

## Thomas, Michael A

---

**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:01 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo impact on Motions

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**From:** Chau, Stephanie  
**Sent:** Tuesday, August 01, 2017 2:41 PM  
**To:** Nicklaw, Nicole C  
**Cc:** Herring, Monte R; Fierro, Joseph; Mello, Amy E  
**Subject:** Rescission Memo impact on Motions

Good morning Nicole,

(b)(5)

During one of our rescission memo information sessions, a question came up regarding Motions.



We have not asked local counsel for guidance on this issue yet.

Thanks,  
Stephanie Chau  
Section Chief  
☎: 949-389-3038 | ✉: [Stephanie.Chau@uscis.dhs.gov](mailto:Stephanie.Chau@uscis.dhs.gov)  
**DHS | USCIS | California Service Center | EB 2-3**

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**Thomas, Michael A**

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**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:29 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Discussion

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**From:** Cox, Robert H  
**Sent:** Wednesday, June 14, 2017 4:15 PM  
**To:** Parascandola, Ciro A; Doumani, Stephanie M  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R; Bailey, Morgan; Choi, Hae-Jin; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T; Plastrik, Steven T; Hanehan, Brendan J; Luna, Maria P (Pilar)  
**Subject:** RE: Rescission Memo Discussion (b)(5)

Hi Stephanie and Ciro,



Please let us know if you have any questions.

Thanks,  
Robert

**From:** Parascandola, Ciro A  
**Sent:** Monday, June 12, 2017 2:49 PM  
**To:** Doumani, Stephanie M; Cox, Robert H  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R  
**Subject:** RE: Rescission Memo Discussion (b)(5)

Hi Stephanie –



(b)(5)

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**Ciro Parascandola**

Acting Chief, Business and Foreign Workers Division  
USCIS Office of Policy and Strategy, DHS (b)(6)  
Office: 202-272-1366; Cell [REDACTED]

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**From:** Doumani, Stephanie M  
**Sent:** Monday, June 12, 2017 2:17 PM  
**To:** Parascandola, Ciro A; Cox, Robert H  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G  
**Subject:** Rescission Memo Discussion

Hi Ciro and Robert,

Happy Monday.

I wanted to see if by chance you were able to confer with your leadership regarding our discussion last week. If so, we would really like to discuss next steps.

Thanks,  
Stephanie

## Thomas, Michael A

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**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:30 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Clarifying Guidance

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**From:** Cox, Robert H  
**Sent:** Friday, June 16, 2017 12:15 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Stern, Kimberly M (Kim); Doumani, Stephanie M  
**Subject:** RE: Rescission Memo Clarifying Guidance

Hi Nicole,

[https://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf)

Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Friday, June 16, 2017 12:06 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Stern, Kimberly M (Kim); Doumani, Stephanie M  
**Subject:** FW: Rescission Memo Clarifying Guidance

Hi OCC,

Can you send us the 2009 DOL guidance that you referenced in your clarifying guidance? (see below) NSC asked for a copy and I'm having trouble locating it.

Thank you,

Nicole

**From:** Simon, Ronna J  
**Sent:** Friday, June 16, 2017 10:39 AM  
**To:** Nicklaw, Nicole C  
**Cc:** Martin, Evelyn M  
**Subject:** FW: Rescission Memo Clarifying Guidance

Hi Nicole,

Could you forward us the 2009 DOL guidance that is referenced in your message below? I want to make sure we're looking at the same thing you are.

Thanks!

Ronna Simon | Section Chief | USCIS Nebraska Service Center

**From:** Martin, Evelyn M  
**Sent:** Thursday, June 15, 2017 8:12 PM  
**To:** Simon, Ronna J; Beringer, Kevin M; Buhr, Deborah J; Carter, Marina L; Fergus, Sarah E; Frazier, Nicholas D; Goddard, Nicholas J (Nick); Gustafson, Randy S; Kolbo, Lee G; Orr, Hae-Ock; Reinhardt, Trevor B; Unick, Eugene B; Whittington, Cynthia A  
**Subject:** FW: Rescission Memo Clarifying Guidance

Additional information. . .

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**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 15, 2017 1:48:47 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R  
**Cc:** Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Rescission Memo Clarifying Guidance

Hello Centers,

(b)(5)

\*\*\*\*\*

(b)(5)

**Thomas, Michael A**

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**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:07 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission: Guidance Memo On H-B Computer Related Positions

**From:** Doumani, Stephanie M  
**Sent:** Friday, April 07, 2017 3:08 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Neufeld, Donald W; Selby, Cara M (Carrie); Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violet, Michael D  
**Subject:** RE: Rescission: Guidance Memo On H-B Computer Related Positions

(b)(5)

Good Afternoon Everyone,



Thanks,

*Stephanie Doumani*

Branch Chief  
Service Center Operations  
Business Employment Services Team  
202-272-1524 Desk

(b)(6)

  
[Stephanie.M.Doumani@uscis.dhs.gov](mailto:Stephanie.M.Doumani@uscis.dhs.gov)

---

**From:** Doumani, Stephanie M  
**Sent:** Thursday, April 06, 2017 2:24 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Selby, Cara M (Carrie); Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violet, Michael D  
**Subject:** Rescission: Guidance Memo On H-B Computer Related Positions  
**Importance:** High

Hi Everyone,

As many of you know, the front office recently issued a Policy Memo titled *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"* PM-602-0142.

(<https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>).

Sincerely,

(b)(5)

*Stephanie Doumani*

Branch Chief

Service Center Operations

Business Employment Services Team

202-272-1524 Desk

(b)(6)

[Stephanie.M.Doumani@uscis.dhs.gov](mailto:Stephanie.M.Doumani@uscis.dhs.gov)

**Thomas, Michael A**

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**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:07 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission: Computer Related Positions

**From:** Nicklaw, Nicole C  
**Sent:** Friday, April 07, 2017 9:45 AM  
**To:** Doumani, Stephanie M; Violett, Michael D  
**Subject:** RE: Rescission: Computer Related Positions

Nothing to add from me.

Thanks!

**From:** Doumani, Stephanie M  
**Sent:** Friday, April 07, 2017 9:43 AM  
**To:** Violett, Michael D; Nicklaw, Nicole C  
**Subject:** RE: Rescission: Computer Related Positions

Anything else to add?

\*\*\*\*\*

(b)(5)

Hi Kevin,

I've added Pam Hutchings to this email, our Division Chief, as well as Carrie Selby, our Deputy Director. Pam and I



Thanks,

Stephanie

**From:** Cummings, Kevin J  
**Sent:** Friday, April 07, 2017 9:21 AM  
**To:** Doumani, Stephanie M; Parascandola, Ciro A  
**Subject:** FW: Rescission: Computer Related Positions

Steph? Please see the plethora of questions posed by Larry below. Thanks.

--Kevin

Kevin J. Cummings  
Chief, Business & Foreign Workers Division  
USCIS Office of Policy and Strategy  
Department of Homeland Security

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**From:** Levine, Laurence D  
**Sent:** Friday, April 07, 2017 9:19 AM  
**To:** Cummings, Kevin J; Parascandola, Ciro A; Nuebel Kovarik, Kathy  
**Cc:** Rather, Michael B  
**Subject:** RE: Rescission: Computer Related Positions

(b)(5)



Thanks,

Larry

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Larry Levine  
Senior Advisor  
Office of Policy & Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
(202) 272-1469

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**From:** Cummings, Kevin J  
**Sent:** Friday, April 07, 2017 9:15 AM  
**To:** Parascandola, Ciro A; Levine, Laurence D; Nuebel Kovarik, Kathy  
**Cc:** Rather, Michael B

**Subject:** FW: Rescission: Computer Related Positions  
**Importance:** High

(b)(5)

Kathy,

Please see the e-mail below from SCOPS. [REDACTED]

[REDACTED] This is something that we really feel does require feedback from you and/or Craig. Thanks in advance for your assistance, and Happy Friday!

--Kevin

Kevin J. Cummings  
Chief, Business & Foreign Workers Division  
USCIS Office of Policy and Strategy  
Department of Homeland Security

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**From:** Doumani, Stephanie M  
**Sent:** Thursday, April 06, 2017 5:30 PM  
**To:** Cummings, Kevin J; Parascandola, Ciro A  
**Cc:** Hutchings, Pamela G; Violett, Michael D; Nicklaw, Nicole C  
**Subject:** Rescission: Computer Related Positions  
**Importance:** High

Hi Kevin and Ciro,

(b)(5)

I hope this email finds you well.

Thank you,

*Stephanie Doumani*

Branch Chief  
Service Center Operations  
Business Employment Services Team  
202-272-1524 Desk  
 (b)(6)  
[Stephanie.M.Doumani@uscis.dhs.gov](mailto:Stephanie.M.Doumani@uscis.dhs.gov)

**Thomas, Michael A**

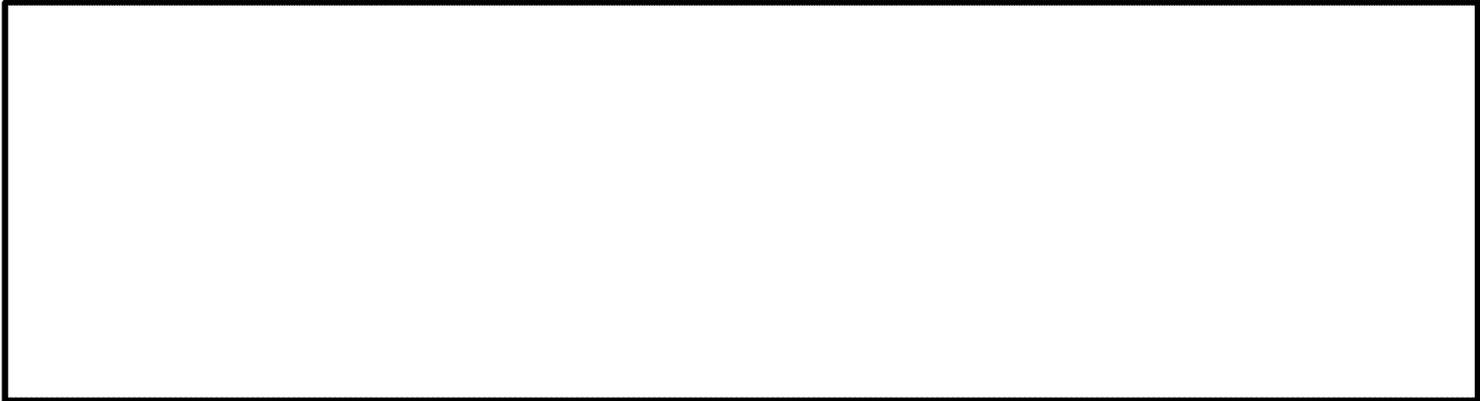
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**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:27 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: overpayment issue denial and Ken Renwick - new AAO branch chief

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**From:** Cox, Robert H  
**Sent:** Wednesday, June 14, 2017 10:09 AM  
**To:** Doumani, Stephanie M; Buten, Elizabeth C; Nicklaw, Nicole C; Bailey, Morgan; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim); Hutchings, Pamela G  
**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief (b)(5)

Hi Stephanie,



Thanks,  
Robert

---

**From:** Doumani, Stephanie M  
**Sent:** Tuesday, June 13, 2017 10:17 PM  
**To:** Cox, Robert H; Buten, Elizabeth C; Nicklaw, Nicole C; Bailey, Morgan; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim); Hutchings, Pamela G  
**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief (b)(5)

Hi Everyone,



around?

Thanks very much,  
Stephanie

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**From:** Cox, Robert H  
**Sent:** Tuesday, June 13, 2017 9:35:31 PM  
**To:** Buten, Elizabeth C; Nicklaw, Nicole C; Bailey, Morgan; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Doumani, Stephanie M; Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim)  
**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief

Hi everyone,

We agree that discussion with DOL to confirm if they are doing anything new, or at least have further input, would be useful as the working group continues to assess this issue.

Thanks,  
Robert

**From:** Buten, Elizabeth C  
**Sent:** Tuesday, June 13, 2017 3:20 PM  
**To:** Nicklaw, Nicole C; Bailey, Morgan; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim)  
**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief

(b)(5)

Nicole,



**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 12, 2017 8:18 PM  
**To:** Bailey, Morgan; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim)  
**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief

Hi Morgan,

(b)(5)

Thank you for your response. We haven't reached out to the DOL yet but agree that this is likely an issue worth flagging for them along with providing some guidance as to how to handle this particular case.



Thanks,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

---

**From:** Bailey, Morgan

**Sent:** Monday, June 12, 2017 9:19 AM

**To:** Nicklaw, Nicole C; Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim)

**Subject:** RE: overpayment issue denial and Ken Renwick - new AAO branch chief

(b)(5)

Hi Nicole,



We also want to announce to the H-1B working group that Ken Renwick (William Renwick in the global address list) has returned to the AAO from the BIA and he is now the Branch Chief for our team, covering the following classifications: H-1B, H-2, H-3, and CW.

Our team is Ken Renwick, Hae-Jin Choi, and Morgan Bailey.

Ahran McCloskey and Lauren Aucoin are no longer working on these issues and can be removed from the group emails.

Thanks,

Morgan

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**From:** Nicklaw, Nicole C

**Sent:** Tuesday, June 06, 2017 7:01 AM

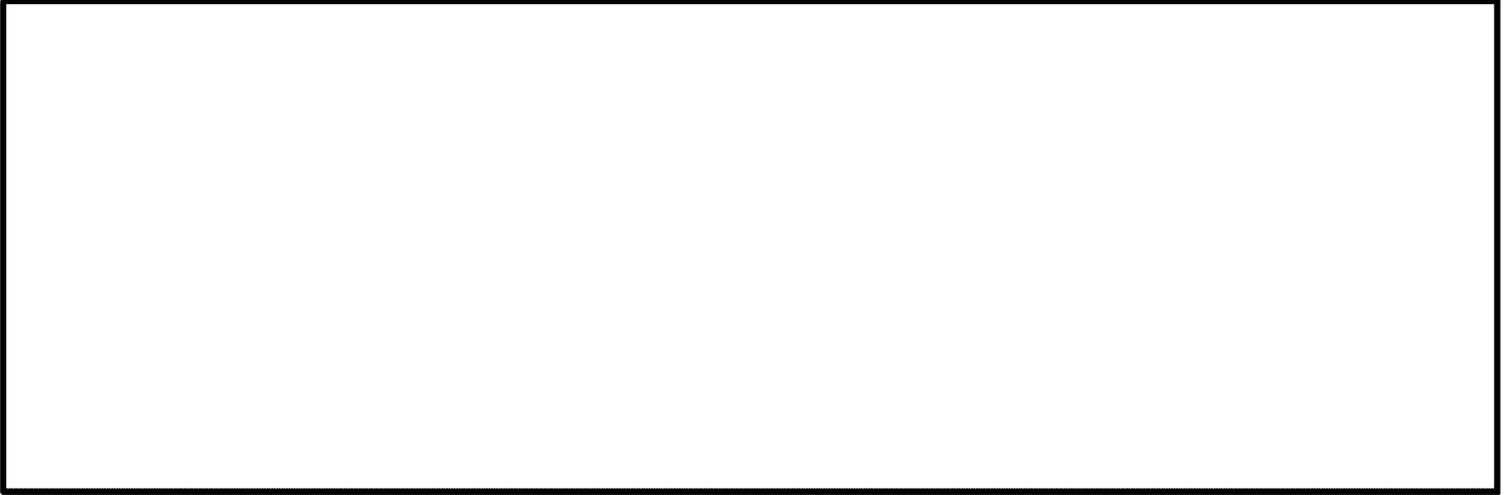
**To:** Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T;

Fortes, Michael J; Bailey, Morgan; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Aucoin, Lauren J; McCloskey, Ahran K; Bump, Micah N; Zimonjic, Milica; Leonard, Kane C; Civic, Amanda M; Chulapakorn, Adrienne; Buono, Paul M; Luna, Maria P (Pilar); Stern, Kimberly M (Kim)

**Subject:** FW: overpayment issue denial

(b)(5)

Hi everyone,



If you can please let us know your thoughts on this issue by COB Monday, June 12 (or sooner 😊), we would greatly appreciate it.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

**From:** Simon, Ronna J

**Sent:** Monday, June 05, 2017 9:47 AM

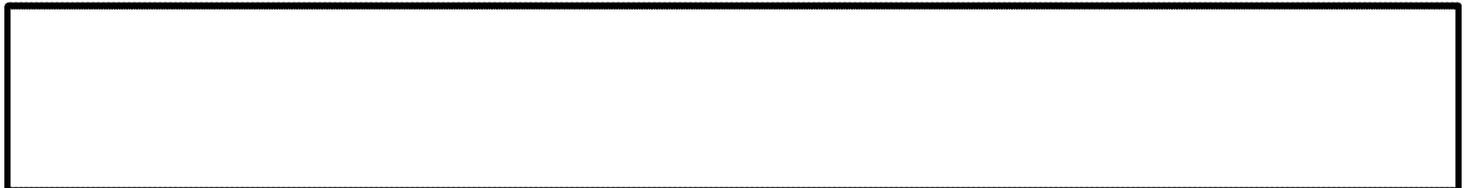
**To:** Doumani, Stephanie M

**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Crawford, Jolene P; Martin, Evelyn M

**Subject:** FW: overpayment issue denial

Hi Stephanie,

(b)(5)



Thanks for your help,

**Ronna Simon** | Section Chief | USCIS Nebraska Service Center  
Star Bldg, Rm 2016 | EX0332 | 402-323-2649

---

**From:** Simon, Ronna J

**Sent:** Monday, February 06, 2017 8:20 AM

**To:** Doumani, Stephanie M; Violett, Michael D; Nicklaw, Nicole C

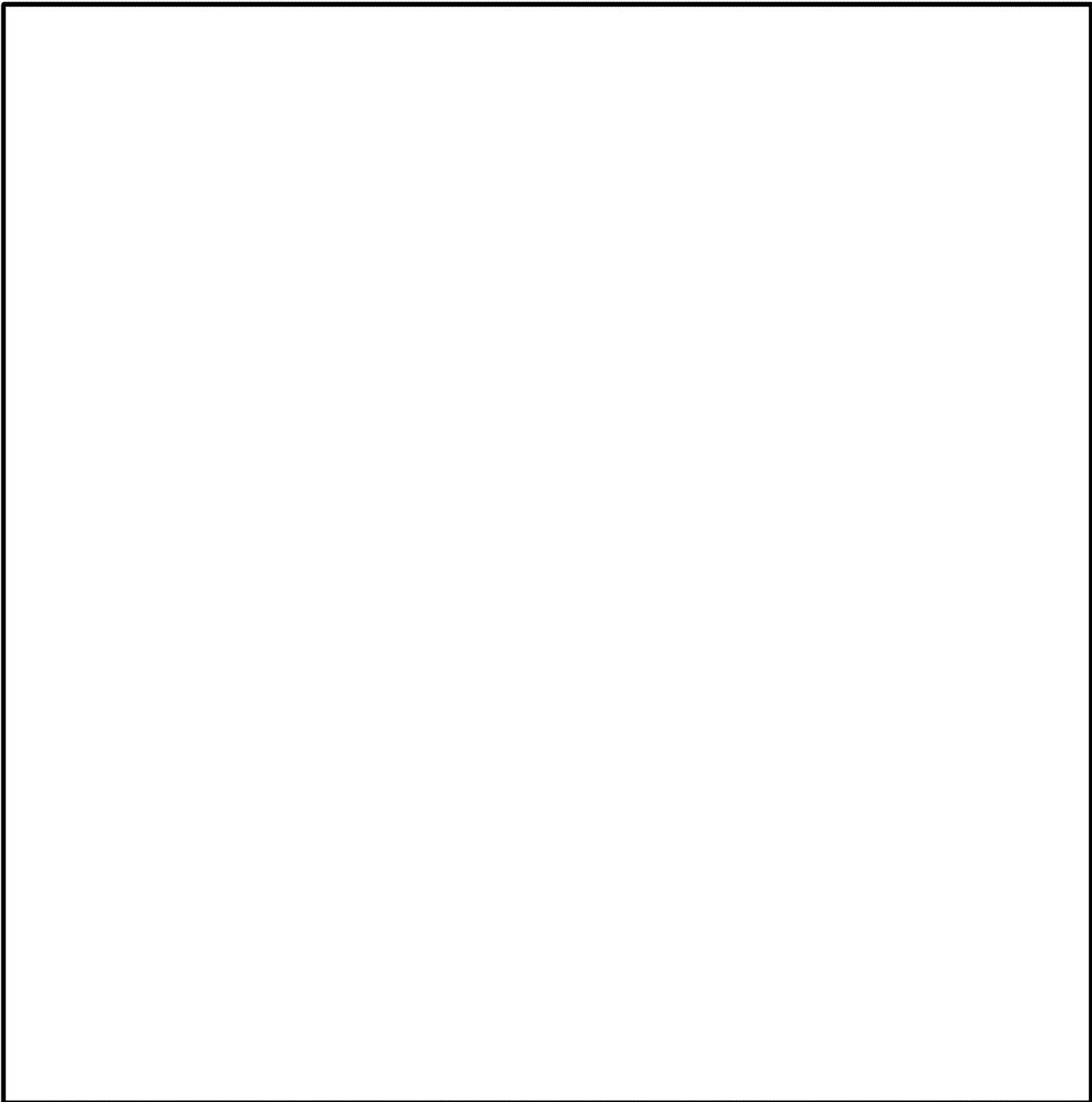
**Cc:** Martin, Evelyn M

**Subject:** RE: overpayment issue denial

Good morning,

(b)(5)

One additional request on this issue.



So my additional request is that be considered in the discussion with the working group. (Having an explanation as to why that wouldn't apply would make it easier for us to assimilate the guidance.)

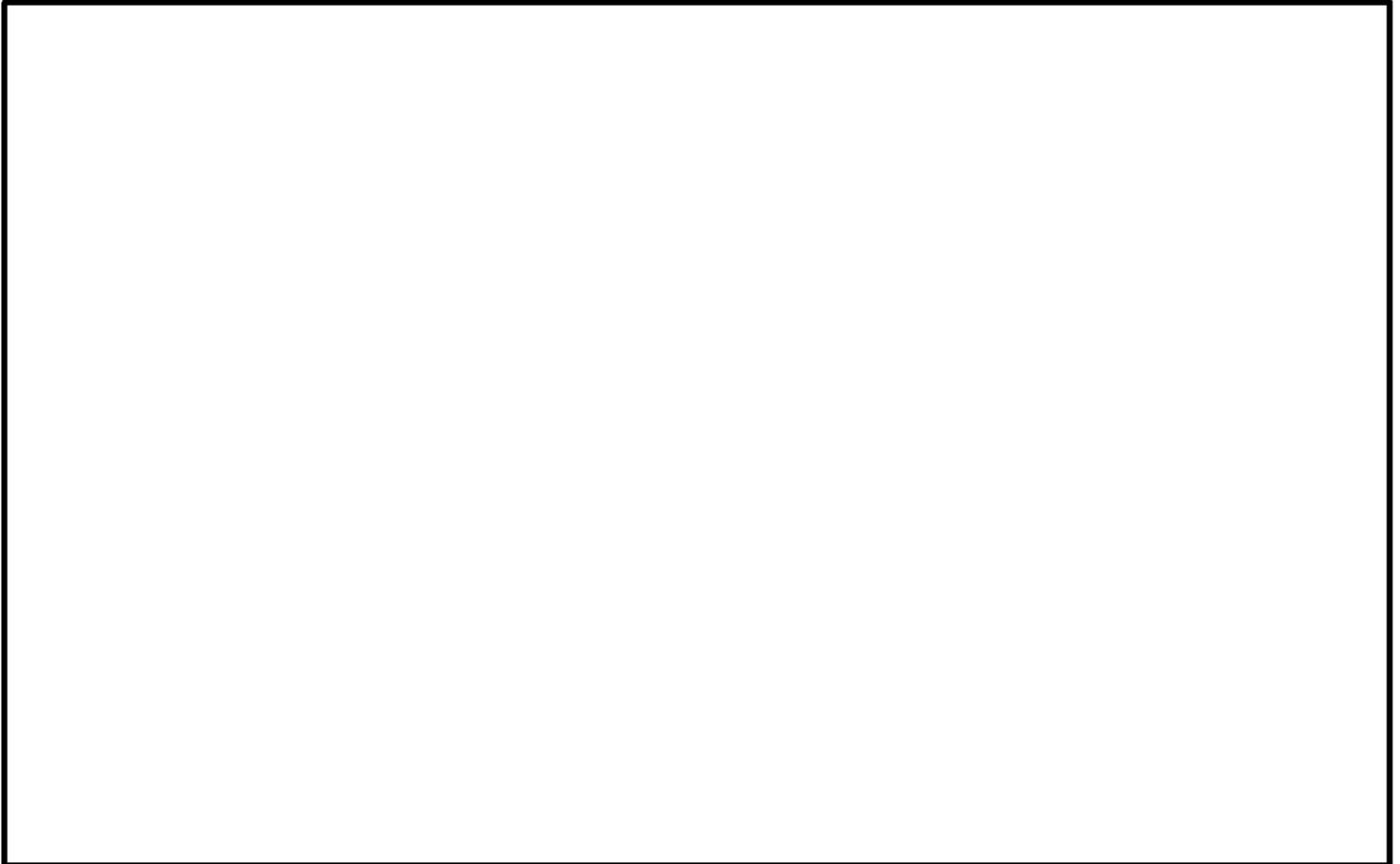
Thanks!

**From:** Doumani, Stephanie M  
**Sent:** Friday, January 27, 2017 2:45 PM  
**To:** Simon, Ronna J; Violett, Michael D; Nicklaw, Nicole C  
**Cc:** Martin, Evelyn M  
**Subject:** RE: overpayment issue denial

(b)(5)

Hi Ronna,

Thanks for your email. I wanted to take a moment to weigh in since Michael discussed this case with me this morning.



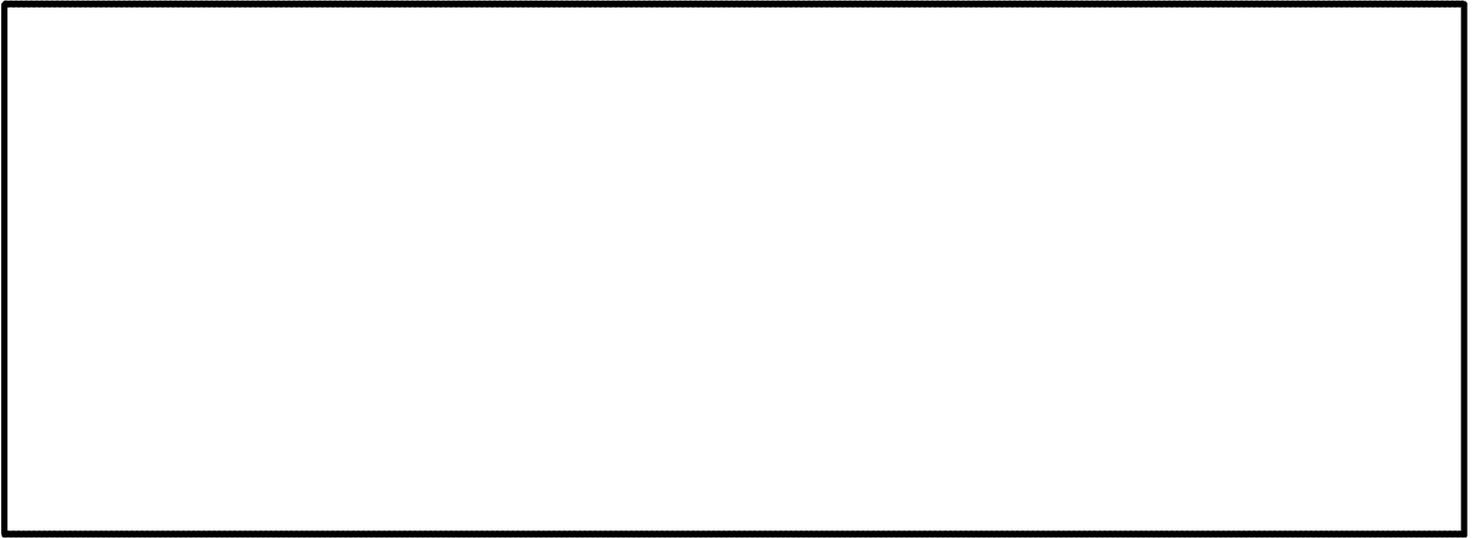
Our next working group meeting was originally scheduled for mid-February, but has since been moved to March. We will be sure to communicate the working group's position on this issue once we hear from them. I hope the feedback above helps in the interim. Please feel free to reach out with any other questions or concerns.

Thanks,  
Stephanie

**From:** Simon, Ronna J  
**Sent:** Friday, January 27, 2017 1:17 PM  
**To:** Violett, Michael D; Nicklaw, Nicole C  
**Cc:** Martin, Evelyn M; Doumani, Stephanie M  
**Subject:** FW: overpayment issue denial

Hello,

(b)(5)



**Ronna Simon** | Section Chief | USCIS Nebraska Service Center  
Star Bldg, Rm 2016 | EX0332 | 402-323-2649

---

**From:** Simon, Ronna J  
**Sent:** Friday, January 27, 2017 9:33 AM  
**To:** Ahlm, Barbara M ([Barbara.M.Ahlm@uscis.dhs.gov](mailto:Barbara.M.Ahlm@uscis.dhs.gov)); Ptacek, David J; Crawford, Jolene P; Elkins, Michael J (Mike); Grabast, Dennis R; Langtry, Linda J  
**Subject:** overpayment issue denial

Good morning,

(b)(5)

Due to outlook issues this morning, Michael Violet and Nicole Nicklaw called this morning to discuss the issue of



Thanks!

**Ronna Simon** | Section Chief | USCIS Nebraska Service Center  
Star Bldg, Rm 2016 | EX0332 | 402-323-2649

**Thomas, Michael A**

---

**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:41 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Labor Condition Application (LCA) | H1-B

---

**From:** Simpson, Erica L  
**Sent:** Friday, August 25, 2017 1:49 PM  
**To:** Nicklaw, Nicole C; Donald, Roseline F  
**Cc:** Stern, Kimberly M (Kim); Boyd-Butler, Jacqueline A  
**Subject:** RE: Labor Condition Application (LCA) | H1-B

Thank you so much!

---

**From:** Nicklaw, Nicole C  
**Sent:** Friday, August 25, 2017 1:35:05 PM  
**To:** Donald, Roseline F  
**Cc:** Stern, Kimberly M (Kim); Simpson, Erica L; Boyd-Butler, Jacqueline A  
**Subject:** RE: Labor Condition Application (LCA) | H1-B

Hi Roseline,

Erica reached out to our team regarding your H-1B question below.

(b)(5)



Please let us know if you have any further questions.

Thanks,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

---

**From:** Simpson, Erica L  
**Sent:** Thursday, August 24, 2017 9:38 AM

**To:** Boyd-Butler, Jacqueline A  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim)  
**Subject:** RE: Labor Condition Application (LCA) | H1-B

Thank you!

---

**From:** Boyd-Butler, Jacqueline A  
**Sent:** Thursday, August 24, 2017 9:37:16 AM  
**To:** Simpson, Erica L  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim)  
**Subject:** RE: Labor Condition Application (LCA) | H1-B

Erica,

It's handled by Michael Violett (on T-Pro), Nicole Nicklaw, and Kimberly Stern (back-up). I've copied Nicole and Kim.

Thanks.

Jackie

---

**From:** Simpson, Erica L  
**Sent:** Thursday, August 24, 2017 9:35 AM  
**To:** Boyd-Butler, Jacqueline A  
**Subject:** FW: Labor Condition Application (LCA) | H1-B

Hi, Jackie. Are you handling the H1B portfolio now? If so, would you be able to help Roseline? Thanks!

---

**From:** Donald, Roseline F  
**Sent:** Thursday, August 24, 2017 9:08 AM  
**To:** Simpson, Erica L  
**Subject:** Labor Condition Application (LCA) | H1-B

(b)(5)

Morning Erica,



*Respectfully,*  
*Roseline F. Donald, PMP, LSS*  
*Project Manager, Service Center Operations*  
*DHS | USCIS | SCOPSHQ | TCD*  
*20 Massachusetts Ave, NW*  
*Washington DC 20529*  
*Desk Phone: 202-272-1010*  
*Mobile: 202-805-0601*

**Thomas, Michael A**

---

**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:32 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Follow up - Rescission Memo Discussion

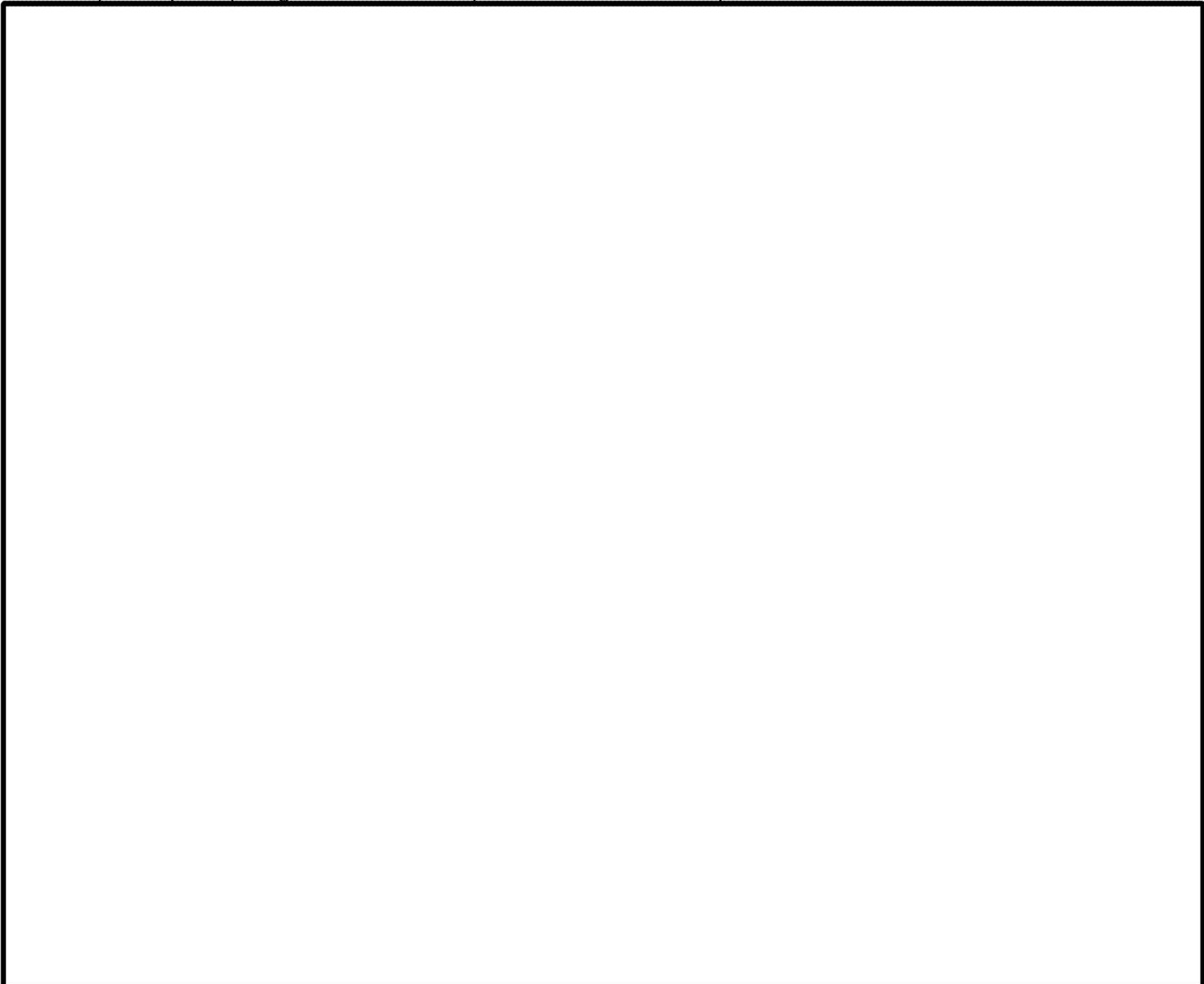
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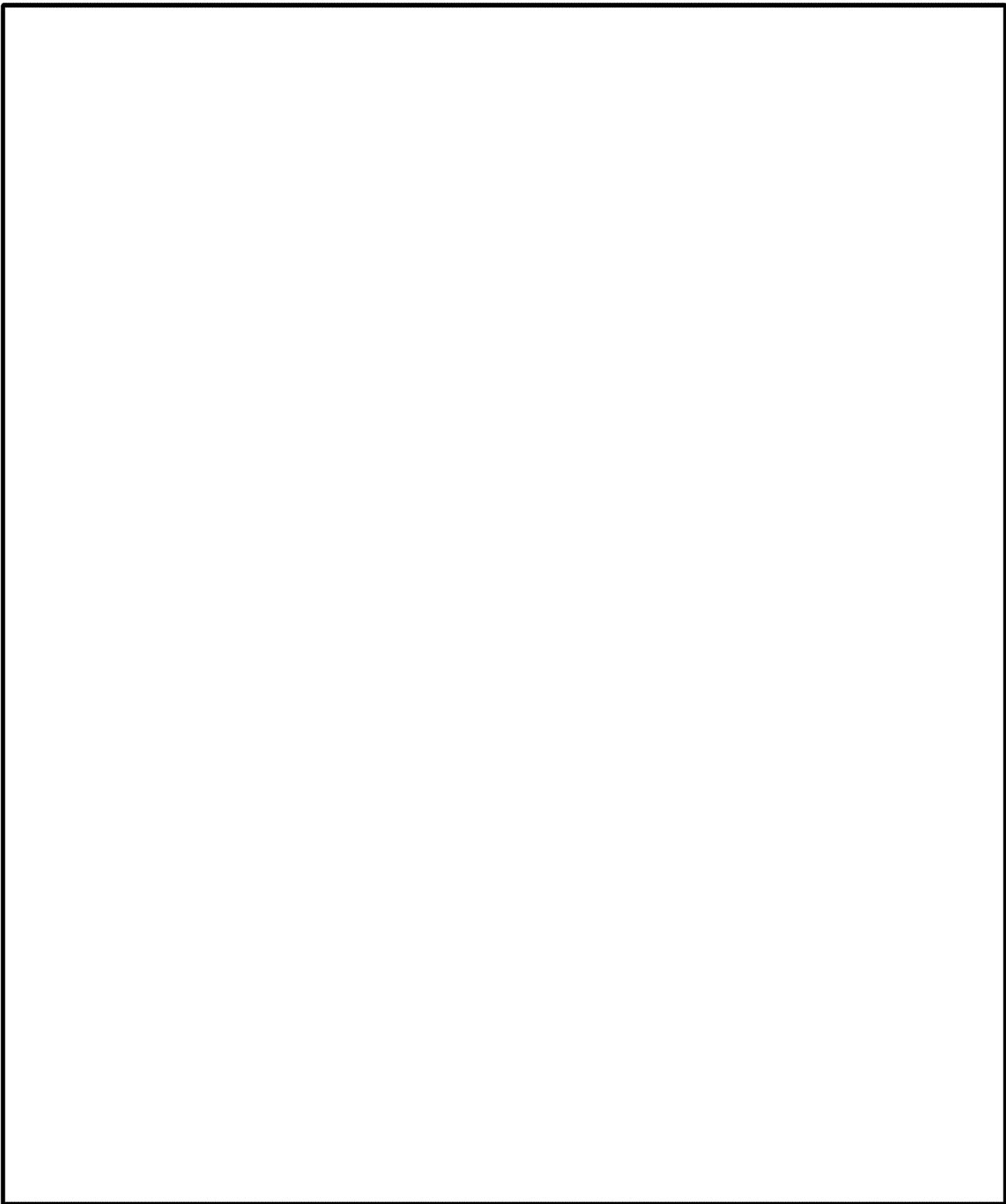
**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 2:17 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R  
**Cc:** Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Follow up - Rescission Memo Discussion

(b)(5)

Hello Centers,

Thank you for participating in the call on Friday to further discuss the implementation of the rescission memo. SCOPS is





As discussed during our last call, we will begin round table sessions next week to discuss particular case scenarios. Please feel free to reach out to us with any additional questions.

(b)(5)

Thank you,

**Nicole Nicklaw**  
Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

**Thomas, Michael A**

---

**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:49 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Final Guidance on PM-602-0142

---

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, May 09, 2017 1:38 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Whittier, Michelle J; Selby, Cara M (Carrie); Zuchowski, Laura B  
**Subject:** RE: Final Guidance on PM-602-0142

(b)(5)

Hi Lynn,

Thank you so much to you and your team for putting together this list of scenarios/examples to illustrate some of the changes based on the new guidance.



Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

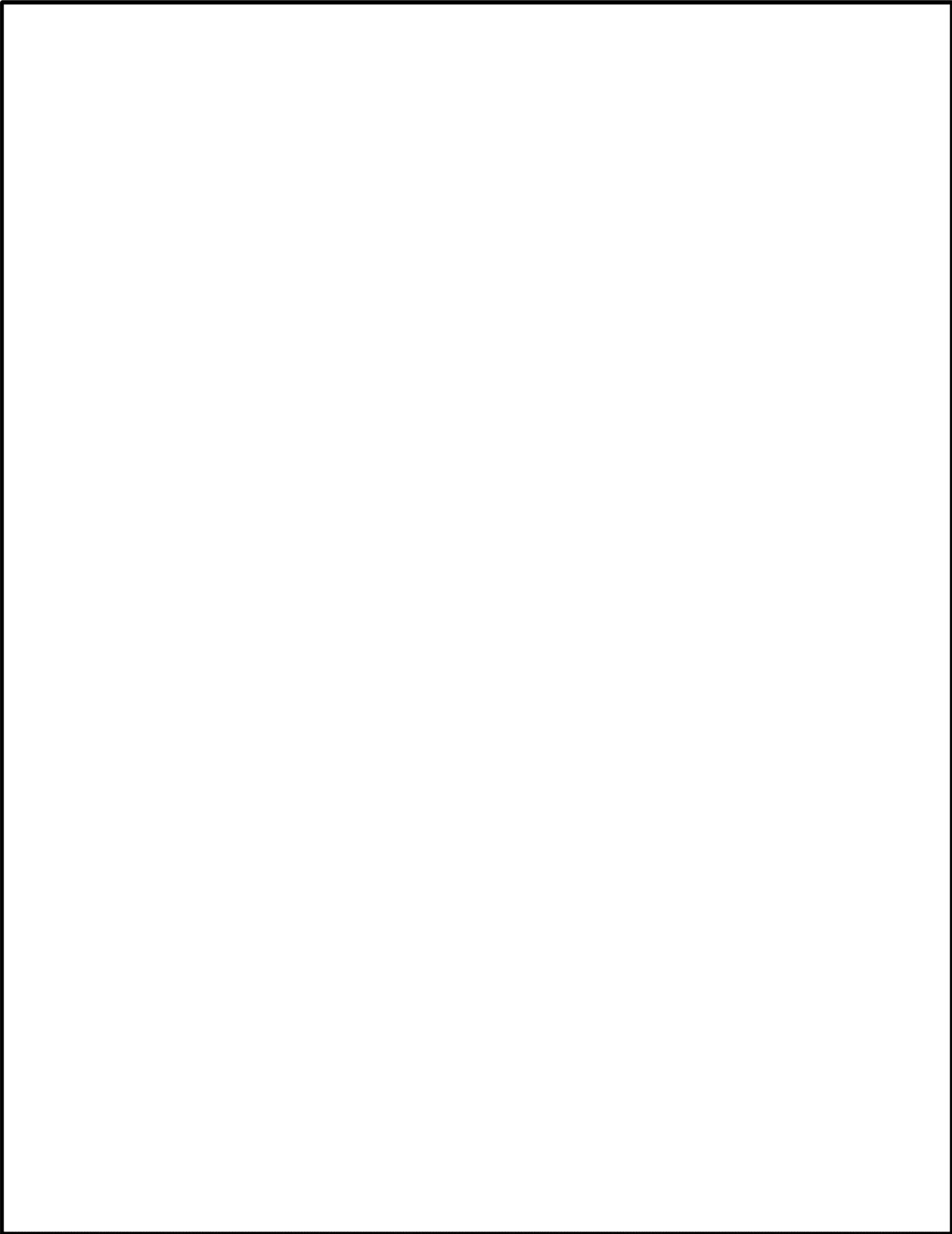
---

**From:** Boudreau, Lynn A  
**Sent:** Thursday, May 04, 2017 10:30 AM  
**To:** Nicklaw, Nicole C; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Whittier, Michelle J; Selby, Cara M (Carrie); Zuchowski, Laura B  
**Subject:** RE: Final Guidance on PM-602-0142

(b)(5)

Hi Nicole,







Thanks,

(b)(5)

Lynn

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 01, 2017 11:21 AM  
**To:** Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Final Guidance on PM-602-0142

Hello all,

(b)(5)



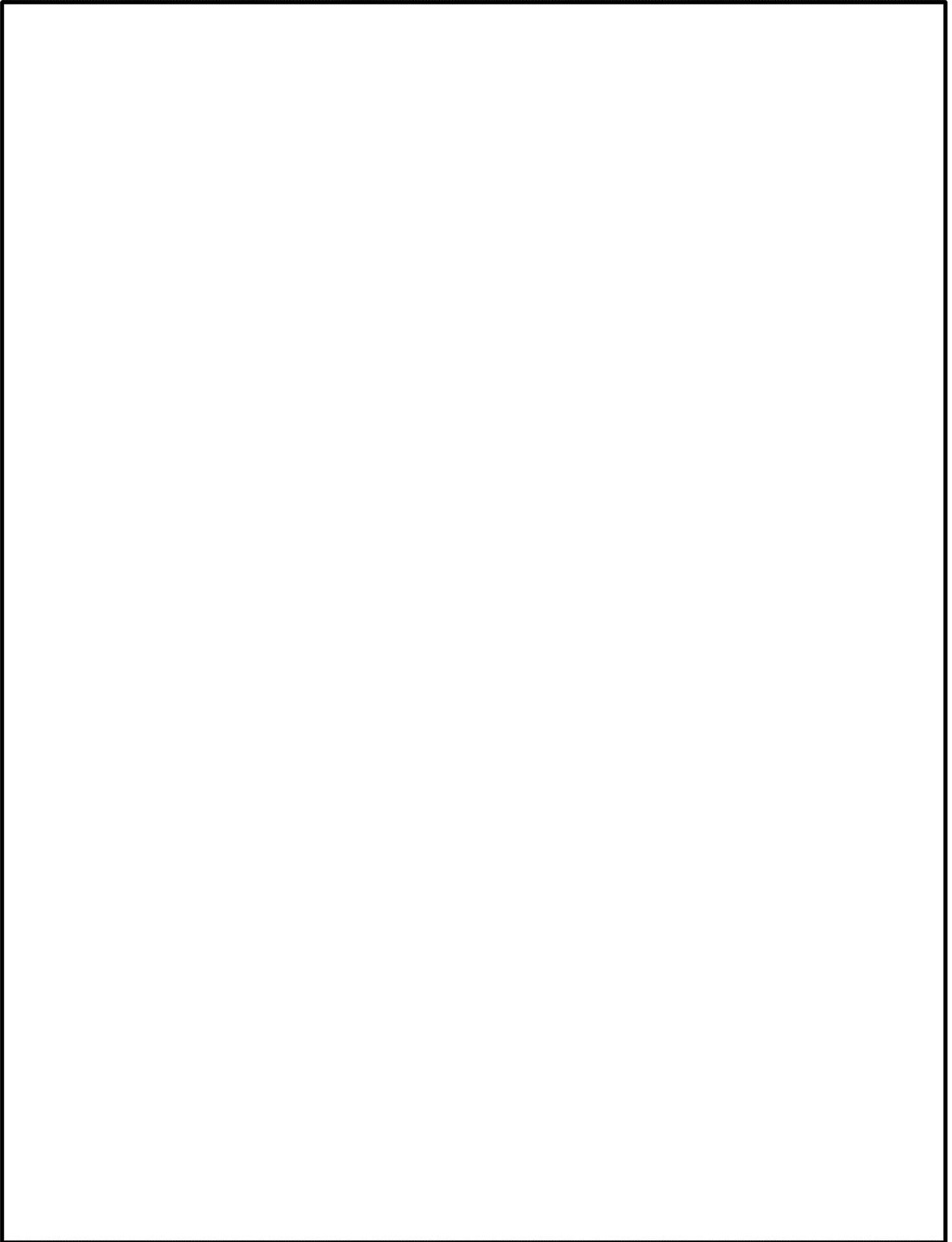
Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

(b)(5)

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*





**Thomas, Michael A**

---

**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:00 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Discussion Topic for Rescission Memo Roundtable

---

**From:** Gisser, Sheldon A (Alex)  
**Sent:** Monday, July 24, 2017 2:28 PM  
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev); Shah, Liza H (Ami)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny) (b)(5)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

[Redacted]

[Redacted]

**From:** Nakajima, Simon T (b)(5)  
**Sent:** Monday, July 24, 2017 2:18 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev); Gisser, Sheldon A (Alex); Shah, Liza H (Ami); Hunt, Brian J  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Adding other SMEs for their thoughts on the other classifications, like E-3s.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, July 24, 2017 1:05 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Robert and OCC,

Thank you so much for discussing this issue with Craig. We will pass along the below to the centers. (b)(5)

[Redacted]

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

---

**From:** Cox, Robert H

**Sent:** Wednesday, July 19, 2017 12:24 PM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)

**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Nicole,

(b)(5)

We ran this issue past Craig and he indicated that:



Thanks,  
Robert

---

**From:** Nicklaw, Nicole C

**Sent:** Thursday, July 13, 2017 4:45 PM

**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)

**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

(b)(5)

Hi Robert,



Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Thursday, July 13, 2017 4:25 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

(b)(5)

Hi Nicole,



Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, July 13, 2017 9:28 AM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Robert,

VSC submitted the attached example this morning.

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, July 12, 2017 4:40 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Nicole,

We would like to review a specific example.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, July 12, 2017 4:24 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Discussion Topic for Rescission Memo Roundtable

Hi OCC,

We just wanted to flag a topic for discussion that the centers asked about at the end of last meeting and requested that we discuss during tomorrow's roundtable.



Any thoughts on this would be greatly appreciated.

(b)(5)

Thank you!

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

**Thomas, Michael A**

---

**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Monday, October 16, 2017 9:43 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Discussion Topic for Rescission Memo Roundtable

---

**From:** Cox, Robert H  
**Sent:** Friday, July 14, 2017 10:45 AM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev) (b)(5)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Thanks. Another question. [Redacted]

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, July 13, 2017 4:45 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

(b)(5)

Hi Robert,

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Thursday, July 13, 2017 4:25 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Choi, Heesun S (Sunny) (b)(5)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Nicole,



Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, July 13, 2017 9:28 AM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Robert,

VSC submitted the attached example this morning.

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, July 12, 2017 4:40 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** RE: Discussion Topic for Rescission Memo Roundtable

Hi Nicole,

We would like to review a specific example.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, July 12, 2017 4:24 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Dalal-Dheini, Sharvari P (Shev)  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Discussion Topic for Rescission Memo Roundtable

(b)(5)

Hi OCC,



Any thoughts on this would be greatly appreciated.

(b)(5)

Thank you!

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

**Thomas, Michael A**

---

**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:01 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Deference and PM-602-0142 (Rescission Memo)

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, August 02, 2017 10:58 AM  
**To:** Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Bailey, Morgan; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Renwick, William K; Zimonjic, Milica; Bump, Micah N; Hale, Paola R  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Deference and PM-602-0142 (Rescission Memo)

(b)(5)

Hello Working Group,

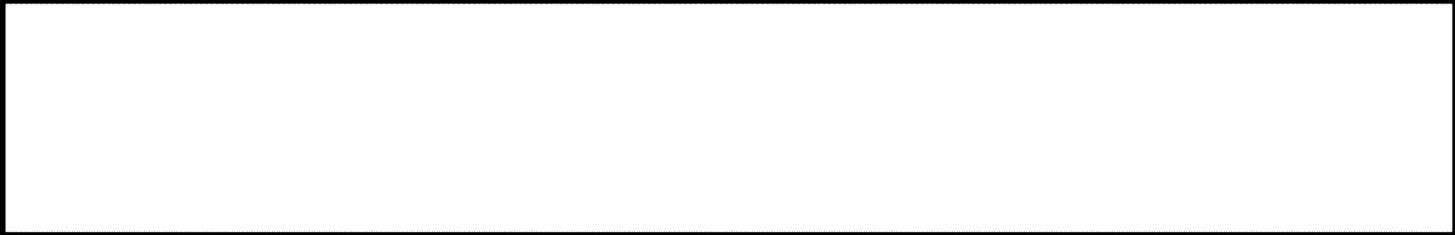


Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 01, 2017 11:21 AM  
**To:** Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Final Guidance on PM-602-0142

Hello all,



Thank you,

(b)(5)

**Nicole Nicklaw**

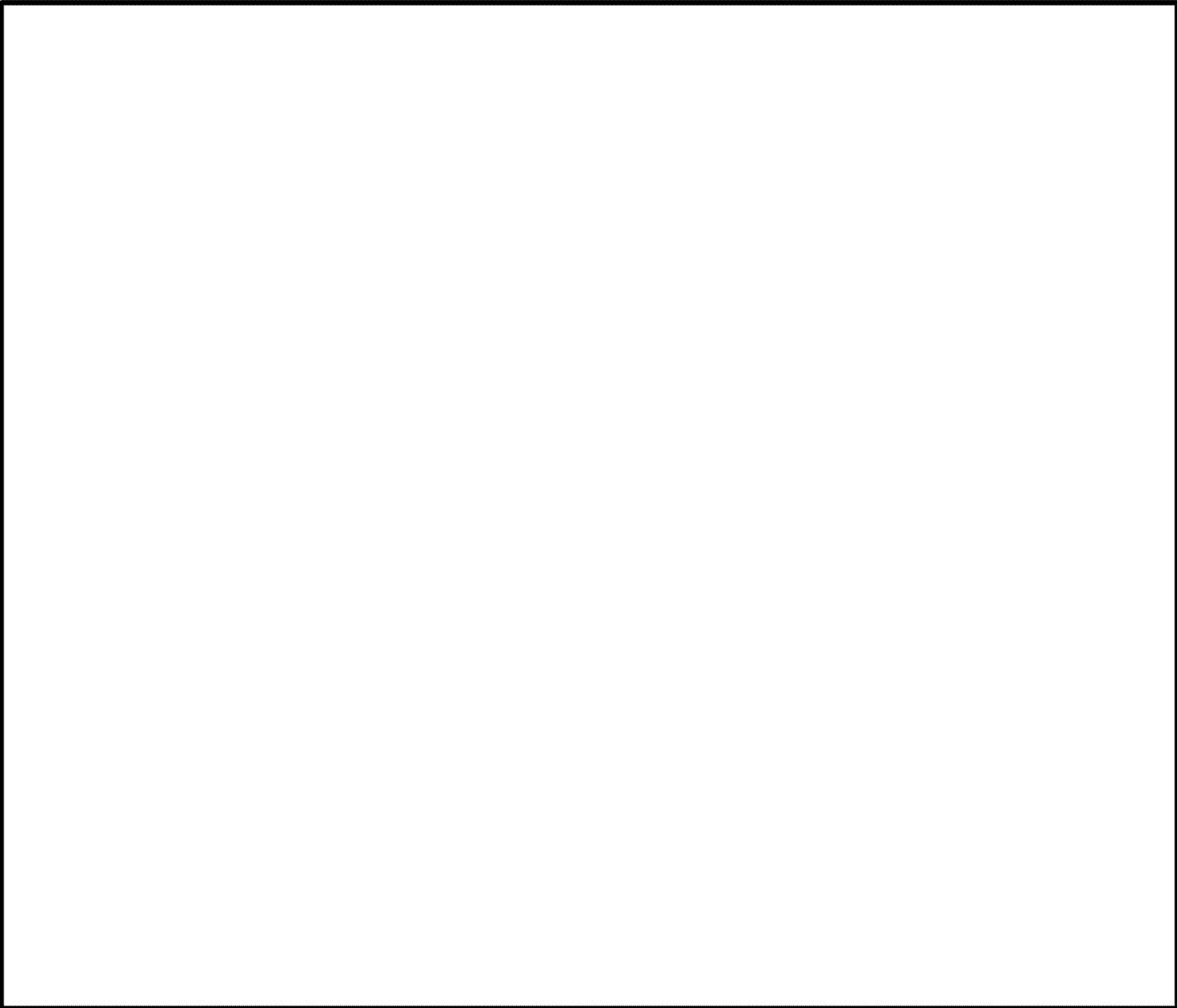
Adjudications Officer

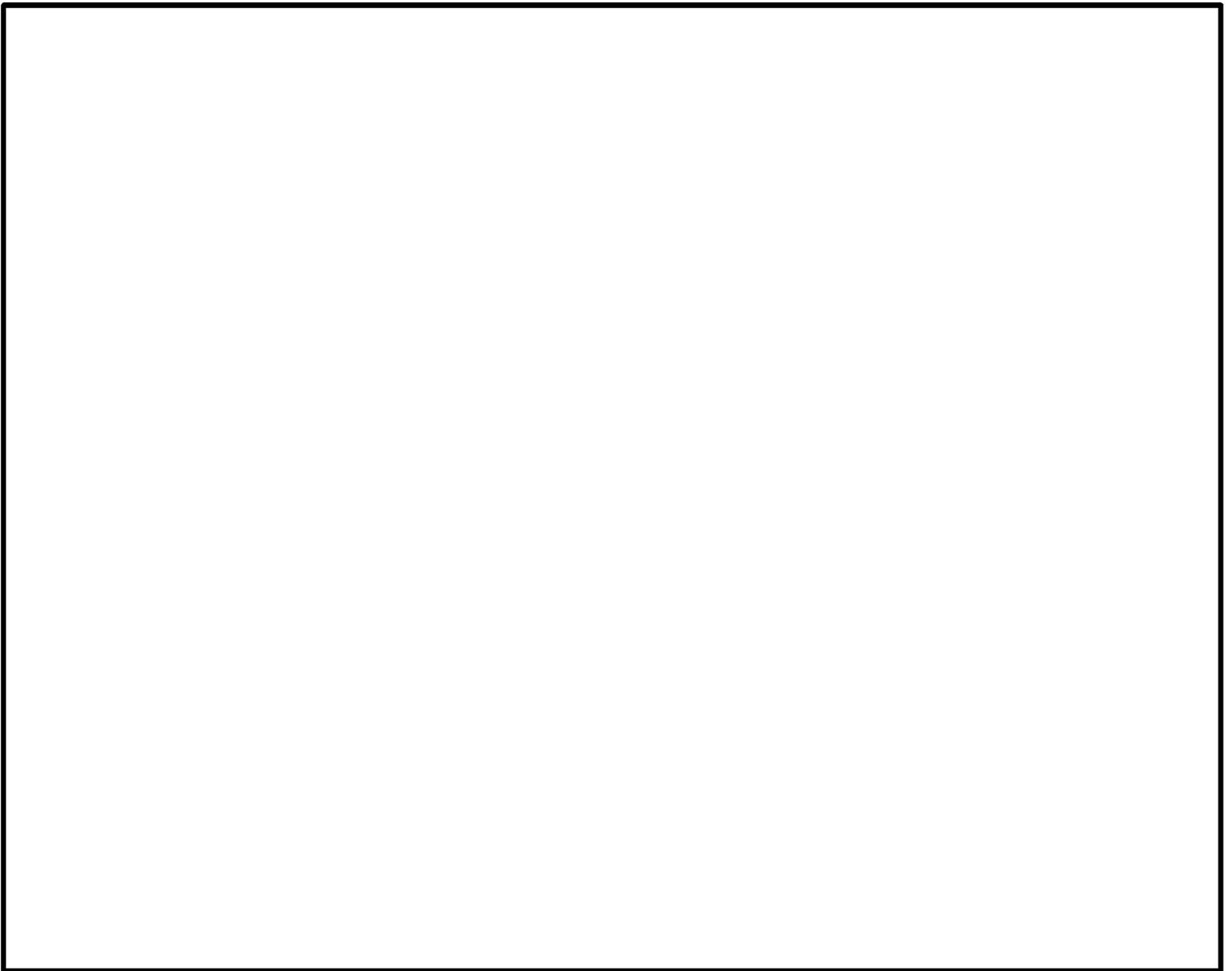
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

\*\*\*\*\*  
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\*\*\*\*\*





**Thomas, Michael A**

---

**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 10:01 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

---

**From:** Doumani, Stephanie M  
**Sent:** Tuesday, August 08, 2017 8:44 AM  
**To:** Nakajima, Simon T; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

(b)(5)



If our understanding is incorrect, please let us know.

Thanks,  
Stephanie

**From:** Nakajima, Simon T  
**Sent:** Monday, August 07, 2017 2:41 PM  
**To:** Doumani, Stephanie M; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Stephanie/SCOPS,

(b)(5)



Thanks,  
Simon

**From:** Doumani, Stephanie M  
**Sent:** Monday, August 07, 2017 12:51 PM  
**To:** Bump, Micah N; Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Everyone,



[Redacted]

Thanks very much for your understanding and your hard work on this.

(b)(5)

Stephanie

---

**From:** Bump, Micah N  
**Sent:** Monday, August 07, 2017 9:28 AM  
**To:** Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

We should be able to review by then. If we need more time, we'll be in touch.

Thanks,

Micah

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Monday, August 07, 2017 8:20 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning,

(b)(5)

[Redacted]

Do you think it would be possible complete initial review by COB Wed. Aug. 9<sup>th</sup>?

Thanks,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:45 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 12:41 PM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N

**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

(b)(5)

Thanks so much for the quick turnaround!



Thanks,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:04 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

(b)(5)

Please find our comments and edits to the slides. Where language remains pending regarding the material change issue, I have changed the font to yellow.



Thanks,  
Simon

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 9:59 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning OCC,

(b)(5)



Thoughts welcome,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Wednesday, August 02, 2017 3:22 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

[Redacted]

(b)(5)

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, July 31, 2017 8:32 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

[Redacted]

[Redacted] If you need additional time, please let us know.

(b)(5)

Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, July 10, 2017 12:03 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

[Redacted]

Thanks,  
Robert

(b)(5)

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 10:22 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks so much, everyone. We really appreciate it!

(b)(5)

[Redacted]

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 4:27 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency (b)(5)

[Redacted]

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 9:15:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny) (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

[Redacted]

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 2:49 PM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 2:40 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

(b)(5)

[Redacted]

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Thursday, June 22, 2017 1:24 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

[Redacted]

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 22, 2017 9:43 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

(b)(5)

[Redacted]

Thank you!

Nicole

**From:** Nakajima, Simon T  
**Sent:** Wednesday, June 21, 2017 5:32 PM  
**To:** Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,  
Simon

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 3:39 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

LOL. Definitely don't have a better plan. 😊

Thanks for confirming.

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 21, 2017 3:25 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

That's the current plan, pending OCC suggestions for a better plan of attack. 😊

Thanks!

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 2:48 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)



Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 8:31 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,

(b)(5)



Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

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**From:** Cox, Robert H  
**Sent:** Wednesday, May 24, 2017 12:30 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 2:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

COB Wednesday will work – thank you!

(b)(5)

Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 12:59 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 12:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk: (202) 272-8174  
Mobile: (202) 557-0347

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:41 AM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 4:40:20 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

(b)(5)

[Redacted]

Thank you!

-Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:38 AM  
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

[Redacted]

Thanks,  
Robert

---

**From:** Nakajima, Simon T  
**Sent:** Friday, May 19, 2017 3:04 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

[Redacted]

(b)(5)

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 15, 2017 11:23 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi OCC,

[Redacted]

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

(b)(5)

Thank you,

Nicole

**From:** Boudreau, Lynn A

**Sent:** Wednesday, May 10, 2017 12:04 PM

**To:** Nicklaw, Nicole C

**Cc:** Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)

**Subject:** FW: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,



Please let me know if you have any additional question or concerns.

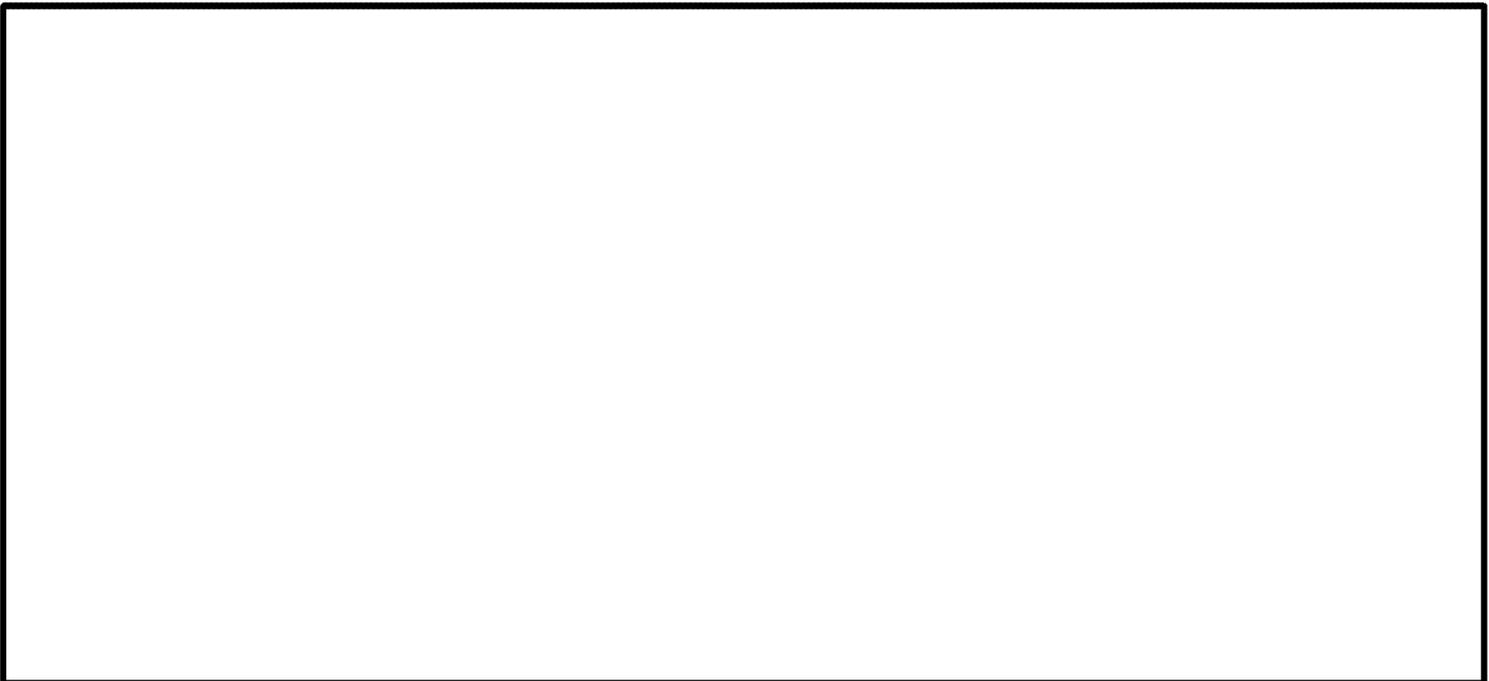
Thanks,

Lynn

(b)(5)

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Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.

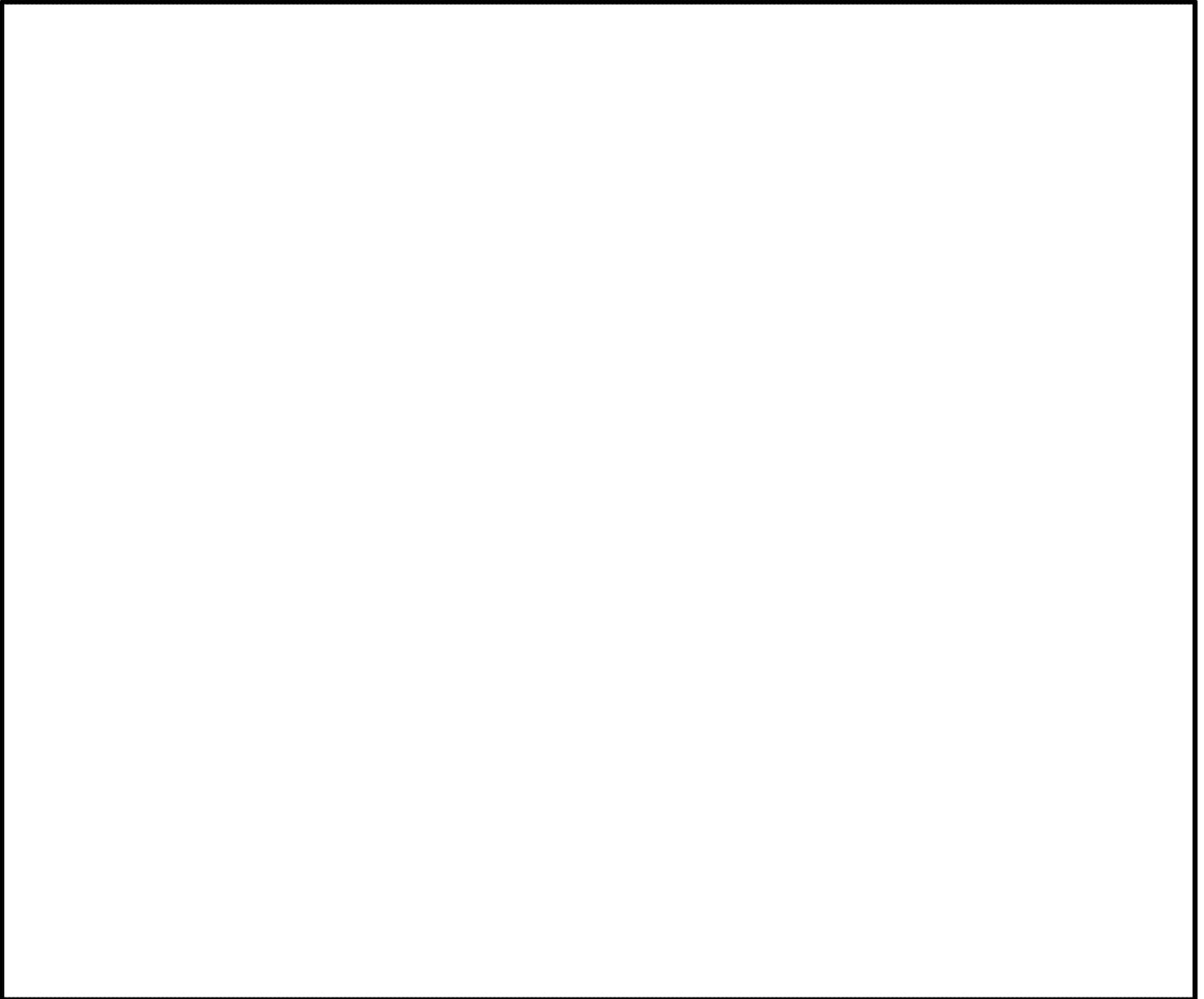




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I tried to respond to your points below in red.

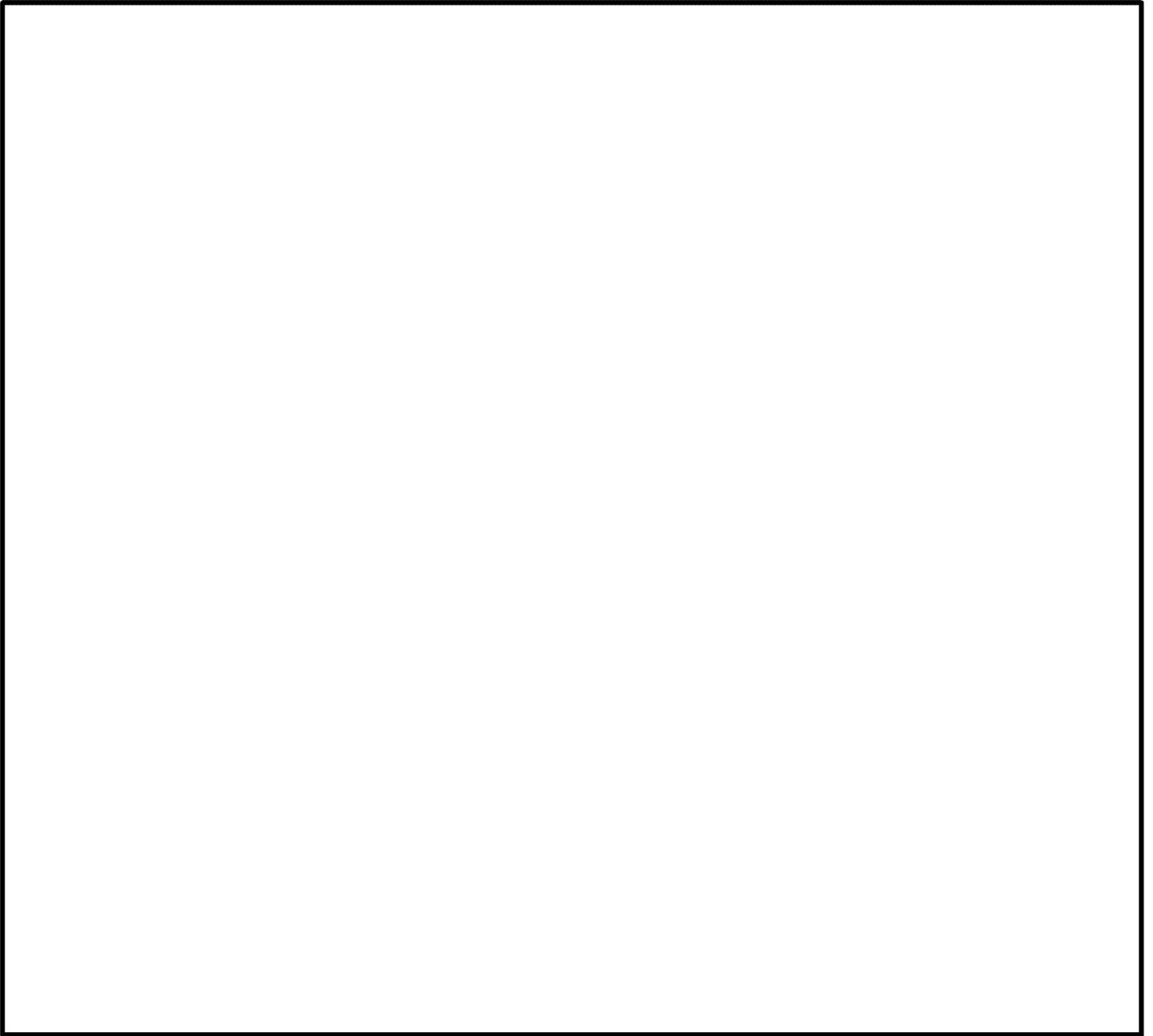
(b)(5)



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(b)(5)





**Thomas, Michael A**

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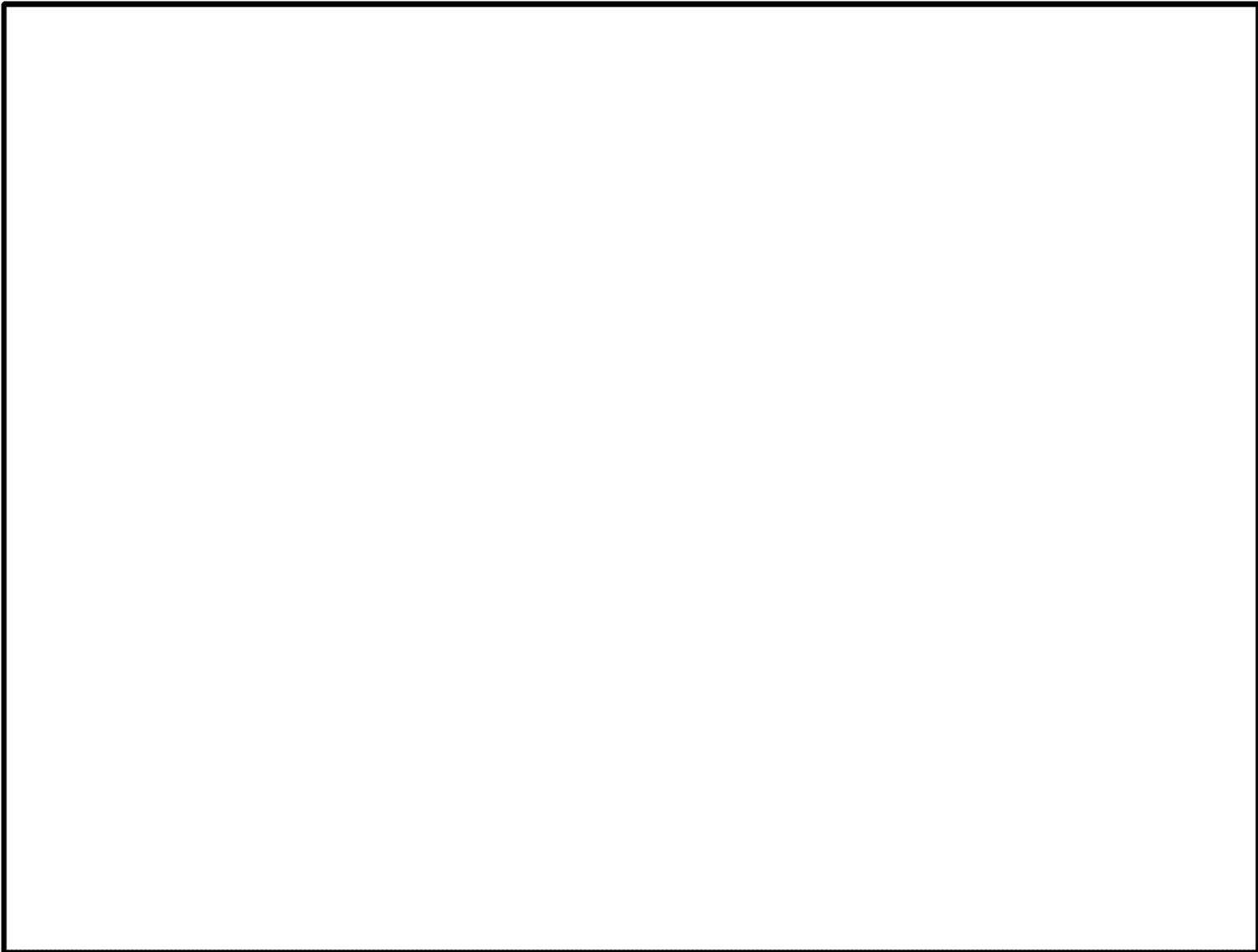
**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Wednesday, October 18, 2017 11:15 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

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**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, May 30, 2017 4:13 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N  
**Cc:** Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Simon, Ronna J; Grabast, Dennis R; Peryea, Jaime L; Collins, Richard A; Parent, Amy B; Roach, Joyce E; Ahlm, Barbara M; Ptacek, David J; Crawford, Jolene P; Elkins, Michael J (Mike); Esser, Christopher J; Bolte, Matthew M (Matt); Langtry, Linda J; Mello, Amy E; Chau, Stephanie; Herring, Monte R; Hanehan, Brendan J; Young, Blanton R (Roy)  
**Subject:** Computer Programmer Memo Service Center Consistency

Hi everyone,

(b)(5)





Please let me know as soon as possible if there are additional questions or issues that should also be included in the summary.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty would qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

In designating the proffered position at a Level I wage, you have indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. Given the *OOH's* guidance that positions located within this occupational category do not require a bachelor's degree in a specific specialty, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. See 8 CFR 214.2(h)(4)(iii)(A)(2). Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. See 8 CFR 214.2(h)(4)(iii)(A)(4).

On [[[LETTER\_CASE\_RECEIPT\_DT]]], you filed a Petition for a Nonimmigrant Worker (Form I-129) with U.S. Citizenship and Immigration Services (USCIS) to classify the beneficiary under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (Act).

Section 101(a)(15)(H)(i)(b) of the Act defines such a beneficiary as an alien:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Furthermore, section 212(n)(1) of the Act states:

No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer-

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least-

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application...

Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i) states in part:

(B) General requirements for petitions involving a specialty occupation.

(1) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

...DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation or whether the individual is a fashion model of

distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

**XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED:** Finally, 8 CFR section 103.2 states in part:

(b) Evidence and Processing.

(1) Demonstrating eligibility at time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions...

...

(12) Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. A benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed...XXX

The LCA submitted with your response was certified after the date of filing your petition, this LCA does not establish eligibility at the time filing as required by 8 CFR section 103.2(b)(12).

Your **XXXINDICATE TYPE OFXXX** business seeks to employ the beneficiary as a **XXXJOB/POSITIONXXX** at an annual salary of **\$XXXAMOUNTXXX**. Based on information provided, your business was established in **XXXYEARXXX** and currently employs **XXXNUMBERXXX** workers. Included in your initial filing is an ETA 9035 Labor Condition Application (LCA) certified by the Department of Labor (DOL) for the position of **XXXJOB/POSITIONXXX** under the **XXXOCCUPATIONAL CLASSIFICATIONXXX** occupational classification and with a Level I wage designation for **XXXLIST LOCATION(S)-CITY, STATE.XXX**

At issue is whether the petition is supported by an LCA which corresponds with the proffered position and, therefore, that the LCA is certified for the specialty occupation in which the beneficiary will be employed. USCIS does not use a position title alone in determining whether the position and its associated wage level as certified on the LCA relates to the proffered position; the agency reviews the educational and experience requirements, individual job duties and specific function, and supervisory duties, if any, of the proffered position. With the initial filing, you submitted the following description of duties for the proffered position: **XXXLIST DUTIES PROVIDED WITH INITIAL FILINGXXX**

On your LCA, you have designated the proffered position as Wage Level I (the lowest of four assignable wage levels). The DOL's Employment and Training Administration Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs, Rev. November, 2009 (DOL Policy Guidance) provides a description of the Wage Levels. Wage Level I is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

On **XXXDATE OF RFE** USCIS informed you in a Request for Evidence (RFE) that the initial evidence did not establish that your petition was supported by an LCA which corresponded with the proffered position described in the petition **XXXUSE IF SPECIALTY OCCUPATION WAS ALSO QUESTIONED:** or that the proffered position qualified as a specialty occupation. **XXX** You were requested to submit evidence to demonstrate that the LCA you have provided, with a Wage Level I designation, corresponds to the proffered position **XXXUSE IF SPECIALTY OCCUPATION WAS ALSO QUESTIONED:** and that the proffered position qualifies as a specialty occupation. **XXX**

On **XXXDATE OF RESPONSE**, USCIS received your response, which included:  
**XXXLIST EVIDENCE RECEIVED**

Your response is insufficient to establish that your petition is supported by a certified LCA that corresponds with the proffered position described in the petition.

As indicated in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), USCIS must determine whether the attestations and content of the LCA correspond to and support the H-1B visa petition. Accordingly, USCIS reviews the LCA to ensure that the wage level designated by the petitioner corresponds to the proffered position.

**XXXIF THE PETITIONER HAS PROVIDED THE OES WORKSHEET IN RESPONSE, USE AND MODIFY AS NEEDED:** In your response, you have provided a copy of a "Worksheet for Use in Determining OES Wage Level" (OES worksheet) relating to the proffered position. On the OES worksheet you have indicated a Wage Level Result of "0" for Experience, Education, Special Skills and Other Requirements, and Supervisory duties and, as such, you determined that the proffered position is a Wage Level I position.

The DOL Policy Guidance provides several guides that can be used for reference during the process of determining the appropriate Wage Level. The OES worksheet you provided is listed as one of these reference documents as "...an example of a worksheet that [the National Prevailing Wage and Helpdesk Center] might use for determining the appropriate wage level." **XXXINCLUDE AND MODIFY AS NEEDED IF THE PETITIONER PROVIDED OR REFERENCED QUINTANILLA V. MYRIAD:** It is noted that you have provided a copy of the DOL decision, *Vicente Carlos Quintanilla v. Myriad RBM, Inc. D/B/A Rules Based Medicine*, ALJ Case No. 2014-LCA-11 (Feb. 10, 2015), in which a DOL Administrative Law Judge (ALJ) discusses the employer's use of the worksheet in making a Wage Level

determination. The ALJ's determination in *Quintanilla* was in the context of a complaint filed for back pay, which is a different context than the instant petition which pertains to USCIS's determination whether the LCA properly corresponds to and supports the H-1B visa petition. Furthermore, USCIS is not bound by the ALJ's determination in *Quintanilla*. XXX

**XXXPROVIDE AN ANALYSIS OF THE PETITIONER'S ANSWERS ON STEPS 2-5 OF THE OES WORKSHEET AND ANY EVIDENCE SUBMITTED IN SUPPORT OF THEIR CLAIMS. ADDRESS ANY INCONSISTENCIES IN THE PETITIONER'S REQUIREMENTS LISTED ON THE OES WORKSHEET AND THE EVIDENCE OF RECORD, SUCH AS PETITIONER'S SUPPORT LETTER, LIST OF JOB DUTIES, JOB OFFER LETTER, ETC.XXX**

As the Wage Level should be commensurate with the complexity of tasks to be performed in the proffered position, it does not appear that Wage Level I is the appropriate level for the proffered position. According to Appendix A of the DOL Guidance, page 5:

“The [OES worksheet] process described above should not be implemented in an automated fashion...The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity.”

Consequently, while USCIS gives appropriate consideration to the OES worksheet submitted and the arguments set forth, the agency will consider the totality of the evidence in the record in assessing whether the LCA in the record corresponds to the proffered position.XXX

**XXXUSE AND MODIFY IF RELEVANT TO THE INSTANT PETITION AND IF THE DISCUSSION ABOVE CONCERNING THE OES WORKSHEET WAS NOT USED:** The DOL's Policy Guidance provides several guides, such as the Wage Level definitions and an advisory worksheet, that can be used for reference during the process of determining the appropriate wage level. As such, the Wage Level definitions are relevant to a Wage Level determination, and should be considered along with the totality of the evidence in the record in making a Wage Level determination. According to Appendix A of the DOL Guidance, page 5:

“The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity.”XXX

Considering the DOL definition of a Wage Level I position and the totality of the evidence in the record, it does not appear that the proffered position comports with the DOL's description of a Level I position. A detailed analysis of the evidence provided in relation to that definition follows.

**Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation.**

**XXXPROVIDE AN ANALYSIS OF THE COMPLEX TASKS THAT APPEAR TO GO BEYOND A BASIC UNDERSTANDING OF THE OCCUPATION AND/OR DO NOT APPEAR APPROPRIATE FOR A BEGINNING LEVEL EMPLOYEE. DO NOT ADDRESS THE BENEFICIARY'S EXPERIENCE AS A DETERMINING FACTOR FOR "ENTRY-LEVEL."XXX**

**These employees perform routine tasks that require limited, if any, exercise of judgment.**

**XXXPROVIDE AN ANALYSIS OF THE ADVANCED TASKS THAT REQUIRE MORE THAN A LIMITED EXERCISE OF JUDGMENTXXX**

**The tasks provide experience and familiarization with the employer's methods, practices, and programs.**

**XXXMODIFY AND USE AS NEEDED:**You have made no claim and provided no evidence to establish that duties of the proffered position will be principally performed to gain experience and familiarization with your methods, practices, and programs.XXX

**The employees may perform higher level work for training and developmental purposes.**

**XXXMODIFY AND USE AS NEEDED:**You have provided no evidence to establish that the complex duties or higher level of work discussed above will be performed for training and developmental purposes. The record establishes that the complex duties and higher level of work will be performed as part of the normal day-to-day work activities of the proffered position.XXX

**These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy.**

**XXXPROVIDE AN ANALYSIS OF THE SUPERVISION AND WHETHER IT DEMONSTRATES THAT THE BENEFICIARY'S WORK IS CLOSELY MONITORED AND REVIEWED FOR ACCURACY AND WHETHER THE BENEFICIARY IS RECEIVING SPECIFIC INSTRUCTIONS ON REQUIRED TASKS AND RESULTS. ADDRESS THE SUPERVISION FOR AN OFF-SITE ASSIGNMENT (IF RELEVANT)XXX**

**XXXADD DISCUSSION IF THE PETITIONER SUBMITTED AN LCA WHICH WAS CERTIFIED AFTER THE TIME OF FILINGXXX**

In support of your petition, you submitted a certified LCA for the position of XXXJOB/POSITIONXXX at a Wage Level I. As discussed above, you have not established that the proffered position is an entry-level position within the occupational category of XXXJOB/POSITIONXXX, nor have you established that the proffered position comports to the DOL's definition of Wage Level I. The proffered position appears to encompass complex tasks and require skills, knowledge, and independent judgment beyond that typically associated with an entry-level XXXJOB/POSITIONXXX.

The record does not establish that the petition is supported by an LCA which corresponds with the proffered position described in the petition as required by 20 CFR 655.705(b) and *Matter of Simeio Solutions*. Accordingly, you have not provided an LCA which is certified for the specialty occupation in which the beneficiary will be employed, as required by 8 CFR section 214.2(h)(4)(i). **XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED:** Furthermore, as discussed above, the LCA submitted with your response was certified after the date of filing your petition. Therefore this LCA does not establish eligibility at the time filing as required by 8 CFR section 103.2(b)(12).XXX Therefore, your petition is denied.

XXX[INSERT AS SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation. Given the *OOH*'s guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

### **Labor Condition Application**

You must establish that your petition is supported by an LCA which corresponds with the proffered position described in the petition.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

The evidence you submitted is insufficient to satisfy this requirement.

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that LCA you have provided, with a Level I wage designation, corresponds to the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
- A new LCA, with a different wage designation and/or SOC code and title. If you submit a new LCA, you must provide an explanation for the change. Note that eligibility for H-1B employment must be established as of the date of filing the I-129 petition. Therefore, the LCA must have been certified **prior to** the date of filing the I-129 petition.

## Specialty Occupation

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

To qualify as a specialty occupation, the position must meet at least one of the following criteria:

- 1) Bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- 3) The employer normally requires a degree or its equivalent for the position; or
- 4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

USCIS interprets the term degree in the above criteria to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position.

XXX[INSERT SPECIALTY OCC SNIPPET]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to :

- A detailed statement to:
  - explain the beneficiary's proposed duties and responsibilities;
  - indicate the percentage of time devoted to each duty;
  - state the educational requirements for these duties; and
  - explain how the beneficiary's education relates to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - list all divisions in the organization;
  - identify the proffered position in the chart;
  - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
  - indicate who will direct the beneficiary, by name and job title.
- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field.

- Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
  - the writer's qualifications as an expert;
  - how the conclusions were reached; and
  - the basis for the conclusions supported by copies or citations of any material used.
- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including copies of:
  - employment or pay records; and
  - degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.
- An explanation of what differentiates your products and services from other employers in the same industry and why a bachelor's level of education in a specific field of study is a prerequisite for entry into the proffered position. Be specific and provide documentation to support any explanation of complexity.
- Copies of documentary examples of work product created by current or prior employees in similar positions, such as:
  - reports;
  - presentations;
  - evaluations;
  - designs; or
  - blueprints.
- Additional information about your organization, highlighting the nature, scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
  - business plans, reports, presentations, etc., to describe your business;
  - contractual agreements or work orders from each company who will utilize the beneficiary's services to show the beneficiary will be performing specialty occupation duties;
  - promotional materials;
  - advertisements;
  - press releases;
  - patents; or
  - articles
- Any evidence you believe will establish that the position qualifies as a specialty occupation.

In addition to proving that the proffered position qualifies as a specialty occupation, you must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

XXX[INSERT LCA SNIPPET]XXX

## Specialty Occupation

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum, for entry into the occupation in the United States.

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

To qualify as a specialty occupation, the position must meet at least one of the following criteria:

- 1) Bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- 3) The employer normally requires a degree or its equivalent for the position; or
- 4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

USCIS interprets the term degree in the above criteria to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position.

XXX[INSERT SPECIALTY OCC SNIPPET]XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to :

- A detailed statement to:
  - explain the beneficiary's proposed duties and responsibilities;
  - indicate the percentage of time devoted to each duty;
  - state the educational requirements for these duties; and
  - explain how the beneficiary's education relates to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - list all divisions in the organization;
  - identify the proffered position in the chart;
  - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
  - indicate who will direct the beneficiary, by name and job title.
- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field.

- Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
  - the writer’s qualifications as an expert;
  - how the conclusions were reached; and
  - the basis for the conclusions supported by copies or citations of any material used.
- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor’s or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including copies of:
  - employment or pay records; and
  - degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.
- An explanation of what differentiates your products and services from other employers in the same industry and why a bachelor’s level of education in a specific field of study is a prerequisite for entry into the proffered position. Be specific and provide documentation to support any explanation of complexity.
- Copies of documentary examples of work product created by current or prior employees in similar positions, such as:
  - reports;
  - presentations;
  - evaluations;
  - designs; or
  - blueprints.
- Additional information about your organization, highlighting the nature , scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
  - business plans, reports, presentations, etc., to describe your business;
  - contractual agreements or work orders from each company who will utilize the beneficiary’s services to show the beneficiary will be performing specialty occupation duties;
  - promotional materials;
  - advertisements;
  - press releases;
  - patents; or
  - articles
- Any evidence you believe will establish that the position qualifies as a specialty occupation.

In addition to proving that the proffered position qualifies as a specialty occupation, you must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

XXX[INSERT LCA SNIPPET]XXX

## Specialty Occupation and Wage Level Issues

### Scenario 1: RFE issued only for specialty occupation without wage level discussion on complexity or specialization

IF:	THEN:
Response establishes that the position is a specialty occupation	Analyze to see whether the duties correspond to the wage level. If duties are clearly inconsistent with wage level, issue RFE concerning wage level as appropriate. See Scenario 4.
Response did not establish that the position is a specialty occupation and also did not discuss how wage level shows complexity or specialization	Deny for specialty occupation but do not include discussion regarding how wage level does not show complexity or specialization since it was not discussed in the RFE.
Response did not establish that the position is a specialty occupation but petitioner/attorney brought up wage level issue	Deny for specialty occupation. If possible, include a discussion regarding how wage level does not show complexity or specialization.

### Scenario 2: RFE issued for specialty occupation that included a discussion on how wage level does not show complexity or specialization. But RFE did not discuss how the duties do not correspond to the wage level.

IF:	THEN:
Response establishes that the position is a specialty occupation	Analyze to see whether the duties correspond to the wage level. If duties are clearly inconsistent with wage level, issue RFE concerning wage level as appropriate. See Scenario 4.
Response did not establish that the position is a specialty occupation	Deny for specialty occupation. If possible, include a discussion regarding how wage level does not show complexity or specialization.

### Scenario 3: RFE issued for specialty occupation and how the duties do not correspond to the wage level

IF:	THEN:
Response establishes that the position is a specialty occupation and that the wage level correspond	Approve
Response establishes that the position is a specialty occupation but did not establish that the wage level correspond	Deny using the wage level does not correspond denial *needs supervisor review*
Response establishes that the wage level correspond but did not establish that the position is a specialty occupation	Deny for specialty occupation only
Response did not establish that the position is a specialty occupation or that the wage level correspond	Deny for both issues *needs supervisor review*

### Scenario 4: RFE issued only for whether the duties correspond to the wage level

IF:	THEN:
Response establishes that the duties correspond to the wage level	Approve
Response did not establish that the wage level correspond	Deny using the wage level does not correspond denial *needs supervisor review*

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Office of the Director (MS 2000)  
Washington, DC 20529-2000



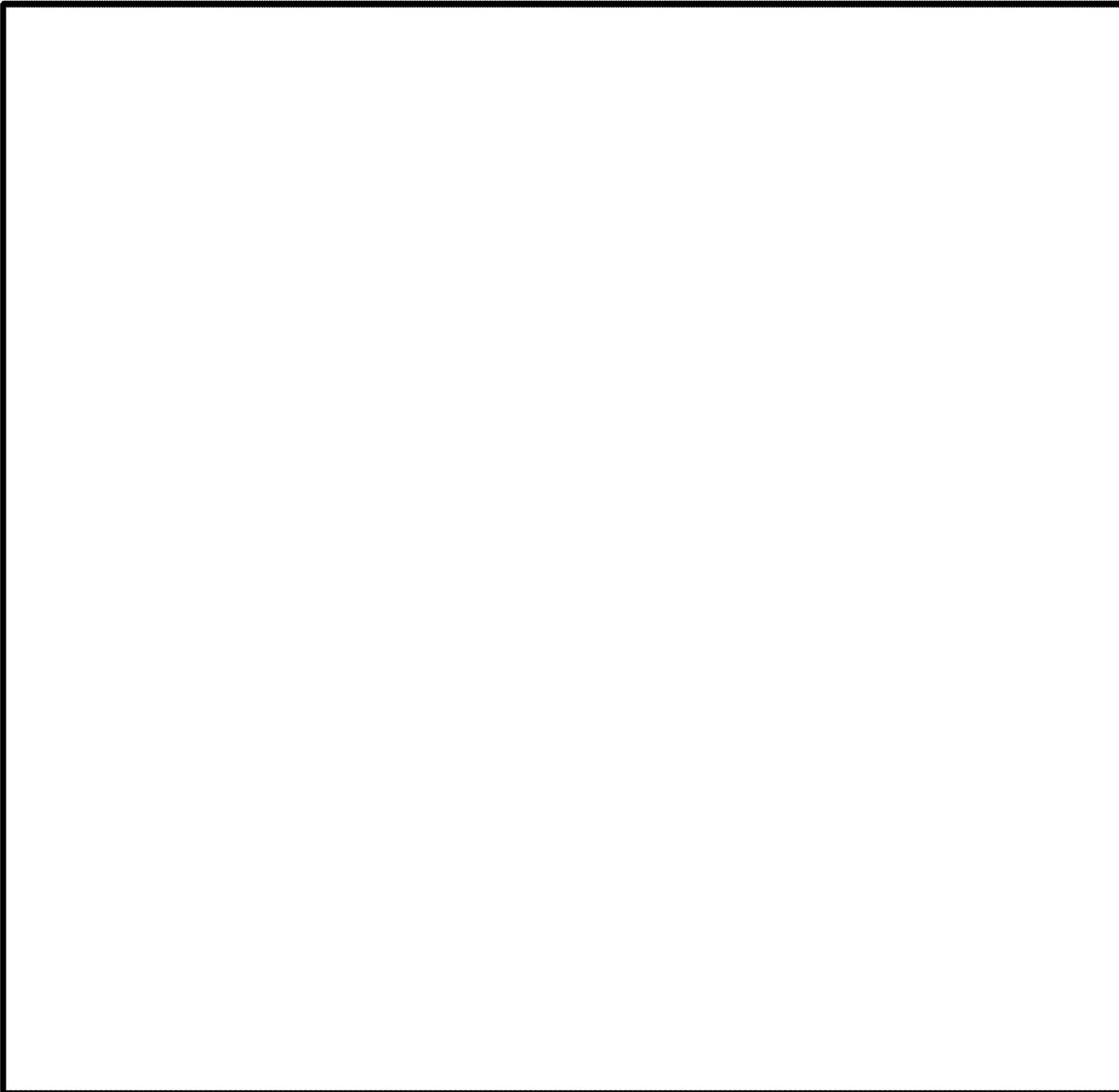
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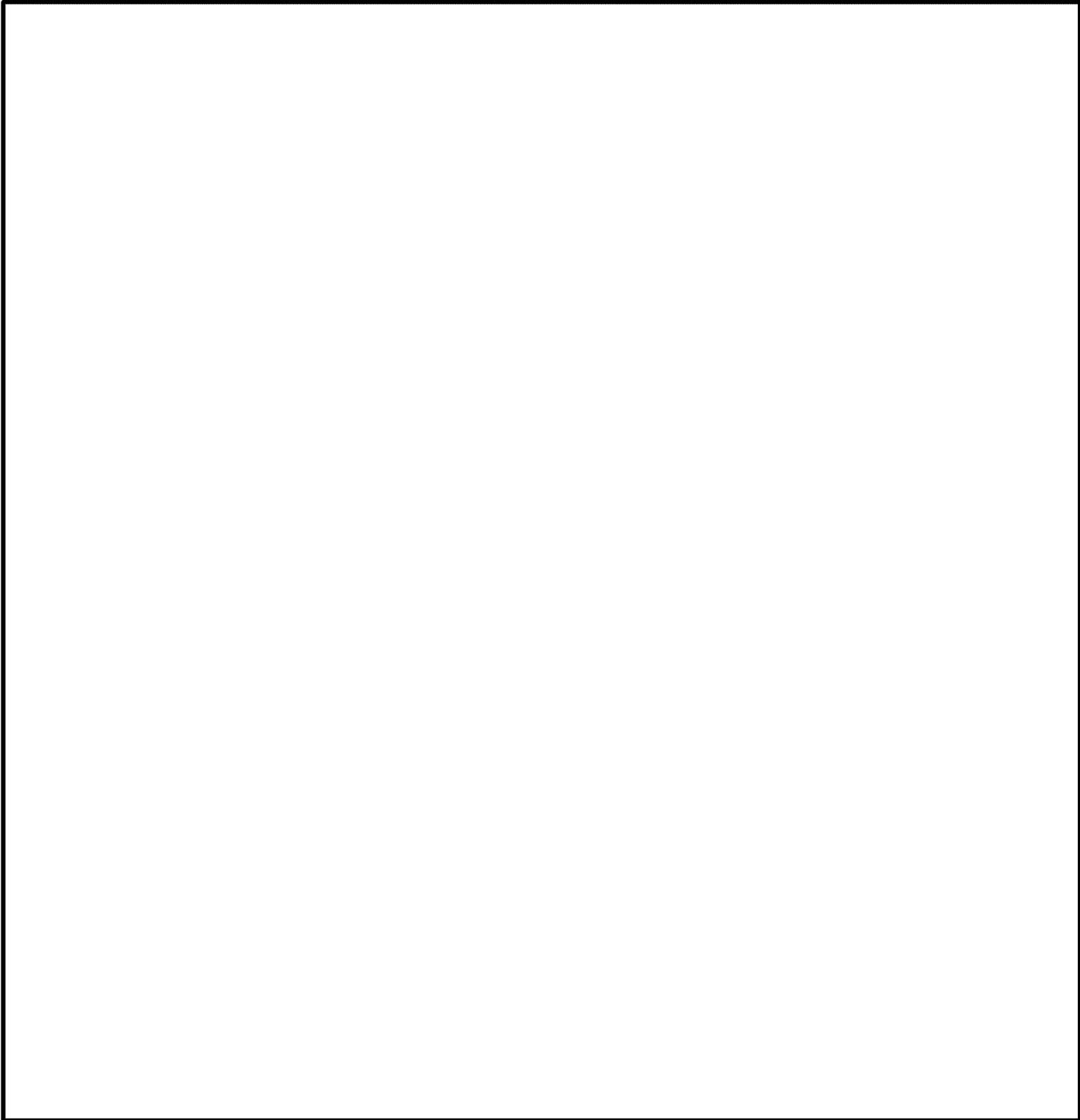
## Policy Memorandum Draft

SUBJECT: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

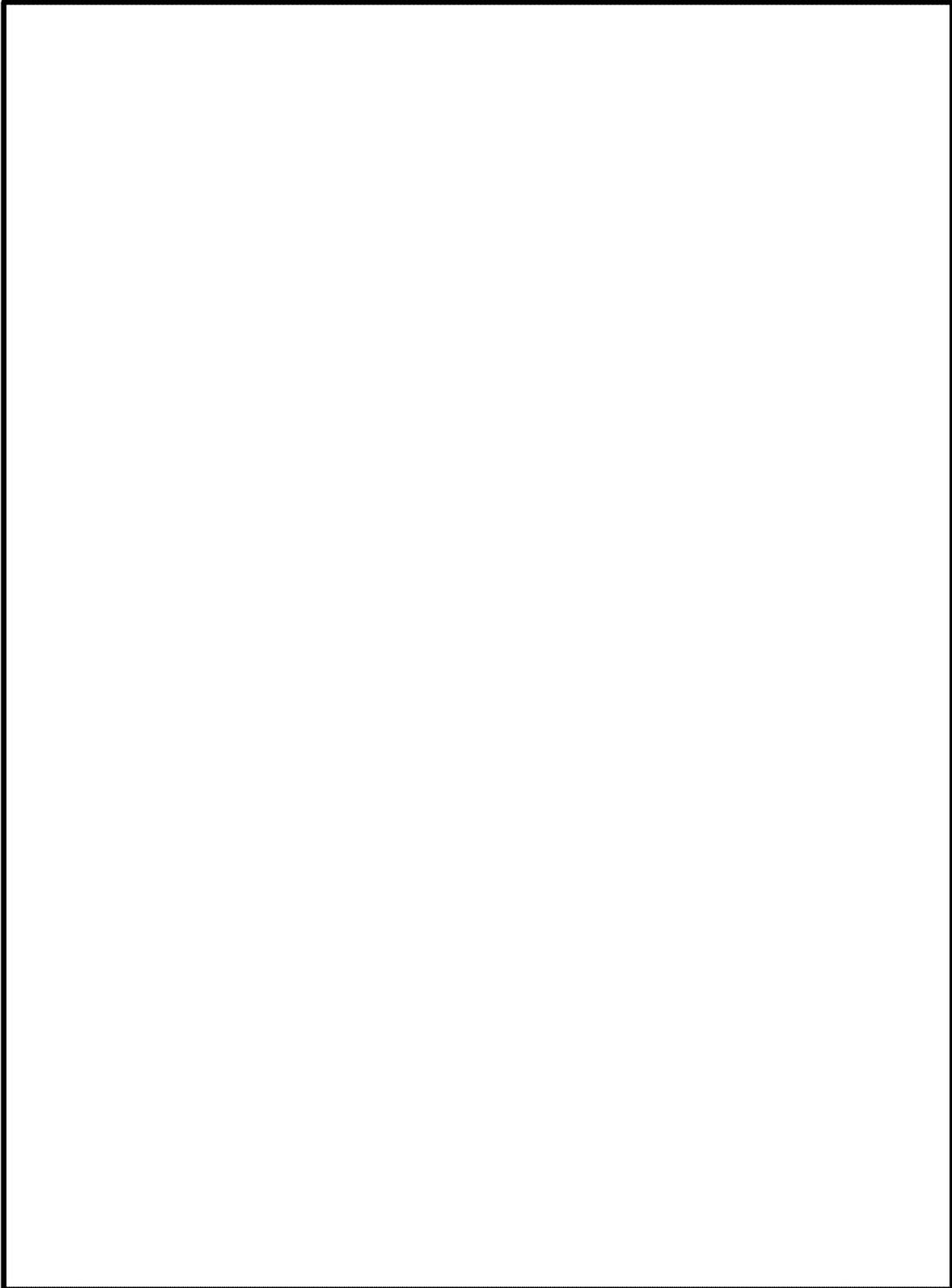


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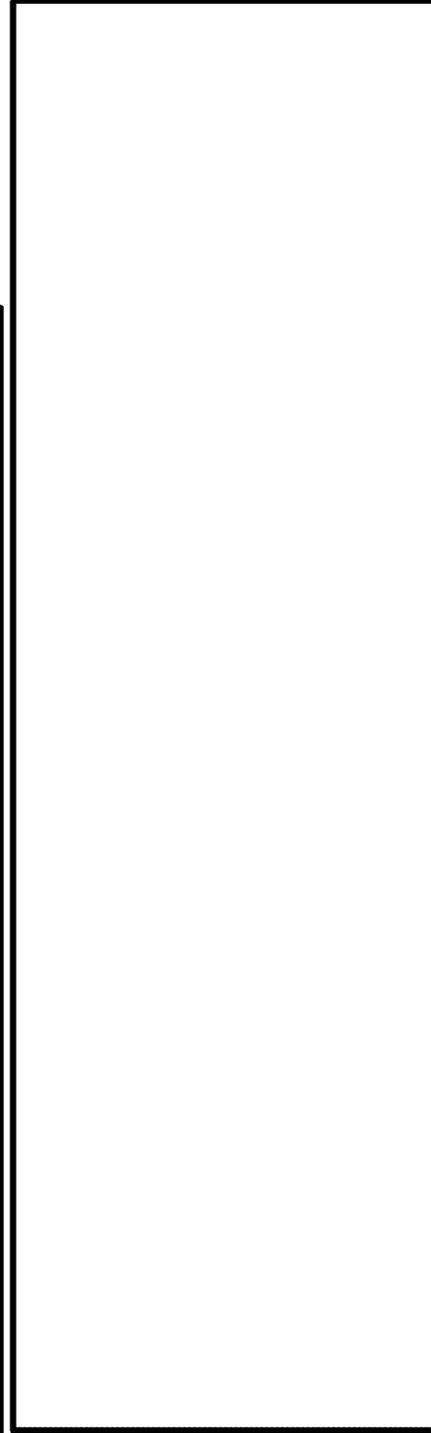
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Policy Memorandum Draft

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SUBJECT: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"



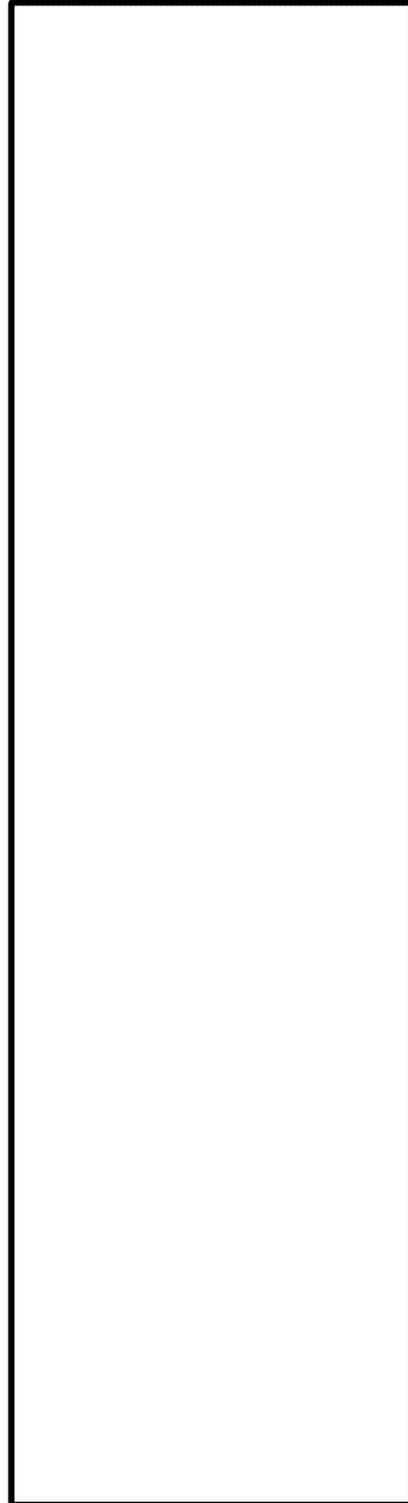
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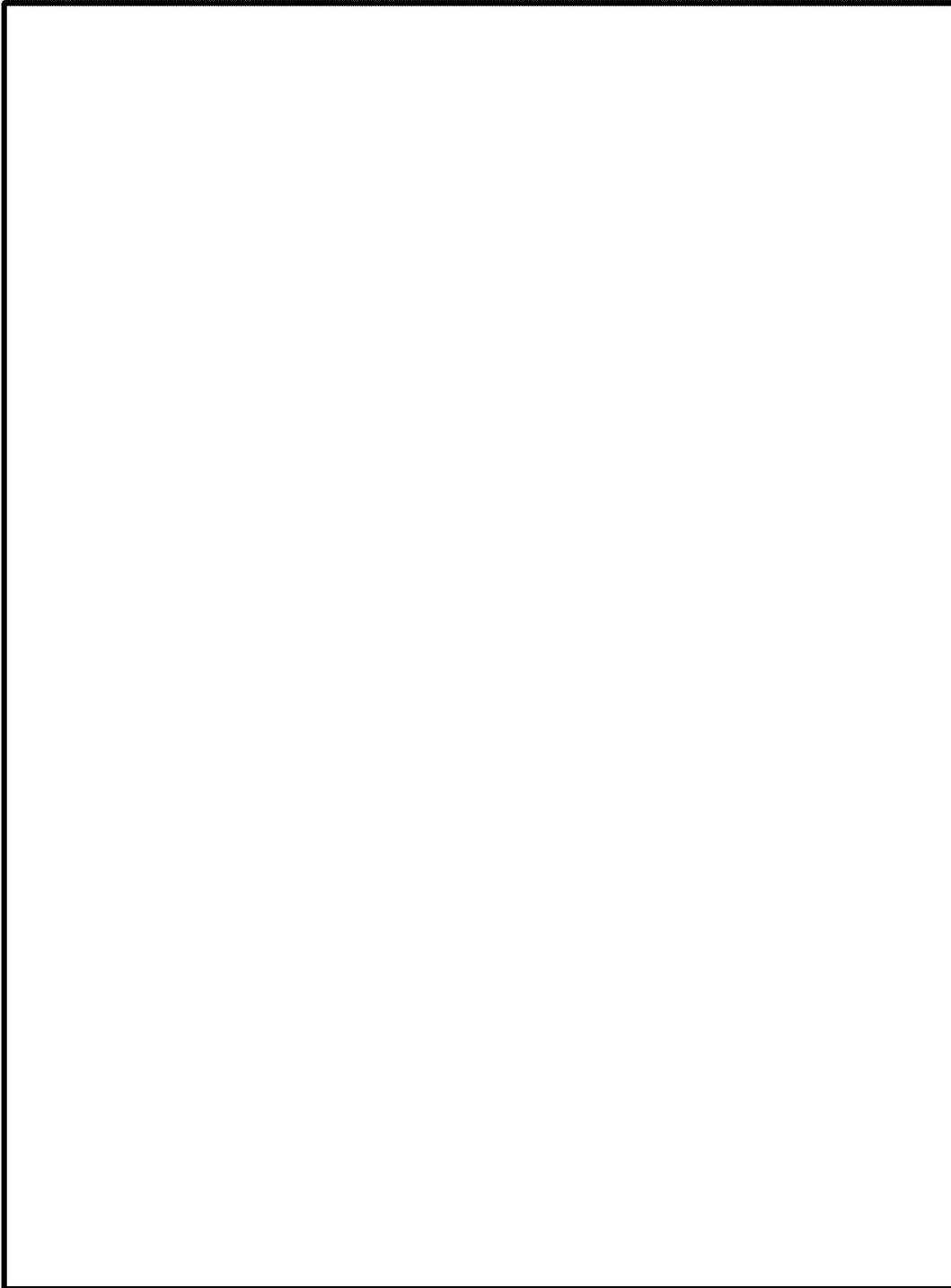


PM-XXX-XXXX: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

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PM-XXX-XXXX: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"  
Page 4

If USCIS officers have questions or suggestions regarding this PM, they should direct them through their appropriate chains of command to the Office of Policy and Strategy.

XXX[INSERT AS SPECIALTY OCC SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation. Given the *OOH*'s guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

XXX[INSERT AS LCA SNIPPET INTO 2120 IF NEEDED]XXX

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition..

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
- A new LCA, with a different wage designation and/or SOC code and title. If you submit a new LCA, you must provide an explanation for the change. Note that eligibility for H-1B employment must be established as of the date of filing the I-129 petition. Therefore, the LCA must have been certified **prior to** the date of filing the I-129 petition. Additionally, a new LCA which constitutes a material change may result in the denial of your petition.

### **Labor Condition Application**

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation.

Moreover, you indicate that the beneficiary will perform duties such as:

**XXX[PROVIDE LIST OF RELEVANT DUTIES]XXX**

These duties do not correspond to the Level I wage description as they do not appear to encompass “only a basic understanding of the occupation.” The duties described appear to contain more than “routine tasks that require limited, if any, exercise of judgement.”

**XXX[INCLUDE IF OFF-SITE EMPLOYMENT AND RELEVANT]XXX**

Moreover, you indicate that the beneficiary will be stationed off-site, at the XXX[END-CLIENT NAME]XXX client location. You indicate XXX[PROVIDE ANALYSIS OF OFF-SITE SUPERVISION AS DESCRIBED IN PETITION OR INDICATE THAT THEY HAVE NOT PROVIDED ANY DESCRIPTION]XXX. Accordingly, it is not apparent how the beneficiary will “work under close supervision and receive specific instructions on required tasks and results expected.” Similarly, it is not apparent how the beneficiary’s work will be “closely monitored and reviewed for accuracy.”

Therefore, the position, as described in your petition, does not appear to be an entry-level position despite the wage classification you have selected on the LCA. As such, you have not sufficiently established that the petition is supported by a certified LCA that corresponds to the petition.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
- A new LCA, with a different wage designation and/or SOC code and title. If you submit a new LCA, you must provide an explanation for the change. Note that eligibility for H-1B employment must be established as of the date of filing the I-129 petition. Therefore, the LCA must have been certified **prior to** the date of filing the I-129 petition. Additionally, a new LCA which constitutes a material change may result in the denial of your petition.



# U.S. Citizenship and Immigration Services

# H-1B Nonimmigrants

October 2017



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# About this Presentation

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Author: USCIS Service Center Operations Directorate.

Date of last revision: October 2017

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Any references in documents or text, with the exception of case law, relate to fictitious individuals.



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# H-1B Petition Process

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- Petitioner files a Labor Condition Application (LCA) with Department of Labor (DOL) for certification.
- Once DOL certifies the LCA, the petitioner submits Form I-129 with a certified LCA to a USCIS Service Center.
- If USCIS approves the petition for a beneficiary who is outside the United States and requires a visa to enter the United States, the beneficiary will need to schedule a visa interview at a U.S. Embassy or Consulate abroad.
  - ✓ If issued an H-1B visa, the beneficiary may apply for admission to the United States with CBP.



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# H-1B Petition Process

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- If the beneficiary does not require a visa to enter the United States, he/she may apply for admission into the United States with CBP using the USCIS approval notice. This beneficiary can therefore obtain H-1B admission without prior contact or interaction with DOS.
- If the beneficiary is in the United States (in valid nonimmigrant status), the petitioner may include a request to change the beneficiary's status from another nonimmigrant status to H-1B or extend H-1B beneficiary's stay on the Form I-129.



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# H-1B Classification for Specialty Occupation Workers

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## H-1B

- Specialty occupation workers;
- Department of Defense (DOD) cooperative research and development project or co-production project workers; and
- Fashion models of distinguished merit and ability.



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# H-1B Classification for Specialty Occupation Workers

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## H-1B1

- Pursuant to free trade agreements, specialty occupation workers that are nationals of Chile and Singapore
- A Form I-129 is not required to be filed with USCIS
  - Individuals may apply for an H-1B1 visa directly at a consular office overseas.
  - However, employers file Form I-129 with USCIS to request an extension of the H-1B1 beneficiary's status, or to request a change of the beneficiary's status from another nonimmigrant status to H-1B1, within the United States.



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# General H-1B Classification Information

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- The annual H-1B cap is set at 65,000.
- The first 20,000 H-1B petitions filed on behalf of beneficiaries with a U.S. Master's or higher degree are exempt from the annual cap.
- Petitions by, or for employment at, certain organizations are not counted against the cap (e.g. institutions of higher education and related/affiliated non-profit entities).
- Certain exemptions and exceptions that apply to the beneficiary might also render the petition cap-exempt.



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# General H-1B Classification Information

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- While in H-1B status, the nonimmigrant may also seek permanent residence in the United States.
- Labor Condition Application is required for specialty occupation and fashion model H-1B petitions.
- Maximum stay of 6 years, with limited exceptions\*



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# H-1B Classification Criteria

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- Petitioner is a U.S. employer or U.S. agent;
- Position qualifies as a specialty occupation; and
- Beneficiary is qualified to perform the specialty occupation position, including, generally, if applicable, any state licensure requirement



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# Specialty Occupation

---

- “Specialty occupation” is broadly defined as an occupation which requires the “theoretical and practical application of a body of highly specialized knowledge.”
- To qualify as a specialty occupation, the position must meet one of the following four criteria:
  - A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;



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# Specialty Occupation

---

- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.



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# Recent Updates

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## **Matter of Simeio Solutions LLC**

On April 9, 2015, the Administrative Appeals Office (AAO) issued this USCIS precedent decision which held that:

- A change in the place of employment of a beneficiary to a geographical area requiring a corresponding Labor Condition Application for Nonimmigrant Workers (“LCA”) be certified to the U.S. Department of Homeland Security with respect to that beneficiary may affect eligibility for H-1B status; it is therefore a material change for purposes of 8 C.F.R. 214.2(h)(2)(i)(E) and (11)(i)(A)(2014).
- When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H-1B petition with the corresponding LCA.
- *Simeio Solutions* decision clarifies that an amended or new petition is now required prior to an H-1B worker changing locations to an area of intended employment that requires a new LCA.



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# Recent Updates

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## Rescission Memo

March 31, 2017 memo entitled “Rescission of the December 22, 2000 ‘Guidance memo on H1B computer related positions’”

- Rescinded a previously existing policy memo which discussed computer related positions and specialty occupations.
- The articulated analysis is applicable to all professions and all H-1B petitions.
- Reinforces existing statutory and regulatory requirements to evaluate petitions and make an eligibility determination, including whether the position qualifies as a specialty occupation and that the petition is supported by a certified LCA that corresponds to the petition.
- A case-by-case evaluation is required to determine whether the petition qualifies for the benefit being requested.
- An RFE may be issued when the preponderance standard is not met, including when the certified LCA, including the wage level, does not appear to correspond to the position.



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# H-2A and H-2B Nonimmigrants

October 2017



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# General H-2A and H-2B Process Overview



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# H-2A and H-2B Program Process Overview

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1. The employer files a temporary labor certification (TLC) application with the U.S. Department of Labor (DOL), or Guam DOL for H-2B workers to be employed on Guam.
2. After receiving an approved TLC, the employer signs and submits it with a Form I-129, Petition for a Nonimmigrant Worker, to U.S. Citizenship & Immigration Services (USCIS).
3. After the petition is approved, if the foreign worker is outside the U.S. and requires a visa, he or she applies for it with the U.S. Department of State at a Consulate or Embassy abroad.



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# H-2A Temporary Agricultural Nonimmigrants



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# H-2A Classification

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Allows U.S. employers to bring foreign nationals to the United States to fill seasonal and temporary agricultural jobs for which U.S. workers are not available.

- To qualify as seasonal, employment must be tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.
- To qualify as temporary, the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.



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# H-2A Classification

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There is no numerical limitation (or “cap”) on the number of foreign nationals who may be issued visas as H-2A agricultural workers in a fiscal year (FY).

- The H-2A program has seen persistent growth, with the number of approved H-2A beneficiaries more than doubling between FY 2011 and FY 2016.



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# H-2A Classification

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## Top Industries

General Farm Worker

Tobacco

Hay and Straw

Oranges

Cotton

Corn

Nurseries

Onions

Sheep

Tomatoes

## Top States

Florida

North Carolina

Georgia

Louisiana

California

Arizona

South Carolina

Arkansas

Idaho

Kentucky



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# H-2B Temporary Non- Agricultural Nonimmigrants



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# H-2B Classification

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Allows U.S. and certain foreign employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs for which U.S. workers are not available.

As a general rule, to qualify as temporary, the petitioner's need for the foreign worker's services or labor shall be:

- A seasonal need for  $\leq 1$  year,
- A peakload need for  $\leq 1$  year,
- An intermittent need for  $\leq 1$  year, or
- A one-time occurrence for  $\leq 3$  years.



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# Top Industries Utilizing H-2B Workers

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Landscaping and Grounds Keeping Workers

Amusement and Recreation Park Attendants

Forest and Conservation Workers

Maids and Housekeeping Cleaners

Meat, Poultry, and Fish Cutters and Trimmers

Construction Laborers

Coaches and Scouts

Nonfarm Animal Caretakers

Waiters and Waitresses

Lifeguards, Ski Patrol, and Other Recreational



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# H-2B Numerical Limitation (the “H-2B cap”)

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There is a numerical limitation (“cap”) of 66,000 H-2B workers per year.

## Allocated semi-annually:

- 33,000 workers for the 1<sup>st</sup> half of the fiscal year  
(Employment starting from 10/1 – 3/31)
- 33,000 workers for the 2<sup>nd</sup> half of the fiscal year  
(Employment starting from 4/1 – 9/30)
- Unused 1<sup>st</sup> half numbers are available for use in the 2<sup>nd</sup> half of the fiscal year



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# H-2B Numerical Limitation (the “H-2B cap”)

- USCIS regularly publishes updates on the current H-2B Cap Count at [www.USCIS.gov](http://www.USCIS.gov).
- Current exceptions to Workers not Counted Against the H-2B Cap:
  - Current H-2B workers in the U.S. who are beneficiaries of petitions to extend their stay and, if applicable, change the terms of their employment or change their employers;
  - Fish roe processors, fish roe technicians or supervisors of fish roe processing; and
  - Workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) or Guam, from November 28,



U.S. Citizenship and Immigration Services, 2019.

# H-2B Returning Workers

- Effective December 18, 2015, H-2B workers certified and confirmed as “returning workers” who had been counted against the cap in one of the preceding three fiscal years were exempted from the H-2B cap for FY 2016 only. The returning worker exemption from the H-2B cap had previously been in place for FYs 2005 through 2007.
- The H-2B returning worker provisions of the 2016 Consolidated Appropriations Act expired on September 30, 2016. Congress did not reauthorize the program for FY 2017.



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# One-Time Increase for FY 2017

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- The FY 2017 Consolidated Appropriations Act delegated authority to the Secretary of Homeland Security, after consultation with the Secretary of Labor, to increase the total number of aliens who may receive an H-2B visa in FY 2017 by not more than the highest number of H-2B returning workers during any fiscal year in which they were exempt from the cap.
- After considering the needs of American businesses and other factors, including the impact on U.S. workers and the integrity of the H-2B program, the then-Secretary decided to increase the cap by 15,000 additional visas. These visas were available only to businesses attesting that they would likely suffer irreparable harm without the ability to employ all the requested H-2B workers.



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# General H-2A and H-2B Petition Information



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# Beneficiary Requirements

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- An H-2A or H-2B petition may include more than one beneficiary if the beneficiaries will be performing the same service for the same period of time in the same location.
- The total number of beneficiaries approved on an H-2A or H-2B petition cannot exceed the number of positions indicated on the relating TLC.
- Beneficiaries can be unnamed on the H-2A or H-2B petition if they seek consular processing, but not when they are already in the United States.

**NOTE:** A beneficiary must be named if he or she is not from a country on the “Eligible Countries List.”



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# Beneficiary Requirements

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- **Limitation of stay:** After being in H-2A or H-2B status for 3 years, a worker must leave the U.S. for at least 3 months before he or she is again eligible for H-2A or H-2B classification.
- **“Eligible Countries List”:** H-2A and H-2B petitions may generally be approved only for nationals of countries that the Secretary of Homeland Security, with concurrence from the Secretary of State, has designated as participating countries. USCIS may approve petitions for nationals of countries not on this list if it is determined to be in the interest of the United States.



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# Petitioner Responsibilities

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- **Prohibited fees:** Fees imposed as a condition of the H-2A or H-2B worker's employment or recruitment are generally prohibited.
- Petitioners must notify USCIS of an H-2A or H-2B worker's payment or agreement to pay prohibited fees to a recruiter within 2 workdays of gaining knowledge of such payment or agreement.
- Petitioners must also notify USCIS within 2 work days under the following circumstances:
  - No show: The worker fails to report to work within 5 work days of the approved start date.
  - Absconder: The worker fails to report to work for 5 consecutive work days without consent.
  - Termination.
  - Early Completion.



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# Want to Know More?

- For more information about the H-2A program, visit: [www.uscis.gov/H-2A](http://www.uscis.gov/H-2A).
- For more information about the H-2B program, visit: [www.uscis.gov/H-2B](http://www.uscis.gov/H-2B).



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A screenshot of the USCIS website page for H-2A Temporary Agricultural Workers. The page is in Spanish. At the top, there is a navigation bar with links for "Español", "Blog", "About USCIS", "Archive", and "Site Map". Below this is a search bar and a menu with categories: "FORMS", "NEWS", "CITIZENSHIP", "GREEN CARD", "TOOLS", and "LAWS". The main content area is titled "H-2A Temporary Agricultural Workers" and includes a description of the program, a list of topics, and a section titled "Who May Qualify for H-2A Classification?". The left sidebar contains a list of immigration categories, with "H-2A Agricultural Workers" highlighted. The right sidebar contains a link for "H-2 Petitioner's Employment Related or Fee Related Notification".

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Home > Working in the United States > Temporary Workers > H-2A Agricultural Workers

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## Working in the United States

### H-2A Temporary Agricultural Workers

The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. A U.S. employer, a U.S. agent as described in the regulations or an association of U.S. agricultural producers named as a joint employer must file Form I-129, Petition for Nonimmigrant Worker, on a prospective worker's behalf.

#### Topics

- Who May Qualify for H-2A Classification?
- H-2A Program Process
- H-2 Eligible Countries List
- Period of Stay
- Family of H-2A Workers
- Employment-Related Notifications to USCIS
- Fee-Related Notifications to USCIS

#### Who May Qualify for H-2A Classification?

To qualify for H-2A nonimmigrant classification, the petitioner must:

- Offer a job that is of a temporary or seasonal nature.
- Demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Show that the employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Generally, submit with the H-2A petition, a single valid temporary labor certification from the U.S. Department of Labor. (A limited exception to this requirement exists in certain "emergent circumstances." See e.g., 8 CFR 214.2(h)(5)(x) for specific details.)

Temporary Workers

- OW-1: CNMI-Only Transitional Worker
- E-1 Treaty Traders
- E-2 CNMI Investor
- E-2 Treaty Investors
- E-3 Certain Specialty Occupation Professionals from Australia
- H-1B Specialty Occupations and Fashion Models
- H-1C Registered Nurse
- H-2A Agricultural Workers**
- H-2B Non-Agricultural Workers
- H-3 Nonimmigrant Trainee
- I Representatives of Foreign Media
- L-1A Intracompany Transferee Executive or Manager

H-2 Petitioner's Employment Related or Fee Related Notification

# Questions?



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**PART H – Specialty Occupation Workers (H-1B, E-3)**

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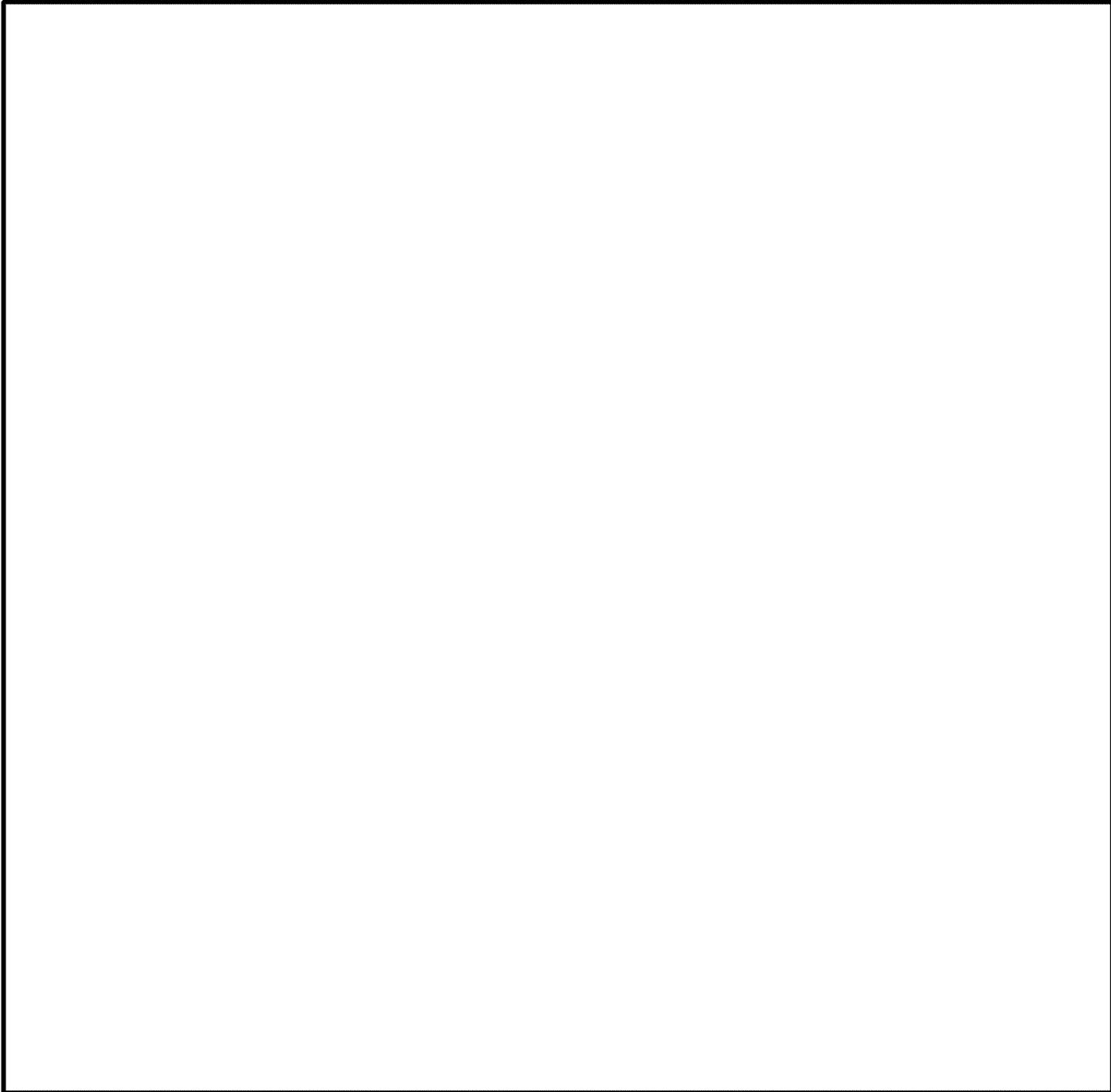
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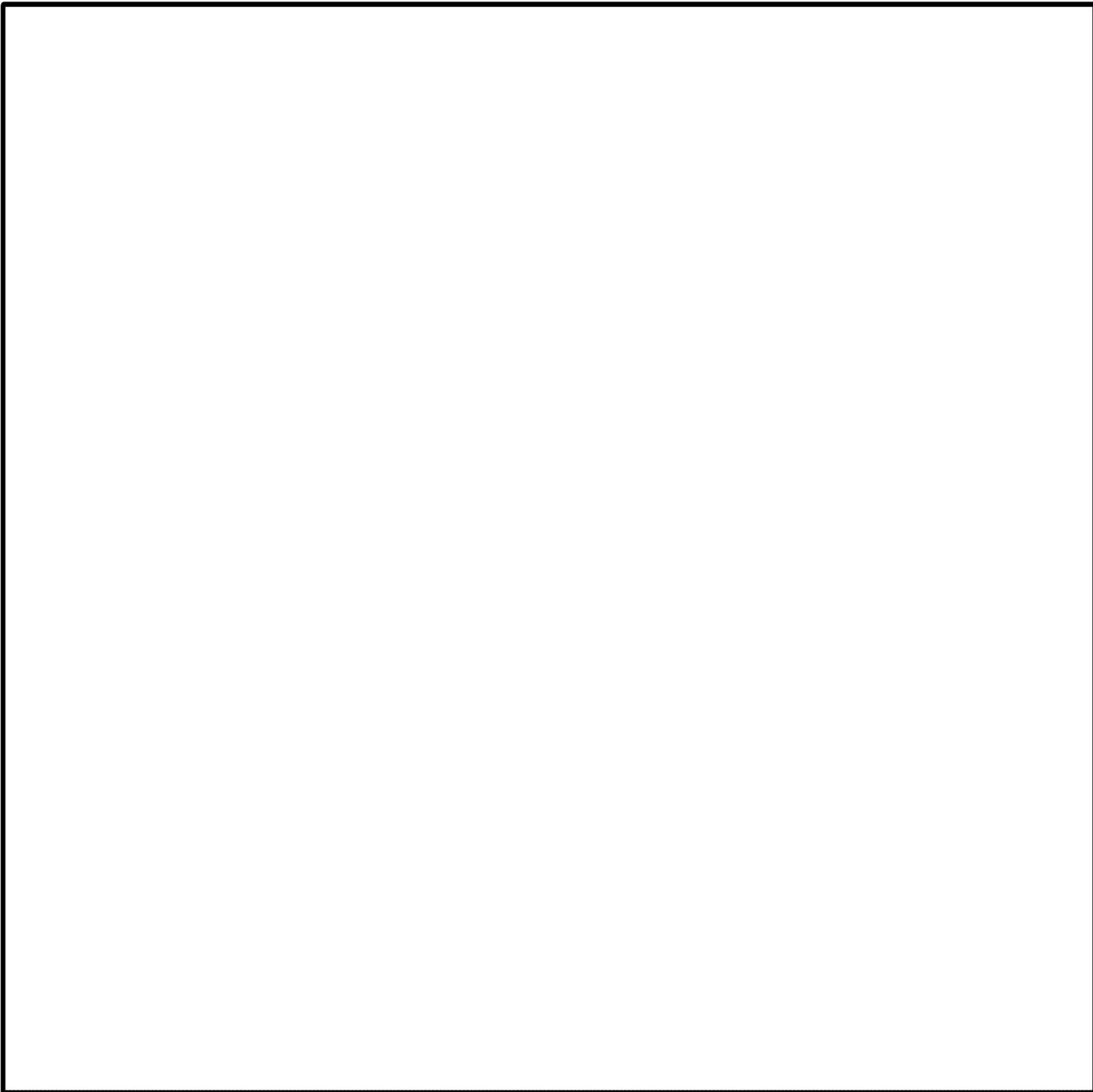
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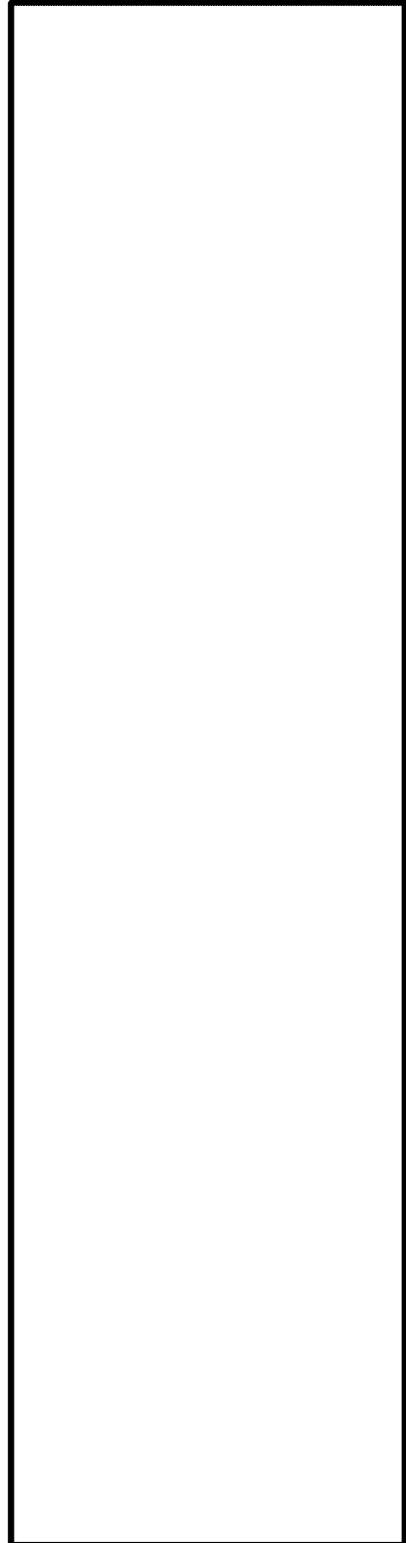
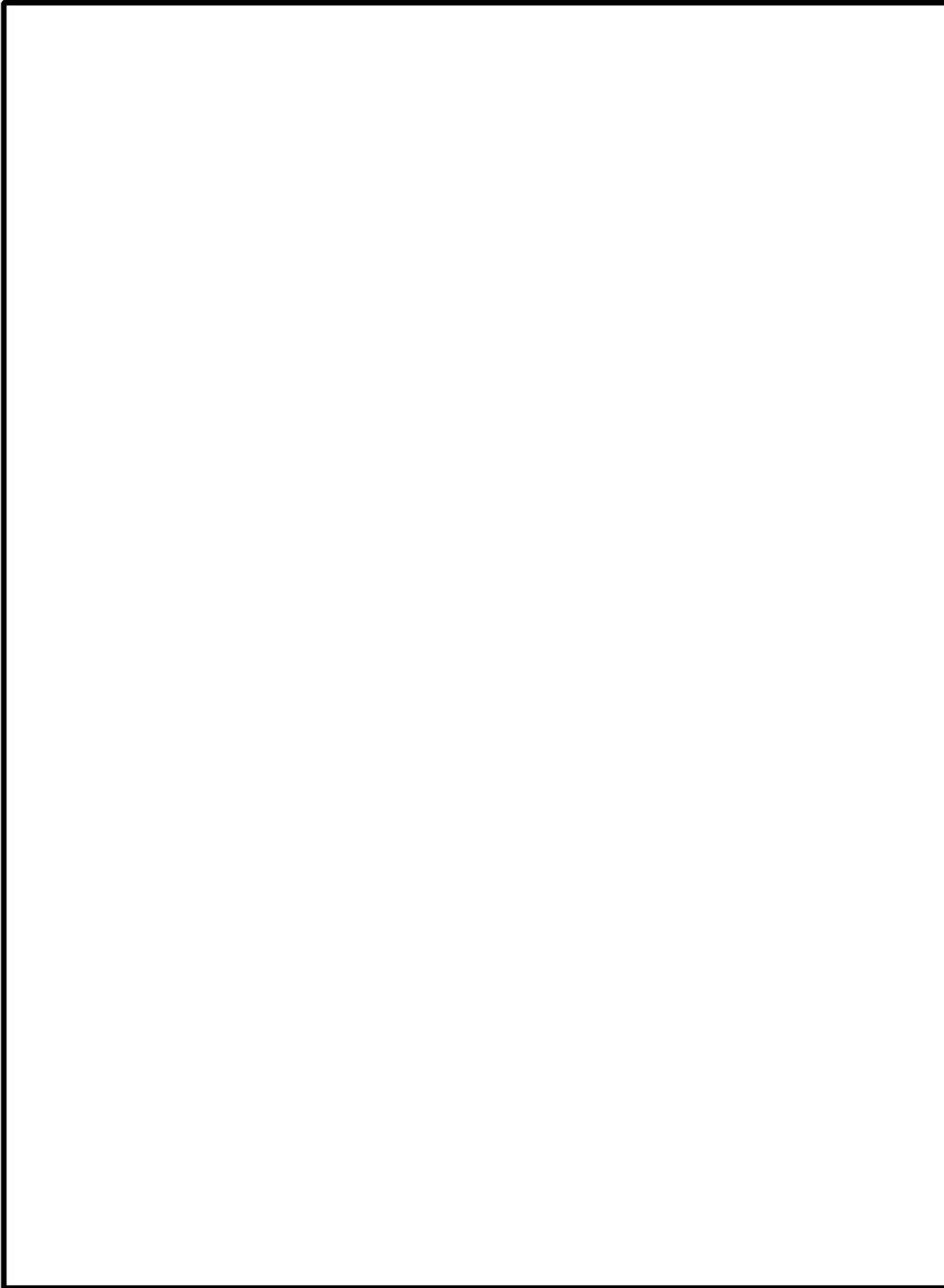


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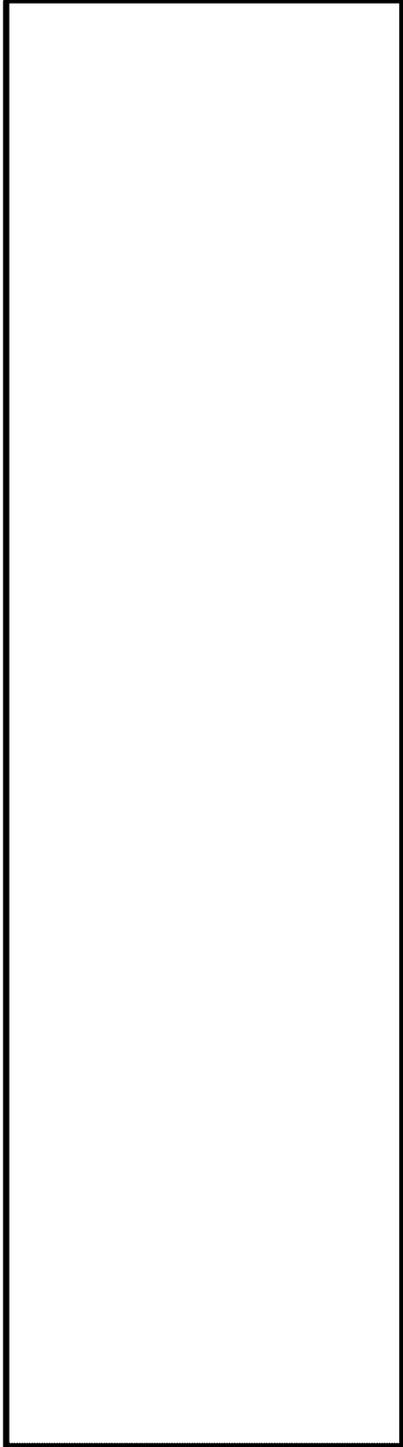
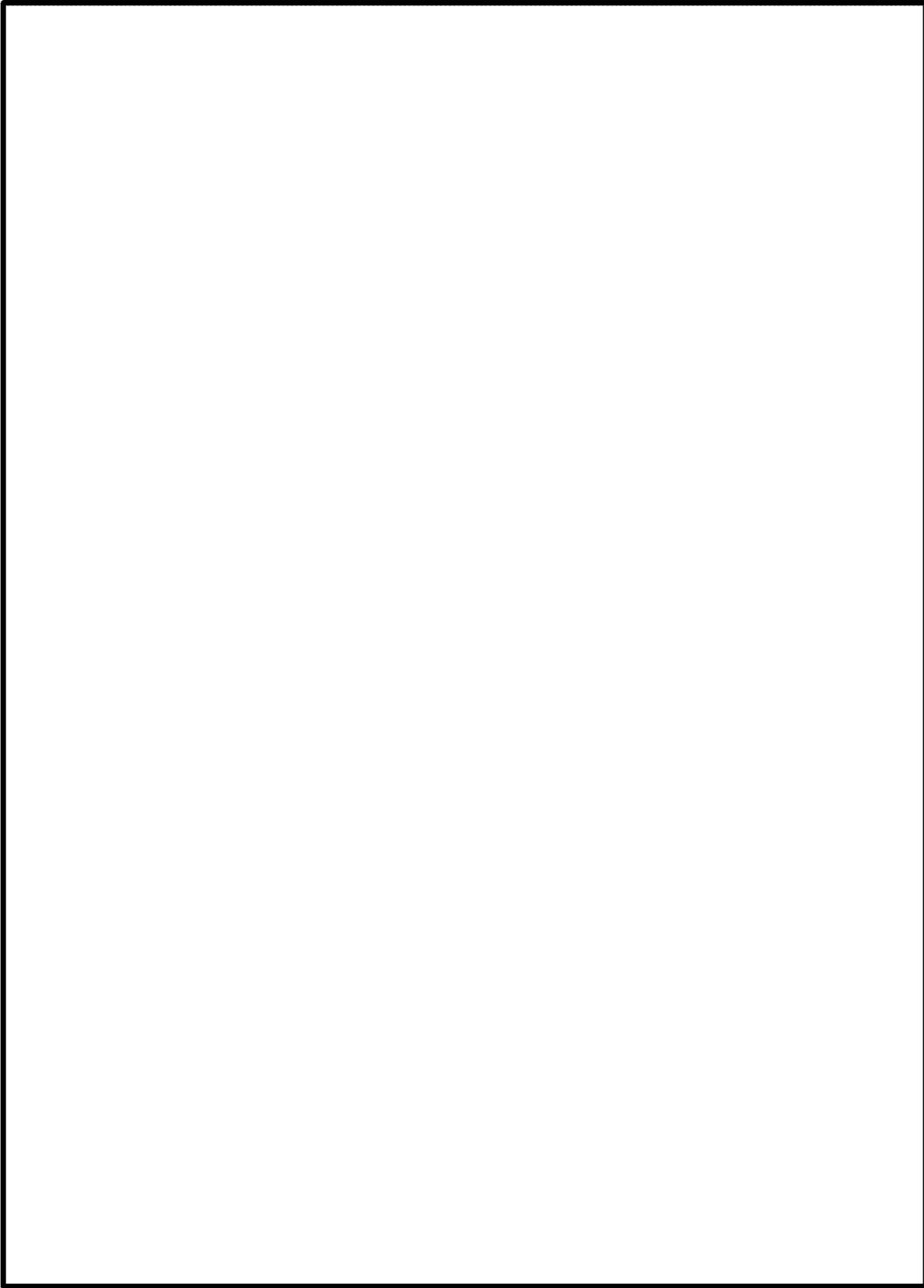


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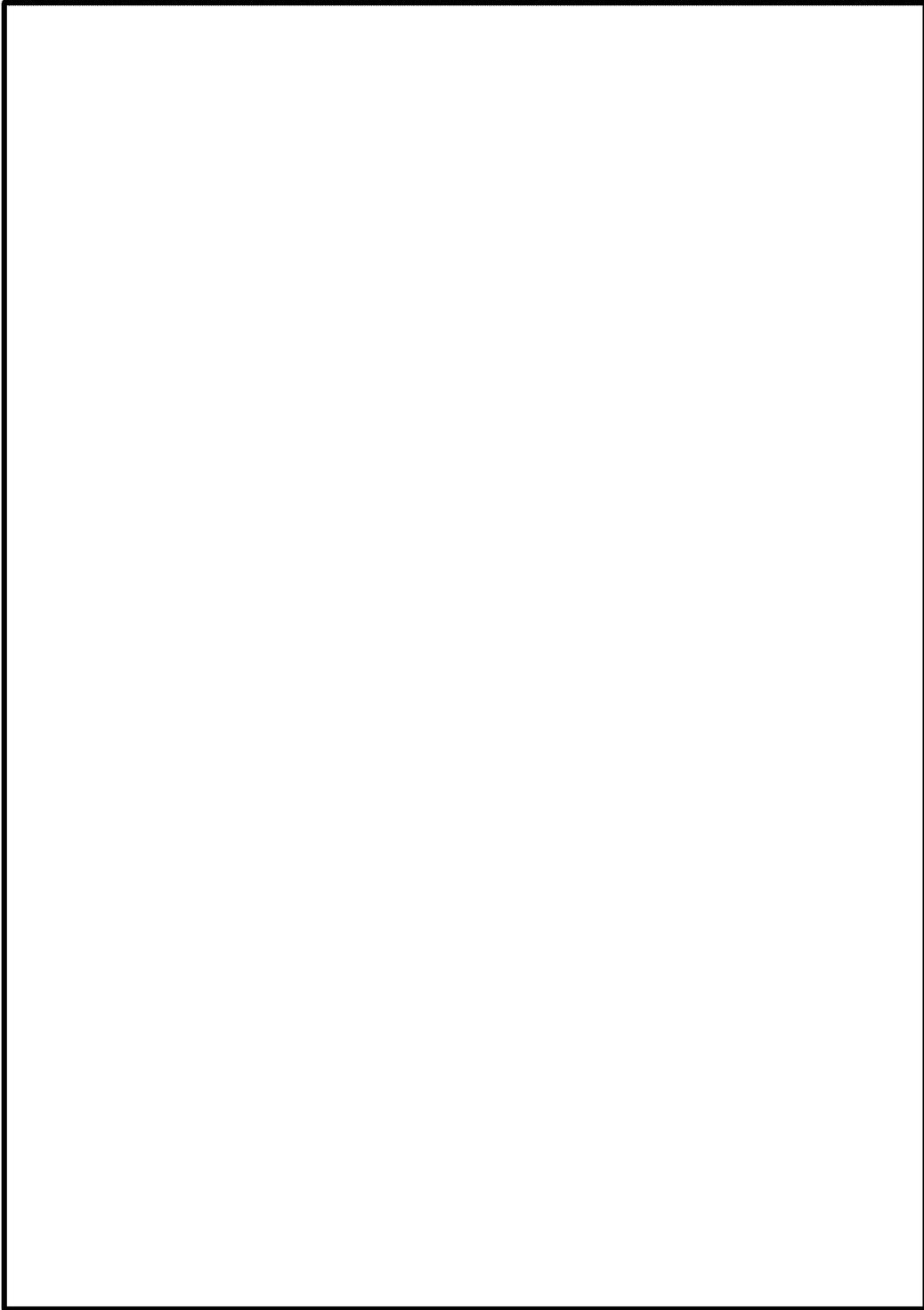
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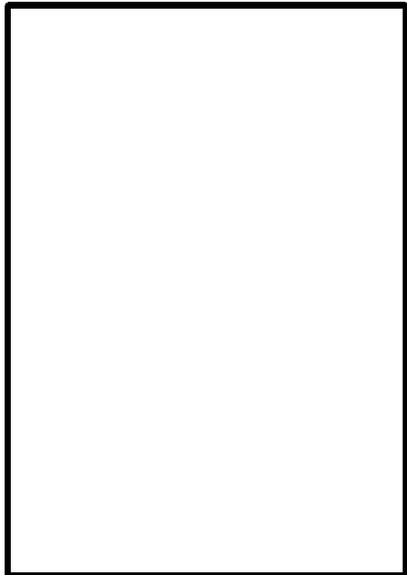
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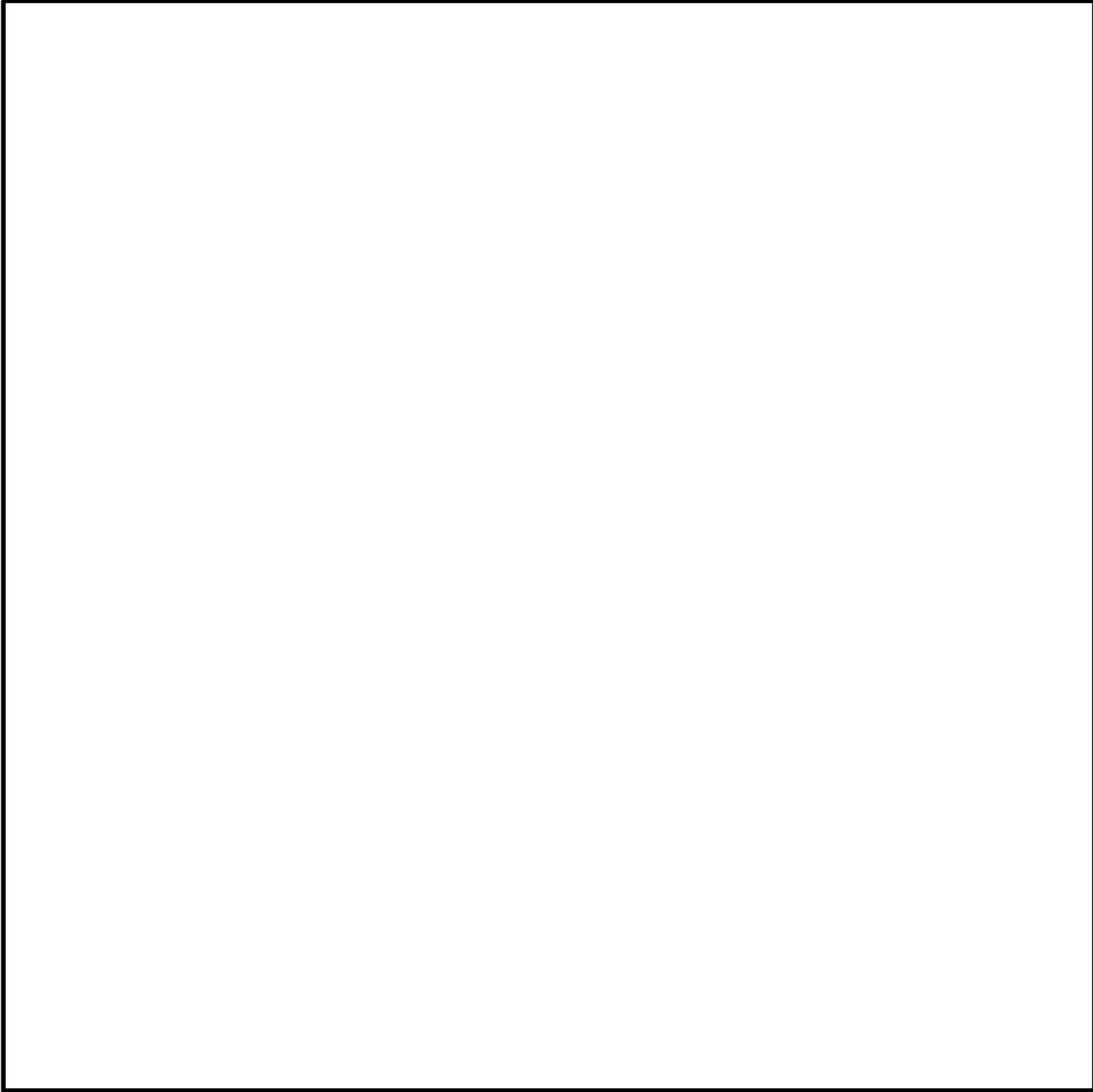
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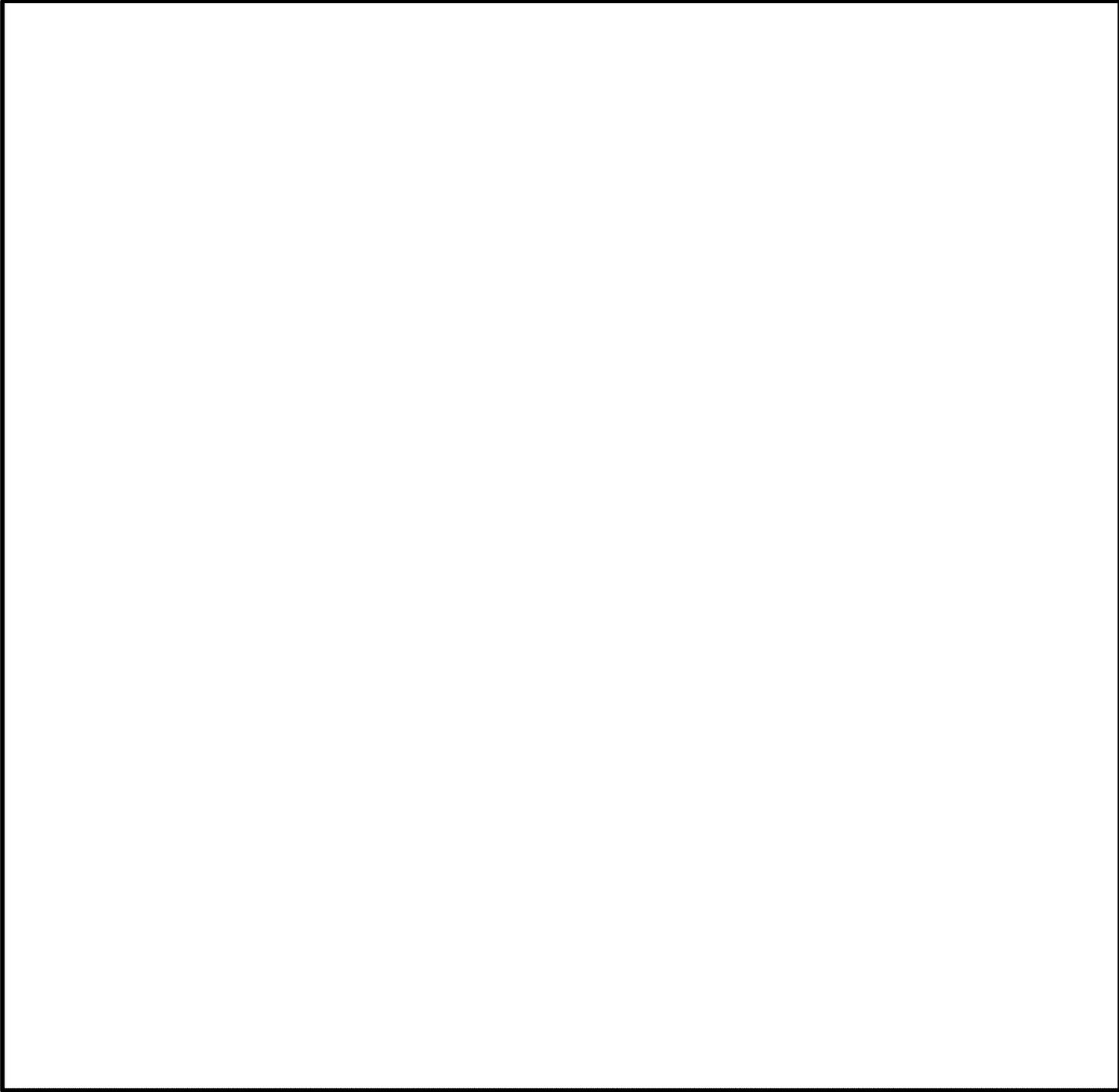
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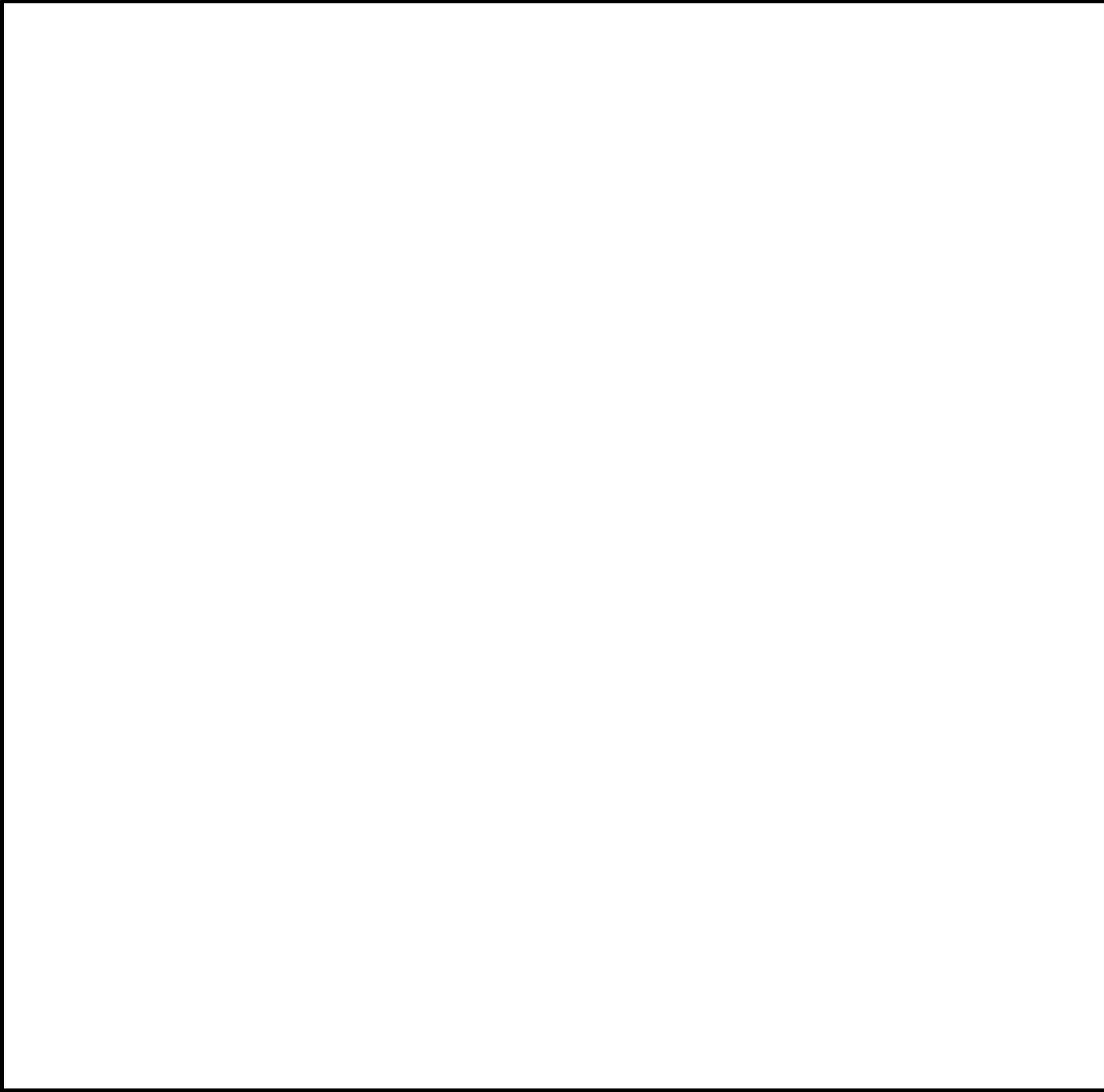


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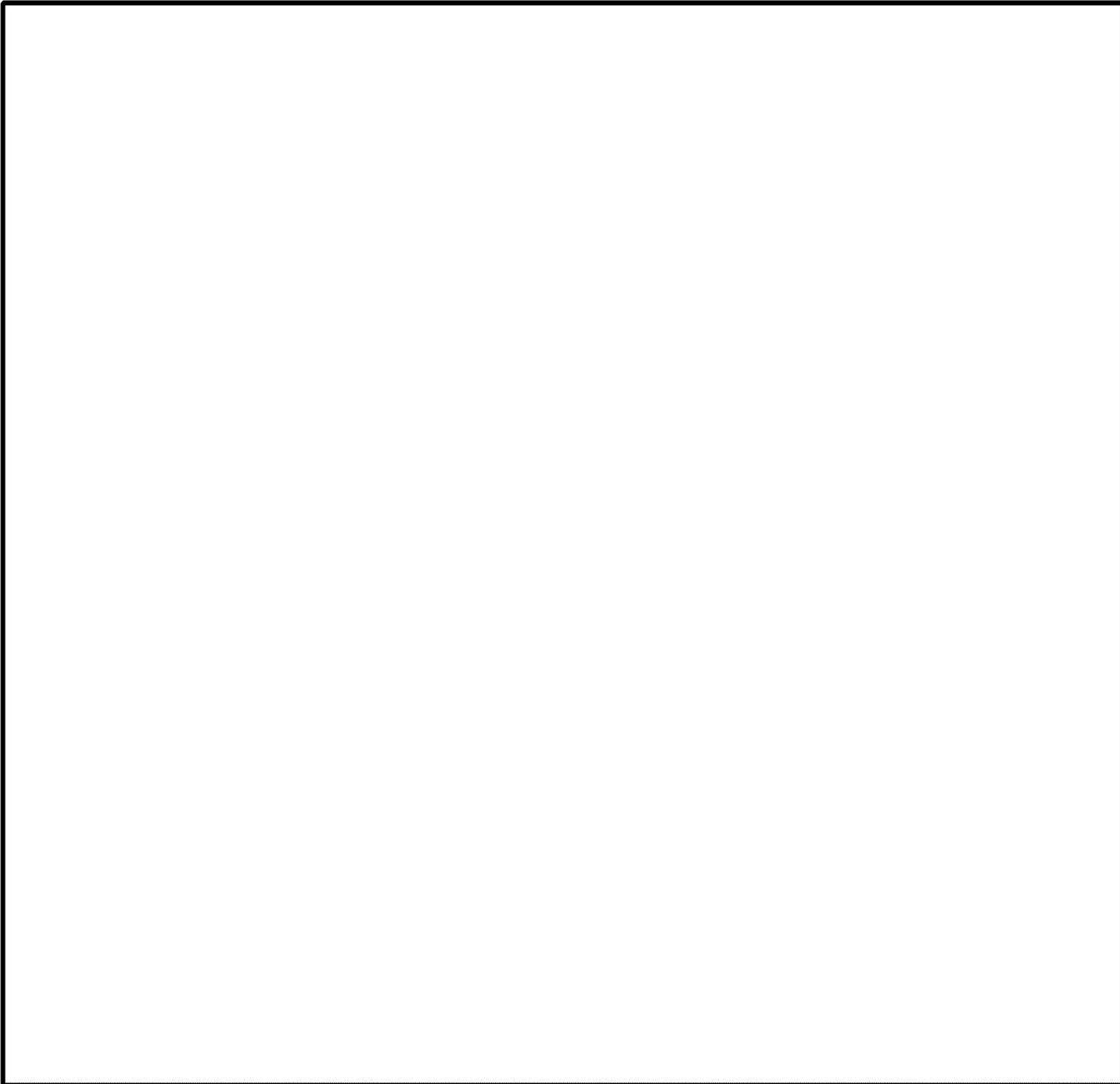


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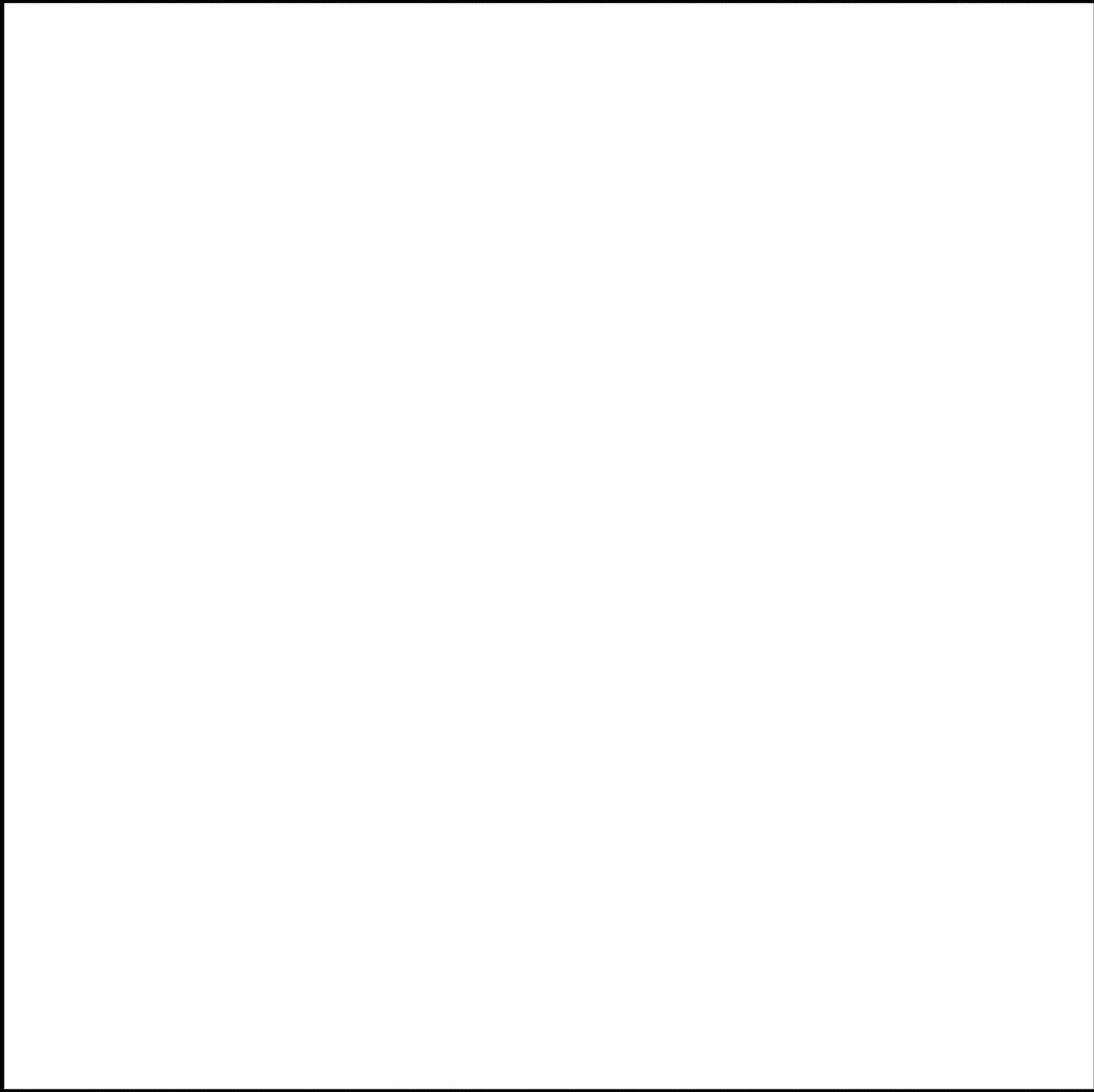
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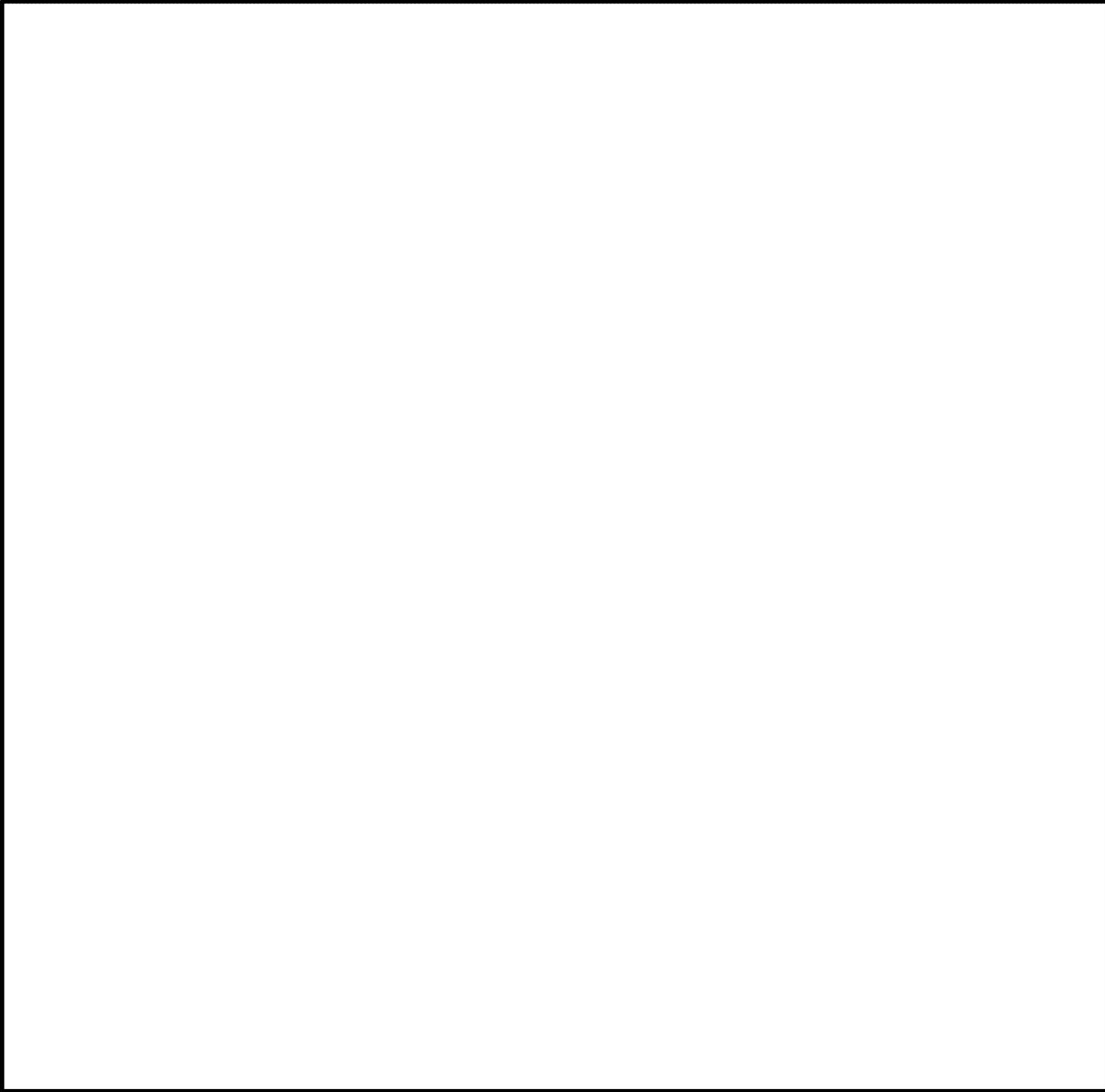
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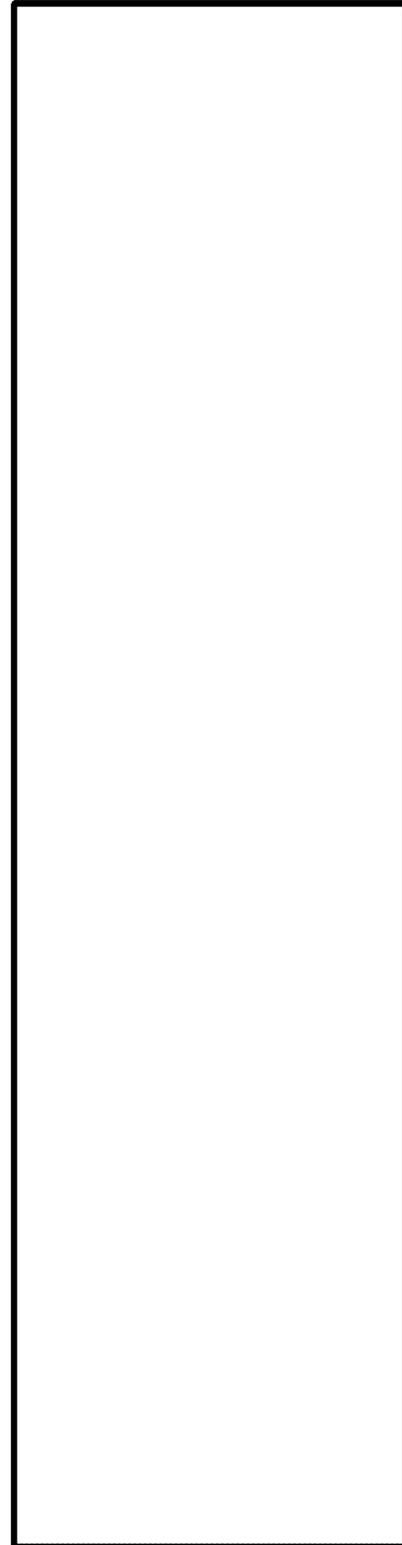
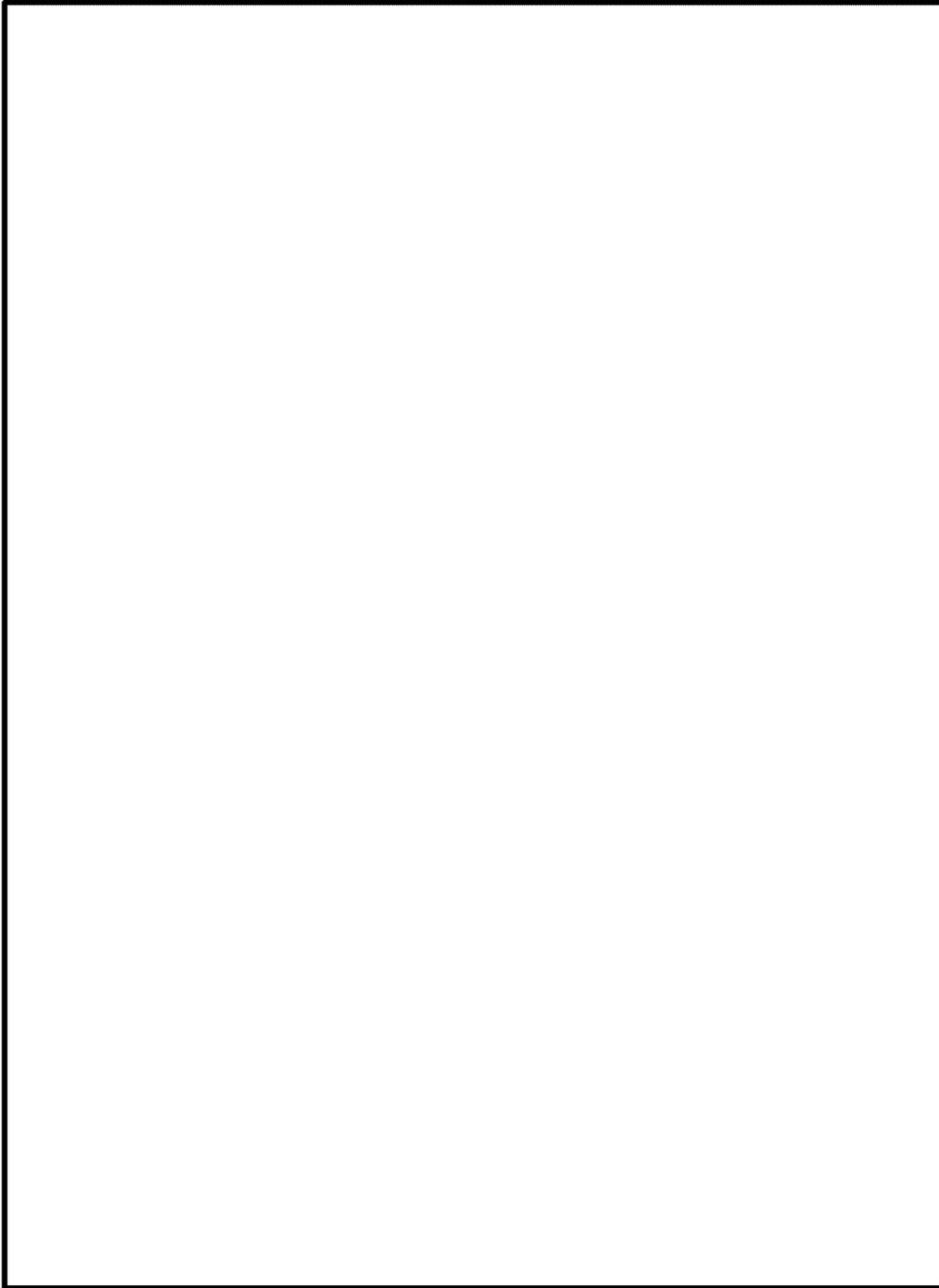


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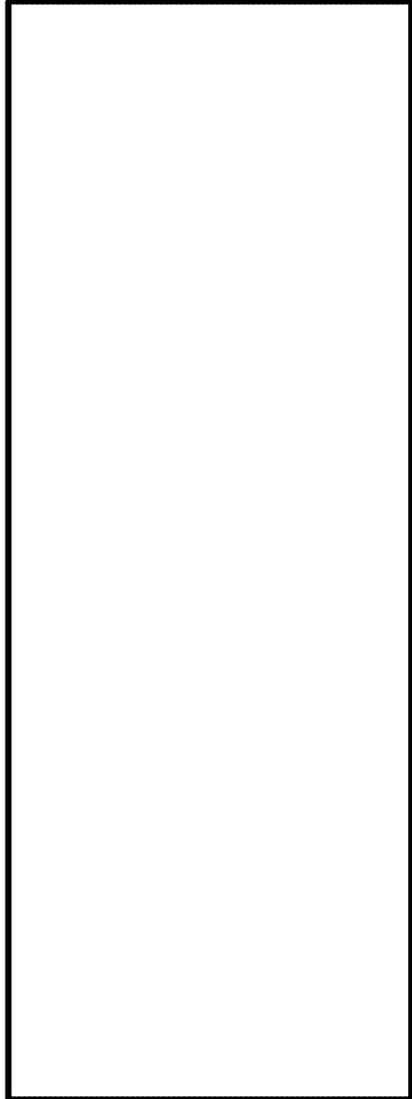
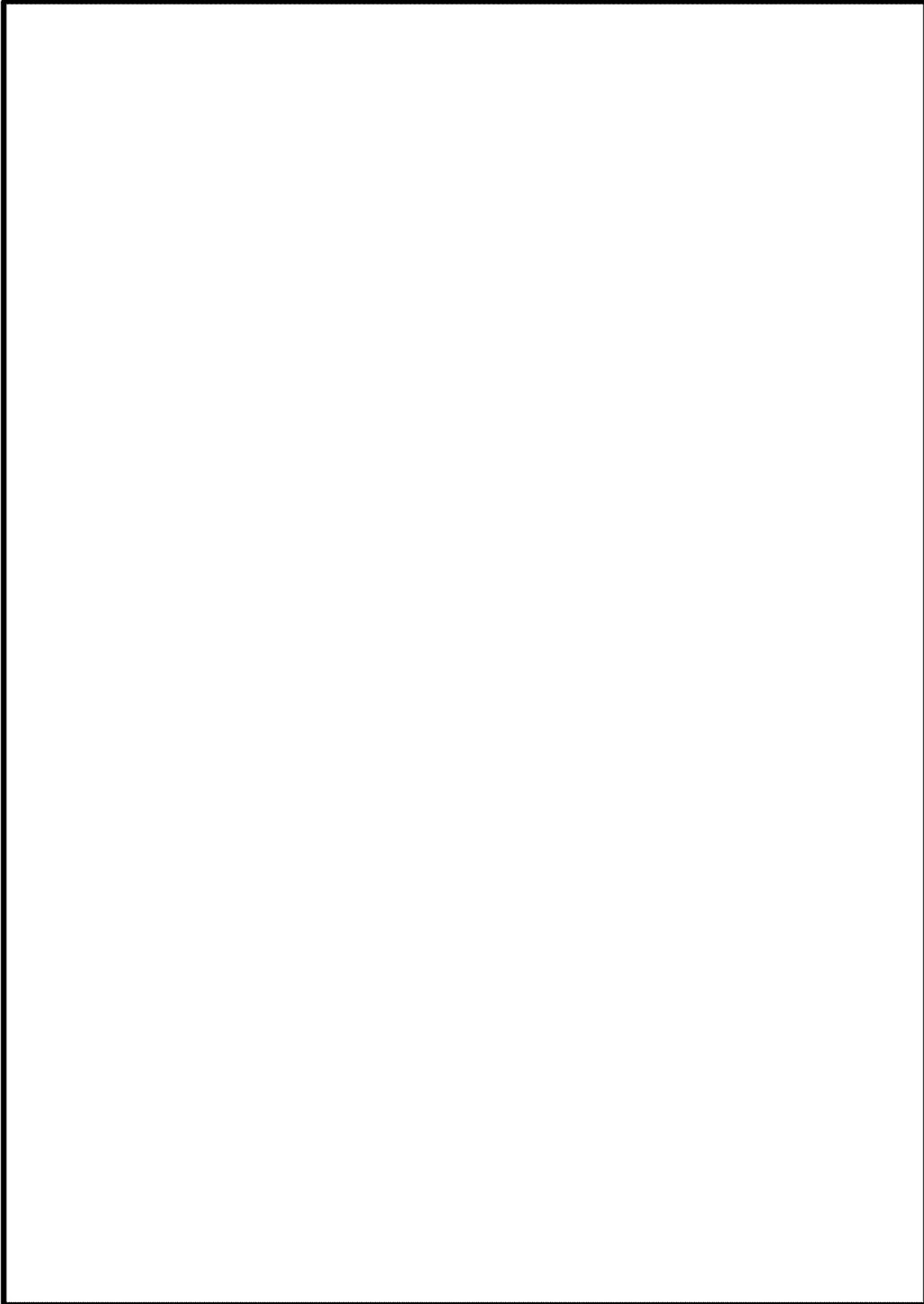


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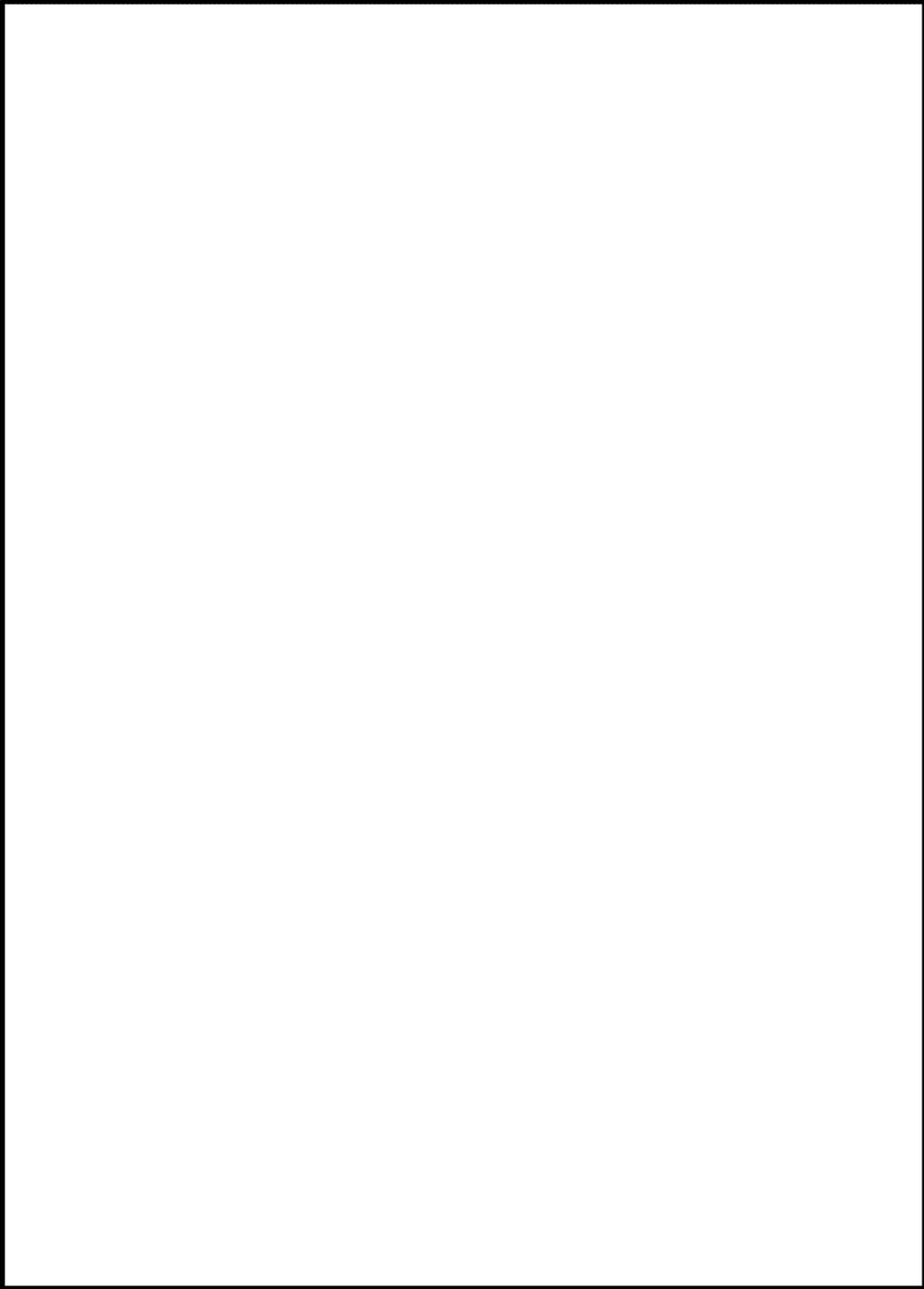
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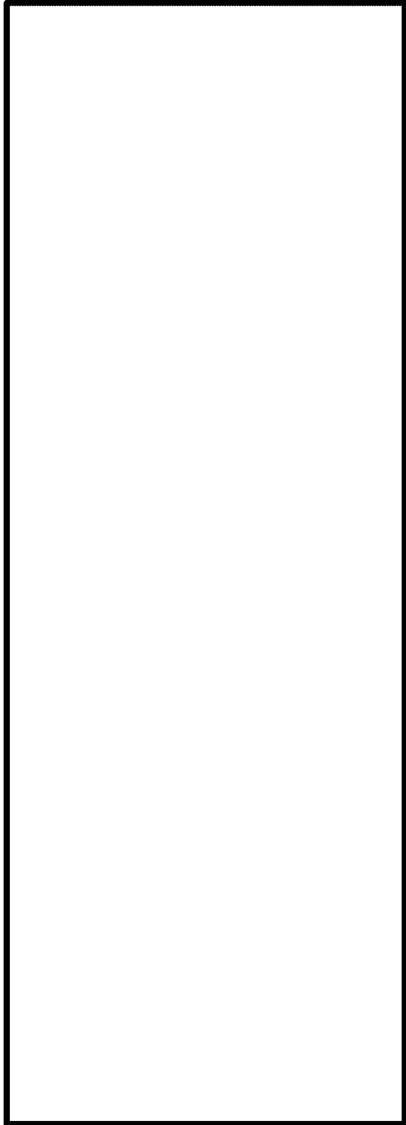
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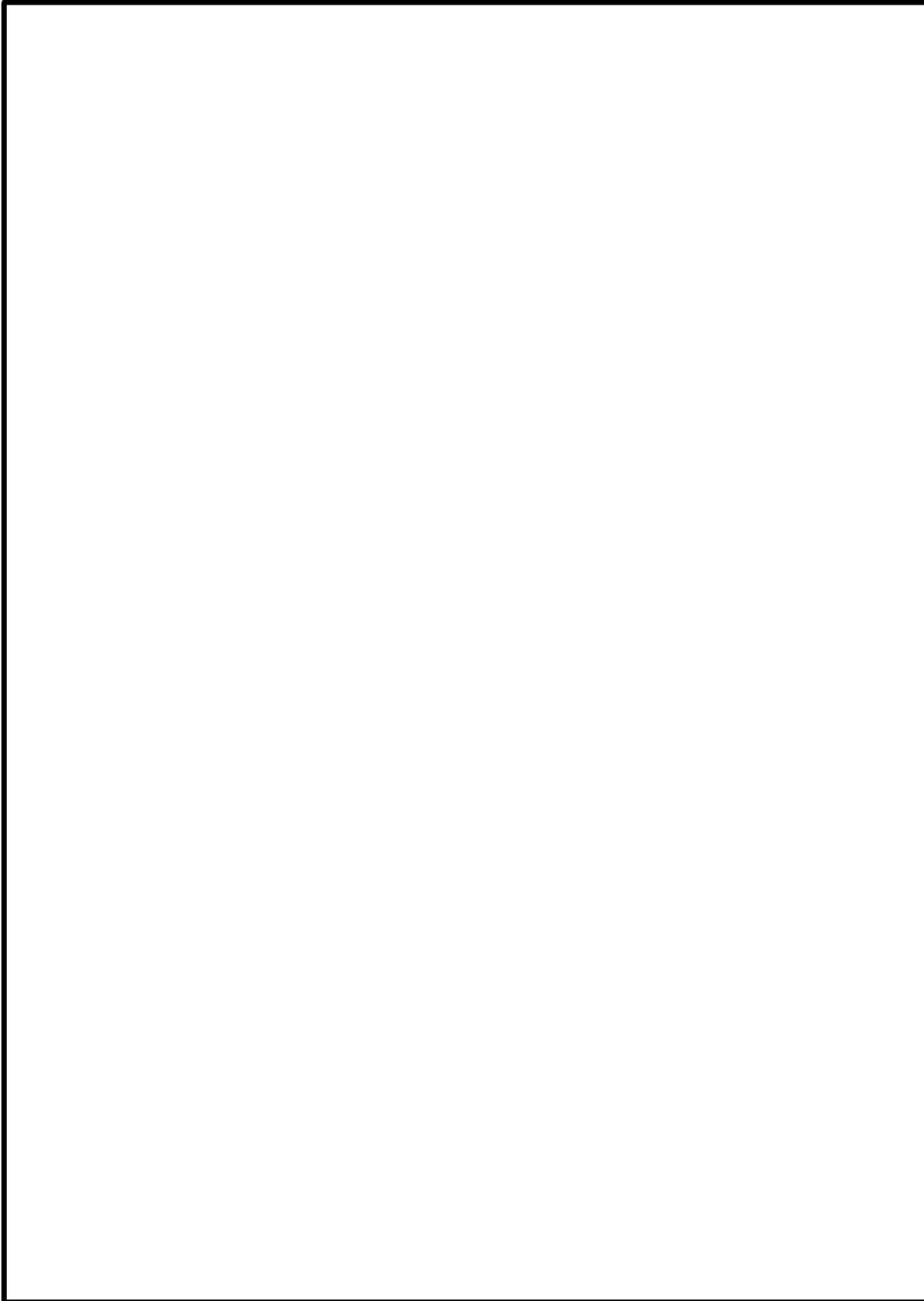


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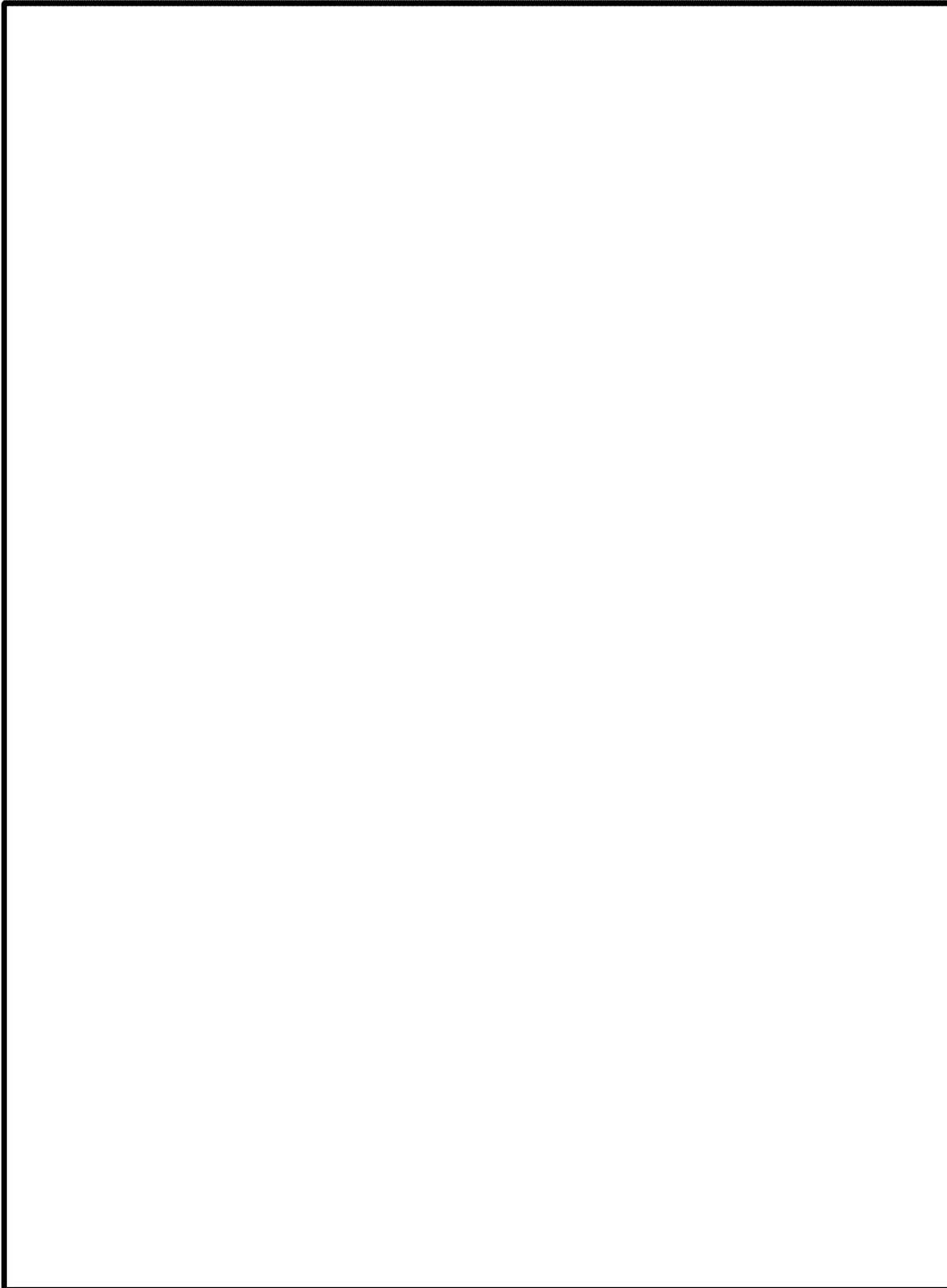
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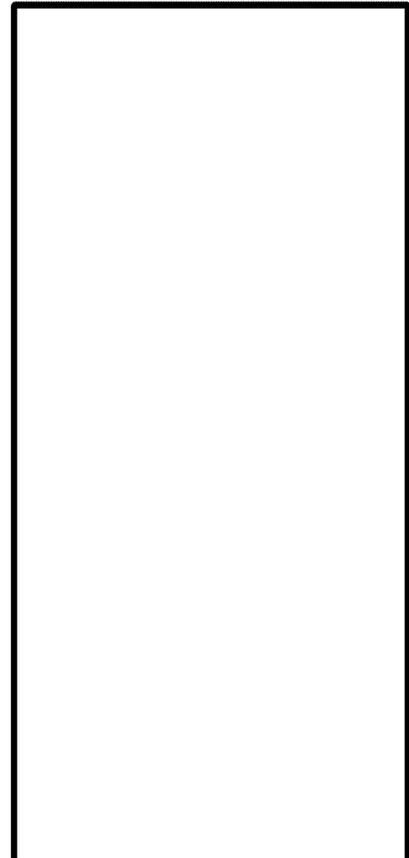
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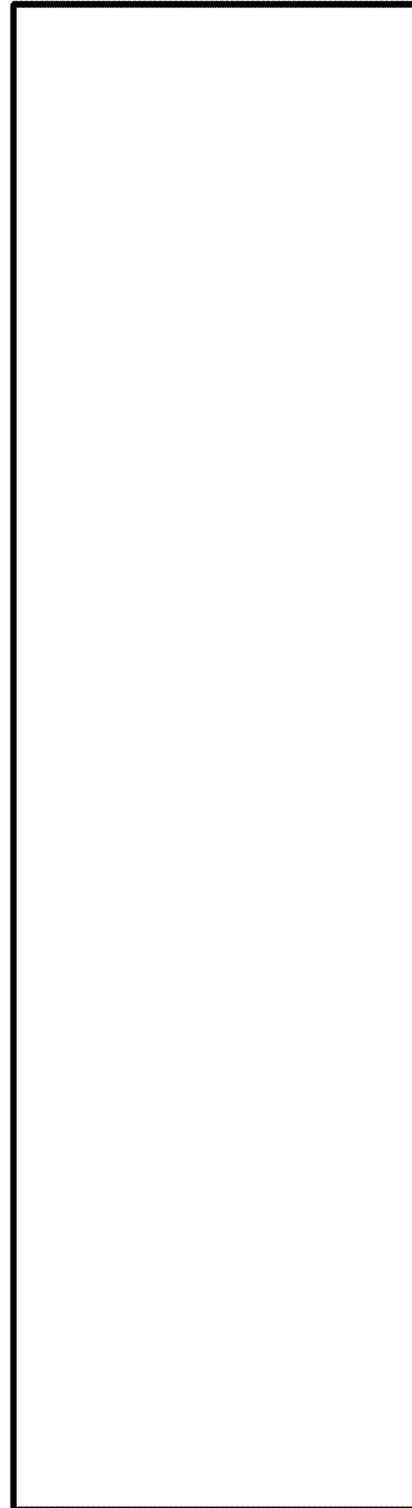


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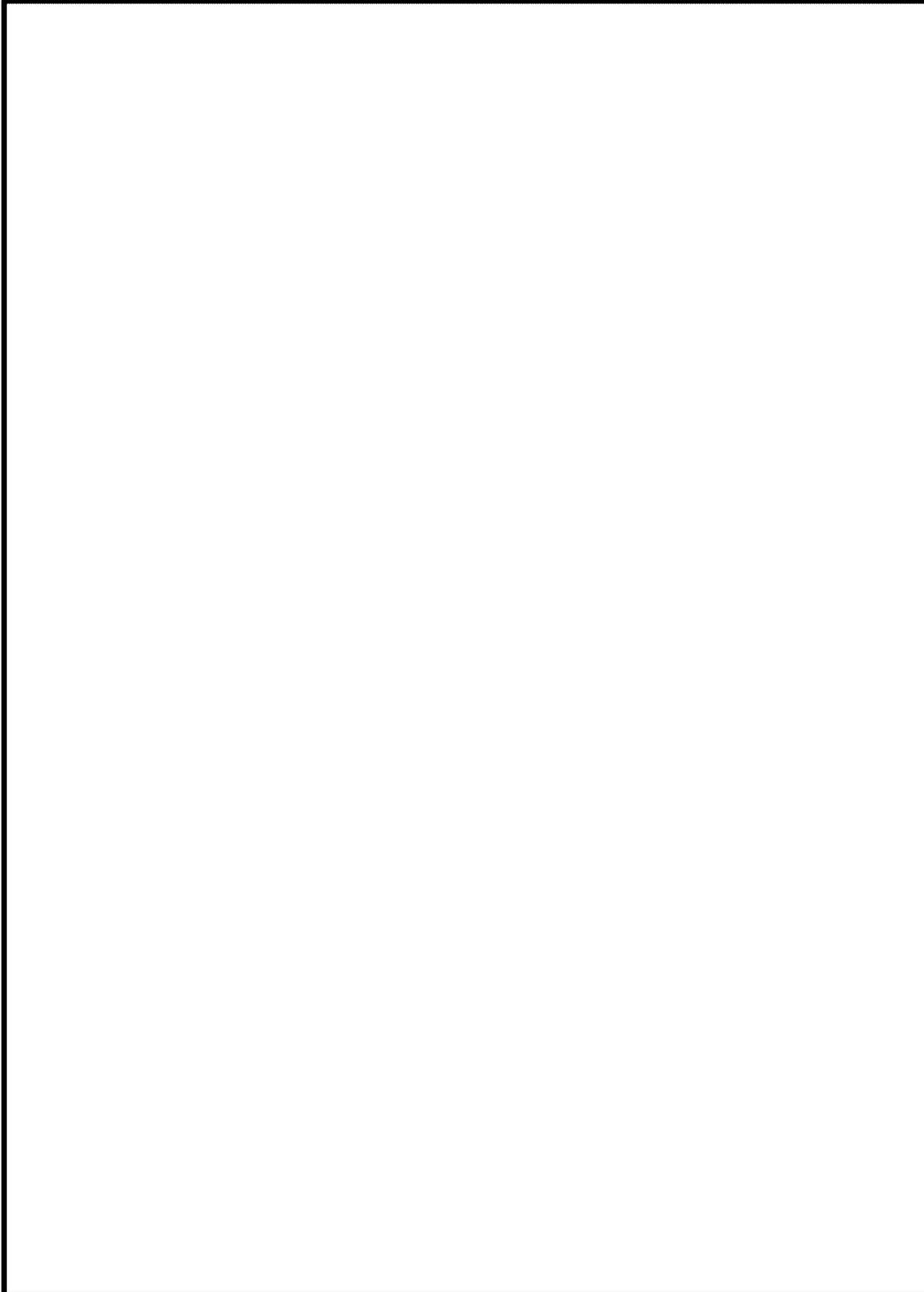
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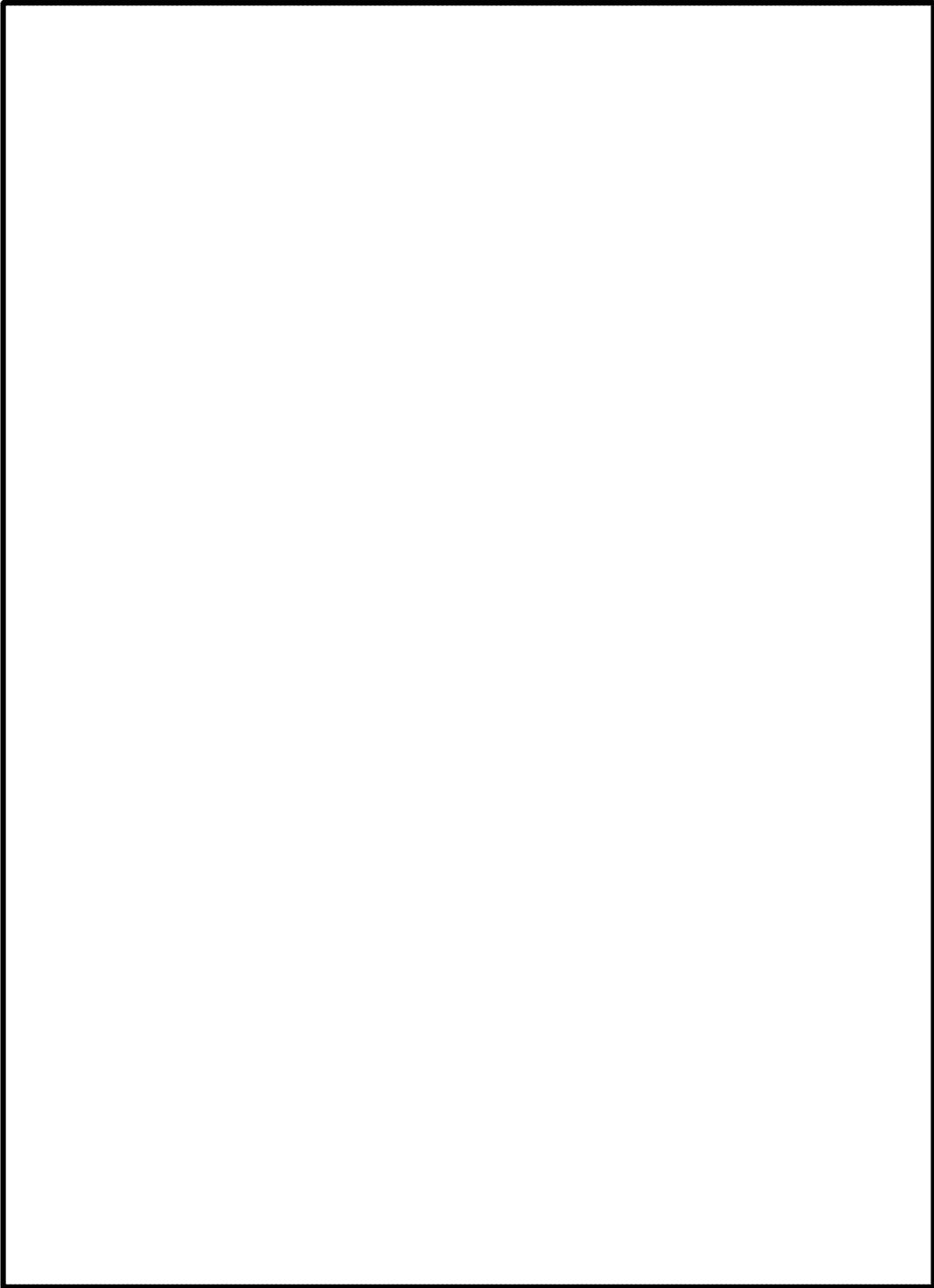
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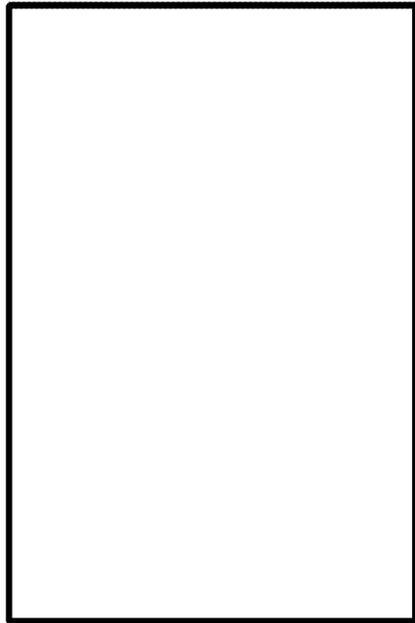
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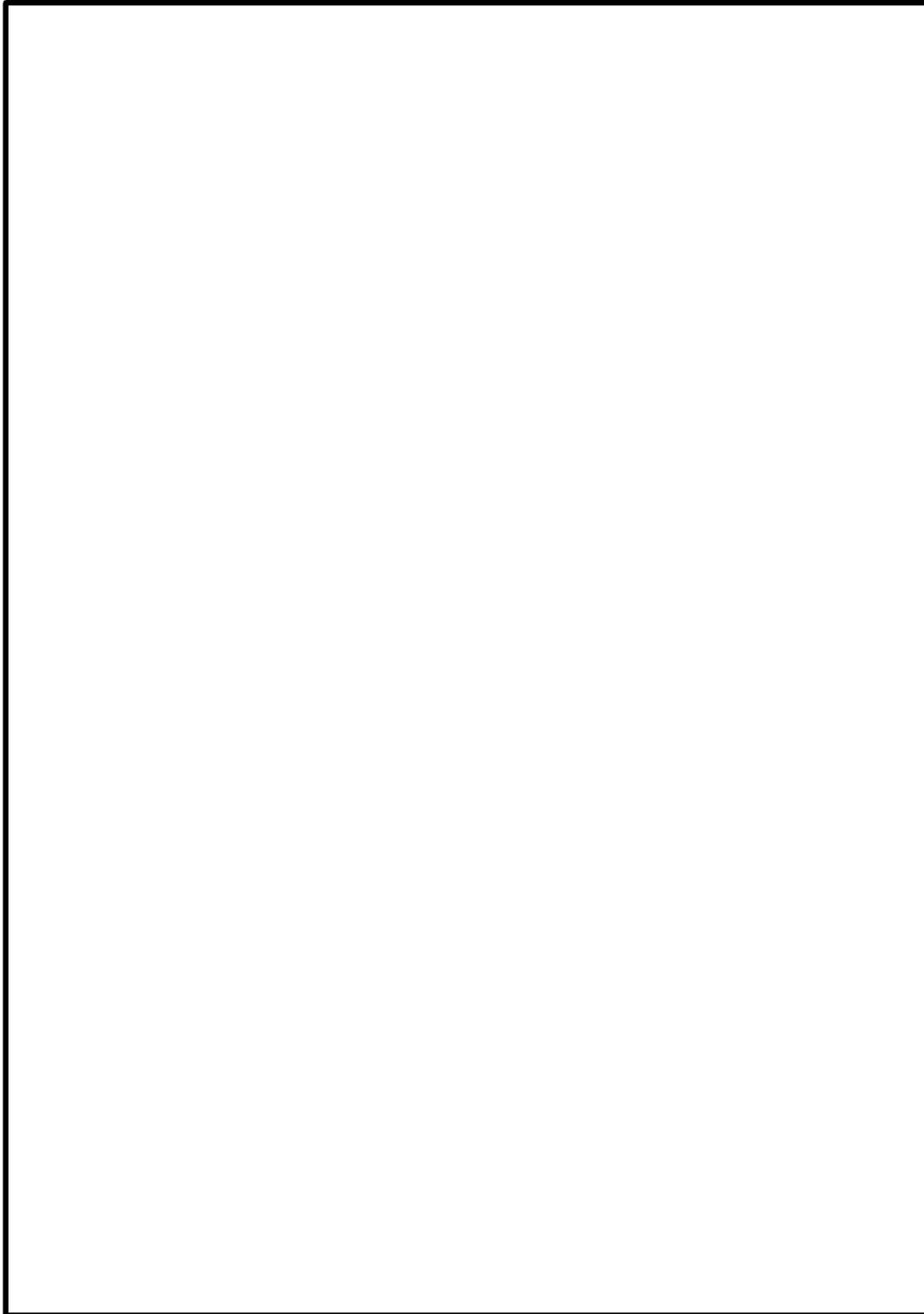
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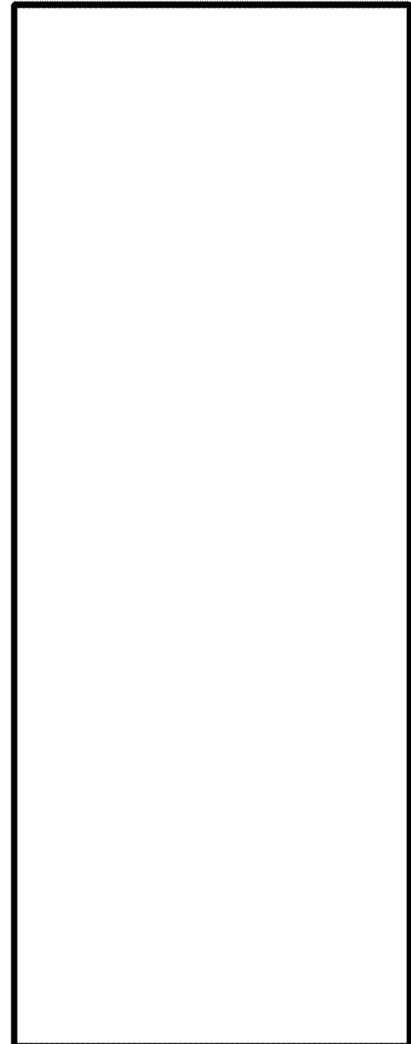
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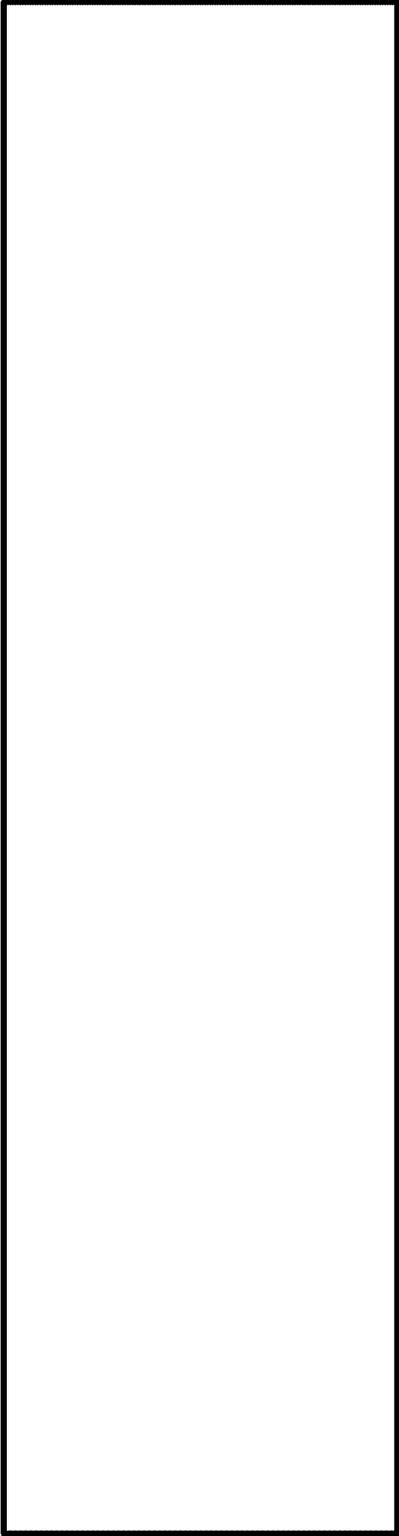
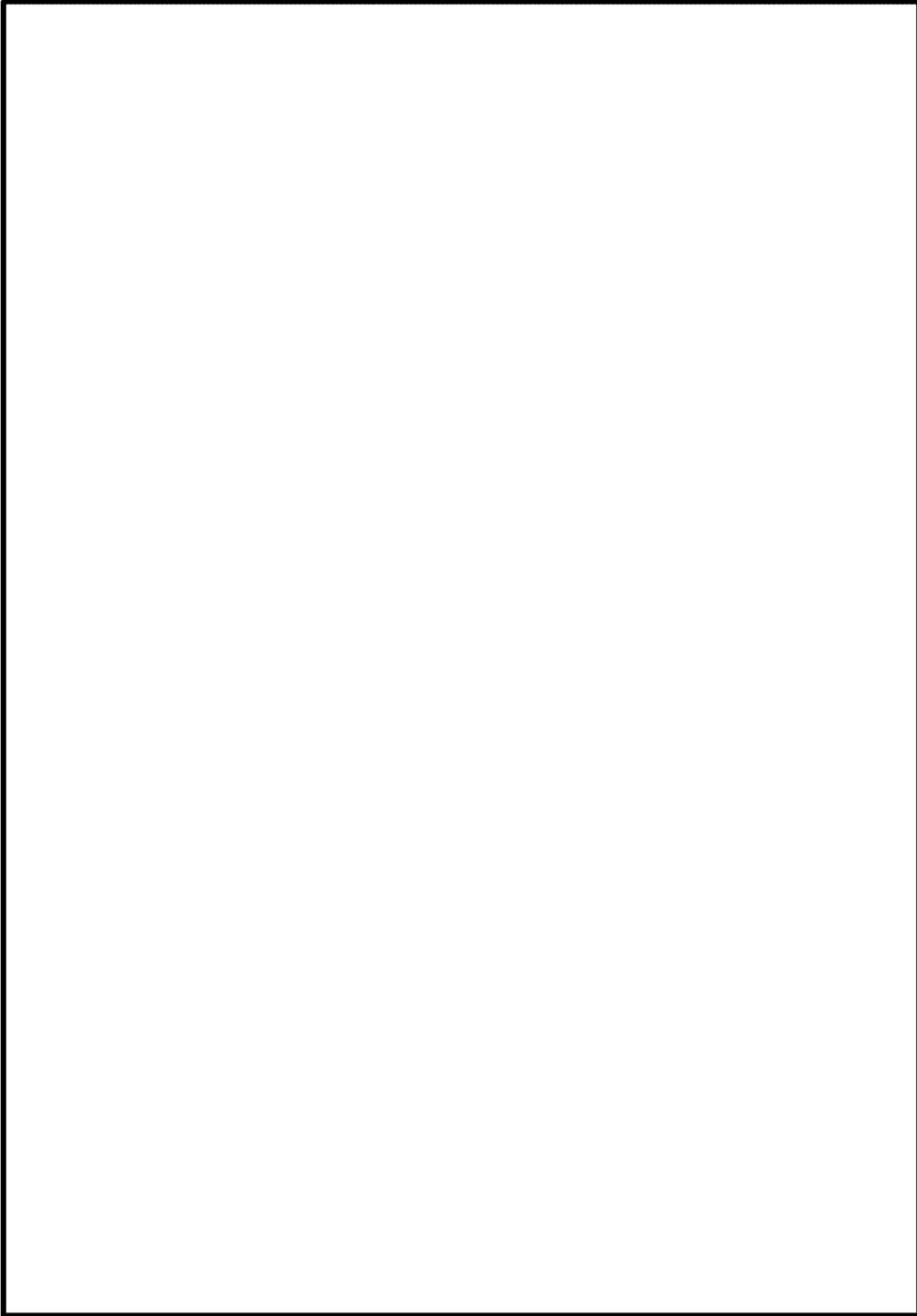


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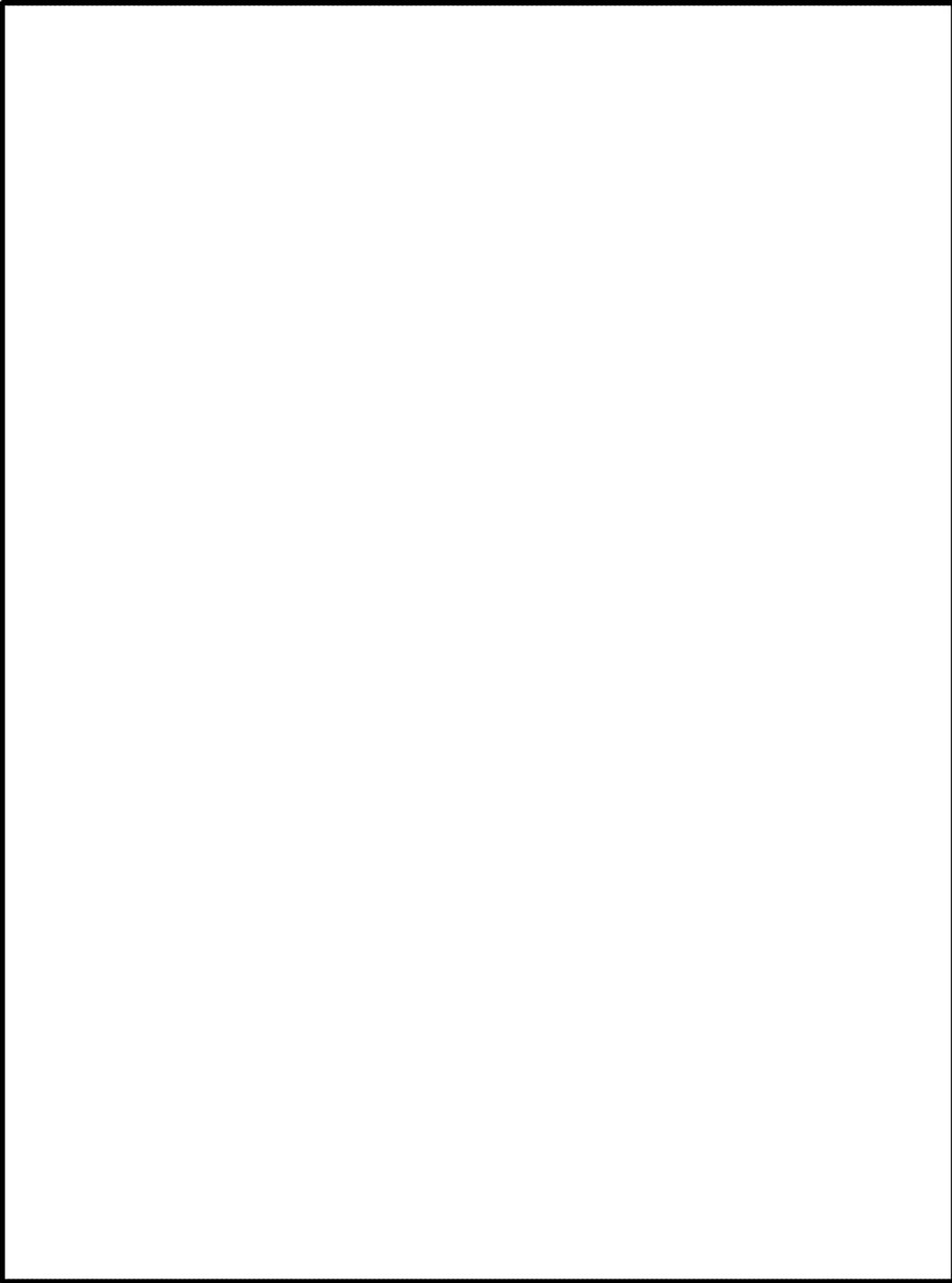
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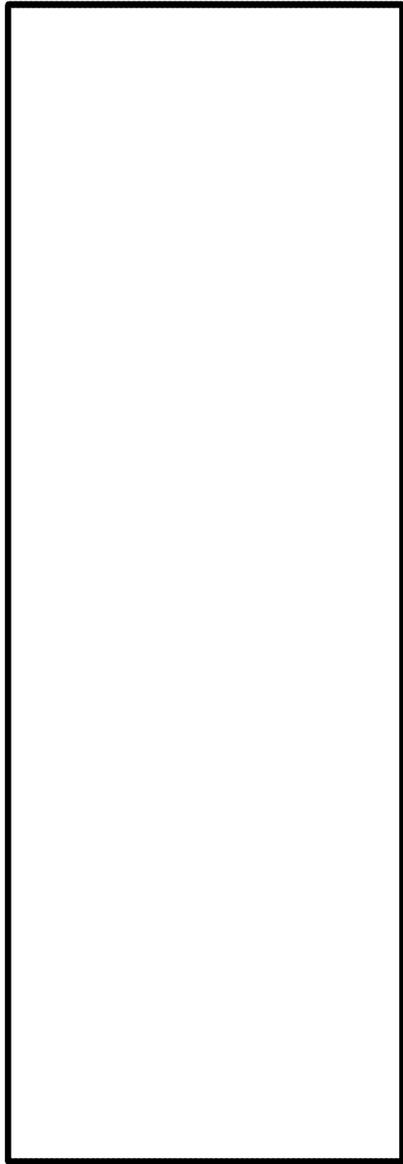


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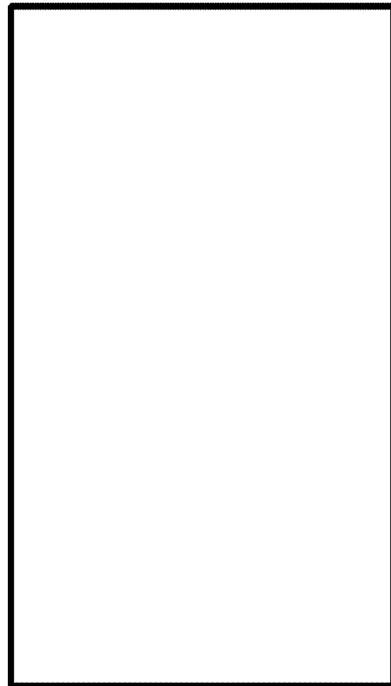
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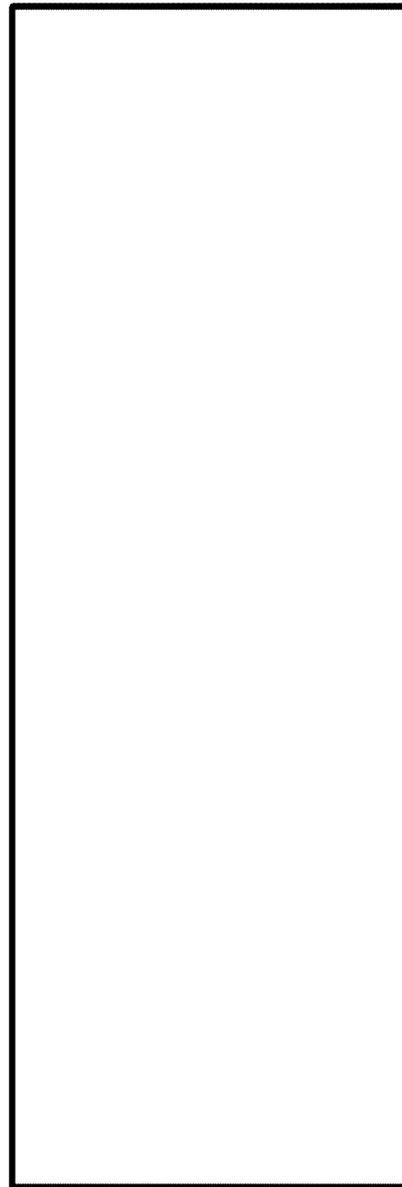
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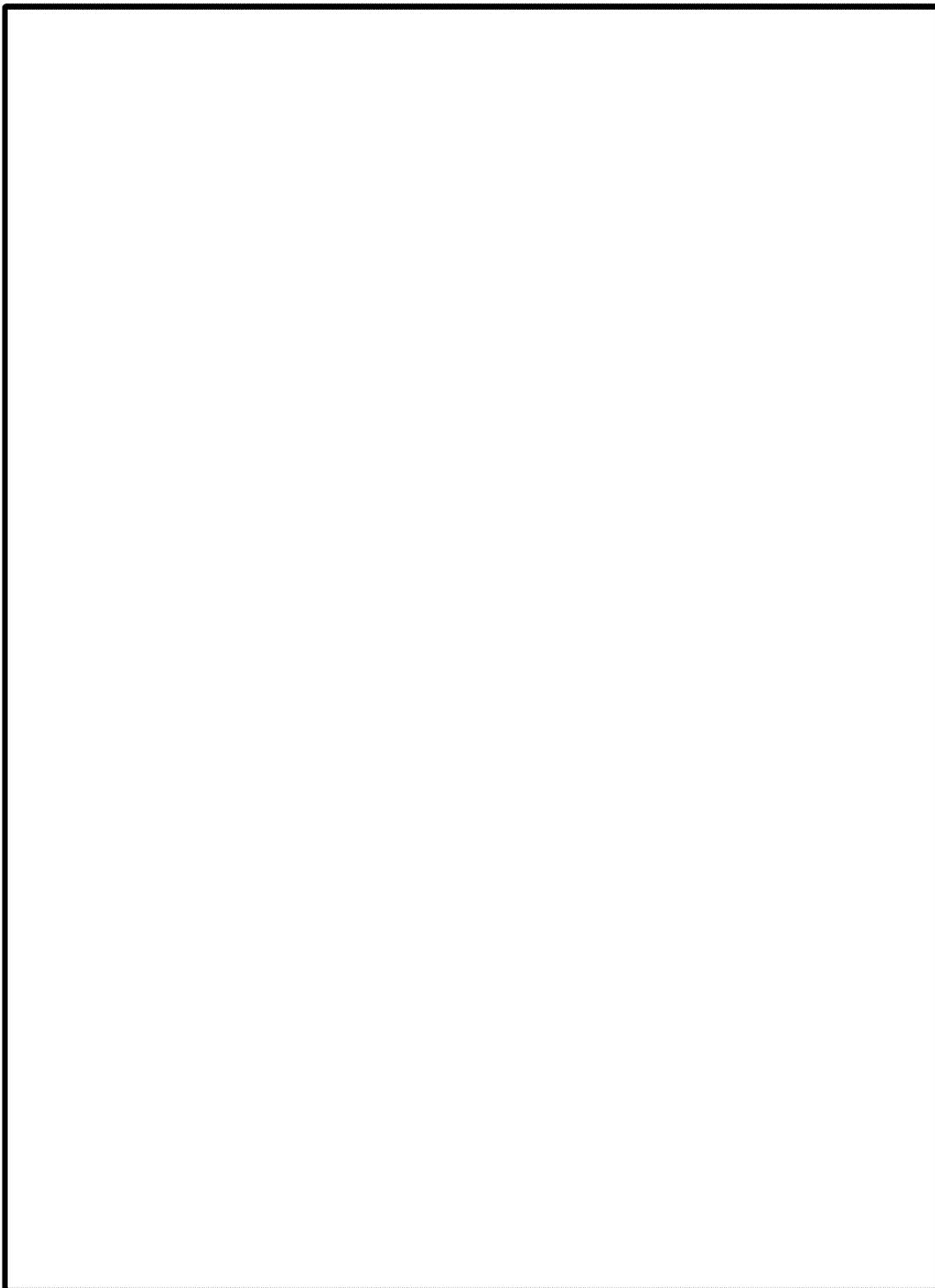
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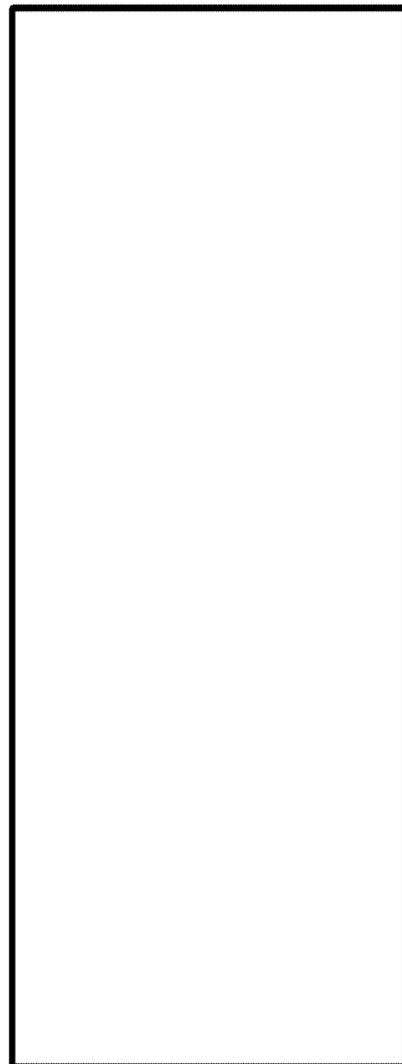
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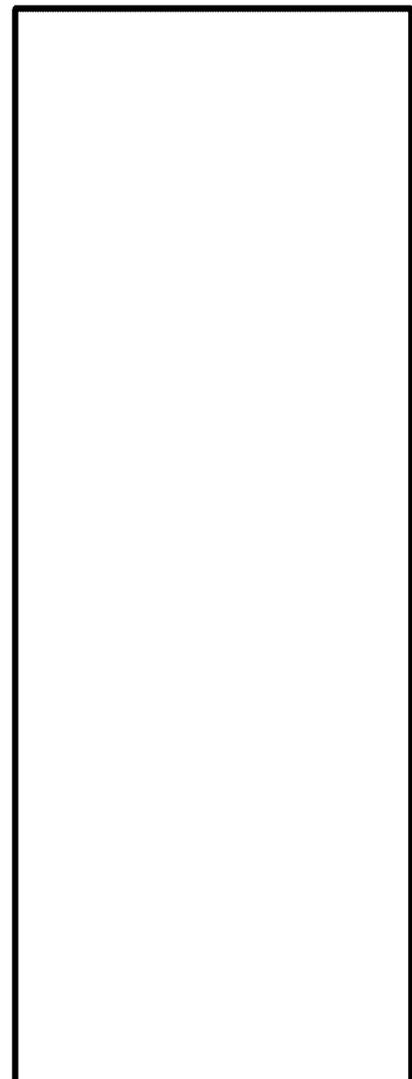
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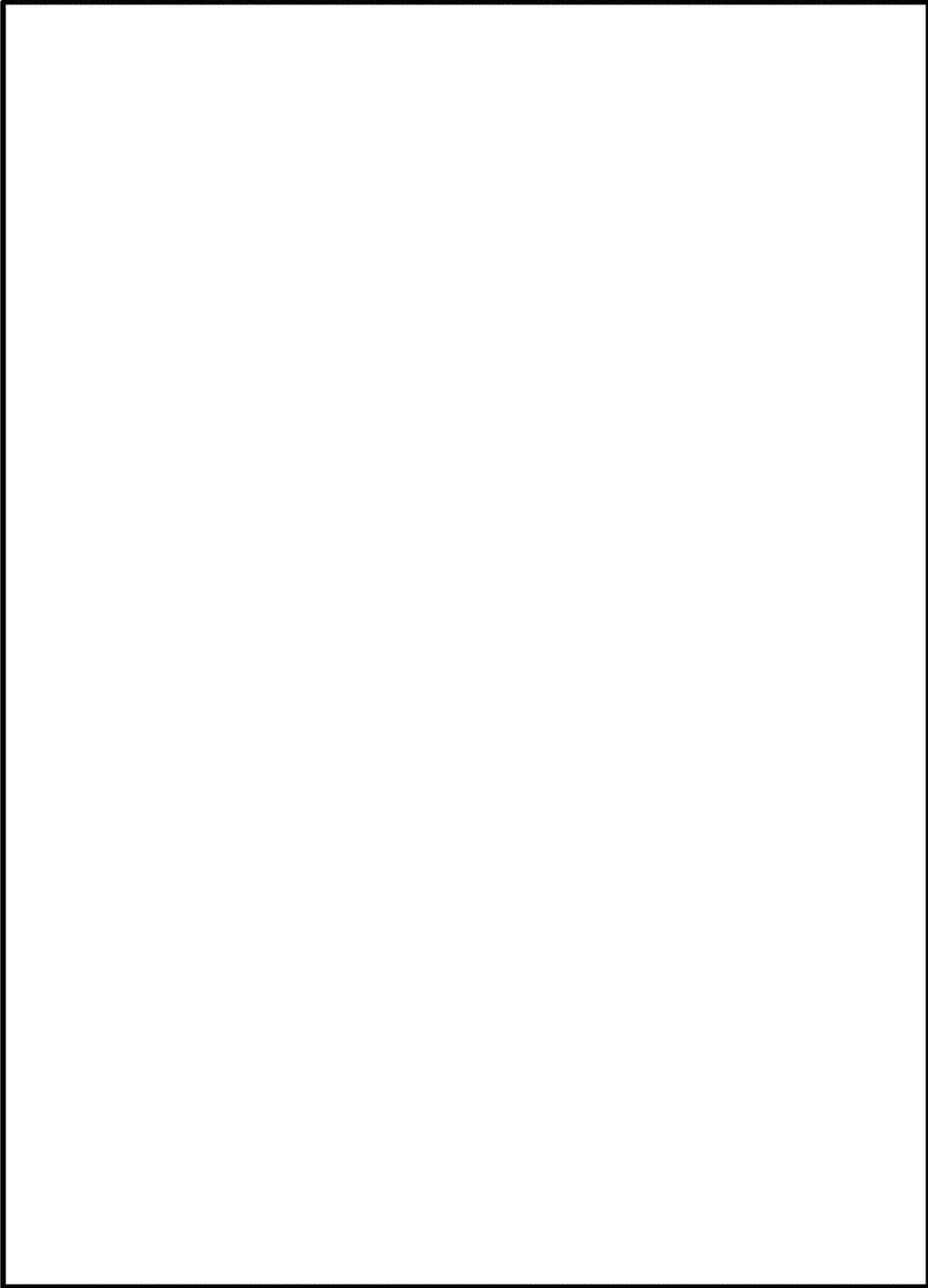
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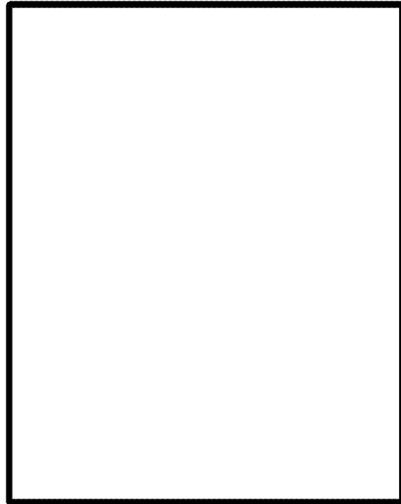
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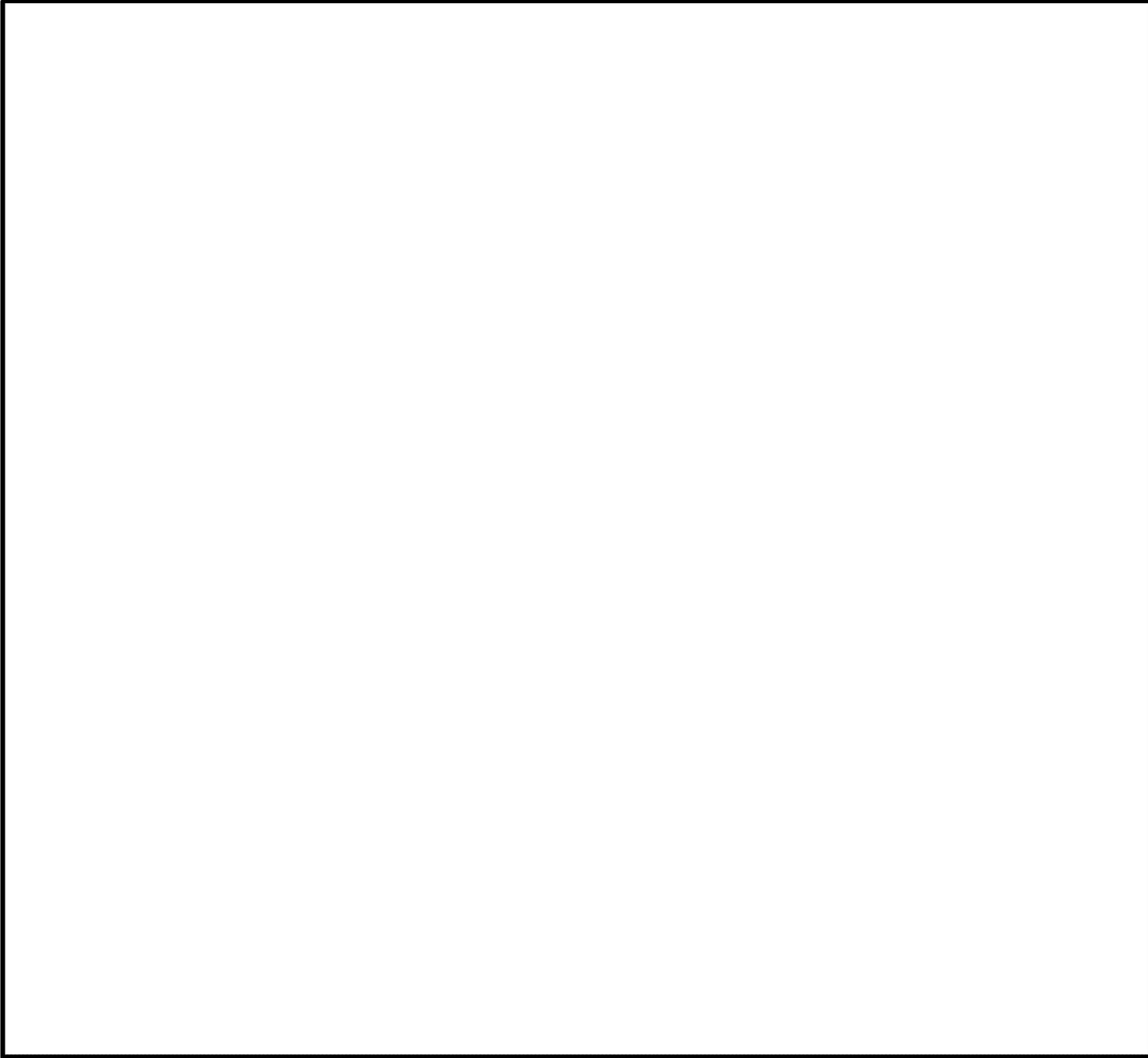
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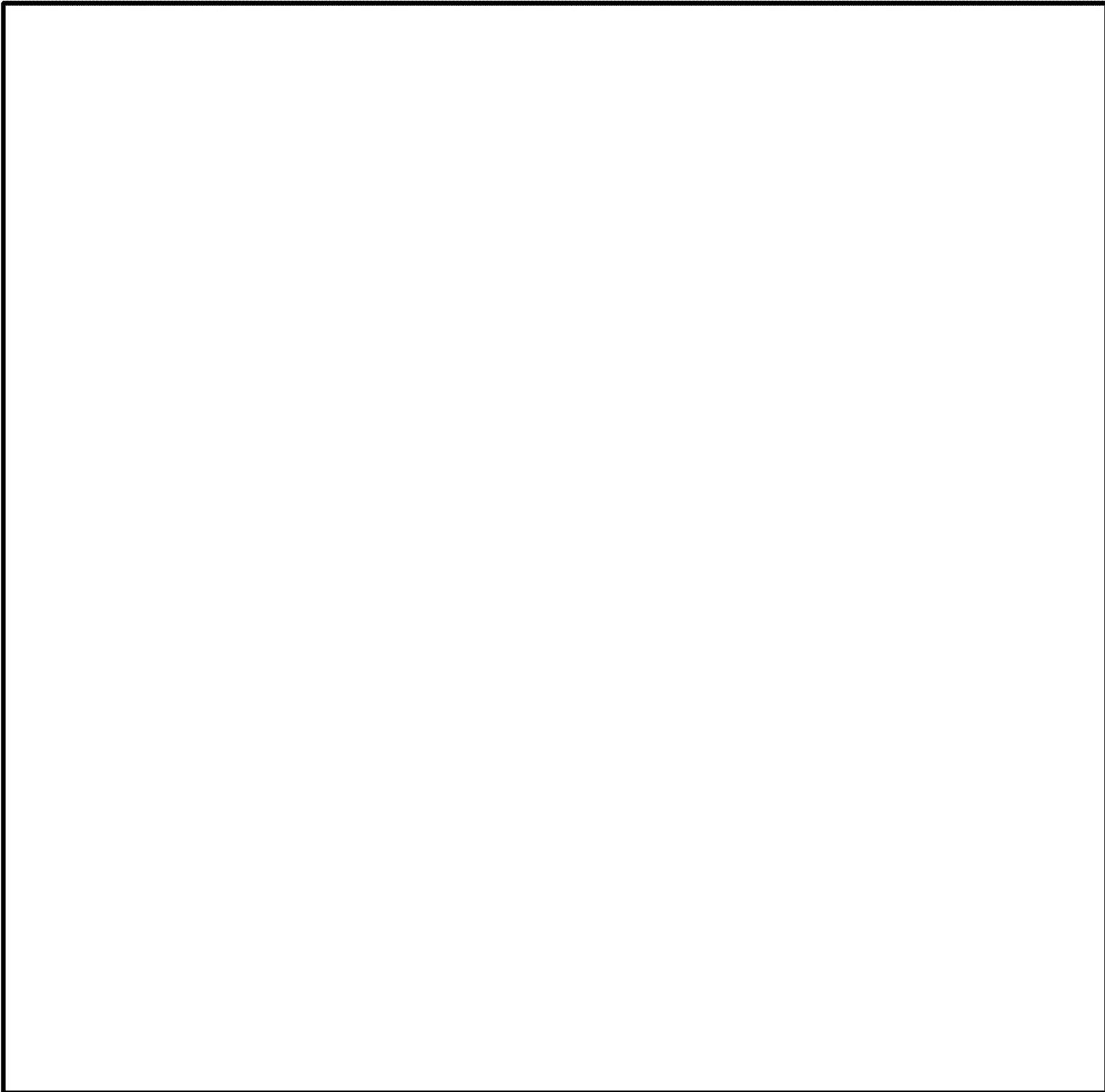
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<sup>123</sup> See 8 CFR 214.2(h)(4)(ii).

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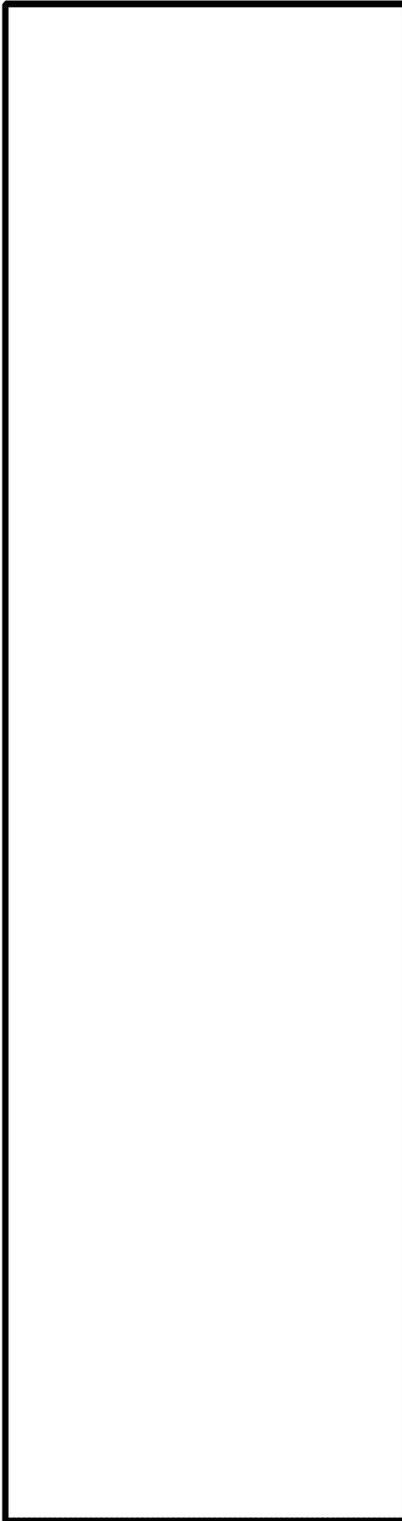
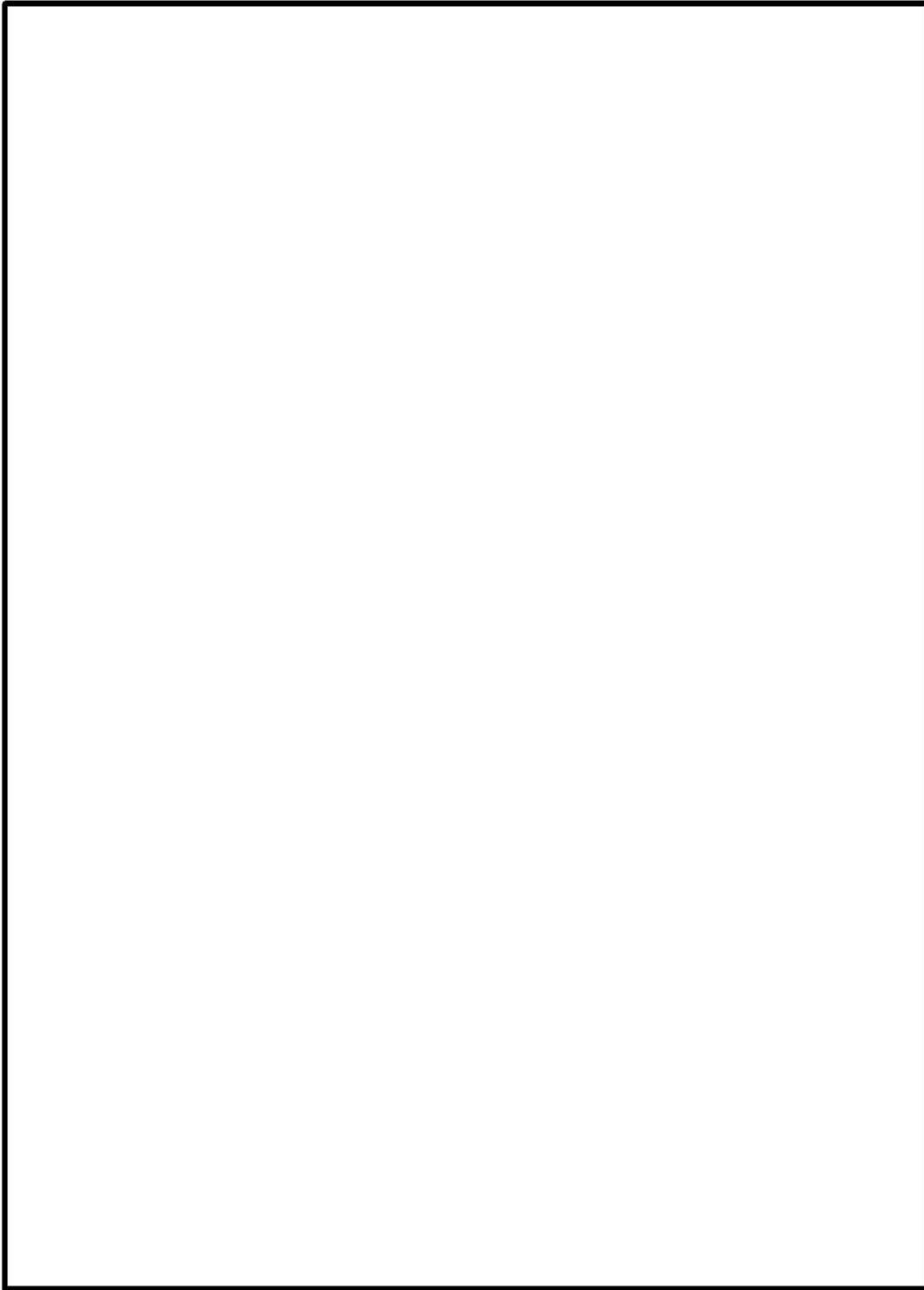
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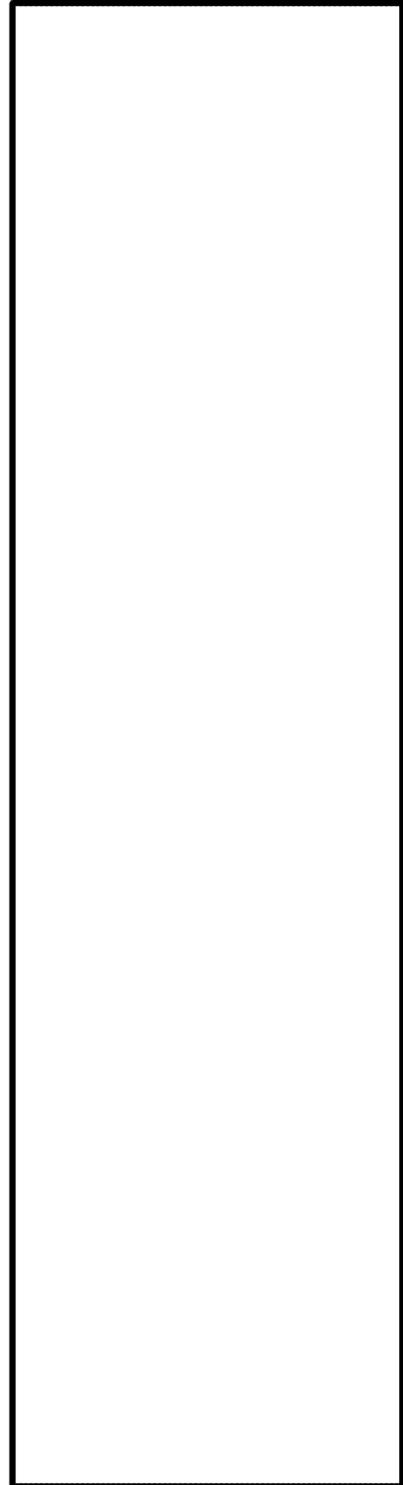
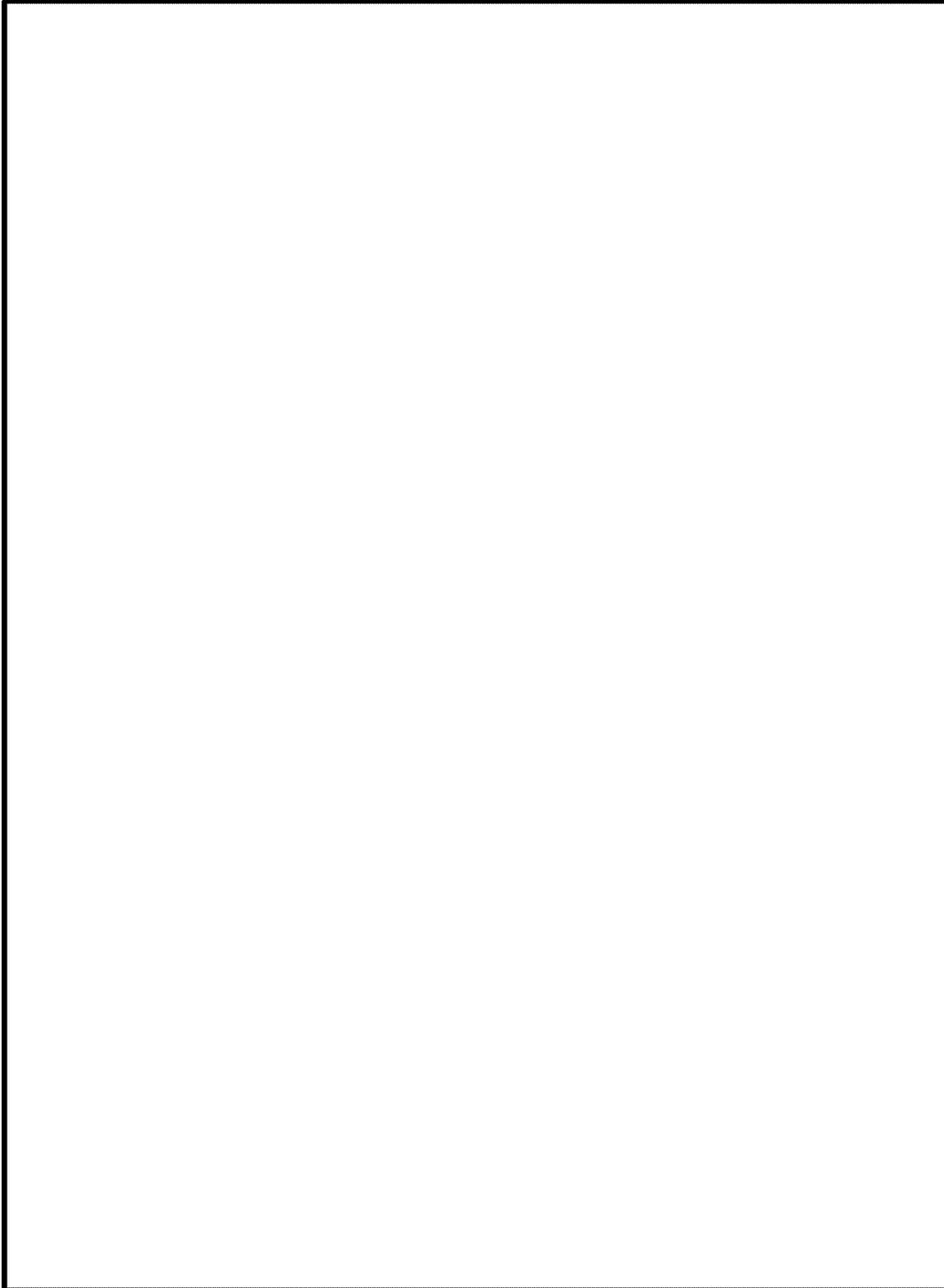


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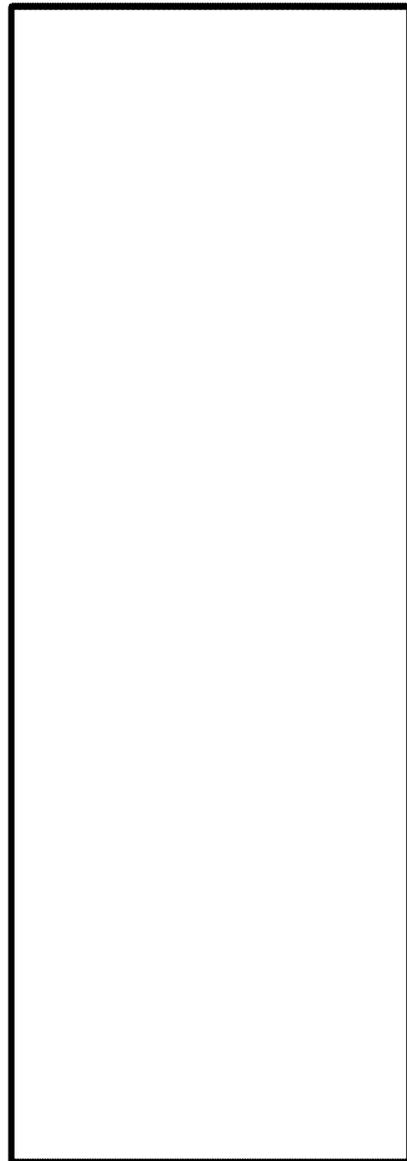
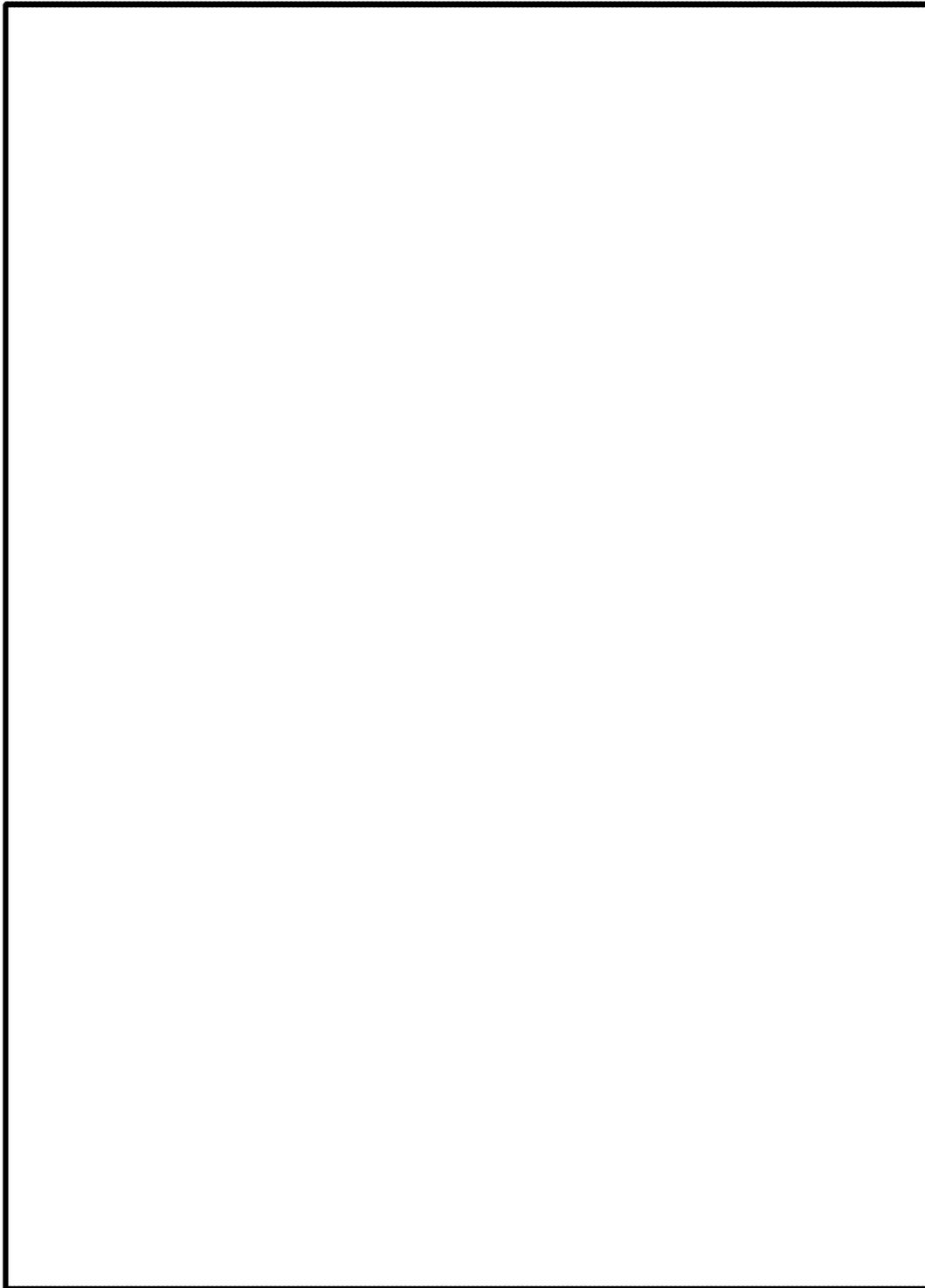


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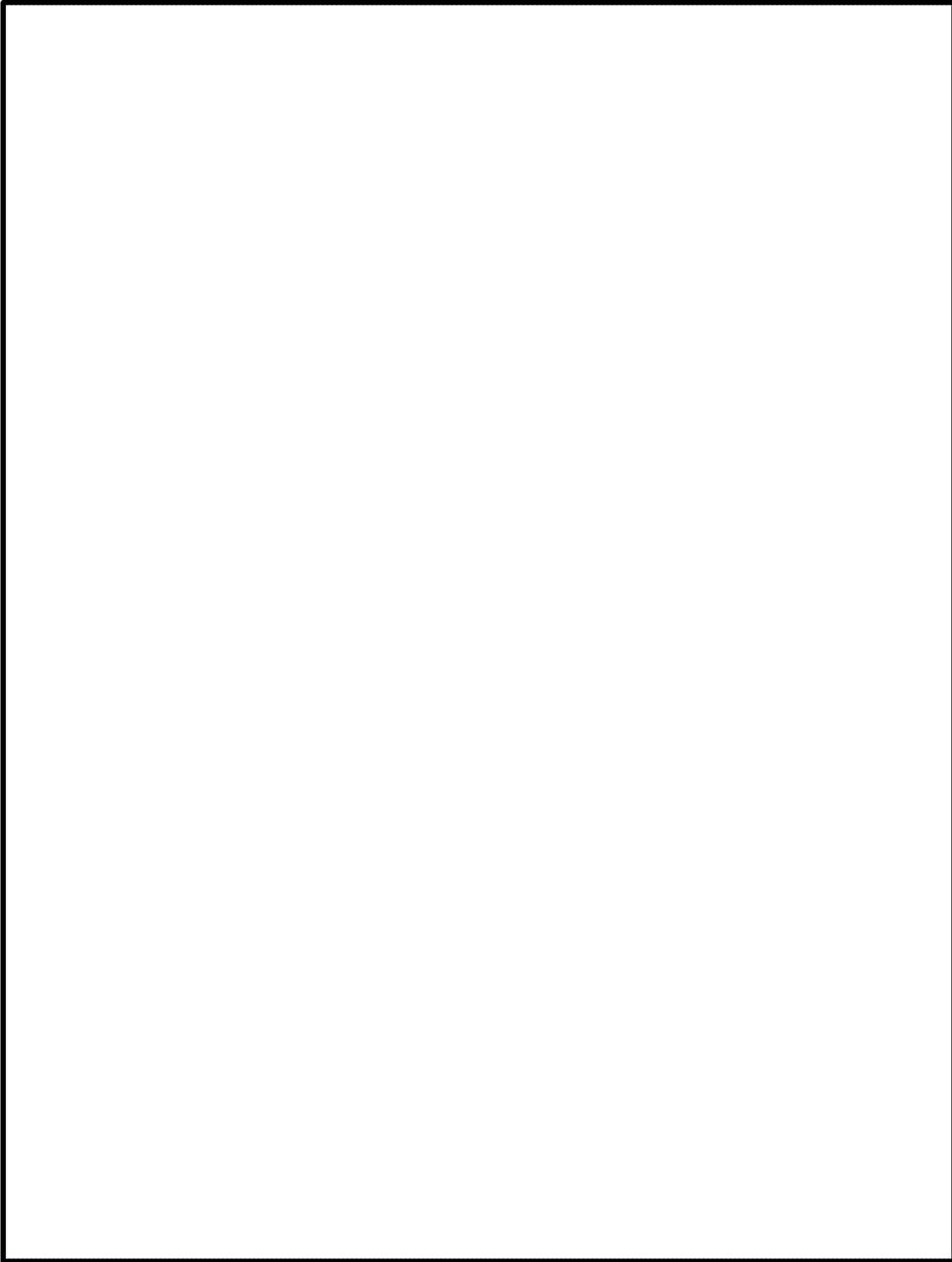
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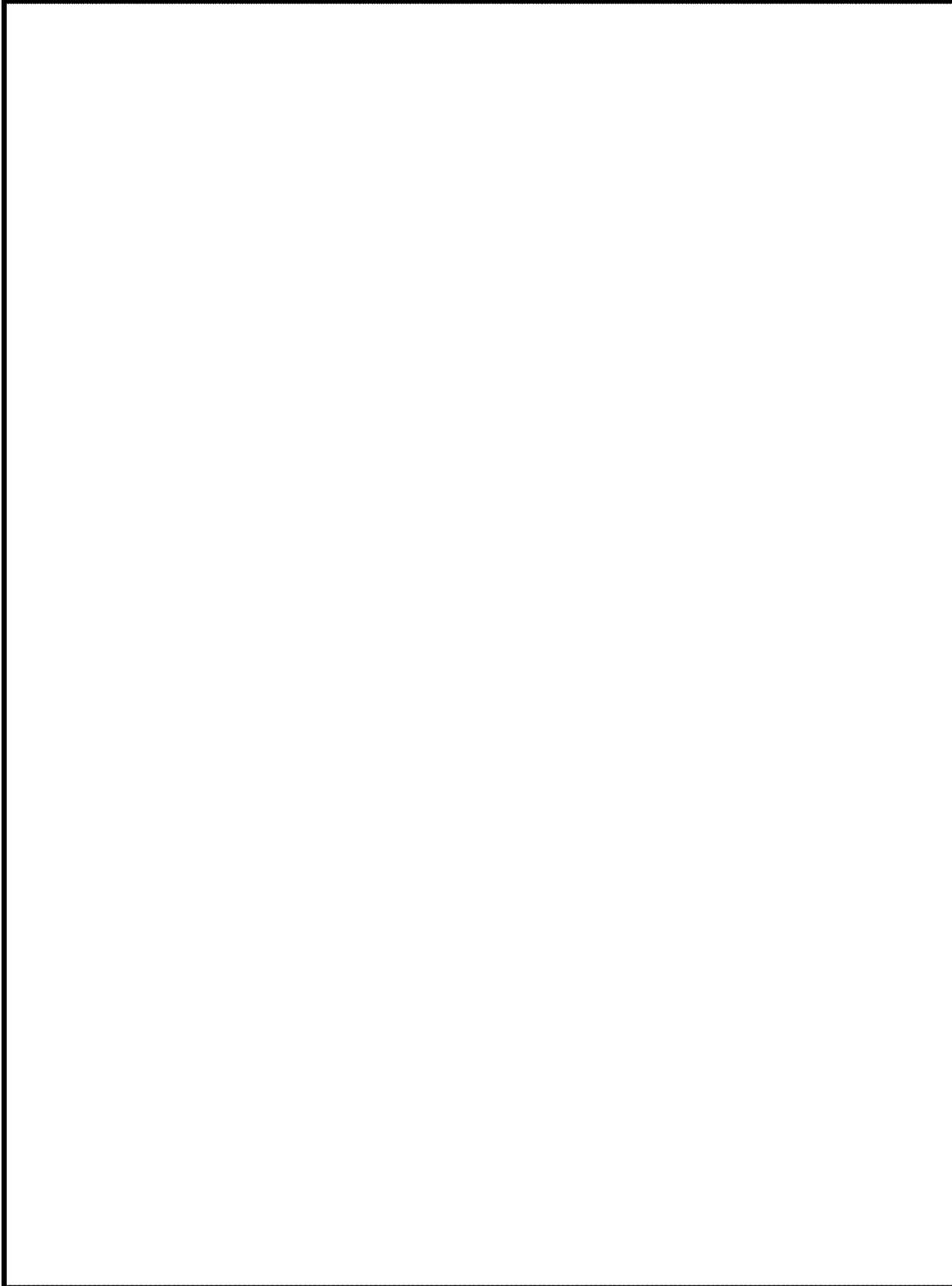


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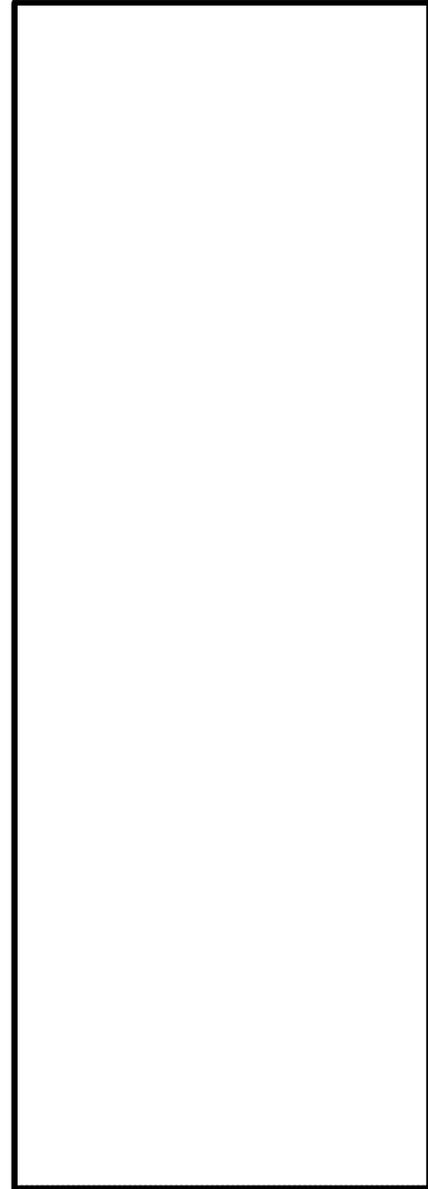
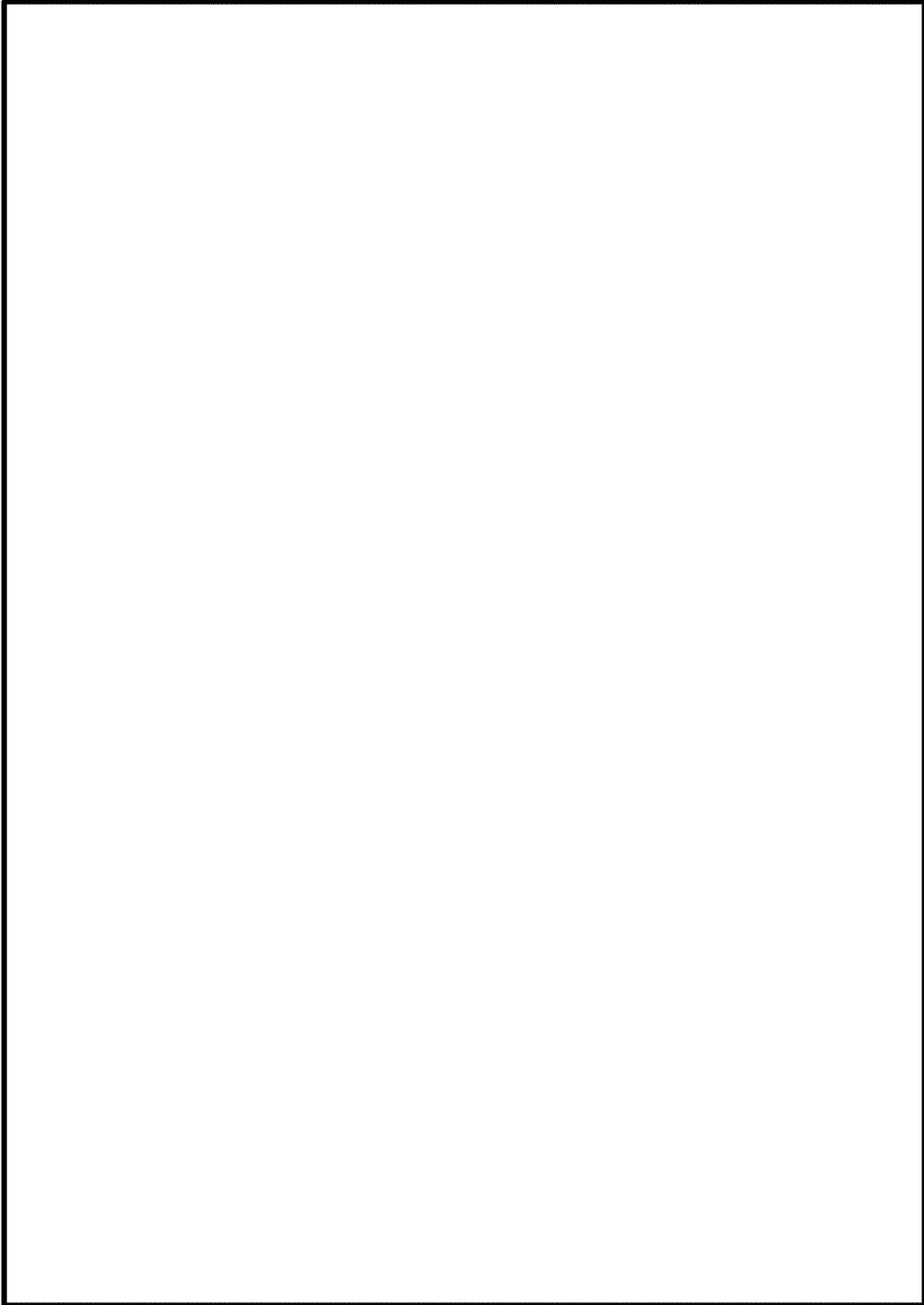


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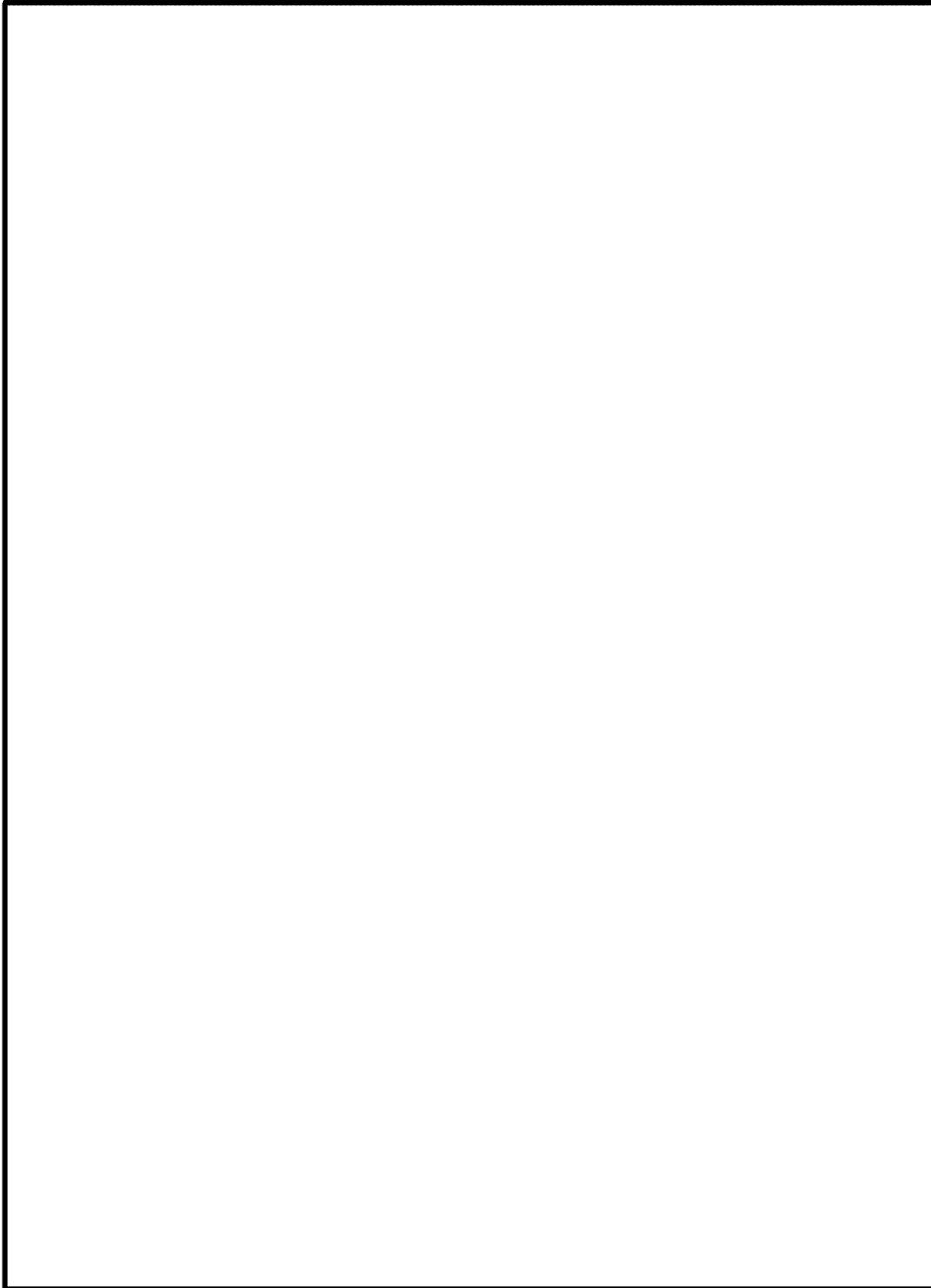
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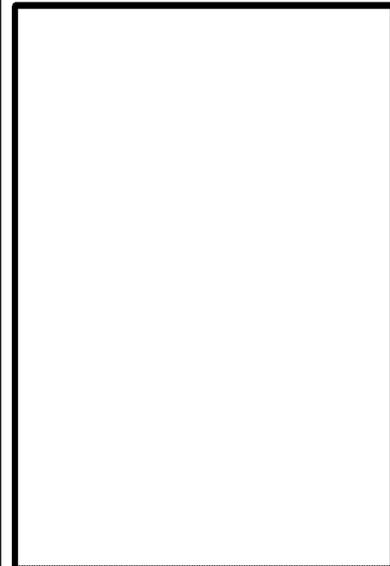
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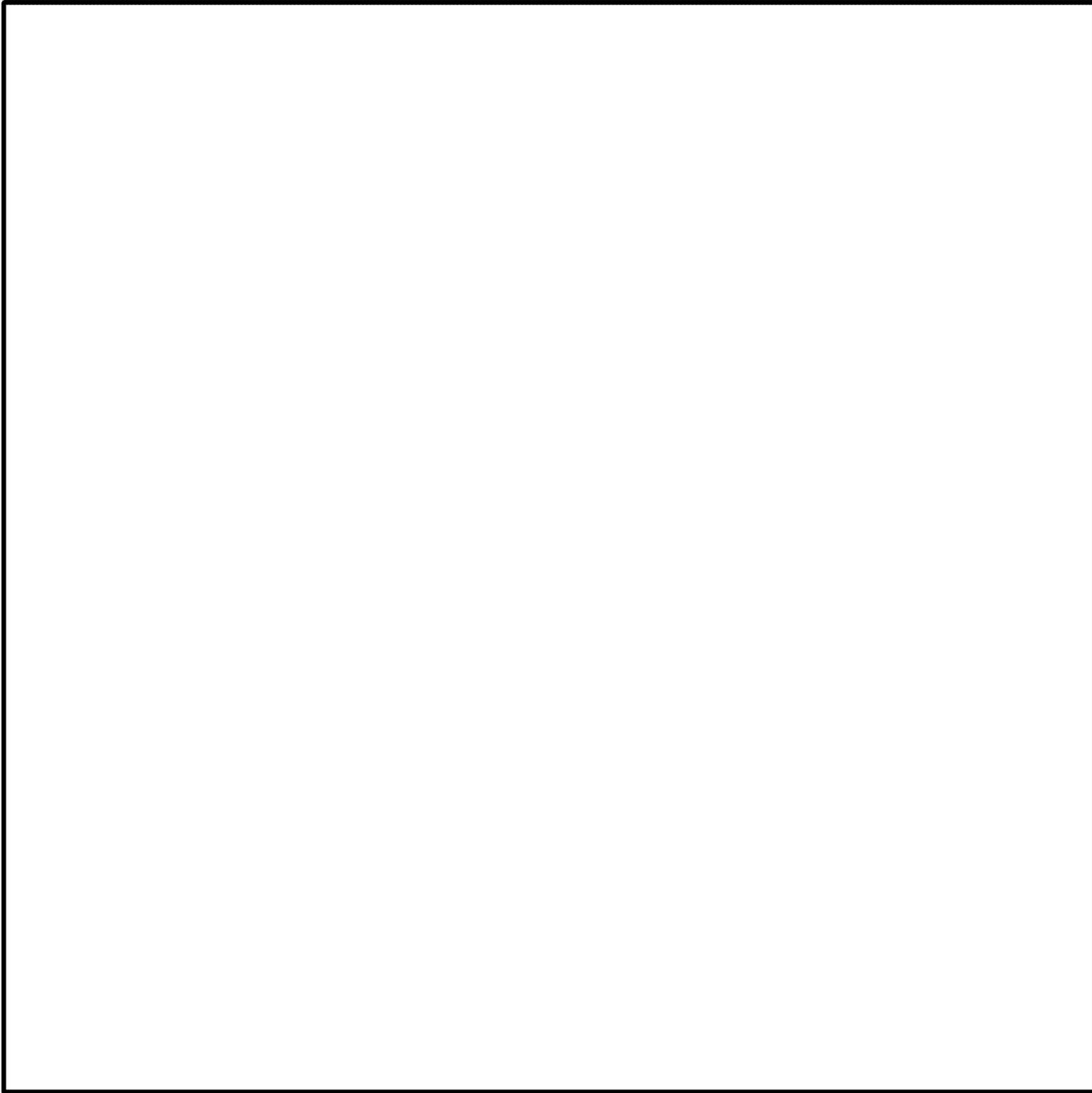
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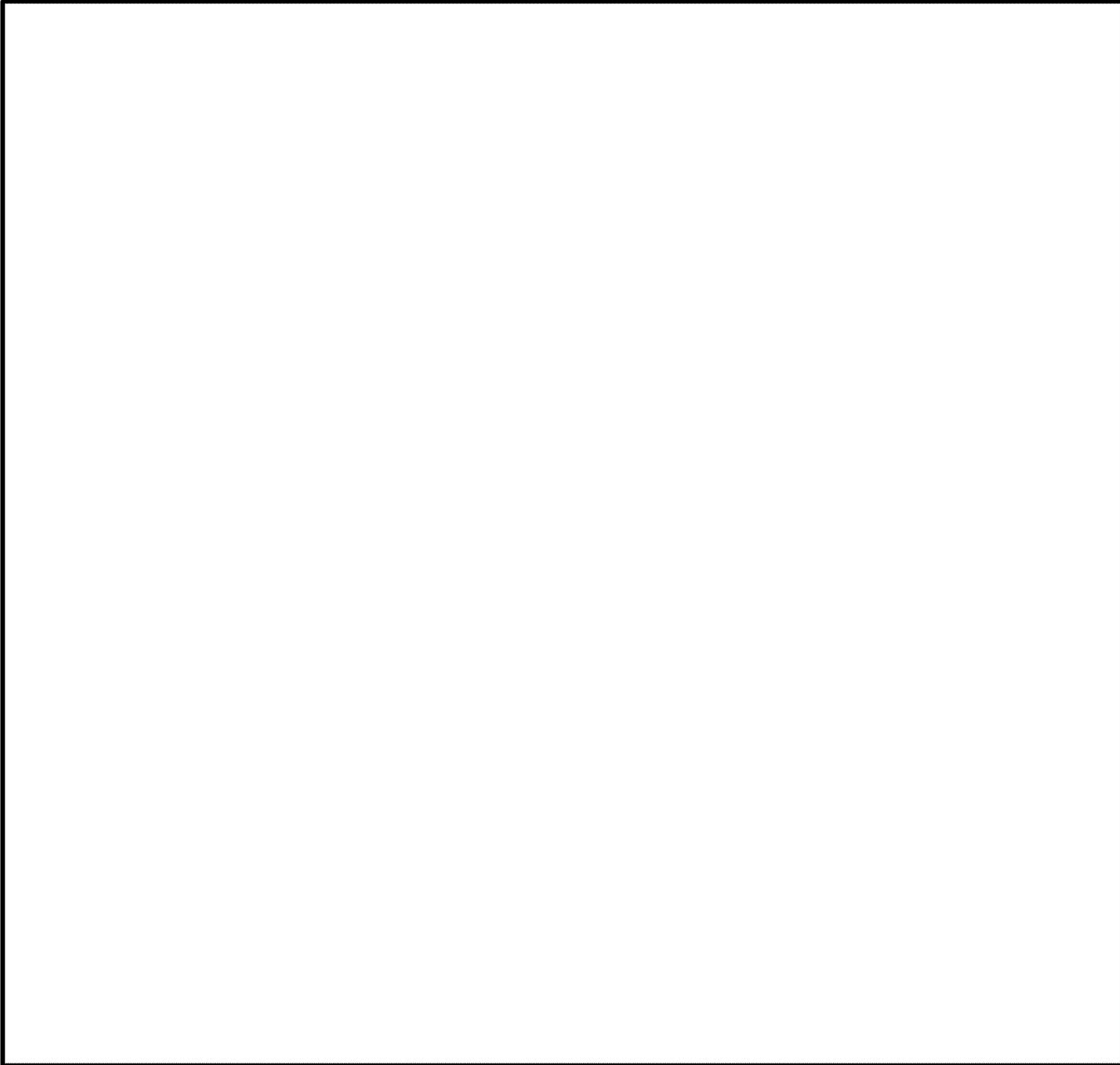
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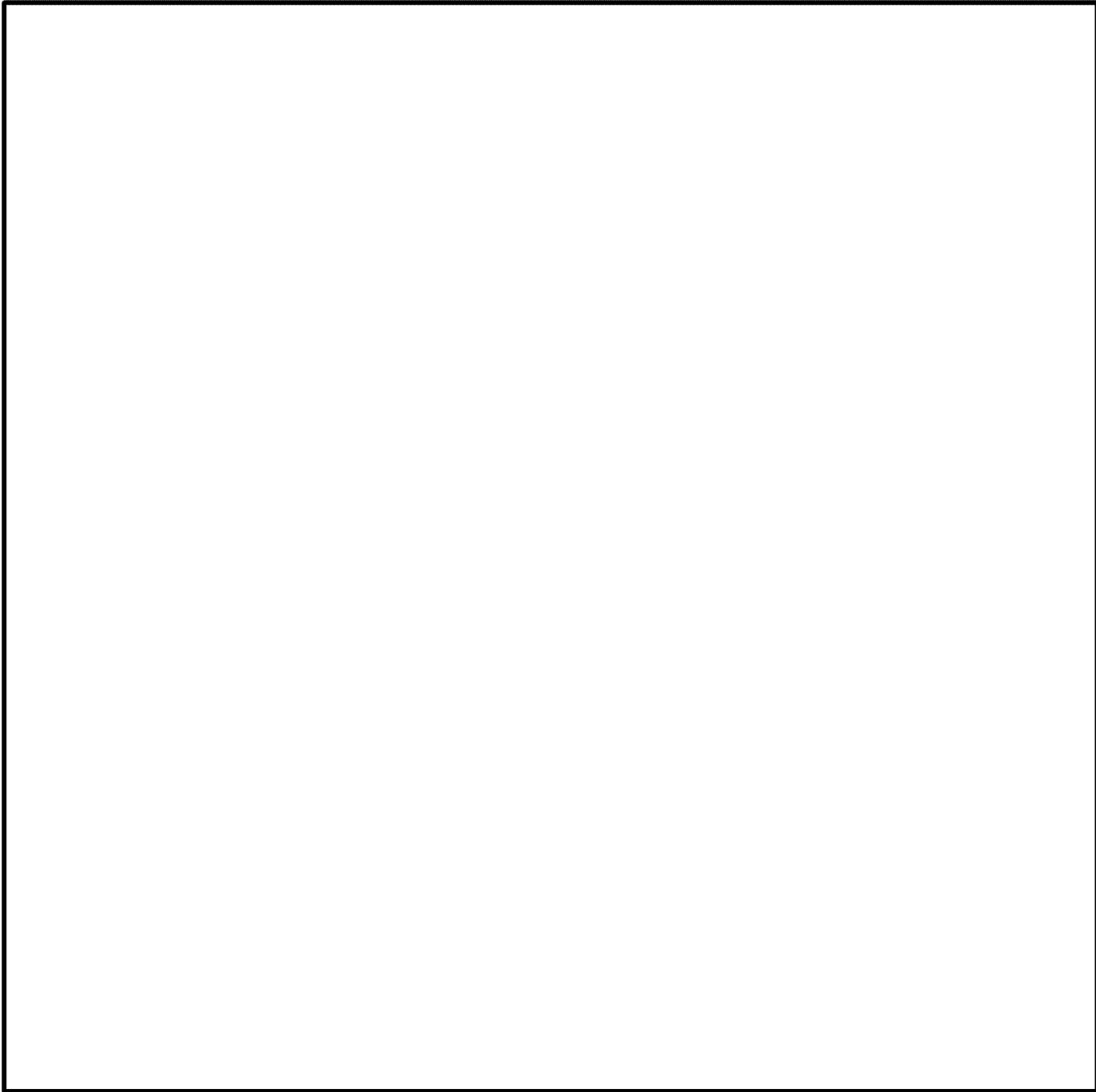
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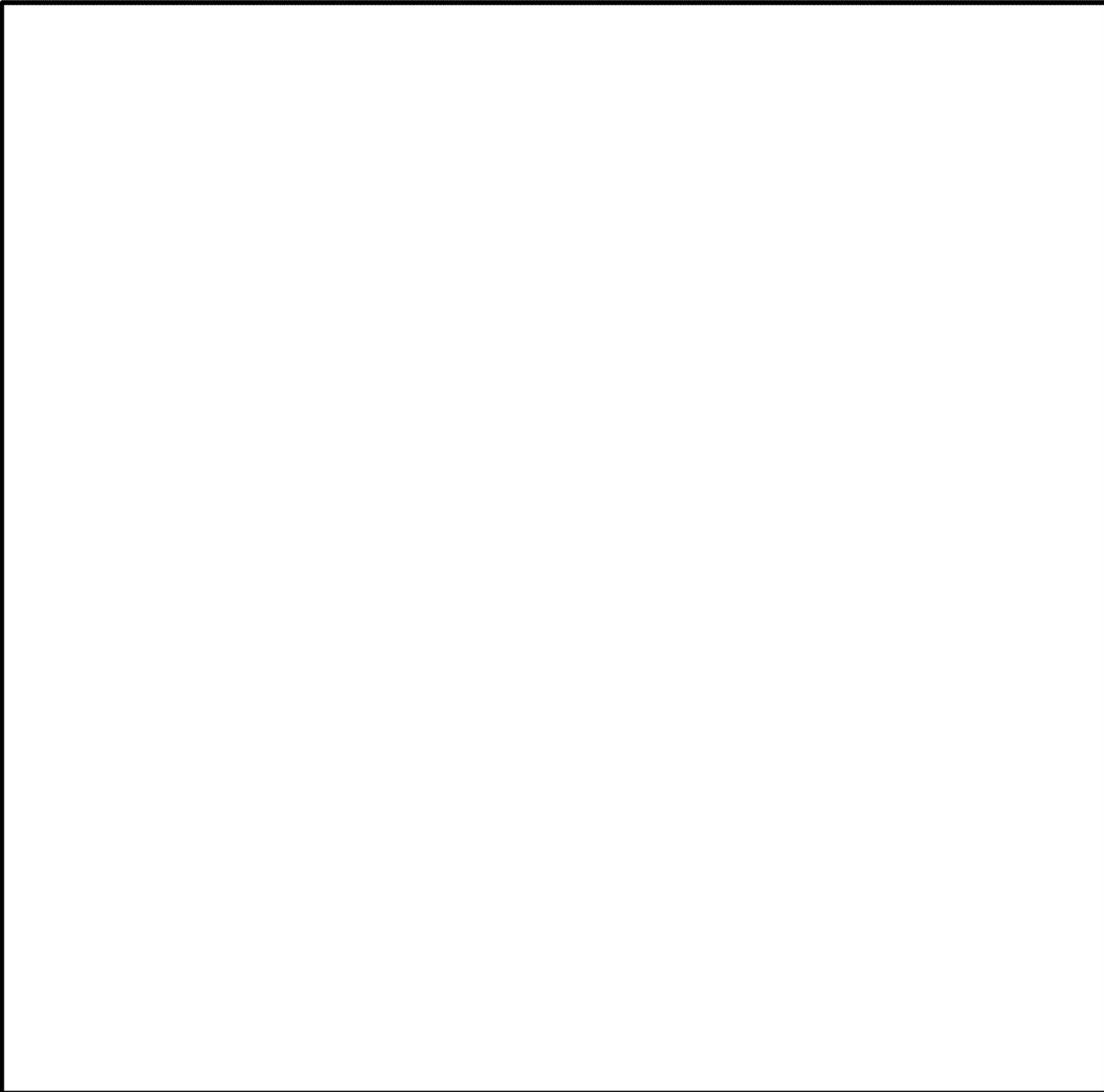
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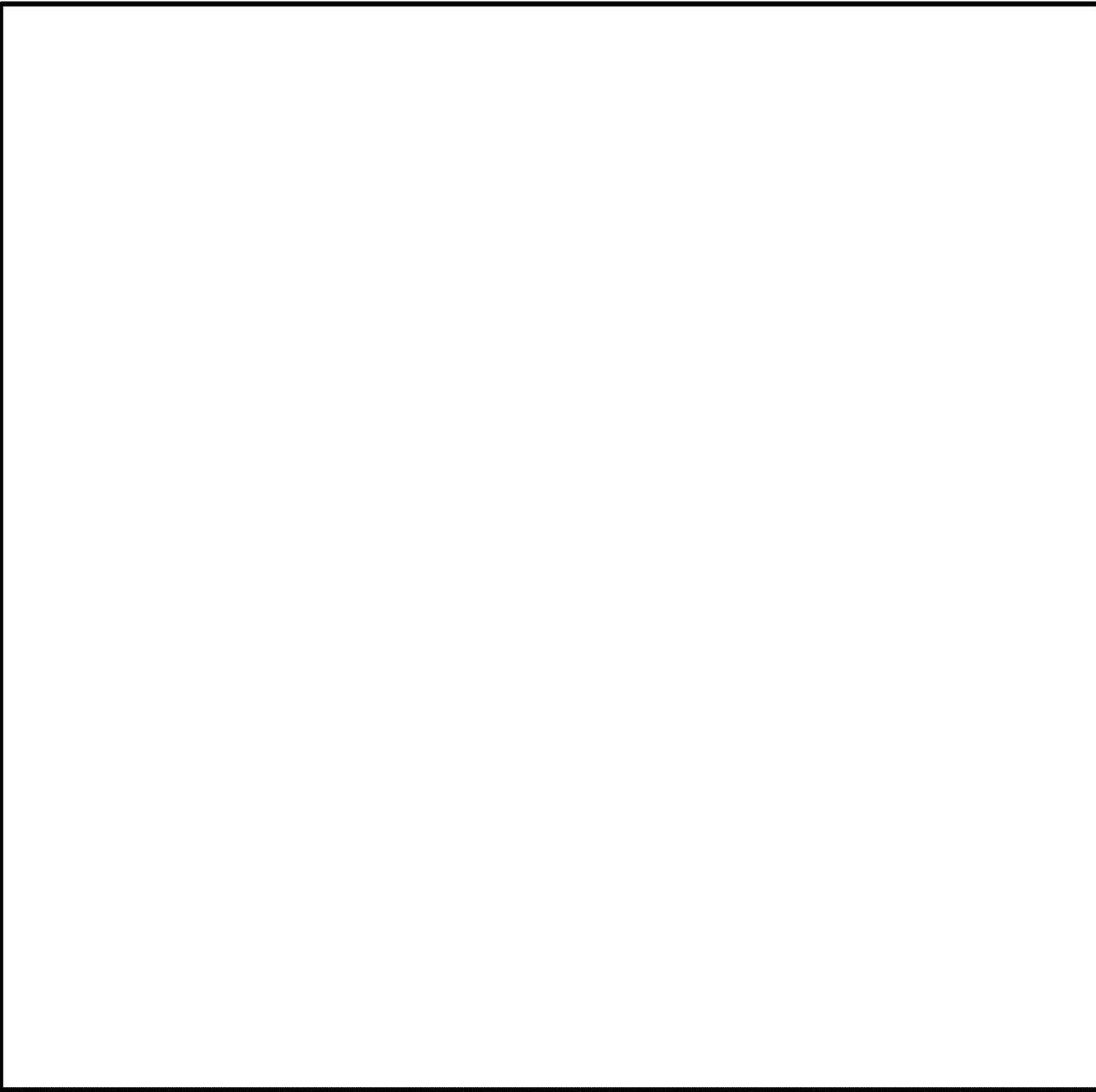
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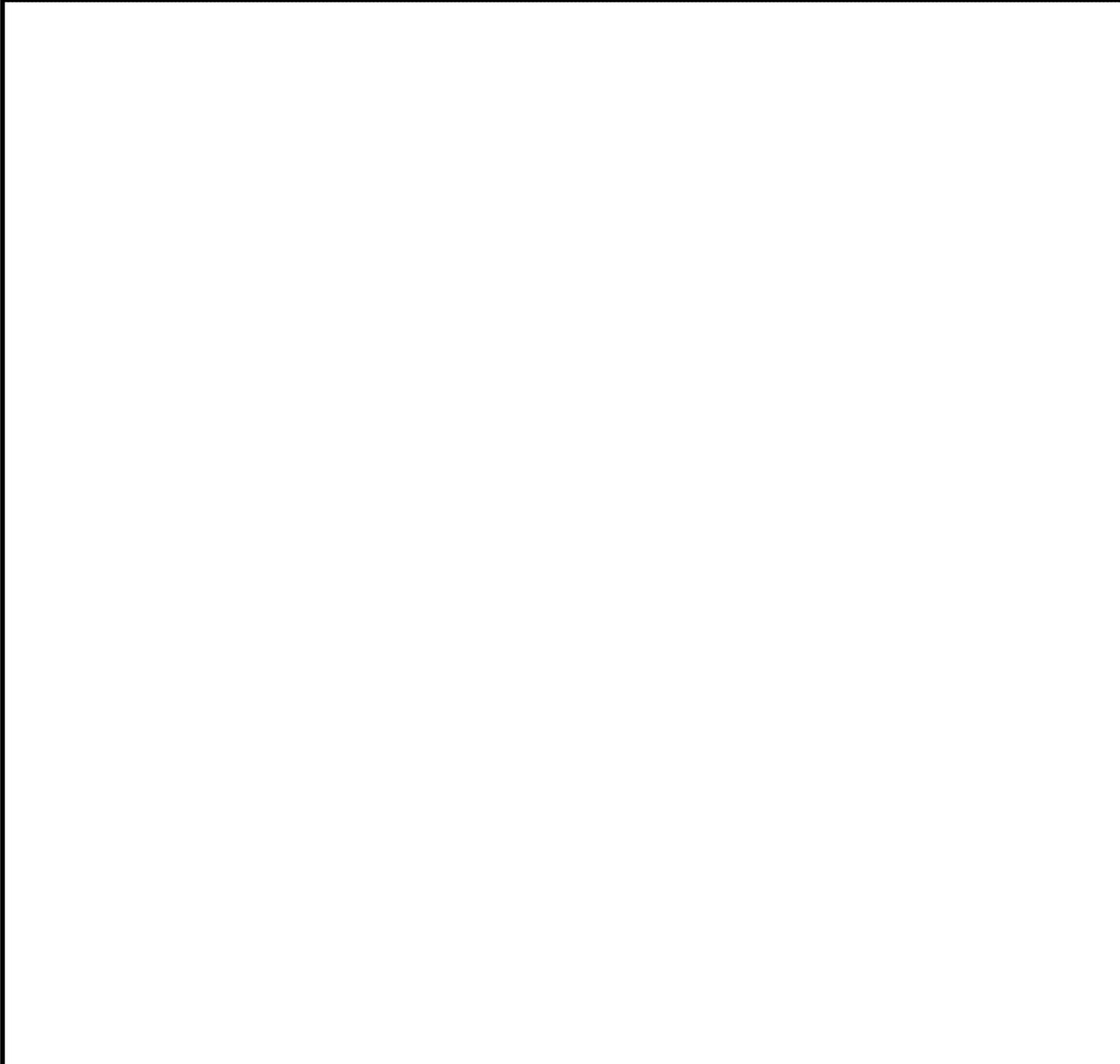
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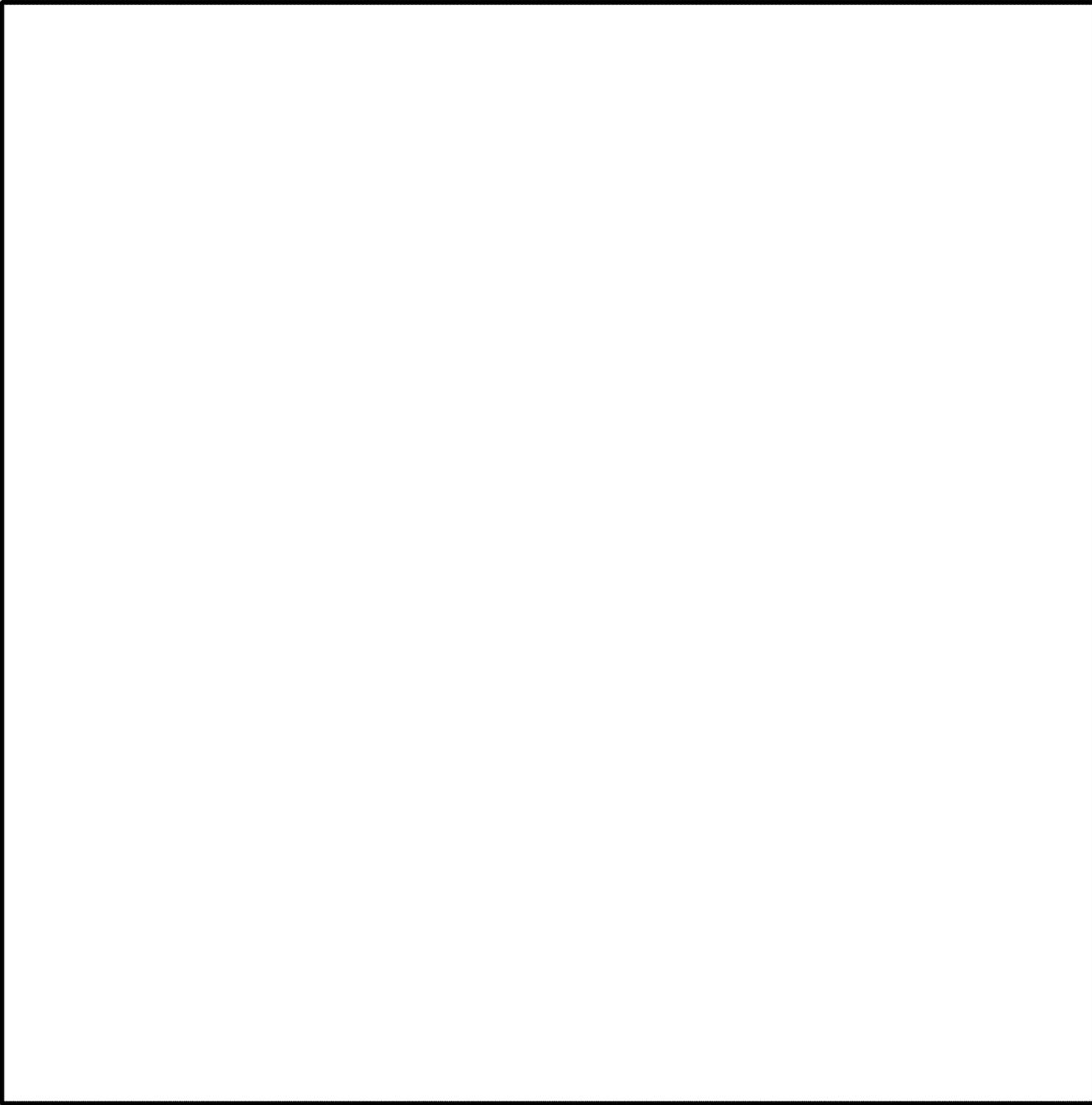


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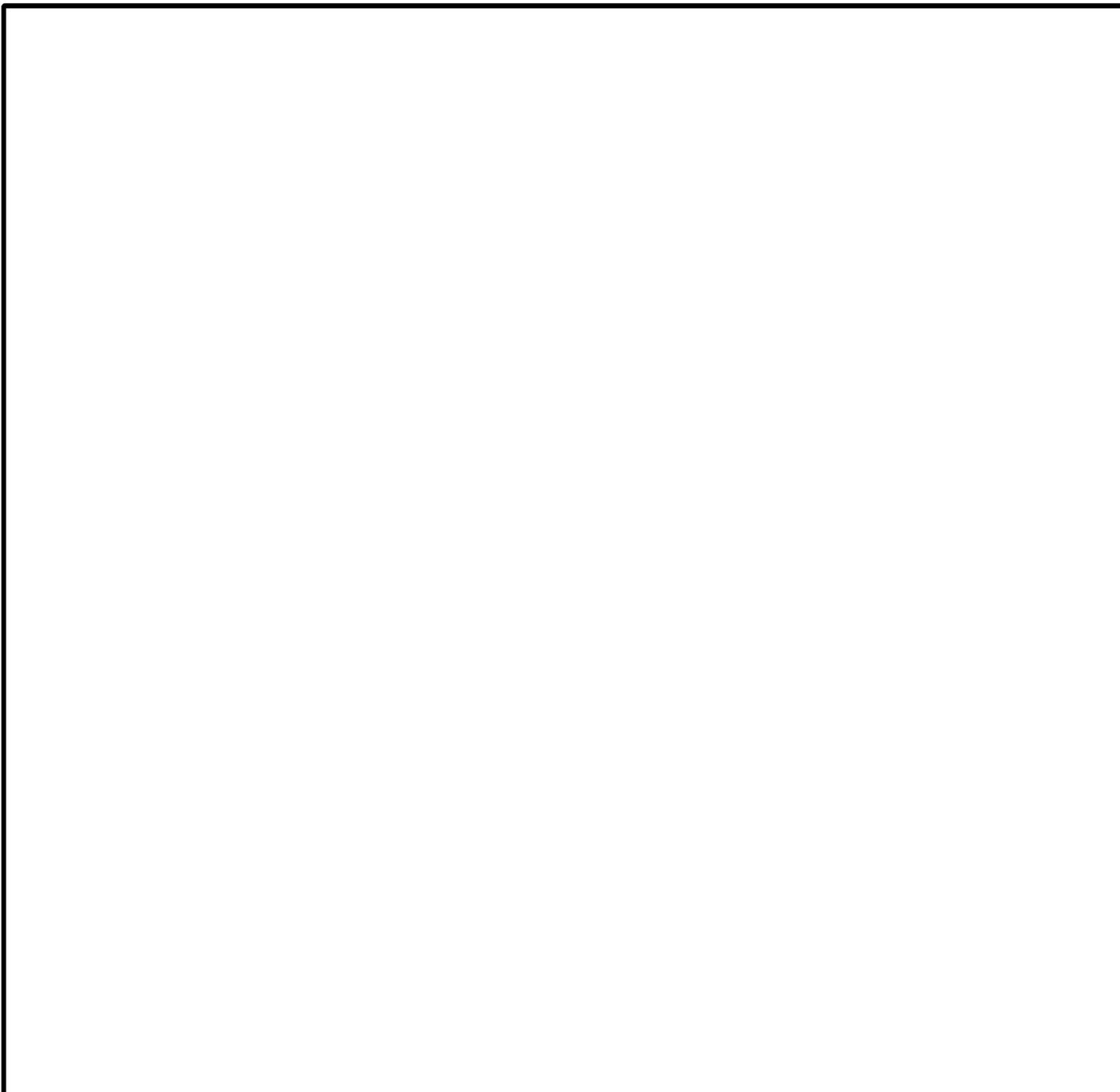
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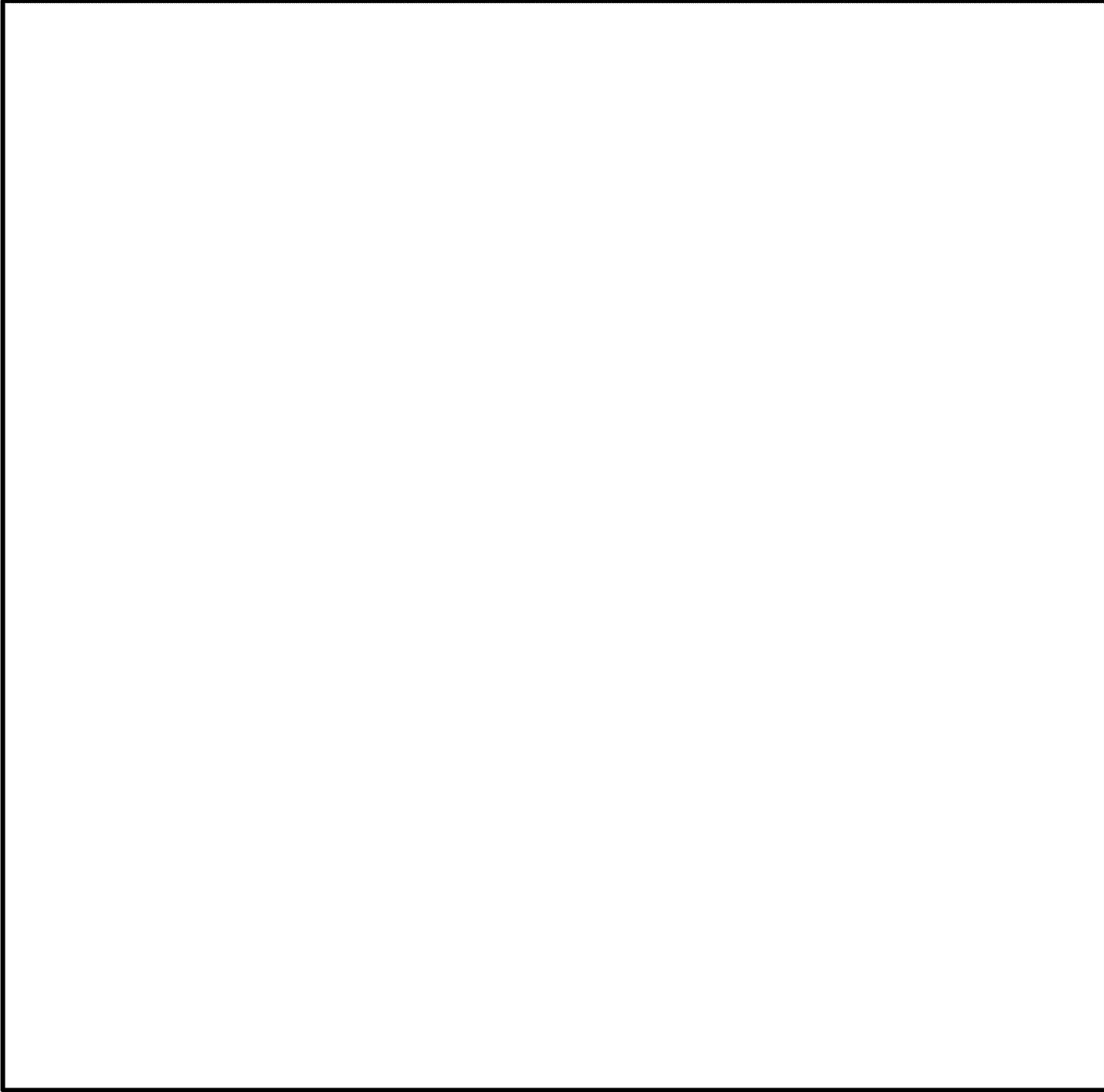
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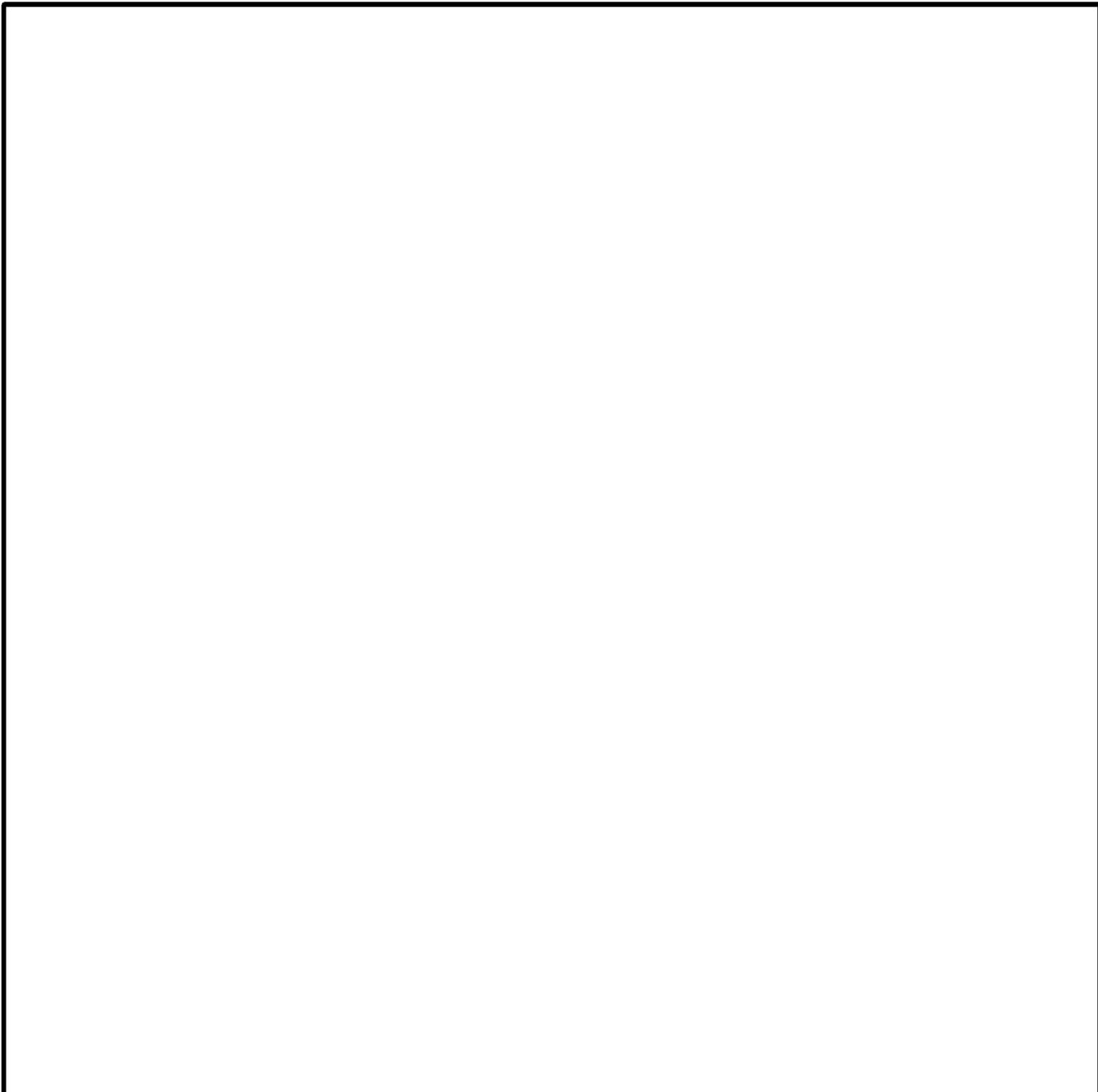


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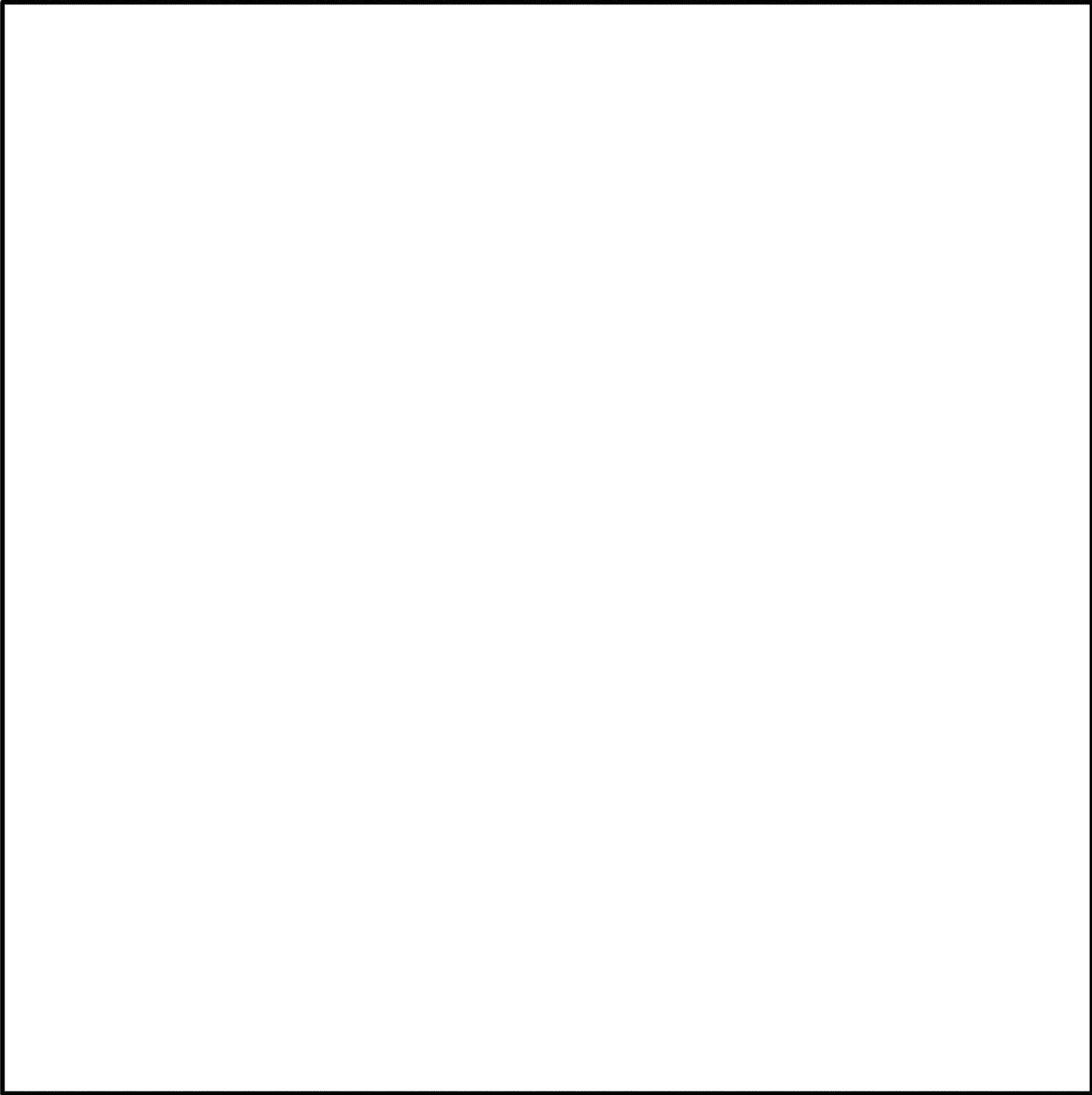


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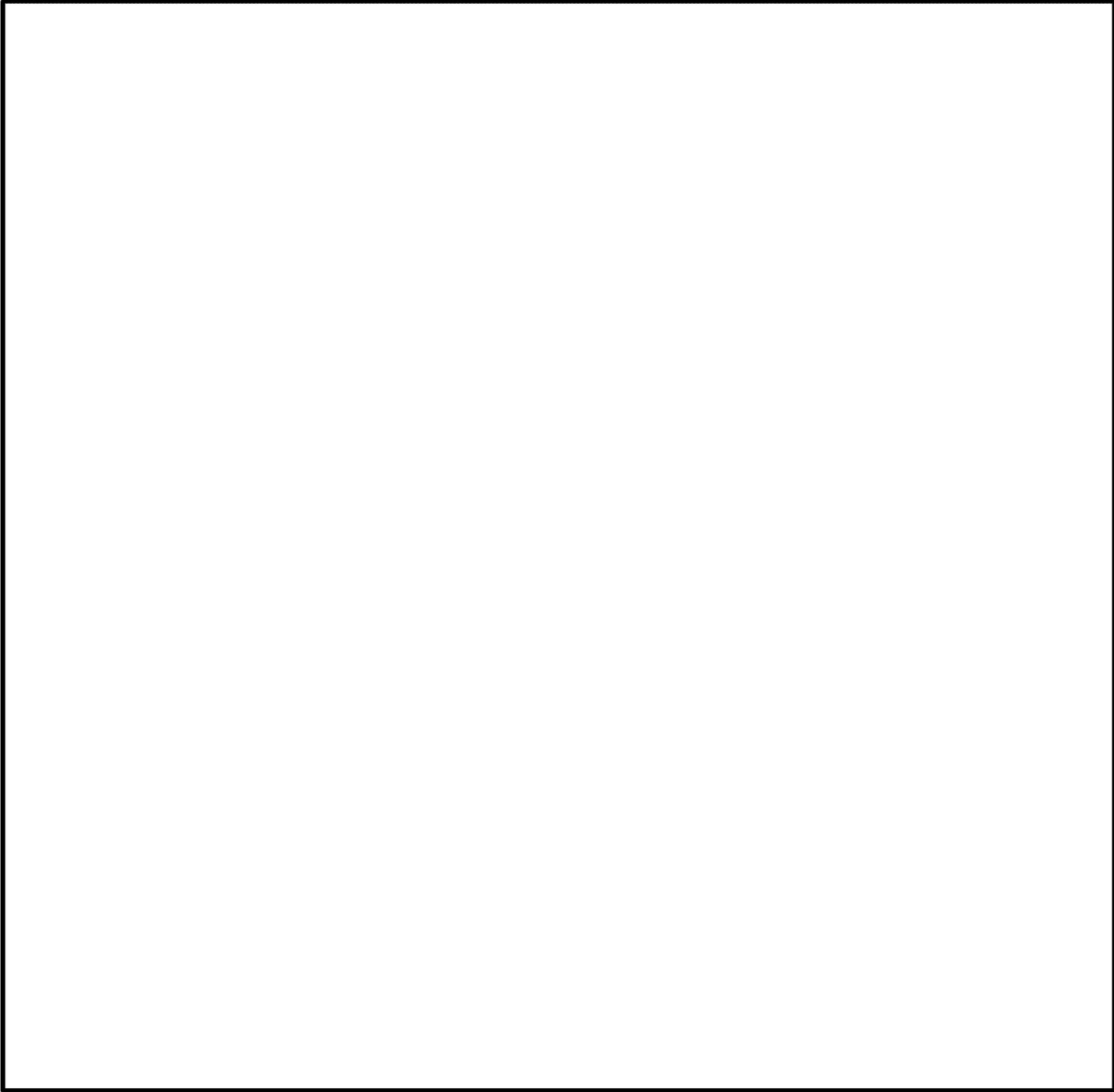
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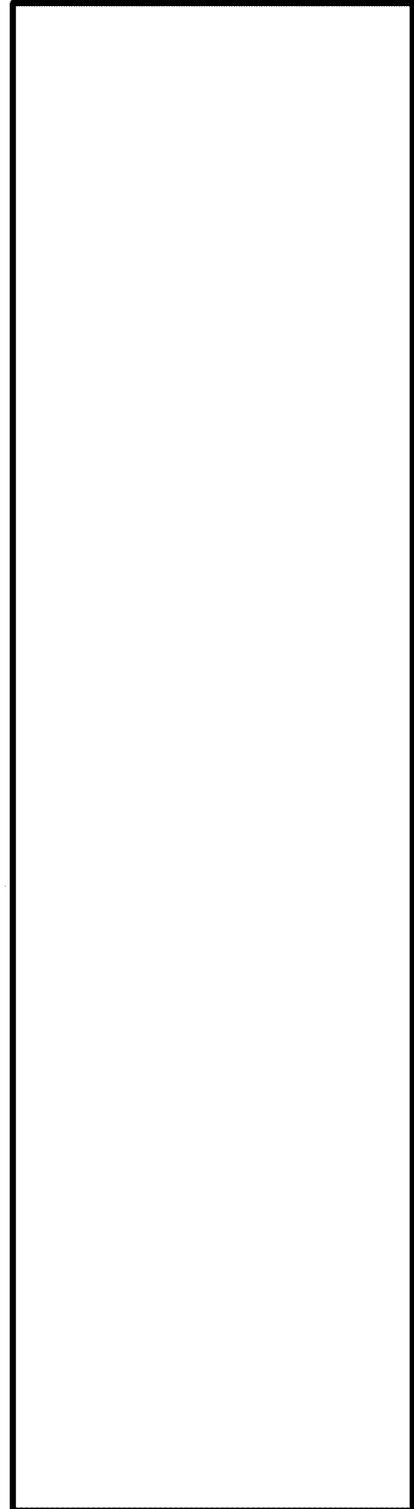
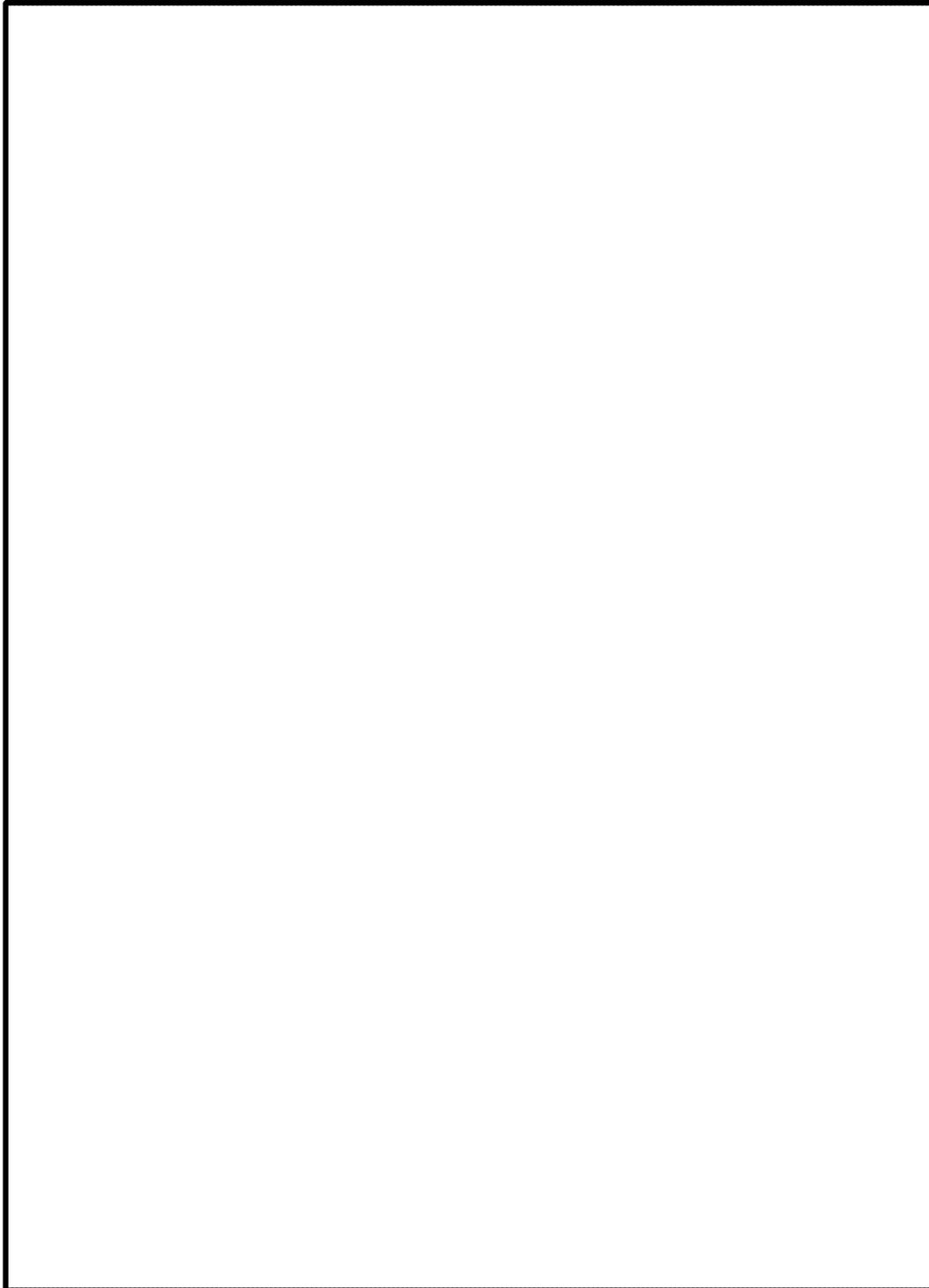


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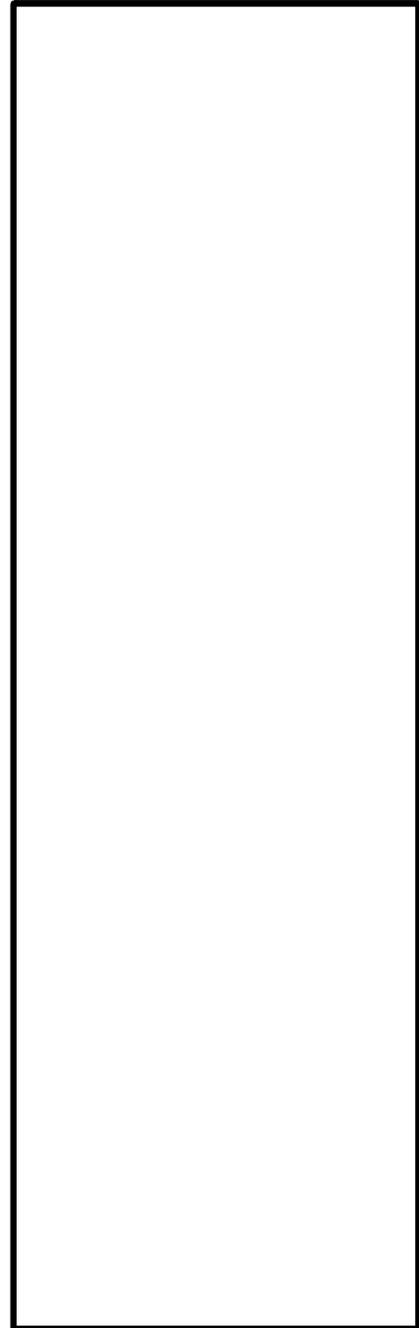


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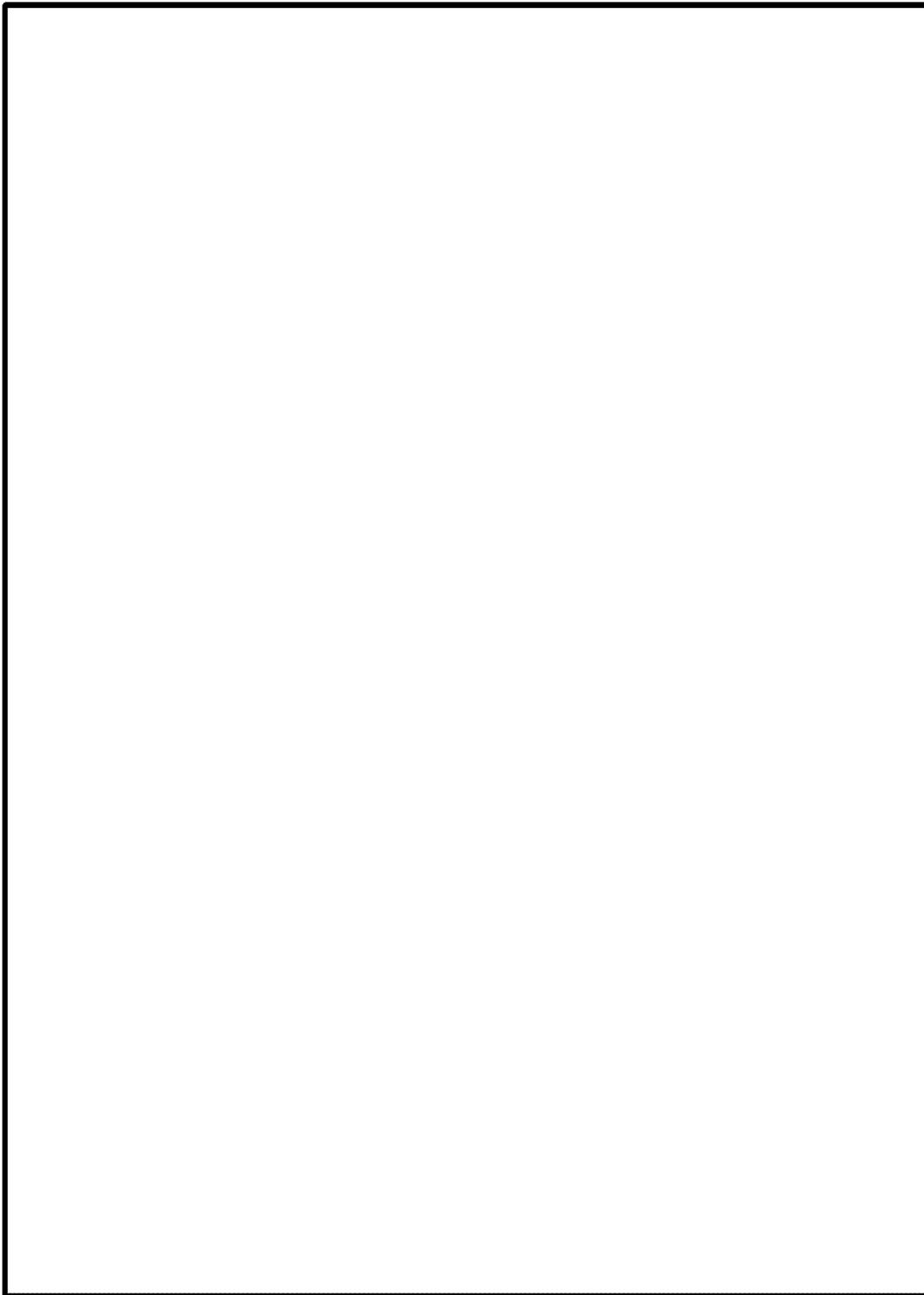


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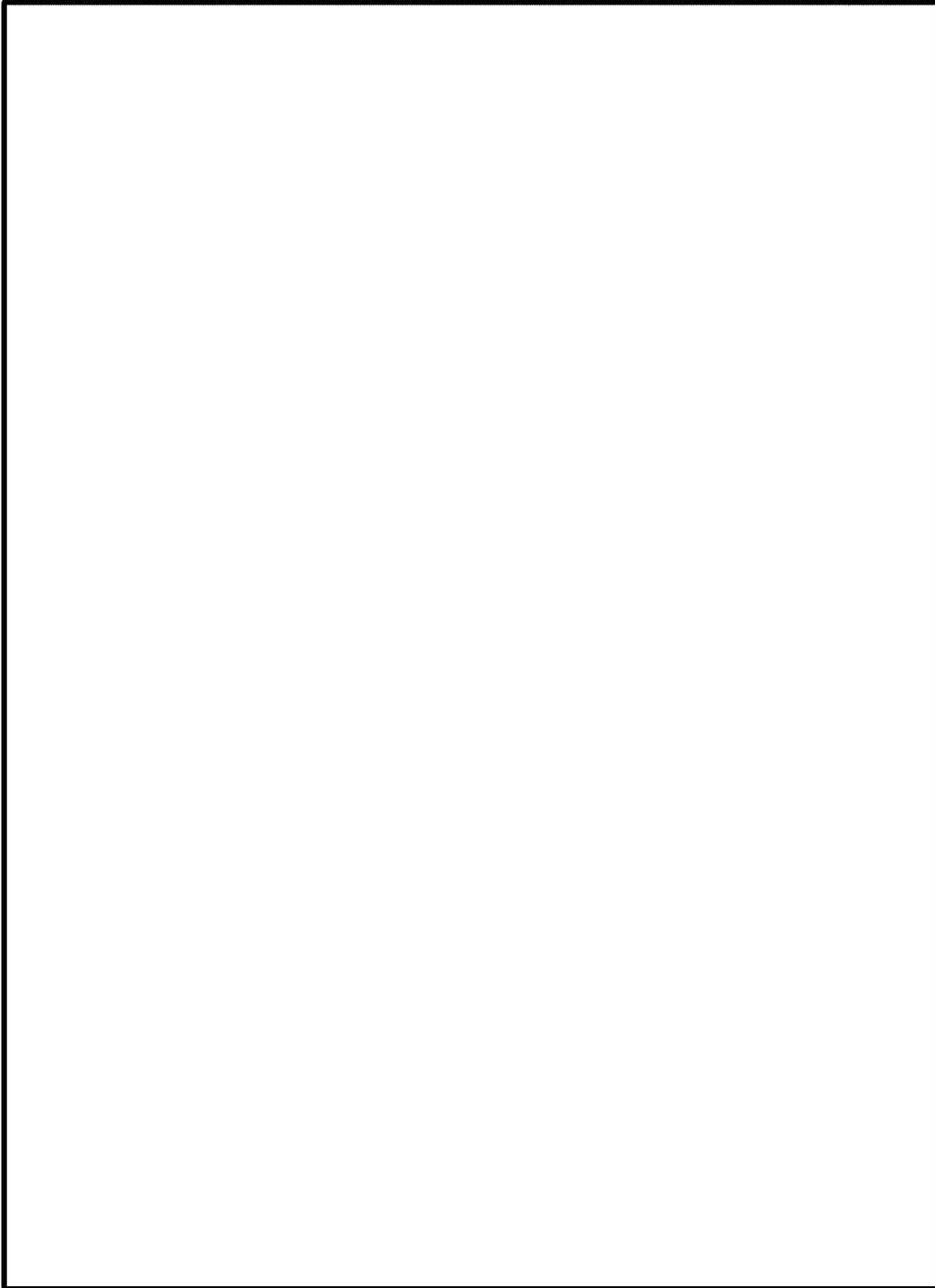
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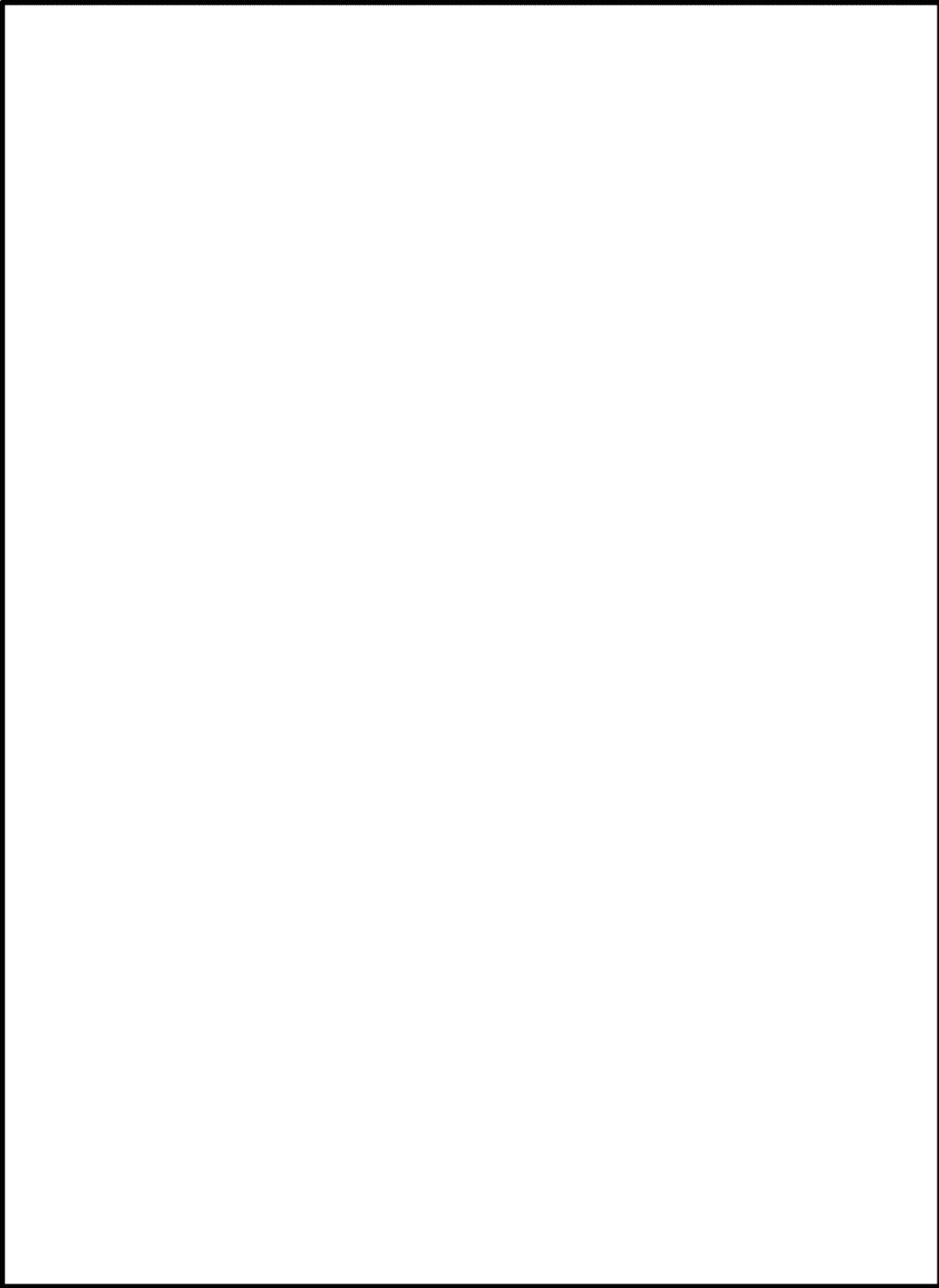
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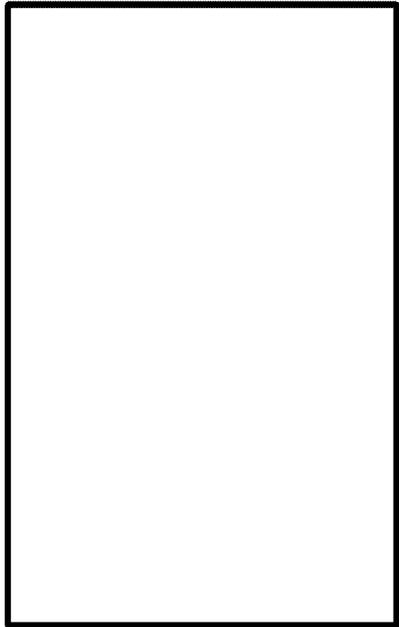
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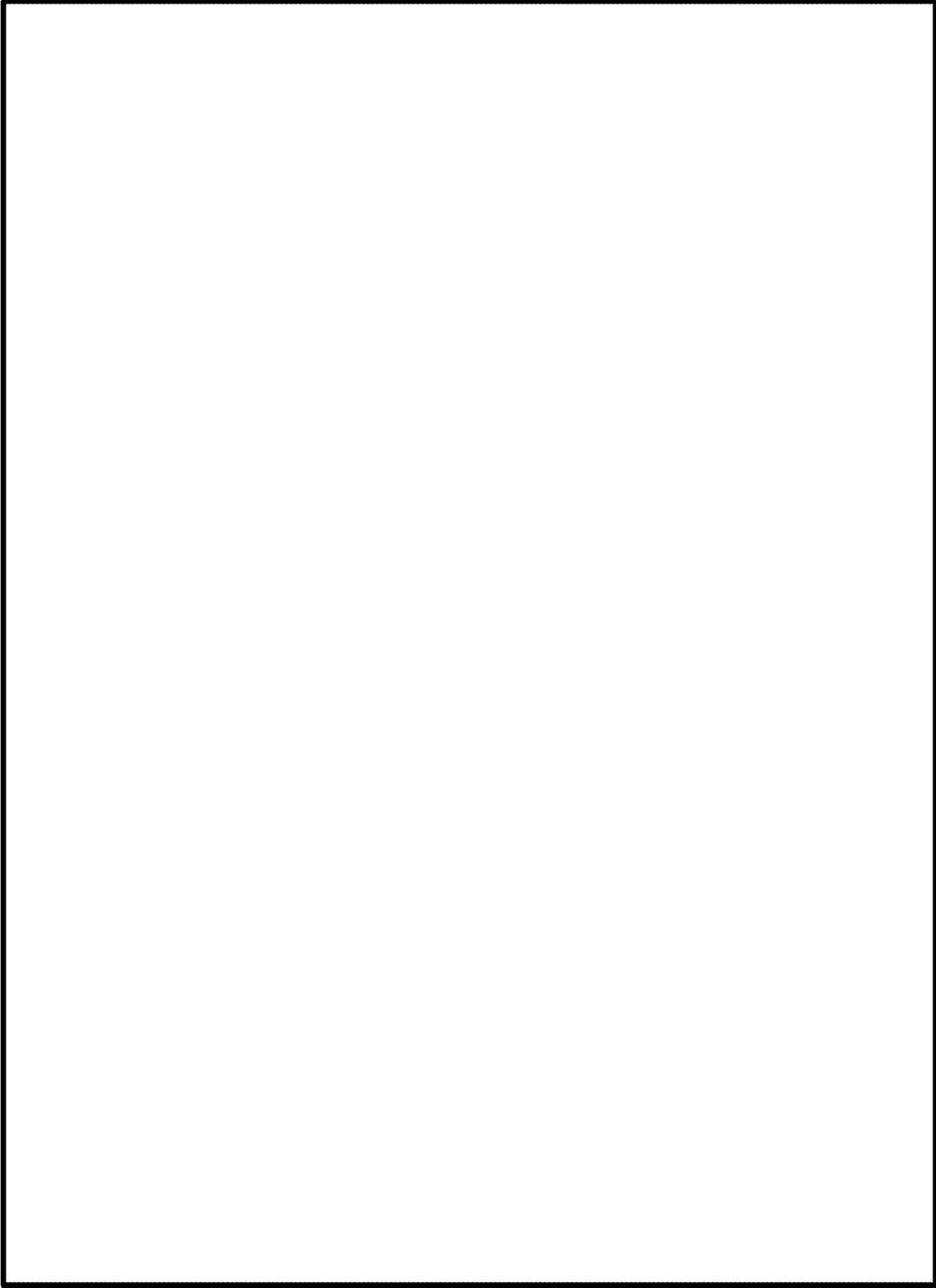
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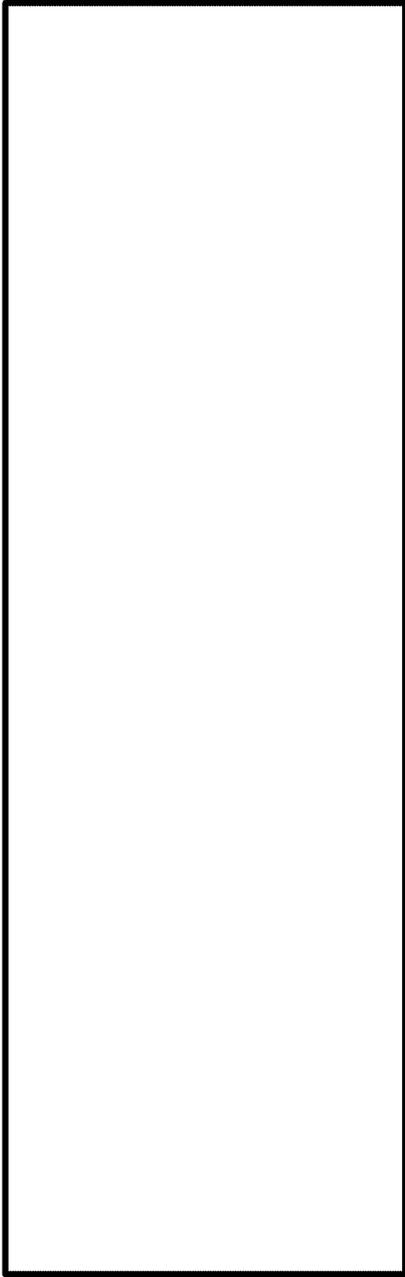
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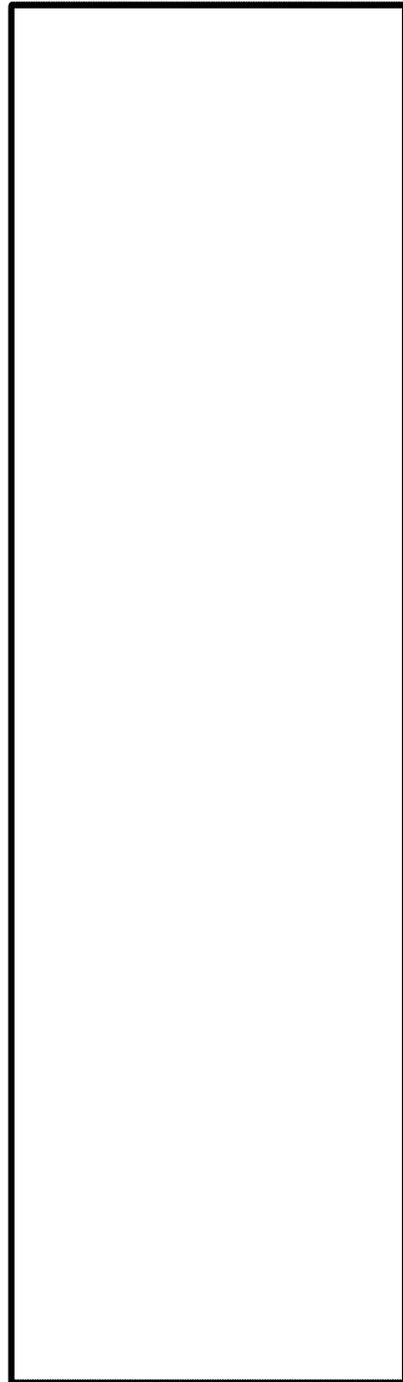
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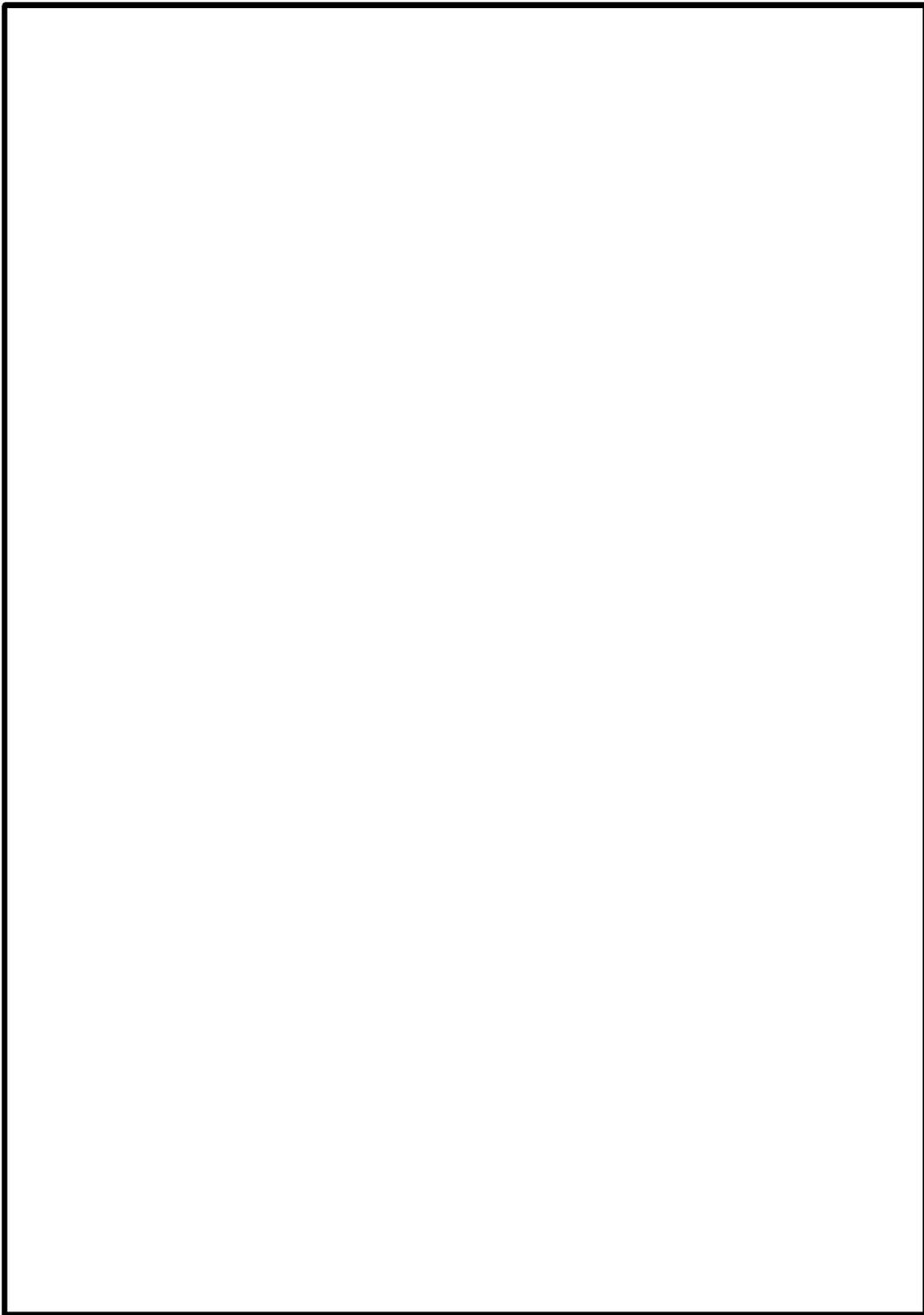
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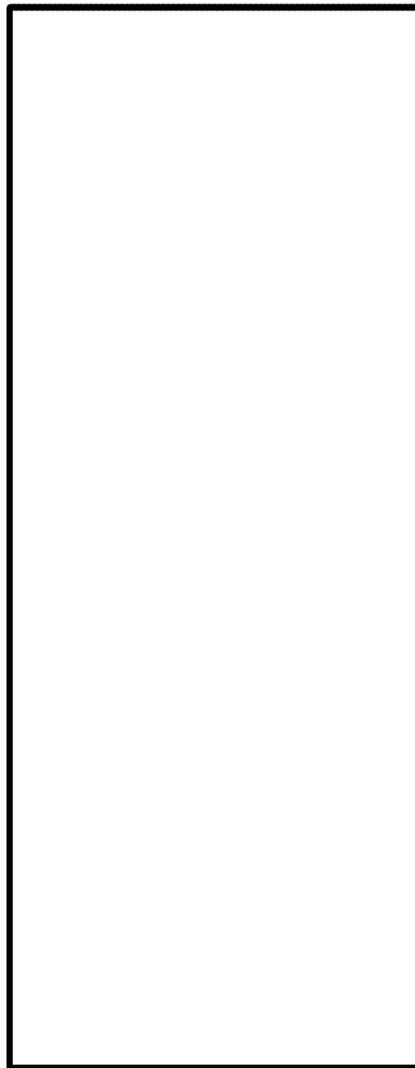
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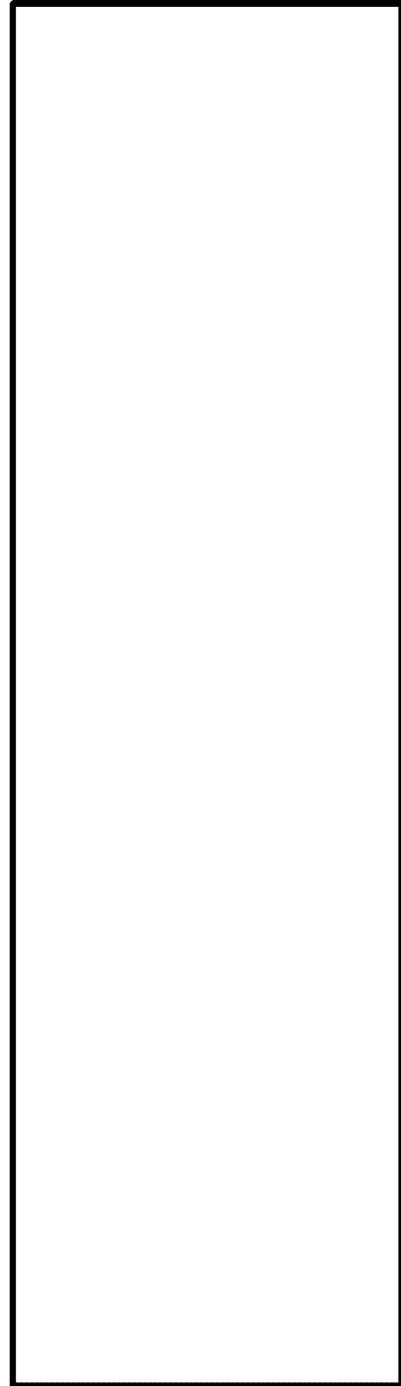
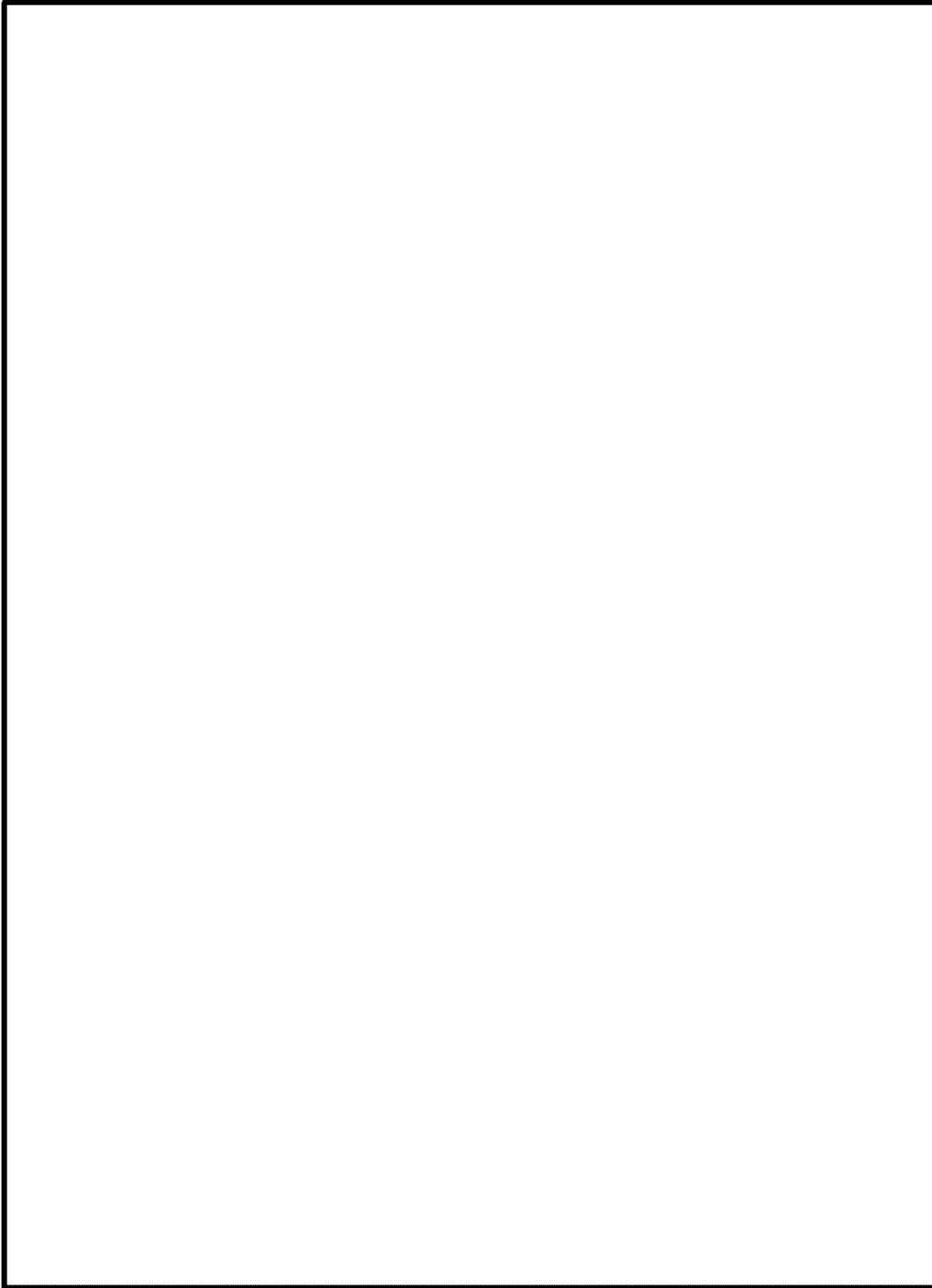


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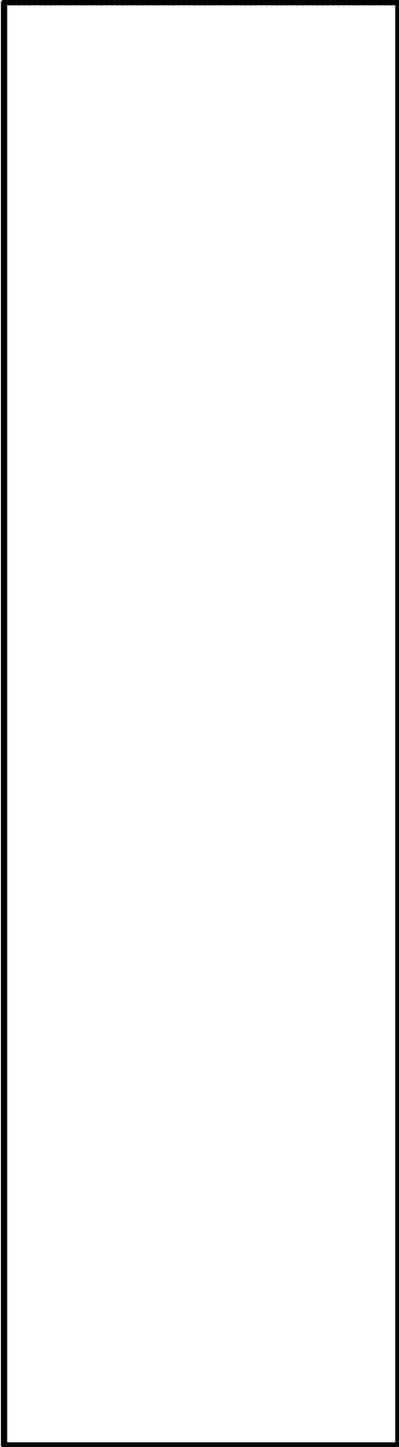
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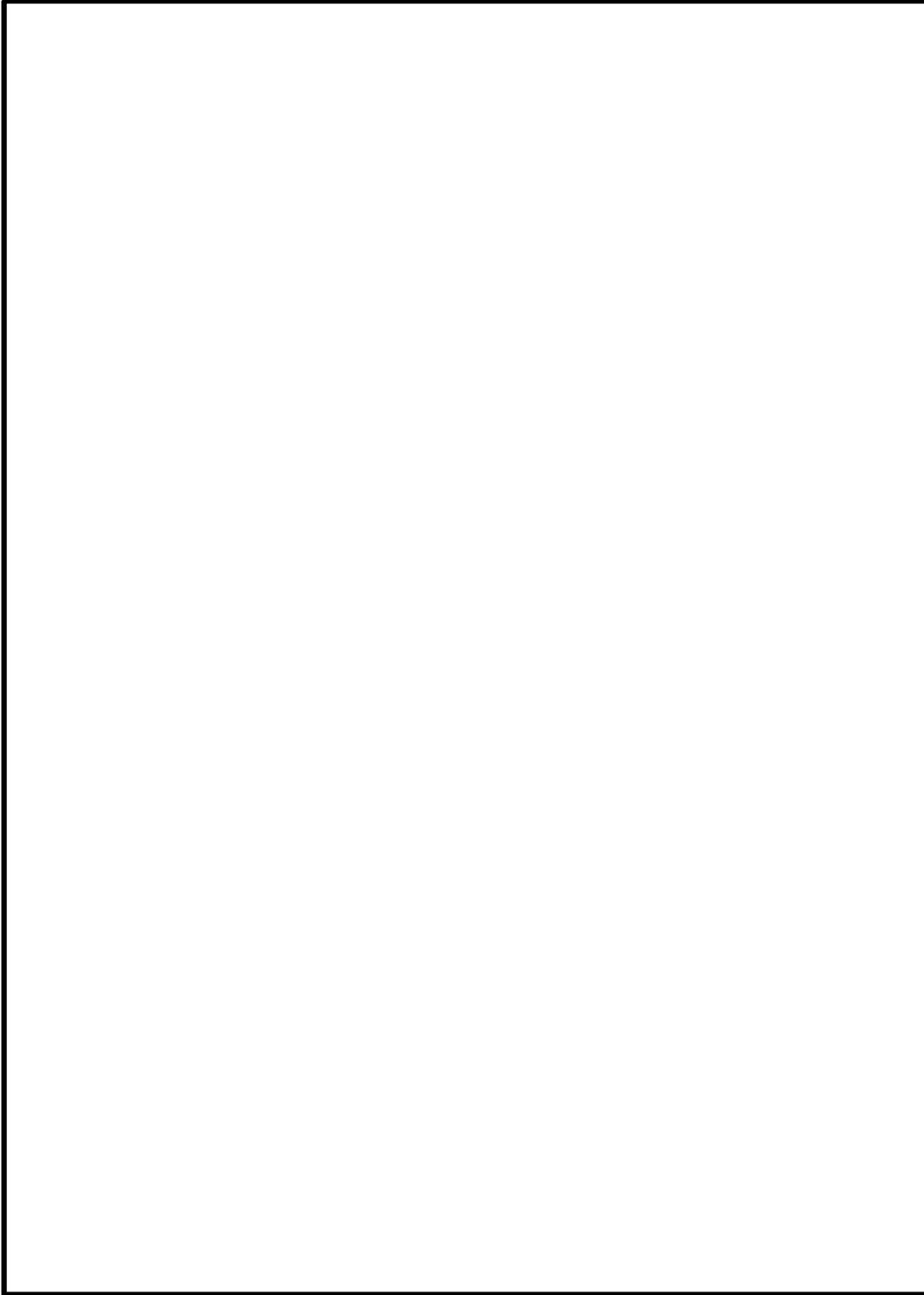
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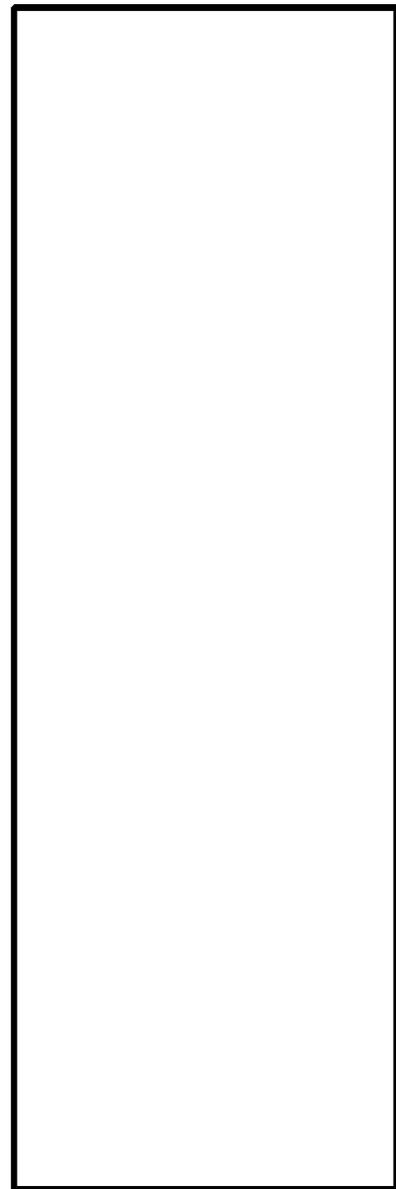
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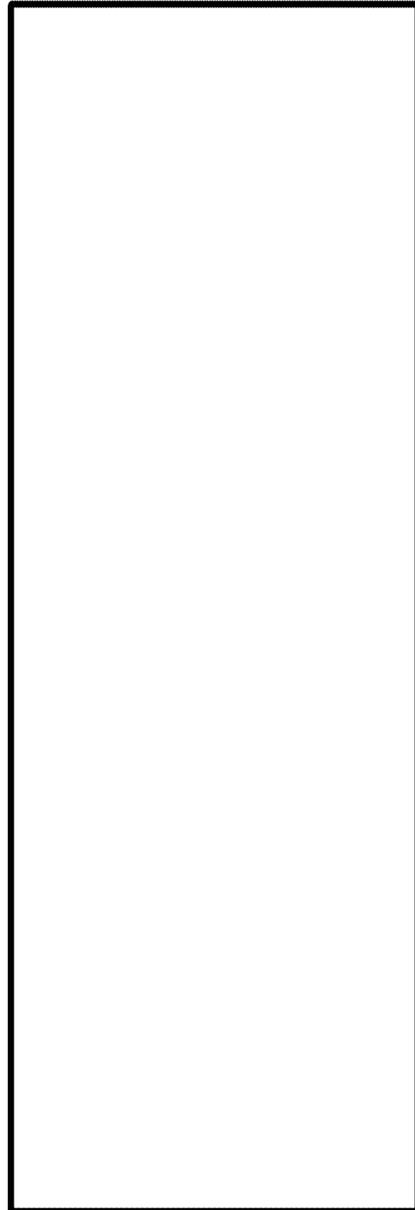
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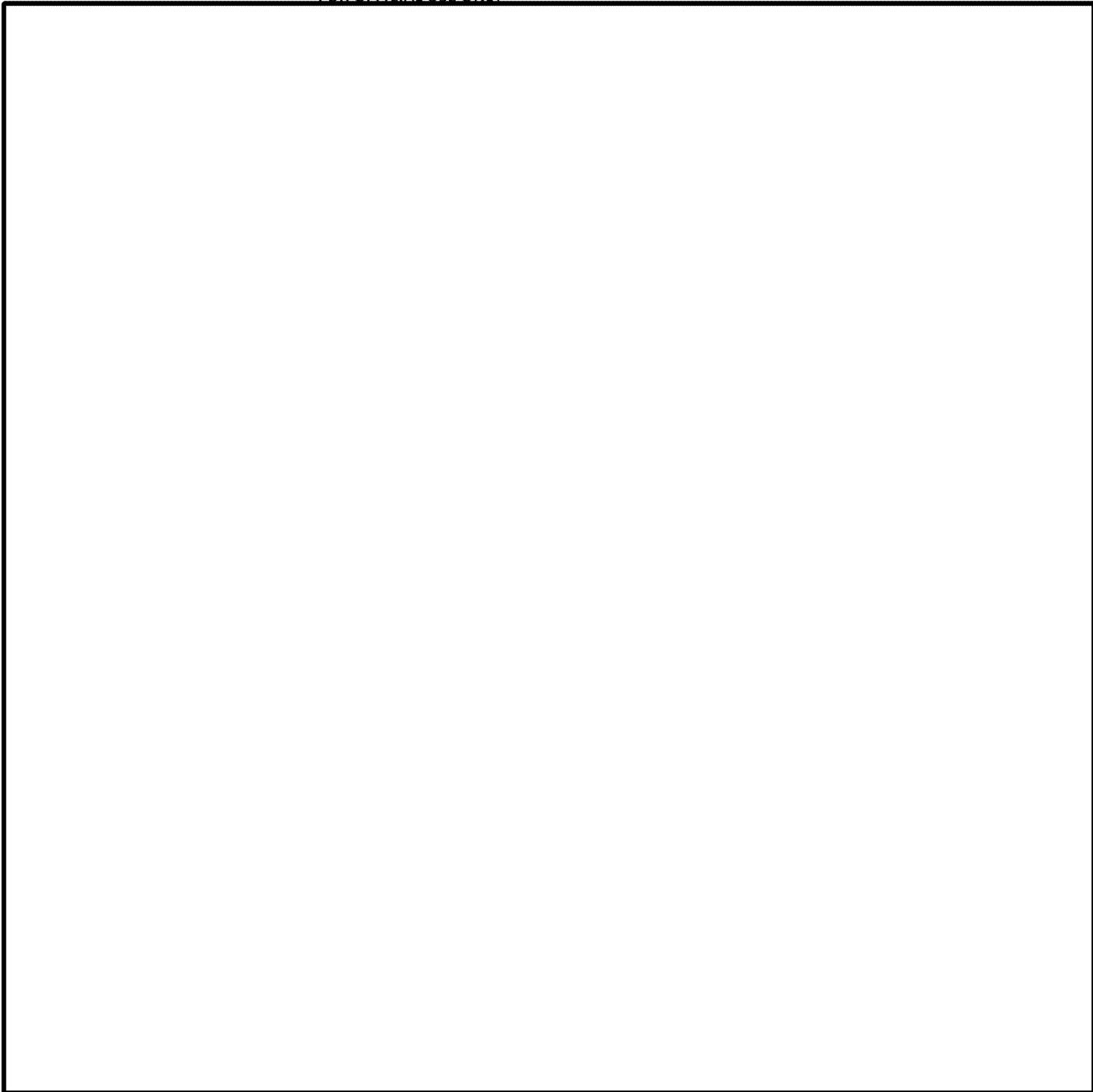
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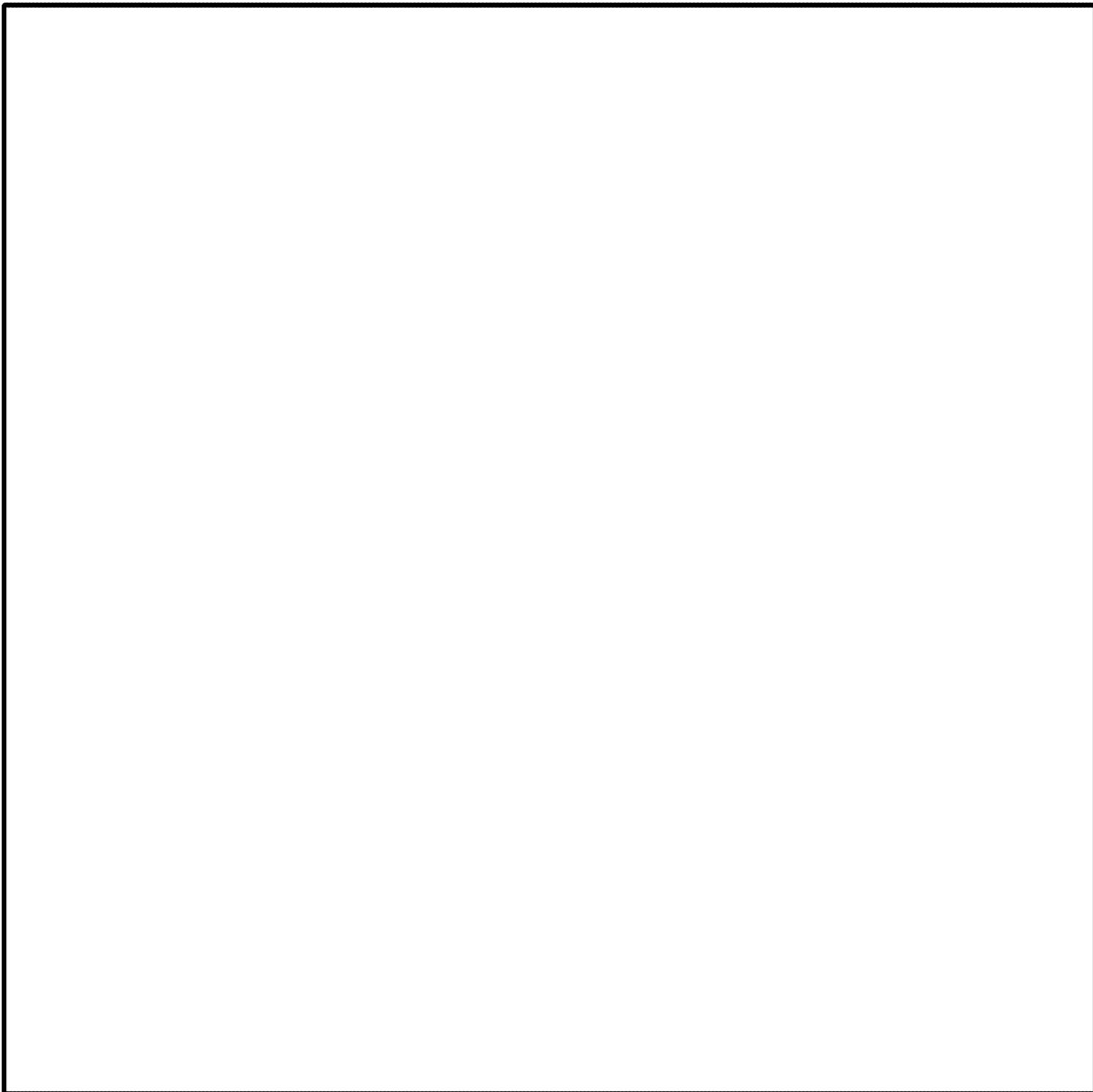


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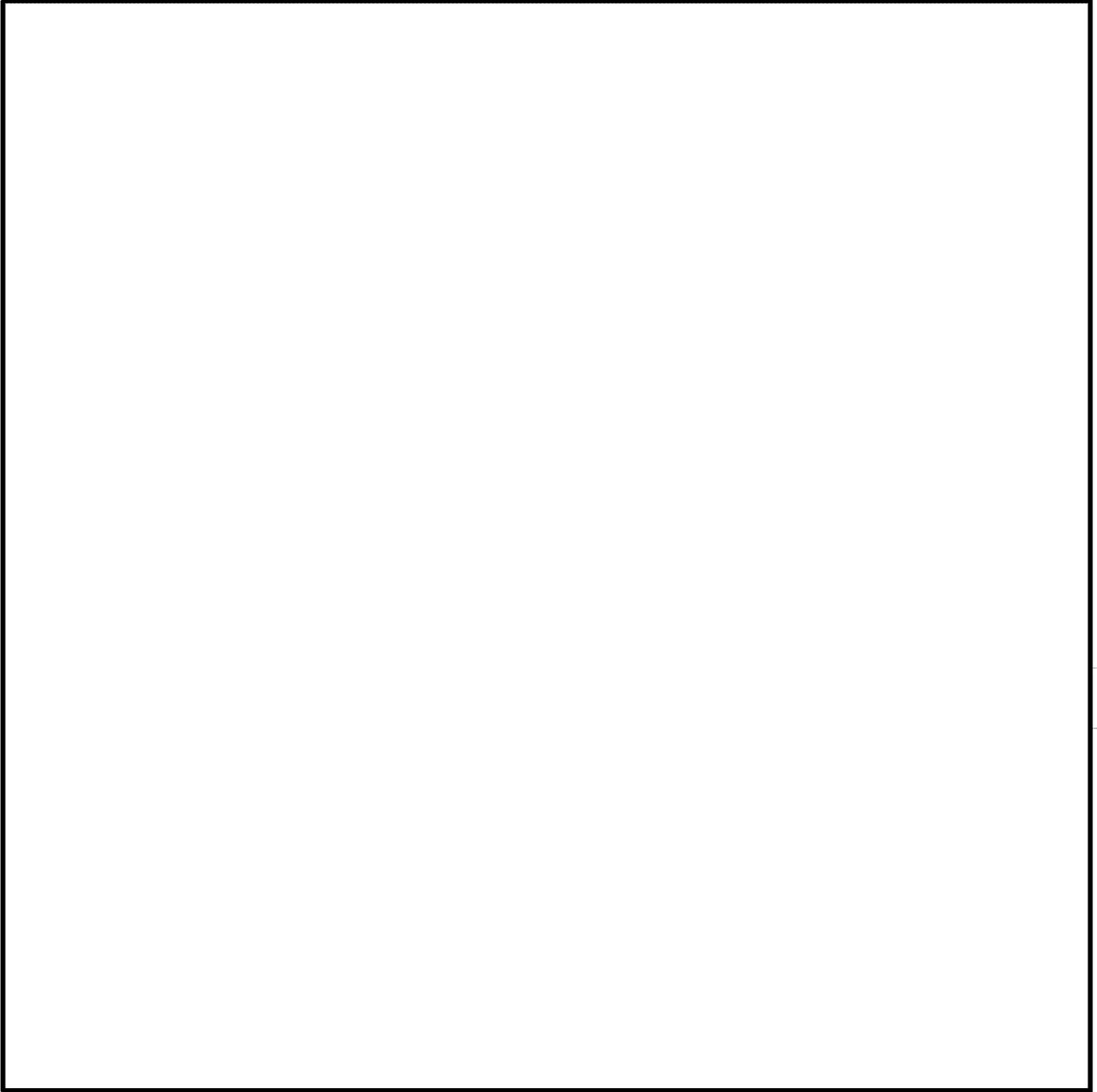
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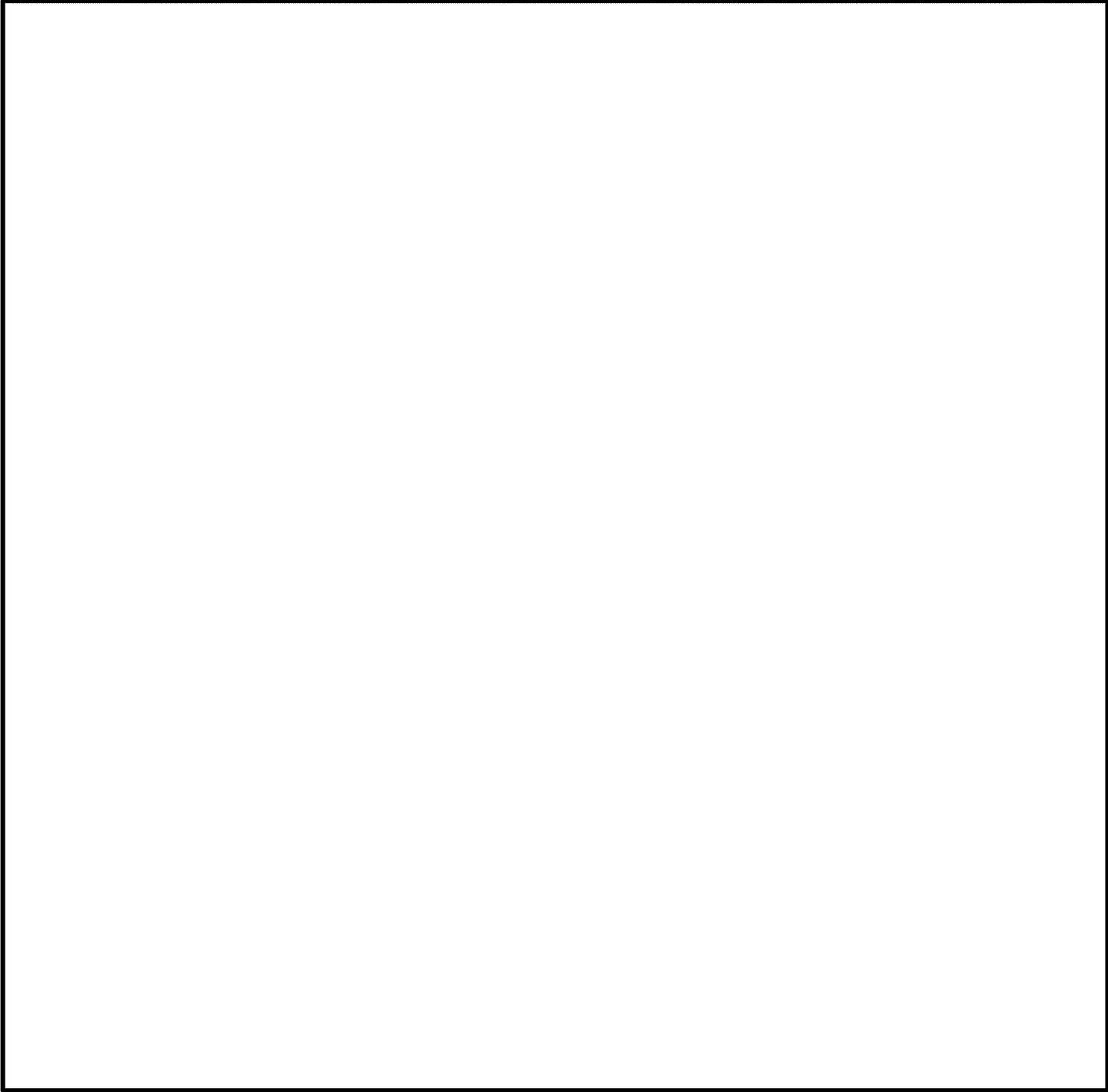
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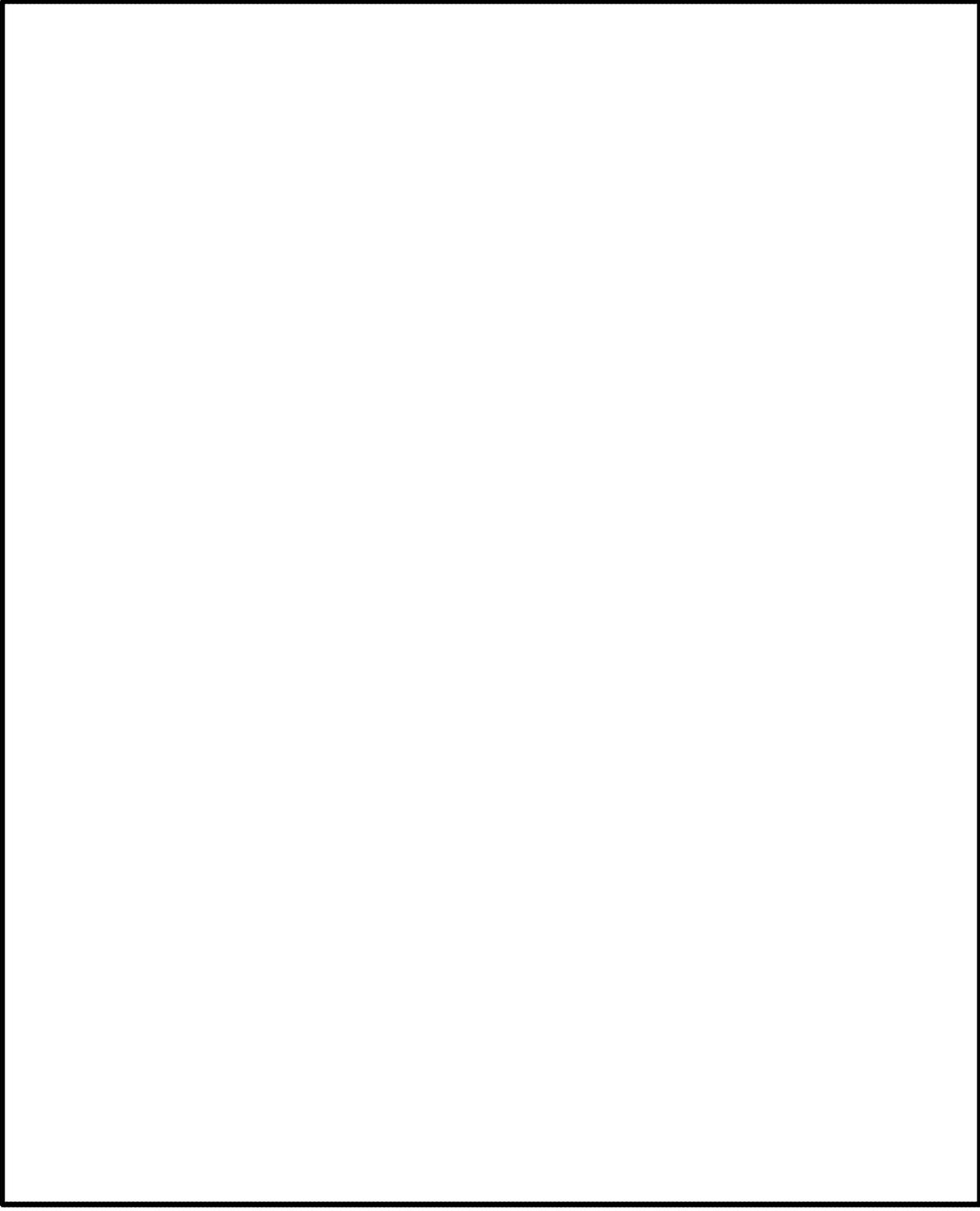
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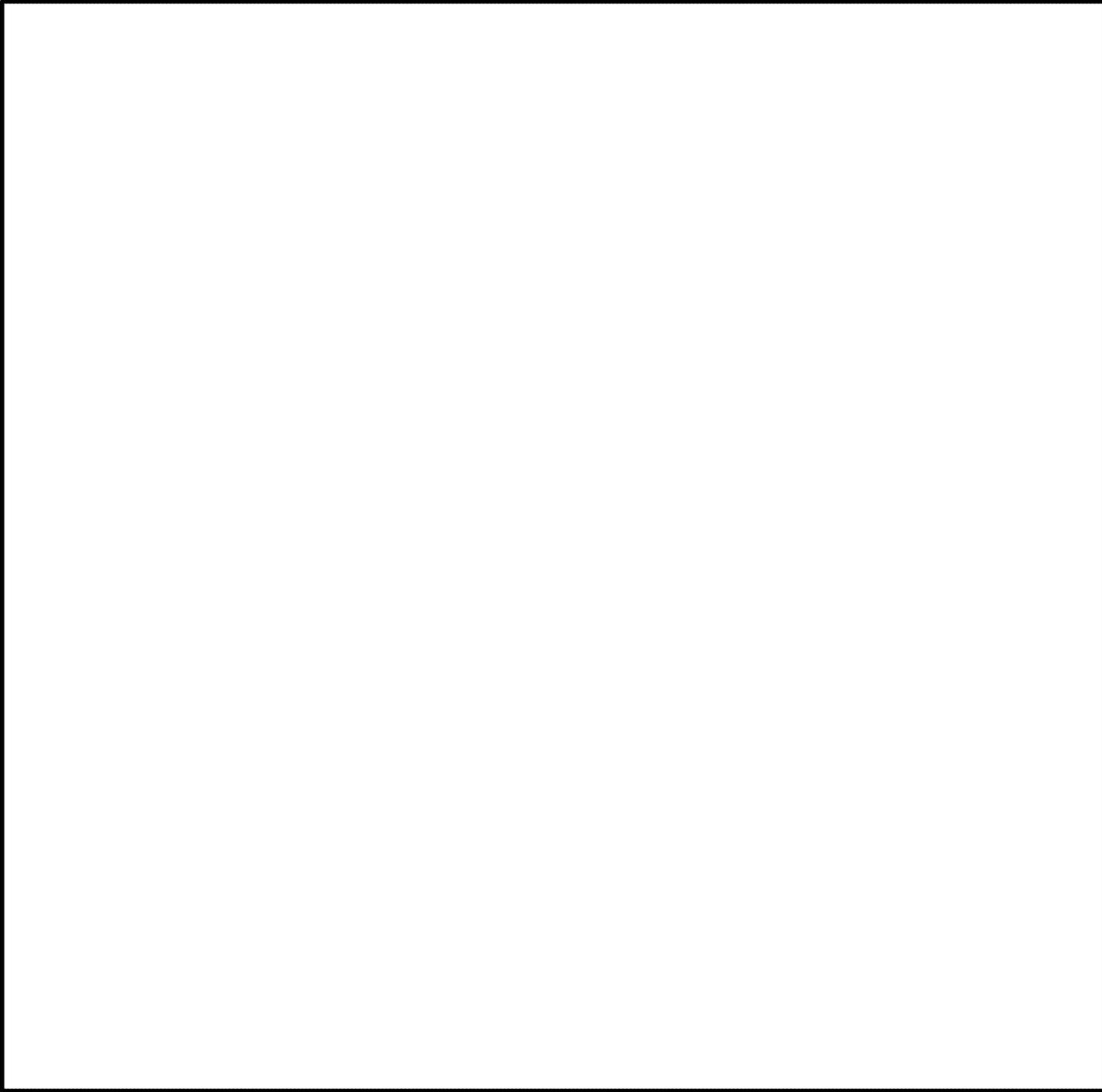
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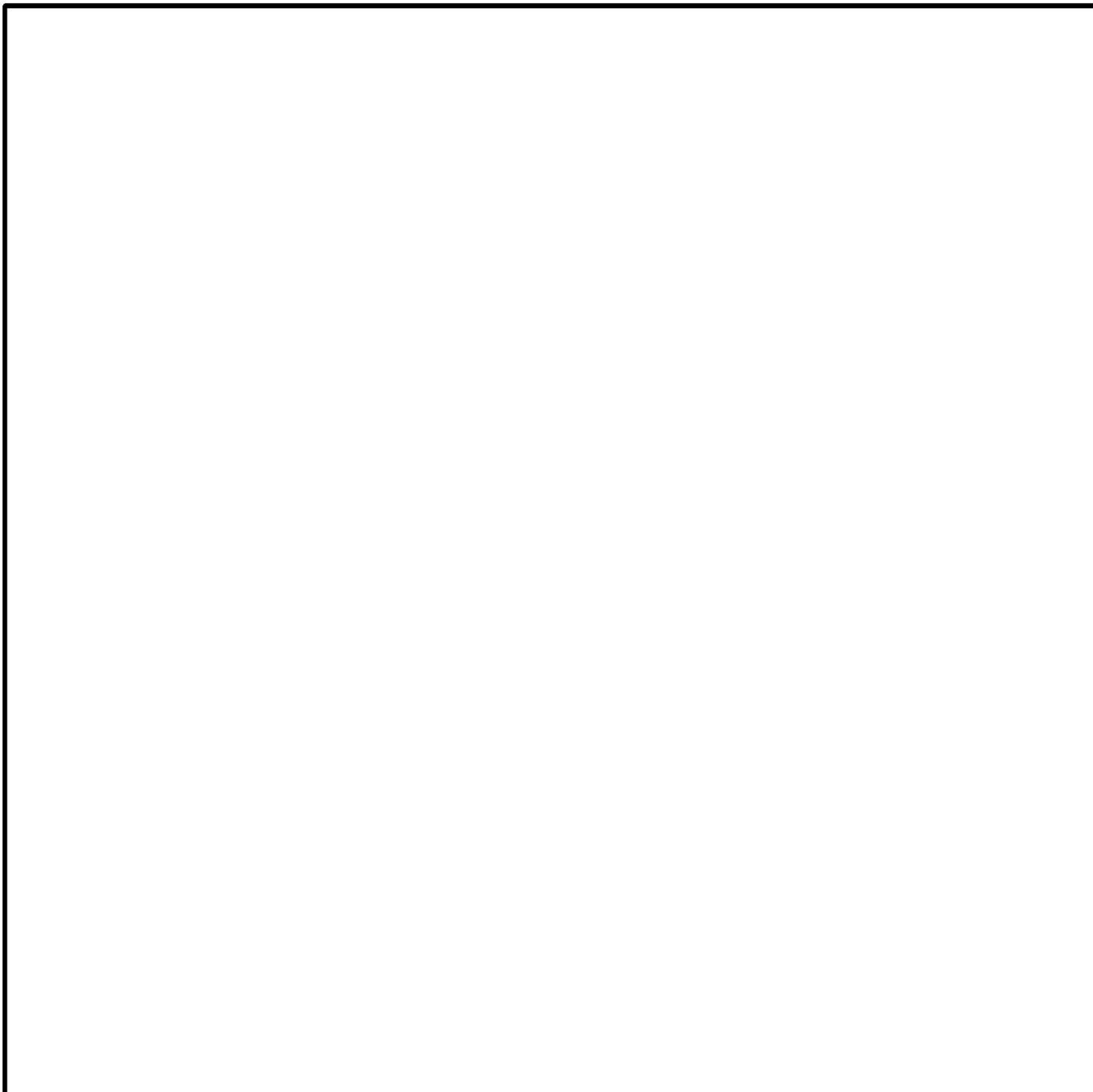
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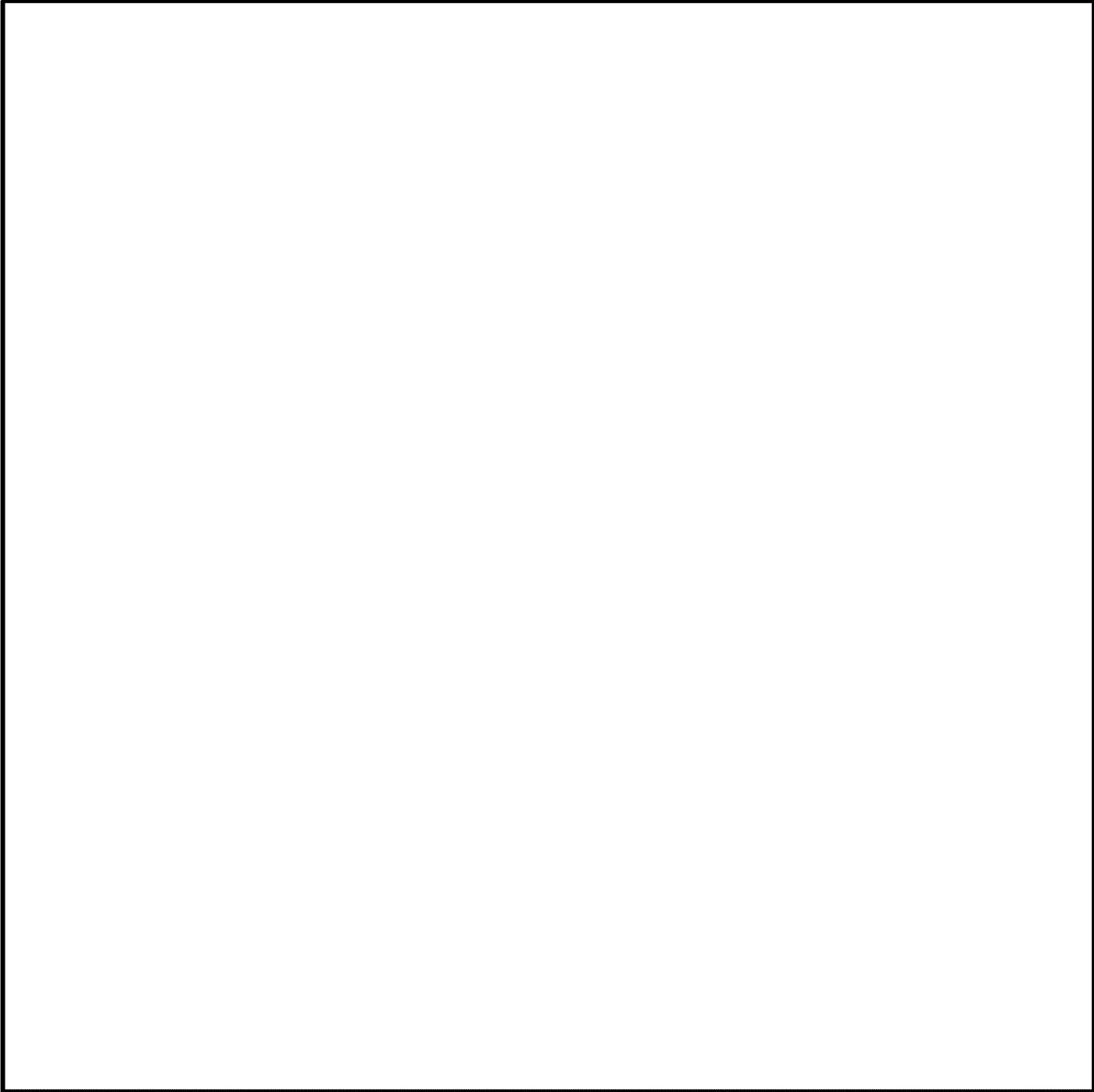
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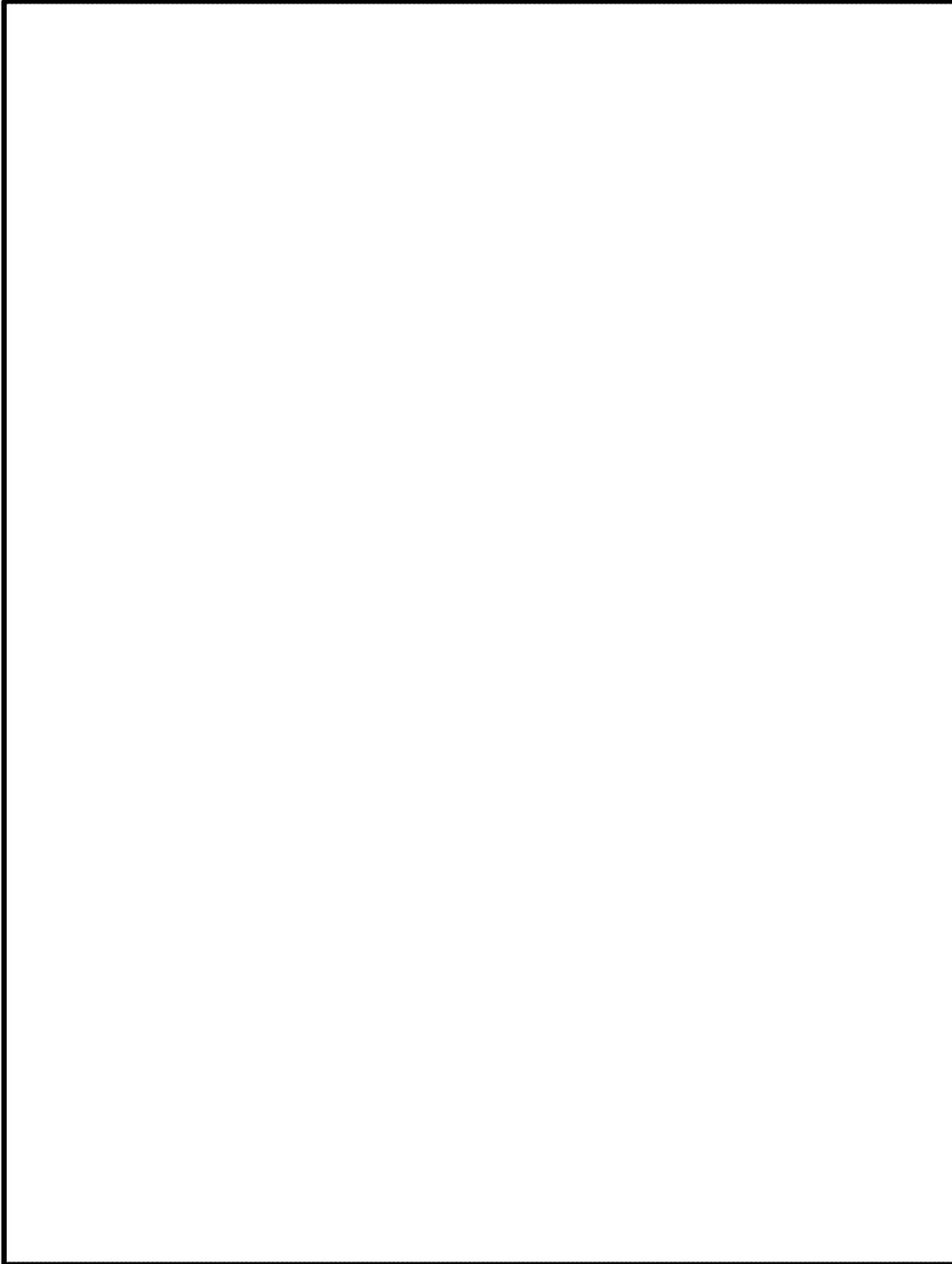
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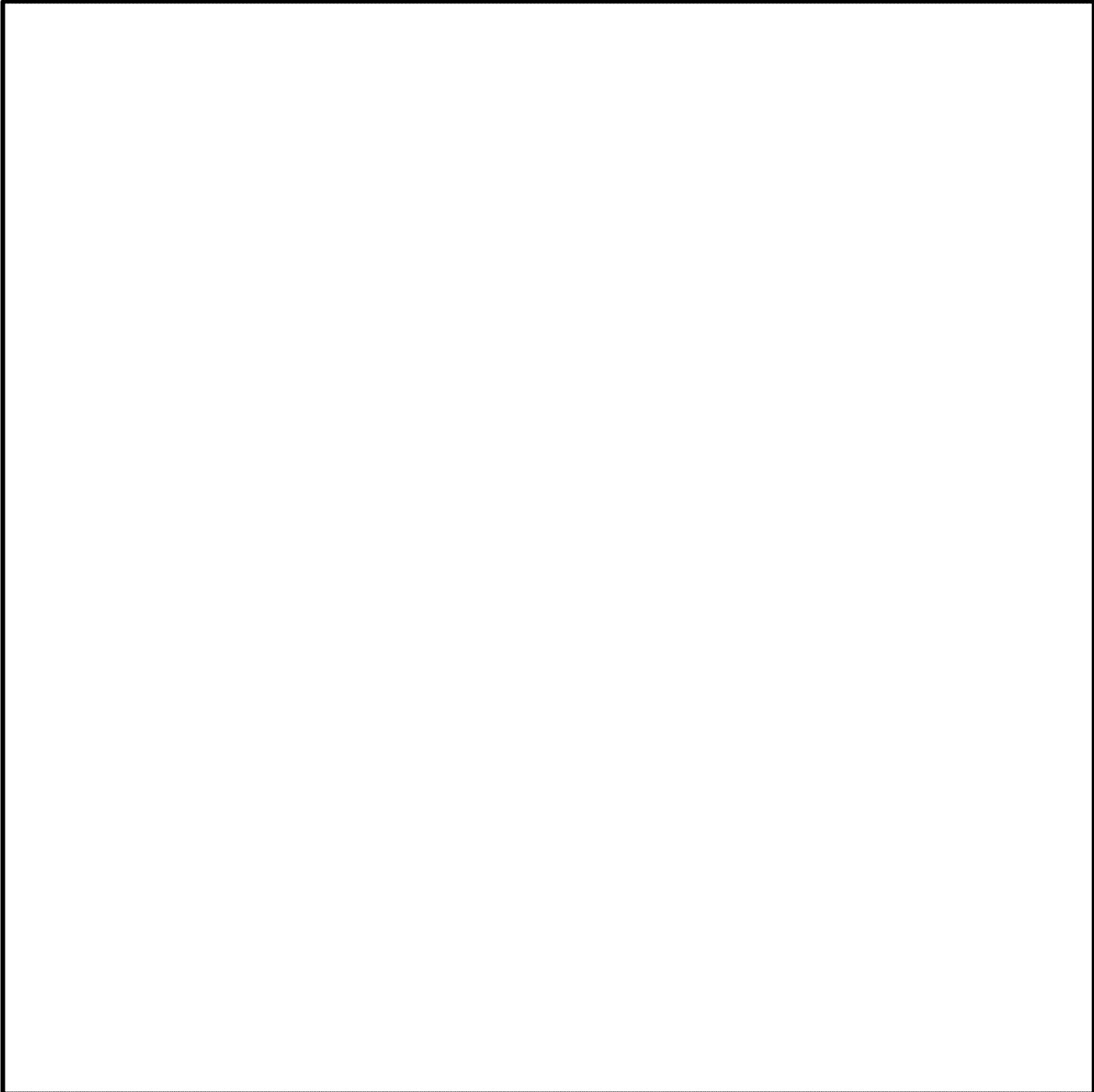


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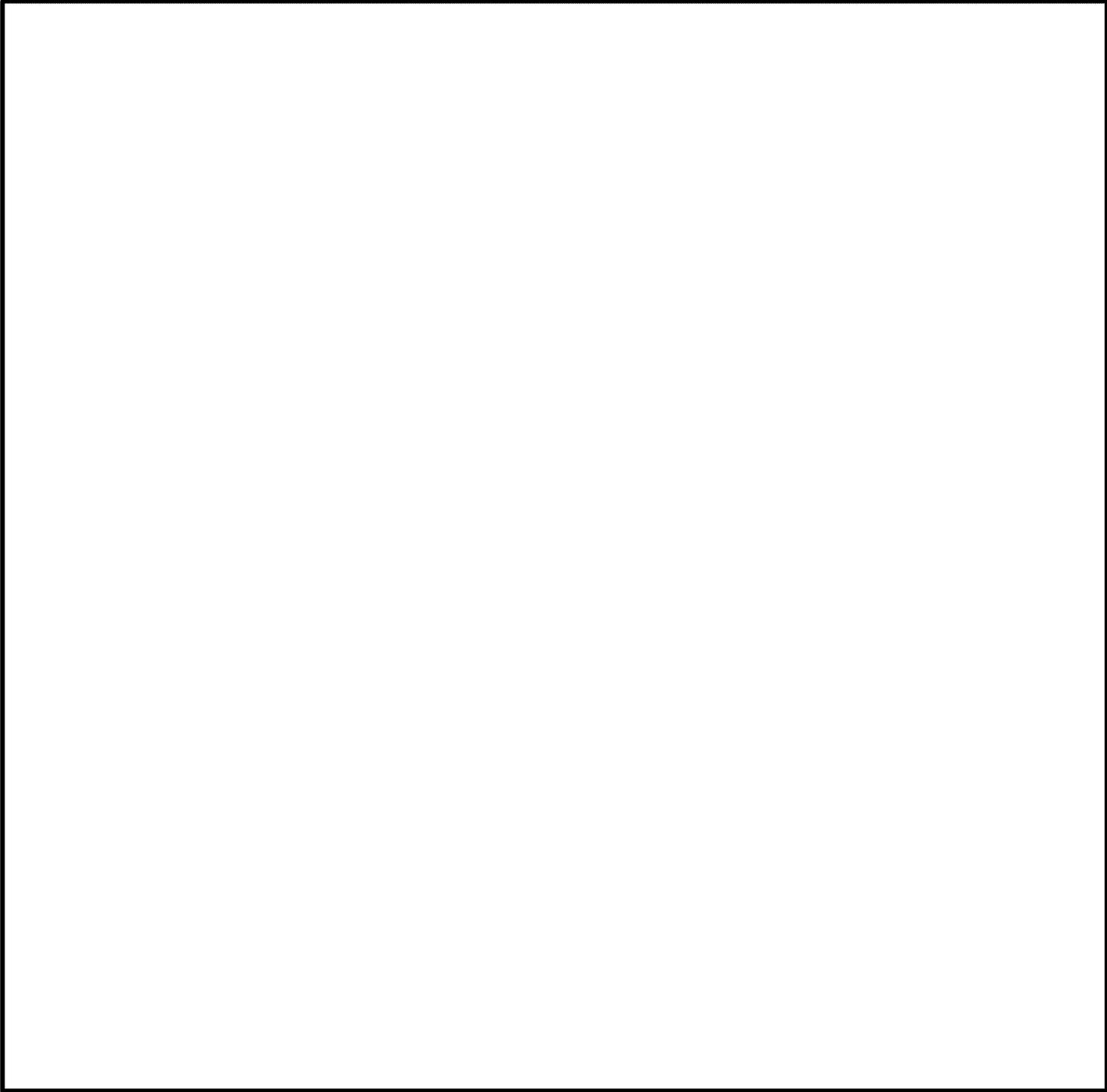


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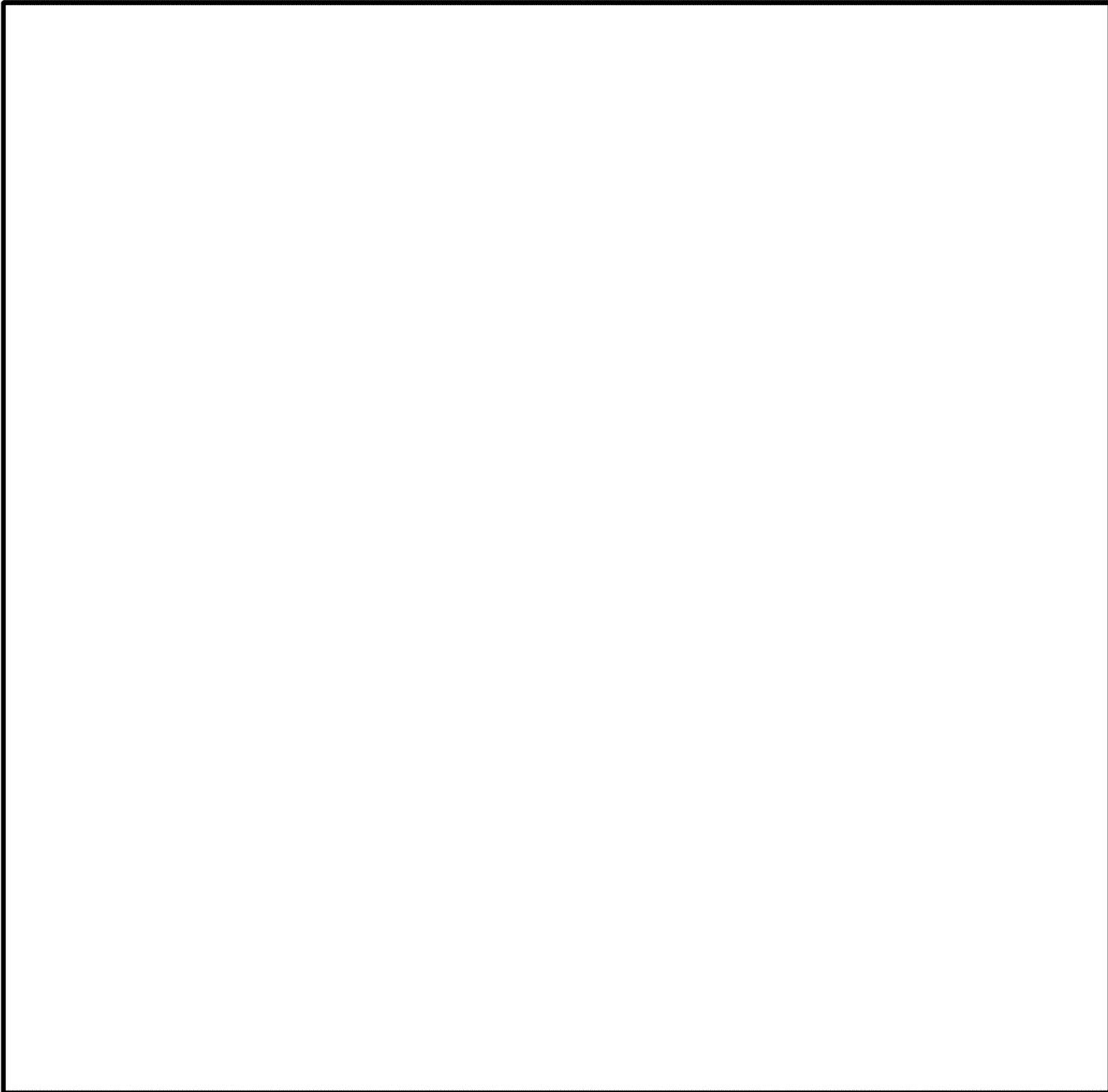
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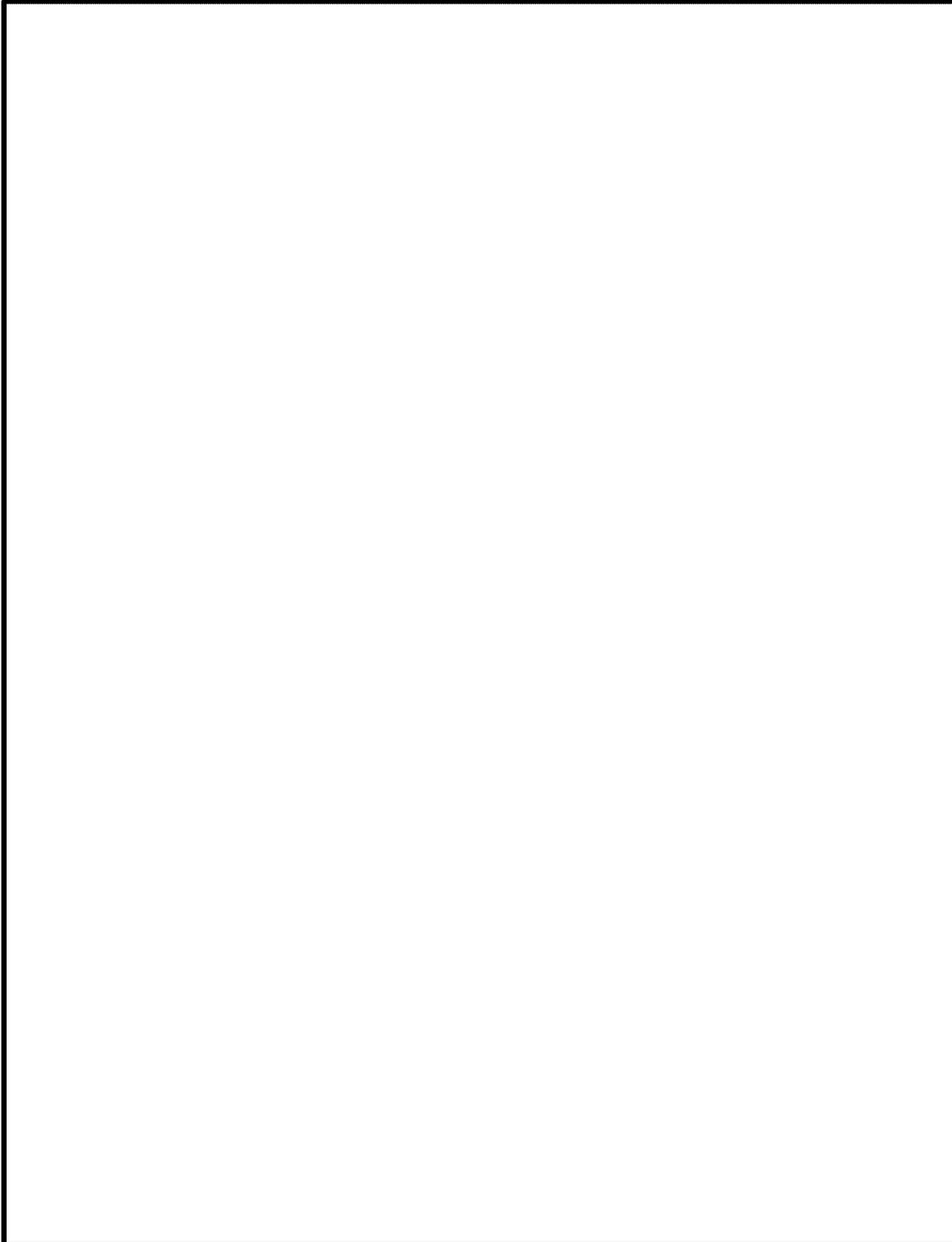
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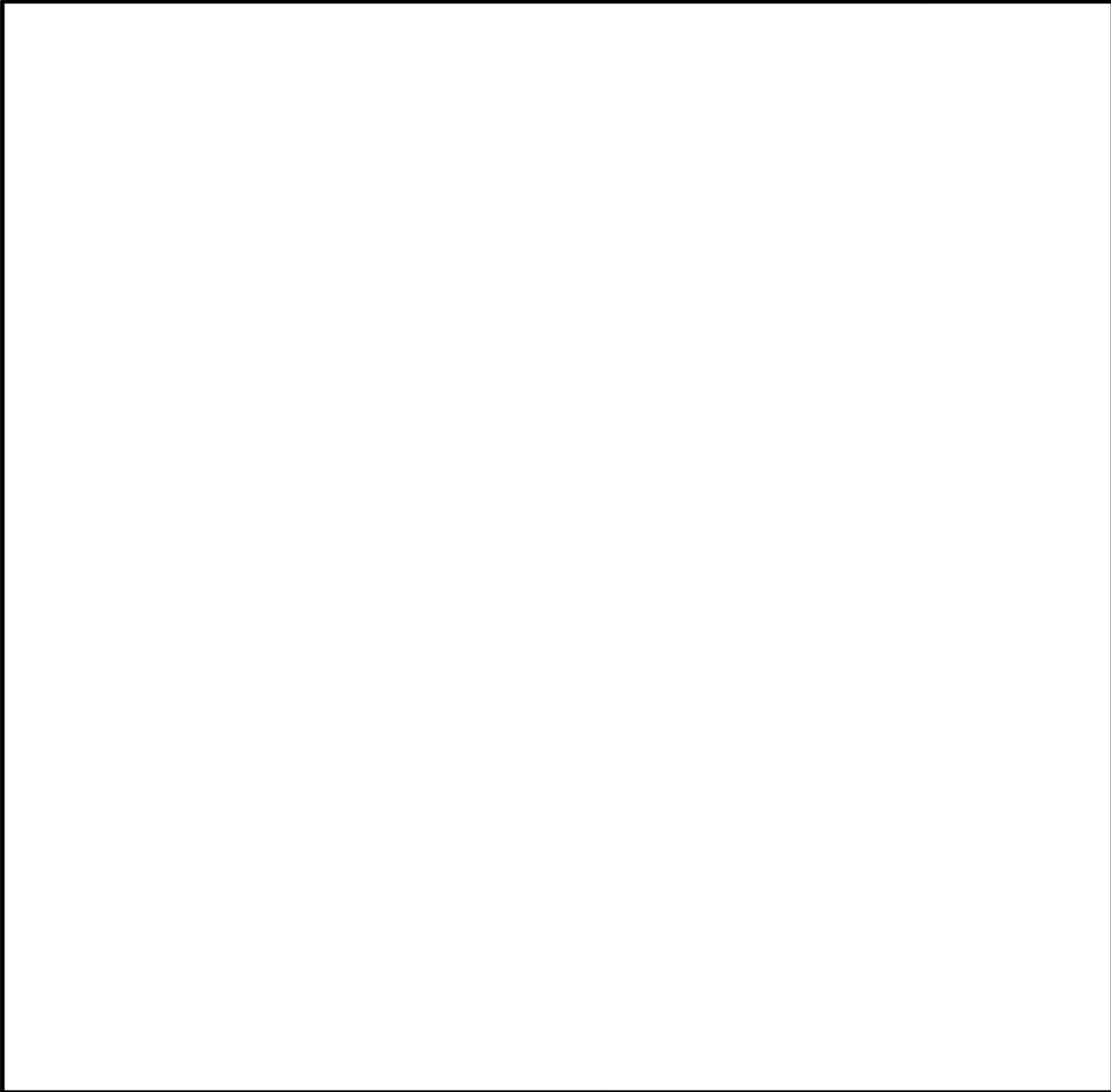
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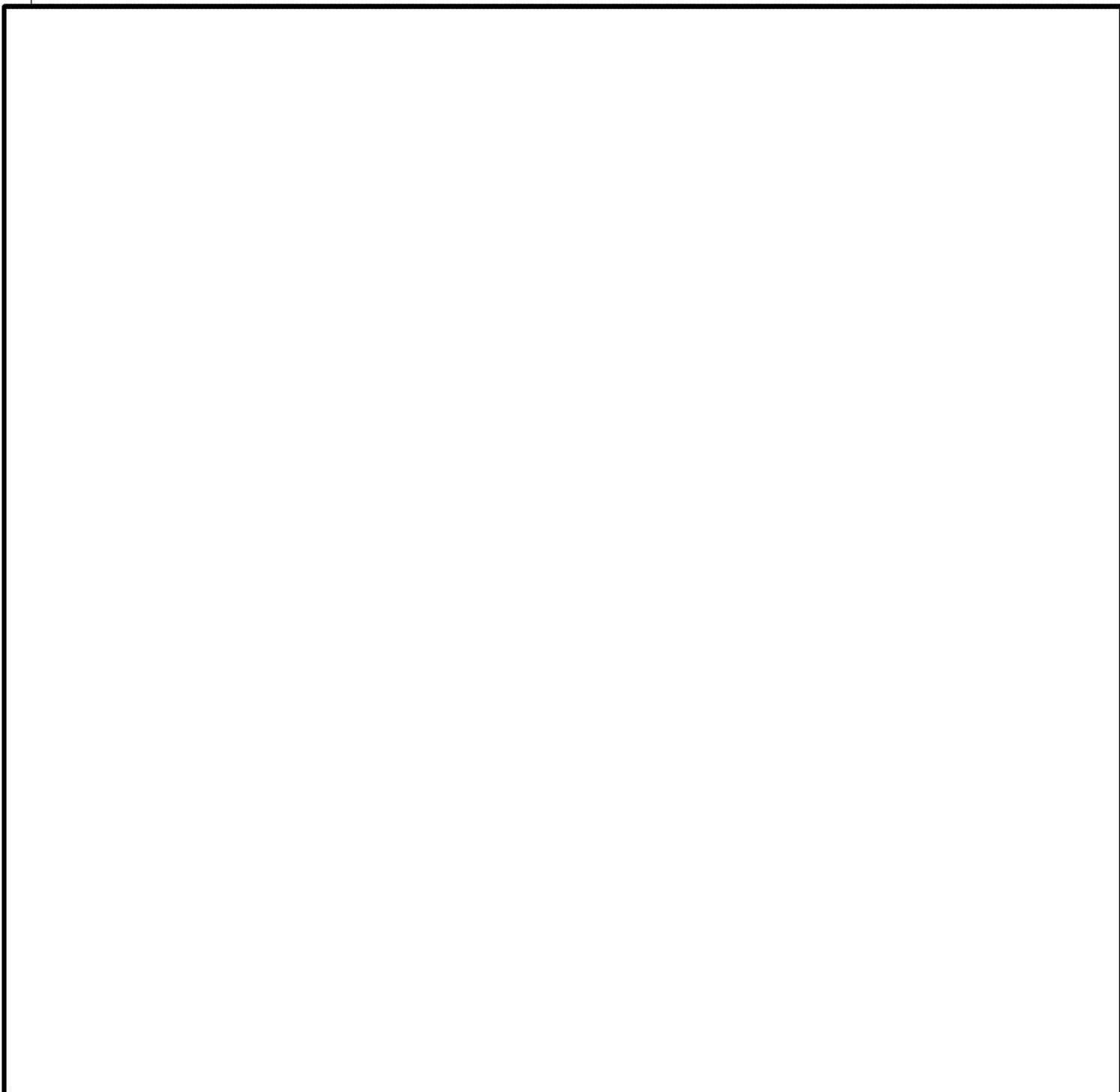
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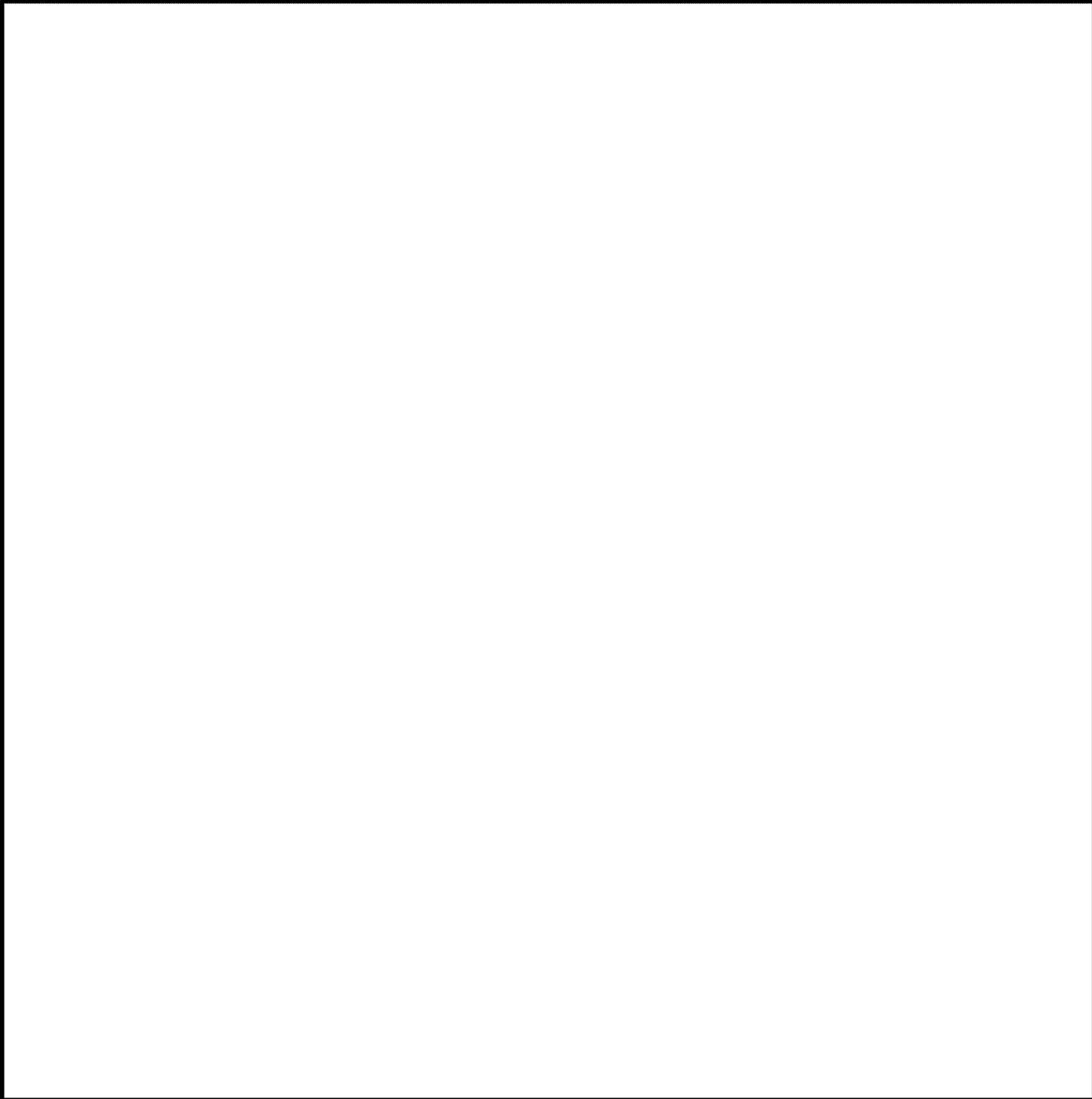
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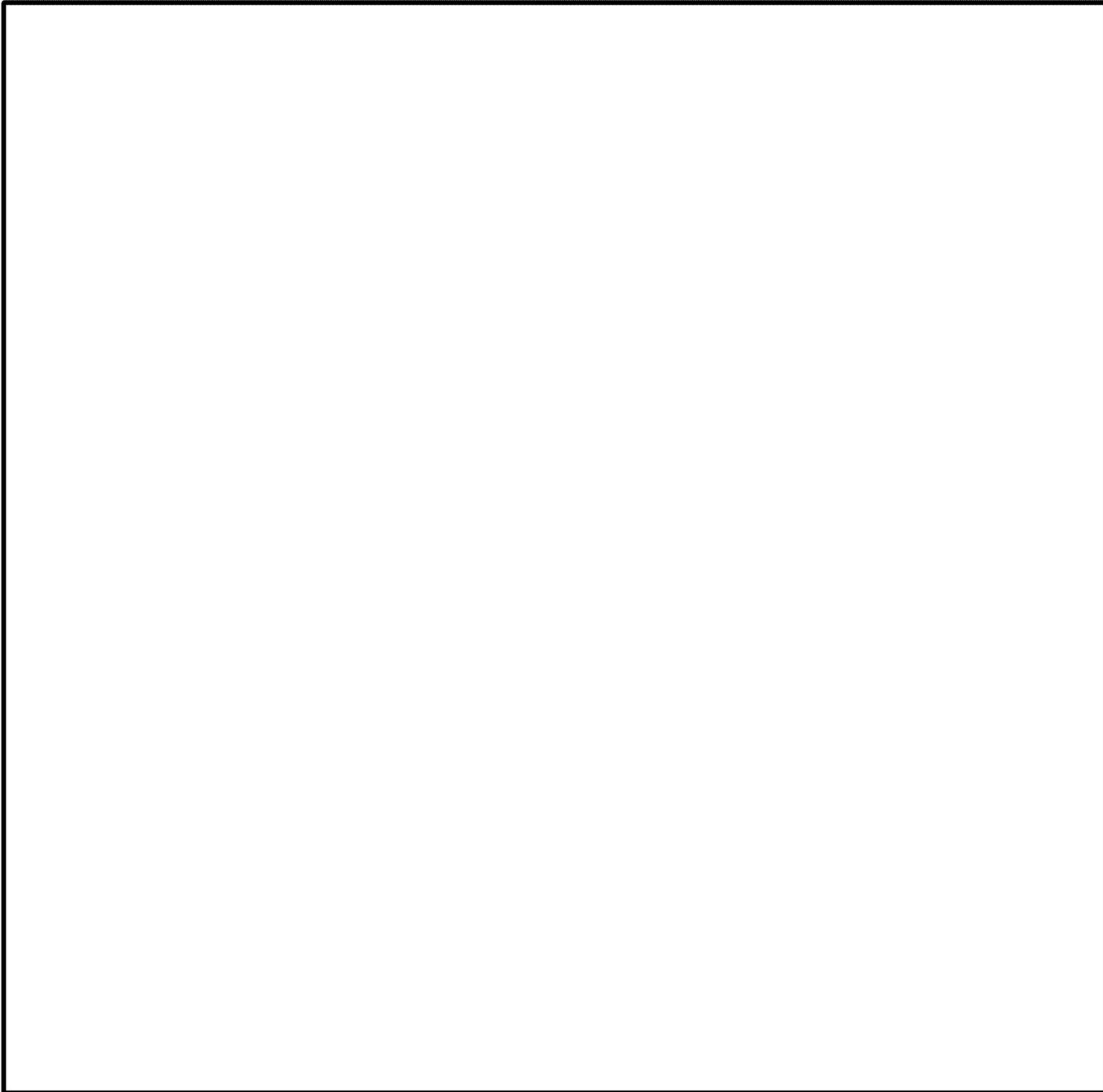
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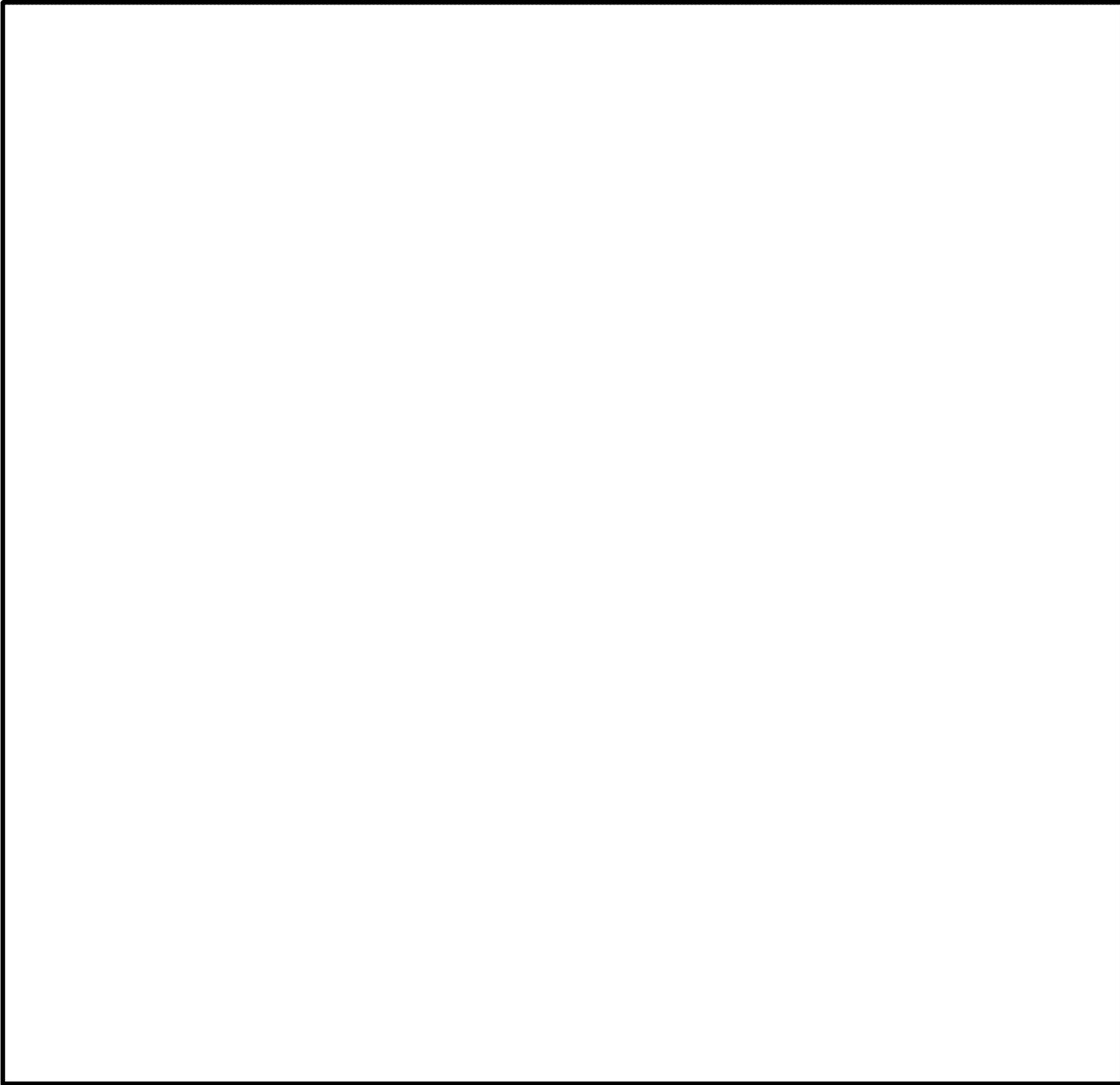
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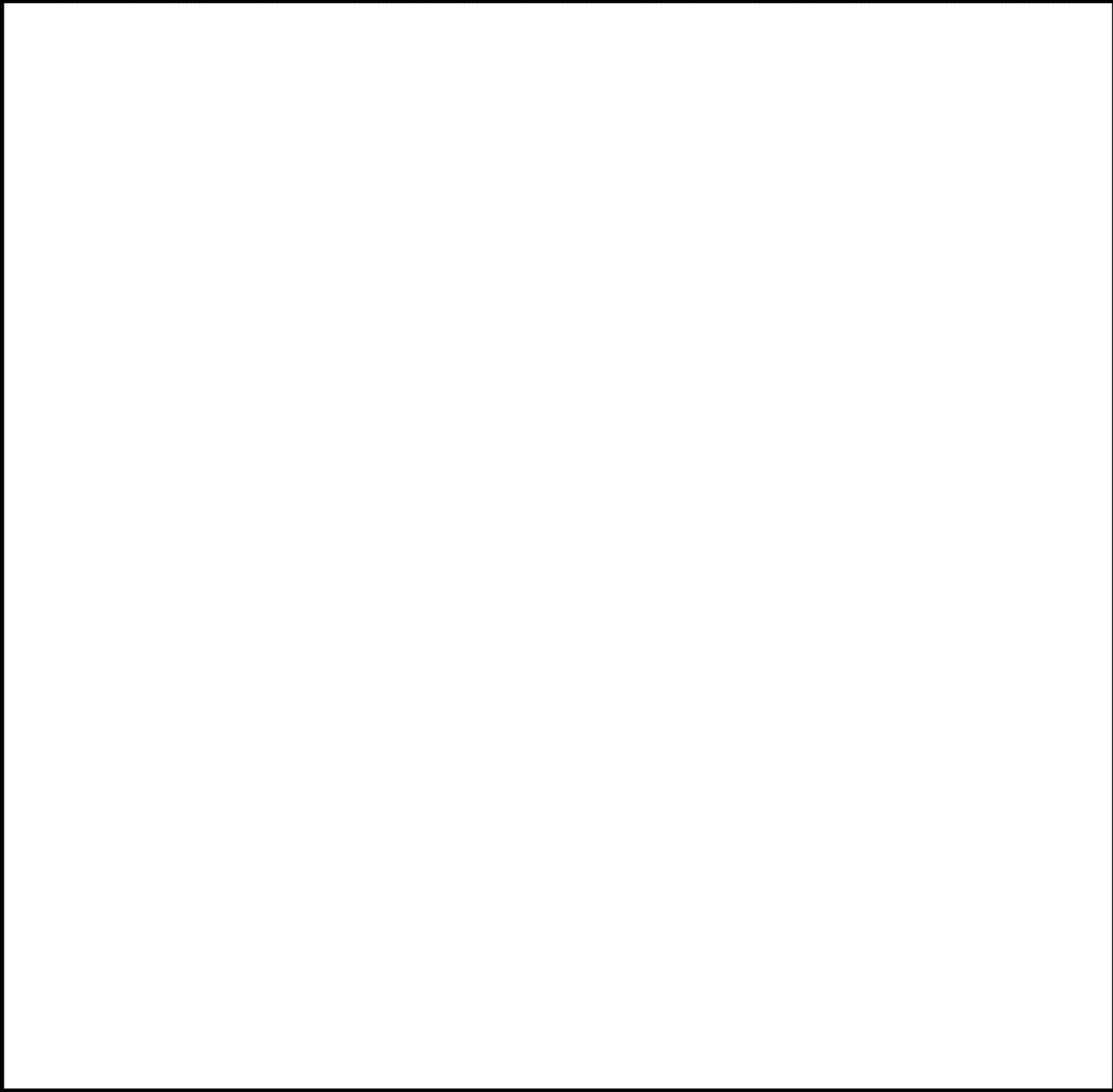
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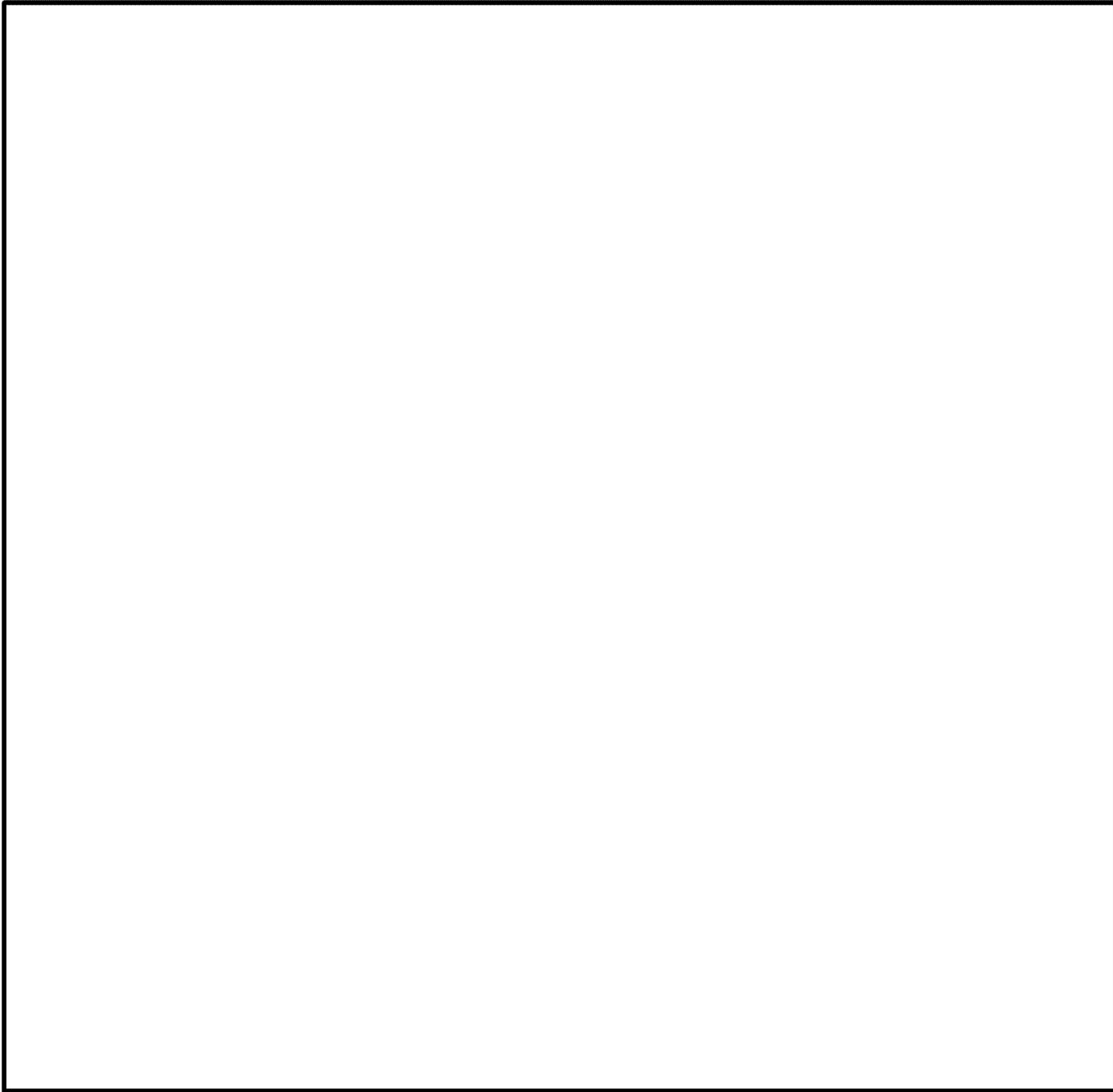
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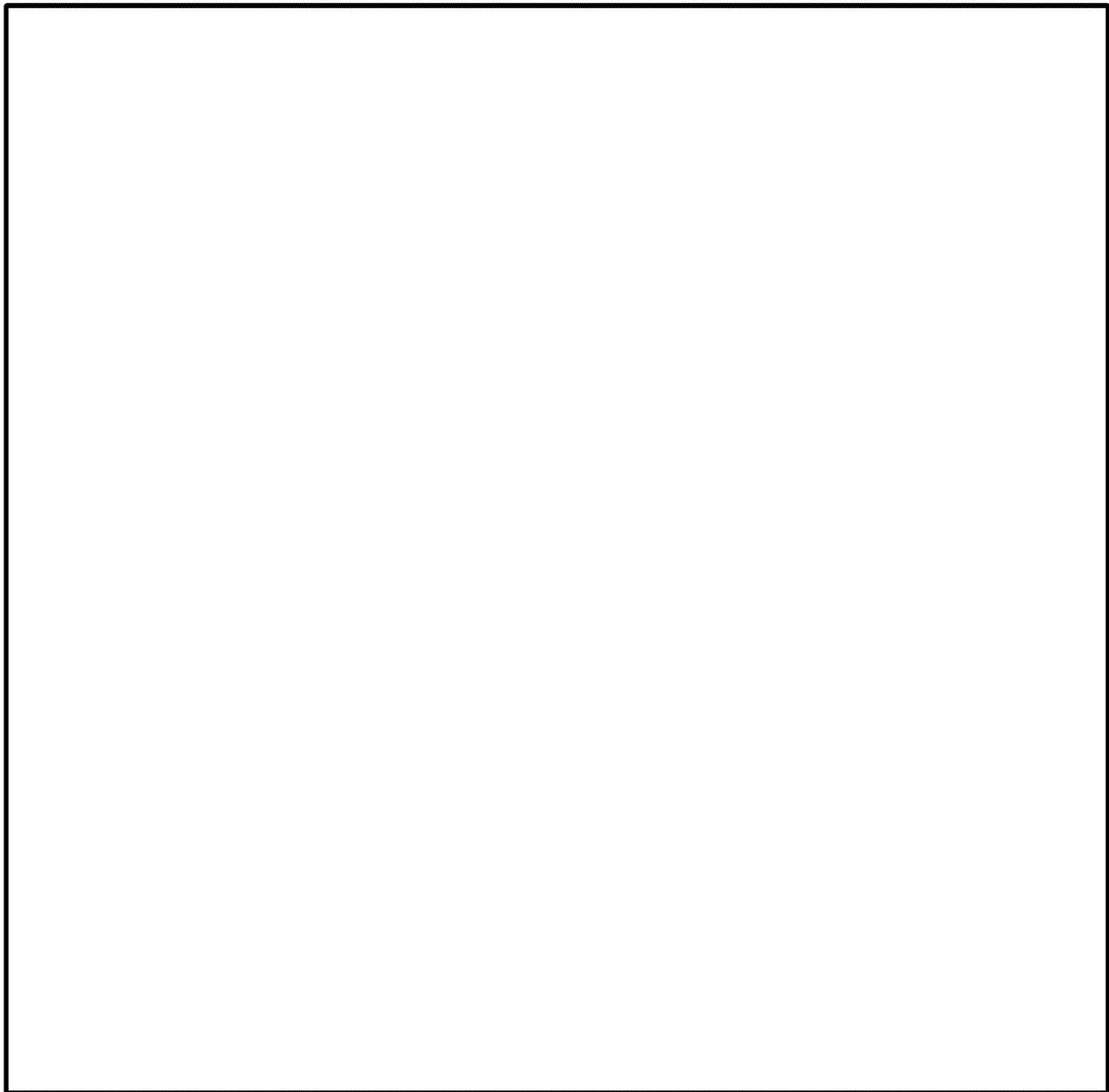
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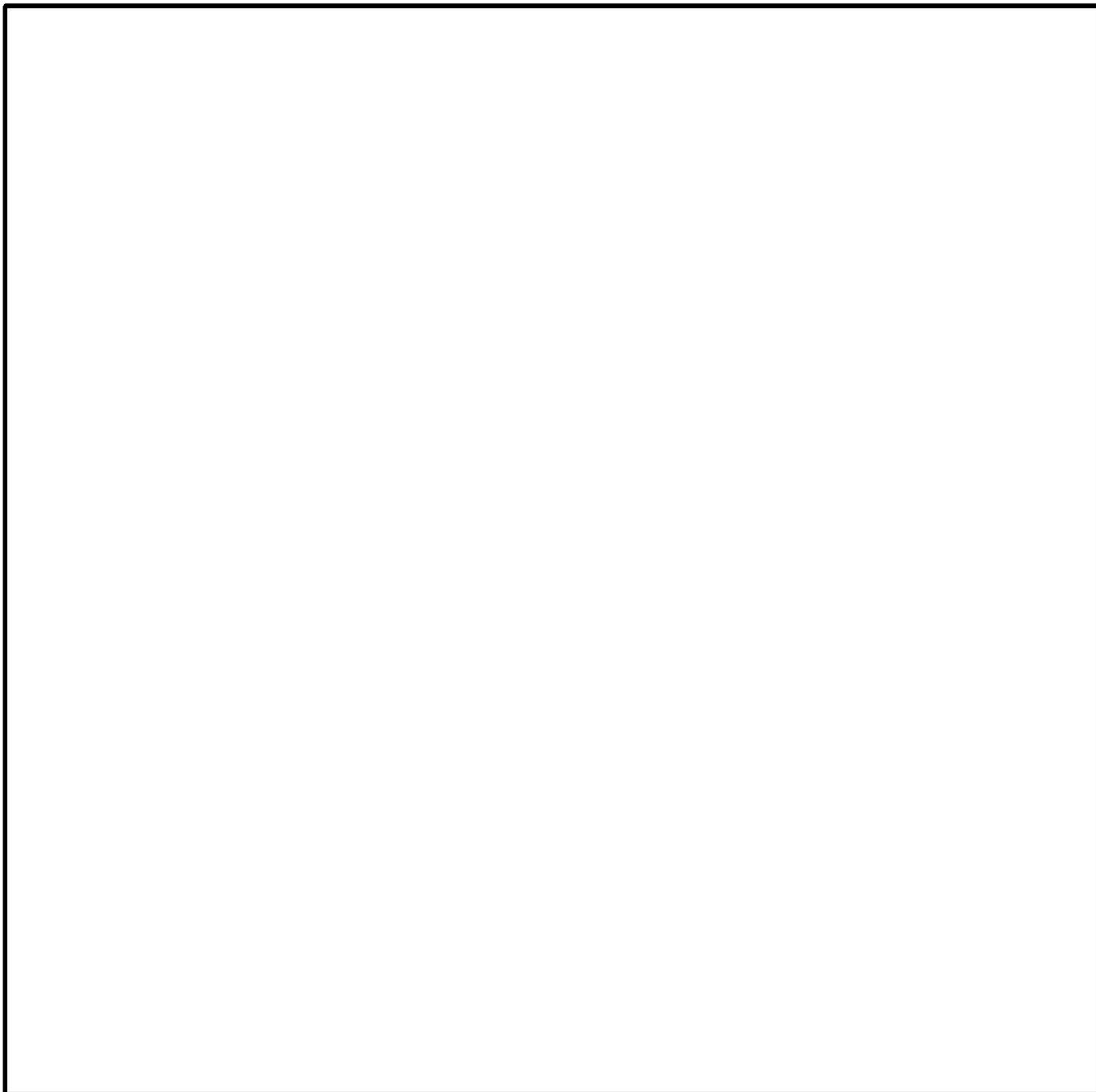
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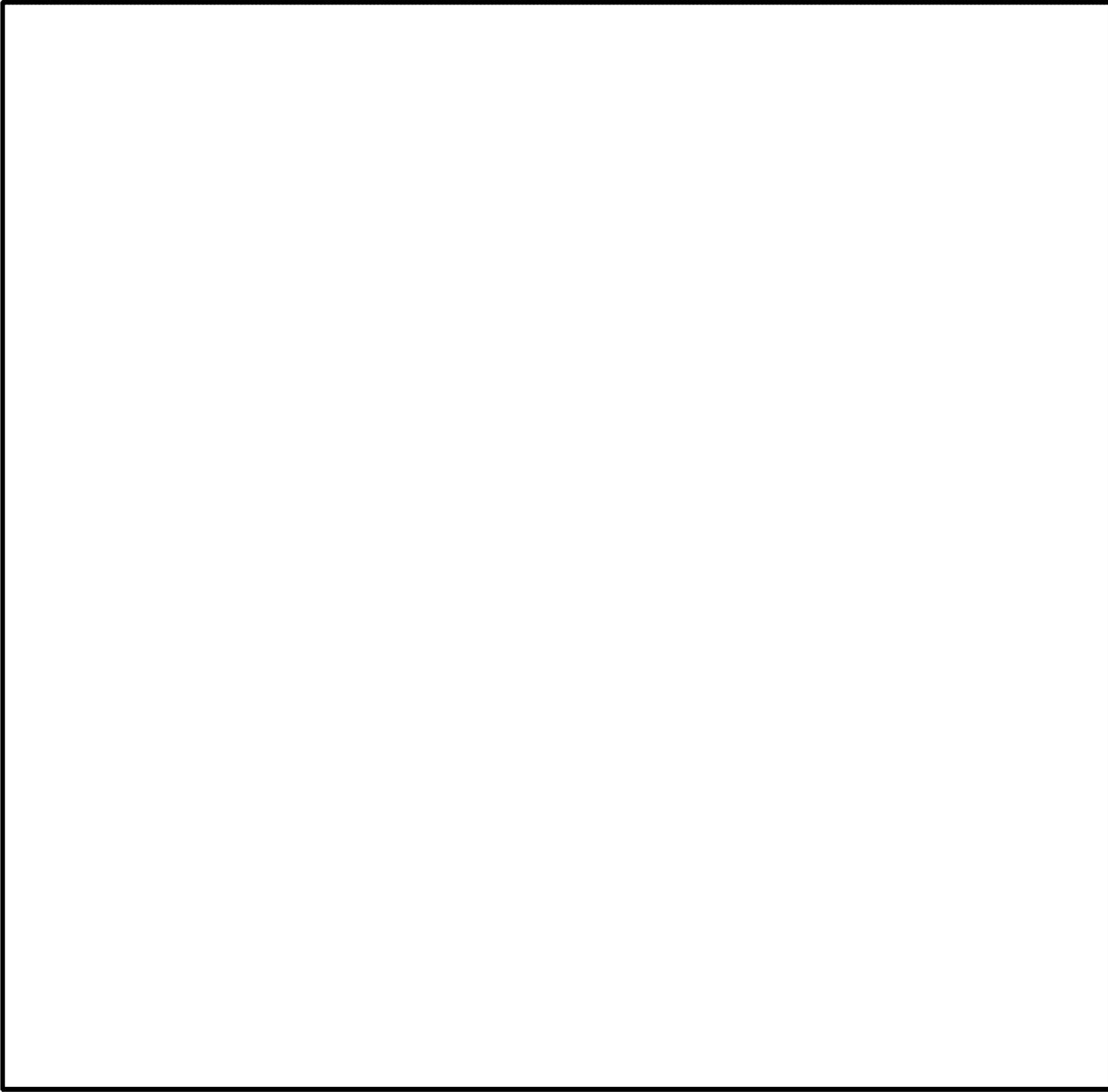
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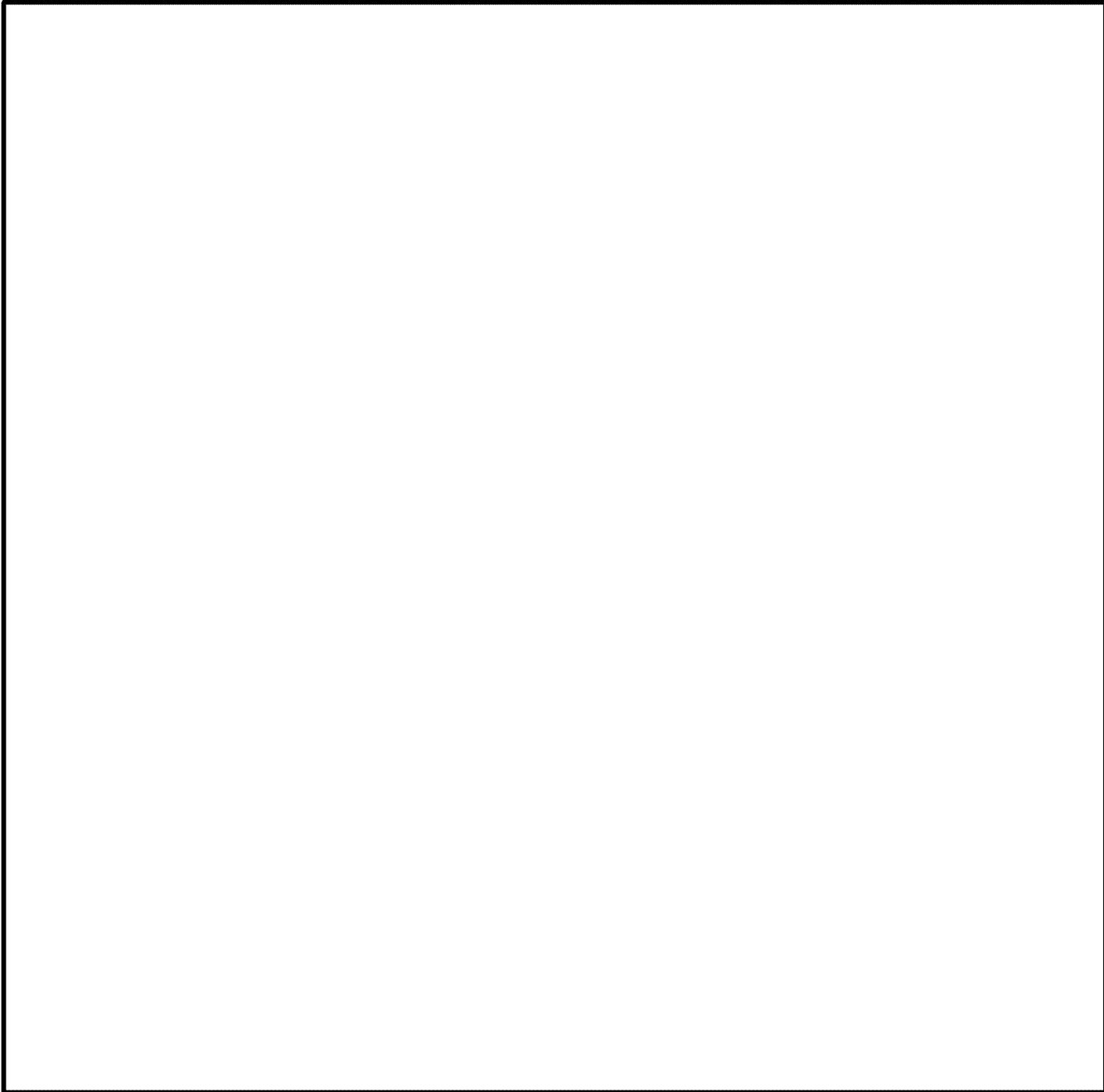
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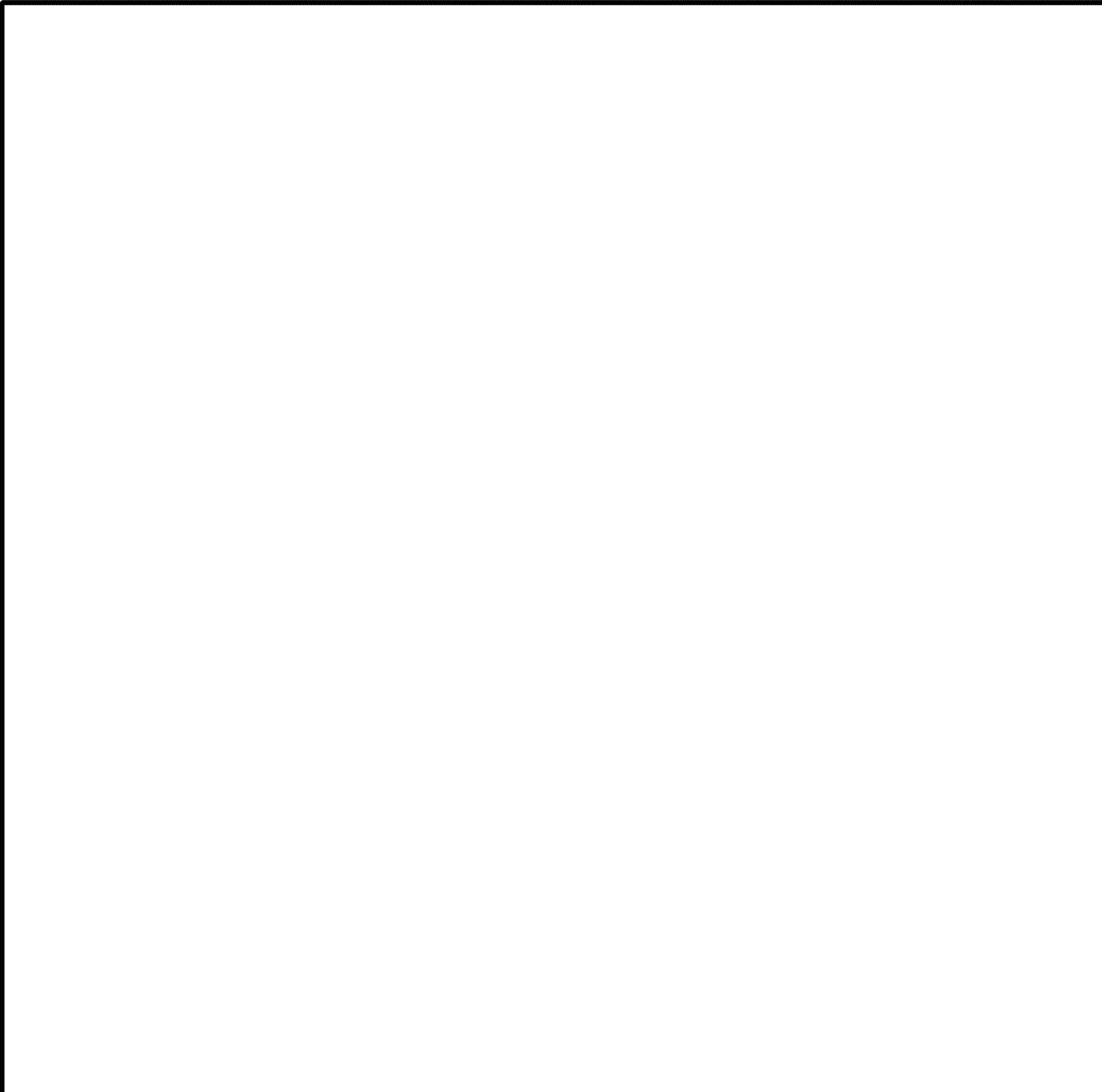
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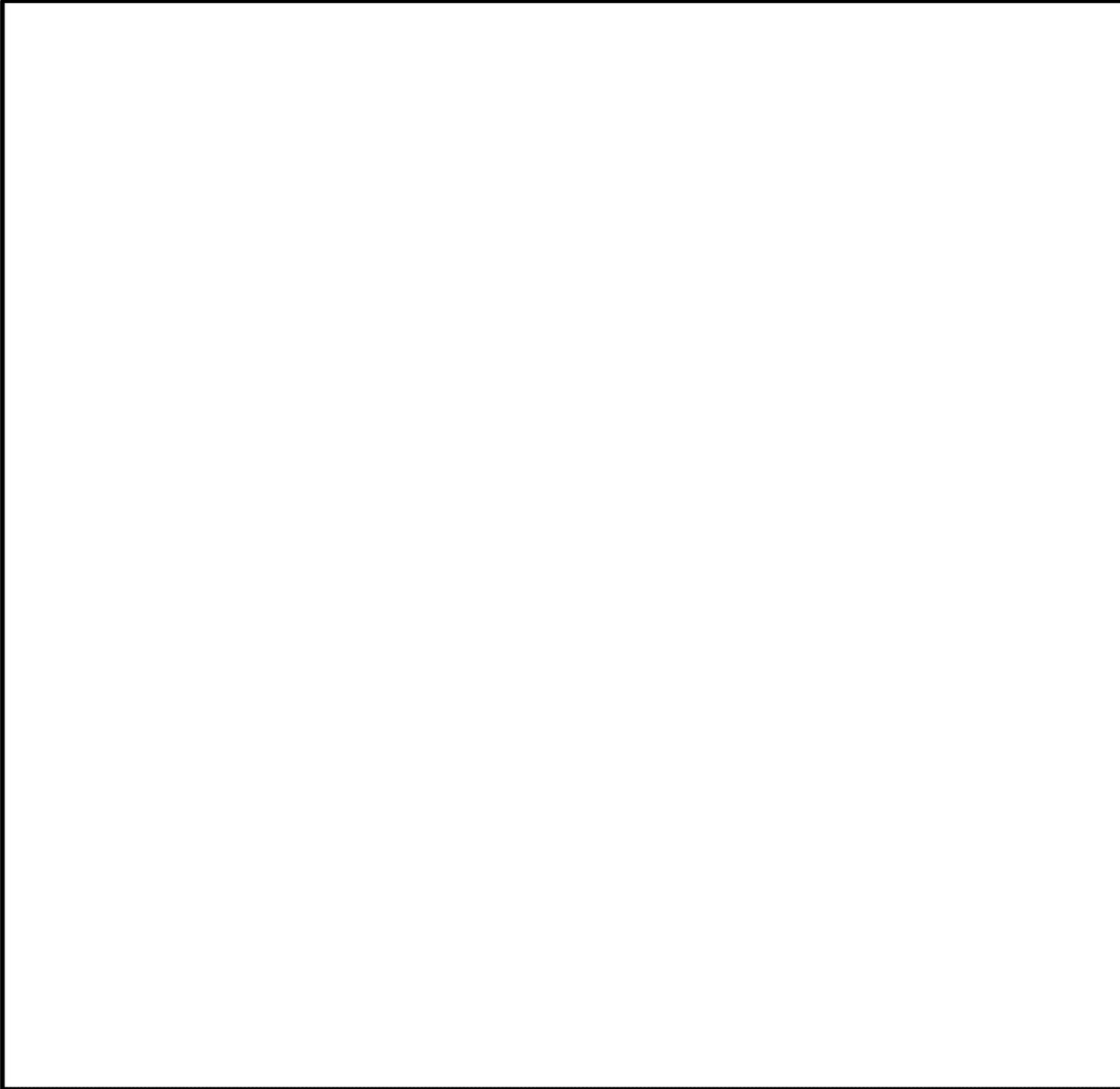
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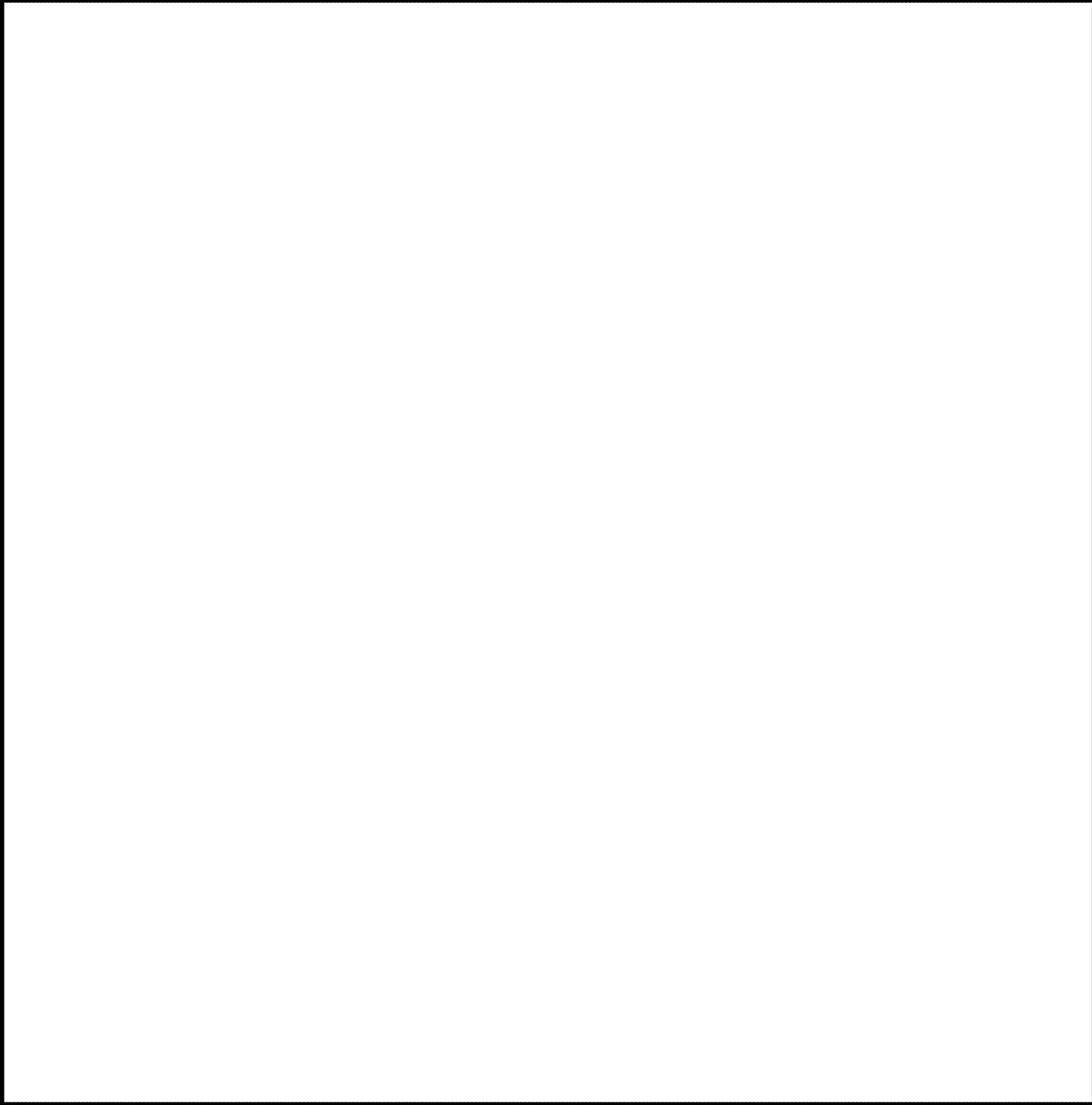
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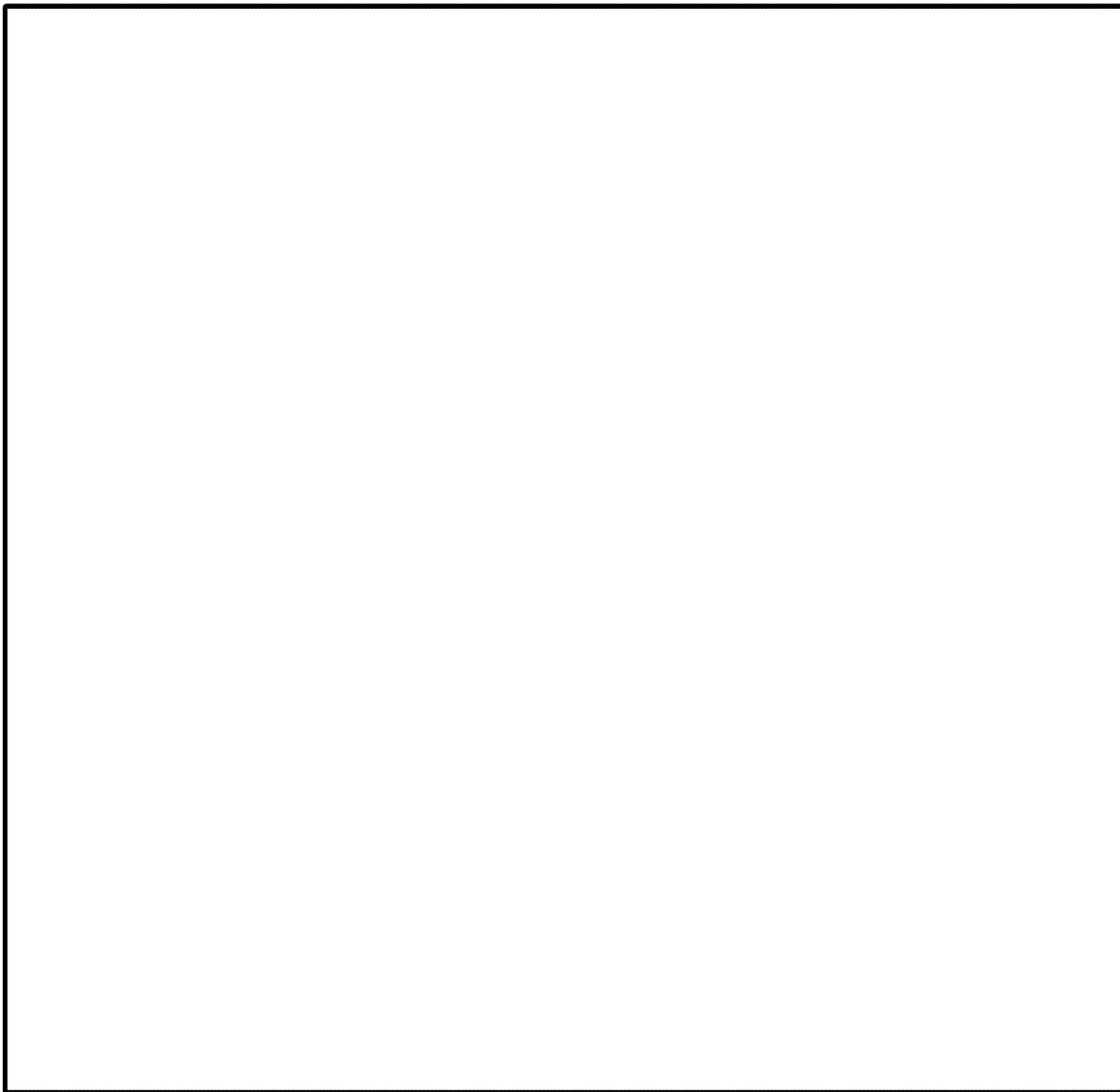
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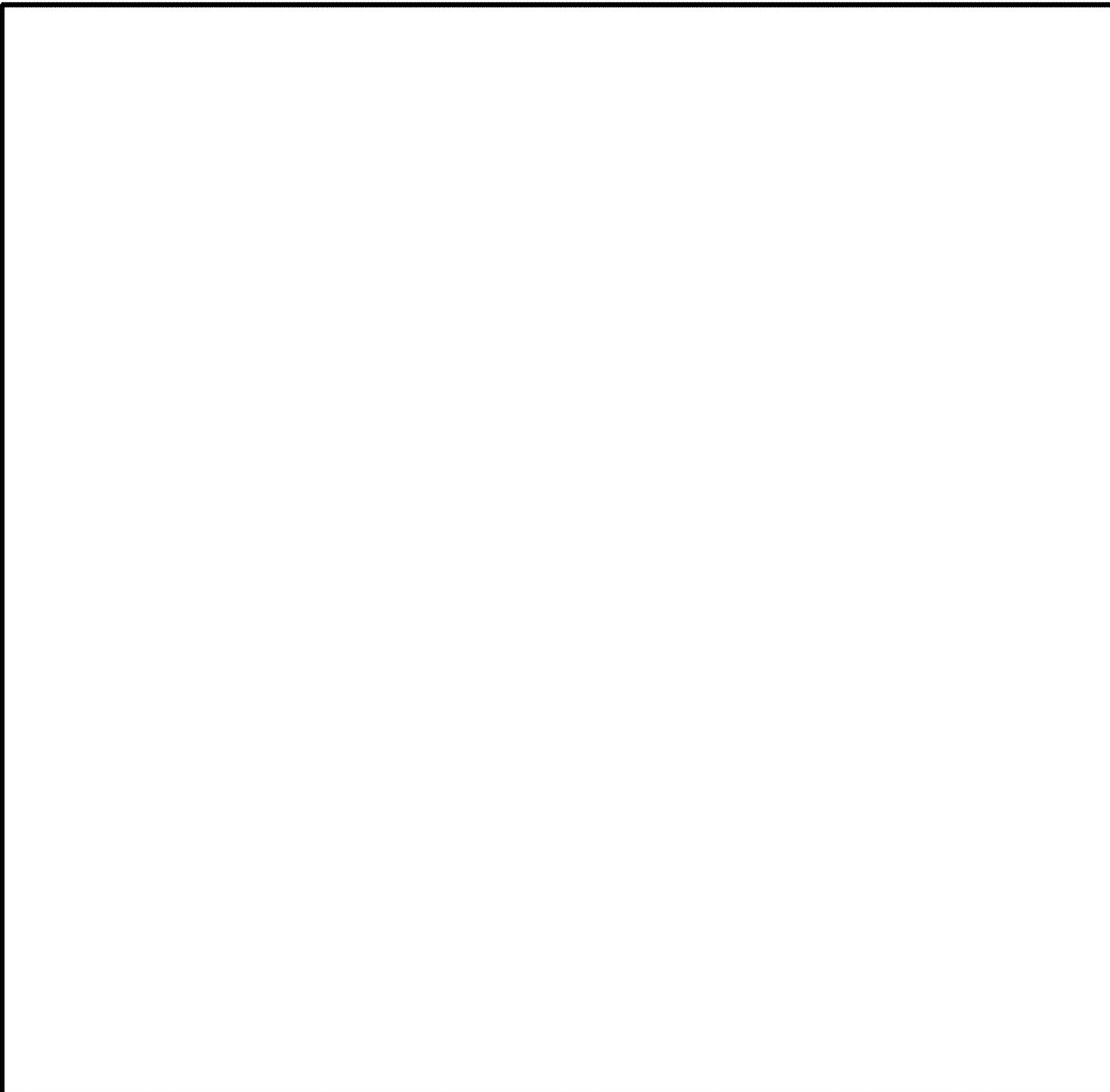
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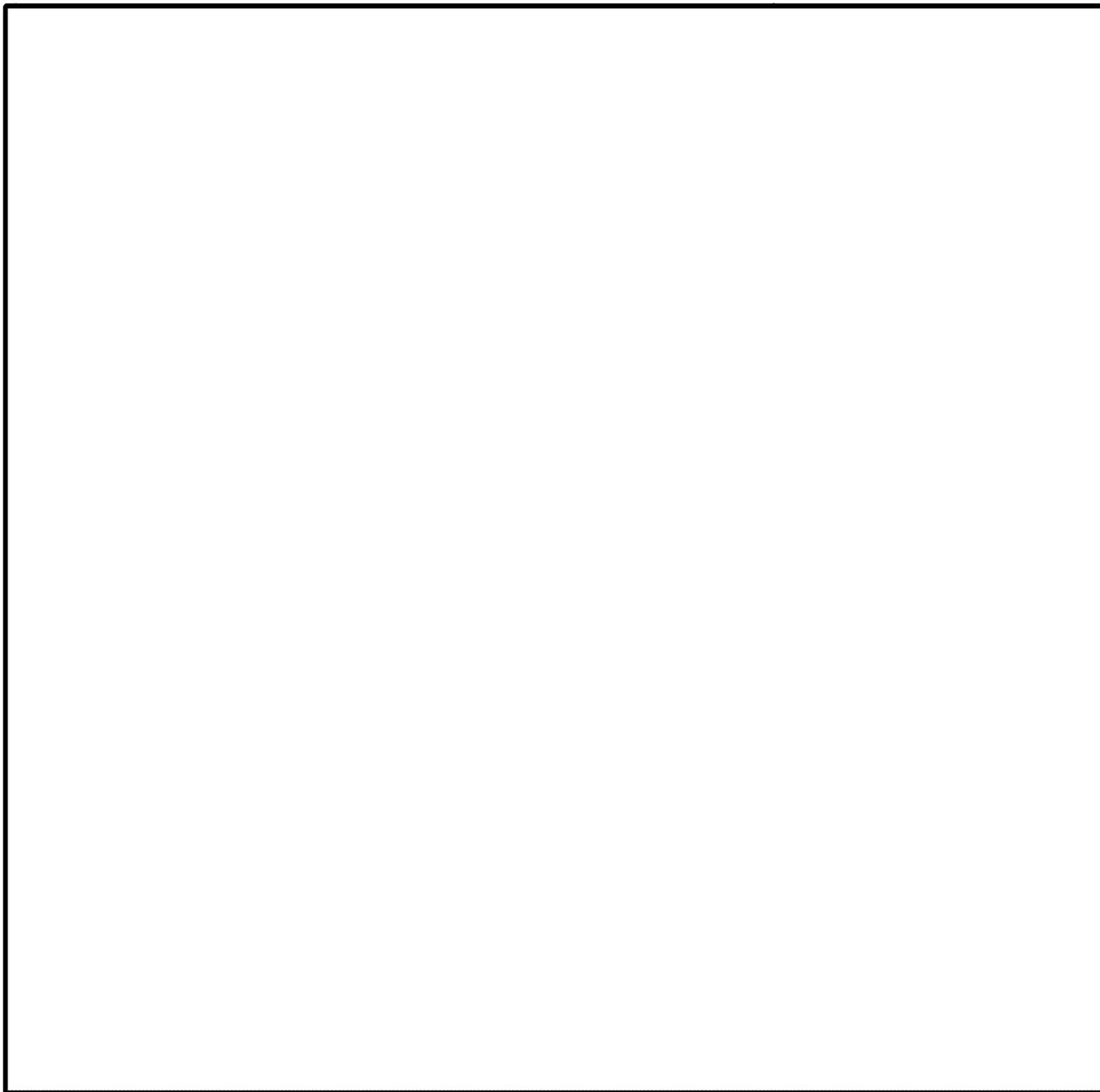
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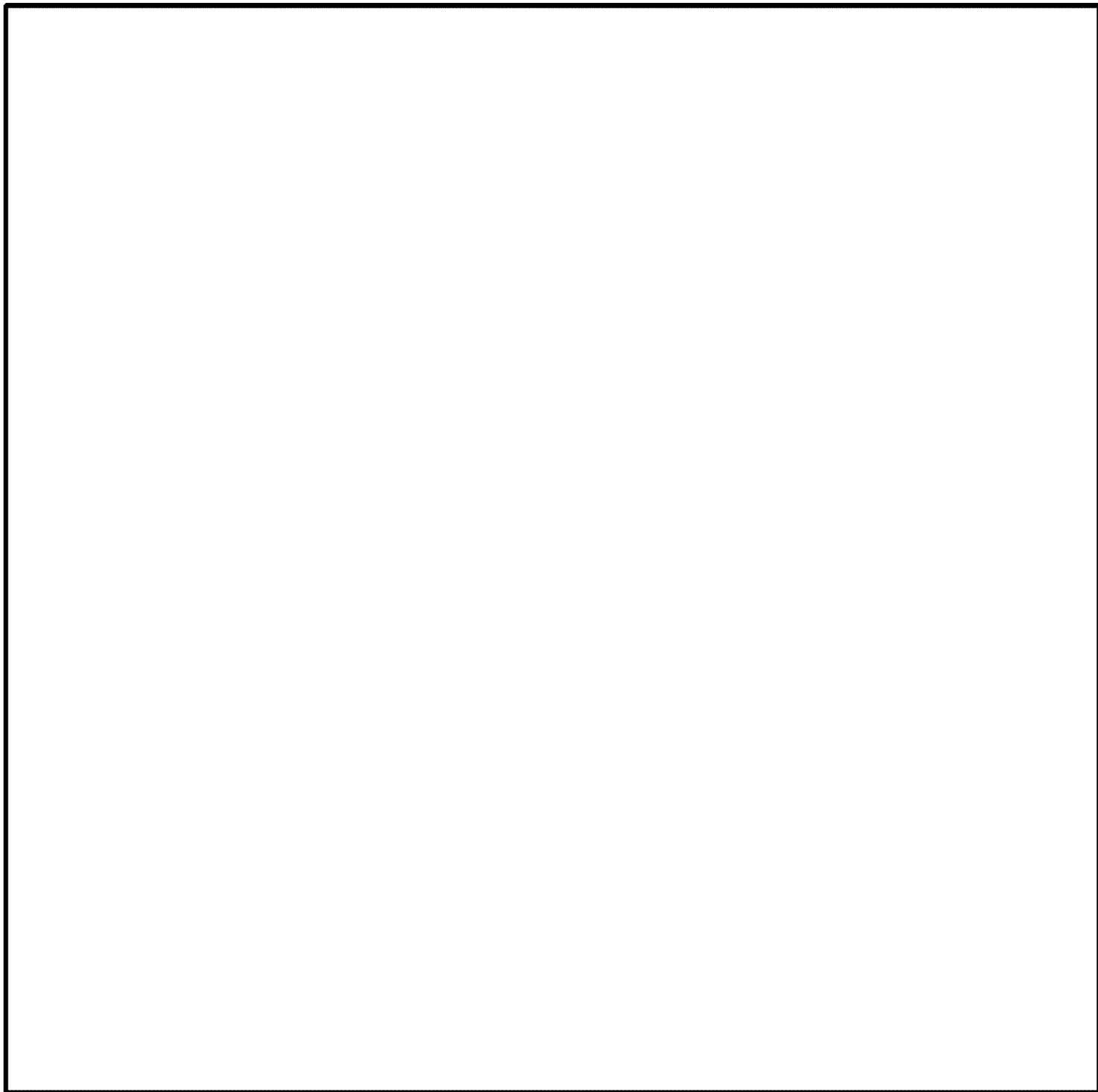
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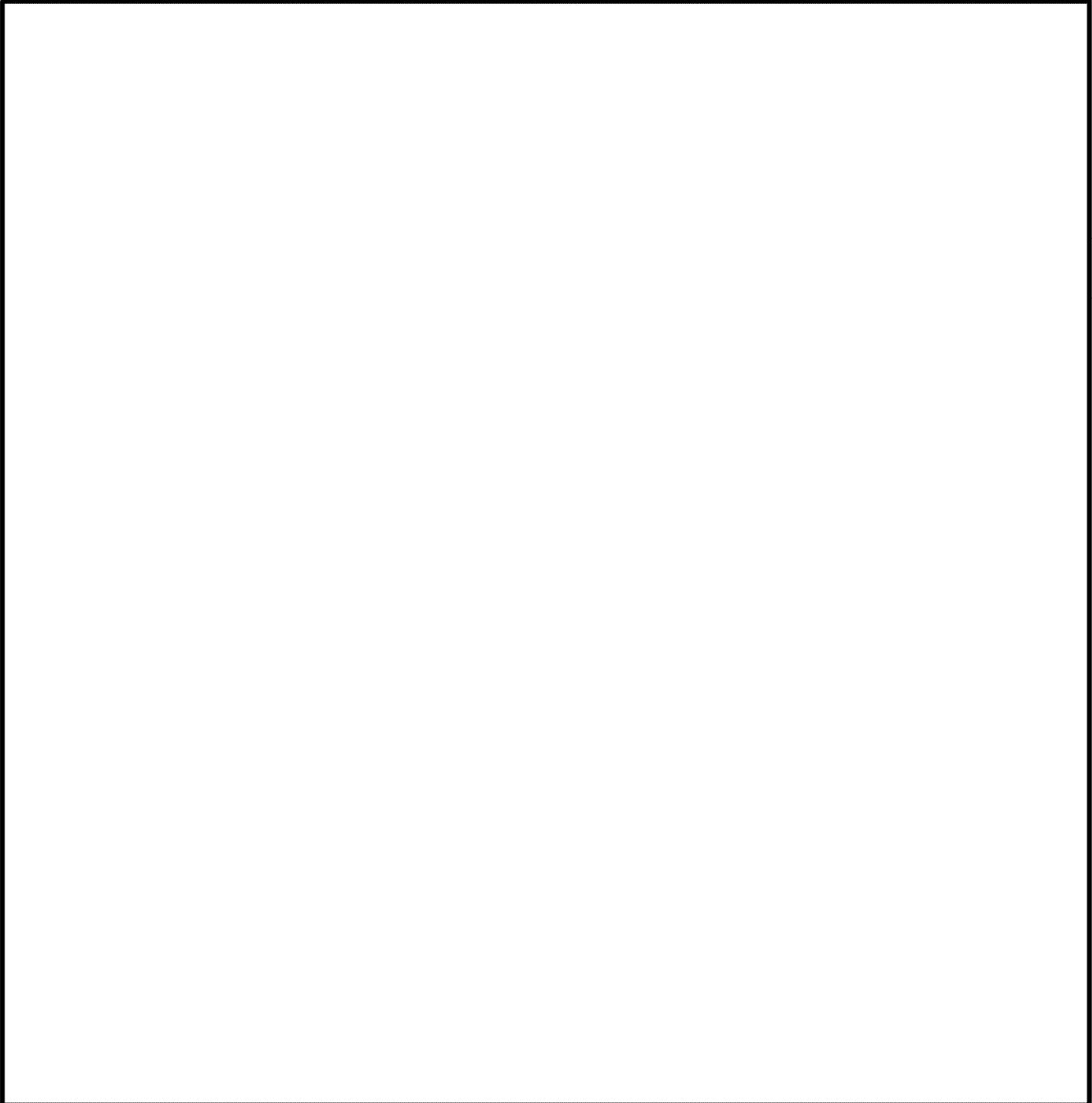
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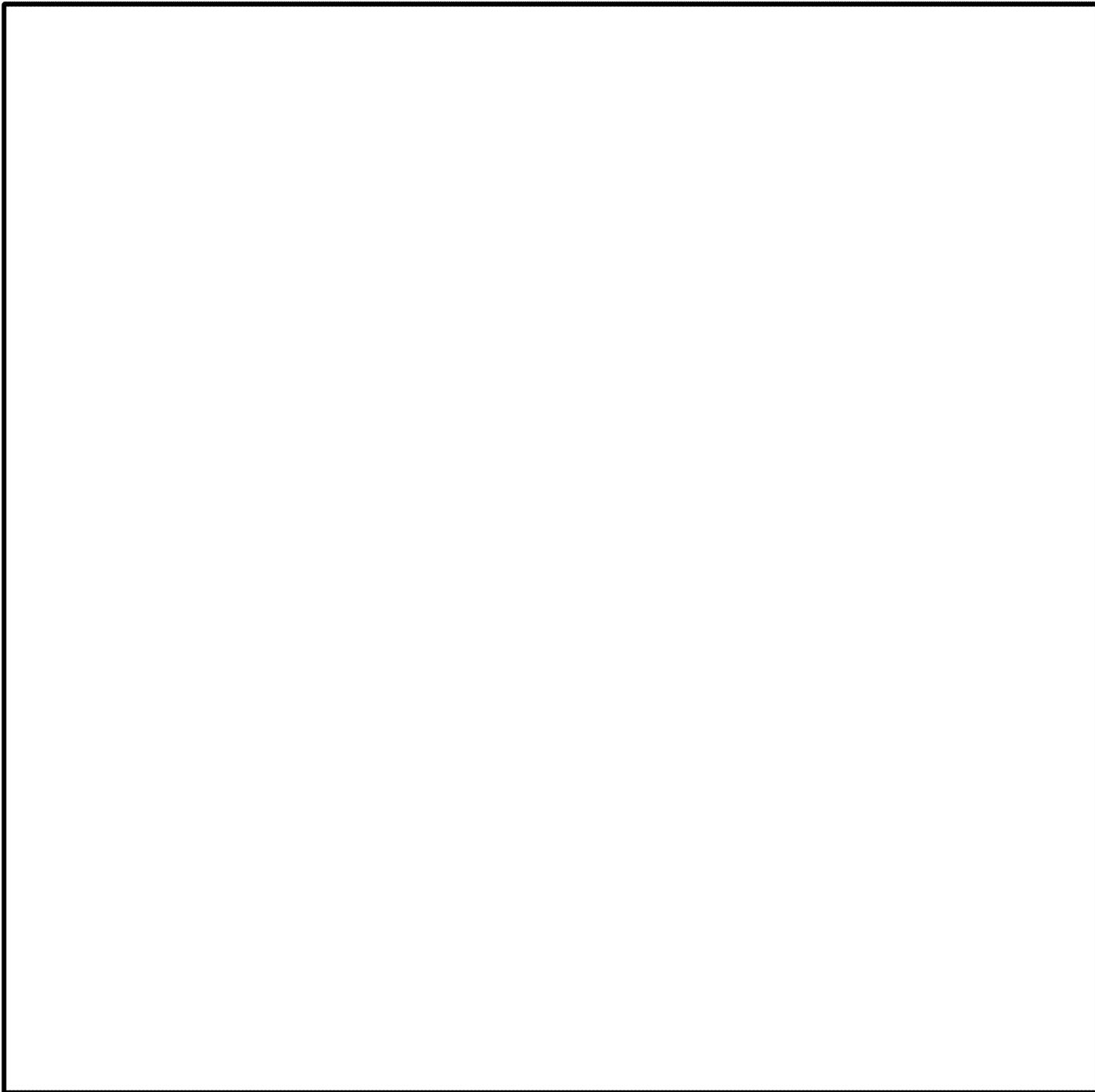
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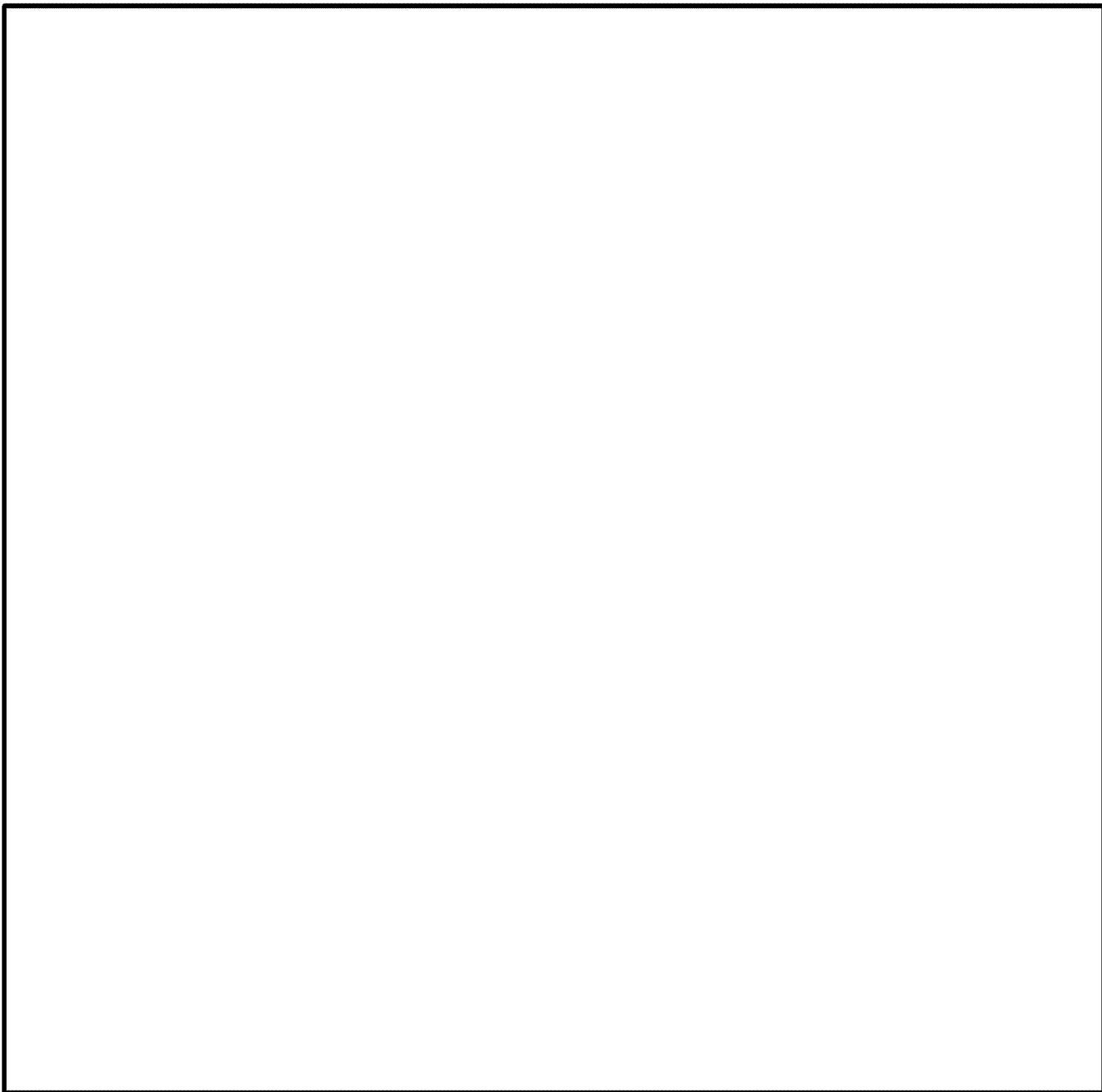
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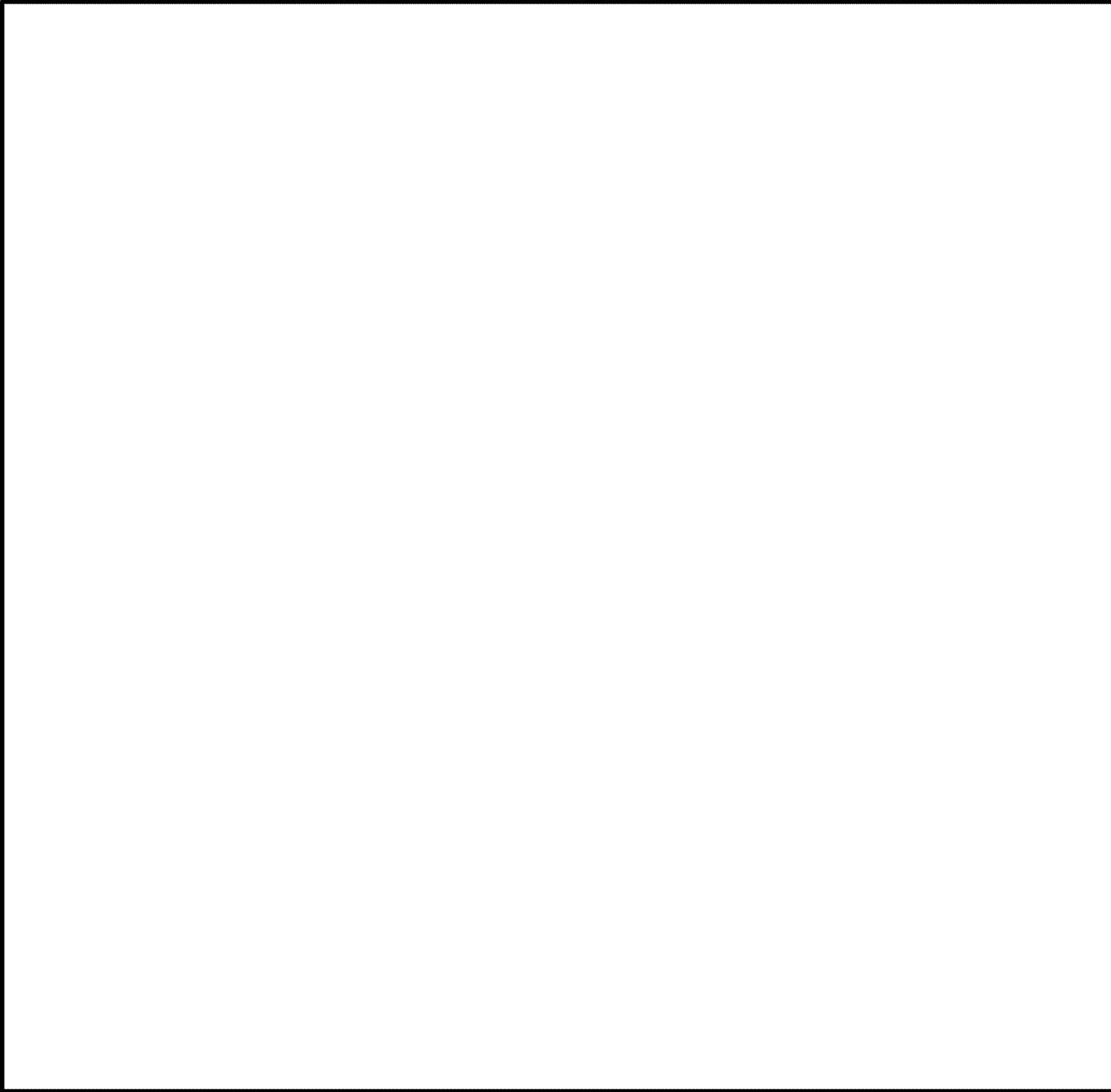
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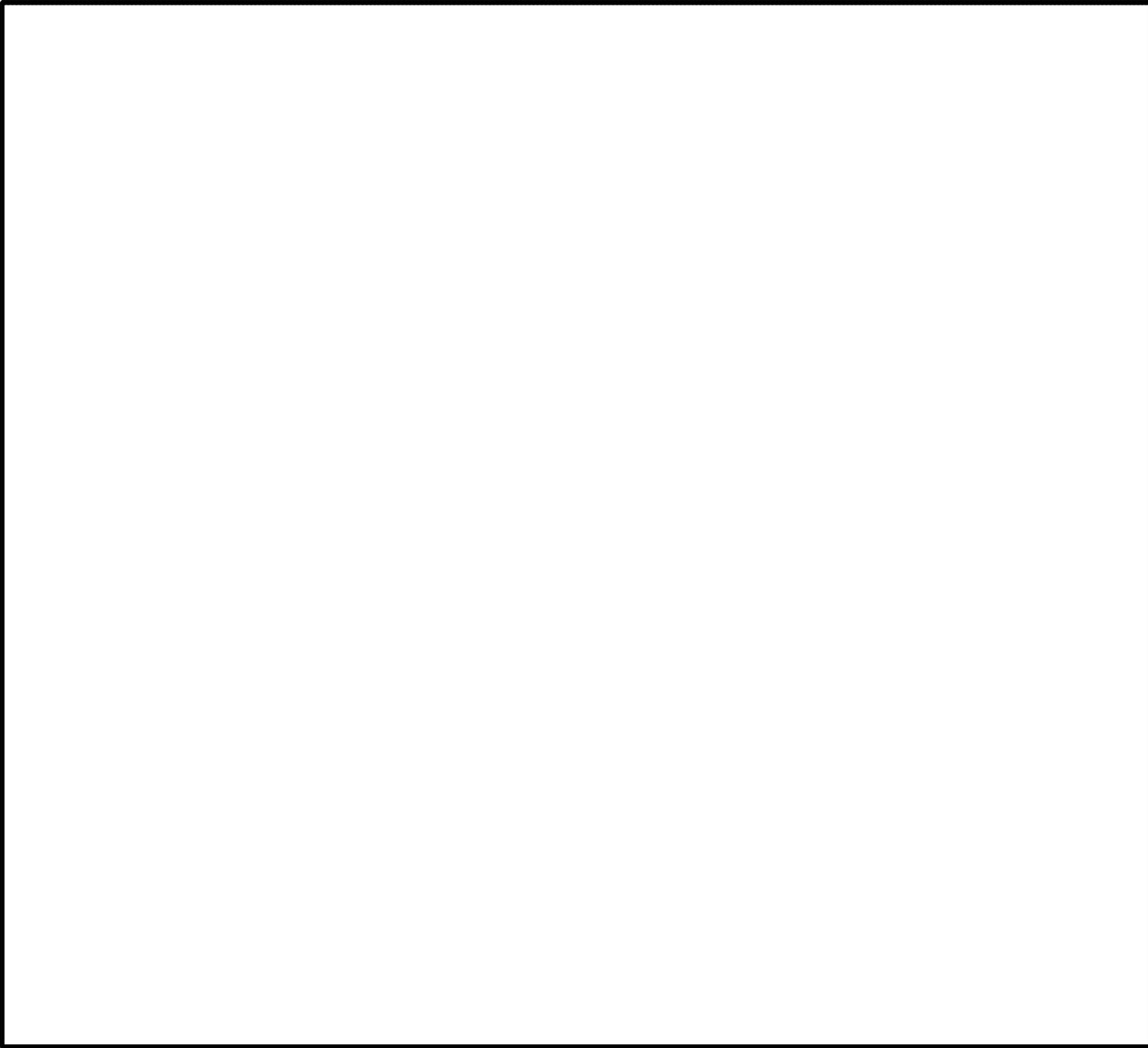
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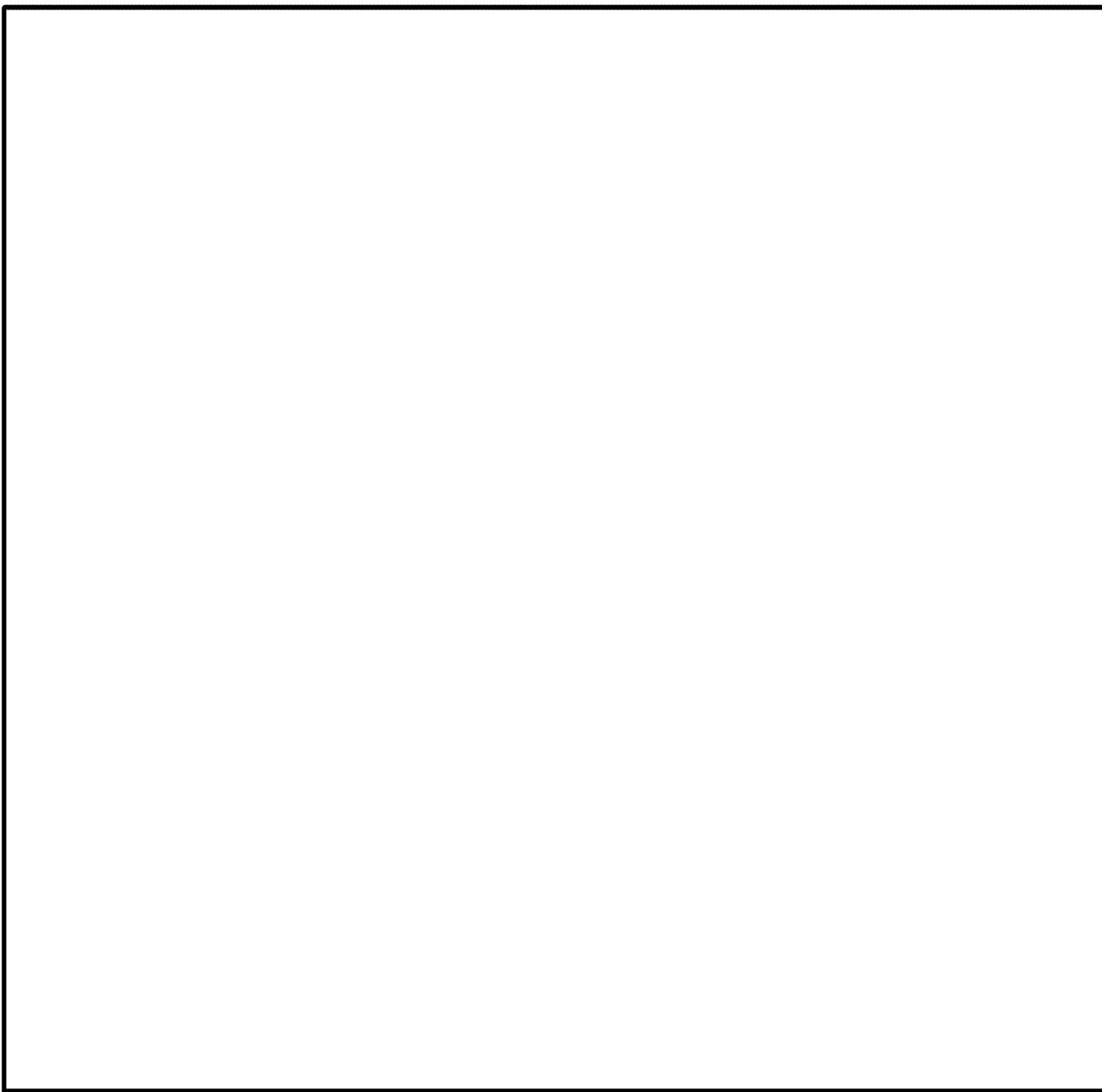
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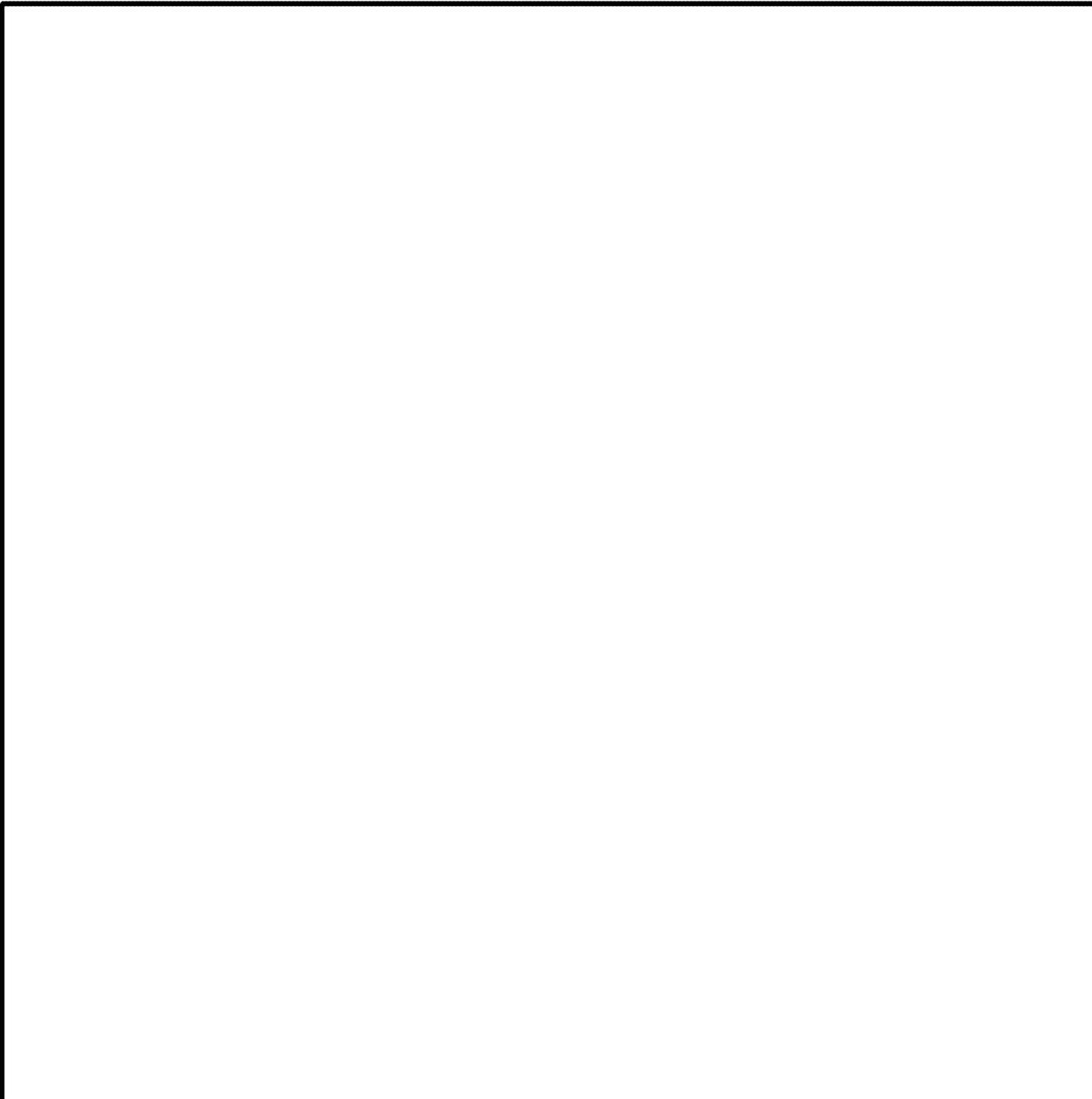
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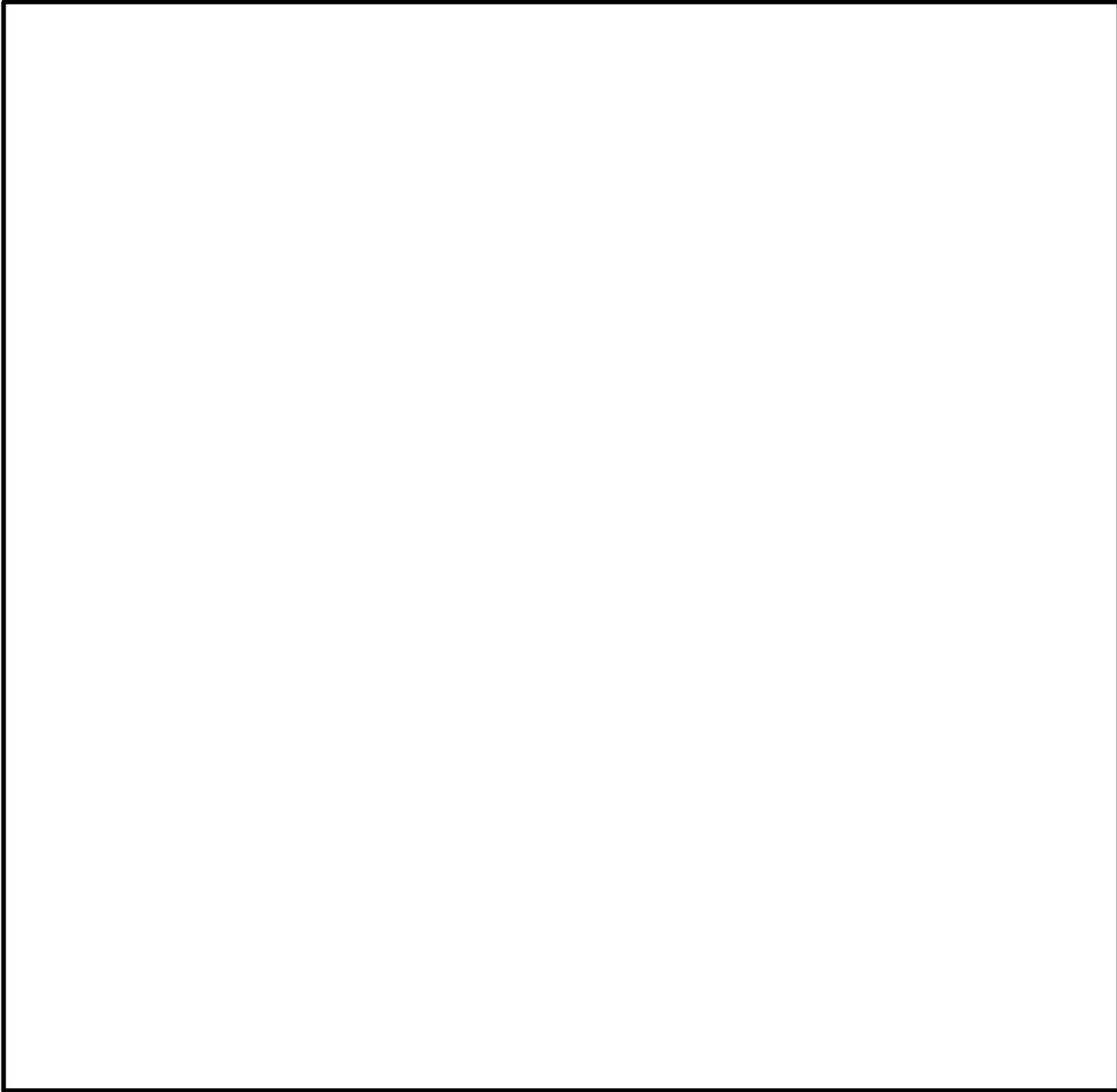
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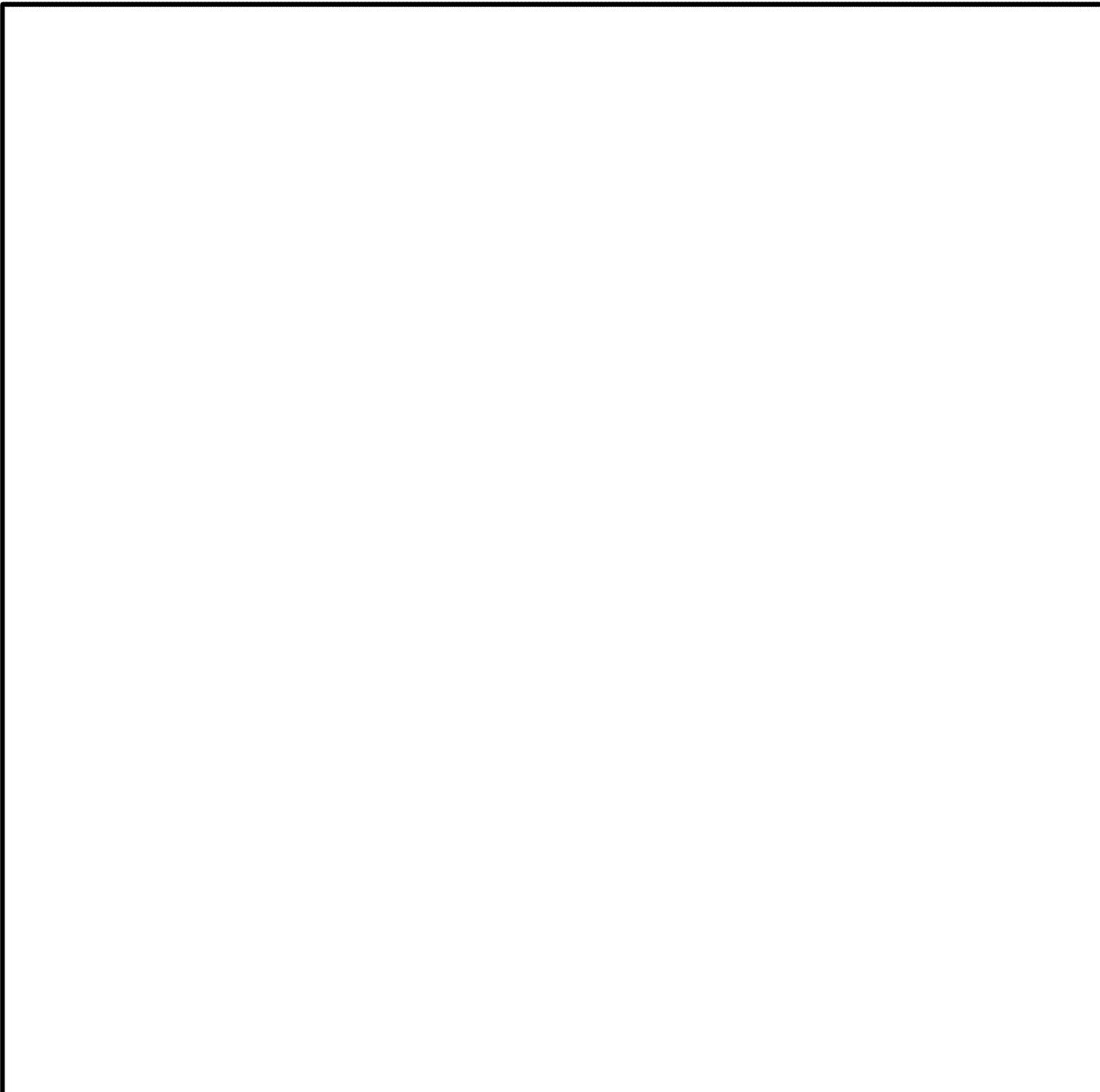
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USCIS Policy Manual, Volume 2: Nonimmigrants

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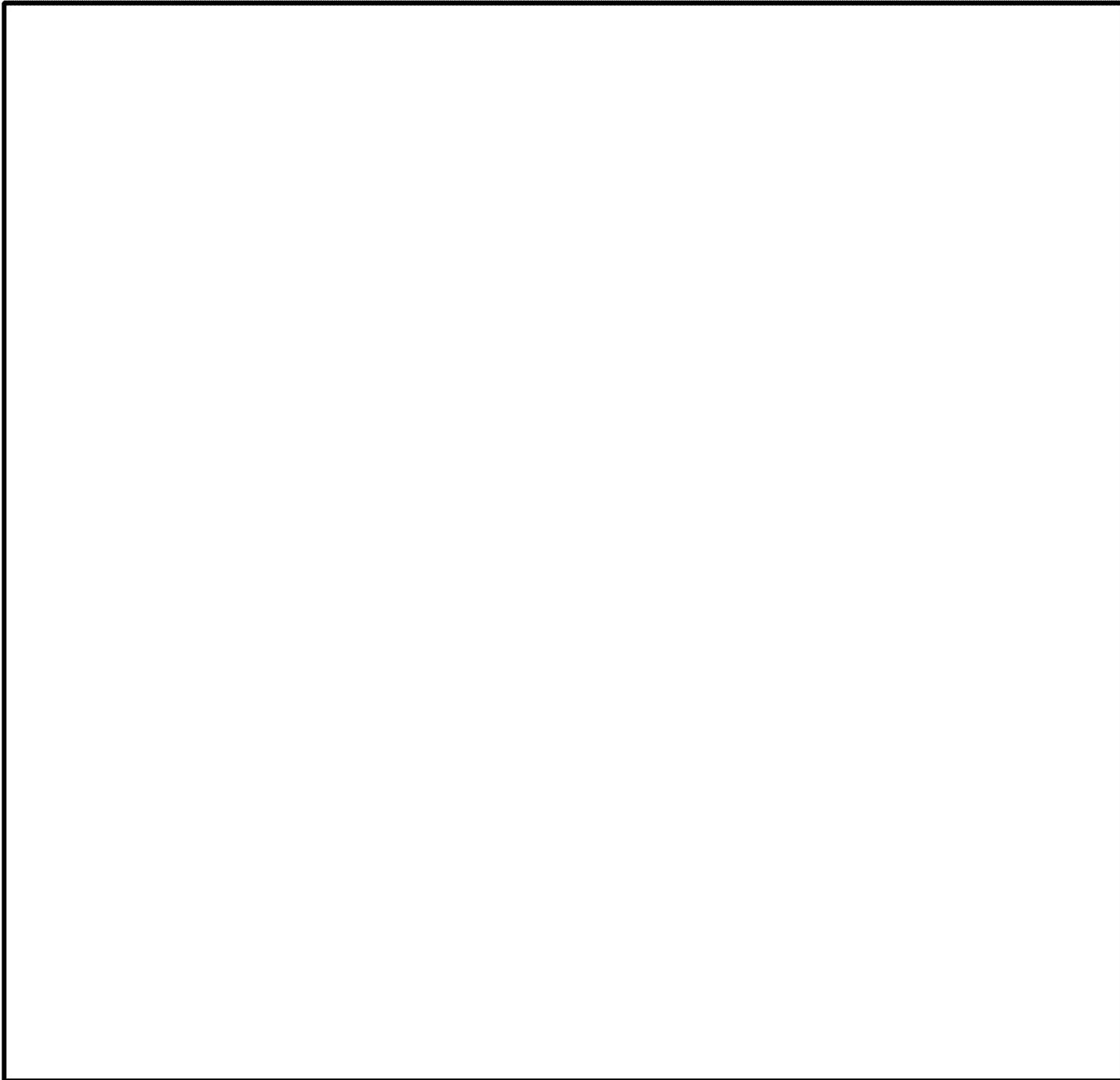
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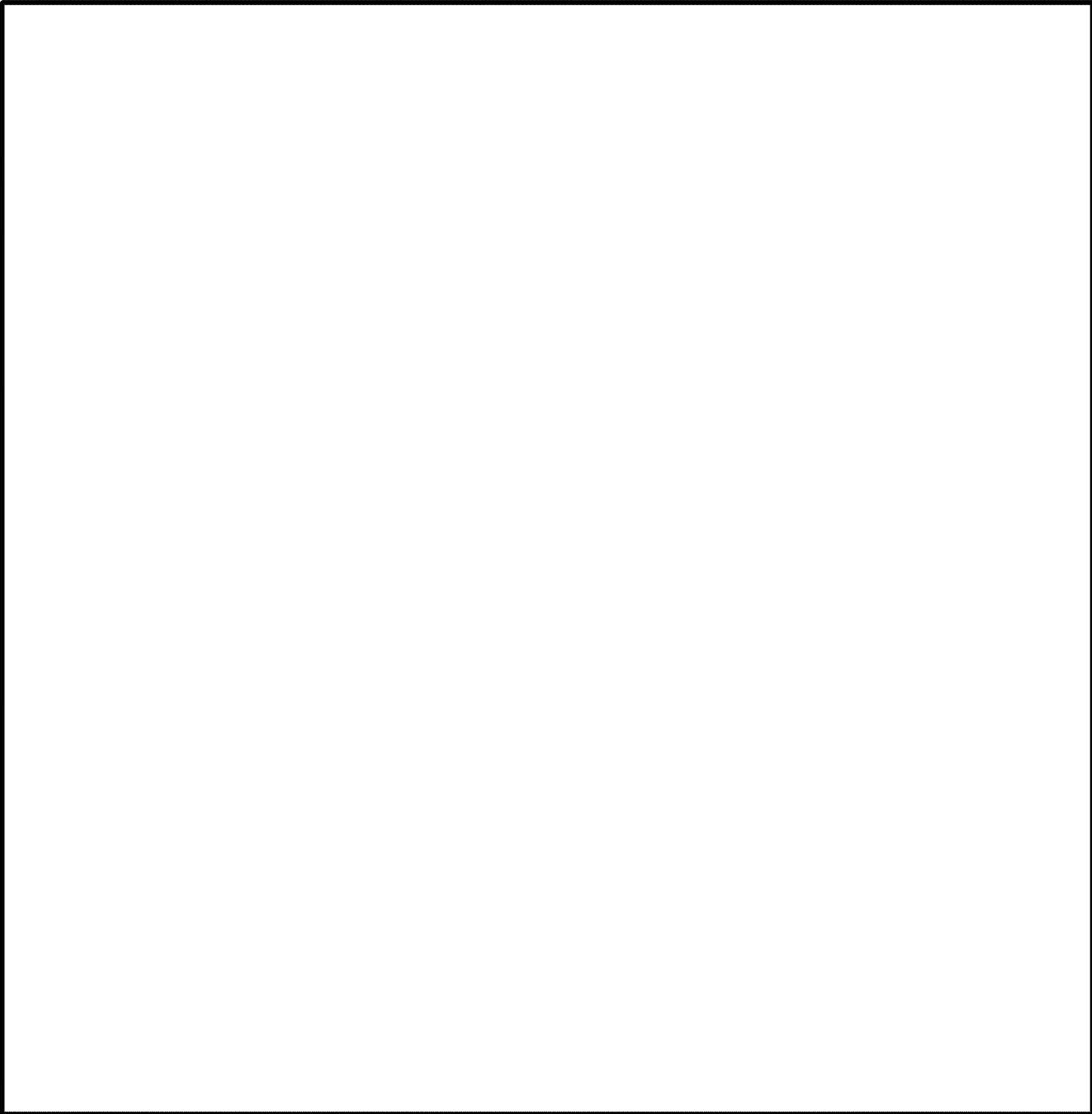
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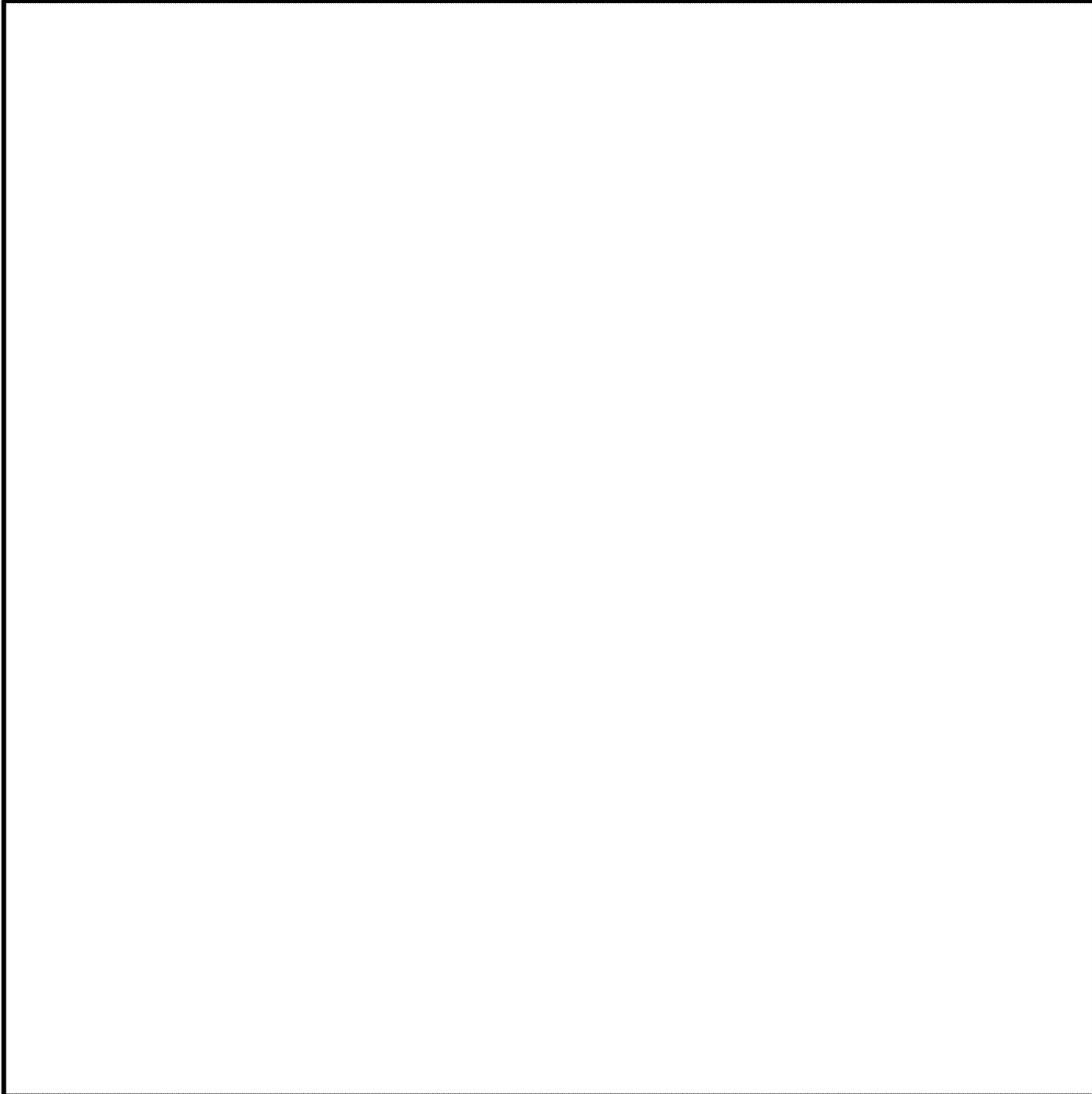
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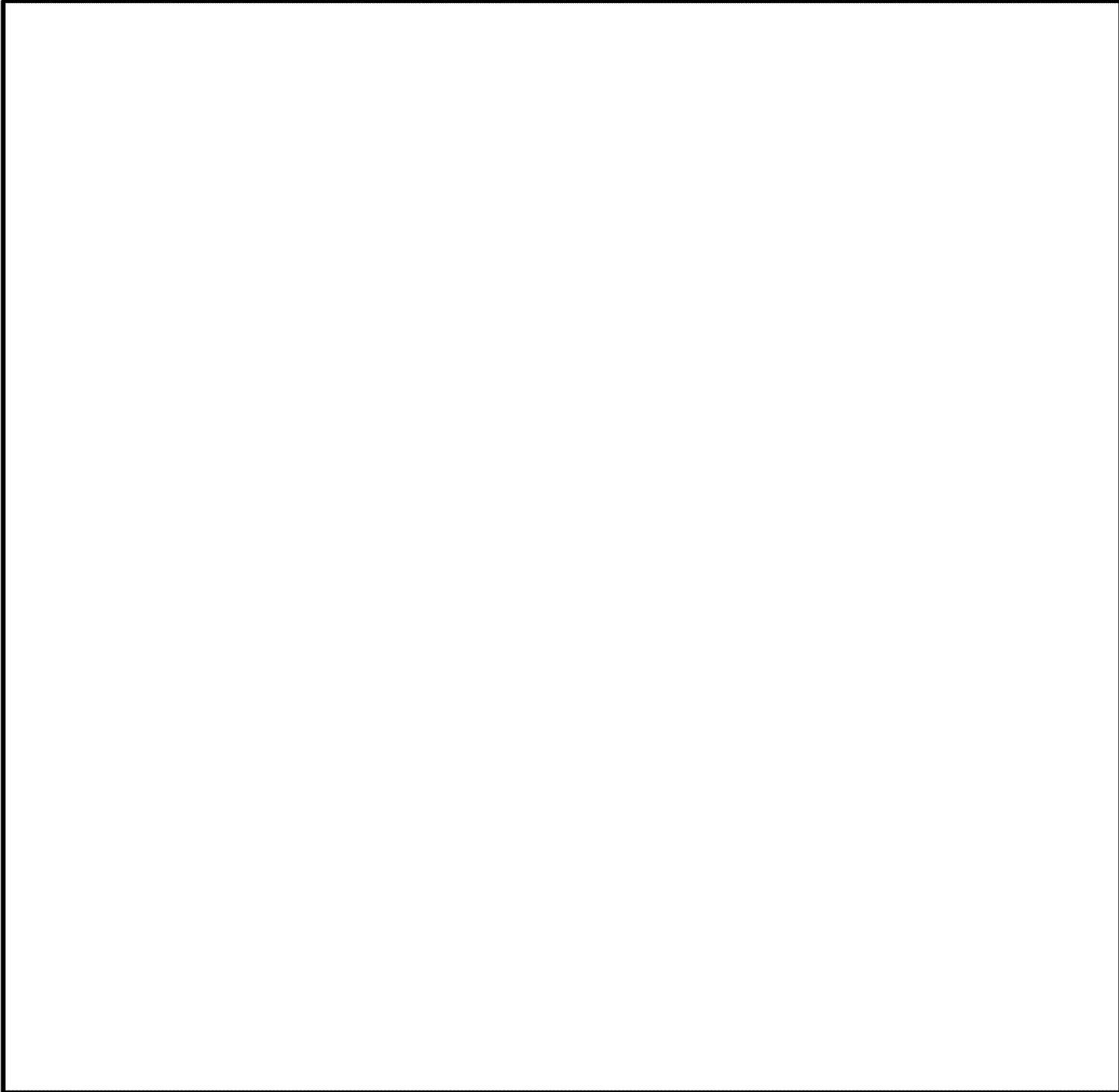
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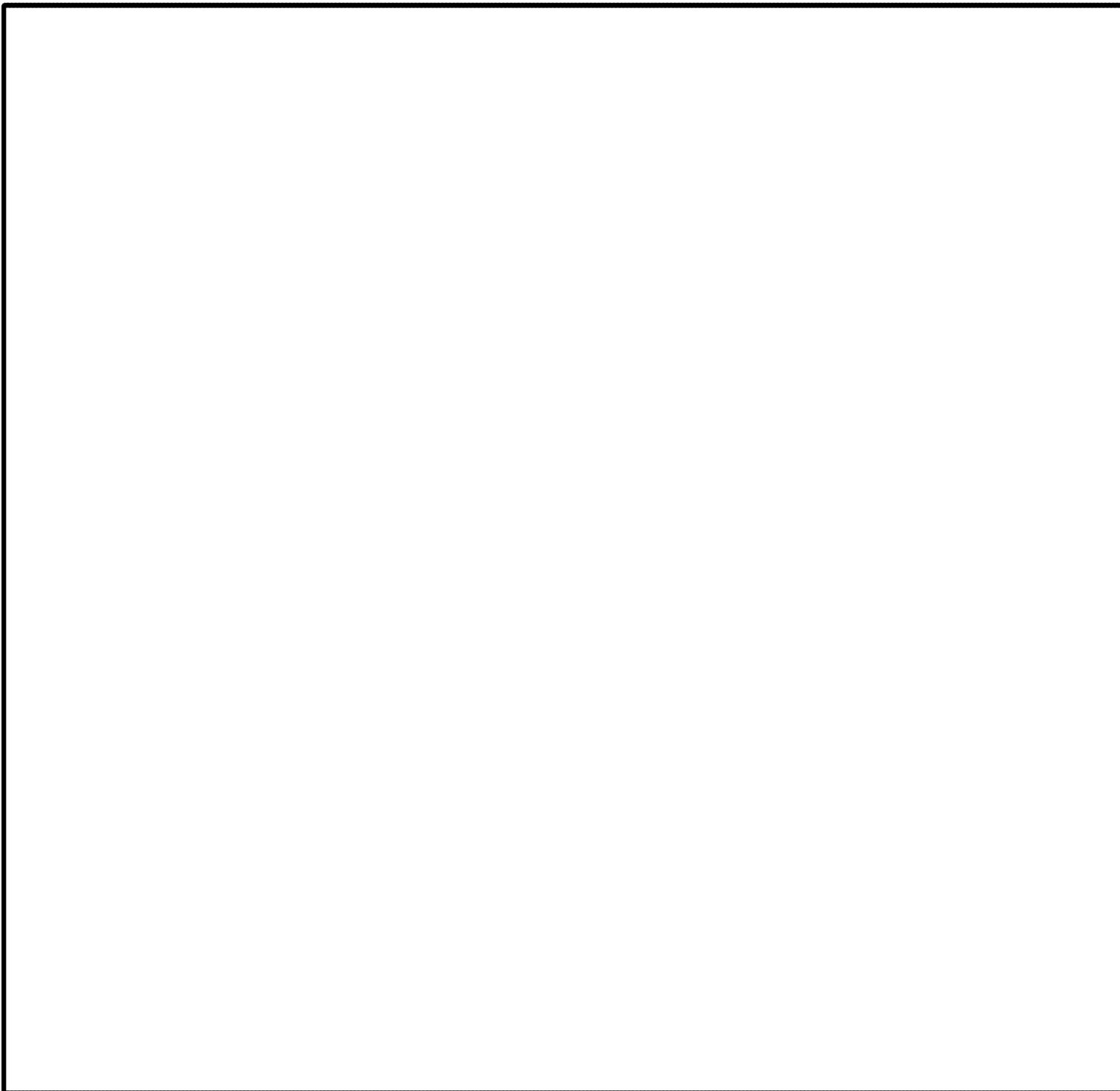
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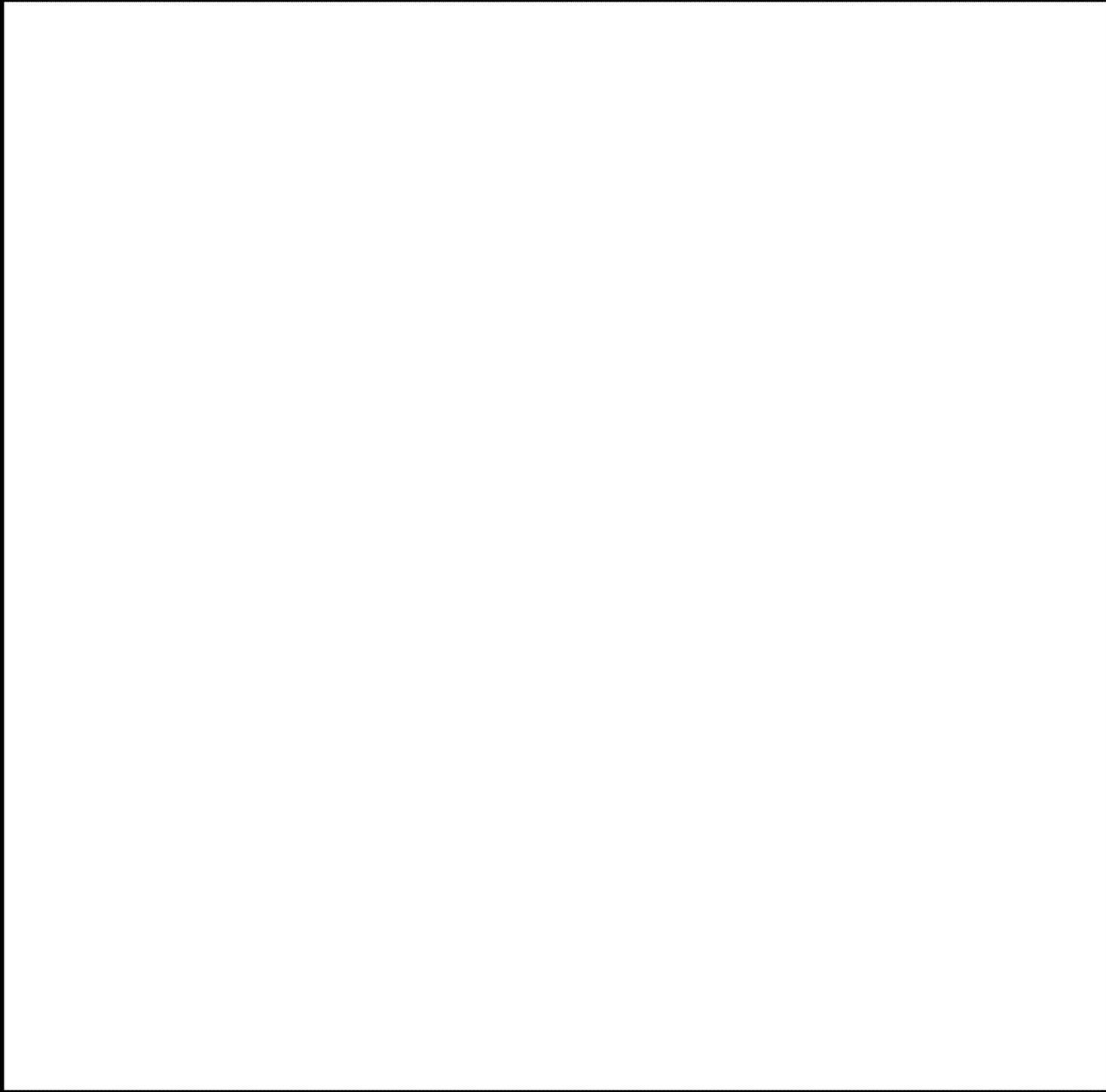
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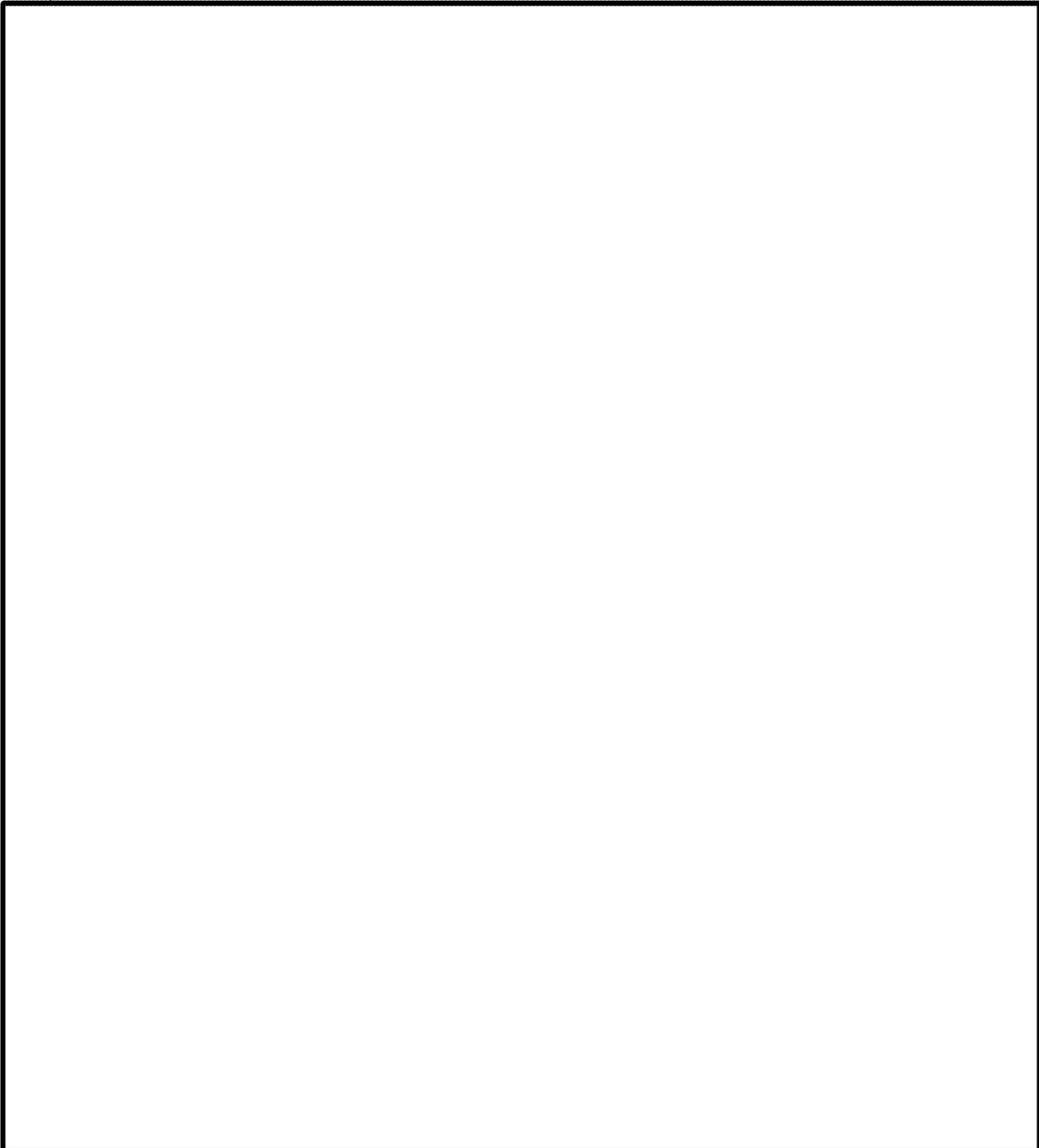
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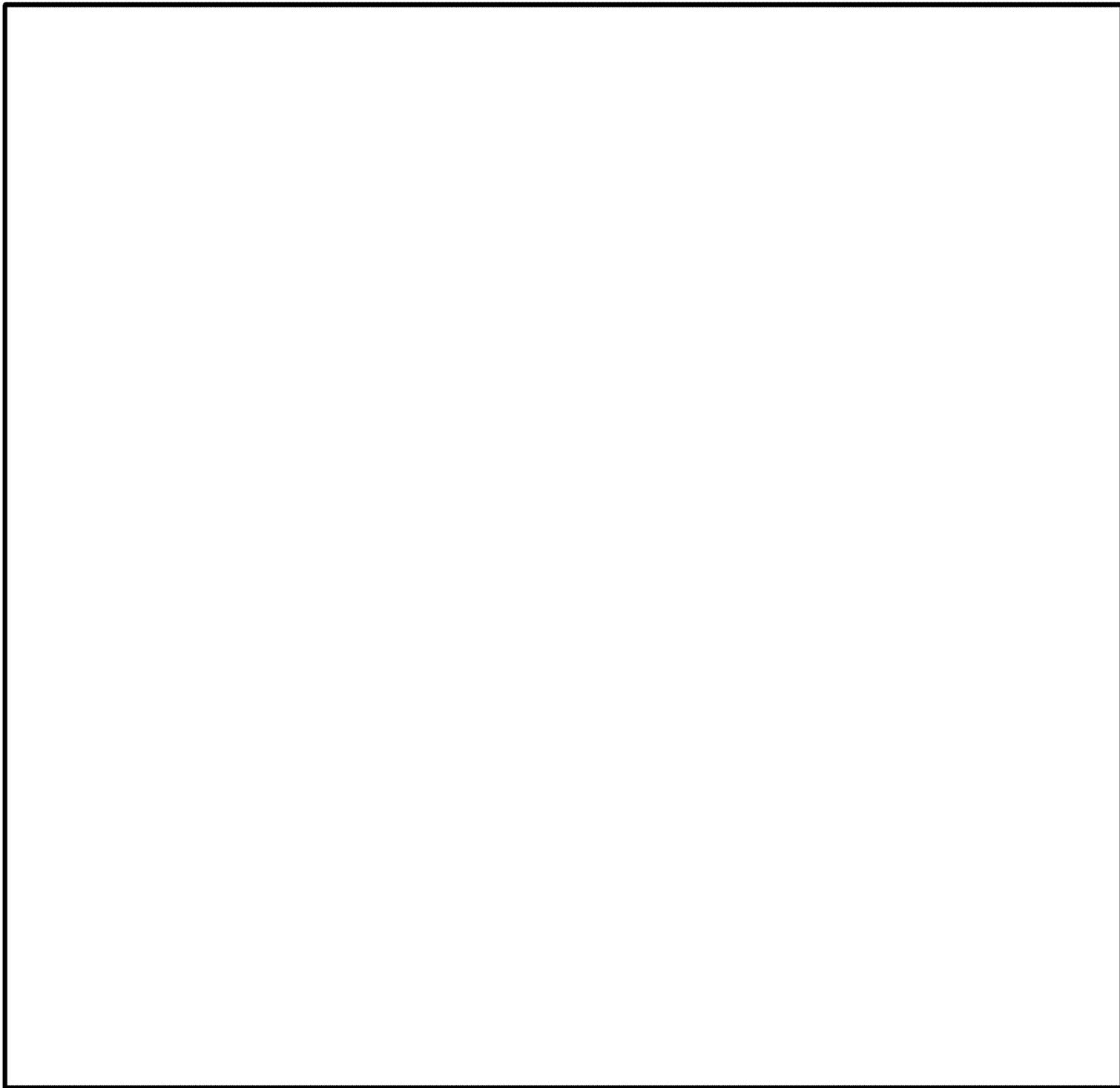
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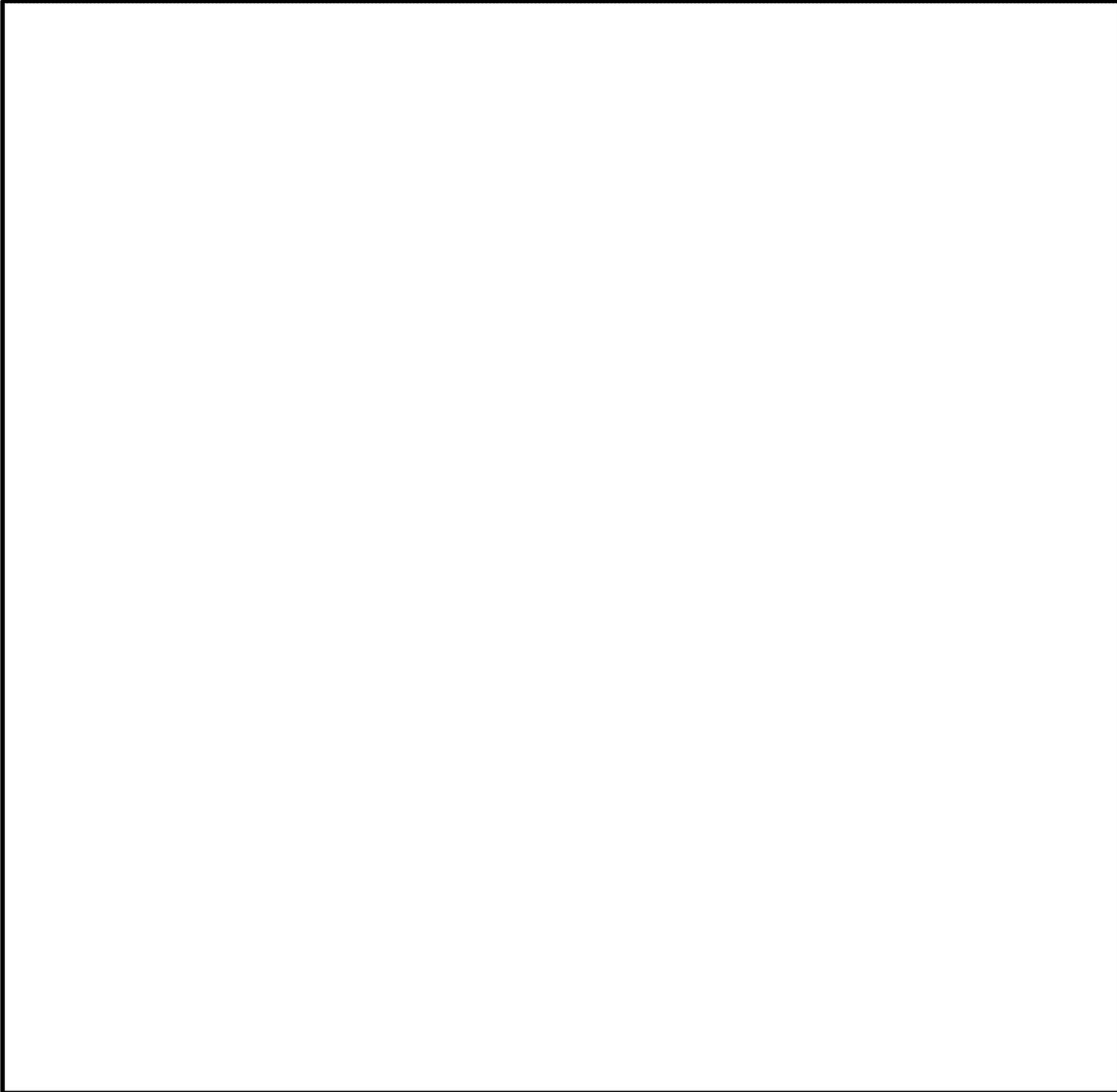
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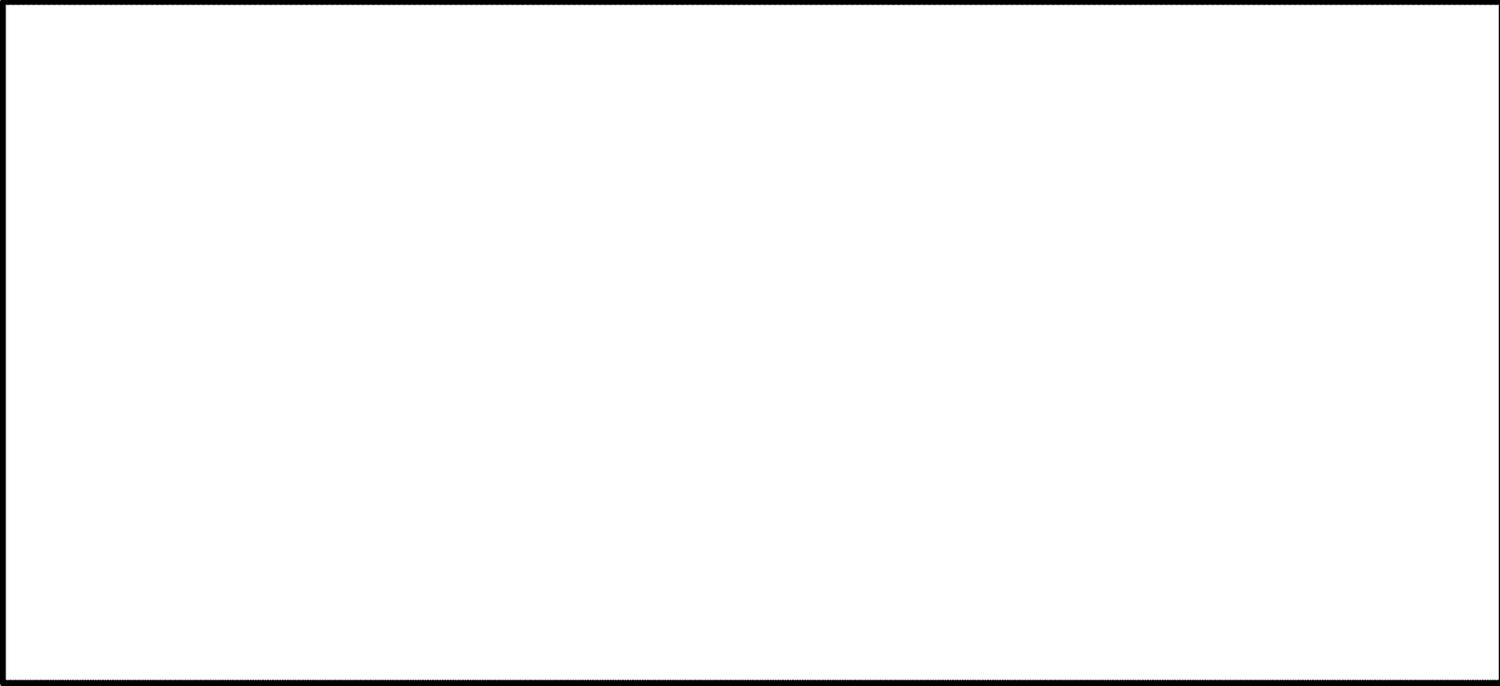
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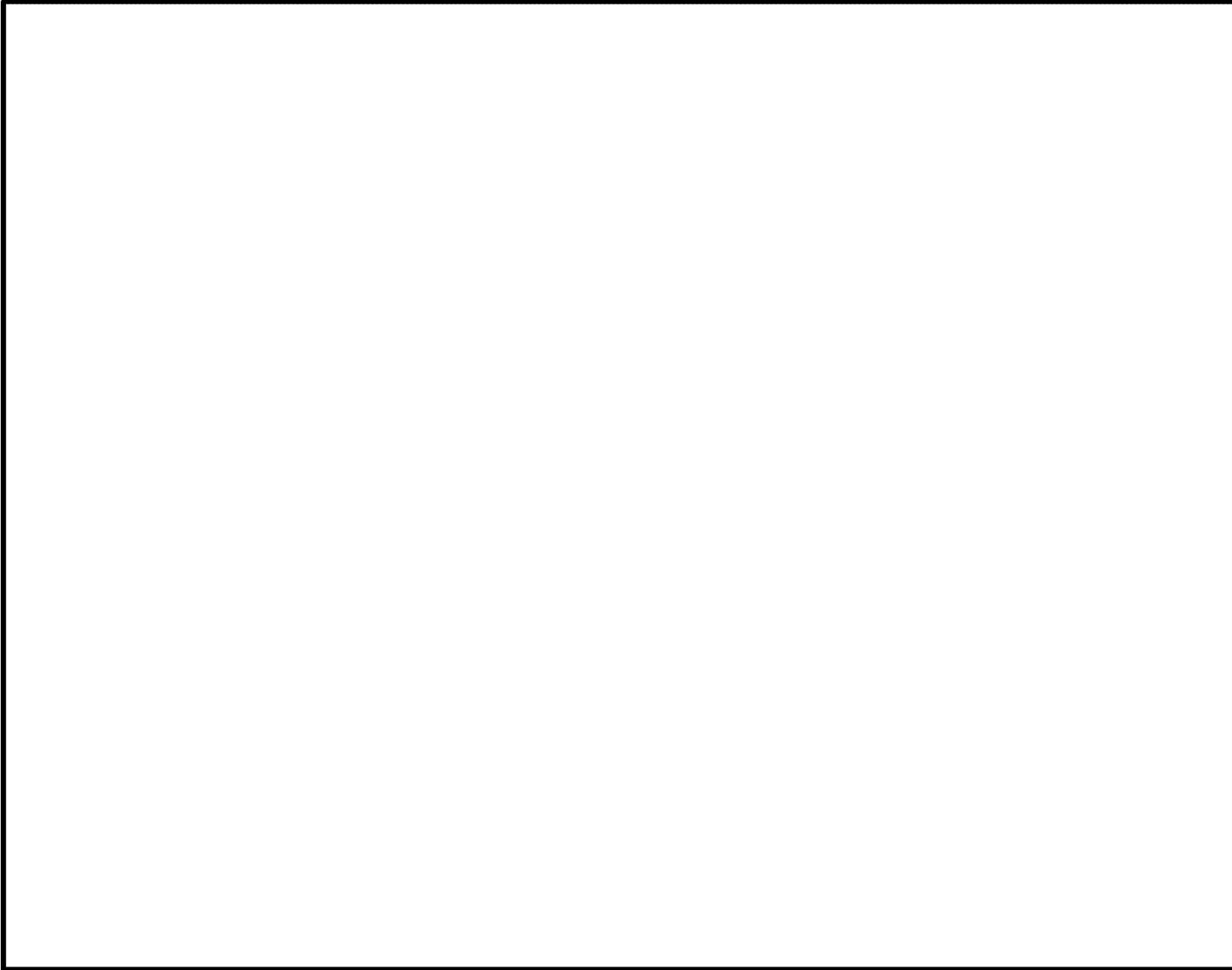
**Appendix: H-1B Visa Limitations by Fiscal Year**



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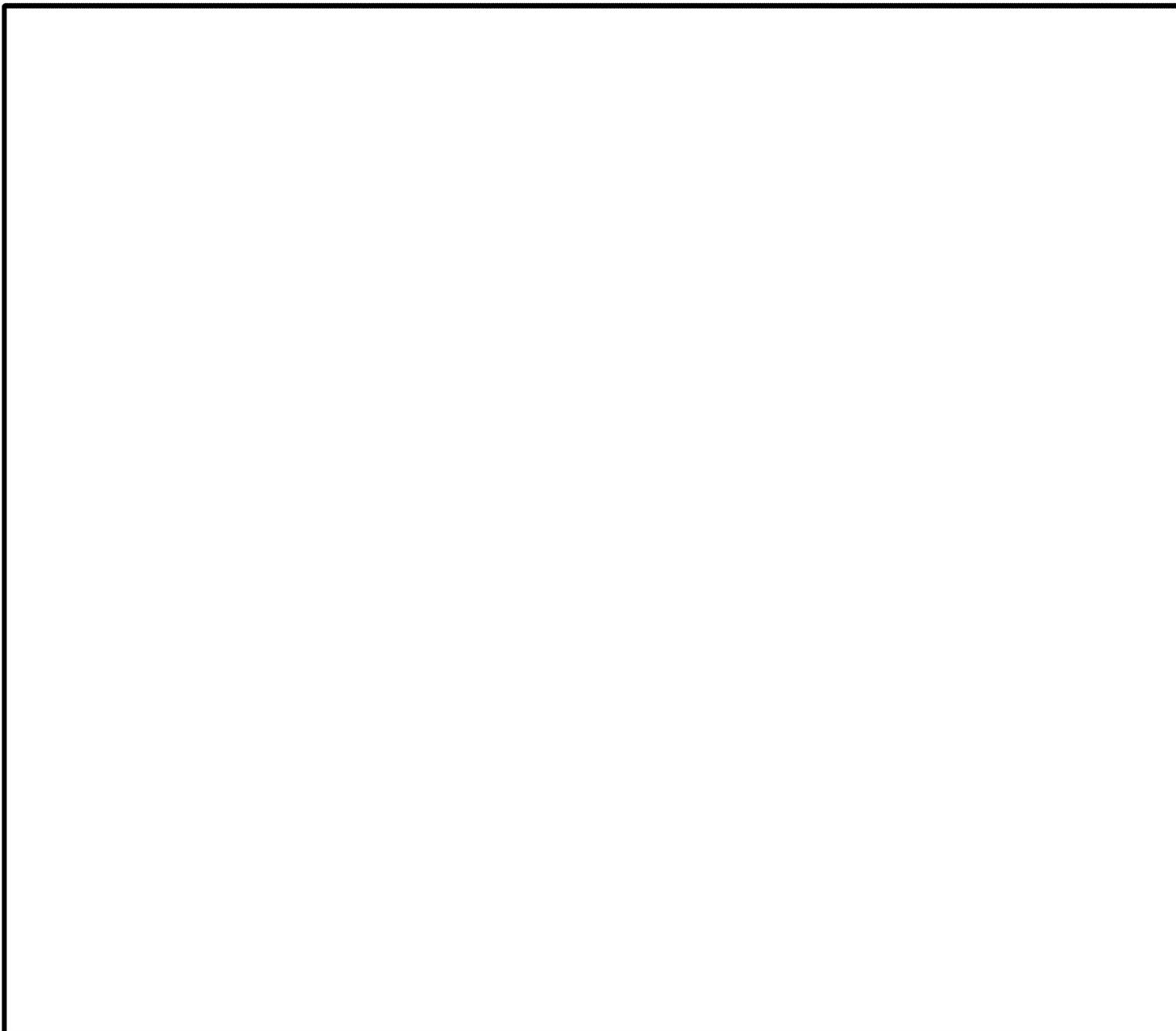


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**AILA/SCOPS Teleconference Agenda  
July 26, 2017**

**I-751 PETITIONS – PROCESSING DELAYS**

1. I-751 Petitions to Remove Conditions are currently taking USCIS over a year to process. The posted processing time for the Vermont Service Center is May 2, 2016 and the posted processing time for the California Service Center is June 9, 2016. Currently, USCIS Customer Service will not accept a case status inquiry on a petition that is not yet beyond USCIS' posted processing time. However, the federal regulations state that the Service Center Director is required to adjudicate the petition to determine if an interview is necessary (and schedule such interview if it is necessary) within 90 days. This requirement is set forth at 8 CFR § 216.4(b)(1):

*(b) Interview-- (1) Authority to waive interview. The director of the regional service center shall review the Form I-751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.*

Could USCIS please elaborate on what steps it is taking to come into compliance with this federal regulation? In the meantime, can USCIS Customer Service representatives be instructed to accept case status inquiries on any I-751 Removal of Conditions petition that has been pending with USCIS for more than 90 days?

**RESPONSE:** When the petitioner files the I-751, the service responds with an I-797 providing an additional 1 year of status. An electronic search will confirm the petition is still pending with USCIS. Allowing inquiries to begin any date prior to current processing dates would only result in another confirmation the petition is pending. USCIS will not assign the petition to an officer prior to normal processing order due to a status inquiry. Occasionally expedite I-751s are adjudicated but these must meet specific expedite criteria and be approved for expedite processing by the Customer Service or Congressional Divisions. Service Centers are in the process of hiring employees in order to meet our workload responsibilities. SCOP continually assesses our resources and balances our workloads in order to work down our backlogs.

## **N-600K and N-400 (MILITARY APPLICATIONS) - TRANSFER TO LOCKBOXES**

2. On June 12, 2017, USCIS alerted the public that it would be sending all N-600K Applications for Citizenship and Issuance of Certificate Under Section 322 (Military applications only) and N-400 Applications for Naturalization (Military applications only) pending at the Nebraska Service Center to the Lockbox. Can SCOPS elaborate on the purpose of these transfers and clarify if and when the public can expect an announcement regarding a change in N-600K and N-400 filing locations?

**RESPONSE:** Naturalization work is slowly being consolidated with all N forms to be assigned to Field Operations. We cannot speculate on possible filing changes down the road, but proper notice will be provided if change occurs.

## **TN SPLIT DECISIONS**

3. Our members report that “split” decisions are not being issued in the context of a TN petition to change and extend status. In other words, if the beneficiary of a TN petition to change and extend status (filed via Form I-129) travels outside the U.S. while the I-129 remains pending, the entire petition will be denied, rather than “splitting” the decision by approving the TN classification while denying the change of status portion.

As authority for these denials, our members are being referred to 69 Fed. Reg. 11287, a provision from 2004 that in part revised the regulatory language at 8 CFR § 214.6(h), regarding extensions of stay for TN beneficiaries. However, the current language at 8 CFR § 214.6(h) was established in 2008 by 73 Fed. Reg. 61332 (10/16/08). The current regulation does not appear to prohibit split decisions. In the context of an extension of status, the current language at 8 CFR § 214.6(h)(ii) states:

The beneficiary must be physically present in the United States at the time of the filing of the appropriate form requesting an extension of stay as a TN nonimmigrant. If the alien is required to leave the United States for any reason while the petition is pending, the petitioner may request that USCIS notify the consular office where the beneficiary is required to apply for a visa or, if visa exempt, a DHS-designated port-of-entry where the beneficiary will apply for admission to the United States, of the approval.

The regulatory language appears to envision USCIS approving TN classification while denying the requested alteration to the actual nonimmigrant status (in this case, an extension).

In light of the foregoing, could USCIS clarify whether split decisions are permissible in the context of a TN petition to change and extend status?

**RESPONSE:** Split decisions for TN I-129 petitions to change and extend status are not permissible. A TN1 or TN2 application may not be “split” because the decision on the classification and the requested action must be the same. Under the NAFTA, a petition may not be required of an applicant for TN classification. As such, the Form I-129, when used to classify a person as a TN nonimmigrant, is considered an “application.” Therefore, the Form I-129 will either be approved in its entirety or denied. Since the TN classification is not “petition-driven,” CBP (in the case of a Canadian TN) or DOS (in the case of a Mexican TN) can determine eligibility without an advance decision by USCIS.

**UNSEALED ENEVELOPES FROM USCIS**

4. Members have reported receiving an uncharacteristic amount of mailings from USCIS in unsealed envelopes. While members of the AILA SCOPS liaison committee have received accounts of this occurring from more than one service center, the majority of the reports seem to be coming from the Vermont Service Center. Would SCOPS kindly request the service centers to alert their mail rooms of this issue?

**RESPONSE:**

**FY 2018 H-1B CAP-SUBJECT PETITIONS**

5. In June, SCOPS indicated it had completed the mailing of all receipts for FY 2018 H-1B cap-subject petitions and that petitions not selected in the lottery would be returned beginning mid-June. Can SCOPS provide AILA an update on whether all unselected petitions have been mailed?

(b)(5)

**RESPONSE:** On July 19, 2017, USCIS announced publically that all unselected petitions were mailed and returned. If a cap subject petition was submitted and the petitioner has not received a receipt notice or a returned petition by July 31, 2017, please contact USCIS customer service for assistance.



**RETURN OF PREMIUM PROCESSING FOR ALL H-1B PETITIONS**

6. On March 3, USCIS announced it would temporarily suspend premium processing for all H-1B petitions beginning on April 3, 2017, indicating specifically that the “suspension may last up to 6 months.” Subsequently, on June 23, 2017, USCIS made another announcement to the public that beginning Monday, June 26, 2017, premium processing would resume for H-1B petitions filed for physicians under the Conrad 30 Waiver Program only, and that further announcements would be made regarding when USCIS would begin to accept premium processing for other types of H-1B petitions. As we approach the six-month mark of October 3, 2017, does SCOPS intend to surpass the

six-month mark established in the original notice or can members begin to work with clients in furtherance of budgeting and preparing for a return of premium processing for all other H-1B petitions on or before October 3?

**RESPONSE:** USCIS does not anticipate that the premium processing suspension will surpass the six-month mark established in the original premium processing suspension announcement. USCIS expects premium processing to resume for all H-1B petitions on or before October 3, 2017.

**FOLLOW-UP: I-140 PETITIONS FOR NURSES (Q. 11 AILA/SCOPS Teleconference May 10, 2017)**

7. The following question and answer appeared on the May 2017 SCOPS agenda:

**I-140 PETITIONS FOR NURSES**

11. AILA has received reports that TSC is regularly denying/issuing RFE/NOIDs on I-140s, holding that nurses who hold a Bachelor of Science Nursing degree (BSN) are not qualified for nursing positions that require an Associate's degree in nursing (ASN). The BSN is, of course, a higher degree, and therefore, these applicants are more than qualified for the proffered positions. The law is clear that any I-140 beneficiary can have additional skills, experience, or education beyond the requirements stated in the ETA Form 9089 and still meet the minimum requirements of the position. In several cases, the position is that of Registered Nurse, and on the ETA Form 9089, the position requires an ASN. TSC claims that the I-140 should be denied because the BSN does not meet the exact requirements on the ETA Form 9089. We have reached out to TSC, suggesting that this is a training issue, but TSC disagrees. Please confirm that an I-140 is approvable when the beneficiary is more than qualified for the proffered position. Case examples include:

[Chart omitted – see AILA Doc. No 17052434 (Posted 5/24/17)]

**5/10/17 RESPONSE:** USCIS is looking into this issue. Several of these cases have been approved. (AILA note: this issue is not restricted to nurse cases, and USCIS is aware of that.)

**FOLLOW UP QUESTION:** Please confirm that an I-140 is approvable when the beneficiary is more than qualified for the proffered position.

**RESPONSE:** SCOPS can confirm that, in general, the beneficiary of a Form I-140 is found to be qualified for the position where his or her education and/or experience exceed the minimum requirements for the position.

**FORM I-140 SCHEDULE A PETITIONS – PREVAILING WAGES FOR CASES INVOLVING ROVING EMPLOYEES**

8. Members are reporting a new trend of RFEs for Form I-140 Schedule A petitions pending at the TSC where the TSC alleges the employer’s prevailing wage determinations are “invalid.”

In these cases, the employer is a staffing company, has multiple locations, and does not know precisely which work location (client location) the employee will be placed at the time of filing. In keeping with the Service’s “Guidance for Schedule A Blanket Labor Certifications effective February 14, 2006” (see Adjudicator’s Field Manual revised Chapter 22, Employment-Based Petitions, Entrepreneurs and Special Immigrants) (AILA Doc. 06021661), the prevailing wage was derived from the employer’s headquarters. The prevailing wage lists the employer’s headquarters as the primary worksite in part E.c. and states the employee will be assigned to one worksite, yet unknown, in part E.5. The Form ETA-9089 requires the primary worksite on page 2, Part H, box 1-2. In the samples provided, the employer stated, “see attached addendum” and included a list of possible known worksites, indicating that the worker would be placed at one of the listed worksites or a yet unknown worksite location.

In the RFEs, the TSC states the prevailing wage is not valid because the employer’s headquarters is not included on the list of known possible worksites. However, the employer’s headquarters was not listed as a possible worksite on the addendum because the employee will not perform work at the employer’s headquarters. As stipulated on the prevailing wage (part E.5) and Form ETA-9089 (box H-11), the employee will be assigned to one worksite, unknown at the time of filing, and the position does not require travel, relocation, or performance of work in various locations. Case samples available.

This appears to be an inaccurate or, at minimum, incomplete analysis of the law. It appears to be a training issue that is slowing the processing and approval of Schedule A cases. Can SCOPS please remind adjudicators to review the Schedule A Guidance? When the employer has multiple worksites, and does not know at the time of filing where the employee will be placed, the prevailing wage is derived from the employer’s headquarters. The headquarters location is not a worksite location.

**RESPONSE:** In general, where an employer consistently indicates on ETA Forms 9141 and 9089, and on Form I-140, that it employs relevant workers at multiple locations and doesn’t know at which of these the Schedule A employee will be placed, the prevailing wage is derived from the employer’s headquarters. However, since our adjudicators encounter a range of scenarios related to this issue, SCOPS cannot comment on the

appropriateness of RFEs without reviewing the entire petition. Please provide sample receipt numbers.

**AILA/SCOPS Teleconference Agenda  
July 26, 2017**

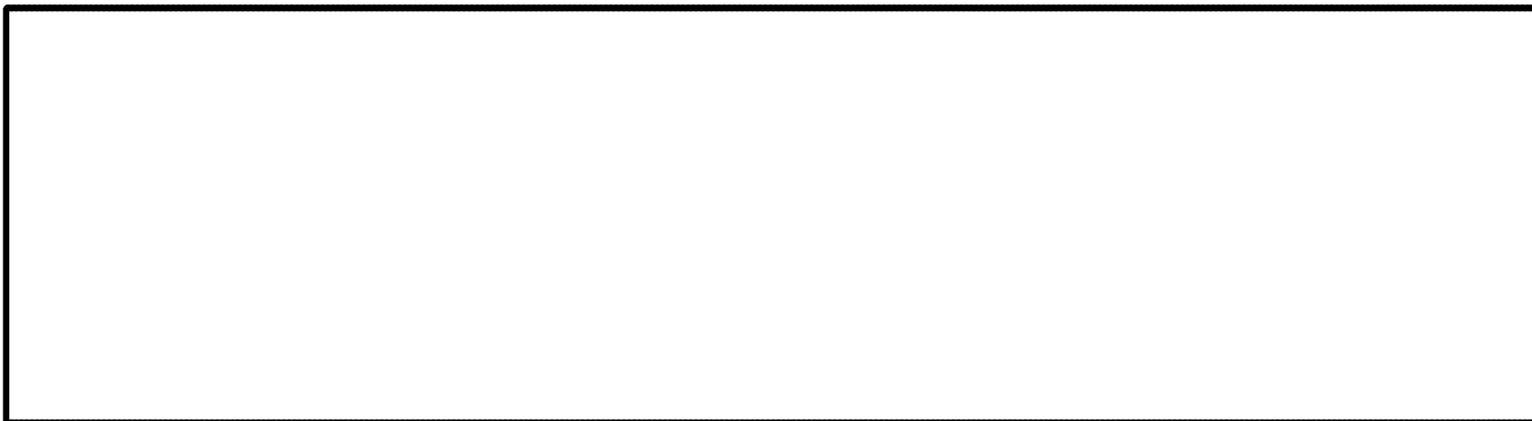
**I-751 PETITIONS – PROCESSING DELAYS**

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*(b) Interview-- (1) Authority to waive interview. The director of the regional service center shall review the Form I-751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.*

Could USCIS please elaborate on what steps it is taking to come into compliance with this federal regulation? In the meantime, can USCIS Customer Service representatives be instructed to accept case status inquiries on any I-751 Removal of Conditions petition that has been pending with USCIS for more than 90 days?

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### **N-600K and N-400 (MILITARY APPLICATIONS) - TRANSFER TO LOCKBOXES**

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**RESPONSE:** Naturalization work is slowly being consolidated with all N forms to be assigned to Field Operations. We cannot speculate on possible filing changes down the road, but proper notice will be provided if a change occurs.

### **TN SPLIT DECISIONS**

3. Our members report that “split” decisions are not being issued in the context of a TN petition to change and extend status. In other words, if the beneficiary of a TN petition to change and extend status (filed via Form I-129) travels outside the U.S. while the I-129 remains pending, the entire petition will be denied, rather than “splitting” the decision by approving the TN classification while denying the change of status portion.

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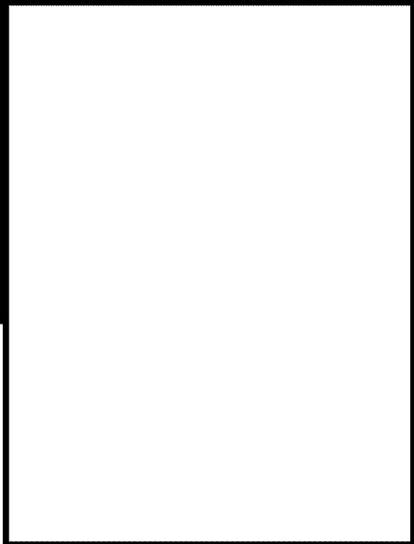
the beneficiary will apply for admission to the United States, of the approval.

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**UNSEALED ENEVELOPES FROM USCIS**

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**RESPONSE:**

**FY 2018 H-1B CAP-SUBJECT PETITIONS**

5. In June, SCOPS indicated it had completed the mailing of all receipts for FY 2018 H-1B cap-subject petitions and that petitions not selected in the lottery would be returned beginning mid-June. Can SCOPS provide AILA an update on whether all unselected petitions have been mailed?

(b)(5)

**RESPONSE:** On July 19, 2017, USCIS announced publically that all unselected petitions were mailed and returned. If a cap subject petition was submitted and the petitioner has not received a receipt notice or a returned petition by July 31, 2017, please contact USCIS customer service for assistance.

#### **RETURN OF PREMIUM PROCESSING FOR ALL H-1B PETITIONS**

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**RESPONSE:** USCIS does not anticipate that the premium processing suspension will surpass the six-month mark established in the original premium processing suspension announcement. USCIS expects premium processing to resume for all H-1B petitions on or before October 3, 2017.

#### **FOLLOW-UP: I-140 PETITIONS FOR NURSES (Q. 11 AILA/SCOPS Teleconference May 10, 2017)**

7. The following question and answer appeared on the May 2017 SCOPS agenda:

##### **I-140 PETITIONS FOR NURSES**

11. AILA has received reports that TSC is regularly denying/issuing RFE/NOIDs on I-140s, holding that nurses who hold a Bachelor of Science Nursing degree (BSN) are not qualified for nursing positions that require an Associate’s degree in nursing (ASN). The BSN is, of course, a higher degree, and therefore, these applicants are more than qualified for the proffered positions. The law is clear that any I-140 beneficiary can have additional skills, experience, or education beyond the requirements stated in the ETA Form 9089 and still meet the minimum requirements of the position. In several cases, the position is that of Registered Nurse, and on the ETA Form 9089, the position requires an ASN. TSC claims that the I-140 should be denied because the BSN does not meet the exact requirements on the ETA Form 9089. We have reached out to TSC, suggesting that this is a training issue, but TSC disagrees. Please confirm that an I-140 is approvable when the beneficiary is more than qualified for the proffered position. Case examples include:

[Chart omitted – see AILA Doc. No 17052434 (Posted 5/24/17)]

**5/10/17 RESPONSE:** USCIS is looking into this issue. Several of these cases have been approved. (AILA note: this issue is not restricted to nurse cases, and USCIS is aware of that.)

**FOLLOW UP QUESTION:** Please confirm that an I-140 is approvable when the beneficiary is more than qualified for the proffered position.

**RESPONSE:** SCOPS can confirm that, in general, the beneficiary of a Form I-140 is found to be qualified for the position where his or her education and/or experience exceed the minimum requirements for the position.

#### **FORM I-140 SCHEDULE A PETITIONS – PREVAILING WAGES FOR CASES INVOLVING ROVING EMPLOYEES**

8. Members are reporting a new trend of RFEs for Form I-140 Schedule A petitions pending at the TSC where the TSC alleges the employer’s prevailing wage determinations are “invalid.”

In these cases, the employer is a staffing company, has multiple locations, and does not know precisely which work location (client location) the employee will be placed at the time of filing. In keeping with the Service’s “Guidance for Schedule A Blanket Labor Certifications effective February 14, 2006” (see Adjudicator’s Field Manual revised Chapter 22, Employment-Based Petitions, Entrepreneurs and Special Immigrants) (AILA Doc. 06021661), the prevailing wage was derived from the employer’s headquarters. The prevailing wage lists the employer’s headquarters as the primary worksite in part E.c. and states the employee will be assigned to one worksite, yet unknown, in part E.5. The Form ETA-9089 requires the primary worksite on page 2, Part H, box 1-2. In the samples provided, the employer stated, “see attached addendum” and included a list of possible known worksites, indicating that the worker would be placed at one of the listed worksites or a yet unknown worksite location.

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position does not require travel, relocation, or performance of work in various locations. Case samples available.

This appears to be an inaccurate or, at minimum, incomplete analysis of the law. It appears to be a training issue that is slowing the processing and approval of Schedule A cases. Can SCOPS please remind adjudicators to review the Schedule A Guidance? When the employer has multiple worksites, and does not know at the time of filing where the employee will be placed, the prevailing wage is derived from the employer's headquarters. The headquarters location is not a worksite location.

**RESPONSE:** In general, where an employer consistently indicates on ETA Forms 9141 and 9089, and on Form I-140, that it employs relevant workers at multiple locations and doesn't know at which of these the Schedule A employee will be placed, the prevailing wage is derived from the employer's headquarters. However, since our adjudicators encounter a range of scenarios related to this issue, SCOPS cannot comment on the appropriateness of RFEs without reviewing the entire petition. Please provide sample receipt numbers.

**AILA/SCOPS Teleconference Agenda  
September 27, 2017**

**RESUMPTION OF PREMIUM PROCESSING FOR ALL H-1B PETITIONS**

1. Does USCIS plan to announce the reinstatement of premium processing next Tuesday, October 3? Will USCIS be accepting requests to convert to premium submitted on October 3? Does SCOPS have a plan in place to receive and process the anticipated large number of requests to convert to premium and, if so, can SCOPS elaborate on that plan?



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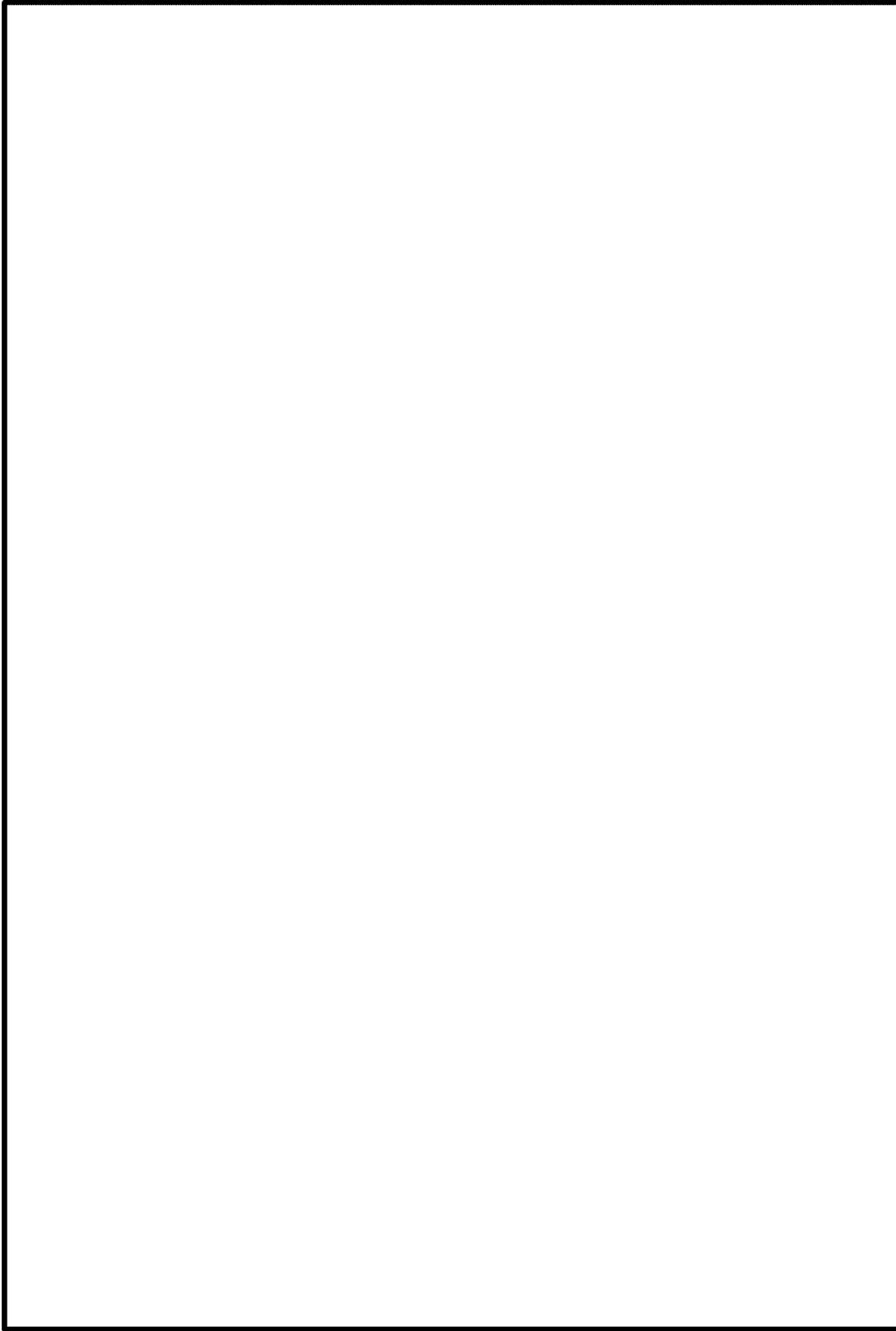
**FY 2018 H-1B CAP-SUBJECT PETITIONS**

2. Can SCOPS provide AILA an update on whether all FY18 cap-subject H-1B petitions have undergone a “first touch” at this time? What percentage of H-1B cap-subject petitions will have been adjudicated to completion as of October 1, 2017?

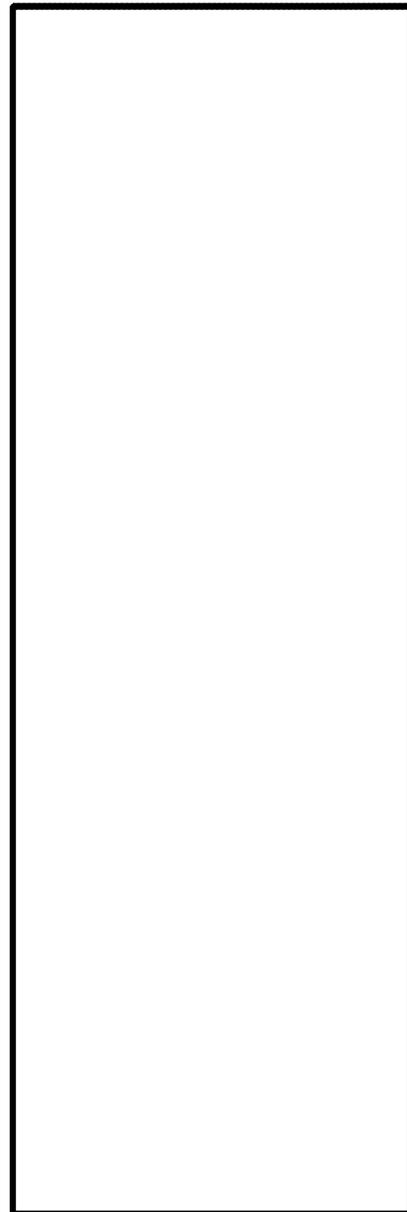
**RESPONSE:** USCIS is on track to complete a first touch on FY18 cap petitions by the beginning of fiscal year 2018. The number of petitions adjudicated to completion as of October 1, 2017 is dependent on a variety of factors, including but not limited to RFE responses and premium processing requests. We cannot predict with ~~certainly~~ certainly the percentage of cap-subject petitions which will be adjudicated to completion as of October 1, 2017.

**IN-PERSON INTERVIEW REQUIREMENT FOR EMPLOYMENT-BASED I-485s AND I-730s FOR BENEFICIARIES WHO ARE IN THE U.S. AND PETITIONING TO JOIN A PRINCIPAL ASYLEE/REFUGEE APPLICANT**

(b)(5)



(b)(5)



- e) How will the “phase-in” work? For example, will only certain types of employment-based applications be impacted initially (e.g., only EB-2 for 2 months, then add EB-3, etc.)

The initial ~~phaseshipment includes only~~ applies to certain employment-based applications (those EB I-485s with an underlying I-140).

- f) Was there a push to ramp up adjudication of employment-based I-485s before 10/1/17? Conversely, was a “hold” placed on pending employment-based I-485s while USCIS finalizes its implementation plan?

Neither occurred. The Service Centers continued to adjudicate at their regular pace with visa availability dictating what is worked.

- g) Will I-730 interviews be held at USCIS Field Offices or Asylum Offices?

I-730 interviews will be held at Field Offices.

- h) What resource and staffing changes have been implemented to accommodate the increased workload at USCIS Field Offices?

This question is more appropriately addressed to FOD.

- i) What type of training is being provided to USCIS field officers to handle employment-based interviews and I-730 petitions?

SCOPS ~~provided/participated in~~ multiple 3.5 hour training webinars on EB485 interviews to ~~insure-ensure~~ all Field Offices had the opportunity to participate. I-730s are initially being sent to only those offices well-staffed with officers who have had significant I-730 adjudicating experience.

- j) How is this new policy expected to impact processing times for employment-based adjustment applications, benefits applications, and petitions overall? If interviews for I-730s petitions are to be handled at the Asylum Offices, how is this expected to impact the affirmative asylum backlog?

EB485 processing times are ~~dictated-affected~~ by visa availability. SCOPS will have the opportunity to prioritize other workloads at this juncture. I-730 interviews should have no impact on the affirmative asylum backlog.

**ORIGINAL I-797 APPROVAL NOTICE REQUIRED BY CBP**

4. AILA members report that CBP officers are increasingly asking nonimmigrant applicants for admission to present an original I-797 Approval Notice, particularly for Canadian Nationals where no visa is issued. This is a problem for O-2, P-1, H-2B and other visa categories that list multiple beneficiaries on the underlying petition and USCIS only issues one I-797 Approval Notice. Filing an I-824 requires a filing fee of \$465 and current processing times are approximately 3-4 months. Will SCOPS consider issuing separate I-797 Approval Notices for each beneficiary or suggest a better way to request multiple I-797 Approval Notices?

**RESPONSE:** Thank you for bringing this issue to our attention. We will review this issue internally and take into consideration your suggestion to issue separate I-797 Approval Notices for each beneficiary.

## DACA

5. Individuals whose DACA benefits have expired within the past year have always been eligible to file for a renewal. See Page 1 of the I-821D instructions ("*NOTE: If you have received DACA and you are filing within one year after your last period of deferred action expired, please follow the instructions provided below for renewal requestors.*"); see also USCIS Help Center ("*If you file after your most recent DACA period expired, but within one year of its expiration, you may submit a request to renew your DACA.*")

Question 4 of USCIS's new DACA FAQ states that "current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018" may file applications for DACA renewal as long as they are received by USCIS as of October 5, 2017. Given the uncertainty about the continuity of DACA, many recipients took a "wait-and-see" approach and allowed their DACA to lapse. Can individuals who have been granted DACA in the past and have DACA EADs that have expired within the past year still renew their DACA before October 5, 2017, which would be consistent with all prior guidance on this issue?

**RESPONSE:** No. As the Acting Secretary's 9/5/17 DACA rescission memo ~~notes~~ states, only DACA recipients whose DACA expires between September 5, 2017 and March 5, 2018, may ~~file requests for~~ renewal of DACA if their renewal request is received by October 5, 2017. Requests for initial DACA and renewal DACA received on or before September 5, 2017 will also be adjudicated.

## FORM I-797 RECEIPT NOTICES FOR CERTAIN EAD APPLICANTS FAIL TO LIST AN EAD CODE

6. Qualified EAD auto-extension applicants under 8 CFR §274a.13(d) who submit a request for a fee waiver (Form I-912) concurrently with the Form I-765 are not receiving an I-797 receipt notice specific to the Form I-765. Instead, they are receiving an I-797 "Fee

Waiver Approved” notice that references the I-765 receipt number. Upon AILA member inquiry, the USCIS National Customer Service Center confirmed that a separate I-797 will not be issued for I-765 applicants when a Form I-912 is concurrently filed. Unfortunately, the I-797 notice that is issued does not list the EAD code, which is required to demonstrate an applicant’s eligibility for an auto-extension for I-9 purposes [as stated in the USCIS Fact Sheet: Automatic Extensions of EADs Provided by the “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers” Final Rule and the M-274 in Section 4.2 <https://www.uscis.gov/i-9-central/42-automatic-extensions-employment-authorization-documents-eads-certain-circumstances>].

We respectfully request that USCIS issue I-797 receipt notices for I-765 applications, even when a Form I-912 fee waiver request is filed concurrently and approved. Additionally, we respectfully request that USCIS affirmatively communicate to the public that there are individuals with qualifying Form I-765 extension requests who are employment authorized under 8 CFR §274a.13(d), notwithstanding the lack of an I-797 receipt notice with a qualifying EAD eligibility code.

**RESPONSE:** CLAIMS3 and lockbox issued I-765 receipt notices were updated in January to include the eligibility category and the 180-day extension language. Unfortunately, it was recognized later that some lockbox receipt notices for I-765s where a fee waiver was granted did not include the eligibility category and additional text. SCOPS has been informed that Lockbox completed a software update on July 6, 2017, and since then all applicable receipt notices issued by the lockbox have included the applicant’s eligibility category and new auto extension text.

#### **FOLLOW UP FROM JUNE 2017 SCOPS CALL - I-797s AND GRACE PERIOD**

7. AILA and SCOPS have previously discussed the confusion regarding the validity dates noted in the I-797. The current I-797 instructs the petitioner/employer to keep the top portion of the I-797 (Petition Period Validity) and the beneficiary to use the left half bottom portion of the I-797 (Grace Period, if granted) for visa processing and admission to the United States. Though the left bottom portion is where the grace period is noted, it does not explain that a portion of the period is a grace period, and not a period of authorized employment. The discrepancy between the validity periods in the upper and lower portions of the I-797 approval notice causes confusion and may lead to many inquiries to USCIS to correct what could easily be conceived to be an error. In addition, the discrepancy between these dates causes confusion for other agencies, namely the Department of State and Customs and Border Protection. In addition to answering the questions below, we respectfully request that USCIS consider amending the Form I-797 in accordance with the suggestions in the attached redlined draft, to provide better clarity to employers, DOS, and CBP.

- A. U.S. Petitioners/Employers: U.S. employers report confusion as to which expiration date should be used in completing Form I-9 or when using E-Verify (the top portion of the I-797 or the left half bottom portion).
- a. Please advise which expiration date should to use for I-9 purposes.
  - b. For stakeholder simplicity, we respectfully suggest that USCIS add data field information to the bottom left portion of Forms I-797 with attached I-94s that states the approved period of employment authorization reflected in the I-797 petition. This will allow both employers and employees to more easily identify the expiration date of authorized employment for purposes of re-verifying employment authorization on the Form I-9. The I-9 instructions require that "Reverification in Section 3 must be completed prior to the earlier of: The expiration date, if any of the employment authorization stated in Section 1, or the expiration date, if any, of the List A or List C employment authorization document recorded in Section 2, [with some exceptions]." Adding the "employment authorized" duration to the bottom of the I-797 would provide much needed clarity for employers and employees in understanding when exactly employment authorization ends.
  - c. In addition, the I-797 language currently reads, "The grace period is a period of authorized stay but does not provide the beneficiary authorization to work beyond the petition validity period." However, there are other regulatory provisions, such as 8 CFR §274a.12(b)(20), which provides 240 days of employment authorization while a timely-filed extension of stay with the same employer is pending, and the H-1B portability provisions found at 8 CFR §214.2(h)(2)(i)(H), which permit aliens to work during the grace period. Therefore, we respectfully suggest that USCIS add the qualifying phrase, "unless otherwise authorized by regulations" to this sentence, as noted in the red-lined draft.
- B. Department of State: Will consular posts know the petition validity expiration date (PED), by looking at the left half bottom portion of the I-797 for purposes of annotating the visa? Does PIMS or CLAIMS reflect a petition validity period and a grace period for DOS reference?
- C. U.S. Customs and Border Protection:
- a. When U.S. Customs and Border Protection reviews an I-797 when processing an individual's initial application for admission in that status, CBP must determine the length of time for which admission is authorized. While CBP is aware of the nonimmigrant grace periods, reports indicate that CBP is not always aware that the left bottom portion of the I-797

already contains the 10-day grace period and thus have issued I-94s with an additional 10 days beyond what is included in the I-797. We therefore recommend that a separate line be added to the left bottom portion/I-94 portion of the I-797 approval notice to indicate the grace period, as suggested in our red-lined version.

- b. Another issue with the I-797 validity period that causes CBP confusion is not directly related to the grace period but bears mentioning in this discussion. That is, when USCIS approves an extension of stay or change of status request, some approval notices bear a start date corresponding to the day following the previously authorized period of stay whereas others bear a start date corresponding to the date of adjudication. When CBP reviews the traveler's history, they notice what appears to be a gap in approval notice validity periods. CBP has informed AILA that it does not follow USCIS and Department of State guidance regarding unlawful presence. We are concerned therefore, that given the current delays with USCIS adjudications, there could be perceived gaps in a person's status exceeding 180 days, which CBP may interpret to have triggered an unlawful presence bar. Even if these requests were timely filed and from a USCIS/ DOS perspective provided the foreign national with a period of authorized stay, CBP may not see it that way. Given this danger, would USCIS consider adopting a uniform policy to issue approval notices for extension of stay and change of status applications with a start date which immediately follows the expiration of the previously authorized status, even in cases where the adjudication occurs after the previous period of stay expired?

- D. USCIS Customer Service: Members report receiving I-797 approval notices where the top petition validity shows the correct duration but the I-94 validity is incorrect and the error clearly results from a typographical error made when the end date is entered into the form. Members have received the following response when following up with USCIS national customer service center on this issue:

*Type of service requested:*

*-- Typographical Error*

*The status of this service request is:*

*Regarding your Form I-94, the paper form will no longer be provided to a traveler upon arrival, except in limited circumstances. The traveler will be provided with a Customs and Border Protection admission stamp on their travel document. If a traveler needs a copy of their I-94 (record of admission) for verification of alien registration, I-94 errors, immigration status or*

*employment authorization, it can be obtained from [www.cbp.gov/I94](http://www.cbp.gov/I94).*

*We hope this information is helpful to you.*

Would USCIS please instruct customer service representatives, officers, and other necessary staff that such errors should be corrected and that replacement I-797 notices should be issued?

**RESPONSE:** As discussed in response to your previous inquiry from the June AILA meeting regarding grace periods, the I-797s in question were in fact issued with errors. USCIS corrected the identified errors and reissued the I-797s. To reiterate, the grace period may be authorized by USCIS as a matter of discretion, on a case-by-case basis, to nonimmigrants seeking changes of status or extensions of stay. The I-797 approval notice provides the petition validity dates at the top of the form and, at the bottom of the form, the I-94 indicates the authorized period of stay which may include the discretionary grace period. The following explanatory language also appears on the I-797,

“The I-94 attached below may contain a grace period of up to 10 days before, and up to 10 days after the petition validity... The grace period is a period of authorized stay but does not provide the beneficiary authorization to work beyond the petition validity period.”

As such, validity period dates should be used for the I-9, Employment Eligibility Verification, because the validity period provides authorization to work. The grace period is a period of authorized stay but does not provide authorization to work. If AILA members identify additional I-797s which are issued with errors, please bring those to our attention so we can further research and issue corrected notices, if required.

Please note that both DOS and CBP have access to certain systems which allow them to view the validity and grace periods that are granted during adjudication of the petition.

Additionally, your inquiry appears to be requesting that USCIS make additional changes to the I-797 approval notices to address your concerns. This request will be taken into consideration.

#### **H-1B RFEs RAISING LEVEL 1 OR 2 WAGE ISSUES AND QUESTIONING WHETHER A POSITION IS A SPECIALTY OCCUPATION**

8. In June 2017, AILA members began receiving Requests for Evidence (RFEs) for H-1B petitions raising questions regarding the use of a Level 1 wage. Specifically, the RFEs

claim that: (1) a Level 1 wage is not appropriate given the complexity of the job duties; or (2) that the position is not a specialty occupation because the Level 1 wage indicates that the position is “entry-level.” More recently, AILA members report receiving RFEs where a Level 2 wage was designated on the Labor Condition Application (LCA). In these cases, USCIS questions whether the position is a specialty occupation, claiming that a Level 2 wage indicates that the employee will be performing only “moderately complex tasks that require limited judgment.”

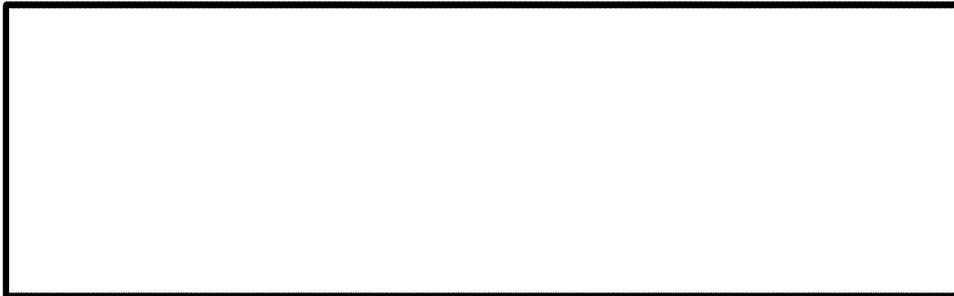
In response to these reports, AILA issued a Call for Examples to collect Level 1 and Level 2 RFEs, assess the scope of the trend, and identify patterns. To date, AILA has received more than 320 case examples. Based on a review of the RFEs submitted, there appear to be three main variants of the Level 1 RFE:

- **Duties Beyond Level 1:** This RFE asserts that the duties indicate the position is beyond entry level, and that therefore the petitioner has not established that the petition is supported by a certified LCA that corresponds to the position. The majority of these RFEs require the petitioner to demonstrate that the Level 1 wage is appropriate for the position. A few of these RFEs require the petitioner to demonstrate that the Level 1 wage is appropriate for the position or to submit a new LCA (if certified before filing).
- **Level 1 is Not a Specialty Occupation:** This RFE asserts that the Level 1 wage indicates that the offered position is not a specialty occupation and therefore the petitioner must demonstrate that the position is a specialty occupation.
- **Duties Beyond Level 1 and Not Specialty Occupation:** This RFE is a hybrid of the first two. It asserts that the duties are beyond entry level and that the Level 1 wage indicates the offered position is not a specialty occupation. Thus, the petitioner must demonstrate that the submitted Level 1 LCA is appropriate for the position.

Can SCOPS explain the impetus for the sudden issuance of such a vast number of RFEs raising this issue? Are all cases that have a Level 1 wage listed on the LCA receiving RFEs as a matter of policy? If not, how does USCIS determine which cases will receive an RFE of this nature?



(b)(5)



(b)(5)

For more information on this determination, please see the Policy Memorandum entitled Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions" dated March 31, 2017.

#### **Duplicate Biometrics Appointment Notices**

9. AILA members have recently reported receiving duplicate biometric appointment notices from the TSC for applicants with pending I-485 adjustment of status applications. For example, an applicant received a biometrics appointment notice on 5/26/17 with an appointment date of 6/13/17, attended that appointment on the required date, and then received a second notice on 8/19/17 to attend another biometrics appointment on 9/5/17, with no explanation as to why the second appointment had been scheduled. AILA has reached out to TSC to notify TSC of this issue and to get some information regarding whether these duplicate biometrics appointment notices are being issued in error, but has not yet received a response. Could SCOPS kindly alert TSC of these duplicate appointment notices, which appears are likely being issued in error or as a result of a glitch in the ASC appointment scheduling system?

**RESPONSE:** The issue of duplicate ASC scheduling was brought to TSC's attention by the HQ Biometric Division on September 7, 2017. TSC uses a local automated process to identify cases that need ASC scheduling and it appears that, due to a technical glitch, the local automated process caused duplicate ASC scheduling of some cases. Once notified of the issue, TSC staff quickly worked with Office of Information Technology (OIT) staff to make an adjustment to the local automated process to correct the issue. The correction was put into place on September 12, 2017.

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty would qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

In designating the proffered position at a Level I wage, you have indicated that the proffered position is a comparatively low, entry-level position relative to other positions within the occupation. Given the *OOH*'s guidance that positions ~~located~~ within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. See 8 CFR 214.2(h)(4)(iii)(A)(2). Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. See 8 CFR 214.2(h)(4)(iii)(A)(4).



(b)(5)

(b)(5)





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

**March 31, 2017**

**PM-602-0142**

## Policy Memorandum

**SUBJECT:** Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions”

### **Purpose**

This policy memorandum (PM) supersedes and rescinds the December 22, 2000 memorandum titled “Guidance memo on H1B computer related positions” issued to Nebraska Service Center (NSC) employees by Terry Way.

### **Scope**

This PM applies to all U.S. Citizenship and Immigration Services (USCIS) employees. The updated guidance is effective immediately.

### **Authority**

- Sections 101(a)(15)(H)(i)(b) and 214(a)(1), (c)(1), (i) of the Immigration and Nationality Act (INA), Title 8, United States Code, sections 1101(a)(15)(H)(i)(b) and 1184(a)(1), (c)(1), (i).
- Title 8 Code of Federal Regulations (CFR), section 214.2(h).

### **Policy**

On April 1, 2006, USCIS instituted “bi-specialization” procedures that discontinued the adjudication of H-1B petitions by the NSC and the Texas Service Center. On July 1, 2016, the NSC once again began to directly accept certain H-1B and H-1B1 (Chile/Singapore Free Trade) petitions. USCIS instituted this change to help address a large increase in H-1B petitions and provide the operational flexibility to redistribute caseloads as necessary to meet processing goals.

Now that H-1B petitions are once again being adjudicated by the NSC, USCIS officers at that service center may inadvertently follow the prior, but no longer adhered to, memorandum entitled “Guidance memo on H1B computer related positions” (dated December 22, 2000) from Terry Way, the former director of the NSC. As the guidance provided in this NSC memorandum is not an accurate articulation of current agency policy, USCIS is rescinding it to prevent inconsistencies in H-1B and H-1B1 adjudications between the three service centers that currently adjudicate H-1B petitions.

One concern with the Terry Way memorandum is that it is now somewhat obsolete. Relying on the 1998-1999 and 2000-01 editions of the *Occupational Outlook Handbook (Handbook)*,<sup>1</sup> it was issued during what the NSC Director called a period of “transition” for certain-computer related occupations.<sup>2</sup> In addition, this memorandum also relied partly on a perceived line of relatively early unpublished (and unspecified) decisions, which did not address the computer-related occupations as they have evolved since those decisions were issued.<sup>3</sup>

But more importantly, statements in the memorandum do not fully or properly articulate the criteria that apply to H-1B specialty occupation adjudications. While the memorandum stated that most programmers had a bachelor’s degree or higher based on information provided by the *Handbook*, that information is not particularly relevant to a specialty occupation adjudication if it does not also provide the specific specialties the degrees were in and/or what, if any, relevance those degrees had to the computer programmer occupation. Further, the memorandum failed to mention that only “some” of those that had a bachelor’s or higher degree at that time held a degree in “computer science . . . or information systems.”<sup>4</sup>

Furthermore, the memorandum also did not accurately portray essential information from the *Handbook* that recognized that some computer programmers qualify for these jobs with only “2-year degrees.” While the memorandum did mention beneficiaries with “2-year” degrees, it incorrectly described them as “strictly involving the entering or review of code for an employer whose business is not computer related.” The *Handbook* did not support such a statement.

Rather, the 2000-01 edition did not make such a distinction and described all programmers as sharing a fundamental job duty, i.e., writing and testing computer code. According to the current version of the *Handbook*, this is still the case; and individuals with only an “associate’s degree” may still enter these occupations.<sup>5</sup> As such, it is improper to conclude based on this information that USCIS would “generally consider the position of programmer to qualify as a specialty occupation.”

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<sup>1</sup> USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses; however, USCIS does not maintain that the *Handbook* is the exclusive source of relevant information.

<sup>2</sup> In stating that the computer programmer occupation was in transition, the NSC Director presumably relied on information in the 2000-01 edition of the *Occupational Outlook Handbook*. That edition indicated that the computer programmer occupation included those with varying and shifting job titles and descriptions due to the many technological innovations in programming at that time.

<sup>3</sup> While 8 CFR 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

<sup>4</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2000-01 ed., “Computer Programmers.”

<sup>5</sup> See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Programmers,” <https://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Mar. 31, 2017).

The memorandum also does not properly explain or distinguish an entry-level position from one that is, for example, more senior, complex, specialized, or unique.<sup>6</sup> This is relevant in that, absent additional evidence to the contrary, the *Handbook* indicates that an individual with an associate’s degree may enter the occupation of computer programmer. As such, while the fact that some computer programming positions may only require an associate’s degree does not necessarily disqualify all positions in the computer programming occupation (viewed generally) from qualifying as positions in a specialty occupation, an entry-level computer programmer position would not generally qualify as a position in a specialty occupation because the plain language of the statutory and regulatory definition of “specialty occupation” requires in part that the proffered position have a minimum entry requirement of a U.S. bachelor’s or higher degree *in the specific specialty*, or its equivalent. See section 214(i)(1) of the Act; 8 CFR 214.2(h)(4)(ii).<sup>7</sup>

Based on the current version of the *Handbook*, the fact that a person may be employed as a computer programmer and may use information technology skills and knowledge to help an enterprise achieve its goals in the course of his or her job is not sufficient to establish the position as a specialty occupation. Thus, a petitioner may not rely solely on the *Handbook* to meet its burden when seeking to sponsor a beneficiary for a computer programmer position. Instead, a petitioner must provide other evidence to establish that the particular position is one in a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the criteria at

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<sup>6</sup> Officers are reminded that “USCIS must determine whether the attestations and content of [a Labor Condition Application (LCA)] correspond to and support the H-1B visa petition.” See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 546 (AAO 2015). Accordingly, USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position. If a petitioner designates a position as a Level I, entry-level position, for example, such an assertion will likely contradict a claim that the proffered position is particularly complex, specialized, or unique compared to other positions *within the same occupation*.

In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [https://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Through the wage level, the petitioner reflects the job requirements, experience, education, special skills/other requirements, and supervisory duties. *Id.*

<sup>7</sup> Officers are also reminded that USCIS does not bear the burden of establishing that a particular position does not qualify as a specialty occupation. Instead, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the INA, 8 U.S.C. § 1361. Accordingly, USCIS officers may not approve a petition based on inconclusive statements from the *Handbook* about the entry-level requirements for a given occupation. Rather, the petitioner bears the burden to submit probative evidence from objective and authoritative sources that the proffered position qualifies as an H-1B specialty occupation.

8 CFR 214.2(h)(4)(iii). Section 214(i)(1) of the INA; *see also Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>8</sup>

## Use

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

## Contact Information

If USCIS officers have questions or suggestions regarding this PM, they should direct them through their appropriate chains of command to the Office of Policy and Strategy.

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<sup>8</sup> Specifically, the court explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int’l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm’r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

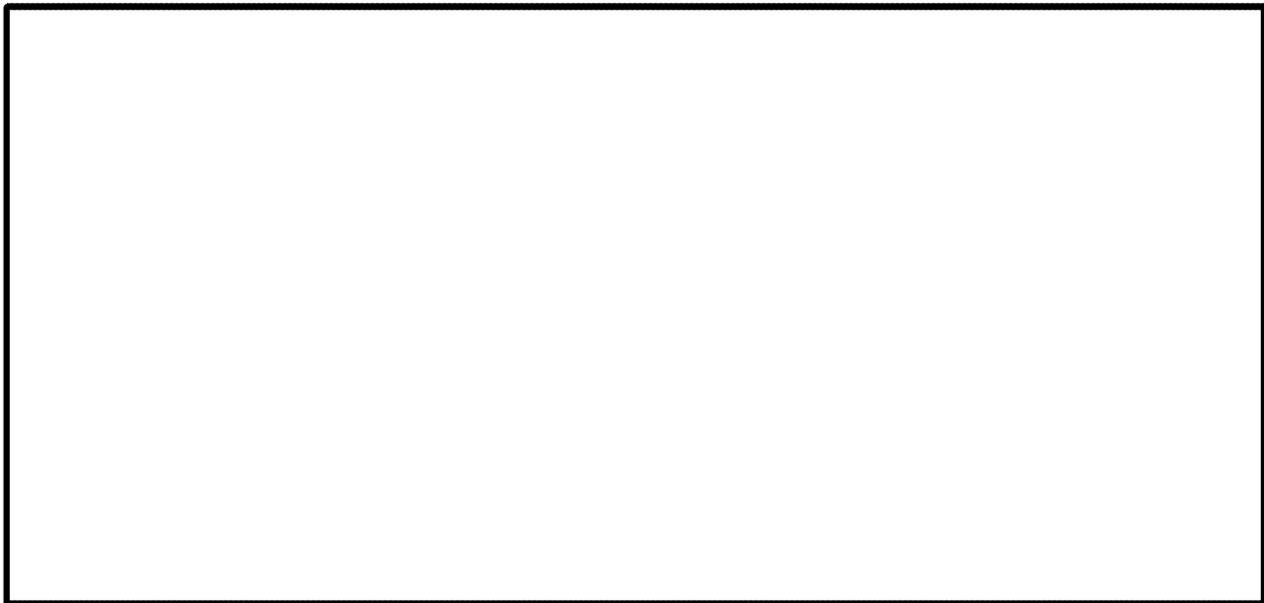
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**To:** Mahmoudi, Sheila C; Plastrik, Steven T; Burford, Mary H; Luna, Maria P (Pilar); Leonard, Kane C; Wilder, Charlotte P; Ammerman, Michael J  
**Cc:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N; Choi, Heesun S (Sunny)  
**Subject:** RE: wage level analysis H1B  
**Date:** Monday, September 11, 2017 9:51:11 AM  
**Attachments:** FW AILAVSC LIAISON INQUIRY; Student Requests for Evidence for Cap Subject H-1Bs.msg

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+ Sunny, Simon and Micah

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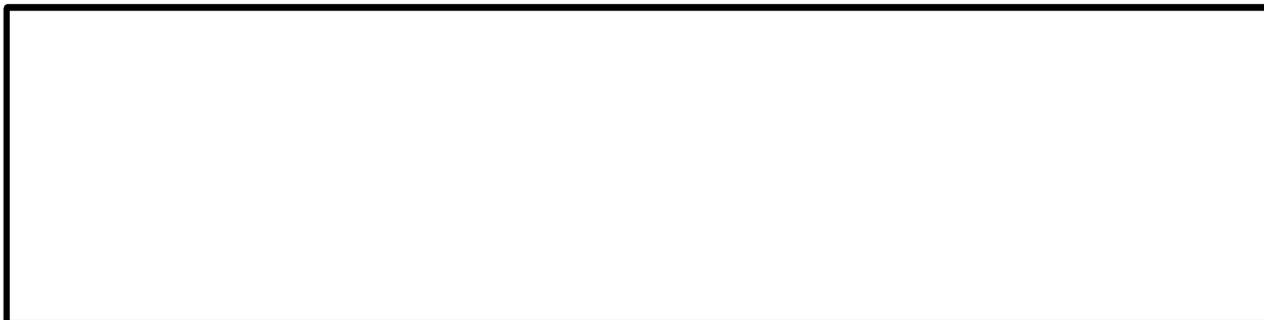
**From:** Mahmoudi, Sheila C  
**Sent:** Friday, September 08, 2017 3:49 PM  
**To:** Plastrik, Steven T; Burford, Mary H; Luna, Maria P (Pilar); Leonard, Kane C; Wilder, Charlotte P; Ammerman, Michael J  
**Cc:** Cox, Robert H; Chase, Carmen M  
**Subject:** wage level analysis H1B



(b)(5)

---

**From:** Abram, John P  
**Sent:** Thursday, August 10, 2017 6:57 PM  
**To:** Fierro, Joseph  
**Cc:** Baran, Kathy A; Tamanaha, Emisa T  
**Subject:** Practice Alert: H-1B "Level 1" RFEs



(b)(5)



(b)(5)

John Patrick Abram  
Chief of Staff  
California Service Center  
U.S. Citizenship and Immigration Services  
Telephone: (949) 389-3018  
Cell Phone [REDACTED] (b)(6)

*Sheila Mahmoudi*

Special Counsel for Field Management  
Office of Chief Counsel, USCIS  
(949) 389-3685 desk [REDACTED] cell (b)(6)

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**From:** [Nakajima, Simon T](#)  
**To:** [Cox, Robert H](#); [Bump, Micah N](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: Rescission Memo RFE Templates  
**Date:** Tuesday, October 24, 2017 5:29:43 PM

---

I'm done with my review. Thanks.

---

**From:** Nakajima, Simon T  
**Sent:** Tuesday, October 24, 2017 2:00 PM  
**To:** Cox, Robert H; Bump, Micah N  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: Rescission Memo RFE Templates

I put those two on the ECN [here](#) and [here](#).

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Tuesday, October 24, 2017 10:37 AM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny); ALD  
**Subject:** RE: Rescission Memo RFE Templates

Good morning Robert,



(b)(5)

If you would be able to complete review and finalize by **Monday October 30th**, it would be greatly appreciated.

Thanks,  
Kim

---

**From:** Cox, Robert H  
**Sent:** Friday, August 25, 2017 5:31 PM  
**To:** Stern, Kimberly M (Kim); Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny); ALD  
**Subject:** RE: Rescission Memo RFE Templates

Hi Kim,

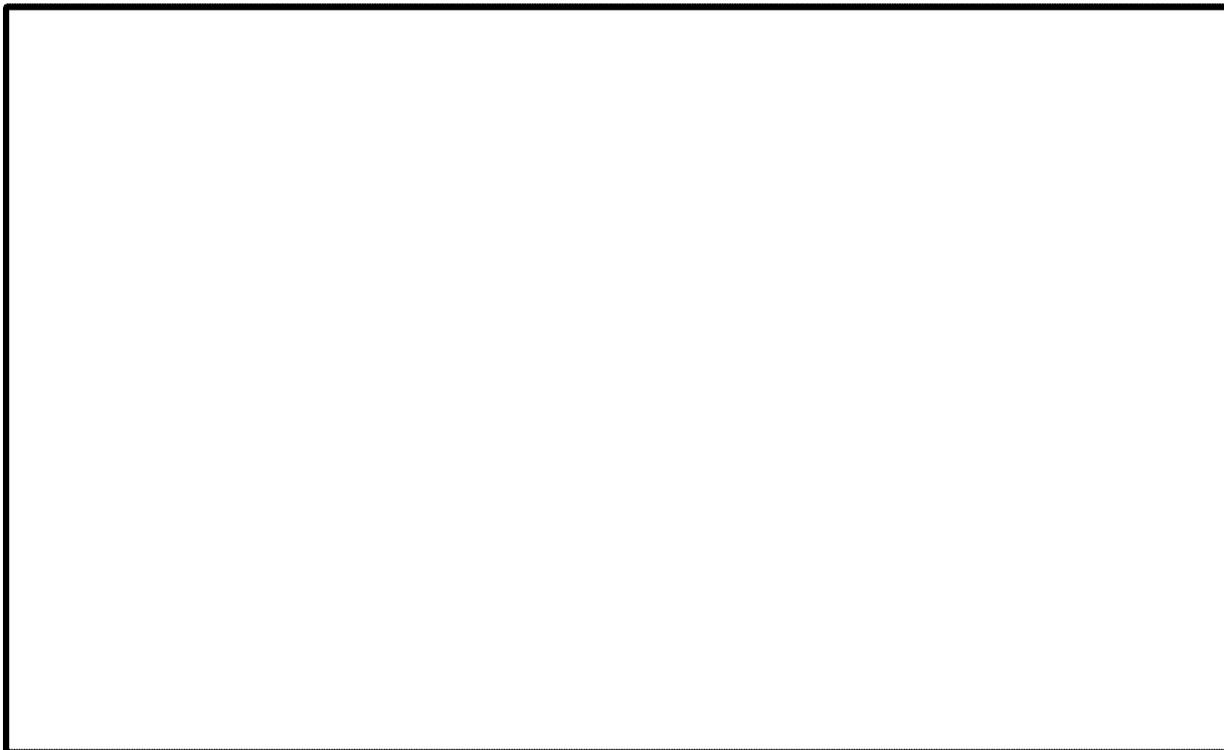
We have completed our initial review of the new RFE templates. Our comments and edits have been saved to the ECN and attached hereto for ease of reference.

Thanks,  
Robert

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 17, 2017 1:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)  
**Subject:** RE: Rescission Memo RFE Templates

Hi Robert,



(b)(5)

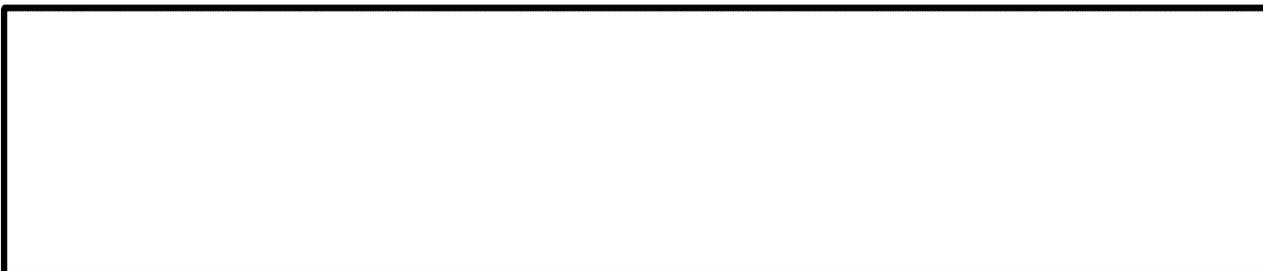
Please let me know if this helps clarify.

Thanks,  
Kim  
😊

---

**From:** Cox, Robert H  
**Sent:** Thursday, August 17, 2017 11:03 AM  
**To:** Stern, Kimberly M (Kim); Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)  
**Subject:** RE: Rescission Memo RFE Templates

Hi Kim,



(b)(5)

(b)(5)

Thanks,  
Robert

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Tuesday, August 15, 2017 2:38 PM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; Choi, Heesun S (Sunny)  
**Subject:** Rescission Memo RFE Templates

Good afternoon OCC,

Nicole and I have reviewed the service center comments/revisions regarding the below the RFE Templates:

(RFE) Computer-Related Positions and Wage Level

(RFE) LCA Certified for Incorrect Wage Level

Your review and re-clearance by COB Aug. 25<sup>th</sup> would be greatly appreciated. Please let us know if you need additional time.

Thank you,  
Kim

---

**From:** Boudreau, Lynn A  
**Sent:** Monday, August 07, 2017 2:52 PM  
**To:** Doumani, Stephanie M; Nicklaw, Nicole C; Stern, Kimberly M (Kim)  
**Cc:** Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J  
**Subject:** FW: Follow up - Rescission Memo Discussion

Hi Stephanie, Nicole and Kim,

Please the attached documents with the compiled comments on CSC's updated RFEs from both VSC and NSC.

Thanks,  
  
Lynn

---

**From:** Grabast, Dennis R  
**Sent:** Tuesday, August 01, 2017 3:55 PM  
**To:** Simon, Ronna J; Martin, Evelyn M; Hersey, Lucas I; Collins, Richard A; Roach, Joyce E; Peryea, Jaime L; Whittier, Michelle J; Plastrik, Steven T; Parent, Amy B; Roberts, Claudia R  
**Subject:** Follow up - Rescission Memo Discussion

NSC Comments concerning RFE suggestions on

(b)(5)



Thanks

Dennis

**Dennis Grabast** | Supervisory Immigration Services Officer | Family Division – I-129H1B  
USCIS/DHS/Nebraska Service Center | (402) 323-2548 | RM2051A | EX 365

**From:** [Cox, Robert H](#)  
**To:** [Bump, Micah N](#); [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#)  
**Subject:** RE: Question re: OES worksheet/DOL definition  
**Date:** Thursday, October 26, 2017 3:13:22 PM

---

[Redacted]

(b)(5)

---

**From:** Bump, Micah N  
**Sent:** Wednesday, October 25, 2017 6:16 PM  
**To:** Nakajima, Simon T; Cox, Robert H  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: Question re: OES worksheet/DOL definition

[Redacted]

(b)(5)

**From:** Nakajima, Simon T  
**Sent:** Wednesday, October 25, 2017 6:04 PM  
**To:** Bump, Micah N; Cox, Robert H  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: Question re: OES worksheet/DOL definition

Thanks Micah. I don't disagree with your analysis, but wonder if the specifics you provide as an example (highlighted below) should be left out for now. Otherwise I thought everything is on point.

---

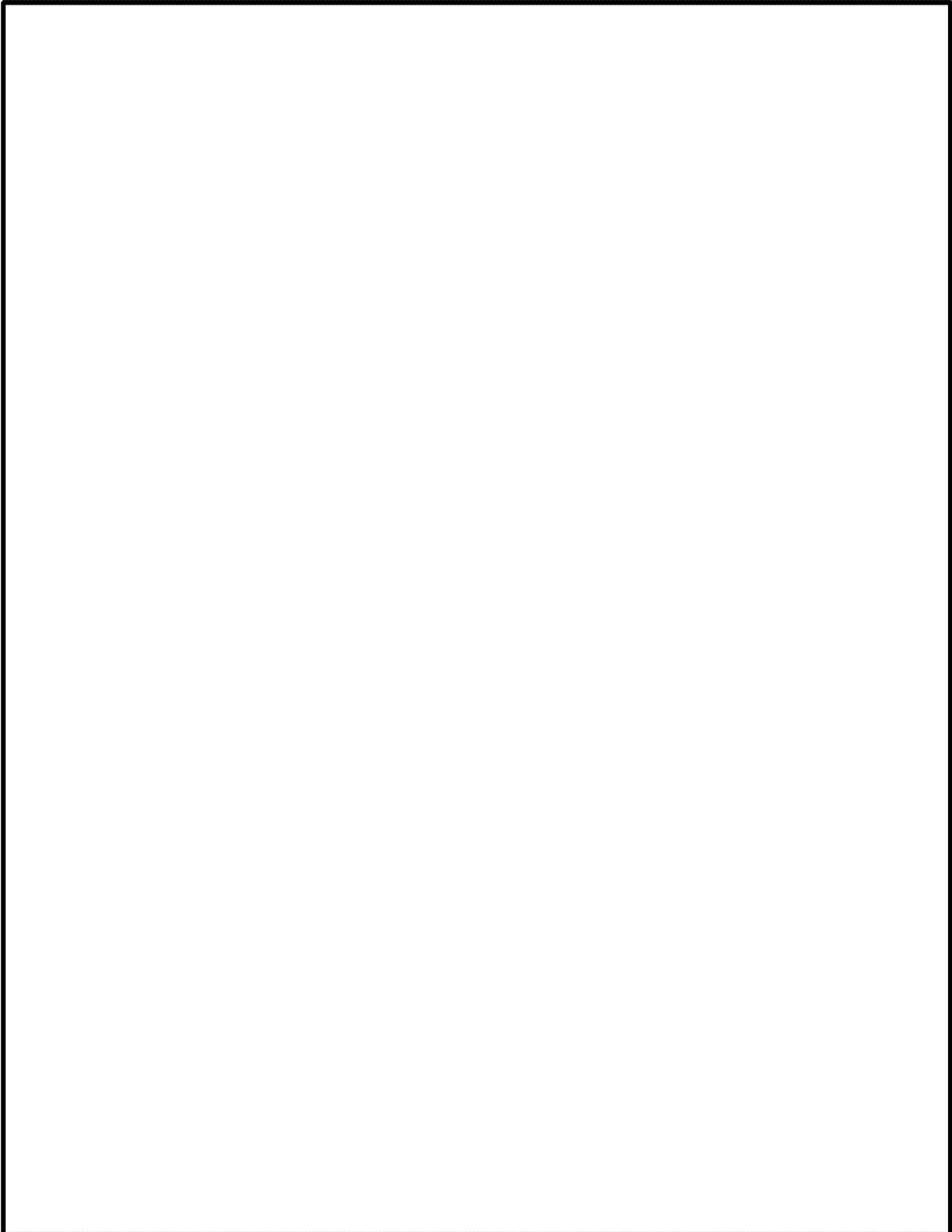
**From:** Bump, Micah N  
**Sent:** Wednesday, October 25, 2017 4:59 PM  
**To:** Nakajima, Simon T; Cox, Robert H  
**Cc:** Choi, Heesun S (Sunny)  
**Subject:** RE: Question re: OES worksheet/DOL definition

[Redacted]

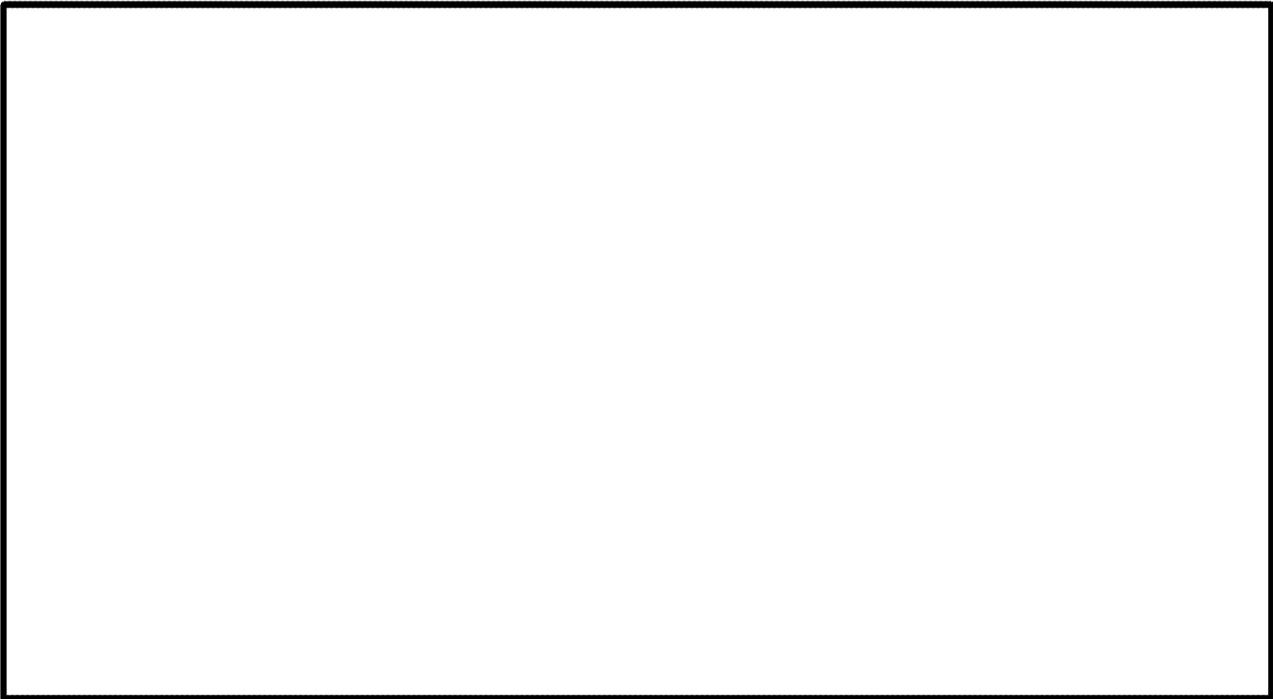
(b)(5)

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, October 24, 2017 4:34 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Question re: OES worksheet/DOL definition

Good afternoon OCC, (b)(5)



(b)(5)



As always, thank you!

BEST

---

**From:** Nakajima, Simon T  
**Sent:** Tuesday, October 24, 2017 6:16 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** RE: Question re: OES worksheet/DOL definition

(b)(5)

Hi Nicole,



Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, October 24, 2017 4:34 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Question re: OES worksheet/DOL definition

Good afternoon OCC,



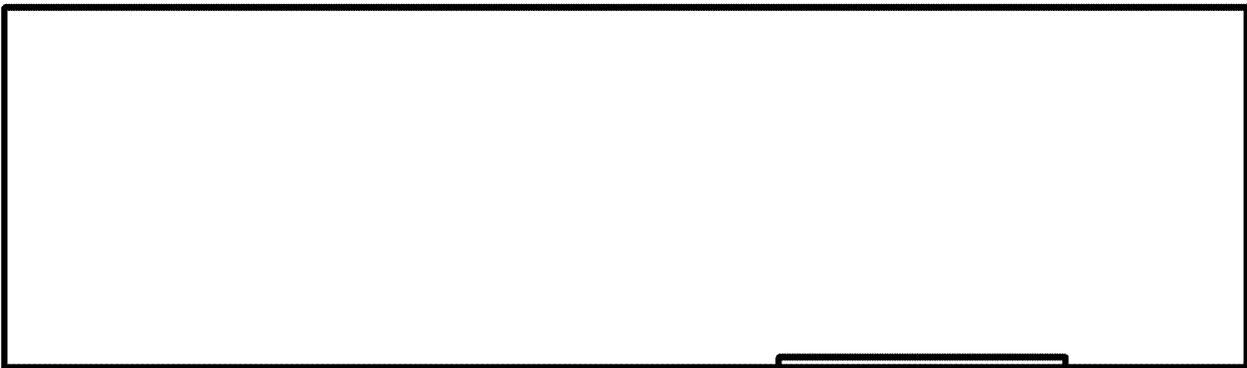


As always, thank you!

BEST

**From:** Plastrik, Steven T  
**To:** Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Nakajima, Simon T  
**Cc:** Schmalz, Peter N; Love, Lucinda A; Young, Blanton R (Roy); Hanehan, Brendan J  
**Subject:** RE: PP 10/24 - wage level material change  
**Date:** Tuesday, October 24, 2017 1:10:57 PM

(b)(5)



I'll pass along this guidance and let you know what they decide  but hopefully this will be sufficient for VSC to move forward.

Thanks,

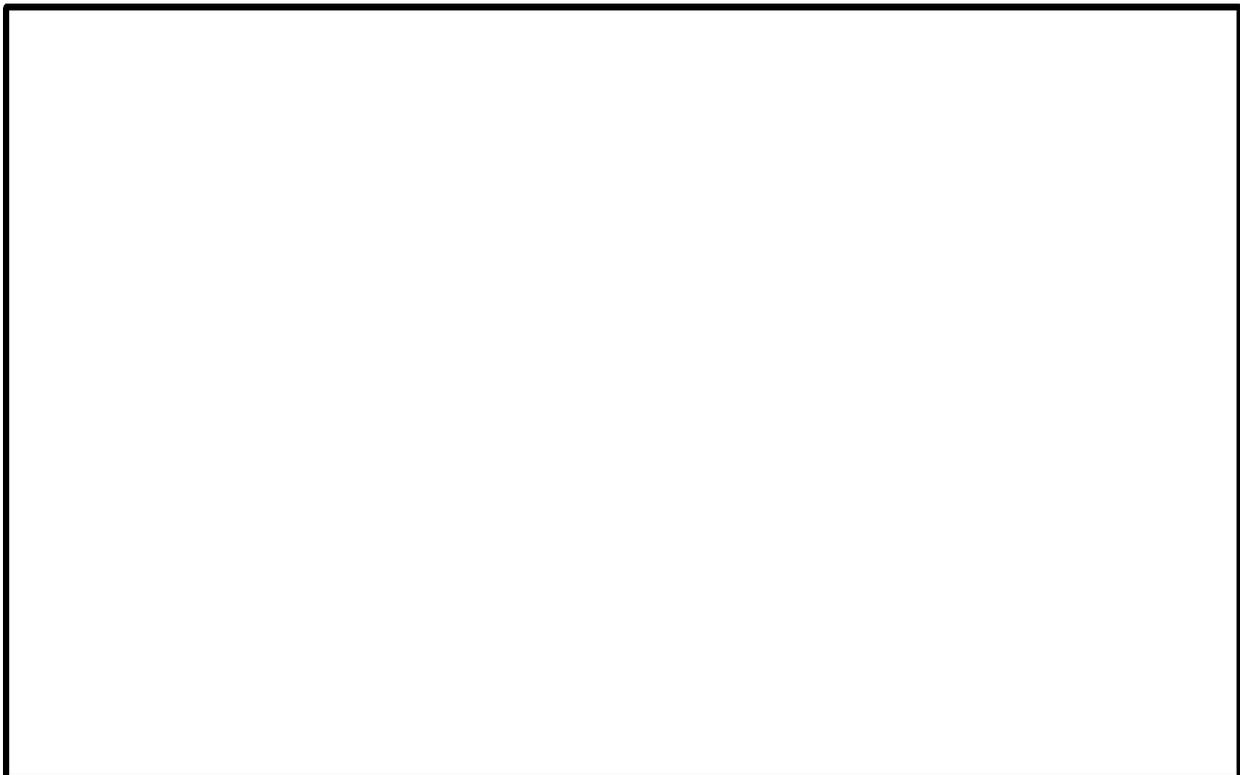
Steve

---

**From:** Cox, Robert H  
**Sent:** Tuesday, October 24, 2017 12:59 PM  
**To:** Plastrik, Steven T; Bump, Micah N; Choi, Heesun S (Sunny); Nakajima, Simon T  
**Cc:** Schmalz, Peter N; Love, Lucinda A; Young, Blanton R (Roy); Hanehan, Brendan J  
**Subject:** RE: PP 10/24 - wage level material change

(b)(5)

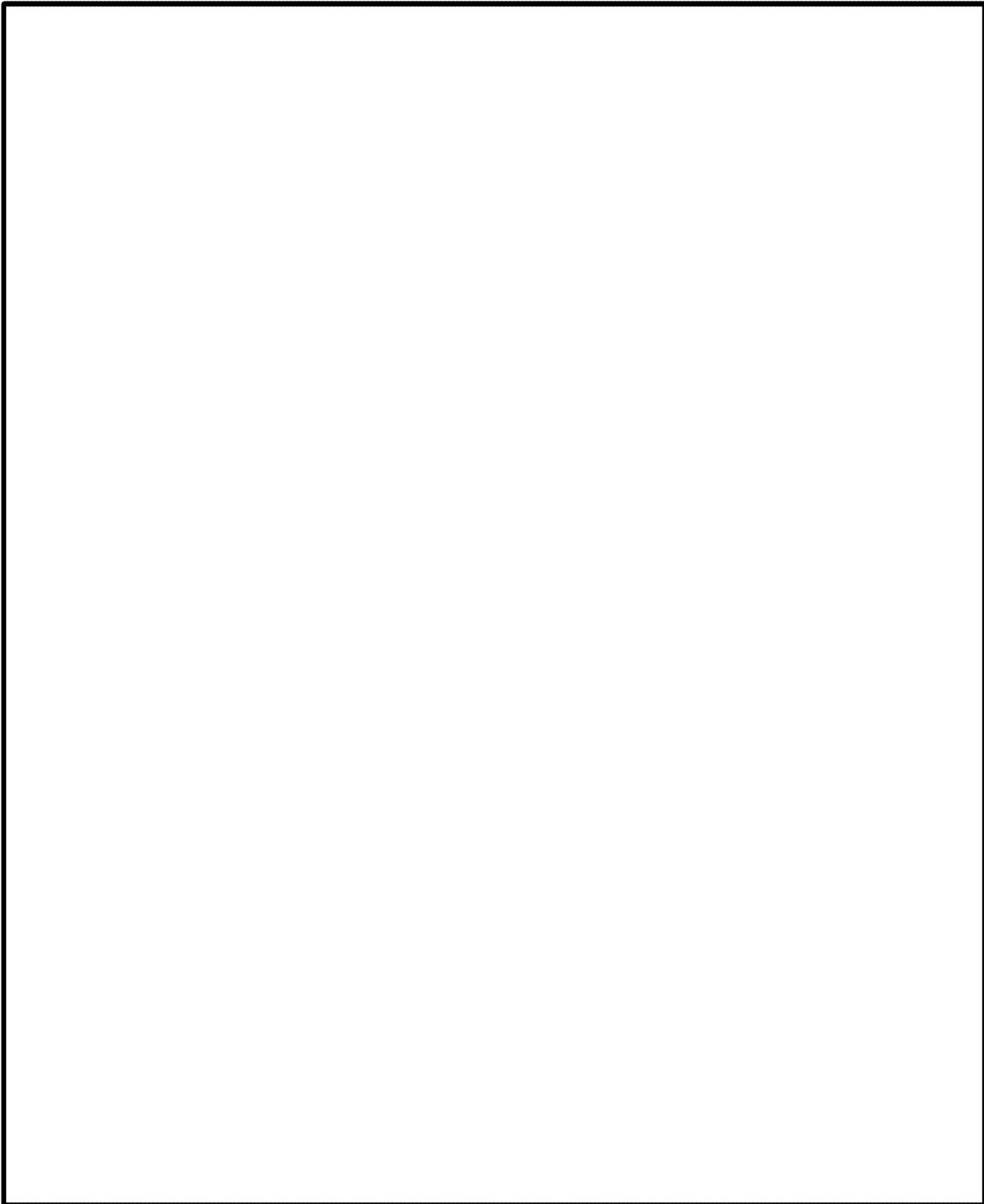
Hi Steven,



Thanks,  
Robert

(b)(5)

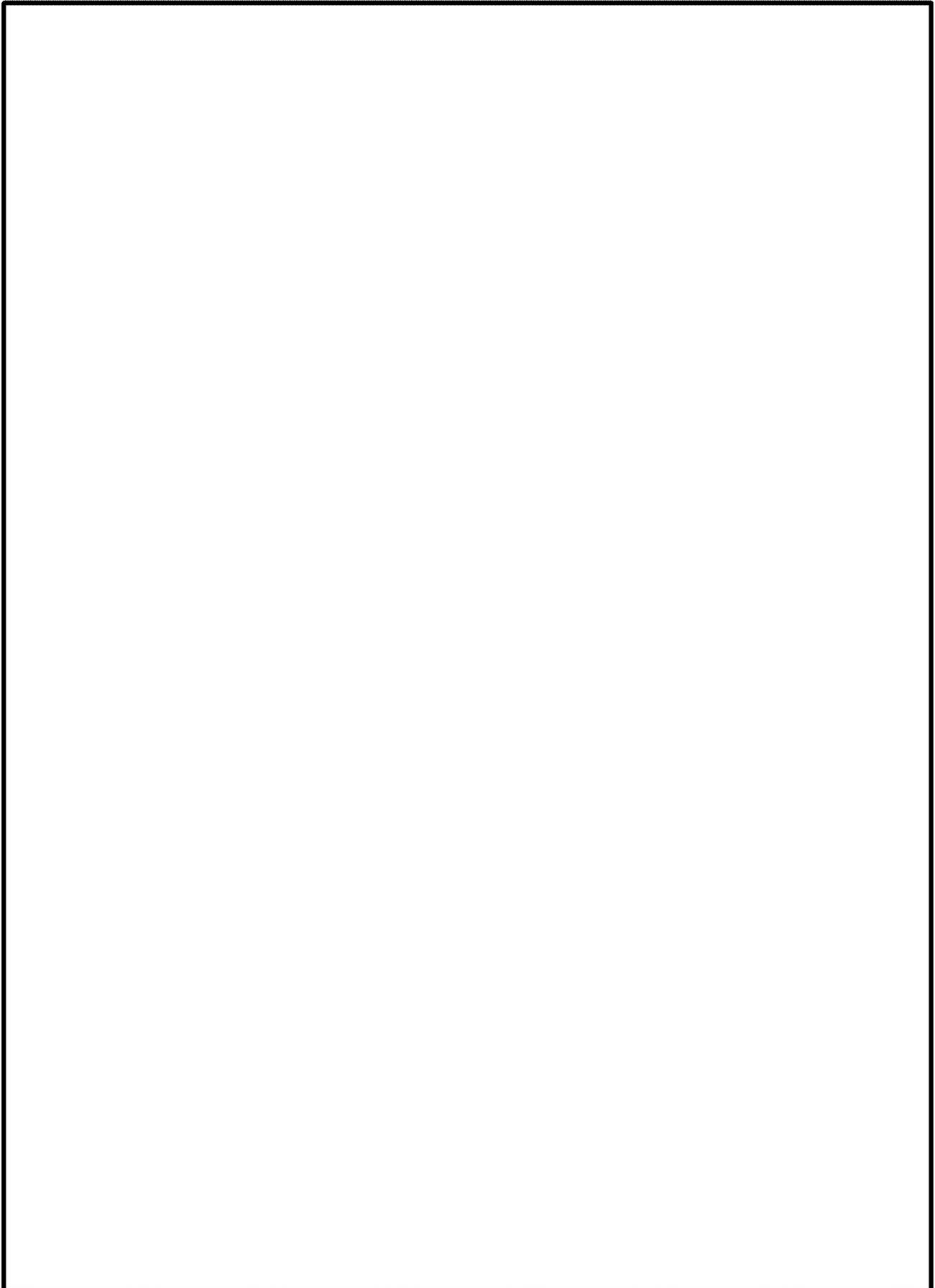
Suggested edits to denial language:



**From:** Plastrik, Steven T  
**Sent:** Tuesday, October 24, 2017 8:57 AM  
**To:** Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Nakajima, Simon T  
**Cc:** Schmalz, Peter N; Love, Lucinda A; Young, Blanton R (Roy); Hanehan, Brendan J  
**Subject:** PP 10/24 - wage level material change  
**Importance:** High

(b)(5)

Good morning—we have a wage level case that we’re hoping to run by you. Unfortunately it’s a PP case due today.



[REDACTED]

If you could please let us know your thoughts on whether this constitutes a material change and the case should be denied or whether VSC may consider an approval, it would be greatly appreciated.

Brendan and Roy—if you have to add or clarify, please feel free to jump in.

If you'd like to discuss, just let us know.

Thanks,

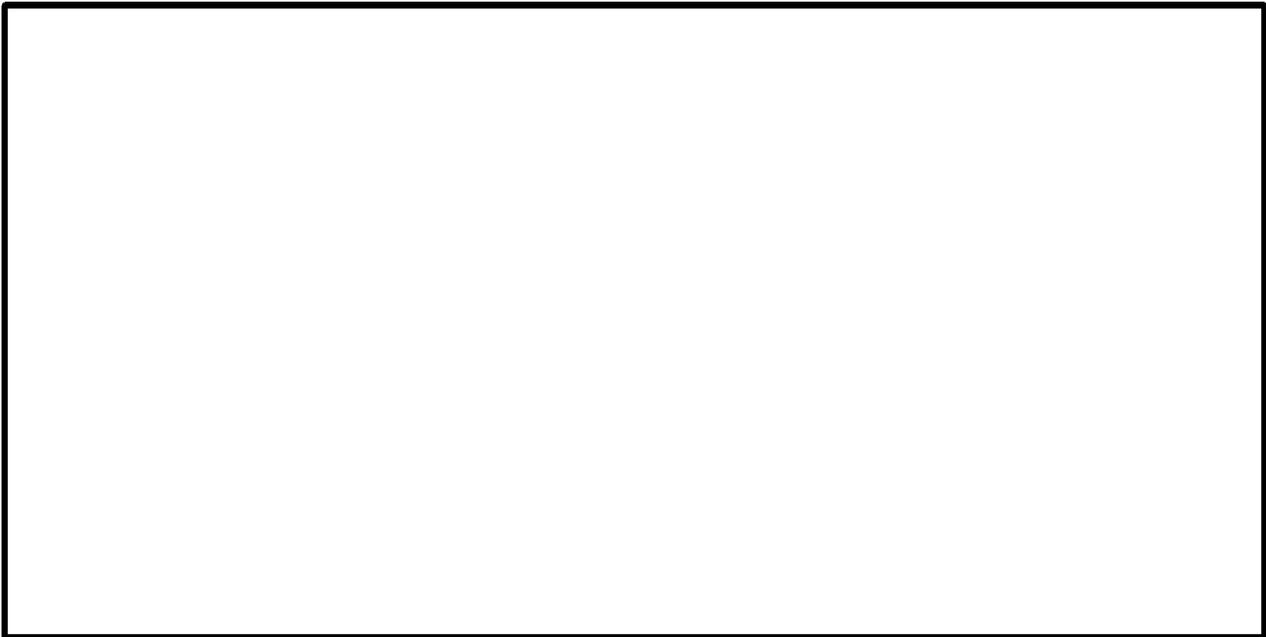
Steve Plastrik  
Associate Counsel  
Vermont Service Center  
USCIS Office of the Chief Counsel  
Office: (802) 288-7809  
Cell: [REDACTED] (b)(6)  
E-mail: [Steven.T.Plastrik@uscis.dhs.gov](mailto:Steven.T.Plastrik@uscis.dhs.gov)

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**From:** Violett, Michael D  
**To:** Buten, Elizabeth C; Angustia, Kathleen M; Dalal-Dheini, Sharvari P (Shev); Parascandola, Ciro A; Van Trump, Jennifer R; Bailey, Morgan; Choi, Heesun S (Sunny); Cox, Robert H; Doumani, Stephanie M; Hoffman, Andrew B; Hurteau, Mallory J; King, Alexander R; Chase, Carmen M; Fortes, Michael J; Choi, Hae-Jin; Miran, Maria Y; Nakajima, Simon T; Greeley, Kevin A; Westra, Michelle M; Symons, Craig M  
**Cc:** Viger, Steven W; Bernstein, Lauren J; Cummings, Kevin J; Cynamon-Rosenthal, Silvia  
**Subject:** RE: Next H-1B Working Group Meeting  
**Date:** Friday, July 15, 2016 11:06:36 AM

---

Hi Elizabeth,



(b)(5)

Thanks,

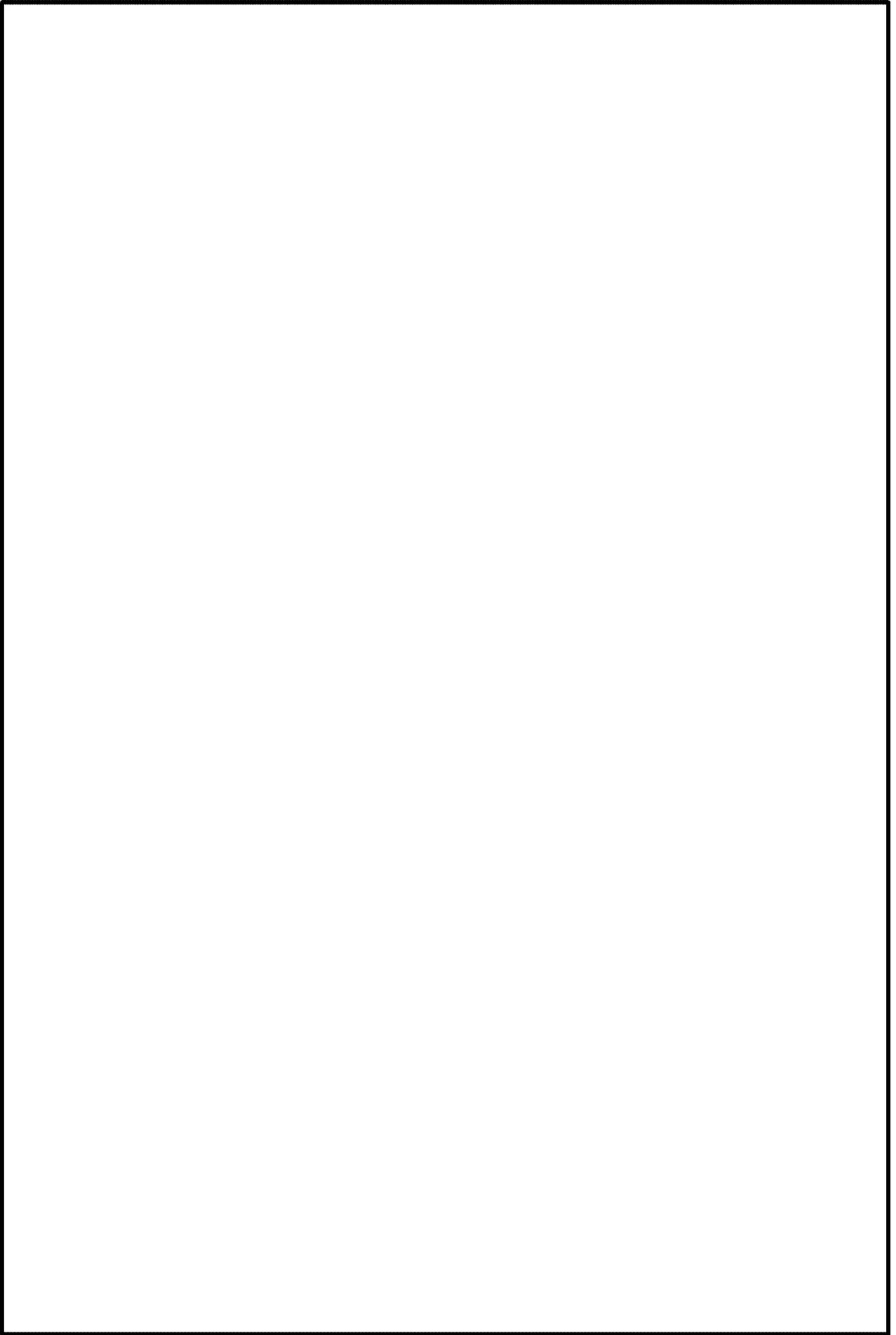
Michael

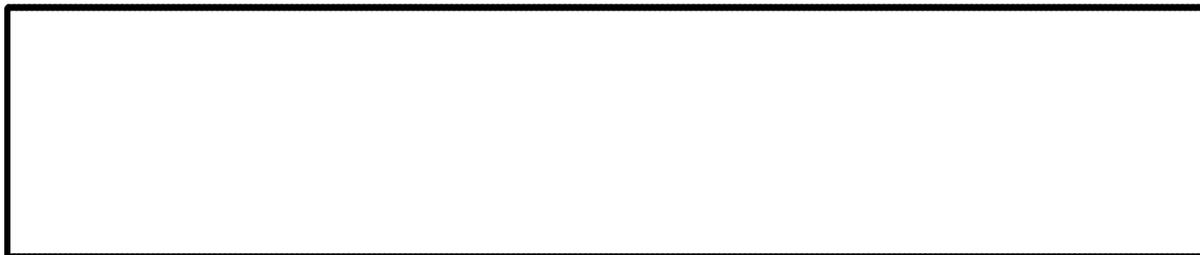
---

**From:** Buten, Elizabeth C  
**Sent:** Thursday, July 07, 2016 1:55 PM  
**To:** Angustia, Kathleen M; Dalal-Dheini, Sharvari P (Shev); Parascandola, Ciro A; Violett, Michael D; Van Trump, Jennifer R; Bailey, Morgan; Choi, Heesun S (Sunny); Cox, Robert H; Doumani, Stephanie M; Hoffman, Andrew B; Hurteau, Mallory J; King, Alexander R; Chase, Carmen M; Fortes, Michael J; Choi, Hae-Jin; Miran, Maria Y; Nakajima, Simon T; Greeley, Kevin A; Westra, Michelle M; Symons, Craig M  
**Cc:** Viger, Steven W; Bernstein, Lauren J; Cummings, Kevin J; Cynamon-Rosenthal, Silvia  
**Subject:** Next H-1B Working Group Meeting



(b)(5)





Elizabeth Buten  
202-272-8465  
Business and Foreign Workers Division  
Office of Policy and Strategy  
US Citizenship and Immigration Services

**From:** [Hunt, Brian J](#)  
**To:** [Bump, Micah N](#)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses  
**Date:** Tuesday, October 10, 2017 10:16:28 AM

---

Hi Micah, do you have any comments? It's pretty short. Thanks!

---

**From:** Nakajima, Simon T  
**Sent:** Tuesday, October 10, 2017 10:15 AM  
**To:** Chase, Carmen M; Choi, Heesun S (Sunny); Hunt, Brian J; Cox, Robert H; Shah, Liza H (Ami); ALD; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

No edits from me. I can send back to client

---

**From:** Chase, Carmen M  
**Sent:** Tuesday, October 10, 2017 9:59 AM  
**To:** Choi, Heesun S (Sunny); Hunt, Brian J; Cox, Robert H; Nakajima, Simon T; Shah, Liza H (Ami); ALD; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

I reviewed and added comments.

---

**From:** Choi, Heesun S (Sunny)  
**Sent:** Friday, October 06, 2017 1:50 PM  
**To:** Hunt, Brian J; Cox, Robert H; Nakajima, Simon T; Shah, Liza H (Ami); ALD; Chase, Carmen M; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

No other edits from me as well.

---

**From:** Hunt, Brian J  
**Sent:** Friday, October 06, 2017 1:38 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Shah, Liza H (Ami); Choi, Heesun S (Sunny); ALD; Chase, Carmen M; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

I have no edits, thanks.

---

**From:** Cox, Robert H  
**Sent:** Friday, October 06, 2017 1:03 PM  
**To:** Nakajima, Simon T; Shah, Liza H (Ami); Choi, Heesun S (Sunny); ALD; Chase, Carmen M; Hunt, Brian J; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

That's fine. I deleted my comment. Thanks.

---

**From:** Nakajima, Simon T  
**Sent:** Friday, October 06, 2017 12:15 PM  
**To:** Shah, Liza H (Ami); Choi, Heesun S (Sunny); Cox, Robert H; ALD; Chase, Carmen M; Hunt, Brian J; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev) (b)(5)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Robert [REDACTED] added it to the doc on the ECN. I think it looks okay, but you may want to look too.

---

**From:** Shah, Liza H (Ami)  
**Sent:** Friday, October 06, 2017 11:18 AM  
**To:** Choi, Heesun S (Sunny); Cox, Robert H; ALD; Nakajima, Simon T; Chase, Carmen M; Hunt, Brian J; Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

I don't have anything to add to this document.

---

**From:** Choi, Heesun S (Sunny)  
**Sent:** Friday, October 06, 2017 11:16 AM  
**To:** Cox, Robert H; ALD; Nakajima, Simon T; Chase, Carmen M; Hunt, Brian J; Shah, Liza H (Ami); Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Thanks for adding that in there, Robert.

---

**From:** Cox, Robert H  
**Sent:** Friday, October 06, 2017 11:11 AM  
**To:** Choi, Heesun S (Sunny); ALD; Nakajima, Simon T; Chase, Carmen M; Hunt, Brian J; Shah, Liza H (Ami); Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

[REDACTED]

(b)(5)

---

**From:** Choi, Heesun S (Sunny)  
**Sent:** Thursday, October 05, 2017 8:13 PM  
**To:** ALD; Nakajima, Simon T; Chase, Carmen M; Cox, Robert H; Hunt, Brian J; Shah, Liza H (Ami); Bump, Micah N  
**Cc:** Dalal-Dheini, Sharvari P (Shev)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Simon uploaded this document onto the ECN [here](#).

Also, I asked Terry if we could have until Tuesday to provide our edits as she originally asked for them by COB tomorrow.

**From:** Raymond, Robert R on behalf of ALD  
**Sent:** Thursday, October 05, 2017 8:07 PM  
**To:** Choi, Heesun S (Sunny); Nakajima, Simon T; Chase, Carmen M; Cox, Robert H; Hunt, Brian J; Shah, Liza H (Ami); Bump, Micah N  
**Cc:** ALD  
**Subject:** FW: Kindly clear these NAFSA-San Antonio responses

Here you go.

---

**From:** OCC-Clearance  
**Sent:** Thursday, October 05, 2017 4:17 PM  
**To:** ALD  
**Cc:** Choi, Heesun S (Sunny); Chase, Carmen M; Nakajima, Simon T  
**Subject:** FW: Kindly clear these NAFSA-San Antonio responses  
**Importance:** High

ALD,

Please take the lead on review and response of this item for OCC, and cc the Box on your reply to the operational client.

CCing others for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance  
Special Counsel to the Deputy Chief Counsel  
DHS | USCIS | Office of the Chief Counsel

---

**From:** Scott, Terry J  
**Sent:** Thursday, October 05, 2017 4:14 PM  
**To:** OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M; Choi, Heesun S (Sunny)  
**Subject:** Kindly clear these NAFSA-San Antonio responses  
**Importance:** High

OCCers:

Good afternoon. Would you please be kind enough to review/clear on the attached questions? CSPED will present these at the upcoming NAFSA regional conference in San Antonio.

Please let me know if you have any questions or concerns.

Thanks!

Terry

**Terry J. Scott**  
Management & Program Analyst

Communications & Customer Service Branch  
Service Center Operations  
U.S. Citizenship & Immigration Services  
U.S. Department of Homeland Security

Mobile: 202-578-0846

**From:** [Scott, Terry J](#)  
**To:** [Nakajima, Simon T](#); [Choi, Heesun S \(Sunny\)](#); [OCC-Clearance](#); [Chase, Carmen M](#)  
**Cc:** [ALD](#); [Hunt, Brian J](#); [Cox, Robert H](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Shah, Liza H \(Ami\)](#); [Bump, Micah N](#)  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses  
**Date:** Tuesday, October 10, 2017 1:28:43 PM  
**Attachments:** [NAFSA REGION III CONFERENCE QUESTIONS San Antonio occ edits 10-10-17 pgs...docx](#)  
**Importance:** High

---

Simon:

OMG, that was embarrassing! Here's the proper attachment, which includes the corrections.

Terry

---

**From:** Scott, Terry J  
**Sent:** Tuesday, October 10, 2017 12:16 PM  
**To:** Nakajima, Simon T; Choi, Heesun S (Sunny); OCC-Clearance; Chase, Carmen M  
**Cc:** ALD; Hunt, Brian J; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Shah, Liza H (Ami); Bump, Micah N  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses  
**Importance:** High

Simon, Carmen, et al:

Good afternoon. SCOPS has responded to the comment and has reworded the affected sentence. SCOPS also accepts the grammatical error.

Please advise if/when OCC clears.

Thanks!

Terry

---

**From:** Nakajima, Simon T  
**Sent:** Tuesday, October 10, 2017 10:17 AM  
**To:** Scott, Terry J; Choi, Heesun S (Sunny); OCC-Clearance; Chase, Carmen M  
**Cc:** ALD; Hunt, Brian J; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Shah, Liza H (Ami); Bump, Micah N  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Hi Terry,

Please find a comment to this set of questions in the attached.

Thanks,  
Simon

---

**From:** Nakajima, Simon T

**Sent:** Friday, October 06, 2017 3:40 PM  
**To:** Scott, Terry J; Choi, Heesun S (Sunny); OCC-Clearance  
**Cc:** Chase, Carmen M  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Terry – we will insert this into the other one and review together. Thanks.

---

**From:** Scott, Terry J  
**Sent:** Friday, October 06, 2017 11:43 AM  
**To:** Choi, Heesun S (Sunny); OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses  
**Importance:** High

Sunny:

Good morning. I am attaching a single “straggler” question and response that became separated from the other responses for the upcoming NAFSA-San Antonio presentation. I’d greatly appreciate it if OCC could review/clear this straggler at its earliest convenience.

Thanks!

Terry

---

**From:** Choi, Heesun S (Sunny)  
**Sent:** Thursday, October 05, 2017 6:06 PM  
**To:** Scott, Terry J; OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Hi Terry - I think Tuesday is a more realistic deadline in light of our other pressing priorities and the fact that Carmen is on AWS tomorrow. If we are able to complete our review sooner, we will of course let you know.

Thank you,  
Sunny

---

**From:** Scott, Terry J  
**Sent:** Thursday, October 05, 2017 4:24 PM  
**To:** Choi, Heesun S (Sunny); OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Sunny:

Thanks for your message. I have no idea if things are as crazy for you in OCC this week as they are in SCOPS. Since there are only 8 questions (actually 7 questions plus one comment) would it be feasible for someone to review/clear these by COB, tomorrow, Friday, October 6<sup>th</sup>? I know I’m going out on a limb by asking for such a short turn-around—especially without knowing how hectic things might be in your office at the moment. CSPED originally requested these responses earlier this week; apparently they plan to pass them to NAFSA in advance of the event so that NAFSA can

utilize them in a PP.

I'd be much obliged if your office could review/clear these at your earliest possible convenience.

Thanks for your understanding!

Terry

---

**From:** Choi, Heesun S (Sunny)  
**Sent:** Thursday, October 05, 2017 4:17 PM  
**To:** Scott, Terry J; OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M  
**Subject:** RE: Kindly clear these NAFSA-San Antonio responses

Hi Terry - by when do you need our edits/comments?

Thanks,  
Sunny

---

**From:** Scott, Terry J  
**Sent:** Thursday, October 05, 2017 4:13 PM  
**To:** OCC-Clearance  
**Cc:** Nakajima, Simon T; Chase, Carmen M; Choi, Heesun S (Sunny)  
**Subject:** Kindly clear these NAFSA-San Antonio responses

OCCers:

Good afternoon. Would you please be kind enough to review/clear on the attached questions? CSPED will present these at the upcoming NAFSA regional conference in San Antonio.

Please let me know if you have any questions or concerns.

Thanks!

Terry

## **Terry J. Scott**

### **Management & Program Analyst**

Communications & Customer Service Branch

Service Center Operations

U.S. Citizenship & Immigration Services

U.S. Department of Homeland Security

Mobile: 202-578-0846

**From:** [Cox, Robert H](#)  
**To:** [Burford, Mary H](#); [Bump, Micah N](#); [Nakajima, Simon T](#)  
**Cc:** [Choi, Heesun S \(Sunny\)](#); [Dalal-Dheini, Sharvari P \(Shev\)](#); [Ammerman, Michael J](#); [Luna, Maria P \(Pilar\)](#); [Leonard, Kane C](#)  
**Subject:** RE: CSC's H1B wage-level denial template  
**Date:** Tuesday, October 17, 2017 11:14:46 AM

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Hi Mary,

We will review and try to get this back to you before too long.

Thanks,  
Robert

---

**From:** Burford, Mary H  
**Sent:** Monday, October 16, 2017 8:27 PM  
**To:** Bump, Micah N; Nakajima, Simon T; Cox, Robert H  
**Cc:** Choi, Heesun S (Sunny); Dalal-Dheini, Sharvari P (Shev); Ammerman, Michael J; Luna, Maria P (Pilar); Leonard, Kane C  
**Subject:** CSC's H1B wage-level denial template

Hi ALD,

Please find attached a draft H1B wage-level denial template we reviewed for CSC. We've made a lot of tinkers and comments and figured you'd like to weigh in too.

We've had this for a couple of weeks now, but please take whatever time you need. I already told our client we would be sending it your way. 😊

Many thanks!

Mary

**Mary H. Burford**  
**Associate Counsel – Service Center Law Division**  
**Office of the Chief Counsel**  
**USCIS California Service Center**  
**Phone: 949.389.8089**  
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**Email: [Mary.H.Burford@uscis.dhs.gov](mailto:Mary.H.Burford@uscis.dhs.gov)**

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**From:** Nicklaw, Nicole C  
**To:** Cox, Robert H; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Cc:** Choi, Heesun S (Sunny); Nakajima, Simon T; Bump, Micah N; Elder, Phillip D; Schmalz, Peter N; ALD  
**Subject:** RE: Citation of Policy Memos in denials/revocations  
**Date:** Tuesday, October 10, 2017 5:17:21 PM

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Hi Robert,

Thank you for getting back to us and further explaining the issue. I'll take this back to Stephanie so we can discuss communicating this concept and the risk associated with the centers citing to policy memos in their notices and decisions.

Thanks,

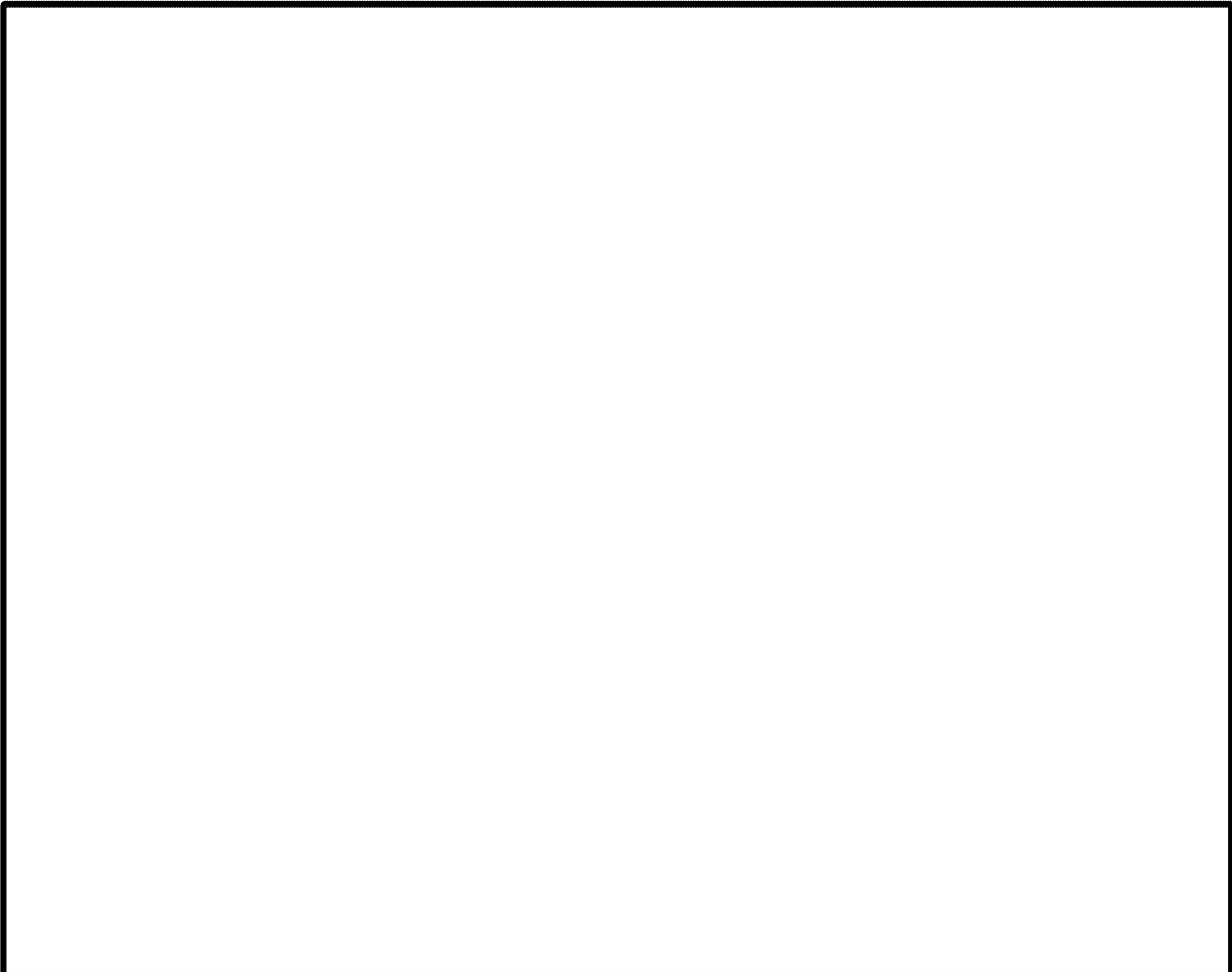
Nicole

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**From:** Cox, Robert H  
**Sent:** Friday, October 06, 2017 10:53 AM  
**To:** Nicklaw, Nicole C; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Cc:** Choi, Heesun S (Sunny); Nakajima, Simon T; Bump, Micah N; Elder, Phillip D; Schmalz, Peter N; ALD  
**Subject:** RE: Citation of Policy Memos in denials/revocations

Hi Nicole,

(b)(5)



(b)(5)



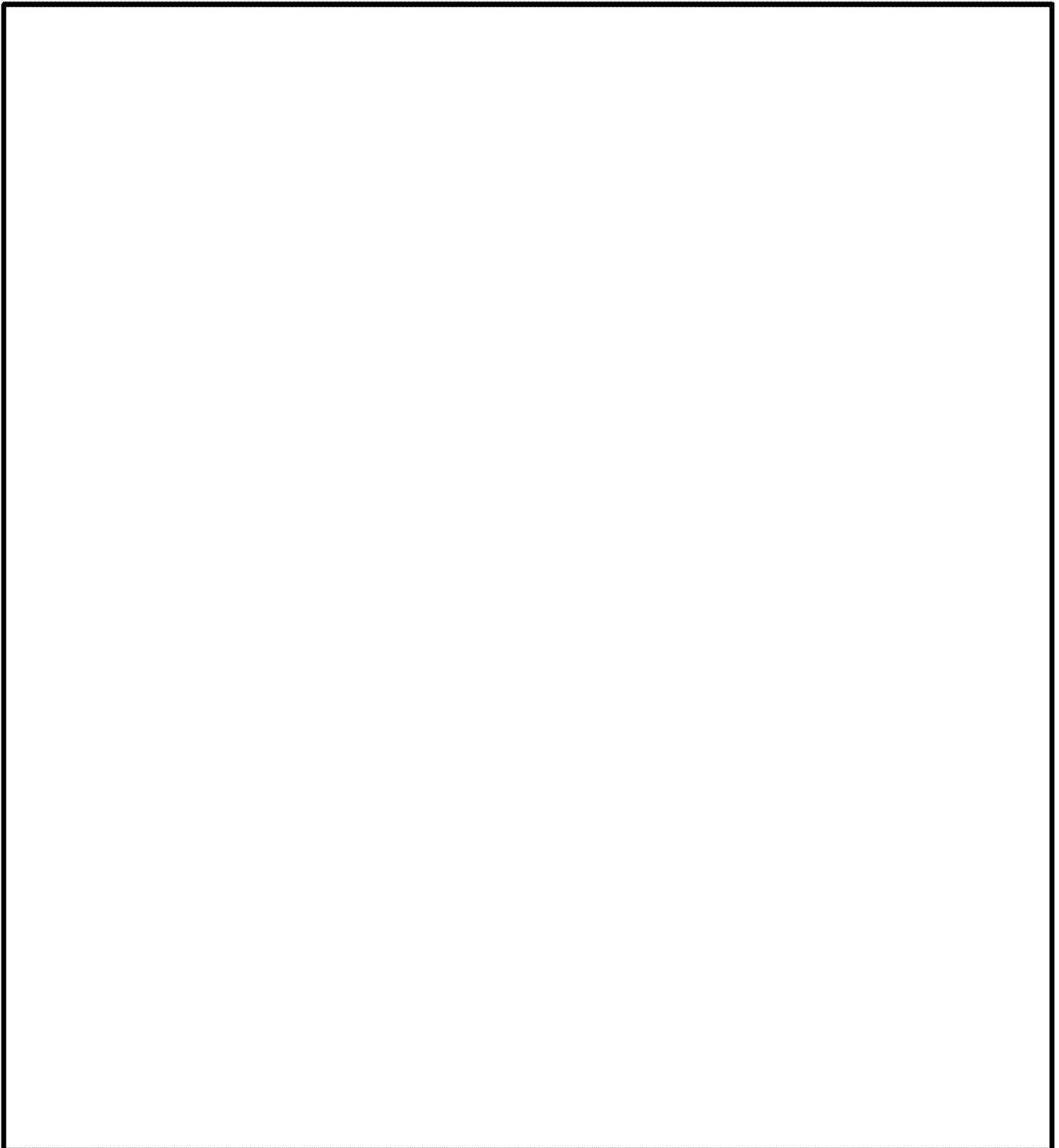
Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, October 05, 2017 9:25 AM  
**To:** Cox, Robert H; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Cc:** Choi, Heesun S (Sunny); Nakajima, Simon T; Bump, Micah N  
**Subject:** RE: Citation of Policy Memos in denials/revocations

(b)(5)

Hi Robert and OCC,



(b)(5)



Please let us know if you need anything else on this.

Thanks,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

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**From:** Cox, Robert H

**Sent:** Monday, October 02, 2017 9:37 AM

**To:** Doumani, Stephanie M; Nicklaw, Nicole C; Stern, Kimberly M (Kim)

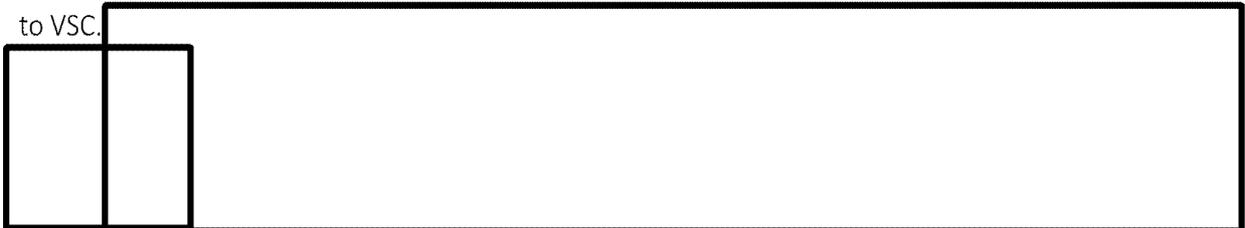
**Cc:** Choi, Heesun S (Sunny); Nakajima, Simon T; Bump, Micah N

**Subject:** Citation of Policy Memos in denials/revocations

Hi SCOPS,

(b)(5)

We received an inquiry from VSC counsel regarding a question that arose after the recent AAO visit to VSC.



Thanks,  
Robert

Implementation of March 31, 2017  
Memo, *Rescission of the December  
22, 2000 "Guidance memo on H1B  
computer related positions"*

# Main Analysis

- The petitioner bears the burden of proof to establish that the particular position in which the beneficiary will be employed qualifies as a specialty occupation.
- For some occupations, such as computer programmers, the general discussion in the OOH may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation.
- The OOH states “Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree.”

# Main Analysis Continued

- The fact that the OOH states that an individual may enter the field with an associate's degree suggests that entry level computer programmer positions do not necessarily require a bachelor's degree and would not generally qualify as a position in a specialty occupation.
- Therefore, for all computer programmer petitions, the petitioner will not have met its burden of proof based on the OOH alone.
- In such cases, the petitioner will need to submit other evidence to establish that the particular position is a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the prongs at 8 CFR 214.2(h)(4)(iii).

# Applicable to Many Occupations

- The Policy Memorandum is specific to the computer programmer occupation.
- However, this same analysis should be conducted for occupations where the OOH does not specify that the minimum requirement for a particular position is normally a bachelor's or higher degree in a specific specialty.

# Specialty Occupation Vs. Beneficiary Qualifications

- The specialty occupation determination is not driven by a beneficiary's qualifications.
- Although the beneficiary may have a bachelor's or higher degree in a specific specialty, the beneficiary's degree alone does not independently establish that the position qualifies as a specialty occupation.
- Adjudicators should determine:
  - First, whether the proffered position qualifies for classification as a specialty occupation, and
  - Second, whether the beneficiary qualifies for the position.
- These are two separate issues.

# Appropriate LCA?

- Adjudicators may also address inconsistencies when the job duties described in a petition do not correspond to the wage level indicated on the Labor Condition Application (LCA).
- USCIS is required to verify, by a preponderance of the evidence, that the information on the certified LCA corresponds to and supports the H-1B petition.
- Adjudicators may issue a request for evidence if they determine that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position.
- This type of analysis should be conducted on all H-1B petitions, including those that are clearly specialty occupations.

# Adjudicating Different Wage Levels

- If a wage level I is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. This would typically result in an RFE.
- If, however, an officer believes there is an issue with a Level II position, and that the Level II LCA appears to be *clearly inconsistent with/lower than* the position as stated in the petition, the officer may raise it with their supervisor and, if needed, seek the advice of counsel.
- Trying to distinguish a Level III from a Level IV position, however, is very difficult under the 2009 DOL guidance, so we recommend against analyzing the appropriateness of the wage level in such cases until further notice .

# What is a Level I Wage?

- The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels.
- A level I wage is defined as:
  - Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

# No Deference Given

Consistent with the March 31, 2017 memo, and the exceptions set forth in the existing deference memo, if USCIS previously approved a petition based on evidence *solely* from the OOH for an entry level computer programmer or otherwise was not adjudicated consistent with the March 31, 2017 memo, deference should **NOT** be given, and the petition should be adjudicated consistent with the new guidance.

- In such cases, including extension petitions, motions, and consular returns, officers should conduct an independent review of the facts and evidence submitted in support of the petition in order to assess eligibility since deference will not apply.

# How Does this Affect Adjudications?

- Note: The following examples are overly-simplified and for illustrative purposes only. They are intended only to provide examples of the areas that may be affected by this policy memo. Adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence.

# Example 1

- A same/same extension for an accountant who has been in the United States for 9 years as an H-1B with the same financial company. The LCA is for a level I wage. The list of duties describe advanced accounting functions, nothing looks introductory. The beneficiary is listed as being a “subject matter expert.”
  - Under the New Guidance – Unless they have a sufficient explanation for selecting the level I wage, or are otherwise able to resolve the apparent wage level discrepancy, we would RFE/deny for not having a certified LCA that corresponds to and supports the H-1B petition. It does not appear that the bene is entry level, the duties do not support that the bene is doing routine tasks that require limited, if any, exercise of judgment, working under close supervision, etc.

# Example 2

- A cap case for a computer programmer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as her only real supervision. The list of duties describes only vaguely what any computer programmer does.
- New Guidance –
  - We would RFE for evidence that this is a specialty occupation (unless the petitioner submitted additional documentation to demonstrate that they have met one of the prongs).
  - We would also RFE on whether a level I wage LCA is appropriate, as she is working offsite with minimal supervision, etc. This is not in line with a level I wage description.
  - The petitioner will need to submit additional evidence to establish that the particular position is a specialty occupation. If the position qualifies as a specialty occupation, particularly if based on evidence regarding the complexity of the position, then it’s probably not a level I wage.

# Example 3

- A cap case for a systems analyst or software developer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as his only real supervision. His list of duties is detailed and documents that he is performing normal, high-level systems analysis or software development.
  - New Guidance – We would RFE/deny (unless they have a sufficient explanation, etc.) on whether a level I wage LCA is appropriate, as they are working offsite with minimal supervision. Also, the duties are not “basic” with only routine tasks. This is not in line with a level I wage description.

# Example 4

- A change of employer/extension for a computer programmer for a IT consulting company. The LCA is for a level I wage. The beneficiary will be working on-site on an unnamed, undocumented in-house project. Her list of duties describes only vaguely what any computer programmer does.
  - New Guidance – We would still issue an RFE for the same reasons. Now, we could add the level I wage issues into our discussion. A denial would still typically follow for the same reasons, but with added support from the level I wage analysis.

# Final Reminder

- As always, adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence when making a final determination.

# About this Presentation

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- Date of last revision: \_\_\_\_\_ This presentation is current only as of the date of last revision.
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- All images in this presentation: (Cite source(s) of images.)

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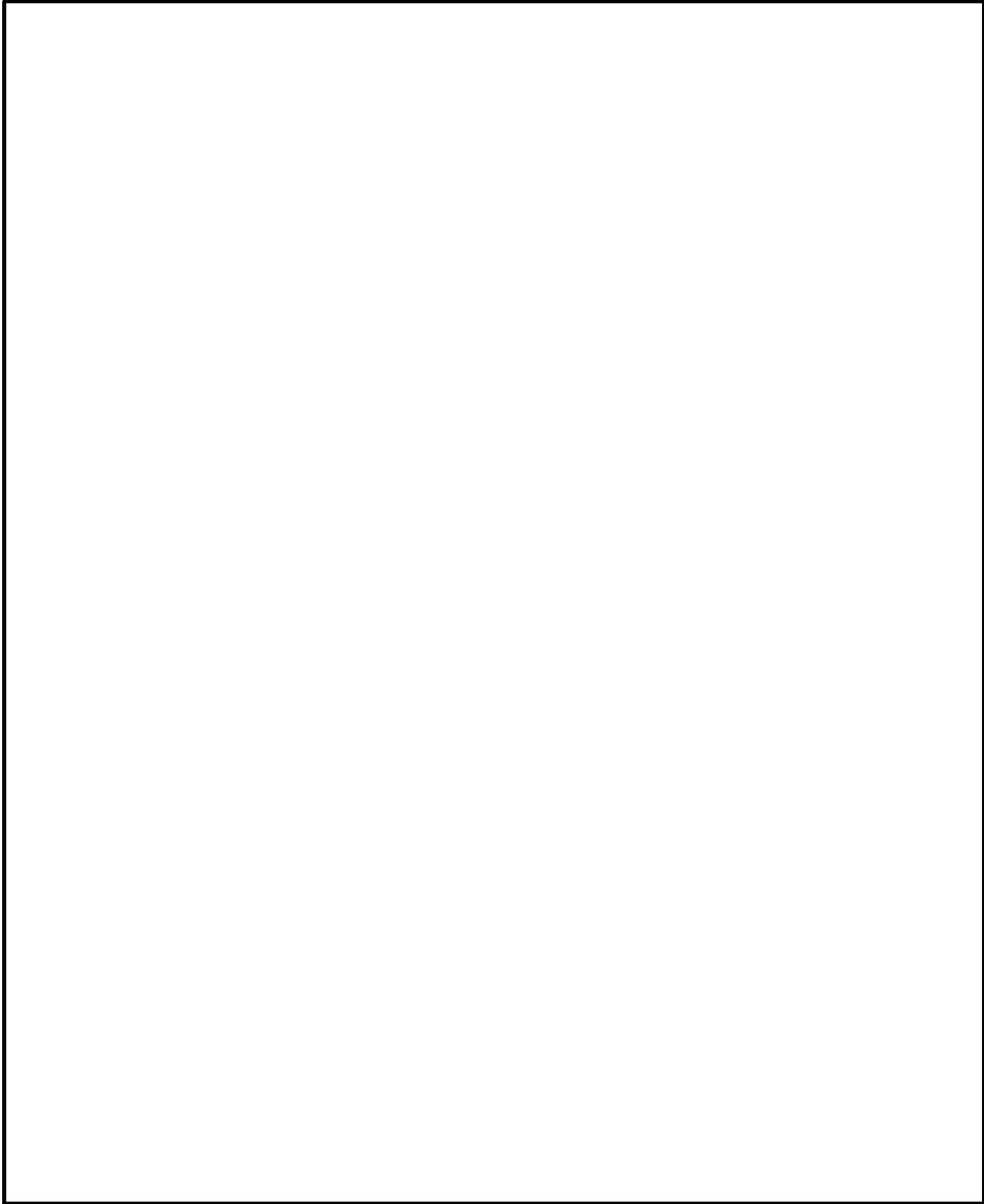
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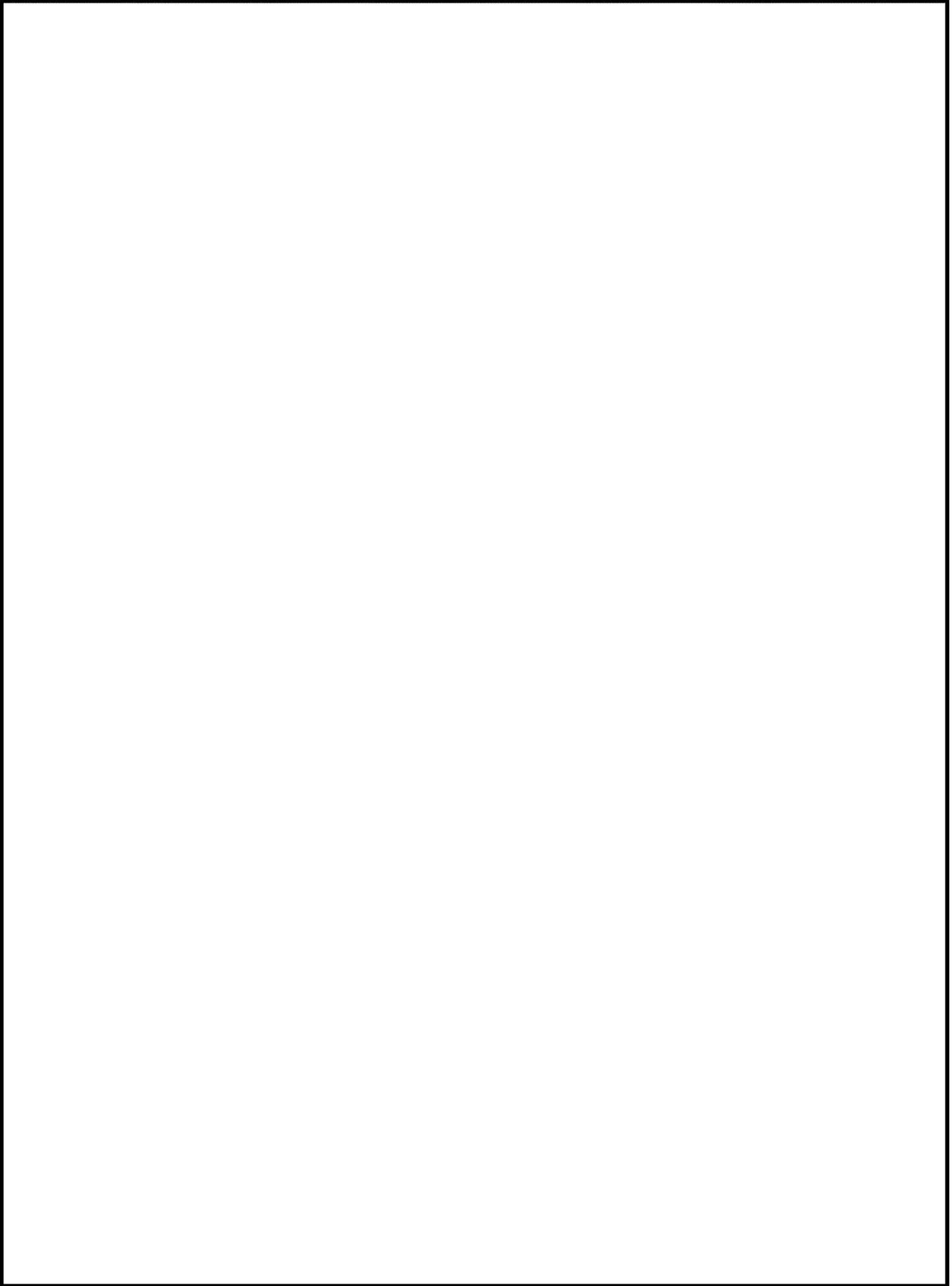
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(b)(5)

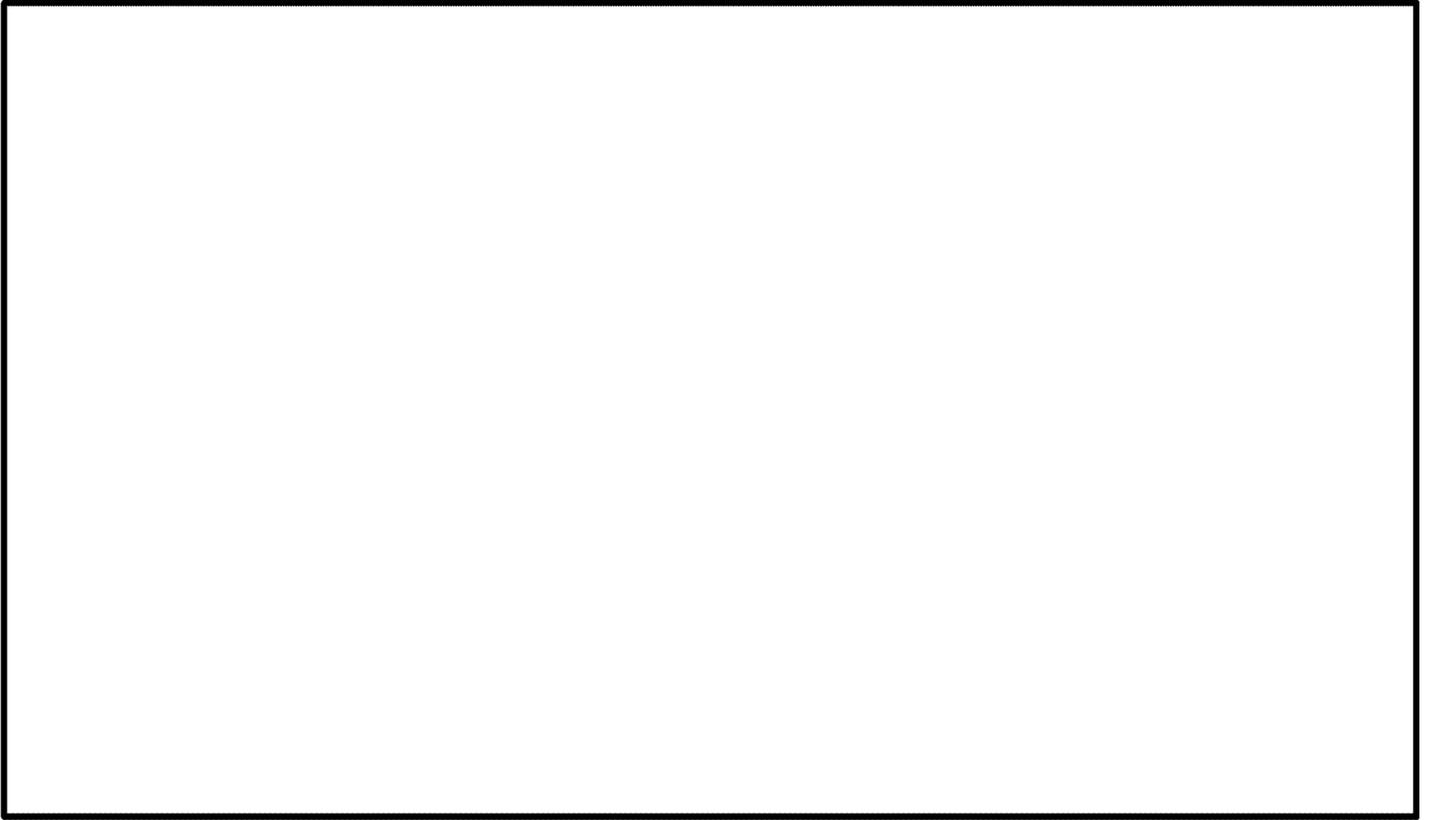
*Rescission of December 20, 2000 "Guidance memo on H1B computer related positions" PM-602-0142*



(b)(5)



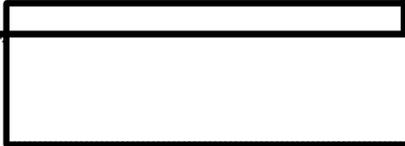
(b)(5)



NAFSA REGION III CONFERENCE QUESTIONS San Antonio

- 1) In April 2017, USCIS announced a policy change regarding change of status from B to F and now requires individuals seeking such a change of status to both file for a change of status and an extension of the B status as well.
- What additional measures should such applicants take to ensure these applications are adjudicated in the proper sequence (i.e. the extension of B status application submitted prior to the change in status application) keeping in mind the importance of the “last action rule”?
  - **Response:** An applicant can ensure that the name, date of birth and I-94 number of the primary applicant is listed correctly on the Form I-539. USCIS typically identifies that an applicant has submitted multiple applications by conducting a name or I-94 number search on our systems and if additional applications are found they will be worked in the correct sequence. However for expediency, providing a list of the receipt numbers of the other application filed would be very helpful.
  - As only one 6 month extension of B status is normally allowed and change of status adjudications are currently taking more than 6 months, under what standard will the second (or perhaps third) B extension be adjudicated? Will USCIS consider the pending change of status as a factor in the subsequent B extensions? If this policy is to remain in place, it would be helpful for our membership if we know that subsequent B extensions and pending change of status applications will be considered by the adjudicator in a holistic manner.

(b)(5)



- Despite the limited wording of the April 2017 policy change, similar policy standards are being applied to other individuals in non-immigrant status seeking to change status to F. Most notably, this policy is being applied to individuals who are ageing out of their current status (i.e. H-4) and who timely filed for a change of status to F-1. RFEs are being issued by USCIS asking for proof the individual extended H-4 status ~~for~~ impossibility ~~impossibility~~ due to age out) or otherwise bridged the gap between the end of H-4 and the adjudication of the change of status to F.
  - Why has there been such broad application of this policy?
- **Response:** USCIS has not changed its policy. We are providing clearer instructions for consistent adjudication. The regulation applies to all – not just to B visitors – who wish to change their nonimmigrant classifications to that of an F-1 student. If the applicant

cannot extend the current non-immigrant status or otherwise to bridge the gap, the I-539 change of status will be denied.

**Comment [SPG3]:** We have no problem with the grammatical change.

- Can you speak as to why the policy regarding these change of status applications has changed?
- **Response:** USCIS has not changed its policy. We are providing clearer instructions for consistent adjudication.
  - In essence, this policy position will require an individual ageing out of H-4 to file a change of status to F and then also file “bridge” applications to B. Such a policy will create undue confusion and repetitive filings. Additionally, such a policy is a departure from USCIS’ previous stances on “bridge” applications. Please explain the logic behind such a policy.
- **Response:** The H-4 applicant in this scenario can follow these steps. However it is up to the applicant. For USCIS the regulations remains the same- an applicant who wishes to change their non-immigrant classification to that of an F-1 student must maintain their nonimmigrant status to within 30 days of the anticipated program start date.
  - As this application of the April 2017 policy is broader than the published policy and does not appear in the change of status instructions or webpage (that content is limited to B to F scenarios), please explain what is being done to educate applicants of this change of policy.
- **Response:** USCIS has not changed its policy. However, we do understand that our customers have questions and would like additional information. Therefore, we are preparing instructions to that affect to be posted on the USCIS website.

2) A comment to take back and would be helpful if USCIS can speak to the following trend:

- There is a current trend (more than a handful of cases reported) that USCIS adjudicators are sending Requests For Evidence in cases stating that an entry-level position with a Level I Wage is not a specialty occupation. For many cap-exempt institutions of higher education, we hire foreign workers with PhDs in a specialized field for professional occupations which are considered an entry-level position (i.e. a Tenure-Track Assistant Professor in Physics requires a PhD in Physics and no years of experience but is a highly specialized professional occupation). A change in policy regarding entry level positions would severely hinder cap-exempt institutions’ ability to hire the most qualified workers in highly specialized fields.

USCIS is utilizing currently existing policy that interprets existing statutory and regulatory requirements to evaluate petitions and make an eligibility determination, including whether the position qualifies as a specialty occupation and that the petition is supported by a certified LCA that corresponds to the petition. Officers evaluate each petition on a case-by-case basis to determine if a petition qualifies for the benefit

being requested. USCIS officers evaluate a petition and request further evidence when the preponderance standard has not been met. An RFE may be issued when the certified LCA does not appear to correspond to the petition (e.g. the wage level is not appropriate for the position).

- 3) We have received reports that when responding to an RFE, the responses are rejected for failure of payment and issued a new receipt number. As we are responding to RFEs, there is not a need to resubmit payment. Can you please give us some pointers on how to avoid this confusion at the Lockbox and to ensure that our responses are correctly forwarded to an adjudicator?
  - **Response:** These appear to be case-specific issues. Kindly provide CSPED with receipt numbers so that we can look into these matters further.
- 4) As a comment – we do appreciate the quick response that is provided through the PSC.studentead@uscis.dhs.gov email! This email address is crucial to many schools who are trying to help their F1 students navigate OPT applications.
- 5) **Response:** It is good to hear positive feedback from our customers regarding the services that are working well for them. Your feedback will be relayed back to Potomac Service Center.

Implementation of March 31, 2017  
Memo, *Rescission of the December  
22, 2000 "Guidance memo on H1B  
computer related positions"*

# Main Analysis

- The petitioner bears the burden of proof to establish that the particular position in which the beneficiary will be employed qualifies as a specialty occupation.
- For some occupations, such as computer programmers, the general discussion in the OOH may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation.
- The OOH states “Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree.”
- The fact that the OOH states that an individual may enter the field with an associate’s degree suggests that entry level computer programmer positions do not necessarily require a bachelor’s degree and would not generally qualify as a position in a specialty occupation.
- Therefore, for all computer programmer petitions, the petitioner will not have met its burden of proof based on the OOH alone.
- In such cases, the petitioner will need to submit other evidence to establish that the particular position is a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the prongs at 8 CFR 214.2(h)(4)(iii).

# Applicable to Many Occupations

- The Policy Memorandum is specific to the computer programmer occupation.
- However, the same analysis should be conducted for occupations where the OOH does not specify that the minimum requirement for a particular position is at least a bachelor's degree in a specific specialty.

# Specialty Occupation Vs. Beneficiary Qualifications

- The specialty occupation determination is not driven by a beneficiary's qualifications.
- Although the beneficiary may have a bachelor's or higher degree in a specific specialty, the beneficiary's degree alone does not independently establish that the position qualifies as a specialty occupation.
- Adjudicators should determine:
  - First, whether the proffered position qualifies for classification as a specialty occupation, and
  - Second, whether the beneficiary qualifies for the position.
- These are two separate issues.

# Appropriate LCA?

- Adjudicators may address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA).
- USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition.
- Adjudicators may issue a request for evidence if they determine that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position.
- This type of analysis should be conducted on all H-1B petitions.

# What is a Level I Wage?

- The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels.
- A level I wage is defined as:
  - Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

# Deference

- The analysis specified in the memo should be applied to same employer extension petitions.
- If USCIS previously approved a petition based on evidence solely from the OOH for an entry level computer programmer, deference should NOT be given, and the petition should be adjudicated consistent with the new guidance.

# How Does this Affect Adjudications?

- Note: The following examples are overly-simplified and for illustrative purposes only. They are intended only to provide examples of the areas that may be affected by this policy memo. Adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence.

# Example 1

- A same/same extension for an accountant who has been in the United States for 9 years as an H-1B with the same financial company and is now on AC21 extensions. The LCA is still for a level I wage. The list of duties describe typical accounting functions, nothing looks introductory. It is not apparent why the bene would still be “entry level” after working at a company for 9 years.
  - Previously – We would not have addressed the wage level. It was not a part of our adjudication.
  - New Guidance – Unless they have a sufficient explanation for selecting the level I wage, we would RFE/deny for not having a certified LCA that corresponds to and supports the H-1B petition. It does not appear that the bene is entry level, the duties do not support that he is doing routine tasks, etc.

# Example 2

- A cap case for a computer programmer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as her only real supervision. The list of duties describes only vaguely what any computer programmer does.
  - Previously – We most likely would have approved, either before or after an RFE. Again, the wage level on the LCA would not have factored into our adjudication.
  - New Guidance –
    - We would RFE for evidence that this is a specialty occupation (unless the petitioner submitted additional documentation to demonstrate that they have met another prong).
    - We would also RFE on whether a level I wage LCA is appropriate, as she is working offsite with minimal supervision. This is not in line with a level I wage description. And, if the petitioner is able to document that a bachelor’s degree is required to perform the duties of the position, this casts further doubt upon if the level I wage LCA is appropriate. It appears that the bene would then be doing more than “routine tasks.”
    - It becomes a Catch-22. If it’s truly a level I wage, then it’s probably not a specialty occupation. If it’s truly a specialty occupation, then it’s probably not a level I wage.

# Example 3

- A cap case for a systems analyst or software developer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as his only real supervision. His list of duties is detailed and documents that he is performing normal, high-level systems analysis or software development.
  - Previously – We would have approved. Again, the wage level on the LCA would not have factored into our adjudication.
  - New Guidance – We would RFE/deny (unless they have a sufficient explanation) on whether a level I wage LCA is appropriate, as they are working offsite with minimal supervision. Also, the duties are not “basic” with only routine tasks. This is not in line with a level I wage description.

# Example 4

- A change of employer/extension for a computer programmer for a IT consulting company. The LCA is for a level I wage. The beneficiary will be working on-site on an unnamed, undocumented in-house project. Her list of duties describes only vaguely what any computer programmer does.
  - Previously – We would have issued an RFE on the basis of lack of specialty occupation work and for a better description of duties. A denial would typically follow in these situations.
  - New Guidance – We would still issue an RFE for the same reasons. Now, we would be able to add the level I wage issues into our discussion, giving us another avenue to address that this is not a specialty occupation. A denial would still typically follow, but with added reasoning from the level I wage LCA.

# Final Reminder

- As always, adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence when making a final determination.

# Example 3

- A cap case for a systems analyst or software developer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as his only real supervision. His list of duties is detailed and documents that he is performing normal, high-level systems analysis or software development.
  - Consistent with the March 31, 2017 memo – We would RFE/deny (unless they have a sufficient explanation, etc.) on whether a level I wage LCA is appropriate, as they are working offsite with minimal supervision. Also, the duties are not “basic” with only routine tasks. This is not in line with a level I wage description.

**Thomas, Michael A**

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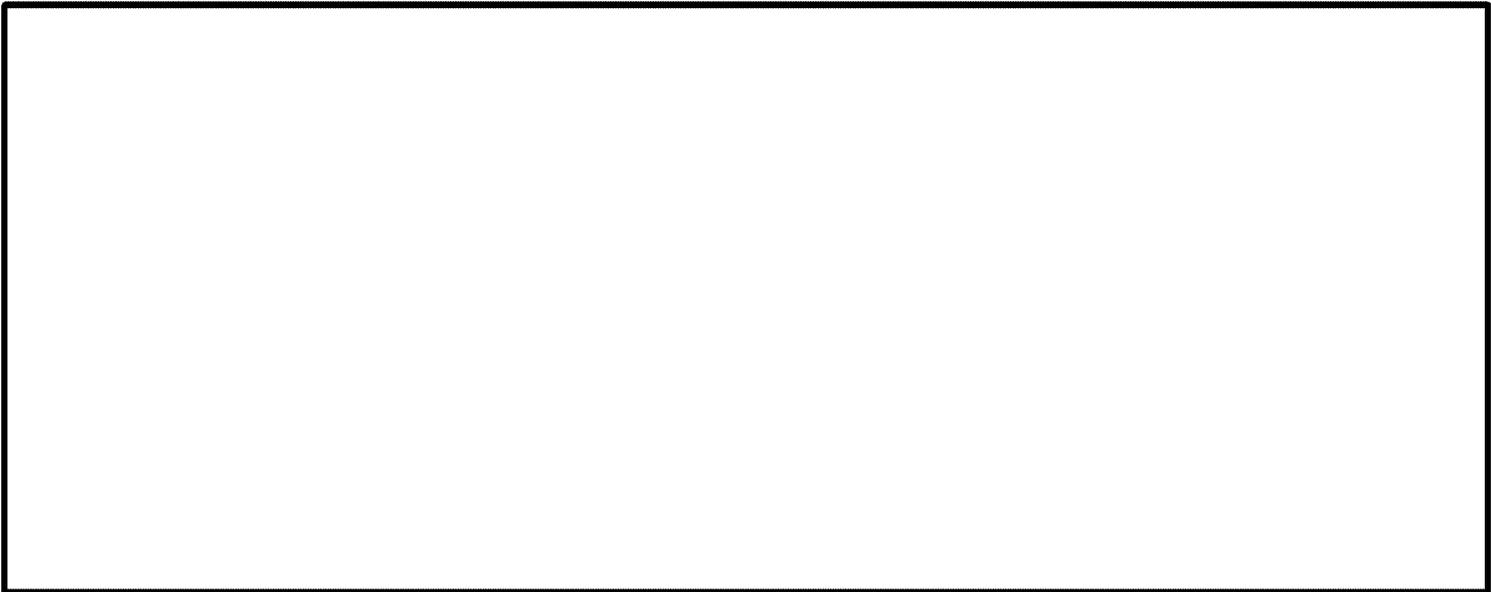
**From:** Stern, Kimberly M (Kim) <Kimberly.M.Stern@uscis.dhs.gov>  
**Sent:** Tuesday, September 05, 2017 8:04 AM  
**To:** BEST\_H1BGuidance@sptaas.dhs.gov  
**Subject:** final PPT - Implementation of March 31, 2017 Memo  
**Attachments:** Implementation of March 31 2017 Memo - OCC Cleared 8.8.17.pptx  
  
**Importance:** High

**From:** Stern, Kimberly M (Kim)  
**Sent:** Wednesday, August 09, 2017 11:01 AM  
**To:** Boudreau, Lynn A; Martin, Evelyn M; Tamanaha, Emisa T; Fierro, Joseph; Nguyen, Carolyn Q  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C  
**Subject:** finalized PowerPoint Training  
**Importance:** High

(b)(5)

Good morning,

Attached please find the finalized PowerPoint Training, regarding the Implementation of March 31, 2017 Memo, *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions."* Please utilize the PPT to train officers as needed.



Should you have any additional questions, please let us know.

Thank you,  
Kim

**Kim M. Stern**  
Adjudications Officer (Policy) | Business Employment Services Team (BEST)  
DHS | USCIS | SCOPS  
Office: 202-272-8500

Cell: [REDACTED] (b)(6)  
Kimberly.M.Stern@USCIS.DHS.GOV

*A mind, once expanded by a new idea, never returns to its original dimensions – Oliver Wendell Holmes, Jr.*

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U.S. Citizenship  
and Immigration  
Services

Date

PM-XXX-XXXX

## Policy Memorandum Draft

SUBJECT: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"

### Purpose

This policy memorandum (PM) supersedes and rescinds the December 22, 2000 memorandum titled "Guidance memo on H1B computer related positions" issued to Nebraska Service Center (NSC) employees by Terry Way.

### Scope

This PM applies to all U.S. Citizenship and Immigration Services (USCIS) employees. The updated guidance is effective immediately.

### Authority

- Sections 101(a)(15)(H)(i)(b) and 214(a)(1), (c)(1), (i) of the Immigration and Nationality Act (INA), Title 8, United States Code, sections 1101(a)(15)(H)(i)(b) and 1184(a)(1), (c)(1), (i).
- Title 8 Code of Federal Regulations (CFR), section 214.2(h).

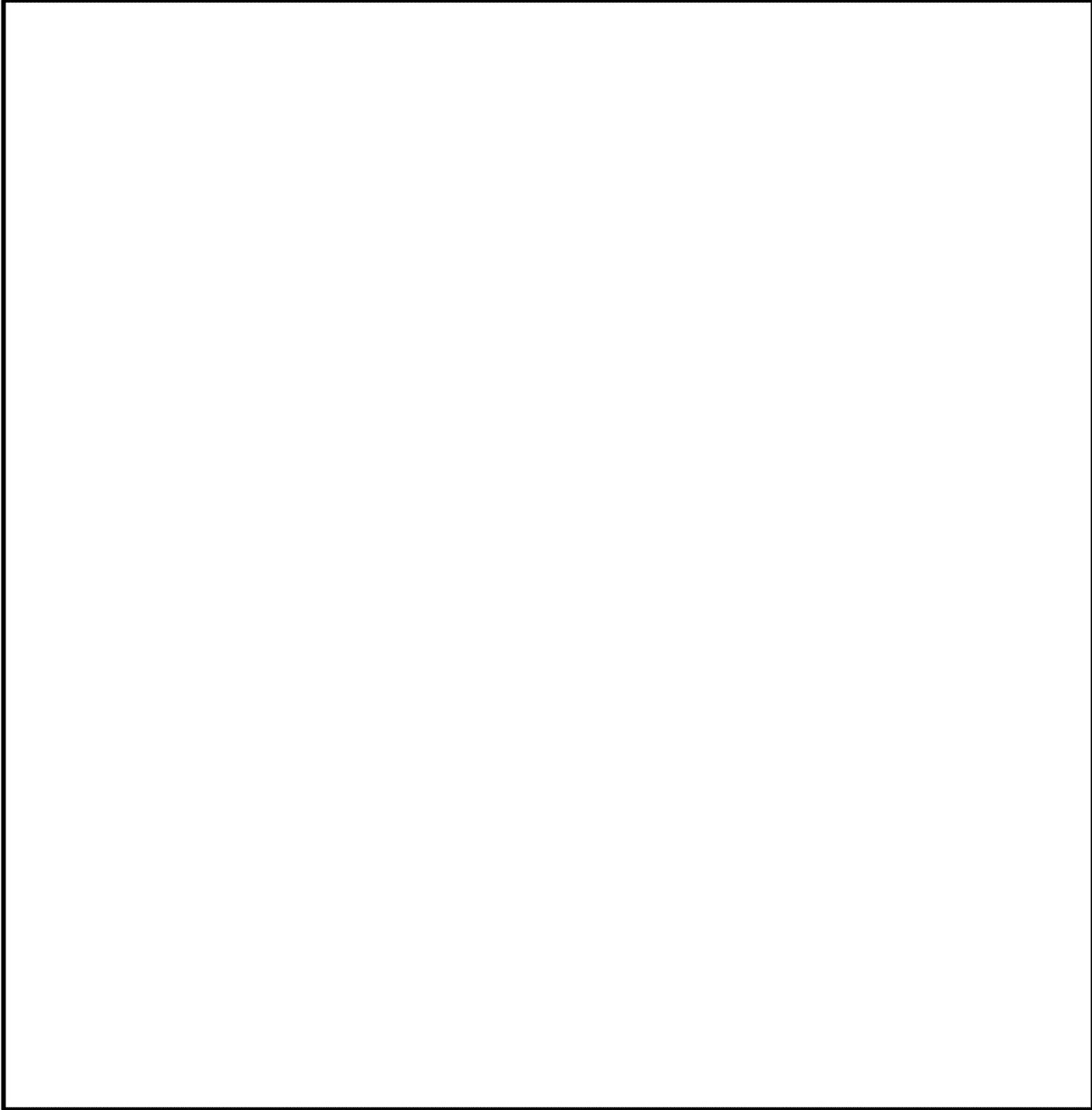
### Policy

On April 1, 2006, USCIS instituted "bi-specialization" procedures that discontinued the adjudication of H-1B petitions by the NSC and the Texas Service Center. On July 1, 2016, the NSC once again began to directly accept certain H-1B and H-1B1 (Chile/Singapore Free Trade) petitions. USCIS instituted this change to help address a large increase in H-1B petitions and provide the operational flexibility to redistribute caseloads as necessary to meet processing goals.

Now that H-1B petitions are once again being adjudicated by NSC, USCIS officers at that service center may inadvertently follow the prior, but no longer adhered to, memorandum entitled "Guidance memo on H1B computer related positions" (dated December 22, 2000) from Terry Way, the former director of the NSC. As the guidance provided in this NSC memorandum is not an accurate articulation of current agency policy, USCIS is rescinding it to prevent inconsistencies in H-1B and H-1B1 adjudications between the three service centers that currently adjudicate H-1B petitions.

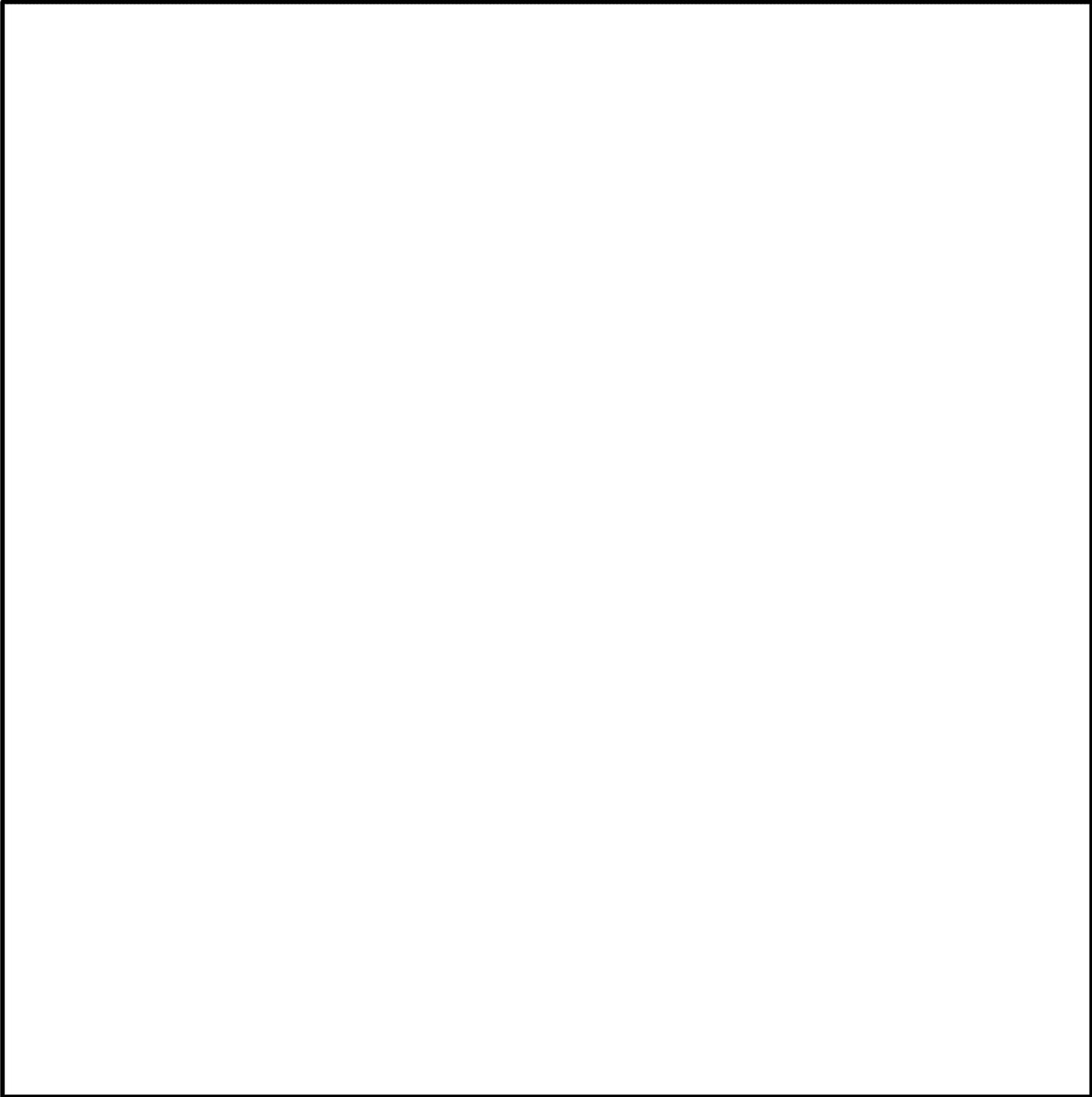
[www.uscis.gov](http://www.uscis.gov)

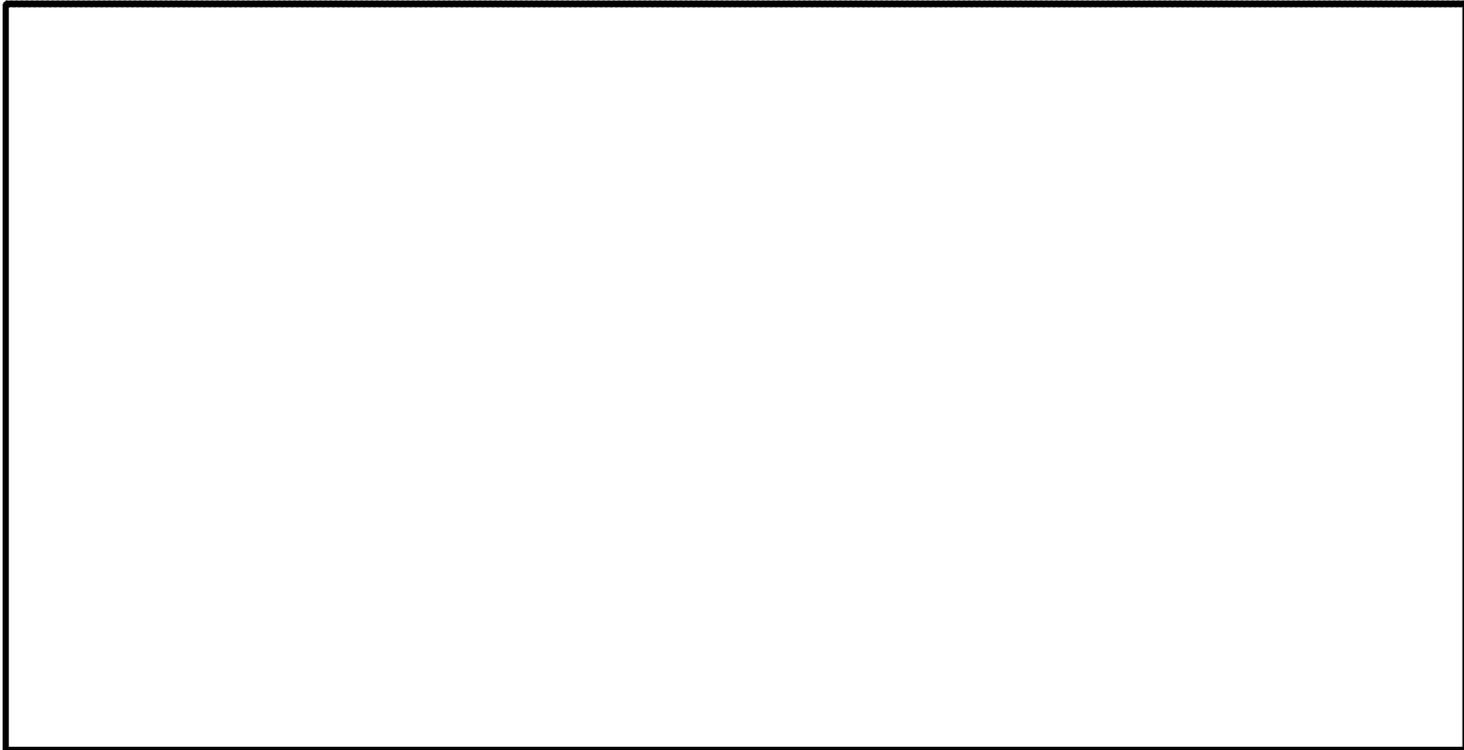
PM-XXX-XXXX: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"  
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Page 4



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PM-XXX-XXXX: Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"  
Page 4





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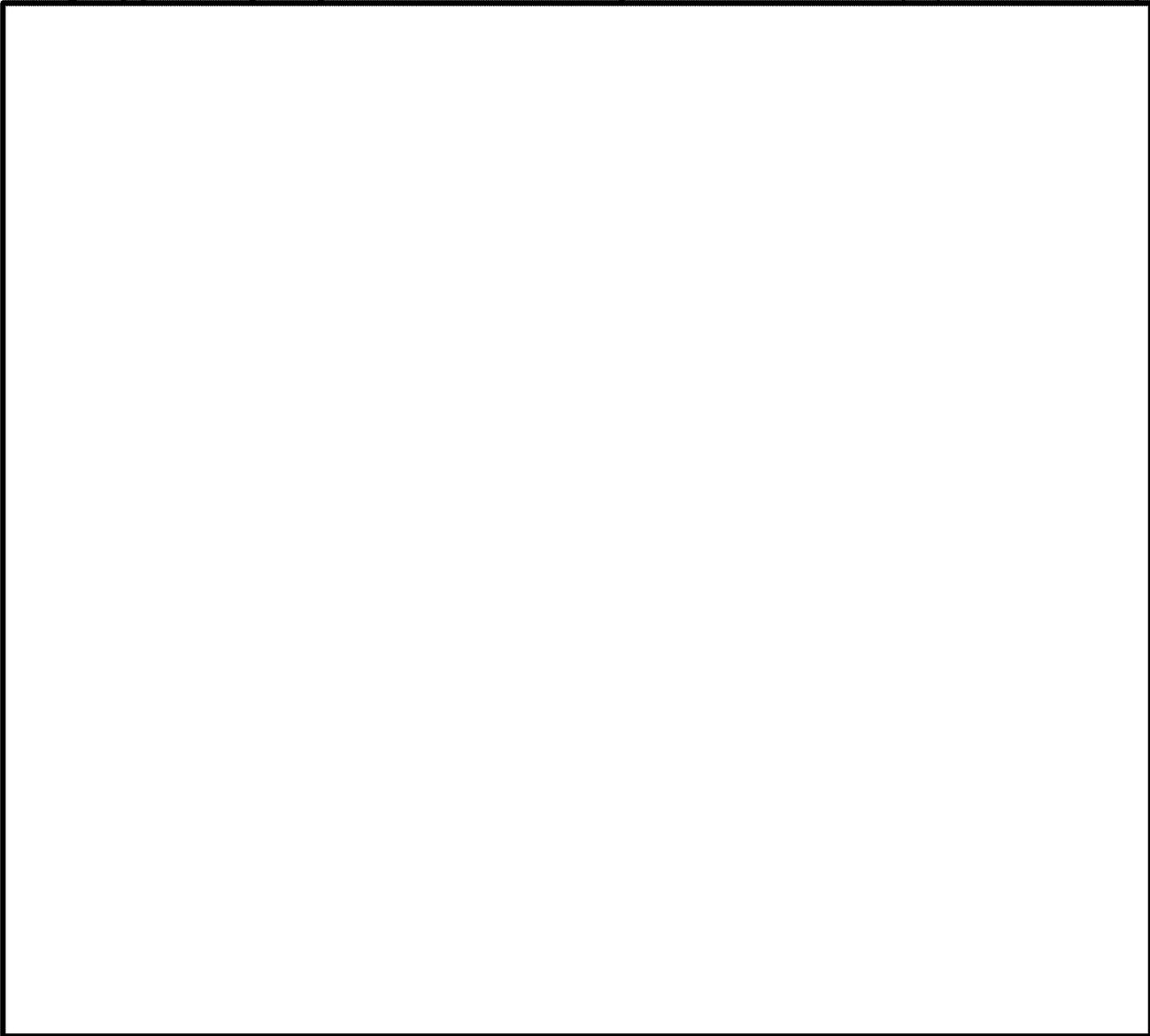
<sup>8</sup> Specifically, the court explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

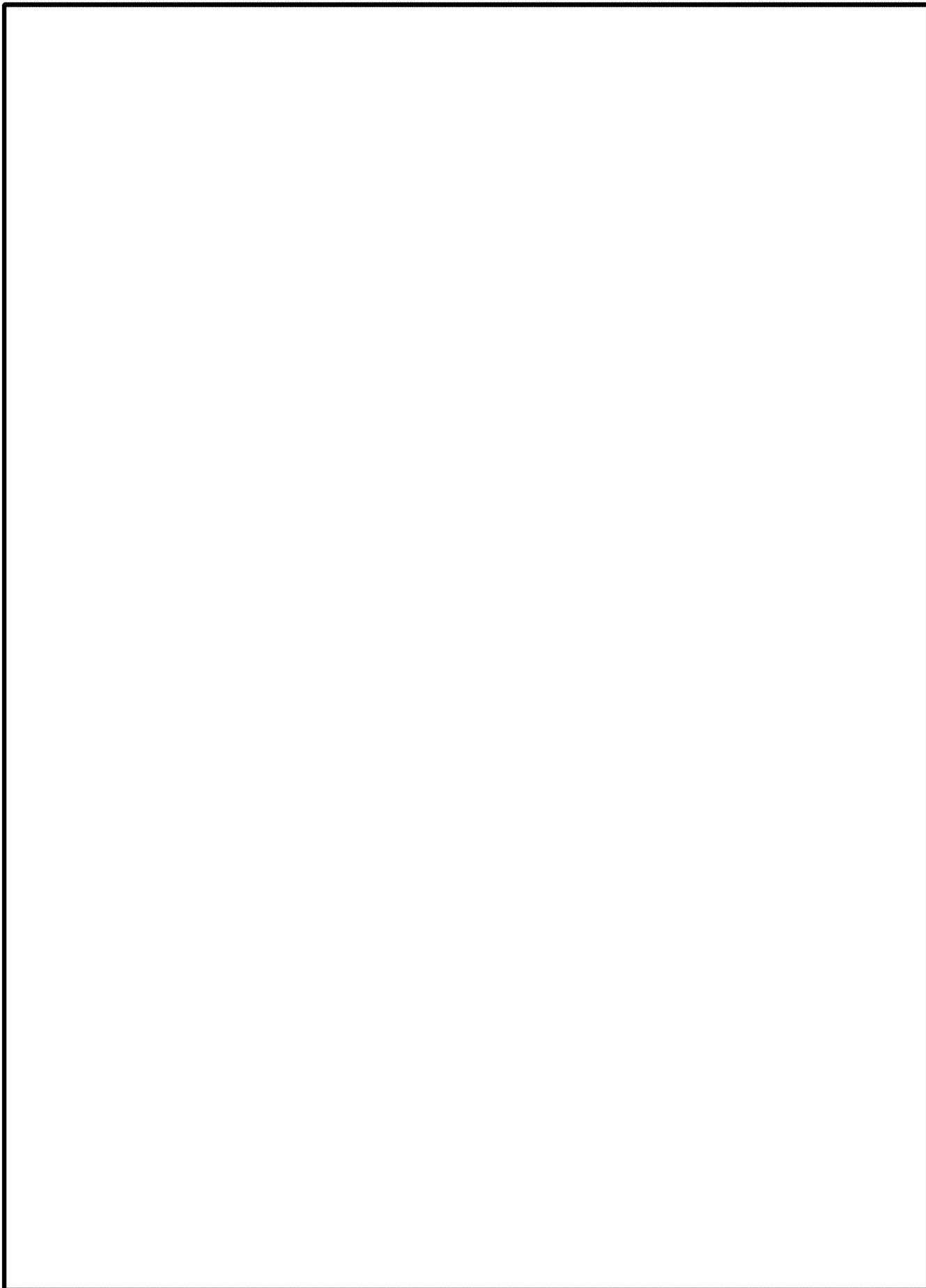
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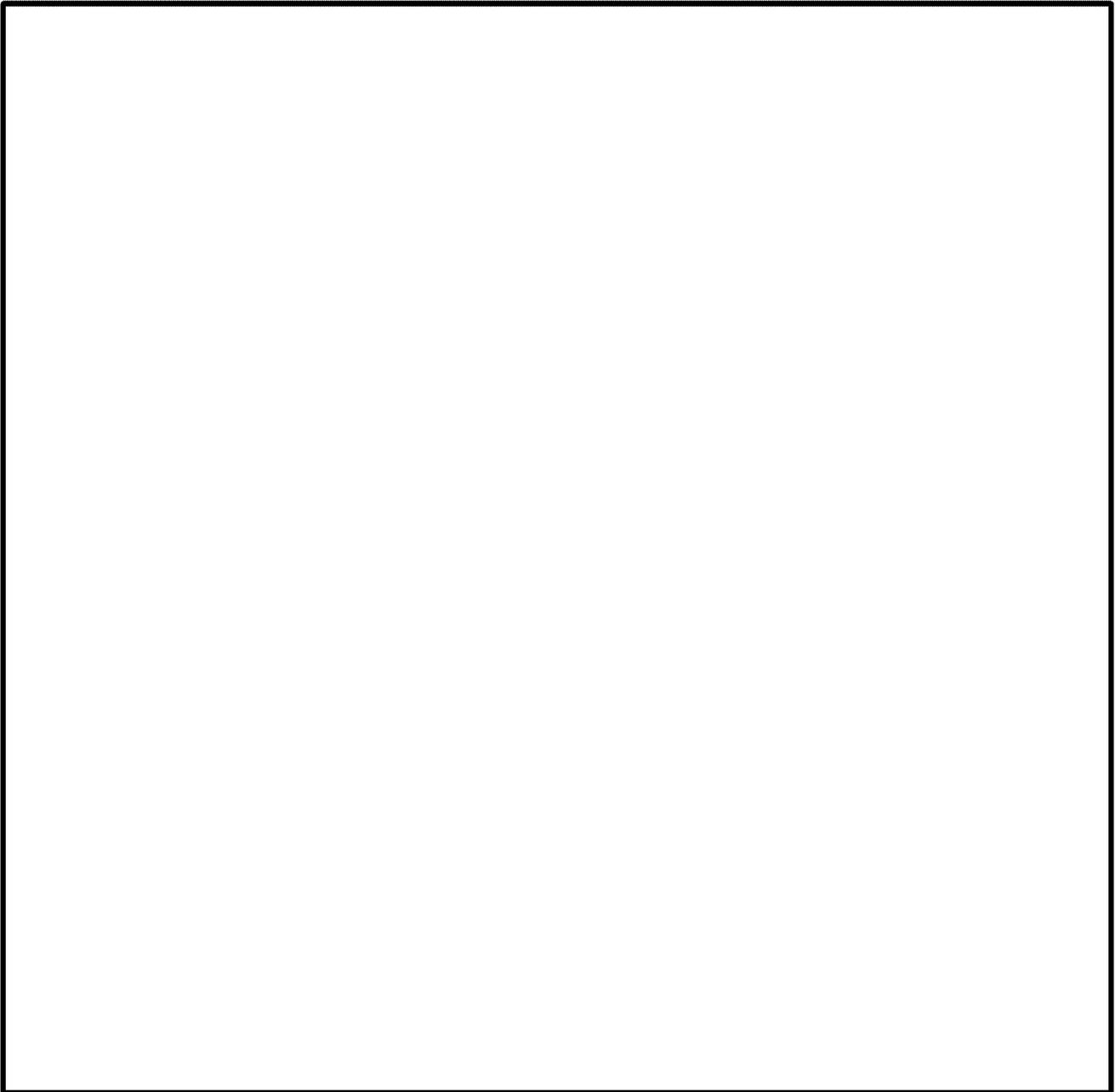
(b)(5)



(b)(5)



(b)(5)



**From:** [Stern, Kimberly M \(Kim\)](#)  
**To:** [Nakajima, Simon T](#)  
**Cc:** [Cox, Robert H](#); [Bump, Micah N](#); [Doumani, Stephanie M](#); [Nicklaw, Nicole C](#); [Choi, Heesun S \(Sunny\)](#)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency  
**Date:** Tuesday, October 24, 2017 2:42:21 PM  
**Attachments:** [1 - RFE \(Specialty Occ. and Wage\).OCC.BEST.6.20.17.v2clean OCC.docx](#)  
[2 - RFE \(Wage Level. LCA Requirement\).6.20.2017.v2clean OCC.docx](#)  
[Specialty Occupation RFE 2120.OCC.BEST.6.20.17.v2clean.docx](#)

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RE: Rescission Memo RFE Templates; Tue 10/24/2017 2:26 PM

Hi Simon,

No problem. Per your request, here is the original email pulled from the archive.

Kim

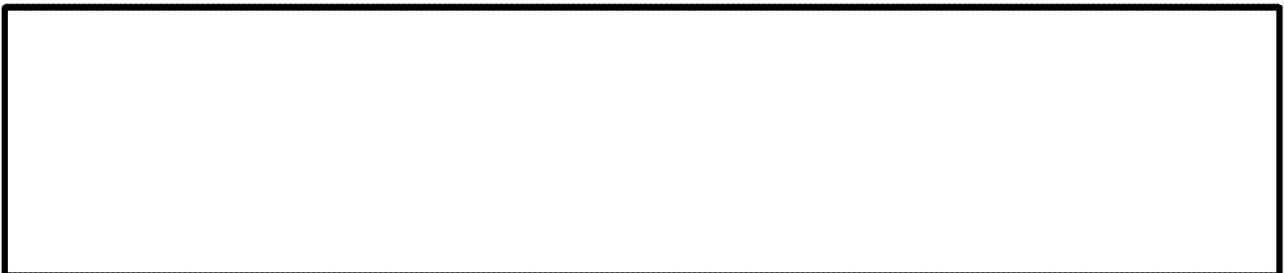
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**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 28, 2017 12:48 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi everyone,

We received the attached, cleared versions of the RFE templates back from OCC which your centers may begin using immediately.

(b)(5)



Please let us know if you have any questions.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: (202) 272-8174

Mobile: (202) 557-0347

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

## **2. Process for Determining Wage Level**

The NPWHC shall use O\*NET information to identify the tasks, work activities, knowledge, and skills generally required for performance in an occupation. A comparison between the particulars of the employer's job offer to the requirements for similar (O\*NET) occupations shall be used to determine the appropriate wage level. It

### Appendix B: Check Sheet for Use in Determining OES Wage Level

Indicator	Job Offer Requirements	O*NET-Usual Requirements	Instruction	Wage Level Result
Step 1. Requirements				1
Step 2. Experience	Enter the years of experience required by the employer.	Job Zone (overall experience, job training)	If the years of required experience in the job order are greater than the low end of the O*NET usual requirements, enter 1, 2, or 3.	
Step 3. Education	Enter the education or training required by the employer.	Professional Occupations Appendix D  Other occupations - Job Zone (overall experience, job training, education)	If the years of required education in the job order are greater than the Categories for Professional Occupations OR O*NET usual requirements for non-professional occupations, enter 1 or 2.	
Step 4. Special Skills (Y/N)	Note special requirements from the job description or other special requirements including licensure or certification.	O*NET Tasks, Knowledge, and Work Activities.  National or state licensing/certification requirements.	Consider if skills, knowledge, work activities, tasks, licensure or certification requirements indicate a higher level of complexity or decision-making. Enter 1 or 2 as appropriate.	
Step 5. Supervisory duties (Y/N)	Note any supervisory duties indicated in the job duties or description.		If Yes, enter a 1 – UNLESS supervision is generally required by the O*NET occupation.	
			<b>Sum:</b>	

**Appendix D: Professional Occupations  
Education and Training Categories**

<b>Code</b>	<b>Definition</b>
1	First professional degree. Completion of the academic program usually requires at least 6 years of full-time equivalent academic study, including college study prior to entering the professional degree program.
2	Doctoral degree. Completion of the degree program usually requires at least 3 years of full-time equivalent academic work beyond the bachelor's degree.
3	Master's degree. Completion of the degree program usually requires 1 or 2 years of full-time equivalent study beyond the bachelor's degree.
4	Work experience, plus a bachelor's or higher degree. Most occupations in this category are managerial occupations that require experience in a related non-managerial position.
5	Bachelor's degree. Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
21-2011.00	Clergy	1
23-1011.00	Lawyers	1
29-1011.00	Chiropractors	1
29-1021.00	Dentists, General	1
29-1022.00	Oral and Maxillofacial Surgeons	1
29-1023.00	Orthodontists	1
29-1024.00	Prosthodontists	1
29-1041.00	Optometrists	1
29-1051.00	Pharmacists	1
29-1061.00	Anesthesiologists	1
29-1062.00	Family and General Practitioners	1
29-1063.00	Internists, General	1
29-1064.00	Obstetricians and Gynecologists	1
29-1065.00	Pediatricians, General	1
29-1066.00	Psychiatrists	1
29-1067.00	Surgeons	1
29-1081.00	Podiatrists	1

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
29-1131.00	Veterinarians	1
15-1011.00	Computer and Information Scientists, Research	2
19-1021.01	Biochemists	2
19-1021.02	Biophysicists	2
19-1022.00	Microbiologists	2
19-1042.00	Medical Scientists, Except Epidemiologists	2
19-2011.00	Astronomers	2
19-2012.00	Physicists	2
19-3031.00	Clinical, counseling, and school psychologists	2
19-3031.01	Educational Psychologists	2
19-3031.02	Clinical Psychologists	2
19-3031.03	Counseling Psychologists	2
25-1021.00	Computer Science Teachers, Postsecondary	2
25-1022.00	Mathematical Science Teachers, Postsecondary	2
25-1032.00	Engineering Teachers, Postsecondary	2
25-1041.00	Agricultural Sciences Teachers, Postsecondary	2
25-1042.00	Biological Science Teachers, Postsecondary	2
25-1043.00	Forestry and Conservation Science Teachers, Postsecondary	2
25-1052.00	Chemistry Teachers, Postsecondary	2
25-1054.00	Physics Teachers, Postsecondary	2
25-1071.00	Health Specialties Teachers, Postsecondary	2
25-1072.00	Nursing Instructors and Teachers, Postsecondary	2
25-1121.00	Art, Drama, and Music Teachers, Postsecondary	2
25-1191.00	Graduate Teaching Assistants	2
15-2021.00	Mathematicians	3
15-2031.00	Operations Research Analysts	3
15-2041.00	Statisticians	3
19-1041.00	Epidemiologists	3
19-2041.00	Environmental Scientists and Specialists, Including Health	3
19-2042.00	Geoscientists, Except Hydrologists and Geographers	3
19-2042.01	Geologists	3
19-2043.00	Hydrologists	3
19-3011.00	Economists	3
19-3021.00	Market Research Analysts	3
19-3022.00	Survey Researchers	3
19-3032.00	Industrial-Organizational Psychologists	3
19-3041.00	Sociologists	3
19-3051.00	Urban and Regional Planners	3
19-3091.01	Anthropologists	3

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
19-3091.02	Archeologists	3
19-3092.00	Geographers	3
19-3093.00	Historians	3
19-3094.00	Political Scientists	3
21-1011.00	Substance Abuse and Behavioral Disorder Counselors	3
21-1012.00	Educational, Vocational, and School Counselors	3
21-1013.00	Marriage and Family Therapists	3
21-1014.00	Mental Health Counselors	3
21-1015.00	Rehabilitation Counselors	3
21-1023.00	Mental Health and Substance Abuse Social Workers	3
21-1091.00	Health Educators	3
25-4011.00	Archivists	3
25-4012.00	Curators	3
25-4021.00	Librarians	3
25-9031.00	Instructional Coordinators	3
29-1121.00	Audiologists	3
29-1123.00	Physical Therapists	3
29-1127.00	Speech-Language Pathologists	3
11-1011.00	Chief Executives	4
11-1011.01	Government Service Executives	4
11-1011.02	Private Sector Executives	4
11-1021.00	General and Operations Managers	4
11-2011.00	Advertising and Promotions Managers	4
11-2021.00	Marketing Managers	4
11-2022.00	Sales Managers	4
11-2031.00	Public Relations Managers	4
11-3011.00	Administrative Services Managers	4
11-3021.00	Computer and Information Systems Managers	4
11-3031.00	Financial Managers	4
11-3031.01	Treasurers, Controllers, and Chief Financial Officers	4
11-3031.02	Financial Managers, Branch or Department	4
11-3040.00	Human Resources Managers	4
11-3041.00	Compensation and Benefits Managers	4
11-3042.00	Training and Development Managers	4
11-3061.00	Purchasing Managers	4
11-9011.00	Farm, Ranch, and Other Agricultural Managers	4
11-9011.01	Nursery and Greenhouse Managers	4
11-9011.02	Agricultural Crop Farm Managers	4
11-9011.03	Fish Hatchery Managers	4

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
11-9031.00	Education Administrators, Preschool and Child Care Center/Program	4
11-9032.00	Education Administrators, Elementary and Secondary School	4
11-9033.00	Education Administrators, Postsecondary	4
11-9041.00	Engineering Managers	4
11-9111.00	Medical and Health Services Managers	4
11-9121.00	Natural Sciences Managers	4
13-1011.00	Agents and Business Managers of Artists, Performers, and Athletes	4
13-1111.00	Management Analysts	4
15-2011.00	Actuaries	4
23-1021.00	Administrative Law Judges, Adjudicators, and Hearing Officers	4
23-1022.00	Arbitrators, Mediators, and Conciliators	4
23-1023.00	Judges, Magistrate Judges, and Magistrates	4
25-2023.00	Vocational Education Teachers, Middle School	4
25-2032.00	Vocational Education Teachers, Secondary School	4
27-1011.00	Art Directors	4
27-2012.00	Producers and Directors	4
27-2012.01	Producers	4
27-2012.02	Directors - Stage, Motion Pictures, Television, and Radio	4
27-2012.03	Program Directors	4
27-2012.04	Talent Directors	4
27-2012.05	Technical Directors/Managers	4
27-2041.00	Music Directors and Composers	4
27-2041.01	Music Directors	4
27-2041.02	Music Arrangers and Orchestrators	4
27-2041.03	Composers	4
27-3020.00	News Analysts, Reporters and Correspondents	4
27-3021.00	Broadcast News Analysts	4
27-3022.00	Reporters and Correspondents	4
11-3051.00	Industrial Production Managers	5
11-9021.00	Construction Managers	5
11-9141.00	Property, Real Estate, and Community Association Managers	5
11-9151.00	Social and Community Service Managers	5
13-1071.00	Employment, Recruitment, and Placement Specialists	5
13-1071.01	Employment Interviewers, Private or Public Employment Service	5

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
13-1071.02	Personnel Recruiters	5
13-1072.00	Compensation, Benefits, and Job Analysis Specialists	5
13-1073.00	Training and Development Specialists	5
13-1121.00	Meeting and Convention Planners	5
13-2011.01	Accountants	5
13-2011.02	Auditors	5
13-2031.00	Budget Analysts	5
13-2041.00	Credit Analysts	5
13-2051.00	Financial Analysts	5
13-2052.00	Personal Financial Advisors	5
13-2053.00	Insurance Underwriters	5
13-2061.00	Financial Examiners	5
13-2071.00	Loan Counselors	5
13-2072.00	Loan Officers	5
13-2081.00	Tax Examiners, Collectors, and Revenue Agents	5
15-1021.00	Computer Programmers	5
15-1031.00	Computer Software Engineers, Applications	5
15-1032.00	Computer Software Engineers, Systems Software	5
15-1051.00	Computer Systems Analysts	5
15-1061.00	Database Administrators	5
15-1071.00	Network and Computer Systems Administrators	5
15-1071.01	Computer Security Specialists	5
15-1081.00	Network Systems and Data Communications Analysts	5
17-1011.00	Architects, Except Landscape and Naval	5
17-1012.00	Landscape Architects	5
17-1021.00	Cartographers and Photogrammetrists	5
17-1022.00	Surveyors	5
17-2011.00	Aerospace Engineers	5
17-2021.00	Agricultural Engineers	5
17-2031.00	Biomedical Engineers	5
17-2041.00	Chemical Engineers	5
17-2051.00	Civil Engineers	5
17-2061.00	Computer Hardware Engineers	5
17-2071.00	Electrical Engineers	5
17-2072.00	Electronics Engineers, Except Computer	5
17-2081.00	Environmental Engineers	5
17-2111.00	Health and Safety Engineers, Except Mining Safety Engineers and Inspectors	5
17-2111.01	Industrial Safety and Health Engineers	5
17-2111.02	Fire-Prevention and Protection Engineers	5

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
17-2111.03	Product Safety Engineers	5
17-2112.00	Industrial Engineers	5
17-2121.00	Marine Engineers and Naval Architects	5
17-2121.01	Marine Engineers	5
17-2121.02	Marine Architects	5
17-2131.00	Materials Engineers	5
17-2141.00	Mechanical Engineers	5
17-2151.00	Mining and Geological Engineers, Including Mining Safety Engineers	5
17-2161.00	Nuclear Engineers	5
17-2171.00	Petroleum Engineers	5
19-1010.00	Agricultural and Food Scientists	5
19-1011.00	Animal Scientists	5
19-1012.00	Food Scientists and Technologists	5
19-1013.01	Plant Scientists	5
19-1013.02	Soil Scientists	5
19-1020.00	Biological Scientists	5
19-1020.01	Biologists	5
19-1023.00	Zoologists and Wildlife Biologists	5
19-1031.00	Conservation Scientists	5
19-1031.01	Soil Conservationists	5
19-1031.02	Range Managers	5
19-1031.03	Park Naturalists	5
19-1032.00	Foresters	5
19-2021.00	Atmospheric and Space Scientists	5
19-2031.00	Chemists	5
19-2032.00	Materials Scientists	5
21-1021.00	Child, Family, and School Social Workers	5
21-1022.00	Medical and Public Health Social Workers	5
21-1092.00	Probation Officers and Correctional Treatment Sp	5
21-2021.00	Directors, Religious Activities and Education	5
23-2092.00	Law Clerks	5
25-2012.00	Kindergarten Teachers, Except Special Education	5
25-2021.00	Elementary School Teachers, Except Special Education	5
25-2022.00	Middle School Teachers, Except Special and Vocational Education	5
25-2031.00	Secondary School Teachers, Except Special and Vocational Education	5
25-2041.00	Special Education Teachers, Preschool, Kindergarten and Elementary	5
25-2042.00	Special Education Teachers, Middle School	5

<b>O*NET-SOC Code</b>	<b>O*NET-SOC Title</b>	<b>Education &amp; Training Category Code</b>
25-2043.00	Special Education Teachers, Secondary School	5
25-3011.00	Adult Literacy, Remedial Education, and GED Teachers and Instructors	5
25-4013.00	Museum Technicians and Conservators	5
25-9021.00	Farm and Home Management Advisors	5
27-1014.00	Multi-Media Artists and Animators	5
27-1021.00	Commercial and Industrial Designers	5
27-1022.00	Fashion Designers	5
27-1024.00	Graphic Designers	5
27-1025.00	Interior Designers	5
27-1027.00	Set and Exhibit Designers	5
27-1027.01	Set Designers	5
27-1027.02	Exhibit Designers	5
27-3031.00	Public Relations Specialists	5
27-3041.00	Editors	5
27-3042.00	Technical Writers	5
27-3043.00	Writers and Authors	5
27-4032.00	Film and Video Editors	5
29-1031.00	Dietitians and Nutritionists	5
29-1071.00	Physician Assistants	5
29-1122.00	Occupational Therapists	5
29-1125.00	Recreational Therapists	5
29-2011.00	Medical and Clinical Laboratory Technologists	5
29-2091.00	Orthotists and Prosthetists	5
29-9010.00	Occupational Health and Safety Specialists and Technicians	5
29-9091.00	Athletic Trainers	5
33-3021.03	Criminal Investigators and Special Agents	5
39-9032.00	Recreation Workers	5
41-3021.00	Insurance Sales Agents	5
41-3031.01	Sales Agents, Securities and Commodities	5
41-3031.02	Sales Agents, Financial Services	5
41-9031.00	Sales Engineers	5
53-2011.00	Airline Pilots, Copilots, and Flight Engineers	5









Human Resources Specialists
Industrial Engineer
Logistician
Management Analysts
Market Research Analyst and Marketing Specialist
Market Research Analysts and Marketing Specialists
Mechanical Engineers
Mechanical Engineers
Medical and Clinical Laboratory Technologists
Medical and Clinical Laboratory Technologists
Medical and Health Services Managers
Medical Scientist, Except Epidemiologists
Medical Scientists (Clinical Educators)
Medical Scientists (Hospitalists)
Medical Scientists (Neurologists)
Medical Scientists (Pediatric Endocrinologists)
Medical Scientists (Radiation Oncologists)
Network and Computer Systems Administrators
Network and Computer Systems Administrators
Operations Research Analysts
Physicians and Surgeons (All Other)
Physicians and Surgeons, All Other
Physics Teachers, Postsecondary
Public Relations Specialists
Secondary School Teachers, Except Special Education
Social Scientist and Related Workers, All Other
Software Developers, Applications
Software Developers Applications
Software Developers, Systems Software
Software Engineer
Software Engineer
Survey Researchers
Validation Engineer







**Occupational Classification (O\*Net)**

Accountants and Auditors
Actuaries
Actuaries
Actuaries
Administrative Services Managers
Architects, Except Landscape & Naval
Architects, Except Landscape and Naval
Architects, Except Landscape and Naval
Broadcast News Analysts
Business Operations Specialist
CAD Engineer
Civil Engineer
Civil Engineers
Commercial and Industrial Designers
Compliance Officers
Compliance Officers
Computer and Information Research Scientists
Computer Occupation, All Other
Computer Occupations - Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other (Business Intelligence Analysts)
Computer Occupations, All Others (Business Intelligence Analyst)
Computer Occupations, All Others (Software QA Engineers & Testers).
Computer Systems Analyst



Industrial Engineers
Information Security Analyst
Instructional Coordinators
Interior Designer
Logisticians
Logisticians
Logisticians
Management Analyst
Management Analyst
Management Analyst
Management Analyst
Management Analysts
Management Analysts
Managers, All Other
Managers, All Other
Market Research Analyst
Market Research Analyst & Marketing Specialist
Market Research Analyst and Marketing Specialists
Market Research Analyst or Marketing Specialist
Market Research Analysts and Marketing Specialist
Market Research Analysts and Marketing Specialists
Marketing Managers
Marketing Managers
Mechanical Engineers
Medical Scientist, Except Epidemiologists
Network & Computer Systems Administrators
Network and Computer Systems Administrators
Network and Computer Systems Administrators
Network and Computer Systems Administrators

Occupational Health & Safety Specialist
Operations Research Analyst
Operations Research Analysts
Operations Research Analysts
Public Relations Specialist
Public Relations Specialists
Reporters and Correspondents
Reporters and Correspondents
Secondary School Teachers, Except Special and
Social scientists and related workers, all other
Software Developer, Applications
Software Developer, Systems Software
Software Developer, Systems Software
Software Developers Applications
Software Developers, Applications
Software Developers, Applications
Software Developers, Applications
Software Developers, Applications
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Software Developers, Applications



**Occupational Classification (O\*Net)**

Accountants and Auditors
Accountants and Auditors
Actuaries
Architectural and civil drafters
Architectural and Engineering Managers
Chemical Engineers
Civil Engineer
Civil Engineer
Compute Occupation, All other
Computer Occupation, All Other
Computer Occupation, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Occupations, All Other
Computer Systems Analyst
Computer Systems Analysts
Computer Systems Engineer/Architect
Cost Estimators
Credit Analysts
Databse Architect
Dentists, General
Editor
Elementary School Teachers, Except Special Education
Engineering Teachers, Postsecondary
Family and General Practitioners
Financial Specialists, All other
Human Resources Specialists

Industrial Engineer
Logistician
Management Analysts
Market Research Analyst and Marketing Specialist
Market Research Analysts and Marketing Specialists
Mechanical Engineers
Mechanical Engineers
Medical and Clinical Laboratory Technologists
Medical and Clinical Laboratory Technologists
Medical and Health Services Managers
Medical Scientist, Except Epidemiologists
Medical Scientists (Clinical Educators)
Medical Scientists (Hospitalists)
Medical Scientists (Neurologists)
Medical Scientists (Pediatric Endocrinologists)
Medical Scientists (Radiation Oncologists)
Network and Computer Systems Administrators
Network and Computer Systems Administrators
Operations Research Analysts
Physicians and Surgeons (All Other)
Physicians and Surgeons, All Other
Physics Teachers, Postsecondary
Public Relations Specialists
Secondary School Teachers, Except Special Education
Social Scientist and Related Workers, All Other
Software Developers, Applications
Software Developers Applications
Software Developers, Systems Software
Software Engineer
Software Engineer
Survey Researchers
Validation Engineer

### **Labor Condition Application**

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation.

Moreover, you indicate that the beneficiary will perform duties such as:

**XXX[PROVIDE LIST OF RELEVANT DUTIES]XXX**

These duties do not correspond to the Level I wage description as they do not appear to encompass “only a basic understanding of the occupation.” The duties described appear to contain more than “routine tasks that require limited, if any, exercise of judgement.”

**XXX[INCLUDE IF OFF-SITE EMPLOYMENT AND RELEVANT]XXX**

Moreover, you indicate that the beneficiary will be stationed off-site, at the XXX[END-CLIENT NAME]XXX client location. You indicate XXX[PROVIDE ANALYSIS OF OFF-SITE SUPERVISION AS DESCRIBED IN PETITION OR INDICATE THAT THEY HAVE NOT PROVIDED ANY DESCRIPTION]XXX. Accordingly, it is not apparent how the beneficiary will “work under close supervision and receive specific instructions on required tasks and results expected.” Similarly, it is not apparent how the beneficiary’s work will be “closely monitored and reviewed for accuracy.”

Therefore, the position, as described in your petition, does not appear to be an entry-level position despite the wage classification you have selected on the LCA. As such, you have not sufficiently established that the petition is supported by a certified LCA that corresponds to the petition.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: ~~XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX~~

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
-

XXX[INSERT AS SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook* (*OOH*) for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation. Given the *OOH*'s guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

### **Labor Condition Application**

You must establish that your petition is supported by an LCA which corresponds with the proffered position described in the petition.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

The evidence you submitted is insufficient to satisfy this requirement.

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that LCA you have provided, with a Level I wage designation, corresponds to the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
- A new LCA, with a different wage designation and/or SOC code and title. If you submit a new LCA, you must provide an explanation for the change. Note that eligibility for H-1B employment must be established as of the date of filing the I-129 petition. Therefore, the LCA must have been certified **prior to** the date of filing the I-129 petition.

# Deference

- When evaluating whether or not an appropriate Labor Condition Application (LCA) was submitted with the petition, deference does not apply.
- USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition. See INA 101(a)(15)(H)(i)(B), INA 212(N), 8 CFR 214.2(h)(4)(B) and *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 546 (AAO 2015).

# Deference Cont.

- Pursuant to an April 23, 2004 memo, when evaluating the specialty occupation for same/same EOS petitions, a position should be given deference unless you can articulate that there was
  - A material error
  - A substantial change in circumstances, or
  - New material information
- Pursuant to the March 31, 2017 memo, if USCIS previously approved a petition based on evidence solely from the OOH when seeking to sponsor a beneficiary for a computer programmer position, deference should not be given and the petition should be adjudicated consistent with the new guidance.

**Labor Condition Application**

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation.

Moreover, you indicate that the beneficiary will perform duties such as:

**XXX[PROVIDE LIST OF RELEVANT DUTIES]XXX**

These duties do not correspond to the Level I wage description as they do not appear to encompass “only a basic understanding of the occupation.” The duties described appear to contain more than “routine tasks that require limited, if any, exercise of judgement.”

**XXX[INCLUDE IF OFF-SITE EMPLOYMENT AND RELEVANT]XXX**

Moreover, you indicate that the beneficiary will be stationed off-site, at the XXX[END-CLIENT NAME]XXX client location. You indicate XXX[PROVIDE ANALYSIS OF OFF-SITE SUPERVISION AS DESCRIBED IN PETITION OR INDICATE THAT THEY HAVE NOT PROVIDED ANY DESCRIPTION]XXX. Accordingly, it is not apparent how the beneficiary will “work under close supervision and receive specific instructions on required tasks and results expected.” Similarly, it is not apparent how the beneficiary’s work will be “closely monitored and reviewed for accuracy.”

Therefore, the position, as described in your petition, does not appear to be an entry-level position despite the wage classification you have selected on the LCA. As such, you have not sufficiently established that the petition is supported by a certified LCA that corresponds to the petition.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

(b)(5)



**Labor Condition Application**

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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**XXX[INCLUDE IF OFF-SITE EMPLOYMENT AND RELEVANT]XXX**

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You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

(b)(5)

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.



XXX[INSERT AS SPECIALTY OCC SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry-level position of a comparatively low level relative to other positions within the occupation. Given the *OOH*'s guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, it does not appear that an entry-level position would have such a requirement.

XXX[INCLUDE ONLY IF RELEVANT/EDIT AS NECESSARY]XXX

The duties that you have described for the beneficiary align with those of any XXX[POSITION]XXX. Because you have classified the proffered position as being at a Level I wage, this would indicate that this position is not so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Similarly, this would indicate that the specific duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

XXX[INSERT AS LCA SNIPPET INTO 2120 IF NEEDED]XXX

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition..

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

XXX[INSERT AS SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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### **Labor Condition Application**

You must establish that your petition is supported by an LCA which corresponds with the proffered position described in the petition.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

The evidence you submitted is insufficient to satisfy this requirement.

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that LCA you have provided, with a Level I wage designation, corresponds to the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to, a combination of the following or similar types of evidence:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.
- A new LCA, with a different wage designation and/or SOC code and title. If you submit a new LCA, you must provide an explanation for the change. Note that eligibility for H-1B employment must be established as of the date of filing the I-129 petition. Therefore, the LCA must have been certified **prior to** the date of filing the I-129 petition.

XXX[INSERT AS SPECIALTY OCC SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

XXX[INCLUDE RELEVANT INFORMATION]XXX

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XXX[INSERT AS LCA SNIPPET INTO 2120 IF NEEDED]XXX

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition..

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position.

[Redacted]

(b)(5)

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

(b)(5)

[Redacted]

XXX[INSERT AS SPECIALTY OCC SNIPPET INTO 2120]XXX

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a labor condition application (LCA) for the position of XXX[POSITION]XXX. The *OOH* states the following regarding the training and educational requirements for a XXX[POSITION]XXX:

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Accordingly, a range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[POSITION]XXX. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage is defined as:

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XXX[INSERT AS LCA SNIPPET INTO 2120 IF NEEDED]XXX

You must establish that your petition is supported by a Form ETA 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position described in the petition..

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. However, if it is your claim that the proffered position is not entry level, but is instead a more advanced or complex position, which normally requires the attainment of a bachelor's degree or higher in a specific specialty as a minimum requirement, you must submit evidence to demonstrate that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position.

[REDACTED]

(b)(5)

XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX

- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position

(b)(5)

[REDACTED]

**USE THIS REF ONLY WHEN THE DUTIES OF THE POSITION ARE CLEARLY INCONSISTENT WITH AND/OR MORE COMPLICATED THAN THE LCA WAGE LEVEL**

*If you are requesting consulate/embassy notification, provide the following evidence in duplicate. Any document submitted to U.S. Citizenship and Immigration Services (USCIS) containing a foreign language, must be accompanied by a full English language translation that has been certified by the translator as complete and accurate, and that the translator is competent to translate from the foreign language into English.*

**Evidence Pertaining to the Labor Condition Application (LCA)**

You must establish that your petition is supported by an ETA Form 9035(E), Labor Condition Application (LCA) that corresponds to the proffered position described in the petition and, therefore, that the LCA is certified for the specialty occupation in which the beneficiary will be employed.

Upon filing, you provided an LCA that designated the proffered position as a Level I wage (the lowest of four assignable wage levels). According to U.S. Department of Labor (DOL) guidelines on wage determinations, a Level I wage is used for the following:<sup>1</sup>

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.<sup>2</sup>

By designating the proffered position at a Level I wage, you indicated that the proffered position is an entry-level position relative to other positions within the occupation.

However, you also indicate that the beneficiary will perform duties such as:

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<sup>1</sup> [http://www.flcdcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf)  
Accessed on February 5, 2018

<sup>2</sup> In comparison, a level II certification is for "qualified" employees who have "attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment." A level III certification is for "experienced" employees "who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff." A level IV certification is for "fully competent" employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

- [INSERT DUTIES THAT ARE INCONSISTENT WITH WAGE LEVEL I I.E. SUPERVISION]

These duties do not correspond to the Level I wage description as they do not appear to encompass “only a basic understanding of the occupation.” The duties as described appear to contain more than “routine tasks that require limited, if any, exercise of judgement.” As such, you have not established that the petition is supported by an LCA which corresponds with the proffered position and, therefore, that the LCA is certified for the specialty occupation in which the beneficiary will be employed. You may submit additional evidence to satisfy this requirement . Evidence may include but is not limited to the following:

- A statement that explains how a Level I wage designation on the submitted LCA corresponds to the proffered position; or
- Documentation to show that a Level I wage designation on the LCA corresponds to the proffered position.
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*If you are requesting consulate/embassy notification, provide the following evidence in duplicate. Any document submitted to U.S. Citizenship and Immigration Services (USCIS) containing a foreign language, must be accompanied by a full English language translation that has been certified by the translator as complete and accurate, and that the translator is competent to translate from the foreign language into English.*

### Evidence Pertaining to the Proffered Position

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

To qualify as a specialty occupation, the position must meet at least one of the following criteria:

- 1) Bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- 3) The employer normally requires a degree or its equivalent for the position; or
- 4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

USCIS interprets the term, degree, in the above criteria to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position.

To show that the position offered to the beneficiary qualifies as a specialty occupation, you submitted:

#### **[ADD, REMOVE, CHANGE SUBMITTED EVIDENCE REGARDING SPECIALTY OCCUPATION]**

- Description of the beneficiary's duties;
- A certified Labor Condition Application (LCA);
- Information about your organization's products or services;
- Copies of job postings;
- Description of the position from the U.S. Department of Labor's *Occupational Outlook Handbook* or O\*NET Online; and
- An analysis of the position.

[REDACTED]

[REDACTED]

From your description of the beneficiary's duties, it appears that the beneficiary will perform many of the duties of a [INSERT AS APPROPRIATE: Computer Programmer / Computer Systems Analyst / Web Developer / Computer Support Specialist / Network and Computer Systems Administrator] as listed in the *Occupational Outlook Handbook* ("OOH") in publication of the U.S. Department of Labor. The OOH indicates that and [Insert specific OOH position title] is an occupation that does not normally require a bachelor's level of education or higher or its equivalent in a specific specialty as a minimum for entry into the occupation.

[REDACTED]

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook* (OOH) for information about the duties and educational requirements of particular occupations. You have petitioned and provided a labor condition application (LCA) for the position of XXXX[POSITION]XXX under the Computer Occupations – All Other occupational classification. The OOH does not contain descriptions for this occupation. You did not provide other evidence to show that a bachelor's degree or higher or its equivalent in a specific specialty is normally required for entry into the position.

[REDACTED]

Further, your assertion that the position is more complex or specialized than similar positions within the occupation appears inconsistent with your classification of the position on the LCA as "Wage Level I". According to U.S. Department of Labor (DOL) guidelines on wage determinations, a level one wage is used for the following:<sup>1</sup>

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results

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<sup>1</sup> [http://www.fldatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.fldatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf)  
Accessed on February 5, 2018

expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.<sup>2</sup>

The LCA you submitted in support of your petition was certified by DOL for an entry level position, Wage Level I, which DOL describes as one that has “only a basic understanding of the occupation...performs routine tasks that require limited, if any, exercise of judgment”. Thus, the LCA submitted in support of your petition contradicts your assertion that the proffered position is so complex or unique that only an individual with a bachelor’s degree or higher in a specific specialty can perform the job duties.

**[SAMPLE ANALYSIS 4: DUTIES ARE VAGUE AND GENERIC]**

Moreover, the duties as described do not provide enough information on the depth, complexity, level of specialization, or substantive aspects of the duties for which the beneficiary would be responsible so that USCIS can sufficiently evaluate the proffered position.. You described the duties of the proffered position in relatively generalized and abstract terms that do not provide sufficient details about the actual duties to be performed. For example, the job description you have provided just generally describes the duties of a [XXXpositionXXX][“i]nvolved in system study and analysis” and “[r]esponsible for deployment of applications.”] but does not provide sufficient details regarding the actual and specific duties the Beneficiary will perform. You did not further elaborate on the specific tasks, methodologies and applications of knowledge that would be required in furtherance of these overarching duties. Terms such as “Involved,” “Adhere,” and “Responsible” provide little insight into the beneficiary’s specific duties to be performed in order to accomplish these general tasks. This type of generalized description may be appropriate when defining the overall range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the beneficiary will actually perform. Without a detailed job description that sufficiently describes the actual duties to be performed, the record is insufficient to establish that the proffered position qualifies as a specialty occupation.

**[SAMPLE ANALYSIS 5: CLAIMED IN-HOUSE WORK]**

In addition, you indicate that the beneficiary will perform services in a specialty occupation at your location and on your in-house projects. It appears that your organization is in the business of providing information technology consulting services to clients. You did not provide probative evidence of any in-house projects such as income and expense projections, timelines, market analyses, number of required workers, or work locations, to show that the beneficiary will be employed in a specialty occupation at your location for the duration of the requested H-

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<sup>2</sup> In comparison, a level II certification is for “qualified” employees who have “attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment.” A level III certification is for “experienced” employees “who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff.” A level IV certification is for “fully competent” employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”

1B employment period. Despite your claim that the beneficiary will be employed in-house, you have not submitted probative evidence that sufficiently demonstrates that you have in-house projects on which the beneficiary will perform. As a result, you have not established that the beneficiary will perform services in a specialty occupation.

**[SAMPLE ANALYSIS 6: JOB POSTINGS NOT FROM SIMILAR ORGANIZATIONS]**

You submitted job postings from several employers. To establish that the degree requirement is common to the industry in parallel positions among similar organizations, you must show that your organization and those employers share similar characteristics. When determining whether your organization and an advertising employer share similar characteristics, such factors may include information regarding the nature or type of organization; when pertinent, the particular scope of operations; and the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Here, you did not explain or provide evidence whether the employers who placed the job postings share similar characteristics with your organization. Without such evidence, you have not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

**[SAMPLE ANALYSIS 7: POSITION ANALYSIS FROM COLLEGE OFFICIAL]**

You provided an advisory opinion of the proffered position from a college professor at [INSERT COLLEGE WHERE PROFESSOR WORKED AT]. The professor opined that the duties of the proffered position are so specialized and complex that the knowledge required to perform these duties requires the attainment of a minimum of a bachelor's degree in computer science, engineering or closely related field. The professor reached this conclusion by relying on your description of the position rather than any specific study of the position at your organization. Although the professor may have general expertise in XXXfield of studyXXX, there is no evidence that the professor knew any more about the specific duties of the position than what you provided. The professor does not demonstrate or assert in-depth knowledge of your business operations or how the duties of the position would actually be performed in the context of your business. For instance, there is no indication that the professor visited your business, observed your employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. The professor's opinion does not relate the professor's conclusion to specific, concrete aspects of your business operations so as to demonstrate a sound factual basis for the professor's conclusions about the educational requirements for the proffered position. Also, the professor's opinion is not supported by copies or citations of research material that may have been used. The professor has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree or higher or its equivalent in a specific specialty.

Given the professor's limited review of the duties of the position, based largely on the job descriptions furnished by you, USCIS gives less weight to the professor's opinion. The evidence does not distinguish the difference between the duties to be performed by the beneficiary and

those normally performed by similar workers, and how the duties of the proffered position are more specialized and complex.

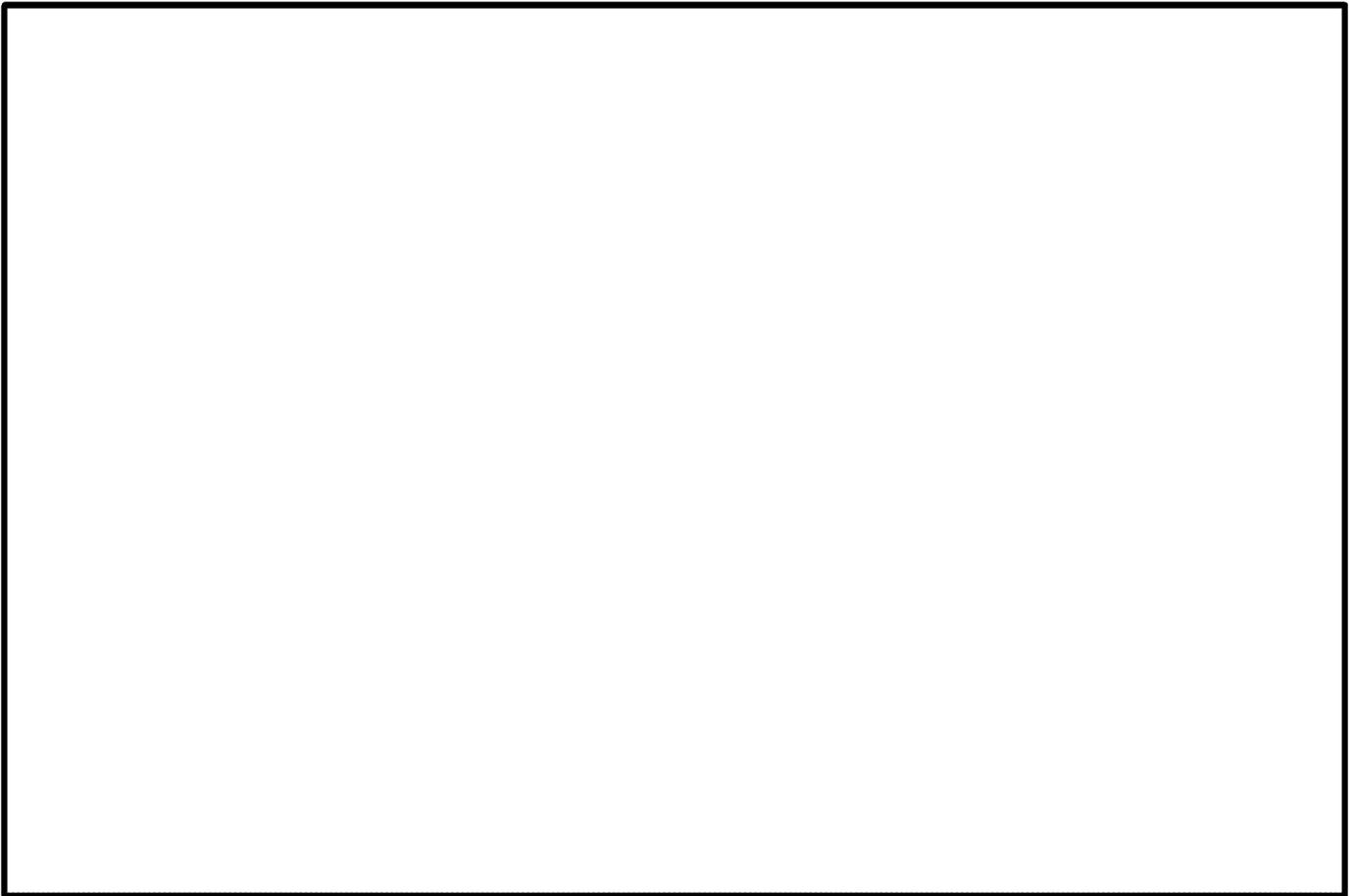
USCIS may use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Chan International*, 19 I&N Dec. 791 (Comm' 1988). As a reasonable exercise of USCIS' discretion, USCIS discounts the advisory opinion as not probative of any criterion of 8 CFR § 21.1(b)(2)(iii)(A).

[REDACTED]

You submitted job postings for several positions at your organization. The degree requirements in the job postings include computer science, engineering, information technology, management information systems, business administration or computer information systems. The degrees listed in the job postings are not closely related to each other.

Further, you indicate that the duties of the proffered position can be performed by an individual with a bachelor's degree or higher in engineering. However, the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Thus, a general degree in engineering or one of its other specialties, such as chemical engineering or mechanical engineering, is not closely related to computer science. Therefore, since you have indicated that a person may qualify to perform the position based on a broad range of degree fields, some of which do not closely relate to the proffered position, you have failed to establish that the proffered position normally requires a bachelor's or higher degree in a specific specialty as a minimum requirement for entry into the position. Hence, you have not established that the position is a specialty occupation.

Also, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement at INA § 21.101(b), provided the specialties are closely related, e.g., chemistry and biochemistry. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in seemingly disparate fields, such as business (with no specialization), engineering or computer related fields would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)," unless you establish how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of those different specialties. Here, you never explained how degrees in business administration, engineering or computer science are directly related to each other and to the duties of the proffered position.



**[END SAMPLE ANALYSES]**

You have not shown that the position offered to the beneficiary is a specialty occupation. You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

**[ADD, REMOVE, CHANGE REQUESTED EVIDENCE AS APPROPRIATE. PLEASE DON'T REQUEST EVIDENCE THAT WAS ALREADY SUBMITTED]**

- A detailed statement to:
  - explain the beneficiary's proposed duties and responsibilities;
  - indicate the percentage of time devoted to each duty; and
  - state the educational requirements for these duties.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - list all divisions in the organization;
  - identify the proffered position in the chart;
  - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
  - indicate who will direct the beneficiary, by name and job title.

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations.
  - Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field.
  - Copies of letter or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
    - The writer's qualifications as an expert;
    - How the conclusions were reached; and
    - The basis for the conclusions supported by copies or citations of any materials used.
  - Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
  - Documentary evidence of your past employment practices for the position, including:
    - Copies of employment or pay records; and
    - Copies of degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.
  - An explanation of what differentiates your products and services from other employers in the same industry and why a bachelor's level of education in a specific field of study is a prerequisite for entry into the proffered position. Be specific and provide documentation to support any explanation of complexity.
  - Copies of documentary examples of work product created by current or prior employees in similar positions, such as:
    - Reports;
    - Presentations;
    - Evaluations;
    - Designs; or
    - Blueprints.
  - Additional information about your organization, such as:
    - Press releases;
    - Business plans;
    - Promotional materials;
    - Advertisements;
    - Patents; or
    - Articles.
  - Any evidence you believe will establish that the position qualifies as a specialty occupation.
- IN-HOUSE WORK ONLY REQUESTS BELOW**
- A copy of relevant portions of valid contracts, statements of work, work orders or service agreements between you and the authorized officials of the ultimate end-client companies to whom the end product or services worked on by the beneficiary will be delivered.

- A copy of a position description or any other documentation that describes the skills required to perform the job offered, the tools needed to perform the job, the product to be developed or the service to be provided, the method of payment, whether the work to be performed is part of your regular business, the provision of employee benefits, and the tax treatment of the beneficiary by you.
- Copies of company brochures, pamphlets, internet website, or any other printed work published by you that outlines, in detail, the products or services provided by your organization.
- Evidence of sufficient production space and equipment to support the beneficiary's specialty occupation work.
- Income and expense projections, timelines and number of workers that are required for the project.
- [REDACTED]
- Copies of critical reviews of your software in trade journals that describes the purpose of the software, its cost, and its ranking among similarly produced software manufacturers.
- A copy of the marketing analysis for your final software product.
- A copy of a cost analysis for your software product.



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**Evidence Pertaining to the Labor Condition Application (LCA)**

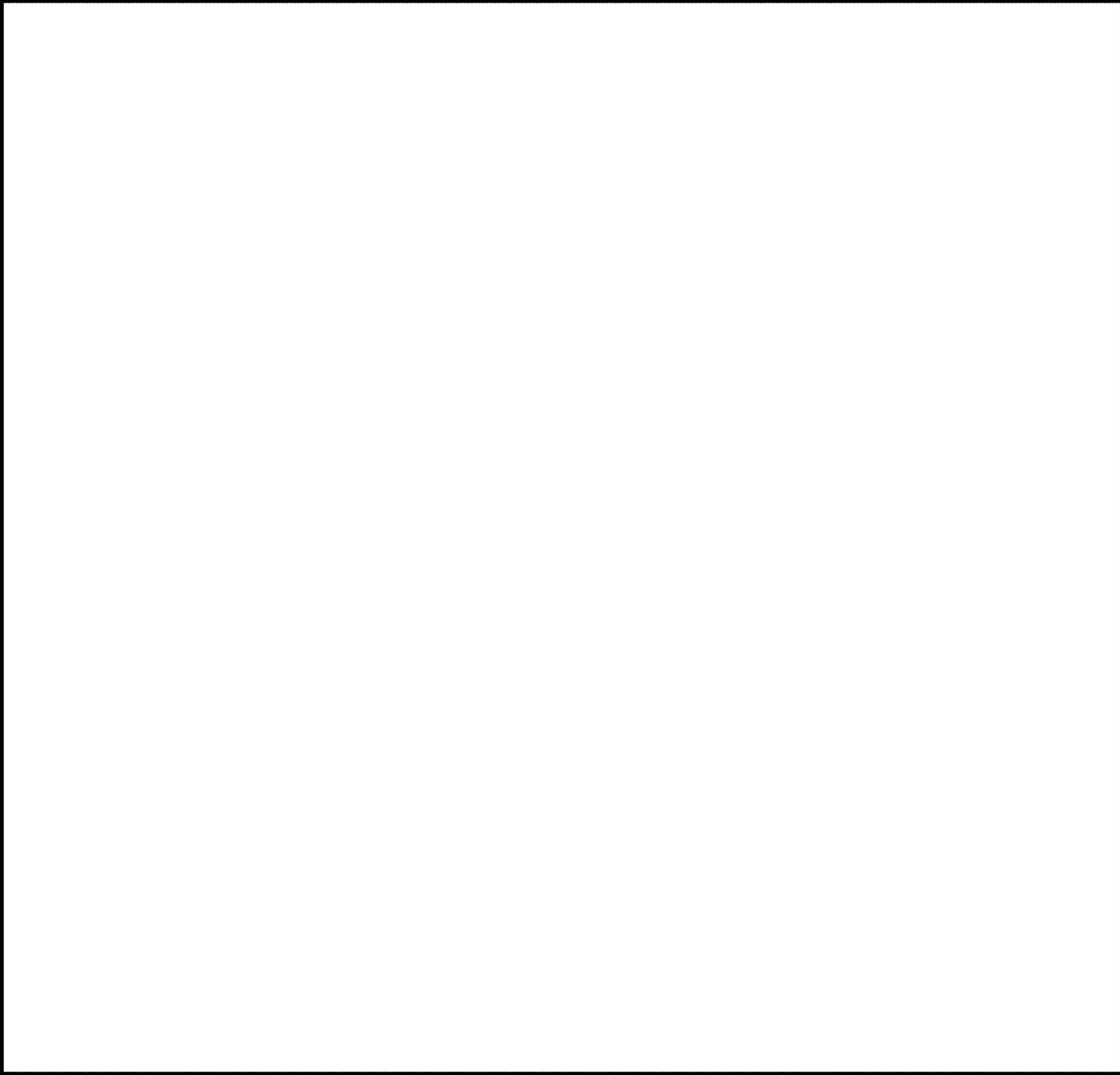
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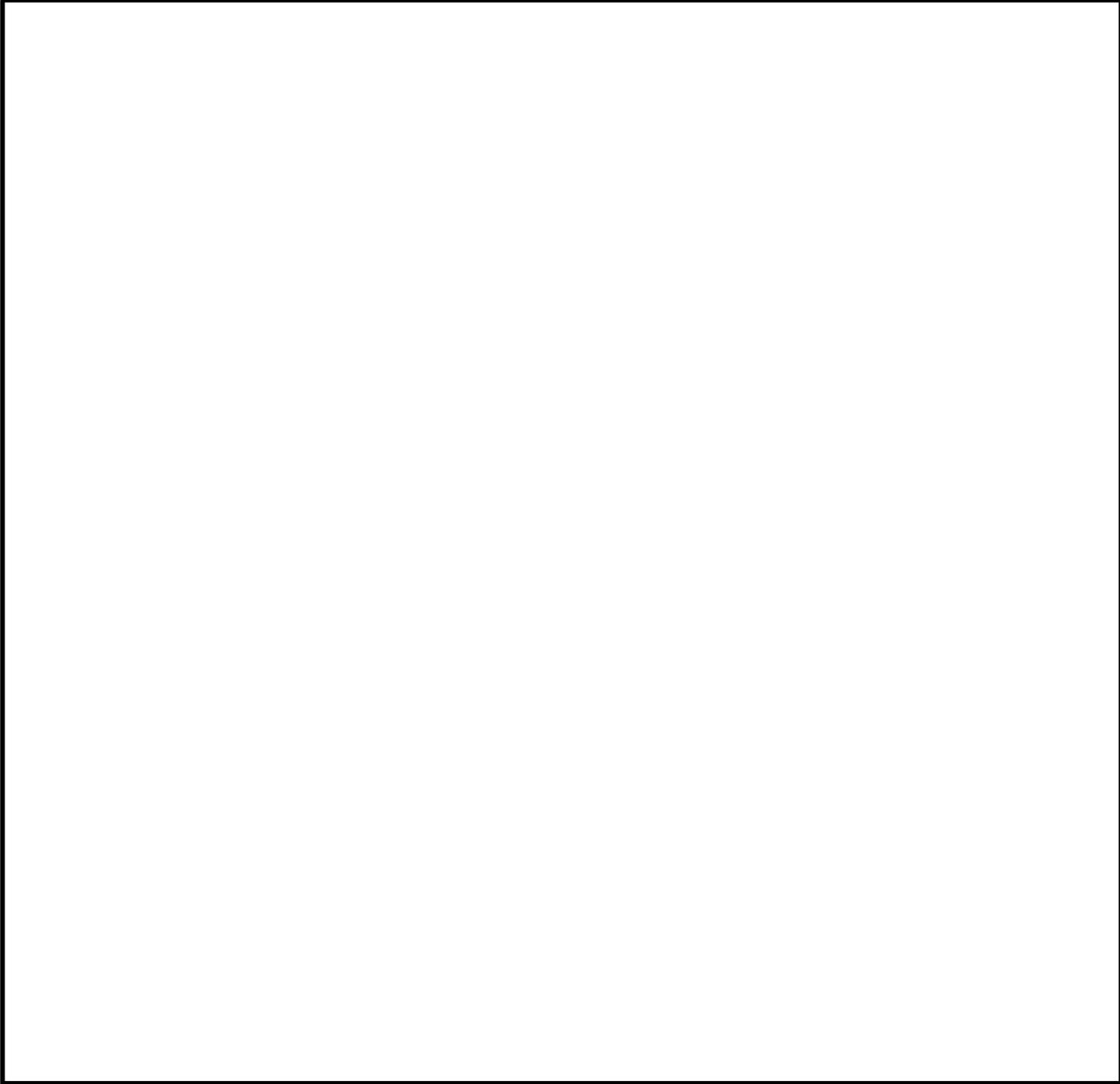
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