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.[1] 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

[1] *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.[2] *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.[3]

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.[4] 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 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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[2] 8 C.F.R. § 208.9(b).

[3] *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.")

[4] *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.[5] *See* RAIO Training Module, *Credibility*, section on "Similar Claims." If

[5] *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.[6]

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.

[6] 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.

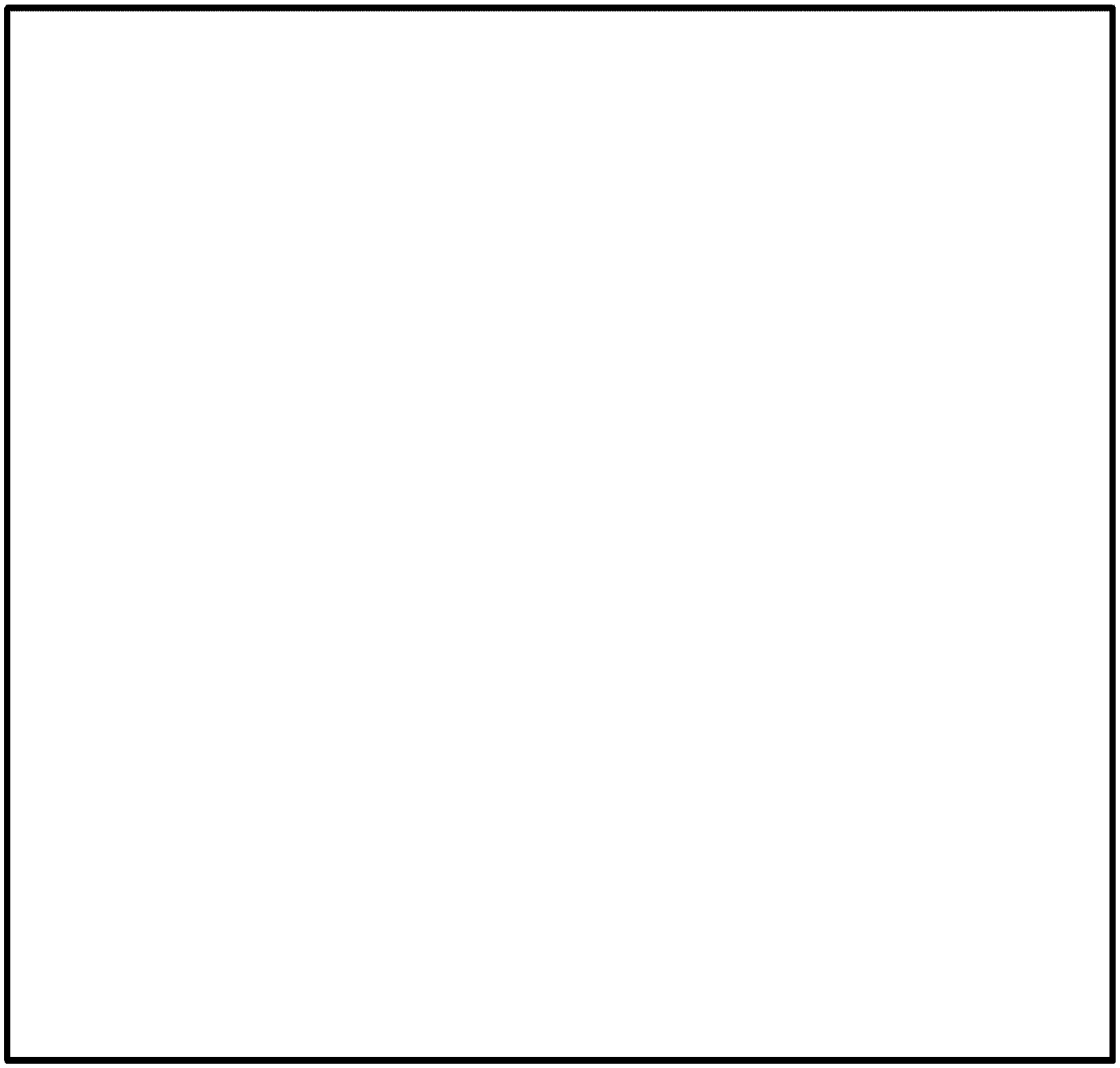
2.6 U.S. Government Records

(b)(7)(e)

[redacted]

[7] *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

[8] *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).

[9] *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.[10] 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[11] 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[12]

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

[10] *Matter of S-M-J-*, 21 I&N Dec. at 725-26.

[11] 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.

[12] *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."[13] For asylum and refugee purposes, a "witness with knowledge" may be the applicant.[14] 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.[15] 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.[16] 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,

[13] Federal Rules of Evidence Rule 901(b)(1), 28 U.S.C.A.

[14] *Zhanling Jiang v. Holder*, 658 F.3d 1118 (9th Cir. 2011)

[15] *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))

[16] *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.[17]

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.[18] 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.[19]

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.[20]

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

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[17] *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)

[18] INA § 291; *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); UNHCR Handbook, ¶ 196.

[19] 8 C.F.R. § 208.9(b); UNHCR Handbook, ¶ 196.

[20] *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.[21] 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."[22]

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.[23] 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.[24] 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.[25]

> 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

[21] *Matter of S-M-J-*, 21 I&N Dec. 722, 724 (BIA 1997).

[22] *Id.* at 723.

[23] 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.*

[24] *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.*

[25] *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[26]) 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.[27]

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.[28]

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.

[26] *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.")

[27] Ilunga v. Holder, 777 F.3d 199, 213 (4th Cir. 2015).

[28] *See* RAIO 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	• **Rebut prior fraudulent marriage** • **Citizenship of children born out of wedlock**
Preponderance of the evidence	*More than 50% chance*	• Meets refugee definition • Special humanitarian concern • Not firmly resettled • Facts supporting eligibility	• Meets refugee definition • Not subject to any bars • Facts supporting eligibility	**Eligibility for benefit 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."[29] 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."[30]

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

[29] O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions* § 12.10 (5th ed. 2000).

[30] *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."[31]

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.[32]

Refugee applicants abroad must establish that they are admissible to the United States as immigrants.[33] 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.[34] 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."[35] 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."[36]

4.3 Clear and Convincing Evidence

[31] *Matter of Patel*, 19 I&N Dec. 774, 784-85 (BIA 1988) (quoting *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966)).

[32] *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).

[33] INA § 207(c)(1).

[34] 8 C.F.R. §§ 207.2(b); 207.4.

[35] 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).

[36] *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."[37] 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.[38]

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."[39]

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."[40]

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[37] *See Black's Law Dictionary* (5th Ed.).

[38] INA §§ 208(a)(2)(B)-(D); 8 C.F.R. § 208.4(a)(2)(i)

[39] *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

[40] *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."[41]

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.[42]

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

[41] *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).

[42] 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.[43]

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.[44]

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

[43] *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-591 (BIA 2015).

[44] *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.[45]

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."[46] 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.[47] 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

[45] INA § 235(b)(1)(B)(v); 8 CFR § 208.30.

[46] *See* 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch).

[47] 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 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.[48]

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." [49]

[48] INA § 208(a)(2); (b)(1)(B)(i); (b)(2)(A)

[49] 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."[50]

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."[51]

You have the authority to question any witnesses presented by the applicant.[52]

ASM Supplement

Must Meet the Refugee Definition[53]

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

[50] INA § 208(b)(1)(B)(ii). *See also Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

[51] INA § 208(b)(1)(B)(ii).

[52] 8 C.F.R. § 208.9(b).

[53] 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."[54]

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[55]

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

[54] INA §208(b)(1)(B)(i).

[55] 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.[56]

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[57], 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."[58] 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

[56] 8 C.F.R. § 208.13(b)(1)

[57] *See* section above, Standards of Proof.

[58] 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."[59]

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."[60]

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

[59] INA § 208(b)(1)(B)(ii). *See also Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

[60] 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.

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 or 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.

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 and Immigration Services

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, RAIO. *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

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

Date	Section (Number and Name)	Brief Description of Changes	Made By
3/8/2016	Entire Lesson Plan	Published	RAIO Training

Table of Contents

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 RAIO adjudications, examples of fraud commonly encountered by RAIO 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 RAIO division to collectively strengthen the integrity of the program by deterring fraud and preventing national security risks.

1.1 Fraud and the RAIO 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.[1] Through this delegated authority, USCIS and U.S. Immigration and Customs Enforcement (ICE) further entered into a written agreement in which

[1] 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.[2]

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.[3] 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.[4] Fraud in RAIO adjudications commonly takes the form of oral or written testimony but may be committed through the concealment or nondisclosure of material[5] facts, through the material falsification or alteration of documentary evidence, or through conduct that amounts to an assertion not in accordance with the truth.[6]

To constitute fraud, the false representation regarding a material fact must have been made:

- knowingly, intentionally and deliberately[7] and

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[2] Memorandum of Agreement Between USCIS and ICE on the Investigation of Immigration Benefit Fraud, entered on September 25, 2008.

[3] 8 C.F.R. § 103.1.

[4] *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).

[5] 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).

[6] *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).

[7] *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.[8]

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

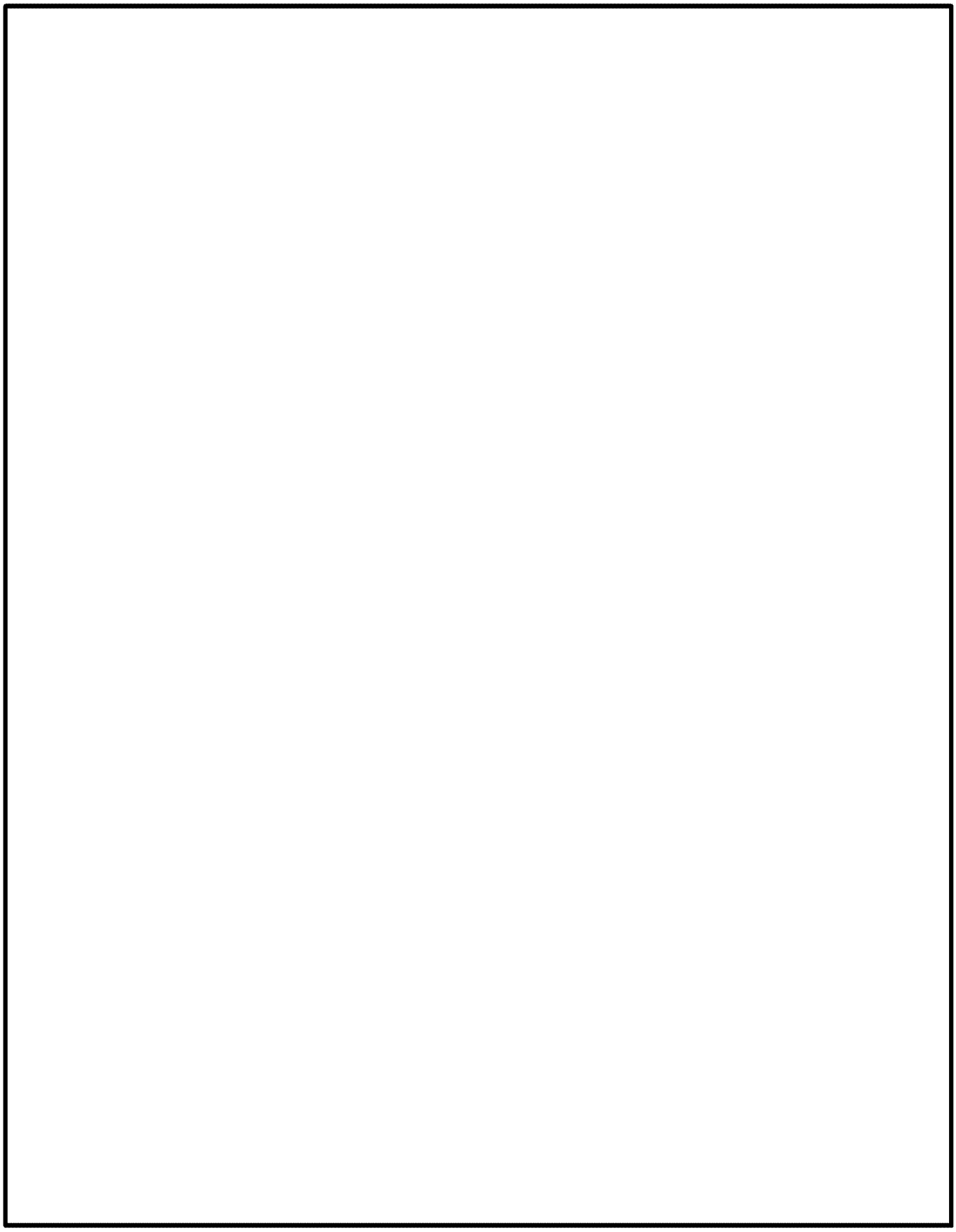
Other perpetrators of fraud outside of the immigration process typically include:

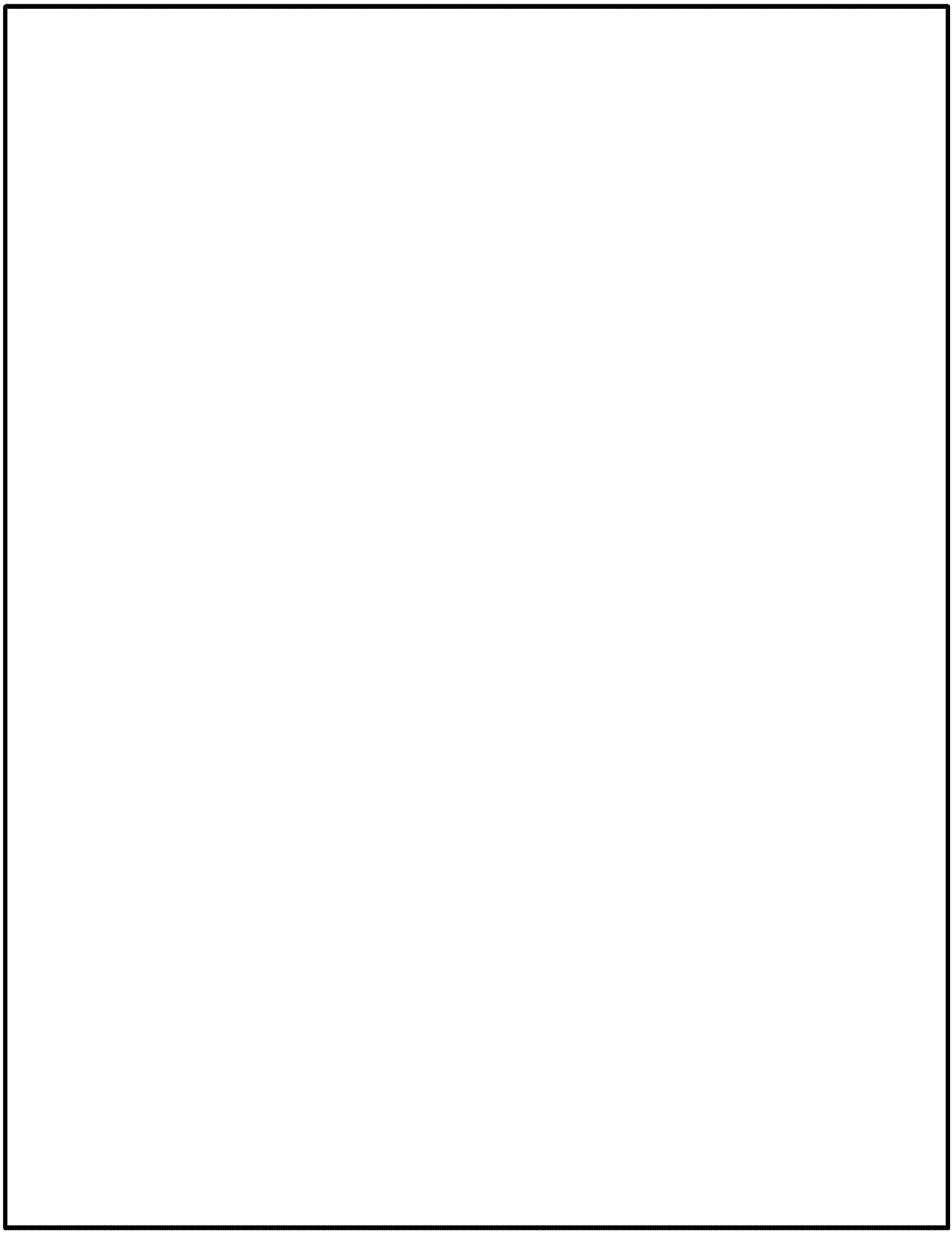
- A document vendor
- A visa facilitator
- A smuggler or middleman
- Other facilitating organizations or officials

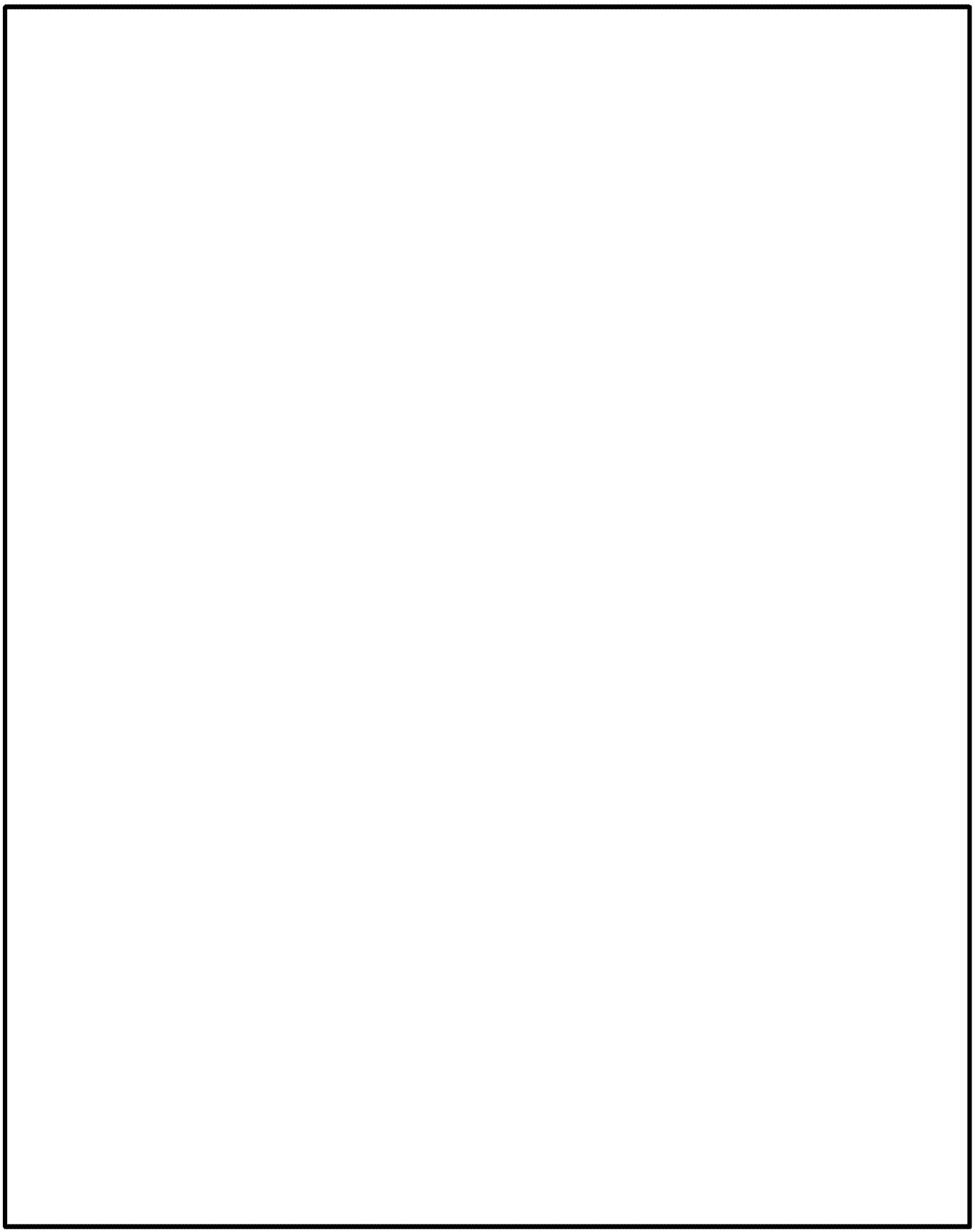
(b)(7)(e)

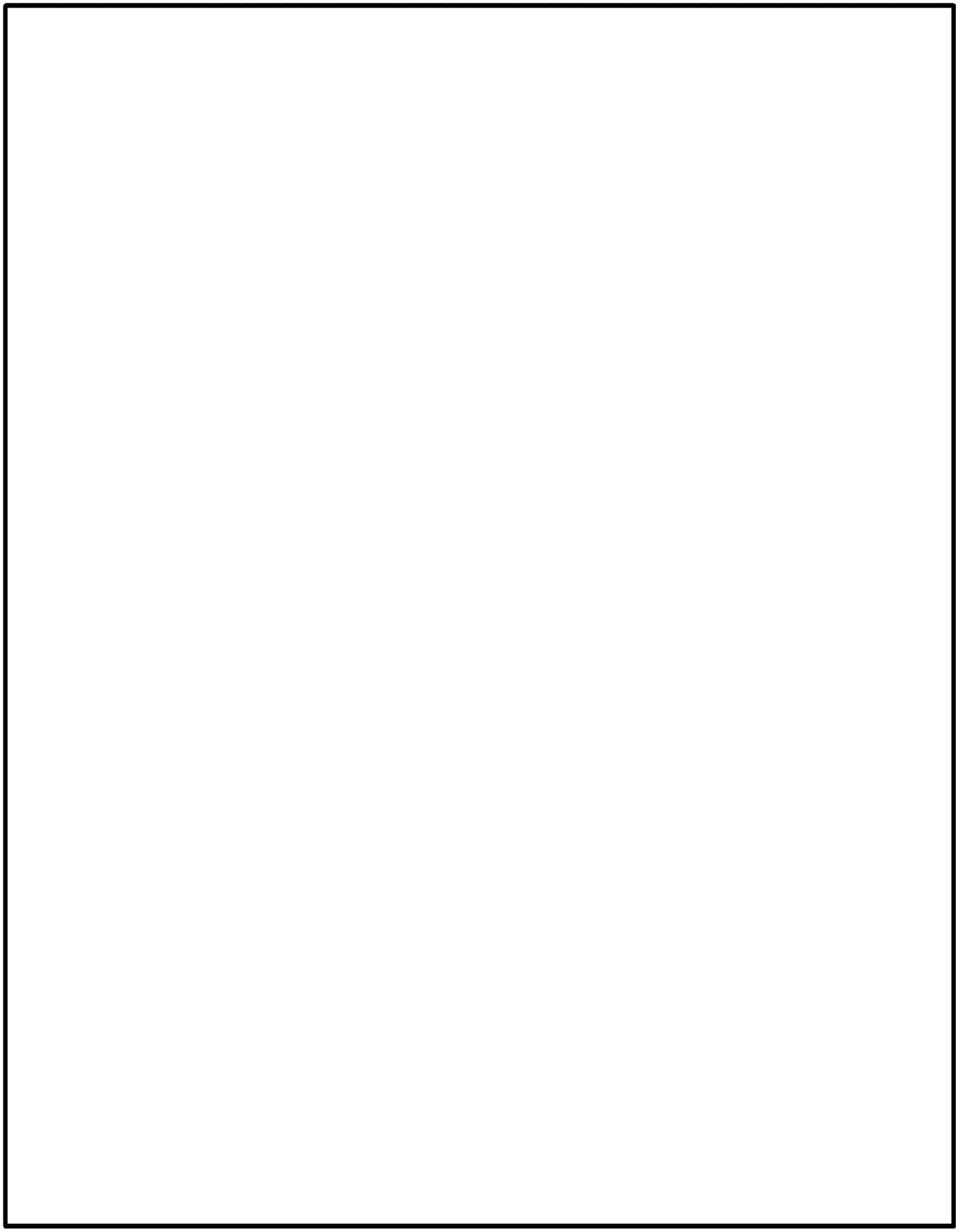
[redacted]

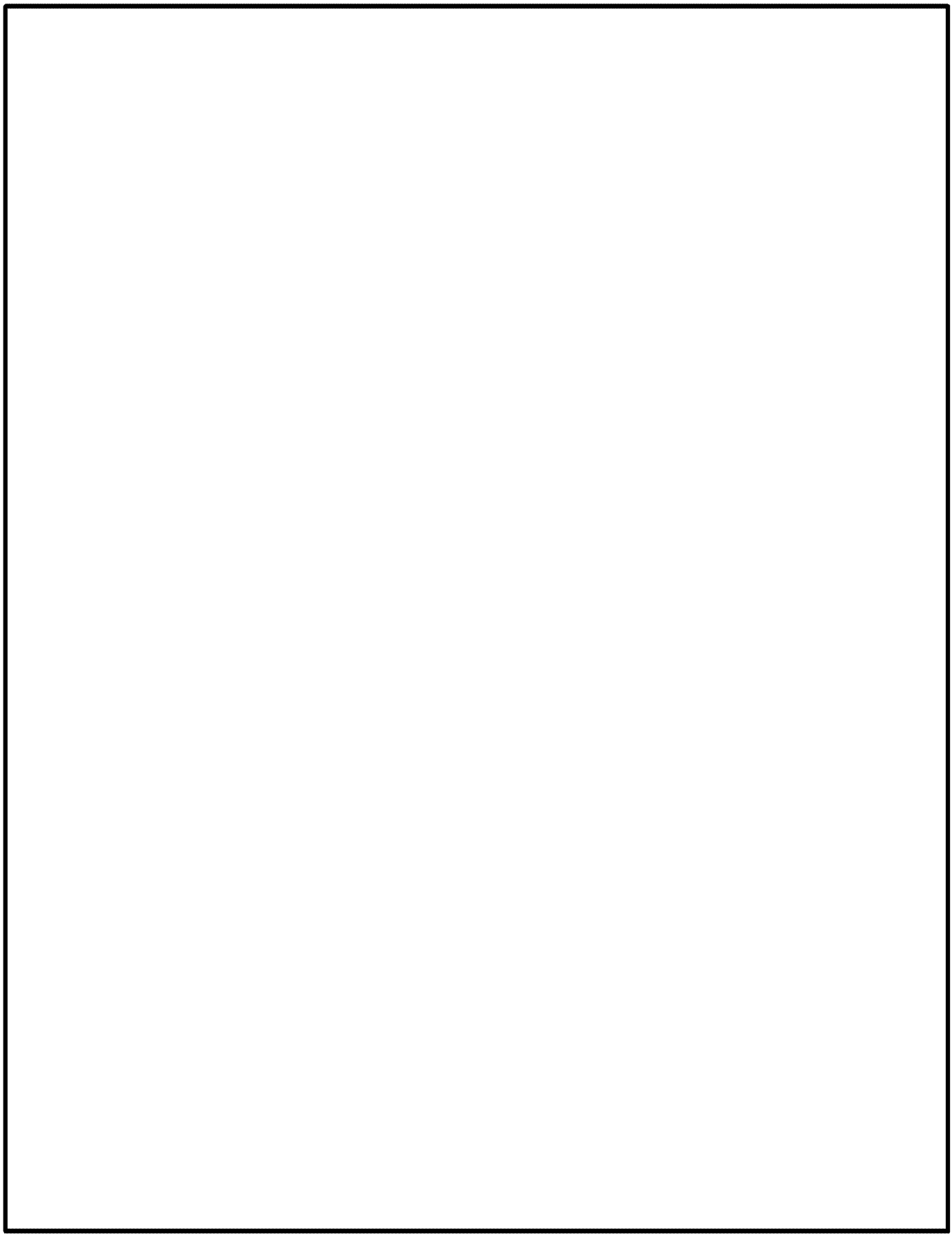
[8] This definition is provided to clarify that not all misrepresentations are considered "fraud" in the USCIS context. When determining whether an applicant's testimony is credible, it is not necessary for a RAIO officer to decide whether a misrepresentation or concealment of a material fact meets all the elements of the definition of fraud.

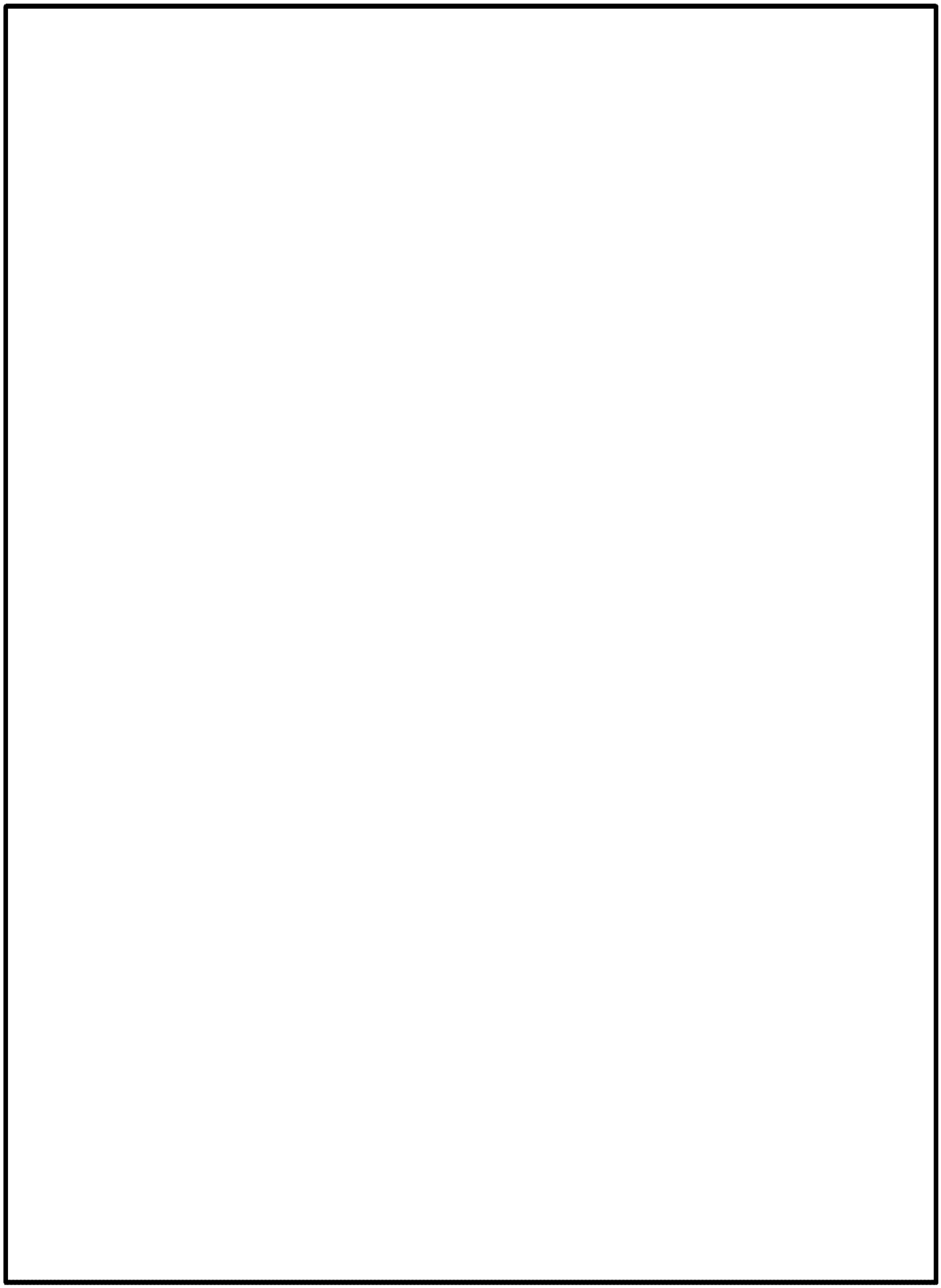


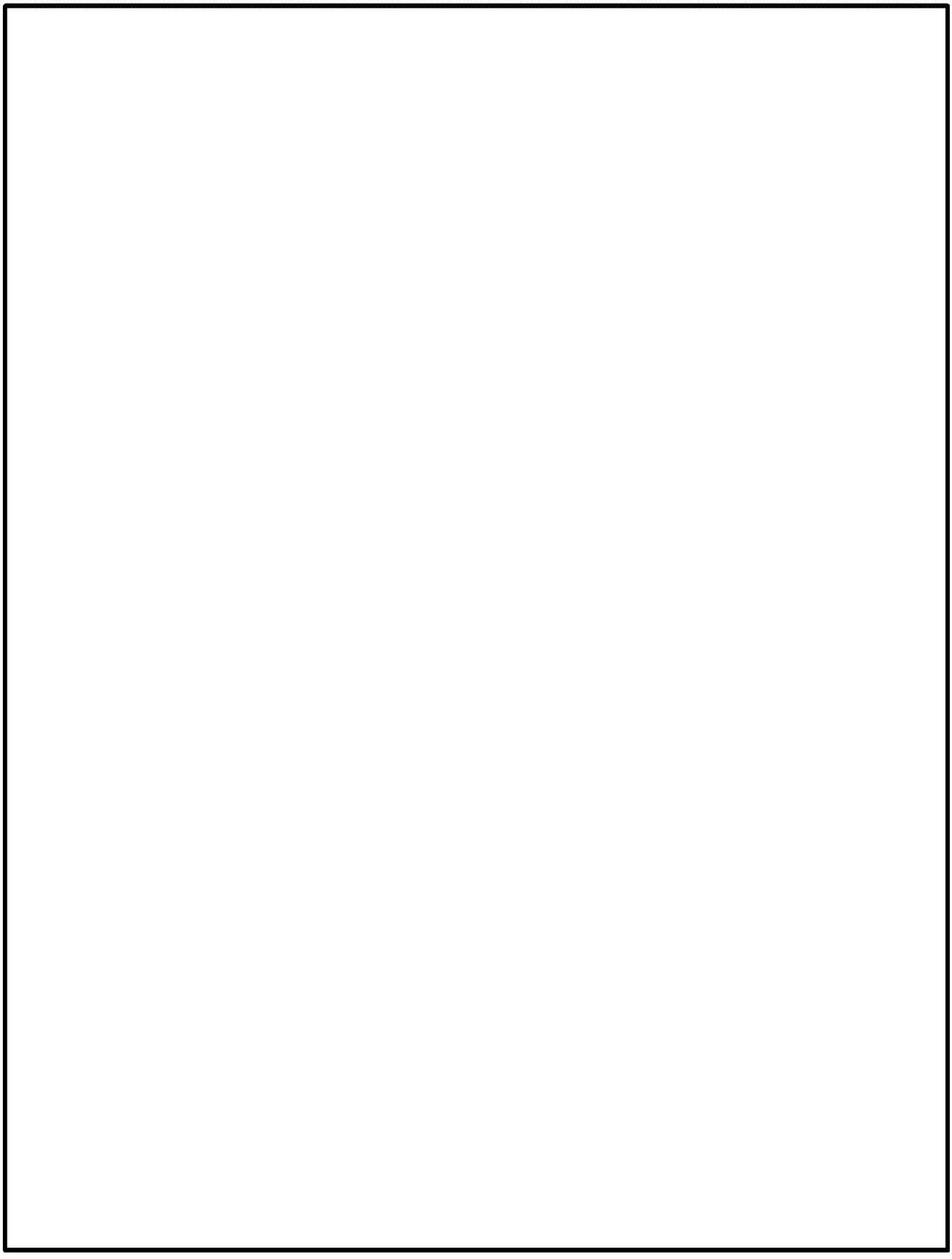












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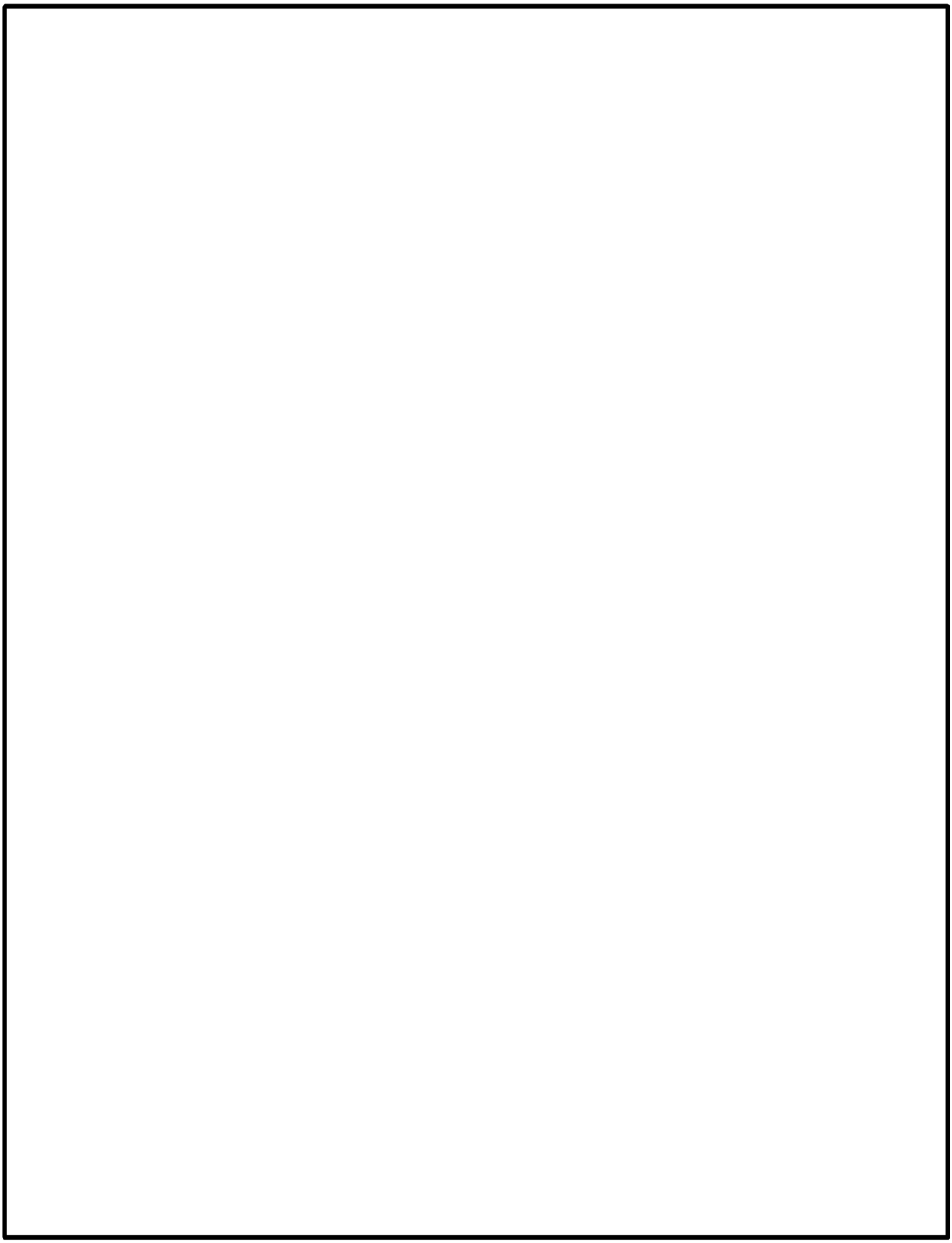

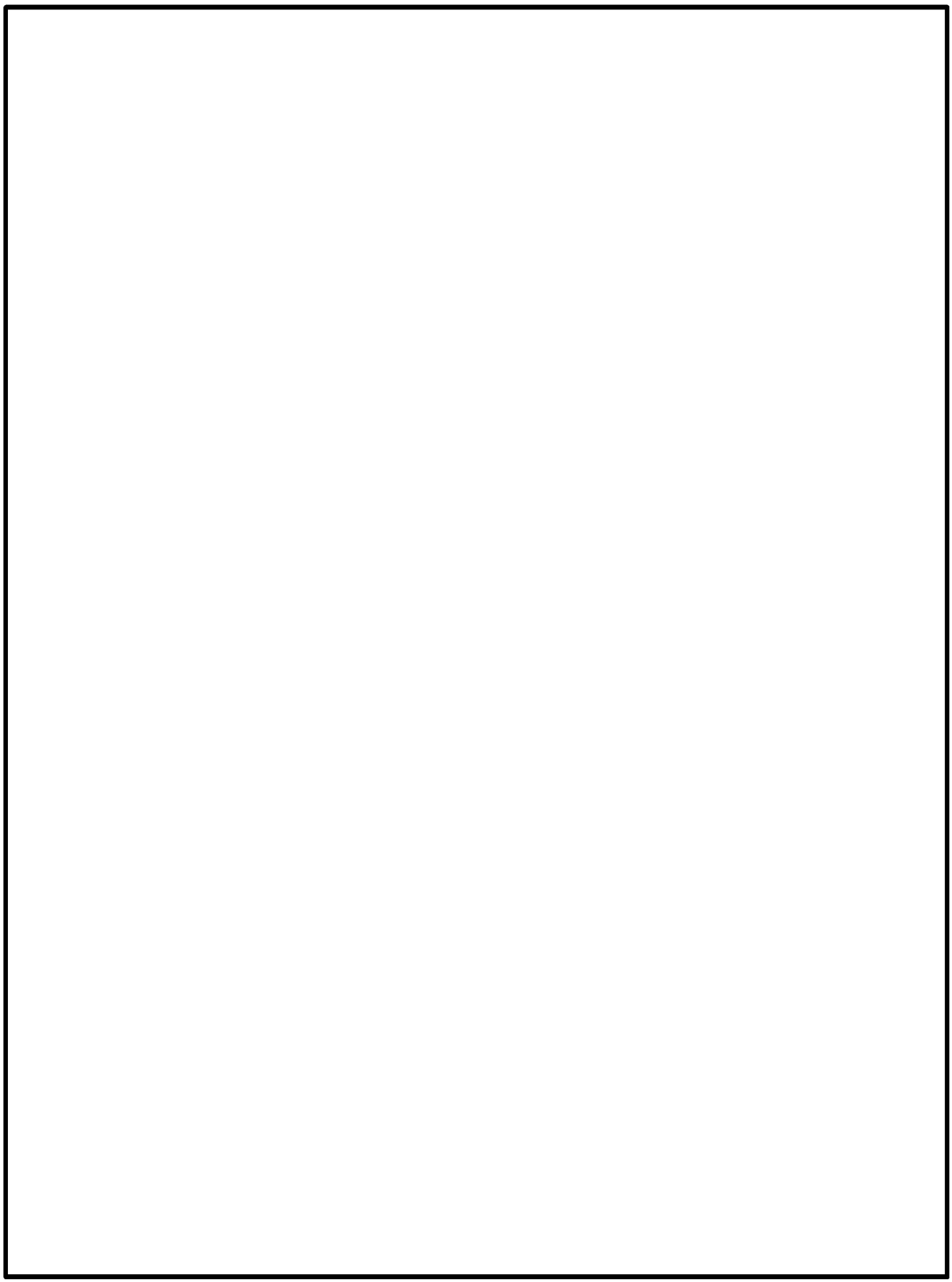

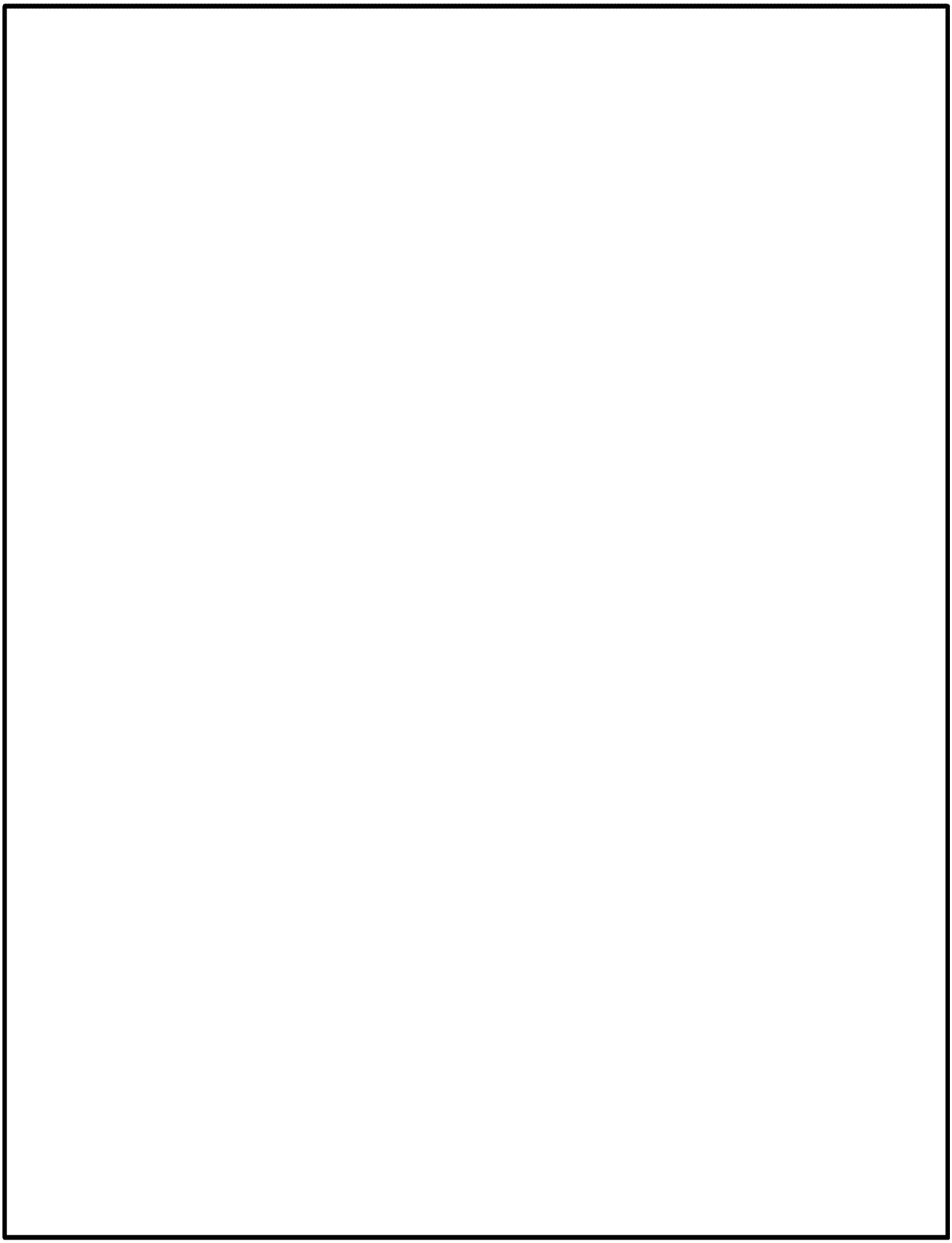

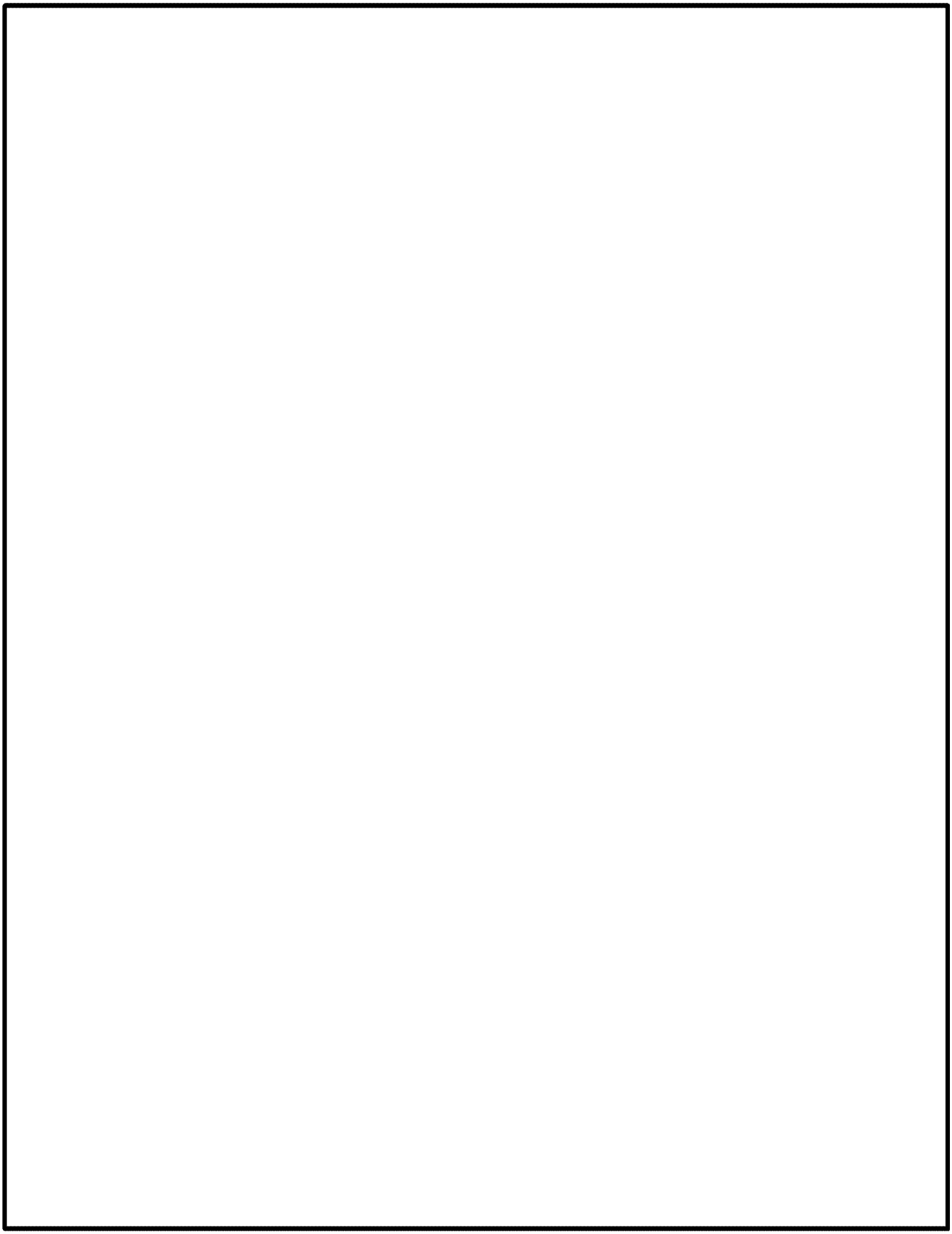

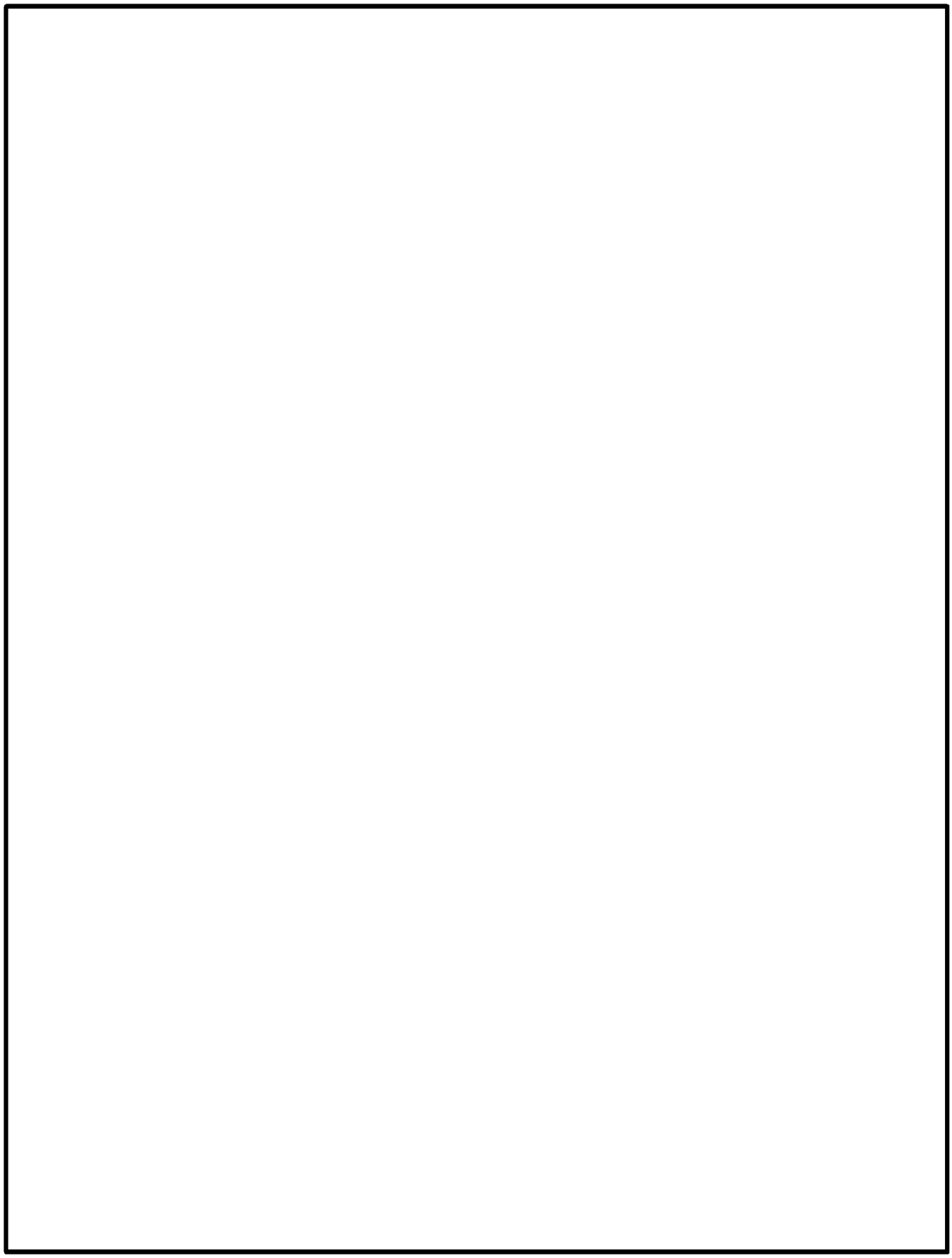

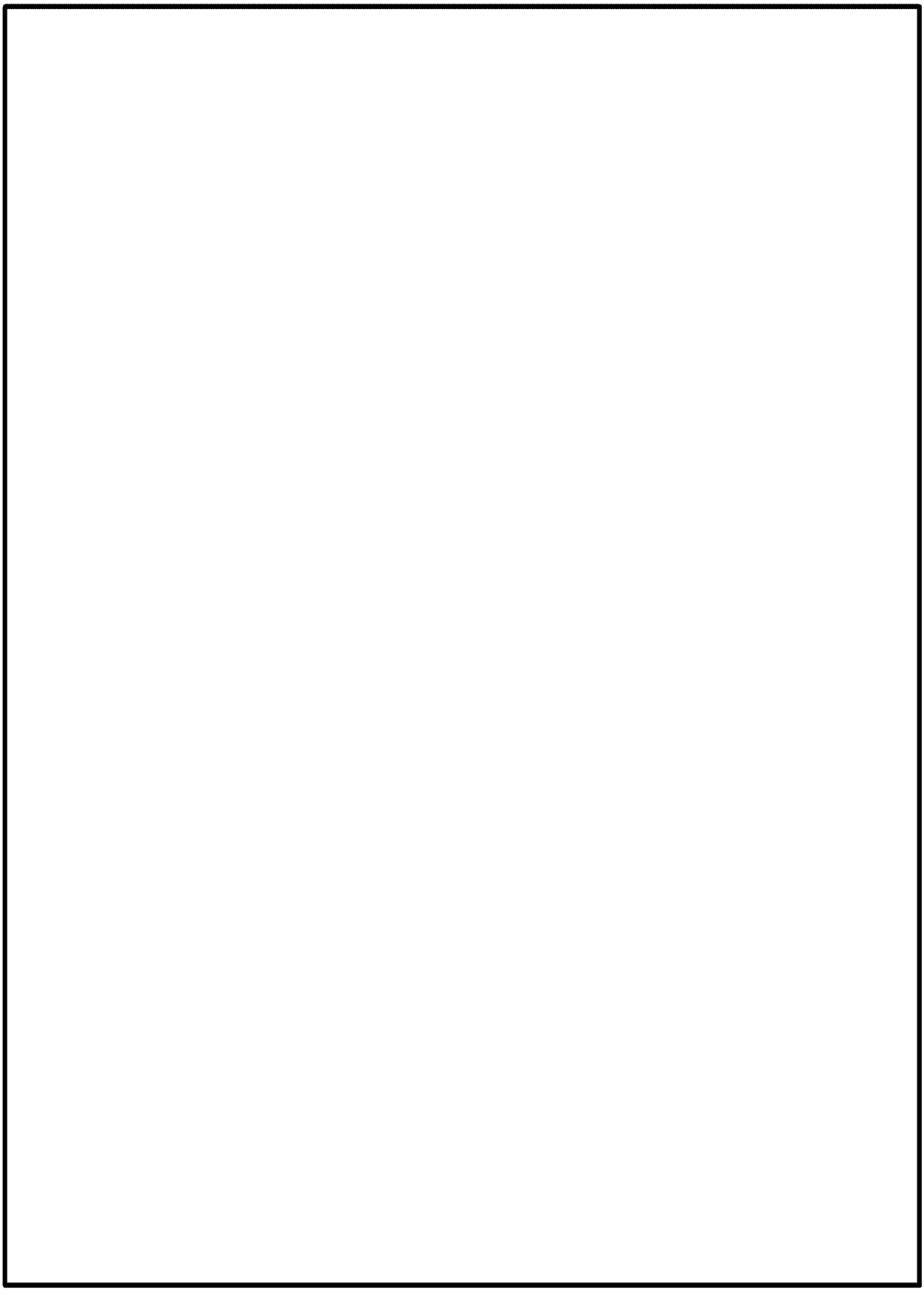

3. FDNS OVERVIEW

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[31] 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."[32] FDNS fulfills the USCIS mission of enhancing both national security and the integrity of the legal immigration

[31] GAO-02-66: Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems (issued January 31, 2002).

[32] 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.[33] 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

[33] 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.[34] 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

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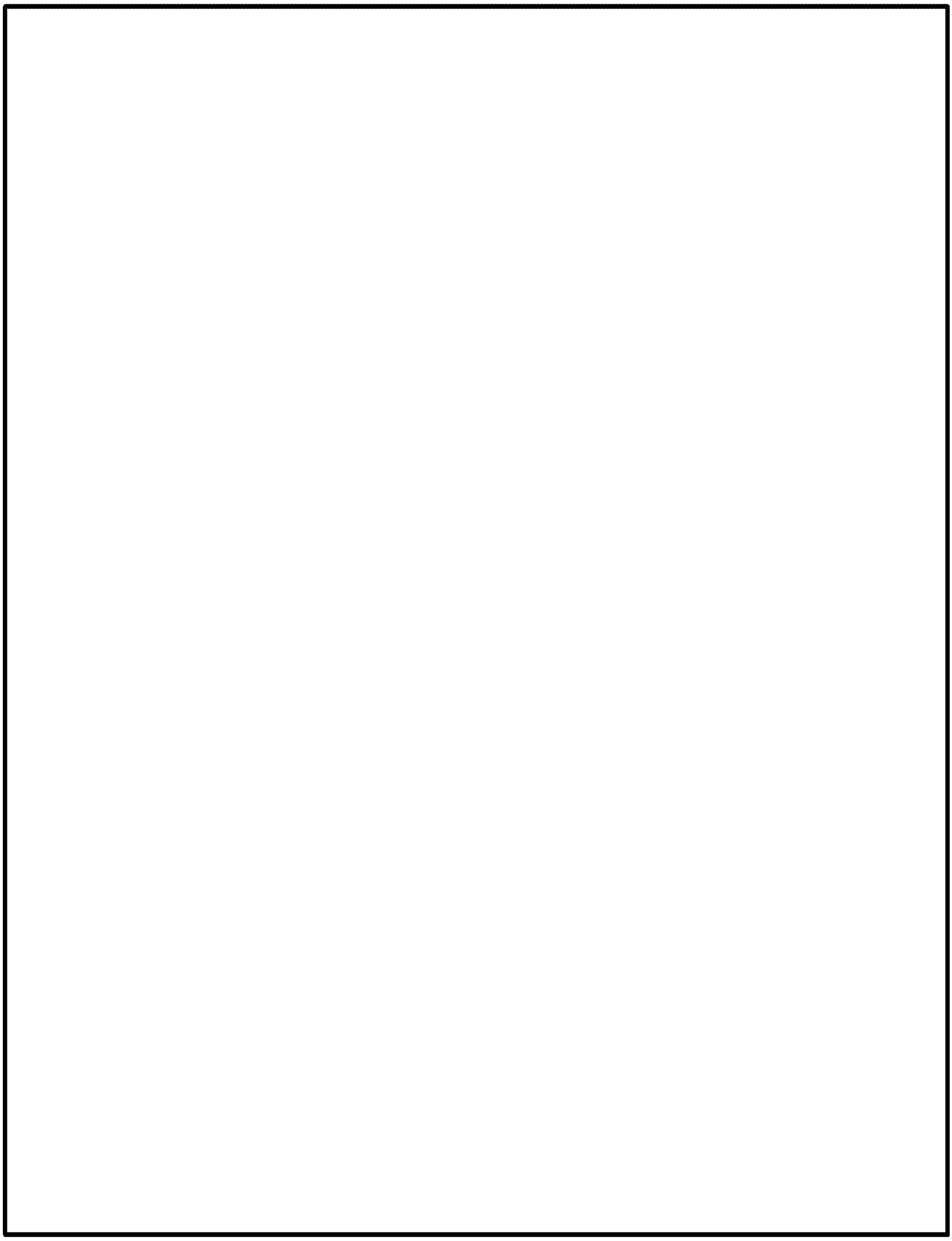
[34] *See* USCIS Connect Page for the FDNS Directorate.



4. RAIO's FDNS Program

RAIO and FDNS have taken important steps to strengthen RAIO's ability to detect and address fraud, national security concerns, and facilitate information sharing in our globally dispersed operating environment. In 2015, FDNS and RAIO executed a governance agreement to strengthen the partnership between the directorates and enhance fraud detection and national security operations throughout RAIO.[35]

RAIO has developed the most extensive set of mandatory identity and background checks in USCIS and the RAIO divisions have developed and expanded program policies and procedures to deter fraud and further identify national security concerns. RAIO'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 RAIO within the:

- RAIO 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 RAIO 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, RAIO created an FDNS branch at the directorate level to enhance effectiveness, promote directorate-wide objectives, and help coordinate the work of RAIO's operational divisions. These efforts include:

- Facilitating the integration of FDNS policies, programs, and guidance into RAIO operations and adjudicative programs;
- Managing FDNS-related reporting and information sharing in compliance with RAIO's unique confidentiality restrictions; and,

[35] Internal Memorandum of Agreement Between FDNS Directorate and RAIO Directorate Regarding the Governance Structure for Fraud Detection and National Security Operations, signed by Matthew Emrich and Joseph Langlois (June 17, 2015).

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- 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.[36] 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

[36] *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[37] 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.[38] 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

[37] FDNS, Fraud Division, Overseas Verification SOP (September 26, 2014).

[38] *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:

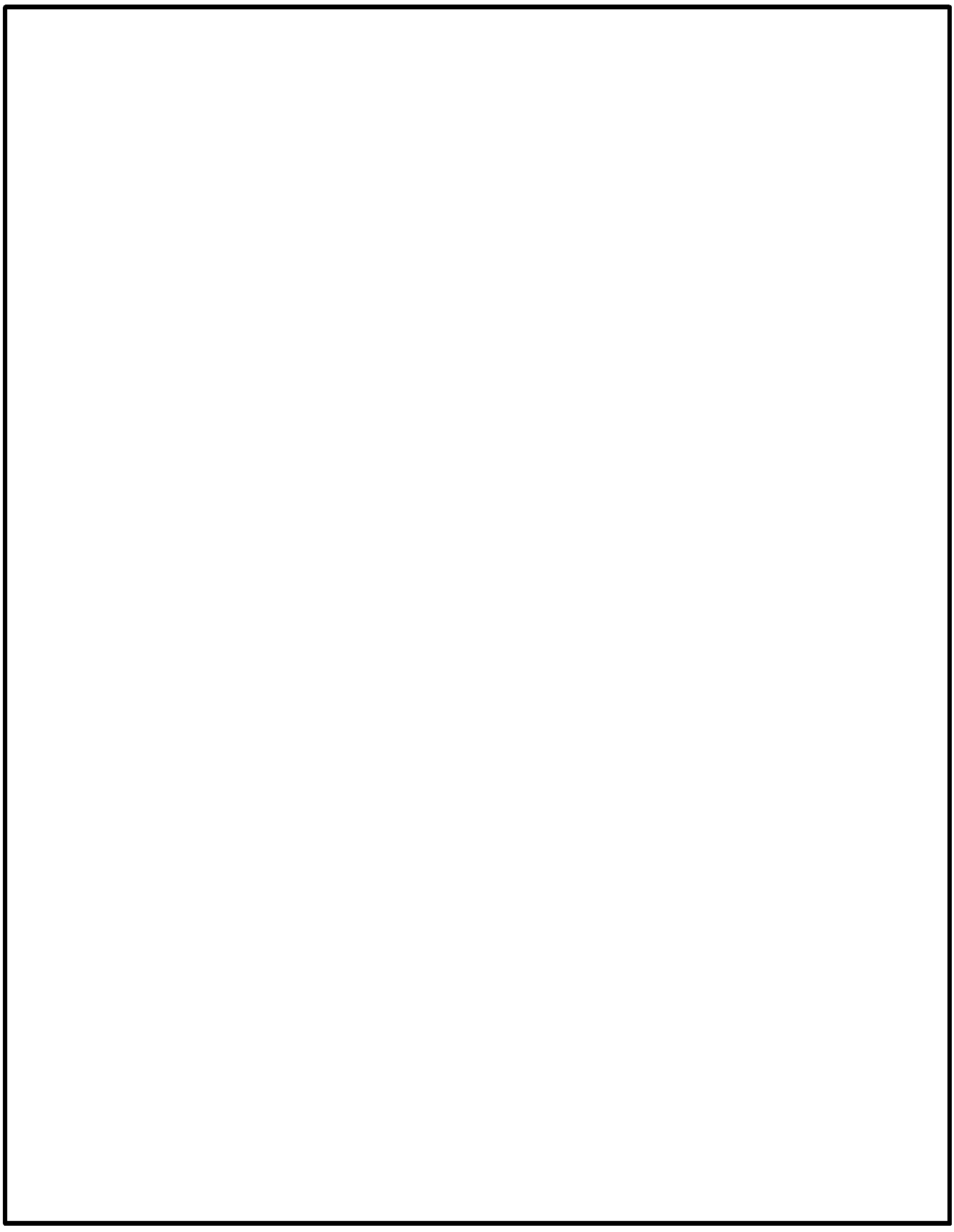
- Murder, rape, or sexual abuse of a minor as defined in INA § 101(a)(43)(A);
- Illicit trafficking in firearms or destructive devices as defined in INA § 101(a)(43)(C);
- Offenses relating to explosive materials or firearms as defined in INA § 101(a)(43)(E);
- Crimes of violence for which the term of 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.

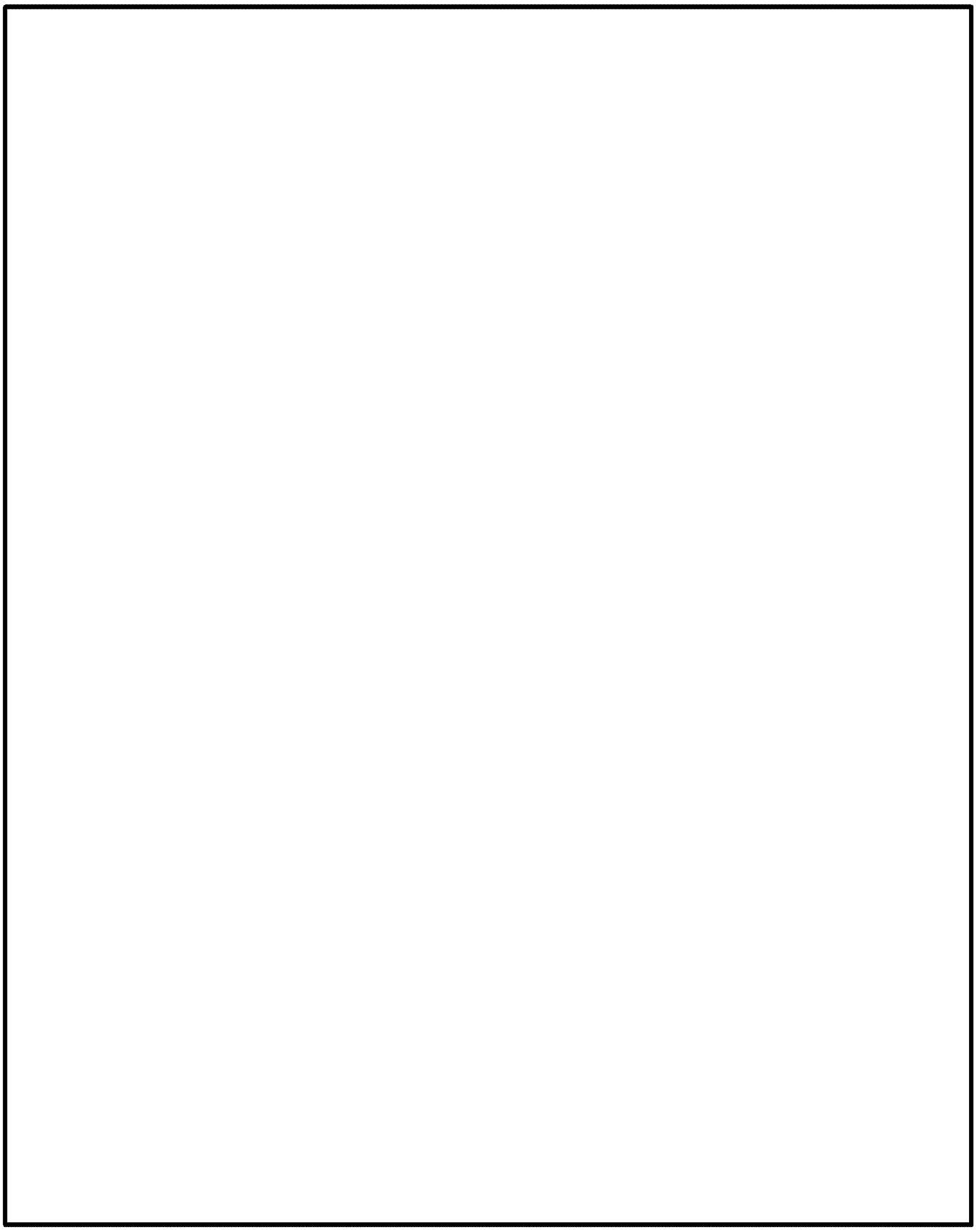
4.3 How Can Your Local FDNS Officer Support You?

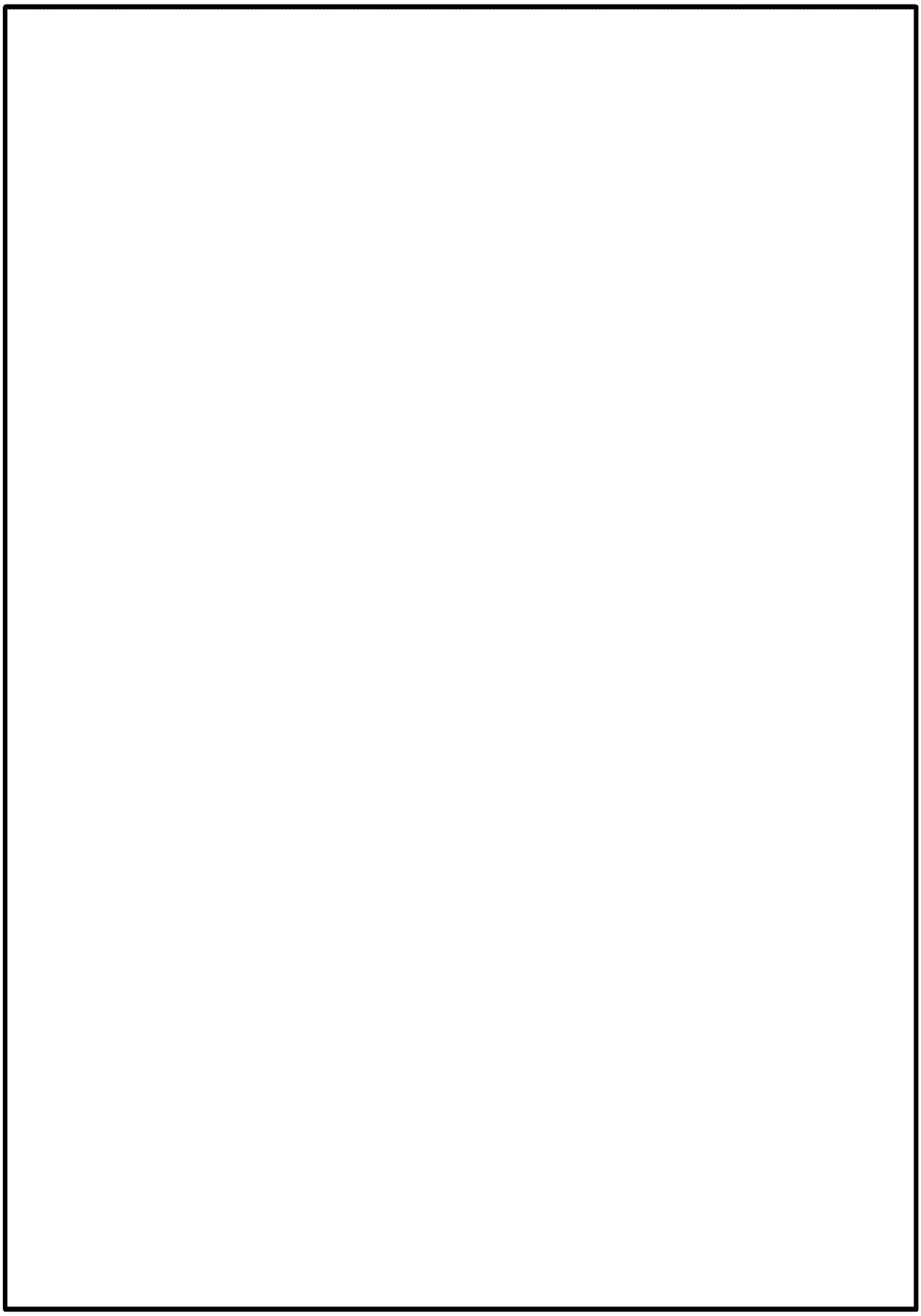
In addition to the functions and duties performed by FDNS officers described in the previous section, there are also functions that are specific to each RAIO Division:

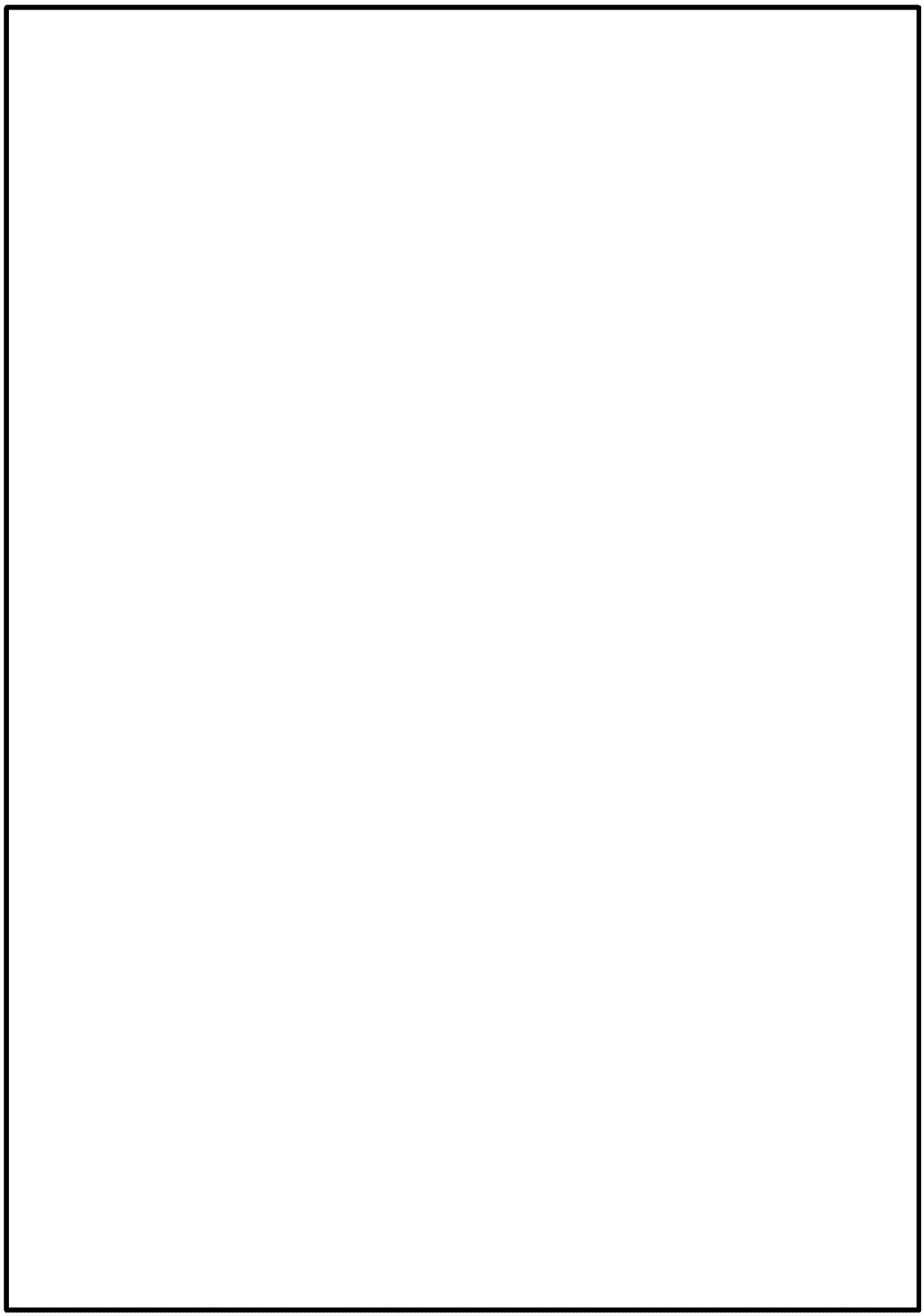
- RAD FDNS officers coordinate with other government agencies and resolve issues related to background checks.
- Asylum FDNS officers may pre-screen applications, identifying fraud, national security, and public safety issues prior to an asylum interview.
- International Operations FDNS officers perform investigations abroad including site visits on behalf of RAIO and domestic offices.

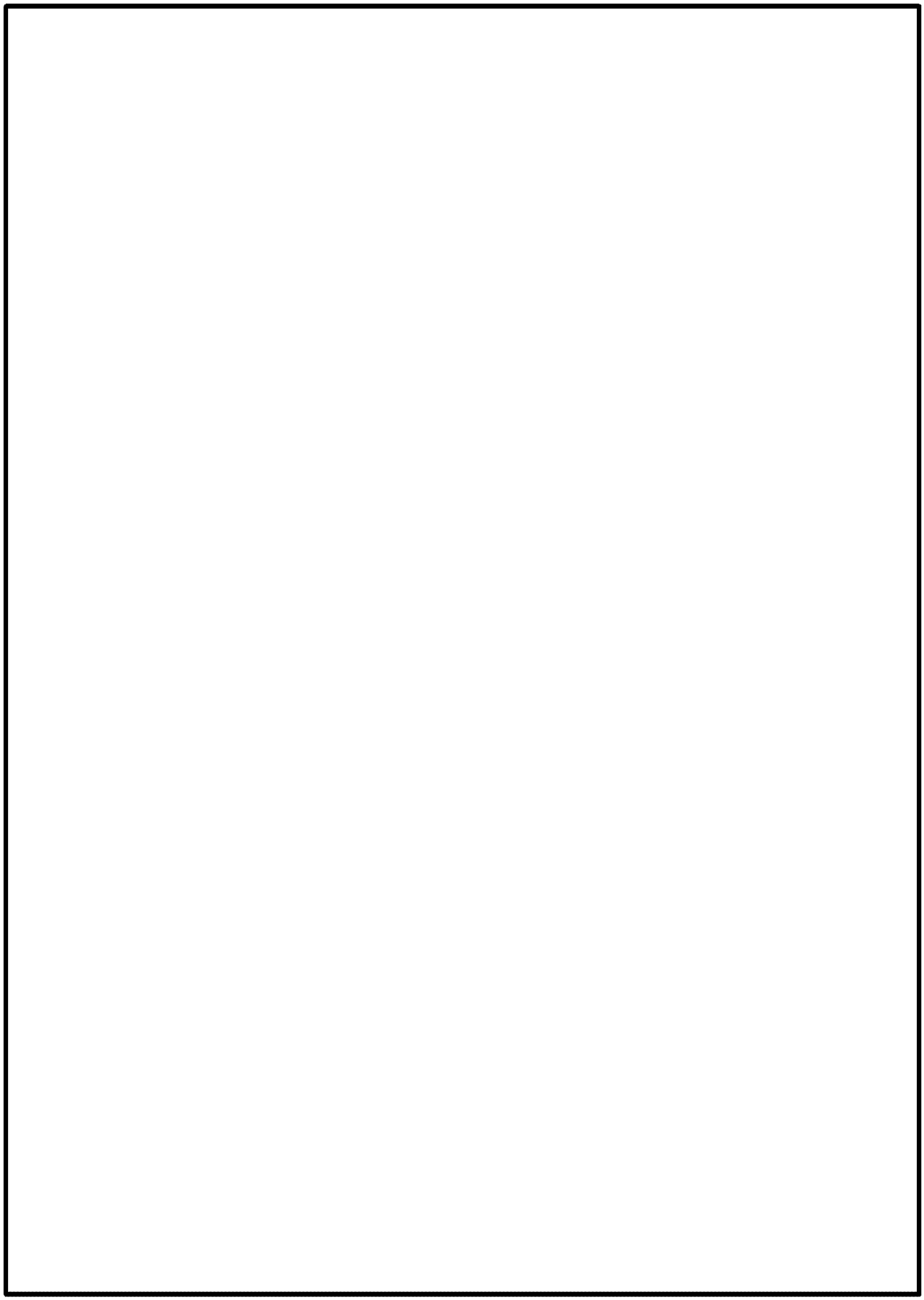
(b)(7)(e) Consult with your supervisor and your respective office's FDNS officers to familiarize yourself with local office procedures on FDNS pre-screening measures and/or ongoing investigations that may aid in the adjudication of your case(s).











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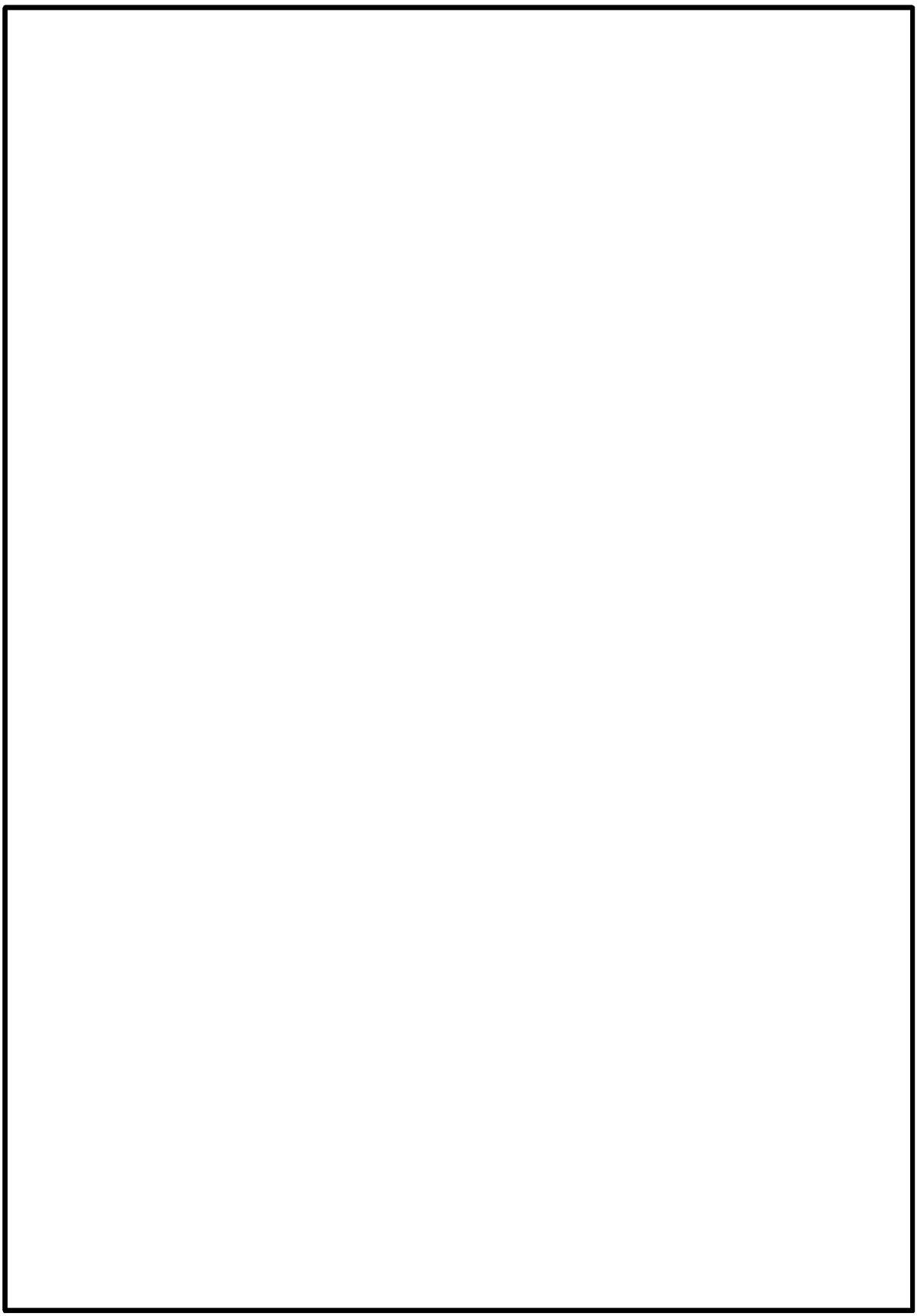

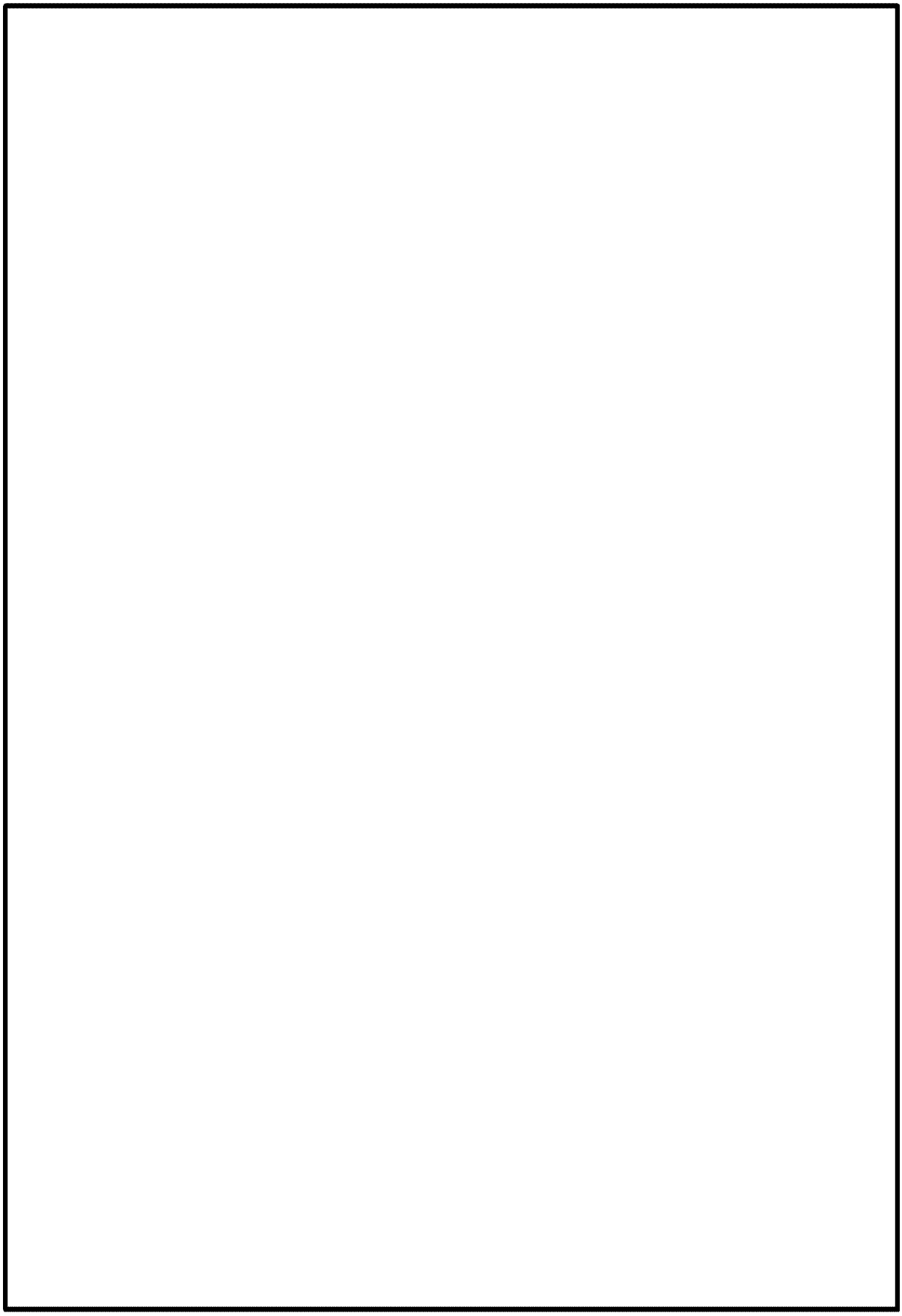

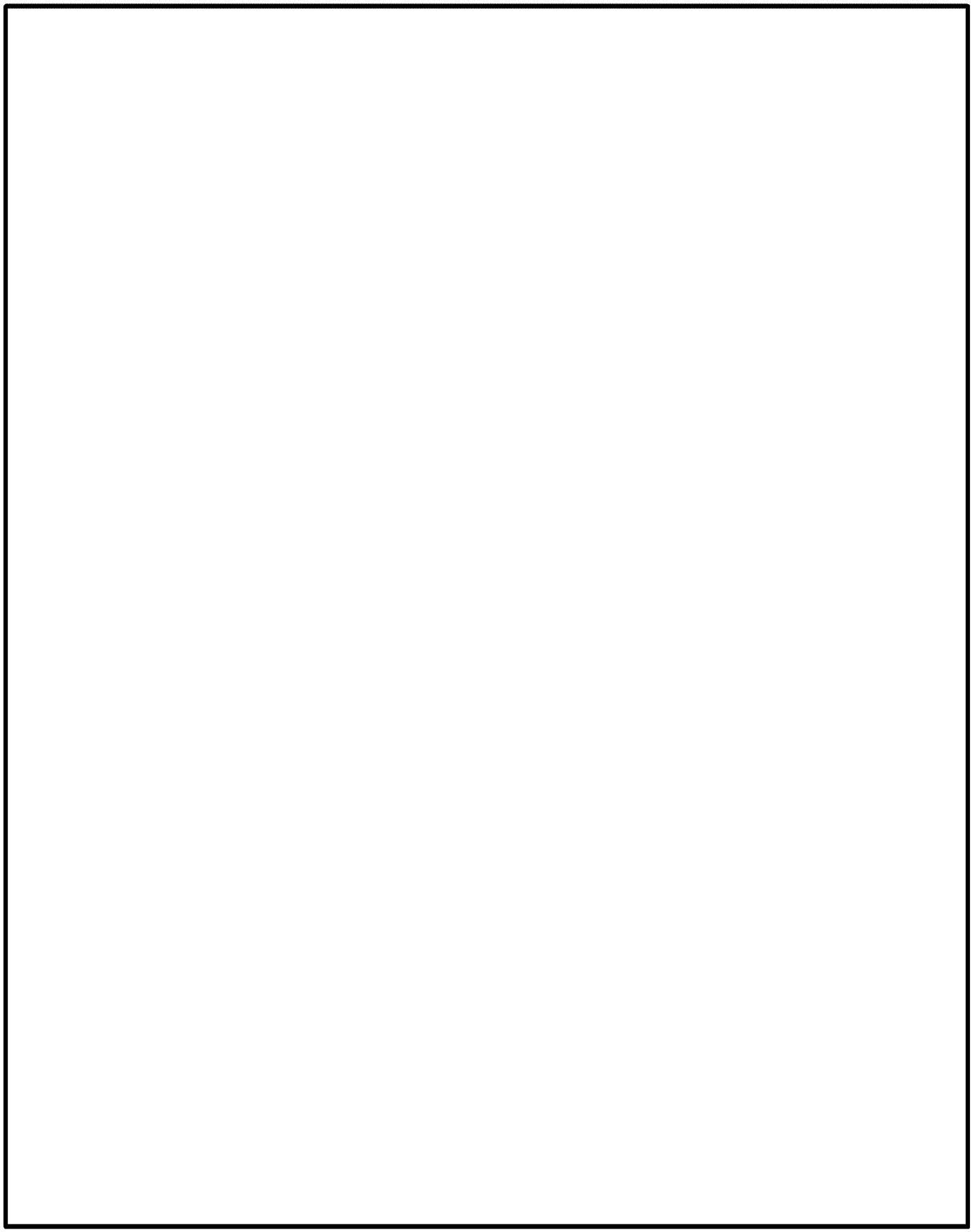

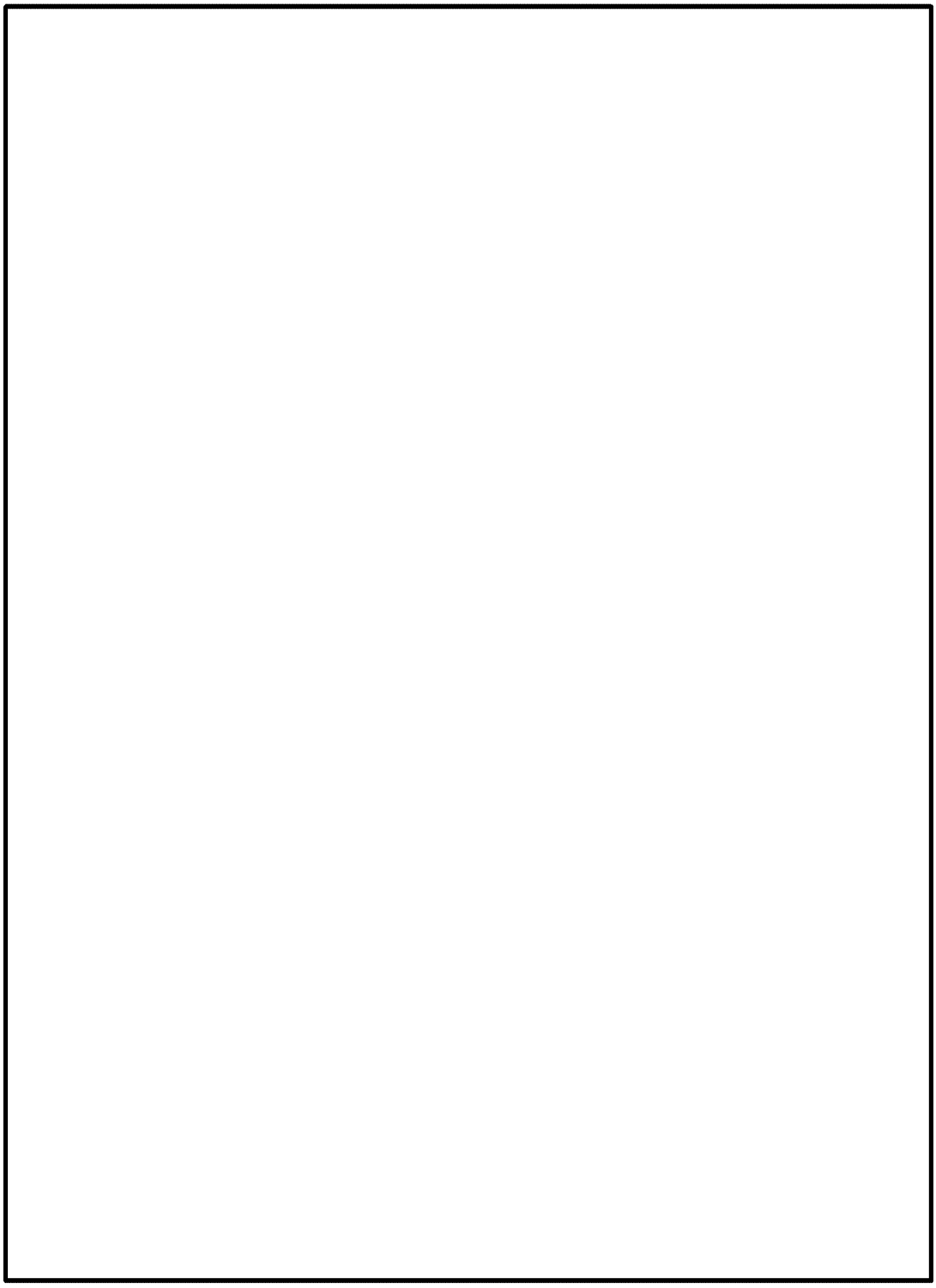

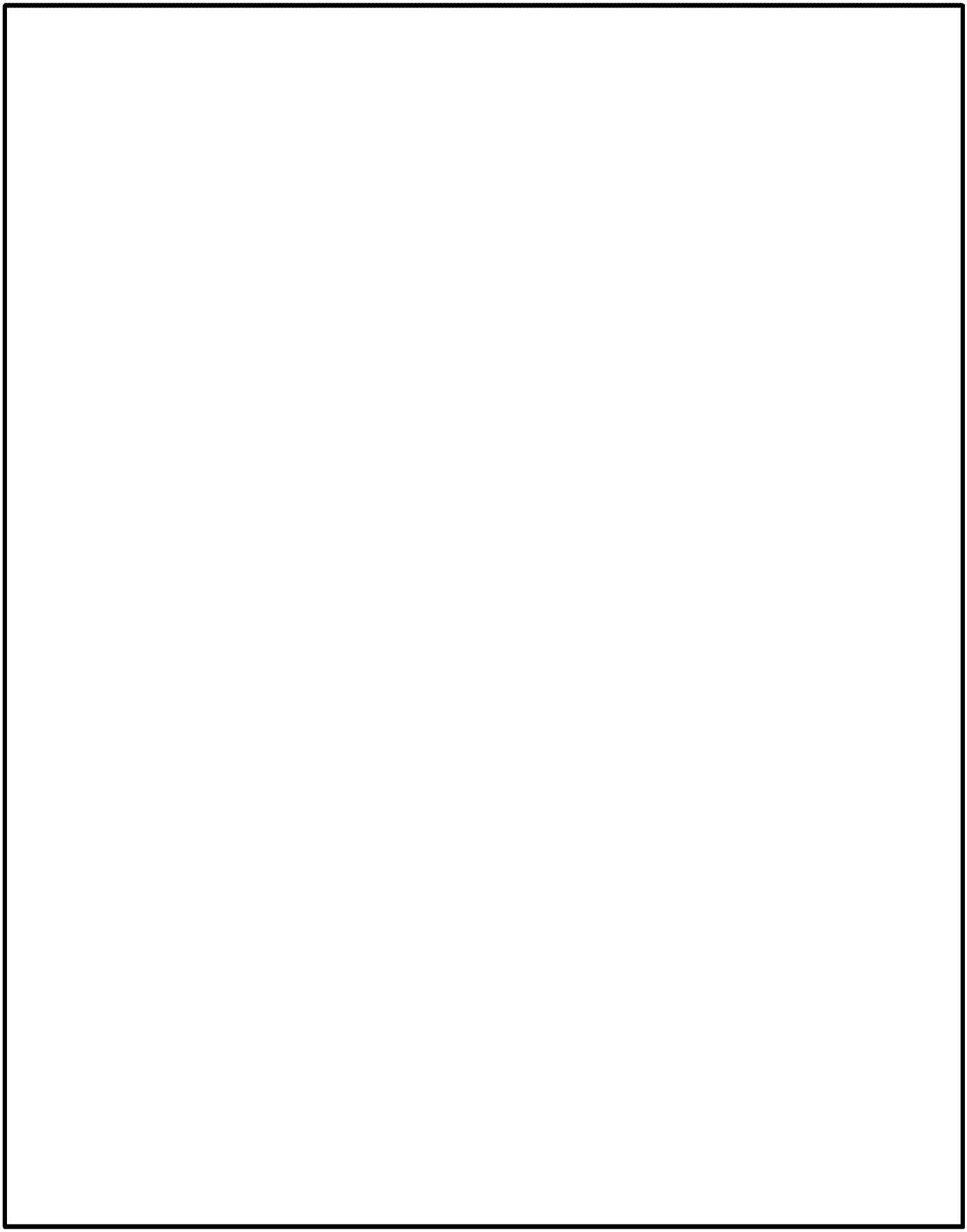

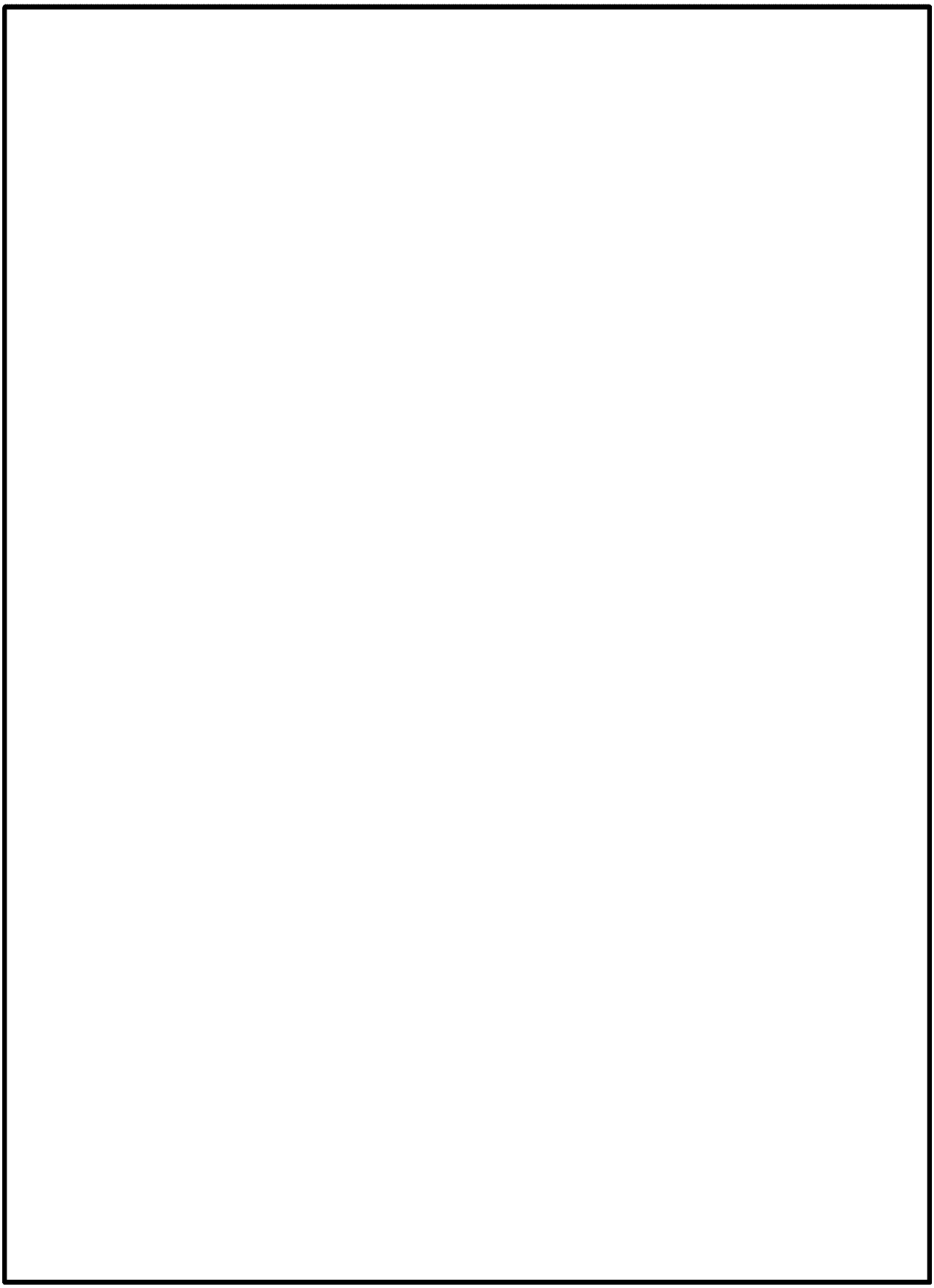

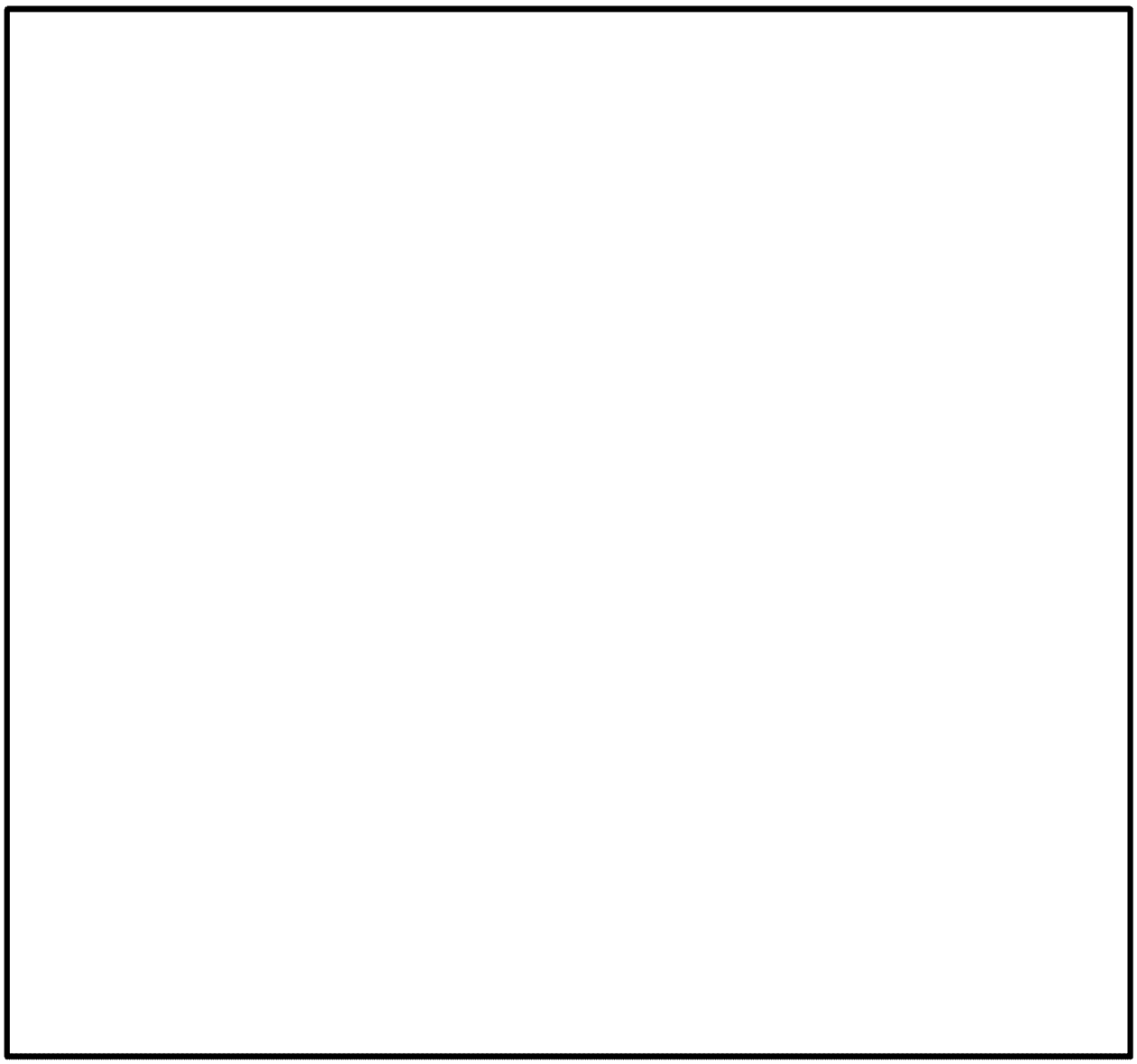

5. SUMMARY

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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[50] Adjudicator's Field Manual (AFM), Chapter 21.2(d)(1)(B).

[51] 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. RAIO 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, RAIO 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).

3. Langlois, Joseph E. Asylum Division, INS Office of International Affairs. *Discovery of fraudulent documents* ***after*** *the asylum interview*, Memorandum to Asylum Directors, Supervisory Asylum Officers, and Asylum Officers. (Washington, DC: May 27, 1998), 2p. (Included in lesson, *Credibility*)

4. Langlois, Joseph E. Asylum Division, INS Office of International Affairs. *Fingerprint and Identity Checklist,* Memorandum for Asylum Office Directors. (Washington, DC: September 3, 1998), 4p.

5. Langlois, Joseph E. Asylum Division, INS Office of International Affairs. *Known or Suspected Human Rights Abusers,* Memorandum to Asylum Office Directors, Supervisory Asylum Officers, QA/Trainers, Asylum Officers, (Washington, DC: September 11, 2000), 5p.

6. Langlois, Joseph E. Asylum Division, INS Office of International Affairs. *Matter of O-D, Int. Dec. 3334 (BIA 1998)*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 29 April 1998), 3 p.

7. Langlois, Joseph E. Asylum Division, Office of International Affairs. *Procedures for Contacting HQASM on Terrorist Cases*, Memorandum to Asylum Office Directors, et al. (Washington, DC: Jan. 3, 2002), 2p.

8. Pearson, Michael A. INS Office of Field Operations. *Forensic Document Laboratory Case Backlogs,* Memorandum to Regional Directors, et al. (Washington, DC: July 13, 1999), 2p.

9. Pearson, Michael A. Office of Field Operations. *Human Rights Abuse Memorandum of Understanding*, Memorandum to Regional Directors, et al. (Washington, DC: Sept. 29, 2000), 2p. plus attachments.

10. Pearson, Michael A. INS Office of Field Operations. *Revised Procedures for Submitting Evidence to the Forensic Document Laboratory,* Memorandum to Regional Directors, et al. (Washington, DC: July 13, 1999), 2 p.

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.

13. Weiss, Jeffrey. INS Office of International Affairs. *Processing Claims Filed by Terrorists or Possible Terrorists,* Memorandum to Asylum Office Directors and HQASM Staff, (Washington, DC: October 1997), 2p.

14. *Annex Regarding Sharing of Information on Asylum and Refugee Status Claims to the Statement of Mutual Understanding on Information Sharing between the Department of Citizenship and Immigration Canada (CIC) and the Bureau of Citizenship and Immigration Services (BCIS), of the U.S. Department of Homeland Security (DHS)* (22 August 2003), 10 pp.

15. *Statement of Mutual Understanding on Information Sharing among the Department of Citizenship and Immigration Canada (CIC) and the U.S. Immigration and Naturalization Service (INS) and the U.S. Department of State (DOS)* (February 27, 2003), 12 pp.

16. Joseph E. Langlois. Director, Asylum Division. *Choicepoint Guidance*, Memorandum to Asylum Office Directors and Deputy Directors (Washington, DC: 29 September 2003), 1 p., plus attachments.

17. Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *US-VISIT SIT Deployment and Issuance of Draft Procedures, including 7 attachments: Draft Procedures, Asylum and Nacara sec. 203 Background Identity and Security Checklist, Federal Registar Notice, 50 Busiest Land Ports of Entry, Deployment Dates for Immigrant Visas Issued Overseas, Deployment Dates for Nonimmigrant Visas Issues Overseas, and Visa Refusal Codes*, Memorandum to All Asylum Office Personnel (Washington, DC: May 26, 2006) 21 pp. including attachments

18. Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *APSS SAFE Screen Guidance*, Memorandum to All Asylum Officer Personnel (Washington, DC: June 5, 2006) 9 pp.

19. Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *Image Storage and Retrieval System Access for Asylum Office Staff,* Memorandum to All Asylum Office Personnel (Washington, DC: June 6, 2006) 2 p.

20. Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *Minimum Staffing Requirement forAsylum Office Forensic Document Laboratory Certified Document Instructors*, Memorandum to Asylum Office Directors and Deputy Directors. (Washington, DC: October 2, 2006). 2 p.

21. Joseph E. Langlois, Chief, Asylum Division, US Citizenship and Immigration Service. *Disclosure of Consular Affairs Visa Data in Asylum Adjudications*. Memorandum to Asylum Office Directors and Deputy Directors. (Washington, DC: January 24, 2008). 5 p.

22. Alejandro Mayorkas, Director, USCIS. *Disclosure of Asylum-Related Information to the Foreign Government Participants in the Five Country Conference.* Decision Memorandum to Janet Napolitano, Secretary, DHS. (Washington, DC: March 5, 2010). 4 p.

23. Ted Kim, Acting Chief, Asylum Division, US Citizenship and Immigration Service. *Issuance of a New Section of the ISCPM Regarding Information Sharing on Asylum Seekers Pursuant to International Agreements*. Memorandum to All Asylum Office Staff. (Washington, DC: July 22, 2011). 2 p.

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.**[52]
- **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)

[redacted]

[52] For further discussion of burden and standards of proof, see RAIO Module, *Evidence*.

[53] *See* INA § 208(b)(1)(B)(iii).

[54] *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

Course	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	***Mandatory Bars to Asylum***
Rev. Date	May 9, 2013
Lesson Description	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.
Terminal Performance Objective	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.
Enabling Performance Objectives	1. Locate the sections of the INA and regulations that apply to grounds for mandatory denials of asylum. (ACRR3) (AAS6) (ACCR4) 2. Identify the grounds of ineligibility to apply for asylum, and the exceptions to those grounds. (AIL4) 3. Indicate who is subject to a mandatory denial or referral of asylum. (ACRR3) 4. Describe the factors to consider in determining whether an individual is firmly resettled. (ACRR3) 5. Identify policies and procedures for handling criminal issues. (ACRR3) (CD38)
Instructional Methods	Lecture; discussion; practical exercises
Student Materials/ References	Lesson Plans; INA; 8 C.F.R. §208; *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999)
Methods of Evaluation	Practical exercise; Written test
Background Reading	1. *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* (Dec. 5, 2002), 5 pp.; Final Rule on the Implementation of the Agreement, 69 FR 69480, November 29, 2004, 12 pp. 2. Walter D. Cadman. Investigations Branch, Office of Field Operations. *Investigative Referral of Suspected Human Rights Abusers*, Memorandum to District Directors, et al. (Washington, DC: Sept. 28, 2000), 2p.

3. Joseph E. Langlois. Asylum Division, Office of International Affairs. *Known or Suspected Human Rights Abusers*, Memorandum to Asylum Office Directors, et al. (Washington, DC: Sept. 11, 2000), 5p.

4. Joseph E. Langlois. Asylum Division, Office of International Affairs. *Procedures for Contacting HQASM on Terrorist Cases*, Memorandum to Asylum Office Directors, et al. (Washington, DC: Jan. 3, 2002), 2p.

5. 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), 11 p.

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.

11. United Nations High Commissioner for Refugees, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*. HCR/GIP/03/05, 4 September 2003, 9 pp.

12. Joseph E. Langlois. USCIS Asylum Division. *Updates to Asylum Officer Basic Training Course Lessons as a Result of Amendments to the INA Enacted by the REAL ID Act of May 11, 2005*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 11 May 2006), 8 pp.

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)

TABLE OF CONTENTS

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

1951 Convention relating to the Status of Refugees, Art. 1.F; *UNHCR Handbook*, paras. 140, 147-63

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

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.

applies to certain applicants arriving from Canada, who are seeking credible or reasonable fear interview, and there are exceptions for all three bars.

- The asylum seeker previously has been denied asylum by an immigration judge or the BIA.

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

By definition, a persecutor cannot be a "refugee." The second sentence of INA § 101(a)(42) specifically excludes persecutors from 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

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

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.

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.

C. Previous Denial of 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:

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.

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.*

Jan. 4, 2002).

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.

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).

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.

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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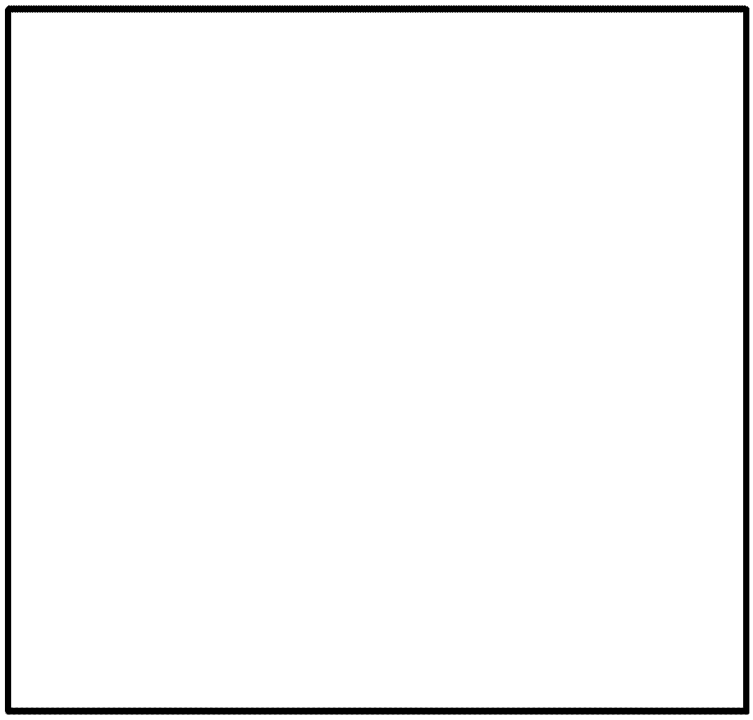

b. Standard of proof

See RAIO module, *Evidence.*

The standard of proof for demonstrating this exception is "to the satisfaction of" the adjudicator.

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.

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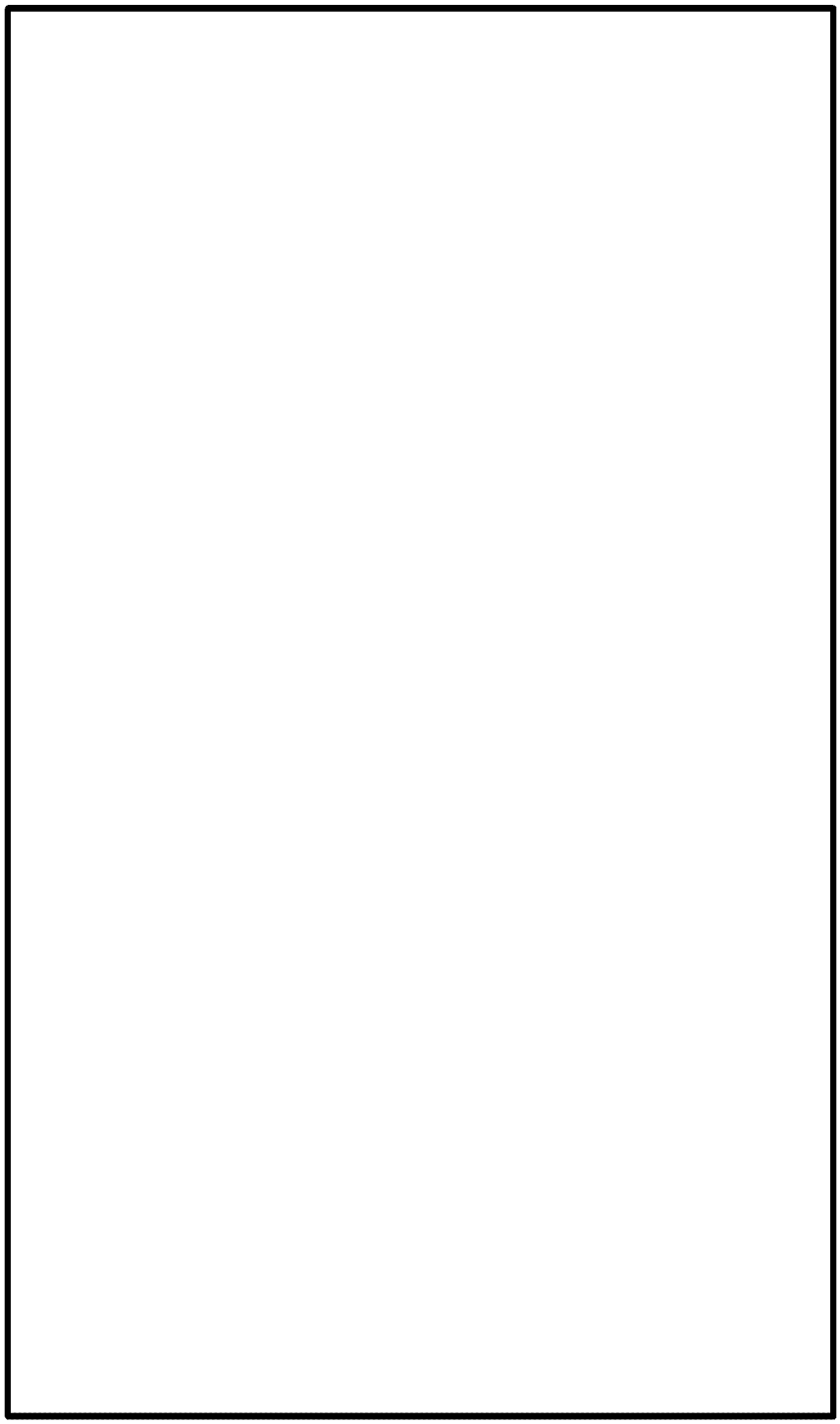

5.

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.

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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.*

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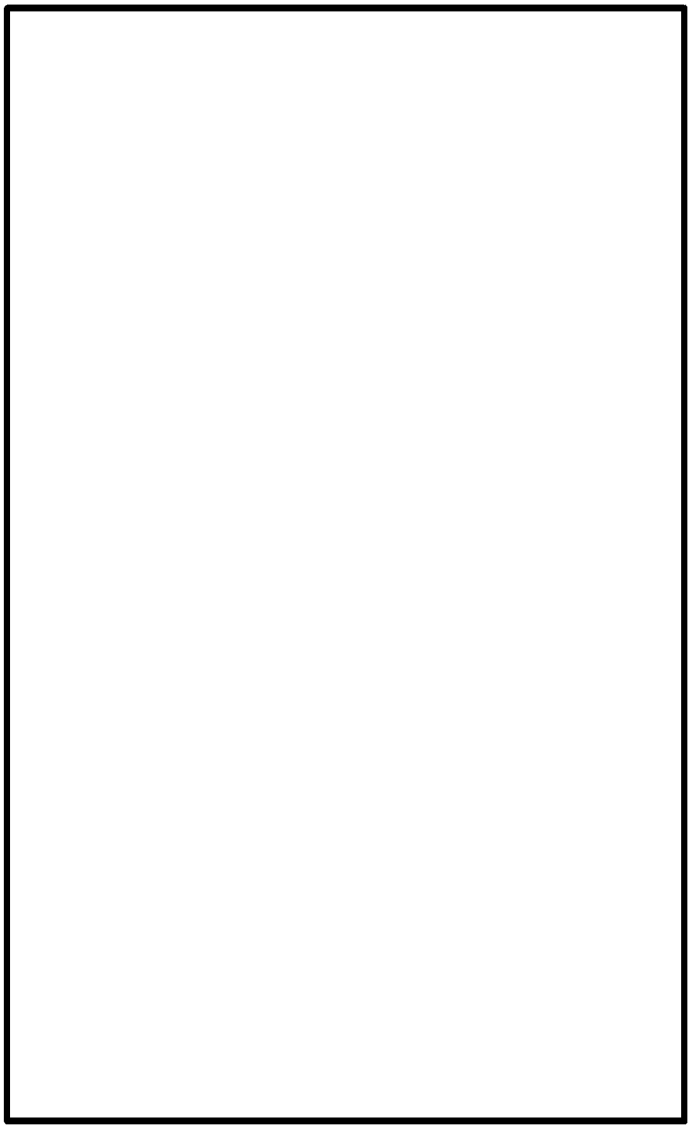

See Asylum lesson, *One-Year Filing Deadline,* section *Changed Circumstances, General Considerations.*

(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*

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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.*

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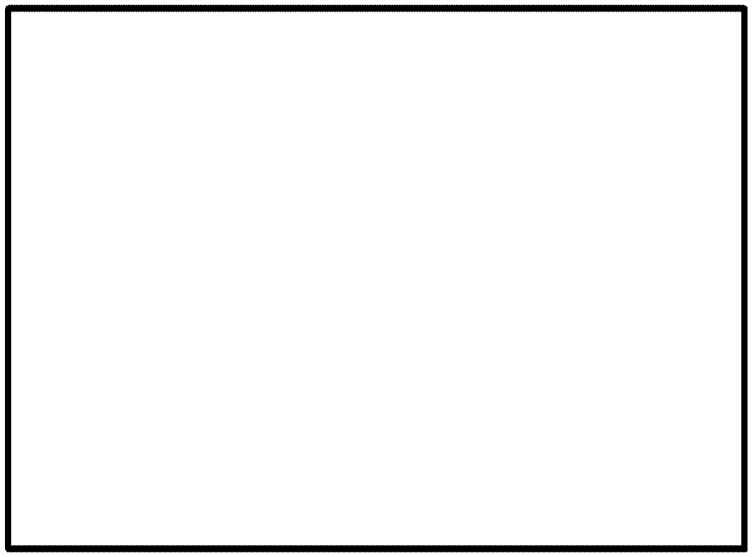


7. Dependents

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 to18 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.***

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.

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.

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.

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

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"

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 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.

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:

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).

(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.

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--
(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.

18 U.S.C. § 16 (definition).

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

Matter of D-, 20 I&N Dec. 827 (BIA 1994); *Matter of Juarez,* 19 I&N Dec. 664 (BIA 1988).

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.

b. drug trafficking

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."

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.

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

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).

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).

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.

INA § 101(a)(43)(G); *Matter of Garcia-Garrocho*, 19 I&N Dec. 423 (BIA 1986); *Matter of Frentescu*, 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)

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.

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. 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.

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

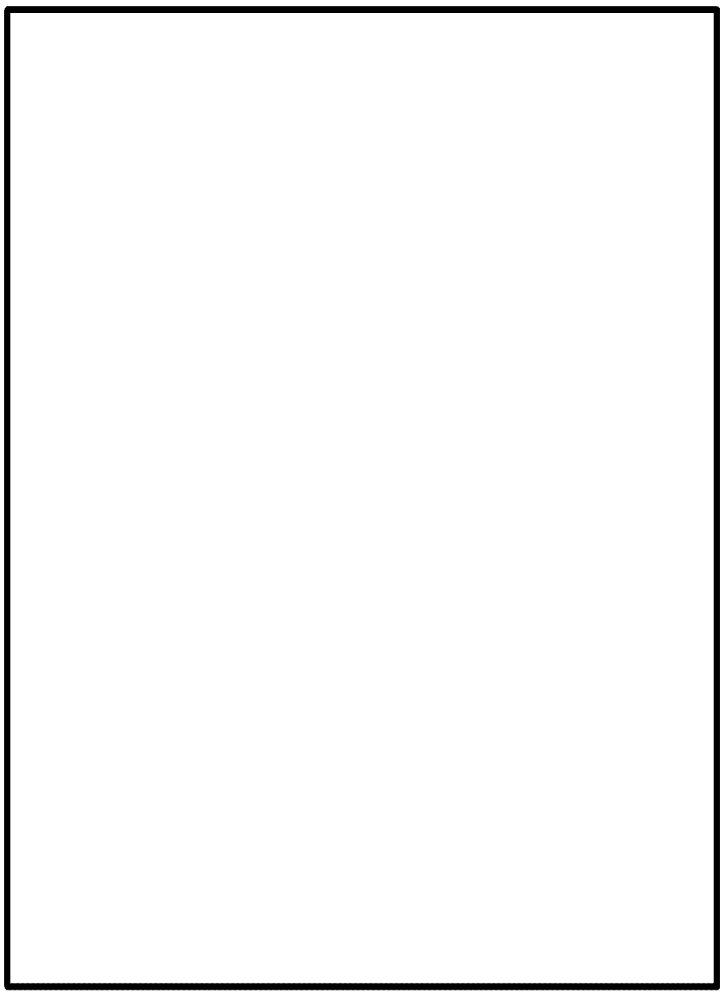
a. There is no requirement that the serious nonpolitical crime resulted in a conviction. The lack of conviction means that this bar can really only be discovered through the interview process, as there will probably not be any documentation. However, the adjudicator needs to find *probable cause* to 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.

Khouzam v. Ashcroft, 361 F.3d 161, 164 (2d Cir. 2004).

(b)(5)



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) (undesignated 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,* 242 477 (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.

   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.

See Black's Law Dictionary, 5th Ed.; *see* RAIO Module, *Evidence.*

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 an 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. Department of Homeland Security
U.S. Citizenship and Immigration Services
Refugee, Asylum and International Operations Directorate
Washington, DC 20529-2100

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[1]; 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[2] and whether the Asylum Office must notify HHS that it has discovered a UAC[3]. 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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[1] 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).
[2] *See* section 235(d)(7)(A) of the TVPRA.
[3] *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,[4] 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.[5] 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.

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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[4] 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.

[5] 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.

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

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: [redacted] Fax: (202)272-1681

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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

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

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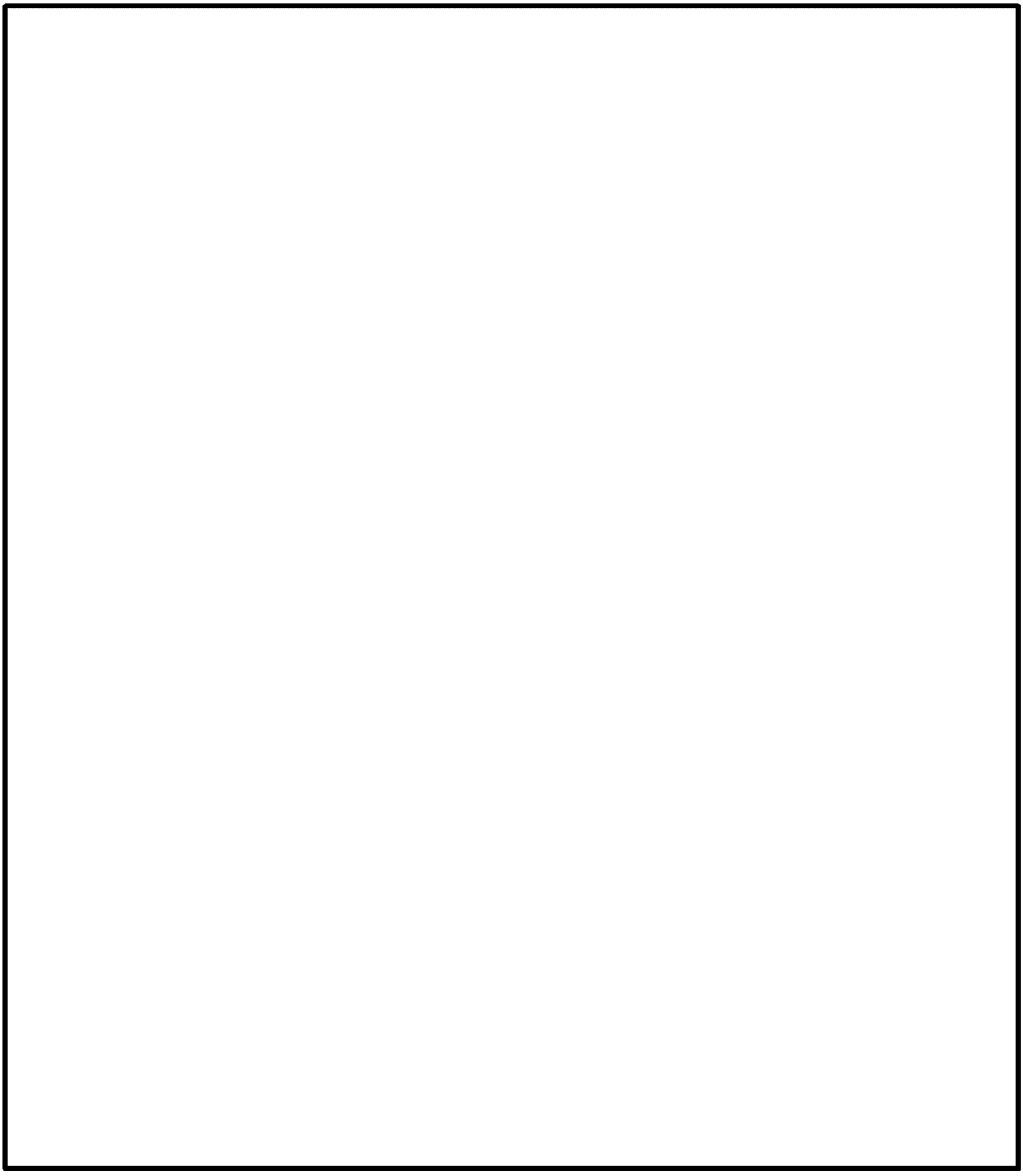

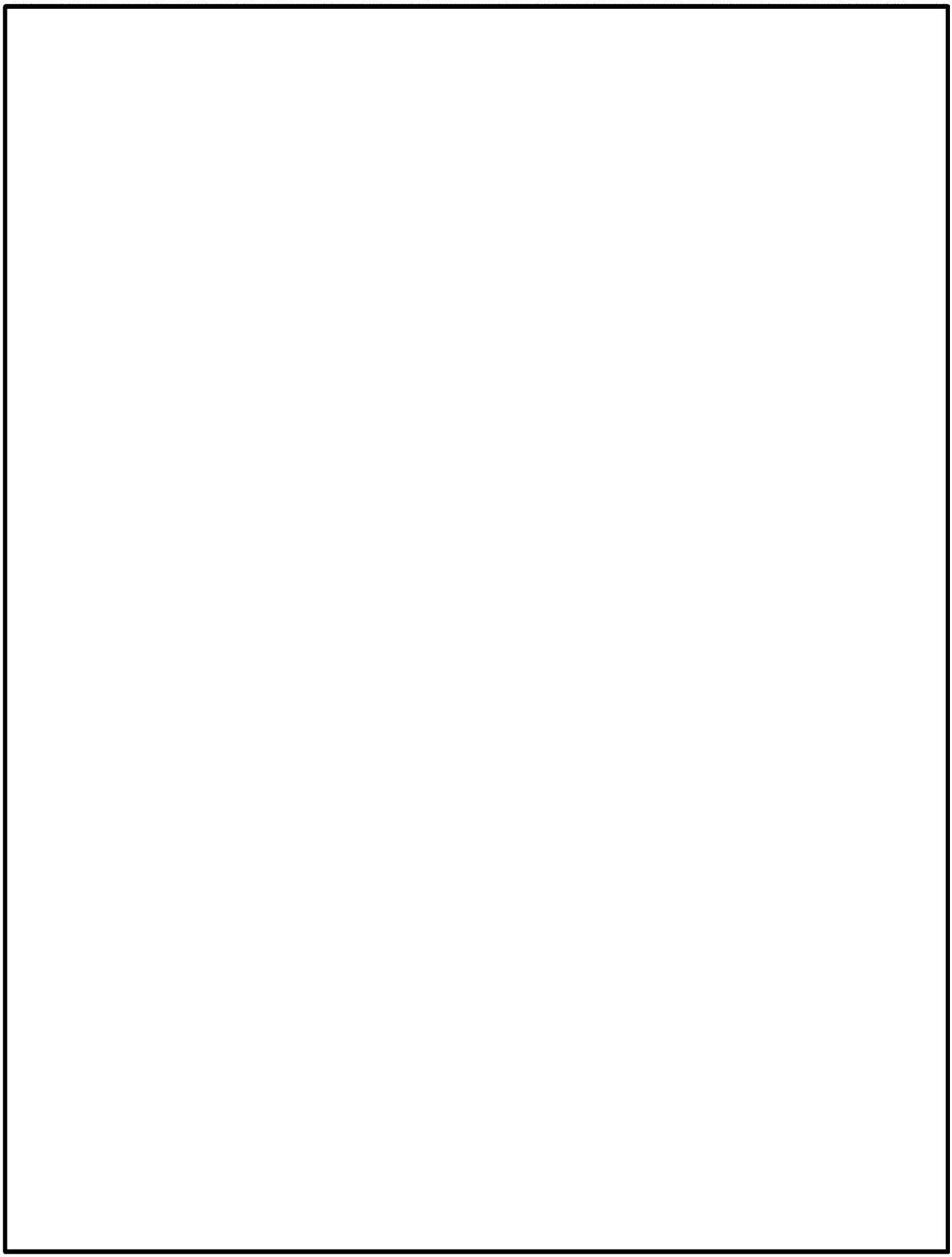

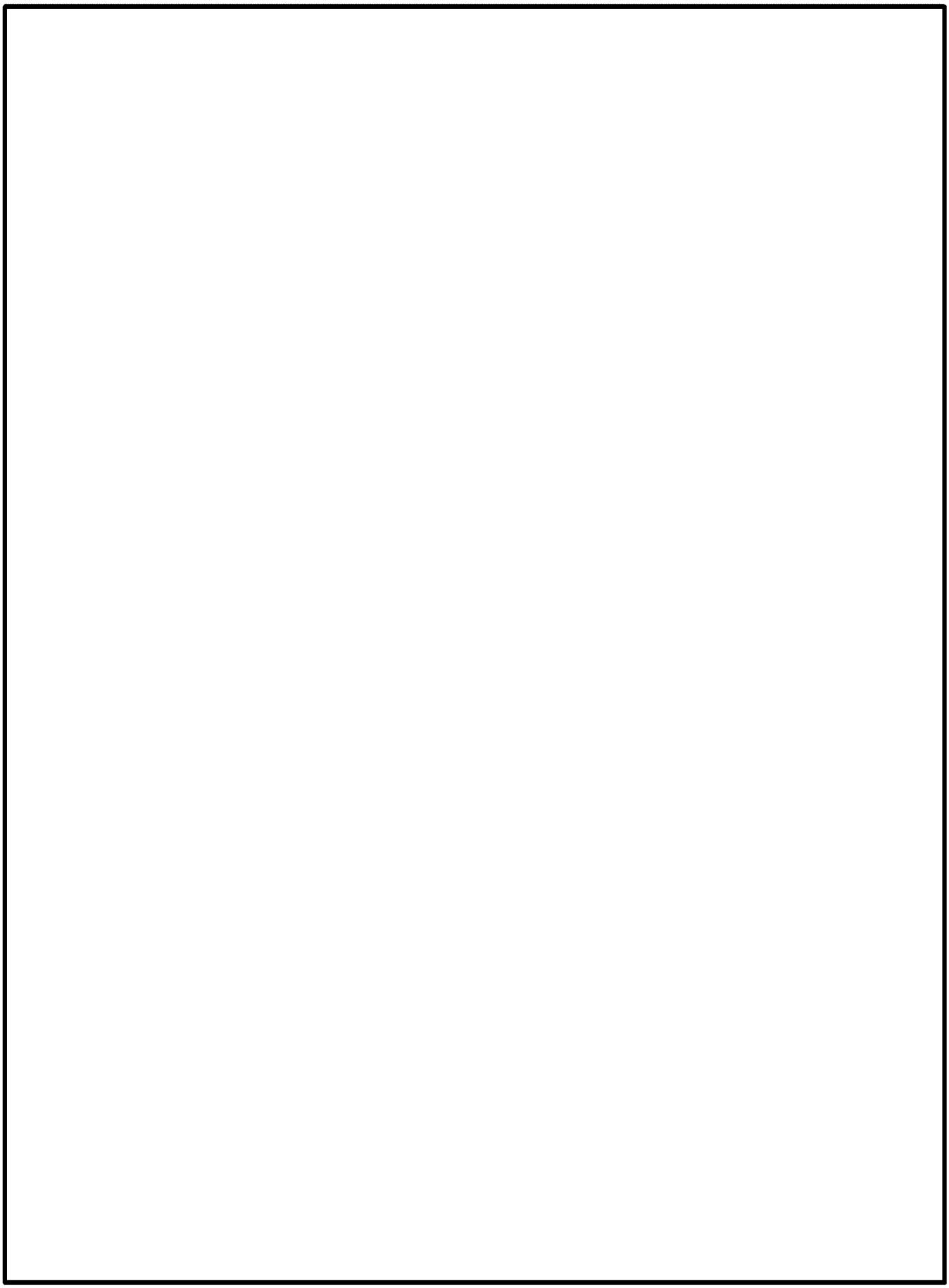

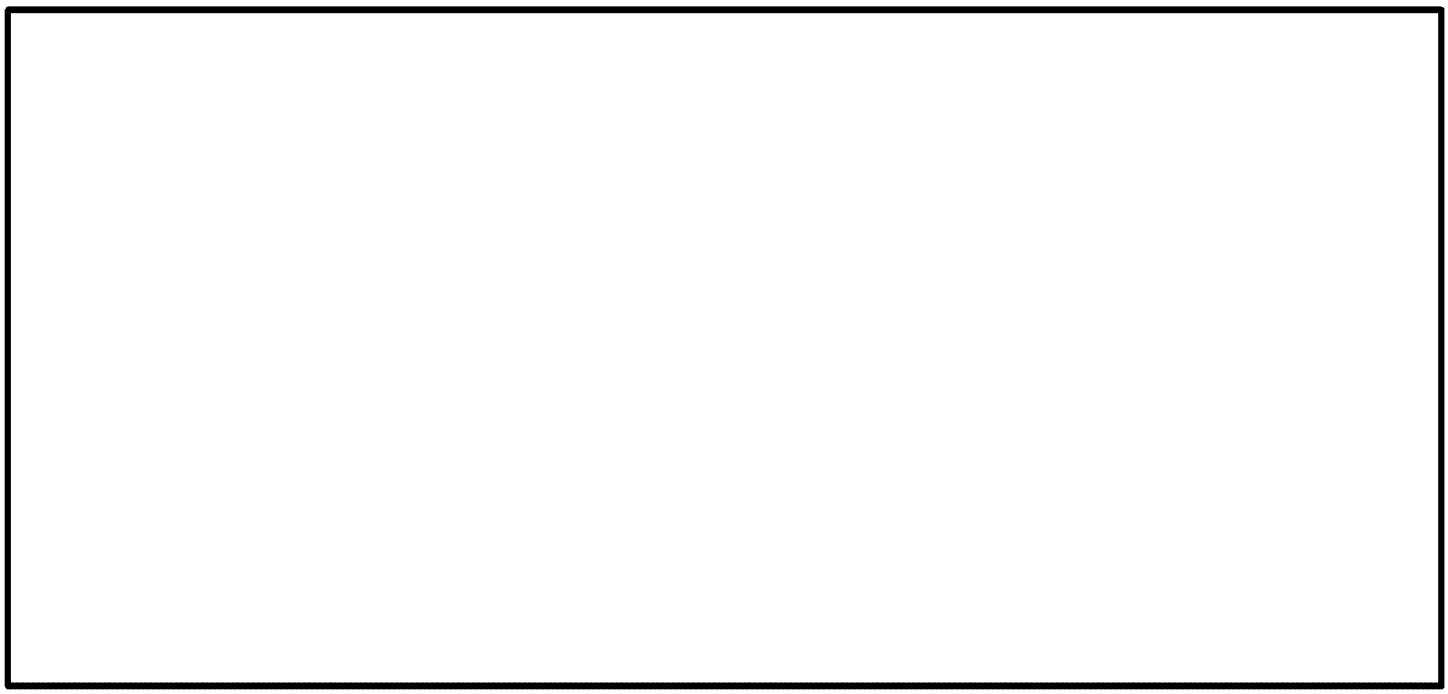

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material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

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

1 INTRODUCTION

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

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

2 NATIONAL SECURITY OVERVIEW

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

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

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

RAIO Mission

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

RAIO Vision

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

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

Security and Terrorism-Related Bars to Asylum

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

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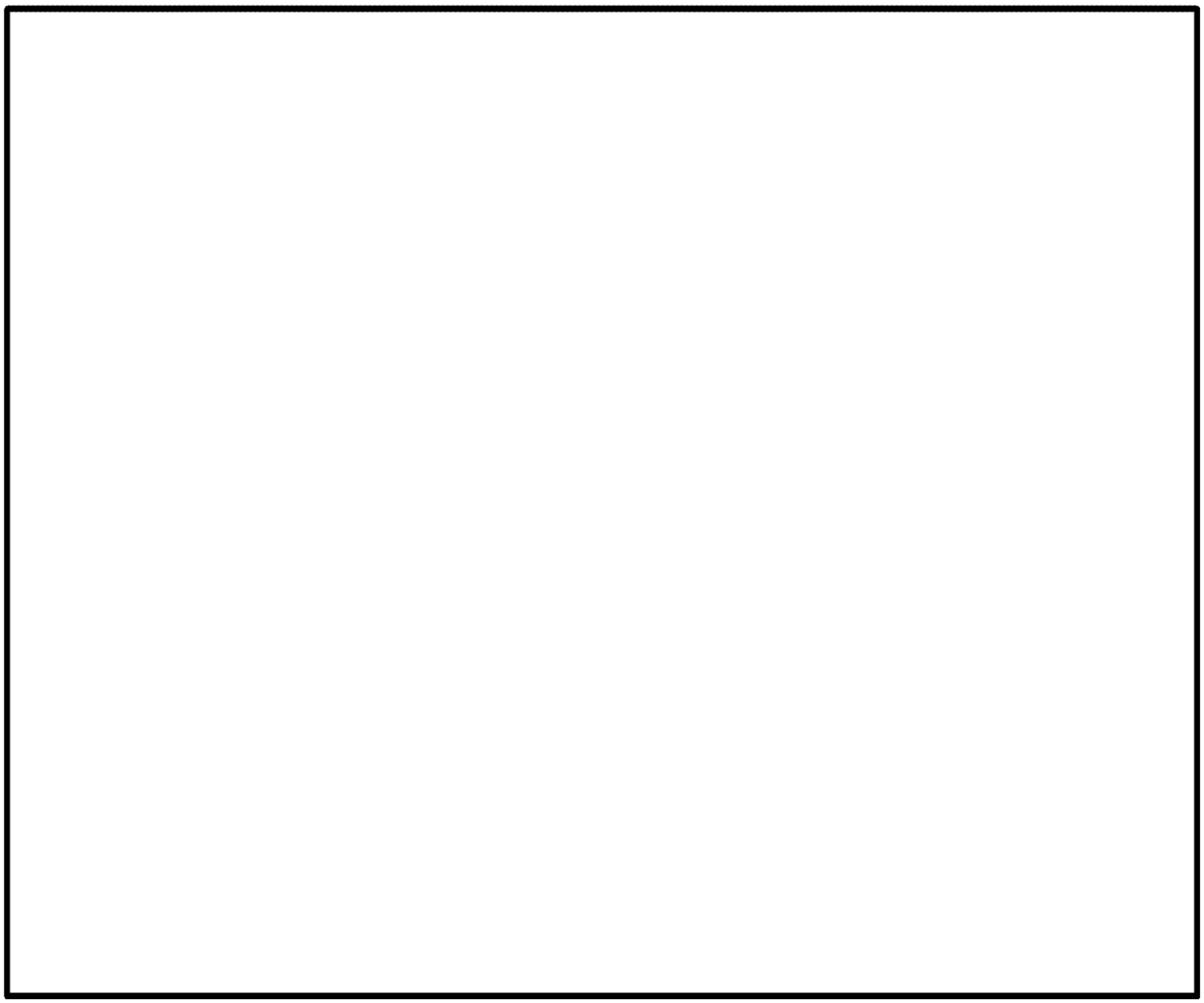
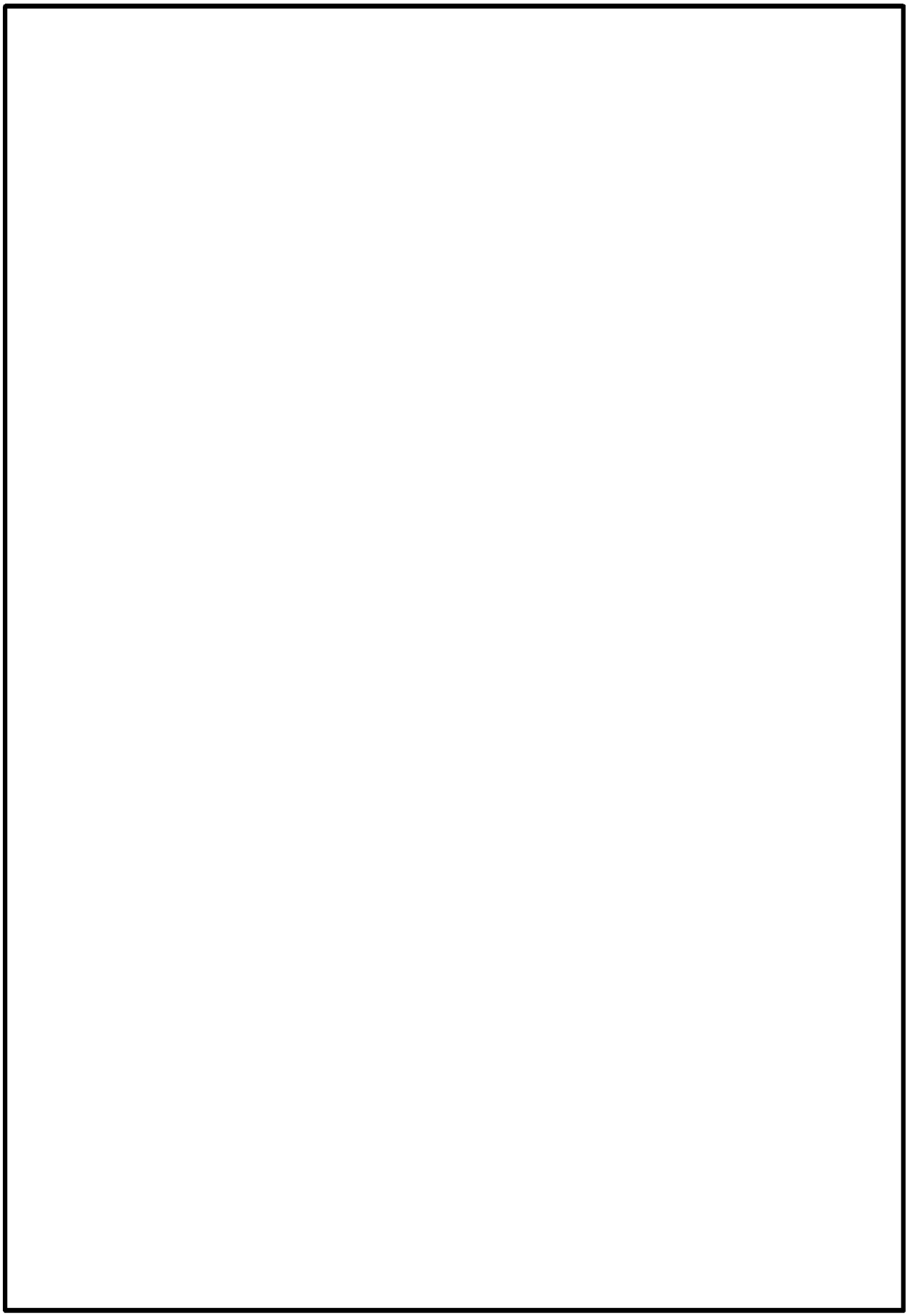
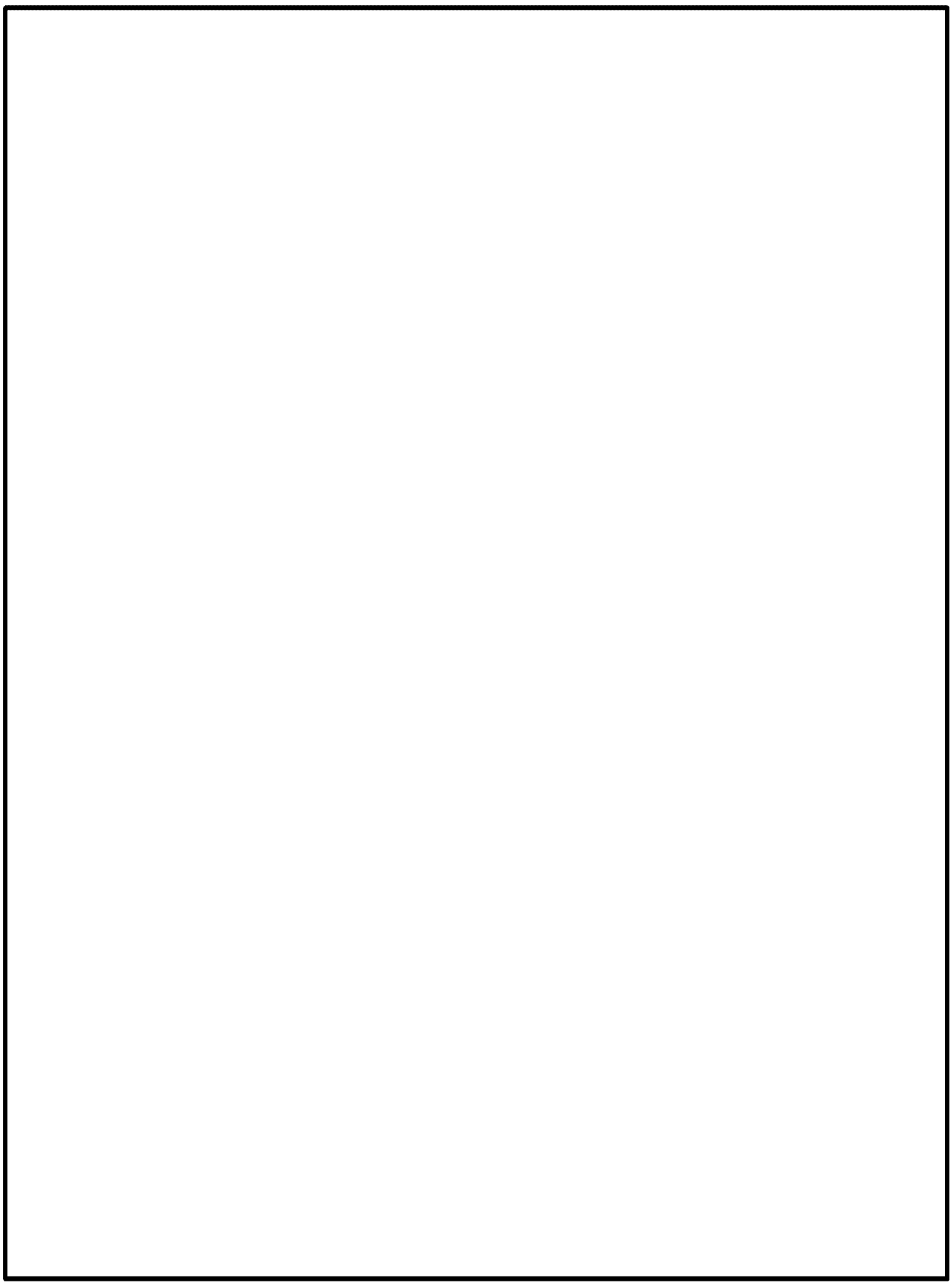
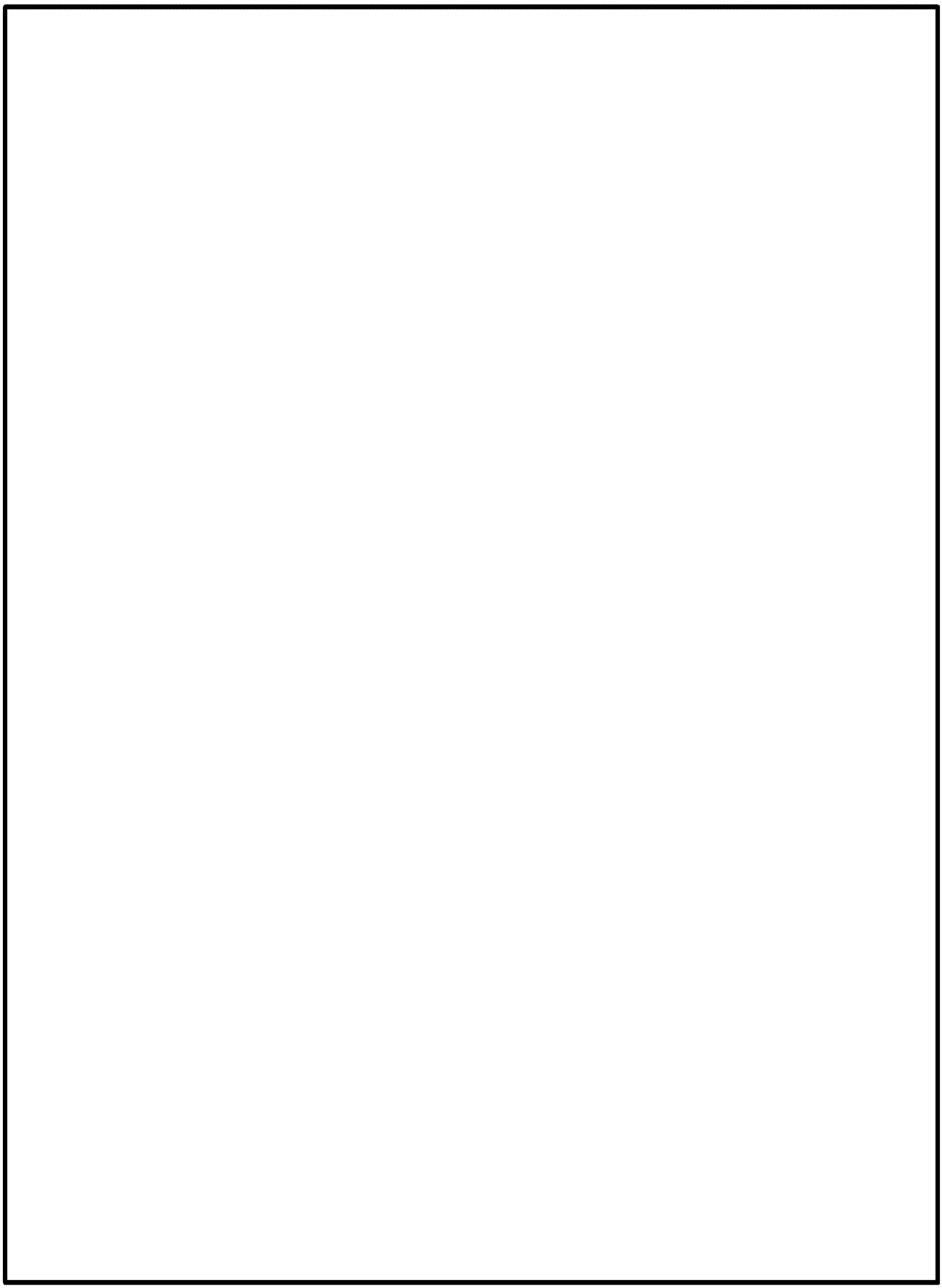
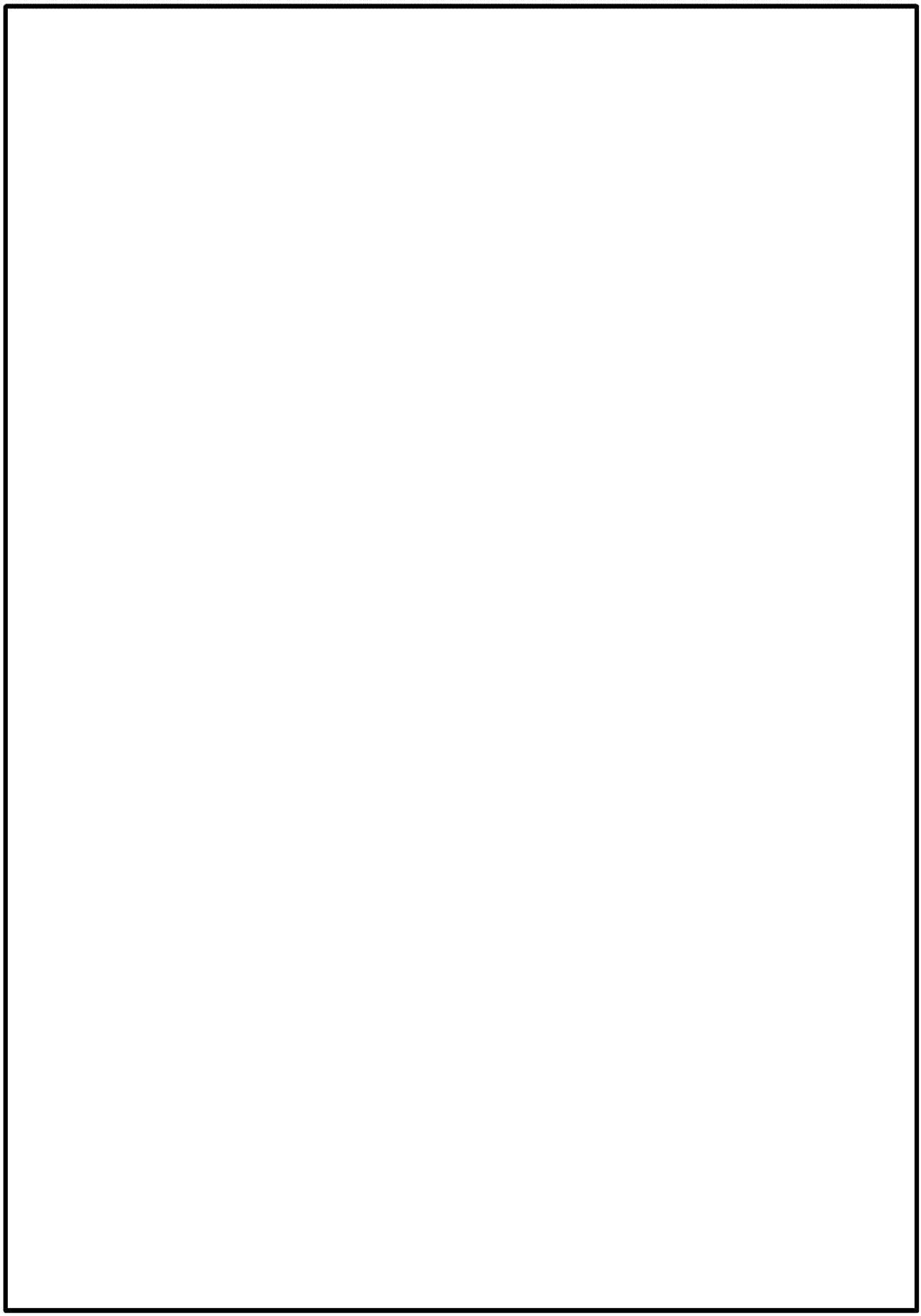
Since a central mission of USCIS is to protect the integrity of the U.S. immigration system, national security matters are a primary consideration in USCIS adjudications. As part of the determination of statutory eligibility for an immigration benefit, you must examine each case for NS concerns and determine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

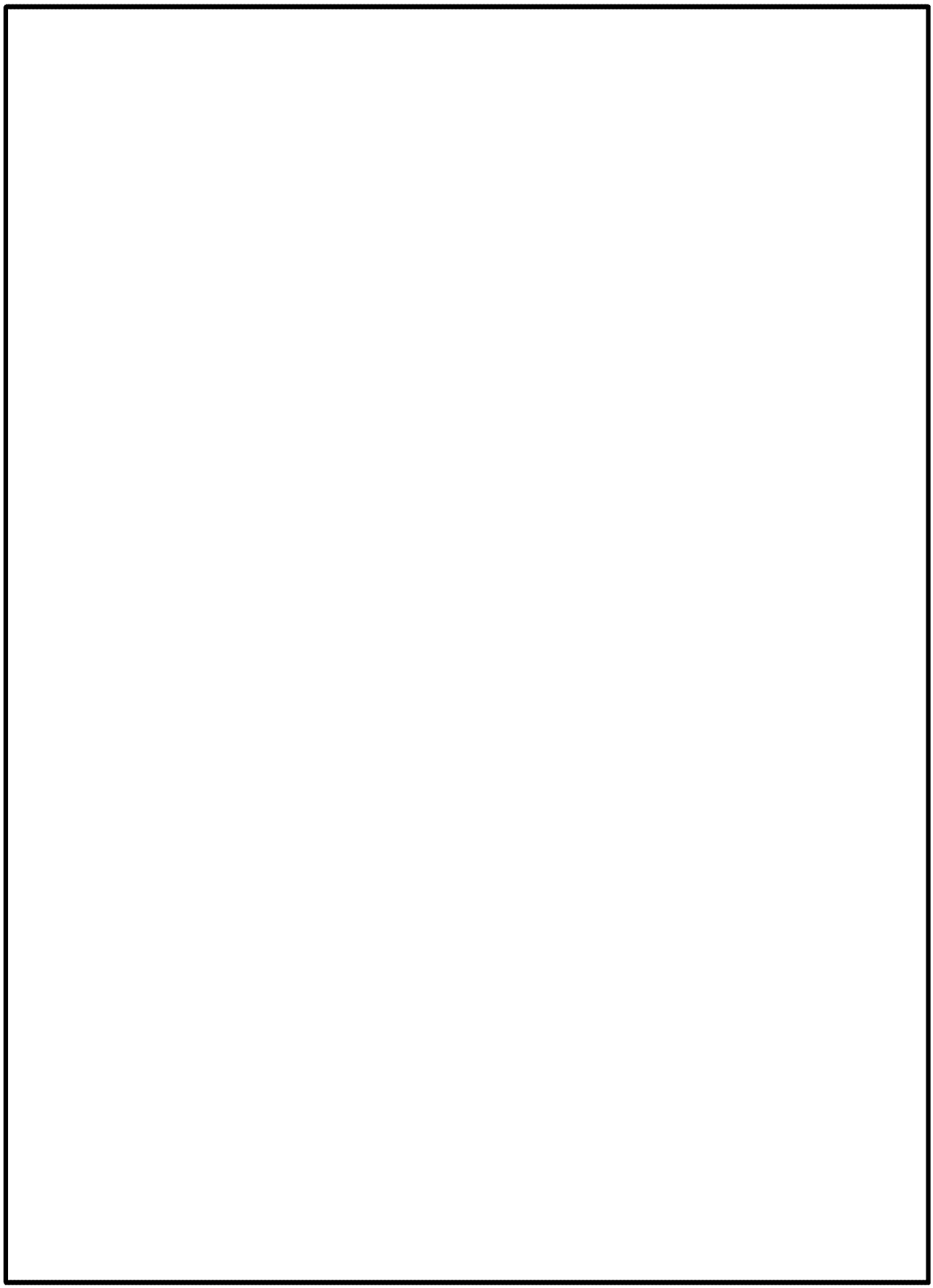


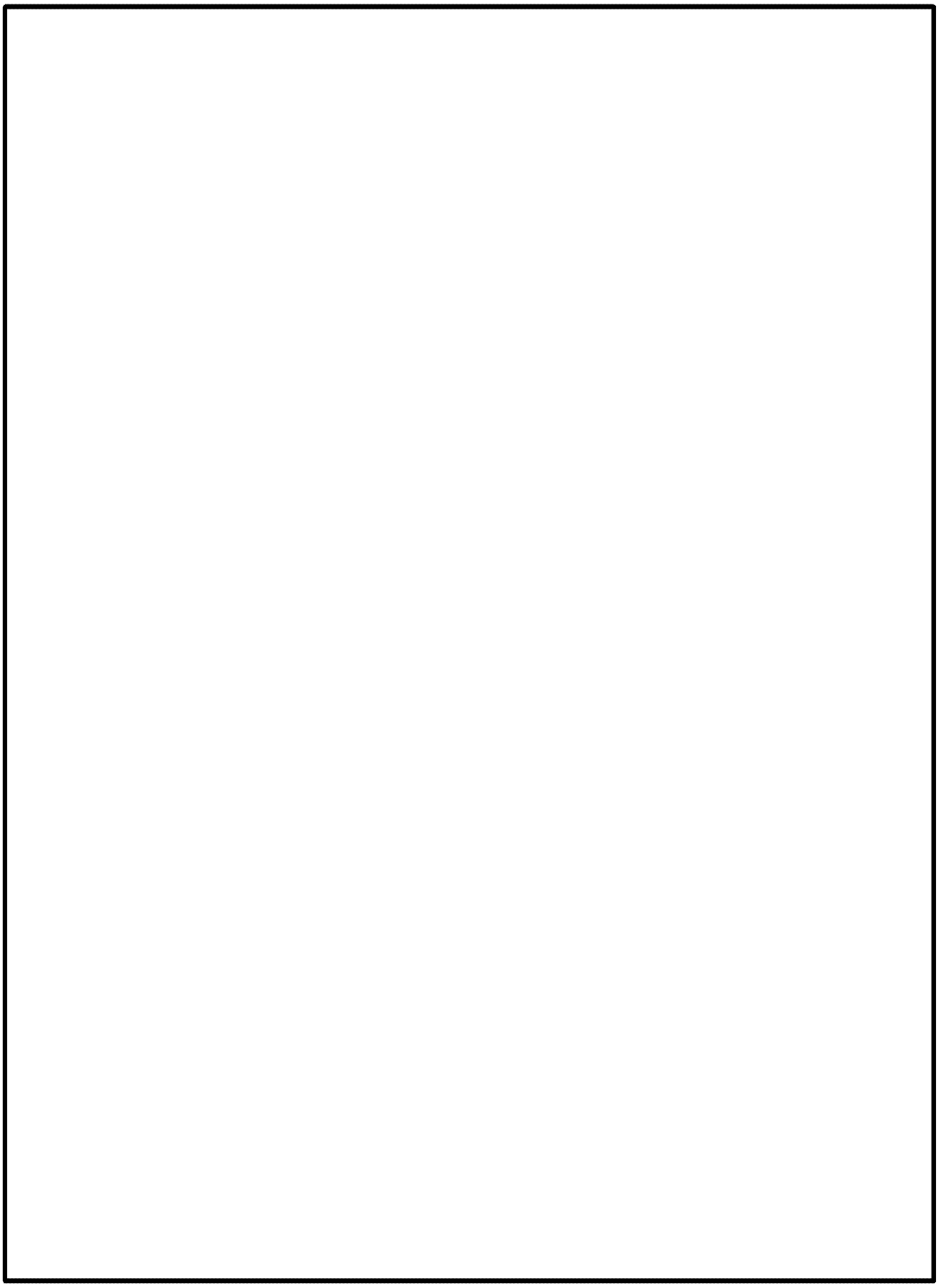


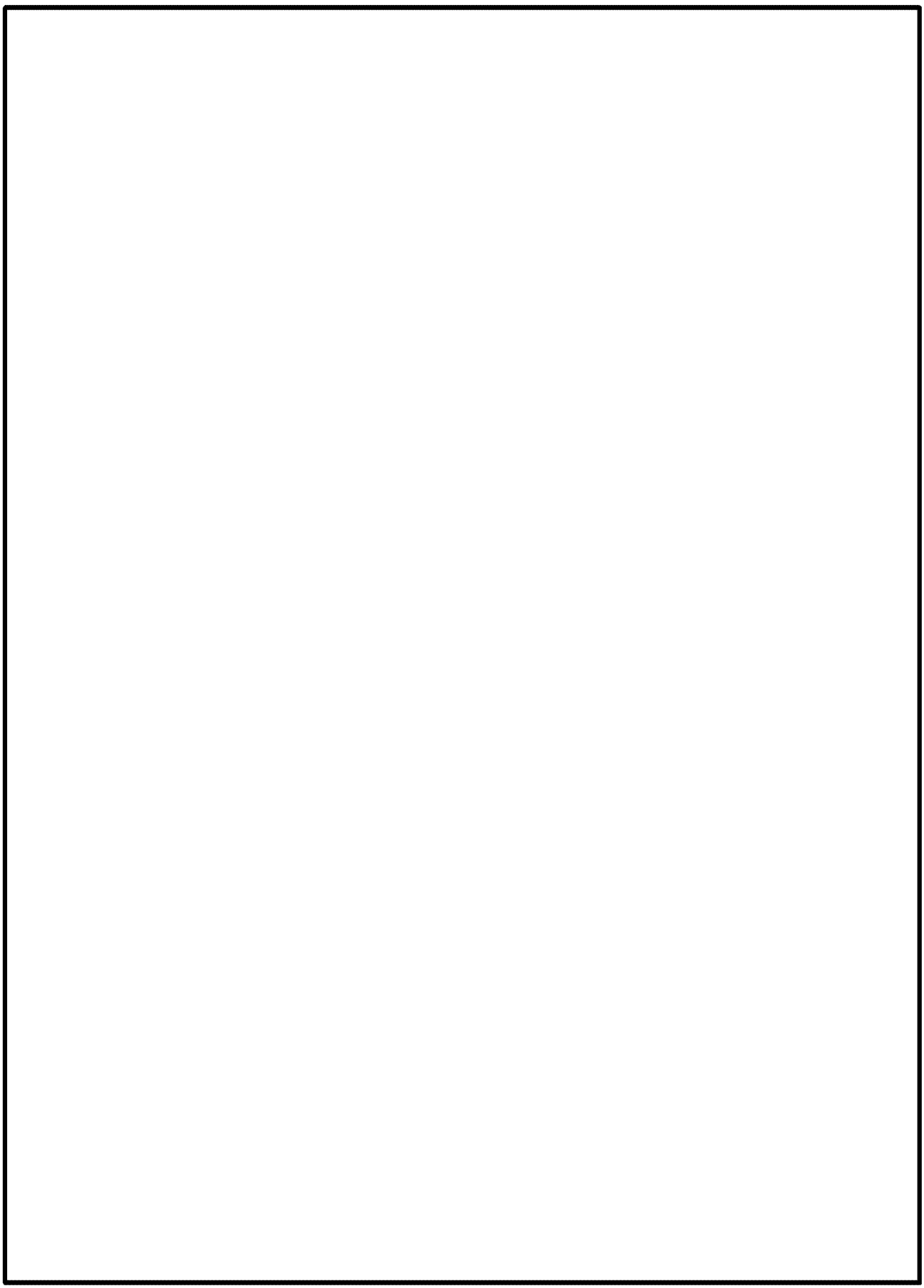


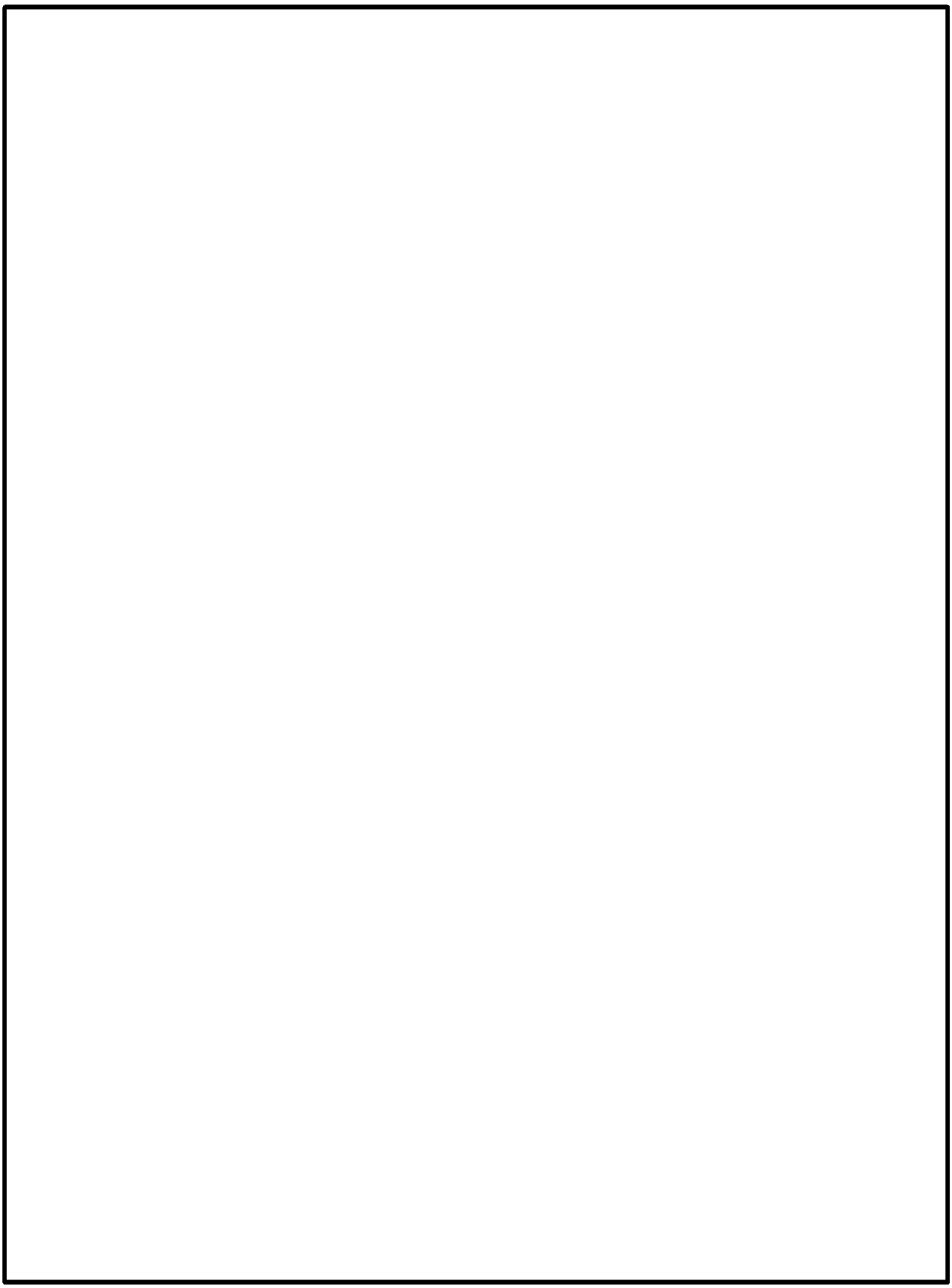


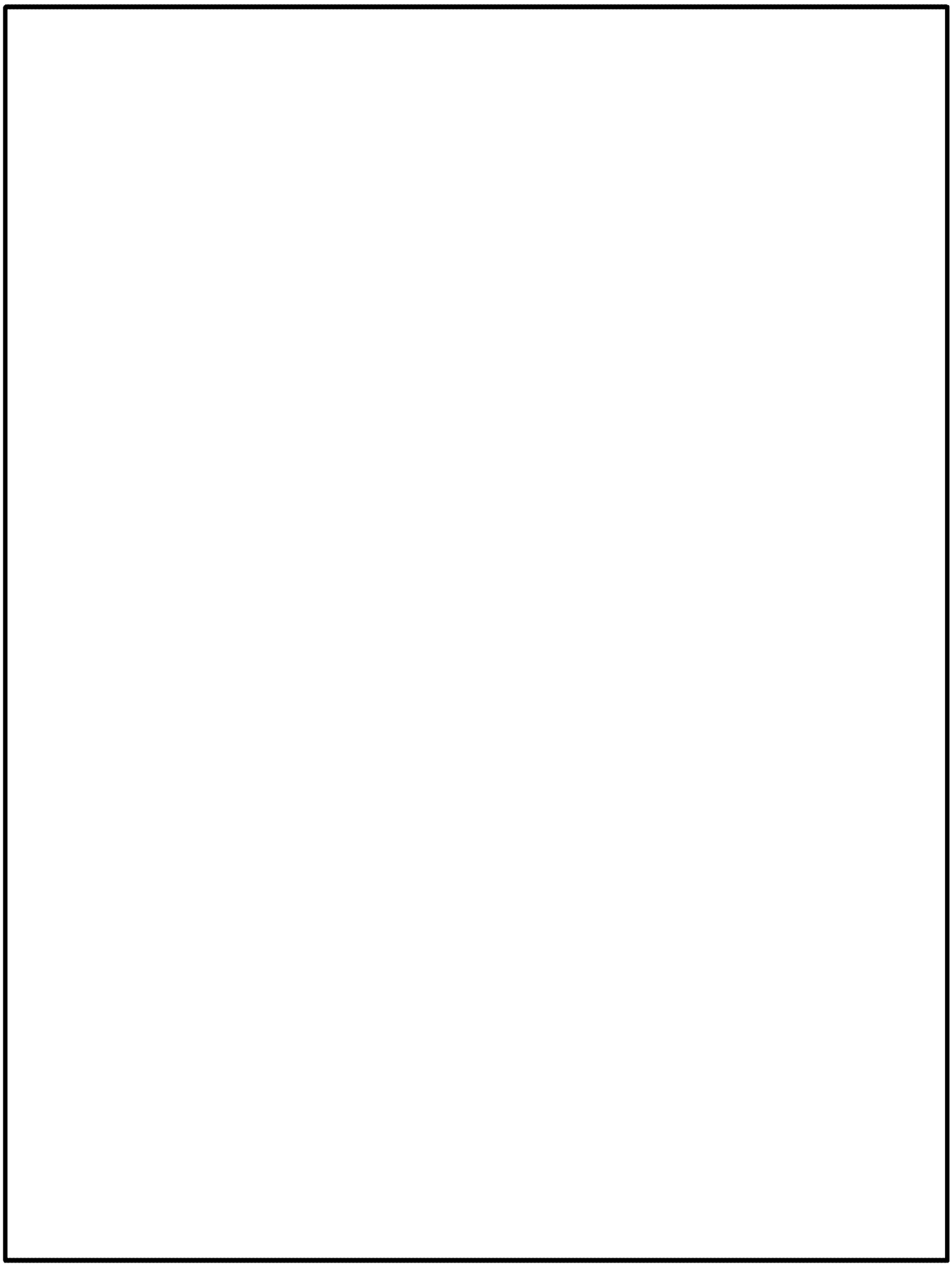


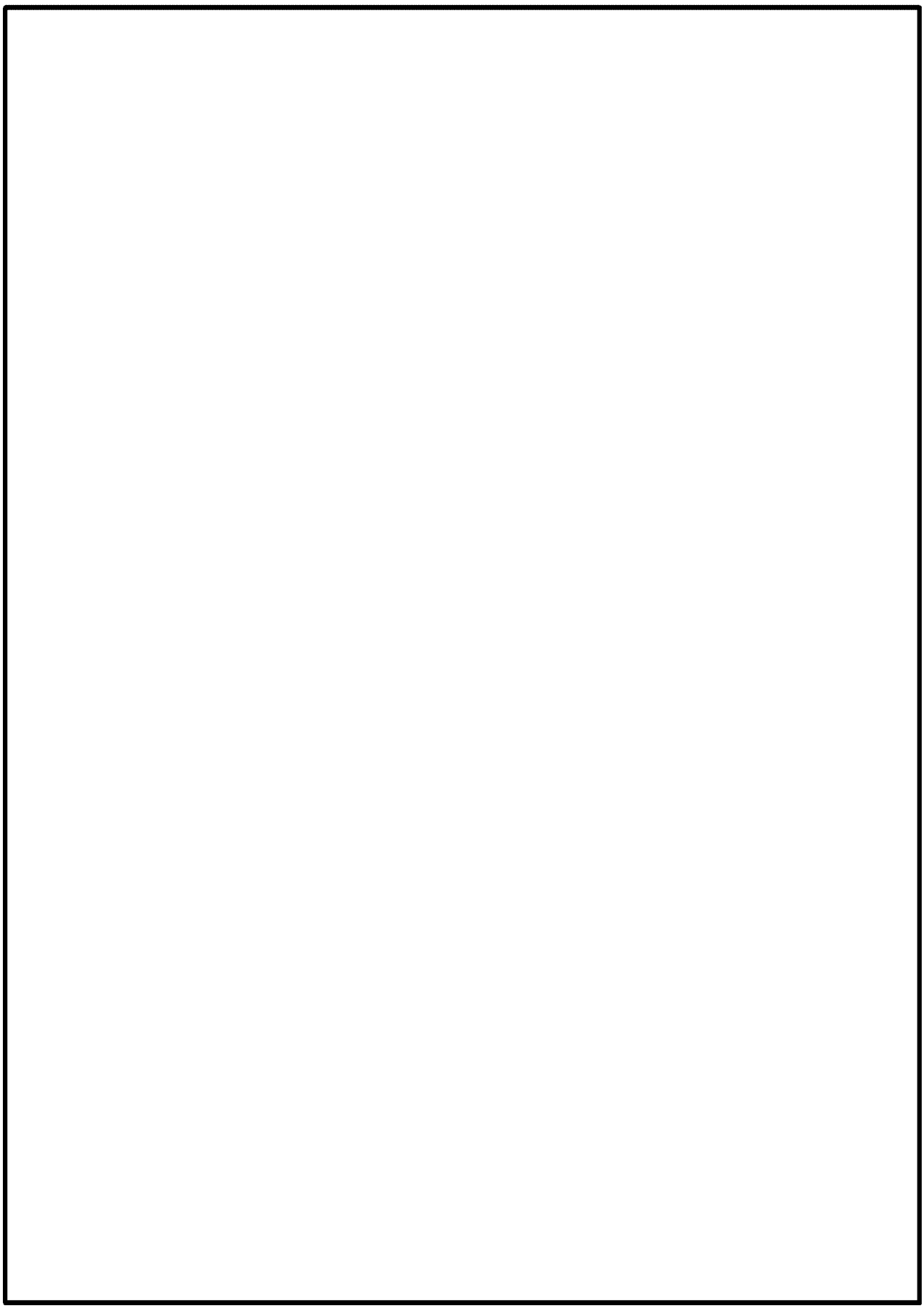


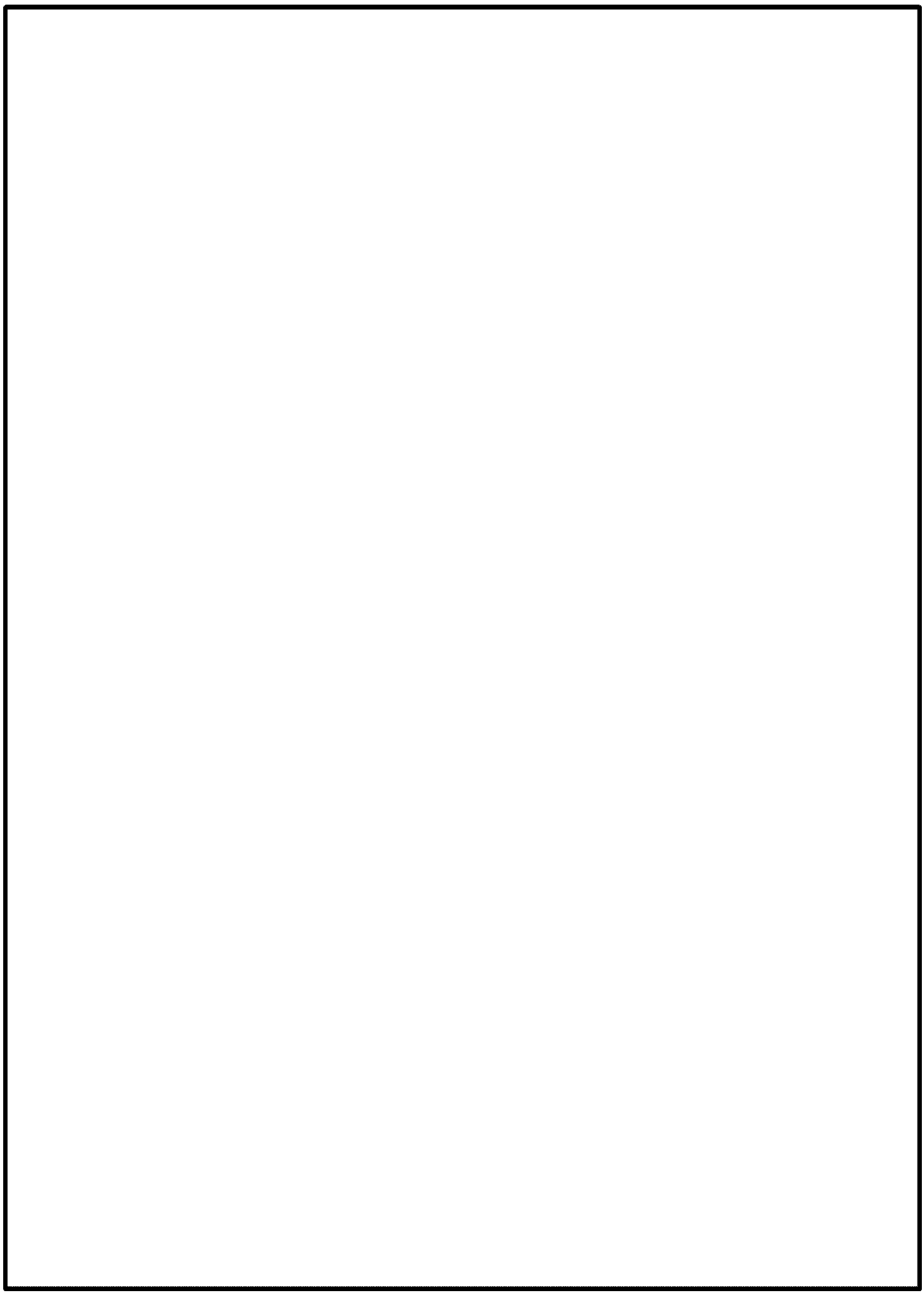












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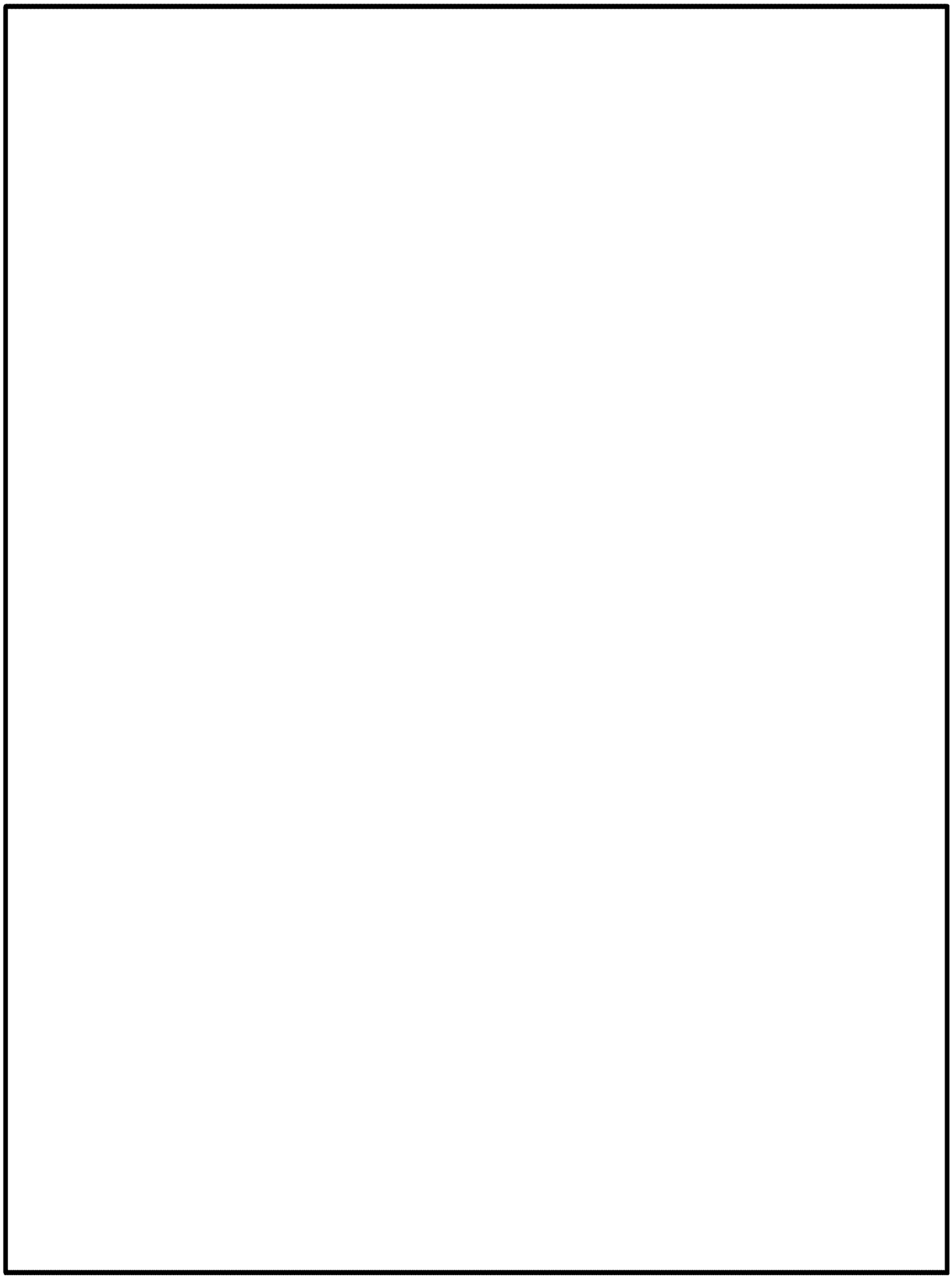

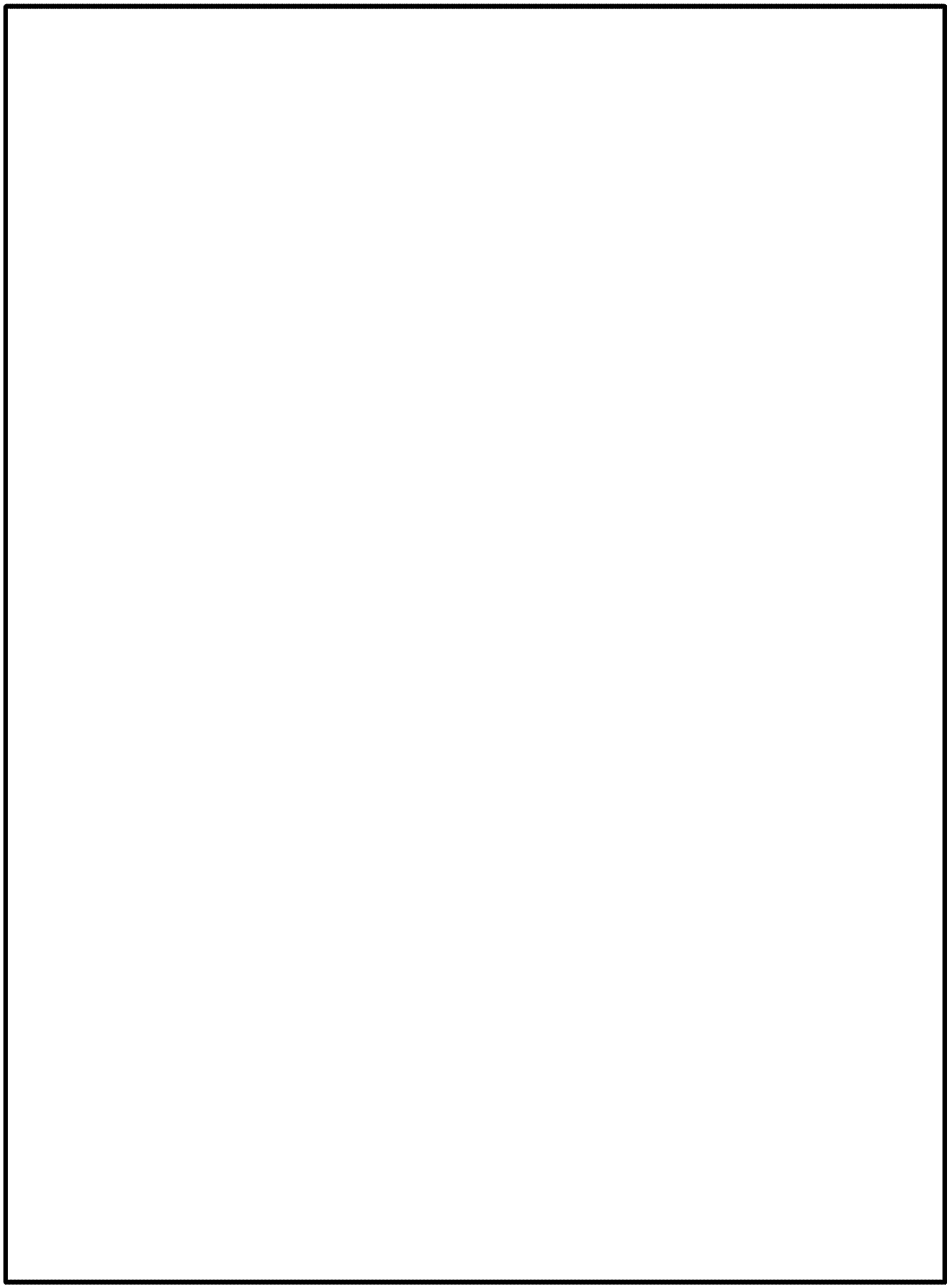

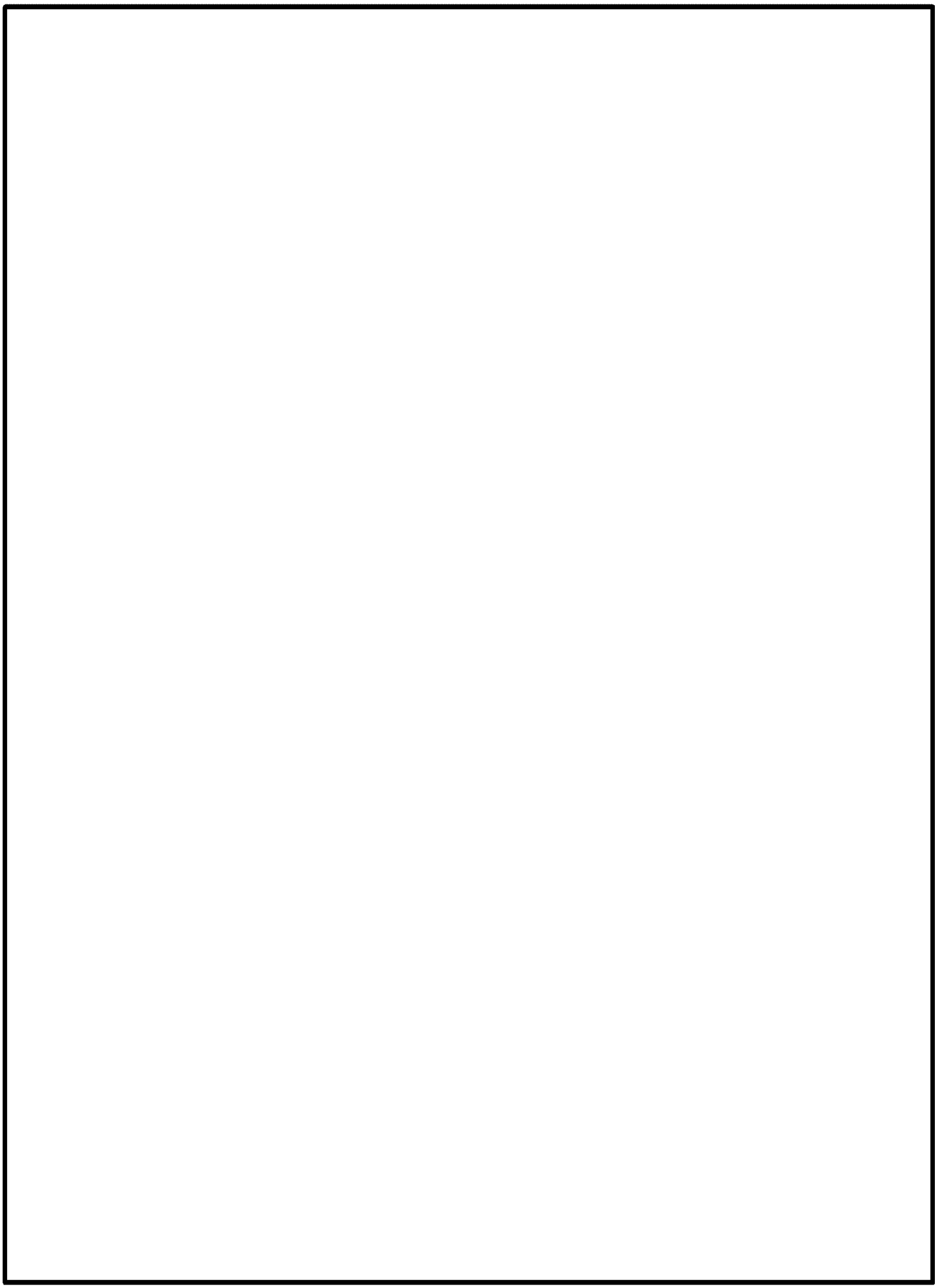

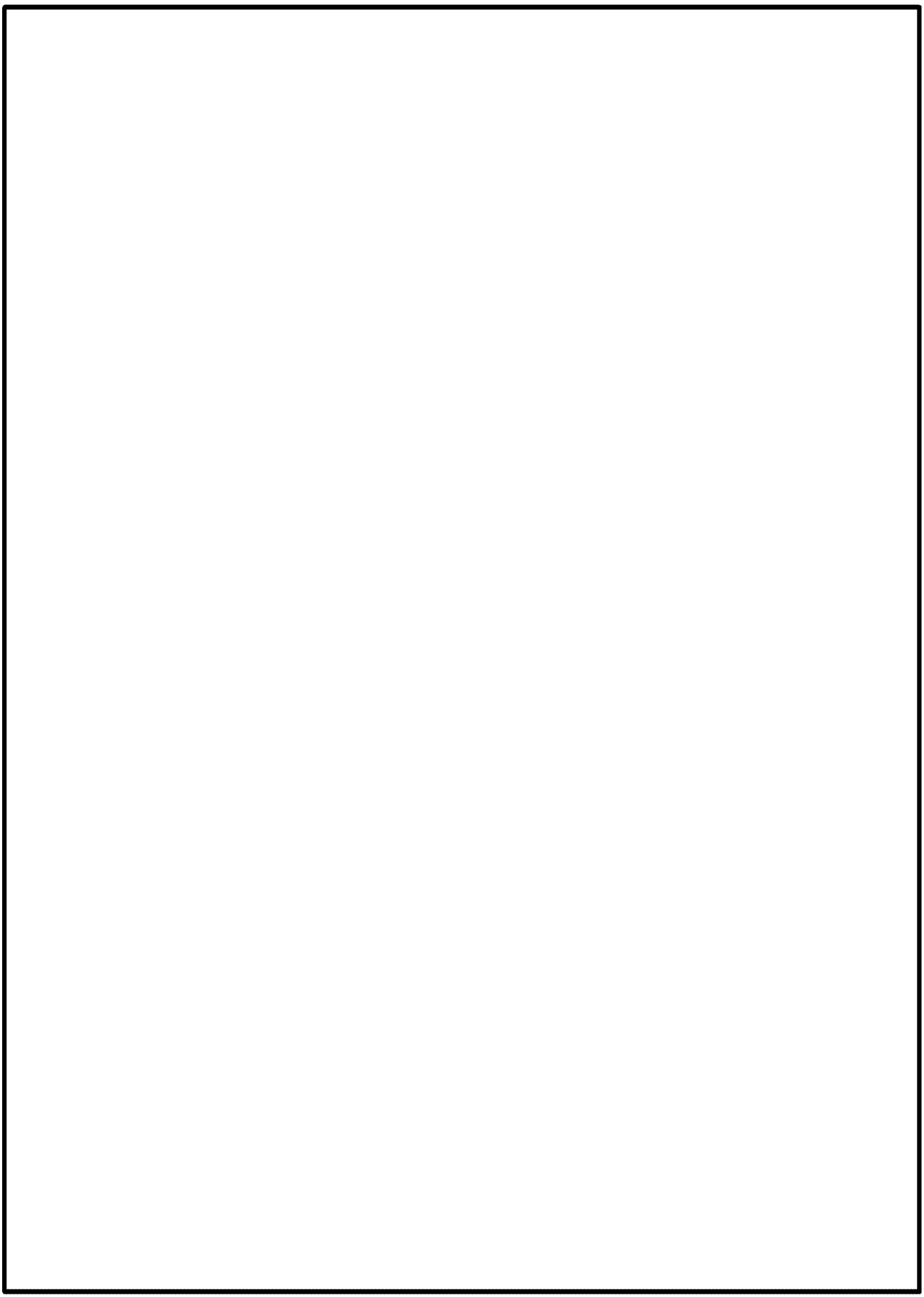

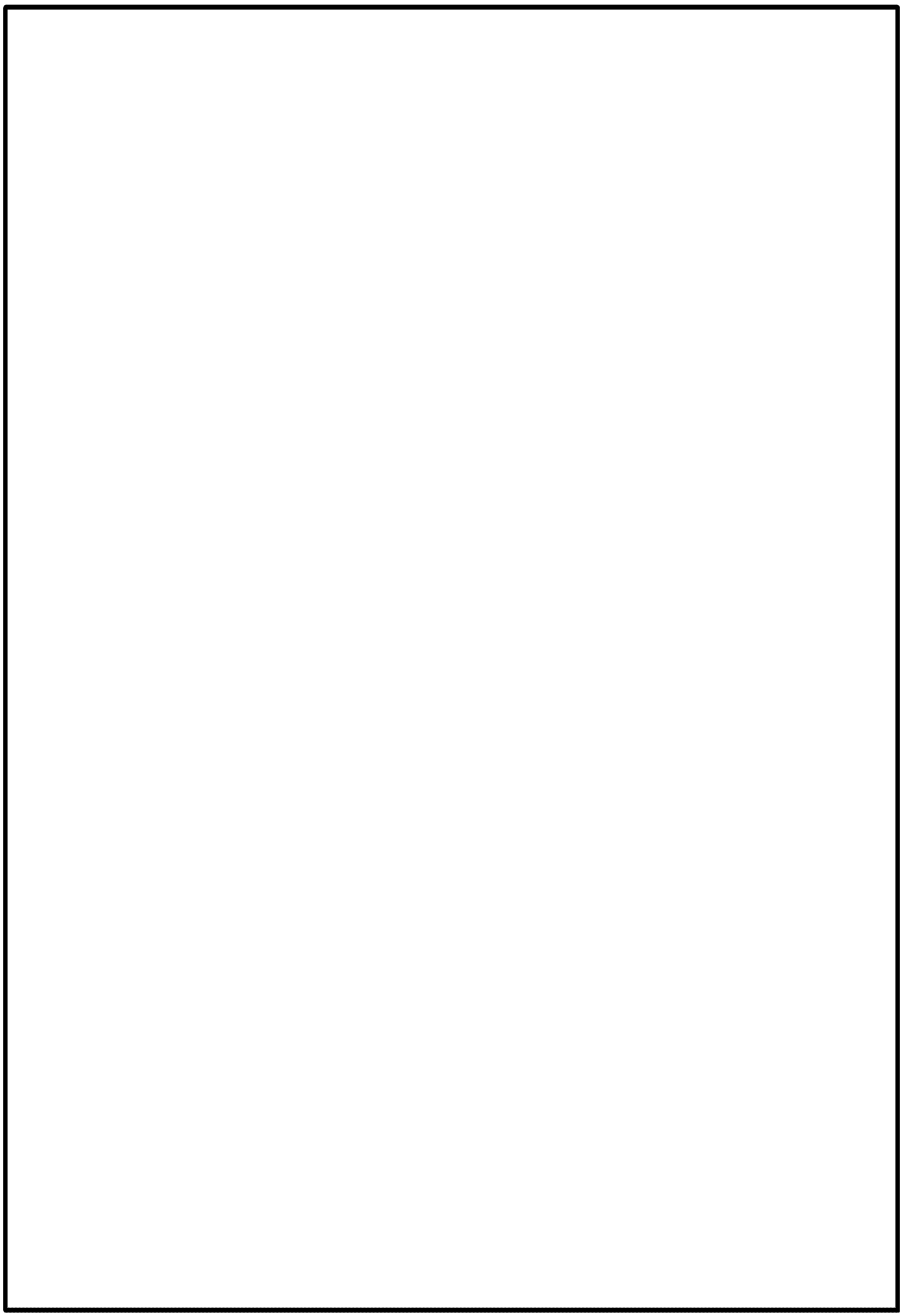

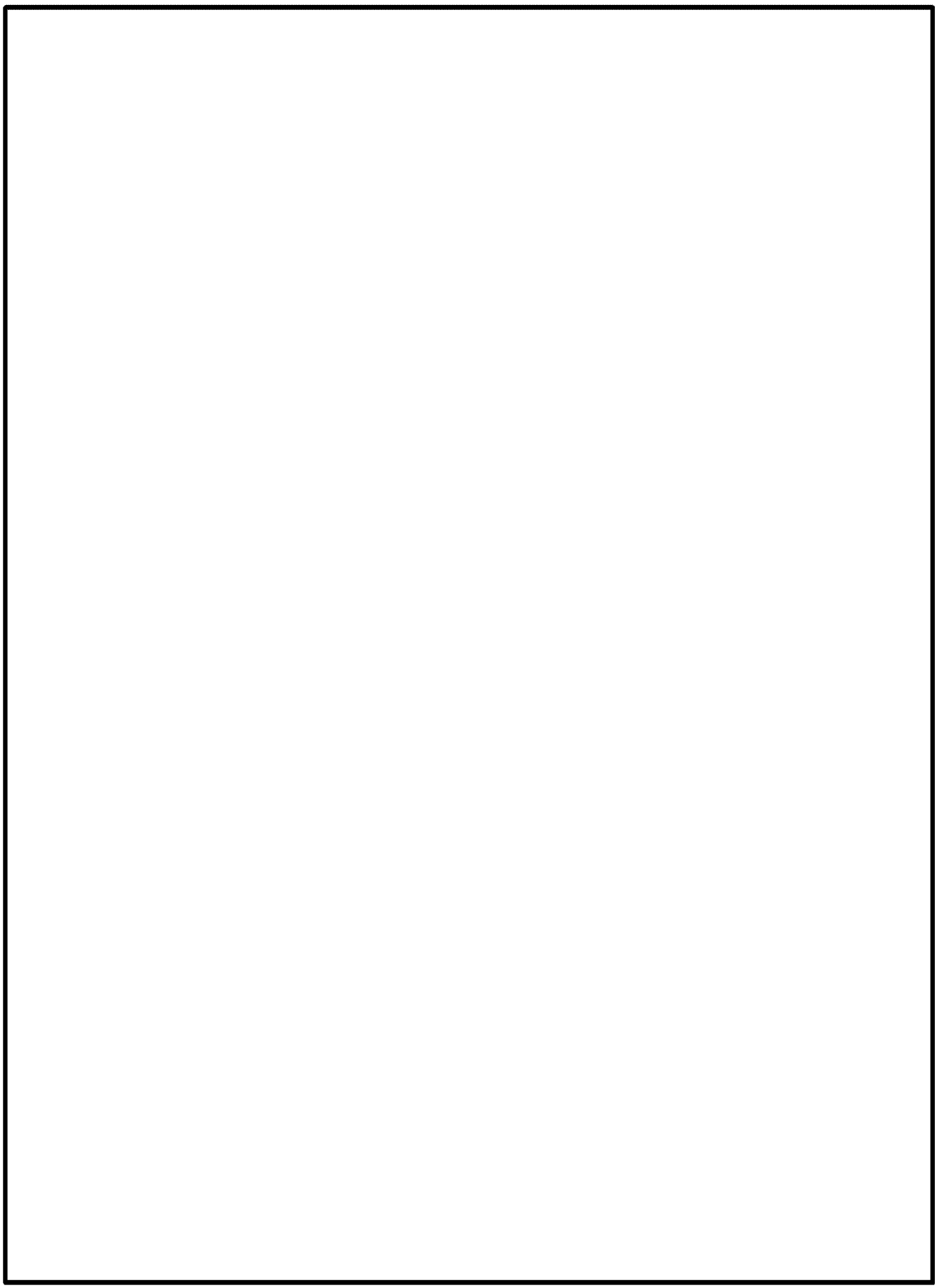

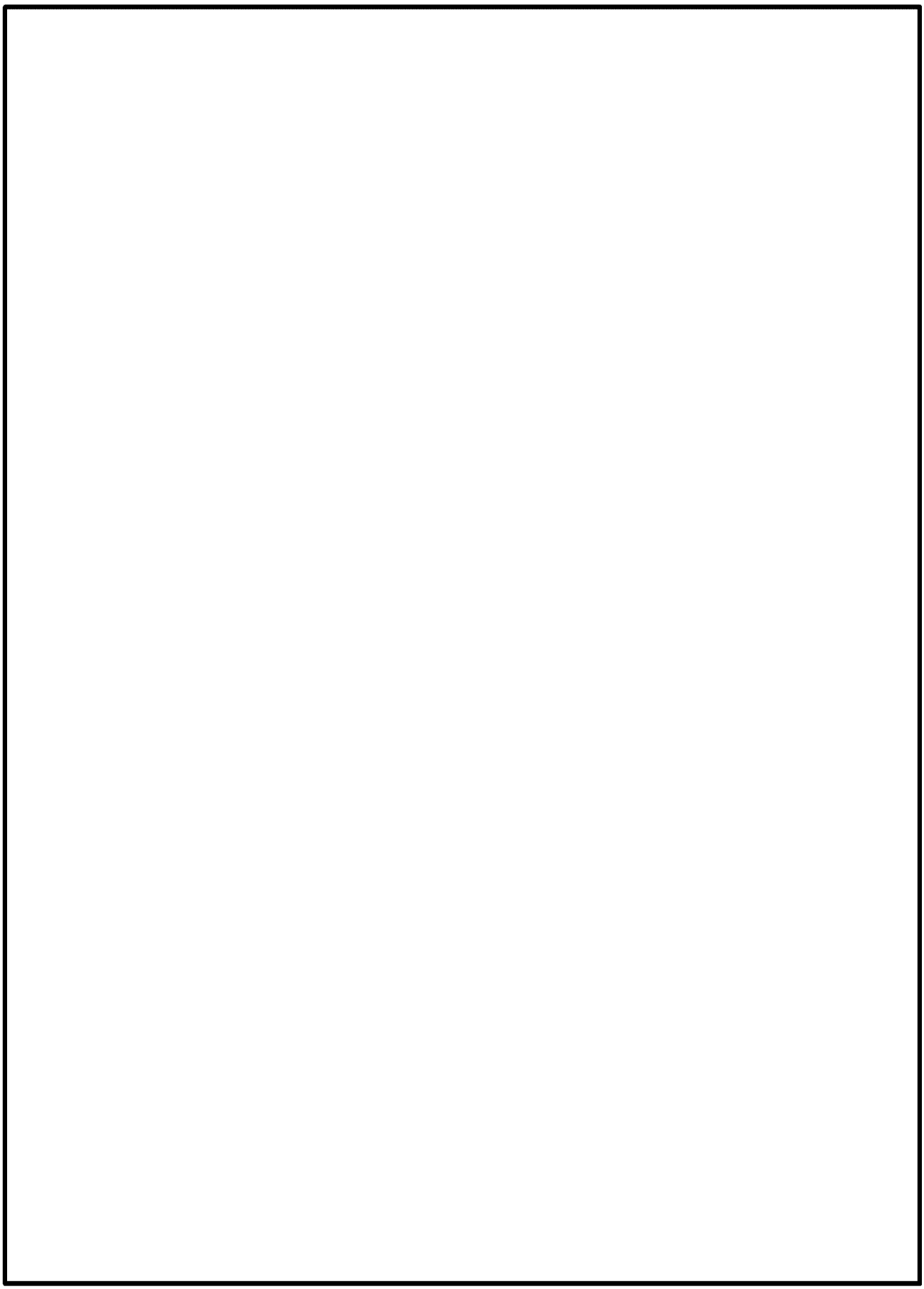

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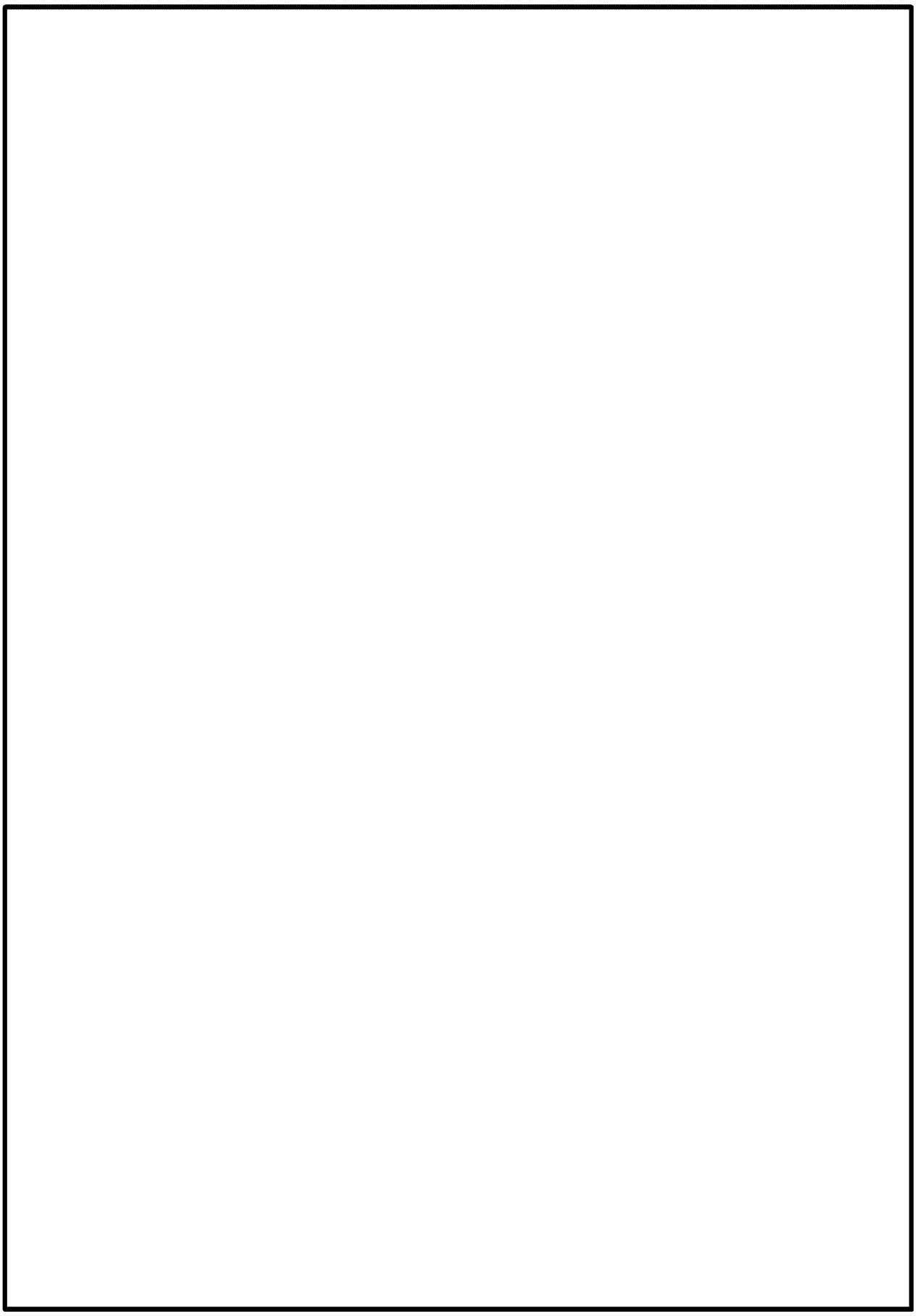

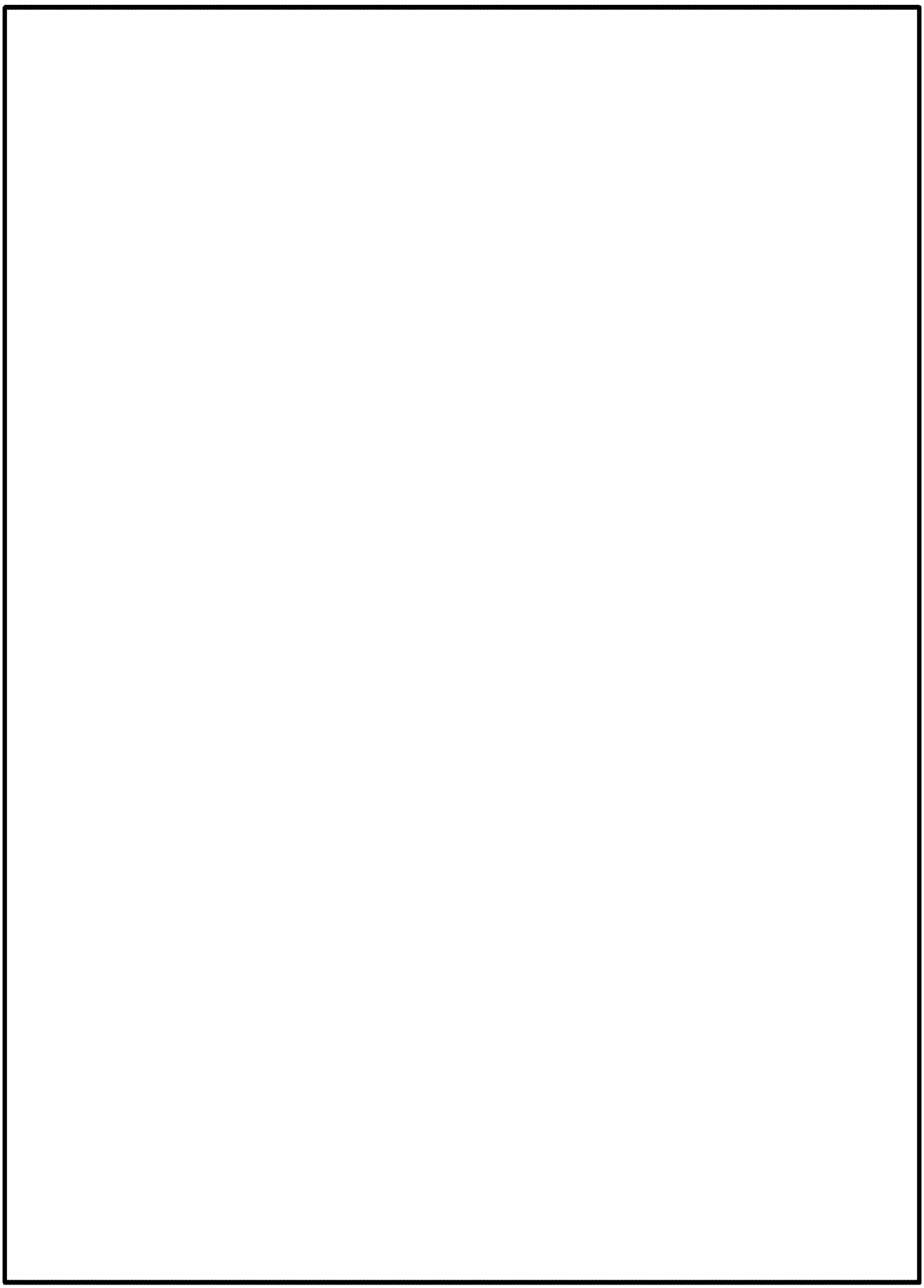

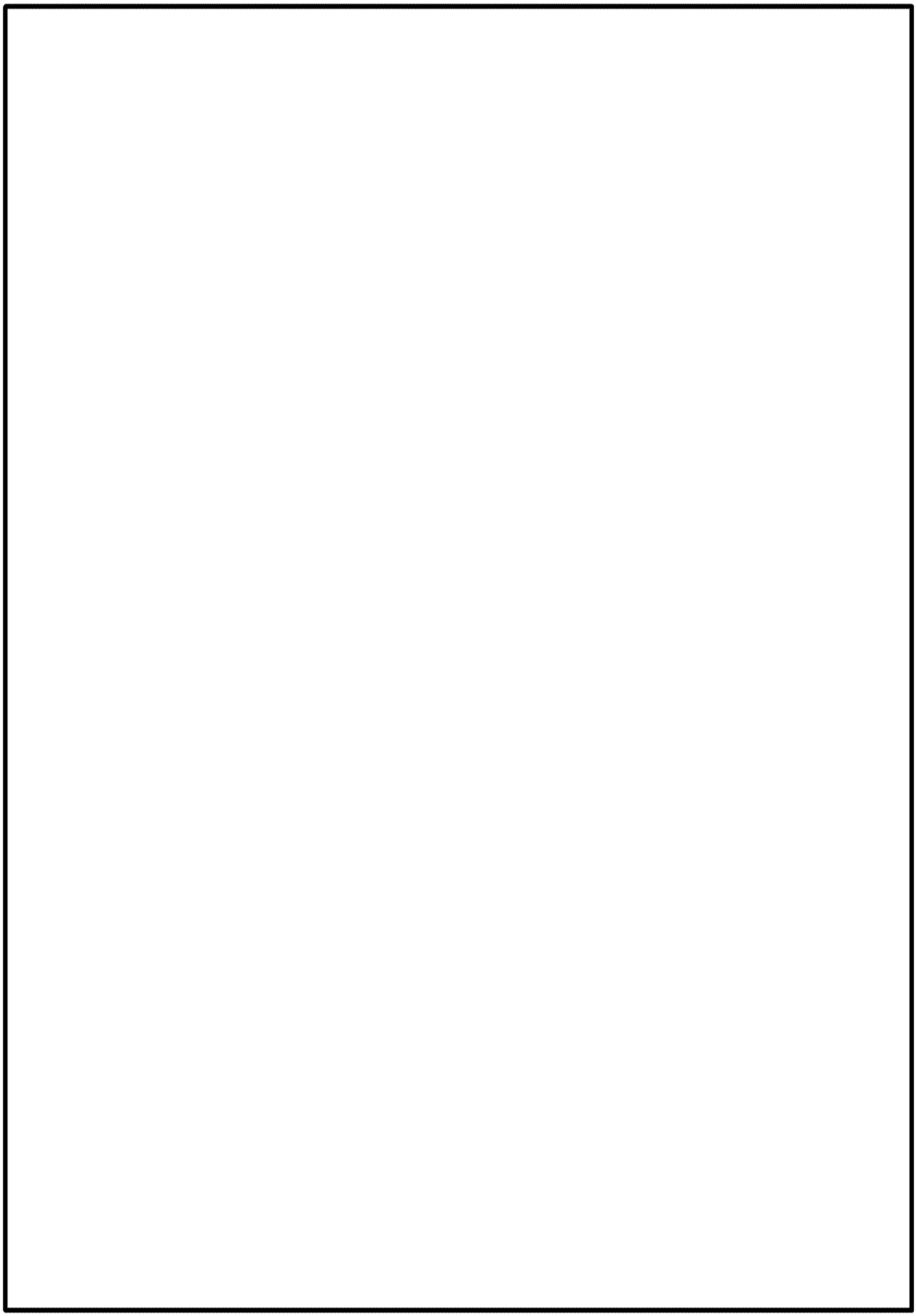

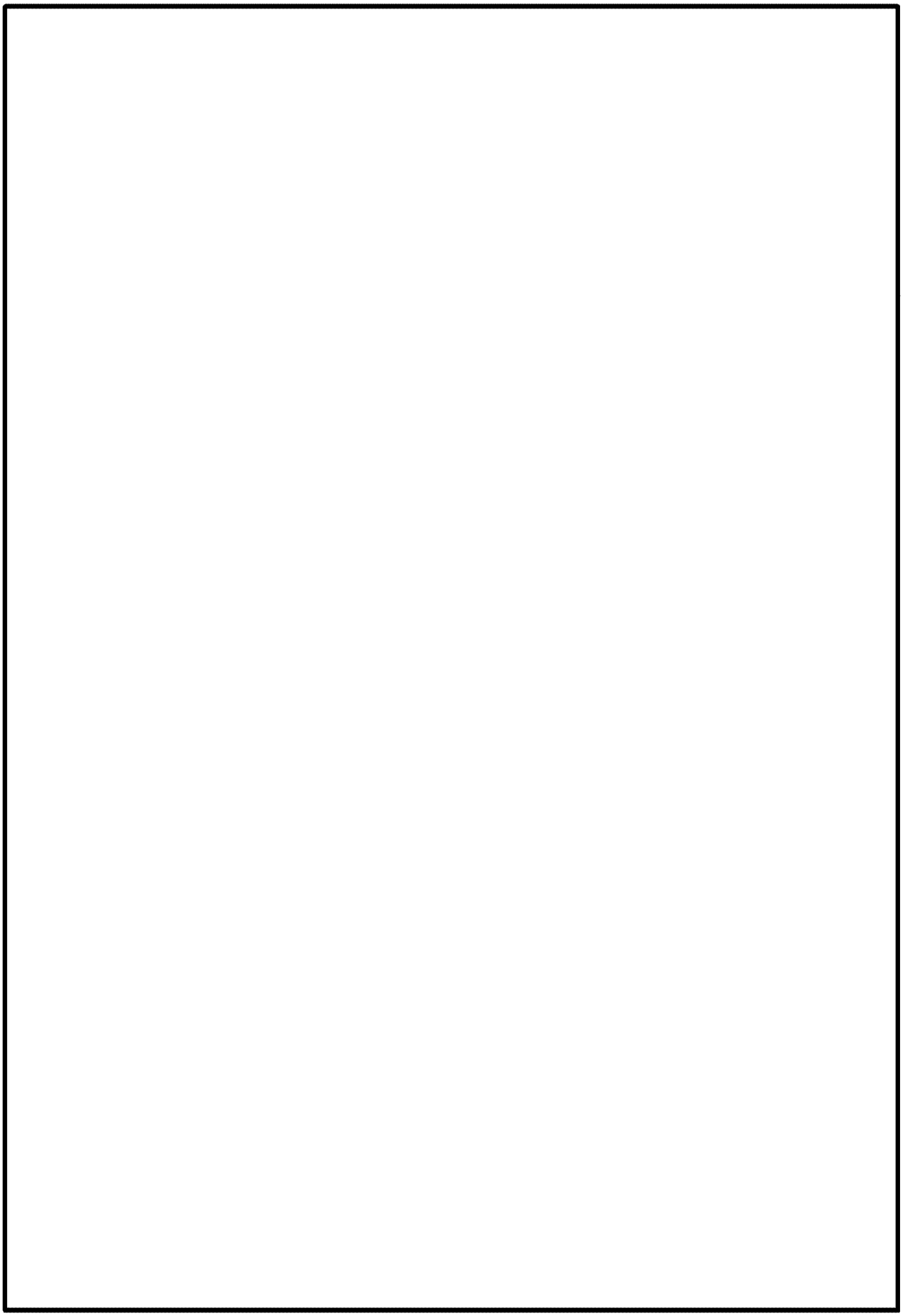

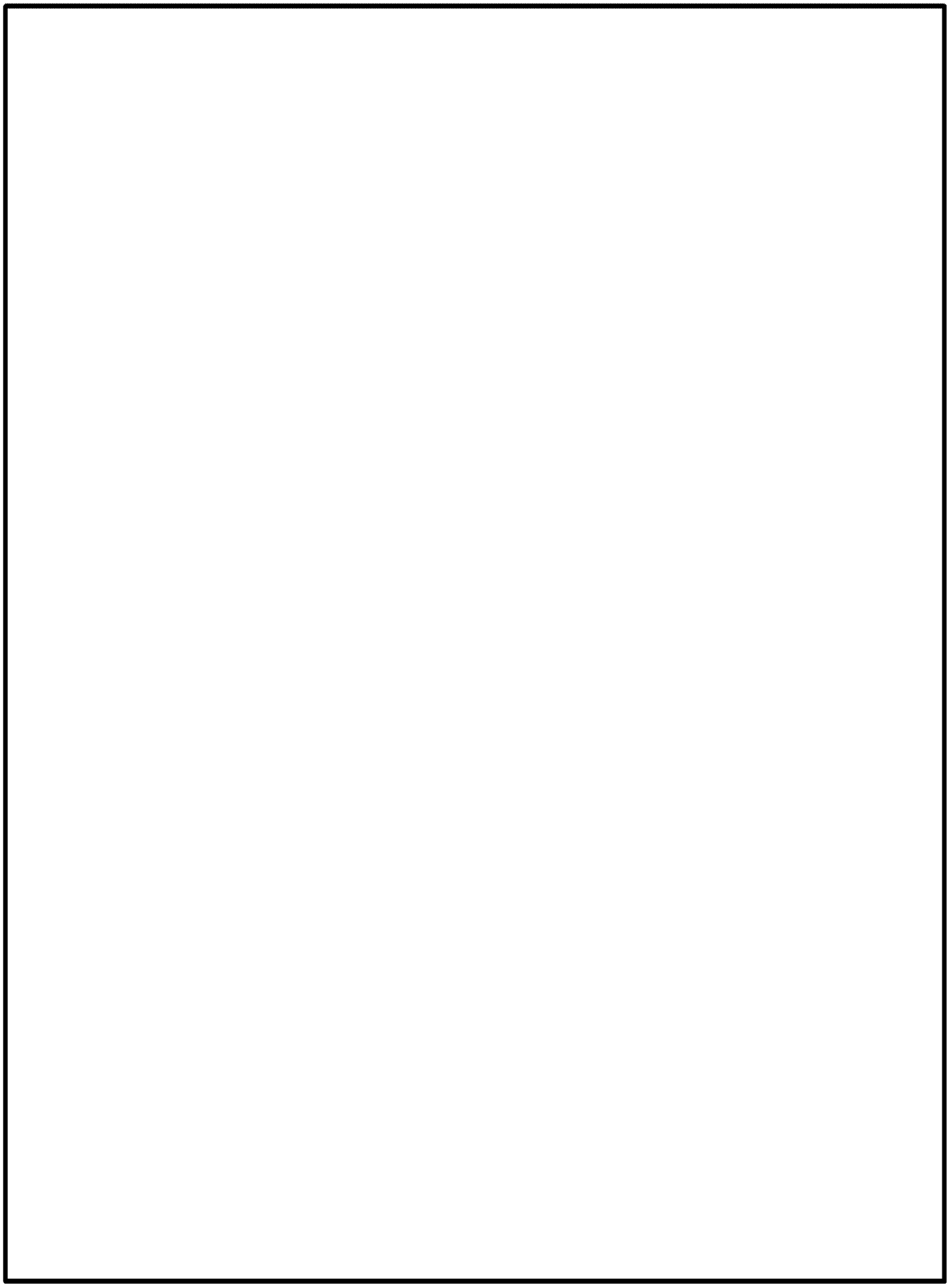

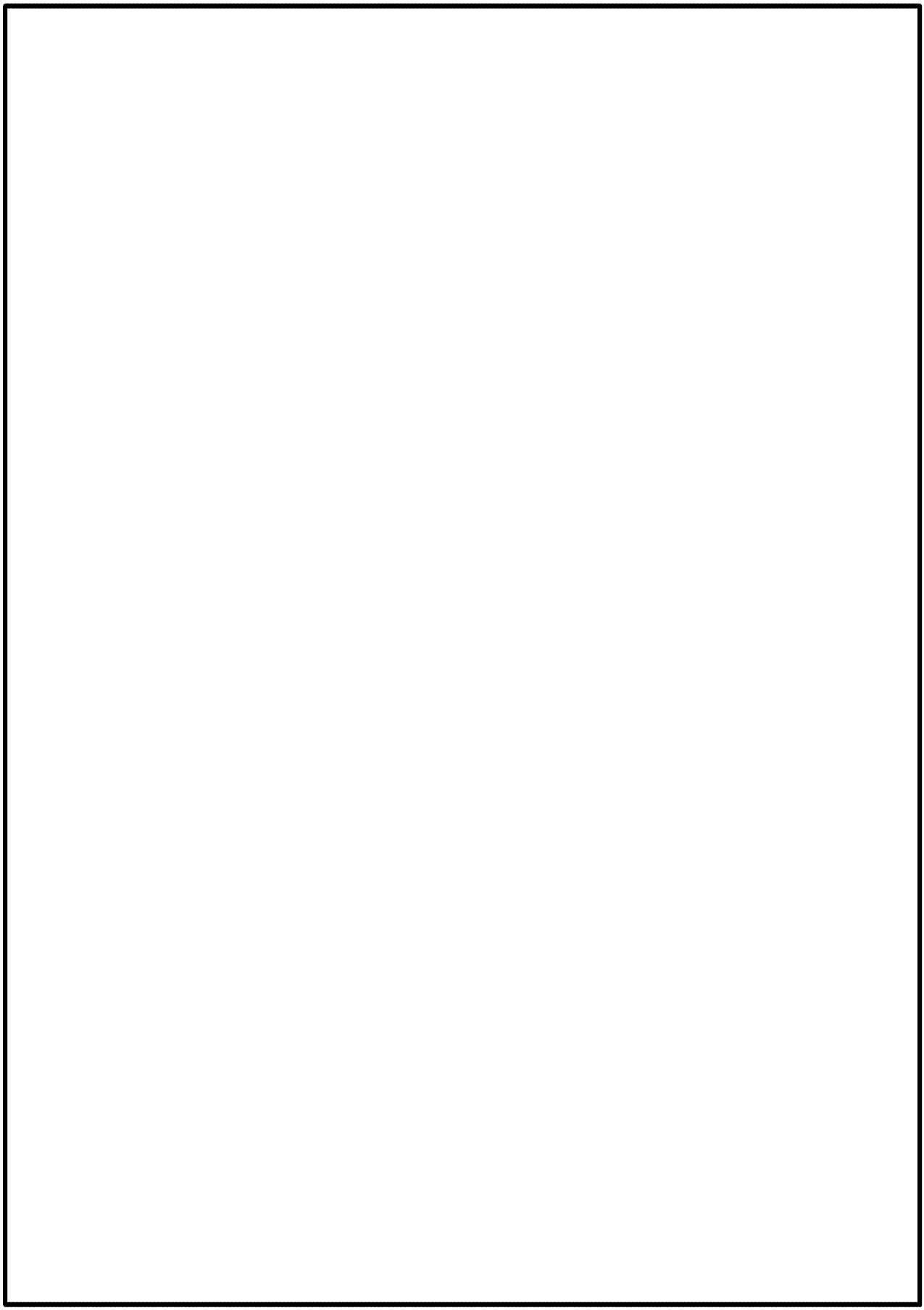

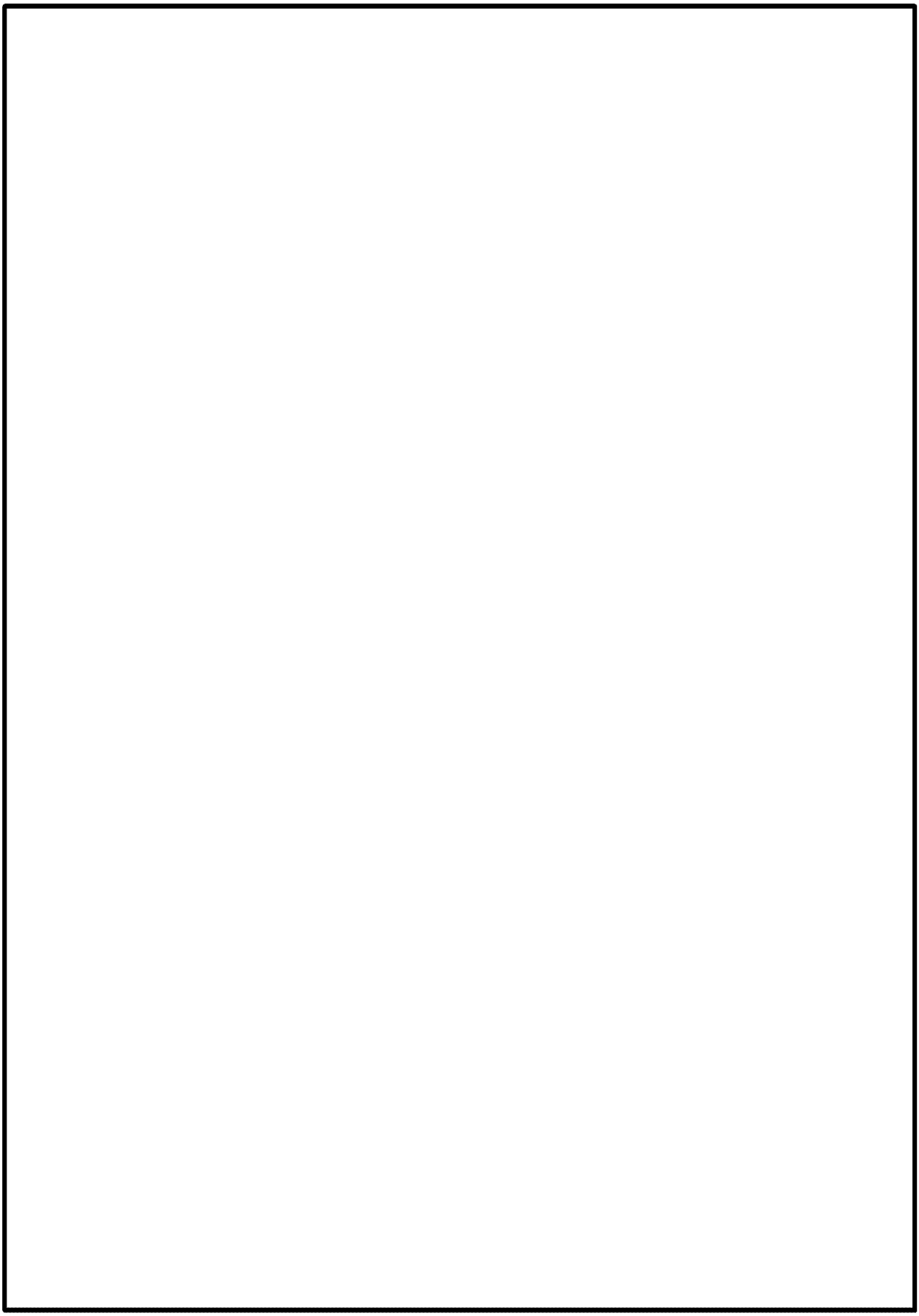

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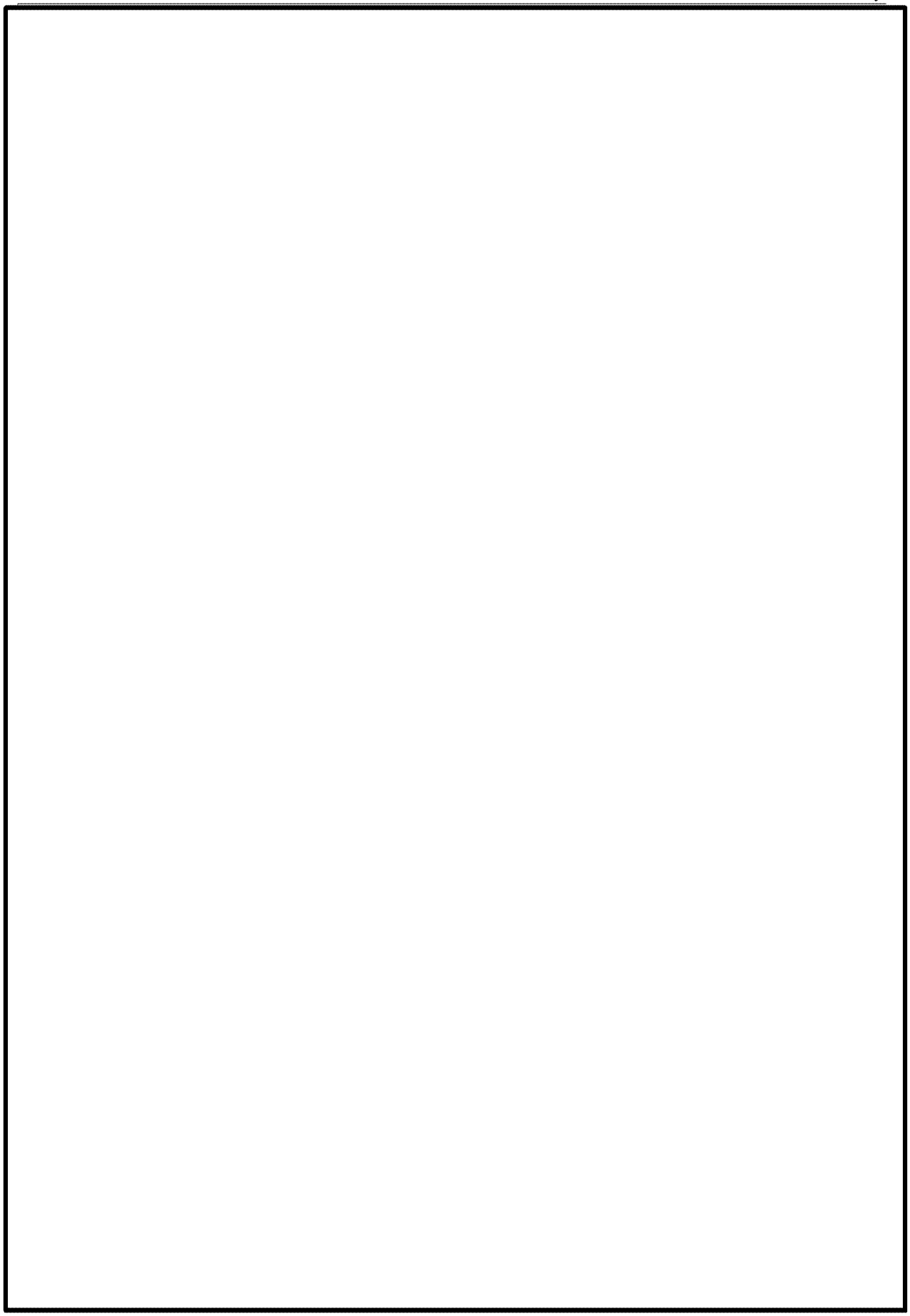

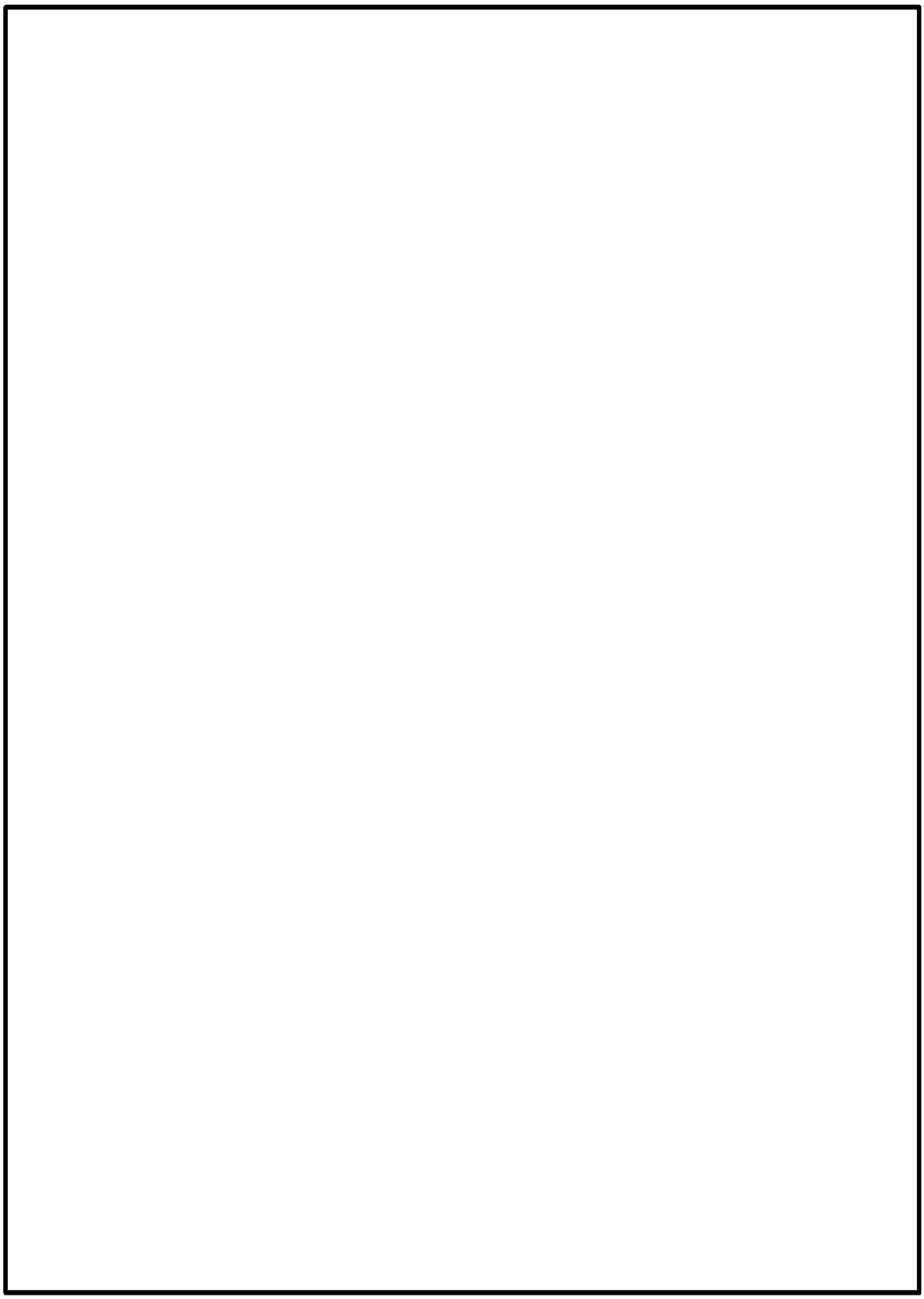

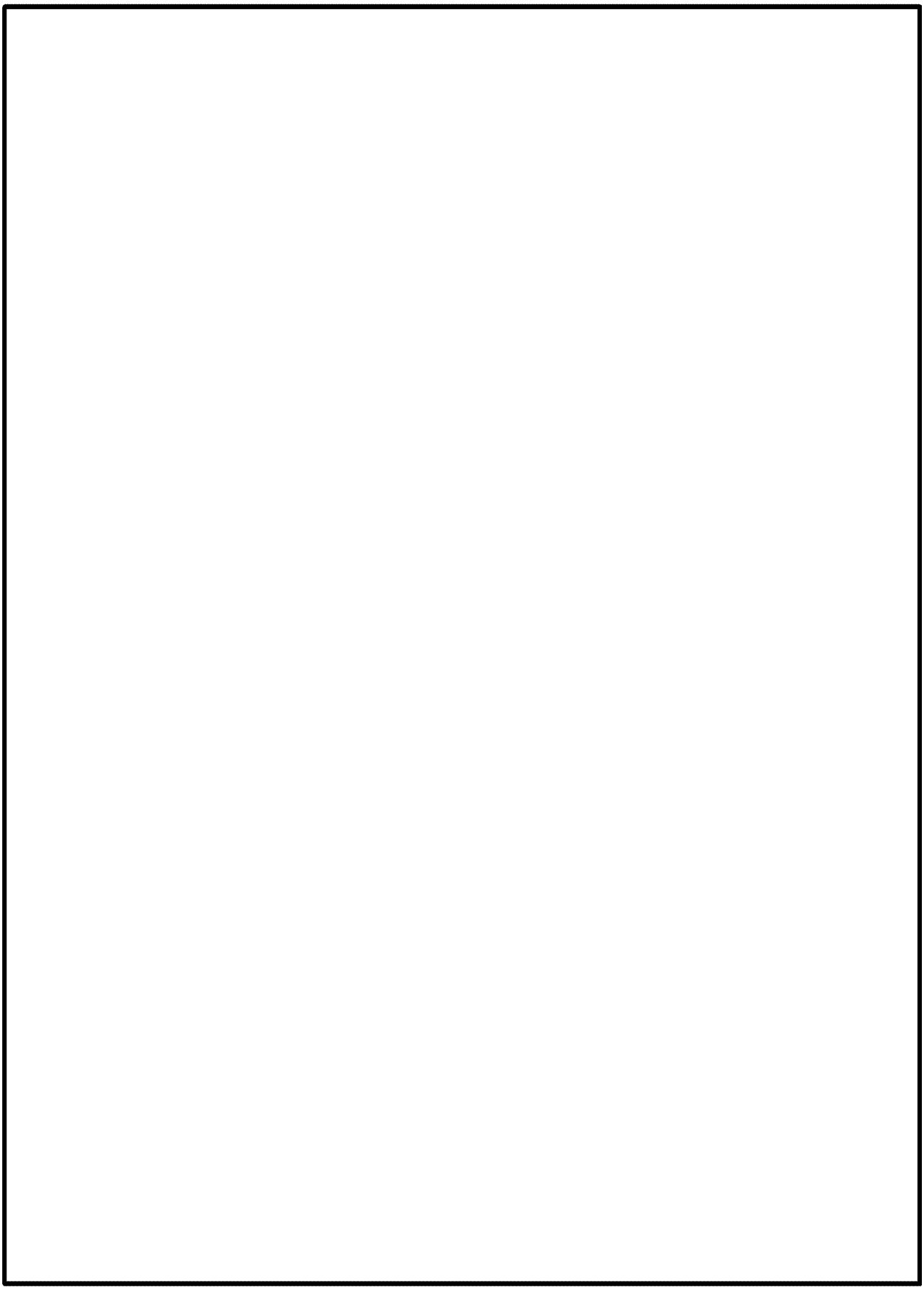

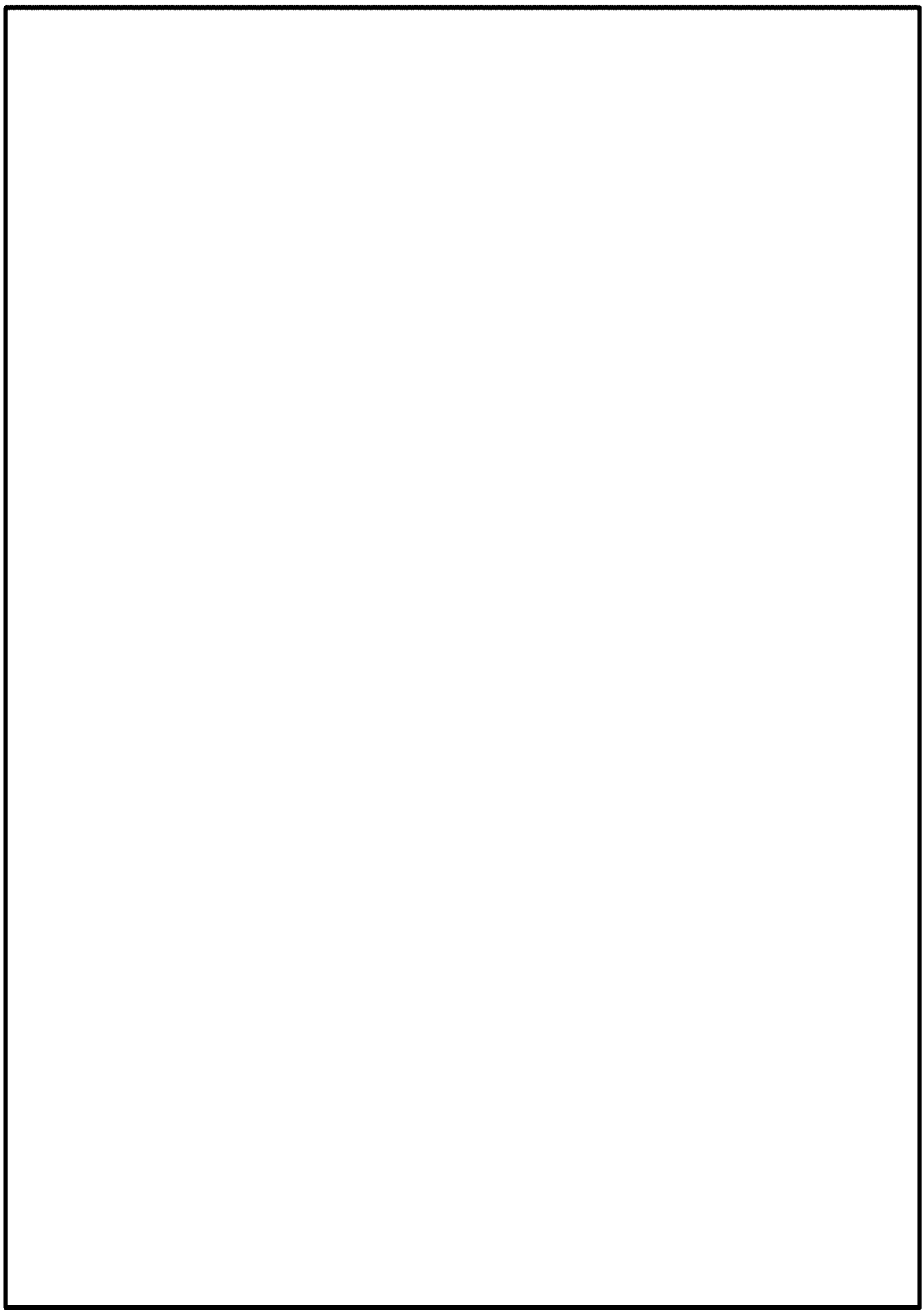

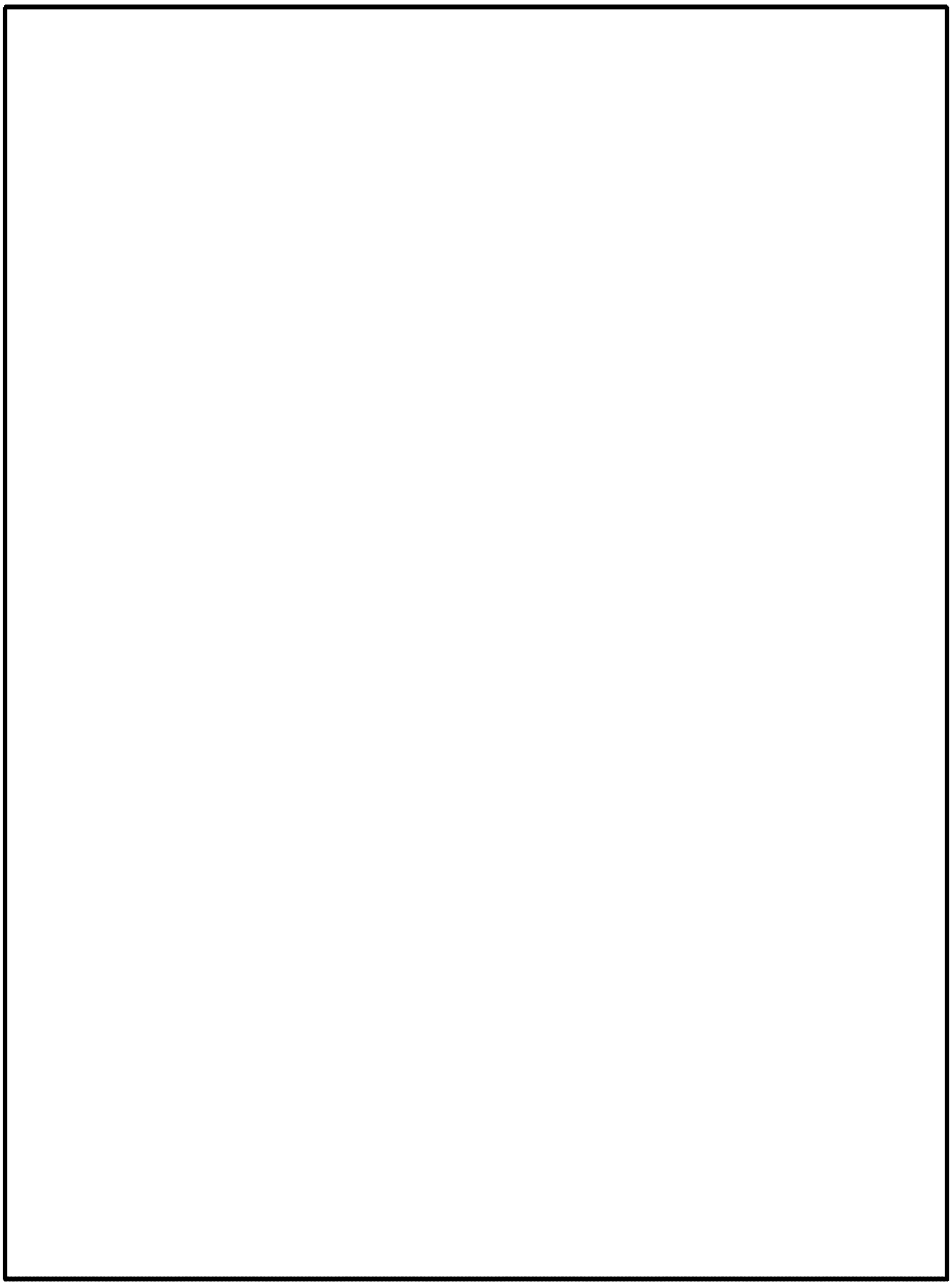

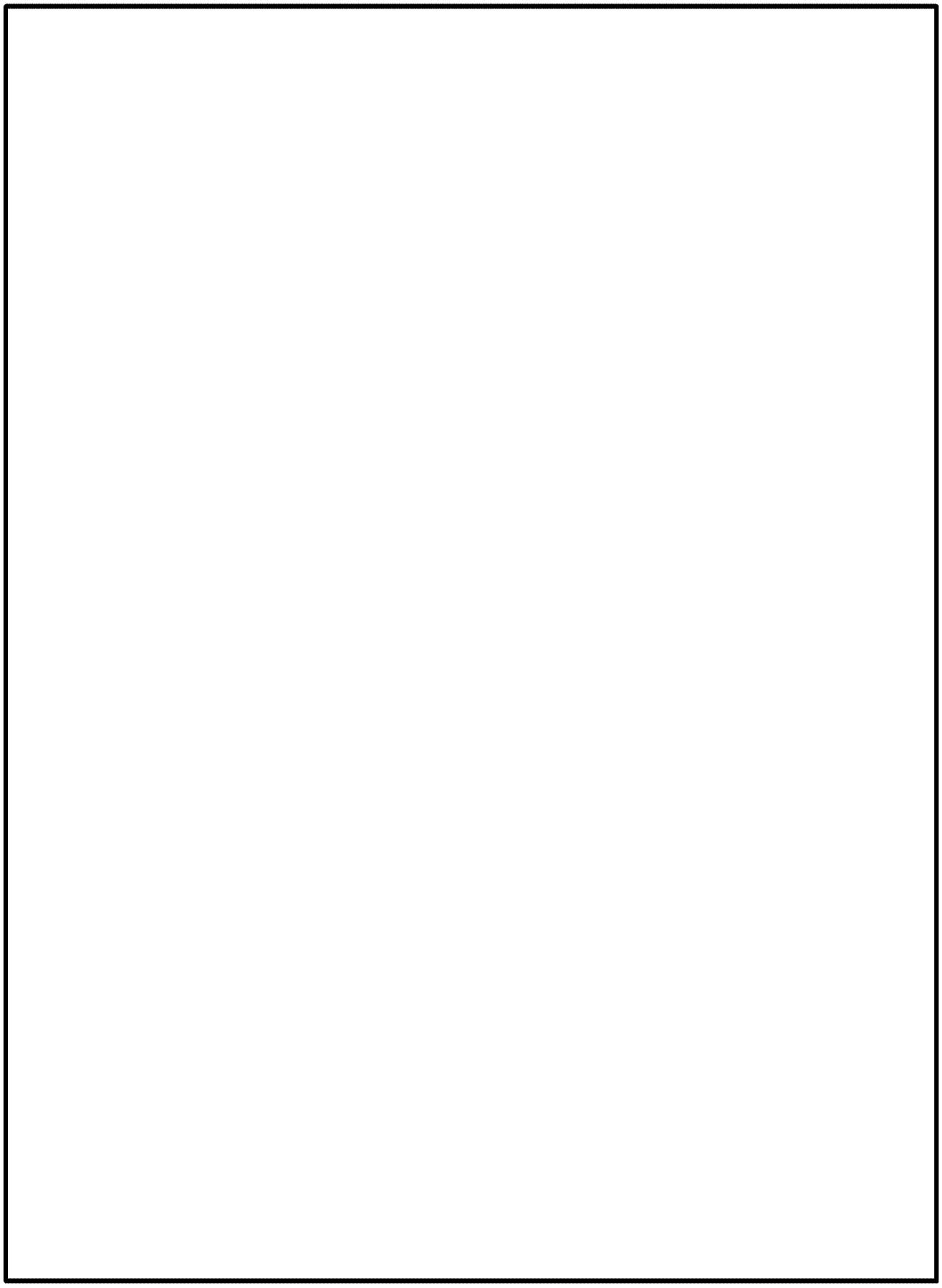

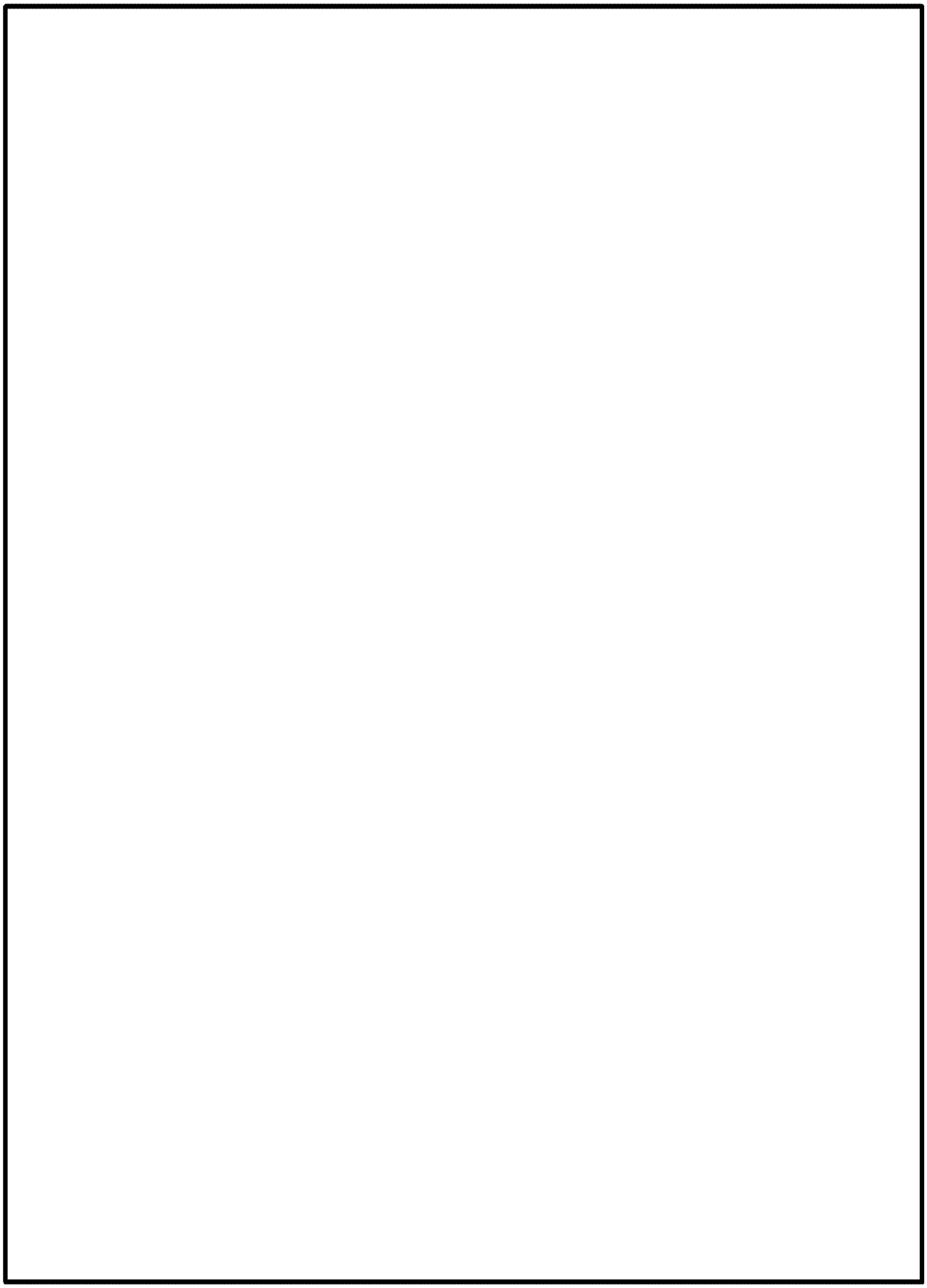

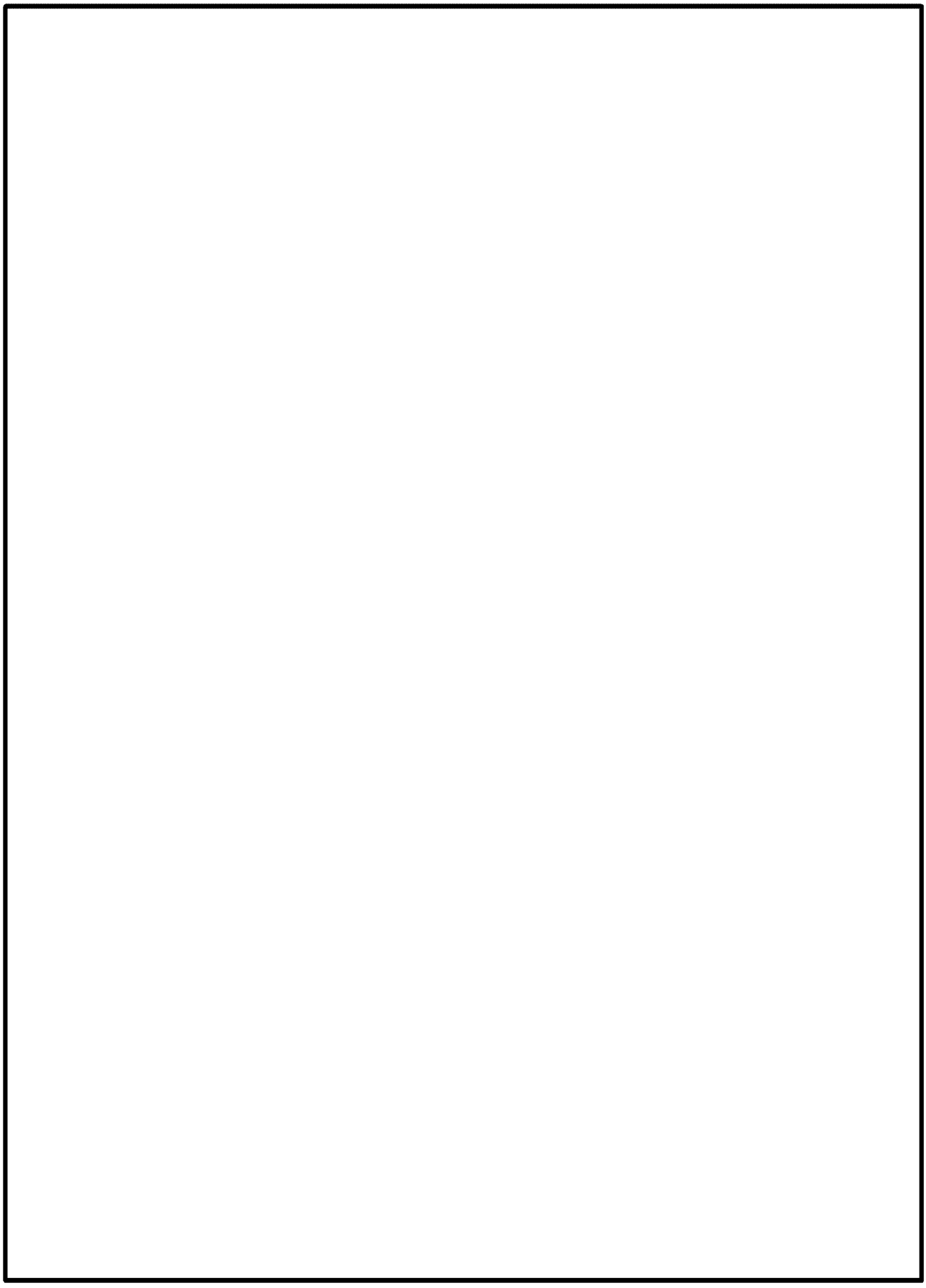

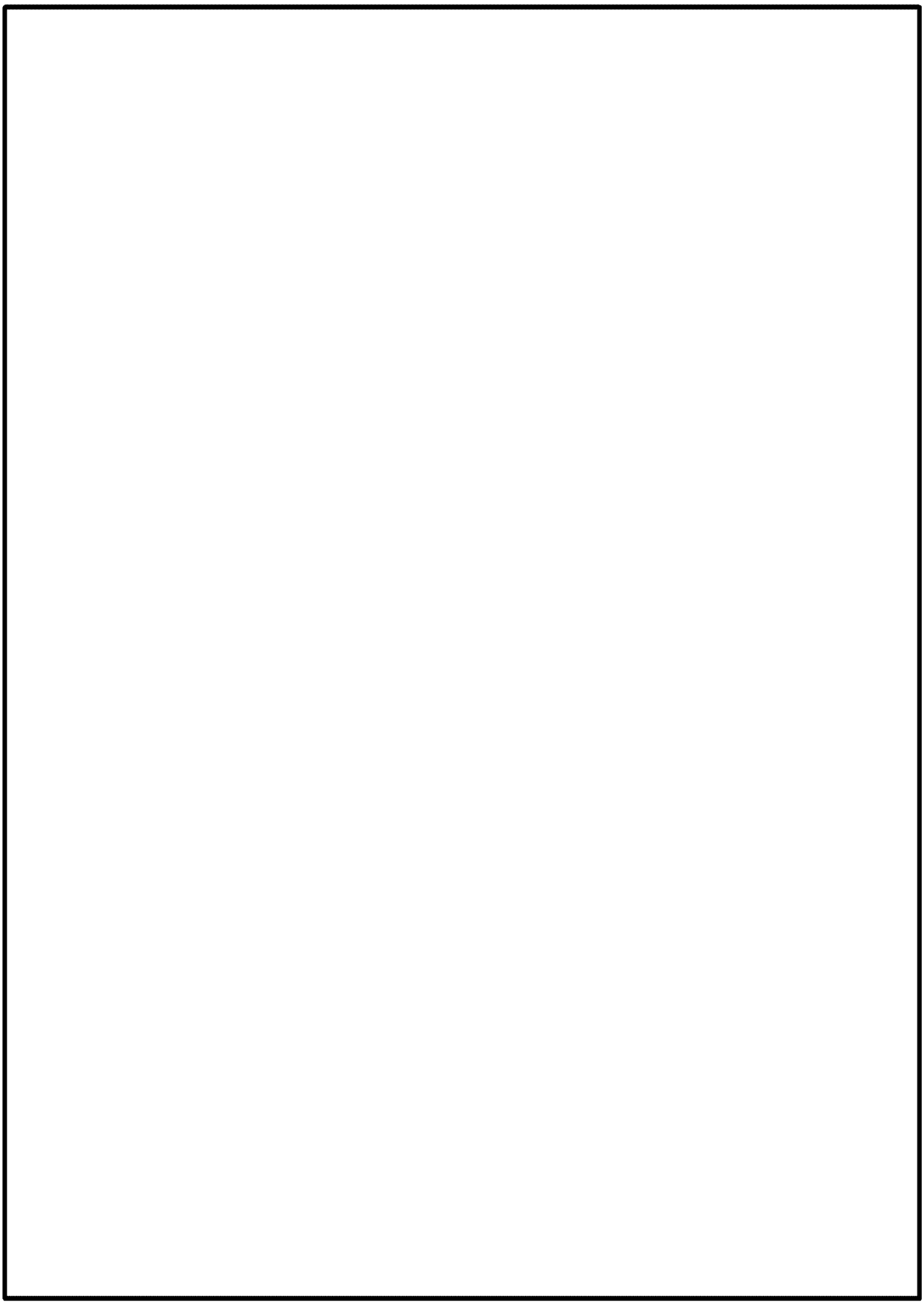

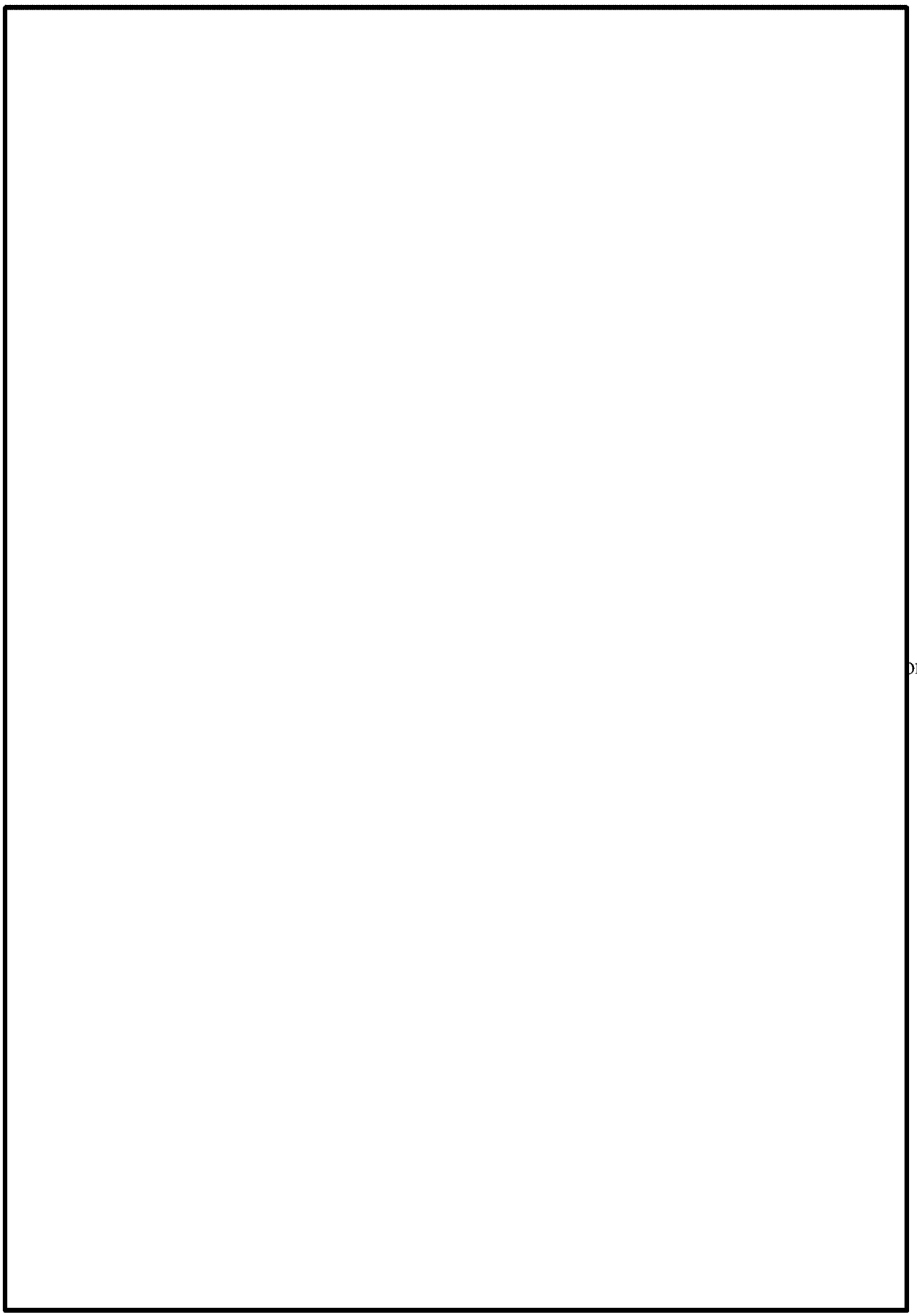

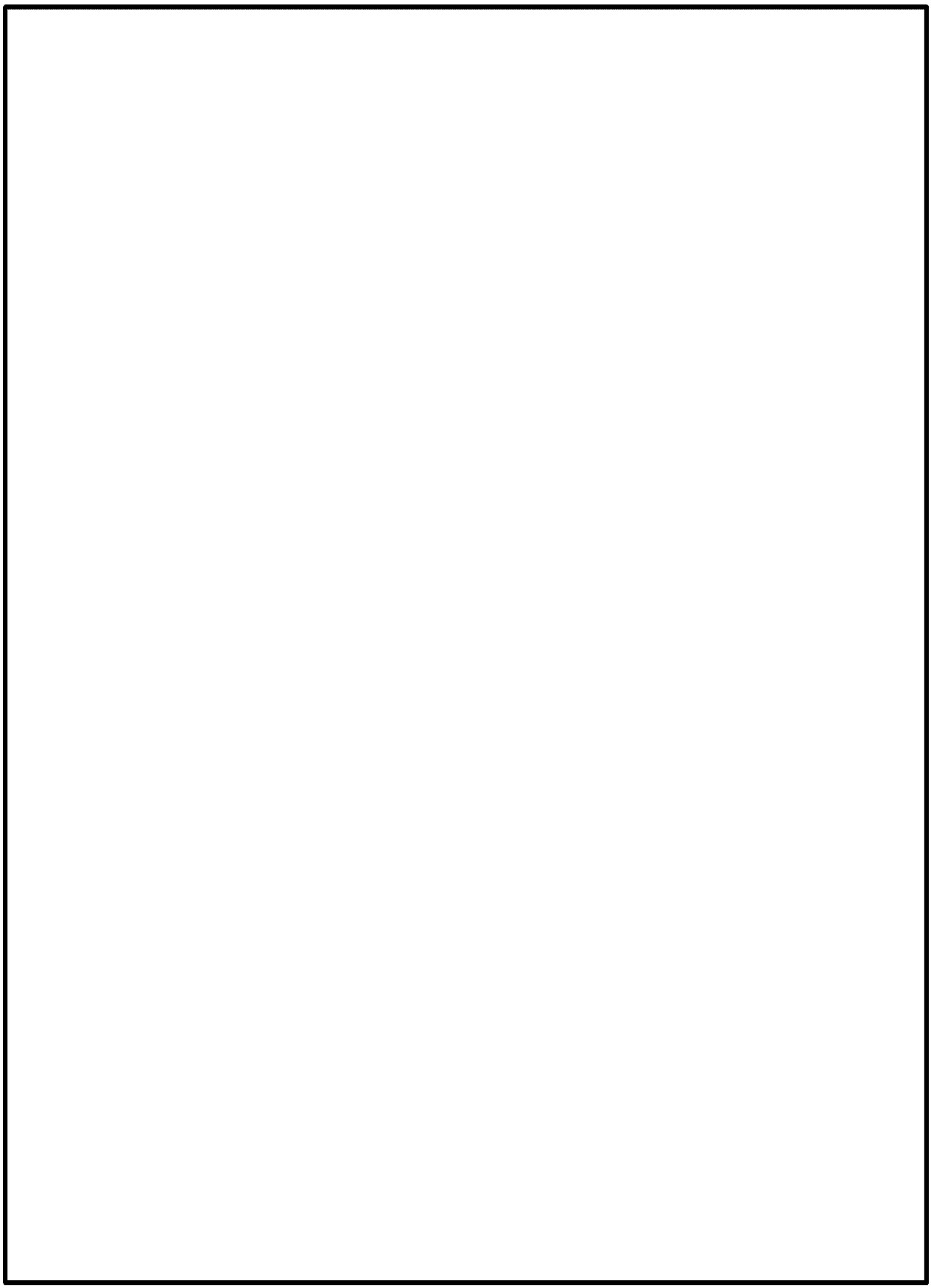

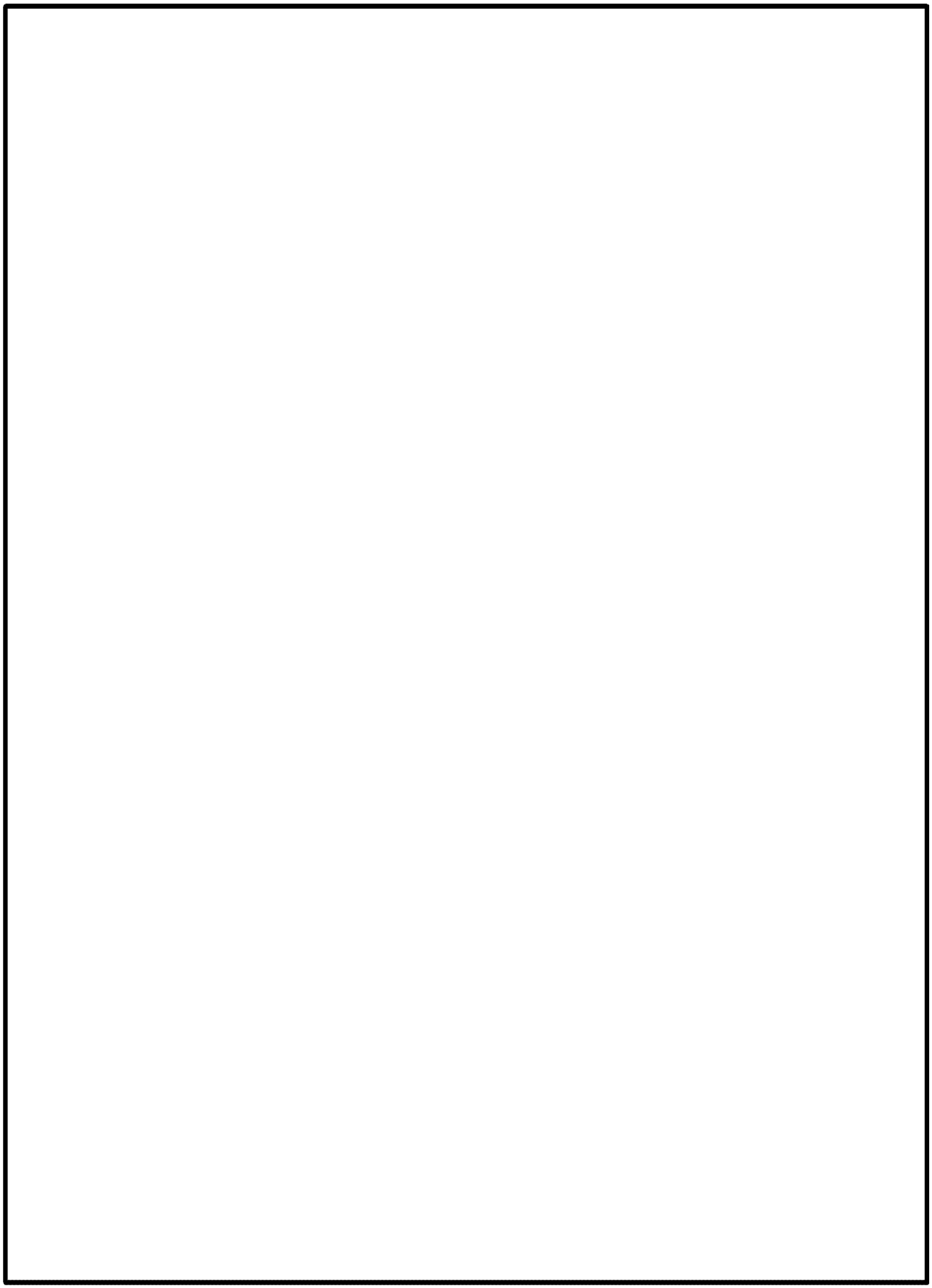

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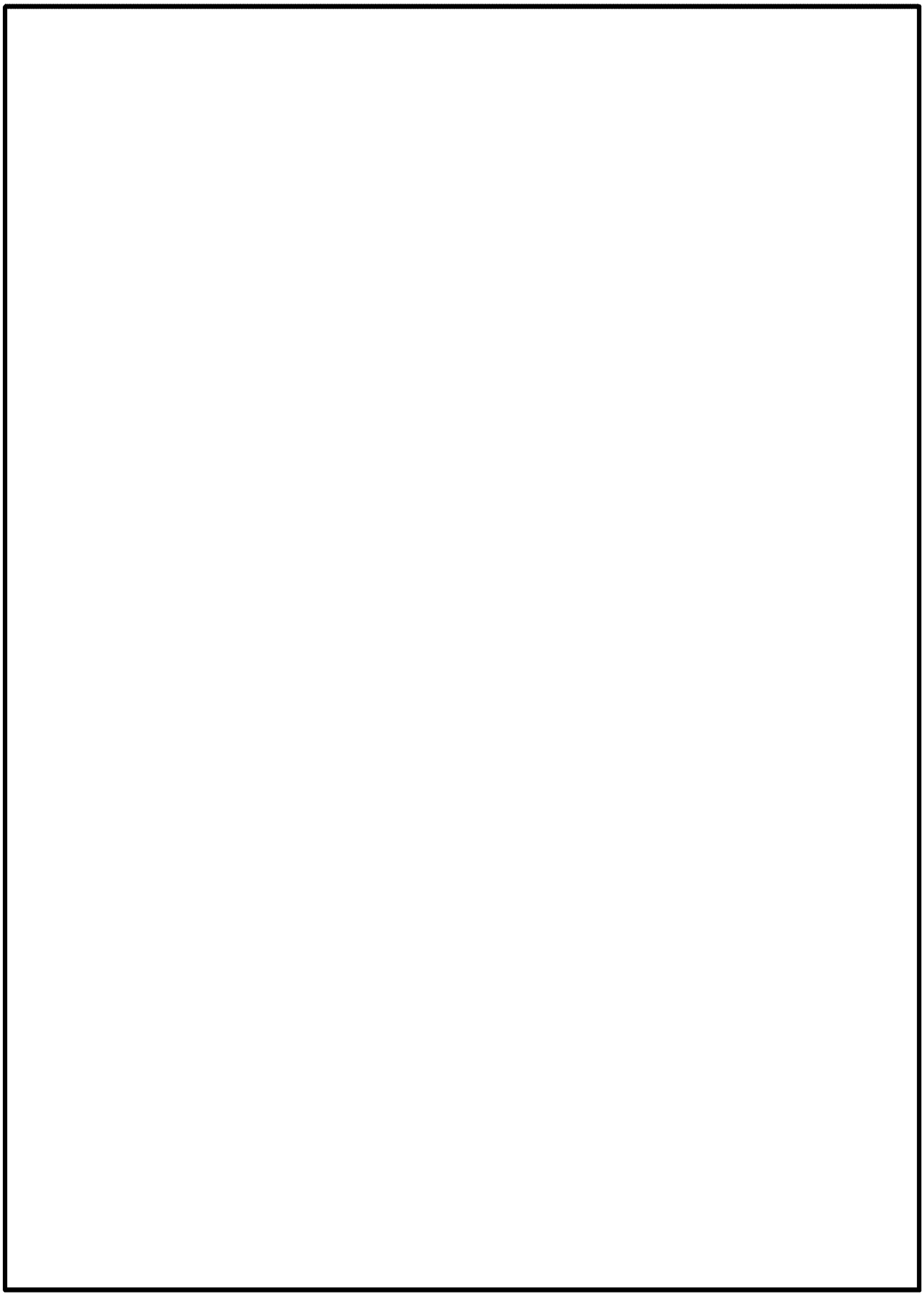

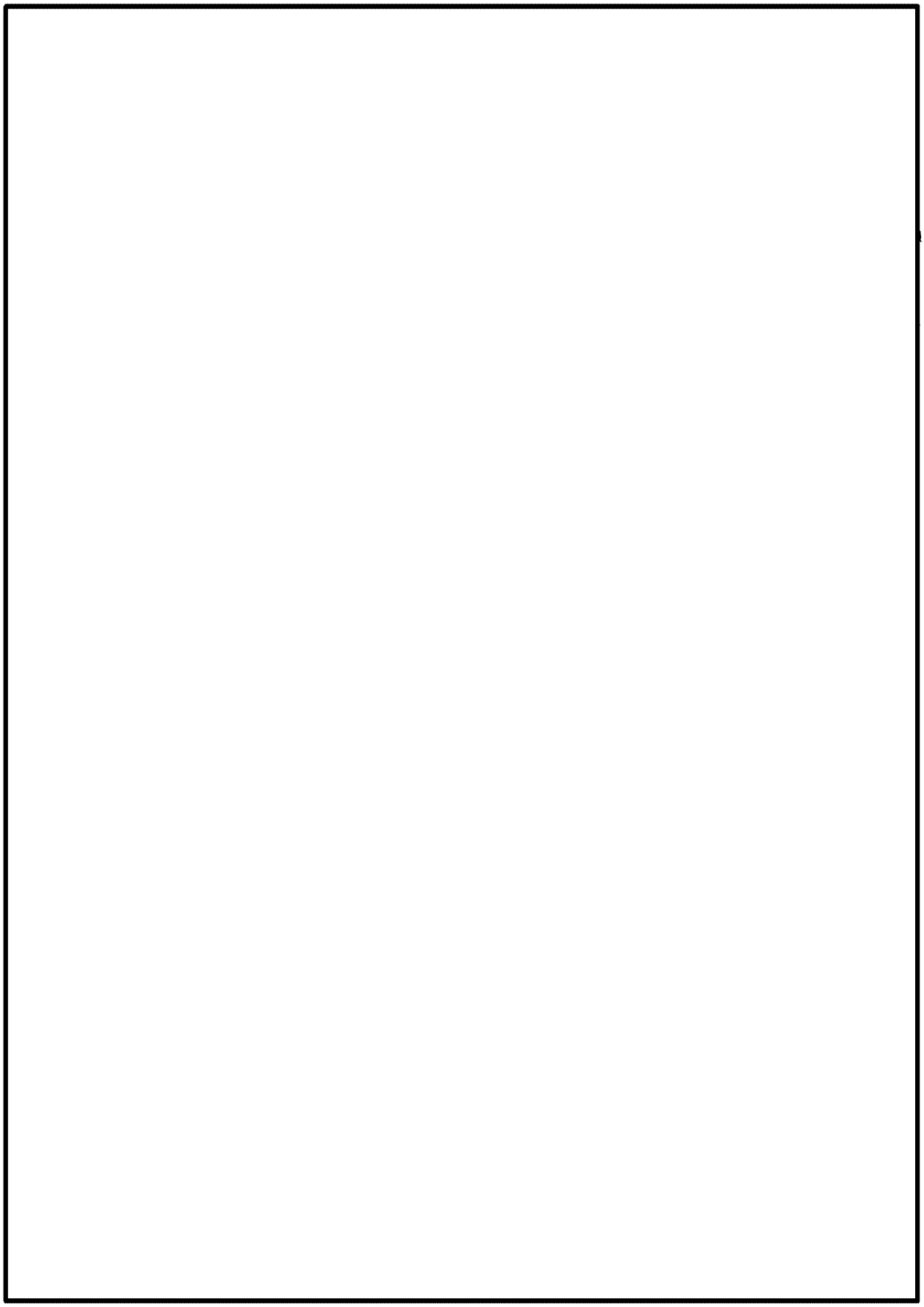

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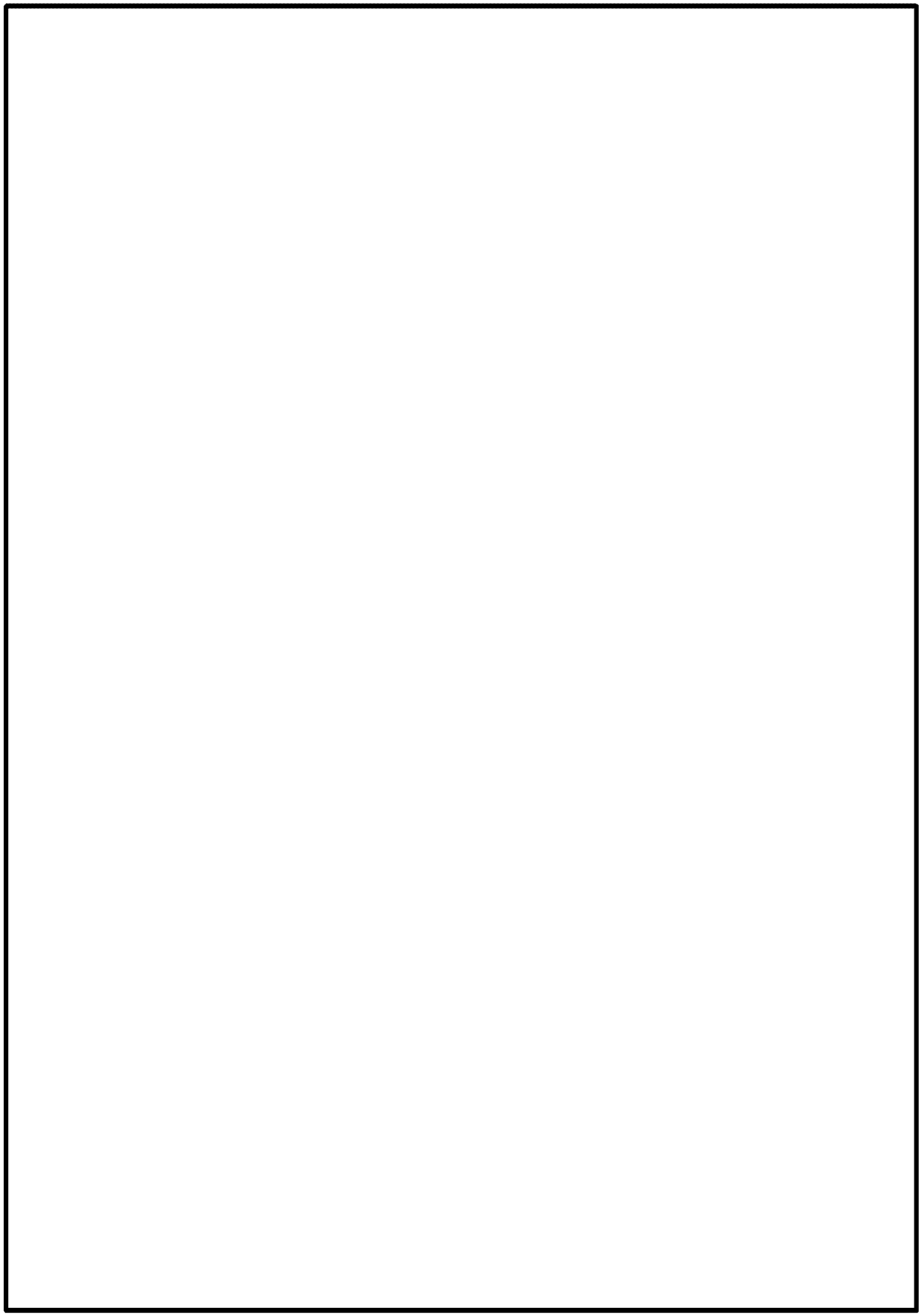

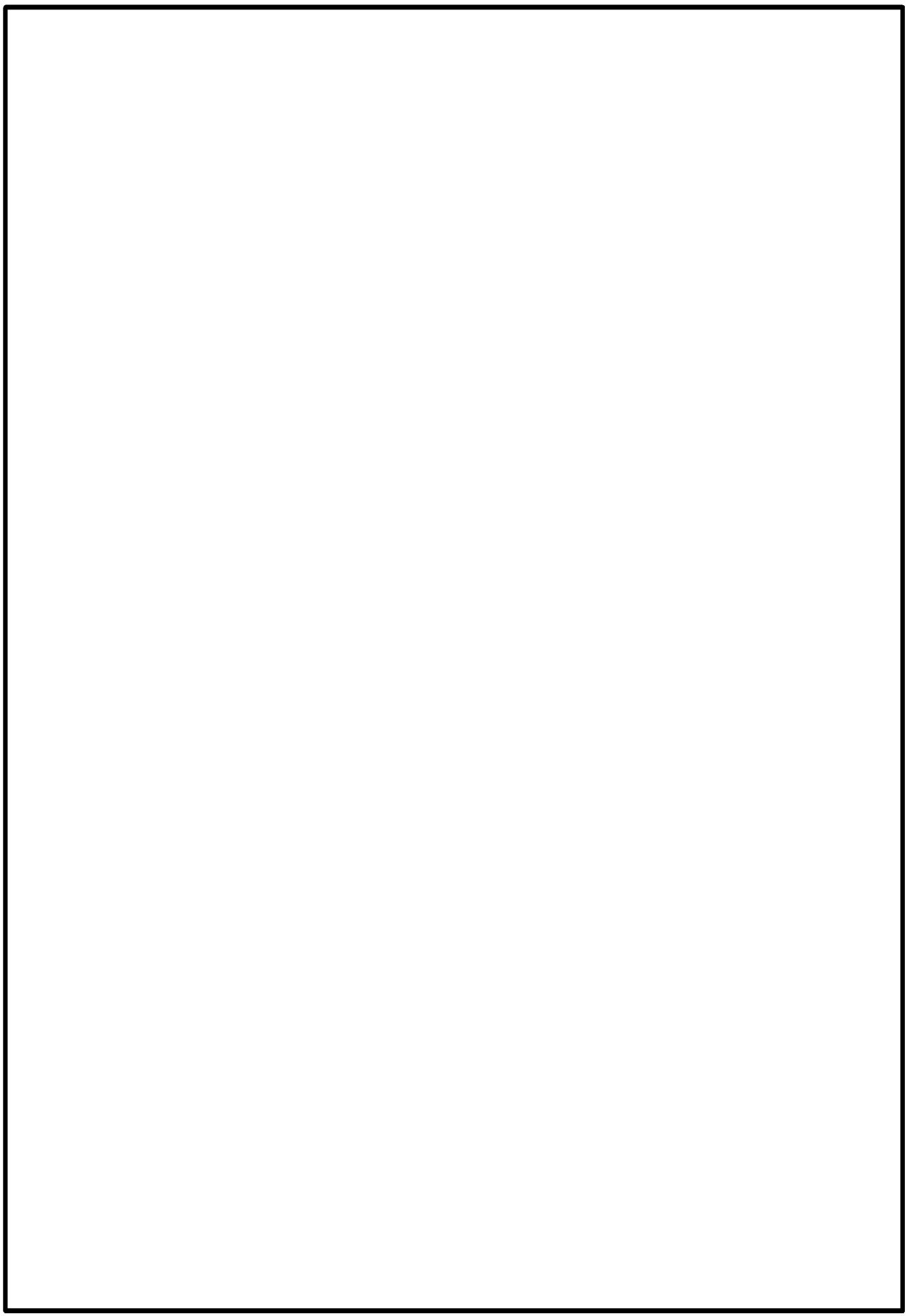

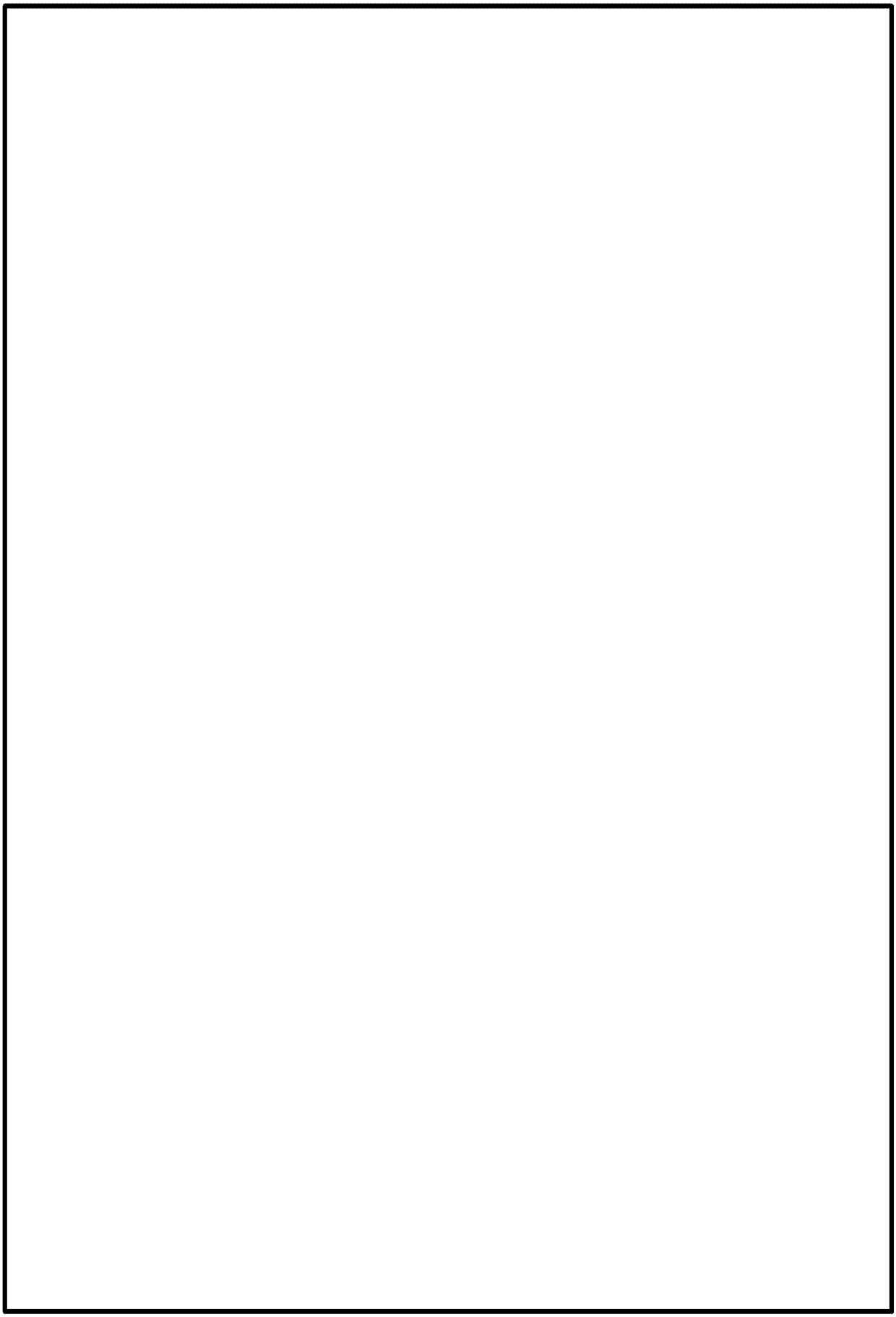

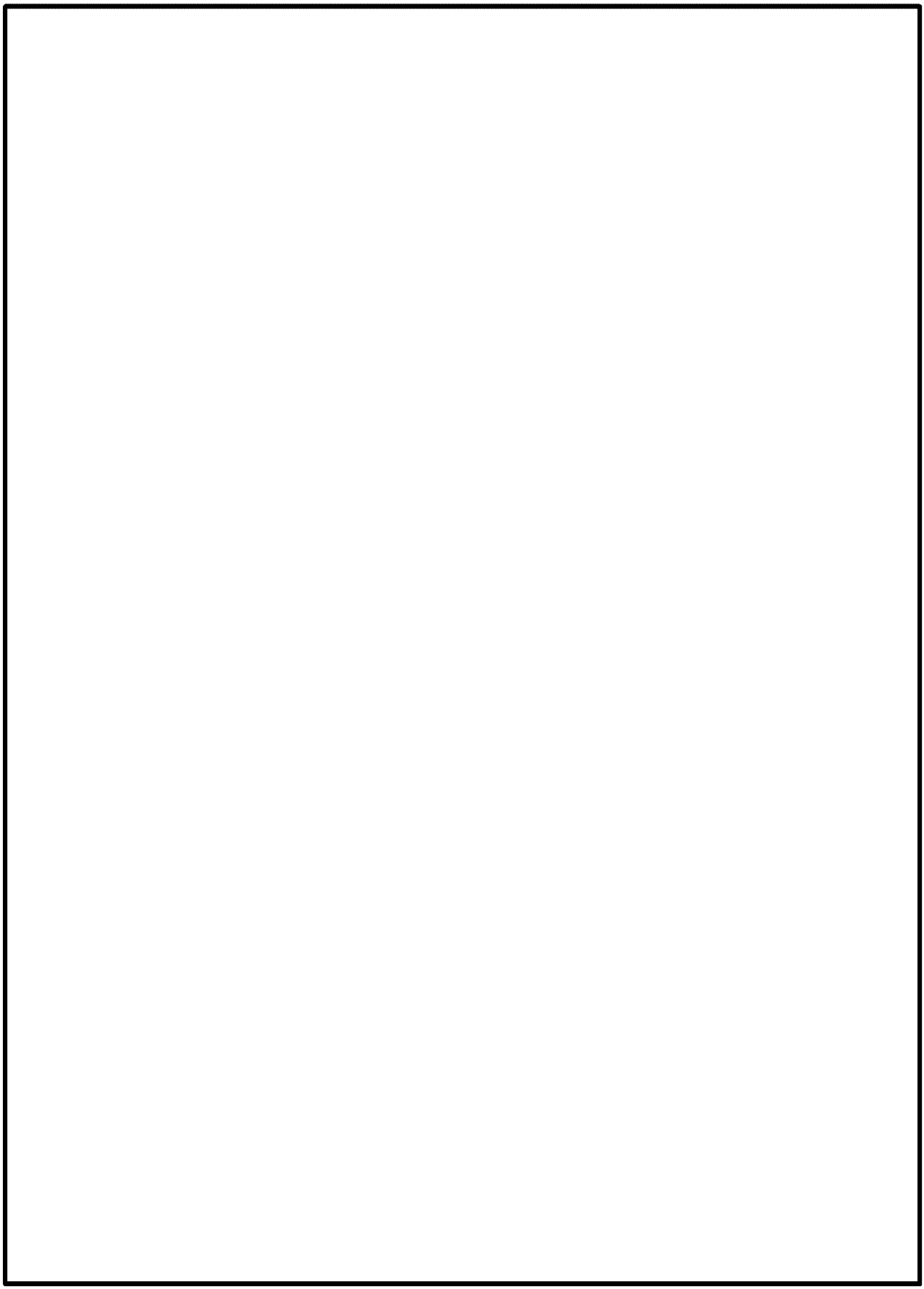

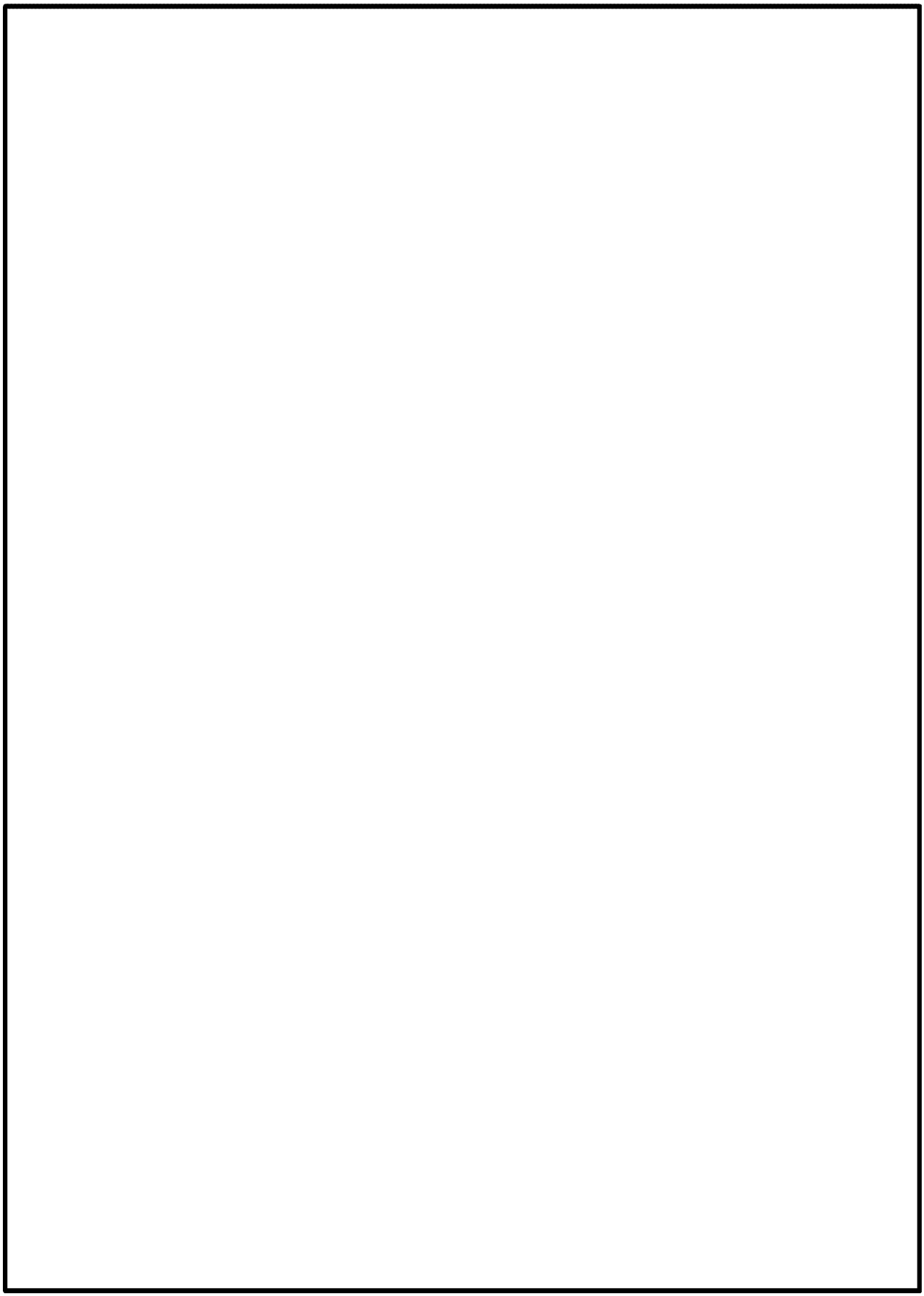

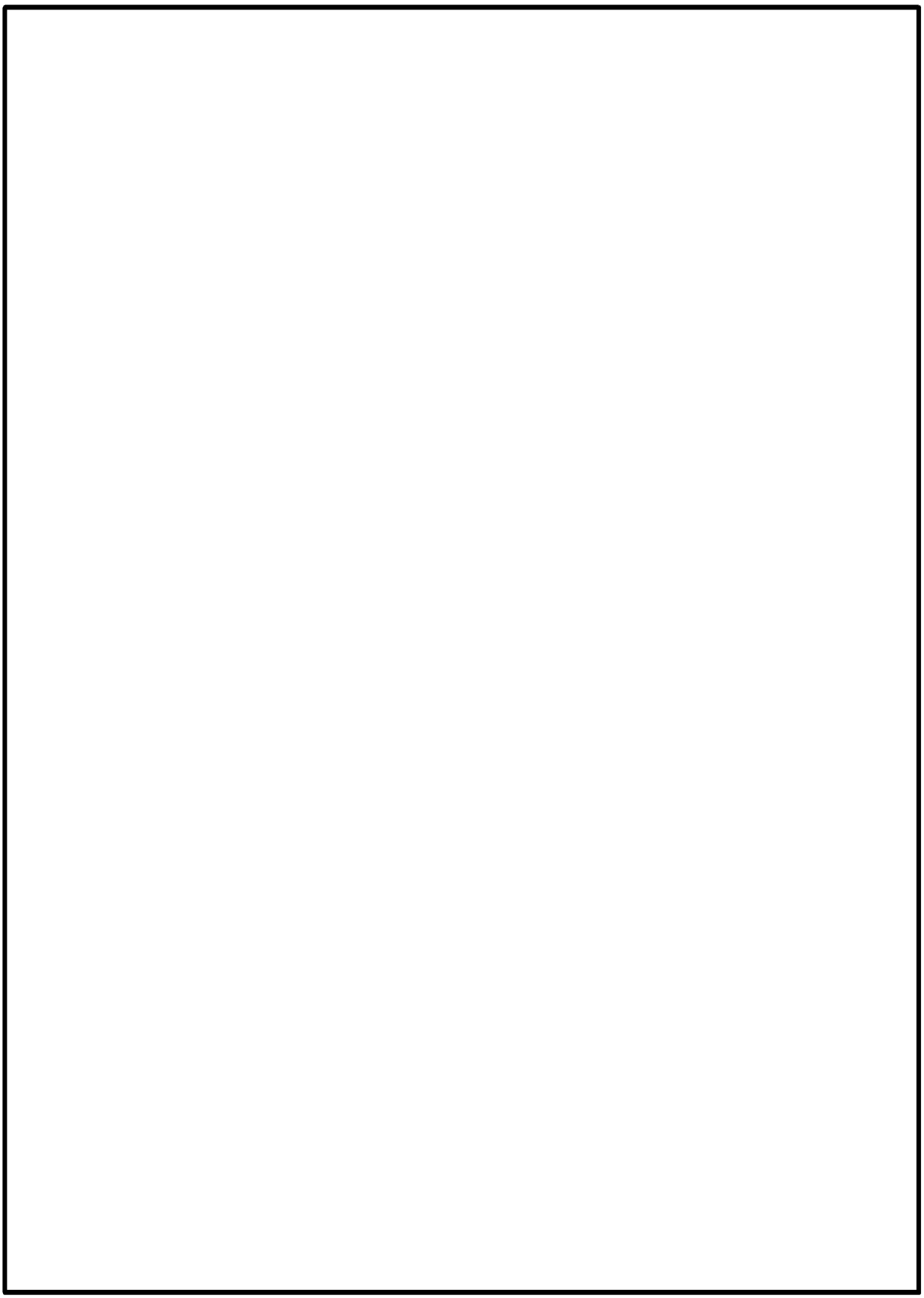

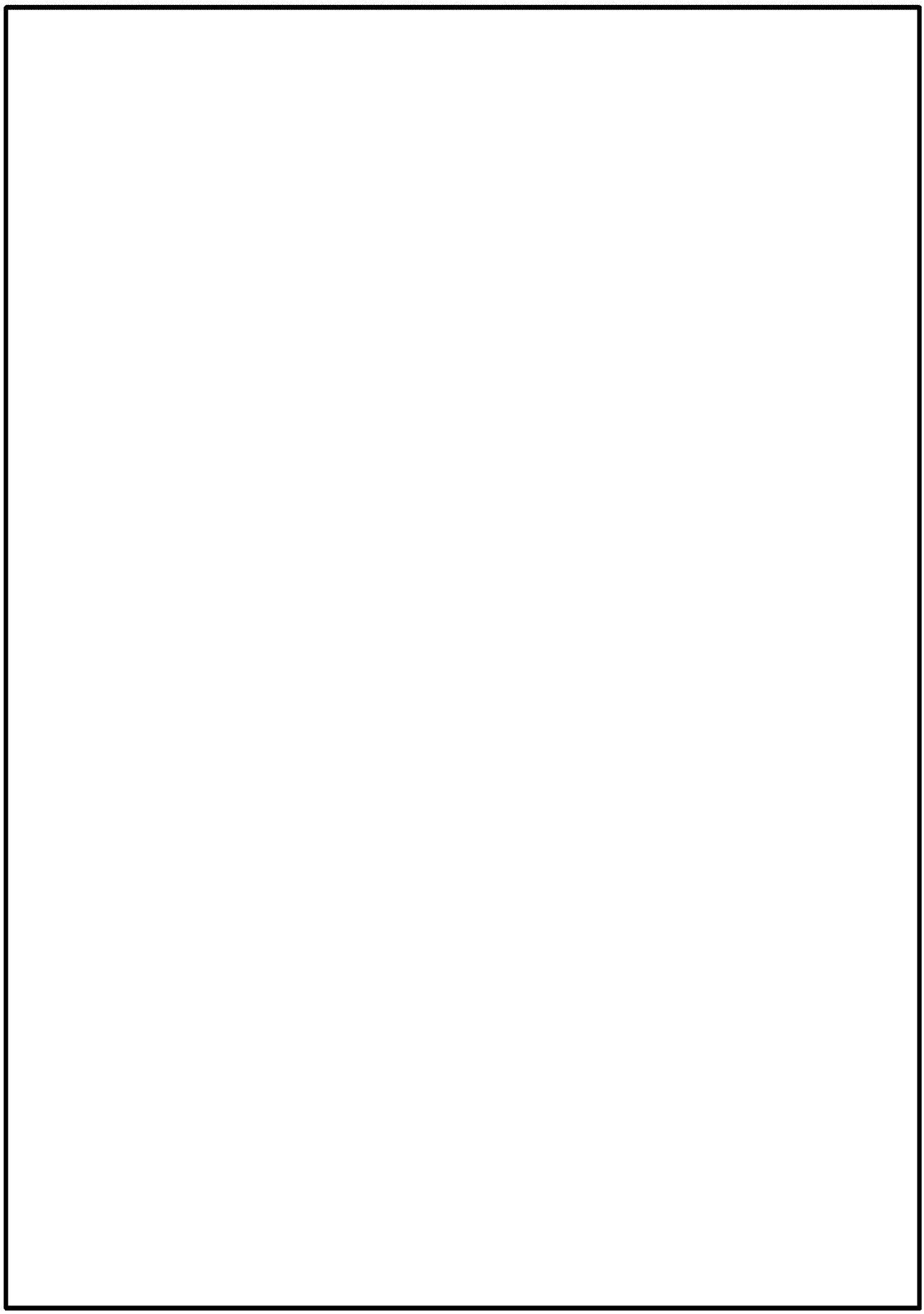

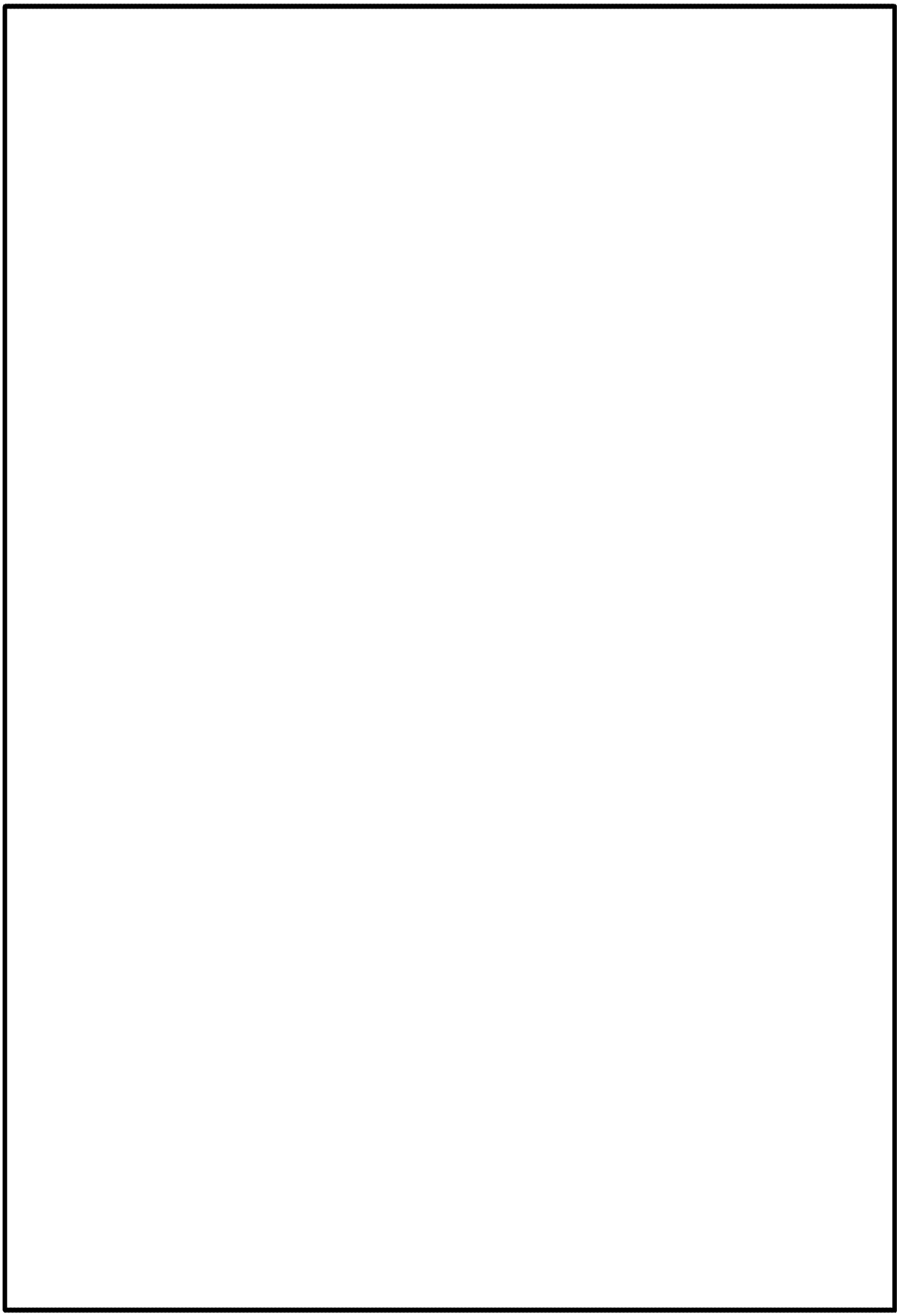

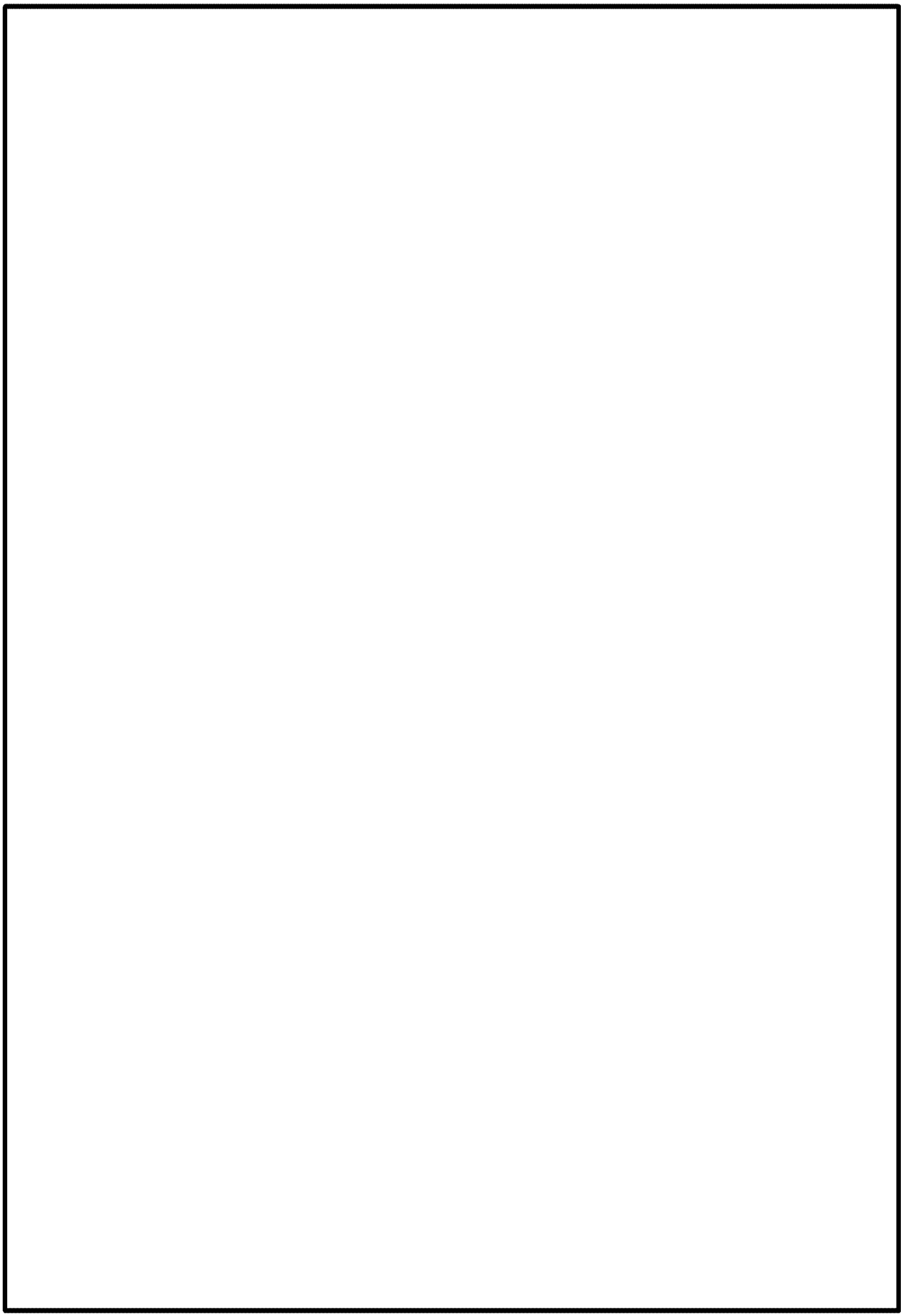

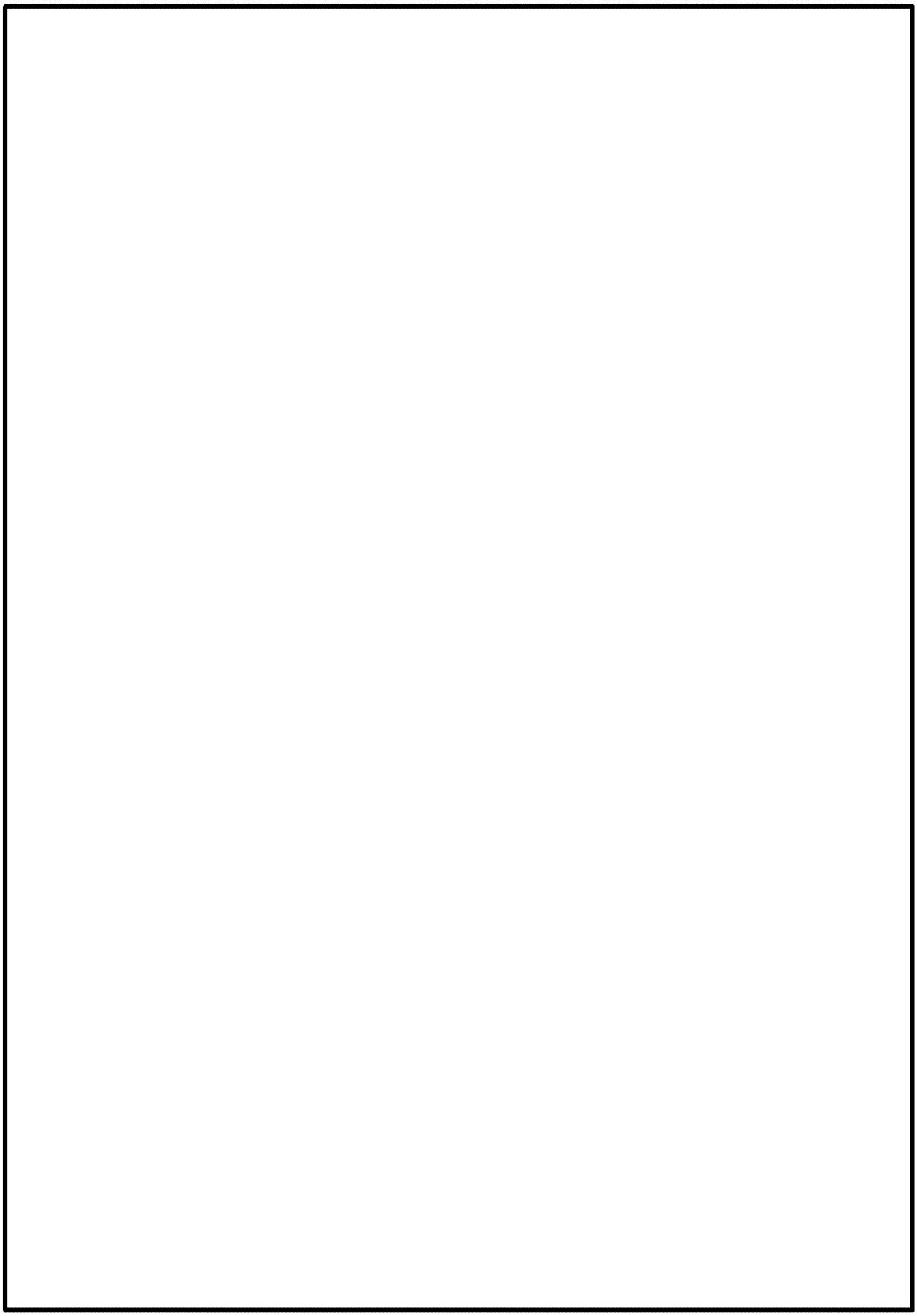

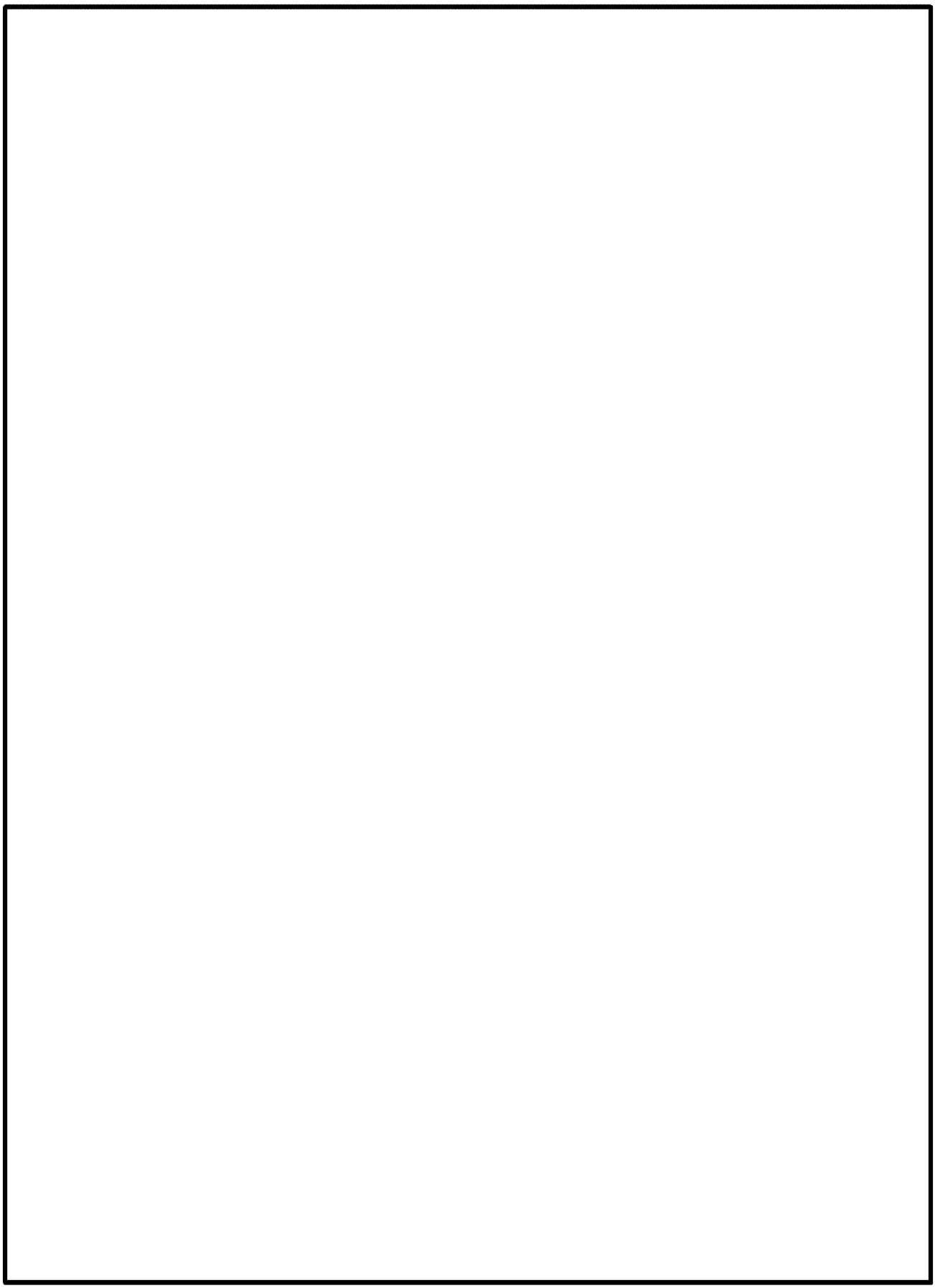

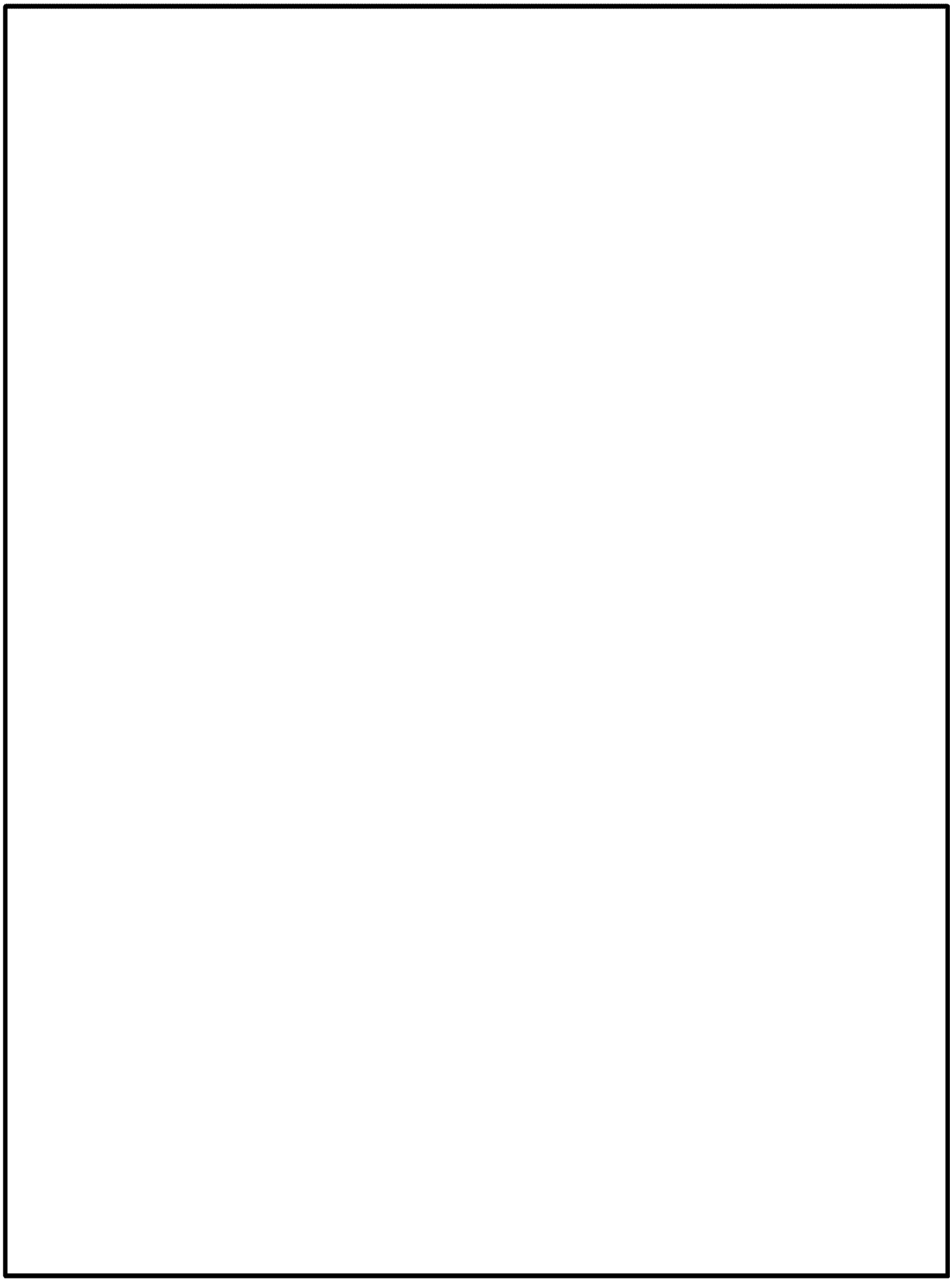

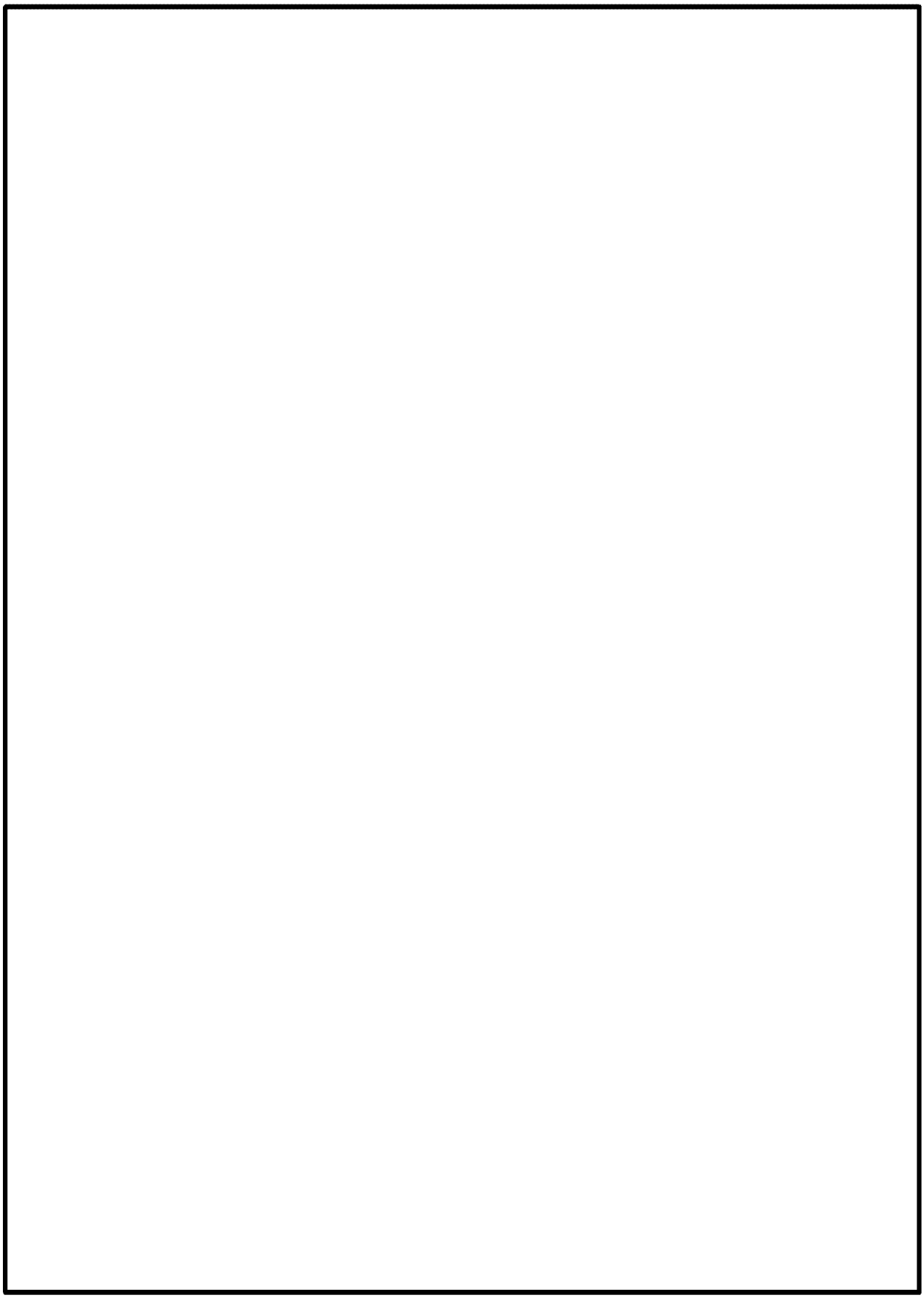

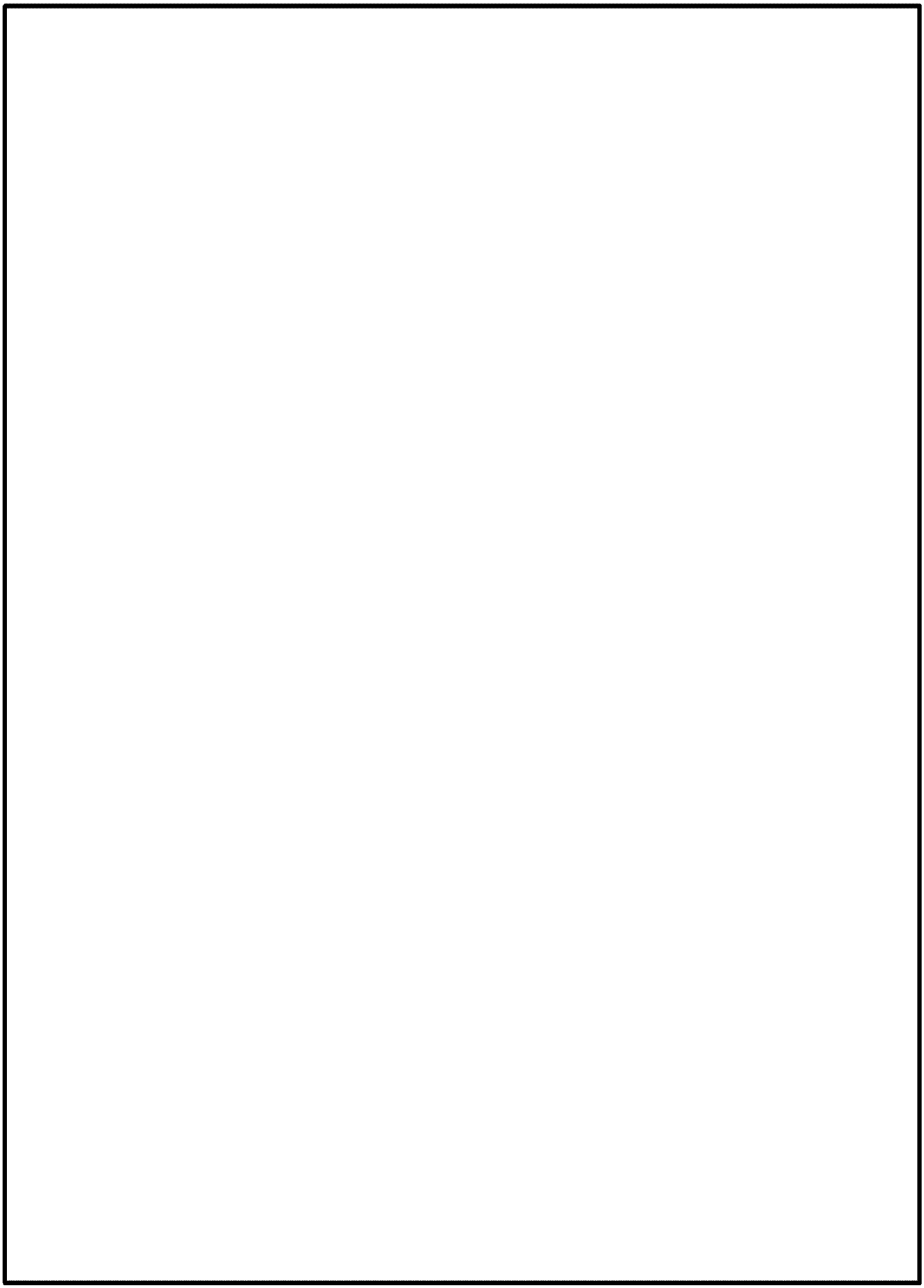

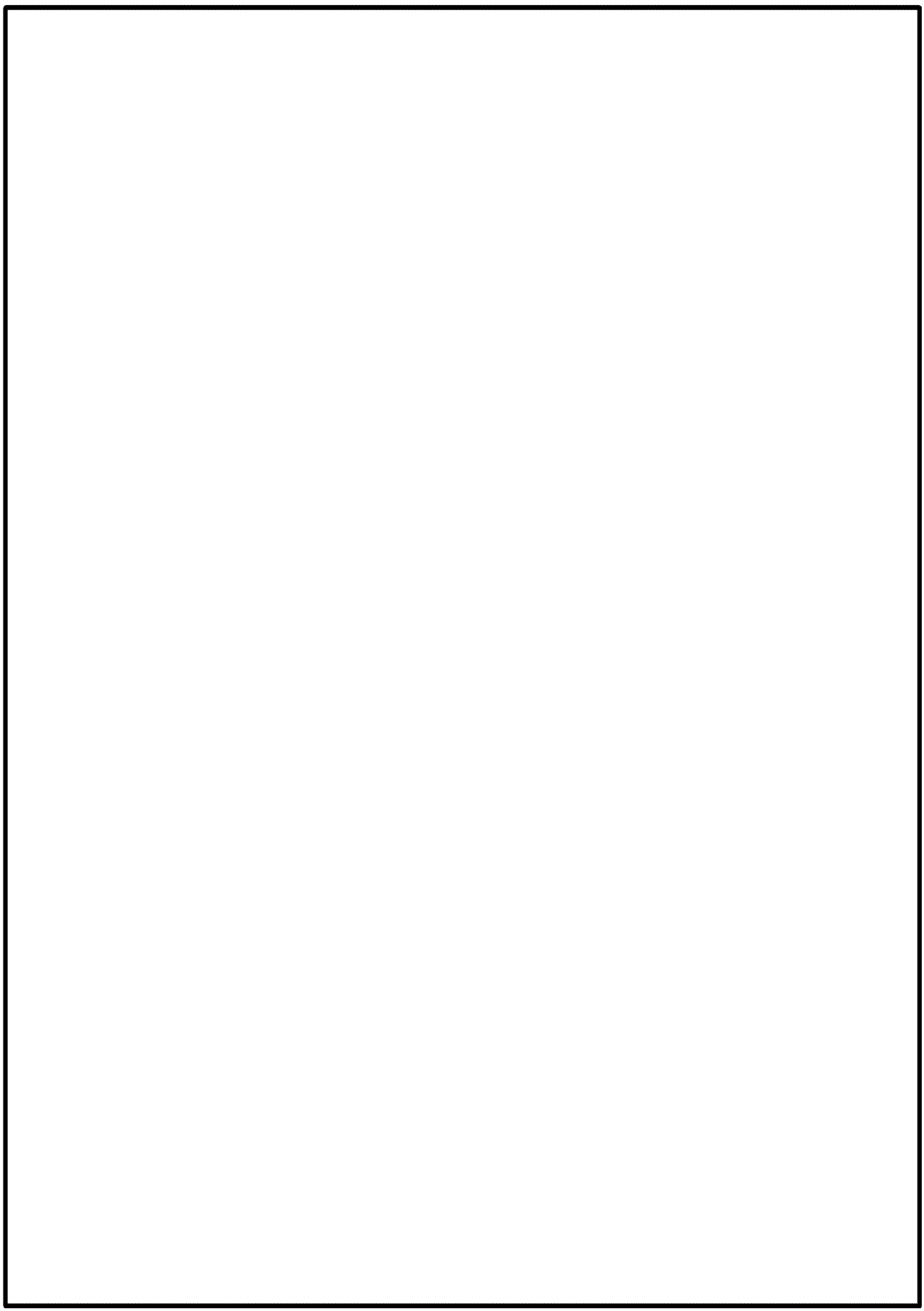

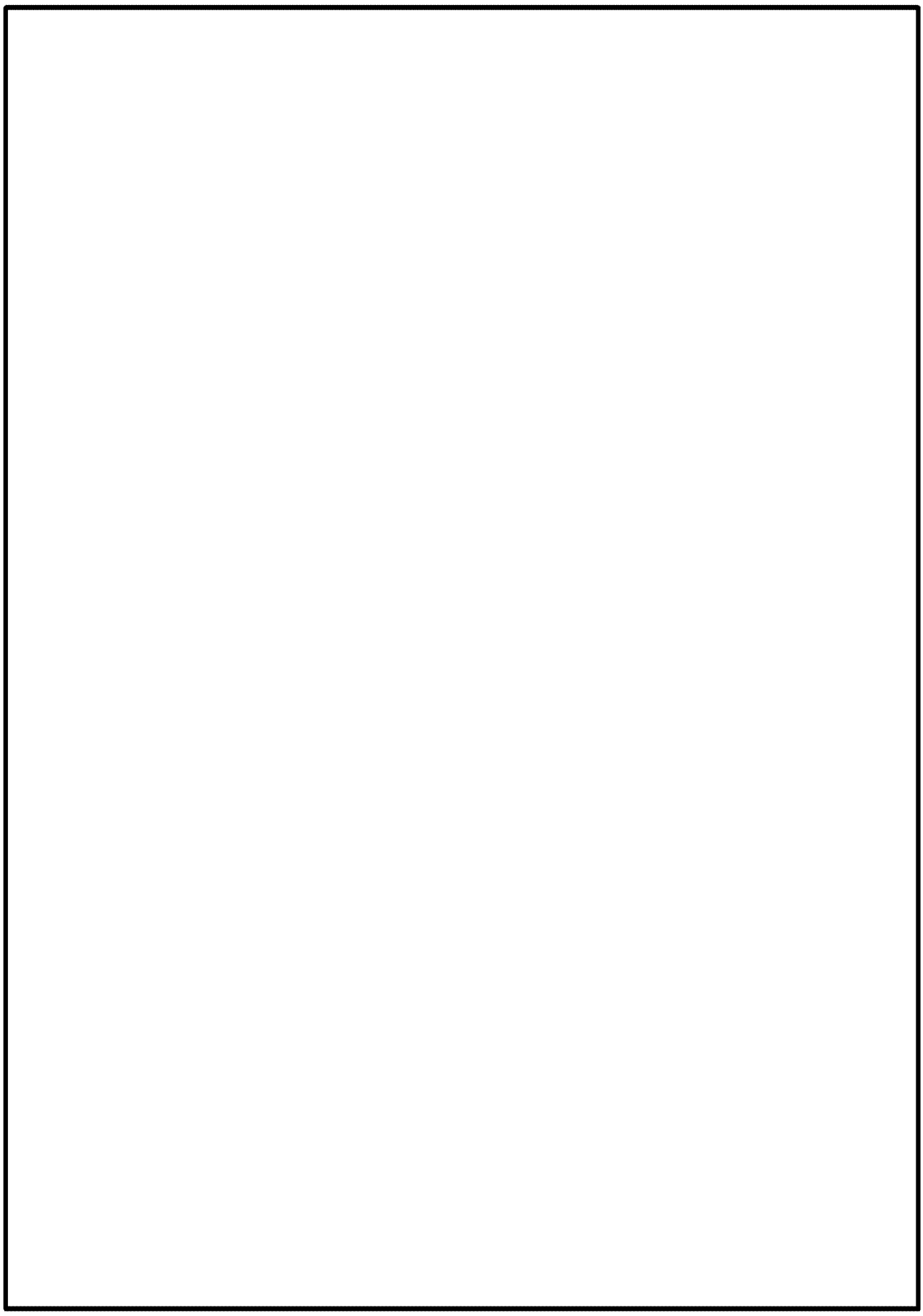

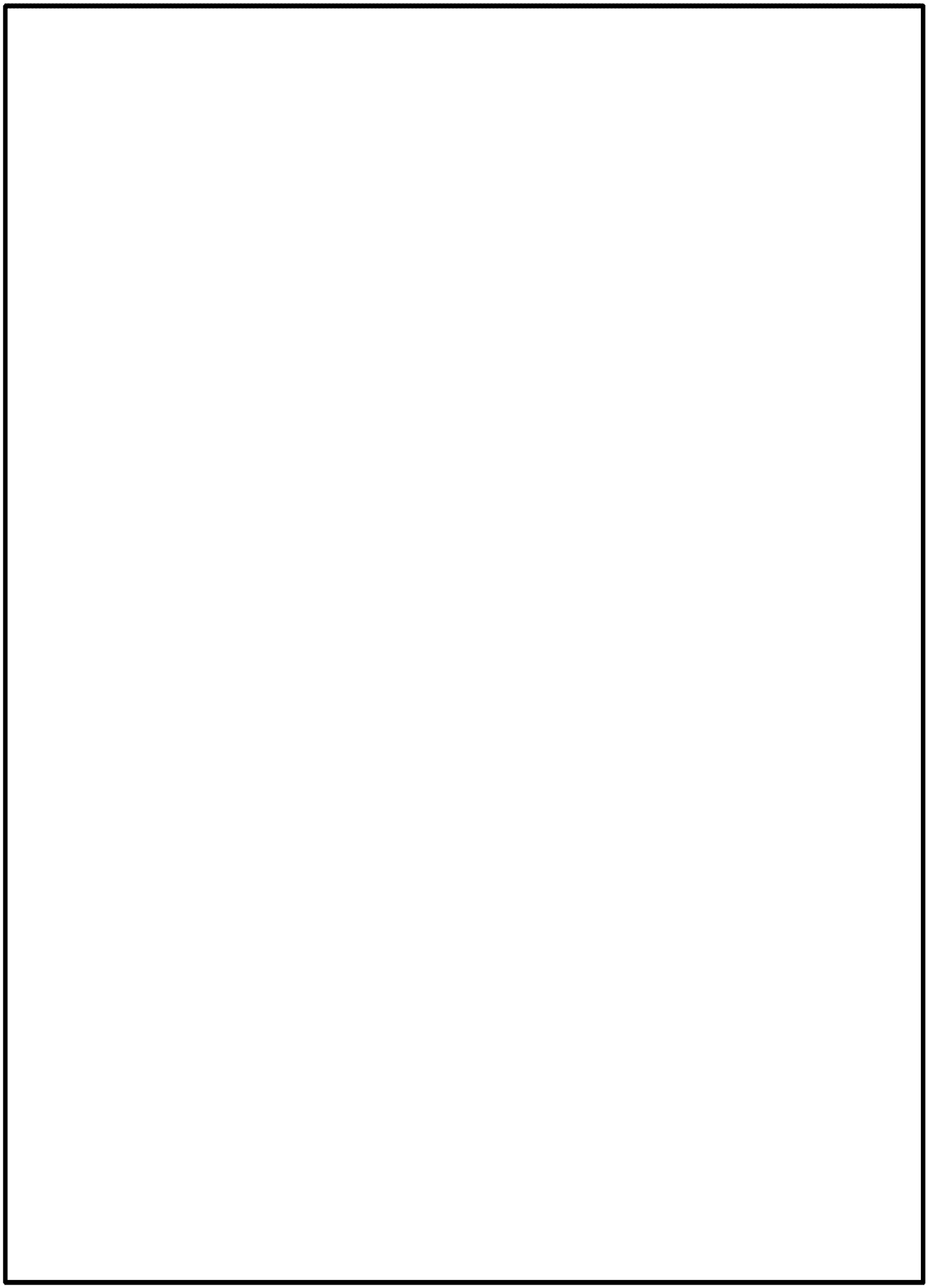

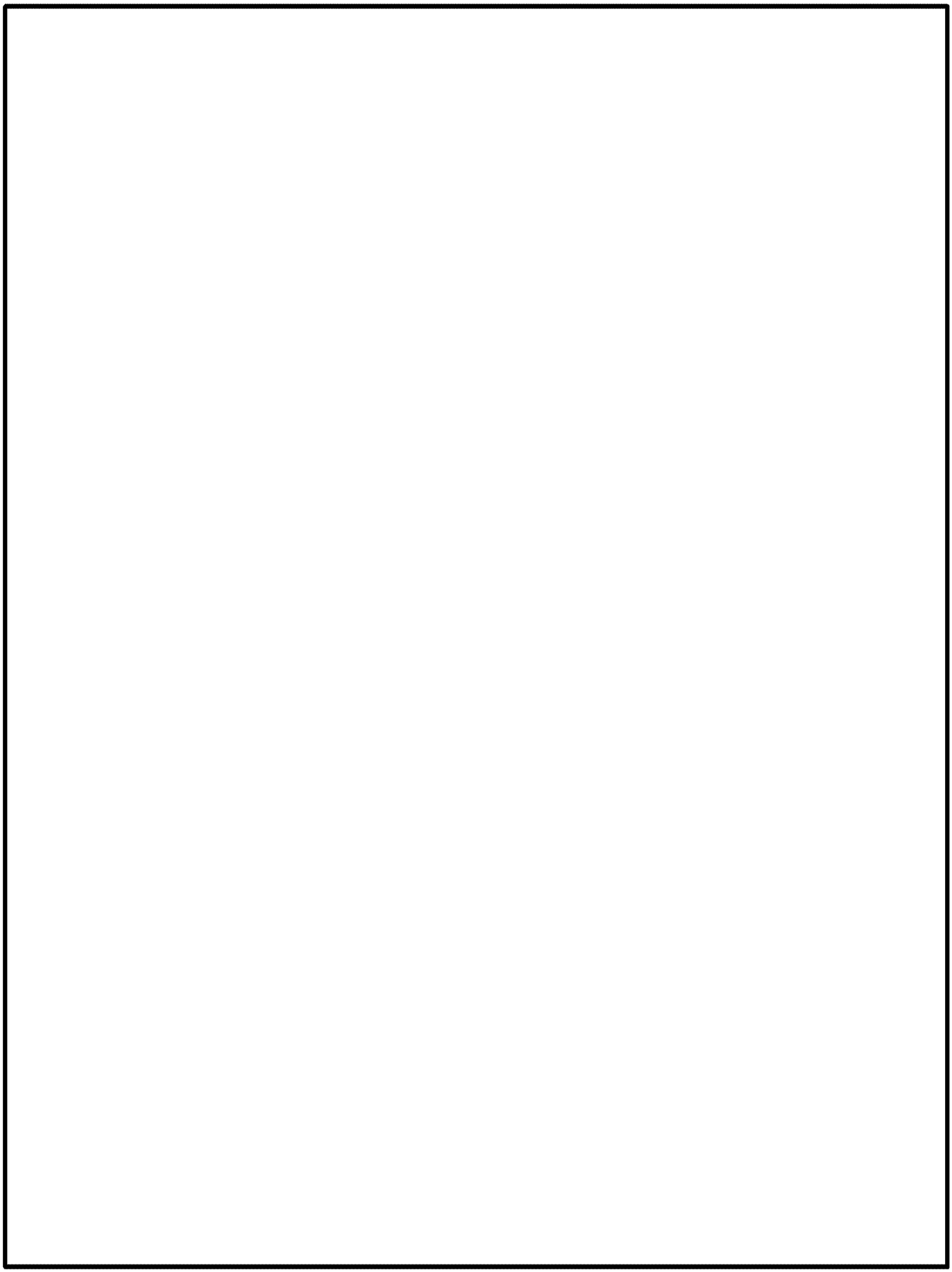

14 CONCLUSION

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 to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in INA §§ 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) (commonly referred to as TRIG), or other non-TRIG matters relating to national security, as described in the CARRP Operational Guidance, Attachment A, discussed above.

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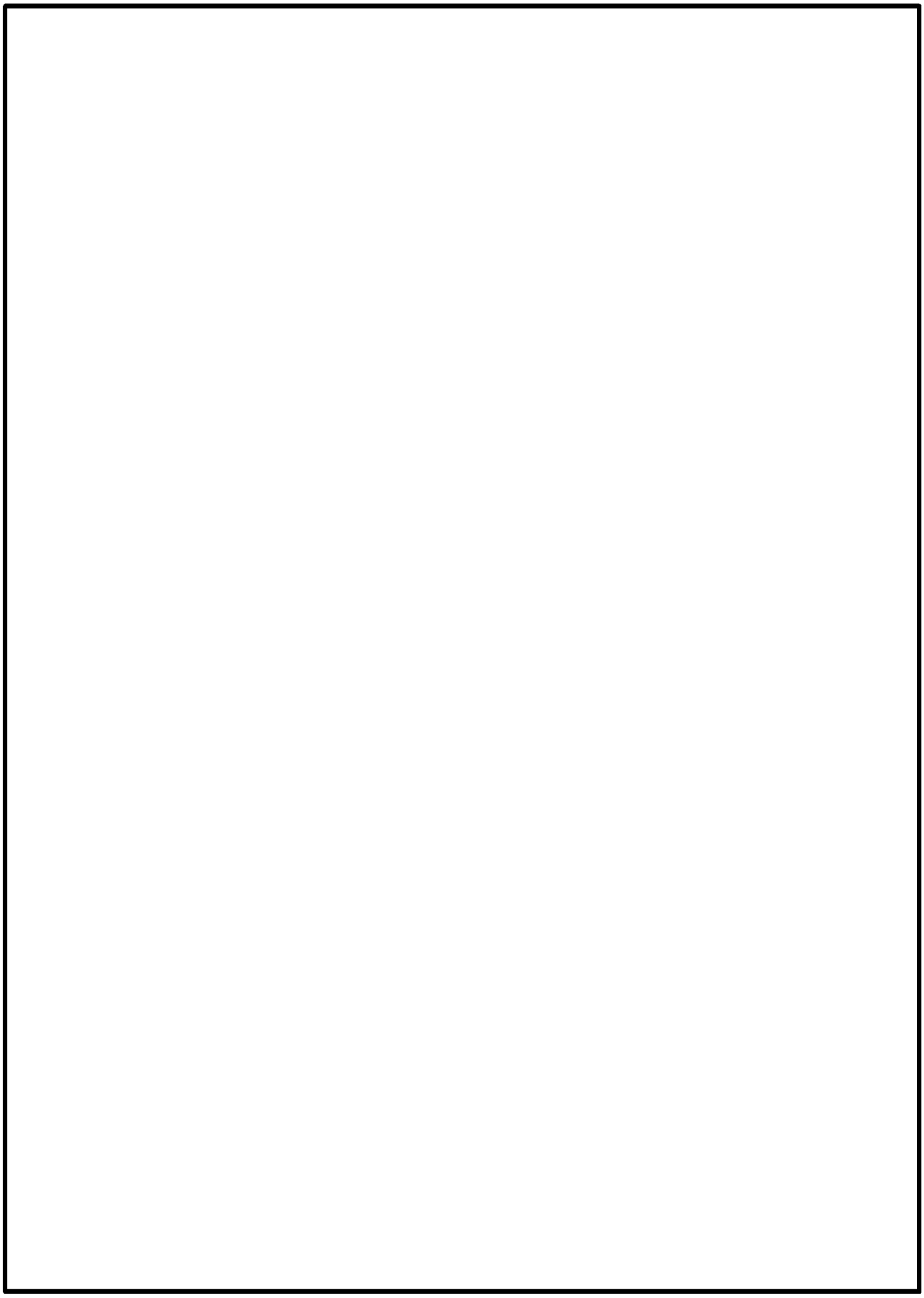

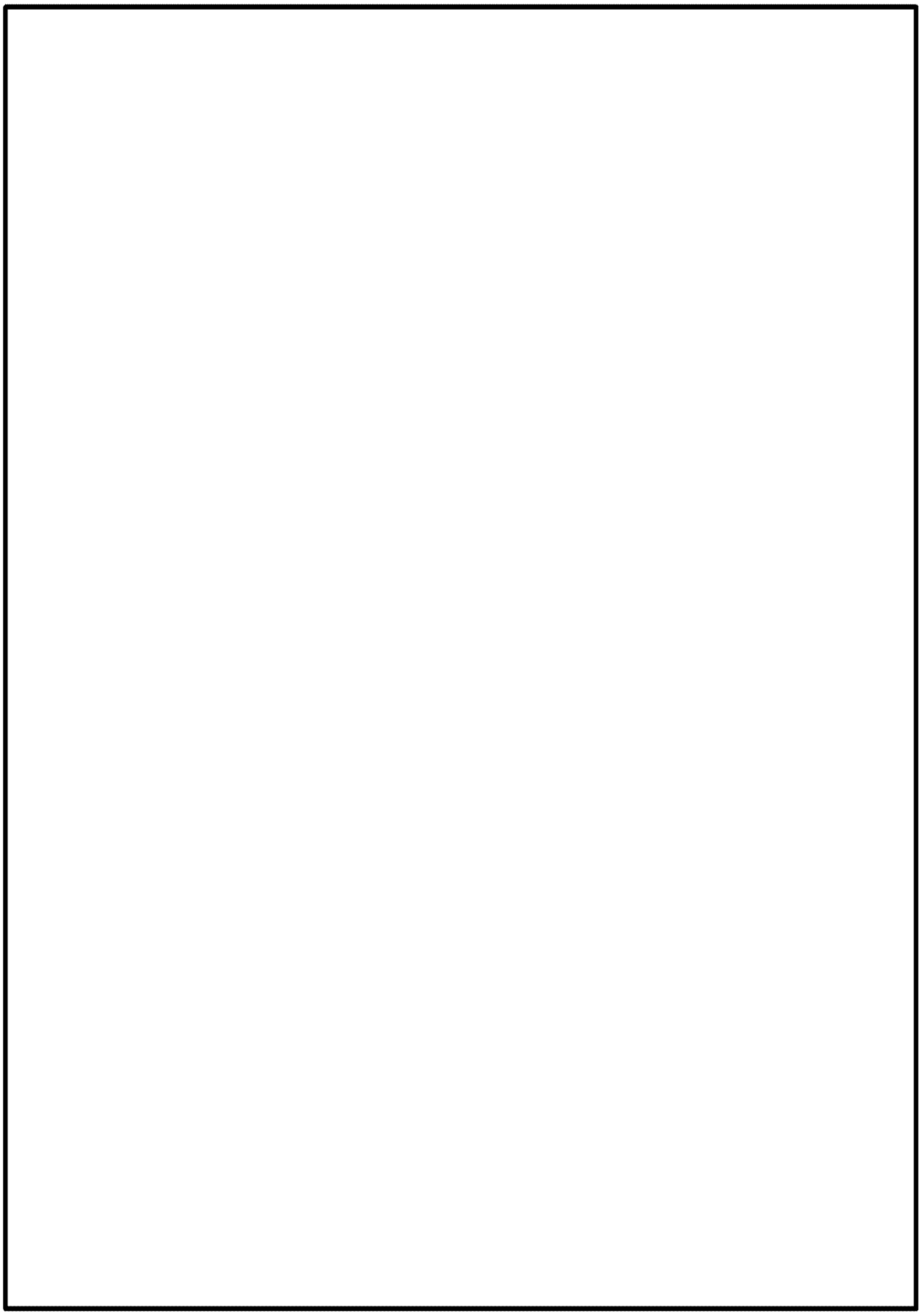

PRACTICAL EXERCISES

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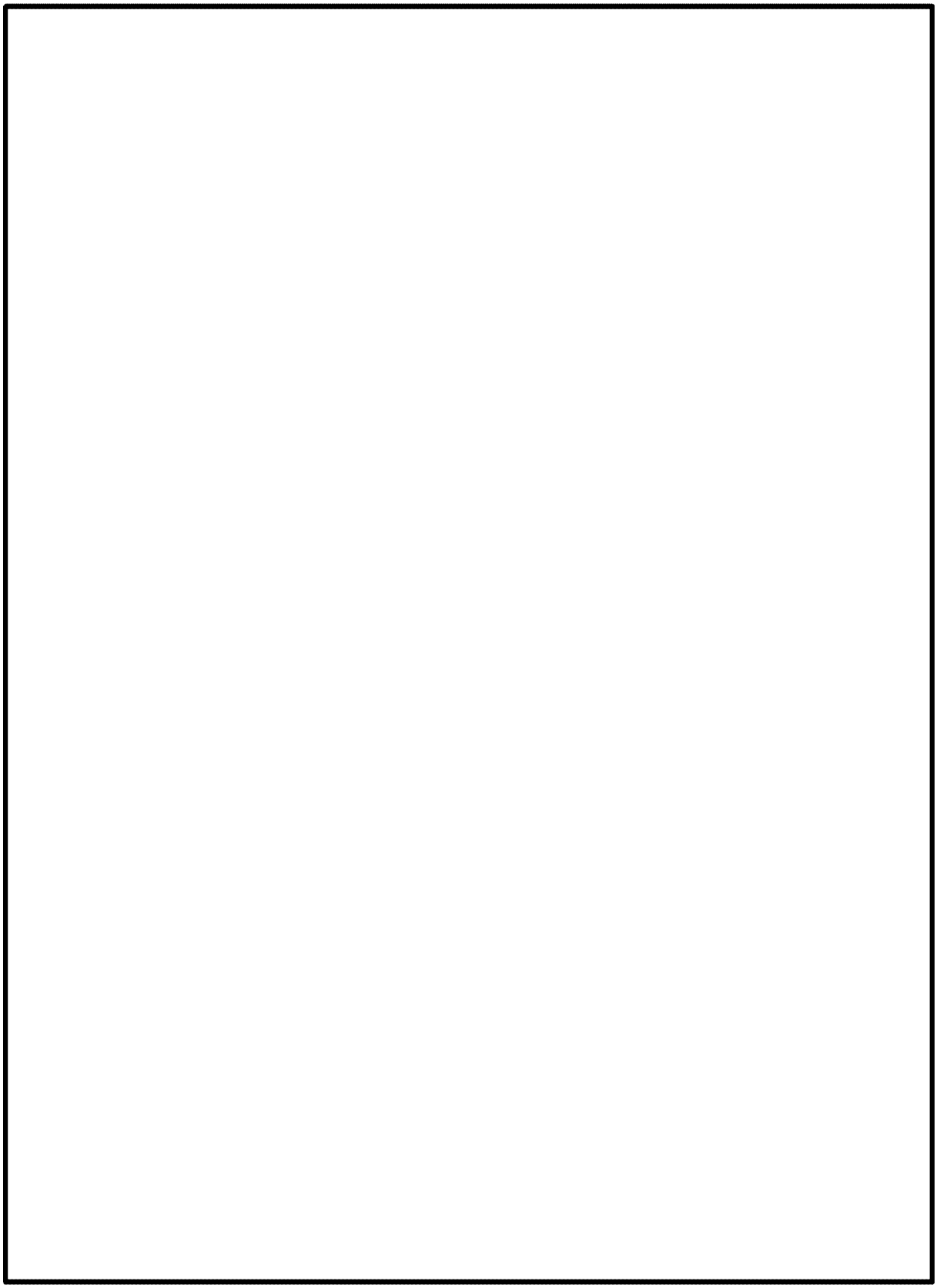

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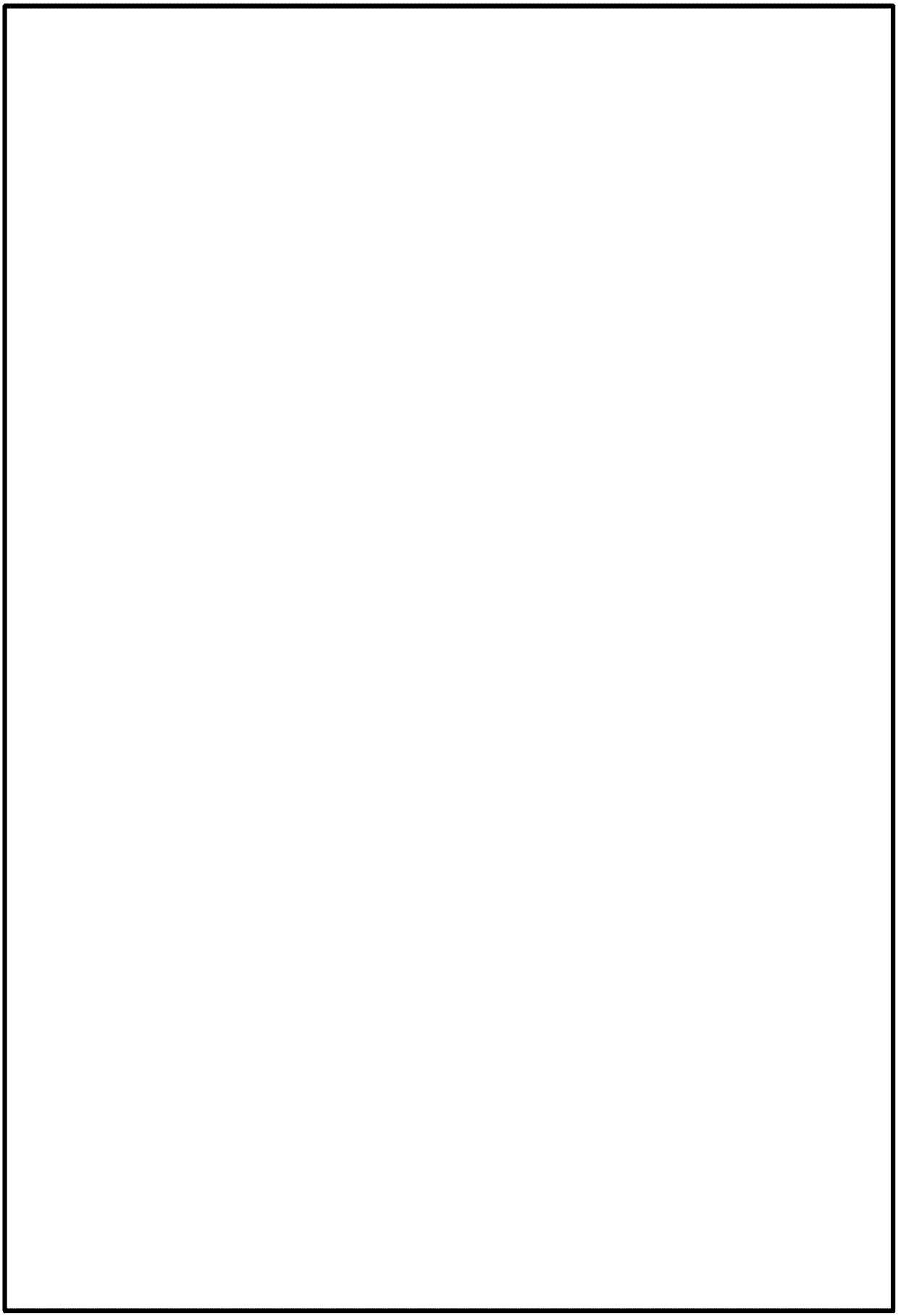

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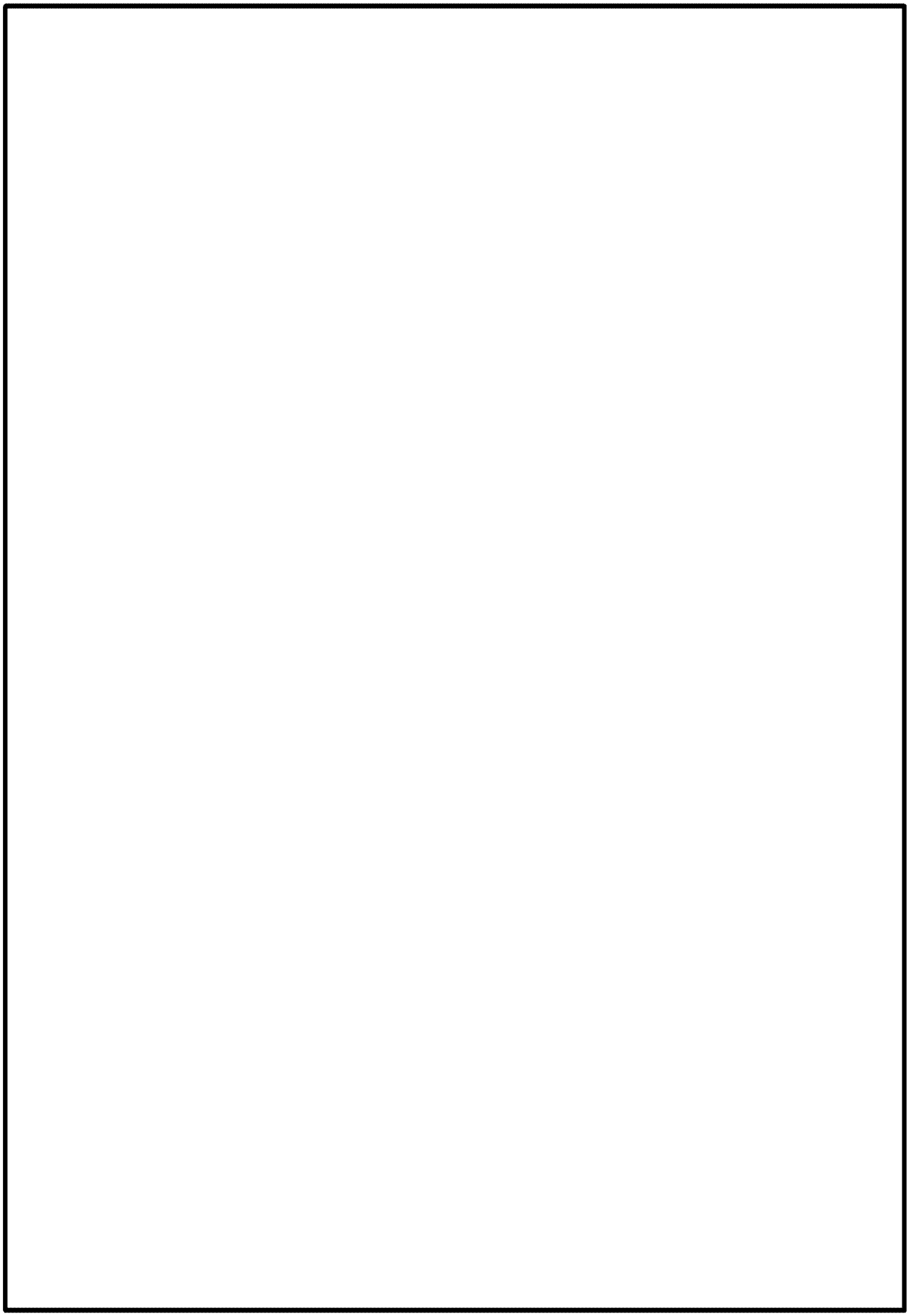

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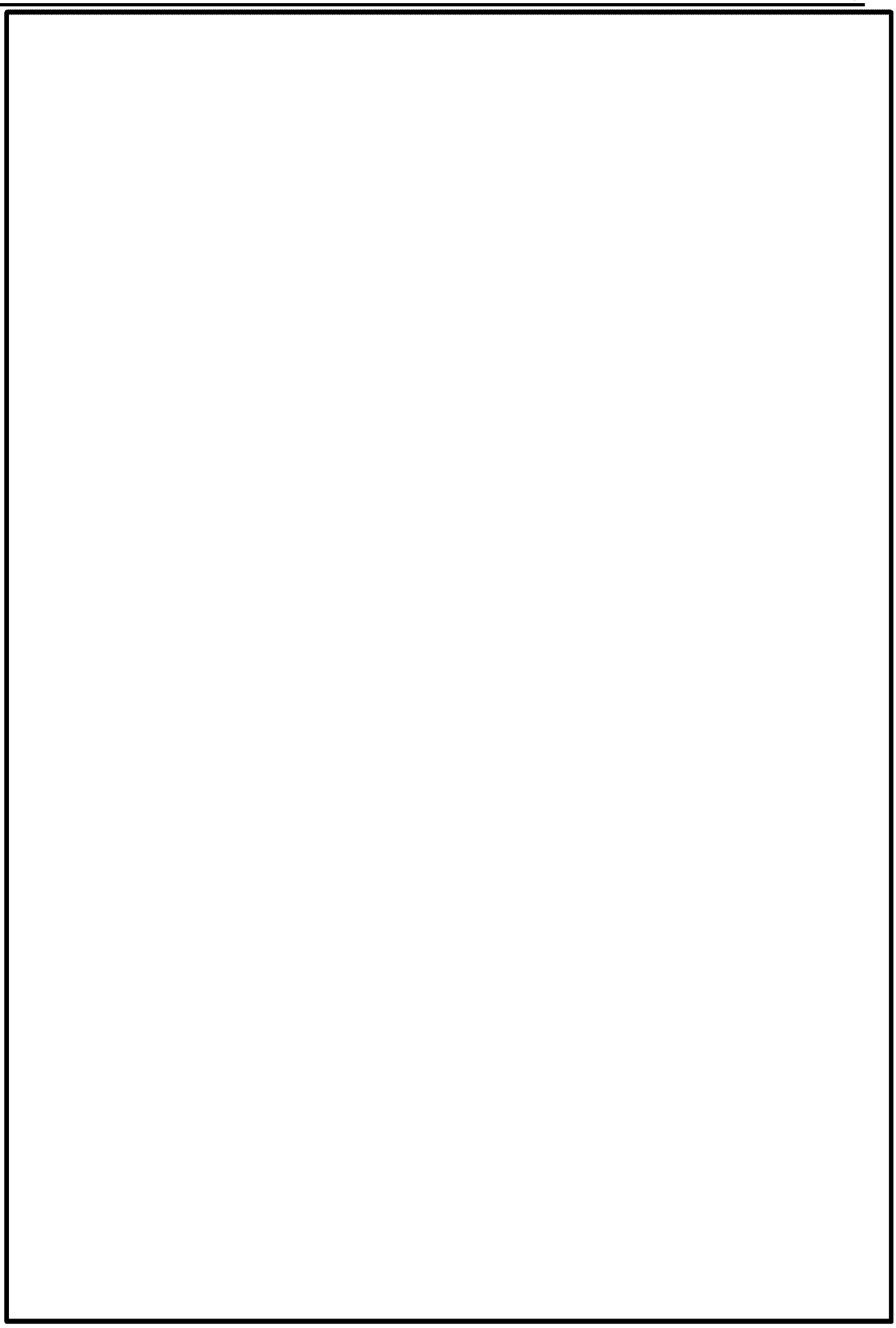

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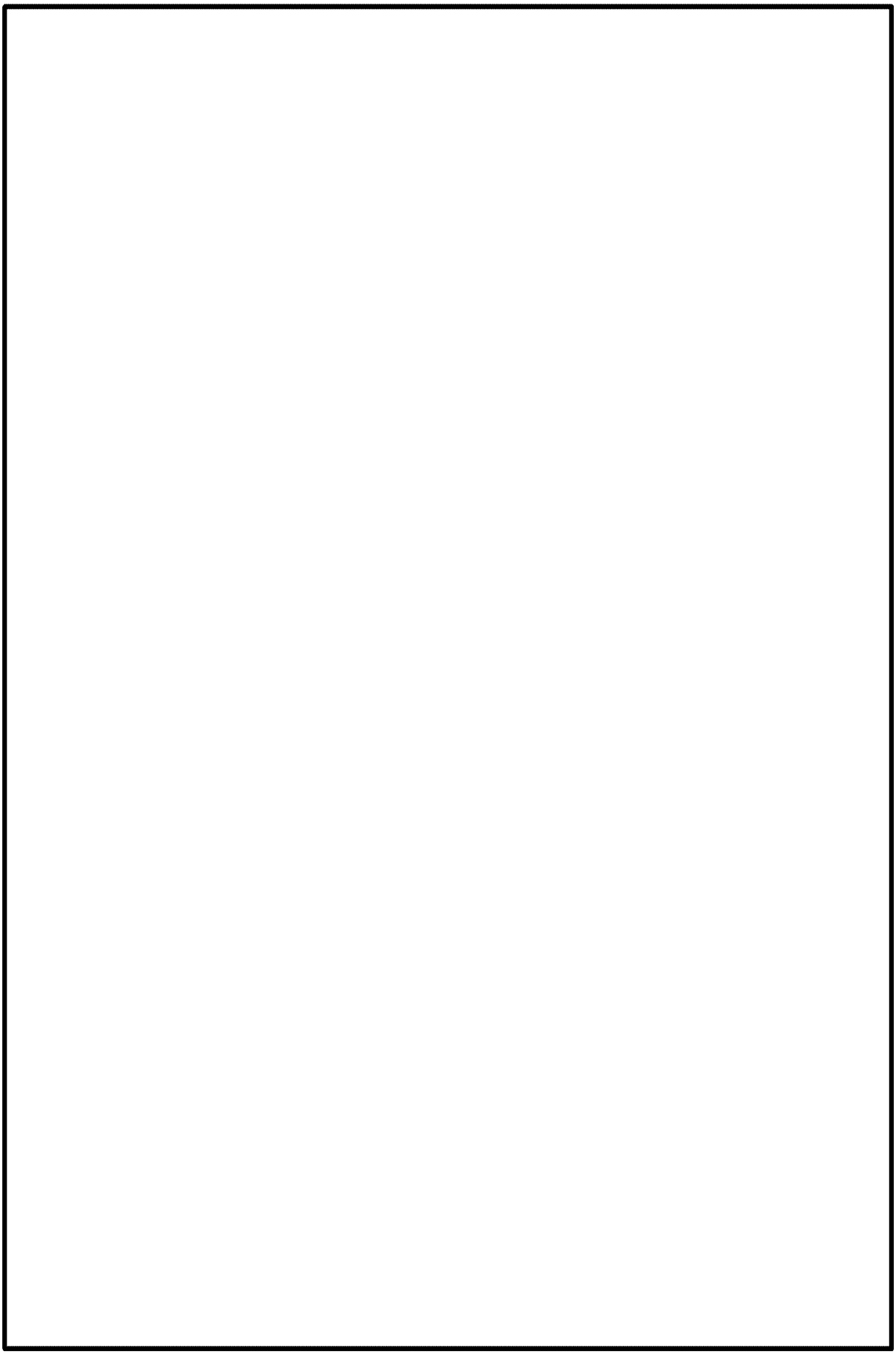

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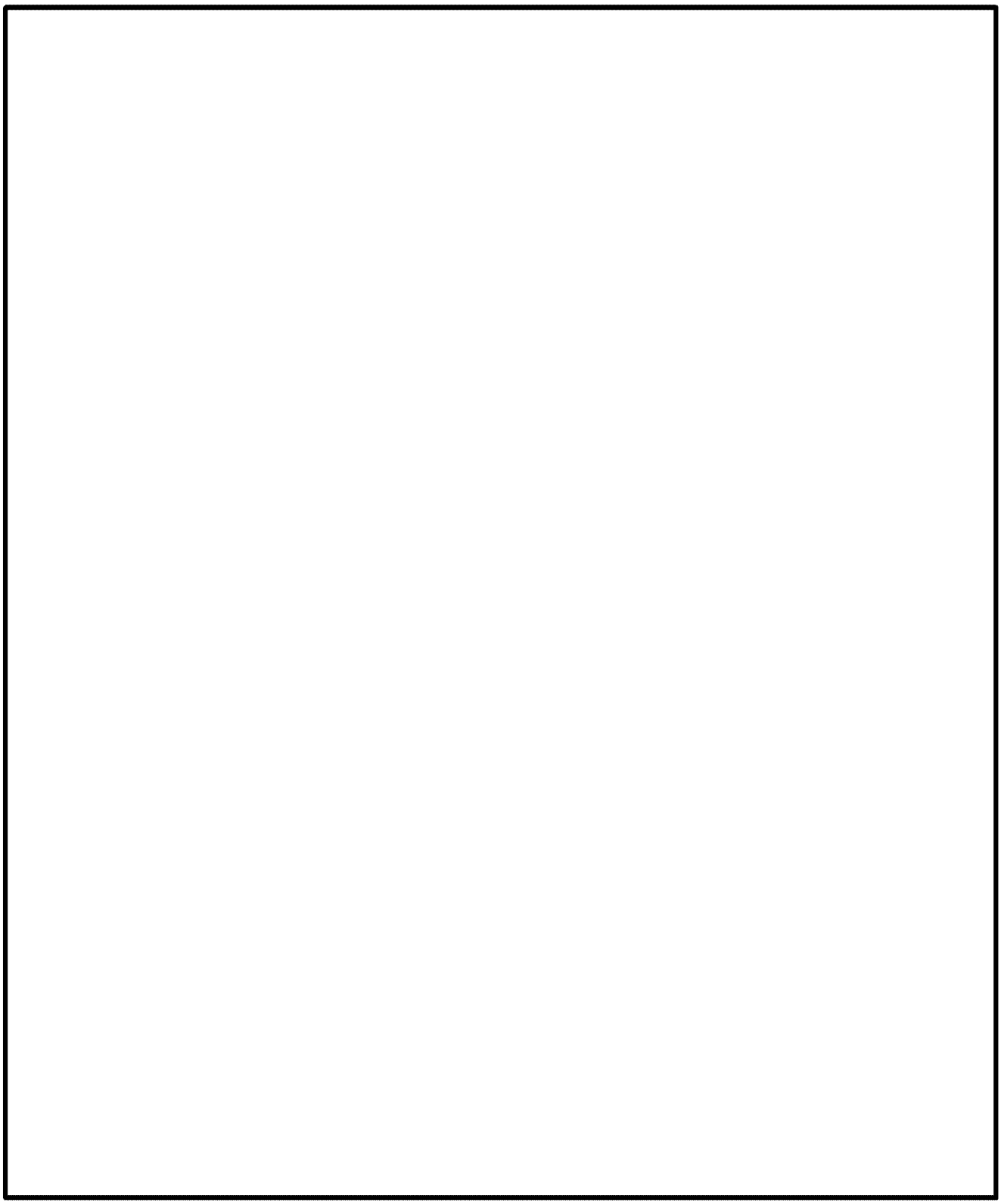

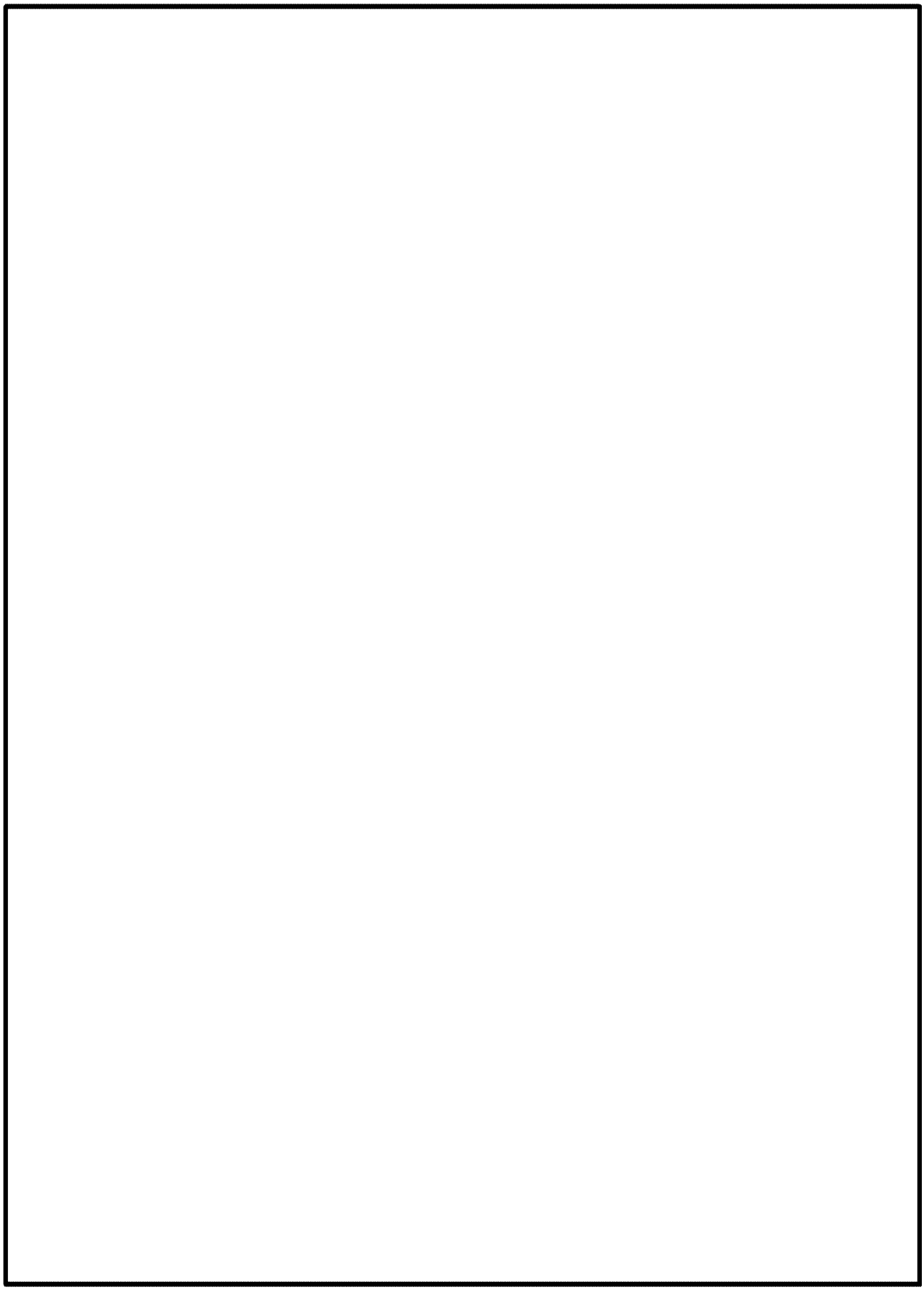

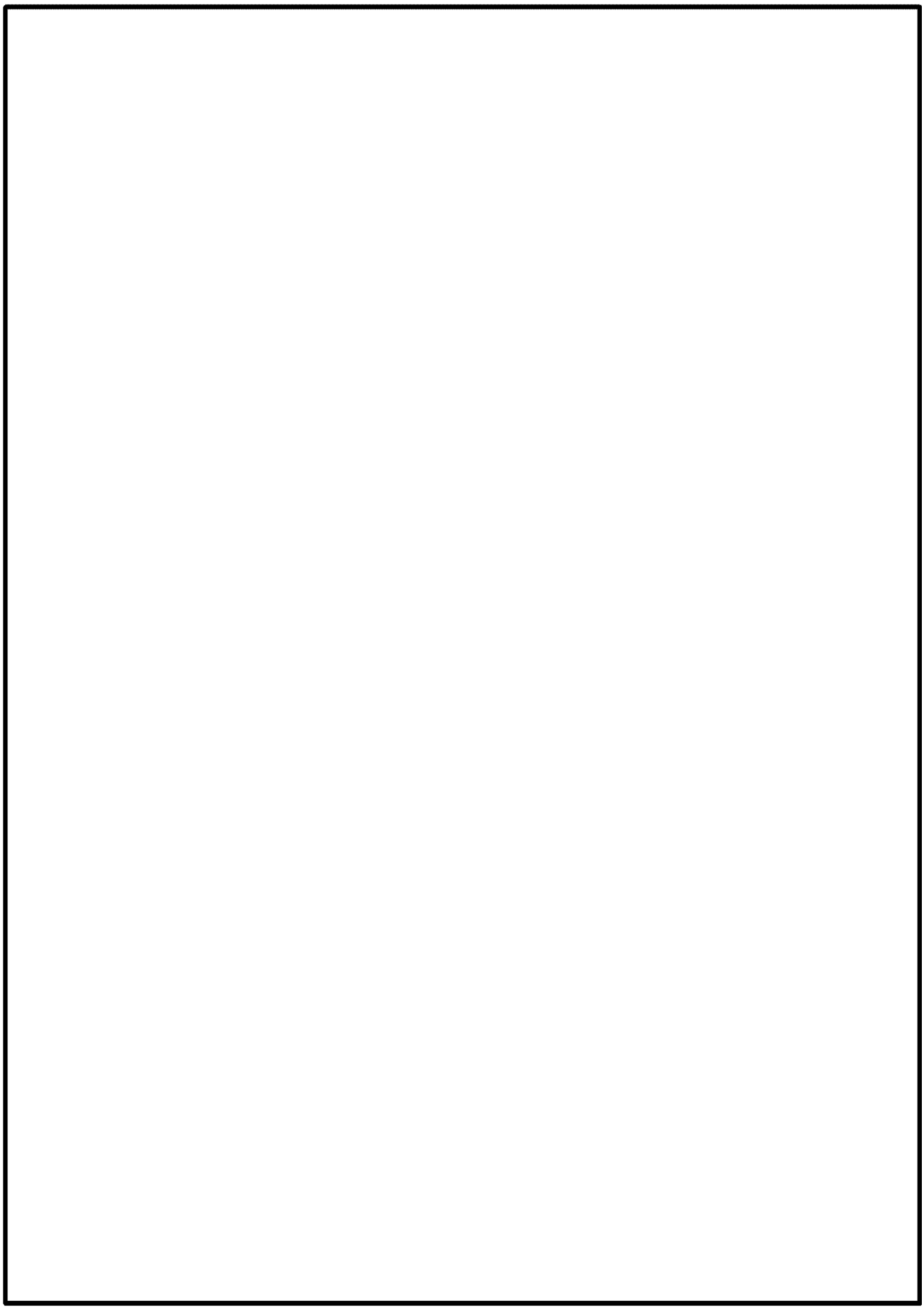

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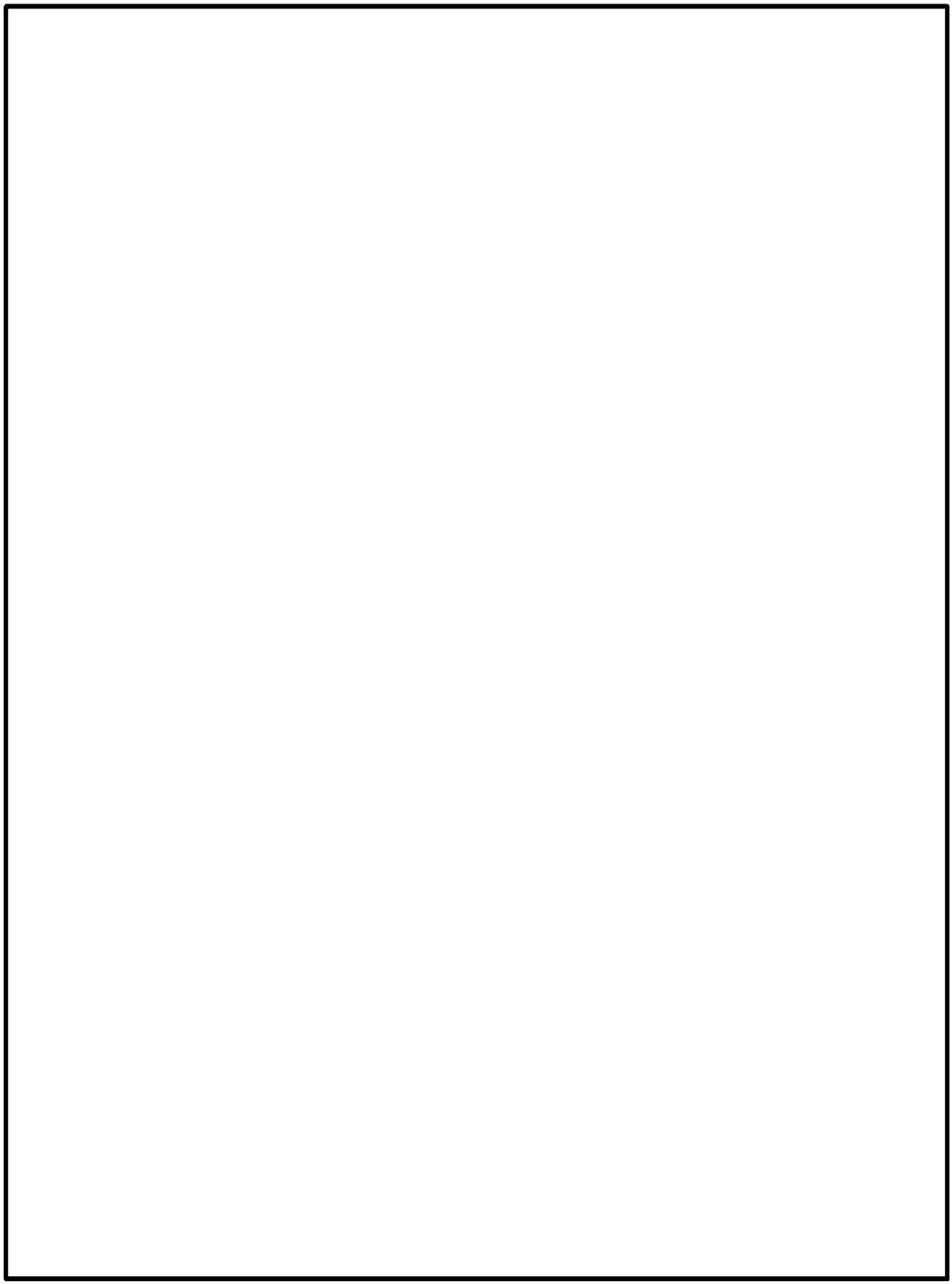

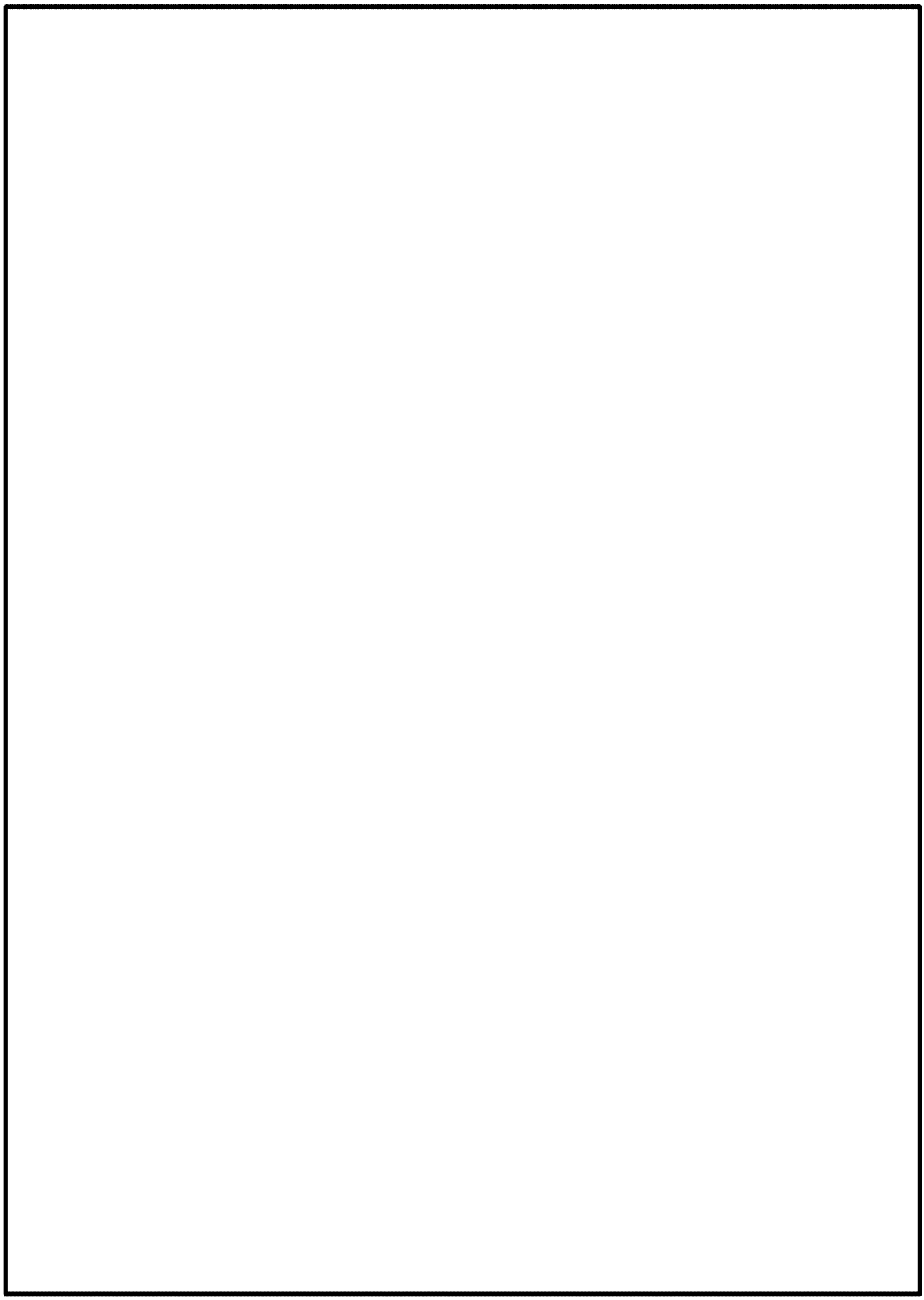

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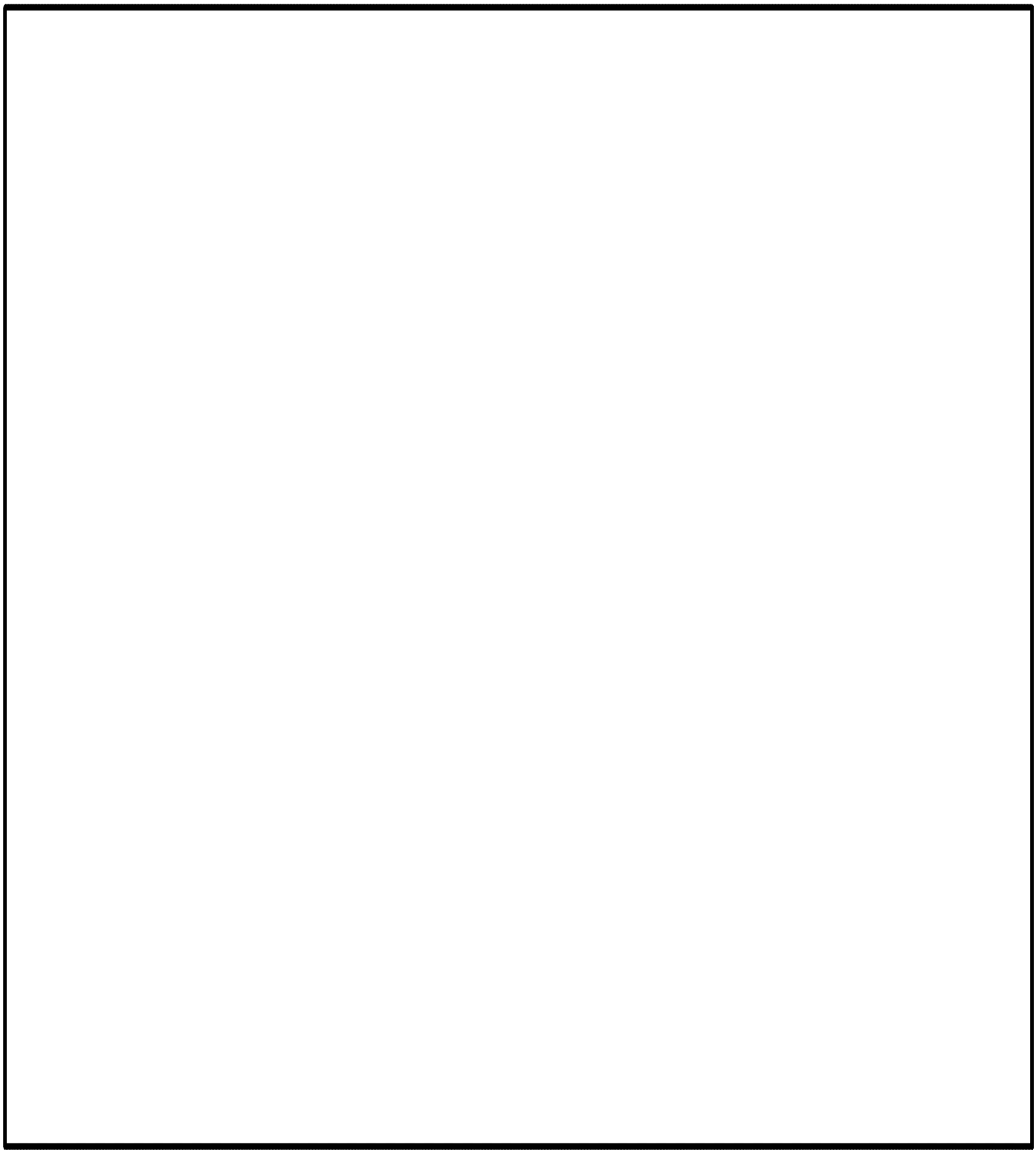
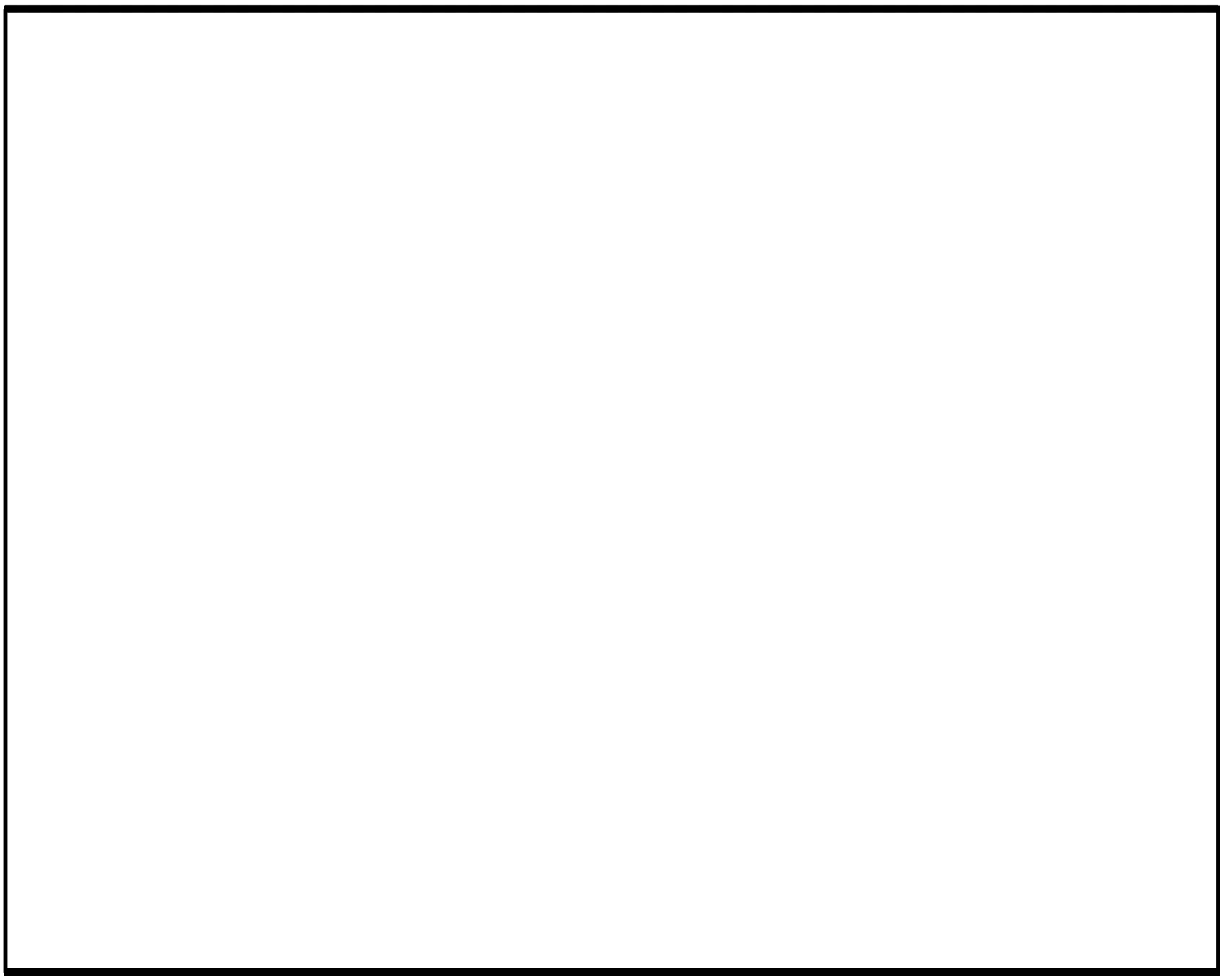
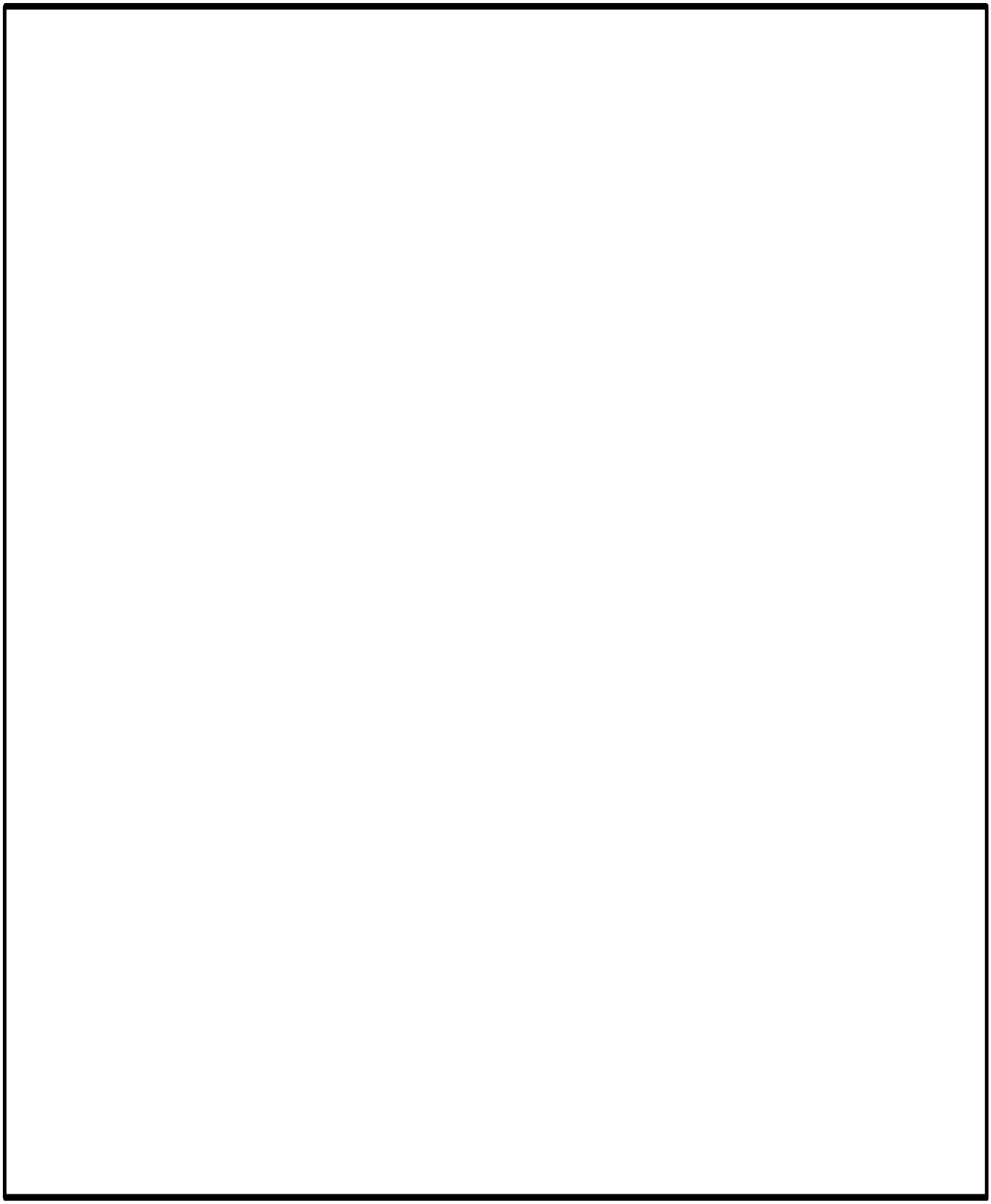
16.10 TRIG Exemption Matrices







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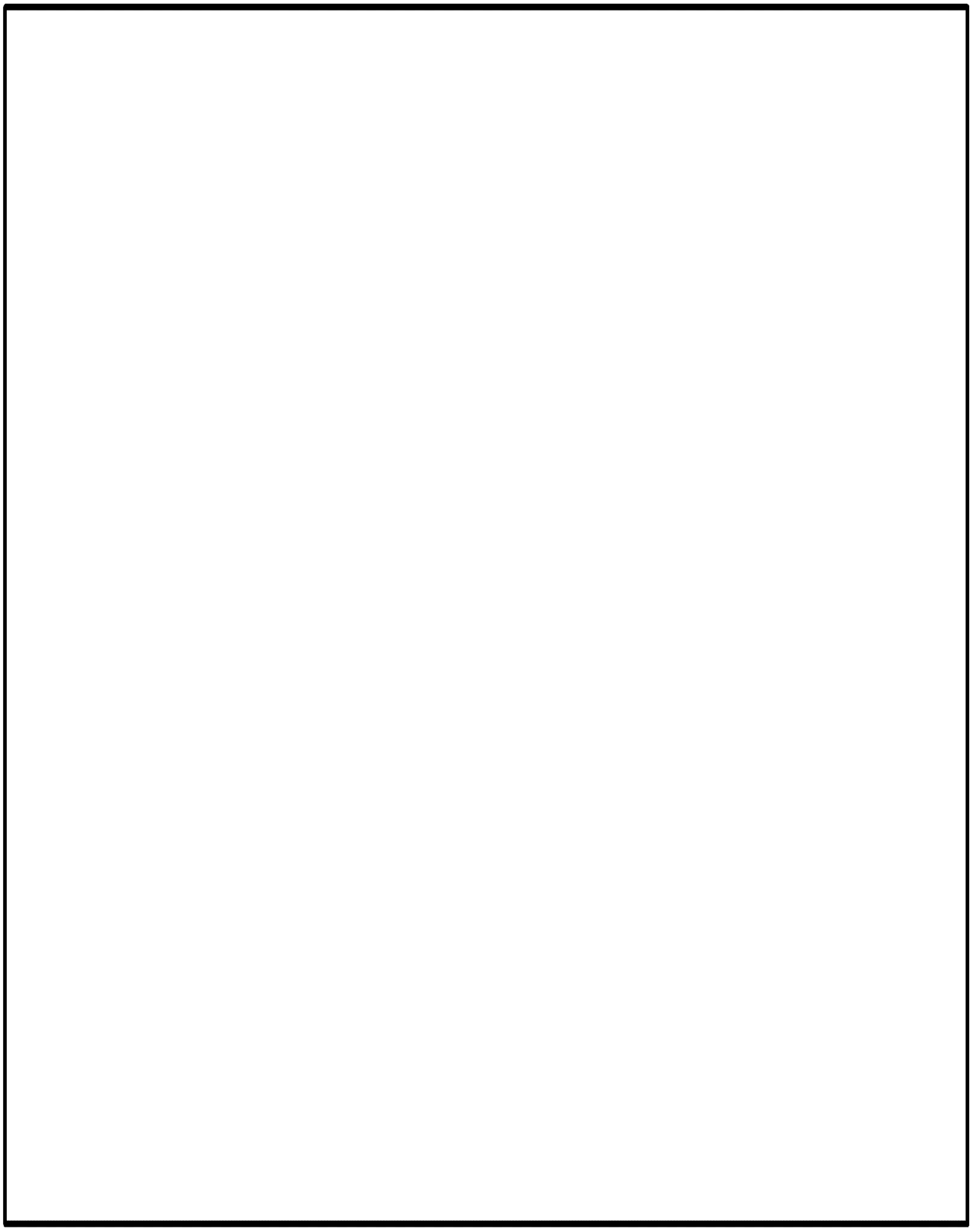

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

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

REQUIRED READING

1."Processing of Refugee Cases with National Security Concerns" Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).

2."Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns" Issued along with Attachment – "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" Memo and Operational Guidance, Barbara Strack, Chief of Refugee Affairs Division (May 14, 2008).

3. Summary of Terrorism-Related Inadmissibility Provisions

4. CAA Group Exemptions Chart

ADDITIONAL RESOURCES

1. USCIS Connect, RAD page (contains links to guidance and memos on TRIG, TRIGFAQs and CARRP).

SUPPLEMENTS

RAD Supplement – 1

12.1 Burden and Standard of Proof for TRIG Inadmissibility Grounds

If the evidence indicates that the applicant may be inadmissible to the United States pursuant to INA § 212(a), then the applicant must establish clearly and beyond doubt that the disqualifying issue does not apply in order to be eligible for resettlement in the U.S. as a refugee pursuant to INA § 207(c).[178]

[178] INA § 235(b)(2)(A).

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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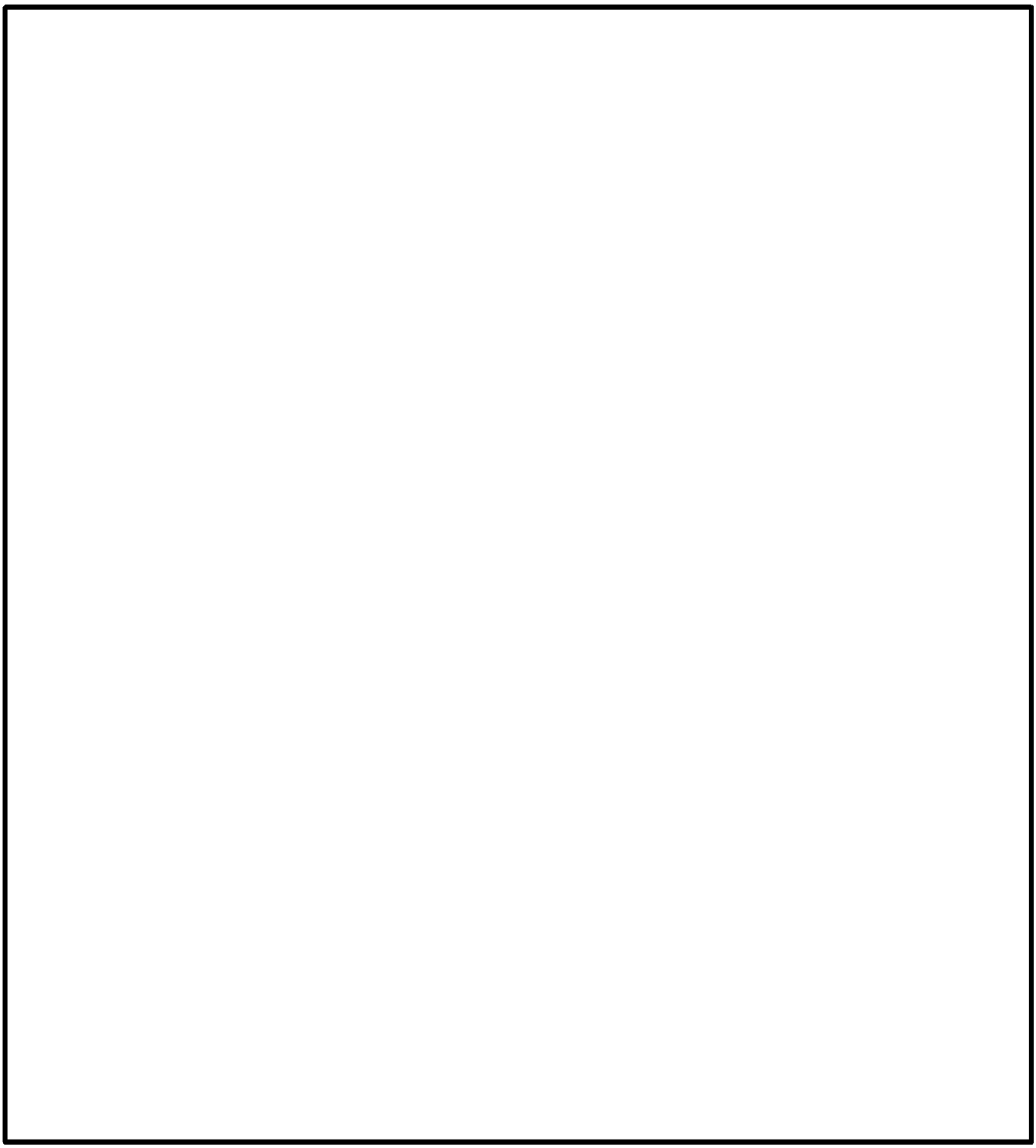

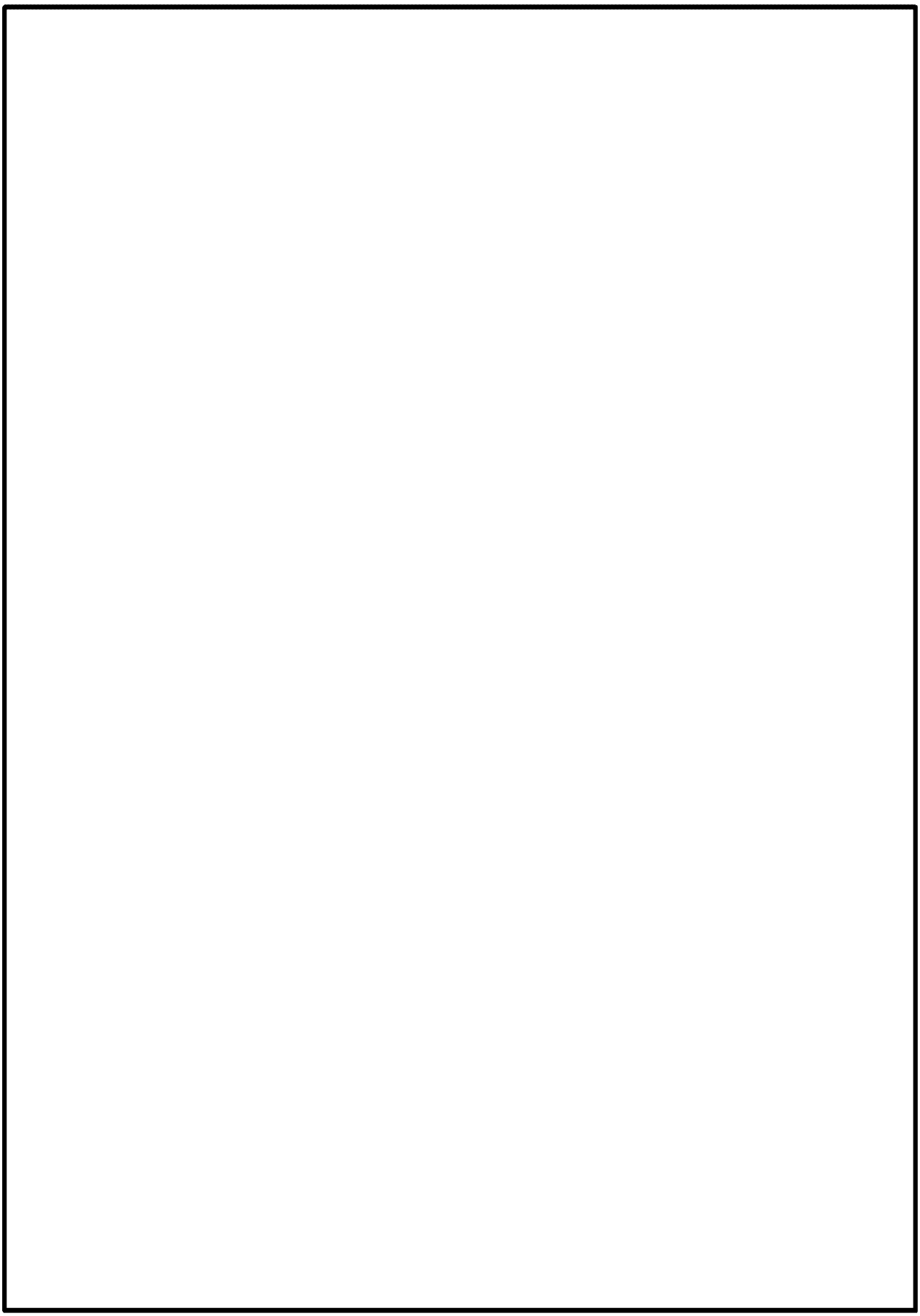

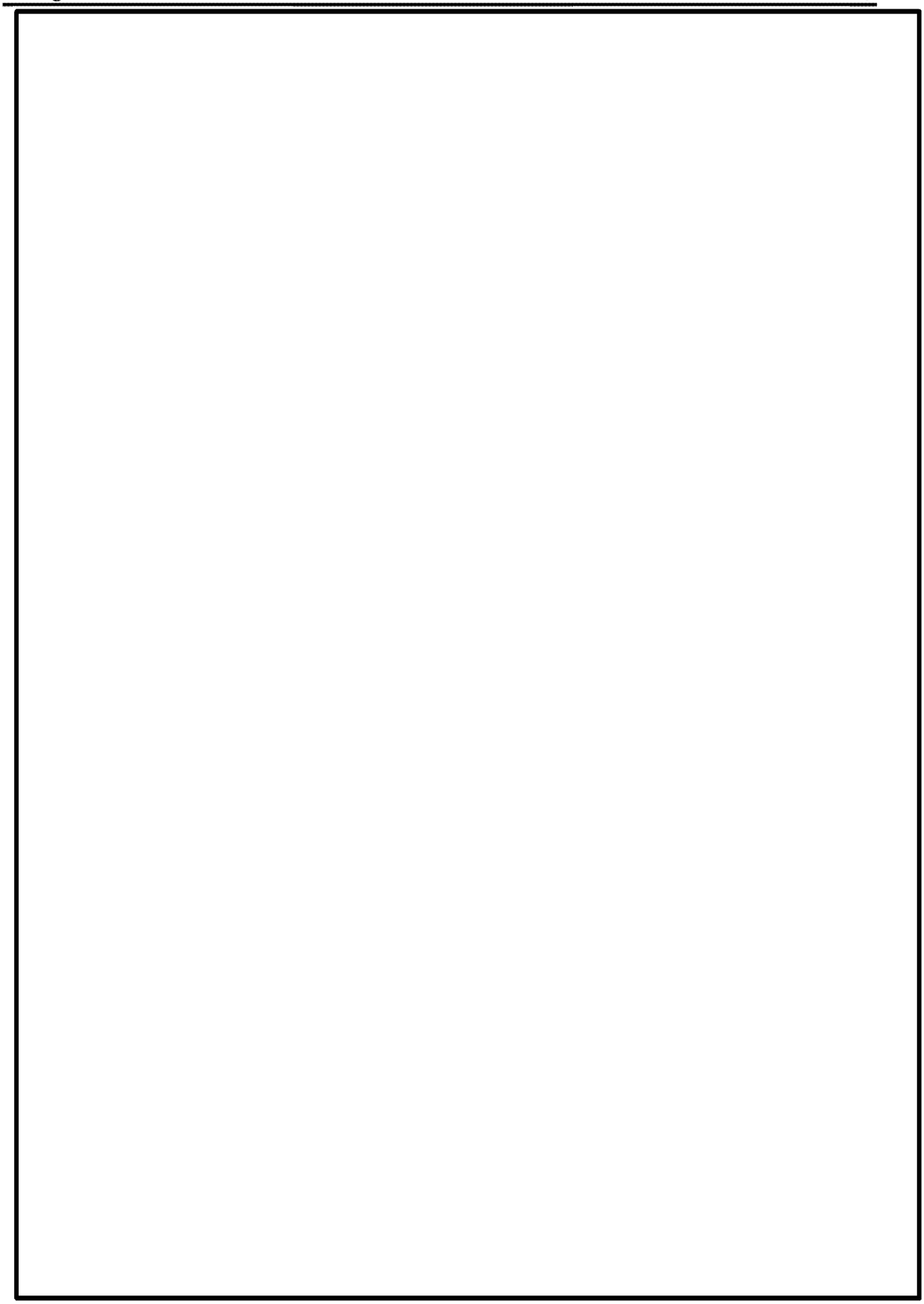

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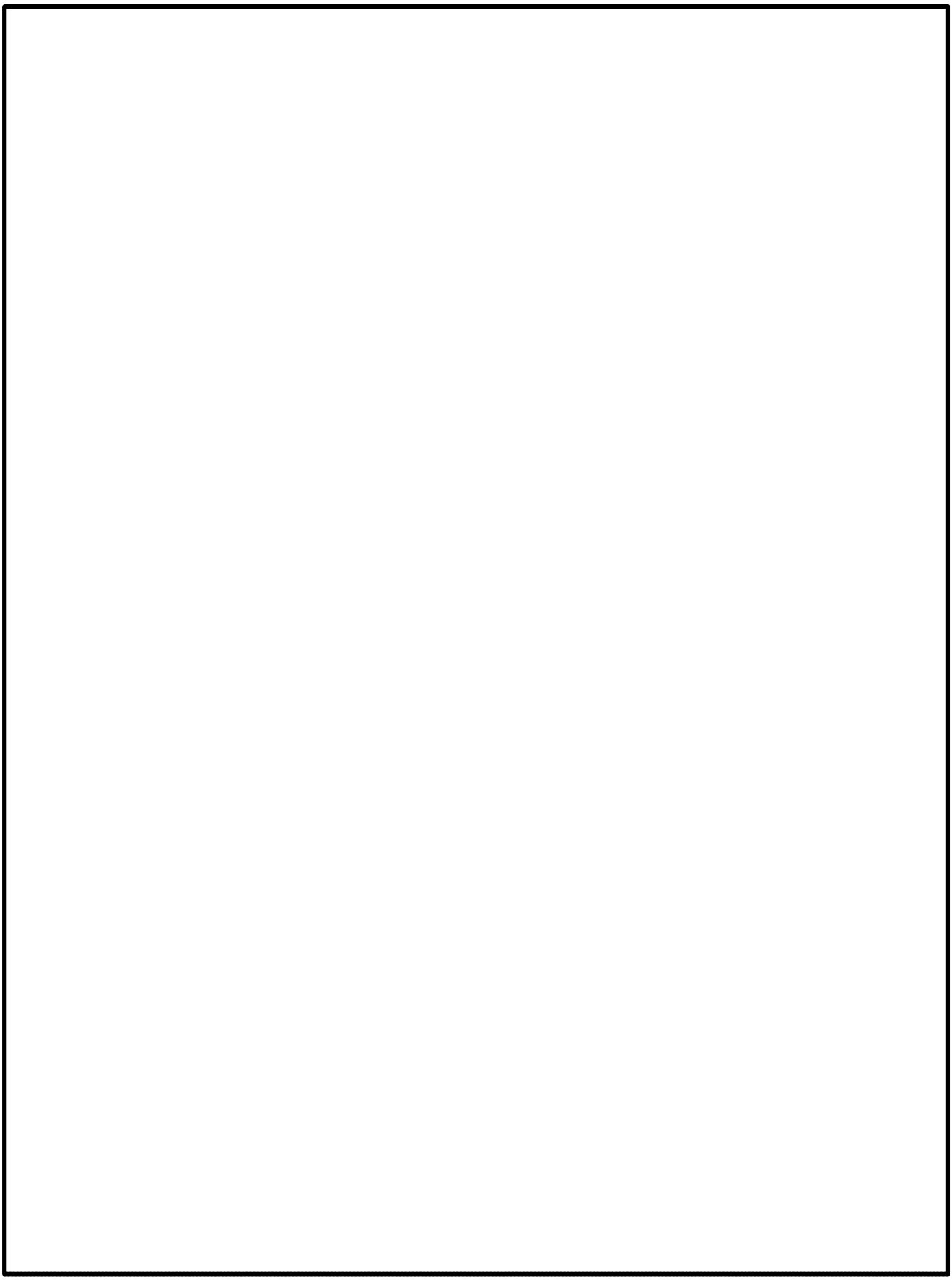

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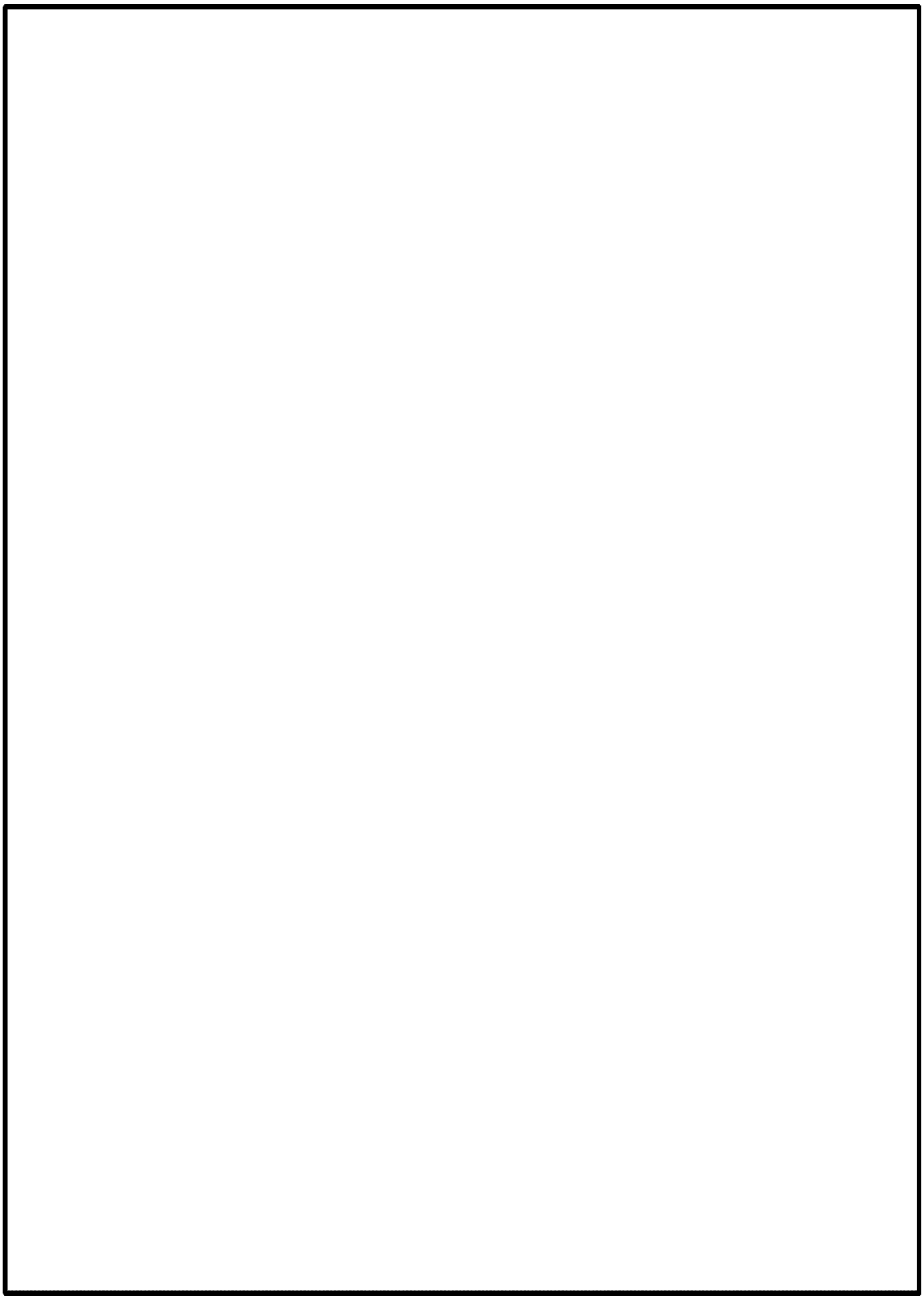

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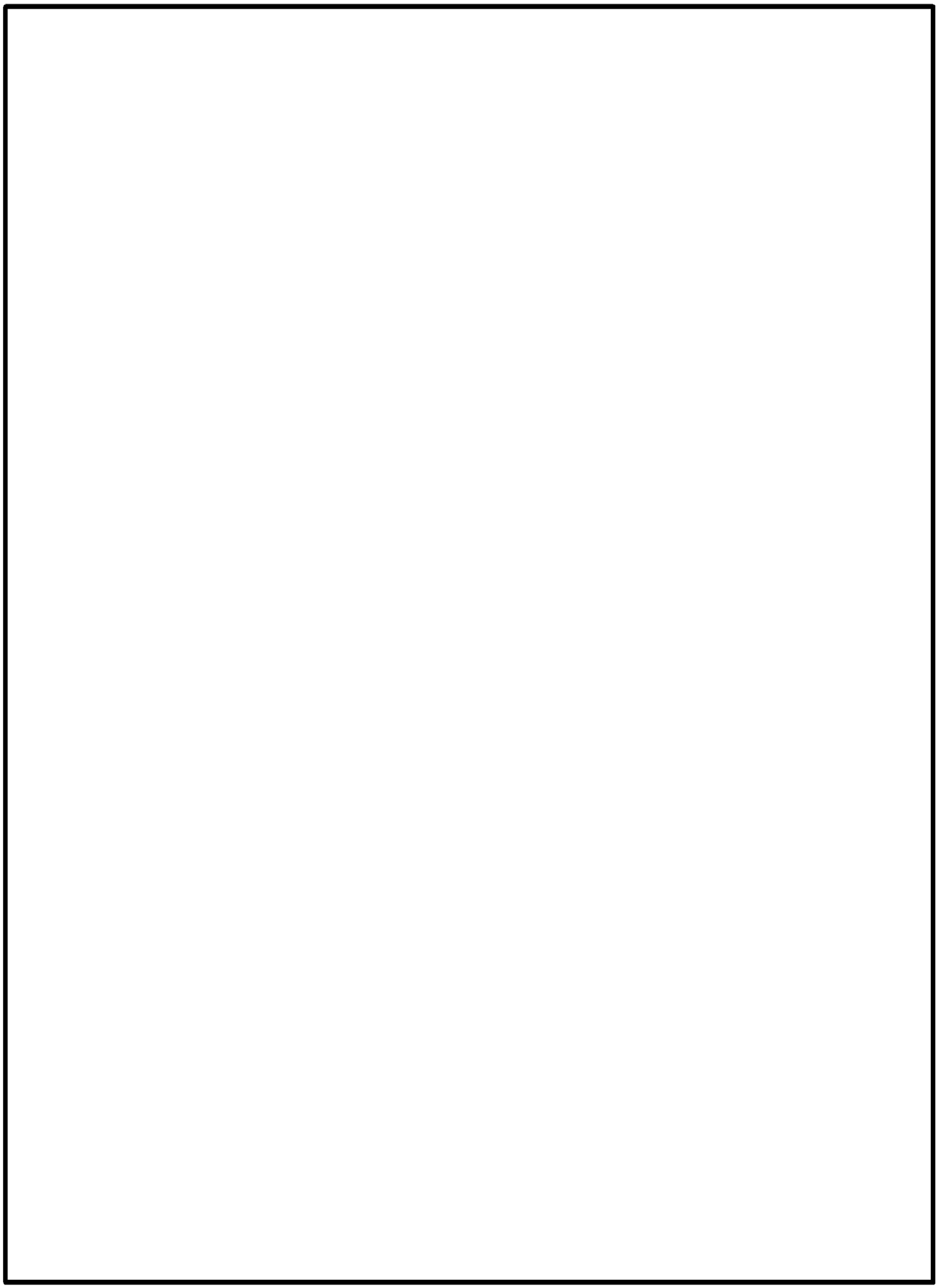

SUPPLEMENT B – ASYLUM DIVISION

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.[181]

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.[182] 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."[183]All discretionary denials and referrals are submitted to Asylum HQ for review.

(b)(7)(e)

[redacted]

[181] 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).

[182] *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

[183] *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

(b)(7)(e)

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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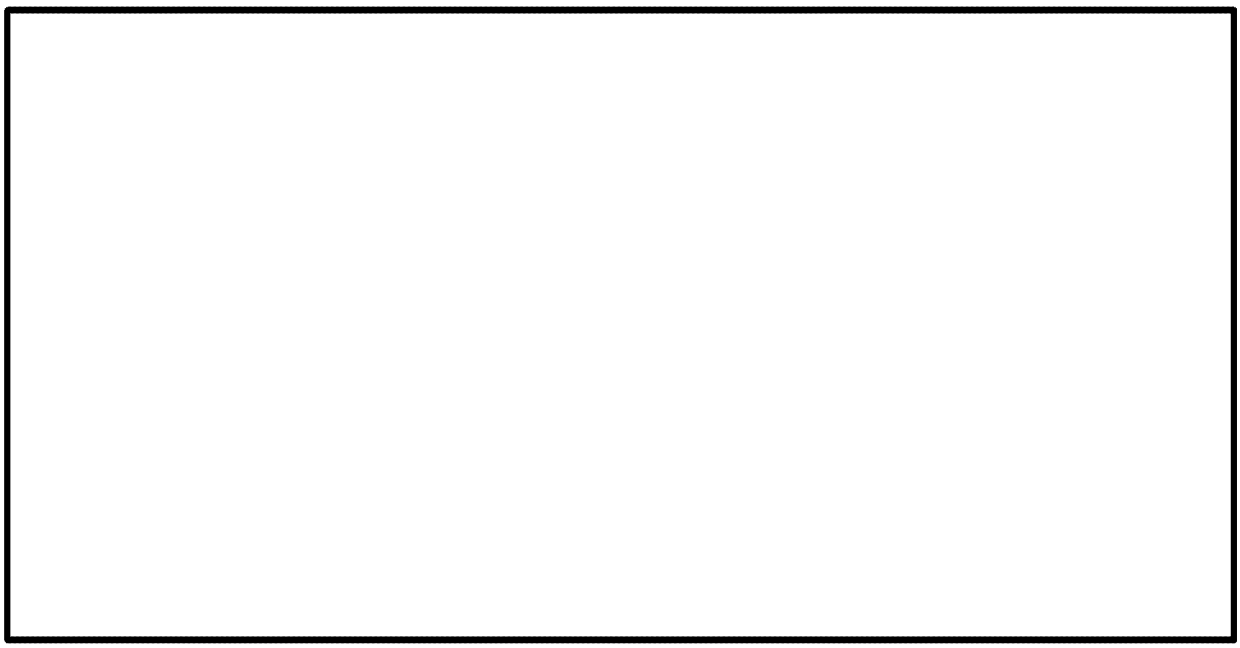

U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

ANALYZING THE PERSECUTOR BAR

TRAINING MODULE

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

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

Task/ Skill #	Task Description
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

Date	Section (Number and Name)	Brief Description of Changes	Made By
4/14/15	Throughout document	Minor formatting edits; fixed broken links; a few recent cases added	RAIO Trng

TABLE OF CONTENTS

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."[1] The INA also specifically bars the Attorney General from granting asylum to such a person.[2] The persecutor bar may apply to government actors as well as private individuals.[3]

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.

[1] INA § 101(a)(42).

[2] 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).

[3] *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][4] and the Holtzman amendment[5]). 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.[6] 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)

[4] 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).

[5] INA § 212(a)(3)(E); *see also* INA § 237(a)(4)(D).

[6] 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.[7] 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.[8] 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.[9] 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.[10]

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.[11]

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[7] *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…").

[8] 8 C.F.R. § 208.9(b); *UNHCR Handbook*, ¶¶ 196, 205(b)(i).

[9] For further information on the preponderance of the evidence standard, see RAIO Training Module *Evidence Assessment.*

[10] *United Nations Convention Relating to the Status of Refugees*, art. 9F, July 28, 1951, 189 U.N.T.S. 150.

[11] *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.[12]

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

[12] *Yukmirovic 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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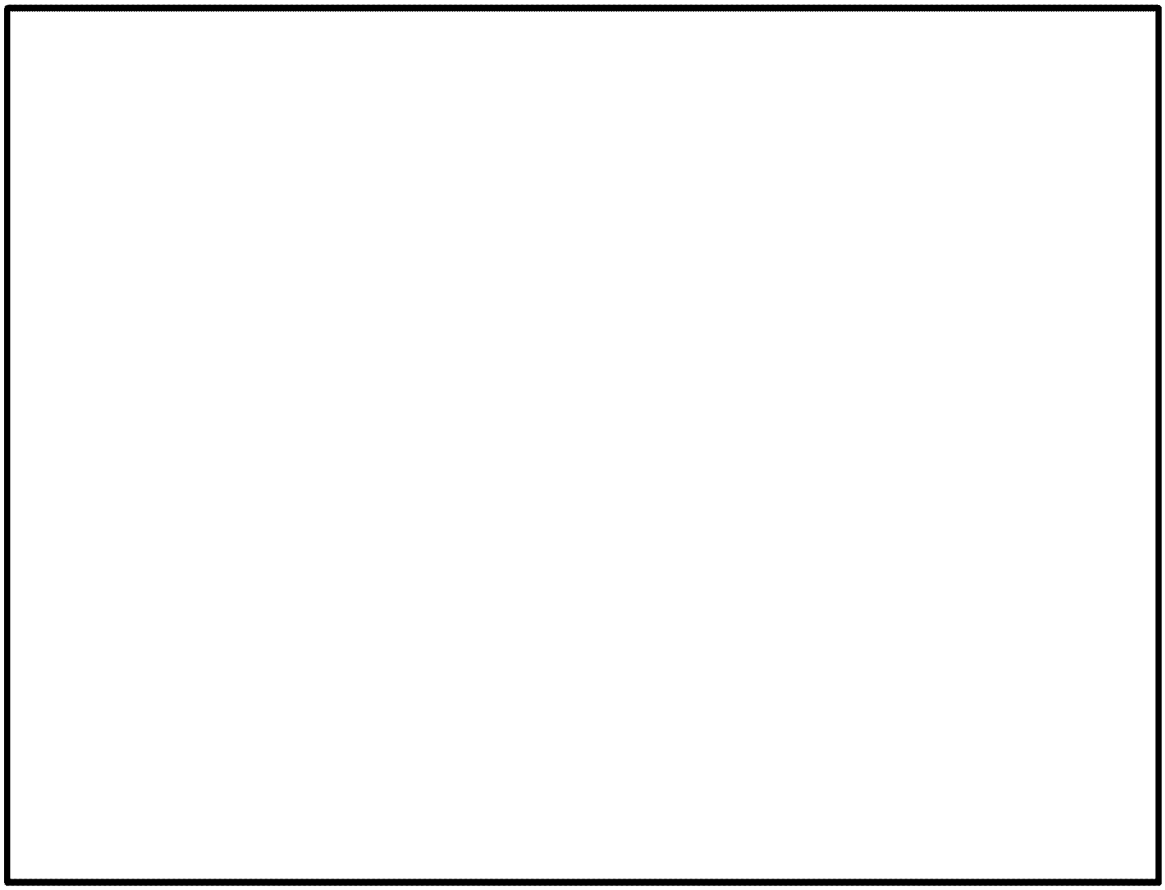

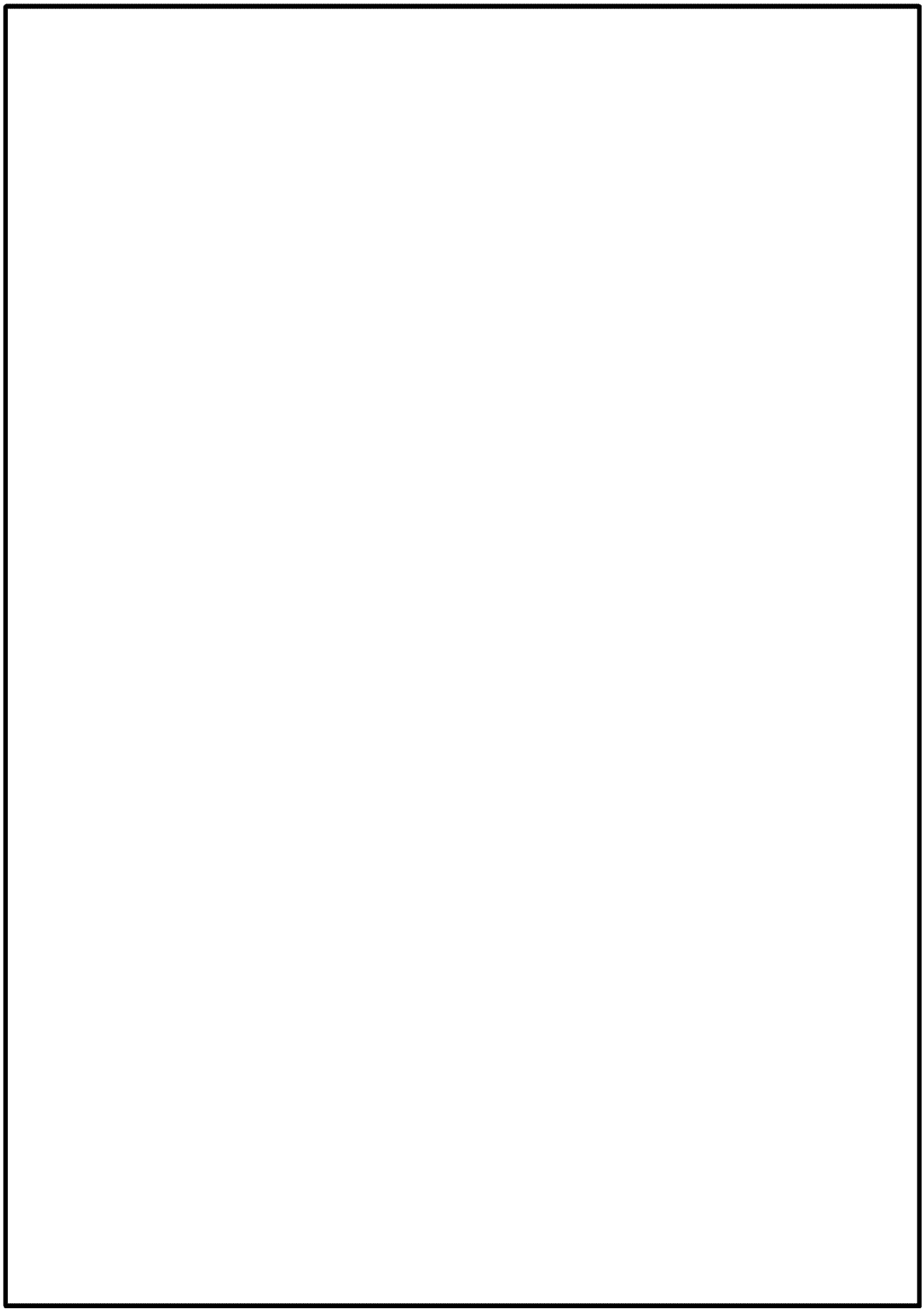

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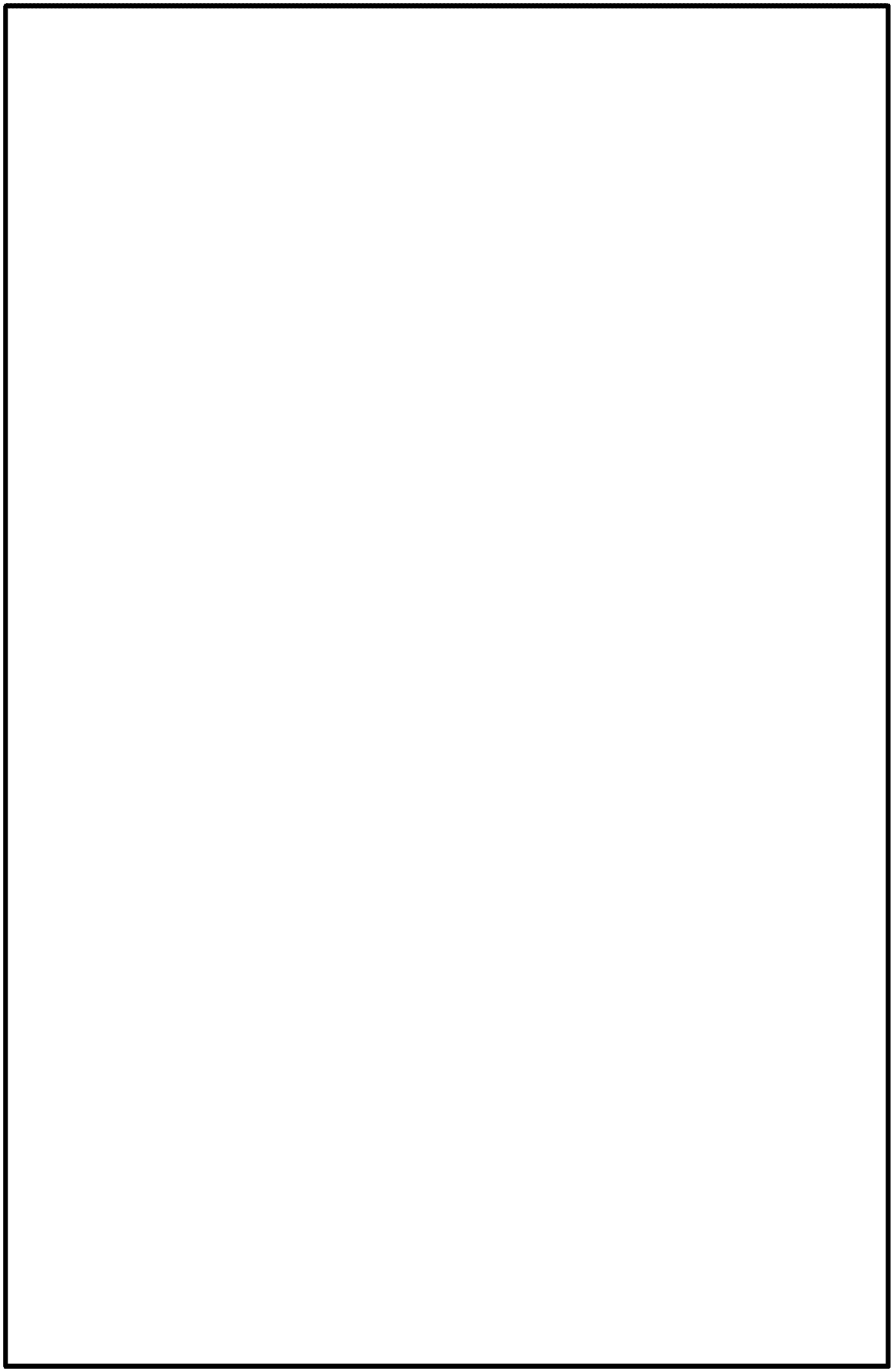

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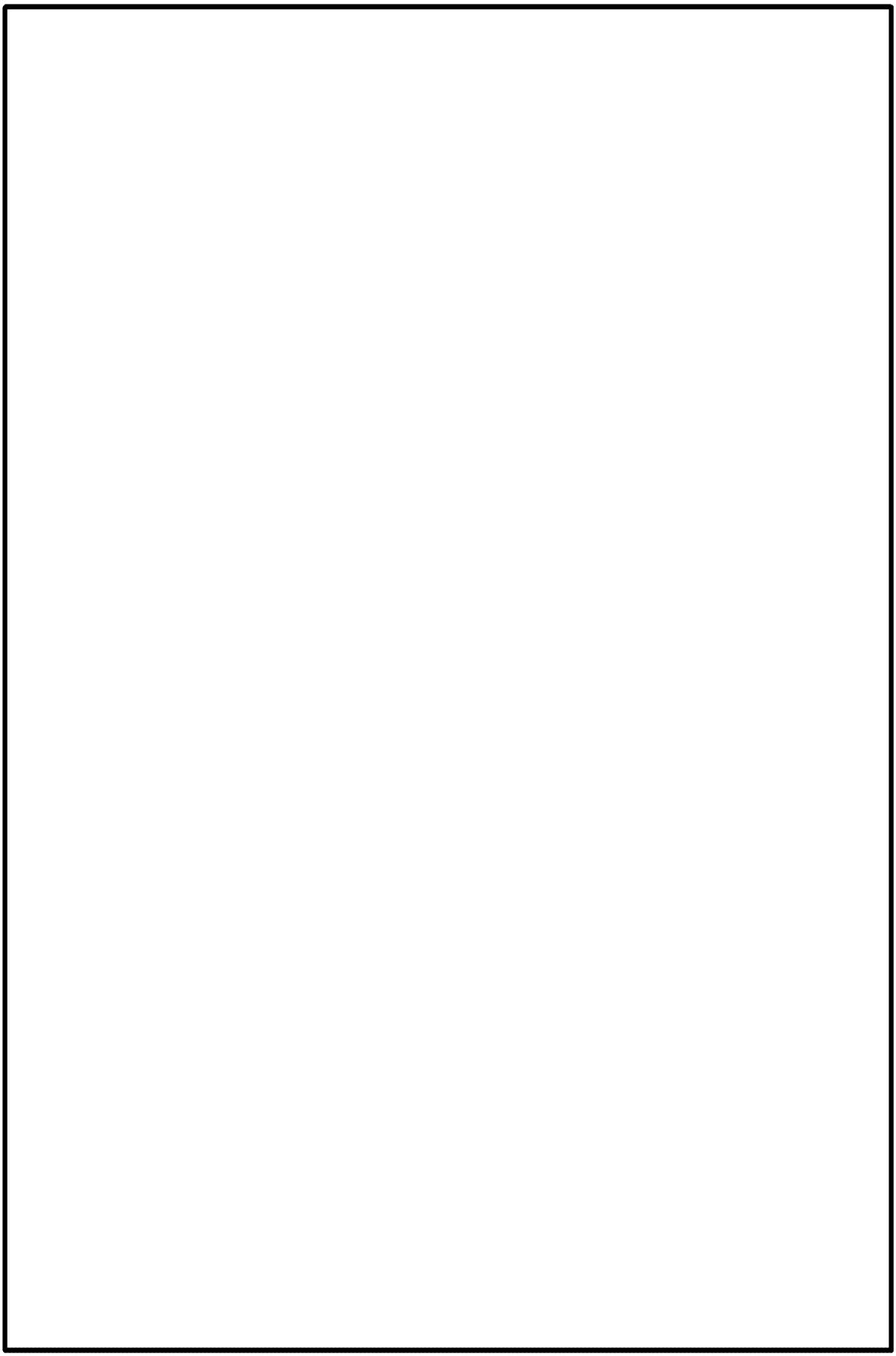

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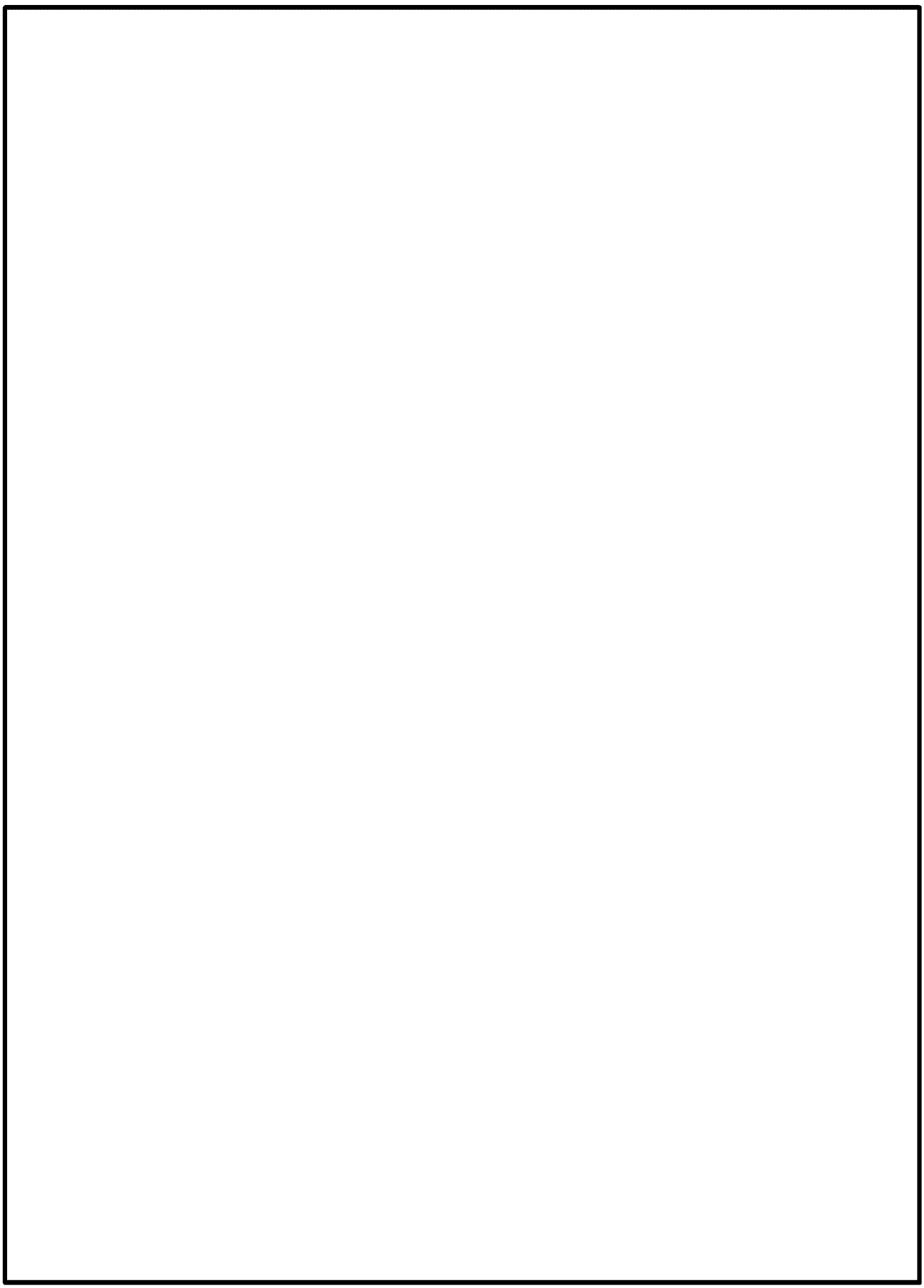

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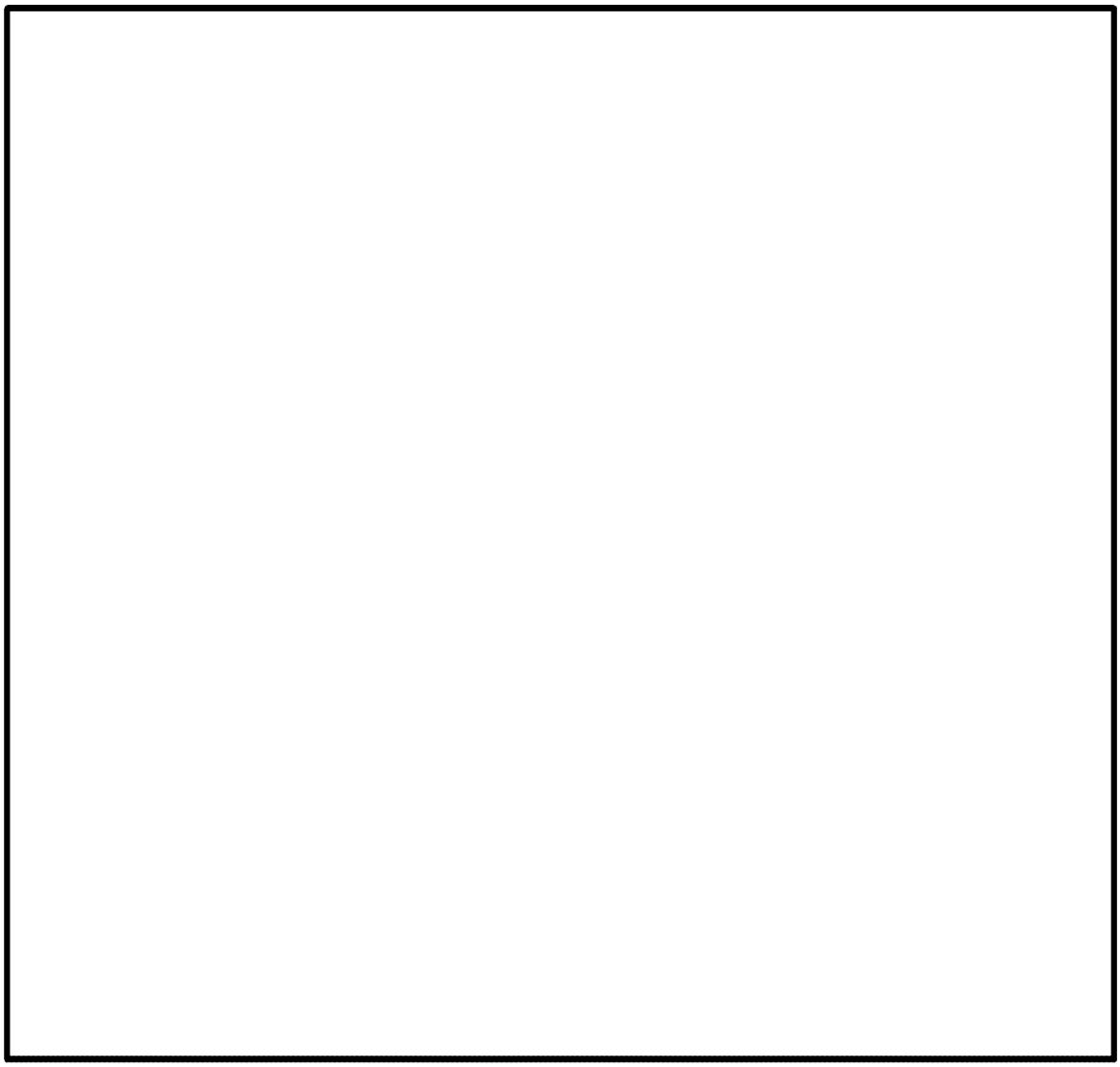

2.2.3 Was the Act a Legitimate Act of War or Law Enforcement?

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:

[18] *Bah*, 341 F.3d at 351.

[19] *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.[20]

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.[21]

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.[22]
>
> 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.[23]

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.[24]

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.[25]

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.

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[20] *Rodriguez-Majano*, 19 I&N Dec. at 816.

[21] *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.

[22] *Rodriguez-Majano*, 19 I&N Dec. at 815-16.

[23] *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*.

[24] *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.").

[25] *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. [26]All countries have the right to investigate, prosecute, and punish individuals for violations of legitimate laws.[27] 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.[28] 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.*

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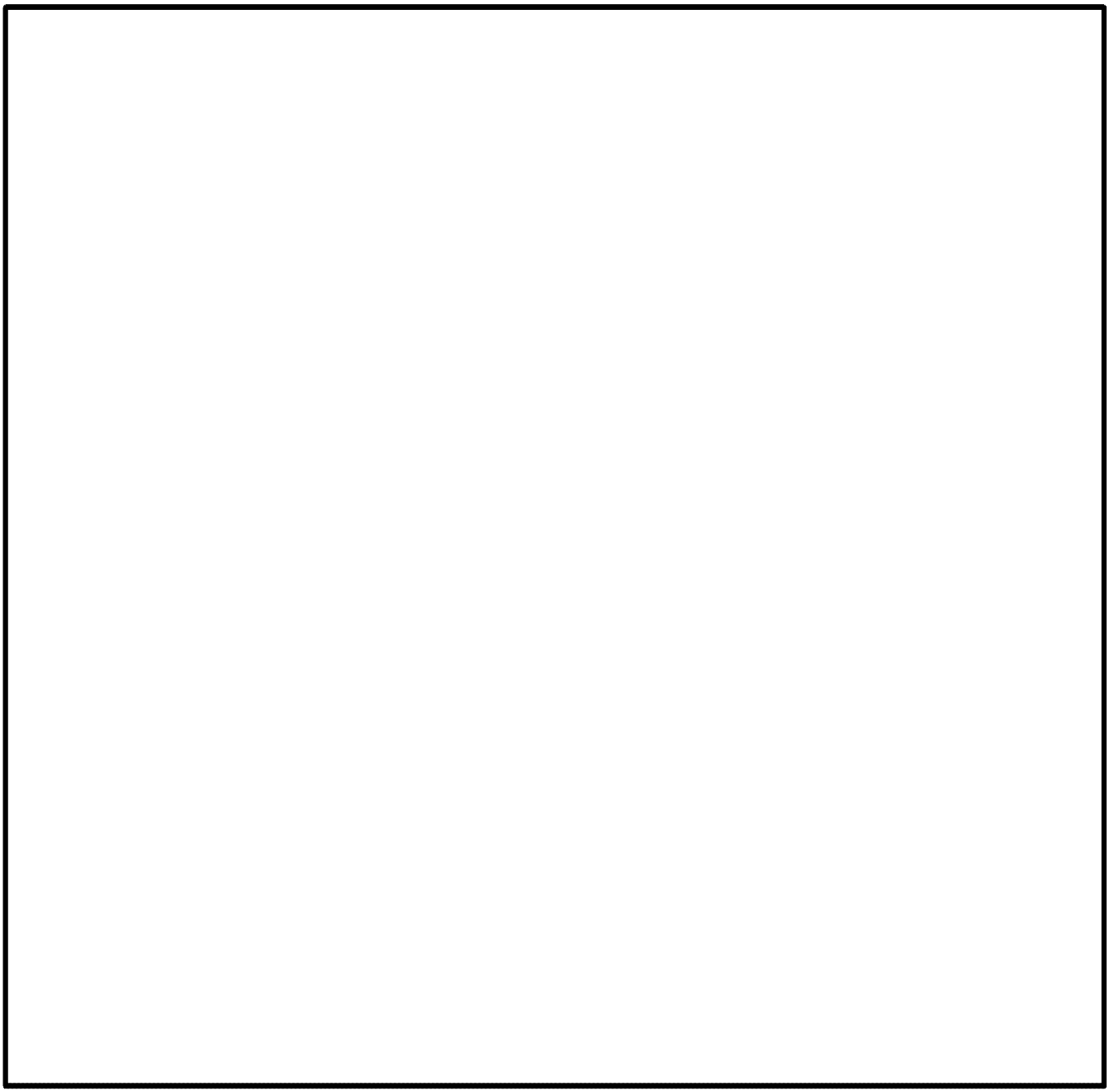

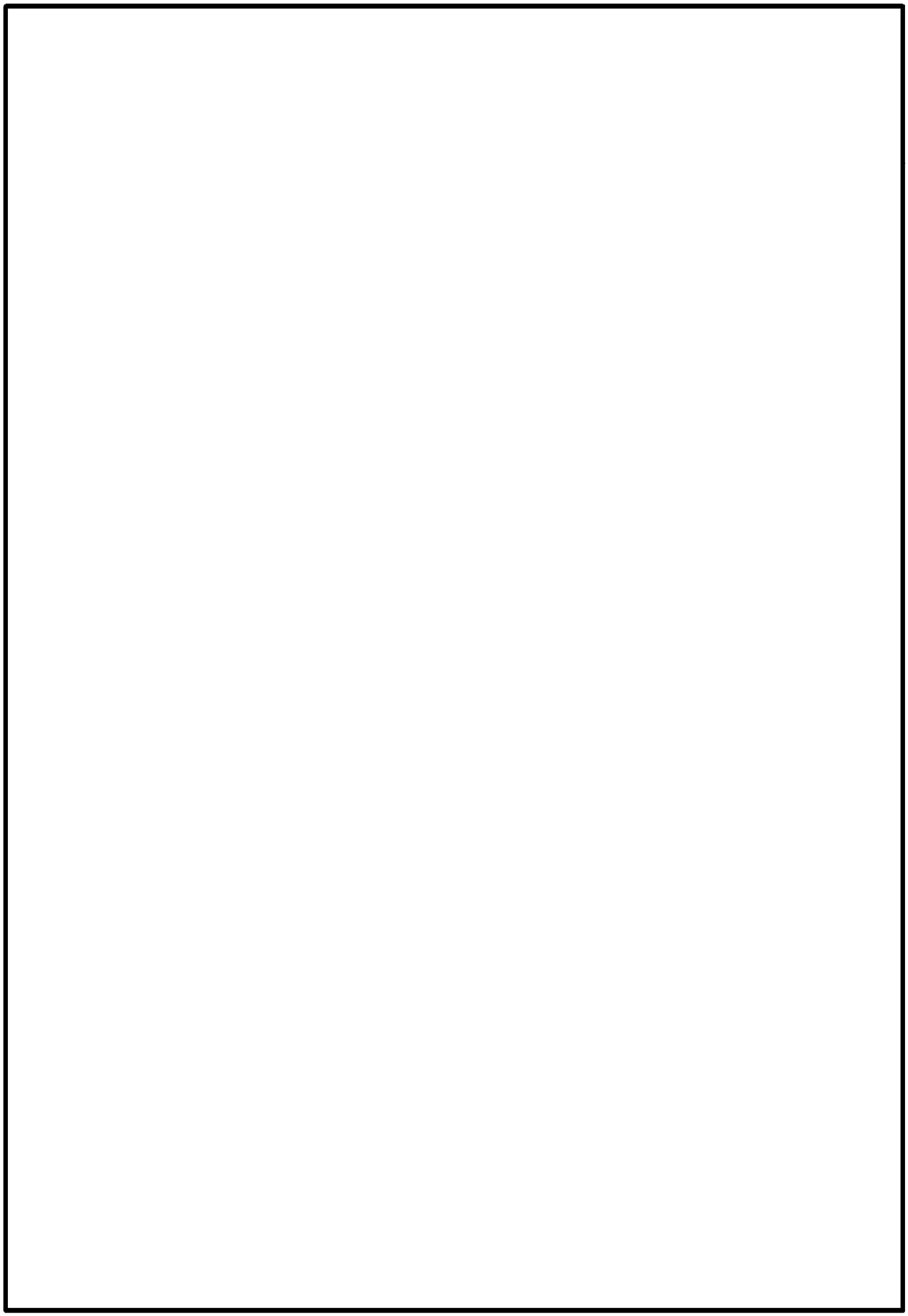

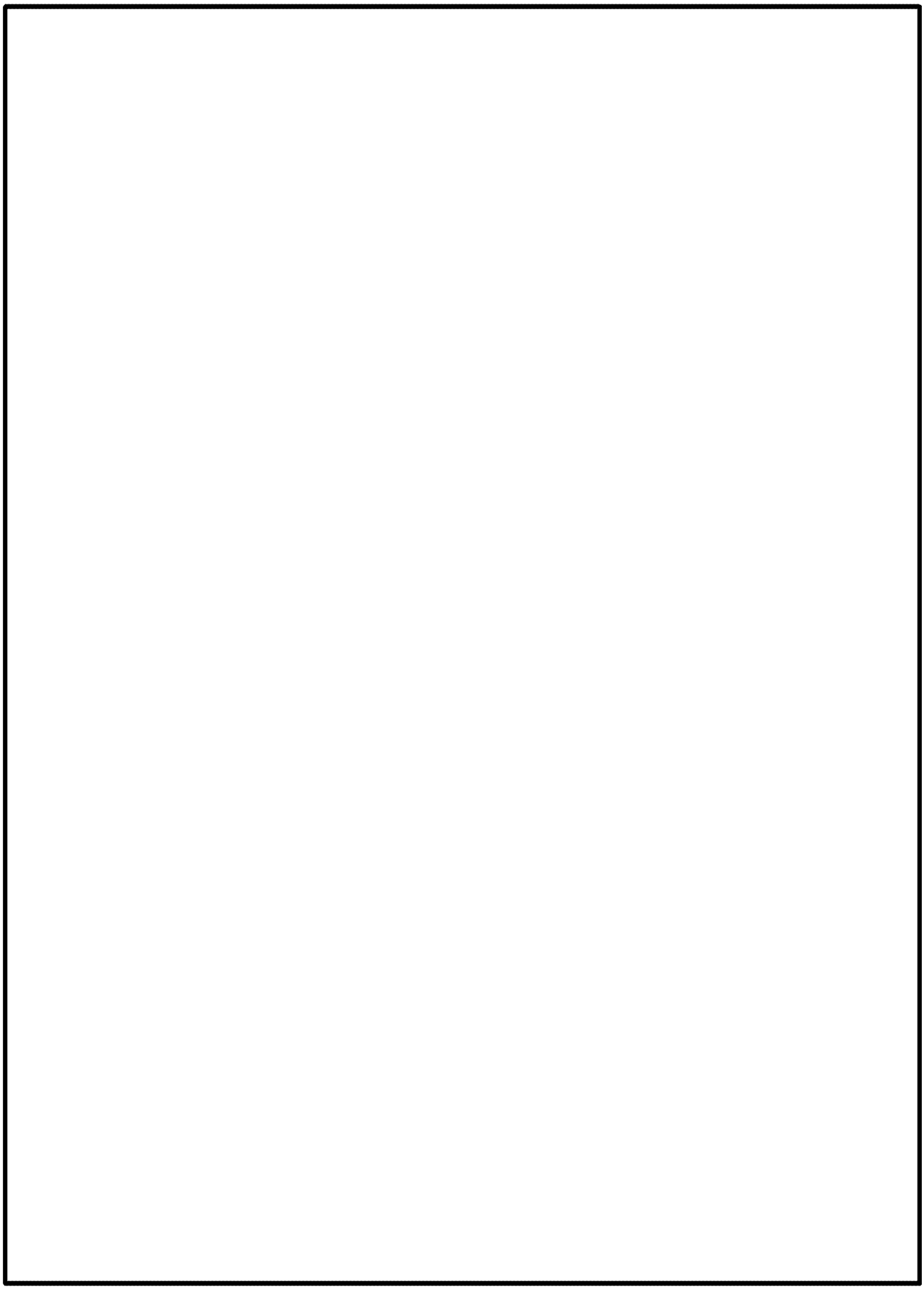

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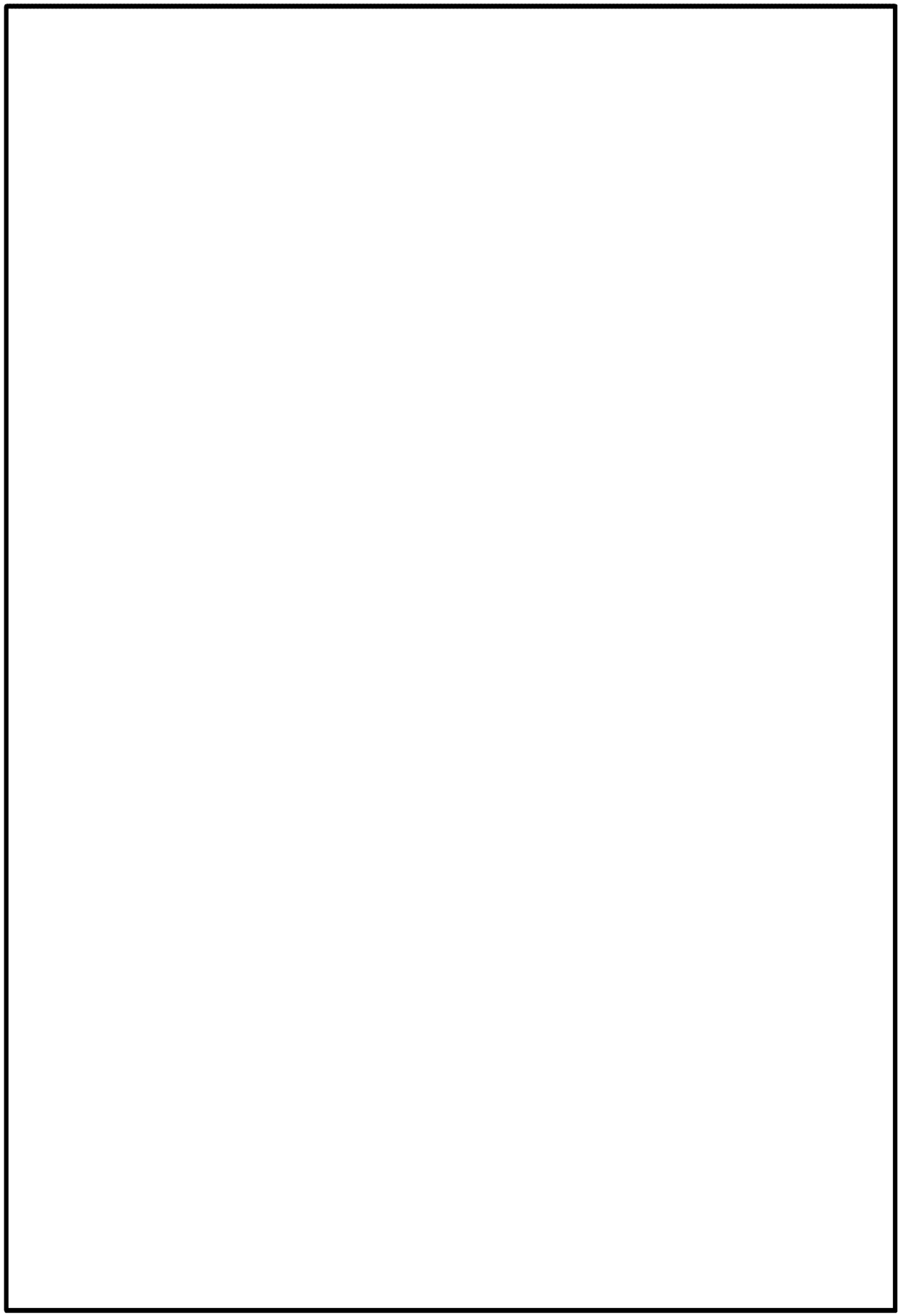

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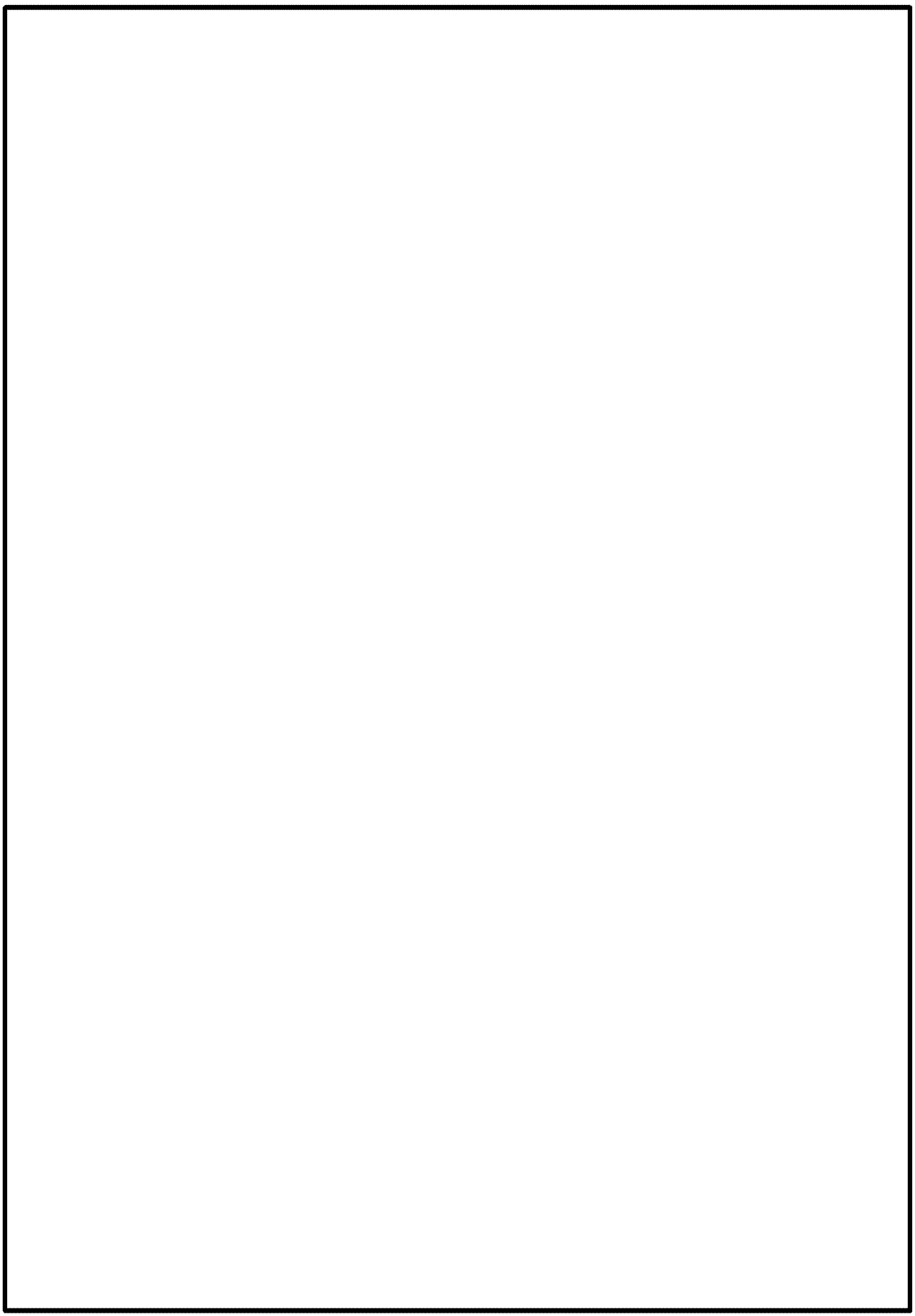

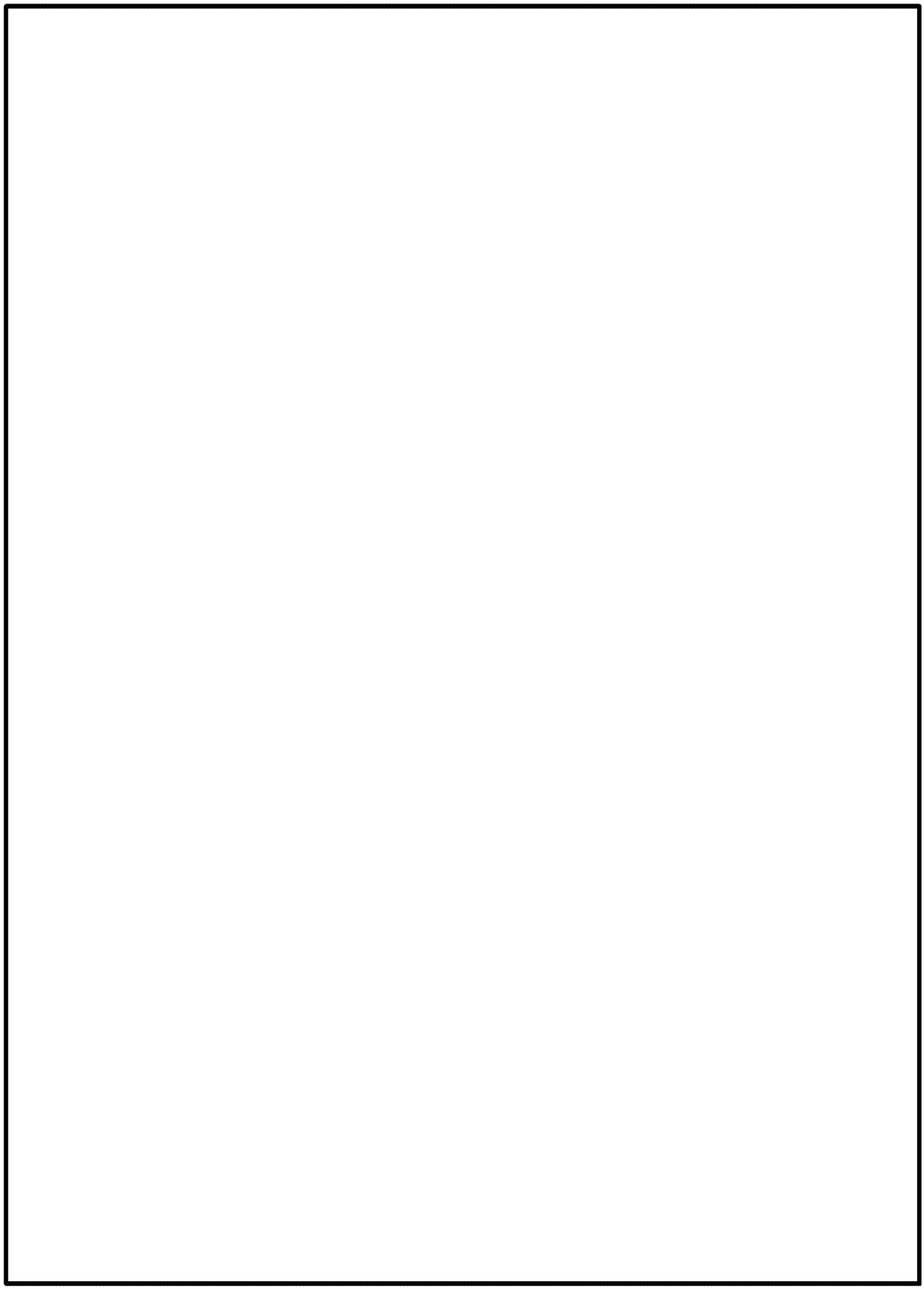

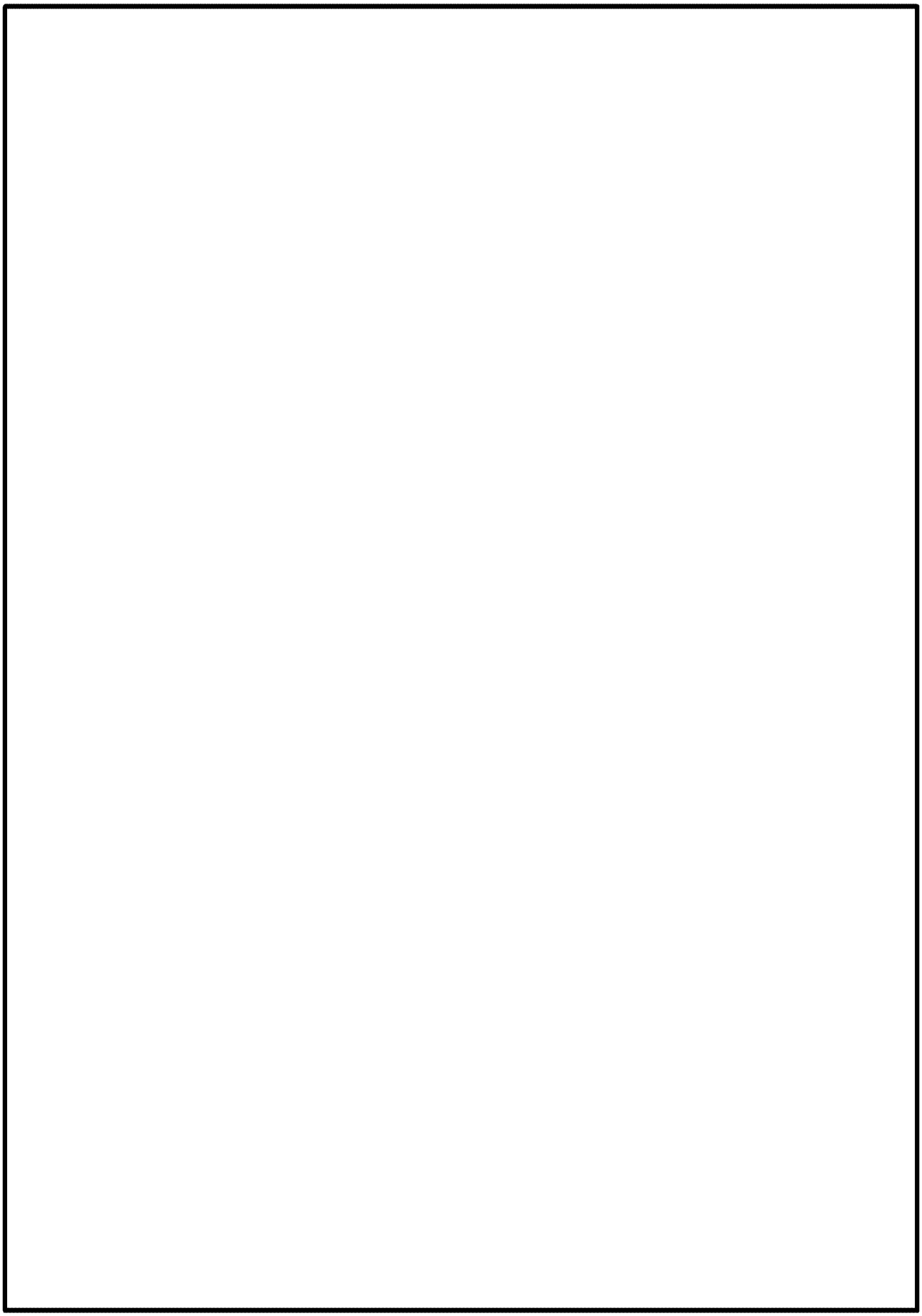

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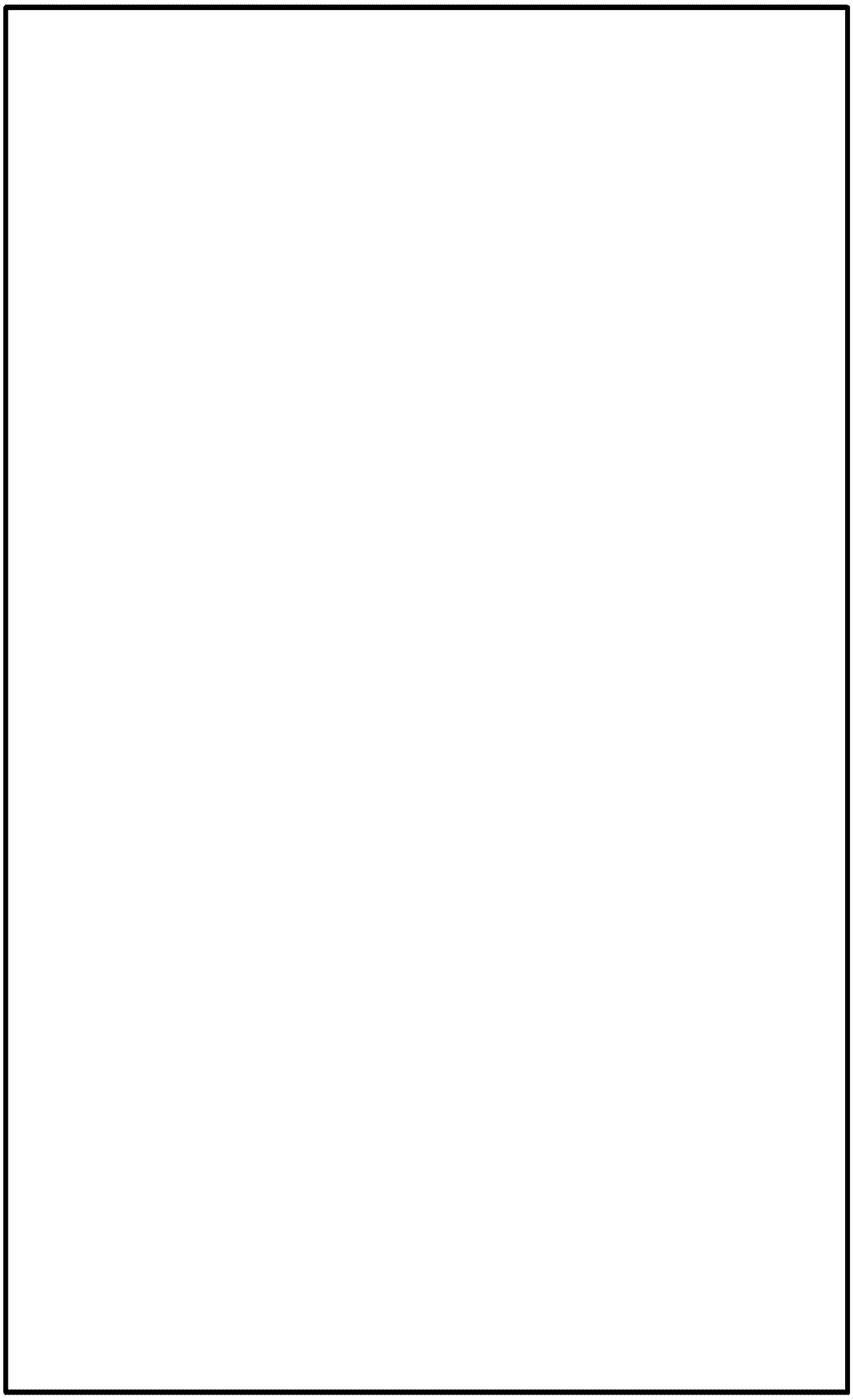

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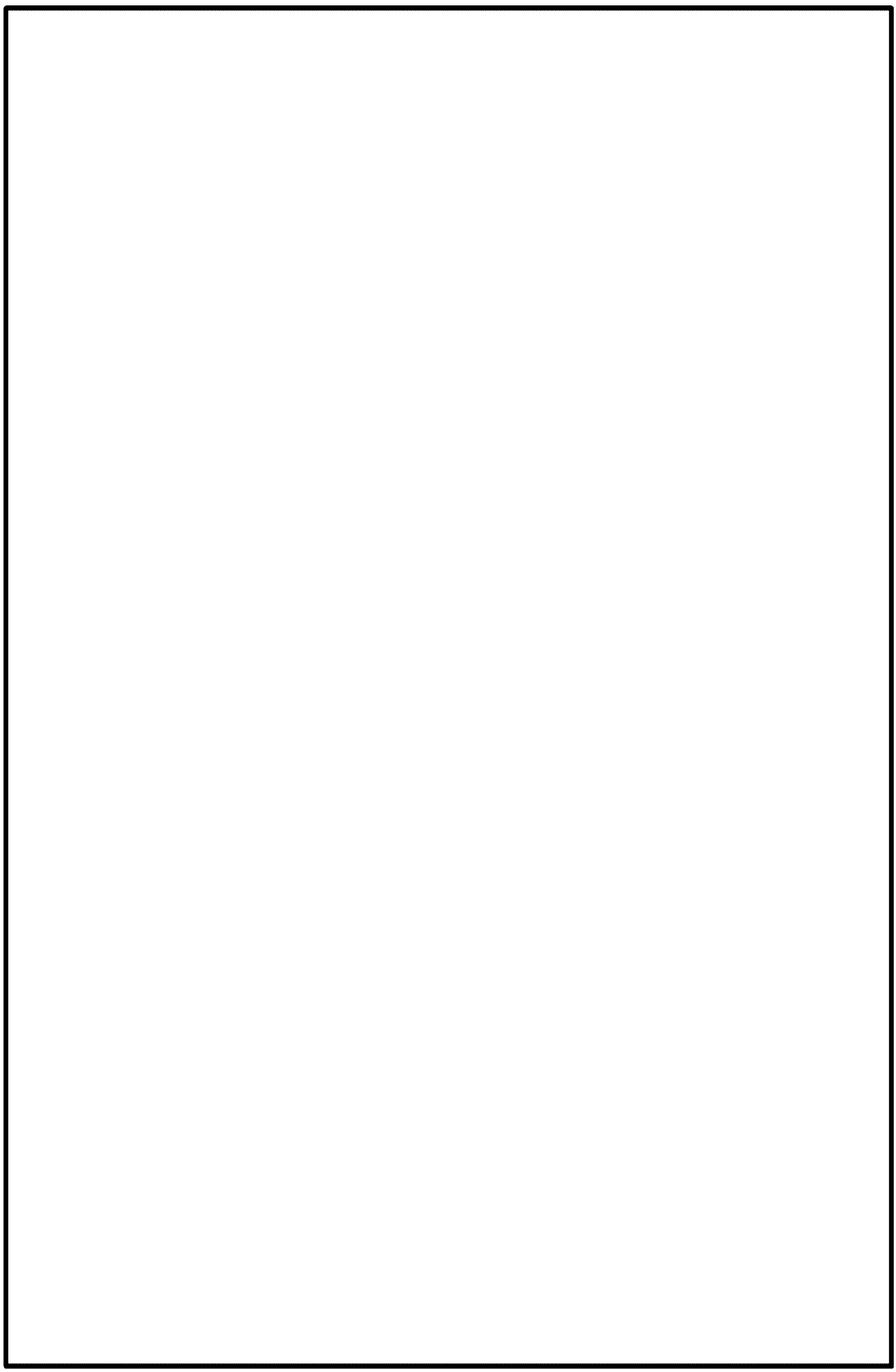

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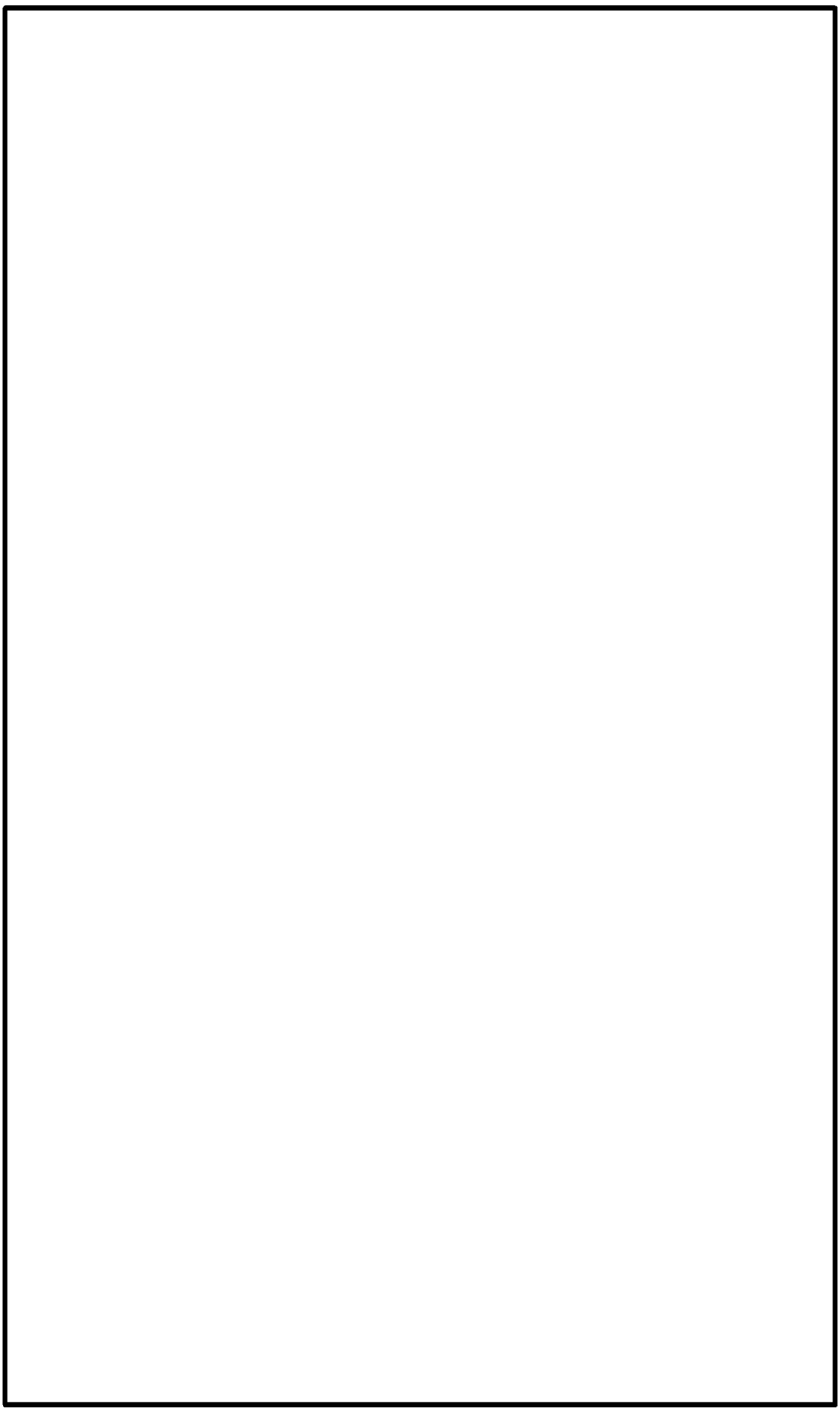

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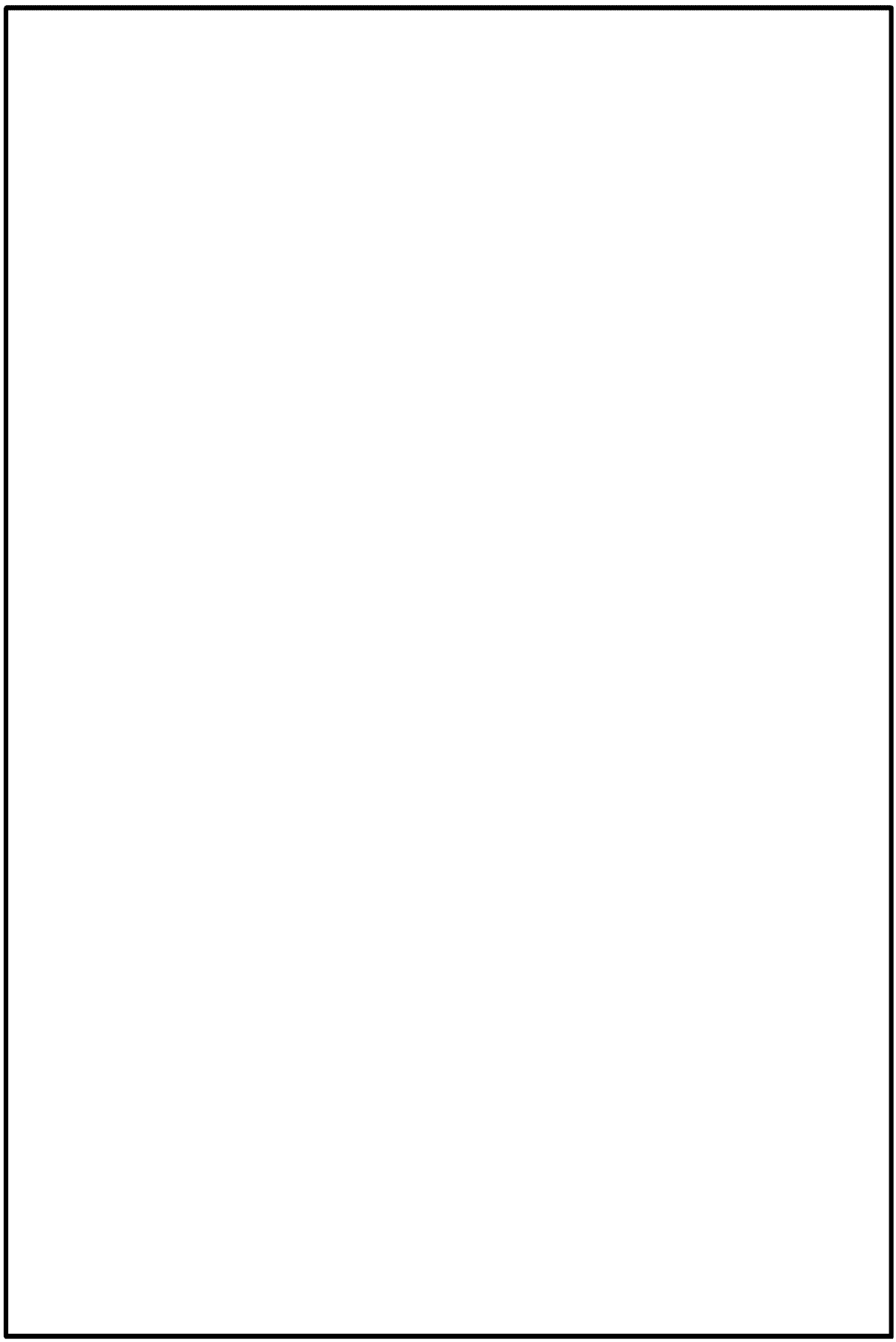

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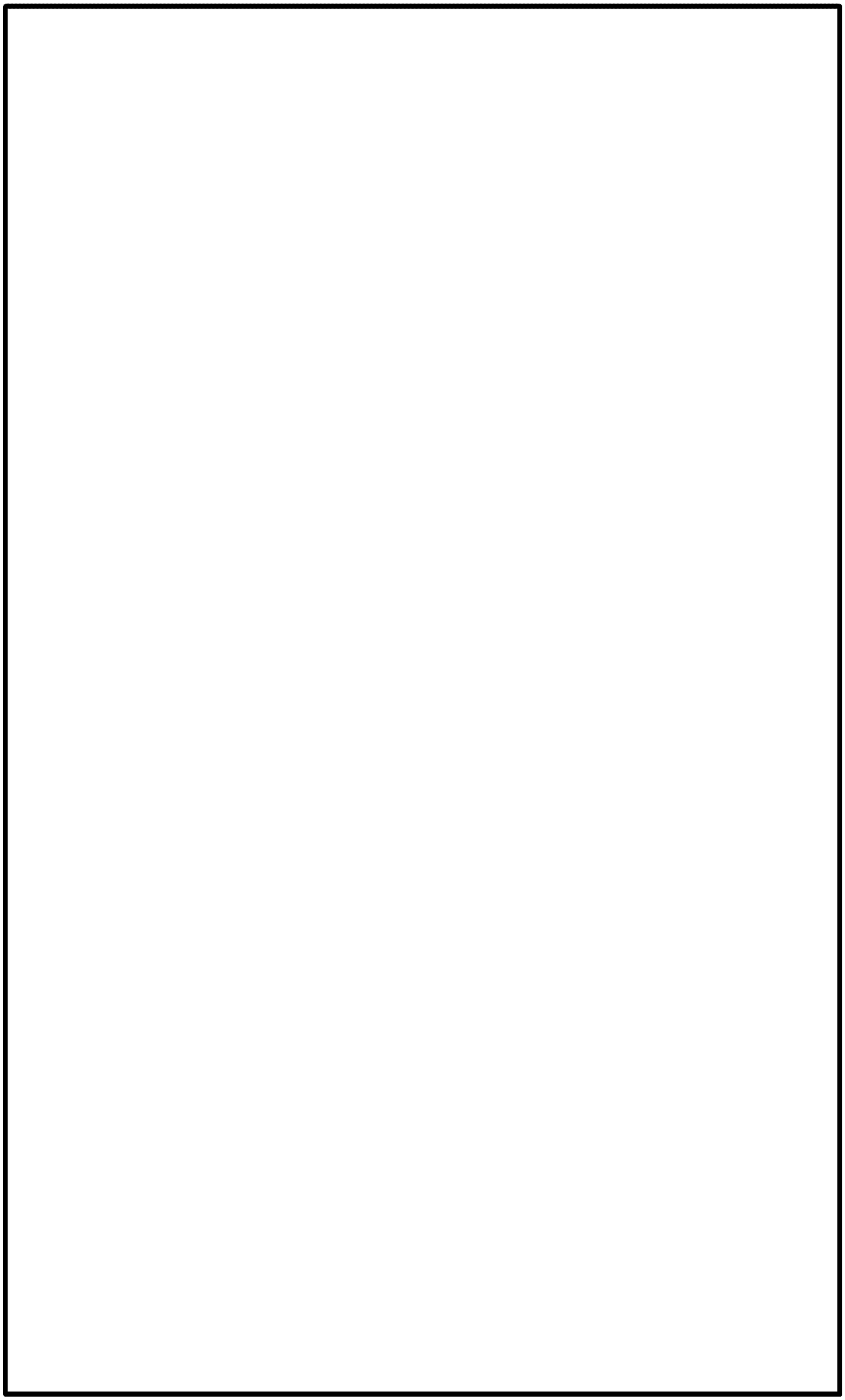

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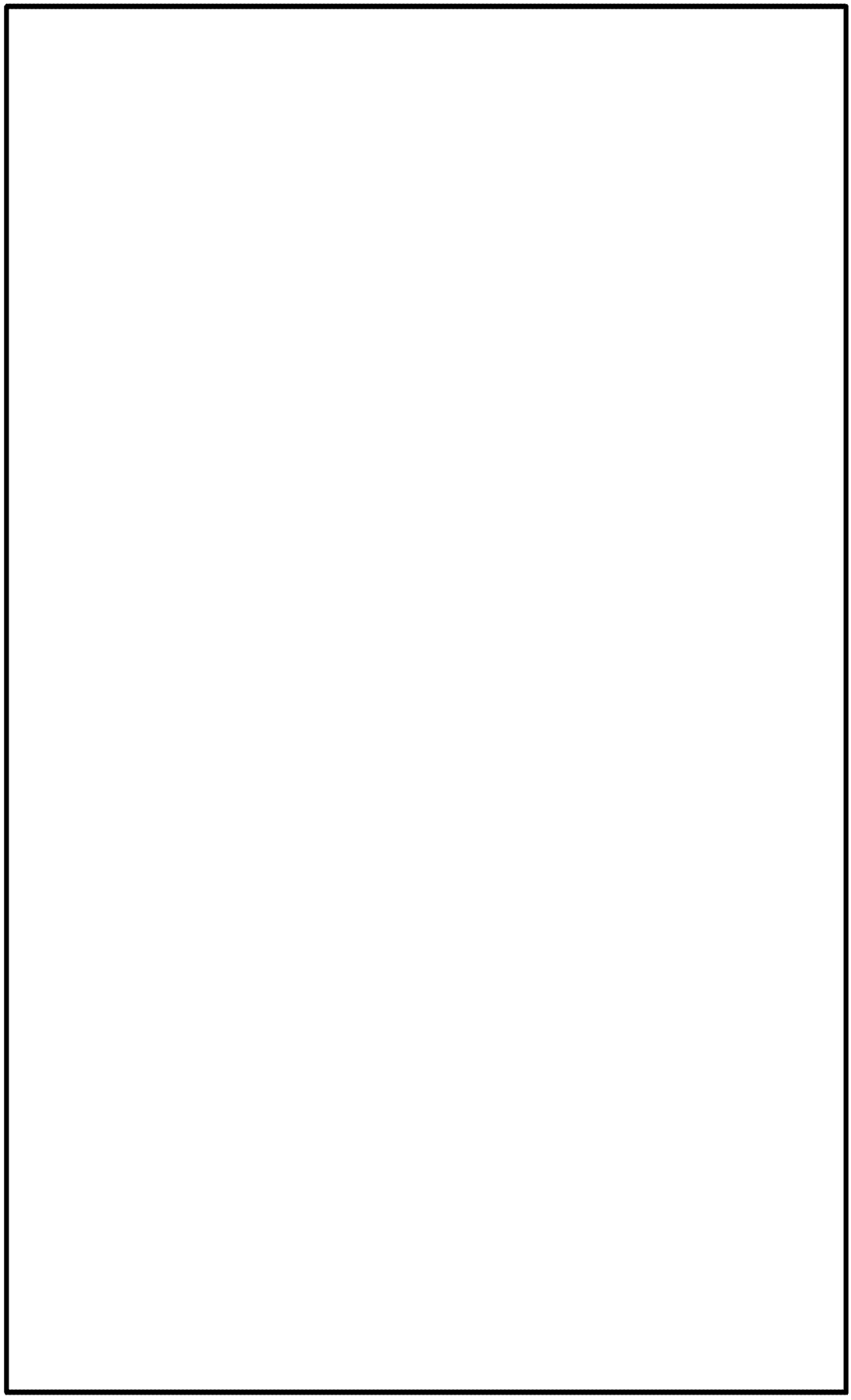

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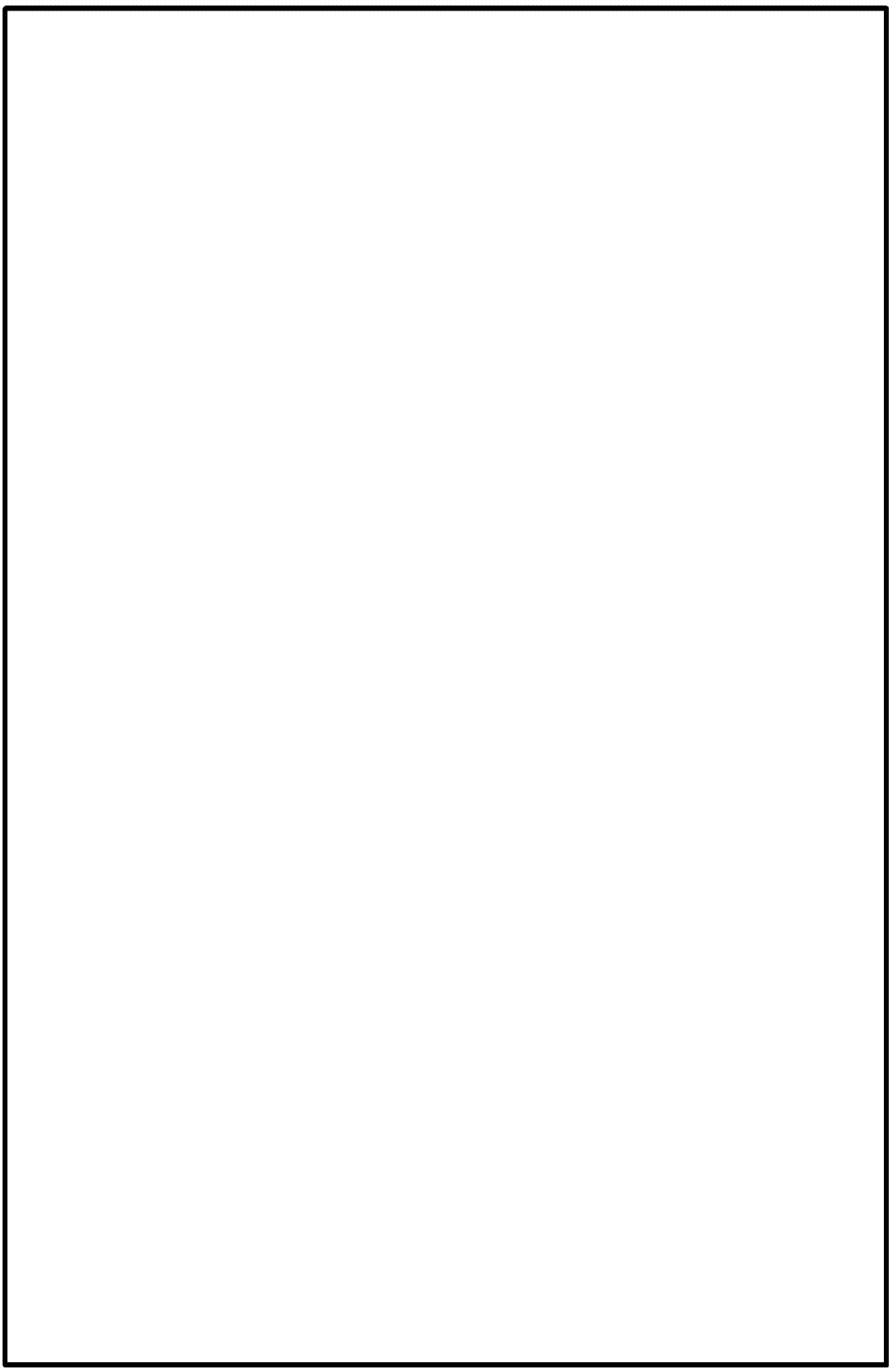

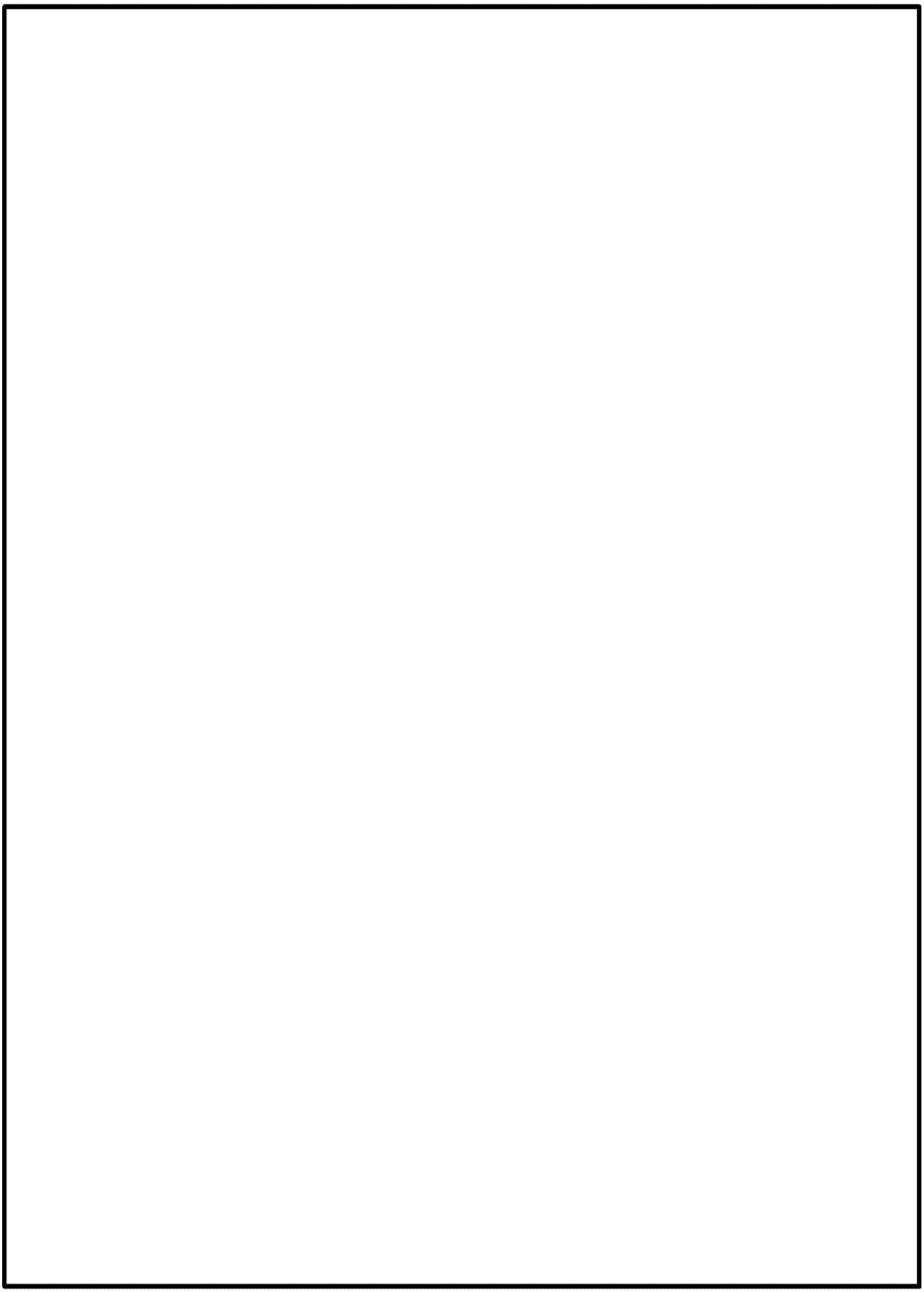

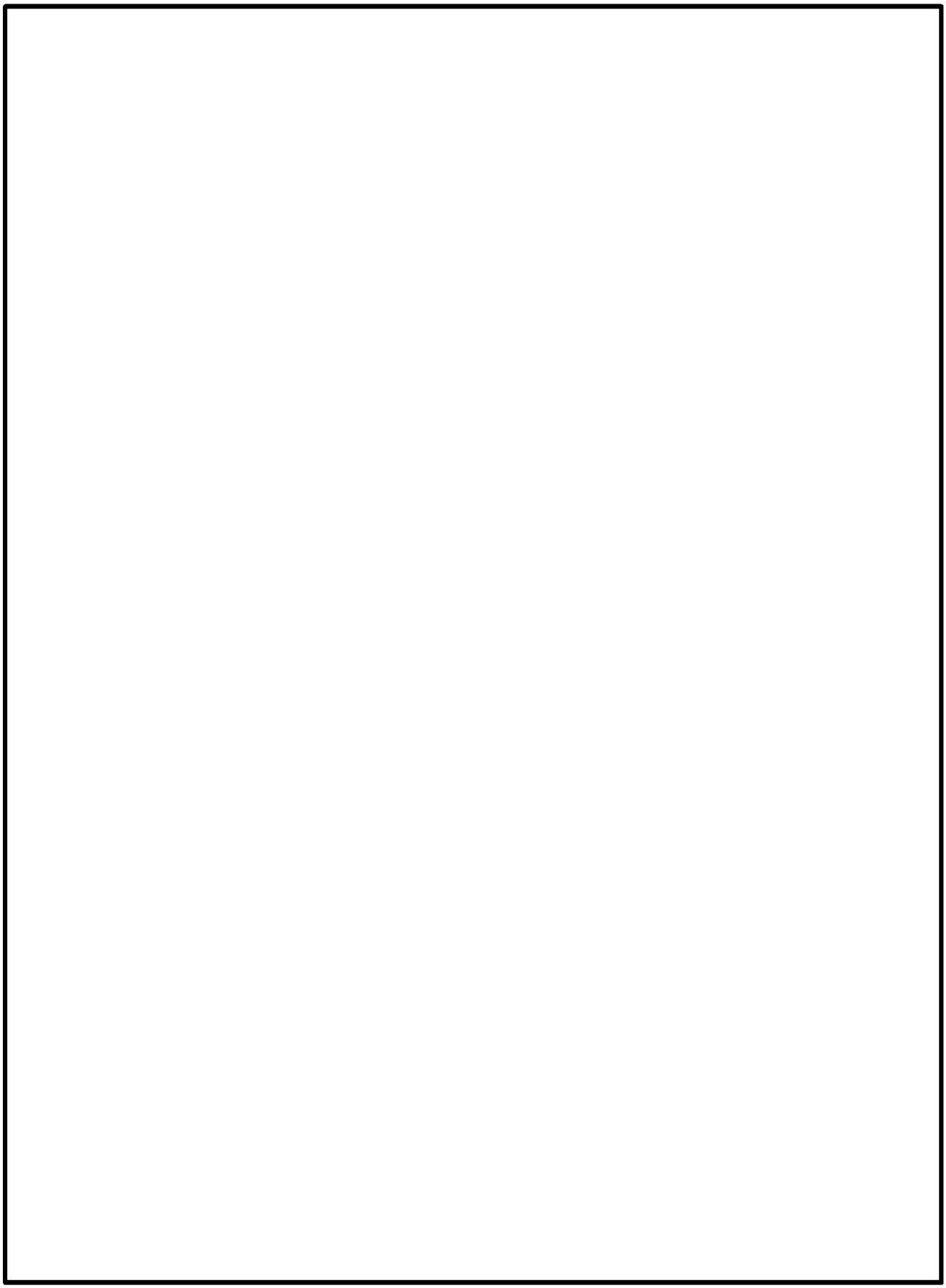

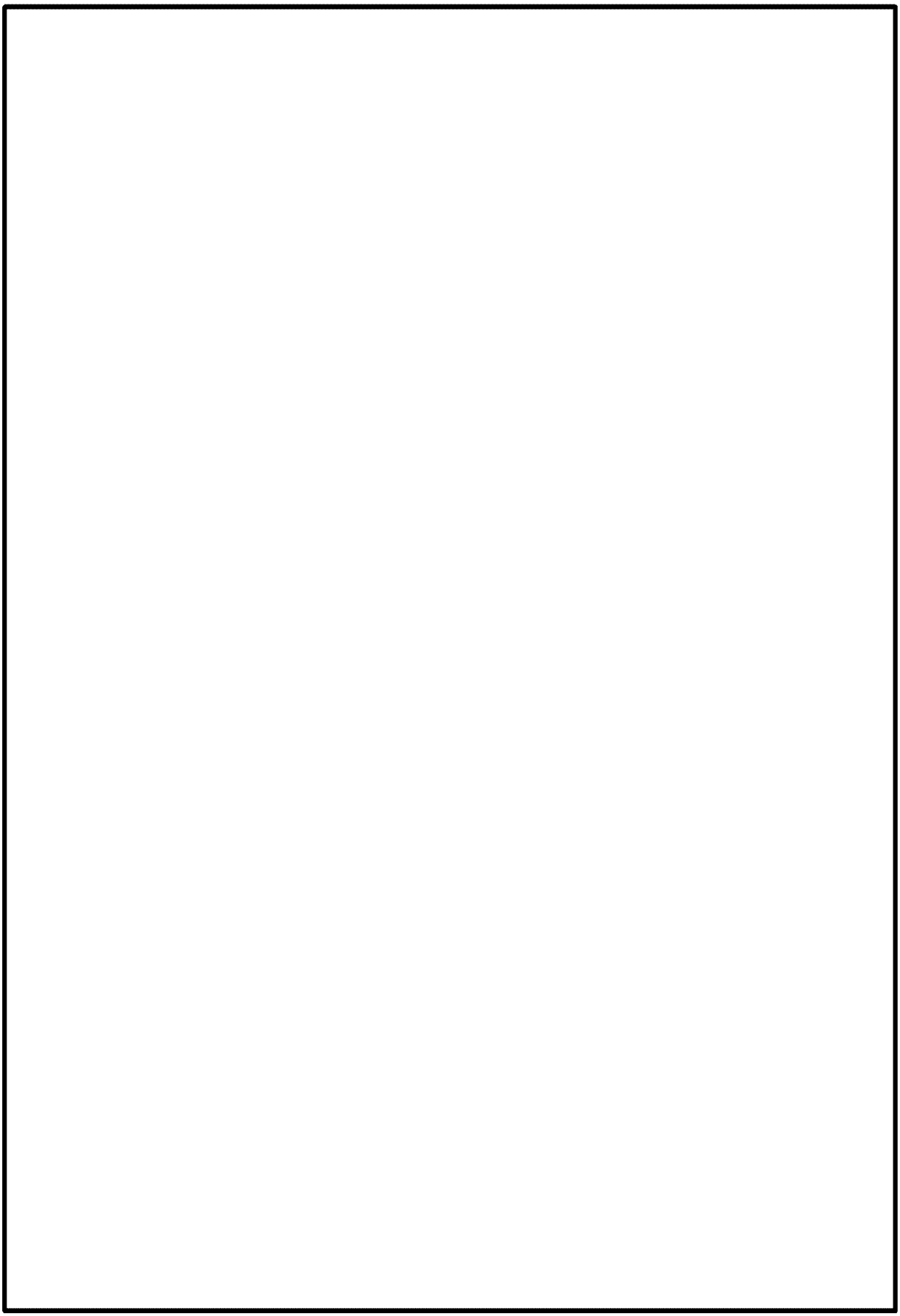

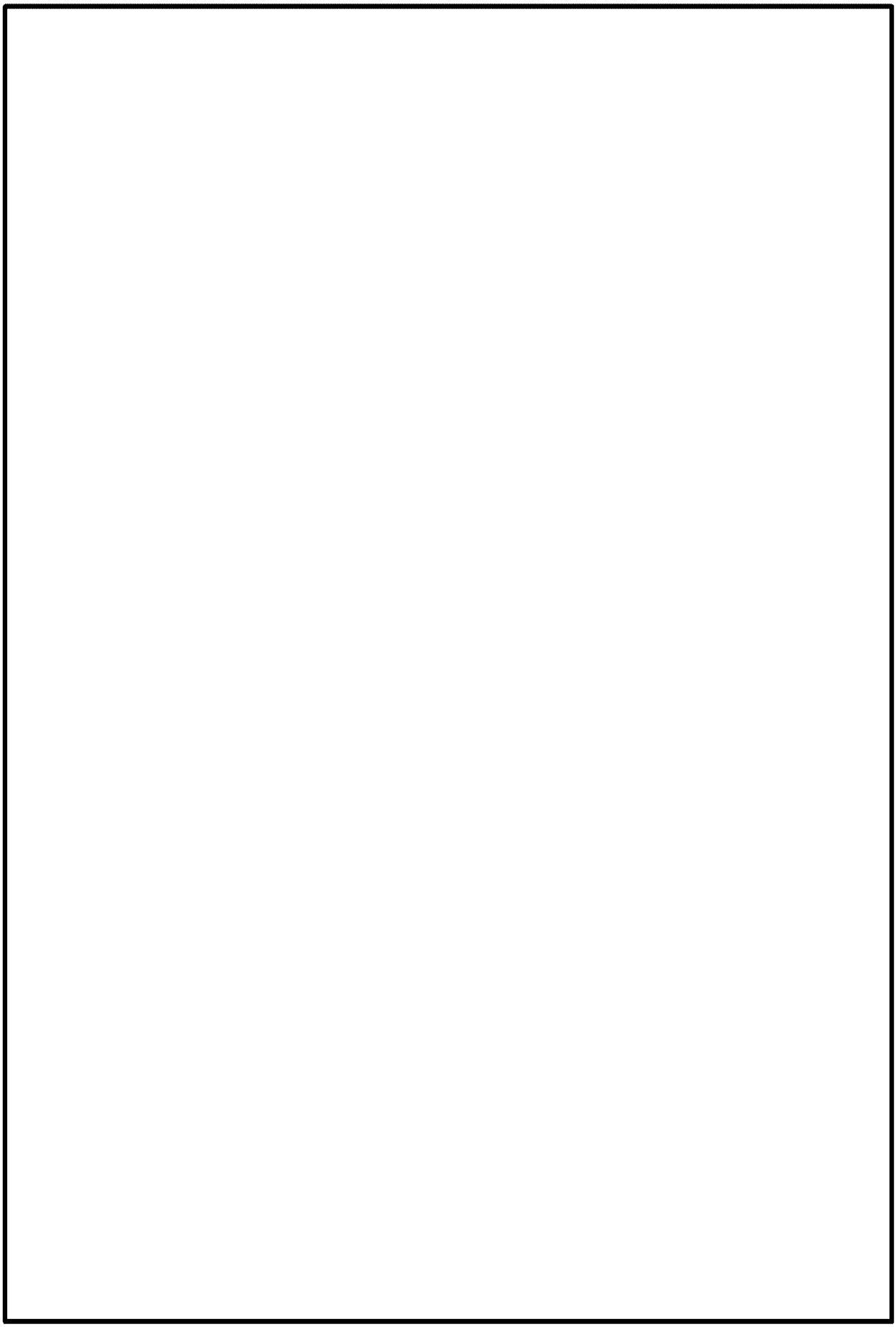

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4 DECISION-MAKING AND WRITING

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.[67]

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.

[67] 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.

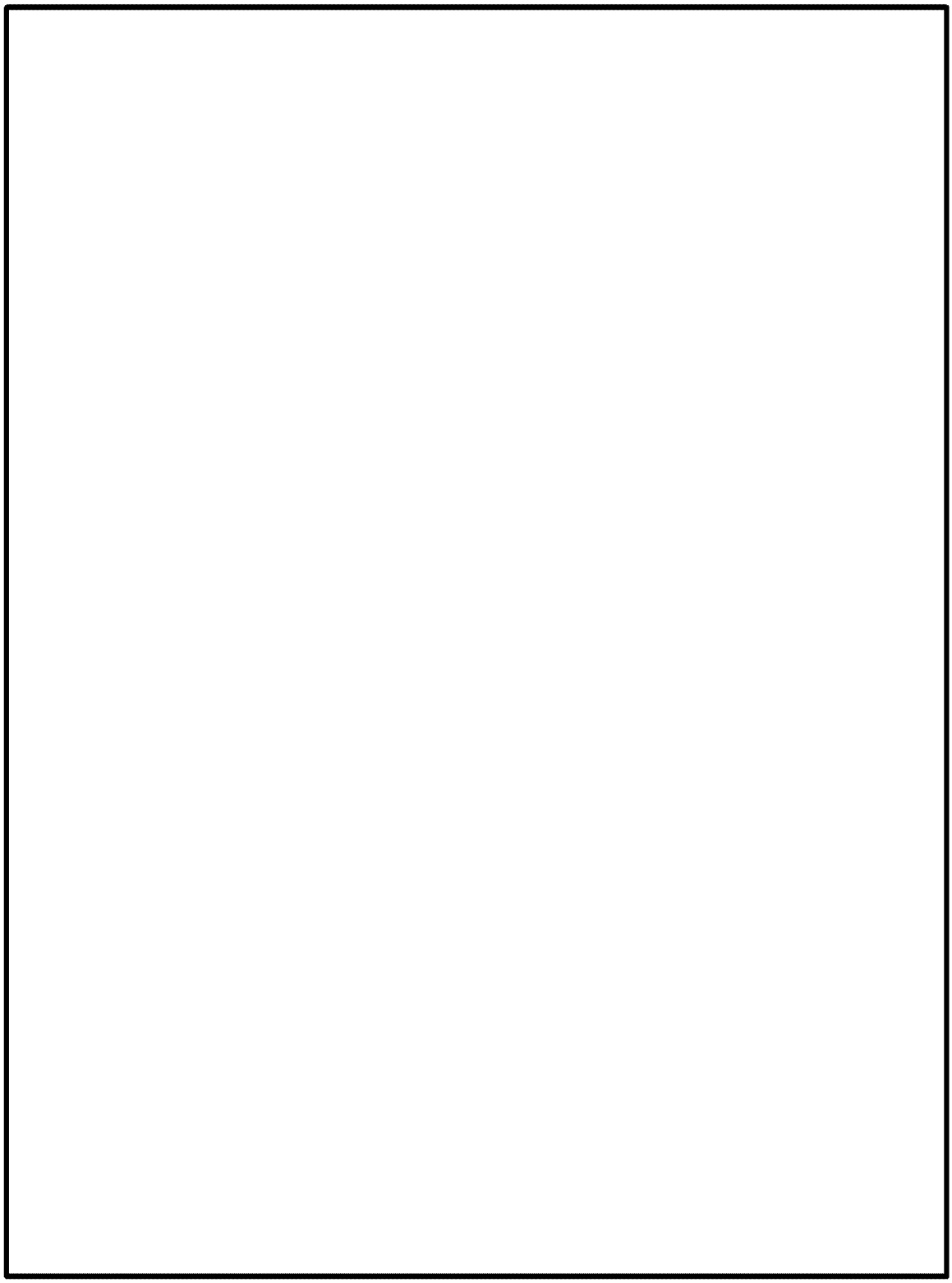
PRACTICAL EXERCISES

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.

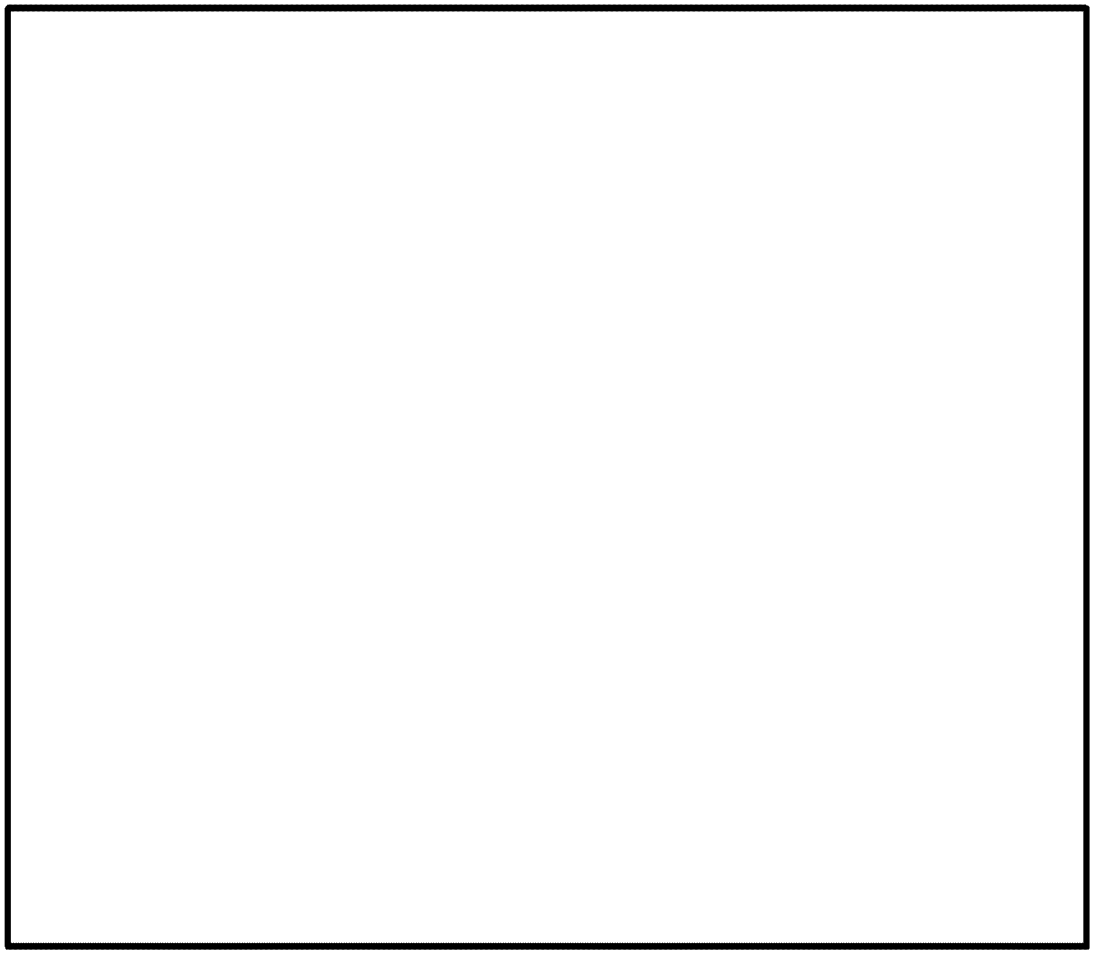
The Court asserted that, "…the BIA and the Court of Appeals misapplied *Fedorenko*. We reverse and remand for the agency to interpret the statute, free from the error, in the first instance." The Court held that simply because the INA is silent on a duress exception doesn't mean that one should or should 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."[68]

As discussed earlier in this module, the burden is on the applicant to establish eligibility.[69] 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.[70] 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

[68] 8 C.F.R. § 208.13(c).

[69] 8 C.F.R. § 208.13(a); *UNHCR Handbook, para 196.*

[70] 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."[71]

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:

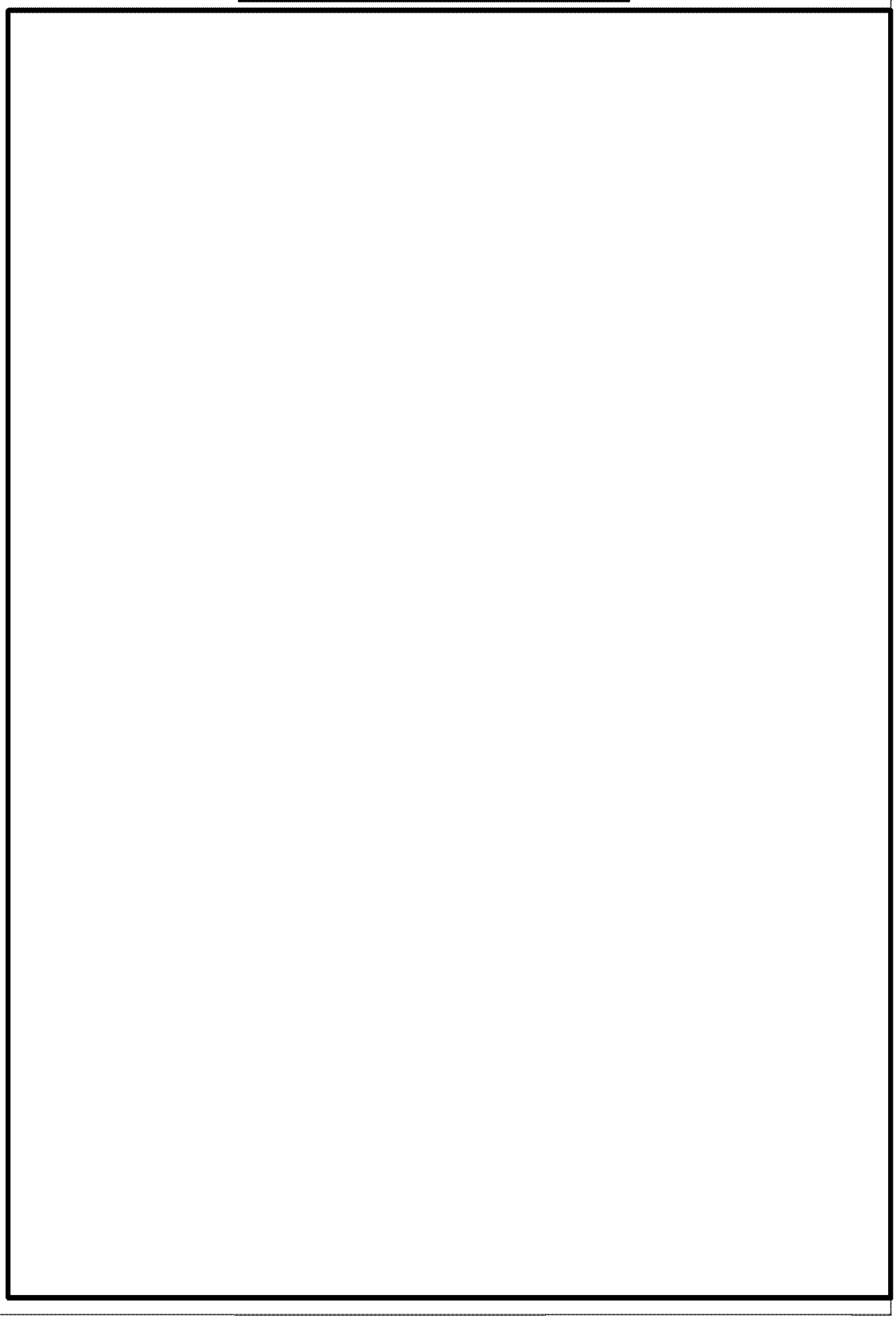
- **Grants** of cases where evidence indicates that the applicant may have ordered, incited, assisted, or other otherwise participated in persecution of others on account of any of the five grounds, and the applicant is found to have met his or her burden of proof to establish that he or she should not 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.

[71] *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

U.S. Citizenship and Immigration Services

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.

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.

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.

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.

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.

REFERRED CASES

- If USCIS already referred a case based on lack of jurisdiction before June 10th, 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".

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****

U.S. Citizenship and Immigration Services

WHERE TO FIND A PREVIOUS UAC DETERMINATION

Form I-213: Record of Deportable Alien

UNACCOMPANIED JUVENILE:
...U.S.C.....

FUNDS IN POSSESSION:

Mexican Peso 20.00 U.S.C.

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

U.S. Citizenship and Immigration Services

WHERE TO FIND A PREVIOUS UAC DETERMINATION

Form I-213: Record of Deportable Alien

TRAVEL INFORMATION:

[ ] 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:

[ ] 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.

WHERE TO FIND A PREVIOUS UAC DETERMINATION

Form 93: CBP UAC Screening Form

EPARTMENT 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.

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 *Referral Notes* section at the bottom of the page.		
	Name	A#	Relationship to UAC
☐ Parent(s)			
☐ Other Related Adult(s)			
☐ Related Minor(s)			
☐ Smuggler(s)			
☐ Non-Related Individual(s)			
☒ Alone			

U.S. Citizenship and Immigration Services

13

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

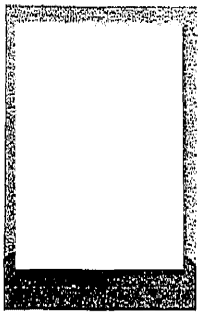
Name of Minor:		Aliases (if any):
Minor's Date of Birth:	Minor's A	FINS#:

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.

WHERE TO FIND A PREVIOUS UAC DETERMINATION

EARM: Encounters Tab

Person | **Encounters** | Supporting Info | Case Summary | Actions/Decisions | A/D | Bonds | Comments | Scheduling | Print

Encounter Details | EOIR Look Up

Subject Information

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

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**

U.S. Citizenship and Immigration Services

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.

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.

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

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.

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.

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.

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 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:	csc-ncsc-followup@uscis.dhs.gov
Vermont Service Center:	vsc.ncscfollowup@uscis.dhs.gov
Nebraska Service Center:	nscfollowup.ncsc@uscis.dhs.gov
Texas Service Center:	tsc.ncscfollowup@uscis.dhs.gov

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.

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 or 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 and see the Instructions to Form I-765, *Application for Employment Authorization.*

Adjournment Codes

January 30, 2015

ALIEN-RELATED ADJOURNMENTS (RED)

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

IJ-RELATED ADJOURNMENTS (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	8A	S
State Department Response to Dale	08	R
Notice Sent Served Improperly	10	R
Other Operational Security Issues	14	R
Alien for Scrounging of Priority Case	25	R
Document Application	29	R
No Interpreter - Not Ordered	32	R
No Interpreter - Ordered for FTA	33	R
Telephonic Malfunction	46	R
Hearing Deliberately Advanced	55	N
Forensic Competency Evaluation	60	R
Appointment of Qualified Representative	61	R
Asylum Competency Issues	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	CLOCK CODES
RED = Alien-Related Delay	S = Stops
GREEN = DHS-Related	R = Runs
BLUE = EOIR-Related Delay (IJ)	X = Eliminates
ORANGE = EOIR-Related Delay (Operational)	N = 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.

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.

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.

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.

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 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:	csc-ncsc-followup@uscis.dhs.gov
Vermont Service Center:	vsc.ncscfollowup@uscis.dhs.gov
Nebraska Service Center:	nscfollowup.ncsc@uscis.dhs.gov
Texas Service Center:	tsc.ncscfollowup@uscis.dhs.gov

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.

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 or 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 and see the Instructions to Form I-765, *Application for Employment Authorization.*

Adjournment Codes

January 30, 2015

ALIEN-RELATED ADJOURNMENTS (RED)

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

IJ-RELATED ADJOURNMENTS (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	33	S
State Department Records not to File	41	R
Notice Sent Set of Improperly	10	R
Other Operational Security Factors	14	R
Move to Scheduling of Priority Case	25	R
Concurrent Applicants	29	R
No Interpreter - Not Ordered	32	R
No Interpreter - Ordered But FTA	33	R
Tele/Video Malfunction	46	R
Hearing Deliberately Advanced	55	N
Forensic Competency Evaluation	60	R
Appointment of Qualified Representative	61	R
Judicial Complexity Inquiry	62	R
Case Severed from Lead - Hearing Advanced	96	R
Case Severed to Lead - Hearing Adjourned	97	R
Date Fairy Error	99	N

COLOR KEY	CLOCK CODES
RED = Alien-Related Delay	S = Stops
GREEN = DHS-Related	R = Runs
BLUE = EOIR-Related Delay (IJ)	X = Eliminates
ORANGE = EOIR-Related Delay (Operational)	N = 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.

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.

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 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:	csc-ncsc-followup@uscis.dhs.gov
Vermont Service Center:	vsc.ncscfollowup@uscis.dhs.gov
Nebraska Service Center:	nscfollowup.ncsc@uscis.dhs.gov
Texas Service Center:	tsc.ncscfollowup@uscis.dhs.gov

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.

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 or 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 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

COLOR KEY	CLOCK CODES
RED = Alien-Related Delay	**S = Stops**
GREEN = DHS-Related	**R = Runs**
BLUE = EOIR-Related Delay (IJ)	**X = Eliminates**
ORANGE = EOIR-Related Delay (Operational)	**N = Neutral**

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

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, 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. 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. 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.

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 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, 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.

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.

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.

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.

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. You may obtain Form AR-11 at a U.S. Post Office, a USCIS office, or online at www.uscis.gov. You may also submit a change of address electronically at 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 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, 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 (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.

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 **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, 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.

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.

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, 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 qualifying family member to the address listed on the online "FORMS" page on the USCIS website at 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.

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. You may obtain Form AR-11 at a U.S. Post Office, a USCIS office, or online at www.uscis.gov. You may also submit a change of address electronically at 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. For more information about the Selective Service and how to register, visit the Selective Service website at www.sss.gov or obtain a Selective Service "mail-back" registration form at the 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

National Security Overview and CARRP Processing

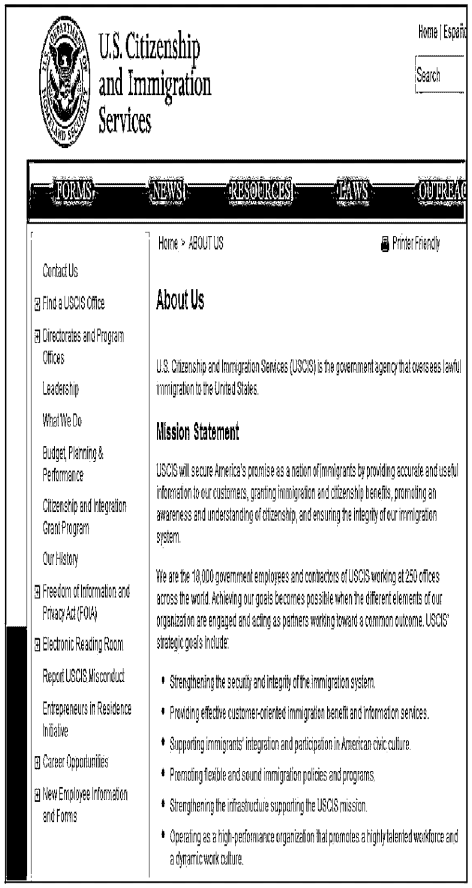
Angie Gipson
Chief, RAIO FDNS

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.

National Security Overview



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?

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).

NS Indicators

I. Statutory Indicators

INA 212(a)(3)(A), (B), or (F) [inadmissibility] or

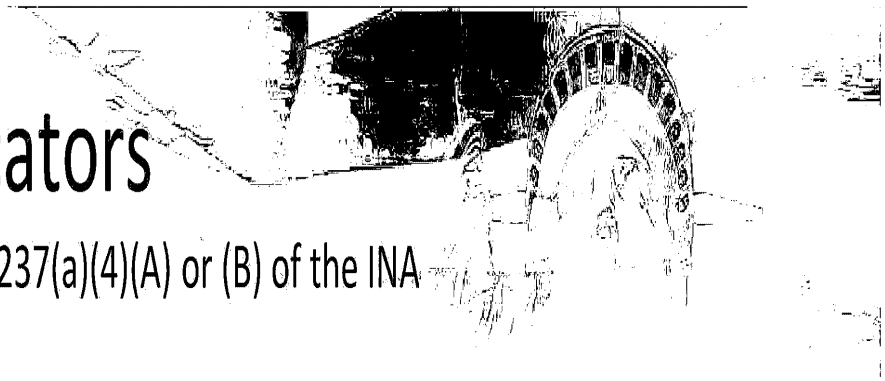
237(a)(4)(A) or (B) [deportability]

II. Non-Statutory Indicators

(b)(7)(e)

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-

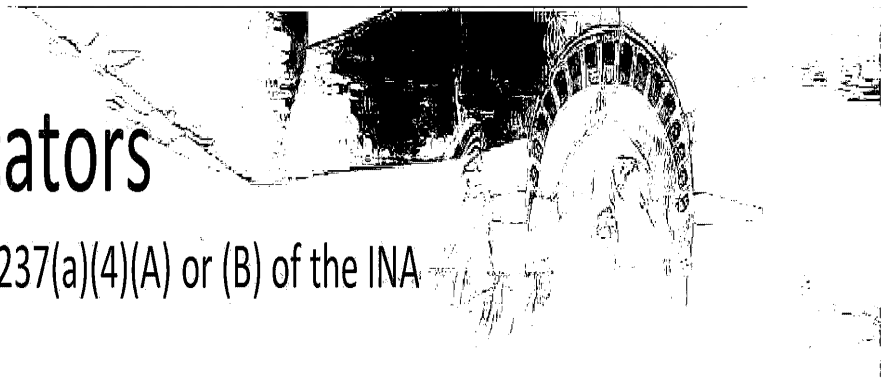
(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(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.

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

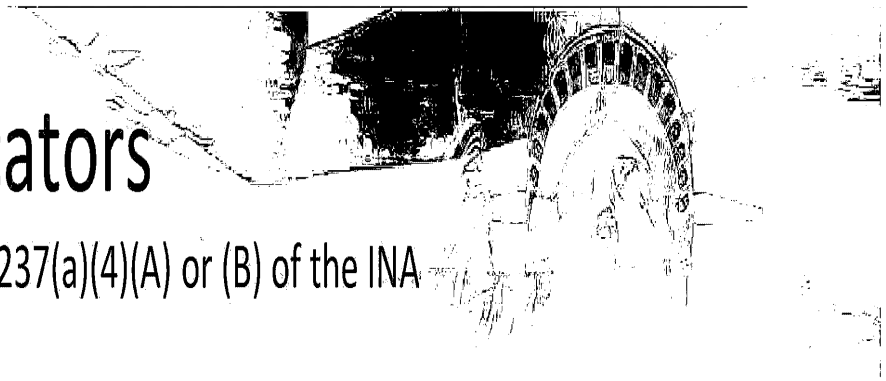
(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED

(v) REPRESENTATIVE DEFINED

(vi) TERRORIST ORGANIZATION DEFINED

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

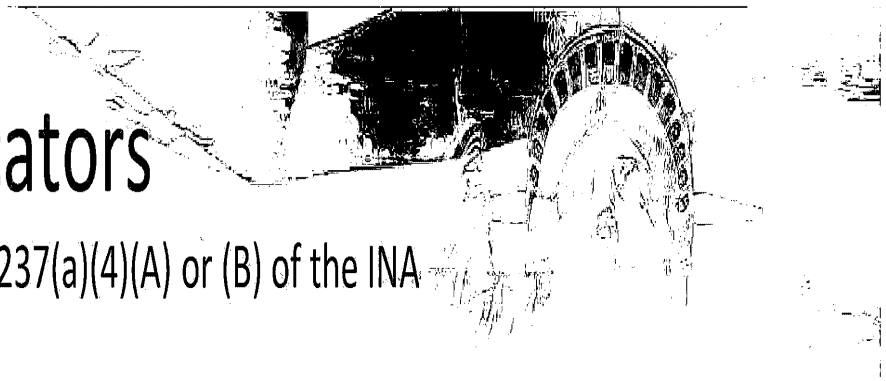
(a) Classes of Aliens Ineligible for Visas or Admission

(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.

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.

Non-Statutory NS Indicators

(b)(7)(e)

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(b)(7)(e)

Increasing evidentiary standard

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Pre-Lesson Hypotheticals

Hypo 1 – NS Indicator or Concern?

(b)(7)(e)

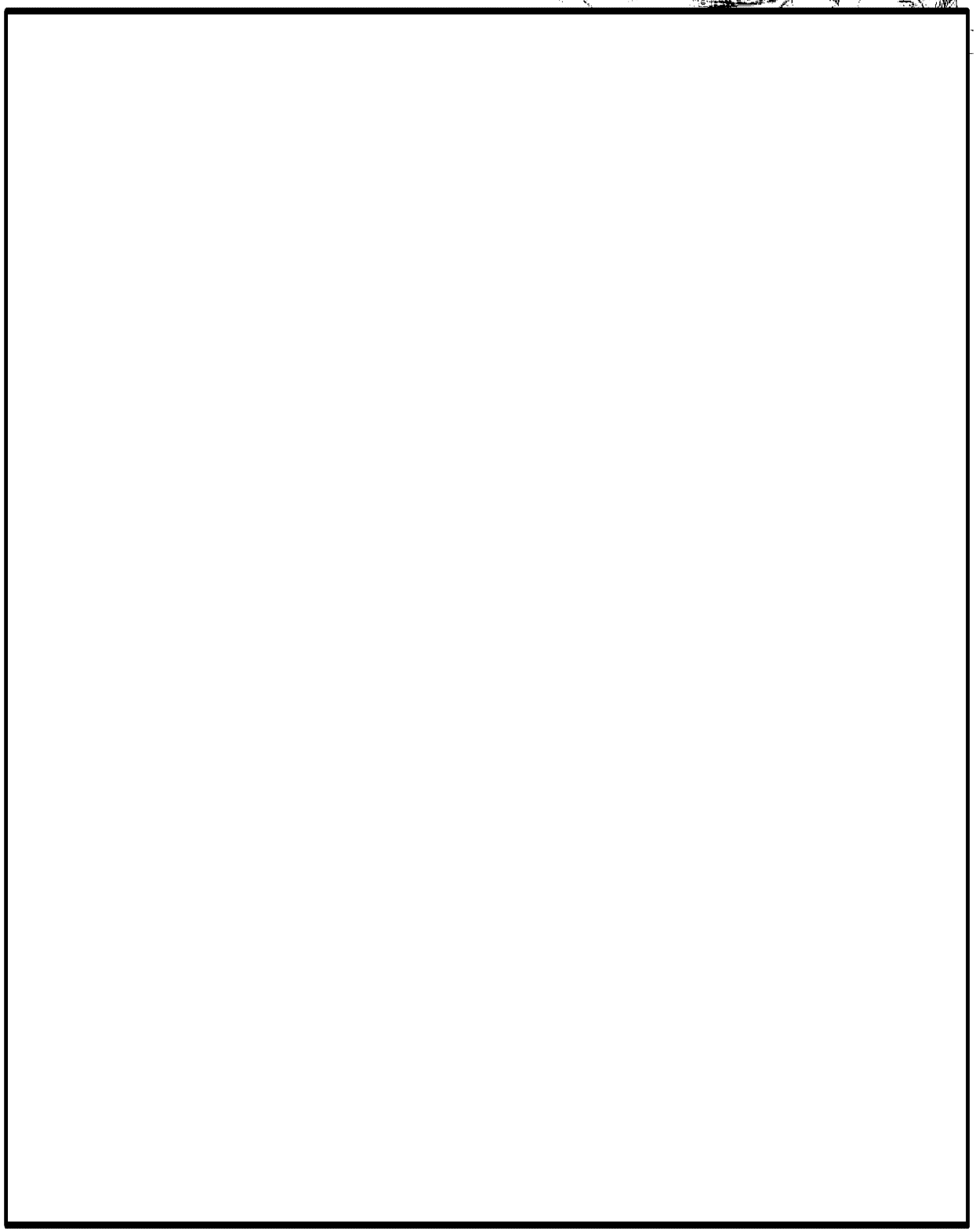
Hypo 2 - NS Indicator or Concern?

(b)(7)(e)

Hypo 3 - NS Indicator or Concern?

(b)(7)(e)

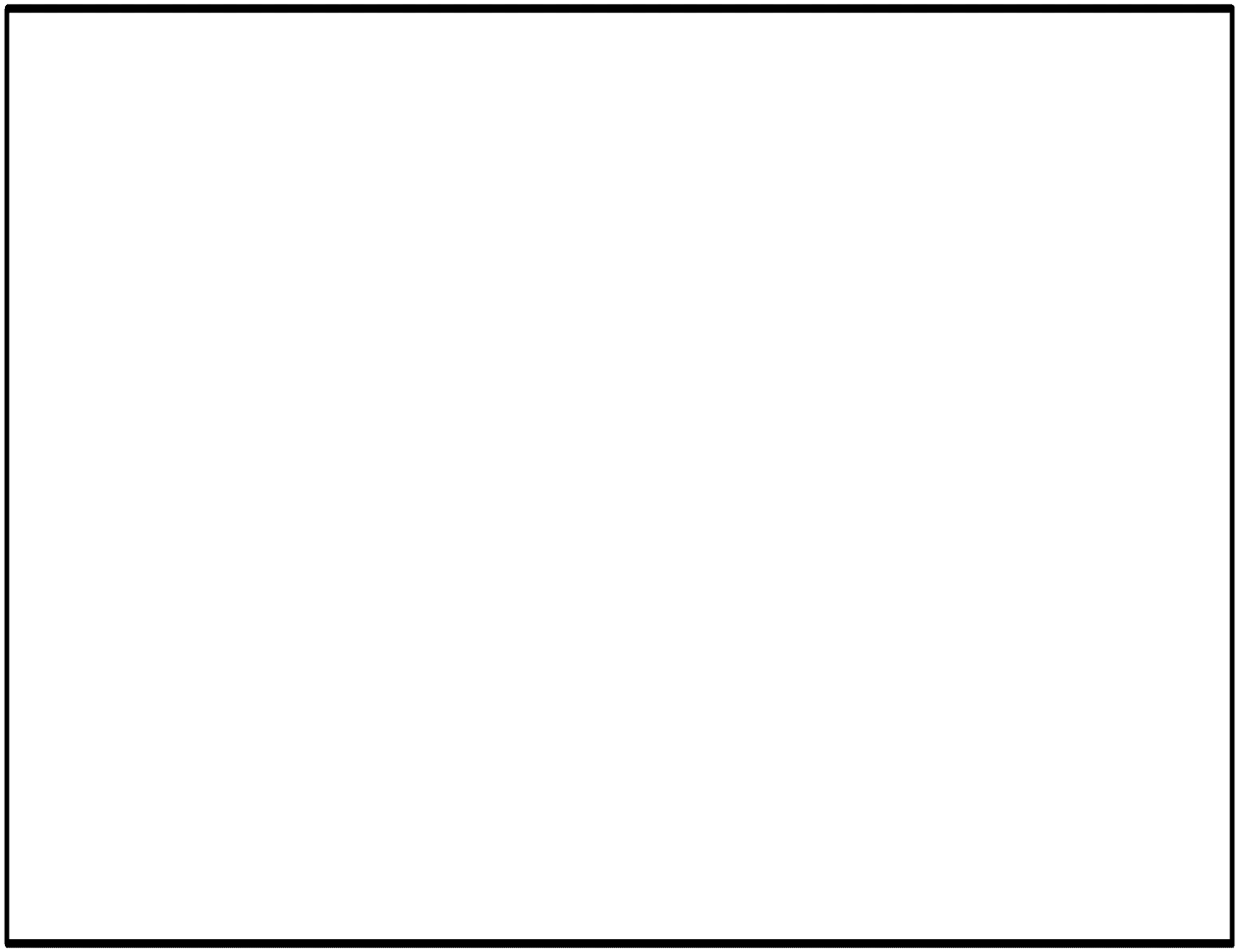
(b)(7)(e)

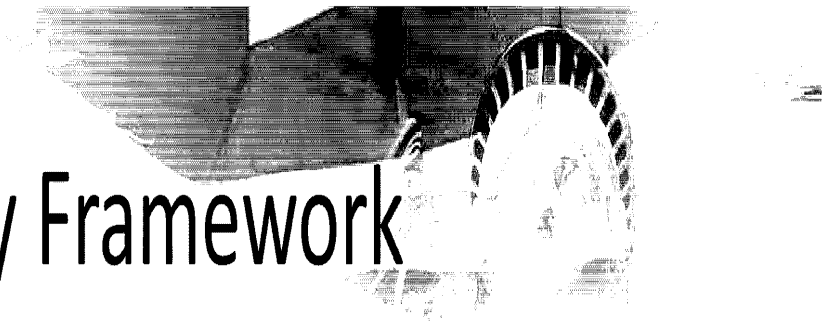


CARRP Process & Operational Procedure

CARRP is a disciplined process for identifying, recording, vetting, and adjudicating applications and petitions where NS concerns are identified.

(b)(7)(e)





National Security Framework

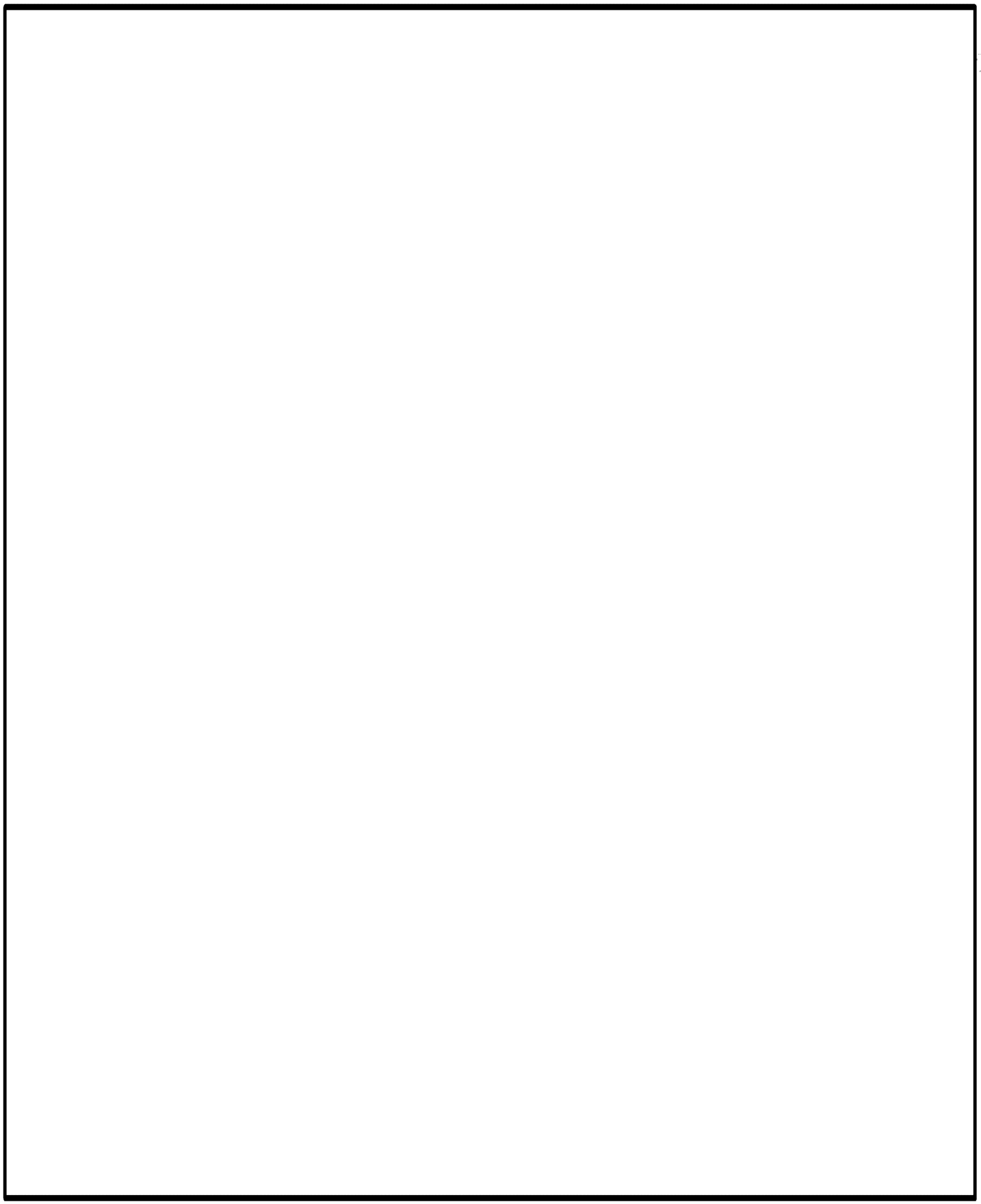
(b)(7)(e)

Known or Suspected Terrorist (KST)

Known or Suspected Terrorist (KST)

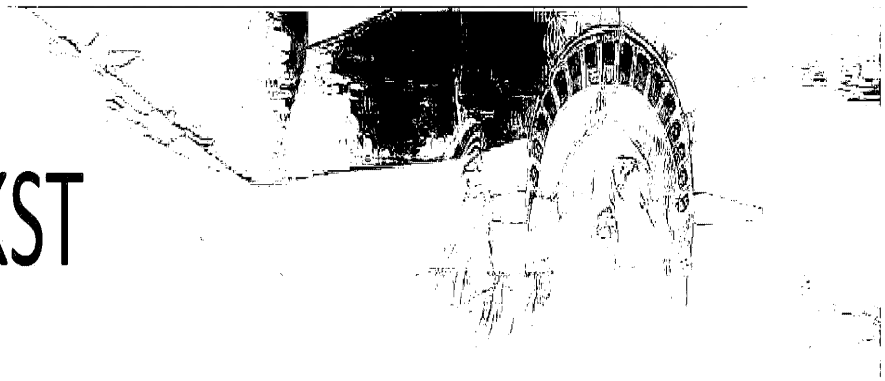
(b)(7)(e)

(b)(7)(e)



Terminology: KST

(b)(7)(e)



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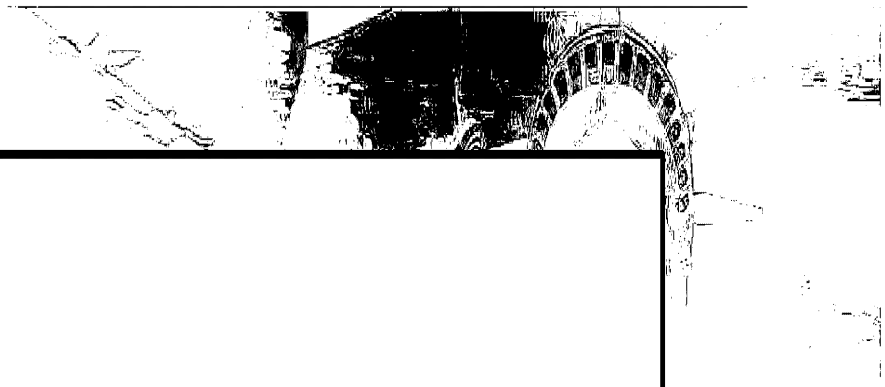
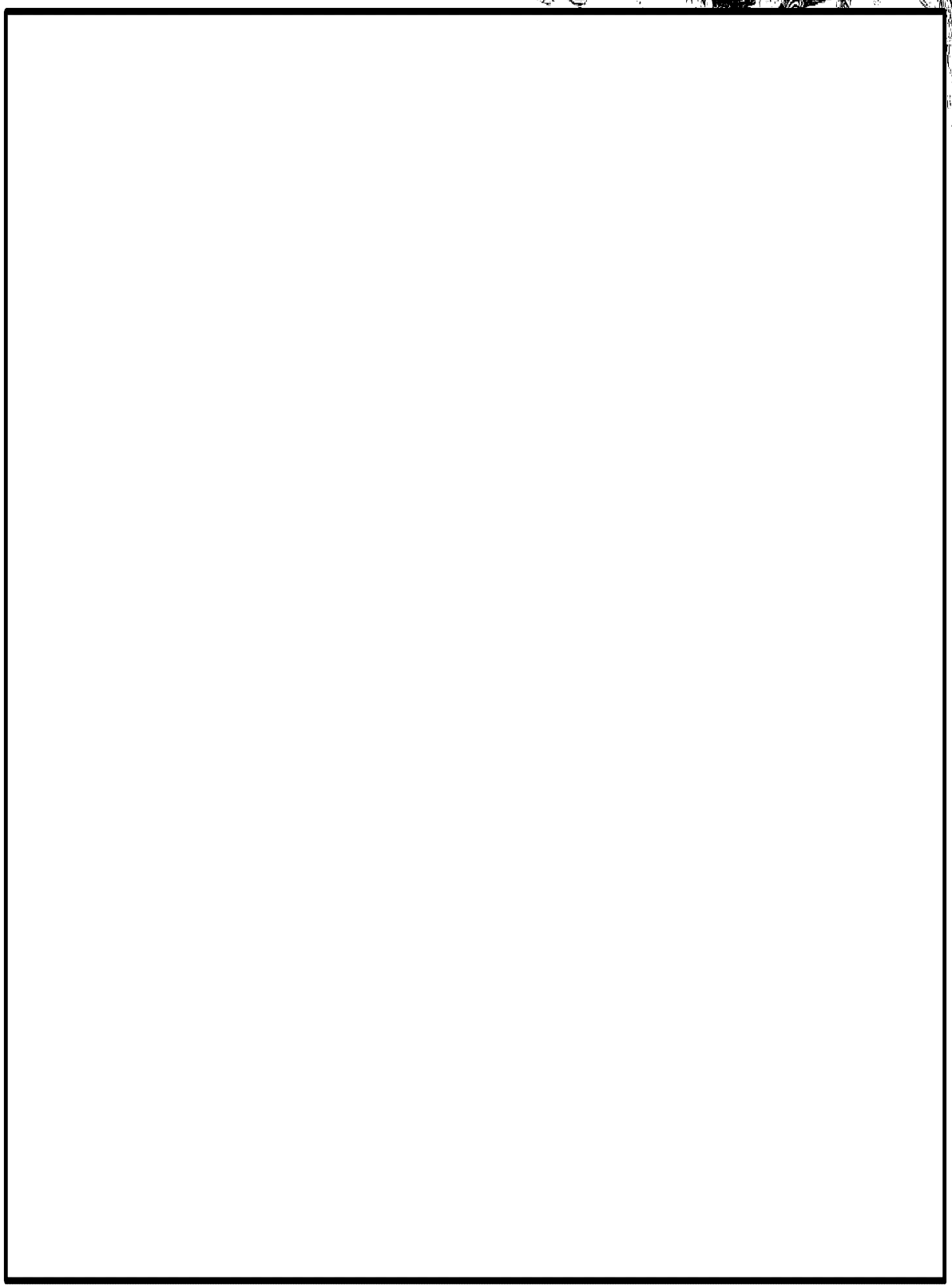
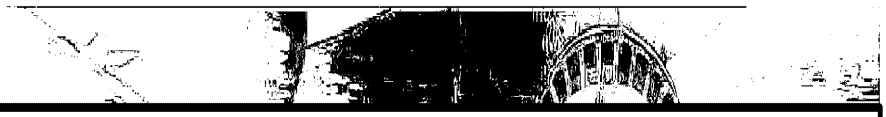
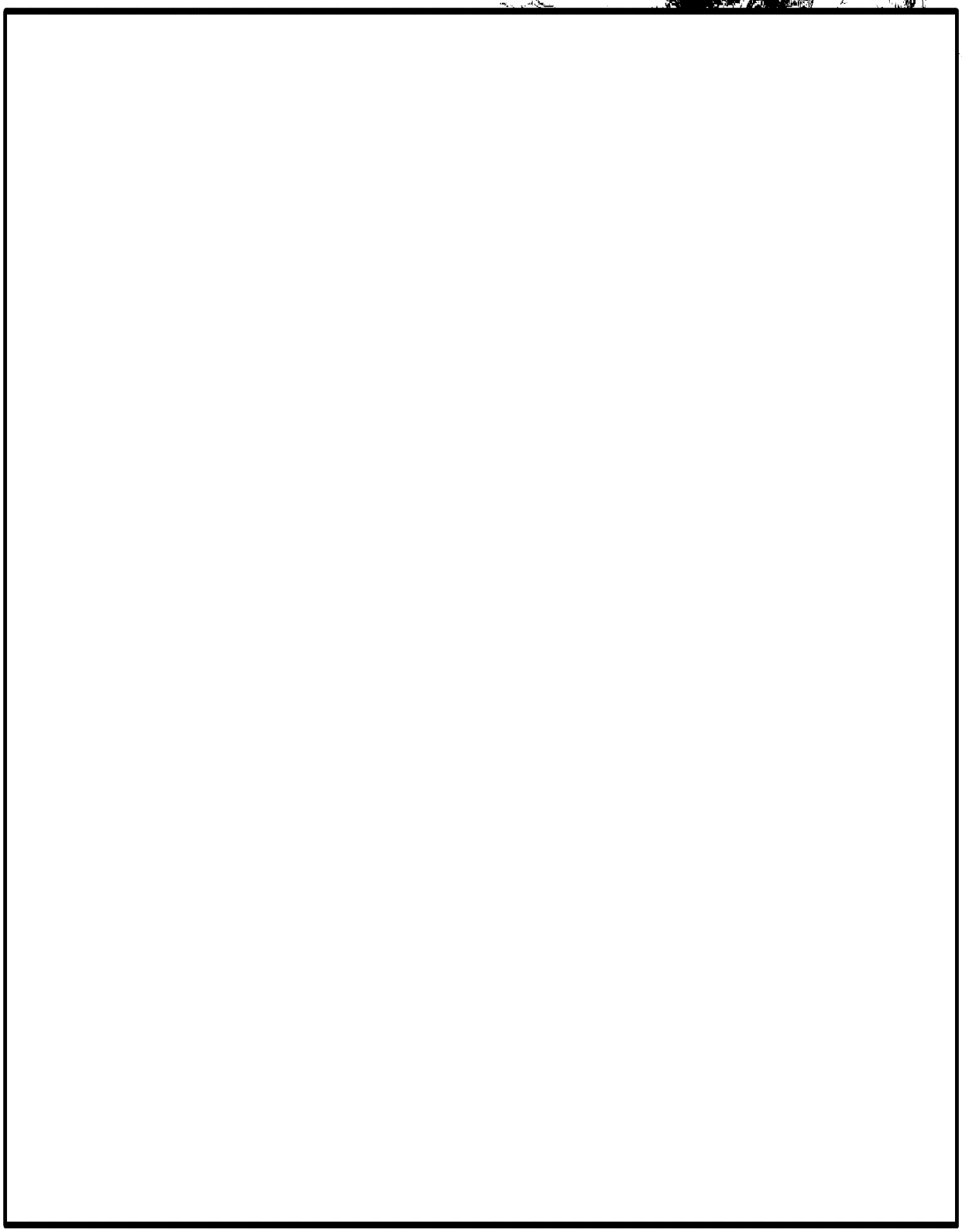




(b)(7)(e)



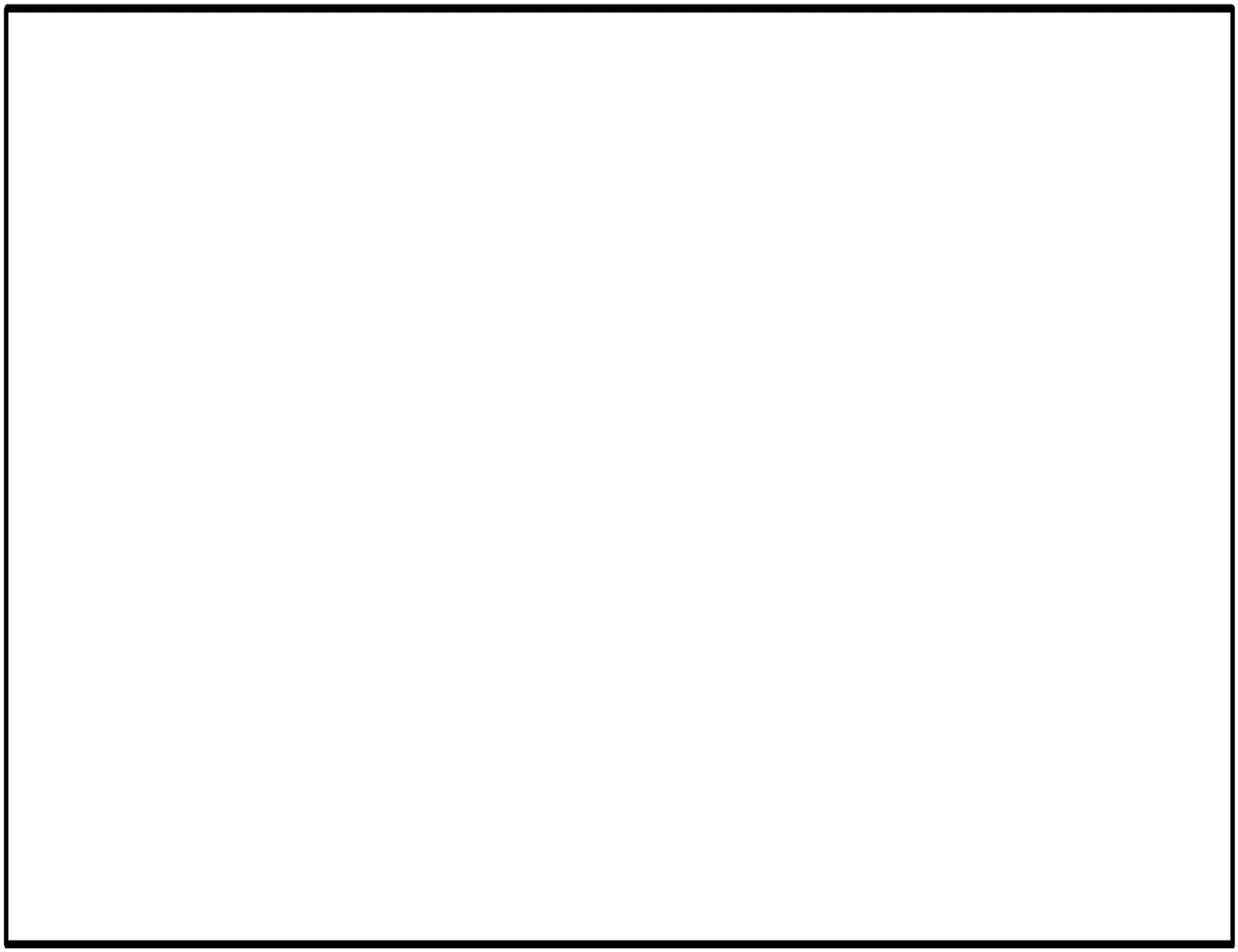
(b)(7)(e)



Non-Known or Suspected Terrorist (Non-KST)

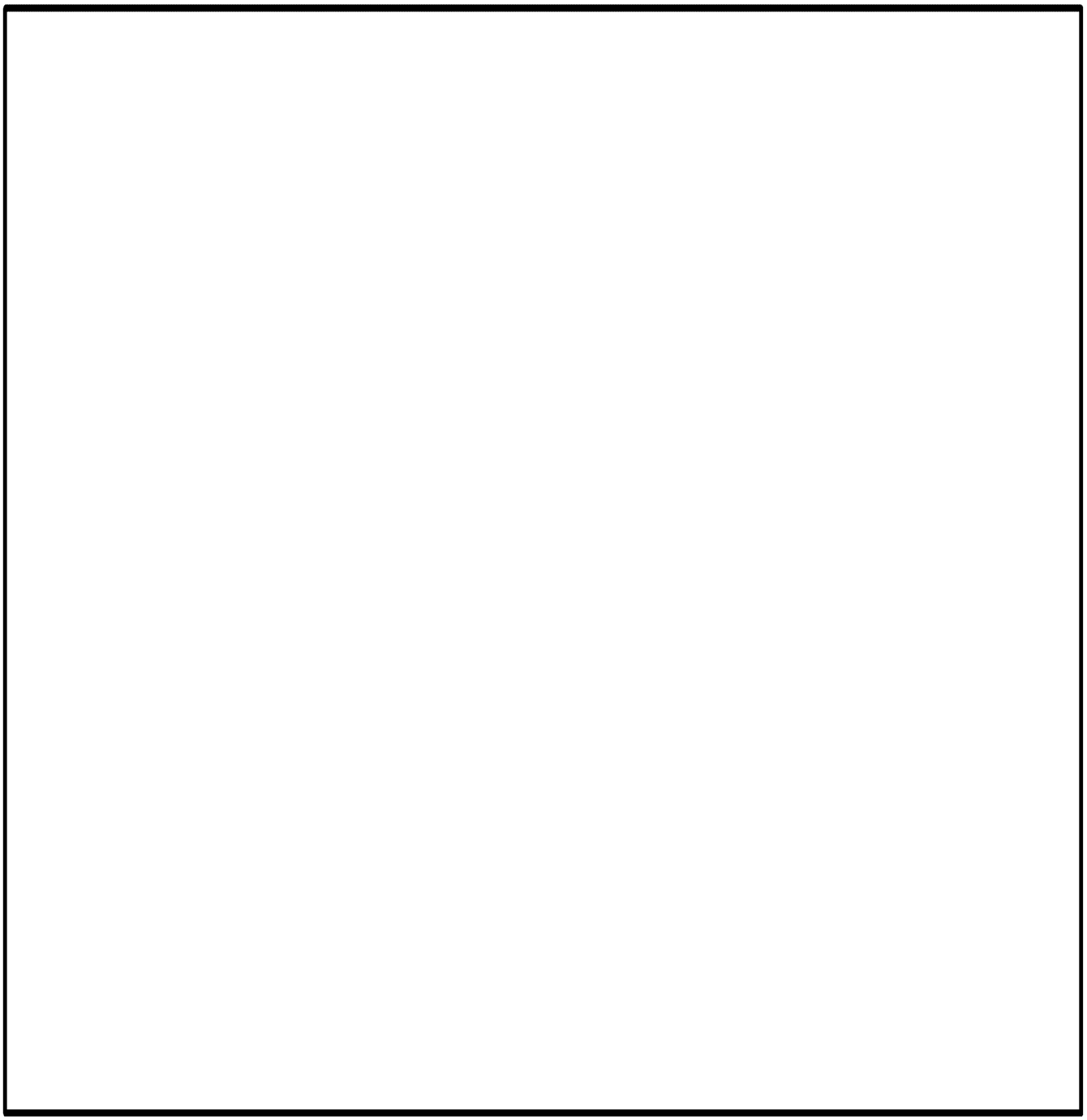
Non-Known or Suspected Terrorist (Non-KST)

(b)(7)(e)



The RAIO Adjudicator's Role in CARRP

(b)(7)(e)



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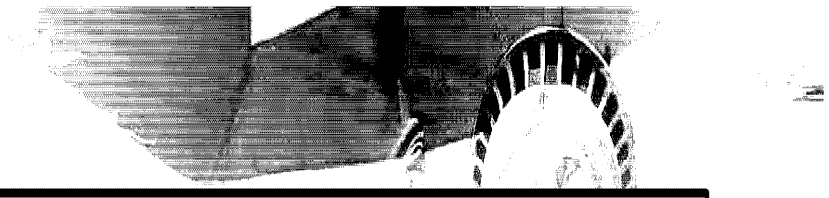
(b)(7)(e)



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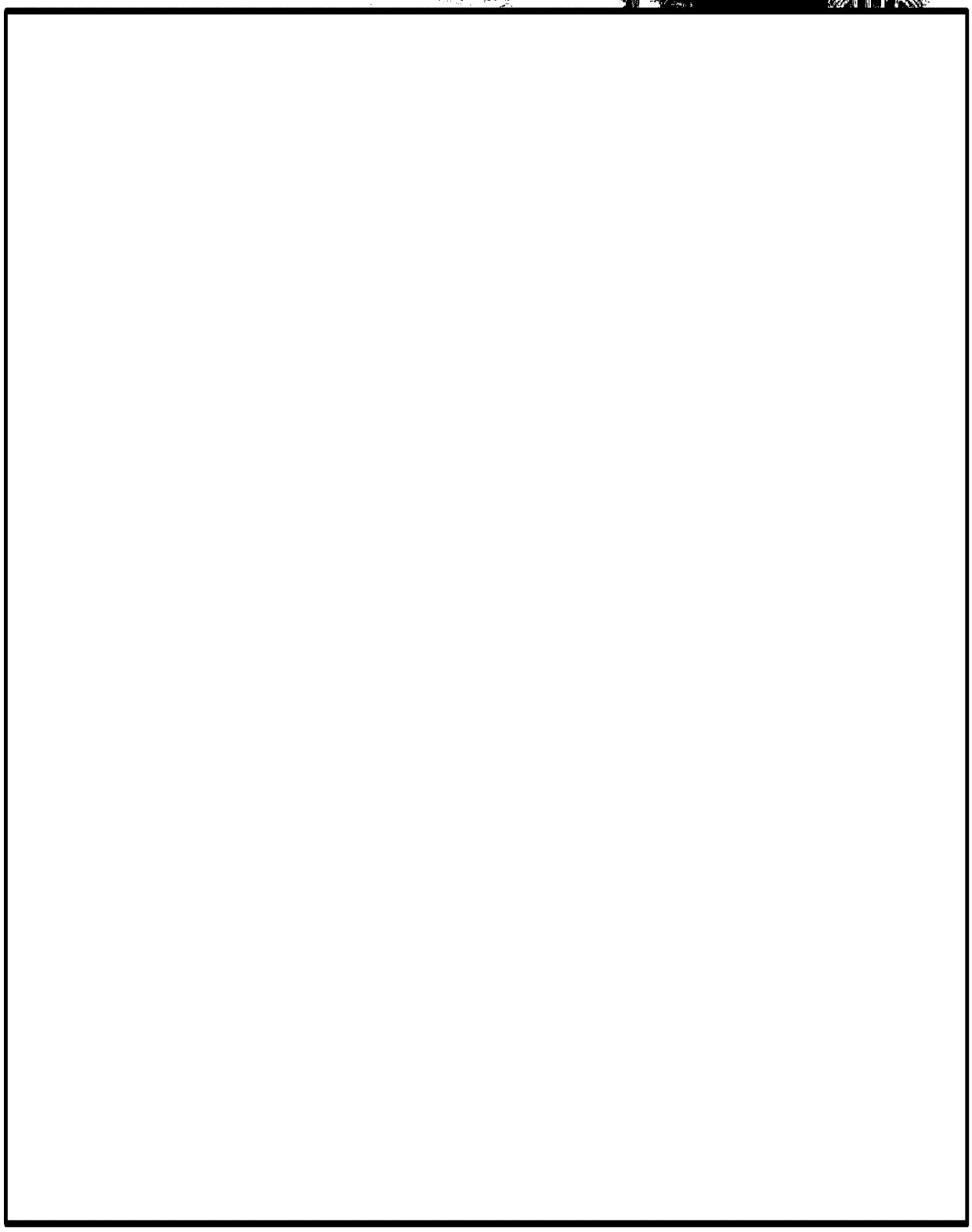
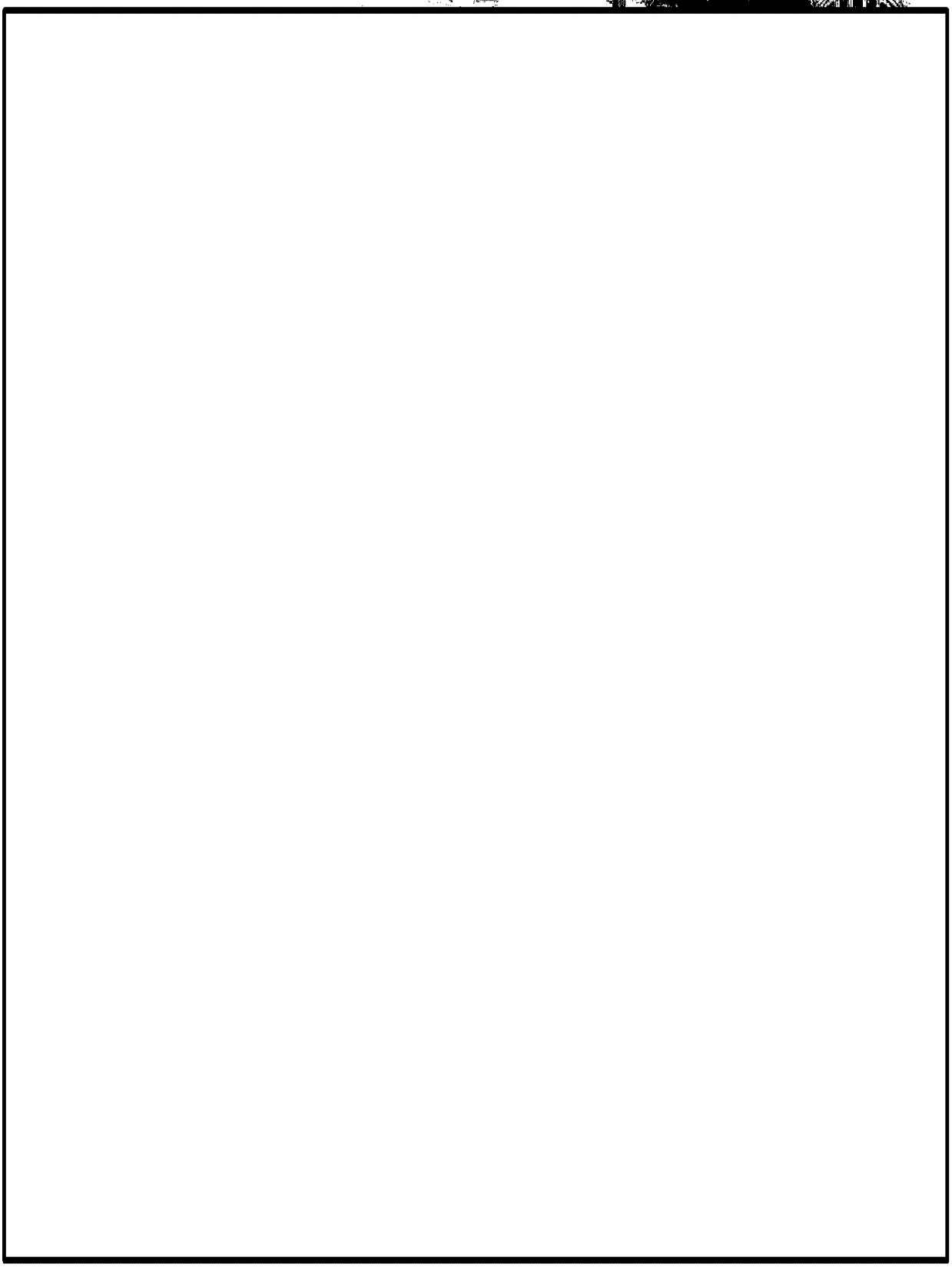


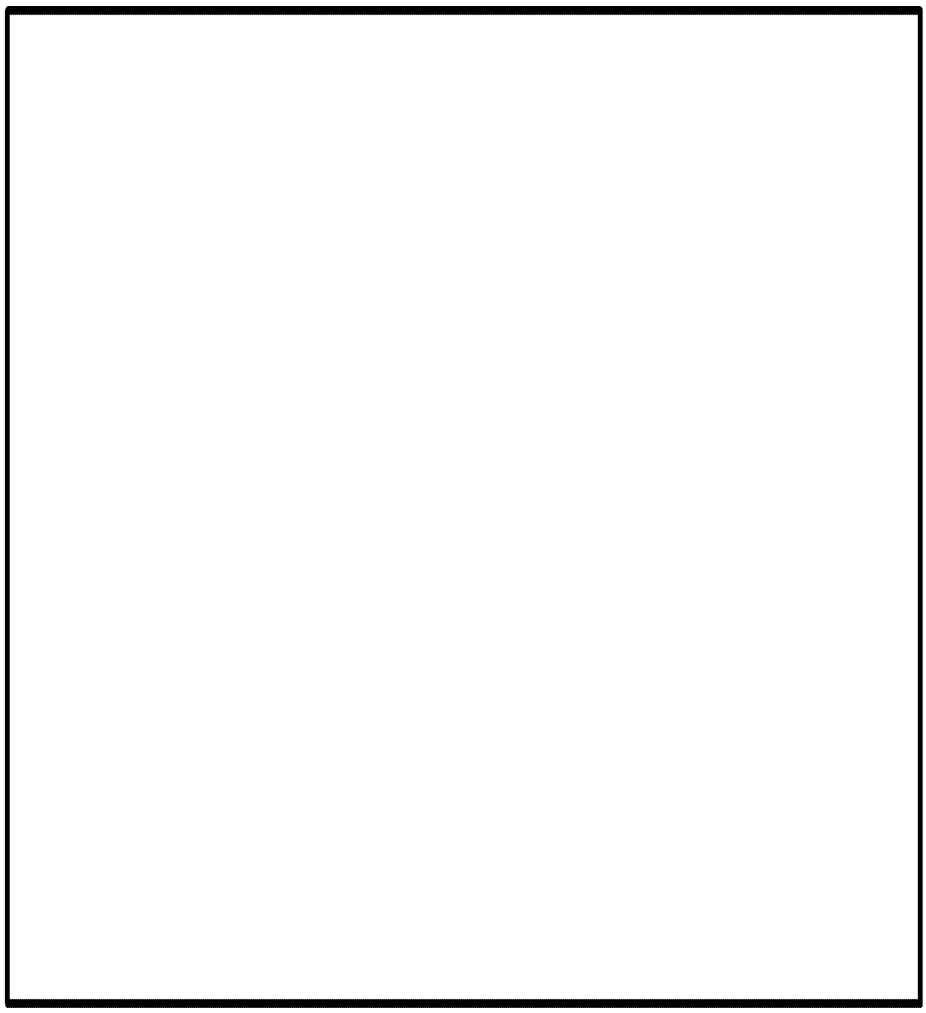
(b)(7)(e)



(b)(7)(e)

Identifying Non-KSTs

(b)(7)(e)



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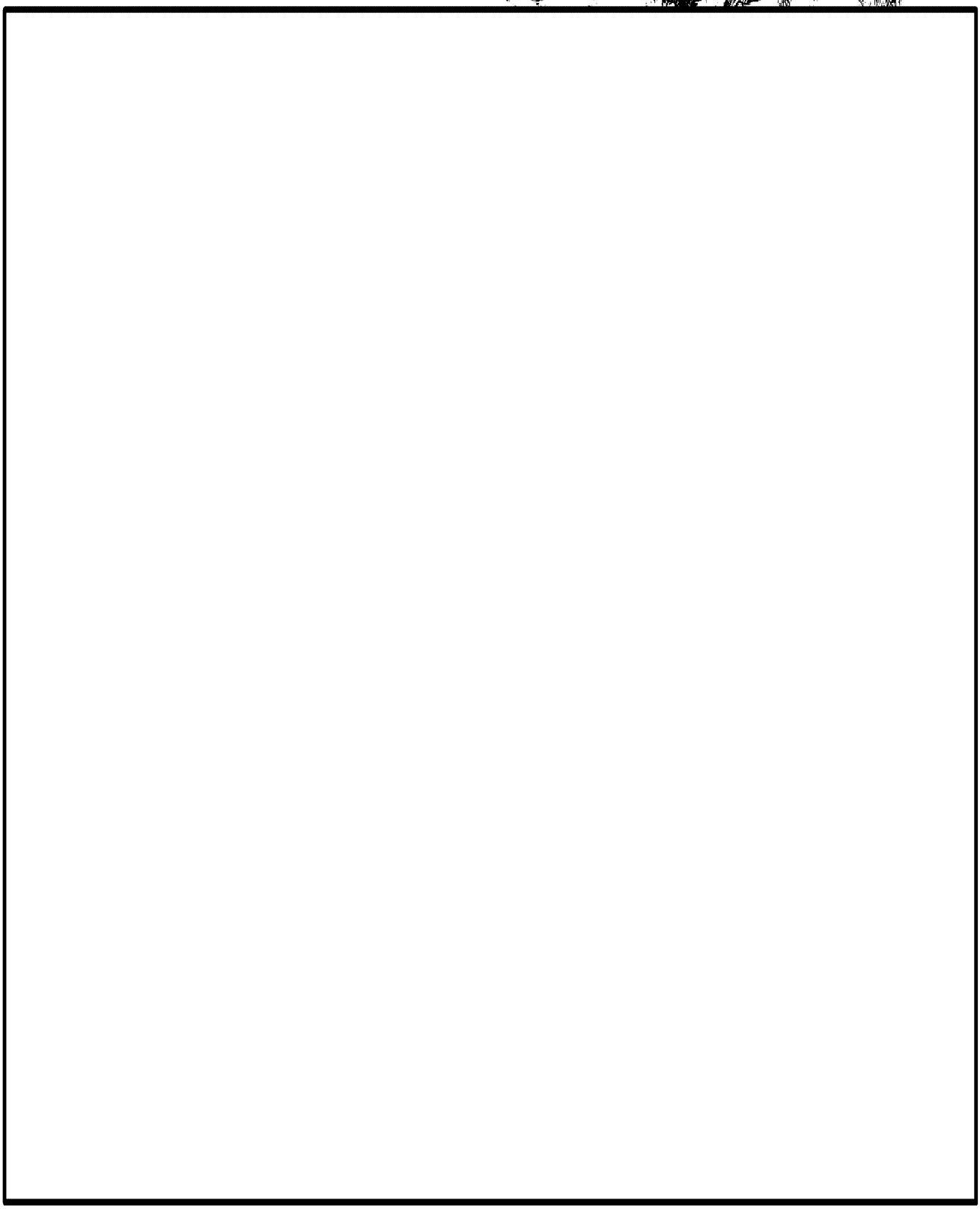
(b)(7)(e)



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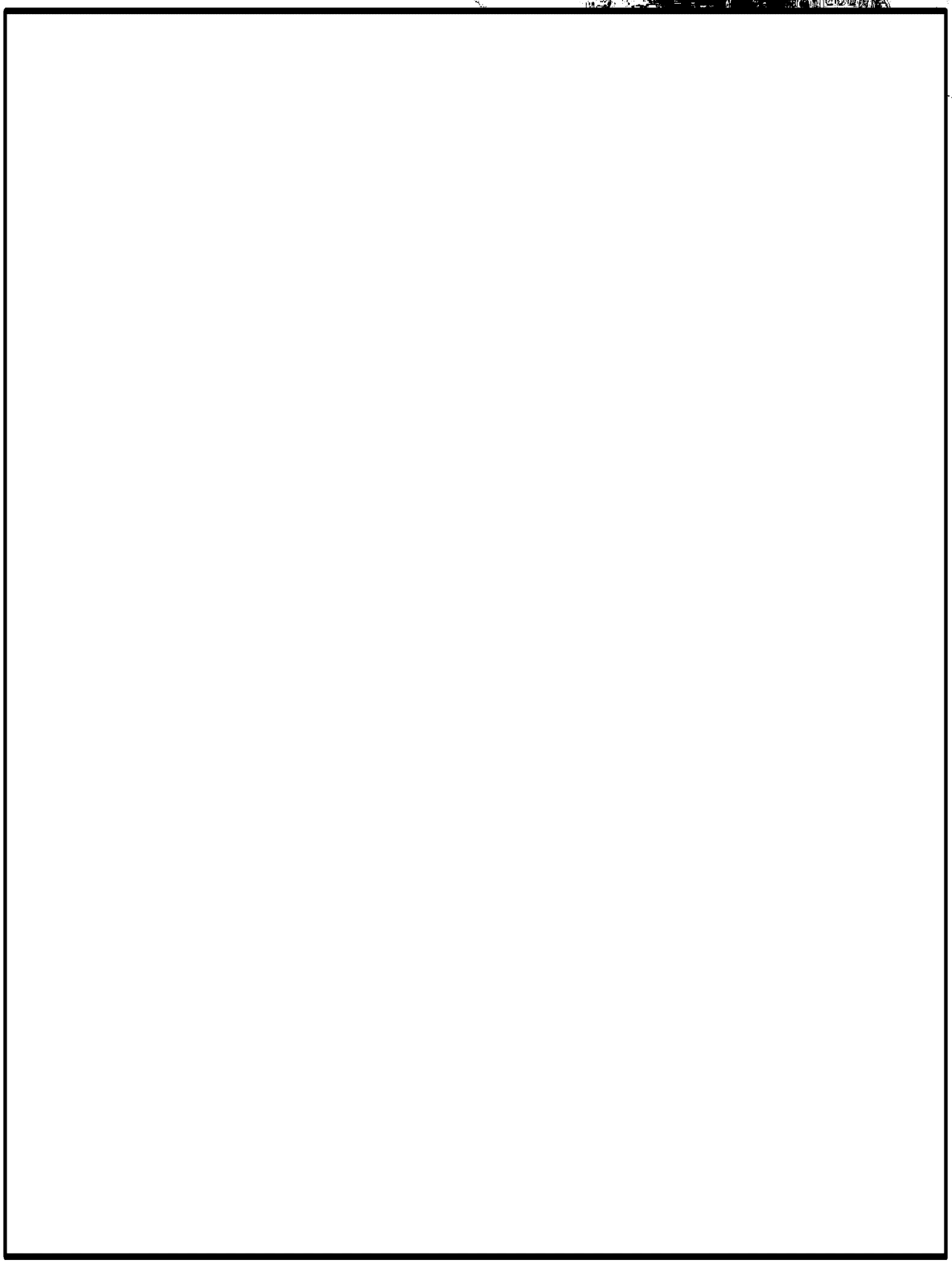
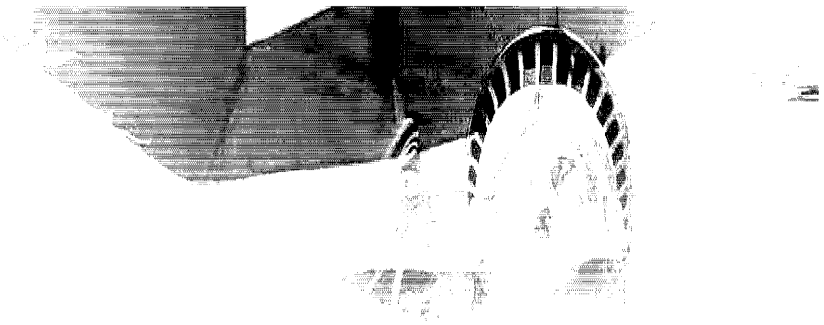
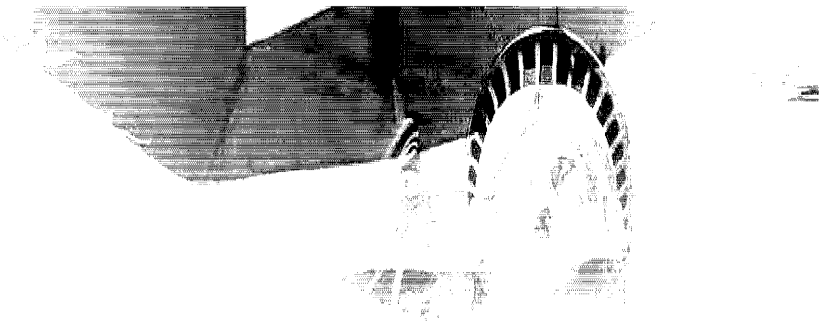




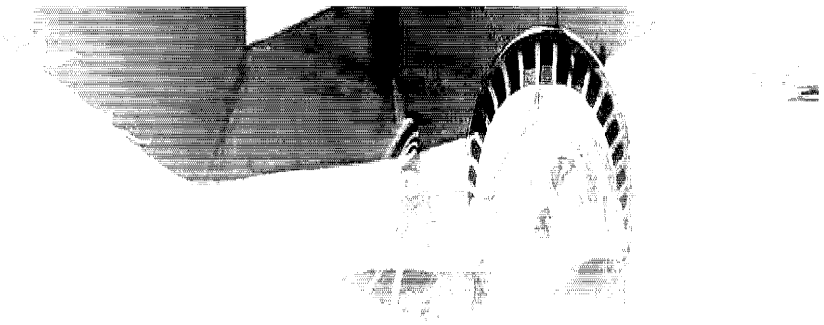
Hypo 4

(b)(7)(e)



Hypo 5

(b)(7)(e)



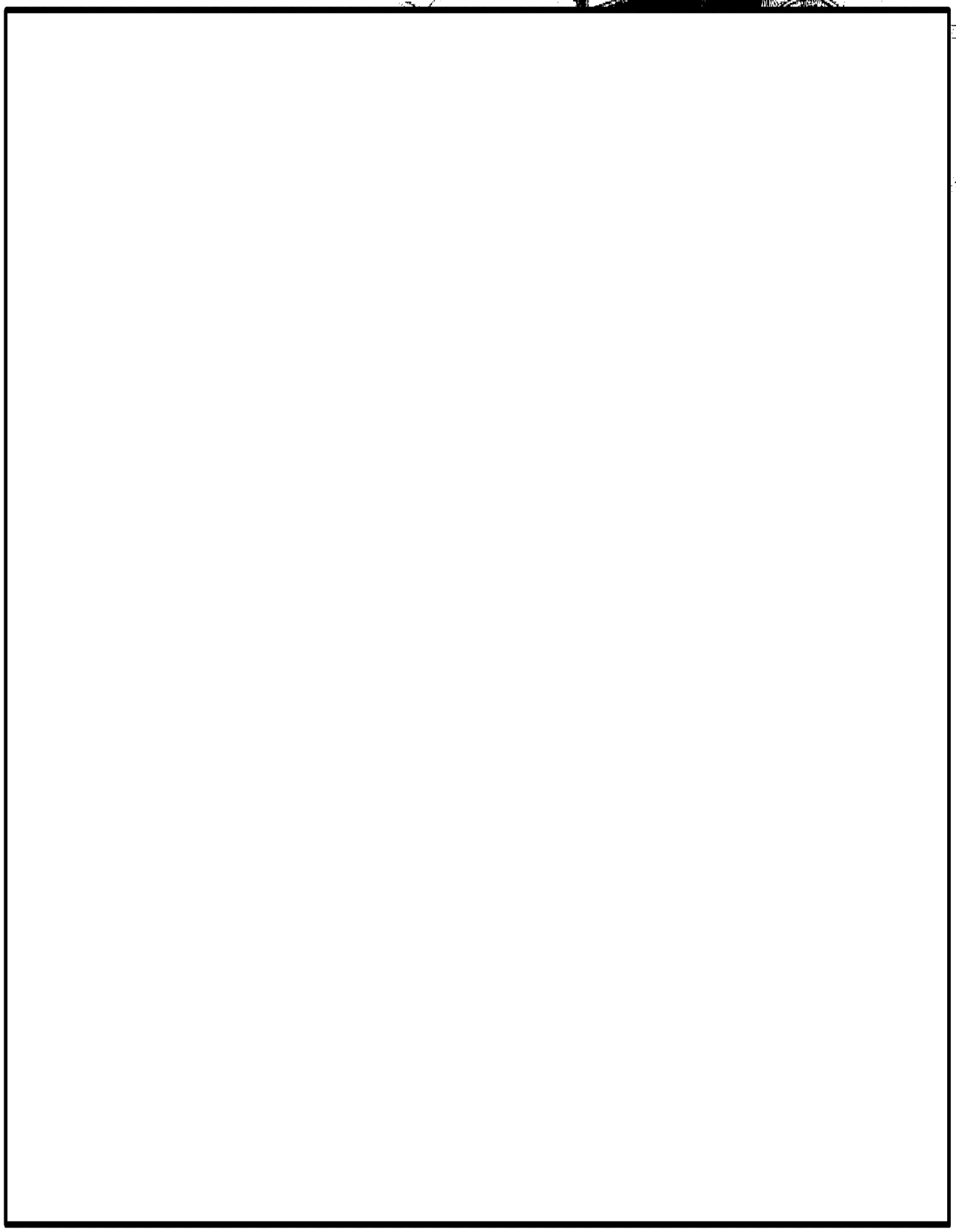
(b)(7)(e) # Hypo 6

A guy walks into a (mandatory?) bar…

NS Concern?

(b)(7)(e)

(b)(7)(e)



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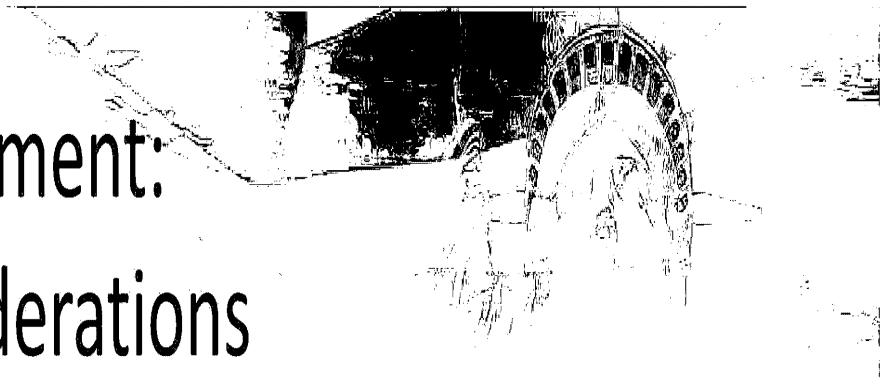

Eligibility Assessment:

(b)(7)(e) Interview Considerations

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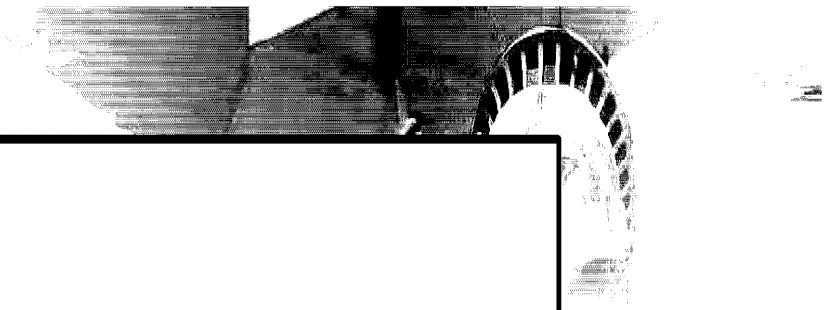
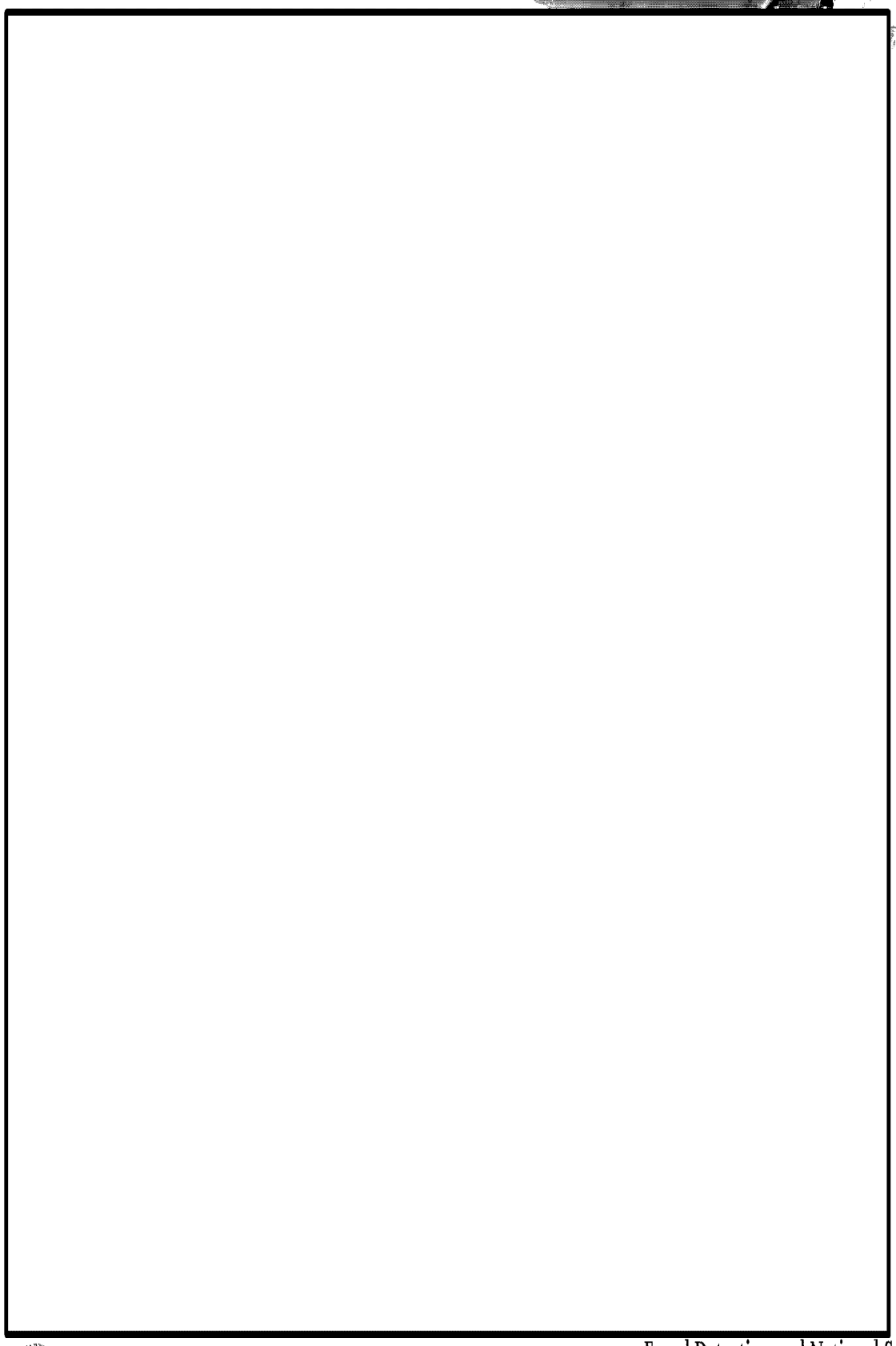
~~Unclassified // FOUO / Law Enforcement Sensitive~~

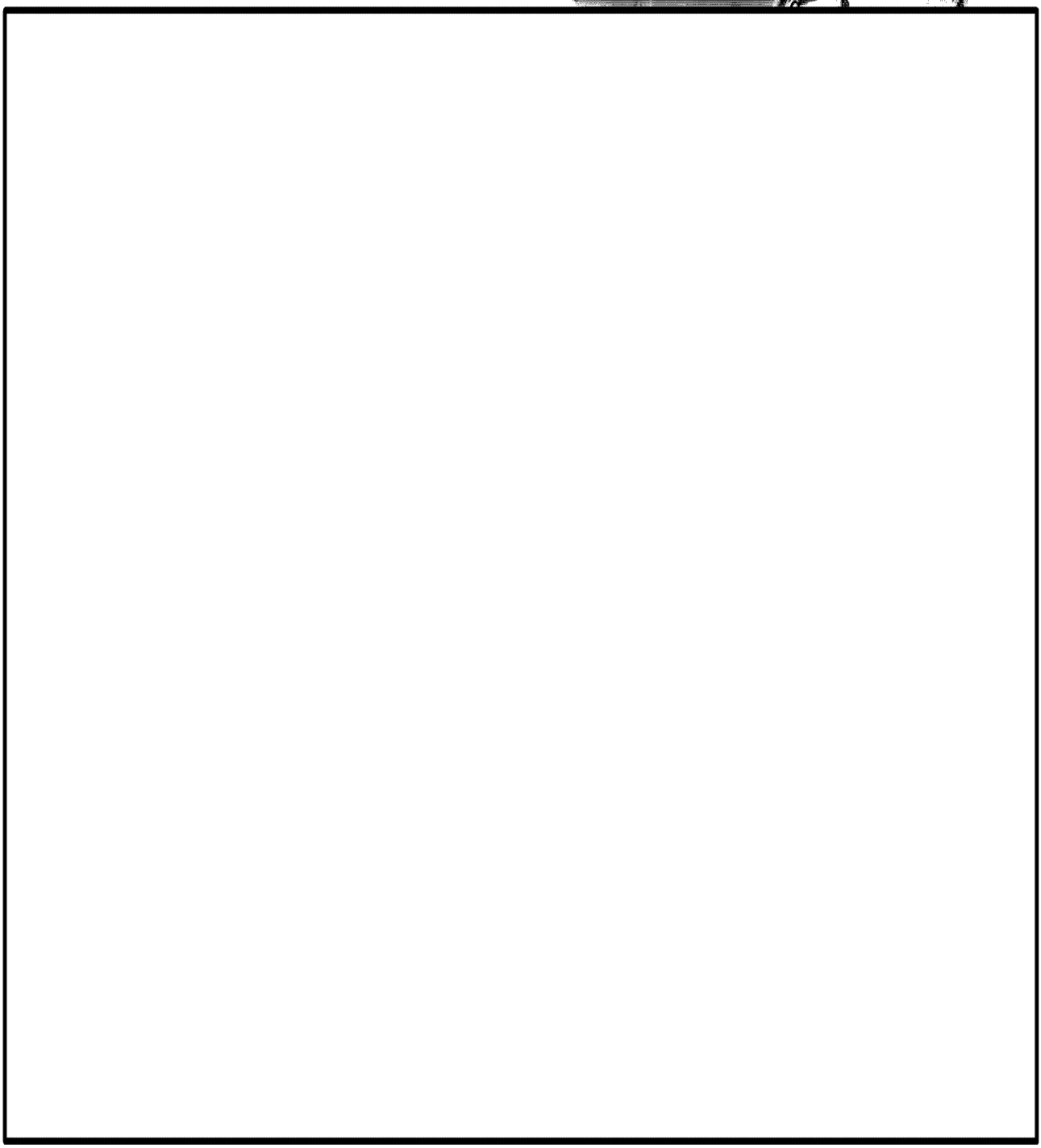
(b)(7)(e)





(b)(7)(e)

(b)(7)(e)



(b)(7)(e)

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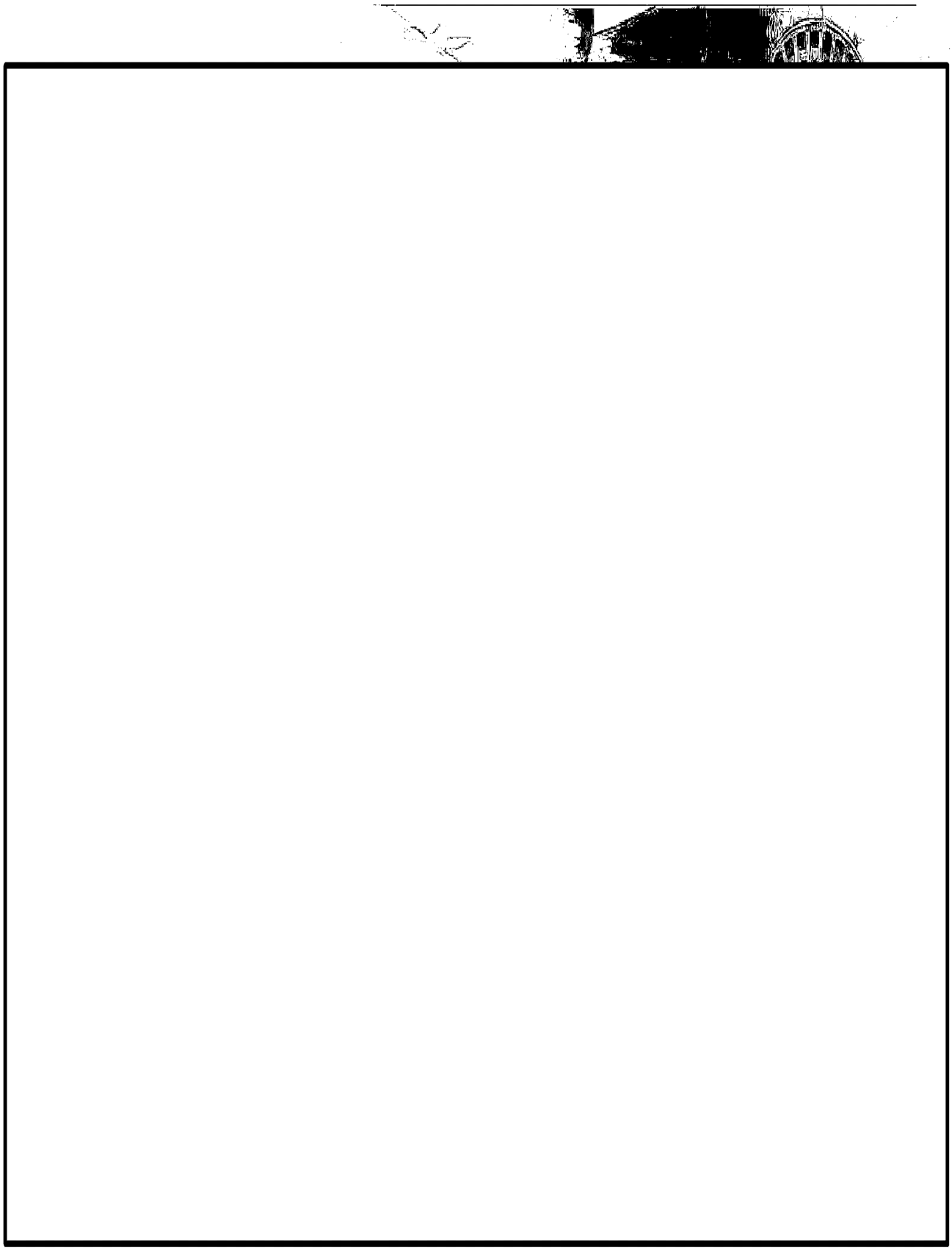

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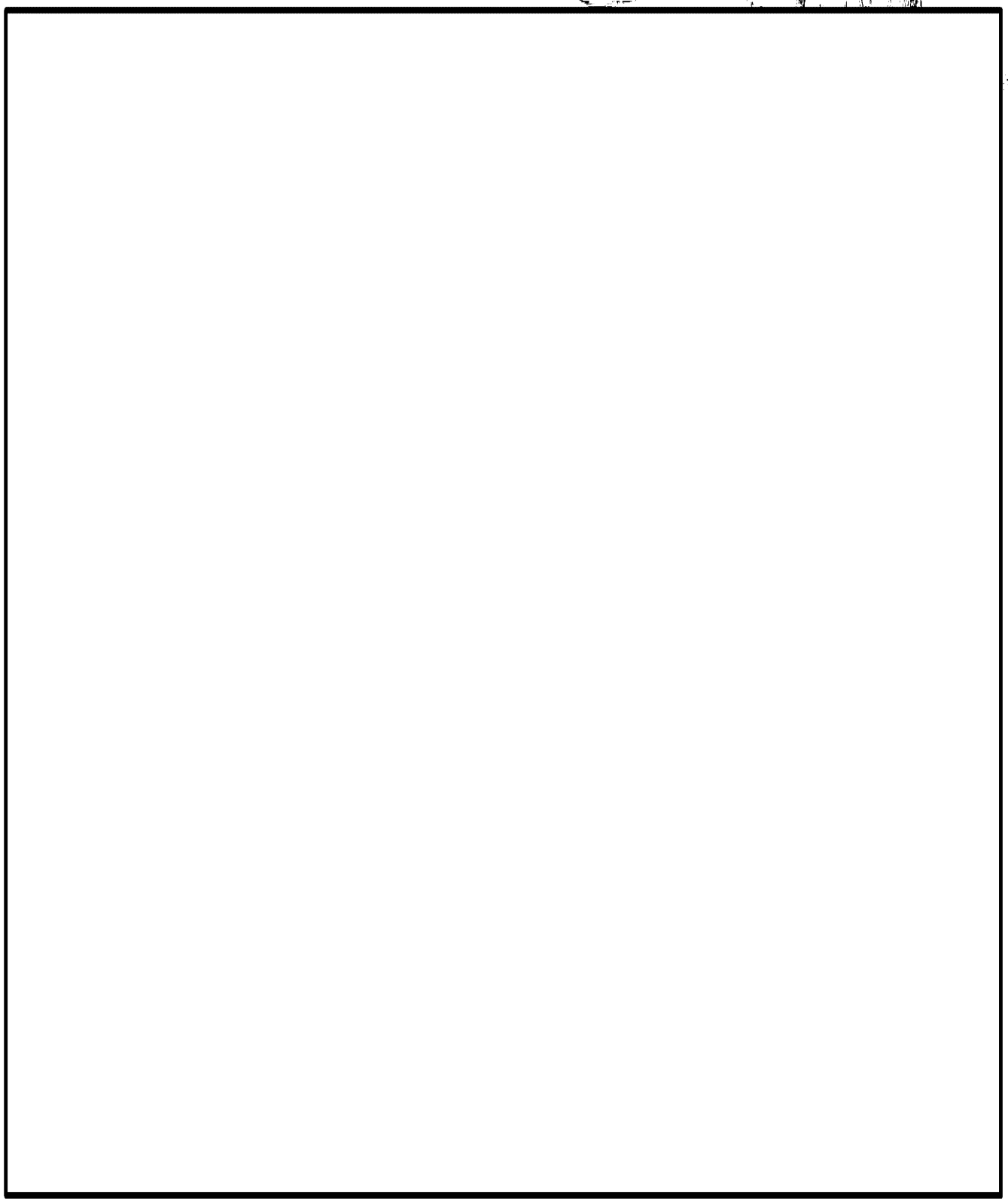
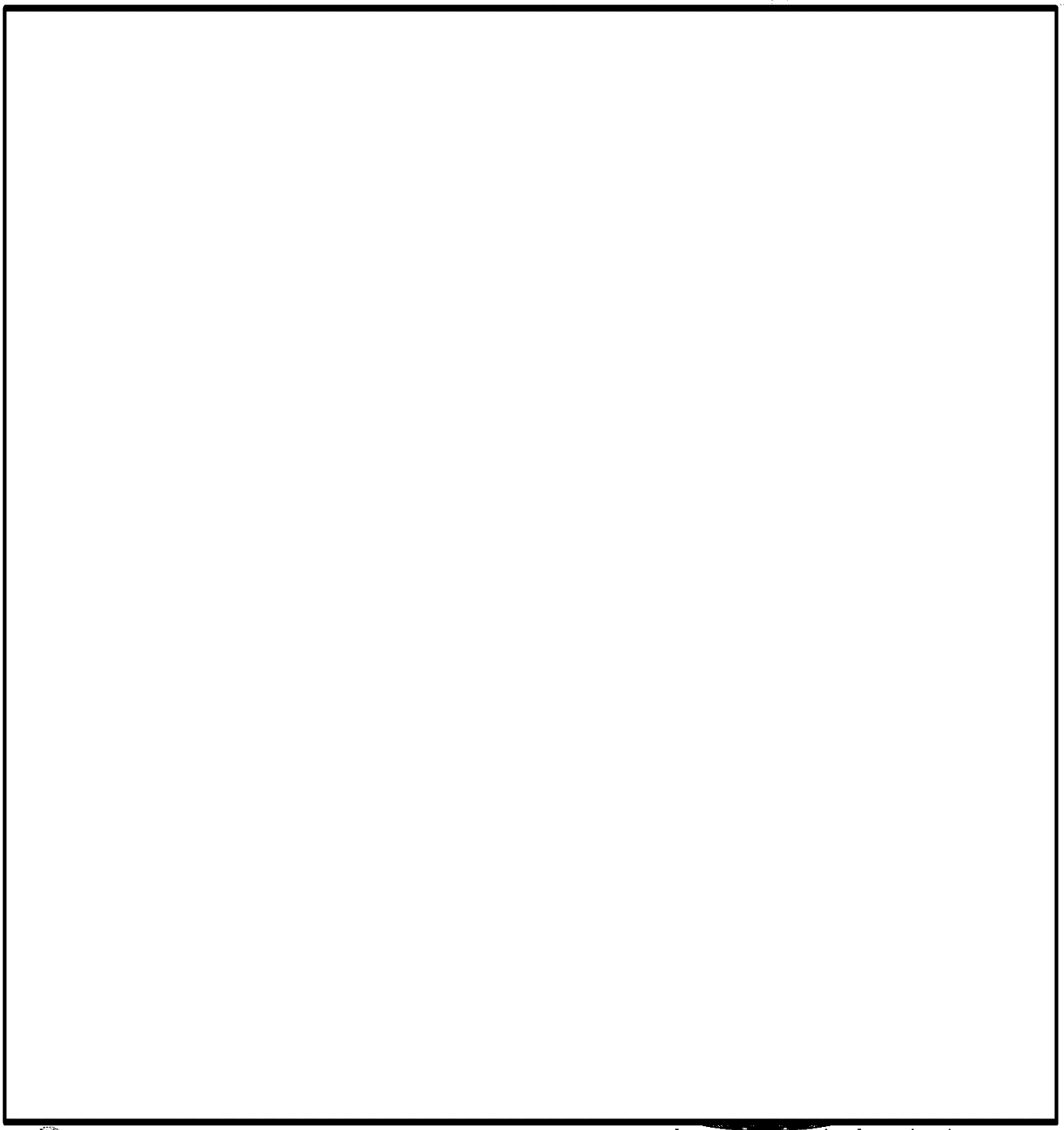


(b)(7)(e)

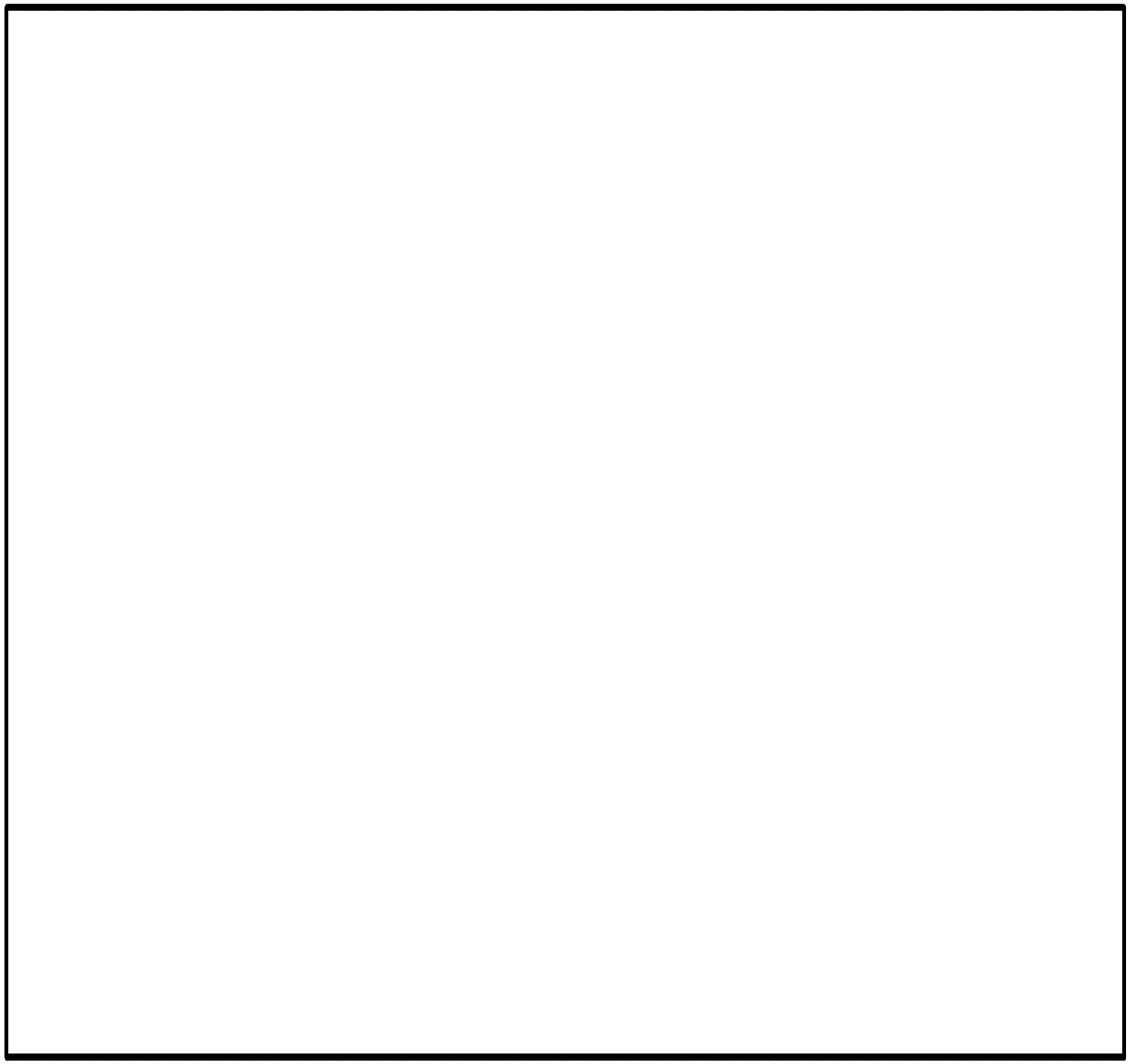
FDNS Findings and Recommendations



(b)(7)(e)

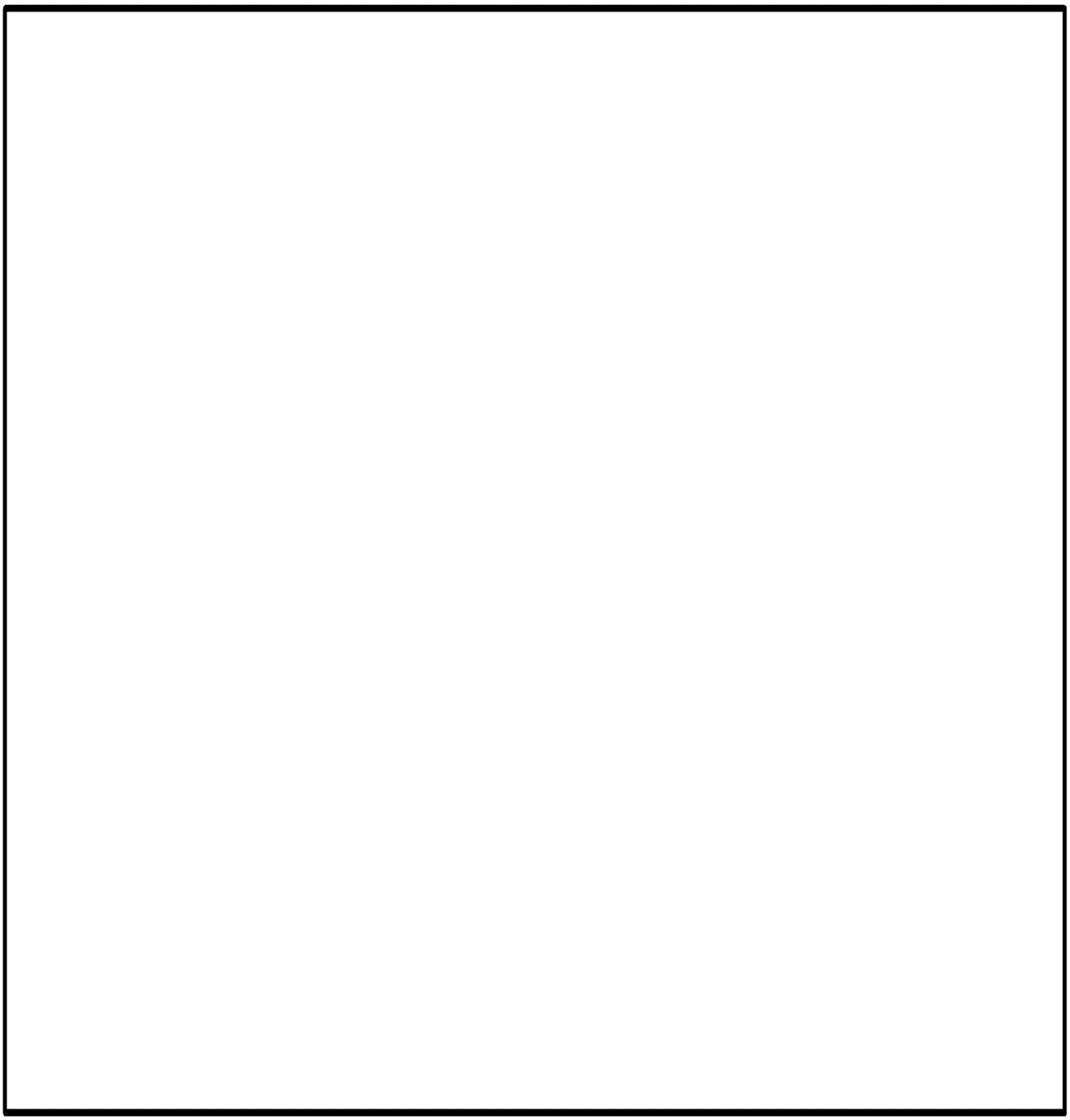
CARRP Roadmap: Adjudicator's Role

(b)(7)(e)



Adjudicating National Security Cases

(b)(7)(e)



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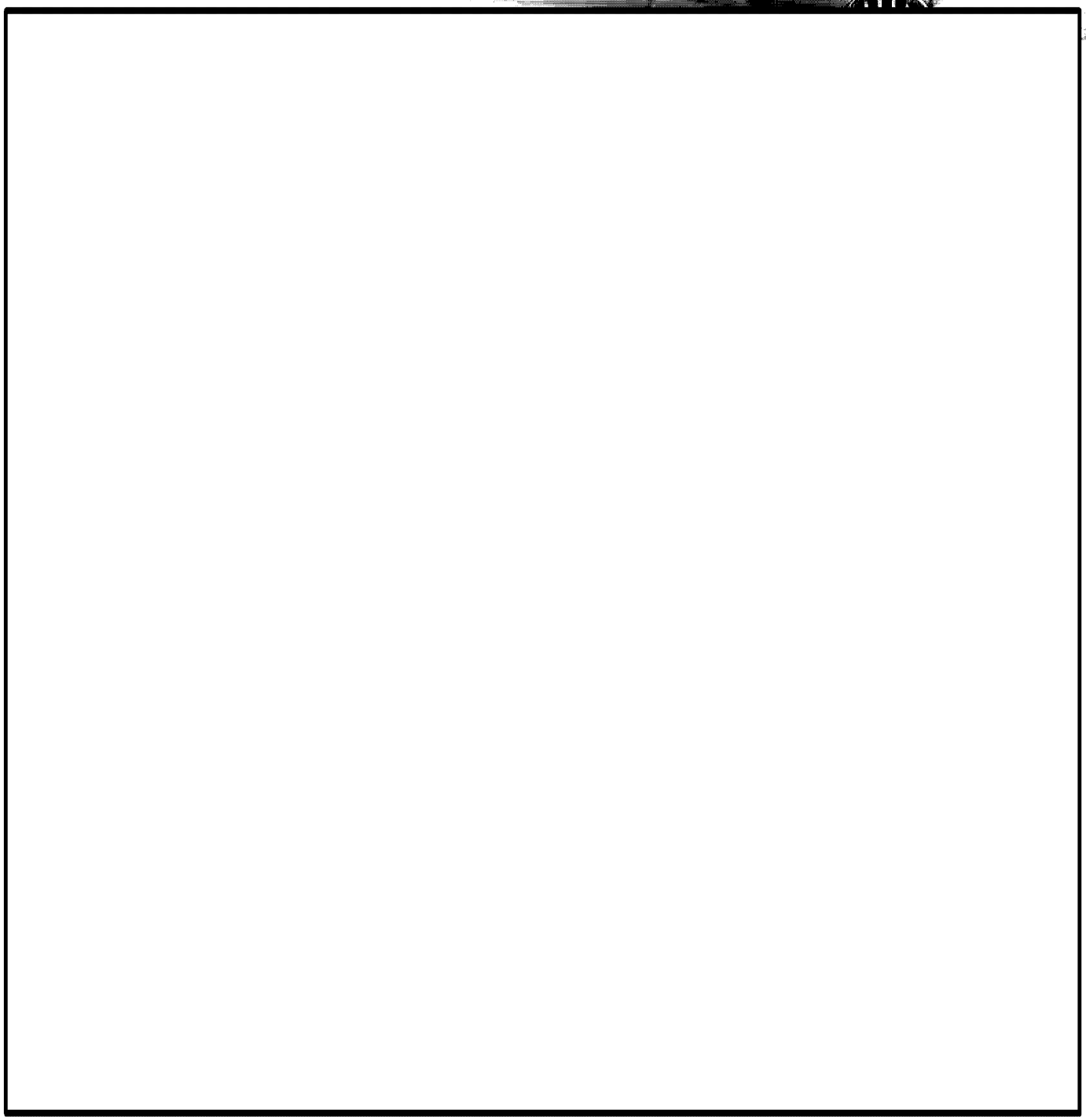
(b)(7)(e)



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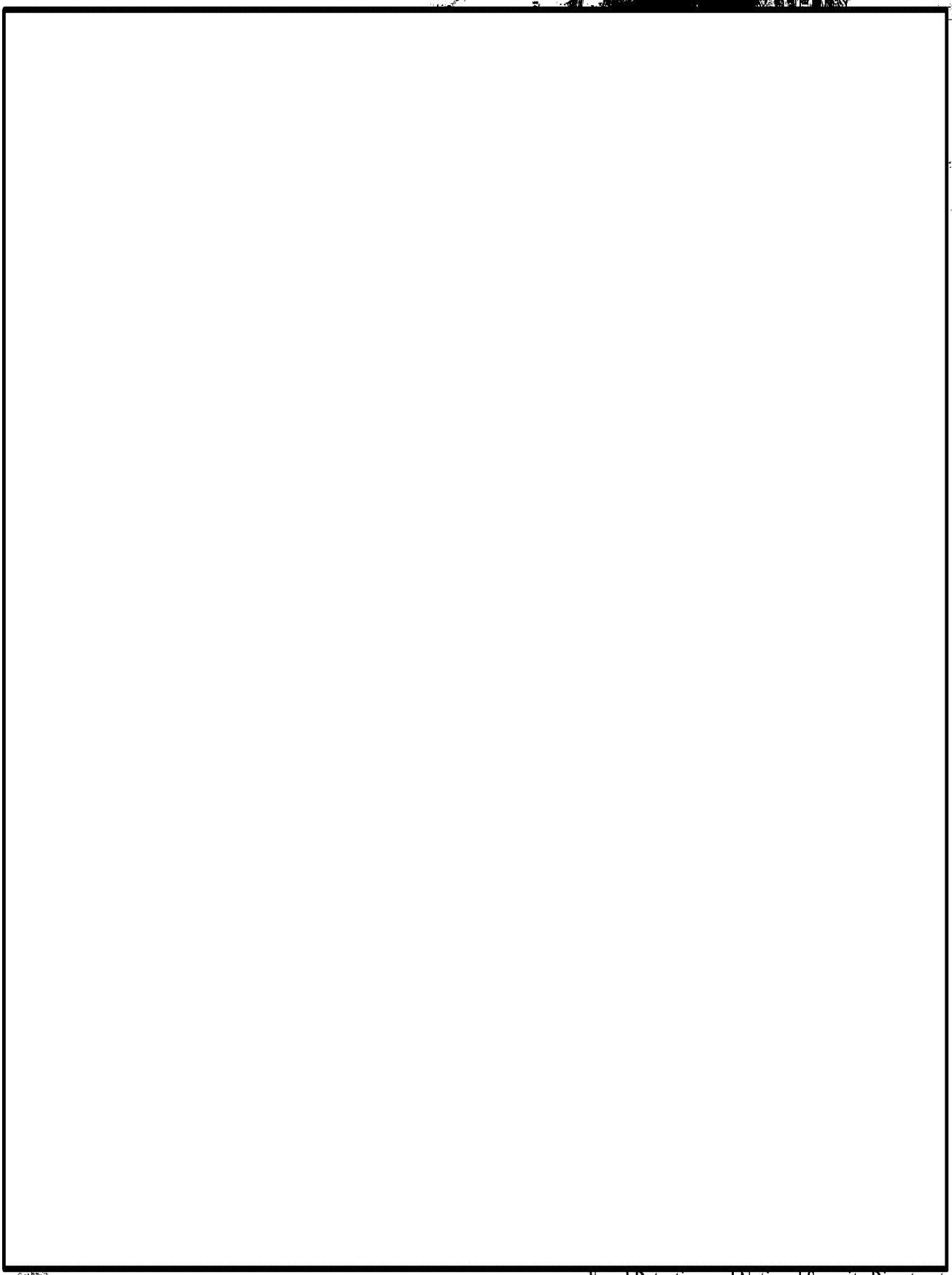

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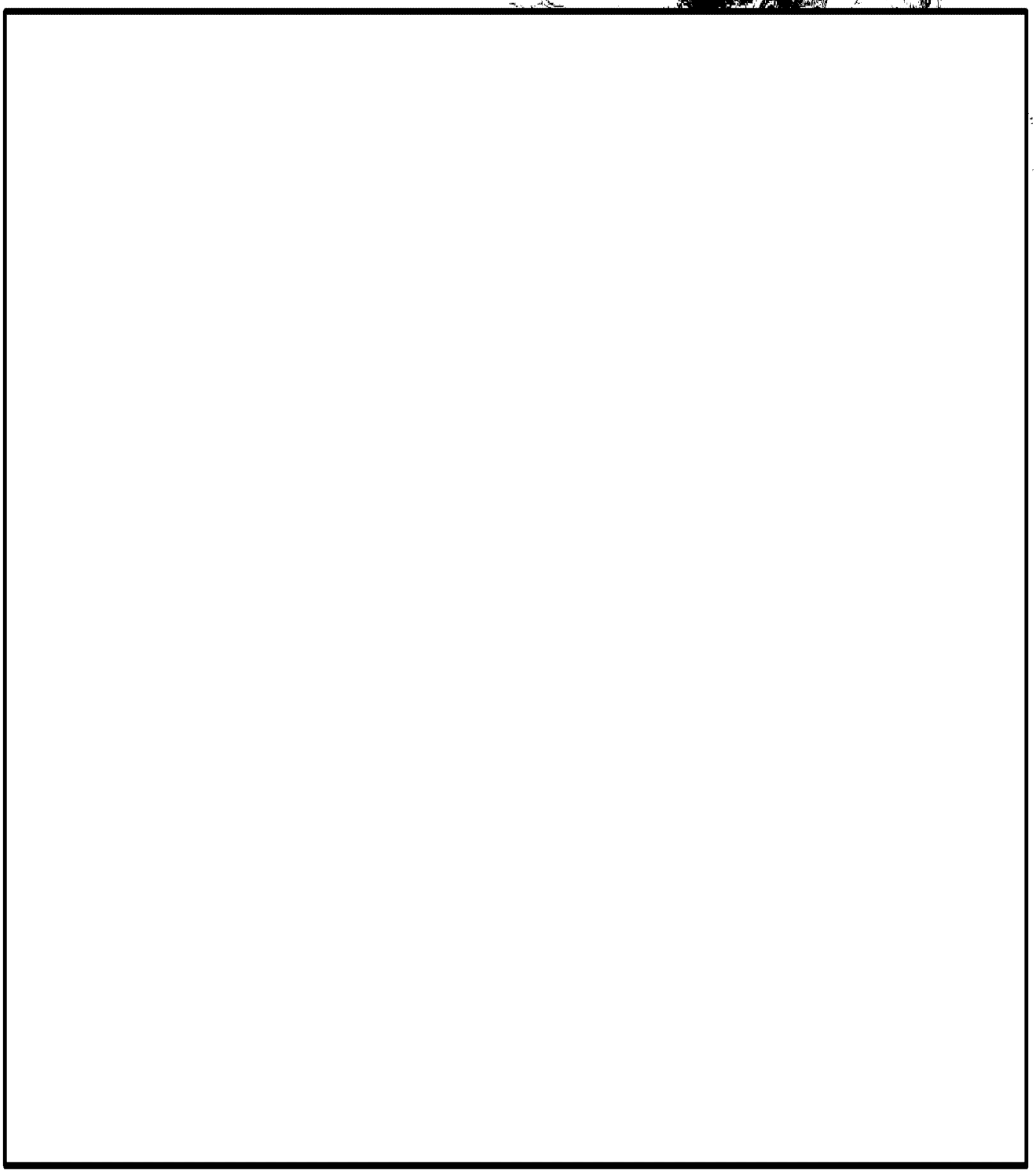
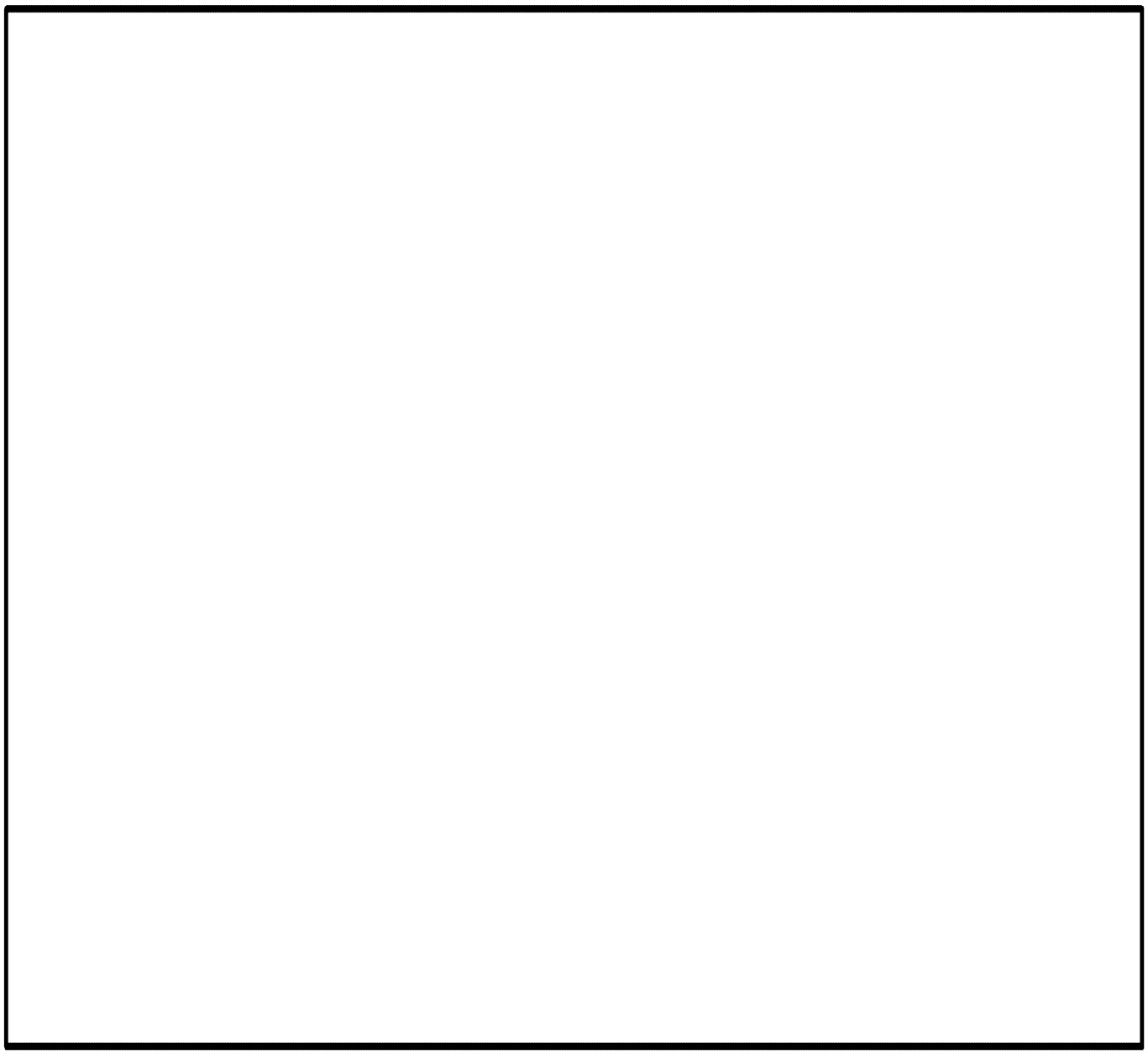


(b)(7)(e)

Adjudicating KST cases

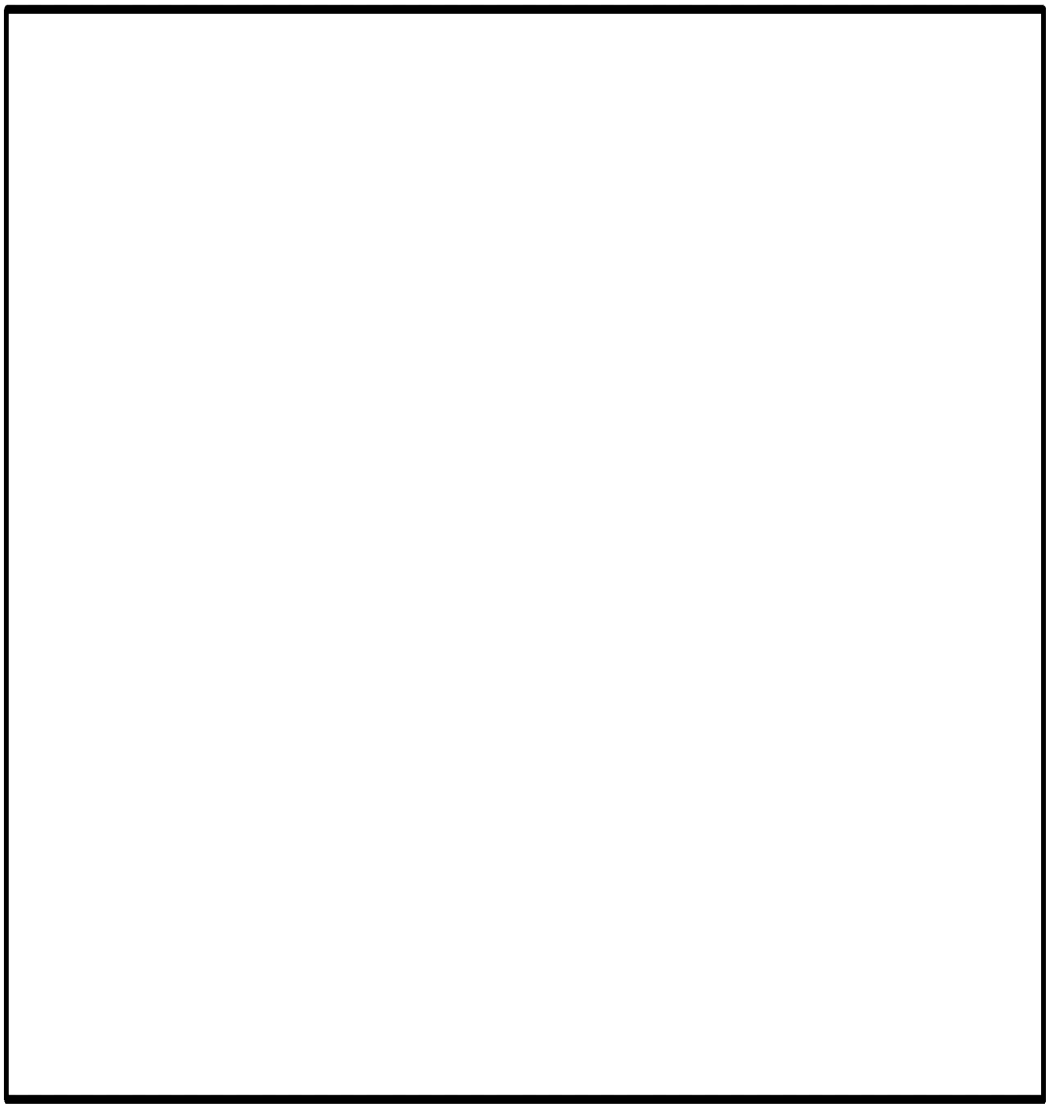
Adjudicating Non-KST cases

(b)(7)(e)



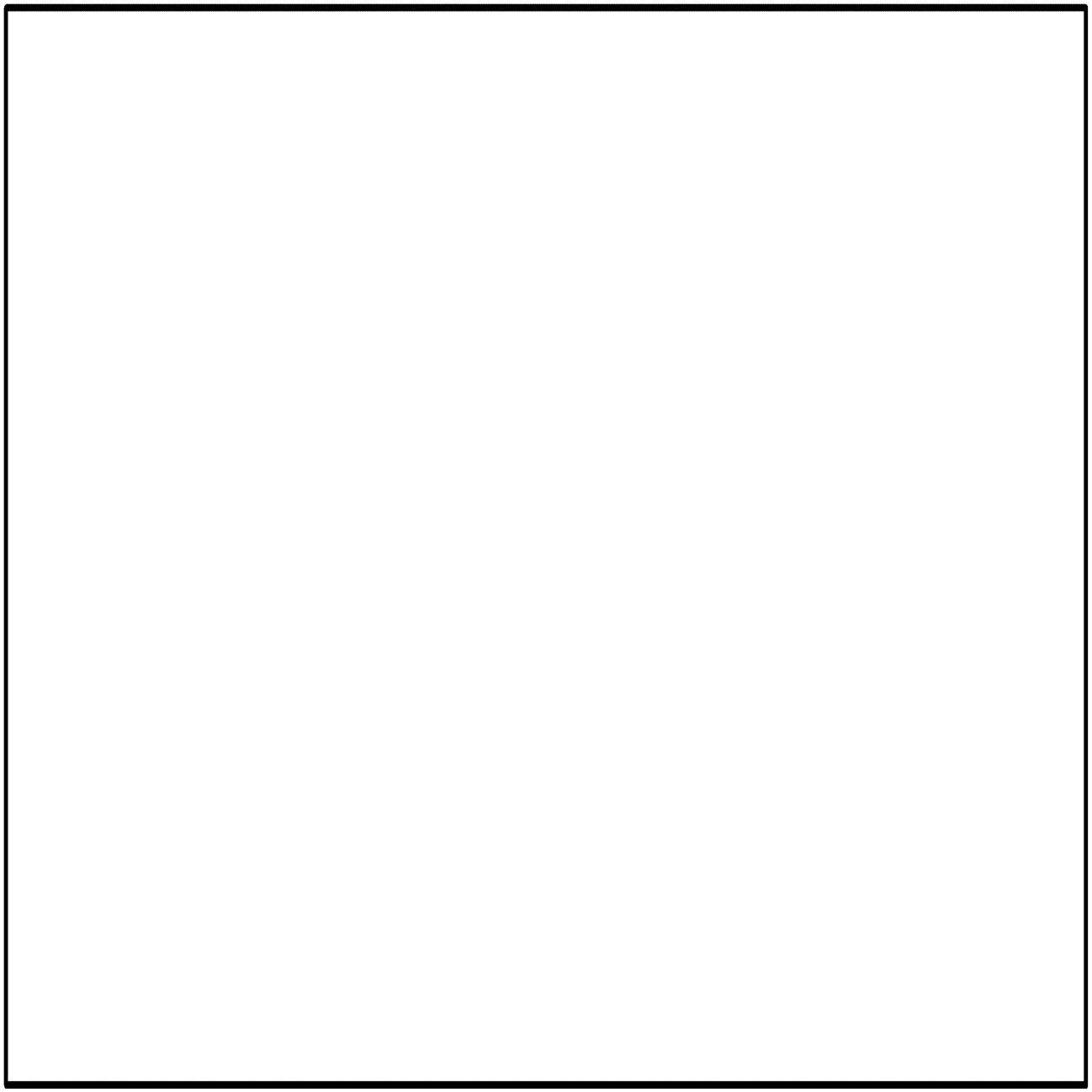
Additional National Security Resources

(b)(7)(e)

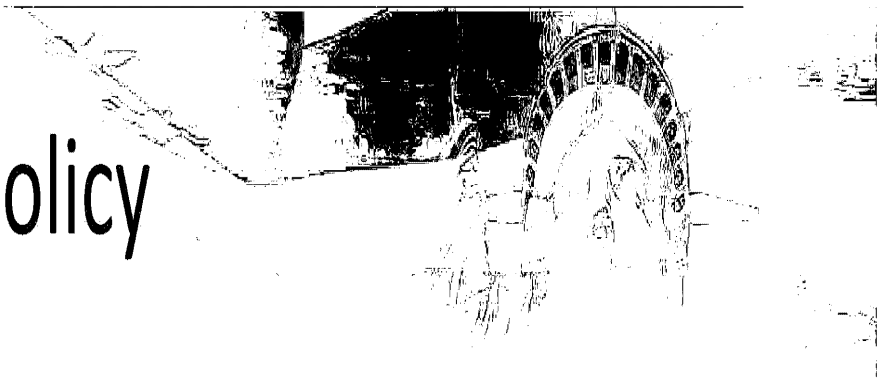


Final Considerations for Adjudication

(b)(7)(e)



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

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

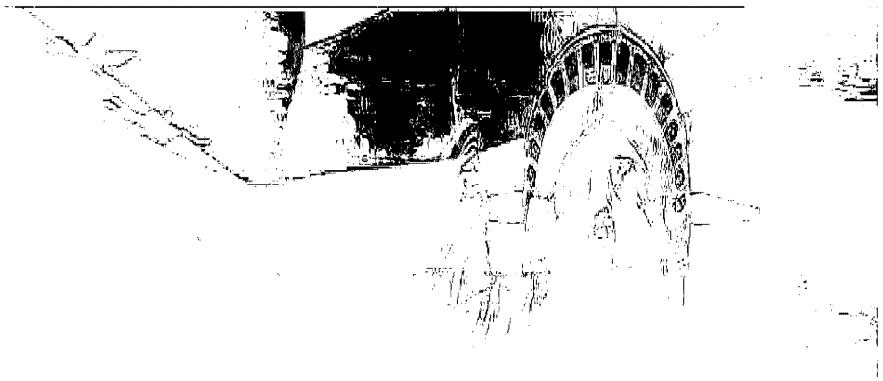
- *Updated Instructions for Handling TECS B10 Records*
  Signed May 23, 2012
    - Provided background on the watchlisting process
    - Designated exclusion code records T50 and T99 records as non-KST's
        - Outlined vetting processes for T50 and T99 records

- *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.

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?



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

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.

This Presentation does not have the force of law, or of a DHS directive.

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Refugee, Asylum and International Operations Directorate
Washington, DC 20529-2100

U.S. Citizenship and Immigration Services

APR 2 8 2016

HQRAIO 120/12a

Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty
Chief, Asylum Division

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,[1] 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

[1] These cases are designated in the Refugees, Asylum, and Parole System (RAPS), the asylum case management system, with the special group code PRL.

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.

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