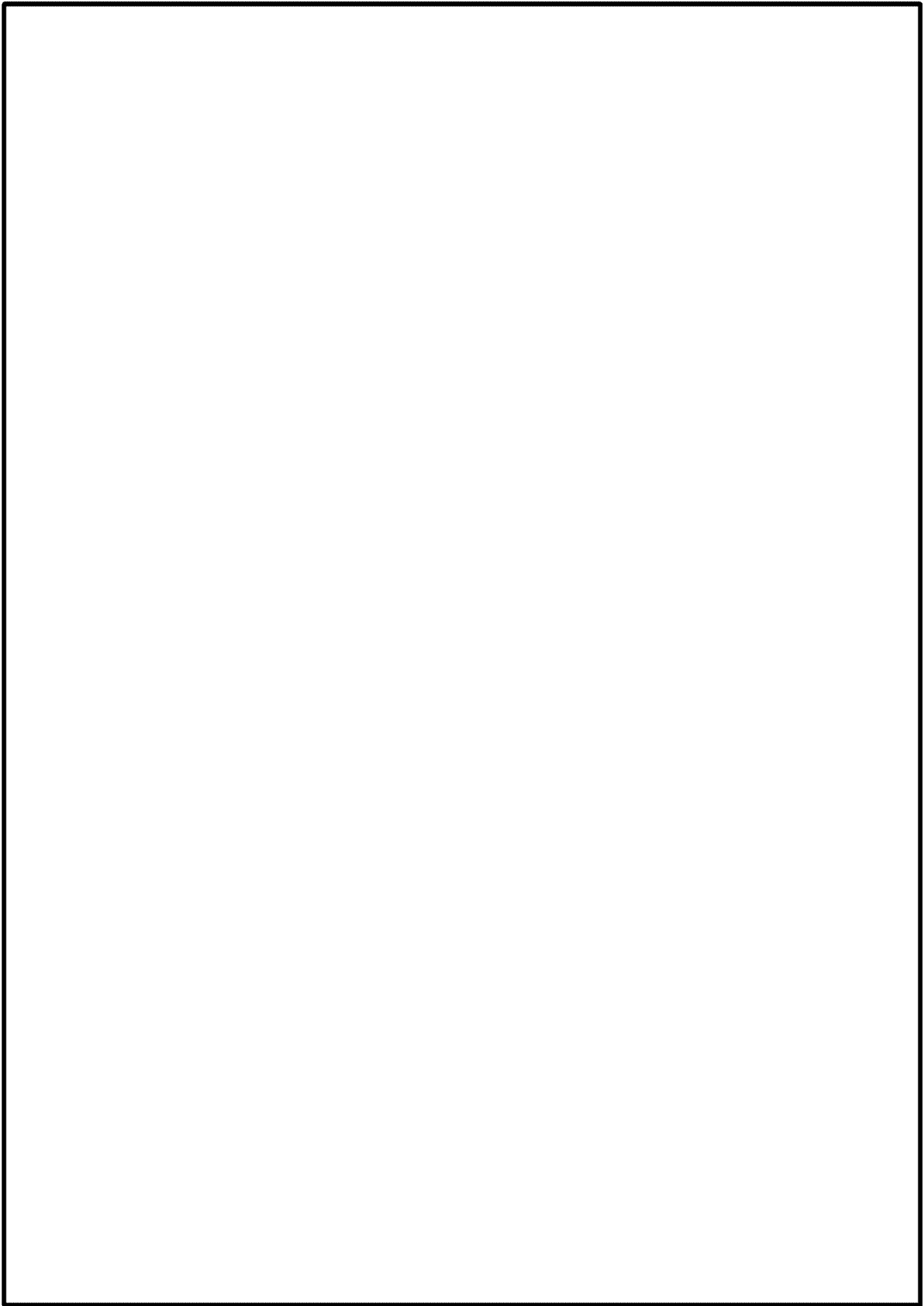




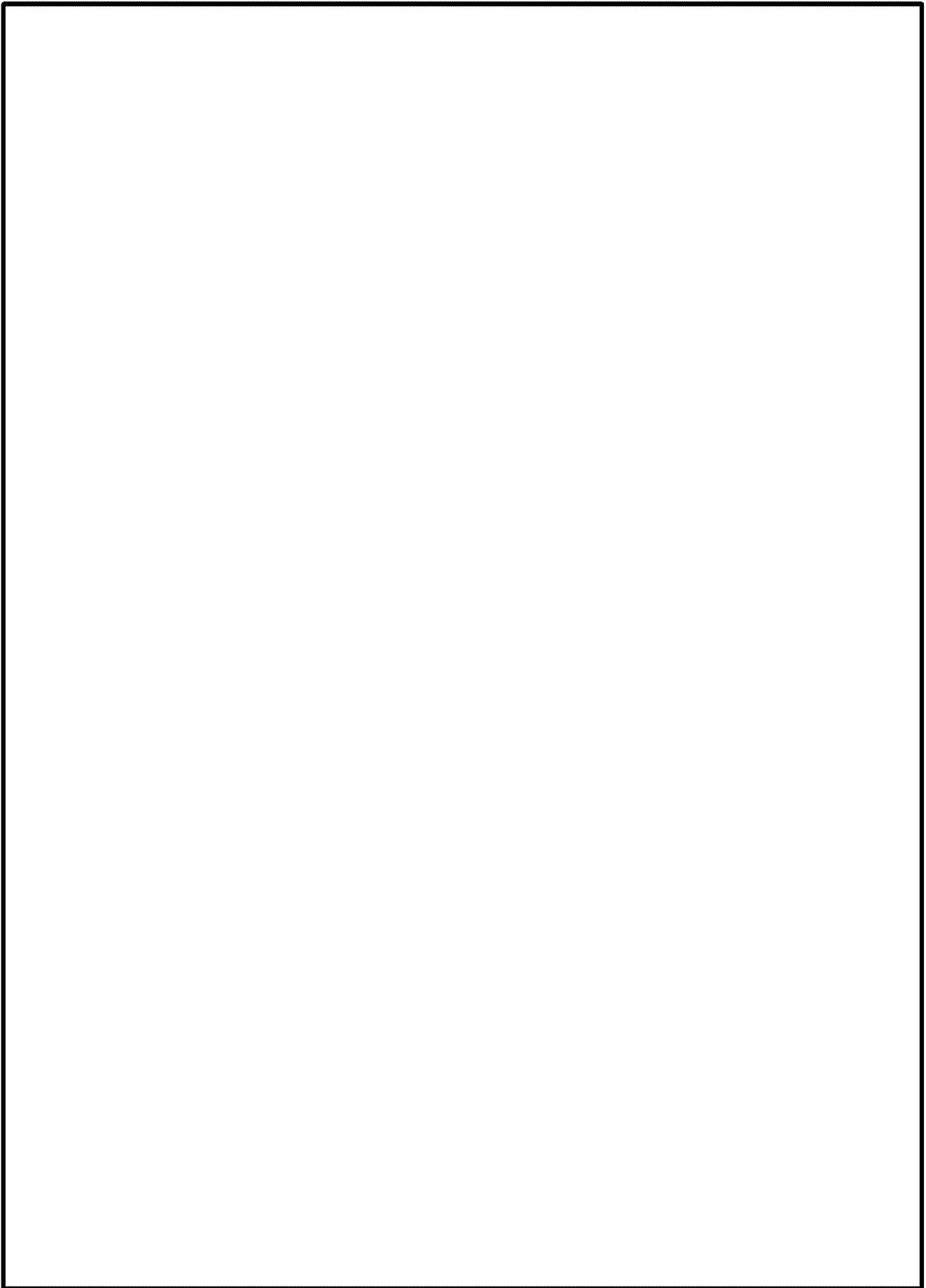


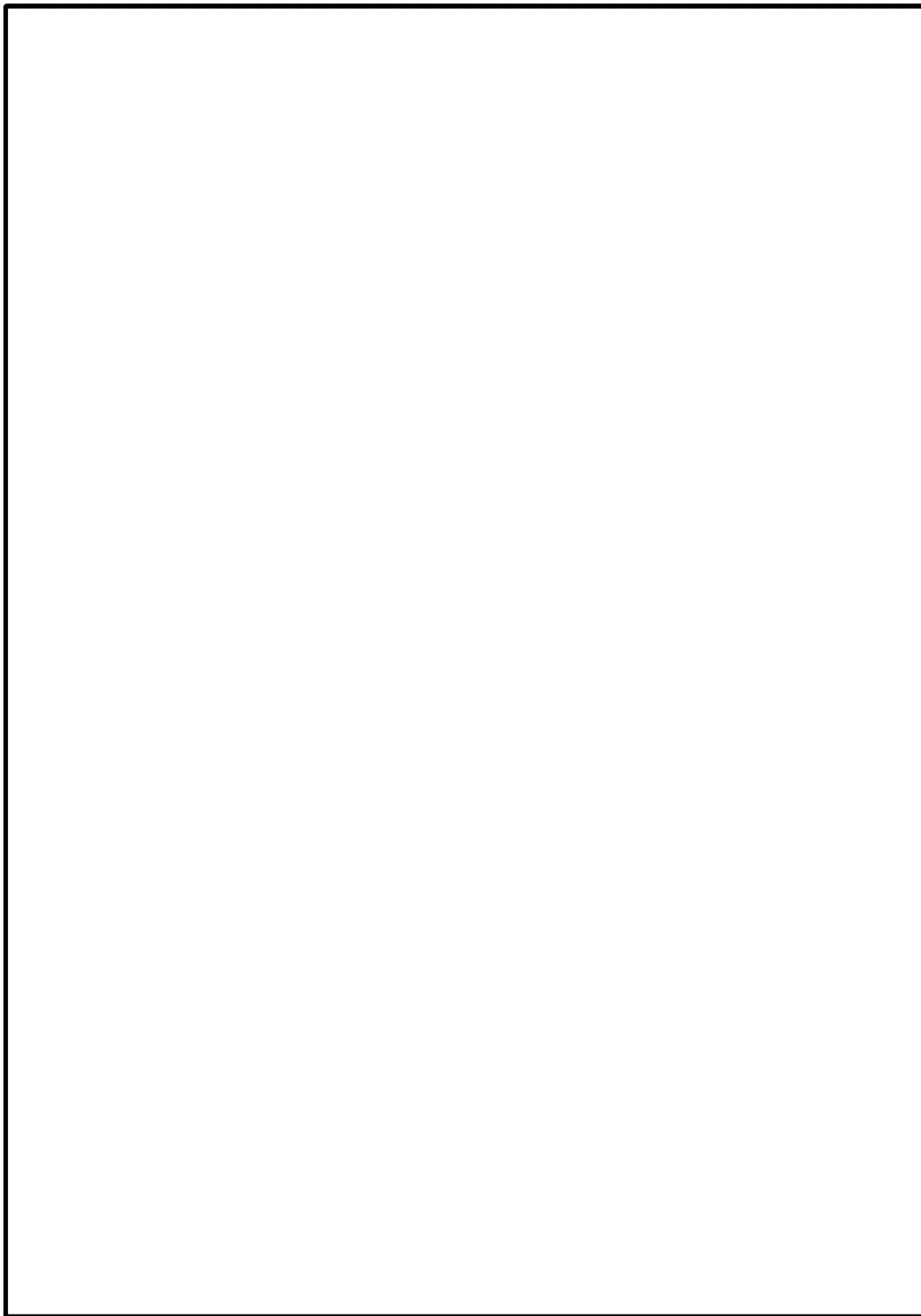


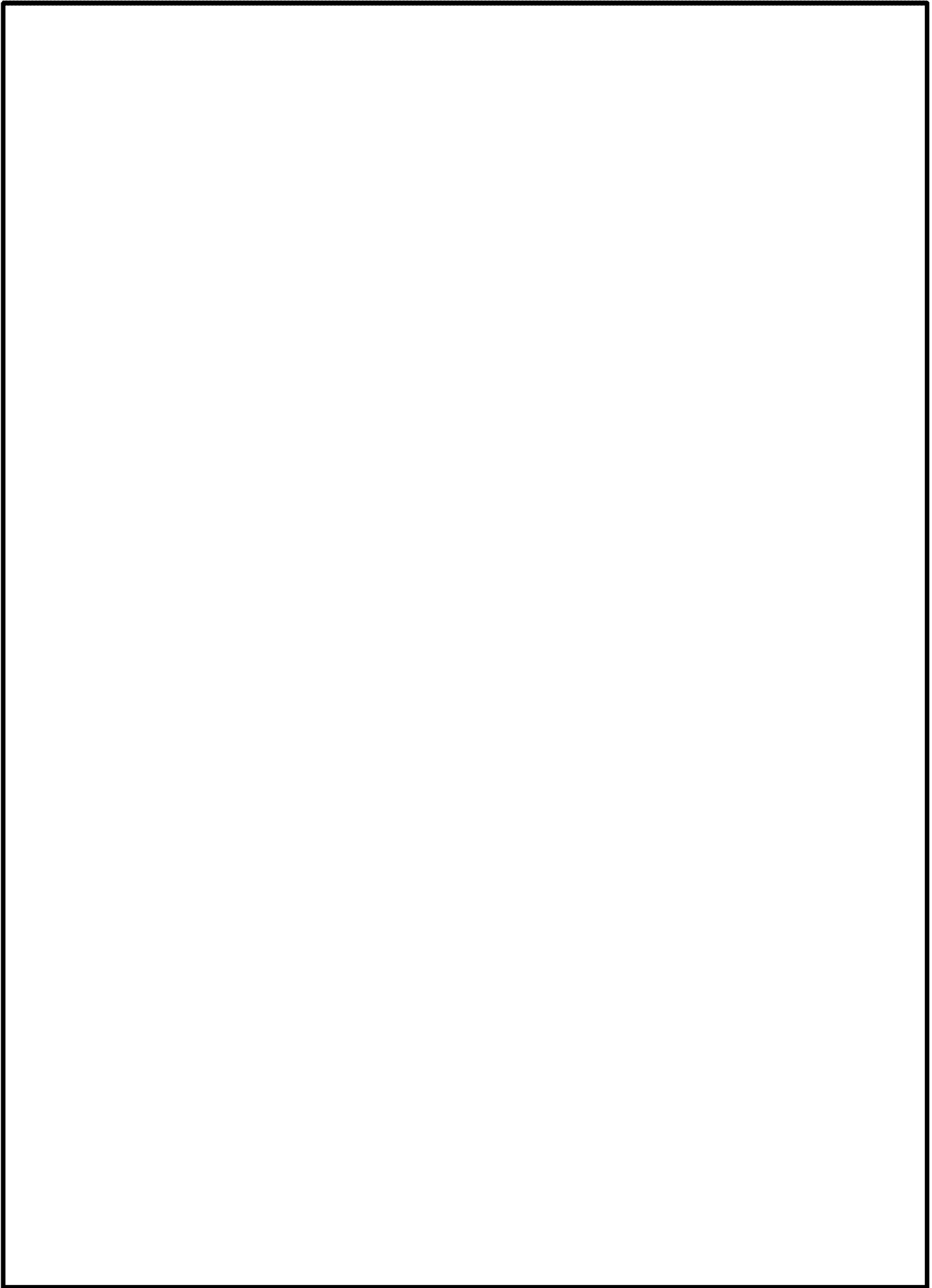


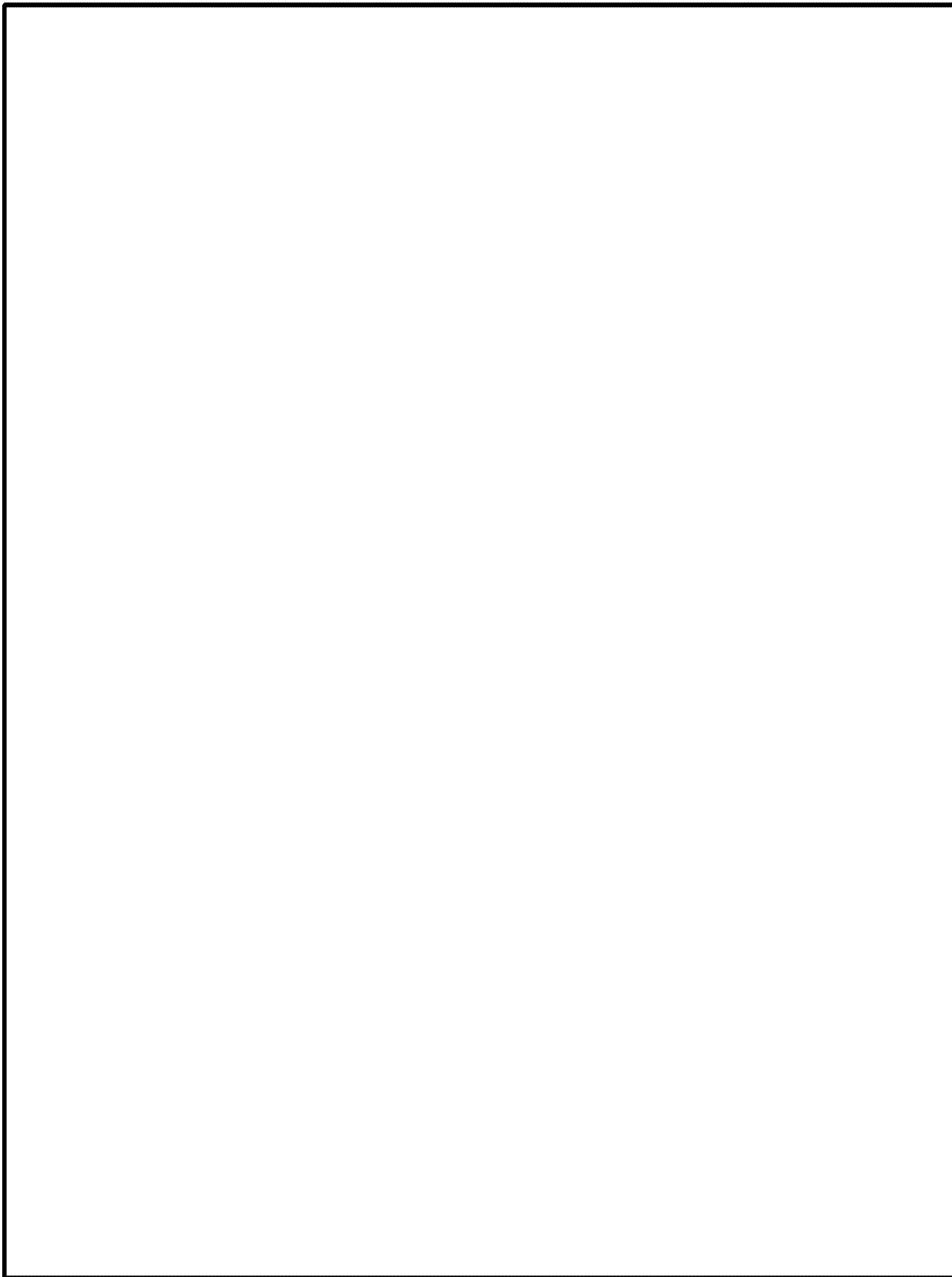












## 14 CONCLUSION

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

## 15 SUMMARY

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

### 15.1 National Security Concerns

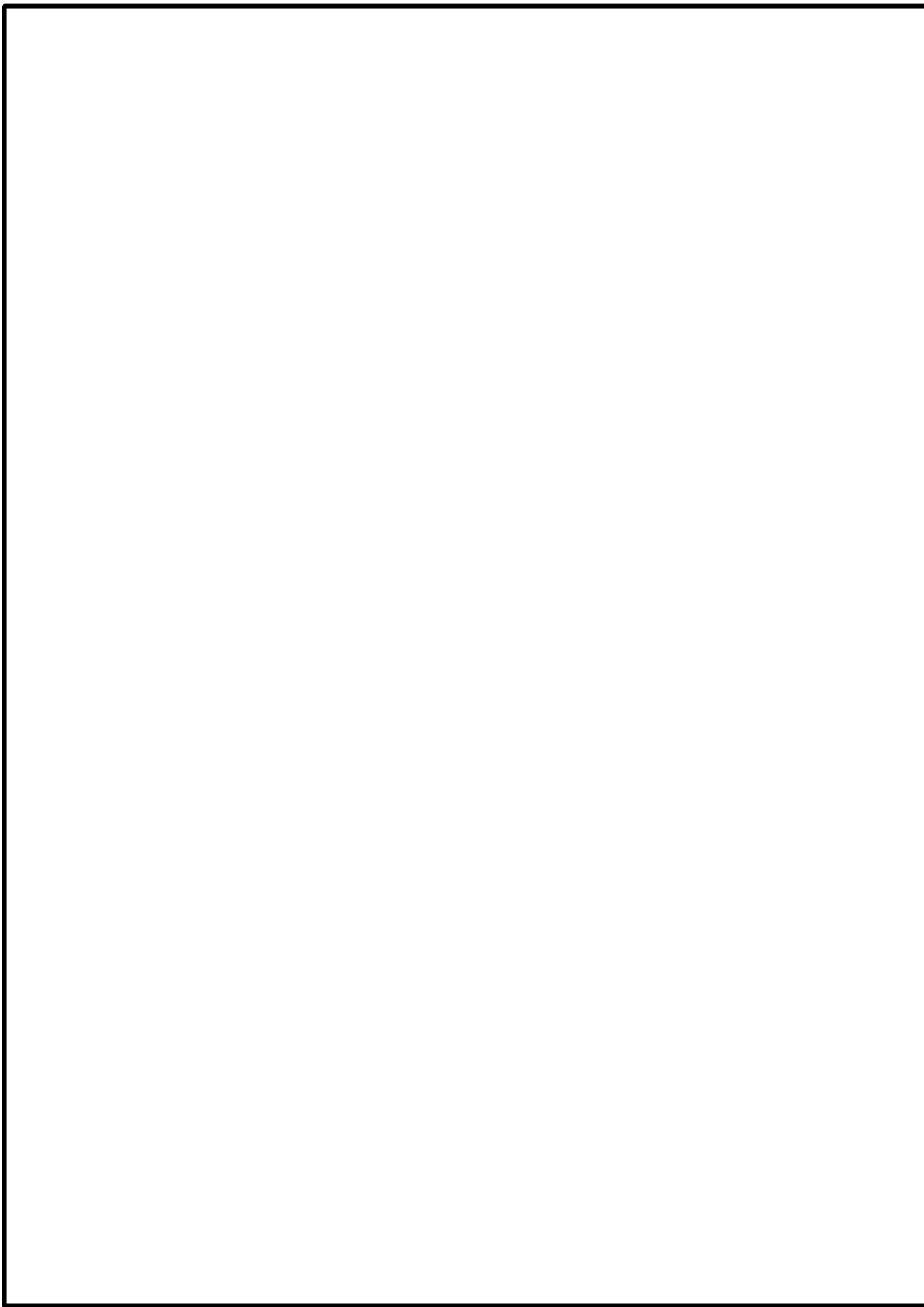
There are two kinds of NS concerns: Known or Suspected Terrorists (KSTs) and Non-Known or Suspected Terrorists (non-KSTs). KSTs are identified by specific systems check results. Non-KSTs are NS concerns identified by any other means, including, but not limited to, applicant testimony, file review or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

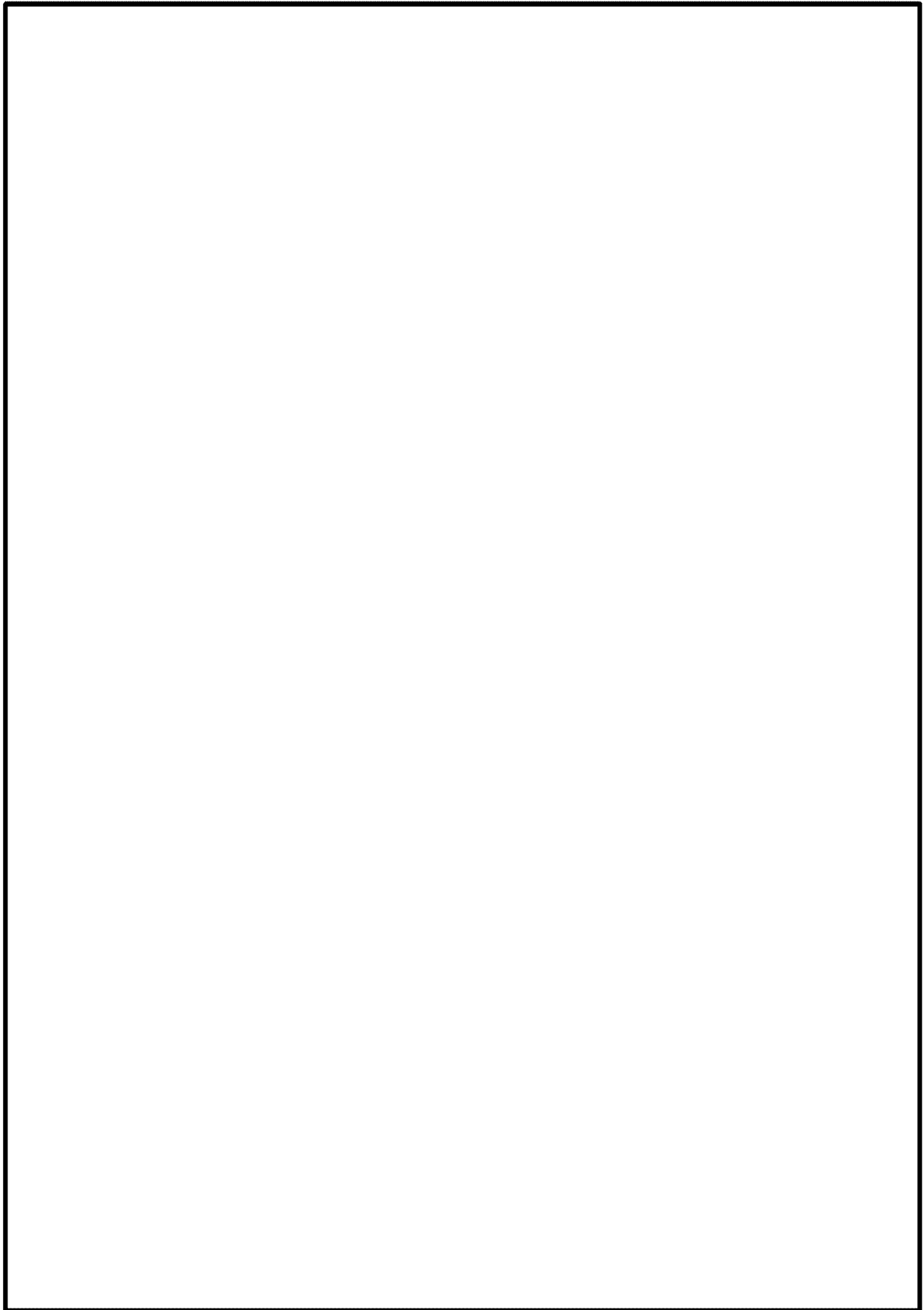
NS indicators may lead to finding an NS concern. NS indicators can be statutory or non-statutory

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

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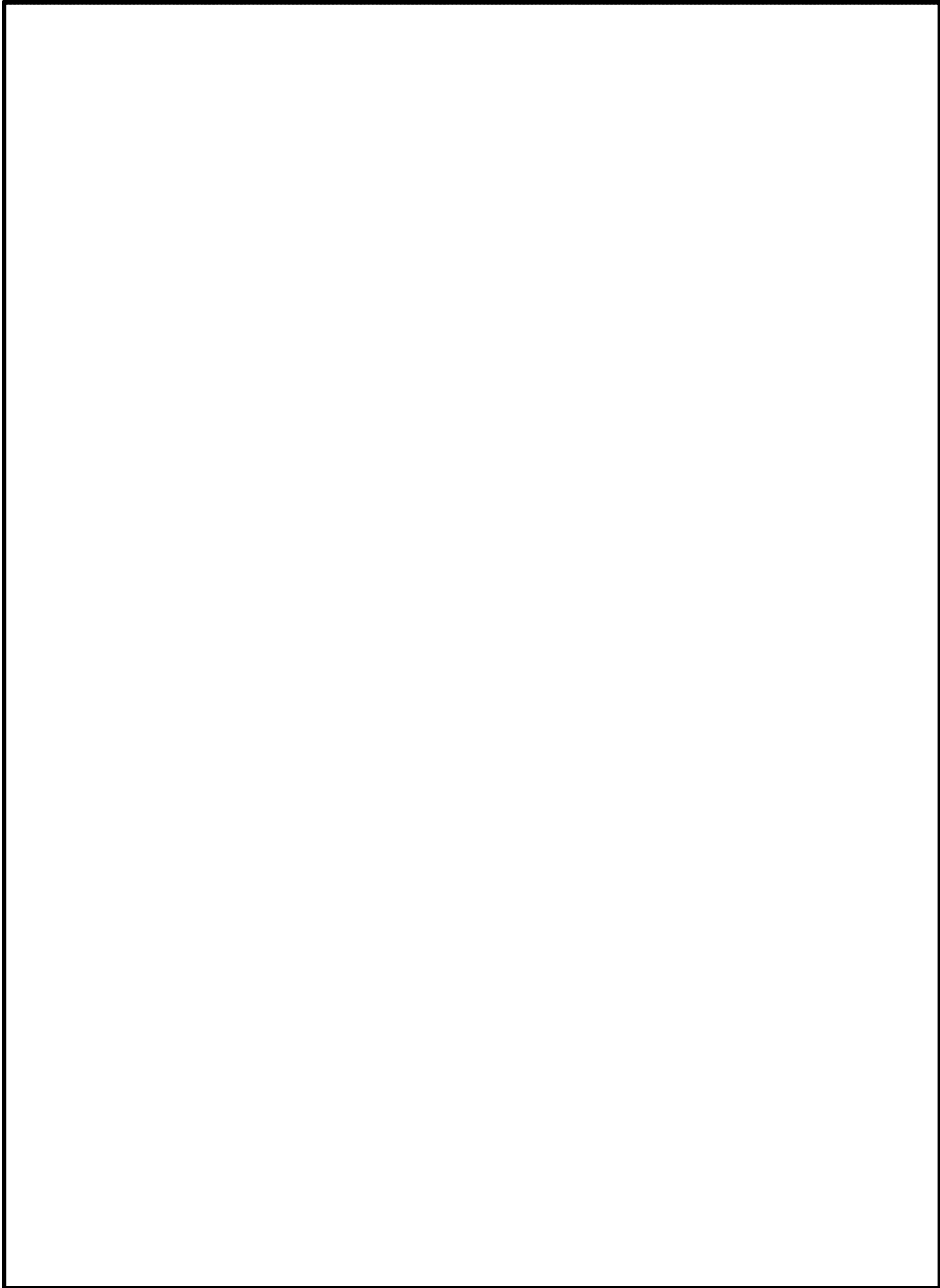






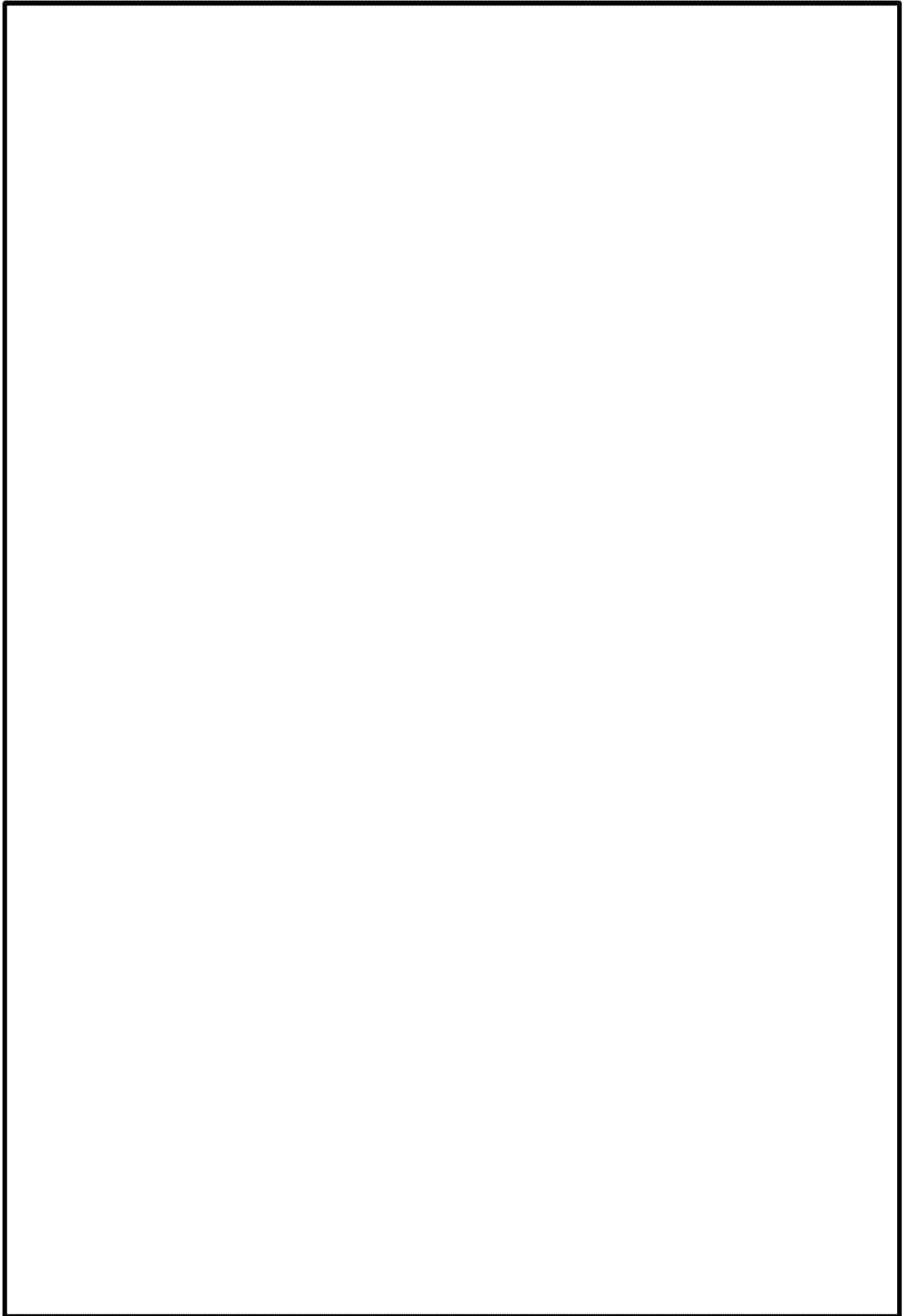
PRACTICAL EXERCISES

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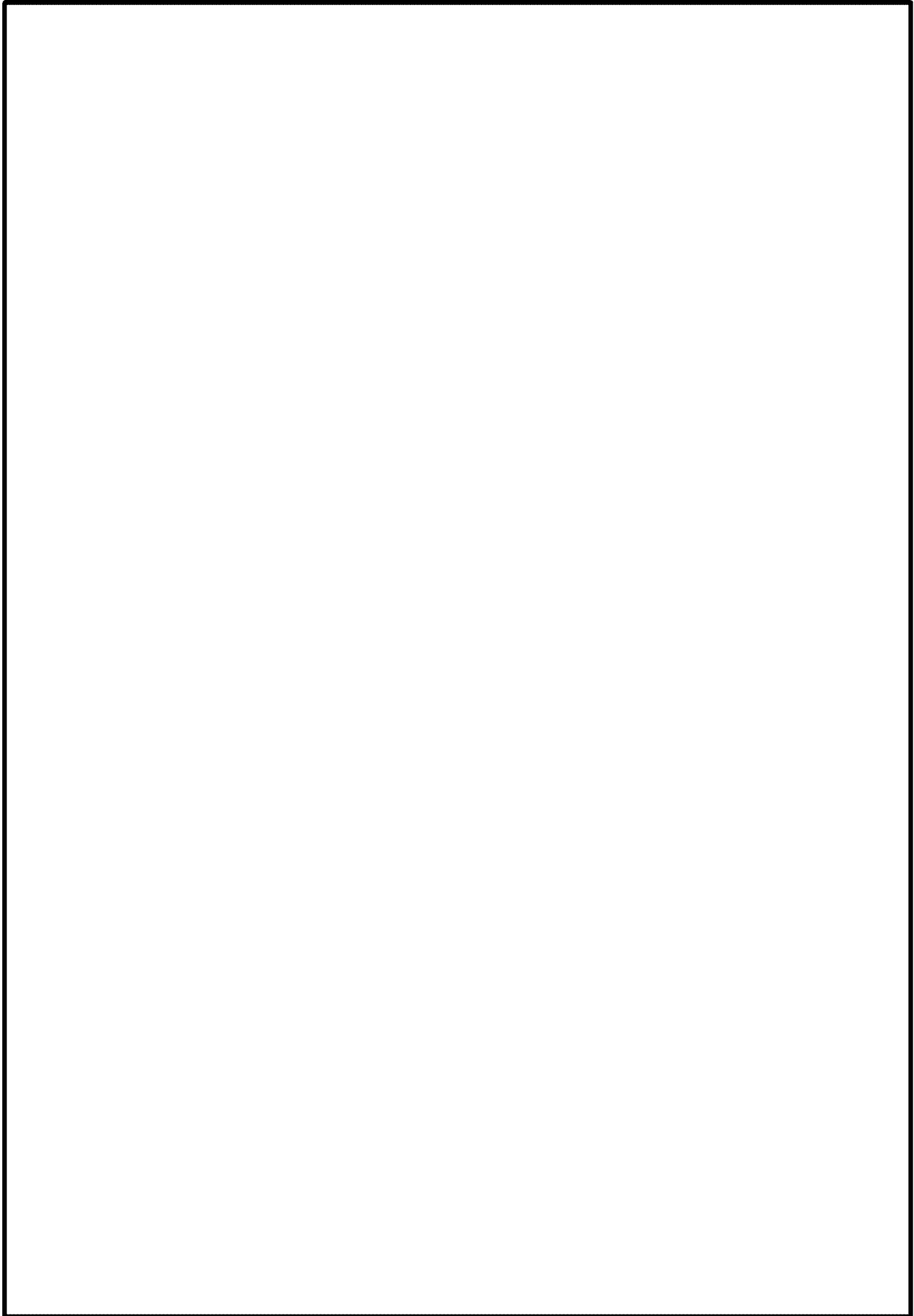




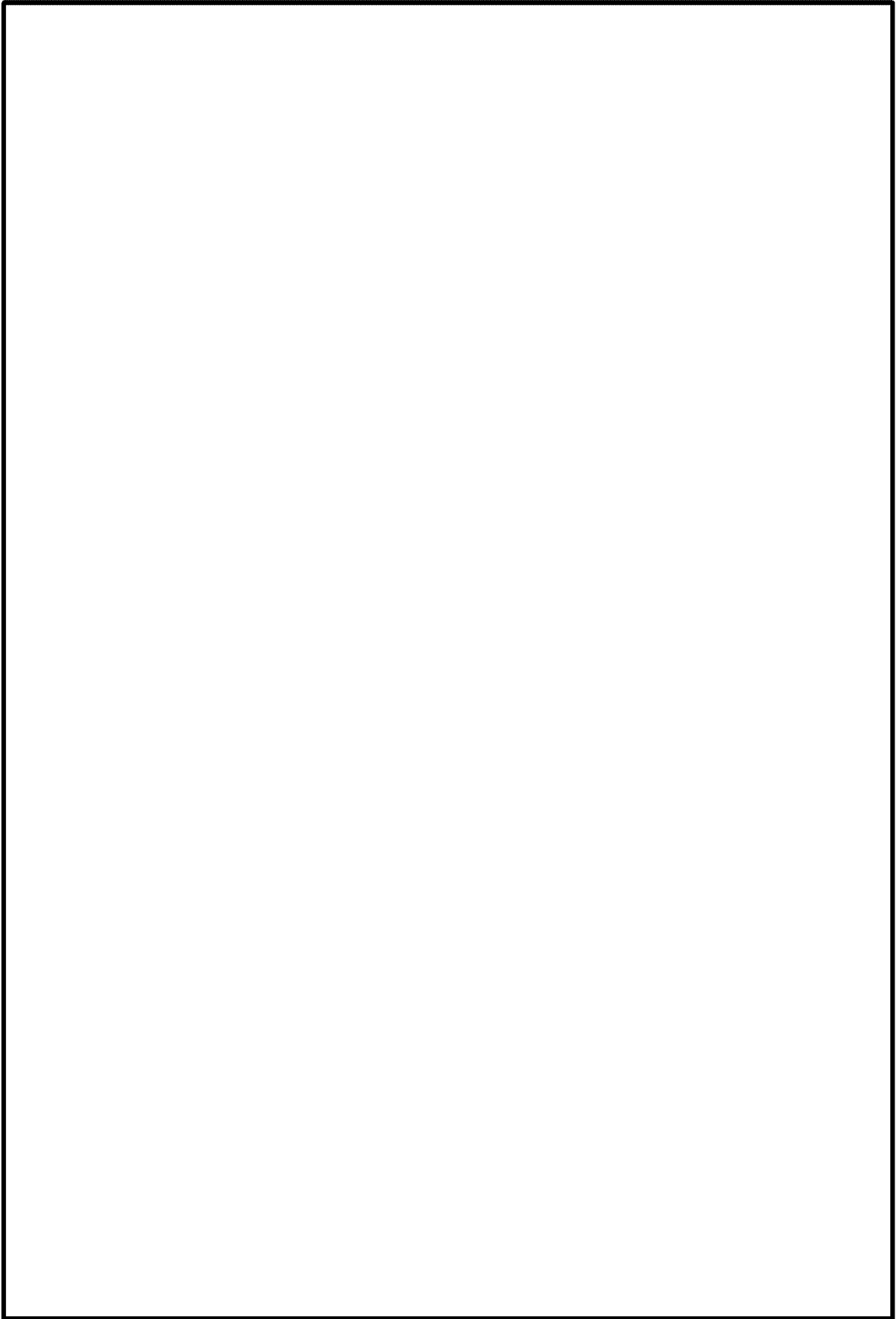
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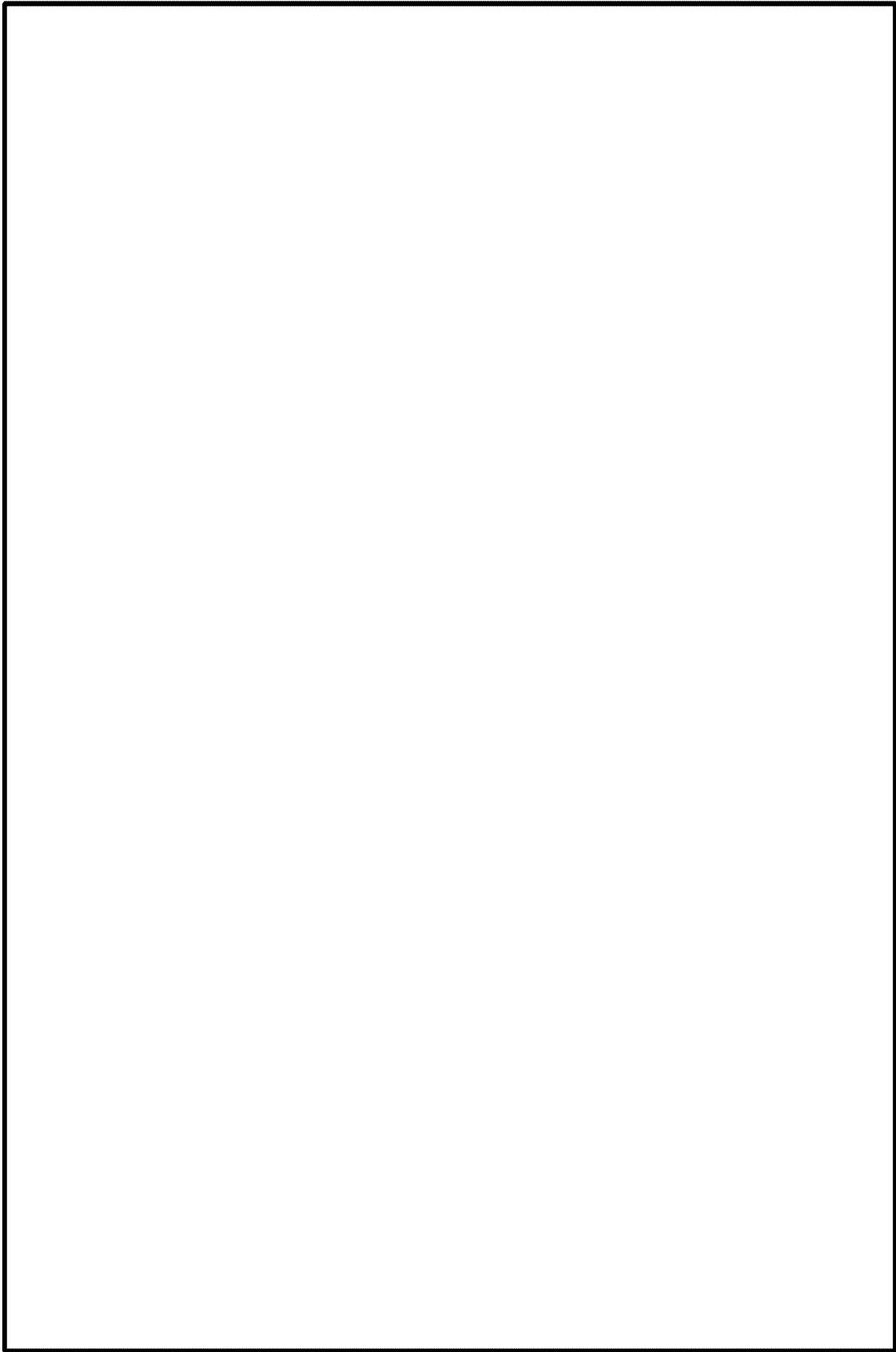
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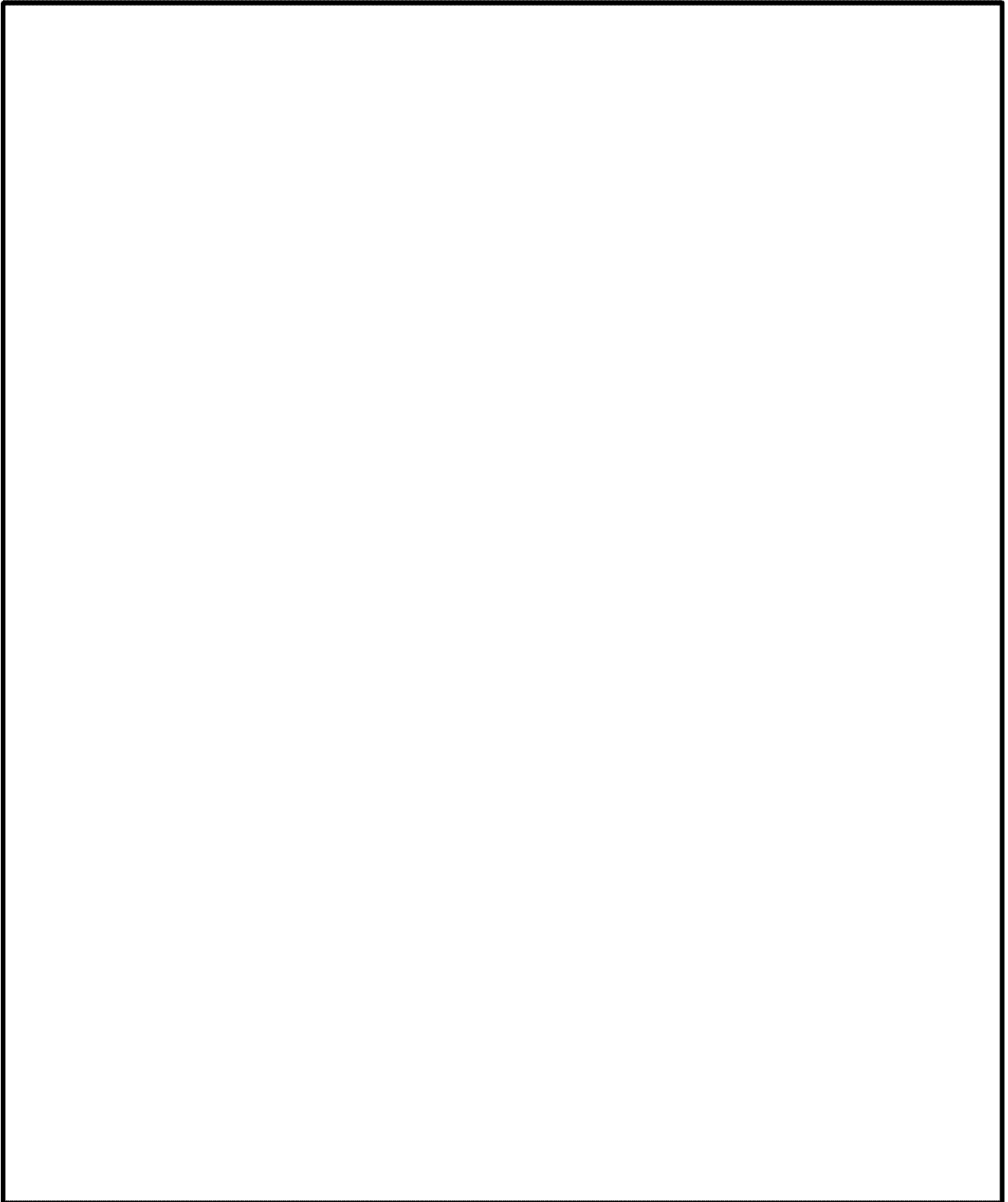
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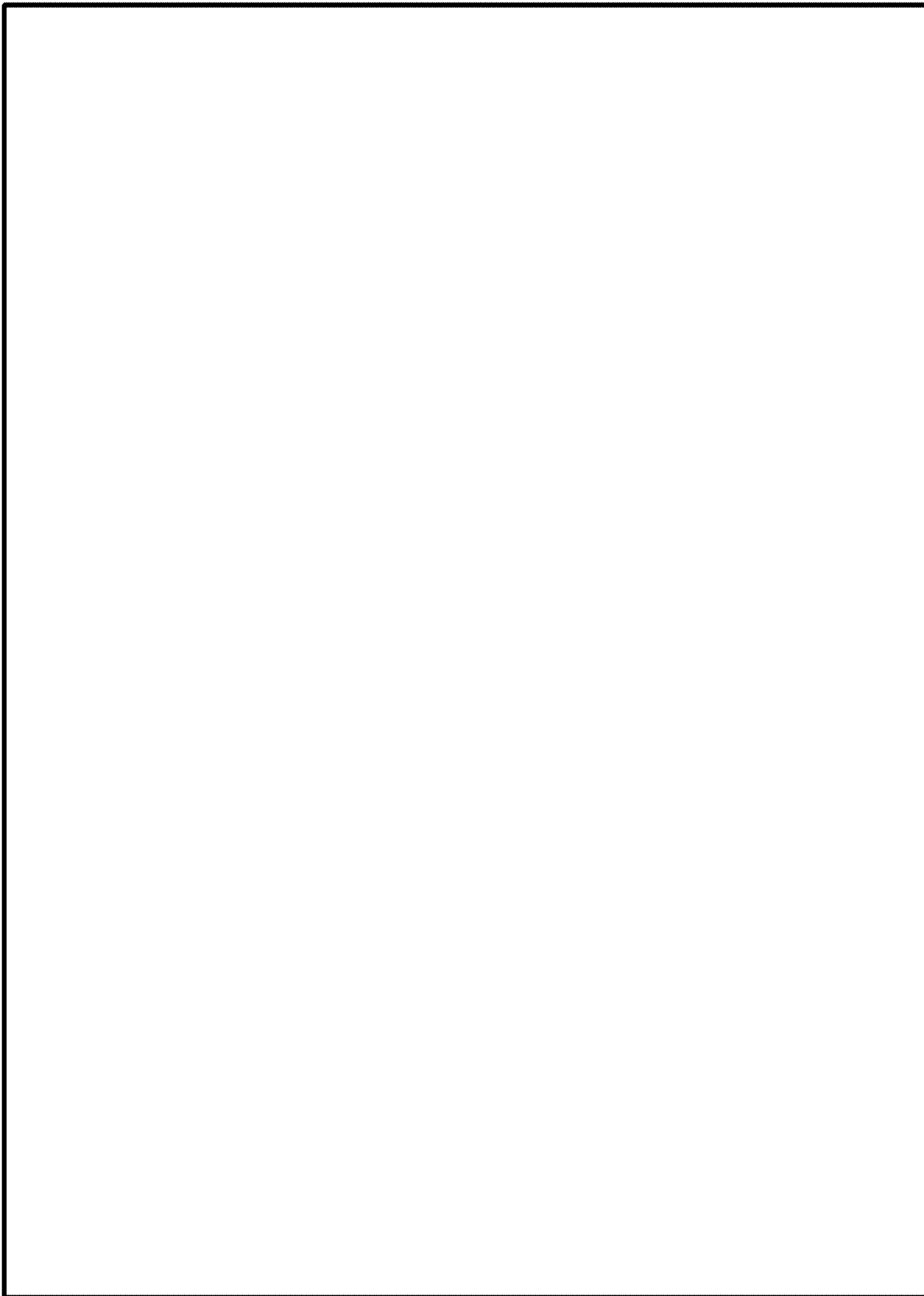


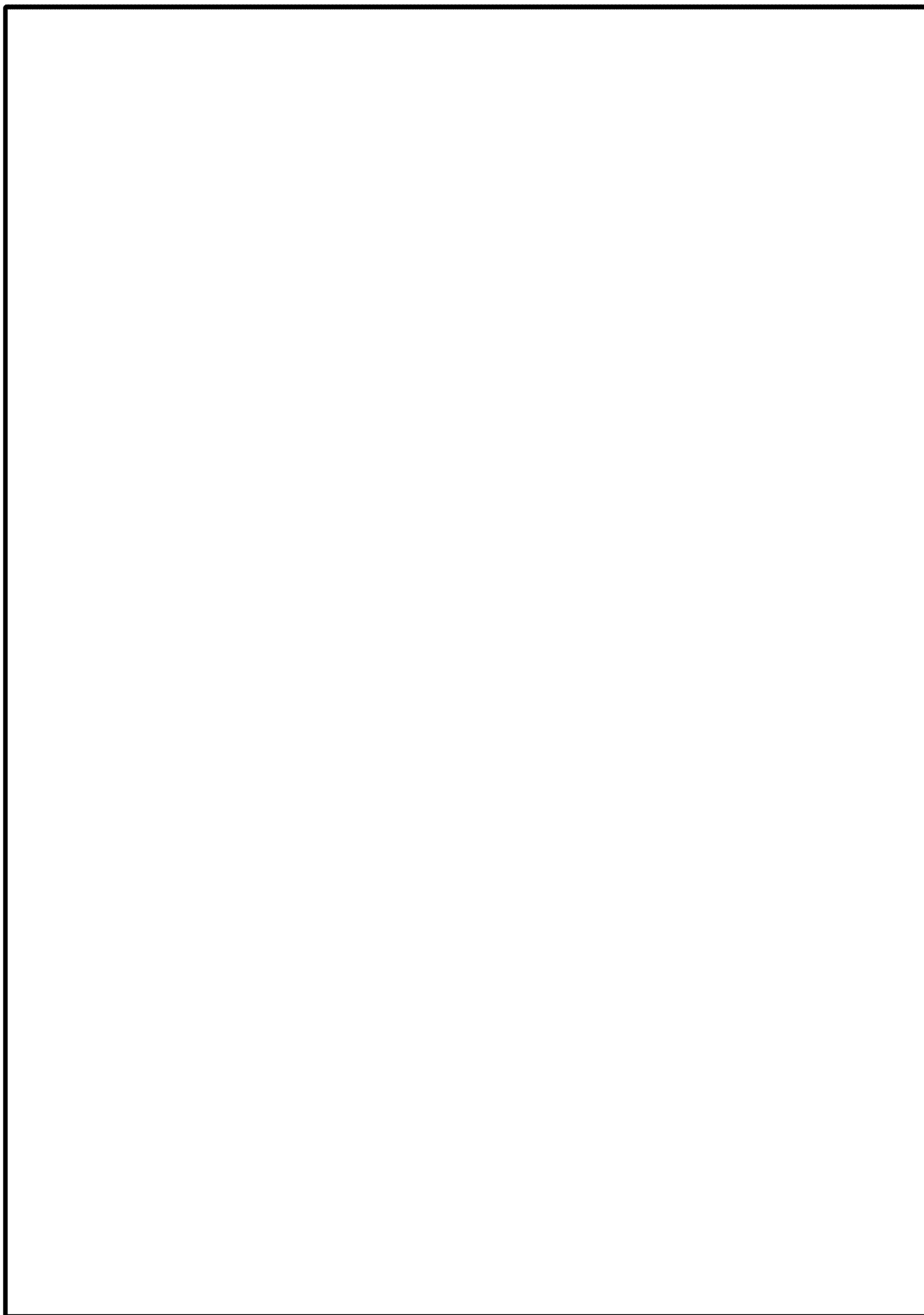
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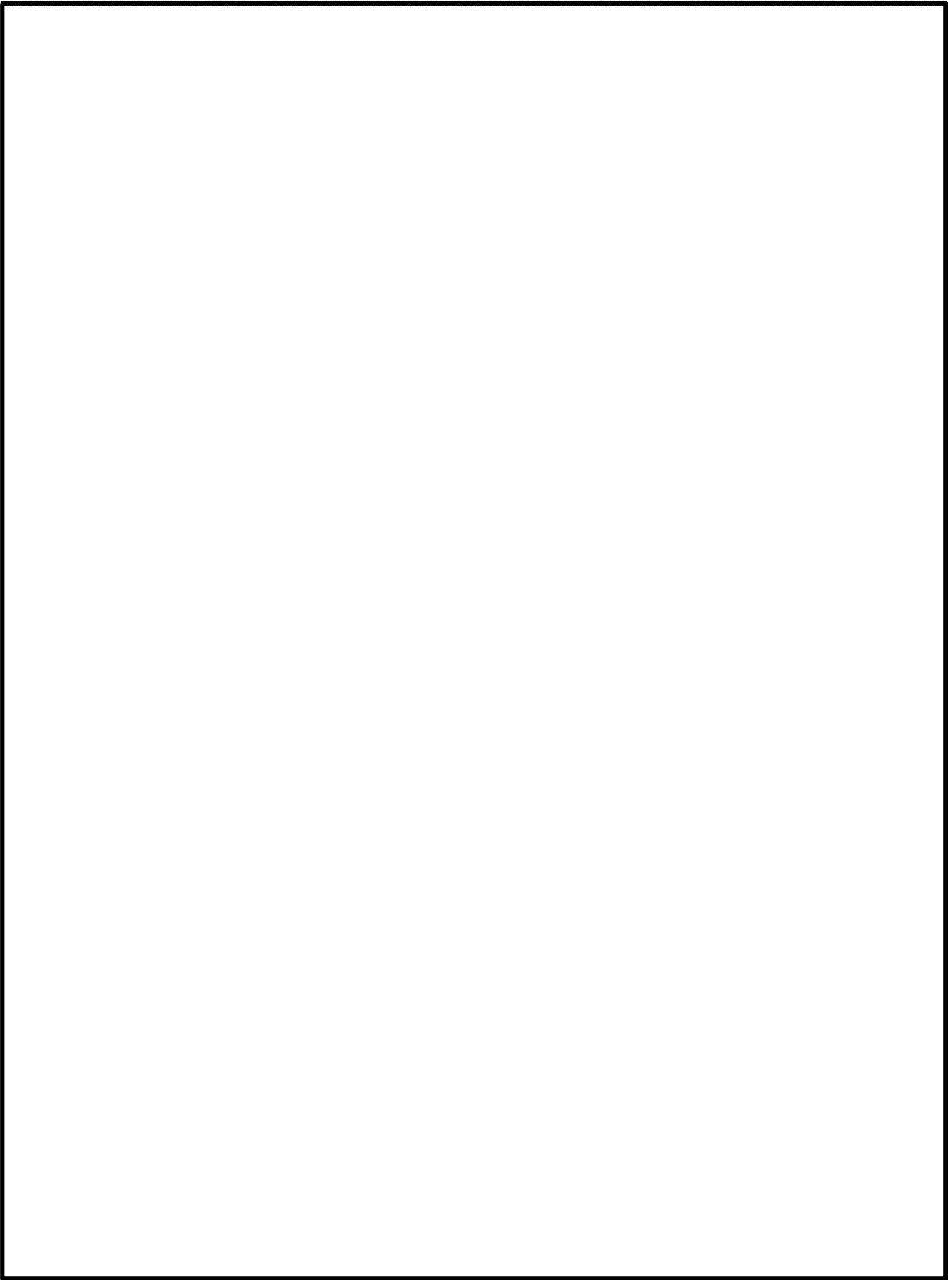


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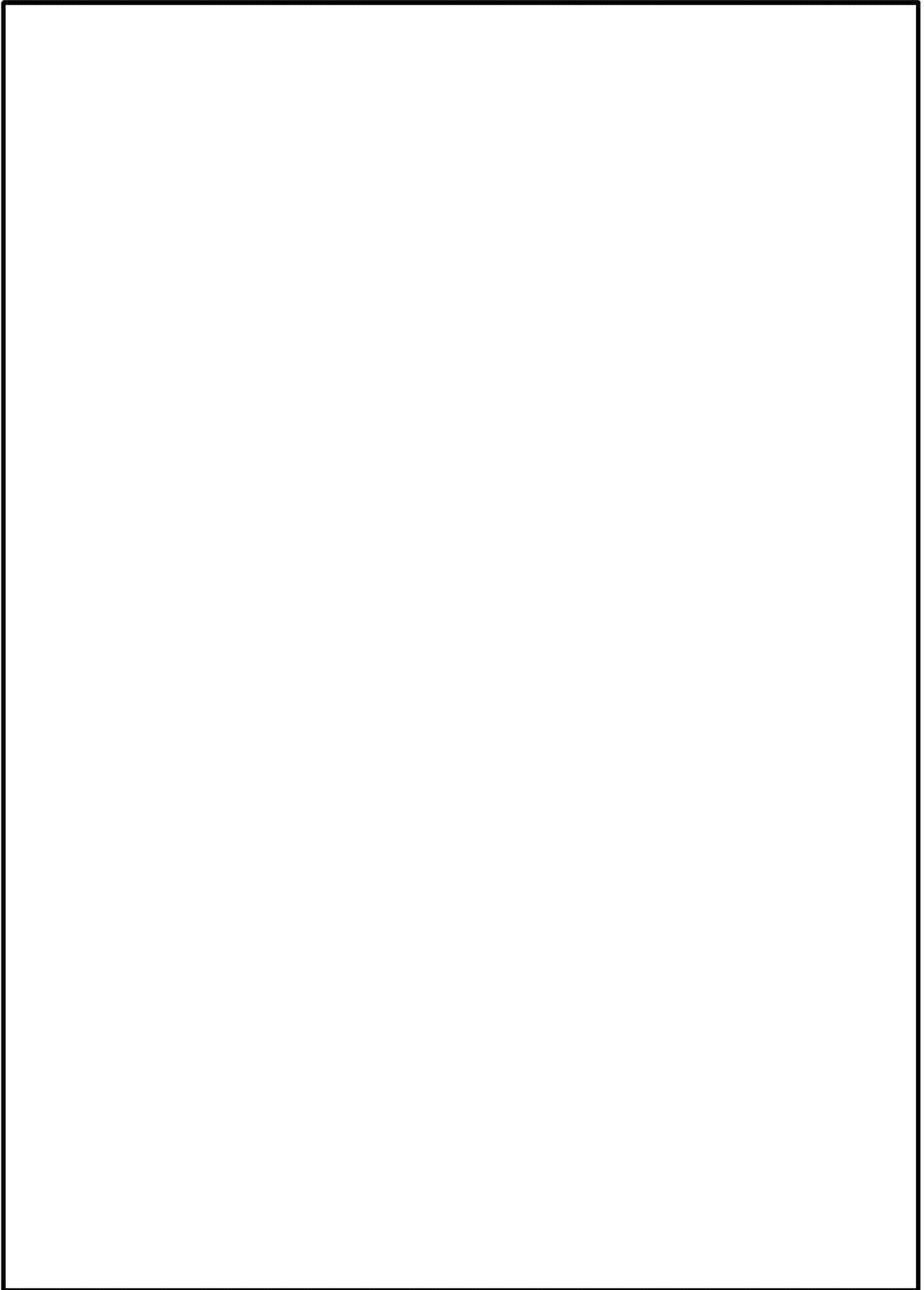






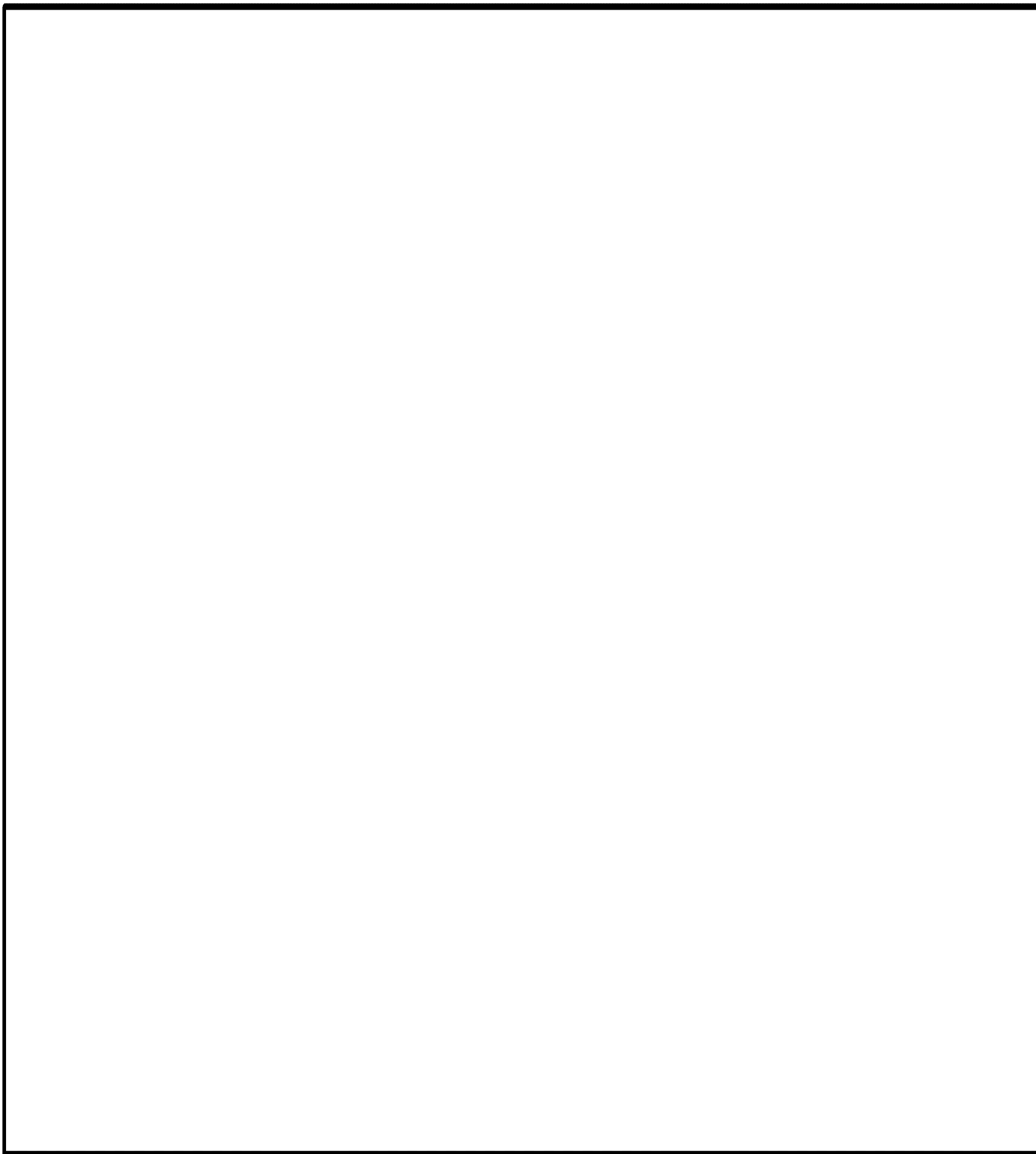


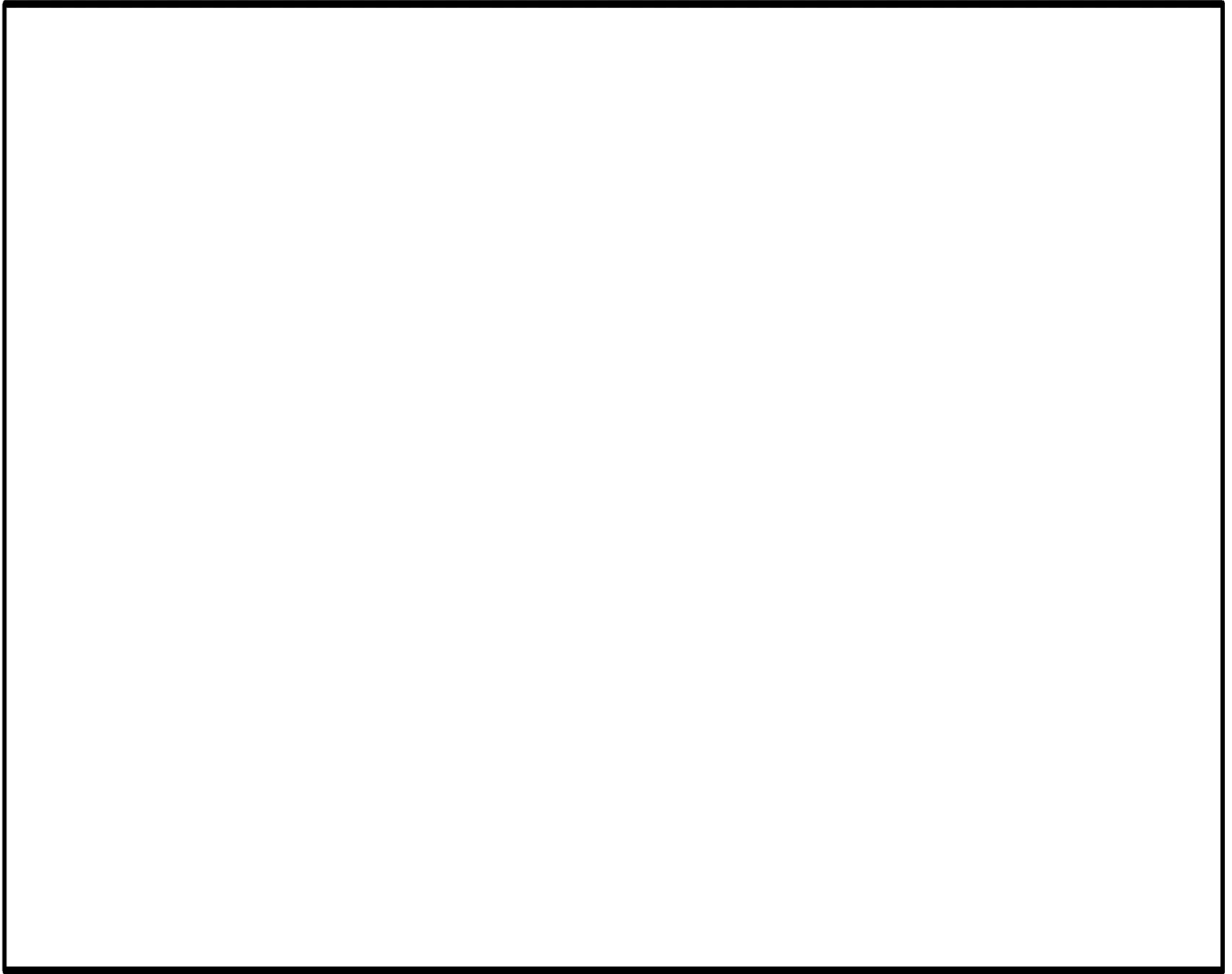


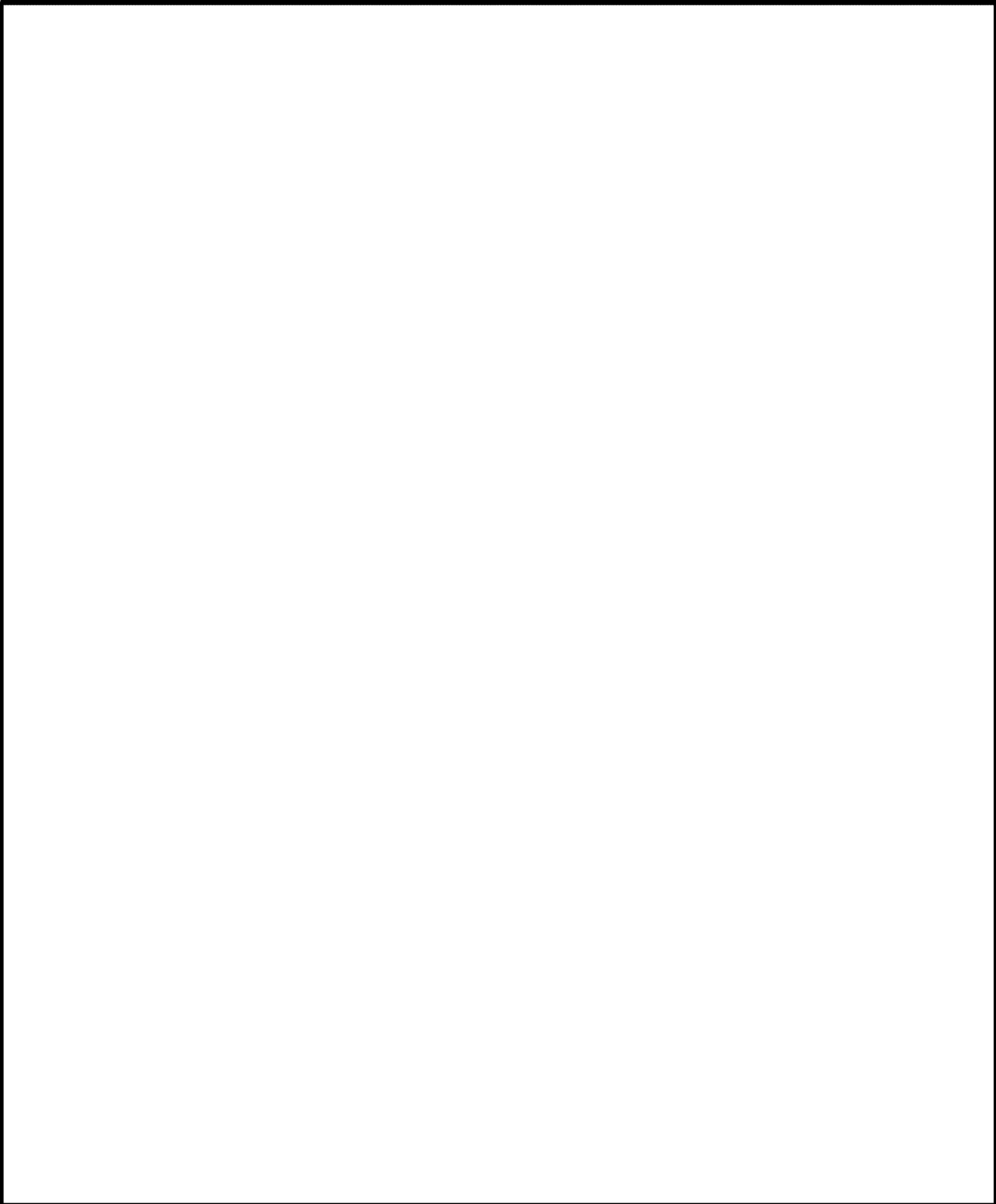


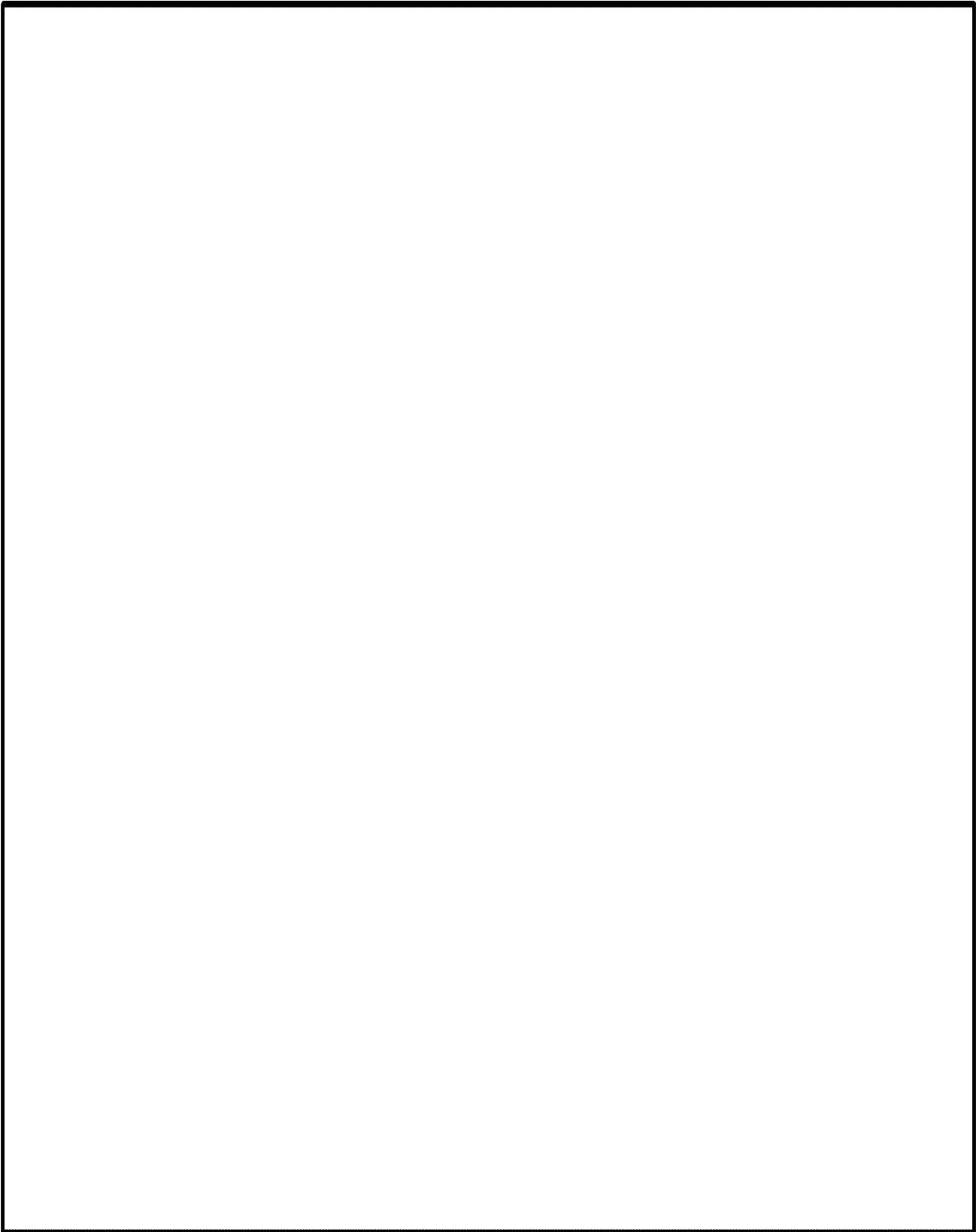
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16.10 TRIG Exemption Matrices









## SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

### REQUIRED READING

1. “Processing of Refugee Cases with National Security Concerns” Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).
2. “Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns” Issued along with Attachment – “Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns” Memo and Operational Guidance, Barbara Strack, Chief of Refugee Affairs Division (May 14, 2008).
3. Summary of Terrorism-Related Inadmissibility Provisions
4. CAA Group Exemptions Chart

### ADDITIONAL RESOURCES

1. USCIS Connect, RAD page (contains links to guidance and memos on TRIG, TRIGFAQs and CARRP).

### SUPPLEMENTS

#### **RAD Supplement – 1**

##### **12.1 Burden and Standard of Proof for TRIG Inadmissibility Grounds**

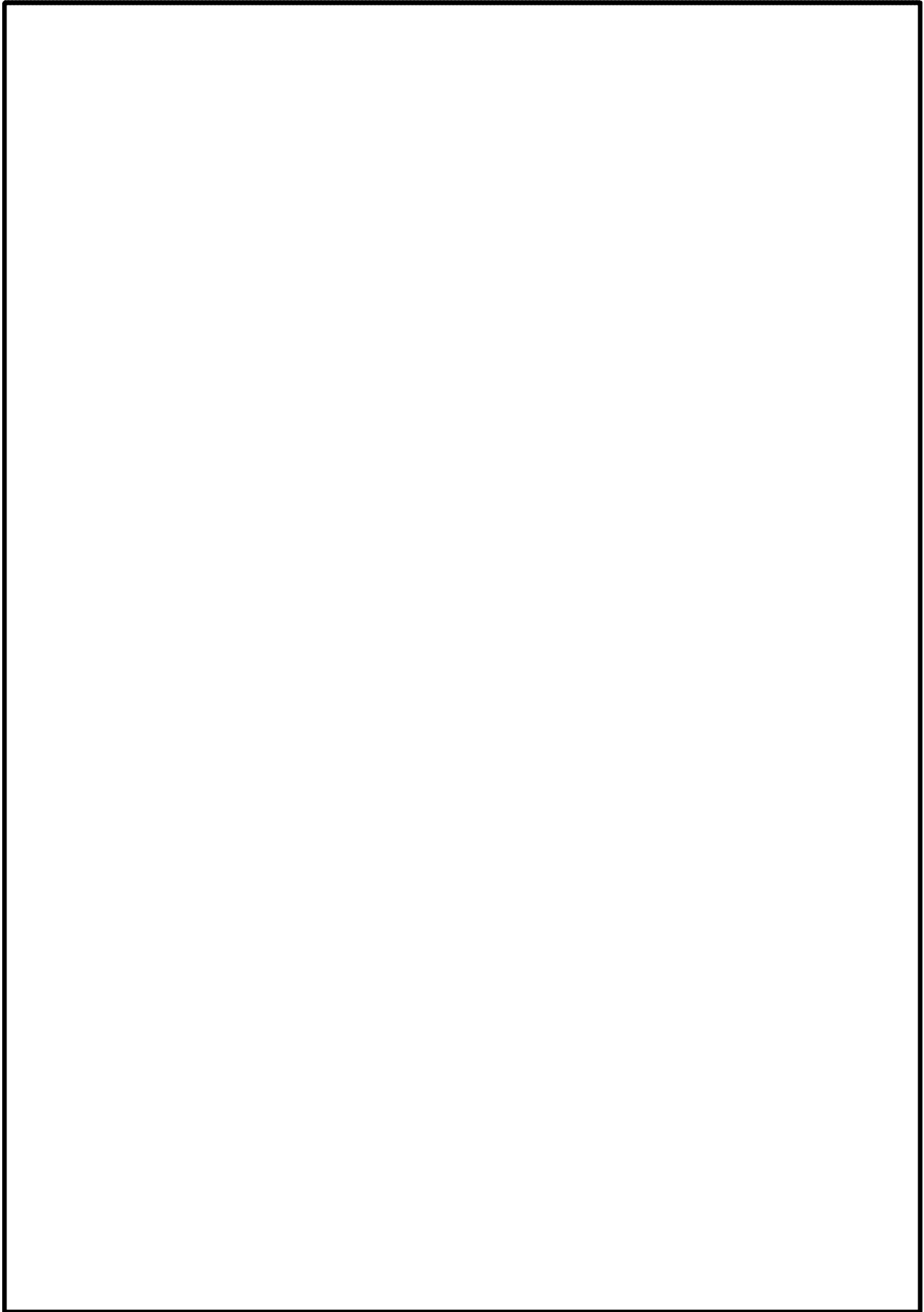
If the evidence indicates that the applicant may be inadmissible to the United States pursuant to INA § 212(a), then the applicant must establish clearly and beyond doubt that the disqualifying issue does not apply in order to be eligible for resettlement in the U.S. as a refugee pursuant to INA § 207(c).<sup>178</sup>

<sup>178</sup> INA § 235(b)(2)(A).

For example, if evidence exists that indicates that the applicant may have engaged in a terrorist activity, the officer would not have to establish that the applicant committed the act; instead, the applicant would have to establish clearly and beyond doubt that he or she did not commit that act.

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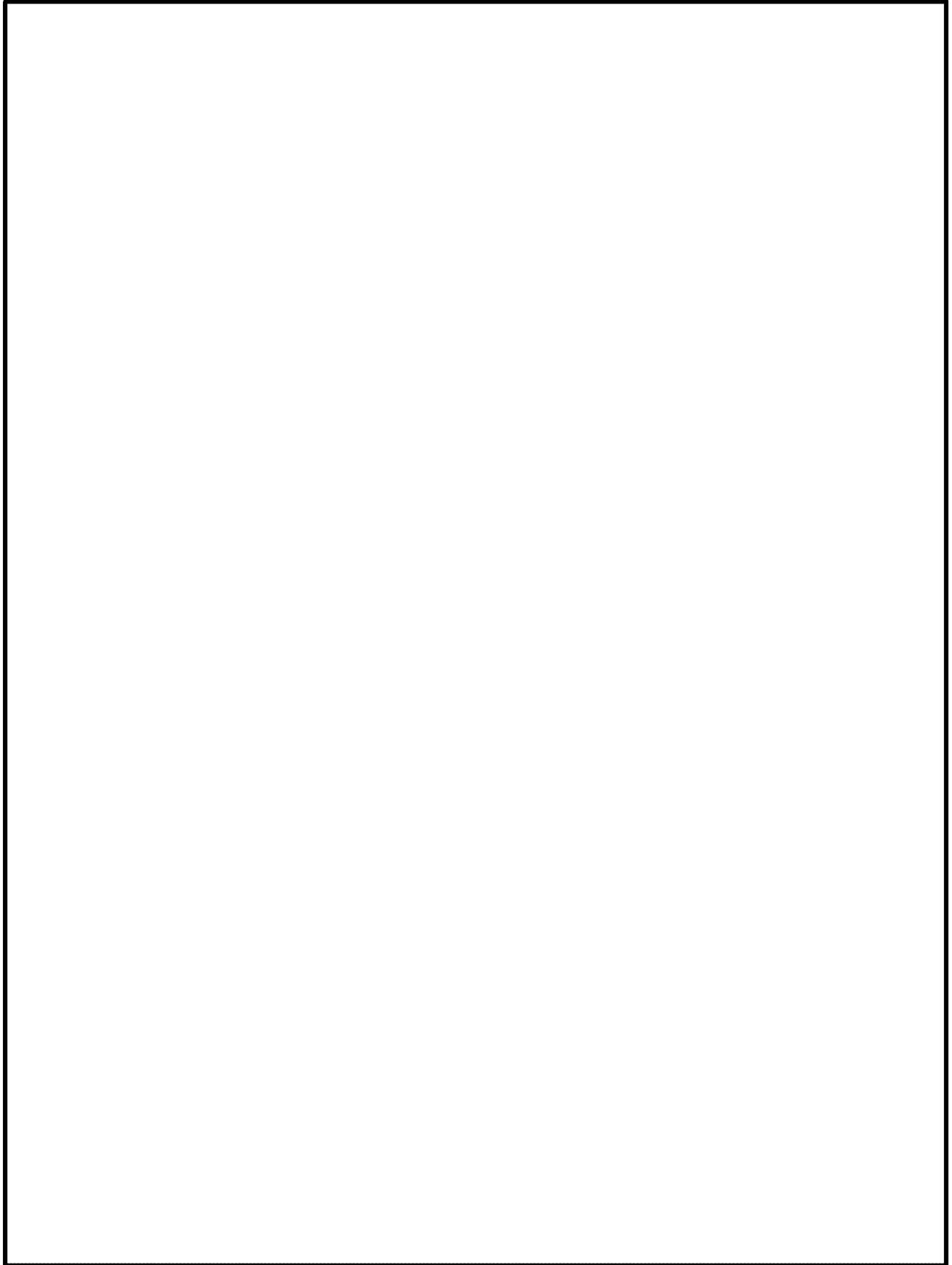
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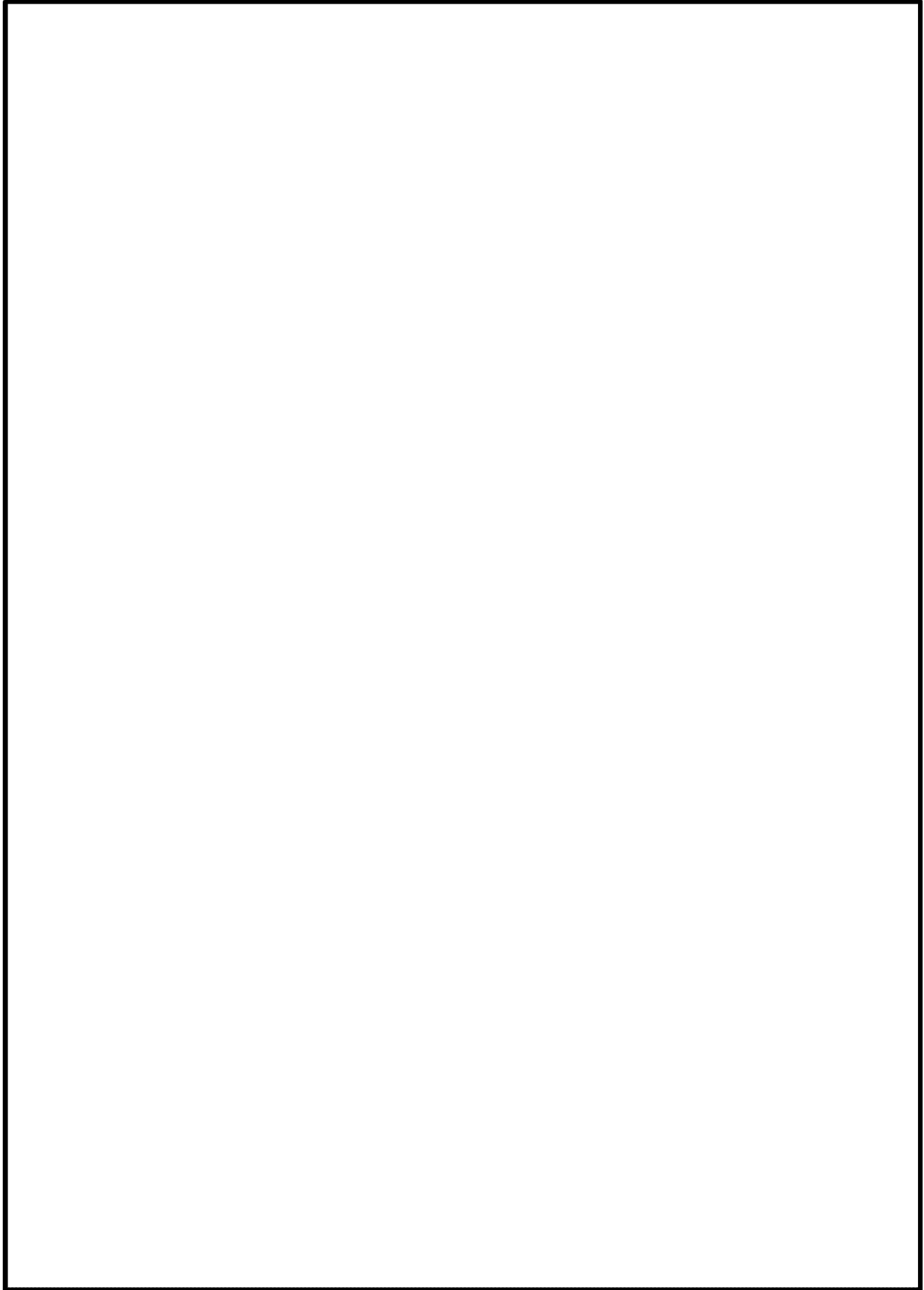




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## SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

### REQUIRED READING

1. “Updated Instructions for Handling TECS B10 Hits,” Ted H. Kim, Acting Chief, Asylum Division (June 19, 2012).
2. Asylum Division Identity and Security Checks Procedures Manual (ISCPM), especially Section VIII of the ISCPM regarding Cases Involving Terrorism or Threats to National Security.
3. Asylum Division Affirmative Asylum Procedures Manual (AAPM).
4. “Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns” (ISCPM), Joseph Langlois, Chief, Asylum Division (May 14, 2008).

### ADDITIONAL RESOURCES

1. ECN Overview for ASM Training.
2. Matter of A-H-, 23 I&N Dec. 774 (AG 2005)
3. Singh-Kaur v. Ashcroft, 385 F.3d 293 (3d Cir. 2004)
4. Matter of R-S-H-, 23 I&N Dec. 629 (BIA 2003)

### SUPPLEMENTS

#### ASM Supplement – 1

#### **Use of Discretion when a Bar Does Not Apply**

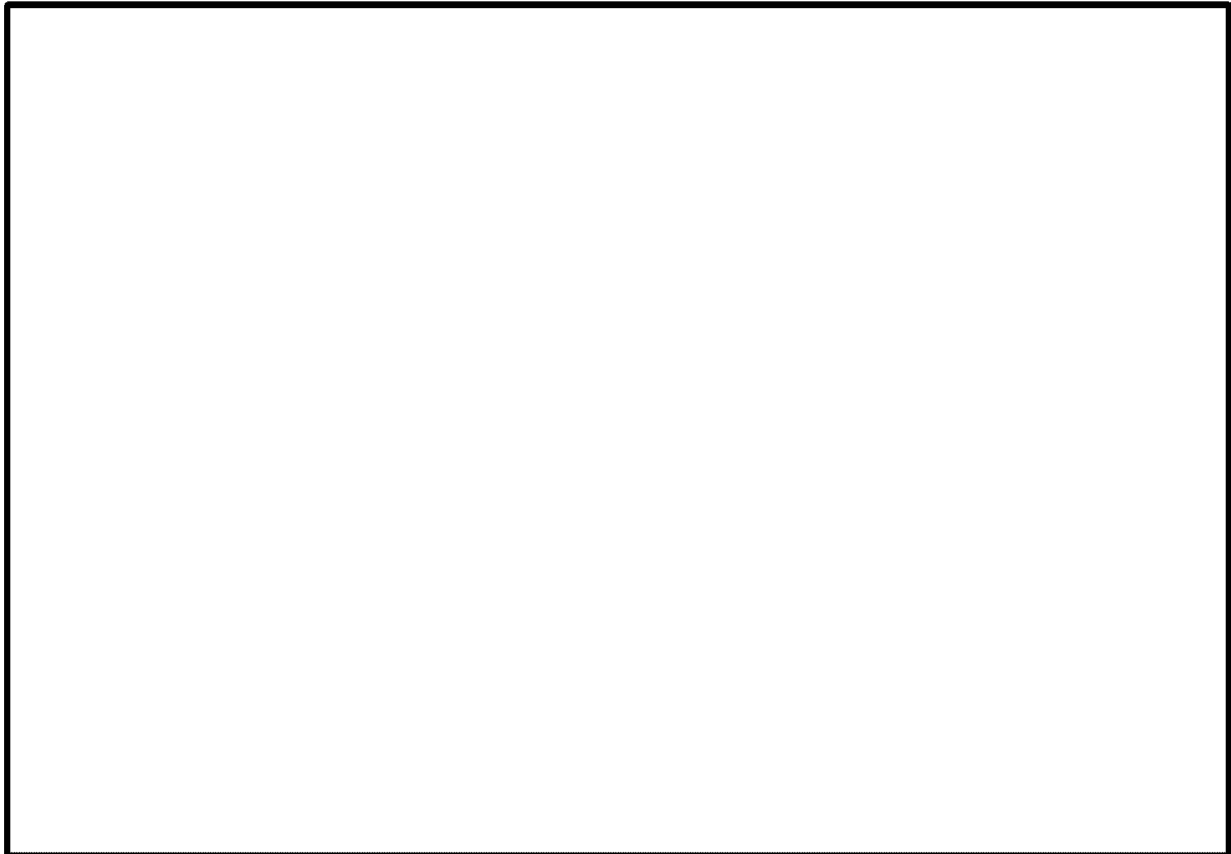
There may be some cases involving a national security matter in which facts fall short of a mandatory bar to asylum but nonetheless warrant the denial or referral of the asylum application as a matter of discretion, even if the applicant has established

refugee status.<sup>181</sup>

Asylum officers must bear in mind that the sound exercise of discretion requires a balancing of the fact that the applicant qualifies as a refugee, along with any other positive factors, against any negative factors presented in the case.<sup>182</sup> This should be reflected in the assessment.

The likelihood of future persecution is an important factor in the exercise of discretion. A reasonable possibility of future persecution weighs heavily in favor of exercising discretion to grant asylum. The BIA has held that “the danger of persecution should generally outweigh all but the most egregious of adverse factors.”<sup>183</sup> All discretionary denials and referrals are submitted to Asylum HQ for review.

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<sup>181</sup> 8 C.F.R. § 208.14(b); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); *Matter of A-H-*, 23 I&N Dec. 774, 780 (AG 2005); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139 (9th Cir. 2004).

<sup>182</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

<sup>183</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

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**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

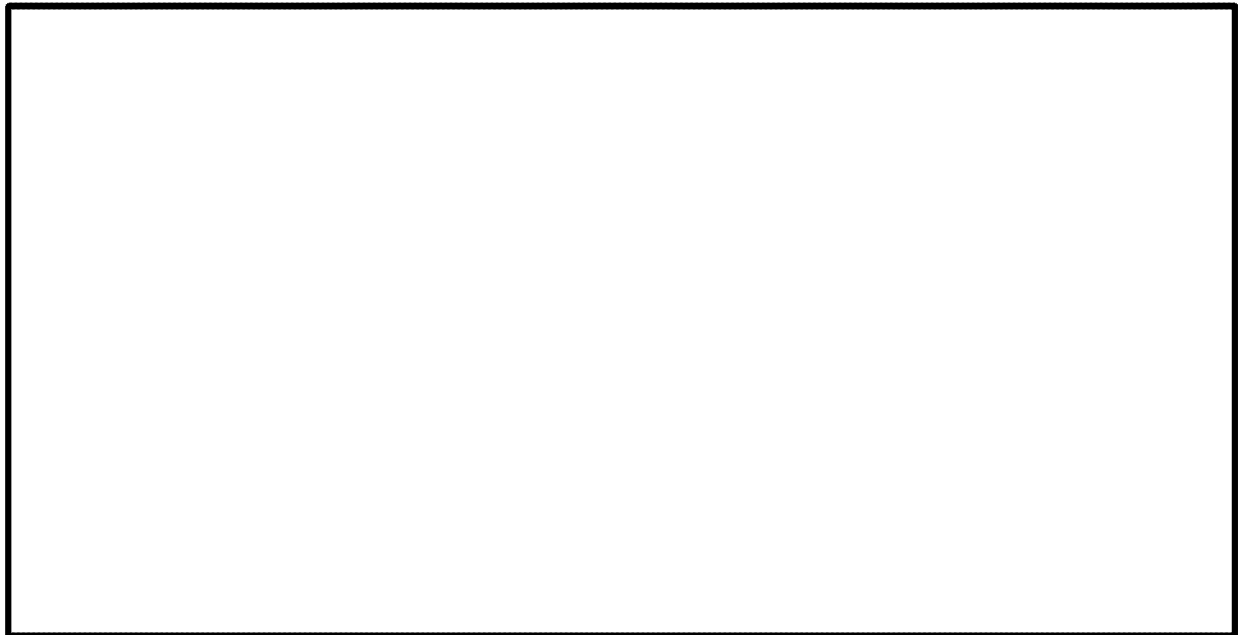
1. “Guidance for International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns” Memo, Alanna Ow, Acting Director of International Operations (April 28, 2008).
2. “Processing of Refugee Cases with National Security Concerns” Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).

**ADDITIONAL RESOURCES**

1. “Updated Background Identity and Security Check Requirements for Refugee/Asylee Following-to Join Processing” Memo Joanna Ruppel, Chief, International Operations (March 29, 2011).

**SUPPLEMENTS**

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U.S. Citizenship  
and Immigration  
Services

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Course**

**ANALYZING THE PERSECUTOR BAR**

TRAINING MODULE

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## **ANALYZING THE PERSECUTOR BAR**

### **Training Module**

#### **MODULE DESCRIPTION**

This module addresses the legal analysis of claims where a refugee or asylum applicant may have been involved in the persecution of others as well as related interviewing considerations.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

During an interview, you (the officer) will be able to elicit all relevant information to correctly determine when an applicant, who is otherwise a refugee, is ineligible for a grant of asylum or refugee status because he or she was involved in the persecution of others on account of a protected ground.

#### **ENABLING PERFORMANCE OBJECTIVES**

1. Summarize recent developments in U.S. law regarding the persecutor bar.
2. Explain the standard of proof applicable in the persecutor bar analysis.
3. Explain the factors to consider when determining whether or not an applicant may have ordered or incited an identifiable persecutory act on account of a protected ground.
4. Explain the factors to consider when determining whether or not an applicant may have assisted or otherwise participated in the persecution of another on account of a protected ground.
5. Describe indicators (“red flags”) that an individual may have been involved in the persecution of others.

#### **INSTRUCTIONAL METHODS**

- Interactive presentation

- Practical exercise
- Demonstration

## **METHOD(S) OF EVALUATION**

Observed Practical Exercise and Written test

## **REQUIRED READING**

1. *Negusie v. Holder*, 555 U.S. 511 (2009);
2. *Matter of A-H-*, 23 I&N Dec. 774 (AG 2005);
3. *Matter of Rodriguez-Majano*, 19 I&N Dec. 811 (BIA 1988);

### **Division-Specific Required Reading - Refugee Division**

### **Division-Specific Required Reading - Asylum Division**

### **Division-Specific Required Reading - International Operations Division**

## **ADDITIONAL RESOURCES**

1. *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011);
2. *Matter of Vides Casanova*, 26 I&N Dec. 494 (BIA 2015).

### **Division-Specific Additional Resources - Refugee Division**

### **Division-Specific Additional Resources - Asylum Division**

### **Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR23	Knowledge of bars to immigration benefits (4)
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR4	Knowledge of the relevant sections of 8 Code of Federal Regulations (CFR) (4)
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
RI1	Skill and identifying issues of a claim (4)
RI2	Skill in identifying the information required to establish eligibility (4)
RI3	Skill and conducting research (e.g., legal, background, country conditions) (4)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
4/14/15	Throughout document	Minor formatting edits; fixed broken links; a few recent cases added	RAIO Trng

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

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

## 1 INTRODUCTION

The term “refugee” in the Immigration and Nationality Act (INA) “does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>1</sup> The INA also specifically bars the Attorney General from granting asylum to such a person.<sup>2</sup> The persecutor bar may apply to government actors as well as private individuals.<sup>3</sup>

There are a number of human rights-related inadmissibility grounds that may arise for Nazi persecutors, genocidaires, torturers, and foreign government officials who have committed particularly severe violations of religious freedom and seek refugee status through overseas processing. [RAD Supplement – Grounds of Inadmissibility] While there may be instances when acts which implicate the persecutor bar also trigger a human rights-related inadmissibility ground, this module is focused exclusively on the persecutor bar. The human rights-related grounds of inadmissibility are discussed in the RAIO Training module, *Overview of Inadmissibility Grounds, Mandatory Bars, and Waivers* and in the RAD and IO division-specific courses.

<sup>1</sup> INA § 101(a)(42).

<sup>2</sup> INA § 208(b)(2)(A)(i). This bar also applies to: cancellation of removal, INA § 240A(e)(5); withholding of removal, INA § 241(b)(3)(B)(i); temporary protected status (TPS), INA § 244(c)(2)(B)(ii); adjustment of status of certain entrants before January 1, 1982 (legalization) (applicant must establish that he or she has “not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion), INA § 245A(a)(4)(C); naturalization of persons who have made extraordinary contributions to national security, INA § 316(f)(1); special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. 105-100, § 203, 111 Stat. 2160 (1997), 8 C.F.R. § 240.66(a); and withholding of removal under the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT), 8 C.F.R. § 208.16(d)(2).

<sup>3</sup> *Matter of McMullen*, 19 I&N Dec. 90, 96 (1984).



The statutory exclusion of persecutors from the refugee definition means that even if an applicant has been persecuted in the past, or has a well-founded fear of future persecution on account of one of the protected grounds, he or she does not meet the definition of a refugee under the INA if the persecutor bar applies.

Other statutes and provisions in the INA contain or have contained language relating to persecutors (e.g., the Displaced Persons Act [DPA]<sup>4</sup> and the Holtzman amendment<sup>5</sup>). In this module, unless otherwise specified, reference to the “persecutor bar” refers exclusively to the language in the refugee definition in INA § 101(a)(42).

This module addresses individuals who may be barred from refugee or asylum status as “persecutors.” This term is used to describe those individuals who have ordered, incited, assisted or otherwise participated in the persecution of others on account of one of the five protected grounds. In other settings, references may be made to the broader category of “human rights abusers” or “human rights violators.” While persecutors may be included in that group, it is important to keep in mind that the term “persecutor” is a specific term of art in refugee and asylum adjudications, unlike general terms such as “human rights abuser” and “human rights violator.”

This module:

- Lays out the elements of the law about which you must elicit testimony during the course of your interview
- Provides an analytical framework to help you analyze the persecutor bar issue
- Provides a list of possible indicators (“red flags”) to help alert you when you must explore the persecutor bar issue
- Explains how credibility may play a part in your determinations

## 1.1 Burden of Proof and Duty to Elicit

The burden is on the applicant to establish eligibility.<sup>6</sup> Asylum and refugee applicants are not expected to understand the complexities of U.S. asylum law and may not realize that they are subject to the persecutor bar, especially if they did not directly commit the act(s)

<sup>4</sup> The Displaced Persons Act of 1948, Pub.L. No. 80-774, 62 Stat. 1009 (1948), as amended by Pub.L. No. 81-555, 64 Stat. 219 (1950).

<sup>5</sup> INA § 212(a)(3)(E); *see also* INA § 237(a)(4)(D).

<sup>6</sup> 8 C.F.R. § 208.13(a); *Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1992) (“UNHCR Handbook”), ¶ 196.

of persecution.<sup>7</sup> Accordingly, although the applicant has the burden of proving eligibility, you have an equal duty in a non-adversarial interview to elicit detailed testimony from the applicant.<sup>8</sup> If you believe that the persecutor bar may apply, you must question the applicant about his or her possible involvement in persecutory acts. If the applicant denies involvement, you must then determine the credibility of that denial.

For additional information regarding credibility determinations, see section below: *Credibility and the Persecutor Bar*, and RAIO Training modules, *Evidence and Credibility*, and ASM Supplement – Burden Shifting

## 1.2 Standard of Proof

An applicant must establish that he or she is not subject to the persecutor bar by a preponderance of the evidence. When using the preponderance of the evidence standard, it is important to focus on the quality of the evidence, not the quantity.<sup>9</sup> Remember that assessing the quality of testimonial evidence means determining whether or not it is credible. See section below: *Credibility and the Persecutor Bar*.

## 1.3 The Rationale behind the Bar

The rationale for the persecutor bar is derived from the general principle in the *1951 Convention relating to the Status of Refugees* that even if someone meets the definition of a refugee, i.e., has a well-founded fear of persecution on account of a protected ground, he or she may nonetheless be considered to be undeserving or unworthy of refugee status.<sup>10</sup>

The BIA has recognized that the exclusion from the refugee definition in INA § 101(a)(42) of those who were involved in the persecution of others is consistent with the principles of the 1951 Convention.

This exclusion from refugee status under the Act represents the view that those who have participated in the persecution of others may be unworthy or undeserving of international protection. The prohibited conduct is deemed so repugnant to civilized society and the community of nations that its justification will not be heard.<sup>11</sup>

<sup>7</sup> See *Jacinto v. INS*, 208 F.3d 725, 733-734 (9th Cir. 2000) (“Applicants for asylum often appear without counsel and may not possess the legal knowledge to fully appreciate which facts are relevant...[adjudicators] are obligated to fully develop the record in [such] circumstances...”).

<sup>8</sup> 8 C.F.R. § 208.9(b); *UNHCR Handbook*, ¶¶ 196, 205(b)(i).

<sup>9</sup> For further information on the preponderance of the evidence standard, see RAIO Training Module *Evidence Assessment*.

<sup>10</sup> *United Nations Convention Relating to the Status of Refugees*, art. 9F, July 28, 1951, 189 U.N.T.S. 150.

<sup>11</sup> *McMullen*, 19 I&N Dec. at 97.

## 2 ANALYTICAL FRAMEWORK

If at any time during your adjudication the persecutor bar issue arises, you will need to develop additional lines of questioning and ask follow-up questions until the record reflects that the applicant is either subject to or not subject to the bar. Often this will involve a credibility determination. You must conduct a particularized evaluation and examine all relevant facts in determining whether the persecutor bar applies.<sup>12</sup>

The INA does not define the terms listed in the persecutor bar: “order,” “incite,” “assist,” or “otherwise participate in.” Nor have the courts developed a uniform, bright-line test to apply when the persecutor bar is an issue. However, the following analytical framework, derived from existing case law, can assist you in analyzing whether the persecutor bar applies. This analytical framework is explored in greater detail below.

### **Step One: Determine if there is Evidence of the Applicant’s Involvement in an Act that May Rise to the Level of Persecution**

- Look for red flags in the evidence to alert you that the persecutor bar may be at issue.
- Evidence may include:
  - the applicant’s testimony during the interview;
  - information in the applicant’s file indicating his or her involvement with an entity known for committing human rights abuses; and
  - country of origin information (COI)
- If a red flag is present, examine whether there is further evidence of a specific act or acts that may rise to the level of persecution.
- Mere membership in an entity that committed persecutory acts is not enough to subject an applicant to the bar.

### **Step Two: Analyze the Harm Inflicted on Others**

- Did the harm rise to the level of persecution?
- Was there a nexus to a protected ground?
- Was the act a legitimate act of war or law enforcement?

### **Step Three: Analyze the Applicant’s Level of Involvement**

<sup>12</sup> *Vukmirovic v. Ashcroft*, 362 F. 3d 1247, 1252 (9th Cir. 2004); *Miranda Alvarado v. Gonzales*, 449 F.3d 915, 926-27 (9th Cir. 2006); *Hernandez v. Reno*, 258 F.3d 806, 814 (8th Cir. 2001); see *Matter of A-H-*, 23 I&N Dec. 774, 784 (AG 2005), *overruled on other grounds by Haddam v. Holder*, 547 F. App’x 306 (4th Cir. Dec. 4, 2013) (“It is appropriate to look at the totality of the relevant conduct in determining whether the bar to eligibility applies.”).

- Did the applicant order, incite, assist, or otherwise participate in the persecutory act(s)?
- Did the applicant know that the persecution was occurring?
- Did the applicant act under duress?

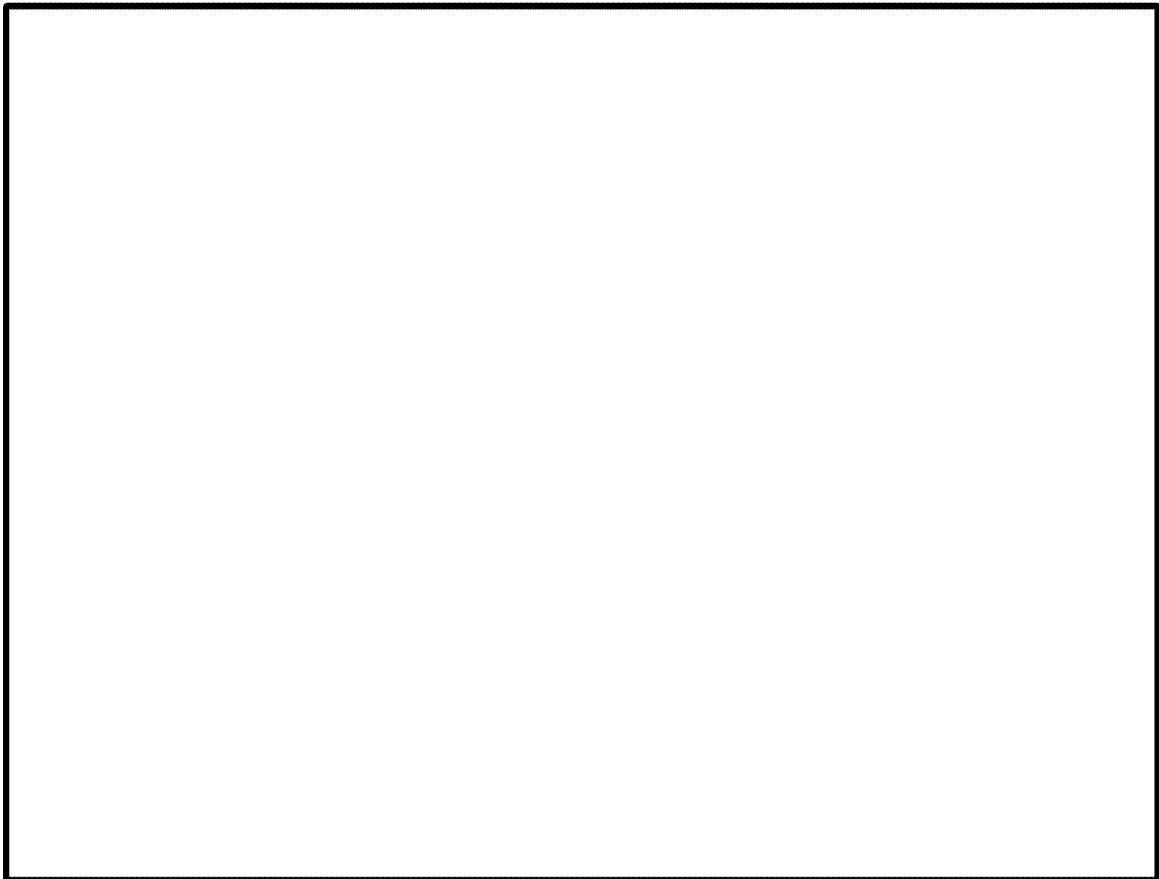
Fully explore this issue for the record and follow Division-specific guidance. Following the analytical framework above will help you avoid using faulty logic that is demonstrated in the following statements:

- “Bad Place + Bad Time = Bad Person”
- “I Know It When I See It”

These statements are not legal standards and should not be the basis of analysis in any decisions relating to the persecutor bar.

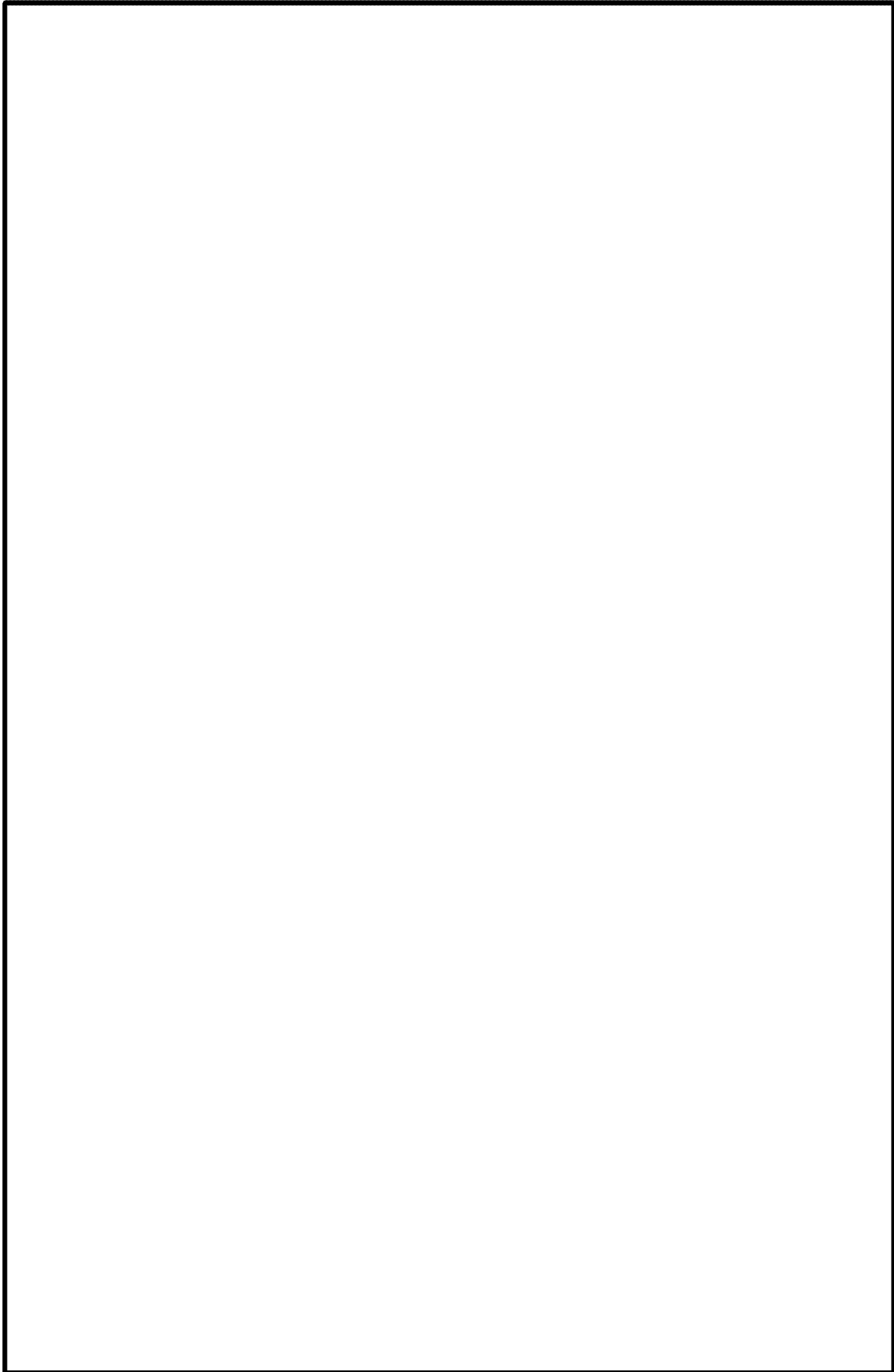
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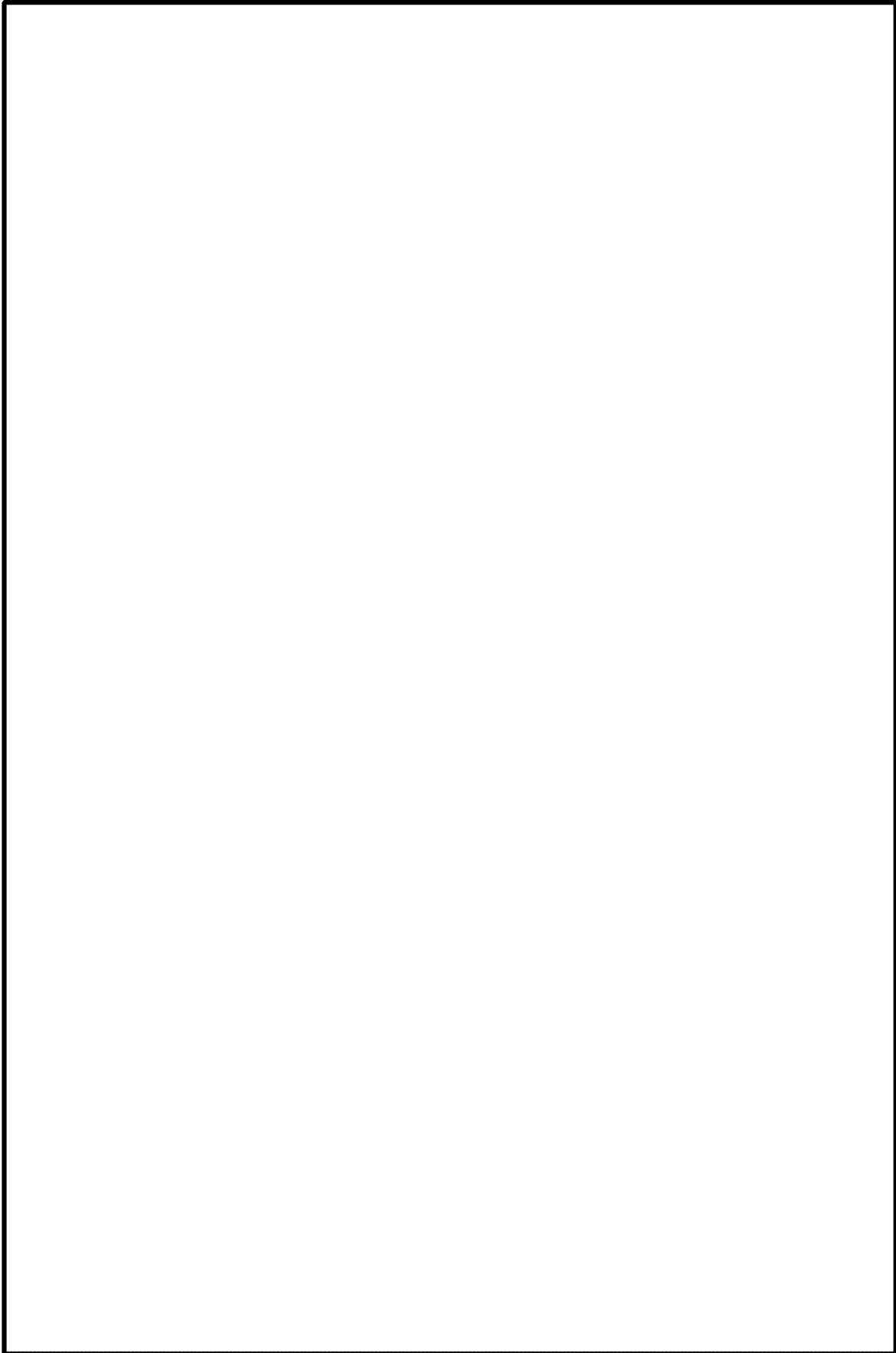




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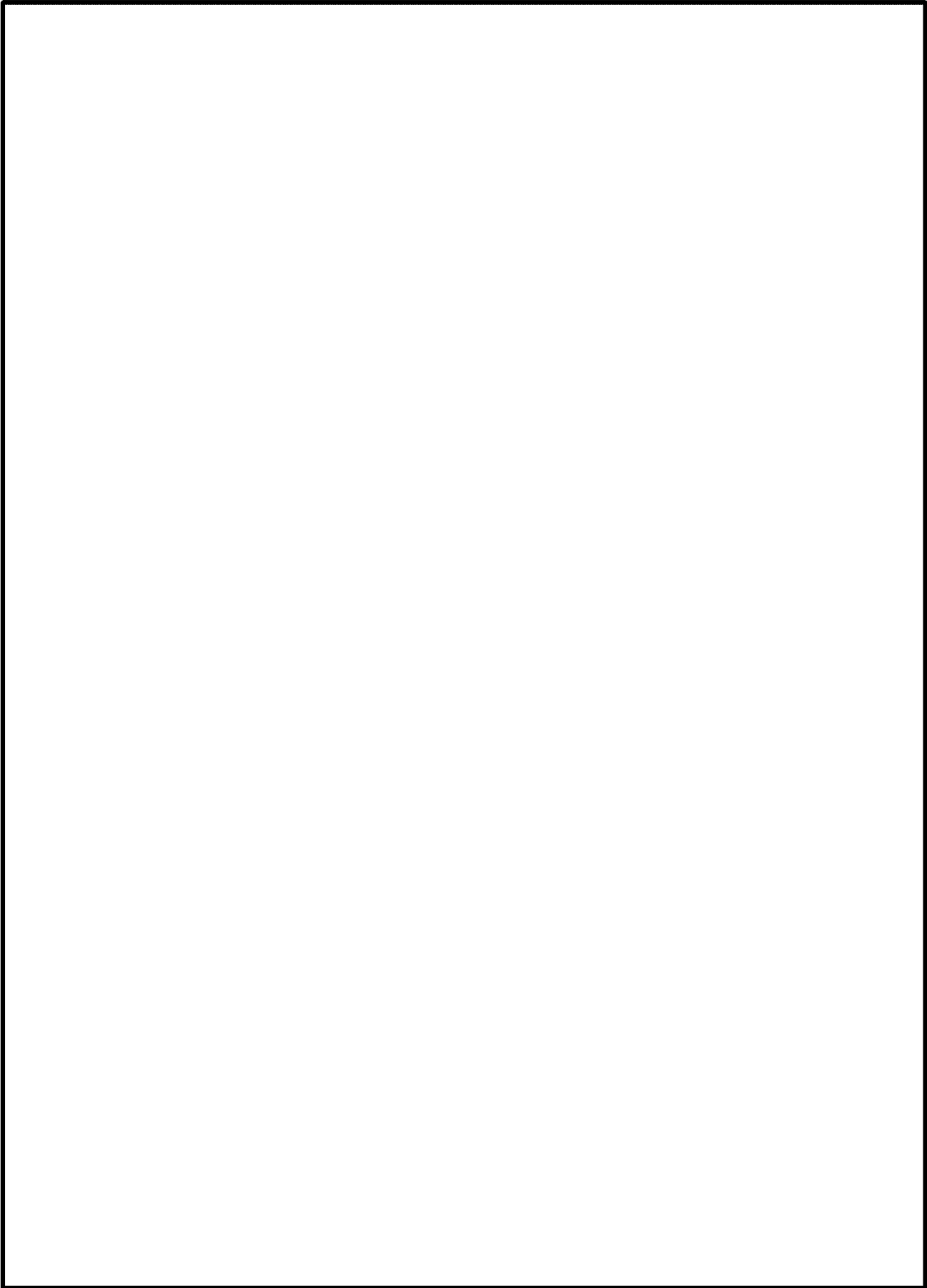


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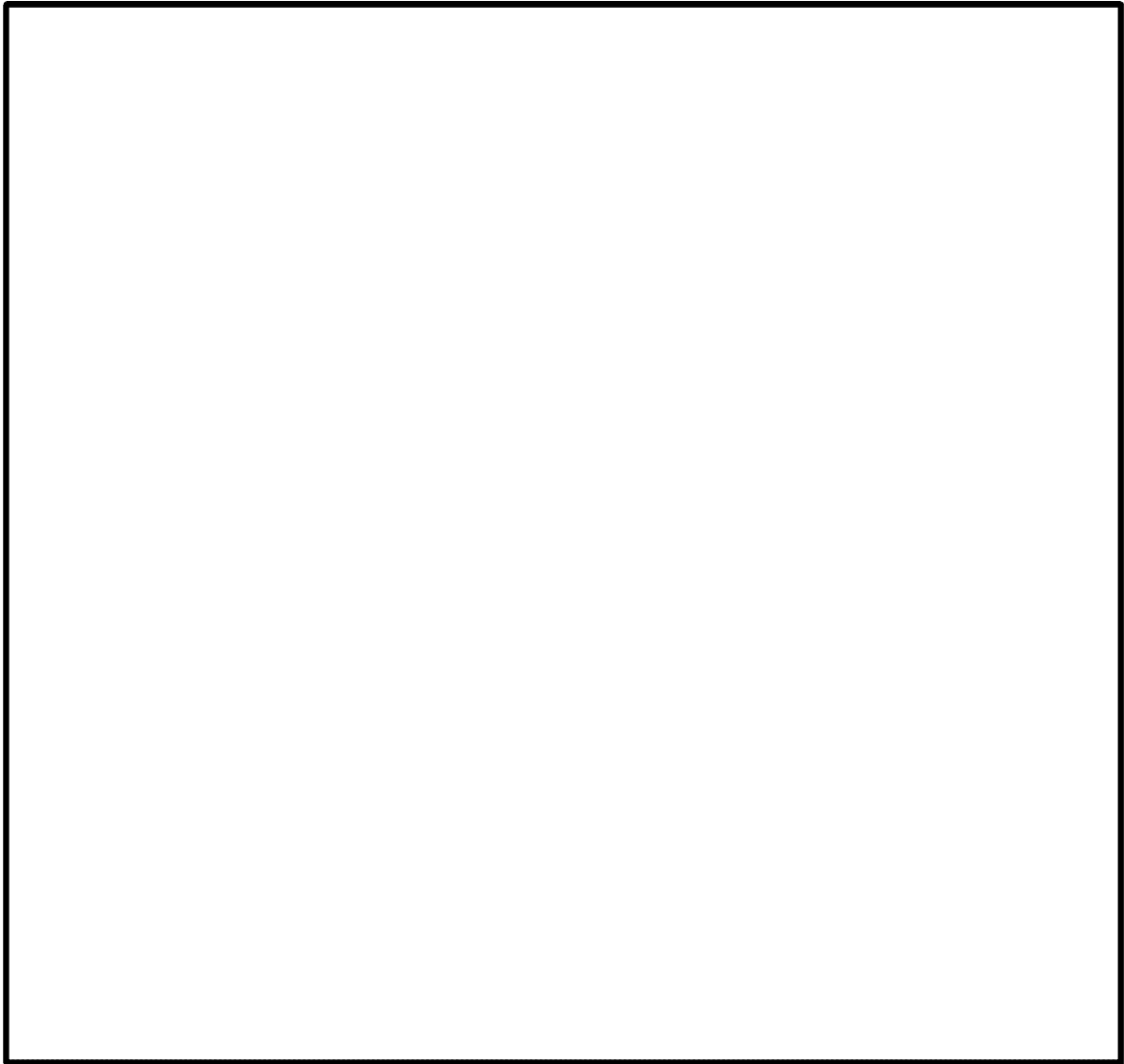
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### 2.2.3 Was the Act a Legitimate Act of War or Law Enforcement?

#### Legitimate Acts of War

The fear of general civil strife or war, and incidental harm resulting from such violence, may not, by itself, establish eligibility for asylum or refugee status. Likewise, involvement in a civil war may not, by itself, trigger the persecutor bar. Such harm may not constitute persecution if it is not directed at the victim(s) on account of a protected ground.

For example, in open combat, acts of warfare taken in furtherance of political goals are not necessarily acts committed on account of a protected ground. The BIA has stated:

---

<sup>18</sup> *Bah*, 341 F.3d at 351.

<sup>19</sup> *Singh*, 417 F.3d at 740.

As the concept of what constitutes persecution expands, the group which is barred from seeking haven in this country also expands, so that eventually all resistance fighters would be excluded from relief. We do not believe Congress intended to restrict asylum and withholding only to those who had taken no part in armed conflict.<sup>20</sup>

Reference to international laws governing warfare may be useful in determining whether actions taken in the context of warfare constitute persecution or are “legitimate” acts of war.<sup>21</sup>

### *Examples*

An individual forced to assist guerrillas fighting in El Salvador did not participate in persecution on account of a protected ground when he covered guerrillas with weapons while they burned cars and drove supplies for battles, because this was considered a legitimate act of war.<sup>22</sup>

The rape of Bosnian Muslim women by an ethnic Serb soldier in order to bring shame to the Bosnian Muslim community during the Bosnian War is not a legitimate act of war, and is in fact a crime of war, and would have the requisite nexus to a protected characteristic to subject an applicant to the persecutor bar.<sup>23</sup>

Likewise, true acts of self-defense do not have a nexus to a protected ground and would not subject an applicant to the persecutor bar.<sup>24</sup>

### *Example*

A Bosnian Serb fended off attacks of Croats who attacked his village. He did not participate in physical attacks against Croats other than in self-defense. The Ninth Circuit held that, given these facts, there was insufficient evidence to find that the applicant was motivated by the Croats’ ethnicity or religion and remanded the case to the Immigration Judge for further evaluation.<sup>25</sup>

If you identify an act that rises to the level of persecution but there is no connection to one of the five protected grounds, the applicant is not subject to the bar.

<sup>20</sup> *Rodriguez-Majano*, 19 I&N Dec. at 816.

<sup>21</sup> *Rodriguez-Majano*, 19 I&N Dec. at 816; see RAIO Training Module *International Human Rights Law* for examples of international instruments relevant to determining what would be considered a “legitimate” act of war.

<sup>22</sup> *Rodriguez-Majano*, 19 I&N Dec. at 815-16.

<sup>23</sup> See Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.N.T.S. 135 (entered into force Oct. 21, 1950) (Geneva Convention III); RAIO Training Module *Nexus and the Five Protected Grounds*.

<sup>24</sup> *Vukmirovic*, 362 F. 3d at 1252-53 (“[h]olding that acts of true self-defense qualify as persecution would run afoul of the ‘on account of’ requirement in the provision.”).

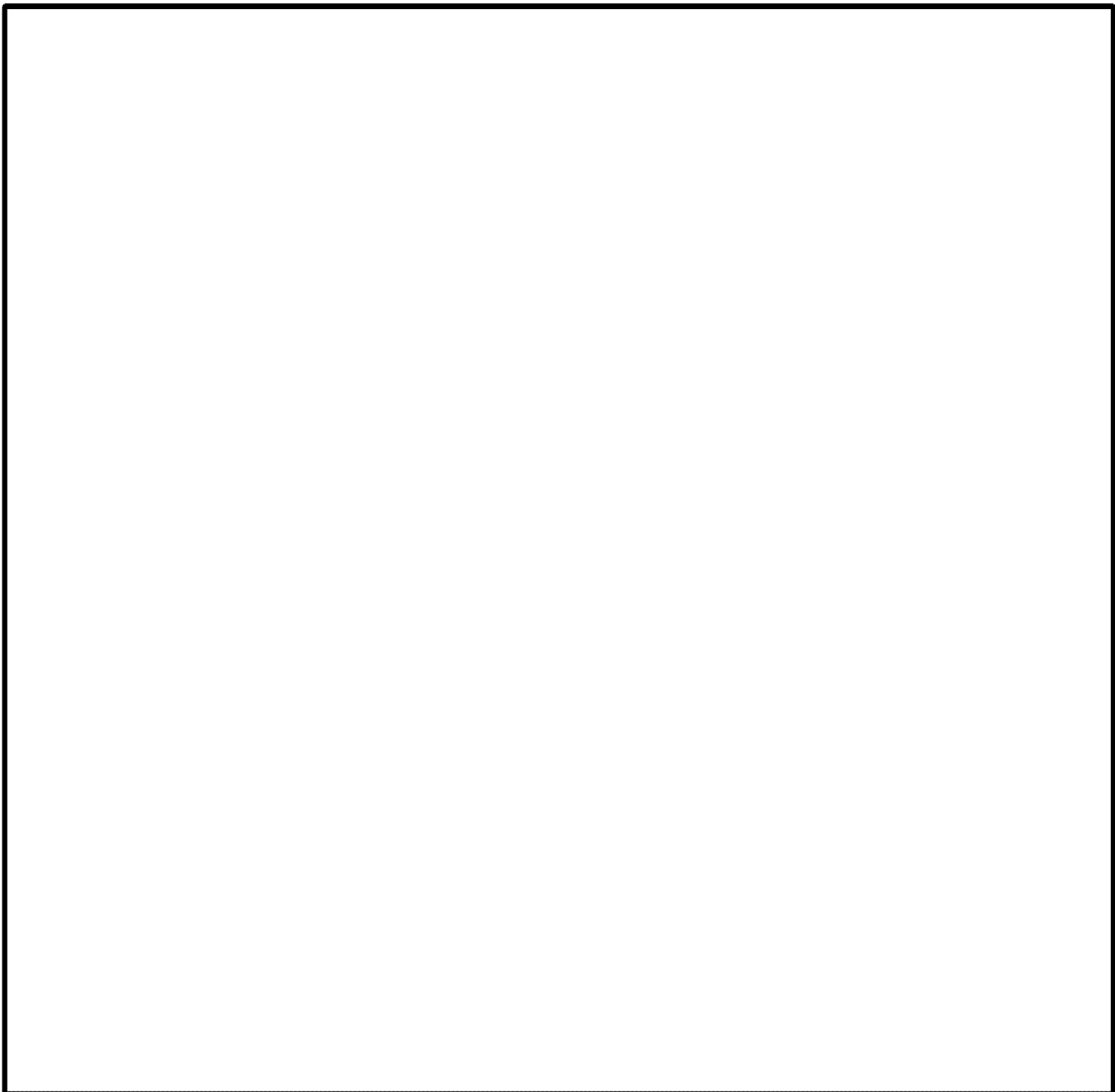
<sup>25</sup> *Id.* at 1253.

### Legitimate Acts of Law Enforcement

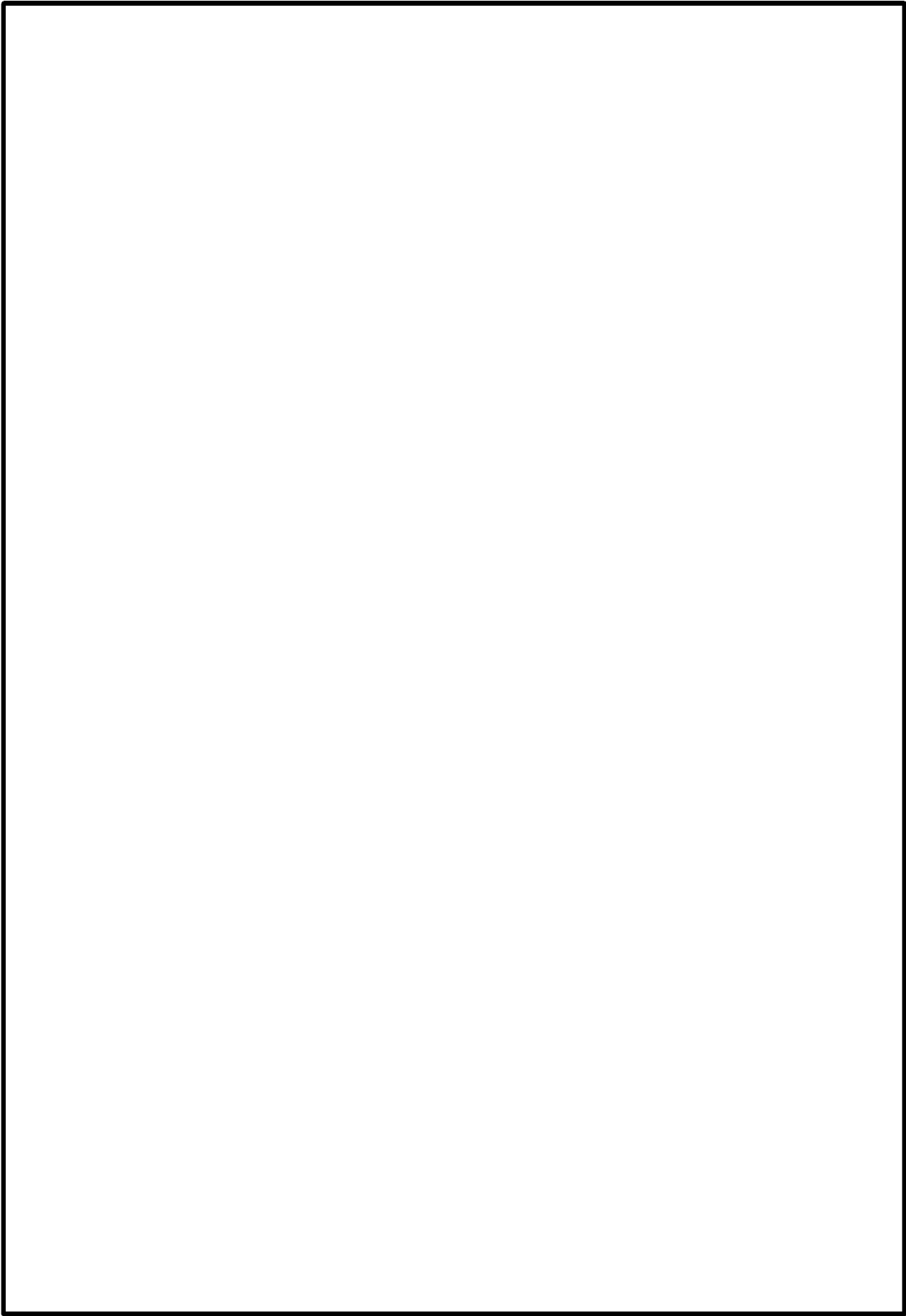
Likewise, legitimate acts of law enforcement have no nexus to a protected ground and would not subject the applicant to the persecutor bar.<sup>26</sup> All countries have the right to investigate, prosecute, and punish individuals for violations of legitimate laws.<sup>27</sup>

Government actors may seek to legitimately penalize individuals for violations of criminal laws of general applicability. Conversely, government actors may use the guise of prosecutions to harm applicants on account of a protected ground.<sup>28</sup> Consider all the facts in the case, along with relevant country of origin information, in determining whether the applicant was involved in a legitimate act of law enforcement. For additional guidance on the difference between prosecution and persecution, see RAIO Training module, *Nexus and the Protected Grounds*.

(b)(7)(e)

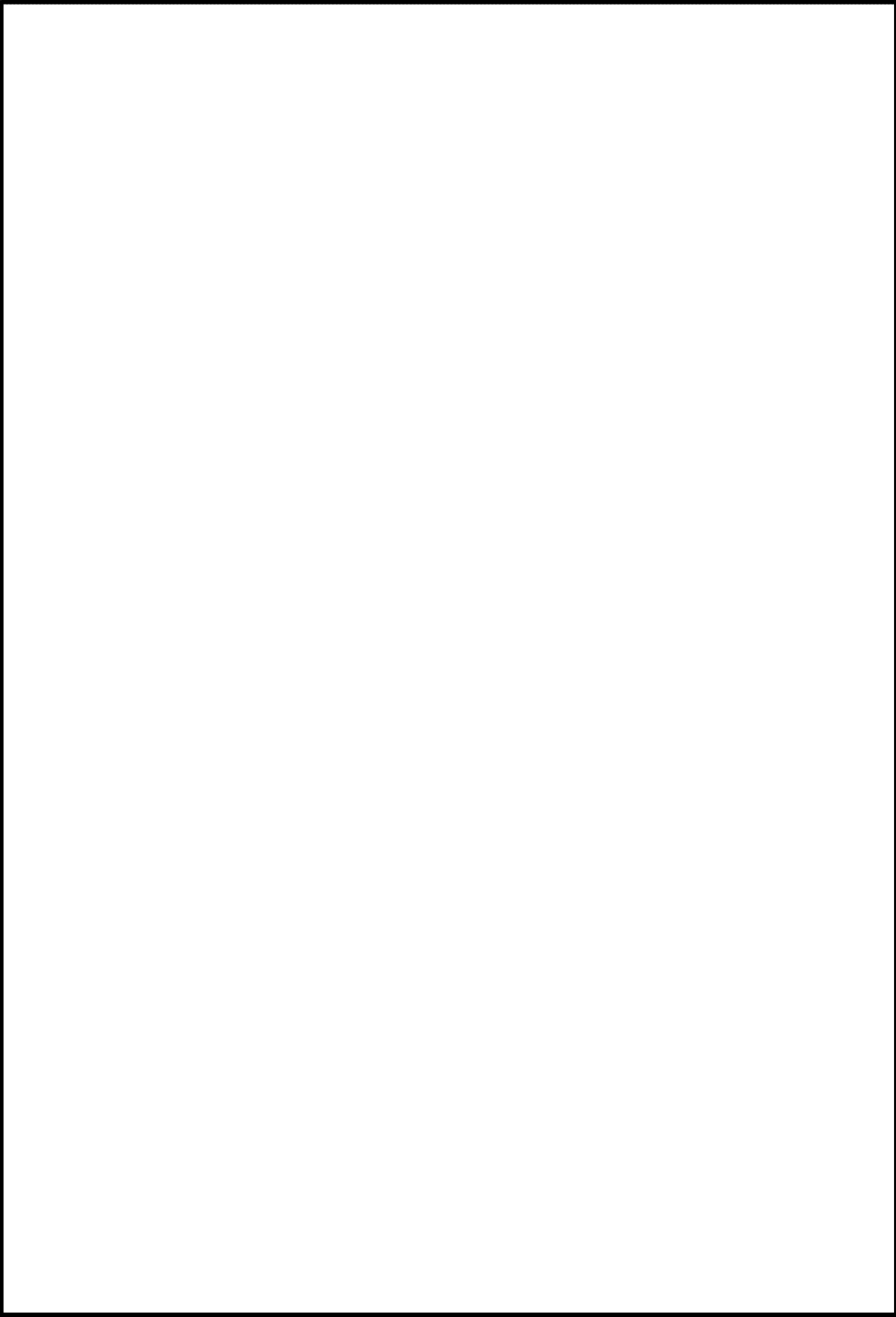


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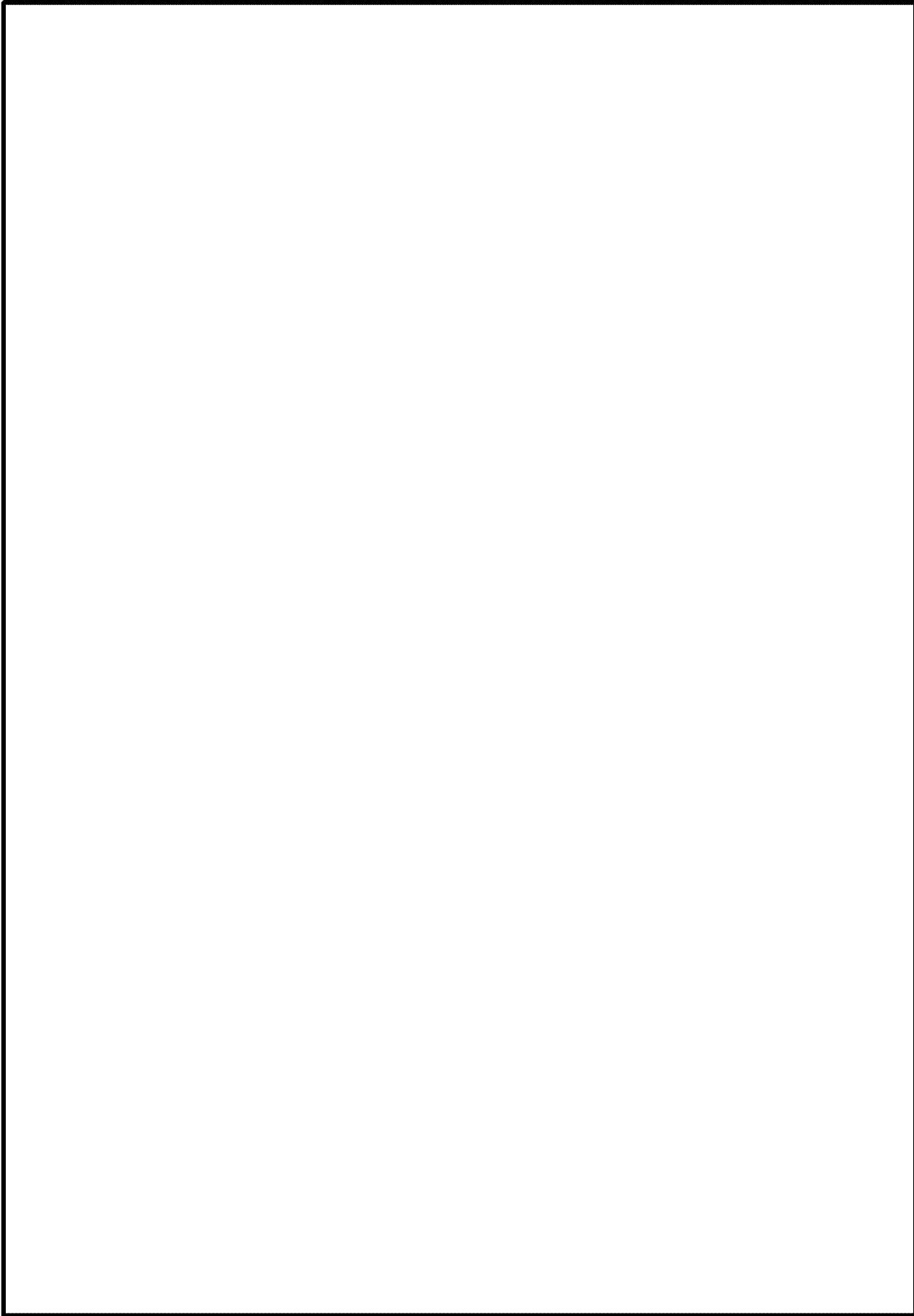


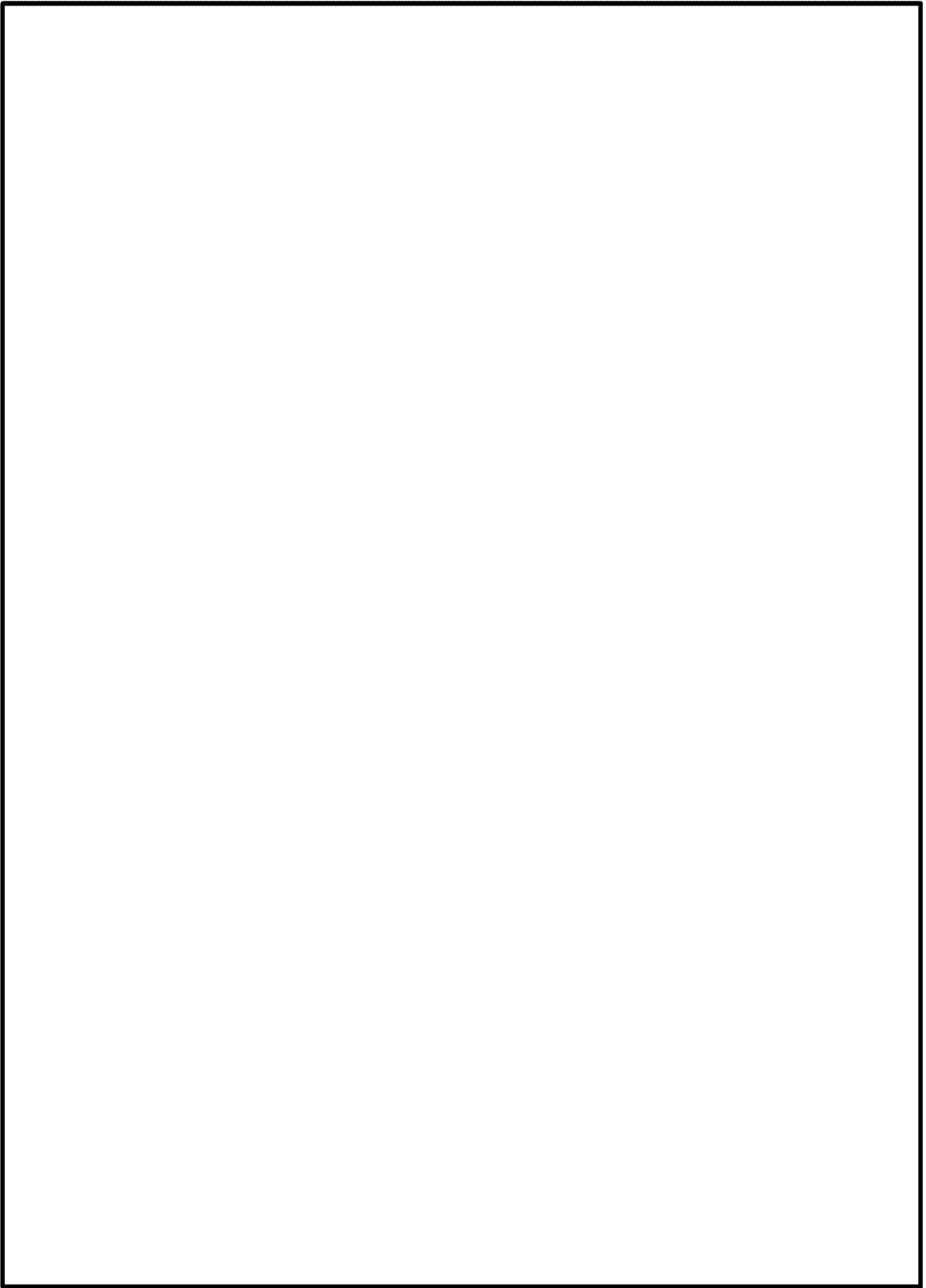


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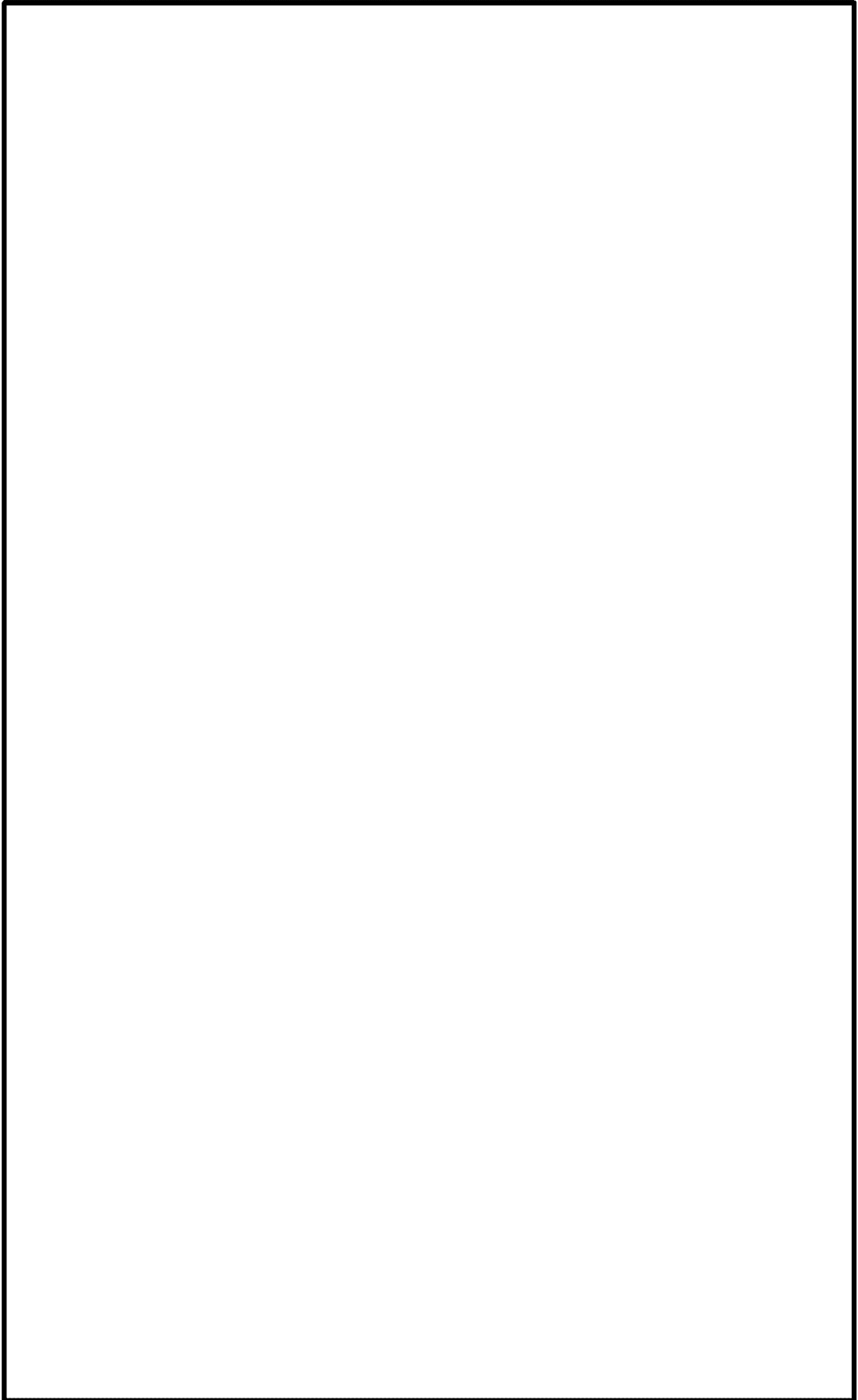




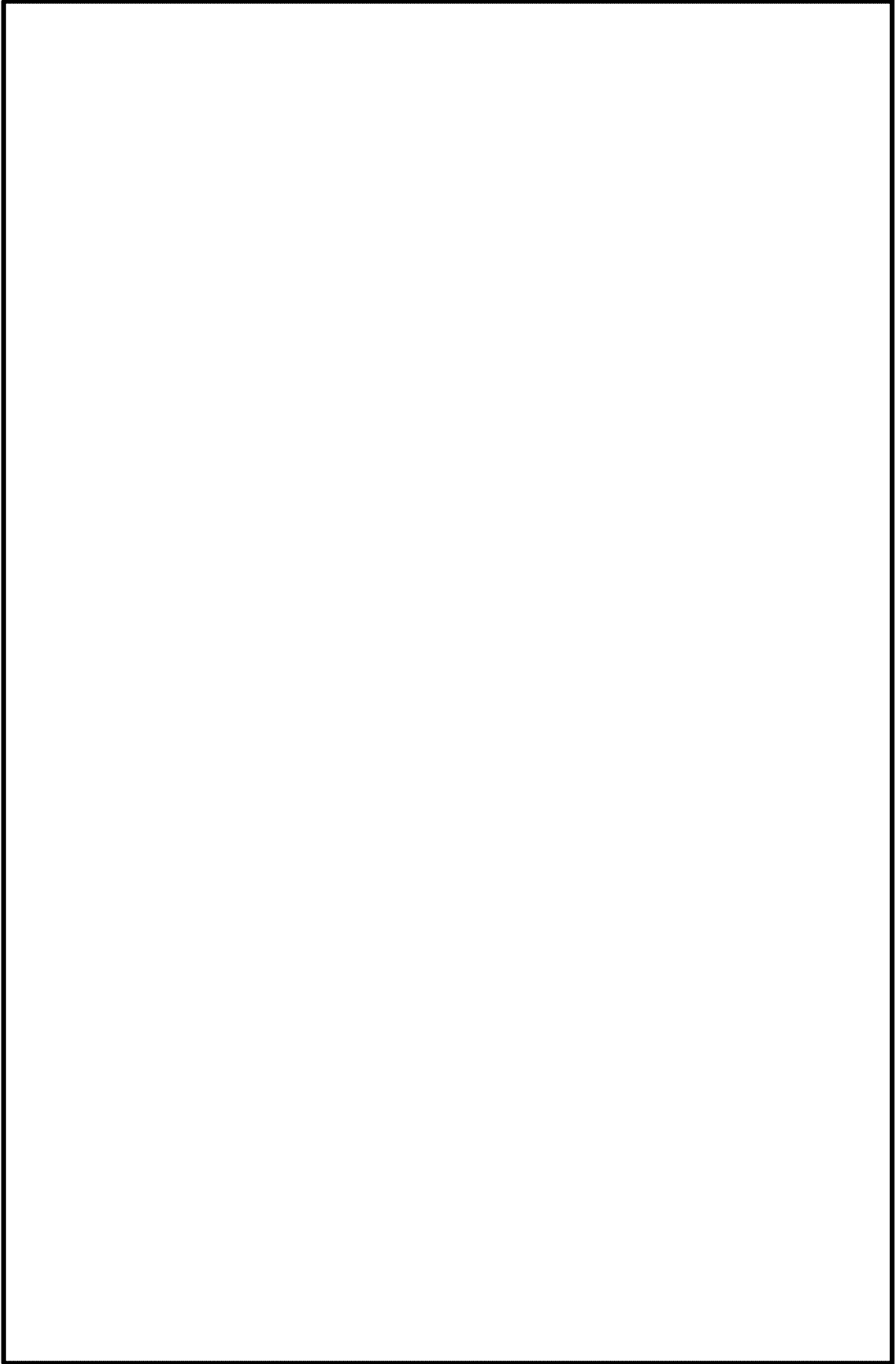




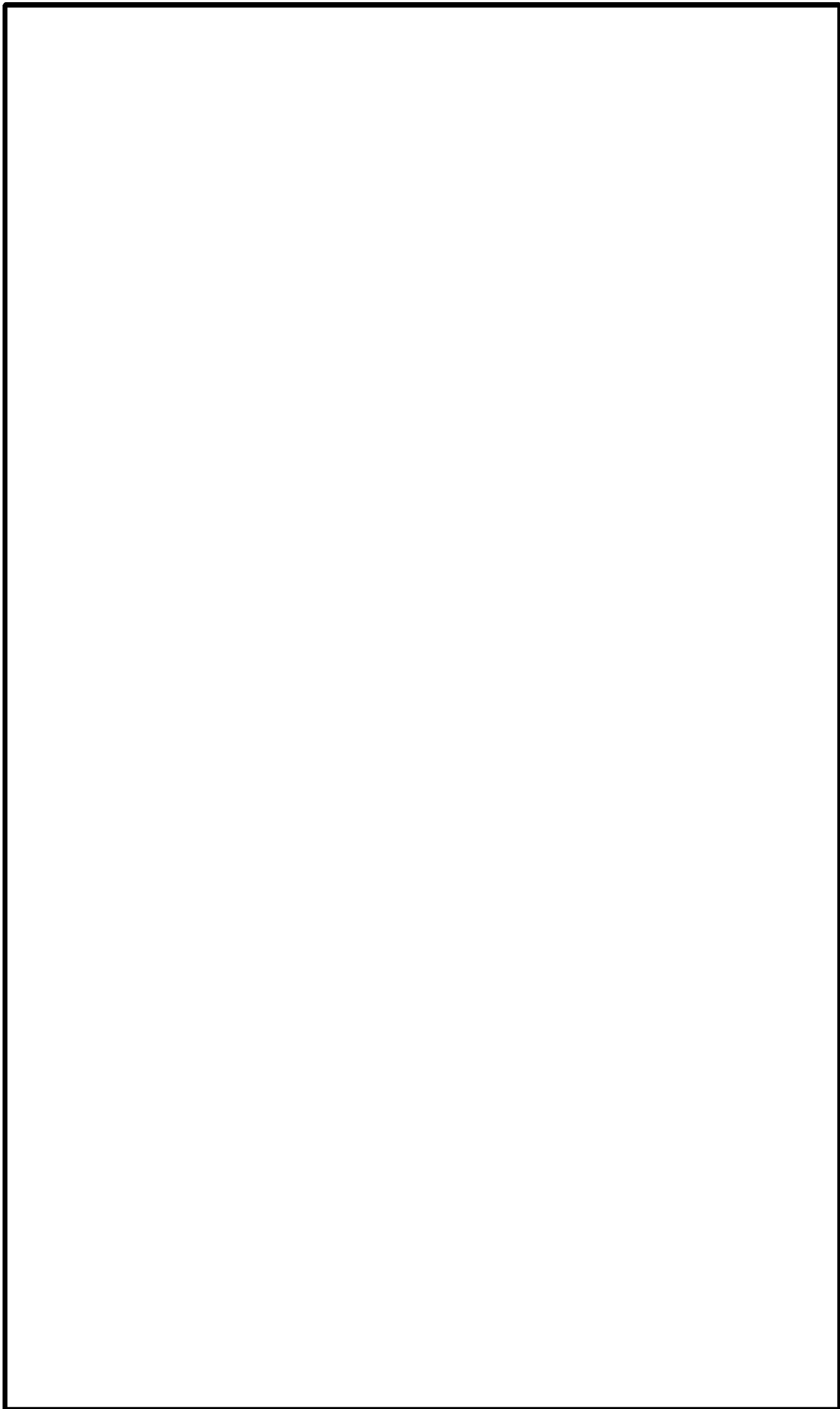
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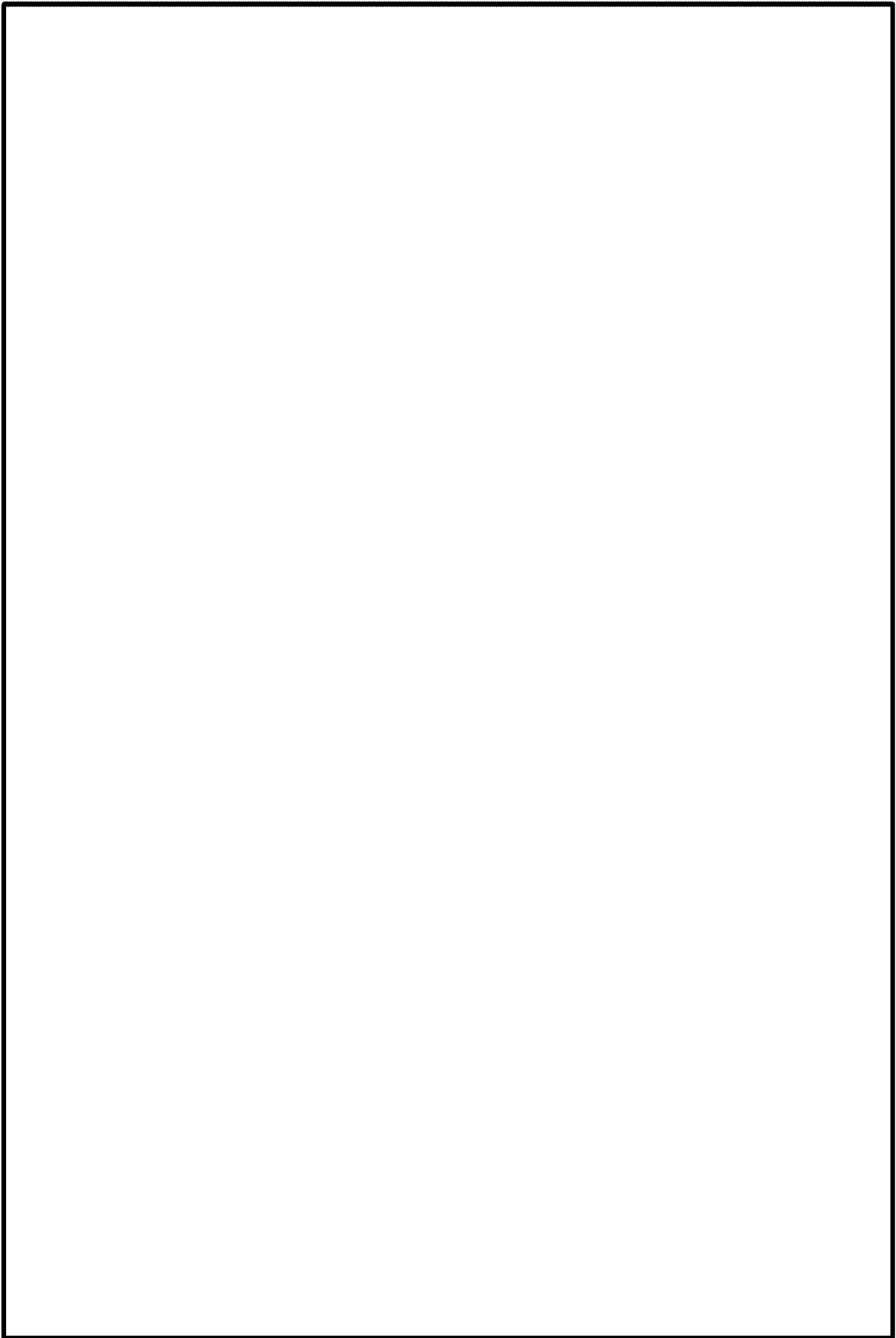
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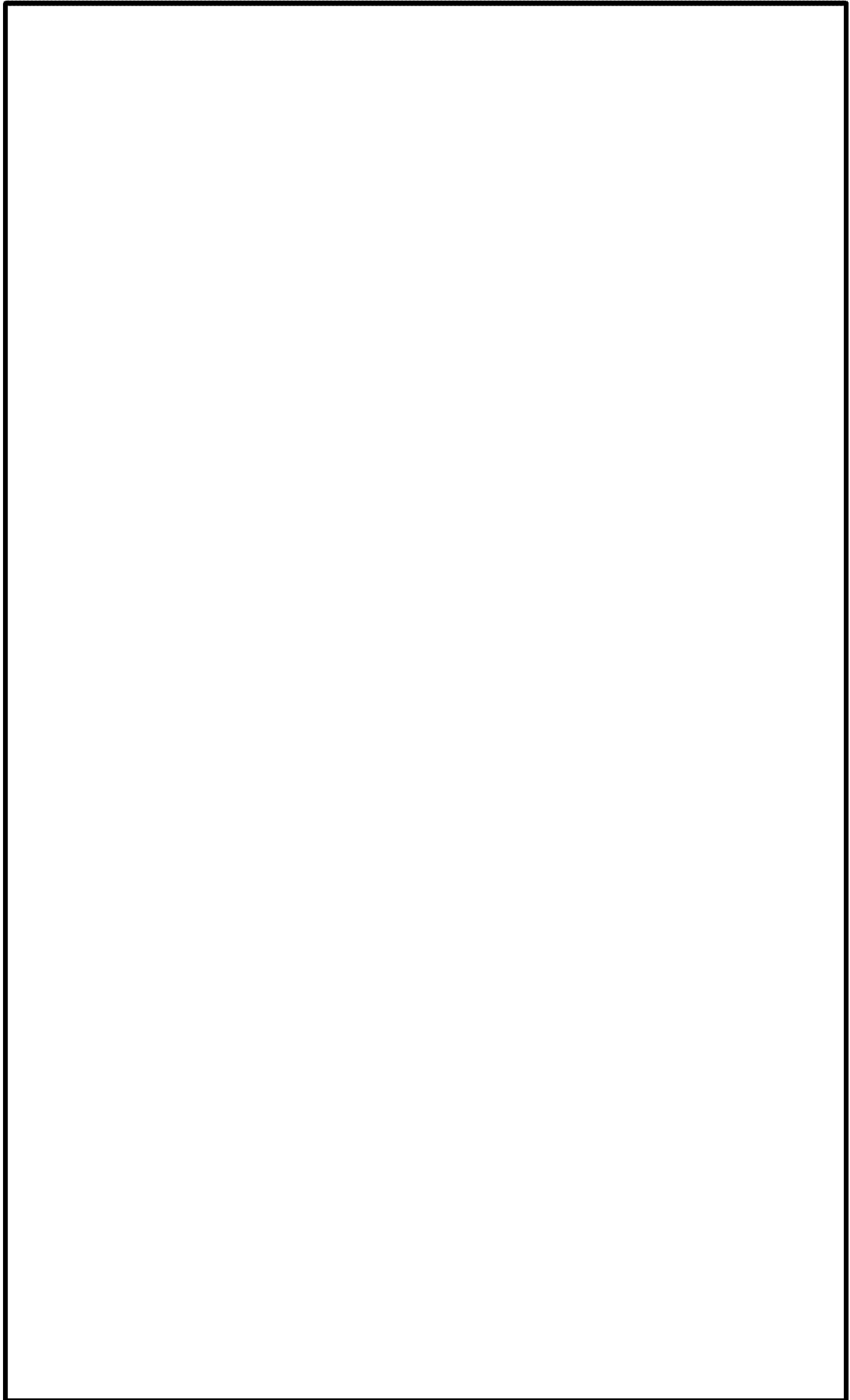
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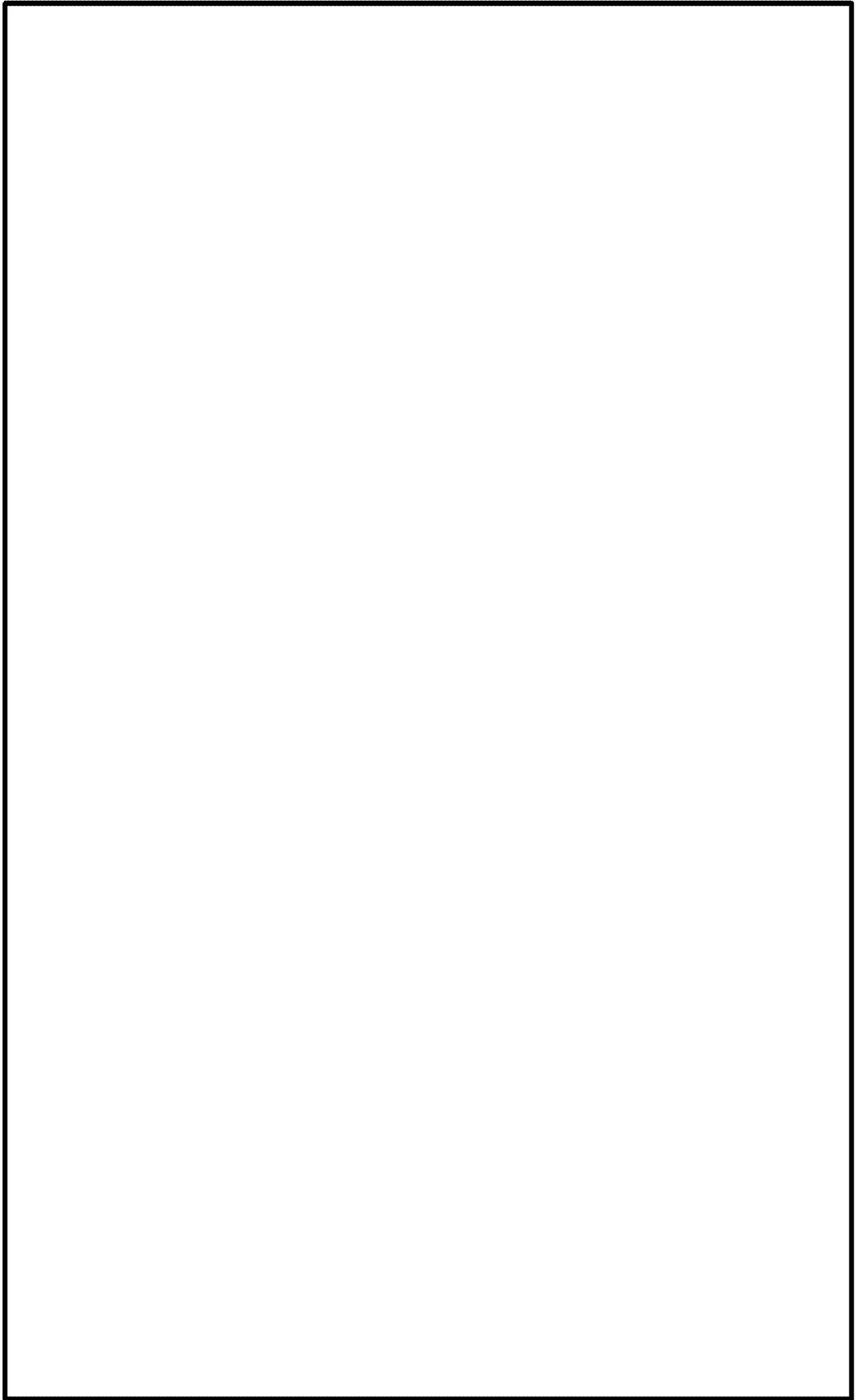
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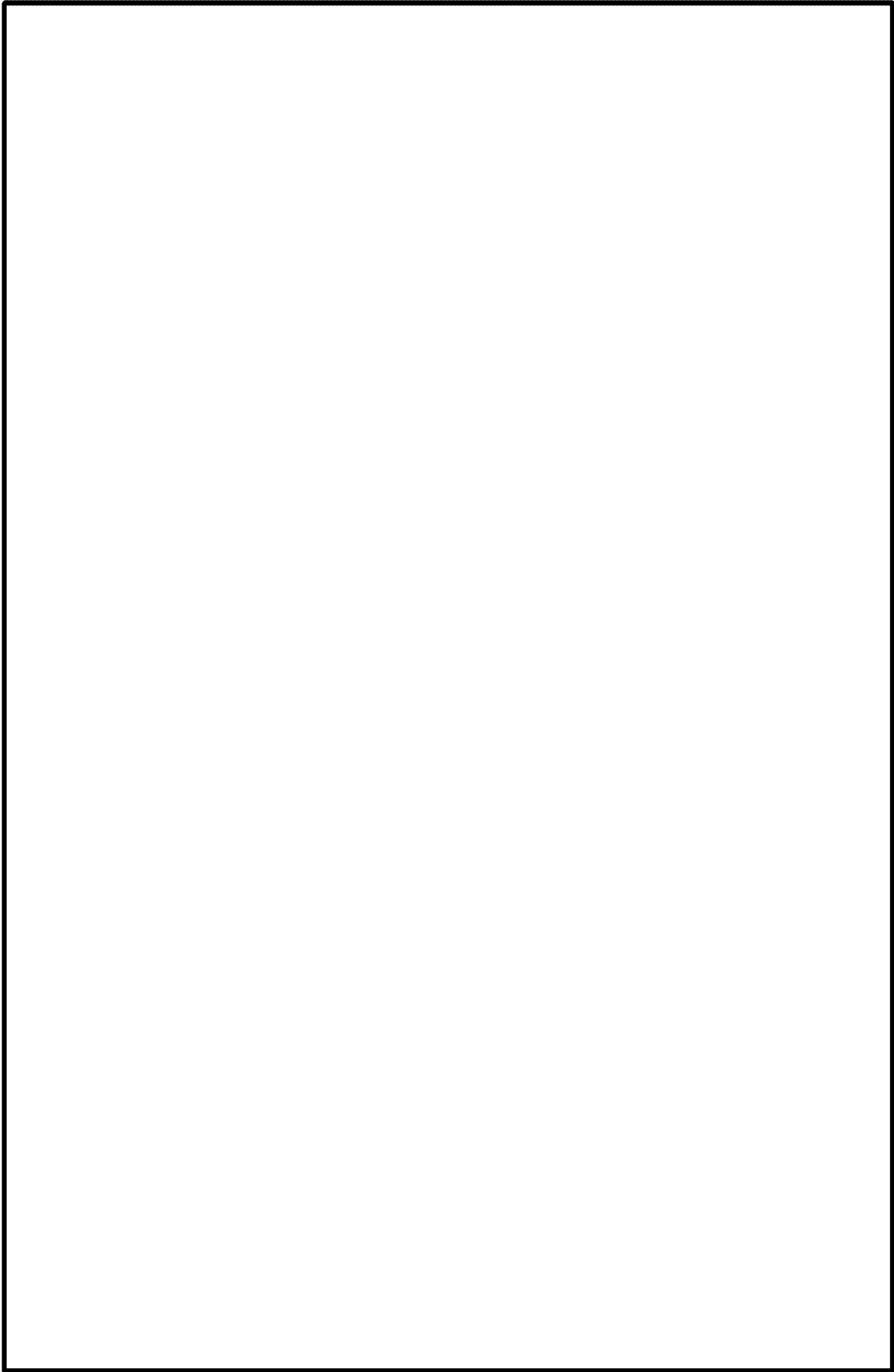
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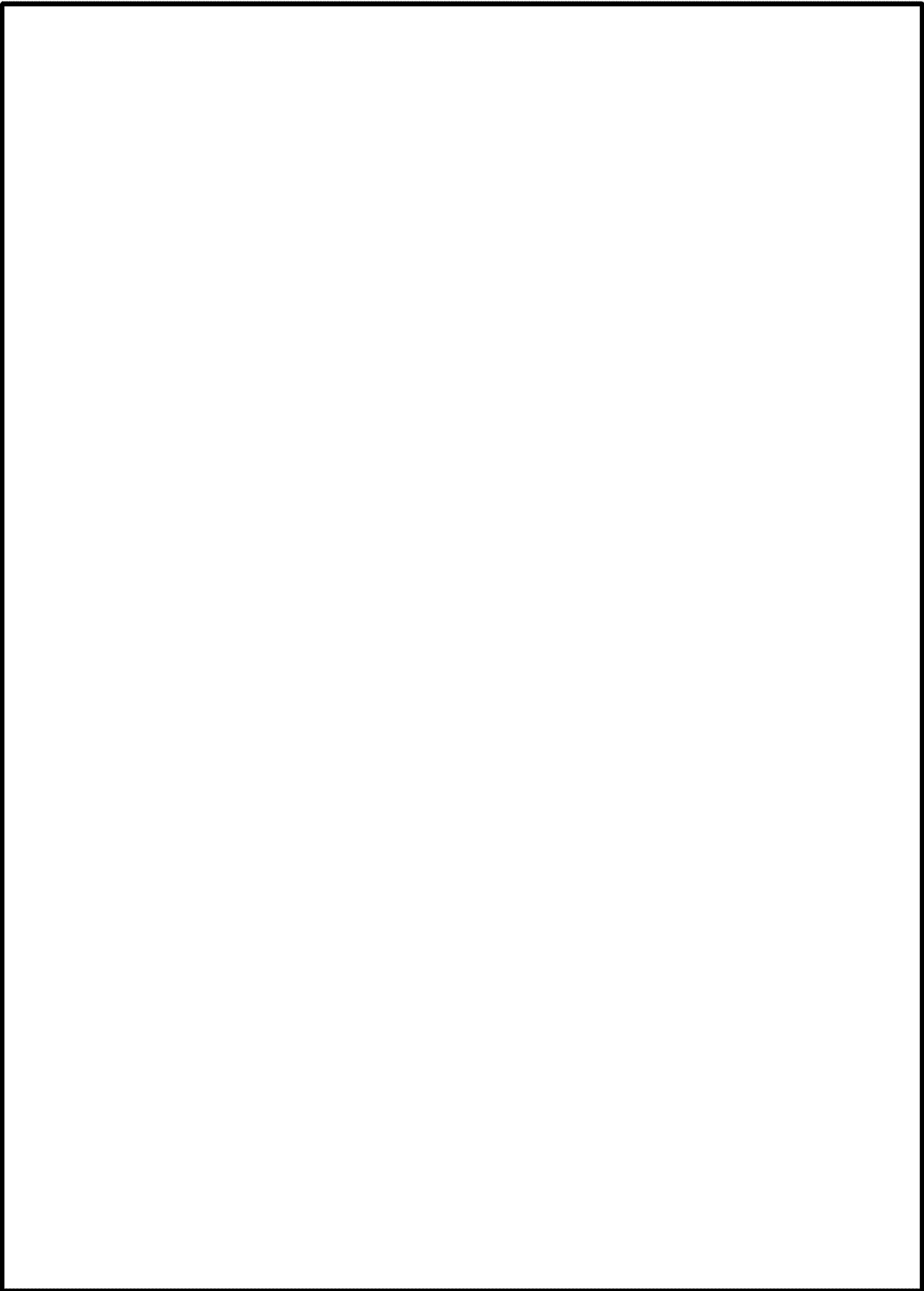
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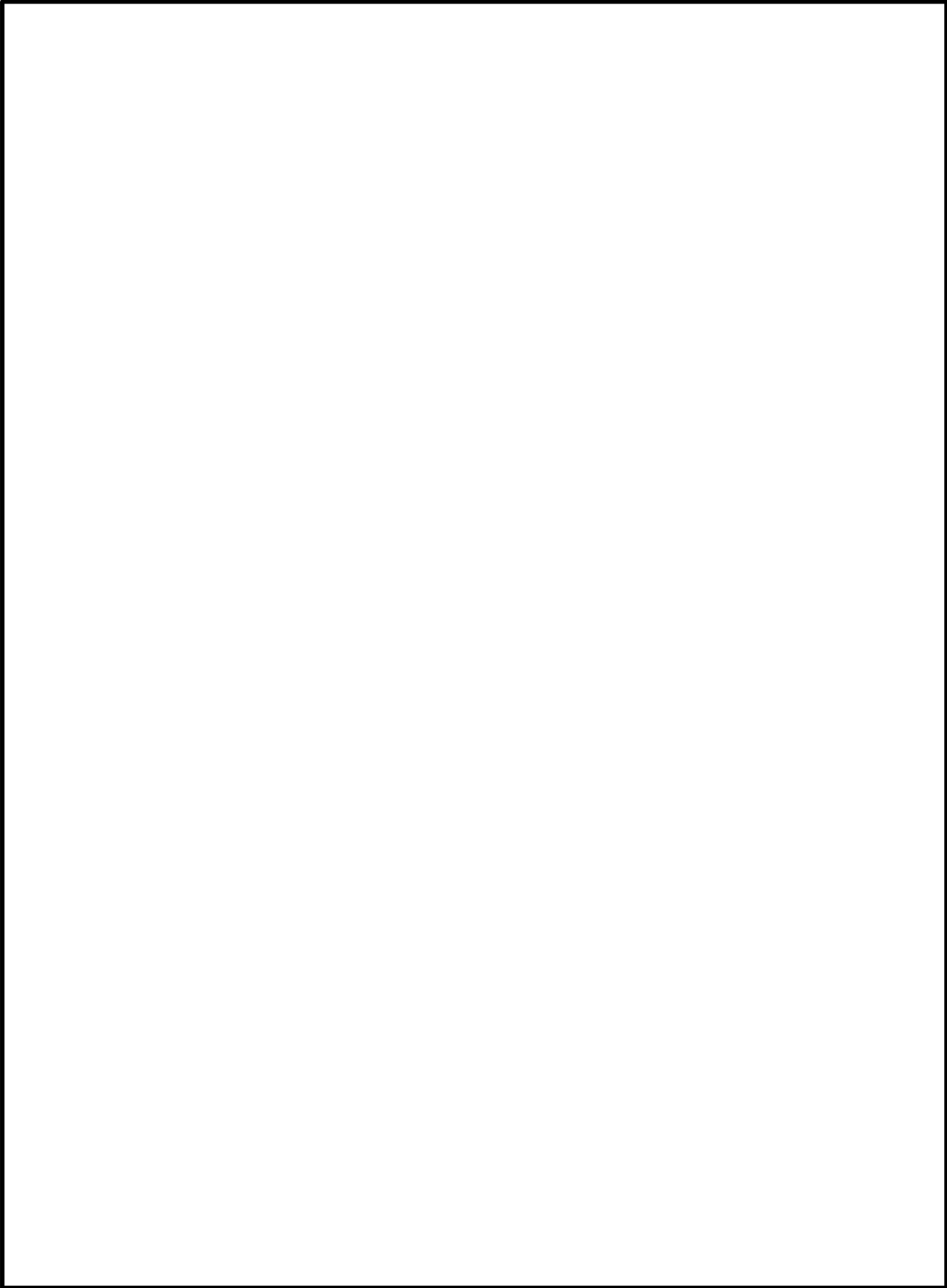
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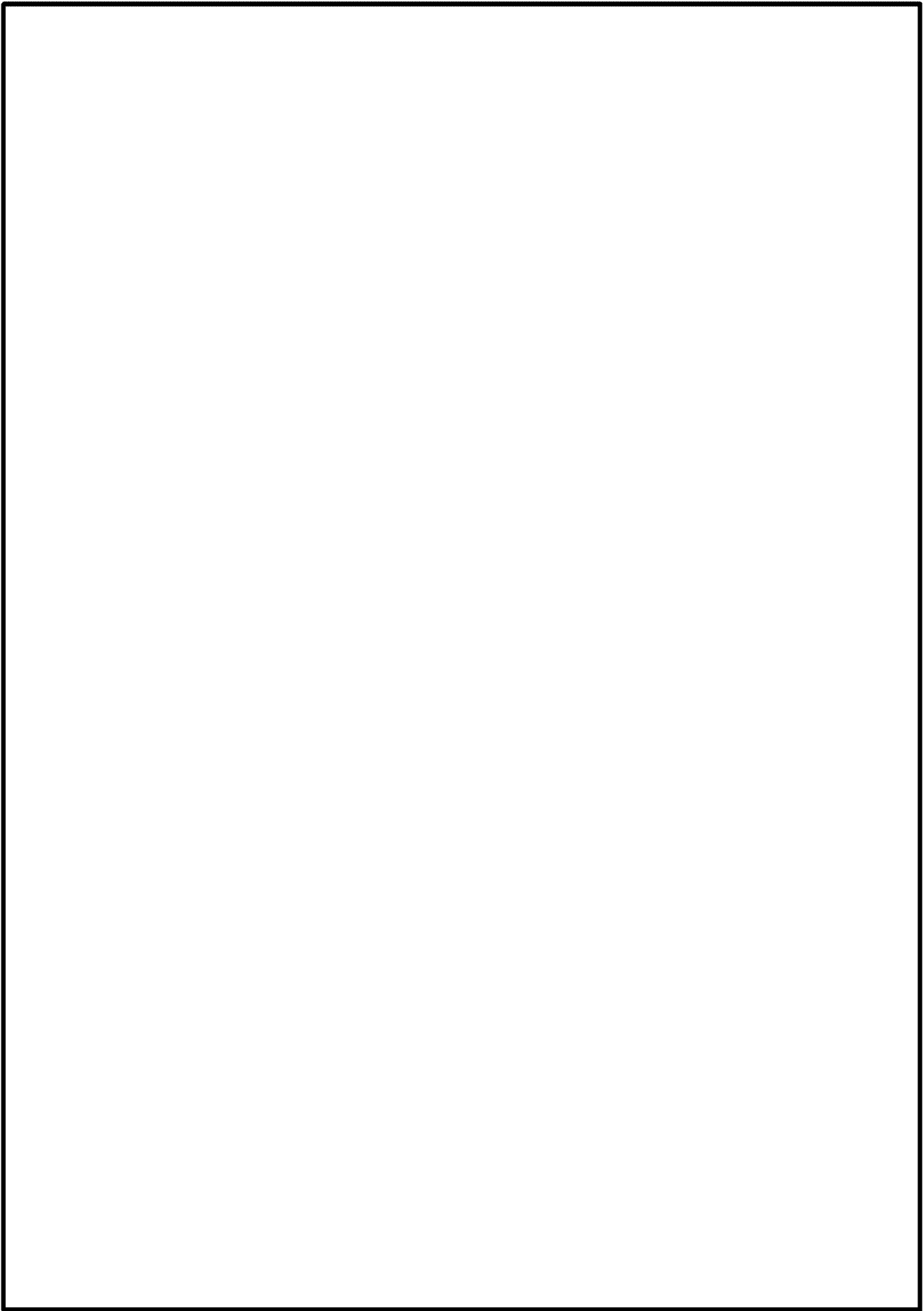




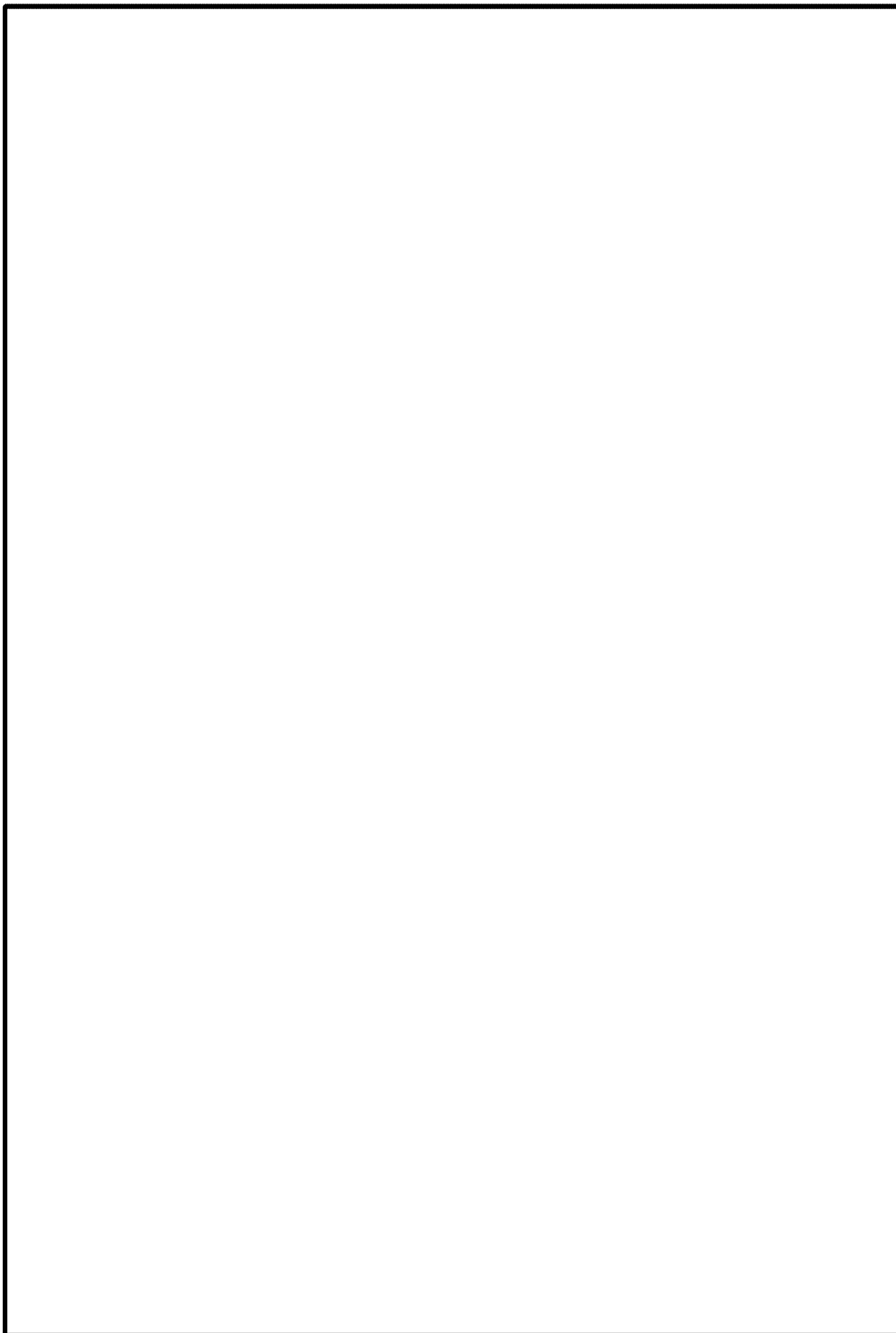


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(b)(7)(e)



## **4 DECISION-MAKING AND WRITING**

### **4.1 Mandatory Nature of the Persecutor Bar**

If you determine that the applicant is subject to the persecutor bar, you cannot approve the case.

In asylum cases, you have no discretion to approve the case, even though the applicant may otherwise qualify for asylum or derivative status. If the asylum applicant is subject to the persecutor bar, you do not weigh that adverse factor against the risk of future persecution in an exercise of discretion. You will either deny the applicant, or if the person is not in status, refer the applicant for an immigration court hearing. See ASM Supplement – Discretion.

In the refugee context, there is no waiver available to an applicant who has been denied based on the persecutor bar. Denial in such cases is mandatory in the overseas context.

### **4.2 Applicability to Dependents**

When a principal applicant is granted asylum or refugee status, his or her spouse and/or children, as defined in the Act, may also be granted status if accompanying or following to join. If the principal applicant is subject to the persecutor bar, neither the spouse nor the child is eligible for asylum or refugee status as a dependent. Conversely, if the principal applicant is not subject to the persecutor bar, but his spouse or his child is subject to the persecutor bar, the principal may be approved and the dependent will be denied or referred.<sup>67</sup>

### **4.3 Relationship to Terrorism-Related Inadmissibility Grounds (TRIG)**

When analyzing the facts before you, it is also important to keep the persecutor bar distinct from the terrorist-related inadmissibility grounds, particularly the bar against material support. Some cases that you review will implicate the applicability of both bars. Under the TRIG analysis, the amount of support need not be large or significant, whereas in the persecutor bar analysis, an applicant must be found to have “ordered, incited, assisted, or otherwise participated” in the persecution.

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<sup>67</sup> INA § 101(a)(42)(B); INA § 207(c)(2); 8 C.F.R. § 208.21(a).

Another distinction between these grounds arises regarding application of a duress exception. While the Executive Branch may provide exemptions by policy for applicants who provided material support under duress to designated or undesignated terrorist organizations, as noted above, the Executive Branch is still considering whether a duress exception should be read into the persecutor bar analysis, and what the limits of that exception would be. Although the relevant facts may occasionally overlap, it is important to keep TRIG and persecutor bar concepts distinct when analyzing the facts of the case before you.

### ***Example***

On a few occasions, when the applicant was a medical doctor in Syria, he provided medical care to patients whom he knew were members of several armed groups opposed to the Syrian Government. On one occasion, after a violent protest, the applicant was taken by the police and government agents to a locked area and told to revive a man who had fainted. The applicant provided medical care to the patient until he regained consciousness and was able to faintly speak. The police then made the applicant leave. The applicant saw signs of beating on the patient and feared the patient was beaten again after he left.

In such a situation, depending on the facts, testimony and any other relevant evidence, the applicant's treatment of members of armed groups opposing the Syrian regime could render him inadmissible for engaging in terrorist activity by providing material support to a terrorist organization, although he could be eligible for a TRIG exemption for the voluntary medical care. However, depending on the facts, testimony and other evidence, the applicant might also be subject to the persecutor bar for his medical care to the patient he feared was beaten by the police. The applicant would have to be questioned regarding, for example, his contemporaneous knowledge of the harm, why the patient was harmed, if he knew his medical care assisted in any later harm and if he acted under duress.

## **4.4 Addressing the Bar in your Decision**

See [ASM Supplement – Decision Writing](#).

See [ASM Supplement – Note Taking](#).

See [ASM Supplement – Identity Checks](#).

See [ASM Supplement – One Year Filing Deadline](#).

See [RAD Supplement – Decision Making and Recording](#).

## **5 CONCLUSION**

Adjudicating claims that may involve the persecutor bar present certain challenges. You must carefully consider all relevant evidence in reaching your decision. As always, the law and the facts, rather than your emotions or intuition, must be your guide.

## 6 SUMMARY

### The Rationale behind the Bar

The rationale for the persecutor bar is derived from the general principle in the *1951 Convention relating to the Status of Refugees* that even if someone meets the definition of refugee, i.e., has a well-founded fear of persecution on account of a protected ground, he or she may nonetheless be considered undeserving or unworthy of refugee status.

### Analytical Framework

#### Step One: Determine if there is Evidence of the Applicant's Involvement in an Act that May Rise to the Level of Persecution

- Look for red flags in the evidence to alert you that the persecutor bar may be at issue.
- Evidence may include:
  - the applicant's testimony during the interview;
  - information in the applicant's file indicating his or her involvement in an entity known for committing human rights abuses; and
  - country of origin information (COI).
- If a red flag is present, examine whether there is further evidence of a specific act or acts that may rise to the level of persecution.
- Mere membership in an entity that committed persecutory acts is not enough to subject an applicant to the bar.

#### Step Two: Analyze the Harm Inflicted on Others

- Does the harm inflicted rise to the level of persecution?
- Is there a nexus to a protected ground?
- Was the act a legitimate act of war or law enforcement?

#### Step Three: Analyze the Applicant's Level of Involvement

- Did the applicant *order, incite, assist, or otherwise participate* in the persecutory act(s)?
- Did the applicant know that the persecution was occurring?



- Prior or contemporaneous knowledge is required.
- Did the applicant act under duress?
  - Fully explore this issue for the record and follow Division specific guidance.

**Do Not Confuse Persecutor Bar with TRIG**

It is important not to confuse the persecutor bar with terrorist-related inadmissibility grounds and the security-related mandatory bars to asylum. While some cases may implicate the applicability of both bars, each issue should be analyzed separately.

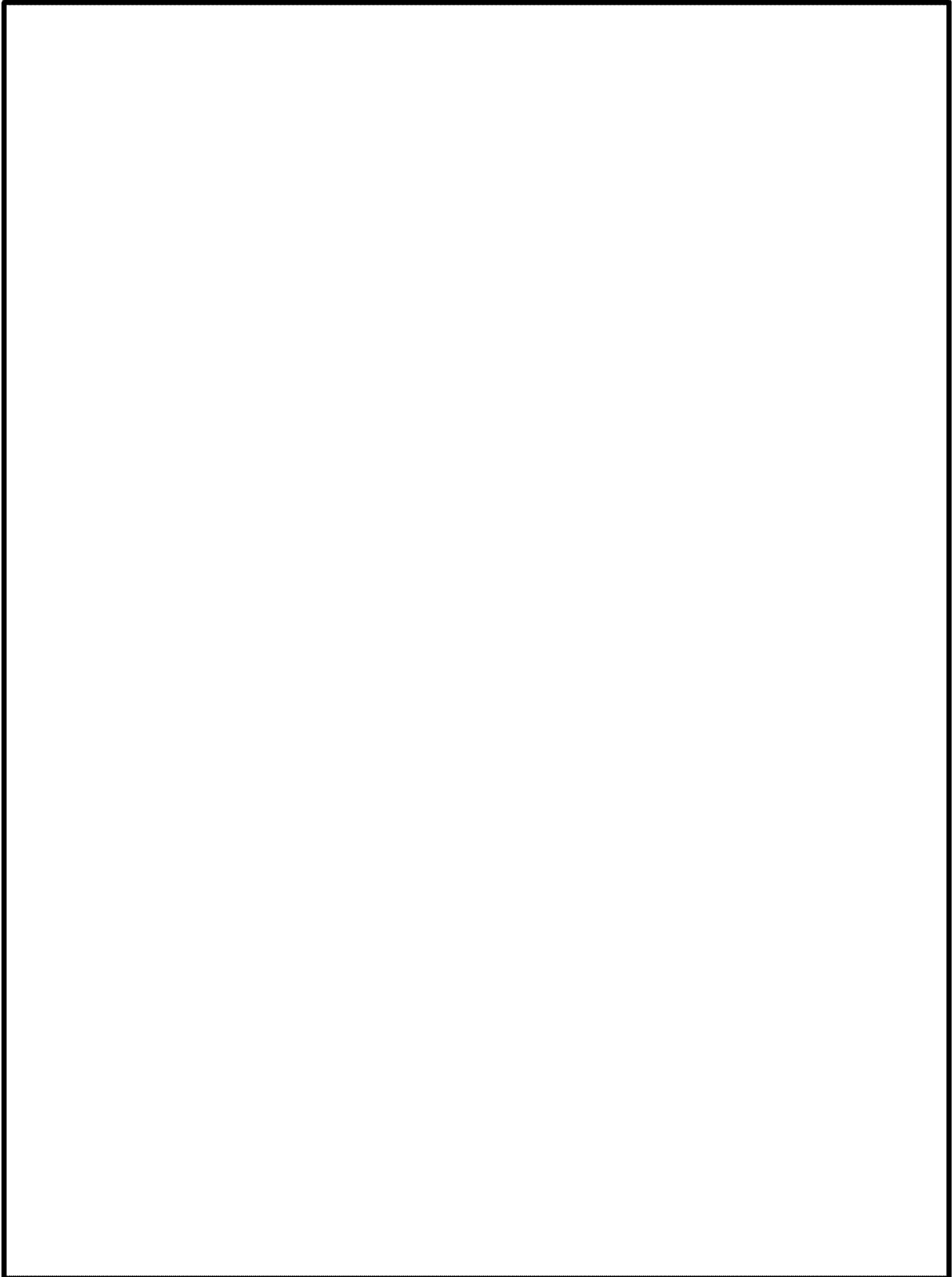
**PRACTICAL EXERCISES**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

OTHER MATERIALS - STEP-BY-STEP PERSECUTOR BAR CHECKLIST

(b)(7)(e)



### SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### **REQUIRED READING**

- 1.
- 2.

#### **ADDITIONAL RESOURCES**

- 1.
- 2.

#### **SUPPLEMENTS**

##### **RAD Supplement – Related Grounds of Inadmissibility**

In addition to analyzing the possible applicability of the persecutor bar to refugee eligibility, when an applicant engages in activity that may have assisted in, or furthered, the harm or suffering of other individuals, the officer must also consider whether related grounds of inadmissibility may apply to the applicant. The related inadmissibility grounds are directed at preventing individuals from entering the United States if they have:

1. Ordered, incited, assisted or otherwise participated in Nazi Persecutions (INA Section 212(a)(3)(E)(i));
2. Ordered, incited, assisted or otherwise participated in genocide (INA Section 212(a)(3)(E)(ii));
3. Committed, ordered, incited, assisted or otherwise participated in torture or extrajudicial killing under the color of law (INA Section 212(a)(3)(E)(iii));
4. Recruited or used child soldiers in violation of section 2442 of title

18, U.S. Code; or

5. As a foreign government official, committed particularly severe violations of religious freedom (INA Section 212(a)(2)(G)).

In the first three inadmissibility grounds, the same analysis of the persecutor bar to refugee status is applicable to the determination of whether an applicant ordered, incited, assisted, or otherwise participated in the relevant activity. Further discussion of these provisions can be found in the Inadmissibility module.

### **RAD Supplement – Decision Making and Recording**

*Please see* Refugee Application Assessment Standard Operating Procedure (SOP): “D. Section IV – BARS AND INADMISSIBILITIES.”

<http://connect.uscis.dhs.gov/org/RAIO/RAD/Documents/SOP%20-%20Assessment%20SOP,%2001-11-12.pdf>

### **RAD Supplement – Duress**

Pursuant to the following guidance, all cases involving persecution committed under duress must be placed on hold for review at RAD Headquarters to ensure the hold is appropriate. When a persecutor hold is appropriate, the applicant may be informed by the RSC regarding his or her options, which may include remaining on long-term hold with RAD, requesting a denial or withdrawing from the USRAP in hope of resettlement in another country. Given the grave consequences for applicants, it is vital that refugee officers elicit all relevant testimony to ensure that the persecutor bar does, in fact, apply. Testimony must be elicited regarding issues such as the applicant’s level of involvement in persecution and his or her prior or contemporaneous knowledge of the persecution.

#### **Response to Query**

**Date:** June 30, 2009

**Subject:** Persecution Committed Under Duress

**Keywords:** Duress, Persecution, Bars, *Negusie*

**Query:** In light of the recent *Negusie* ruling, what should officers do with cases in which applicants are found to have ordered, incited, assisted or otherwise

participated in the persecution of others if such actions were taken under duress?

**Response:** Effective immediately, officers must place on hold any case in which a refugee applicant is found to have ordered, incited, assisted or otherwise participated in the persecution of others *if such actions were taken under duress*. Supervisors are requested to keep track of all cases (including case numbers) placed on hold pursuant to this instruction in their standard trip report. Where IO staff serve as a team leader or otherwise oversee adjudication of refugee processing (either through nomad circuit rides or as part of the regular IO workload), IO staff should send to RAD Headquarters, through the Overseas District chain of command, a list of the cases on hold, including A-numbers, and note the reason for placement on hold as an applicant found to have ordered, incited, assisted or otherwise participated in the persecution of others while under duress.

While no duress exception to the persecutor bar currently exists, the requirement to place such cases on hold has been made at the request of the Department of Homeland Security's Office of the General Counsel in light of the March 3, 2009, Supreme Court decision in *NEGUSIE v. HOLDER*.

The issue presented by the case is whether the provision of the Immigration and Nationality Act that prohibits the finding that an individual is a refugee if he/she has engaged in the persecution of others applies to those who were compelled to do so under duress (for example, coercion through physical harm or threats of death or torture.) The petitioner in the case, Negusie, at age 18, was forcibly conscripted by Eritrean military forces in the longstanding war with Ethiopia. On account of his Ethiopian heritage, however, Negusie refused to fight against those he deemed his "brothers." He served roughly two years in prison on account of his refusal. Following his term of imprisonment, Negusie was directed to serve as a guard at the same prison where he had been held. Torture reportedly is common at the prison. Based on his work as a prisoner, the Fifth Circuit denied Negusie relief, finding the forcible service as a prison guard is irrelevant to deciding applicability of the bar.

The Court asserted that, "...the BIA and the Court of Appeals misapplied *Fedorenko*. We reverse and remand for the agency to interpret the statute, free from the error, in the first instance." The Court held that simply because the INA is silent on a duress exception doesn't mean that one should or should not exist and held that the BIA should use its interpretive authority to decide the matter.

DHS is assessing the issue at this time to formulate a department position. As such, all USCIS Divisions have been instructed to hold any cases that raise a plausible duress claim. Cases put on hold must contain a *plausible* claim of duress as to any persecutory act *and be otherwise eligible* for the benefit. If there is no plausible duress claim and/or the individual is not otherwise eligible, the case may be denied.

Refugee Officers are accustomed to analyzing duress in the context of TRIG

exemptions. The same factors may be considered when determining whether duress was a factor in the applicant's actions. At a minimum, the persecutory act must have been committed as a response to a *reasonably-perceived threat* of *serious harm*. Lines of inquiry/considerations to assess whether the action was taken under duress include but are not limited to:

(b)(7)(e)



## SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

### REQUIRED READING

- 1.
- 2.

### ADDITIONAL RESOURCES

- 1.
- 2.

### SUPPLEMENTS

#### ASM Supplement - Burden Shifting

The asylum regulations regarding the “mandatory bars” to asylum state that “if the evidence indicates that” an applicant ordered, incited, assisted, or otherwise participated in the persecution of any person on account of one of the five protected grounds, “he or she shall have the burden of proving by a preponderance of the evidence that he or she did not so act.”<sup>68</sup>

As discussed earlier in this module, the burden is on the applicant to establish eligibility.<sup>69</sup> Credible testimony alone may be enough to meet the applicant’s burden. While the applicant has the burden of proving eligibility, you have an equal duty in a non-adversarial interview to elicit detailed testimony from the applicant.<sup>70</sup> If the applicant’s testimony, documents in the record, country of origin information, or other evidence indicates that the persecutor bar may apply, you must question the applicant about his or her possible involvement in persecutory acts. If the applicant denies involvement, you must then determine the credibility of

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<sup>68</sup> 8 C.F.R. § 208.13(c).

<sup>69</sup> 8 C.F.R. § 208.13(a); *UNHCR Handbook, para 196*.

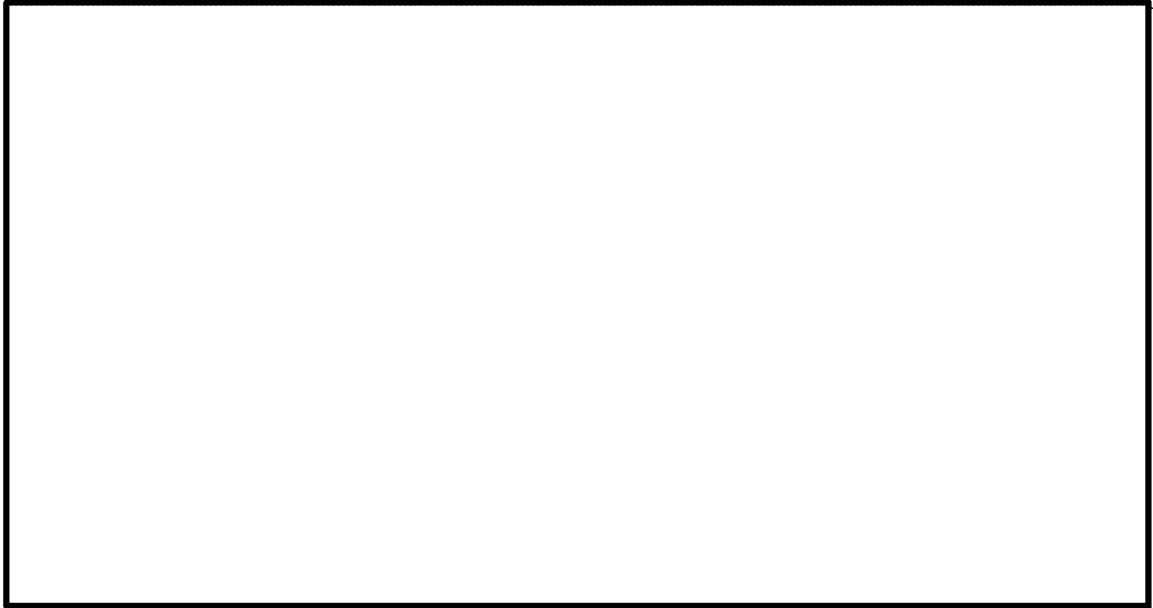
<sup>70</sup> 8 C.F.R. § 208.9(b); *UNHCR Handbook, para 196*, and *205(b)(i)*.



that denial. For additional information regarding credibility determinations and evaluation of evidence, see RAIO Training modules, *Credibility* and *Evidence Assessment*. Just as you must identify inconsistencies and offer the applicant an opportunity to explain, in the instance where it appears the persecutor bar might apply, you must identify the issues of concern and elicit detailed information on which to base the determination. The applicant must establish that he or she is not subject to the persecutor bar by a preponderance of the evidence.

(b)(5)

(b)(7)(e)



**ASM Supplement - Discretion**

There may be some cases in which facts fall short of a mandatory bar to asylum but nonetheless warrant the denial or referral of the asylum application as a matter of discretion, even if the applicant has established refugee status.

Examples:

(b)(5)



(b)(5)

Asylum officers must bear in mind that the sound exercise of discretion requires a balancing of the fact that the applicant qualifies as a refugee, along with any other positive factors, against any negative factors presented in the case. This should be reflected in the assessment.

The likelihood of future persecution is an important factor in the exercise of discretion. A reasonable possibility of future persecution weighs heavily in favor of exercising discretion to grant asylum. The BIA has held that “the danger of persecution should generally outweigh all but the most egregious of adverse factors.”<sup>71</sup>

NOTE: Denials and referrals of applicants who meet the definition of a refugee and are otherwise eligible for asylum, but are denied or referred because of acts that are not a bar to asylum must be reviewed by Headquarters Quality Assurance.

#### **ASM Supplement – Headquarters Review**

Cases involving the persecutor bar require headquarters review. Specifically, Headquarters Quality Assurance will review the following cases involving the persecutor bar:

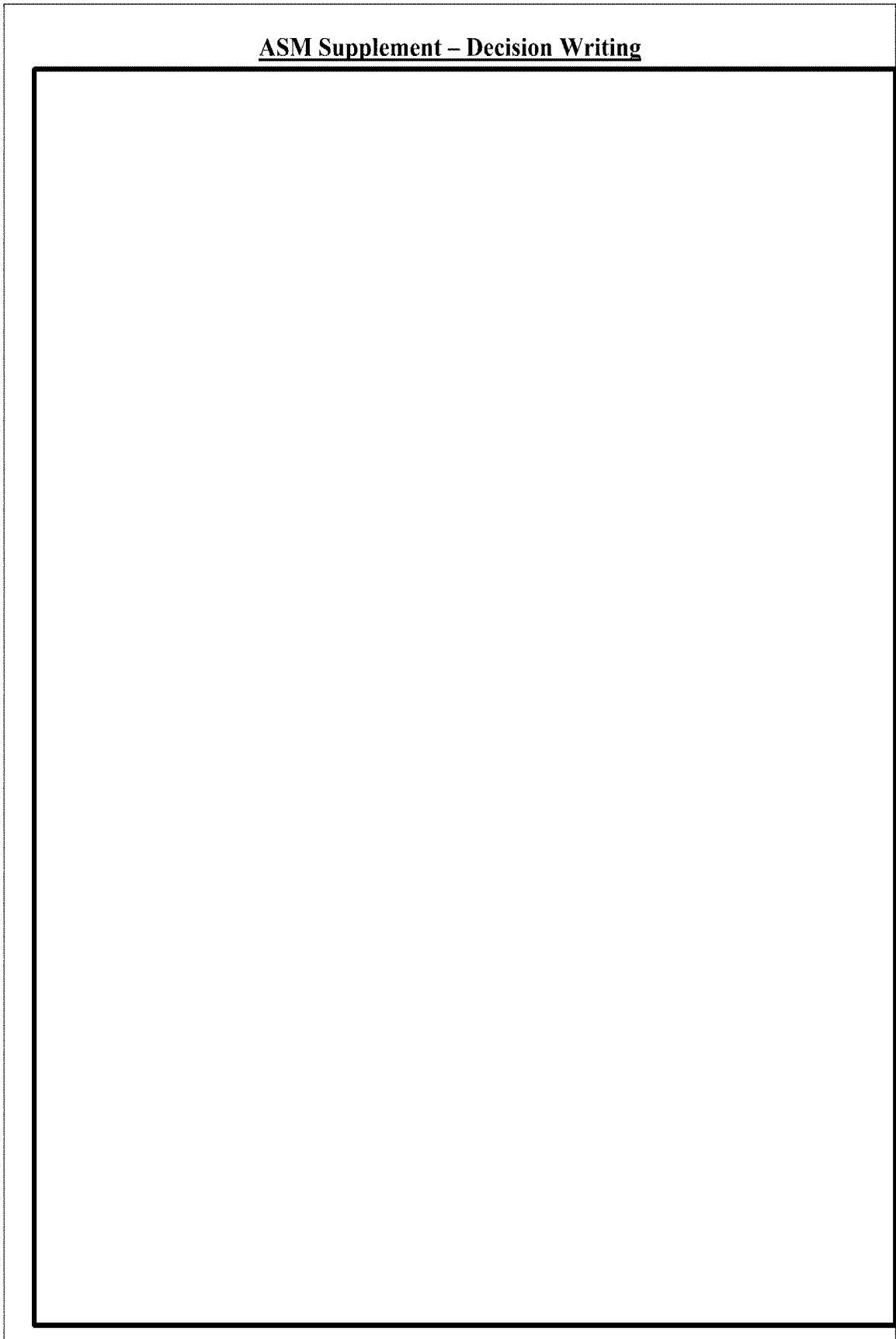
- **Grants** of cases where evidence indicates that the applicant may have ordered, incited, assisted, or otherwise participated in persecution of others on account of any of the five grounds, and the applicant is found to have met his or her burden of proof to establish that he or she should not be barred a persecutor.
- **All Notices of Intent to Deny (NOID) and referrals to the immigration judge** when an applicant is found to be credible and found to be barred as a persecutor.
- **All NOIDs and referrals of credible applicants with cases that involve having committed persecution of others under duress.** Pending finalization of guidance relating to the issue of voluntariness and the persecutor bar, HQ Quality Assurance will put on hold cases where there is evidence of duress and intent.

<sup>71</sup> *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

(b)(5)

(b)(7)(e)

ASM Supplement – Decision Writing



**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**There is no IO Supplement.**

**REQUIRED READING**

- 1.
- 2.

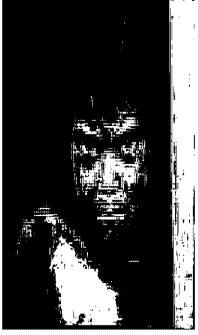
**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**IO Supplement – 1**

**There is no IO Supplement.**



# Updated Procedures for Determining Initial Jurisdiction Over UAC Asylum Applications



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1

Photograph by Hiram A. Ruiz, courtesy of the US Committee for Refugees,



# OBJECTIVES

1-Understand the updated procedures for determining whether USCIS has jurisdiction over an asylum application filed by a UAC.

2-Identify where to locate evidence of prior CBP or ICE UAC determinations.

3-Understand what to do in cases in which CBP or ICE has not made a previous UAC determination.



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# BACKGROUND

- CBP and ICE determine whether a minor is a UAC upon apprehension to determine who will have physical custody over the minor.
- UACs are issued NTAs and placed in removal proceedings.
- ICE directs UACs who wish to apply for asylum to file Form I-589 with USCIS and gives them UAC Instruction Sheet.



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# BACKGROUND

- Up until now, Asylum Officers have been making independent factual inquiries under the UAC definition to determine whether an asylum applicant was a UAC at the time of filing their asylum application, even where DHS had already made a UAC determination.
- Under the current procedures, AOs spend time during the asylum interview asking questions about the applicants' age and making difficult inquiries into the availability of a parent or legal guardian.



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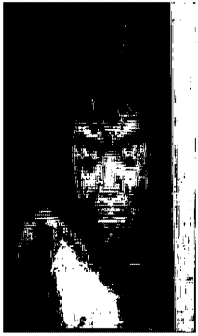


# NEW PROCEDURES

- Effective June 10, 2013, USCIS will adopt a previous CBP or ICE determination that an applicant is a UAC and take jurisdiction over the asylum case.
- USCIS will accept a previous UAC status determination and take jurisdiction, as long as that UAC status determination was still in place at the date of initial filing of the asylum application.
- USCIS will accept this previous determination even if there is evidence that would not support a new determination applicant is a UAC (e.g., turned 18 years old or reunited with a parent) after being deemed a UAC by CBP or ICE.
- AOs will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant files the initial application for asylum.



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# NEW PROCEDURES

- This change in procedure will save valuable time and resources for Asylum Officers and minimize the number of cases returned to EOIR. This change will also allow AO's to focus on the asylum eligibility part of the determination.
- By taking jurisdiction over the case, the UAC will get a non-adversarial interview and a decision by USCIS on the merits.
- All UAC cases will still require HQ review as juveniles in accordance with the Quality Assurance Referral Sheet.



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# PENDING CASES

- This change applies to all asylum applications in which USCIS has not issued a final decision as of June 10, 2013.
- All pending cases where we found no jurisdiction must be re-examined for jurisdiction based on a previous CBP or ICE UAC status determination.
- If USCIS finds jurisdiction, the case must be re-evaluated based on the merits and revised from a memo-to-file into an assessment.
- Asylum Offices should schedule a follow-up interview if the record is not adequately developed to decide the case on the merits.



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# REFERRED CASES

- If USCIS already referred a case based on lack of jurisdiction before June 10<sup>th</sup>, we will not accept motions to reopen or reconsider the case based on the new procedures.
- AAPM Section III.M, Motions to Reopen and Reconsider, states:

“An Asylum Office Director, or his or her designee, need only consider a motion to reopen or reconsider for a case that has received a *Final Denial* from an Asylum Office. Because referred cases have not received a final decision, they are not entitled to reconsideration”.



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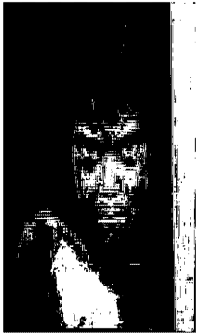
# WHERE TO FIND A PREVIOUS UAC DETERMINATION

- Form I-213: Record of Deportable Alien
- Form 93: CBP UAC Screening Form
- ORR UAC Initial Placement Referral
- ORR Verification of Release Form
- EARM: Encounters Tab

*\*\*\*The ICE UAC Instruction Sheet is NOT by itself  
evidence of a prior UAC determination\*\*\**



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form I-213: Record of Deportable Alien

**UNACCOMPANIED JUVENILE:**  
 .....  
*L.S.E.*

**FUNDS, IN POSSESSION:**  
 .....

Mexican Peso 20.00 *L.S.E.*

**RECORDS CHECKED:**  
 -----

CIS Negative  
 CLAIM Negative  
 IAFIS Negative

**NARRATIVE:**  
 -----

**NOTE:**  
 Subject is an unaccompanied juvenile.

**ENCOUNTER/ALIENAGE:**  
 Subject, [ ] (A# [ ]), DOB: [ ], was encountered by  
 McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form I-213: Record of Deportable Alien

### TRAVEL INFORMATION:

[redacted] stated that she traveled from her home in El Salvador to Chiapas, Mexico then to Altar, Sonora, Mexico by bus. She then crossed the U.S./Mexico International Boundary illegally on foot.

### DISPOSITION:

[redacted] is being served with a Warrant of Arrest/Notice to Appear, and placed in removal proceedings, per Section 212(a) (6) (A) (i) of the INA. She is an unaccompanied juvenile.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## Form 93: CBP UAC Screening Form

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection

### UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name:

A NUMBER (if any)

A \_\_\_\_\_

#### Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?

Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

#### Human Trafficking

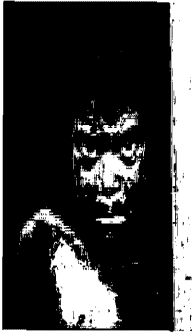
**Definition:** Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## ORR UAC Initial Placement Referral Form

UAC Initial Placement Referral Form

See Footer for Instructions – Updated, 3/25/08

Processing Officer's Name	Email Address	Desk Phone	Cell Phone

### UAC Information

First Name	Middle Name	Last Name	DOB
Additional Names Used:			
Gender	Country of Birth	Immigration Status	A#
	EL SALVADOR	NTA Issued	
			FINS #

### Entry and Apprehension Information

	City and/or Location Code	ST	Date	Time	Type
Entry	SASABE	AZ	12/17/2010	10:00 AM	Entered Without Inspection
Apprehension	SASABE	AZ	12/18/2010	3:00 PM	N/A
Current Location	TUCSON	AZ	N/A	N/A	Processing Center


<b>UAC apprehended with:</b> (Choose more than one if applicable)	Please provide the following for all relatives apprehended with the AUC, if more space is needed, use the <i>Referral Notes</i> section at the bottom of the page.		
	Name	A#	Relationship to UAC
<input type="checkbox"/> Parent(s)			
<input type="checkbox"/> Other Related Adult(s)			
<input type="checkbox"/> Related Minor(s)			
<input type="checkbox"/> Smuggler(s)			
<input type="checkbox"/> Non-Related Individual(s)			
<input checked="" type="checkbox"/> Alone			



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION ORR Verification of Release Form



US Department of Health and Human Services

Office of Refugee Resettlement  
Verification of Release Form

**OFFICE OF REFUGEE RESETTLEMENT**  
**Division of Unaccompanied Children's Services**

Name of Minor:	Aliases (if any):	
Minor's Date of Birth:	Minor's A	FINS#:

Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) has released from its custody the above-named minor into the care and custody of:

---

**Acknowledgement of Conditions of Release**

- I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:
- I agree to appear at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).
- I agree to report to the DHS/ICE office if so ordered.
- I agree to notify DHS/ICE if I decide to depart from the United States. I will do this at least 5 days before I actually depart the United States.
- I agree to notify DHS/ICE and EOIR within 5 days of a change of address.



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# WHERE TO FIND A PREVIOUS UAC DETERMINATION

## EARM: Encounters Tab

Person	<b>Encounters</b>	Supporting Info	Case Summary	Actions/Decisions	ATD	Bonds	Comments	Scheduling	Print
--------	-------------------	-----------------	--------------	-------------------	-----	-------	----------	------------	-------

Encounter Details [EOIR Look Up](#)

### Subject Information

FINS:	Criminal Type: <b>N/A</b>	Role:
A-Number:	Agg Felon: <b>N - Not an Aggravated Felon</b>	Role Comment: <b>N/A</b>
Control Name:	Primary Citizenship: <b>GUATEMALA</b>	Processing Disposition: <b>Warrant of Arrest/Notice to Appear</b>
First Name:	Hair: <b>BLK</b>	INS Status: <b>Inadmissible Alien</b>
Middle Name: <b>N/A</b>	Eyes: <b>BRO</b>	POE: <b>HIDALGO, TX</b>
Maiden: <b>N/A</b>	Complexion: <b>MED</b>	Entry Date: <b>12/04/2010</b>
Nickname: <b>N/A</b>	Race: <b>W</b>	Entry Class: <b>PWA Mexico</b>
Living?: <b>N/A</b>	Origin: <b>N/A</b>	Apprehension Date: <b>2010-12-04 05:40:00.0</b>
Sex: <b>M</b>	Date of Birth:	Apprehension Location: <b>HIDALGO, TX</b>
Marital Status: <b>Single</b>	Age: <b>20</b>	
SSN: <b>N/A</b>	Age at Encounter: <b>17</b>	
Juvenile Verified: <b>Y</b>	Height: <b>64</b>	
Occupation: <b>CHILD</b>	Weight: <b>130</b>	

**I-213 Narrative** NOTE: Subject is an unaccompanied juvenile. Subject made contact with \_\_\_\_\_ via phone \_\_\_\_\_, ENCOUNTER/ALIENAGE: Subject, \_\_\_\_\_ DOB: \_\_\_\_\_ was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was determined to be a citizen and national of Guatemala with no immigration documents. Subject entered the United States at a place not designated as a port of entry by the Attorney General of the United States and or the Secretary of Homeland Security, the successor, thus subject was not admitted, inspected, or paroled.



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# CASE EXAMPLE

- Juan was apprehended by CBP and is in removal proceedings. His asylum interview with USCIS was on May 23, 2013. The Asylum Officer found no jurisdiction based on the previous UAC determination guidelines and wrote a memo-to-file. QAT reviews the file on Monday, June 10, 2013 before sending it to HQ for review. What should QAT do with Juan's case?
- What happens if the record is not sufficient to decide the case on the merits?





# CASE EXAMPLE

- Claudia was apprehended by CBP and placed in removal proceedings. Her asylum interview with USCIS is on June 16, 2013. When preparing for the interview, the Asylum Officer finds Form I-213, which states, “subject is an unaccompanied juvenile” and an ORR Initial Placement Referral Form in the file.
- Does USCIS have jurisdiction over Claudia’s asylum case?
- Does USCIS still have jurisdiction even if Claudia is 20 years old by the time she filed Form I-589?



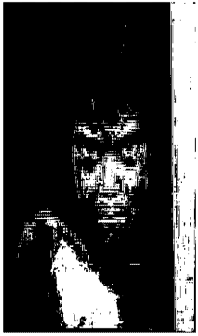
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# CASE EXAMPLE

- Jaime was apprehended, placed into removal proceedings, and transferred to ORR custody when he was 17 years old. When Jaime turned 18, ICE took him into custody and affirmatively terminated the prior UAC determination.
- Does USCIS have jurisdiction over Jaime's asylum case?





# IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE

## IF APPLICANT IS IN REMOVAL PROCEEDINGS

- Asylum Officer determines if the applicant was a UAC on the date of the initial filing of the asylum application to establish if USCIS has jurisdiction and if the 1-year filing deadline applies.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determinations using previous guidance on examining the applicant's age and unaccompanied status.



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# CASE EXAMPLE

- Leo and his father were apprehended at the border by CBP in 2012 and placed in removal proceedings. His father was removed to their home country shortly after. Leo tells the IJ that he wants to apply for asylum and that he is unaccompanied.
- Does USCIS have jurisdiction over Leo's asylum application if he was 16 years old when he filed Form I-589?
- What happens if the Asylum Officer finds out during the interview that Leo has been living with his mother in the United States since 2012?
- What happens if Asylum Officer finds that USCIS does not have jurisdiction?



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# IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE IF APPLICANT IS NOT IN REMOVAL PROCEEDINGS

- Asylum Officer examines whether the applicant was a UAC on the date of the initial filing of the asylum application to determine if 1-year filing deadline applies.
- Jurisdiction is not at issue in these affirmative applications.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determination using previous guidance on examining the applicant's age and unaccompanied status.



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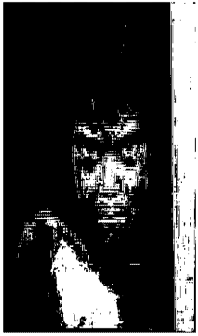


# CASE EXAMPLE

- Jenny entered the United States in 2009 and has been living with her teenage friends in Texas since then. She was never apprehended and has never been in removal proceedings. She files Form I-589 with USCIS in 2013 at the age of 17.
- Does USCIS have jurisdiction over Jenny's asylum case?
- Does the Asylum Officer need to determine if Jenny is a UAC? Why or why not?



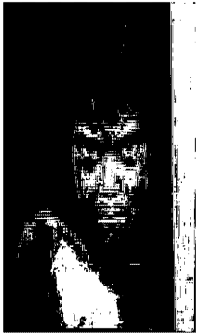
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# CREDIBLE & REASONABLE FEAR

- UACs should be placed in Section 240 removal proceedings and should not be subject to expedited or administrative removal.
- If the evidence indicates that a UAC was mistakenly put through the APSO process, the officer must make a UAC determination and communicate the findings to ICE or CBP as appropriate.





# SUMMARY

- The new procedures are effective June 10, 2013. All AOs in the field need to be trained by this date.
- USCIS will accept a previous CBP or ICE determination of an asylum applicant's UAC status and take jurisdiction over the asylum case if that determination was still in place on the date of filing.
- If CBP or ICE have NOT made a previous UAC determination, USCIS must determine whether the applicant is a UAC using previously issued guidance.



**92. NOTICE OF LACK OF JURISDICTION (NON-UAC)**  
(RFGM Nov. 2015)

**Notice of Lack of Jurisdiction (Non-UAC)**

This letter refers to your Form I-589, *Application for Asylum and for Withholding of Removal*, filed with U.S. Citizenship and Immigration Services (USCIS).

On «Date», you were served with an I-862, *Notice to Appear*, and placed in immigration proceedings in front of an immigration judge. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amends the Immigration and Nationality Act to give USCIS initial jurisdiction over an asylum application filed by an Unaccompanied Alien Child (UAC). As defined at 6 U.S.C. § 279(g)(2), an Unaccompanied Alien Child means:

a child who—

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
  - (i) there is no parent or legal guardian in the United States; or
  - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

USCIS has determined that we do not have initial jurisdiction over your asylum application as a UAC for the following reason(s):

- You were \_\_\_\_ years old and there was not a prior UAC determination still in place at the time of filing your I-589.
- You had been determined to be a UAC but that finding had been terminated prior to the date of filing your I-589.
- You were not unaccompanied at the time of filing your I-589 because you had a parent or legal guardian in the United States who was available to provide care and physical custody of you.
- You had a lawful immigration status in the United States at the time of filing your I-589.
- USCIS already adjudicated your I-589 affirmatively on \_\_\_\_\_ and referred it to the Immigration Court.
- Other:

**Need to Appear in Immigration Court:**

Based on the above reason(s), your case has been returned to the immigration judge to continue immigration proceedings. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge, and your request will be considered (without filing another application) when you appear at your next immigration hearing or at a time to be determined by the Immigration Court. The determinations that we have made in returning your application are not binding on the immigration judge, who will decide your case again. You must appear in Immigration Court for all scheduled hearings before the immigration judge.

**WARNING: Currently jurisdiction over your asylum application is with the Immigration Court. You**

**must attend all scheduled hearings with the Immigration Court or you may be ordered removed from the United States.**

**Change of Address:**

Because you have been placed in removal proceedings, you must notify the Immigration Court within five days of any change of address by completing Form EOIR-33, *Alien's Change of Address Form/Immigration Court*, and submitting the Form EOIR-33 to the Immigration Court where your proceedings have been referred. Form EOIR-33 is available on the Department of Justice website at [www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm](http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm)

**Employment Authorization:**

If you applied for asylum on or after January 4, 1995, you are subject to a 150-day waiting period before you can apply for employment authorization, and an additional 30 days before employment authorization can be approved, for a total of 180 days. The number of days a completed asylum application is considered pending does not include any delays requested or caused by you while your application is pending with the Asylum Office or with an immigration judge. See Title 8, Code of Federal Regulations section 208.7. This time period during which your asylum application must be pending with USCIS and/or the Executive Office for Immigration Review before you may be granted an employment authorization document (EAD) is called the "180-day asylum EAD clock."

Delays requested or caused by you while your application was pending with the Asylum Office may include:

- a request to transfer your case to a new Asylum Office or interview location, including when the transfer is based on a new address;
- a request to reschedule your interview for a later date;
- failure to appear at your interview or fingerprint appointment;
- failure to provide a competent interpreter at your interview;
- a request to provide additional evidence after your interview; and
- failure to receive and acknowledge your asylum decision in person (if required).

Less than 150 days have elapsed since your asylum application was first filed in accordance with 8 C.F.R. §§ 208.3 and 208.4. Therefore, you are currently not eligible to apply for employment authorization pursuant to 8 C.F.R. § 274.a12(c)(8) and provided in 8 C.F.R. § 208.7. The earliest possible date you are eligible to apply for employment authorization is «**Projected Date**». If an immigration judge does not deny your asylum application within the 150-day waiting period, then you will be eligible to apply for employment authorization. If you fail to appear for the scheduled hearing before the immigration judge and this failure is not excused, employment authorization will not be granted. As of the date of this notice, your asylum application was pending «**CLKDaysElapsed**» days.

This calculation includes the number of days that have elapsed since your asylum application was filed with USCIS, not including any delays caused or requested by you, or any days elapsed since the lodging or filing of an asylum application before Executive Office for Immigration Review.

If you have not attained 18 years of age by the time of this letter, please note that federal employment authorization does not guarantee you will be old enough to be eligible to work in the state where you reside. Each state also has its own laws relating to employment, including the employment of minors. Many states have enacted child labor laws, some of which may have a minimum age for employment which is higher than the federal minimum age. Please visit the U.S. Department of Labor website at <http://www.dol.gov/> for more information.

**68. REFERRAL NOTICE FOR FAILURE TO APPEAR**  
(RFGM Nov. 2015)

**Referral Notice for Failure to Appear**

This letter refers to your Form I-589, *Application for Asylum and for Withholding of Removal*, filed with U.S. Citizenship and Immigration Services (USCIS).

You previously received notice from USCIS requiring you to appear for an interview regarding your asylum application. On «**InterviewDate**», you failed to appear for your asylum interview. You did not submit a written request to reschedule your interview within 45 days after your missed interview, or you failed to establish “good cause” for your request to reschedule.

Therefore, your asylum application has been referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request that the immigration judge consider your asylum application, and you may amend your application when you appear before the immigration judge at the date and time listed on the attached charging document (Form I-862, *Notice to Appear*). The immigration judge will evaluate your asylum claim independently and is not required to rely on or follow the decision made by USCIS. This referral includes the derivative family member(s) included in your asylum application, who are listed above.

You may request that the Asylum Office make a determination as to whether “exceptional circumstances” existed for your failure to appear at your asylum interview, which is a higher standard than good cause. If you do not establish exceptional circumstances for your failure to appear at your asylum interview, you may be ineligible for employment authorization. Title 8, Code of Federal Regulations, section 208.7(a)(4).

Exceptional circumstances is defined in the Immigration and Nationality Act (INA), section 240(e)(1) as:

“circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.”

Exceptional circumstances are not limited to the express examples provided at INA section 240(e)(1). The Asylum Office will examine the facts and circumstances of your case to determine if you have demonstrated exceptional circumstances.

To request that the Asylum Office find that exceptional circumstances existed for your failure to appear at your asylum interview, you must take the following steps:

- Submit to the Asylum Office by mail, fax, or email a written explanation describing in detail the exceptional circumstances which caused your failure to appear. You must also include an explanation for any delay between your missed interview date and your request to reschedule your interview because of exceptional circumstances.
- Include any available documents that support your explanation. These documents may include, but are not limited to, medical records, police reports, and birth/death certificates.
- Any document that is not in English must be accompanied by a full English language translation, along with a certification by a translator that the translation is complete and accurate, and that the translator is competent to translate from the relevant language into English.



If you submit a request to the Asylum Office to demonstrate exceptional circumstances, the Asylum Office will send you written notice of its determination as to whether or not you established exceptional circumstances for missing your asylum interview and the next steps for you to take. If you have established exceptional circumstances, and you are currently in removal proceedings, the Asylum Office cannot reopen your asylum application and reschedule you for an asylum interview unless the immigration judge dismisses your removal proceedings.

**Employment Authorization:**

If you applied for asylum on or after January 4, 1995, you are subject to a 150-day waiting period before you can apply for employment authorization, and an additional 30 days before employment authorization can be approved, for a total of 180 days. The number of days a completed asylum application is considered pending does not include any delays requested or caused by you while your application is pending with the Asylum Office or with an immigration judge. *See* Title 8, Code of Federal Regulations section 208.7. This time period during which your asylum application must be pending with USCIS and/or the Executive Office for Immigration Review before you may be granted an employment authorization document (EAD) is called the “180-day asylum EAD clock.”

Delays requested or caused by you while your application was pending with the Asylum Office may include:

- a request to transfer your case to a new Asylum Office or interview location, including when the transfer is based on a new address;
- a request to reschedule your interview for a later date;
- failure to appear at your interview or fingerprint appointment;
- failure to provide a competent interpreter at your interview;
- a request to provide additional evidence after your interview; and
- failure to receive and acknowledge your asylum decision in person (if required).

Your 180-day asylum EAD clock stopped on the date you failed to appear for your asylum interview. As of the date you failed to appear for your interview, your asylum application was pending «**CLKDaysElapsed**» days.

**WARNING: Currently jurisdiction over your asylum application is with the Immigration Court. You must attend all scheduled hearings with the Immigration Court or you may be ordered removed from the United States.**

**Change of Address:**

Because you have been placed in removal proceedings, you must notify the Immigration Court within five days of any change of address by completing Form EOIR-33, *Alien’s Change of Address Form/Immigration Court*, and submitting the Form EOIR-33 to the immigration court where your proceedings have been referred. Form EOIR 33 is available on the Department of Justice website at [www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm](http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm).



### **THE 180-DAY ASYLUM EAD CLOCK NOTICE**

#### **What is the 180-day Asylum EAD Clock?**

The “180-day Asylum EAD Clock” measures the time period during which an asylum application has been pending with the U.S. Citizenship and Immigration Services (USCIS) asylum office and/or the Executive Office for Immigration Review (EOIR). USCIS service centers adjudicate the Form I-765, *Application for Employment Authorization*, and use the 180-day Asylum EAD Clock to determine eligibility for employment authorization. Asylum applicants who applied for asylum on or after January 4, 1995, must wait 150 days before they can file a Form I-765. USCIS cannot grant employment authorization for an additional 30 days, for a total 180-day waiting period. This 180-day Asylum EAD Clock does not include any delays applicants request or cause while their applications are pending with an asylum office or immigration court.

#### **What Starts the 180-day Asylum EAD Clock?**

For asylum applications first filed with an asylum office, USCIS calculates the 180-day Asylum EAD Clock starting on the date that a complete asylum application is received by USCIS, in the manner described by the Instructions to the Form I-589, *Application for Asylum and for Withholding of Removal*. If an asylum application is referred from the asylum office to EOIR, the applicant may continue to accumulate time toward employment authorization eligibility while the asylum application is pending before an immigration judge.

For asylum applications first filed with EOIR, USCIS calculates the 180-day Asylum EAD Clock in one of two ways:

- 1) If a complete asylum application is “lodged” at the immigration court window, the application will be stamped “lodged not filed” and the applicant will start to accumulate time toward eligibility for employment authorization on the date of lodging, or
- 2) If the asylum application is not “lodged,” the applicant generally will start to accumulate time toward eligibility for employment authorization on the date that a complete asylum application is filed at a hearing before an immigration judge.

Applicants who lodge an application at an immigration court window must still file the application with an immigration judge at a later hearing.

#### **What stops the 180-day Asylum EAD Clock?**

The 180-day Asylum EAD Clock does not include any delays requested or caused by an applicant while his or her asylum application is pending with USCIS and/or EOIR.

##### **For cases pending with an asylum office:**

Delays requested or caused by an applicant may include:

- A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;
- A request to reschedule an interview for a later date;
- Failure to appear at an interview or fingerprint appointment;
- Failure to provide a competent interpreter at an interview;
- A request to provide additional evidence after an interview; and
- Failure to receive and acknowledge an asylum decision in person (if required).

If an applicant is required to receive and acknowledge his or her asylum decision at an asylum office, but fails to appear, his or her 180-day Asylum EAD Clock will stop until the first master calendar hearing with an immigration judge after the case is referred to EOIR.

If an applicant fails to appear for an asylum interview, the 180-day Asylum EAD Clock will stop on the date of the missed interview, and the applicant may be ineligible for employment authorization unless he or she makes a written request to the asylum office to reschedule the interview within 45 days and demonstrates “good cause” for missing the interview. A request to reschedule an interview with the asylum office that is made after 45 days from the missed interview must demonstrate “exceptional circumstances,” which is a higher standard than good cause. If the applicant

has established exceptional circumstances for missing the asylum interview, and is currently in removal proceedings before an immigration judge, the asylum office cannot reopen the asylum application or reschedule the applicant for an interview unless the immigration judge dismisses the removal proceedings. If the asylum office determines that an applicant's failure to appear for an interview was due to lack of notice of the interview appointment, the asylum office will not attribute a delay to the applicant and the asylum office will reschedule the interview.

For more information about reschedule requests and missed asylum interviews, see "Preparing for Your Asylum Interview" on the Asylum Division's website at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum).

**For cases pending with EOIR:**

Asylum cases pending with EOIR are adjudicated at hearings before an immigration judge. At the conclusion (or "adjournment") of each hearing, the immigration judge will determine the reason for the adjournment. If the adjournment is requested or caused by the applicant, the applicant will stop accumulating time toward the 180-day Asylum EAD Clock until the next hearing. If the adjournment is attributed to the immigration court or the Department of Homeland Security, the applicant will continue accumulating time.

Common reasons why an asylum applicant may stop accumulating time toward the 180-day Asylum EAD Clock include:

- An applicant asks for the case to be continued so he or she can get an attorney;
- An applicant, or his or her attorney, asks for additional time to prepare the case; and
- An applicant, or his or her attorney, declines an expedited asylum hearing date.

Additionally, if an asylum applicant files a motion between hearings that delays the case, such as a motion to continue or a motion to change venue, and that motion is granted, the applicant may stop accumulating time toward the 180-day Asylum EAD Clock. The last page of this notice contains a chart listing reasons for case adjournments and whether these reasons are applicant-caused delays. Additional information regarding codes used by the immigration courts that affect the 180-day Asylum EAD Clock can be found at the Operating Policy and Procedures Memorandum (OPPM) 13-02, *The Asylum Clock*, available at [www.justice.gov/eoir](http://www.justice.gov/eoir).

Further, the accumulation of time toward the 180-day Asylum EAD Clock stops on the date an immigration judge issues a decision on the asylum application. An applicant whose asylum application is denied before 180 days have elapsed on the 180-day Asylum EAD Clock will not be eligible for employment authorization. However, if the decision is appealed to the Board of Immigration Appeals (Board) and the Board remands it (sends it back) to an immigration judge for adjudication of an asylum claim (including Board remands to an immigration judge following an appeal to a U.S. Court of Appeals), the applicant's 180-day Asylum EAD Clock will be credited with the total number of days between the immigration judge's decision and the date of the Board's remand order.

The applicant will continue to accumulate time on the 180-day Asylum EAD Clock while the asylum claim is pending after the remand order, excluding any delays requested or caused by the applicant.

**How do I find more information about the 180-day Asylum EAD Clock?**

Asylum applicants in removal proceedings before EOIR may call the EOIR hotline at 1-800-898-7180 to obtain certain information about their 180-day Asylum EAD Clock. The EOIR hotline generally reports a calculation of the number of days between the date an asylum application was filed with an asylum office or at a hearing before an immigration judge, and the date the immigration judge first issued a decision on the application, not including delays requested or caused by the applicant.

However, in some cases, an applicant may have accumulated more time on the 180-day Asylum EAD Clock than the number of days reported on the EOIR hotline. The number of days reported on the hotline does not include:

- The time an applicant accumulates toward the 180-day Asylum EAD Clock when the applicant has lodged an asylum application at an immigration court window prior to filing the application at a hearing before an immigration judge; or
- The time that USCIS may credit to an applicant's 180-day Asylum EAD Clock if the asylum application was remanded to an immigration judge by the Board for further adjudication of an asylum claim.

To determine the number of days on an applicant's 180-Day Asylum EAD Clock, an applicant may rely on the number of days reported by the EOIR hotline if the applicant has not lodged his or her application at an immigration court window or if the asylum application was not remanded from the Board for further adjudication of an asylum claim.

Applicants who lodged an application at an immigration court window should add the number of days between the date of lodging of the application and when the application was filed at a hearing before an immigration judge (or the current date if the applicant has not yet had a hearing at which the application could be filed).

Applicants whose cases were remanded from the Board for further adjudication of the asylum claim should add the number of days from the immigration judge's initial decision on the asylum application to the date of the Board's order remanding the case. These applicants continue to accumulate time toward the 180-day Asylum EAD Clock after the case is remanded, excluding delays requested or caused by the applicant. For more information on whether a delay is requested or caused by the applicant, please see the previous section.

**What if I think there is an error in the calculation of time on my 180-Day Asylum EAD Clock?**

For questions regarding time accumulated on the 180-day Asylum EAD Clock when an applicant's asylum application is pending with an asylum office, please contact the 180-day Asylum EAD Clock point of contact at the asylum office with jurisdiction over the case. The points of contact can be found on the Asylum Division Web page at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum) under "Asylum Employment Authorization and Clock Contacts."

For cases before EOIR, asylum applicants should address questions to the immigration judge during the hearing, or to the court administrator, in writing, after the hearing. Applicants **should not** file motions related to the 180-day Asylum EAD Clock. If an applicant believes the issue has not been correctly addressed at the immigration court level, the applicant may then contact the Assistant Chief Immigration Judge for the appropriate immigration court in writing. For cases on appeal, applicants may contact EOIR's Office of General Counsel in writing. Please refer to OPPM 13-02 for more details.

**What if I think there is an error in the adjudication of my Form I-765, Application for Employment Authorization?**

USCIS service centers adjudicate the Form I-765. Applicants may contact a USCIS service center through the National Customer Service Center hotline at 1-800-375-5283. Inquiries that cannot be resolved by a customer service representative will be routed to the service center where the Form I-765 was filed. Applicants should receive a response from the service center within 30 days. If more than 30 days pass without a response, applicants may email the appropriate USCIS service center at one of the following addresses:

California Service Center:	<a href="mailto:csc-ncsc-followup@uscis.dhs.gov">csc-ncsc-followup@uscis.dhs.gov</a>
Vermont Service Center:	<a href="mailto:vsc.ncscfollowup@uscis.dhs.gov">vsc.ncscfollowup@uscis.dhs.gov</a>
Nebraska Service Center:	<a href="mailto:nscfollowup.ncsc@uscis.dhs.gov">nscfollowup.ncsc@uscis.dhs.gov</a>
Texas Service Center:	<a href="mailto:tsc.ncscfollowup@uscis.dhs.gov">tsc.ncscfollowup@uscis.dhs.gov</a>

If applicants do not receive an email response from the service center address above within 21 days, applicants may email the USCIS Headquarters Office of Service Center Operations at [SCOPSSCATA@uscis.dhs.gov](mailto:SCOPSSCATA@uscis.dhs.gov).

**What is the ABT Settlement Agreement?**

On April 12, 2013, USCIS and EOIR entered into a settlement agreement in the class action litigation *B.H., et al. v. USCIS, et al.*, also referred to as the ABT Settlement Agreement. Under the terms of the ABT Settlement Agreement, USCIS and EOIR agreed to change certain practices related to asylum cases and the calculation of time for employment authorization eligibility.

The ABT Settlement Agreement has a separate review process for asylum applicants who believe they have not received relief described in the ABT Settlement Agreement. Applicants who believe they have been denied relief under the Agreement should consult the ABT Settlement Agreement and associated documents, and follow the Individual ABT Claim Review process described in the Agreement to resolve their claims. For more information about the ABT Settlement Agreement, visit [www.uscis.gov](http://www.uscis.gov) or [www.justice.gov/eoir](http://www.justice.gov/eoir).

**How do I apply for work authorization?**

For instructions on how to apply for employment authorization, visit the USCIS website at [www.uscis.gov/i-765](http://www.uscis.gov/i-765) and see the Instructions to Form I-765, *Application for Employment Authorization*.

# ADJOURNMENT CODES

## January 30, 2015

### ALIEN-RELATED DELAYS (GREEN)

### DHS-RELATED ADJOURNMENTS (ORANGE)

Description	Code	Clock
Alien to Seek Representation	01	S
Preparation - Alien/Attorney/Representative	02	S
Alien to File for Asylum	05	S
Alien to File Other Application	06	S
DHS Application Process - Alien Initiated	7A	S
DHS Adjudication of I-130	7C	S
DHS Adjudication of I-140	7D	S
DHS Adjudication of I-730	7E	S
DHS Adjudication of I-751	7F	S
1966 Cuban Adjustment	7G	S
Pending Naturalization of Petitioning Relative	7H	S
No-show by Alien/Alien's Attorney/Representative	11	S
Alien/Alien's Attorney/Representative Request	12	S
Supplement Asylum Application	21	S
Alien or Representative Rejected Earliest Possible		
Asylum Hearing	22	S
Asylum Application Withdrawn/Reset for Other Issues	23	X
Alien Request for an In-Person Hearing	26	S
Consolidation with Family Member	30	S
Preparation of Records/Biometrics Check/		
Overseas Investigation by Alien	36	S
Illness of Alien	38	S
Illness of Atty/Representative	39	S
Illness of Witness	40	S
Alien Requested Forensic Analysis	42	S
Joint Request of Both Parties	45	S
Contested Charges	51	S
Jurisdiction Rests with the BIA	52	S
Alien Claim to U.S. Citizenship	54	S
DHS Vertical Prosecution Date Not Accommodated	57	S

Description	Code	Clock
Preparation - DHS	03	R
DHS or DHS Administrative File Unavailable for Hearing	04	R
DHS Application Process - DHS Initiated	7B	R
Alien in DHS/Corrections Custody not Presented for Hearing	09	R
Alien Released From DHS/Corrections Custody	16	R
DHS to Provide Biometrics Check	24	R
DHS Request for an In-Person Hearing	27	R
DHS Investigation	37	R
DHS Forensic Analysis	43	R
Cooperating Witness /Law Enforcement	44	R
New Charge Filed by DHS	47	R
Juvenile Home Study	49	R
Quarantine - Detained Cases	50	R
DHS Request for Certification of Mental Competency	53	R
Vertical Prosecution - DHS Cause Delay	56	R
DHS Vertical Prosecution Date Not Accommodated	58	R

### INSUFFICIENT TIME TO COMPLETE HEARING

Insufficient Time to Complete Hearing	13	R
MC to IC - Merits Hearing	17	R
IJ Request for an In-Person Hearing	28	R
RC to SC Merits Hearing	31	R
Unplanned IJ Leave - Sick/Annual	34	R
Unplanned IJ Leave - Detail/Other Assignment	35	R
Interpreter Appeared But IJ Rejected	48	R
Reserved Decision	RR	R

### OPERATIONAL ADJOURNMENTS (ORANGE)

IJ Completion (Prior to Hearing)	NA	S
State Department Response not to File	08	R
Notice Sent Served Incorrectly	10	R
Other Operational Security Factors	14	R
Appt for Scheduling of Priority Case	25	R
Government Application	29	R
No Interpreter - No Ordered	32	R
No Interpreter - Ordered for IJTS	33	R
TeleVoice Administration	36	R
Hearing Deliberately Advanced	38	N
Forensic Competency Evaluation	60	R
Appointment of Qualified Representative	61	R
Judicial Competency Inquiry	62	R
Case Reverted from Lead - Hearing Adjourned	96	R
Case Joined to Lead - Hearing Adjourned	97	R
Data Entry Error	99	N

COLOR KEY	CLOCK CODES
<b>RED</b> = Alien-Related Delay	<b>S</b> = Stops
<b>GREEN</b> = DHS-Related	<b>R</b> = Runs
<b>BLUE</b> = EOIR-Related Delay (IJ)	<b>X</b> = Eliminates
<b>ORANGE</b> = EOIR-Related Delay (Operational)	<b>N</b> = Neutral



**87. UAC DECISION NOTICE FOR NON-ELIGIBILITY**  
(RFGM Nov. 2015)

**UAC Decision Notice for Non-Eligibility**

This letter refers to your Form I-589, *Application for Asylum and for Withholding of Removal*, filed with U.S. Citizenship and Immigration Services (USCIS).

On «Date», you were served with an I-862, *Notice to Appear*, and placed in immigration proceedings in front of an immigration judge. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amends the Immigration and Nationality Act to give USCIS initial jurisdiction over an asylum application filed by an Unaccompanied Alien Child (UAC). As defined at 6 U.S.C. § 279(g)(2), an Unaccompanied Alien Child means:

a child who—

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
  - (i) there is no parent or legal guardian in the United States; or
  - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

USCIS has initial jurisdiction over your asylum application because, (1) as of the date you first filed for asylum, a prior determination by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) that you were a UAC was still in place, or (2) an asylum officer determined that you met the definition of a UAC on the date you first filed for asylum. USCIS interviewed you on «InterviewDate» at the above-named Asylum Office.

Applicants for asylum must credibly establish that: they have suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; they are not subject to any bar to asylum; and they merit a grant of asylum in the exercise of discretion.

**Reason(s) for Ineligibility for Asylum:**

For the reasons described below, USCIS has determined that you do not meet the requirements for asylum and has not granted your claim for asylum:

1.  You have not established that you are a refugee because:
  - A. Past Persecution
    - You did not describe any instances of suffering harm in the past.
    - You have not established that any harm you experienced in the past, considering incidents both individually and cumulatively, amounts to persecution.
    - The person or persons who harmed you were not government agents and you failed to establish that the government was unable or unwilling to protect you.
    - You have not established that any harm you experienced in the past is on account of one of the protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).

AND

## B. Future Persecution

- You have not expressed a fear of future persecution.
  - You have not established that there is a reasonable possibility you would suffer persecution in the future.
  - You have not established that any future harm you fear is on account of one of the protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).
  - You have not established that the threat of persecution you fear exists throughout your country (or, if stateless, country of last habitual residence) or that it would be unreasonable for you to relocate within that country to avoid future persecution.
  - You have not established that your fear of future persecution is well-founded, because you have not shown that your government is unable or unwilling to protect you from the harm you fear.
2.  Although the evidence indicates that you are a refugee because you were persecuted in the past on account of a protected characteristic in the refugee definition, USCIS has referred your request as a matter of discretion because:
- A preponderance of the evidence establishes that country conditions have changed to such an extent that there is not a reasonable possibility you would suffer persecution if you were to return to your country (or, if stateless, country of last habitual residence),
  - A preponderance of the evidence establishes that there has been a fundamental change in circumstances such that there is not a reasonable possibility you would suffer persecution if you were to return to your country (or, if stateless, country of last habitual residence),
  - A preponderance of the evidence establishes that the threat of persecution you fear does not exist throughout your country and it would be reasonable for you to relocate within your country (or, if stateless, country of last habitual residence) to avoid future persecution,

AND

you have not shown compelling reasons for being unwilling or unable to return to your country (or, if stateless, country of last habitual residence) arising from the severity of the past persecution you experienced, nor have you established that there is a reasonable possibility you would suffer other serious harm in your country (or, if stateless, country of last habitual residence).

### 3. (FOR APPLICATIONS FILED ON OR AFTER APRIL 1, 1997.)

- Evidence indicates that you are barred by statute from a grant of asylum for the following reason(s) and you failed to establish by a preponderance of the evidence that such reason(s) does not apply to you:
  - Evidence indicates that you ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.
  - You were convicted of a particularly serious crime or aggravated felony, which occurred inside or outside the U.S.
  - There are serious reasons for believing that you committed a serious nonpolitical crime outside the United States before you came to the United States.



- There are reasonable grounds for regarding you as a danger to the security of the United States.
  - You have engaged in terrorist activity.
  - You are engaged in or are likely to engage in terrorist activity.
  - You are a representative of an organization that has been designated by the Secretary of State as a foreign terrorist organization.
  - You have incited terrorist activity.
  - You were firmly resettled in a third country.
4.  You are a citizen or national of another country in addition to the country of persecution, and you have not established that you were persecuted or have a well-founded fear of persecution on account of a protected ground in that other country.
5.  After careful consideration of all available information and explanations at your asylum interview, your claim was deemed not credible on the basis of:
- Material inconsistency(ies) between your testimony and application and/or other evidence.
  - Material inconsistency(ies) within your testimony.
  - Material inconsistency(ies) with country conditions information.
  - Lack of detail(s) on material points.

Brief Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6.  You failed to follow requirements for fingerprint processing.
7.  Other Reason for Referral: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Need to Appear in Immigration Court:**

Based on the above reasons, your case has been returned to the immigration judge to continue immigration proceedings. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge, and your request will be considered (without filing another application) when you appear at your next immigration hearing or at a time determined by the immigration court. The determinations that we have made in returning your application are not binding on the immigration judge, who will decide your case again. You must appear in immigration court for all scheduled hearings before the immigration judge.

**WARNING: Currently jurisdiction over your asylum application is with the Immigration Court. You must attend all scheduled hearings with the Immigration Court or you may be ordered removed from the United States.**

**Change of Address:**

Because you have been placed in removal proceedings, you must notify the Immigration Court within five days of any change of address by completing Form EOIR-33, *Alien's Change of Address Form/Immigration Court*,

and submitting the Form EOIR-33 to the Immigration Court where your proceedings have been referred. Form EOIR 33 is available on the Department of Justice website at [www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm](http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm).

**Employment Authorization:**

If you applied for asylum on or after January 4, 1995, you are subject to a 150-day waiting period before you can apply for employment authorization, and an additional 30 days before employment authorization can be approved, for a total of 180 days. The number of days a completed asylum application is considered pending does not include any delays requested or caused by you while your application is pending with the Asylum Office or with an immigration judge. See Title 8, Code of Federal Regulations section 208.7. This time period during which your asylum application must be pending with USCIS and/or the Executive Office for Immigration Review before you may be granted an employment authorization document (EAD) is called the “180-day asylum EAD clock.”

Delays requested or caused by you while your application was pending with the Asylum Office may include:

- a request to transfer your case to a new Asylum Office or interview location, including when the transfer is based on a new address;
- a request to reschedule your interview for a later date;
- failure to appear at your interview or fingerprint appointment;
- failure to provide a competent interpreter at your interview;
- a request to provide additional evidence after your interview; and
- failure to receive and acknowledge your asylum decision in person (if required).

Less than 150 days have elapsed since your asylum application was first filed in accordance with 8 C.F.R. §§ 208.3 and 208.4. Therefore, you are currently not eligible to apply for employment authorization pursuant to 8 C.F.R. § 274.a12(c)(8) and provided in 8 C.F.R. § 208.7. The earliest possible date you are eligible to apply for employment authorization is «**Projected Date**». If an immigration judge does not deny your asylum application within the 150-day waiting period, then you will be eligible to apply for employment authorization. If you fail to appear for the scheduled hearing before the immigration judge and this failure is not excused, employment authorization will not be granted. As of the date of this notice, your asylum application was pending «**CLK DAYS ELAPSED**» days.

This calculation includes the number of days that have elapsed since your asylum application was filed with USCIS, not including any delays caused or requested by you, or any days elapsed since the lodging or filing of an asylum application before Executive Office for Immigration Review.

If you have not attained 18 years of age by the time of this letter, please note that federal employment authorization does not guarantee you will be old enough to be eligible to work in the state where you reside. Each state also has its own laws relating to employment, including the employment of minors. Many states have enacted child labor laws, some of which may have a minimum age for employment which is higher than the federal minimum age. Please visit the U.S. Department of Labor website at <http://www.dol.gov/> for more information.

**90. UAC NOTICE FOR FAILURE TO APPEAR**  
(RFGM Nov. 2015)

**UAC Notice for Failure to Appear**

This letter refers to your Form I-589, *Application for Asylum and for Withholding of Removal*, filed with U.S. Citizenship and Immigration Services (USCIS).

On «Date», you were served with a Form I-862, *Notice to Appear*, and placed in immigration proceedings in front of an immigration judge. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amends the Immigration and Nationality Act to give USCIS initial jurisdiction over an asylum application filed by an Unaccompanied Alien Child (UAC). As defined at 6 U.S.C. § 279(g)(2), an Unaccompanied Alien Child means:

a child who—

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
  - (i) there is no parent or legal guardian in the United States; or
  - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

You filed for asylum with USCIS under the initial jurisdiction provision of the TVPRA as a UAC. USCIS sent you an interview notice requiring your appearance at your asylum interview, scheduled for «InterviewDate» at the above-named Asylum Office. You failed to appear for your scheduled interview on «InterviewDate». Also, you did not show good cause for your failure to appear to USCIS by providing a written reasonable excuse for not attending your asylum interview within 45 days after your missed interview.

**Need to Appear in Immigration Court:**

Based on the above reason, your case has been returned to the immigration judge to continue immigration proceedings. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge, and your request will be considered (without filing another application) when you appear at your next immigration hearing or at a time determined by the Immigration Court. You must appear in Immigration Court for all scheduled hearings before the immigration judge.

You may request that the Asylum Office make a determination as to whether “exceptional circumstances” existed for your failure to appear at your asylum interview, which is a higher standard than good cause. If you do not establish exceptional circumstances for your failure to appear at your asylum interview, you may be ineligible for employment authorization. Title 8, Code of Federal Regulations, section 208.7(a)(4).

Exceptional circumstances is defined in the Immigration and Nationality Act (INA), section 240(e)(1) as:

“circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.”

Exceptional circumstances are not limited to the express examples provided at INA section 240(e)(1). The Asylum Office will examine the facts and circumstances of your case to determine if you have demonstrated exceptional circumstances.

To request that the Asylum Office find that exceptional circumstances existed for your failure to appear at your asylum interview, you must take the following steps:

- Submit to the Asylum Office by mail, fax, or email a written explanation describing in detail the exceptional circumstances which caused your failure to appear. You must also include an explanation for any delay between your missed interview date and your request to reschedule your interview because of exceptional circumstances.
- Include any available documents that support your explanation. These documents may include, but are not limited to, medical records, police reports, and birth/death certificates.
- Any document that is not in English must be accompanied by a full English language translation, along with a certification by a translator that the translation is complete and accurate, and that the translator is competent to translate from the relevant language into English.

If you submit a request to the Asylum Office to demonstrate exceptional circumstances, the Asylum Office will send you written notice of its determination as to whether or not you established exceptional circumstances for missing your asylum interview and the next steps for you to take. If you have established exceptional circumstances, and you are currently in removal proceedings, the Asylum Office cannot reopen your asylum application and reschedule you for an asylum interview unless the immigration judge dismisses your removal proceedings.

**WARNING: Currently jurisdiction over your asylum application is with the Immigration Court. You must attend all scheduled hearings with the Immigration Court or you may be ordered removed from the United States.**

**Change of Address:**

Because you have been placed in removal proceedings, you must notify the Immigration Court within five days of any change of address by completing Form EOIR-33, *Alien's Change of Address Form/Immigration Court*, and submitting the Form EOIR-33 to the Immigration Court where your proceedings have been referred. Form EOIR 33 is available on the Department of Justice website at [www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm](http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm).

**Employment Authorization:**

If you applied for asylum on or after January 4, 1995, you are subject to a 150-day waiting period before you can apply for employment authorization, and an additional 30 days before employment authorization can be approved, for a total of 180 days. The number of days a completed asylum application is considered pending does not include any delays requested or caused by you while your application is pending with the Asylum Office or with an immigration judge. *See* Title 8, Code of Federal Regulations section 208.7. This time period during which your asylum application must be pending with USCIS and/or the Executive Office for Immigration Review before you may be granted an employment authorization document (EAD) is called the "180-day asylum EAD clock."

Delays requested or caused by you while your application was pending with the Asylum Office may include:

- a request to transfer your case to a new Asylum Office or interview location, including when the transfer is based on a new address;
- a request to reschedule your interview for a later date;
- failure to appear at your interview or fingerprint appointment;
- failure to provide a competent interpreter at your interview;
- a request to provide additional evidence after your interview; and
- failure to receive and acknowledge your asylum decision in person (if required).

Your 180-day asylum EAD clock stopped on the date you failed to appear for your asylum interview. As of the date you failed to appear for your interview, your asylum application was pending «**CLKDaysElapsed**» days.

This calculation includes the number of days that have elapsed since your asylum application was filed with USCIS, not including any delays caused or requested by you, or any days elapsed since the lodging or filing of an asylum application before Executive Office for Immigration Review.

If you have not attained 18 years of age by the time of this letter, please note that federal employment authorization does not guarantee you will be old enough to be eligible to work in the state where you reside. Each state also has its own laws relating to employment, including the employment of minors. Many states have enacted child labor laws, some of which may have a minimum age for employment which is higher than the federal minimum age. Please visit the U.S. Department of Labor website at <http://www.dol.gov/> for more information.



### **THE 180-DAY ASYLUM EAD CLOCK NOTICE**

#### **What is the 180-day Asylum EAD Clock?**

The “180-day Asylum EAD Clock” measures the time period during which an asylum application has been pending with the U.S. Citizenship and Immigration Services (USCIS) asylum office and/or the Executive Office for Immigration Review (EOIR). USCIS service centers adjudicate the Form I-765, *Application for Employment Authorization*, and use the 180-day Asylum EAD Clock to determine eligibility for employment authorization. Asylum applicants who applied for asylum on or after January 4, 1995, must wait 150 days before they can file a Form I-765. USCIS cannot grant employment authorization for an additional 30 days, for a total 180-day waiting period. This 180-day Asylum EAD Clock does not include any delays applicants request or cause while their applications are pending with an asylum office or immigration court.

#### **What Starts the 180-day Asylum EAD Clock?**

For asylum applications first filed with an asylum office, USCIS calculates the 180-day Asylum EAD Clock starting on the date that a complete asylum application is received by USCIS, in the manner described by the Instructions to the Form I-589, *Application for Asylum and for Withholding of Removal*. If an asylum application is referred from the asylum office to EOIR, the applicant may continue to accumulate time toward employment authorization eligibility while the asylum application is pending before an immigration judge.

For asylum applications first filed with EOIR, USCIS calculates the 180-day Asylum EAD Clock in one of two ways:

- 1) If a complete asylum application is “lodged” at the immigration court window, the application will be stamped “lodged not filed” and the applicant will start to accumulate time toward eligibility for employment authorization on the date of lodging, or
- 2) If the asylum application is not “lodged,” the applicant generally will start to accumulate time toward eligibility for employment authorization on the date that a complete asylum application is filed at a hearing before an immigration judge.

Applicants who lodge an application at an immigration court window must still file the application with an immigration judge at a later hearing.

#### **What stops the 180-day Asylum EAD Clock?**

The 180-day Asylum EAD Clock does not include any delays requested or caused by an applicant while his or her asylum application is pending with USCIS and/or EOIR.

##### **For cases pending with an asylum office:**

Delays requested or caused by an applicant may include:

- A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;
- A request to reschedule an interview for a later date;
- Failure to appear at an interview or fingerprint appointment;
- Failure to provide a competent interpreter at an interview;
- A request to provide additional evidence after an interview; and
- Failure to receive and acknowledge an asylum decision in person (if required).

If an applicant is required to receive and acknowledge his or her asylum decision at an asylum office, but fails to appear, his or her 180-day Asylum EAD Clock will stop until the first master calendar hearing with an immigration judge after the case is referred to EOIR.

If an applicant fails to appear for an asylum interview, the 180-day Asylum EAD Clock will stop on the date of the missed interview, and the applicant may be ineligible for employment authorization unless he or she makes a written request to the asylum office to reschedule the interview within 45 days and demonstrates “good cause” for missing the interview. A request to reschedule an interview with the asylum office that is made after 45 days from the missed interview must demonstrate “exceptional circumstances,” which is a higher standard than good cause. If the applicant

has established exceptional circumstances for missing the asylum interview, and is currently in removal proceedings before an immigration judge, the asylum office cannot reopen the asylum application or reschedule the applicant for an interview unless the immigration judge dismisses the removal proceedings. If the asylum office determines that an applicant's failure to appear for an interview was due to lack of notice of the interview appointment, the asylum office will not attribute a delay to the applicant and the asylum office will reschedule the interview.

For more information about reschedule requests and missed asylum interviews, see "Preparing for Your Asylum Interview" on the Asylum Division's website at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum).

**For cases pending with EOIR:**

Asylum cases pending with EOIR are adjudicated at hearings before an immigration judge. At the conclusion (or "adjournment") of each hearing, the immigration judge will determine the reason for the adjournment. If the adjournment is requested or caused by the applicant, the applicant will stop accumulating time toward the 180-day Asylum EAD Clock until the next hearing. If the adjournment is attributed to the immigration court or the Department of Homeland Security, the applicant will continue accumulating time.

Common reasons why an asylum applicant may stop accumulating time toward the 180-day Asylum EAD Clock include:

- An applicant asks for the case to be continued so he or she can get an attorney;
- An applicant, or his or her attorney, asks for additional time to prepare the case; and
- An applicant, or his or her attorney, declines an expedited asylum hearing date.

Additionally, if an asylum applicant files a motion between hearings that delays the case, such as a motion to continue or a motion to change venue, and that motion is granted, the applicant may stop accumulating time toward the 180-day Asylum EAD Clock. The last page of this notice contains a chart listing reasons for case adjournments and whether these reasons are applicant-caused delays. Additional information regarding codes used by the immigration courts that affect the 180-day Asylum EAD Clock can be found at the Operating Policy and Procedures Memorandum (OPPM) 13-02, *The Asylum Clock*, available at [www.justice.gov/eoir](http://www.justice.gov/eoir).

Further, the accumulation of time toward the 180-day Asylum EAD Clock stops on the date an immigration judge issues a decision on the asylum application. An applicant whose asylum application is denied before 180 days have elapsed on the 180-day Asylum EAD Clock will not be eligible for employment authorization. However, if the decision is appealed to the Board of Immigration Appeals (Board) and the Board remands it (sends it back) to an immigration judge for adjudication of an asylum claim (including Board remands to an immigration judge following an appeal to a U.S. Court of Appeals), the applicant's 180-day Asylum EAD Clock will be credited with the total number of days between the immigration judge's decision and the date of the Board's remand order.

The applicant will continue to accumulate time on the 180-day Asylum EAD Clock while the asylum claim is pending after the remand order, excluding any delays requested or caused by the applicant.

**How do I find more information about the 180-day Asylum EAD Clock?**

Asylum applicants in removal proceedings before EOIR may call the EOIR hotline at 1-800-898-7180 to obtain certain information about their 180-day Asylum EAD Clock. The EOIR hotline generally reports a calculation of the number of days between the date an asylum application was filed with an asylum office or at a hearing before an immigration judge, and the date the immigration judge first issued a decision on the application, not including delays requested or caused by the applicant.

However, in some cases, an applicant may have accumulated more time on the 180-day Asylum EAD Clock than the number of days reported on the EOIR hotline. The number of days reported on the hotline does not include:

- The time an applicant accumulates toward the 180-day Asylum EAD Clock when the applicant has lodged an asylum application at an immigration court window prior to filing the application at a hearing before an immigration judge; or
- The time that USCIS may credit to an applicant's 180-day Asylum EAD Clock if the asylum application was remanded to an immigration judge by the Board for further adjudication of an asylum claim.

To determine the number of days on an applicant's 180-Day Asylum EAD Clock, an applicant may rely on the number of days reported by the EOIR hotline if the applicant has not lodged his or her application at an immigration court window or if the asylum application was not remanded from the Board for further adjudication of an asylum claim.

Applicants who lodged an application at an immigration court window should add the number of days between the date of lodging of the application and when the application was filed at a hearing before an immigration judge (or the current date if the applicant has not yet had a hearing at which the application could be filed).

Applicants whose cases were remanded from the Board for further adjudication of the asylum claim should add the number of days from the immigration judge's initial decision on the asylum application to the date of the Board's order remanding the case. These applicants continue to accumulate time toward the 180-day Asylum EAD Clock after the case is remanded, excluding delays requested or caused by the applicant. For more information on whether a delay is requested or caused by the applicant, please see the previous section.

**What if I think there is an error in the calculation of time on my 180-Day Asylum EAD Clock?**

For questions regarding time accumulated on the 180-day Asylum EAD Clock when an applicant's asylum application is pending with an asylum office, please contact the 180-day Asylum EAD Clock point of contact at the asylum office with jurisdiction over the case. The points of contact can be found on the Asylum Division Web page at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum) under "Asylum Employment Authorization and Clock Contacts."

For cases before EOIR, asylum applicants should address questions to the immigration judge during the hearing, or to the court administrator, in writing, after the hearing. Applicants **should not** file motions related to the 180-day Asylum EAD Clock. If an applicant believes the issue has not been correctly addressed at the immigration court level, the applicant may then contact the Assistant Chief Immigration Judge for the appropriate immigration court in writing. For cases on appeal, applicants may contact EOIR's Office of General Counsel in writing. Please refer to OPPM 13-02 for more details.

**What if I think there is an error in the adjudication of my Form I-765, Application for Employment Authorization?**

USCIS service centers adjudicate the Form I-765. Applicants may contact a USCIS service center through the National Customer Service Center hotline at 1-800-375-5283. Inquiries that cannot be resolved by a customer service representative will be routed to the service center where the Form I-765 was filed. Applicants should receive a response from the service center within 30 days. If more than 30 days pass without a response, applicants may email the appropriate USCIS service center at one of the following addresses:

California Service Center:	<a href="mailto:csc-ncsc-followup@uscis.dhs.gov">csc-ncsc-followup@uscis.dhs.gov</a>
Vermont Service Center:	<a href="mailto:vsc.ncscfollowup@uscis.dhs.gov">vsc.ncscfollowup@uscis.dhs.gov</a>
Nebraska Service Center:	<a href="mailto:nscfollowup.ncsc@uscis.dhs.gov">nscfollowup.ncsc@uscis.dhs.gov</a>
Texas Service Center:	<a href="mailto:tsc.ncscfollowup@uscis.dhs.gov">tsc.ncscfollowup@uscis.dhs.gov</a>

If applicants do not receive an email response from the service center address above within 21 days, applicants may email the USCIS Headquarters Office of Service Center Operations at [SCOPSSCATA@uscis.dhs.gov](mailto:SCOPSSCATA@uscis.dhs.gov).

**What is the ABT Settlement Agreement?**

On April 12, 2013, USCIS and EOIR entered into a settlement agreement in the class action litigation *B.H., et al. v. USCIS, et al.*, also referred to as the ABT Settlement Agreement. Under the terms of the ABT Settlement Agreement, USCIS and EOIR agreed to change certain practices related to asylum cases and the calculation of time for employment authorization eligibility.

The ABT Settlement Agreement has a separate review process for asylum applicants who believe they have not received relief described in the ABT Settlement Agreement. Applicants who believe they have been denied relief under the Agreement should consult the ABT Settlement Agreement and associated documents, and follow the Individual ABT Claim Review process described in the Agreement to resolve their claims. For more information about the ABT Settlement Agreement, visit [www.uscis.gov](http://www.uscis.gov) or [www.justice.gov/eoir](http://www.justice.gov/eoir).

**How do I apply for work authorization?**

For instructions on how to apply for employment authorization, visit the USCIS website at [www.uscis.gov/i-765](http://www.uscis.gov/i-765) and see the Instructions to Form I-765, *Application for Employment Authorization*.



# ADJOURNMENT CODES

## January 30, 2015

### EAOIR-RELATED DELAYS (BLUE)

Description	Code	Clock
Alien to Seek Representation	01	S
Preparation - Alien/Attorney/Representative	02	S
Alien to File for Asylum	05	S
Alien to File Other Application	06	S
DHS Application Process - Alien Initiated	7A	S
DHS Adjudication of I-130	7C	S
DHS Adjudication of I-140	7D	S
DHS Adjudication of I-730	7E	S
DHS Adjudication of I-751	7F	S
1966 Cuban Adjustment	7G	S
Pending Naturalization of Petitioning Relative	7H	S
No-show by Alien/Alien's Attorney/Representative	11	S
Alien/Alien's Attorney/Representative Request	12	S
Supplement Asylum Application	21	S
Alien or Representative Rejected Earliest Possible		
Asylum Hearing	22	S
Asylum Application Withdrawn/Reset for Other Issues	23	X
Alien Request for an In-Person Hearing	26	S
Consolidation with Family Member	30	S
Preparation of Records/Biometrics Check/		
Overseas Investigation by Alien	36	S
Illness of Alien	38	S
Illness of Atty/Representative	39	S
Illness of Witness	40	S
Alien Requested Forensic Analysis	42	S
Joint Request of Both Parties	45	S
Contested Charges	51	S
Jurisdiction Rests with the BIA	52	S
Alien Claim to U.S. Citizenship	54	S
DHS Vertical Prosecution Date Not Accommodated	57	S

### DHS-RELATED ADJOURNMENTS (GREEN)

Description	Code	Clock
Preparation - DHS	03	R
DHS or DHS Administrative File Unavailable for Hearing	04	R
DHS Application Process - DHS Initiated	7B	R
Alien in DHS/Corrections Custody not Presented for Hearing	09	R
Alien Released From DHS/Corrections Custody	16	R
DHS to Provide Biometrics Check	24	R
DHS Request for an In-Person Hearing	27	R
DHS Investigation	37	R
DHS Forensic Analysis	43	R
Cooperating Witness /Law Enforcement	44	R
New Charge Filed by DHS	47	R
Juvenile Home Study	49	R
Quarantine - Detained Cases	50	R
DHS Request for Certification of Mental Competency	53	R
Vertical Prosecution - DHS Cause Delay	56	R
DHS Vertical Prosecution Date Not Accommodated	58	R

### EAOIR-RELATED DELAYS (BLUE)

Insufficient Time to Complete Hearing	13	R
MC to IC - Merits Hearing	17	R
IJ Request for an In-Person Hearing	28	R
RC to SC Merits Hearing	31	R
Unplanned IJ Leave - Sick/Annual	34	R
Unplanned IJ Leave - Detail/Other Assignment	35	R
Interpreter Appeared But IJ Rejected	48	R
Reserved Decision	RR	R

### OPERATIONAL ADJOURNMENTS (ORANGE)

IJ Completion (Prior to Hearing)	83	S
State Department Response not available	08	R
Notice Sent, Serviced Inadequately	10	R
Other Operational Security Factors	14	R
Alien for Scheduling of Priority Case	25	R
Concurrent Application	29	R
No Interpreter - No Ordered	32	R
No Interpreter - Ordered but FTA	33	R
Tel/Wide Mfg Function	46	R
Hearing Deliberately Adjourned	55	N
Forensic Competency Evaluation	60	R
Appointment of Unqualified Representative	61	R
Judicial Competency Inquiry	62	R
Case Seized from Lead - Hearing Adjourned	96	R
Case Jurisdiction Lead - Hearing Adjourned	97	R
Data Entry Error	99	N

COLOR KEY	CLOCK CODES
<b>RED</b> = Alien-Related Delay	<b>S</b> = Stops
<b>GREEN</b> = DHS-Related	<b>R</b> = Runs
<b>BLUE</b> = EOIR-Related Delay (IJ)	<b>X</b> = Eliminates
<b>ORANGE</b> = EOIR-Related Delay (Operational)	<b>N</b> = Neutral



## **THE 180-DAY ASYLUM EAD CLOCK NOTICE**

### **What is the 180-day Asylum EAD Clock?**

The “180-day Asylum EAD Clock” measures the time period during which an asylum application has been pending with the U.S. Citizenship and Immigration Services (USCIS) asylum office and/or the Executive Office for Immigration Review (EOIR). USCIS service centers adjudicate the Form I-765, *Application for Employment Authorization*, and use the 180-day Asylum EAD Clock to determine eligibility for employment authorization. Asylum applicants who applied for asylum on or after January 4, 1995, must wait 150 days before they can file a Form I-765. USCIS cannot grant employment authorization for an additional 30 days, for a total 180-day waiting period. This 180-day Asylum EAD Clock does not include any delays applicants request or cause while their applications are pending with an asylum office or immigration court.

### **What Starts the 180-day Asylum EAD Clock?**

For asylum applications first filed with an asylum office, USCIS calculates the 180-day Asylum EAD Clock starting on the date that a complete asylum application is received by USCIS, in the manner described by the Instructions to the Form I-589, *Application for Asylum and for Withholding of Removal*. If an asylum application is referred from the asylum office to EOIR, the applicant may continue to accumulate time toward employment authorization eligibility while the asylum application is pending before an immigration judge.

For asylum applications first filed with EOIR, USCIS calculates the 180-day Asylum EAD Clock in one of two ways:

- 1) If a complete asylum application is “lodged” at the immigration court window, the application will be stamped “lodged not filed” and the applicant will start to accumulate time toward eligibility for employment authorization on the date of lodging, or
- 2) If the asylum application is not “lodged,” the applicant generally will start to accumulate time toward eligibility for employment authorization on the date that a complete asylum application is filed at a hearing before an immigration judge.

Applicants who lodge an application at an immigration court window must still file the application with an immigration judge at a later hearing.

### **What stops the 180-day Asylum EAD Clock?**

The 180-day Asylum EAD Clock does not include any delays requested or caused by an applicant while his or her asylum application is pending with USCIS and/or EOIR.

#### **For cases pending with an asylum office:**

Delays requested or caused by an applicant may include:

- A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;
- A request to reschedule an interview for a later date;
- Failure to appear at an interview or fingerprint appointment;
- Failure to provide a competent interpreter at an interview;
- A request to provide additional evidence after an interview; and
- Failure to receive and acknowledge an asylum decision in person (if required).

If an applicant is required to receive and acknowledge his or her asylum decision at an asylum office, but fails to appear, his or her 180-day Asylum EAD Clock will stop until the first master calendar hearing with an immigration judge after the case is referred to EOIR.

If an applicant fails to appear for an asylum interview, the 180-day Asylum EAD Clock will stop on the date of the missed interview, and the applicant may be ineligible for employment authorization unless he or she makes a written request to the asylum office to reschedule the interview within 45 days and demonstrates “good cause” for missing the interview. A request to reschedule an interview with the asylum office that is made after 45 days from the missed interview must demonstrate “exceptional circumstances,” which is a higher standard than good cause. If the applicant has established exceptional circumstances for missing the asylum interview, and is currently in removal

proceedings before an immigration judge, the asylum office cannot reopen the asylum application or reschedule the applicant for an interview unless the immigration judge dismisses the removal proceedings. If the asylum office determines that an applicant's failure to appear for an interview was due to lack of notice of the interview appointment, the asylum office will not attribute a delay to the applicant and the asylum office will reschedule the interview.

For more information about reschedule requests and missed asylum interviews, see "Preparing for Your Asylum Interview" on the Asylum Division's website at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum).

### **For cases pending with EOIR:**

Asylum cases pending with EOIR are adjudicated at hearings before an immigration judge. At the conclusion (or "adjournment") of each hearing, the immigration judge will determine the reason for the adjournment. If the adjournment is requested or caused by the applicant, the applicant will stop accumulating time toward the 180-day Asylum EAD Clock until the next hearing. If the adjournment is attributed to the immigration court or the Department of Homeland Security, the applicant will continue accumulating time.

Common reasons why an asylum applicant may stop accumulating time toward the 180-day Asylum EAD Clock include:

- An applicant asks for the case to be continued so he or she can get an attorney;
- An applicant, or his or her attorney, asks for additional time to prepare the case; and
- An applicant, or his or her attorney, declines an expedited asylum hearing date.

Additionally, if an asylum applicant files a motion between hearings that delays the case, such as a motion to continue or a motion to change venue, and that motion is granted, the applicant may stop accumulating time toward the 180-day Asylum EAD Clock. The last page of this notice contains a chart listing reasons for case adjournments and whether these reasons are applicant-caused delays. Additional information regarding codes used by the immigration courts that affect the 180-day Asylum EAD Clock can be found at the Operating Policy and Procedures Memorandum (OPPM) 13-02, *The Asylum Clock*, available at [www.justice.gov/eoir](http://www.justice.gov/eoir).

Further, the accumulation of time toward the 180-day Asylum EAD Clock stops on the date an immigration judge issues a decision on the asylum application. An applicant whose asylum application is denied before 180 days have elapsed on the 180-day Asylum EAD Clock will not be eligible for employment authorization. However, if the decision is appealed to the Board of Immigration Appeals (Board) and the Board remands it (sends it back) to an immigration judge for adjudication of an asylum claim (including Board remands to an immigration judge following an appeal to a U.S. Court of Appeals), the applicant's 180-day Asylum EAD Clock will be credited with the total number of days between the immigration judge's decision and the date of the Board's remand order.

The applicant will continue to accumulate time on the 180-day Asylum EAD Clock while the asylum claim is pending after the remand order, excluding any delays requested or caused by the applicant.

### **How do I find more information about the 180-day Asylum EAD Clock?**

Asylum applicants in removal proceedings before EOIR may call the EOIR hotline at 1-800-898-7180 to obtain certain information about their 180-day Asylum EAD Clock. The EOIR hotline generally reports a calculation of the number of days between the date an asylum application was filed with an asylum office or at a hearing before an immigration judge, and the date the immigration judge first issued a decision on the application, not including delays requested or caused by the applicant.

However, in some cases, an applicant may have accumulated more time on the 180-day Asylum EAD Clock than the number of days reported on the EOIR hotline. The number of days reported on the hotline does not include:

- The time an applicant accumulates toward the 180-day Asylum EAD Clock when the applicant has lodged an asylum application at an immigration court window prior to filing the application at a hearing before an immigration judge; or
- The time that USCIS may credit to an applicant's 180-day Asylum EAD Clock if the asylum application was remanded to an immigration judge by the Board for further adjudication of an asylum claim.

To determine the number of days on an applicant's 180-Day Asylum EAD Clock, an applicant may rely on the number of days reported by the EOIR hotline if the applicant has not lodged his or her application at an immigration

court window or if the asylum application was not remanded from the Board for further adjudication of an asylum claim.

Applicants who lodged an application at an immigration court window should add the number of days between the date of lodging of the application and when the application was filed at a hearing before an immigration judge (or the current date if the applicant has not yet had a hearing at which the application could be filed).

Applicants whose cases were remanded from the Board for further adjudication of the asylum claim should add the number of days from the immigration judge's initial decision on the asylum application to the date of the Board's order remanding the case. These applicants continue to accumulate time toward the 180-day Asylum EAD Clock after the case is remanded, excluding delays requested or caused by the applicant. For more information on whether a delay is requested or caused by the applicant, please see the previous section.

### **What if I think there is an error in the calculation of time on my 180-Day Asylum EAD Clock?**

For questions regarding time accumulated on the 180-day Asylum EAD Clock when an applicant's asylum application is pending with an asylum office, please contact the 180-day Asylum EAD Clock point of contact at the asylum office with jurisdiction over the case. The points of contact can be found on the Asylum Division Web page at [www.uscis.gov/Asylum](http://www.uscis.gov/Asylum) under "Asylum Employment Authorization and Clock Contacts."

For cases before EOIR, asylum applicants should address questions to the immigration judge during the hearing, or to the court administrator, in writing, after the hearing. Applicants **should not** file motions related to the 180-day Asylum EAD Clock. If an applicant believes the issue has not been correctly addressed at the immigration court level, the applicant may then contact the Assistant Chief Immigration Judge for the appropriate immigration court in writing. For cases on appeal, applicants may contact EOIR's Office of General Counsel in writing. Please refer to OPPM 13-02 for more details.

### **What if I think there is an error in the adjudication of my Form I-765, Application for Employment Authorization?**

USCIS service centers adjudicate the Form I-765. Applicants may contact a USCIS service center through the National Customer Service Center hotline at 1-800-375-5283. Inquiries that cannot be resolved by a customer service representative will be routed to the service center where the Form I-765 was filed. Applicants should receive a response from the service center within 30 days. If more than 30 days pass without a response, applicants may email the appropriate USCIS service center at one of the following addresses:

California Service Center:	<a href="mailto:csc-ncsc-followup@uscis.dhs.gov">csc-ncsc-followup@uscis.dhs.gov</a>
Vermont Service Center:	<a href="mailto:vsc.ncscfollowup@uscis.dhs.gov">vsc.ncscfollowup@uscis.dhs.gov</a>
Nebraska Service Center:	<a href="mailto:nscfollowup.ncsc@uscis.dhs.gov">nscfollowup.ncsc@uscis.dhs.gov</a>
Texas Service Center:	<a href="mailto:tsc.ncscfollowup@uscis.dhs.gov">tsc.ncscfollowup@uscis.dhs.gov</a>

If applicants do not receive an email response from the service center address above within 21 days, applicants may email the USCIS Headquarters Office of Service Center Operations at [SCOPSSCATA@uscis.dhs.gov](mailto:SCOPSSCATA@uscis.dhs.gov).

### **What is the ABT Settlement Agreement?**

On April 12, 2013, USCIS and EOIR entered into a settlement agreement in the class action litigation *B.H., et al. v. USCIS, et al.*, also referred to as the ABT Settlement Agreement. Under the terms of the ABT Settlement Agreement, USCIS and EOIR agreed to change certain practices related to asylum cases and the calculation of time for employment authorization eligibility.

The ABT Settlement Agreement has a separate review process for asylum applicants who believe they have not received relief described in the ABT Settlement Agreement. Applicants who believe they have been denied relief under the Agreement should consult the ABT Settlement Agreement and associated documents, and follow the Individual ABT Claim Review process described in the Agreement to resolve their claims. For more information about the ABT Settlement Agreement, visit [www.uscis.gov](http://www.uscis.gov) or [www.justice.gov/eoir](http://www.justice.gov/eoir).

### **How do I apply for work authorization?**

For instructions on how to apply for employment authorization, visit the USCIS website at [www.uscis.gov/i-765](http://www.uscis.gov/i-765) and see the Instructions to Form I-765, *Application for Employment Authorization*.

# Adjournment Codes

January 30, 2015

## ALIEN - RELATED ADJOURNMENTS

Description	Code	Clock
Alien to Seek Representation	01	S
Preparation - Alien/Attorney/Representative	02	S
Alien to File for Asylum	05	S
Alien to File Other Application	06	S
DHS Application Process - Alien Initiated	7A	S
DHS Adjudication of I-130	7C	S
DHS Adjudication of I-140	7D	S
DHS Adjudication of I-730	7E	S
DHS Adjudication of I-751	7F	S
1966 Cuban Adjustment	7G	S
Pending Naturalization of Petitioning Relative	7H	S
No-show by Alien/Alien's Attorney/Representative	11	S
Alien/Alien's Attorney/Representative Request	12	S
Supplement Asylum Application	21	S
Alien or Representative Rejected Earliest Possible Asylum Hearing	22	S
Asylum Application Withdrawn/Reset for Other Issues	23	X
Alien Request for an In-Person Hearing	26	S
Consolidation with Family Member	30	S
Preparation of Records/Biometrics Check/Overseas Investigation by Alien	36	S
Illness of Alien	38	S
Illness of Atty/Representative	39	S
Illness of Witness	40	S
Alien Requested Forensic Analysis	42	S
Joint Request of Both Parties	45	S
Contested Charges	51	S
Jurisdiction Rests with the BIA	52	S
Alien Claim to U.S. Citizenship	54	S
DHS Vertical Prosecution Date Not Accommodated	57	S

## DHS - RELATED ADJOURNMENTS

Description	Code	Clock
Preparation - DHS	03	R
DHS or DHS Administrative File Unavailable for Hearing	04	R
DHS Application Process - DHS Initiated	7B	R
Alien in DHS/Corrections Custody not Presented for Hearing	09	R
Alien Released From DHS/Corrections Custody	16	R
DHS to Provide Biometrics Check	24	R
DHS Request for an In-Person Hearing	27	R
DHS Investigation	37	R
DHS Forensic Analysis	43	R
Cooperating Witness /Law Enforcement	44	R
New Charge Filed by DHS	47	R
Juvenile Home Study	49	R
Quarantine - Detained Cases	50	R
DHS Request for Certification of Mental Competency	53	R
Vertical Prosecution - DHS Cause Delay	56	R
DHS Vertical Prosecution Date Not Accommodated	58	R

## IJ - RELATED ADJOURNMENTS

Insufficient Time to Complete Hearing	13	R
MC to IC - Merits Hearing	17	R
IJ Request for an In-Person Hearing	28	R
RC to SC Merits Hearing	31	R
Unplanned IJ Leave - Sick/Annual	34	R
Unplanned IJ Leave - Detail/Other Assignment	35	R
Interpreter Appeared But IJ Rejected	48	R
Reserved Decision	RR	R

## OPERATIONAL ADJOURNMENTS

IJ Completion (Prior to Hearing)	8A	S
State Department Response not in File	08	R
Notice Sent/Served Incorrectly	10	R
Other Operational/Security Factors	14	R
Allow for Scheduling of Priority Case	25	R
Concurrent Application	29	R
No Interpreter - Not Ordered	32	R
No Interpreter - Ordered but FTA	33	R
TeleVideo Malfunction	46	R
Hearing Deliberately Advanced	55	N
Forensic Competency Evaluation	60	R
Appointment of Qualified Representative	61	R
Judicial Competency Inquiry	62	R
Case Severed from Lead - Hearing Adjourned	96	R
Case Joined to Lead - Hearing Adjourned	97	R
Data Entry Error	99	N

### COLOR KEY

**RED = Alien-Related Delay**  
**GREEN = DHS-Related**  
**BLUE = EOIR-Related Delay (IJ)**  
**ORANGE = EOIR-Related Delay (Operational)**

### CLOCK CODES

**S = Stops**  
**R = Runs**  
**X = Eliminates**  
**N = Neutral**

### UAC no jurisdiction projected 150 day calculator

CLOS date	CLK DAYS ELAPSED		Days left to 150	Proj. 150 day date
10/6/2015	55	150	95	1/9/2016

Directions:

1. Enter the admin close date from the KLOK screen in cell A1 "CLOS date."
2. Enter the "CLK DAYS ELAPSED" from the KLOK screen in cell B2.
3. The projected 150 date is displayed in column E.

17. **ASYLUM APPROVAL – NUNC PRO TUNC**  
(RFGM NOV. 2015)

**Asylum Approval**

U.S. Citizenship and Immigration Services (USCIS) has determined that you are eligible for asylum in the United States. Enclosed with this letter you will find a completed Form I-94, *Arrival-Departure Record*. Please retain this document.

The Form I-94, *Arrival-Departure Record*, indicates that you have been granted asylum status in the United States pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act (INA) as of «**FDECDate**». **[Date inserted corresponds to EITHER the date that the individual was granted derivative asylum by USCIS or EOIR OR the date of the individual's arrival in the U.S. pursuant to an approved Form I-730.]** This date reflects a grant of asylum *nunc pro tunc* back to the date of your **[original grant of asylum as a derivative of a spouse/parent] [approval as a beneficiary of a Form I-730, *Refugee/Asylee Relative Petition*] [arrival in the United States pursuant to an approved Form I-730, *Refugee/Asylee Relative Petition*]**. Your derivatives listed above – who are present in the United States, who were included in your asylum application, and for whom you have established a qualifying relationship – are granted derivative asylum.

Asylum is authorized for an indefinite period, but asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated pursuant to section 208(c)(2) of the INA if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States.

Now that you are an asylee, you may apply for certain benefits listed below. You are responsible for complying with applicable laws and regulations explained in this letter. We recommend that you retain the original of this letter as proof of your status and that you submit copies of this letter when applying for any of the benefits or services listed below.

You may obtain any of the USCIS forms mentioned in this letter on the USCIS website at [www.uscis.gov](http://www.uscis.gov), through the National Customer Service Center at 1-800-375-5283, or at a local USCIS office.

## **Benefits**

### **1. Employment Authorization**

You are authorized to work in the United States for as long as you remain in asylum status. Your derivative family member(s) listed above are also authorized to work in the United States, so long as they retain derivative asylum status. You are authorized to work in the United States whether or not you have an Employment Authorization Document (EAD). To demonstrate employment authorization to employers, you must show certain documentation, such as an unrestricted Social Security card, a state-issued driver's license, or an unexpired EAD issued by USCIS. For a list of all documents that employers may accept as proof of employment authorization, consult the USCIS Form I-9, *Employment Eligibility Verification*, available on the USCIS website at [www.uscis.gov/i-9-central](http://www.uscis.gov/i-9-central). Many employers also use E-Verify to electronically check your employment eligibility. You can learn your E-Verify rights and responsibilities by visiting [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). If you do not already possess an EAD, you may apply for an EAD by submitting Form I-765, *Application for Employment Authorization*, to the address listed on the online "FORMS" page on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

### **2. Derivative Asylum Status**

You may request derivative asylum status for your spouse or any unmarried child(ren) under 21 years of age who is not included in this decision and with whom you have a qualifying relationship, whether or not that spouse or child is in the United States. To request derivative asylum status, you must submit Form I-730, *Refugee/Asylee Relative Petition*, to the address listed on the online "FORMS" page on the USCIS website at [www.uscis.gov](http://www.uscis.gov) within two years of the date of this letter. USCIS may extend the two-year filing period in certain cases for humanitarian reasons.

### **3. Social Security Cards**

You and any of your derivative family members listed above may apply immediately for an unrestricted Social Security card at any Social Security office. For more information or to obtain a Form SS-5, *Application for a Social Security Card*, visit the Social Security Administration's website at [www.ssa.gov](http://www.ssa.gov), call the toll-free number 1-800-772-1213, or visit a local Social Security office. When you go to a Social Security office to apply for a Social Security card, you must take your Form I-94, *Arrival-Departure Record*, to demonstrate that you have been granted asylum. If available, you should also take photo-identity documentation, such as an EAD or passport. For directions to the Social Security office nearest to you, call the Social Security Administration toll-free number or visit the website listed above.

### **4. Assistance and Services through the Office of Refugee Resettlement**

You and any of your derivative family members listed above may be eligible to receive assistance and services through the Office of Refugee Resettlement (ORR). ORR funds and administers various programs run by state and private, non-profit agencies throughout the United States. These programs include cash and medical assistance, employment preparation and job placement, and English language training. Many of these programs have time-limited eligibility periods that begin from the date you were first granted asylum. You may not be eligible to receive assistance and services if you were eligible after receiving your first grant of asylum and the time period for eligibility has ended. To take advantage of any of these programs for which you may be eligible, you must contact ORR as soon as possible after receipt of this letter. For more information about these programs and where to go for assistance and services in your state, visit the ORR website at [www.acf.hhs.gov/programs/orr](http://www.acf.hhs.gov/programs/orr).



## 5. Employment Assistance

You and any of your derivative family members listed above are eligible to receive certain employment services – including job search assistance, career counseling, and occupational skills training – through One-Stop Career Centers. To find the center nearest you, please call 1-877-US2-JOBS or visit America’s Service Locator at [www.servicelocator.org](http://www.servicelocator.org).

## 6. Adjustment of Status to Lawful Permanent Resident Status

After you and any of your derivative family members listed above have been physically present in the United States for one year from the date you were granted asylum on «**FDECDate**», you may apply for lawful permanent resident status by submitting a separate Form I-485, *Application to Register Permanent Residence or Adjust Status*, for yourself and each derivative family member to the address listed on the online “FORMS” page on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

### **Responsibilities**

#### 1. Travel Outside of the United States

If you, or your family member(s) with derivative asylum status, plan to travel outside of the United States, you must each request permission to return to the United States before you leave this country by obtaining a refugee travel document. A refugee travel document is valid for one year and is issued to an asylee to allow his or her return to the United States after temporary travel abroad. If you, or your family member(s) with derivative asylum status, do not request a refugee travel document in advance of your departure from the United States, you may be unable to re-enter the United States or you may be placed in removal proceedings before an immigration judge. A refugee travel document does not guarantee that you will be admitted into the United States. Rather, you must still undergo inspection by an immigration inspector from United States Customs and Border Protection (CBP). You and your derivative family member(s) listed above may apply for a refugee travel document by submitting Form I-131, *Application for Travel Document*, for each individual to the address listed on the online “FORMS” page on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

**WARNING:** If you return to the country of claimed persecution, you may be questioned as to why you were able to return to the country of claimed persecution, and your asylum status may be terminated pursuant to section 208(c)(2) of the INA. Returning to one’s country of claimed persecution may demonstrate a change of circumstances in the country of claimed persecution, show fraud in the initial asylum application, or demonstrate you have voluntarily availed yourself of the protection of the country of claimed persecution.

#### 2. Changes of Address

You must notify the Department of Homeland Security (DHS) of any change of address within ten days of such change by submitting Form AR-11, *Alien’s Change of Address Card*, to the address listed on the online “FORMS” page on the USCIS website at [www.uscis.gov](http://www.uscis.gov). You may obtain Form AR-11 at a U.S. Post Office, a USCIS office, or online at [www.uscis.gov](http://www.uscis.gov). You may also submit a change of address electronically at [www.uscis.gov](http://www.uscis.gov).

3. Selective Service Registration

All male asylees between the ages of 18 and 26 must register for the Selective Service. Failure to do so may affect your ability to obtain certain benefits in the United States or obtain U.S. citizenship in the future. To obtain information about the Selective Service and how to register, visit the Selective Service website at [www.sss.gov](http://www.sss.gov) or obtain a Selective Service "mail-back" registration form at a U.S. Post Office.

**Note: Please write your full name, date of birth, and A-number on any correspondence you have with DHS.**

Enclosures:    \_\_\_ Form I-94, *Arrival-Departure Record(s)*  
                  \_\_\_ Translated Summary of This Approval Letter

**49. STANDARD ASYLUM APPROVAL**  
(RFGM NOV. 2015)

**Asylum Approval**

As of «FDECDate», you have been granted asylum in the United States pursuant to section 208 of the Immigration and Nationality Act (INA). Your derivative family member(s) listed above – who are present in the United States, who were included in your asylum application, and for whom you have established a qualifying relationship – are granted derivative asylum. Enclosed with this letter you will find a completed Form I-94, *Arrival-Departure Record*, for you and each of your derivative family members listed above. Please retain this document.

Asylum is authorized for an indefinite period, but asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated pursuant to section 208(c)(2) of the INA if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States.

Now that you are an asylee, you may apply for certain benefits listed below. You are responsible for complying with applicable laws and regulations explained in this letter. In addition to your Form I-94, *Arrival-Departure Record*, we recommend that you retain the original of this letter as proof of your status and that you submit copies of this letter when applying for any of the benefits or services listed below.

You may obtain any of the U.S. Citizenship and Immigration Services (USCIS) forms mentioned in this letter on the USCIS website at [www.uscis.gov](http://www.uscis.gov), through the National Customer Service Center at 1-800-375-5283, or at a local USCIS office.

**Benefits**

1. Employment Authorization

You are authorized to work in the United States for as long as you remain in asylum status. Your derivative family member(s) listed above are also authorized to work in the United States, so long as they retain derivative asylum status. You are authorized to work in the United States whether or not you have an Employment Authorization Document (EAD). To demonstrate employment authorization to employers, you must show certain documentation such as an unrestricted Social Security card, a state-issued driver's license, or an unexpired EAD issued by USCIS. For a list of all documents that employers may accept as proof of employment authorization, consult the USCIS Form I-9, *Employment Eligibility Verification*, on the USCIS website at <http://www.uscis.gov/i-9-central>. Many employers also use E-Verify to electronically check your employment eligibility. You can learn your E-Verify rights and responsibilities by visiting <http://www.uscis.gov/e-verify>.

USCIS will mail to the last address you provided to USCIS a secure Form I-766, *Employment Authorization Document* (EAD), which will be valid for two years. USCIS will also mail EADs for each of your derivative family members listed above who previously submitted their biometrics (e.g., fingerprints, photo and signature) at a USCIS Application Support Center (ASC). If you or your derivative family member(s) do not receive the EAD(s) in the mail within **14 business days** of the issuance of your asylum approval letter, please contact the Asylum Office listed above that issued your grant of asylum.

Contact information for asylum-based EAD questions is available on [www.uscis.gov/asylum](http://www.uscis.gov/asylum) (see “Asylum

Employment Authorization and Clock Contacts”). If your initial EAD is lost or stolen, you may apply for a replacement card by submitting Form I-765, *Application for Employment Authorization*, to the address listed on the online “FORMS” page on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

## 2. Derivative Asylum Status

You may request derivative asylum status for your spouse and/or any unmarried child(ren) under 21 years of age who are not included in this decision and with whom you have a qualifying relationship, whether or not that spouse or child is in the United States. To request derivative asylum status, you must submit Form I-730, *Refugee/Asylee Relative Petition*, to the address listed on the online “FORMS” page on the USCIS website at [www.uscis.gov](http://www.uscis.gov) **within two years** of the date you were granted asylum status. USCIS may extend the two-year filing period in certain cases for humanitarian reasons.

## 3. Social Security Cards

You and any of your derivative family members listed above may apply immediately for an unrestricted Social Security card at any Social Security office. For more information or to obtain a Form SS-5, *Application for a Social Security Card*, visit the Social Security Administration’s website at [www.ssa.gov](http://www.ssa.gov), call their toll-free number 1-800-772-1213, or visit a local Social Security office. When you go to a Social Security office to apply for a Social Security card, you must take your Form I-94, *Arrival-Departure Record*, to demonstrate that you have been granted asylum. If available, you should also take photo-identity documentation, such as an EAD or passport. For directions to the Social Security office nearest to you, call the Social Security Administration toll-free number or visit the website listed above.

## 4. Assistance and Services through the Office of Refugee Resettlement

You and any of your derivative family members listed above may be eligible to receive assistance and services through the Office of Refugee Resettlement (ORR). ORR funds and administers various programs run by state and private, non-profit agencies throughout the United States. These programs include cash and medical assistance, employment preparation and job placement, and English language training. Many of these programs have time-limited eligibility periods that begin from the date you were granted asylum. Therefore, to take advantage of these programs, you must contact ORR as soon as possible after receipt of this letter. For more information about these programs and where to go for assistance and services in your state, visit the ORR website at [www.acf.hhs.gov/programs/orr](http://www.acf.hhs.gov/programs/orr).

## 5. Employment Assistance

You and any of your derivative family members listed above are eligible to receive certain employment services – including job search assistance, career counseling, and occupational skills training – through One-Stop Career Centers. To find the center nearest you, call 1-877-US2-JOBS or visit America’s Service Locator at [www.servicelocator.org](http://www.servicelocator.org).

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## Responsibilities

### 1. Travel Outside of the United States

If you, or your family member(s) with derivative asylum status, plan to travel outside of the United States, you must each request permission to return to the United States before you leave this country by obtaining a refugee travel document. A refugee travel document is valid for one year and is issued to an asylee to allow his or her return to the United States after temporary travel abroad. If you, or your family member(s) with derivative asylum status, do not request a refugee travel document in advance of your departure from the United States, you may be unable to re-enter the United States or you may be placed in removal proceedings before an immigration judge. A refugee travel document does not guarantee that you will be admitted into the United States. Rather, you must still undergo inspection by an immigration inspector from United States Customs and Border Protection (CBP). You and your derivative family member(s) listed above may apply for a refugee travel document by submitting Form I-131, *Application for Travel Document*, for each individual to the address listed on the online "FORMS" page on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

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### 3. Selective Service Registration

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**Note: Please write your full name, date of birth, and A-number on any correspondence you have with DHS.**

Enclosures:     \_\_\_ Form I-94, *Arrival-Departure Record(s)*  
                  \_\_\_ Translated Summary of This Approval Letter



U.S. Citizenship  
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# National Security Overview and CARRP Processing

Angie Gipson  
Chief, RAIO FDNS

RAIO Combined Training  
May 2, 2016

# Learning Objectives

- Provide Adjudicators with general understanding of USCIS' approach to handling cases with national security concerns.
- Familiarize Adjudicators with the FDNS Controlled Application Review and Resolution Process (CARRP)
- Enable Adjudicators to Identify factors that may indicate a national security concern.
- Enable Adjudicators with knowledge on primary FDNS resources used in vetting and resolution of national security concerns.

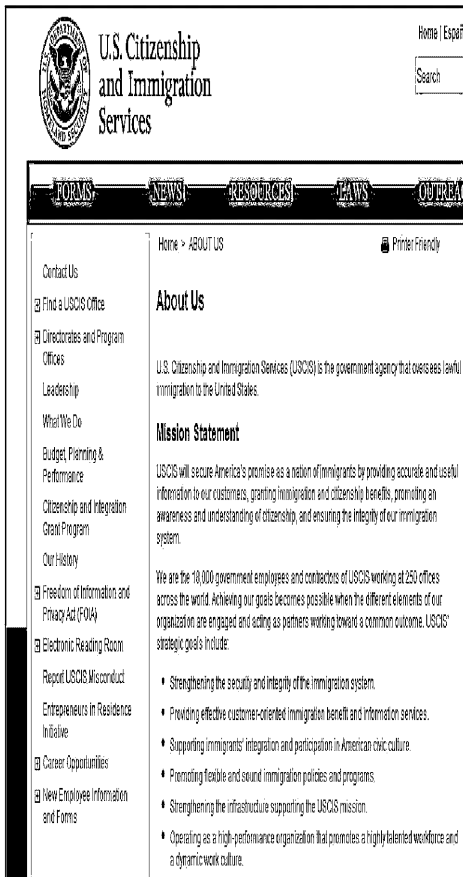


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# National Security Overview



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Directorates and Program Offices

Leadership

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Budget, Planning & Performance

Citizenship and Integration Great Program

Our History

Freedom of Information and Privacy Act (FOIA)

Electronic Reading Room

Report USCIS Misconduct

Entrepreneurs in Residence Initiative

Career Opportunities

New Employee Information and Forms

## About Us

U.S. Citizenship and Immigration Services (USCIS) is the government agency that oversees lawful immigration to the United States.

### Mission Statement

USCIS will secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.

We are the 18,000 government employees and contractors of USCIS working at 250 offices across the world. Achieving our goals becomes possible when the different elements of our organization are engaged and acting as partners working toward a common outcome. USCIS' strategic goals include:

- Strengthening the security and integrity of the immigration system.
- Providing effective customer-oriented immigration benefit and information services.
- Supporting immigrants' integration and participation in American civic culture.
- Promoting flexible and sound immigration policies and programs.
- Strengthening the infrastructure supporting the USCIS mission.
- Operating as a high-performance organization that promotes a highly talented workforce and a dynamic work culture.

## USCIS Mission Statement:

“USCIS will secure America’s promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.”

## Lesson Objectives

1. How do we define national security concerns?
2. How do we identify national security concern cases?
3. How do we process national security concern cases?



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# What is “national security” at USCIS?

## SOURCE OF AUTHORITY

INA § 212(a)(3)(A), (B), (F) – Security and related *inadmissibility* grounds

INA § 237(a)(4)(A) or (B) – Security and related *deportability* grounds

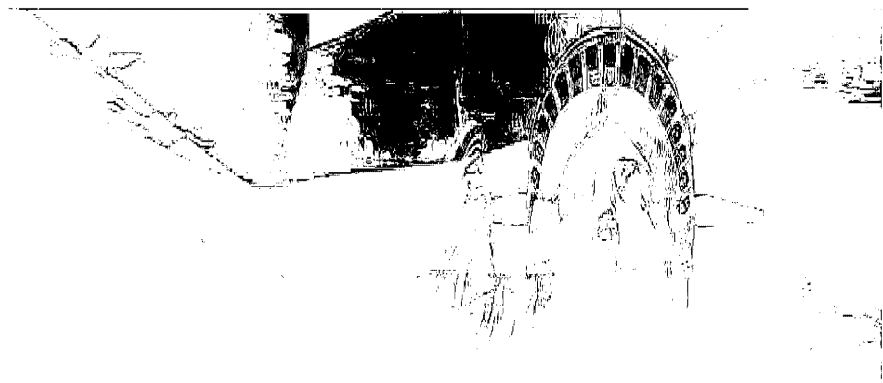
A national security concern exists when an individual or organization has been determined to have an **articulable link** to prior, current or planned involvement in, or association with, an activity, individual or organization described in INA § 212(a)(3)(A), (B), or (F), 237(a)(4)(A) or (B).



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# NS Indicators

## I. Statutory Indicators

INA 212(a)(3)(A), (B), or (F) [inadmissibility] or

237(a)(4)(A) or (B) [deportability]

## II. Non-Statutory Indicators

(b)(7)(e)



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# Statutory NS Indicators

Sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA

## 212 - GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION

(a) Classes of Aliens Ineligible for Visas or Admission

### (3) Security and related grounds.-

(A) In general.-Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in-

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is inadmissible.



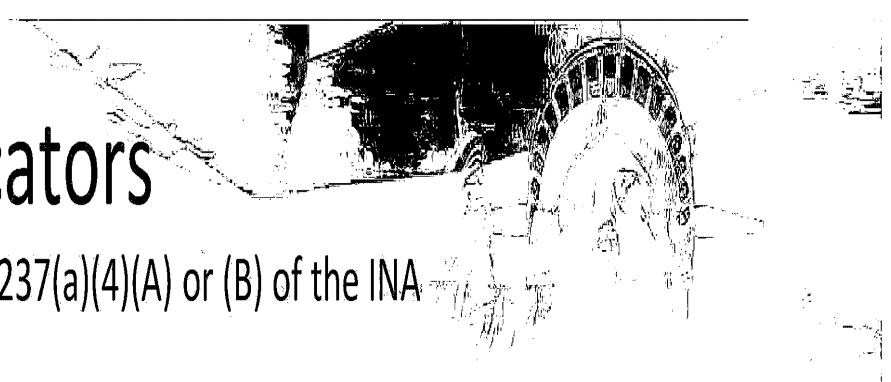
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# Statutory NS Indicators

Sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA



## 212 - GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION

### (a) Classes of Aliens Ineligible for Visas or Admission

#### (3) Security and related grounds.-

##### (B) Terrorist activities-

(i) IN GENERAL.-Any alien who-

(I) has engaged in a terrorist activity,

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of--

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), *unless* the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

(ii) EXCEPTION- Subclause (IX) 4d of clause(i) does not apply to a spouse or child

(iii) TERRORIST ACTIVITY DEFINED

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED

(v) REPRESENTATIVE DEFINED

(vi) TERRORIST ORGANIZATION DEFINED



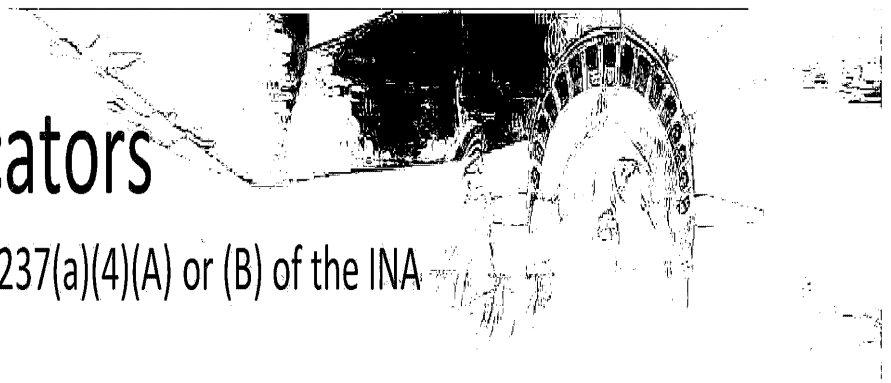
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# Statutory NS Indicators

Sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA



## 212 - GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION

(a) Classes of Aliens Ineligible for Visas or Admission

### (3) Security and related grounds. -

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



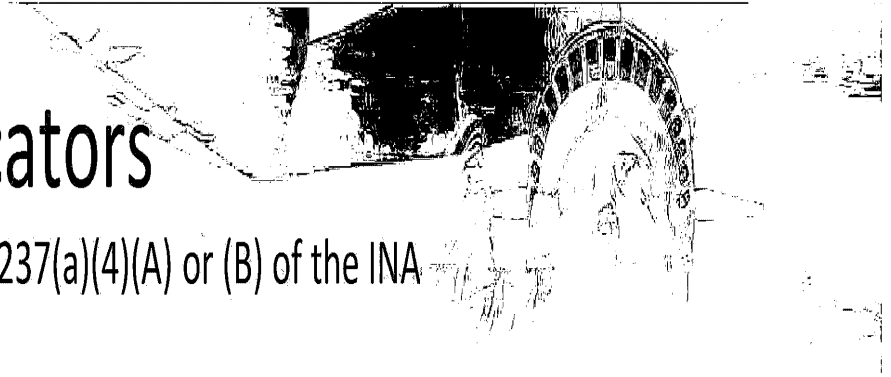
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# Statutory NS Indicators

Sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA



## 237 - GENERAL CLASSES OF DEPORTABLE ALIENS

(a) Classes of Deportable Aliens.-Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

### (4) Security and related grounds.-

(A) In general.-Any alien who has engaged, is engaged, or at any time after admission engages in-

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is deportable.

(B) Terrorist Activities - Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.



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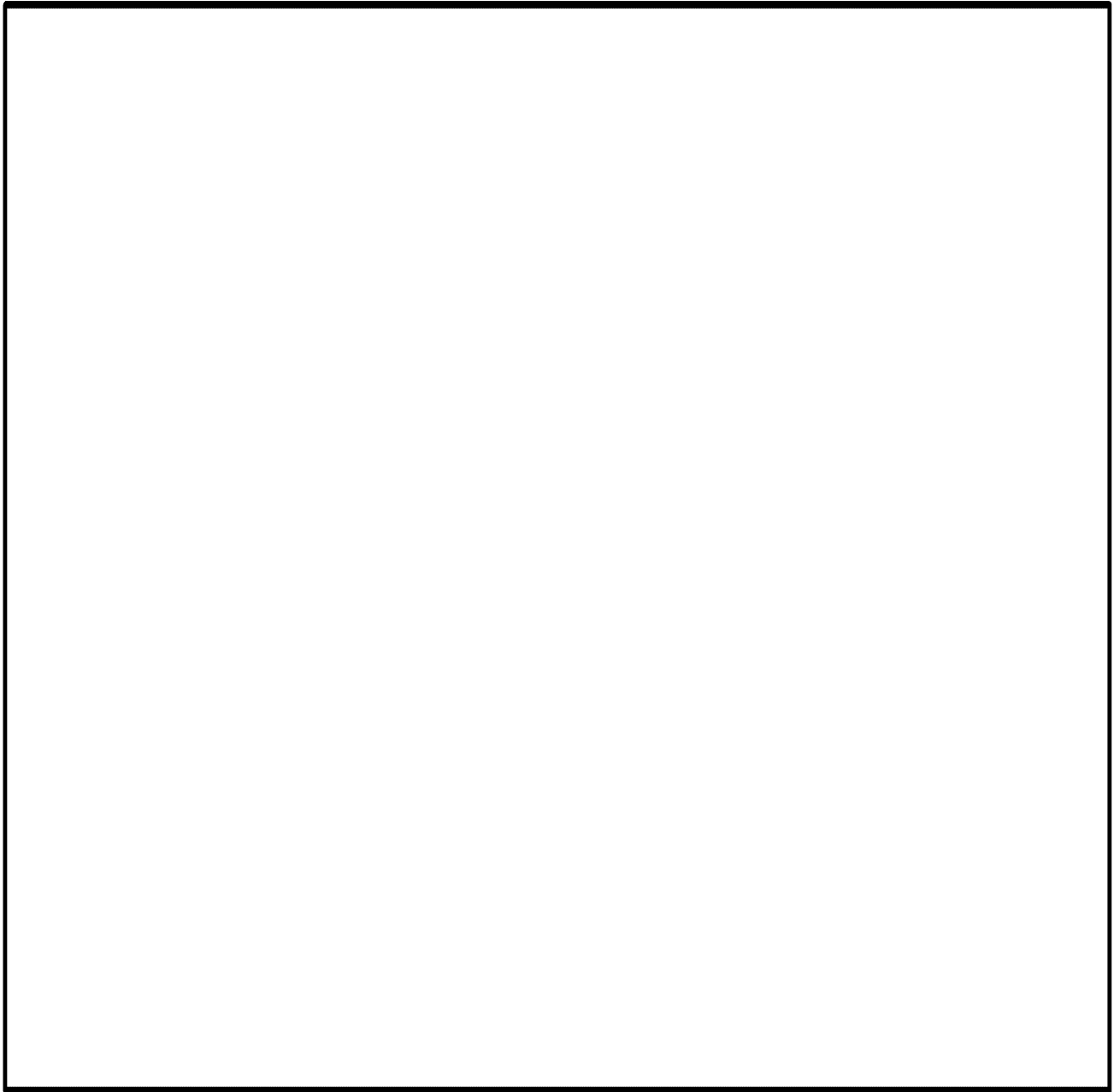
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# Non-Statutory NS Indicators

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increasing evidentiary standard

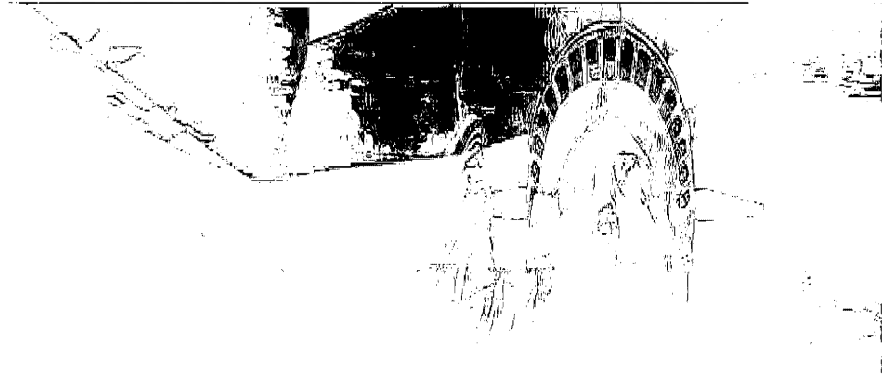


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# Pre-Lesson Hypotheticals



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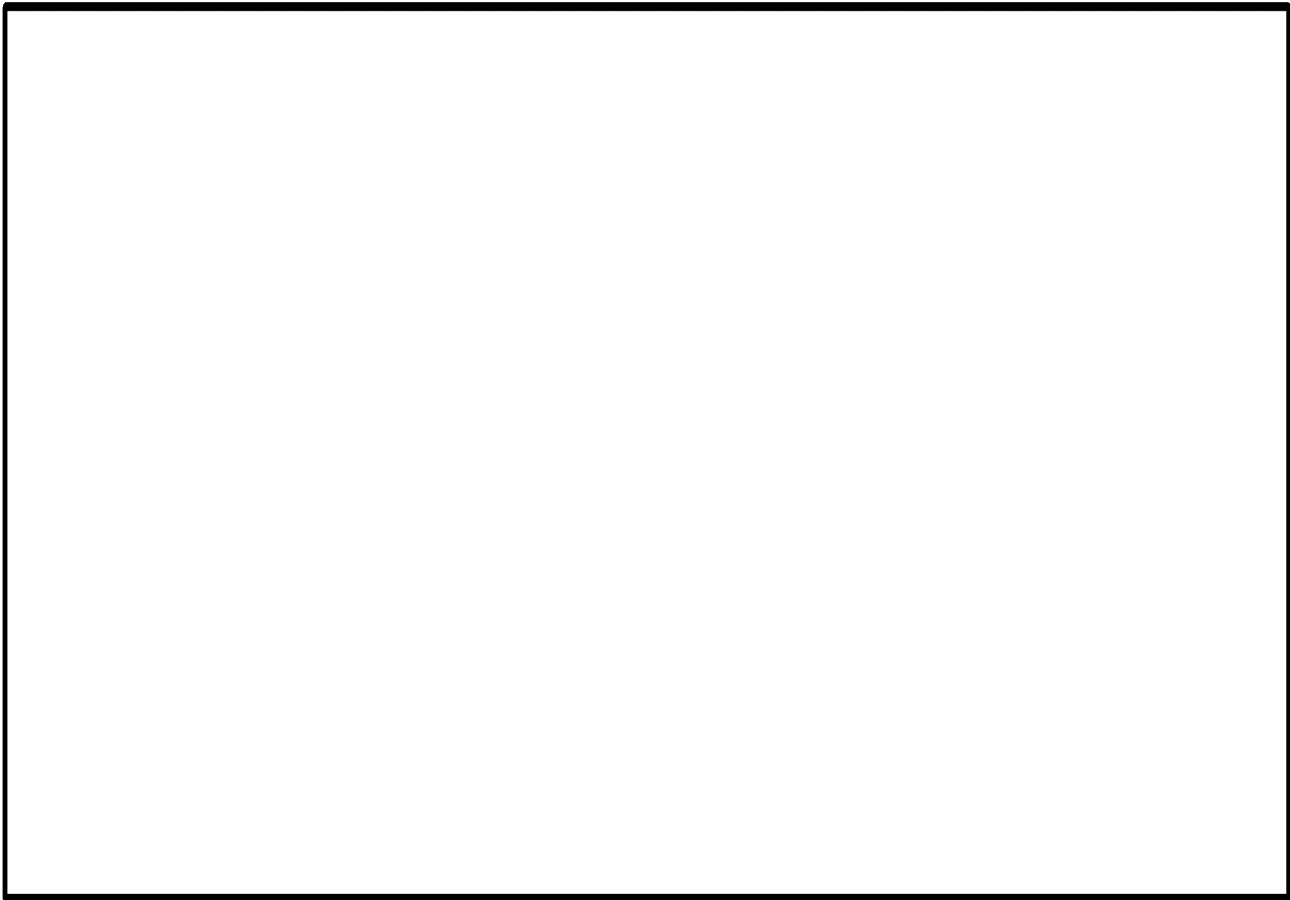
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# Hypo 1 – NS Indicator or Concern?

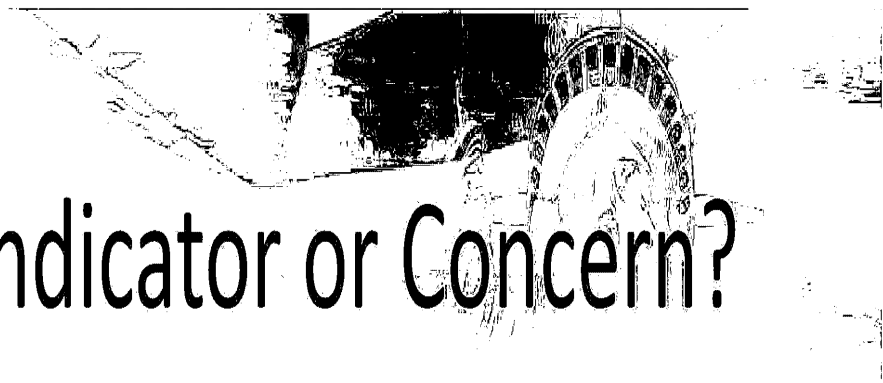
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# Hypo 2 - NS Indicator or Concern?

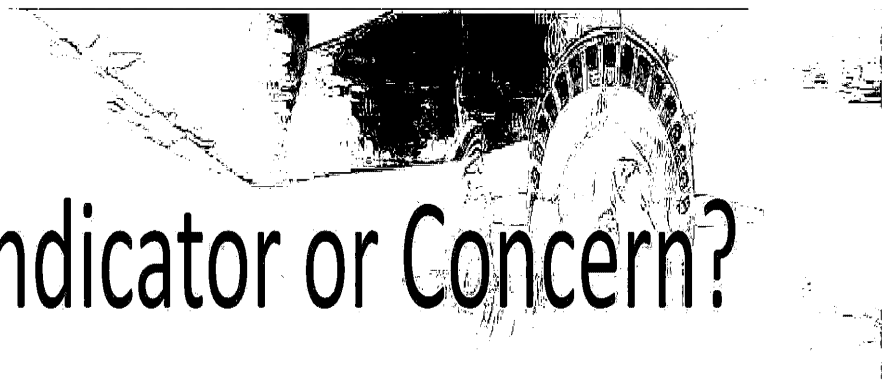
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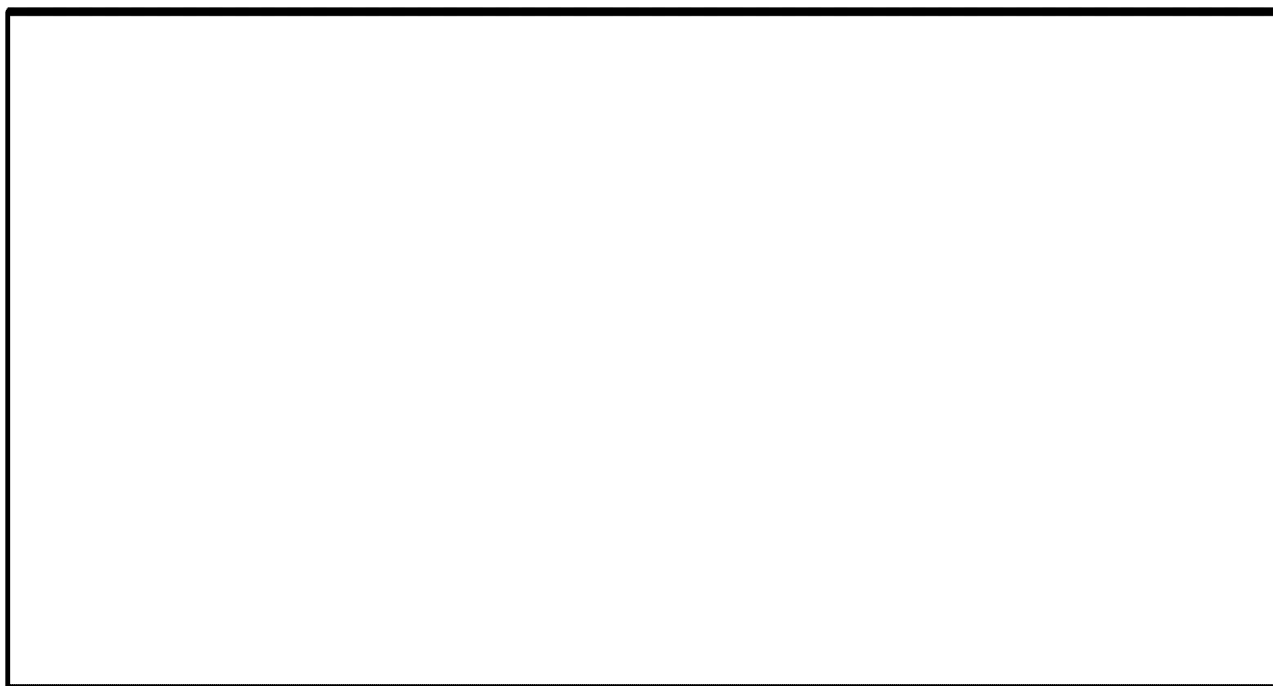
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# Hypo 3 - NS Indicator or Concern?

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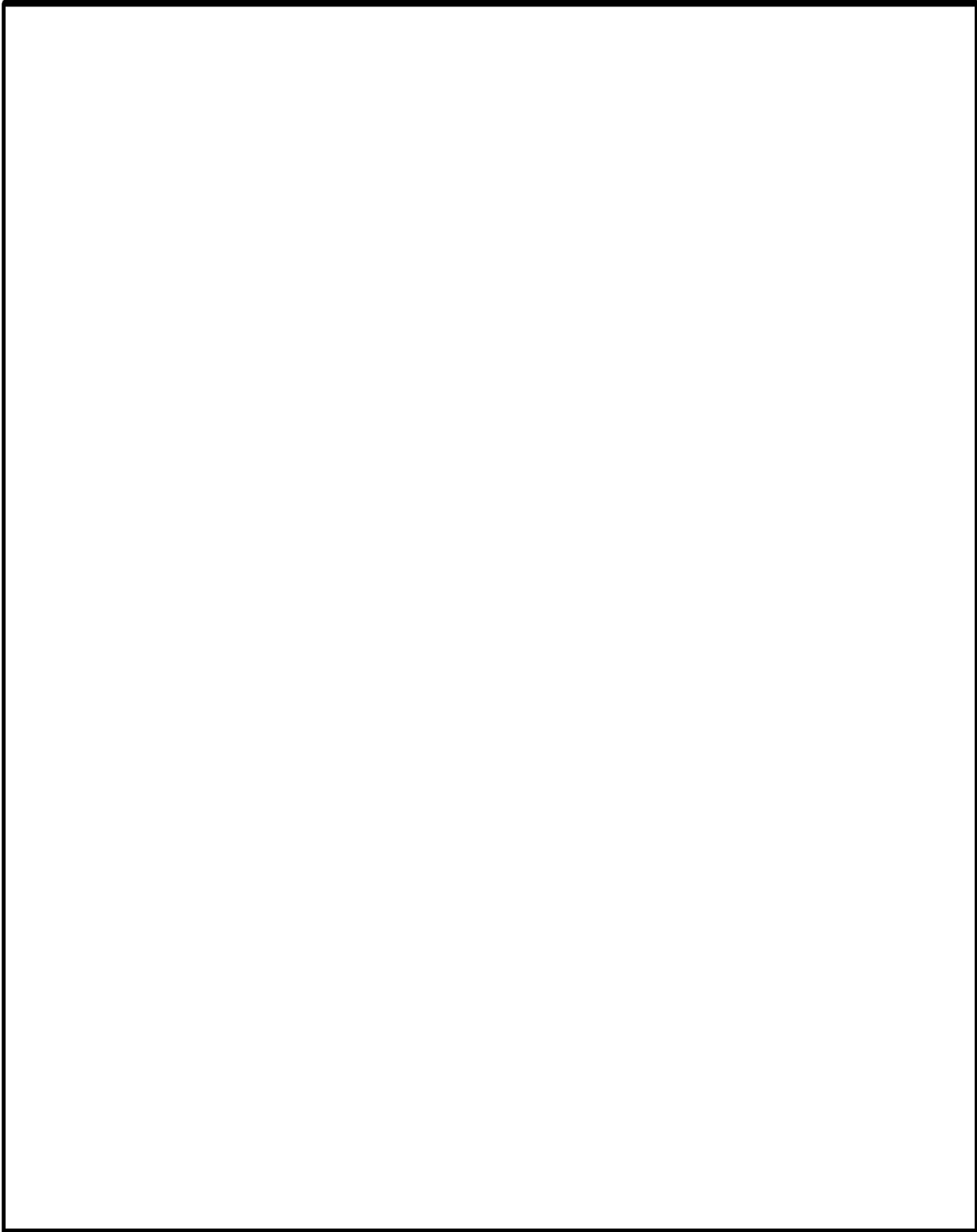


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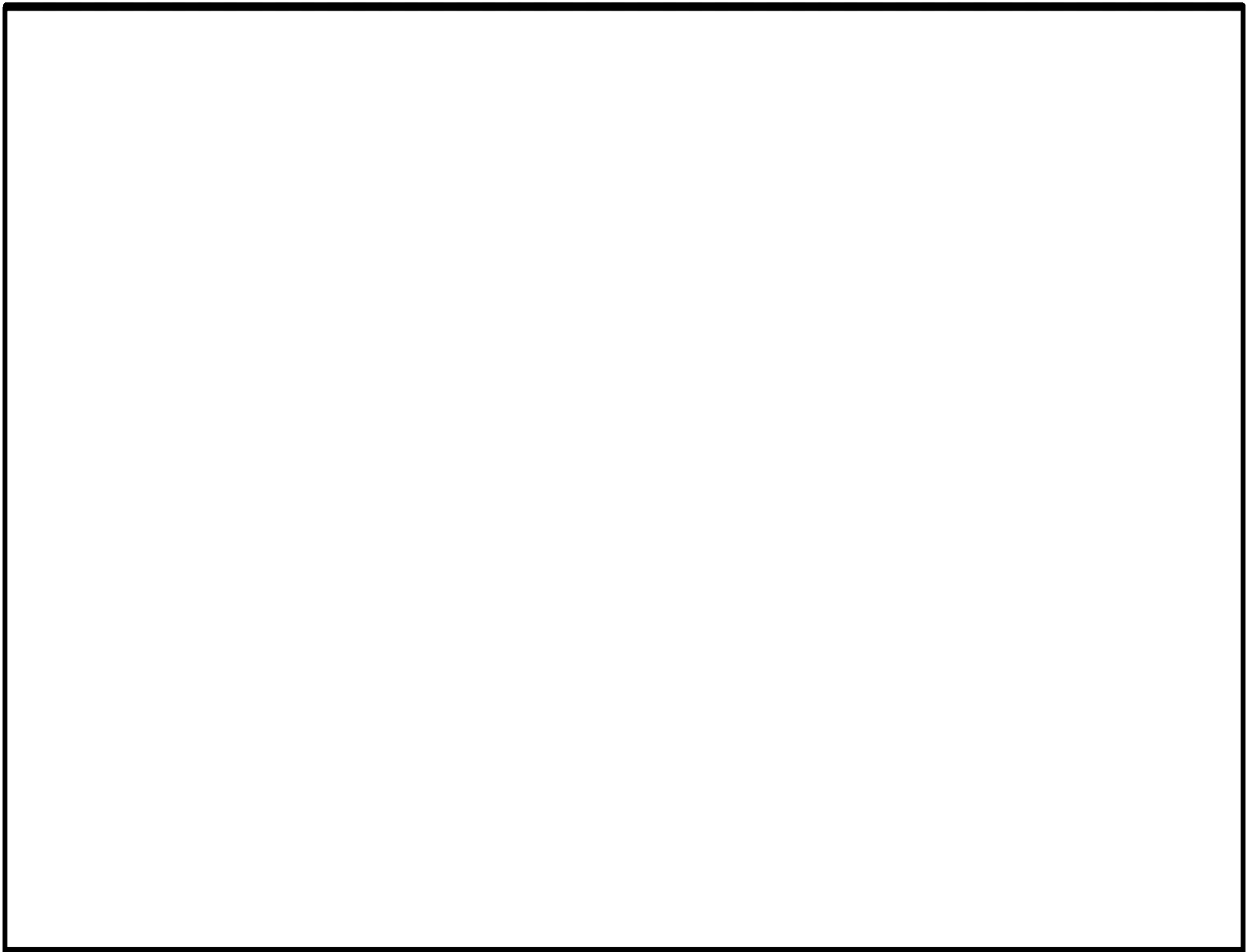
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# CARRP Process & Operational Procedure

CARRP is a disciplined process for identifying, recording, vetting, and adjudicating applications and petitions where NS concerns are identified.

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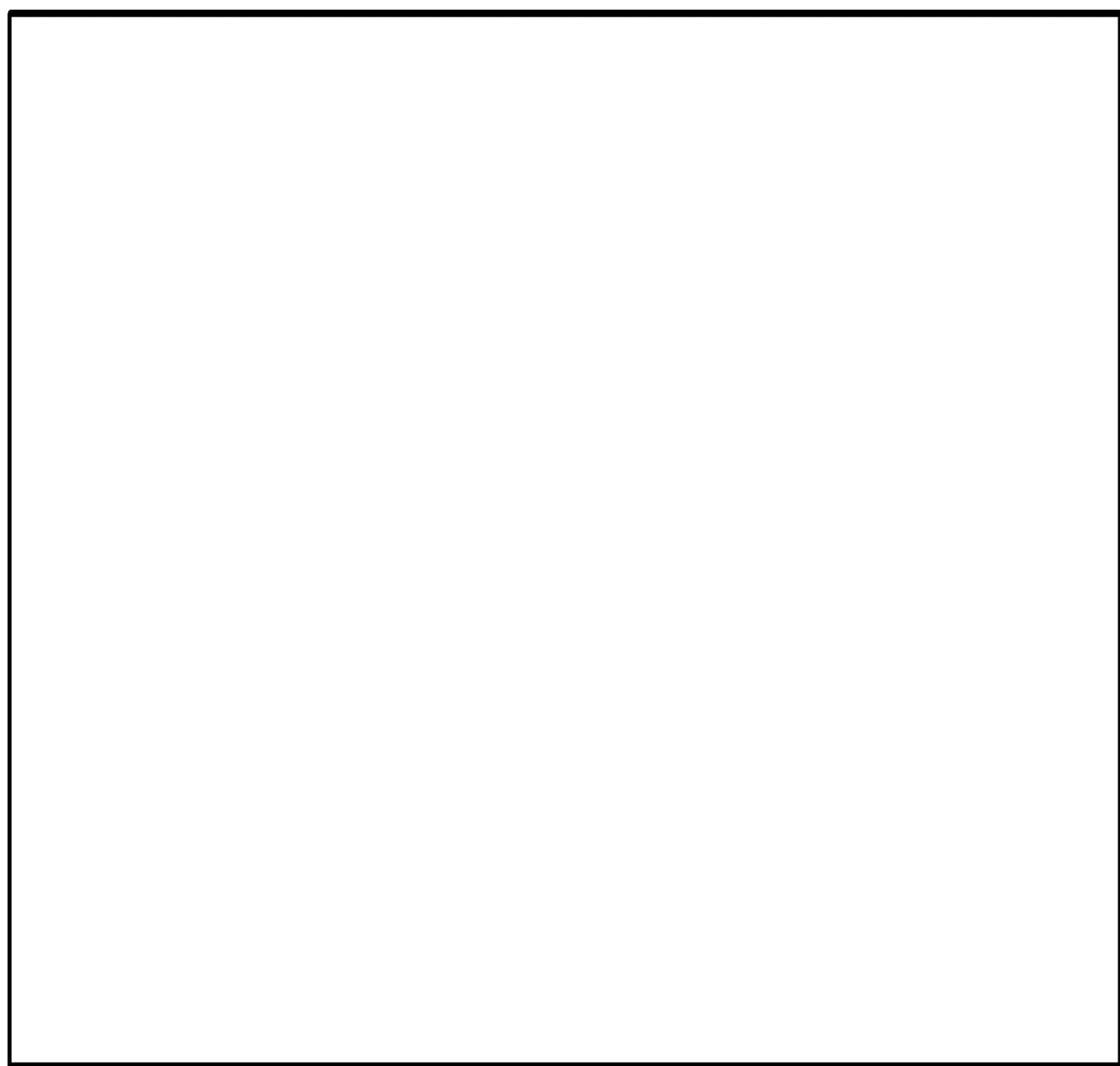
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# National Security Framework

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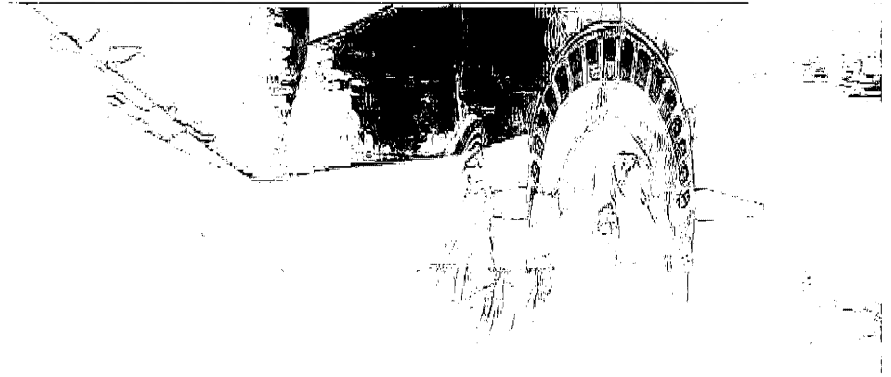


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Terminology



# Known or Suspected Terrorist (KST)



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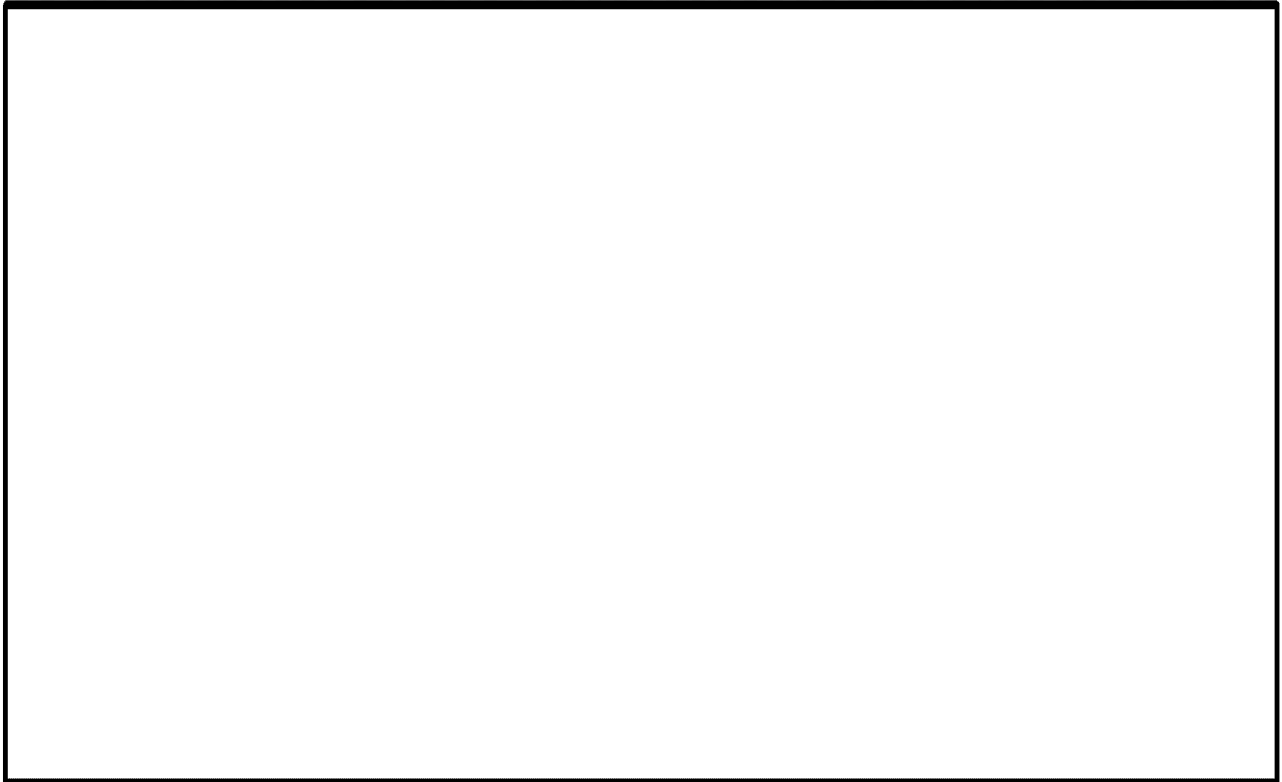
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# Known or Suspected Terrorist (KST)

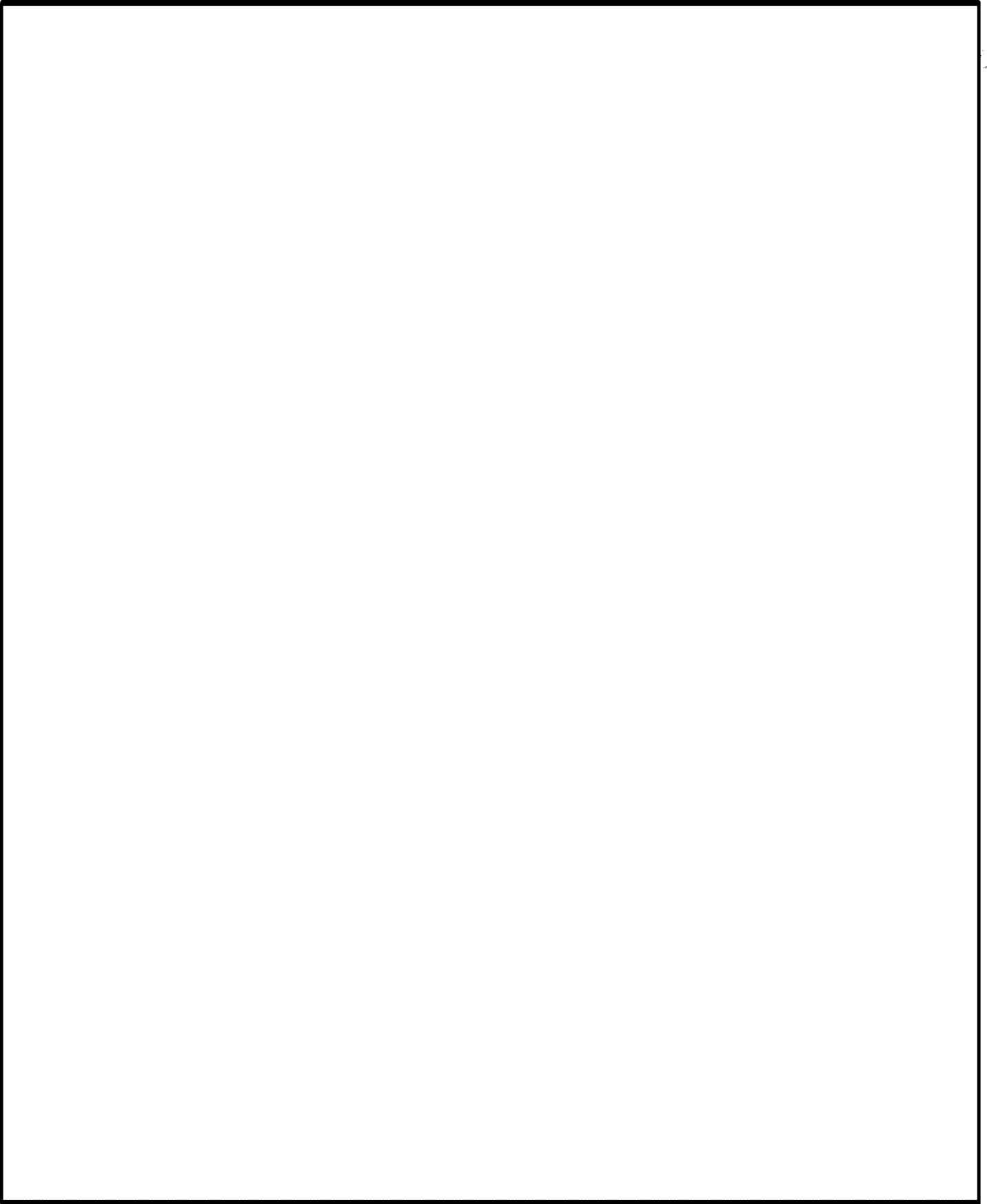
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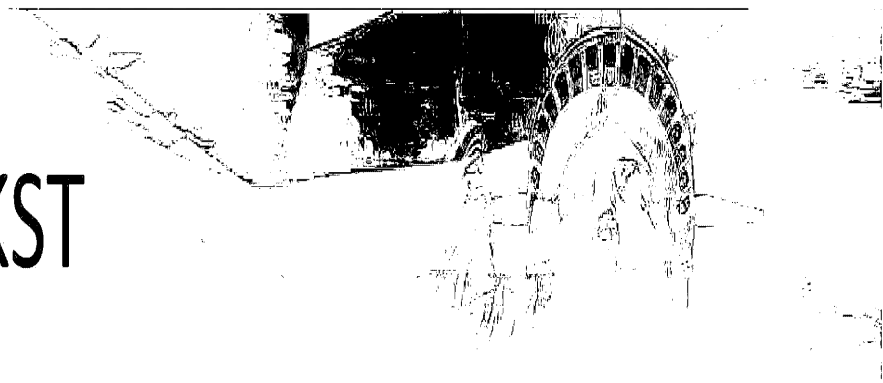
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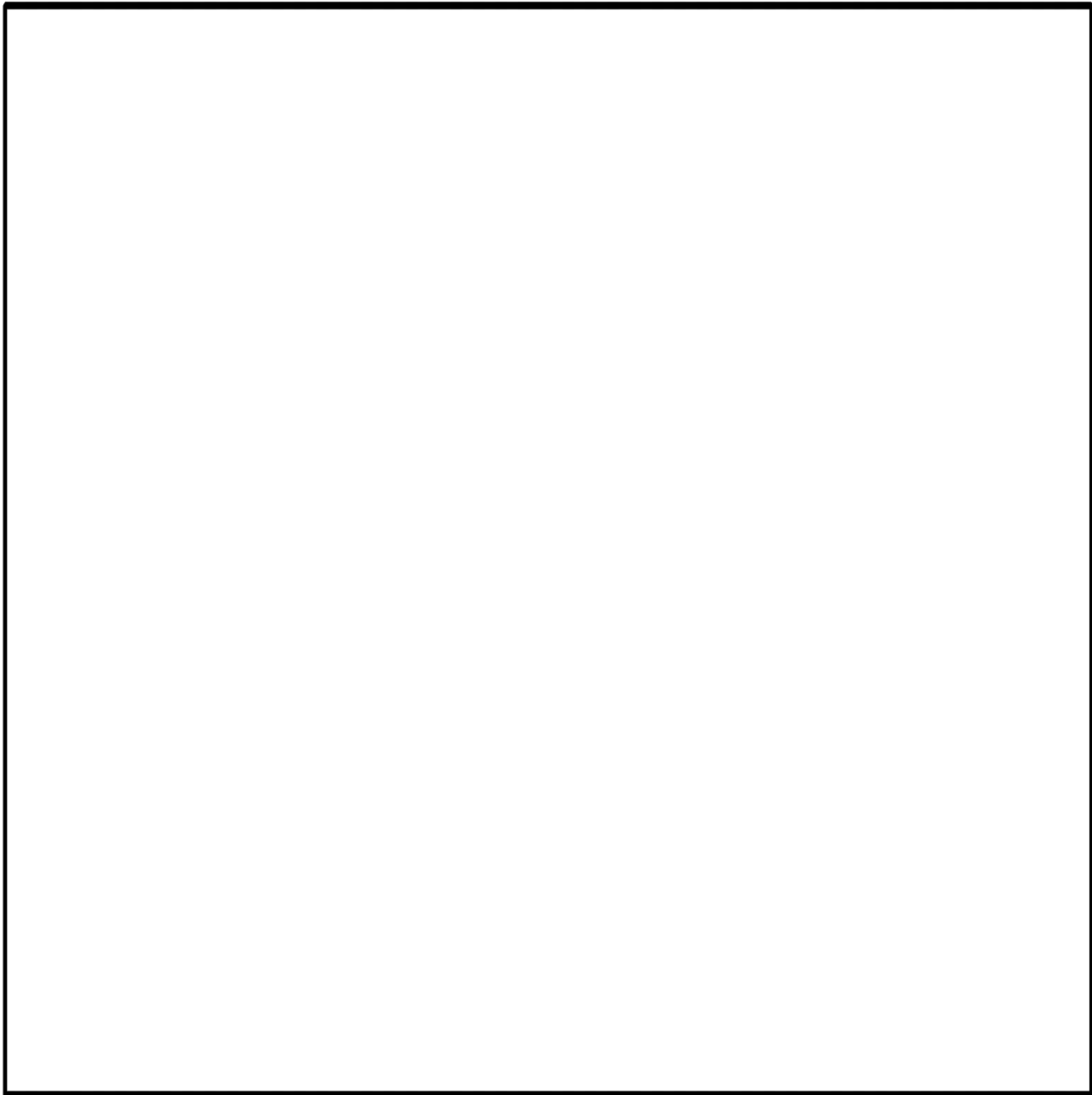
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# Terminology: KST

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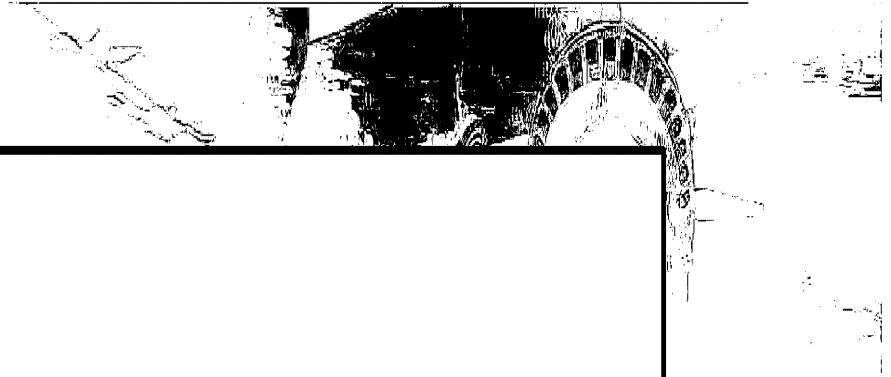


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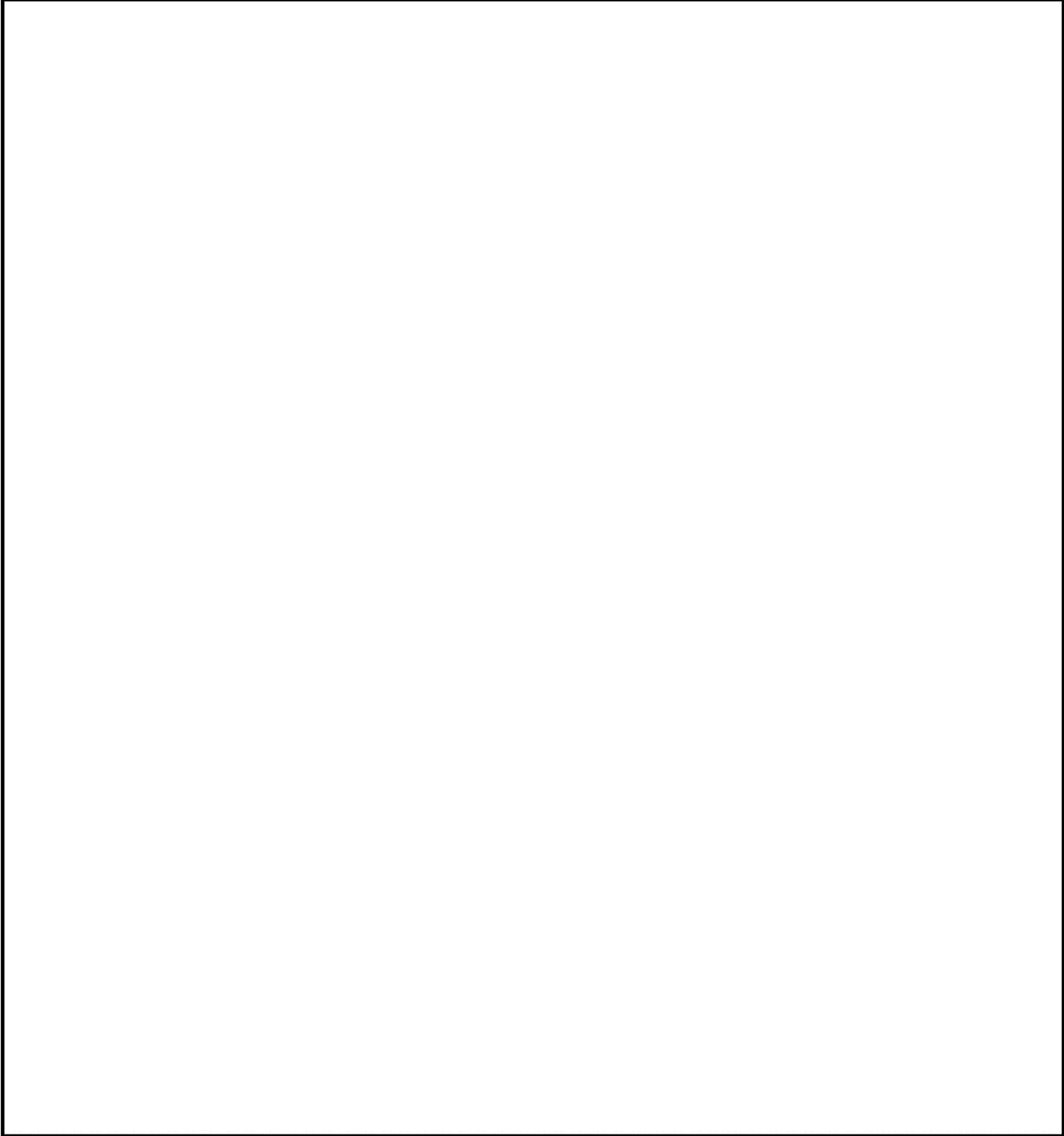
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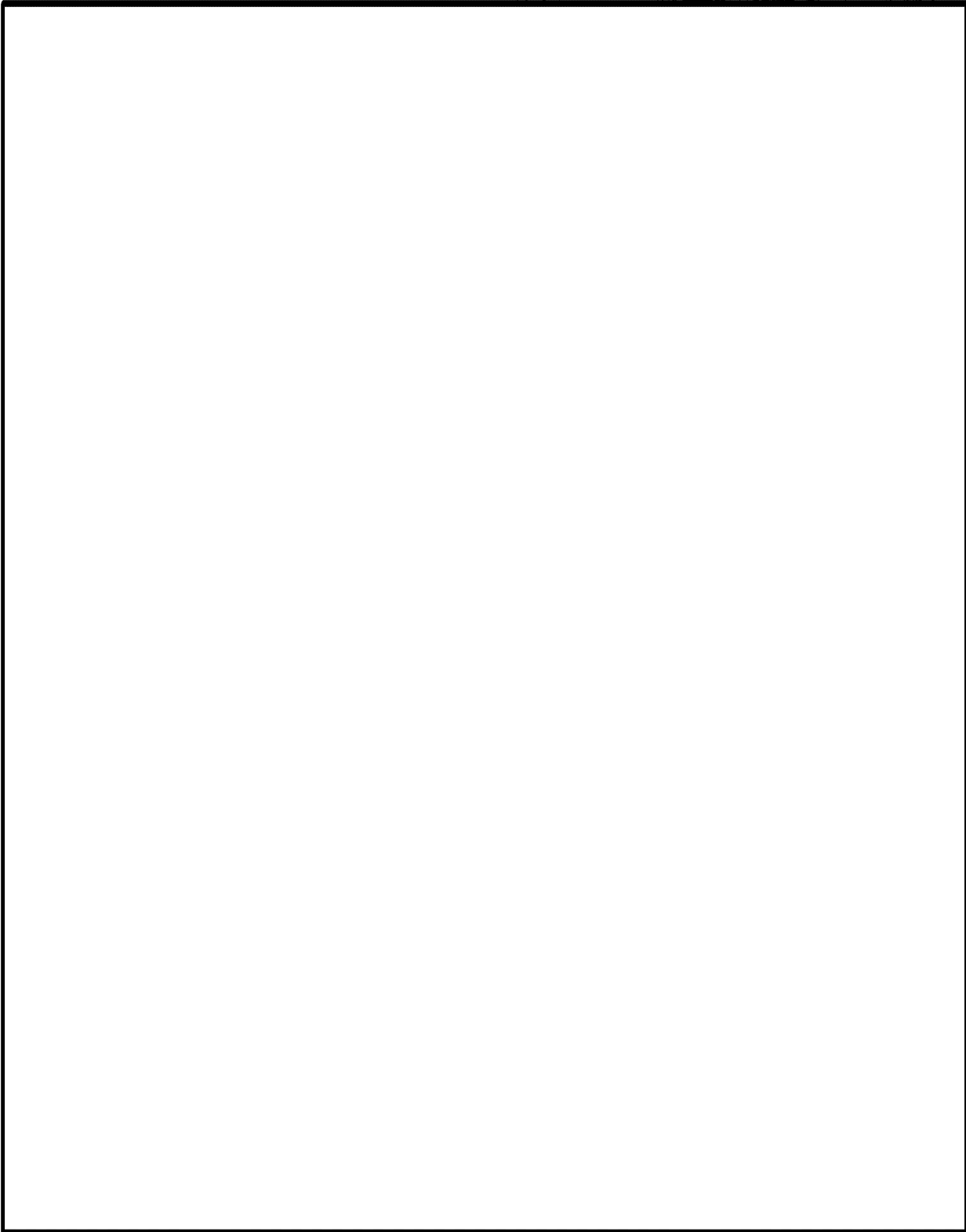


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# Terminology



## Non-Known or Suspected Terrorist (Non-KST)



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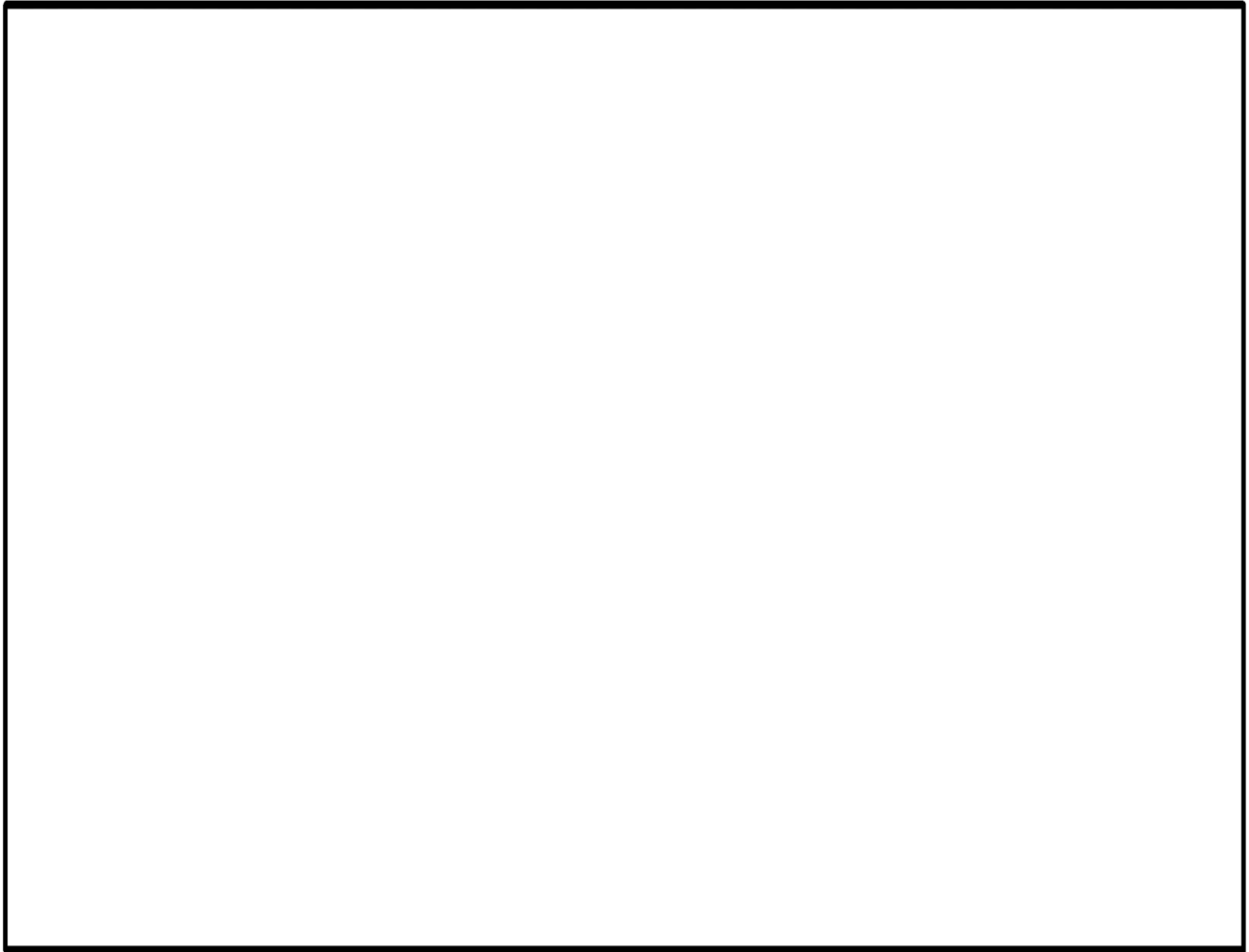
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# Non-Known or Suspected Terrorist (Non-KST)

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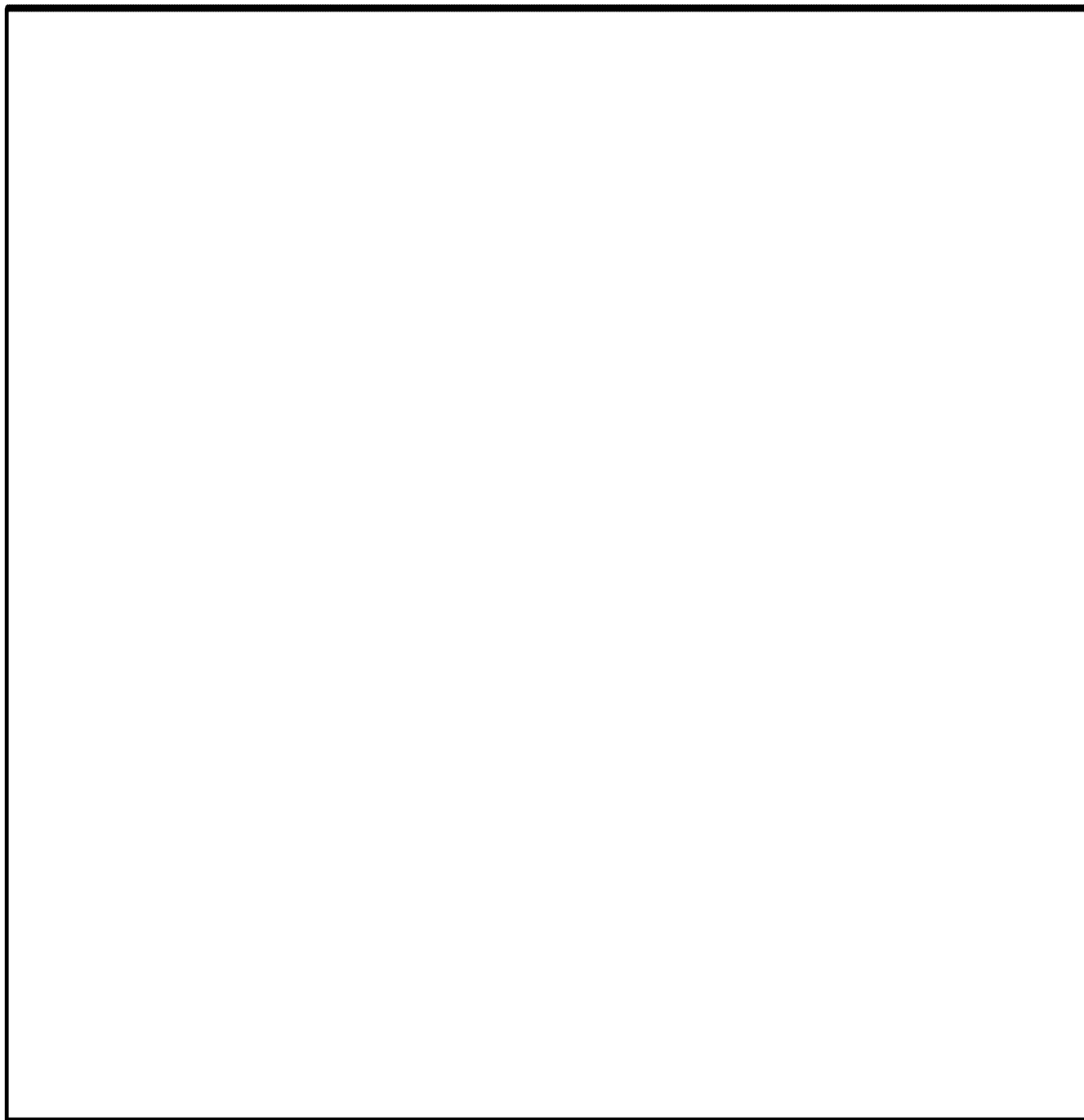
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# The RAI0 Adjudicator's Role in CARRP

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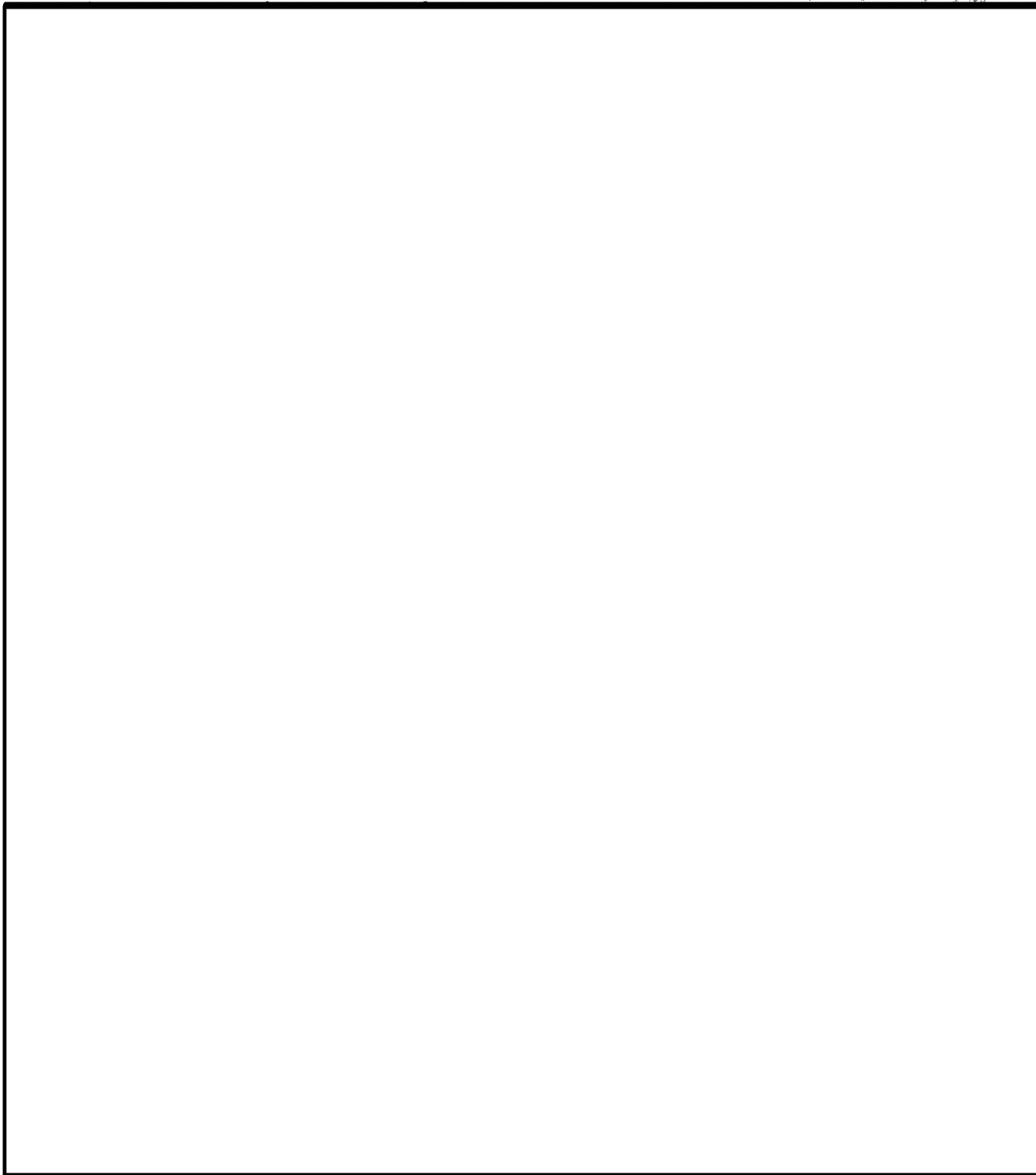


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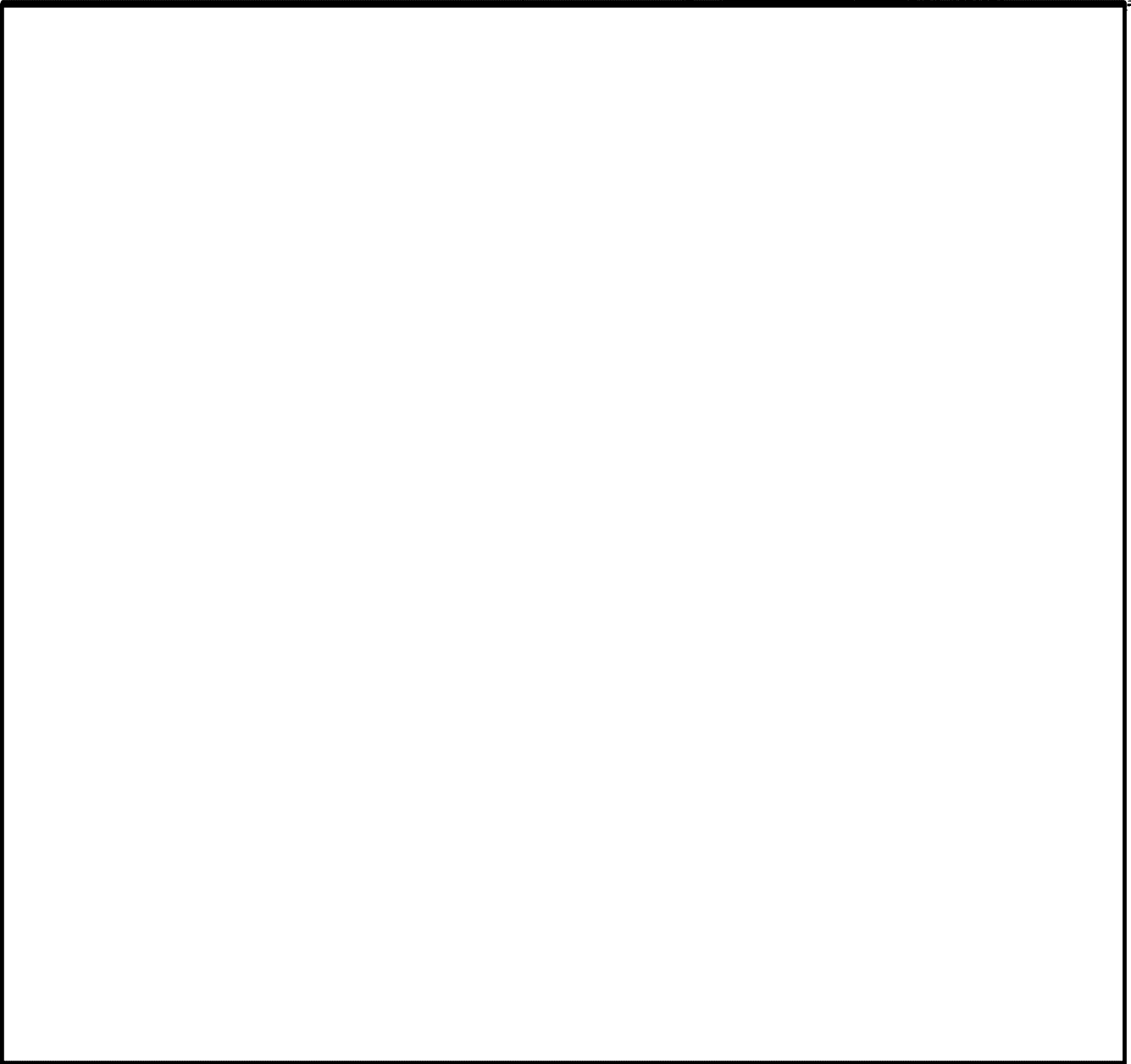
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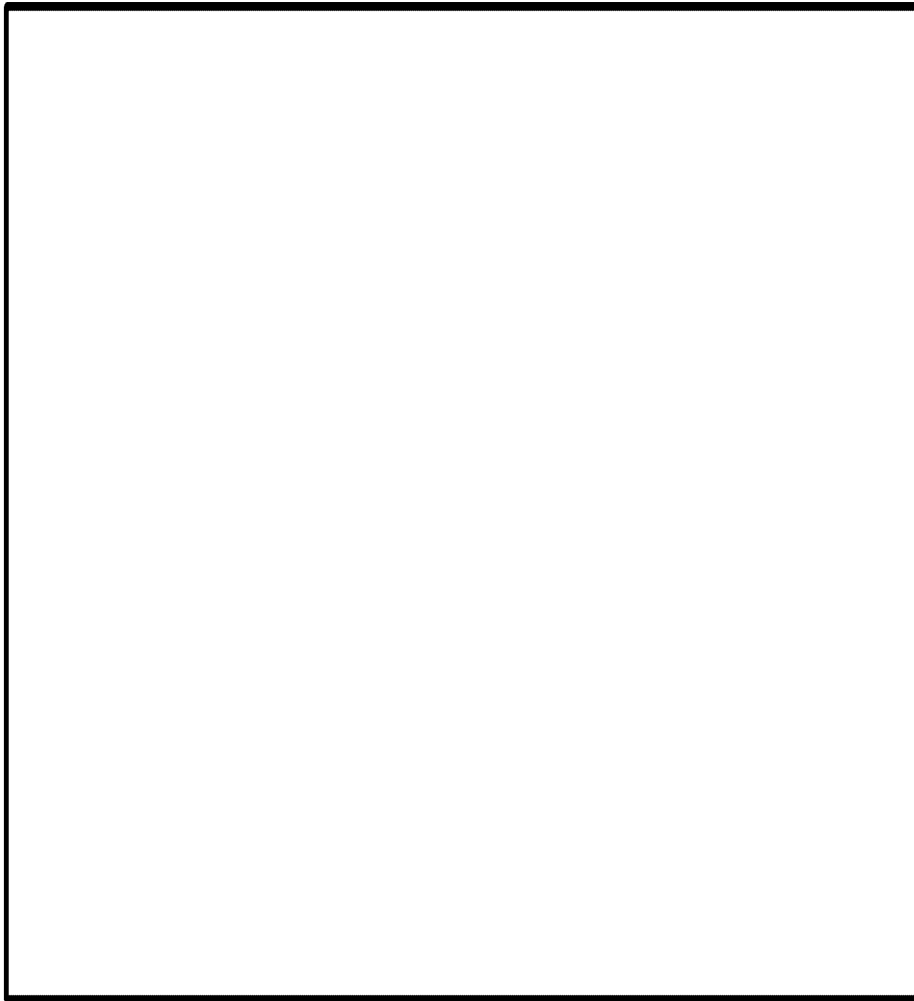
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# Identifying Non-KSTs

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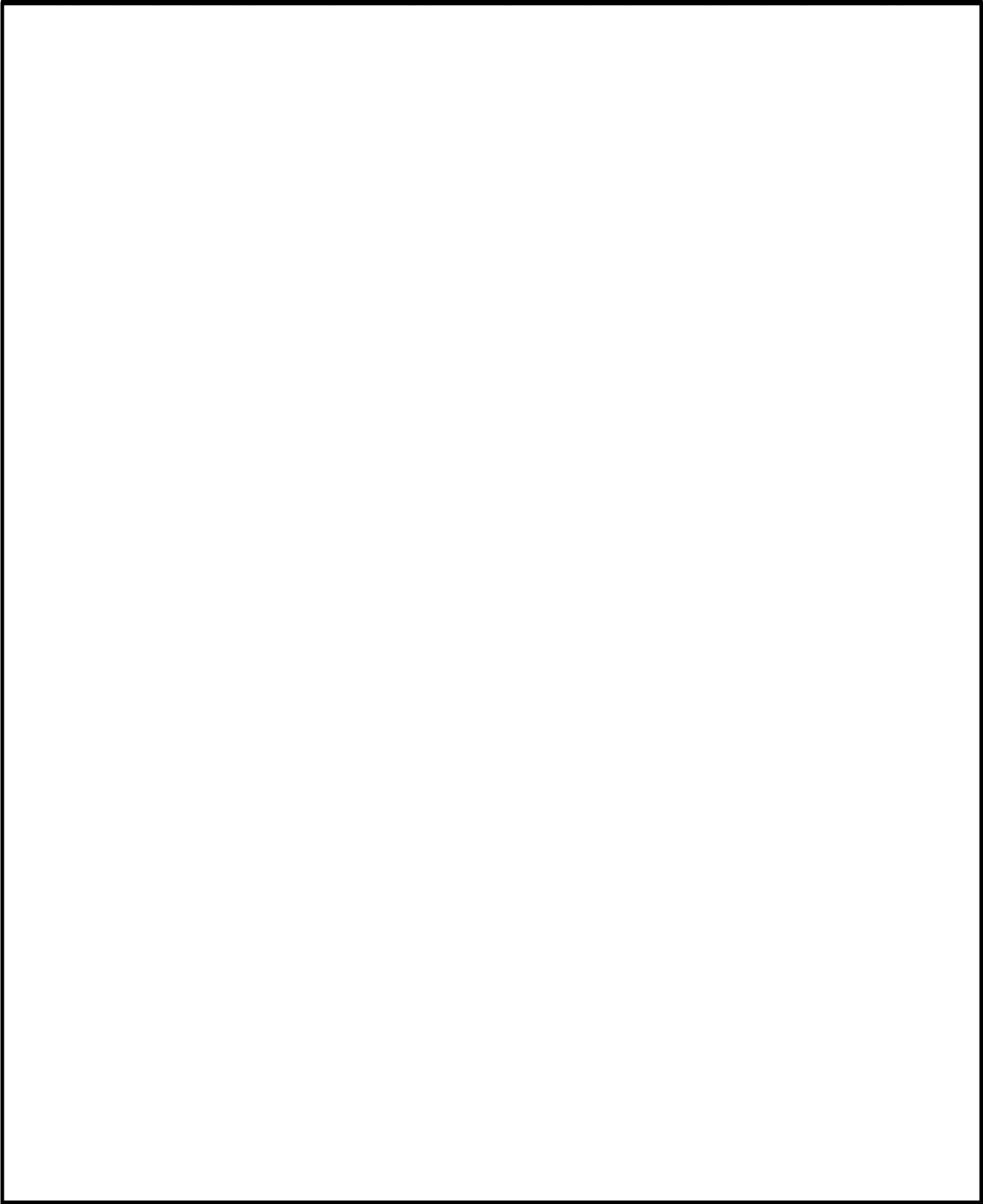


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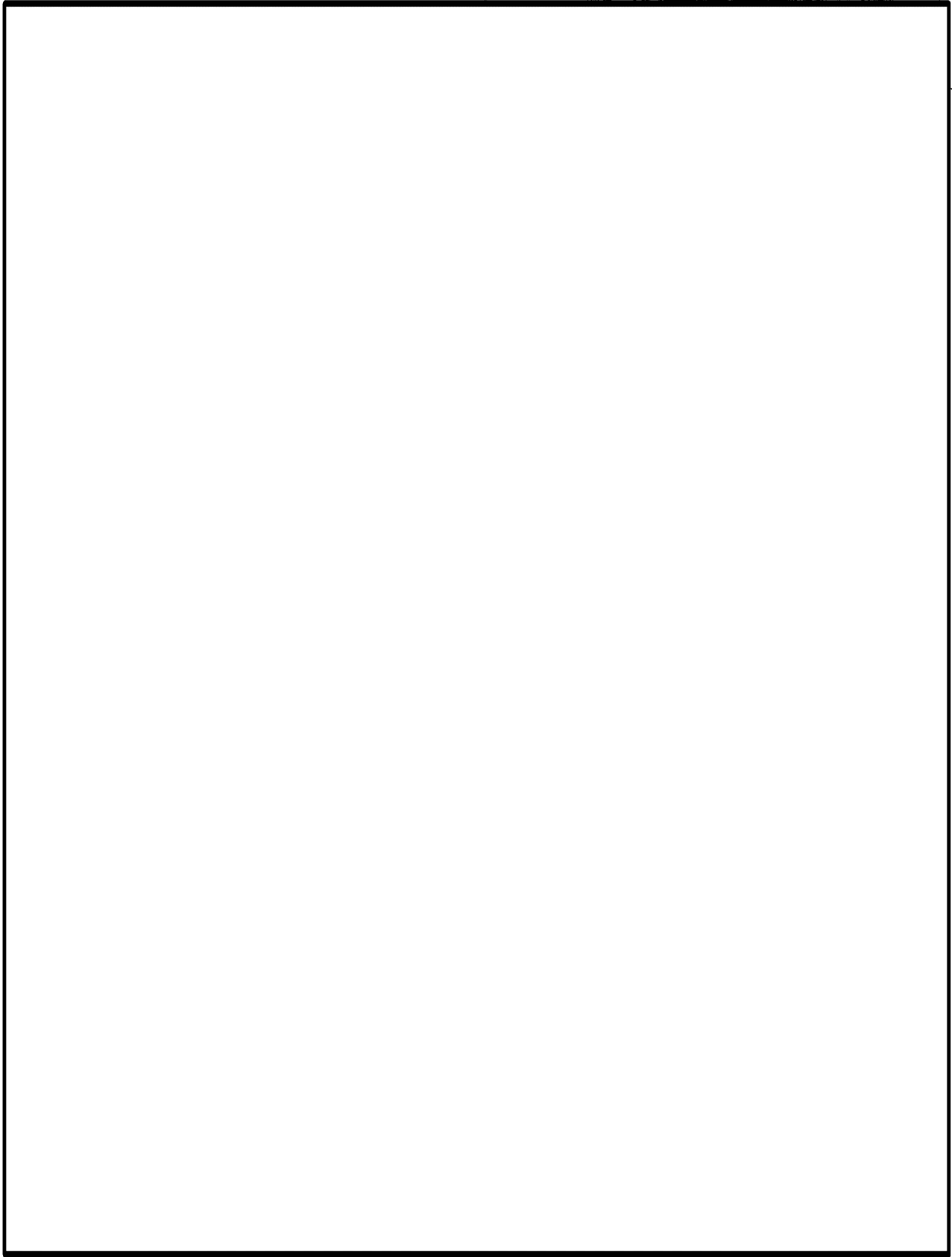
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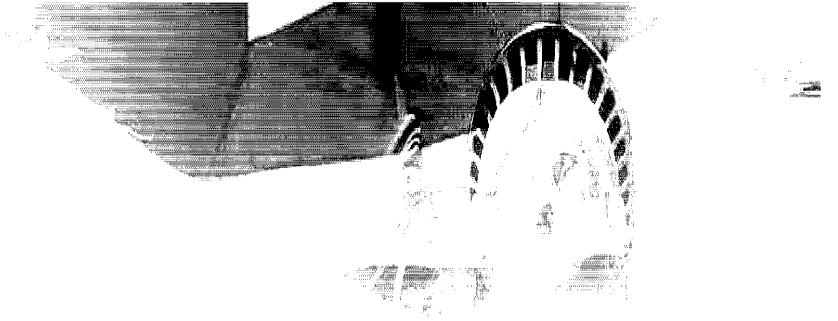


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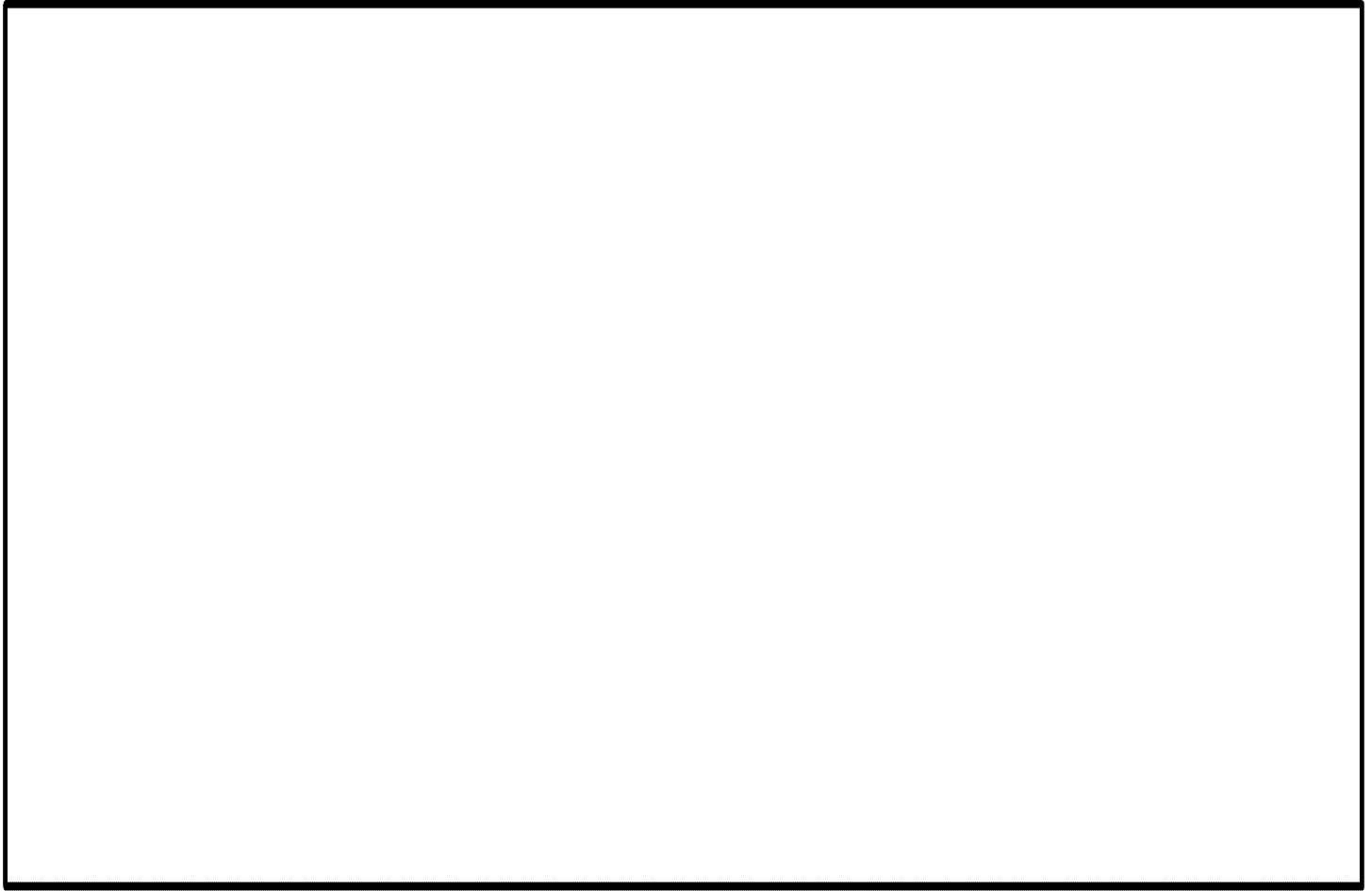
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# Hypo 4

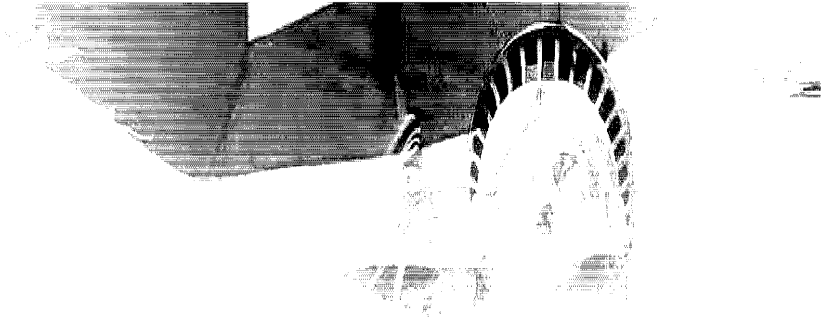
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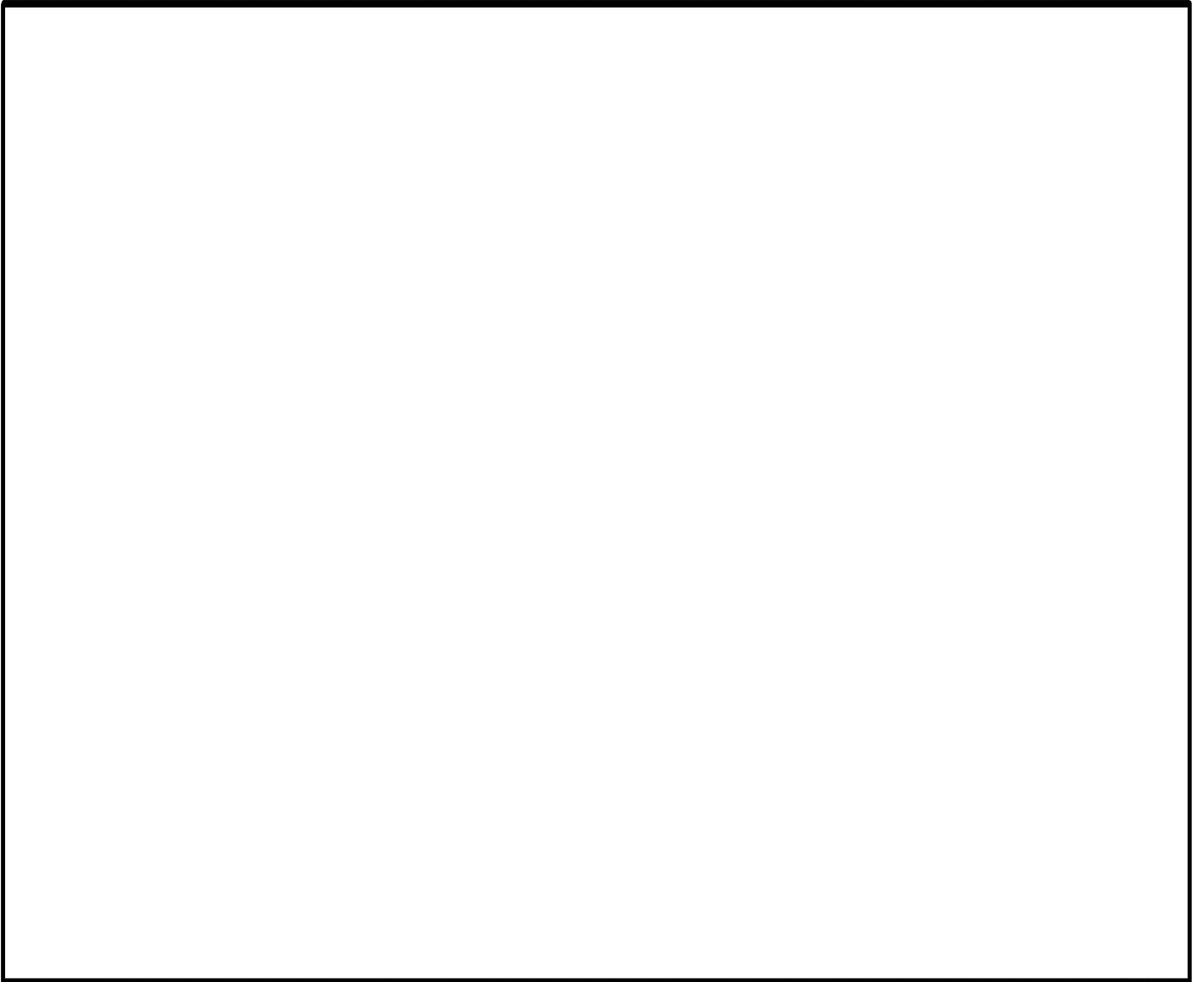
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# Hypo 5

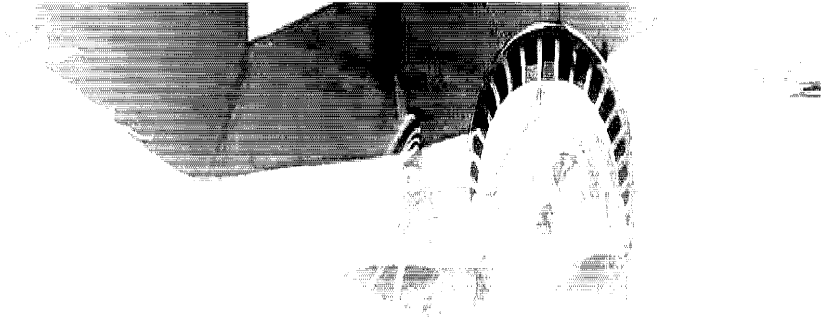
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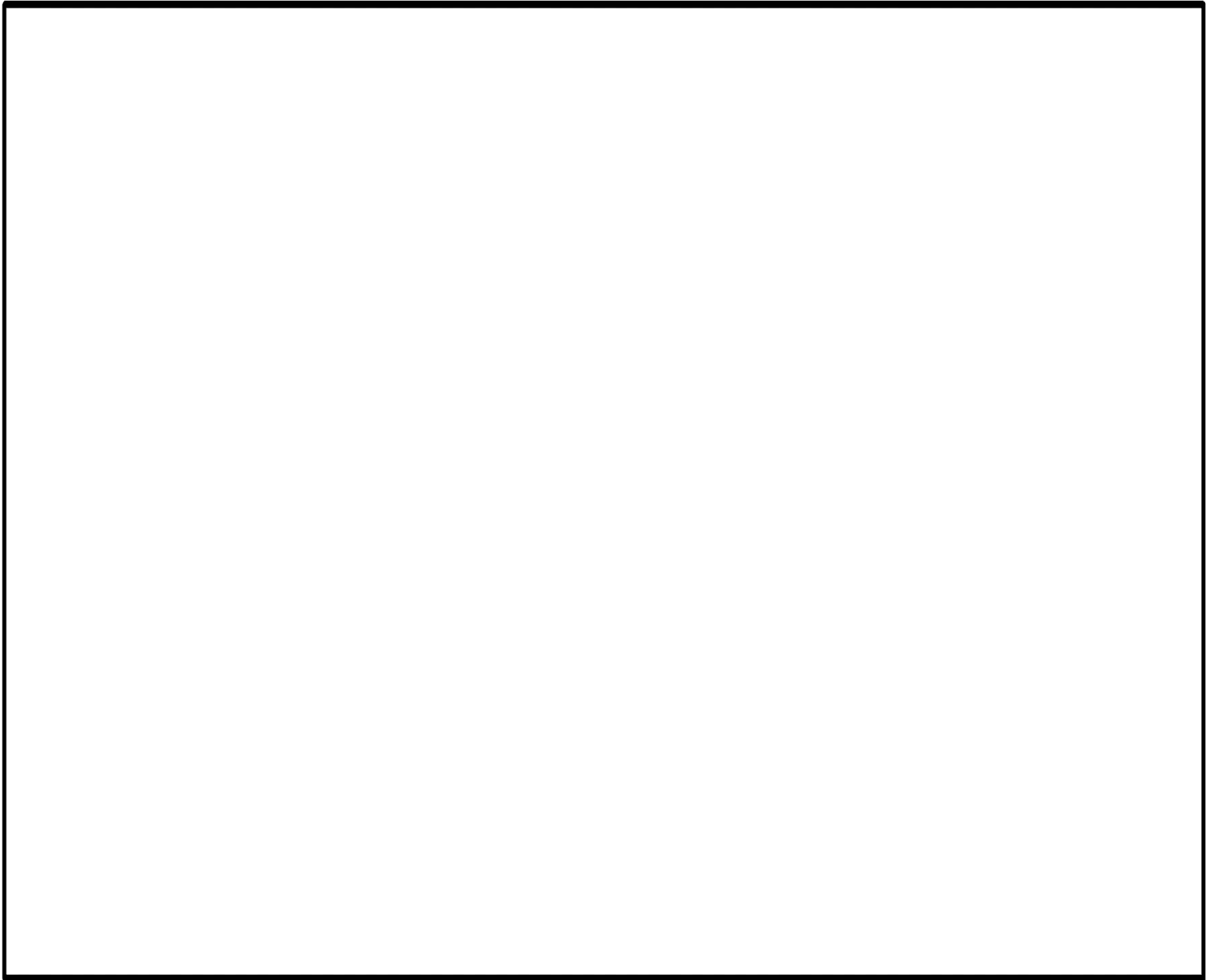
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A guy walks into a (mandatory?) bar...

NS Concern?

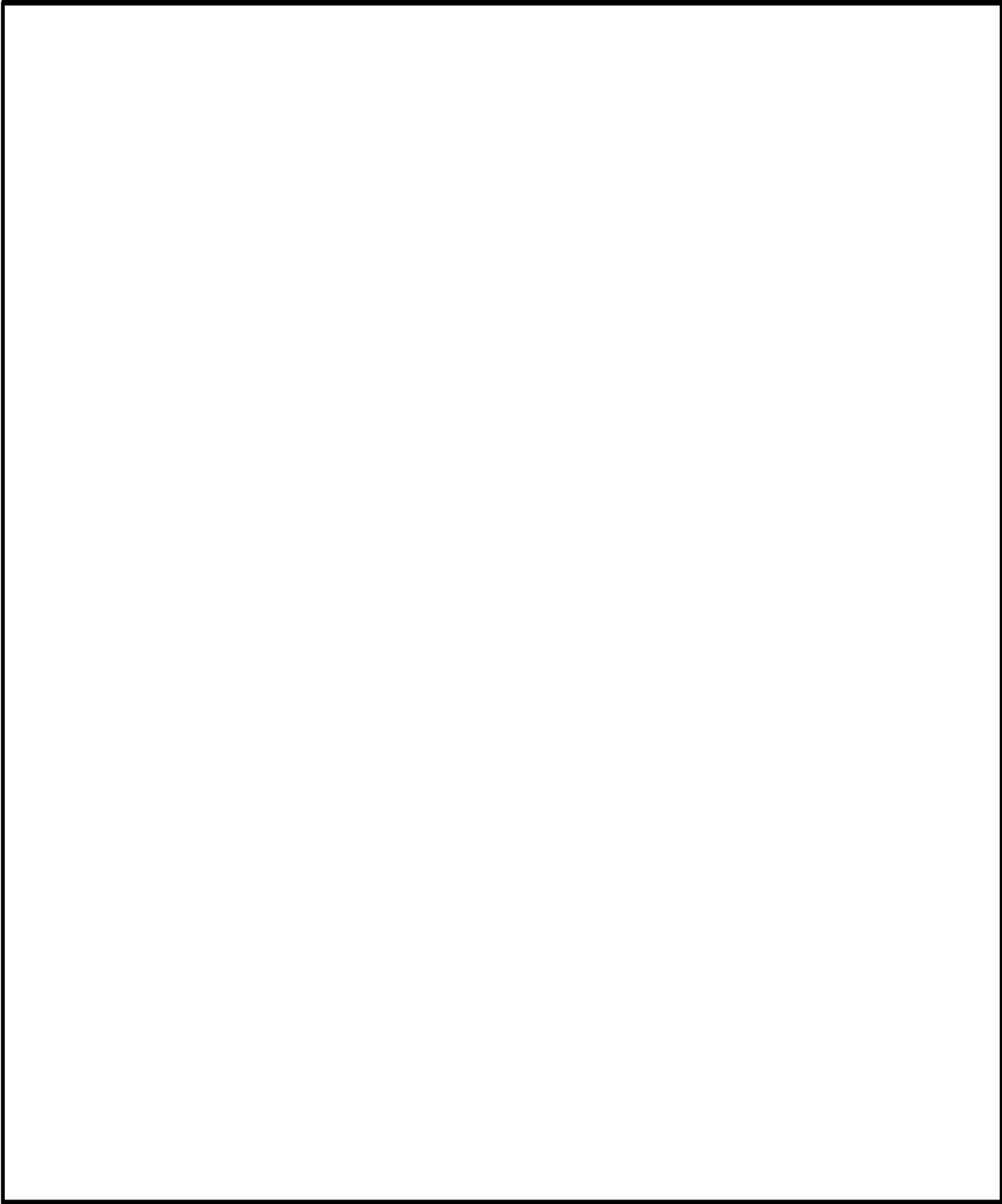


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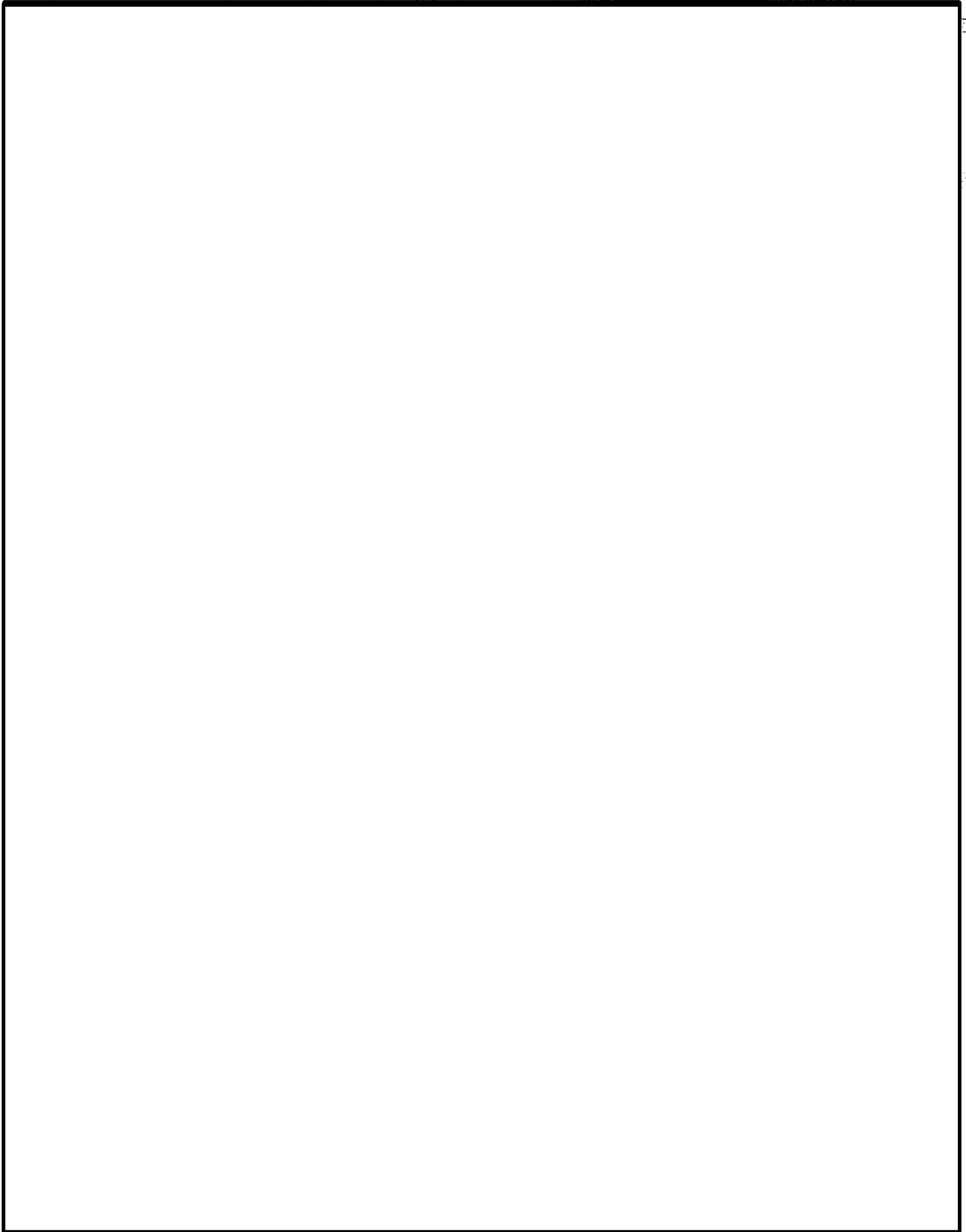


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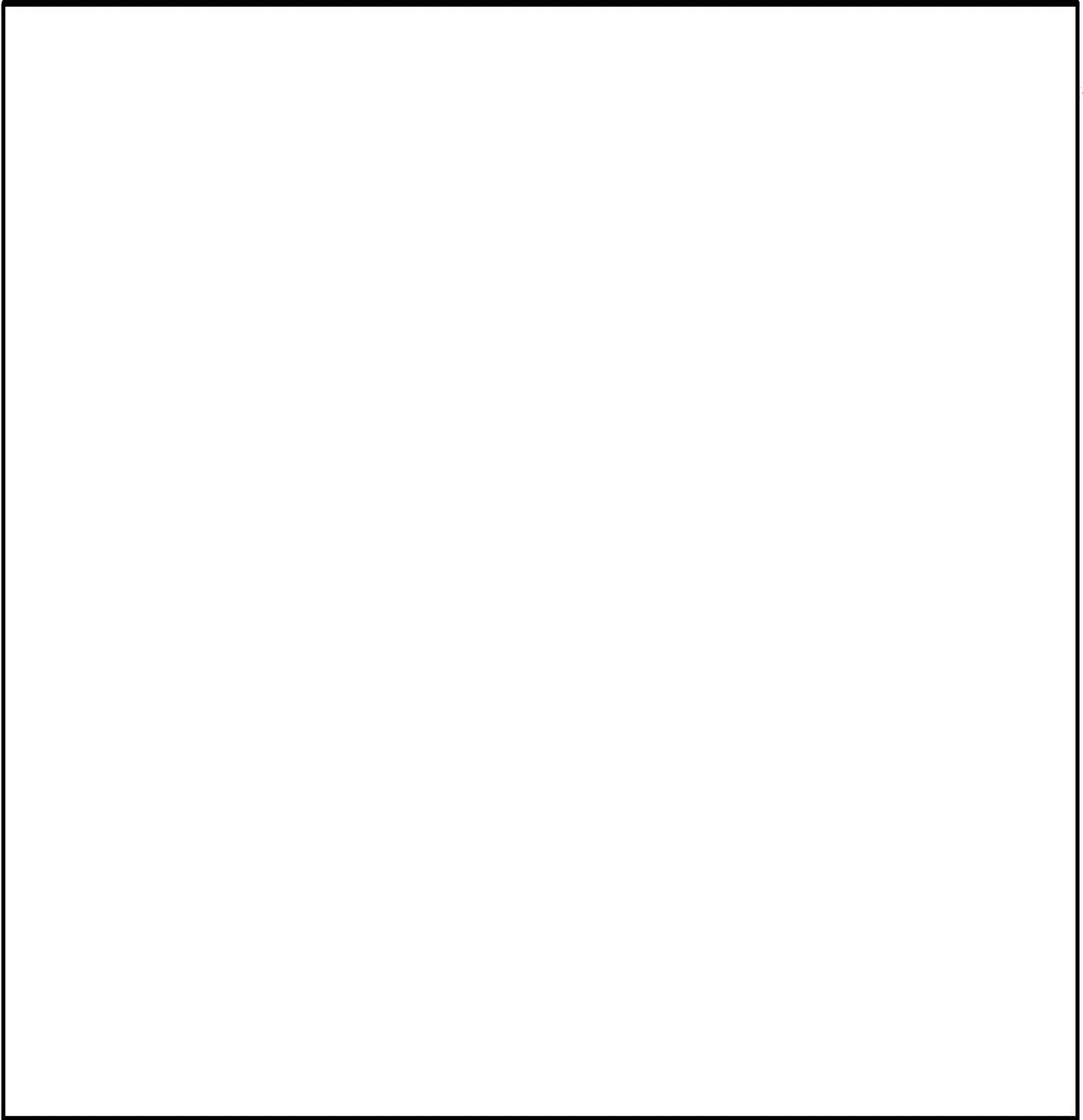


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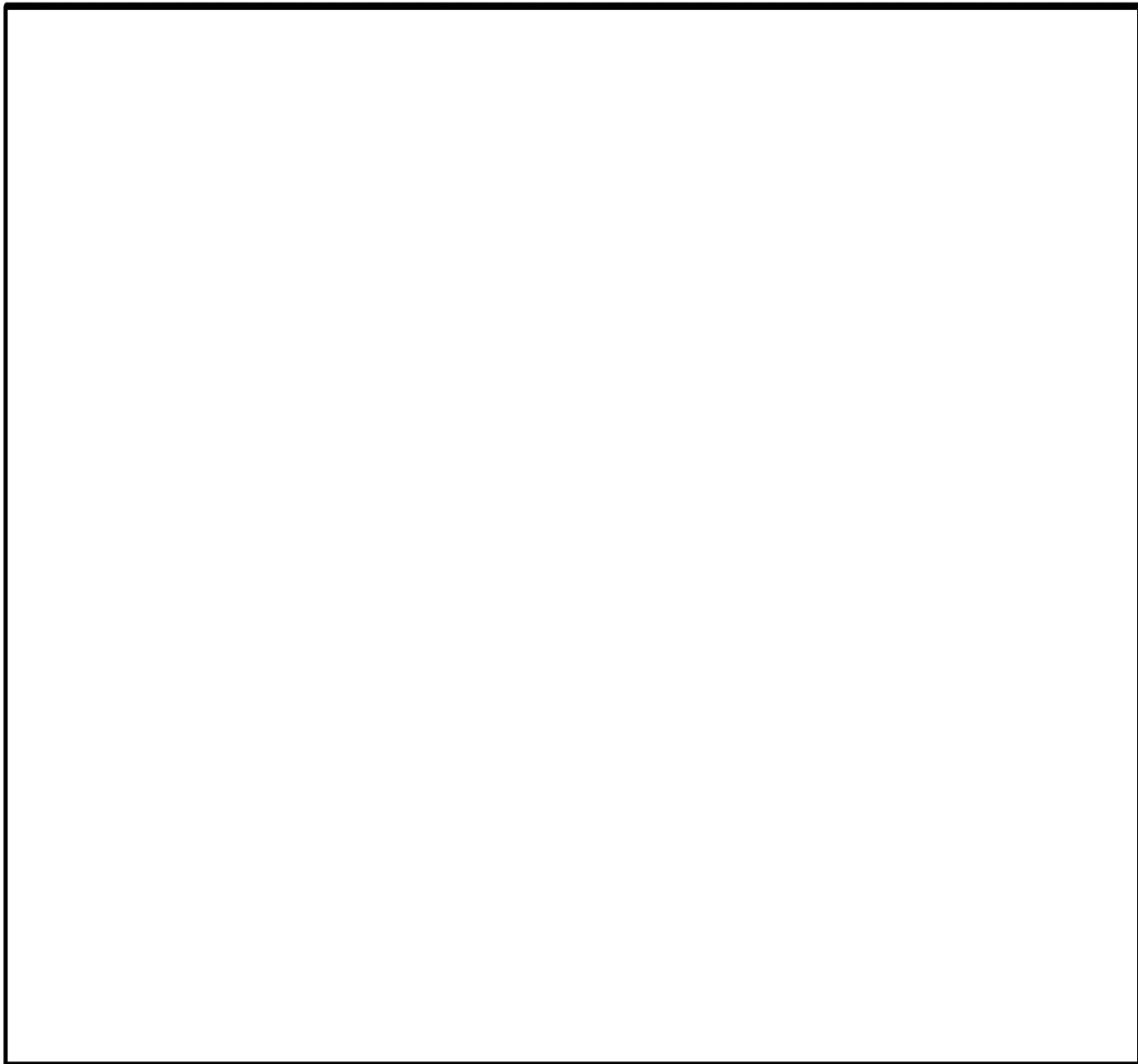
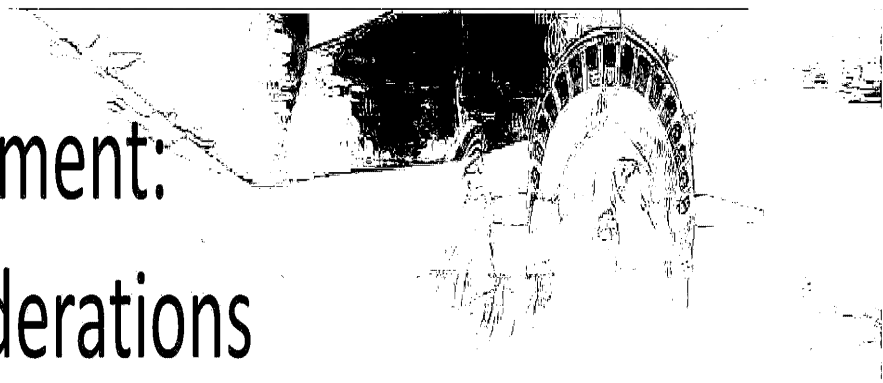
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# Eligibility Assessment: Interview Considerations

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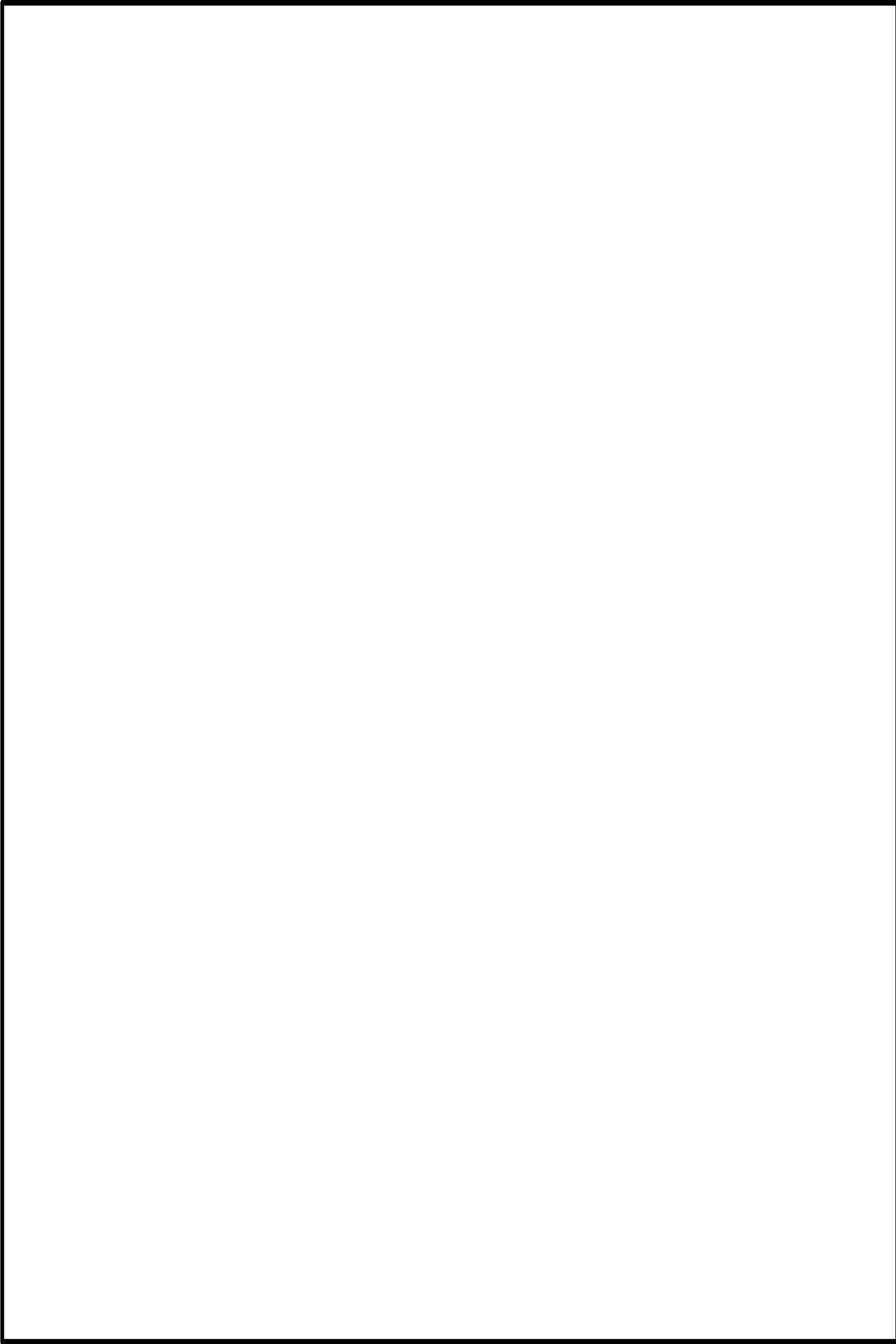
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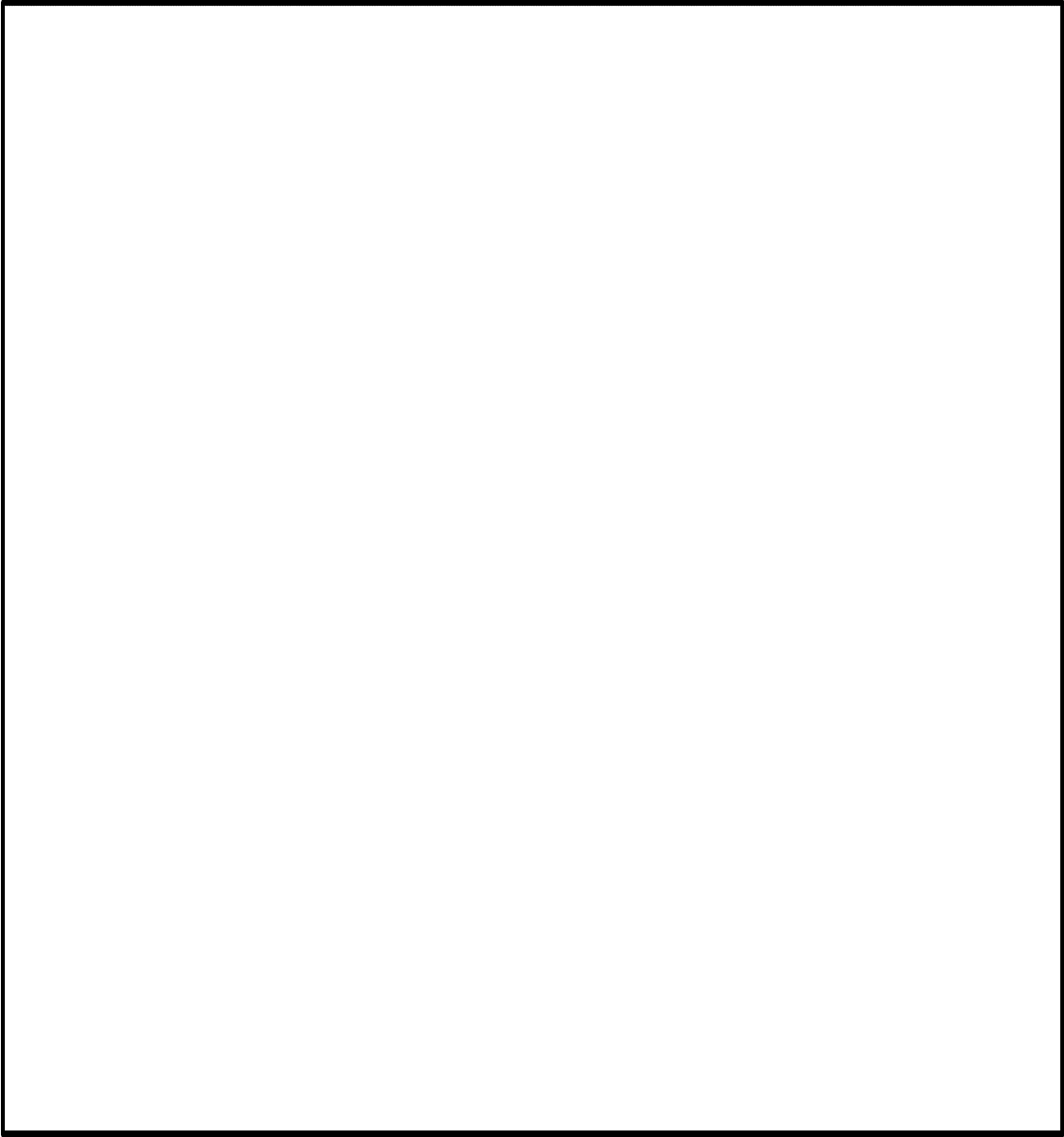


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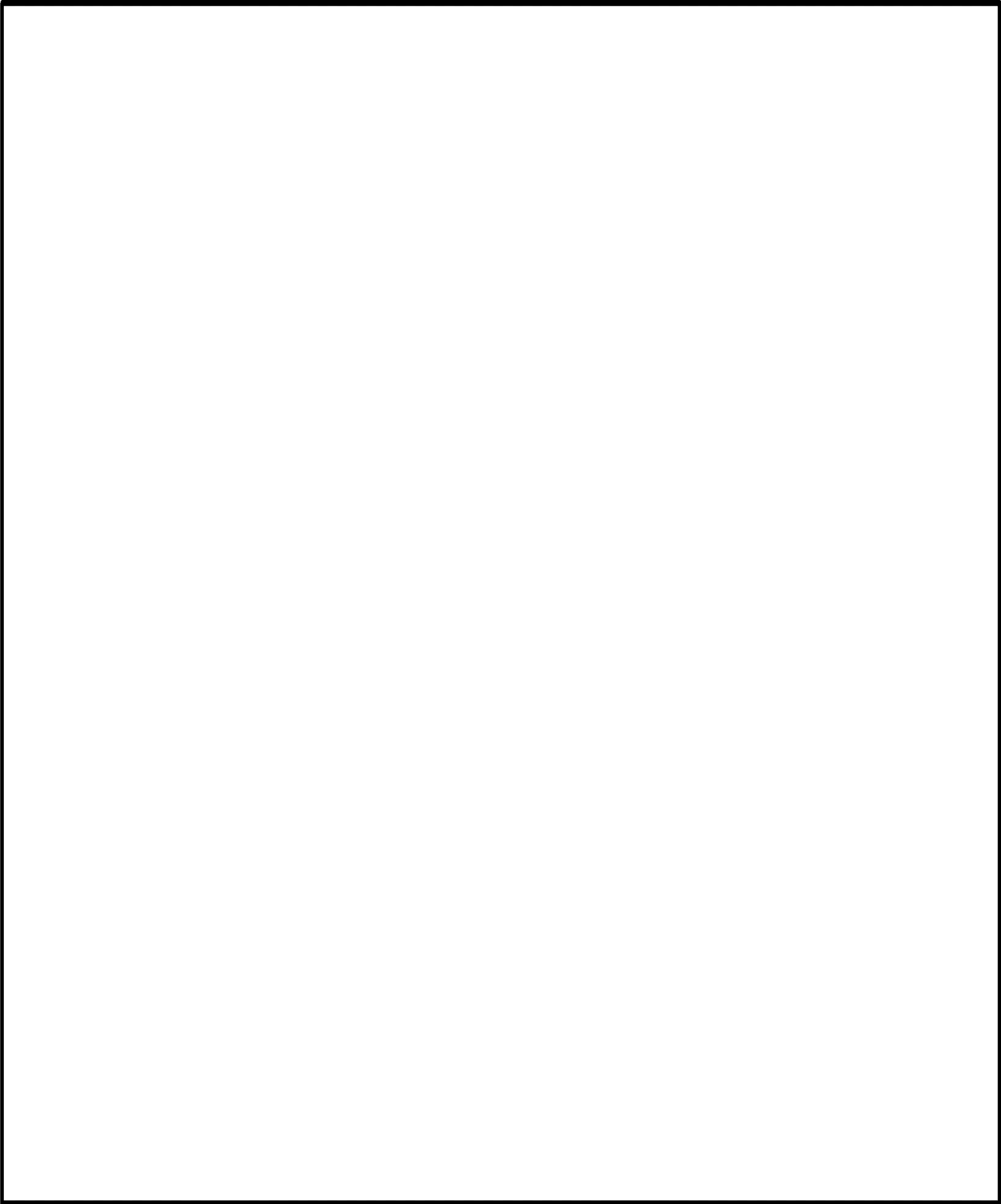


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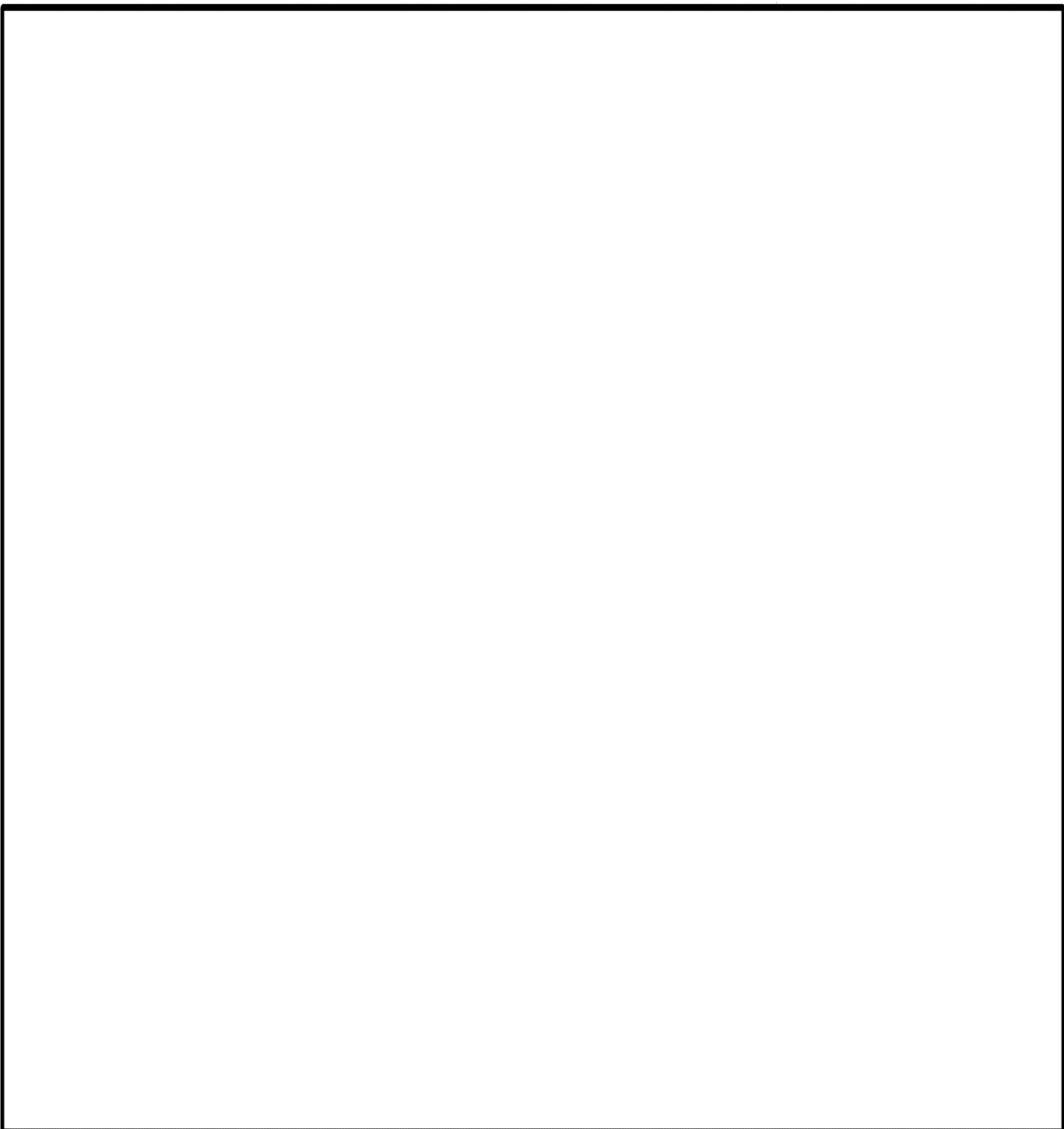
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(b)(7)(e) **FDNS Findings and Recommendations**

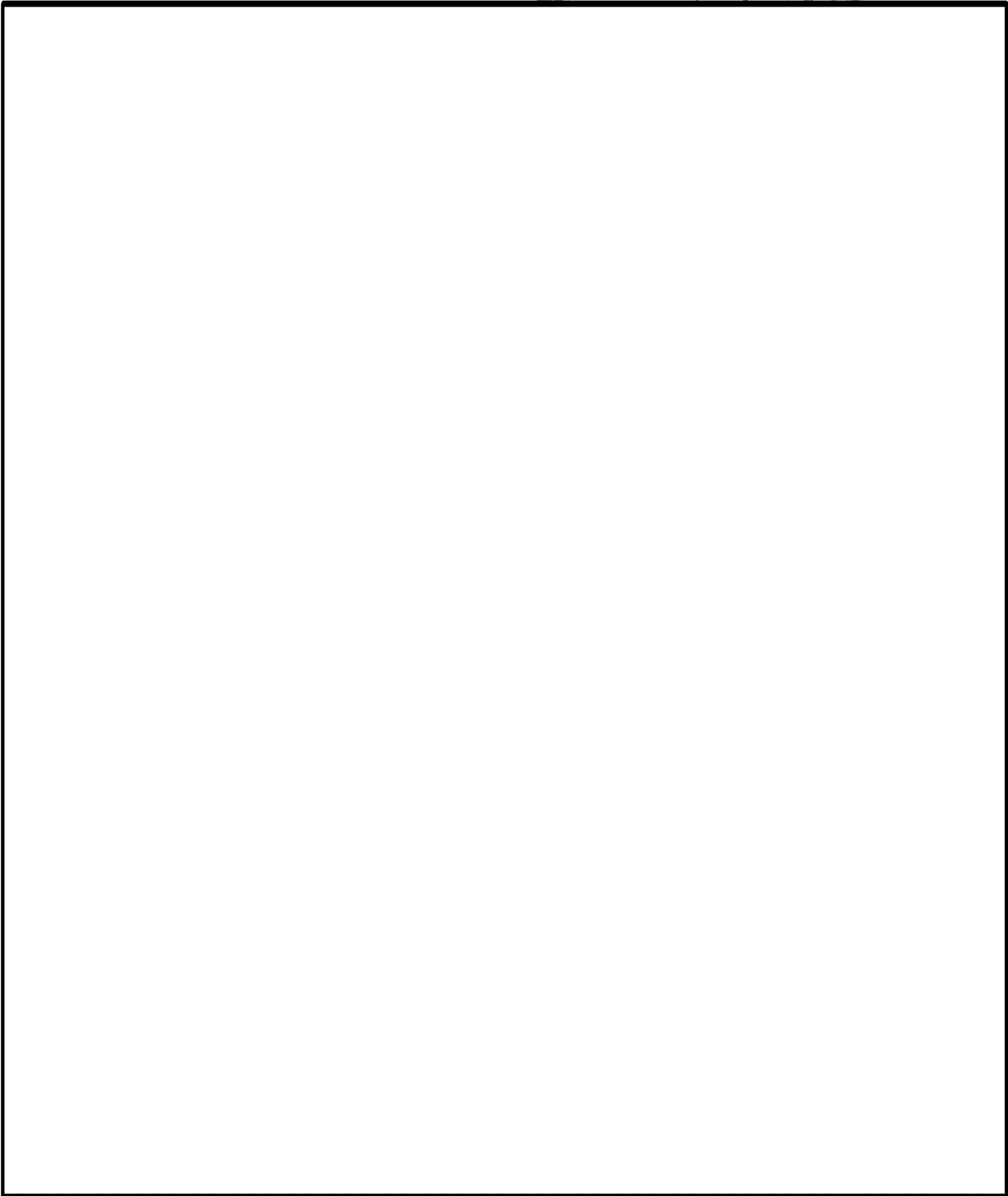


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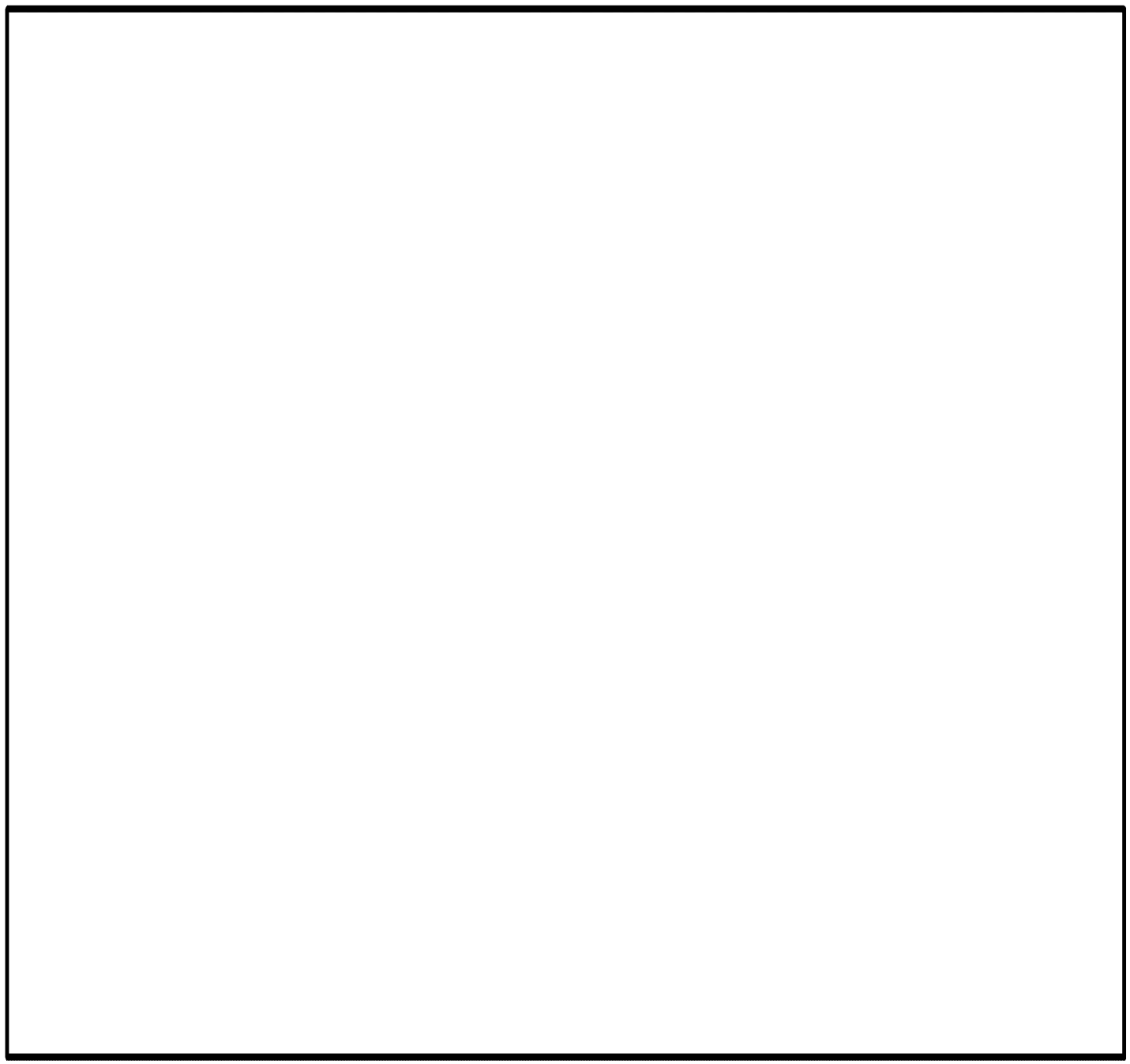
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# CARRP Roadmap: Adjudicator's Role

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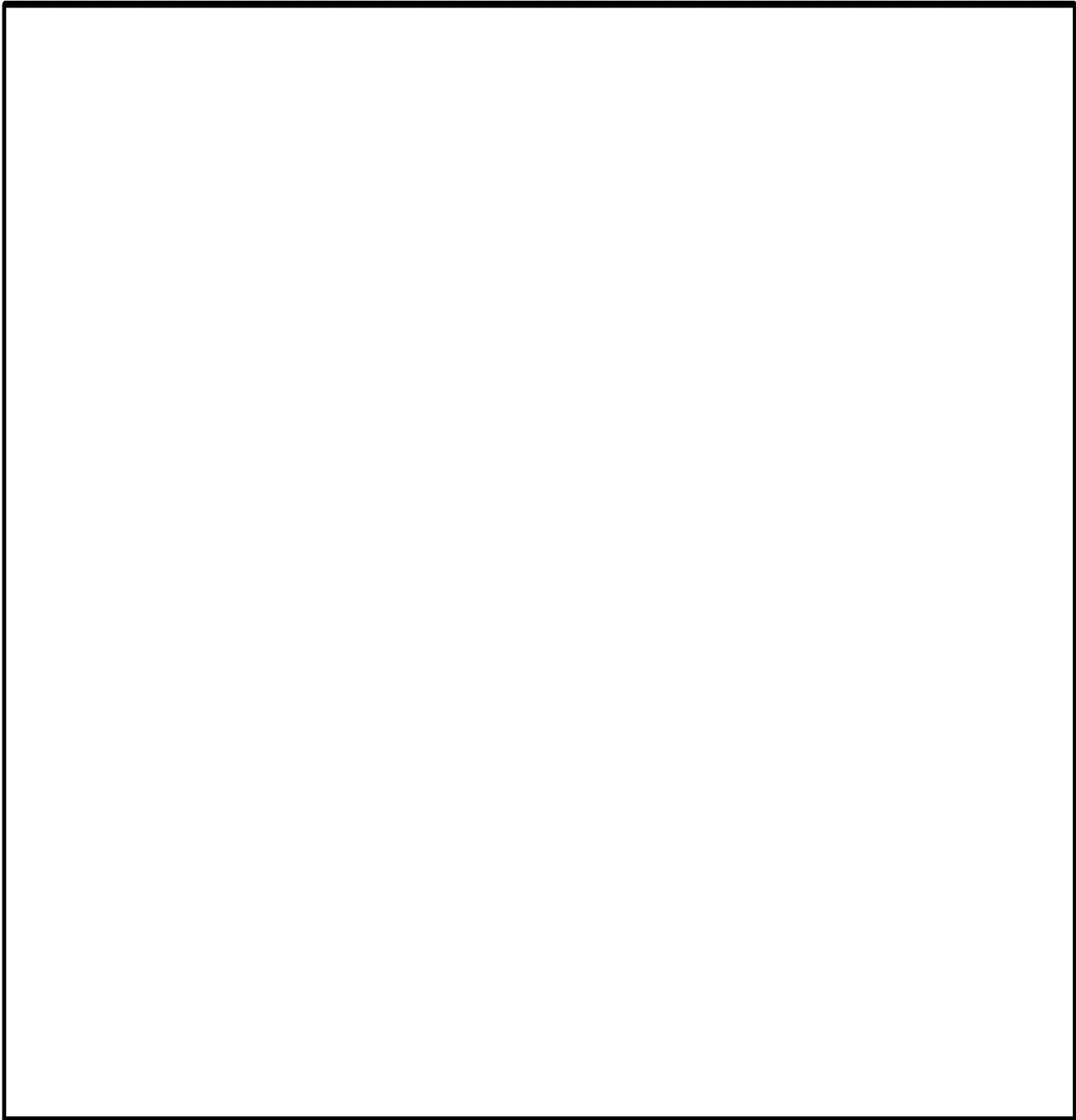
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# Adjudicating National Security Cases

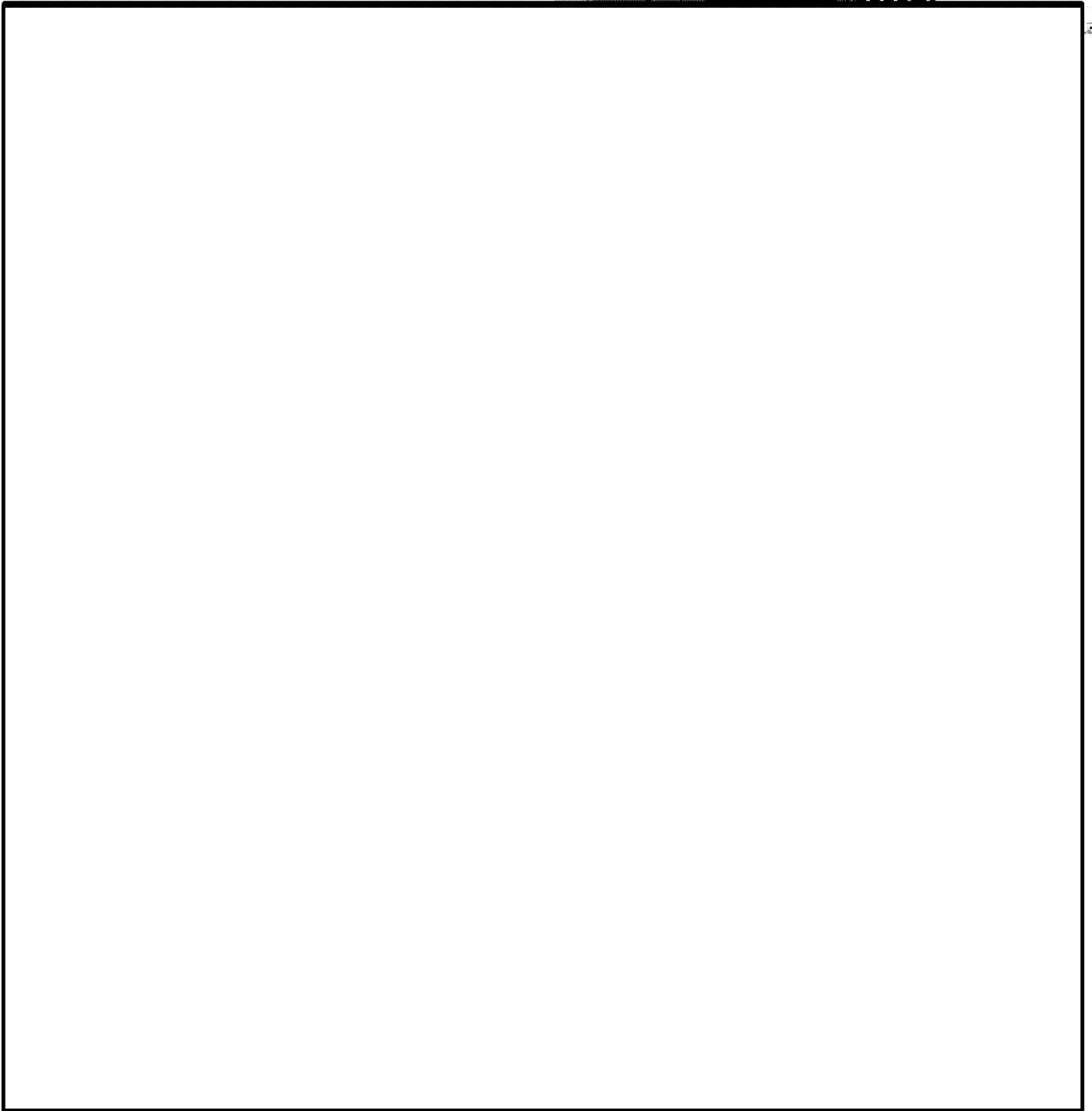
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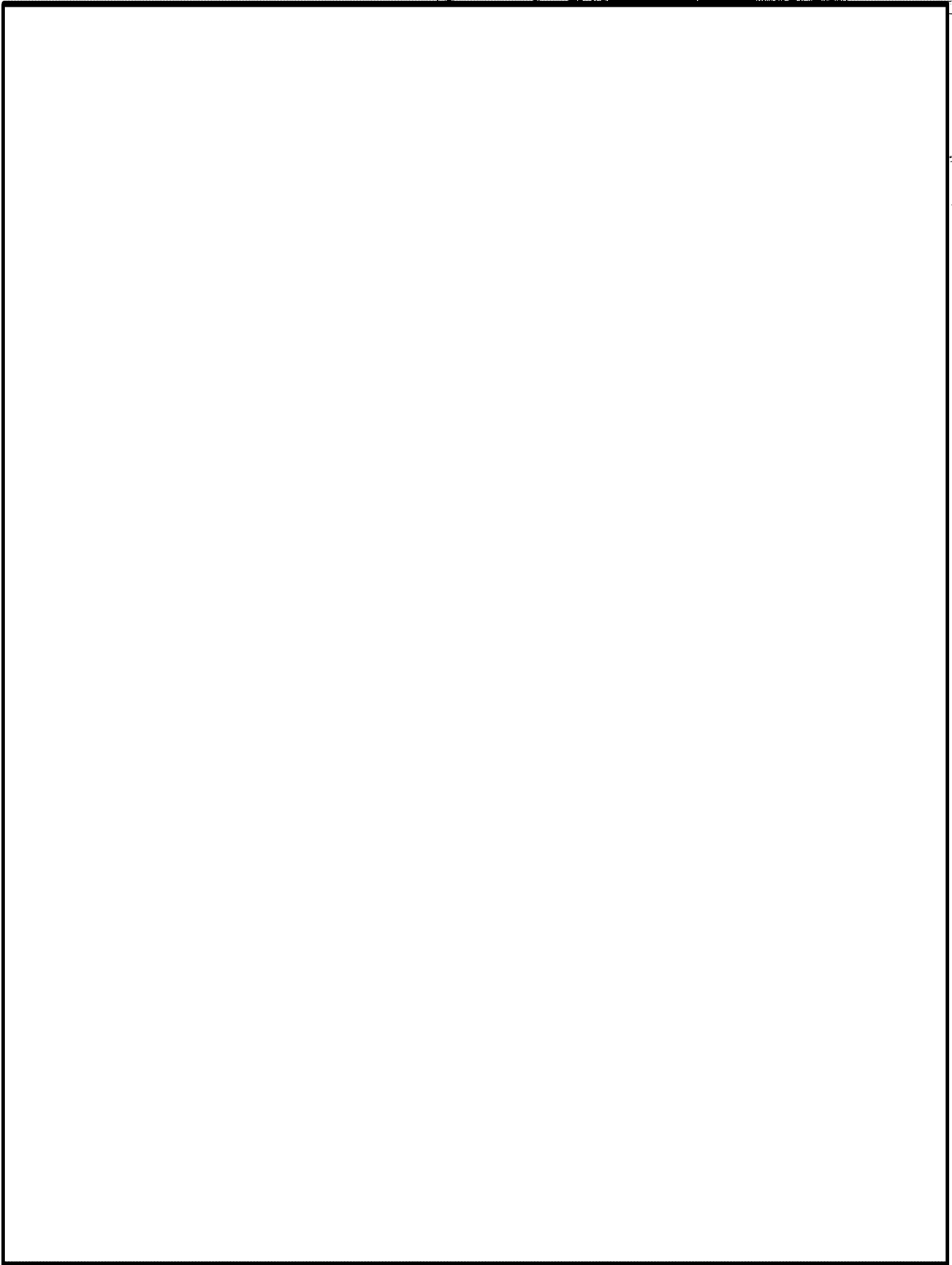
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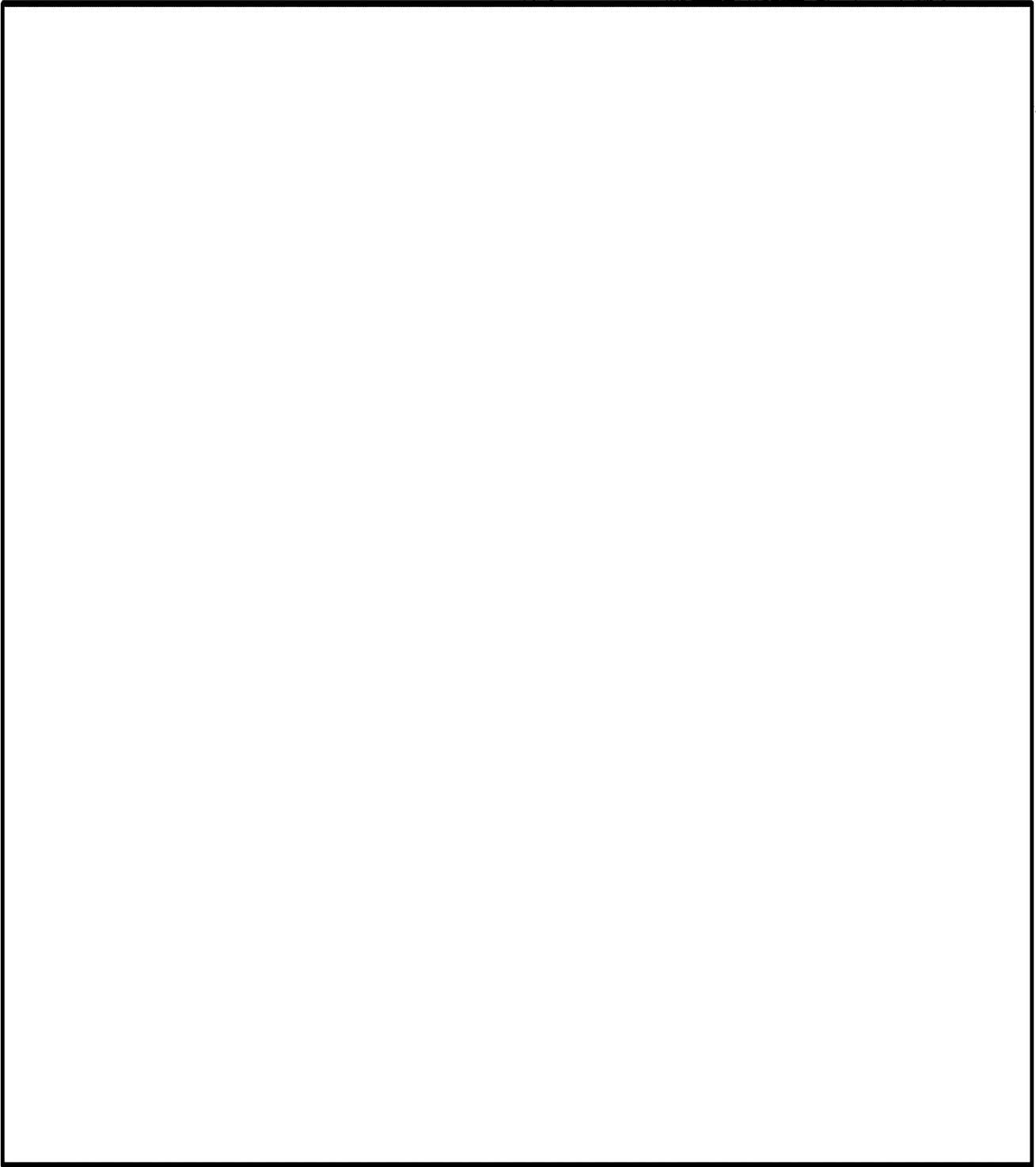


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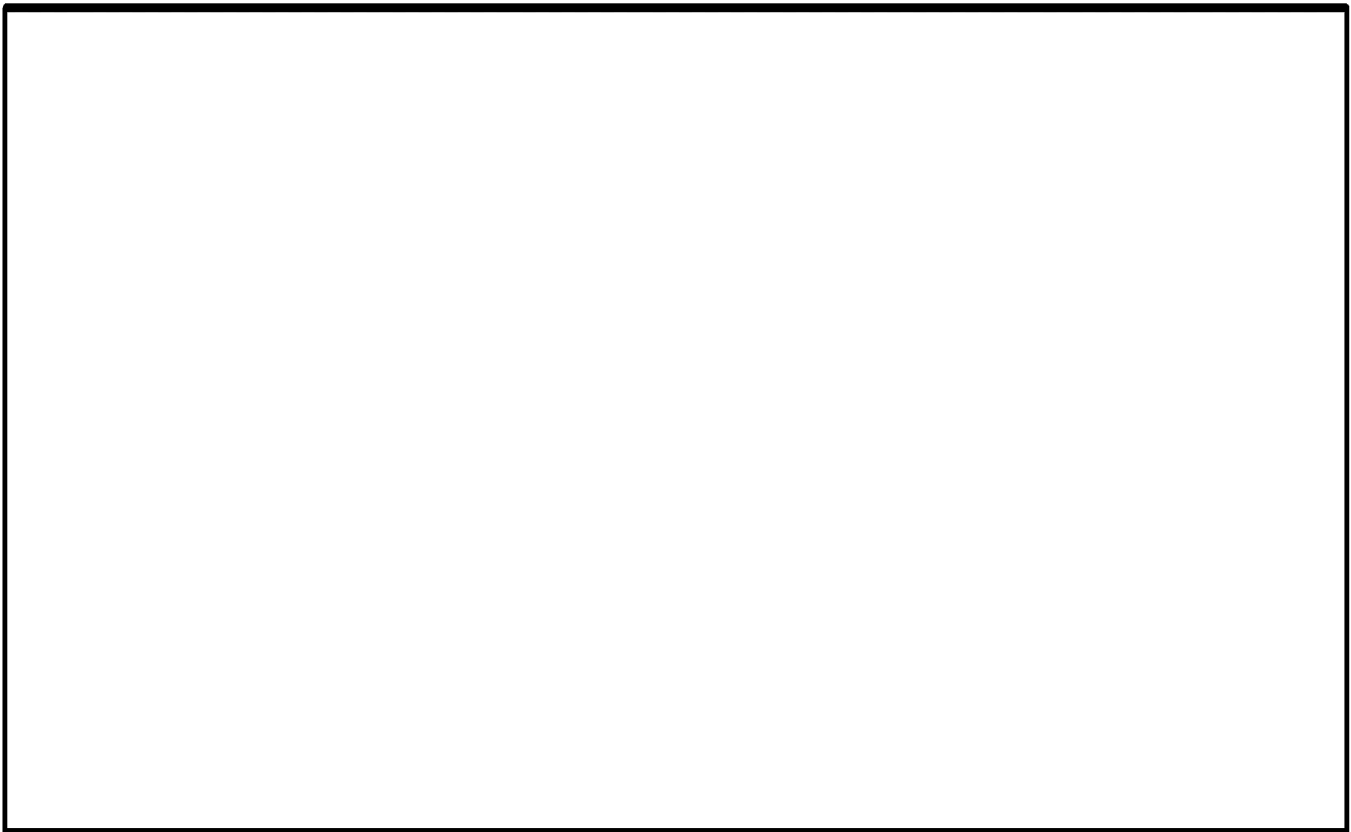
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# Adjudicating KST cases



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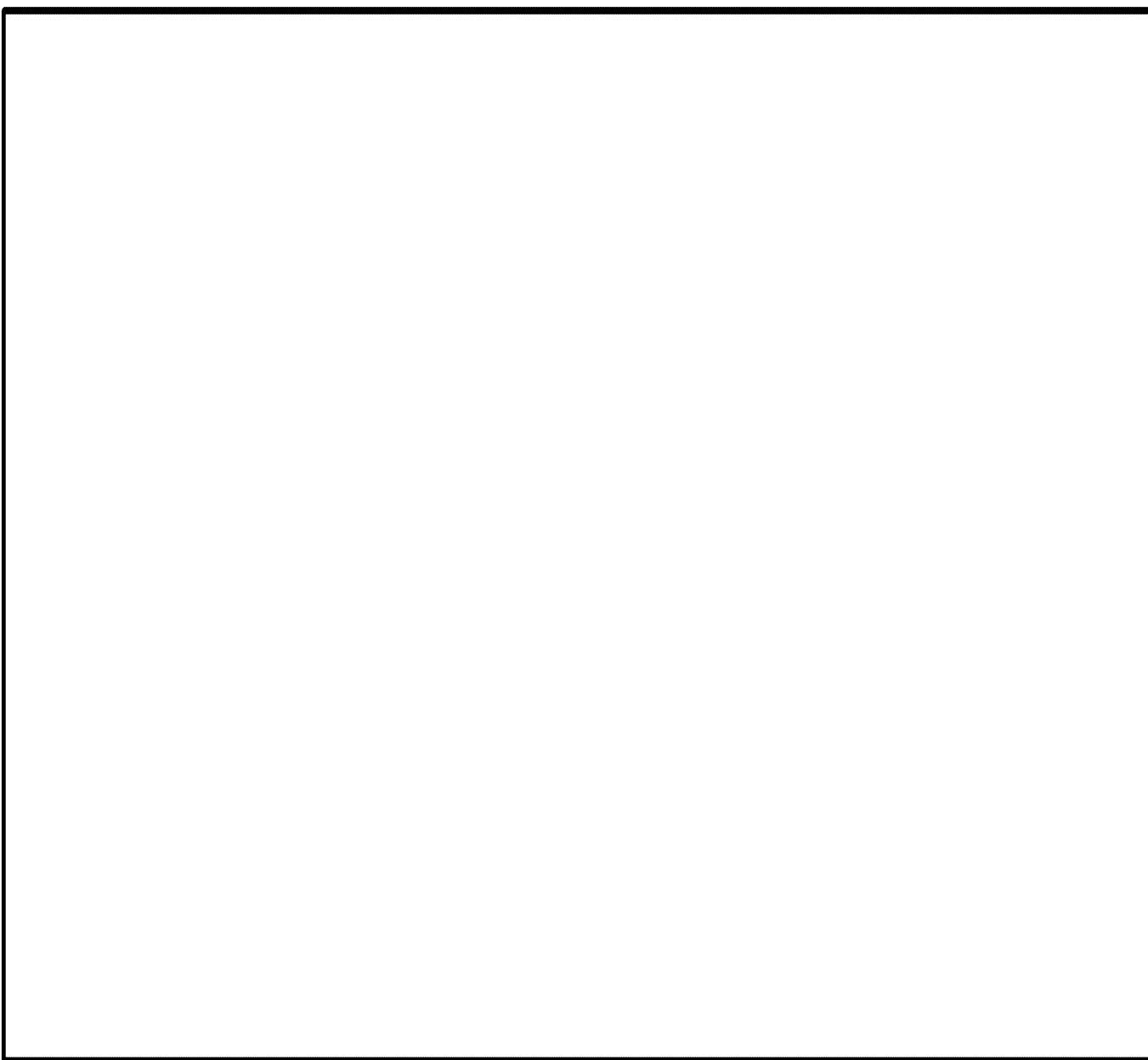
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# Adjudicating Non-KST cases

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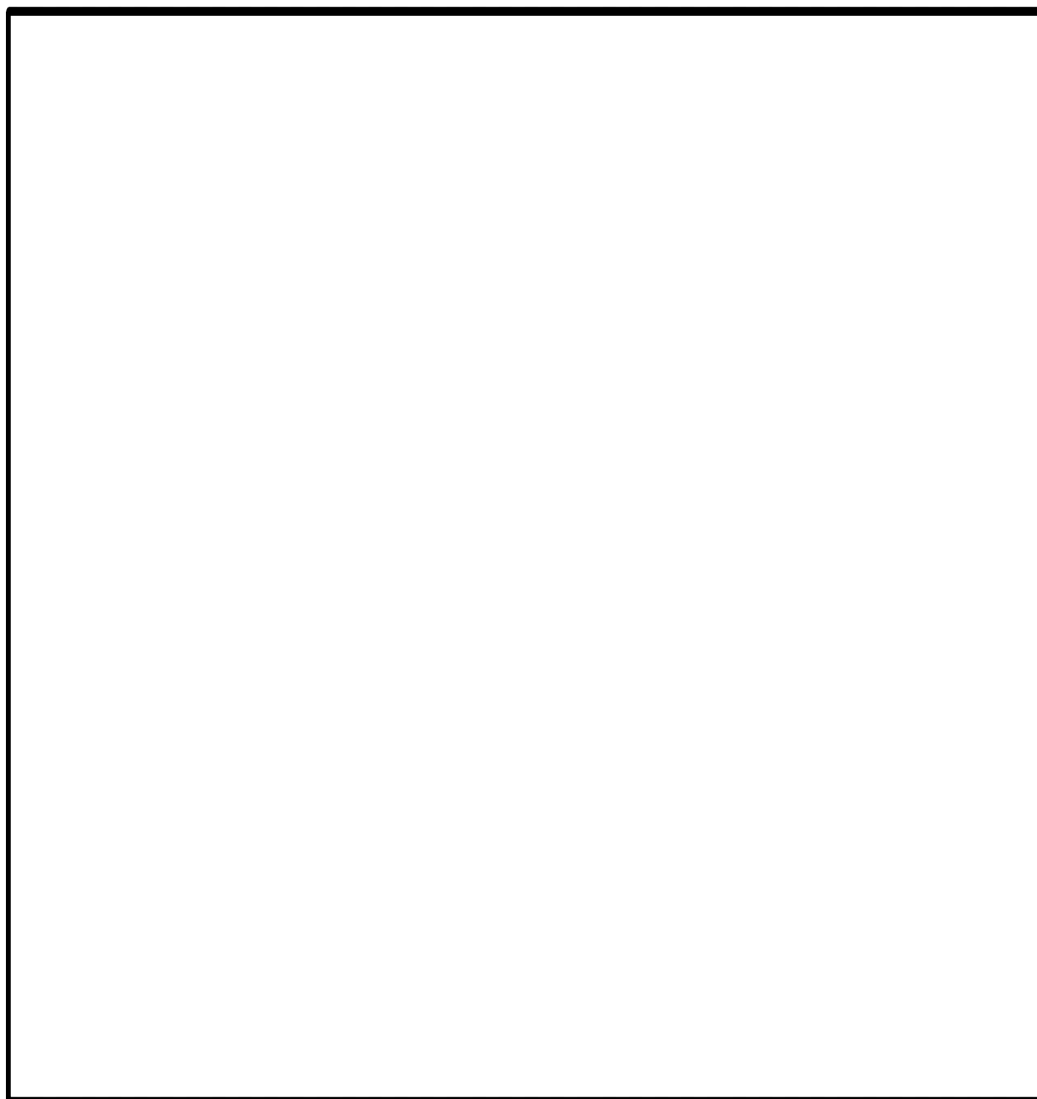
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# Additional National Security Resources

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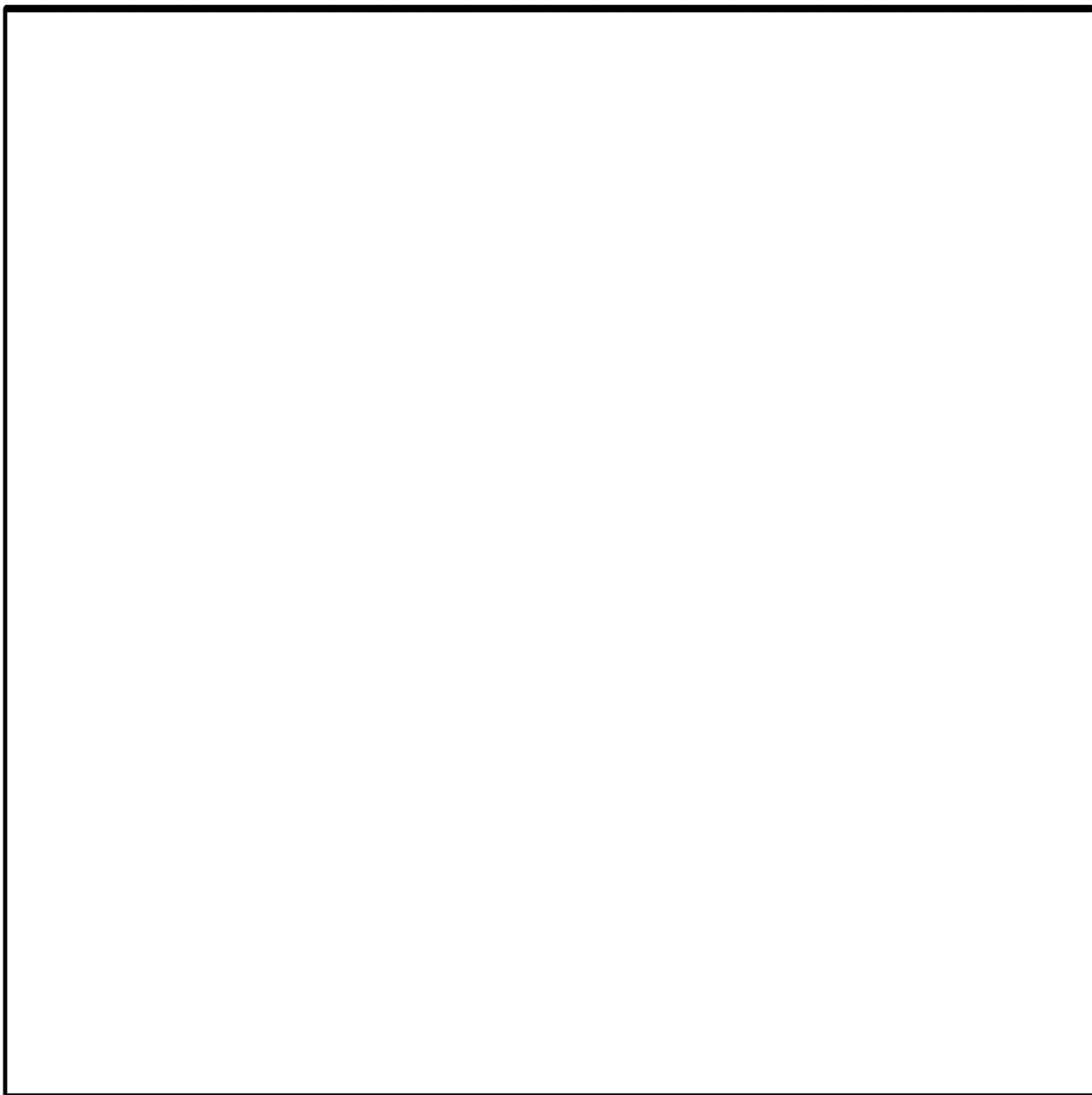
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# Final Considerations for Adjudication

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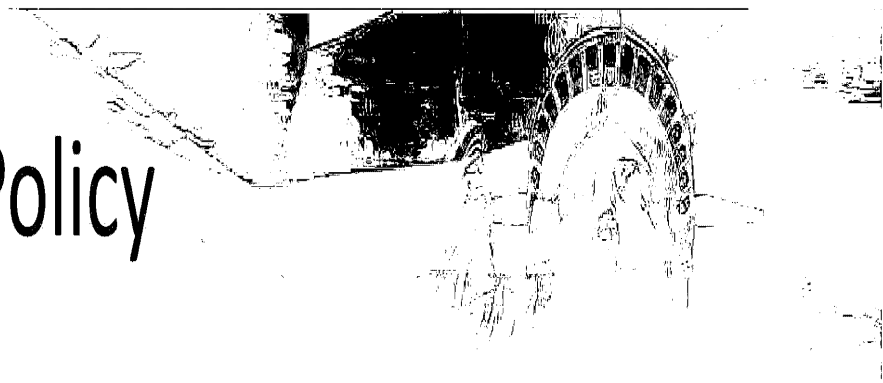


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# USCIS CARRP Policy



- *Policy for Vetting and Adjudicating Cases with National Security Concerns*

Signed April 11, 2008

- Established KST vs. Non-KST categories
- Decentralized non-KST processing to the field
- Defined CARRP terms (“deconfliction,” “external vetting,” etc.)
- Described the four stages of CARRP

- *Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving NS Concerns*

Signed February 06, 2009

- Cases with unresolved KST NS concerns can be granted ONLY after concurrence of the USCIS Deputy Director.

- *Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices*

Signed June 5, 2009

- Identified the roles of “designated officers” in CARRP
- Outlined the actions and FDNS-DS documentation responsibilities within each role



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# USCIS CARRP Policy, con t..

- Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorist  
Signed July 26, 2011
  - Revised the 2008 memo to allow the field to perform external vetting of KST cases without a requirement to consult HQ FDNS
- Policy for Treatment of Certain Cases Related to Alien Entrepreneurs Involving National Security (NS) Concerns  
Signed May 8, 2012
  - Identified new form types subject to CARRP
- Updated Instructions for Handling TECS B10 Records  
Signed May 23, 2012
  - Provided background on the watchlisting process
  - Designated exclusion code records T50 and T99 records as non-KST's
    - Outlined vetting processes for T50 and T99 records
- Interim Guidance on Senior Leadership Review Board Standard Operating Procedures for Senior Leadership Case Review  
Signed March 23, 2015
  - This interim guidance provides clarification for the process flow and documentation required for final grants of all KSTs and other high-profile Non-KST cases.



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# Reviewing National Security Objectives

## Lesson Objectives

- How do we define national security concerns at USCIS?
- How do we identify national security concern cases?
- How do we process national security concern cases?

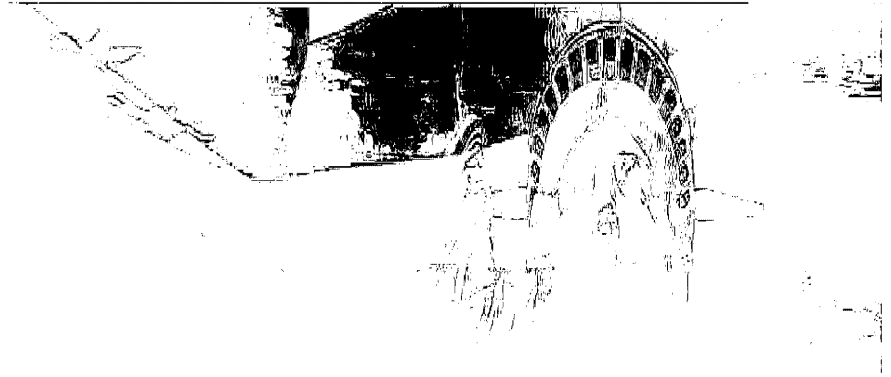


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# Questions?



## Feedback Reminder:

Please complete the survey to provide feedback for consideration and incorporation during the next training course. We review the surveys from every course and value your suggestions for improvement.

Thank you!  
Angie  
Chief, RAIO FDNS



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# Training Disclaimer

This Presentation is intended solely to provide training and guidance to USCIS personnel in performing their duties relative to the adjudication of immigration benefits.

It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner.

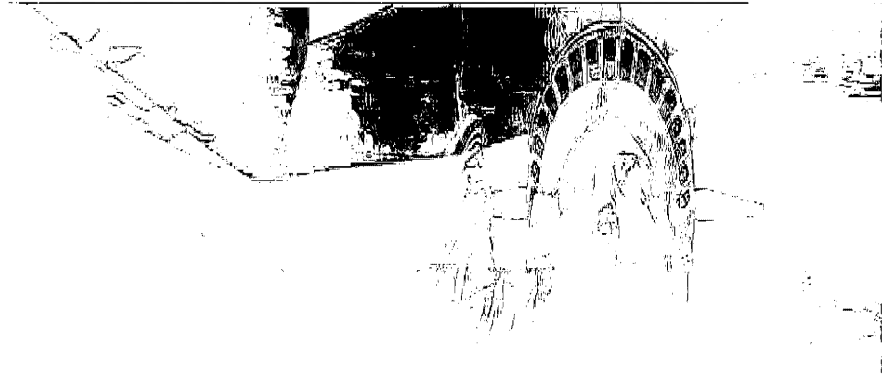
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APR 28 2016

HQRAIO 120/12a

## Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty  
Chief, Asylum Division

A large, bold, handwritten signature in black ink, appearing to read "John Lafferty", written over the "FROM:" line.

SUBJECT: Updated Procedures for Interviewing Unaccompanied Alien Children in Removal Proceedings

This memorandum provides updated guidance and procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Office personnel on conducting interviews concerning asylum applications filed by potential unaccompanied alien children (UACs) under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, codified at INA § 208(b)(3)(C). These procedures modify the current guidance found in training materials on implementing the TVPRA. These procedures are effective immediately and will be incorporated into the Affirmative Asylum Procedures Manual. The training materials will also be revised.

Prior guidance instructed Asylum Officers to conduct full interviews, including on the merits of the asylum claim, in all cases identified as involving a potential UAC,<sup>1</sup> including those involving individuals in removal proceedings over whom the Asylum Officer found USCIS lacked jurisdiction because the asylum application was not filed by a UAC. There is no statutory or regulatory requirement to continue an asylum interview once USCIS determines that it lacks jurisdiction. Nonetheless, the rationale for this guidance was that under procedures in place until June 2013, Asylum Officers made UAC determinations in every case involving a potential UAC by making independent factual inquiries under the UAC definition, at 6 U.S.C. § 279(g). Because these determinations were often complicated, they were sometimes overturned upon supervisory or Headquarters review, and if the Asylum Officer conducted an interview on the asylum claim as well as on the jurisdictional determination, the Asylum Office would not likely need to call the applicant back for an additional interview if USCIS was ultimately determined to have jurisdiction over the case.

In June 2013, the USCIS Asylum Division changed the procedures pertaining to determining UAC status with the issuance of the memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. Under the new procedures, Asylum Officers adopt UAC determinations already made by other Department of Homeland Security components in most cases

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<sup>1</sup> These cases are designated in the Refugees, Asylum, and Parole System (RAPS), the asylum case management system, with the special group code PRL.



## Updated Procedures for Interviewing Unaccompanied Alien Children in Removal Proceedings Page 2

without a new factual inquiry. This jurisdictional determination is generally much simpler than under the prior procedures, and there is therefore less chance that an Asylum Officer's determination will be overturned upon review.

In order to make processing of asylum applications more efficient, Asylum Officers no longer need to interview the applicant on the merits of the asylum claim in cases involving individuals in removal proceedings over whom the Asylum Officer finds USCIS lacks jurisdiction because the asylum application was not filed by a UAC. Once an Asylum Officer finds that USCIS lacks jurisdiction, the Asylum Officer may conclude the interview. Before the applicant leaves the Asylum Office, the Asylum Officer must consult with a UAC point of contact, a Supervisory Asylum Officer, or a Training Officer to ensure that the finding of lack of jurisdiction appears to be correct.

Asylum Offices no longer need to submit to the Headquarters Quality Assurance Branch those cases in which the Asylum Officer finds USCIS lacks jurisdiction because the asylum application was not filed by a UAC. Rather, as noted above, Asylum Office personnel will be reviewing such lack of jurisdiction findings in the field before the applicant leaves the office following the interview, and again as part of mandatory supervisory review of all asylum decisions. Asylum Offices are encouraged to have their UAC point of contact serve as a resource for others in the office with questions about UAC jurisdiction. In addition, for any case that the Asylum Office determines involves complex jurisdictional issues, Asylum Office Directors may continue to request Headquarters quality assurance review following the asylum interview. Furthermore, if Asylum Offices become aware of complex jurisdictional issues prior to the asylum interview, they are encouraged to contact the Headquarters UAC points of contact to discuss the issues.

If you have any questions concerning the guidance contained in this memorandum, please contact Kimberly Sicard at [kimberly.r.sicard@uscis.dhs.gov](mailto:kimberly.r.sicard@uscis.dhs.gov).



U.S. Citizenship  
and Immigration  
Services

APR 28 2016

HQRAIO 120/12a

## Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty  
Chief, Asylum Division

A large, bold, handwritten signature in black ink, appearing to read "John Lafferty", written over the "FROM:" line.

SUBJECT: Updated Procedures for Interviewing Unaccompanied Alien Children in Removal Proceedings

This memorandum provides updated guidance and procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Office personnel on conducting interviews concerning asylum applications filed by potential unaccompanied alien children (UACs) under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, codified at INA § 208(b)(3)(C). These procedures modify the current guidance found in training materials on implementing the TVPRA. These procedures are effective immediately and will be incorporated into the Affirmative Asylum Procedures Manual. The training materials will also be revised.

Prior guidance instructed Asylum Officers to conduct full interviews, including on the merits of the asylum claim, in all cases identified as involving a potential UAC,<sup>1</sup> including those involving individuals in removal proceedings over whom the Asylum Officer found USCIS lacked jurisdiction because the asylum application was not filed by a UAC. There is no statutory or regulatory requirement to continue an asylum interview once USCIS determines that it lacks jurisdiction. Nonetheless, the rationale for this guidance was that under procedures in place until June 2013, Asylum Officers made UAC determinations in every case involving a potential UAC by making independent factual inquiries under the UAC definition, at 6 U.S.C. § 279(g). Because these determinations were often complicated, they were sometimes overturned upon supervisory or Headquarters review, and if the Asylum Officer conducted an interview on the asylum claim as well as on the jurisdictional determination, the Asylum Office would not likely need to call the applicant back for an additional interview if USCIS was ultimately determined to have jurisdiction over the case.

In June 2013, the USCIS Asylum Division changed the procedures pertaining to determining UAC status with the issuance of the memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. Under the new procedures, Asylum Officers adopt UAC determinations already made by other Department of Homeland Security components in most cases

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<sup>1</sup> These cases are designated in the Refugees, Asylum, and Parole System (RAPS), the asylum case management system, with the special group code PRL.

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If you have any questions concerning the guidance contained in this memorandum, please contact Kimberly Sicard at [kimberly.r.sicard@uscis.dhs.gov](mailto:kimberly.r.sicard@uscis.dhs.gov).