U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Citizenship and Immigration Services

Control Number: COW2020002492

May 9, 2025

Austin Evers
American Oversight
1030 15th Street NW
Suite B255
Washington, DC 20005

Dear Austin Evers:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on September 10, 2020 regarding policy documents related to Coronavirus/COVID-19 (DHS Privacy Control Number 2020-HQFO-01685).

Consultations in this request are still outstanding, however U.S.C.I.S. will make a supplemental release of records once the consultation process has been completed.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's Guidance. We have completed the review of all documents and have identified 4370 pages that are responsive, which includes spreadsheets related to your request. Enclosed are 873 pages released in their entirety and 2779 pages released in part. Additionally, we have referred 293 pages in their entirety to Office of Management and Budget, 4 pages in their entirety to U.S. Department of State, 414 pages in their entirety to Department of Homeland Security and some pages in their entirety to another government agency. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(E) of the FOIA.

The following exemptions are applicable:

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

There may be additional documents that contain discretionary releases of exempt information. If made,

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these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal by mail to USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our USCIS FOIA Public Liaison at U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010, or by email at FOIAPAQuestions@uscis.dhs.gov.

A USCIS FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. USCIS FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency, and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our USCIS FOIA Public Liaison, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email ogis@nara.gov; telephone 202-741-5770; toll free 877-684-6448; or facsimile 202-741-5769.

The National Records Center does not process petitions, applications, or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with USCIS, please visit the Contact Us page at www.uscis.gov or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Sincerely,



James A Baxley
Chief FOIA Officer
Freedom of Information Act & Privacy Act Unit

Enclosure(s)

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

May 9, 2025

Control Number: COW2020002492

Austin Evers
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1030 15th Street NW
Suite B255
Washington, DC 20005

Dear Austin Evers:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on September 10, 2020, regarding records sufficient to identify any exemptions, exceptions, exclusions, or waivers to the Presidential Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak, published at Presidential Proclamation No. 10052, 85 Fed. Reg. 38263 (June 22, 2020). Date Range for Record Search from 3/15/2020 to 8/24/2020.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's Guidance. We have completed the review of all documents and have identified 4354 pages that are responsive to your request. Enclosed are 857 pages released in their entirety, 2779 pages released in part, and 16 spreadsheets released in their entirety. Additionally, we have referred 293 pages in their entirety to Office of Management and Budget, 4 pages in their entirety to U.S. Department of State, 414 pages in their entirety to Department of Homeland Security and some pages in their entirety to another government agency. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(E) of the FOIA.

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Sincerely,

James A Baxley
Chief FOIA Officer
Freedom of Information Act & Privacy Act Unit

Enclosure(s)

AMERICAN OVERSIGHT

West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

August 27, 2020

The Honorable Mike Pompeo
Secretary of State
2201 C St. NW
Washington, DC 20520

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Avenue
Washington, DC 20210

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Secretaries Pompeo, Scalia and Wolf:

The West Virginia Coal Association, as the trade organization representing 94 million tons of thermal and metallurgical coal produced in the Mountain State and 51,664 state residents employed directly by the coal industry, would like to make you aware of the potential negative impacts resulting from the President's Proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" dated June 22, 2020.

West Virginia is the nation's second largest coal producing state, the largest producer of metallurgical coal (an essential feedstock for the manufacturing of iron and steel) and the largest producer of coal destined for foreign exports. The West Virginia coal industry is directly responsible for over $5 billion in economic activity in the state, including $2 billion in wages and over $250 million in local and state tax revenues.

Many H-2B employers contract their services to coal companies in West Virginia to perform forestry work. These reforestation efforts are central to the coal industry's compliance with federal and state mining laws governing the timely reclamation of sites once coal removal has been completed. The federal Surface Mining Control & Reclamation Act (30 USC 1201, *et. seq.*) and the corresponding federal regulations promulgated by the federal Office of Surface Mining (30 CFR 700, *et seq.*) require mine operators to complete reclamation, including reforestation efforts, within established timeframes to avoid regulatory violations and/or delays in moving coal production activities to new, undisturbed areas.

The State of West Virginia maintains similar, but more specific timeframes and requirements, referred to as "contemporaneous reclamation" under the West Virginia Surface Coal Mining & Reclamation Act (W.Va. Code 22-3-1, et. *seq.*) and its implementing state rules at 38 CSR 2, *et.seq.*

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The inability to complete the timely reforestation efforts mandated by the federal and state regulatory programs places mine operators at risk for violations under those programs and could jeopardize continued coal production and employment since the ability to move active mining units to new areas is directly tied to the operator's completion of reclamation (including reforestation efforts) on the previously mined and disturbed areas. Additionally, reforestation is a central component of reclamation-returning formerly mined areas to their pre-disturbance form and providing the highest-level environmental protection and remediation to the natural environment and communities in which we operate.

The unrealized reclamation activity from the suspension of H-2B non-immigrant labor that performs forestry work is significant and could potentially impact the nation's supply of thermal coal, used to produce electricity and the domestic production of iron and steel if metallurgical coal supplies are interrupted.

The West Virginia Coal Association urges the Administration to consider an exemption for H-2B guest workers that perform forestry work and reforestation / reclamation efforts at coal mining operations.

Respectfully Submitted,

Jason Bostic
Vice President

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Annual Report 2020

Citizenship and Immigration Services Ombudsman

June 30, 2020

Homeland Security

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Annual Report 2020

Citizenship and Immigration Services Ombudsman

June 30, 2020

Homeland Security

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Office of the Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security
Mail Stop 0180
Washington, DC 20528-0180

Homeland Security

June 30, 2020

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairmen and Ranking Members:

The Office of the Citizenship and Immigration Services Ombudsman is pleased to submit, pursuant to section 452(c) of the Homeland Security Act of 2002, its 2020 Annual Report.

I am available to provide additional information upon request.

Sincerely,

Michael T. Dougherty
Citizenship and Immigration Services Ombudsman

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DHS-20-2156-A-000007

Message from the Ombudsman



I am pleased to present the Citizenship and Immigration Services Ombudsman's 2020 Annual Report to Congress.

The Office of the Citizenship and Immigration Services Ombudsman was created in the Homeland Security Act in 2002. The Office was designed as a separate component, independent of U.S. Citizenship and Immigration Services (USCIS). Our mission includes assisting individuals and employers in resolving difficulties they experience when seeking immigration benefits from USCIS and proposing changes to improve the delivery of those benefits. In performing these duties our office adheres to the principles of confidentiality, impartiality and independence. The Ombudsman's Office is expected to conduct full and substantive analysis of pervasive and serious problems and to include other information that the Ombudsman deems advisable. In addition, as a component of the Department of Homeland Security (DHS), our office supports the Department's larger mission objectives, core values and guiding principles, which include contributing to the integrity of the immigration system while identifying systemic risks that threaten the security and prosperity of the United States.

As this Report is being finalized, USCIS is facing two significant challenges: the staggered reopening of its public-facing offices in the wake of the global coronavirus (COVID-19) pandemic, and a budget shortfall that may result in furloughs. Stakeholders and the public have raised questions and concerns with the Ombudsman's Office on how USCIS' processing of immigration benefits and services will be affected by the lingering effects of the pandemic and the potential furlough. The COVID-19 pandemic gave USCIS an opportunity to test out its continuity plan that made even more evident the importance of moving beyond the paper processing of immigration benefits applications to an environment in which filings and adjudications can be processed electronically. USCIS may want to intensify its efforts on implementing electronic filing and adjudication for all form types—a goal once set for the end of 2020.

Though USCIS has provided clarification and guidance on several issues of immediate concern, such as evidentiary response times and in-person interviews, as the COVID-19 pandemic has lengthened, important issues remain unresolved. The Office has supported USCIS by conveying stakeholder concerns and, where appropriate, by offering recommended action. Most of those impacted, from tourists to employers, wish to comply with U.S. immigration laws and need unambiguous guidance to do so. In this difficult period, our Office has encouraged (and will continue to encourage) USCIS to conduct frequent outreach to publicly set stakeholder expectations. We welcome the opportunity to collaborate with USCIS in such efforts. Regardless, the Ombudsman's Office will continue to fully satisfy its statutory obligations, in part through meetings with stakeholders and through outreach events such as webinars, in our belief that clear communications from DHS and USCIS are imperative to support the effective administration of U.S. immigration laws.

Perhaps the greatest immigration benefit that the United States can bestow on a foreign national is citizenship. Given its importance to individuals seeking to naturalize, it is not surprising we receive frequent queries from individuals seeking to understand the status of USCIS adjudications on their applications for citizenship among the thousands of requests for assistance we receive annually. In this Report, we study the increasing naturalization application backlog, and recommend ways to streamline more complicated cases and identify creative remote interview solutions. Given the significance of U.S. citizenship, we also study in this Report the challenges of denaturalizing those who, due to agency error or through

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fraud, received the benefit despite being ineligible. While there is always pressure on USCIS to adjudicate applications, it is essential to maintain the integrity of the process, ensuring that appropriate vetting and screening of applicants is completed; once a benefit like citizenship is awarded to an unqualified individual, it is legally difficult and resource-intensive to later reverse it.

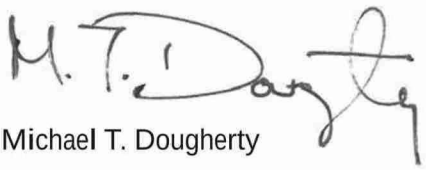
An important means of maintaining integrity in the immigration system is the promotion of data collection, data standards and reliable, objective data reporting as close to real time as possible. Accurate metrics-keeping promotes better situational awareness within DHS, but also provides leaders within the Executive and Legislative branches a clearer understanding of the status of the immigration system. In this Report, we cover the progress of the DHS Immigration Data Integration Initiative, which is enhancing technology and internal procedures to improve immigration metrics-keeping to ensure that relevant, accurate information is available to operational components and leadership at DHS.

The Report covers the rapid increase of the optional practical training (OPT) program, which enables approximately 200,000 foreign students to work annually in the United States in areas related to their course of study, including science, technology, engineering and mathematics (STEM). While practical training affords numerous advantages to foreign students, schools and U.S. employers, the OPT and STEM OPT programs have remained a source of concern in recent years due to their vulnerability to fraud and indicators that they are being leveraged by foreign governments as a means of conducting espionage or illicit technology transfer in the STEM areas. The Ombudsman examines how foreign students obtain practical training and, using open-source data, applies an objective analytical framework to the programs to determine potential risks to the security and prosperity of the United States.

The Office has had numerous opportunities to comment upon the processing of asylum applications, and this Report is no exception. The number of pending affirmative asylum applications now stands at approximately 350,000, despite USCIS' near tripling of its asylum staff. As always, the pressure on USCIS to complete applications in a secure and timely manner must be viewed in the context of its workload and business model: in FY 2019, it received 8.1 million applications and petitions, and it operates as a fee-funded agency. USCIS, like most other federal agencies, lacks the agility to rapidly staff and train personnel to meet dynamic surges in workloads like those experienced with asylum, naturalization, and employment authorization applications.

I wish to share my appreciation for the very positive experience that we have had with Congressional staff serving in district and state offices who assist individual constituents and other stakeholders in resolving immigration benefits problems. We appreciate their dedication and value the opportunity to meet frequently with them. I also wish to thank on behalf of our Office the USCIS staff and leadership team for their friendship and collaboration. Finally, I extend my sincere gratitude to the professional staff of the Ombudsman's Office, who, after seamlessly transitioning to a remote work environment, have continued to work with admirable diligence and creativity to achieve the mission of this Office.

Sincerely,



Michael T. Dougherty

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Office of the Citizenship and Immigration Services Ombudsman: 2019 in Review—Looking Back, Looking Ahead

Established by the Homeland Security Act of 2002, the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) is an independent, impartial, and confidential office within the Department of Homeland Security (DHS). The Ombudsman reports directly to the Deputy Secretary of DHS and is independent of U.S. Citizenship and Immigration Services (USCIS).

Pursuant to statute,[1] the mission of the Ombudsman is to:

- Assist individuals and employers in resolving problems with USCIS;
- Identify trends and areas in which individuals and employers have problems dealing with USCIS; and
- To the extent possible, propose changes in USCIS' administrative practices to mitigate identified problems.

The Ombudsman achieves its mission by:

- Evaluating requests for assistance from individuals and employers with cases before USCIS and, where appropriate, recommending that USCIS take corrective action;
- Facilitating interagency collaboration and conducting outreach with a wide range of public and private stakeholders;
- Working collaboratively with USCIS to identify problems and improve responsiveness in the delivery of immigration benefits and services; and
- Reviewing USCIS' operations, researching applicable laws, regulations, policies, and procedures, and issuing recommendations (both formal and informal) to bring systemic issues to USCIS' attention.

HOW THE OMBUDSMAN PROCESSES REQUESTS FOR CASE ASSISTANCE

Anyone with standing (applicants, petitioners, legal and other representatives) may contact the Ombudsman for assistance with specific case problems at USCIS. There is no cost to submit a request for case assistance. However, because the Ombudsman is a resource of last resort, one should first attempt to resolve concerns directly with USCIS through its public service channels. If USCIS is unable to resolve the problem, one may submit a Form DHS-7001, *Request for Case Assistance,* online through the Ombudsman's website, which automatically generates an email with the case number.[2] A paper version of Form DHS-7001 is available on the website for individuals who are unable to complete the form online.

Pre-Assignment. Each request for case assistance is reviewed initially by one of the Ombudsman's senior immigration law experts to determine whether the Ombudsman's Office has jurisdiction and to identify requests requiring expedited service.[3] In general, the

[1] Homeland Security Act of 2002 (HSA) § 452, Pub. L. 107–296, title IV; 6 U.S.C. § 272 (2002).

[2] Citizenship and Immigration Services Ombudsman's Webpage, "Ombudsman—Case Assistance," https://www.dhs.gov/case-assistance (accessed Apr. 14, 2020). DHS firewalls unfortunately do not allow individuals outside of the United States to complete the form online. The office accepts requests by email, fax, or mail from individuals who have trouble filing online.

[3] The Ombudsman aims to review all requests for assistance within 7 days of receipt.

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Ombudsman's mission is limited to issues dealing with immigration benefits, but in certain circumstances the Office can assist with cross-agency issues. For example, our immigration law analysts regularly communicate with the Department of State's (DOS) National Visa Center to help with difficulties getting files transferred.

After determining that the Ombudsman has jurisdiction over the case, reviewers identify the level of urgency of the case. To help the Ombudsman assess emergency situations, individuals requesting assistance must submit documentation to demonstrate that their situation fits USCIS' expedite

Tips for Requesting Case Assistance from the Ombudsman

- ✓ Try to resolve the problem with USCIS first. The Ombudsman is an office of last resort.
- ✓ Check USCIS' posted processing times, paying particular attention to the "Receipt date for a case inquiry" date, before contacting USCIS or the Ombudsman.
- ✓ Provide only basic documentation related to your request such as receipt notices, Requests for Evidence (RFEs), and denial notices. We will contact you if we need more.
- ✓ Email the documentation if it cannot be submitted through the online submission process. Only mail or fax documents if you do not have access to a computer.
- ✓ You must be the petitioner, applicant, or representative to submit a request for case assistance. A beneficiary cannot submit a request for case assistance. For example, if you are an adjustment of status applicant, but the underlying petition has not yet been approved, we will need the petitioner's consent.
- ✓ Submit the request under the applicant or petitioner's name—not the name of the law firm, school, or organization representing them.
- ✓ Provide a clear and concise explanation of the problem, case history, and how you would like the Ombudsman to assist.
- ✓ If you are requesting expedited assistance, submit documentary evidence of the urgency or hardship (medical records, financial documents, letters from employers, etc.) and how you will be unable to withstand the hardship.
- ✓ If you are protected by federal confidentiality provisions, you must submit your signature on section 12 of the Form DHS-7001 as an attachment. Although the Ombudsman may communicate via email or telephone with legal representatives who have a properly completed Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*, on file with USCIS and the Ombudsman, the Ombudsman can only communicate via postal mail with unrepresented individuals protected by these confidentiality provisions. Your current address must be updated in the USCIS system because we can only send mail to that address, not the one provided on the Form DHS-7001.
- ✓ Each applicant or petitioner requires a separate Form DHS-7001. If you need assistance for more than one family member or employment petition, please submit separate requests for case assistance. You can email the office at cisombudsman@hq.dhs.gov after you have received your case numbers to let us know that the cases are related and should be worked together.
- ✓ Because many of our requests for help relate to mailing issues, please remember to timely update your current address with USCIS for every pending application or petition. The easiest way to do so is online at https://egov.uscis.gov/coa/displayCOAForm.do. You must also submit an updated Form AR-11 *Alien's Change of Address Card* to USCIS to properly change your address.

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DHS-20-2156-A-000013

criteria.[4] In addition to cases meeting that criteria, the Ombudsman expedites all requests related to Employment Authorization Documents (EAD) that are outside of USCIS' posted processing times. Other examples of situations where the Ombudsman expedites its assistance include difficulties obtaining proof of status or travel documents, and administrative or legal errors made by USCIS.

A complete Form DHS-7001 submission includes a brief summary of the issue, receipt numbers for all associated applications or petitions, evidence of previous attempts to resolve with USCIS, consent from the proper party, copies of pertinent documents (*e.g.*, receipts, denials), and a copy of the Form G-28 submitted to USCIS if a legal representative is making the request. If additional information or documentation is required, an immigration law analyst will contact the petitioner, applicant, or representative.

If, after reviewing the submission, the reviewer determines that the Ombudsman cannot assist, we will contact the individual, employer, or legal representative to explain why.

Assignment. With the exception of cases needing expediting, requests for case assistance are assigned and worked in the order in which they are received. Cases that meet USCIS' expedite criteria are assigned by supervisors to analysts every business day. In January 2019, the Case Team began assigning expedites to half of its analysts so that non-expedited cases would continue to be worked by those not assigned expedites.

Analysts review the facts and law related to each request and check the case history in USCIS' databases to learn the file's location, confirm filing dates, and check the status of the case.

The Ombudsman's team of analysts has a wide range of expertise. Many have worked in USCIS adjudication roles, private immigration law practice, and positions in other federal agencies such as the Departments of State, Labor, and Justice.

Contacting USCIS. When the request warrants an inquiry to USCIS, the Ombudsman communicates directly with designated points of contact at field offices, service centers, asylum offices, and other locations. Each inquiry includes a request that USCIS review the file to ensure that both law and policy have been properly applied.

In 2019, the Ombudsman expedited 2,559 of the total 8,745 cases received (29 percent). More than half of the expedited cases (1,369) were related to Employment Authorization Documents. Other cases frequently expedited include applications for adjustment of status, applications for travel documents, and petitions filed by Special Immigrant Juveniles who are nearing their 18th birthday.

USCIS Response. The Ombudsman does not close any request for case assistance until USCIS provides a substantive response. When USCIS responds to an inquiry, the analyst notifies the applicant, petitioner, or representative by email, telephone, or U.S. postal mail (in confidential cases).

The Ombudsman advocates for a fair and consistent process, and not for a particular outcome. A response from USCIS does not always result in an approved application or petition. It is important to note that the Ombudsman's case assistance is never a substitute for legal recourse; individuals and employers *must* timely file Motions to Reopen/Reconsider and appeals to preserve their rights, even after making a request for case assistance to the Ombudsman.[5]

Extended Review. Where USCIS does not provide a specific timeframe for resolution, the Ombudsman adds the request to a queue of long-pending cases, generally referred to as the Extended Review list. Occasionally, cases that have fallen outside normal processing times have done so for reasons beyond the control of USCIS, such as a background check being conducted by another agency. The Ombudsman continues to follow up regularly with USCIS until it takes action on each case.

2019: CASEWORK IN REVIEW

In 2019, the Ombudsman's Case Team had between 7 and 9 immigration law analysts and immigration case assistants who worked 8,745 requests for case assistance submitted by the public, a decrease of nearly 23 percent from the previous year. As an office funded solely by appropriations from Congress, and not by fees from the

[4] USCIS Webpage, "Expedite Criteria;" https://www.uscis.gov/forms/expedite-criteria (accessed Apr. 14, 2020).

[5] *See generally*, 8 C.F.R. § 103.3(a) (appeals), § 103.5 (motions to reopen/reconsider).

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public, the Ombudsman's Office was closed for 35 days at the end of 2018 and beginning of 2019 during the partial lapse in appropriations. The Office did not accept any new requests during the funding lapse and was also prohibited from handling any work during that time. Approximately 900 requests for case assistance that would have otherwise been resolved during that time period were instead carried forward.

Once the Ombudsman's systems were brought back online, the Ombudsman received approximately 50 more requests for case assistance per week in the months immediately following the shutdown than in the weeks before the shutdown—an additional inventory of over 400 requests. The inability to work these requests during the funding lapse created a backlog that lasted through most of 2019. Upon return, moreover, the office focused first on expediting cases involving USCIS error, EAD expedites, and other time-sensitive cases, which used a disproportionate amount of resources. It was not until early 2020 that the Ombudsman's Office was able to return to taking action on requests for case assistance within 45 days of receipt, on average.

The following case examples are just a small sample of the types of requests the team completed in 2019.

Erroneous Denial. A *pro bono* attorney contacted the Ombudsman because USCIS erroneously denied his client's Form I-914, *Application for T Nonimmigrant Status*, claiming the applicant failed to respond to an RFE prior to the submission deadline. USCIS considered the application abandoned and denied it. The attorney had correspondence from USCIS as well as postal service tracking information showing that the RFE response was, in fact, received by USCIS prior to the deadline. The Ombudsman requested that USCIS review the case for possible service error. Two weeks later USCIS reopened the application on its own motion, sparing the applicant the need to file a costly and time-consuming Motion to Reopen.

Documents Lost Abroad. An adjustment of status applicant lost his advance parole document while traveling in India, and was therefore unable to board a plane to return to his family and job in the United States. While the applicant attempted other means of obtaining advance parole, he was unsuccessful until he reached out to the Ombudsman. In less than 2 weeks from the Ombudsman's request, USCIS had approved an emergency travel document and communicated with the DOS abroad to complete the processing of documents that would allow the adjustment applicant to return to the United States.

Delayed Naturalization. An applicant for citizenship reached out to the Ombudsman when over a year had passed since her interview and test at USCIS. She had contacted USCIS several times to obtain an update, but without success. Thanks to the Ombudsman's inquiry, the applicant was at her local office to take the Oath of Citizenship less than a month later.

Incorrect Approval Dates. An agricultural employer sought assistance when its Form I-129, *Petition for a Nonimmigrant Worker* was approved with incorrect validity period dates, giving the employee less time to work for the company than requested. The Ombudsman asked USCIS to have a supervisor review the petition and supporting documentation from the Department of Labor. Subsequently, the petition was reopened and the validity dates corrected, giving the petitioning employer the agricultural help it needed throughout the season.

Misclassification of Status. After several unsuccessful service center requests and attempts to communicate with her Congressman's office, an applicant for adjustment of status contacted the Ombudsman's Office. Her application for a travel document was erroneously denied by USCIS. The denial notice stated that she had entered the United States unlawfully or as a crewmember in transit. The Ombudsman reviewed the applicant's documentation and USCIS' databases and located evidence that she had in fact entered appropriately as a J-1 Exchange Visitor. In less than a week, USCIS reopened and reviewed the file, and sent a travel document to be produced and mailed to the applicant.

Typographical Error. An applicant contacted the Ombudsman for assistance in correcting USCIS' typographical error of his first name on his receipt and approval notice, which caused difficulties not only for the applicant but also for his spouse, who required a correct approval notice to obtain the visa needed to join her husband in the United States. When the Ombudsman reviewed the case, it was discovered that the applicant's efforts to resolve the issue had resulted in the name being corrected in the USCIS databases, but amended documents had still not been produced and sent to the applicant. As a result of the Ombudsman's inquiry, USCIS printed and sent the corrected documents to the applicant within a week.

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Adjudication Error. A petitioning employer requested the Ombudsman review the denial of a Form I-140, *Immigrant Petition for Alien Worker*. This was the second petition filed by the company—the first was previously denied due to a typographic error on the form. The second application was filed with a clear explanation that it relied on the previously submitted labor certification. Per USCIS policy, when a subsequent petition is filed after a denial, and the expired labor certification is otherwise valid, the certification may be used in the second petition. The adjudicator did not take this policy into account and denied the second petition for failure to include a current labor certification. At the Ombudsman's request, the petition was reopened and approved.

Processing Delays. The Ombudsman assisted an applicant for adjustment of status who had not received a decision 8 months after his interview; at that point, the application was beyond the posted processing time range. Upon the Ombudsman's inquiry, the USCIS field office located all the requisite information, including the applicant's response to an RFE submitted several months before, and determined that the individual was eligible for lawful permanent residence. He received his approval notice a week later.

THE YEAR IN OUTREACH

In 2019, the Ombudsman conducted 85 stakeholder engagements, despite the lapse in appropriations that resulted in the Ombudsman's Office remaining closed for 35 days between December 2018 and January 2019. These included meetings with, and presentations to, community-based organizations, employers, Congressional staffers, attorneys and accredited representatives, state and local government officials, and individual applicants. The Ombudsman also conducted outreach through a series of teleconferences with stakeholders. Moving into 2020, the office shifted its focus to using multiple platforms to reach out to the public, including online surveys and webinars.

LOOKING AHEAD: IMMIGRATION BENEFITS IN THE AGE OF COVID-19

As this Report is being finalized, the global coronavirus (COVID-19) pandemic continues to present significant operational and policy challenges for Federal agencies. Unsurprisingly, stakeholders and the public have raised numerous questions on how the processing of immigration benefits and services will be affected by DHS and USCIS actions in response to the pandemic. USCIS provided



"How can we begin to thank you and your team enough for your work on this case? We just received [the applicant's] EAD for his OPT yesterday - at each stage of good news we receive, we've been jumping up and down and barely able to contain ourselves! We are both eternally grateful to your team ... for [this applicant's] sake, and for the broader work that you do. ... I wish I had more words to convey the immenseness of our gratitude to you and your team's work, this case and beyond! Many, many, many thanks again."

clarification and guidance on several issues of immediate concern such as evidentiary response times and in-person interviews. The Ombudsman's Office has supported USCIS by conveying stakeholder concerns and, where appropriate, offering recommended action. But as offices are reopening, important issues have remained unresolved. Most of those impacted, from tourists to employers, wish to comply with U.S. immigration laws and need unambiguous guidance to do so—guidance that has not been quick in coming from the agency. As we continue to live with uncertainty, clear communications from DHS and USCIS will remain imperative to support the administration of U.S. immigration laws.

Actions Taken by USCIS

Ordinarily, USCIS directly interacts with the public in its field offices, asylum offices, and Application Support Centers (ASCs), conducting face-to-face appointments, interviews, and oath ceremonies. In early March 2020, a USCIS field office closed after an employee tested positive for coronavirus; on March 18, USCIS announced it would close all of its public-facing offices in order to protect stakeholders and staff and to slow the spread of the virus. Soon after, USCIS issued announcements to its employees and the public on how certain policies and procedures would change during the COVID-19 crisis. These announcements were posted on the USCIS website and distributed through USCIS listservs. USCIS' collective guidance was subsequently centralized on a USCIS webpage.[6]

- **Suspended in-person appointments.** Starting March 18, 2020, USCIS cancelled all routine in-person

[6] USCIS webpage, "USCIS Response to COVID-19," Apr. 29, 2020; https://www.uscis.gov/about-us/uscis-response-covid-19 (accessed Apr. 29, 2020).

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services, including all biometrics appointments. USCIS remained open for emergency in-person appointments that, if needed, could be obtained through the USCIS Contact Center. On April 4, 2020, USCIS announced its intent to begin to reopen offices "on or after" June 4, 2020. As this Report is being finalized, offices are reopening and rescheduling appointments. Certain questions regarding timing, process, and numbers have not been publicly resolved, but the Ombudsman will continue to work with USCIS to disseminate information to stakeholders regarding modifications being implemented in the reopening.

- Extended biometrics when possible. USCIS started using previously submitted biometrics for applicants who had filed a Form I-765, *Application for Employment Authorization,* to extend work authorizations. This enabled the agency to continue to process applications, although only in cases in which biometrics already existed and remained on file.
- Extension of required responses. Petitioners and applicants were given an additional 60 calendar days after the response due date set forth in a Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate if such request or notice was issued and dated by USCIS between March 1 and July 1, 2020, inclusive.[7]
- Amending H-2A and H-2B requirements. USCIS published a temporary final rule to amend certain H-2A requirements to help U.S. agricultural employers meet workforce needs.[8] On May 14, the agency published a temporary final rule to amend similar H-2B requirement.[9]
- **Added flexibility to extensions of stay and change of** status. USCIS published guidance on how to timely apply for an extension of status, along with guidance reminding the public of the agency's authority to accept late applications.

USCIS' Work During the COVID-19 Pandemic

The pandemic has altered USCIS' way of managing its workforce and its workloads. As mentioned, USCIS eliminated all routine in-person appointments, including biometrics appointments and oath ceremonies, between closing in mid-March and when it initiated reopening on June 4. In-person interviews, such as adjustment and naturalization interviews were suspended during these office closings, but emergency in-person appointments remained an option. A majority of USCIS employees turned to working from home. This has brought additional challenges because while the agency has made strides in electronic processing of cases, many applications and petitions still require paper files. The transfer and tracking of these files in the pandemic as adjudicators continued their daily activities has presented additional logistical challenges. And the staff performing intake on new filings at USCIS facilities is necessarily smaller.

USCIS has issued public announcements on policy and program changes during the pandemic through its website and through its media channels, including Twitter and listservs. The agency has not, however, made any changes to established policies or regulations, except for the above-mentioned changes and reminders.

Ombudsman's Work During the Pandemic

The Ombudsman's Office has been able to maintain continuity of service during the COVID-19 crisis, seamlessly shifting its work to virtual platforms. Stakeholders have continued to submit requests for case assistance through the online case assistance system, and immigration law analysts continued to address these requests. The Office has seen a decrease in requests for case assistance. See Figure 1.1 (*Ombudsman Case Assistance Requests).* The Ombudsman and staff have continued to meet with stakeholder groups across the country using various media, including online webinar technology. The Policy Team continued to engage with USCIS through virtual meetings on non-COVID-19 related policy concerns.

Shortly after USCIS' announcement to temporarily suspend in-person appointments, the Ombudsman's Office began to receive numerous questions and concerns from stakeholders, which the Office organized and relayed to USCIS. Among other things, stakeholders sought guidance on how USCIS might conduct naturalization interviews in a time of social distancing, and whether USCIS would grant flexibility in extensions or

[7] USCIS Webpage, "USCIS Expands Flexibility for Responding to USCIS Requests" (Mar. 30, 2020); https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests (accessed Apr. 29, 2020); "USCIS Expands Flexibility for Responding to USCIS Requests" (May 1, 2020); https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests (accessed May 15, 2020).

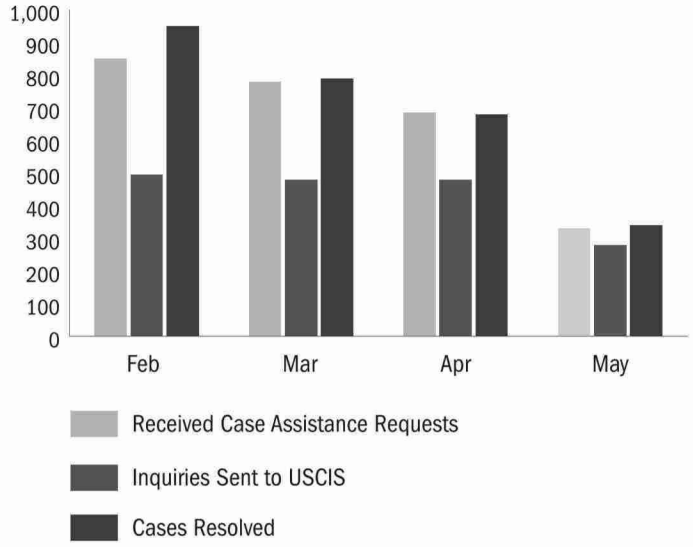
[8] "Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency," 85 Fed. Reg. 21739 (Apr. 20, 2020).

[9] "Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency," 85 Fed. Reg. 28843 (May 14, 2020).

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Figure 1.1 Ombudsman Case Assistance Requests
(February–May 15, 2020)



amendments to individuals (such as H-1B workers and students) who were seeking to maintain status even as employers reduced work hours and schools employed distance learning.

MOVING FORWARD

1. The Ombudsman recommends that USCIS publicize its workforce plans going forward to inform the public and highlight continuity of services.

As this Report is being finalized, it is unclear how or whether USCIS has yet adopted a safe and timely way to collect, process and adjudicate paper filings. Case processing is often reliant upon an in-person examination. USCIS has just released details of its reopenings, particularly with respect to its interviews, as it reopens offices and reissues interview notices. To help manage expectations, the Ombudsman recommends that USCIS continue to share with the public how it intends to manage its workload to ensure continuity of services, particularly regarding how it will perform in-person services to minimize impact of contagion on the public and the USCIS workforce. The Ombudsman will continue to partner with USCIS to get this information to the affected communities to better inform their decisions.

2. The Ombudsman recommends that USCIS issue policy or program statements on certain critical status questions, including those **submitted through the Ombudsman's Office.**

There is a public benefit to USCIS sharing information in response to the following critical questions:

- How does USCIS intend to meet statutory and regulatory obligations respecting the processing of naturalization applications?
- What actions is USCIS taking to respond to individuals with emergency needs, including those seeking temporary proof of lawful permanent resident status, advance parole, etc.?
- How is USCIS managing benefits applications from vulnerable populations (such as victims of human trafficking), where prolonged waiting periods could potentially endanger the applicant's safety?
- What is USCIS planning to do with adjustment applications where it has the authority to waive the in-person requirement?

3. The Ombudsman recommends that USCIS reinstitute its national stakeholder meetings for its directorates to maintain communication with the public.

Given the disruptions and challenges faced by USCIS in responding to the COVID-19 crisis, there is renewed value in USCIS engaging in more national stakeholder engagements to ensure the public understands USCIS policy and guidance. Through consistent and routine public engagement, USCIS can clarify processes for both unrepresented and represented applicants and petitioners, reducing potential confusion, anxiety and queries from stakeholders wishing to conform with USCIS rules. It will also reduce fraud and bad actors who seek to take advantage of any vacuum in communication by promoting false stories to scam unsuspecting individuals.

CONCLUSION

USCIS' future challenges are unknown, which is why it is important that it exercise clear communication with the public. Taking the Ombudsman's recommendations would achieve this, as well as bring to light the work already being done within the agency. The Ombudsman will continue to support USCIS' efforts and respond to our mutual stakeholder community.

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The Geometry of the Naturalization Backlog

Responsible Office: Field Operations Directorate

KEY FACTS AND FINDINGS

- The N-400 backlog has steadily increased in the past decade, but surged significantly in fiscal years (FY) 2016 and 2017, resulting in a pending inventory of 652,431 applications at the end of 2019. The shutdown of offices caused by the global coronavirus (COVID-19) pandemic has only exacerbated this inventory, as interviews and oath ceremonies did not take place from mid-March through May, 2020.
- Unanticipated surges in applications were not met with additional resources, although efforts have been made to create efficiencies while maintaining integrity, the strain of expanded interview requirements has impacted processing times. Longer completion rates and lean staffing have also contributed to increased processing times.
- USCIS has implemented a series of initiatives to deal appropriately with its backlog, including increasing fees to more closely align to a full fee recovery, but the

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COVID-19 shutdown has created a significant issue in righting processing delays.

- USCIS needs to consider additional steps to assist it with the adjudication of naturalization applications, including those pending for a significant time, such as concurrent adjudications with pending applications. The current pandemic also presents the agency with a unique opportunity to contemplate the feasibility of remote naturalization adjudications.

BACKGROUND

In FY 2019, USCIS naturalized 833,000 new U.S. citizens, its highest number since FY 2009.[10] However, this accomplishment resulted in only a modest reduction of pending Forms N-400, *Applications for Naturalization*.[11] The N-400 backlog has steadily increased in the past decade, but surged significantly in FY 2016 and FY 2017. As of December 31, 2019, USCIS had 652,431 pending N-400 applications,[12] which is 184 percent higher than the number of N-400 applications pending at the end of FY 2009.[13]

Before the COVID-19 pandemic, USCIS projected an increase in N-400 filings in FY 2020.[14] Coupled with the agency's financial constraints,[15] the increase would present a considerable challenge to meaningfully reducing the ongoing backlog. In order to simply keep pace with the incoming caseload, the agency must not only achieve a "personal best" in completions, but also overcome a perennially challenging issue—lack of resources—by reconfiguring the way it processes N-400 applications. The agency is equally obliged to maintain the integrity of the naturalization process to ensure that the benefit is issued only to those who are legally qualified to receive it.

Although these two objectives are not mutually exclusive, the agency's history provides significant lessons on how the pressures of reducing backlogs and maintaining timetables may lead to compromising integrity. In 1995, faced with mounting application backlogs and external political pressures, the legacy Immigration and Naturalization Service (INS) prioritized production at the expense of accuracy, naturalizing 179,524 individuals without "a definitive criminal history check conducted by the FBI," which resulted in the naturalization of 10,800 individuals who "had been arrested for at least one felony offense."[16] The Department of Justice Office of Inspector General (OIG) also determined that the INS' focus on quantity over quality resulted in inadequate training, reduced safeguards and the hasty implementation of unproven processing techniques.[17] More recently, in 2016, USCIS' schedule-driven deployment of the N-400 in the Electronic Immigration System (ELIS) platform resulted in a finding of inadequate background security checks.[18]

[10] USCIS Webpage, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goal" (Oct. 16, 2019); https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals (accessed May 9, 2020).

[11] From the end of FY 2018 to the end of FY 2019, the number of pending N-400 applications reduced by 12 percent. *See* USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types" (Jan. 14, 2020 and Feb. 26, 2019); https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-all-uscis-application-and-petition-form-types (accessed May 9, 2020).

[12] USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2020, 1st Quarter" (Apr. 17, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY2020Q1.pdf (accessed May 29, 2020).

[13] *See* USCIS Webpage, "Data Set: Naturalization Benefits: September 2010;" https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/N-400%20and%20Application%20for%20Benefits/n-400-natz-benefits-2010-sept.pdf (accessed May 9, 2020).

[14] In FY 2019, USCIS received 830,877 N-400 applications. Within its proposed fee schedule, USCIS projected that its N-400 receipts for FY 2019/2020 would average 913,500. *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62290 (Nov. 14, 2019) (providing data for FY 2019/2020 projections). *See* USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2019, 4th Quarter" (Jan. 14, 2020);" https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY19Q4.pdf (accessed May 9, 2020) (providing data for FY 2019 N-400 receipts).

[15] *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62282 (Nov. 14, 2019).

[16] DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Criminal History Checking Procedures" (Jul. 2000), pp. 1–2; https://oig.justice.gov/special/0007/crimhist.pdf (accessed May 9, 2020).

[17] "Under the pressure of production goals and in the absence of adjudicative standards, the evaluation of naturalization eligibility became more perfunctory. Adjudicators were trained and instructed to concentrate primarily on the minimal statutory criteria. In addition, their inquiries were limited by the frequent unavailability of the crucial tools of naturalization processing: applicant criminal history checks and permanent files. The procedures on which INS relied to make these tools available to adjudicators, clerical and automated processes, experienced even greater strain as production expectations increased. As a result of all these factors, naturalization processing integrity was compromised during CUSA." DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Conclusions and Recommendations" (Jul. 2000), p. 2; https://oig.justice.gov/special/0007/crimhist.pdf (accessed May 9, 2020).

[18] *See* DHS Office of the Inspector General, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 2017); https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf (accessed May 9, 2020).

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Given that naturalization is the most significant benefit that USCIS confers, compromising benefit integrity cannot be an acceptable consequence of increased productivity. Moreover, as explained in further detail within this Report, denaturalization is a labor-intensive task, and U.S. Attorney's Offices do not possess the necessary resources to serve as substitute for the hasty administration of naturalization benefits.

This article examines the drivers of the current backlog and upcoming events that may further exacerbate it. It also studies innovative measures USCIS has implemented to optimize its current resources, and considers additional steps the agency can take to address resource constraints and reduce its backlog—without sacrificing benefit integrity.

CAUSES OF CURRENT BACKLOG

Prior to discussing the current backlog numbers and its anticipated growth, it is necessary to define and explain how the term "backlog" will be used in this article.[19] USCIS defines backlog as the number of pending applications and petitions that have been in process longer than the agency's processing goals (i.e., 5 months for N-400 applications).[20] The agency further reduces this number by removing applications and petitions that are outside of its control (e.g., pending responses to Requests for Evidence (RFE) or re-examination).[21] For the purposes of this article, we use the term "backlog" when referring to USCIS' total pending N-400 inventory because we believe this portrays a more understandable and accurate description of the processing challenges facing the agency.[22] Including only cases that have been pending for longer than 5 months presents an incomplete picture and creates a potentially incorrect assumption that USCIS will process cases excluded from the count within its current goal (some will be, others will not).[23] Similarly, while removing cases that are outside of USCIS' control correctly reduces the number of cases upon which USCIS cannot currently take action, it diminishes the length of time applicants who filed those now-removed cases wait to receive a continuation notice, and ignores the obstacles that inhibit USCIS' ability to timely process the N-400 application once it has all the information it needs.[24]

Finally, USCIS is actively working toward alternative ways to define and calculate processing time goals to better reflect actual cycle times, and it will remove performance measures within DHS's Annual Performance Report used to assess the agency's ability to meet its processing time goals.[25] This will have a significant impact on the number of cases USCIS considers as part of a defined backlog.

Examining the root causes of the current inventory provides necessary context for understanding the various approaches to reducing it.

Unanticipated Increase in Receipts. Projecting workload volume is a key element USCIS uses to determine the resources needed to timely process benefit

[19] The term "backlog" is not intended as a pejorative. Rather, it is defined by USCIS itself and is in line with the Ombudsman's statutory mission to study "problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications." Homeland Security Act § 452(c)(1)(F); 6 U.S.C. § 272(c)(1)(F).

[20] *See* "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. ii fn. 2 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020).

[21] USCIS refers to this figure as its net backlog. *See* "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. ii fn. 3 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020).

[22] The Ombudsman notes that this definition is consistent with how the DHS OIG utilized this term within a recent report. *See* DHS Office of the Inspector General, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 2017); https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf (accessed May 9, 2020).

[23] As of December 31, 2019, 78 percent of field offices' median processing times were at or beyond the 5-month processing goal. Ombudsman's calculation based on information provided by USCIS on March 6, 2020.

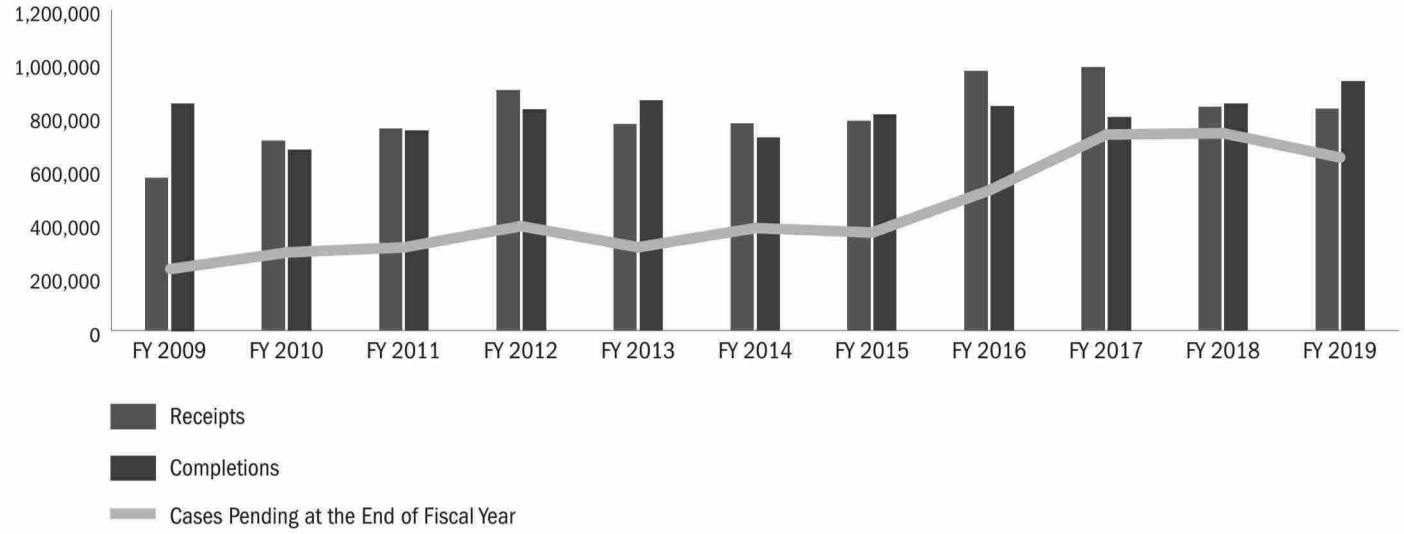
[24] At the end of FY 2019, USCIS had 647,585 N-400 applications pending and reported a net N-400 backlog of 263,405 cases. As noted above, we believe that it is reasonable to include the nearly 400,000 additional applications when discussing the resource challenges facing the agency, and in order to have a fuller understanding of the issue. *See* USCIS Webpage, "Immigration and Citizenship Data;" https://www.uscis.gov/tools/reports-studies/immigration-forms-data (accessed May 9, 2020) (providing data for FY 19 N-400 receipts) and "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, at Appendix A (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020) (providing data for FY 2019 N-400 net backlog).

[25] "U.S. Department of Homeland Security Annual Performance Report for Fiscal Years (FY) 2019–2021," DHS Office of the Chief Financial Officer, p. 91; https://www.dhs.gov/sites/default/files/publications/dhs_fy_2019-2021_apr_final.pdf (accessed May 9, 2020).

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Figure 2.1: N-400 Backlog Growth



Source: USCIS Webpage, "Monthly Statistical Reports on Applications for Benefits and N-400 Naturalization Benefits" (providing data for FYs 2009-2012) and USCIS Webpage, "Immigration and Citizenship Data;" https://www.uscis.gov/tools/reports-studies/immigration-forms-data (accessed May 9, 2020) (providing data for FYs 2013-2019). Note: Pending data begins with the number of N-400 applications pending at the end of FY 2009 (i.e., September 30, 2009), and continues through the end of FY 2019. Completions are calculated by combining the total number of approvals and denials during the respective fiscal year.

requests.[26] Specifically, the agency's Staffing Allocation Models (SAMs) rely on projected volumes to estimate the necessary staffing requirements for a variety of immigration benefits.[27] Unanticipated increases in receipts tend to have adverse effects on the backlog. To make workload projections, USCIS considers immigration receipt data from the past 15 years, historical events, and its own assessment of future developments.[28] The Volume Projection Committee (VPC), an internal working group that consists of representatives from all relevant USCIS directorates and program offices, is responsible for refining these projections.[29]

As shown in Figure 2.1 *(N-400 Backlog Growth)*, USCIS historically experiences a temporary increase in naturalization filings in presidential election years and when fee increases are proposed, followed by reduced filings in the next fiscal year.[30] So, it was somewhat surprising when USCIS projected a 6 percent decrease in naturalization from FY 2015 to FY 2016, despite an anticipated fee increase and the 2016 election.[31] Actual receipts were 25 percent higher than what was projected in FY 2016.[32] To compound matters, N-400 receipts increased by approximately 16 percent in FY 2017,[33] and the total volume of filings was 14 percent higher from the previous year than USCIS had projected in its Annual

[26] *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62289.

[27] *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62286.

[28] *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62289.

[29] *Id.*

[30] Fee increases occurred in FY 2010 and FY 2016. "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. 26904, 26916 (May 4, 2016); and "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. 33446, 33461 (Jun. 11, 2010).

[31] USCIS projected that it would receive 824,173 N-400 applications in FY 2015 and 774,634 N-400 applications in FY 2016. *See* William A. Kandel, Congressional Research Service, "U.S. Citizenship and Immigration Services (USCIS) Functions and Funding" p. 20 (May 15, 2015); https://crsreports.congress.gov/product/pdf/R/R44038/3 (providing data for FY 2015 projected receipts) and Ombudsman's Annual Report 2017, p.10 (providing data for FY 2016 projected receipts).

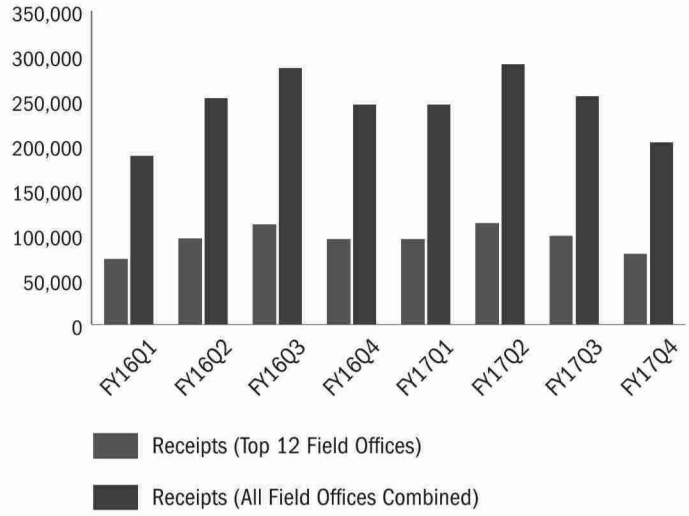
[32] Information provided by USCIS (Mar. 24, 2017). USCIS confirmed that it is in the process of refining its methodology for volume projections to consider events such as presidential elections and anticipated fee increases. Information provided by USCIS (Apr. 24, 2020).

[33] USCIS Webpage, "USCIS Aims to Decrease Processing Times for N-400 and I-485;" https://www.uscis.gov/news/alerts/uscis-aims-decrease-processing-times-n-400-and-i-485 (accessed May 9, 2020).

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Figure 2.2: N-400 Receipt Disparities



Source for Ombudsman's calculations: USCIS Webpage, "Immigration and Citizenship Data;" https://www.uscis.gov/tools/reports-studies/immigration-forms-data (accessed May 9, 2020).
Note: The top 12 field offices for N-400 receipts during this timeframe were: New York, Newark, Chicago, Houston, San Francisco, Dallas, Atlanta, Los Angeles County, Long Island, Queens, Baltimore, Los Angeles (city).

Performance Report.[34] The N-400 backlog grew by 41 percent from October 2016 to October 2018 due in part to the unforeseen receipt increase.

The extraordinary receipt growth in N-400 filings in FY 2016 and FY 2017 did not impact all geographic locations equally. As demonstrated by Figure 2.2 *(N-400 Receipt Disparities)*, 12 field offices (out of 88) received approximately 40 percent of the total naturalization filings in FY 2016 and FY 2017. Unsurprisingly, the filing surge had a lasting impact on these field offices' processing times, which has also resulted in processing time disparities across geographic locations.[35]

Increased Workloads at Field Offices. Field offices are responsible for adjudicating various types of immigration benefit requests that require face-to-face interviews.[36] Under current regulations and practice, applicants for naturalization appear for an in-person interview at their local field office.[37] USCIS may waive the interview requirement for other benefit requests,[38] but recently updated interview waiver guidance has increased the number of interviews that field offices must administer, which has necessarily limited the field offices' ability to reduce the backlogs of the N-400 and other workloads.[39] In addition, the lengthening of processing times for Form I-751, *Petition to Remove Conditions on Residence*, which resulted in an increase in concurrently pending Forms N-400 and Forms I-751, has presented additional challenges.

In October 2017, USCIS expanded in-person interview requirements for certain adjustment of status applicants in accordance with Executive Order 13780.[40] This resulted in a considerable increase in the number of employment-based adjustment of status interviews conducted at certain field offices. Because of priority dates and visa

34 "U.S. Department of Homeland Security Annual Performance Report for Fiscal Years (FY) 2017–2019," DHS Office of the Chief Financial Officer, p. 30 fn. 2; https://www.dhs.gov/sites/default/files/publications/DHS%20FY%202017-2019%20APR_0.pdf (accessed May 9, 2020).

35 As of December 31, 2019, the average median processing time for these twelve field offices is 8.9 months, which is approximately 1.6 months longer than the national average median. Ombudsman's calculation based on information provided by USCIS (Mar. 6, 2020).

36 "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 7 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020).

37 8 C.F.R. § 335.2(a).

38 *See, e.g.,* INA § 216(d)(3); 8 U.S.C. § 1186(d)(3) and 8 C.F.R. §§ 216.4(b)(1) and 245.6.

39 "USCIS is also interviewing a greater proportion of adjustment of status applicants, requiring more time and effort to adjudicate Form I-485." *See,* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62304.

40 Among other things, Executive Order 13780 instructs DHS and other federal agencies to develop a uniform baseline for screening and vetting standards and procedures, such as in-person interviews, to detect fraud and national security concerns. In response, USCIS expanded in-person interview requirements for the following populations of cases: adjustment of status applications based on employment (Form I-485, *Application to Register Permanent Residence or Adjust Status*); refugee/asylee relative petitions (Form I-730, *Refugee/Asylee Relative Petition*) for beneficiaries who are in the United States and are petitioning to join a principal asylee/refugee applicant; and petitions to remove conditions on residence (Form I-751) received on or after December 10, 2018. *See* Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (Mar. 6, 2017); 82 Fed. Reg. 13209, 13215 (Mar. 9, 2017). *See also* USCIS Webpage, "USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants" (Aug. 28, 2017); https://www.uscis.gov/news/news-releases/uscis-expand-person-interview-requirements-certain-permanent-residency-applicants (accessed May 9, 2020); and USCIS Webpage, "USCIS Revises Interview Waiver Guidance for Form I-751" (Dec. 10, 2018); https://www.uscis.gov/news/alerts/uscis-revises-interview-waiver-guidance-form-i-751 (accessed May 9, 2020).

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availability,[41] field offices generally prioritize employment-based Forms I-485, *Application to Register Permanent Residence or Adjust Status*, to ensure maximizing visa usage.[42] Simultaneously, USCIS attempts to balance processing times for its Forms N-400 and Forms I-485 workloads, and seeks to ensure that all field offices have similar processing times.[43] However, the expanded interview requirements resulted in additional workloads that have impacted overall adjudication times.[44]

In addition, the presence of a concurrently pending I-751 in an applicant's record appears to lengthen the N-400 processing time. The I-751 is filed by conditional permanent residents[45] seeking to remove the conditions on their permanent resident status. An N-400 may not be approved if there is a pending I-751, as the removal of conditions of permanent residence is a necessary predicate to naturalization. Officers are instructed to adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application.[46] Procedural hurdles may prevent officers from adjudicating these benefit requests concurrently. For example, as USCIS is increasingly moving to an electronic environment to process N-400s, the physical file that contains the pending I-751 (still filed in paper format) may not be available at the naturalization interview. In addition, an officer may wish to interview a petitioning spouse on a jointly filed I-751; however, due to time constraints and/or failure to notify the applicant to bring the spouse to the interview, USCIS must reschedule to continue the processing of the I-751 and the N-400. Further, in November 2018, USCIS revised its I-751 interview waiver guidance, which contains additional requirements USCIS officers must take into consideration before waiving an I-751 interview.[47] These multiple pending benefit requests increase the likelihood that USCIS will be unable to adjudicate the N-400 in the first instance, resulting in lengthening processing times and increased backlogs.

Insufficient Staffing Levels and Facilities. Although USCIS has almost doubled its authorized staffing since FY 2009, it remains unable to process all cases within time projections due to insufficient staffing levels and facilities.[48] Because of cost concerns, USCIS could not authorize staffing at the levels recommended by the SAMs.[49] The agency has also been unable to fill all authorized positions due to lags in the hiring process and the need to backfill existing positions.[50] Higher than anticipated staff attrition rates at certain field offices

41 For further information regarding employment-based immigration, *see* William A. Kandel, Congressional Research Service, "Permanent Employment-Based Immigration and the Per-country Ceiling" (Dec. 21, 2018); https://crsreports.congress.gov/product/pdf/R/R45447 (accessed May 12, 2020).

42 Information provided by USCIS (Apr. 24, 2020).

43 *Id.*

44 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

45 Permanent resident status is conditional when it is based on marriage to a U.S. citizen, and the marriage was less than 2 years old on the date of admission. In general, a conditional permanent resident must jointly file with his or her petitioning spouse a Form I-751 in order to remove the conditions. Absent good cause and extenuating circumstances, jointly filed Forms I-751 must be submitted to USCIS during the 90-day period immediately before conditional residence expires. Conditional permanent residents enjoy the same rights, privileges, responsibilities and duties as other permanent residents, including the right to apply for naturalization. Accordingly, conditional permanent residents may apply for naturalization while their I-751s remain pending. *See generally* INA § 216; 8 U.S.C. § 1186a and 8 C.F.R. § 216.

46 12 USCIS Policy Manual, Pt. G, Ch. 5(B)(2); https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-5 (accessed May 9, 2020).

47 USCIS Webpage, "USCIS Revises Interview Waiver Guidance for Form I-751" (Dec. 10, 2018); https://www.uscis.gov/news/alerts/uscis-revises-interview-waiver-guidance-form-i-751 (accessed May 9, 2020).

48 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

49 *See* Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed May 9, 2020). "In FY 2019, USCIS authorized an additional 737 employees (a 5% increase) in the operational directorates that conduct adjudications." "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 8 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf.

50 *See* Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed May 9, 2020).

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contributed to increases in N-400 processing times.[51] Field offices commonly experience a lag in productivity with newly hired staff because they are not fully productive until they have completed their extensive on-the-job training.[52] To accommodate more staff, USCIS would need to expand office space beyond its existing facilities, and it generally takes the General Services Administration (GSA) 18 to 36 months to deliver space that is ready to occupy.[53]

Increased Completion Rates. USCIS uses completion rates to determine fees and appropriate staffing levels to address projected workloads.[54] Completion rates are the average amounts of time per adjudication of an immigration benefit request.[55] Declining completions per hour of work, coupled with a projected increase in receipts, will result in the need to hire more officers. However, when productivity expectations are not sustained, insufficient revenue is generated to support hiring at SAM-recommended staffing levels.[56] For example, within its 2016 proposed fee rule, USCIS indicated an N-400 completion rate of 1.25 hours.[57] However, technical and functional difficulties in the rollout of the N-400 in ELIS,[58] as well as enhanced vetting requirements,[59] resulted in a longer completion rate.[60]

In addition to staffing and revenue issues, a decline in the completions per hour by itself can hinder USCIS' ability to reduce the backlog.[61] On average, it currently takes officers approximately 30 minutes longer to adjudicate the N-400 than it did in 2010.[62] Some key factors leading to increased completion rates include: the growing complexity of the naturalization adjudication process;[63] issues with the deployment of ELIS;[64] and the removal of numerical case production metrics from employee evaluations in FY 2014.[65] Regarding growing complexity, concurrently pending benefit requests such as N-400s and I-751s, and the submission of Forms N-648, *Medical Certification for Disability Exceptions* (N-648), have steadily increased in recent years. Also, in 2014, the length of the N-400 doubled from 10 pages to 20 pages,

51 For example, in FY 2018, the Reno Field Office had an attrition rate of 35 percent, and the Las Vegas Field Office had an attrition rate of 26 percent. *See* Letter from Acting Director K. Cuccinelli to Senator Catherine Cortez Masto (Jun. 25, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_delays_in_Nevada_-_Senator_Cortez_Masto.pdf (accessed May 9, 2020).

52 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (July 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

53 *Id.*

54 "Generally, the more time spent adjudicating a request, the more cost that gets assigned, and therefore, the higher the fee." "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. 26904, 26914 (May 4, 2016).

55 *See* "FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum," USCIS, p. 20 (October 2016); https://www.regulations.gov/document?D=USCIS-2016-0001-0466 (accessed May 18, 2020).

56 *See* "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 8 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020).

57 "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. at 29625.

58 Ombudsman's Annual Report 2017, pp. 12–13.

59 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (July 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

60 Within its 2019 proposed fee rule, USCIS reported an N-400 completion rate of 1.57 hours. "U.S. Citizenship and Immigration Services Fee Schedule;" 84 Fed. Reg. at 62292.

61 *See* "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security," USCIS, p. 7 (Apr. 29, 2020); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf (accessed May 9, 2020).

62 The N-400 completion rate reported in USCIS' 2010 proposed fee rule was 1.08 hours. "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. at 33471.

63 *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62294.

64 *See* DHS Office of the Inspector General, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 2017) at 9; https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf (accessed May 9, 2020).

65 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

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which took more time to verify responses, an essential part of the now lengthened naturalization interview.

Continued Unpredictability and Additional Challenges. Though it is uncertain what impact the COVID-19 pandemic might have on N-400 filings, it is common for USCIS to experience a surge in naturalization filings during presidential election years and when USCIS proposes to increase fees, both of which will occur in 2020.[66] However, unlike 2016, the agency faces additional challenges, such as budgetary restrictions and a national emergency, each of which might further exacerbate the N-400 backlog.

Proposed Fee Rule. USCIS has proposed to increase the filing fee for the naturalization application from $640 to $1,170, a $530 or 83 percent increase.[67] In prior fee rules, USCIS set the N-400 filing fee at an amount less than its estimated costs in order to promote naturalization and immigrant integration.[68] This devaluation meant that USCIS had to shift costs and increase filing fees to other applicants.[69] Due to equity concerns, and given the significant increase in naturalization filing in recent years, the agency determined that it could no longer maintain a N-400 filing fee below actual cost.[70]

In addition to the fee increase, USCIS is proposing to eliminate N-400 fee waiver requests, and to remove the reduced fee option for those naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the federal poverty guidelines. From January 2017 to March 2020, approximately 28 percent of the N-400s received were found eligible for a fee waiver.[71] Since its inception in 2016, the reduced fee waiver has provided reduced fees to approximately 14,000 applicants.[72] The proposed filing fee increase, coupled with the planned modifications to ensure all N-400 applicants pay the same amount, will likely motivate permanent residents to apply for naturalization before these changes are implemented—leading to increased filings in FY 2020.

Budgetary Constraints and Lags in Hiring. Budgetary restrictions will have a profound effect on USCIS' ability to meaningfully reduce the number of pending N-400s. USCIS' current fee structure, absent change, will leave the agency underfunded by approximately $1.3 billion per fiscal year.[73] To remain solvent, USCIS has not been able to authorize staffing at the levels recommended by the SAMs.[74] As discussed above, insufficient staffing levels is one of the principal drivers of the N-400 backlog.

In order to address its budgetary shortfall and to increase resources dedicated to adjudicating more N-400s, USCIS has proposed to adjust its fees by a 21 percent weighted average.[75] USCIS calculates that the revenue generated from increased fees will provide USCIS with funds needed to pursue an aggressive backlog-reducing hiring strategy.[76] However, as noted above, certain field offices have exceeded their physical space capacity and cannot accommodate the additional staff needed to increase N-400 adjudications until existing facilities are modified. Moreover, due to delays in onboarding new employees and lags in productivity for newer employees, hiring will

66 USCIS published its notice of proposed fee increase on November 14, 2019. 84 Fed. Reg. 62280.

67 "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62280.

68 *See, e.g.,* "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. at 26916; and "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. at 33461.

69 *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62316.

70 *Id.*

71 Information provided by USCIS (Apr. 24, 2020). "In the FY 2019/2020 fee review, USCIS determined that without changes to fee waiver policy, it would forgo revenue of approximately $1,494 million. The proposed fee schedule estimates $962 million forgone revenue from fee waivers and fee exemptions." "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62298.

72 Information provided by USCIS (Apr. 24, 2020).

73 "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62282.

74 *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operations Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

75 "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg.at 62280.

76 The "strategy that aims to achieve a domestic backlog reduction of 76 percent by the end of FY 2024. The modeling used assumes an aggressive hiring initiative over the next three years." "USCIS Budget Overview Fiscal Year 2021 Congressional Justification," p. CIS–IEFA–12; https://www.dhs.gov/sites/default/files/publications/united_states_citizenship_and_immigration_services.pdf (accessed May 9, 2020).

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Figure 2.3: Location of Pending N-400 Applications Within Order of Processing

Pending, awaiting initial interview	Pending, awaiting re-exam	Pending, awaiting decision	Approved, awaiting oath
558,973	28,781	16,841	88,621

Source: Information provided by USCIS (Apr. 24, 2020). Note: "Approved, awaiting oath" population is not counted within "Pending, awaiting decision" category.

not provide immediate relief for the growing backlog.[77] USCIS will still need to address the issue of high attrition rates at certain field offices.

National Emergency. Events in FY 2020 continue to challenge the agency with respect to its naturalization inventory. On March 17, 2020, USCIS announced that it was temporarily suspending in-person services at its field offices and canceling all naturalization ceremonies to help slow the spread of COVID-19. On June 4, 2020, certain USCIS field offices began resuming in-person services, such as naturalization ceremonies. Figure 2.3 *(Location of Pending N-400 Applications Within Order of Processing)* provides a breakdown of the pending N-400 inventory as of December 31, 2019, and where applications were located in the order of processing. Although the data predates the office closures, it provides insights into how the national emergency is likely to further bottleneck N-400 processing.

This temporary closure will impact N-400 applicants on the front end awaiting an interview or re-interview. It will also impact applicants with approved cases awaiting an oath ceremony. Conversely, suspension of in-person interviews will allow USCIS to focus its efforts on adjudicating already-interviewed cases awaiting decision, but approved applicants will still require an in-person oath ceremony. Federal and state guidance on the continued need for social distancing and limiting public gatherings may hamper USCIS' ability to complete naturalizations. While it remains to be seen what impact reopening field offices will have on N-400 adjudications, the unpredictability of the COVID-19 pandemic will continue to present challenges for the agency in reducing the N-400 backlog.

[77] *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (testimony of Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate).

EFFORTS MADE TO ADDRESS THE BACKLOG

Although USCIS requires additional staff to meaningfully reduce its N-400 backlog, hiring and maintaining necessary staffing levels to tackle that goal has proven difficult. In order to compensate, USCIS has launched a series of initiatives that focus on redistributing resources and increasing efficiencies in its field offices.

Workload Shifts. On June 19, 2019, USCIS announced that it would shift N-400 caseloads between field offices to address processing time and staffing disparities.[78] The case transfers were based upon a combination of zip code realignments, interview reassignments, continued case shifts, and other factors. For example, in attempting to reduce the N-400 processing times in the Seattle field office, USCIS shifted several N-400s to the Portland and Yakima field offices.[79] The agency reasoned that these shifts would allow impacted applicants to have their naturalization interviews scheduled approximately 11–12 months sooner than if they were interviewed in Seattle.[80]

Due to system limitations, USCIS was unable to provide the Ombudsman's Office with exact figures on the field offices that participated in the workload shifts, the number of cases that were transferred and completed, and the number of applicants who could not or did not appear for their interview at the new location. Notwithstanding, USCIS indicated that its workload shifts are a proven method of reducing wait times for the "giving office." We note that the median processing times at the Seattle Field Office in July 2019 (the month after the announced workload shifts) and December 2019 remained the same.[81] We recommend that the agency improve its ability to track and monitor its N-400 workload shifts to better analyze and illustrate the effectiveness and impact of this initiative.

ELIS. In order to increase efficiency, the agency is leveraging electronic processing and automation. ELIS serves as USCIS' system for public-facing electronic filings, and is one of its internal electronic case

[78] USCIS Webpage, "USCIS Aims to Decrease Processing Times for N-400 and I-485" (Jun. 17, 2019); https://www.uscis.gov/news/alerts/uscis-aims-decrease-processing-times-n-400-and-i-485 (accessed May 9, 2020).

[79] Letter from Acting Director K. Cuccinelli to Representative Pramila Jayapal (Aug. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Times_-_Representative_Jayapal.pdf (accessed May 9, 2020).

[80] *Id.*

[81] The median N-400 processing time at the Seattle field office for both July and December 2019 was 15.2 months. Information provided by USCIS (Mar. 6, 2020).

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management systems.[82] On April 13, 2016, USCIS began processing naturalization applications in ELIS. Currently, prospective N-400 applicants have the option of filing online or by mail (paper) with the appropriate USCIS lockbox facility. For paper filings, the lockbox contractors convert the submitted N-400 application into an electronic format and transmit the benefit request information into ELIS.[83] Effective July 2019, all new N-400s began to be processed through ELIS regardless of how they are filed.[84]

The agency expected its transition to an electronic filing and case management system to improve service, operational efficiency, and security.[85] Unfortunately, due to insufficient testing of the system, the initial introduction of the N-400 in ELIS was plagued with issues.[86] There was an understandable learning curve for officers as demonstrated by the drop in N-400 completions in FY 2017.[87] However, after resolving the initial glitches,[88] and with officers becoming more comfortable with the electronic processing environment, USCIS has turned a corner in its electronic processing of N-400 cases. Accordingly, the agency is now able to leverage automated functions in ELIS to enhance vetting and better manage workloads at field offices. The formalized check-in process and case sorting tool, discussed below, provide examples of USCIS' efforts to expand on ELIS' capabilities.

Formalized Check-In Process. Starting with its Central Region, in November 2018, USCIS piloted a process that transitioned non-decisional tasks into an expanded pre-interview "check-in" stage, allowing officers to focus principally on the benefit interview and reducing the overall length of time needed to conduct an interview. The goal of this pilot was to increase overall interview capacity and enable field offices to more appropriately utilize their resources.[89]

The Formalized Check-In (FCI) project tested several variations of the process during the pilot phase. After demonstrating increased efficiencies overall and a more productive operation, USCIS determined that the features most beneficial to all field offices included the following:

- Conducting IDENTity Verification Tool (IVT) enrollment for all form types outside the traditional eligibility interview setting, either in a check-in stage or at reception;
- Using an automated N-400 assessment at the time of scheduling to identify less complex ELIS N-400 cases for the purpose of customizing interview time slots (discussed in further detail below); and
- Conducting the statutory naturalization English and civics testing requirements at the beginning of the interview. An applicant will only proceed with the remainder of the naturalization interview if they successfully complete all features of the naturalization test, or if they are exempt from the requirement.[90]

Beginning in January 2020, all field offices were required to begin implementing these FCI features. During the pilot, some field offices gained interview capacity through additional FCI features. Field offices have the option of implementing these features based on their physical layout,

82 DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)," p. 1 (Dec. 3, 2018); https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 10, 2020).

83 DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)," p. 2 (Dec. 3, 2018); https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 10, 2020).

84 USCIS continues to adjudicate and track older N-400 applications via the legacy Computer-Linked Application Information Management System (CLAIMS) 4 system. As of December 31, 2019, USCIS had 28,617 N-400 applications that remain pending in its CLAIMS 4 system. Information provided by USCIS (May 5, 2020).

85 "Immigration Benefits Vetting: Examining Critical Weaknesses in USCIS Systems," *before the* Subcommittee on Oversight and Management Efficiency *of the* U.S. House Homeland Security Committee, 2017, 115th Cong. 1st Sess., pp. 1–2 (Mar. 16, 2017) (written statement of Lori Scialabba, Acting USCIS Director); http://docs.house.gov/meetings/HM/HM09/20170316/105629/HHRG-115-HM09-Wstate-ScialabbaL-20170316.pdf (accessed Apr. 3, 2020).

86 DHS OIG, "USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery," OIG-18-23 (Nov. 30, 2017); https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-23-Nov17.pdf (accessed Apr. 3, 2020); and DHS OIG, "Management Alert-U.S. Citizenship and Immigration Services' Use of the Electronic Immigration System for Naturalization Benefits Processing," OIG-17-26-MS (Jan.19, 2017); https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-26-MA-011917.pdf (accessed Apr. 3, 2020); *see* Ombudsman's Annual Report 2017, p. 9.

87 *See* Figure 2.1 (page 13). In FY 2017, USCIS made final adjudicative decisions on 223,609 cases using the ELIS online system; 205,777 of these completed cases have resulted in applicants proceeding through a full adjudication in the online system and taking the Oath of Allegiance. *See* USCIS 2017 Annual Report Response, p. 2 (May 11, 2018); https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Ombudsmans_2017_Annual_Report_to_Congress.pdf (accessed May 10, 2020).

88 *See* Letter from former Director Cissna to Representative Scott Perry (Mar. 2, 2018); https://www.uscis.gov/sites/default/files/files/nativedocuments/ELIS_-_Chairman_Perry.pdf (accessed May 10, 2020).

89 Information provided by USCIS (Apr. 24, 2020).

90 *Id.*

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staffing, interview queues, and methods of operation.[91] The COVID-19 pandemic has delayed the nationwide implementation of FCI.

N-400 Automated Interview Assessments. The FCI requires all field offices to use an automated N-400 assessment for the purpose of customizing interview time slots. The N-400 assessment leverages ELIS' technology to review application data and information available through other systems to identify factors that help inform the expected length of an interview.[92] Generally, the criteria used to determine assessment levels relate to common issues that require additional interview time. Examples include derogatory information uncovered during background checks, evidence of extended absences from the United States, and other issues related to eligibility. These factors are grouped into assessment levels that field office schedulers consult prior to scheduling N-400 interviews. Using automated interview assessment to identify complexity allows the field offices to tailor the length of the interview to the anticipated case factors.

As the agency continues to look for ways to increase efficiency and leverage ELIS' technology, there are additional actions it should consider to improve processing of concurrently pending benefit requests and N-648s. In addition, in light of the current COVID-19 pandemic, the agency should also consider the feasibility of remote naturalization adjudications.

RECOMMENDATIONS

1. Improving Concurrent Processing of I-751/N-400

Due to the lengthening processing times, and the ability of conditional permanent residents to apply for naturalization, the number of concurrently pending I-751 petitions (removal of conditional residence) and N-400s has steadily increased since FY 2016. At the end of FY 2016, only 3,187 N-400s were pending with an I-751.[93] As of December 31, 2019, this number had increased to 34,491.[94] As of this writing, the I-751 processing times range from 19.5 to 42.5 months at field offices, and 12.5 to 26 months at service centers.[95] Petitioners deemed eligible for interview waivers for a petition to remove conditions on residence will have their I-751s adjudicated at a service center, while those I-751s that do not meet the interview waiver criteria will be transferred to the appropriate field office for interview scheduling. Because service centers do not adjudicate N-400 applications, the increasing presence of these dual benefit requests has resulted in additional I-751 adjudications at the field offices.[96]

Individuals with pending concurrent applications present a dilemma for the agency. Conditional permanent residents with pending I-751s can obtain evidence of their status throughout the pendency of their petitions, and the rights, privileges, responsibilities, and duties that apply to all other lawful permanent residents apply equally to conditional residents, including the right to apply for naturalization.[97] Accordingly, I-751s are not a priority for the agency because inaction does not delay the delivery of an immigration benefit (although it may complicate other things, including permanent proof of lawful permanent resident status, proof of employment and travel authorization, etc.). Conversely, N-400s are more of a priority for field offices because naturalization is considered the pinnacle of benefits the agency can bestow, conferring privileges unique to citizenship (*e.g.*, the right to vote, a U.S. passport, federal jobs, etc.). The comingling of the N-400 and I-751 backlogs increases the likelihood of USCIS processing the I-751 faster than it otherwise would, but also may delay the processing of the N-400.

USCIS should consider taking steps to standardize its processing of these concurrently pending benefit requests to limit processing delay. Currently, USCIS instructs officers to adjudicate the I-751 prior to or concurrently with the adjudication of the N-400, but, as noted above, procedural hurdles often present complications for concurrent adjudication. Through its use of automated pre-interview assessments, USCIS may be able to limit unnecessary continuations by identifying which pending N-400 applications also have a pending I-751 *prior* to scheduling an interview. This would allow the agency

[91] Optional features included: Assigning cases using an "off-the-top" methodology, in which the ISO conducts interviews based on the next case that is in the queue rather than having specific cases assigned to the officers prior to the interview date, and conducting the complete interview at the Information Counter for cases that have been assessed as likely less complex. *Id.*

[92] *Id.*

[93] Information provided by USCIS (May 5, 2020).

[94] *Id.*

[95] USCIS Webpage, "Check Case Processing Times;" https://egov.uscis.gov/processing-times/ (accessed May 10, 2020).

[96] Although having a pending N-400 does not automatically result in the referral of the I-751 for an interview, unadjudicated I-751s sit in A-files that are pulled by the Field Office Directorate's National Benefits Center (NBC) for pre-processing of the N-400. Therefore, if the I-751 is not adjudicated by the time the NBC receives the A-file for pre-processing, the field office will be responsible for adjudicating the petition.

[97] 8 C.F.R. § 216.1.

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to ensure that the pending I-751 (as the I-751 is still a paper filing) is available to the officer at the time of the naturalization interview. USCIS could tailor its naturalization interview notices appropriately and instruct N-400 applicants with a pending I-751 to bring their spouses (if jointly filed) to the interview, as both may be interviewed to satisfy the officer of the continuing viability of the marriage and remove the conditions.

In addition to leveraging its technology, USCIS could provide supplementary guidance to officers regarding the overlapping eligibility determinations made for jointly filed I-751s and N-400s filed pursuant to INA § 319(a), which requires a higher level of evidence (i.e., marital union and joint residence) than is required for the approval of I-751s filed jointly (i.e., *bona fide* marriage). An applicant is not eligible for naturalization if his or her lawful permanent resident status was obtained by mistake or fraud, or if the admission to the United States was otherwise not in compliance with the law. If a naturalization applicant satisfies his or her burden with respect to marital union, joint residence, and the lawful admission requirement, this should satisfy the officer's inquiry into the *bona fides* of the marriage. Providing clearer guidance to officers with respect to these overlapping eligibility determinations will limit duplicative efforts and increase adjudicative efficiencies.

2. Improving N-648 Processing

The Form N-648 is used by applicants seeking an exception to the English and/or civics requirements because of a physical or developmental disability or mental impairment. The form must be completed by a certified medical professional, such as a medical doctor, doctor of osteopathy, or clinical psychologist. The submission of an N-648, especially at the time of the interview, can increase the complexity of the N-400 adjudication; exception requests often contain medical terminology explaining complex disability and mental impairment issues. In addition, the N-648 process is potentially vulnerable to fraud and "doctor shopping,"[98] which may result in referrals to USCIS' Fraud Detection and National Security (FDNS) division.[99]

On December 12, 2018, USCIS updated its N-648 filing procedures with new guidance. Among other things, this guidance clarifies that, absent a credible explanation, the N-648 must be submitted with the N-400.[100] In addition, the update explains that officers can find an N-648 insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud.[101]

In their review of the N-648 for sufficiency, officers are instructed to not only review the form for completeness, but to also assess the following components:

- Ensure that the N-648 relates to the applicant and that there are no discrepancies between the form and other available information, including biographic data, testimony during the interview, or information contained in the applicant's A-file;[102]
- Determine whether the N-648 contains enough information to establish that the applicant is eligible for the exception by a preponderance of the evidence. This determination includes ensuring that the medical professional's explanation is both sufficiently detailed as well as specific to the applicant and to the applicant's stated disability (rather than a generic, "one size fits all" explanation);
- Ensure the N-648 fully addresses the underlying medical condition and its causal connection or nexus with the applicant's inability to comply with the English or civics requirements or both; and
- If the record reflects that the applicant has a regularly treating medical professional, but another medical professional has completed the N-648, ensure that the form includes a credible and sufficiently detailed

[98] DHS officials have informed the Ombudsman's Office that fraud and "doctor shopping" are both significant concerns within the N-648 process. "Doctor shopping" occurs when an applicant actively seeks out a doctor who is willing to misrepresent the applicant's diagnosis on the N-648 for the purpose of obtaining an exception to the English and/or civics requirement. Applicants may engage in doctor shopping when they are aware of a doctor who is known to complete fraudulent N-648s and/or their regular treating physician will not attest to a disability or mental impairment under the penalty of perjury.

[99] USCIS Policy Manual, Pt. E, Ch. 3.D.5; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

[100] USCIS Policy Manual, Pt. E, Ch. 3.B.2; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

[101] USCIS Policy Manual, Pt. E, Ch. 3.E.5; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

[102] The A-file contains official immigration records of aliens or persons who are not citizens or nationals of the United States. DHS Privacy Impact Assessment, "Integrated Digitization Document Management Program (IDDMP)," p. 2 (Dec. 3, 2018); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-iddmp-09242013.pdf (accessed May 10, 2020).

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explanation for the reason that the regularly treating medical professional did not complete the N-648.[103]

Requiring applicants to submit their N-648s at the time of filing may help ensure that officers have ample time to review the application before an interview, including an assessment of the claimed disabilities in light of their impact on the applicant's ability to meet the requirements. Having these issues settled in advance may result in a more streamlined interview process.[104]

In order to further increase efficiencies and fraud detection, USCIS should consider pre-adjudicating concurrently filed N-648s at its National Benefits Center (NBC) prior to transferring the file to the field office for an interview. USCIS has acknowledged that the centralization of certain pre-interview assessments allows interviewing officers to focus on the person applying for the benefit and to increase the number of interviews a field office can schedule.[105] N-648s submitted at the time of filing provide the agency with an opportunity to centralize and streamline another pre-interview task, which will increase efficiency by removing an adjudicative burden from the interviewing officer.[106] The centralization of N-648 determinations will also allow the agency to better track and monitor suspicious filing patterns by doctors (e.g., boiler plate language, assessments beyond the specialty possessed by the medical professional), and other fraud concerns.

USCIS' current regulatory agenda includes proposing a process that would both designate and revoke the status of licensed physicians authorized to complete N-648s.[107] A similar process exists for civil surgeon designations.[108] Creating a comparable process for the N-648 will help deter unscrupulous medical professionals from preparing fraudulent exception requests, in turn, making the N-400 process more efficient. A formal designation process will discourage questioning the validity of the diagnosis as officers will have more confidence in the medical professionals authorized to prepare the form.[109] Similarly, revoking the designation of an unethical medical professional will allow officers to more efficiently dismiss subsequent N-648s prepared by such individuals. In order to increase efficiencies and combat fraud, the Ombudsman's Office encourages USCIS to move forward with proposing a process to designate and revoke the status of medical professionals authorized to complete N-648s.

3. Expanding Remote Capabilities

The resumption of in-person services and the continued need for social distancing presents USCIS with an opportunity to introduce video teleconferencing technology (VTC) into its naturalization process. In the short-term, VTC offers USCIS a legally permissible and operationally feasible solution for resuming interviews and oath-taking ceremonies while ensuring greater protections for its employees and applicants. In the long term, remote naturalization has the potential to increase efficiencies, creating long-term solutions for better balancing workloads and overcoming resource constraints. USCIS can build upon its current remote interview capabilities and adopt best practices from other federal agencies that

[103] USCIS Policy Manual, Pt. E, Ch. 3.E.1; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

[104] USCIS Teleconference, "N-648, Medical Certification for Disability Exceptions" (Feb. 12, 2019), p. 6; https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Teleconference_on_Form_N-648_Medical_Certification_for_Disability_Exceptions.pdf (accessed May 10, 2020).

[105] *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operation Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate);" https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

[106] An applicant must submit Form N-648 as an attachment to their N-400. *See* 8 C.F.R. § 312.2(b)(2). As discussed above, current USCIS policy allows for applicants to submit the N-648 after filing (*i.e.,* prior to or at the time of the naturalization interview) if the applicant provides a credible explanation and supporting evidence for the late submission. *See* USCIS Policy Manual, Pt. E, Ch. 3.B.2; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

[107] U.S. Office of Management and Budget Webpage, "Unified Agenda and Regulatory Plan" (Fall 2019), "Improvements to the Medical Certification for Disability Exceptions Processing;" https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1615-AC23 (accessed May 10, 2020)

[108] *See* 8 C.F.R. § 232.2.

[109] Although officers are instructed to not second-guess the medical diagnosis, legitimate fraud concerns in the N-648 process can make this a difficult task. For example, some medical professional may engage in a pattern of submitting N-648s with "boiler plate" language. Although the generic language may accurately reflect the medical diagnosis for any particular applicant, the pattern itself raises reasonable suspicions that require further inquiries and a potential fraud investigation. *See generally* USCIS Policy Manual, Pt. E, Ch. 3.E.5; https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3 (accessed May 10, 2020).

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currently utilize VTC for case adjudications. Through remote naturalization, USCIS can also achieve several of its stated realignment goals.[110]

Legal Authority. The Immigration and Nationality Act does not specify the manner in which naturalization interviews must be conducted.[111] The corresponding regulations require that each naturalization applicant appear in person before a USCIS officer, and that the interview take place in a setting apart from the public.[112] While it is for USCIS to determine its interpretation of its authorizing statute, it is within the agency's discretion to determine the mode of interview—in-person or VTC—and remote interviews can be implemented in a way that satisfies the legal requirements.[113] Regarding administrative naturalization ceremonies, unless USCIS excuses the appearance, the applicant must appear in person at a public ceremony.[114] Remote ceremonies may also be structured in a way so as to meet the legal requirements. For example, applicants appearing at a USCIS facility for their remote ceremony would meet the "in-person" requirement. In addition, remote ceremonies can meet the "public" requirement by allowing the applicant to bring guests to the remote ceremony or providing a publicly available streaming capacity for the applicant to share with family and friends.

Technological Considerations. Although not utilized agency-wide, remote adjudications are not a new concept to USCIS,[115] or the federal government.[116] In order to effectively introduce remote naturalization technology, USCIS should examine existing operating procedures and confer with other agencies better-versed in VTC adjudications. USCIS offices with experience in conducting remote interviews could offer existing operational guidance and best practices on some of the following key considerations: protecting privacy and confidentiality; addressing credibility concerns; permitting an interpreter; and including an attorney or representative. Several federal administrative agencies utilize VTC for court hearings or case adjudications such as the Department of Justice's Executive Office for Immigration Review (EOIR),[117] the Social Security Administration,[118] the Department of Veteran Affairs,[119] and the Department of Health and Human Services.[120] In considering issues related to equipment and infrastructure, USCIS should consult with other agencies that have brought VTC to scale. Supplementing USCIS' expertise with the knowledge of agencies more experienced in VTC adjudications will assist in the efficient roll-out of remote naturalization technology.

[110] On October 1, 2019, USCIS announced that it was realigning the organization and structure of its domestic regional, district, and field offices. Through realignment, USCIS created regions and districts of similar sizes to balance workloads and staffing levels, and to improve consistency across organizational and management structures in the field. USCIS Message, "USCIS Field Operations Directorate (FOD) Realigns Districts" (Oct. 1, 2019) (in the possession of the Ombudsman).

[111] INA § 335(b); 8 U.S.C. § 1446(b).

[112] 8 C.F.R. §§ 335.2(a), (c).

[113] For example, although officers would conduct the examination remotely, naturalization applicants could appear in person at a designated USCIS location, and their interviews could occur in a private setting in front of a USCIS officer. This would enable USCIS to validate identity and control the proceeding in a secure environment.

[114] INA § 337(a); 8 U.S.C. § 1448(a).

[115] The Asylum Division conducts credible and reasonable fear screenings telephonically, and in 2016, it established an office dedicated to adjudicating these claims remotely. *See* "Asylum Application, Interview, and Employment Authorization for Applicants," 84 Fed. Reg. 62374, 62393 (Nov. 14, 2019). Also, in FY 2016, the Investor Program Office (IPO) began utilizing VTC to conduct interviews of select foreign investors seeking to remove their conditional status. *See* "Citizenship for Sale: Oversight of the EB-5 Investor Visa Program," hearing *before the* Senate Committee on the Judiciary, 115th Cong. 2nd Sess. (Jun. 19, 2018) (statement of L. Francis Cissna, Director); https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-citizenship-sale-oversight-eb-5-investor-visa-program-senate-committee-judiciary-june-19-2018-uscis-director-l-francis-cissna (accessed May 10, 2020).

[116] *See* "Memorandum on the History of Agency Video Teleconferencing Adjudications," Administrative Conference of the United States (Nov. 26, 2015); https://www.acus.gov/sites/default/files/documents/VTC%20Hearing%20History_FINAL.pdf (accessed May 10, 2020).

[117] During the first quarter of fiscal year 2020 (October–December 2019) one out of every six (17 percent) of the 57,182 final immigration court hearings that concluded an immigrant's case was held by video. TRAC Immigration, *Use of Video in Place of In-Person Court Hearings* (Jan. 28, 2020); https://trac.syr.edu/immigration/reports/593/ (accessed May 10, 2020).

[118] *See* "Setting the Manner for the Appearance of Parties and Witnesses at a Hearing," 84 Fed. Reg. 69298 (Dec. 18, 2019).

[119] In FY 2017, the Board of Veterans' Appeals held 61 percent of its hearings by VTC. Department of Veteran Affairs, Board of Veterans' Appeals, FY 2017 Annual Report, p. 23; https://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2017AR.pdf (accessed May 10, 2020).

[120] *See* U.S. Department of Health & Human Services Webpage, "Appeal to Administrative Law Judges, Hearing Procedures;" https://www.hhs.gov/about/agencies/dab/different-appeals-at-dab/appeals-to-alj/procedures/hearing/index.html (accessed May 9, 2020).

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Operationalizing Remote Naturalization. A shift to remote naturalization would be a major undertaking for the agency, even in pilot form. But USCIS has acknowledged that technological resources are needed to effectively reduce its backlog and it has already moved forward with implementing significant changes to the naturalization process.[121] Remote naturalization allows the agency to better adhere to the Centers for Disease Control and Prevention's (CDC) current COVID-19 mitigation guidance.[122] Prior to rolling out new proposals nationwide, USCIS typically begins with a pilot program where a limited number of field offices are used to test the new processing methods. This enables the agency to evaluate efficiencies gained/lost, resolve unforeseen challenges, and ultimately determine if the pilot will benefit the agency nationwide. The transition to remote naturalization should be tested and implemented in a similar fashion.

In deciding which field offices to select for the pilot, USCIS might consider pairing offices within the same district with disparate processing times and staffing levels. During the initial implementation, the availability of physical office space will also need to be a consideration. The primary candidates for such pairing would likely be understaffed offices with lengthy processing times that have the space necessary to stage or host additional interviews but lack the staff to conduct those interviews, collaborating with adequately staffed offices with median N-400 processing times below the national average. In addition to achieving a better workload balance, pairing offices will allow officers to familiarize themselves with regional issues (*e.g.*, fraud associated with N-648s, interpreters, and other localized concerns). It will also allow management at each respective office to effectively coordinate on matters related to resource availability, interview and ceremony scheduling, and consistency in adjudications.

Once the appropriate offices have been selected, remote naturalization will require adjustments. By using hypothetical field offices and segmenting the naturalization process, USCIS might identify procedures in need of modification and explore how the advent of ELIS, FCI and automated N-400 case assessments increase the operational feasibility of remote naturalization. In the examples provided below, Office A represents the understaffed field office, while Office B represents the adequately staffed office.

Interview Scheduling: On a typical day, Office A interviews 100 naturalization interviews, while Office B conducts 300. Office A has 5 vacant offices. Office B is in need of additional office space and currently allows 5 of its officers to telework each day so that offices can be shared. Naturalization applications are generally arranged for scheduling by filing date. Due to Office A's lengthy processing times, the oldest N-400 applications awaiting scheduling consist mainly of Office A's cases, and Office B will be assigned a certain number of Office A's cases to interview remotely. The N-400 automated assessment tool, which identifies factors that inform the interview length, provides Office B with visibility into Office A's pending interview queue. Office B is also able to identify cases for scheduling where USCIS has the A-file in electronic format, and there is no need for a physical file transfer. After factoring in the information from the assessment and considering the ability for telework employees to interview remotely, Office B can increase its interview capacity and assist Office A in reducing its processing times.

Interview Check-In: The naturalization applicant appears at Office A on the date of his or her interview. Although Office B will be responsible for conducting the naturalization examination, FCI allows Office A to utilize non-adjudicative staff to complete identity verification and other administrative tasks that can occur prior to the interview. In addition to increasing the time the interviewing officer has to focus on eligibility requirements and fraud detection, this process also ensures that identity verification occurs at the office where the applicant appears in person. After the FCI is completed successfully, the applicant will be escorted to one of the vacant offices designated for remote interviews.

Interview: Office B will conduct the remote naturalization interview via VTC. Due to advances in this technology, interviewing officers should be able to interact and elicit testimony as effectively through VTC as they

[121] *See* "Hearing on Policy Changes and Processing Delays at USCIS," *before the* Subcommittee on Immigration and Citizenship *of the* U.S. House Committee on the Judiciary, 116th Cong. 1st Sess. (Jul. 16, 2019) (joint written statement of Don Neufeld, Associate Director, Service Center Operations Directorate; Michael Valverde, Deputy Associate Director, Field Operation Directorate; and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate);" https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019 (accessed May 9, 2020).

[122] *See* Centers for Disease Control and Protection Webpage, "Communities, Schools, Workplaces, and Events;" https://www.cdc.gov/coronavirus/2019-ncov/community/index.html (accessed May 9, 2020).

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would in the current interview setting.[123] Because the electronic online environment provided by ELIS facilitates remote interview capabilities, the interviewing officer will be able to view the N-400 application, administer the naturalization test, record changes to the application, and have the applicant review and certify revisions via a tablet.[124] All of these operations can be performed remotely. Moreover, the digitization of certain A-files provides electronic access to records.[125] After conducting the interview, the remote officer will notify support staff at Office A that the interview has been completed, and transmit the Form N-652, *Naturalization Interview Results*, which Office A will provide to the applicant.

Post-Interview Actions—Approval: If the applicant has established eligibility for naturalization, Office B will move forward with approving the N-400 application. The application will go through the "appropriate internal procedures" at Office A before the applicant is scheduled to appear at a naturalization ceremony.[126] Ideally, if Office A is located within a jurisdiction where federal district courts do not exercise exclusive oath authority,[127] and the applicant is not requesting a name change,[128] he or she can be naturalized on the same day as the interview.[129] If Office A does not have the resources to conduct a same-day ceremony, it could once again rely on VTC and Office B to administer the oath of allegiance.[130]

USCIS is required to conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion,[131] and has developed a Model Plan for Naturalization Ceremonies to satisfy this requirement.[132] Slight procedural modifications should be considered to increase efficiencies and to facilitate remote processing. For example, it is common at naturalization events for USCIS officers to perform a check-in process where they review and collect the Form N-445, *Notice of Naturalization*, and all USCIS-issued travel documents and lawful permanent resident cards that have been previously issued to each applicant.[133] In our scenario, Office A's support staff would be responsible for reviewing and collecting the necessary documents prior to escorting the applicant to the remote naturalization room. After Office B completed the ceremony, Office A would be responsible for providing the applicant with his or her Form N-550, *Certificate of Naturalization*.

Post-Interview Actions—Continuation or Denial: If Office B determines that additional information is needed or the applicant is ineligible for naturalization, it will take action as appropriate. In determining which office will ultimately be responsible for adjudicating continued cases or cases that require a re-examination to resolve eligibility issues, USCIS should consider best practices from its previous N-400 workload shifts.

Post-Pilot: In evaluating the success of the pilot, USCIS should ensure that it tracks metrics that will allow it answer questions concerning the program's overall effectiveness, such as:

- Was the pilot successful in eliminating disparities in processing times between the paired field offices?
- What was the overall impact on interview capacity and completion rates at each office?
- How much time and money were invested in resolving technological issues? If processing times reduced overall, do the resources spent justify the reduction?
- What was the impact on adjudicative quality? For example, what impact did the pilot have on fraud referrals to FDNS?
- What positive or negative effects were observed on individuals being naturalized?

123 *See* "Setting the Manner for the Appearance of Parties and Witnesses at a Hearing," 84 Fed. Reg. at 69300.

124 DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)," p. 11 (Dec. 3, 2018); https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 10, 2020).

125 Not all A-files are digitized. As noted above, digitized A-files should be given priority for remote interview scheduling. For further information on A-file digitization, *see* DHS Privacy Impact Assessment, "Integrated Digitization Document Management Program (IDDMP)" (Dec. 3, 2018); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-iddmp-09242013.pdf (accessed May 10, 2020).

126 USCIS Policy Manual, Pt. B, Ch. 4.A; https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-4 (accessed May 10, 2020).

127 INA § 310(b); 8 U.S.C. § 1421(b).

128 Courts administer the oath for any approved applicant wishing to make a name change at the time of naturalization. INA § 336(e); 8 U.S.C. § 1447(e); *see also* 8 C.F.R. § 337.2.

129 For further discussion on ways USCIS can make naturalization oath ceremonies more convenient for applicants, *see* Ombudsman Recommendations, "Study and Recommendations on Naturalization Oath Ceremonies" (Dec. 16, 2008); https://www.dhs.gov/xlibrary/assets/cisomb_naturalization_recommendation_2008-12-16.pdf (accessed May 19, 2020).

130 USCIS officials with authority to administer the oath, such as Field Office Directors, may re-delegate this authority within their chains of command. *See* INA §§ 310 and 337, and 8 C.F.R. §§ 310.3(e) and 337.2(b). *See also* Section II(V) of DHS Delegation 0150.1 (issued Jun. 5, 2003).

131 INA § 337(a); 8 U.S.C. § 1448(a).

132 *See* USCIS Policy Manual, Pt. J, Ch. 5; https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-5 (accessed May 10, 2020).

133 *Id.*

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In addition to increasing the number of pilot sites or implementing nationwide, the agency could establish an office dedicated to remote naturalization similar to the Asylum Division's remote unit, and lease available federal space where applicants can appear for their interviews. Ultimately, the decision to conduct remote naturalizations may hinge on USCIS' fiscal situation.

Potential Efficiencies Gained from Remote Naturalization. Remote naturalization coincides with the Field Office Directorate's realignment objectives—to increase interview capacity and provide more consistent processing times across the United States. Remote naturalization provides USCIS with the opportunity to better balance its workloads. As discussed above, the agency has utilized workload transfers in an effort to decrease wide disparities in N-400 processing times across field office jurisdictions. If naturalization interviews were conducted remotely, officers would not be limited to interviewing applicants that reside within or near their office's jurisdiction. This would provide the agency greater flexibility in distributing workloads between disparate offices. In the end, this might help the agency to appropriately balance its N-400 workload, and achieve one of its realignment goals.

Improving remote capabilities should reduce the delays and costs associated with increasing physical office space. USCIS has cited insufficient space at certain field offices as a backlog contributor. Due to its current financial difficulties and GSA delays, adding additional space may not be feasible at this time. Remote naturalization offers the agency a more immediate solution. Offices that are unable to accommodate additional staff will benefit from the reduced physical footprint of remote naturalization. The Ombudsman acknowledges that the proposal in its current form will initially require dedicated space at field offices; however, the COVID-19 pandemic has provided numerous government agencies, including USCIS, with protracted telework experience. The agency should leverage this experience to utilize current office space to its fullest potential (e.g., telework, office sharing, shift work, hoteling, etc.). In particular, USCIS staff who are not interviewing applicants should not occupy space dedicated to remote interviews.

Remote naturalization also places the agency in a better position to ensure continuity of services throughout the COVID-19 pandemic. As it reopens to the public, the agency will need to integrate federal guidelines for maintaining social distancing as well as various state restrictions on public gatherings. Remote naturalization may permit USCIS to incorporate these mitigation requirements into its interview and ceremony process. It is unclear at this time when USCIS will be able to resume normal operations nationwide, but remote naturalization provides the agency with the best opportunity to continue interviewing and naturalizing while also following federal and state guidelines.

CONCLUSION

Prior to the COVID-19 pandemic, the agency's backlog reduction efforts faced significant challenges from an anticipated 2020 filing surge and inadequate resources. These challenges are now compounded by the burdens placed on the system from delayed interviews, unpredictable receipt levels, and the likely strain to come once the agency is again fully operational. USCIS has rolled out several different measures to process N-400s more efficiently. It should consider additional reforms to improve the processing of concurrently pending benefit requests and N-648s, as well as establishing remote adjudication capabilities in order to limit the backlog growth. With continued ingenuity and capital, the agency can effectively reduce the backlog without sacrificing benefit integrity.

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Denaturalization: Maintaining the Integrity of the Naturalization Program

Responsible Office: Field Operations Directorate

KEY FACTS AND FINDINGS

- USCIS has worked to increase and centralize its denaturalization operations and referrals, in part due to weaknesses in the background check process that resulted in ineligible applicants becoming naturalized citizens.
- To address ineligible individuals becoming naturalized citizens, USCIS is using the revocation of naturalization provisions under section 340 of the Immigration and Nationality Act to revoke their citizenship when it was illegally procured or obtained by concealment of a material fact or willful misrepresentation.
- In January 2018, USCIS created the Historical Fingerprint Enrollment (HFE) Unit in Los Angeles, renamed the

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Benefits Integrity Office (BIO) in November 2019, to review questionable naturalization cases identified in DHS OIG's report on Operation Janus.

- BIO's denaturalization workload has since expanded and USCIS continues to analyze and learn from the cases to implement front end measures to prevent fraud and the erroneous naturalization of ineligible applicants.

BACKGROUND

Naturalized citizens, upon swearing allegiance to the United States and receiving certificates of naturalization, are correspondingly granted the same privileges and responsibilities that those born within our borders receive at birth. These citizens are distinguishable from native-born citizens by only a few exceptions, so significant they are inscribed in the U.S. Constitution. Becoming a naturalized citizen culminates an immigrant's often long and expensive U.S. immigration journey; many, for good reason, consider naturalization the most significant immigration benefit that the U.S. government can bestow.

USCIS considers maintaining the integrity of the naturalization process to be a core mission, ensuring that only qualified individuals are naturalized by validating identities and completing background checks. The naturalization application process is one of few with a regulatory requirement that the individual appear before USCIS in person to demonstrate eligibility.[134] In the past, USCIS has at several junctures focused more on production than integrity. This has resulted in the need to revoke citizenship, also known as denaturalization,[135] sometimes decades after the benefit is bestowed. Denaturalization is a costly and time-consuming process, involving multiple cabinet-level departments and federal litigation and requiring a significant expenditure of resources.

Investigations into naturalization irregularities in the Citizenship USA (CUSA) initiative from the late 1990s, in which thousands of applicants were naturalized in a promotion of citizenship, and Operation Janus demonstrate how weaknesses in the adjudication process, specifically in background checks, can impact the integrity of the naturalization program. In the late 1990s, a Department of Justice (DOJ) investigative report found weaknesses in the Immigration and Naturalization Service's (INS) implementation of CUSA, resulting in the naturalization of individuals later found to have disqualifying criminal records.[136] When resources permitted, the federal government identified ineligible citizens and rescinded their citizenship.

In 2008, a Customs and Border Protection (CBP) agent discovered 206 fingerprint cards (cards on which fingerprints were printed for use in identity verification and criminal background checks) that had not been uploaded into USCIS' digital fingerprint repository, and so were not accessible to adjudicators prior to granting immigration benefits to those individuals, including lawful permanent resident (LPR) status and naturalization. Subsequently, other DHS components searched for undigitized fingerprints, increasing the number of unrecorded fingerprint records to 315,000; this undertaking became known as Operation Janus. A DHS OIG investigation eventually determined at least 1,811 naturalized citizens with final deportation orders or criminal records may not have had their fingerprint records in the digital fingerprint repository at the time USCIS adjudicated their naturalization applications.[137] In 2016, USCIS staff located at the National Benefits Center reviewed those files and referred those deemed ineligible for naturalization to DOJ for denaturalization proceedings.[138] Operation Janus concluded in 2016.[139]

Since Operation Janus, USCIS has revamped its denaturalization review and referral process to mitigate fraud and the naturalization of ineligible applicants. In January 2018, it created the HFE Unit in Los Angeles, renamed the BIO in November 2019,[140] to review questionable naturalization cases. USCIS continues to analyze and learn from the cases reviewed by BIO to determine measures it can implement on the front end to prevent fraud and the naturalization of ineligible applicants.[141] While it may be too early to assess

[134] INA § 335(b); 8 U.S.C. § 1446(b). *See also* 8 C.F.R. § 335.2(a).

[135] Revocation of naturalization is also commonly referred to as "denaturalization." 12 USCIS Policy Manual, Pt. L, Ch. 1(A); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-1 (accessed May 7, 2020).

[136] In September 1996, INS initiated Citizenship USA to reduce its backlog of pending naturalization applications. *See* DOJ OIG, "Semiannual Report to Congress, October 1, 1999–March 31, 2000;" https://oig.justice.gov/semiannual/0003/sa201p1.htm (accessed May 4, 2020).

[137] DHS OIG, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 14, fn 1; https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf (accessed May 21, 2020).

[138] Information provided by USCIS (Apr. 22, 2020).

[139] DHS OIG, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 7; https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf (accessed May 21, 2020).

[140] Information provided by USCIS (May 7, 2020).

[141] Information provided by USCIS (Apr. 22, 2020).

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BIO's progress, the revamped denaturalization process shows potential for diminishing the use of USCIS' limited resources to correct preventable mistakes. The Ombudsman is studying the scope and progress of this aspect of USCIS' efforts to maintain the integrity of the naturalization process.

THE CULMINATION OF THE IMMIGRATION JOURNEY: BECOMING A NATURALIZED CITIZEN

Article 1, Section 8 of the U.S. Constitution gives Congress the power to establish a uniform rule of naturalization. In the Naturalization Act of 1790, Congress authorized courts to accept requests to naturalize and determine an applicant's eligibility, and delineated the requirements and process to become a naturalized citizen, such as requiring the individual be a "free white person" of good moral character, reside within the United States for 2 years, and take an oath to support the U.S. Constitution.[142] Many years later, subsequent laws removed restrictions to naturalization, such as marital status, gender, race, and nationality.[143] The last significant piece of legislation amending naturalization procedures, the Immigration Act of 1990, transferred the authority to naturalize from the federal courts, where it had resided for 200 years, to the Executive Branch (then the Attorney General, now the DHS).[144] Other than courts taking on a more ceremonial role in the last step of the naturalization process—the oath of allegiance—the initial statutory framework remains essentially the same.

Section 316 of the Immigration and Nationality Act (INA) provides that to become a naturalized citizen, an applicant must: have been an LPR for at least 5 years; have been and continue to be a person of good moral character during the required period of LPR status; have continuously resided in the United States as an LPR for 5 years immediately before applying and throughout the naturalization application process; and be physically present in the United States for at least half of that 5-year period.[145] The requisite 5 years may be reduced to 3 years if the applicant's naturalization eligibility is based on marriage to a U.S. citizen,[146] or excused completely in certain circumstances provided in the INA.

Naturalization Application Process. Shortly after the LPR has filed his or her Form N-400, *Application for Naturalization*, and supporting documents, USCIS schedules a biometrics (i.e., fingerprints, photograph, and signature) appointment at a local Application Support Center (ASC), which triggers a background check.[147] The background check verifies an individual's identity, a principal first step in the secure delivery of immigration benefits, and establishes eligibility for the benefit sought.[148] USCIS' ELIS now automatically initiates applicants' fingerprint searches in the Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) digital repository Next Generation Identification (NGI),[149] where USCIS can examine whether an applicant has used other identities, been arrested or convicted of a crime, been deported, or has links to terrorist activities. Applicants must inform USCIS on the N-400 or during the interview of whether they have applied for immigration benefits using a different or alternate identity, or whether they have ever been previously ordered deported or removed.

A USCIS officer reviews the results of the background check and resolves any derogatory information

[142] An Act to Establish a Uniform Rule of Naturalization, Ch. 3, §1-103 (Mar. 26, 1790) (repealed 1795).

[143] *See* Patrick Weil, "The Sovereign Citizen," *passim* (2012); https://muse.jhu.edu/book/21278 (accessed May 7, 2020). *See generally* Marian L. Smith, "INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898," National Archives Prologue Magazine (Summer 2002); https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1.html (accessed May 27, 2020).

[144] Immigration Act of 1990, Pub. L. 101-649, § 310, 104 Stat. 5038 (Nov. 29, 1990) (codified as INA § 310).

[145] INA § 316(a)–(d).

[146] INA § 319(a).

[147] Information provided by USCIS (Apr. 22, 2020). USCIS is in the process of developing continuous immigration vetting, which will move USCIS away from many of the point-in-time checks, background checks being triggered by the filing of an application or petition, to a holistic, recurrent vetting model with an emphasis on "person-centric" identification and screening—meaning certain security checks will be associated with an individual, not an application, petition, or benefit request. However, these initiatives are still under development and not fully implemented at this time. Information provided by USCIS (Apr. 24, 2020).

[148] Information provided by USCIS (Apr. 24, 2020). *See also* 12 USCIS Policy Manual, Pt. B, Ch. 2(A); https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-2 (accessed May 7, 2020).

[149] DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) pp. 9–10; https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 4, 2020).

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appropriately.[150] An applicant's criminal record may prevent them from meeting the good moral character requirement under section 316(a)(3) of the INA.[151] In addition, section 318 of the INA prohibits applicants with pending or final orders of deportation from naturalizing, unless their naturalization is based on U.S. military service.[152] Once the preliminary background check is complete, an officer will interview the individual under oath and issue English proficiency and civics examinations that the applicant must pass before the officer approves the naturalization application.[153] The applicant must also acknowledge support for the U.S. Constitution by taking an Oath of Allegiance.[154] Thereafter, USCIS will issue the individual a Certificate of Naturalization. If USCIS discovers the applicant was not eligible to become a naturalized citizen at the time citizenship was conferred, it can refer the individual to DOJ for denaturalization.

PITFALLS IN THE NATURALIZATION PROGRAM

Citizenship USA. The 1986 Immigration Reform and Control Act (IRCA) created a path to citizenship for certain foreign nationals residing unlawfully in the United States[155] or who worked as special agricultural workers (SAW).[156] In the 1990s, millions of beneficiaries of these programs became eligible to apply for naturalization.[157] Between FYs 1995 and 1997, INS received over 3.6 million applications for naturalization, which was 2.2 million more than what it received during the previous 3 fiscal years.[158] Accordingly, INS was faced with an overwhelming surge in naturalization applications that it was not equipped to adjudicate in a timely fashion.

On August 31, 1995, INS announced the Citizenship USA program, promoting the benefits of citizenship, with a goal to naturalize over 1 million applicants within a year.[159] At the same time, INS attempted to address the increasing number of naturalization applications pending adjudication by hiring adjudication officers, establishing naturalization interview centers, and implementing process efficiencies. In FY 1996 alone, over 1.1 million LPRs took the Oath of Allegiance and became naturalized citizens.[160] However, this milestone came at a cost of allegations of partisan political activities and insufficient criminal background checks.[161] INS may have naturalized over 6,000 unqualified individuals.[162]

The DOJ OIG investigated the CUSA program, finding significant long-term mismanagement in naturalization processing, especially as it involved identity verification, despite repeated interventions by the OIG, Congress and the Government Accountability Office.[163] The OIG cataloged weaknesses in the training of new hires, the database systems and the transmission of information between systems, criminal background check procedures, and other areas that could have led to unlawful naturalizations. Of the total number of naturalized individuals under the CUSA program, the FBI did not complete the criminal history check for 18 percent of them; the FBI was unable to read the fingerprint cards for

[150] If there are inconsistencies between the information provided by the applicant and the background check results, the officer can review the applicant's physical A-file and information contained in other USCIS accessible systems to determine which information is verifiable or relevant and make updates to the applicant's information in ELIS, if necessary. *See* DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) pp. 9–10; https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 4, 2020).

[151] *See* INA § 101(f) and 8 C.F.R. 316.10(b) (defining statutory and discretionary ineligibility for good moral character).

[152] *See* INA § 328(b)(2).

[153] 8 C.F.R. § 335.2(b).

[154] INA § 337(a).

[155] Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 201; 8 U.S.C. § 1255a.

[156] Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 210; 8 U.S.C. § 1160.

[157] Nancy F. Rytina and Chunnong Saeger, "Naturalizations in the United States: 2004," DHS Office of Immigration Statistics (Jun. 2005), p. 3; https://www.dhs.gov/sites/default/files/publications/Naturalizations_2004.pdf (accessed May 29, 2020).

[158] USCIS Webpage, "Yearly Naturalization Statistics 1992–2015" (Sep. 30, 2015); https://www.uscis.gov/sites/default/files/files/nativedocuments/Yearly_Natz_Stats.pdf (accessed Apr. 20, 2020).

[159] DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, The Implementation of CUSA" (Jul. 2000) at 2; https://oig.justice.gov/special/0007/cusaimp.pdf (accessed Mar. 9, 2020).

[160] USCIS Webpage, "Yearly Naturalization Statistics 1992–2015" (Sep. 30, 2015); https://www.uscis.gov/sites/default/files/files/nativedocuments/Yearly_Natz_Stats.pdf (accessed Apr. 20, 2020).

[161] *See* DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, The Implementation of CUSA" (Jul. 2000) at 32-33, 38-39; https://oig.justice.gov/special/0007/cusaimp.pdf (accessed May 27, 2020).

[162] Jon B. Hultman, "Administrative Denaturalization: Is There Nothing You Can Do That Can't Be [Un]Done," 34 Loy. L.A. L. Rev. 895 at 907 (2001); https://digitalcommons.lmu.edu/llr/vol34/iss2/16 (accessed May 7, 2020).

[163] *See* DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Executive Summary" (Jul. 2000); https://oig.justice.gov/special/0007/execsum.pdf (accessed May 29, 2020).

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124,711 of the applicants and did not receive fingerprint cards for another 61,366.[164]

A break-down in communication between INS and the FBI contributed to INS naturalizing applicants when the FBI could not complete a fingerprint check. Before and during CUSA, naturalization applications included fingerprint cards (Form FD-258) prepared by local private vendors and police stations.[165] The cards contained biographical information, including the applicant's name, date of birth, and sex. INS would remove the fingerprint cards from the rest of the application and send them to the FBI for a "name-check" and fingerprint comparison.[166] Because INS did not conduct the fingerprinting, it could not verify that the fingerprints on the FD-258 attached to the naturalization application were that of the applicant.

Before conducting the fingerprint check, the FBI would determine whether the fingerprint cards were readable, or classifiable.[167] Cards were classifiable if all ten fingerprints were legible. If the cards were classifiable, then FBI conducted an automated search of its fingerprint repository, verified any matches by manually comparing the applicant's fingerprint card to the card on file with the FBI, and provided the results to INS.[168] Smudged, unclassifiable cards decreased the effectiveness of the automatic reader and the manual comparison of the fingerprints. If the name check results indicated the applicant had a criminal history, but the FBI could not verify the results through its repository, the FBI returned the unclassifiable cards to INS with the notation "no record based on name-check."[169] At this point, INS could have asked the applicant to submit a new fingerprint card, which INS would forward to the FBI at no extra cost to the INS. Unfortunately, INS interpreted the FBI's notation to mean that the FBI had completed its criminal history check and discovered no criminal record.[170] Instead of submitting new cards so FBI could confirm an individual's identity and criminal history, INS went forward with naturalization. This missed communication contributed to INS not completing the first step in securing delivery of immigration benefits, verifying the identity of the applicant, and ultimately led to naturalizing hundreds of thousands of applicants without completing their checks.

While the OIG report did not specifically recommend reviewing the CUSA cases for denaturalization proceedings, DOJ and INS attorneys decided to explore their options.

Operation Janus. In 2008, a CBP employee uncovered old fingerprint cards for 206 foreign nationals who had deportation orders but who had been granted immigration benefits, such as LPR status or citizenship, under different names and dates of birth.[171] Due to inconsistent practices by INS, and later ICE, the individuals' fingerprint cards had never been uploaded into digital fingerprint records. Further research uncovered a total of 315,000 fingerprint cards of individuals who were criminals or had final deportation orders dating back to 1990 that had not been digitized.[172] This undertaking became known as Operation Janus.

To fully understand Operation Janus and the OIG findings, one must also understand the process for collecting and storing fingerprints, an essential evidentiary piece of the adjudication process (enabling USCIS to verify a person's identity as well as criminal history). In 1999, the FBI began digitizing the fingerprints it had collected from state, local, and other Federal agencies and maintaining them in its Integrated Automated Fingerprint Identification System (IAFIS)—the precursor to the current digital repository, NGI.[173] Prior to digitization, fingerprints were captured on Forms FD-258.[174] INS, and later, ICE were supposed to share the fingerprint cards collected from foreign nationals with the FBI to run against IAFIS holdings, but neither did do so consistently.[175] Nor did INS always provide updated information to the FBI on individuals associated with the fingerprint records. In addition, when INS developed IDENT in 1994, it had not uploaded all the fingerprint cards into the system.[176] As a result, USCIS adjudicated naturalization applications without having

164 DOJ Office of the Inspector General, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative, Criminal History Checking Procedures" (Jul. 2000) at 2 fn 1; https://oig.justice.gov/special/0007/crimhist.pdf (accessed May 27, 2020).

165 *Id.* at 8 fn 8.

166 *See Id.* at 8-9.

167 *Id.* at 9.

168 *Id.* at 9-10.

169 *Id.* at 10-11; https://oig.justice.gov/special/0007/crimhist.pdf (accessed May 27, 2020).

170 *Id.* at 11 fn 13.

171 *See* DHS Office of the Inspector General, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 1; https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf (accessed Mar. 12, 2020).

172 *See Id.* at 4.

173 *See Id.* at 3-4.

174 *Id.*

175 *Id.*

176 DHS Office of the Inspector General, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 5; https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf (accessed Mar. 12, 2020).

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complete information about the applicants, which led to USCIS erroneously naturalizing at least some portion of those committing fraud in using adopted aliases, because they could not match the fingerprints associated with the original identity. The original fingerprint records of the individuals revealed some were subject to final orders of deportation or removal from the United States under a different identity.

The 2016 DHS OIG report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records,* found that the government had in its possession 315,000 paper fingerprint records that it had never uploaded into IDENT.[177] As a result of the incomplete background checks, an unknown number of ineligible individuals received immigration benefits. The OIG concluded the incomplete digital fingerprint records hindered USCIS' ability to fully evaluate applicant eligibility, and recommended that USCIS establish a plan for reviewing cases of naturalized citizens who may have been ineligible for the benefit.[178]

Following Operation Janus, ICE initiated Operation Second Look to review hundreds of thousands of files of individuals who had been ordered deported from the United States, at least some portion of which had unlawfully remained in the country. ICE reviewed the naturalized citizen files for potential criminal denaturalization, one of three ways to denaturalize. Cases not eligible for criminal denaturalization were referred to USCIS for civil denaturalization. In a budget request for FY 2019, the administration asked for $207.6 million to investigate 887 anticipated leads and to review another 700,000 immigrant files as part of ICE's second phase of Operation Second Look.[179] Congress did not approve this proposal.[180]

MITIGATING MISTAKES ON THE BACK END: DENATURALIZATION

In the beginning of the twentieth century, Congress turned its attention to the integrity of the naturalization system to combat naturalization obtained by fraud. In 1906, Congress passed the Naturalization Act of 1906, authorizing U.S. attorneys, upon the showing of good cause, to initiate in courts authorized to naturalize proceedings that would take away an individual's naturalization "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."[181] This procedure remains mostly unchanged. The Immigration and Nationality Act of 1952 established the current statutory provision for denaturalization under section 340 of the INA and changed the fraud ground to "concealment of a material fact or by willful misrepresentation."[182] Illegal procurement remains a ground for denaturalization.

Three ways to denaturalize: administrative, criminal, and civil procedures.[183] In 1996, the Attorney General began to interpret the INA to authorize INS to create its own procedure for administrative denaturalization.[184] INS sent Notices of Intent to Revoke Naturalization to individuals who had become naturalized citizens under CUSA. However, a Ninth Circuit decision held INS had no statutory authority to administratively revoke a person's naturalization status.[185] Since this decision, the INS, and now USCIS, has considered itself obliged to pursue revocation proceedings in federal court.[186]

177 *See Id.* at 4.

178 *See Id.* at 3 and 8.

179 *See* DHS ICE, "Budget Overview: Congressional Justification" (2019); https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf (accessed Mar. 30, 2020). *See also* DHS USCIS, "Budget Overview: Congressional Justification (2019); https://www.dhs.gov/sites/default/files/publications/U.%20S.%20Citizenship%20and%20Immigration%20Services.pdf (accessed Mar. 3, 2020).

180 *See* Letter from former USCIS Director L. Francis Cissna to Representative Jesús G. "Chuy" Garcia p. 6 (Apr. 5, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (accessed Jun. 1, 2020).

181 An Act to Establish a Bureau of Immigration and Naturalization, ch. 3592, § 15, Pub. L. No. 338 (1906).

182 INA § 340; 8 U.S.C. § 1451.

183 USCIS can cancel a Certificate of Citizenship or Certificate of Naturalization without going through revocation proceedings if it determines the named individual created or obtained the certificate illegally or fraudulently. The cancellation does not impact the individual's underlying LPR status because the person is not considered to have ever been naturalized by USCIS. The naturalization certificate document itself does not confer citizenship. *See* 12 USCIS Policy Manual, Pt L, Ch. 1(C); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-1 (accessed May 15, 2020).

184 Jon B. Hultman, "Administrative Denaturalization: Is There Nothing You Can Do That Can't Be [Un]Done," 34 Loy. L.A. L. Rev. 895 (2001); https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2274&context=llr (accessed May 7, 2020).

185 *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000) (*en banc*); *Gorbach v. Reno*, 2001 WL 34145464 (W.D. Wash. Feb. 14, 2001) (INS enjoined permanently nationwide from applying and executing revocation of naturalization regulations); 12 USCIS Policy Manual, Pt. L, Ch. 1(C); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-1 (accessed May 15, 2020).

186 *See* 12 USCIS Policy Manual, Pt. L, Ch. 1(B); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-1 (accessed May 15, 2020); *see also* Patrick Weil, The Sovereign Citizen, p. 179 (2012); https://muse.jhu.edu/book/21278 (accessed May 7, 2020).

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Upon USCIS referral under 8 C.F.R. § 340.2, the U.S. Attorney's Office (USAO) initiates a denaturalization case in either criminal or civil proceedings in a U.S. district court. In criminal denaturalization proceedings, the U.S. Attorney must prove "beyond a reasonable doubt," the same burden of proof standard for all criminal cases, that the individual obtained naturalization by fraud pursuant to 18 U.S.C. § 1425.[187] The statute of limitations for pursuing a criminal denaturalization conviction is 10 years.

In civil proceedings under INA § 340(a), a U.S. district court judge can revoke citizenship if the naturalized person: (1) illegally procured naturalization; (2) concealed or willfully misrepresented a material fact; or (3) refused to testify before Congress within 10 years of naturalizing concerning their subversive activities.[188] Under INA § 340(c), the court can revoke the citizenship of a naturalized person who was a member of or affiliated with the Communist party, other totalitarian party, or terrorist organization within 5 years of naturalizing.[189] Under INA § 329(c), the court may revoke an individual's naturalization if within 5 years of naturalizing they received other than an honorable discharge.[190]

In contrast to criminal proceedings, the U.S. Attorney in a civil case must prove by "clear, unequivocal, and convincing" evidence that the individual met one of the above-mentioned grounds for revocation.[191] This standard of proof is higher than the preponderance of the evidence standard but lower than the criminal proceeding standard (*e.g.*, beyond a reasonable doubt). In addition, there is no time restriction to pursue a civil denaturalization proceeding.

Figure 3.1: Grounds for Revoking Naturalization

Criminal Naturalization Fraud	INA § 340(e)
Illegal Procurement, Concealment or Willful Misrepresentation, or Refusal to testify before Congress	INA § 340(a)
Member or affiliate of certain political or terrorist organizations	INA § 340(c)
Dishonorable discharge within 5 years of naturalizing	INA § 329(c)

Although the statistics provided in this article may include individuals denaturalized in criminal proceedings or under INA § 329(c), this analysis focuses on denaturalization cases filed in civil proceedings under INA § 340 based on illegal procurement, or concealment of a material fact or willful misrepresentation.

Denaturalization law and procedure. An individual procures naturalization illegally if the applicant did not meet one of the statutory eligibility requirements under INA § 316(a) (*i.e.,* LPR status, good moral character, physical and continuous presence, and attachment to the principles of the U.S. Constitution) at the time of naturalization. The applicant's failure to meet one of the statutory eligibility requirements does not have to result from deception or misrepresentation; merely failing to satisfy all the requirements at the time of naturalization subjects the applicant to revocation for illegal procurement.[192]

An individual is subject to denaturalization based on concealment of a material fact, or willful misrepresentation committed during the naturalization process, if the concealment or misrepresentation of fact was willful, material, and resulted in the individual obtaining

[187] 12 USCIS Policy Manual, Pt. L, Ch. 1(A); https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1 (accessed May 7, 2020). *See* INA 340(e) (If a naturalized person has been convicted by a U.S. District Court judge of obtaining naturalization through fraud, then the judge can also revoke the convicted individual's citizenship at the end of the criminal proceedings).

[188] INA § 340(a); 8 U.S.C. § 1451(a).

[189] INA § 340(c); 8 U.S.C. § 1451(c).

[190] INA § 329(c); 8 U.S.C. § 1440(c).

[191] 12 USCIS Policy Manual, Pt. L, Ch. 1(A); https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-1 (accessed May 15, 2020).

[192] *See Fedorenko v. United States*, 449 U.S. 490, 506 (1981) (U.S. Supreme Court "cases have also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship 'illegally procured,' and naturalization that is unlawfully procured can be set aside."). *See also* 12 USCIS Policy Manual, Pt. L, Ch. (2)(A); https://www.uscis.gov/policy-manual/volume-12-part-l-chapter-2 (accessed May 15, 2020).

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naturalization.[193] Concealment includes failing to disclose on the naturalization application or during the interview a criminal record or commission of a crime.[194] For a fact to be material, its lack of disclosure or misrepresentation by the applicant during the naturalization process, either on the form or during the interview, must have a "natural tendency to influence" the officer's decision to grant naturalization.[195]

If the district court finds that the individual has not presented sufficient evidence to rebut the government's evidence, then the judge may revoke the individual's naturalization. Revocation results in an individual being considered to have never been a U.S. citizen and strips them of their certificate of naturalization and any other documents evidencing citizenship.

Since a judge's denaturalization order does not automatically result in removing the individual from the United States, USCIS would need to file a Form I-862, *Notice to Appear* (NTA) with the EOIR to initiate removal proceedings.[196] According to USCIS, a significant benefit of the denaturalization process is that the U.S. district court record shows the individual's admissions to support a finding of inadmissibility, thus preventing the individual from relitigating inadmissibility in removal proceedings.[197] However, the individual cannot be charged with a ground of deportability under the INA that would not have applied *after* the person was naturalized.[198]

A spouse or child who is naturalized as a result of their relationship to the denaturalized individual may also lose their citizenship depending on the revocation ground. If the denaturalization order is based on concealment of a material fact or willful misrepresentation, then a spouse or child who became a citizen through the denaturalized individual would also be eligible for denaturalization.[199] However, denaturalization resulting from the person's membership or affiliation with certain organizations or dishonorable discharge from the military would not result in the spouse and children losing their citizenship if they reside in the United States at the time of the revocation.[200] The spouse and children would also not lose their citizenship if the judge denaturalized the individual based on the ground of illegal procurement, which does not require willful deception or misrepresentation, due to statutory ineligibility for naturalization.[201]

Collaboration between DHS and DOJ. When DHS was established, USCIS sent possible denaturalization cases to ICE, which made the final decision on whether to send the case to DOJ.[202] USCIS wanted more visibility into the outcomes of these referrals and in 2014 determined it had authority through a DHS delegation of authority to refer cases to DOJ directly.

Currently, both USCIS and ICE directly refer cases to DOJ, with ICE mostly handling cases under consideration for criminal denaturalization. Within USCIS, the new BIO Unit is not the only source of denaturalization proceedings; local field offices can also review potential denaturalization cases for referral to DOJ.[203] The field offices usually refer cases to DOJ through ICE, although on rare occasions they have directly referred cases to DOJ for consideration.[204] This article focuses exclusively on cases under BIO's purview and its review and referral process, but we note the potential for local field offices to follow a denaturalization review process similar to that of BIO.

USCIS' current denaturalization review and referral process evolved from Operation Janus, where it developed criteria to satisfy DOJ's legal and evidentiary standards for litigating denaturalization cases in U.S. district court and tracked the process from initiation to completion.[205]

193 12 USCIS Policy Manual, Pt. L, Ch. 2(B)(1) (citing to *Kungys v. United States*, 485 U.S. 759, 767 (1988)); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-2 (accessed May 15. 2020). *See also Maslenjak v. United States*, 137 S. Ct. 1918 (2017) (concealment or misrepresentation in criminal denaturalization proceedings under 18 U.S.C. § 425(a)).

194 Immigrant Legal Resource Center Practice Advisory, "Denaturalization and Revocation of Naturalization," at 6 (Feb. 2020); https://www.ilrc.org/denaturalization-and-revocation-naturalization (accessed Apr. 14, 2020).

195 The concealment or misrepresentation can result from failure to provide information as well as stating an untruth. *Kungys v. United States*, 485 U.S. 759, 772 (1988) (reversing the Court of Appeals' denaturalization order because Kungys's failure to provide his correct date and place of birth on his naturalization application were not material to the outcome of his application).

196 Information provided by USCIS (Apr. 22, 2020).

197 *Id.*

198 *Costello v. INS*, 376 U.S. 120 (1964) (holding a denaturalized citizen cannot be deported for two crimes involving moral turpitude when the convictions took place while he was a citizen). *But see Matter of Gonzalez-Muro*, 24 I&N Dec. 472 (BIA 2008), distinguishing *Costello*, and finding that the denaturalized citizen could be deported for crimes he committed, and concealed during the naturalization process, while an LPR.

199 INA 340(d); 12 USCIS Policy Manual, Pt. L, Ch 3(C)(2); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-3 (accessed May 15, 2020).

200 12 USCIS Policy Manual, Pt. L, Ch. 3(C)(3); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-3 (accessed May 15, 2020).

201 12 USCIS Policy Manual, Pt. L, Ch. 3(C)(1); https://www.uscis.gov/policy-manual/volume-12-part-I-chapter-3 (accessed May 15, 2020).

202 Information provided by USCIS (Apr. 22, 2020).

203 Information provided by USCIS (May 7, 2020).

204 *Id.*

205 Information provided by USCIS (Apr. 22, 2020).

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When USCIS created BIO's predecessor, the HFE Unit, it initially reviewed the files of 1,811 naturalized citizens with multiple identities and final deportation orders or criminal records who, at the time of adjudication, either did not or may not have had their full fingerprint records in IDENT or the FBI digital fingerprint repositories, referring those who warranted denaturalization to DOJ.[206] These were some of the missing fingerprint cases identified in the 2016 DHS OIG report on Operation Janus. Additional cases arose as more old fingerprint cards were uploaded into IDENT, which were also reviewed by the unit.[207] On January 9, 2018, DOJ announced the first denaturalization as a result of Operation Janus and USCIS' intention to refer 1,600 additional cases to DOJ.[208]

The unit was renamed the BIO in November 2019,[209] due to the office's expanded focus on reviewing fraud in all benefit requests.[210] BIO is now staffed with 64 full-time employees, some of whom worked on the litigation of CUSA denaturalization cases. These employees consist of 54 officers from the FNDS, 9 associate attorneys, and a division chief.[211] Its funding comes from immigration application fees.[212]

BIO has reviewed slightly more than 87 percent, or 3,121, of its current naturalization workload of 3,569 cases. BIO concluded that 2,563 of the cases it reviewed were potentially subject to denaturalization and that 211 of the reviewed cases were not appropriate for DOJ referral.[213] It has so far referred 490 of those cases to DOJ.[214] DOJ initiated civil court proceedings in 42 of those cases, 22 of which resulted in denaturalization orders.[215]

BIO's portfolio is currently limited to the dual-identity cases discussed above and individuals who did not disclose certain criminal activity when naturalizing. USCIS has pursued these cases as part of its core mission to ensure the integrity of the immigration system by detecting fraud and national security concerns in naturalization. The dual-identity workload is expected to decrease in significance because the pool of Operation Janus cases is finite, as well as a direct result of USCIS electronically capturing almost all fingerprint records via its ASC locations[216] and its increased use of biometrics-centered screening and background checks in ELIS.[217] The eventual shift away from these cases will not diminish the office's function, however, since its role has expanded to look at all USCIS form types.

In a typical dual-identity civil denaturalization case, an individual has been placed in deportation proceedings under one name (for example, Jane Doe) and her fingerprints were captured on a paper card. An A-file was created for Jane Doe and her fingerprint card was placed inside. The card was not shared with the FBI or digitized when INS moved to a digital fingerprint system. A hearing date was set, but Jane Doe did not appear, resulting in an *in absentia* order, authorizing Jane Doe's removal from the United States. Jane, who may or may not know of the removal order, subsequently becomes a lawful permanent resident through marriage to a U.S. citizen under a different name (for example Jane Dear). The second name may be her married name. Her fingerprints were captured electronically and automatically uploaded into IDENT and an A-file was created under the name Jane Dear. As a result, the individual has two A-files with two different names and two sets of matching fingerprint records: one paper and one digital. Eventually, Jane applied for naturalization. If both fingerprint records were not in the digital repository and Jane did not disclose both identities and/or the *in absentia* deportation order during the naturalization process, the officer would not have access to

206 DHS OIG, "Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records," OIG-16-130 (Sep. 2016) at 14; https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf (accessed Mar. 12, 2020).

207 Information provided by USCIS (May 7, 2020).

208 DOJ Press Release, "Justice Department Secures First Denaturalization As a Result of Operation Janus" (Jan. 9, 2018); https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus (accessed March 6, 2020).

209 Information provided by USCIS (May 7, 2020).

210 Information provided by USCIS (Apr. 22, 2020).

211 Information provided by USCIS (Apr. 22, 2020 and May 7, 2020).

212 Information provided by USCIS (May 7, 2020).

213 Information provided by USCIS (Apr. 22, 2020).

214 *Id.*

215 *Id.*

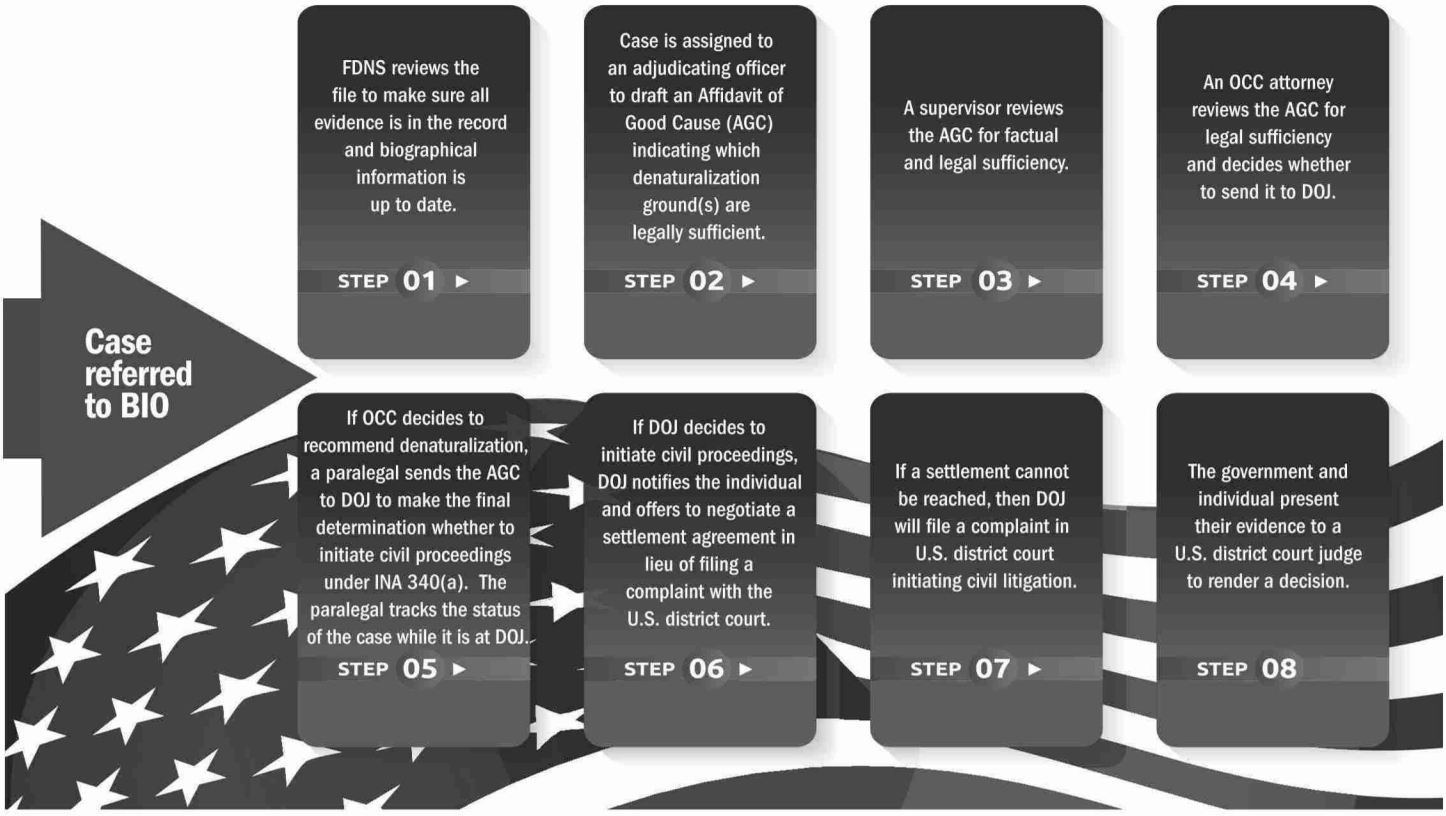
216 1 USCIS Policy Manual, Pt. C, Ch. 2(A); https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2 (accessed Jun. 1, 2020). USCIS provides mobile biometrics services for certain individuals and does not collect biometrics from incarcerated individuals. Per an agreement with ICE, ICE Enforcement and Removal Operations takes the biometrics of individuals at DHS detention facilities who are applying for benefits with USCIS. *See* 1 USCIS Policy Manual, Pt. C, Ch. 2(B); https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2 (accessed Jun. 1, 2020). Individuals residing abroad must report to a DHS-designated location to have their biometric information collected either electronically or by paper. *See* 8 C.F.R. § 103.16.

217 "USCIS ELIS automatically places the benefit request in an adjudicator work queue after A-Number validation, completion of the biometric collections and background checks, and return of the background and security check results have occurred." DHS Privacy Impact Assessment, "USCIS Electronic Immigration System (USCIS ELIS)" (Dec. 3, 2018) p. 9; https://www.dhs.gov/sites/default/files/publications/pia-uscis-elis056a-december2018.pdf (accessed May 4, 2020).

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Figure 3.2: Collaboration between BIO and DOJ in Civil Denaturalization Cases



Source: Information provided by USCIS (Apr. 22, 2020).

this information and would not know to explore possible ineligibilities in the adjudication.

In February 2019, BIO established Operation Prison Outlook, which reviewed the naturalization applications of naturalized citizens meeting the following criteria: convicted of certain sex offenses, naturalized more than 10 years ago, and currently in prison.[218] It reviewed these files because the individuals' criminal history may have rendered them ineligible to naturalize if the charge and conviction dates took place while their naturalization applications were pending. BIO identified 935 naturalized citizens who met these criteria, and thus far, have identified 27 as referrals to DOJ for denaturalization.[219]

In general, BIO reviews the cases it receives on a first-in, first-out basis; however, it may prioritize cases with aggravating circumstances.[220] Determining whether denaturalization is appropriate and will result in a successful prosecution involves a holistic, complex analysis of facts, laws, and mitigating factors, which may include the individual's age, health, and time spent in the United States; and justifications for the apparent irregularities supporting the grounds for denaturalization.[221] The reviewer must have an in-depth understanding of naturalization and immigration benefits law to evaluate anew the individual's immigration history, taking into consideration the rules governing the admission of evidence in courts and the standard of burden of proof. During step two of the review process referenced in Figure 3.2 *(Collaboration between BIO and DOJ in Civil Denaturalization Cases)*, an adjudicating officer reviews the individual's known immigration history from the beginning with an eye on the commission of immigration violations to support applicable revocation grounds. Evidence in support of each violation must meet the clear, unequivocal, and convincing standard for civil denaturalization proceedings.

[218] Information provided by USCIS (Apr. 22, 2020).
[219] *Id.*
[220] Information provided by USCIS (May 7, 2020).
[221] Information provided by USCIS (Apr. 22, 2020) (Mitigating circumstances are rare, but BIO does look at the totality of the case, including whether the citizen is deceased and if one of the names used was a maiden name).

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Depending on the revocation ground, state and federal criminal laws and scientific experts may also come into play. To prove the Operation Janus cases, for example, USCIS gathered evidence from ICE's Homeland Security Investigations (HSI) laboratory and fingerprint experts to confirm the paper card and digital fingerprints belong to the same person.[222]

BIO must construct a legally sufficient Affidavit of Good Cause (AGC) DOJ can then use to secure a denaturalization order. Centralizing denaturalization cases at BIO and encouraging collaboration among adjudication officers, FDNS officers, and Office of the Chief Counsel (OCC) attorneys to share expertise and resources, streamlines the denaturalization review process and develops successful cases.[223] Since DOJ's success is partially dependent on the file it receives from USCIS, good communication and the exchange and incorporation of feedback between BIO and DOJ are essential. The case can move back and forth through the various steps, allowing for extensive collaboration.

Except in the Eastern District of New York, Southern District of New York, and for the most part in the Eastern District of Virginia, USAO delegates the responsibility to litigate the civil denaturalization cases to DOJ's Office of Immigration Litigation (OIL) attorneys.[224]

Once the USAO has approved initiating judicial proceedings, the USAO or OIL notifies the impacted individual. Due to the resources expended in each proceeding, the government's goal is to resolve cases as quickly as possible, either through settlement agreement in lieu of trial or summary judgment.[225] According to USCIS, individuals in denaturalization proceedings often want a concession that DHS will not pursue removal proceedings against them or their spouses and/or children before signing a settlement agreement. Since ICE represents DHS in immigration court proceedings, it must agree in writing to a non-removal agreement.[226] If a settlement cannot be reached, then DOJ will file a complaint with the U.S. district court.

According to USCIS, it is referring cases to DOJ faster than USAO/OIL can review them.[227] Since FY 2017, when staff at the NBC were reviewing the cases referenced in the DHS OIG 2016 report, BIO has referred more cases to DOJ each subsequent year, from 19 referrals in FY 2017 up to 232 referrals in FY 2019 (12 times as many cases as the first year).[228] In February 2020, OIL announced it was setting up a denaturalization section to "litigate the denaturalization of terrorists, war criminals, sex offenders, and other fraudsters," which would join its District Court and Appellate Sections due to an anticipated increase in referrals from "law enforcement agencies."[229] USCIS is in communication with OIL in structuring the new section's process to coordinate efforts, and it expects the new denaturalization section will narrow the gap between referred and court initiated cases.[230]

Initial Reactions of Effectiveness: Will Post-Adjudication Corrections Improve Integrity in the Process? As CUSA and Operation Janus have demonstrated, lack of fraud risk management on the front end of a process encourages further fraud. BIO's review and referral process has potential to mitigate the mistakes that are not caught on the front end. By requiring factually solid, legally sufficient denaturalization cases that are more likely to result in a settlement or judge's order in favor of the government, the process affords the agency an opportunity to analyze and learn from the files it reviews. This is true not just of the mistakes made that led to Operation Janus and similar cases, but any aspect of the case provides room for improvement to the process. According to USCIS,

> USCIS expects it will continuously work to improve upon our processes and learn from the gaps that might be identified as we continue to work through this population of [denaturalization] cases. Ultimately, we expect closing the [biometric] gaps identified above and strengthening our screening and vetting processes will result in a decrease in the overall number of new cases referred for denaturalization.[231]

USCIS invests a significant amount of time and human resources to denaturalization cases but it does not control

222 *Id.*
223 *Id.*
224 *Id.* According to the Office of the United States Attorneys website, there are 94 U.S. district courts. OUSA Webpage, "Introduction to the Federal Court System;" https://www.justice.gov/usao/justice-101/federal-courts (accessed May 6, 2020).
225 Information provided by USCIS (Apr. 22, 2020).
226 *Id.*
227 *Id.*
228 *Id.*
229 DOJ Webpage, "The Department of Justice Creates Section Dedicated to Denaturalization Cases" (Feb. 26, 2020); https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases (accessed Mar. 6, 2020).
230 Information provided by USCIS (Apr. 22, 2020).
231 Information provided by USCIS (May 7, 2020).

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the outcome and denaturalization may not result in the individual being removed from the United States. However, the agency may achieve improvements in the integrity of the naturalization process by being actively involved on the back end. According to USCIS,

> Overall, USCIS is continuing to analyze and learn from the [BIO] population. While we are still early in our review and analysis of this population, we believe the actions USCIS has taken in the following areas will help avoid a repeat of the HFE population and prevent the naturalization of ineligible applicants:
>
> - Increase in biometric collections for identity verification at various points in the immigration lifecycle;
> - Enrollment of legacy INS, historical paper-based fingerprint records into the Automated Biometric Identification System (IDENT), a data system that is accessible across all DHS components and works with other federal agencies;
> - Electronic collection of USCIS fingerprints as well as digital upload into IDENT; and
> - Increased biometric-based screening and background checks to detect multiple identities and additional potentially derogatory information earlier in the adjudicative process.
>
> In addition, USCIS continues efforts to increase access to law enforcement databases. If successful, this will allow USCIS to obtain real-time updates of an applicant's criminal history and ensure USCIS has current and complete criminal history record before completing its adjudication. If successful, this would also mitigate the need to pursue denaturalization on those who did not disclose their full criminal history during the naturalization process.[232]

Every problem faced by USCIS is an opportunity for it to develop efficiencies and revise its process and procedures to ensure the integrity of the immigration system. Denaturalization cases can shed light on how USCIS can get ahead of fraudsters and better identify and analyze an applicant's past actions to separate those considered not significant enough to justify initiating denaturalization. CUSA and Operation Janus have taught USCIS that it is far easier, and less costly, to avoid mistakes and misunderstandings in the first place.

CONCLUSION AND RECOMMENDATIONS

Not ensuring the identity of individuals seeking immigration benefits, along with naturalizing LPRs before timely and fully completing each step of the adjudication process, has an adverse effect on the integrity of the immigration system and processing of benefits, and diverts resources that could otherwise be applied to more efficient administering of benefits for qualified applicants. BIO's augmented denaturalization review process has potential to identify fraud patterns and develop measures to prevent erroneous approvals, thereby diminishing resource expenditures dedicated to future denaturalization proceedings. At this time, the limited number of referrals that have resulted from BIO's denaturalization process are insufficient to make conclusions about its efficacy, much less its expandability to other adjudication processes. The Ombudsman will continue to monitor USCIS' denaturalization efforts and its impact on the naturalization process and on stakeholders.

The Ombudsman recommends that USCIS consider the following as it continues its review and revamping of the denaturalization review process:

1. Inform the public of BIO's standards and review process. If BIO is contributing to the integrity of and confidence in the naturalization process, inform the public about BIO's purpose and findings. Reassurances that BIO's workload is tied to eligibility to be a U.S. citizen and that it is being used to inform the adjudications process would significantly improve public faith in the program and bolster the arguments for continued efforts (and funding).
2. Inform the public of the results BIO's denaturalization cases are having on fraud prevention, thereby mitigating the need to refer denaturalization cases to DOJ. The denaturalization process enhances the integrity of the naturalization process. The public wants to know the process is being improved by BIO's efforts. USCIS should identify a way to capture BIO's impact on protecting the integrity of the naturalization process.

[232] *Id.*

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The Challenge of Decreasing USCIS' Affirmative Asylum Backlog

Responsible Office: Refugee, Asylum and International Operations Directorate

KEY FACTS AND FINDINGS

- The USCIS Asylum Division oversees the affirmative asylum application process and conducts fear screenings for individuals apprehended at the U.S. border who are subject to expedited removal proceedings.
- Since 2014, fear screenings at the Southern border and affirmative asylum receipts have impacted the USCIS Asylum Division's ability to keep pace with its affirmative asylum backlog.
- USCIS has managed these obligations through staffing adjustments, policy updates and proposed regulations.
- Despite many efforts, the affirmative asylum inventory remains above 350,000 as of the publication of this Report.
- USCIS could publish processing times for long-pending asylum applications and could triage pending applications to determine ineligible cases.

BACKGROUND

Over the past decade, USCIS has attempted to keep pace with an historically high number of affirmative asylum applications, many filed by foreign nationals arriving at

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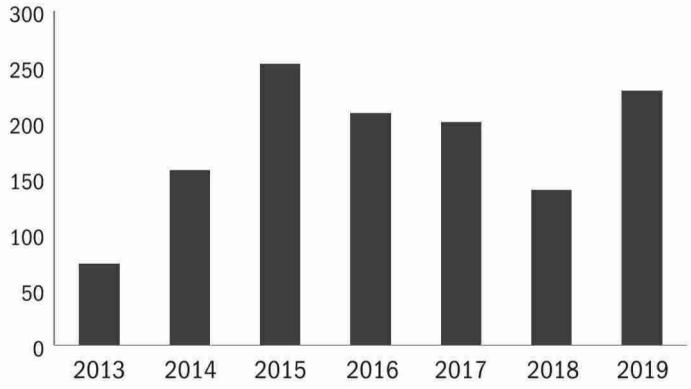
the Southern border of the United States from countries in Northern Central America. Limited available resources have hampered USCIS' ability to address its pending backlog, currently over 350,000.[233] More recently, USCIS was forced to suspend all in-person asylum interviews due to the COVID-19 pandemic, further inhibiting the ability of the USCIS Asylum Division to keep pace with its inventory.[234]

USCIS has taken several steps to address the backlog, from adjusting its scheduling priorities, to reconfiguring regulatory requirements, to developing new operational procedures. These efforts focus on reducing the number of pending cases, along with narrowing the influx of affirmative asylum applications.

OMBUDSMAN WORK WITH AFFIRMATIVE ASYLUM

The Ombudsman's casework and stakeholder engagements have highlighted the need to review USCIS' affirmative asylum backlog. From 2013 to 2019, the Ombudsman's Office saw a 30 percent increase in case assistance requests for affirmative asylum applications. See Figure 4.1 *(Ombudsman Case Assistance Requests, Form I-589, Application for Asylum and for Withholding of Removal).*

Figure 4.1: Ombudsman Case Assistance Requests, Form I-589, Application for Asylum and for Withholding of Removal



Source: Ombudsman's Case Management System (Apr. 1, 2020).

Despite USCIS' adoption of a national interview scheduling priority, both legal representatives and individuals have expressed to the Ombudsman that highly variable and unpredictable processing times for pending applications between asylum offices has made it difficult to determine when USCIS might schedule an applicant for an interview and to plan accordingly. Stakeholders have suggested that USCIS resume using national and local engagement and outreach mechanisms to explain agency policies and programmatic changes that could affect processing times.[235]

Additionally, the Ombudsman's Office received numerous stakeholder inquiries surrounding USCIS' plans to leverage its skilled workforce in lieu of conducting in-person interviews during the COVID-19 pandemic. The Ombudsman's Office is accordingly reviewing USCIS' affirmative asylum backlog to assess how the agency can reduce the time it takes to address long-pending affirmative asylum applications while supporting the administration of U.S. immigration laws and treaty obligations.

1. A Brief Overview of U.S. Asylum Processing

U.S. immigration law allows a foreign national to seek asylum using three pathways: affirmative filing, defensive filing, and expedited removal/credible and reasonable fear interviews.

Affirmative Asylum. If already in the United States and not in immigration removal proceedings, the foreign national may affirmatively apply for asylum with USCIS.[236] The foreign national files with USCIS the Form I-589, *Application for Asylum or Withholding of Removal*, along with supporting evidence.[237] There is currently no fee for this application.[238] USCIS reviews the application, collects and processes biometrics, and conducts an interview.

Currently, USCIS does not post processing times for scheduling or issuing decisions on affirmative asylum applications.[239] Those wanting to learn the processing time

233 Information provided by USCIS (Apr. 24, 2020).

234 USCIS Webpage, "USCIS Response to Coronavirus 2019 (COVID-19)" (Jun. 10, 2020); https://www.uscis.gov/about-us/uscis-response-coronavirus-2019-covid-19 (accessed Jun. 16, 2020). Beginning June 4, 2020, USCIS field offices and asylum offices started to resume non-emergency face-to-face services to the public. Applications Support Centers (ASC) will resume services at a future date.

235 Various stakeholder meetings with the Ombudsman's Office (May 2020).

236 8 C.F.R. § 208.2.

237 USCIS Webpage, "I-589, Application for Asylum and for Withholding of Removal" (Feb. 14, 2020); https://www.uscis.gov/i-589 (accessed May 6, 2020).

238 DHS proposed rule, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62318–62319 (Nov. 14, 2019) would add a $50 fee to affirmative asylum applications.

239 For most form types, USCIS publishes processing times on its website. *See* USCIS Webpage, "Check Case Processing Times," https://egov.uscis.gov/processing-times/ (accessed May 15, 2020).

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for an affirmative asylum case are directed to a USCIS Affirmative Asylum Interview Scheduling webpage.[240]

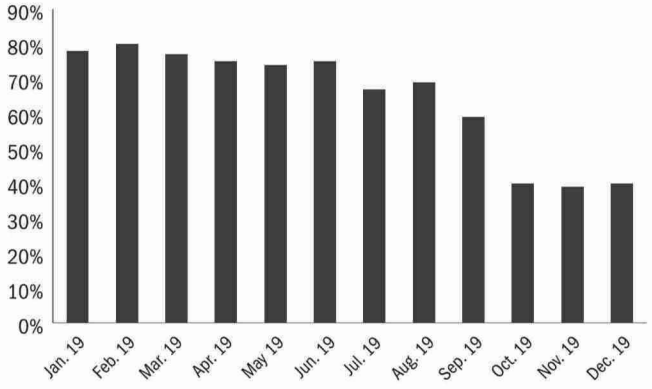
Following the asylum interview and a final background check, if the applicant meets the statutory requirements and is found to be credible, the asylum officer may grant asylum. If the applicant has not met the statutory requirements and is not lawfully in the United States, the asylum officer refers the case to the EOIR at the DOJ for removal or deportation proceedings.[241] If the case is referred to an immigration judge, the applicant may submit a new asylum application for the judge to review.[242]

Defensive Asylum. If the foreign national is apprehended within the United States and placed in removal proceedings, he or she may file an asylum application defensively with the immigration court if not subject to expedited removal as described further below.[243] The same USCIS form and filing process is used, but USCIS has no review of the defensive application. The immigration judge makes the determination on whether the applicant is granted asylum.

Expedited Removal and Credible/Reasonable Fear Screening. If the foreign national is apprehended by CBP or by ICE without proper documentation of admissibility and cannot demonstrate they have been in the United States for at least 2 years, the options are limited to those available in expedited removal proceedings, an administrative process that does not include a hearing before an immigration judge.[244] When an apprehended alien says that he or she fears returning to his or her home country, they are given 48 hours to rest, provided an opportunity to contact a legal representative, and otherwise prepare before USCIS conducts either a credible, or reasonable fear screening.[245] Both screenings must be conducted in "a non-adversarial manner, separate and apart from the general public."[246]

An alien who has never before been removed from the United States who is placed in expedited removal proceedings receives what is referred to as a credible fear screening.[247] The asylum officer determines whether there is a "significant possibility" the person will establish eligibility for asylum or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[248] If the asylum officer makes a positive finding, the case is referred to an immigration judge and the individual can apply for asylum in the removal hearing. The average monthly positive rate for credible fear determinations for Calendar Year (CY) 2019 was decreasing from around 80 percent to approximately 40 percent. See Figure 4.2 *(USCIS Credible Fear Positive Findings)*.[249]

Figure 4.2: USCIS Credible Fear Positive Findings



Source: Information provided by USCIS (Apr. 6, 2020).

240 USCIS Webpage, "Affirmative Asylum Interview Scheduling" (Jan. 26, 2018); https://www.uscis.gov/affirmative-asylum-scheduling (accessed May 12, 2020).

241 8 C.F.R. § 208.2.

242 8 C.F.R. § 208.14 and 208.19. If the applicant has valid legal status in the United States but is found ineligible for asylum, USCIS will issue a final denial decision and does not refer the case to EOIR.

243 8 C.F.R. § 208.2.

244 *See* INA § 235; 8 U.S.C. § 1235.3(b). As of July 23, 2019, DHS exercised the "remaining scope of its statutory authority to place in expedited removal with limited exceptions" those apprehended without authorization within U.S. borders, or who have committed fraud or misrepresentation, who have not been admitted or paroled and who are unable to show that they have been physically present for 2 years. "Designating Aliens for Expedited Removal," 84 Fed. Reg. 35409 (Jul. 22, 2019). This applies to individuals arriving at a port of entry who are inadmissible due to fraud or misrepresentation (INA § 212(a)(6)(C)) or who lack proper entry documents (INA §212(a)(7)).

245 *See* 8 C.F.R. § 208.30(f) and (g), 208.31(f) and (g); USCIS Webpage, "Questions and Answers: Credible Fear Screening" (Jul. 15, 2015); https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening (accessed May 2, 2020).

246 8 C.F.R. § 208.30(d) and 208.31(c).

247 INA § 235(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(B)(ii).

248 INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v); "The term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title;" 8 C.F.R. § 208.30(e)(2). *See UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85; https://www.refworld.org/docid/3ae6b3a94.html (accessed Jun. 16, 2020).

249 *See* USCIS Webpages, "Semi-Monthly Credible-Fear and Reasonable Fear Receipts and Decisions" (undated); https://www.uscis.gov/tools/reports-studies/immigration-forms-data/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions (accessed May 26, 2020) and "Credible Fear Workload Report Summary: June 2019" (Jan 14, 2020); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/Credible_Fear_Stats_FY2019_thru_June.pdf (accessed May 26, 2020).

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An alien who has been previously removed from the United States or granted voluntary departure and unlawfully reentered the United States receives a reasonable fear screening because they are not eligible to apply for asylum.[250] The asylum officer determines whether the person has a "reasonable fear of persecution or torture" if returned to his or her home country. A positive determination allows the person to request relief, such as withholding of removal or, in some cases, relief under the CAT, before an immigration judge.[251]

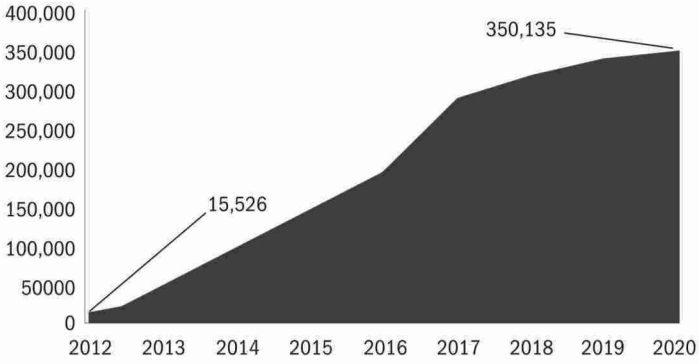
In both scenarios, if the alien receives a negative decision from the asylum officer, he or she may still request that an immigration judge review the negative credible or reasonable fear determination.[252] If the immigration judge concurs in the negative credible fear finding, ICE will move forward with removal from the United States. If the judge makes a positive credible or reasonable fear determination finding, the individual has an opportunity to seek relief before the immigration judge.[253]

All three pathways to asylum have experienced fluctuation in filing volume and pending backlogs throughout the years. DHS has successfully addressed significant backlogs in the past.[254] However, DHS appears to face novel challenges due to filing surges and policy and program changes that have expanded backlogs at USCIS and EOIR.[255] Reliable solutions from the past might not solve the many challenges DHS is facing today.

2. The Origins of the Affirmative Asylum Backlog

There are many reasons why USCIS' affirmative asylum backlog has grown to over 350,000 cases waiting disposition.[256] See Figure 4.3 *(USCIS Affirmative Asylum Backlog)*. From increased filing receipts to hiring limitations and other operational imperatives, accruing a large backlog may have been unavoidable.[257] While there is no single reason, several factors played a significant role to bring the agency to its current backlog numbers.

Figure 4.3: USCIS Affirmative Asylum Backlog



Source: USCIS Data, Affirmative Asylum Statistics from 2012 to 2019. 2020 information (through April) provided by USCIS (Apr. 24, 2020). As of April 3, 2020, the Asylum Division had 350,135 affirmative asylum cases pending final decision.

Migration Surge and the Fear Screening Process. Since FY 2012, USCIS resources, along with those of other DHS components, have been substantially taxed due to a surge of foreign nationals attempting to enter the United States at and between ports of entry who, once apprehended, express a fear of returning to their home countries, thereby warranting a fear screening. Total apprehensions of inadmissible aliens at the Southern border, after reaching an all-time high of 1.6 million in FY 2000, rose again from 444,859 in FY 2015 to 977,509 in FY 2019.[258]

There are various push and pull factors for the surge, from economic opportunities and family connections in the United States, to poor socioeconomic conditions, gang violence and/or persecution in the country of origin. The motives to migrate are often mixed; some claims may

250 8 C.F.R. § 241.8; 8 U.S.C. § 1231(a)(5).
251 8 C.F.R. § 208.31(e).
252 8 C.F.R. § 208.30(g) and 208.31(g).
253 8 C.F.R. § 208.31(g).
254 *See* USCIS Webpage, "Backlog Elimination," which provides reports to Congress on how USCIS addressed its backlogs in 2006; https://www.uscis.gov/tools/reports-studies/backlog-elimination (accessed May 6, 2020).
255 As of October 2019, EOIR reported having 986,274 pending cases on its docket; not all are defensive asylum applications but involve all reasons for removal. *See* "Executive Office for Immigration Review Adjudication Statistics, Pending Cases" (Oct. 7, 2019); https://www.uscis.gov/tools/reports-studies/backlog-elimination (accessed May 6, 2020).
256 Information provided by USCIS (Apr. 24, 2020).
257 USCIS has not always defined its backlog in a way that includes its entire inventory. In 2006, USCIS defined the asylum backlog as the number of cases remaining after subtracting an average of 6 months' production from the total number of cases pending. "USCIS Backlog Elimination Plan Update, FY2006 Third Quarter," p. 1 (Dec. 11, 2006); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf (accessed May 4, 2020).
258 Audrey Singer and William A. Kandel, Congressional Research Service, "Immigration: Recent Apprehension Trends at the U.S. Southwest Border," p. 5 (Nov. 19, 2019); https://fas.org/sgp/crs/homesec/R46012.pdf (accessed Jun. 9, 2020). *See also* Congressional Research Service, "Central American Immigration: Root Causes and U.S. Policy," p. 1 (Jun. 13, 2019); https://fas.org/sgp/crs/row/IF11151.pdf (accessed Jun. 2, 2020).

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qualify an alien for asylum, many others do not.[259] As the former Acting Secretary testified, smugglers, exploiting "the low credible fear threshold," have counseled aliens to express a fear of persecution "knowing that they will be processed and released with a court date years in the future."[260] DHS has had to manage staggering increases in fear screening requests at the Southern border, irrespective of the legitimacy of the intent behind the request.

The fear screening exists to ensure that those who may be subject to persecution in their home countries are not refouled or forced to return.[261] Aliens who express fear but have no intention to file for asylum or do not fear persecution in their home country are not the intended beneficiaries of the law.[262] According to DOJ, over the past 11 years (2008–2019), while 81 percent of credible fear screenings have been referred to the immigration court, only 54 percent of those referrals actually file for asylum with the court.[263] Former Acting Secretary McAleenan noted that those who exploit this process "deprive those who actually qualify for asylum the humanitarian protection they deserve."[264] At this time, there is little procedural means of separating "exploitive" versus "legitimate" fear screenings. In expedited removal proceedings, the law requires that in the case of a person who "indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B)," and USCIS must therefore conduct those screenings.[265] All fear screenings at the Southern border, whether legitimate or not, impact USCIS' available resources and inhibit the agency's ability to reduce the affirmative asylum backlog.

Exponential Growth in USCIS Affirmative Asylum Receipts. Starting in 2014, USCIS saw a surge in affirmative asylum filings. In 2012, the Asylum Division received approximately 3,000 applications per month. By FY 2014, that number doubled, reaching 6,000 filings per month and steadily grew until the peak in March 2017.[266] Following the peak, affirmative asylum filings with USCIS decreased by 25 percent from an estimated 139,800 applications in FY 2017 to 105,500 in 2018.[267] See Figure 4.4 (*USCIS Affirmative Asylum Applications Filed).*

During this same timeframe, CBP reported a surge in unaccompanied alien children (UAC) entering the United States.[268] UACs are legally eligible to first file for asylum with USCIS, despite being in removal proceedings with DOJ.[269] UACs file the majority of affirmative asylum applications from the Northern Central American

[259] *See* Audrey Singer and William A. Kandel, Congressional Research Service, "Immigration: Recent Apprehension Trends at the U.S. Southwest Border," p. 1 (Nov. 19, 2019); https://fas.org/sgp/crs/homesec/R46012.pdf (accessed Jun. 2, 2020).

[260] "The Trump Administration's Child Separation Policy: Substantiated Allegations of Mistreatment" *before the* U.S. House of Representatives Committee on Oversight and Reform, 116th Cong. 1st Sess. p. 8 (2019) (testimony of Kevin K. McAleenan, Acting Secretary, U.S. Department of Homeland Security) ; https://docs.house.gov/meetings/GO/GO00/20190718/109813/HHRG-116-GO00-Wstate-McAleenanK-20190718.pdf (accessed May 28, 2020).

[261] INA § 235(b)(1)(A)(ii); 8 U.S.C. § 1225(b)(1)(A)(ii).

[262] *See* INA § 235(b)(1)(A)(ii): "If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B)." *See also* Human Rights First, "Credible Fear: A Screening Mechanism in Expedited Removal," (Feb. 2018); https://www.humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf (accessed May 29, 2020).

[263] DOJ EOIR, "Credible Fear and Asylum Process: Fiscal Year (FY) 2008-2019 (Oct. 23, 2019); https://www.justice.gov/eoir/file/1216991/download (accessed May 28, 2020).

[264] "The Trump Administration's Child Separation Policy: Substantiated Allegations of Mistreatment" before the U.S. House of Representatives Committee on Oversight and Reform. 5 (2019) (testimony of Kevin K. McAleenan, Acting Secretary, U.S. Department of Homeland Security); https://docs.house.gov/meetings/GO/GO00/20190718/109813/HHRG-116-GO00-Wstate-McAleenanK-20190718.pdf (accessed May 28, 2020).

[265] INA § 235(b)(1)(A)(ii); 8 U.S.C. § 1225(b)(1)(A)(ii).

[266] USCIS Webpage, "Affirmative Asylum Statistics: July, August and September 2014," Jun. 30, 2015; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_Affirmative_Asylum_July_August_September_2014.pdf (accessed Apr. 10, 2020).

[267] Nadwa Mossaad, DHS Office of Immigration Statistics, "Refugees and Asylees: 2018," Annual Flow Report, p. 6 (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf (accessed Jun. 2, 2020). Venezuelan applications continued to rise making up a quarter of total applications in 2018, while applications from Chinese nationals decreased sharply by 52 percent. The number of affirmative asylum applications filed by individuals from Northern Central America (El Salvador, Guatemala, and Honduras) fell by 19 percent in 2018 from a record high of 31,100 applications in 2017.

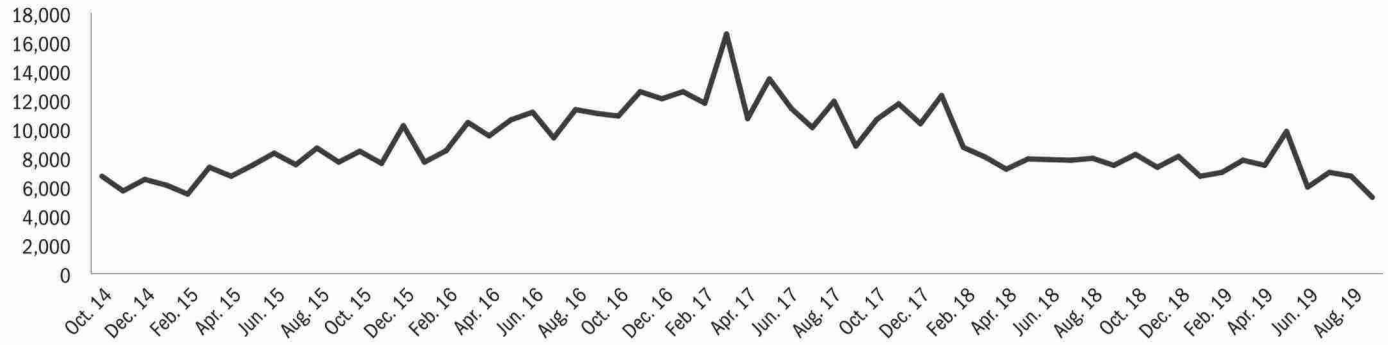
[268] CBP Webpage, "U.S. Border Patrol Southwest Border Unaccompanied Alien Children Encounters by Country" (May 7, 2020); https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions (accessed May 28, 2020). DOJ EOIR also reported that its UAC docket went from 3,188 cases pending in 2008 to 95,807 pending cases in 2020, Q2. *See* EOIR Adjudication Statistics "Pending Unaccompanied Alien Child (UAC) Cases" (Apr. 15, 2020); https://www.justice.gov/eoir/page/file/1060871/download (accessed May 29, 2020).

[269] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, §§ Pub. L. No. 110-457; *U.S. Statutes at large* 122 (2008): 5044; *See also* USCIS Policy Update, "Updates on Determining Jurisdiction of Asylum Claims from Unaccompanied Alien Children (UACs)" (May 31, 2019); https://www.uscis.gov/sites/default/files/USCIS/Refugee%2C%20Asylum%2C%20and%20Int%27l%20Ops/Asylum/Webpage_update_UAC_Asylum_Application.pdf (accessed May 29, 2020).

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Figure 4.4: USCIS Affirmative Asylum Applications Filed



Source: USCIS Immigration Data on Affirmative Asylum Filings (Oct. 2014-Aug. 2019).

countries, making up 56 percent in 2016 and 2017 and 60 percent in 2018.[270] This factor, along with the general surge in illegal migration on the Southern border, added to the receipts each fiscal year, and caused an exponential growth in pending caseload from 11,000 in 2012 to nearly 350,000 in 2020.[271] See Figure 4.3 *(Affirmative Asylum Backlog)*.

USCIS Asylum Division Staffing Challenges. The USCIS Asylum Division has struggled to maintain a workforce equipped to meet the surge of incoming receipts. To start, like many government agencies, USCIS cannot easily respond to changes in staffing demands. USCIS uses Staffing Allocation Models (SAM),[272] or staffing projections, throughout its directorates to determine staffing needed to maintain its processing goals. USCIS Refugee, Asylum and International Operations Directorate's (RAIO) headquarters works with local asylum offices to coordinate volume projections and the number of staff needed to meet production goals.[273] Each asylum office receives its staffing allocations at the start of the fiscal year and must work within those allocations to try to meet its performance goals. Once the staffing numbers are set for each fiscal year, each asylum office is free to manage its resources, but the allocations do not deviate.[274] If projections do not accurately account for filing surges or new DHS programs, the asylum offices cannot keep up with the work.

Once the resources are distributed, a second challenge arises with onboarding and training a productive workforce. In recent years, USCIS has more than doubled its onboarded staff from 349 asylum officers in FY 2015 to 866 today.[275] See Figure 4.5 *(USCIS Asylum Division—Historic Hiring)*. However, it takes a minimum of 6 months on the job for an asylum officer to become proficient enough to adjudicate asylum applications at the expected pace.[276] Additionally, between FY 2016 to FY 2019, the Asylum Division has needed to temporarily assign on average 475 asylum officers each year in response to other program needs within USCIS, including, among other things, the operational and legal imperative to conduct fear screenings at the border. All these factors have impacted USCIS' ability to address its affirmative asylum backlog.

Additional DHS Programs Obligating USCIS Asylum Division Resources. To address the migration surge on the Southern border, DHS crafted various strategies that required the participation and assistance of USCIS asylum officers to conduct fear screenings. These obligations resulted in temporary assignments to the border, as well as virtual assignments from local USCIS asylum offices. From FY 2015 to present, USCIS used asylum staff to fill 1,882 temporary assignments (rotations) to the border

[270] Nadwa Mossaad, DHS Office of Immigration Statistics, "Refugees and Asylees: 2018," Annual Flow Report, p. 6 (October 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf (accessed Jun. 2, 2020).

[271] Information provided by USCIS (Apr. 24, 2020).

[272] "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration and Benefit Request Requirements" 84 Fed. Reg. 62280, 62286 (Nov. 14, 2019). As mentioned *supra* the Staffing Allocation Model is a Microsoft Excel-based workforce planning tool that estimates the staffing requirements necessary to adjudicate workload receipt (for example, applications and petitions) forecasts at target processing times.

[273] Information provided by USCIS (Apr. 20, 2020).

[274] *Id.*

[275] Information provided by USCIS (Apr. 24, 2020).

[276] Information provided by USCIS (Apr. 22, 2020).

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Figure 4.5: USCIS Asylum Division—Historic Hiring

Staffing Category	2015	2016	2017	2018	2019	2020
Federal Employees (starting)	1,037	1,153	1,449	1,612	1,637	1,710
All Staff Onboard	726	989	1,052	1,122	1,373	1,684
Federal Employees Asylum Officers (starting)	425	533	625	686	686	769
Asylum Officers Onboard	349	500	546	542	552	866
Staff Growth	285	116	296	163	25	73
Staff Growth (Asylum Officers)	52	108	92	61	0	83
USCIS Details to Asylum	45	12	15	81	193	171
Asylum Staff Temporarily Assigned to USCIS (RAD)	0	200 TDYs	42 TDYs	0	0	0
Asylum Staff Temporarily Assigned to the Border	45	444	311	498	406	178

Source: Information provided by USCIS (Apr. 6, 2020).

for credible fear and reasonable fear screenings.[277] This resulted in a decline in the number of new affirmative asylum cases being processed by the asylum offices.

Migrant Protection Protocols. In January 2019, DHS initiated the Migrant Protection Protocols (MPP), which allows DHS to return a third-country asylum seeker to Mexico while awaiting expedited removal proceedings. DHS instituted MPP in response to the shifting demographics of the apprehensions of those seeking to unlawfully enter the United States.[278] In FY 2009, 91 percent of those apprehended were Mexican nationals; by FY 2019 that number had dropped to 19 percent. At the same time, individuals apprehended from the Northern Central American countries rose to over 70 percent.[279]

DHS implemented MPP to "help restore a safe and orderly immigration process, decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, national security, and public safety, while ensuring that vulnerable populations receive the protections they need."[280] A CBP officer controls the majority of the MPP review. If the person affirmatively asserts a fear of returning to Mexico, the CBP officer must consider taking the foreign national out of the MPP program.[281] Once this happens, the CBP officer must refer the person to a USCIS asylum officer for a fear assessment screening. If the asylum officer assesses that the person is "more likely than not" to face persecution or torture in Mexico, the individual may not be processed for MPP.[282] CBP officers retain all existing discretion to process the person for any other available disposition, including expedited removal, issuance of Form I-862, *Notice to Appear*, review of waivers, or requests for parole.[283]

By October 2019, USCIS had completed over 7,400 MPP fear assessments.[284] Of those, approximately 13 percent received positive fear screening determinations, meaning they successfully demonstrated a fear of returning to

[277] Information provided by USCIS (Apr. 24, 2020). The short-term nature of these assignments explains why their number exceeds the number of available staff to fill them.

[278] DHS Document, "Assessment of the Migrant Protection Protocols (MPP)," p.1 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020). *See also* DHS Press Release, "Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration" (Dec. 20, 2018); https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration (accessed May 27, 2020). *See also* DHS Press Release, "Migrant Protection Protocols" (Jan. 24, 2019); https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols (accessed May 27,2020). *See also* INA § 235(b)(2)(C).

[279] Information provided by the DHS Office of Information Statistics (Jun. 4, 2020).

[280] DHS Press Release, "Migrant Protection Protocols" (Jan. 24, 2019); https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols (accessed May 27, 2020).

[281] CBP Document, "MPP Guiding Principles," p. 1 (Jan. 28, 2019); https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf (accessed Apr. 9, 2020).

[282] *Id.*

[283] *Id.* p. 2.

[284] DHS Document, "Assessment of the Migrant Protection Protocols (MPP)" p. 5 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020).

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Mexico to await their immigration proceedings.[285] During that same timeframe, DHS had returned more than 55,000 persons claiming asylum and others to Mexico to await asylum hearings.[286]

COVID-19 and the Suspension of In-Person Interviews. On March 18, 2020, USCIS suspended routine in-person services to help slow the spread of COVID-19. This included USCIS asylum offices and ASCs used for collecting biometrics. On average, USCIS asylum offices conduct between 2,000 to 4,500 interviews a month; these interviews were not taking place during the period the offices remained closed.

As this Report was being finalized, USCIS began reopening its offices on June 4, 2020, as part of a staggered reopening plan.[287] At a minimum, USCIS lost the ability to conduct at least 4,000 and perhaps as many as 12,000 asylum interviews. USCIS is reopening its offices in a gradual and measured way, resulting in fewer interviews. USCIS asylum offices face another challenge with COVID-19 on how to address the pending backlog, especially in light of thousands of missed interviews and reduced capacity for the foreseeable future.

Additionally, USCIS recently proposed a request to Congress for a $1.2 billion appropriation to assist in covering the losses in application filings.[288] "Given the unprecedented nature of the global pandemic, there is no historical data that can be used to project the scope and duration of COVID-19's impact on USCIS' revenue," USCIS' Deputy Director for Policy was reported to have written in an email to employees. "USCIS will exhaust its funding this summer, and without congressional intervention, we risk not being able to make payroll and will have to take drastic actions to keep the agency afloat."[289] How this will impact USCIS' ability to address the asylum backlog is unclear at this time, but will certainly diminish operations.

Collectively, these events, both predictable and unpredictable, have impacted USCIS' ability to reduce its pending affirmative asylum backlog.[290]

3. Measures Taken to Address the Backlog and Reduce Processing Delays

The stress placed on the U.S. immigration system by the surging number of asylum claims is multi-faceted and has accordingly called for a multi-faceted approach to deal with it. Over the last few years, USCIS has taken several measures to address its backlog, which has reduced incoming receipts but not the number of pending cases. See Figures 4.3 and 4.4 above.[291] From changing how it schedules interviews, to lifting hiring freezes, to amending regulations and processes to mitigate incentives to file a *pro forma* Form I-589, DHS has made substantial efforts to clear the path to reduce its pending affirmative backlog.

LIFO Processing. To "stem the growth of the agency's asylum backlog" and "deter those who might try to use the existing backlog as a means to obtain employment authorization," USCIS in January 2018 returned to the "Last-in, First-out" (LIFO) workflow process that had been in place for nearly 20 years from 1995 to 2014.[292] The agency explained that LIFO processing would "allow USCIS to identify frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and place those individuals into immigration proceedings."[293] The now-operative LIFO scheduling methodology (which replaced

[285] *Id.*

[286] DHS Document "Assessment of the Migration Protection Protocols (MPP)" p. 2 (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed May 5, 2020). The U.S. Supreme Court recently issued a stay of a preliminary injunction granted by the Northern District of California. *Innovation Law Labs, et al v. Nielsen*, 3:19-cv-0087 (N.D. Cal. Feb. 14, 2019). On June 16, 2020, DHS and DOJ announced the postponement of MPP hearings and in-person document service through, and including, July 17, 2020. When conditions are deemed safe, the Departments will provide notice 15 days prior to resumption with additional, location-specific information. Individuals should continue to check on case status in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal. *See* DHS Webpage, "Joint DHS/EOIR Statement on MPP Rescheduling" (Jun. 16, 2020); https://www.dhs.gov/news/2020/06/16/joint-dhseoir-statement-mpp-rescheduling (accessed Jun. 22, 2020).

[287] USCIS Webpage, "USCIS Response to COVID-19" (May 7, 2020); https://www.uscis.gov/about-us/uscis-response-covid-19 (accessed May 6, 2020).

[288] Eric Katz, "Employees Concerned After Agency Threatens Furloughs Over Budget Shortfall" (May 22, 2020); https://www.govexec.com/pay-benefits/2020/05/employees-concerned-after-agency-threatens-furloughs-over-budget-shortfall/165615/ (accessed May 27, 2020). *See also* USCIS Webpage, "Deputy Director for Policy Statement on USCIS' Fiscal Outlook" (Jun. 25, 2020); https://www.uscis.gov/news/news-releases/deputy-director-policy-statement-uscis-fiscal-outlook (accessed Jun. 28, 2020).

[289] *Id.*

[290] At present, this office lacks sufficient information to report on pilot screening programs instituted in the fall of 2019 and known as "Prompt Asylum Screening Review" (PASR) or "Prompt Asylum Case Review" (PACR) and "Humanitarian Asylum Review Process" (HARP). They may be the topic of future study.

[291] End of Fiscal Year asylum data posted on USCIS Webpage, "Immigration and Citizenship Data;" https://www.uscis.gov/tools/reports-studies/immigration-forms-data (accessed May 6, 2020).

[292] USCIS Press Release, "USCIS to Take Action to Address Asylum Backlog" (Jan. 31, 2018); https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog (accessed Jun. 8, 2020).

[293] *Id.*

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the "First-in, First-out" method used from 2014 to 2018, a period in which the backlog increased approximately 450 percent) prioritizes newly-filed applications and maintains the statutory requirement of an interview (in the absence of exceptional circumstances) within 45 days of filing an application.[294] With the return to LIFO scheduling, USCIS also started scheduling asylum interviews using the following order of priority for those cases that fall under the jurisdiction of the nine primary asylum office locations:

> First Priority: Rescheduled interviews.[295] These include applications that were scheduled for an interview, but the interview had to be rescheduled either by USCIS or at the applicant's request.
>
> Second Priority: Applications pending 21 days or less.[296]
>
> Third Priority: All other pending affirmative asylum applications are scheduled for interviews starting with newer filings and working back toward older filings.[297]
>
> Fourth Priority: All pending affirmative asylum applications that are over 100 days old.[298]

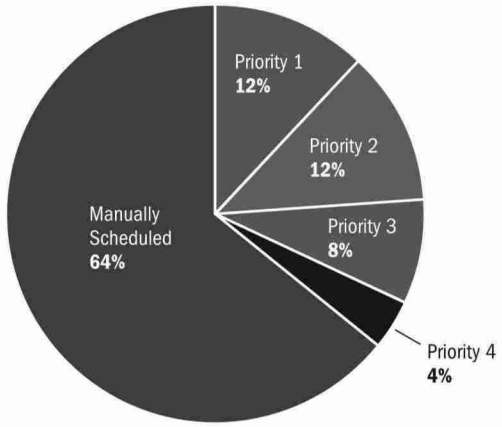
Cases subject to interviews at "circuit ride" locations (generally a USCIS field office situated closer than the asylum office to an applicant's residence) do not fall under the Second Priority's 21-day time frame. Rather, the Asylum Division schedules these cases for interviews as resources permit.[299] Additionally, asylum offices accept expedite requests for emergency situations.[300]

These priorities are automatically calculated in the Asylum Division's case management system when scheduling affirmative asylum interviews. According to USCIS, most interview slots are taken by the first and second priorities, giving little movement to the Third Priority and older cases.[301]

From FY 2015 to FY 2020, Quarter 2, USCIS reduced the average time it took from the occurrence of an interview to issuing a decision. In FY 2015, USCIS asylum offices averaged 82 days from conducting an interview to completing an asylum application. In FY 2018, when USCIS instituted the LIFO processing, interview to completion time dropped from 74 days to 46 days. In FY 2020, completions were averaging 18 days.[302]

In November 2018, the Asylum Division started using Global, a cloud-based case management system to track priorities for interview assignments. The Asylum Division, however, still manually schedules most of its interviews without tracking the priority category. See Figure 4.6 *(USCIS Affirmative Asylum Interview Scheduling)*.[303]

Figure 4.6: USCIS Affirmative Asylum Interview Scheduling



Source: Information provided by USCIS (Apr. 6 and May 12, 2020).

Expanded Hiring Opportunities for the USCIS Asylum Division. USCIS has exercised every opportunity to hire new asylum officers. Routinely exempt from agency-wide hiring freezes,[304] the Asylum Division has more than doubled its staffing allocations from 2012 to 2020. See Figure 4.5 *(USCIS Asylum Division—Historic Hiring)*. USCIS has allowed each asylum office to prioritize its workforce, leverage skillsets and strategize

294 INA § 208(d)(5); 8 U.S.C. § 1158(d)(5)(A)(ii).
295 USCIS Webpage, "Affirmative Asylum Interview Scheduling" (Jan. 26, 2018); https://www.uscis.gov/affirmative-asylum-scheduling (accessed Apr. 9, 2020).
296 *Id.*
297 *Id.*
298 Information provided by USCIS (Apr. 24, 2020).
299 USCIS Webpage, "Affirmative Asylum Interview Scheduling" (Jan. 26, 2018); https://www.uscis.gov/affirmative-asylum-scheduling (accessed Apr. 9, 2020).
300 Information provided by USCIS (Apr. 23, 2020).
301 Information provided by USCIS (Apr. 24, 2020).
302 *Id.*
303 *Id.* For background on Global, *See* "Privacy Impact Assessment Update for the USCIS Asylum Division DHS/USCIS/PIA-027(d)" (Sept. 27, 2018); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-asylum-september2018.pdf (accessed Jun. 10, 2020).
304 Eric Katz, "Trump Freezes Hiring for Immigrant Services" (Feb. 24, 2020); https://www.govexec.com/workforce/2020/02/trump-freezes-hiring-immigrant-services/163282/ (accessed Apr. 9, 2020). USCIS recently implemented an agency-wide hiring freeze that did not exempt the Asylum Division. This announcement was based on a severe deficit in collected fees due to a decline in receipts.

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on how best to attend to its workload.[305] Nevertheless, these hiring increases have not been sufficient to reduce the number of pending affirmative asylum applications. The overwhelming demand on the Asylum Division from the surge in new asylum cases has swallowed any added benefits USCIS' hiring and strategic workforce management could have made in reducing the backlog.

USCIS Asylum Vetting Center. The Ombudsman's 2019 Annual Report provided a comprehensive review of USCIS' Asylum Vetting Center (AVC).[306] The AVC will eventually perform as the receipting center for all affirmative I-589 filings, replacing the Nebraska Service Center (NSC) in that capacity. Its functions will include:

- Responsibility for pre-screening all new asylum filings for public safety and national security threats;
- Support for large-scale national fraud investigations, scanning and using technology to review text analytics data from asylum filings to identify national fraud trends and patterns; and
- Coordination of national backlog reduction efforts, centralizing management of all files for backlogged cases, distribution of cases and review of post-adjudication asylum termination requests and establishing a timely records distribution system to support improved asylum field office adjudication efficiencies.[307]

The full functioning of the AVC has not been achieved due to construction delays for its physical premises.[308] The AVC will lift much of the administrative burden from asylum officers, giving them more time to focus on adjudicating the merits of each application. These advancements are on hold while USCIS awaits the standing up of this center.

DHS Regulatory and Asylum Program Changes. DHS has proposed or implemented several regulations to address the shift in migrant populations seeking relief at the U.S. border, as well as to eliminate any incentive to file a *pro forma*, frivolous or fraudulent affirmative asylum application to obtain an employment authorization document (EAD).

Modification of Asylum Eligibility and Procedural Requirements. In July 2019, DOJ and DHS implemented an interim final rule that requires foreign nationals to seek protection in a third country through which they transited *en route* to the United States before being eligible to apply for asylum in the United States.[309] The bar applies prospectively to people entering the United States on or after July 16, 2019.[310] This bar mostly impacts people migrating from the Northern Central American countries of Honduras, Guatemala and El Salvador who transit through Mexico, and other countries, to reach the U.S. Southern border. Asylum officers and immigration judges must now apply the third-country transit bar when conducting fear screenings and determining asylum eligibility. While this bar prevents many foreign nationals from seeking asylum, it does not bar them from filing a request for relief under CAT.

As an interim final rule, the so-called "third-country bar" went into effect the day it was published in the Federal Register. The comment period closed on August 15, 2019. The Departments received 1,847 comments from the public.

Removal of the 30-Day Processing Provision for Asylum Applicant Work Authorizations. In September 2019, USCIS issued a proposed regulation to remove the agency's 30-day processing requirement for asylum-based EADs.[311] DHS proposed the rule "to eliminate the 30-day processing provision at 8 C.F.R. § 208.7(a)(1) because of the increased volume of affirmative asylum applications and accompanying EAD applications, over two decades of intake changes and EAD production, and the need to appropriately vet applicants for fraud and national security concerns."[312] According to the rule, elimination of the 30-day timeframe would provide flexibility for "DHS to meet its core missions of enforcing and administering our immigration laws and enhancing security."[313]

The comment period for this proposal closed on November 8, 2019, with USCIS receiving 3,245 public comments. The final rule was published as this Report was being finalized, essentially unchanged, with an effective date of

[305] Information provided by USCIS (Apr. 21, 23, and 24, 2020).
[306] *See* Ombudsman's Annual Report 2019, p. 56.
[307] Ombudsman's Annual Report 2019, p. 60.
[308] Information provided by USCIS (Apr. 24, 2020).
[309] "Asylum Eligibility and Procedural Modifications," 84 Fed. Reg. 33829, 33830 (July 16, 2019). Litigation delayed the effective date of the interim rule, but the U.S. Supreme Court lifted a national injunction, reinstating the interim rule on September 11, 2019. *See East Bay Sanctuary Covenant v. Barr*, 588 U.S. __ (Sept. 11, 2019).
[310] *Id.*
[311] "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 84 Fed. Reg. 47148 (Sept. 9, 2019).
[312] "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 84 Fed. Reg. at 47155.
[313] *Id.*

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August 21, 2020.[314] It is not yet clear what effect it might have on USCIS processing backlogs.

Adjustments to the Asylum Application, Interview Process, and Employment Authorization. In November 2019, USCIS proposed a regulation to extend the time asylum applicants must wait to apply for an EAD, along with other changes regarding EAD eligibility.[315] As stated in the rule, "DHS seeks to reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications to obtain employment authorization…or other non-asylum-based forms of relief such as cancellation of removal, and to discourage illegal entry into the United States."[316] In the rule, USCIS proposed actions to deter such affirmative asylum applications:

- Extend the waiting period from 150 days to a year before an applicant could apply for employment authorization;
- Eliminate the issuance of recommended approvals for a grant of affirmative asylum;
- Revise eligibility for employment authorization;
- Revise the provisions for EAD termination;
- Change provisions for filing an asylum application;
- Limit EAD validity periods;
- Incorporate biometrics collection requirements into the employment authorization process for asylum seekers; and
- Clarify employment authorization eligibility for those who have been paroled after being found to have a credible or reasonable fear of persecution or torture.

The comment period for this rule closed on January 13, 2020; USCIS received 1,077 public comments. DHS submitted a final rule to the Office of Management and Budget (OMB) on June 3, 2020.[317] On June 26, DHS published a final rule, effective August 25, 2020.[318] It is not known at this time what impact it might have on asylum processing backlogs.

Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear. As this Report was being finalized, DHS and DOJ published a proposed rule, to amend the regulations governing credible and fear determinations.[319] The rule proposes changes to the procedures for handling asylum, statutory withholding of removal, and withholding and deferral of removal under the CAT regulations, proposes new bars to asylum eligibility, seeks to limit frivolous or otherwise non-meritorious asylum applications and raises the standard for fear screenings.[320] The Notice of Proposed Rulemaking is open for comment until July 15, 2020.[321]

USCIS' Proposed Fee Rule. In November 2019, DHS published a new fee rule that would establish, for the first time, a $50 fee to file a Form I-589 with USCIS.[322] DHS cited the continuous, sizeable increase in affirmative asylum filings, and the growing processing backlogs as the primary reason for instituting a fee. USCIS has historically used fees paid from other benefit requestors to cover the costs of processing asylum applications. DHS asserted that the minimal fee of $50 would alleviate the pressure that the greatly increased asylum workload places on the administration of other immigration benefits and would mitigate the fee increase of other immigration benefit requests.[323]

Implementing Bilateral and Multilateral Asylum Cooperative Agreements. On November 19, 2019, DOJ and DHS issued an interim final rule to provide for the implementation of Asylum Cooperative Agreements (ACAs) between the United States and transit countries.[324] ACAs provide the Department the authority to remove nationals of these countries, who can now be repatriated

[314] "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 85 Fed. Reg. 37502 (Jun. 22, 2020).
[315] "Asylum Application, Interview, and Employment Authorization for Applicants," 84 Fed. Reg. 62374, 62388 (Nov. 14, 2019).
[316] "Asylum Application, Interview, and Employment Authorization for Applicants," 84 Fed. Reg. at 62375.
[317] Office of Management and Budget Webpage, "Office of Management and Regulatory Affairs (OIRA) Executive Order Submissions Under Review," (Jun. 3, 2020); https://www.reginfo.gov/public/do/eoReviewSearch (accessed Jun. 3, 2020).
[318] "Asylum Application, Interview, and Employment Authorization for Applicants," 85 Fed. Reg. 38532 (Jun. 26, 2020).
[319] "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review," 85 Fed. Reg. 36264 (Jun. 15, 2020).
[320] *Id.*
[321] *Id.*
[322] "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62318 (Nov. 14, 2019). An individual files a Form I-589 with EOIR when in removal proceedings. This is a defensive asylum application. The proposed rule does not require a fee for individuals filing before EOIR.
[323] *Id.*
[324] "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," 84 Fed. Reg. 63994 (Nov. 19, 2019).

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to a safe third country in which they can apply for protection. Aliens arriving at the U.S. border to seek asylum can be sent to an ACA partner country (as long as the individuals themselves are not nationals of that country), if that country will provide a "full and fair procedure" for determining their protection claims.[325] In certain circumstances, an ACA, in conjunction with INA § 208(a)(2)(A), bars a foreign national subject to the agreement from applying for asylum in the United States and provides for the person's removal, pursuant to the agreement, to a country that will provide access to a "full and fair procedure" for determining the protection claim.[326] The rule broadens the procedures to include expedited removal and INA § 240 proceedings for determining whether someone is subject to an ACA or falls within one of the exceptions.[327]

Additionally, the rule establishes a credible fear screening mechanism to evaluate whether an alien who would otherwise be removable can establish that it is "more likely than not," instead of the lower standard of a "significant possibility," that they would meet the burden of proving their asylum claim. The rule applies to all ACAs in force between the United States and countries other than Canada, including bilateral ACAs recently entered into with El Salvador, Guatemala, and Honduras.[328] The Guatemala ACA was signed by the parties on July 26, 2019.[329] The Honduras ACA was signed by the parties on September 25, 2019, and the El Salvador ACA was signed on September 20, 2019.[330] There is ongoing litigation on the ACA that may interfere with the enforceability of some of the agreements in prohibiting asylum applications being filed in the United States.[331]

These proposed rules have the potential to significantly change the inflow of affirmative applications but may not impact the pending caseload with USCIS. These proposed solutions will not play out until the agency can implement the rules.

CBP Officers Conducting Credible Fear Screenings under Delegated Authority from USCIS. Pursuant to a Memorandum of Agreement (MOA) between CBP and USCIS, the asylum office is training CBP officers to conduct credible fear screenings. Under the INA's expedited removal provisions, credible fear screenings must be conducted by "asylum officers," which is defined as an "immigration officer who-

> (i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and
>
> (ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications."[332]

The CBP officers are temporarily assigned to work as asylum officers under the direction of the USCIS asylum office.[333] CBP officers receive two weeks of instruction (80 hours) with up to 120 additional hours of training and eventually, up to 140 hours of direct mentorship.[334] After training, the CBP officer conducts credible fear screenings as if he or she were a USCIS asylum officer. The CBP officers forward their screening assessments to a USCIS Supervisory Asylum Officer (SAO) to review and finalize the screening determination.[335] Due to the CBP officers' competing law enforcement duties, they are only permitted 180-day temporary assignments as asylum officers.[336] At present, it is not clear what long-term impacts these temporary assignments might have on reducing USCIS resource demands for border support operations.

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325 *Id.* *See* 84 Fed. Reg. 63996 Footnote 5: "This interim rule leaves in place the regulatory structure specific to the U.S.-Canada Agreement so as to avoid disruption to long-standing processes and expectations concerning implementation of that agreement. This rule will allow for implementation of ACAs that have a broader scope of applicability than the U.S.-Canada Agreement and, consequently, provides for a more robust threshold screening mechanism for evaluating whether an alien is properly removed subject to an ACA other than the U.S.-Canada Agreement, which is narrowly directed to third country nationals seeking to enter the United States at a U.S.-Canada land border port of entry."

326 *Id.* *See also* INA § 208 (a)(2); 8 U.S.C. § 1158 (a)(2).

327 An immigration judge shall apply the applicable regulations in deciding whether the individual qualifies for any exception under the Agreement that would permit the United States to exercise authority over the individual's asylum claim. *See* 8 C.F.R. § 1240.11(g)(3) and (h)(3).

328 "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," 84 Fed. Reg. 63994 (Nov. 19, 2019).

329 *Id.*

330 DHS Fact Sheet, "DHS AGREEMENTS WITH GUATEMALA, HONDURAS, AND EL SALVADOR" (undated), available at https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

331 *U.T. v. Barr*, Case 1:20-cv-00116-EGS (D.D.C. filed Jan. 15, 2020).

332 INA § 235(b)(1)(E); 8 U.S.C. § 1225(b)(1)(E).

333 Information provided by USCIS (Apr. 20, 2020).

334 *Id.*

335 Memorandum of Agreement Between U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) p. 3 (Jul. 10, 2017).

336 Information provided by USCIS (Apr. 20, 2020).

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All these programs have some impact on affirmative asylum processing, intended or not. Programs that train CBP officers to conduct credible fear interviews, for example, undeniably free up asylum officers, allowing them to focus instead on pending affirmative asylum applications. Regulations that deter economic migrants from crossing the U.S. border and filing non-meritorious asylum claims to obtain work authorization should reduce the number of officers required to conduct credible fear interviews. While USCIS, along with other DHS entities and DOJ, has adopted new and creative ways to resolve resource demands on the asylum program, there remain significant holes in the process.

KEY ISSUES REGARDING USCIS' AFFIRMATIVE ASYLUM BACKLOG

Starting as early as 2014, the United States experienced a surge of foreign nationals attempting to unlawfully cross its Southern border. At its peak last year, more than 4,800 aliens attempted to cross the border daily—representing an average of more than three apprehensions per minute.[337] While supporting operations to address this surge, and increasing its asylum workforce, USCIS has developed strategies "to reduce and ultimately eliminate the backlog of pending affirmative asylum cases combin[ing] strategic staffing increases with a broad range of efficiency measures for asylum office programs as well as other USCIS programs."[338] Gains on reducing the affirmative asylum backlog are yet to be seen. Understanding that many of the challenges USCIS faces with its affirmative asylum backlog are outside of the agency's control, the Ombudsman's Office believes it remains useful to summarize the outstanding programmatic and policy issues relevant to the backlog and to individuals applying for asylum.

RECOMMENDATIONS

1. **Provide Estimates of Affirmative Asylum** Application Processing Times.

USCIS publishes processing times for most form types on its website.[339] However, it does not publish processing times for its affirmative asylum queue. An applicant wanting to learn the processing time for an affirmative asylum case is referred to USCIS' Affirmative Asylum Interview Scheduling webpage, which lists only the priorities as described earlier in this article.[340] Given the variability in scheduling asylum interviews across the country, and given that the limited available data shows most interviews are still manually scheduled, USCIS should consider collecting scheduling data on these cases[341] and at minimum posting online what date range of cases it is currently processing at various asylum offices. This would be of particular value to managing the expectations of individuals in queue and in assisting legal service providers in managing caseloads and allocating resources.

2. Make Public USCIS Strategies to Reduce the **Affirmative Asylum Backlog, Perhaps as Part of** a Request for Congressional Funding.

USCIS strategies to reduce and eliminate the backlog of pending affirmative asylum cases is of concern to individuals and to legal service providers, and of course to Congress; if USCIS is seeking appropriated funding from Congress in the wake of COVID-19, there may be utility in pointing out the reduction efforts being made, as well as potential resource requirements specifically aimed at reduction. Now is the time to act.

In January 2018, USCIS stated its intention to address the asylum backlog.[342] As a start, it implemented a scheduling priority to address the growing backlog. That policy change was never intended to address the cases that were currently pending but instead to reduce the incoming receipts.[343] With a reduced flow of cases, USCIS could then focus on the pending backlog. Delays in the

[337] DHS Document, "Assessment of the Migrant Protection Protocols (MPP)" (Oct. 28, 2019); https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed Apr. 9, 2020).

[338] Information provided by USCIS (Apr. 24, 2020).

[339] USCIS Webpage, "Check Case Processing Times;" https://egov.uscis.gov/processing-times/ (accessed May 12, 2020).

[340] USCIS Webpage, "Affirmative Asylum Interview Scheduling" (Jan. 26, 2018); https://www.uscis.gov/affirmative-asylum-scheduling (accessed May 12, 2020).

[341] Information provided by USCIS (Apr. 24, 2020).

[342] *See* USCIS Webpage, "Affirmative Asylum Interview Scheduling" (Jan. 26, 2018); https://www.uscis.gov/affirmative-asylum-scheduling (accessed Apr. 9, 2020).

[343] Information provided by USCIS and stakeholders (Apr. and May, 2020).

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timely processing of affirmative asylum applications are detrimental to those with legitimate claims and serve as inducement to those seeking to file *pro forma* or fraudulent asylum claims to enter and remain in the United States for purposes of securing employment.

USCIS' backlog has continued to grow despite its efforts to reduce it. USCIS has over 350,000 affirmative applications awaiting completion.[344] This workload has steadily grown each month since the surge of filings began in 2014. See Figure 4.3 and Figure 4.5 *supra.*

3. Increase National Outreach Efforts.

The USCIS Asylum Division should return to its practice of holding national quarterly stakeholder engagements, where USCIS explained processing data, provided policy updates and responded to public questions. It was an opportunity to inform the community on the current activities of the agency. It was also an opportunity for the agency to hear from the community on issues of concern or growing trends.

Additionally, increasing national engagements may result in more consistent delivery of services between local asylum offices, where stakeholders report a variety of communication between asylum offices.[345] Some USCIS asylum offices maintain local email addresses and communication lines for the community to submit questions, requests for expedites and concerns with cases.[346] Other USCIS asylum offices rarely hold engagements and are not regularly engaging the public.[347] There are numerous objective benefits that ensue from local and national outreach, but especially at a national level. Consistent information regarding particularly substantive issues may result in more coherent and professional filings with fewer questions or issuance of RFEs. Operational information disseminated broadly may in turn generate fewer calls to the USCIS Contact Center, fostering greater understanding to inform and reduce unnecessary anxiety. Entrusting public engagements entirely to the local asylum offices, however, may hamper the offices' ability to adjudicate affirmative asylum applications and result in inconsistent services to the public.

4. Conduct Triage on Backlogged Cases to Determine Whether They Should Remain in the Backlog.

The challenge of the backlog is not only its size, but the number of meritorious claims that are in the backlog and remain unadjudicated. If reducing the backlog will assist USCIS in prioritizing potentially meritorious claims, there is value in determining what kinds of cases should be removed from the backlog due to an actual or near-term change in status. Such activities would presumably be less resource intensive (requiring system-wide queries of USCIS databases) than opening one case at a time.

Such measures may include the systematic identification of cases that may be dismissed pursuant to 8 C.F.R. § 208.14(g). Given the long pendency of many asylum applications with USCIS, it is likely that numerous applicants for asylum have obtained lawful permanent residence by other means, such as through employment-based adjustment of status or family-based adjustment of status. The regulation provides that, "[i]f an asylum applicant is granted adjustment of status to lawful permanent resident, [USCIS] may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice…."[348] The asylum seeker is then provided 30 days in which to submit a written request to USCIS for adjudication of the asylum application. If the individual does not respond within 30 days, USCIS "may presume the asylum application abandoned and dismiss it without prejudice."[349] Presumably USCIS would, through its Central Index System, be able to identify in the universe of asylum applicants those who are now lawful permanent residents (LPRs), and provide them the opportunity to abandon their claims, and to dismiss without prejudice those who fail to respond.

Additionally, USCIS can conduct systemic records checks to determine whether aliens in the affirmative asylum backlog are the beneficiaries of approved immigrant visa petitions and who may have current or near current priority dates, USCIS can in good faith conclude such cases are not a priority and suspend asylum processing, thereby reducing its workload. USCIS could also use other DHS systems, such as the CBP data system Arrival and Departure Information System (ADIS), to determine

[344] Information provided by USCIS (Apr. 24, 2020).
[345] Information provided by stakeholders (Apr. and May, 2020).
[346] Information provided by USCIS (Apr. 24, 2020).
[347] Information provided by stakeholders (May 4, 2020).
[348] 8 C.F.R. § 208.14(g).
[349] *Id.*

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asylum applicants' status and the impact that status would have on asylum eligibility.[350]

5. When Available, Provide Public Information on Impacts of COVID-19 Limitations to Set Expectations and Assist Stakeholders.

As we finalize this Report, USCIS is just commencing its reopenings in the wake of COVID-19 closures and has not yet published a plan on how it will resume interviewing affirmative asylum applicants as the spread of COVID-19 slows. The regulations require an in-person interview for an affirmative asylum application.[351] For FY 2019, USCIS conducted an average of 5,133 interviews a month.[352] Naturally, every month that USCIS is closed to the public adds to USCIS' backlog as it continues to accept Form I-589 applications. USCIS has an opportunity now, in the easing due to COVID-19, to engage stakeholders on the actions that it is undertaking. A series of teleconferences and webinars, with an opportunity for public input and interaction, would enable USCIS to understand and respond to the most pressing issues for its stakeholders. The regulated community, in turn, benefits by receiving that information upon which it can act more confidently. As always, the Ombudman's Office remains available to assist USCIS in such structured outreach efforts.

6. Improve USCIS Data to Support the Integrity of the Affirmative Asylum Program and Decisions Being Made About Program and Policy Concerns.

Despite the many program and policy changes USCIS has made to address the affirmative asylum backlog, existing data collection and reporting do not appear to measure the impact of such changes. More refined data collection would allow the agency to better track the outcomes of new policies and program changes. Because the pending backlog continues to grow, USCIS cannot, with certainty, identify which policies are working and which are ineffective. Better metrics and tracking measures would allow the agency to prioritize its resources to policies and measures that achieves its priorities – such as program integrity and national security.[353]

7. Prepare for How to Manage Resources if Faced with Another Suspension of In-person Interviews, Such as the One Experienced During the COVID-19 National Emergency.

It is conceivable that USCIS will need to close its offices again in response to COVID-19 or another pandemic. USCIS should review its authorities, workforce capabilities and workload to identify how to maintain continuity if directed to suspend in-person interviews in the future. Implementing a transparent and forward-leaning plan, and sharing those intended efforts, would position USCIS to lead in a time of crisis and maintain continuity, bolstering confidence in the agency with regard to both the public and Congress.

CONCLUSION

Changes in DHS policies and proposed regulations are likely to decrease the in-flow of affirmative asylum applications, but results stemming from these changes will be slow moving. USCIS should consider alternatives to effectively reduce the pending backlog, while carefully monitoring the impact of the recent program changes.

[350] *See* Privacy Impact Assessment, "Arrival and Departure Information System (ADIS) DHS/CBP/PIA-024(c)" (Jan. 3, 2020); https://www.dhs.gov/sites/default/files/publications/privacy-pia-024c-adis-january2020.pdf (accessed Jun. 11, 2020).

[351] INA § 208(d)(5)(A); 8 U.S.C. § 1158(d)(5)(A).

[352] USCIS Data, "Affirmative Asylum Statistics: September 2019" (Jan. 14, 2020); https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PEDAffirmativeAsylumStatisticsFY2019.pdf (accessed Apr. 10, 2020).

[353] *See* "Spotlight: The DHS Immigration Portal" *infra* for additional information on improving DHS information sharing capabilities.

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Spotlight: DHS Immigration Data Integration Initiative

This study was a collaboration with the DHS Office of Immigration Statistics, which kindly donated its time and expertise in providing the content.

The Department of Homeland Security's (DHS) longstanding challenges with collecting, storing, sharing, and analyzing immigration data are evidenced by the independent and piecemeal development of data systems and processes among its component agencies to leverage immigration enforcement and benefits information. External to DHS, partners such as the U.S. Department of Health and Human Services, the U.S. Department of State (DOS), the U.S. Department of Labor (DOL), and the U.S. Department of Justice (DOJ) have their own independent systems and databases to support their work with those aspects of the immigration system over which they have jurisdiction, namely Unaccompanied Alien Children (UAC), visa issuance, employment-based immigration, and oversight of immigration court cases, respectively. These many stand-alone systems lack connectivity and consistency, and components within DHS and agencies outside it are often unable to access each other's data in a timely manner.

This lack of access impedes an effective administration of the immigration system in numerous ways. Accurate data in real time is essential to the day-to-day administration of programs, to effectively direct operations, and ensure

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efficient deployment of resources. It is also critical to developing sound policies that will have a direct impact. More significantly, accurate information feeds into the future—informing administrative and legislative efforts to improve the immigration system.

To address these issues, in September 2016, the Department launched the Immigration Data Integration Initiative (IDII). The IDII was tasked with: (1) establishing Department-wide immigration data standards; (2) giving DHS data stakeholders timely access to relevant data from across the Department; and (3) ensuring that immigration records are fully linkable across DHS data systems for validated, authoritative statistical reporting across the Department. The effort is led by the Office of Immigration Statistics (OIS) and is co-chaired by the DHS Office of the Chief Information Officer (OCIO), with oversight by an Executive Steering Committee (ESC) that includes all of the Department's operational and headquarters components with immigration responsibilities. As the IDII nears its four-year anniversary, it is working closely with the newly-appointed DHS and Component Chief Data Officers (CDO) to begin implementing immigration data standards, collaborating with U.S. Customs and Border Protection's (CBP's) Unified Immigration Portal (UIP) team to improve enterprise-wide access to standardized data, and delivering authoritative statistical Immigration Data as a Service (ImmDaaS) to internal and external stakeholders.

BACKGROUND

The Homeland Security Act of 2002 established DHS out of numerous existing agencies, as well as creating new ones. Several DHS components were tasked with the administration of certain immigration responsibilities. Even though they were unified in a single department, each of DHS's legacy components retained ownership and management of their own data systems. As a result, the Department and its interagency partners currently maintain over four dozen separate immigration data systems. Each department and their sub-agencies have developed these databases to track the people and processes within their purview. However, the resulting proliferation of systems results in difficulty obtaining unified, uniform, real-time information on individuals progressing through immigration processes, and inhibits consistent records.

The resulting lack of reliable information has created numerous problems for the broad U.S. immigration system, such as:

- Inefficient tracking of individuals through the immigration lifecycle;
- Lack of transparency into immigration processes and data to effectively determine and maintain compliance with applicable laws and regulations;
- Ineffective sharing of data on individuals to effectively support immigration functions;
- Inability to produce timely, consistent, and reliable reports on a full range of immigration processes and outcomes; and
- Inability to evaluate how changes to policy or procedures would impact immigration processes due to lack of access to the valid data to perform necessary analysis.

In addition to these challenges, the compartmentalized approach to data associated with immigration introduces other inefficiencies. Agencies lack direct access and perhaps understanding of each other's data, requiring a multitude of interagency agreements and cumbersome interfaces. Changes to agreements often require a laborious re-development and review of documents. Additionally, the system-to-system approach for data exchange is inefficient and causes delays in data sharing.

At the same time, DHS also lacks a complete set of common data standards—i.e., shared data codes, definitions, and formats. While OIS manages long-standing Immigration Data Management System (IDMS) tables that include such standards, not all systems follow the IDMS standards. Until recently, DHS had not implemented a policy or designated an oversight body with authority to make and enforce enterprise-wide data standards.

This siloed data ecosystem hinders both operational and statistical missions across the Department as well as across all the agencies with immigration equities. On an operational level, non-standardized data is difficult to share across systems—a particularly burdensome problem with respect to immigration data since almost everyone who applies for or receives an immigration benefit or is subject to an immigration enforcement action touches multiple data systems. Operational personnel are frequently required to re-enter information in multiple databases and/or manually search multiple others, taxing an overburdened system and creating opportunities for data entry errors. Mismatched data formats also cause records

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to be dropped, a problem that can lead to burdensome forensic efforts to recreate lost data and lost records that simply never get corrected.

On a statistical level, non-standardized data and siloed systems are major obstacles to timely and accurate reporting and analysis. Reporting offices must clean and validate data from multiple systems that are supposed to provide the same or similar information. The lack of enterprise-wide reporting rules means that different offices and agencies may produce conflicting results based on dissimilar data, or delay reports until differences can be resolved. The inability to reliably match individual-level records across multiple systems without a great deal of work is also an obstacle to end-to-end analysis and reporting, making it difficult and time-consuming to conduct complex program evaluations or conduct other evidence-building activities.

IDII DATA GOVERNANCE

In 2016, the DHS Secretary directed a focus on improved data governance and information technology (IT) systems and practices to address these types of challenges within the Department. In DHS Memorandum 16-3048, "Improving Immigration Data Analysis and Reporting," the Secretary directed the OIS to work with the OCIO, the Department's operational components, and other federal immigration partners to develop a more fully-integrated immigration data environment and to strengthen the Department's systems for analyzing and reporting immigration data.

The goals of the resulting IDII are to:

- Establish uniform Department-wide data standards (including a common data glossary, documentation of data processes, and measures to ensure data quality);
- Develop the necessary policies to prioritize and facilitate the real- or near real-time access to necessary immigration data; and
- Ensure that records are fully linkable across immigration data systems.

IDII's data governance is managed by the IDII Data Governance Working Group (DGWG). The IDII DGWG worked with subject matter experts across the Department and interagency to develop a list of data elements to prioritize for standardization. These standards were prioritized based on their centrality to operational and statistical missions and the demand for standards to facilitate information sharing and end-to-end reporting. The ongoing work of the DGWG is focused on continually assessing the prioritization of immigration data elements that require standardization as a need arises among immigration data stakeholders. The IDII DGWG convenes subject matter experts from across the Department and its interagency immigration partners to agree on baseline data standards to publish in a shared reference data repository.

As a data standard is baselined, the DGWG also works with stakeholders to develop the workflow to manage future changes to a published standard. The Data Change Request (DCR) is the online form DHS components use to submit a change request to a published standard. The DGWG also identifies a data steward for each standard who is a subject matter expert on the data being baselined. The data steward is an essential part of change management after a baselined standard is published. The data steward will vet and validate proposed changes to the data standard after a baselined data standard is available within the immigration domain. The DCR goes live for use when a baselined standard is published in the reference data repository and is the tool the data steward uses to manage and validate necessary changes to a data standard.

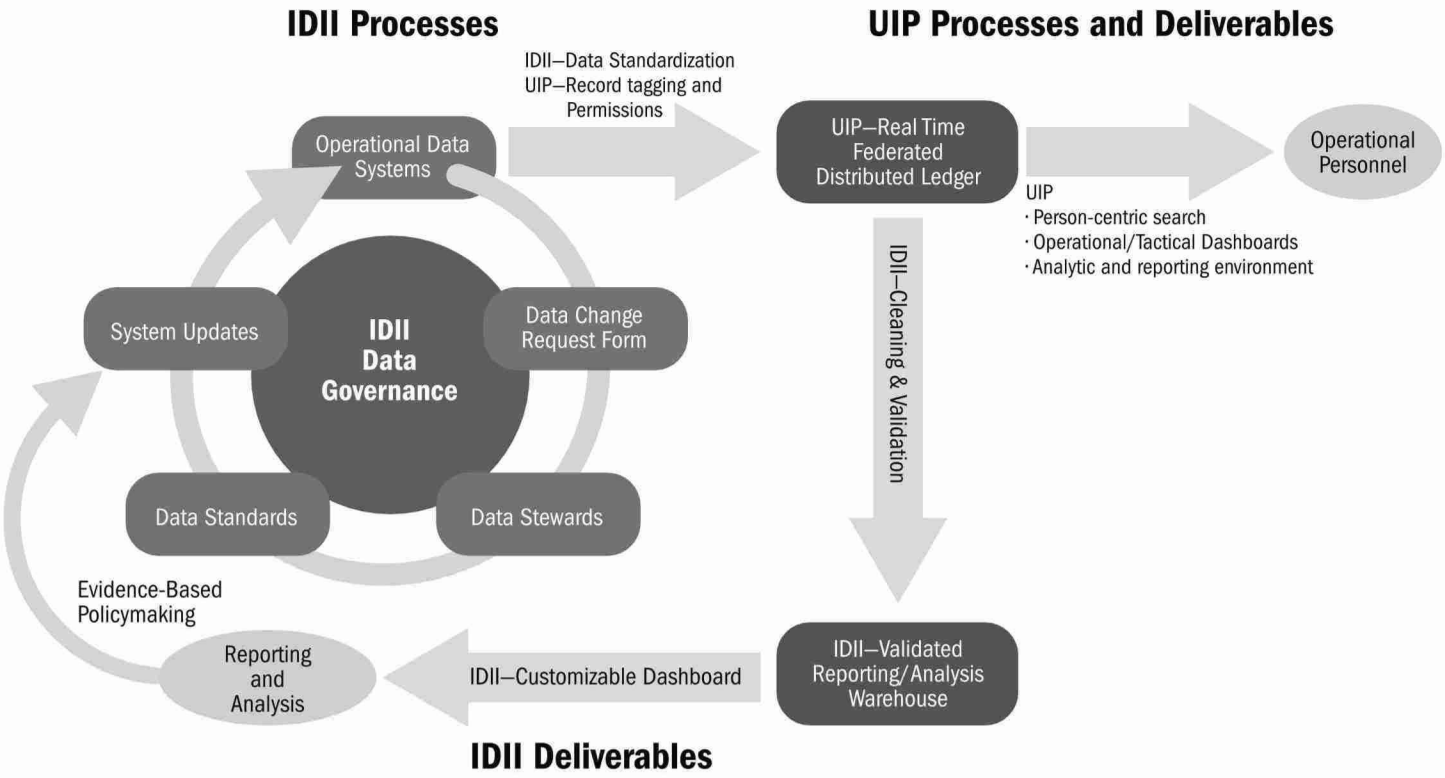
The IDII's approach to data governance is forward-leaning within the Department, and as such has partnered with other immigration stakeholders across the Department. For example, the IDII DGWG is working with CBP's UIP team to have UIP use the available published data standards when developing its dashboards. The UIP is being developed in response to a 2018 U.S. Government Accountability Office (GAO) report, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*[354] that examined the processes for tracking and reunifying separated families. Following the report, the Commissioner of CBP and the other immigration Component heads pledged to prevent future challenges by better connecting immigration databases. In April 2019, then-Acting Secretary Kevin McAleenan directed DHS to develop and establish the UIP as a federated technology platform to better integrate immigration data. The goal of the UIP is to permit agencies across the Federal government to efficiently and effectively manage their collective immigration data from the first to last encounters in the immigration process and

[354] *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border,* GAO-19-163 (Oct. 9, 2018); https://www.gao.gov/products/GAO-19-163 (accessed May 28, 2020).

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Figure 5.1: IDII-UIP Joint Processes and Deliverables



Source: Information provided by DHS OIS (May 15, 2020).

across agency boundaries. See Figure 5.1 *(IDII-UIP Joint Processes and Deliverables).*

Shortly after the UIP initiative was announced, the UIP and the IDII began efforts to leverage each other's work as much as possible as each continues to develop. The IDII will be responsible for implementing enterprise-level immigration data standards and will support UIP by helping to standardize immigration data as it is being absorbed into UIP's federated distributive ledger. Standardized data will support the UIP's core deliverables, including real-time, person-centric search tools and the creation of tactical and operational dashboards to support mission functions. The IDII will also leverage the UIP data warehouse to broaden and accelerate its access to operational data, which the IDII will clean, match, and de-duplicate to create a person-level enterprise data warehouse for reporting and analysis.

The UIP effort will support the IDII's enterprise reporting goals by expediting data aggregation. At the same time, the IDII's ongoing work to implement enterprise data standards will facilitate the standardization of data flowing into the UIP's platform to afford stakeholders easier access to reliable real-time information on the integrated platform. Enabling a single warehoused source of data and permitting access for information sharing across Federal government agencies increases transparency and will lead to better mission outcomes through an accurate, real-time, unified view of immigration data to determine status. By allowing for real-time access to standardized information, the joint IDII and UIP efforts will (1) enable a reduction in manual processes across multiple Component systems; (2) increase the rate at which operators can process foreign nationals; and (3) allow analysts to address reporting in order to improve decision-making and reduce errors when processing data.

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IDII DATA PROCESSING AND RECORD MATCHING

In addition to its data governance work, the IDII's Policy and Oversight Working Group (POWG) is working on improving data processing and record matching when OIS links records across the multiple operational datasets it receives to produce Department-level reports on immigration enforcement and processing activities. IDII's data policy work ensures that the OIS/IDII Flow Dataset and ImmDaaS tools adhere to all appropriate privacy and data security protections. The IDII data policy team works with DHS oversight bodies to advance the broader DHS data governance framework.

OIS ingests the operational data from DHS components and interagency partners and then cleans and validates the data to produce reportable records. These are linked records at the person-level to support end-to-end reporting and analysis. Under the IDII, OIS is working to speed and strengthen data processing and record matching to generate a single authoritative dataset (the "Flow Dataset") that can be used for enterprise-wide immigration reporting and analysis.

IMMIGRATION DATA AS A SERVICE

The IDII's long-term vision is to use the standardized immigration data that can be linked at the person-level to build ImmDaaS. ImmDaaS refers to products and user tools IDII makes available to allow DHS leaders, managers and operators to access the authoritative OIS/IDII Dataset for official DHS reporting and analysis. Successful implementation of ImmDaaS will permit stakeholders to utilize these datasets for official DHS reporting and analysis. OIS also produces and supports "downstream" data products that leverage the person-level Flow Dataset. The reporting capabilities will be expanded to provide DHS components and other Federal agencies with immigration equities with customizable data dashboards leveraging standardized person-level datasets to support authoritative analysis and reporting. Eventually, OIS will expand ImmDaaS tools to provide improved access to immigration data to Congress and the public as directed by the Foundations of Evidence-Based Policymaking Act (the "Evidence Act"). In turn, this information will allow Congress to have a clearer understanding of the state of the immigration system and the ability to project first and second-order effects of potential legislative changes to the system.

OVERSIGHT COMPLIANCE

Throughout all the above work, the IDII also considers current policies regarding data sharing to ensure that all the data standards and data products IDII produces adhere to all appropriate privacy and data security protections. IDII continues to work with DHS and interagency partners to draft data sharing agreements, as needed, and works with DHS oversight bodies to advance the broader DHS data governance framework.

TIMELINE

The IDII DGWG estimates that approximately 125 immigration data standards are required to meet the core governance demands within the immigration domain. Current plans call for this full suite of standards to be published to the Department's shared data governance center over the next 2 to 4 years (by the end of FY 2024), depending on available resources. As standards become available, their complete implementation also depends on establishing automated connections between the data governance center and DHS components source systems and data aggregators like the UIP. IDII and UIP are establishing the first of those connections in FY 2020, with planned extensions to core U.S. Immigration and Customs Enforcement (ICE) systems close behind.

With respect to data matching and improved ImmDaaS, OIS will provide an initial set of person-level data dashboards to select DHS users in FY 2020, with plans to expand the scope of coverage (to include all available immigration data) and access (to all DHS and interagency stakeholders) between 2021 and 2023, depending on available resources. Public-facing data tools will be made available between 2022 and 2024.

CHALLENGES

The work of establishing and implementing enterprise data standards and closer to real-time authoritative reporting based on person-level data is inherently difficult due to the scope and complexity of the immigration data eco-system. Each immigration standard requires collaboration of as many as a dozen or more subject matter experts, meaning hundreds of individuals will participate in standards development over the course of the IDII's publication effort, and roughly an equal number will be involved in connecting data systems to the data governance center and ensuring that systems are updated to reflect common standards. The effort is more difficult still because work

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within the immigration domain will complement and overlap with similar efforts across other domains (*e.g.*, law enforcement, human resources, emergency preparedness) and other levels of standardization (system-specific standards at the sub-domain level, and DHS- and U.S. government-wide standards at the supra-domain level). The breadth and complexity of the immigration data systems is naturally mirrored in the resulting mission sets: each of the end-state immigration data use cases, from operational missions at the border or benefits processing centers to statistical reporting and analysis missions, connect to a network of data systems that often span multiple DHS and partner agencies, further complicating the end-state implementation challenges.

Overcoming the complexity of the intertwined data systems involves two additional overarching challenges that stem from the fact that these efforts are fundamentally new to DHS. First, the Department lacks a robust and widely accepted set of data policies. In particular, because DHS has never previously implemented data standards on a wide scale, policies to assign responsibility for publishing standards that cross multiple systems remain nascent, and no policy exists to ensure that systems implement policies as they are published. Likewise, policies regarding the division of labor between statistical and operational data providers and between headquarters and DHS components are poorly developed.

Congress has provided statutory direction to resolve these policy challenges by explicitly tasking OIS and the Office of Strategy, Policy, and Plans with providing enterprise immigration standards, with ensuring the accuracy and reliability of DHS statistics and, more generally, by supporting the IDII. The Evidence Act provides additional governance infrastructure through the creation of the DHS Statistical Official (a position assigned to the OIS Deputy Assistant Secretary) and CDO, as well as the creation of the DHS Data Governance Council (DGC). OIS is working with the IDII ESC and the DHS DGC to establish clear DHS policies to support the successful implementation of data standards and of ImmDaaS for both statistical and operational mission sets.

A second overarching challenge, also stemming from the Department's relative inexperience with data standards and coordinated immigration reporting, is the lack of a robust IT infrastructure to support the IDII effort, including data governance resources and automated connections among diffuse data systems. In its capacity as IDII co-chair, the OCIO has taken on these challenges by selecting the Department's enterprise-wide data governance center and by establishing secure file transfer protocols to begin connecting source data systems to USCIS and OCIO server environments where IDII data may be stored and managed. Both IT efforts remain incomplete.

CONCLUSION

DHS has since its inception suffered not from a lack of immigration data, but instead from an abundance of data that does not lend itself to easy comparison. In taking significant steps to fix its longstanding challenges with immigration data, the Department has taken the lead among its Federal partners to provide a "one-stop shop" for data that meets established levels of standardization, searchability, and linkability. Moreover, by working to facilitate the real- or near real-time access to necessary immigration data, the Department is striving to produce a living repository that can ultimately provide all data stakeholders, with a need to know, access to the information. The capability will improve tracking of individuals through the immigration lifecycle, providing a common operational picture for all stakeholders; provide transparency into immigration processes and data to effectively determine and maintain compliance with laws and regulations; orchestrate sharing of data on individuals in support of immigration functions; and provide analytics capabilities that support operational and administrative decision-making as well as long-range planning. This not only benefits those with immediate decision-making responsibilities when encountering individuals in the system, but also those charged with administering and making recommendations on improving the system.

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Foreign Students and the Risks Surrounding Optional Practical Training

Responsible Offices: Student and Exchange Visitor Program, National Security Investigations Division, Immigration and Customs Enforcement (ICE); Service Center Directorate, USCIS

PRESIDENTIAL PROCLAMATION

Pursuant to the Homeland Security Act, the Ombudsman's Office is expected in its annual report to conduct full and substantive analysis of pervasive and serious problems encountered by individuals and employers in the adjudication and processing of immigration benefits, including other information that the Ombudsman deems advisable. In addition, as a component of the Department of Homeland Security (DHS), the Ombudsman's Office supports the Department's larger mission objectives, core values and guiding principles, which include contributing to the integrity of the immigration system while identifying systemic risks that threaten the security and prosperity of the United States. It was for these reasons that the

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Ombudsman's Office initiated research on the Optional Practical Training (OPT) program in December 2019.

As the Ombudsman's Office was drafting this study on the OPT program for inclusion in this year's Annual Report, President Trump on May 29, 2020, issued a *Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People's Republic of China*.[355] The Proclamation indicated that authorities from the People's Republic of China (PRC) were using "some Chinese students, mostly post-graduate students and post-doctorate researchers, to operate as non-traditional collectors of intellectual property," which represented a threat to the long-term economic vitality of the United States and to the "security of the American people."[356]

More specifically, the Proclamation suspended the entry of PRC nationals under F and J visas who are connected to entities that implement or support "the PRC's 'military-civil fusion strategy' . . . mean[ing] actions by or at the behest of the PRC to acquire and divert foreign technologies, specifically critical and emerging technologies, to incorporate into and advance the PRC's military capabilities." The suspension does not apply to PRC nationals "seeking to pursue undergraduate study" in the United States.[357]

Among other things, the Proclamation directs the Secretary of State and the Secretary of Homeland Security to examine nonimmigrant and immigrant programs for potential reform, to take other actions to "mitigate the risk posed by the PRC's acquisition of sensitive United States technologies and intellectual property," and report back to the President within 60 days.

The Proclamation aligns with the Administration's National Security Strategy of December 2017. The Administration indicated in the Strategy that it would review "visa procedures to reduce economic theft by non-traditional intelligence collectors. We will consider restrictions on foreign STEM students from designated countries to ensure that intellectual property is not transferred to our competitors, while acknowledging the importance of recruiting the most advanced technical workforce to the United States."[358]

While this study may have utility to the 60-day review of nonimmigrant and immigrant programs directed by the Proclamation, it is not intended to function as a response to the Proclamation by the Ombudsman's Office or by the DHS.

WHAT OPT IS, AND ISN'T

Foreign students in the United States, of which there are over one million annually, arrive here through several different pathways. F visas are for foreign students pursuing full courses of academic study at a college, university, or other accredited academic institution (including secondary institutions), or in an accredited language training program; M visas are for foreign students pursuing full courses of study at an established vocational or other recognized nonacademic institution, including language and flight schools.[359] F and M visas are, like all visas, issued by the Department of State (DOS), but most of their maintenance and compliance is administered by the Student and Exchange Visitor Program (SEVP), the arm within the U.S. Immigration and Customs Enforcement (ICE) charged with maintaining data about student entries, maintenance of status, and activities during their studies.[360] The DOS manages nonimmigrant exchange visitors in the J visa classification, who may also come to pursue academic post-secondary studies. Each visa category is specific to a group of students arriving to study in a variety of contexts.[361] The Ombudsman's study is primarily focused on F-1 students seeking post-secondary education at the bachelor's, master's or doctoral

355 Proclamation No. 10043, 85 Fed. Reg. 34353 (Jun. 4, 2020).

356 *Id.*

357 *Id.*

358 United States. *The National Security Strategy of the United States of merica, p. 22,* [Washington]: President of the U.S., 2017, p. 22; https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf (accessed Jan. 28, 2020).

359 F-1 and M-1 visas are reserved for the students themselves; spouses and children may enter in F-2 and M-2 status. INA §§ 101(a)(15)(f), (m); 8 USC §§ 1101(a)(15)(f), (m).

360 DHS ICE Webpage, "Student and Exchange Visitor Program," Feb. 6, 2020; https://www.ice.gov/sevis (accessed Jun. 15, 2020).

361 For a succinct discussion of the differences between the F and J student categories, see DOS Webpage, "Studying at U.S. Universities and Colleges: F-1 versus J-1 Visas" (undated); https://j1visa.state.gov/basics/other-u-s-visas/studying-at-u-s-universities-and-colleges-f-1-versus-j-1-visas/ (accessed May 7, 2020).

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level, and after completion of that education seeking a course of practical, on-the-job training.[362]

How students arrive at U.S. colleges and universities takes the efforts of several private and governmental actors. All F-1 and M-1 (as well as J-1) students interact to some extent with the SEVP. SEVP certifies schools to be authorized to receive students and oversees both the schools and the students.[363] Students may, in some circumstances, enter under another nonimmigrant visa category and change to student status; others enter after submitting the school- and SEVP-issued documentation and applying for a student visa at a U.S. consulate.

Nonimmigrant students have some options to pursue non-academic learning activities, including employment. OPT is designed to be temporary employment that is directly related to a nonimmigrant student's major area of study.[364] A foreign student can engage in OPT during the academic program ("pre-completion OPT"), either while school is in session (including academic breaks), or after completing the academic program ("post-completion OPT"). A student can apply for 12 months of OPT at each education level (*e.g.,* a 12-month OPT period at the bachelor's level and another 12-month period at the master's level, assuming the student engages in both at a U.S. college or university).[365] OPT may be granted at almost any time in a student's career after a year of course work has been completed, but must be completed no later than 14 months after graduation, with the sole exception being the science, technology, engineering, and math (STEM) extension (described *infra*).[366] For various reasons, including the need to obtain evidence of this authorization from U.S. Citizenship and Immigration Services (USCIS) in the form of an employment authorization document (EAD), a majority of students prefer to save OPT for post-academic use.

OPT is distinguished from other types of work, fellowships, or internships in which a foreign student may engage. There are limited employment opportunities that may be unrelated to a student's study, including employment in cases of economic hardship.[367] There are also on-campus employment opportunities (generally part-time, but can include off-campus sites that are affiliated with the school).[368] OPT is categorized as a training opportunity, but there are two such types of training categories for foreign students, distinguishable from each other. The first involves internship or practicum activities, known as curricular practical training (CPT), which can take place on or off campus with sponsoring employers, and is considered "an integral part of an established curriculum."[369] The other is OPT, defined as "temporary employment … directly related to the student's major area of study."[370]

Those who earn a degree in certain STEM fields are also eligible to apply for a 24-month extension of the original 12-month post-completion OPT.[371] This extension is available to those students who complete and obtain a STEM degree (as defined by DHS) from a school designated by a recognized accrediting agency, are employed by an employer that is enrolled in and using the E-Verify program, and have already received an initial grant of post-completion OPT based on that STEM degree.[372] In order to obtain STEM OPT, an employer must offer a training program, given to the Designated School Official (DSO), demonstrating goals and objectives, how those goals will be reached, and how the student will be supervised and evaluated.[373] It is the only OPT category in which an employer's name must be identified prior to the student's application for employment authorization.[374]

[362] Recent data indicates that the overwhelming majority of students admitted to the United States entered in F-1 status, a total of 1,862,828 in FY 2018. W. Navarro, "Annual Flow Report, U.S. Nonimmigrant Admissions: 2018," DHS Office of Immigration Statistics, Table 1; https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020). (Admission "events" are not reflective of total admissions, but instead reflect every admission of an individual in that category. Students entering more than once each year would be counted as multiple admission events.) M-1 students constitute only another one percent (18,838). Exchange visitor admissions represent a significant number of admissions (611,373) but only a percentage of these are post-secondary students. One major distinction between seeking F status and J status is that an F student must demonstrate financial independence to complete their course of study. 8 C.F.R. § 214.2(f)(1)(i)(B).

[363] Government Accountability Office, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risk Related to School Recertification and Program Oversight," GAO-19-297, p. 1 (Mar. 2019); https://www.gao.gov/assets/700/697630.pdf (accessed Jun. 7, 2020).

[364] See generally 8 C.F.R. § 214.2(f)(9)-(10).

[365] 8 C.F.R. § 214.2(f)(10).

[366] 8 C.F.R. § 214.2(f)(10)(ii)(A)(3).

[367] 8 C.F.R. § 214.2(f)(9)(ii)(C).

[368] 8 C.F.R. § 214.2(f)(9)(ii).

[369] 8 C.F.R. § 214.2(f)(10)(i).

[370] 8 C.F.R. § 214.2(f)(10)(ii).

[371] 8 C.F.R. § 214.2(f)(10)(ii)(C).

[372] *Id.*

[373] 8 C.F.R. § 214.2(f)(10)(ii)(C)(7).

[374] U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356, p. 2 (Mar. 2014); https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 20, 2020).

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Figure 6.1: Growth in OPT, STEM OPT and CPT

Students with an Employment Authorization Document (EAD) who were employed by calendar year												
Authorizations with Employment in the Indicated Year												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
OPT	24,838	45,357	46,198	51,080	56,421	62,628	67,740	77,619	99,323	37,570	152,681	145,564
STEM OPT	2	2,128	5,869	9,356	13,504	15,937	18,782	21,456	27,493	41,782	64,481	69,650
Total SEVIS IDs W/OPT	**24,838**	**47,432**	**51,985**	**60,348**	**69,804**	**78,364**	**86,284**	**98,825**	**126,509**	**171,593**	**204,633**	**200,162**
CPT	57,403	61,171	48,568	57,409	63,911	68,482	76,223	92,528	111,135	122,529	132,380	151,525

Students issued an Employment Authorization Document (EAD) by calendar year												
Issued OPT and STEM Authorizations in the Indicated Calendar Year												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total SEVIS IDs W/OPT	**81,976**	**82,525**	**82,843**	**91,860**	**103,393**	**111,978**	**120,897**	**133,098**	**159,298**	**190,683**	**218,998**	**208,065**

Source: DHS ICE Webpage, "2007 to 2018 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances;" https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2018.pdf (accessed Jun. 4, 2020).

THE GROWTH OF OPT: A PRIMER

The OPT program has expanded exponentially in size and scope over the past 20 years, proving attractive to students pursuing post-secondary degrees. The percentage of all foreign students in the United States who participated in OPT in 2018, as indicated by ICE records, was more than 20 percent.[375] According to the Pew Research Center, nearly 1.5 million international students were approved for OPT between 2004 and 2016.[376] The total number of OPT students rose from 24,838 in 2007 to 200,162 in 2018, an increase of over 700 percent. During the same period, the subset of students pursuing extended STEM OPT rose from 2 individuals, when the category first became available, to 69,650 individuals.[377]

Over the past few years OPT program participation has increased, even where international student growth on U.S. campuses has slowed slightly.[378]

The OPT program, in particular its STEM subset, has been characterized as a high-tech worker program containing none of the worker protections mandated by the Immigration and Nationality Act (INA) for foreign worker programs, such as the H-1B program.[379]

OPT is not what many would consider an internship arrangement. There are separate provisions for training opportunities tied to the academic program, such as fellowships and internships, both on and off campus, that are distinguished from OPT.[380] DHS regulatory amendments in 2016 required a training plan from the employer, to be approved by the school in advance, as well

[375] DHS Immigration and Customs Enforcement, "Student and Exchange Visitor (SEVP) Program: SEVIS By The Numbers 2018" (undated); https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf (accessed Jun. 11, 2020).

[376] Neil G. Ruiz and Abby Budiman, "Number of foreign college graduates staying in U.S. to work climbed again in 2017, but growth has slowed," Pew Research Center Fact Tank (Jul. 25, 2018); https://www.pewresearch.org/fact-tank/2018/07/25/number-of-foreign-college-graduates-staying-in-u-s-to-work-climbed-again-in-2017-but-growth-has-slowed/ (accessed Jun 3, 2020).

[377] DHS ICE Webpage, "2007 to 2018 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances" (undated); https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2018.pdf (accessed Jun. 4, 2020).

[378] Institute of International Education, "Leading Places of Origin," Open Doors: Report on International Educational Exchange (Nov. 2019); https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin (accessed Jun. 7, 2020). "Open Doors®, supported by a grant from the Bureau of Educational and Cultural Affairs at the U.S. Department of State, is a comprehensive information resource on international students and scholars studying or teaching at higher education institution." https://www.iie.org/Research-and-Insights/Open-Doors.

[379] For a discussion of the H-1B program, including several of those protections, see Annual Report 2019, pp. 8–42.

[380] *See, e.g.*, 8 C.F.R. § 214.2(f)(10)(i).

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as an attestation from the employer that the student was not replacing a full- or part-time, temporary or permanent U.S. employee.[381]

It is alleged (and is the subject of current litigation) that employers are attracted to hiring OPT students by tax incentives aligned to the status of the students.[382] We state no position on that litigation, but note that nonresident foreign students are exempt from U.S. Social Security and Medicare taxes on wages paid for services performed within the United States, as long as such services are allowed by USCIS and are performed to carry out the purposes for which such visas were issued.[383] This applies for the duration of F-1 status, although the exemption does not apply to unauthorized employment or to employment unaligned with the program requirements (*e.g.*, not closely related to course of study for which the visa was issued).[384] In the case of a STEM OPT recipient, this period of time can last up to 36 months after graduation. In the case of a STEM student who pursues a complete post-secondary education in the United States, that period of time can be, cumulatively, up to 6 years (up to 3 years each after receiving 2 degrees).[385]

While foreign students arrive in the United States from all over the world, a few countries predominate the program. The top two countries by total number of active Student and Exchange Visitor Information System (SEVIS) records in 2018 were China (478,732) and India (251,290).[386] Post-secondary students from China and India represent more than 50 percent of the total international student population of over 1 million.[387]

The National Science Foundation (NSF) data on trends in doctorates in Science and Engineering (S&E) fields demonstrates that of the 55,195 doctorate recipients in 2018, 17,124 were given to temporary visa holders.[388] Over one-third, 6,182, were from China, which is consistently the top foreign country from which doctoral degree candidates originate in the last decade, followed by India, South Korea, Iran and Taiwan. This aligns with another study undertaken by the NSF, which found that China and India are two of the top three countries from which those coming for doctoral study "intend to stay" after completing that degree; specifically, 88 percent of Indian doctoral recipients and 87 percent of Chinese recipients planned on remaining in the United States after graduation.[389] Moreover, students from India and China were more likely to remain in the United States than those from other countries, even 10 years after receiving their doctorates.[390]

[381] 8 C.F.R. § 214.2(f)(10)(ii)(C)(10)(*ii*).

[382] See NAFSA, "STEM OPT WashTech Litigation" (Apr. 13, 2020); https://www.nafsa.org/professional-resources/browse-by-interest/stem-opt-washtech-litigation (accessed Jun. 17, 2020).

[383] Internal Revenue Service Webpage, "Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees" (Dec. 11, 2019); https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes (accessed Jun. 6, 2020).

[384] Internal Revenue Service Webpage, "Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees" (Dec. 11, 2019); https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes (accessed Jun. 6, 2020).

[385] 8 C.F.R. § 214.2(f)(10)(C) ("If a student completes all such course requirements for another qualifying degree at a higher degree level than the first, the student may apply for a second 24-month extension of OPT while in a valid period of post-completion OPT … In no event may a student be authorized for more than two lifetime STEM OPT extensions.")

[386] DHS ICE Webpage, "2018 All Countries of Citizenship by Total Number of Active SEVIS Records" (undated); https://www.ice.gov/doclib/sevis/pdf/data-CitizenshipActiveStudents_2018.pdf (accessed Jun. 10, 2020).

[387] The Institute of International Education posits that there were approximately 1,095,299 foreign students in the United States in the 2018-19 academic year. Institute of International Education, "Leading Places of Origin," Open Doors: Report on International Educational Exchange (Nov. 2019); https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin (accessed Jun. 7, 2020).

[388] National Science Foundation, "Doctorate Recipients from U.S. Universities 2018," Table 25 (December 2019); https://ncses.nsf.gov/pubs/nsf20301/report (accessed Jun. 7, 2020).

[389] "From 1980 onward, the number of temporary visa holders intending to stay in the United States after earning a doctorate increased at an average annual rate of 5.4%, whereas the growth in number of temporary visa holders intending to leave the United States after graduation has been more modest (2.8% average annual increase). As a result, in 2015, the number of temporary visa holders intending to stay in the United States was nearly three times as great as the number intending to leave (11,508 versus 3,885)." National Science Foundation, "Doctoral Recipients from U.S. Universities 2017," p. 10 (Jun. 2017); https://www.nsf.gov/statistics/2017/nsf17306/static/report/nsf17306.pdf (accessed Jun. 7, 2020).

[390] STEM graduates from the PRC (90 percent) and India (83 percent) stayed at higher rates than European students (69 percent). Congressional Research Service, "In Focus: Foreign STEM Students in the United States," Nov. 1, 2019; https://crsreports.congress.gov/product/pdf/IF/IF11347 (accessed Jun. 6, 2020)(citing the 2017 NSF study).

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Figure 6.2: Top 25 Places of Origin of International Students, 2017/18 & 2018/19

Rank	Place of Origin	2017/18	2018/19	% of Total	% Change
	World TOTAL	**1,094,792**	**1,095,299**	**100.0**	**0.05**
1	China	363,341	369,548	33.7	1.7
2	India	196,271	202,014	18.4	2.9
3	South Korea	54,555	52,250	4.8	-4.2
4	Saudi Arabia	44,432	37,080	3.4	-16.5
5	Canada	25,909	26,122	2.4	0.8
6	Vietnam	24,325	24,392	2.2	0.3
7	Taiwan	22,454	23,369	2.1	4.1
8	Japan	18,753	18,105	1.7	-3.5
9	Brazil	14,620	16,059	1.5	9.8
10	Mexico	15,468	15,229	1.4	-1.5
11	Nigeria	12,693	13,423	1.2	5.8
12	Nepal	13,270	13,229	1.2	-0.3
13	Iran	12,783	12,142	1.1	-5.0
14	United Kingdom	11,460	11,146	1.0	-2.7
15	Turkey	10,520	10,159	0.9	-3.4
16	Kuwait	10,190	9,195	0.8	-9.8
17	Germany	10,042	9,191	0.8	-8.5
18	France	8,802	8,716	0.8	-1.0
19	Indonesia	8,650	8,356	0.8	-3.4
20	Bangladesh	7,496	8,249	0.8	10.0
21	Colombia	7,976	8,060	0.7	1.1
22	Pakistan	7,537	7,957	0.7	5.6
23	Venezuela	8,371	7,760	0.7	-7.3
24	Malaysia	8,271	7,709	0.7	-6.8
25	Spain	7,489	7,262	0.7	-3.0

Source: Institute of International Education, "Leading Places of Origin," Open Doors: Report on International Educational Exchange (Nov. 2019); https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin (accessed Jun. 7, 2020).

IDENTIFYING THE VULNERABILITIES IN THE PROGRAM: GENERAL CONCERNS

SEVP has been administered within ICE since DHS's creation.[391] SEVP is part of the National Security Investigations Division of ICE, and coordinates information for all of the government organizations that have an interest in such information on nonimmigrant students, including DOS, USCIS, and U.S. Customs and Border Protection (CBP).[392] SEVP provides "integrity to the United States immigration system by collecting, maintaining and analyzing information so only legitimate nonimmigrant students or exchange visitors gain entry into the United States."[393] A school must be certified by ICE through SEVP to accept foreign students in order for those students to obtain F-1 or M-1 visas, which is accomplished through the school submitting Form I-17, *Petition for Approval of School for Attendance by Nonimmigrant Student*, and includes a site visit to the campus.[394] SEVP assists in ostensibly tracking and providing oversight of foreign students, both facilitating the flow of legitimate students and preventing exploitation of student pathways by unscrupulous actors.[395]

SEVP manages SEVIS, the web-based system for monitoring of student records, in partnership with other agencies (including USCIS and DOS, the latter of which oversees documentation for J exchange visitors). SEVP relies on DSOs to provide to ICE, through SEVIS, needed information to ensure the system performs its functions to monitor both the schools and the students, deny terrorists' acceptance into the U.S. academic system, and ensure enforcement of applicable immigration laws.[396] DSOs are school employees who must be U.S. citizens or lawful permanent residents and who are responsible for entering student information and maintaining it in the

[391] Homeland Security Act Section 442(a)(4) put the administration of the SEVP, which had been developed pursuant to the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, into the hands of what became Immigration and Customs Enforcement at DHS.

[392] DHS Webpage, "Student and Exchange Visitor Program: SEVP Overview" (Feb. 26, 2020); https://www.ice.gov/sevis (accessed Jun. 15, 2020).

[393] DHS Webpage, "Get to Know SEVP: The Student and Exchange Visitor Program" (undated); https://studyinthestates.dhs.gov/assets/Get%20to%20Know%20SEVP_Oct2018.pdf (accessed Jun. 6, 2020).

[394] *See generally* 8 C.F.R. § 214.3.

[395] U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356, p. 2 (Mar. 2014); https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 7, 2020).

[396] *See generally* 8 C.F.R. § 214.3(l)(1).

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system, recording any changes as they occur.[397] ICE is largely dependent on DSOs to properly maintain student information in SEVIS, even if that means obtaining information from students well after graduation, and to report violations.[398]

Both SEVP and DSOs are leanly staffed yet have a significant set of responsibilities. SEVP works in the field through its representatives. ICE indicated in January, 2020 that for the approximately 9,000 certified schools (that encompass a wide range from K–12 through universities), divided into approximately 60 regions, there is roughly 1 representative for each region.[399] That SEVP representative is responsible for site visits to schools (potentially hundreds, depending on the region) at least once each year, reviewing records and ensuring schools comply with program requirements and regulations.

DSOs (and the Principal DSO, or PDSO) take on a significant array of responsibilities with respect to ensuring information on students is fully and timely entered into SEVIS.[400] DSOs support the students regarding their status, the school regarding compliance, and the federal government regarding enforcement of immigration laws. They are also responsible for ensuring their continuing intent to comply with all program rules regarding the requirements for nonimmigrant students' admission, maintenance of status, change of status, and requirements for school approval, upon penalty of perjury.[401]

In 2019, approximately 10 percent of the Ombudsman's public engagements involved school-related stakeholders, engaging with hundreds of DSOs across the country. DSOs reported significant data problems, including gaps in communication between SEVIS and USCIS' Computer-Linked Application Information Management System (CLAIMS). These gaps can lead to errors that have a ripple effect on students, schools, and employers, especially when the student is seeking OPT, and cause DSOs to spend significant amounts of time correcting them. DSOs also say they are called upon to explain the intricacies of immigration regulations to SEVIS staff, who may not have worked directly with international students.[402] Site visits from field representatives, which are to take place every year, do not always occur as required (some more frequently, some less frequently).[403] And DSOs experience a relatively high rate of turnover—DHS noted a rate of 37.1 percent in 2012, when fewer foreign students undertook OPT and there were fewer requirements for post-completion STEM OPT.[404]

Several times over the past decade the Government Accountability Office (GAO) has identified substantial deficiencies in SEVIS, including actions relating to OPT reporting and compliance requirements. In 2012, GAO found that ICE had not developed a process for identifying program risk since it assumed responsibility for the SEVIS program, making several recommendations for initiating such a process.[405] Two years later, GAO reiterated its concerns regarding fraud risk, this time specifically with OPT, recommending that DHS "identify and assess OPT-related risks and require additional employment information from students and schools."[406] GAO's recommendation stemmed in part from interviews with ICE enforcement officials, who voiced their concern that the program contained higher levels of fraud and noncompliance because "it enables eligible foreign students to work in the United States for extended periods of time without obtaining a temporary work visa," and because of the length of the work authorization.[407] GAO recommended that DHS take specific actions to clarify eligibility rules, determine alignment of job and degree, and add reporting requirements, all to better ensure DSOs' and students' compliance with OPT requirements.[408]

In 2019, GAO returned to SEVP, this time focusing on

[397] For an overview of DSO reporting requirements, see DHS ICE Webpage, "SEVIS Reporting Requirements for Designated School Officials" (Mar. 29, 2019); https://www.ice.gov/sevis/dso-requirements (accessed Jun. 17, 2020).

[398] Students may be given limited access to SEVP when in post-completion OPT to provide changes to their address and employment; it is discretionary on the school to require students to complete this reporting, but they may not block students from this limited access. DHS ICE Webpage, "SEVIS and the SEVP Portal" (Mar. 22, 2019); https://studyinthestates.dhs.gov/sevis-help-hub/student-records/fm-student-employment/sevis-and-the-sevp-portal (accessed Jun. 20, 2020).

[399] Information provided by ICE (Jan. 16, 2020).

[400] *See* 8 C.F.R. § 214.3(a)(1).

[401] 8 C.F.R. § 214.3(a)(1)(ii).

[402] Information provided by stakeholders (Apr. 17 and Jun. 17, 2020).

[403] Information provided by stakeholders (Jun. 19, 2020).

[404] "Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants," 80 Fed. Reg. 23680, 23686, ftnt. 12 (Apr. 29, 2015).

[405] GAO, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions," GAO-12-572 (Jun. 18, 2012); https://www.gao.gov/assets/600/591668.pdf (accessed Jun. 7, 2020).

[406] GAO, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356, p. 31 (Mar. 2014); https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 7, 2020).

[407] *Id.* One relevant observation made at the time was that nonimmigrants are a vulnerable population that can be exploited by illegitimate companies or organizations that lure students to the United States with false promises of high-paying jobs and potential ways to stay in the country.

[408] *Id.* at 31.

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the certification and re-certification of schools, but also recommending specific fraud training for DSOs.[409] This report noted several program deficiencies regarding the vetting and training of DSOs, including background checks and verification of eligibility, pointing to yet another weakness in the program—DSOs potentially overwhelmed by program responsibilities and not fully trained.[410] It was noted that "DSOs with multiple job responsibilities may not have time to keep up with SEVP rules and policy updates" and that "DSOs have a high rate of turnover, especially at small schools, and may lack the expertise to effectively follow program requirements."[411] Because DSOs carry significant responsibility for ensuring program compliance of both the school and the student, these observations are concerning.

The introduction of nonimmigrant students into American workplaces, especially in STEM fields, ultimately involves the sharing of technology and/or intellectual property with foreign nationals. In many cases it is innocuous, trivial, or otherwise protected against. But in the case of STEM students, the vulnerability has been largely ignored.

ON THE JOB TRAINING?

Nonacademic training of a nonimmigrant student, both during and subsequent to academic coursework, is not specifically mentioned in the current definition of a student in the INA.[412] However, "practical training" employment authorization for foreign students, growing out of their academic programs, has been in existence since before the McCarren-Walter Act introduced the modern definition of a foreign student.[413] Regulations were promulgated in 1953 to create the modern parameters of a work program. It has survived in varying forms ever since.

Work authorization for students was given a specific legislative life in the Immigration Act of 1990. That statute created a pilot program for off-campus work that was *unrelated* to the student's course of study.[414] As an attempt to measure impact on the U.S. workforce, it was to be studied and reported on by both the Secretary of the Department of Labor (DOL) and the Commissioner of legacy Immigration and Naturalization Service (INS) evaluating its usefulness.[415] When the evaluation took place, DOL and INS recommended it not be extended.[416] It was not.

The growth of OPT, and the creation of a separate STEM OPT, has brought substantial focus to its controversial nature. STEM students were given the ability to extend their OPT from 12 months to 29 months in 2008.[417] Citing the competitive global market and the recognized shortages in STEM fields, by providing F-1 students with a longer period to remain in the United States, DHS sought to mitigate the "immediate competitive disadvantage faced

[409] GAO, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Certification and Program Oversight," GAO-19-297, March 2019; https://www.gao.gov/assets/700/697630.pdf (accessed May 5, 2020).

[410] *Id.* at 41.

[411] *Id.* at 48.

[412] An F-1 student is generally defined as "an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184[m] of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn.…" INA § 101(a)(15)(F)(i); 8 U.S.C. § 1101(a)(15(F)(1).

[413] Immigration and Nationality Act of 1952, § 101(a)(15)(f), Pub. L. 82–414, 66 Stat. 163 (Jun. 27, 1952). In 1947 regulations regarding students were finalized, which included the definition of a student based in the statute but also included discretion for practical training: "[8 C.F.R.] § 125.15 Employment … (b) In cases where employment for practical training is required or recommended by the school, the district director may permit the student to engage in such employment for a six-month period subject to extension for not over two additional six-month periods, but any such extensions shall be granted only upon certification by the school and the training agency that the practical training cannot be accomplished in a shorter period of time." 12 Fed. Reg. 5355, 5357 (Aug. 7, 1947).

[414] Immigration Act of 1990, § 221(a)(2), Pub. L. 101–649, 104 Stat. 4978 (authorizing the Attorney General to establish a pilot to grant work authorization to a student who has completed at least 1 year of study, to be employed in a position unrelated to the student's field of study and off-campus, if the employer provided "the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment …") It was created as a 3 year pilot and extended to 5 years in 1994. Immigration and Nationality Technical Corrections Act of 1994, § 215, Pub. L. 103–416, 109 Stat. 4305 (Oct. 25, 1995).

[415] *Id.*

[416] D. Costa, "Little-known temporary visas for foreign tech workers depress wages," TheHill.com, Nov. 11, 2014; https://thehill.com/blogs/pundits-blog/technology/223607-little-known-temporary-visas-for-foreign-tech-workers-depress (accessed Jun. 5, 2020).

[417] "Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions," 73 Fed. Reg. 18944 (Apr. 8, 2008).

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by U.S. high-tech industries."[418] In 2016, the DHS rules were again modified, allowing for in total a 36-month period of employment, but also requiring certain program modifications when seeking the additional 24 months. These modifications included new requirements on students, employers, and DSOs, such as the requirement of an employer and student to submit a formal training plan to identify and execute learning objectives; the requirement that the student not replace an existing U.S. worker; the requirement that STEM OPT employers be enrolled in and remain in good standing with E-Verify, as determined by USCIS, and that they report changes in the STEM OPT student's employment; a requirement that the student's terms and conditions of employment be commensurate with similarly situated U.S. workers; optional site visits to the employer; and additional reporting requirements for DSOs.[419] These provisions have been the subject of protracted litigation that is unresolved at this time.[420]

The numbers of post-completion OPT holders have continued to grow.[421] In 2014, GAO noted that 100,000 of the roughly 1 million international students at that time were remaining after completing a course of study to engage in practical training.[422] In the past 3 years for which there is data, F-1 students make up the overwhelming majority of the student population admissions, comprising between 1.86 million and 1.89 million from 2016 to 2018.[423] This correlated to the number of actual student records in SEVIS, which in 2018 numbered over 1.55 million.[424] Of those students, more than 10 percent are engaged in OPT. In fact, the numbers of students in OPT, and in STEM OPT, have surpassed first-time H-1B workers. In 2016, more than 171,593 were in OPT programs; by 2018, approximately 200,162 were working pursuant to OPT, of which 69,650 were in STEM.[425]

The concerns expressed by GAO regarding risk are only partially alleviated by the additional reporting and validation requirements for DSOs, employers, and students added to the STEM OPT extension program (and only to that program). Students represent a relatively small portion of the total numbers of nonimmigrants to the United States (only about 2.4 percent in FY 2018),[426] yet present a problem due to their relative youth and looser ties to their home countries. In FY 2018, 3.73 percent stayed beyond the authorized window for departure at the end of their program—a total of 68,593 students.[427] Broken down, 3.59 percent in the F visa category overstayed their visas, while 10.80 percent of M visa students and 3.86 percent of J visa students overstayed.[428] The countries with the largest numbers of overstayers was China, with 12,924 students, India, with 5,716, and Saudi Arabia, with 3,917.[429] While the percentage of all foreign students who overstay is relatively small, the cumulative numbers are significant.

HOW FOREIGN STUDENTS ARE CLEARED TO WORK

In the 2019 Annual Report, the Ombudsman's Office studied "*Challenges Facing Timely Adjudication of Employment Authorization Documents*."[430] Among other things, the Report discussed:

a) The growth in EAD application filings due in part to the increase in the F-1 student population seeking OPT;

[418] "Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions," 73 Fed. Reg. at 18947.

[419] "Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students," 81 Fed. Reg. 13040 (Mar. 11, 2016).

[420] For a succinct summary of the ongoing Washtech litigation challenging OPT, see NAFSA Webpage, "STEM OPT WashTech Litigation" (Apr. 13, 2020); https://www.nafsa.org/professional-resources/browse-by-interest/stem-opt-washtech-litigation (accessed Jun 16, 2020).

[421] N. Ruiz, "More foreign grads of U.S. colleges are staying in the country to work," Pew Research Center Fact Tank (May 18, 2017); https://www.pewresearch.org/fact-tank/2017/05/18/more-foreign-grads-of-u-s-colleges-are-staying-in-the-country-to-work/ (accessed Jun. 5, 2020).

[422] GAO, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356, p. 1 (Mar. 2014); https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 5, 2020).

[423] W. Navarro, "Annual Flow Report, U.S. Nonimmigrant Admissions: 2018," Table 1, DHS Office of Immigration Statistics (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020). Admission "events" are not reflective of total admissions, but instead reflect every admission of an individual in that category. Students entering more than once each year would be counted as multiple admission events.

[424] DHS Webpage, "2018 All Countries of Citizenship by Total Number of Active SEVIS Records" (undated); https://www.ice.gov/doclib/sevis/pdf/data-CitizenshipActiveStudents_2018.pdf (accessed Jun. 9, 2020).

[425] *Id.*

[426] W. Navarro, "Annual Flow Report, U.S. Nonimmigrant Admissions: 2018," Table 1, DHS Office of Immigration Statistics (Oct. 2019); https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf (accessed Jun. 5, 2020).

[427] DHS, "Fiscal Year 2018 Entry/Exit Overstay Report" (undated); https://www.dhs.gov/sites/default/files/publications/cbp_-_fiscal_year_2018_entry_exit_overstay_report.pdf (accessed Jun. 7, 2020).

[428] *Id.* at 12.

[429] *Id.*

[430] *See* Ombudsman's Annual Report 2019, pp. 70–84.

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b) The top five EAD categories by receipts in FY18 included 227,000 requests from students, including those seeking OPT; and

c) When adjudicating a Form I-765, USCIS adjudicators must under standard operating procedure confirm the identity of the applicant, review the current immigration status of record, and perform background and security checks to determine whether there are any criminal, national security, or other issues that must be resolved before reviewing the substantive benefit request.

One of the observations the Ombudsman put forward in the context of the Form I-765, *Application for Employment Authorization,* adjudication delays was the very short amount of time USCIS spends looking at such applications, which was recently reconfirmed by the agency. USCIS has determined the average hours per adjudication of this benefit (meaning the time an employee with adjudicative responsibilities actually handles the case) is two-tenths of an hour, or 12 minutes.[431] While additional time is spent on administrative duties, including printing an approved card, an average EAD application takes only that amount of time to review, vet, and clear within the agency. And for some students, this may be the first—and possibly only—encounter between the student and USCIS.[432]

Most nonimmigrant worker programs are subject to statutory and regulatory norms, either requiring a demonstration of the lack of adverse impact on U.S. workers, or the explicit exemption from those protections (such as those in the context of the L-1 intracompany transfer visa, or O visas for nonimmigrants of extraordinary ability). The single bulwark in the OPT program is the training plan submitted by employers and employees in the STEM extension OPT portion, attesting to the parameters of the training program and demonstrating that it is indeed a training program and not fully "work."[433] OPT fails to include many of the customary protections that would have been legislated in (or negotiated out) had it been developed by Congress, rather than created by regulation that did not include analysis of necessary resources to securely administer a program that would eventually dwarf the H-1B program, and tangentially impact U.S. workers working in STEM or other disciplines. Those protections in the STEM OPT extension lie: (1) in the training plan submitted with the extension application, which is a shared responsibility of the employer, employee, and DSO to submit, maintain, and demonstrate progress toward the evaluation process, and (2) in the attestations of the employer that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment.[434] Under the current regulatory regime, it is incumbent on DSOs, not the Federal government, to review and approve the training plan, to ensure amendments to the training plan are entered, and to see evaluations through.[435]

The demonstration of OPT is the EAD, obtained by the student through USCIS, not through ICE. As a fee-funded agency, USCIS is currently seeking a fee increase to "right-size" the actual costs of its operations.[436] The proposed increase for the EAD is 20 percent, or an additional $80, for a total of $575, which includes $85 to capture biometrics.[437] Given the time taken currently by USCIS with respect to the EAD, this may seem adequate. It does not, however, account for any of the costs to ICE for managing SEVP, which must be covered by fees

[431] "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280, 62291, Table 6 (Nov. 14, 2019).

[432] A student who has received an F-1 visa outside the United States and has not needed to travel, or who has travelled and reentered on a valid student visa, may never have come before USCIS in any way, as no updates to status are needed, until the EAD is sought. Students who maintain full-time courses of study and do not violate the terms of their status are considered to be in valid status for the duration of their stay. A student who entered the United States in another status and changed to that of a student would have need to file for such change of status with USCIS.

[433] 8 C.F.R. § 214.2(f)(10)(ii)(C)(7). "The training plan … must identify goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer; describe a performance evaluation process; and describe methods of oversight and supervision. Employers may rely on their otherwise existing training programs or policies to satisfy the requirements relating to performance evaluation and oversight and supervision, as applicable."

[434] 8 C.F.R. § 214.2(f)(10)(ii)(C)(8).

[435] However, if USCIS has derogatory information regarding the applicant, school or DSO that raises concerns of non-compliance with any of the program requirements when adjudicating the OPT authorization, it may request a copy of the Training Plan, Form I-983, from the DSO to assist the officer in the adjudication process. Information provided by USCIS (Apr. 25, 2019).

[436] *See* "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. 62280 (Nov. 14, 2019).

[437] "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 84 Fed. Reg. at 62327 (Table 19).

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associated with SEVP, nor for any additional vetting or security screening of a student to ensure eligibility for the benefit sought. After a student is vetted prior to the start of the program by DOS in the securing of a visa, and CBP upon admission into the United States, there is minimal oversight of student activities.[438] A student may reside in the United States for years—studying and working with OPT without anyone questioning what activities the student might be engaged in, much less what activities they may be involved in related to their home country. Under current regulations, if a student does not travel, triggering the need for a new visa from DOS, generally no security vetting takes place by any U.S. government agency after the student's admission.

The funding for SEVP activities, including the vetting of schools and students prior to entry, comes from fees paid by schools and foreign students approved for the program.[439] These fees are authorized under the INA as part of the costs of the program.[440] In June 2019, SEVP increased its fees and introduced 2 new fees to adjust for diminishing revenues from FY 2016 through FY 2018, to recover the cost of operations.[441] Under the current cost recovery model, a school pays $3000 to obtain an initial certification and $655 for the required site visit.[442] Recertification is less than half that amount, at $1250. Students pay differing amounts for documentation certifying their ability to enroll; F-1 students pay $350 with the Form I-901, *Fee Remittance for Certain F, J and M Nonimmigrants*, to be entered into SEVIS, which enables the student to obtain the documentation necessary to have a visa or change of status issued.

These SEVP fee increases, the first in 10 years (because, according to ICE, increases were previously rendered unnecessary due to "surplus revenue"), were specifically made "to cover the current deficit between revenue and expenditures plus make necessary service upgrades… ensuring full cost recovery by providing fees for each specific benefit that will more adequately recover the cost associated with administering the benefit."[443] The fees do not reflect increases in vetting and screening, or enhancements to systems to ensure compliance, such as increased costs for additional field representatives to conduct site visits, or more testing of DSOs to ensure understanding of program rules.

One of the more intransigent dilemmas that make up the foreign student program is that the vast majority of the student program—tracking, compliance, and monitoring of student status and completion of milestones—is overseen by ICE, while the OPT portion of the program is primarily handled by USCIS. This bifurcation within DHS allows each entity autonomy but does not foster coordination.

OPT requests for employment authorization are handled in the same general fashion as all EADs.[444] At this stage, the background checks are the same as for other EAD categories. The eligibility is based on demonstration of program completion as evidenced by the Form I-20, *Certificate of Eligibility for Nonimmigrant Student Status,* and SEVIS.[445] There is no indication that USCIS performs additional verification of status or additional verification of nonimmigrant intent. There is no ability for USCIS to conduct further evaluation of the school program, DSO compliance with program requirements, or screening of the applicant. In non-STEM OPT, there is not even a requirement to identify an employer; the EAD is obtained in the absence of an offer of employment, with the understanding that the student will work in a field related to the degree.[446] In STEM OPT, more is done to confirm eligibility, including that the employer participates in the E-Verify program, but the review of the program and the attestation of the DSO is already certified in SEVIS.[447]

438 *See infra* for comments regarding the visa process, as indicated by the Department of State. "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. 2 (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf (accessed Jun. 3, 2020).

439 U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356 (Feb. 2014); https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 5, 2020).

440 INA § 286(e)(1), 8 USC § 1372(e)(1).

441 "Adjusting Program Fees for the Student and Exchange Visitor Program," 84 Fed. Reg. 23930 (May 23, 2019). "As a consequence of multiple factors, including inflation, costs associated with SEVIS enhancement, complying with a two-year recertification cycle of schools, increased demand for program and investigatory services, and increased litigation related to administrative enforcement and regulatory actions, the surplus is expected to be exhausted in FY 2019 even without any further service upgrades. The projected shortfall poses a risk of degrading operations and services funded by fee revenue." 84 Fed. Reg. at 23931.

442 "Adjusting Program Fees for the Student and Exchange Visitor Program," 84 Fed. Reg. at 23931.

443 *Id.*

444 *See generally* Annual Report 2019, pp. 70–72.

445 Adjudicators are to look to see whether there is "evidence of F-1 status, SEVIS Form I-20, I-20 meets filing requirements, evidence of program completion." Information provided by USCIS (Apr. 25, 2019).

446 8 C.F.R. § 214.2(f)(10).

447 Information provided by USCIS (Apr. 25, 2019).

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Absent a fraud indicator, such as information that the school or a STEM employer may be fraudulent (or that the student is not eligible, for example having violated the terms of status), USCIS has little authority to do more.[448]

As the number of foreign nationals employed through OPT and STEM OPT have risen in the past decade, Federal officials in the Departments of Defense, State, Justice and Homeland Security, along with a variety of Congressional committees and subcommittees, have expressed concern at the emergence of OPT as a means for foreign countries to conduct data collection of sensitive technologies through students and researchers. Their concern has particularly focused on the activities of the PRC government, the Chinese Communist Party (CCP), and the People's Liberation Army (PLA).

These concerns have not been ignored. Even before the President's Proclamation last month, in June 2018, DOS announced it would restrict visas for Chinese graduate students studying in sensitive research fields to 1 year, while permitting annual renewals.[449] DOS has not identified exactly which disciplines are subject to this higher level of scrutiny. But a Chinese national who enters the United States may not need to travel again, and if the student remains in the United States in a full-time course of study, no new visa is needed, and thus no additional scrutiny except that placed by a DSO.

Given that much of the concern over OPT and STEM OPT concerns the integrity of the immigration system, and involves individuals and employers who are obtaining work authorization from USCIS, and is of particular concern to Congress, the Ombudsman finds it advisable to provide an objective analysis of risk surrounding OPT.

ASSESSING RISK AROUND THE OPT PROGRAM

To gain an understanding of potential risks surrounding the OPT program, it is helpful to employ a risk analysis framework. The framework is intended to provide an objective evaluation of risk; to promote understanding and consensus; and to identify actions that government might take to mitigate or eliminate risk in the program.

The framework separately examines threat, vulnerability and consequence to evaluate risk. Threat and vulnerability analysis help us to understand the probability of a danger arising in activities around the program; consequence analysis helps us to understand the nature and magnitude of the danger. These three together help us to determine whether activity around the program manifests low, medium or high levels of risk. This approach is incremental; if at any point in the analysis there is no perceived threat, or vulnerability, or consequence, then little or no risk is manifested and the analysis can conclude. However, if some level of risk exists within the program, it becomes necessary to examine strategies to mitigate or eliminate the risk.

In studying the objective evaluation of risk surrounding the OPT program, the Ombudsman emphasizes Federal Bureau of Investigation (FBI) Director Wray's observation that "[t]his threat is not about the Chinese people as a whole, and certainly not about Chinese-Americans as a group,"[450] and the view expressed by Deputy Assistant Secretary of State Edward Ramotowski that "foreign students, often with no nefarious intent in their plan to study in the United States, may be co-opted by their home governments to share technical expertise that they acquired while working in the U.S."[451]

THREATS SURROUNDING THE OPT PROGRAM

Threat analysis focuses on the government program and those entities or persons who are taking part in the program or making use of it in some way. To conduct threat analysis, we separately examine three items: access, intent and capability, asking, "What level of access do entities or persons have to participating in the program or leveraging it to their advantage? Do those entities or persons intend to engage in actions that are detrimental to the United

[448] "Students are not required to submit the Training Plan, Form I-983, with their STEM OPT extension applications, and officers should consider the endorsement of the DSO sufficient to meet the attestation requirements of the STEM OPT extension program." *Id.*

[449] A. Yoon-Hendricks, "Visa Restrictions for Chinese Students Alarm Academia," The New York Times, Jul. 25, 2018; https://www.nytimes.com/2018/07/25/us/politics/visa-restrictions-chinese-students.html (accessed Jan. 29, 2020).

[450] Christopher Wray, Director, FBI, "Responding Effectively to the Chinese Economic Espionage Threat," *at the* DOJ China Initiative Conference, *hosted by* Center for Strategic and International Studies, February 6, 2020; https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat (accessed Jun. 10, 2020).

[451] "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. 2 (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf (accessed Jun. 3, 2020).

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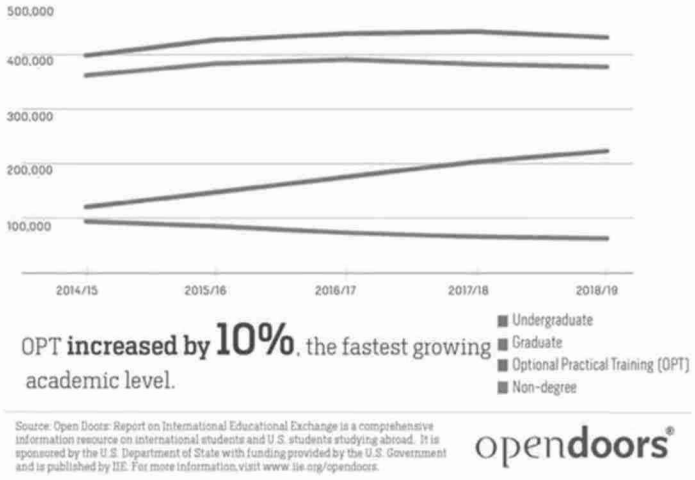
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States? Do those entities or persons have the technical and organizational capability to exploit vulnerabilities inherent in the program?"

Access

As indicated above, the OPT program has experienced exponential growth, which in turn has increased Access. In the last 5 academic years from 2014 to 2019, OPT averaged a 16 percent annual growth rate; in the 2018–2019 academic year, approximately 223,000 foreign students on nonimmigrant visas were reportedly using the program to obtain employment in academic, research or corporate environments in areas related to their course of study.[452]

Figure 6.3: Academic Levels of International Students



This potentially gives them access to innovative technologies, trade secrets, experimental processes, unpublished data, cutting-edge software, blueprints, confidential business information and other intellectual property that may be sensitive or proprietary in nature, and which may be funded in whole or in part by U.S. government grants.[453]

A significant number of foreign nationals, most of whom are from the China, access American universities and colleges to obtain doctoral degrees in STEM fields, a trend that has continued over the last 20 years. As noted above, NSF reporting indicates that Chinese nationals (including Hong Kong) obtained nearly 45,000 S&E doctorates in the decade from 2008 to 2018, and represented the majority of foreign nationals awarded doctorates in engineering, math and computer sciences in the United States over the same period.[454]

The duration of time that a foreign national is permitted to remain and work in the United States on a nonimmigrant visa is relevant to the access analysis. As discussed above, OPT allows a student to work for 12 months (either pre- or post-graduation) for each degree earned; optional training for those who studied in STEM disciplines (STEM OPT) permits an additional 24-month work authorization period in addition to the 12-month OPT work authorization, for a total of 3 years of work authorization. Foreign students who obtain a second STEM degree can receive an additional 3 years of work authorization, allowing for a cumulative 6 years of work authorization.[455]

While granting PRC and other foreign nationals access to U.S. schools and workplaces has many benefits, as recognized by U.S. employers and the academic community, and "most do not have access to sensitive information or technology,"[456] it does contribute to risk. Author Daniel Golden testified in 2018 that, "[g]lobalization has transformed American universities into a front line for espionage. Some small but significant percentage of international students and faculty come to help their countries gain recruits for clandestine operations, insights

[452] Institute of International Education (IIE) Open Doors 2019 Fast Facts, https://www.iie.org/en/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/Infographics/International-Student-Data (accessed Jun. 10, 2020).

[453] "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 2nd Sess. 3 (2018) (statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, FBI); https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf (accessed Jun. 9, 2020).

[454] The National Science Foundation, National Center for Science and Engineering Statistics, Directorate for Social, Behavioral and Economic Sciences, Survey of Earned Doctorates, "Doctorate Recipients from U.S. Universities, 2018;" https://ncses.nsf.gov/pubs/nsf20301/report/fields-of-study and https://ncses.nsf.gov/pubs/nsf20301/report/u-s-doctorate-awards (accessed Jun. 21, 2020).

[455] 8 C.F.R. § 214.2(f)(10)(C).

[456] "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 2nd Sess. 2 (2018) (statement of Joseph Morosco, Assistant Director, Office of the National Intelligence Manager for Counterintelligence, National Counterintelligence and Security Center); https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Morosco%20Testimony.pdf (accessed Jun. 9, 2020).

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into U.S. government plans, and access to sensitive military and civilian research."[457]

In 2019, a Commissioner on the U.S.-China Economic Security Review Commission testified in the Senate that "U.S. advanced technology and technological expertise is transferred to China, through both legal and illegal means [in part through] the tens of thousands of Chinese students and researchers at U.S. universities and research institutes who return to China after completing these programs."[458]

In a 2018 hearing before the Senate Intelligence Committee, FBI Director Christopher Wray, when asked about "the counterintelligence risk posed to U.S. national security from Chinese students, particularly those in advanced programs in the sciences and mathematics," testified that the PRC government's "use of nontraditional collectors, especially in the academic setting, whether it's professors, scientists, [or] students," was observed "in almost every field office that the FBI has around the country. It's not just in major cities. It's in small ones as well. It's across basically every discipline." He added that some PRC nationals were "exploiting the very open research and development environment that we have, which we all revere, but they're taking advantage of it."[459] Director Wray later testified in 2019 that

> asymmetric espionage, typically carried out by students, researchers, or businesspeople operating front companies, is prevalent. Foreign intelligence services not only seek our nation's state and military secrets, but they also target commercial trade secrets, research and development, and intellectual property, as well as insider information from … U.S. corporations, and American universities. Foreign intelligence services continue to employ more creative and more sophisticated methods to steal innovative technology, critical research and development data, and intellectual property, in an effort to erode America's economic leading edge. These illicit activities pose a significant threat to national security.[460]

Students enrolled in U.S. schools who seek to exfiltrate data or knowledge back to their home countries are regarded as non-traditional collectors (NTCs). They are not necessarily trained in intelligence-gathering, but may serve PRC government interests due to their access to U.S. research and technology.[461] A senior State Department official testified before the Senate Judiciary Committee in 2018 that the PRC government's use of NTCs "is common in academic settings … such actors have exploited the opportunity to work with renowned U.S. scholars and researchers and have taken advantage of the very open research and development environment prevalent at U.S. colleges and universities."[462]

The FBI explained before the Senate Judiciary Committee that foreign intelligence services allow

> students and scholars to conduct their U.S.-based academic pursuits, waiting to leverage them once they return to their home countries…. Many of those whom they target are young, inexperienced, and impressionable. Likewise, [such individuals] are also relatively inexpensive, inconspicuous,

457 "Scholars or Spies: Foreign Plots Targeting America's Research and Development," *before the* Subcommittee on Oversight *of the* U.S. House of Representatives, Committee on Science, Space and Technology, 115th Cong. 2nd Sess. (2018) (prepared statement of Daniel Golden); https://docs.house.gov/meetings/SY/SY21/20180411/108175/HHRG-115-SY21-Wstate-GoldenD-20180411.pdf (accessed Jun. 10, 2020); *see also* Defense Security Service, "Targeting U.S. Technologies 2016: A Trend Analysis of Cleared Industry Reporting," (undated) at 18–19; https://www.dcsa.mil/Portals/69/documents/about/err/2016_Trend_Analysis_Report.pdf (accessed Jun. 12, 2020).

458 "Winning the Race to 5G and the Next Era of Technology Innovation in the United States," *of the* U.S. House Committee on Commerce, Science, and Transportation, 116th 1st Sess. 2 (2019) (prepared statement of Michael Wessel, American commissioner of the US-China Economic and Security Review Commission); https://www.commerce.senate.gov/services/files/3B1AD4D5-B73A-4B01-BF93-8E6695095CA8 (accessed May 16, 2020).

459 "Open Hearing on Worldwide Threats," *before the* U.S. Senate Select Committee on Intelligence, 115th Cong. 1st Sess. (2018) (prepared statement of Christopher Wray, Director of the Federal Bureau of Investigation); https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-0# (accessed Jan. 28, 2020).

460 "Oversight of the Federal Bureau of Investigation," *before the* U.S. Senate Judiciary Committee, 116th Cong. 1st Sess. 4 (2019) (prepared statement of Christopher Wray, Director of the Federal Bureau of Investigation); https://www.judiciary.senate.gov/imo/media/doc/Wray%20Testimony1.pdf (accessed Jun. 12, 2020).

461 "China's Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses," *before the* Committee on the Judiciary *of the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. (2018) (prepared statement of John C. Demers, Assistant Attorney General, National Security Division, U.S. Department of Justice); https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2018/12/18/12-05-2018_john_c._demers_testimony_re_china_non-traditional_espionage_against_the_united_states_the_threat_and_potential_policy_responses.pdf (accessed Jun. 12, 2020).

462 "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. 2 (2018) (prepared statement of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); https://www.judiciary.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf (accessed Jun. 3, 2020).

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> and expendable, making them attractive options to further the foreign intelligence services' priorities and collection needs.[463]

The Defense Security Service within the Department of Defense (DOD) reported in 2017 that "[a]lthough East Asia and the Pacific entities engage in traditional forms of collection and espionage, nontraditional collectors who do not serve official intelligence roles continue to make up the majority of collection attempts," adding that East Asia consistently led the top collector regions seeking sensitive or classified information from U.S. companies, academic and research institutions.[464]

> Near East countries used Near East students and professors with science and engineering backgrounds in the United States to collect sensitive academic and scientific research to advance indigenous weapons programs…. Academic solicitations will likely remain high as increasing numbers of Near Eastern students continue to target U.S. academic programs that can be directly linked to improving military capabilities.[465]

Apart from NTCs, it is believed that foreign intelligence officers have obtained U.S. student visas to conduct espionage. The U.S.-China Economic and Security Review Commission cited research indicating that the Chinese military has "sponsored more than 2,500 Chinese military scientists and engineers to travel to universities in the United States and elsewhere as students or visiting scholars."[466] The FBI's current Most Wanted list includes a military officer from the PLA who entered the United States on a J-1 visa and studied for approximately 18 months at Boston University's Department of Physics, Chemistry and Biomedical Engineering while "completing numerous assignments from PLA officers" to obtain data on U.S. military capabilities.[467] The FBI believes "that the officer has fled to China."[468]

Intent

Intent analysis considers whether any entity that has access to a government program has an interest in taking actions that could be detrimental to the interests of the United States. Such actions could be harmful even if driven exclusively by commercial incentives. Intent is of course made evident in public statements and in patterns of behavior.

Discussing the intent of PRC government leadership in 2020, FBI Director Wray explained,

> we need to understand … the scope of China's ambitions, which are no secret … it is about the Chinese government and the Chinese Communist Party. The Chinese government is fighting a generational fight to surpass our country in economic and technological leadership. But not through legitimate innovation, not through fair and lawful competition, and not by giving their citizens the freedom of thought and speech and creativity we treasure here in the United States. Instead, they've shown that they're willing to steal their way up the economic ladder at our expense . . . to surpass America, they need to make leaps in cutting-edge technologies. Last March, at a Communist Party gathering, Chinese Premier Li made that understanding pretty clear. He said: 'Our capacity for innovation is not strong, and our weakness in terms of core technologies for key fields remains a salient problem.' To accomplish the breakthroughs they seek, China is acquiring American intellectual property and innovation, by any means necessary.[469]

[463] "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 2nd Sess. 4 (2018) (prepared statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigation); https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf (accessed Jun. 9, 2020).

[464] Defense Security Service, "Targeting U.S. Technologies 2017: A Trend Analysis of Cleared Industry Reporting," (undated) at 20; https://www.hsdl.org/?view&did=816264 (accessed Jun. 3, 2020).

[465] *Id.* at 20, 23–24.

[466] Sean O'Conner, U.S.-China Economic and Security Review Commission, Staff Research Report, "How Chinese Companies Facilitate Technology Transfer from the United States" (May 6, 2019) at 9; https://www.uscc.gov/sites/default/files/Research/How%20Chinese%20Companies%20Facilitate%20Tech%20Transfer%20from%20the%20US.pdf (accessed Jun. 8, 2020).

[467] FBI Webpage: "Most Wanted: Yanqing Ye" (undated); https://www.fbi.gov/wanted/counterintelligence/yanqing-ye (accessed Jun. 3, 2020).

[468] Michele McPhee, "The China Spy Scandal That Entangled Harvard Could Hit Yale and MIT Next," Newsweek (Feb. 29, 2020); https://www.newsweek.com/china-spy-scandal-that-entangled-harvard-could-hit-yale-mit-next-1489806 (accessed May 4, 2020).

[469] Christopher Wray, Director, Federal Bureau of Investigation, "Responding Effectively to the Chinese Economic Espionage Threat," *at the* DOJ China Initiative Conference, *hosted by* Center for Strategic and International Studies, (Feb. 6, 2020); https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat (accessed Jun. 10, 2020).

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The Director also noted, "Even as we speak, the FBI has about 1,000 investigations involving China's attempted theft of U.S.-based technology, in all 56 of our field offices, spanning almost every industry and sector."[470]

Intent Expressed Through the 'Thousand Talents Plan'

A 2019 staff report from the Senate Committee on Homeland Security and Governmental Affairs stated, "Some countries . . . seek to exploit America's openness to advance their own national interests. The most aggressive of them has been China. China primarily does this through its more than 200 talent recruitment plans—the most prominent of which is the Thousand Talents Plan."[471]

The Thousand Talents Plan (TTP) was initiated by the PRC government in 2008. The TTP "encourages participants to transfer research and other proprietary information from the United States to China."[472] The Senate staff report explains that the TTP

> incentivizes individuals engaged in research and development in the United States to transmit the knowledge and research they gain here to China in exchange for salaries, research funding, lab space, and other incentives. China unfairly uses the American research and expertise it obtains for its own economic and military gain. In recent years, federal agencies have discovered talent recruitment plan members who downloaded sensitive electronic research files before leaving to return to China, submitted false information when applying for grant funds, and willfully failed to disclose receiving money from the Chinese government on U.S. grant applications.[473]

A number of eminent professors working in U.S. universities have been criminally charged for activities resulting from their participation in the TTP, often because they concealed their relationships to the PRC government, universities, or corporations. They have included a professor who allegedly performed disease research at a major U.S. university while being employed by two Chinese universities for the same type of research;[474] another who allegedly received grant monies from NASA for high-temperature electronics packaging and failed to disclose close ties with the PRC government and Chinese companies; [475] and another who allegedly received significant personal and professional benefits[476] while collaborating with numerous Chinese scientists on the development of nanotechnologies considered important to U.S. defense agencies for potential military applications such as sensing, munitions, power and energy, structural materials, and coatings.[477]

Recruiting through the TTP is not confined to tenured professors. FBI Director Wray testified in 2019 that

> we have seen through lots of investigations of abuse of those talent plans and essentially we have situations where it has created a pipeline in some cases at major universities especially at the graduate level more so than at the undergraduate level of key intellectual properties sometimes that has dual use potential flowing back to China for the advancement of its various strategic plans and

[470] *Id.*

[471] U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans" (Nov. 19 2019) p. 1; https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf (accessed Jun. 8, 2020).

[472] Sekar, Kavya, Library of Congress, Congressional Research Service, "Foreign Interference in NIH Research: Policy Implications" (Dec. 19, 2019); https://crsreports.congress.gov/product/pdf/IN/IN11207 (accessed Jun. 3, 2020).

[473] U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans" (Nov. 19, 2019), pp. 17–18; https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf (accessed Jun. 8, 2020).

[474] Department of Justice Press Release, "Former Emory University Professor and Chinese 'Thousand Talents' Participant Convicted and Sentenced for Filing a False Tax Return" (May 11, 2020); https://www.justice.gov/opa/pr/former-emory-university-professor-and-chinese-thousand-talents-participant-convicted-and (accessed Jun. 3, 2020).

[475] Department of Justice, U.S. Attorney's Office, Western District of Arkansas Press Release, "University of Arkansas Professor Arrested for Wire Fraud" (May 11, 2020); https://www.justice.gov/usao-wdar/pr/university-arkansas-professor-arrested-wire-fraud (accessed Jun. 3, 2020); *see generally* NASA Science Mission Directorate, Tech Port Webpage, "500°C Capable, Weather-Resistant Electronic Packaging for Extreme Environment Exploration" (undated); https://techport.nasa.gov/view/92294 (accessed Jun. 3, 2020).

[476] Department of Justice Press Release, "Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases," (Jan. 28, 2020); https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related (accessed on Jun. 19, 2020); *see also* Robert Plumb, Federal Bureau of Investigation, "Affidavit in Support of Application for Criminal Complaint," (Jan. 21, 2020) 1–2; https://www.justice.gov/opa/press-release/file/1239796/download (accessed Jan. 30, 2020).

[477] Douglas Belkin, "Harvard Chemistry Chairman Under Investigation Is a Giant of His Field," *The Wall Street Journal*, (Jan. 29, 2020); https://www.wsj.com/articles/harvard-chemistry-chairman-under-investigation-is-giant-of-field-11580345484 (accessed Jan. 30, 2020); U.S. Department of Defense, "Defense Nanotechnology Research and Development Program," (Dec. 2009) p. ES-1; https://www.nano.gov/sites/default/files/pub_resource/dod-report_to_congress_final_1mar10.pdf (accessed Jan. 30, 2020).

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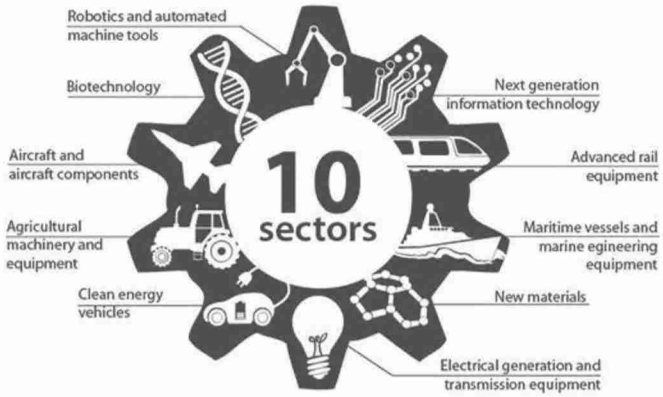
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the irony is that the U.S. is essentially funding that economic resurgence through various money that it provides through grants.[478]

Intent Expressed Through 'Made in China 2025'

In 2015, the PRC government issued a plan to transform "China into a leading manufacturing power by the year 2049," titled the 'Made in China 2025' plan.[479] Among other things, the plan is intended to promote "breakthroughs in ten key sectors," including information technology, robotics, aerospace equipment, polymers and other new materials, and bio-medicine.[480]

Figure 6.4: "Made in China 2025" Target 10 Strategic Industries for Development (NSD)



Source: "China's Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses," *before the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. (2018) (statement of John C. Demers, Assistant Attorney General, National Security Division); https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2018/12/18/12-05-2018_john_c._demers_testimony_re_china_non-traditional_espionage_against_the_united_states_the_threat_and_potential_policy_responses.pdf; *see also* "China's Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses," *before the* U.S. Senate Judiciary Committee, 115th Cong. 1st Sess. (2018); https://www.judiciary.senate.gov/meetings/chinas-non-traditional-espionage-against-the-united-states-the-threat-and-potential-policy-responses (accessed Jun. 12, 2020).

In February 2020, U.S. Attorney General William Barr characterized the plan as "a sustained, highly-coordinated campaign to replace the United States as the dominant technological superpower," mobilizing "all elements of Chinese society" and massive financing "to dominate the core technologies of the future."[481] He added, "Unfortunately, it also involves industrial espionage and theft of technology and intellectual property, as well as . . . engaging in cyber intrusions . . . and using non-traditional collectors, such as graduate students participating in university research projects."[482] The Attorney General concluded that "[t]he PRC's economic aggression and theft of intellectual property comes with immense costs. It has been estimated that the annual cost to the U.S. economy could be as high as $600 billion."[483]

Intent Expressed Through Military-Civil Fusion and Dual-Use Technologies

The hazards of losing sensitive technology to strategic competitors such as the PRC are not merely economic. For over a decade, the PRC government has pursued "a policy of 'military-civil fusion,' which bind Chinese civilian entities with the PLA in a common goal" of strengthening Chinese military capabilities.[484] The DOS has asserted that, "military-civil fusion . . . prioritizes the development or acquisition of advanced technology that is useful militarily, either for the modernization of the [PLA] or for other domestic security purposes, such as general surveillance or the particularly egregious repression occurring in Xinjiang" of Muslim ethnic Uyghurs.[485]

[478] "Oversight of the Fed. Bureau of Investigation," *before the* U.S. Senate Judiciary Committee, 116th Cong. 1st Sess. (2019) (statement of Christopher Wray, Director of the Federal Investigation Bureau); *cited in* U.S. Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans" (Nov. 19, 2019), p. 30; https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf (accessed Jun. 20, 2020).

[479] The State Council of the People's Republic of China Webpage, "Made in China 2025 plan issued," (May 19, 2015); http://english.www.gov.cn/policies/latest_releases/2015/05/19/content_281475110703534.htm (accessed Jun. 3, 2020). The website "English.gov.cn" is the official English-language site for the State Council of the People's Republic of China.

[480] *Id.*

[481] Attorney General William P. Barr, U.S. Department of Justice, Federal Bureau of Investigation, "Keynote Address," *at the* DOJ China Initiative Conference, *hosted by* Center for Strategic and International Studies (Feb. 6, 2020); https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-keynote-address-department-justices-china (accessed Apr. 27, 2020).

[482] *Id.*

[483] *Id. See also* "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 2nd Sess. 4 (2018) (statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigations); https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf (accessed Jun. 9, 2020).

[484] Kate O'Keeffe and Aruna Viswanatha, "U.S. Turns Up the Spotlight on Chinese Universities," *The Wall Street Journal* (Jan. 21, 2020); https://www.wsj.com/articles/u-s-turns-up-the-spotlight-on-chinese-universities-11579602787 (accessed May 28, 2020).

[485] "Securing the U.S. Research Enterprise from China's Talent Recruitment Plans," *before the* Permanent Subcommittee on Investigations *of the* U.S. Senate Committee on Homeland Security & Governmental Affairs, 116th 1st Sess. 3 (2019) (written testimony of Edward J. Ramotowski, Deputy Assistant Secretary of State, Bureau of Consular Affairs); https://www.hsgac.senate.gov/imo/media/doc/Ramotowski%20Testimony.pdf (accessed May 28, 2020).

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Fusion enables the PRC government "to continue international collaboration with scientists while not disclosing that such collaboration may be for modernizing China's military,"[486] even as the PLA operates as "a funding source, research partner and an elite customer"[487] of "the central players in China's IT sector."[488] In January 2020, U.S. Secretary of State Mike Pompeo emphasized that, "Under Chinese law, Chinese companies and researchers must—I repeat, must—under penalty of law, share technology with the Chinese military."[489]

The DOD reported in 2009 that "the 'major specialty items' to be targeted for research and innovation [by the PRC government] include: core electronic components, high-end universal chips and operating system software, very large-scale integrated circuit manufacturing, broadband wireless mobile communications, high-grade numerically controlled machine tools, large aircraft, high-resolution satellites, manned spaceflight, and lunar exploration."[490] More recently, the PRC government has announced growth initiatives to include Strategic Emerging Industries (SEI) catalogs for "next-generation information technology as [a] priority. Such technology includes artificial intelligence, cybersecurity services, integrated circuits and network equipment and software. Other SEI's include biotechnology, energy efficient and environmental technologies and high-end equipment manufacturing."[491] The IT catalog is "a state-driven initiative, featuring regulatory scrutiny over foreign investments in the strategic industries, mergers, joint ventures, access to foreign IP, and agreements between the government and foreign entities for 'strategic assets to remain in China or under the control of a Chinese company.'"[492] In 2019, the PRC Ministry of Commerce, following approval by the Chinese Communist Party Central Committee, reportedly identified its key industries for investment to include smart devices, vaccine production and fifth-generation technologies and components, such as drones, mobile phones, optics, sensors and lasers.[493]

It is noteworthy that many of the research, development, acquisition and manufacturing priorities expressed by the PRC government in its 'Made in China 2025' plan and SEI catalogs, are cleared fields of study in STEM OPT. When DHS expanded the duration of STEM OPT in 2016, ICE created a STEM Designated Degree Program List indicating what "fields of study that DHS considers to be [STEM fields] for purposes of the 24-month STEM optional practical training extension." Leveraging Department of Education classifications, the list includes items such as "Cyber/Electronic Operations and Warfare," "Combat Engineering," "Directed Energy Systems" and "Undersea Warfare" as well as others of interest to the PRC government.[494]

Capability

Having examined access and intent, the final element to be considered when examining threat is Capability. Capability is defined as the technical and organizational skill of an adversary or competitor to exploit vulnerabilities or loopholes in a U.S. government program.

As already indicated in this analysis, it is apparent to numerous Federal authorities that the PRC government is capable of exploiting OPT to advance its own agendas. Commenting on PRC government capabilities, the

[486] U.S. Senate, Staff Report, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans" (Nov. 19, 2019) p. 19; https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf (accessed Jun. 7, 2020).

[487] James Mulvenon, Rececca Samm Tyroler-Cooper, "China's Defense Industry on the Path of Reform," The US-China Economic and Security Review Commission (October 2009), p. 39; https://www.uscc.gov/sites/default/files/Research/REPORT_DGI%20Report%20on%20PRC%20Defense%20Industry111009.pdf (accessed May 28, 2020).

[488] *Id.*

[489] Secretary of State Michael R. Pompeo, "Remarks to the Silicon Valley Leadership Group: Technology and the China Security Challenge"(Jan. 13, 2020); https://id.usembassy.gov/remarks-by-secretary-pompeo-on-technology-and-the-china-security-challenge/ (accessed May 28, 2020).

[490] James Mulvenon, Rececca Samm Tyroler-Cooper, "China's Defense Industry on the Path of Reform," The US-China Economic and Security Review Commission (Oct. 2009), p. 38; https://www.uscc.gov/sites/default/files/Research/REPORT_DGI%20Report%20on%20PRC%20Defense%20Industry111009.pdf (accessed May 28, 2020).

[491] Institute for Security & Development Policy, "Made in China 2025," Backgrounder (Jun. 2018), p. 3; https://isdp.eu/content/uploads/2018/06/Made-in-China-Backgrounder.pdf (accessed May 7, 2020).

[492] *Id.*

[493] Dorcas Wong, "China Releases New Draft List of Encouraged Industries for Foreign Investment," *China Briefing from Dezan Shira & Associates* (Feb. 19, 2019); https://www.china-briefing.com/news/china-2019-draft-encouraged-industries-foreign-investment/ (accessed May 28, 2020). Chinese interest in 13 critical areas of technology is discussed in a November 2019 U.S. Senate Staff Report. *See* U.S. Senate, Staff Report, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans" (Nov. 2019), pp. 17–18; https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf (accessed May 28, 2020).

[494] DHS ICE Webpage, "STEM Designated Degree Program List, Effective May 10, 2016," https://www.ice.gov/sites/default/files/documents/Document/2016/stem-list.pdf (accessed Jun. 17, 2020).

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former CEO of Quantum and Symantec, Michael Brown, stated before the House Permanent Select Committee on Intelligence in 2018 that the PRC government has the capacity to obtain what he referred to as "the crown jewels of U.S. innovation" through combinations of legal investments and economic espionage. As to the latter capability, the theft or duplication of U.S. military-sponsored technologies was achieved by means of cyber exploits and "using Chinese foreign national students [placed] in sensitive areas of U.S. research." Concerning PRC government's legal acquisition of technologies through venture investing in early-stage companies, market knowledge and the use of professional organizations, he asserted, "[v]iewed individually, the legal practices may seem benign but when viewed in combination, and at the scale China is employing them, the composite picture illustrates the intent, design and dedication of a regime focused on technology transfer at a massive scale" in the areas of "artificial intelligence, autonomous vehicles, augmented/virtual reality, robotics, blockchain and genetic engineering," all of them "critical in advancing U.S. military capability."[495]

At the same hearing, a witness from the Center for a New American Security stated, "In some cases, students and researchers have leveraged academic research environments in ways that may contravene U.S. law or academic norms. The potential for negative externalities has been clearly illustrated by the case of Liu Ruopeng, a Duke Ph.D. student, who allegedly appropriated sensitive research funded by the U.S. military on metamaterials, and then returned to China to fund a highly successful research institute … which supports the Chinese military in advanced technological developments."[496] There is speculation that Ruopeng, "who came to the U.S. with the express intent of studying" metamaterials in the Duke lab, "was actually on a mission from the Chinese government."[497]

Concerned by the PRC government's access to academic institutions in the United States and its stated intentions to grow its expertise across a constellation of technologies, the DOJ created the "China Initiative" in 2018, led by DOJ's National Security Division, "which is responsible for countering nation-state threats to the United States." Among other goals, the Initiative seeks to "[i]dentify priority trade secret theft cases," advance "an enforcement strategy concerning non-traditional collectors (e.g., researchers in labs, universities, and the defense industrial base) that are being coopted into transferring technology contrary to U.S. interests," and "[e]ducate colleges and universities about potential threats to academic freedom and open discourse from influence efforts on campus."[498]

Vulnerability

To evaluate vulnerability, we examine the attributes of a Federal government program that leave it susceptible to exploitation by malign actors or governments. Vulnerabilities often arise from the Federal government's lack of information, situational awareness, resource allocation or failure to anticipate first, second and third order effects when designing the program.

Vulnerability Due to Exploitation by Foreign Governments

The OPT program as presently designed and administered exhibits a number of significant vulnerabilities. Its principal vulnerability is that it may be exploited by foreign governments with interests adverse to those of the United States. While OPT was created with the benign intention of offering foreign students the opportunity to gain work experience in their area of study, and may help them defray some of the costs of their education in the United States, it is currently being used by government

[495] "China's Threat to American Government and Private Sector Research and Innovation Leadership," *before the* Permanent Select Committee on Intelligence *of the* U.S. House of Representatives, 115th Cong. 2nd Sess. (prepared statement of Michael A. Brown, Presidential Innovation Fellow), at 2–4; https://congress.gov/115/meeting/house/108561/witnesses/HHRG-115-IG00-Wstate-BrownM-20180719.pdf (accessed Jun. 3, 2020).

[496] "China's Threat to American Government and Private Sector Research and Innovation Leadership," "China's Threat to American Government and Private Sector Research and Innovation Leadership," *before the* Permanent Select Committee on Intelligence *of the* U.S. House of Representatives, 115th Cong. 2nd Sess. 8 (prepared statement of Elsa B. Kania, Center for a New American Security), at 8; https://docs.house.gov/meetings/IG/IG00/20180719/108561/HHRG-115-IG00-Wstate-KaniaE-20180719.pdf (accessed Jun. 15, 2020).

[497] Cynthia McFadden, Aliza Nadi and Courtney McGee, NBC News, "Education or espionage? A Chinese student takes his homework home to China," NBC News (July 24, 2018); https://www.nbcnews.com/news/china/education-or-espionage-chinese-student-takes-his-homework-home-china-n893881 (accessed Jun. 15, 2020).

[498] U.S. Department of Justice, "Information about the Department of Justice's China Initiative and a Compilation of China-Related Prosecutions since 2018;" https://www.justice.gov/opa/page/file/1223496/download (accessed Jun. 17, 2020). *See also* G. Kolata, "Vast Dragnet Targets Theft of Biomedial Secrets for China," The New York Times (Nov. 4, 2019); https://www.nytimes.com/2019/11/04/health/china-nih-scientists.html (accessed Jun. 25, 2020).

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actors from countries such as the PRC as a means of conducting espionage and technology transfer through some portion of the many thousands of foreign nationals who have obtained OPT employment in the United States.

Another key vulnerability to the OPT program is the amount of time that it affords a nonimmigrant student to remain employed in the United States. As explained above, a foreign national who pursues STEM OPT may remain employed in the United States for periods that add up to 6 years. If the student is acting as an NTC for his or her government, the longer the period of employment, perhaps with different employers, increases the amount and variety of information that the student can exfiltrate. It also increases the likelihood that a student NTC can establish and grow trust relationships with U.S. employers, which have proven an important factor in cases like that of Liu Ruopeng, who apparently leveraged "an exact replica" of his professor's Duke University lab back in China.[499]

Further, as noted above, aside from the vetting and screening that DOS conducts when issuing a visa, and USCIS background checks in issuing an EAD, there is no existing mechanism for continuous vetting of foreign national students, which might indicate whether the student is exhibiting predetermined risk factors that might warrant follow-up inquiries from the Federal government.[500]

Vulnerability Due to Fraud

There are significant indications that the OPT program is vulnerable to fraud because agency compliance resources are not scaled to (or keeping pace with) the size of the program. As previously noted, in 2019 there were "1.2 million foreign students at nearly 9,000 SEVP-certified schools across more than 18,000 campuses."[501] The total number of SEVP employees at ICE directly administering this very large program is approximately 376 full-time employees.[502]

Initial and continuing OPT compliance apparently falls in part to SEVIS field representatives.[503] The SEVP is divided into 60 territories in the United States,[504] with a single SEVIS field representative assigned to each territory. According to ICE, "Field representatives serve as liaisons between SEVP and SEVP-certified schools," and "enhance national security by fostering regulatory adherence and [SEVIS] data integrity." They meet with school officials "in their territories normally a minimum of once per year" to ensure schools "understand SEVP rules and regulations, to answer questions, provide training to PDSOs and DSOs, and to help "school officials with the SEVP recertification process by conducting scheduled school visits."[505] A single SEVP representative can be responsible for as many as 240 schools.[506] As a program matter, visits to participating schools (unless some problem is manifest) is usually a single visit per year.[507]

The failure of OPT designers to foresee growth in the program and to anticipate the proportionate staff resources that would be required to assure its security

[499] Cynthia McFadden, Aliza Nadi and Courtney McGee, NBC News, "Education or espionage? A Chinese student takes his homework home to China," NBC News (Jul. 24, 2018); https://www.nbcnews.com/news/china/education-or-espionage-chinese-student-takes-his-homework-home-china-n893881 (accessed Jun. 15, 2020); Marc S. Reisch, "Acknowledging the spies on campus," Chemical & Engineering News (Jun. 27, 2018); https://cen.acs.org/policy/intellectual-property/Acknowledging-spies-campus/96/i27 (accessed Jun. 15, 2020).

[500] As indicated previously, DOS decided in 2018 to limit Chinese student visas to a duration of 1 year. Such students, if they return home and seek to re-enter the United States, are subject to multiple screenings, including interviews, by DOS.

[501] GAO, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight," GAO-19-297 (Mar. 2019) at 50; https://www.gao.gov/assets/700/697630.pdf (accessed Jun. 15, 2020). As previously mentioned, in addition to colleges and universities, participating academic institutions include language training schools, vocational schools, K-12 schools, and flight schools. DHS ICE Webpage, "2018 SEVIS by the Numbers Report" (undated); https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf (accessed Jun. 17, 2020).

[502] Department of Homeland Security, U.S. Immigration and Customs Enforcement, Budget Overview, Fiscal Year 2020 Congressional Justification, Student and Exchange Visitor Program, ICE -SEVP -3. https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf (accessed Jun. 10, 2020).

[503] GAO, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight," GAO-19-297 (Mar. 2019) at 50; https://www.gao.gov/assets/700/697630.pdf (accessed Jun. 20, 2020).

[504] DHS ICE Webpage, "SEVP Field Representative Regions & Territories" (Dec. 2019); https://studyinthestates.dhs.gov/assets/sevp_fieldrepresentativeunitmap.png (accessed Jun. 11, 2020).

[505] DHS ICE Webpage, "SEVP Field Representatives" (undated); https://studyinthestates.dhs.gov/sevp-field-representatives (accessed Jun. 18, 2020).

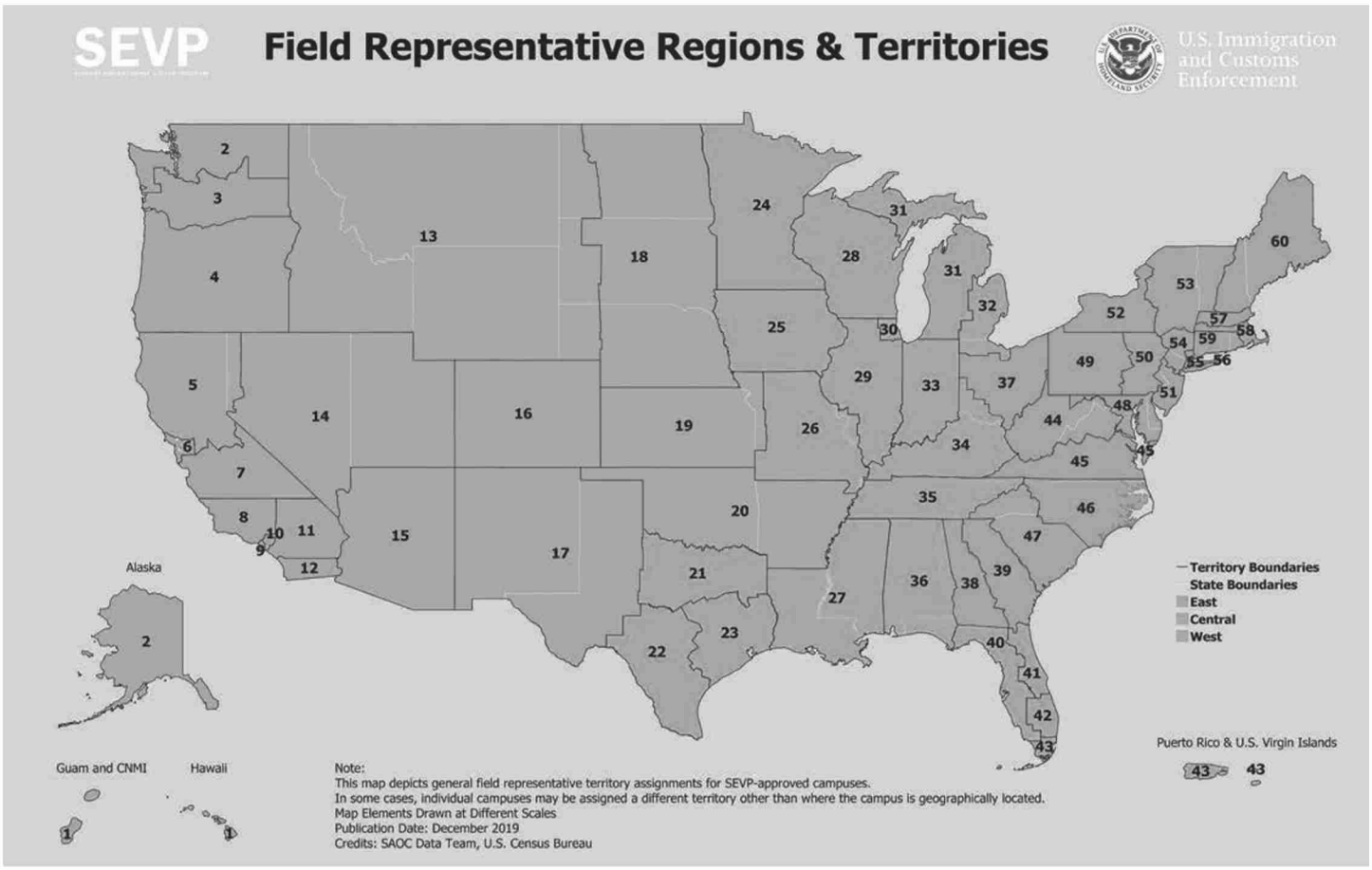
[506] Information received from stakeholders (Jan. 16, 2020).

[507] Information received from stakeholders (Jun. 19, 2020). *See also* "Adjusting Program Fees for the Student and Exchange Visitor Program," 84 Fed. Reg. 23930, 23958 (May 23, 2019) ("SEVP performs 600 site visits annually. Of these 600 visits, 426 will be at schools that apply for initial certification . . . [t]he remaining 174 site visits may include visits when a school adds a new physical location or campus.").

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Figure 6.6



Source: DHS ICE Webpage, "Study in the States" (Dec. 2019); https://studyinthestates.dhs.gov/assets/sevp_fieldrepresentativeunitmap.png (accessed Jun. 15, 2020).

and integrity perhaps accounts in part for the SEVP's inability to detect fraud among some participating students, schools and employers. It was not apparently compliance oversight within the SEVIS program that led to well-publicized discoveries in late 2019 that at least a dozen businesses listed by ICE as among the top employers of OPT students appeared to be fraudulent shell companies.[508] The revelation that two of those shell companies had fraudulently "employed" not less than 2,685 F-1 student visa holders seeking to extend their stay in the United States for years between 2013 and 2019 did not apparently originate from any certification action or site visit conducted by the SEVP; rather, it resulted from an FBI investigation of a foreign student in Chicago who was allegedly performing tasks for a PRC intelligence agency.[509]

As noted above, the GAO has repeatedly studied SEVIS and concluded that the program is vulnerable to fraud. In its most recent report in 2019, the GAO cataloged a variety of weaknesses in the SEVP, including its lack of vetting and verification of DSOs, and its failure to provide mandatory and universal training to DSOs, especially

[508] Stephen Stock, Michael Bott, Sean Myers, Jeremy Carroll, Michael Horn and Molly Forster, NBC Bay Area and NBC News, "Thousands of Foreign Students May Have Overstayed Visas Through Employment at Possible Shell Companies," *NBC Bay Area and NBC News* (Dec. 10, 2019); https://www.nbcbayarea.com/news/local/thousands-of-foreign-students-may-have-overstayed-visas-through-employment-at-shell-companies/2178507/ (accessed Jun. 16, 2020); Immigration and Customs Enforcement, "2017 Top 200 Employers for Pre- and Post-Completion Optional Practical Training (OPT) Students" (undated); https://www.ice.gov/doclib/sevis/pdf/data_Top200_EmployersPrePostCompletion_OPT_Students2017.pdf. (accessed Jun. 21, 2020).

[509] Todd Lighty, Chicago Tribune, "How a Chicago college student ended up in the middle of an FBI investigation into Chinese spying," *Chicago Tribune*, (Sept. 26, 2019); http://www.chicagotribune.com/investigations/ct-chinese-espionage-chicago-20190926-xh74yrhorzakjpsnojyx4aapfm-story.html (accessed Jun. 15, 2020); U.S. v. Weiyun Huang, 19-CR-275, N.D. IL., at 4; https://www.justice.gov/usao-ndil/press-release/file/1187726/download (accessed Jun. 21, 2020).

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"about their role to prevent and report fraud."[510] In 2014, GAO reported that ICE had not assessed potential risks in the OPT program and could not fully ensure that foreign students were maintaining their legal status in the United States.[511] And, in 2012, GAO reported that weaknesses in "ICE's monitoring and oversight of SEVP-certified schools" and its failure to manage and share key information on potentially criminal violations in the SEVP contributed "to security and fraud vulnerabilities"[512] within the program.

CONSEQUENCE

The analysis of consequence examines the nature and magnitude of dangers arising from vulnerabilities in the government program.

Both the Attorney General and the Secretary of State have publicly expressed significant concerns with the adverse economic and military consequences of technology transfer to strategic adversaries.[513] In addition, the FBI Assistant Secretary for Counterintelligence testified in 2018 that foreign state adversaries illicitly acquiring "U.S. academic research and information to advance their scientific, economic, and military development goals . . . save their countries significant money, time, and resources while achieving generational advances in technology. Through their exploitative efforts, they reduce U.S. competitiveness and deprive victimized parties of revenue and credit for their work."[514] The theft or plagiarism of advanced technology, cutting-edge research, classified data, world-class equipment and expertise, he added, is adverse to both government and the private-sector, and can undermine national security. "When these foreign academics unfairly take advantage of the U.S. academic environment, they do so at a cost to the institutions that host them, as well as to the greater U.S. innovation ecosystem in which they play a role. Directly or indirectly, their actions cost money, jobs, expertise, sensitive information, advanced technology, first-mover advantage, and domestic incentive to innovate."[515]

CONCLUSIONS ON RISK SURROUNDING OPT

The risk analysis framework applied in this study indicates that risk is present in the environment surrounding the OPT and STEM OPT programs. These programs allow many nonimmigrant students, including graduate students in STEM, to work in academic, research or corporate environments where they may have access to technologies or other intellectual property that may be sensitive or proprietary in nature. Foreign entities like the PRC government with clearly expressed intentions to achieve economic, technical and military dominance by acquiring intellectual property and cutting-edge innovations, have succeeded in leveraging some portion of its student population to perform as NTCs, while also inserting intelligence operatives into the mix of students working in the United States, often for significant periods of time. OPT, which has not been designed, staffed or administered to systemically counter such threats, is vulnerable to exploitation by foreign governments with interests adverse to those of the United States. Accordingly, there appears to be a high risk that the OPT is being used as a means for strategic adversaries to conduct espionage and technology transfer from the United States.

Consideration of Mitigation Strategies

As we indicated at the outset, this study does not function as a DHS or Ombudsman response to the Presidential

[510] U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight," GAO-19-297 (Mar. 2019) at 49; https://www.gao.gov/assets/700/697630.pdf (accessed Jun. 3, 2020).

[511] U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization," GAO-14-356 (Feb. 2014) at 15-30; https://www.gao.gov/assets/670/661192.pdf (accessed Jun. 17, 2020).

[512] " 'Student and Exchange Visitor Program: DHS Needs to Take Actions to Strengthen Monitoring of Schools,' GAO-12-895T (Jul. 24, 2012)," *before the* Subcommittee on Immigration, Refugees, and Border Security *for the* U.S. Senate Committee on the Judiciary, 113th Cong. 1st Sess. (2013) 2-3 (prepared statement of Rebecca Gambler, Government Accountability Office); https://www.gao.gov/products/gao-12-895t (accessed Jun. 17, 2020); U.S. Government Accountability Office, "Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions," GAO-12-572 (Jun. 18, 2012) at 21–36; https://www.gao.gov/assets/600/591668.pdf (accessed Jun. 17, 2020).

[513] Attorney General William P. Barr, U.S. Department of Justice, Federal Bureau of Investigation, "Keynote Address," *at the* DOJ China Initiative Conference, *hosted by* Center for Strategic and International Studies, (Feb. 6, 2020); https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-keynote-address-department-justices-china (accessed Apr. 27, 2020).; Secretary of State Michael R. Pompeo, "Remarks to the Silicon Valley Leadership Group: Technology and the China Security Challenge,"(Jan. 13, 2020); https://id.usembassy.gov/remarks-by-secretary-pompeo-on-technology-and-the-china-security-challenge/ (accessed May 28, 2020).

[514] "Student Visa Integrity: Protecting Educational Opportunity and National Security," *before the* Subcommittee on Border Security and Immigration *of the* U.S. Senate Judiciary Committee, 115th Cong. 2nd Sess. 2 2 (2018) (prepared statement of E.W. Priestap, former Assistant Director, Counterintelligence Division, Federal Bureau of Investigation); https://www.judiciary.senate.gov/imo/media/doc/06-06-18%20Priestap%20Testimony.pdf (accessed Jun. 9, 2020).

[515] *Id.* at 4.

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Proclamation of May 29, 2020. The Proclamation directs DOS and DHS, consulting with other appropriate agencies, to recommend within 60 days "any other measures requiring Presidential action that would mitigate the risk posed by the PRC government's acquisition of sensitive United States technologies and intellectual property." In deference to this ongoing process, this study does not include any specific recommendations to diminish risk in the OPT. However, based upon previous study and outreach conducted by the Ombudsman's Office, there are two potential risk mitigation strategies that could be accomplished through operational or administrative actions.[516]

Assisting DSOs

The Ombudman's Office, which conducts over 100 structured outreach events with immigration stakeholders each year, has met with DSOs and other school representatives on numerous occasions. Our consistent take-away from such meetings is that school officials are very interested in ensuring that they are aligned with SEVP directives. DSOs from small schools to the largest universities carry significant responsibilities in maintaining school and student records in SEVIS, brokering the many problems students encounter in the immigration system, and ensuring databases and substantive requirements are reflective of one another. As discussed *supra*, GAO has noted the difficulties faced by DSOs, especially in being adequately trained, including playing a role in detecting fraud. Because there are potential criminal penalties that could attach to school officials (who like students themselves could be victims of criminal schemes), SEVP should ensure that DSOs are not unwittingly assisting in violations of criminal statutes against false statements or the fraudulent and unlawful use of immigration documents in the United States.

DSOs carry a significant responsibility to interpret student obligations, to interpret school compliance and to ensure both sets of obligations are met. As mentioned above, most DSOs seek to fully perform their duties and ensure their students comply with all program requirements. However, the GAO noted last year that enhanced training for DSOs was necessary to ensure that DSOs "adequately understand the program's regulations" and "their own responsibilities within the program," and that DSOs were lacking uniform training to identify "fraud schemes or trends . . . including student visa exploitation and national security vulnerabilities."[517] We have learned through our outreach that DSO activities extend well beyond the academic program, ensuring students comply with reporting requirements through the length of what can be a years-long OPT when the student has left the campus, and can be challenging regardless of the size of the program. Because DSOs can assist in combatting threats to national security, and want to avoid unwittingly assisting in potential criminal violations, fulsome training and support for DSOs should be considered an important mitigation strategy.

To meet these obligations, DSOs require additional resources. Agency compliance resources have not kept pace with the growth of foreign student participation in the United States and would benefit from being re-evaluated in light of current participation rates. Certification and recertification of DSOs should include insuring full demonstrated understanding of program requirements, with additional training to assist them well beyond the use of tools such as video tutorials. Site visits need to be annual and should be meaningful opportunities for dialogue to articulate issues and concerns and seek redress. SEVIS support should include ongoing dialogue to fix the data entry and data reconciliation problems that frustrate DSOs and can cause status problems for students. And DSOs should be given the ability to ensure the government is a full partner in detecting and reporting fraud and similar concerns, so they can use the tools that enable them to concentrate on legitimate students.

Securing Issuance of EADs at USCIS

Protections can be added to the process to minimize the potential for illegitimate use of an EAD, and USCIS could have considerably more authority over confirming the eligibility and legitimacy of the employer, the training opportunity, and the student. Among other options, USCIS should be able to verify the existing requirements, which for STEM extension OPT includes the existence of the training program, the identity of the employer, and the good standing and completion of the student of the course of study.

[516] We do not consider potential legislative solutions, such as the "Holding China Accountable Act" recently introduced in the House. *See* U.S. House of Representatives, Permanent Select Committee on Intelligence, Press Releases, "Ranking Member Nunes introduces the Holding China Accountable Act" (Jun. 11, 2020); https://republicans-intelligence.house.gov/news/documentsingle.aspx?DocumentID=1107 (accessed Jun. 3, 2020).

[517] GAO, "Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Certification and Program Oversight," GAO-19-297, pp. 47–49 (Mar. 2019); https://www.gao.gov/assets/700/697630.pdf (accessed Jun. 20, 2020).

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Other protections might be added. Non-STEM students could be subject to the same requirements STEM students currently undergo. For example, only STEM OPT requires an employer be identified in advance, but this could be extended to encompass all EAD recipients.[518] Verification through SEVIS, requiring the participation of the school in the disclosure, would enable USCIS to verify employer identity using existing tools. Another option is expanding the mandatory use of E-Verify to encompass all OPT employers. EADs of students who fail to report in to an employer within a reasonable time after EAD issuance with a legitimate employer could be cancelled. As for an EAD that has been cancelled, verification of the authorization of the EAD through a mandatory E-Verify check would assist employers who seek legitimate hires.

[518] If new rules were promulgated to require that all OPT applicants identify employers prior to filing EAD applications, USCIS would need to adjust its EAD processing to ensure students have proof of employment authorization to secure and keep job offers. Most employers cannot wait 3 to 6 months after making an offer to onboard an employee, especially if the EAD processing time is deducted from the 14-month limit on the available duration of work experience.

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InfoMod (Year Two): Accomplishments, Lessons Learned, and Current Challenges

Responsible Offices: External Affairs and Field Operations Directorates

KEY FACTS AND FINDINGS

- In implementing its Information Services Modernization Program, USCIS believed it would be able to schedule eligible individuals for InfoPass appointments more quickly and to enhance flexibility in InfoPass appointment scheduling.
- While the initiation of InfoMod was somewhat bumpy, this was due in part to contract issues and reduced staff. Both program times and response times have improved since InfoMod expanded nationwide.
- Data from 2019 seems to indicate the program has met its stated goal to free up adjudication resources by steering inquirers to the self-help tools available through a variety of media. It is unclear, however, as to the specific time benefit recouped by adjudications.

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- Stakeholders continue to report dissatisfaction with the program, however, citing wait times to speak to a representative and a lack of knowledge among the initial representatives encountered.
- The InfoMod system will continue to be on the front lines as USCIS returns to in-person operations at its field offices in the wake of COVID-19.

INTRODUCTION

In the 2019 Annual Report the Ombudsman initially reported on USCIS' decision to end its self-scheduled InfoPass appointment system, shifting immigration benefit seekers and their representatives to other channels to obtain information, updates, and services.[519] USCIS refers to this transition as the Information Services Modernization Program or "InfoMod."[520]

With InfoMod now in its second full year, this article highlights InfoMod's early successes and shortfalls, reviews USCIS' response to Ombudsman recommendations offered in last year's Report and offers new recommendations to address continued public needs in the wake of the coronavirus (COVID-19) pandemic.

BACKGROUND

In implementing the InfoMod changes, USCIS emphasized the benefits of centralizing "the public's information service needs via the USCIS Contact Center, while allowing field offices to divert previous InfoPass resources to adjudicating cases."[521] Benefit filers can access service tools through the USCIS website, directly initiating an inquiry or service request on matters including: filings pending outside normal processing times, reporting and requesting correction of typographical errors in documents and records, reporting missing correspondence and documents, and similar issues.[522] Those who need or prefer to speak with a USCIS representative may still do so under InfoMod using a toll-free number to dial the Contact Center.[523]

By discontinuing the self-scheduled InfoPass option, USCIS was in part responding to on-the-ground realities it was confronting at some of its busiest field offices.[524] Officers were dedicating scarce time to in-person appointments where the information sought could be obtained through other USCIS resources. Moreover, because anyone could make an appointment, it became increasingly difficult for individuals with urgent needs to obtain timely in-person appointments.[525]

The situation grew more acute as USCIS processing times lengthened, particularly for high-volume immigration benefits such as Form N-400, *Application for Naturalization*, Form I-751, *Petition to Remove Conditions on Residence*, and Form I-90, *Application to Replace Permanent Resident Card*, and applicants increasingly found the need for in-person appointments to obtain temporary proof of legal status.[526] Requests for emergency advance parole documents due to unanticipated life events (*e.g.*, the sudden death or serious illness of a close family member, or the need to attend an urgent business meeting)[527] added to this increased workload.

InfoPass. USCIS launched its InfoPass appointment scheduling system in 2003 to augment its existing customer service inquiry process. Prior to InfoPass, immigration benefit filers (and/or their legal representatives) could visit a USCIS office during business hours on a walk-in basis to speak to an immigration officer about a case matter, obtain forms, or ask a question. This

[519] *See* Ombudsman's Annual Report 2019, "From InfoPass to InfoMod: a Crossroads for Applicant Support Services," pp. 44–55.

[520] USCIS Webpage, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goals" (Oct. 16, 2019); https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals (accessed May 19, 2020).

[521] Information provided by USCIS (Apr. 9, 2019). *See also* USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

[522] *See* USCIS Webpage, "Case Inquiry and Service Request On-Line tools;" https://egov.uscis.gov/e-request/Intro.do (accessed Apr. 20, 2020).

[523] The Contact Center phone number is 1-800-375-5283. *See* USCIS Webpage, "USCIS Contact Center;" https://www.uscis.gov/contactcenter (accessed May 1, 2020).

[524] Data shows that in Fiscal Year 2018, 65 of 119 USCIS offices (including international locations) were operating at near full capacity for InfoPass appointments, reporting that 95 percent or higher of their available appointment times slots were filled. Additionally, it is noted that of the remaining 54 offices, 11 were operating at 90–94 percent capacity, and an additional 5 had already transitioned to InfoMod as FY 2018 came to a close. Information provided by USCIS (Jun. 1, 2020).

[525] USCIS Webpage, "Emergency Travel" (May 10, 2019); https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel (accessed Apr. 20, 2020).

[526] *See* USCIS Policy Manual, Pt. B, Ch. 2.F; https://www.uscis.gov/policy-manual/volume-11-part-b-chapter-2 (accessed May 3, 2020).

[527] Not all foreign nationals require advance permission to depart and to return to the United States, technically referred to as "Advance Parole." *See generally* USCIS Webpage, "Emergency Travel" (May 10, 2019); https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel (accessed May 3, 2020).

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process was used for years by USCIS, and by legacy INS before that, with applicants and their counsel at busier offices queueing up in physical lines early in the morning, some of those lines extending even outside the agency's physical office space.[528]

The InfoMod Pilot. Based upon the agency's observation that a substantial proportion of limited InfoPass appointments were being reserved by individuals who did not require in-person services, InfoMod began as a pilot in March 2018 at five USCIS field offices.[529] The InfoMod pilot was also in part driven by data that showed that, on a nationwide basis, approximately 25 percent of all self-scheduled InfoPass appointment time-slots resulted in a "no-show." USCIS sought to recapture and channel Immigration Service Officer (ISO) time into more productive uses, including interviewing and adjudicating cases.[530]

During the InfoMod pilot, individuals who would ordinarily self-schedule an InfoPass appointment did not have the opportunity to do so, and instead were directed to visit USCIS' website to obtain general information or use online services. Alternatively, USCIS asked that individuals call its Contact Center, where a USCIS representative could determine whether the caller qualified for an in-person appointment.

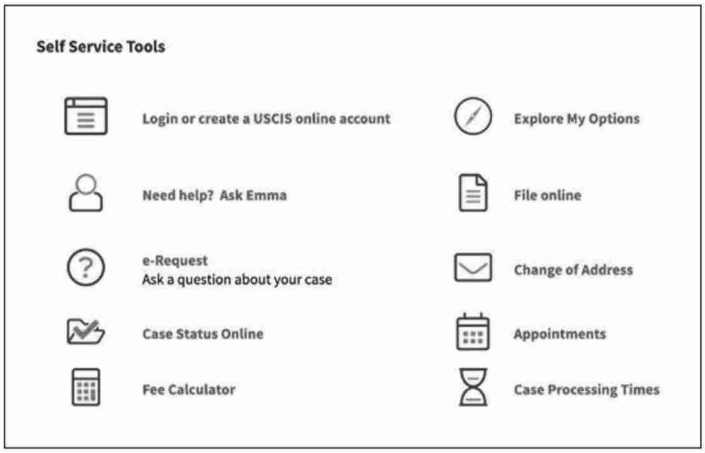
The InfoMod pilot was conducted for a period of 6 months,[531] and the results confirmed that approximately 70 to 80 percent of in-person appointments were being used to make case status inquiries.[532] According to USCIS, InfoMod allowed the agency to schedule eligible individuals for an InfoPass appointment more quickly and enhanced its ability to accommodate InfoPass appointment dates and times requested by applicants with more flexibility.[533]

Based on these results, USCIS determined that it would implement the program nationwide, completing the transition in all its field offices as of August 2019.[534] The principal goal of InfoMod remained the same: to use the Contact Center to distinguish those individuals who required in-person services at a field office from those who could be serviced remotely or could avail themselves of the agency's online options.

USCIS' ON-LINE SELF-SERVICE TOOLS

No longer able to self-schedule an appointment at a local USCIS field office, applicants and petitioners (and their representatives) are directed to use the self-service options available on USCIS' website under InfoMod. The self-service actions may be initiated using one's own personal computer or mobile device or using public devices such as computer stations at local libraries. The "Self-Service Tools"[535] include the following:

Figure 7.1



Source: USCIS Webpage, "Tools;" https://www.uscis.gov/tools (accessed May 27, 2020).

528 *See* Ombudsman's Annual Report 2005, pp. 13–14. *See also* Ombudsman Recommendation 11, "USCIS issue national policy guidance on the implementation of InfoPass to ensure equitable access to immigration services" (Nov. 29, 2004); https://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_12_InfoPass_11-29-04.pdf (accessed Apr. 21, 2020).

529 InfoMod was first piloted at the Hartford field office; it was then introduced in the Jacksonville, El Paso, San Francisco and Sacramento field offices in the spring and summer of 2018. Information provided by USCIS (Apr. 12, 2019).

530 Information provided by USCIS (Apr. 9, 2019).

531 *Id.*

532 USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

533 Whereas in the previous self-scheduling InfoPass process, applicants may or may not have been able to make their own appointment 14 days in advance, under the new process, applicants seeking in-person services were able to obtain an appointment on average within 24 hours for urgent requests and within 5 days for other requests. Information provided by USCIS (Apr. 9, 2020).

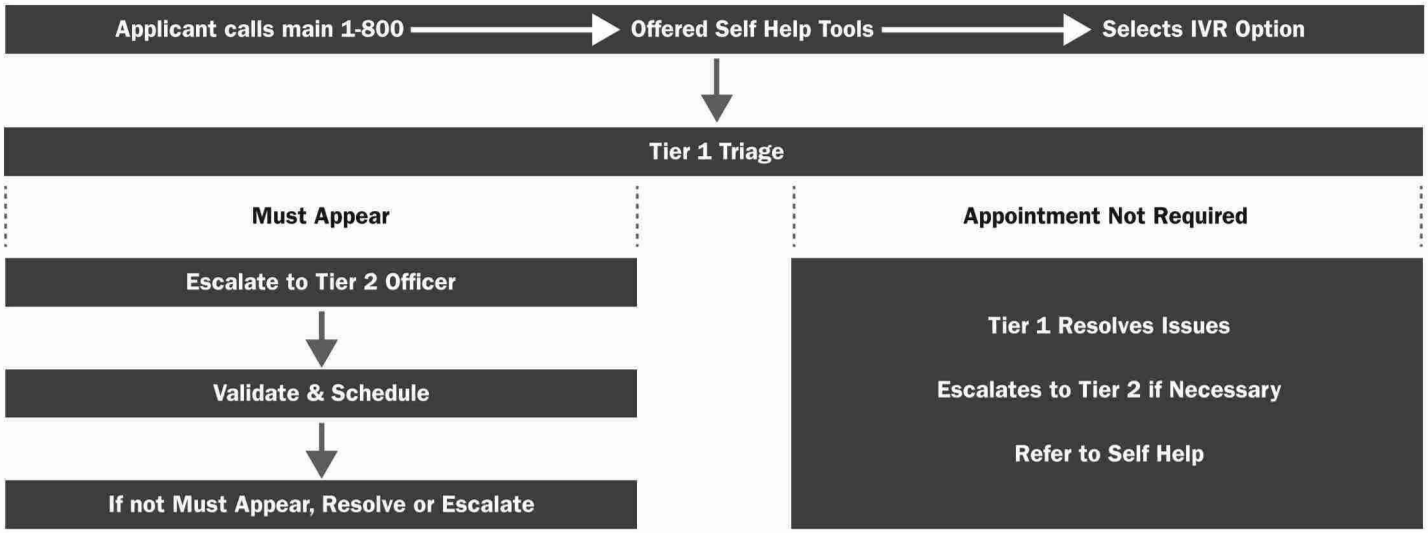
534 USCIS 2019 Annual Report Response, p. 5 (Jan. 24, 2020); https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed May 1, 2020).

535 USCIS Webpage, "Tools;" https://www.uscis.gov/tools (accessed Apr. 15, 2020). *See also* USCIS Webpage, "Case Inquiry/Service Request;" https://egov.uscis.gov/e-request/Intro.do (accessed Apr. 15, 2020).

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Figure 7.2



Source: Information provided by USCIS (May 15, 2020).

In FY 2019, USCIS saw a 13 percent increase in the number of individuals using its digital tools.[536]

USCIS' CONTACT CENTER

Those seeking live case assistance must call the USCIS Contact Center using its toll-free number, which is available 24 hours a day, 7 days a week.[537] Calls are answered by USCIS' Interactive Voice Response (IVR) system, available in English and Spanish. To speak to a live representative, callers must first navigate a long series of prompts and menu options and listen to at least one substantive (and sometimes complicated) message. Those who call between Monday and Friday from 8:00 AM to 8:00 PM Eastern Time, except for Federal holidays, and navigate through the IVR are connected to a Tier 1 representative. Tier 1 representatives are not USCIS officers but contract employees provided by a vendor supporting the Contact Center. Tier 1 representatives are provided 80 hours of training, including basic elements of immigration law, how to access USCIS systems, how to complete service requests and use applicable systems, and how to navigate "knowledge articles" (information documents) to provide responses.[538] Tier 1 representatives triage all incoming requests, working to resolve those for which they have authority and information by opening a service request (Service Request Management Tool, or SRMT) using USCIS' ticketing system.[539]

In 2017, USCIS granted Tier 1 representatives access to the Person-Centric Query Service (PCQS),[540] and in August 2018, to bolster the Contact Center's representatives' ability to resolve more matters at Tier 1, the agency granted them access to other databases and operating systems, including CLAIMS (Computer-Linked

[536] USCIS Webpage, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goals" (Oct. 16, 2019); https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals (accessed May 19, 2020).

[537] Ombudsman's Annual Report 2019, p. 50.

[538] This training is managed by the contract vendor, but the materials are provided by USCIS. In preparing this year's report on InfoMod, the Ombudsman also asked if USCIS tests new hires to determine if they have the basic knowledge and skills to fill Tier 1 representative positions at it Contact Center. USCIS advised that it does not, and that the testing is performed by the vendor. Information provided by USCIS (May 13, 2020).

[539] *See* Ombudsman's Annual Report 2014, pp. 51–53.

[540] Information provided by USCIS (Apr. 13, 2020). PCQS provides a "consolidated read-only view of an immigrant's past interactions with the U.S. Government as he or she passed through the U.S. immigration system." *See* DHS Privacy Impact Assessment, "Live Chat," p. 3 (May 19, 2017); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-livechat-may2017.pdf (accessed Jun. 6, 2020). For additional information about PCQS, *see generally* DHS Privacy Impact Assessment, "Person Centric Query Service," p. 1 (Mar. 8, 2016); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-pcqs-march2016.pdf (accessed May 1, 2020).

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Application Information Management System).[541] With this expansion, for the first time Tier 1 representatives were provided access to basic information the Ombudsman has long identified as fundamental to successfully assist callers regarding their specific case matters.[542]

When a Tier 1 representative is unable to resolve an inquiry, or upon request, the call may be escalated to Tier 2, where a USCIS ISO will review the matter and determine how best to proceed. Tier 1 representatives who determine that a caller's request meets one of the qualifying criteria[543] will create an SRMT for a Tier 2 ISO to review, and the caller is advised that USCIS will return a call within 48 to 72 hours to schedule the InfoPass appointment.[544] The Tier 2 ISO is expected to make two attempts to return the call.[545]

Contact Center Staffing Challenges. USCIS currently operates its Contact Center out of three locations: New York, New York; Overland Park, Kansas, and Los Angeles, California. Prior to InfoMod, the Contact Center's Tier 1 representatives were provided to the agency by two separate vendors under contract with USCIS.[546] With the Contact Center now expected to serve as the agency's principal contact point with the public, USCIS awarded a staffing contract in which one vendor would supply all Tier 1 staffing requirements. This contract change occurred in October 2018, just 2 months after USCIS committed to expanding InfoMod in all field offices. The implementation of this new contract proved problematic, however, as a sizeable number of trained Tier 1 representatives did not transition to employment with the successful vendor, as anticipated.[547] As a result, Tier 1 staffing shrunk in late 2018 from approximately its expected level of 750 representatives to as low as 500 in January 2019.[548] As of March 31, 2020, the USCIS Contact Centers reported approximately 680 employed Tier 1 representatives, still below its pre-InfoMod staffing level.[549]

INFOMOD: KEY DATA POINTS FROM 2018 AND 2019[550]

Overall, calls made to the USCIS Contact Center dropped slightly (3 percent) from 13,447,885 calls in CY 2018 as compared to 13,066,410 calls received in CY 2019.[551] By contrast, the number of calls that proceeded through the IVR to a Tier 1 representative went down 24 percent during the same time, from 6,295,289 in 2018 to 4,802,869 in 2019. At the same time, FY 2019 IVR data shows approximately 23 percent of callers abandon their attempts to reach the Contact Center.[552] As to InfoPass appointments, counting appointments by individuals from field office districts where the transition to InfoMod had not yet occurred, 404,558 InfoPass appointments were scheduled in FY 2019, as compared to 858,023 in FY 2018, a reduction of more than 50 percent.[553] USCIS estimates that appointment volume has decreased by 70 percent since InfoMod was implemented across the field offices.[554]

According to other data provided by USCIS, the top three reasons for a field office appointment remain unchanged year over year, as follows:

- To obtain an Alien Documentation Identification and Telecommunications (ADIT) stamp for evidence of permanent resident status needed for employment or travel (representing nearly 80 percent of all InfoPass appointments);
- To make fee-payments related to matters pending before the EOIR, and processing actions related to an immigration judge's issuance of lawful permanent resident status grants; and

[541] *See* Ombudsman's Annual Report 2019, p. 50. For information about CLAIMS, *see* DHS Privacy Impact Assessment, "Computer Linked Application Information Management System (CLAIMS) 3 and Associated Systems" (Mar. 12, 2020); https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-claims3c-march2020.pdf (accessed Jun. 6, 2020).

[542] See Ombudsman's Annual Report 2008, p. 39.

[543] The "Reason for Appointment Guide" was updated on February 5, 2020. Information provided by USCIS (Apr. 15, 2020).

[544] Information provided by USCIS (Apr. 8, 2020).

[545] Information provided by USCIS (Apr. 12, 2020).

[546] Information provided by USCIS (Apr. 15, 2020).

[547] *Id.*

[548] During this study the Ombudsman requested daily Tier 1 and Tier 2 staffing numbers for calendar year 2019, but the agency stated that it "does not have exact daily staffing numbers. With leave, training, new hires, retirements, details, and other administrative situations, it would be very difficult to go back and create a day-by-day breakdown." Information provided by USCIS (Apr. 29, 2020).

[549] Information provided by USCIS (Apr. 15, 2020).

[550] Note that some data displayed in this report captures a standard Calendar Year (CY), while other data captures a Fiscal Year (FY), October 1 through the following September 30.

[551] Information provided by USCIS (Apr. 15 and Jun. 2, 2020). As reported previously, 20 percent of customer service inquiries came into the Contact Center through *myUSCIS* in FY 2019.

[552] Information provided by USCIS (Apr. 15, 2020).

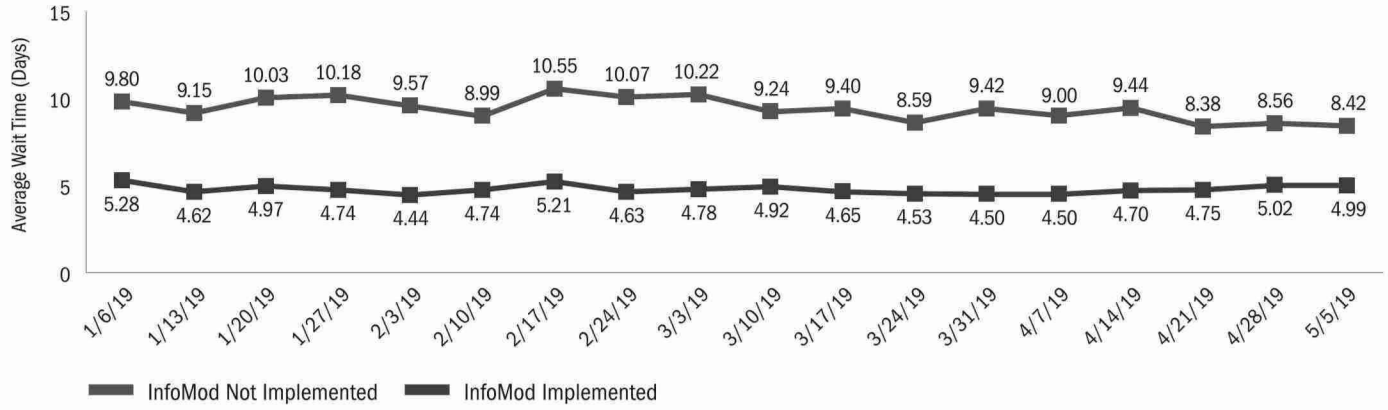
[553] Information provided by USCIS (Jun. 1, 2020 and Jun. 12, 2020). InfoPass appointments were reduced through FY 2019 by the conversion to InfoMod as well as by the closure of several international offices. Information provided by USCIS (Jun. 12, 2020).

[554] Information provided by USCIS (Apr. 8, 2020).

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Figure 7.3: Average Appointment Wait Time Analysis

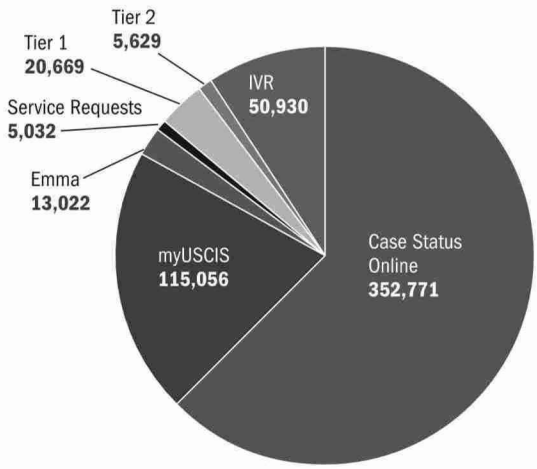


Source: Information provided by USCIS (May 12, 2020).

- To issue Advance Parole documents requested for emergency travel.[555]

The Ombudsman reviewed data provided by USCIS covering a representative 5-day period in 2019 (April 29 through May 3) detailing various characteristics of the 563,109 inquiries received by the agency through all available channels.[556] See Figure 7.4 *(Average Daily Volume—Live and Self Help Channels)* below.

Figure 7.4: Average Daily Volume—Live and Self Help Channels



Source: Information provided by USCIS (May 12, 2020).

[555] Information provided by USCIS (Apr. 15, 2020).

[556] The inquiries reported covered the timespan of April 29 through May 3, 2019, a period during which InfoMod was implemented in 61 percent of USCIS field offices. Information provided by USCIS to the Ombudsman (May 12, 2020). The agency could not provide us with data to enable an accurate before-and-after comparison of wait times for scheduling an appointment due to local and regional office variations.

The data shows that under InfoMod, 95 percent of all customer service inquiries received by USCIS were submitted or resolved without Tier 1 or Tier 2 involvement.[557] The remaining five percent were resolved through live Contact Center assistance, either at Tier 1 or Tier 2.[558] Urgent InfoPass appointments were either made by a USCIS Tier 2 ISO in a "call back" the same day or the next day.[559] The average wait time for all InfoPass appointments in FY 2019 was 7.67 days.[560]

During this same 5-day period, 31 percent of all individuals seeking an InfoPass appointment with a field office were found to meet one of the criteria warranting such an appointment, with an average wait time of 5 days.[561] Comparing the wait time data from the 59 locations where InfoMod was implemented (including some of the largest Metropolitan Statistical Areas in the United States)[562] with the remaining 37 offices where the transition had not yet occurred, reveals on average individuals could visit their local field office 3 days faster under InfoMod—5.0 days versus 8.4 days.[563]

Notably, USCIS data also shows that although online filing of SRMTs were low, representing only half of one percent

[557] Ombudsman's calculation based on information provided by USCIS (May 12, 2020).

[558] Ombudsman's calculation based on information provided by USCIS (May 12, 2020).

[559] Information provided by USCIS (May 12, 2020).

[560] *Id.*

[561] *Id.*

[562] Information provided by stakeholders at various engagements throughout FY 2019 and FY 2020.

[563] This is the average wait time for an InfoPass appointment across all USCIS facilities that had transitioned to InfoMod as of May 5, 2019. Information provided by USCIS (May 12, 2020).

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of all inquiries, it also revealed that 20 percent were initiated through a petitioner's or applicant's *myUSCIS* account.[564] This latter statistic is otherwise encouraging as it validates that a sizeable number of immigration benefit filers are utilizing this new digital channel.[565]

VARYING PERSPECTIVES ON THE IMPLEMENTATION AND CURRENT STATE OF INFOMOD

Stakeholder Perspective. As reported in the Ombudsman's 2019 Annual Report, early feedback on InfoMod fell into the following categories:[566]

- Concerns Related to Wait Time to Speak with a Representative
  - Long wait times (initially measured in hours in some cases).
  - Calls involuntarily disconnected during Tier 1 conversations and during transfers from Tier 1 to Tier 2 (necessitating repeating the process from the beginning).
- Concerns Related to Inadequate Representative Training
  - Lack of understanding of the circumstances that may warrant an in-person appointment including paying filing fees for USCIS services related to matters pending before the immigration courts.
  - Erroneous requests for Form G-28 or requesting a receipt number, in matters where one would not usually exist.[567]
- Concerns Related to Call Backs
  - Not occurring within 24 hours as was represented.
  - Occurring in the early morning, late afternoon, or on weekends.
  - Call returned to benefit filer, and not the attorney of record who made the inquiry.
  - USCIS call showing "ID-blocked" leading to inadvertent rejections as robot-calls.

The Ombudsman probed these concerns in outreach meetings with stakeholders and determined that some were more troublesome than others—more specifically, missed "call backs." Missed "call backs" can have very real consequences.[568] As previously noted, when USCIS twice tries and fails to connect on a call back, the entire process to speak to a live USCIS representative must be repeated. When a matter is truly of an emergency nature, a missed call could well constitute the determining factor. For individuals and employers represented by legal counsel, missed calls can directly lead to increased legal fees when attorneys find themselves again dialing the Contact Center, navigating the IVR, and possibly, enduring another long wait to speak to someone. Some representatives asserted that they found it necessary to carry their clients' files with them wherever they went so as not to miss the limited opportunity when a call did come.

In addition to the various inputs provided by stakeholders, the Ombudsman conducted a survey in May 2020 seeking a sampling of stakeholder opinions concerning InfoMod.[569] While the Ombudsman has not had a chance to fully analyze the results of the survey before finalizing this Report, a majority of the stakeholders who responded to the survey expressed negative opinions about their Contact Center experience, citing long wait times holding for a representative and a lack of understanding among Tier 1 operators. When completed, the Ombudsman will share its survey-derived analysis with USCIS on potential improvements.

USCIS' Perspective. During this study, the Ombudsman requested USCIS provide its own assessment of InfoMod. In response USCIS stated: "InfoMod [was] a tremendous success for applicants [and that it] received positive feedback from the full spectrum of public stakeholders (applicants, attorneys, congressional staff, media stories) as

564 Information provided by USCIS (May 12, 2020).

565 *See* Ombudsman's Annual Report 2019, "Transitioning from Transformation to eProcessing," pp. 62–69.

566 *See* Ombudsman's Annual Report 2019, "From InfoPass to InfoMod: a Crossroads for Applicant Support Services," pp. 44–55. This includes outreach events and meetings with stakeholders, review of online reports and stories, meetings with USCIS. Information provided by stakeholders on Feb. 13, 2019, Feb. 14, 2019, Mar. 6, 2019, Mar. 9, 2019, Mar. 11–12, 2019, Apr. 17, 2019, May 15-18, 2019, and Jun. 21, 2019, Apr. 15, 2019, and from the Ombudsman's Contact Center and Public Engagement Teleconference (Feb. 14, 2019).

567 For example, when an attorney is seeking to fee-in an EOIR motion, or, when an individual is requesting an I-94 after being granted asylum as a defense against removal.

568 This sentiment was echoed by stakeholders the Ombudsman met with including individual benefit seekers, attorneys, representatives of accredited immigration benefit assistance preparers, and staff representatives of several Congressional House and Senate officials. Information provided by stakeholders (Feb. 27, 2020).

569 The survey was open for a 7 day period beginning on May 15 and ending May 22, 2020. The survey captured 1275 responses.

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[it] was implemented."[570] The Ombudsman is cognizant, however, of the agency's prior acknowledgement that at the end of 2018, wait times were long, often exceeding 30 minutes, and were sometimes up to 3 hours.[571] Even as it conceded that this was not ideal,[572] USCIS characterized this as a temporary problem attributable to the vendor change, and not directly related to its implementation of InfoMod.[573] The Ombudsman's review of 2019 data indicates that Contact Center wait times were consistently shorter, ranging between 9.9 and 19.8 minutes; the average speed of calls in February 2020 was reported as 7.1 minutes, and down to 3.5 minutes in late March.[574] USCIS otherwise posits that the public and its field offices both benefited from the reassignment of ISOs previously performing InfoPass duty to adjudication work.[575]

Based on a review of information available to the Ombudsman, there is insufficient data to quantify how InfoMod's shift in resources impacted field office adjudications. Despite the absence of empirical evidence, the Ombudsman nevertheless believes that InfoMod will have a positive impact on field office adjudications and plans to continue studying the impact of InfoMod.

USCIS' 2020 INFOMOD GOALS

The Ombudsman requested USCIS to detail InfoMod's operational goals for FY 2020. In response,[576] the agency provided the following general objectives:

- Dedicate a team of employees to focus solely on information services;
- Provide efficiencies for the public by reducing wait times for information and reducing the need for travel to a field office;
- Reduce the amount of USCIS employee and contractor time and resources spent on information inquiries that can be answered online or should be directed to other agencies;
- Provide advance notice of requests for adjudication services such as advance parole and proof of status documentation, enabling field offices and ISOs to organize their workdays more efficiently; and
- Reduce the number of officers needed to address in-person information requests and reallocate those resources to interviewing and adjudicating applications.

Apart from the above, USCIS advanced a goal to seek out and deploy new technologies to connect with applicants,[577] including a "text-ahead" capability that would help coordinate a specific call back timeslot.[578]

NEAR-TERM AND LONG-TERM INFOMOD CHALLENGES

While USCIS is currently committed to this new model to meet the public's information and service needs, and to enable the agency to operate more efficiently, there are challenges that the Ombudsman recommends the agency address. The Ombudsman understands that the reduction in fee intake is likely to significantly impact USCIS staffing models for the foreseeable future, and that these suggestions may be unachievable in the near term, we offer them for consideration as USCIS prioritizes its efforts.

[570] USCIS Response to the Citizenship and Immigration Services Ombudsman's 2019 Annual Report to Congress, January 24, 2019; https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

[571] USCIS Response to the Citizenship and Immigration Services Ombudsman's 2019 Annual Report to Congress, January 24, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

[572] *See generally* USCIS Webpage, "New Online Tools Reduce Wait Times for Callers" (Feb. 25, 2019); https://www.uscis.gov/news/alerts/new-online-tools-reduce-wait-times-callers (accessed Apr. 18, 2020).

[573] USCIS Response to the Citizenship and Immigration Services Ombudsman's 2019 Annual Report to Congress, January 24, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/Response_to_Ombudsman_2019_Annual_Report.pdf (accessed Apr. 18, 2020); *see also* information provided by USCIS (Apr. 15, 2020).

[574] Information provided by USCIS (Apr. 15, 2020).

[575] USCIS estimated that the transition to InfoMod would allow it "to redirect an estimated 116 Full Time Equivalents ($12.4M per annum in personnel resources) toward conducting interviews and other adjudicative activities, leading to a reduction in processing times and enhancing the capabilities and effectiveness of USCIS employees." Information provided by USCIS (Apr. 8, 2020).

[576] Information provided by USCIS (Apr. 15, 2020).

[577] *Id.*

[578] *Id.* USCIS underscored that it is at the earliest exploration stage and has not yet committed to using this technology. The Ombudsman encourages USCIS to quickly determine its feasibility, and to further explore how it may utilize currently existing email capabilities that would not incur new or additional cost burdens on the agency.

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In the Near Term:

1. Address the expected surge in demand for information and assistance by thousands of applicants and petitioners affected by the closure of **USCIS field and asylum offices, Application Support** Centers, and reduced operations caused by the COVID-19 outbreak. As offices resume operations, interviews and naturalization ceremonies are being rescheduled in altered settings and reduced availability; substantial backlogs will continue for the foreseeable future as delayed adjudications are addressed. There will be many foreign nationals with complicated maintenance of status and departure circumstances that require in-person discussions and potentially local field office resolution.

2. Augment the Contact Center's current "call back" routine by using email and/or phone texting to negotiate a narrow time window when the caller will be ready to take the return call. In making this recommendation, the Ombudsman notes that with such arrangements in place, "call backs" could take place after normal business hours since the time window will have been arranged in advance. USCIS could adapt its capabilities to shift the work where the staff can best use this, taking into account workplace flexibilities and the presence of staff on the West Coast.

3. Explore ways to reduce caller-initiated disconnects, which may serve as an indicator of caller frustration with navigating the IVR system. Fiscal Year 2019 IVR data shows approximately 23 percent of callers abandon attempts to reach the Contact Center. Given the elevated role that the Contact Center now plays as the primary avenue to discuss a case matter with a live USCIS representative, this is an area deserving further examination and improvement. The Ombudsman has heard from at least one high-profile organizational stakeholder that the limited language options now available are a problem for USCIS' diverse community.[579] USCIS may want to explore reducing the number of prompts and choices, and increase use of plain language.[580]

4. **Assign a unique identifier that would allow callers** to bypass the IVR to reach a Tier 2 representative under certain conditions (***e.g.***, when an USCIS "call back" cycle did not result in a connection). Requiring a caller to begin the entire process over from the beginning is both unnecessary and inefficient, and the Contact Center could maintain a record of the number of attempts callers make to resolve an issue.

In the longer term:

1. **Adapt its Contact Center's Tier 1 staffing to meet the** anticipated demand. USCIS could consider expanding live representative assistance hours to accommodate individuals and employers from the Western states needing to obtain information.[581] The Ombudsman recognizes that this may require the agency to revisit and adjust its current vendor contract requirements, and that it may be difficult in light of both the pandemic aftermath and the agency's recently announced fiscal issues.

2. **Through modification of its vendor contract** requirements, impose more rigorous competency **training and testing of individuals hired to fill Tier** 1 representative positions. This may include, for example, lengthening its training period, including "nesting"—the period when they are answering calls under the direct supervision of a USCIS employee.

3. Beyond its current offering of communications in English and Spanish, record Contact Center instructions and messaging in multiple foreign languages. This recommendation aligns with USCIS' stated Language Access Plan's commitment to "incorporate language access considerations in its

[579] Information received from stakeholders (Mar. 12, 2019).

[580] As this report is being finalized, USCIS advised it was implementing a new IVR telephone system (again only in English and Spanish) providing callers the ability to speak to the system rather than selecting keypad options, to receive links for forms and information by email or text, and complete an optional, real-time customer service survey. The new IVR, to be rolled out in stages, is designed to provide callers "a greater range of self-service options." USCIS Webpage, "USCIS Begins Implementing New Interactive Voice Response Telephone System;" https://www.uscis.gov/news/alerts/uscis-begins-implementing-new-interactive-voice-response-telephone-system (accessed May 18, 2020).

[581] In setting this as a goal, the Ombudsman notes that live assistance is available at the Department of State National Visa Center from 7:00 AM to 12:00 AM (EST), Monday through Friday. *See* DOS Webpage, "NVC Contact Information;" https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/nvc-contact-information.html (accessed May 8, 2020).

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routine strategic and business planning, identify and translate materials into the most frequently encountered languages, provide interpretive support or guidance where appropriate, and educate its personnel about language access responsibilities and how to use available language access resources."[582]

4. Consider providing limited live foreign language capacity beyond Spanish to individuals who call the Contact Center for information or services. Like other federal agencies, this may be accomplished through the contracting of a GSA-approved interpreter services provider. The Ombudsman suggests that USCIS explore this as a pilot that imposes specific time periods or days when interpreter services are offered.

5. USCIS could commission an independent research company to create and manage a new Contact Center user-satisfaction survey. To ensure that the agency is providing the best possible fee-for-service support to the public it serves, USCIS could conduct periodic surveys with the public to evaluate InfoMod's effectiveness and identify areas where the process could be improved.

[582] Department of Homeland Security, "USCIS Language Access Plan," pp. 2, 6 (Dec. 2019); https://www.dhs.gov/sites/default/files/publications/uscisc-updated-language-access-plan-2020.pdf (accessed May 18, 2020). In making this long-term recommendation, the Ombudsman acknowledges that USCIS' current implementation of its Language Access Plan is compliant with Executive Order 13166, and that the cost associated with such recordings will have to be weighed against more pressing requirements in a time of fiscal issues for the agency. More information on this subject may be found on USCIS' website. *See* USCIS Webpage, "USCIS Language Access Plan;" https://www.uscis.gov/tools/multilingual-resource-center/uscis-language-access-plan (accessed May 27, 2020).

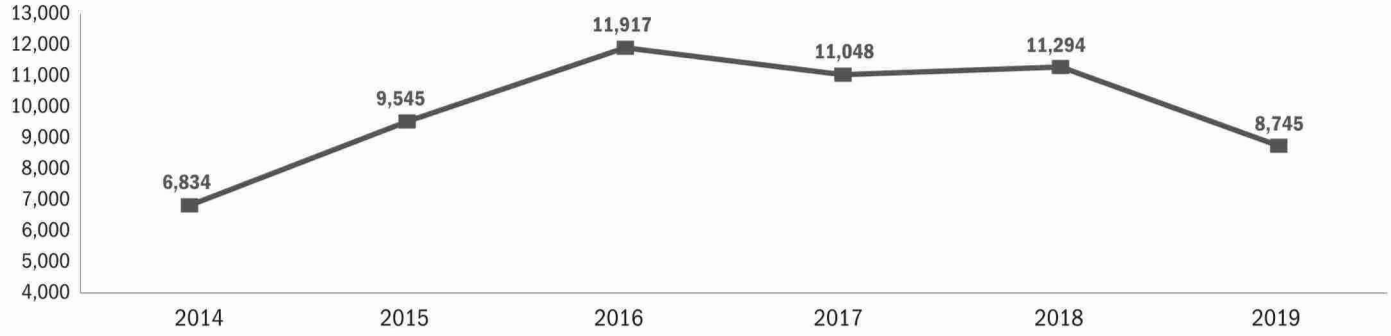
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Appendices

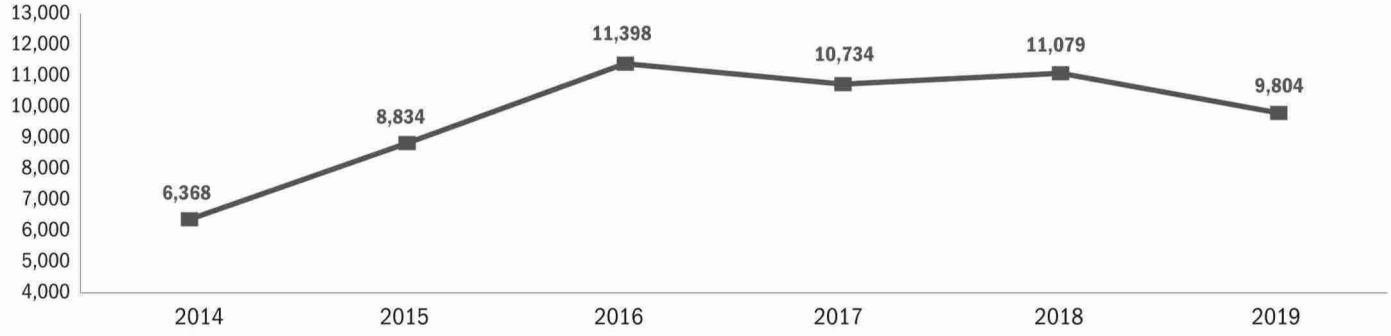
The Ombudsman by the Numbers

Ombudsman Requests for Case Assistance Received by Calendar Year



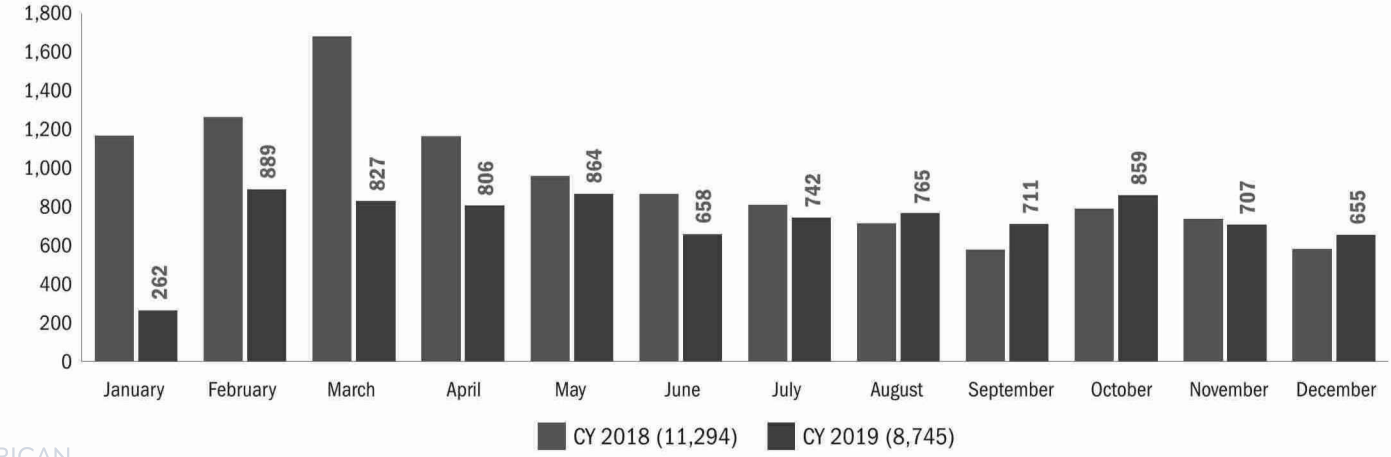
*In CY 2019 the Ombudsman's Office did not accept incoming requests for assistance during the 35-day funding lapse.

Ombudsman Requests for Case Assistance Resolved by Calendar Year



*In CY 2019 the Ombudsman's Office did not accept incoming requests for assistance during the 35-day funding lapse.

Ombudsman Requests for Case Assistance Received by Month for Calendar Years 2018 and 2019

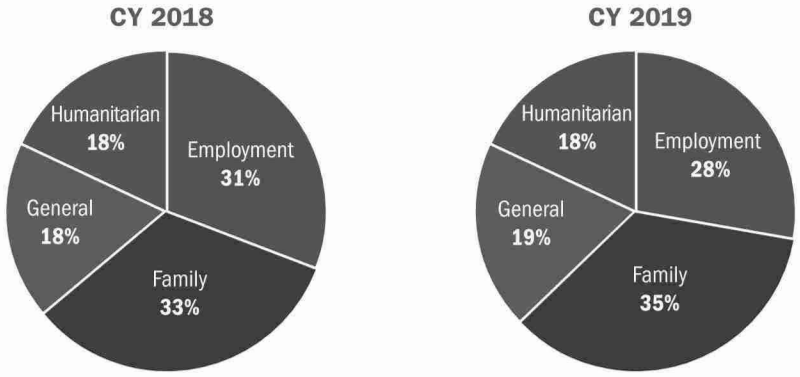


*In CY 2019 the Ombudsman's Office did not accept incoming requests for case assistance during the 35-day funding lapse.

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Ombudsman Requests for Case Assistance—Submission by Category



Ombudsman Top Forms Requesting Case Assistance, 2019

Requests for Case Assistance Top Form Types CY 2019	# Received	% of Total Requests
I-765, Application for Employment Authorization	2,280	26%
I-485, Application to Register Permanent Residence or Adjust Status	1,788	20%
I-130, Petition for Alien Relative	1,047	12%
N-400, Application for Naturalization	733	8%
I-751, Petition to Remove the Conditions of Residence	275	3%
I-589, Application for Asylum and Withholding of Removal	228	3%
I-131, Application for Travel Document	226	3%
I-140, Immigration Petition for Alien Worker	206	2%
I-539, Application to Extend/Change Nonimmigrant Status	160	2%
I-290B, Notice of Appeal or Motion	133	2%

Requests for Case Assistance Top Form Types CY 2018	# Received	% of Total Requests
I-765, Application for Employment Authorization	4,064	36%
I-485, Application to Register Permanent Residence or Adjust Status	1,893	17%
N-400, Application for Naturalization	1,084	10%
I-130, Petition for Alien Relative	982	9%
I-131, Application for Travel Document	264	2%
I-751, Petition to Remove Conditions on Residence	235	2%
I-140, Immigrant Petition for Alien Workers	198	2%
I-589, Application for Asylum and for Withholding of Removal	190	2%
I-821D, Consideration of Deferred Action for Childhood Arrivals	189	2%
I-90, Application to Replace Permanent Resident Card	176	2%

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Top Ten States Where Applicants Reside and the Top Five Primary Form Types

California



Requests Received: 1,314

Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	411	31%
I-485, Application to Register Permanent Residence or Adjust Status	255	19%
I-130, Petition for Alien Relative	107	8%
N-400, Application for Naturalization	102	8%
I-589, Application for Asylum and Withholding of Removal	45	3%

Texas



Requests Received: 1,027

Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	283	28%
I-485, Application to Register Permanent Residence or Adjust Status	178	17%
I-130, Petition for Alien Relative	153	15%
N-400, Application for Naturalization	107	10%
I-131, Application for Travel Document	32	3%

New York



Requests Received: 943

Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	251	27%
I-485, Application to Register Permanent Residence or Adjust Status	235	25%
N-400, Application for Naturalization	109	12%
I-130, Petition for Alien Relative	105	11%
I-751, Petition to Remove the Conditions of Residence	34	4%

Florida



Requests Received: 786

Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	222	28%
I-765, Application for Employment Authorization	168	21%
I-130, Petition for Alien Relative	120	15%
N-400, Application for Naturalization	68	9%
I-140, Immigration Petition for Alien Worker	30	4%

Maryland



Requests Received: 400

Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	129	32%
I-765, Application for Employment Authorization	82	21%
I-130, Petition for Alien Relative	53	13%
N-400, Application for Naturalization	36	9%
I-360 (Juvenile), Petition for Amerasian, Widow(er), or Special Immigrant	21	5%

Illinois



Requests Received: 397

Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	90	23%
I-765, Application for Employment Authorization	85	21%
I-130, Petition for Alien Relative	66	17%
N-400, Application for Naturalization	49	12%
I-751, Petition to Remove the Conditions of Residence	21	5%

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New Jersey

Requests Received: 386

Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	126	33%
I-485, Application to Register Permanent Residence or Adjust Status	73	19%
I-130, Petition for Alien Relative	38	10%
I-360 (Juvenile), Petition for Amerasian, Widow(er), or Special Immigrant	23	6%
N-400, Application for Naturalization	20	5%

Virginia

Requests Received: 338

Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	80	24%
I-765, Application for Employment Authorization	77	23%
N-400, Application for Naturalization	45	13%
I-130, Petition for Alien Relative	40	12%
I-589, Application for Asylum and Withholding of Removal	14	4%

Georgia

Requests Received: 298

Top Primary Form Types:	Count	% of Total
I-485, Application to Register Permanent Residence or Adjust Status	86	29%
I-765, Application for Employment Authorization	54	18%
I-130, Petition for Alien Relative	37	12%
N-400, Application for Naturalization	28	9%
I-751, Petition to Remove the Conditions of Residence	17	6%

Washington

Requests Received: 205

Top Primary Form Types:	Count	% of Total
I-765, Application for Employment Authorization	75	37%
I-485, Application to Register Permanent Residence or Adjust Status	41	20%
I-130, Petition for Alien Relative	16	8%
I-751, Petition to Remove the Conditions of Residence	14	7%
I-131, Application for Travel Document	9	4%

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Updates on the 2019 Citizenship and Immigration Services Ombudsman Annual Report Recommendations

In the 2019 Annual Report to Congress, the Ombudsman made several recommendations to USCIS on how to improve delivery of immigration services, in keeping with Section 452(c)(1)(F) of the Homeland Security Act of 2002.[583]

On January 24, 2020, USCIS issued its response, concurring with many of the recommendations. The Ombudsman issues the following updates to these recommendations and USCIS' actions taken to implement them, as well as those not taken, in accordance with Section 452(c)(1)(C)-(E).

THE H-1B PROGRAM: WAGES AND SPECIALTY OCCUPATIONS

The Ombudsman's 2019 Recommendations:

1. **Define "Highly Specialized Knowledge" and Incorporate Wages as a Factor.** The law defines "specialty occupation" as an occupation that requires a theoretical or practical application of a body of *highly specialized knowledge*. In addition to requiring an application of a body of highly specialized knowledge, the occupation must also require a bachelor's degree or higher in a specific specialty, or its equivalent. Although these are separate requirements, the regulation that defines the qualifying criteria for specialty occupations does not define the term "highly specialized knowledge." Rather, the four different standards contained within the regulation pertain to meeting the educational requirement of the definition. This leaves half the statutory definition undefined in establishing eligibility. In order to ensure that the position requires a theoretical or practical application of a body of highly specialized knowledge, USCIS should consider defining the term "highly specialized knowledge" in the H-1B context.

   Wages proffered to the beneficiary could be a factor in the consideration of whether or not a position requires a body of highly specialized knowledge. Incorporating proffered wages within the regulatory criteria for specialty occupations appears to be consistent with the intent of the program and could promote higher wages among H-1B beneficiaries overall. Specifically, a substantial salary offered for the proffered position generally decreases the likelihood that the position will have an adverse impact on similarly situated U.S. workers. Furthermore, a higher than average wage could evidence that the proffered position is typically one that requires a body of highly specialized knowledge.

   USCIS Response: Under the Unified Agenda, there is a proposed regulation titled "Strengthening the H-1B Nonimmigrant Visa Classification Program." DHS will propose to revise the definition of "specialty occupation" to increase focus on obtaining the best and brightest foreign nationals via the H-1B program and define "employer-employee relationship." DHS/USCIS states that these proposed changes will better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.

   Ombudsman Update: As we finalize this Report, USCIS has not yet published a proposed rule in the Federal Register. In order to ensure that the position requires a theoretical or practical application of a body of highly specialized knowledge, USCIS should consider defining the term "highly specialized knowledge" in its rulemaking. Ambiguity will only prolong confusion and waste government and stakeholder resources while the industry attempts to understand the agency's intentions and comply with shifting standards. The Ombudsman's Office continues to support the incorporation of proffered wages within the regulatory criteria for specialty occupations to promote higher wages among H-1B beneficiaries and U.S. workers overall, especially during this period of unstable employment due to COVID-19.

2. **Prioritize Wages and Skill Level in the H-1B Lottery.** Currently, the H-1B program contains significant numbers of potential beneficiaries with a U.S. master's degree or higher. The number of cap-subject petitions filed under the advanced degree exemption has been steadily increasing. The continued

[583] For a full review of the Ombudsman's recommendations, *see* Ombudsman's Annual Report 2019, *passim*.

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increase of prospective beneficiaries with at least a U.S. master's degree demonstrates a pool of potential foreign workers with a higher level of academic knowledge.

Reforming the H-1B lottery process is one way to ensure that H-1B visas are awarded to the most-skilled beneficiaries. Apart from a separate, smaller lottery conducted for petitions filed on behalf of beneficiaries with at least a U.S. advanced degree, the selection process does not consider the beneficiary's skill level. The number of unselected petitions filed under the advanced degree exemption has increased markedly in prior years. Congress has previously considered legislation that would, among other reforms, eliminate the random selection system in favor of prioritization based on other factors (*e.g.,* wage offered, education level attained, etc.). Without Congressional action, the inherently random nature of the current H-1B lottery system will continue to disserve the most-skilled beneficiaries and the organizations seeking to employ them.

USCIS Response: On January 31, 2019, DHS published a final rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. This final rule reverses the order in which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption and introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. Changing the order in which USCIS counts these allocations increased the number of petitions for beneficiaries with a master's or higher degree from a U.S. institution of higher education selected under the H-1B numerical allocations. Specifically, the change will result in an estimated increase of up to 16 percent (or 5,340 workers) in selected petitions for those beneficiaries.

Ombudsman Response: The Ombudsman's Office recognizes that a statutory amendment may be the only way to directly address the issue of prioritization based on wages and skill levels. We are currently reviewing the results of the changes to the H-1B registration process, which was conducted for the first time in March 2020.

3. Revise Degree Equivalency Criteria. With respect to regulatory changes, USCIS could consider refining its degree equivalency criteria as an additional reform. The statute permits awarding H-1B visas to beneficiaries who lack a U.S. bachelor's degree. Specifically, the petitioner may demonstrate that the beneficiary meets the requirements based on experience in the specialty that is equivalent to the completion of the required degree. The beneficiary must also have recognition of expertise in the specialty through progressively responsible positions. The regulations allow for a combination of experience, education, and/or training to be considered in the equivalency determination. When showing a beneficiary's qualifications through experience, 3 years of increasingly responsible professional experience equates to 1 year of college-level training (i.e., a bachelor's degree equates to 12 years of experience). For equivalence to a master's degree, the beneficiary must have a bachelor's degree followed by at least 5 years of increasingly responsible experience in the specialty; a doctorate must be in the form of a U.S. doctorate or its foreign equivalent.

   To ensure that H-1B visas are awarded to the most-skilled beneficiaries, USCIS could modify its regulations to increase the level of experience that may be substituted for each year of college-level training. Similarly, as it has done for positions that require a doctorate degree, USCIS could remove the experience equivalency allowed for a master's degree. These reforms would increase the experience skill level required for beneficiaries who do not possess at least a U.S. bachelor's degree or a foreign degree determined to be its equivalent, as well as for those who possess a degree in an unrelated field.

   USCIS Response: USCIS has not published any recent rules or updates to its Policy Manual on this topic and does not anticipate doing so in the near future.

   Ombudsman Update: The Ombudsman's Office continues to support its recommendation that USCIS reevaluate its experience-to-degree equivalency formula to determine if it captures the realities of highly skilled experience. Given COVID-19's adverse effects on the economy, it is more important than ever to protect the jobs of U.S. workers. The highly skilled business environment has evolved over the last decade with the introduction of new industries, advancement in technologies and shifts in global demands. In coordination with the DOL, USCIS should reevaluate its current experience-to-degree equivalency formula to determine whether it needs improvement in light of the current business environment.

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FROM INFOPASS TO INFOMOD: A CROSSROADS FOR APPLICANT SUPPORT SERVICES

1. Enhance quality assurance monitoring standards to include a higher level of substantive review to inform InfoMod enhancements. USCIS has the capability to review its interactions with the regulated public, and already engages in a robust quality control through review of the actual interactions. It can review recorded calls of those who communicated with the Contact Center to request an appointment but were not transferred to Tier 2. This kind of review could result in additional changes to the criteria for in-person appointments.

USCIS Response: USCIS agrees and is reviewing escalated InfoPass calls between Tiers 1 and 2 to streamline the work between the Tiers and make this a more efficient process for callers.

Ombudsman Update: Stakeholders continue to report challenges in accessing Tier 2 representatives and resolving requests effectively using the Contact Center. Recently, the Ombudsman's Office posted a public survey on USCIS' updated public inquiry process, and will conduct follow-on study and engagements on InfoMod, given its importance to individuals, employers and their representatives. The Ombudsman's Office will report any new findings or recommendations to USCIS and the stakeholder community.

2. Work toward a convenient window of time to call back individuals to limit missed calls. In the current process, the Contact Center returns calls at a time of its own selection (including after ordinary working hours), meaning that applicants, petitioners and representatives cannot adjust their schedules to ensure they are available (and prepared for) the call. When a return call is missed, it leads to more work for the agency and frustration for the individual or employer. Providing a narrower window than 24 to 48 hours, as is currently the case, would likely ensure a higher rate of successful returned calls, especially across time zones.

USCIS Response: USCIS acknowledges this need, but emphasizes that addressing it requires substantial technological modifications to agency systems. USCIS is reviewing options for new technology and expects to have it in place in FY 2020.

Ombudsman Update: The Ombudsman's Office looks forward to these modifications; however, adding a note to the record provided to the Tier 2 representatives as to suitable times to respond to the inquiry might reduce the number of complaints relating to this issue. This is particularly important as USCIS continues to depend more and more on the USCIS Contact Center to respond to public inquiries.

3. Educate potential users on the continued improvements to ***myUSCIS,*** especially its multiple **benefits, such as communicating with the Contact** Center through electronic messages. As eProcessing expands, USCIS will rely more on its electronic portal to communicate with the affected public. Educating the public on *myUSCIS* and its benefits will help applicants and petitioners and USCIS communicate more efficiently and effectively. Moreover, providing an opportunity for feedback will also help USCIS identify needed improvements.

USCIS Response: USCIS has updated its Interactive Voice Response (IVR) system to provide more information to callers, its hold messaging in which callers are reminded they can use self-service options, and its landing pages where users navigate USCIS' website to find self-service tools.

Ombudsman Update: USCIS did not respond directly to the Ombudsman's recommendation to include stakeholders in its development of eProcessing expansions. The Ombudsman's Office continues to encourage USCIS to engage with stakeholders when developing and rolling out new functions and form types for eProcessing to ensure their perspective is considered, and that adequate training is provided to improve outcomes.

4. Allow attorneys and accredited representatives in **the same law firm or organization to engage with the** agency. Attorneys and accredited representatives bound by ethical obligations to a state bar as well as under the ethical structures of EOIR can be held responsible for their actions before the agency. Allowing other attorneys and legal representatives to be able to discuss with USCIS administrative issues such as requesting appointments, seeking rescheduling, and reporting issues would increase efficiency for both the agency and the applicant. This would also increase the responsiveness of return calls, if a fellow attorney can be called upon when the attorney of record is not available.

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USCIS Response: USCIS disagreed with this recommendation, stating that the agency will only communicate with the benefit requestor and the attorney or accredited representative of record, as established through a properly completed and filed Form G-28, *Notice of Appearance as Attorney or Accredited Representative*.

Ombudsman Update: Additional public guidance would help explain how a law firm could add legal representatives to the G-28 for the sole purpose of making Contact Center inquiries and not to replace the attorney of record for the pending application or petition with USCIS. A frequent complaint to the Ombudsman is that the Contact Center will not speak with an attorney, even if that attorney has already entered a G-28, when that representation is not reflected (for whatever reason) in the system. USCIS could designate a clear path for submission and confirmation of the G-28 for the limited purpose of Contact Center communication.

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5. Update InfoPass appointment guidance for the Contact Center to include procedures for escalating calls that require immediate attention due to exigent circumstances. While USCIS cannot anticipate all situations, certain exigent circumstances could receive a higher level of attention, including the possibility of a same-day appointment. These might include obtaining an ADIT stamp to show an employer as proof of status and employment eligibility so the individual can begin a job or not lose one, or an emergency advance parole document to meet an applicant's urgent travel need. The updated guidance would provide timely services to applicants with needs that can only be addressed through in-person appointments.

USCIS Response: The USCIS Field Office Directorate and Operations Office Directorate meet weekly to coordinate, address specific inquiries, and update protocols as needed. The appointment guidance, updated as needed, identifies ways to note those circumstances that require immediate attention, which are escalated directly to the field office with jurisdiction over the request via a "hotline" staffed by officers who can quickly assist in scheduling an emergency appointment. Further, Contact Center personnel meet regularly with agency partners in the Field Office Directorate to manage both the urgent and non-urgent appointment requests.

Ombudsman Update: The Ombudsman's Office continues to receive requests for case assistance and concerns from stakeholders that emergency requests are not handled properly at the USCIS Contact Center. Stakeholders report they are often denied the opportunity to demonstrate eligibility for an emergency appointment. Additional public engagement may inform both the public on how USCIS is updating its responses to better to address these types of cases, as well as provide USCIS with valuable feedback from the public on the situations that require assistance.

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6. Conduct a strategic evaluation of support services every 3 years to make sure the methods continue to **be efficient and effective, and that new technology** is incorporated. While USCIS engages in frequent review of its processes to ensure effectiveness and integrity, regular evaluations of its communication and interaction methods would help ensure technology upgrades and strategic improvements are made.

USCIS Response: USCIS agreed, stating that the agency consistently seeks user feedback and conducts user group studies to ensure it is in touch with its user audience. USCIS will use an "omni-channel survey tool" that should help it gain quick and efficient feedback.

Ombudsman Update: The Ombudsman's Office continues to receive concerns from stakeholders on their difficulties in making inquiries to the agency. We recommend that USCIS provide more information to the public regarding the survey tool and its results to ensure that stakeholders are aware of this option to provide input and the results of the feedback received.

TRANSITIONING FROM TRANSFORMATION TO EPROCESSING

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1. Conduct public-user feedback sessions and publish summaries on a rolling basis as each new **benefit product is released.** Obtaining feedback from the public will help problems uncovered to be reported back quickly for resolution; feedback loops will inform the development and rollout of future eProcessing initiatives.

USCIS Response: USCIS frequently conducts early stage user research through in-person and virtual interviews. These interviews inform USCIS design and technical decisions. Additionally, the agency aims to conduct usability sessions to obtain public user feedback approximately every 6 weeks. USCIS also receives feedback on current production issues through the agency's

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public email addresses and outreach sessions. USCIS technical teams review each reported issue and prioritize the bugs to be resolved in a timely manner.

Ombudsman Update: Stakeholder feedback in response to this issue indicates that more USCIS engagement with stakeholders including employers, not-for-profit organizations, and educational institutions, is necessary.

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2. **Expand and fully staff an IT support office that external users can access specifically for technical** assistance. USCIS currently has an IT support desk for filers. IT support representatives take tickets on technology problems received by Tier 1 and Tier 2 representatives at the Contact Center. However, to appropriately handle the increased volume of inquiries that will accompany eProcessing when it is fully functional, investment and planning for IT support will need to begin now.

USCIS Response: The USCIS Office of Information Technology has a fully functioning Enterprise Operations Center (EOC) that is staffed 24/7. USCIS personnel and the contract technicians at the EOC are prepared to handle increases in work volume. The helpdesk vendor is recruiting and hiring staff in anticipation of increased demand. USCIS renewed the contract with the vendor in July 2019 and will continue to work closely with the vendor as new forms are made available to file online.

Ombudsman Update: As USCIS expands public access to eProcessing, additional user support and information is imperative to ensure the public has the necessary resources to timely and effectively file petitions and applications with USCIS.

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3. Clearly identify, track, and measure system disruptions and their impact on productivity to determine steps necessary to mitigate them.

USCIS Response: "USCIS is maturing its proactive monitoring environment to provide continuous monitoring of application performance and infrastructure stability. USCIS will integrate alerts and monitoring with the existing Critical Infrastructure Response process to provide targeted root-cause analysis of errors, alerts, and downtime. USCIS performance monitoring teams will work with development teams to ensure development markers are used across the enterprise to enable more rapid troubleshooting of system disruptions, allowing for automated and continuous deployment."

Ombudsman Update: The Ombudsman's Office continues to support this recommendation and recognizes USCIS' efforts to improve the process. USCIS needs to be able to quickly identify and track issues as they arise in eProcessing. The Ombudsman's Office received complaints during the H-1B registration process in March 2020, for example, which were forwarded to USCIS for response. Prior to the lottery selection, the Ombudsman's Office surveyed its stakeholders on their experience with the H-1B registration process; while 60 percent experienced technical difficulties, they were resolved 80 percent of the time. Better information sharing would inform the public of these resources and prepare the public for eProcessing as USCIS continues to introduce new forms to file online.

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4. Accelerate engagement with immigration forms/case management vendors whose systems are used by immigration service providers. For individuals who seek legal representation when applying for immigration benefits, those services are often supported by vendors that create forms and case management systems. As described above, vendors have for several years expressed concern that they have not been included in the planning process. Engaging them in the eProcessing development process sooner will offer legal providers and their clients a smoother transition to eProcessing.

USCIS Response: USCIS is creating an outreach plan to consult immigration-law service providers, and will increase outreach to these audiences as more of its technical approach and early attempts are available for demonstration.

Ombudsman Update: USCIS has so far consulted a limited number of immigration-law service providers. While the Ombudsman does not in this or any other recommendation intend to directly support any business, including immigration forms/case management vendors, the fact remains that a significant number of individuals, employers and representatives rely upon such case management systems when interacting with USCIS, making their inputs potentially valuable to both USCIS and the public. Meeting with additional providers, and specifically with immigration forms/case management vendors, would assist in the integration and adoption of new eProcessing forms. Publishing the findings from these meetings would allow the public to comment on the results and refine any programmatic or policy recommendations.

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It would also eliminate any benefit given to the private businesses that meet with USCIS.

CHALLENGES FACING TIMELY ADJUDICATION OF EMPLOYMENT AUTHORIZATION DOCUMENTS

1. **Augment USCIS' staffing resources to enable the National Benefits Center and Service Centers to** devote more production hours to Employment Authorization Document (EAD) processing.

USCIS Response: "USCIS actively recruits and hires to maintain the highest possible levels of staffing and implements alternative work schedules and telework programs to boost the capacity of its offices. The agency consistently seeks to expand its technological capabilities and implement business process efficiencies and allocates adjudicators to workloads in a manner consistent with USCIS and departmental priorities. Due to these efforts, the growth rate of the backlog slowed between FY 2018 and FY 2019 to less than one percent. USCIS has also proposed new fees and a reduction in fee waivers so that USCIS has the resources it requires for additional staff and overtime."

Ombudsman Update: USCIS is facing a production crisis on multiple fronts: fees are not meeting processing costs, the COVID-19 pandemic suspended normal in-person appointments, and filing trends are erratic and unpredictable. USCIS concurred with the Ombudsman's recommendation but did not address the employment authorization processing specifically. Understanding that USCIS is facing unprecedented challenges, the Ombudsman's Office continues to recommend that USCIS review its approach to EAD adjudications and ensure applicants have adequate information to timely file.

2. Accelerate the incorporation of the Form I-765, ***Application for Employment Authorization,*** into eProcessing, which could reduce the number of steps in EAD adjudication, reducing processing times and improving overall efficiency. While this may be a formidable task given the number of EAD types adjudicated and the sheer volume of EAD filings, even selecting only one type for eProcessing (such as adjustment of status related applications) could accelerate the adjudication of these forms and pave the way to testing the eProcessing system across the agency.

USCIS Response: None.

Ombudsman Update: USCIS has not incorporated Form I-765 into eProcessing. Incorporating a large-volume application like the Form I-765 into eProcessing would empower the agency to support its goal of protecting its workforce during the COVID-19 pandemic, as well as improve processing efficiency and integrity.

3. Implement a public education campaign to **encourage applicants to file Form I-765 renewal** applications up to 180 days before the expiration of their current EAD to reduce the impact of longer processing times.

USCIS Response: USCIS concurred with this recommendation, and stated that the agency can raise awareness by using existing communication resources such as social media messages and Internet content, as well as web alerts and stakeholder messages via electronic communication platforms. USCIS can also incorporate this campaign within its national and local outreach.

Ombudsman Update: The USCIS webpages, "I-765, Application for Employment Authorization" and "Automatic Employment Authorization Document (EAD) Extension" have no information on filing up to 180 days before expiration. USCIS filing checklists also do not provide guidance on when an individual may file to renew an employment authorization document. The Ombudsman's Office was able to find guidance using the USCIS' "Ask Emma," warning that a person cannot file for a renewal of the EAD more than 180 days before the original EAD expires. This information is helpful to those who access "Ask Emma," but additional guidance is warranted, especially on the Form I-765 webpage, to ensure the public understands when to file an application to renew employment authorization and how to try to avoid a lapse.

4. In tandem with this public education recommendation, emphasize that petitioners and applicants verify the addresses provided (for all **forms filed with USCIS)** by USPS's "Look Up a Zip Code" checker; doing so confirms the address is correctly formatted and serviced by USPS.

USCIS Response: USCIS agrees, and stated that this is one of the agency's top messages in many of its communications and outreach efforts. USCIS will keep reminding applicants of the importance of verifying and

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updating their address in all forms filed with the agency. The agency has made it possible for individuals filing online to select the U.S. Postal Service (USPS) version of their address. For some filings, applicants can review and update this information in their account profile. USCIS hopes to make that capability available to more applicants over the coming year.

Ombudsman Update: While USCIS may include this information in its messaging, additional methods of communication are available to improve public awareness. For example, the USCIS "Change of Address" webpage could include a notice for individuals (such as victims of domestic violence, trafficking and other crimes), who are unable to file online to use the USPS's "Look Up a Zip Code" checker before filing their paper Form AR-11, *Alien's Change of Address Card*. This vulnerable population especially needs to ensure the agency always has a current address on file since USCIS only communicates via the safe address provided. Adding information to the USCIS webpage would support the agency's messaging goals and the Ombudsman's recommendation.

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5. Consider establishing a uniform process to identify and expedite processing of Form I-765 **resubmissions filed due to "service error,"** and operationalize the use of express mail courier service (e.g., USPS Express Mail, UPS, Federal Express, etc.) to speed up the delivery of corrected or replacement documents in such situations.

USCIS Response: The instructions for Form I-765, *Application for Employment Authorization*, outline the process for requesting replacement or correction of an EAD under the heading "Replacement for Card Error." These instructions make it clear that applicants should not be resubmitting a Form I-765 when alleging a service error, but instead must "submit a letter explaining the error, along with the card containing the error to the service center or National Benefits Center that approved the Form I-765." The only instance in which an applicant is required to resubmit a Form I-765 is when an error is not attributable to USCIS.

USCIS further stated that once the agency receives a letter explaining the error, it reviews the initial application. In the current processing environment, USCIS is unable to flag Forms I-765 that are being reviewed due to allegations that the EAD either contains incorrect information or was not properly delivered due to a "service error." However, as USCIS expands eProcessing of applications in USCIS ELIS to include Form I-765, the agency will improve the response to those types of requests and to resolve systemic issues that may cause errors in the future.

USCIS is not considering implementing a process that will expedite these kinds of submissions. In an effort to provide consistency in expected processing times, USCIS generally adjudicates cases on a first-in, first-out basis; however, USCIS provides for and considers requests for expeditious processing in accordance with USCIS Expedite Criteria posted on the USCIS website. "Service error" is one basis to request expedited processing according to the USCIS Expedite Criteria.

USCIS cannot use FedEx or UPS since they do not deliver to P.O. Boxes. USCIS could possibly use USPS Priority Mail Express overnight delivery, but it would cost four times as much as the Priority Mail service, which the agency currently uses.

Ombudsman Update: Individuals and employers continue to need timely and efficient employment authorization processing, with clear avenues to expeditiously correct service errors, and the Ombudsman continues to receive concerns of this nature. Ensuring individuals receive their employment authorization documents in a timely and efficient matter will support this goal.

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Homeland Security Act—Section 452—Citizenship and Immigration Services Ombudsman

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the 'Ombudsman'). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS—It shall be the function of the Ombudsman—

1) To assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

2) To identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

3) To the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS—

1) OBJECTIVES—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) Shall identify the recommendation the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) Shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) Shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) Shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) Shall include such other information as the Ombudsman may deem advisable.

2) REPORT TO BE SUBMITTED DIRECTLY—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES—The Ombudsman—

1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

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3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS—

1) IN GENERAL—The Ombudsman shall have the responsibility and authority—

(A) To appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) To evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

2) CONSULTATION—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES—

1) IN GENERAL—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

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USCIS Naturalization and Adjustment of Status Processing Times

Processing Times for USCIS Field Offices for Form N-400, *Application for Naturalization*

December 2019 (FY 2020 1st Quarter) ■ = 0–5 Months ● = 15–7 Months ▲ = 7+ Months



Source: Information provided by USCIS.

Processing Times for USCIS Field Offices for Form I-485, *Application to Register Permanent Residence or Adjust Status*

December 2019 (FY 2020 1st Quarter) ■ = 0–5 months ● = 5–7 months ▲ = 7+ months

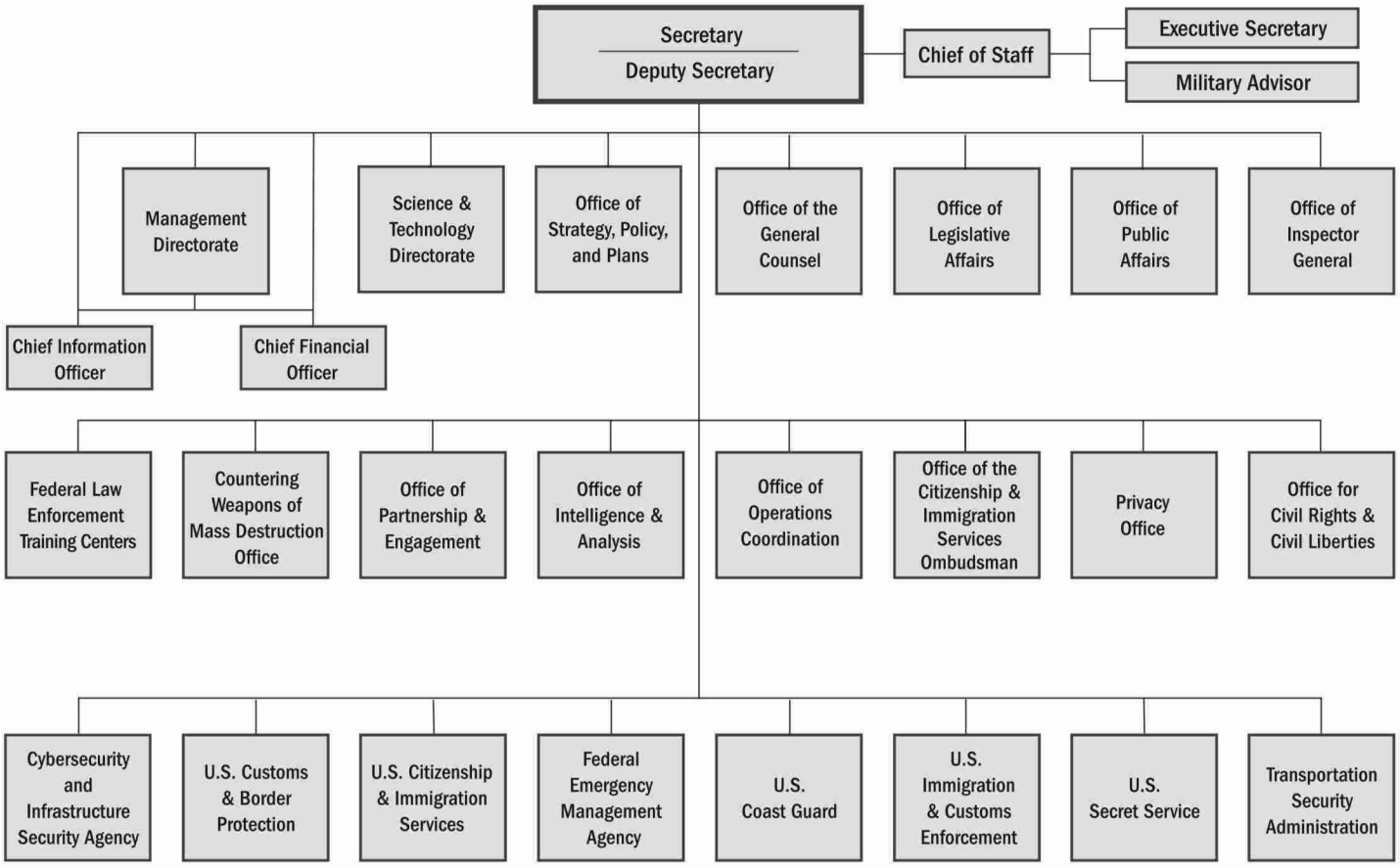


Source: Information provided by USCIS.

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U.S. Department of Homeland Security Organization Chart



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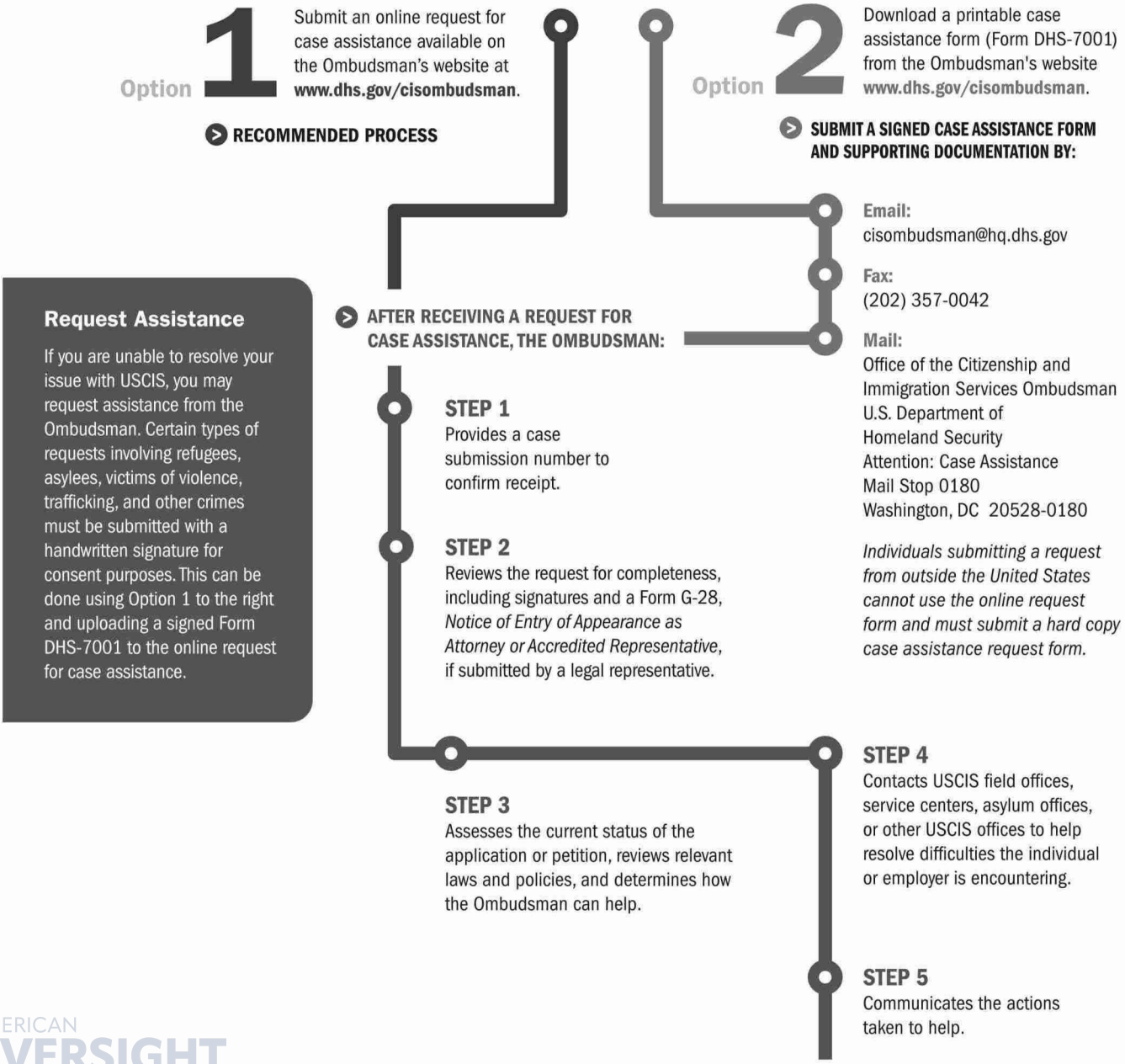
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How to Request Case Assistance from the Ombudsman: Scope of Assistance Provided

Helping Individuals and Employers Resolve Problems with USCIS

Before asking the Ombudsman for help with an application or petition, try to resolve the issue with USCIS by:

- Submitting a request through your *myUSCIS* account;
- Submitting an e-Request with USCIS online at **https://egov.uscis.gov/e-Request**; or
- Contacting USCIS for assistance at **1-800-375-5283**.



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Acronyms

AAO	Administrative Appeals Office
ACA	Asylum Cooperative Agreement
ADIS	Arrival and Departure Information System
ADIT	Alien Documentation Identification and Telecommunications
AGC	Affidavit of Good Cause
AO	Asylum Officer
ASC	Applications Support Center
AVC	Asylum Vetting Center
BIA	Board of Immigration Appeals
BIO	Benefits Integrity Office
CAT	U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection
CCP	Chinese Communist Party
CDC	Centers for Disease Control and Prevention
CDO	Chief Data Officer
CLAIMS	Computer Linked Application Information Management System
COVID-19	Coronavirus Disease 2019
CPT	Curricular Practical Training
CRS	Congressional Research Service
CUSA	Citizenship USA
CY	Calendar Year
DCR	Data Change Request
DGC	Data Governance Council
DGWG	Data Governance Working Group
DHS	U.S. Department of Homeland Security
DOD	Department of Defense
DOL	U.S. Department of Labor
DOJ	U.S. Department of Justice
DOS	U.S. Department of State
DSO	Designated School Official
EAD	Employment Authorization Document
ELIS	Electronic Immigration System
EOC	Enterprise Operations Center
EOIR	Executive Office for Immigration Review
ESC	Executive Steering Committee
FBI	Federal Bureau of Investigation
FCI	Formalized Check-In
FDNS	Fraud Detection and National Security Directorate
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GSA	General Services Administration
HARP	Humanitarian Asylum Review Process
HFE	Historical Fingerprint Enrollment
HSA	Homeland Security Act
HSI	(ICE's) Homeland Security Investigations
IAFIS	Integrated Automated Fingerprint Identification System
ICE	U.S. Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System
IDII	Immigration Data Integration Initiative
IDMS	Immigration Data Management System
ImmDaaS	Immigration Data as a Service
INA	Immigration and Nationality Act
InfoMod	Information Services Modernization Program
INS	Immigration and Naturalization Service
IPO	Investor Program Office
IRCA	Immigration Reform and Control Act of 1986
ISO	Immigration Services Officer
IT	Information Technology
IVT	IDENTity Verification Tool
IVR	Interactive Voice Response
LIFO	Last-In, First-Out
LPR	Lawful Permanent Resident
MOA	Memorandum of Agreement

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MPP	Migrant Protection Protocols
NBC	National Benefits Center
NGI	Next Generation Identification
NSC	Nebraska Service Center
NSF	National Science Foundation
NTA	Notice to Appear
NTC	Non-Traditional Collector
NVC	National Visa Center
OCC	Office of the Chief Counsel
OCIO	Office of the Chief Information Officer
OIG	Office of Inspector General
OIL	Office of Immigration Litigation
OIS	Office of Immigration Statistics
OMB	Office of Management and Budget
OPT	Optional Practical Training
OUSA	Office of United States Attorneys
PACR	Prompt Asylum Case Review
PASR	Prompt Asylum Screening Review
PCQS	Person Centric Query Service
PDSO	Priority Designated School
PIMS	Petition Information Management Service
PLA	People's Liberation Army
POWG	Policy and Oversight Working Group
PRC	People's Republic of China
RAIO	Refugee, Asylum, and International Operations
RAD	Refugee and Asylum Division
RFE	Request for Evidence
RFI	Request for Information
SAM	Staffing Allocation Model
SAO	Supervisory Asylum Officer
SAW	Special Agricultural Worker
SEI	Strategic Emerging Industries
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
SRMT	Service Request Management Tool
STEM	Science, Technology, Engineering, and Mathematics
TTP	Thousand Talents Program
UAC	Unaccompanied Alien Children
UIP	Unified Immigration Portal
USAO	U.S. Attorney's Office
USCIS	U.S. Citizenship and Immigration Services
USPS	U.S. Postal Service
VPC	Volume Projection Committee
VTC	Video Teleconferencing

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Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security

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Toll-free: 1-855-882-8100

http://www.dhs.gov/cisombudsman

Send your comments to: cisombudsman@hq.dhs.gov

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AGF AMERICAN GOAT FEDERATION
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August 28, 2020

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The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Acting Secretary Wolf:

On behalf of the over 150,000 goat producers as well as the 80,000 sheep producers in the U.S., many of whom rely on foreign labor, thank you for the efforts the Department of Homeland Security has undertaken this year to address labor disruptions impacting agricultural employers and threats to the domestic food supply as a result of COVID-19. Many measures have been implemented to address pandemic-related issues concerning the hiring, travel and employment of seasonal, nonimmigrant agricultural employees who supplement the domestic workforce. The temporary H-2A rules that Department of Homeland Security (DHS) put in place to allow for workers to remain in the country and working past the three year limit that expired on August 18, 2020.

We seek your ongoing assistance in addressing problems that have arisen because of the temporary rule issued on April 20, 2020, entitled "Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency," which was extended on August 19, 2020. This temporary provision has and will continue to provide significant relief to agricultural employers. However, given circumstances outside employers' control due to ongoing pandemic restrictions, we request the Department consider additional accommodation to the three-year maximum stay requirements. This rule has been vitally important to us while Peru has closed its borders and not allowed any workers to leave Peru.

Despite aggressive, ongoing efforts to recruit employees from the domestic workforce, the sheep and goat industry continues to rely on H-2A nonimmigrant workers, to help run their operations. As the COVID-19 pandemic swept the globe this spring, Peru, one of the main producers of our foreign workers, was among the countries to implement severe travel restrictions, which ultimately resulted in fewer eligible workers being able to travel to the United States.

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A large percentage of WRA workers come from Peru due to the experienced workforce that resides there. We have been unable to bring any new workers into the US and have a shortage of workers in the sheep and goat industry due to the travel restrictions. Being able to extend workers who are currently in the United States has helped fill the shortage. We have received reports from the Peru embassy and the US Embassy in Lima that the airport will not be open for international travel through September. The initial April 2020 temporary rule allowed H-2A visa workers to stay past their three-year maximum and helped alleviate the shortage of workers that resulted from pandemic travel restrictions. As the pandemic persists and international travel restrictions remain, agricultural employers would benefit from continued accommodations to the three-year maximum stay requirements, especially those in the sheep and goat industry. Consequently, new workers currently in Peru may not be able to travel to the U.S. Additionally, temporarily limiting international travel may also be beneficial for public health reasons, with less potential for exposure abroad and a reduced need for COVID screening upon reentry into the United States. Unfortunately, the temporary rule extension issued on August 19, 2020, does not alleviate the unworkable scenario many sheep and goat operators currently find themselves.

As many goat operations kid in the fall, ranches have been unable to send their current workforce home this summer as they normally do, and are unable to get a new workforce in the country in time for the season to start. As you know, nannies will not wait to give birth and can risk higher mortality rates if a rancher does not have an experienced workforce, especially with multiple births in high concentrations of predators.

Rest assured that the jobs continue to be advertised in the US, but currently there is no domestic workforce that is willing and able to fill this labor shortage. With workers legal work authorizations expiring at the end of their 3 years and has no access to return home, they should be given the opportunity to work in the United States legally to earn money. Because of the restrictions in Peru and abroad, the families of these workers also depend on the paychecks of the workers. Workers don't have a lot of other options to return home and want to continue working until they are able to go home. The sheep and goat industry prides itself on having a legal workforce and we would request that DHS supports the employers and employees who don't have other options and extend their temporary rules past August 18, 2020.

Agricultural employers across the country have been severely harmed by the COVID-19 pandemic. Having a reliable and secure legal workforce through the H-2A nonimmigrant visa program would be one less concern for farmers and ranchers as they continue to run their businesses and feed the world. Please consider an extension to maximum length of stay requirements or other accommodations to assist these employers as they continue to navigate the uncertainties caused by COVID-19 and international travel restrictions. Thank you for your consideration of this very time-sensitive matter.

Sincerely,

Randy K. Dusek

Randy Dusek,
President

AMERICAN OVERSIGHT

UNITED work & travel

A division of American Pool Enterprises, Inc.

SCANNED/RECEIVED
BY EXEC SEC
2020 AUG -5 PM 1:17

July 30th, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

RE: Request for for extention of petition validity - WAC2001850961

Dear Acting Secretary Wolf:

Trident Seafoods, Inc. (Trident) is a large, multi-national company that annually produces in excess of 1 billion lbs of wild caught, American-harvested seafood. Trident has not been immune to the market effects of the COVID19 pandemic. The economic disruption caused by COVID19 has had a ripple effect on the international supply chain, from the seafood harvesters to the consumer. The normal harvest of cod and pollock in western Alaska was drastically halted in March as the domestic and international markets were slowed, if not altogether, stopped. As international markets have slowly stabilized, Trident harvesters will be able to fish for their remaining cod and pollock quotas in late fall and early winter – non-traditional harvest times that would overlap Thanksgiving, Christmas, and New Years.

As such, from early-October to mid January, Trident will experience a tremendous and unforeseen labor need due to the exigent amounts of cod and pollock processing which needs to be performed at the Akutan facility (800 nautical miles west of Anchorage) because of the COVID19 pandemic. Trident needs to plan for maximum production and maximum employment participation in the cod processor job classification. Trident has a workforce in place of both domestic and H-2B visa holders. However, in non-COVID times, this workforce would be rotated out and return after the holidays. Concurrent to this is the confluence of the end of the Trident petition validity for the H-2B workforce under the current approved petition.

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Trident's Akutan processing facility is located in a small, island community where there is a small population. At present, the community of Akutan and the Trident facility has thus far been spared from the spread of COVID19. It is prudent to keep the existing workforce in place rather than risk COVID19 exposure by bringing in 1,300 new cod and pollock processors. Trident Seafoods is therefore requesting an extension of 60 days for the validity period of the I-797 numbered WAC2001850961 in the interests of US food security and the health of the local community. As a reminder, DHS recognized that fishermen and seafood processing employees are "essential critical infrastructure workers" (declared in the Krebs memo from April 2020).

I thank you for your attention to this matter and for your service to the country during these difficult times.

Sincerely,



Brian Gannon
Director of Legislative Affairs
UNITED WORK & TRAVEL

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RECEIVED
By ESEC at 5:02 pm, Jun 11, 2020

STATE OF ARKANSAS
ASA HUTCHINSON
GOVERNOR

June 9, 2020

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear Mr. President,

I want to thank you for your leadership in handling the public health and economic crisis created by COVID-19. I am writing to express my hope that if a second presidential Executive Order is issued in the coming weeks on the topic of non-immigration visas (including H-1B visas), that an explicit "carve out" be included for all workers who have been deemed essential under the guidance provided to states and US territories by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA). Such a carve out is important for businesses in Arkansas and is vital to getting America back to work.

While a carve out for high-skilled healthcare and agricultural workers who seek to come to this country on an H-1B is welcome, it does not go far enough. Such an exemption would preclude the entry of high-skilled IT workers who support the work of the healthcare and agricultural sectors.

Legal analysts note that the Executive Order issued by you on April 22, 2020, itself exempts essential workers who are helping to alleviate the effects of COVID-19, language that can—and in my view, should--be read broadly to include keeping the economy running and growing as states reopen. My hope is that if there is a subsequent presidential executive order issued on the topic, that order will make this interpretation explicit to help ensure the nation's recovery from the economic harm of the pandemic is as swift and pronounced as possible.

I am attaching a letter from the U.S. Chamber of Commerce expressing the business community's support for these non-immigrant visas, as well as another letter from over 300 companies and 65 associations asking that these programs be left untouched by a potential second executive order limiting immigration. Finally, the letter

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TELEPHONE (501) 682-2345
www.governor.arkansas.gov

attached is signed by nine Senate Republicans that make the case for our request, which is that if you find the programs must be altered, please exempt all essential workers under CISA guidance from any executive order limiting non-immigrant visas, including H-1Bs.

Thank you for your consideration of this request. I appreciate your service during this critical time.

Sincerely,



Asa Hutchinson

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500 Woodlane Street, Suite 250 • Little Rock, AR 72201
Telephone (501) 682-2345
www.governor.arkansas.gov

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

May 26, 2020

The Honorable Larry Kudlow
Director
National Economic Council
Washington, DC 20500

The Honorable Jared Kushner
Senior Advisor to the President
The White House
Washington, DC 20500

Dear Director Kudlow and Mr. Kushner:

The U.S. Chamber of Commerce commends the administration for your efforts to ensure that businesses have all the tools necessary for a strong recovery that will return millions of Americans back to work. Just as supportive tax and regulatory policy and access to credit are essential for a return to growth, so is access to talent. That is why the Chamber is concerned about the possible expansion of the President's April 22nd proclamation on immigration.

Legal immigrant workers are a key contributor to U.S. economic growth. While the negative economic impact of the pandemic has certainly been severe, it has varying effects on different sectors of the economy. For example, a recent report issued by the National Foundation of American Policy shows that the unemployment rate for workers employed in Computer Occupations — a sector that has historically relied upon the contributions of legal immigrant and temporary nonimmigrant workers — was actually lower last month than it was in January.

There are many other sectors of our economy that rely upon the contribution of foreign nationals working in the United States. Businesses across industries are very concerned about the potential disruptions that will be caused if they can no longer employ valued employees that work here under the following visa classifications: H-1B, L-1, H-4, F-1 Optional Practical Training (OPT), and H-2B. Similarly, companies that rely upon investment dollars from the EB-5 Immigrant Investor Program are concerned about restrictions being imposed upon those individuals that have invested in their businesses. Shutting these individuals out of the chance to contribute to an economic recovery is misguided for a host of reasons:

- H-1B specialty occupation workers are critical for companies in the innovation sectors. An article by the CATO Institute highlights the benefits that these workers provide on patent production, and the prospects for reduced American innovation and productivity growth if these workers are shut out of employment. Another CATO study shows that virtually all H-1B employers pay their H-1B workers at least the prevailing market wage, with the vast majority of H-1B employers paying these workers about 20% higher than the average market wage.

- Multinational companies often utilize the L-1 program to move senior executives, key managers, and specialized knowledge employees into the U.S. to jumpstart new

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product lines, research initiatives, and business divisions. Bans imposed upon these workers would make the U.S. a less compelling location for foreign investment.

- The Optional Practical Training program provides a critical link for international students that have graduated from American colleges and universities to remain in the U.S. and to receive training at an American employer post-graduation. A 2018 National Foundation for American Policy brief indicates that 22% of America's billion-dollar start-ups had at least one immigrant founder that came to the U.S. as a student. Eliminating this critical talent pipeline for American businesses would negatively impact future innovation and economic growth.

- The H-4 spousal work authorization program is a very small but critical tool that helps various businesses retain their top talent as they wait for their H-1B workers to obtain their green cards. A recent analysis estimating the impact of eliminating this program detailed a potential $7.5 billion hit to annual GDP and a likely reduction in overall employment and wages for American workers.

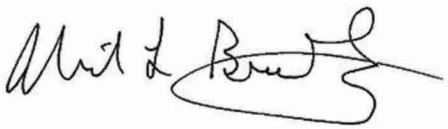
- While we appreciate the Administration's recently enacted temporary measures to aid H-2B employers in industries that are essential to the food supply chain, many other sectors rely on H-2B workers, including forestry and landscaping firms. Many of those firms, for example, perform essential tasks along utility corridors. Preventing companies in these seasonal industries from meeting their critical workforce needs will inhibit their ability to carry out their essential functions during this crucial period.

- The EB-5 Immigrant Investor Visa Program is a powerful tool to create jobs in the U.S. This program allows eligible foreign nationals to go through a multi-step process to obtain a green card if they make sizable investment in a U.S. business that creates at least 10 jobs for American workers. This program should be reformed and modernized, but eliminating this potential source of business investment during the pandemic recovery would be counterproductive to broader economic recovery efforts.

In short, expanding the April 22 proclamation to categorically ban companies from utilizing these immigrant and temporary nonimmigrant visa programs would substantially limit the ability of many companies to help get the American economy moving again. In turn, that would negatively impact the millions of Americans who are counting on a swift economic recovery to return to work themselves.

Thank you again for your many efforts to support a strong economic recovery. Please do not hesitate to contact me if we can be of assistance in this or any other matter.

Sincerely,



Neil L. Bradley

AMERICAN OVERSIGHT

May 21, 2020

The Honorable Donald J. Trump
President of the United States of America
The White House
Washington, DC 20500

The Honorable Secretary Michael Pompeo
Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Secretary Eugene Scalia
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Acting Secretary Chad Wolf
Department of Homeland Security
Washington, DC 20528

Dear Mr. President and Honorable Secretaries,

The undersigned organizations, speaking for a variety of sectors and geographies across the American economy, and small, medium, and large employers, are writing about the importance of the high-skilled workforce to America's economic recovery. In particular, the undersigned represent employers that rely on a highly skilled, college-educated, science and engineering workforce, including nonimmigrant professionals, to innovate, produce, research, develop, and lead. At this critical juncture in our nation's history, the ability to continue to do so is in the national interest.

We urge you to avoid outcomes, even for temporary periods, that restrict employment-authorization terms, conditions, or processing of L-1, H-1B, F-1, or H-4 nonimmigrants. Constraints on our human capital are likely to result in unintended consequences and may cause substantial economic uncertainty if we have to recalibrate our personnel based on country of birth.

We join you in your continued commitment to protect the health and economic well-being of Americans, and hope our attached Appendix is helpful as you consider weighty judgments on how to navigate this important moment.

Respectfully submitted,

324 employers and trade, industry, and higher education associations and groups across the American economy focused on the high-skilled workforce (signatory list follows Appendix)

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APPENDIX

Importance to the nation of the STEM workforce and avoiding artificial constraints to this workforce

IMPORTANCE OF THE COLLEGE-EDUCATED STEM WORKFORCE, INCLUDING NONIMMIGRANTS

STEM Jobs. It has been well-understood in the post-World War II era that the STEM workforce is of particular interest to all developed economies because of its central role in fostering innovation, economic competitiveness, and national security. The centrality of the STEM workforce across the American economy is evidenced by the fact that in the 21st century Americans with university STEM degrees are called upon to use their quantitative skills in finance, public administration, professional services, manufacturing, information, education, health care, transportation, and retail, in addition to high-tech, as the Census Bureau has explained. However, over the years, computer-related professional job openings have outstripped the availability of qualified Americans to fill those positions. For this reason, the Department of Homeland Security reports that 66% of all H-1B approvals are in computer-related occupations and, correspondingly, the Department of Labor reports that 60% of Permanent Labor Certifications approved to sponsor new green card holders are in the computer and mathematical occupations, with most such labor certifications filed on behalf of H-1B visa holders. Importantly, when Department of Labor wage data on H-1B workers is compiled, as the Cato Institute did for a May 2020 article, "the unequivocal takeaway from the data is that H-1B employers are, on average, paying a premium for many of their foreign workers." Today, the unemployment rate in computer occupations remains low, at about 2.8% through April 2020, according to a May 2020 analysis of government occupational level data.

Innovation. Foreign-born STEM professionals have had a positive impact on the American economy. As described in a July 2019 economic study on the impact of highly-skilled STEM immigration on the U.S. economy, the foreign-born share of STEM professionals in the United States increased from about 16% to 24% over the period 2000 to 2015 creating an estimated benefit of $103 billion for American workers almost all "attributed to the generation of ideas associated with high-skilled STEM immigration which promotes the development of new technologies that increase the productivity and wages of U.S.-born workers." An economic report on global talent and U.S. immigration policy published in April 2020 highlights that when looking at the net global migration of inventors from 2000 to 2010 China and the United States are at opposite ends of the spectrum, where China receives virtually no immigrant inventors and instead possesses the largest number of natives moving to other countries to become inventors elsewhere. The United States dwarfs all other 26 advanced economies in the world in welcoming new inventors, with about ten times that of Germany, the next highest country. Indeed, economists from George Borjas in June 1986 (National Bureau of Economic Research) to those at the Census Bureau and George Mason University in February 2019 (IZA - Institute for Labor Economics) to William Kerr in April 2020 (Harvard Business School) have consistently found that for immigrants coming to America their propensity toward innovation, as well as entrepreneurship, is higher than for U.S.-born workers. We want to continue to harness that innovation and entrepreneurship for America and Americans, and we're sure the administration wants the same.

Nonimmigrants. Among the nonimmigrant classifications that play a role in providing access to this STEM workforce for American employers, three classifications have been most critical and have been tools in our toolbox for ***decades***: the L-1, H-1B and F-1 nonimmigrant classifications.

- Created by Congress in 1970, over the last ***50*** years the L-1 visa category has been available to facilitate international transfers of existing employees to the United States within related firms. A cornerstone of business operations for those that do business both in the United States and abroad has been the ability to transfer current staff that are managers, executives, and specialized knowledge personnel across national boundaries in order to harmonize operations, expand markets, service clients, and share knowledge.

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- Established in the 1952 rewrite of the nation's immigration laws, for over ***65*** years the H-1 visa classification has existed to allow U.S. employers to hire professionals born outside our country. Since 1990, this category has been subject to numerical limits and a labor condition application, and the category has been designated as the H-1B visa.
- In August 1947 the Department of Justice promulgated a regulation permitting "employment for practical training" for international students, after completion of the student's regular course of study. For over ***70*** years, a program allowing such post-completion employment authorization for international students has continued, now through Department of Homeland Security regulations governing F-1 nonimmigrants.

The stability of America's workforce – including L-1, H-1B, and F-1 nonimmigrants – cannot be more important than at this very moment when the Trump administration and the entire nation look to our companies to reinforce the backbone of the national economy.

IMPORTANCE OF AVOIDING UNNECESSARY CHURN IN THE COLLEGE-EDUCATED STEM WORKFORCE, INCLUDING NONIMMIGRANTS

Churn. Economists define "churn" as hiring for replacement, which means that a prior worker, being replaced, left voluntarily or was terminated. Turnover may come about because employers grow and shrink, but more frequently because of churn. Separations in the employment relationship that occur based solely on changed agency policy choices governing nonimmigrant employment authorization create additional churn and result in inefficiency. Thus, at this critical juncture in our nation's economic life, creating government-mandated churn in our human capital creates significant risks because the ramifications of those decisions will quickly reach into our capacity and productivity.

L-1. Narrowing access to L-1 intracompany transfers is a significant concern as we respond to Covid-19 challenges, because appropriate use of the L-1 classification by employers plays a direct role in supporting job creation and job retention in the United States, as well as expanding U.S. advanced manufacturing, continuing U.S.-centered research and development, increasing exports from the U.S., and encouraging foreign direct investment into the U.S. Multinational companies, of the type that might qualify to use the L-1 category, employ about one-quarter of all U.S. private sector employees. The impact of business disruption to a group of firms that play such an outsized role in the economy is significant.

With regard to U.S.-based R&D, an economist at the Wharton School of the University of Pennsylvania assessed Department of Commerce data in a February 2020 study and found restrictive high-skilled immigration policies encouraged multinational companies to off-shore R&D efforts. As the Wharton economist explains, "From a nationalistic perspective, this is problematic; if skilled foreign-born workers are at a U.S. firm's foreign affiliate instead of in the U.S., the innovative spillovers that they generate will go to another country instead." The National Science Foundation's 2020 reports show that the U.S. performs one-quarter of global STEM R&D, the largest percentage for any single nation; that STEM R&D performed in the U.S. increased sharply in 2017, up 10% when compared to 2015 and 34% higher than 2010; that 73% of all development research in the U.S. is performed by private sector businesses; and that U.S. multinational firms are responsible for 80% of such private R&D in the U.S. Changing long-standing immigration policies risks many unintended consequences, including disruption of these positive trends.

H-1B. Temporarily or indefinitely eliminating or reducing the H-1B program or discouraging its use would not create or leave more jobs for U.S. natives *and* would risk reducing growth and productivity. The University of Chicago did a survey in February 2017 through its Initiative on Global Markets (IGM Forum), asking its panel of economists from Yale, MIT, Princeton, Berkeley, Harvard, and Stanford about the following premise: "If the U.S. significantly lowers the number of H-1B visas now, employment for American workers will rise materially over the next four years." None (0) of the economists agreed with the premise, 81% disagreed, 19% were

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uncertain. A May 2017 economic study on firm dynamics and immigration found that completely eliminating the H-1B category would ultimately result in a 3.7% decrease in GDP. An August 2018 economic study on the relationship between H-1B visa petitions and the entry of new products and exit of outdated products (product reallocation) concluded that firm-level analysis shows H-1B visa petitions are associated with higher rates of product reallocation. Generating product reallocation is one measure to identify where smaller, incremental innovations are occurring. In a seminal economic evaluation of H-1B visas and productivity in 219 American cities, published in the Journal of Labor Economics in July 2015, economists concluded that their simulations showed an increase of H-1B visa holders in a city explained increased productivity. Specifically, the economists found that "foreign STEM growth explained between one-third and one-half of the average Total Factor Productivity growth during the period" 1990 to 2010. It seems the Trump administration should not initiate a realignment of the H-1B category to respond to a downturn in the economy, especially because history shows us that H-1B demand from employers is tightly connected to market forces.[1]

OPT. As the number of U.S. postsecondary STEM degrees attained by F-1 nonimmigrants has steadily grown, the Optional Practical Training (OPT) program, to include the STEM OPT extension, has correspondingly become a significant pipeline for the U.S. STEM workforce. As explained by CRS in November 2019, from school year 88-89 (the earliest year for which annual data are available) to school year 16-17 (the most recent year for which data are available) there has been a 315% increase in STEM degrees awarded in the U.S. to foreign students, most of which is at the graduate level. When the Business Roundtable of American CEOs (BRT) partnered with the Interindustry Forecasting Project of the University of Maryland (Inforum) to assess the OPT program the resulting December 2018 report showed a negative impact to the U.S. economy should OPT participation be reduced. The BRT-Inforum modeling showed, among other things, a loss of 443,000 jobs over a decade, including 225,000 jobs held by native-born workers. Relatedly, an economist's study in March 2019, analyzing unemployment among STEM workers in 102 metro areas, concluded that unemployment rates are lower in areas with larger numbers of F-1 nonimmigrants doing OPT as a share of workers in STEM occupations. When the Niskanen Center reported on its OPT research in March 2019 its data suggest that 10 additional OPT participants working in a core-based statistical area (CBSAs are aggregated metropolitan areas) leads to 5 additional patents originating in that CBSA. The economic risk of taking steps that might dilute the utility of OPT as a pipeline is further highlighted by a policy brief from October 2018 that illustrated that 22% of America's billion-dollar start-ups had at least one immigrant founder that first came to the U.S. as an international student.

H-4. Lastly, we draw attention to H-4 dependent spouses of the H-1B professionals we are sponsoring for green card status. These H-4 visa holders are permitted to work when they are waiting in long immigrant visa backlogs after the sponsoring employers have completed all legal hurdles to classify the H-1B professional as an immigrant. Economists conducted a cost-benefit analysis in April 2019 on whether H-4 spousal work authorization rules should be rescinded, and found that rescinding the H-4 employment authorization regulation would cost the U.S. economy some $7.5 billion including loss of employment for American workers employed by the 2% of H-4 workers that have started their own businesses and employ 5 workers on average. The same economists found that 66% of employed H-4 visa holders held a job in a core STEM field, another 16% in business, finance, or management, and another 8% were health care professionals or health care support workers.

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[1] The ***only*** three fiscal years ***since FY1997*** where cap-subject H-1B petitions did not exceed the numerical limit at some time prior to the end of the fiscal year were FY2000, 2001 and 2002, years for which Congress had temporarily increased the H-1B cap to 195,000 in response to the dotcom explosion. Because the new numbers became available only as the dotcom bubble burst, cap-subject H-1B filings in those three fiscal years were 163,600, 79,100, and 78,000 respectively – with decreasing numbers, well under the cap in each successive year. Similarly, following the 2008 great recession, H-1B filings were significantly down such that the numerical limits were *not* met in April (H-1B cap-subject filings are made in April for the government's fiscal year beginning October 1 of that calendar year). The so-called "regular cap" of 65,000 H-1B petitions was met in December 2009, January 2011, November 2011, and June 2012 for, respectively, FY2010, 2011, 2012, and 2013. When the economy is stronger, numerical H-1B limits are met in April, as in calendar years 2008 and 2009 (for FY2009 and 2010) and calendar years 2014 to the present (for FY2015 to 2021).

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SIGNATORIES

1871 – Chicago's Technology & Entrepreneurship Center
ACE Physical Therapy and Sports Medicine Institute, Inc.
Adex Medical Staffing, LLC
Adobe
Advanced Polymer Coatings
airCFO
Akamai Technologies
Altair Global
Amazon.com
American First Finance Inc.
American Immigration Lawyers Association
Applied Value LLC
APPS Solutions inc
Arch Group LLC
Argo AI, LLC
Ariston Tek Inc
Arizona Technology Council (AZTC)
Asana
Aspen Technology, Inc.
Association of American Universities
Association of Public and Land-Grant Universities
Attentive
Aulder Capital
Aurora
Avicenna Medical Systems, Inc.
Avventis Tech Inc
Axess North America
Baslee Engineering Solutions (BES), Inc
Bates White
BBVA Digital Bank - San Francisco Rep Office
Belcher Pharmaceuticals, LLC
Benefit Resource, Inc.
BIO-key International, Inc.
BioBridge Global
Biogen
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Bloom Energy
Bloomberg
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Brandinc US, Inc
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BSA | The Software Alliance
Business Roundtable
Cadence Design Systems, Inc.
California Technology Council (CTC)
Carbon Health Technologies, Inc.
Cardone Industries Inc
censhare US Inc.
Ceva Logistics
Chatanooga Technology Council
Chr. Hansen, Inc.
Cisco Systems Inc.
Citadel Drilling
CivilTech Engineering, Inc.
Clockwise Inc
Colorado Technology Association (CTA)
Complete Genomics
Computer Measurement Group (CMG)
Computing Technology Industry Association
Connecticut Technology Council (CTC)
Consonus Health
Consumer Technology Association
Contentsquare
Credit Karma, Inc.
CrowdSmart
Cyclomedia Technology Inc.
Dashlane
Dedrone
Deem, Inc.
Dell Technologies
Dematic
Demon Oilfield Services Corp.
Derakhshan Consulting LLC
DMG MORI USA, Inc.
DoorDash
DotHouse Health
Dr. Schar USA
Dropbox
DRS Engineering Inc.
DTC Global Services LLC
E.W. Howell Co., LLC
E&M Electric and Machinery, Inc.
Enanta Pharmaceuticals Inc
Essence Corp
ETS
Facebook
Far East Metals, Inc.
Fast
FEAM Maintenance/Engineering
Finsight Group Inc
FirstPass Global, Inc
Fitesa Simponville Inc
FlagshipKansas.Tech
Forensic Fluids Laboratories
ForgeRock, Inc.
Fortress Engineering Ltd.
Furniture Design Studios, Inc

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Game Prophecies, Inc.
Garmin International, Inc.
GCP Tech
Genius Minds LLC
Getaround
GitHub
Glamsquad
Global Business Alliance
Global Engine Maintenance LLC
GN Hearing Care
Golden Technology, Inc
Google, Inc.
Grandison Management
Great Point Partners
Greater Memphis IT Council
Greater Nashville Technology Council
Green Village Concrete INC
GreenShape LLC
greight freight llc
Harco Manufacturing Group, LLC.
HBPO North America, Inc.
Hennepin Healthcare System, Inc.
Hewlett Packard Enterprise
Himax Imaging
Hired
Hirsch Bedner Associates
Horizon Hydraulics
HP Inc.
HUMAC INC.
I&L Investments and Management, Inc.
Idaho Tech Council (ITC)
Illinois Technology Association (ITA)
iLogic inc
Information Technology Industry Council
InfoTech Resources
Insight Venture Management LLC
Instacart
Institute of International Bankers
Integrated Automation Systems, LLC
Intel Corporation
Intuit
IPEX Global Inc
Isthmus Engineering, Inc
Jantzen Brands Corporation
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Jyve Corporation
KabanaSoft LLC
KC Tech Council
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Kleiner Perkins
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Kolla Soft Inc
Kong Dragon Capital Investment
Kongsberg Digital
L'Oreal Travel Retail Americas, Inc.
Laguro, Inc.
LANXESS Corporation
Lilu, Inc.
LinkedIn
Louis Dreyfus Company LLC
LUCITO
Lyft
Lynk Inc.
MachiningCloud Inc
Madrona Venture Group
MANN+HUMMEL Purolator Filters LLC
Maryland Tech Council (MTC)
Masimo Corporation
Massachusetts Technology Leadership Council (MassTLC)
Matician Inc
MBLM
McMillen Jacobs Associates
Medialocate, Inc
Medium
Microbiologics
Micron Technology, Inc.
Microsoft Corporation
Mid-America Technology Alliance
Millbrook Revolutionary Engineering Inc
Minnesota High Tech Association (MHTA)
Mokuni LLC
Montana High-Tech Business Alliance
Monzlapur New York
MUEngineers, Inc.
NAFSA: Association of International Educators
NAM Info Inc
Nasdaq
NationsBenefits LLC
NAVAC Inc.
Netgear, Inc.
Nevada Technology Association
New American Economy
New Jersey Tech Council (NJTC)
New Mexico Technology Council (NMTC)
New York Tech Alliance

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NH Tech Alliance
North Carolina Technology Association (NC TECH)
Northern Virginia Technology Council
Nova Credit Inc.
Novita Communications
Nuvia, Inc
NXP Semiconductors
Ohio IT Association
Okta
ON Semiconductor
OnSiteIQ Inc
Palm Beach Tech Association
PayPal
PEGRight
Philadelphia Alliance for Capital and Technologies (PACT)
Pirelli Tire LLC
Pittsburgh Technology Council
Postmates
PreciseLED.INC
Pronix
Propeller Health
PVH Corp (Phillips-Van Heusen Corporation)
Qnergy, Inc.
quadric.io Inc
Quallcom, Inc.
R.H. Chen Engineering
Region Technologies Inc
Remedy Analytics, Inc.
Remitly
Ricoh Printing Systems America, Inc.
Roanoke-Blacksburg Technology Council
Roblox Corporation
Rollbar, Inc.
Salesforce
SAMSON Controls, Inc.
SAP
SEBA International LLC
SEDA Environmental
Segment.io, Inc.
Selldorf Architects
Selux Diagnostics
Semex USA, Inc.
Semiconductor Industry Association
Shielding Integrity Services Inc.
Sigma Software LLC
Silicon Valley Bank
Silicon Valley Leadership Group
Simulations Plus, Inc.
SK hynix memory solutions America
Slack Technologies
SLK America, Inc.
Society for Human Resource Management
SolarEdge Technologies
Solution BI US Corp.
Sony Corporation of America
SPACO-Inc
Spectrum Health System
Square
Starburst Accelerator LLC
Sterling Software, Inc.
Stoll America Knitting Machinery, Inc.
Sunsong North America, Inc.
TAG
Tamp Bay Tech
Taro Engineering LLC
TaskRabbit
TEAM Industries Inc.
Tech Association of South Carolina
Tech Birmingham
Tech Collective
Tech Council of Central Pennsylvania
Tech Rochester
Tech San Diego
Tech Titans
Tech:NYC
TechLauderdale
TechNet
TechNexus Venture Collaborative
Technology Association of Georgia (TAG)
Technology Association of Iowa (TAI)
Technology Association of Louisville Kentucky (TALK)
Technology Association of Oregon (TAO)
Technology Council of North Dakota
Technology Councils of America (TECNA)
TechPoint
Tekion
Texas BioMedical Research Institute
Texas Instruments
The Marskell Group, LLC
The Yes Platform, Inc.
TheraCare of New York Inc.
Thumbtack
Tillster, Inc.
Titan Data Group Inc.
Tomorrow Water
Top Notch Logworks Inc.
Tracker Corp
Tri Marine Fish Company, LLC
Trinity Health
Turbo Air, Inc.
Turo
Twitter

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U.S. Chamber of Commerce
Utah Technology Council
V Plus O Communications
VEB Solutions, Inc.
Venture Home Solar LLC
VigiLanz Corporation
VMWare
Voss USA Inc.
Waymo
Webber, LLC (a Ferrovial company)
West Coast Consulting
Wi-Tronix, LLC
Wisconsin Technology Council (WTC)
Woodbridge Group
Workday, Inc.
World Fresh Produce Inc.
Worldwide ERC
WorldWide HealthStaff Solutions Ltd.
Xero
YOOBIC Inc.
Zillow
ZOLLER Inc
Zoom Video Communications, Inc.
Zymergen, Inc.

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BDI
The Voice of German Industry

DIHK
Deutscher Industrie- und Handelskammertag
Association of German Chambers of Commerce and Industry

The Honorable Chad Wolf
Acting U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Ave NW
WASHINGTON, D.C. 20016
UNITED STATES OF AMERICA

RECEIVED
By ESEC at 12:58 pm, May 18, 2020

Berlin, May 14, 2020

Dear Mr. Secretary Wolf,

With compassion and concern, we observe the severity of the Covid-19 pandemic in the United States. Our commiseration is with the families who are caring for a sick family member or have lost a loved one. We understand the immediate crisis measures taken by the U.S. Federal Government and States to contain the crisis. At the same time, as business leaders our responsibility also lies with ensuring the functioning of the economy and enabling a restart of business activity to ensure the livelihood of millions of workers. We are deeply worried that some government measures threaten to deepen and prolong the economic crisis, foremost medium-term restrictions in the area of temporary work visas.

The Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak of April 22nd primarily imposes restrictions on the issuing of new green cards. We respect that immigration policy falls under the primacy of politics. Nonetheless, we regret this decision as the outstanding economic dynamism of the United States is also based on attracting the best and most ambitious talents internationally.

We are particularly worried about the review of all "non-immigrant programs" within 30 days, ordered by section 6 of said proclamation. Our concern is that this might result in a further restriction of U.S. temporary work visas, which are essential for the transatlantic economy (as well as for scientific and cultural exchange fueling our transatlantic partnership). The number of companies reporting problems with workflows and service provision due to restrictions in the issuing of U.S. visas has already increased in recent years. According to the German American Business Outlook 2020, one-fourth of German companies in the US see the availability of workforce visas as a key challenge for their business.

Non-immigrant visa applicants from Germany are helping create jobs in the US. These are roles that are strongly linked to generating new investment in the US. If companies cannot bring key staff to the US to build their new production sites and expand their existing investments, such new investments will go elsewhere. As

Federation of German Industries (BDI)

German Chambers of Industry and Commerce (DIHK)

Berlin Office
Breite Straße 29
10178 Berlin
Germany

AMERICAN OVERSIGHT

companies look to bring new production close to the US market, places like Mexico or Canada stand to profit if the U.S. adds restrictions to non-immigrant visas.

A practical example of this would be the maintenance or installation of industrial machinery, both in U.S. production facilities of German companies and for U.S. customers of German machine manufacturers. Generally, maintenance or installation in a production site is carried out by joint teams consisting of local staff, experts from headquarters, and experts from the machine manufacturer. If this cannot be executed or is delayed due to the restricted issuing of temporary work visas, entire production processes in the United States are threatened to repeatedly come to a standstill. For example, restricted issuance of B1 visas for service technicians already cause production shutdowns in the United States. Experiencing the economic damage of non-operative production sites as never before, we should prevent such unnecessary damage.

With direct investments in approximately 5,400 companies, German businesses provide more than 900,000 jobs in the United States. German businesses take pride in being strongly engaged with their local U.S. business partners and communities. It is in our vital interest to contribute to the U.S. manufacturing base and to participate in the outstanding U.S. economy. Through their skills and dual education programs, German companies also play an important role in the education, training, and lifelong learning of the U.S. workforce. Together, U.S. and German companies in the US have created apprenticeship clusters like the Industry Consortium for Advanced Technical Training in Illinois (ICATT) or the Georgia Consortium for Advanced Technical Training (GA CATT).

Representing German industry and commerce, the Federation of German Industries (BDI) and the Association of German Chambers of Industry and Commerce (DIHK) therefore ask you to take into account the adverse effects that restrictions of temporary work visas have on the U.S. manufacturing sector and economy as a whole. We are optimistic that a careful evaluation of these effects will result in the conclusion that easing the issuance of temporary work visas, rather than restricting them, will result in more and better jobs for U.S. citizens.

We thank you for your commitment to the transatlantic relationship and remain with best regards

Dr. Joachim Lang
Director General
BDI

Dr. Martin Wansleben
CEO
DIHK

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U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Sixteenth Congress

March 24, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Re: Mitigating the Impact of the COVID-19 Pandemic on Essential Workers, Students, and Other Individuals Seeking Immigration Benefits

Dear Acting Secretary Wolf:

As you are aware, on March 13, 2020, the White House issued a proclamation declaring a national emergency as a result of the COVID-19 outbreak.[1] Since then, the Department of Homeland Security (DHS) has issued a number of policies related to the outbreak, including the recent guidance issued by U.S. Citizenship and Immigration Services (USCIS) explaining that the public charge rule will not restrict any testing, treatment, or preventative care for a communicable disease, including COVID-19.[2] USCIS also provided guidance explaining how the agency will evaluate cases involving immigrants who may necessarily require supplemental assistance in the form of certain public benefits during any period of unemployment related to COVID-19.[3] This guidance is critical, as it is essential to our nation's health and safety that immigrants not be deterred from engaging in measures to stop the spread of the virus, such as social distancing, and from seeking appropriate testing and care.

Effective March 18, 2020, USCIS has suspended routine in-person services at Asylum Offices, Field Offices, and Application Support Centers, while providing for emergency services in limited situations.[4] We understand the agency's need to protect its staff, as well as the public

[1] The White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

[2] U.S. Citizenship and Immigration Services, Public Charge (Mar. 13, 2020), https://www.uscis.gov/greencard/public-charge.

[3] Id.

[4] U.S. Citizenship and Immigration Services, USCIS Response to the Coronavirus Disease 2019 (COVID-19), https://www.uscis.gov/about-us/uscis-response-coronavirus-disease-2019-covid-19.

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they serve, during this critical time. USCIS, however, must take additional steps to mitigate the effects of the suspension on certain functions. We ask that you consider taking the following actions to reduce hardships on U.S. employers, universities, and other entities and individuals, including students and essential workers, during the COVID-19 pandemic:

1. Minimizing Additional Backlogs Through Interview Waivers: With the suspension of in-person services at USCIS Field Offices, USCIS should return to its prior policy of waiving interviews in cases involving applicants that have already been screened (such as employment-based applicants for adjustment of status and certain family-based applicants). Consistent with this prior policy, USCIS should maintain discretion to require an in-person interview on a case-by-case basis, after the outbreak subsides, if an application presents fraud, national security, or other concerns. At a minimum, DHS should waive interviews for individuals working in critical infrastructure industries, including healthcare, pharmaceuticals, and food supply.

2. Relaxing Filing and Other Requirements: In the past, when natural disasters and other catastrophic events devastated the nation, USCIS provided flexibility to affected individuals and entities by excusing late filings and easing regulatory and policy requirements. USCIS should clarify that it will apply the policies articulated on its "Special Situations" page to individuals who are affected by COVID-19 and, consistent with 8 CFR 214.1(c)(4) and 248.1(b)(1), excuse delays in filing applications for extension of stay or change of status, if such delay is associated with the outbreak.[5]

3. Measures to Preserve Lawful Status and Employment Authorization: To prevent significant hardship to applicants and petitioners resulting from outbreak-related lapses in status or work authorization, USCIS should automatically extend any employment authorization document, DACA grant, or nonimmigrant status that will expire in the next 90 days. Moreover, during any time period in which USCIS suspends biometric appointments at Application Support Centers, USCIS should use its discretionary authority to also suspend the requirement to appear for biometrics capture for children and other low-risk individuals, including those who have had biometrics taken in connection with prior applications or petitions.

4. Protecting Children from Aging Out: DHS should use its authority under the Homeland Security Act to make any necessary policy changes to ensure that children are adequately protected from "aging-out" of visa eligibility as an accompanying or following-to-join child of an immigrant, immediate relative child, or child of an asylum seeker or U visa applicant.

5. Mitigating Negative Impact on U.S. Businesses and Shoring Up Healthcare Resources: USCIS should take the following steps to ease the burdens on U.S. businesses that have implemented mandatory telework policies in response to the COVID-19 emergency, to

[5] U.S. Citizenship and Immigration Services, Special Situations, https://www.uscis.gov/humanitarian/special-situations.

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facilitate the speedy deployment of physicians and other healthcare workers to assist in the COVID-19 response, and to ensure workers are protected.

a. Facilitating Remote Telework and the Transfer of Healthcare Workers to Crisis Locations: DHS and the Department of Labor (DOL) should coordinate and announce a policy: (1) confirming that employers of H-1B workers are not required to file a new Labor Condition Application (LCA) or an amended H-1B petition if such workers are continuing in the same occupational classification but are shifting to telework; and (2) extending the short-term placement option from 30 days to 180 days. Similar policies should be applied to hospitals and healthcare facilities to make it easier to quickly move healthcare workers to temporary treatment facilities and testing locations.

b. Extending Nonimmigrant Employment-Authorized Grace Period: To prevent unnecessary travel of certain nonimmigrants who are between jobs, DHS should temporarily extend the 60-day grace period provided to such individuals to 180 days.

c. Extending F-1 "Cap Gap" Employment Authorization: Under current regulations, F-1 students working on Optional Practical Training (OPT) and changing status to H-1B receive an automatic extension of employment authorization through October 1, the start of the new fiscal year, at which point they transition to H-1B status. For new H-1Bs in Fiscal Year 2021, USCIS should extend this "cap gap" work authorization until the date on which the H-1B petition is adjudicated. This will ensure that the agency has the flexibility it needs to determine its processing priorities and focus its resources accordingly, without depriving U.S. businesses of essential workers, if H-1B processing is delayed beyond October 1.

d. Waiving Certain Nonimmigrant Visa Interviews: DHS and the Department of State should coordinate and announce a policy, consistent with their joint authority under section 222(h) of the Immigration and Nationality Act (INA), to waive the interview requirement, due to "unusual or emergent circumstances" for certain nonimmigrants who have been previously issued visas in the same classification, and present no fraud or national security concerns.

e. Extending Period to Re-Enter on Certain Nonimmigrant Visas: Many temporary or seasonal workers were admitted to the United States to work in industries that have been forced to suspend work due to the COVID-19 outbreak, and now have expired visas. Under current regulations, such individuals can travel to Canada, Mexico, or certain adjacent islands, and reenter the United States within 30 days to resume work, if they have an unexpired admission stamp or I-94 Arrival/Departure Record. Given the likelihood that work in some industries or geographic areas will be suspended for longer periods of time, DHS should extend the 30-day limitation on re-entry and allow such workers to immediately re-enter the United States when their employers resume normal business operations.

f. Providing Certainty to Critical Infrastructure Employees. As noted by the President, workers in several DHS-designated critical infrastructure industries—such as healthcare, pharmaceuticals, and food supply—have a special responsibility to maintain normal work

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schedules.[6] As states and localities continue to implement lockdowns prohibiting all but those in essential occupations from moving freely, undocumented agricultural workers must be able to travel to and from farms without fear of negative repercussions. DHS should grant deferred action, parole in place, or other temporary recognition that allows these essential workers to continue working and prevent further disruption of our national food supply during this national emergency. In addition, DHS should expedite the approval of new employment authorization documents, without requiring the payment of additional fees, for individuals with job offers to work in critical infrastructure industries.

6. Easing Burdens on Universities and Students: In addition to restricting the ability of foreign students to travel, the COVID-19 pandemic has resulted in extensive campus closures, prompting the transition to remote course work for millions of students. The pandemic is precisely the type of extraordinary situation that warrants the issuance of emergency measures to relax current regulatory requirements applicable to students, through the publication of a Special Student Relief notice in the Federal Register. Such measures should include:

   a. Protecting Students Who Leave the United States during COVID-19 Pandemic: DHS should ensure that students who return to their home countries but are otherwise in compliance with SEVP requirements remain eligible for future immigration benefits requiring maintenance of status, including school and program transfers.

   b. Relaxing OPT Requirements: As many foreign students are completing coursework remotely this semester, DHS should waive the requirement that such students file Form I-765, Application for Employment Authorization, for purposes of OPT, while physically present in the United States. In addition, DHS should ease the current filing deadlines for OPT—currently students must file Form I-765 within 30 days of the Designated School Official's OPT recommendation, or within 60 days of such recommendation if applying for STEM-based OPT.

   c. Exempting Periods of Unemployment from OPT Limits: The economic and social disruptions resulting from the COVID-19 outbreak have made it difficult, if not impossible, for students to secure and retain post-completion training in their fields of study. As such, DHS should not consider time spent unemployed during the COVID-19 emergency towards OPT unemployment limits.

Thank you for your continuing efforts to respond to this national emergency. Given the urgent nature of these matters, I ask that you respond to this letter by April 3, 2020, articulating your position on these proposals.

[6] The President's Coronavirus Guidelines for America, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

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Sincerely,



Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship
House Committee on the Judiciary

cc: The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary

The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary

The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary

The Honorable Michael Pompeo, Secretary of State

The Honorable Eugene Scalia, Secretary of Labor

Mr. Ken Cuccinelli, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Mr. Edward Ramotowski, Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State

Mr. John Pallasch, Assistant Secretary, Employment and Training Administration, Department of Labor

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CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.

MIRC Michigan Immigrant Rights Center

north carolina JUSTICE CENTER

LEGAL AID JUSTICE CENTER

SPLC Southern Poverty Law Center

JUSTICE AT WORK Formerly known as Friends of Farmworkers

Northwest Forest Worker Center

April 2, 2020

RECEIVED
By ESEC at 8:18 am, Apr 07, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
Mary E. Switzer Building
330 C Street SW Room 5123
Washington, D.C. 20201

RE: H-2B Temporary Work Visa & Impact of COVID-19

Dear Secretaries Scalia, Wolf, Pompeo, and Azar:

We are advocates and legal services providers from across the U.S. who regularly represent and interact with workers employed by H-2B employers in a wide variety of industries and organizations concerned with the well-being of all workers in the United States. Because of the vulnerability of the H-2B workforce, their international travel, their frequent residence in employer-provided or controlled group housing, and the close quarters associated with the work some H-2B workers perform, federal agencies like yours need to take action now to protect these workers and the community from additional spread of COVID-19.

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At this time, there are tens of thousands of H-2B workers currently in the United States,[1] with many thousands more who may be crossing the border in the next two months to work in landscaping, seafood processing, hospitality, and other industries.[2] These workers will travel, live, and work in close quarters.

Many of these workers will be deemed "critical infrastructure" workers and required to work and travel in states that have "shelter in place" orders. They will work in or near communities with confirmed community spread of COVID-19. They will be unfamiliar with the U.S. healthcare system and ineligible for many benefits. For these reasons, they are uniquely vulnerable to acquiring and transmitting COVID-19, and will face many barriers in accessing care and support.

Other workers are employed by or are being recruited for employment with H-2B employers in industries that are not classified as essential critical infrastructure industries.[3] The economic disruption caused by the COVID-19 pandemic has resulted, and will result, in H-2B workers being displaced from promised employment because their visas are tied to an employer that is not performing essential work, and potentially being left homeless, unemployed, and unable to return to their homes.

Our concerns and recommendations are outlined below:

1. Protect H-2B workers displaced from employment by layoffs and early termination of work, and provide assistance for H-2B workers who are unable to return to their home countries.

Analysis of the categories of jobs for which employers have historically received H-2B workers indicates that significant numbers of H-2B workers now in the country are likely to be

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[1] Unfortunately, the U.S. DOL, ETA, OFLC Performance Data, Disclosure Data, public disclosure information page as of March 27, 2020 has not been updated to include any disclosure information for FY2020Q1 ending on December 31, 2019. As a result, it is impossible to precisely identify data as to the current employers with H-2B workers. A review of FY2019 H-2B DOL labor certification approvals for employment continuing into 2020 suggests that as many as 17,383 positions will continue into the period between April 2020 and the end of the year, with 14,466 of those jobs ending in the period between April and June 30, 2020. It is impossible to know how many of those approved labor certification resulted in the issuance of H-2B visas. The USCIS Cap Count webpage reflects that on Nov. 15, 2019, USCIS reached the cap of 33,000 H-2B visa approvals for the 1st half of FY 2020. Presumably most of the 33,000 H-2B workers entered the U.S. subsequent to October 1, 2019 and most of them likely remain in the U.S. See Cap Count for H-2B Nonimmigrants, https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-h-2b-nonimmigrants.

[2] The USCIS Cap Count webpage reflects that on February 18, 2020, USCIS reached the cap of 33,000 H-2B visa approvals for the second half of FY 2020 beginning on April 1, 2020. See id. Pursuant to 9 FAM 402.10-11 (U) VALIDITY OF H VISAS, an H-2B visa may be validly issued for entrance to the U.S. ten days prior to the petition date. As a result, under normal circumstances the 33,000 FY2020Q3 H-2B visas for employment beginning on or after April 1, 2020 would have permitted entrance of those workers beginning on March 22, 2020.

[3] See U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, (March 19, 2020), https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf.

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employed in industries where state and local health orders limiting employment to "essential workers" during the COVID-19 pandemic will result in their layoff on at least a temporary basis and/or early termination of the promised period of employment.

The classification of "essential workers" in at least some states (e.g., Pennsylvania) is based on the NAICS code of the industry of the employer rather than on the SOC Code of the workers. Examination of FY19 H-2B DOL labor certifications by NAICS Code shows there is likely to be a significant number of H-2B workers who will be employed in industries which may be classified as non-essential, resulting in a curtailment or cessation of operations by those employers and in turn the temporary layoff or early termination of H-2B workers. The table below reflects the NAICS Sectors of H-2B labor certifications approved by DOL in FY2019.

NAICS Sector	Title Sector	H-2B Workers
	Total All FY 19 Certified	150,465
56	Administrative and Support and Waste Management and Remediation Services	66,842
71	Arts, Entertainment, and Recreation	19,203
72	Accommodation and Food Services	18,461
11	Agriculture, Forestry, Fishing and Hunting	15,015
31-33	Manufacturing	13,170
23	Construction	10,191
42	Wholesale Trade	1,498
54	Professional, Scientific, and Technical Services	1,067
48-49	Transportation and Warehousing	981
21	Mining, Quarrying, and Oil and Gas Extraction	868
61	Educational Services	821
44-45	Retail Trade	739
53	Real Estate and Rental and Leasing	714
55	Management of Companies and Enterprises	342
81	Other Services (except Public Administration)	301
22	Utilities	211
92	Public Administration	16
62	Health Care and Social Assistance	14
51	Information	6
52	Finance and Insurance	5

Workers in industries classified as Arts, Entertainment, and Recreation and as Accommodation and Food Services, which accounted for 37,664 of the FY2019 approved H-2B worker positions, are very likely to be jobs in which H-2B workers will be displaced from employment.

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We are aware of H-2B workers currently in the United States whose employers have ceased operations or laid off workers, but who are unable to return to their home country because that country (for example, Jamaica, Peru, and South Africa) has closed its border. As additional businesses shut down or greatly reduce their workforce because of coronavirus concerns or state issued mandates, we anticipate more H-2B workers will find themselves stranded in the United States, facing the expiration of their visas and unable to work or access basic resources, such as food, medical care, housing, or money to pay for their basic subsistence.

Recommendations:

- The Department of Labor and the Department of Homeland Security, in accordance with 20 C.F.R. § 655.20(g), should:
  - Require H-2B employers to comply with the requirement to obtain written approval of the DOL Certifying Officer before terminating employment of any H-2B worker because of loss of work;
  - Withhold such approval until DOL and the employer (and its H-2B processing agent) have made efforts to offer comparable employment to each such worker;
  - Require each H-2B employer to provide temporary housing and a daily subsistence allowance until the employer is able to make arrangements at the employer's expense to return the H-2B worker to their home.
  - Require the H-2B employer to be responsible for continued housing and subsistence for that worker until the worker can return home or has accepted alternative H-2B employment, where border closings or other barriers prevent that worker from returning to their home.
- The Department of Homeland Security should automatically extend the visas of H-2B workers who are unable to leave the United States and expedite or streamline the processing of requests for workers to transfer to new employers, similar to the process used for change of employers for H-2A workers. See 8 C.F.R. § 274a.12(b)(21).[4]

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[4] 8 C.F.R. § 274a.12(b)(21) states:

> A nonimmigrant alien within the class of aliens described in 8 CFR 214.2(h)(1)(ii)(C) who filed an application for an extension of stay pursuant to 8 CFR 214.2 during his or her period of admission. Such alien is authorized to be employed by a new employer that has filed an H-2A petition naming the alien as a beneficiary and requesting an extension of stay for the alien for a period not to exceed 120 days beginning from the "Received Date" on Form I-797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay, ~~provided that the employer has enrolled in and is a participant in good standing in the E-Verify program, as determined by USCIS in its discretion~~. Such authorization will be subject to any conditions and limitations noted on the initial authorization, except as to the employer and place of employment. However, if the District Director or Service Center director adjudicates the application prior to the expiration of this 120-day period and denies the application for extension of stay, the employment authorization under this paragraph (b)(21) shall automatically terminate upon 15 days after the date of the denial decision.

The above stricken language is in the existing H-2A regulation. However, because of the COVID-19 emergency situation, we would recommend dispensing with the requirement for the new employer to

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- The Department of Labor should verify that a worker's decision to seek other employment is voluntary and should verify job offers so that H-2B workers can avoid fraud and only transfer to employers that have received H-2B labor certifications.
- The Department of Labor should ensure that H-2B workers that have been laid off because of COVID-19 can access unemployment insurance benefits through their state's UI program or via the Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Pandemic Unemployment Compensation created by the CARES Act, which expands eligibility to provide unemployment compensation to workers who are not normally eligible for benefits so long as their unemployment was connected to the COVID-19 pandemic.

2. Ensure group housing for H-2B workers complies with CDC recommendations.

Although most H-2B employers do not have to provide housing for their employees, in many locations across the United States, it is common for employers or contractors to either provide or facilitate group housing for H-2B workers. This is particularly true in the seafood, landscaping, horse track, and horse grooming industries. In addition, employers of forestry services workers and carnival workers are required to provide housing. Typically, employer-provided housing for H-2B workers involves crowded motel rooms or apartments (e.g., eight people in a two bedroom apartment or four in a motel room), barracks-style housing, tents, or carnival trailers. These close living conditions do not allow workers to adhere to the Centers for Disease Control and Prevention (CDC)'s social distancing recommendations, as they often sleep, cook, and use the bathroom in close proximity to others.

Recommendations:

The Department of Labor and/or Department of Health and Human Services should provide mandatory guidance to H-2B employers on the provision of group housing. Such guidance should include requirements for:

- Avoiding housing workers in situations where they cannot observe the CDC six foot social distancing recommendation;
- Provision of cleaning products and sanitizer;
- Arranging planned housing for workers with symptoms and for workers with diagnosed COVID-19;
- Providing signs with COVID-19 prevention information and contact information for a clinic or health department; and
- Other recommendations in alignment with CDC guidance.

Many states do not require inspection of H-2B housing. We recommend that all H-2B housing owned, operated, provided, or facilitated by the employer or an agent of the employer be inspected and regulated by the federal Occupational Safety and Health Administration (OSHA) or an OSHA-designated state or local agency. Local, state, and federal agencies tasked with inspecting and certifying such housing should ensure the housing complies with CDC recommendations and require an additional COVID-19 plan, identifying the planned procedure if

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participate in the E-Verify program, and instead suggest that DHS simply permit such a "transfer" to any employer with a previously approved H-2B labor certification by DOL.

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COVID-19 is identified by a housing occupant.[5] Such COVID-19 plans should include the following:

- Ensure housing capacity limits are in compliance with CDC recommendations, with a minimum of six feet between bunks or beds and adequate ventilation.[6]
- Provide designated areas with separate sleeping, cooking, and bathing facilities for quarantined workers.
- Provide separate living facilities for workers that are over sixty or have underlying health conditions.
- Post in each housing unit, in a language understood by the workers, educational materials regarding COVID-19 and best health practices, including washing hands frequently for a minimum of twenty seconds and working six feet apart.
- Provide proof of sufficient sanitizing and handwashing supplies at the housing and at worksites.
- Provide proof of sufficient masks for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19.
- Designate a specific individual(s) responsible for ensuring workers comply with health and sanitation requirements.
- Designate a specific individual(s) responsible for disinfecting worker housing and any vehicles used to transport workers on a daily basis (or more often) at no cost to the workers.
- Designate a specific individual(s) who will receive reports from workers who may have COVID-19 symptoms, and who will coordinate and transport such workers to obtain medical services.
- Designate a specific individual(s) whose sole responsibility is to care for quarantined workers and ensure they have sufficient food, that the quarantine is enforced, and that transportation to medical care is provided.
- Provide paid sick leave for workers who will be quarantined.
- Provide proof that advance arrangements have been made to ensure sufficient essential supplies and food will be available in the community where the workers will be housed.
- Plan for responding to COVID-19 to limit exposure to other housing occupants and workers and ensure that affected workers/housing occupants receive the needed health care without overwhelming the health care network in rural areas.[7]

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[5] For guidance on steps to sanitize living facilities, see CDC COVID-19 Preparedness Checklist for Nursing Homes and other Long-Term Care Settings, https://www.cdc.gov/coronavirus/2019-ncov/downloads/novel-coronavirus-2019-Nursing-Homes-Preparedness-Checklist_3_13.pdf.

[6] The current temporary housing standard requires fifty square feet per person in sleeping areas with beds as close as three feet together. See OSHA Temporary Labor Camp Standard 1910.142(b)(2)-(3); ETA Standard § 654.407.

[7] Katelyn Newman, Rural Communities Brace for Coronavirus, U.S. NEWS (Mar. 23, 2020), https://www.usnews.com/news/healthiest-communities/articles/2020-03-23/rural-america-braces-for-coronavirus;

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- Require DOL approval and that written notification be provided to the appropriate foreign consulate prior to any removal of workers from employer-provided housing to ensure no H-2B worker is removed from the housing without treatment.[8]
- Post a notice advising workers of their right to protection from eviction.

3. Scrutinize employers seeking additional H-2B workers.

The Immigration and Nationality Act defines an H-2B worker as:

> (H) an alien . . . (ii) . . . (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . [non-agricultural] temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.

8 U.S.C. § 1101(a)(15)(H)(ii)(b).

In accordance with DOL H-2B regulations, each employer seeking an H-2B labor certification from DOL is required to execute an ETA 9142B, Appendix B Employer Declaration stating:

> I HEREBY CERTIFY my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:
>
> 1. The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek). . . .
>
> 8. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job-related reasons and all H-2B workers are laid off first.

Recommendations:

Under the unique circumstances of massive nationwide layoffs of U.S. workers and state and local closures of non-essential critical infrastructure businesses, a redetermination that U.S.

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see also Dan Keating & Laris Karklis, Rural Areas May be Most Vulnerable During Coronavirus Outbreak, WASH. POST (Mar. 19, 2020), https://www.washingtonpost.com/nation/2020/03/19/rural-areas-may-be-most-vulnerable-during-coronavirus-outbreak/?arc404=true. The National Rural Health Association has warned that the rural health care safety net, already "fragile before the national emergency, now . . . is being crippled by COVID-19." Press Release, National Rural Health Association, Urgent Federal Action Needed for Rural Health Care Workers Combating COVID-19 (Mar. 2020), https://www.ruralhealthweb.org/getmedia/dc6252f4-5120-4d0e-91db-32cbb1e8d029/COVID-19-URGENT-REQUESTS-FOR-RURAL-HEALTH-WORKERS_4.aspx.

[8] Where employers control workers' housing, they may revoke workers' access to that housing on short notice. In our current situation, such eviction from housing could cause a public health crisis.

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workers would not accept employment and that the offer of employment is a bona fide offer of full time employment for the period of requested need is appropriate.[9]

4. Require enhanced procedures during consular processing of H-2B workers.

H-2B workers who are applying for visas at U.S. Consulates around the world need up-to-date information on health conditions and restrictions on movement and gathering in the U.S. locations where they are headed.

As of April 2, 2020, officials in at least thirty-eight states have implemented stay-at-home orders restricting the movement of individuals for very narrow purposes and shutting down businesses that are not deemed essential or part of "critical infrastructure."[10] This is of particular concern for H-2B forestry services workers and carnival workers who travel on approved itineraries from state to state, since conditions and restrictions are likely to vary by location. Employers are required to provide H-2B workers with a contract that includes the terms and conditions of employment. Protections need to be in place prior to the workers' arrival, and complete information related to COVID-19 should be included in the contract. This can be ensured if USDOL includes new requirements for H-2B job order approval.

Recommendations:

The Department of Homeland Security should provide information to U.S. Consulates to give to workers in their home countries during the visa application process explaining any current restrictions on each location listed in that worker's H-2B order, as well as general information on how to protect oneself from COVID-19. To the extent that consulates are not having in-person contact with H-2B workers during the visa issuance process, employers should be required to have any in-country recruiter provide this information to each person recruited along with a copy of the H-2B contract. The information should be posted on the Department of State website. H-2B workers should have access to unemployment insurance and expanded pandemic-related disaster benefits. Given the quarantine orders set in place in numerous states to self-isolate after traveling, H-2B workers and out-of-state workers should be paid for this time period.

Prior to approval of a job order, the agencies tasked with reviewing job orders should ensure that an employer has a plan for preventing and responding to COVID-19, including requiring the employer to:

- Designate a specific individual(s) responsible for ensuring workers comply with health and sanitation requirements.
- Plan work crew activities to ensure proper distancing to avoid unnecessary transmission of the disease at work.
- Ensure sufficient bathroom and hand washing facilities are available at the worksite.
- Ensure daily sanitization of bathroom and handwashing facilities.

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[9] This is particularly true since DOL is barred by Congressional Appropriation's restrictions from directly enforcing H-2B regulations for the three-fourths guarantee of the amount of work promised to H-2B workers.

[10] See Sarah Mervosh et al., See Which States and Cities Have Told Residents to Stay Home, N.Y. TIMES (Mar. 31, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html.

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- Provide proof of sufficient personal protective equipment required for any workers handling or working around pesticides, free of charge.
- Provide paid sick leave, workers' compensation coverage and/or the three-fourths guarantee if the worker is unable to complete the contract due to COVID-19, to ensure that all COVID-19-related treatment and medical expenses, including transportation and lost wages, are covered.
- Guarantee that no worker will be sent home with any COVID-19 symptoms.
- Designate a hotline number capable of receiving information or messages twenty-four hours a day should be established to allow workers to report potential symptoms and request medical assistance and COVID-19 testing.

Employers are required to provide workers with the terms and conditions of employment when workers are still in their hometowns. In addition to the normal terms and conditions, all persons who are recruiting workers for H-2B employment in 2020 must provide written information that includes detailed information about COVID-19, including:

- The health risks;
- The risk of exposure during travel;
- The prevalence of COVID-19 in the community where the worker will be working;
- How employers will protect their safety while transporting, housing, and employing them in the United States;
- The promise of free individual cleaning and sanitizing products and the schedule for regular sanitizing of the housing, transportation, and other communal areas.
- The employer's approved COVID-19 Response Plan, including that workers will:
    - Receive free testing and treatment at no cost should they develop COVID-19 symptoms.
    - Be quarantined if they develop symptoms or test positive.
    - Not be sent home until all COVID-19 symptoms have been fully resolved.
- The availability of paid sick leave, workers' compensation, the three-fourths guarantee, unemployment insurance, and/or other benefits provided, should they be unable to complete the contract due to COVID-19.
- Their right to a safe workplace and protections against retaliation and evictions.

In light of U.S. Consular offices ceasing in-person interviews, all information, job contracts, and Know-Your-Rights brochures should be posted on the Department of Labor's website to ensure that workers can access this crucial information.

5. Ensure that H-2B workers travelling to the U.S. can maintain social distancing protocols.

H-2B workers embark on a long journey to get to their worksite in the U.S. The first leg of the trip is from their home community to the U.S. Consulate's office. There they must wait for days, sometimes a week for visa processing. With the current lack of clarity around visa processing for first-time applicants, this waiting time could extend even longer. Once they receive their visas, the second leg of the trip is to their worksite in the U.S. Federal regulations provide that H-2B employers must arrange for or reimburse workers' reasonable transportation

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and subsistence expenses.[11] The challenge is that workers are typically encouraged to share overcrowded hotel rooms and buses with many other workers for days, or even weeks to curb expenses.

Recommendations:

U.S. Consulates should provide clearer guidance around visa processing for first-time applicants to ensure that job seekers are not congregating unnecessarily near consular offices. Your agencies should encourage H-2B employers to arrange or encourage workers to seek alternate modes of transportation that follow the CDC COVID-19 recommendations.[12] This should include staggering travel, so workers are distributed over multiple, half-full buses, or flying workers commercially to minimize travel time. For private bus travel, H-2B employers should arrange for increased ventilation and supplies to disinfect surfaces at regular intervals. The Occupational Safety and Health Administration and/or Department of Health and Human Services should provide guidance to H-2B employers on the provision of group housing. Employers should arrange for or encourage workers to seek individual hotel accommodations for each worker and reimburse the higher cost of housing. Employers should also arrange for or encourage workers to seek room service or food delivery services to avoid unnecessary contact and reimburse the higher costs of food.

6. Ensure working conditions for H-2B workers comply with CDC recommendations.

H-2B workers who choose to work during this time are taking on the risk of contracting COVID-19 as an occupational hazard. These workers may not be aware of existing protections that provide for their health and safety in the workplace. They may also not be aware of more recent guidance around precautions they can take to protect themselves in the workplace. Agencies and employers need to ensure that H-2B workers are informed on the CDC and other public health guidelines to minimize the risk of COVID-19 contagion. There are many things federal and state health and safety agencies can do to support employers and H-2B workers through the COVID-19 pandemic.

Recommendations:

- Provide employers of H-2B workers with resources and information. Agencies should make posters, public health guidelines, and educational materials on COVID-19 available to employers in multiple languages. Employers need this information readily available so they can share with their H-2B workers.
- Create an emergency plan. Require employers to have an emergency plan in the event an H-2B worker falls ill with COVID-19. This plan should anticipate quarantine housing needs and proper medical care. H-2B workers often work in rural settings with little to no access to medical care. Agencies need to work with employers to

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[11] See 29 C.F.R. §§ 655.173, 655.20(j)(1)(i).

[12] Center for Disease Control and Prevention COVID-19 Workplace, School, and Home Guidance Fact Sheet, https://www.cdc.gov/coronavirus/2019-ncov/downloads/workplace-school-and-home-guidance.pdf; *U.S. Department of Transportation and Federal Aviation Administration's COVID*-19 Interim Health Guidance for Air Carriers and Crews, (Mar. 12, 2020), https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2020/SAFO20003.pdf.

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identify medical care and what to do if COVID-19 strikes their workplace. H-2B workers depend on their employers for medical treatment.

- Promote proper hygiene. Provide H-2B workers with breaks and encourage frequent hand washing and social distancing. H-2B employers should provide proof of adequate hand washing stations, disinfecting and sanitizing materials, disposable gloves, masks, and other industry-specific personal protective equipment (PPE). Employers should develop schedules to regularly sanitize and disinfect commonly touched surfaces like doorknobs, handrails, and workstations. Employers should provide for increased ventilation in enclosed workspaces. Employers should stagger shifts and lunch breaks to facilitate social distancing. Employers should hang signs encouraging hand washing and proper sneezing and coughing hygiene.
- Encourage the reporting of COVID-19 symptoms. H-2B workers should be encouraged to report if they are feeling ill. It is important there is no adverse action or retaliatory action taken against a worker that reports their symptoms or those of another worker.
- Ensure access to Families First Coronavirus Response Act. H-2B workers must be eligible to access paid sick days under the Act. Now is not the time to exempt small business operations from coverage under the Act. H-2B workers need to be informed by their employers that they can access paid sick leave if they fall ill with COVID-19.
- Ensure workers recruited from out-of-state are informed of the risk of exposure to COVID-19 by providing information regarding the danger of COVID-19, the prevalence of COVID-19 in the community where the worker will be working compared to the worker's current location and permanent residence, the risk of exposure during transportation, the CDC's recommendations for work and social distancing, and the proposed living and working conditions.
- Ensure workers will be housed and transported in compliance with the CDC social distancing recommendations.
- Provide workers with access to testing for COVID-19 at no cost.
- Provide unemployment insurance or paid sick leave for workers who are unable to complete the job contract due to COVID-19.

7. Assure three-fourths guarantee for H-2B workers who began work after the COVID-19 crisis began.

On March 13, 2020, the White House declared a National Emergency concerning COVID-19. Since at least that date, H-2B employers have been aware of the risks that COVID-19 represents to their industries and the public health at large. Following a brief disruption in consular visa processing, on March 26, 2020, the State Department issued an announcement clarifying that U.S. Consular offices in Mexico will continue to process H-2 visas for first-time and returning workers. Although an exception to the three-fourths guarantee exists for disasters beyond the control of the employer or for similar unforeseeable catastrophic events, H-2B employers who have continued to bring workers after March 13, 2020 are not facing an unforeseeable event, but are acting with full knowledge of the risks associated with COVID-19.[13]

[13] See 29 C.F.R. § 655.20(g).

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Recommendations:

The Department of Labor should affirm that, if any H-2B worker who entered the United States after March 13, 2020 develops symptoms of COVID-19 and, as a result, cannot complete the H-2B contract, they are entitled to the three-fourths guarantee. Likewise, the Department of Labor should affirm that, if any H-2B worker who entered the United States after March 13, 2020 is not offered sufficient hours of work due to COVID-19-related disruptions to business, they are entitled to the three-fourths guarantee. If employers seek to terminate a job order without fulfilling the three-fourths guarantee, certifying officers should deny such requests. As part of the certification process, H-2B employers should be specifically informed of their obligation to pay the three-fourths guarantee if COVID-19 impacts contract fulfillment, of their obligation to assist H-2B workers with a transfer to another employer, and of the requirement to pay the workers' return transportation should there be no transfer.[14]

CONCLUSION

The undersigned organizations and persons request that the Administration take urgent action and implement the recommendations outlined in this letter. The safety and health of H-2B workers, their families, and the community at large depends on the swift action of your agencies. We request that this letter and its recommendations be included in the comments being collected on the implementation of the Families First Coronavirus Response Act and the CARES Act. Additionally, we request a timely meeting to discuss the progress of your agencies in carrying out the recommendations outlined in this letter. You may contact Sulma Guzman (sulma@cdmigrante.org) and Carol Brooke (carol@ncjustice.org). We look forward to your prompt response and leadership in coordinating COVID-19 emergency services.

Sincerely,

Sulma Guzmán
Policy Director
Centro de los Derechos del Migrante, Inc.

Carol Brooke
Senior Attorney
North Carolina Justice Center

Diana Marin
Supervising Attorney
Michigan Immigrant Rights Center

Arthur N. Read
General Counsel
Justice at Work (Pennsylvania)

Jason Yarashes
Lead Attorney & Program Coordinator
Legal Aid Justice Center

Meredith Stewart
Senior Supervising Attorney
Southern Poverty Law Center

Carl Wilmsen
Northwest Forest Worker Center /
Lomakatsi Restoration Project

[14] 20 C.F.R. § 655.20(g).

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With the support of the following organizations:

CRLA Foundation, Sacramento, CA
Oxfam America
Migration that Works (formerly International Labor Recruitment Working Group)
National Lawyers Guild Labor and Employment Committee
Sugar Law Center for Economic & Social Justice
Legal Aid Justice Center, Richmond, VA
Farmworker and Landscaper Advocacy Project -FLAP-, Chicago, IL
Equal Justice Center, Austin, TX
Public Justice Center, Baltimore MD
Northwest Workers' Justice Project, Portland, OR
Migrant Legal Aid, Grand Rapids, MI
Dominican Sisters ~ Grand Rapids, MI
Freedom Network USA, Washington D.C.
Coalition for Humane Immigrant Rights, Los Angeles, CA
Restaurant Opportunities Center of Michigan
Lomakatsi Restoration Project, Ashland, OR
Worker Justice Center of New York - Rochester, Kingston & Hawthornen, NY
Seafood Workers' Alliance, New Orleans Worker Center for Racial Justice, Louisiana
International Institute of Detroit, MI
The Pennsylvania State University, Center for Global Workers' Rights, University Park, PA
Jobs With Justice, Washington D.C.
Idaho Legal Aid Services, Twin Falls, ID
CATA - El Comite de Apoyo a los Trabajadores Agricolas, PA, MD and NJ
Chicago's Legal Aid Society, Chicago, IL
Safe Harbor Law, LLC
Justice in Motion, Brooklyn, NY
Alianza Nacional de Campesinas - National
Advocates for Basic Legal Equality, Inc.; Toledo, OH
Worker's Rights Clinic - MLAW, Ann Arbor, MI
Legal Aid of North Carolina - Farmworker Unit
MESA, West Lafayette, IN
Alianza Nacional de Campesinas Florida
Organizacion en California de Lideres Campesinas, Oxnard, CA

CC:

The Honorable Robert R. Redfield, MD, Director, Center for Disease Control and Prevention;
Members, U.S. House Committee on Education and Labor;
Members, Congressional Progressive Caucus; and,
Members, Congressional Hispanic Caucus.

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CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.

MIRC Michigan Immigrant Rights Center

north carolina JUSTICE CENTER

LEGAL AID JUSTICE CENTER

SPLC Southern Poverty Law Center

JUSTICE AT WORK Formerly known as Friends of Farmworkers

Northwest Forest Worker Center

April 2, 2020

RECEIVED
By ESEC at 8:18 am, Apr 07, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
Mary E. Switzer Building
330 C Street SW Room 5123
Washington, D.C. 20201

RE: H-2B Temporary Work Visa & Impact of COVID-19

Dear Secretaries Scalia, Wolf, Pompeo, and Azar:

We are advocates and legal services providers from across the U.S. who regularly represent and interact with workers employed by H-2B employers in a wide variety of industries and organizations concerned with the well-being of all workers in the United States. Because of the vulnerability of the H-2B workforce, their international travel, their frequent residence in employer-provided or controlled group housing, and the close quarters associated with the work some H-2B workers perform, federal agencies like yours need to take action now to protect these workers and the community from additional spread of COVID-19.

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At this time, there are tens of thousands of H-2B workers currently in the United States,[1] with many thousands more who may be crossing the border in the next two months to work in landscaping, seafood processing, hospitality, and other industries.[2] These workers will travel, live, and work in close quarters.

Many of these workers will be deemed "critical infrastructure" workers and required to work and travel in states that have "shelter in place" orders. They will work in or near communities with confirmed community spread of COVID-19. They will be unfamiliar with the U.S. healthcare system and ineligible for many benefits. For these reasons, they are uniquely vulnerable to acquiring and transmitting COVID-19, and will face many barriers in accessing care and support.

Other workers are employed by or are being recruited for employment with H-2B employers in industries that are not classified as essential critical infrastructure industries.[3] The economic disruption caused by the COVID-19 pandemic has resulted, and will result, in H-2B workers being displaced from promised employment because their visas are tied to an employer that is not performing essential work, and potentially being left homeless, unemployed, and unable to return to their homes.

Our concerns and recommendations are outlined below:

1. Protect H-2B workers displaced from employment by layoffs and early termination of work, and provide assistance for H-2B workers who are unable to return to their home countries.

Analysis of the categories of jobs for which employers have historically received H-2B workers indicates that significant numbers of H-2B workers now in the country are likely to be

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[1] Unfortunately, the U.S. DOL, ETA, OFLC Performance Data, Disclosure Data, public disclosure information page as of March 27, 2020 has not been updated to include any disclosure information for FY2020Q1 ending on December 31, 2019. As a result, it is impossible to precisely identify data as to the current employers with H-2B workers. A review of FY2019 H-2B DOL labor certification approvals for employment continuing into 2020 suggests that as many as 17,383 positions will continue into the period between April 2020 and the end of the year, with 14,466 of those jobs ending in the period between April and June 30, 2020. It is impossible to know how many of those approved labor certification resulted in the issuance of H-2B visas. The USCIS Cap Count webpage reflects that on Nov. 15, 2019, USCIS reached the cap of 33,000 H-2B visa approvals for the 1st half of FY 2020. Presumably most of the 33,000 H-2B workers entered the U.S. subsequent to October 1, 2019 and most of them likely remain in the U.S. See Cap Count for H-2B Nonimmigrants, https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-h-2b-nonimmigrants.

[2] The USCIS Cap Count webpage reflects that on February 18, 2020, USCIS reached the cap of 33,000 H-2B visa approvals for the second half of FY 2020 beginning on April 1, 2020. See id. Pursuant to 9 FAM 402.10-11 (U) VALIDITY OF H VISAS, an H-2B visa may be validly issued for entrance to the U.S. ten days prior to the petition date. As a result, under normal circumstances the 33,000 FY2020Q3 H-2B visas for employment beginning on or after April 1, 2020 would have permitted entrance of those workers beginning on March 22, 2020.

[3] See U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, (March 19, 2020), https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf.

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employed in industries where state and local health orders limiting employment to "essential workers" during the COVID-19 pandemic will result in their layoff on at least a temporary basis and/or early termination of the promised period of employment.

The classification of "essential workers" in at least some states (e.g., Pennsylvania) is based on the NAICS code of the industry of the employer rather than on the SOC Code of the workers. Examination of FY19 H-2B DOL labor certifications by NAICS Code shows there is likely to be a significant number of H-2B workers who will be employed in industries which may be classified as non-essential, resulting in a curtailment or cessation of operations by those employers and in turn the temporary layoff or early termination of H-2B workers. The table below reflects the NAICS Sectors of H-2B labor certifications approved by DOL in FY2019.

NAICS Sector	Title Sector	H-2B Workers
	Total All FY 19 Certified	150,465
56	Administrative and Support and Waste Management and Remediation Services	66,842
71	Arts, Entertainment, and Recreation	19,203
72	Accommodation and Food Services	18,461
11	Agriculture, Forestry, Fishing and Hunting	15,015
31-33	Manufacturing	13,170
23	Construction	10,191
42	Wholesale Trade	1,498
54	Professional, Scientific, and Technical Services	1,067
48-49	Transportation and Warehousing	981
21	Mining, Quarrying, and Oil and Gas Extraction	868
61	Educational Services	821
44-45	Retail Trade	739
53	Real Estate and Rental and Leasing	714
55	Management of Companies and Enterprises	342
81	Other Services (except Public Administration)	301
22	Utilities	211
92	Public Administration	16
62	Health Care and Social Assistance	14
51	Information	6
52	Finance and Insurance	5

Workers in industries classified as Arts, Entertainment, and Recreation and as Accommodation and Food Services, which accounted for 37,664 of the FY2019 approved H-2B worker positions, are very likely to be jobs in which H-2B workers will be displaced from employment.

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We are aware of H-2B workers currently in the United States whose employers have ceased operations or laid off workers, but who are unable to return to their home country because that country (for example, Jamaica, Peru, and South Africa) has closed its border. As additional businesses shut down or greatly reduce their workforce because of coronavirus concerns or state issued mandates, we anticipate more H-2B workers will find themselves stranded in the United States, facing the expiration of their visas and unable to work or access basic resources, such as food, medical care, housing, or money to pay for their basic subsistence.

Recommendations:

- The Department of Labor and the Department of Homeland Security, in accordance with 20 C.F.R. § 655.20(g), should:
  - Require H-2B employers to comply with the requirement to obtain written approval of the DOL Certifying Officer before terminating employment of any H-2B worker because of loss of work;
  - Withhold such approval until DOL and the employer (and its H-2B processing agent) have made efforts to offer comparable employment to each such worker;
  - Require each H-2B employer to provide temporary housing and a daily subsistence allowance until the employer is able to make arrangements at the employer's expense to return the H-2B worker to their home.
  - Require the H-2B employer to be responsible for continued housing and subsistence for that worker until the worker can return home or has accepted alternative H-2B employment, where border closings or other barriers prevent that worker from returning to their home.
- The Department of Homeland Security should automatically extend the visas of H-2B workers who are unable to leave the United States and expedite or streamline the processing of requests for workers to transfer to new employers, similar to the process used for change of employers for H-2A workers. See 8 C.F.R. § 274a.12(b)(21).[4]

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[4] 8 C.F.R. § 274a.12(b)(21) states:

> A nonimmigrant alien within the class of aliens described in 8 CFR 214.2(h)(1)(ii)(C) who filed an application for an extension of stay pursuant to 8 CFR 214.2 during his or her period of admission. Such alien is authorized to be employed by a new employer that has filed an H-2A petition naming the alien as a beneficiary and requesting an extension of stay for the alien for a period not to exceed 120 days beginning from the "Received Date" on Form I-797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay, ~~provided that the employer has enrolled in and is a participant in good standing in the E-Verify program, as determined by USCIS in its discretion~~. Such authorization will be subject to any conditions and limitations noted on the initial authorization, except as to the employer and place of employment. However, if the District Director or Service Center director adjudicates the application prior to the expiration of this 120-day period and denies the application for extension of stay, the employment authorization under this paragraph (b)(21) shall automatically terminate upon 15 days after the date of the denial decision.

The above stricken language is in the existing H-2A regulation. However, because of the COVID-19 emergency situation, we would recommend dispensing with the requirement for the new employer to

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- The Department of Labor should verify that a worker's decision to seek other employment is voluntary and should verify job offers so that H-2B workers can avoid fraud and only transfer to employers that have received H-2B labor certifications.
- The Department of Labor should ensure that H-2B workers that have been laid off because of COVID-19 can access unemployment insurance benefits through their state's UI program or via the Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Pandemic Unemployment Compensation created by the CARES Act, which expands eligibility to provide unemployment compensation to workers who are not normally eligible for benefits so long as their unemployment was connected to the COVID-19 pandemic.

2. Ensure group housing for H-2B workers complies with CDC recommendations.

Although most H-2B employers do not have to provide housing for their employees, in many locations across the United States, it is common for employers or contractors to either provide or facilitate group housing for H-2B workers. This is particularly true in the seafood, landscaping, horse track, and horse grooming industries. In addition, employers of forestry services workers and carnival workers are required to provide housing. Typically, employer-provided housing for H-2B workers involves crowded motel rooms or apartments (e.g., eight people in a two bedroom apartment or four in a motel room), barracks-style housing, tents, or carnival trailers. These close living conditions do not allow workers to adhere to the Centers for Disease Control and Prevention (CDC)'s social distancing recommendations, as they often sleep, cook, and use the bathroom in close proximity to others.

Recommendations:

The Department of Labor and/or Department of Health and Human Services should provide mandatory guidance to H-2B employers on the provision of group housing. Such guidance should include requirements for:

- Avoiding housing workers in situations where they cannot observe the CDC six foot social distancing recommendation;
- Provision of cleaning products and sanitizer;
- Arranging planned housing for workers with symptoms and for workers with diagnosed COVID-19;
- Providing signs with COVID-19 prevention information and contact information for a clinic or health department; and
- Other recommendations in alignment with CDC guidance.

Many states do not require inspection of H-2B housing. We recommend that all H-2B housing owned, operated, provided, or facilitated by the employer or an agent of the employer be inspected and regulated by the federal Occupational Safety and Health Administration (OSHA) or an OSHA-designated state or local agency. Local, state, and federal agencies tasked with inspecting and certifying such housing should ensure the housing complies with CDC recommendations and require an additional COVID-19 plan, identifying the planned procedure if

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participate in the E-Verify program, and instead suggest that DHS simply permit such a "transfer" to any employer with a previously approved H-2B labor certification by DOL.

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COVID-19 is identified by a housing occupant.[5] Such COVID-19 plans should include the following:

- Ensure housing capacity limits are in compliance with CDC recommendations, with a minimum of six feet between bunks or beds and adequate ventilation.[6]
- Provide designated areas with separate sleeping, cooking, and bathing facilities for quarantined workers.
- Provide separate living facilities for workers that are over sixty or have underlying health conditions.
- Post in each housing unit, in a language understood by the workers, educational materials regarding COVID-19 and best health practices, including washing hands frequently for a minimum of twenty seconds and working six feet apart.
- Provide proof of sufficient sanitizing and handwashing supplies at the housing and at worksites.
- Provide proof of sufficient masks for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19.
- Designate a specific individual(s) responsible for ensuring workers comply with health and sanitation requirements.
- Designate a specific individual(s) responsible for disinfecting worker housing and any vehicles used to transport workers on a daily basis (or more often) at no cost to the workers.
- Designate a specific individual(s) who will receive reports from workers who may have COVID-19 symptoms, and who will coordinate and transport such workers to obtain medical services.
- Designate a specific individual(s) whose sole responsibility is to care for quarantined workers and ensure they have sufficient food, that the quarantine is enforced, and that transportation to medical care is provided.
- Provide paid sick leave for workers who will be quarantined.
- Provide proof that advance arrangements have been made to ensure sufficient essential supplies and food will be available in the community where the workers will be housed.
- Plan for responding to COVID-19 to limit exposure to other housing occupants and workers and ensure that affected workers/housing occupants receive the needed health care without overwhelming the health care network in rural areas.[7]

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[5] For guidance on steps to sanitize living facilities, see CDC COVID-19 Preparedness Checklist for Nursing Homes and other Long-Term Care Settings, https://www.cdc.gov/coronavirus/2019-ncov/downloads/novel-coronavirus-2019-Nursing-Homes-Preparedness-Checklist_3_13.pdf.

[6] The current temporary housing standard requires fifty square feet per person in sleeping areas with beds as close as three feet together. See OSHA Temporary Labor Camp Standard 1910.142(b)(2)-(3); ETA Standard § 654.407.

[7] Katelyn Newman, Rural Communities Brace for Coronavirus, U.S. NEWS (Mar. 23, 2020), https://www.usnews.com/news/healthiest-communities/articles/2020-03-23/rural-america-braces-for-coronavirus;

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- Require DOL approval and that written notification be provided to the appropriate foreign consulate prior to any removal of workers from employer-provided housing to ensure no H-2B worker is removed from the housing without treatment.[8]
- Post a notice advising workers of their right to protection from eviction.

3. Scrutinize employers seeking additional H-2B workers.

The Immigration and Nationality Act defines an H-2B worker as:

> (H) an alien . . . (ii) . . . (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . [non-agricultural] temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.

8 U.S.C. § 1101(a)(15)(H)(ii)(b).

In accordance with DOL H-2B regulations, each employer seeking an H-2B labor certification from DOL is required to execute an ETA 9142B, Appendix B Employer Declaration stating:

> I HEREBY CERTIFY my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:
>
> 1. The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek). . . .
>
> 8. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job-related reasons and all H-2B workers are laid off first.

Recommendations:

Under the unique circumstances of massive nationwide layoffs of U.S. workers and state and local closures of non-essential critical infrastructure businesses, a redetermination that U.S.

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see also Dan Keating & Laris Karklis, Rural Areas May be Most Vulnerable During Coronavirus Outbreak, WASH. POST (Mar. 19, 2020), https://www.washingtonpost.com/nation/2020/03/19/rural-areas-may-be-most-vulnerable-during-coronavirus-outbreak/?arc404=true. The National Rural Health Association has warned that the rural health care safety net, already "fragile before the national emergency, now . . . is being crippled by COVID-19." Press Release, National Rural Health Association, Urgent Federal Action Needed for Rural Health Care Workers Combating COVID-19 (Mar. 2020), https://www.ruralhealthweb.org/getmedia/dc6252f4-5120-4d0e-91db-32cbb1e8d029/COVID-19-URGENT-REQUESTS-FOR-RURAL-HEALTH-WORKERS_4.aspx.

[8] Where employers control workers' housing, they may revoke workers' access to that housing on short notice. In our current situation, such eviction from housing could cause a public health crisis.

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workers would not accept employment and that the offer of employment is a bona fide offer of full time employment for the period of requested need is appropriate.[9]

4. Require enhanced procedures during consular processing of H-2B workers.

H-2B workers who are applying for visas at U.S. Consulates around the world need up-to-date information on health conditions and restrictions on movement and gathering in the U.S. locations where they are headed.

As of April 2, 2020, officials in at least thirty-eight states have implemented stay-at-home orders restricting the movement of individuals for very narrow purposes and shutting down businesses that are not deemed essential or part of "critical infrastructure."[10] This is of particular concern for H-2B forestry services workers and carnival workers who travel on approved itineraries from state to state, since conditions and restrictions are likely to vary by location. Employers are required to provide H-2B workers with a contract that includes the terms and conditions of employment. Protections need to be in place prior to the workers' arrival, and complete information related to COVID-19 should be included in the contract. This can be ensured if USDOL includes new requirements for H-2B job order approval.

Recommendations:

The Department of Homeland Security should provide information to U.S. Consulates to give to workers in their home countries during the visa application process explaining any current restrictions on each location listed in that worker's H-2B order, as well as general information on how to protect oneself from COVID-19. To the extent that consulates are not having in-person contact with H-2B workers during the visa issuance process, employers should be required to have any in-country recruiter provide this information to each person recruited along with a copy of the H-2B contract. The information should be posted on the Department of State website. H-2B workers should have access to unemployment insurance and expanded pandemic-related disaster benefits. Given the quarantine orders set in place in numerous states to self-isolate after traveling, H-2B workers and out-of-state workers should be paid for this time period.

Prior to approval of a job order, the agencies tasked with reviewing job orders should ensure that an employer has a plan for preventing and responding to COVID-19, including requiring the employer to:

- Designate a specific individual(s) responsible for ensuring workers comply with health and sanitation requirements.
- Plan work crew activities to ensure proper distancing to avoid unnecessary transmission of the disease at work.
- Ensure sufficient bathroom and hand washing facilities are available at the worksite.
- Ensure daily sanitization of bathroom and handwashing facilities.

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[9] This is particularly true since DOL is barred by Congressional Appropriation's restrictions from directly enforcing H-2B regulations for the three-fourths guarantee of the amount of work promised to H-2B workers.

[10] See Sarah Mervosh et al., See Which States and Cities Have Told Residents to Stay Home, N.Y. TIMES (Mar. 31, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html.

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- Provide proof of sufficient personal protective equipment required for any workers handling or working around pesticides, free of charge.
- Provide paid sick leave, workers' compensation coverage and/or the three-fourths guarantee if the worker is unable to complete the contract due to COVID-19, to ensure that all COVID-19-related treatment and medical expenses, including transportation and lost wages, are covered.
- Guarantee that no worker will be sent home with any COVID-19 symptoms.
- Designate a hotline number capable of receiving information or messages twenty-four hours a day should be established to allow workers to report potential symptoms and request medical assistance and COVID-19 testing.

Employers are required to provide workers with the terms and conditions of employment when workers are still in their hometowns. In addition to the normal terms and conditions, all persons who are recruiting workers for H-2B employment in 2020 must provide written information that includes detailed information about COVID-19, including:

- The health risks;
- The risk of exposure during travel;
- The prevalence of COVID-19 in the community where the worker will be working;
- How employers will protect their safety while transporting, housing, and employing them in the United States;
- The promise of free individual cleaning and sanitizing products and the schedule for regular sanitizing of the housing, transportation, and other communal areas.
- The employer's approved COVID-19 Response Plan, including that workers will:
    - Receive free testing and treatment at no cost should they develop COVID-19 symptoms.
    - Be quarantined if they develop symptoms or test positive.
    - Not be sent home until all COVID-19 symptoms have been fully resolved.
- The availability of paid sick leave, workers' compensation, the three-fourths guarantee, unemployment insurance, and/or other benefits provided, should they be unable to complete the contract due to COVID-19.
- Their right to a safe workplace and protections against retaliation and evictions.

In light of U.S. Consular offices ceasing in-person interviews, all information, job contracts, and Know-Your-Rights brochures should be posted on the Department of Labor's website to ensure that workers can access this crucial information.

5. Ensure that H-2B workers travelling to the U.S. can maintain social distancing protocols.

H-2B workers embark on a long journey to get to their worksite in the U.S. The first leg of the trip is from their home community to the U.S. Consulate's office. There they must wait for days, sometimes a week for visa processing. With the current lack of clarity around visa processing for first-time applicants, this waiting time could extend even longer. Once they receive their visas, the second leg of the trip is to their worksite in the U.S. Federal regulations provide that H-2B employers must arrange for or reimburse workers' reasonable transportation

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and subsistence expenses.[11] The challenge is that workers are typically encouraged to share overcrowded hotel rooms and buses with many other workers for days, or even weeks to curb expenses.

Recommendations:

U.S. Consulates should provide clearer guidance around visa processing for first-time applicants to ensure that job seekers are not congregating unnecessarily near consular offices. Your agencies should encourage H-2B employers to arrange or encourage workers to seek alternate modes of transportation that follow the CDC COVID-19 recommendations.[12] This should include staggering travel, so workers are distributed over multiple, half-full buses, or flying workers commercially to minimize travel time. For private bus travel, H-2B employers should arrange for increased ventilation and supplies to disinfect surfaces at regular intervals. The Occupational Safety and Health Administration and/or Department of Health and Human Services should provide guidance to H-2B employers on the provision of group housing. Employers should arrange for or encourage workers to seek individual hotel accommodations for each worker and reimburse the higher cost of housing. Employers should also arrange for or encourage workers to seek room service or food delivery services to avoid unnecessary contact and reimburse the higher costs of food.

6. Ensure working conditions for H-2B workers comply with CDC recommendations.

H-2B workers who choose to work during this time are taking on the risk of contracting COVID-19 as an occupational hazard. These workers may not be aware of existing protections that provide for their health and safety in the workplace. They may also not be aware of more recent guidance around precautions they can take to protect themselves in the workplace. Agencies and employers need to ensure that H-2B workers are informed on the CDC and other public health guidelines to minimize the risk of COVID-19 contagion. There are many things federal and state health and safety agencies can do to support employers and H-2B workers through the COVID-19 pandemic.

Recommendations:

- Provide employers of H-2B workers with resources and information. Agencies should make posters, public health guidelines, and educational materials on COVID-19 available to employers in multiple languages. Employers need this information readily available so they can share with their H-2B workers.
- Create an emergency plan. Require employers to have an emergency plan in the event an H-2B worker falls ill with COVID-19. This plan should anticipate quarantine housing needs and proper medical care. H-2B workers often work in rural settings with little to no access to medical care. Agencies need to work with employers to

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[11] See 29 C.F.R. §§ 655.173, 655.20(j)(1)(i).

[12] Center for Disease Control and Prevention COVID-19 Workplace, School, and Home Guidance Fact Sheet, https://www.cdc.gov/coronavirus/2019-ncov/downloads/workplace-school-and-home-guidance.pdf; *U.S. Department of Transportation and Federal Aviation Administration's COVID*-19 Interim Health Guidance for Air Carriers and Crews, (Mar. 12, 2020), https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2020/SAFO20003.pdf.

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identify medical care and what to do if COVID-19 strikes their workplace. H-2B workers depend on their employers for medical treatment.

- Promote proper hygiene. Provide H-2B workers with breaks and encourage frequent hand washing and social distancing. H-2B employers should provide proof of adequate hand washing stations, disinfecting and sanitizing materials, disposable gloves, masks, and other industry-specific personal protective equipment (PPE). Employers should develop schedules to regularly sanitize and disinfect commonly touched surfaces like doorknobs, handrails, and workstations. Employers should provide for increased ventilation in enclosed workspaces. Employers should stagger shifts and lunch breaks to facilitate social distancing. Employers should hang signs encouraging hand washing and proper sneezing and coughing hygiene.
- Encourage the reporting of COVID-19 symptoms. H-2B workers should be encouraged to report if they are feeling ill. It is important there is no adverse action or retaliatory action taken against a worker that reports their symptoms or those of another worker.
- Ensure access to Families First Coronavirus Response Act. H-2B workers must be eligible to access paid sick days under the Act. Now is not the time to exempt small business operations from coverage under the Act. H-2B workers need to be informed by their employers that they can access paid sick leave if they fall ill with COVID-19.
- Ensure workers recruited from out-of-state are informed of the risk of exposure to COVID-19 by providing information regarding the danger of COVID-19, the prevalence of COVID-19 in the community where the worker will be working compared to the worker's current location and permanent residence, the risk of exposure during transportation, the CDC's recommendations for work and social distancing, and the proposed living and working conditions.
- Ensure workers will be housed and transported in compliance with the CDC social distancing recommendations.
- Provide workers with access to testing for COVID-19 at no cost.
- Provide unemployment insurance or paid sick leave for workers who are unable to complete the job contract due to COVID-19.

7. Assure three-fourths guarantee for H-2B workers who began work after the COVID-19 crisis began.

On March 13, 2020, the White House declared a National Emergency concerning COVID-19. Since at least that date, H-2B employers have been aware of the risks that COVID-19 represents to their industries and the public health at large. Following a brief disruption in consular visa processing, on March 26, 2020, the State Department issued an announcement clarifying that U.S. Consular offices in Mexico will continue to process H-2 visas for first-time and returning workers. Although an exception to the three-fourths guarantee exists for disasters beyond the control of the employer or for similar unforeseeable catastrophic events, H-2B employers who have continued to bring workers after March 13, 2020 are not facing an unforeseeable event, but are acting with full knowledge of the risks associated with COVID-19.[13]

[13] See 29 C.F.R. § 655.20(g).

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Recommendations:

The Department of Labor should affirm that, if any H-2B worker who entered the United States after March 13, 2020 develops symptoms of COVID-19 and, as a result, cannot complete the H-2B contract, they are entitled to the three-fourths guarantee. Likewise, the Department of Labor should affirm that, if any H-2B worker who entered the United States after March 13, 2020 is not offered sufficient hours of work due to COVID-19-related disruptions to business, they are entitled to the three-fourths guarantee. If employers seek to terminate a job order without fulfilling the three-fourths guarantee, certifying officers should deny such requests. As part of the certification process, H-2B employers should be specifically informed of their obligation to pay the three-fourths guarantee if COVID-19 impacts contract fulfillment, of their obligation to assist H-2B workers with a transfer to another employer, and of the requirement to pay the workers' return transportation should there be no transfer.[14]

CONCLUSION

The undersigned organizations and persons request that the Administration take urgent action and implement the recommendations outlined in this letter. The safety and health of H-2B workers, their families, and the community at large depends on the swift action of your agencies. We request that this letter and its recommendations be included in the comments being collected on the implementation of the Families First Coronavirus Response Act and the CARES Act. Additionally, we request a timely meeting to discuss the progress of your agencies in carrying out the recommendations outlined in this letter. You may contact Sulma Guzman (sulma@cdmigrante.org) and Carol Brooke (carol@ncjustice.org). We look forward to your prompt response and leadership in coordinating COVID-19 emergency services.

Sincerely,

Sulma Guzmán
Policy Director
Centro de los Derechos del Migrante, Inc.

Carol Brooke
Senior Attorney
North Carolina Justice Center

Diana Marin
Supervising Attorney
Michigan Immigrant Rights Center

Arthur N. Read
General Counsel
Justice at Work (Pennsylvania)

Jason Yarashes
Lead Attorney & Program Coordinator
Legal Aid Justice Center

Meredith Stewart
Senior Supervising Attorney
Southern Poverty Law Center

Carl Wilmsen
Northwest Forest Worker Center /
Lomakatsi Restoration Project

[14] 20 C.F.R. § 655.20(g).

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With the support of the following organizations:

CRLA Foundation, Sacramento, CA
Oxfam America
Migration that Works (formerly International Labor Recruitment Working Group)
National Lawyers Guild Labor and Employment Committee
Sugar Law Center for Economic & Social Justice
Legal Aid Justice Center, Richmond, VA
Farmworker and Landscaper Advocacy Project -FLAP-, Chicago, IL
Equal Justice Center, Austin, TX
Public Justice Center, Baltimore MD
Northwest Workers' Justice Project, Portland, OR
Migrant Legal Aid, Grand Rapids, MI
Dominican Sisters ~ Grand Rapids, MI
Freedom Network USA, Washington D.C.
Coalition for Humane Immigrant Rights, Los Angeles, CA
Restaurant Opportunities Center of Michigan
Lomakatsi Restoration Project, Ashland, OR
Worker Justice Center of New York - Rochester, Kingston & Hawthornen, NY
Seafood Workers' Alliance, New Orleans Worker Center for Racial Justice, Louisiana
International Institute of Detroit, MI
The Pennsylvania State University, Center for Global Workers' Rights, University Park, PA
Jobs With Justice, Washington D.C.
Idaho Legal Aid Services, Twin Falls, ID
CATA - El Comite de Apoyo a los Trabajadores Agricolas, PA, MD and NJ
Chicago's Legal Aid Society, Chicago, IL
Safe Harbor Law, LLC
Justice in Motion, Brooklyn, NY
Alianza Nacional de Campesinas - National
Advocates for Basic Legal Equality, Inc.; Toledo, OH
Worker's Rights Clinic - MLAW, Ann Arbor, MI
Legal Aid of North Carolina - Farmworker Unit
MESA, West Lafayette, IN
Alianza Nacional de Campesinas Florida
Organizacion en California de Lideres Campesinas, Oxnard, CA

CC:

The Honorable Robert R. Redfield, MD, Director, Center for Disease Control and Prevention;
Members, U.S. House Committee on Education and Labor;
Members, Congressional Progressive Caucus; and,
Members, Congressional Hispanic Caucus.

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Congress of the United States
Washington, DC 20515

RECEIVED
By ESEC External at 11:55 am, Jul 02, 2020

July 1, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia,

We write concerning the President's "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," Proclamation 10052, and its effects on the Utah Dual Language Immersion (DLI) program.

Across Utah, there are nearly 300 DLI schools utilizing over 50 international teachers teaching Chinese, German, French, Portuguese, Russian, and Spanish. Because of the skills required to teach in a DLI program, many positions do not receive any qualified American applicants, and the programs turn to international teachers as a last resort. Not only do these teachers fill important teaching positions, they also facilitate an exchange of cultures and share their fluency in languages all deemed critical by the U.S. Department of Defense.

While we understand and support the prioritization of American workers, we are concerned that the recent prohibition of J-1 and H-1B visas will put DLI students at a disadvantage this school year – when schools already face uncertainty due to the COVID-19 pandemic. The Utah DLI program utilizes J-1 and H-1B visas to fill teacher openings if, and only if, those positions cannot be filled by American applicants, thus ensuring that international teachers are not replacing American workers.

Because of the importance of education and DLI programs to the future of our nation, we respectfully ask that you consider an exemption to the J-1 and H-1B visa ban for international teachers filling critical DLI teaching positions in programs that have been unsuccessful in filling

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the positions with Americans. We believe that the ability to reopen schools safely in the fall and to provide a first-class education is in the national interest of Utah and American families.

If you have any clarifying questions, please have a member of your staff contact Rebekah Rodriguez (Rebekah.Rodriguez@mail.house.gov) in Representative Curtis's office. Thank you for your consideration of our request.

Sincerely,

John R. Curtis
Member of Congress

Ben McAdams
Member of Congress

Rob Bishop
Member of Congress

Chris Stewart
Member of Congress

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Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

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underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

TOWN OF KILL DEVIL HILLS

Post Office Box 1719, 102 Town Hall Drive
Kill Devil Hills, North Carolina 27948
252-449-5300
www.kdhnc.com

Mayor
BENJAMIN A. SPROUL

Mayor Pro Tem
IVY RAY INGRAM

Commissioners
TERRY L. GRAY
BERNARD B. MCAVOY, JR.
JOHN L. WINDLEY

Town Manager
DEBORA P. DIAZ

Assistant Town Manager
SHAWN R. MURPHY

Town Clerk
MARY E. QUIDLEY

Town Attorney
CASEY C. VARNELL

September 17, 2020

The Honorable Donald Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

RECEIVED
By ESEC at 3:55 pm, Oct 06, 2020

REF: J-1 and H-2B Visa Exchange Visitor Programs Exemption Request

Dear Mr. President,

The Town of Kill Devil Hills is situated on the Atlantic coast on the Outer Banks of North Carolina. With year-round population of 7,200, it receives hundreds of thousands of visitors during the summer tourism season to our beaches. I write to request your support for establishing an exemption for the J-1 and H-2B Visa Exchange Visitor Programs, which are vital to our seasonal economy. Our concerns have recently been summarized in a recently adopted resolution, which has been included:

Resolution in Support of the J-1 and H-2B Visa Exchange Visitor Program

Since our economy is greatly impacted by an influx of annual visitors to our community, having a reliable seasonal pool of employees available through the Summer Work Travel Programs of the J-1 and H-2B Visa Exchange Visitor Programs is essential to all of our businesses along the coast, from mom n' pop operations and big box stores and even local governmental operations. The Town of Kill Devil Hills requests a National Interest Exemption for Economic Recovery, as provided by section 3(b)(iv) and 4(a)(i) of the Presidential Proclamation of June 22, 2020, to assist our local businesses remaining a viable and integral part of our nation's economy.

AMERICAN OVERSIGHT

Thank you for your consideration of these requests.

Sincerely,

Benjamin A. Sproul
Mayor

Encl.
cc: Honorable Michael Pompeo, Secretary of State
Honorable Chad Wolf, Secretary of Homeland Security
Honorable Eugene Scalia, Secretary of Labor
Honorable Richard Burr, U.S, Senate
Honorable Thom Tillis, U.S. Senate
Honorable Gregory Murphy, U.S. House of Representatives
Honorable Roy Cooper, Governor
Honorable Bob Steinburg, N.C. Senate
Honorable Bobby Hanig, N.C. House of Representatives
Dare County, N.C., local governments
Kill Devil Hills Board of Commissioners
File

AMERICAN OVERSIGHT

TOWN OF KILL DEVIL HILLS

Land Where Flight Began

Resolution in Support of
the J-1 and H-2B Visa Exchange Visitor Programs

WHEREAS the Town of Kill Devil Hills, its citizens, local businesses, and visitors depend on and value the students who participate in the J-1 and H-2B Visa Exchange Visitor Programs – Summer Work Travel Programs (SWTPs) to meet the demands of visiting tourists during the summer season; and

WHEREAS the Presidential Proclamation issued on June 22, 2020, suspended the SWTPs through December 31, 2020, with the possibility of extension; and

WHEREAS due to the suspension and loss of SWTPs participants, host employers have needed to reduce services and operating hours, close off portions of their facilities, and turn away customers; and

WHEREAS a recent survey of SWTPs host employers found the average employer laid off or furloughed 13 employees each, and lost on average $250,000 in revenues, because of the loss of SWTPs participants; and

WHEREAS the Town of Kill Devil Hills is committed to ensuring American employees are protected during these difficult economic times, but that not nearly enough Americans are applying for the seasonal jobs offered in Kill Devil Hills and northeastern North Carolina, and unquestionably not enough to replace the lost SWTPs participants; and

WHEREAS the Presidential Proclamations 10014 and 10052 have a specific provision for periodically reviewing the suspension of programs like the SWTPs from the Proclamations' suspension, such as the 30 and 60 day reviews directed by the modifications to Section 4 of the Presidential Proclamation 10014; and

WHEREAS Section 3(b)(iv) the Presidential Proclamation of June 22, 2020, provides that the Secretaries of State and/or Homeland Security can determine which groups, like SWTPs, can be exempted from the suspension because their entry would be in the national interest of the United States; and

WHEREAS Section 4(a)(i) of the Presidential Proclamation of June 22, 2020, further directs those Secretaries, along with the Secretary of Labor, to define categories like the SWTPs program to be exempted per the procedures of Section 3(b)(iv) who can facilitate the immediate and continued economic recovery of the United States can determine which groups, like SWTPs, can be exempted from the suspension because their entry would be in the national interest of the United States; and

AMERICAN OVERSIGHT

NOW, THEREFORE, BE IT RESOLVED that the Town of Kill Devil Hills, North Carolina, determines the immediate resumption of the SWTPs is necessary to the immediate and continuing economic recovery of businesses within our community and throughout Dare County and northeastern North Carolina, wholeheartedly endorses the State Department's SWTPs, and

1. Petitions the White House to issue a National Interest Exemption for Economic Recovery during the next 60-Day Review, concluding on September 22, 2020, as provided by Section 3(b)(iv) and 4(a)(i) of the Presidential Proclamation of June 22, 2020;

2. Asks the congressional delegation representing the Town of Kill Devil Hills to engage the White House in support of this National Interest Exemption;

3. Directs Town Staff to forward a copy of this Resolution to the President and all congressional members representing the citizens of Kill Devil Hills;

4. Encourages all Town residents to participate in events and initiatives that will raise the overall awareness of the need for the resumption of the SWTPs and to engage their congressional representatives asking them to support this program as well; and

5. Supports the Outer Banks International Student Outreach Program (ISOP) and SWTPs sponsors as they help our Town resume this program.

This 14th day of September 2020.

SEAL

Benjamin A. Sproul
Mayor

ATTEST:

James Michael O'Dell
Deputy Town Clerk

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 2:52 pm, Jul 09, 2020

July 09, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Chad Wolf
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Dear President Trump and Acting Secretary Wolf:

I write to request that you revoke the Administration's June 22, 2020 proclamation to suspend H-1B, H-2B, H-4, L, and most J work visa programs and extend the green card suspension until January 2021. Furthermore, I request that the Administration clarify how this action will meaningfully address labor needs through this challenging time. This decision will drastically limit the award of petitions and will further strain American businesses, which are already battling a recession.

In the midst of the current pandemic, foreign workers have proven to be vitally important. The United States relies on these petitioners to perform critical services now more than ever. The Administration's decision will cause further damage to the health and prosperity of our nation. Further, American industry will struggle to compete with other nations if it is unable to bring in the talent necessary to spur innovation. Nearly half of all Fortune 500 companies were started by immigrants or by their children. Ongoing efforts to retain and attract talent and entrepreneurship will be critical to our economic recovery and leadership in innovation.

America's business leaders and trade associations have objected to these limitations. The Chamber of Commerce, National Association of Manufacturers, FWD.us, the Information Technology Industry Council, and the Internet Association are among the groups that have cited the likely financial losses that small businesses and technology companies will incur. Executives from Google, Facebook, Microsoft, and Twitter, have all cited the suspension's long-term detrimental effect on our ability to attract and develop talent.

To that end, I request that you clarify the following:

1. What data from the Department of Labor (DoL) and Department of Homeland Security (DHS) establishes a relationship between widespread job losses during COVID-19 and the visas suspended by the proclamation?
2. What projections or data do the Administration, DoL, and DHS cite to indicate that these actions would lower the unemployment rate during and after the COVID-19 pandemic?
3. What efforts is the Administration taking to improve and increase the talent pipeline across sectors in the United States?

AMERICAN OVERSIGHT

I strongly urge you to reconsider your recent decision. Immigrants are vital to protecting American health and preserving American prosperity.

I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 1:17 pm, Jul 10, 2020

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

July 10, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Wolf:

On behalf of the American Council of Engineering Companies (ACEC) – the voice of the business of engineering – I am writing to express our concerns about the presidential proclamation signed on June 22, 2020 that would suspend H-1B and L visas, among others. This sudden barrier to employing highly-skilled engineering professionals will disrupt the operations of engineering firms across the country, and we respectfully request a waiver for the engineering industry.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America's infrastructure and built environment. Because of the critical shortage of engineers in this country, H-1B and other employment-based visa programs allow engineering firms to pursue their vital work of building the nation's infrastructure when American citizens are not available to fill these jobs.

The National Science Foundation has reported incremental growth in bachelor's degrees in engineering since 2000, but these very modest increases are not nearly enough to meet the demands of a robust and growing economy, particularly in recent years. The engineering workforce is also getting older, and nearly 30 percent of all engineering and science degree holders in the labor force are 50 or over and expected to retire in the next 15 years. Moreover, the National Science Foundation reports that in 2015 half of engineering master's degrees awarded by U.S. universities were earned by foreign nationals on temporary visas, including 70 percent of master's degrees in electrical engineering.

America's engineering industry will always hire qualified Americans first, and we support investments in STEM education and other initiatives to attract more young people to the engineering profession. However, the data above clearly demonstrates that the industry needs access to the best and brightest around the world in order to fill key

AMERICAN OVERSIGHT

positions. Engineering firms employ highly skilled, technically sophisticated professionals, often at the mid-career level, using H-1B visas as well as L-1 visas for individuals with specialized knowledge of the firm's operations that cannot easily be transferred to new hires.

During the pandemic, engineering firms have worked to ensure continuity of operations across all types of infrastructure and provided support to critical industries. These services include infrastructure safety inspections to assess deterioration; completion of ongoing construction; assessing the ability to repurpose infrastructure for pandemic response; renovating to protect public and worker health and safety; designing needed changes to existing infrastructure and new infrastructure; providing support for operations and maintenance of existing infrastructure; and similar activities.

These critical functions will be impacted directly should the proclamation remain in effect for the engineering industry. All engineering firm employees, including those with H-1B and L-1 visas, are critical to an engineering firm's ability to continue this essential work. Accordingly, we respectfully urge the Departments of Homeland Security, State and Labor to provide a waiver for engineering firms from the visa suspensions delineated in the presidential proclamation of June 22, 2020.

Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,



Linda Bauer Darr
President & CEO

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 20, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

Dear Senator Bennet:

Thank you for your July 9, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

President Trump recently issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."[1] The presidential proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process benefit requests, including for the H, J, and L programs and for permanent residence ("green cards"). To the extent that you are concerned about the temporary suspension of visa issuance for individuals outside of the United States, USCIS defers to our colleagues at the Department of State.

The Secretary of Labor and the Acting Secretary of Homeland Security reviewed nonimmigrant programs and found that the admission of workers within several nonimmigrant visa categories poses a risk of displacing and disadvantaging United States workers during this economic recovery. With regard to your data requests pertaining to unemployment rates, USCIS defers to our colleagues at the Department of Labor. As for the Administration's efforts to improve and increase the talent pipeline across sectors in the United States, the goal of recent presidential proclamation is to ensure that U.S. businesses look to American workers first as the United States recovers from the economic effects of the coronavirus. Many Americans are out of work through no fault of their own due to the coronavirus pandemic and they should not remain on the sidelines while being replaced by foreign labor.

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-000189

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 14, 2020

The Honorable Amy Klobuchar
United States Senate
Washington, DC 20510

Dear Senator Klobuchar:

Thank you for your April 6, 2020 letter regarding premium processing during the coronavirus (COVID-19) pandemic. Mr. Cuccinelli has asked that I respond on his behalf.

The Department of Homeland Security has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. The Department continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. On May 11, 2020, we introduced temporary policy changes for certain medical professionals during the COVID-19 pandemic. Further, as we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens.

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DHS-20-2156-A-000191

Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Bradley S. Schneider
Member of Congress

The Honorable Susan M. Collins
United States Senator

The Honorable Abby Finkenauer
Member of Congress

The Honorable Jacky Rosen
United States Senator

The Honorable Tom Cole
Member of Congress

AMERICAN OVERSIGHT

The Honorable Ron Wyden
United States Senator

The Honorable Terri Sewell
Member of Congress

The Honorable Angus S. King, Jr.
United States Senator

The Honorable Lisa Blunt Rochester
Member of Congress

The Honorable Thomas R. Carper
United States Senator

The Honorable Cindy Axne
Member of Congress

The Honorable Tammy Baldwin
United States Senator

The Honorable Angie Craig
Member of Congress

The Honorable Edward J. Markey
United States Senator

The Honorable Mark Pocan
Member of Congress

The Honorable Richard Blumenthal
United States Senator

The Honorable Tom O'Halleran
Member of Congress

The Honorable Jeanne Shaheen
United States Senator

The Honorable Raja Krishnamoorthi
Member of Congress

The Honorable Tom Udall
United States Senator

AMERICAN OVERSIGHT

The Honorable Sylvia R. Garcia
Member of Congress

The Honorable Martin Heinrich
United States Senator

The Honorable Xochitl Torres Small
Member of Congress

The Honorable Charles E. Schumer
United States Senator

The Honorable Darren Soto
Member of Congress

The Honorable Christopher A. Coons
United States Senator

The Honorable Kamala D. Harris
United States Senator

The Honorable Catherine Cortez-Masto
United States Senator

The Honorable Patrick Leahy
United States Senator

The Honorable Tina Smith
United States Senator

The Honorable Richard J. Durbin
United States Senator

The Honorable Elizabeth Warren
United States Senator

The Honorable Kevin Cramer
United States Senator

The Honorable Margaret Wood Hassan
United States Senator

AMERICAN OVERSIGHT

The Honorable Tammy Duckworth
United States Senator

The Honorable Dianne Feinstein
United States Senator

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 28, 2020

The Honorable Amy Klobuchar
United States Senate
Washington, DC 20510

Dear Senator Klobuchar:

Thank you for your April 24, 2020 letter. Mr. Cuccinelli asked that I respond on his behalf.

On March 18, 2020, U.S. Citizenship and Immigration Services (USCIS) temporarily suspended routine in-person services to help slow the spread of coronavirus (COVID-19). USCIS plans to begin reopening our offices to the public on or after June 4. USCIS staff are continuing to perform duties that do not involve face-to-face contact with the public.

USCIS continues to accept and process applications and petitions. In response to the COVID-19 pandemic, USCIS extended certain flexibilities for responding to notices and requests and provided options to mitigate the immigration consequences for nonimmigrants who need to extend or change their status. In addition, our website provides guidance for aliens who have special situations. Please see the enclosure for our responses to your additional questions.

Thank you for your interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

Enclosure

cc:

The Honorable Mazie K. Hirono
United States Senator

AMERICAN OVERSIGHT

DHS-20-2156-A-000196

The Honorable Tammy Duckworth
United States Senator

The Honorable Richard J. Durbin
United States Senator

The Honorable Christopher A. Coons
United States Senator

The Honorable Richard Blumenthal
United States Senator

The Honorable Cory A. Booker
United States Senator

The Honorable Kamala D. Harris
United States Senator

The Honorable Robert Menendez
United States Senator

The Honorable Elizabeth Warren
United States Senator

The Honorable Bernard Sanders
United States Senator

The Honorable Catherine Cortez Masto
United States Senator

The Honorable Jacky Rosen
United States Senator

The Honorable Christopher S. Murphy
United States Senator

The Honorable Edward J. Markey
United States Senator

Kirsten Gillibrand
United States Senator

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 13, 2020

Miriam Feldblum
Executive Director
Presidents' Alliance on Higher Education and Immigration
740 15th Street NW, Suite 900
Washington, DC 20005

Dear Ms. Feldblum:

Thank you for your March 25, 2020 letter, which provided recommendations for the Department of Homeland Security (DHS) during the COVID-19 pandemic.

DHS has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, we have amended certain requirements to lessen the impact of the coronavirus public health emergency. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation

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DHS-20-2156-A-000198

to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for you letter and interest in this important matter, which we appreciate and will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

DHS-20-2156-A-000199

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 12, 2020

The Honorable Vicky Hartzler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hartzler:

Thank you for your March 31, 2020 letter regarding the enforcement of work requirement provisions for H-1B visa holders serving in the healthcare sector during the COVID-19 pandemic.

The U.S. Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. On May 11, 2020, we issued a policy memorandum on temporary policy changes for certain H-1B foreign medical graduates. In addition, as we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the

AMERICAN OVERSIGHT

DHS-20-2156-A-000200

9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for you letter and interest in this important matter, which we appreciate and will consider the recommendations you have put forward. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

DHS-20-2156-A-000201

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 13, 2020

The Honorable Vicky Hartzler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hartzler:

Thank you for your March 31, 2020 letter regarding the enforcement of work requirement provisions for H-1B visa holders serving in the healthcare sector during the COVID-19 pandemic.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

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While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the

AMERICAN OVERSIGHT

DHS-20-2156-A-000202

9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Bourke, Matthew D
Subject: Communications Materials: H-1B Interim Final Rule
To: Bourke, Matthew D
Sent: October 7, 2020 12:40 PM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - PAG.docx

Colleagues – today USCIS published communications materials related to the H-1B Interim Final Rule.

Documents:

- **PAG** – attached and in the Talking Points Library as Strengthening the H-1B Program IFR.

Guidance:

- Public Affairs Officers – PAG to assist in responding to media queries.
- Public Engagement, OLIA – For your information.
- Internal Communications – For your information.
- Electronic Communications – For your information.

Matthew Bourke
Media Affairs Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (b)(6)
Phone: [redacted]

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Office of Public Affairs

For internal use only

Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
Oct. 7, 2020

GUIDANCE
Respond to query

BACKGROUND
We are amending certain regulations governing the H-1B nonimmigrant visa program to strengthen the H-1B nonimmigrant visa program to protect U.S. workers and restore integrity to the program.

Specifically, we are:

- Revising the regulatory definition and standards for a "specialty occupation" to better align with the statutory definition of the term;
- Adding definitions for "worksite" and "third-party worksite;"
- Revising the definition of "United States employer;"
- Clarifying that we will use the current common law to determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary;
- Requiring corroborating evidence of work in a specialty occupation;
- Limiting the validity period for third-party placement petitions to a maximum of one year;
- Providing a written explanation when we approve a petition with an earlier validity period end-date than requested;
- Amending the general itinerary provision to clarify it does not apply to H-1B petitions; and
- Codifying our H-1B site visit authority, including the potential consequences of refusing a site visit.

Although the H-1B program was intended to allow employers to fill gaps in their workforce and remain competitive in the global economy, it has expanded far beyond that, often to the detriment of U.S. workers. Data shows that the H-1B program has been used to displace U.S. workers and has led to reduced wages in several industries in the U.S. labor market. These changes to the H-1B program are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by COVID-19 to more effectively ensure that employing H-1B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. These changes will also help the program function more effectively and efficiently.

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TALKING POINTS

RESPONSE TO QUERY

(b)(5)

Q1. How is USCIS revising the definition of "specialty occupation"?

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Q2. Will USCIS accept the "equivalent" to a degree in a specific specialty to qualify for a specialty occupation?

Q3. What other definitions is USCIS adding or clarifying?

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Q4. How is USCIS clarifying the "employer-employee relationship"? Is USCIS restoring the "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placement" policy memo?

Q5. What is the list of factors USCIS will consider when determining an "employer-employee relationship"?

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Q6. What is the additional clarification USCIS is adding in restoring the 2010 policy guidance?

Q7. What types of evidence will USCIS require from petitioners who place H-1B workers at third-party worksites to determine a qualified employer-employee relationship?

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Q8. Why is USCIS limiting the validity period for H-1B petitions in which the beneficiary will be working at a third-party worksite?

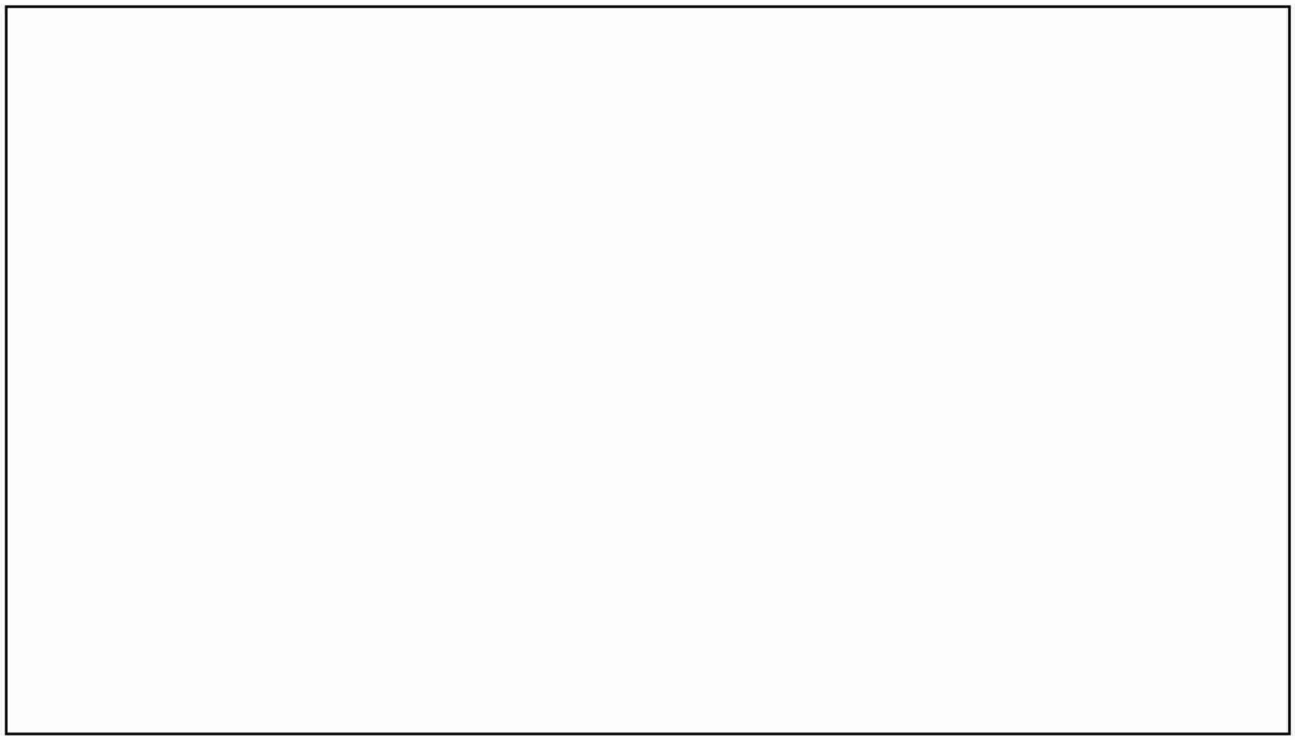
Q9. Has USCIS considered the amount of money petitioners must now pay in filing fees or how petitioners would be affected by only receiving a one-year period of stay for beneficiaries?

Q10. How has USCIS revised the itinerary requirement for H-1B petitions?

Q11. How does the IFR address site visit inspections?

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(b)(5)



Q12. Why did USCIS choose to amend these regulations through an interim final rule?



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Q13. When will this interim final rule be effective?

Q14. Is USCIS trying to force employers to hire U.S. workers?

Q15. How many H-1B nonimmigrants are in the United States?

Q16. What evidence is there that employing H-1B workers affects wages for U.S. workers?

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Q17. Did President Trump specifically demand USCIS to issue this interim final rule?

Q18. Will these updates be applied to H-1B petitions pending once the IFR is effective?

Q19. Does USCIS believe petitioners will stop using the H-1B program, or that petitioners might move operations overseas due to this IFR?

AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
To: Calkins, Aaron L
Sent: October 6, 2020 12:49 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Response Neal (Final) 10.2.20.docx, Draft Response Neal (DHS Redline)10.2.20.docx, Draft Enclosure (Final) 10.2.20.docx, Draft Enclosure (DHS Redline) 10.2.20.docx, Neal Cover Memo 10.2.20.pdf

OCC said [redacted]

(b)(5)

Mary Sheets

From: Calkins, Aaron L [redacted]
Sent: Monday, October 05, 2020 2:37 PM
To: Sheets, Mary W [redacted]
(b)(6)
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

We need to check with OCC, I thin [redacted]

(b)(5)

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Sheets, Mary W [redacted]
(b)(6)
Sent: Monday, October 5, 2020 1:41 PM
To: Calkins, Aaron L [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

No edits from me. This one needs COS signature on the cover memo.

Mary Sheets

From: Kilgore, Garry R [redacted]
Sent: Monday, October 05, 2020 9:09 AM
(b)(6)
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 19, 2020**

Request: COS signature on Cover Memo and to review the draft response to Chm. Neal +2 prior to going to the DHS Front Office for clearance.

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Background: Chairman Neal +2 wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052. DHS ESEC has requested OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA:

(b)(6)

Attachments:

1. Incoming 8.4.20
2. Draft Response Neal (DHS Redline) 10.2.20
3. Draft Enclosure (DHS Redline) 10.2.20
4. Cover Memo 10.2.20
5. Draft Response Neal (Final) 10.2.20
6. Draft Enclosure Neal (Final) 10.2.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues

(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

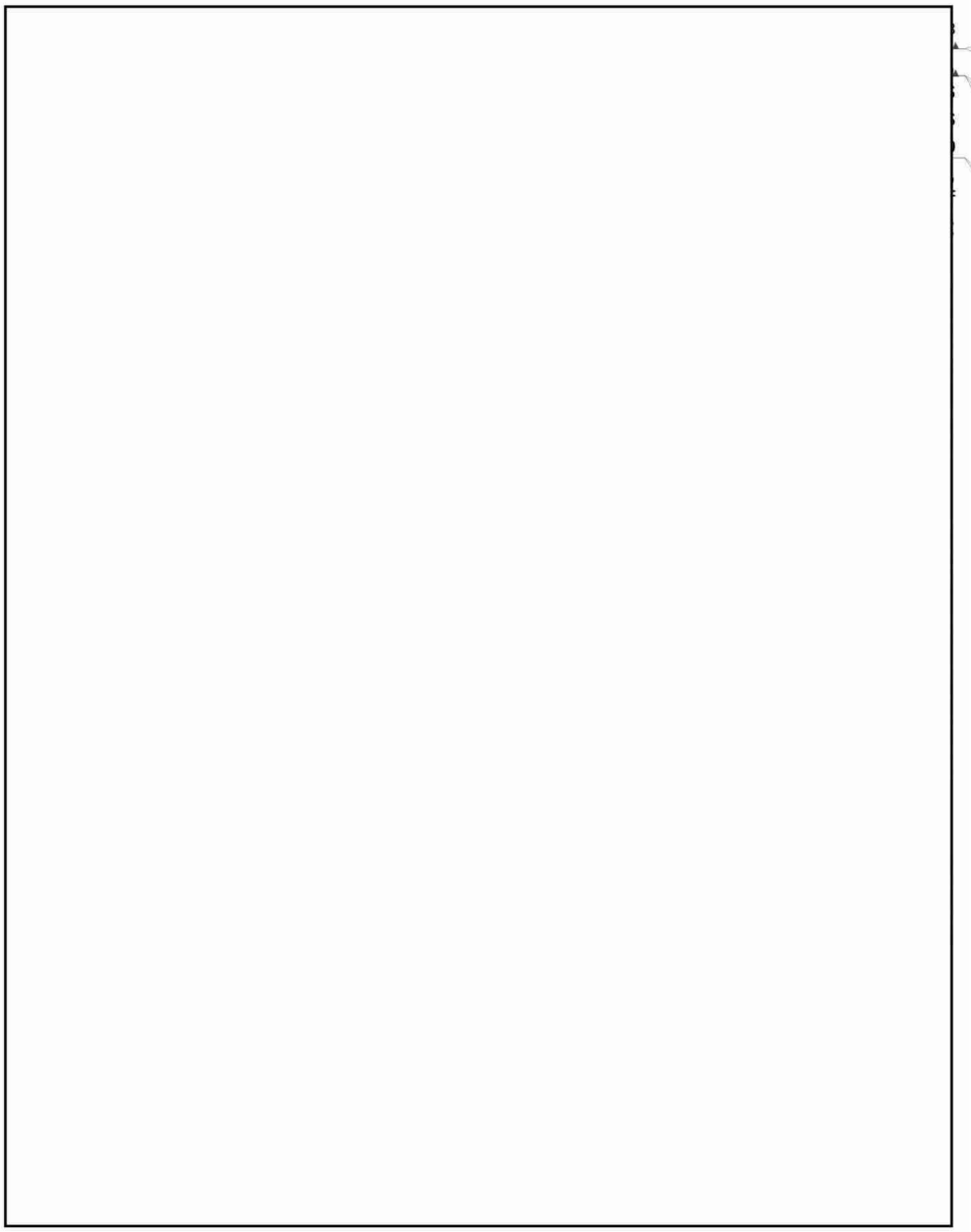
2. **How will the "substantial public health benefit/secondary effect"** exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and

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AMERICAN OVERSIGHT

research workforce?



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[redacted]

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

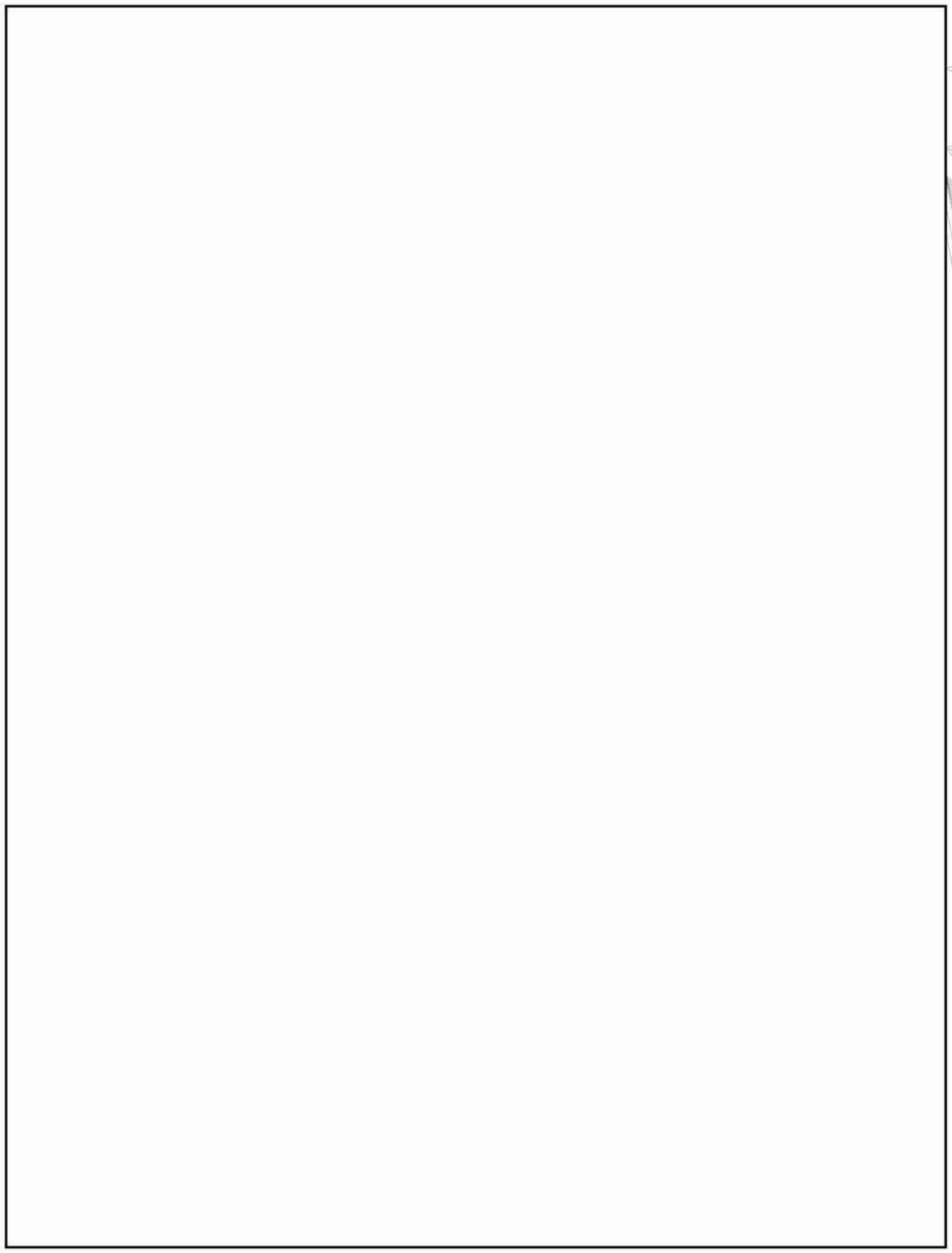
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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter



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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

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4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

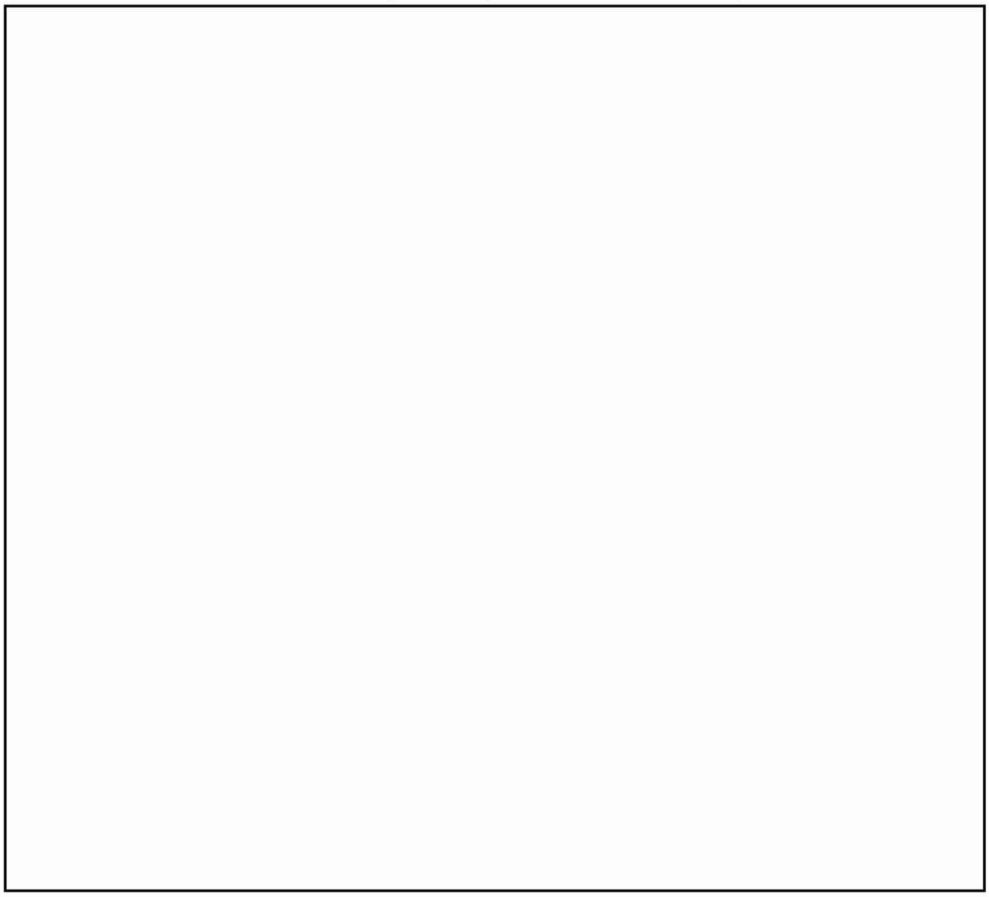
AMERICAN OVERSIGHT

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding ~~expressing support for~~ H-1B health workers and researchers. The Acting Secretary has~~Wolf~~ asked that I respond on his behalf.



www.uscis.gov

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(b)(5)

[redacted]

———Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

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[2] For USCIS policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

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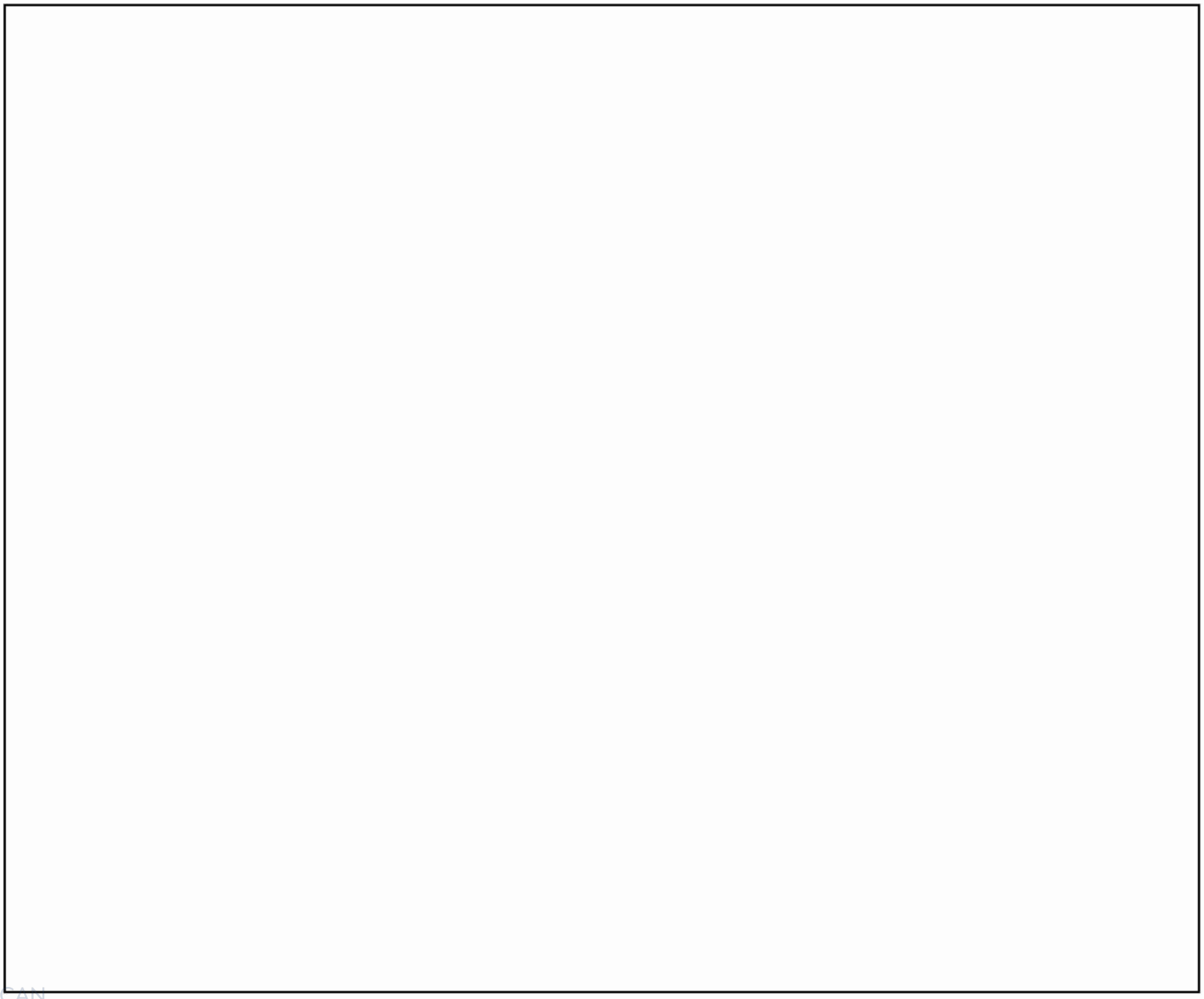
(b)(5)

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

[redacted]

Thank you again for your letter and interest in this important issue. Enclosed are responses to the four questions posed. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

Enclosure

[redacted]

AMERICAN OVERSIGHT

(b)(5)

Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

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underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron Calkins
Chief of Staff

SUBJECT: Request for Approval: Response to Chairman Neal's August 4, 2020 Letter Regarding Temporary Protected Status for Lebanon (WF 1199281)

Context: Chairman Neal wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted], Senior Legal Advisor, USCIS Office of the Chief Counsel, and it has not been substantially changed since his review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT:
CBP:
OLA:
PLCY:
OGC:

[redacted] (b)(6)

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

From: SPIVEY, BETH
Subject: FW: H1 B materials
To: Calkins, Aaron L; Koncar, Steven A
Sent: October 6, 2020 9:05 AM (UTC-05:00)
Attached: 10.12.2020 AS1 H1B Strengthening Remarks .docx, Strengthening the H-1B Program IFR - Stakeholder Message EXA DO CLEAN.docx, Strengthening the H-1B Program IFR - News Release EXA DO CLEAN.docx, Strengthening the H-1B Program IFR - LG EXA DO PLCY.docx, Strengthening the H-1B Program IFR - PAG EXA DO CLEAN.docx

(b)(6)

Are you guys doing Hill notification on this? If so, we will let you guys lead...

Beth Spivey
Assistant Secretary
Office of Legislative Affairs
Department of Homeland Security
[redacted] (mobile)

From: BROWN, BRANDY [redacted]
Sent: Tuesday, October 6, 2020 9:58 AM
To: SPIVEY, BETH [redacted]
Subject: FW: H1 B materials

All still in draft format.

From: BROWN, BRANDY
Sent: Tuesday, October 6, 2020 9:44 AM
To: READ, RUSSEL [redacted]>; MCKINNIS, MELIKA [redacted]; SPIVEY, BETH [redacted]>
Subject: RE: H1 B materials

This is the draft I have from 1:08p yesterday.

The other materials are still undergoing clearance.

From: READ, RUSSEL [redacted]
Sent: Tuesday, October 6, 2020 9:25 AM
To: MCKINNIS, MELIKA [redacted]; BROWN, BRAND [redacted]
Subject: Re: H1 B materials

Copy, I sent the most recent version yesterday. Brandy, let me know if the email was received, happy to resend if not!

From: MCKINNIS, MELIKA [redacted]
Sent: Tuesday, October 6, 2020 8:53:03 AM
To: BROWN, BRANDY [redacted]; READ, RUSSEL [redacted]
Subject: Fwd: H1 B materials

Brandy—ESEC has the talkers policy created on this if you don't have the final.

Russ—can you send Brandy the remarks so she can include them in her package to Beth?

Thanks.

(b)(6)

AMERICA OVERSIGHT

Melika Willoughby McKinnis

(b)(6)

Deputy Assistant Secretary
Office of Public Affairs
[redacted]

From: WOLTORNIST, ALEXEI [redacted]
Sent: Tuesday, October 6, 2020 8:50:00 AM
To: SPIVEY, BETH [redacted]; MCKINNIS, MELIKA [redacted] BROWN, BRANDY [redacted]
Subject: H1 B materials

Can we send Beth the final version of the. H1B materials?

(b)(6)

AMERICAN OVERSIGHT

Referred to another government agency

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Leadership Guidance

Date AP style
#00-YY

Strengthening the H-1B Nonimmigrant Visa Classification Program

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What You Need to Know

The IFR goes into effect on date. For more information, see the Federal Register Notice.

The USCIS Leadership Guidance is a product of the Office of Public Affairs.
Archive | Contact Us

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News Release

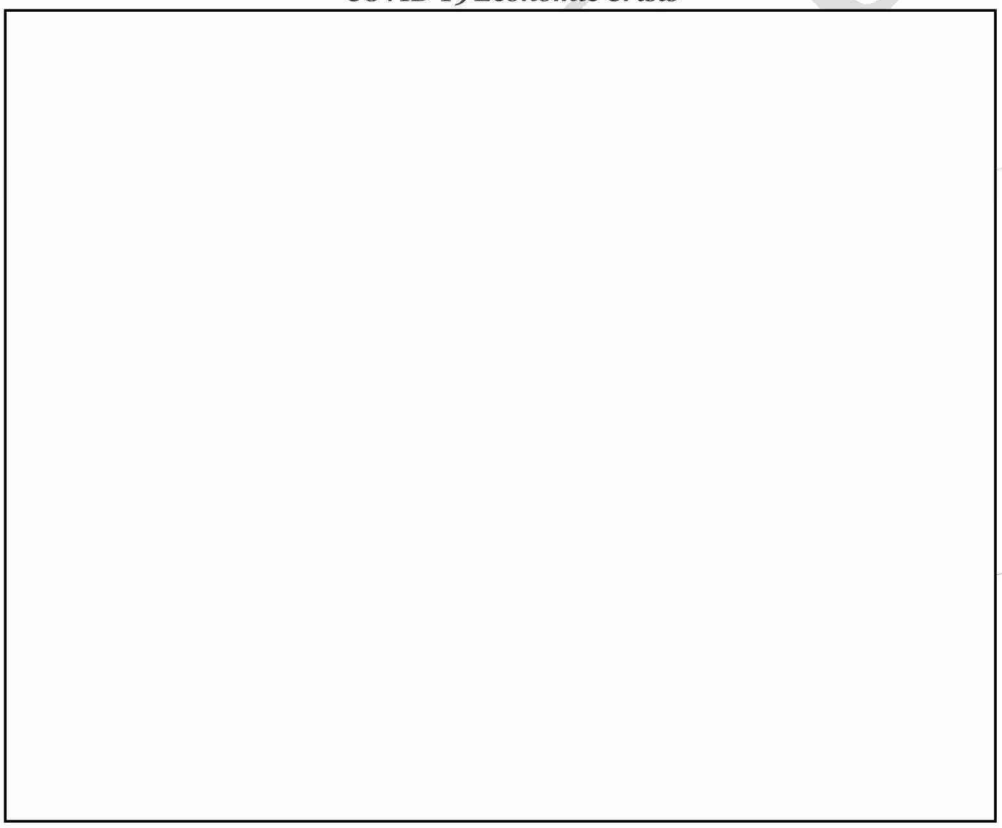
Month XX, 2020

DHS Protects American Workers, Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover from Impacts of COVID-19 Economic Crisis

~~DHS Strengthens H-1B Program~~

~~Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis~~

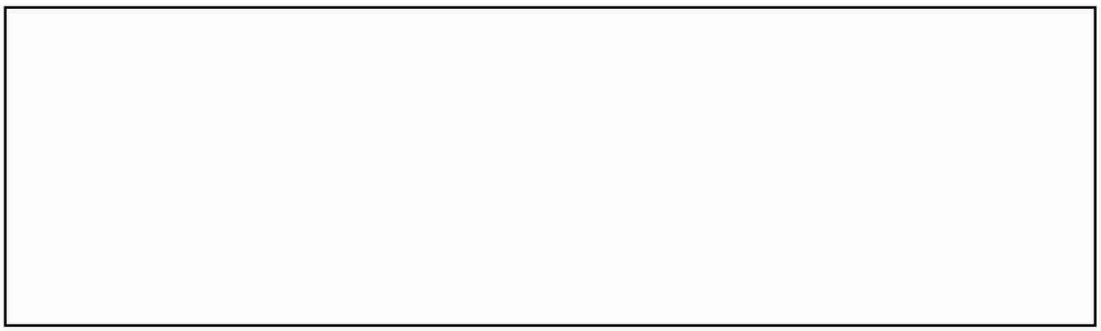


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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
Oct. 1, 2020

GUIDANCE
Respond to query

BACKGROUND
We are amending certain regulations governing the H-1B nonimmigrant visa program to strengthen the H-1B nonimmigrant visa program to protect U.S. workers and restore integrity to the program.

Specifically, we are:

- Revising the regulatory definition and standards for a "specialty occupation" to better align with the statutory definition of the term;
- Adding definitions for "worksite" and "third-party worksite;"
- Revising the definition of "United States employer;"
- Clarifying that we will use the current common law to determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary;
- Requiring corroborating evidence of work in a specialty occupation;
- Limiting the validity period for third-party placement petitions to a maximum of one year;
- Providing a written explanation when we approve a petition with an earlier validity period end-date than requested;
- Amending the general itinerary provision to clarify it does not apply to H-1B petitions; and
- Codifying our H-1B site visit authority, including the potential consequences of refusing a site visit.

Although the H-1B program was intended to allow employers to fill gaps in their workforce and remain competitive in the global economy, it has expanded far beyond that, often to the detriment of U.S. workers. Data shows that the H-1B program has been used to displace U.S. workers and has led to reduced wages in several industries in the U.S. labor market. These changes to the H-1B program are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by COVID-19 to more effectively ensure that employing H-1B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. These changes will also help the program function more effectively and efficiently.

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TALKING POINTS

RESPONSE TO QUERY

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Q1. How is USCIS revising the definition of "specialty occupation"?

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Q2. Will USCIS accept the "equivalent" to a degree in a specific specialty to qualify for a specialty occupation?

Q3. What other definitions is USCIS adding or clarifying?

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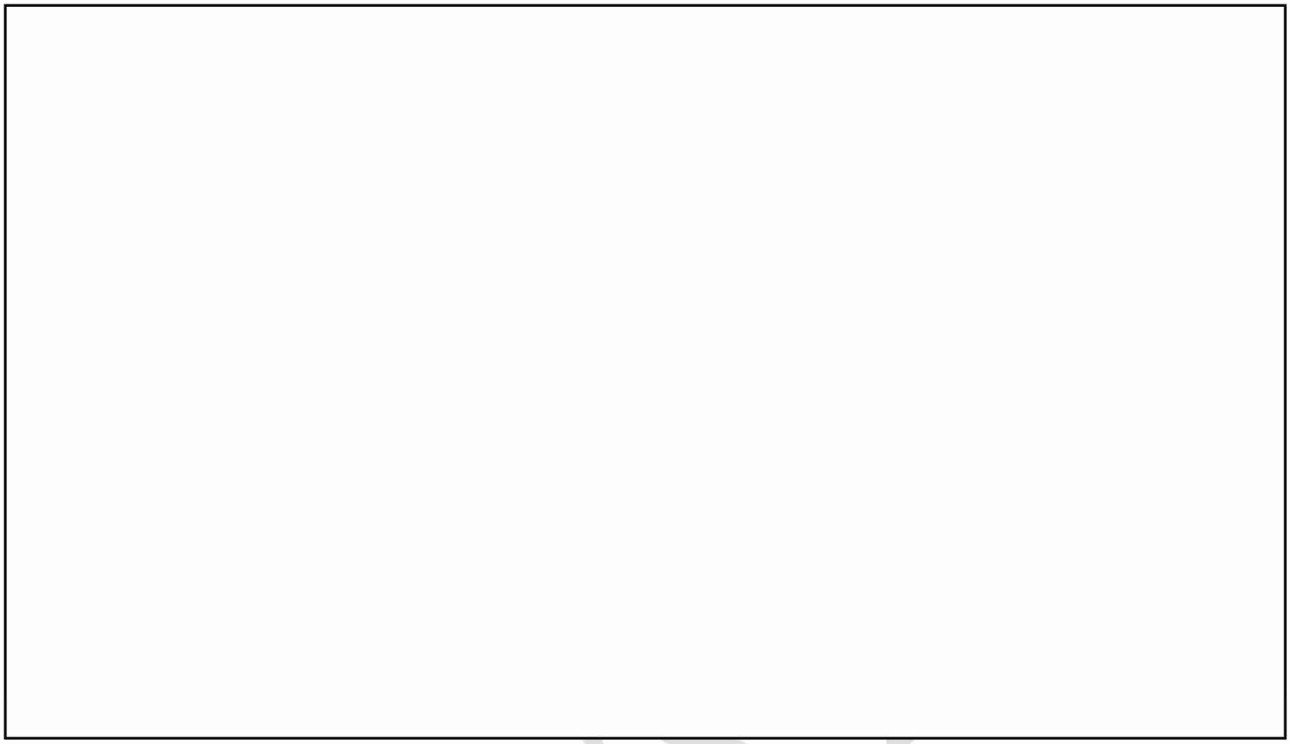
Q11. How does the IFR address site visit inspections?

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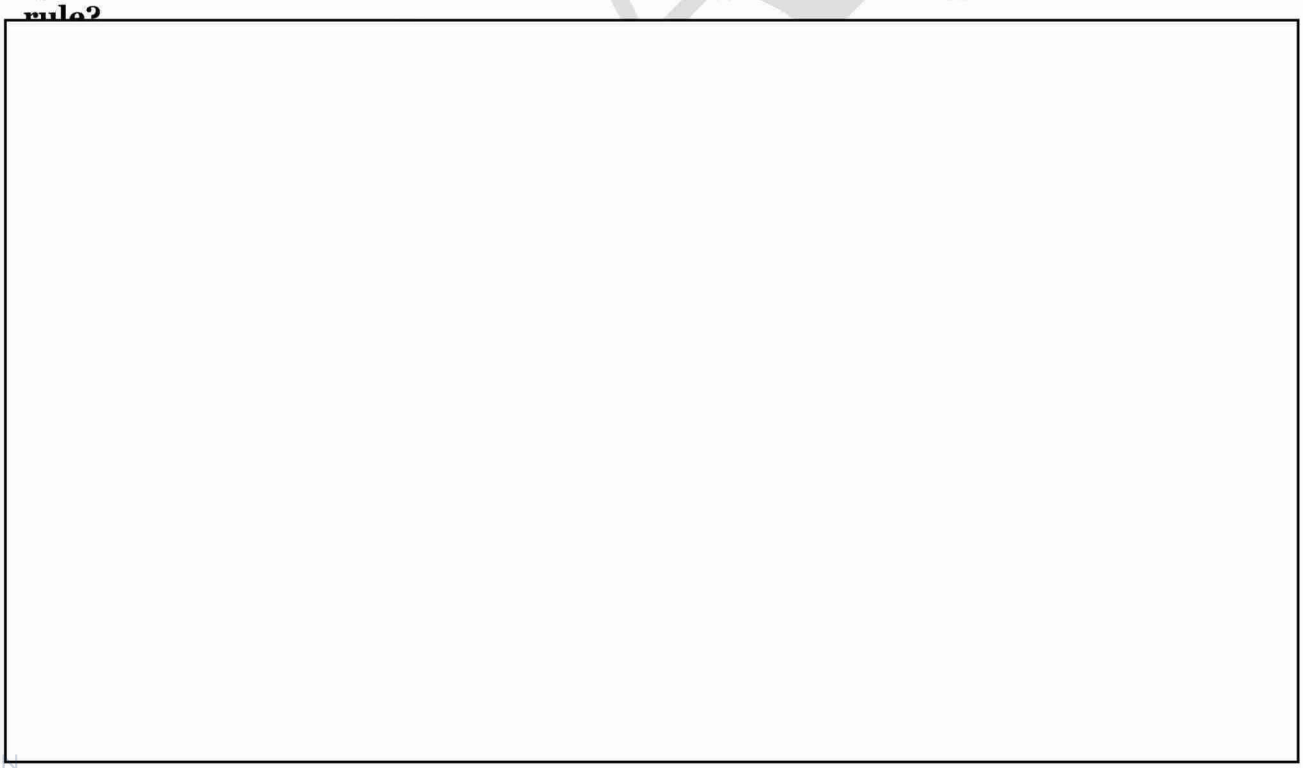
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Q12. Why did USCIS choose to amend these regulations through an interim final rule?



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Stakeholder Message

DHS Strengthens H-1B Program to Protect U.S. Workers During COVID-19 (b)(5)

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Kind regards,

The USCIS Public Engagement Division

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From: Calkins, Aaron L
Subject: Fwd: H1B Strengthening Rule Materials
To: Edlow, Joseph B
Sent: October 5, 2020 4:30 PM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - News Release EXA DO CLEAN.docx, D2P Talking Points - H1B Strengthening IFR.docx, Strengthening the H-1B Program IFR - PAG EXA DO CLEAN.docx

(b)(6)

Thanks,

Aaron L. Calkins

Get Outlook for iOS

From: Rexrode, Kathryn S [redacted]
Sent: Monday, October 5, 2020 5:29:40 PM
To: Calkins, Aaron L [redacted]
Subject: Fwd: H1B Strengthening Rule Materials

Kathryn S. Rexrode
Associate Director, External Affairs
USCIS

From: Rodriguez, Sarah [redacted]
Sent: Monday, October 5, 2020 5:27:06 PM
To: Rexrode, Kathryn S [redacted]
Subject: FW: H1B Strengthening Rule Materials

Sarah Rodriguez
O [redacted] | M: [redacted]

From: Rodriguez, Sarah
Sent: Monday, October 5, 2020 5:06 PM
To: Withington, Jonathan B [redacted]
Subject: H1B Strengthening Rule Materials

Here are the docs so you can send all at once to KR.

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H-1B Strengthening Interim Final Rule Talking Points

October 5, 2020

First: DHS is tasked with addressing the economic crisis caused by COVID-

Second: DHS is committed to addressing the abusive strategy that currently

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Third: DHS intends to better certify that each H-1B nonimmigrant will be

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News Release

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Month XX, 2020

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis

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TALKING POINTS

restoring a longstanding policy.

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(b)(6)

From: Smith, Mirna
Subject: RE: H-1B Strengthening
To: Piateski, Jennifer E; Garza, Regina M
Cc: Deshommes, Samantha L; Law, Robert T; Parascandola, Ciro A
Sent: October 5, 2020 2:26 PM (UTC-05:00)
Attached: 2020.10.05 H-1B Strengthening IFR - Clean.docx

Hi Jenny and Regina,

Attached please see the final, signed version of the H-1B Strengthening IFR that was submitted to OFR earlier today.

Thank you,
Mirna

From: Parascandola, Ciro A
Sent: Monday, October 5, 2020 3:20 PM
To: Smith, Mirna
Cc: Deshommes, Samantha L; Law, Robert T
Piateski, Jennifer E; Garza, Regina M
Subject: H-1B Strengthening

Hi Mirna – Can you please send Jenny and Regina the final copy of the rule that is going to the OFR? D2P would like to see it. Thanks!

Ciro Parascandola
Acting Deputy Chief
USCIS Office of Policy and Strategy, DHS
Office Cell

This email, along with any attachments, is intended solely for the use of the addressee(s) and may contain information that is sensitive or protected by applicable law. Unauthorized use or dissemination of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies. Thank you.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-0018]

RIN 1615-AC13

Strengthening the H-1B Nonimmigrant Visa Classification Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim Final Rule with Request for Comments.

SUMMARY: The Department of Homeland Security (DHS or the Department), is amending certain DHS regulations governing the H-1B nonimmigrant visa program. Specifically, DHS is: revising the regulatory definition of and standards for a "specialty occupation" to better align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how U.S. Citizenship and Immigration Services (USCIS) will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring corroborating evidence of work in a specialty occupation; limiting the validity period for third-party placement petitions to a maximum of 1 year; providing a written explanation when the petition is approved with an earlier validity period end date than requested; amending the general itinerary provision to clarify it does not apply to H-1B petitions; and codifying USCIS' H-1B site visit authority, including the potential consequences of refusing a site visit. The primary purpose of these changes is to better ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the

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DHS-20-2156-A-000269

economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the wages and working conditions of similarly employed U.S. workers. In addition, in strengthening the integrity of the H-1B program, these changes will aid the program in functioning more effectively and efficiently.

DATES: This interim final rule is effective on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments must be submitted on this interim final rule on or before [Insert date 60 days from the date of publication in the FEDERAL REGISTER]. Comments on the collection of information (see Paperwork Reduction Act section) must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER]. Comments on both the interim final rule and the collection of information received on or before [Insert date 30 days from the date of publication in the FEDERAL REGISTER] will be considered by DHS and USCIS. Only comments on the interim final rule received between [insert date 31 days from the date of publication in the FEDERAL REGISTER] and [insert date 60 days after the date of publication in the FEDERAL REGISTER] will be considered by DHS and USCIS. Note: Comments received after [Insert date 30 days from the date of publication in the FEDERAL REGISTER] only on the information collection will not be considered by DHS and USCIS.

ADDRESSES: You may submit comments on the entirety of this interim final rule package, identified by DHS Docket No. USCIS-2020-0018, through the Federal eRulemaking Portal: http://www.regulations.gov. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the interim final rule and

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may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID-19, USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using http://www.regulations.gov, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 202-272-8377 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529-2120. Telephone Number (202) 272-8377 (not a toll-free call). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

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  B. Legal Authority
  C. Summary of Costs and Benefits
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  B. Implementation of this Interim Final Rule
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E. Congressional Review Act
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G. Executive Order 12988 (Civil Justice Reform)
H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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DHS-20-2156-A-000272

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J. Paperwork Reduction Act
1.USCIS Form I-129H1
2.USCIS H-1B Registration Tool
K. Signature
VII. List of Subjects and Regulatory Amendments

II. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this interim final rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to DHS in implementing these changes will: reference a specific portion of the interim final rule; explain the reason for any recommended change; and include data, information, or authority that supports such a recommended change. Comments submitted in a manner other than those listed in the ADDRESSES section, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the interim final rule. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS-2020-0018 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at http://www.regulations.gov, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you

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provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at http://www.regulations.gov.

Docket: For access to the docket and to read background documents or comments received, go to http://www.regulations.gov, referencing DHS Docket No. USCIS-2020-0018. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

III. Executive Summary

A. Purpose and Summary of the Regulatory Action

Congressional intent behind creating the H-1B program was, in part, to help U.S. employers fill labor shortages in positions requiring highly skilled or educated workers using temporary workers.[1] A key goal of the program at its inception was to help U.S. employers obtain the temporary employees they need to meet their business needs.[2] To address legitimate countervailing concerns of the adverse impact foreign workers could have on U.S. workers, Congress put in place a number of measures intended to protect U.S. workers to ensure that H-1B workers would not adversely affect them. INA section 212(n) and (p); 8 U.S.C. 1182(n) and (p). However, over time, legitimate concerns have emerged that indicate that the H-1B

[1] See H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721 (stating "The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages.").

[2] Bipartisan Policy Council, Immigration in Two Acts, Nov. 2015, at 7, https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Immigration-Legislation-Brief.pdf, citing 1990 U.S.C.C.A.N. supra at 6721 (stating "At the time [1990], members of Congress were also concerned about U.S. competitiveness in the global economy and sought to use legal immigration as a tool in a larger economic plan, stating that "it is unlikely that enough U.S. workers will be trained quickly enough to meet legitimate employment needs, and immigration can and should be incorporated into an overall strategy that promotes the creation of the type of workforce needed in an increasingly global economy.").

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program is not functioning as originally envisioned and that U.S. workers are being adversely affected. On April 18, 2017, the President of the United States issued Executive Order (E.O.) 13788, Buy American and Hire American, instructing DHS to "propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of U.S. workers in the administration of our immigration system."[3] E.O. 13788 specifically directed DHS and other agencies to "suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."[4]

In response to the directives of E.O. 13788, DHS undertook a comprehensive review of all rules and policies regarding nonimmigrant visa classifications for temporary foreign workers, including the H-1B visa program. Although the H-1B program was intended to allow employers to fill gaps in their workforce and remain competitive in the global economy, it has expanded far beyond that, often to the detriment of U.S. workers. Data shows that the H-1B program has been used to displace U.S. workers and has led to reduced wages in a number of industries in the U.S. labor market.[5] The economic crisis caused by the COVID-19 public health emergency has compounded those detrimental effects.

The President of the United States addressed those harms in Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak and directed DHS to pursue rulemaking that ensures that U.S. workers are not disadvantaged by H-1B workers.[6] This interim final rule is consistent not only with that

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[3] See Executive Order 13788, Buy American and Hire American, 82 FR 18837, sec. 5 (Apr. 18, 2017).
[4] See id. at sec. 5(b).
[5] See e.g., Ron Hira and Bharath Gopalaswamy, Atlantic Council, *Reforming US' High*-Skilled Guestworker Program (2019), available at https://www.atlanticcouncil.org/in-depth-research-reports/report/reforming-us-high-skilled-immigration-program/.
[6] Proclamation 10014 of April 22, 2020, Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 FR 23441 (Apr. 27, 2020).

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directive, but also with the aims of the Presidential Proclamation Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak.[7] Section 5 of Proclamation 10052 directs the Secretary of DHS to, "as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action . . . ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers." In addition, this rule will further the policy objective of E.O. 13927, *Accelerating the Nation's Economic Recovery from the COVID*-19 Emergency by Expediting Infrastructure Investments and Other Activities.[8]

Consistent with Congressional intent of the H-1B program, the Buy American and Hire American E.O. 13788, Presidential Proclamations 10014 and 10052, and to ensure that U.S. workers are protected under U.S. immigration laws, DHS is proposing a number of revisions and clarifications, which are detailed below. As noted above, these changes are urgently needed to strengthen the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not negatively affect the wages and working conditions of similarly employed U.S. workers.

By reforming key aspects of the H-1B nonimmigrant visa program, this rule will improve program integrity and better ensure that only petitioners who meet the statutory criteria for the H-1B classification are able to employ H-1B workers who are qualified for the classification.

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[7] Proclamation 10052 of June 22, 2020, Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 FR 38263 (Jun. 25, 2020).

[8] See Executive Order 13927, Accelerating the *Nation's Economic Recovery from the COVID*-19 Emergency by Expediting Infrastructure Investments and Other Activities, 85 FR 35165, sec. 2 (Jun. 9, 2020) (ordering that "agencies should take all reasonable measures to . . . speed other actions . . . that will strengthen the economy and return Americans to work").

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This, in turn, will protect jobs of U.S. workers as a part of responding to the national emergency, and facilitate the Nation's economic recovery.

B. Legal Authority

The Secretary of Homeland Security's authority for these regulatory amendments is found in various sections of the INA, 8 U.S.C. 1101 et seq., and the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq. General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. See also 6 U.S.C. 202(4) (charging the Secretary with ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States''). Further authority for these regulatory amendments is found in:

- Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), which classifies as nonimmigrants aliens coming temporarily to the United States to perform services in a specialty occupation or as a fashion model with distinguished merit and ability;
- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe by regulation the terms and conditions of the admission of nonimmigrants;
- Section 214(c) of the INA, 8 U.S.C. 1184(c), which, inter alia, authorizes the Secretary to prescribe how an importing employer may petition for an H nonimmigrant worker and the information that an importing employer must provide in the petition;

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- Section 214(i) of the INA, 8 U.S.C. 1184(i), which defines the term "specialty occupation;" and
- Section 287(b) of the INA, 8 U.S.C. 1357(b), which authorizes USCIS to administer oaths and to take and consider evidence concerning any matter which is material and relevant to the administration and enforcement of the INA.

Finally, under section 101 of HSA, 6 U.S.C. 111(b)(1)(F), a primary mission of the Department is to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland."

C. Summary of Costs and Benefits

This interim final rule will impose new annual costs of $24,949,861 for petitioners completing and filing H-1B petitions[9] with an additional time burden of 30 minutes. The changes in the H-1B petition, resulting from this interim final rule, result in additional time to complete and file the petition as compared to the time burden to complete the current form. By reducing uncertainty and confusion surrounding disparities between the statute and the regulations, this rule will better ensure that approvals are only granted for positions adhering more closely to the statutory definition. This rule will also result in more complete petitions and allow for more consistent and efficient adjudication decisions.

[9] DHS estimates the costs and benefits of this rule using the newly published U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, final rule ("Fee Schedule Final Rule"), and associated form changes, as the baseline. 85 FR 46788 (Aug. 3, 2020). The Fee Schedule Final Rule was scheduled to go into effect on October 2, 2020. On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide injunction, which prevents DHS from implementing the Fee Schedule Final Rule. See, Immigrant Legal Resource Center v. Wolf, No. 4:20-cv-5883 (N.D. Cal. Sept. 29, 2020). DHS intends to vigorously defend this lawsuit and is not changing the baseline for this rule as a result of the litigation. Should DHS not prevail in the Fee Schedule Final Rule litigation, this rule may reflect overstated transfers, costs, and opportunity costs associated with the filing of the Form I-129.

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DHS estimates $17,963,871 in annual costs to petitioners to submit contractual documents, work orders, or similar evidence required by this rule to establish an employer-employee relationship and qualifying employment. The petitioner must establish, at the time of filing, that it has actual work in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. In addition, all H-1B petitions for beneficiaries who will be placed at a third-party worksite must submit evidence showing that the beneficiary will be employed in a specialty occupation, and that the petitioner will have an employer-employee relationship with the beneficiary.

DHS estimates $1,042,702 for the total annual opportunity cost of time for worksite inspections of H-1B petitions. This interim final rule is codifying DHS' existing authority to conduct site visits and other compliance reviews and clarifying consequences for failure to allow a site visit. Conducting on-site inspections and other compliance reviews is critical to detecting and deterring fraud and noncompliance. Failure or refusal of the petitioner or third-party worksite parties to cooperate in a site visit or verify facts may be grounds for denial or revocation of any H-1B petition for workers performing services at locations which are a subject of inspection, including any third-party worksites.

DHS estimates cost savings of $4,490,968 annually in eliminating the general itinerary requirement for H-1B petitions. Relative to the current regulation, this provision reduces the cost for petitioners who file on behalf of beneficiaries performing services in more than one location and submit itineraries.

While the maximum validity period for a specialty occupation worker is currently 3 years, this interim final rule will limit the maximum validity period to 1 year for workers placed at third-party worksites. DHS estimates costs of $0 in FY 2021, $376,747,030 in FY 2022, $502,330,510

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for each of FY 2023 through FY 2027, and $349,127,070 for each of FY 2028 through FY 2030, for the increasing number of Form I-129H1 petitions to request authorization to continue H-1B employment for workers placed at third-party worksites. DHS will have greater oversight in such cases, which are most likely to involve noncompliance, fraud, or abuse, thereby strengthening the H-1B program.

DHS estimates a one-time total regulation familiarization cost of $11,941,471 in FY2021. For the 10-year implementation period of the rule (FY 2021 through FY 2030), DHS estimates the annual net societal costs to be $51,406,937 (undiscounted) in FY 2021, $416,212,496 (undiscounted) in FY 2022, $541,795,976 (undiscounted) from FY 2023 through FY 2027 each year, $388,592,536 (undiscounted) from FY 2028 through FY 2030 each year. DHS estimates the annualized net societal costs of the rule to be $430,797,915, annualized at 3-percent and $425,277,621, annualized at 7-percent discount rates.

IV. Background

A. History and Purpose of the H-1B Visa Program

The H-1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge, and a bachelor's or higher degree in the specific specialty, or its equivalent. See Immigration and Nationality Act (INA) sections 101(a)(15)(H)(i)(b) and 214(i); 8 U.S.C 1101(a)(15)(H)(i)(b) and 1184(i). The H-1B visa program also includes workers performing services related to a Department of Defense (DOD) cooperative research and development project or coproduction project, and services of distinguished merit and ability in the field of fashion modeling. See INA section 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 CFR 214.2(h)(4)(i)(A).

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The number of aliens who may be issued initial H-1B visas or otherwise provided initial H-1B nonimmigrant status during any fiscal year has been capped at various levels by Congress over time, with the current numerical limit generally being 65,000 per fiscal year. See INA section 214(g)(1)(A); 8 U.S.C. 1184(g)(1)(A). Congress has also provided for various exemptions from the annual numerical allocations, including an exemption for 20,000 aliens who have earned a master's or higher degree from a United States institution of higher education. See INA section 214(g)(5) and (7); 8 U.S.C. 1184(g)(5) and (7). Additionally, Congress has exempted from the annual numerical allocations H-1B workers who are or will be employed at a nonprofit or public institution of higher education or a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization. See INA section 214(g)(5)(A)-(B), 8 U.S.C. 1184(g)(5)(A)-(B). The 5-year average annual number of H-1B petitions approved outside the numerical limitations established by Congress, which also includes petitions for continuing H-1B workers who were previously counted toward an annual numerical allocation and who have time remaining on their 6-year period of authorized admission, see INA section 214(g)(7), 8 U.S.C. 1184(g)(7), was approximately 214,371 based on DHS data.[10] As of September 30, 2019, the total H-1B authorized-to-work population was approximately 583,420.[11] The total H-1B authorized-to-work population, rather than the yearly cap, is more indicative of the scope of the H-1B nonimmigrant program and the urgent need to strengthen it to protect the economic interests of U.S. workers.

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[10] Office of Policy and Strategy, Policy Research Division (PRD) Claims 3 and USCIS analysis. July 29, 2020.
[11] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, Policy Research Division, H-1B Authorized to Work Population Estimate, available at https://www.uscis.gov/sites/default/files/document/reports/USCIS%20H-1B%20Authorized%20to%20Work%20Report.pdf (reflecting that not all of the 583,420 H-1B workers were approved in the same fiscal year as the data used to estimate the population as of September 30, 2019, was pulled on October 9, 2019).

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Despite Congress' efforts to protect the interest of U.S. workers to ensure that H-1B workers will not adversely affect them,[12] data show that the H-1B program has been subject to abuse or otherwise adversely affected U.S. workers from its inception.[13] When the Immigration Act of 1990 (IMMACT 90) was introduced, Congress specifically sought to address "the problem of H-visa abuse."[14] As early as 1992, the U.S. Government Accountability Office (GAO) published a report noting concerns by representatives of organized labor that H-1B nonimmigrants were adversely affecting the wages and working conditions of U.S. workers, and were allowing U.S. employers to excessively rely on foreign labor.[15] In September 2000, the GAO published another report highlighting documented allegations of and concerns relating to program misuse—such as employers paying workers less than comparable wages or employees using false credentials — and questioning whether the program adequately serves employers or protects workers.[16] This report concluded that the H-1B "program is vulnerable to abuse—both by employers who do not have bona fide jobs to fill or do not meet required labor conditions, and by potential workers who present false credentials."[17] Such abuse threatens the wages and job opportunities of qualified U.S. workers. More GAO reports followed in 2003, 2006, and 2011, all continuing to report on the pervasive abuses and shortcomings in the H-1B program. For instance, the 2006 report highlighted common violations such as employers not paying their

[12] See INA section 212(n) and (p); 8 U.S.C. 1182(n) and (p).
[13] See, e.g., How H-1B Visas Have Been Abused Since the Beginning, CBS News, Aug. 13, 2017, https://www.cbsnews.com/news/how-h-1b-visas-have-been-abused-since-the-beginning/.
[14] 1990 U.S.C.C.A.N. 6710, 6724.
[15] U.S. Gov't Accountability Off., GAO/PEMD-92-17, Immigration and the Labor Market Nonimmigrant Alien Workers in the United States, at 17 (1992), https://www.gao.gov/assets/160/151654.pdf.
[16] U.S. Gov't Accountability Off., GAO/HEHS-00-157, H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers, at 4 (2000), https://www.gao.gov/new.items/he00157.pdf.
[17] GAO/HEHS-00-157, at 19.

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H-1B workers the required wage and owing them back wages.[18] The 2011 reports cited to the high incidence of wage-related complaints against staffing companies, and concluded that the involvement of staffing companies in the H-1B program further weakens U.S. labor protections.[19] Several news alerts and investigative newsletters released in 2019 and 2020 by the Department of Labor (DOL) and Department of Justice (DOJ) highlighted convictions of individuals using their companies to engage in fraud through the H-1B program.[20]

DHS believes that the same concerns have persisted in recent years, as highlighted by certain petitions filed by entities within the information technology (IT) industry. In recent years, there has been a 75 percent increase in the proportion of IT workers in the population of H-1B approved petitions – from 32 percent in FY 2003 to 56 percent in FY 2019.[21] As a comparison,

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[18] U.S. Gov't Accountability Off., GAO-06-901T, H-1B Visa Program: More Oversight by Labor can Improve Compliance with Program Requirements (2006), https://www.gao.gov/new.items/d06901t.pdf.

[19] U.S. Gov't Accountability Off., GAO-11-26, Reforms are Needed to Minimize the Risks and Costs of Current Program 60 (2011), https://www.gao.gov/assets/320/314501.pdf ("The involvement of staffing companies, whose share of H-1B workers is not precisely known but is likely not trivial, further weakens enforcement efforts because the end-user of the H-1B worker is not liable for complying with labor protection requirements."); U.S. Gov't Accountability Off., GAO-11-505T, H-1B Visa Program Multifaceted Challenges Warrant Re-examination of Key Provisions 12 (2011), https://www.gao.gov/assets/90/82421.pdf ("Another factor that weakens protection for U.S. workers is the fact that the H-1B program lacks a legal provision to hold employers accountable to program requirements when they obtain H-1B workers through staffing companies" and "Wage and Hour investigators reported that a large number of the complaints they receive about H-1B employers were related to the activities of staffing companies.").

[20] See, e.g., OIG Investigations Newsletter (U.S. Dep't of Lab., Off. of Inspector Gen.) (Dec. 1, 2019 – Jan. 30, 2020), https://www.oig.dol.gov/public/oinewsletter/DOL-OIG%20Investigations%20Newsletter%20December%202019%20-%20January%202020.pdf (last visited Aug. 11, 2020); OIG Investigations Newsletter (U.S. Dep't of Lab., Off. of Inspector Gen.) (Oct. 1, 2019 – Nov. 30, 2019), https://www.oig.dol.gov/public/oinewsletter/DOL-OIG%20Investigations%20Newsletter%20October%20-%20November%202019.pdf (last visited June 23, 2020); News Release (U.S. Dep't of Just., U.S. Att'y's Off.) (Feb. 19, 2020), https://www.justice.gov/usao-ednc/pr/corporate-president-kronsys-inc-cygtec-inc-and-arkstek-inc-sentenced-conspiracy-commit (last visited June 23, 2020); News Release (U.S. Dep't of Just., U.S. Att'y's Off.) (Mar. 17, 2020), https://www.justice.gov/usao-nj/pr/owner-information-technology-companies-sentenced-15-months-prison-visa-fraud-and-tax (last visited June 23, 2020).

[21] Characteristics of H-1B Specialty Occupation Workers (H-1B): Fiscal Year 2004 Issued November 2006. https://www.uscis.gov/sites/default/files/document/reports/h1b_fy04_characteristics.pdf (last visited Sept. 18,2020), Table 13A. IT related industry (IT industry number of petition approved is 70,189 and total number of petition approved is 217,340); Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019 (Mar. 5, 2020), https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf (last visited Aug. 11, 2020), Table 13A. IT related industry (IT industry number of

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there has been a 16 percent increase in the proportion of IT workers in the U.S. civilian workforce - from 2.5 percent in 2000 to 2.9 percent in 2014.[22] At the same time, wages have largely remained flat in IT fields.[23] For instance, the average IT wage was 189 percent of the national average in FY 2003 and 182 percent in FY 2019.[24] The disproportionate growth of H-1B petitions for computer-related occupations versus the percentage growth of IT positions in the U.S. economy, and the stagnation of IT wages, demands DHS seriously consider whether petitioners are using the H-1B program in a way that disproportionally benefits foreign IT workers and the companies who petition for them to the detriment of U.S. IT workers. DHS must also consider whether there is a correlation between the large flow of H-1B workers into the

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petition approved is 217,447 and total number of petition is 388,403). Calculations: 75%=56%/32%-1. 32% rounded= (70,189/217,340)*100%, 56% rounded=(217,447/388,403)*100%.

[22] U.S. Census Bureau, Occupations in Information Technology (Aug. 16, 2016), available at https://www.census.gov/content/dam/Census/library/publications/2016/acs/acs-35.pdf, p2. Figure 1.

[23] Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, Economic Policy Institute, Guestworkers in the High-Skill U.S. Labor Market: An analysis of supply, employment, and wage trends, Apr. 24, 2013, at 2, 23, available at https://files.epi.org/2013/bp359-guestworkers-high-skill-labor-market-analysis.pdf ("However, following the crash of 2001, wages declined and have been essentially flat for the decade."); Sean McLain and Dhanya Ann Thoppil, Bulging Staff Cost, Shrinking Margins, CRISIL Research, (2019), available at https://www.crisil.com/en/home/our-analysis/reports/2019/05/bulging-staff-cost-shrinking-margins.html (analyzing local wages for computer-based occupations, along with H-1B wage rates prevalent for the same computer-based occupations across the US, and concluding that the average per hour rate for an H-1B-based employee is ~$33 while a locally-based employee is ~$42). See generally Hira and Gopalaswamy, supra note 5, at 11 ("H-1B workers are underpaid and placed in substandard working conditions, while US workers' wages are depressed, and they lose out on job opportunities")

[24] See U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2003 National (XLS), available at https://www.bls.gov/oes/tables.htm (last visited Sept. 22, 2020) (showing that the annual mean wage for SOC code 00-0000 was $36,210 in May 2003); U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2019 National (XLS), available at https://www.bls.gov/oes/tables.htm (last visited Sept. 22, 2020) (showing that the annual mean wage for SOC code 00-0000 was $53,490 in May 2019); U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2003 National industry-specific (XLS), available at https://www.bls.gov/oes/tables.htm (last visited Sept. 28, 2020) (showing that the annual mean wage for SOC code 15-0000 and NAICS code 541000 was $68,420 in May 2003); U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 541000 – Professional, Scientific, and Technical Services, available at https://www.bls.gov/oes/2019/may/naics3_541000.htm (last visited Sept. 28, 2020) (showing that the annual mean wage for SOC code 15-0000 was $97,230 in May 2019). We calculated the percentages by dividing the 2019 figures by the 2003 figures for the respective SOC codes (189% = ($68,420/$36,210)*100%, 182% = ($97,230/$53,490)*100%).

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economy and the stagnation of wages for U.S. IT workers generally.[25] If the employment of H-1B workers is having an adverse effect on similarly employed U.S. workers by way of reducing their wages or displacing U.S. workers by hiring H-1B workers, that adverse effect likely will be proportionately greater in the IT industry.

Moreover, many H-1B petitions for IT workers are filed by companies, including staffing companies,[26] that place the H-1B workers at worksites of third-parties, i.e., companies that did not directly petition USCIS for H-1B workers. From FY 2018 to FY 2019 an average of 71 percent of all approved H-1B petitions in the IT industry involved third-party worksites (compared to 36 percent for all approved H-1B petitions across industries).[27] As noted in the 2011 GAO report and evidenced by the recent convictions highlighted in the DOL and DOJ reports, the extensive involvement and lack of accountability of staffing companies within the H-1B program is a major factor that makes the program vulnerable to fraud and weakens protection for U.S. workers.[28] DOL has received a large number of complaints about staffing companies and participated in several investigations that led to convictions of technology staffing companies for fraudulent involvement in the H-1B program.[29]

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[25] Salzman, supra note 22, at 26 ("In other words, the data suggest that current U.S. immigration policies that facilitate large flows of guestworkers appear to provide firms with access to labor that will be in plentiful supply at wages that are too low to induce a significantly increased supply from the domestic workforce.").
[26] The term "staffing companies" refers to "employers that apply for H-1B workers but ultimately place these workers at the worksites of other employers as part of their business model." GAO-11-26, at 19.
[27] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, Policy Research Division, Systems: C3 database, Database Queried: 05/20/2020, Report Created: 05/20/2020. This data is based on H-1B approvals where the petitioner reported "off-site [work] at another company or organization's location" on the Form I-129. The term "off-site" which is used on the Form I-129 has the same meaning as "third-party worksite." The I-129 does not ask a petitioner seeking to place a beneficiary "off-site" to specify whether it is a staffing company.
[28] GAO-11-505T, at 12; OIG Investigations Newsletter (Dec. 1, 2019 – Jan. 30, 2020), supra; OIG Investigations Newsletter (Oct. 1, 2019 – Nov. 30, 2020), supra; News Release (Feb. 19, 2020, supra; News Release (Mar. 17, 2020), supra.
[29] See supra note 17.

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Some staffing companies may also be described as outsourcing companies, i.e., companies that are hired to perform services or produce goods for another company and, in some cases, also seek to transfer work from the United States to workers based abroad to reduce the overall costs of the services they provide to clients in the United States.[30] Outsourcing companies have been criticized as "gaming the system" so that they have a ready pool of low-paid temporary workers, which ultimately hurts the wages of U.S. workers.[31] The "outsourcing" business model involves using H-1B visas to bring relatively low-cost foreign workers into the United States and then contracting them out to other U.S. companies seeking their services.[32] These H-1B workers are relatively "low-paid" or "low-cost" in the sense that they are often paid less than the local median salary for workers in the same occupation, in other words, often paid less than what the worker would command in a truly competitive open job market.[33]

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[30] Merriam-Webster. (n.d.). Outsource. In Merriam-Webster.com dictionary. Retrieved August 3, 2020, from https://www.merriam-webster.com/dictionary/outsource ("to procure (something, such as some goods or services needed by a business or organization) from outside sources and especially from foreign or nonunion suppliers : to contract for work, jobs, etc., to be done by outside or foreign workers."). While the word "outsourcing" can refer to the practice of locating work overseas, see e.g., GAO -11-26 at FN 48, it can also be used interchangeably with the word "staffing" to refer to the general practice of contracting out H-1B workers to third-party clients, see Daniel Costa and Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Levels, May 4, 2020, at 4, available at https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/ (describing the "outsourcing business model" as "plac[ing] H-1B hires at third-party client sites.").

[31] See, e.g ., Costa and Hira, supra note 30; Sarah Pierce and Julia Gelatt, Migration Policy Institute, Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform, March 2018, at 2, available at https://www.migrationpolicy.org/research/evolution-h-1b-latest-trends-program-brink-reform; Karen Pedersen, Peter Eckstein, Sandra Candy Robinson, Commentary: the H-1B Visa Problem as IEEE-USA Sees It, Mar. 6, 2017, available at https://spectrum.ieee.org/view-from-the-valley/at-work/tech-careers/commentary-the-h1b-problem-as-ieeeusa-sees-it; HaeYoun Park, How Outsourcing Companies are Gaming the Visa System, N.Y. Times, Nov. 10, 2015, available at https://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html; Julia Preston, Large Companies Game H-1B Program, Costing the U.S. Jobs, N.Y. Times, Nov. 10, 2015, available at https://www.nytimes.com/2015/11/11/us/large-companies-game-h-1b-visa-program-leaving-smaller-ones-in-the-cold.html?action=click&contentCollection=U.S.&region=Footer&module=WhatsNext&version=WhatsNext&contentID=WhatsNext&moduleDetail=undefined&pgtype=Multimedia.

[32] Pedersen, Eckstein, and Robinson, supra note 33.

[33] Costa and Hira, supra note 30 (explaining that "the market wage is the wage a U.S. worker would command for a position" and that "the most reasonable and closest proxy for a market wage is the median wage for an occupation in a local area"); Youyou Zhou, Most H-1B Workers are Paid Less, But It Depends on the Type of Job, The Associated press, Apr. 18, 2017, available at https://apnews.com/afs:Content:873580003 (workers in high-tech jobs such as computer science are often paid less than their American counterparts).

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H-1B employers are able to "take advantage of program rules in order to legally pay many of their H-1B workers below the local median wage for the jobs they fill."[34] By bringing in lower-paid foreign workers, U.S. companies, in turn, may be incentivized to avoid hiring more U.S. workers or, even worse, lay off their own, higher-paid U.S. workers who previously performed those services adequately and replace them with lower-paid H-1B workers of lesser qualifications employed by a staffing company.[35] An employer's preference for hiring H-1B workers based on their citizenship, immigration status, or national origin could violate the INA's anti-discrimination provision at INA section 274B, 8 U.S.C. 1324b.[36] Further still, the outsourcing companies may ultimately send their H-1B nonimmigrant workers back to their home countries to perform their jobs or move a significant amount of work overseas to capitalize on lower costs of business, taking away even more U.S. jobs.[37] As a result, DHS is concerned that the current regulatory regime encourages some companies to use the H-1B visa as a tool to lower business costs at the expense of U.S. workers.[38]

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[34] Costa and Hira, supra note 30. As this article explains, these actions comport with the existing legal framework in which H-1B employers are only required to pay the higher of the actual wage level for similarly situated employees or the prevailing wage. See section 212(n)(1)(A) of the Act. Further, based on the way the four wage levels are set, the lowest two permissible H-1B wage levels fall below the local median salaries. See section 212(p)(4) of the Act. For more general information on wage levels and how they are calculated, see Amy Marmer Nice, Wages and High-Skilled Immigration: How the Government Calculates Prevailing Wages and Why It Matters, American Immigration Council, Dec. 2017, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/wages_and_high-skilled_immigration.pdf.

[35] Preston, supra note 33.

[36] See U.S. Department of Justice, Justice News, Justice Department Settles Claim Against Virginia-Based Staffing Company for Improperly Favoring Temporary Visa Workers Over U.S. Workers (July 27, 2020), https://www.justice.gov/opa/pr/justice-department-settles-claim-against-virginia-based-staffing-company-improperly-favoring (announcing a settlement agreement with a provider of IT staffing and consulting services resolving a claim that one of the provider's offices "discriminated against U.S. workers because of their citizenship status when it posted a job advertisement specifying a preference for non-U.S. citizens who held temporary work visas….Under the INA, employers cannot discriminate based on citizenship, immigration status or national origin at any stage of their hiring process, including the posting of job advertisements, regardless of whether it affects the final hiring outcome.").

[37] Preston, supra note 33.

[38] Maria L. Ontiveros, H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers, 38 Berkeley J. Emp. & Lab. L. 1, 17 (2017); Grace Martinez, Comment, Legal Immigrants Displacing American Workers: How U.S. Corporations are Exploiting H-1B Visas to the Detriment of Americans, 86 UMKC

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U.S.-based companies that are not traditionally in the staffing or outsourcing business also have exploited the H-1B program in ways not contemplated by Congress.[39] In recent years, U.S. companies such as The Walt Disney Company, Hewlett-Packard, University of California San Francisco, Southern California Edison, Qualcomm, and Toys "R" Us have reportedly laid off their qualified U.S. workers and replaced them with H-1B workers provided by H-1B-dependent outsourcing companies.[40] In some cases, the replaced U.S. workers were even forced to train the foreign workers who were taking their jobs and sign nondisclosure agreements about this treatment as a condition of receiving any form of severance.[41] These examples illustrate how the current regulatory regime of the H-1B program allows employers, whether staffing, outsourcing, or other types of companies, to exploit the H-1B program in ways not contemplated by Congress.

L. Rev. 209 (2017).

[39] Paayal Zaveri and Aditi Roy, Big American Tech Companies are Snapping up Foreign-Worker Visas, Replacing Indian Outsourcing Firms, CNBC, Apr. 20, 2018, available at https://www.cnbc.com/2018/04/20/big-american-tech-companies-are-snapping-up-h1-b-visas.html. See also H.R. REP. 105-657, 20-21 (stating "[b]ecause the bill is so dramatically increasing the supply of foreign workers without there being firm evidence of a domestic labor shortage, it is imperative that we build into the H–1B program adequate protections for U.S. workers").

[40] See Pierce and Gelatt, supra note 33, at 24; Hira and Gopalaswamy, supra note 22; Patrick Thibodeau, Southern California Edison IT Workers "Beyond Furious" Over H-1B Replacements, Computerworld, Feb. 4, 2015, available at https://www.computerworld.com/article/2879083/southern-california-edison-it-workers-beyond-furious-over-h-1b-replacements.html; DHS, Office of Inspector General, OIG-18-03, USCIS Needs a Better Approach to Verify H-1B Visa Participants, at 3 (Oct. 20, 2017), available at https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-18-03-Oct17.pdf.

[41] See Perrero v. HCL Am., Inc., No. 616CV112ORL31TBS, 2016 WL 5943600, at 1 (M.D. Fla. Oct. 13, 2016) ("According to the allegations of the Complaint (Doc. 1), which are accepted in pertinent part as true for purposes of resolving the instant motions, Perrero is a former employee of [Disney]'s information technology ("IT") department. (Doc. 1 at 6). HCL is an IT services provider. (Doc. 27 at 1). In January 2015, he and several hundred other [Disney] IT workers were fired; their responsibilities were filled by IT workers employed by HCL. (Doc. 1 at 6). The workers who replaced the Plaintiff and his co-workers were foreign nationals holding H-1B visas. (Doc. 1 at 7) [Disney] management told Perrero and his co-workers of their imminent firing more than 90 days in advance, and informed them that if they did not stay and train the HCL IT workers during that period, they would not get a bonus and severance pay."). See also Costa and Hira, supra note 30 ("the laid-off U.S. workers were required to train their H-1B replacements to do their former jobs- and in some cases sign nondisclosure agreements saying they would not speak publicly about their experiences- as a condition of receiving severance pay.").

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Employers that pay below-median wages to their H-1B workers (in other words, any employer not paying at least Level III wages) are not necessarily in violation of the law. Section 212(n)(1)(A) of the Act requires employers to pay at least the actual wage level paid to other similarly situated employees or the prevailing wage, whichever is higher. Since the lowest two prevailing wage levels are currently set lower than the local median salary, employers offering wages at the two lowest permissible wage levels (Levels I and II) may be able to lawfully pay below-median wages.[42] In FY 2019, 60 percent of all H-1B jobs were certified at the two lowest prevailing wage levels.[43]

Moreover, H-1B employers that displace U.S. workers are not necessarily violating the law, either. While section 212(n)(1)(E) through (G) of the Act, 8 U.S.C. 1182(n)(1)(E)–(G), requires H-1B-dependent employers[44] to make certain attestations such as not displacing U.S. workers and taking good faith steps to recruit U.S. workers, the statute also offers broad exceptions to these requirements that, over time, have effectively gutted the U.S. worker recruitment requirement such as by utilizing third-party contractors[45] or paying a $60,000 annual

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[42] Costa and Hira, supra note 30 (explaining how the two lowest permissible H-1B prevailing wage levels are significantly lower than the local median salaries).
[43] Id. at 18.
[44] The term "H-1B-dependent employer" is defined at section 212(n)(3) of the Act, 8 U.S.C. 1182(n)(3). As stated in H.R. REP. 105-657, H.R. REP. 105-657, 23 (1998), H-1B-dependent companies "often do nothing but contract their foreign workers out to other companies–often after the other companies have laid off American workers. H-1B-dependent companies have been accused of a disproportionate share of H-1B abuses."
[45] See e.g. Perrero v. HCL Am., Inc., supra at 3-4. (The Court rejected Plaintiff's argument that, because he and his Disney co-workers were replaced by contracted HCL H-1B workers, "HCL must have lied when it made the '"displacement' certification on the LCA." The Court found that the only way for HCL's certification on the LCA to be false would have been if the working conditions of HCL's U.S. worker employees, not Disney's, were adversely affected by HCL's H-1B hiring. Thus, by contracting through HCL as opposed to hiring directly, Disney and HCL circumvented worker protections, exploiting a loophole in the system designed to protect U.S. workers.). See also 144 Cong. Rec. E2323-01, 144 Cong. Rec. E2323-01, E2323, 1998 WL 785735 (stating "[t]he employers most prone to abusing the H-1B program are called 'job contractors' or 'job shops'… the[se] companies don't have to shoulder the obligations of being the legally recognized employers-the job contractors/shops remain the official employers") (statement of Rep. Lamar Smith, then chairman of the Subcommittee on Immigration and Claims).

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salary, among other things.[46] DOL data establishes that 99.3 percent of all H-1B-dependent employers claim exemption from these attestation requirements,[47] showing how easily and frequently H-1B-dependent employers are able to bypass statutory requirements intended to protect U.S. workers. In addition, these purported U.S. worker protections only apply to employers who are H-1B-dependent employers or have been found by DOL to have committed a willful failure to meet their LCA obligations or material misrepresentation in its application.[48] However, employment discrimination in favor of H-1B visa holders over qualified U.S. workers may violate another part of the INA, at INA section 274B, 8 U.S.C. 1324b.[49]

Overall, these reports and studies expose significant gaps in the ability of the H-1B program, as currently structured, to serve its original intent to supplement the U.S. workforce with a limited number of highly skilled workers while protecting the economic interests of U.S. workers. The President's recent "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" notes that the entry of additional workers through the H-1B program "presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak."[50] The changes made in the interim final rule will extend beyond the duration of the

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[46] For example, section 212(n)(3)(B) of the Act defines "exempt H-1B nonimmigrant" as an H-1B nonimmigrant who receives annual wages equal to at least $60,000 or has attained a master's or higher degree (or its equivalent) in a related specialty. The $60,000 salary threshold was set in 1998 through the American Competitiveness and Workforce Improvement Act and has not been adjusted to date. If adjusted for inflation, the salary threshold for the exception to the U.S. worker recruitment would be over $93,000. See, U.S. Dep't of Labor, Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (comparing data from October 1998 to May 2020).

[47] U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Public Disclosure File: LCA Data, Federal Fiscal Year: 2019.

[48] See INA section 212(n)(1)(E)(ii) and (G), 8 U.S.C. 1182(n)(1)(E)(ii) and (G).

[49] See supra note 36.

[50] See Proclamation 10052 of June 22, 2020, Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 FR 38263 (Jun. 25, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-06-25/pdf/2020-13888.pdf.

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proclamation, but the threats described in the proclamation highlight the urgent need for strengthening of the H-1B program to protect U.S. workers. The Department's responsibility to ensure the safety and security of our country includes the protection of American workers.[51] This responsibility includes ensuring, as much as possible, that American workers are not negatively affected by H-1B workers. Therefore, the Department believes it is imperative to issue this rule to strengthen the integrity of the H-1B program and make more certain that petitions are only approved for qualified beneficiaries and petitioners.

B. Implementation of this Interim Final Rule

This rule only will apply to petitions filed on or after the effective date of the regulation, including amended petitions or petition extensions. DHS will not apply the new regulations to any pending petitions nor to previously approved petitions, either through reopening or through a notice of intent to revoke.

V. Discussion of the Provisions to Strengthen the H-1B Program

A. Amending the Definition and Criteria for a "Specialty Occupation"

1. Amending the Definition of a "Specialty Occupation"

DHS is revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of "specialty occupation."

Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), describes, among others, nonimmigrants coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the INA, 8 U.S.C. 1184(i)(1) states, in relevant part, "the term 'specialty occupation' means an occupation that requires- (A) theoretical and practical

[51] Cf. section 101 of the Homeland Security Act of 2002, 6 U.S.C. 111(b)(1)(F), stating that a primary mission of the Department is to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland."

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application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." The current regulatory definition of "specialty occupation" at 8 CFR 214.2(h)(4)(ii) states:

> Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

First, this rule amends the definition of a "specialty occupation" at 8 CFR 214.2(h)(4)(ii) to clarify that there must be a direct relationship between the required degree field(s) and the duties of the position. Consistent with existing USCIS policy and practice, a position for which a bachelor's degree in any field is sufficient to qualify for the position, or for which a bachelor's degree in a wide variety of fields unrelated to the position is sufficient to qualify, would not be considered a specialty occupation as it would not require the application of a body of highly specialized knowledge.[52] Similarly, the amended definition clarifies that a position would not qualify as a specialty occupation if attainment of a general degree, without further specialization, is sufficient to qualify for the position. This is consistent with the statutory requirement that a degree be "in the specific specialty" and has long been the position of DHS and its predecessor, Immigration and Naturalization Service (INS).[53]

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[52] See Caremax Inc v. Holder, 40 F. Supp. 3d 1182, 1187-88 (N.D. Cal. 2014).

[53] See Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (stating "[t]he 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 also Shanti, Inc. v. Reno, 36 F. Supp. 2d 1151, 1166 (D. Minn.1999) (the proffered position's requirement of a business administration degree is a general degree requirement, and therefore, INS did not abuse its discretion in denying the H-1B petition); All Aboard Worldwide Couriers, Inc. v. Attorney General, 8 F. Supp. 2d 379, 381 (S.D.N.Y. 1998) (INS did not abuse its

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Under this new rule, the petitioner will have the burden of demonstrating that there is a direct relationship between the required degree in a specific specialty (in other words, the degree field(s) that would qualify someone for the position) and the duties of the position. In many cases, the relationship will be clear and relatively easy to establish. For example, it should not be difficult to establish that a required medical degree is directly correlated to the duties of a physician. Similarly, a direct relationship may be established between the duties of a lawyer and a required law degree, and the duties of an architect and a required architecture degree. In other cases, the direct relationship may be less readily apparent, and the petitioner may have to explain and provide documentation to meet its burden of demonstrating the relationship. To establish a direct relationship, the petitioner would need to provide information regarding the course(s) of study associated with the required degree, or its equivalent, and the duties of the proffered position, and demonstrate the connection between the course of study and the duties and responsibilities of the position.

The requirement of a direct relationship between a degree in a specific specialty, or its equivalent, and the position should not be misconstrued as necessarily requiring a singular field of study. Section 214(i)(1) of the INA allows the "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent)" (emphasis added). The placement of the phrase "or its equivalent" after the phrase "in the specific specialty" means that USCIS may accept the equivalent to a degree in a specific specialty, as long as that equivalent provides the same (or essentially the same) body of specialized knowledge.[54] In general, provided the required fields

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discretion in determining that the proffered position did not qualify as a specialty occupation based on "an absence of evidence that [the petitioner] require[s] job candidates to have a B.A. in a specific, specialized area.").

[54] See, e.g., Relx, Inc. v. Baran, 397 F. Supp. 3d 41, 54 (D.D.C. 2019) ("There is no requirement in the statute that only one type of degree be accepted for a position to be specialized. "); Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs., 839 F. Supp. 2d 985, 997 (S.D. Ohio 2012) (stating that when determining whether a position is a specialized occupation "knowledge and not the title of the degree is what is important.").

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of study are closely related, for example, electrical engineering and electronics engineering for the position of an electrical engineer, a minimum of a bachelor's or higher degree, or its equivalent, in more than one field of study may be recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B). In such a case, the "body of highly specialized knowledge" required by section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), essentially would be the same, and each field of study would be in a "specific specialty" directly related to the position consistent with section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B).

In cases where the petitioner lists degrees in multiple disparate fields of study as the minimum entry requirement for a position, the petitioner would have to establish how each field of study is in a specific specialty providing "a body of highly specialized knowledge" directly related to the duties and responsibilities of the particular position to meet the requirements of sections 214(i)(1)(A) and (B) of the INA, 8 U.S.C. 1184(i)(1)(A) and (B), the regulatory definition, and one of the four criteria at new 8 CFR 214.2(h)(4)(iii)(A).

As such, a minimum entry requirement of a bachelor's or higher degree, or its equivalent, in multiple disparate fields of study would not automatically disqualify a position from being a specialty occupation. For example, a petitioner may be able to establish that a bachelor's degree in the specific specialties of either education or chemistry, each of which provide a body of highly specialized knowledge, is directly related to the duties and responsibilities of a chemistry teacher. In such a scenario, the "body of highly specialized knowledge" requirement of section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), and the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the INA, 8 U.S.C.

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1184(i)(1)(B), would both be met and the chemistry teacher position listing multiple disparate fields of study would be in a specialty occupation.

In determining specialty occupation, USCIS interprets the "specific specialty" requirement in section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B), to relate back to the body of highly specialized knowledge requirement referenced in section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), required by the specialty occupation in question, such that section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B), is only met if the purported degree in a specific specialty or specialties, or its equivalent, provides a body of specialized knowledge directly related to the duties and responsibilities of the particular position as required by section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A).

If the minimum entry requirement for a position is a general degree without further specialization or an explanation as to what type of degree is required, the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B), would not be satisfied. For example, a requirement of a general engineering degree for a position of software developer would not satisfy the specific specialty requirement. In such an instance, the petitioner would not satisfactorily demonstrate how a required general engineering degree provides a body of highly specialized knowledge that is directly related to the duties and responsibilities of a software developer position.[55]

Similarly, a petition with a requirement of an engineering degree in any or all fields of engineering for a position of software developer would not suffice unless the record establishes how each or every field of study within an engineering degree provides a body of highly specialized knowledge directly relating to the duties and responsibilities of the software

[55] See supra note 54.

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developer position.[56] The issue is whether a proffered position requires the application of a body of highly specialized knowledge as required by section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), and attainment of at least a bachelor's degree in the specific specialty (or its equivalent) as required by section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B). If an individual could qualify for a software developer position based on having a seemingly unrelated degree in any engineering field or in general engineering, or its equivalent, then it cannot be concluded that the position requires the application of a body of highly specialized knowledge and a degree in a specific specialty because someone with an entirely or largely unrelated degree may qualify to perform the job.[57] In such a scenario, the requirements of sections 214(i)(1)(A) and (B) of the INA, 8 U.S.C. 1184(i)(1)(A) and (B), would not be satisfied.

Similarly, a requirement of a bachelor's degree in an unspecified "quantitative field" (which could include mathematics, statistics, economics, accounting, or physics) for a software developer position would be insufficient to meet the requirements of a specialty occupation unless the record identifies specific specialties within the wide variety of "quantitative fields" and establishes how each identified degree in a specific specialty provides a body of highly specialized knowledge, consistent with section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), that is directly related to the duties and responsibilities of the software developer position. While a position may allow a range of degrees, and apply multiple bodies of highly specialized

[56] The requirement of any engineering degree could include, for example, a chemical engineering degree, marine engineering degree, mining engineering degree, or any other engineering degree in a multitude of unrelated fields.
[57] In these examples, the educational credentials are referred to by the title of the degree for expediency. However, USCIS separately evaluates whether the beneficiary's actual course of study is directly related to the duties of the position, rather than merely the title of the degree. When applicable, USCIS will consider whether the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation.

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knowledge, each of those qualifying degree fields must be directly related to the proffered position.

2. Amending the Criteria for Specialty Occupation Positions

As quoted above, under section 214(i)(1) of the INA, 8 U.S.C. 1184(i)(1), a "specialty occupation" requires attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. However, the current regulatory criteria at 8 CFR 214.2(h)(4)(iii)(A) states that a bachelor's degree be "normally" required, or "common to the industry," or that the knowledge required for the position is "usually associated" with at least a bachelor's degree or equivalent. The words "normally," "common," and "usually" are not found in the statute, and therefore, should not appear in the regulation. To conform to the statutory definition of a "specialty occupation" and promote consistent adjudications, DHS is eliminating the terms "normally," "common," and "usually" from the regulatory criteria. See new 8 CFR 214.2(h)(4)(iii)(A). This change means that the petitioner will have to establish that the bachelor's degree in a specific specialty or its equivalent is a minimum requirement for entry into the occupation in the United States by showing that this is always the requirement for the occupation as a whole, the occupational requirement within the relevant industry, the petitioner's particularized requirement, or because the position is so specialized, complex, or unique that it is necessarily required to perform the duties of the specific position.

The wording of the current regulatory criteria creates ambiguity. For example, the dictionary definition of "normally" is "usually, or in most cases," and "usually" is defined as "in

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the way that most often happens."[58] "Most" is defined as "the biggest number or amount (of), or more than anything or anyone else,"[59] and is a synonym for "normally" or "usually." These definitions could be read to encompass anything from 51 percent to 99 percent, and possibly a broader range depending on the interpretation, highlighting how ambiguous they are. Use of these terms, if interpreted to mean that a position is a specialty occupation if merely 51 percent of positions within a certain occupation require at least a certain bachelor's degree, is inconsistent with the most natural read of, and arguably runs directly contrary to the statutory definition of, a "specialty occupation" which imposes a minimum entry requirement of a bachelor's or higher degree in the specific specialty (or its equivalent). See section 214(i)(1) of the INA, 8 U.S.C. 1184(i)(1). Thus, DHS believes that it is imperative to align the regulatory language with the statutory language and clarify that a bachelor's (or higher) degree in a directly related specific specialty is required. It will no longer be sufficient to show that a degree is normally, commonly, or usually required. In FY 2018, USCIS frequently issued Requests for Evidence (RFEs) in H-1B cases, requesting more evidence or explanations to establish that proffered positions qualified as specialty occupations.[60] DHS believes that the revisions in this rule will clarify the requirements for establishing a specialty occupation and reduce the need for RFEs in future adjudications.

In addition, DHS is replacing the phrase, "To qualify as a specialty occupation," with the phrase "A proffered position does not meet the definition of specialty occupation unless it also

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[58] Cambridge Dictionary, normally, https://dictionary.cambridge.org/us/dictionary/english/normally (last visited Sept. 9, 2020); Cambridge Dictionary, usually, https://dictionary.cambridge.org/us/dictionary/english/usually (last visited Sept. 9, 2020).

[59] Cambridge Dictionary, most, https://dictionary.cambridge.org/us/dictionary/english/most (last visited Sept. 9, 2020).

[60] See USCIS report Understanding Requests for Evidence (RFEs): A Breakdown of Why RFEs were Issued for H-1B Petitions in Fiscal Year 2018, available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/understanding-requests-for-evidence-h-1b-petitions-in-fiscal-year-2018.pdf.

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satisfies" prior to setting forth the regulatory criteria. See new 8 CFR 214.2(h)(4)(iii)(A). This change will clarify that meeting one of the regulatory criteria is a necessary part of – but not necessarily sufficient for – demonstrating that a position qualifies as a specialty occupation. This is not new; the criteria at current 8 CFR 214.2(h)(4)(iii)(A) must be construed in harmony with and in addition to other controlling regulatory provisions and with the statute as a whole. In 2000, the U.S. Court of Appeals for the Fifth Circuit highlighted the ambiguity of the regulatory provision's current wording, and petitioners have misinterpreted the criteria in 8 CFR 214.2(h)(4)(iii)(A) as setting forth both the necessary and sufficient conditions to qualify as a specialty occupation, a reading that resulted in some positions meeting one condition of 8 CFR 214.2(h)(4)(iii)(A), but not the definition as a whole.[61] These changes will eliminate this source of confusion.

DHS also is amending 8 CFR 214.2(h)(4)(iii)(A)(1) by replacing the word "position" with "occupation," so that it sets forth "the minimum requirement for entry into the particular occupation in which the beneficiary will be employed." See new 8 CFR 214.2(h)(4)(iii)(A)(1). DHS believes that replacing "position" with "occupation" will clarify that the first criterion can be satisfied if the petitioner can show that its position falls within an occupational category for which all positions within that category have a qualifying minimum degree requirement.[62] DHS further believes that this revision provides added clarity to the regulatory criteria as the criteria

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[61] Defensor v. Meissner, 201 F.3d 384, 387 (5th Cir. 2000) (stating that current 8 CFR 214.2(h)(4)(iii)(A) "appears to implement the statutory and regulatory definition of specialty occupation through a set of four different standards. However, this section might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition. The ambiguity stems from the regulation's use of the phrase 'to qualify as.' In common usage, this phrase suggests that whatever conditions follow are both necessary and sufficient conditions. Strictly speaking, however, the language logically entails only that whatever conditions follow are necessary conditions. . . . If § 214.2(h)(4)(iii)(A) is read to create a necessary and sufficient condition for being a specialty occupation, the regulation appears somewhat at odds with the statutory and regulatory definitions of 'specialty occupation.'").

[62] DHS generally determines a position's occupation or occupational category by looking at the standard occupational classification (SOC) code designated on the LCA.

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will flow from general to specific (i.e., occupation level to industry to employer to position). If the occupation requires at least a bachelor's degree in a specific specialty (e.g., lawyer or doctor) then it necessarily follows that a position in one of those occupations would require a degree and qualify as a specialty occupation. If that is not applicable, then the petitioner could submit evidence to show that at least a bachelor's degree in a specific specialty (or its equivalent) is required based on industry norms, the employer's particular requirement, or because of the particulars of the specific position. USCIS will continue its practice of consulting DOL's Occupational Outlook Handbook and other reliable and informative sources submitted by the petitioner, to assist in its determination regarding the minimum entry requirements for positions located within a given occupation.

DHS further is amending 8 CFR 214.2(h)(4)(iii)(A)(2) by consolidating this criterion's second prong into the fourth criterion. See new 8 CFR 214.2(h)(4)(iii)(A)(2). The second prong of current 8 CFR 214.2(h)(4)(iii)(A)(2), which focuses on a position's complexity or uniqueness, is similar to current 8 CFR 214.2(h)(4)(iii)(A)(4), which focuses on a position's complexity and specialization. In practice, they are frequently consolidated into the same analysis. This amendment streamlines both criteria, as well as the explanation and analysis in written decisions issued by USCIS pertaining to specialty occupation determinations, as such decisions discuss all four criteria and are necessarily repetitive because of the existing overlap between 8 CFR 214.2(h)(4)(iii)(A)(2) and (4). This amendment also simplifies the analysis because petitioners may now demonstrate eligibility under this criterion if the position is "so specialized, complex, or unique" (emphasis added), as opposed to "so complex or unique" under current 8 CFR 214.2(h)(4)(iii)(A)(2) and "so specialized and complex" under current 8 CFR 214.2(h)(4)(iii)(A)(4) (emphasis added). Notwithstanding these amendments, the analytical

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framework of the first prong of 8 CFR 214.2(h)(4)(iii)(A)(2) generally will remain the same. Thus, a petitioner will satisfy new 8 CFR 214.2(h)(4)(iii)(A)(2) if it demonstrates that the specialty degree requirement is the minimum entry requirement for (1) parallel positions (2) at similar organizations (3) within the employer's industry in the United States. This criterion is intended for the subset of positions with minimum entry requirements that are determined not necessarily by occupation, but by specific industry standards. For example, registered nurses (RNs) generally do not qualify for H-1B classification because most RN positions normally do not require a U.S. bachelor's or higher degree in nursing (or a directly related field), or its equivalent, as the minimum for entry into these particular positions.[63] However, advanced practice registered nurses generally would be specialty occupations due to the advanced level of education and training required for certification.[64] For this criterion, DHS would continue its practice of consulting the DOL's Occupational Outlook Handbook and other reliable and informative sources, such as information from the industry's professional association or licensing body, submitted by the petitioner.

The third criterion at 8 CFR 214.2(h)(4)(iii)(A)(3) essentially will remain the same, other than the deletion of "normally." This criterion still will recognize an employer's valid employment practices, provided that those practices reflect actual requirements. The additional sentence, "The petitioner also must establish that the proffered position requires such a directly related specialty degree, or its equivalent, to perform its duties," simply will reinforce the existing requirements for a specialty occupation, in other words, that the position itself must

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[63] See U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, "Registered Nurses," https://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4 (indicating that nurses can have a bachelor's or associate's degree in nursing, or a diploma from an approved nursing program) (last visited Jun. 25, 2020).

[64] USCIS Policy Memorandum PM-602-0104, Adjudication of H-1B Petitions for Nursing Occupations (Feb. 18, 2015), available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015-0218_EIR_Nursing_PM_Effective.pdf.

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require a directly related specialty degree, or its equivalent, to perform its duties. See new 8 CFR 214.2(h)(4)(iii)(A)(3). Employers requiring degrees as a proxy for a generic set of skills will not meet this standard. Employers listing a specialized degree as a hiring preference will not meet this standard either. If USCIS were constrained to recognize a position as a specialty occupation merely because an employer has an established practice of demanding certain educational requirements for the proffered position – without consideration of whether the position requires the application of a body of highly specialized knowledge consistent with the degree requirement – then any beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform work in a non-specialty occupation if the employer arbitrarily imposed such a degree requirement for the non-specialty occupation position.[65] With respect to the first part of this criterion, a petitioner could submit evidence of an established recruiting and hiring practice for the position to establish its requirements for the position. DHS is leaving the term "established practice" undefined to allow more flexibility for petitioners, although it notes that petitioners seeking to fill a position for the first time generally would not be able to demonstrate an "established practice."[66]

As discussed above, the criterion at the new 8 CFR 214.2(h)(4)(iii)(A)(4) incorporates the second prong of current 8 CFR 214.2(h)(4)(iii)(A)(2). See new 8 CFR 214.2(h)(4)(iii)(A)(4). No other substantive changes are being made to this criterion. Thus, the fourth criterion can be satisfied if the petitioner demonstrates that the proffered position's job duties are so specialized,

[65] Defensor, 201 F.3d at 388 (noting "If only [the employer]'s requirements could be considered, then any alien with a bachelor's degree could be brought into the United States to perform a non-specialty occupation, so long as that person's employment was arranged through an employment agency which required all clients to have bachelor's degrees. Thus, aliens could obtain six-year visas for any occupation, no matter how unskilled, through the subterfuge of an employment agency. This result is completely opposite the plain purpose of the statute and regulations, which is to limit H1–B [sic] visas to positions which require specialized experience and education to perform.")

[66] First-time hirings are not precluded from qualifying under one of the other criteria.

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complex, or unique that they necessitate the attainment of a U.S. bachelor's degree in a directly related specific specialty, or its equivalent.

DHS acknowledges that some petitioners may believe they have a reliance interest in retaining the existing regulatory framework for specialty occupation. For example, by eliminating the word "normally" from the regulatory criterion at 8 CFR 214.2(h)(4)(iii)(A)(1), some occupations that previously qualified under this criterion may no longer qualify because a bachelor's degree in a specific specialty or its equivalent is not always a minimum requirement for entry. To the extent that petitioners may have a reliance interest in retaining the current regulations, the government's interests in having the regulations conform to the best reading of the statutory definition and creating clearer standards to facilitate more consistent adjudications[67] far outweigh any such reliance interest. It is important to note that, although some occupations will no longer qualify under 8 CFR 214.2(h)(4)(iii)(A)(1), the petitioner may still establish that the proffered position satisfies any one of the other criteria at 8 CFR 214.2(h)(4)(iii)(A)(2)-(4). None of the revised provisions categorically prevent any particular position from qualifying as a specialty occupation.

Further, DHS recognizes the possibility that some petitions for H-1B nonimmigrant classification might have been approved in error under the current regulation even though the petitions indicated that an alien could qualify to perform the relevant position based on a general degree. USCIS has generally denied such petitions on the basis that such petitions do not meet the statutory and regulatory definition of specialty occupation under the current regulation, but

[67] See GAO/HEHS-00-157, at 25 (finding that "a petition previously submitted and denied can be approved by another adjudicator, even if the denying adjudicator determined that the employer does not meet H-1B requirements" owing to inconsistently available reasons for denials and information system limitations); GAO-11-26, at 27 (noting examples of instances in which "[e]xecutives at several companies" experienced inconsistencies in the adjudication process, including decisions to deny or grant H-1B classification based on whether projects required "specialty occupation").

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recognizes that a small number might have been approved in error and that similar petitions will be denied as a result of this Rule's clarification of the definition of "specialty occupation." For example, by adding the phrase "A position is not a specialty occupation if attainment of a general degree, such as business administration or liberal arts, without further specialization, is sufficient to qualify for the position" at new 8 CFR 214.2(h)(4)(ii), positions where a general degree may qualify someone to perform the job, and that may have been erroneously approved as specialty occupations because of confusion created by the ambiguous wording in the current regulations, may now be denied. But again, to the extent that the revised regulations would result in the denial of some petitions that were erroneously approved under the current regulatory scheme, the government's interests in better adhering to the statute and better ensuring consistent adjudication far outweigh any interests petitioners may have in receiving continued petition approvals in a small number of cases based on error resulting from imprecise regulatory text. DHS notes that each case is decided on its own merits, and simply because a petition was approved previously does not guarantee that a similar petition would be approved in the future as prior approvals are not binding on USCIS.[68] The burden of proof remains on the petitioner, even where an extension of stay in H-1B nonimmigrant status is sought.[69]

B. Defining "Worksite" and "Third Party Worksite"

DHS will add definitions for "worksite" and "third-party worksite" to the existing list of definitions at 8 CFR 214.2(h)(4)(ii). See new 8 CFR 214.2(h)(4)(ii). First, DHS will define "worksite" similar to the DOL definition of "place of employment" in 20 CFR 655.715 as "the

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[68] Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D. La.), aff'd 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001); Matter of Church Scientology Intl, 19 I&N Dec. 593, 597 (Comm'r 1988).

[69] See 8 CFR § 103.2(b)(1) ("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); 8 CFR § 214.1(c)(5) ("Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service.").

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physical location where the work is actually performed by the H-1B nonimmigrant." A "worksite" will not include any location that would not be considered a "worksite" for LCA purposes, meaning that DHS will apply the same exclusions and examples of "non-worksite locations" as in DOL's regulations at 20 CFR 655.715.[70] As H-1B petitioners and USCIS

[70] 20 CFR 655.715: "(1) The term does not include any location where either of the following criteria—paragraph (1)(i) or (ii)—is satisfied: (i) Employee developmental activity. An H-1B worker who is stationed and regularly works at one location may temporarily be at another location for a particular individual or employer-required developmental activity such as a management conference, a staff seminar, or a formal training course (other than "on-the-job-training" at a location where the employee is stationed and regularly works). For the H-1B worker participating in such activities, the location of the activity would not be considered a "place of employment" or "worksite," and that worker's presence at such location—whether owned or controlled by the employer or by a third party—would not invoke H-1B program requirements with regard to that employee at that location. However, if the employer uses H-1B nonimmigrants as instructors or resource or support staff who continuously or regularly perform their duties at such locations, the locations would be "places of employment" or "worksites" for any such employees and, thus, would be subject to H-1B program requirements with regard to those employees.
(ii) Particular worker's job functions. The nature and duration of an H-1B nonimmigrant's job functions may necessitate frequent changes of location with little time spent at any one location. For such a worker, a location would not be considered a "place of employment" or "worksite" if the following three requirements (i.e., paragraphs (1)(ii)(A) through (C)) are all met—(A) The nature and duration of the H-1B worker's job functions mandates his/her short-time presence at the location. For this purpose, either: (1) The H-1B nonimmigrant's job must be peripatetic in nature, in that the normal duties of the worker's occupation (rather than the nature of the employer's business) requires frequent travel (local or non-local) from location to location; or (2) The H-1B worker's duties must require that he/she spend most work time at one location but occasionally travel for short periods to work at other locations; and (B) The H-1B worker's presence at the locations to which he/she travels from the "home" worksite is on a casual, short-term basis, which can be recurring but not excessive (i.e., not exceeding five consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations); and (C) The H-1B nonimmigrant is not at the location as a "strikebreaker" (i.e., the H-1B nonimmigrant is not performing work in an occupation in which workers are on strike or lockout). (2) Examples of "non-worksite" locations based on worker's job functions: A computer engineer sent out to customer locations to "troubleshoot" complaints regarding software malfunctions; a sales representative making calls on prospective customers or established customers within a "home office" sales territory; a manager monitoring the performance of out-stationed employees; an auditor providing advice or conducting reviews at customer facilities; a physical therapist providing services to patients in their homes within an area of employment; an individual making a court appearance; an individual lunching with a customer representative at a restaurant; or an individual conducting research at a library. (3) Examples of "worksite" locations based on worker's job functions: A computer engineer who works on projects or accounts at different locations for weeks or months at a time; a sales representative assigned on a continuing basis in an area away from his/her "home office;" an auditor who works for extended periods at the customer's offices; a physical therapist who "fills in" for full-time employees of health care facilities for extended periods; or a physical therapist who works for a contractor whose business is to provide staffing on an "as needed" basis at hospitals, nursing homes, or clinics. (4) Whenever an H-1B worker performs work at a location which is not a "worksite" (under the criterion in paragraph (1)(i) or (1)(ii) of this definition), that worker's "place of employment" or "worksite" for purposes of H-1B obligations is the worker's home station or regular work location. The employer's obligations regarding notice, prevailing wage and working conditions are focused on the home station "place of employment" rather than on the above-described location(s) which do not constitute worksite(s) for these purposes. However, whether or not a location is considered to be a "worksite"/"place of employment" for an H-1B nonimmigrant, the employer is required to provide reimbursement to the H-1B nonimmigrant for expenses incurred in traveling to that location on the employer's business, since such expenses are considered to be ordinary business expenses of employers

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officers should already be familiar with the concept of "worksite" because it also applies in the LCA context, DHS believes that this definition does not represent a significant change. Second, DHS will define "third-party worksite" as "a worksite, other than the beneficiary's residence in the United States, that is not owned or leased, and not operated, by the petitioner." See new 8 CFR 214.2(h)(4)(ii).[71] This definition is similar to the "owned or operated" test commonly used in the LCA context.[72] Again, as this concept should already be familiar to H-1B petitioners and USCIS officers, this definition should not be a significant change.

The newly added definitions are helpful because the terms "worksite" and "third-party worksite" are used elsewhere in the amended regulations. As explained below, the new employer-employee relationship definition specifically refers to the beneficiary's worksite as a relevant factor in determining whether such relationship exists (e.g., "where the supervision is not at the petitioner's worksite, how the petitioner maintains such supervision," see new 8 CFR 214.2(h)(4)(ii)). Further, a 1-year maximum validity period will apply whenever the beneficiary will be working at a third-party worksite. See new 8 CFR 214.2(h)(9)(iii)(A)(1). Finally, the new site visit provisions will clarify that inspections may include any third-party worksites, as applicable. See new 8 CFR 214.2(h)(4)(i)(B)(7).

C. Clarifying the Definition of "United States Employer"

Currently, the term "United States employer" is defined at 8 CFR 214.2(h)(4)(ii) as "a person, firm, corporation, contractor, or other association, or organization in the United States"

(§§655.731(c)(7)(iii)(C); 655.731(c)(9)). In determining the worker's "place of employment" or "worksite," the Department will look carefully at situations which appear to be contrived or abusive; the Department would seriously question any situation where the H-1B nonimmigrant's purported "place of employment" is a location other than where the worker spends most of his/her work time, or where the purported "area of employment" does not include the location(s) where the worker spends most of his/her work time."

[71] While the definition of "third-party worksite" will exclude the beneficiary's U.S. residence, employment of the beneficiary from home must still be in accordance with all applicable laws.

[72] See 20 CFR 655.734(a)(1)(ii)(A) (the petitioner's obligation requires proper notice at each place of employment "whether such place of employment is owned or operated by the employer or by some other person or entity").

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which, among other things, "[e]ngages a person to work within the United States" and "[h]as an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee." Through this rule, DHS is changing this definition by: (1) striking the word "contractor" from the general definition of "United States employer"; (2) inserting the word "company" in that general definition; (2) expanding upon the existing requirement to engage the beneficiary to work within the United States; and (3) expanding upon the employer-employee relationship and the factors used to determine if a valid "employer-employee relationship" between the petitioner and the beneficiary exists or will exist. See new 8 CFR 214.2(h)(4)(ii).

DHS believes these revisions are necessary to clarify the requirements to qualify as an employer for purpose of the H-1B classification. As previously discussed, the current regulation at 8 CFR 214.2(h)(4)(ii) defines "United States employer" as an entity that has an "employer-employee relationship" with an "employee." But these terms are not adequately defined. Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), defines an H-1B nonimmigrant as a worker coming temporarily to the United States to perform services in a specialty occupation, and for whom the intending "employer" has filed a labor condition application. Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), states in relevant part that the question of importing any alien as an H-1B nonimmigrant shall be determined after consultation with appropriate agencies of the Government, upon petition of the importing employer. Congress continued using the term "employer" and "employment" in subsequent amendments, but without specifically defining those terms. See, e.g., section 214(n) of the INA, 8 U.S.C. 1184(n), as amended by the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106-313, 114 Stat. 1251 (authorizing the H-1B nonimmigrant to accept new "employment" upon the filing of an H-

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1B petition by the "prospective employer"). DHS believes the revisions in this rule are necessary to clarify and strengthen the requirements to qualify as a United States employer for the H-1B program.

1. **Replacing "contractor" with "company"**

First, striking "contractor" will avoid potential confusion as the term "contractor" in the definition is misleading. The inclusion of "contractors" in the regulatory language could be read to suggest that contractors should generally qualify under the definition of a "United States employer." While a contractor is certainly not excluded from qualifying as a "United States employer" for purposes of an H-1B petition, the contractor, like any petitioner, must establish the requisite "employer-employee relationship" with the H-1B beneficiary. This revision will also update the definition to include reference to "company," as that term is commonly used to describe various types of business entities, such as limited liability companies.

DHS acknowledges that third-party arrangements involving one or more contractors may be a legitimate business model.[73] However, these types of business arrangements generally make it more difficult to assess whether the petitioner and the beneficiary have or will have the requisite employer-employee relationship. Typically, these types of business arrangements require the beneficiary to be placed at one or more third-party worksites, which are not owned or leased and not operated, by the petitioner. This placement, in itself, potentially dilutes the petitioner's control over the beneficiary. The difficulty of assessing control is increased in situations where there are one or more intermediary contractors (often referred to as "vendors"[74])

[73] Karen Jensen, Barriers to H-1B Visa Sponsorship in the IT Consulting Industry: The Economic Incentive to Alter H-1B Policy, 35 Fordham International Law Journal Volume 1027, 1036 (2017).

[74] The "vendor" concept is frequently referenced in H-1B petitions that involve the information technology (IT) industry. While the term is not precisely defined, petitions commonly refer to "primary vendors," who have an established or preferred relationship with a client, or "implementing vendors," who bid on an IT project with a client and then implement the contract using their own staff. Primary or implementing vendors may turn to secondary

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involved in the contractual chain. Overall, the more parties there are in the contractual chain, the more likely those other parties exert control over the beneficiary's work, and more importantly, potentially limit the amount of control, if any, that the petitioner would have over the beneficiary's employment. As a result, the relationship between the petitioner and the beneficiary becomes more attenuated.

By removing the word "contractor", DHS seeks to avoid any confusion or mistaken belief that contractors should generally qualify as "United States employers." Petitioners that are contractors are reminded of their burden, similar to all other H-1B petitioners, whether they are a person, corporation, or company, to establish the employer-employee relationship for each H-1B petition they file.

Nevertheless, it is important to note that the deletion of the term "contractor" from the regulatory definition does not mean that a contractor never would qualify as a "United States employer" for the purpose of filing an H-1B petition. A contractor may be a person, firm, company, corporation, or other association or organization, and the contractor (whatever the form) still may qualify as a U.S. employer of the H-1B beneficiary if the contractor demonstrates the requisite employer-employee relationship with the beneficiary.[75] Because this change will not impact a contractor's continued ability to establish a valid employer-employee relationship on a

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vendors to fill staffing needs on individual projects. See, e.g., Acclaim Systems, Inc. v. Infosys, No. Civ.A. 13-7336, 2016 WL 974136 at *2 (E.D. Pa. Mar. 11, 2016). As a result, the ultimate client project may be staffed by a team of H-1B beneficiaries who were petitioned for by different, unrelated employers.

[75] DHS recognizes that this change will result in a definition of "United States employer" that is slightly different from DOL's definition of "employer." 20 C.F.R. 655.715 states in pertinent part: "Employer means a person, firm, corporation, contractor, or other association or organization in the United States that has an employment relationship with H-1B . . . nonimmigrants and/or U.S. worker(s)." However, DHS does not believe this disparity would be significant, particularly because the DOL definition still requires the contractor to have an employment relationship with the H-1B nonimmigrant based on the common law. Furthermore, DHS definitions are separate from, and generally serve different purposes than, DOL definitions. While DOL may deem the person or entity filing an H-1B petition to be the employer for purpose of enforcing wage and other obligations, DHS must determine whether the petitioner qualifies as the intending or importing United States employer. See, e.g., 20 CFR 655.705 (DOL administers the LCA process and most enforcement provisions).

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case-by-case basis, DHS does not believe that removing the term "contractor" will have a substantive impact on the eligibility determination. The change is simply intended to remove a term that is typically associated with work arrangements that typically do not involve an employer and employee.

2. Engaging the Beneficiary to Work

As currently written in 8 CFR 214.2(h)(4)(ii), the requirement for a petitioner to "[engage] a person to work within the United States" has limited practical value. It does not specify that the petitioner should engage the beneficiary (rather than "a person"). And it does not qualify the work to be performed within the United States. By stating in new 8 CFR 214.2(h)(4)(ii) that an employer must "[engage] the beneficiary to work within the United States, and ha[ve] a bona fide, non-speculative job offer for the beneficiary," DHS seeks to provide more meaningful requirements for the definition of "United States employer," consistent with statutory references to the intending or importing employer petitioning for an alien to perform services in a specialty occupation.[76]

New 8 CFR 214.2(h)(4)(ii) will make it clear that a petitioner must have non-speculative employment for the beneficiary at the time of filing.[77] At the time of filing, the petitioner must establish that a bona fide job offer exists and that actual work will be available as of the requested start date.[78] If the petitioner does not have any work available, then it cannot

[76] Consistent with the existing rule, this language does not and will not prohibit H-1B nonimmigrants from travelling internationally.
[77] Cf. 8 CFR 103.2(b)(1) (eligibility must be established at the time of filing).
[78] The requested start date as indicated on the H-1B petition in this context may differ from when an H-1B nonimmigrant is considered to "enter into employment" for purposes of receiving required pay under DOL regulations. See 20 CFR 655.731(c)(6), section 212(n) of the INA. While DOL regulations provide for a limited period of time for the employer to place the beneficiary on the payroll, that is a separate rule pertaining to the employer's wage obligation under section 212(n) of the INA and does not pertain to the petitioner's obligation under section 214 of the INA and new 8 CFR 214.2(h)(4)(ii) to establish that work is available for the beneficiary to

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reasonably engage the beneficiary "to work within the United States" in order to qualify as a United States employer at the time of filing. See 8 CFR 214.2(h)(4)(ii).

The agency long held and communicated the view that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position, stating that historically, USCIS (or the Service, as it was called at the time) has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment.[79] This proposed rule explained that the H-1B classification was not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts.[80] Speculative employment undermines the integrity and a key goal of the H-1B program, which is to help U.S. employers obtain the skilled workers they need to meet their business needs, subject to annual numerical limitations, while protecting the wages and working conditions of U.S. workers. Further, USCIS cannot reasonably ascertain whether the beneficiary will be employed in a specialty occupation if the employment is speculative.

Note, however, that establishing non-speculative employment does not amount to demonstrating non-speculative daily work assignments through the duration of the requested validity period. DHS is not by this rule requiring employers to establish non-speculative and

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perform as of the start date requested by the petitioner. The requirement in new 8 CFR 214.2(h)(4)(ii) will be met if work is available for the beneficiary as of the start date of intended employment requested on the H-1B petition.

[79] Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214).

[80] Id. See also GAO/HEHS-00-157, supra at 10 ("The petition is required to contain the necessary information to show that a bona fide job exists…."); Serenity Info Tech v. Cuccinelli, 2020 WL 2544534, at *13 (N.D. Ga. 2020) ("Demonstrating that the purported employment is actually likely to exist for the beneficiary is a basic application requirement….").

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specific assignments for each and every day of the proposed period of employment.[81] Again, under new 8 CFR 214.2(h)(4)(ii), a petitioner must demonstrate, at the time of filing, availability of actual work as of the requested start date.

3. Clarifying the "Employer-Employee Relationship"

Third, DHS will remove the phrase "as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee" from the current definition of "United States employer," and replace that phrase with a separate, more extensive definition of "employer-employee relationship" based on USCIS' interpretation of existing common law. See new 8 CFR 214.2(h)(4)(ii). These revisions will clarify the test for establishing the requisite "employer-employee relationship" and eliminate the ambiguity and confusion created by the existing regulation.

The term "employer-employee relationship" at 8 CFR 214.2(h)(4)(ii) is not adequately defined. The phrase in that provision which reads, "as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee," does not give sufficient guidance. For example, it is unclear whether the five factors are entirely disjunctive, such that the test is met if any one factor is met, or whether the last factor ("or otherwise control") is merely disjunctive of the fourth factor ("supervision"), such that the first three factors ("hire, pay, fire")

[81] See ITServe Alliance, Inc. v. Cissna, 443 F.Supp.3d 14, 19 (D.D.C. Mar. 10, 2020) (the U.S. District Court for the District of Columbia, in considering a requirement that an H-1B petitioner establish non-speculative assignments for the entire time requested in a petition, explained that "very few, if any, U.S. employers would be able to identify and prove daily assignments for the future three years for professionals in a specialty occupation" and that "[n]othing in [the definition of 'specialty occupation'] requires specific and non-speculative qualifying day-to-day assignments for the entire time requested in the petition."); Serenity, 2020 WL 2544534, at *13 (citing ITServe). Speculative employment should not be confused with employment that is contingent on petition approval, visa issuance (when applicable), and the grant of H-1B status. DHS recognizes that employment may be actual, but contingent on petition approval and the alien being granted H-1B status.

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must always be met.[82] Although some courts have viewed this phrase as establishing that any single listed factor, such as pay, in and of itself is sufficient to establish the requisite control,[83] DHS agrees with the Fifth Circuit's statement in Defensor that the conjunctive interpretation, where "hire, pay, fire, supervise" are read together "as one prong of the test and 'otherwise control the work' is…viewed as an independent prong of the test accords better with the commonsense notion of employer."[84] DHS firmly disagrees with the disjunctive interpretation because it leads to the illogical result of virtually any petitioner satisfying the definition, because H-1B petitioners are generally required to submit an LCA that includes an attestation that the petitioner will pay the beneficiary at least the required wage. If the regulation is read to set forth a five-factor disjunctive test, then arguably all petitioners who submit an LCA would satisfy the pay factor, such that reference to other factors would be superfluous in any case where the petitioner is required to submit an LCA.

In the absence of specific, clear, and relevant statutory or regulatory definitions, USCIS has interpreted these terms consistent with its understanding of current common law. In 2010, USCIS provided clarifying policy guidance regarding the employer-employee regulation and factors based on the common law that USCIS officers should consider when adjudicating H-1B

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[82] See, e.g., Defensor, 201 F.3d at 388 ("Under § 214.2(h)(4)(ii)(2), an employer is someone who '[h]as an employer-employee relationship with respect to the employees ..., as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee.' It is unclear whether Vintage's ability to simply 'hire' or 'pay' an employee is sufficient standing alone to grant Vintage employer status under this definition. Another interpretation would be that 'hire, pay, fire, supervise' are to be read conjunctively as one prong of the test and 'otherwise control the work' is to be viewed as an independent prong of the test. Under the latter interpretation, merely being able to 'hire' or 'pay' an employee, by itself, would be insufficient to grant employer status to an entity that does not also supervise or actually control the employee's work….[T]he second interpretation accords better with the commonsense notion of employer…")

[83] See, e.g., ITServe, 2020 WL 1150186, at *17 ("The use of 'or' distinctly informs regulated employers that a single listed factor can establish the requisite 'control' to demonstrate and employer-employee relationship. This formulation makes evidence that there are multiple ways to demonstrate employer control, that is, by hiring or paying or firing or supervising or 'otherwise' showing control.").

[84] See Defensor, 201 F.3d at 388 (emphasis added).

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petitions.[85] While the listed factors were based on the agency's interpretation of the common law, they were specifically tailored to the H-1B program based on the agency's expertise and experience dealing with challenges posed particularly by cases where the beneficiary was placed at a third-party worksite.[86] This policy guidance remained in effect for more than a decade and was only recently rescinded in response to a recent court decision finding the policy guidance, as applied, to be a new substantive rule that required rulemaking in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.[87] This interim final rule will restore, with additional clarification, the policy that existed since 2010 and only recently was rescinded due to a judicial ruling on procedural grounds.

USCIS interprets the term "employer-employee relationship" to be the "conventional master-servant relationship as understood by common-law agency doctrine."[88] That doctrine, as explained by the Supreme Court, requires an evaluation of the hiring party's right to control the manner and means by which the product is accomplished "among the other factors" relevant to the employer-employee relationship.[89] As the common law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive."[90]

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[85] USCIS Policy Memorandum HQ 70/6.2.8, Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements (Jan. 8, 2010). This memorandum was superseded and archived on June 17, 2020. Therefore, it can be found in the Supporting Documents accompanying this interim final rule.
[86] For example, the 2010 memorandum's listed factor of "does the petitioner supervise the beneficiary and is such supervision off-site or on-site" was an elaboration of the common-law factor of "the location of the work," Darden, 503 U.S. at 323-24, but was tailored to issues commonly presented by H-1B cases where the petitioner claimed to supervise the beneficiary, but was not physically located at the same worksite as the beneficiary and end-client.
[87] See, e.g., ITServe, 2010 WL 1150186, at *2 ("The current CIS interpretation of the employer-employee relationship requirement is inconsistent with its regulation, was announced and applied without rulemaking, and cannot be enforced.").
[88] See Clackamas Gastroenterology Assocs., P.C. v. Wells, 538 U.S. 440, 445 (2003); Nationwide Mutual Ins. Co. v. Darden, 503 U.S. 318, 323 (1992) (quoting Cmty. for Creative Non–Violence v. Reid, 490 U.S. 730 (1989)).
[89] Darden, 503 U.S. at 323-24.
[90] Id. at 324 (quoting NLRB v. United Ins. Co. of Am., 390 U.S. 254, 258 (1968)); see also Clackamas, 538 U.S. at 445.

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Foremost, in addition to restoring through this rule the longstanding policy that USCIS has applied until recently but had rescinded in order to reduce the potential for additional APA-based litigation, the revised regulation will make clear that USCIS will assess and weigh all relevant aspects of the relationship. See new 8 CFR 214.2(h)(4)(ii). DHS does not believe that any one factor should be decisive. To do otherwise could be construed as contrary to the Supreme Court's declaration in Nationwide Mutual Ins. Co. v. Darden that "all of the incidents of the relationship must be assessed and weighed with no one factor being decisive."[91]

Paragraph (1) of the revised "employer-employee" definition lists non-exhaustive factors to be considered in the totality of the circumstances in cases where the H-1B beneficiary does not possess an ownership interest in the petitioning organization or entity. The revised regulation lists the following factors: (i) whether the petitioner supervises the beneficiary and, if so, where such supervision takes place; (ii) where the supervision is not at the petitioner's worksite, how the petitioner maintains such supervision; (iii) whether the petitioner has the right to control the work of the beneficiary on a day-to-day basis and to assign projects; (iv) whether the petitioner provides the tools or instrumentalities needed for the beneficiary to perform the duties of employment; (v) whether the petitioner hires, pays, and has the ability to fire the beneficiary; (vi) whether the petitioner evaluates the work-product of the beneficiary; (vii) whether the petitioner claims the beneficiary as an employee for tax purposes; (viii) whether the petitioner provides the beneficiary any type of employee benefits; (ix) whether the beneficiary uses proprietary information of the petitioner in order to perform the duties of employment; (x) whether the beneficiary produces an end-product that is directly linked to the petitioner's line of business; and (xi) whether the petitioner has the ability to control the manner and means in which the work

[91] 503 U.S. at 324.

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product of the beneficiary is accomplished. By listing these factors out, DHS is making clear that no single factor is dispositive and that all factors must be taken into consideration to the extent applicable and appropriate to the facts of the specific case.

While the new regulation will clarify the employer-employee relationship test, it is largely consistent with past USCIS policy and practice and the standard familiar to USCIS officers and H-1B petitioners.[92] Specifically and as mentioned earlier, in 2010, USCIS issued a policy memorandum, "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements"[93] which explained the agency's approach of relying on common law doctrine, as articulated by the Supreme Court, to interpret the existing regulatory provision. This memorandum elaborated on a number of factors that USCIS considers particularly relevant in the H-1B context, based on its interpretation of the common law and the facts typically present in H-1B adjudications based on USCIS' experience. New 8 CFR 214.2(h)(4)(ii) incorporates the same factors listed in this memorandum with two exceptions, neither of which would have a significant impact on the adjudication of H-1B petitions. More specifically, the 2010 memorandum stated the third factor as, "Does the petitioner have the right to control the beneficiary on a day-to-day basis if such control is required?" In clarifying the factors in this regulation, DHS is not including the misleading phrase, "if such control is required," that was previously included in the 2010 USCIS policy guidance because this phrase

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[92] As early as 2009, various Administrative Appeals Office (AAO) non-precedent decisions began relying on the common law doctrine, as articulated by the Supreme Court, to analyze the regulatory provision for employer-employee relationship at 8 CFR 214.2(h)(4)(ii). See, e.g., (Identifying Information Redacted by Agency) Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. S 1101, 2009 WL 3555560, at *2-3 (applying the common law test as described by the Supreme Court to determine the employer-employee relationship); (Identifying Information Redacted by Agency) Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. S 1101, 2009 WL 3555481, at *2-3 (same); (Identifying Information Redacted by Agency) Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. S 1101, 2009 WL 4982248, at *7-8 (same).

[93] See supra note 85.

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implies that control is not necessarily required. DHS believes that the petitioner should be required to demonstrate control, which includes, but is not limited to, the inquiry of whether the petitioner has the right to control day-to-day.

The 2010 memorandum contained another potentially confusing or inaccurate statement in footnote 6 that the employer-employee relationship "hinges upon the right to control." USCIS now believes that this statement places an undue emphasis on the right to control and that the best interpretation of existing case law is that "right to control" is just one factor in the overall common law analysis rather than the determinative test. Specifically, the Supreme Court in Darden stated:

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party (emphasis added).[94]

While the first sentence suggests that the test is right to control, the second sentence suggests that right to control is one of many factors, rather than the test. Further, in Clackamas Gastroenterology Assocs., P.C. v. Wells, the Supreme Court focused on "the common-law element of control [a]s the principal guidepost that should be followed in this case," and proceeded to analyze "'the extent of control' that one may exercise over the details of the work of the other,"[95] which again suggests that the test does not hinge on the right to control. In

[94] Darden, 503 U.S. at 323-24.
[95] Clackamas, 538 U.S. at 448.

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Clackamas, the Supreme Court also emphasized that the employer-employee relationship depends on all incidents of the relationship, with no one factor being decisive.[96] As the quoted language in these cases suggests, the employer-employee relationship does not hinge upon any single factor. Thus, the 2010 memorandum's emphasis on the right to control arguably is in tension with these Supreme Court decisions. DHS believes that the new definitions in 8 CFR 214.2(h)(4)(ii), along with this explanation, will clarify that the right to control is not determinative and will not, in itself, be sufficient to demonstrate an employer-employee relationship, consistent with common law.

DHS believes that this clarification of "right to control" as one factor rather than a determinative factor is not a clear departure from the way USCIS has generally applied the common law test over many years. While the rescinded 2010 memorandum indicated that the determination hinges on the right to control, the analysis has always required an evaluation of the totality of the facts involved, including, in part, the degree to which the petitioner exercises actual control over the beneficiary's work. Some officers have placed more weight on the relevance of the actual control exercised, or to be exercised, when making the determination. For example, various Administrative Appeals Office (AAO) non-precedent decisions, citing the rule established in Darden, have stated that we "…must examine who has actual control, not just the right to control, the beneficiary's work."[97] Other officers may have placed less weight on the relevance of the actual control exercised, or to be exercised, and more weight on the petitioner's legal right to control the beneficiary's work. In 2018, USCIS provided further clarification on its

[96] 538 U.S. at 451 (quoting Darden and NLRB).
[97] See, e.g., Matter of K-I-S- Inc., 2019 WL 2090064, at *4 (AAO Apr. 24, 2019) (citing Darden, 503 U.S. at 323); Matter of A- Inc., 2017 WL 3034820, at *6 (AAO June 29, 2017) (observing that "if mid-vendors or the end-client exercise actual control over his work on a daily basis, then we cannot find the Petitioner to be the Beneficiary's 'employer' for H-1B purposes" (emphasis in original)).

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website regarding the implementation of the 2010 policy memorandum interpreting the employment relationship regulatory requirement:

> Although the 2010 memorandum states that the "employer-employee relationship hinges on the right to control" the beneficiary's employment, the factors that are generally taken into consideration when assessing the relationship primarily focus on who actually takes/will take the action rather than the right to take certain action. For example, when assessing whether the petitioner provides or will provide the tools or instrumentalities for the beneficiary, the primary focus is not whether the petitioner has the right to provide such tools or instrumentalities, but whether the petitioner actually provides or will provide such items.[98]

Accordingly, as reflected on the USCIS website in the 2018 clarification, whether the petitioner actually controls the beneficiary's employment has been an important factor in the overall analysis.

Therefore, DHS believes that this provision will not represent a clear change in longstanding past practice.[99] The revised provision, however, will clarify that the employer-employee relationship determination will be based on the totality of the circumstances. USCIS will analyze the applicability of the relevant factors listed in the definition based on the specific evidence provided by the petitioner when making the employment relationship determination, consistent with its historical past practice. USCIS will assess and weigh each factor as it exists or will exist "in the reality of the actual working relationship."[100] Thus, even though the "right to control the work of the beneficiary" is listed as a relevant factor, it is one among many factors

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[98] See https://www.uscis.gov/news/public-releases-topic/business-immigration/questions-answers-memoranda-establishing-employer-employee-relationship-h-1b-petitions.

[99] While USCIS rescinded the 2010 and 2018 policy guidance on June 17, 2020, and has abstained from applying the common law analysis in its adjudication of employer-employee relationship, this is merely a temporary change to allow for rulemaking to occur and avoid continued litigation of this issue. See USCIS Policy Memorandum PM-602-0114, Rescission of Policy Memoranda (June 17, 2020), available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2020/PM-602-0114_ITServeMemo.pdf. This interim practice, however, has only been for a short period of time and certainly not long enough to create any reliance interests based on this interim practice.

[100] NLRB, 390 U.S. at 259; see Darden, 503 U.S. at 323-24.

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that will be weighed. USCIS will also consider other factors, as noted above, including the petitioner's ability to control the manner and means in which the work product of the beneficiary is accomplished. Similarly, when assessing whether the petitioner provides or will provide the tools or instrumentalities for the beneficiary, USCIS believes that the primary focus should not be on whether the petitioner has the right to provide such tools or instrumentalities, but whether the petitioner actually provides or will provide such items.[101] While another person or entity may have the right to provide tools or instrumentalities to the worker, the relevant point of focus is on who will actually provide the tools or instrumentalities. For example, if the tools or instrumentalities will be provided by the H-1B beneficiary or end-client, that fact may weigh against a finding that the petitioner will be the employer. If, however, the petitioner will provide the tools and instrumentalities for the beneficiary to perform the work, that fact would weigh in favor of a finding that the petitioner will be the employer. Overall, the petitioner will be required to demonstrate that it can actually take the claimed actions when it comes to these factors. It will not be enough for a petitioner to simply show that it retains the right to control.[102]

Paragraph (2) of the revised provision lists additional factors that would be considered in cases where the H-1B beneficiary possesses an ownership interest in the petitioning organization or entity. These factors include: (i) whether the petitioning entity can hire or fire the beneficiary

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[101] See Darden, 503 U.S. at 323-324 (listing "the source of the instrumentalities and tools," as opposed to the right to provide such instrumentalities and tools).

[102] DHS believes that this new regulation is not necessarily inconsistent with the DOL definition of "Employed, employed by the employer, or employment relationship" at 20 C.F.R. 655.715. Although the DOL regulation states that "the key determinant is the putative employer's right to control the means and manner in which the work is performed," it also recognizes that "[A]ll of the incidents of the relationship must be assessed and weighed with no one factor being decisive." Further, in promulgating the regulation, DOL acknowledged that a list of factors based on the common law provided a "useful framework" for analyzing an employment relationship. Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80110, 80139 (Dec. 20, 2000). To the extent that there are inconsistencies, DHS believes the common law supports the proposition that right to control alone is not sufficient to establish an employer-employee relationship, and that all incidents of the relationship must be considered in making the determination.

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or set the rules and parameters of the beneficiary's work, (ii) whether and, if so, to what extent the petitioner supervises the beneficiary's work, (iii) whether the beneficiary reports to someone higher in the petitioning entity, (iv) whether and, if so, to what extent the beneficiary is able to influence the petitioning entity, (v) whether the parties intended that the beneficiary be an employee, as expressed in written agreements or contracts, and (vi) whether the beneficiary shares in the profits, losses, and liabilities of the organization or entity. All of these are additional factors, meaning that they would supplement, not replace, the other factors listed in paragraph (1) of the revised definition. These additional factors mirror the Supreme Court's analysis in Clackamas, consistent with DHS's position that the term "employer," undefined in the statute, should be interpreted consistent with the common law. These additional factors, as provided in Clackamas, are also familiar to USCIS officers and H-1B petitioners given the specific references to Clackamas in the 2010 policy guidance that was in effect until June 2020.[103]

DHS recognizes that, as a general principle of law, a corporation is a separate legal entity from its shareholders.[104] Nevertheless, DHS may look beyond the corporate entity to assess whether a valid employment relationship exists between the petitioner and the beneficiary such that the petitioner, rather than the beneficiary, truly qualifies as an "employer" pursuant to the statute. Absent unusual factual circumstances, a beneficiary who is the sole or majority shareholder of the petitioning entity, does not report to anyone higher within the organization, is not subject to the decisions made by a separate board of directors, and has veto power over decisions made by others on behalf of the organization, will likely not be considered an "employee" of that entity for H-1B purposes. On the other hand, if a beneficiary is bound by

[103] 538 U.S. at 448-449.
[104] See Matter of Aphrodite Invs. Ltd., 17 I&N Dec. 530 (Comm'r 1980); Matter of Tessel, Inc., 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980).

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decisions (including the decision to terminate the beneficiary's position) made by a separate board of directors or similar managing authority, and does not have veto power (including negative veto power) over those decisions, then the mere fact of his or her ownership interest will not necessarily preclude the beneficiary from being considered an employee.

USCIS considered alternatives for defining the term "employer[,]" including revising the current regulatory definition to delete and replace the disjunctive "or" with "and[,]" or listing the common law factors verbatim from existing case law. USCIS declined to simply delete and replace the disjunctive "or[,]" and otherwise retain the current regulation, as it fails to provide the same level of clarification and guidance as the new definition listing factors relevant to employer-employee relationship determinations, including those where the beneficiary has an ownership interest in the petitioner. USCIS also declined simply to cite to the existing case law or list the factors verbatim from the existing case law. USCIS believes that its officers and H-1B petitioners are most familiar with the general factors as articulated in the rescinded 2010 policy memorandum. USCIS seeks to restore the policy that has guided H-1B adjudications of this issue for more than a decade, with certain changes for added clarity, and believes that the definition in this interim final rule best accomplishes that goal with the least amount of potential disruption for USCIS officers and H-1B petitioners. USCIS rescinded the 2010 policy memorandum because of a recent court decision finding the memorandum, as applied, imposed a substantive rule that departs from the existing regulation, thereby failing to comply with the APA's rulemaking requirements. This interim final rule will restore the policy as articulated in the 2010 memorandum, with additional clarifications, in compliance with the APA.

DHS recognizes that some petitioners may have developed a reliance interest based on H-1B adjudications subsequent to the June 2020 rescission of the 2010 policy memorandum. DHS

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believes, however, that the reliance interest some petitioners may have based on recent adjudications does not outweigh the importance of restoring guidance, with additional clarification, that has existed since 2010 and on which USCIS officers and H-1B petitioners have relied to assess eligibility for H-1B classification. The disjunctive wording of the current regulation is confusing for USCIS officers and H-1B petitioners alike, and DHS believes that any reliance interest that may have developed in the short time since June 2020 should yield to restoring guidance that is more detailed and less ambiguous for all involved in the H-1B program.

D. Corroborating Evidence of Work in a Specialty Occupation

Pursuant to section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), an H-1B nonimmigrant must be coming temporarily to the United States to perform services in a specialty occupation. USCIS interprets this statutory provision to require that the petitioner must actually have work in the specialty occupation listed in the H-1B petition available for the beneficiary as of the start date of intended employment. Therefore, DHS is making it clear at new 8 CFR 214.2(h)(4)(iv)(C) that the petitioner must establish, at the time of filing, that it has actual work in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. New 8 CFR 214.2(h)(4)(iv)(C) complements the revised definition of "United States employer" at new 8 CFR 214.2(h)(4)(ii) requiring evidence of a bona fide, non-speculative job offer. Read together, both new provisions reinforce that speculative employment is not permitted in the H-1B program. As stated earlier, USCIS cannot reasonably ascertain whether the beneficiary will be employed in a specialty occupation if the

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employment is speculative.[105] USCIS must assess the actual services to be performed to determine whether the alien will be performing services in a specialty occupation. That determination necessarily requires review and analysis of the actual work to be performed and cannot be based on speculation.

Importantly, new 8 CFR 214.2(h)(4)(iv)(C) clarifies the types of corroborating evidence petitioners must submit in third-party placement cases. Based on USCIS' program experience, petitioners who regularly place their workers at third-party worksites often submit uncorroborated statements describing the role the H-1B beneficiary will perform at the third-party worksite. Such statements, without additional evidence, are generally insufficient to establish by a preponderance of the evidence that the H-1B beneficiary will actually perform work in a specialty occupation. Moreover, such uncorroborated statements are generally insufficient to establish that the petitioner will have and maintain an employer-employee relationship while the beneficiary works at the third-party worksite.[106] Therefore, where a beneficiary will be placed at one or more third-party worksites, DHS will require the petitioner to submit evidence such as contracts, work orders, or other similar evidence (such as a detailed letter from an authorized official at the third-party worksite) to establish that the beneficiary will perform services in a specialty occupation at the third-party worksite(s), and that the petitioner

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[105] Again, speculative employment should not be confused with employment that is contingent on petition approval, visa issuance (when applicable), and the grant of H-1B status. DHS recognizes that employment may be actual, but contingent on petition approval and the alien being granted H-1B status.

[106] See Part II.A. above, for descriptions of program violations and other issues arising with third-party placements. See also 144 Cong. Rec. E2323-01, E2323 , 1998 WL 785735 (stating "[t]he employers most prone to abusing the H-1B program are called 'job contractors' or 'job shops'. Much, or all, of their workforces are composed of foreign workers on H-1B visas. Many of these companies make no pretense of looking for American workers and are in business to contract their H-1Bs out to other companies. The companies to which the H-1Bs are contracted benefit in that the wages paid to the foreign workers are often well below what comparable Americans would receive. Also, the companies don't have to shoulder the obligations of being the legally recognized employers-the job contractors/shops remain the official employers") (statement of Rep. Lamar Smith, then chairman of the Subcommittee on Immigration and Claims).

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will have an employer-employee relationship with the beneficiary. See new 8 CFR 214.2(h)(4)(iv)(C).

If submitting contracts, the petitioner should include both the master services agreement and the accompanying work order(s), statement(s) of work, or other similar legally-binding agreements under different titles. These contracts should be signed by an authorized official of the third-party entity that will use the beneficiary's services. In general, the master services agreement (also commonly called a supplier agreement) sets out the essential contract terms and provides the basic framework for the overall relationship between the parties.[107] The work order or statement of work provides more specific information, such as the scope of services to be performed, details about the services, and the allocation of responsibilities among the parties.[108] The petitioner may also submit a detailed letter signed by an authorized official of the ultimate end-client company or companies where the beneficiary will actually work. Other types of corroborating evidence may include technical documentation, milestone tables, marketing analyses, cost-benefit analyses, brochures, and funding documents, insofar as this evidence corroborates that the petitioner will have an employer-employee relationship with the beneficiary, and that the beneficiary will perform services in a specialty occupation at the third-party worksite(s). Overall, the totality of the evidence submitted by the petitioner must be detailed enough to provide a sufficiently comprehensive view of the work available and substantiate, by a preponderance of the evidence, the terms and conditions under which the work will be performed. Documentation that merely sets forth the general obligations of the parties to

[107] See § 49:35. Contract scope—Master services agreement, 3 Successful Partnering Between Inside and Outside Counsel § 49:35.
[108] See § 49:37. Contract scope—Statements of work, 3 Successful Partnering Between Inside and Outside Counsel § 49:37.

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the agreement, or which do not provide specific information pertaining to the actual work to be performed, would generally be insufficient.[109]

Further, in cases where the beneficiary is staffed to a third-party, the submitted corroborating documents should generally demonstrate the requirements of the position as imposed by the third-party entity (commonly referred to as the "end-client") that will use the beneficiary's services. As noted in Defensor v. Meissner, if only the petitioner's requirements are considered, "then any beneficiary with a bachelor's degree could be brought into the United States to perform work in a non-specialty occupation, so long as that person's employment was arranged through an employment agency that required all [staffed workers] to have bachelor's degrees."[110] This result would be completely opposite of the plain purpose of the statute and regulations, which is to limit H-1B visas to positions which require specialized education to perform duties that require theoretical and practical application of a body of highly specialized knowledge.[111] However, not all third-party placements would necessarily require such evidence. For example, where the beneficiary is placed at a third-party's worksite, but performs work as part of a team of the petitioner's employees, including an on-site supervisor employed by the petitioner and who manages the work of the petitioner's employees, the requirements of the position as established by the petitioner may be determinative. USCIS will make the determination as to whether the requirements of the petitioner or third-party entity are controlling

[109] When requested evidence may contain trade secrets, for example, the petitioner may redact or sanitize the relevant sections to provide a document that is still sufficiently detailed and comprehensive, yet does not reveal sensitive commercial information. Although a petitioner may always refuse to submit confidential commercial information if deemed too sensitive, the petitioner must also satisfy the burden of proof. Cf. Matter of Marques, 16 I&N Dec. 314, 316 (BIA 1977) ("The respondent had every right to assert his claim under the Fifth Amendment. However, in so doing he runs the risk that he may fail to carry his burden of persuasion with respect to his application for discretionary relief.")

[110] 201 F.3d at 387–88.

[111] Id.

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on a case-by-case basis, taking into consideration the totality of the relevant circumstances, as described above.

Finally, new 8 CFR 214.2(h)(4)(iv)(C) will also state that, in accordance with 8 CFR 103.2(b) and paragraph 214.2(h)(9) of this section, USCIS may request copies of contracts, work orders, or other similar corroborating evidence on a case-by-case basis in all cases, regardless of where the beneficiary will be placed. While USCIS already has general authority to request any document it deems necessary, this additional provision will make it clear that USCIS has authority to specifically request contracts and other similar evidence. This provision will apply to any H-1B petition, including a petition where the petitioner indicates that the beneficiary will exclusively work in-house. For example, if a petitioner indicates that the beneficiary will develop system software for a client but will perform such work exclusively at the petitioner's premises, USCIS may request a copy of the client contract or other corroborating evidence to confirm that the relevant work exists to ensure that the beneficiary will be employed in a specialty occupation.

E. Maximum Validity Period for Third-Party Placements

While DHS recognizes that third-party arrangements may generally be part of a legitimate business model, this business model presents more challenges in the context of the H-1B program and USCIS' ability to better ensure eligibility and compliance. Accordingly, DHS will set a 1-year maximum validity period for all H-1B petitions in which the beneficiary will be working at a third-party worksite. See new 8 CFR 214.2(h)(9)(iii)(A)(1). To make the determination of whether a beneficiary will be working or placed at a third-party worksite, USCIS will rely on information contained in the H-1B petition and any accompanying LCA,

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which must identify each worksite where the beneficiary will work and the name of any third-party entity (secondary entity) at each worksite.[112]

Although the maximum period of authorized admission for an H-1B nonimmigrant has been established by Congress in section 214(g)(4) of the INA, 8 U.S.C. 1184(g)(4), Congress did not specify the validity period for an approved H-1B visa petition. Congress authorized DHS to promulgate regulations setting the validity period, including a range of validity periods not to exceed the maximum period of authorized admission. Id. In relevant part, section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), states, "the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary] may by regulations prescribe. . . ." See also section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1) ("The question of importing any alien as [an H-1B nonimmigrant] in any specific case or specific cases shall be determined by [DHS] … upon petition of the importing employer.… The petition shall be in such form and contain such information as [DHS] shall prescribe."). Under current regulations at 8 CFR 214.2(h)(9)(iii), the maximum validity period an H-1B petition may be approved is "up to three years," which necessarily allows for lesser periods as well. USCIS has an established practice of approving H-1B petitions for less than 3 years for various reasons, such as to conform to the dates of the accompanying LCA. See id. Further, DHS regulations already limit the validity period to 1 year in cases of temporary licensure. See 8 CFR 214.2(h)(4)(v)(C). Likewise, DHS will now limit the validity period for third-party placement petitions to a maximum of 1 year.

[112] The Labor Condition Application for H-1B, H-1B1 and E-3 Nonimmigrant Workers Form ETA-9035CP – General Instructions for the 9035 & 9035E, defines "secondary entity" as "another entity at which or with which LCA workers will be placed during the period of certification." See https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Form%20ETA-9035CP%20Instructions.pdf.

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DHS believes that the 1-year limit is reasonable given the nature of third-party placements. In general, the nature of contracting work leads to beneficiaries being more transient, as well as greater potential for changes to the terms and conditions of employment. Specifically, these are situations where the petitioner is not the end-user of the H-1B worker's services, and the beneficiary performs work for another entity at that other entity's worksite. DHS believes that enhanced monitoring of compliance is valuable and needed to ensure that the beneficiary is being employed consistent with the terms and conditions of the petition approval.[113] The fact that 6 to 12 month work orders are common in petitions involving third-party placements, based on USCIS' program experience and review of evidence in such cases,[114] supports DHS's belief that limiting the validity period to up to one year is reasonable as it more closely aligns with the length of time that a beneficiary would generally be assigned under a particular work order. It is also common based on USCIS' program experience that, despite the requirement that the petitioner must file an amended or new H-1B petition with the corresponding LCA when there is a material change in the terms and conditions of employment,[115] once a certain work order expires, a petitioner may obtain another work order

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[113] This includes, among other terms and conditions, that the petitioner is maintaining the required employer-employee relationship with the beneficiary. Enhanced monitoring of the employer-employee relationship is particularly important in cases where a staffing company uses H-1B workers to fill positions previously occupied by the petitioner's in-house employees.

[114] See, e.g., Matter of I-S-S- LLC, Appeal of California Service Center Decision Form I-129, Petition for a Nonimmigrant Worker, 2017 WL 959844, at *5 (the Petitioner stated in its support letter that "industry convention is to issue work orders for a short duration and continue extending them through project completion."); Matter of K-T-, Inc. Appeal of Vermont Service Center Decision Form I-129, Petition for a Nonimmigrant Worker, 2019 WL 1469913, at *4 (the Petitioner asserted that contract extensions for six-month intervals are common within the IT consulting industry); (Identifying Information Redacted by Agency) Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. S 1101, 2013 WL 4775077, at *8 (on appeal, counsel states that in the petitioner's industry, it is standard to issue work orders or statements of work for short-term project, which typically last for six to nine months, and that it "is neither typical nor normal for a company to have a [statement of work] that covers a three-year period of time.").

[115] See 8 CFR 214.2(h)(2)(i)(E) (requiring that a petitioner file an amended or new petition to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition), (11)(i)(A) (requiring the petitioner to "immediately notify the [agency] of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility"); Matter of Simeio Solutions, LLC, 26 I&N Dec. 542, 547 (AAO 2015).

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under changed terms and conditions, including a different work location, or even assign the beneficiary to a different client, without timely filing the required amended or new petition. Such unaccounted changes increase the risk of violations of H-1B program requirements. DHS believes that continuing to approve third-party petitions for longer periods of time, including the maximum three-year validity period, would greatly diminish USCIS' ability to properly monitor program compliance in cases where fraud and abuse are more likely to occur.

DHS considered an alternative of limiting validity periods only when the beneficiary would "primarily" work at a third-party worksite. DHS believes that this alternative would allow petitioners to easily avoid the limited validity period provision. For example, if "primarily" were defined to mean more than half of the time, the petitioner could claim that a beneficiary would not work 51% of the time (and thus not "primarily") at a third-party worksite to circumvent this limitation. This would undermine the effectiveness of the rule. It would also create additional burdens on DHS in that it would require adjudicators to review and evaluate evidence regarding where a beneficiary would "primarily" be placed. Further, DHS believes that excluding any location that would not require an LCA from the definition of "worksite" provides sufficient flexibility in the application of this rule.[116] Therefore, DHS rejected the alternative of limiting validity periods only when the beneficiary would "primarily" work at a third-party worksite.

DHS believes that limiting approvals for third-party placement petitions to a maximum of 1 year will allow the agency to more consistently and thoroughly monitor a petitioner's and beneficiary's continuing eligibility, including whether the beneficiary has maintained H-1B status, whether the beneficiary's position remains a specialty occupation (e.g., whether the terms

[116] For example, DOL's definition of worksite (which DHS adopts) excludes locations where an H-1B nonimmigrant's job functions may necessitate frequent changes of location with little time spent at any one location, such as jobs that are peripatetic in nature. See 20 CFR 655.715.

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of the contract or placement have changed), and whether any changes in the nature of the placement interfere with the necessary employer-employee relationship between the petitioner and the beneficiary, through the adjudication of more frequent petitions requesting an extension of status.[117] Additionally, it will reduce the potential for employer violations. Based on the agency's experience in administering the H-1B program, significant employer violations, including placing beneficiaries in non-specialty occupation jobs, may be more likely to occur when petitioners place beneficiaries at third-party worksites.[118] In many instances, the relationship between the petitioning employer and the H-1B beneficiary is more attenuated when the beneficiary is working at a third-party worksite. Petitioners who contract H-1B workers out to another company at a third-party worksite generally have less visibility into the actual work being performed, including whether it is the appropriate work for a specialty occupation, the hours worked, and the relationship between the beneficiary and his or her on-site supervisor. As the GAO stated in its 2011 report to Congress, DOL's Wage and Hour investigators reported that a large number of the complaints they received were related to the activities of staffing companies, where the H-1B beneficiary is placed at a third-party worksite.[119]

DHS believes that fraud and abuse is more likely to occur in cases involving third-party placements, as evidenced by the higher rate of noncompliance in those cases. Noncompliance is determined when an immigration officer conducts a compliance review to ensure that the

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[117] The approval of a new or amended petition for a beneficiary placed at a third-party worksite will also be limited to a maximum of 1 year. See 8 CFR 214.2(h)(2)(i)(E); see also Matter of Simeio Solutions, LLC, supra at 547.
[118] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Policy Research Division (2019). Summary of H-1B Site Visits Data (showing a higher rate of noncompliance for petitioners who indicated the beneficiary works at an off-site or third-party location compared to worksites where the beneficiary does not work off-site). See also, e.g., U.S. Gov't Accountability Office, GAO-11-26, H-1B Visa Program: Reforms are Needed to Minimize the Risks and Costs of Current Program (2011) (describing the lack of accountability and types of common violations for staffing companies).
[119] GAO-11-26, supra.

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petitioner (employer) and beneficiary (job applicant or other potential employee) follow the terms and conditions of their petition.[120] This process includes reviewing the petition and supporting documents, researching information in public records and government systems, and, where possible, interviewing the petitioner and beneficiary through unannounced site visits.[121] DHS analyzed a sampling of H-1B petitions filed during FYs 16-19 (through March 27, 2019) and found that the noncompliance rate for petitioners who indicated the beneficiary works at an off-site or third-party location is much higher compared to worksites where the beneficiary does not work off-site (21.7 percent vs 9.9 percent).[122] DHS believes that limiting the maximum validity period for petitions where beneficiaries are placed at third-party worksites is reasonable given this significantly higher noncompliance rate, and so will also encourage compliance with the regulations and improve the program's overall integrity.

When approving an H-1B petition involving third-party placement, USCIS will generally consider granting the maximum validity period of 1 year, barring a separate consideration consistent with the controlling statutes and DHS regulations (such as the beneficiary reaching the 6-year maximum period of authorized admission pursuant to section 214(g)(4) of the INA, and not being eligible for an exemption from that 6-year limit) compelling a shorter approval period. This general practice will have the added benefit of providing petitioners who provide sufficient evidence a degree of certainty with respect to what validity period to request and to expect, if approved. If a petitioner indicates in the H-1B petition or LCA that the beneficiary will be

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[120] See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Site Visit and Verification Program (last updated Sept. 9, 2019), https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program (last visited Sept. 18, 2020).

[121] Id.

[122] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Policy Research Division (2019). Summary of H-1B Site Visits Data.

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working at a third-party worksite, then the maximum validity period the petitioner should request is 1 year. And if USCIS approves such petition for the maximum period of 1 year after making a determination that the petitioner has met its burden of proof, then there should be no reason to dispute the length of the validity period since it is set by regulation.[123]

As with any petition requesting an extension of stay, a petition requesting a 1-year extension of stay for a beneficiary who will work at a third-party worksite may be accompanied by either a new, or a photocopy of the prior, LCA from DOL that the petitioner continues to have on file, provided that the LCA is still valid for the period of time requested and properly corresponds to the petition. See 8 CFR 214.2(h)(15)(ii)(B). In this sense, a prior LCA is still valid if the validity period does not expire before the end date of the extension petition's requested validity period.[124] However, note that a new LCA is required if there are any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. See 8 CFR 214.2(h)(2)(i)(E) (requiring that a petitioner file an amended or new petition to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition, and that "this requirement includes a new labor condition application").

DHS recognizes that new 8 CFR 214.2(h)(9)(iii)(A)(1) will require those affected petitioners to submit extension petitions more frequently, thereby incurring more filing costs. DHS further recognizes that some of these affected petitioners may incur significantly higher filing costs with each extension petition, namely, the 9-11 Response and Biometric Entry-Exit

[123] Note, however, that a petitioner is not precluded from filing a motion or appeal.
[124] Because the maximum validity period of a certified LCA is three years, see 20 CFR 655.750(a), DHS recognizes that the validity date of the LCA and the requested validity date in the extension petition will not always match. DHS will accept a prior LCA as long as that LCA is still valid, as explained above.

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Fee (Pub. L. 114-113 Fee) of $4,000.[125] If the Fee Schedule Final Rule takes effect, the Pub. L. 114-113 Fee would apply to any petitioner filing an H-1B petition that employs 50 or more employees in the United States if more than 50 percent of the petitioner's employees in the aggregate are in H-1B, L-1A or L-1B nonimmigrant status, including filing an extension of stay request.[126] DHS recognizes the increased cost on this population of affected petitioners, but believes this increased cost is justified due to the importance of better ensuring compliance with the terms and conditions of the petition approval in these instances, as explained above. Additionally, nothing in this rulemaking limiting the maximum validity period to 1 year for H-1B aliens placed at third-party worksites would directly result in such alien worker being unable to obtain the statutory maximum six years of H-1B status. Instead, through this rulemaking, petitioners with this business model will have to pay more filing costs for the continued use of H-1B workers than they currently do. It is valuable to note that the amount and parameters of the Pub. L. 114-113 Fee is mandated by Congress. In creating the Pub. L. 114-113 Fee, the goal was to impose this additional fee on employers that overly rely on H-1B or L nonimmigrant workers.[127]

F. Written Explanation for Certain H-1B Approvals

DHS is amending its regulations to require its issuance of a brief explanation when an H-1B nonimmigrant petition is approved but USCIS grants an earlier end validity date than

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[125] Consolidated Appropriations Act, 2016, PL 114-113, December 18, 2015, 129 Stat 2242.

[126] Presently, the Pub. L. 114-113 fee is required for H-1B petitions filed by certain petitioners only when the Fraud Fee also applies, meaning that it is not currently required for H-1B extensions. The Fee Schedule Final Rule will require payment of the Pub. L. 114-113 fee for all H-1B petitions filed by those petitioners, unless the petition is an amended petition without an extension of stay request. While implementation of the Fee Schedule Final Rule has been enjoined, DHS nevertheless estimates costs of this interim final rule based on the fees that will be required if the injunction is lifted and the Fee Schedule Final Rule takes effect so as to avoid underestimating potential costs of this interim final rule. See supra note 9.

[127] 85 Fed. Reg. at 46867.

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requested by the petitioner. See new 8 CFR 214.2(h)(9)(i)(B). Providing such an explanation will help ensure that the petitioner is aware of the reason for the limited validity approval.

G. Revising the Itinerary Requirement for H-1B Petitions

DHS is revising the itinerary requirement at 8 CFR 214.2(h)(2)(i)(B) (for service or training in more than one location) to specify that this particular provision will not apply to H-1B petitions. See new 8 CFR 214.2(h)(2)(i)(B). DHS is making this revision in response to a recent court decision specific to H-1B petitions.[128] The itinerary requirement at 8 CFR 214.2(h)(2)(i)(B) will still apply to other H classifications. In addition, DHS will still apply the itinerary requirement at 8 CFR 214.2(h)(2)(i)(F)(1) for H-1B petitions filed by agents.

H. Site Visits

Pursuant to its general authority under sections 103(a) and 287(b) of the INA, 8 U.S.C. 1103(a) and 1357(b), and 8 CFR part 2.1, USCIS conducts inspections, evaluations, verifications, and compliance reviews to ensure that an alien is eligible for the benefit sought and that all laws have been complied with before and after approval of such benefits. These inspections and other compliance reviews may be conducted telephonically or electronically, as well as through physical on-site inspections (site visits). The existing authority to conduct inspections is vital to the integrity of the immigration system as a whole, including the H-1B program specifically, and protecting American workers. In this rule, DHS is adding regulations specific to the H-1B program to codify its existing authority and clarify the scope of inspections – particularly on-site inspections – and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections.[129] See new 8 CFR 214.2(h)(4)(i)(B)(7). The

[128] See ITServe, 2020 WL 1150186, at *21 ("the itinerary requirement in the INS 1991 Regulation [codified at 8 CFR 214.2(h)(2)(i)(B)] . . . has been superseded by statute and may not be applied to H-1B visa applicants").).

[129] Although DHS is only revising H-1B regulations at this time, DHS reiterates that it has the same authority to conduct on-site inspections and other compliance reviews for other nonimmigrant and immigrant categories.

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authority of USCIS to conduct on-site inspections or other compliance reviews to verify information does not relieve the petitioner of its burden of proof or responsibility to provide information in the petition (and evidence submitted in support of the petition) that is complete, true, and correct.

In 2008, USCIS conducted a review of 246 randomly selected H-1B petitions filed between October 1, 2005, and March 31, 2006, and found violations ranging from "document fraud to deliberate misstatements regarding job locations, wages paid, and duties performed" in 20.7 percent of the cases reviewed.[130] Following this, in July 2009, USCIS started the Administrative Site Visit and Verification Program as an additional way to verify information in certain visa petitions. Under this program, USCIS Fraud Detection and National Security (FDNS) officers make unannounced site visits to collect information as part of a compliance review. A compliance review verifies whether petitioners and beneficiaries are following the immigration laws and regulations that are applicable in a particular case. This process includes researching information in government databases, reviewing public records and evidence accompanying the petition, and interviewing the petitioner and beneficiary.[131] It also includes conducting site visits.

In addition, beginning in 2017, USCIS began taking a more targeted approach in conducting site visits related to the H-1B program. USCIS started focusing on H-1B-dependent employers (those who have a high ratio of H-1B workers as compared to U.S. workers, as defined in section 212(n) of the INA), cases in which USCIS cannot validate the employer's

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[130] Written Testimony of Donald Neufeld, Associate Director, Service Center Operations Directorate, USCIS (March 31, 2011), available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Congress/Testimonies/2011/testimony_2011331_H-1B_Neufeld.pdf.

[131] Outside of the Administrative Site Visit and Verification Program, USCIS conducts forms of compliance review in every case, whether it is by researching information in relevant government databases or by reviewing public records and evidence accompanying the petition.

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basic business information through commercially available data, and employers petitioning for H-1B workers who work off-site at another company or organization's location.

The site visits conducted by USCIS through the Administrative Site Visit and Verification Program have uncovered a significant amount of noncompliance in the H-1B program. From Fiscal Year (FY) 2013 through FY 2016, USCIS conducted 30,786 H-1B compliance reviews. Of those, 3,811 (12 percent) were found to be noncompliant.[132] From FY 2016 through March 27, 2019, USCIS conducted 20,492 H-1B compliance reviews and found 2,341 (11.4 percent) to be noncompliant.[133] Further, DHS analyzed the results of the compliance reviews from FY16 - FY19 and found that the noncompliance rate for petitioners who indicated the beneficiary works at an off-site or third-party location is much higher compared to worksites where the beneficiary does not work off-site (21.7 percent versus 9.9 percent, respectively).[134]

Site visits are important to maintaining the integrity of the H-1B program and in detecting and deterring fraud and noncompliance with H-1B program requirements.[135] By better ensuring program integrity and detecting and deterring fraud and noncompliance, DHS will better ensure that the H-1B program is used appropriately and that the economic interests of U.S. workers are

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[132] USCIS, Fiscal Year 2017 Report to Congress: H-1B and L-1A Compliance Review Site Visits, Fraud Detection and National Security Compliance Review Data (October 1, 2012 to September 30, 2016), p. 7 (January 17, 2018), available at https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20H-1B%20and%20L-1A%20Compliance%20Review%20Site%20Visits.pdf (last visited Aug. 11, 2020).

[133] Department of Homeland Security, U.S. Citizenship and Immigration Services, Policy Research Division (PRD)(2019). Summary of H-1B Site Visits Data.

[134] Id.

[135] DHS acknowledges the 2017 Office of Inspector General report that addressed concerns with the H-1B site visit program and made recommendations for improvement. OIG-18-03, supra. Since the issuance of this report, USCIS has greatly improved its site visit program pursuant to the report's recommendations, such that USCIS believes the concerns addressed in the 2017 report no longer pertain. Specifically, the report's assessment that "USCIS site visits provide minimal assurance that H-1B visa participants are compliant and not engaged in fraudulent activity" no longer pertains. As of March 31, 2019, the recommendations have been resolved. See DHS, Office of Inspector General, DHS Open Unresolved Recommendations Over Six Months Old, as of March 31, 2019, https://www.oig.dhs.gov/sites/default/files/DHS-Open-Recommendations-As-Of-033119_053019.pdf (not listing OIG-18-03 as an "open unresolved" report). DHS maintains that site visits, generally, are an important and effective tool for the H-1B program. The new site visit provisions at 8 CFR 214.2(h)(4)(i)(B)(7)(i) will directly support USCIS' continued efforts to strengthen the effectiveness of the site visit program and the integrity of the H-1B program overall.

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protected. Therefore, as noted above, DHS is adding regulations specific to the H-1B program to set forth the scope of on-site inspections and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections. The new regulations make clear that inspections may include, but are not limited to, an on-site visit of the petitioning organization's facilities, interviews with its officials, review of its records related to compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the H-1B petition, such as facts relating to the petitioner's and beneficiary's H-1B eligibility and compliance. See new 8 CFR 214.2(h)(4)(i)(B)(7)(i). The new regulation also clarifies the possible scope of an inspection, which may include the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable. DHS believes that the ability to inspect various locations is critical since the purpose of a site inspection is to confirm information related to the H-1B petition, and any one of these locations may have information relevant to a given petition.

The new regulation also states that, if USCIS is unable to verify facts related to an H-1B petition or to compliance with H-1B petition requirements due to the failure or refusal of the petitioner or third-party to cooperate with a site visit,[136] then such failure or refusal may be grounds for denial or revocation of any H-1B petition for H-1B workers performing services at the location or locations which are a subject of inspection, including any third-party worksites. See new 8 CFR 214.2(h)(4)(i)(B)(7)(iii). This new provision will put petitioners on notice of the

[136] In the context of a FDNS field inquiry, failure to cooperate means that contact with the petitioner or third party was made, the FDNS officer had the chance to properly identify her/himself, and the petitioner or third party refused to speak to the officer or agreed to speak, but did not provide the information requested within the time period specified.

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specific consequences for noncompliance, whether by them or by a contractual third-party. It has long been established that, in H-1B visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought.[137] If USCIS conducts a site visit in order to verify facts related to the H-1B petition or to verify that the beneficiary is being employed consistent with the terms of the petition approval, and is unable to verify relevant facts and otherwise confirm compliance, then DHS believes that it would be reasonable to conclude that the petitioner will not have met its burden of proof and the petition may be properly denied or revoked. This would be true whether the unverified facts relate to a petitioner worksite or a third-party worksite at which a beneficiary has been or will be placed by the petitioner. It would also be true whether the failure or refusal to cooperate is by the petitioner or a third-party.

In addition, with respect to a failure or refusal to cooperate by a third-party, DHS believes this provision is reasonable because the third-party is benefiting from the services performed by the H-1B worker at its location. The third-party should not be permitted to benefit from the services performed by the H-1B worker if it simultaneously refuses to allow DHS access to verify that those services are being performed in accordance with the law. Additionally, if this provision did not apply to third-party worksites, such that a third-party's failure to cooperate with a site visit could not be grounds for denial or revocation, then this would create an unfair loophole with respect to third-party worksites, which could be exploited by unscrupulous petitioners and undermine the integrity of the H-1B program.

As with all other new provisions in this interim final rule, new 8 CFR 214.2(h)(4)(i)(B)(7)(iii) will apply to petitions filed on or after the effective date of the regulation. If, for example, a third-party refuses to cooperate with a site visit conducted after the

[137] See section 291 of the INA, 8 U.S.C. 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

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effective date of the regulation, but in connection with a petition that was filed before the effective date of the regulation, USCIS will make a final decision on that petition under the legal framework in effect at the time the petition was filed.

I. Severability

Finally, DHS has added a clause to clarify its intent with respect to the provisions being amended or added by this rule; DHS intends that all the provisions covered by this rule function separately from one another and be implemented as such. Therefore, in the event of litigation or other legal action preventing the implementation of some aspect of this rule, DHS intends to implement all others to the greatest extent possible.

VI. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The COVID-19 pandemic is an unprecedented "economic cataclysm."[138] This is one of the direst national emergencies the United States has faced in its history. In just one week, unemployment claims skyrocketed from "a historically low number" to the most extreme unemployment ever recorded: nearly quintuple the previous worst-ever level of unemployment claims, observed during the 1982 recession.[139] DHS must respond to this emergency immediately.

Accordingly, this rule is being issued without prior notice and opportunity to comment pursuant to 5 U.S.C. 553(b)(B). The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to

[138] Ben Casselman et al., New Data Shows Staggering Toll of Outbreak, N.Y. TIMES, Mar. 27, 2020, at A1.
[139] Front Page of the New York Times, N.Y. TIMES, Mar. 27, 2020, at A1; Casselman et al., supra note 140, at A1. See also id. tbl. 1.

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the public interest." 5 U.S.C. 553(b)(B). The good cause exception for forgoing notice and comment rulemaking "excuses notice and comment in emergency situations, . . . or where delay could result in serious harm." Jifry v. FAA, 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is "narrowly construed and only reluctantly countenanced," the Department has appropriately invoked the exception in this case, for the reasons set forth below.[140]

The pandemic emergency's economic impact is an "obvious and compelling fact" that justifies good cause to forgo regular notice and comment. Such good cause is "justified by obvious and compelling facts that can be judicially noticed." *Mobil Oil Corp. v. Dep't of Energy*, 728 F.2d 1477, 1490 (Temp. Emer. Ct. App. 1983).

The reality of the COVID-19 national emergency is omnipresent and undeniable. In addition to "obvious and compelling facts" known to virtually all Americans during this pandemic, multiple executive orders and declarations further establish the fact of a "crisis," "fiscal calamity," and unprecedented national emergency. *Sorenson Commc'ns Inc. v. F.C.C.*, 755 F.3d 702, 707 (D.C. Cir. 2014) ("Though no particular catechism is necessary to establish good cause, something more than an unsupported assertion is required."). Good cause to forgo notice and comment in this instance is consistent with the principle that "use of these exceptions by administrative agencies should be limited to emergency situations." *Am. Fed'n of Gov't Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). "Emergencies, though not the only situations constituting good cause, are the most common." Riverbend Farms, Inc. v. Madigan, 958 F.2d 1479, 1484 n.2 (9th Cir. 1992).

[140] Tenn. Gas Pipeline Co. v. FERC, 969 F.2d 1141, 1144 (D.C. Cir. 1992) (quoting New Jersey v. EPA, 626 F.2d 1038, 1046 (D.C.Cir.1980)).

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On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act in response to COVID–19.[141] On March 13, 2020, President Trump declared a National Emergency concerning the COVID–19 outbreak, retroactive to March 1, 2020, to control the spread of the virus in the United States.[142] On June 4, the President issued the E.O. 13927 Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities, which among other things urges agencies to "take all appropriate steps to use their lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the Nation's economic recovery . . . [including] other actions . . . that will strengthen the economy and return Americans to work."[143] On June 22, 2020, the President issued a Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.[144] On June 29, 2020, the President issued further clarification in a Proclamation on Amendment to Proclamation 10052.[145] Subject to certain exceptions, the proclamation, as amended, restricts the entry of certain immigrants and nonimmigrants, including certain H-1B nonimmigrants, into the United States through December 31, 2020 as their entry would be detrimental to the interests of the United States. The proclamation notes that "between February and April of 2020 . . . more than 20 million United

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[141] HHS, Determination that a Public Health Emergency Exists, https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last reviewed Aug. 11, 2020). See also HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020).

[142] Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020). See also White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID– 19) Outbreak, https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/ (last visited Aug. 11, 2020).

[143] See Executive Order 13927, *Accelerating the Nation's Economic Recovery from the COVID*-19 Emergency by Expediting Infrastructure Investments and Other Activities, 85 FR 35165, sec. 2 (Jun. 9, 2020).

[144] Proclamation 10052 of June 22, 2020, Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 FR 38263 (Jun. 25, 2020).

[145] Proclamation 10054 of June 29, 2020, Amendment to Proclamation 10052, 85 FR 40085 (Jul. 2, 2020).

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States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions." While the proclamation only restricts new entries (with certain exceptions) by aliens who do not have H-1B visas or other listed travel documents on the effective date of the proclamation, Section 5 of the proclamation directs the Secretary of Homeland Security to "as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding . . . ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers." The issuance of this interim final rule to strengthen the integrity of the H-1B nonimmigrant visa program is thus also consistent with the aims of the new proclamation.

H-1B workers comprise a much larger share of the U.S. labor market than the 65,000 annual numerical limitations and therefore have the potential to impact the availability of job opportunities for similarly situated U.S. workers who may be competing for jobs with H-1B workers as well as their wages and working conditions, particularly in industries where H-1B workers are predominantly employed. In recent years, the overwhelming majority of H-1B petitions have been filed for positions in the one industry, the IT industry—the share of H-1B workers in computer-related occupations grew from 32 percent in FY 2003 to 56 percent in FY2019.[146] The 5-year average annual number of H-1B petitions approved outside the numerical limitations established by Congress, which includes petitions for continuing H-1B workers who were previously counted toward an annual numerical allocation and who have time remaining on their 6-year period of authorized admission, see INA section 214(g)(7), 8 U.S.C. 1184(g)(7), was approximately 214,371 based on DHS data.[147] As of September 30, 2019, the total H-1B

[146] See supra note 1.
[147] Office of Policy and Strategy, Policy Research Division (PRD) Claims 3 and USCIS analysis. July 29, 2020

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authorized-to-work population was approximately 583,420.[148] The total H-1B authorized-to-work population, rather than the yearly cap, is more indicative of the scope of the H-1B program and the urgent need to strengthen it to protect the economic interests of U.S. workers. This is particularly urgent given the exceptionally high unemployment rate in the United States – 10.2 percent as of August 7, 2020.[149] In addition to high unemployment generally, there has been a significant jump in unemployment due to COVID-19 between August 2019 and August 2020 in two industry sectors where a large number of H-1B workers are employed, from 4.7 percent to 8.6 percent in the Information sector, and from 3.2 to 7.2 percent in the Professional and Business Services sector.[150]

The changes being made through this rule clarify statutory requirements and limit the potential for fraud and abuse in the H-1B program, thereby protecting the wages, working conditions, and job opportunities of U.S. workers, while continuing to provide U.S. employers with access to qualified workers consistent with congressional intent. Namely, this rule clarifies the requirements for petitioners to prove that H-1B workers will be employed in a specialty occupation, as required by 8 U.S.C. 1182(i). This requirement is intended to ensure that the H-1B classification is used as intended by Congress while ensuring that H-1B workers are not negatively affecting U.S. workers. The rule revises the definition of "United States employer"

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[148] See supra note 11.

[149] U.S. Dep't of Labor, Bureau of Labor Statistics, Economic News Release, Employment Situation News Release (Aug. 7, 2020), available at https://www.bls.gov/news.release/archives/empsit_08072020.htm (last visited Aug. 11, 2020).

[150] See, e.g., U.S. Dep't of Labor, Bureau of Labor Statistics, Economic News Release, Table A-14. Unemployed Persons by Industry and Class of Worker, Not Seasonally Adjusted (last modified Sept. 23, 2020), available at https://www.bls.gov/news.release/empsit.t14.htm (last visited Sept. 29, 2020); United States Census Bureau, Industry and Occupation Code Lists & Crosswalks, Census 2017 Industry List with Crosswalk, available at https://www.census.gov/topics/employment/industry-occupation/guidance/code-lists.html (last visited Aug. 11, 2020). "Information" sector includes Internet publishing and broadcasting and web search portals, and Data processing, hosting, and related services. "Professional and Business Services, i.e. Professional, Scientific, and Management, and Administrative and Waste Management Services" includes Computer systems design and related services, and Management, scientific, and technical consulting services.

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and defines the term "employer-employee relationship" to more clearly establish what it means for the petitioner to be a U.S. employer for purposes of H-1B petition eligibility. In addition, the rule limits the petition validity period for third-party placements to a maximum of 1 year. Finally, this rule includes consequences for the failure to comply with USCIS site visits – one of the key ways in which USCIS verifies information provided by the petitioner and ensures compliance with statutory and regulatory requirements. The rule makes clear that if USCIS is denied access to a worksite to conduct a site visit, USCIS can deny or revoke any H-1B petition for workers performing services at that worksite. These changes cumulatively limit the potential for fraud and abuse, particularly in third-party worksite cases, and better ensure that petitioners have insight into and a tangible connection to the work H-1B beneficiaries will be doing in order to ensure that H-1B beneficiaries will be employed by the petitioning employers in specialty occupations to fill structural skill and employment gaps in the U.S. labor force. Given exceptionally high unemployment in the United States--highest since the Great Depression,[151] including in the industries where a large share of H-1B workers is employed--these regulatory changes are urgently needed to ensure that the Nation continues toward economic recovery without disadvantaging U.S. workers.

Courts have found "good cause" under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. For example, an agency may rely upon the good-cause exception to address "a serious threat to the financial stability of [a government] benefit program," *Nat'l Fed'n of Fed. Emps. v. Devine*, 671 F.2d

[151] Andrew Soergel, Unemployment Highest Since Great Depression as Coronavirus Collapses Labor Market, U.S. News & World Report, May 8, 2020, https://www.usnews.com/news/national-news/articles/2020-05-08/unemployment-highest-since-great-depression-as-coronavirus-collapses-labor-market.

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607, 611 (D.C. Cir. 1982), and "[c]ourts have upheld a 'good cause' exception when notice and comment could result in serious damage to important interests. Id. at 611–12.

Here, delay in responding to the COVID-19 economic emergency and its cataclysmic unemployment crisis threatens a "weighty, systemic interest" that this rule protects: ensuring the employment of H-1B workers is consistent with the statutory requirements for the program and thus is not disadvantaging U.S. workers. Mack Trucks, Inc. v. E.P.A., 682 F.3d 87, 94 (D.C. Cir. 2012). Already, the impact of the COVID-19 unemployment crisis is projected to last a decade.[152] Loss or prolonged lack of employment reduces or eliminates an unemployed person's income, and therefore has the tendency to reduce that person's demand for goods and services as a consumer. This reduced demand can cause further job losses among the producers that would otherwise supply the unemployed person's demands. Therefore, the faster the United States can address high unemployment, the better it can protect future employment. But the slower unemployment recovers in the present, the longer it will languish into the future. Good cause to forego notice and comment rulemaking in this case is "an important safety valve to be used where delay would do real harm." U.S. Steel Corp. v. E.P.A., 595 F.2d 207, 214 (5th Cir. 1979). Each effort to strengthen the United States labor market for U.S. workers during this emergency, however marginal in isolation, is necessary to accomplish the goal of facilitating an economic recovery in the aggregate.

Furthermore, the relatively limited scope of this rule also conforms it to the proper application of the "good cause" exception. First, this rule operates as an interim rule, not yet a

[152] See, e.g., Annekin Tappe, Unemployment rate won't recover for the next decade, CBO projects, CNN, July 2, 2020, https://www.cnn.com/2020/07/02/economy/congressional-budget-office-projections-economy/index.html; Congressional Budget Office, An Update to the Economic Outlook: 2020 to 2030 (July 2, 2020), available at https://www.cbo.gov/system/files/2020-07/56442-CBO-update-economic-outlook.pdf (last visited Aug. 11, 2020).

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final rule, and thus may be subject to change in the future. "[T]he interim status of the challenged rule is a significant factor" favoring the good cause "determination." Mid-Tex Elec. Co-op., Inc. v. F.E.R.C., 822 F.2d 1123, 1132 (D.C. Cir. 1987). Second, the rule only affects several discrete aspects of the H-1B program, as discussed above. "[T]he less expansive the interim rule, the less the need for public comment." Tennessee Gas Pipeline Co. v. F.E.R.C., 969 F.2d 1141, 1144 (D.C. Cir. 1992) (citing AFL-CIO v. Block, 655 F.2d at 1156). "The more expansive the regulatory reach of these rules, of course, the greater the necessity for public comment." 655 F.2d at 1156.

Therefore, consistent with the above authorities, the Department is bypassing notice and comment requirements of 5 U.S.C. 553(b) and (c) to urgently respond to the COVID-19 resulting economic crises, including high unemployment. Instead of amending its regulations through notice and comment rulemaking which is generally a lengthy process, DHS is taking post-promulgation comments and providing a 60-day delayed effective date to ensure that the regulated public has advanced notice to adjust to these regulatory changes.

B. Executive Orders 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs, benefits, and transfers of available alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Pursuant to EO 12866 (Regulatory Planning and Review), the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget has determined that this is

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an economically significant regulatory action. However, OIRA has waived review of this regulation under EO 12866, section 6(a)(3)(A).

1. Summary of Economic Impacts

DHS is amending its regulations governing H-1B specialty occupation nonimmigrant workers in this interim final rule. DHS is implementing a number of revisions and clarifications to better ensure that each H-1B nonimmigrant worker will be working for a qualified petitioner and in a job which meets the statutory definition of specialty occupation, and to help protect the wages and working conditions of U.S. workers while improving the integrity of the H-1B program. This interim final rule amends the relevant sections of DHS regulations to reflect these changes.

For this analysis, DHS uses the term "H-1B petition" or "Form I-129 H-1B" to generally refer to the historical Form I-129 (H Classification Supplement, H-1B and H-1B1 data collection) and the planned Form I-129H1 that may replace the historical form. Where it is more accurate to specifically refer to the Form I-129H1 that will take effect if the Fee Schedule Final Rule takes effect, DHS uses the term "Form I-129H1."[153]

For the 10-year implementation period of the rule (FY2021 to FY2030), DHS estimates the annual net societal costs to be $51,406,937 (undiscounted) in FY2021, $416,212,496 (undiscounted) in FY2022, $541,795,976 (undiscounted) from FY2023 to FY2027 each year, $388,592,536 (undiscounted) from FY2028 to FY2030 each year. DHS estimates the annualized

[153] DHS estimates the costs and benefits of this rule using the newly published U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, final rule ("Fee Schedule Final Rule"), and associated form changes, as the baseline. 85 FR 46788 (Aug. 3, 2020). The Fee Schedule Final Rule was scheduled to go into effect on October 2, 2020. On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide injunction, which prevents DHS from implementing the Fee Schedule Final Rule. See, Immigrant Legal Resource Center v. Wolf, No. 4:20-cv-5883 (N.D. Cal. Sept. 29, 2020). DHS intends to vigorously defend this lawsuit and is not changing the baseline for this rule as a result of the litigation. Should DHS not prevail in the Fee Schedule Final Rule litigation, this rule may reflect overstated transfers, costs, and opportunity costs associated with the filing of the Form I-129.

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net societal costs of the rule to be $430,797,915, annualized at 3-percent and $425,277,621, annualized at 7-percent discount rates.

Table 1 provides a detailed summary of the regulatory changes and their impacts.

Table 1. Summary of Provisions and Impacts of the Interim Final Rule			
Provision	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
(a) Revising the regulatory definition and standards for specialty occupation so they align more closely with the statutory definition of the term	The changes in the Form I-129H1 result in additional time to complete and file Form I-129H1 as compared to the time burden to complete the current Form I-129. The time burden will change to 4.5 hours from the current 4.0 hours. DHS applies the additional time burden to complete and file Form 1-129H1 (0.5 hours per petition).	Quantitative: Petitioners - • $24,949,861 costs annually for petitioners completing and filing Form I-129H1 petitions with an additional time burden of 30 minutes. DHS/USCIS – • None Qualitative: Petitioners – • None DHS/USCIS – • None	Quantitative: Petitioners - • None DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – • By reducing uncertainty and confusion surrounding disparities between the statute and the regulations, this rule will better ensure that approvals are only granted for positions adhering more closely to the statutory definition. This rule will also result in more complete petitions and allow for more consistent and efficient adjudication decisions.
(b) Requiring corroborating evidence of work in a specialty occupation 8 CFR 214.2(h)(4)(iv)	The petitioner must establish, at the time of filing, that it has actual work in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. In addition, all H-1B petitions for beneficiaries who will be placed at a third-party worksite must submit evidence showing that the beneficiary will be employed in a specialty occupation, and that the petitioner will	Quantitative: Petitioners – • $17,963,871 in costs annually to petitioners to submit contractual documents, work orders, or similar evidence required by this rule to establish an employer-employee relationship and qualifying employment. DHS/USCIS- • None	Quantitative: Petitioners – • None DHS/USCIS – • None Qualitative: Petitioners – • None. DHS/USCIS – • Written evidentiary requirements would serve the critical purpose of informing

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Table 1. Summary of Provisions and Impacts of the Interim Final Rule			
Provision	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
	have an employer-employee relationship with the beneficiary. USCIS may request copies of contracts, work orders, or other similar corroborating evidence on a case-by-case basis in all cases, regardless of where the beneficiary will be placed.	Qualitative: Petitioners – • None DHS/USCIS – • None	USCIS of the terms and conditions of the work to be performed.
(c) Codifying in regulations existing authority to conduct site visits and other compliance reviews, and clarifying consequences for failure to allow a site visit 8 CFR 214.2(h)(4)(i)(B)(7)	DHS is clarifying that inspections and other compliance reviews may include, but are not limited to, a visit of the petitioning organization's facilities, interviews with its officials, review of its records related to compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers pertinent to the petitioner's H-1B eligibility and compliance. An inspection may be conducted at locations including the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable.	Quantitative: Petitioners- • $1,042,702 annually for the total annual opportunity cost of time for worksite inspections of H-1B petitions. DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS- None	Quantitative: Petitioners- • None DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – Conducting on-site inspections and other compliance reviews is critical to detecting and deterring fraud and noncompliance. Failure or refusal of the petitioner or third-party worksite parties to cooperate in a site visit or verify facts may be grounds for denial or revocation of any H-1B petition for workers performing services at locations which are a subject of inspection, including any third-party worksites.
(d) Eliminating the general itinerary requirement for H-1B petitions **8 CFR** 214.2(h)(2)(i)(B)	This provision change eliminates the general itinerary requirement for H-1B petitions.	Quantitative: Petitioners- • None DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS –	Quantitative: Petitioners – • Cost savings $4,490,968 annually. • Total cost savings over 10-year ranges DHS/USCIS – • None Qualitative: Petitioners – • None

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Table 1. Summary of Provisions and Impacts of the Interim Final Rule			
Provision	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
		• None	DHS/USCIS – • None
(e) Limiting maximum validity period for third-party placement 8 CFR 214.2(h)(9)(iii)(A)(1)	Under current regulations at 8 CFR 214.2(h)(9)(iii), the maximum validity period an H-1B petition may be approved is "up to three years". While the maximum validity period for a specialty occupation worker is currently 3 years, this interim final rule will limit the maximum validity period to 1 year for workers placed at third-party worksites. This provision will result in more extension petitions from petitioners with beneficiaries who work at third-party worksites.	Quantitative: Petitioners- • Costs $0 in FY2021, $376,747,030 in FY2022, $502,330,510 in FY2023-FY2027 each year, $349,127,070 in FY2028-FY2030 each year for the increasing Form I-129H1 petitions to request authorization to continue H-1B employment for workers placed at third-party worksites. DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – • None	Quantitative: Petitioners - • None DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – • USCIS would have greater oversight for those H-1B petitions most likely to involve fraud and abuse, thereby strengthening the H-1B program.
(f) Providing a Written Explanation for Certain H-1B Limited Approvals 8 CFR 214.2(h)(9)(i)	DHS will revise the regulations to require issuance of a brief explanation when an H-1B nonimmigrant petition is approved but USCIS grants an earlier validity period end date than requested by the petitioner.	Quantitative: Petitioners- • None DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – • None	Quantitative: Petitioners- • None DHS/USCIS- • None Qualitative: Petitioners – • Providing a written explanation for limited validity period will help ensure that the petitioner is aware of the reason for shorter validity periods.

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Table 1. Summary of Provisions and Impacts of the Interim Final Rule			
Provision	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
			DHS/USCIS- • None
(g) Familiarization Cost	Familiarization costs comprise the opportunity cost of the time spent reading and understanding the details of a rule in order to fully comply with the new regulation(s).	Quantitative: Petitioners- • One-time cost of $11,941,471 in FY2021 DHS/USCIS- • None Qualitative: Petitioners – • None DHS/USCIS – • None	Quantitative: Petitioners – • None DHS/USCIS – • None Qualitative: Petitioners – • None DHS/USCIS – • None

In addition to the impacts summarized above, Table 2 presents the accounting statement and as required by Circular A-4.[154]

Table 2. OMB A-4 Accounting Statement ($, 2019 for FY2021-FY2030)				
Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Annualized Monetized Benefits (discount rate in parenthesis)	(3 percent) N/A	N/A	N/A	RIA
	(7 percent) N/A	N/A	N/A	RIA
Annualized quantified, but un-monetized, benefits	N/A			RIA
Unquantified Benefits	The purpose of the changes in this interim final rule is to ensure that each H-1B nonimmigrant beneficiary will be working for a qualified petitioner and in a job that meets the statutory definition of specialty occupation. In addition, these changes will strengthen U.S. worker protections while improving the integrity of the H-1B program by preventing fraud and abuse.			RIA

[154] White House, Office of Management and Budget, Circular A-4 (Sept. 17, 2003), available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf (last visited Aug. 11, 2020).

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COSTS				
Annualized monetized costs (discount rate in parenthesis)	(3 percent) $430,797,915			RIA
	(7 percent) $425,277,621			RIA
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	N/A			
TRANSFERS				
Annualized monetized transfers: "on budget"	N/A	N/A	N/A	
From whom to whom?				
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	
From whom to whom?	N/A	N/A	N/A	
Miscellaneous Analyses/Category	Effects			Source Citation
Effects on state, local, and/or tribal governments	N/A			
Effects on small businesses	N/A			
Effects on wages	N/A			
Effects on growth	N/A			

2. Provisions of the Interim Final Rule with Economic Impacts

The H-1B nonimmigrant visa program helps U.S. employers meet their business needs by temporarily employing foreign workers in specialty occupations. A specialty occupation is defined as an occupation that requires (1) theoretical and practical application of a body of highly specialized knowledge, and (2) the attainment of a bachelor's degree (or higher) in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United

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States.[155] The H-1B visa program also includes workers performing services related to a Department of Defense (DOD) cooperative research and development project or coproduction project, and services of distinguished merit and ability in the field of fashion modeling.

As discussed in detail in the preamble, the purpose of the changes in the rule is to better ensure that each H-1B nonimmigrant worker will be working for a qualified petitioner and in a job that meets the statutory definition of specialty occupation. Additionally, the changes help strengthen the integrity of the H-1B program and better ensure that visas are only awarded to qualified beneficiaries and petitioners.

DHS is amending its regulations governing H-1B specialty occupation workers by providing revisions and clarifications that will better align the regulations with Congressional intent and will strengthen the integrity of the H-1B program. DHS is making the following amendments to the H-1B regulations through this interim final rule:

a) Revising the regulatory definition and criteria for determining whether the job the H-1B beneficiary will be employed in is in a specialty occupation, so they align more closely with the statutory definition of the term;
b) Requiring corroborating evidence of work in a specialty occupation;
c) Codifying in regulations existing authority to conduct site visits and other compliance reviews, and consequences for failure to allow a site visit; and
d) Eliminating the general itinerary requirement for H-1B petitions.
e) Limiting maximum validity period for third-party placements;
f) Providing a written explanation for certain H-1B approvals.

In the sections that follow, DHS discusses the quantified economic impacts of each provision listed above except for provision f) which has no quantifiable economic impact. Provision f) is qualitatively discussed in benefits section vi.

[155] See INA 214(i)(l), 8 U.S.C. 1184(i)(l).

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3. Population

In order to estimate the economic effects of this interim final rule, DHS forecasts the affected population for the ten-year period from the beginning of fiscal year (FY) 2021. The affected population is defined as the annual population of Form I-129H1[156] petitions for specialty occupation workers. DHS assumes that there are three primary components that determine the population forecast: the historical number of H-1B petitions, the expected change in the number of petitions due to macroeconomic changes, and the expected changes in the number of petitions due to provisions in this interim final rule.

The historical number of H-1B petitions is summarized in Table 3 below. In each year between FY2015 and FY2019, DHS received between 123,203 and 141,190 initial H-1B petitions, with an annual average of 133,451 initial petitions received. In addition, DHS received between 235,566 and 279,946 H-1B extension petitions, with an annual average of 268,405 extension petitions received. Ignoring macroeconomic effects and any effects of this interim final rule, DHS does not expect the number of initial petitions approved to trend upwards or downwards. This is borne out in the data: neither the annual number of initial petitions nor the annual number of extension petitions exhibit a trend; both series rise and fall over the five-year historical period. Absent changes in macroeconomic conditions and changes due to this interim final rule, DHS would expect similar numbers in FY2021 to FY2030.

Table 3. Total Receipts, Approvals of Form I-129 H-1B By Type of Petition, FY 2015 to FY 2019.

Fiscal Year	Number of Petitions Received	Number of Initial Petitions Received	Number of Extension Petitions Received	Number of Petitions Approved	Number of Initial Petitions Approved	Number of Extension Petitions Approved

[156] See supra notes 9 and 153.

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	A=B+C	B	C	D=E+F	E	F
2015	368,160	132,594	235,566	238,956	91,267	147,689
2016	398,800	129,098	269,702	304,911	87,765	217,146
2017	403,149	123,203	279,946	326,798	82,041	244,757
2018	418,596	141,190	277,406	298,625	76,747	221,878
2019	420,574	141,170	279,404	365,199	124,816	240,383
Total	2,009,279	667,255	1,342,024	1,534,489	462,636	1,071,853
5-yr average	401,856	133,451	268,405	306,898	92,527	214,371
Source: Office of Policy and Strategy, Policy Research Division (PRD), Claims 3 and USCIS analysis. July 29, 2020.						

The number of H-1B petition submissions is partially dependent on macroeconomic conditions. For example, a drastic improvement in U.S. economic conditions may result in higher demand from U.S. employers for H-1B specialty occupation workers. DHS acknowledges future uncertainty surrounding the impacts of the COVID pandemic on the U.S. economy but does not expect this to significantly alter the affected population described. Consequently, the impacts of this interim final rule are evaluated based on an assumed continuation of the conditions observed in the historical data period (FY2015-2019) over the projected period (FY2021-2030). Thus, DHS does not incorporate any macroeconomic changes in its population forecast.

Finally, the number of H-1B petitions may also change due to behavioral responses to provisions in the interim final rule. For example, provisions that increase filing costs may discourage potential petitioners from filing, and provisions that decrease the term of the H-1B validity period may result in increased filings by the same petitioners. DHS examined each of the provisions and determined that one provision would materially change the filing behavior of potential petitioners: This interim final rule will reduce the maximum validity period for third-party placement to one year compared to the three-year current maximum validity period. This provision will result in more petitions from petitioners with beneficiaries who work at third-party worksites. DHS incorporates this increase in its FY2021-2030 forecasts of the affected

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population. A detailed discussion of this provision's effect on the forecasted population of petition is provided in the corresponding cost analysis subsection.

DHS acknowledges that changes to the H-1B program may impact dependent H-4 nonimmigrants. DHS is unable to quantify the number of H-1B workers that will be ineligible or no longer apply for a visa due to this interim final rule and is therefore unable to quantify the costs to the dependent H-4 nonimmigrants. H-1B nonimmigrant workers who are the beneficiaries of petitions that are denied as a result of the petitioner's failure to establish eligibility or noncompliance with the changes made by this rule would be required to seek eligible employment to avoid additional impacts to their dependents.

DHS acknowledges that some industries may be affected more than others. According to FY2019 Annual Report to Congress,[157] approximately half of H-1B petitions approved are for industries related to computers, software, or data processing. These industries would be most affected by this rule.

i. Historical Population of H-1B Specialty Occupation Worker Program

Table 4 shows the number of receipts, approvals, and denials for all Form I-129 H-1B petitions including initials and extensions from FY2015 to FY2019.[158] During this period, the total annual receipts for Form I-129 H-1B petitions have steadily increased each year and ranged from a low of 368,160 in FY 2015 to a high of 420,574 in FY 2019. Accordingly, over the 5-year period, USCIS received an average of 401,856 Form I-129 H-1B petitions and approved an

[157] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019, 19-21 (Mar. 5, 2020), https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf (last visited Aug. 11, 2020).

[158] The number of petitions approved is based on the validity start date. If validity start date is unavailable, approval is based on approval date. The number of petitions denied is based on the date the application was denied irrespective of the initial date of submission.

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average of 306,898 petitions annually. DHS estimates the approval rate for Form I-129 H-1B petitions is about 78 percent and the denial rate is about 22 percent.

Table 4. Total Receipts, Approvals, and Denials of Form I-129 H-1B Petitions with an H-1B Classification, FY 2015 to FY 2019.

Fiscal Year	Number of Petitions Received[a]	Number of Petitions Approved	Number of Petitions Denied	Number of Petitions Approved or Denied[b]	Approval Rate	Denial Rate
	A	B	C	D=B+C	E=B/D	F=C/D
2015	368,160	238,956	69,179	308,135	77.5%	22.5%
2016	398,800	304,911	78,782	383,693	79.5%	20.5%
2017	403,149	326,798	82,316	409,114	79.9%	20.1%
2018	418,596	298,625	104,174	402,799	74.1%	25.9%
2019	420,574	365,199	106,311	471,510	77.5%	22.5%
Total	2,009,279	1,534,489	440,762	1,975,251	-	-
5-yr average	401,856	306,898	88,152	395,050	77.7%	22.3%

Source: Office of Policy and Strategy, Policy Research Division (PRD), Claims 3 and USCIS analysis. July 29, 2020. Number of Petition Denied data is pulled on April 22, 2020.
[a] The number of petitions received includes all initial petitions and petitions for extension.
[b] The sum of petitions approved or denied does not equal the number of petitions received because some petitions are revoked, withdrawn, or still pending.

To determine the cost of preparing and filing a petition, DHS assumes that petitioners may use human resources (HR) specialists (or others that provide equivalent services) (hereafter HR

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specialist) or use lawyers or accredited representatives[159] to complete and file Form I-129 H-1B petitions. A lawyer or accredited representative appearing before DHS must file Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) to establish the eligibility and authorization of a lawyer or accredited representative to represent a client (applicant, petitioner, requestor, beneficiary or derivative, or respondent) in an immigration matter before DHS. Table 5 presents the total number of Form G-28 filings by petitioners who filed Form I-129 H-1B. DHS estimates that about 74 percent (73.5 percent rounded up) of Form I-129 H-1B petitions were completed and filed by a lawyer or other accredited representative (hereafter lawyer). DHS assumes the remaining 26 percent of Form I-129 H-1B petitions were completed and filed by HR specialists.

Table 5. Total Number of Forms G-28[a] filed with Form I-129 H-1B Petitions, FY 2015 to FY 2019.

Fiscal Year	Receipts of Form I-129 H-1B Petitions	Number of Form G-28 Filed with Form I-129 H-1B Petitions	Percent of Form I-129 H-1B Petitions Filed with Form G-28
	A	B	C = B / A
2015	368,160	257,771	70.0%
2016	398,800	273,497	68.6%
2017	403,149	292,390	72.5%
2018	418,596	324,206	77.5%
2019	420,574	329,399	78.3%
Total	2,009,279	1,477,263	-
5-year Average	401,856	295,453	73.5%

Source: Office of Policy and Strategy, Policy Research Division (PRD) and USCIS analysis. April 22, 2020.
[a]Form G-28 has no filing fee.

[159] Accredited representatives are defined in 8 CFR 292.1(a)(4): A person representing an organization described in §292.2 of this chapter who has been accredited by the Board. USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimate cost. However, USCIS understands that not all occupations employ individuals with these occupations and; therefore, recognizes equivalent occupations may also prepare and file these petitions.

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Petitioners who use lawyers or accredited representatives to complete and file Form I-129 H-1B petitions may either use an in-house lawyer or hire an outsourced lawyer.[160] Of the total number of Form I-129 H-1B petitions filed between FY2015 and FY2019 by lawyers or accredited representatives (74 percent), DHS estimates that 24 percent of Form I-129 H-1B petitions filed by lawyers were filed by in-house lawyers while the remaining 50 percent were filed by outsourced lawyers.[161]

ii. Population Affected by the Rule

DHS uses the estimates derived from the historical data shown in tables 4 and 5 to estimate the baseline population. Accordingly, the baseline population consists of 401,856 Form I-129 H-1B petitions received annually, which is disaggregated into the percent of Form I-129 H-1B petitions filed by HR specialists (26 percent), in-house lawyers (24 percent), or outsourced lawyer (50 percent). Additionally, DHS uses these percentage shares to disaggregate the 306,898 H-1B petitions approved annually. For each provision, DHS further estimates the subpopulation that is affected by that particular provision using the same proportion of HR specialist, in-house

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[160] DHS uses the terms "in-house lawyer" and "outsourced lawyer" to differentiate between the types of lawyers that may file Form I-129H1 on behalf of an employer petitioning for an H-1B beneficiary.

[161] DHS uses data from the longitudinal study conducted in 2003 and 2007 on legal career and placement of lawyers, which found that 18.6, 55, and 26.2 percent of lawyers practice law at government (federal and local) institutions, private law firms, and private businesses (as inside counsel), respectively. See Dinovitzer et al (2009). After the JD II: Second Results from a National Study of Legal Careers, The American Bar Foundation and the National Association for Law Placemen (NALP) Foundation for Law Career Research and Education, Table 3.1, p. 27. https://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf.

Among those working in private law firms and private businesses (55 and 26.2 percent, respectively), DHS estimates that while 67.7 percent of lawyers practice law in private law firms, the remaining 32.3 percent practice in private businesses (55 percent + 26.2 percent = 81.2 percent, 67.7 percent = 55/81.2 *100, 32.2 percent = 26.2/81.2*100). Because 74 percent of the H-1B petitions are filed by lawyers or accredited representatives, DHS multiplies 74 percent by 32.3 and 67.7 percent to estimate the proportion of petitions filed by in-house lawyers (working in private businesses) and outsourced lawyer (working in private law firms), respectively.
24 (rounded) percent of petitions filed by in-house lawyers = 74 percent of petitions filed by lawyers or accredited representatives × 32.3 percent of lawyers work in private businesses.
50 (rounded) percent of petitions filed by in-house lawyers = 74 percent of petitions filed by lawyers or accredited representatives × 67.7 percent of lawyers work in private law firms.

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lawyer, and outsourced lawyer. These estimates are detailed in the separate provision discussed in the cost analysis of this interim final rule.

Table 6. Summary of Estimated Average Number of Petitions Received Annually by Type of Filer

Affected Population	Estimated Average Population Affected A	Number of Petitions Filed by HR Specialists B = A × 26%	Number of Petitions Filed by In-house Lawyers C = A × 24%	Number of Petitions Filed by Outsourced Lawyers D = A × 50%
Estimated average number of Form I-129 H-1B petitions received annually	401,856	104,483	96,445	200,928
Estimated average number of petitions approved annually	306,898	79,793	73,656	153,449
Source: USCIS analysis				

As discussed above, DHS forecasts an increase in the affected population due to the new interim final rule. Table 7 below summarizes this increase for FY2021-FY2030. The forecasted increase is discussed in detail in section "Limiting maximum validity period for third-party placements."

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Table 7. Forecasting Total Receipts of Form I-129H1 for FY2021 to FY2030			
Fiscal Year	Historical Baseline[a]: Number of Petitions Received	Estimated Increase in Number of Petitions Received	Total Estimated Number of Petitions Received
2021	401,856	0	401,856
2022	401,856	110,483	512,339
2023	401,856	147,311	549,167
2024	401,856	147,311	549,167
2025	401,856	147,311	549,167
2026	401,856	147,311	549,167
2027	401,856	147,311	549,167
2028	401,856	147,311	549,167
2029	401,856	147,311	549,167
2030	401,856	147,311	549,167
Source: USCIS analysis [a] Historical Baseline is the 5-year averages of received H-1B petitions for FY2015-2019 from Table 4.			

4. Costs and Cost Savings of Regulatory Changes to Petitioners

i. Estimated Wage by Type of Filers

As previously discussed, DHS assumes that a petitioner will use an HR specialist, in-house lawyer, or outsourced lawyer to complete and file Form I-129H1 petitions.[162] In this analysis, DHS estimates the opportunity cost of time for these occupations using average hourly wage rates of $32.58 for HR specialists and $69.86 for lawyers.[163] These average hourly wage rates do not

[162] DHS limits its analysis to HR specialists, in-house lawyers, and outsourced lawyer to present estimated costs. However, DHS acknowledges that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions.

[163] See U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2019 National Occupational Employment and Wage Estimates-National, SOC 13-1071 – Human Resources Specialist and SOC 23-1011 – Lawyers, available at https://www.bls.gov/oes/2019/may/oes_nat.htm (last visited Aug. 11, 2020).

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account for worker benefits such as paid leave, insurance, and retirement. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent DOL, Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.46.[164]

For petitioners filing Form I-129 H1, DHS calculates the average total rate of compensation as $47.57 per hour for an HR specialist, where the average hourly wage is $32.58 per hour worked and average benefits are $14.99 per hour.[165] Additionally, DHS calculates the average total rate of compensation as $102.00 per hour for an in-house lawyer, where the average hourly wage is $69.86 per hour worked and average benefits are $32.14 per hour.[166] Moreover, DHS recognizes that a petitioner may choose, but is not required, to hire an outsourced lawyer to prepare and file the H-1B petition. Therefore, DHS calculates the average total rate of compensation as $174.65 per hour for an outsourced lawyer, where the average hourly wage is $69.86 per hour worked and the average benefits are $104.79 per hour.[167] Table 6 shows the compensation rates used in this analysis.

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[164] The benefits-to-wage multiplier is calculated as follows: ($37.10 Total Employee Compensation per hour) ÷ ($25.47 Wages and Salaries per hour) = 1.457 = 1.46 (rounded) See U.S. Dep't of Labor, Bureau of Labor Statistics, Economic News Release, Employer Cost for Employee Compensation (December 2019), Table 1 (Mar. 19, 2020), available at https://www.bls.gov/news.release/archives/ecec_03192020.pdf (last visited Aug. 11, 2020). Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group.

[165] Calculation of the weighted mean hourly wage for HR specialists: $32.58 per hour × 1.46 = $47.566 = $47.57 (rounded) per hour

[166] Calculation of weighted mean hourly wage for in-house lawyers: $102.00 average hourly total rate of compensation for in-house lawyer = $69.86 average hourly wage rate for lawyer (in-house) × 1.46 benefits-to-wage multiplier.

[167] Calculation of weighted mean hourly wage for outsourced lawyer: $174.65 average hourly total rate of compensation for outsourced lawyer = $69.86 average hourly wage rate for lawyer (in-house) × 2.5 conversion multiplier. DHS uses a conversion multiplier of 2.5 to estimate the average hourly wage rate for outsourced lawyer based on the hourly wage rate for an in-house lawyer. DHS has used this conversion multiplier in various previous rulemakings. For example, the DHS analysis in, Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 FR 24905 (May 31, 2018), used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

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Table 8. Summary of Estimated Wages for Form I-129 H-1B Petition Filers by Type of Filer	
	Hourly Compensation Rate
Human Resources (HR) Specialist	$47.57
In-house Lawyer	$102.00
Outsourced Lawyer	$174.65
Source: USCIS analysis.	

ii. Baseline Estimate of Current Costs

In the current filing process, an employer petitioning on behalf of an H-1B specialty occupation worker must complete and file Form I-129H1. The filing fee for Form I-129H1 is $555 per petition and the time burden to review instructions and complete and submit Form I-129H1 is 4.0 hours per petition.[168] To estimate petitioners' postage cost of mailing a package containing a completed Form I-129H1 petition and all required supporting documents to USCIS, DHS uses the shipping price of United States Postal Service (USPS) Domestic Priority Mail Express Flat Rate Envelopes, which is priced at $27.55 per package.[169]

Pub. L. 114-113 requires payment of $4,000 for certain H-1B petitions filed by employers that meet the statute's 50 employee/50 percent test. The Fee Schedule Final Rule, if it takes effect, would extend applicability of the Pub. L. 114-113 fee, such that it would be required for all H-1B petitions filed by those employers, unless the petition is an amended petition without an extension of stay request.[170] In order to estimate the number of petitions that would

[168] See supra note 9.

[169] Although petitioners may choose other means of shipping, for the purposes of this analysis, DHS uses the shipping prices of United States Postal Service (USPS) Domestic Priority Mail Express Flat Rate Envelopes, which is currently priced at $27.55 per package, as a proxy estimate for the postage cost of mailing a package containing completed Form I-129H1. DHS also assumes that the package on average weighs three pounds and ships locally or in zone 1 or 2. See U.S. Postal Service, Price List, Notice 123, Effective January 26, 2020, available at https://pe.usps.com/text/dmm300/Notice123.htm#_c011 (last visited Aug. 11, 2020).

[170] See supra note 126. Currently, the Pub. L. 114-113 fee is required for H-1B petitions filed by certain petitioners only when the Fraud Fee also applies, meaning that it is not currently required for H-1B extensions. While implementation of the Fee Schedule Final Rule has been enjoined, DHS nevertheless estimated costs of this interim final rule based on the fees that will be required if the injunction is lifted and the Fee Schedule Final Rule takes effect so as to avoid underestimating potential costs of this interim final rule.

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require the Pub. L. 114-113 fee, DHS uses the estimated percentage of H-1B petitions filed by petitioners that have 50 or more employees and 50 percent of the employees are in the H-1B or L-1 visa classification: 26 percent. This fee applies to certain petitions filed on or before September 30, 2027.[171] The affected population to which the $4,000 fee is applied is 104,483, which is 26 percent of 401,856, the average number of petitions received annually from FY2015 to FY2019.

DHS applies a fraud prevention and detection fee of $500 to certain H-1B petitions.[172] In order to estimate the number of petitions that will be filed with the fraud prevention and detection fee DHS uses the percentage of H-1B petitions filed with the fraud prevention and detection fee in FY2018 (52 percent) and multiplied by the 5-year average number of petitions received annually from FY2015 to FY2019 in Table 9 below (401,856). Therefore, the fraud prevention and detection fee is applied to 208,965 petitions.

Table 9. Number of H-1B Petition Filed for Fraud Prevention and Detection Fee and ACWIA fee or Exemption from ACWIA Fee for FY 2018

	FY2018	Percentage	Estimated petitions
Total Petitions Filed	418,799		401,856*
Fraud Prevention and Detection Fee			
Total Petitions Filed with Fee	218,333	52%[b]	208,965[g]
ACWIA Fee			
Total Petitions Filed			
Without any fee exemptions	277,979	66%[c]	265,225[h]
With at least one exemption	140,820	34%[d]	136,631[i]
Size of Employer			
Full time employees <26	39,333	11%[e]	29,175[j]
Full time employees>25	316,972	89%[f]	235,946[k]
Number of employees unknown	62,494		
Total without unknown	356,305[a]		

Source: Report on H-1B Petitions, Fiscal Year 2018 Annual Report to Congress, March 18, 2019 (Table 2 and Table 4)

[171] See supra note 126.
[172] See section 214(c)(12)(A) of the INA, 8 U.S.C. 1184(c)(12)(A).

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*5-year average number of petitions received annually from FY2015 to FY2019 (401,856) is from Table 4
[a] Total without unknown (356,305) = Total Petitions Filed FY2018 (418,799) – Number of employees unknown (62,494)
[b] Percentage of Total Petitions filed with Fraud Fee FY2018 (52%) =Total petitions filed with Fee FY2018/Total petitions filed FY2018=218,333/418,799
[c] Percentage of Total petitions filed without any ACWIA fee exemptions FY2018 (66%) = Total petitions filed without any ACWIA fee exemption FY2018/Total petitions filed FY2018=277,979/418,799
[d] Percentage of Total petitions filed with at least one ACWIA fee exemptions FY2018 (34%) = Total petitions filed with at least one ACWIA fee exemption FY2018/Total petitions filed FY2018=140,820/418,799
[e] Percentage of Full-time employees <26 FY2018 (11%) = Full time employees <26 FY2018 /Total without unknown FY2018=39,333/356,305
[f] Percentage of Full-time employees >25 FY2018 (89%) = Full time employees >25 FY2018 /Total without unknown FY2018=316,972/356,305
[g] Total estimated petitions filed with Fraud Fee (208,965) =5-year average number of petitions received annually from FY2015 to FY2019 (401,856) * Percentage of Total Petitions filed with Fraud Fee FY2018 (52%)
[h] Total estimated petitions filed without any ACWIA fee exemptions (265,225) =5-year average number of petitions received annually from FY2015 to FY2019 (401,856) * Percentage of Total petitions filed without any ACWIA fee exemptions FY2018 (66%)
[i] Total estimated petitions filed with at least one ACWIA fee exemptions FY2019 (136,631) =5-year average number of petitions received annually from FY2015 to FY2019 (401,856) * Percentage of Total petitions filed with at least ACWIA fee exemptions FY2018 (34%)
[j] Estimated Full-time employees <26 (29,175) = Total estimated petitions filed without any ACWIA fee exemptions (265,225) * Percentage of Full-time employees <26 FY2018 (11%)
[k] Estimated Full-time employees >25 (235,946) = Total estimated petitions filed without any ACWIA fee exemptions (265,225) * Percentage of Full-time employees >25 FY2018 (89%)

DHS also applies the American Competitiveness and Workforce Improvement Act (ACWIA) fee.[173] Certain petitions are exempt from the ACWIA fee and, when required, the amount of the fee depends on the size of the entity. It is $750 for employers with 25 or fewer full-time employees or $1500 for employers with 26 or more full-time employees. In order to estimate the number of petitions that will be filed with the ACWIA fee, DHS uses the percentage of H-1B petitions filed with the ACWIA fee in FY2018 (66 percent) and the 5-year average of the annual number of H-1B petitions received (401,856) from Table 9 above. Total estimated petitions filed with the ACWIA fee is 265,225 as described in Table 9. Among the estimated petitions filed with the ACWIA fee (265,225) using the percentage of H-1B petitions filed with the ACWIA fee in

[173] See INA 214(c)(9), 8 U.S.C. 1184(c)(9).

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FY2018 there are 29,175 (11 percent) employers with 25 or fewer full-time employees and 235,946 (89 percent) employers with 26 or more full-time employees also as described in Table 9. Based on these estimated annual number of petitions, DHS estimates that 29,175 petitions would require an ACWIA fee of $750 and 235,946 petitions would require an ACWIA fee of $1,500 for each fiscal year for FY2021 to FY2030.

Table 10 shows the total annual cost of filing Form I-129 H-1B using the historical data on petitions received for FY2015 to FY2019. The baseline population is estimated using the 5-year average of the annual number of H-1B petitions received from FY2015 to FY2019 (401,856) in Table 4. Various fees are applied to the proportion of the baseline population as described in Table 9. DHS estimates the total annual cost under current regulation is $1,331,915,275, or an average of $3,314 per petition received. This baseline cost per petition received is applied to the baseline population for FY2021 to FY2027.[174] Since the Pub. L. 114-113 Fee of $4,000 is currently set to expire at the end of FY2027, DHS removes this fee from its baseline per petition cost in fiscal years FY2028 to FY2030. For those years, the baseline cost per petition received is estimated to be $2,274 per petition received.[175]

Table 10. Estimated Annual Baseline (Current) Cost of Filing Form I-129 H-1B petitions

Cost Items	Affected Population A	Time Burden (Hours) B	Compensation Rate C	Total Annual Cost D =A×B×C
Opportunity cost of time to complete Form I-129 petitions by:				
HR specialist	104,483	4.0	$47.57	$19,881,025

[174] Average per petition received cost ($3,314, rounded) = Total annual cost ($1,331,915,275)/5-year average petition received annually (401,856) for FY2015 to FY2019.

[175] Average per petition received cost without Pub. L. 114-113 Fee of $4,000 ($2,274, rounded) = Total annual cost without Pub. L. 114-113 Fee of $4,000 ($913,983,275)/5-year average petition received annually (401,856) for FY2015 to FY2019; Total annual cost without Pub. L. 114-113 Fee of $4,000 ($913,983,275) = Total annual cost ($1,331,915,275) – Pub. L. 114-113 fee ($417,932,000) from Table 10.

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In-house lawyer	96,445	4.0	$102.00	$39,349,560
Outsourced lawyer	200,928	4.0	$174.65	$140,368,301
Form I-129 filing fee cost	401,856		$555	$223,030,080
Pub. L. 114-113 fee	104,483		$4,000	$417,932,000
Fraud prevention and detection fee	208,965		$500	$104,482,500
ACWIA fee <26	29,175		$750	$21,881,059
ACWIA fee >25	235,946		$1,500	$353,919,617
Postage cost per package to mail completed Form I-129	401,856		$27.55	$11,071,133
Total Baseline Cost				$1,331,915,275
Source: USCIS analysis				

DHS estimates the total annual additional costs of the regulatory changes or cost savings from the regulatory changes. DHS presents each of these costs/ cost savings separately in sections that follow.

iii. Detailed Economic Effects of Each Provision in the interim final rule

The interim final rule changes the requirements governing the petitioning process for H-1B specialty occupation workers, which will result in additional costs for petitioners. The additional costs include increase in time burden of completing and filing an H-1B petition, submitting contractual documents, work orders, or similar documentary evidence if the beneficiary will work at a third-party worksite, requesting authorization to continue H-1B employment beyond 1 year for a subset of petitioners, codifying existing authority for conducting worksite inspections, and clarifying petition denials or revocations for failure to cooperate with a site inspection. In addition, the interim final rule will eliminate the general itinerary requirement for H-1B petitions which will result in cost savings for petitioners.

The additional cost and cost savings discussed above reflect changes to per petition costs. In addition, the interim final rule will also increase the affected population. To better illustrate the effects of each provision, DHS disentangles the effects of changes in per-petition costs from the

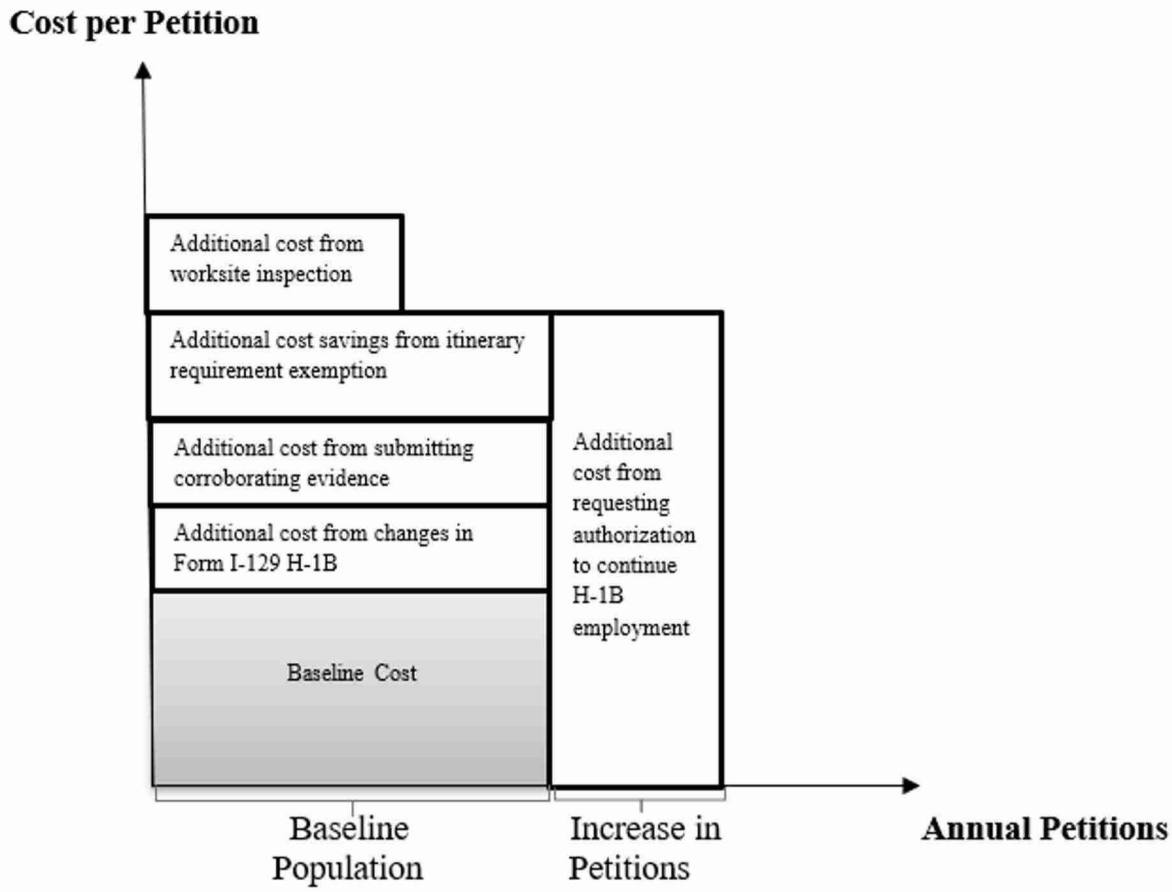
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effects of changes in the affected population. This is illustrated in the Diagram 1 below[176]. In Diagram 1, the vertical axis denotes per-petition costs and the horizontal axis denotes the affected population. The area of the shaded rectangle thus represents the current, baseline cost of preparing and filing H-1B petitions to petitioners. The provisions that affect the per-petition cost, including additional costs changes in Form I-129 H-1B, submitting corroborating evidence, and additional cost savings from itinerary requirement exemption, are represented as rectangles above the baseline population, denoting that the additional costs are calculated based on the baseline population. Separately, DHS adds a rectangle to the right of the baseline cost rectangle to represent the additional costs resulting from population changes due to the provision to limit the maximum validity period for third-party worksites. As the rectangle illustrates, DHS incorporates the per-petition cost increases into the cost calculation of the population increase. Finally, DHS separately estimates the cost of worksite inspections, which is represented by the small rectangle on the top. The number of worksite inspections does not depend on the number of H-1B petitions received and is not expected to be affected by the provision that limits the validity period.

[176] Diagram 1 excludes a one-time familiarization cost.

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Diagram 1. Breakdown of the Total Cost of the IFR



a. Revising the regulatory definition and standards for specialty occupation so they align more closely with the statutory definition of the term.

1. Additional Costs due to Changes in Form I-129 for H-1B Petitions

DHS is amending its regulations governing H-1B specialty occupation workers by making a number of revisions and clarifications to strengthen the integrity of the H-1B program, thereby better protecting the wages and working conditions of U.S. workers. DHS is amending Form I-129H1, which must be filed by petitioners on behalf of H-1B beneficiaries, in order to align them with the regulatory changes DHS is making in the interim final rule. The changes to Form I-129H1 will result in an increased time burden to complete and submit the form.

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As discussed, the current estimated time burden to complete and file Form I-129H1 takes a total of 4.0 hours per petition.[177] As a result of the changes in this interim final rule, DHS estimates the total time burden to complete and file Form I-129H1 will be 4.5 hours per petition, to account for the additional time petitioners will spend on reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request. DHS estimates the time burden will increase by a total of 30 minutes (0.5 hours) per petition.[178]

To estimate the additional cost of filing due to changes in Form I-129H1 petitions, DHS applies the additional estimated time burden to complete and file Form I-129H1 (0.583 hours) to the respective total population and compensation rate of who may file, including an HR specialist, in-house lawyer, or outsourced lawyer.

The total affected population for this provision is the number of petitions, including both initial and continuing petitions, for FY2021-2030. The total affected population for FY2021-2030 is estimated using the 5-year average of the annual number of H-1B petitions received for FY2015-FY2019, as listed in Table 4. Although the provision's increase in time burden may affect the total affected population, DHS believes that any effect would be de minimis: The estimated cost of the additional 30 minutes of time burden per petition is $62,[179] which is less than 0.06 percent of $107,000,[180] the average annual earnings of all H-1B nonimmigrant

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[177] See supra note 9.

[178] 0.5 hours additional time to complete and file new Form I-129H1 = (4.5 hours to complete and file new Form I-129 H1) – (4.0 hours to complete and file current Form I-129H1).

[179] Calculation: The estimated cost of the additional 30 minutes of time burden per petition ($72, rounded) = ($47.57 (HR specialist hourly wage rate, Table 6) * 26% (percent of H-1B petitions filed by HR specialist, Table 5) + $102 (In-house lawyer hourly wage rate, Table 6) * 24% (percent of H-1B petitions filed by in-house lawyer, Table 5) + $174.65 (Outsourced lawyer hourly wage rate, Table 6) *50% (percent of H-1B petitions filed by outsourced lawyer, Table 5))*0.5 (30 minute increase in time burden)

[180] This is the annual average earning of all H-1B nonimmigrant workers in all industries with known occupations (excluding industries with unknown occupations) for FY 2019. It is what employers agreed to pay the nonimmigrant

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workers. DHS believes that this cost increase may lead to de minimis changes on the margin to the set of petitioners.

As shown in Table 11, DHS estimates the total additional annual cost to petitioners of completing and filing Form I-129H1 petitions will be approximately $24,949,861, or an average of $62 per petition received.[181]

Table 11. Additional Opportunity Costs of Time to Petitioners for Filing Form I-129H1 Petitions from an Increase in Time Burden

Cost Items	Total Affected Population A	Additional Time Burden to Complete Form I-129H1 (Hours) B	Compensation Rate C	Total Cost D = A×B×C
Opportunity cost of time to complete Form I-129 H1 petitions by:				
HR specialist	104,483	0.5	$47.57	$2,485,128
In-house lawyer	96,445	0.5	$102.00	$4,918,695
Outsourced lawyer	200,928	0.5	$174.65	$17,546,038
Total	401,856			$24,949,861
Source: USCIS analysis				

b. Requiring corroborating evidence of work in a specialty occupation.

1. Costs of Submitting Contracts, Work Orders, or Similar Evidence Establishing Specialty Occupation and Employer-Employee Relationship.

Petitioners who regularly place their workers at third-party worksites often submit uncorroborated statements describing the role the H-1B beneficiary will perform at the third-party worksite. Such statements by the petitioner, without additional corroborating evidence, are generally insufficient to establish by a preponderance of the evidence that the H-1B beneficiary will actually perform specialty occupation work, and that the petitioner will have an employer-

workers at the time the petitions were filed and estimated based on full-time employment for 12 months, even if the nonimmigrant worker worked fewer than 12 months. Source: USCIS, March 5, 2020. See Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019, p.16, Table 10, supra note 21.

[181] Additional annual cost per petition received for completing and filing Form I-129 H-1B petitions ($62, rounded) = Total baseline cost ($24,949,861)/5-year average petition received annually (401,856).

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employee relationship with the beneficiary. Therefore, where a beneficiary will be placed at one or more third-party worksites, DHS will require the petitioner to submit evidence such as contracts, work orders, or other similar evidence to establish that the beneficiary will perform services in a specialty occupation at the third-party worksite(s), and that the petitioner will have an employer-employee relationship with the beneficiary.[182]

DHS estimates the time burden required to gather and submit corroborating evidence (such as contracts, work orders, or similar evidence) for petitioners with third-party worksite beneficiaries. DHS notes that corroborating evidence will have to be detailed enough to provide a sufficiently comprehensive view of the work available, and the terms and conditions under which the work will be performed at the third-party worksite. Since these petitioners will generally need to provide more documentation than petitioners who do not seek to employ H-1B workers at third-party worksite locations, DHS estimates the time burden for petitioners will be approximately 1 hour to gather and submit these documents as required under this interim final rule.[183] DHS requests public comment on this time burden estimate.

Since the terms "worksite" and "third-party worksite" are referenced in the new regulations, this interim final rule defines these terms. For example, the new regulation defining an employer-employee relationship refers to the "worksite" where the beneficiary will be employed as a relevant factor. The term "off-site" used on the Form I-129 H-1B has the same meaning as "third-party worksite."[184] Therefore, DHS uses the data on off-site locations to forecast the number of petitions involving a third-party worksite. To estimate the population

[182] See new 8 CFR 214.2(h)(4)(iv)(C).
[183] DHS notes that it is using approximate time burden estimates in this analysis because DHS does not have relevant information on how much time it would take affected petitioners to gather and submit corroborating evidence as required in the interim final rule. Therefore, DHS assumes 1 hour for the time to gather and submit written evidentiary document requirements.
[184] See supra note 27.

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impacted by the requirements for third-party worksites, DHS uses data on approved Form I-129 H-1B petitions. DHS uses available data for FY 2018 and FY 2019 to estimate the percentage of petitions that are approved for third-party worksites. Accordingly, Table 12 shows the average number of Form I-129 H-1B petitions approved in FY 2018 and FY 2019 for workers placed at off-site location. Nearly 36 percent of petitions were approved for workers placed at off-site locations.[185] DHS uses the estimated 36 percent as the proportion of both the population of received petitions and the population of approved petitions that are third-party worksite.

Table 12. Form I-129 H-1B Petitions for Workers Placed at Off-site Locations

Fiscal Year	Total Approved Petitions for Workers Placed at Off-site locations	Total Approved Petitions	Percent Placed at Off-site locations
2018	112,071	302,159	37.1%
2019	127,845	369,050	34.6%
Total	239,916	671,209	71.7%
2-year Average	119,958	335,605	35.8%

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD). May 27, 2020

Based on DHS' previous estimate of the average annual total number of receipts of Form I-129 H-1B petitions (401,856), we estimate that approximately 144,668 petitions would be filed requesting workers to be placed at third-party worksites.[186] To estimate the total cost of submitting documentary evidence as per the requirements of this provision, DHS multiplies the rate of compensation according to who would file the petition (an HR specialist, in-house lawyer, or outsourced lawyer, respectively) among the affected population by the estimated time burden to submit the documents. As shown in Table 13, DHS estimates that the total annual cost of

[185] Estimate based on data obtained from the Office of Policy and Strategy, Policy Research Division (PRD). 36 (rounded) percent petitions approved for off-site locations in FY 2018 and FY2019 = 239,916 total petitions approved for off-site locations in FY 2018 and FY2019 ÷ 671,209 total petitions approved in FY 2018 and FY2019.

[186] DHS uses the proportion of workers approved for off-site locations petitions (36 percent) as an approximate measure to estimate the number of workers to be placed at third-party worksites from the total number of petitions filed. 144,668 petitions filed requesting workers to be placed at third-party worksites = 401,856 petitions filed annually × 36 percent.

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submitting corroborating evidence (such as contracts, work orders or similar documents) required by this rule is $17,963,871 for the population of 144,668 petitions of workers placed at third-party worksites.

To estimate the effect of this provision in conjunction with other provisions that change the forecasted population, DHS calculates the cost of this provision on a per-petition-received basis. The annual cost of this provision, divided amongst the entire population of received petitions, would average out to approximately $45 per received petition.[187]

Table 13. Form I-129 H1 **Petitioners'** Cost for Submitting Corroborating Evidence to Establish that the Beneficiary will be Employed by the Petitioner in a Specialty Occupation at the Third-party Worksite.

Cost Items	Affected Population A	Time Burden (Hours) B	Compensation Rate C	Total Cost D =A×B×C
Opportunity cost of time to complete Form I-129 H1 petitions by:				
HR specialist[a]	37,614	1	$47.57	$1,789,298
In-house lawyer[b]	34,720	1	$102.00	$3,541,440
Outsourced lawyer[c]	72,334	1	$174.65	$12,633,133
Total	144,668			$17,963,871

Source: USCIS Analysis
[a] 37,614 petitions filed by HR specialist annually = 144,668 petitions request workers to be placed at third-party worksite annually × 26 percent.
[b] 34,720 petitions filed by in-house lawyers annually = 144,668 petitions request workers to be placed at third-party worksites annually × 24 percent.
[c] 72,334 petitions filed by outsourced lawyer annually = 144,668 petitions request workers to be place at third-party worksites annually × 50 percent.

Although the provision's increase in time burden may affect the total affected population, DHS believes that any effect would be de minimis: The estimated cost of the additional one hour of time burden per petition involving third-party worksites is $124,[188] which is less than 0.12

[187] The annual cost of the provision per received petition ($45) = Total annual cost of submitting corroborating evidence ($17,963,871) / Total number of H-1B petitions filed annually (401,856).
[188] Calculation: The estimated cost of the additional one hour of time burden per petition ($124, rounded) = $47.57 (HR specialist hourly wage rate, Table 6) * 26% (percent of H-1B petitions filed by HR specialist, Table 5) + $102

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percent of $107,000,[189] the average annual earnings of all H-1B nonimmigrant workers. DHS believes that this cost increase is so small that no potential petitioner would change their decision to file based solely on this change.

c. Codifying in regulations existing authority to conduct site visits and other compliance reviews and clarifying consequences for failure to allow a site visit.

1. Cost of Worksite Inspections

Using its general authority, USCIS may conduct audits, on-site inspections, compliance reviews, or investigations to help verify a petitioner's and beneficiary's H-1B eligibility and better ensure that all laws have been complied with before and after approval of such benefits.[190] The existing authority to conduct on-site inspection is critical to the integrity of the H-1B program to detect and deter fraud and noncompliance. In this rule, DHS is adding regulations specific to the H-1B program to codify its existing authority and clarify the scope of inspections – particularly on-site inspections – and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections.

To be clear, USCIS has historically conducted site visits and has had the authority to deny or revoke petitions for reasons including noncompliance with a site visit request. However, the authority to conduct a site visit is not currently codified in CFR for the H-1B program. Since this interim final rule newly codifies this authority, DHS quantitatively estimates the costs associated

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(In-house lawyer hourly wage rate, Table 6) * 24% (percent of H-1B petitions filed by in-house lawyer, Table 5) + $174.65 (Outsourced lawyer hourly wage rate, Table 6) *50% (percent of H-1B petitions filed by outsourced lawyer, Table 5).

[189] This is the annual average earning of all H-1B nonimmigrant workers in all industries with known occupations (excluding industries with unknown occupations) for FY 2019. It is what employers agreed to pay the nonimmigrant workers at the time the petitions were filed and estimated based on full-time employment for 12 months, even if the nonimmigrant worker worked fewer than 12 months. See Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019, p.16, Table 10, supra note 21.

[190] See Section 103 of the INA and 8 CFR part 2.1. As stated in subsection V.A.5.ii(d) of this analysis, this interim final rule will also clarify the possible scope of an inspection, which may include the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable.

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with conducting site visits. Also, the provision delineates that failure or refusal to cooperate with a site visit request and allow USCIS to verify facts may result in denial or revocation. DHS considers this part of the provision as a clarification to existing regulations[191] and discusses the benefits of this clarification qualitatively.

In July 2009, USCIS started the Administrative Site Visit and Verification Program (ASVVP)[192] as an additional method to verify information in certain visa petitions under scrutiny. Under this program, Fraud Detection and National Security (FDNS) officers were authorized to make unannounced site visits to collect information as part of a compliance review, which verifies whether petitioners and beneficiaries are following the immigration laws and regulations that are applicable in a particular case. This process includes researching information in government databases, reviewing public records and evidence accompanying the petition, interviewing the petitioner and/or beneficiary, and conducting site visits. Once the site visit is completed, the FDNS officers write a Compliance Review Report, identifying any indicators of fraud or noncompliance to assist USCIS in subsequent final adjudicative decisions (for example, a notice of intent to revoke the petition approval).

Site visits conducted by USCIS have uncovered noncompliance in the H-1B program. From FY 2013 to 2016, USCIS conducted 30,786 H-1B compliance reviews, of which 3,811 (12.4 percent) were found to be noncompliant.[193] From FY 2016 to March 27, 2019, USCIS conducted 20,492 H-1B compliance reviews and found 2,341 (11.4 percent) to be

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[191] See 8 CFR 214.2(h)(11)(iii)(A).
[192] See U.S. Citizenship and Immigration Services - Administrative Site Visit and Verification Program, available at https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program (last visited Aug. 11, 2020).
[193] See supra note 132.

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noncompliant.[194] However, when disaggregated by worksite location, the noncompliance rate is found to be higher for workers placed at an off-site or third-party location compared to workers placed at a petitioner's onsite location (21.7 percent and 9.9 percent, respectively).[195]

As a result, starting in 2017, USCIS began conducting more targeted site visits related to the H-1B program, focusing on the cases of H-1B-dependent employers (employers who have a high ratio of H-1B workers compared to U.S. workers, as defined by statute) for whom USCIS cannot validate the employer's basic business information through commercially available data, and on employers petitioning for H-1B workers who work off-site at another company or organization's location.

DHS seeks to ensure that the H-1B program is used appropriately and the interests of U.S. workers are protected. Hence, the interim final rule codifies in regulation USCIS' existing authority to conduct site visits and other compliance reviews and will make clear that inspections and other compliance reviews may include, but are not limited to, worksite visits including petitioners' headquarters, satellite locations, or third-party worksites, and interviews or review of records, as applicable.

The interim final rule will also clarify the consequences of a petitioner's or third party's refusal or failure to cooperate with these inspections. This interim final rule will make clear that inspections may include, but are not limited to, a visit of the petitioning organization's facilities, interviews with its officials, review of its records related to compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers pertinent to the petitioner's H-1B eligibility and compliance.[196] The interim

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[194] USCIS, Office of Policy and Strategy, Policy Research Division (OP&S PRD), Summary of H-1B Site Visits Data.

[195] Id.

[196] See new 8 CFR 214.2(h)(4)(i)(B)(7)(i).

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final rule also explains the possible scope of an inspection, which may include the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable. Additionally, the new regulation states that if USCIS is unable to verify facts related to an H-1B petition due to the failure or refusal of the petitioner or a third-party to cooperate with a site visit, then such failure or refusal may be grounds for denial or revocation of any H-1B petition for H-1B workers performing services at the location or locations which are a subject of inspection, including any third-party worksites.[197] This provision further strengthens the integrity of the H-1B program and helps to detect and prevent fraud and abuse.

In order to estimate the population impacted by site visits, DHS uses historical site inspection data. The site inspections were conducted at Form I-129 H-1B petitioners' on-site locations and third-party worksites from FY2015 to FY2019. Table 14 shows the number of worksite inspections conducted each year and the average duration of time for conducting each worksite inspection. During this period, the annual number of worksite inspections has increased each year and ranged from a low of 4,413 in FY2015 to a high of 10,384 in FY2019.

Table 14. Total Number of Worksite Inspections Conducted for Form I-129 H-1B Petitioners and Average Inspection Time, FY 2015 to FY 2019.

Fiscal Year	Number of Worksite Inspections	Average Duration for Worksite Inspection (Hours)
2015	4,413	0.94
2016	7,046	0.91
2017	7,174	1.04
2018	7,718	1.16
2019	10,384	1.23
Total	36,735	5.28

Source: USCIS, Fraud Detection & National Security (FDNS), DS database, May 28, 2020

[197] See new 8 CFR 214.2(h)(4)(i)(B)(7)(iii).

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The number of worksite inspections does not depend on the number of H-1B petitions received. It depends on DHS resources to conduct the site visits. DHS uses the highest annual number of worksite inspections in past five years (10,384 in FY2019) as the estimated annual population of worksite visits for the next 10 years. DHS also uses 1.23 hours from FY2019 historical data for the estimated duration for worksite inspection, which includes interviewing the beneficiary, the on-site supervisor or manager and other workers, as applicable, and reviewing all records pertinent to the H-1B petitions available to USCIS when requested during inspection.

DHS assumes that a supervisor or manager would be present on behalf of a petitioner while a USCIS immigration officer conducts the worksite inspection in addition to the beneficiary. The beneficiary would be interviewed to verify the date employment started, work location, hours, salary, or other terms of employment, to corroborate the information provided in an approved petition. The supervisor or manager would be the most qualified employee at the location who could answer all questions pertinent to the petitioning organization and its H-1B nonimmigrant workers. They would also be able to gather and provide the proper records considered pertinent to USCIS immigration officers. Consequently, for the purposes of this economic analysis, DHS assumes that on average two individuals will be interviewed during each worksite inspection: the beneficiary and the supervisor or manager. DHS uses their respective compensation rates in the estimation of the worksite inspection costs.[198] However, if any other worker or on-site manager is interviewed, the same compensation rates would apply.

[198] Any other USCIS costs associated with the worksite inspections (i.e., travel and deskwork relating to other research, review and document write up) are not estimated here because these costs are covered by fees collected from petitioners filing Form I-129 for H-1B petitions. All such costs are discussed under the Federal Government Cost section.

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DHS uses hourly compensation rates to estimate the opportunity cost of time a beneficiary and supervisor or manager would incur during worksite inspections. Based on data obtained from a USCIS report for Fiscal Year 2019, DHS estimates that an H-1B worker earned an average of $107,000 per year, or $51.44 hourly wage in FY 2019.[199] The annual salary does not include non-cash compensation and benefits, such as health insurance and transportation. DHS adjusts the average hourly wage rate using a benefits-to-wage multiplier to estimate the average hourly compensation of $75.11 for an H-1B nonimmigrant worker.[200] DHS uses an average compensation rate of $85.96 for a supervisor or manager in the estimation of the opportunity cost of time he or she would incur during worksite inspections.[201] Of the 1.23 hours of worksite inspection time (see Table 14), DHS has no information on how long a USCIS immigration officer would take to interview a beneficiary, or supervisor, or manager. In this analysis, DHS assumes that it would take 0.49 hours to interview a beneficiary and 0.74 hours to interview a supervisor or manager.[202]

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[199] This is the annual average earning of all H-1B nonimmigrant workers in all industries with known occupations (excluding industries with unknown occupations) for FY 2019. It is what employers agreed to pay the nonimmigrant workers at the time the applications were filed and estimated based on full-time employment for 12 months, even if the nonimmigrant worker worked fewer than 12 months. See Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019, p.16, Table 10, at supra note 21. $51.44 hourly wage = $107,000 annual pay ÷ 2,080 annual work hours. According to U.S. Department of Labor (DOL) that certifies the Labor Condition Application of the H-1B worker, a full-time H-1B employee works 40 hours per week for 52 weeks for a total of 2,080 hours in a year. DOL, Wage and hour Division: Fact Sheet # 68 – What Constitutes a Full-Time Employee Under H-1B Visa Program? July 2009. See https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs68.pdf (last visited Aug. 11, 2020).

[200] Hourly compensation of $75.11 = $51.44 average hourly wage rate for H-1B worker × 1.46 benefits-to-wage multiplier. See section V.A.5. for estimation of the benefits-to-wage multiplier.

[201] Hourly compensation of $85.96 = $58.88 average hourly wage rate for Management Occupations (national) × 1.46 benefits-to-wage multiplier. See U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2019 National Occupational Employment and Wage Estimates National, SOC 11-0000 – Management Occupations, available at https://www.bls.gov/oes/current/oes110000.htm (last visited Aug. 11, 2020).

[202] DHS assumes that an interview with the beneficiary takes 40% of the inspection duration, while an interview with the supervisor or manager takes 60%. In addition to the inspection, DHS assumes the supervisor or manager will need additional time to gather and discuss the records/documents provided to the USCIS Immigration Officer. Duration of interview hours for beneficiaries (0.49) = Inspection duration (1.23) x 40% = 0.42 (rounded). Duration of interview hours for supervisors or managers (0.74) = Inspection duration (1.23) x 60% = 0.74.

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In Table 15, DHS estimates the total annual opportunity cost of time for worksite inspections of H-1B petitions by multiplying the average annual number of worksite inspections (10,384) by the average duration the interview would take for a beneficiary (0.49) or supervisor or manager (0.74) and their respective compensation rates. DHS obtains the total annual cost of the H-1B worksite inspections to be $1,042,702 for this provision.

Table 15. Estimated Annual **Petitioners'** Cost of Worksite Inspection for H-1B Petitions

Cost Item	Number of Worksite Inspections	Average Duration of Interview (Hours)	Compensation Rate	Total Cost
	A	B	C	D =A×B×C
Beneficiaries' opportunity cost of time during worksite inspections	10,384	0.49	$75.11	$382,172
Supervisors or managers' opportunity cost of time during worksite inspections	10,384	0.74	$85.96	$660,530
Total	-	1.23	-	$1,042,702
Source: USCIS analysis				

If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition. In this interim final rule, it may be grounds for denial or revocation of any H-1B petition for H-1B workers performing services at the location or locations which are subject of inspection, including any third-party worksites, if USCIS is unable to verify relevant facts due to failure or refusal of the petitioner or third-party worksite parties to cooperate in a site visit.[203]

DHS notes that the site visit provision could create an incentive for employers to cooperate, and to provide further evidence to support the Form I-129 H-1B petition, for an adjudicative decision. The new provision will notify petitioners of the specific consequences for noncompliance, whether by them or by officials at the third-party worksite. If USCIS conducts a

[203] See new 8 CFR 214.2(h)(4)(i)(B)(7)(ii) and (iii).

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site visit in order to verify facts related to the H-1B petition, including whether the beneficiary is being employed consistent with the terms of the petition approval, then DHS believes that it would be reasonable to conclude that the petitioner will not have met its burden of proof and the petition may be properly denied or revoked if USCIS is unable to verify relevant facts to determine compliance or because of failure or refusal to comply with the site inspection. This would be true whether the unverified facts relate to a petitioner worksite or a third-party worksite at which a beneficiary has been or will be placed by the petitioner. It would also be true whether the failure or refusal to cooperate is by the petitioner or a third-party.

d. Eliminating the general itinerary requirement for H-1B petitions.

1. Cost savings of itinerary requirement exemption

Current regulations require an itinerary with the dates and locations of the services to be provided if a Form I-129 H-1B petition indicates that the beneficiary will be performing services in more than one location.[204] This interim final rule eliminates this requirement for H-1B petitioners. DHS is revising 8 CFR 214.2(h)(2)(i)(B) to specify that the itinerary requirement for service or training in more than one location will not apply to H-1B petitions. See new 8 CFR 214.2(h)(2)(i)(B). DHS is making this revision in response to a recent court decision specific to H-1B petitions.[205] The itinerary requirement at 8 CFR 214.2(h)(2)(i)(B) will still apply to other H classifications. In addition, DHS will still apply the itinerary requirement at 8 CFR 214.2(h)(2)(i)(F) for H-1B petitions filed by agents.

DHS calculates economic impacts of this provision relative to the current regulation. Relative to the current regulation this provision reduces the cost for the petitioners who file on behalf of beneficiaries performing services in more than one location and submitting itineraries.

[204] See current 8 CFR 214.2(h)(2)(i)(B).
[205] See, ITServe All., Inc. v. Cissna, No. CV 18-2350 (RMC), 2020 WL 1150186 (D.D.C. Mar. 10, 2020).

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However, due to the absence of detailed data on the number of petitioners who file on behalf of beneficiaries performing services in more than one location, DHS uses the number of petitions filed annually for workers placed at off-site locations as a proxy for petitioners with beneficiaries performing services in multiple locations. DHS assumes the petitions filed for workers placed at off-site locations are likely to indicate that beneficiaries will be performing services at multiple locations and, therefore, petitioners are likely to submit itineraries. DHS estimates that the number of petitions filed annually for workers placed at off-site locations who may submit itineraries using average number of petitions received annually from FY2015 to FY2019 and the proportion of off-site workers approved petitions. The estimated number of petitions filed annually for workers placed at off-site location is 144,668.[206] DHS estimates the cost savings based on the opportunity cost of time of preparing and submitting an itinerary by multiplying the estimated time burden to gather itinerary information (0.25 hours)[207] by the compensation rate of an HR specialist, in-house lawyer or outsourced lawyer, respectively. Table 16 shows that the estimated annual cost savings due to the elimination of the itinerary requirement, $4,490,968. Since the itinerary is normally submitted with the Form I-129 H-1B package, there would be no additional postage savings.

To estimate the effect of this provision in conjunction with other provisions that change the forecasted population, DHS calculates the cost savings of this provision on a per-petition-

[206] DHS uses the proportion of workers placed at off-site location (36 percent from Table 12) as an approximate measure to estimate the number of petitions received annually for workers performing services in multiple locations from the total number of petitions filed. 144,528 petitions filed for workers performing services in multiple locations = 401,468 total petitions filed annually × 36 percent.

[207] DHS assumes that it would not take more than 0.25 hours (or 15 minutes) because this itinerary information should be readily available from the petitioners' records during the time of filing the petitions.

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received basis. The annual cost savings of this provision, divided amongst the entire population of received petitions, would average out to approximately $11 per received petition. [208]

Table 16. Estimated Cost Savings to Form I-129H1 Petitioners due to the Elimination of the Itinerary Requirement.				
	Affected Population [a] A	Time Burden (Hours) B	Compensation Rate C	Total Annual Cost A x B x C
Opportunity cost of time to complete Form I-129H1 petitions by:				
HR specialist	37,614	0.25	$47.57	$447,325
In-house lawyer	34,720	0.25	$102.00	$885,360
Outsourced lawyer	72,334	0.25	$174.65	$3,158,283
Total	144,668			$4,490,968
Source: USCIS analysis [a] The estimated number of petitions filed annually for workers placed at off-site location 144,668 HR specialist (37,614) = 144,668 x Percent of petitions filed by HR specialist (26%) In-house lawyer (34,720) = 144,668 x Percent of petitions filed by in-house lawyer (24%) Outsourced lawyer (72,334) = 144,668 x Percent of petitions filed by outsourced lawyer (50%)				

e. Limiting maximum validity period for third-party placement

1. Costs of Requesting Authorization to Continue H-1B Employment

DHS is amending the maximum validity period for a petition approved for workers placed at third-party worksites. Under current regulations at 8 CFR 214.2(h)(9)(iii), the maximum validity period an H-1B petition may be approved is "up to three years". This interim final rule will limit the maximum validity period to 1 year for workers placed at third-party worksites.[209] This provision will result in more extension petitions from petitioners with beneficiaries who work at third-party worksites.

DHS estimates the increase in petitions for FY2021 to FY2030 due to the reduction in maximum validity period. Although the maximum validity period for a specialty occupation worker is 3 years, the average validity period for approved H-1B beneficiaries is 28 months.[210]

[208] Additional annual cost savings per petition received for itinerary requirement exemption for H-1B petitions ($11, rounded) = Total baseline cost savings ($4,490,968)/5-year average petition received annually (401,856).
[209] See new 8 CFR 214.2(h)(9)(iii)(A)(1).
[210] See supra note 11.

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Since the interim final rule limits the validity period for petitions indicating that the beneficiary will work at a third-party worksite to up to 1 year (12 months), petitioners seeking to continue the employment of beneficiaries placed at third-party worksites will have to file extension petitions more frequently to request authorization to continue such H-1B employment. The reduction in average validity period from 28 months to 12 months or less will increase the frequency of petitions by 28/12 times annually for FY 2023 and onwards. There is a transition period in FY2021 and FY2022, which is explained in detail below.

To determine the number of petitions under the current regulations, DHS uses the historical 5-year average number of petitions approved for FY2015 to FY2019 (306,898)[211] and the proportion of workers approved for off-site locations petitions (36 percent) as an approximate measure to estimate the number of workers to be placed at third-party worksites.[212] DHS estimates the number of petitions approved annually for workers placed at third-party worksite as 110,483[213] under the 28 month average validity period. DHS assumes that 110,483 petitions are approved uniformly across 12 months, or 9,207[214] petitions per month.

For FY2021 DHS estimates no additional increase in petitions due to this provision because any associated costs would occur at the end of the petition validity period when the petitioner seeks to file an extension petition. Any petition filed in FY2021 under the provision's maximum validity period of 12 months for workers placed at third party worksites would have otherwise been filed under the current regulations, which is up to 3 years. The baseline population

[211] Table 4. Total Receipts, Approvals, and Denials of Form I-129 Petitions with an H-1B Classification, FY 2015 to FY 2019.
[212] Table 12. Form I-129 H-1B petitions for Workers placed at Off-site Locations.
[213] Calculation: Estimated number of petitions approved annually for workers placed at third-party worksite 110,483=5-year average number of petitions approved for FY2015 to FY2019 (306,898) * Percentage of workers approved for off-site locations petitions 36%.
[214] Calculation: 9,207= Estimated number of petitions approved annually for workers placed at third-party worksite 110,483/12 months.

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already accounts for these petitions. The reduction in maximum validity period from 3 years to 12 months would increase the number of filed petitions starting 12 months after the effective date of this interim final rule, which would be in FY2022. Those petitions pending or approved prior to the effective date of this interim final rule would still be subject to the current regulation maximum validity period of 3 years, unless an amended petition is filed.

For FY2022, DHS estimates an additional 110,483 extension petitions due to this provision. These additional extension petitions would be filed by petitioners who had third-party worksite petitions filed in FY2021 that require an extension under the interim final rule's 12 month maximum validity period but would not have required an extension under the current 28 month average validity period.

For each year between FY2023 and FY2030, DHS estimates an additional 147,311 extension petitions due to this provision. These additional extension petitions represent the sum of 110,483 petitions filed in the previous fiscal year plus 36,828[215] extension petitions from four months of the fiscal year prior to the previous fiscal year, all of which may have maintained their validity under the current 28 month average validity period.[216] The summary table is presented above in section "Population Affected by the Rule" in Table 7.

DHS estimates the additional costs resulting from the population changes due to the limiting maximum validity period for third-party worksites using the forecasted increase in the number of petitions received as discussed above. The cost per additional petition is the sum of the

[215] For example, in FY2025 extension petitions consist of those petitions filed in FY2024 whose maximum12 month validity period would expire in FY2025 and 4 month worth of petitions filed in FY2023 that would have had their 28 month average validity period expire in FY2025. Therefore, 4 month worth of petition (36,828, rounded) = 4 months*(Estimated number of petitions approved annually for workers placed at third-party worksite 110,483/12 months).

[216] Additional 147,311 extension petitions=110,483 Petitions filed in the previous fiscal year + 36,828 Extension petitions from four months of the fiscal year prior to the previous fiscal year.

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baseline cost per petition received, additional annual cost per petition received for completing and filing Form I-129H1 petitions, additional annual cost per petition received for submitting corroborating evidence for H-1B petitions, and the annual cost savings per petition received for itinerary requirement exemption for H-1B petitions. Arithmetically, this is obtained by adding $3,314, $62, $45, and ($11) to equal $3,410 for FY2021 to FY2027. Due to the expiration of the Pub. L. 114-113 Fee at the end of FY2027, the cost for FY2028 to FY2030 is obtained by adding $2,274, $62, $45, and ($11) to equal $2,370.[217]

This provision's estimated annual increase in costs to petitioners is the product of the estimated additional population and estimated cost per petition received, both described above. Table 17 delineates these costs for each fiscal year between FY2021 and FY2030.

Table 17. Forecasting Increase in Cost due to Population Increase for FY2021 to FY2030

Fiscal Year	Estimated Increase in Number of Petitions Received A	Cost per Petition Received B	Estimated Increase in Cost due to Population Increase A x B
2021	0	$3,410	0
2022	110,483	$3,410	$376,747,030
2023	147,311	$3,410	$502,330,510
2024	147,311	$3,410	$502,330,510

[217] Additional annual cost per petition received for each provision is calculated in the relevant section. Sum of cost per petition received for each provision ($3,410)=Additional annual cost per petition received for completing and filing Form I-129 H-1B petitions ($62) + Additional annual cost per petition received for submitting corroborating evidence for H-1B petitions ($45) - Additional annual cost savings per petition received for itinerary requirement exemption for H-1B petitions ($11) + Baseline cost per petition received ($3,314) for FY2021 to FY2027. Sum of cost per petition received for each provision ($2,370)=Additional annual cost per petition received for completing and filing Form I-129 H-1B petitions ($62) + Additional annual cost per petition received for submitting corroborating evidence for H-1B petitions ($45) - Additional annual cost savings per petition received for itinerary requirement exemption for H-1B petitions ($11) + Baseline cost per petition received ($2,274) for FY2028 to FY2030.

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2025	147,311	$3,410	$502,330,510
2026	147,311	$3,410	$502,330,510
2027	147,311	$3,410	$502,330,510
2028	147,311	$2,370	$349,127,070
2029	147,311	$2,370	$349,127,070
2030	147,311	$2,370	$349,127,070
Source: USCIS Analysis			

f. Familiarization Cost

Familiarization costs comprise the opportunity cost of the time spent reading and understanding the details of a rule in order to fully comply with the new regulation(s). To the extent that an individual or entity directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. The entities directly regulated by this rule are the employers who file H-1B petitions. There were 48,084 unique employers who filed H-1B petitions in FY2019.[218] DHS assumes that the petitioners require approximately two hours to familiarize themselves with the rule. Using the average total rate of compensation of HR specialists, In-house lawyer, and Outsourced lawyer from Table 8 and assuming one person at each entity familiarizes his or herself with the rule, DHS estimates a one-time total familiarization cost of $11,941,471 in FY2021.

Table 18. Familiarization Costs to the Petitioners

Cost Items	Total Affected Population A	Additional Time Burden to Familiarize (Hours) B	Compensation Rate C	Total Cost D = A×B×C
Opportunity cost of time to familiarize the rule by:				
HR specialist	12,502	2	$47.57	$1,189,440
In-house lawyer	11,540	2	$102.00	$2,354,160

[218] Source: Office of Policy and Strategy, Policy Research Division (PRD), Claims 3 and USCIS analysis, August 18, 2020.

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Outsourced lawyer	24,042	2	$174.65	$8,397,871
Total	48,084			$11,941,471
Source: USCIS analysis				

5. Total Estimated and Discounted Net Costs of Regulatory Changes to Petitioners

DHS presents the total annual estimated costs and cost savings annualized over a 10-year implementation period resulting from regulatory changes in this interim final rule. Table 19 shows the total annual cost of the rule to be $55,897,905 in FY2021, $420,703,464 in FY2022, $546,286,944 in each of FY2023 to FY2027, and $393,083,504 in each of FY2028 to FY2030 to the petitioners. DHS also estimates the total annual savings of the rule to petitioners to be $4,490,968. Therefore, the estimated total annual net costs to petitioners to be $51,406,937 in FY2021, $416,212,496 in FY2022, $541,795,976 in each of FY2023 to FY2027, and $388,592,536 in each of FY2028 to FY2030.

Table 19. Summary of Estimated Annual Net Costs to Petitioners in the Interim Final Rule for FY2021 to FY2030

Costs or Cost Savings (provision)	Total Estimated Annual Cost FY2021	Total Estimated Annual Cost FY2022	Total Estimated Annual Cost FY2023–FY2027	Total Estimated Annual Cost FY2028–FY2030
(a) Petitioners' additional cost of filing Form I-129H1 petitions	$24,949,861	$24,949,861	$24,949,861	$24,949,861
(b) Petitioners' cost of submitting evidence establishing employer-employee relationship and specialty occupation work when the beneficiary will be working at a third-party worksite	$17,963,871	$17,963,871	$17,963,871	$17,963,871
(c) Petitioners' cost of worksite inspection	$1,042,702	$1,042,702	$1,042,702	$1,042,702
(e) Petitioners' cost of requesting authorization to continue H-1B employment more frequently because of limitation on validity period for third-party worksite petitions	$0	$376,747,030	$502,330,510	$349,127,070
(f) Petitioners' cost of familiarization to the rule	$11,941,471	$0	$0	$0

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Total Annual Costs	$55,897,905	$420,703,464	$546,286,944	$393,083,504
(d) Petitioners' cost savings due to eliminating general H-1B itinerary requirement	$4,490,968	$4,490,968	$4,490,968	$4,490,968
Total Annual Cost Savings	$4,490,968	$4,490,968	$4,490,968	$4,490,968
Total Annual Net Costs	$51,406,937	$416,212,496	$541,795,976	$388,592,536
Source: USCIS analysis Calculation: Total annual net costs = Total annual costs - Total annual cost savings				

To compare costs over time, DHS applies a 3 percent and a 7 percent discount rate to the total estimated costs associated with this interim final rule. Table 20 shows the summary undiscounted and discounted total net costs to Form I-129H1 petitioners over a 10-year period. DHS estimates the 10-year total net cost of the rule to petitioners to be approximately $4,342,376,923 undiscounted, $3,674,793,598 discounted at 3-percent, and $2,986,972,052 discounted at 7-percent. Over the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be $430,797,915 annualized at 3-percent, $425,277,621 annualized at 7-percent.

Table 20. Total Estimated Net Costs of this Interim Final Rule (FY 2021-FY 2030)

Fiscal Year	Total Net Costs (Undiscounted)	Total Net Costs (Discounted at 3 percent)	Total Net Costs (Discounted at 7 percent)
2021	$51,406,937	$49,909,648	$48,043,867
2022	$416,212,496	$392,320,196	$363,536,113
2023	$541,795,976	$495,820,069	$442,266,905
2024	$541,795,976	$481,378,707	$413,333,556
2025	$541,795,976	$467,357,968	$386,293,043
2026	$541,795,976	$453,745,600	$361,021,536

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2027	$541,795,976	$440,529,709	$337,403,304
2028	$388,592,536	$306,758,536	$226,164,394
2029	$388,592,536	$297,823,822	$211,368,593
2030	$388,592,536	$289,149,342	$197,540,741
Total	$4,342,376,923	$3,674,793,598	$2,986,972,052
Annualized		$430,797,915	$425,277,621
Source: USCIS analysis			

E.O. 13771 directs agencies to reduce regulation and control regulatory costs. This interim final rule is considered an E.O. 13771 regulatory action. DHS estimates the total cost of this rule is $292,051,988 annualized using a 7 percent discount rate over a perpetual time horizon in 2016 dollars and discounted back to 2016.

6. Costs to the Federal Government

DHS is revising the regulations to require issuance of a brief explanation when an H-1B nonimmigrant petition is approved, but the validity period end date is earlier than the end date requested by the petitioner at the time of filing. The cost for providing a written explanation of the rationale for limiting the approval validity end date in such cases will be borne by USCIS.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services by DHS, including administrative costs and services provided without charge to certain applicants and petitioners.[219] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (such as facility rent, IT equipment and systems, or other expenses) and immigration services provided without charge. Consequently, since USCIS

[219] See INA section 286(m), 8 U.S.C. 1356(m).

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immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. DHS notes the time necessary for USCIS to review the information submitted with the forms relevant to this interim final rule includes the time to adjudicate the benefit request. These costs are captured in the fees collected for the benefit request from petitioners. DHS notes that this rule may increase USCIS' costs associated with adjudicating immigration benefit requests. Future adjustments to the fee schedule may be necessary to recover these additional operating costs and will be determined during USCIS' next comprehensive biennial fee review.

7. Benefits of the Regulatory Changes

This rule specifies the conditions under which DHS intends to implement the changes in the current rule regarding petitions for H-1B specialty occupation workers filed using Form I-129H1. Although the H-1B program was intended to allow employers to fill gaps in their workforce and remain competitive in the global economy, it has in fact expanded far beyond that, often to the detriment of U.S. workers. As discussed above, the H-1B program has been used to displace U.S. workers, and has led to reduced wages in a number of industries in the U.S. labor market. In this interim final rule, DHS is implementing revisions and clarifications to ensure that each H-1B nonimmigrant beneficiary is working for a qualified petitioner and in a job meeting the statutory requirements of a specialty occupation. The benefits of each provision in the interim final rule is discussed in detail below.

DHS is updating Form I-129H1 for H-1B petitions to incorporate the regulatory changes in this interim final rule. Although this will result in petitioners incurring additional costs while filing H-1B petitions, USCIS can use the additional credible evidence requested in the H-1B

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petitions to potentially reduce the number of Requests for Evidence (RFEs) sent to petitioners, which ultimately would allow for more efficient and timely adjudication decisions.

Where a beneficiary will be placed at one or more third-party worksites, DHS will require the petitioner to submit evidence such as contracts, work orders, or other similar evidence to establish that the petitioner will have an employer-employee relationship with the beneficiary, and that the beneficiary will perform services in a specialty occupation at the third-party worksite(s). While USCIS already has general authority to request any document it deems necessary, this interim final rule states that USCIS may request copies of contracts, work orders, or other similar corroborating evidence on a case-by-case basis in all cases, regardless of where the beneficiary will be placed. This supporting evidence will allow USCIS to confirm that beneficiaries working at third-party worksites will have a valid employment relationship with the petitioner and will be performing qualifying specialty occupation services while working at the third-party worksite.

Based on the noncompliance uncovered by USCIS site visits,[220] DHS is adding additional requirements specific to the H-1B program to set forth the scope of on-site inspections and the consequences of a petitioner's or third-party's refusal or failure to fully cooperate with these inspections. DHS believes that site visits are important to maintain the integrity of the H-1B program by detecting and deterring fraud and noncompliance. As a result, USCIS can ensure that the H-1B program is used appropriately and the economic interests of U.S. workers are protected. The ability to detect and deter fraud and noncompliance will strengthen the H-1B program and hence outweigh any overall adjudication delays resulting from the worksite visits. Under this rule, such failure or refusal to cooperate and allow USCIS to verify facts may be grounds for denial or revocation of any H-1B petition for workers performing services at the location or

[220] See supra note 132.

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locations which are subjects of inspection, including any third-party worksites. DHS is clarifying that failure or refusal to cooperate with a site visit or other compliance review may be grounds for denial or revocation of a petition.

DHS believes that limiting approvals for third-party placement petitions to a maximum of 1-year would allow the agency to more consistently and thoroughly monitor a petitioner's and beneficiary's continuing eligibility. DHS believes that limiting the validity period for petitions where beneficiaries are placed at third-party worksites, where fraud and abuse is more likely to occur, would also increase compliance with the regulations and improve the program's overall integrity. This general practice will have the added benefit of providing a degree of certainty to petitioners with respect to what validity period to request and to expect, if approved.

DHS will revise the regulations to require issuance of a brief explanation when an H-1B nonimmigrant petition is approved but USCIS grants an earlier validity period end date than requested by the petitioner. Providing a written explanation for limited validity period will help ensure that the petitioner is aware of the reason for shorter validity periods.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. "Small entities" are small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. This IFR is exempt from the notice and comment rulemaking, as stated in

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the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq of the preamble. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value equivalent of $100 million in 1995 adjusted for inflation to 2019 levels by the Consumer Price Index for All Urban Consumers (CPI-U) is approximately $168 million based on the Consumer Price Index for All Urban Consumers.[221]

While this interim final rule rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a "Federal mandate" as defined for UMRA purposes.[222] The cost of preparation of H-1B petitions (including required evidence) and the payment of H-1B nonimmigrant petition fees by petitioners or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary

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[221] See U.S. Dep't of Labor, Bureau of Labor Statistics, Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items, available at https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202003.pdf (last visited Aug. 11, 2020).

Calculation of inflation: 1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2019); 2) Subtract reference year CPI-U from current year CPI-U; 3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; 4) Multiply by 100 = [(Average monthly CPI-U for 2019 – Average monthly CPI-U for 1995) / (Average monthly CPI-U for 1995)] * 100 = [(255.657 – 152.383) / 152.383] * 100 = (103.274 / 152.383) *100 = 0.6777 * 100 = 67.77 percent = 68 percent (rounded)

Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.68 = $168 million in 2019 dollars.

[222] See 2 U.S.C. 658(6).

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Federal program, applying for immigration status in the United States.[223] This interim final rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA. Therefore, no actions were deemed necessary under the provisions of the UMRA.

E. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this interim final rule is a major rule as defined by 5 U.S.C. 804, also known as the "Congressional Review Act," as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104– 121, 110 Stat. 847, 868 et seq. Accordingly, this rule will be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the IFR's publication, whichever is later.

F. Executive Order 13132 (Federalism)

This interim final rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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[223] See 2 U.S.C. 658(7)(A)(ii).

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H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This interim final rule does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. National Environmental Policy Act

DHS analyzes actions to determine whether the National Environmental Policy Act, Public Law 91–190, 42 U.S.C. 4321 through 4347 (NEPA), applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01, Implementation of the National Environmental Policy Act (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR Parts 1500–1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions ("categorical exclusions") which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. Categorical exclusions established by DHS are set forth in Appendix A of the Instruction Manual. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a

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piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This rule amends regulations governing the H-1B temporary nonimmigrant specialty occupation program to improve the integrity of the program, and more closely conform the regulatory framework to that of the Act. Specifically, DHS is revising the regulatory definition and standards for determining whether an alien will be employed in a "specialty occupation" to align with the statutory definition of the term. The rule is also revising the definition of "United States employer," and "employer-employee relationship," to clarify how USCIS will determine whether there is an employer-employee relationship between the petitioner and the beneficiary. In addition, the rule is limiting the validity period for third-party placement petitions to a maximum of 1 year; providing for a written explanation for certain approved petitions where the validity period is limited to 1 year or less; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to better ensure that each H-1B nonimmigrant worker will be working for a qualified employer and in a position that meets the statutory definition of a "specialty occupation." While this rule tightens regulatory eligibility criteria and may result in denials of some H-1B petitions, this rule does not change the number of H-1B workers that may be employed by U.S. employers; the rule leaves unchanged the statutory numerical limitations and cap exemptions. It also does not change rules for where H-1B nonimmigrants may be employed.

Generally, DHS believes NEPA does not apply to a rule intended to strengthen an immigration program because any attempt to analyze its potential impacts would be largely

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speculative, if not completely so. DHS cannot reasonably estimate how many petitions will be filed for workers to be employed in specialty occupations following the changes made by this rule or whether the regulatory amendments herein will result in an overall change in the number of H-1B petitions that are ultimately approved, and the number of H-1B workers who are employed in the United States in any fiscal year. DHS has no reason to believe that the amendments to H-1B regulations would change the environmental effect, if any, of the existing regulations. Therefore, DHS has determined that even if NEPA were to apply to this action, this rule clearly fits within categorical exclusion A3(d) in the Instruction Manual, which provides an exclusion for "promulgation of rules . . . that amend an existing regulation without changing its environmental effect." This rule maintains the current human environment by making improvements to the H-1B program during the economic crisis caused by COVID-19 in a way that will more effectively prevent the employment of H-1B workers from negatively impacting the working conditions of U.S. workers who are similarly employed. This rule is not a part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

J. Paperwork Reduction Act

1. USCIS Form I-129[224]

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a

[224] As indicated elsewhere in this rule, DHS estimated the costs and benefits of this rule using the newly published U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, final rule ("Fee Schedule Final Rule"), and related form changes, as the baseline. 85 FR 46788 (Aug. 3, 2020). The Fee Schedule Final Rule was scheduled to go into effect on October 2, 2020. On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide injunction, which prevents DHS from implementing the Fee Schedule Final Rule. See, Immigrant Legal Resource Center v.

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rule. The revised information collection has been submitted to OMB for review and approval as required by the PRA.

DHS invites comment on the impact of this rule to the collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument. Comments are encouraged and will be accepted until [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All submissions received must include the agency name and OMB Control Number 1615-0009 in the body of the submission. To avoid duplicate submissions, please use only one of the methods under the ADDRESSES and Public Participation sections of this interim final rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

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Wolf, No. 4:20-cv-5883 (N.D. Cal. Sept. 29, 2020). While DHS intends to vigorously defend this lawsuit and is not changing the economic baseline for this rule as a result of the litigation, it is using the currently approved Form I-129, and not the form version associated with the enjoined Fee Schedule Final Rule for the purpose of seeking OMB approval of form changes associated with this rule. Should DHS prevail in the Fee Schedule Final Rule litigation and is able to implement the form changes associated with that rule, DHS will comply with the Paperwork Reduction Act and seek approval of the information collection changes associated with this rule, based on the version of the Form I-129 that is in effect at that time.

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technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Petition for a Nonimmigrant Worker.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant in certain classifications. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for certain nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-129 is 294,751 and the estimated hour burden per response is 2.84 hours; the estimated total number of respondents for the information collection E-1/E-2

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Classification Supplement to Form I-129 is 4,760 and the estimated hour burden per response is 0.67 hours; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I-129 is 3,057 and the estimated hour burden per response is 0.67 hours; the estimated total number of respondents for the information collection H Classification Supplement to Form I-129 is 96,291 and the estimated hour burden per response is 2.5 hours; the estimated total number of respondents for the information collection H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection L Classification Supplement to Form I-129 is 37,831 and the estimated hour burden per response is 1.34 hours; the estimated total number of respondents for the information collection O and P Classifications Supplement to Form I-129 is 22,710 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Q-1 Classification Supplement to Form I-129 is 155 and the estimated hour burden per response is 0.34 hours; the estimated total number of respondents for the information collection R-1 Classification Supplement to Form I-129 is 6,635 and the estimated hour burden per response is 2.34 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection of information is 1,268,331 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is $70,681,290.

2. USCIS H-1B Registration Tool

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a

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rule. The revised information collection has been submitted to OMB for review and approval as required by the PRA.

DHS invites comment on the impact to the collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument. Comments are encouraged and will be accepted until [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All submissions received must include the agency name and OMB Control Number 1615-0144 in the body of the submission. To avoid duplicate submissions, please use only one of the methods under the ADDRESSES and Public Participation sections of this interim final rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

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(2) Title of the Form/Collection: H-1B Registration Tool.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: OMB-64; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. USCIS will use the data collected through the H-1B Registration Tool to select a sufficient number of registrations projected to meet the applicable H-1B cap allocations and to notify registrants whether their registration was selected.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection H-1B Registration Tool is 275,000 and the estimated hour burden per response is 0.583 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection of information is 160,325 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is $0.

K. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the Federal Register.

VII. List of Subjects and Regulatory Amendments

8 CFR Part 214

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Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214 -- NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Amend § 214.2 by:

a. Revising paragraph (h)(2)(i)(B);

b. Revising paragraph (h)(4)(i)(B) by adding new paragraph (h)(4)(i)(B)(7);

c. Revising paragraph (h)(4)(ii) definitions of "Specialty Occupation" and "United States employer," and adding new definitions for "Employer-employee relationship," "Third-party worksite," and "Worksite";

d. Revising paragraph (h)(4)(iii)(A);

e. Adding a new paragraph (h)(4)(iv)(C);

f. Revising paragraph (h)(9) by redesignating paragraph (h)(9)(i) as paragraph (h)(9)(i)(A), adding a new paragraph (h)(9)(i)(B), and revising paragraph (h)(9)(iii)(A)(1); and

g. Adding and reserving new paragraph (h)(24)(i) and adding new paragraph (h)(24)(ii);

The revisions and additions read as follows:

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§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) Service or training in more than one location. A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training. The itinerary must be submitted to USCIS with the Petition for a Nonimmigrant Worker, or successor form, as provided in the form instructions. The address that the petitioner specifies as its location on the Petition for a Nonimmigrant Worker must be where the petitioner is located for purposes of this paragraph. This paragraph (h)(2)(i)(B) does not apply to H-1B petitions.

* * * * *

(4) * * *

(i) * * *

(B) * * *

(7)(i) Inspections, evaluations, verifications, and compliance reviews. The information provided on an H-1B petition and the evidence submitted in support of such petition may be verified by USCIS through lawful means as determined by USCIS, including telephonic and electronic verifications and on-site inspections. Such inspections may include, but are not limited to, a visit of the petitioning organization's facilities, interviews with the petitioning organization's officials, review of the petitioning organization's records related to compliance

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with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the H-1B petition, such as facts relating to the petitioner's and beneficiary's H-1B eligibility and compliance. An inspection may be conducted at locations including the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable.

(ii) USCIS may conduct on-site inspections or other compliance reviews as described in paragraph (i) at any time after the filing of an H-1B petition. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

(iii) USCIS conducts on-site inspections or other compliance reviews to verify facts related to the adjudication of the petition and compliance with H-1B petition requirements. If USCIS is unable to verify such facts due to the failure or refusal of the petitioner or a third-party worksite party to cooperate in an inspection or other compliance review, then such failure or refusal to cooperate and allow USCIS to verify facts may result in denial or revocation of any H-1B petition for H-1B workers performing services at the location or locations which are a subject of inspection or compliance review, including any third-party worksites.

* * * * *

(ii) Definitions.

Employer-employee relationship means the conventional master-servant relationship consistent with the common law. The petitioner must establish that its offer of employment as stated in the petition is based on a valid employer-employee relationship that exists or will exist. In considering whether the petitioner has established that a valid "employer-employee

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relationship" exists or will exist, USCIS will assess and weigh all relevant aspects of the relationship with no one factor being determinative.

(1) In cases where the H-1B beneficiary does not possess an ownership interest in the petitioning organization or entity, the factors that USCIS may consider to determine if a valid employment relationship will exist or continue to exist include, but are not limited to:

(i) whether the petitioner supervises the beneficiary and, if so, where such supervision takes place;

(ii) where the supervision is not at the petitioner's worksite, how the petitioner maintains such supervision;

(iii) whether the petitioner has the right to control the work of the beneficiary on a day-to-day basis and to assign projects;

(iv) whether the petitioner provides the tools or instrumentalities needed for the beneficiary to perform the duties of employment;

(v) whether the petitioner hires, pays, and has the ability to fire the beneficiary;

(vi) whether the petitioner evaluates the work-product of the beneficiary;

(vii) whether the petitioner claims the beneficiary as an employee for tax purposes;

(viii) whether the petitioner provides the beneficiary any type of employee benefits;

(ix) whether the beneficiary uses proprietary information of the petitioner in order to perform the duties of employment;

(x) whether the beneficiary produces an end-product that is directly linked to the petitioner's line of business; and

(xi) whether the petitioner has the ability to control the manner and means in which the work product of the beneficiary is accomplished.

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(2) In cases where the H-1B beneficiary possesses an ownership interest in the petitioning organization or entity, additional factors that USCIS may consider to determine if a valid employment relationship will exist or continue to exist include, but are not limited to:

(i) whether the petitioning entity can hire or fire the beneficiary or set the rules and parameters of the beneficiary's work;

(ii) whether and, if so, to what extent the petitioner supervises the beneficiary's work;

(iii) whether the beneficiary reports to someone higher in the petitioning entity;

(iv) whether and, if so, to what extent the beneficiary is able to influence the petitioning entity;

(v) whether the parties intended that the beneficiary be an employee, as expressed in written agreements or contracts and

(vi) whether the beneficiary shares in the profits, losses, and liabilities of the organization or entity.

* * * * *

Specialty occupation means an occupation that requires

(1) the theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor, such as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, or the arts, and

(2) the attainment of a U.S. bachelor's degree or higher in a directly related specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States. The required specialized studies must be directly related to the position. A position is not a specialty occupation if attainment of a general degree, such as business administration or liberal arts,

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without further specialization, is sufficient to qualify for the position. While a position may allow a range of degrees or apply multiple bodies of highly specialized knowledge, each of those qualifying degree fields must be directly related to the proffered position.

* * * * *

Third-party worksite means a worksite, other than the beneficiary's residence in the United States, that is not owned or leased, and not operated, by the petitioner.

* * * * *

United States employer means a person, firm, corporation, company, or other association or organization in the United States which:

(1) Engages the beneficiary to work within the United States, and has a bona fide, non-speculative job offer for the beneficiary;

(2) Has an employer-employee relationship with respect to employees under this part; and

(3) Has an Internal Revenue Service Tax identification number.

* * * * *

Worksite means the physical location where the work actually is performed by the H-1B nonimmigrant. A "worksite" will not include any location that would not be considered a "worksite" for LCA purposes.

* * * * *

(iii) Criteria for H-1B petitions involving a specialty occupation—

(A) Criteria for specialty occupation position. A proffered position does not meet the definition of specialty occupation unless it also satisfies at least one of the following criteria:

AMERICAN OVERSIGHT

(1) A U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, is the minimum requirement for entry into the particular occupation in which the beneficiary will be employed;

(2) A U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, is the minimum requirement for entry into parallel positions at similar organizations in the employer's United States industry;

(3) The employer has an established practice of requiring a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, for the position. The petitioner must also establish that the proffered position requires such a directly related specialty degree, or its equivalent, to perform its duties; or

(4) The specific duties of the proffered position are so specialized, complex, or unique that they can only be performed by an individual with a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent.

* * * * *

(iv) * * *

(C) Corroborating evidence of work in a specialty occupation. The petitioner must establish, at the time of filing, that it has actual work in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. When a beneficiary will be placed at one or more third-party worksites, the petitioner must submit evidence such as contracts, work orders, or other similar corroborating evidence showing that the beneficiary will perform services in a specialty occupation at the third-party worksite(s), and that the petitioner will have an employer-employee relationship with the beneficiary. In accordance with 8 CFR 103.2(b) and paragraph 214.2(h)(9) of this section, USCIS may request copies of

AMERICAN OVERSIGHT

contracts, work orders, or other similar corroborating evidence on a case-by-case basis in all cases, regardless of where the beneficiary will be placed.

* * * * *

(9) * * *

(i) * * * * *

(B) Where the petition is approved with an earlier validity period end date than requested by the petitioner, the approval notice will provide or be accompanied by a brief explanation for the validity period granted.

* * * * *

(iii) * * *

(A)(1) H-1B petition in a specialty occupation. The maximum validity period for an approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation is 3 years. However, where the beneficiary will be working at a third-party worksite, the maximum validity period for an approved petition is 1 year. In all instances, the approved petition may not exceed the validity period of the labor condition application.

* * * * *

(24) Severability.

(i) [Reserved]

(ii) The following provisions created or revised by Strengthening the H-1B Nonimmigrant Visa Classification Program, ## FR #####, are intended to be implemented as separate and severable from one another: (h)(2)(i), (h)(4)(i)(B)(7), (h)(4)(ii) (definitions of employer-employee, specialty occupation, third party worksite, U.S. employer, and worksite), (h)(4)(iii)(A), (h)(4)(iv)(C), (h)(9)(i)(B), and (h)(9)(iii)(A)(1). If one or more of these changes

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are not implemented, DHS intends that the remaining provisions will remain valid and be implemented to the greatest extent possible.

* * * * *

_____
Chad R. Mizelle,
Senior Official Performing the Duties of the General Counsel,
U.S. Department of Homeland Security.

AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
To: 'Calkins, Aaron L'
Sent: October 5, 2020 12:41 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Response Neal (DHS Redline)10.2.20.docx, Draft Enclosure (DHS Redline) 10.2.20.docx, Draft Response Neal (Final) 10.2.20.docx, Draft Enclosure (Final) 10.2.20.docx, Neal Cover Memo 10.2.20.pdf

No edits from me. This one needs COS signature on the cover memo.

Mary Sheets

From: Kilgore, Garry R [redacted]
Sent: Monday, October 05, 2020 9:09 AM
To: USCIS Directors Office Clearance-EXSC [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 19, 2020**

Request: COS signature on Cover Memo and to review the draft response to Chm. Neal +2 prior to going to the DHS Front Office for clearance.

Background: Chairman Neal +2 wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052. DHS ESEC has requested OLA to sign the final response.

Clearance:

OP&S:	Meredith Lapp – Created draft response.
OCC:	Philip Busch – Cleared with edits.
EXA:	Elizabeth O'Brien – Cleared.

Attachments:

1. Incoming 8.4.20
2. Draft Response Neal (DHS Redline) 10.2.20
3. Draft Enclosure (DHS Redline) 10.2.20
4. Cover Memo 10.2.20
5. Draft Response Neal (Final) 10.2.20
6. Draft Enclosure Neal (Final) 10.2.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. **How will the "substantial public health benefit/secondary effect"** exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

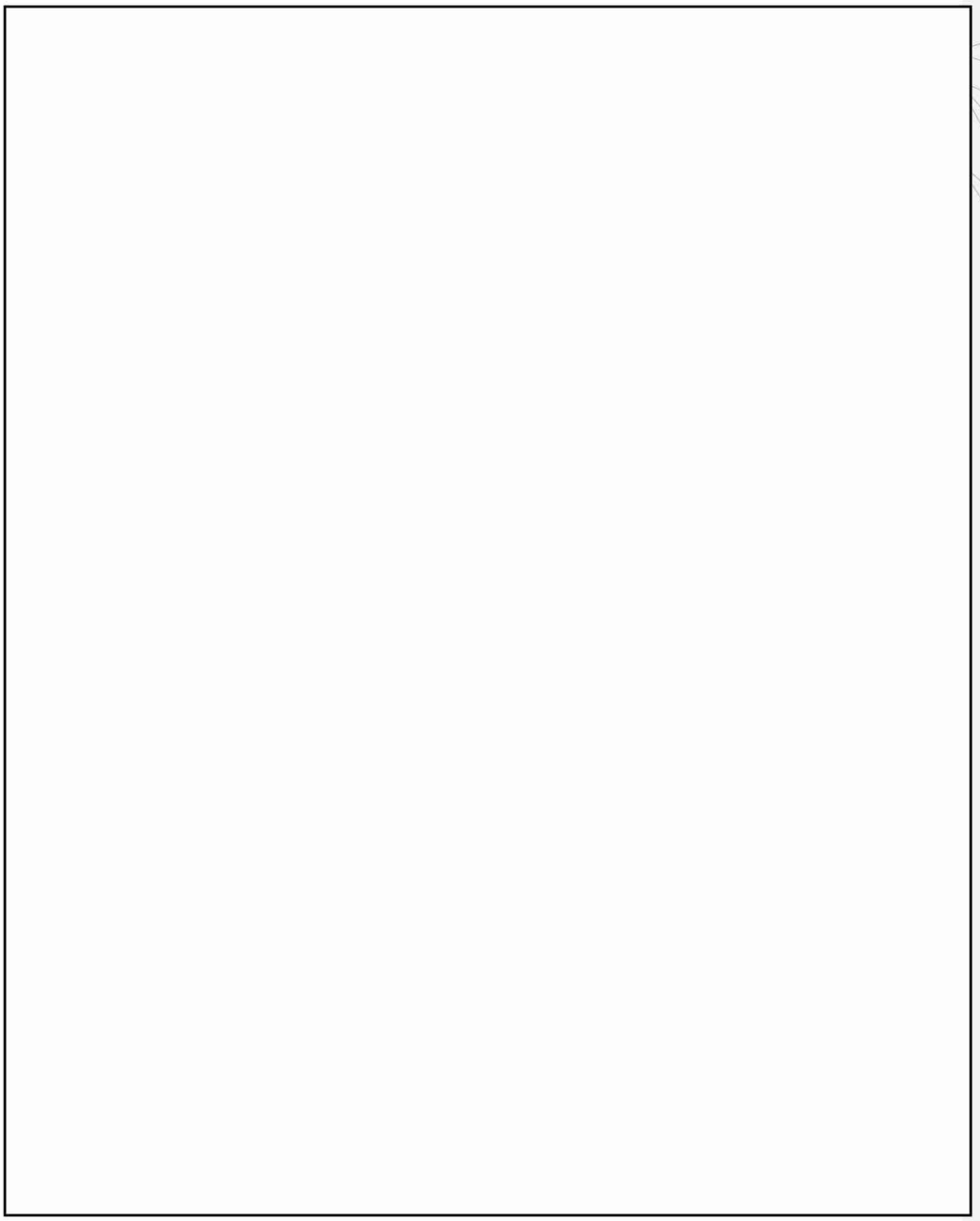
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and

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research workforce?



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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

[redacted]

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

[redacted]

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U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter

(b)(5)

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3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

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4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

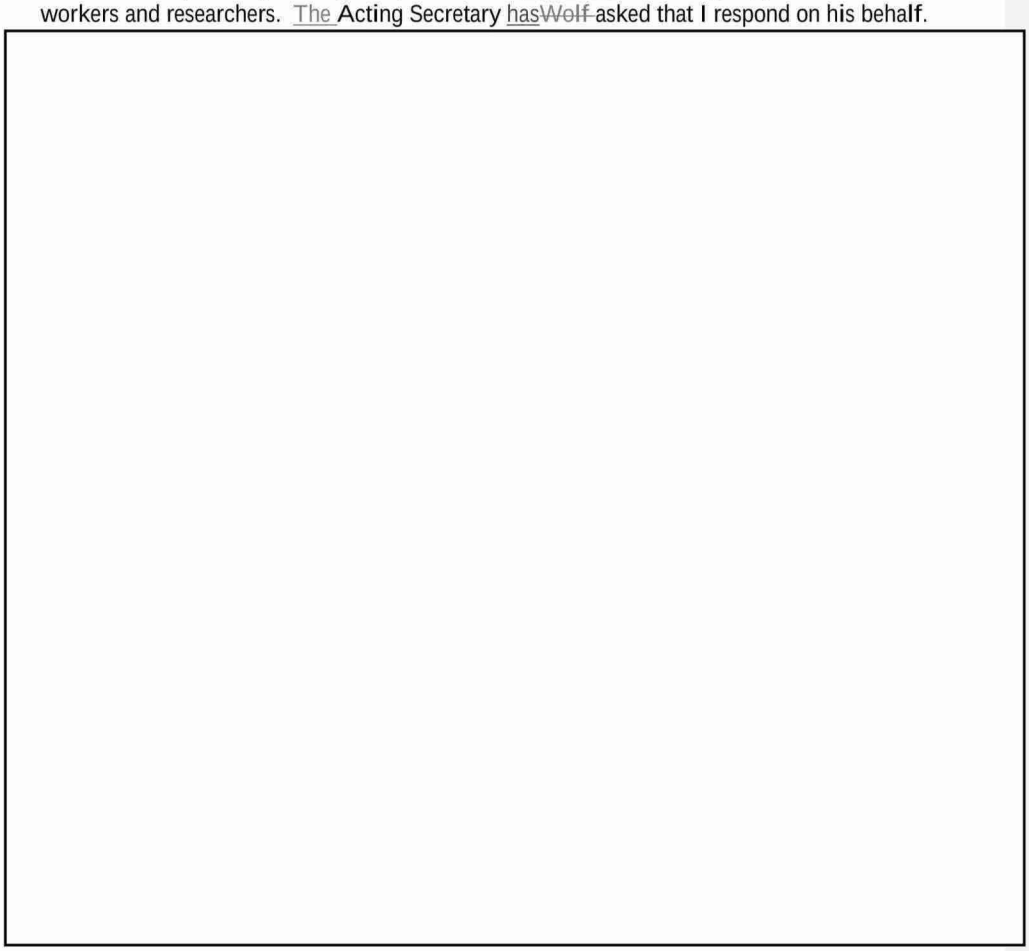
AMERICAN OVERSIGHT

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding ~~expressing support for~~ H-1B health workers and researchers. The Acting Secretary has~~Wolf~~ asked that I respond on his behalf.



www.uscis.gov

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[redacted]

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Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

[redacted]

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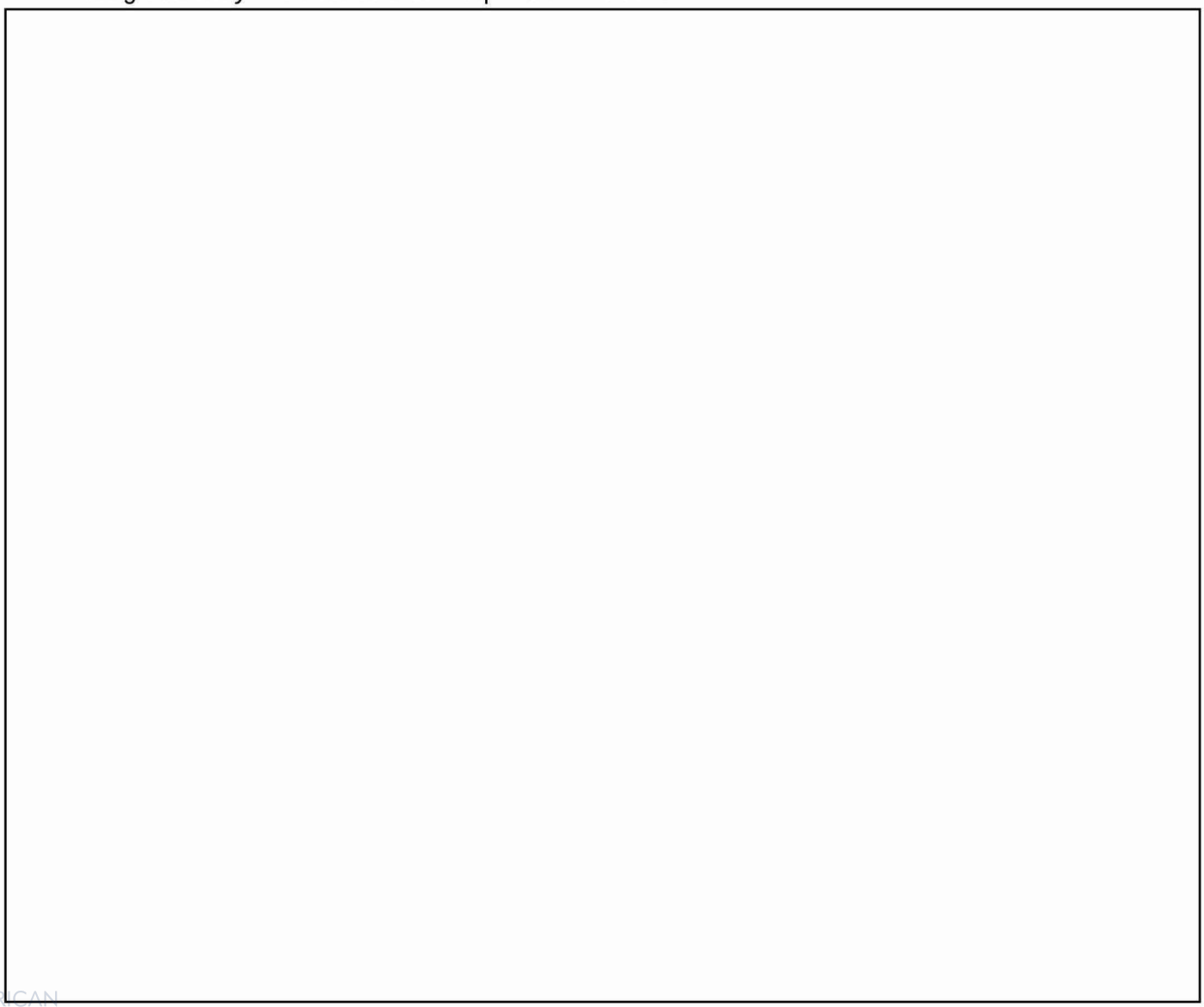
(b)(5)

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.



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(b)(5)

[redacted]

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

Enclosure

[redacted]

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(b)(5)

Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

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underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

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Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron Calkins
Chief of Staff

SUBJECT: Request for Approval: Response to Chairman Neal's August 4, 2020 Letter Regarding Temporary Protected Status for Lebanon (WF 1199281)

Context: Chairman Neal wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted], Senior Legal Advisor, USCIS Office of the Chief Counsel, and it has not been substantially changed since his review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT:
CBP:
OLA:
PLCY:
OGC:

[redacted] (b)(6)

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

From: Calkins, Aaron L
Subject: Fwd: Final version of the H1B IFR
To: Edlow, Joseph B
Sent: October 5, 2020 7:14 AM (UTC-05:00)
Attached: USCIS Info Memo on H1B Strengthening IFR - 10-4-20 USCIS OGC and Bill Chip edits.docx

(b)(6)

FYI
Thanks,

Aaron L. Calkins

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From: Dove, Stephen W (Steve) [redacted]
Sent: Sunday, October 4, 2020 9:04:15 PM
To: Calkins, Aaron L [redacted]; Denayer, Larry [redacted]; Piateski, Jennifer E [redacted] Bailey, Morgan [redacted] Askew, Marineka P [redacted]
Subject: Final version of the H1B IFR

Please see attached for the DHS approved memo.

Thanks

Stephen Dove
USCIS EXSO Chief
[redacted] Cell

(b)(6)

AMERICAN OVERSIGHT

(b)(5)

INFORMATION

MEMORANDUM FOR THE ACTING SECRETARY

FROM: ~~Component Head Name~~Joseph Edlow
~~Title~~Deputy Director for Policy

SUBJECT: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

Timeliness: DHS is announcing that it has published an interim final rule, Strengthening the H-1B Nonimmigrant Visa Classification Program, in furtherance of Presidential Proclamation 10052.

[redacted]

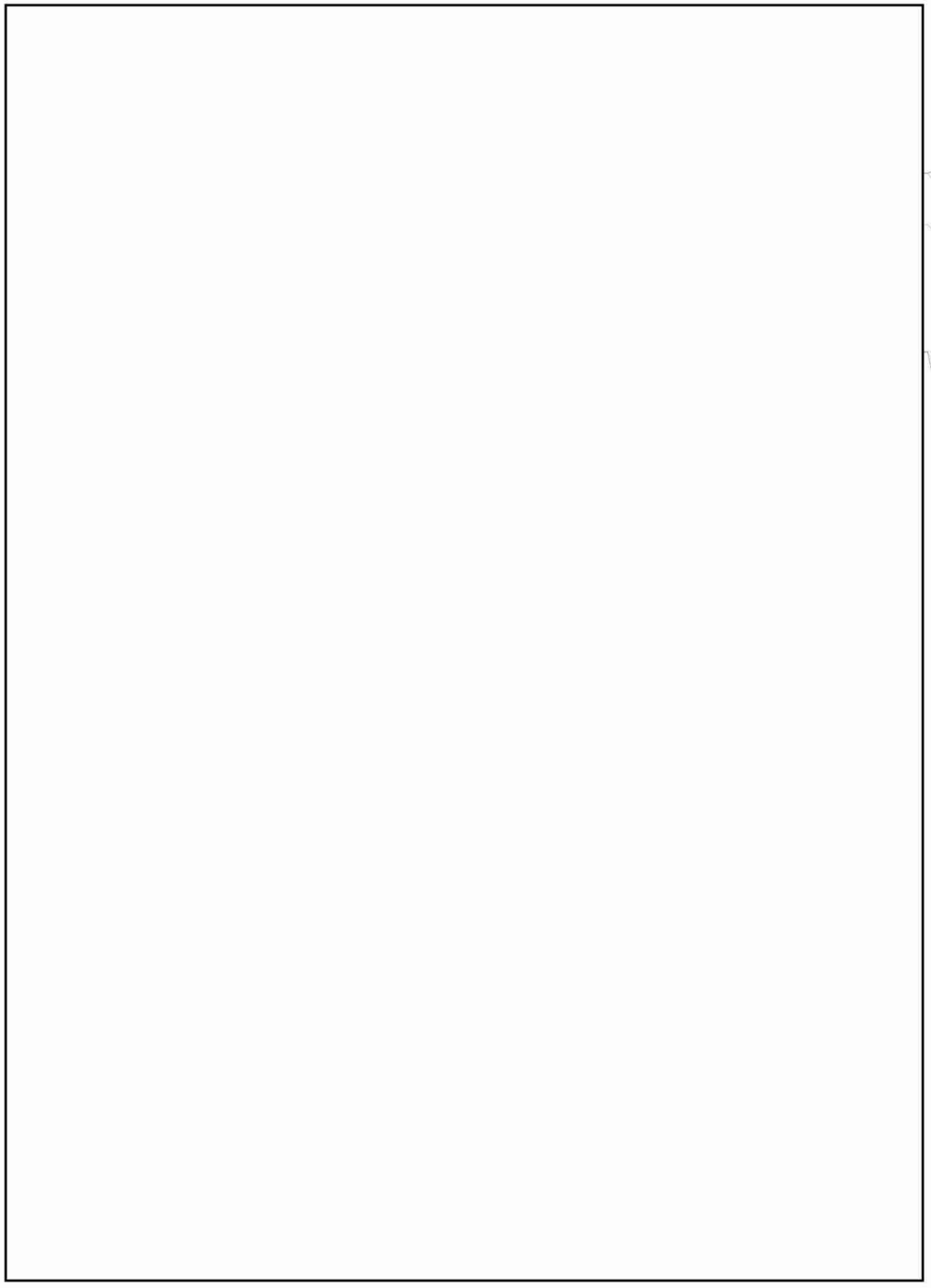
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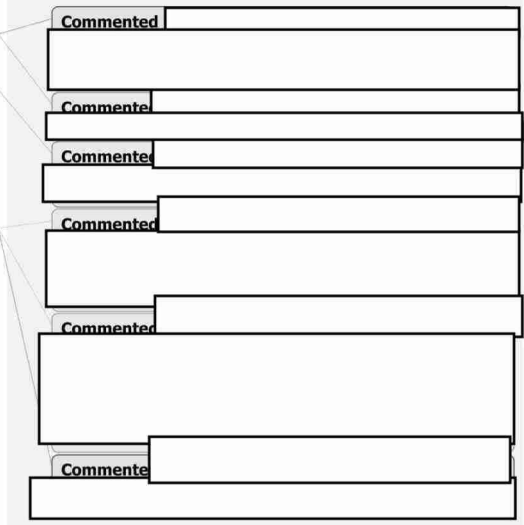
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Attachments:
Potential Questions and Answers
Talking Points
OPA Remarks

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Potential Questions and Answers

A. What is the most important point to stress about theseis new changes?

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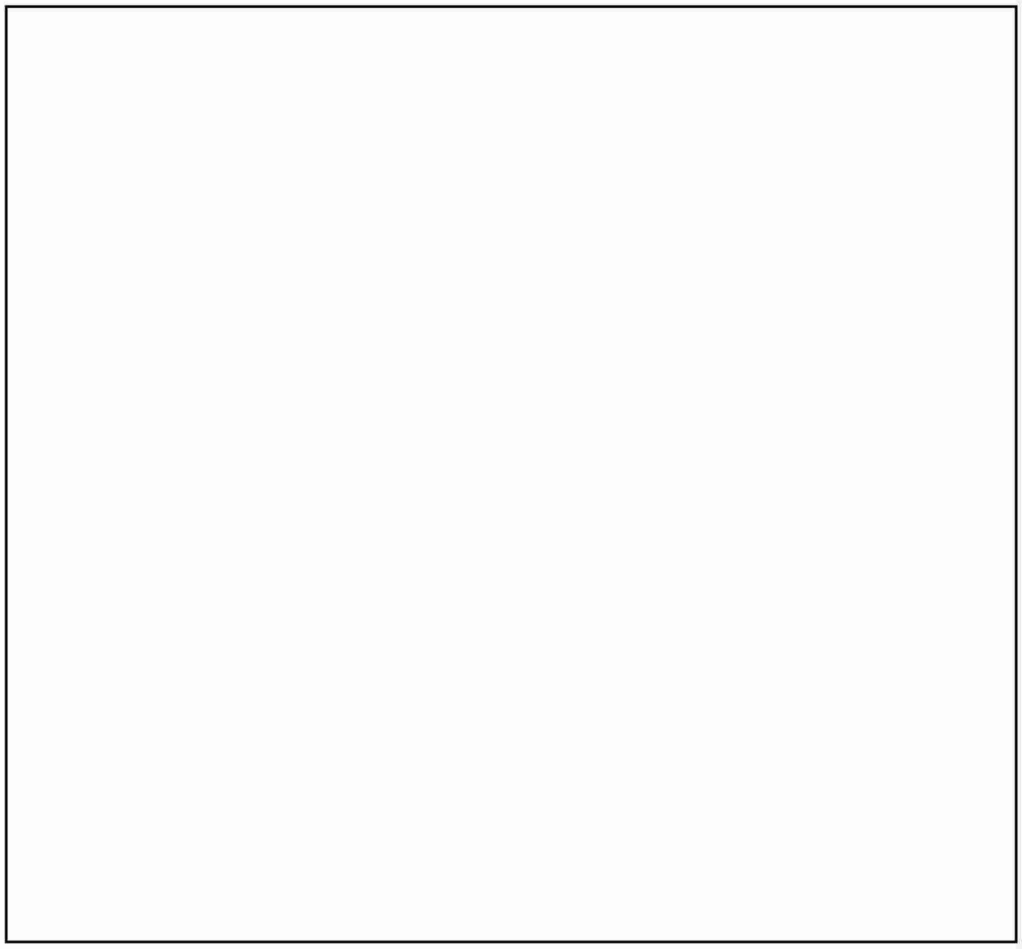
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From: Groom, Molly M
Subject: OCC comments on H-1B strengthening memo
To: Dove, Stephen W (Steve); Law, Robert T; Rexrode, Kathryn S; Fishman, George M; Calkins, Aaron L; Choi, Heesun S (Sunny)
Sent: October 4, 2020 6:06 PM (UTC-05:00)
Attached: USCIS Info Memo on H1B Strengthening IFR - 10-3-20 with USCIS passback.OCCedits.docx

Here are some comments from OCC on the H-1B strengthening memo. Thanks so much. I started a new chain because of technical difficulties.

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(b)(5)

INFORMATION

MEMORANDUM FOR THE SECRETARY

FROM: Component Head Name
Title

SUBJECT: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

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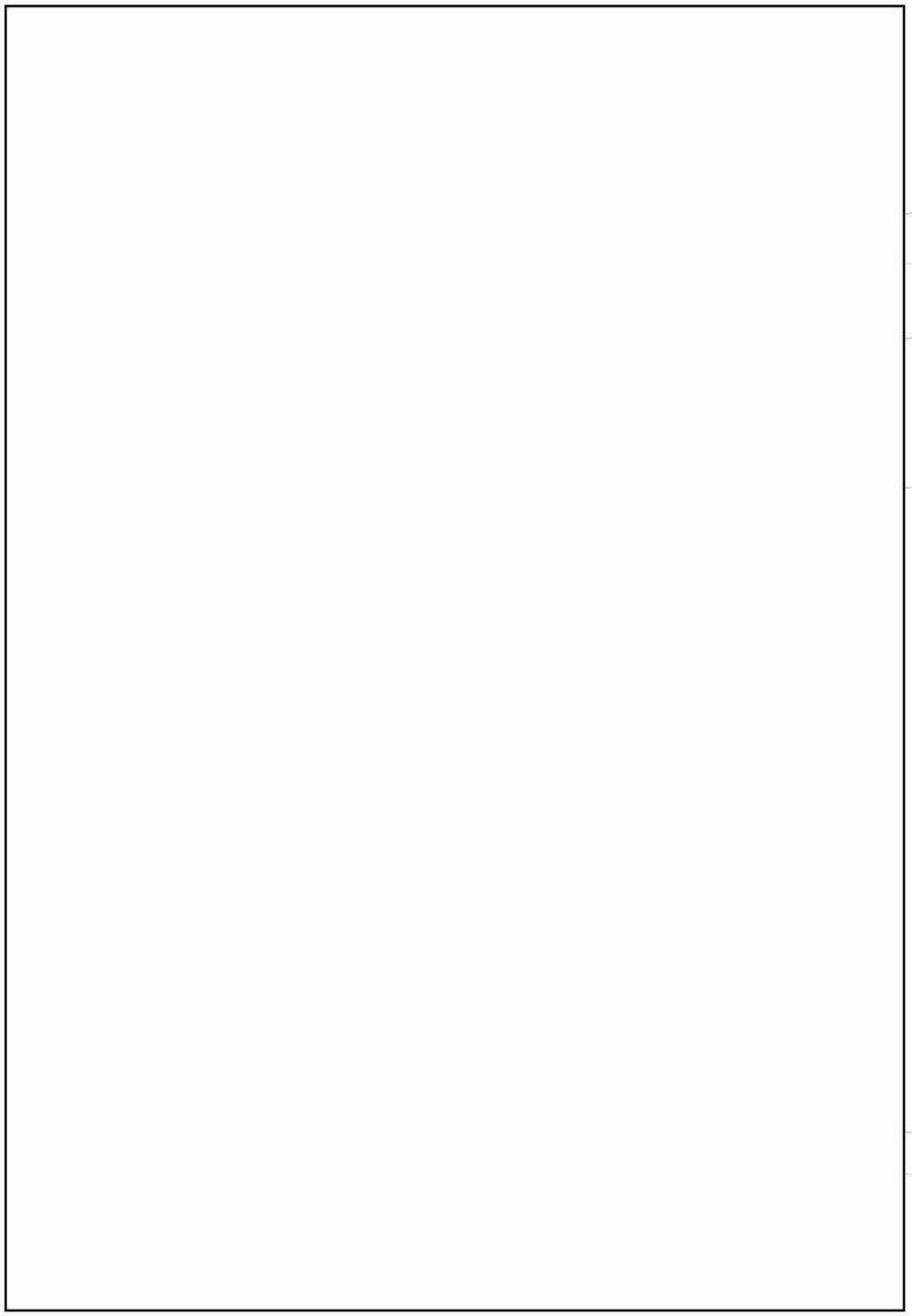
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Component Coordination:

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Attachments:

Potential Questions and Answers
Talking Points
OPA Remarks

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Potential Questions and Answers about the DHS H-1B Strengthening Rule

A. What is the most important point to stress about this new change?

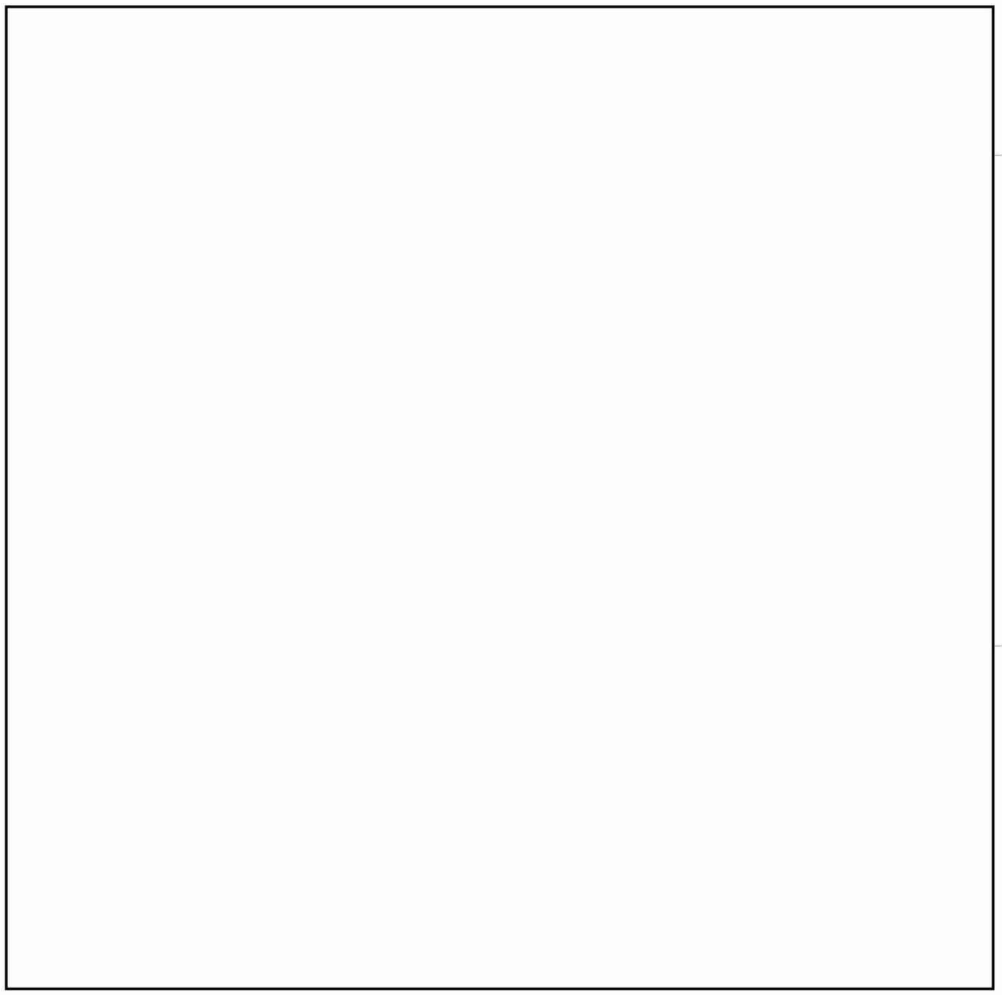
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AMERICAN OVERSIGHT

From: Law, Robert T
Subject: RE: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material
To: Dove, Stephen W (Steve)
Cc: USCIS Exec Sec; Rexrode, Kathryn S; Fishman, George M; Groom, Molly M; Calkins, Aaron L
Sent: October 4, 2020 5:43 PM (UTC-05:00)
Attached: USCIS Info Memo on H1B Strengthening IFR - 10-3-20 with USCIS passback rev.docx

Steve,

A few edits and comments attached.

-Rob

Robert Law
office)
cell)

From: Dove, Stephen W (Steve
Sent: Sunday, October 4, 2020 4:37 PM
To: Law, Robert
Cc: USCIS Exec Sec; Rexrode, Kathryn S; Fishman, George M; Groom, Molly M; Calkins, Aaron L
Subject: Fwd: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

Hi Rob,

Per the below, please address the three ESEC comments in the attached, need to respond by 7 pm today. I am including EXA and OCC so they can weigh in with any concerns as well. I believe the COS delegated OP&S authority to respond direct with any further modifications to the material in response to ESEC comments, but including Aaron for his visibility.

Thanks

Stephen Dove
USCIS EXSO Chief
ell

Begin forwarded message:

From: "DE LA VARA, HUNTER"
Date: October 4, 2020 at 4:28:56 PM EDT
To: "Dove, Stephen W (Steve)", "Barrow, Clark" USCIS Exec Se, "Drake, Johnetta" v>, "Carter, Constance L"
Cc: "Law, Robert T" >, ESEC-BBI
Subject: RE: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

Please review the attached documents and respond to ESEC's comments. There are three comments from DHS ESEC. Please do a final review and address the comments.

AMERICAN OVERSIGHT

Please submit by 7PM tonight.

Thanks,

Hunter de la Vara
Briefing Book Coordinator | Office of the Executive Secretary (b)(6)
C: O:

From: Dove, Stephen W (Steve)
Sent: Sunday, October 4, 2020 10:26 AM
To: Barrow, Clark
Cc: Law, Robert T ; ESEC-BBIC
Subject: Re: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

Hi Rob,

We are standing by in the event OGC requests more USCIS adjudication. They may be good with our initial response, just let us know.

Thanks

Stephen Dove
Chief, Executive Secretariat
USCIS
cell

On Oct 3, 2020, at 8:29 PM, Barrow, Clark wrote: (b)(6)

Adding others at USCIS

The FO has requested that we include

(b)(5)

We need to **deliver this memo to AS1 by tomorrow evening** (cleared by OGC and USCIS). Please let ESEC know how we can help.

From: Dove, Stephen W (Steve) (b)(6)
Sent: Friday, October 2, 2020 9:59 PM
To: DE LA VARA, HUNTER
Cc: USCIS Exec Sec ; ESEC-BBIC
Subject: Re: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

AMERICAN OVERSIGHT

(b)(6)

Hi Hunter,

Please see the USCIS response to the OGC edits in both documents.

Thanks

(b)(5)

All other edits are non substantive and I am fine accepting those.

-Rob

Robert Law
Chief, Office of Policy & Strategy
(b)(6)

Stephen Dove
USCIS EXSO Chief
Cell

On Oct 2, 2020, at 9:06 PM, DE LA VARA, HUNTER wrote:

Attached was their input/comments.

Please adjudicate.

Thanks,

Hunter de la Vara
Briefing Book Coordinator | Office of the Executive Secretary
C: O:

From: MCCLEARY, STEPHEN
Sent: Friday, October 2, 2020 4:22 PM
To: DE LA VARA, HUNTER ; ESEC-BBIC
Cc: USCIS Exec Sec >; Penn, Melissa M ; OGC Exec Sec

(b)(6)

AMERICAN OVERSIGHT

Subject: FW: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

OGC comments attached.

Steve McCleary
Deputy Chief of Staff
Office of the General Counsel
U.S. Department of Homeland Security
[redacted] (o)
(c)

(b)(6)

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This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the General Counsel, U.S. Department of Homeland Security. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).

From: Penn, Melissa M [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Friday, October 2, 2020 10:48 AM
To: OGC Exec Sec [redacted]; OPA Exec Sec [redacted]; PLCY EXEC SEC [redacted]
Cc: USCIS Exec Sec [redacted]; Dove, Stephen W (Steve) [redacted] Carter, Constance L [redacted]; Drake, Johnetta [redacted]; Dennis, Morgan C [redacted]; ESEC-BBIC [redacted]
Subject: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material
Importance: High

(b)(6)

Good afternoon OGC, OPA, and PLCY,

USCIS is requesting your urgent review and clearance **by 12:00pm Today, 10/2**.

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security

AMERICAN OVERSIGHT

(O) [redacted]
Email [redacted]

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours*** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR ([redacted] should be working on this). Please also complete the attached Info Form for Regs.

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

This is a system generated email. So, please do NOT reply to this email.

<S1-S2 Remarks Template - Oct 2018 (1).OCCedits CLEAN (ogc-imm edits 100220).docx>
<S1-S2 Briefing Memo Template - May 2020 (1).OCCedits CLEAN copy (ogc-imm edits 100220).docx>
<USCIS Info Memo on H1B Strengthening IFR - 10-3-20 with USCIS passback.docx>

AMERICAN OVERSIGHT

(b)(5)

INFORMATION

MEMORANDUM FOR THE SECRETARY

FROM: ~~Component Head Name~~Joseph Edlow
~~Title~~Deputy Director for Policy

SUBJECT: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

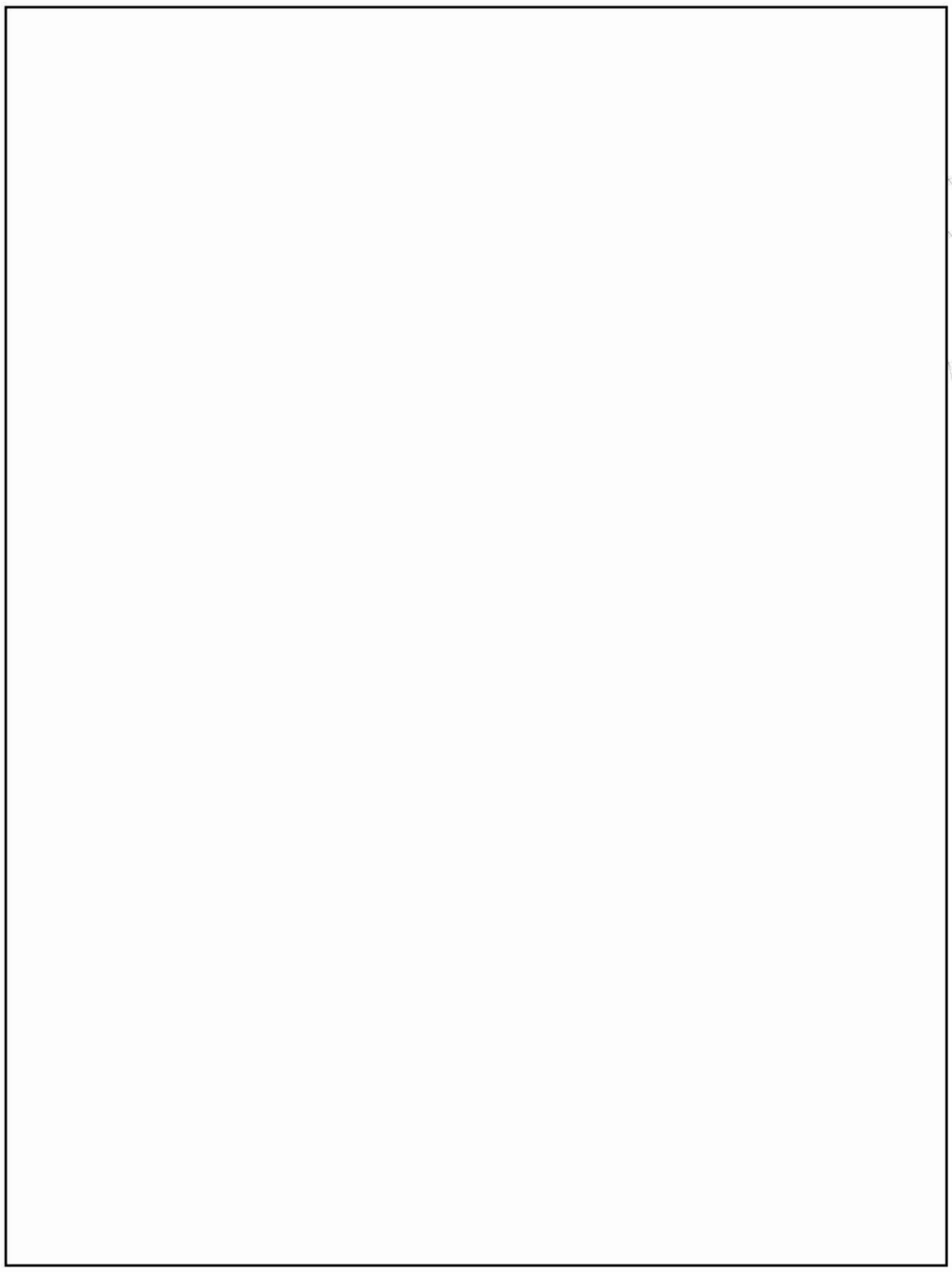
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info reg form from USCIS

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AMERICAN OVERSIGHT

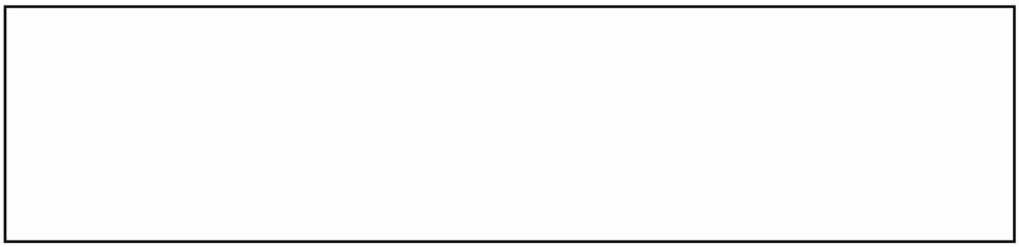
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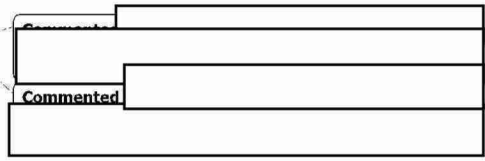
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Component Coordination:



Attachments:

Potential Questions and Answers
Talking Points
OPA Remarks

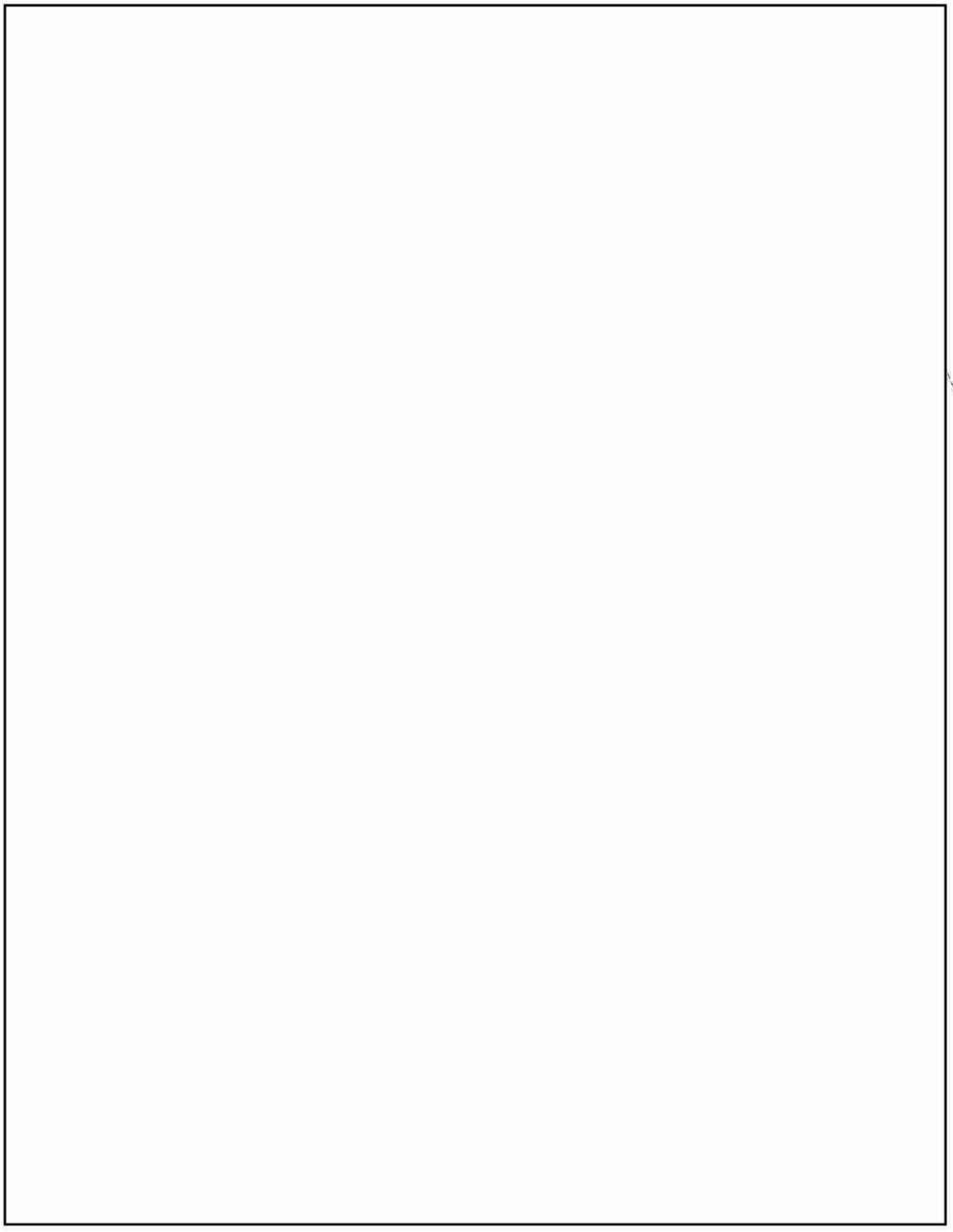
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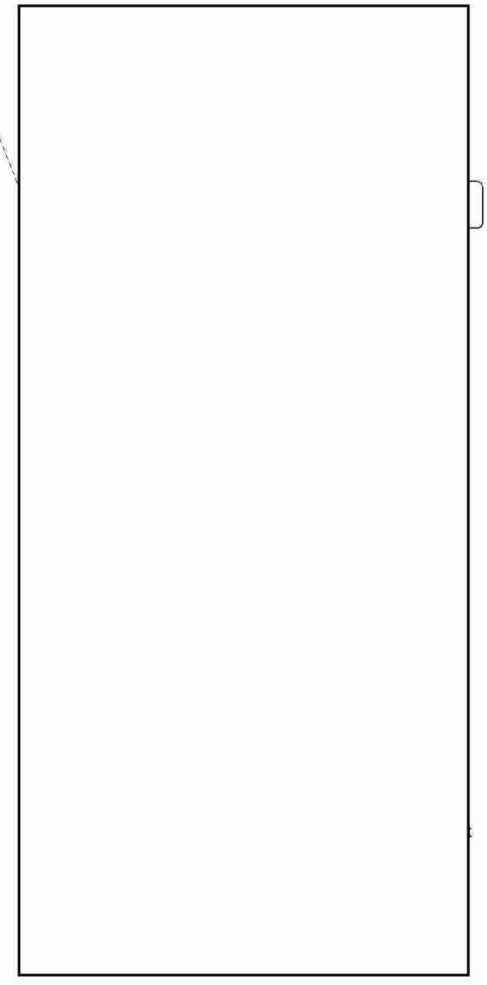
AMERICAN OVERSIGHT

(b)(5)

Potential Questions and Answers

A. What is the most important point to stress about this new change?

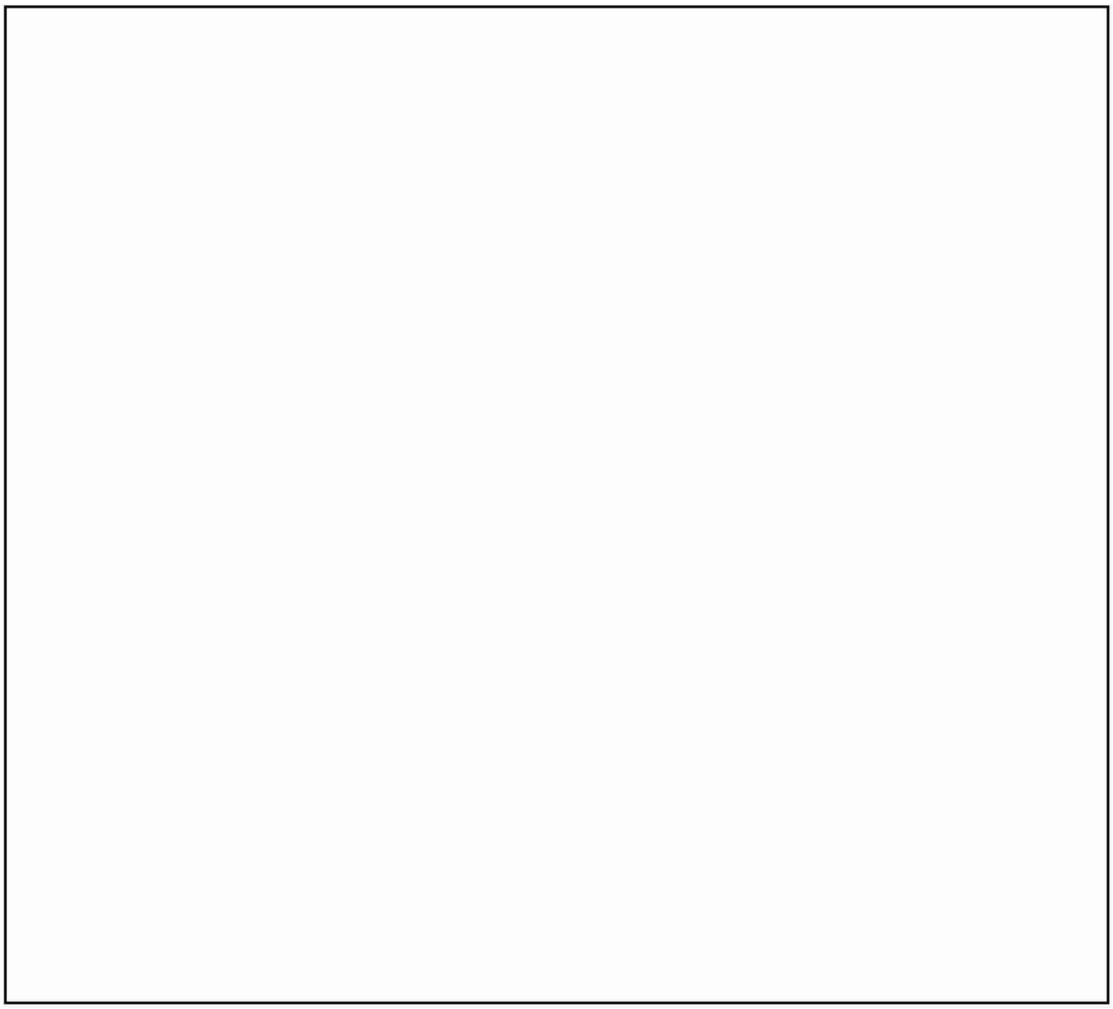




AMERICAN OVERSIGHT

(b)(5)

(b)(5)



AMERICAN OVERSIGHT

From: Dove, Stephen W (Steve)
Subject: Fwd: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material
To: Calkins, Aaron L
Cc: Law, Robert T
Sent: October 3, 2020 7:36 PM (UTC-05:00)
Attached: USCIS Info Memo on H1B Strengthening IFR - 10-3-20 with USCIS passback.docx

Hi Aaron,

Per the below it looks like ESEC will want us to a have a final go at the BM to address any further OGC concerns tomorrow. Rob was copied on the ESEC transmit so he is up to date.

Thanks

Stephen Dove
Chief, Executive Secretariat
USCIS
[redacted] cell (b)(6)

Begin forwarded message:

From: "Barrow, Clark" [redacted]
Date: October 3, 2020 at 8:29:53 PM EDT
To: "Dove, Stephen W (Steve)" [redacted] USCIS Exec Sec [redacted] "Carter, Constance L" [redacted], "Law, Robert T" [redacted]
Cc: ESEC-BBIC [redacted] "DE LA VARA, HUNTER" [redacted] (b)(6)
Subject: RE: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

Adding others at USCIS

The FO has requested that we include [redacted]

(b)(5)

We need to **deliver this memo to AS1 by tomorrow evening** (cleared by OGC and USCIS). Please let ESEC know how we can help.

From: Dove, Stephen W (Steve) [redacted] (b)(6)
Sent: Friday, October 2, 2020 9:59 PM
To: DE LA VARA, HUNTER [redacted]
Cc: USCIS Exec Sec [redacted]; ESEC-BBIC [redacted]
Subject: Re: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (b)(6)

AMERICAN OVERSIGHT

Hi Hunter,

Please see the USCIS response to the OGC edits in both documents.

Thanks

(b)(5)

All other edits are non substantive and I am fine accepting those.

-Rob

Robert Law
Chief, Office of Policy & Strategy

(b)(6)

Stephen Dove
USCIS EXSO Chief
202 329 6721 - Cell

On Oct 2, 2020, at 9:06 PM, DE LA VARA, HUNTER <HUNTER.DELAVARA@hq.dhs.gov> wrote:

Attached was their input/comments.

Please adjudicate.

Thanks,

Hunter de la Vara
Briefing Book Coordinator | Office of the Executive Secretary

From: MCCLEARY, STEPHEN
Sent: Friday, October 2, 2020 4:22 PM
To: DE LA VARA, HUNTER; ESEC-BBIC
Cc: USCIS Exec Sec; Penn, Melissa M; OGC Exec Sec
Subject: FW: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material

(b)(6)

AMERICAN OVERSIGHT

OGC comments attached.

Steve McCleary
Deputy Chief of Staff
Office of the General Counsel
U.S. Department of Homeland Security
[redacted](o)
[redacted](c)

(b)(6)

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From: Penn, Melissa M [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Friday, October 2, 2020 10:48 AM
To: OGC Exec Sec [redacted]; OPA Exec Sec [redacted]; PLCY EXEC SEC [redacted]
Cc [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Drake, Johnetta [redacted] Dennis, Morgan C [redacted]; ESEC-BBIC [redacted]
Subject: [URGENT COMPONENT CLEARANCE REQUEST] H1B Strengthening Rule IFR - Lead Component: Draft BMS Material
Importance: High

Good afternoon OGC, OPA, and PLCY,

USCIS is requesting your urgent review and clearance **by 12:00pm Today, 10/2**.

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O) [redacted]
Email: [redacted]

AMERICAN OVERSIGHT

(b)(6)

From: Briefing Book Tracking System

[redacted] (b)(6)

Sent: Thursday, October 01, 2020 12:13 PM
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Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

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Task Lead Component: Draft BMS Material

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<S1-S2 Briefing Memo Template - May 2020 (1).OCCedits CLEAN copy (ogc-imm edits 100220).docx>

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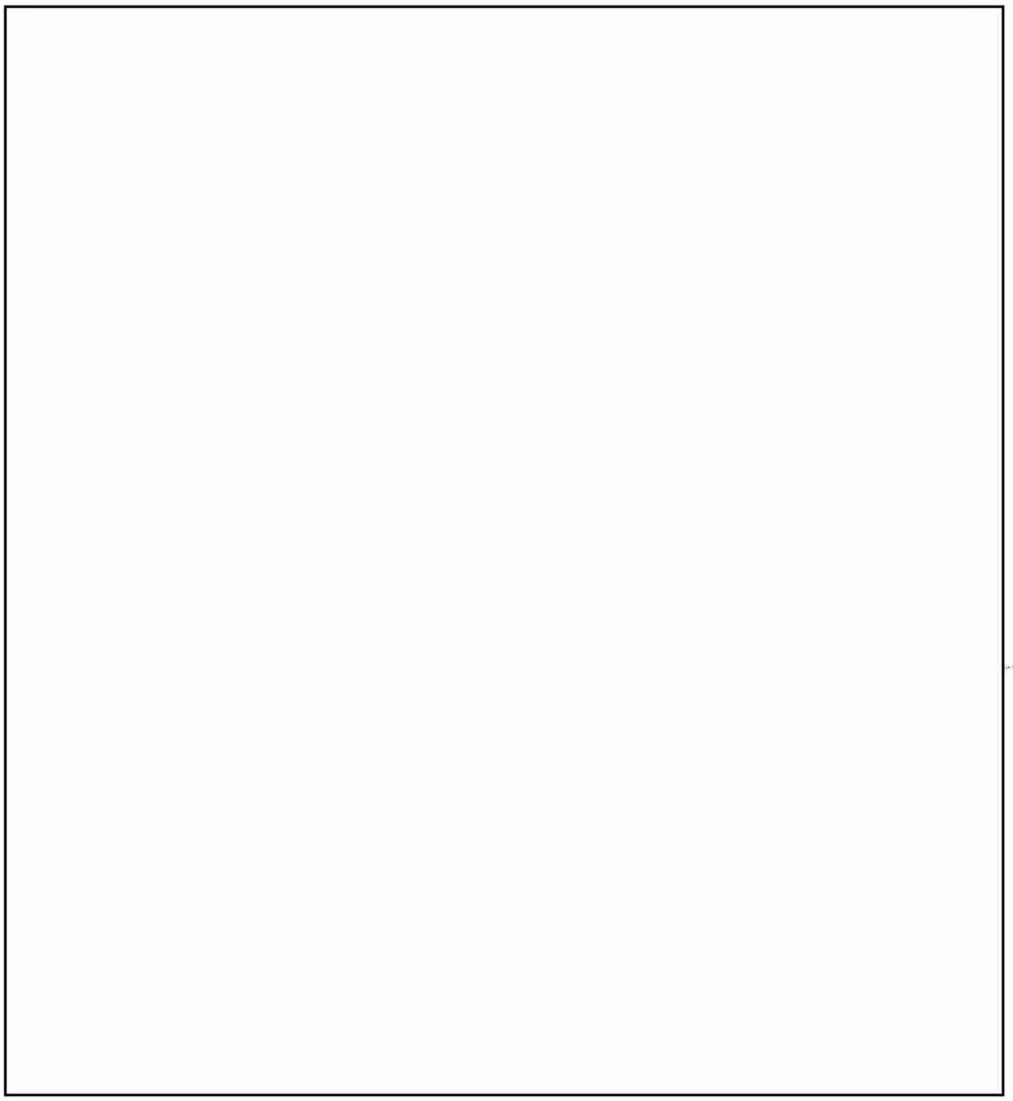
INFORMATION

MEMORANDUM FOR THE SECRETARY

FROM: Component Head Name
Title

Commented

SUBJECT: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

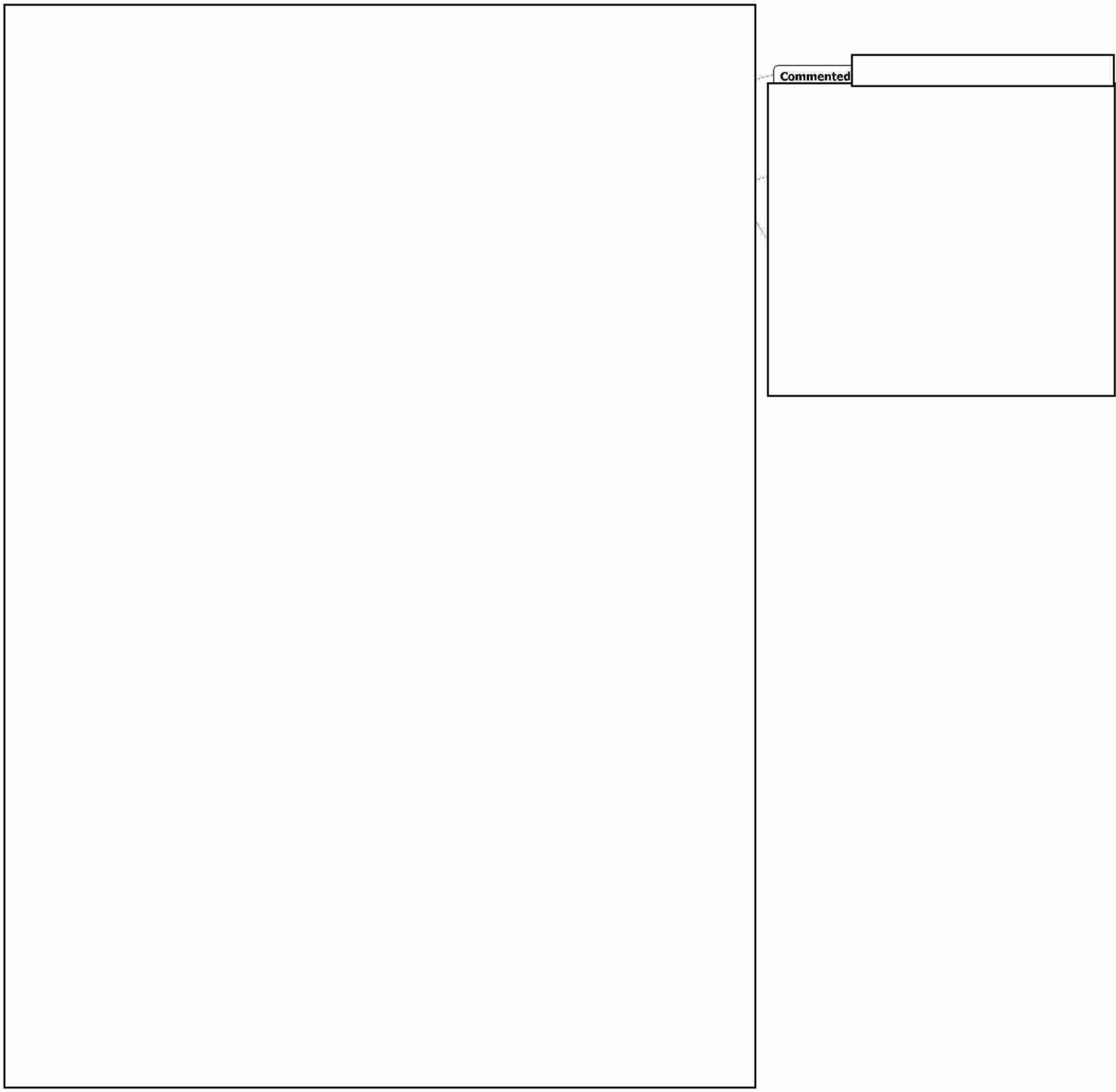


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(b)(5)

(b)(5)



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OVERSIGHT

(b)(5)

(b)(5)

[redacted]

Component Coordination:

[redacted]

Attachments:

Potential Questions and Answers
Talking Points
OPA Remarks

(b)(5)

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(b)(5)

Potential Questions and Answers

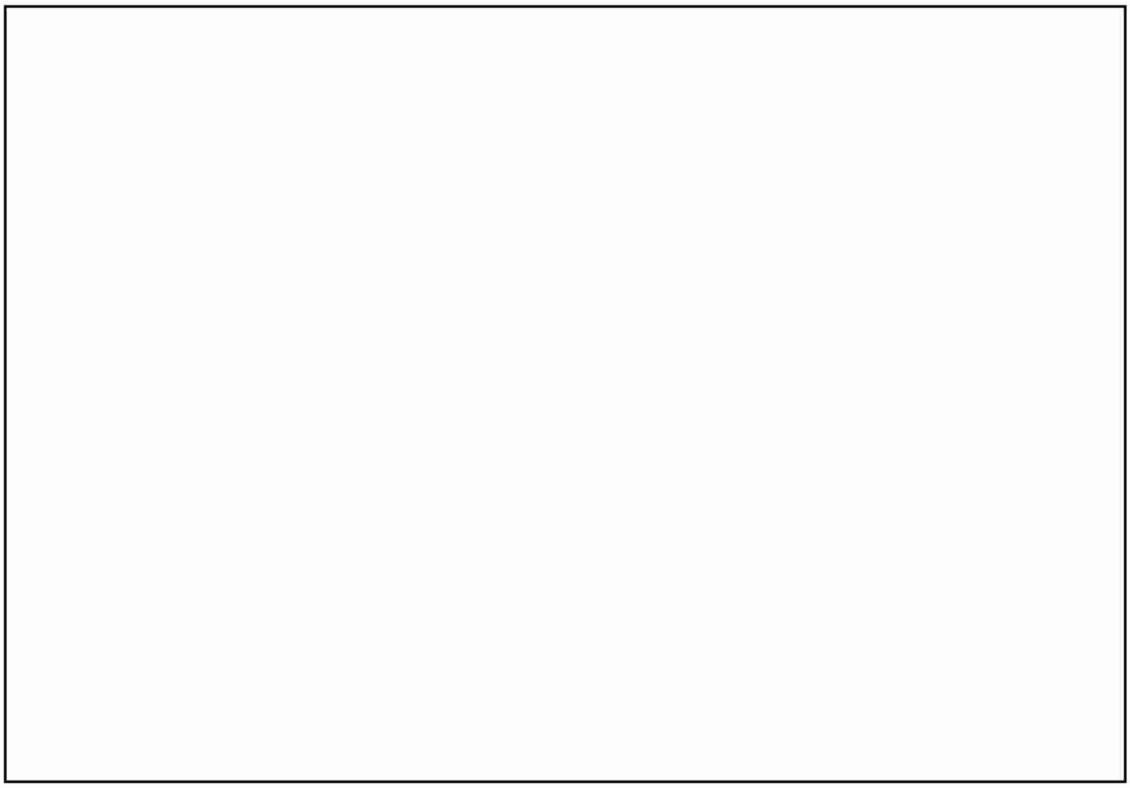
A. What is the most important point to stress about this new change?

Commented

(b)(5)

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633
To: 'Calkins, Aaron L'
Sent: October 2, 2020 1:08 PM (UTC-05:00)
Attached: Incoming 8.27.20.pdf, Draft response - Bostic (OCC edits) 9.22.20.doc, Draft response - Bostic (Final) LH 9.24.20.doc

No edits from me to this one. Would you like Jenny to review also?

Mary Sheets

From: Kilgore, Garry R [redacted]
Sent: Thursday, September 24, 2020 4:02 PM
To: Weinhold, Kasey D [redacted]>; USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Cc: Blanco, Patricia [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

Good afternoon all,

All required POD's have provided a response. OCC concurred with edits, which are attached for reference.

EXSO presents the attached "Draft response – Bostic (Final) LH 9.24.20" for review and D2P signature.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted]office)
STARS Issues: [redacted]

From: Weinhold, Kasey D [redacted]
Sent: Monday, September 21, 2020 2:16 PM
To: Blanco, Patricia J [redacted]>; USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]
Cc: USCIS EXSO External <[redacted]>
Subject: RE: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

Good afternoon,

This inquiry is similar to ***DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504***. Please have the PODs review the attached revised version (which is based upon STARS 29504). Thank you!

Sincerely,

AMERICAN OVERSIGHT

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services

Department of Homeland Security
Office [redacted] | **Mobile** [redacted] **E-mail:** [redacted]

From: Blanco, Patricia J [redacted]
Sent: Monday, September 21, 2020 11:07 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Cc: USCIS EXSO External [redacted]
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

Requestor Directorate/Office: ESEC

Due Date: **Tuesday, September 29, 2020**

Request: D2P review and signature.

Background: Jason Bostic wrote to Acting Secretary Wolf regarding the shortage of H-2B workers. DHS ESEC has requested D2P sign the final response.

Clearance:

OP&S:
OCC:
EXA:
CBP:

[redacted]

Attachments:

1. Incoming 8.27.20
2. Draft Response Bostic – (OCC edits) 9.16.20
3. Draft Response Bostic – (Final) LH 9.21.20

*******Please reply to all on this email ******

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat
[redacted]

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

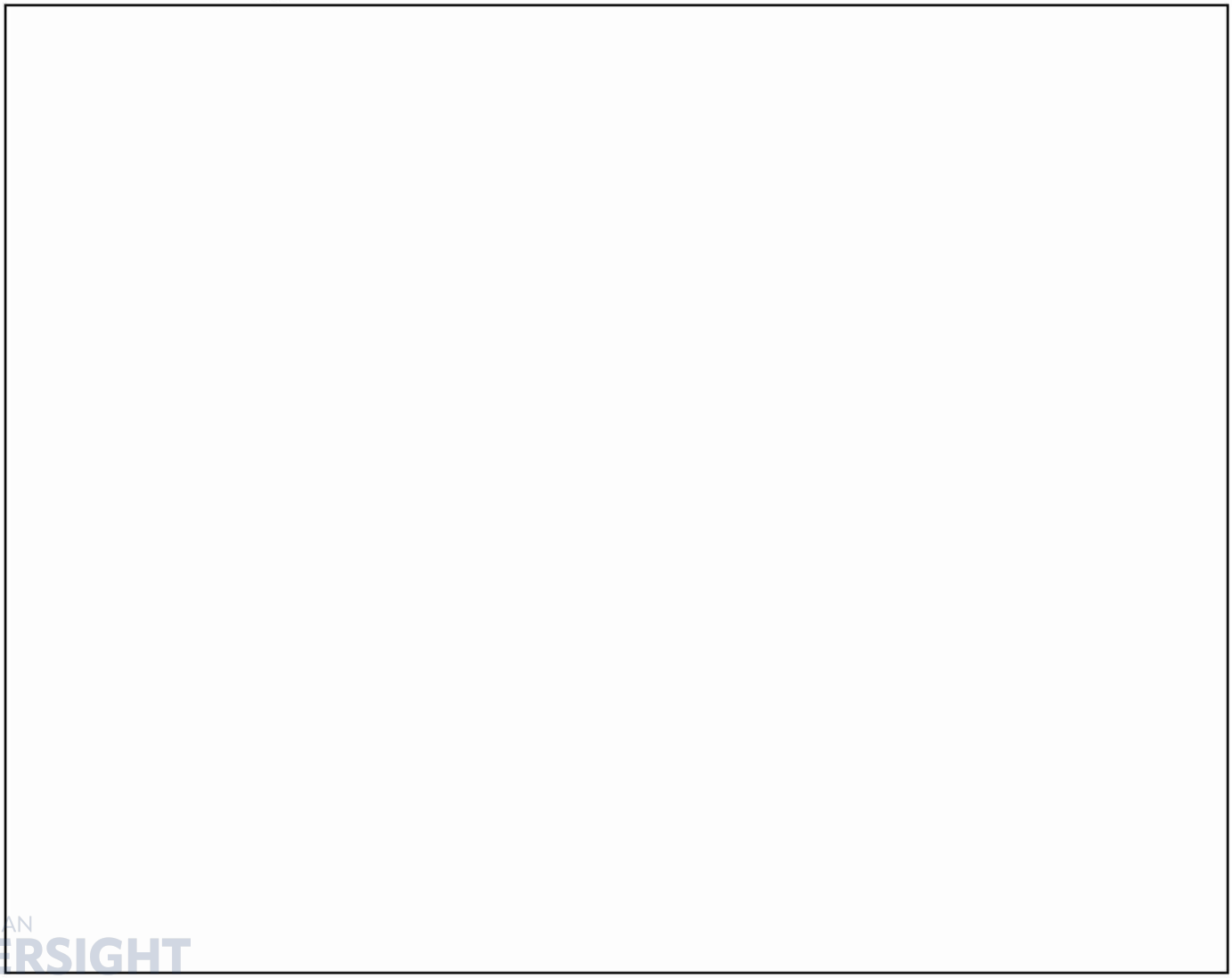
U.S. Citizenship and Immigration Services

September XX, 2020

Mr. Jason Bostic
Vice President
West Virginia Coal Association
P.O. Box 3923
Charleston, West Virginia 25339

Dear Mr. Bostic:

Thank you for your August 27, 2020 letter regarding H-2B workers. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



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DHS-20-2156-A-000465

(b)(5)

Thank you again for your letter and your interest in this matter.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

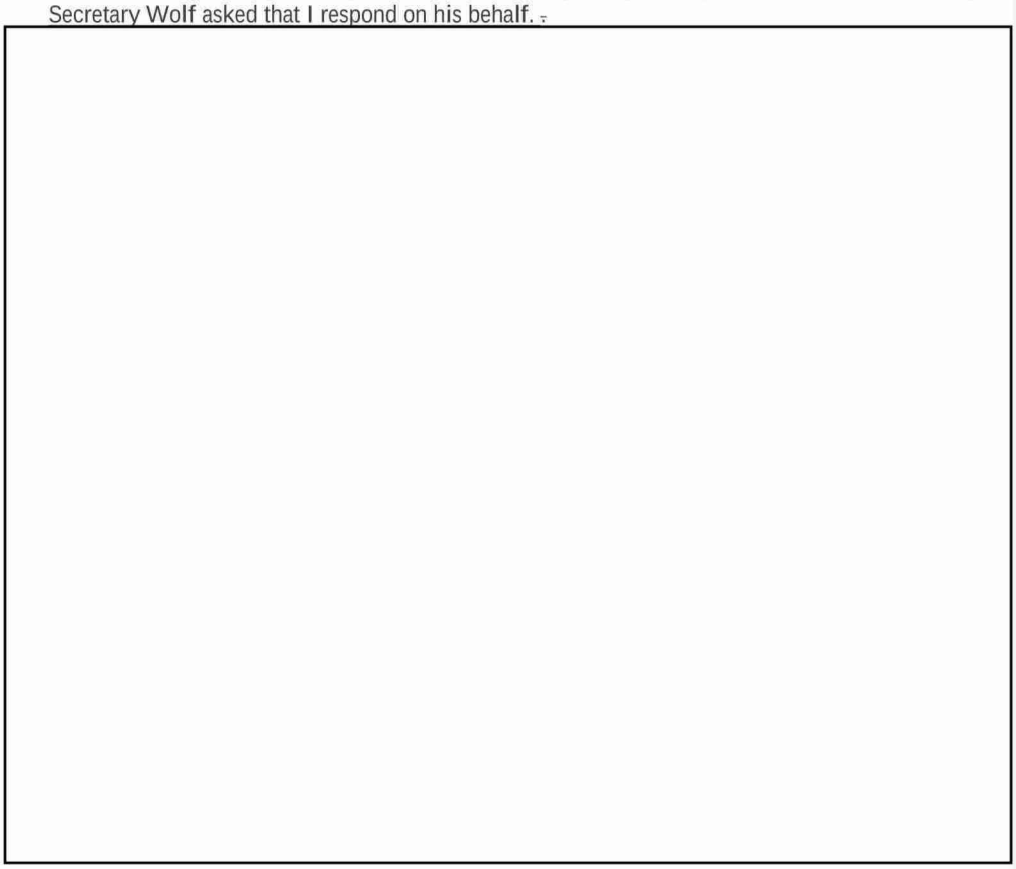
September XX, 2020

Mr. Jason Bostic
Vice President
West Virginia Coal Association
P.O. Box 3923
Charleston, West Virginia 25339

(b)(5)

Dear Mr. Bostic:

———Thank you for your August 27, 2020 letter regarding ~~shortage of~~ H-2B workers. Acting Secretary Wolf asked that I respond on his behalf. -



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(b)(5)

[redacted]

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Sincerely,

[redacted]

(b)(5)

AMERICAN OVERSIGHT

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

August 27, 2020

The Honorable Mike Pompeo
Secretary of State
2201 C St. NW
Washington, DC 20520

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Avenue
Washington, DC 20210

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Secretaries Pompeo, Scalia and Wolf:

The West Virginia Coal Association, as the trade organization representing 94 million tons of thermal and metallurgical coal produced in the Mountain State and 51,664 state residents employed directly by the coal industry, would like to make you aware of the potential negative impacts resulting from the President's Proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" dated June 22, 2020.

West Virginia is the nation's second largest coal producing state, the largest producer of metallurgical coal (an essential feedstock for the manufacturing of iron and steel) and the largest producer of coal destined for foreign exports. The West Virginia coal industry is directly responsible for over $5 billion in economic activity in the state, including $2 billion in wages and over $250 million in local and state tax revenues.

Many H-2B employers contract their services to coal companies in West Virginia to perform forestry work. These reforestation efforts are central to the coal industry's compliance with federal and state mining laws governing the timely reclamation of sites once coal removal has been completed. The federal Surface Mining Control & Reclamation Act (30 USC 1201, *et. seq.*) and the corresponding federal regulations promulgated by the federal Office of Surface Mining (30 CFR 700, *et seq.*) require mine operators to complete reclamation, including reforestation efforts, within established timeframes to avoid regulatory violations and/or delays in moving coal production activities to new, undisturbed areas.

The State of West Virginia maintains similar, but more specific timeframes and requirements, referred to as "contemporaneous reclamation" under the West Virginia Surface Coal Mining & Reclamation Act (W.Va. Code 22-3-1, et. *seq.*) and its implementing state rules at 38 CSR 2, *et.seq.*

AMERICAN OVERSIGHT

The inability to complete the timely reforestation efforts mandated by the federal and state regulatory programs places mine operators at risk for violations under those programs and could jeopardize continued coal production and employment since the ability to move active mining units to new areas is directly tied to the operator's completion of reclamation (including reforestation efforts) on the previously mined and disturbed areas. Additionally, reforestation is a central component of reclamation-returning formerly mined areas to their pre-disturbance form and providing the highest-level environmental protection and remediation to the natural environment and communities in which we operate.

The unrealized reclamation activity from the suspension of H-2B non-immigrant labor that performs forestry work is significant and could potentially impact the nation's supply of thermal coal, used to produce electricity and the domestic production of iron and steel if metallurgical coal supplies are interrupted.

The West Virginia Coal Association urges the Administration to consider an exemption for H-2B guest workers that perform forestry work and reforestation / reclamation efforts at coal mining operations.

Respectfully Submitted,

Jason Bostic
Vice President

AMERICAN OVERSIGHT

From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due 10/2/20 USCIS Reg TPs STARS #31286
To: Sheets, Mary W; Piateski, Jennifer E
Sent: October 2, 2020 11:33 AM (UTC-05:00)
Attached: STRENGTHENING THE H-1B PROGRAM TPs - 10.2.20 - Original OPS.OCCedits CLEAN.docx, S1-S2 Briefing Memo Template - May 2020 (1).OCCedits CLEAN.docx, S1-S2 Remarks Template - Oct 2018 (1).OCCedits CLEAN.docx

Attached is a clean H-1B TPs document. Can you two review?

I'm also attaching the two other documents that have already been cleared, we just need to make sure everything is consistent.

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security
(b)(6)

From: Law, Robert T [redacted]
Sent: Friday, October 2, 2020 12:31 PM
To: Calkins, Aaron L [redacted]; Parascandola, Ciro A [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due 10/2/20 USCIS Reg TPs STARS #31286

See attached.

Robert Law
[redacted] (office)
(cell)

From: Calkins, Aaron L [redacted]
Sent: Friday, October 2, 2020 12:17 PM
To: Law, Robert T [redacted]; Parascandola, Ciro A [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due 10/2/20 USCIS Reg TPs STARS #31286

Can you adjudicate these edits and get me a clean copy back?

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Dove, Stephen W (Steve) [redacted]
Sent: Friday, October 2, 2020 12:15 PM
To: USCIS Exec Sec [redacted]; USCIS Directors Office Clearance-EXSO [redacted]; Calkins, Aaron L [redacted]
Cc: Drake, Johnetta [redacted]; Penn, Melissa M [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due 10/2/20 USCIS Reg TPs STARS #31286

OCC edits attached.

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Thank you

(b)(6)

Stephen Dove
Chief, USCIS EXSO
[redacted] cell
office direct

(b)(6)

From: Dennis, Morgan C [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Friday, October 2, 2020 11:50 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Calkins, Aaron L [redacted]
Cc: USCIS Exec Sec [redacted]; Drake, Johnetta [redacted]; Dove, Stephen W (Steve [redacted]; Penn, Melissa M [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due 10/2/20 USCIS Reg TPs STARS #31286
Importance: High

Requestor Directorate/Office: DHS ESEC [redacted]

Due Date: **12:00 PM Today**

Request: ESEC requests USCIS to review attachment.

Clearance:
OP&S: [redacted]
EXA:
OCC: **Still awaiting clearance from OCC.**

Attachments:
Talking Points

*******Please reply to all on this email ******

From: DE LA VARA, HUNTER [redacted]
Sent: Friday, October 02, 2020 9:35 AM
To: PLCY EXEC SEC [redacted]; Gilmer, Chadwick [redacted]; OGC Exec Sec [redacted]; MCCLEARY, STEPHEN [redacted]; USCIS Exec Sec [redacted]; Dove, Stephen W (Steve) [redacted]
Cc: ESEC-BBIC [redacted]
Subject: USCIS Reg TPs

Good Morning OGC, PLCY, and USCIS,

Can you please review the attached talking points for AS1? We would like clearance by 12:00 PM if possible.

Thanks,

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(b)(6)

Hunter de la Vara

Briefing Book Coordinator | Office of the Executive Secretary
[redacted]
C[redacted] | O:[redacted]

(b)(6)

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Timestamp

Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES (b)(5)

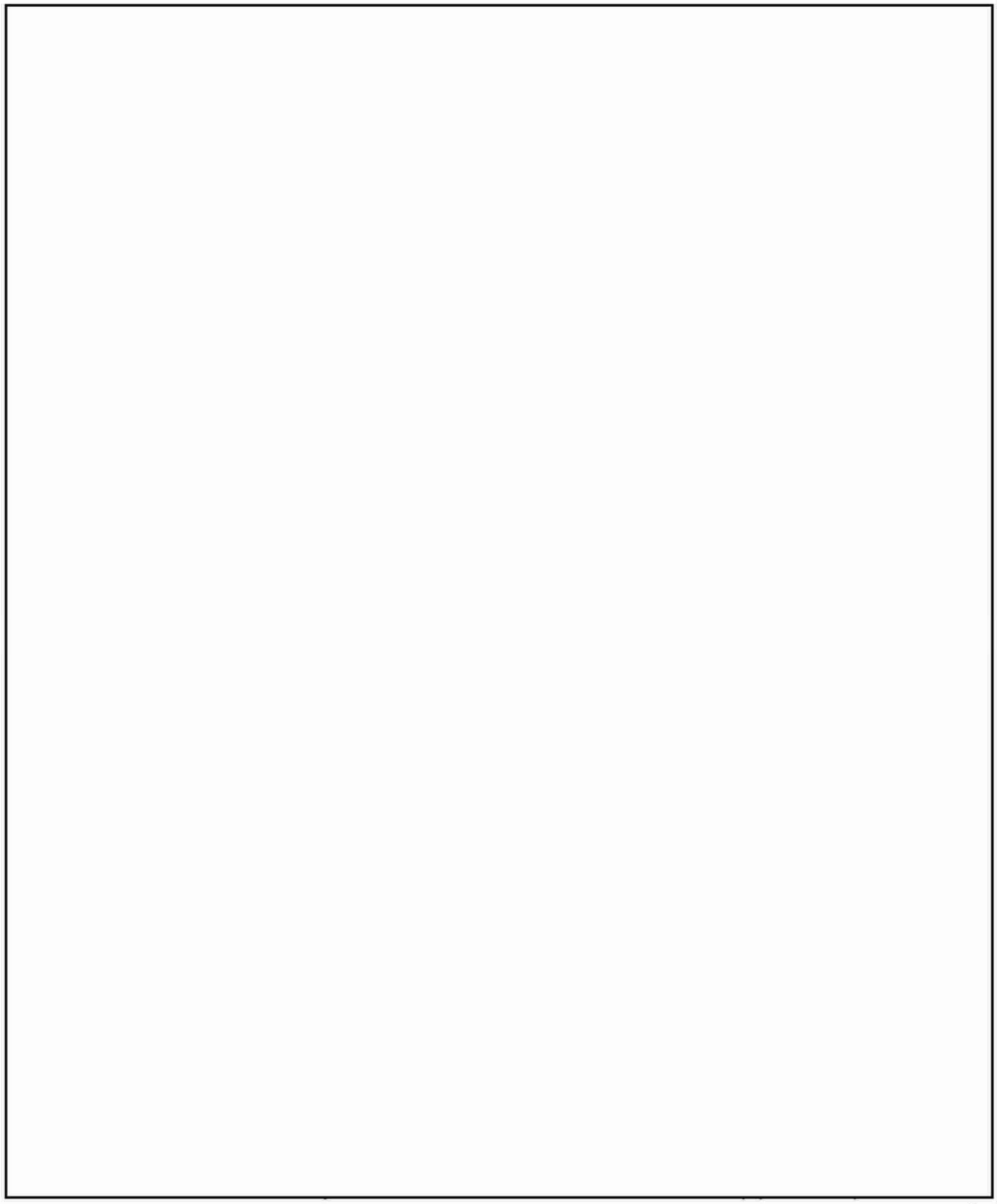
A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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Washington, DC

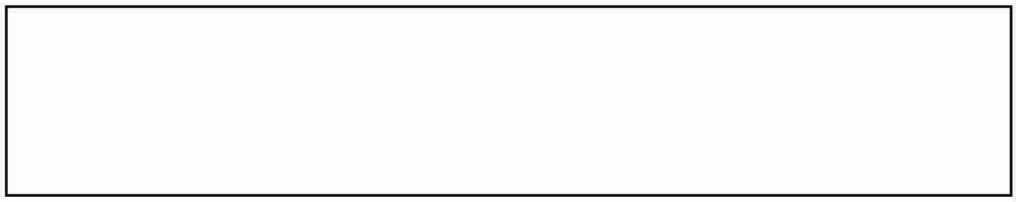
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Washington, DC

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(b)(5)

H-1B Rules
Talking Points

(b)(5)

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)

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(b)(5)

Wage Level Interim Final Rule (DOL Rule)



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STRENGTHENING THE H-1B PROGRAM TPs

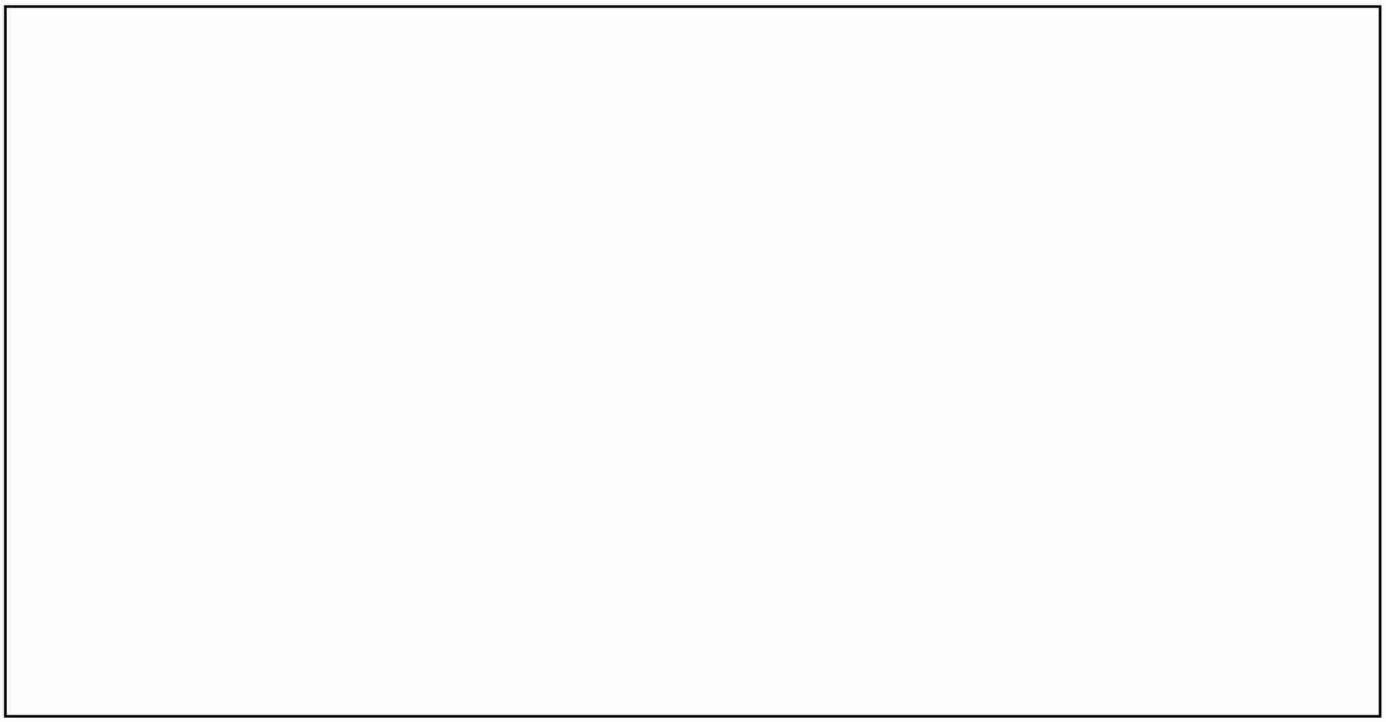
(b)(5)

FIRST: **We are taking historic action to strengthen the country's broken**

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Washington, DC

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(b)(6)

From: Calkins, Aaron L
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Cc: USCIS Exec Sec
Sent: October 2, 2020 9:31 AM (UTC-05:00)
Attached: S1-S2 Briefing Memo Template - May 2020 (1).OCCedits CLEAN.docx, S1-S2 Remarks Template - Oct 2018 (1).OCCedits CLEAN.docx

Attached are the DO cleared documents.

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Drake, Johnetta [redacted]>
Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due:

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10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

(b)(6)

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

(b)(5)

KEY POINTS AND PRIORITIES

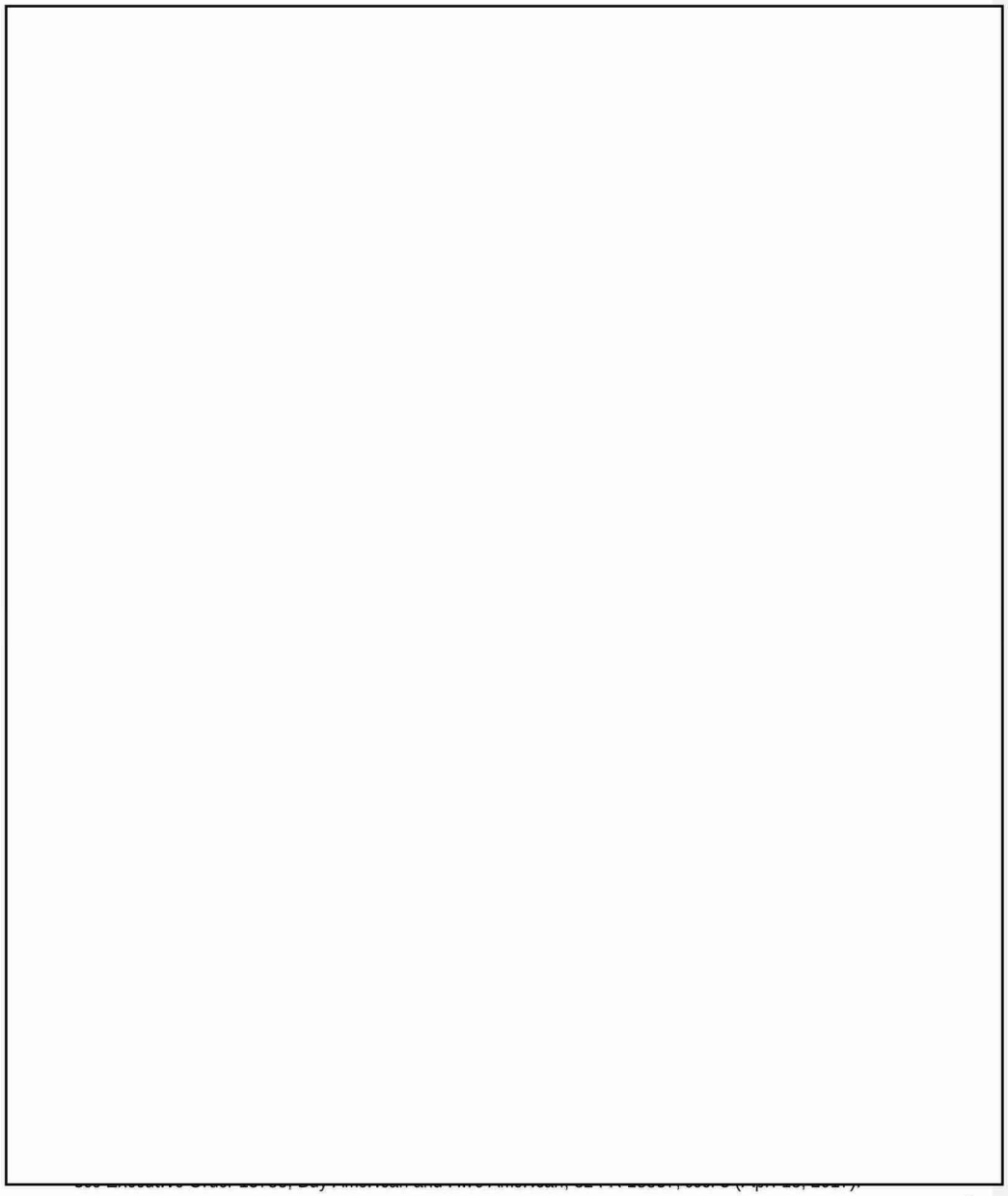
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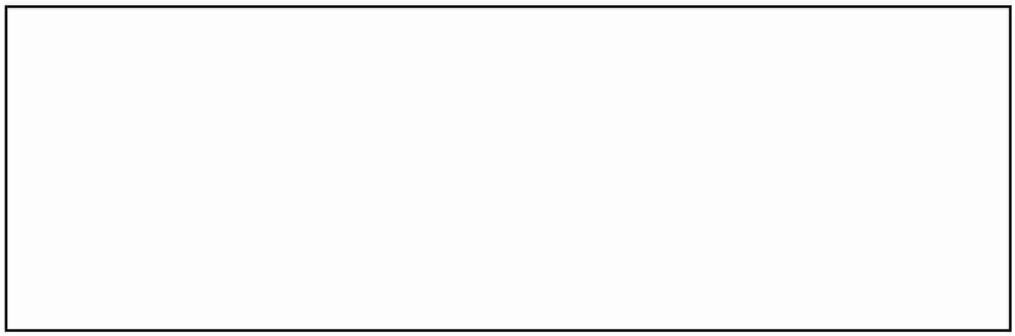
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Washington, DC

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H-1B Rules
Talking Points

(b)(5)

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)

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Wage Level Interim Final Rule (DOL Rule)

(b)(5)



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From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: Edlow, Joseph B
Sent: October 2, 2020 9:26 AM (UTC-05:00)
Attached: S1-S2 Briefing Memo Template - May 2020 (1).OCCedits CLEAN.docx, S1-S2 Remarks Template - Oct 2018 (1).OCCedits CLEAN.docx

See attached. Need to get back to HQ as soon as possible. (b)(6)

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Law, Robert T <[redacted]>
Sent: Friday, October 2, 2020 10:24 AM
To: Calkins, Aaron L <[redacted]>; Parascandola, Ciro A <[redacted]>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

See attached

Robert Law
[redacted]office)
[redacted]cell)

From: Law, Robert T
Sent: Friday, October 2, 2020 10:17 AM
To: Calkins, Aaron L [redacted]; Parascandola, Ciro A <[redacted]>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Yes. I'm on the phone w/ JZ and DOL re: the rollout but I can handle.

Robert Law
[redacted]office)
[redacted]cell)

From: Calkins, Aaron L [redacted]
Sent: Friday, October 2, 2020 10:17 AM
To: Law, Robert T [redacted]arascandola, Ciro A <[redacted]>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Can you send me clean copies that I can send to D2P?

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

(b)(6)

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From: Law, Robert T [redacted]
Sent: Friday, October 2, 2020 10:02 AM
To: Calkins, Aaron L [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Edits/responses attached.

Robert Law
[redacted]office)
[redacted]cell)

From: Calkins, Aaron L [redacted]
Sent: Friday, October 2, 2020 8:48 AM
To: Law, Robert T [redacted]
Subject: Fwd: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Thanks,

Aaron L. Calkins

Get Outlook for iOS

From: Choi, Heesun S (Sunny) [redacted]
Sent: Friday, October 2, 2020 8:47:49 AM
To: Drake, Johnetta [redacted]; USCIS Exec Sec [redacted], USCIS Directors Office Clearance-EXSO [redacted]
Cc: OCC-Clearance [redacted]; ALD [redacted]; Groom, Molly M [redacted]; Salem, Claudia S [redacted]; Bump, Micah N [redacted]; Cox, Robert H [redacted]; Zimonjic, Milica [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Attached please find OCC's edits. Let us know if you have any questions.

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS|USCIS|Office of the Chief Counsel
[redacted] *(Direct)*
(Cell)
(Fax)
[redacted]

(b)(6)

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and delete this message. Thank you.

(b)(6)

From: Drake, Johnetta [redacted]
Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

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Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***Cell)***
Desk)

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

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Required Coordination OGC;OPA;PLCY

(b)(6)

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs. (b)(6)

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES (b)(5)

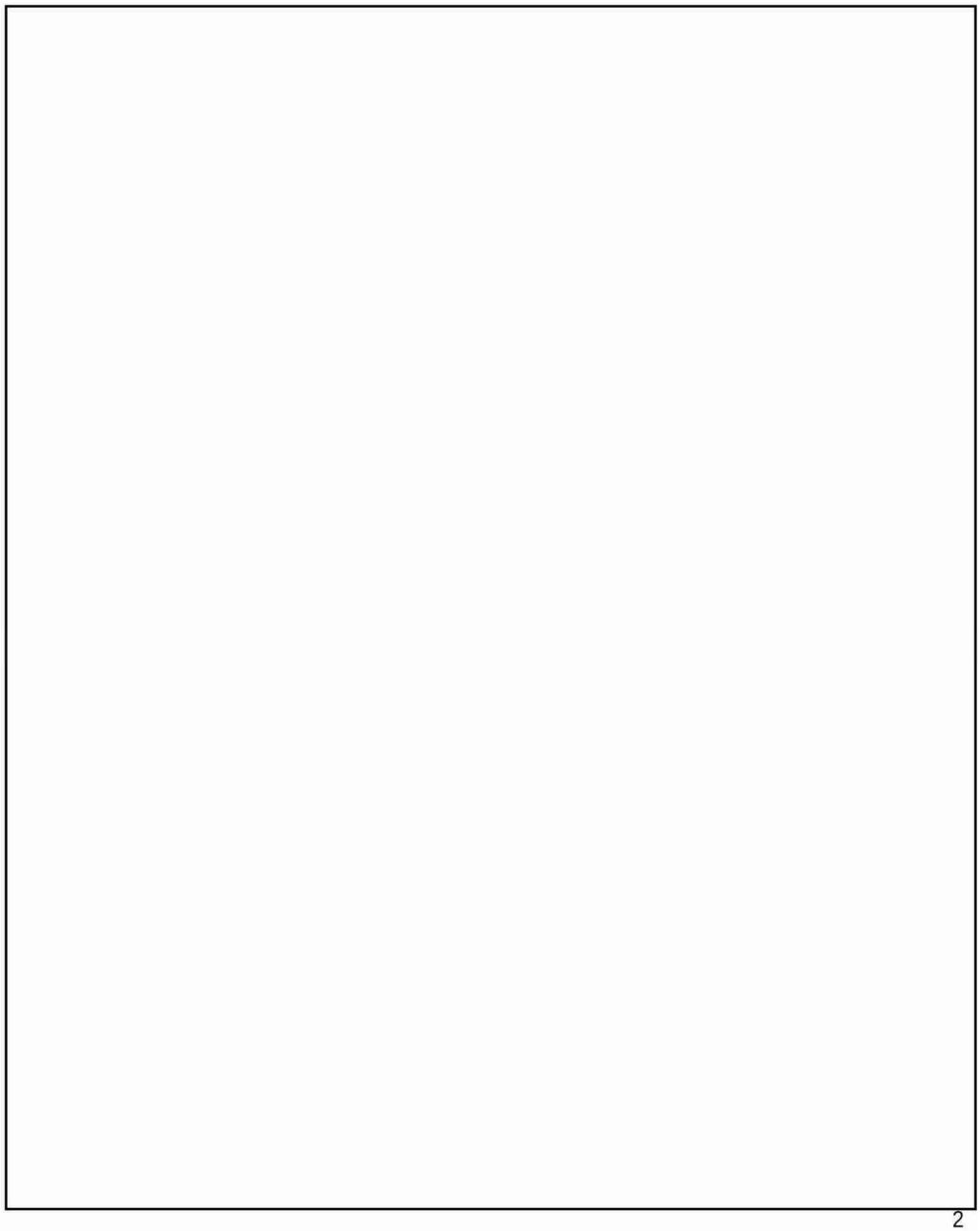
A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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Washington, DC

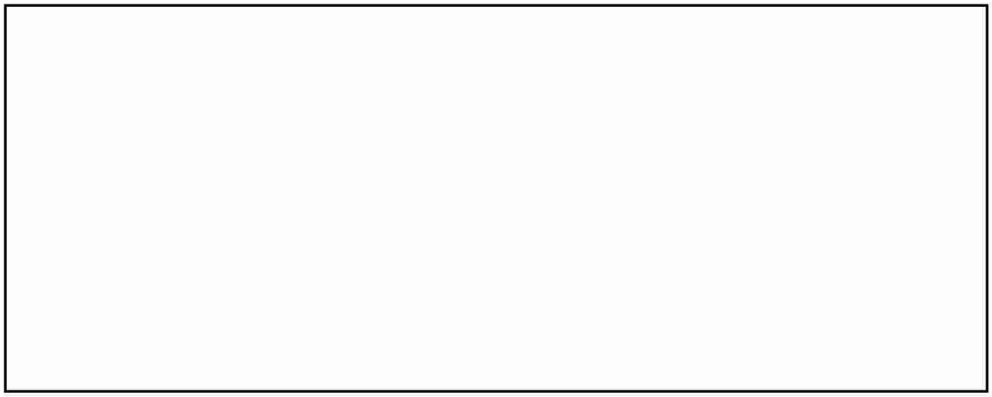
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DHS-20-2156-A-000497

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H-1B Rules
Talking Points

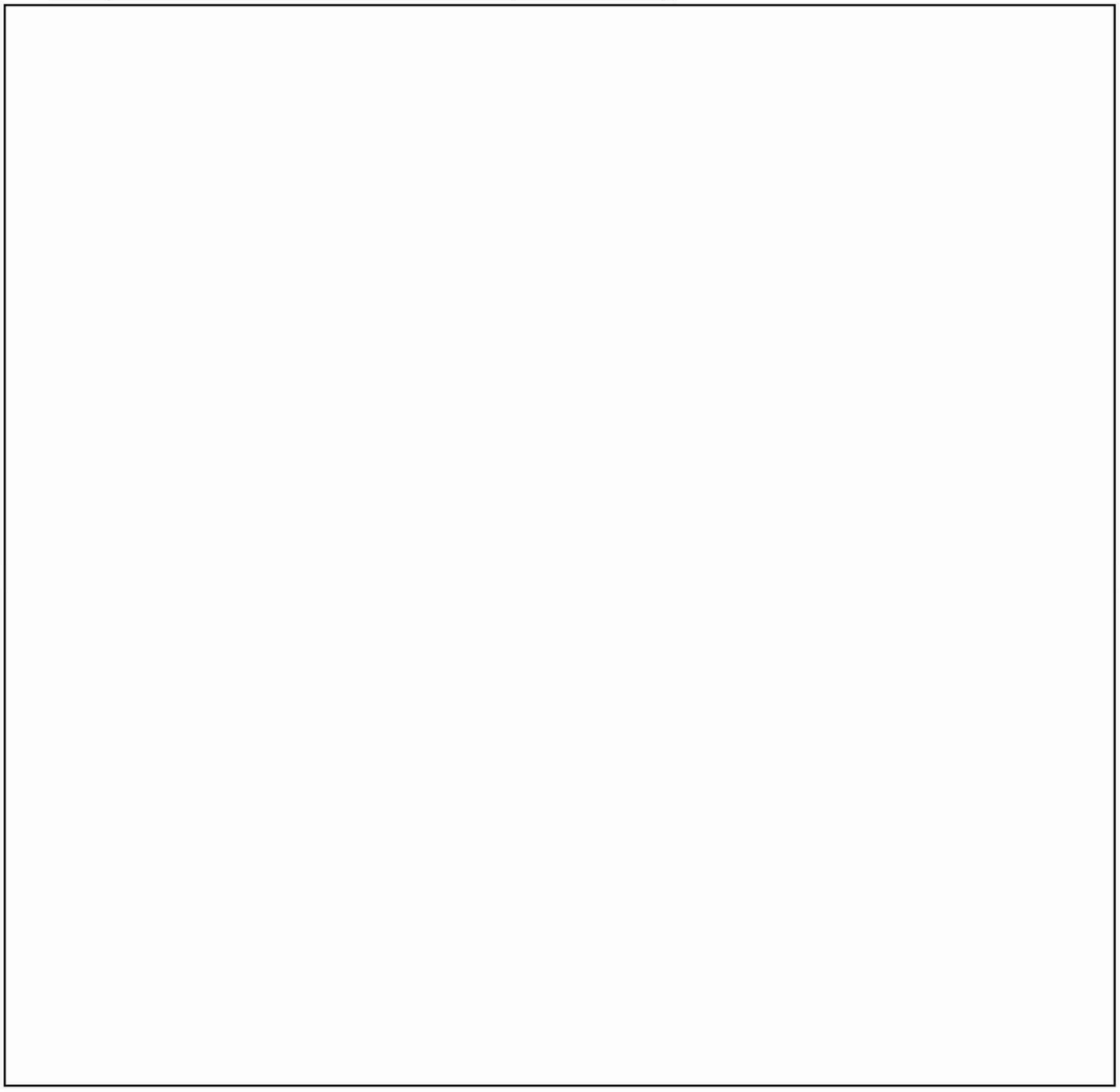
(b)(5)

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)

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(b)(5)

Wage Level Interim Final Rule (DOL Rule)



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From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
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Chief of Staff
U.S. Citizenship and Immigration Services
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Attached please find OCC's edits. Let us know if you have any questions.

(b)(6)

(b)(6)

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS|USCIS|Office of the Chief Counsel
[redacted]

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From: Drake, Johnetta [redacted]>
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Cc: USCIS Exec Sec [redacted]
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Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

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Attachments:
Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

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(b)(6)

(b)(6)

From: Briefing Book Tracking System <[redacted]>
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

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Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

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Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES

A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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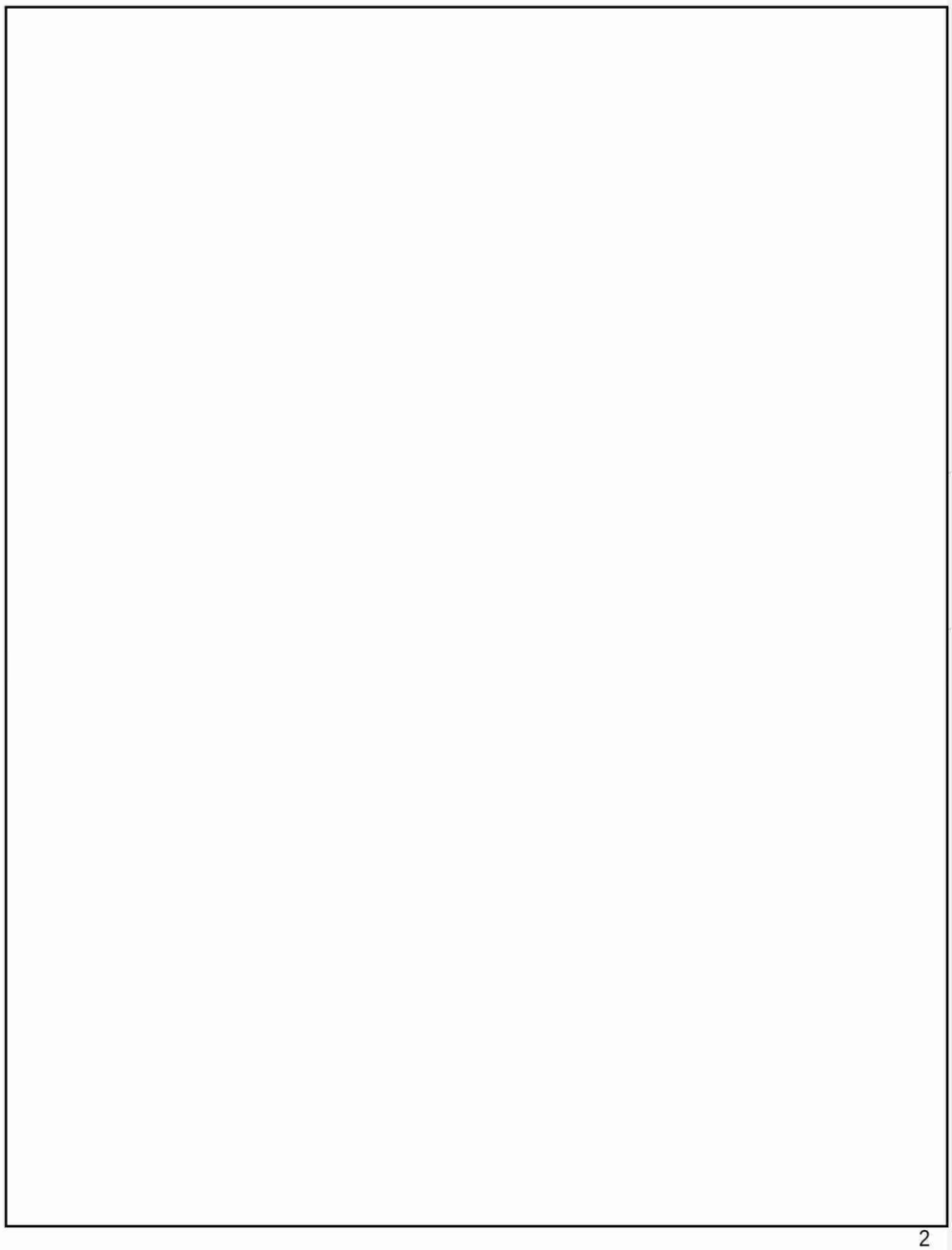
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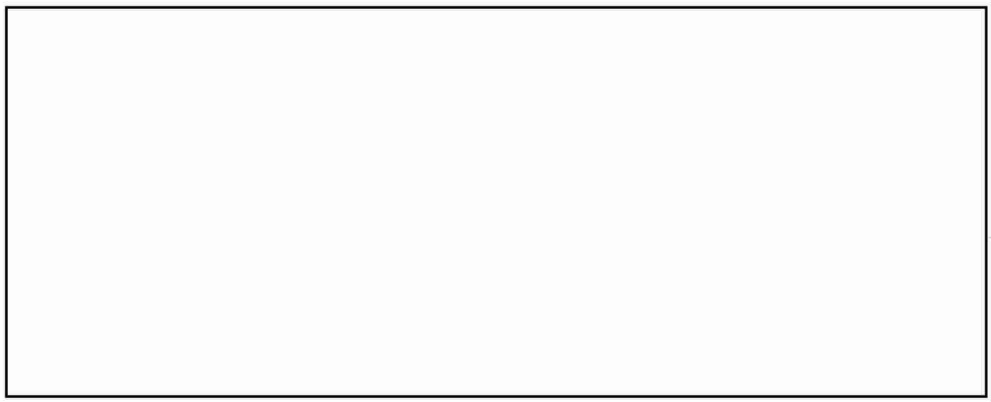
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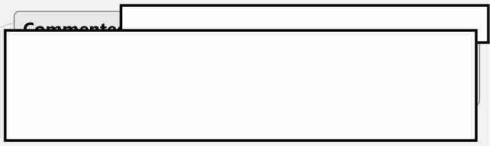
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Washington, DC

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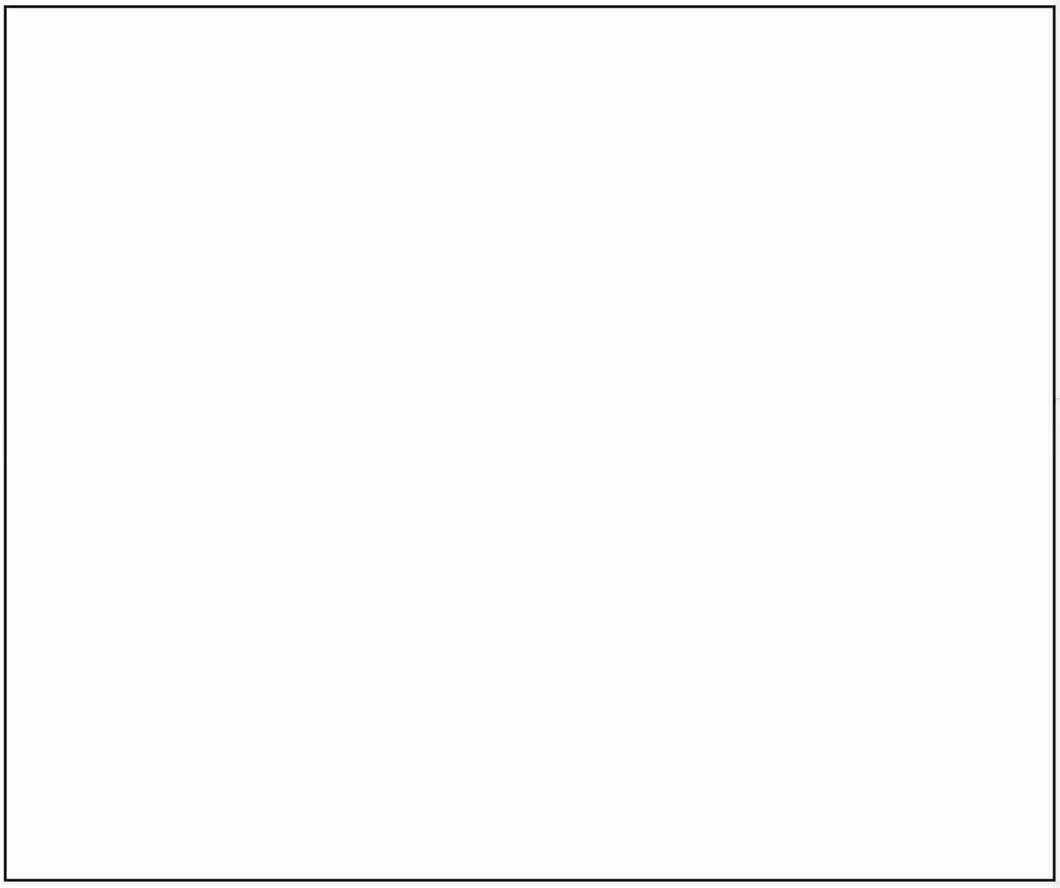
U.S. Department of Homeland Security
Washington, DC

AMERICAN OVERSIGHT

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H-1B Rules
Talking Points

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)

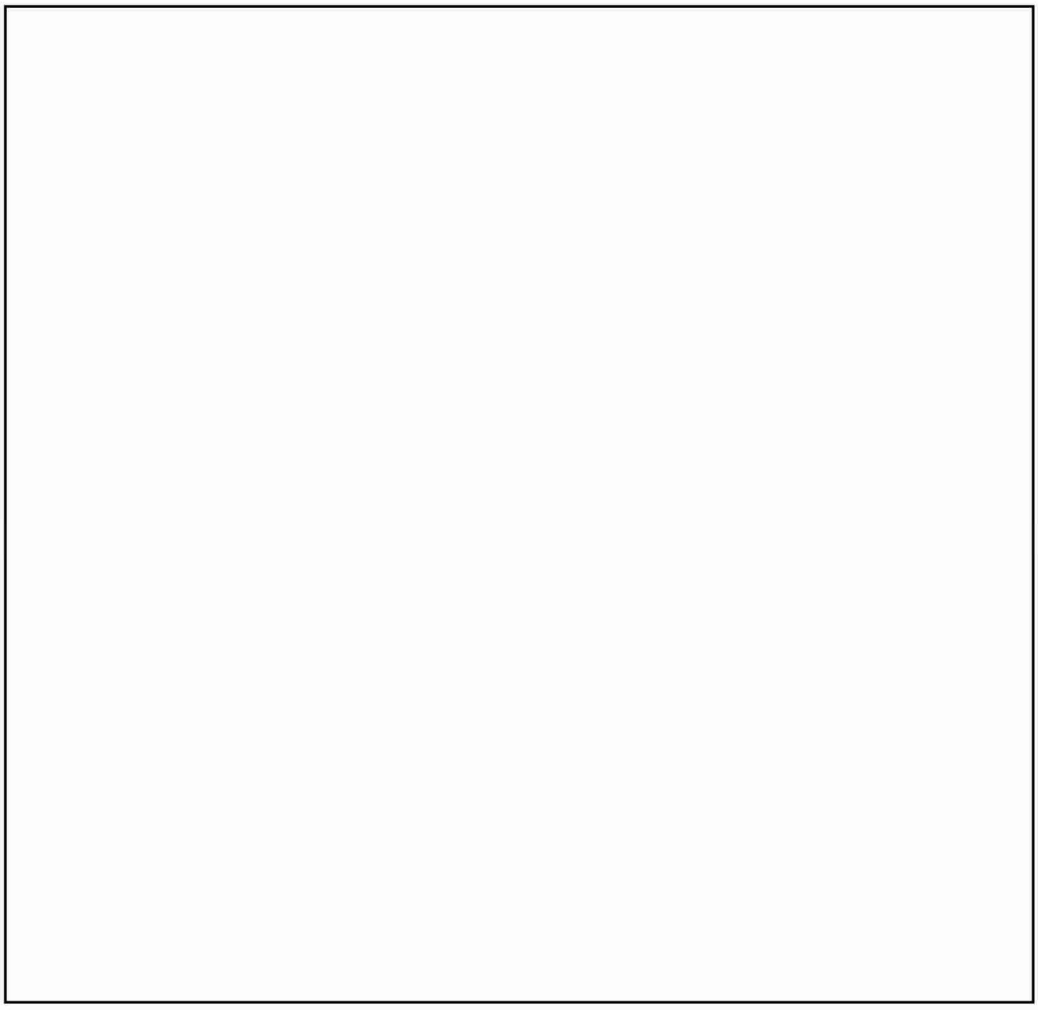


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Wage Level Interim Final Rule (DOL Rule)



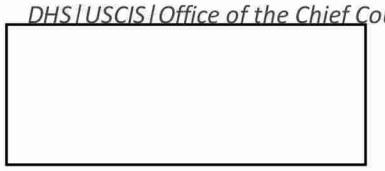
AMERICAN OVERSIGHT

From: Choi, Heesun S (Sunny)
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: Drake, Johnetta; USCIS Exec Sec; USCIS Directors Office Clearance-EXSO
Cc: OCC-Clearance; ALD; Groom, Molly M; Salem, Claudia S; Bump, Micah N; Cox, Robert H; Zimonjic, Milica
Sent: October 2, 2020 7:48 AM (UTC-05:00)
Attached: S1-S2 Briefing Memo Template - May 2020 (1).OCCedits.docx, S1-S2 Remarks Template - Oct 2018 (1).OCCedits.docx, S1-S2 Info Form for Regs - 09-01-20.OCCedits.docx

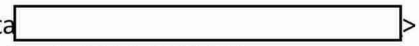
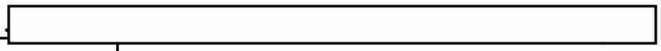
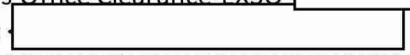
Attached please find OCC's edits. Let us know if you have any questions.

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS|USCIS|Office of the Chief Counsel



This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Drake, Johnetta >
Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO 
Cc: USCIS Exec Sec 
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

AMERICAN OVERSIGHT

*******Please reply to all on this email ******

(b)(6)

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

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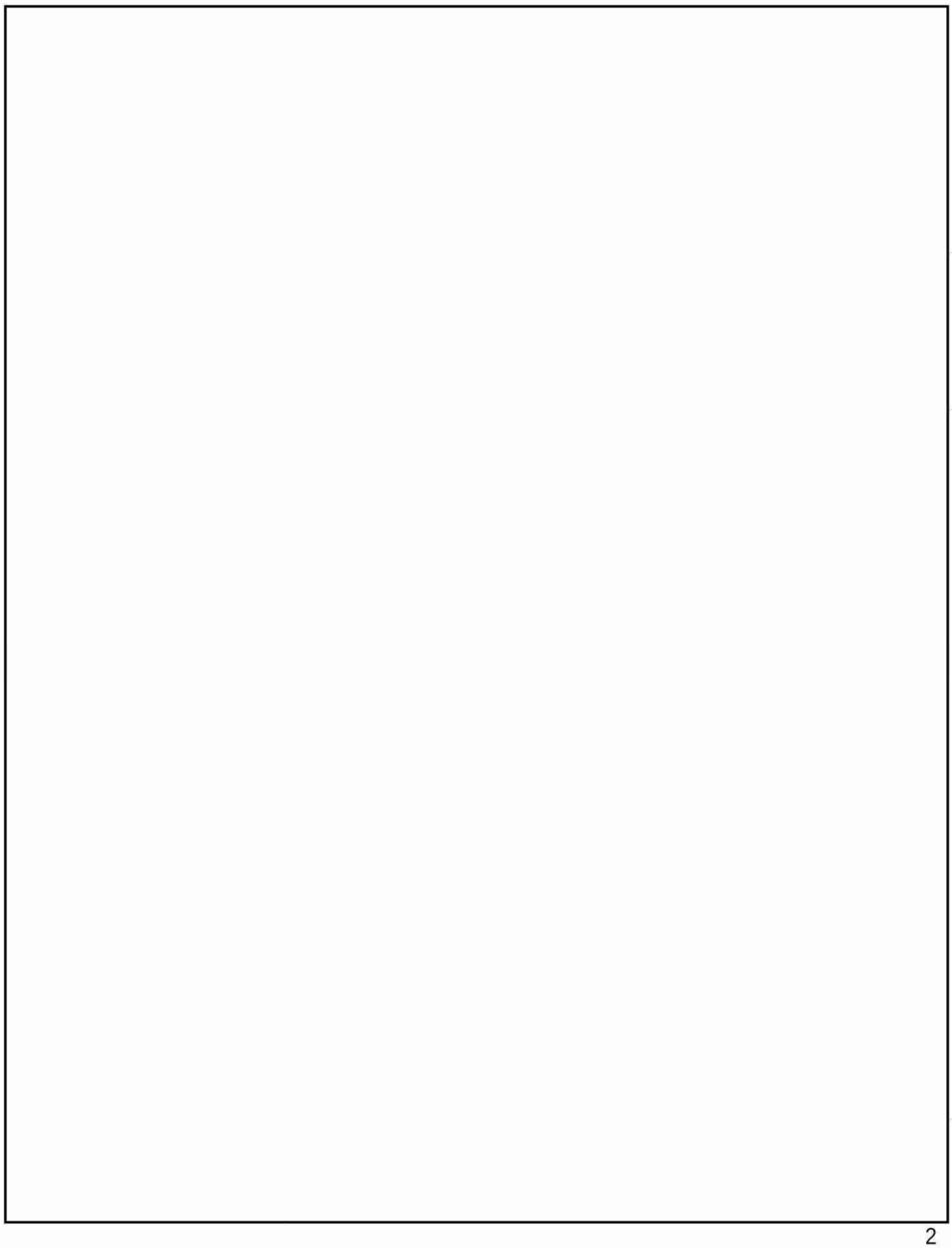
U.S. Department of Homeland Security
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Washington, DC

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Briefing Memorandum Clearance Sheet

Subject:

Drafted:

Approved:

Cleared:

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Washington, DC

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TALKING POINTS FORM FOR REGULATIONS

MESSAGE TO OGC/COMPONENT: please use this form to provide basic information on a forthcoming regulation. The Front Office will use this material to draft talking points. Unless specifically asked, please do not draft talking points. Instead, provide only the answers as directed below.

REGULATION:	Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule
COMPONENT:	U.S. Citizenship and Immigration Services, Department of Homeland Security
DEADLINE:	(deadline for publication)
APPROVED (this form):	Name, Title (Component Deputy Chief of Staff or higher)
DRAFTER (this form):	
OGC POC (for the reg):	Name, Title, Cell Phone

KEY POINTS

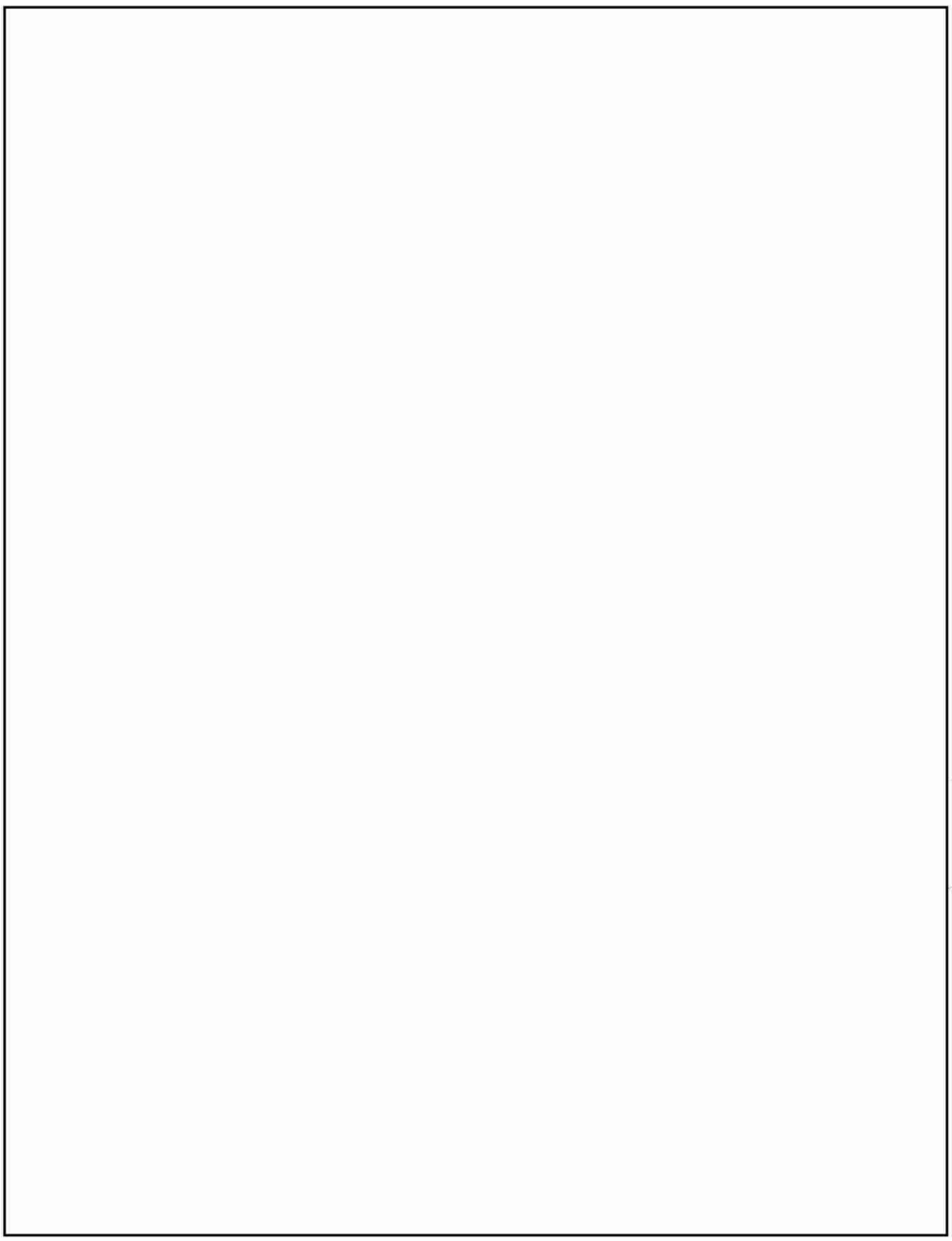
TALKING POINTS FORM FOR REGULATIONS

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TALKING POINTS FORM FOR REGULATIONS



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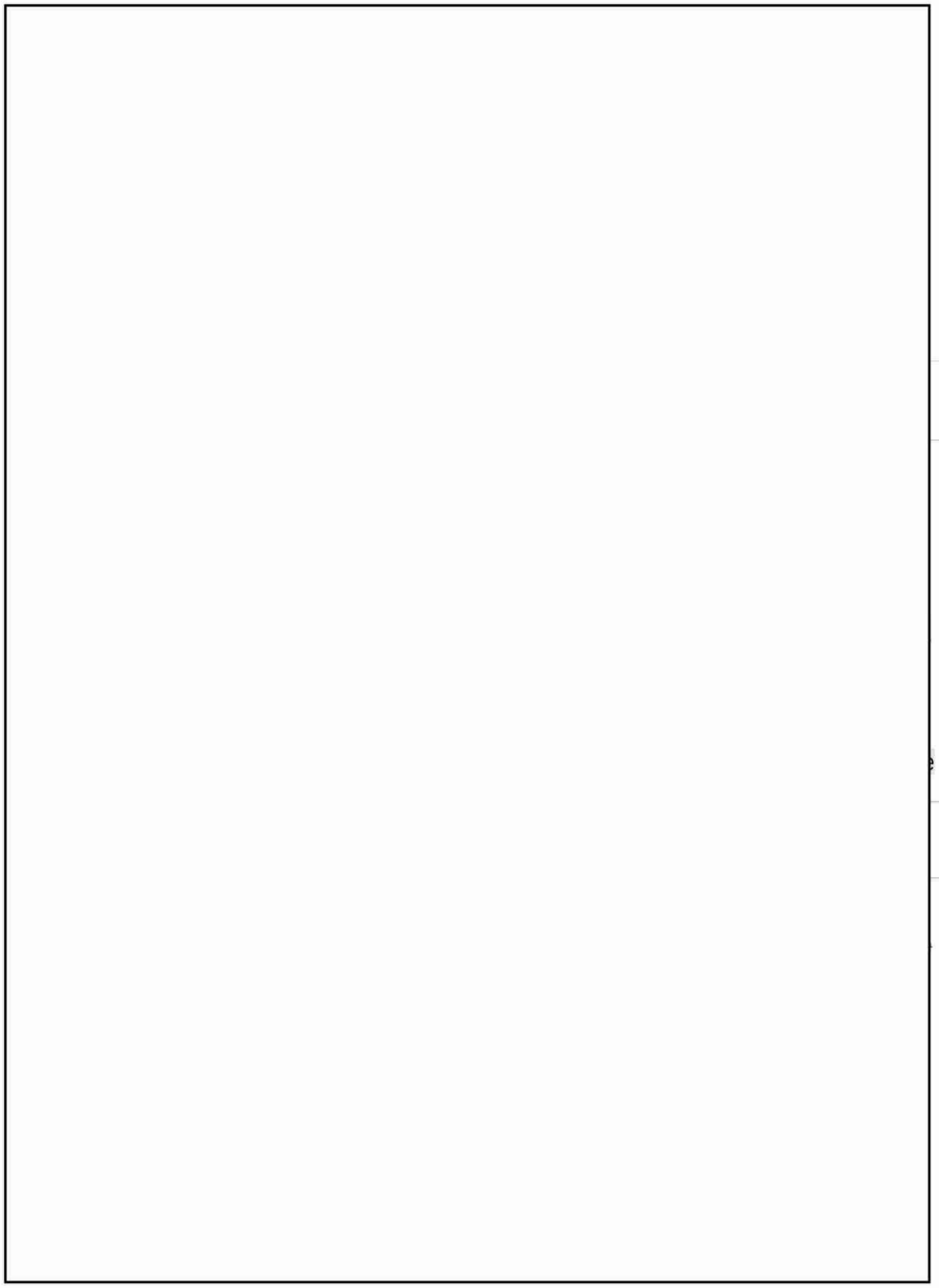
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TALKING POINTS FORM FOR REGULATIONS



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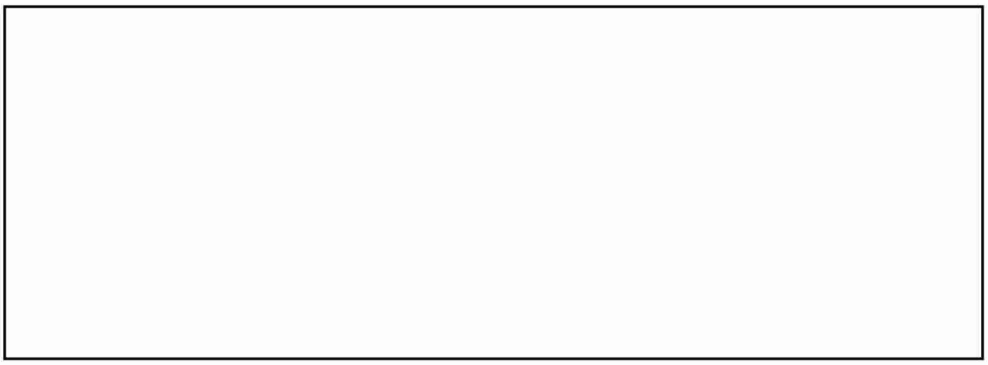
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TALKING POINTS FORM FOR REGULATIONS



TALKING POINTS FORM FOR REGULATIONS

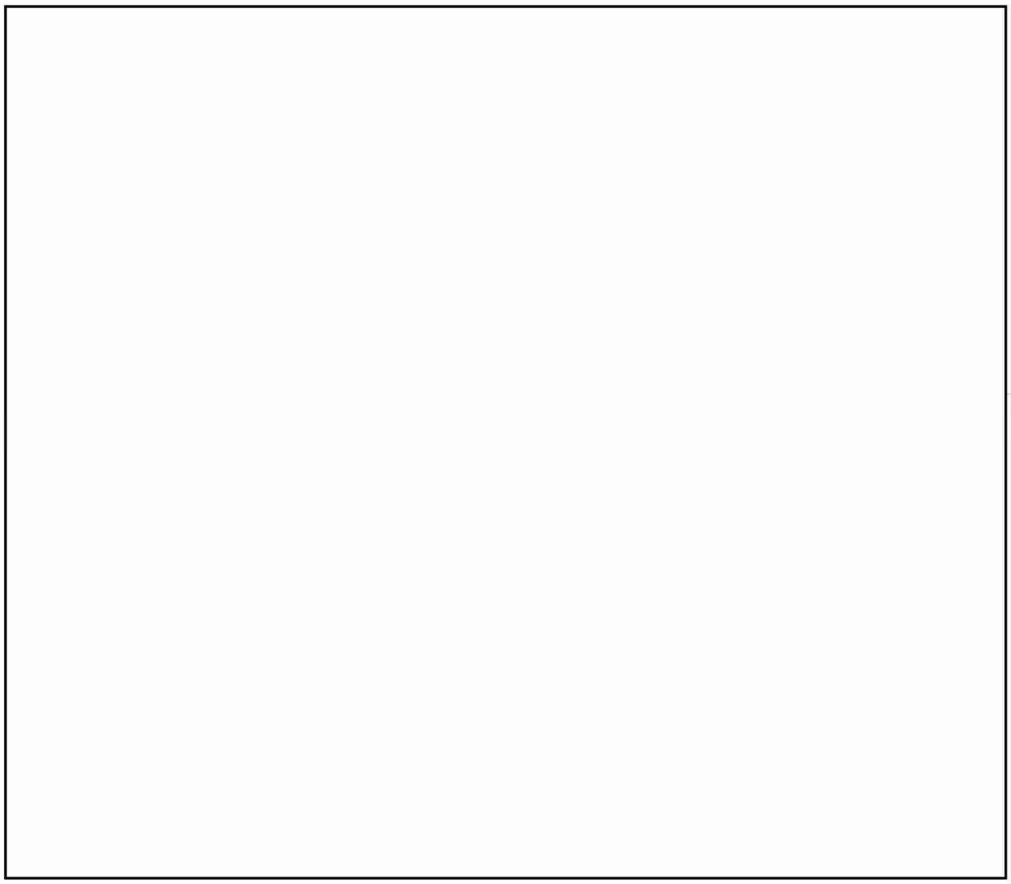
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H-1B Rules
Talking Points

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)



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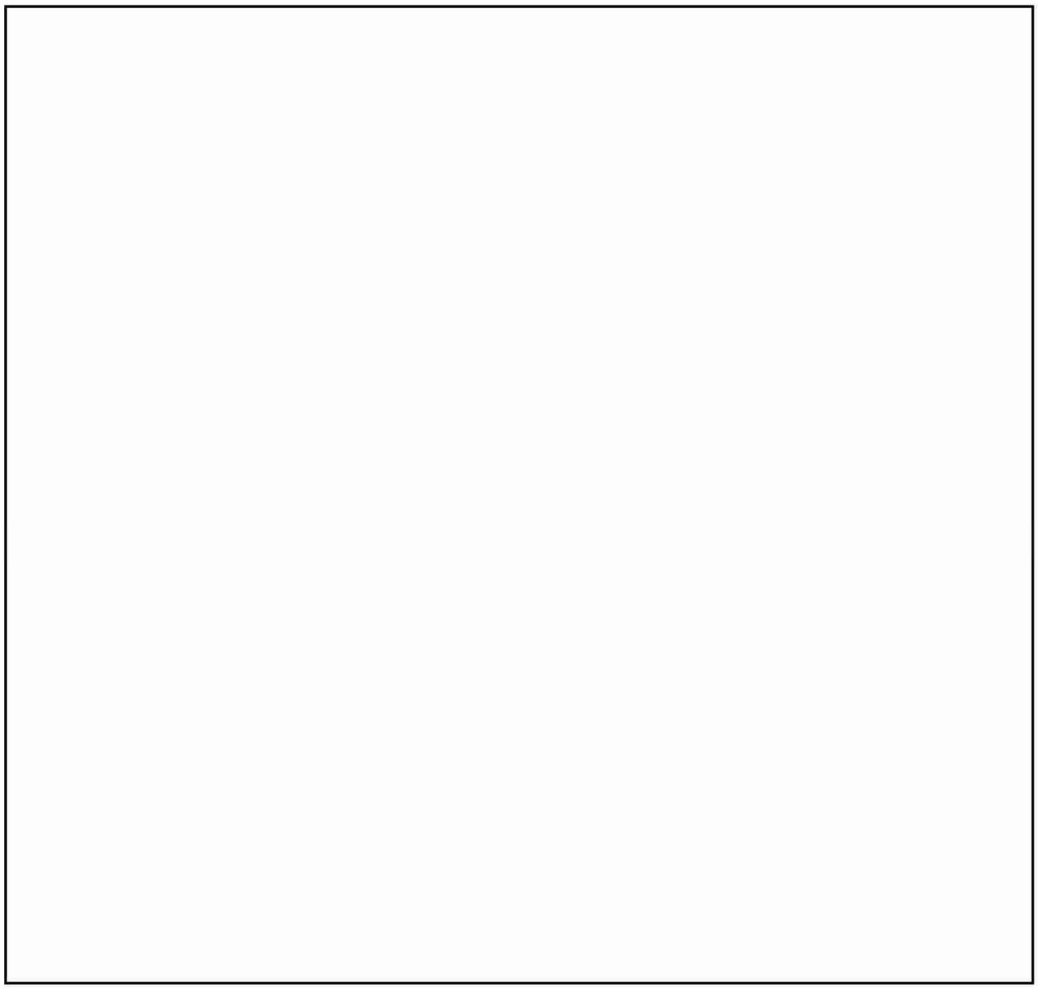
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Wage Level Interim Final Rule (DOL Rule)



AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: 'Aaron L Calkins'
Sent: October 2, 2020 7:47 AM (UTC-05:00)
Attached: S1-S2 Briefing Memo Template - May 2020 EXA.docx

Have you already sent this to D2P for review?

Mary Sheets

From: Christensen, Gillian M
Sent: Thursday, October 01, 2020 8:02 PM
To: Calkins, Aaron L; OCC-Clearance; EXA Clearance Distribution List
Cc: Fishman, George M; Groom, Molly M; Patching, Laura D; Sheets, Mary W; Rexrode, Kathryn S
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260

Hi Aaron –

EXA only had one edit, which was to add a question to the briefing template about why the rule was withdrawn from OIRA this week. We've received numerous media queries about it today so AS1 may need to articulate the process of why that occurred.

Let us know if you need anything else.

Thanks!
Gillian

From: Calkins, Aaron L
Sent: Thursday, October 01, 2020 7:07 PM
To: OCC-Clearance; EXA Clearance Distribution List
Cc: Fishman, George M; Groom, Molly M; Patching, Laura D; Sheets, Mary W; Rexrode, Kathryn S
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

OCC and EXA – Sorry to bug you this evening but I need you to review and clear the attached documents for AS1. **I need this back NLT 9am tomorrow so that D2P can review.**

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

AMERICAN OVERSIGHT

From: Drake, Johnetta

Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO <[redacted]
Cc: USCIS Exec Sec <[redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted]***Cell)***
Desk)

From: Briefing Book Tracking System <[redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

Task Lead Component: Draft BMS Material

AMERICAN OVERSIGHT

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

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Briefing Material Set Link: H1B Strengthening Rule IFR

This is a system generated email. So, please do NOT reply to this email.

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES

A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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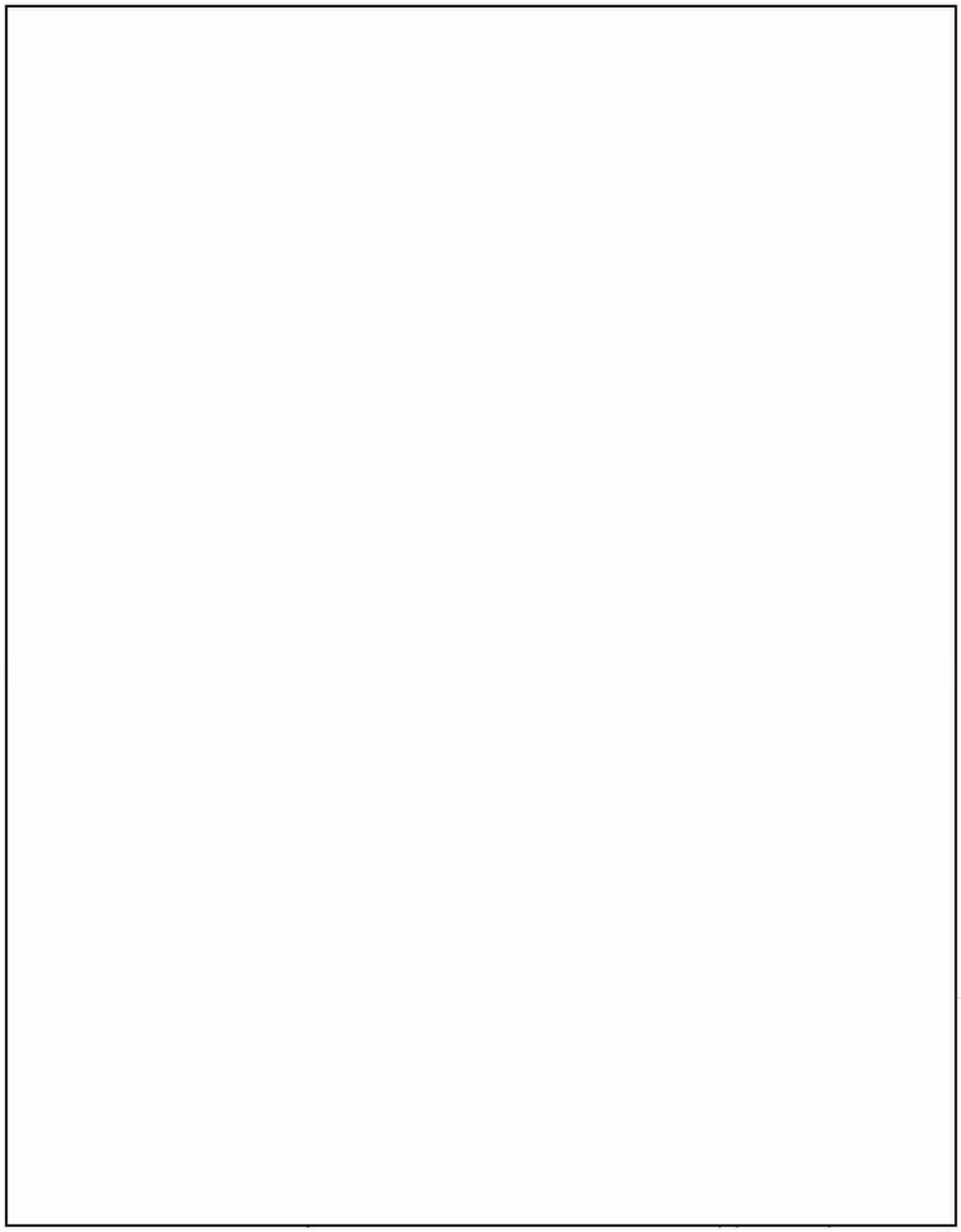
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Washington, DC

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Approved:

Cleared:

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Washington, DC

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AMERICAN OVERSIGHT

From: Christensen, Gillian M
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: Calkins, Aaron L; OCC-Clearance; EXA Clearance Distribution List
Cc: Fishman, George M; Groom, Molly M; Patching, Laura D; Sheets, Mary W; Rexrode, Kathryn S
Sent: October 1, 2020 7:02 PM (UTC-05:00)
Attached: S1-S2 Briefing Memo Template - May 2020 EXA.docx

Hi Aaron –

EXA only had one edit, which was to add a question to the briefing template about why the rule was withdrawn from OIRA this week. We've received numerous media queries about it today so AS1 may need to articulate the process of why that occurred.

Let us know if you need anything else.

Thanks!
Gillian

From: Calkins, Aaron L <Aaron.L.Calkins@uscis.dhs.gov>
Sent: Thursday, October 01, 2020 7:07 PM
To: OCC-Clearance <[redacted]>; EXA Clearance Distribution List [redacted]
Cc: Fishman, George M [redacted]; Groom, Molly M [redacted]; Patching, Laura D <[redacted]>; Sheets, Mary W <[redacted]>; Rexrode, Kathryn S [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

OCC and EXA – Sorry to bug you this evening but I need you to review and clear the attached documents for AS1. **I need this back NLT 9am tomorrow so that D2P can review.**

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Drake, Johnetta [redacted]
Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

AMERICAN OVERSIGHT

(b)(6)

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

(b)(6)

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

This is a system generated email. So, please do NOT reply to this email.

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Timestamp

Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES

A DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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[redacted]

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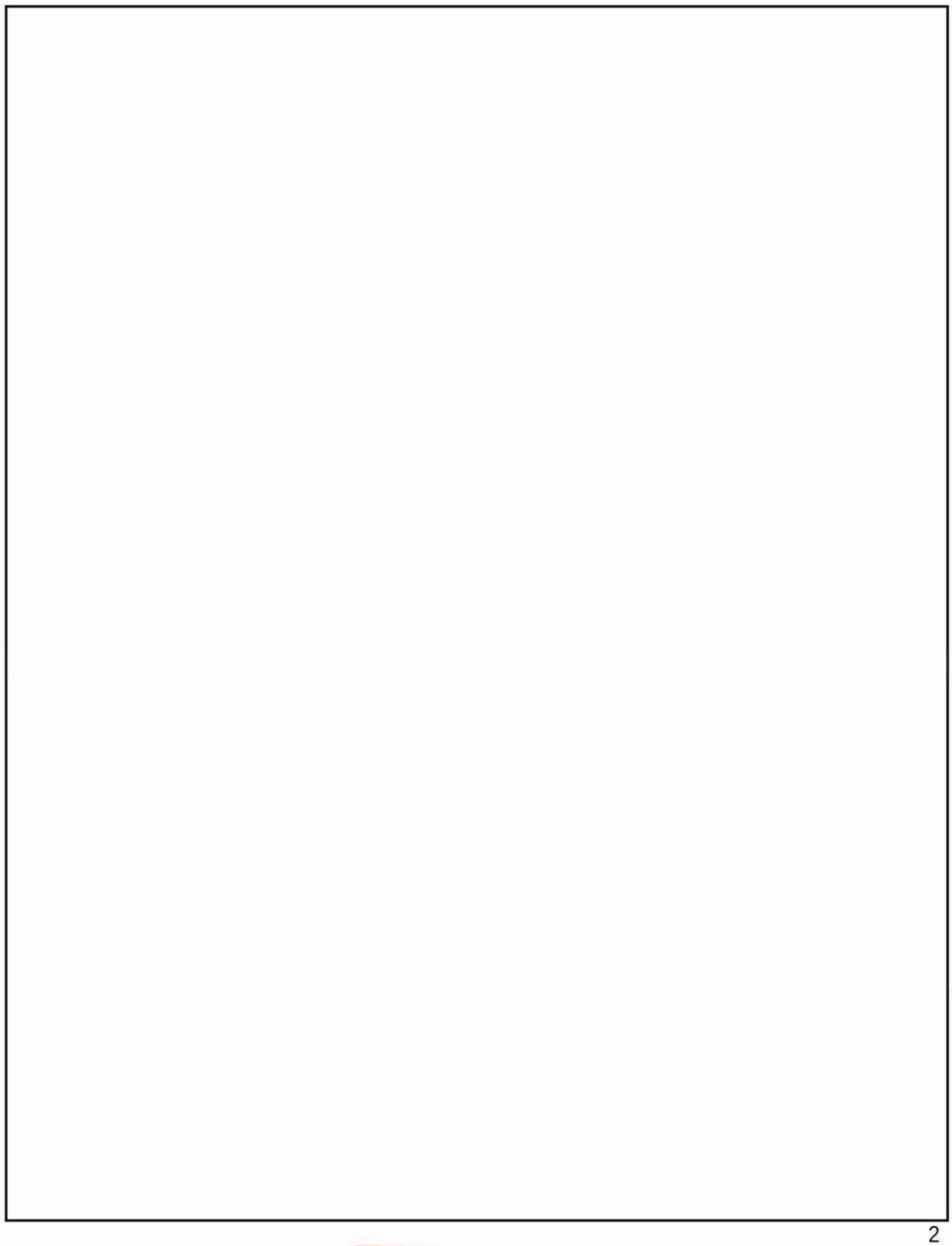
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Washington, DC

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Approved:

Cleared:

Commented

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Washington, DC

AMERICAN OVERSIGHT

(b)(6)

From: Dove, Stephen W (Steve)
Subject: Re: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)
To: Barrow, Clark
Cc: Law, Robert T; USCIS Exec Sec; ESEC-BBIC; Carter, Constance L; Calkins, Aaron L
Sent: October 1, 2020 6:11 PM (UTC-05:00)
Attached: H-1B Strengthening - S1-S2 Info Form.docx

Hi Clark,

Attached is the talking points form as cleared by our COS. We should have the remainder of the materials to you by the noon deadline tomorrow.

Thanks

Stephen Dove
USCIS EXSO Chief
[redacted] Cell

On Oct 1, 2020, at 6:45 PM, Barrow, Clark [redacted]> wrote:

Great, thanks. Please send when ready.

From: Law, Robert T [redacted]
Sent: Thursday, October 1, 2020 6:43 PM
To: Barrow, Clark; USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Dove, Stephen W (Steve); Carter, Constance L; Aaron L. Calkins
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

To avoid confusion we're going to use the version of the form that was provided last week. Everything should be cleared later tonight.

Robert Law
[redacted] office)
cell)

From: Barrow, Clark [redacted]>
Sent: Thursday, October 1, 2020 6:16 PM
To: Law, Robert T [redacted]>; USCIS Exec Sec [redacted]; ESEC-BBIC [redacted]
Cc: USCIS Exec Sec [redacted]>; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]>; Calkins, Aaron L [redacted]
Subject: Re: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

Ok thanks, we don't want to confuse drafters at HQ so please just resend the latest form. We will only move forward the latest version.

(b)(6)

AMERICAN OVERSIGHT

Also, has everyone cleared this at USCIS? We can wait until later tonight if needed. Just need the form tonight please. (b)(6)

From: Law, Robert T
Sent: Thursday, October 1, 2020 6:04 PM
To: Barrow, Clark; USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Dove, Stephen W (Steve); Carter, Constance L; Aaron L. Calkins
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

We don't need an extension, this is a top priority. Clark, sending you bootleg copies now of the Info Form (first version you should already have from last week). The second one is slightly revised, but not substantively. The remaining documents will be delivered in time tomorrow.

Robert Law
(office)
(cell)

From: Barrow, Clark
Sent: Thursday, October 1, 2020 5:34 PM
To: USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Law, Robert T; Dove, Stephen W (Steve); Carter, Constance L; Calkins, Aaron L
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

Adding others

I'm sorry but we need to deliver these materials before 5 pm tomorrow. The tasking below asks for the following:

1. We need USCIS to complete the attached "Info Form for Regs" (believe this is already happening at USCIS)
    1. Due to ESEC by COB today
    2. Please include as much information as possible, HQ will turn this into talking points and remarks

In a separate tasking, we asked USCIS to do the following:

1. Briefing Binder with background from USCIS Briefing Materials
    1. Need it to ESEC by 12 noon tomorrow
    2. USCIS to include background on H-1B Strengthening Rule and on DOL Prevailing Wage IFR

From: Penn, Melissa M **On Behalf Of** USCIS Exec Sec
Sent: Thursday, October 1, 2020 5:22 PM
To: ESEC-BBIC
Cc: USCIS Exec Sec
Subject: FW: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

AMERICAN OVERSIGHT

USCIS is requesting an extension until 5pm tomorrow, 10/2.

(b)(6)

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O[redacted]
Email:[redacted]

(b)(6)

From: Briefing Book Tracking System <[redacted]>
Sent: Thursday, October 01, 2020 12:14 PM
Subject: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

The Front Office has requested USCIS provide additional products/information for H1B Strengthening Rule IFR. Please see below for request and submit the requested materials by **10/1/2020 5:00 PM.**

Requirements

Please fill out the Info Regs Form, DO NOT fill out a remarks form, OPA will use the background materials and Regs form to draft remarks.

Briefing Material Set Link: H1B Strengthening Rule IFR

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TALKING POINTS FORM FOR REGULATIONS

MESSAGE TO OGC/COMPONENT: please use this form to provide basic information on a forthcoming regulation. The Front Office will use this material to draft talking points. Unless specifically asked, please do not draft talking points. Instead, provide only the answers as directed below.

REGULATION: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

COMPONENT: U.S. Citizenship and Immigration Services, Department of Homeland Security

DEADLINE: (deadline for publication)

APPROVED this form: Name, Title (Component Deputy Chief of Staff or higher)

DRAFTER of this form: (b)(6)

KEY POINTS

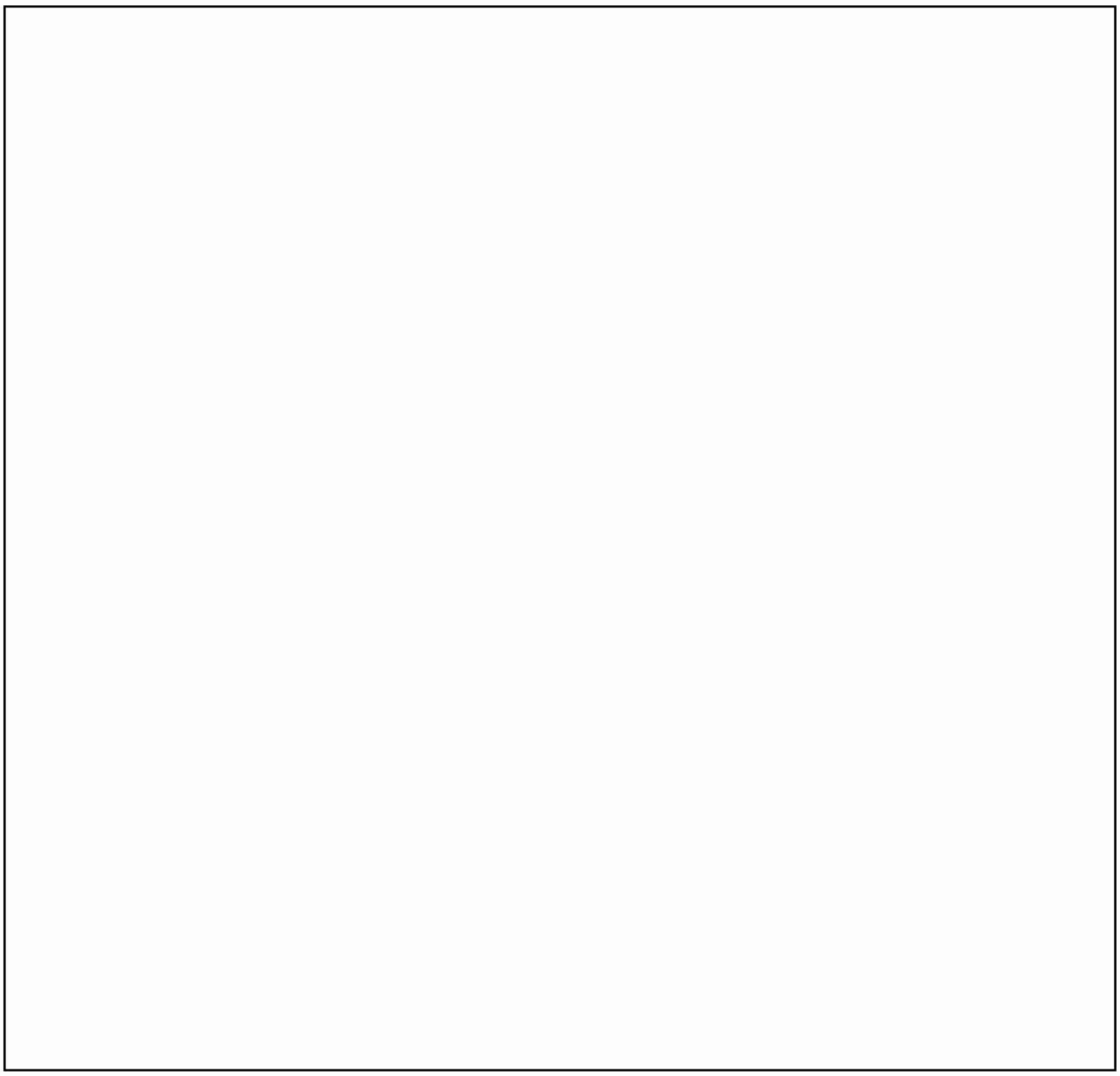
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: OCC-Clearance; EXA Clearance Distribution List
Cc: Fishman, George M; Groom, Molly M; Patching, Laura D; Sheets, Mary W; Rexrode, Kathryn S
Sent: October 1, 2020 6:07 PM (UTC-05:00)
Attached: S1-S2 Remarks Template - Oct 2018 (1).docx, S1-S2 Briefing Memo Template - May 2020 (1).docx

OCC and EXA – Sorry to bug you this evening but I need you to review and clear the attached documents for AS1. **I need this back NLT 9am tomorrow so that D2P can review.**

(b)(6)

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Drake, Johnetta [redacted]
Sent: Thursday, October 1, 2020 6:23 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
Importance: High

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

From: Briefing Book Tracking System [redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due:

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10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours*** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

(b)(6)

Task Lead Component: Draft BMS Material

Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Timestamp

Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES

A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

[redacted]

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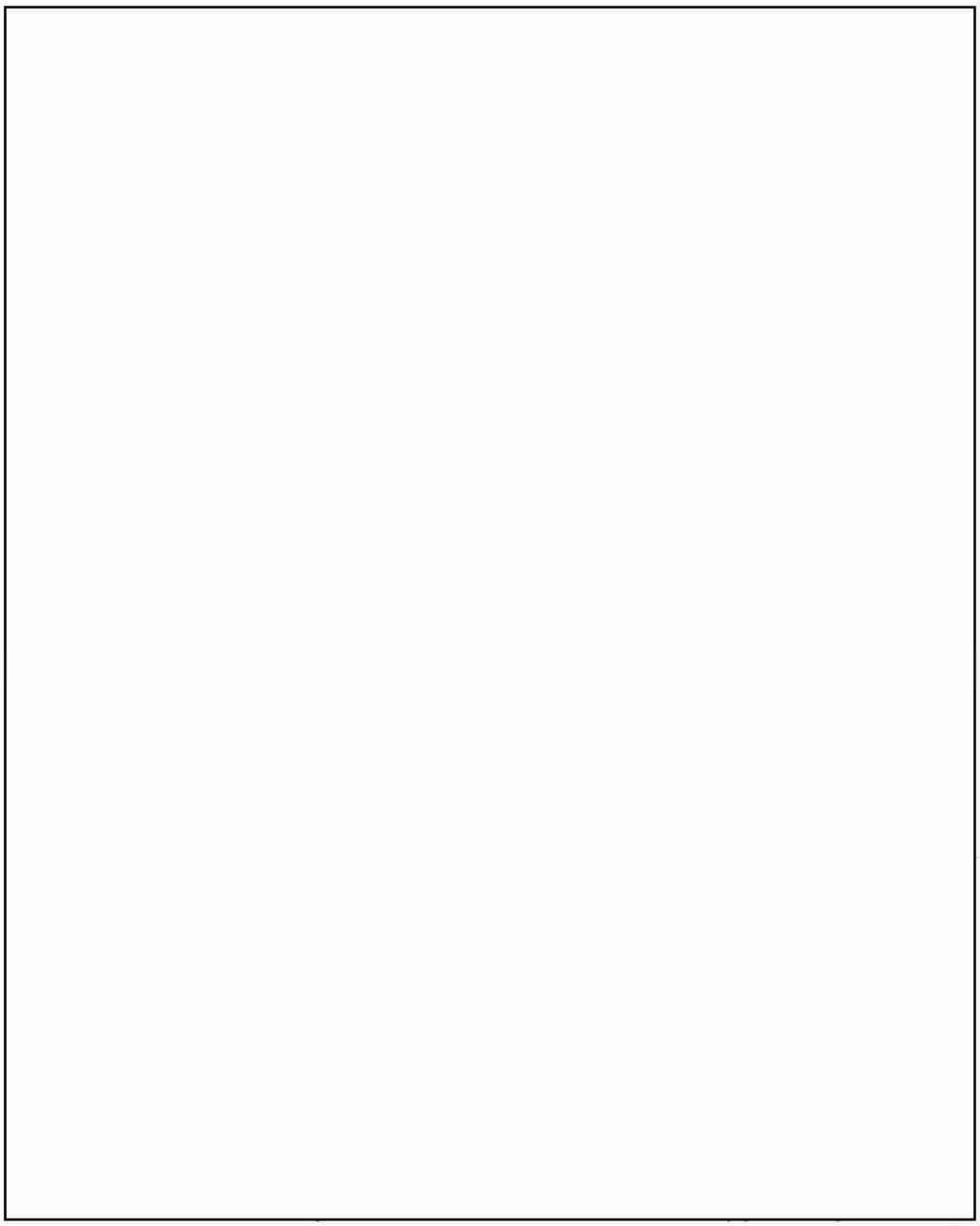
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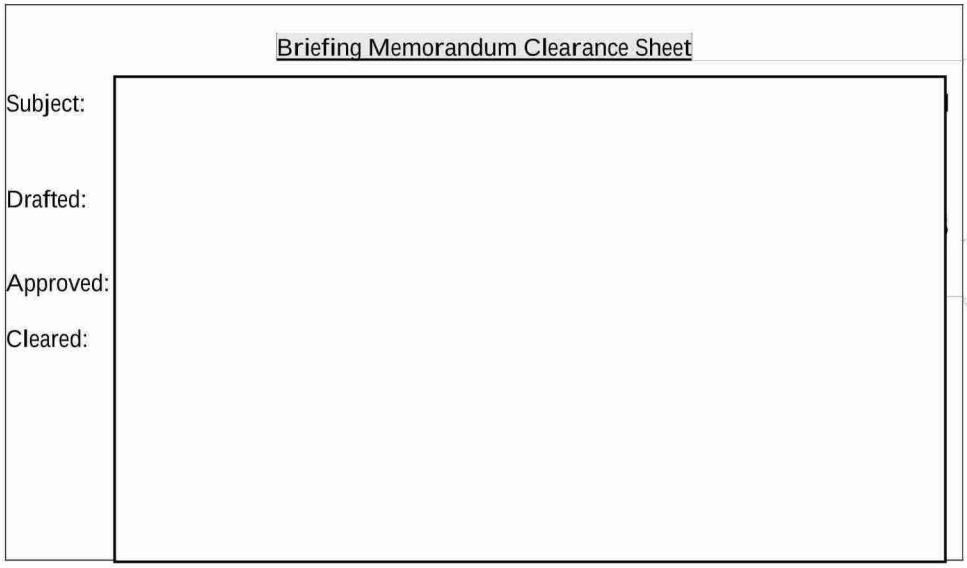
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Washington, DC

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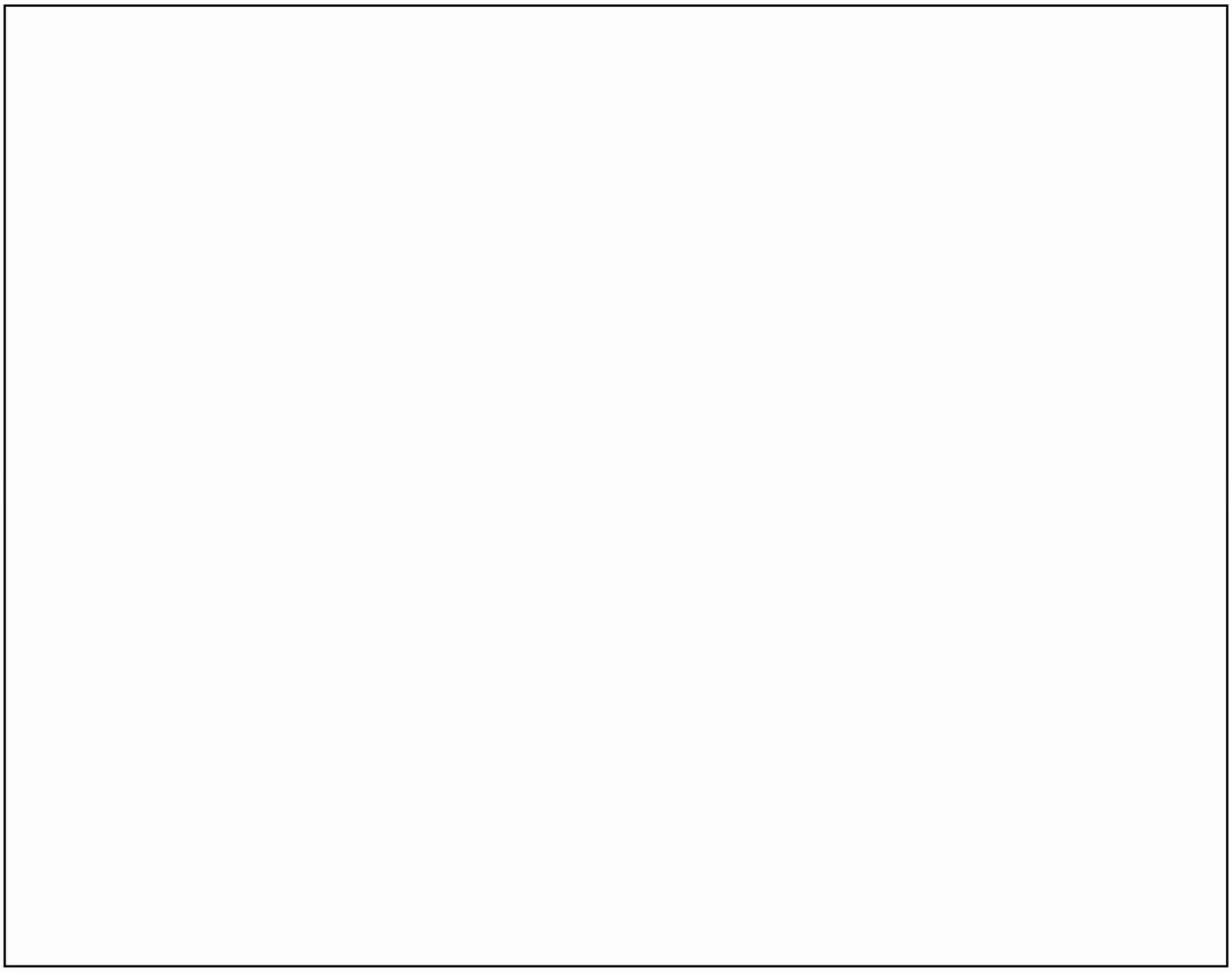
U.S. Department of Homeland Security
Washington, DC

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H-1B Rules
Talking Points

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)

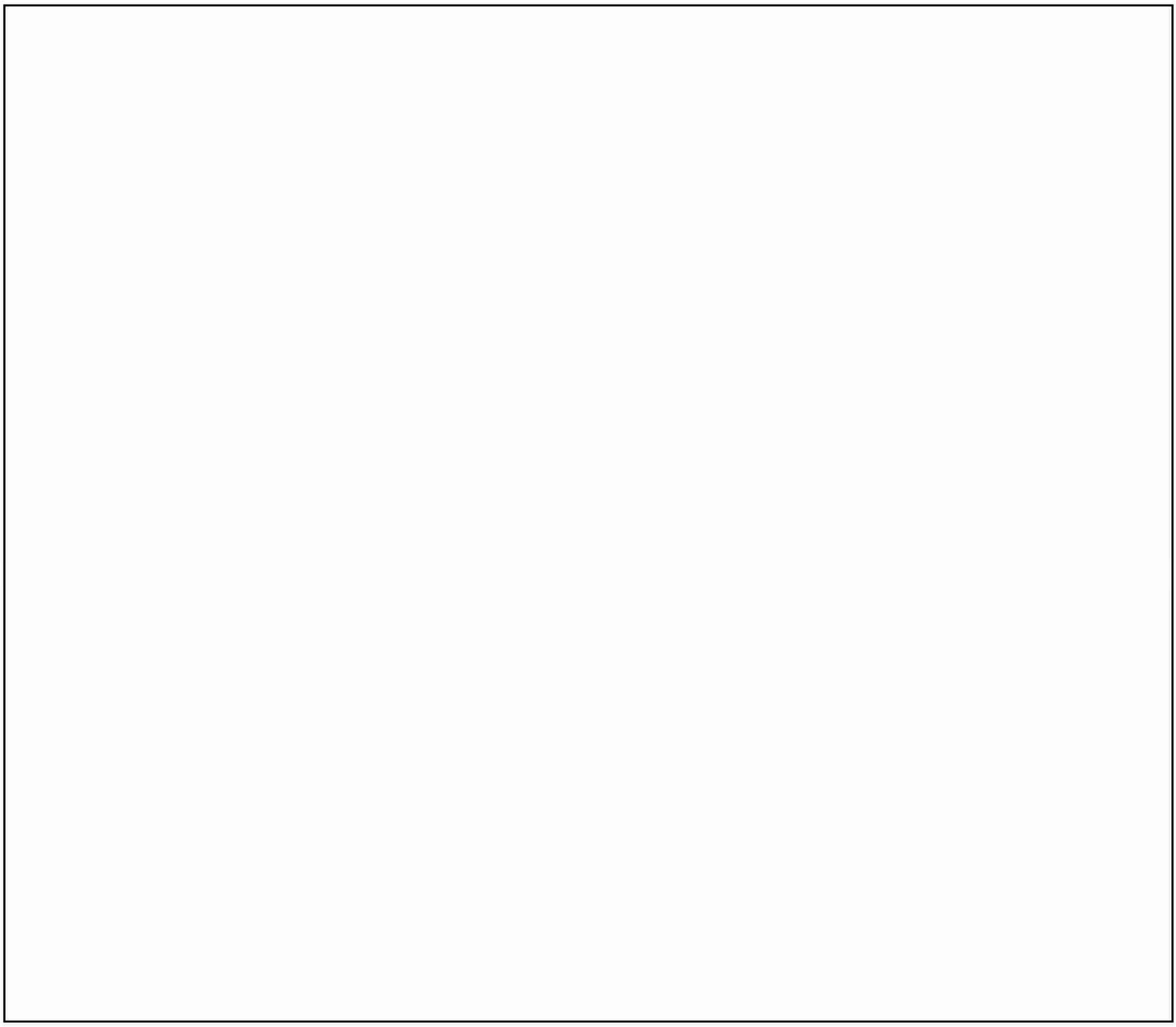
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Wage Level Interim Final Rule (DOL Rule)

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From: Law, Robert T
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)
To: Calkins, Aaron L; USCIS Exec Sec
Sent: October 1, 2020 5:31 PM (UTC-05:00)
Attached: S1-S2 Info Form for Regs - 09-01-20 H-1B Strengthening redline.docx

(b)(6)

Attached is the redline version that updated the Info Form DHS already had.

Robert Law
(office)
(cell)

From: Barrow, Clark
Sent: Thursday, October 1, 2020 6:16 PM
To: Law, Robert T; USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Dove, Stephen W (Steve)
Carter, Constance L; Calkins, Aaron L
Subject: Re: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

Ok thanks, we don't want to confuse drafters at HQ so please just resend the latest form. We will only move forward the latest version.

Also, has everyone cleared this at USCIS? We can wait until later tonight if needed. Just need the form tonight please.

From: Law, Robert T
Sent: Thursday, October 1, 2020 6:04 PM
To: Barrow, Clark; USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Dove, Stephen W (Steve); Carter, Constance L; Aaron L. Calkins
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

We don't need an extension, this is a top priority. Clark, sending you bootleg copies now of the Info Form (first version you should already have from last week). The second one is slightly revised, but not substantively. The remaining documents will be delivered in time tomorrow.

Robert Law
office)
cell)

From: Barrow, Clark
Sent: Thursday, October 1, 2020 5:34 PM
To: USCIS Exec Sec; ESEC-BBIC
Cc: USCIS Exec Sec; Law, Robert T; Dove, Stephen W (Steve); Carter, Constance L; Calkins, Aaron L
Subject: RE: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

Adding others

I'm sorry but we need to deliver these materials before 5 pm tomorrow. The tasking below asks for the following:

1. We need USCIS to complete the attached "Info Form for Regs" (believe this is already happening at USCIS)
    1. Due to ESEC by COB today

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2. Please include as much information as possible, HQ will turn this into talking points and remarks

In a separate tasking, we asked USCIS to do the following: (b)(6)

1. Briefing Binder with background from USCIS Briefing Materials
    1. Need it to ESEC by 12 noon tomorrow
    2. USCIS to include background on H-1B Strengthening Rule and on DOL Prevailing Wage IFR

From: Penn, Melissa M <[redacted] **On Behalf Of** USCIS Exec Sec
Sent: Thursday, October 1, 2020 5:22 PM
To: ESEC-BBIC [redacted]
Cc: USCIS Exec Sec <[redacted]
Subject: FW: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

USCIS is requesting an extension until 5pm tomorrow, 10/2.

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O) [redacted]
Email: [redacted]

From: Briefing Book Tracking System <[redacted]
Sent: Thursday, October 01, 2020 12:14 PM
Subject: (FOR ACTION) Additional FO Requirements - H1B Strengthening Rule IFR (Due: 10/1/2020 5:00 PM)

The Front Office has requested USCIS provide additional products/information for H1B Strengthening Rule IFR. Please see below for request and submit the requested materials by **10/1/2020 5:00 PM.**

Requirements

Please fill out the Info Regs Form, DO NOT fill out a remarks form, OPA will use the background materials and Regs form to draft remarks.

Briefing Material Set Link: H1B Strengthening Rule IFR

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TALKING POINTS FORM FOR REGULATIONS

MESSAGE TO OGC/COMPONENT: please use this form to provide basic information on a forthcoming regulation. The Front Office will use this material to draft talking points. Unless specifically asked, please do not draft talking points. Instead, provide only the answers as directed below.

REGULATION:	Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule
COMPONENT:	U.S. Citizenship and Immigration Services, Department of Homeland Security
DEADLINE:	(deadline for publication)
APPROVED (this form):	Name, Title (Component Deputy Chief of Staff or higher)
DRAFTER (this form):	(b)(6)
OGC POC (for the reg):	Name, Title, Cell Phone

KEY POINTS

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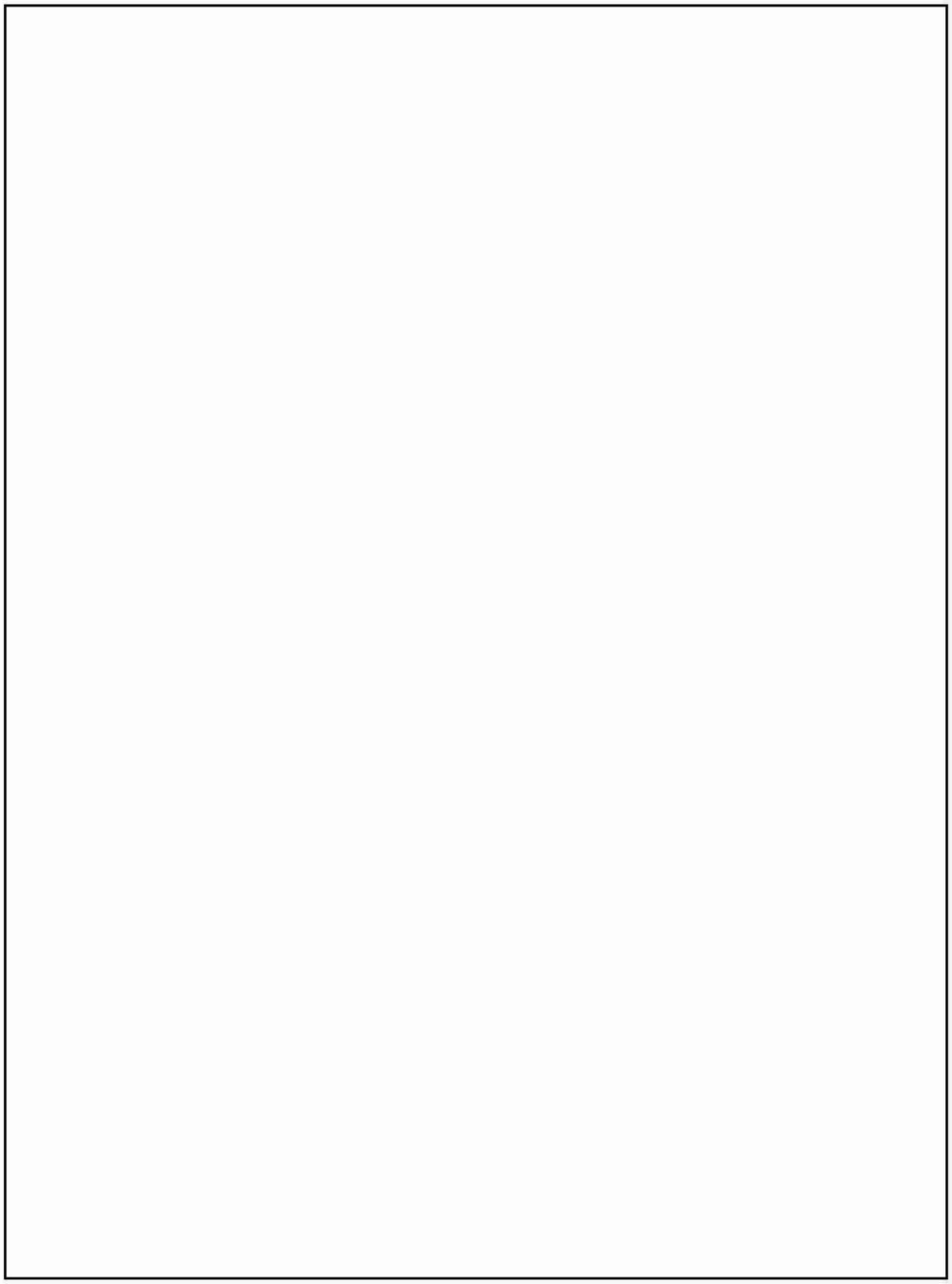
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TALKING POINTS FORM FOR REGULATIONS

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TALKING POINTS FORM FOR REGULATIONS

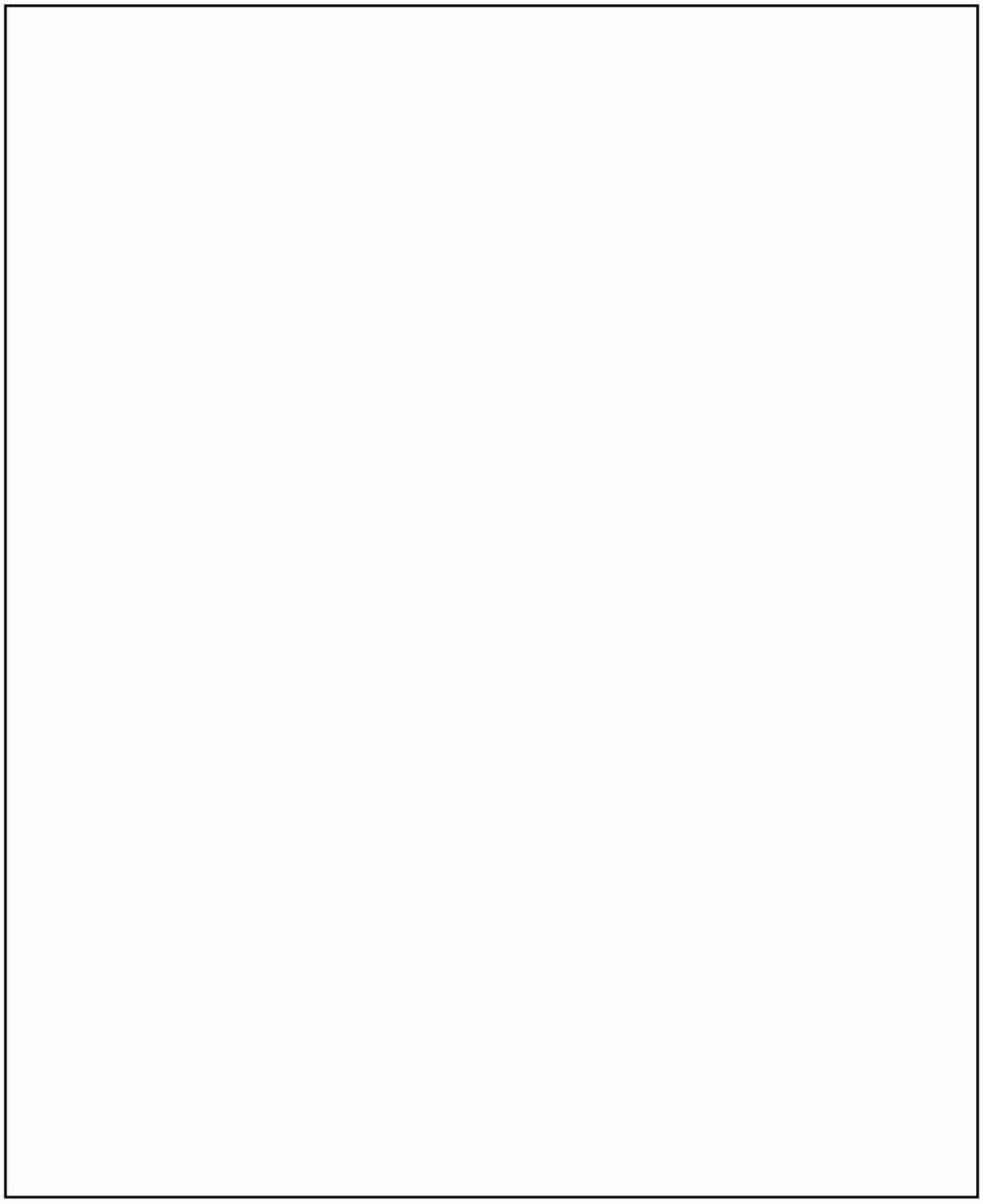


TALKING POINTS FORM FOR REGULATIONS

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TALKING POINTS FORM FOR REGULATIONS



TALKING POINTS FORM FOR REGULATIONS

AMERICAN OVERSIGHT

From: Drake, Johnetta
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 10/2/20- S1BB - H1B Strengthening Rule IFR - STARS#31260
To: USCIS Directors Office Clearance-EXSO
Cc: USCIS Exec Sec
Sent: October 1, 2020 5:23 PM (UTC-05:00)
Attached: S1-S2 Remarks Template - Oct 2018 (1).docx, S1-S2 Briefing Memo Template - May 2020 (1).docx

Good evening,

Requestor Directorate/Office: ESEC

Due Date: 12pm on Friday, 10/2/2020

Request: USCIS has been assigned Lead Component for drafting briefing materials for H1B Strengthening Rule IFR. OP&S took the lead in drafting and submits the attached docs.

Attachments:
Remarks Form
Background Papers

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted]***(Cell)***
(Desk)

From: Briefing Book Tracking System <[redacted]
Sent: Thursday, October 01, 2020 12:13 PM
Subject: S1BB - 10/2/2020 5:00 PM - H1B Strengthening Rule IFR - Lead Component: Draft BMS Material (Due: 10/2/2020 12:00 PM)

USCIS has been assigned Lead Component: Draft BMS Material for [2020-10-02] H1B Strengthening Rule IFR.

You have NLT ***24 hours**** to request this task be reassigned to another Component; please include a justification in your request. *Templates can be found by selecting "New" under the Documents tab.*

Required Coordination OGC;OPA;PLCY

Requested Products Remarks (OPA) & Remarks Form (Lead);Background Papers;Info Form for Regs

Objectives/Instruction USCIS please provide a long set of briefing materials (not for a meeting, just background). Also, include background on an accompanying DOL Prevailing Wage IFR [redacted] should be working on this). Please also complete the attached Info Form for Regs.

Task Lead Component: Draft BMS Material

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Due Date 10/2/2020 12:00 PM

Tasking Notes

Please see guidance for direction on the briefing materials.

These Briefing Materials will not move until you mark your task complete.

Briefing Material Set Link: H1B Strengthening Rule IFR

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Timestamp

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Homeland Security

BRIEFING MEMORANDUM FOR THE ACTING SECRETARY/SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY

Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

KEY POINTS AND PRIORITIES

A. DHS is announcing that it has published an interim final rule, Strengthening the H-1B

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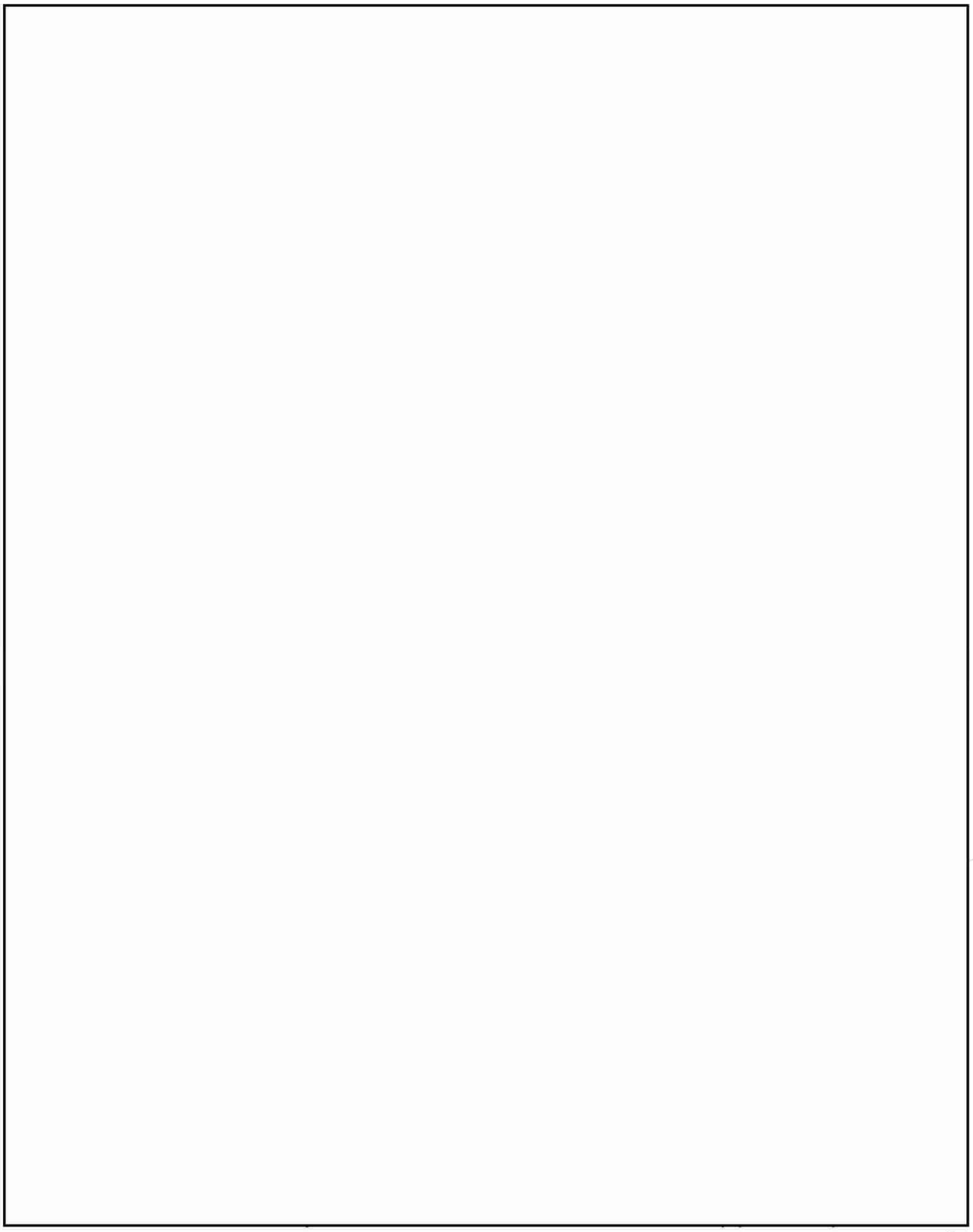
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Washington, DC

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Briefing Memorandum Clearance Sheet

Subject:

Drafted:

Approved:

Cleared:

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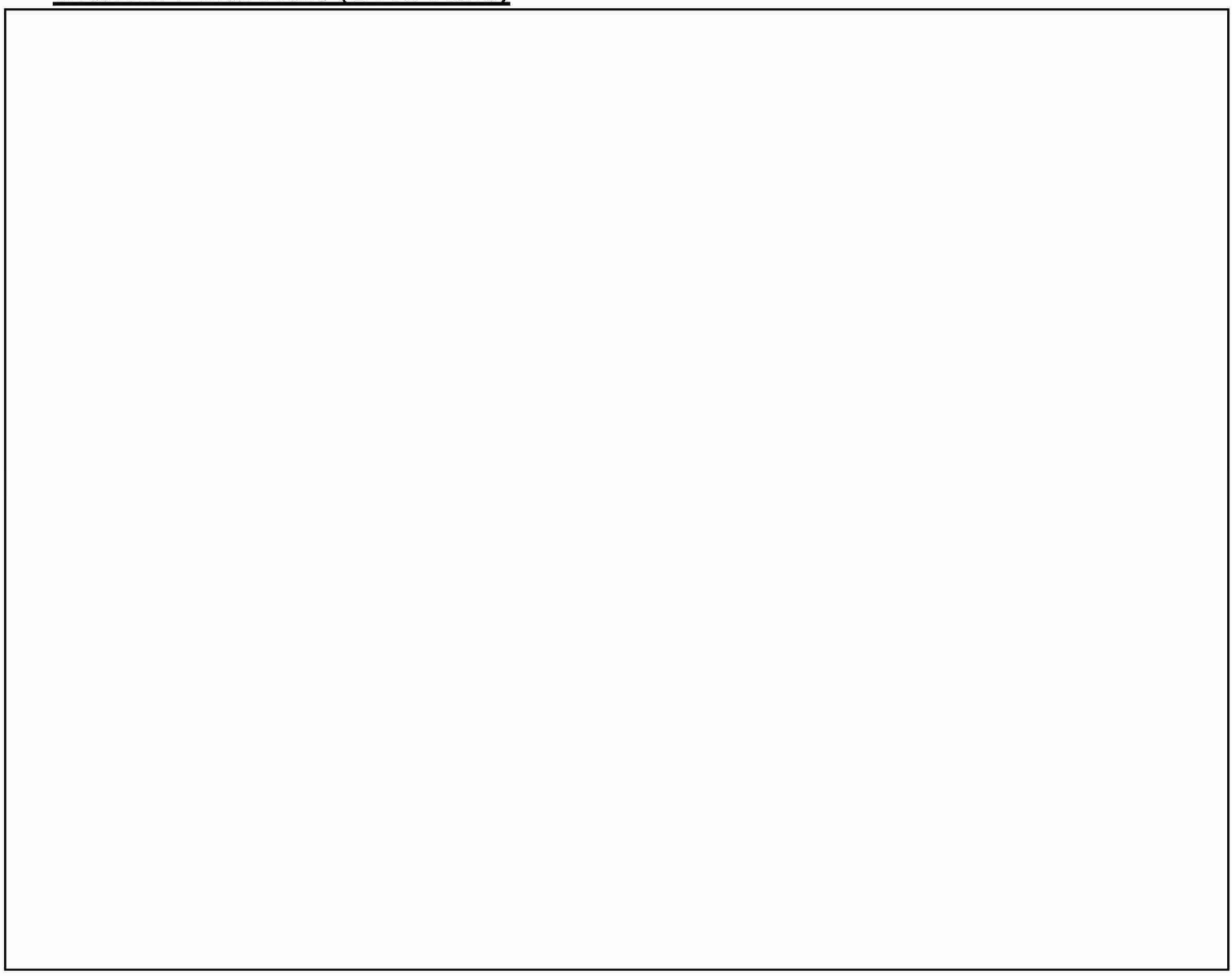
U.S. Department of Homeland Security
Washington, DC

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H-1B Rules
Talking Points

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Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule (DHS Rule)



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Wage Level Interim Final Rule (DOL Rule)

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Referred to Department of Homeland Security

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From: Sheets, Mary W
Subject: RE: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1
To: Christensen, Gillian M; USCIS Directors Office Advisors
Cc: EXA Clearance Distribution List; Rexrode, Kathryn S
Sent: October 1, 2020 12:02 PM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - LG EXA DO edits.docx, Strengthening the H-1B Program IFR - PAG EXA DO edits.docx, Strengthening the H-1B Program IFR - Stakeholder Message EXA DO edits.docx, Strengthening the H-1B Program IFR - News Release EXA (002) DO edits.docx

CLEARED with edits

On behalf of the Director's Office, I clear the comms for the H-1B IFR with the attached edits.

(b)(6)

Thank you,

Mary Sheets

From: Christensen, Gillian M [redacted]
Sent: Tuesday, September 29, 2020 4:14 PM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1

Good Afternoon Folks:

Attached for your review/clearance are the comms materials for the Strengthening the H-1B Program interim final rule. USCIS is currently responding to the 2nd OMB passback, targeting submission of our responses today. This should hopefully be the last passback.

Background:
DHS is amending certain regulations governing the H-1B nonimmigrant visa program. The primary purpose of these changes is to better ensure that each H-1B nonimmigrant worker will be working for a qualified employer in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by COVID-19 to more effectively ensure that employing H-1B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. These changes will also help the program function more effectively and efficiently.

Due:
COB Thursday, Oct. 1

Comms:
Strengthening the H-1B Program IFR – News Release
Strengthening the H-1B Program IFR – LG
Strengthening the H-1B Program IFR – PAG
Strengthening the H-1B Program IFR – Stakeholder Message

Clearance:
- **EXA:** [redacted]
- **OP&**
- **OCC:**
- **SCOI**

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Many thanks!
Gillian

(b)(6)

Leadership Guidance

Date AP style
#00-YY

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Strengthening the H-1B Nonimmigrant Visa Classification Program

The USCIS Leadership Guidance is a product of the Office of Public Affairs.
Archive | Contact Us

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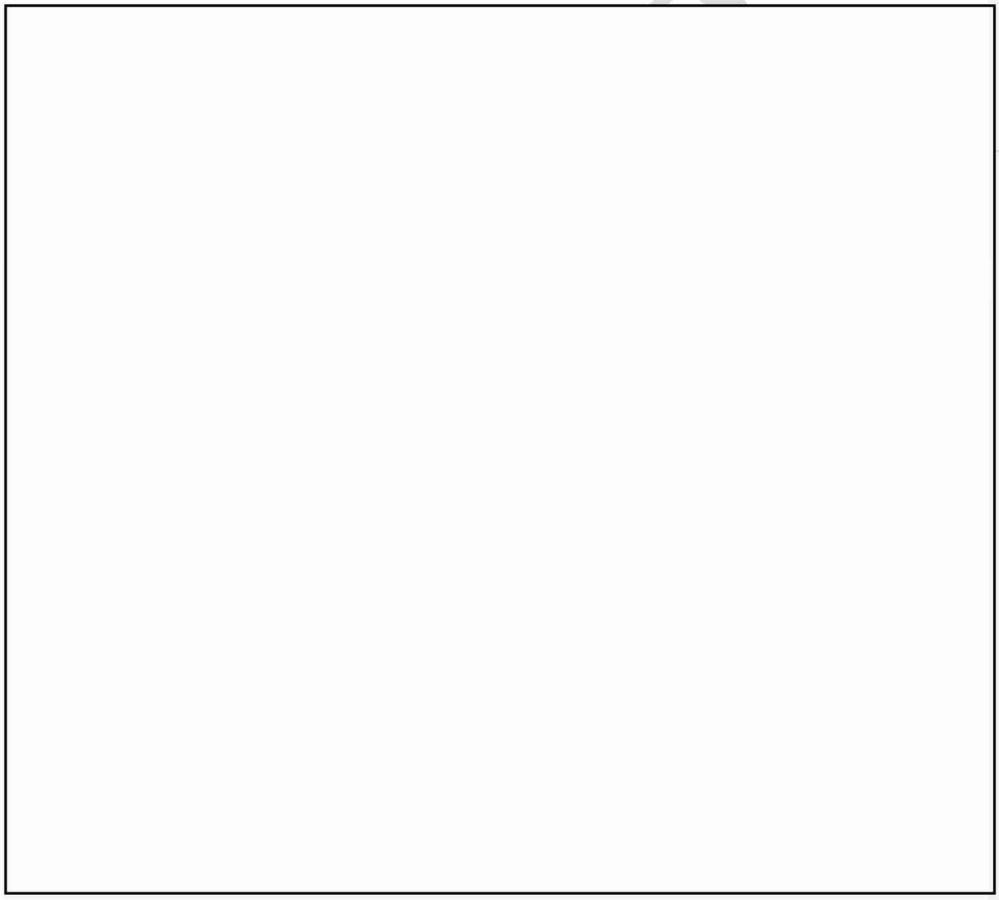
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News Release

Month XX, 2020

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis



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[redacted]

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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
~~Sept. 29~~Oct. 1, 2020

GUIDANCE
Respond to query

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BACKGROUND

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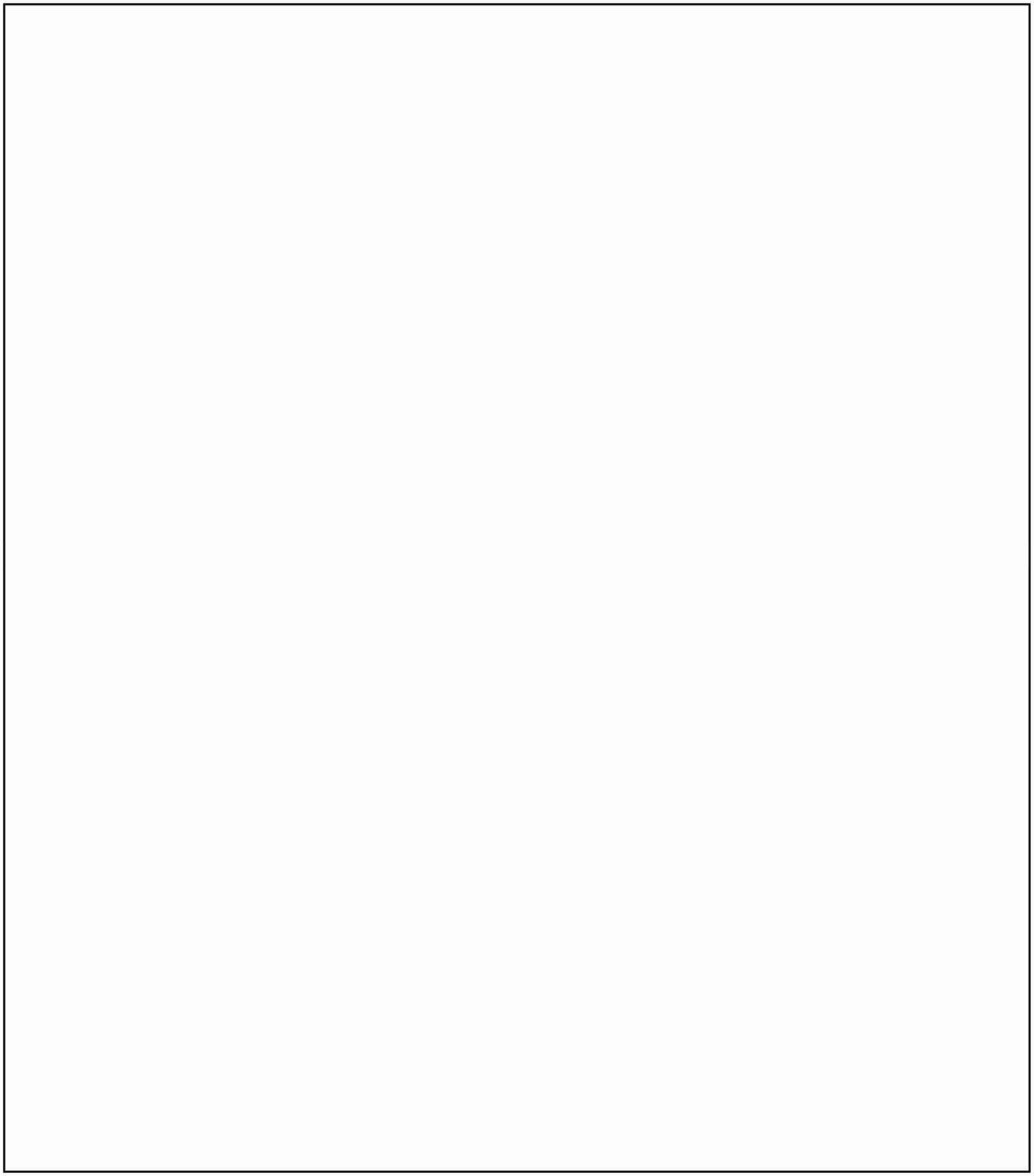
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TALKING POINTS

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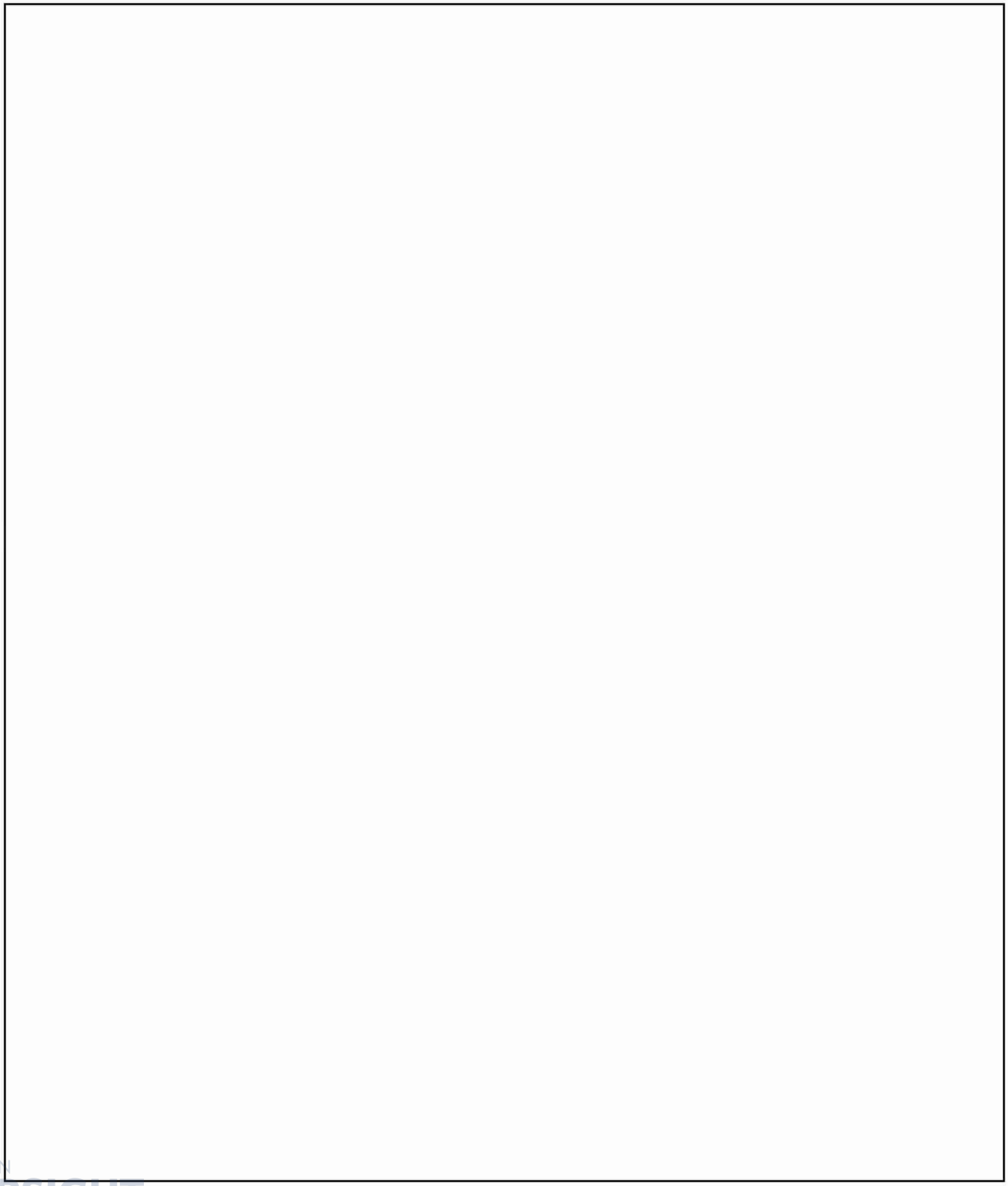
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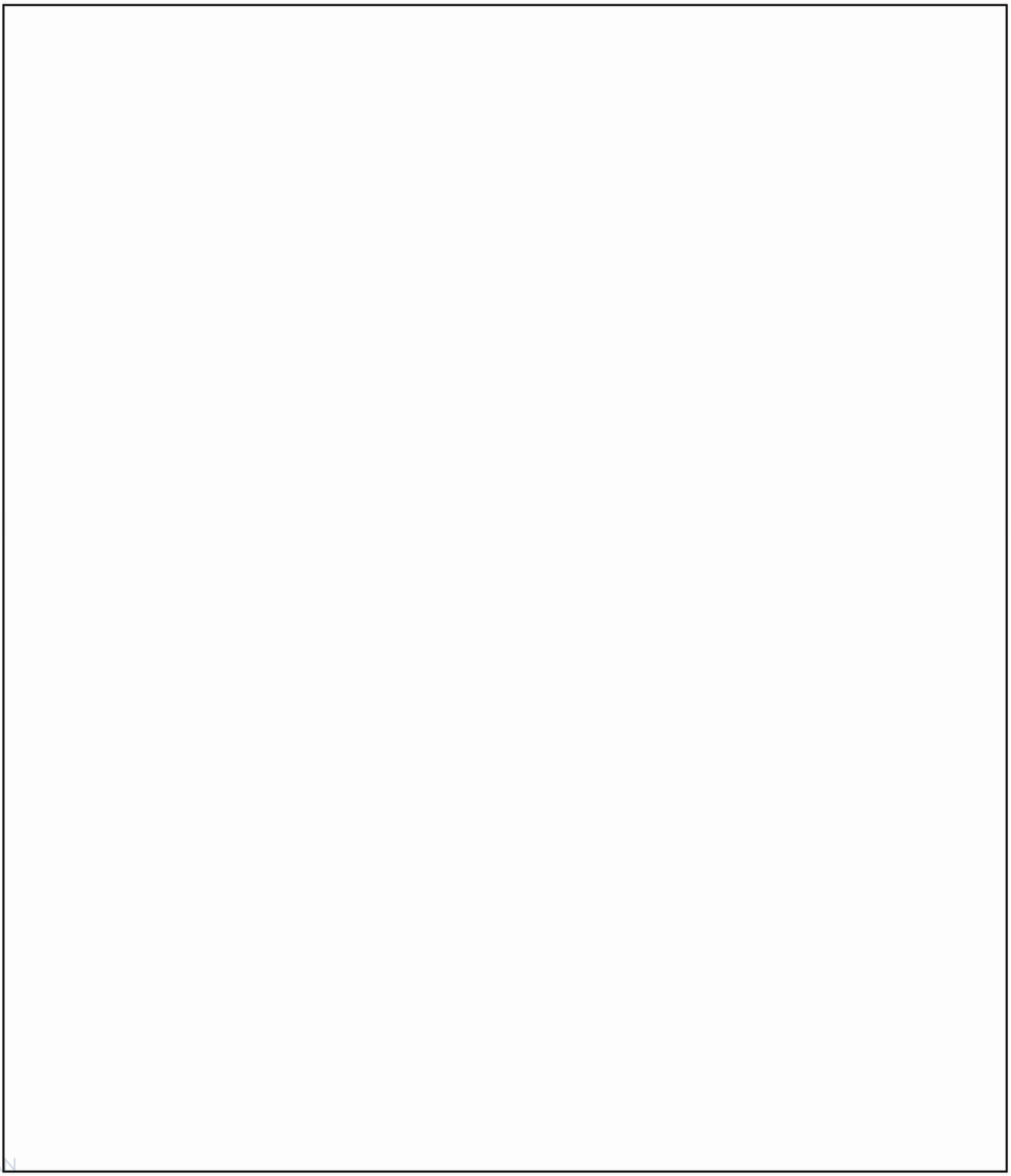
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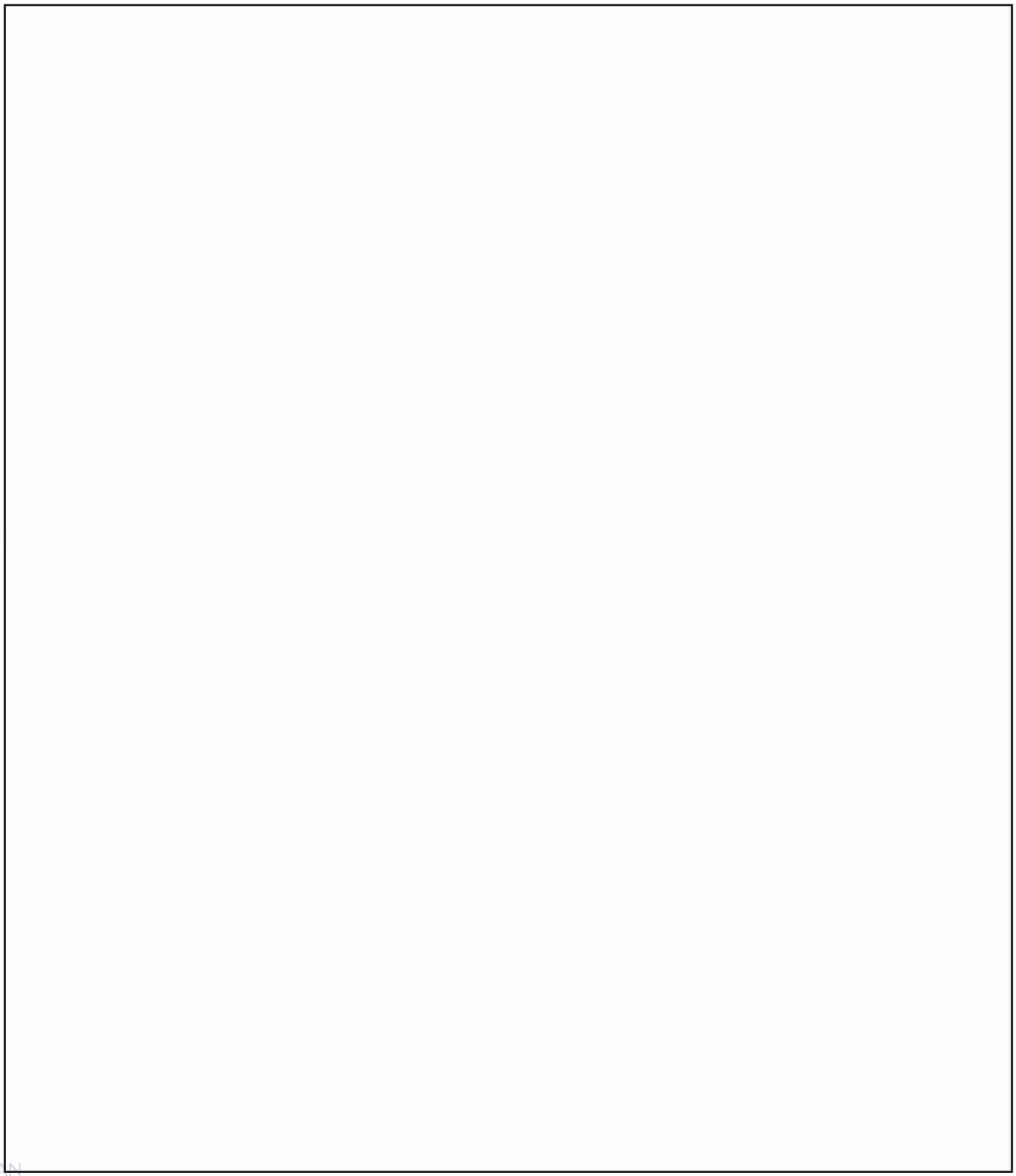
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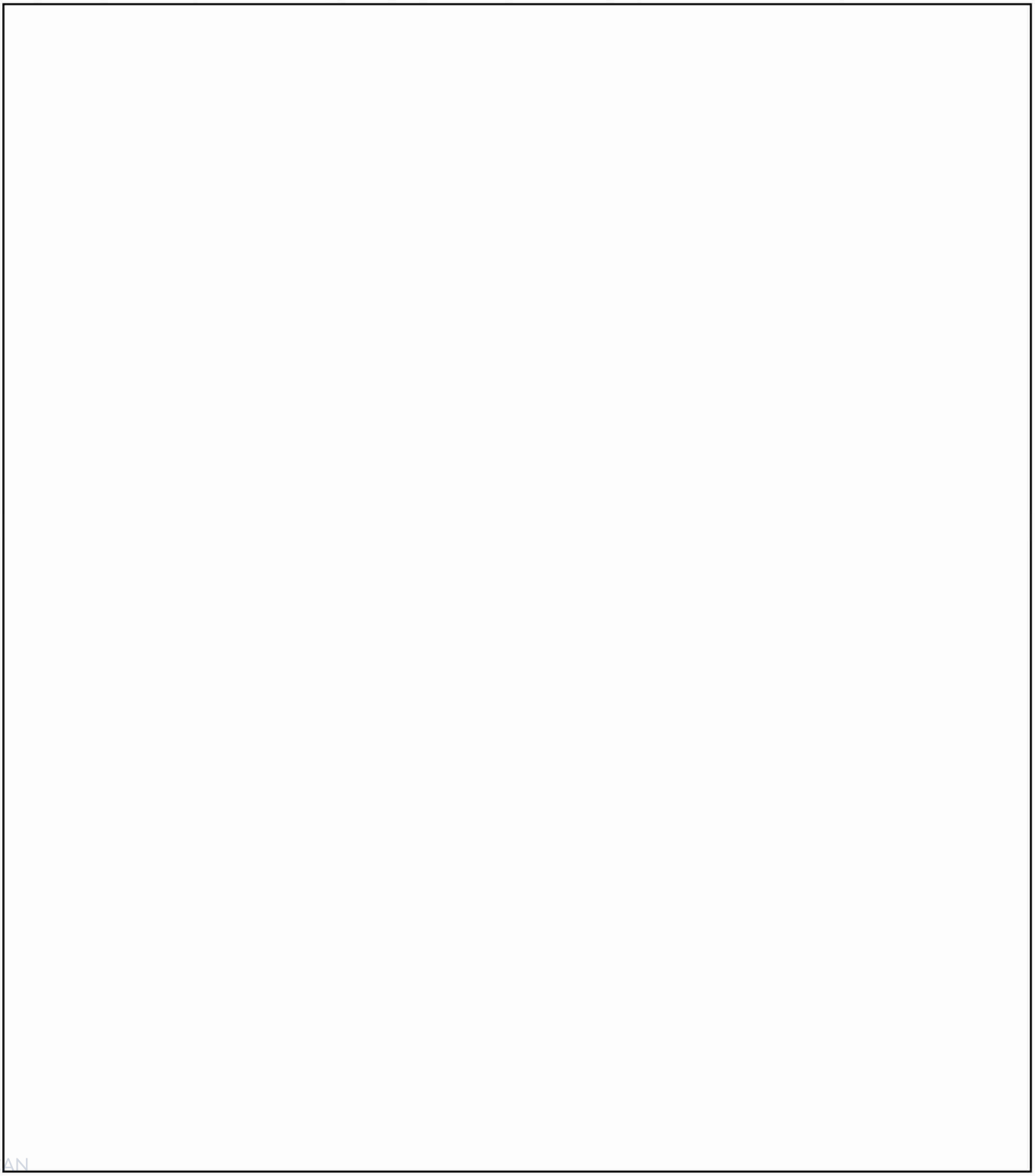
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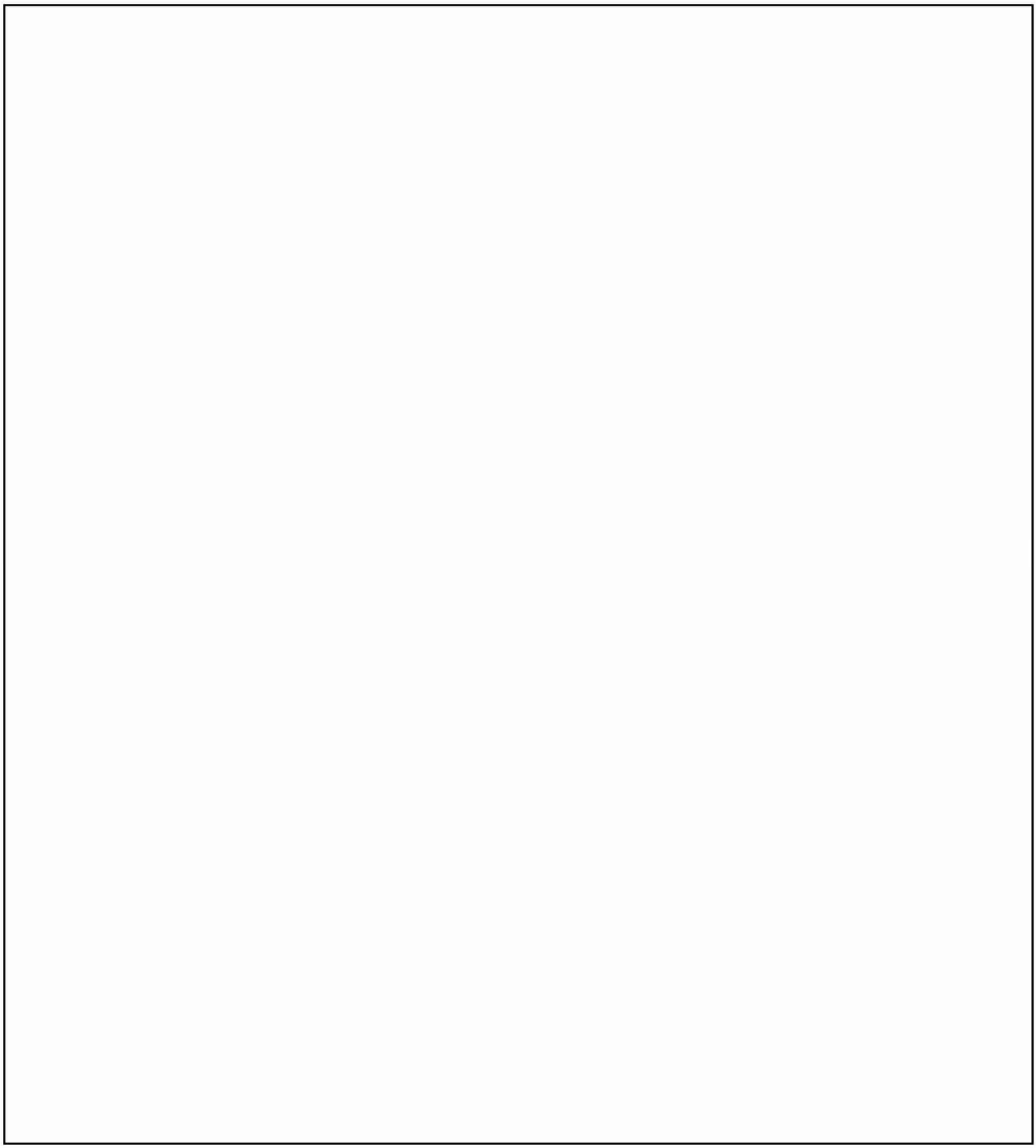
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Stakeholder Message

(b)(5)

DHS Strengthens H-1B Program to Protect U.S. Workers During COVID-19

For more information on USCIS and its programs, please visit uscis.gov or follow us on Twitter (@uscis), Instagram (/uscis), YouTube (/uscis), Facebook (/uscis) and LinkedIn (/uscis).

Kind regards,

The USCIS Public Engagement Division

AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: H-1B IFR Comms
To: 'Calkins, Aaron L'
Sent: October 1, 2020 11:14 AM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - LG EXA DO edits.docx, Strengthening the H-1B Program IFR - PAG EXA DO edits.docx, Strengthening the H-1B Program IFR - Stakeholder Message EXA DO edits.docx, Strengthening the H-1B Program IFR - News Release EXA (002) DO edits.docx

Edits attached.

Mary Sheets
Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
(b)(6)(c)

(b)(6)

AMERICAN OVERSIGHT

Leadership Guidance

Date AP style
#00-YY

(b)(5)

Strengthening the H-1B Nonimmigrant Visa Classification Program

The IFR goes into effect on date. For more information, see the Federal Register Notice.

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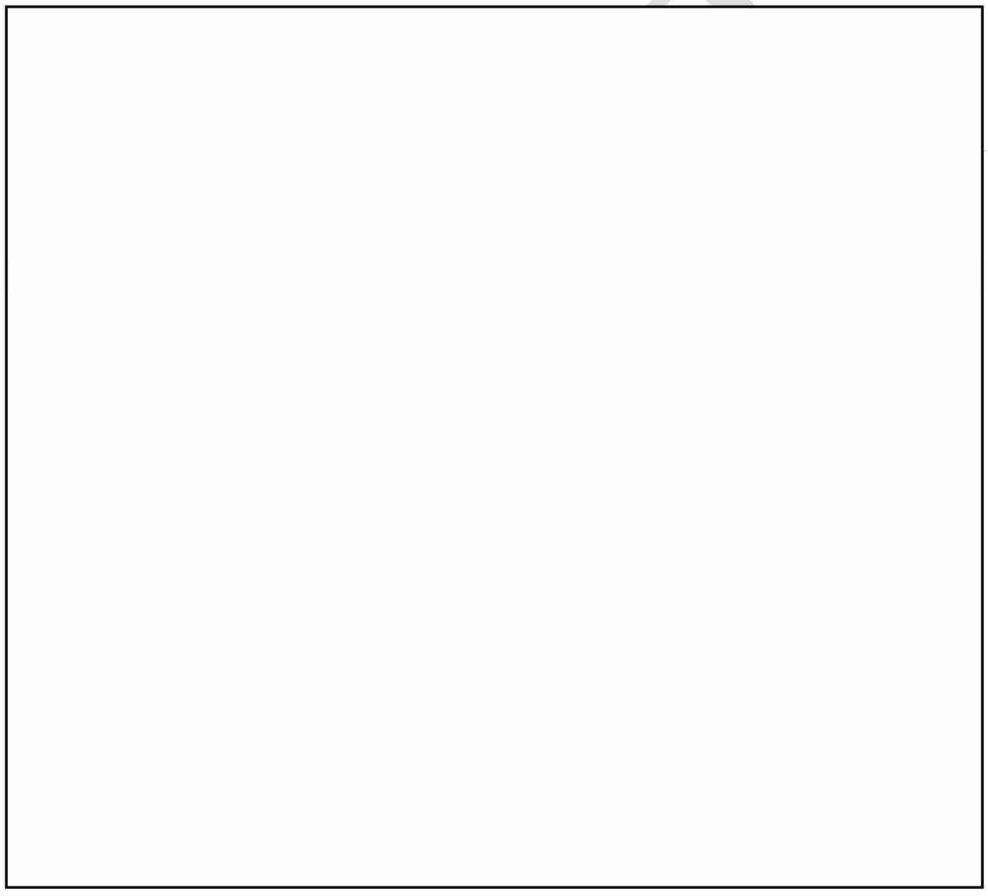
News Release

Month XX, 2020

(b)(5)

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis



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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
~~Sept. 29~~Oct. 1, 2020

GUIDANCE
Respond to query

BACKGROUND

(b)(5)

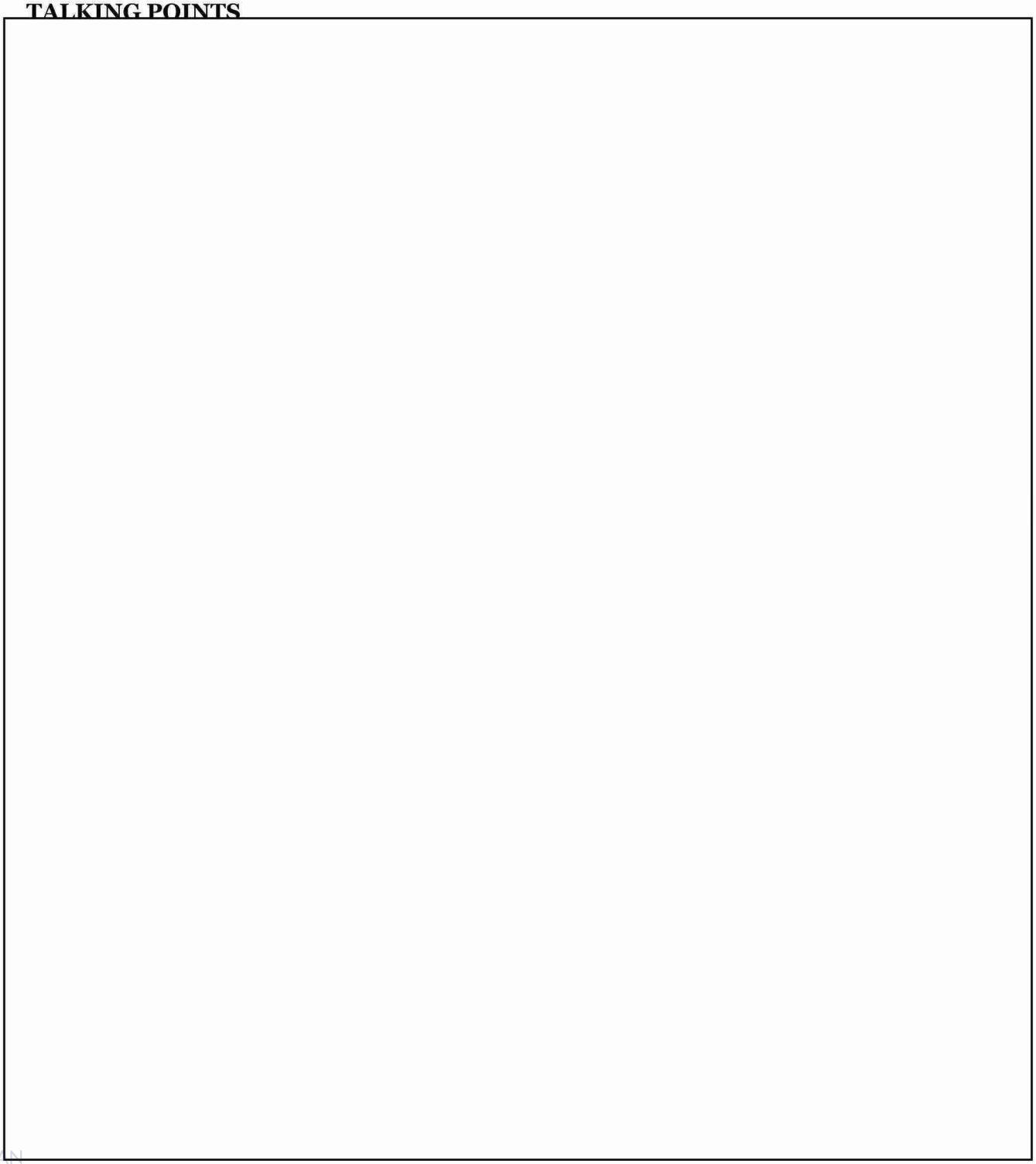
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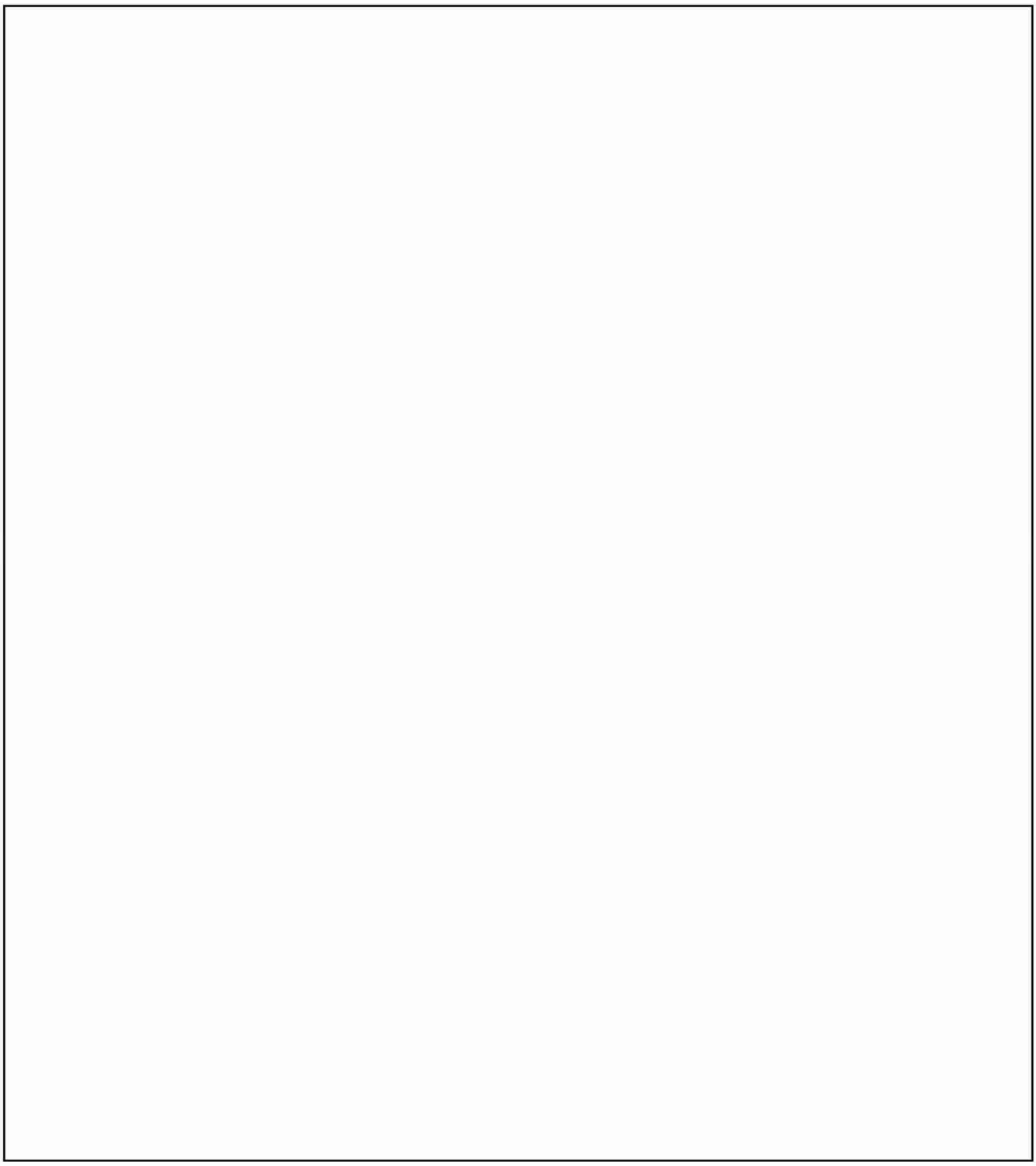
TALKING POINTS



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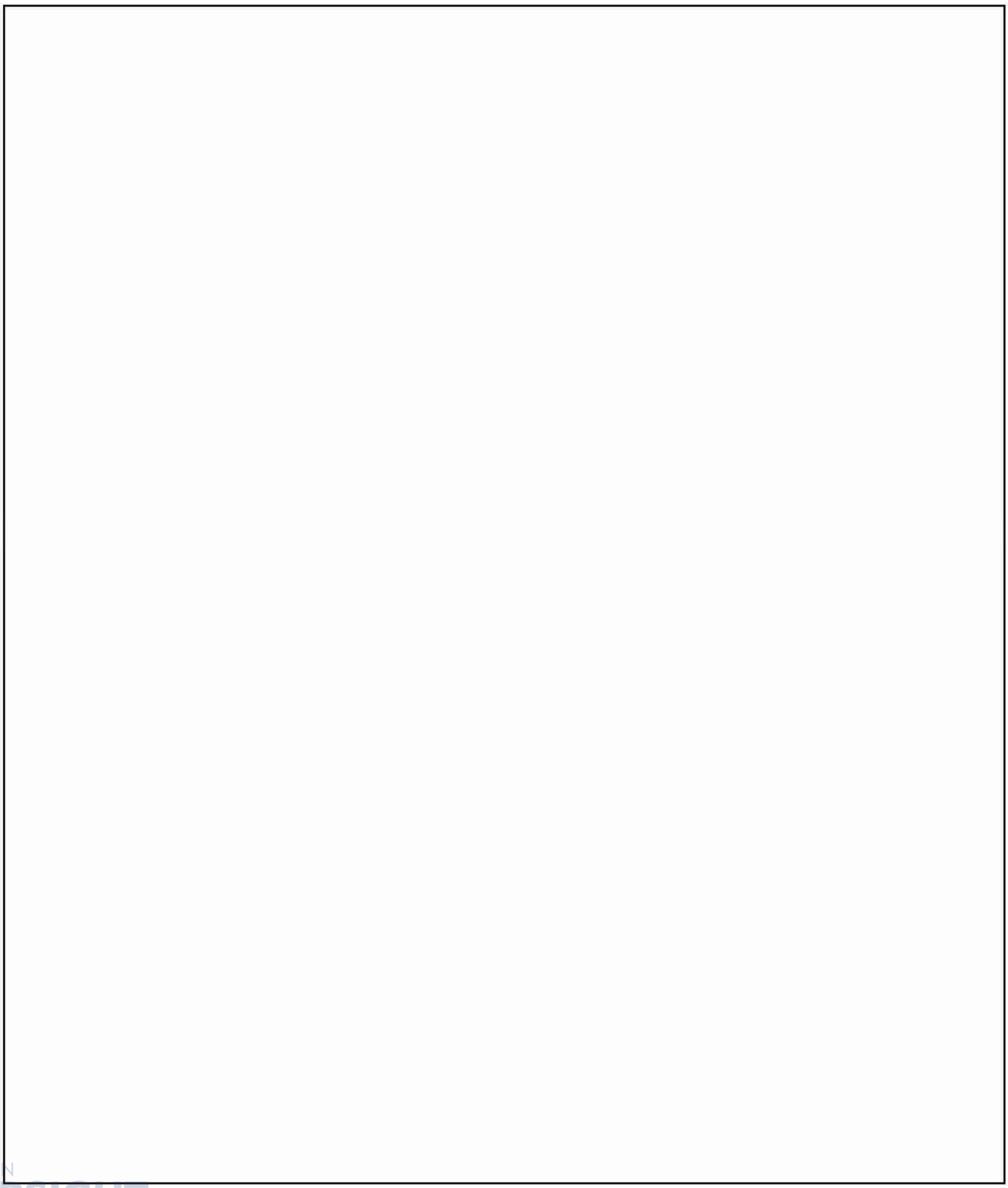
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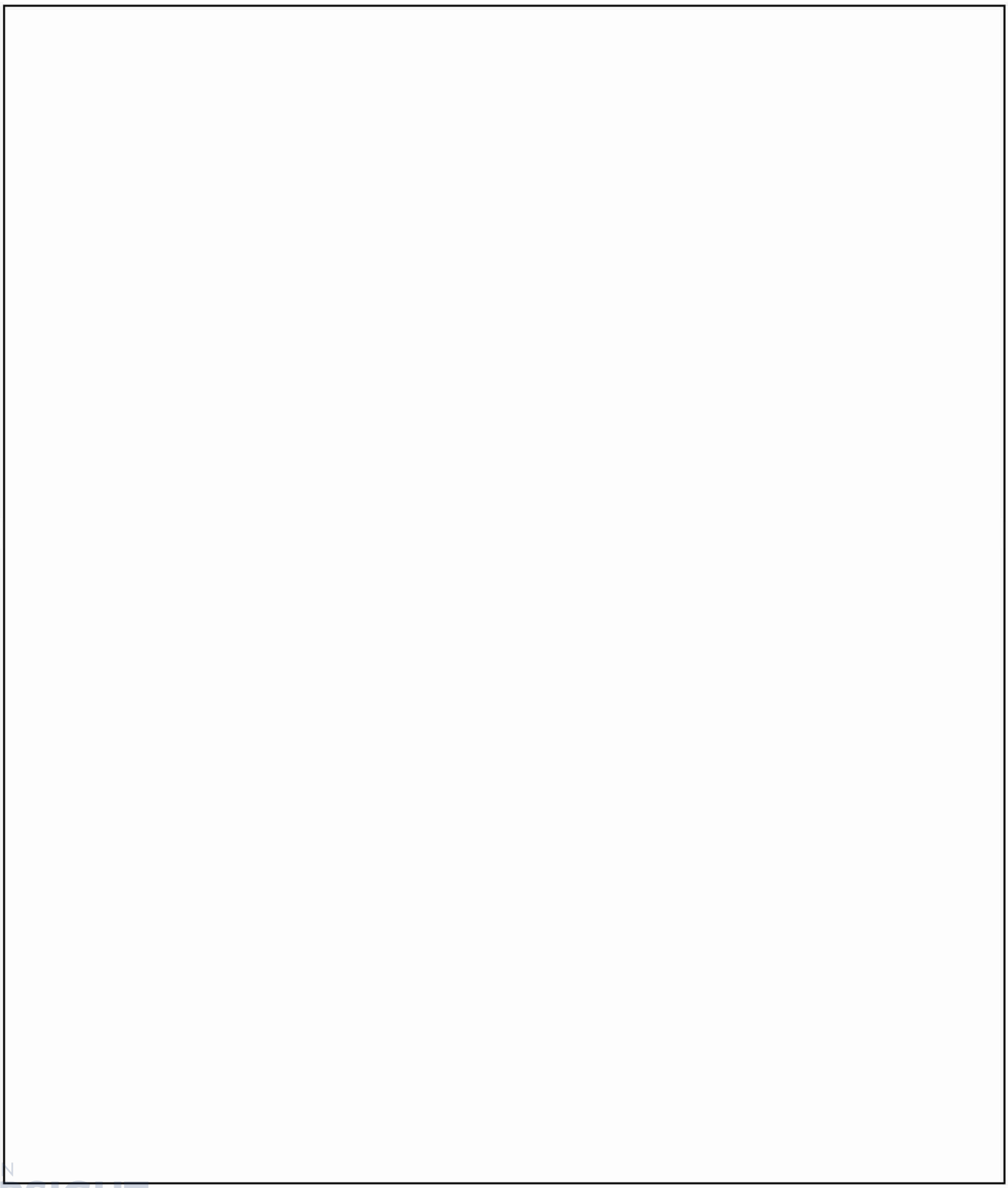
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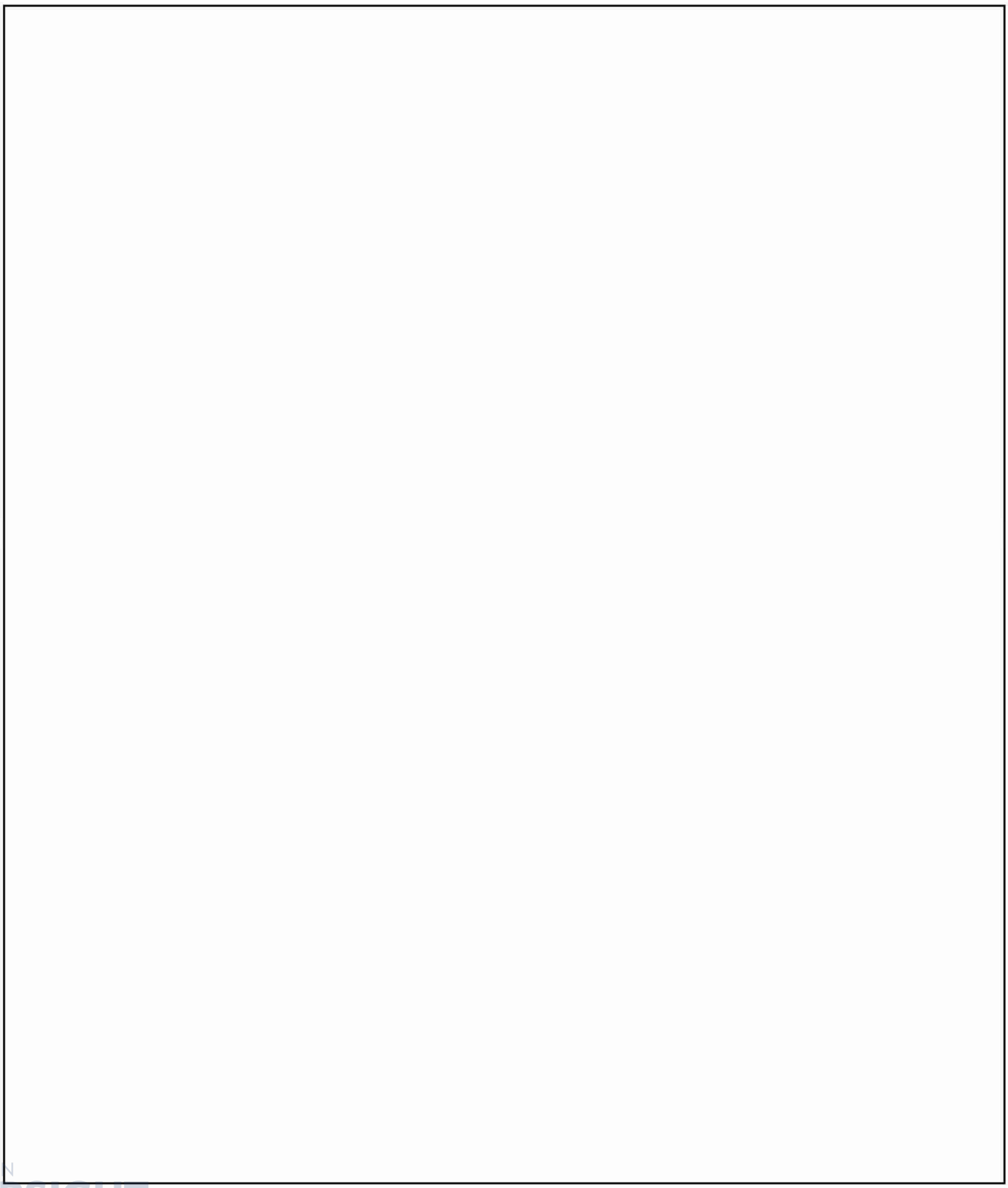
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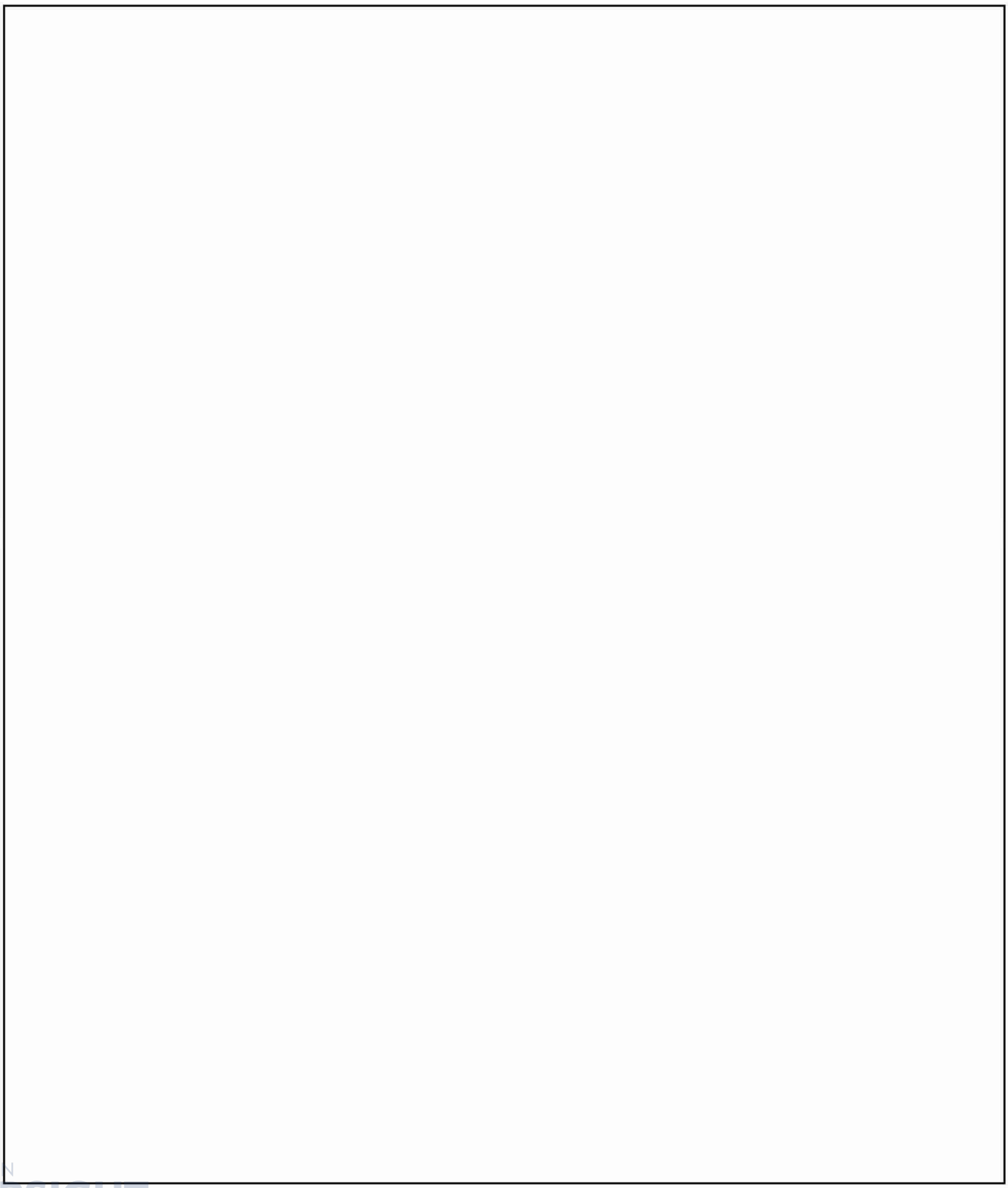
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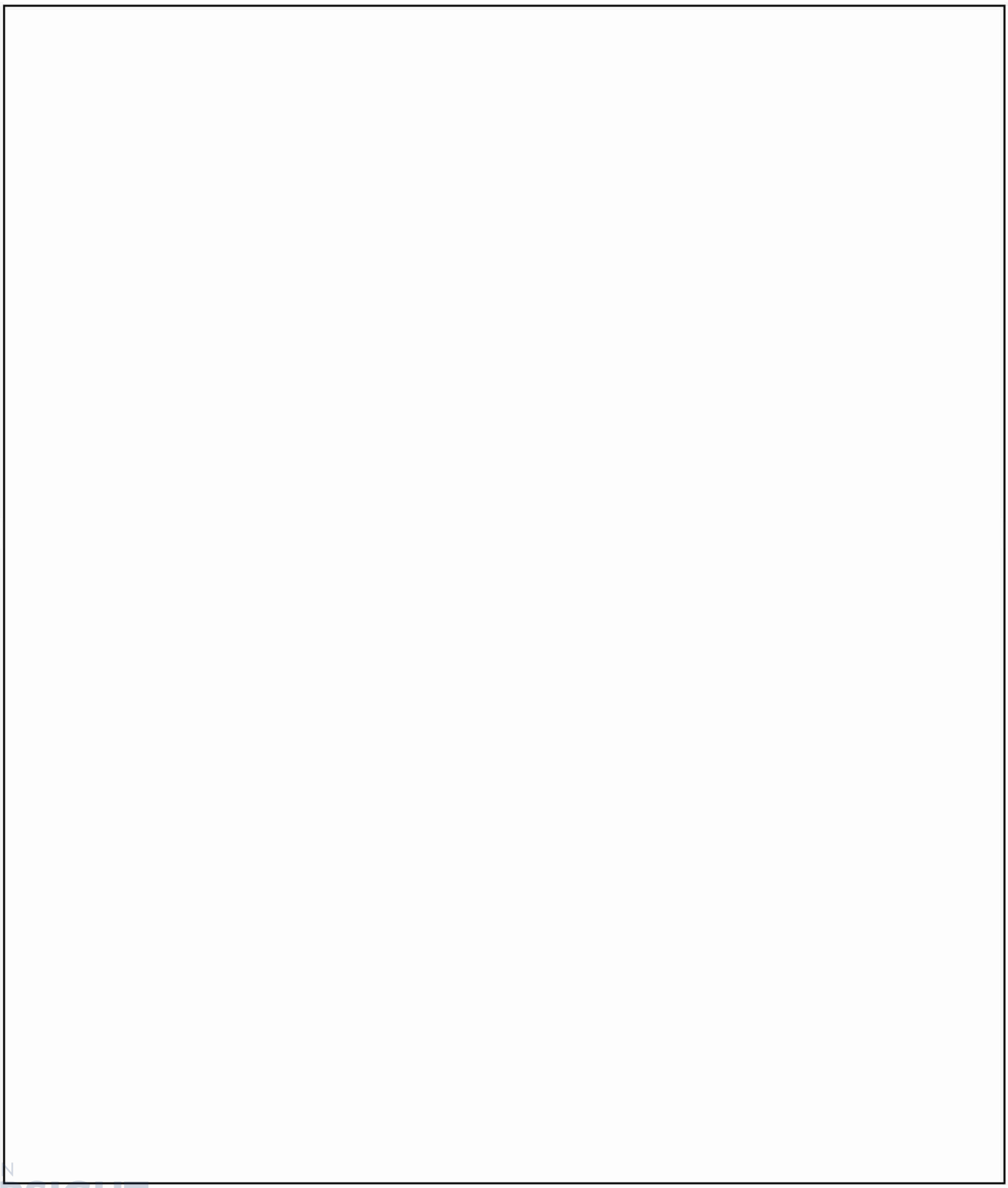
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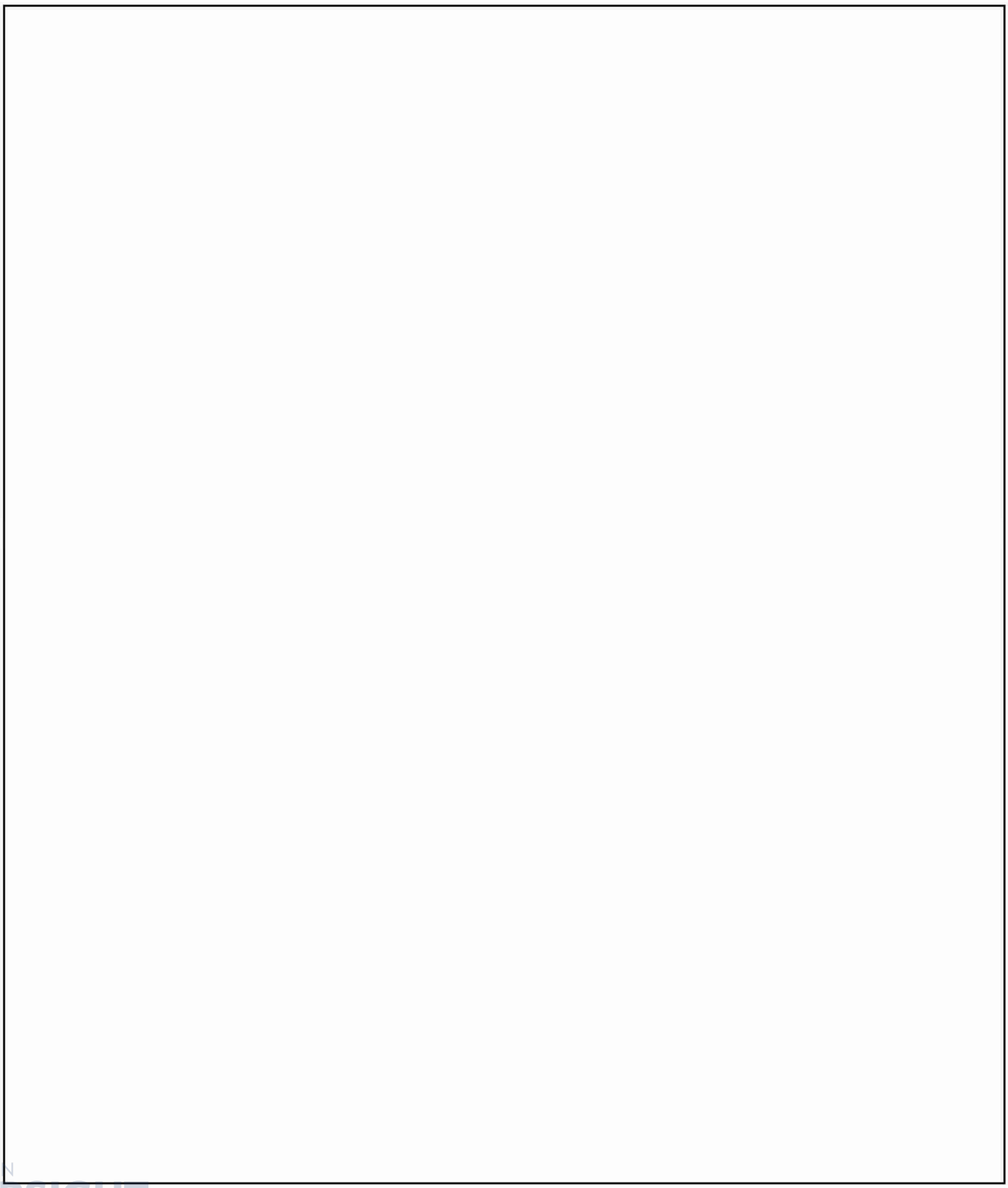
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Stakeholder Message

DHS Strengthens H-1B Program to Protect U.S. Workers During COVID-19

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[redacted]

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Kind regards,

The USCIS Public Engagement Division

AMERICAN OVERSIGHT

From: Kilgore, Garry R
Subject: RE: DO Memo w/ Recommendations on Strengthening PP 10052 Implementation
To: Garza, Regina M; USCIS Directors Office Clearance-EXSO
Cc: Sheets, Mary W; King, Alexander R
Sent: October 1, 2020 11:05 AM (UTC-05:00)
Attached: Memorandum - Office of the Director - Implementation of PP 10014 and 10052 EXSO Edits.doc

(b)(6)

Good afternoon Regina,

Please see the attached with formatting edits from EXSO. This version has been printed and placed in D2P's inbox.

Let me know if you need any additional support.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

From: Garza, Regina M [redacted]
Sent: Thursday, October 01, 2020 10:12 AM
To: Kilgore, Garry R [redacted]; USCIS Directors Office Clearance-EXSO [redacted]
Cc: Sheets, Mary W [redacted] King, Alexander R [redacted]
Subject: DO Memo w/ Recommendations on Strengthening PP 10052 Implementation

Good morning Garry,

Could you assist us with preparing these documents for D2P's review and signature today? We internally cleared the materials with OP&S [redacted] and FDNS leadership.

Please let us know if you have questions.

Cordially,
Regina

Regina Garza
Senior Advisor, Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Mass Ave Office: 202-272-1076 | Camp Springs Office: [redacted]
Mobile: [redacted] **E-mail:** [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

October 1, 2020

Memorandum

TO: Matthew Emrich
Associate Director
Fraud Detection and National Security Directorate

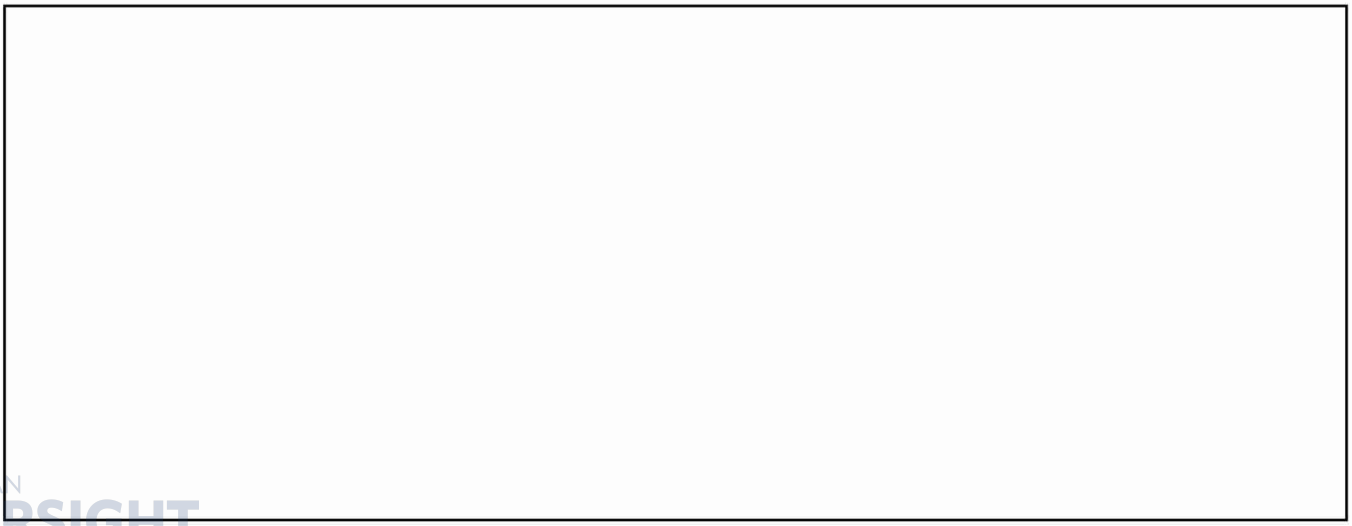
Tracy Renaud
Associate Director
Service Center Operations Directorate

Robert Law
Chief
Office of Policy & Strategy

FROM: Joseph Edlow
Deputy Director for Policy

SUBJECT: Strengthening Enforcement and Implementation of Presidential Proclamation 10052, Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(5)

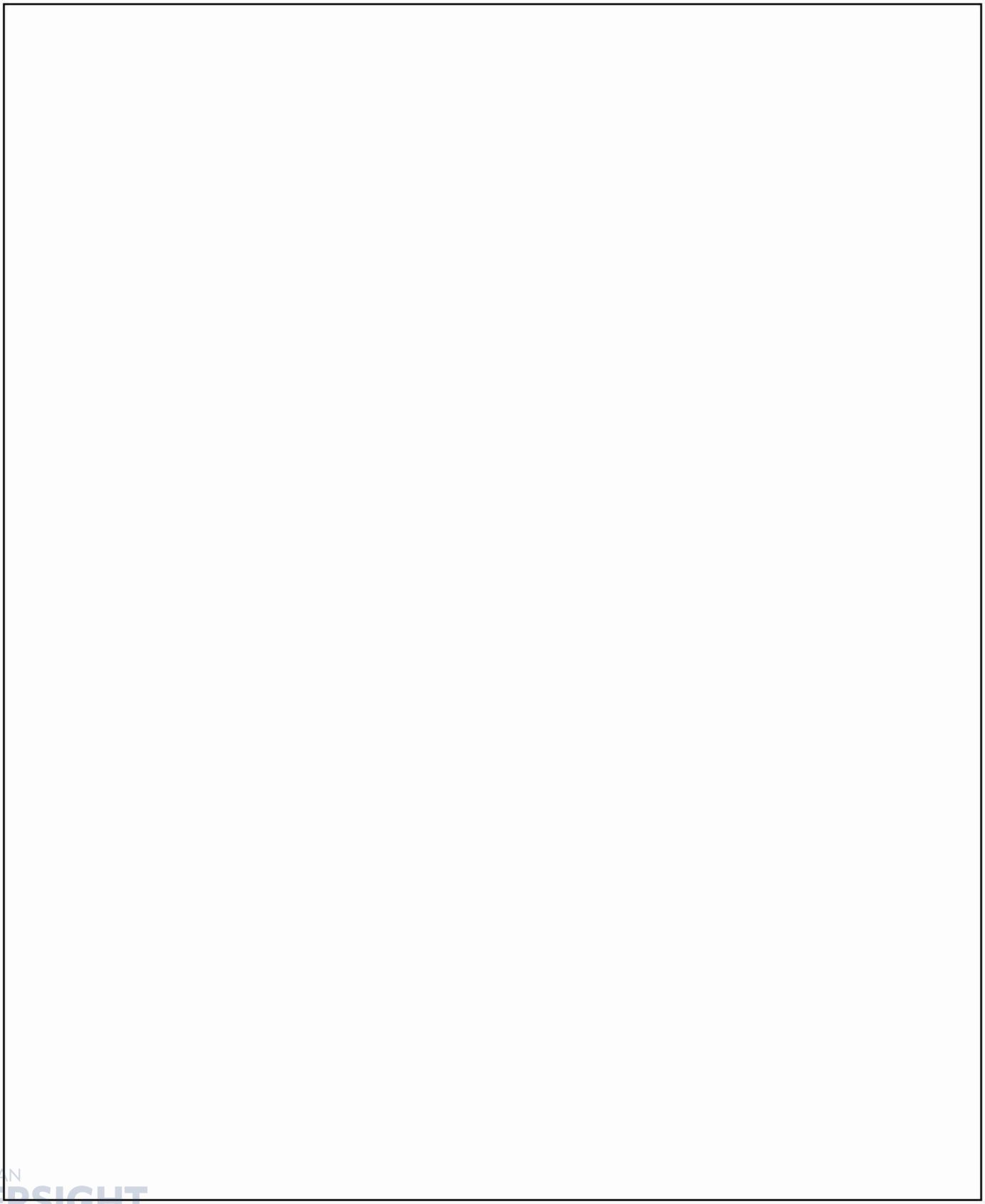
Purpose: This Memorandum directs engagement with the Departments of State and Labor to implement and enforce the Presidential Proclamations on Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.



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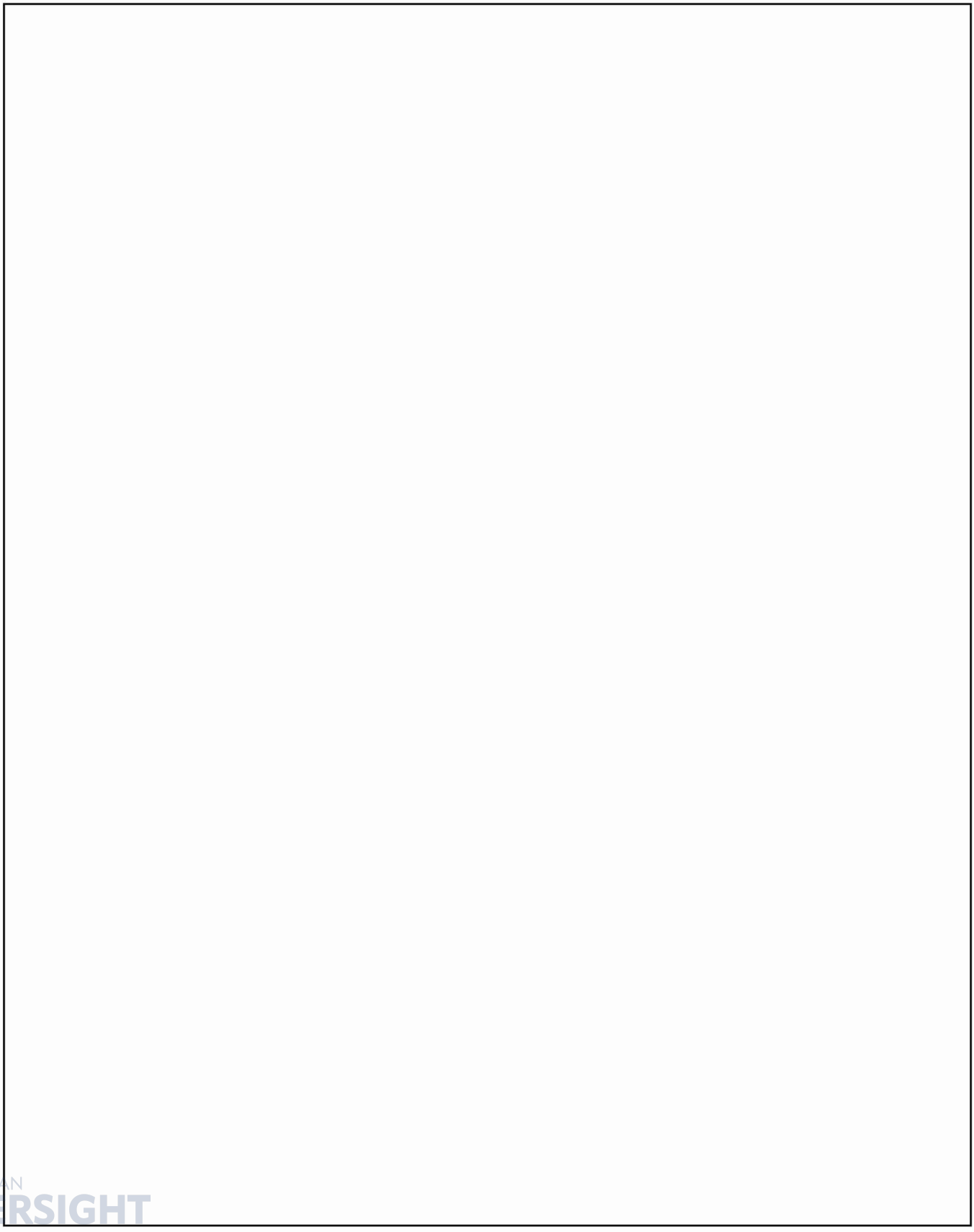
DHS-20-2156-A-000628

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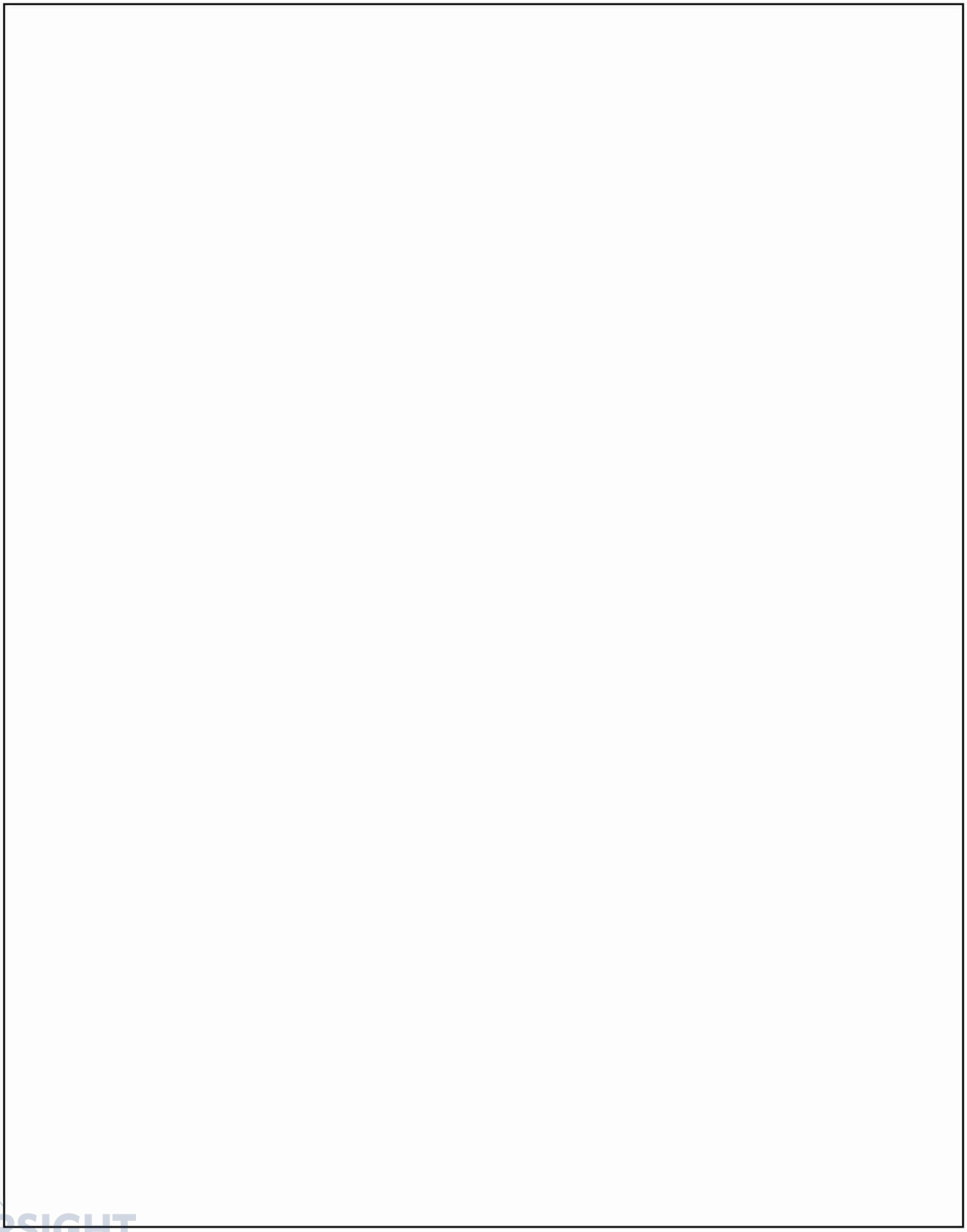
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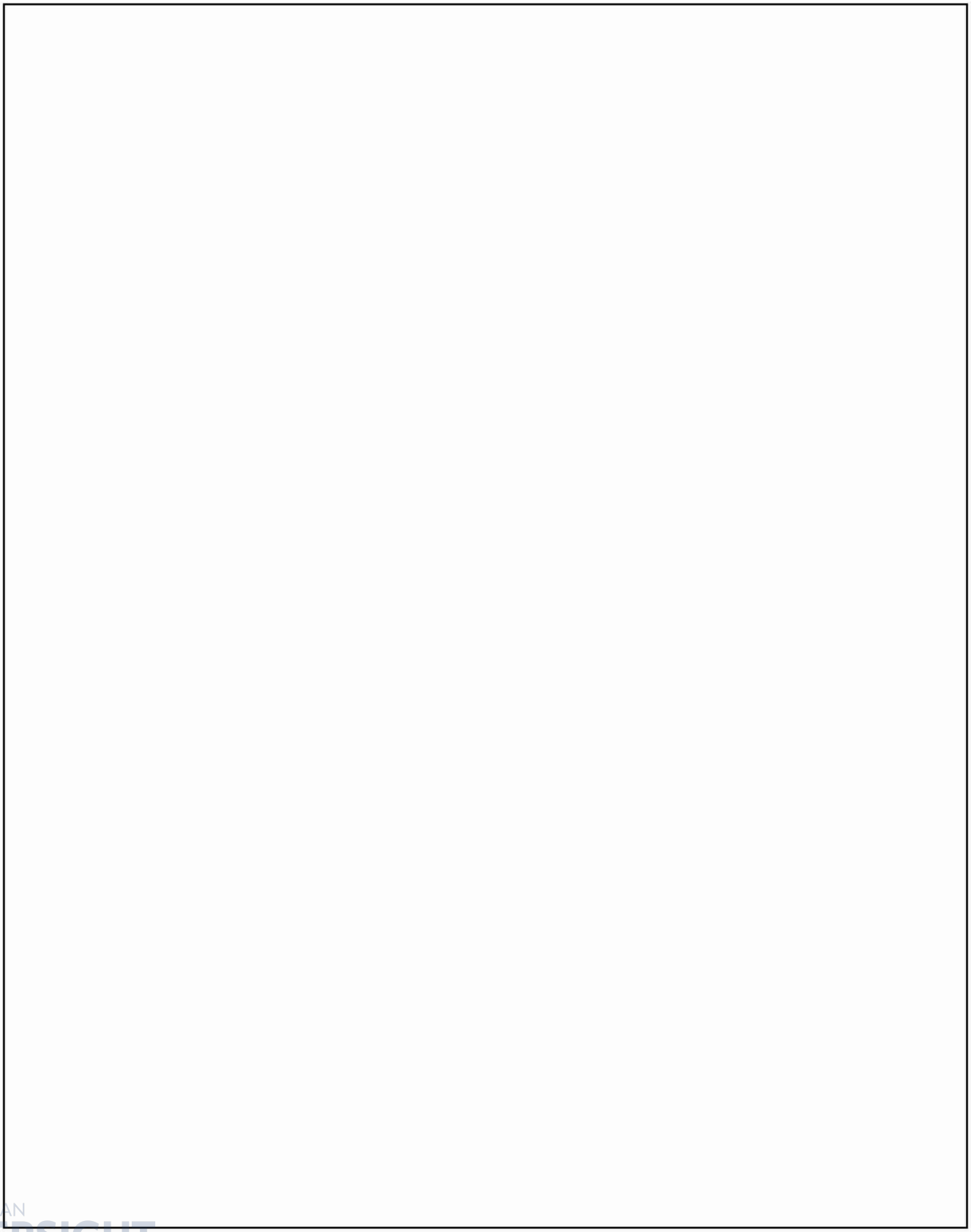
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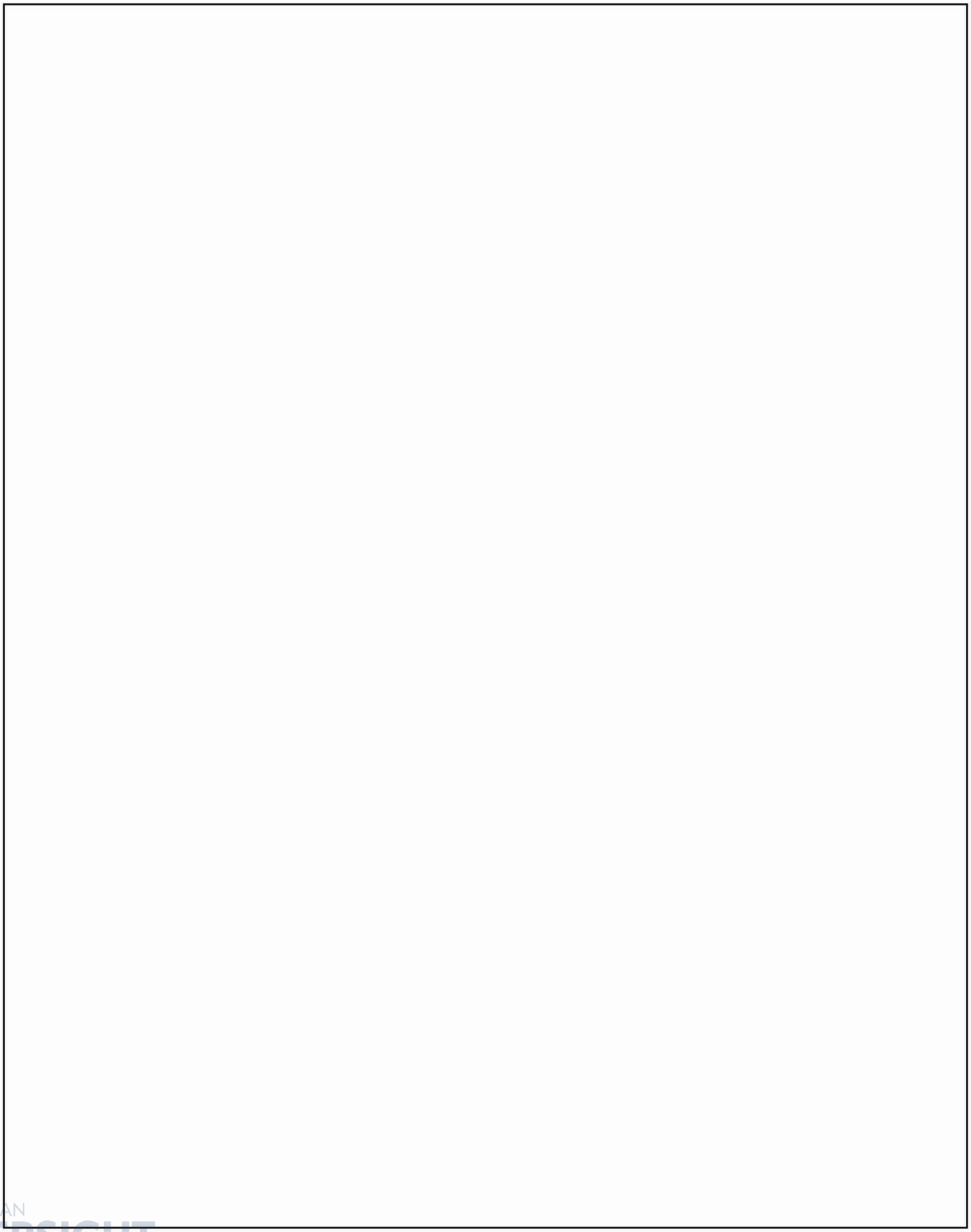
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(b)(5)



AMERICAN OVERSIGHT

From: Sheets, Mary W
Subject: FW: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1
To: 'Aaron L Calkins'
Sent: October 1, 2020 9:49 AM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - News Release EXA.docx, Strengthening the H-1B Program IFR - LG EXA.docx, Strengthening the H-1B Program IFR - PAG EXA.docx, Strengthening the H-1B Program IFR - Stakeholder Message EXA.docx

(b)(5)

Mary Sheets

From: Christensen, Gillian M [redacted]>
Sent: Tuesday, September 29, 2020 4:14 PM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted]>; Rexrode, Kathryn S [redacted]
Subject: RE: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1

Good Afternoon Folks:

Attached for your review/clearance are the comms materials for the Strengthening the H-1B Program interim final rule. USCIS is currently responding to the 2nd OMB passback, targeting submission of our responses today. This should hopefully be the last passback.

Background:
DHS is amending certain regulations governing the H-1B nonimmigrant visa program. The primary purpose of these changes is to better ensure that each H-1B nonimmigrant worker will be working for a qualified employer in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by COVID-19 to more effectively ensure that employing H-1B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. These changes will also help the program function more effectively and efficiently.

Due:
COB Thursday, Oct. 1

Comms:
Strengthening the H-1B Program IFR – News Release
Strengthening the H-1B Program IFR – LG
Strengthening the H-1B Program IFR – PAG
Strengthening the H-1B Program IFR – Stakeholder Message

Clearance:
- **EXA** [redacted]
- **OP&**
- **OCC**
- **SCO**

Many thanks!
Gillian

(b)(5)

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Leadership Guidance

Date AP style
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Strengthening the H-1B Nonimmigrant Visa Classification Program

[redacted]

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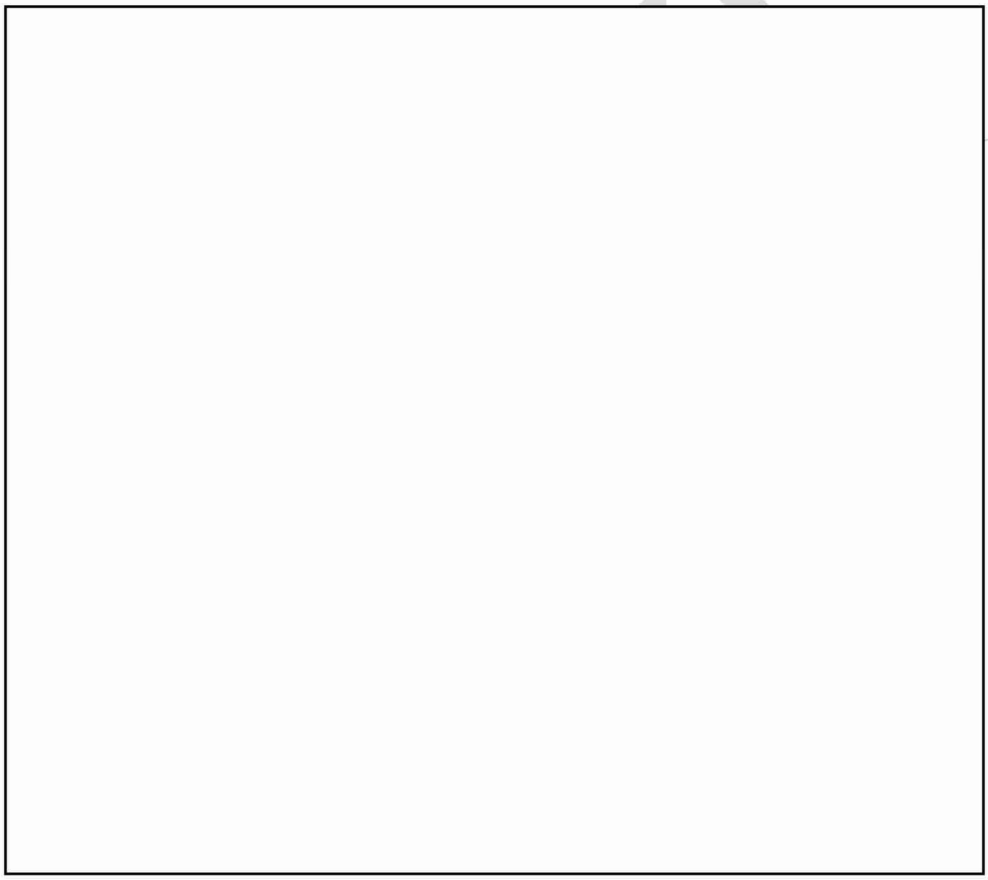
News Release

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Month XX, 2020

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis



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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
Sept. 29, 2020

GUIDANCE
Respond to query

(b)(5)

BACKGROUND
We are amending certain regulations governing the H-1B nonimmigrant visa program.

TALKING POINTS

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RESPONSE TO QUERY

Q1. How is USCIS revising the definition of "specialty occupation"?

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Q2. Will USCIS accept the "equivalent" to a degree in a specific specialty to qualify for a specialty occupation?

Q3. What other definitions is USCIS adding or clarifying?

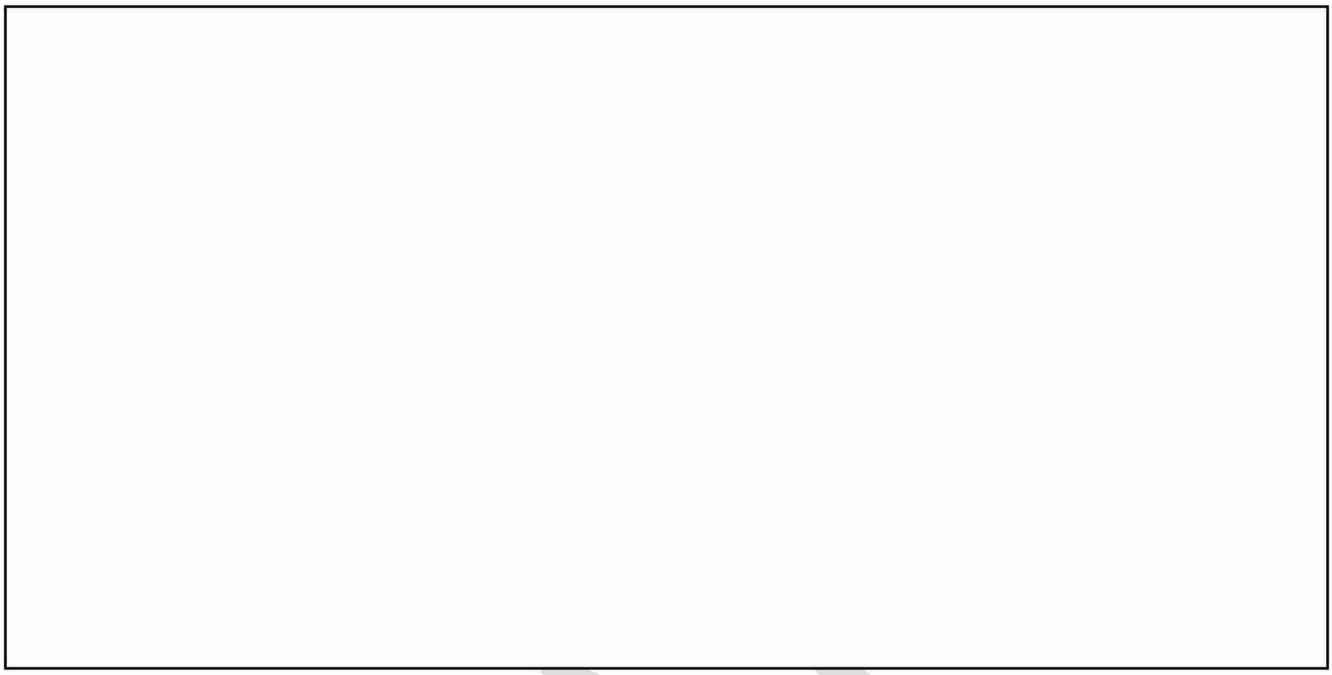
Q4. How is USCIS clarifying the "employer-employee relationship"? Is USCIS restoring the "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placement" policy memo?

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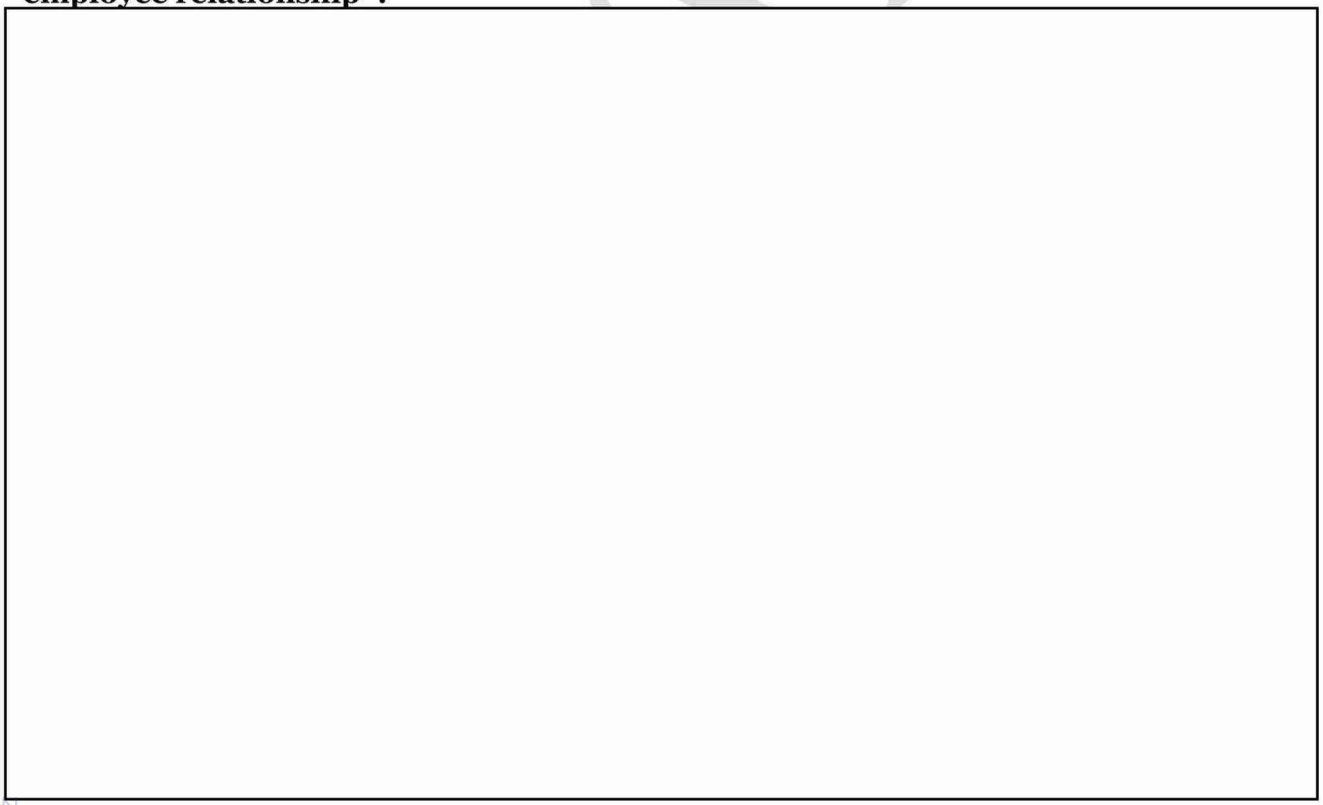
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Q5. What is the list of factors USCIS will consider when determining an "employer-employee relationship"?



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Q6. What is the additional clarification USCIS is adding in restoring the 2010 policy guidance?

Q7. What types of evidence will USCIS require from petitioners who place H-1B workers at third-party worksites to determine a qualified employer-employee relationship?

Q8. Why is USCIS limiting the validity period for H-1B petitions in which the beneficiary will be working at a third-party worksite?

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Q9. Has USCIS considered the amount of money petitioners must now pay in filing fees or how petitioners would be affected by only receiving a one-year period of stay for beneficiaries?

Q10. How has USCIS revised the itinerary requirement for H-1B petitions?

Q11. How does the IFR address site visit inspections?

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Q12. Why did USCIS choose to amend these regulations through an interim final rule?

Q13. When will this interim final rule be effective?

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Q14. Is USCIS trying to force employers to hire U.S. workers?

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Q16. What evidence is there that employing H-1B workers affects wages for U.S. workers?

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Q18. Will these updates be applied to H-1B petitions pending once the IFR is effective?

Q19. Does USCIS believe petitioners will stop using the H-1B program, or that petitioners might move operations overseas due to this IFR?

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Stakeholder Message

DHS Strengthens H-1B Program to Protect U.S. Workers During COVID-19

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Kind regards,

The USCIS Public Engagement Division

AMERICAN OVERSIGHT

(b)(6)

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Subject: FW: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1
To: Kilgore, Garry R
Sent: October 1, 2020 9:01 AM (UTC-05:00)
Attached: Strengthening the H-1B Program IFR - News Release EXA.docx, Strengthening the H-1B Program IFR - LG EXA.docx, Strengthening the H-1B Program IFR - PAG EXA.docx, Strengthening the H-1B Program IFR - Stakeholder Message EXA.docx

Can you please package these ASAP for D2P review?

Thank you,

Mary Sheets

From: Christensen, Gillian M [redacted]
Sent: Thursday, October 01, 2020 9:59 AM
To: Sheets, Mary W [redacted]
Cc: Delgado, Daniel [redacted]
Subject: FW: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1

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(b)(6)

Clearance:

- **EXA:**
- **OP&S**
- **OCC:**
- **SCOP**

(b)(6)

Many thanks!
Gillian

AMERICAN OVERSIGHT

Leadership Guidance

(b)(5)

Date AP style
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Strengthening the H-1B Nonimmigrant Visa Classification Program

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News Release

Month XX, 2020

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis

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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
Sept. 29, 2020

GUIDANCE
Respond to query

BACKGROUND
We are amending certain regulations governing the H-1B nonimmigrant visa program. (b)(5)

TALKING POINTS

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RESPONSE TO QUERY

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Sent: Tuesday, September 29, 2020 4:14 PM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted] Rexrode, Kathryn S [redacted]
Subject: RE: For EXA/DO Clearance: Strengthening the H-1B Program IFR Comms. Due: COB Thursday, Oct. 1

Good Afternoon Folks:

Attached for your review/clearance are the comms materials for the Strengthening the H-1B Program interim final rule. USCIS is currently responding to the 2nd OMB passback, targeting submission of our responses today. This should hopefully be the last passback.

Background:
DHS is amending certain regulations governing the H-1B nonimmigrant visa program. The primary purpose of these changes is to better ensure that each H-1B nonimmigrant worker will be working for a qualified employer in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by COVID-19 to more effectively ensure that employing H-1B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. These changes will also help the program function more effectively and efficiently.

Due:
COB Thursday, Oct. 1

Comms:
Strengthening the H-1B Program IFR – News Release
Strengthening the H-1B Program IFR – LG
Strengthening the H-1B Program IFR – PAG
Strengthening the H-1B Program IFR – Stakeholder Message

Clearance:
- **EXA:** [redacted]
- **OP&**
- **OCC:**
- **SCOI**

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Many thanks!
Gillian

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Leadership Guidance

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Date AP style
#00-YY

Strengthening the H-1B Nonimmigrant Visa Classification Program

The IFR goes into effect on date. For more information, see the Federal Register Notice.

The USCIS Leadership Guidance is a product of the Office of Public Affairs.
Archive | Contact Us

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DHS-20-2156-A-000664

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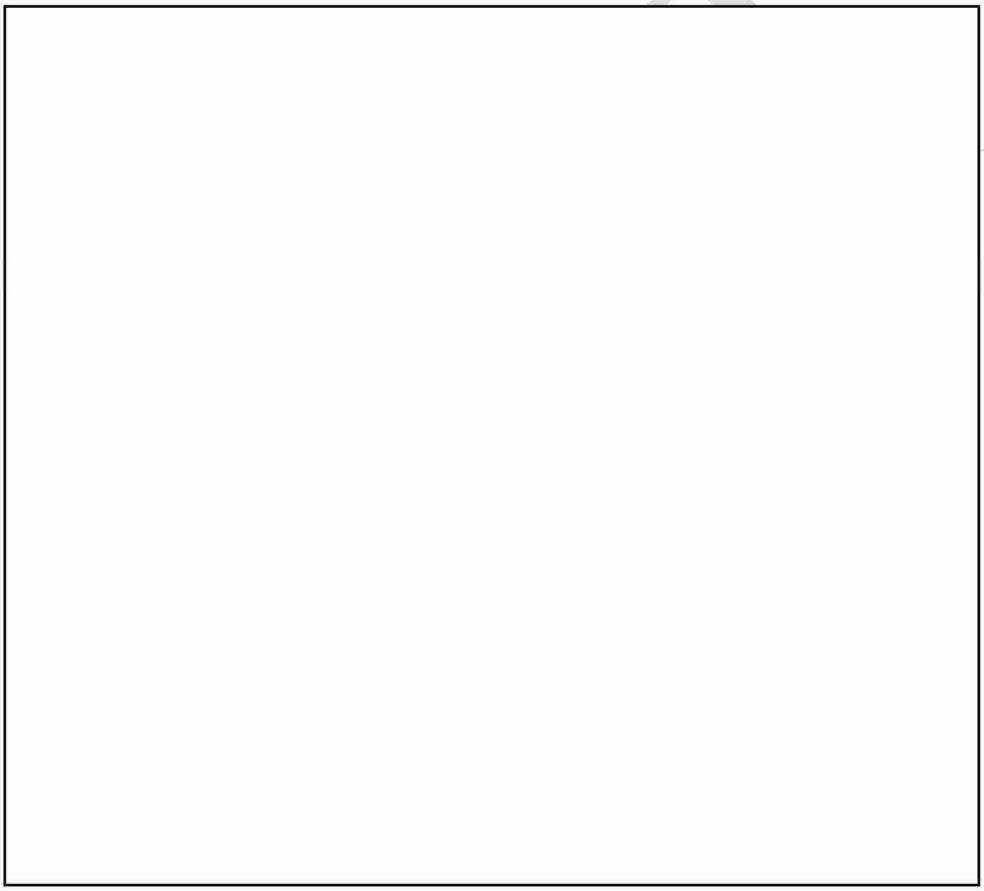
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News Release

Month XX, 2020

DHS Strengthens H-1B Program

Reforms Give U.S. Workers Best Opportunity to Recover From Impacts of COVID-19 Economic Crisis



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- USCIS -

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Public Affairs Guidance

ISSUE
Strengthening the H-1B Nonimmigrant Visa Classification Program IFR

LAST MODIFIED
Sept. 29, 2020

GUIDANCE
Respond to query

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BACKGROUND

TALKING POINTS

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RESPONSE TO QUERY

Q1. How is USCIS revising the definition of "specialty occupation"?

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Q2. Will USCIS accept the "equivalent" to a degree in a specific specialty to qualify for a specialty occupation?

Q3. What other definitions is USCIS adding or clarifying?

Q4. How is USCIS clarifying the "employer-employee relationship"? Is USCIS restoring the "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placement" policy memo?

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Q5. What is the list of factors USCIS will consider when determining an "employer-employee relationship"?

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Q6. What is the additional clarification USCIS is adding in restoring the 2010 policy guidance?

Q7. What types of evidence will USCIS require from petitioners who place H-1B workers at third-party worksites to determine a qualified employer-employee relationship?

Q8. Why is USCIS limiting the validity period for H-1B petitions in which the beneficiary will be working at a third-party worksite?

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Q9. Has USCIS considered the amount of money petitioners must now pay in filing fees or how petitioners would be affected by only receiving a one-year period of stay for beneficiaries?

Q10. How has USCIS revised the itinerary requirement for H-1B petitions?

Q11. How does the IFR address site visit inspections?

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Q12. Why did USCIS choose to amend these regulations through an interim final rule?

Q13. When will this interim final rule be effective?

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A13. The IFR will be effective 60 days after the date of publication in the Federal Register.

Q14. Is USCIS trying to force employers to hire U.S. workers?

Q15. How many H-1B nonimmigrants are in the United States?

Q16. What evidence is there that employing H-1B workers affects wages for U.S. workers?

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Q17. Did President Trump specifically demand USCIS to issue this interim final rule?

Q18. Will these updates be applied to H-1B petitions pending once the IFR is effective?

Q19. Does USCIS believe petitioners will stop using the H-1B program, or that petitioners might move operations overseas due to this IFR?

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Stakeholder Message

DHS Strengthens H-1B Program to Protect U.S. Workers During COVID-19

For more information on USCIS and its programs, please visit uscis.gov or follow us on Twitter (@uscis), Instagram (/uscis), YouTube (/uscis), Facebook (/uscis) and LinkedIn (/uscis).

Kind regards,

The USCIS Public Engagement Division

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From: Sheets, Mary W
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
To: USCIS Exec Sec; USCIS Directors Office Clearance-EXSO
Cc: Drake, Johnetta
Sent: September 29, 2020 5:00 PM (UTC-05:00)
Attached: FD Comments DRAFT Memorandum - Office of the Director - Implementation of PP 10014 and 10052 9.24.20 - MT edits.docx

CLEARED with edits

On behalf of the Director's Office, I clear the DHS Talking Points with edits to the attached document from the Director's Office.

Thank you,
Mary Sheets

From: Davis, Patrice H [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Tuesday, September 29, 2020 4:31 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]; Drake, Johnetta [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
Importance: High

Afternoon,

A gentle reminder that our clearance to CRCL's ***DHS Talking Points for U.N. Universal Periodic Review*** package is due **by 5:00pm, today, September 29**.

Thank you,

Patrice H. Davis
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
[redacted]
Office [redacted]
Cell: [redacted]

From: Davis, Patrice H [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Monday, September 28, 2020 2:21 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Sec [redacted]; Drake, Johnetta [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
Importance: High

Greetings,

Requestor: DHS CRCL (Montrece Rolling)

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Due date: Tuesday, COB, September 29. (Extension request)

AMERICAN OVERSIGHT

Request: DHS CRL is requesting components review on their short turnaround request. On behalf of the Department of State (DOS), please find attached talking points drafted by DOS related to the upcoming presentation of the U.S. Government's report under the United Nation's (U.N.) Universal Periodic Review (UPR) process. The talking points cover several topics, including family separation, implementation of the Migrant Protection Protocols (MPP), conditions of detention, human trafficking, and election integrity. For your background and reference only, please find the final version of the 2020 UPR report cleared by the White House and submitted to the U.N. Please see below for additional background on the UPR process.

Background: The CRCL Officer is the designated Department point of contact for international human rights treaty reporting and coordination under Executive Order 13107. In this capacity, CRCL coordinates DHS's input and clearance on inter-agency reports that the Department of State submits to the United Nations under various international human rights treaties and the U.N.'s UPR process.

The UPR process is conducted every four and a half years to provide U.N. Member States with the opportunity to review and assess its human rights record. During the review, Member States deliver a report that details human rights conditions within their State and any actions taken to address concerns detailed by other States. Following the submission of the report, Member State delegates engage in an interactive dialogue, presenting their state report at the U.N. and answering questions. The USG is scheduled to participate in an interactive dialogue at the U.N. on November 9, 2020.

Clearances:
FDNS:
RAIO:
OP&S
OCC:
EXA: E

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Attachments:
DHS Talking points – Third Cycle Draft
Report of the United States for the Universal Periodic Review (for reference purposes only)

*****Please reply to all on this email*****

Thank you,

Patrice H. Davis
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
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Cell:

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AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Memorandum

TO: Matthew Emrich
Associate Director, Fraud Detection and National Security Directorate
Tracy Renaud
Associate Director, Service Center Operations Directorate
Robert Law
Chief, Office of Operations & Strategy

FROM: Joseph B. Edlow
Deputy Director for Policy (b)(5)

SUBJECT: Strengthening Enforcement and Implementation of Presidential Proclamation 10052, Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Purpose

This Memorandum directs engagements with the State Department and Department of Labor to implement and enforce the Presidential Proclamations on Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.

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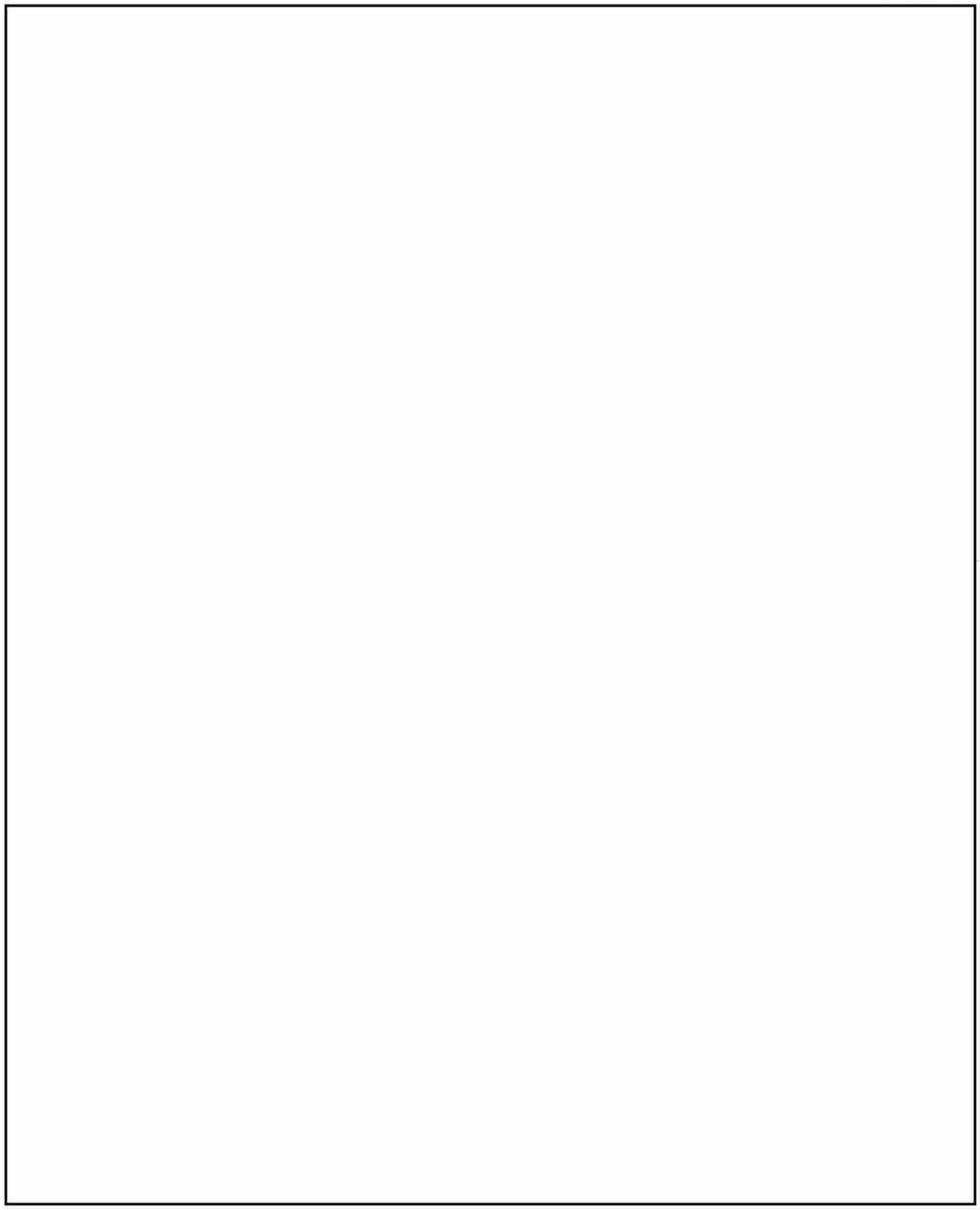
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From: Garza, Regina M
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
To: Piateski, Jennifer E; Sheets, Mary W
Sent: September 29, 2020 4:45 PM (UTC-05:00)
Attached: FD Comments DRAFT Memorandum - Office of the Director - Implementation of PP 10014 and 10052 9.24.20 - MT edits.docx

Apologies for the delay. I caught a couple of items requiring [redacted]

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Cordially,
Regina

From: Piateski, Jennifer E [redacted]bv> (b)(6)
Sent: Tuesday, September 29, 2020 5:15 PM
To: Sheets, Mary W [redacted] Garza, Regina M [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091

I took a quick look, but will defer to Regina.

From: Sheets, Mary W [redacted]
Sent: Tuesday, September 29, 2020 4:48 PM
To: Piateski, Jennifer E [redacted]; Garza, Regina M [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
Importance: High

Hello! Aaron requested that you both review this.

Mary Sheets

From: Calkins, Aaron L [redacted]
Sent: Tuesday, September 29, 2020 4:39 PM
To: Sheets, Mary W [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
Importance: High

This looks fine to me, but please have Regina and Jenny review as well.

Thanks,

Aaron L. Calkins
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

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From: Davis, Patrice H [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Tuesday, September 29, 2020 4:31 PM

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To: USCIS Directors Office Clearance-EXSO
Cc: USCIS Exec Sec; Drake, Johnetta
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 9/29 DHS Talking Points for U.N. Universal Periodic Review STARS#31091
Importance: High

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Thank you,

Patrice H. Davis
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Offic
Cell:

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To: USCIS Directors Office Clearance-EXSO
Cc: USCIS Exec Sec Drake, Johnetta
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at the U.N. and answering questions. The USG is scheduled to participate in an interactive dialogue at the U.N. on November 9, 2020.

Clearances:
FDNS
RAIO
OP&S
OCC:
EXA:

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Attachments:
DHS Talking points – Third Cycle Draft
Report of the United States for the Universal Periodic Review (for reference purposes only)

*****Please reply to all on this email*****

Thank you,

Patrice H. Davis
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Offi
Cell:

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

(b)(5)

Memorandum

TO: Matthew Emrich
Associate Director, Fraud Detection and National Security Directorate
Tracy Renaud
Associate Director, Service Center Operations Directorate
Robert Law
Chief, Office of Operations & Strategy

FROM: Joseph B. Edlow
Deputy Director for Policy

SUBJECT: Strengthening Enforcement and Implementation of Presidential Proclamation 10052, Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Purpose

This Memorandum directs engagements with the State Department and Department of Labor to implement and enforce the Presidential Proclamations on Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.

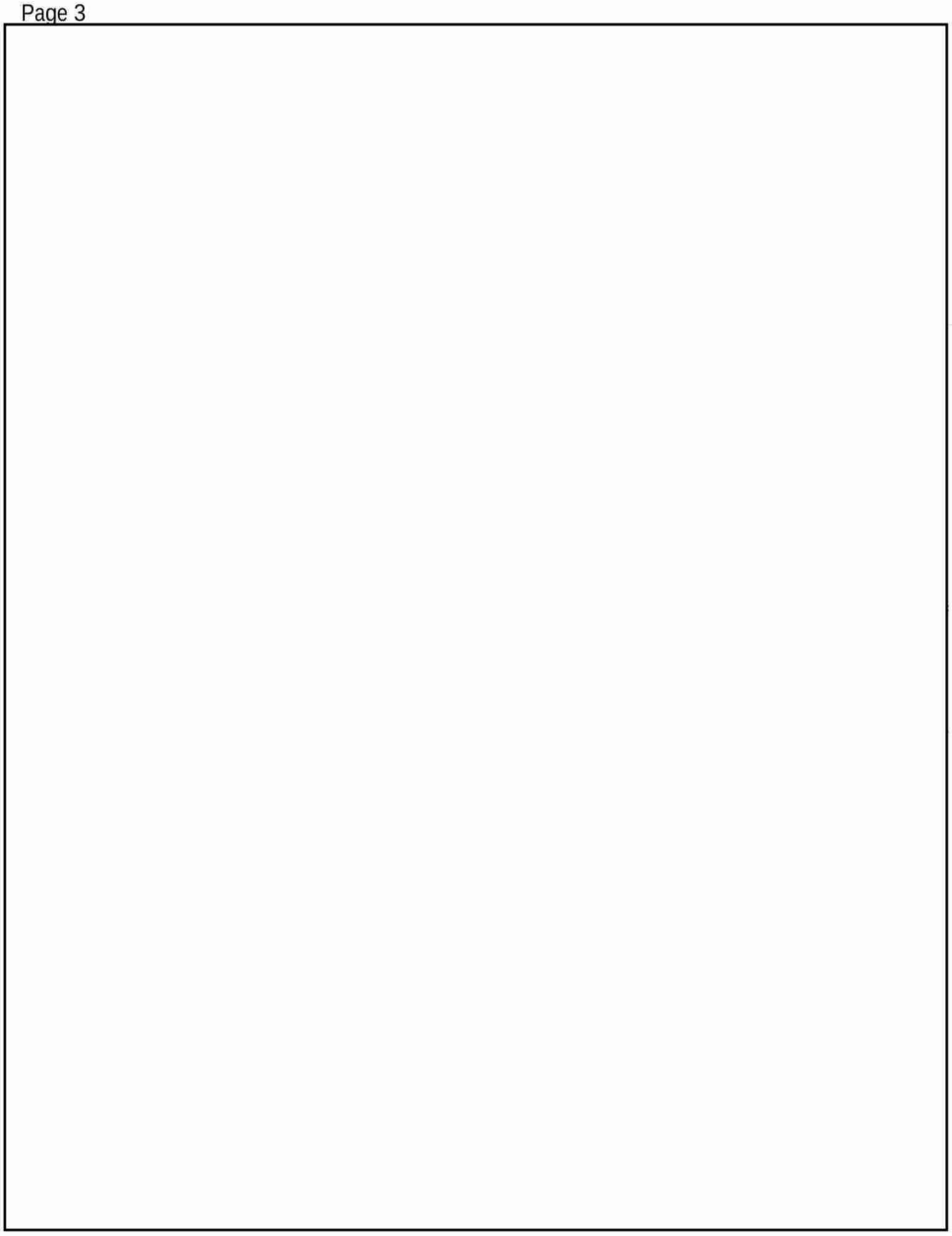
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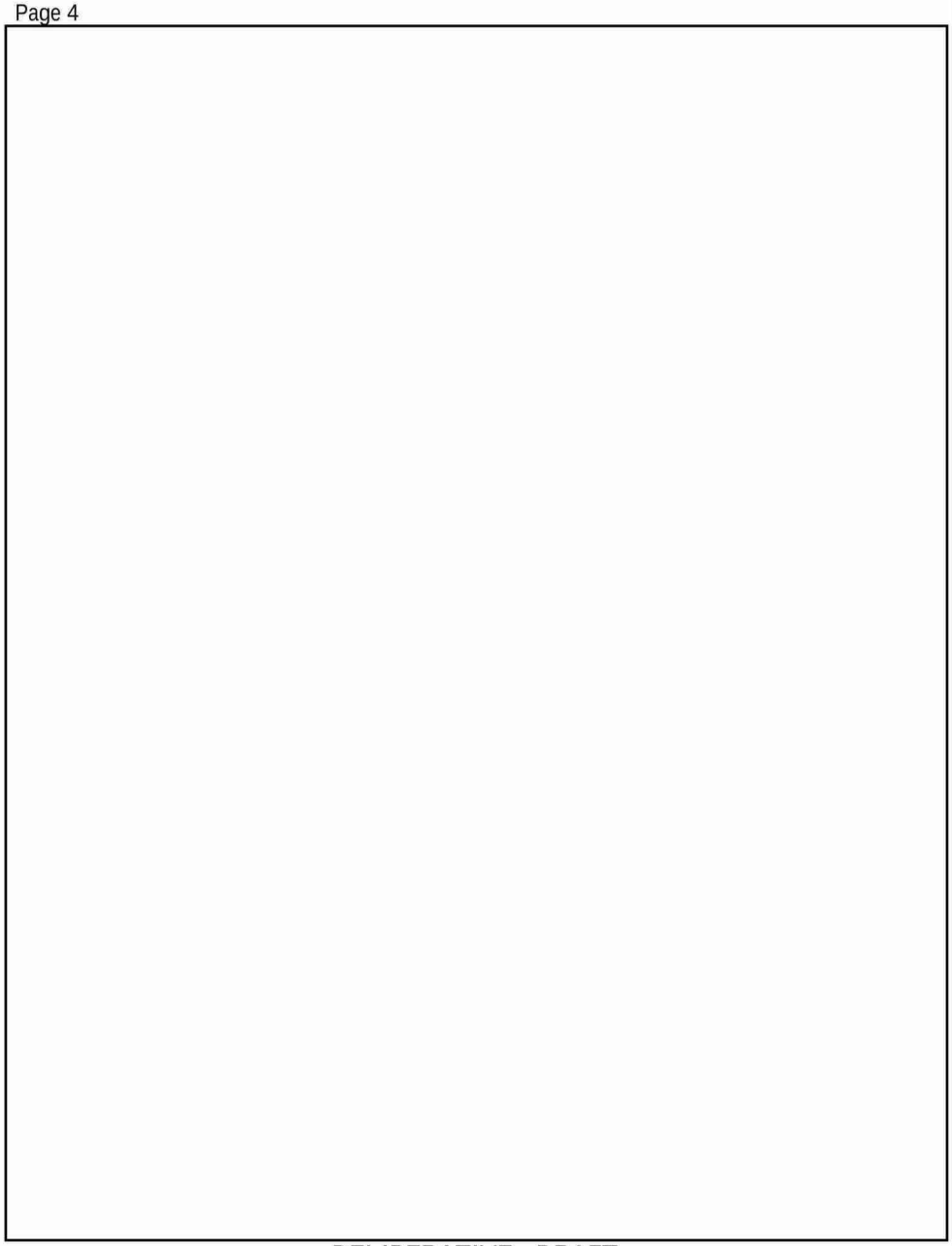


Comments

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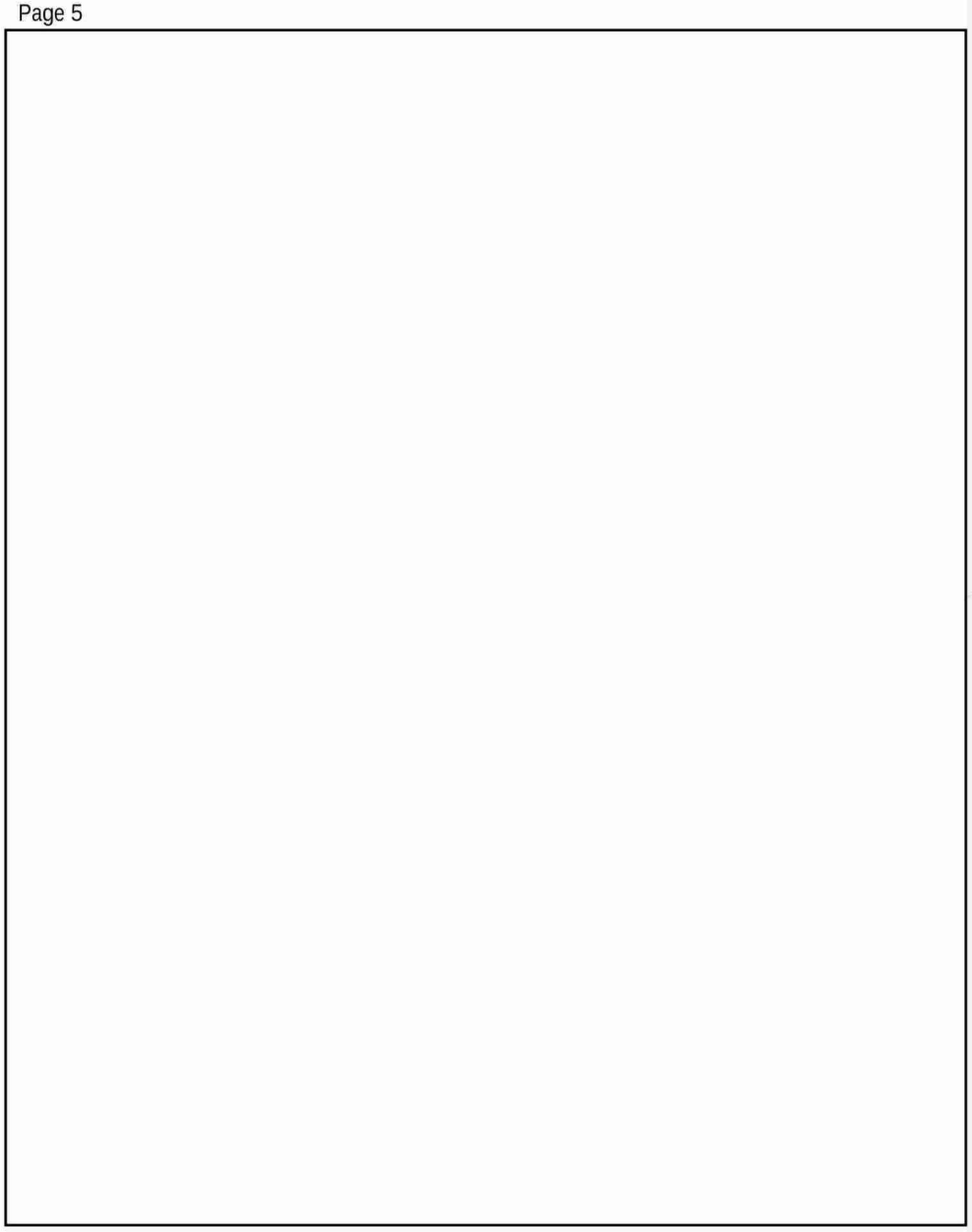
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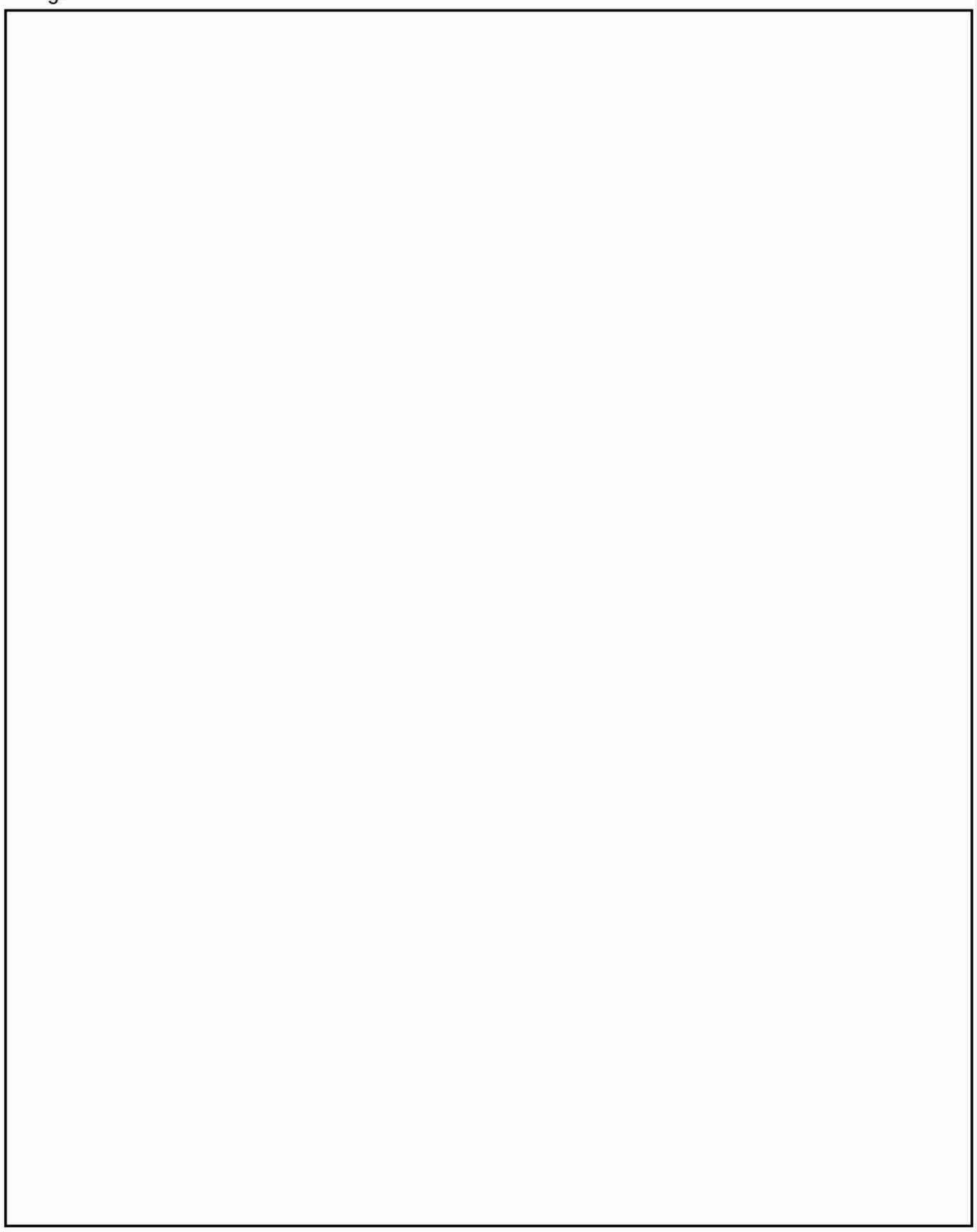


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From: Garza, Regina M
Subject: DO Memo on Strengthening PP 10052 Implementation
To: Emrich, Matthew D; Smeltzer, Brian R
Cc: King, Alexander R; Piateski, Jennifer E
Sent: September 29, 2020 8:21 AM (UTC-05:00)
Attached: Memorandum - Office of the Director - Implementation of PP 10014 and 10052.docx, USCIS Recommendations on National Interest Exceptions to PP 10052.docx

Good morning Matt and Brian,

For your awareness, we would like to share with you the final drafts of:

- The memorandum directing interagency engagement with DOS and DOL to strengthen the enforcement and implementation of PP 10052;
- USCIS recommendations to DOS on any ALDAC produced to provide additional guidance to consular officers on the published info on the national interest exceptions created under PP 10052.

Both documents were prepared based on OP&S's and the Fraud Division's earlier work on this topic. Please let us know at your earliest convenience if you have any questions or concerns that you would like to discuss before we share both documents with D2P for final review and signature. As this is among D2P's priorities, we would like to share these final drafts with him as soon as possible.

Cordially,
Regina

Regina Garza
Senior Advisor, Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Mass Ave Office: 202-272-1076 | Camp Springs Office: [redacted]
Mobile: [redacted] **E-mail** [redacted] (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Memorandum

TO: Matthew Emrich
Associate Director, Fraud Detection and National Security Directorate
Tracy Renaud
Associate Director, Service Center Operations Directorate
Robert Law
Chief, Office of Policy & Strategy

FROM: Joseph B. Edlow
Deputy Director for Policy

DATE: September 29, 2020

SUBJECT: Strengthening Enforcement and Implementation of Presidential Proclamation 10052, Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(5)

Purpose

This Memorandum directs engagement with the Departments of State and Labor to implement and enforce the Presidential Proclamations on Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.

Background

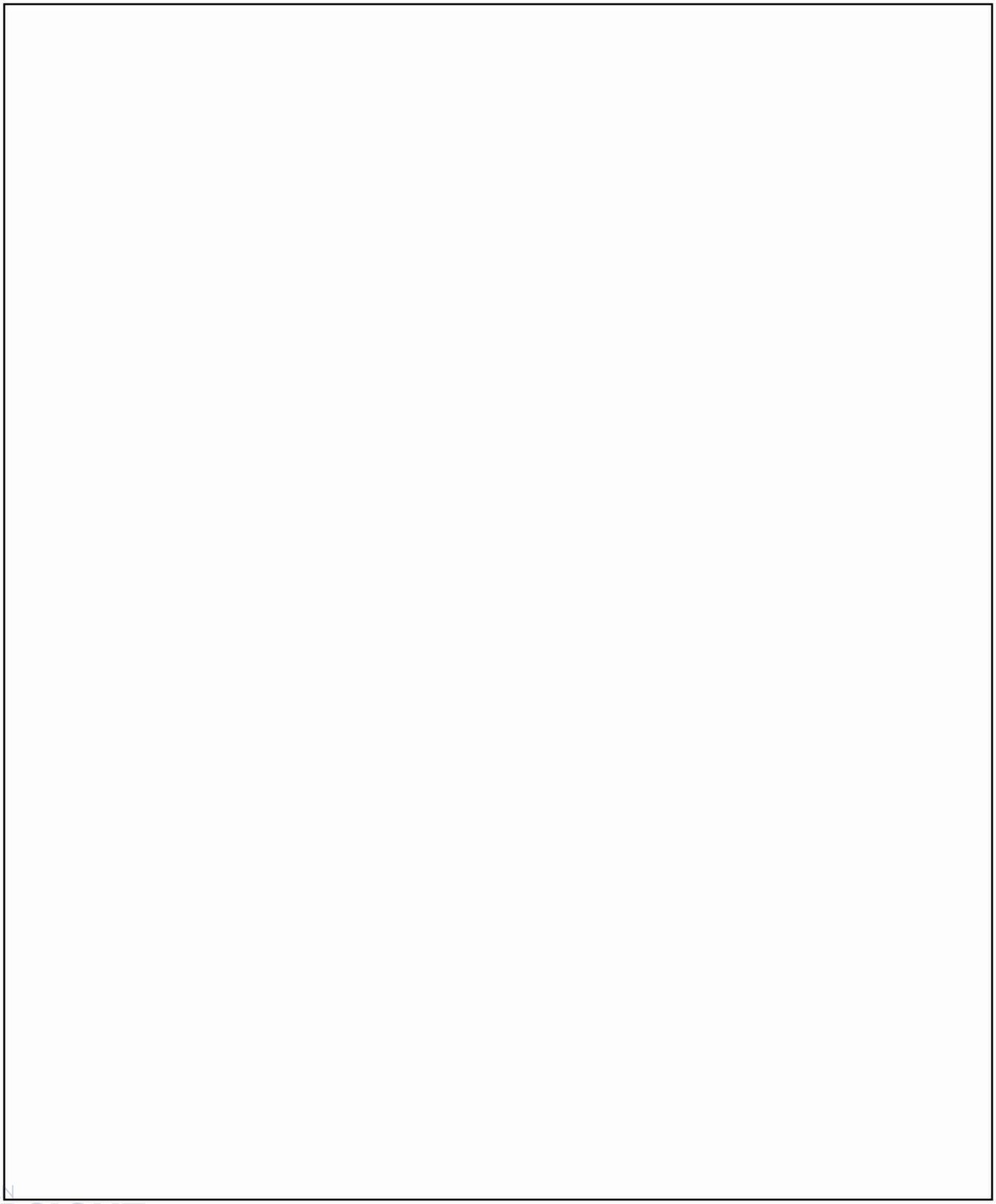
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Strengthening Enforcement and Implementation of Presidential Proclamation 10052, Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(5)

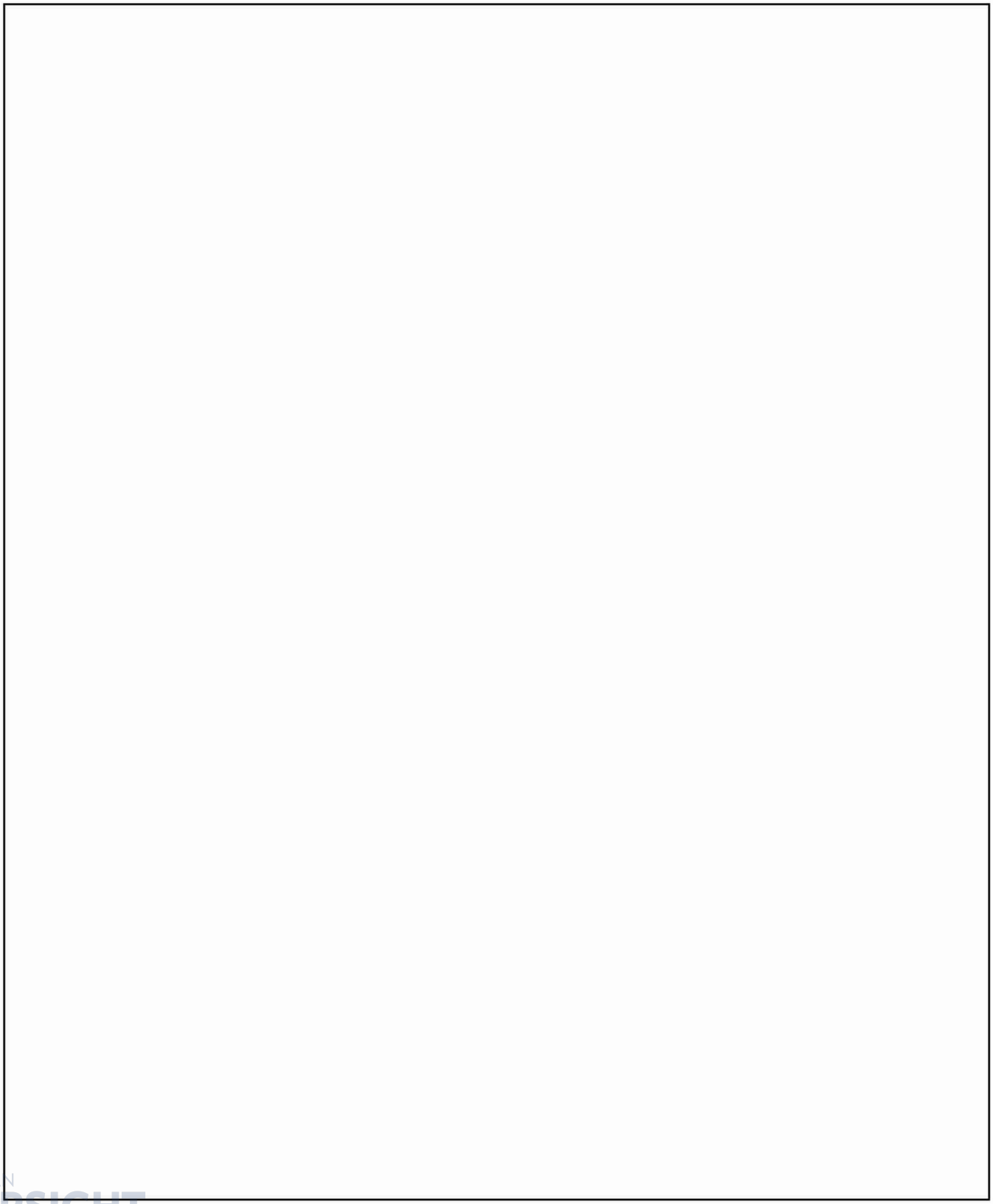
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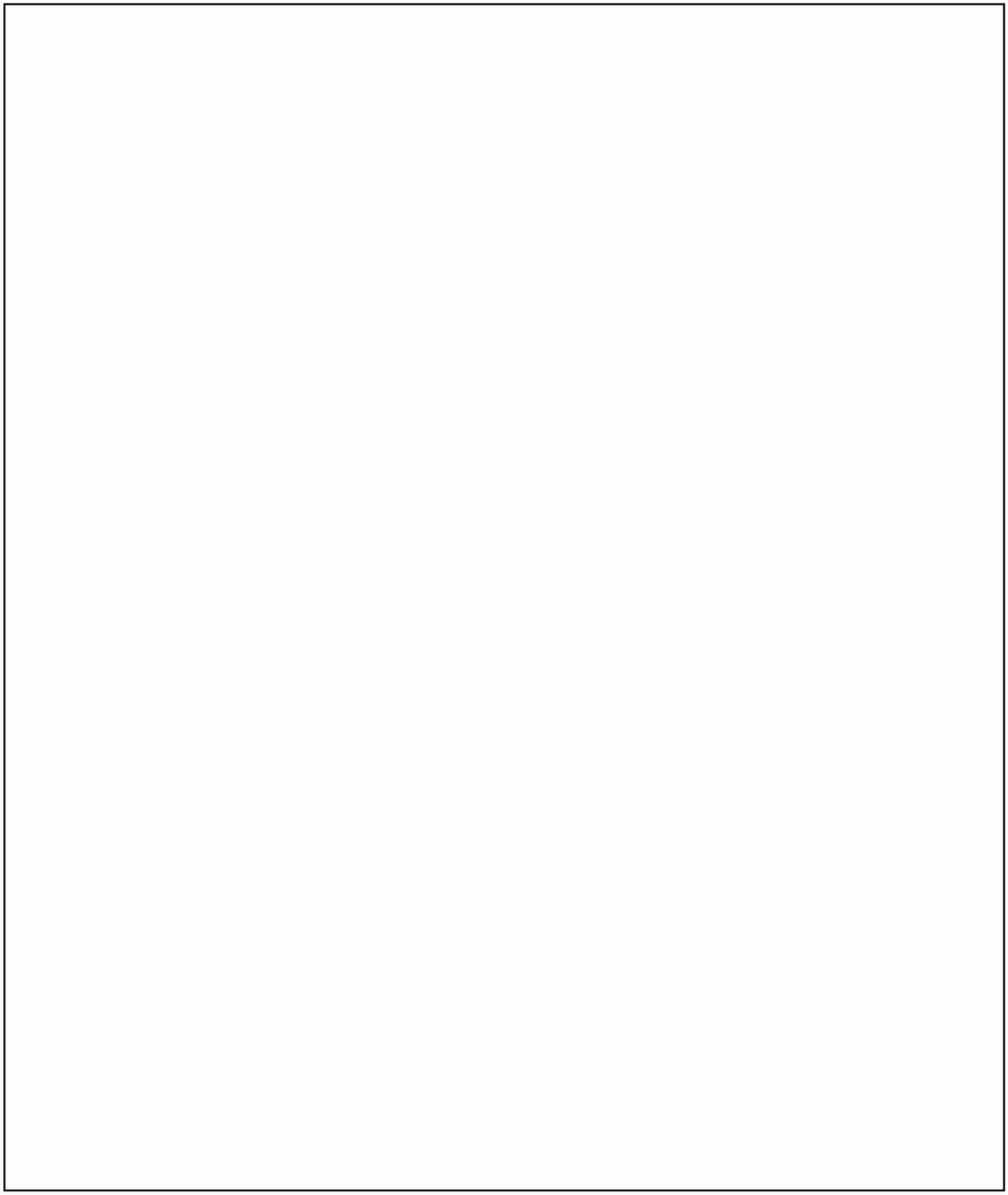
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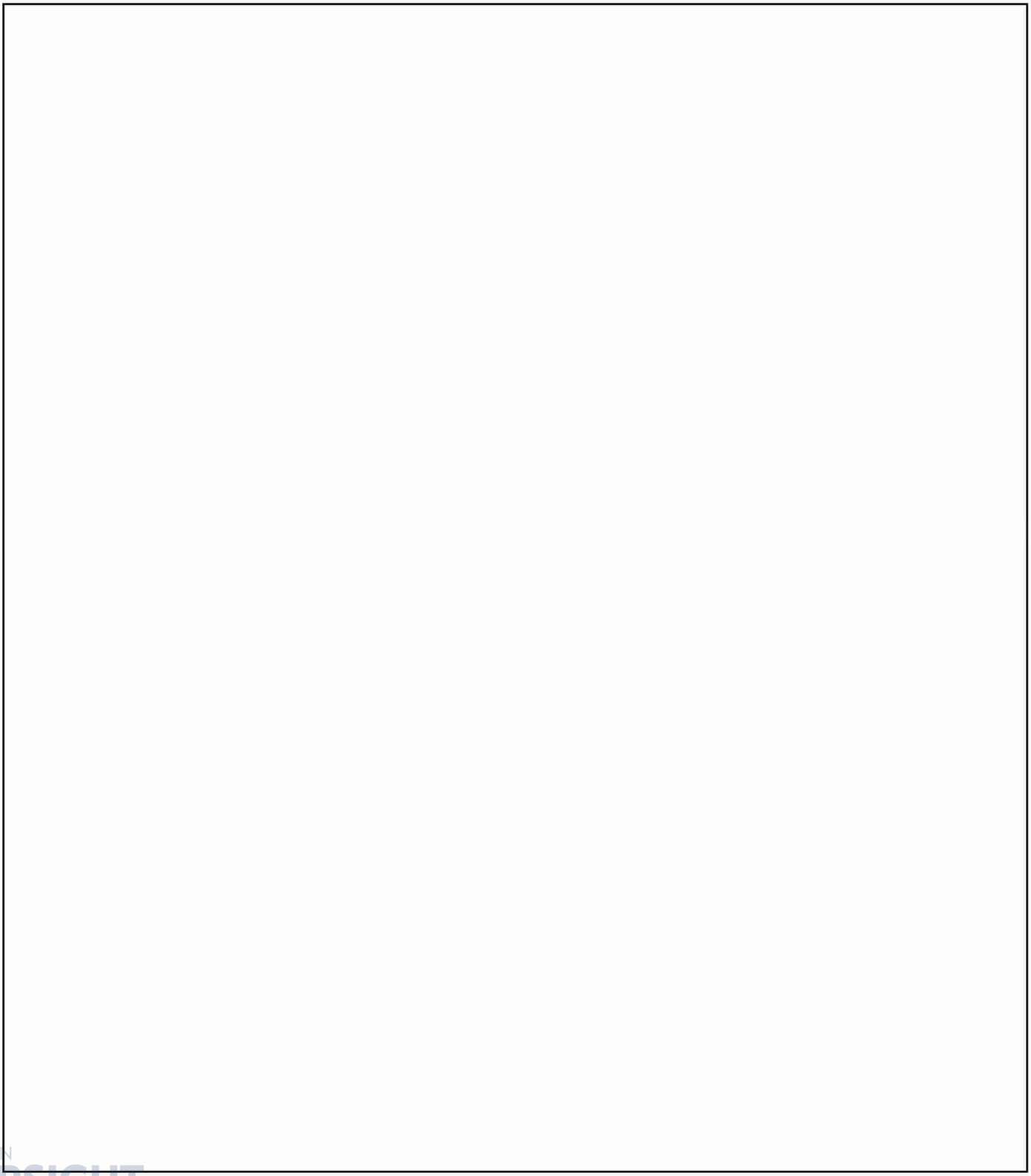
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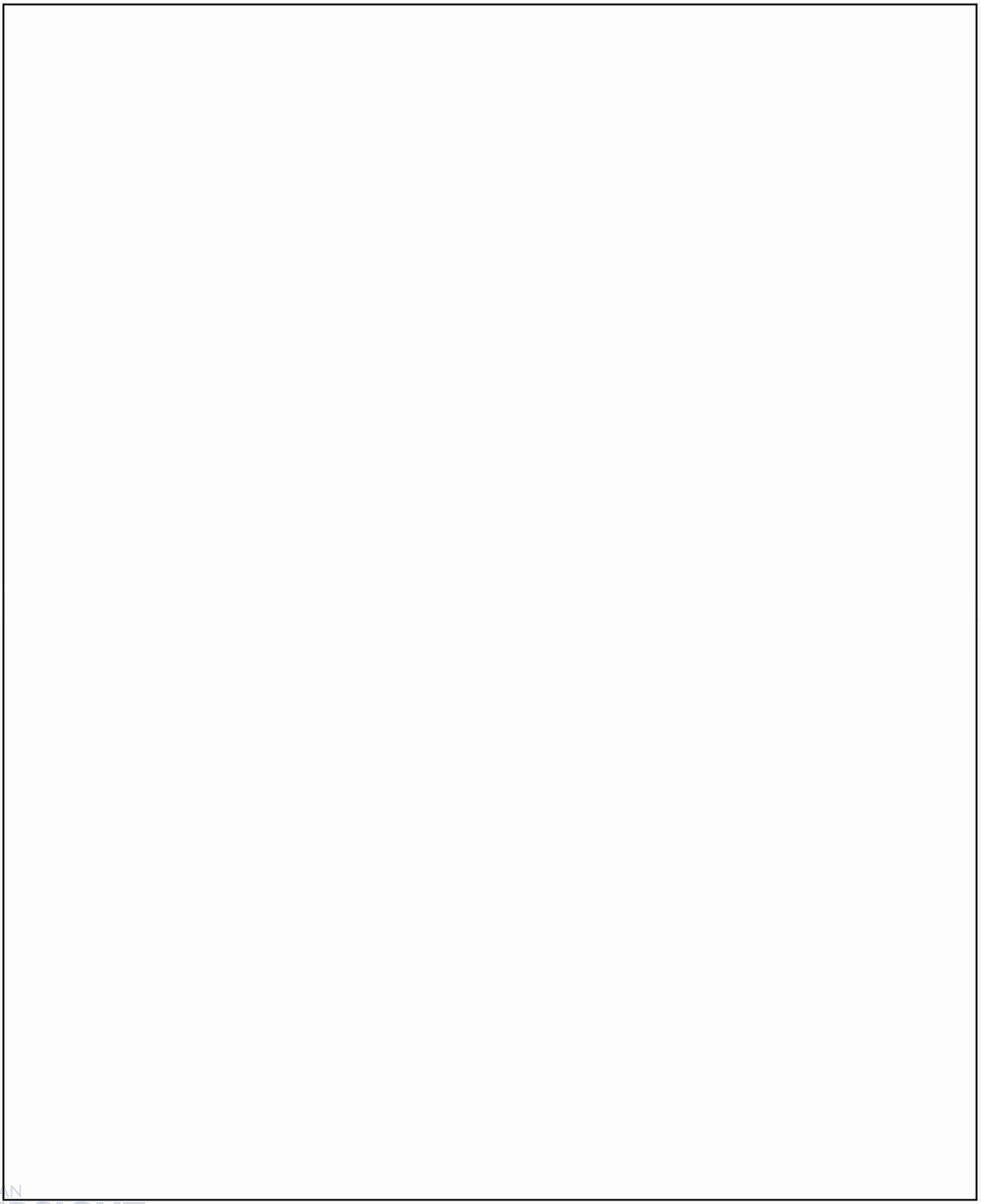
USCIS Recommendations on National Interest Exceptions to the Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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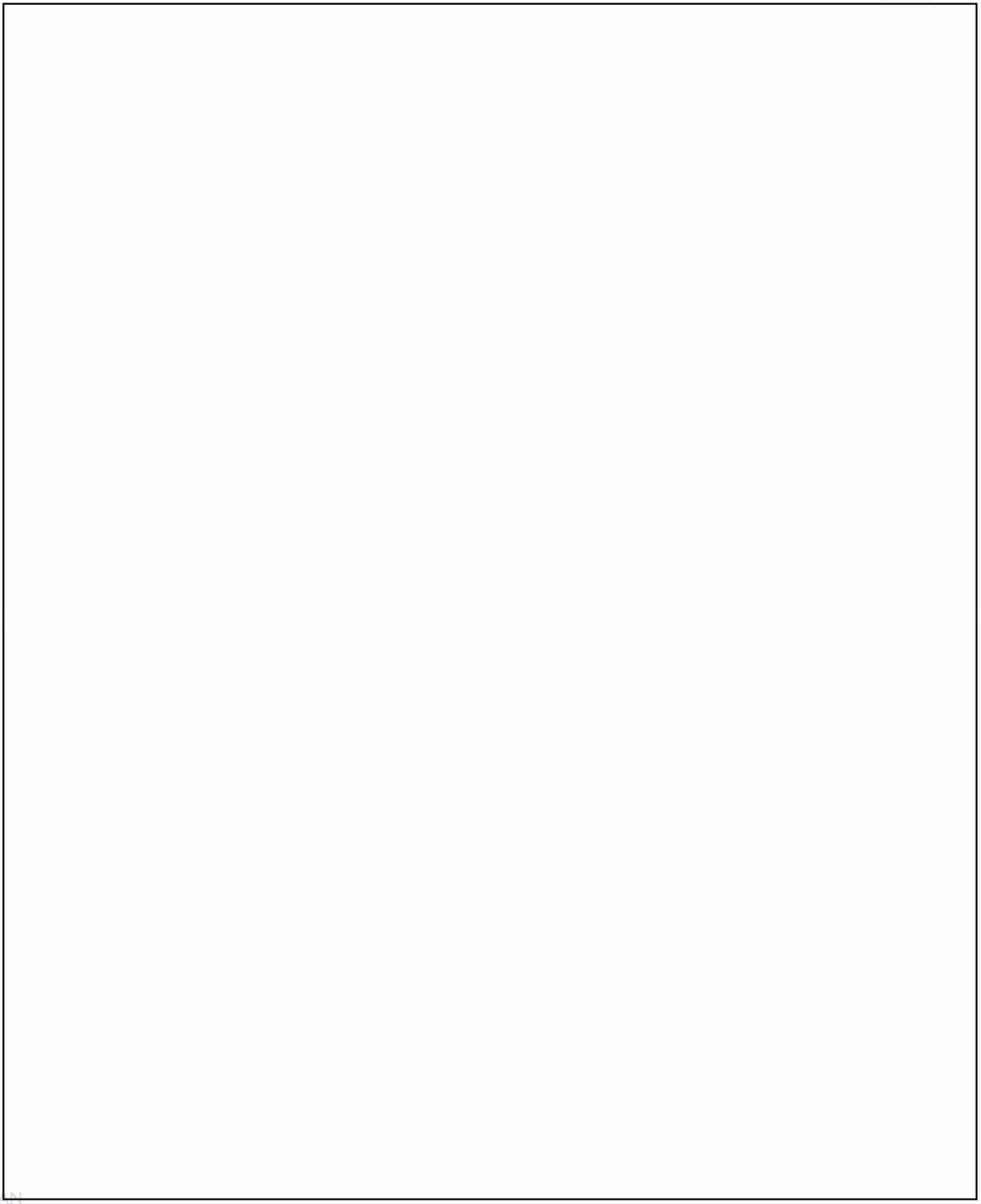
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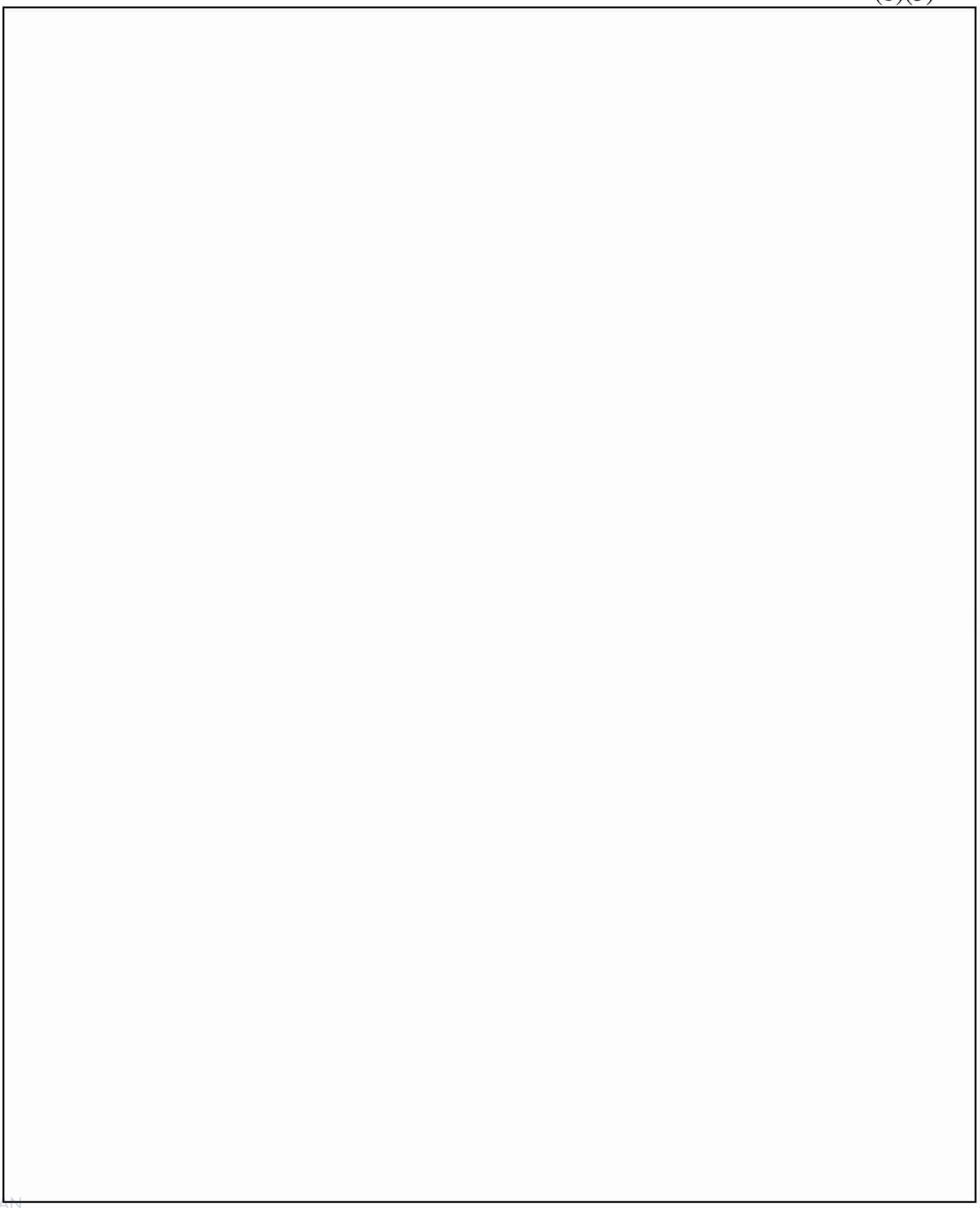
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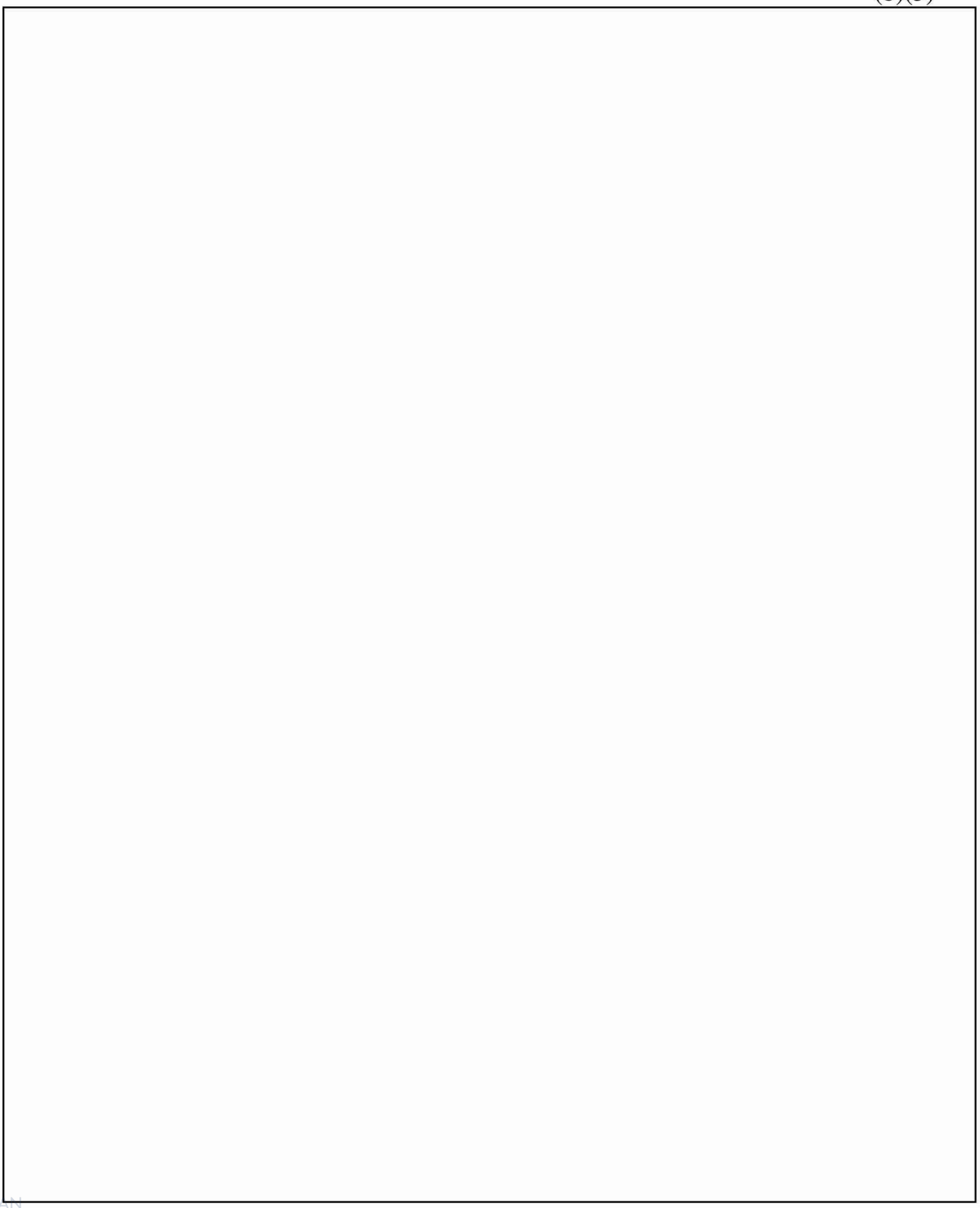
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From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633
To: Weinhold, Kasey D; USCIS Directors Office Clearance-EXSO; Brown, James R
Cc: Blanco, Patricia J
Sent: September 24, 2020 3:02 PM (UTC-05:00)
Attached: Incoming 8.27.20.pdf, Draft response - Bostic (OCC edits) 9.22.20.doc, Draft response - Bostic (Final) LH 9.24.20.doc

(b)(6)

Good afternoon all,

All required POD's have provided a response. OCC concurred with edits, which are attached for reference.

EXSO presents the attached "Draft response – Bostic (Final) LH 9.24.20" for review and D2P signature.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted](office)
STARS Issues: [redacted]

From: Weinhold, Kasey D [redacted]
Sent: Monday, September 21, 2020 2:16 PM
To: Blanco, Patricia J [redacted]; USCIS Directors Office Clearance-EXSO [redacted] Brown, James R [redacted]
Cc: USCIS EXSO External [redacted]
Subject: RE: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

Good afternoon,

This inquiry is similar to ***DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504***. Please have the PODs review the attached revised version (which is based upon STARS 29504). Thank you!

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] | **Mobile** [redacted] **E-mail:** [redacted]

From: Blanco, Patricia J [redacted]
Sent: Monday, September 21, 2020 11:07 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Cc: USCIS EXSO External [redacted]
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

AMERICAN OVERSIGHT

(b)(6)

Requestor Directorate/Office: ESEC

Due Date: **Tuesday, September 29, 2020**

Request: D2P review and signature.

Background: Jason Bostic wrote to Acting Secretary Wolf regarding the shortage of H-2B workers. DHS ESEC has requested D2P sign the final response.

Clearance:

OP&S:
OCC:
EXA:
CBP:

(b)(6)

Attachments:

1. Incoming 8.27.20
2. Draft Response Bostic – (OCC edits) 9.16.20
3. Draft Response Bostic – (Final) LH 9.21.20

*********Please reply to all on this email ********

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat

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AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

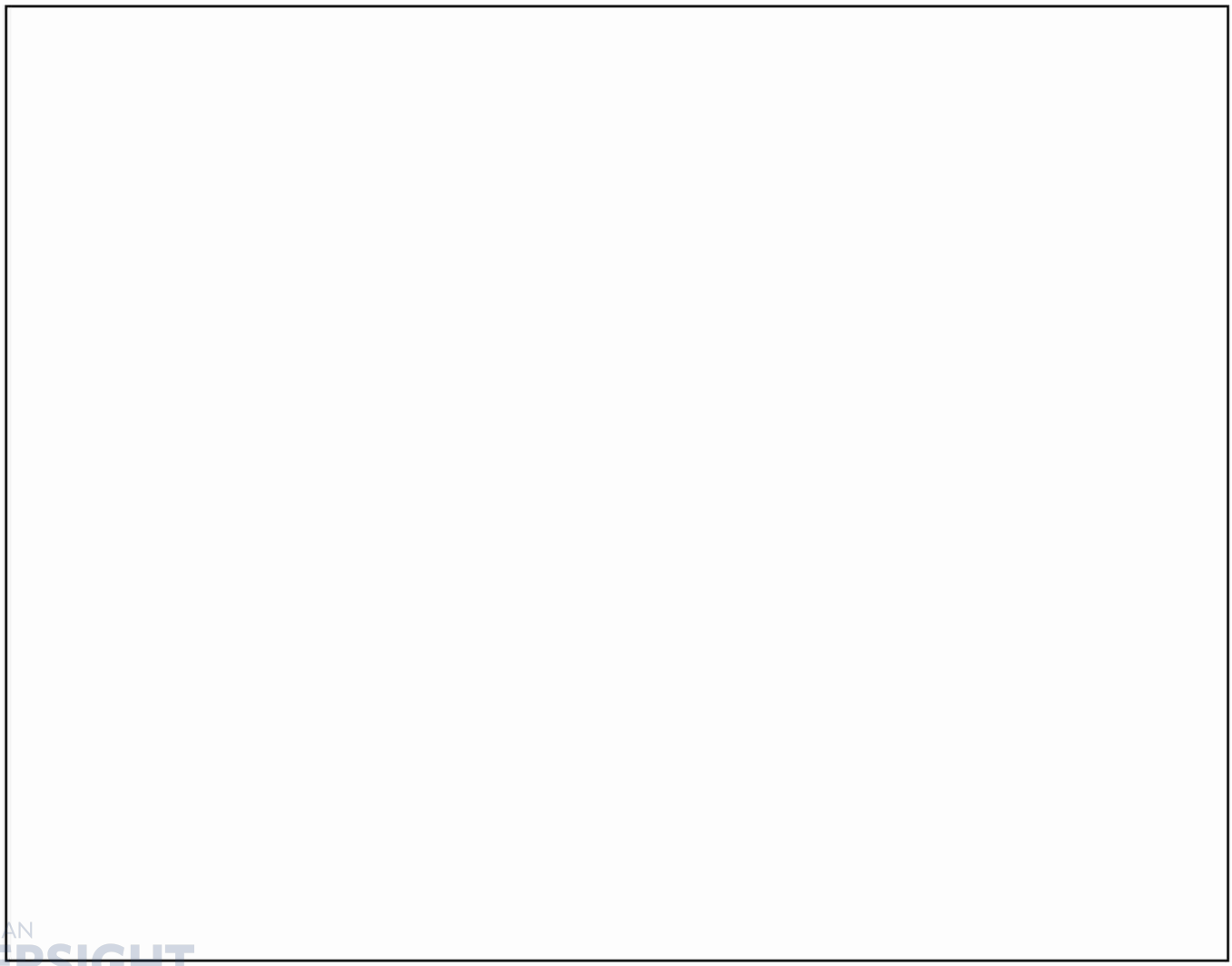
September XX, 2020

Mr. Jason Bostic
Vice President
West Virginia Coal Association
P.O. Box 3923
Charleston, West Virginia 25339

Dear Mr. Bostic:

Thank you for your August 27, 2020 letter regarding H-2B workers. Acting Secretary Wolf asked that I respond on his behalf.

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(b)(5)

[redacted]

Thank you again for your letter and your interest in this matter.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

September XX, 2020

Mr. Jason Bostic
Vice President
West Virginia Coal Association
P.O. Box 3923
Charleston, West Virginia 25339

Dear Mr. Bostic:

Thank you for your August 27, 2020 letter regarding ~~shortage of~~ H-2B workers. Acting Secretary Wolf asked that I respond on his behalf. ~~.~~ (b)(5)



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[redacted]

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Sincerely,

[redacted]

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(b)(5)

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

August 27, 2020

The Honorable Mike Pompeo
Secretary of State
2201 C St. NW
Washington, DC 20520

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Avenue
Washington, DC 20210

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Secretaries Pompeo, Scalia and Wolf:

The West Virginia Coal Association, as the trade organization representing 94 million tons of thermal and metallurgical coal produced in the Mountain State and 51,664 state residents employed directly by the coal industry, would like to make you aware of the potential negative impacts resulting from the President's Proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" dated June 22, 2020.

West Virginia is the nation's second largest coal producing state, the largest producer of metallurgical coal (an essential feedstock for the manufacturing of iron and steel) and the largest producer of coal destined for foreign exports. The West Virginia coal industry is directly responsible for over $5 billion in economic activity in the state, including $2 billion in wages and over $250 million in local and state tax revenues.

Many H-2B employers contract their services to coal companies in West Virginia to perform forestry work. These reforestation efforts are central to the coal industry's compliance with federal and state mining laws governing the timely reclamation of sites once coal removal has been completed. The federal Surface Mining Control & Reclamation Act (30 USC 1201, *et. seq.*) and the corresponding federal regulations promulgated by the federal Office of Surface Mining (30 CFR 700, *et seq.*) require mine operators to complete reclamation, including reforestation efforts, within established timeframes to avoid regulatory violations and/or delays in moving coal production activities to new, undisturbed areas.

The State of West Virginia maintains similar, but more specific timeframes and requirements, referred to as "contemporaneous reclamation" under the West Virginia Surface Coal Mining & Reclamation Act (W.Va. Code 22-3-1, et. *seq.*) and its implementing state rules at 38 CSR 2, *et.seq.*

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The inability to complete the timely reforestation efforts mandated by the federal and state regulatory programs places mine operators at risk for violations under those programs and could jeopardize continued coal production and employment since the ability to move active mining units to new areas is directly tied to the operator's completion of reclamation (including reforestation efforts) on the previously mined and disturbed areas. Additionally, reforestation is a central component of reclamation-returning formerly mined areas to their pre-disturbance form and providing the highest-level environmental protection and remediation to the natural environment and communities in which we operate.

The unrealized reclamation activity from the suspension of H-2B non-immigrant labor that performs forestry work is significant and could potentially impact the nation's supply of thermal coal, used to produce electricity and the domestic production of iron and steel if metallurgical coal supplies are interrupted.

The West Virginia Coal Association urges the Administration to consider an exemption for H-2B guest workers that perform forestry work and reforestation / reclamation efforts at coal mining operations.

Respectfully Submitted,

Jason Bostic
Vice President

AMERICAN OVERSIGHT

(b)(6)

From: Sheets, Mary W
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959
To: Calkins, Aaron L
Sent: September 24, 2020 9:13 AM (UTC-05:00)
Attached: Nonimmigrant 212(f) 6.16v 3_ark.docx

Morgan, Alex, and I all reviewed the attached talking points summary on the H-1B strengthening rule. Let me know if you have any additional edits, and I'll clear back to EXSO.

From: Bailey, Morgan [redacted]
Sent: Thursday, September 24, 2020 9:19 AM
To: Sheets, Mary W [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959

Hi Mary,

I had a few minor edits/suggestions.

Thanks,
Morgan

From: Sheets, Mary W [redacted]
Sent: Thursday, September 24, 2020 9:07 AM
To: Bailey, Morgan [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959

Hi Morgan,

Aaron requested that Alex review this one so I sent it over to him, and he found a typo on the last page but that was it. Please let me know if you'd like to review as well.

Mary

From: King, Alexander R [redacted]
Sent: Thursday, September 24, 2020 8:30 AM
To: Sheets, Mary W [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959

Hi Mary,

This looks fine to me with the exception of a typo on page 3 which I corrected.

Thanks,
Alex

From: Sheets, Mary W [redacted]
Sent: Wednesday, September 23, 2020 5:05 PM
To: King, Alexander R [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959

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Importance: High

Hi Alex,

I haven't spoken with you since I started my detail in the DO, but I'm up here now helping Aaron out. He asked if you could please review this H-1B Strengthening talking points form. Please let me know if you have any edits, and I'll be happy to send it back to EXSO.

Thanks,
Mary

(b)(6)

From: Kilgore, Garry R <
Sent: Wednesday, September 23, 2020 3:16 PM
To: USCIS Directors Office Clearance-EXSO ; Drake, Johnetta
Cc: Dennis, Morgan C
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959
Importance: High

Requestor: OP&S

Due date: COB, September 30, 2020

Request: OP&S is requesting D2P review and clearance to Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form.

Background: This is the new process that DHS FO instituted rather recently. The form is submitted to AS1 prior to him signing the rule. We originally emailed the form directly to for review and approval, but as of last week, asked that we submit the form via EXSO.

Attachments:
H-1B Strengthening

*****Please respond to all on this email.*****

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues

(b)(6)

AMERICAN OVERSIGHT

TALKING POINTS FORM FOR REGULATIONS

MESSAGE TO OGC/COMPONENT: please use this form to provide basic information on a forthcoming regulation. The Front Office will use this material to draft talking points. Unless specifically asked, please do not draft talking points. Instead, provide only the answers as directed below.

REGULATION: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

COMPONENT: U.S. Citizenship and Immigration Services, Department of Homeland Security

DEADLINE: (deadline for publication)

APPROVED this form: Name, Title (Component Deputy Chief of Staff or higher)

DRAFTER of this form: (b)(6)

KEY POINTS (b)(5)

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(b)(5)

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(b)(5)

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(b)(6)

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 9/30/20 Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form - STARS #30959
To: USCIS Directors Office Clearance-EXSO; Drake, Johnetta
Cc: Dennis, Morgan C
Sent: September 23, 2020 2:16 PM (UTC-05:00)
Attached: H-1B Strengthening - S1-S2 Info Form.docx

Requestor: OP&S [redacted]

Due date: COB, September 30, 2020

Request: OP&S is requesting D2P review and clearance to Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule, Talking Points Form.

Background: This is the new process that DHS FO instituted rather recently. The form is submitted to AS1 prior to him signing the rule. We originally emailed the form directly to [redacted] for review and approval, but as of last week, [redacted] asked that we submit the form via EXSO.

Attachments:
H-1B Strengthening

*****Please respond to all on this email.*****

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

TALKING POINTS FORM FOR REGULATIONS

MESSAGE TO OGC/COMPONENT: please use this form to provide basic information on a forthcoming regulation. The Front Office will use this material to draft talking points. Unless specifically asked, please do not draft talking points. Instead, provide only the answers as directed below.

REGULATION: Strengthening the H-1B Nonimmigrant Visa Classification Program, Interim Final Rule

COMPONENT: U.S. Citizenship and Immigration Services, Department of Homeland Security

DEADLINE: (deadline for publication)

APPROVED this form: Name, Title (Component Deputy Chief of Staff or higher)

DRAFTER of this form:

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KEY POINTS

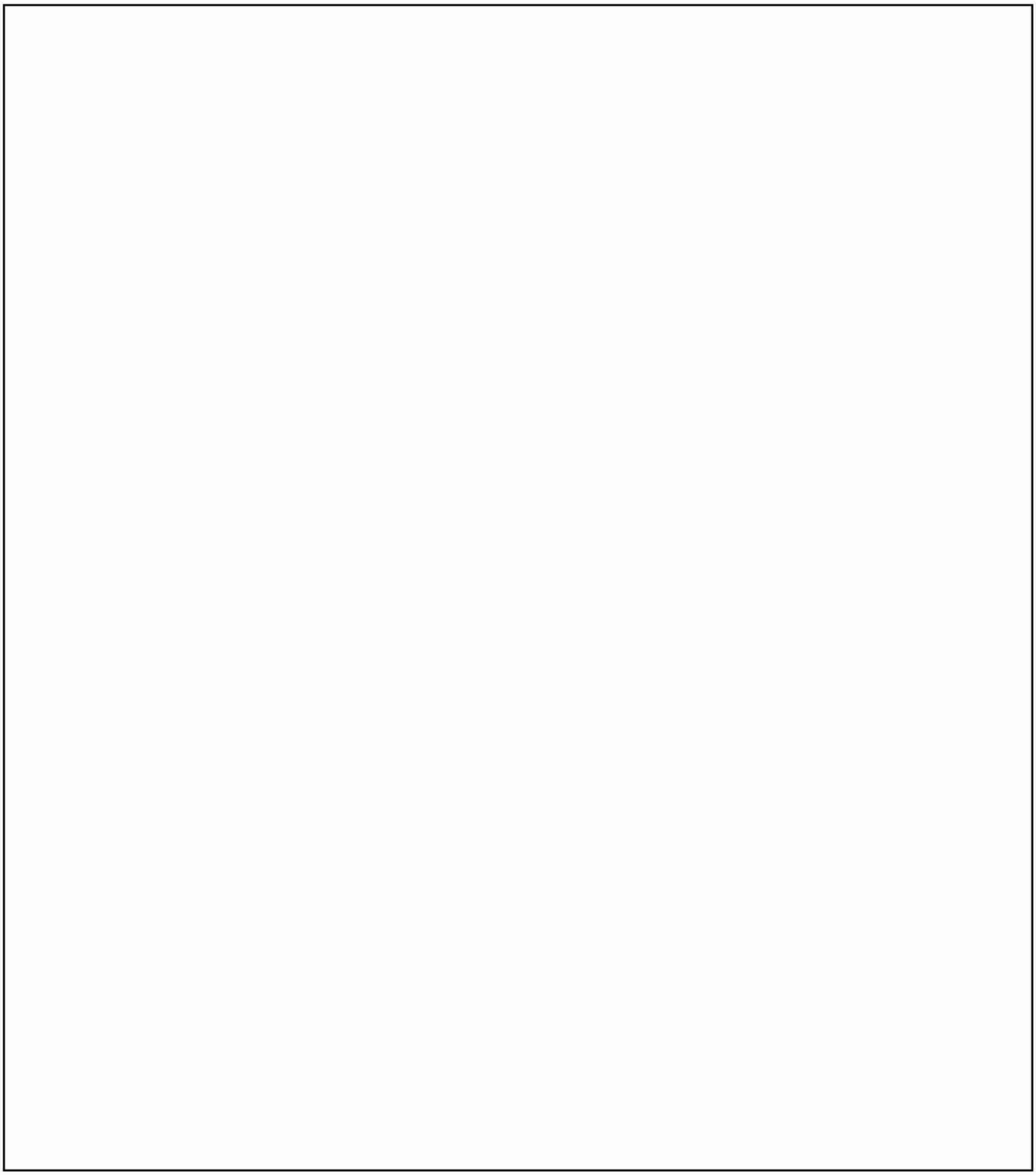
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From: Bailey, Morgan
Subject: FW: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633
To: Weinhold, Kasey D
Sent: September 21, 2020 12:51 PM (UTC-05:00)
Attached: Incoming 8.27.20.pdf, Draft response - Bostic (Final) LH 9.21.20 Revised.doc

Hi Kasey,

This inquiry is similar to DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504. Please ask EXSO to have the PODs review the attached revised version (which is based upon STARS 29504).

Thank you,
Morgan

From: Blanco, Patricia J [redacted]
Sent: Monday, September 21, 2020 11:07 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Cc: USCIS EXSO External [redacted]
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 9/29/20 - VIP Correspondence -Jason Bostic- H-2B - STARS 30633

Requestor Directorate/Office: ESEC

Due Date: **Tuesday, September 29, 2020**

Request: D2P review and signature.

Background: Jason Bostic wrote to Acting Secretary Wolf regarding the shortage of H-2B workers. DHS ESEC has requested D2P sign the final response.

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	
CBP:	

Attachments:

1. Incoming 8.27.20
2. Draft Response Bostic – (OCC edits) 9.16.20
3. Draft Response Bostic – (Final) LH 9.21.20

*********Please reply to all on this email ********

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat
[redacted]

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

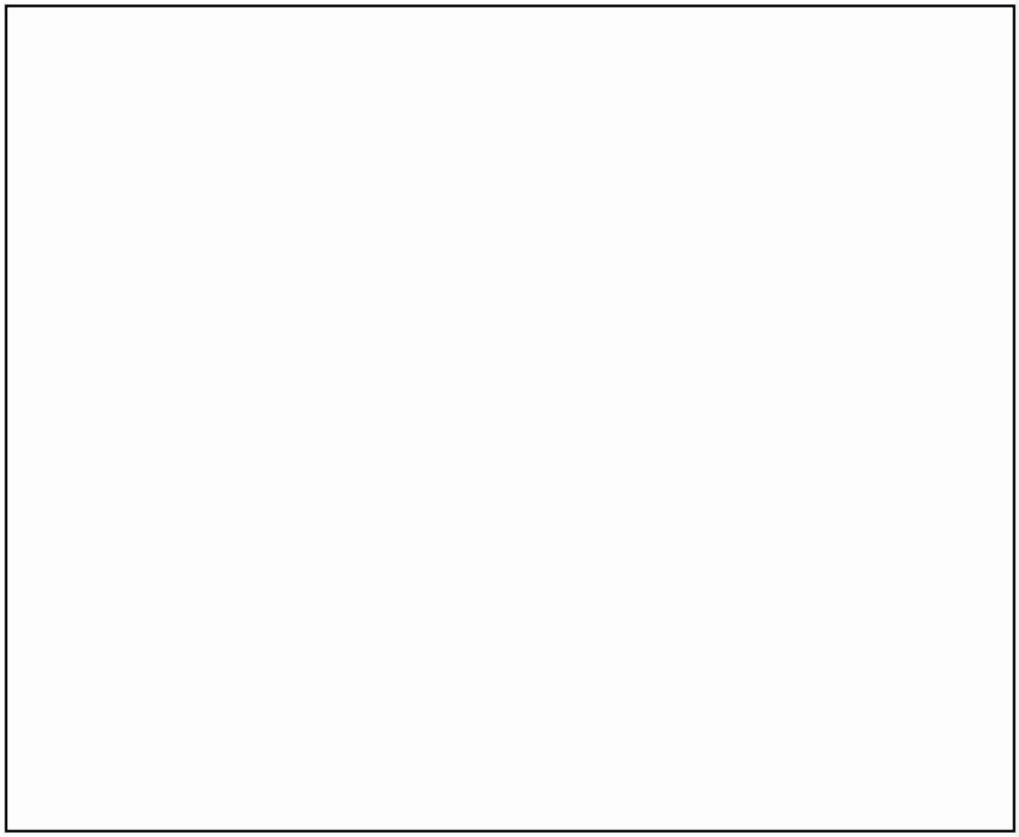
September XX, 2020

Mr. Jason Bostic
Vice President
West Virginia Coal Association
P.O. Box 3923
Charleston, West Virginia 25339

(b)(5)

Dear Mr. Bostic:

———Thank you for your August 27, 2020 letter regarding ~~shortage of~~ H-2B workers. Acting Secretary Wolf asked that I respond on his behalf. ~~.~~



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[redacted]

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Thank you again for your letter and your interest in this matter.

Sincerely,

[redacted]

AMERICAN OVERSIGHT

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

August 27, 2020

The Honorable Mike Pompeo
Secretary of State
2201 C St. NW
Washington, DC 20520

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Avenue
Washington, DC 20210

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Secretaries Pompeo, Scalia and Wolf:

The West Virginia Coal Association, as the trade organization representing 94 million tons of thermal and metallurgical coal produced in the Mountain State and 51,664 state residents employed directly by the coal industry, would like to make you aware of the potential negative impacts resulting from the President's Proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" dated June 22, 2020.

West Virginia is the nation's second largest coal producing state, the largest producer of metallurgical coal (an essential feedstock for the manufacturing of iron and steel) and the largest producer of coal destined for foreign exports. The West Virginia coal industry is directly responsible for over $5 billion in economic activity in the state, including $2 billion in wages and over $250 million in local and state tax revenues.

Many H-2B employers contract their services to coal companies in West Virginia to perform forestry work. These reforestation efforts are central to the coal industry's compliance with federal and state mining laws governing the timely reclamation of sites once coal removal has been completed. The federal Surface Mining Control & Reclamation Act (30 USC 1201, *et. seq.*) and the corresponding federal regulations promulgated by the federal Office of Surface Mining (30 CFR 700, *et seq.*) require mine operators to complete reclamation, including reforestation efforts, within established timeframes to avoid regulatory violations and/or delays in moving coal production activities to new, undisturbed areas.

The State of West Virginia maintains similar, but more specific timeframes and requirements, referred to as "contemporaneous reclamation" under the West Virginia Surface Coal Mining & Reclamation Act (W.Va. Code 22-3-1, et. *seq.*) and its implementing state rules at 38 CSR 2, *et.seq.*

AMERICAN OVERSIGHT

The inability to complete the timely reforestation efforts mandated by the federal and state regulatory programs places mine operators at risk for violations under those programs and could jeopardize continued coal production and employment since the ability to move active mining units to new areas is directly tied to the operator's completion of reclamation (including reforestation efforts) on the previously mined and disturbed areas. Additionally, reforestation is a central component of reclamation-returning formerly mined areas to their pre-disturbance form and providing the highest-level environmental protection and remediation to the natural environment and communities in which we operate.

The unrealized reclamation activity from the suspension of H-2B non-immigrant labor that performs forestry work is significant and could potentially impact the nation's supply of thermal coal, used to produce electricity and the domestic production of iron and steel if metallurgical coal supplies are interrupted.

The West Virginia Coal Association urges the Administration to consider an exemption for H-2B guest workers that perform forestry work and reforestation / reclamation efforts at coal mining operations.

Respectfully Submitted,

Jason Bostic
Vice President

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

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From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
To: Kilgore, Garry R
Cc: Weinhold, Kasey D; Dove, Stephen W (Steve); Carter, Constance L
Sent: September 17, 2020 1:55 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (Final) 9.14.20.docx, Revised Draft Response Neal (Final) 9.11.20.docx

CLEARED
On behalf of the Director's Office, I clear USCIS' response to DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 (with edits). A clean version is attached. (Garry will load the signed version to STARS). Thanks!

From: Kilgore, Garry R
Sent: Thursday, September 17, 2020 1:07 PM
To: Bailey, Morgan
Cc: Weinhold, Kasey D; Dove, Stephen W (Steve)
Carter, Constance L
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Good afternoon ma'am,

D2P cleared without edits. I don't have a scanner to attach the signed coversheet.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

From: Bailey, Morgan
Sent: Wednesday, September 16, 2020 10:47 PM
To: Kilgore, Garry R; Dove, Stephen W (Steve)
; Carter, Constance L
Cc: Weinhold, Kasey D
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Please print a for D2P to review. Please use this version – it has edits.

Thanks!

From: Weinhold, Kasey D
Sent: Monday, September 14, 2020 12:01 PM
To: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

AMERICAN OVERSIGHT

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(b)(6)

Hi Morgan,

Minor edits. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: | **Mobile:** **E-mail:**

From: Blanco, Patricia J
Sent: Monday, September 14, 2020 11:35 AM
To: DDCLEAR
Cc: USCIS Directors Office Clearance-EXSO >; USCIS Exec Congr Corresp
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 19, 2020**

Request: Director's Office clearance for the draft response to Chm. Neal +1 prior to going to the DHS Component clearance.

Background: Chairman Neal +1 wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052. DHS ESEC has requested OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA:

Attachments:

1. Incoming 8.4.20
2. Draft Enclosure (Redline) 9.14.20
3. Revised Draft Response Neal (Final) 9.11.20
4. Draft Enclosure (Final) 9.11.20

*******Please reply to all on this email ******

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat

AMERICAN OVERSIGHT

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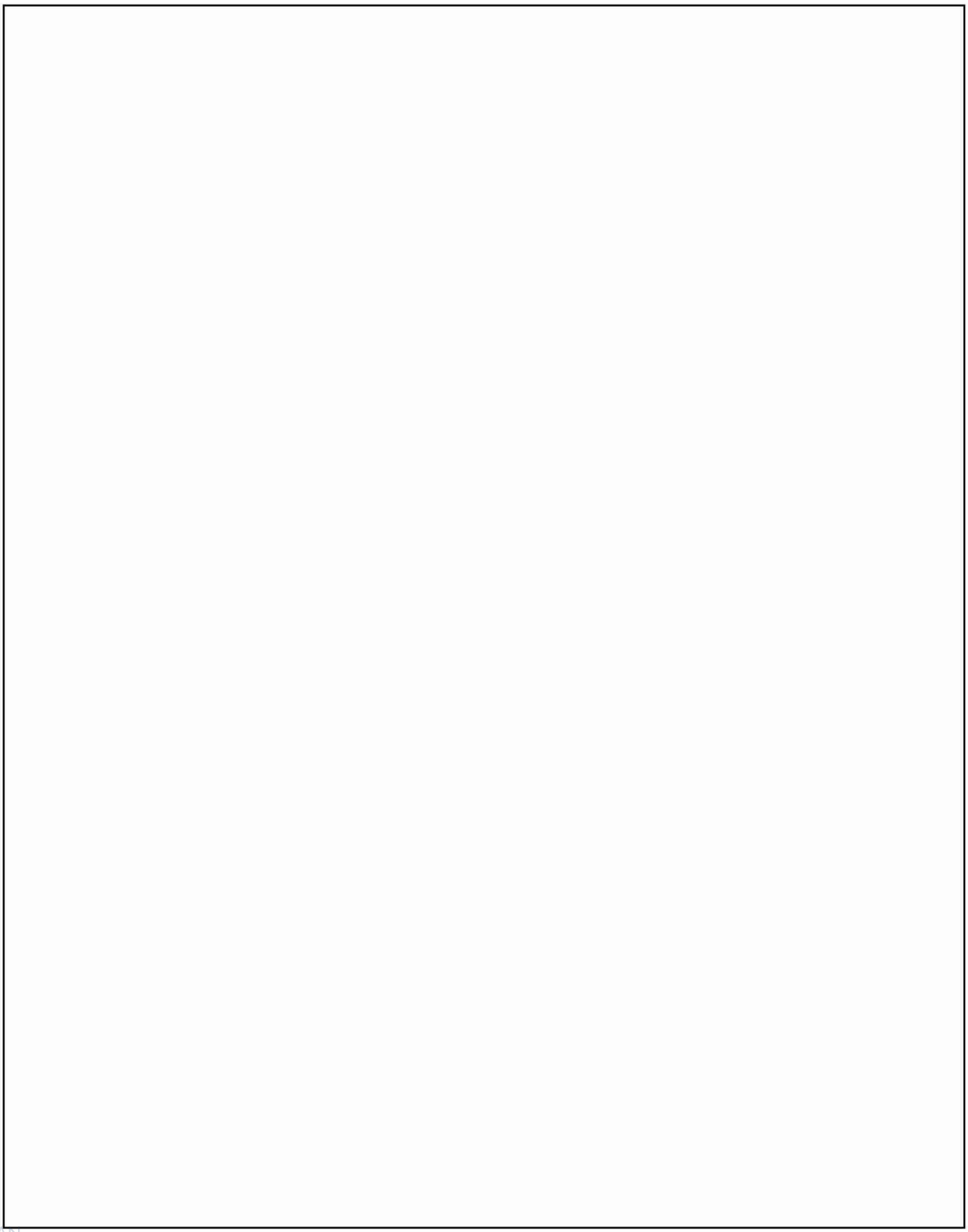
U.S. Citizenship and **Immigration Services' Response to Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. **How will the "substantial public health benefit/secondary effect"** exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

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4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

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[redacted]

[7] https://protect-public.hhs.gov/.

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DHS-20-2156-A-000816

Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

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Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter expressing support for H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.



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(b)(5)

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

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(b)(6)

From:
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
To: Kilgore, Garry R; Dove, Stephen W (Steve); Carter, Constance L
Cc: Weinhold, Kasey D
Sent: September 16, 2020 9:47 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (Final) 9.14.20.docx

Please print a for D2P to review. Please use this version – it has edits.

Thanks!

From: Weinhold, Kasey D [redacted]
Sent: Monday, September 14, 2020 12:01 PM
To: Bailey, Morgan [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Hi Morgan,

Minor edits. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] | **Mobile:** [redacted] | **E-mail:** [redacted]

From: Blanco, Patricia J [redacted]
Sent: Monday, September 14, 2020 11:35 AM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Clearance-EXSO [redacted]>; USCIS Exec Congr Corresp [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 19, 2020**

Request: Director's Office clearance for the draft response to Chm. Neal +1 prior to going to the DHS Component clearance.

Background: Chairman Neal +1 wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052. DHS ESEC has requested OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

(b)(6)

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Attachments:

1. Incoming 8.4.20
2. Draft Enclosure (Redline) 9.14.20
3. Revised Draft Response Neal (Final) 9.11.20
4. Draft Enclosure (Final) 9.11.20

*********Please reply to all on this email ********

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat

(b)(6)

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U.S. Citizenship and **Immigration Services' Response to Chairman Neal's August 4, 2020 Letter**

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[redacted]

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Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

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Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR
To: Piateski, Jennifer E
Sent: September 15, 2020 12:38 PM (UTC-05:00)
Attached: H-1B Registration Selection by Wage Levels IFR Clean.docx

Hi Jenny – Last week, we agreed to concurrently review the H-1B Selection IFR with the PODs because OP&S is behind schedule with delivering it to DHS OGC for further review. It is 80 pages.

OP&S will be able to obtain and incorporate any major concerns or edits from the Director's Office at the same time that it is considering feedback from other offices. The document was printed for Joe on Friday. Rob will circle back to discuss any major issues or concerns with Joe once the comments and edits are complete.

I just wanted to ensure that you have awareness.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. ####-20; DHS Docket No. USCIS-####-####]

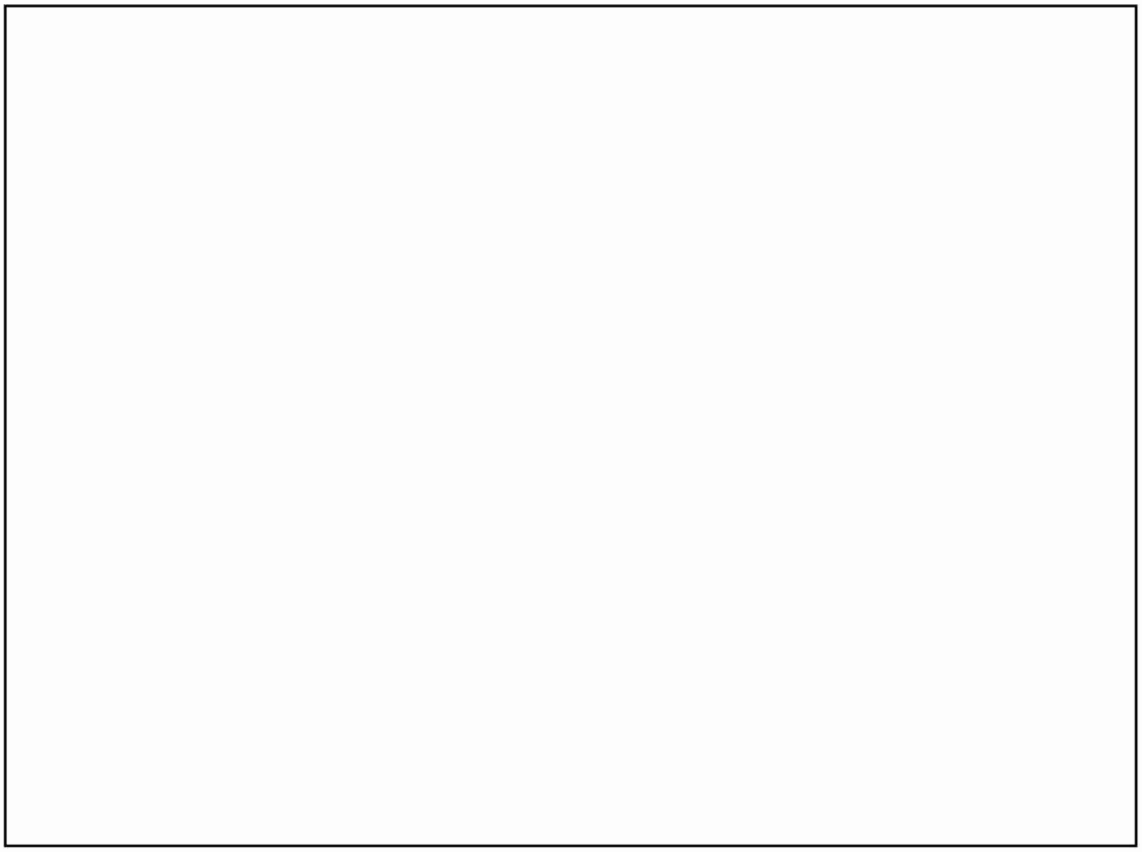
RIN 1615-AC61

Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions

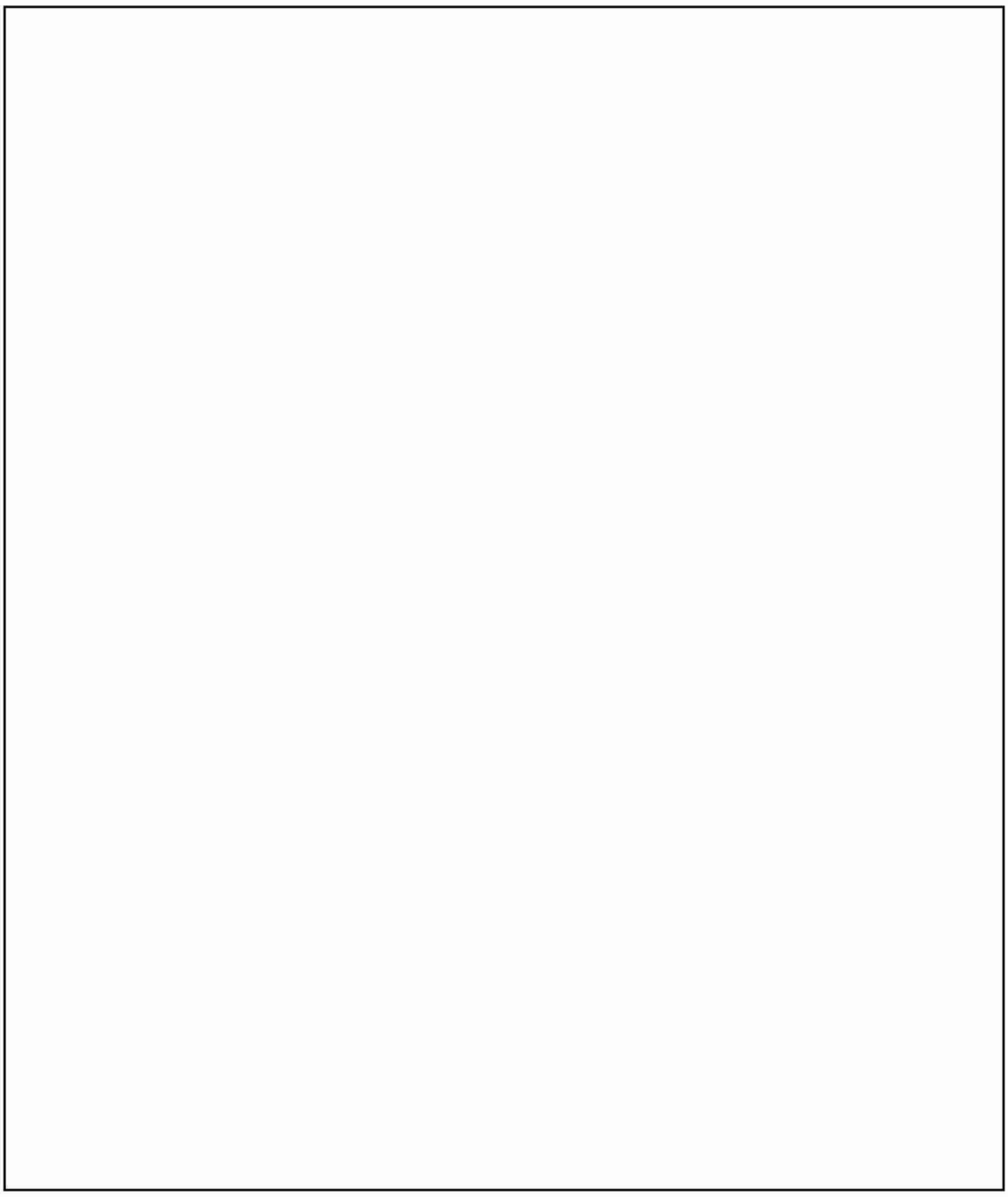
AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim Final Rule.

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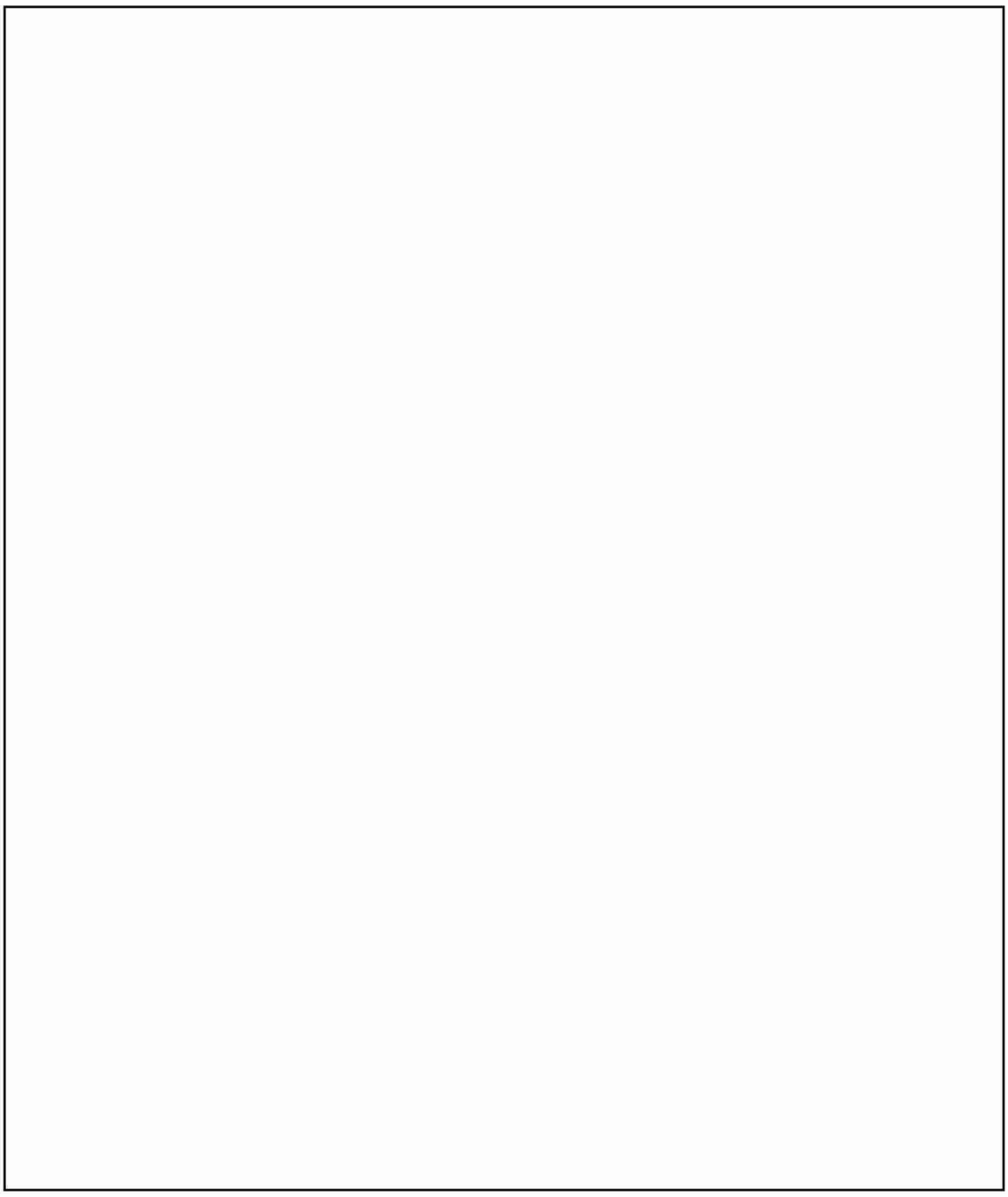


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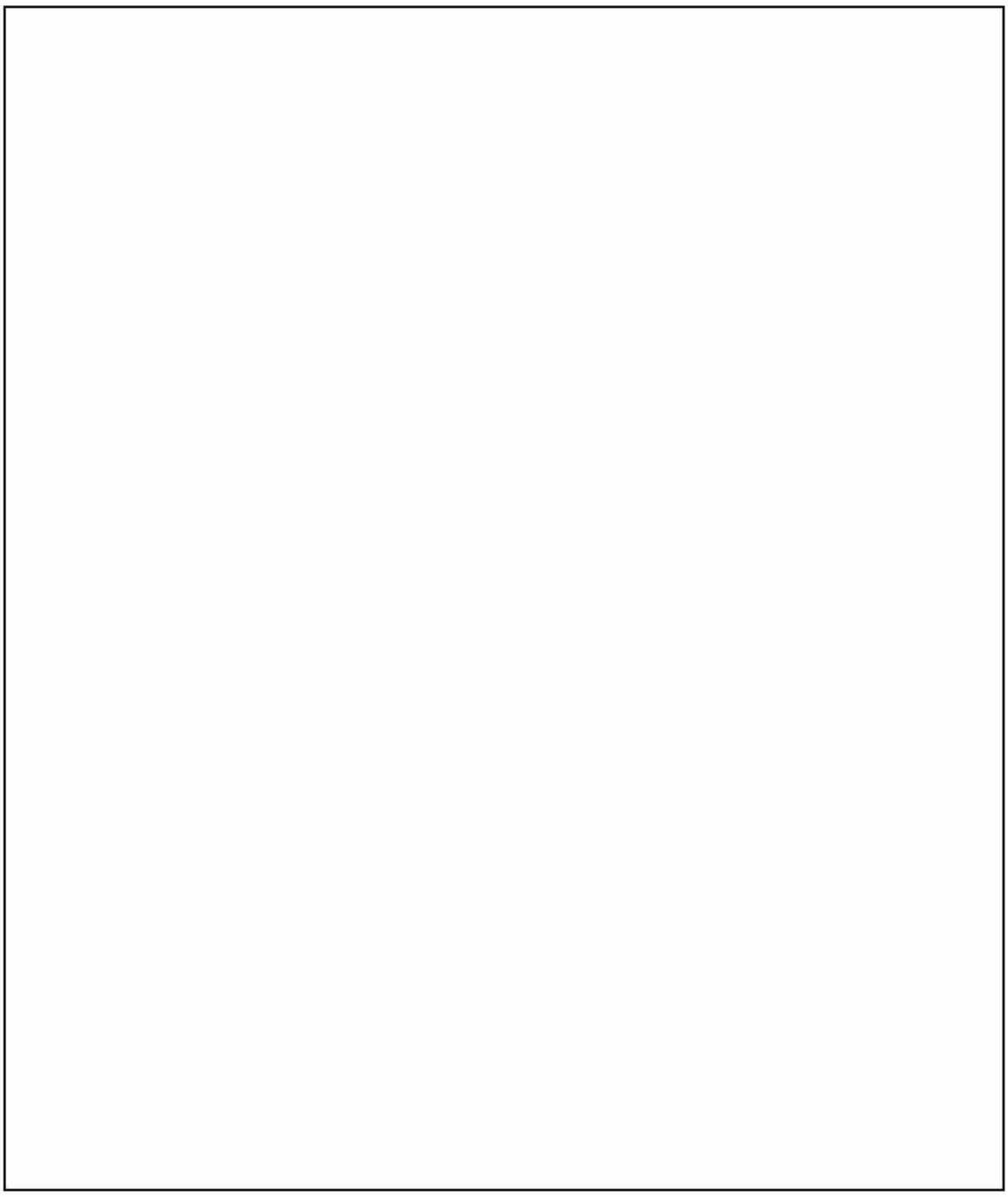
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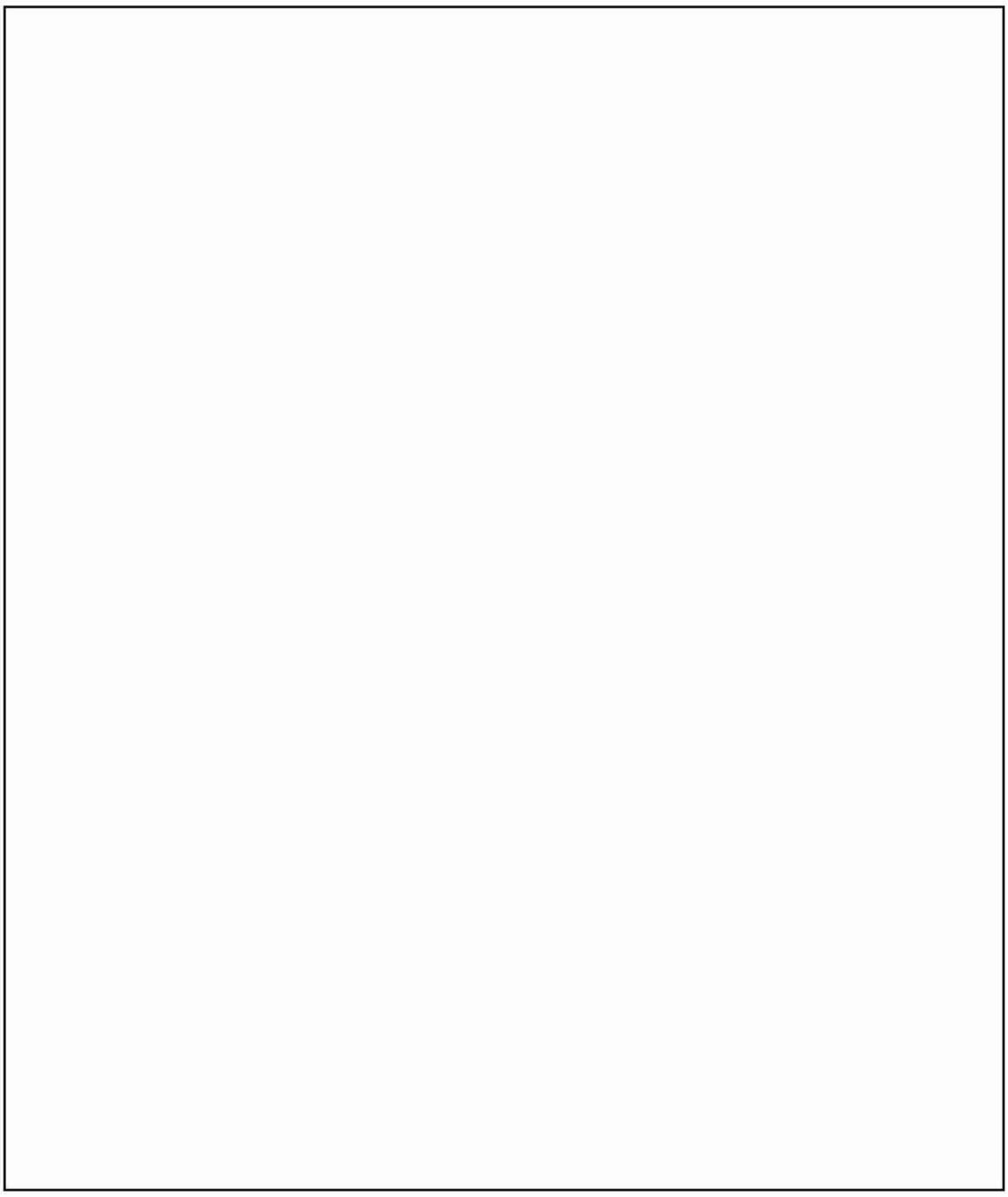
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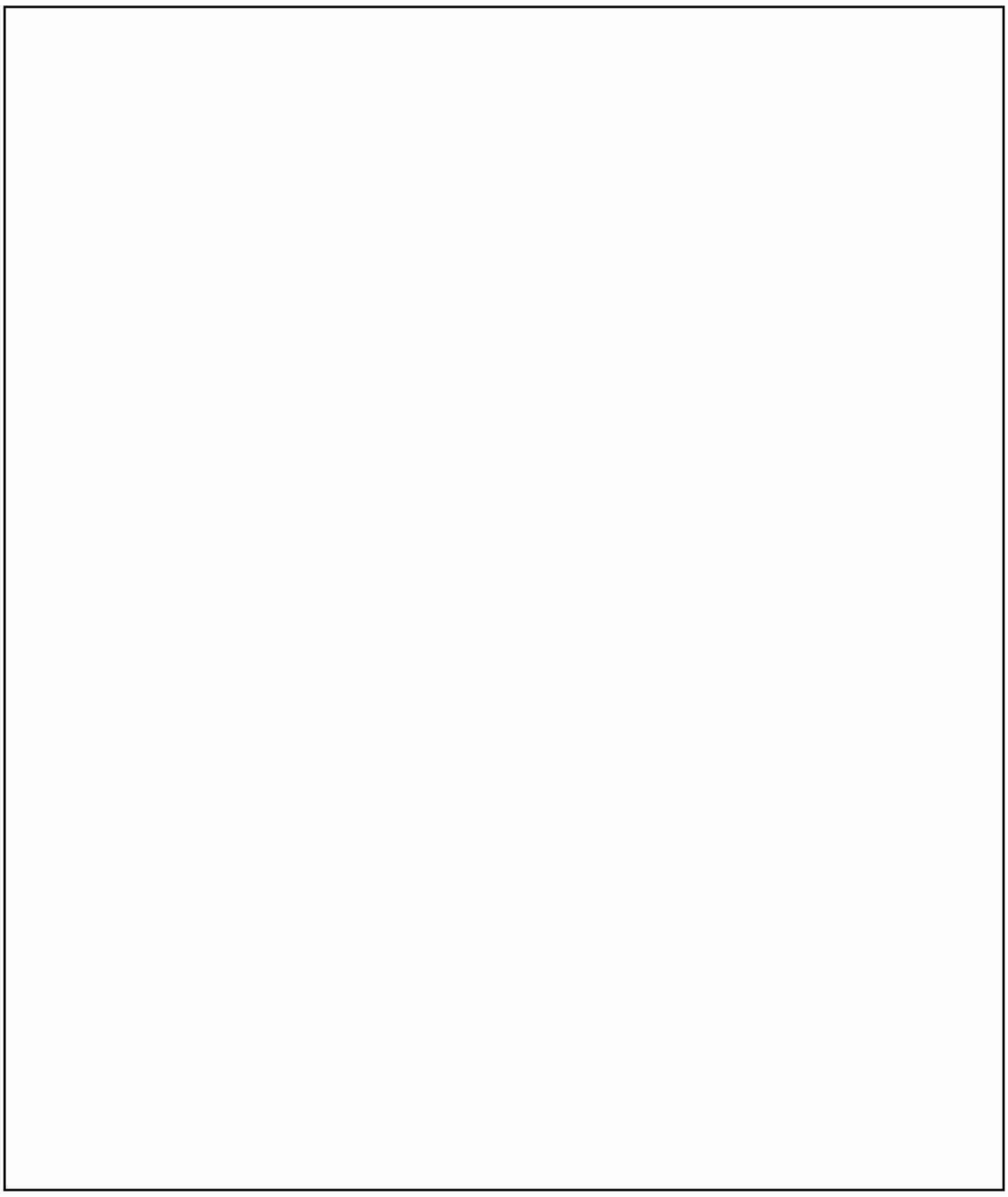
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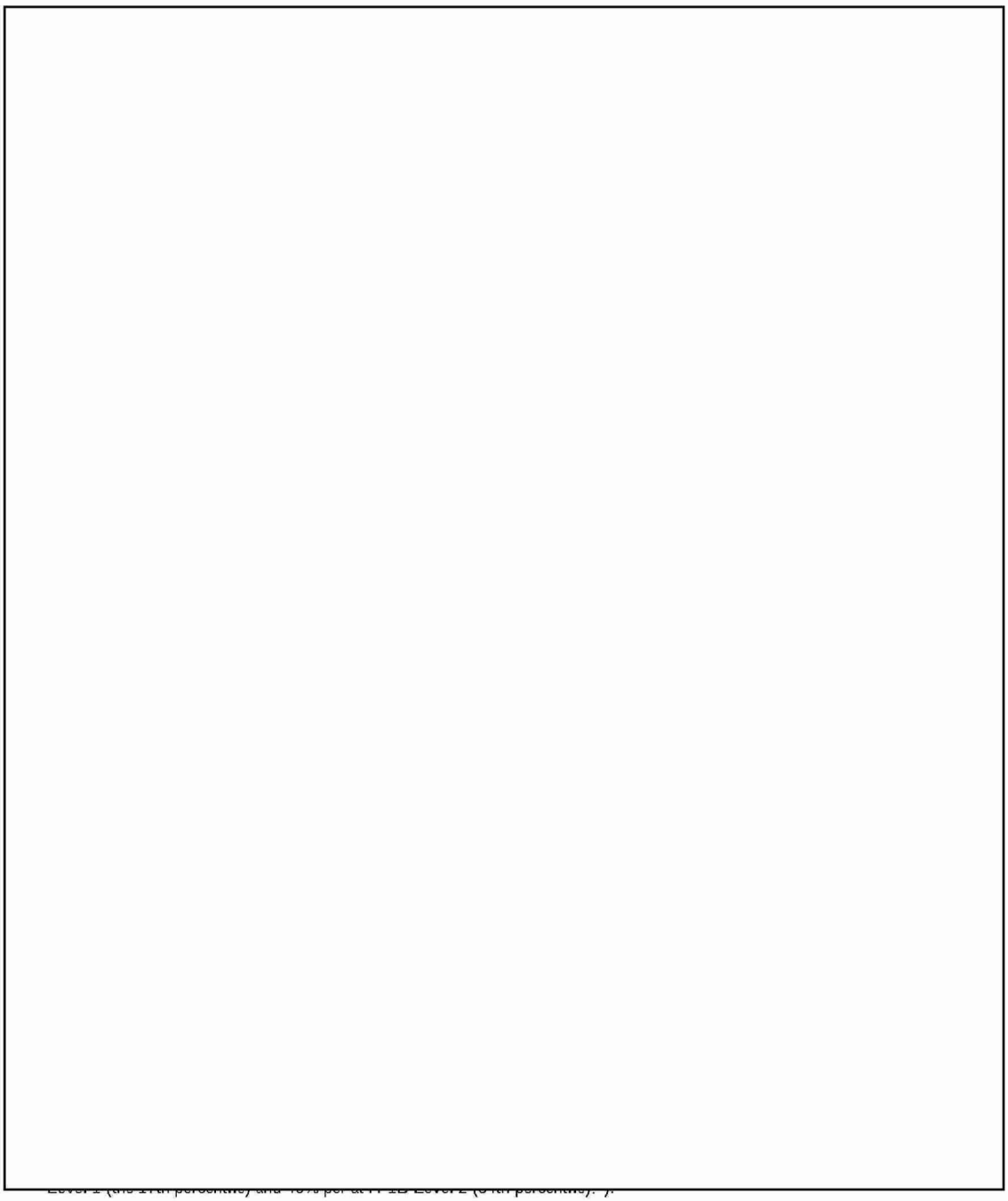
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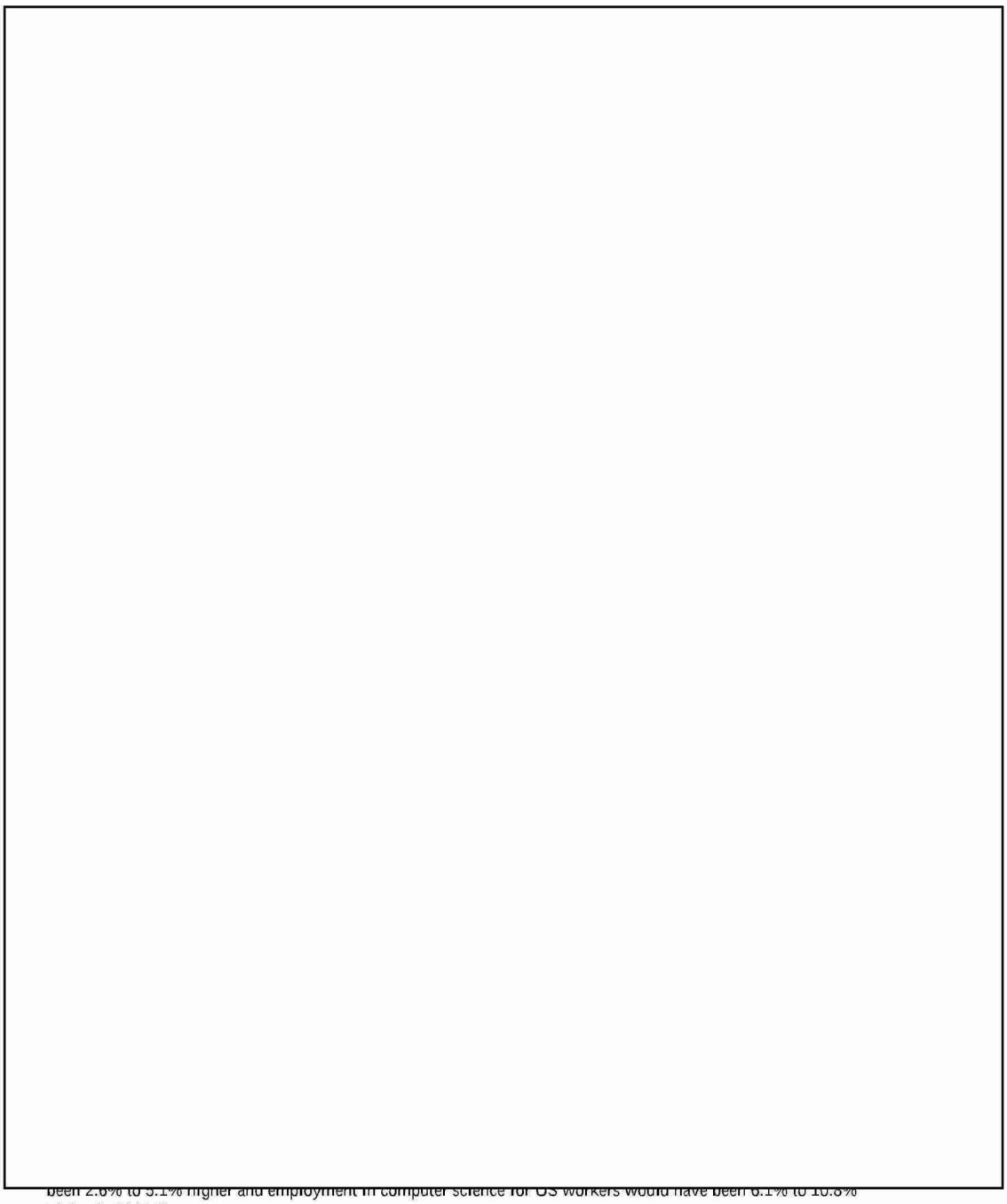
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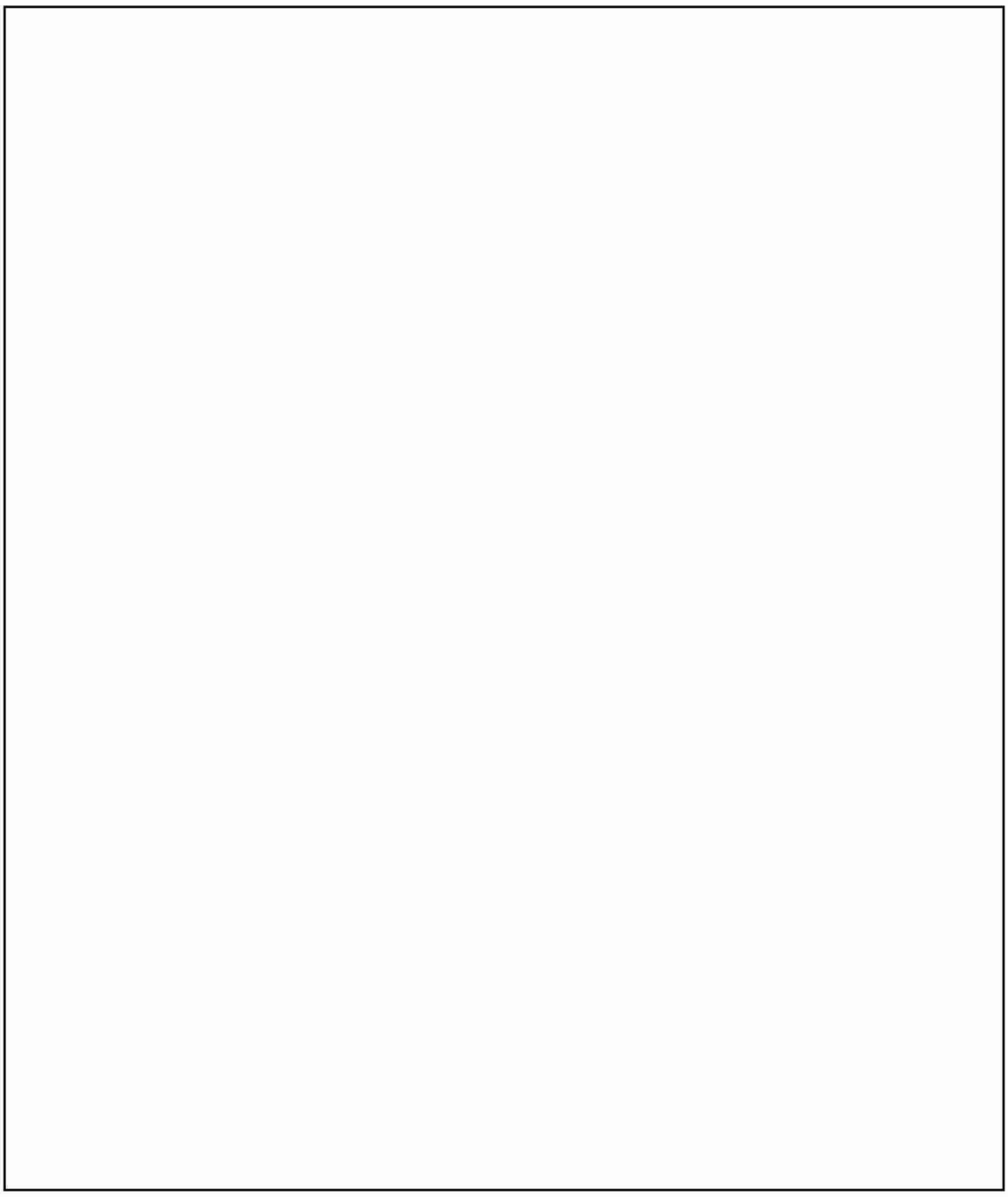
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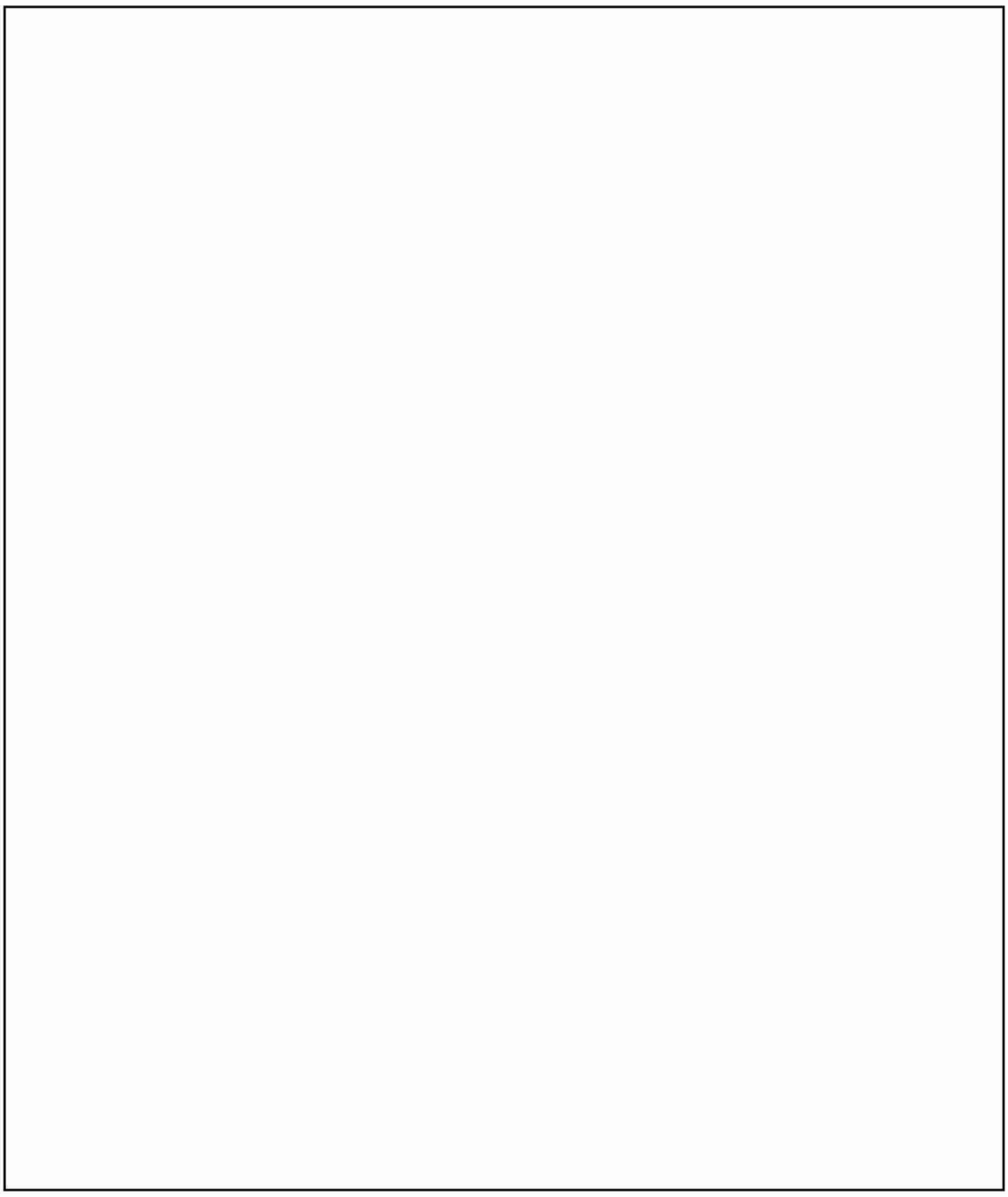
been 2.6% to 5.1% higher and employment in computer science for US workers would have been 6.1% to 10.8% higher in 2001.").

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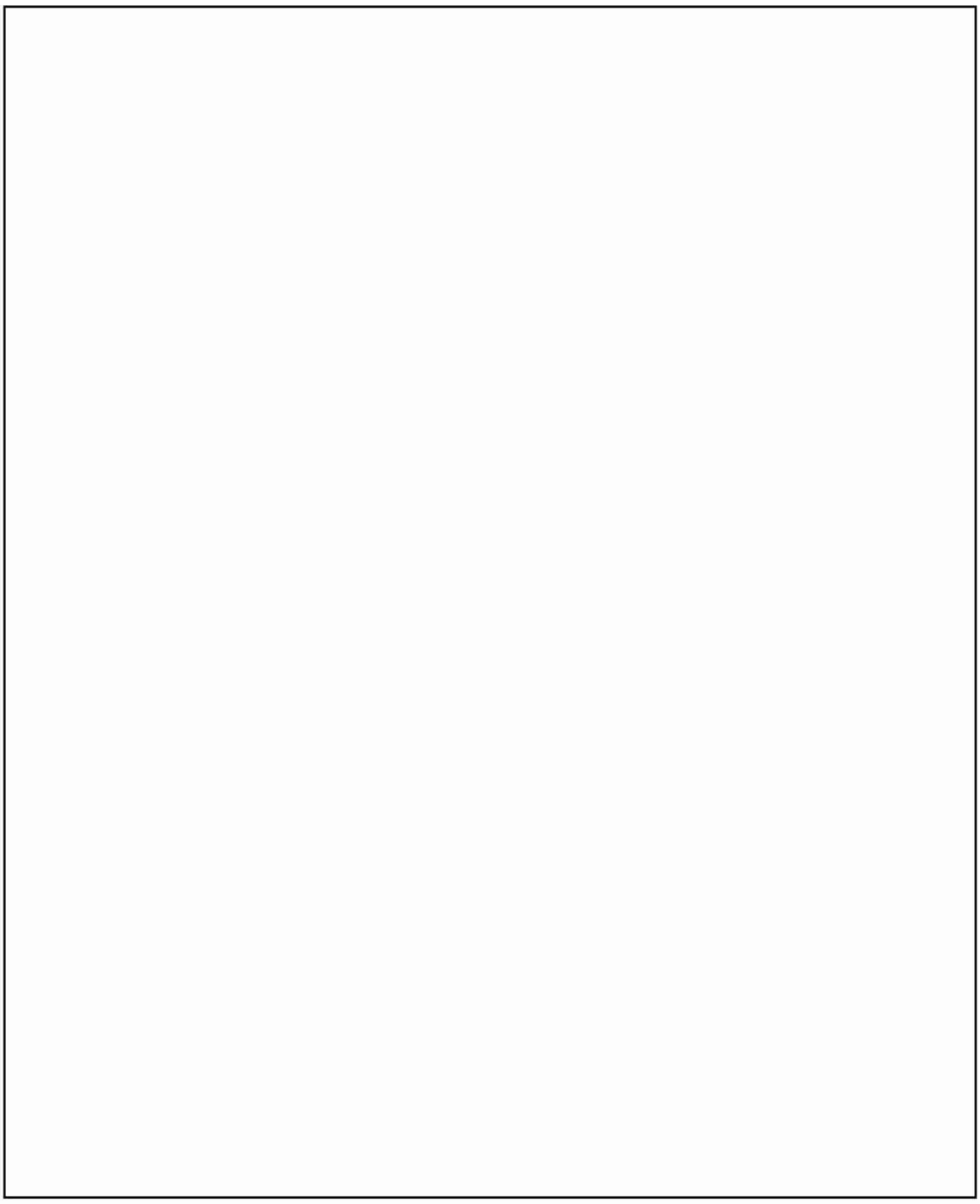
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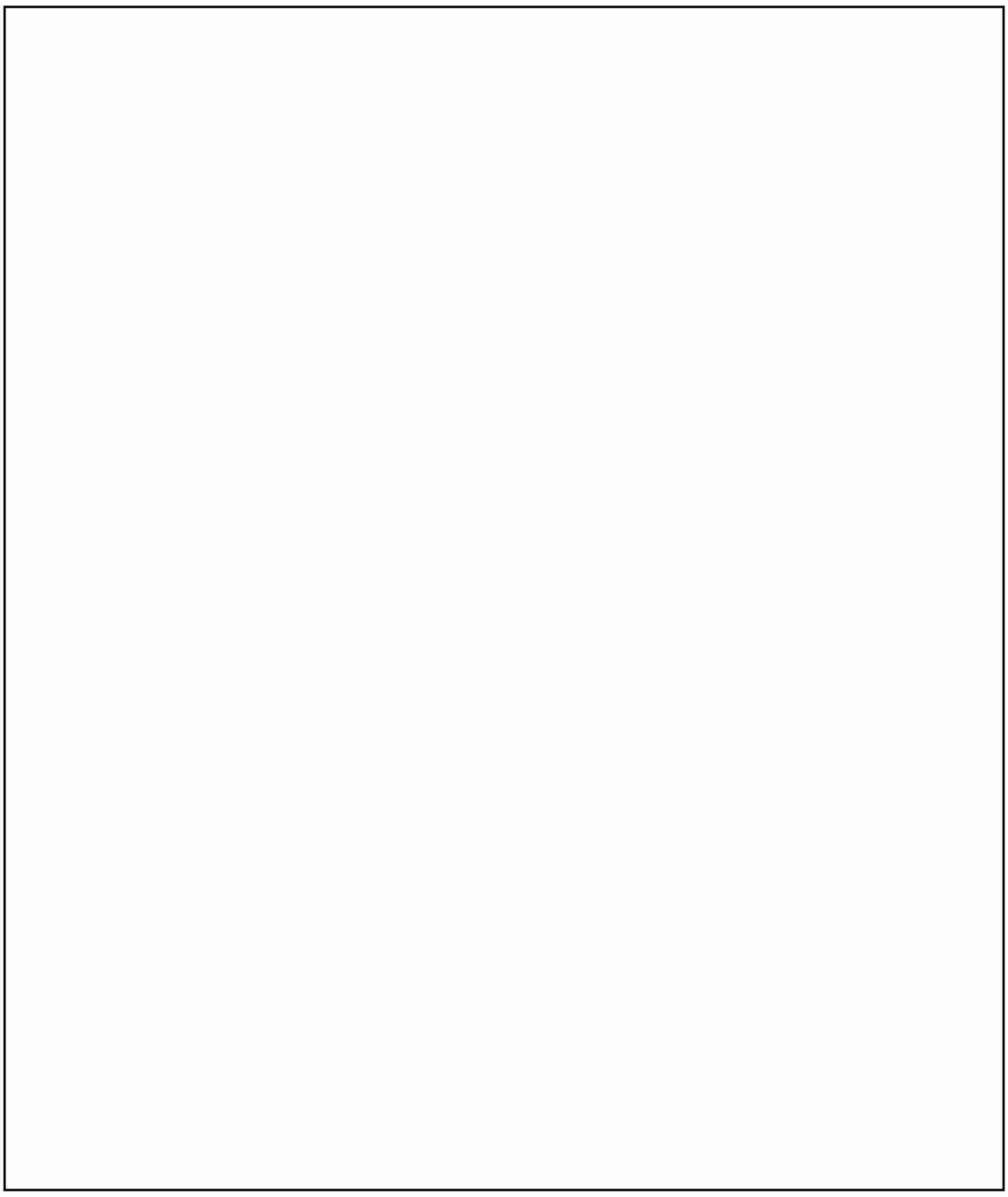
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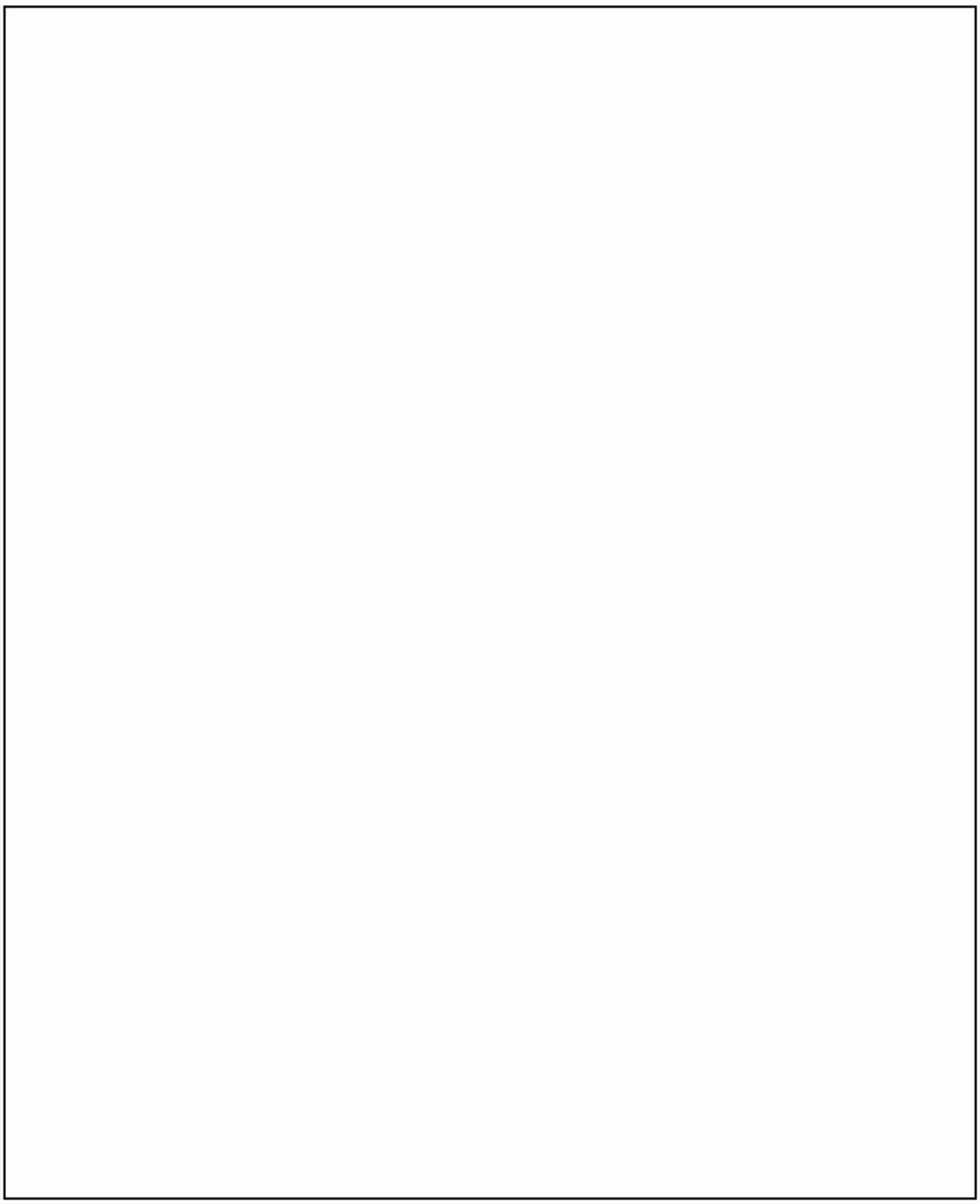
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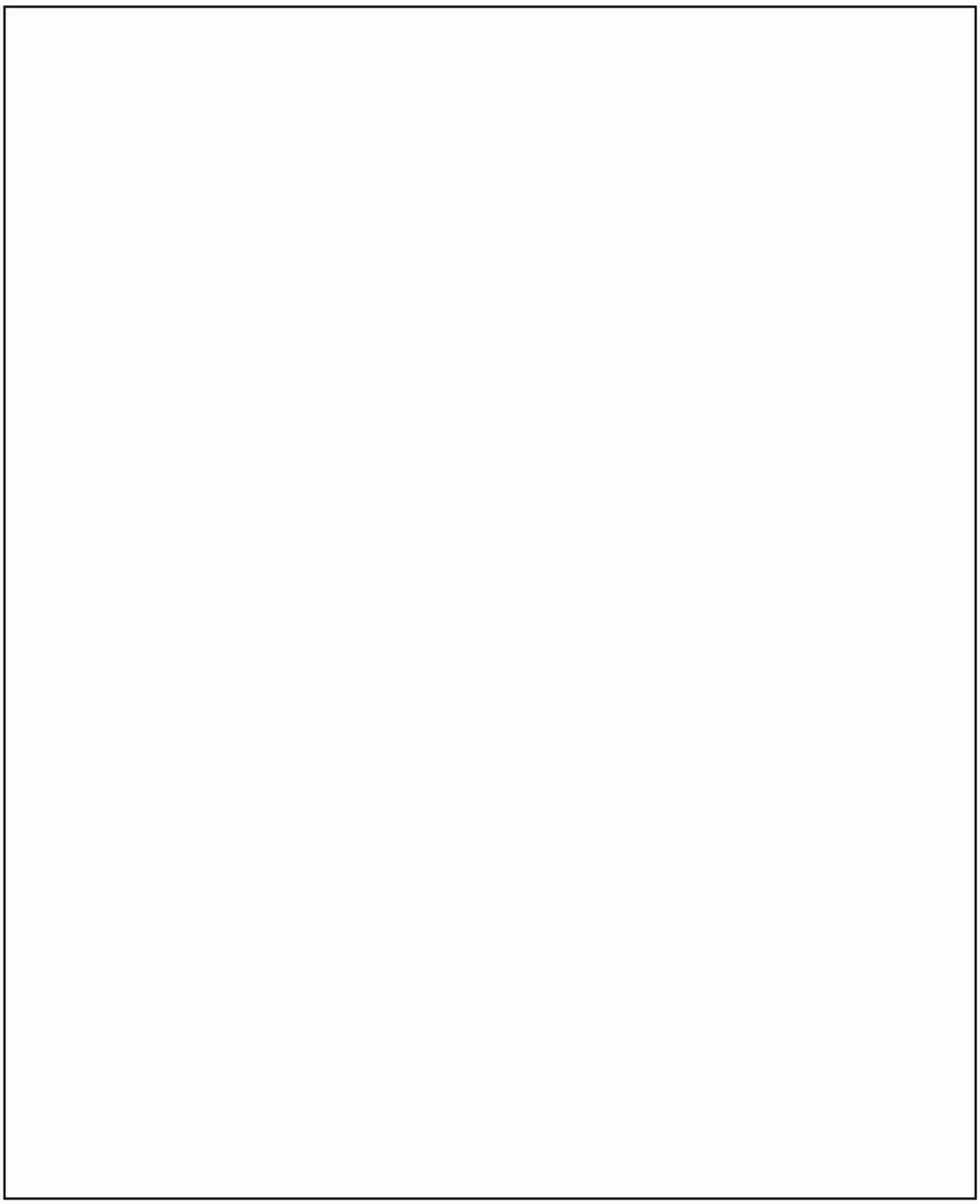
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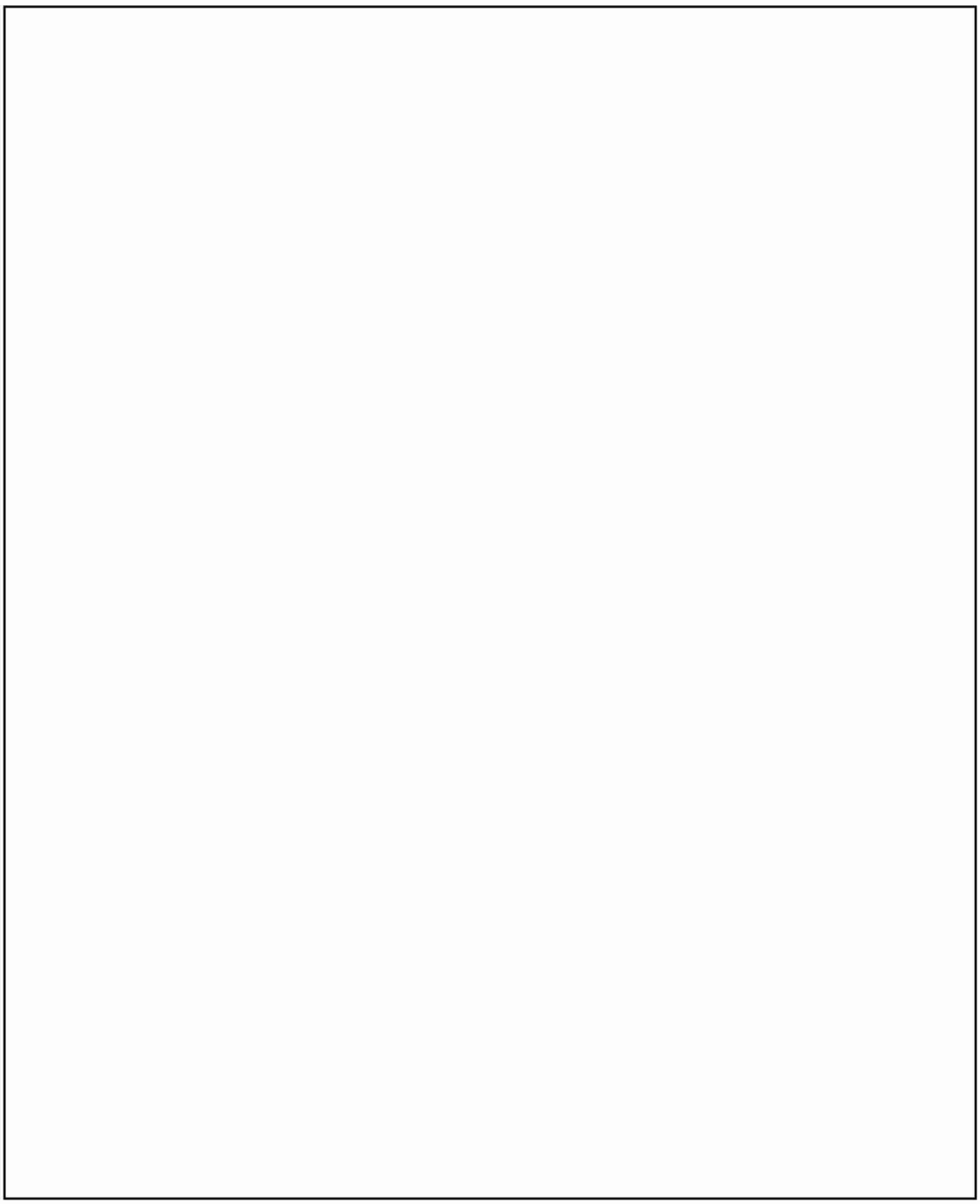
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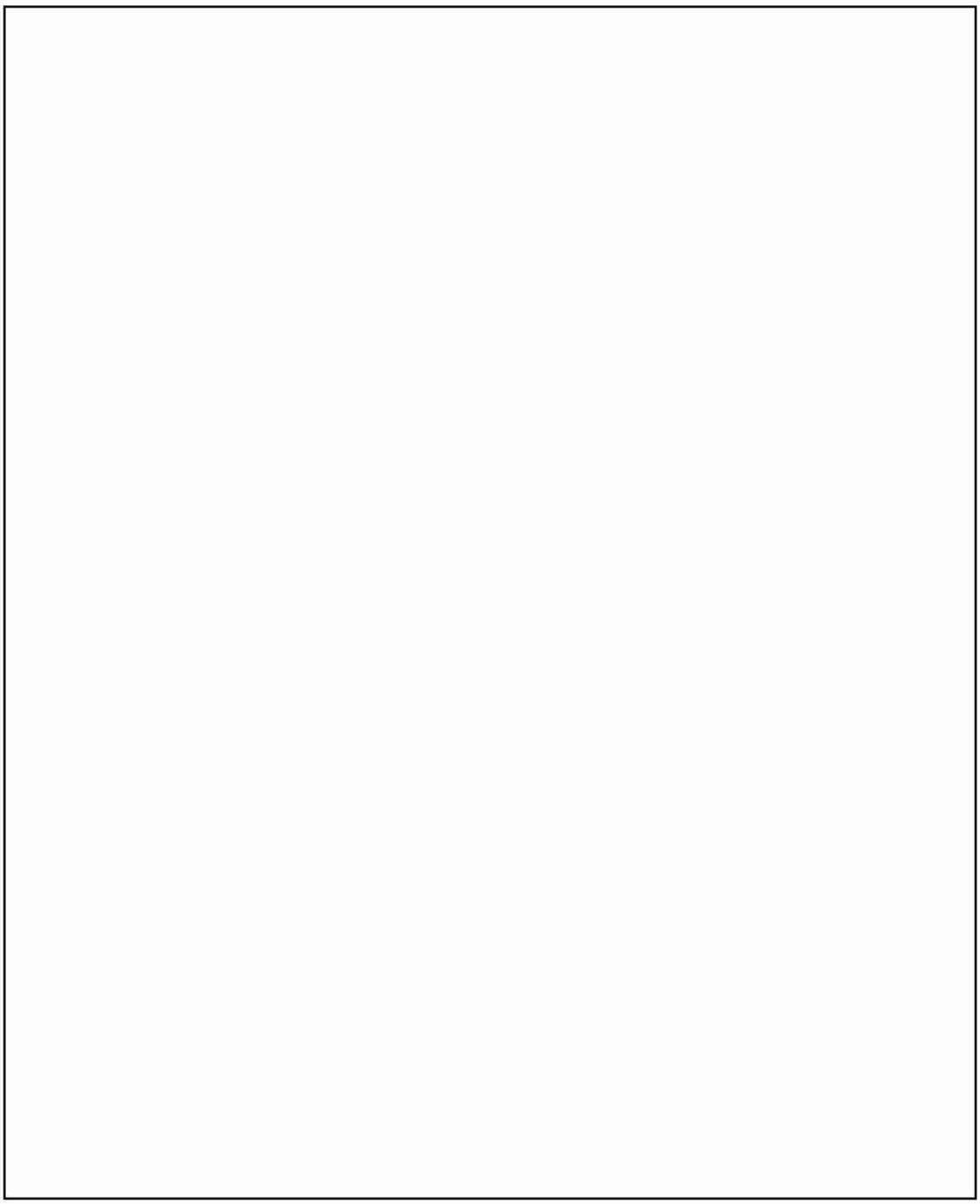
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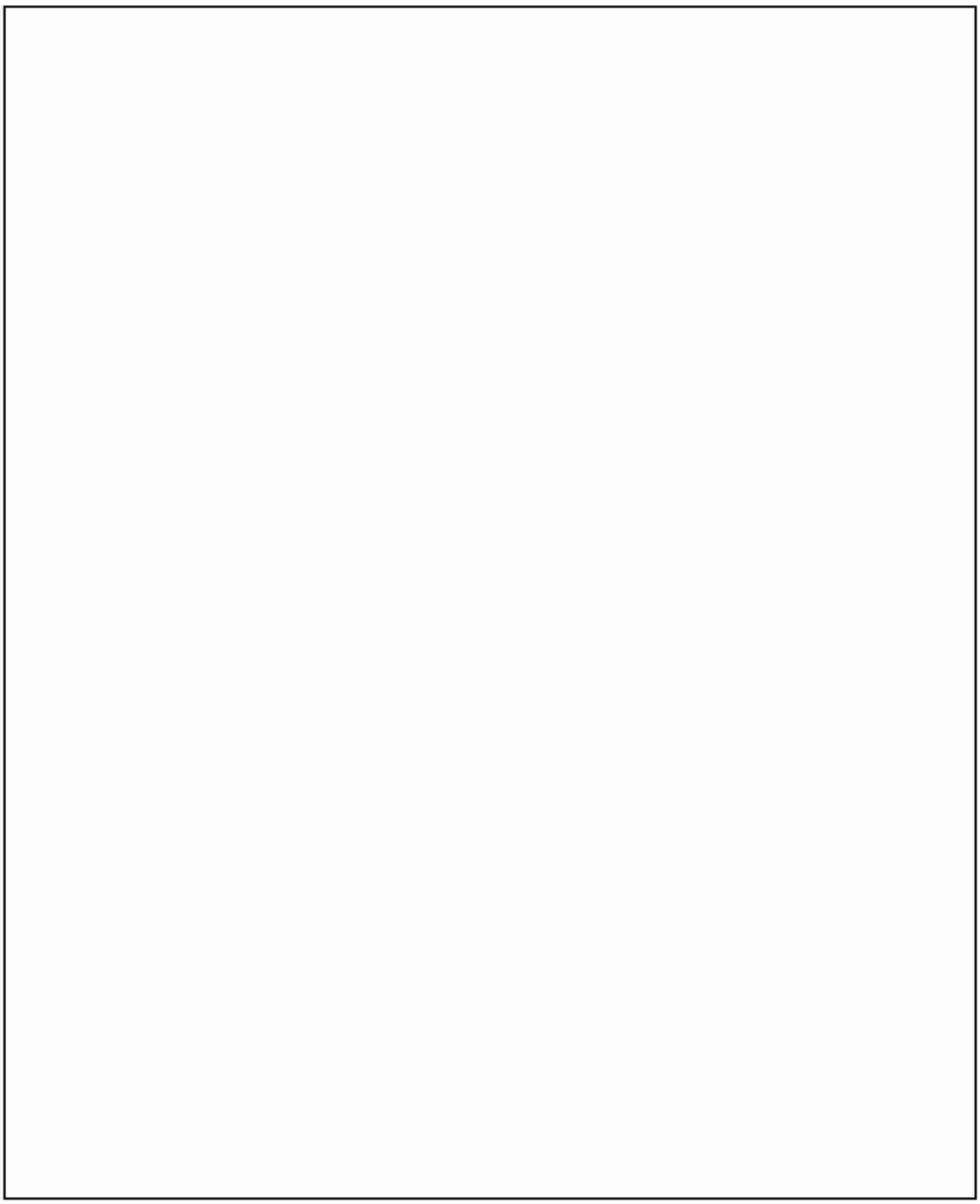
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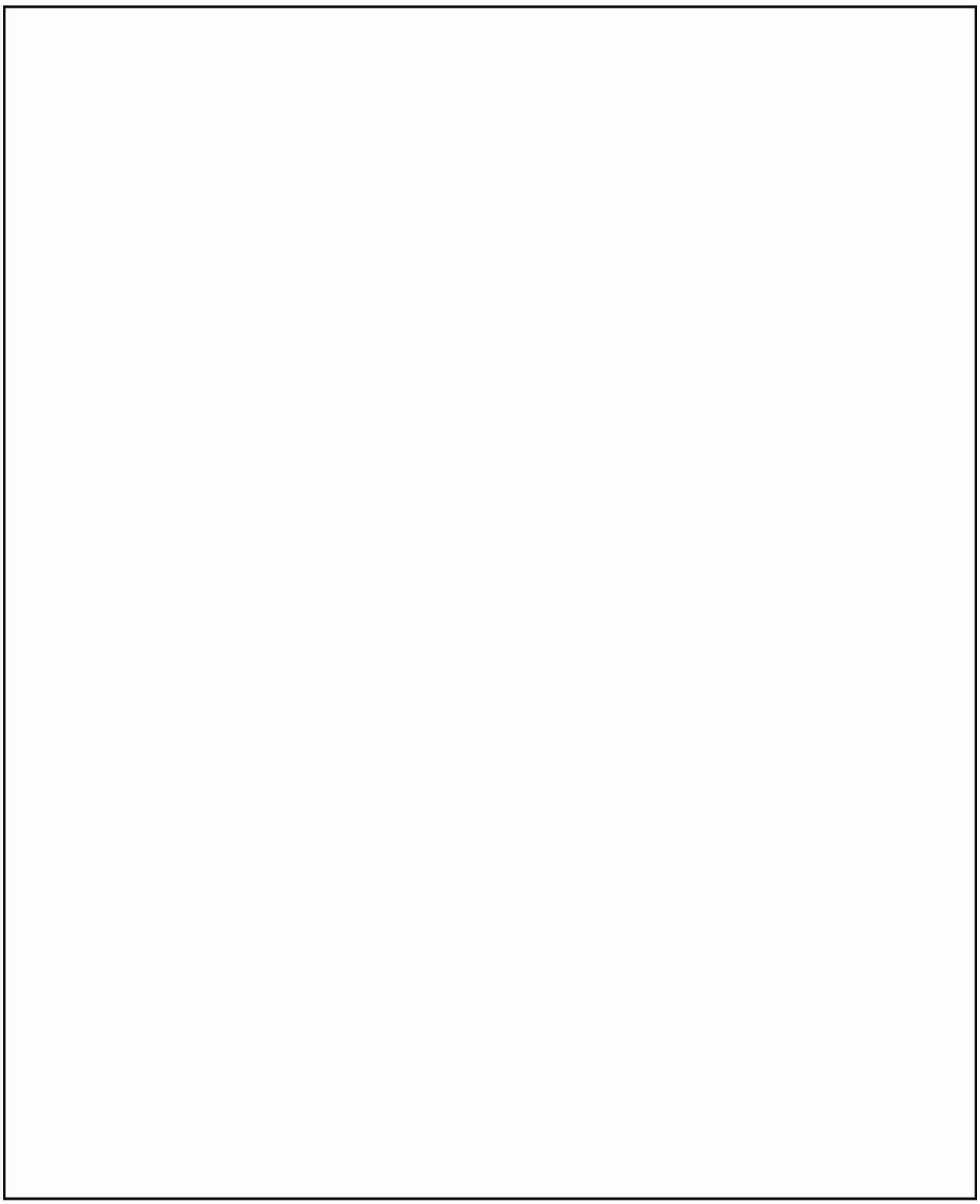
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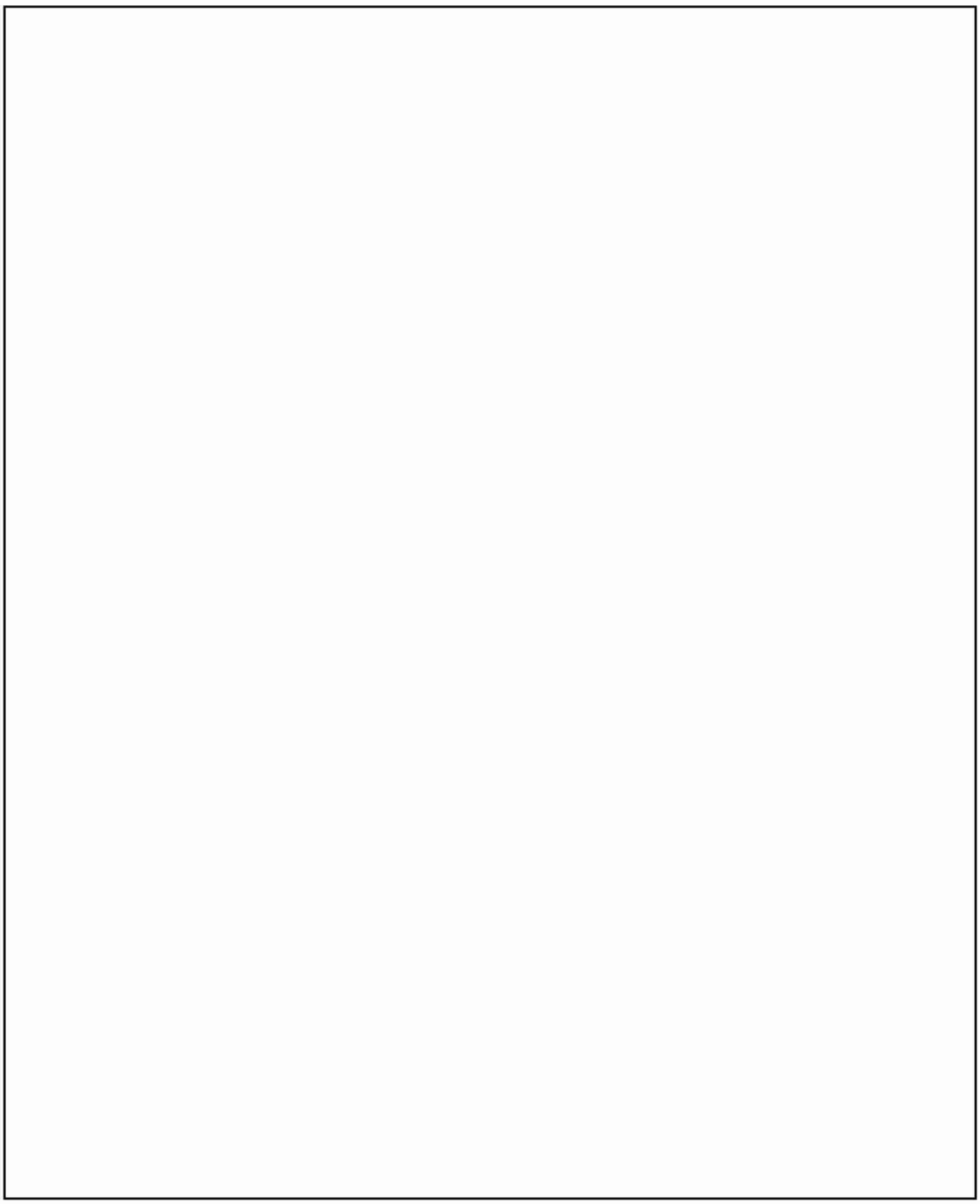
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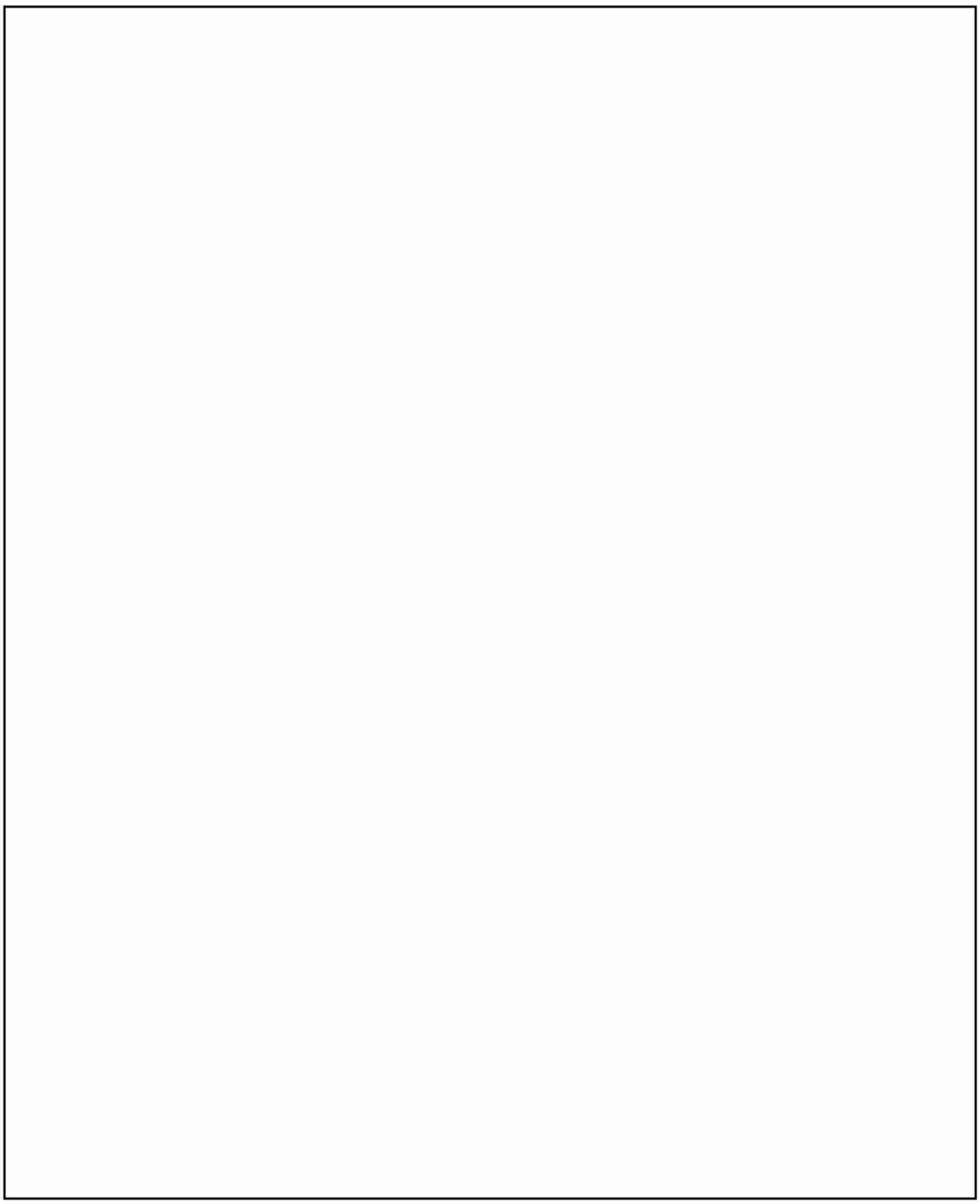
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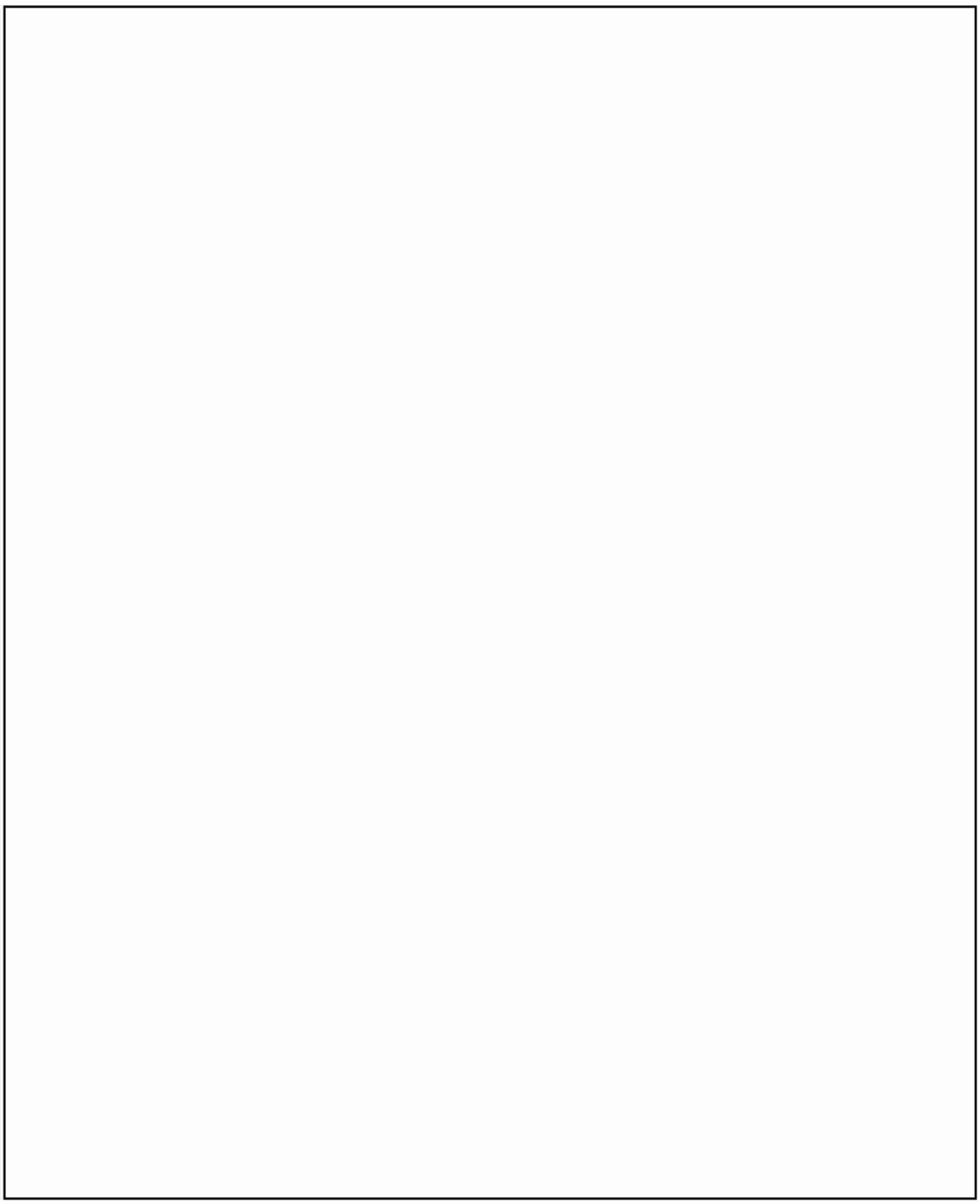
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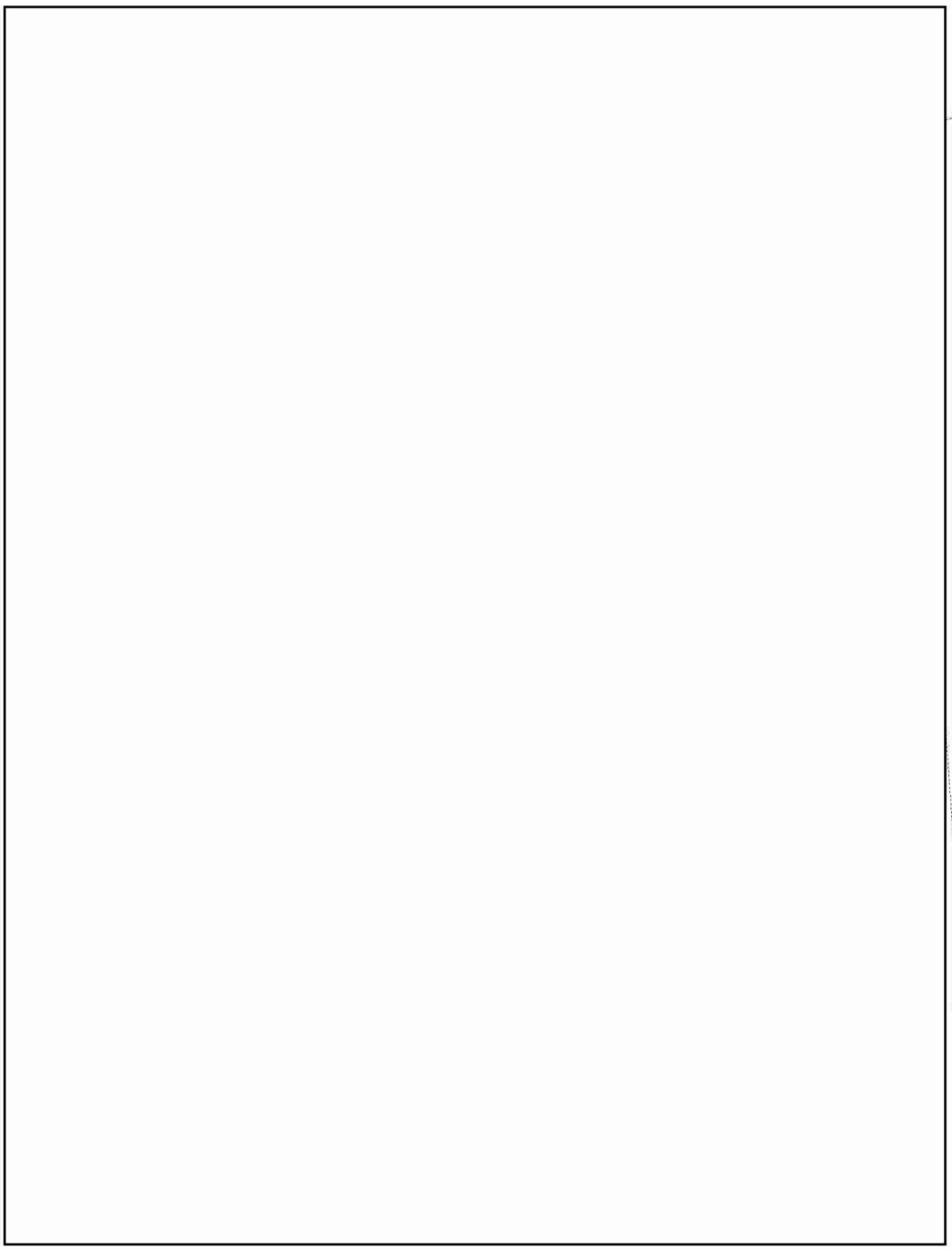
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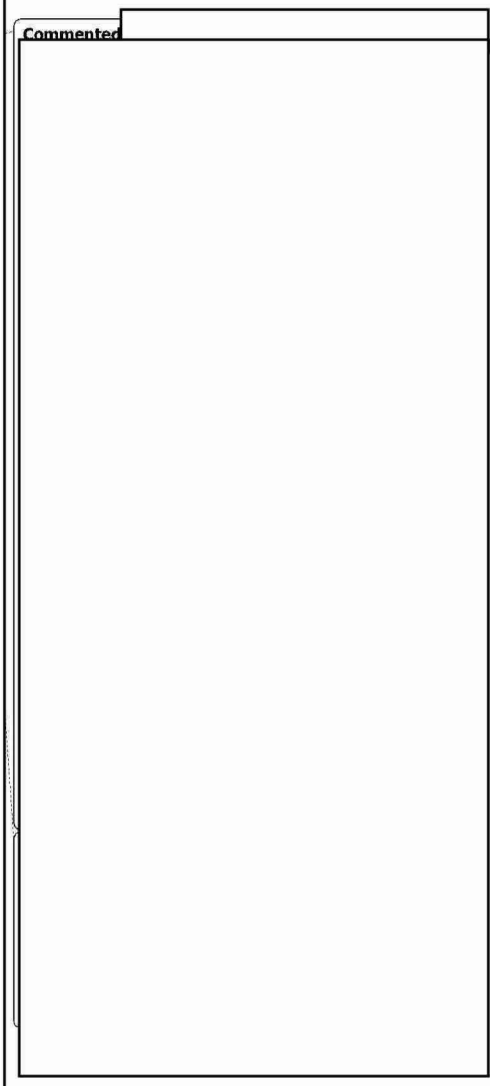


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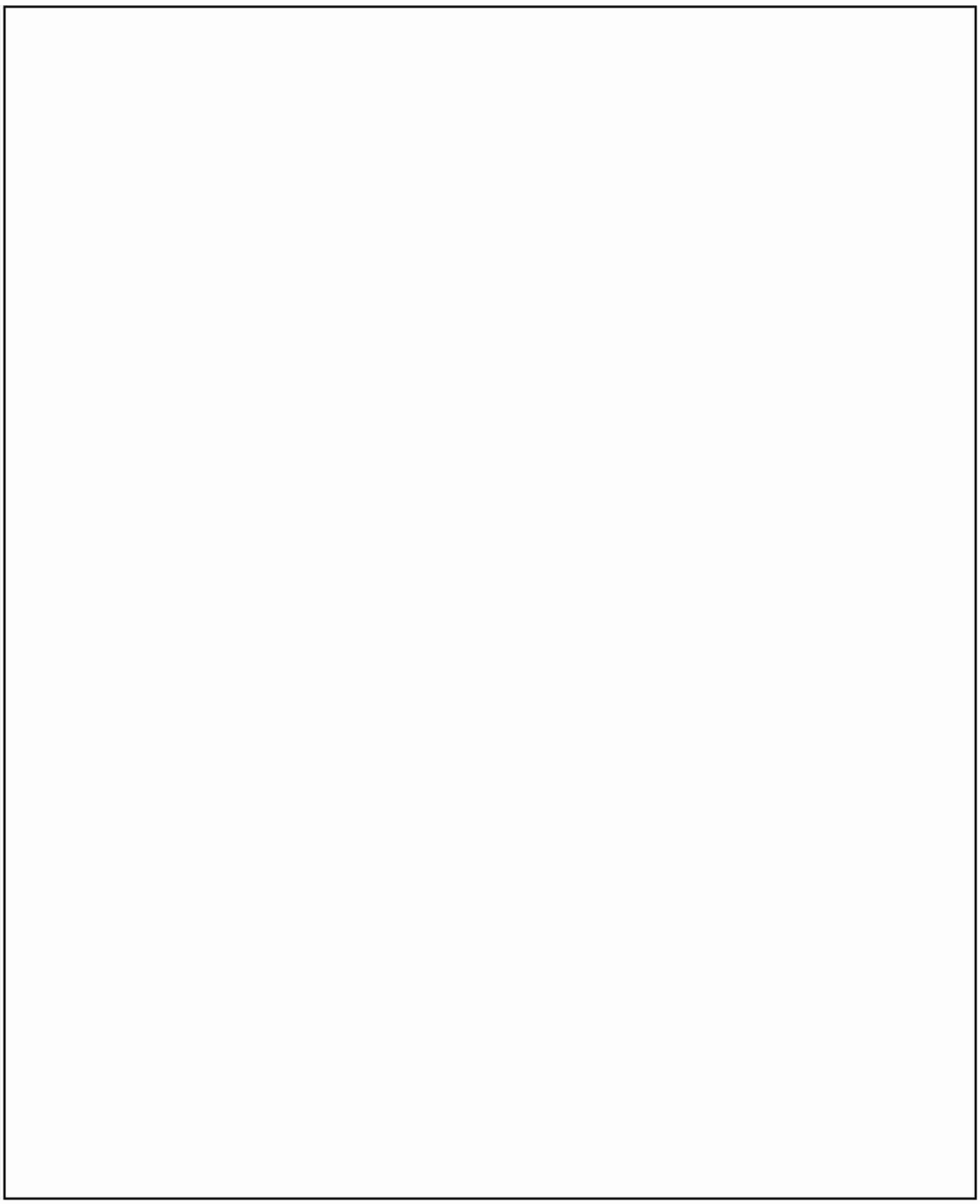


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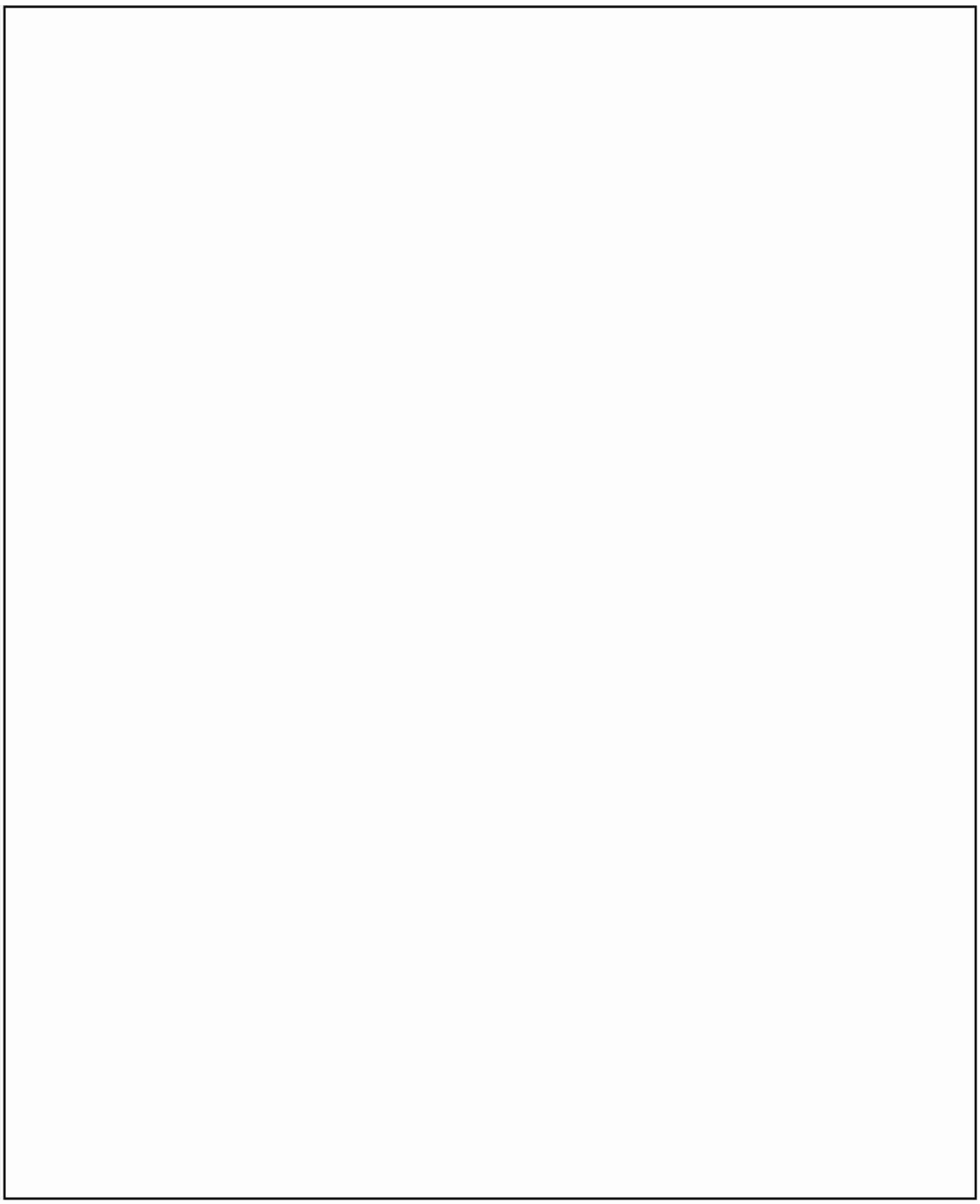
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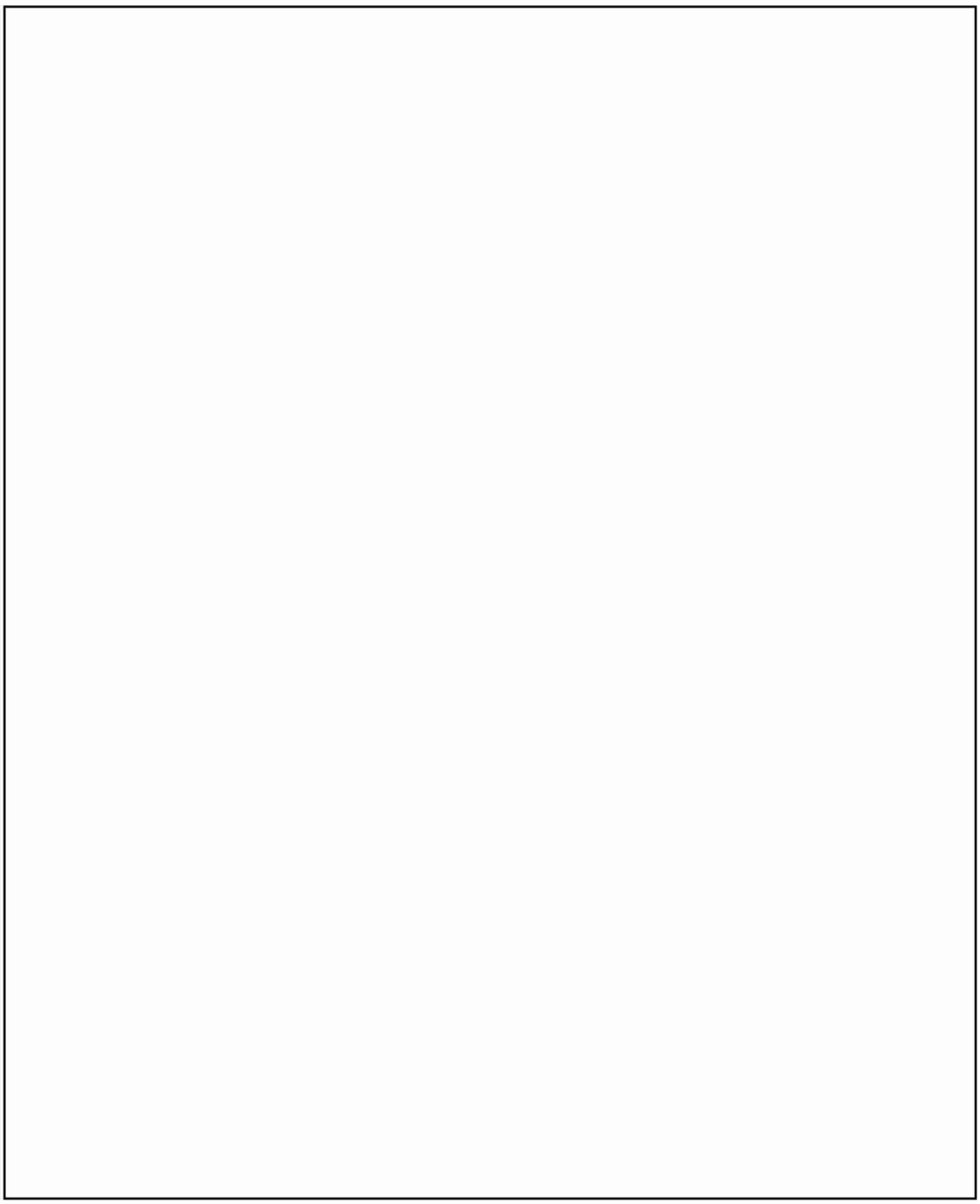
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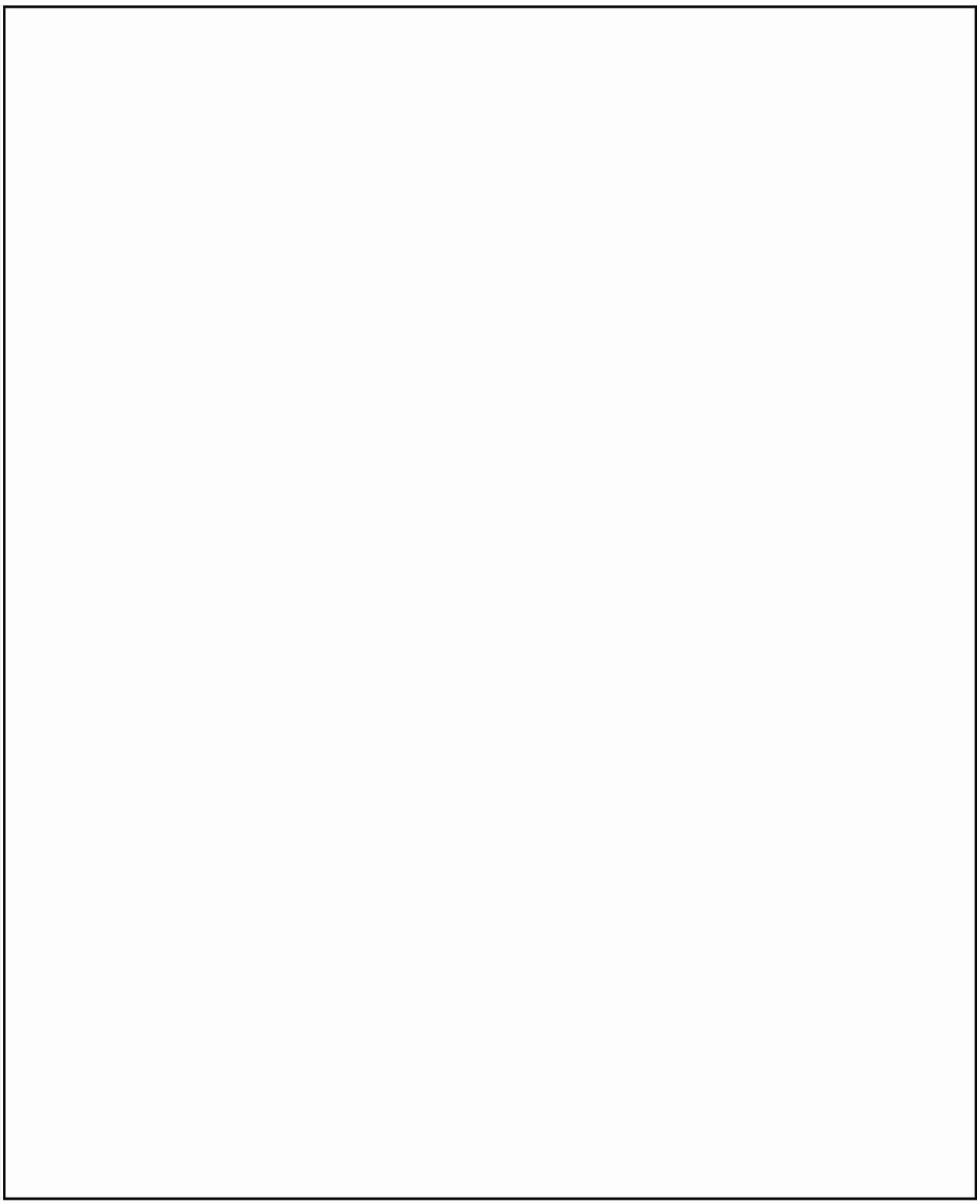
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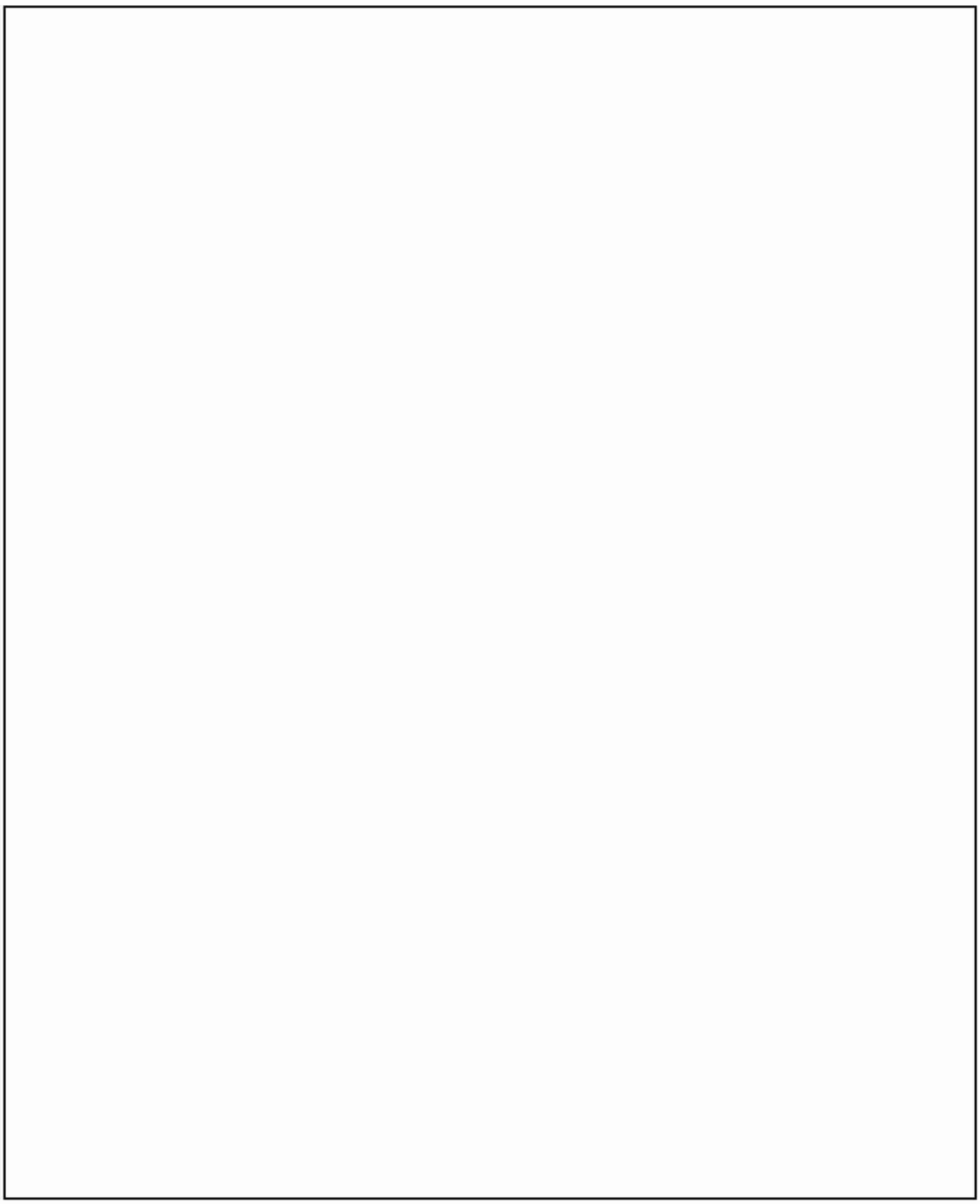
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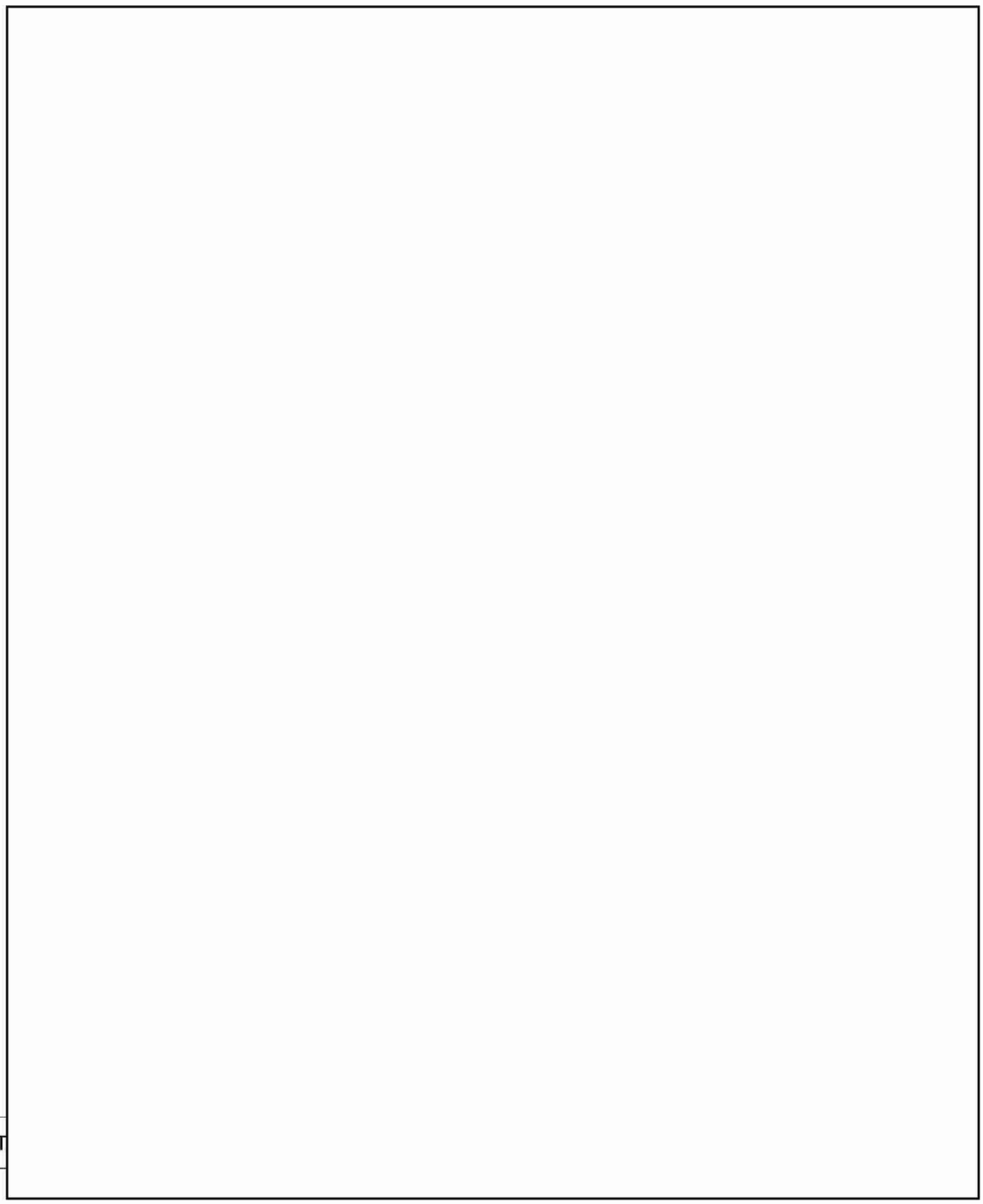
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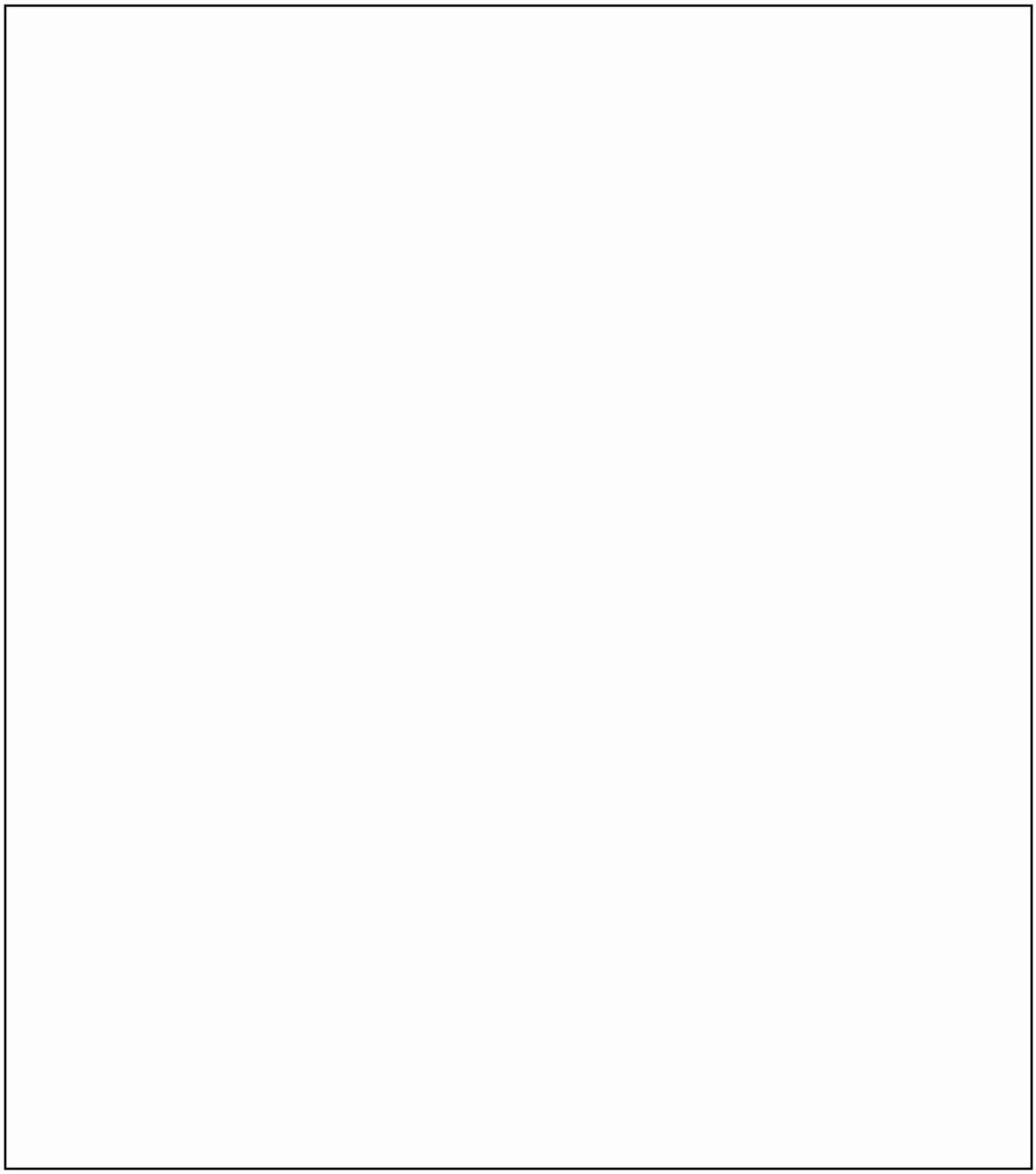


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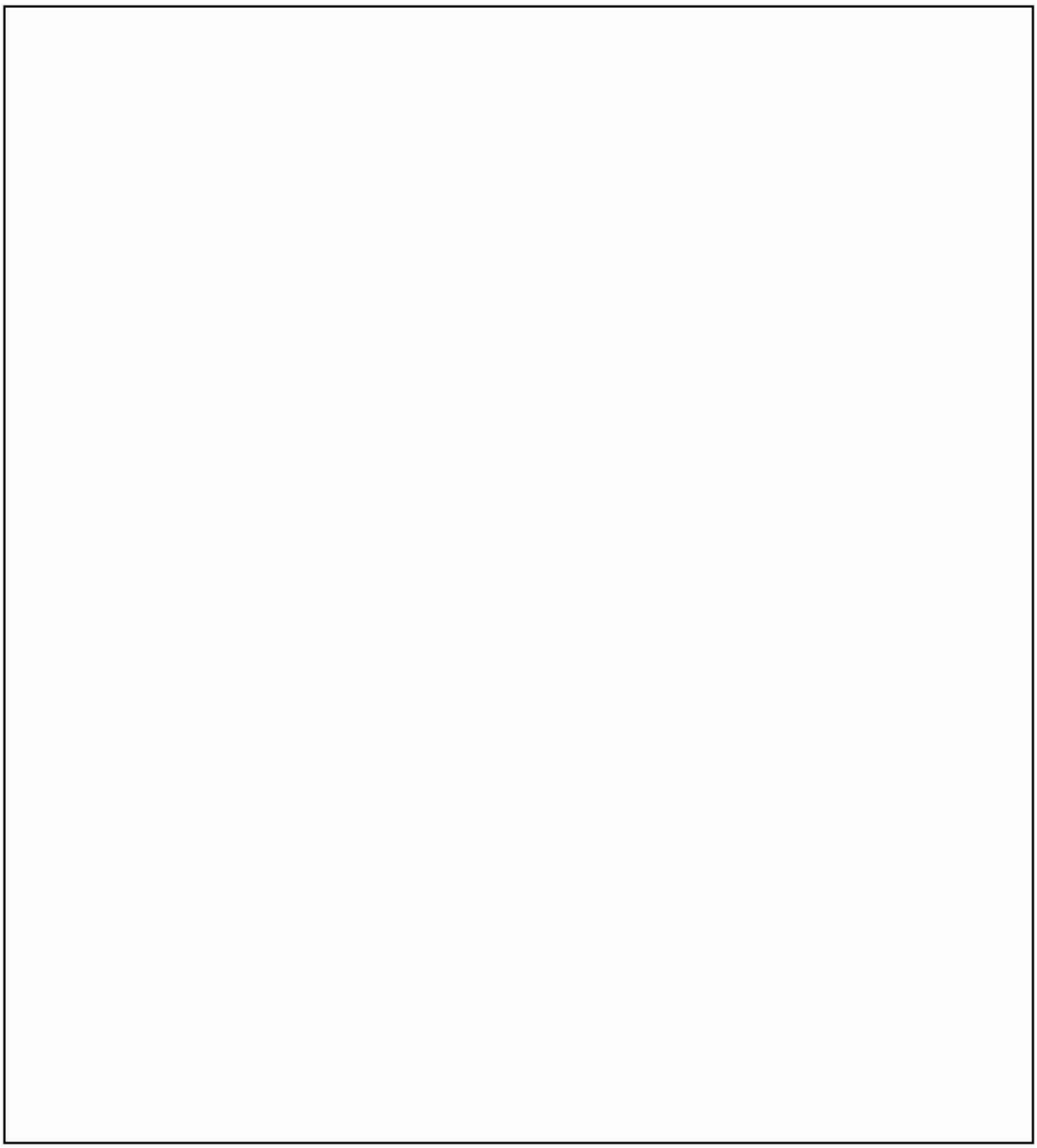
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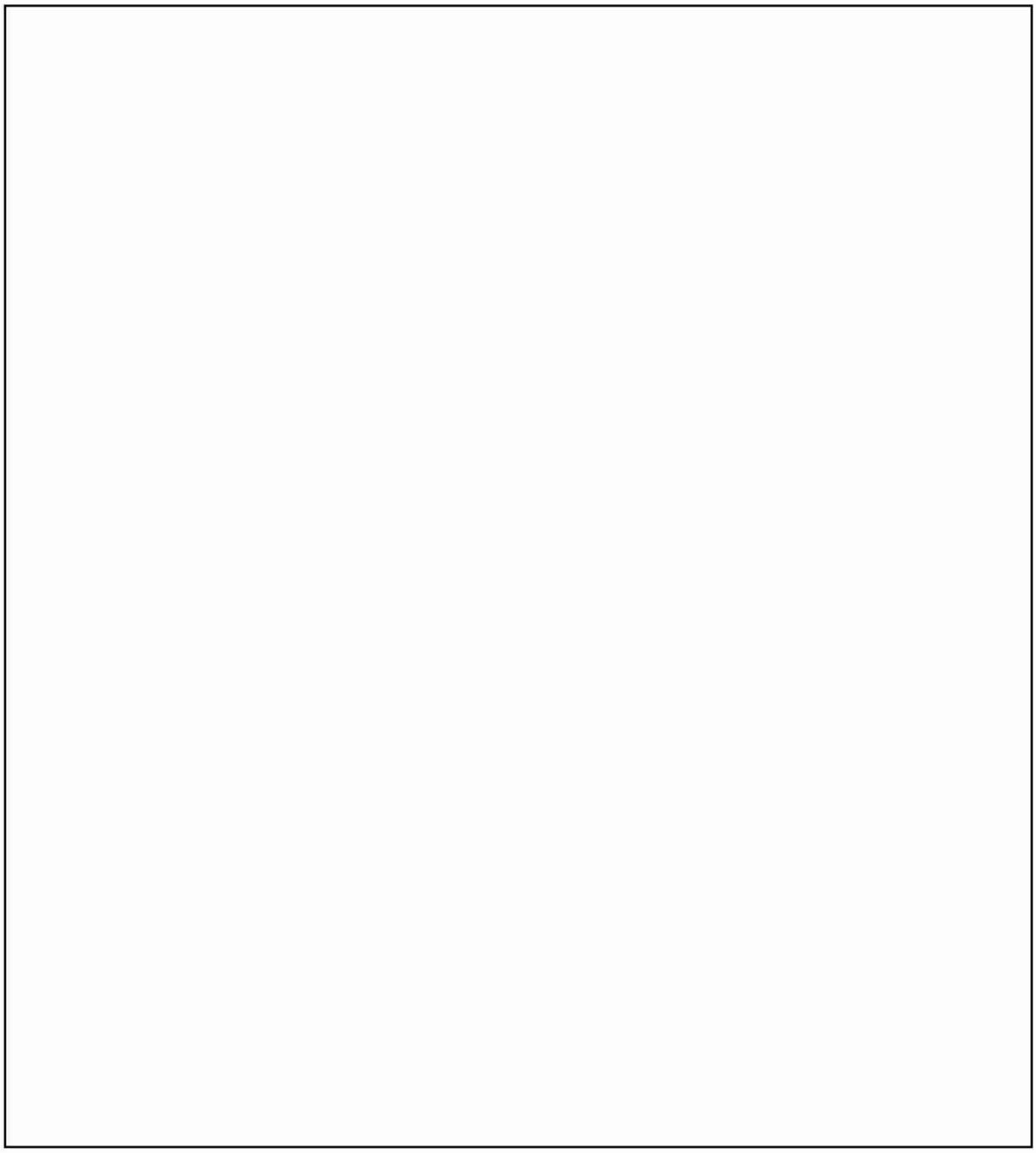
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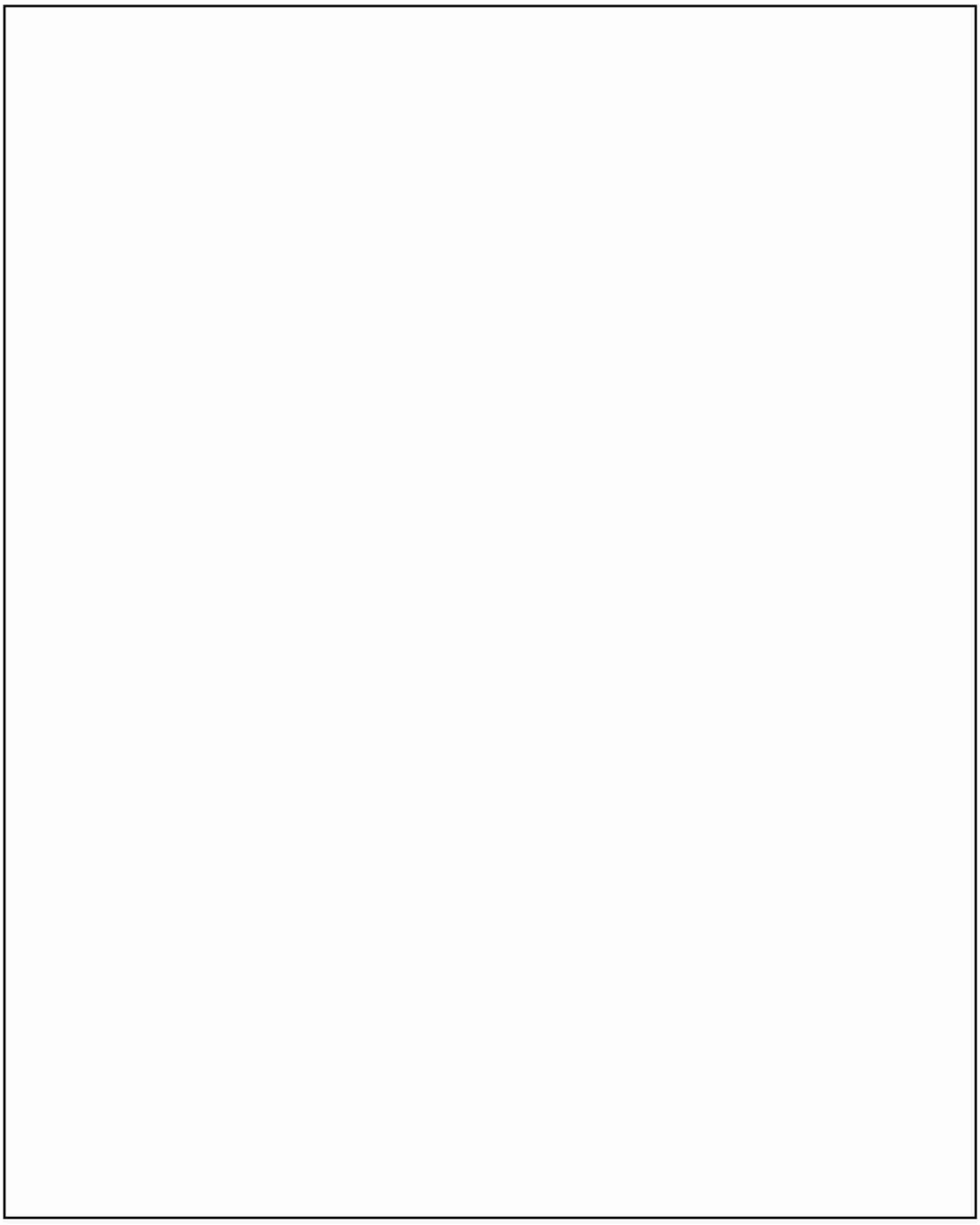
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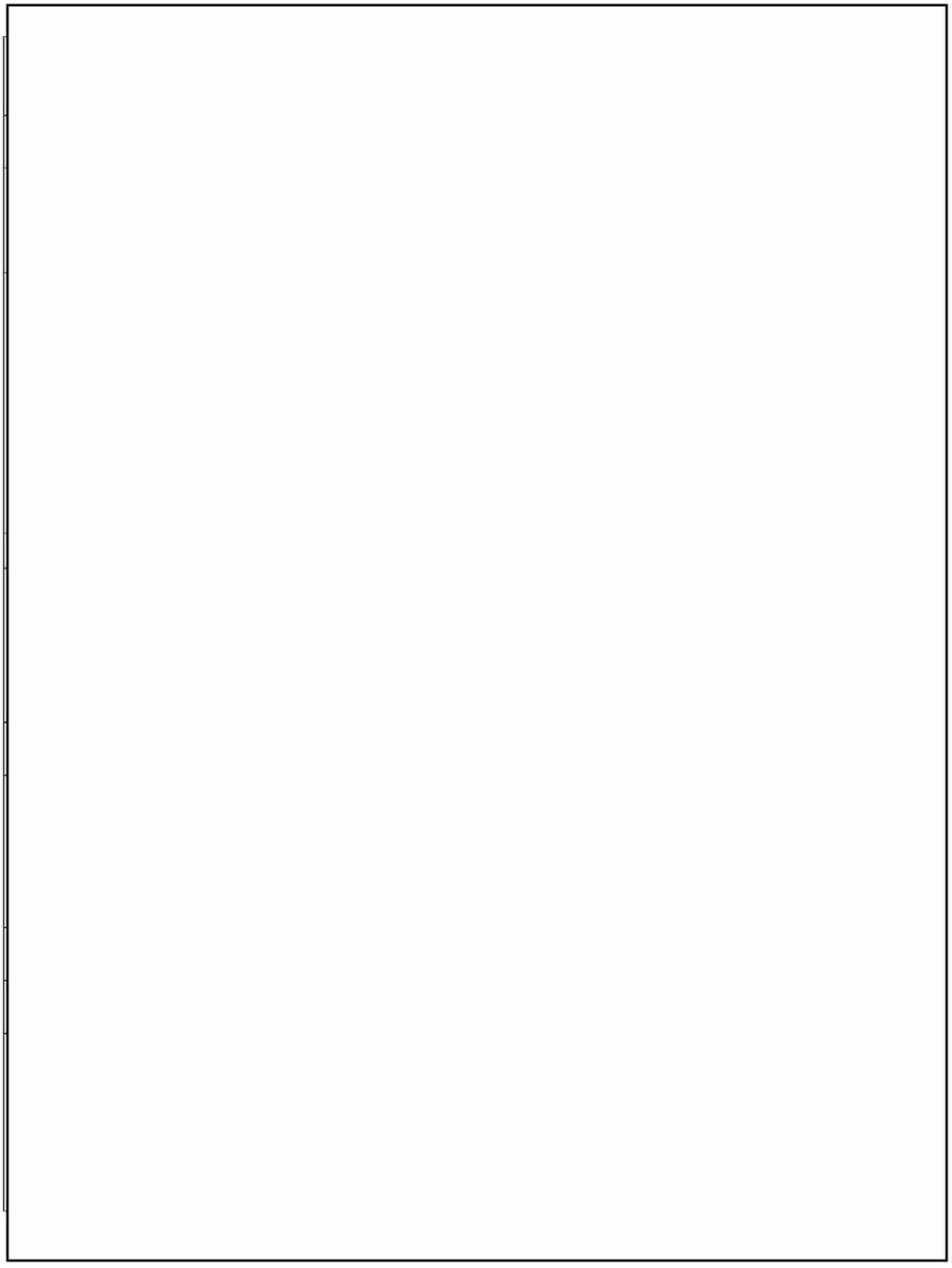
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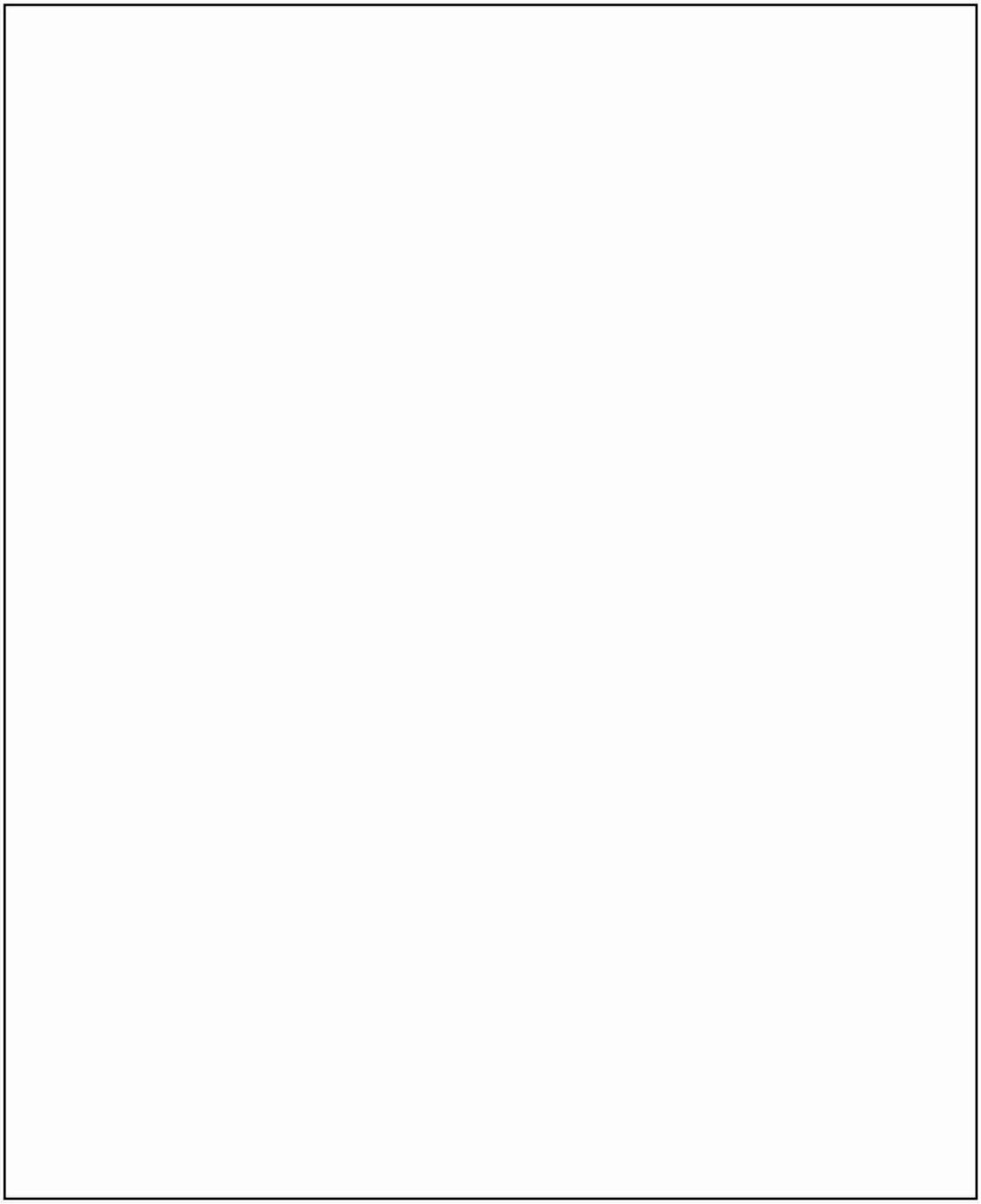
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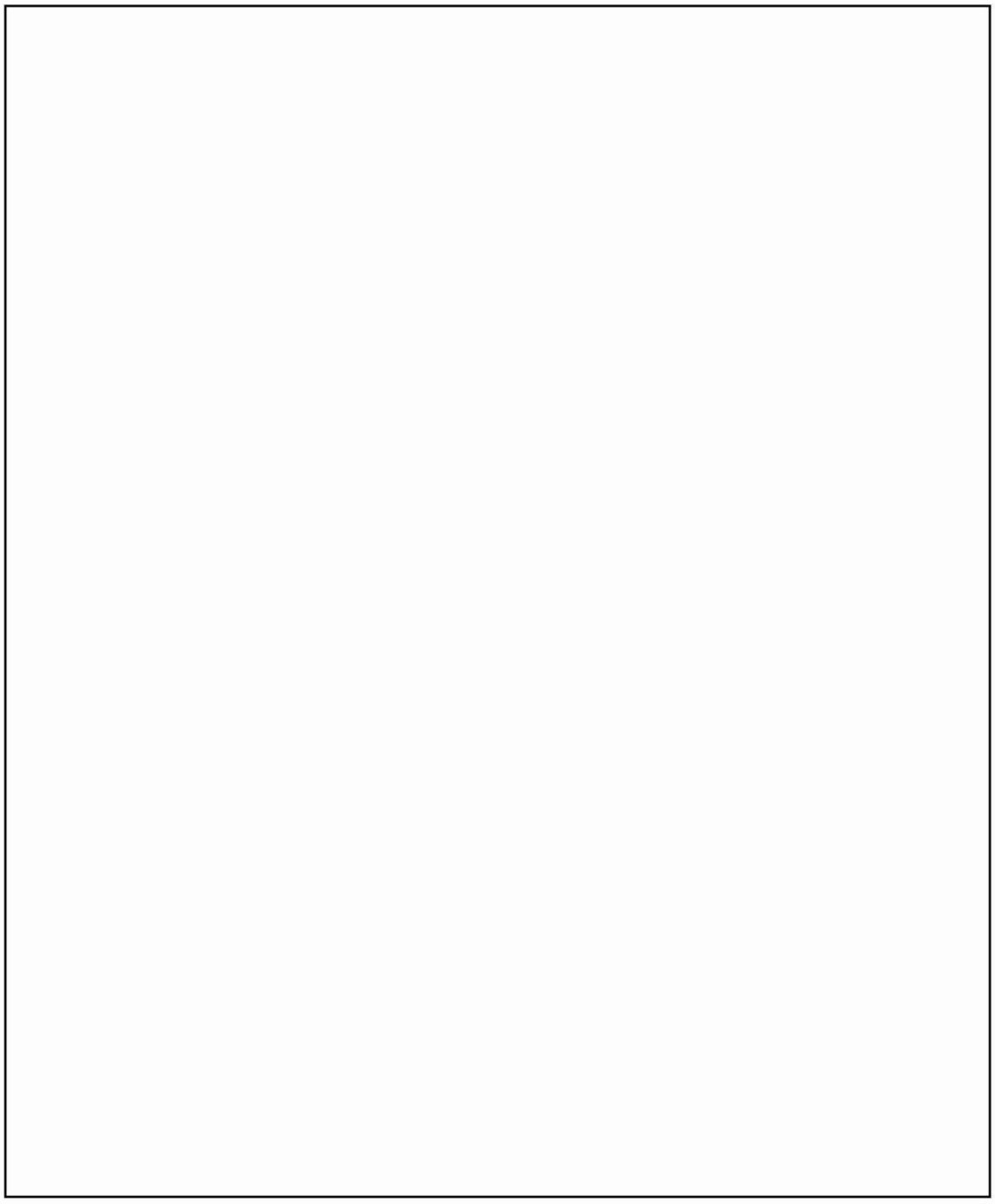
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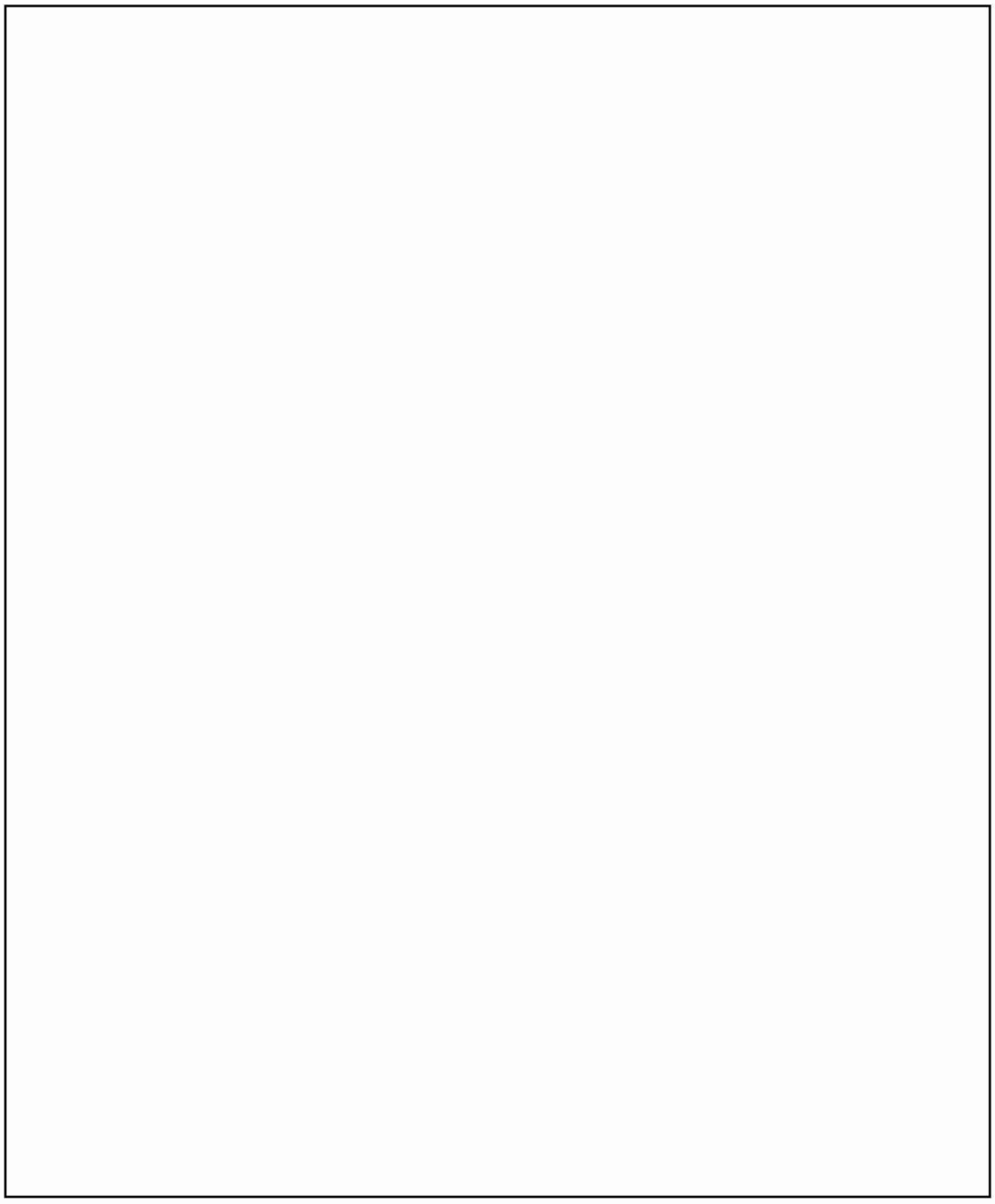
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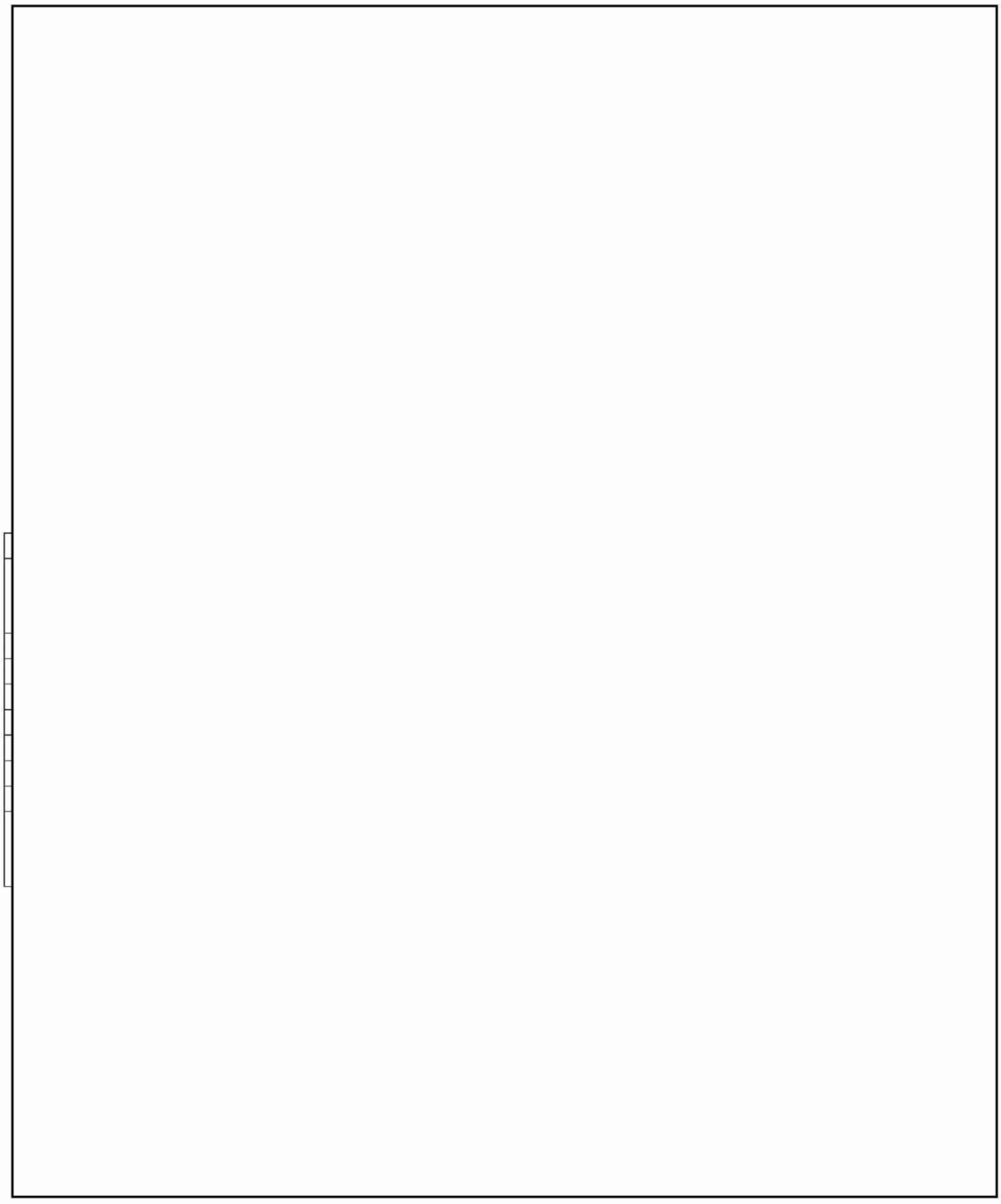
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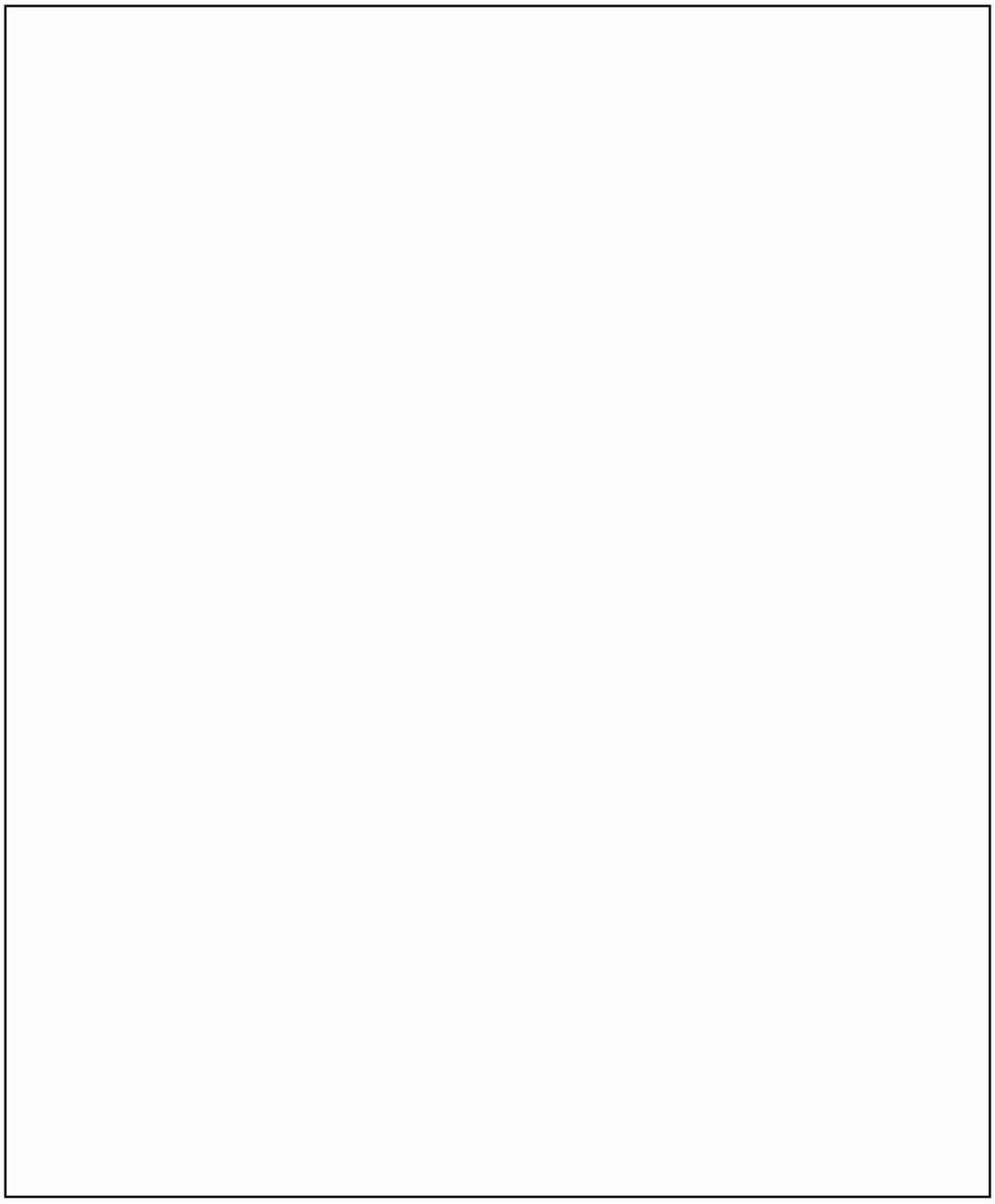
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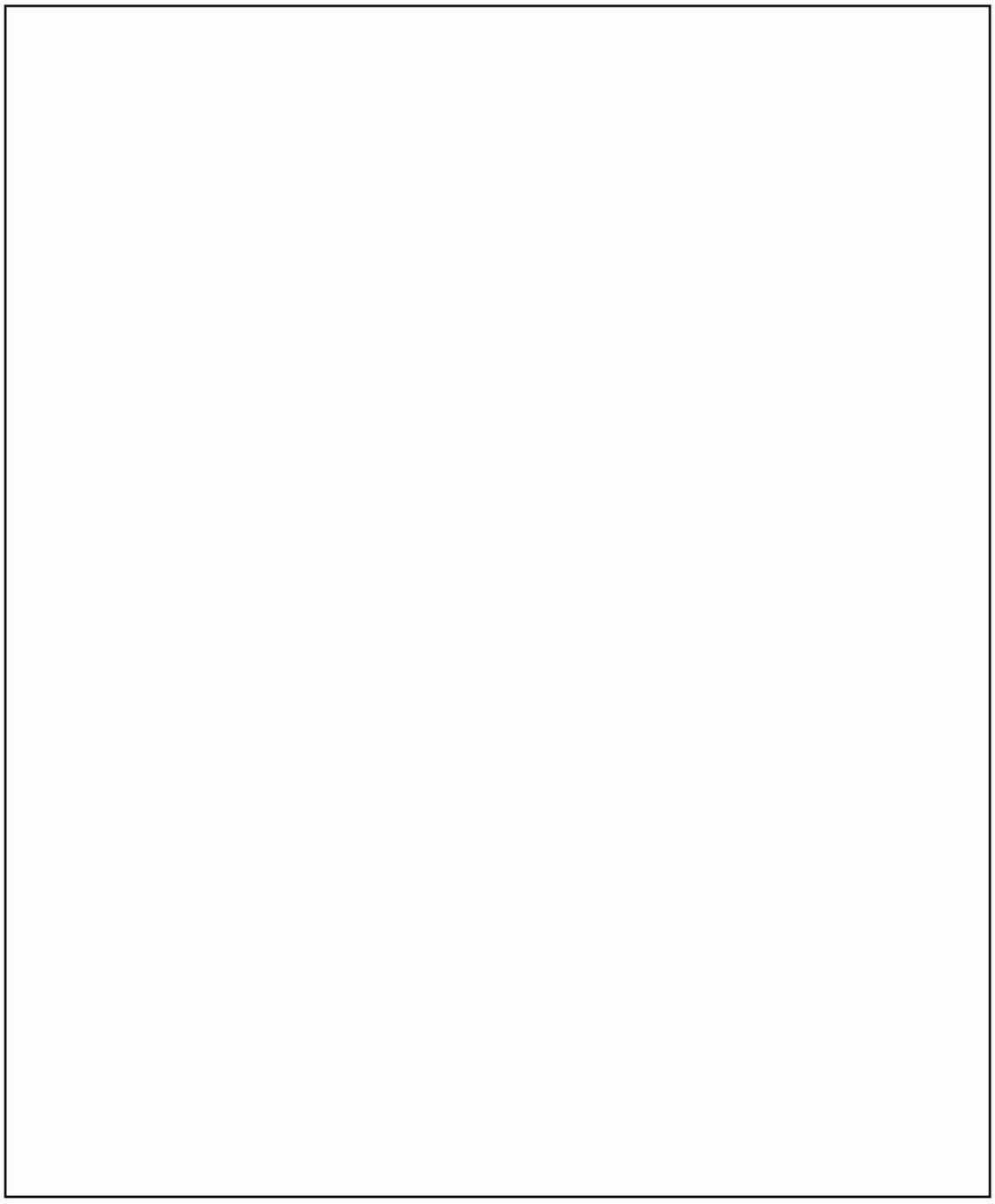
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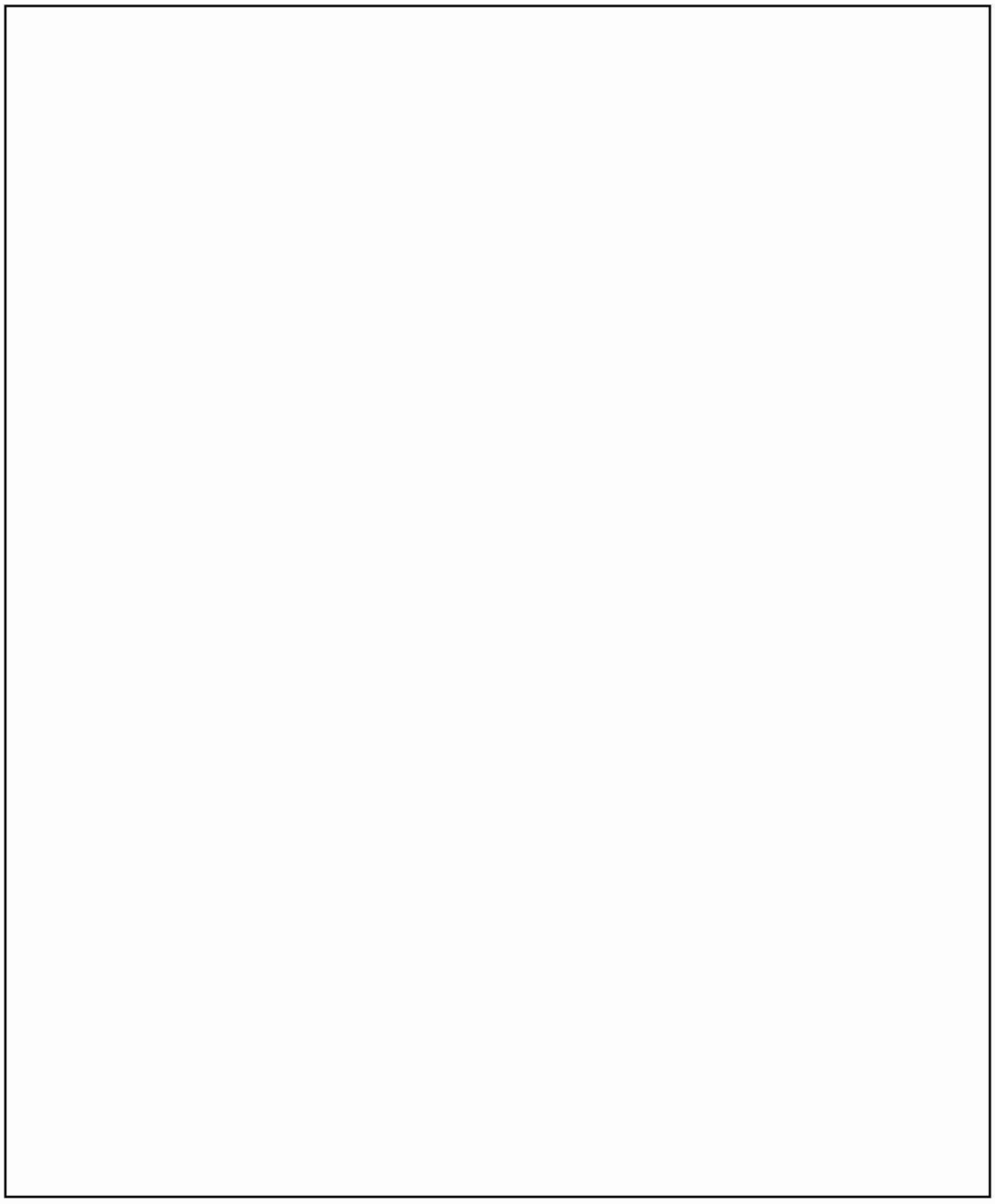
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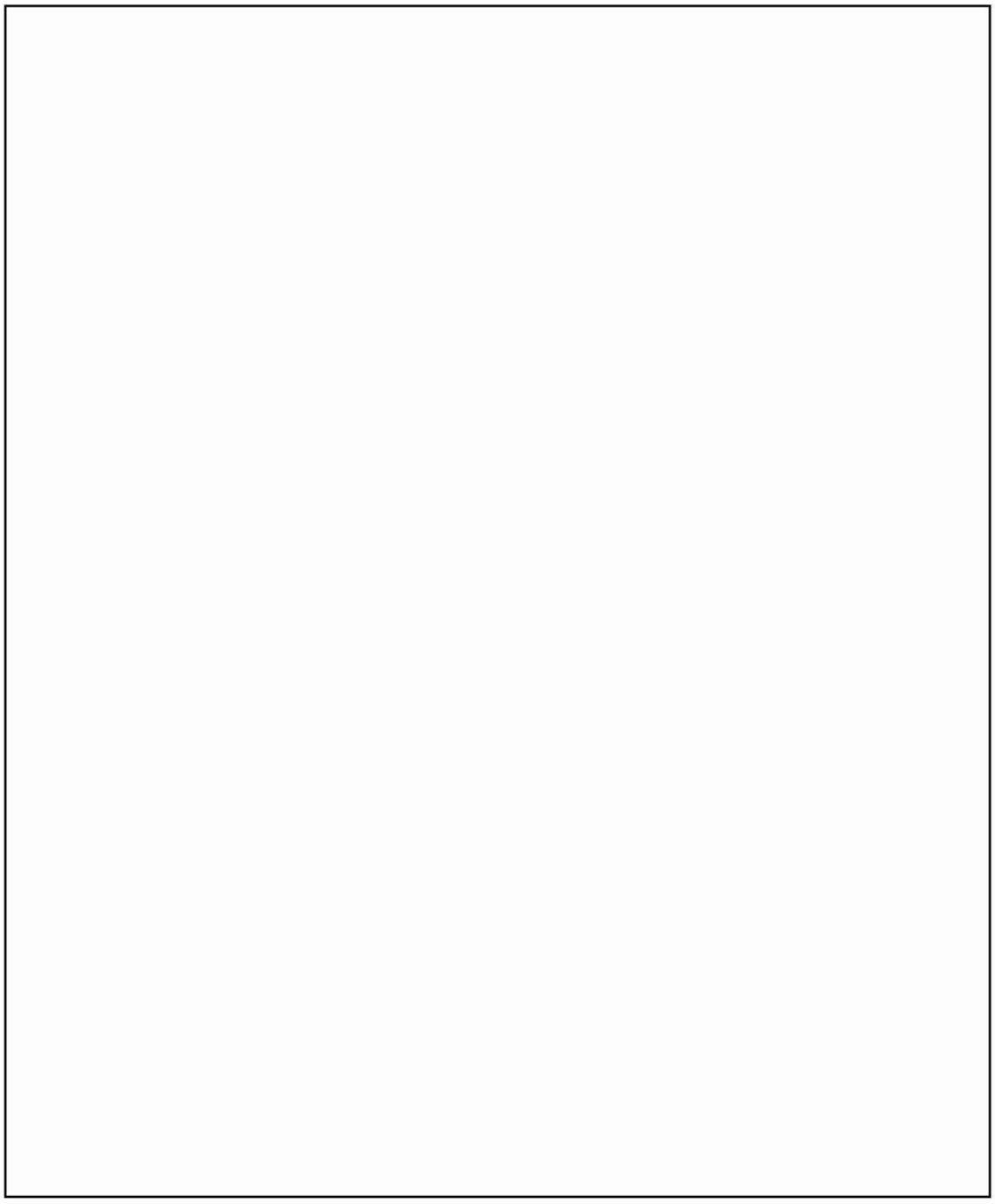
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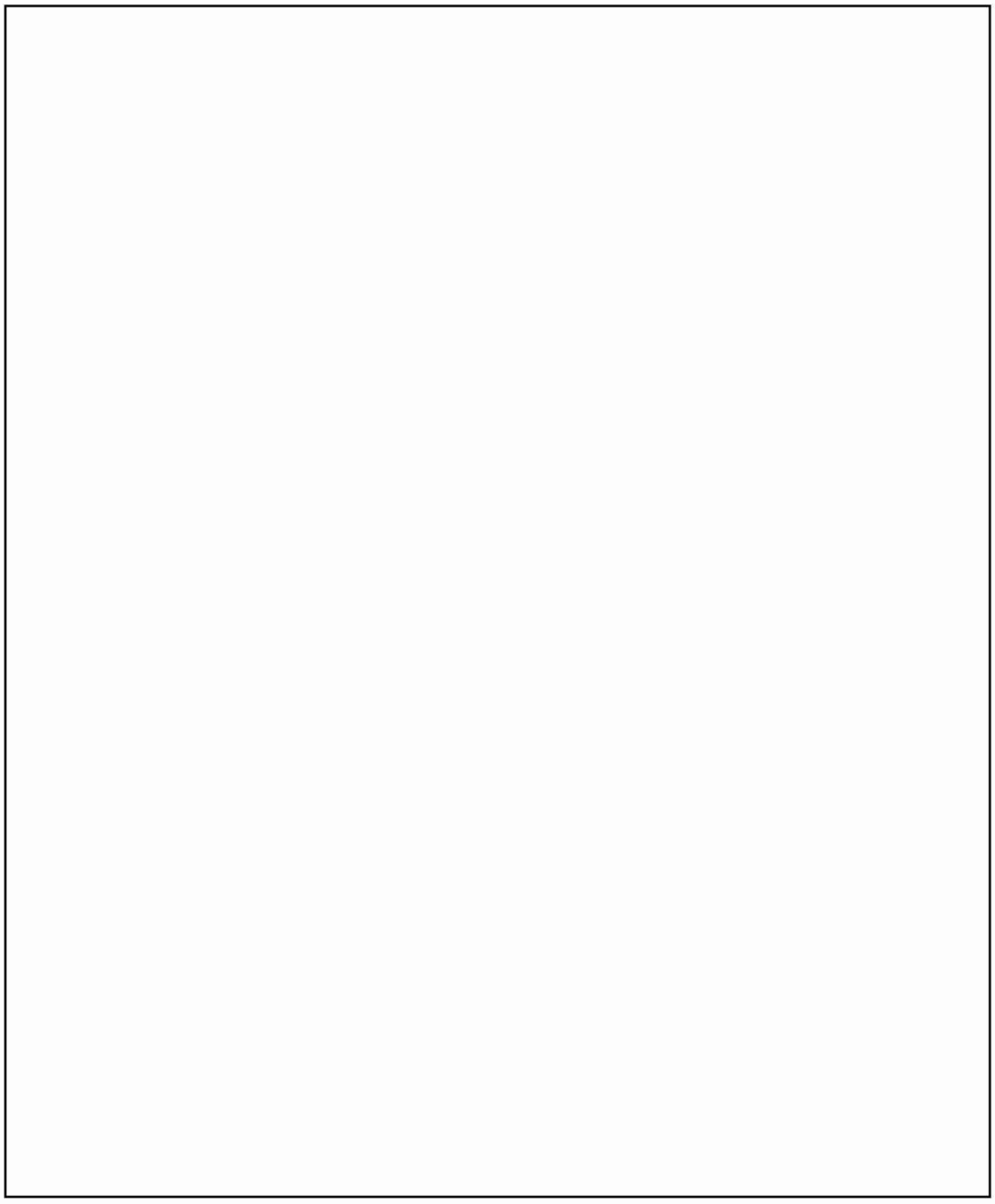
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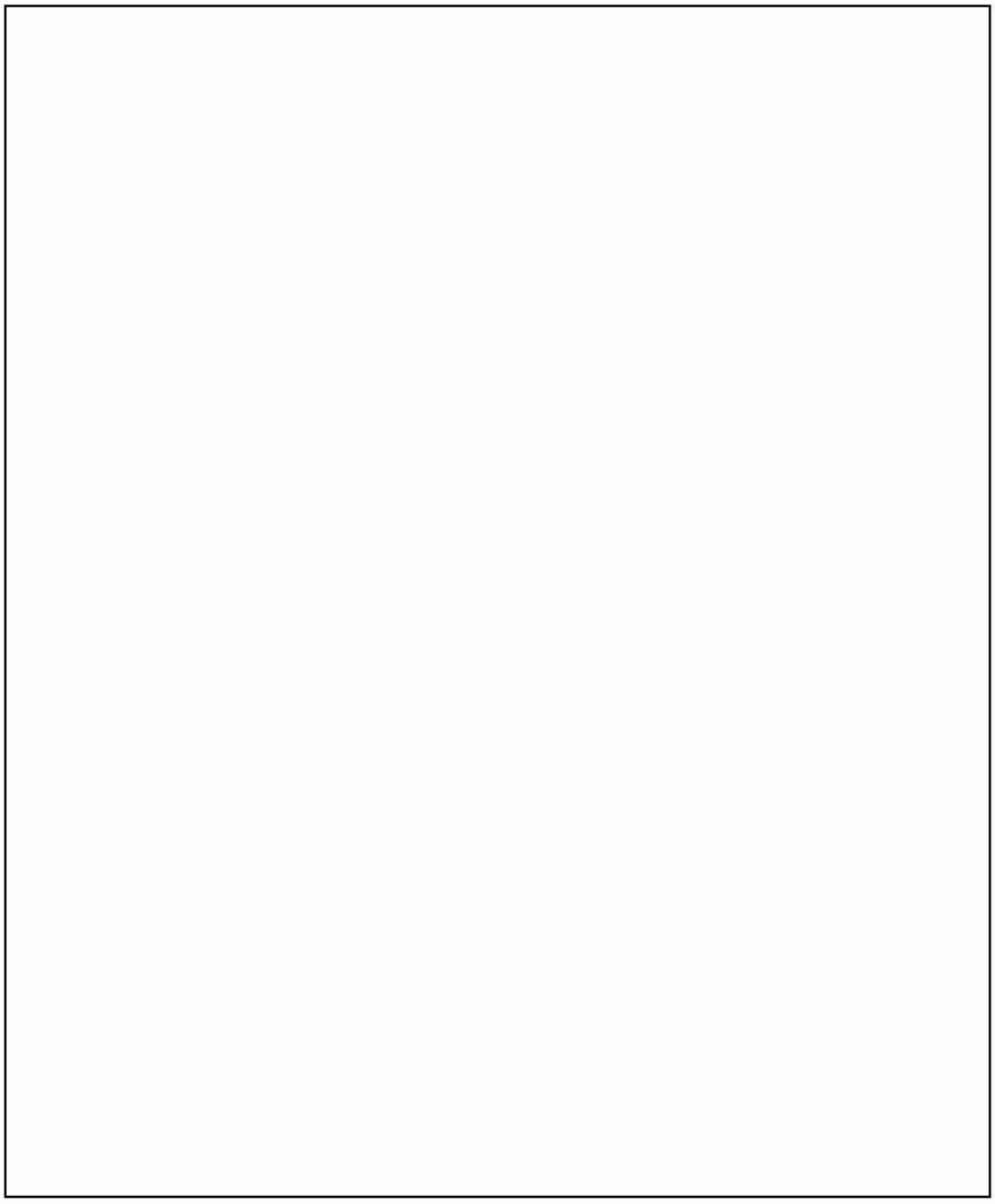
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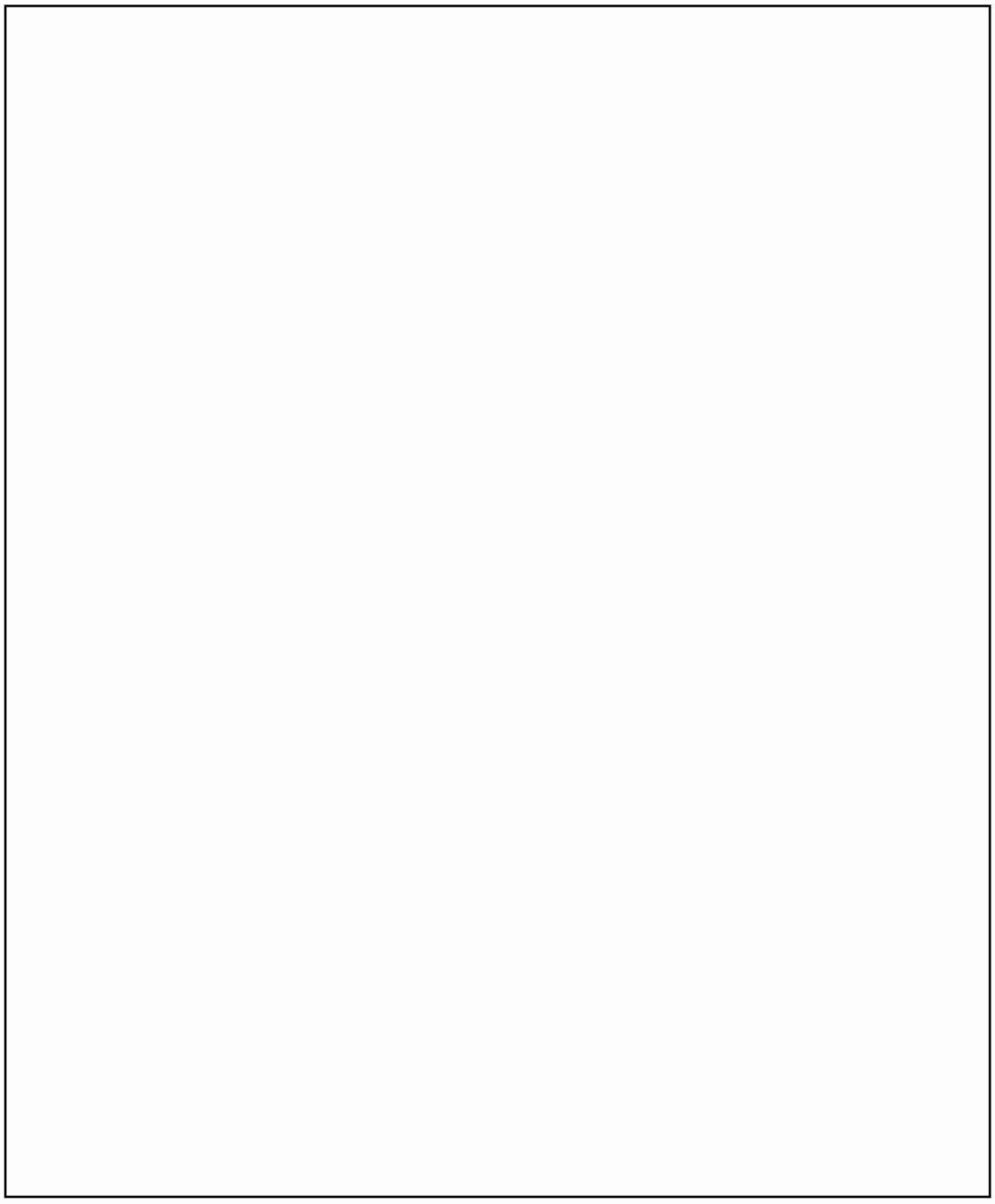
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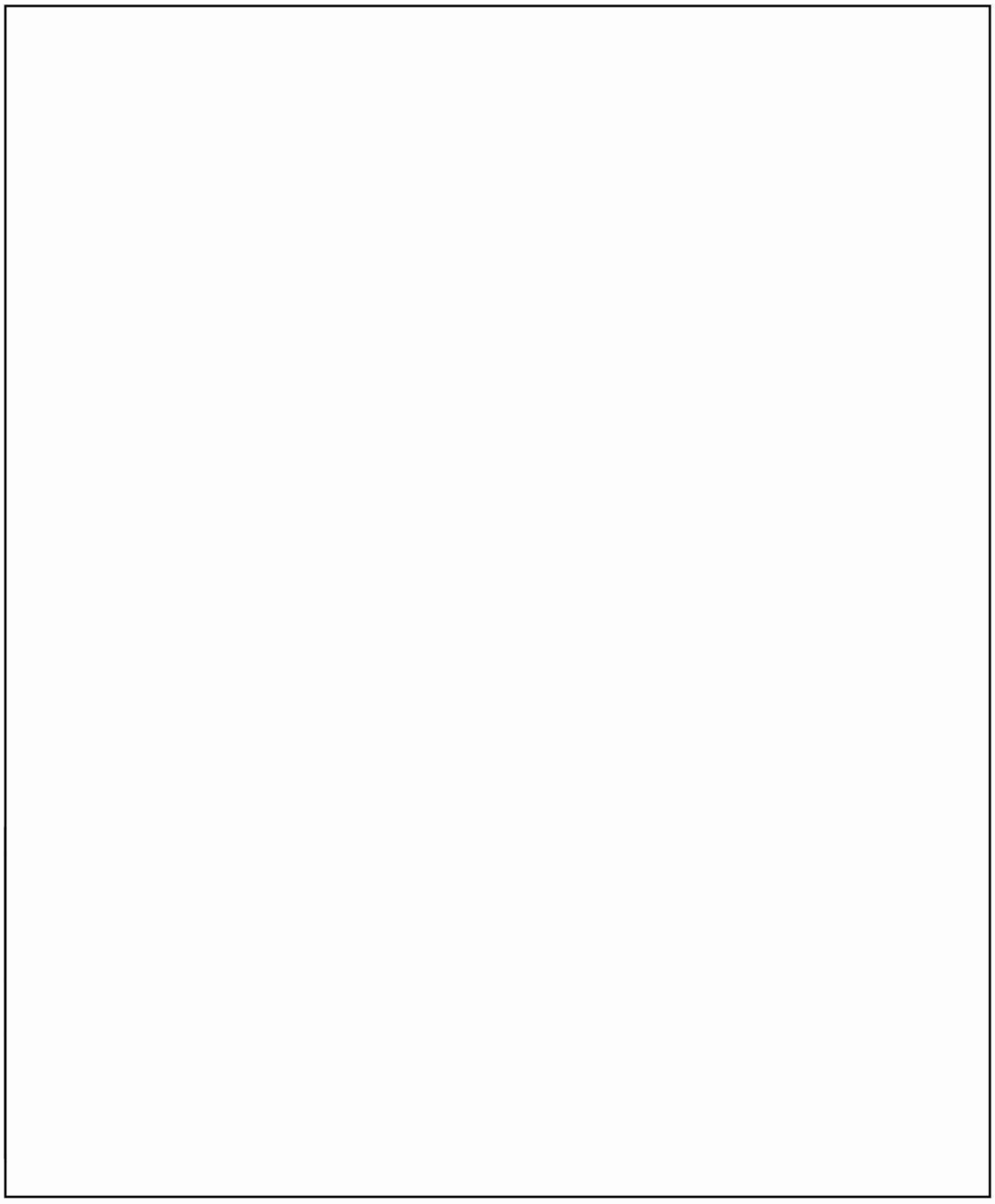
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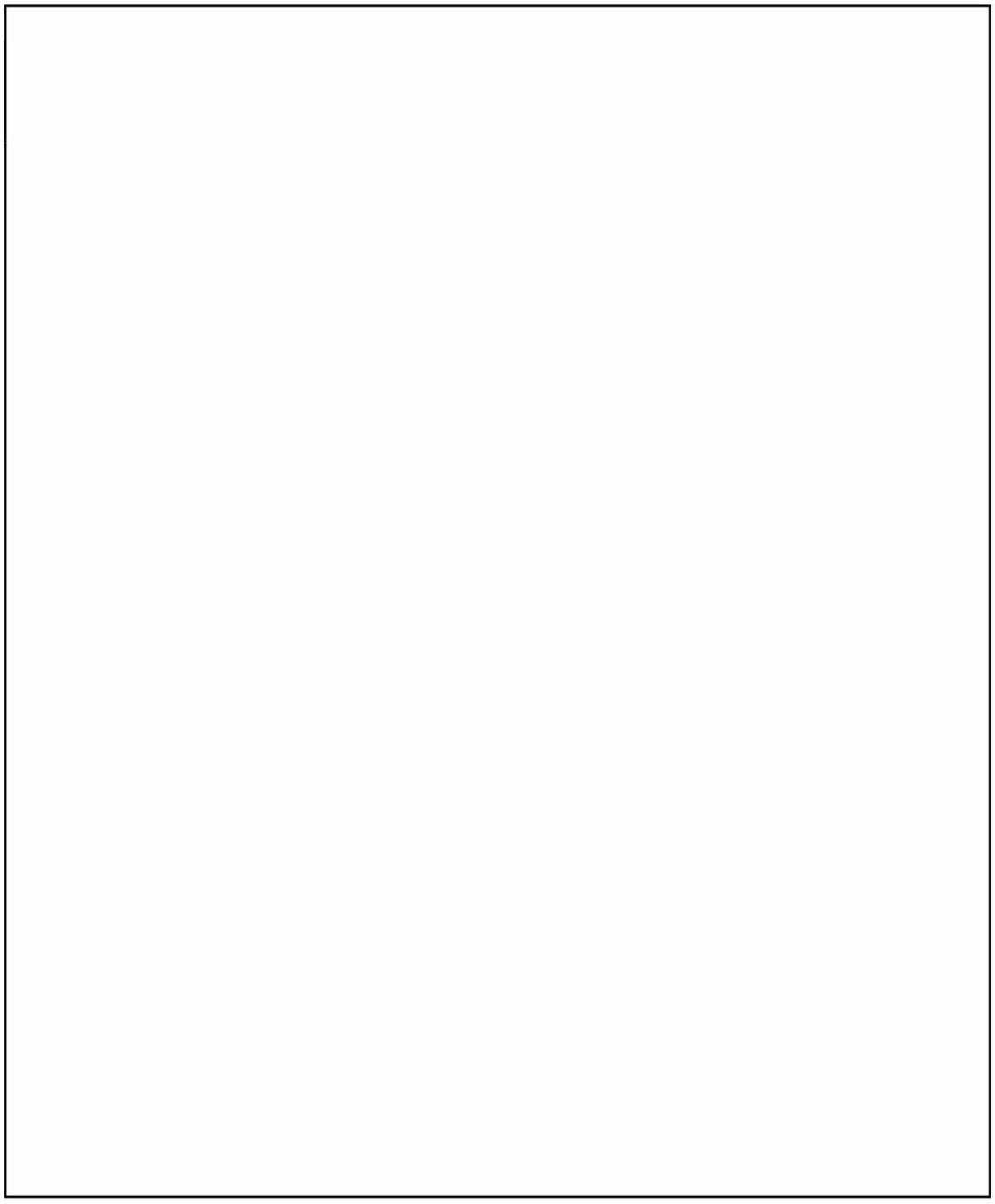
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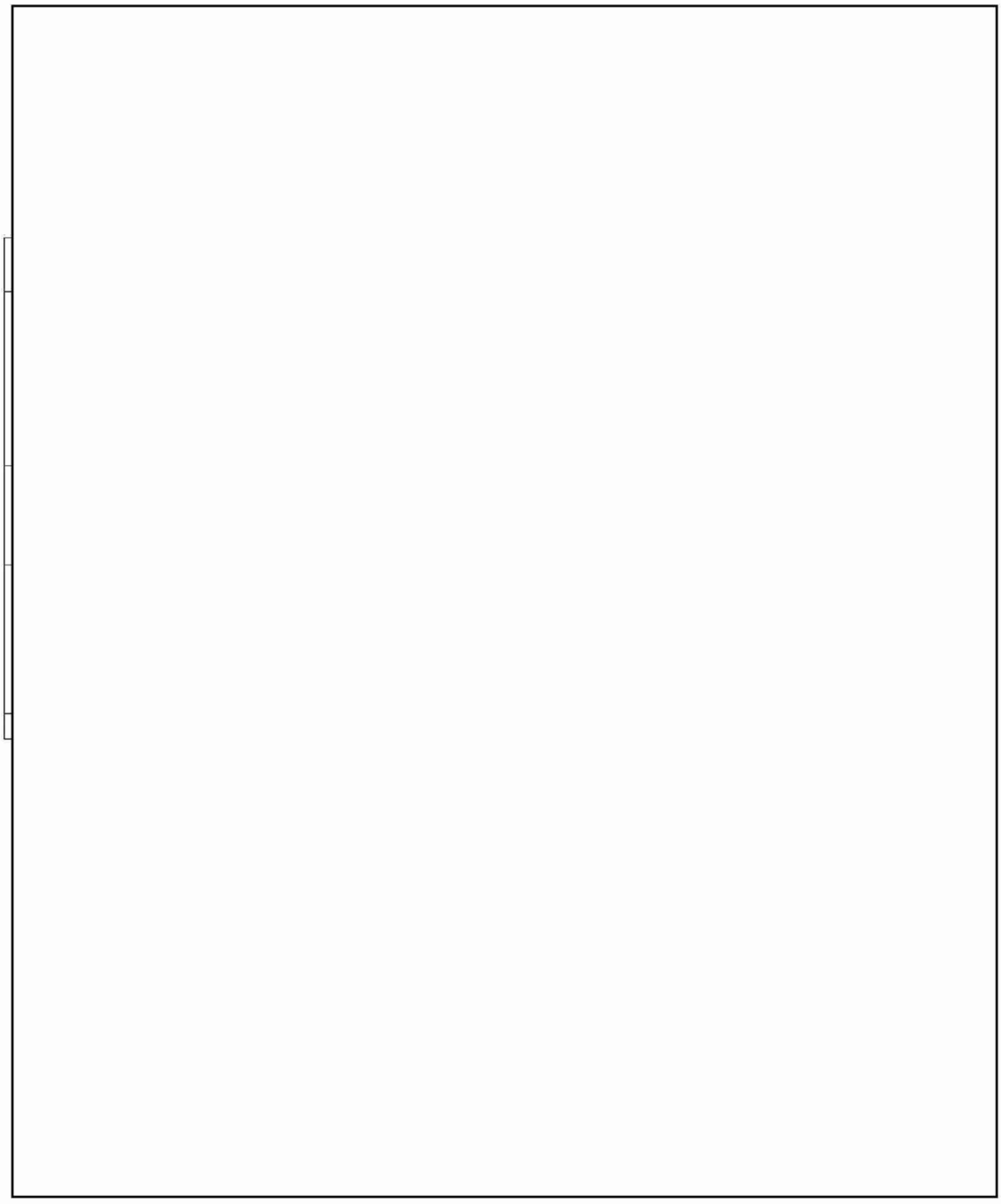
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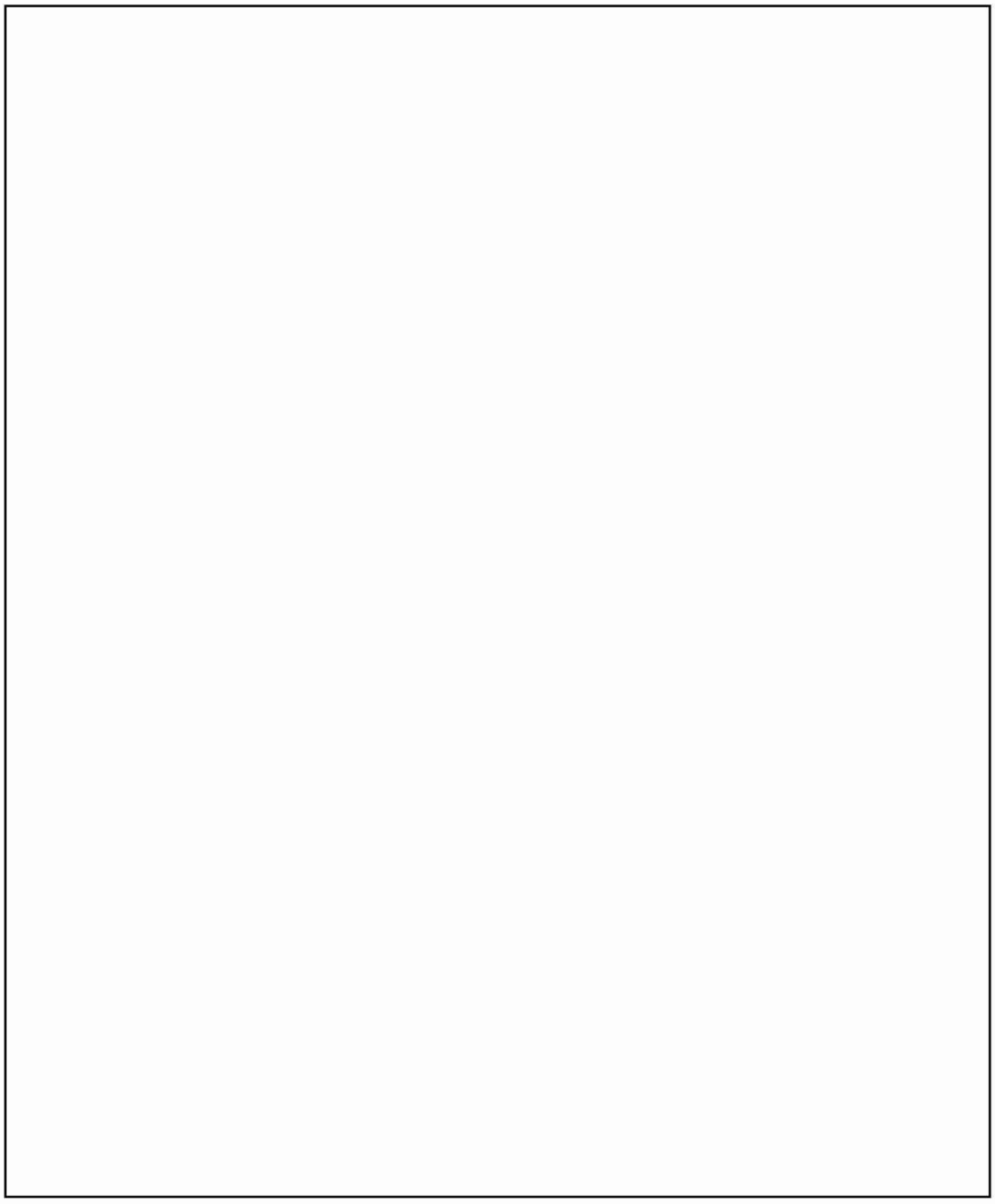
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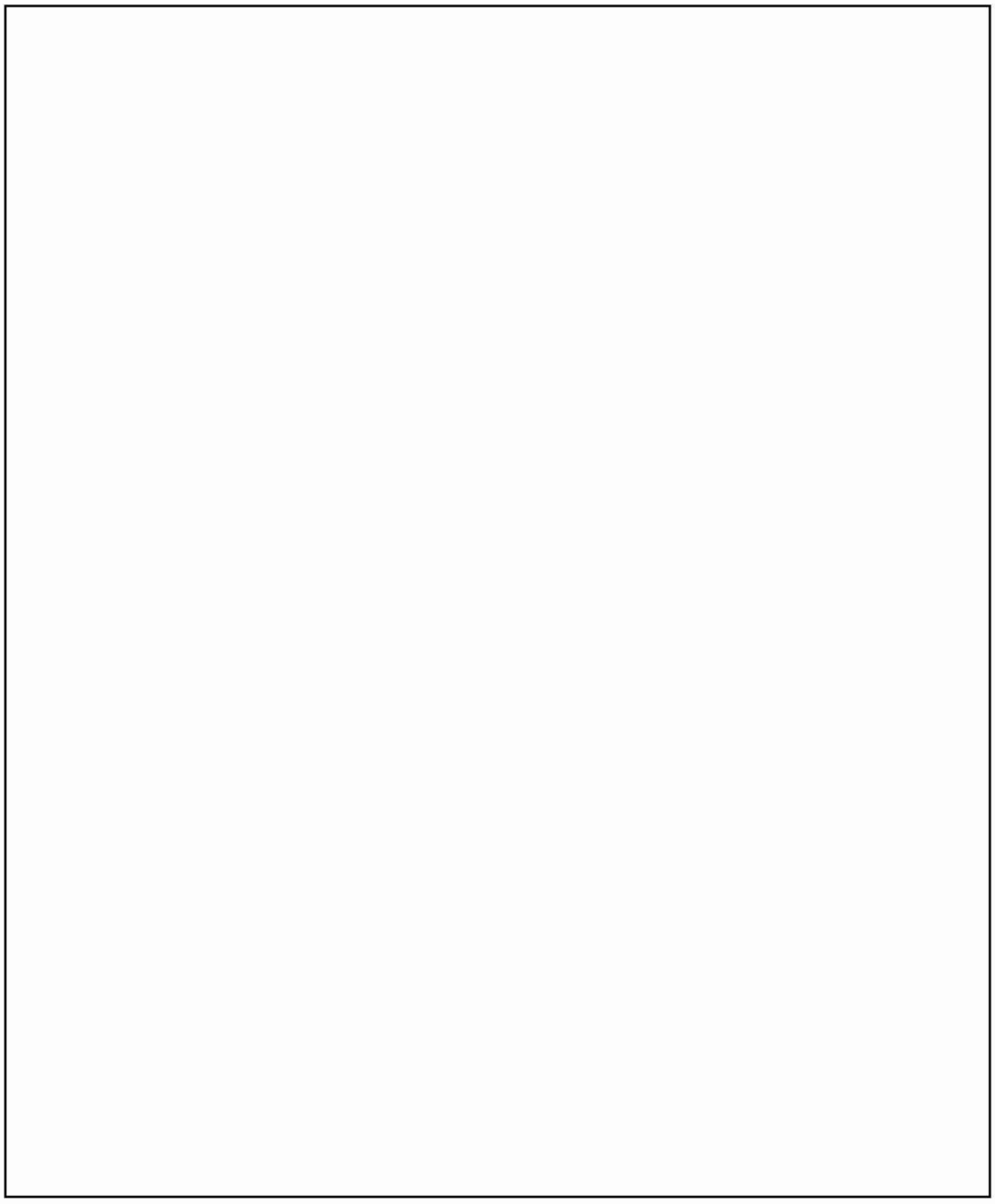
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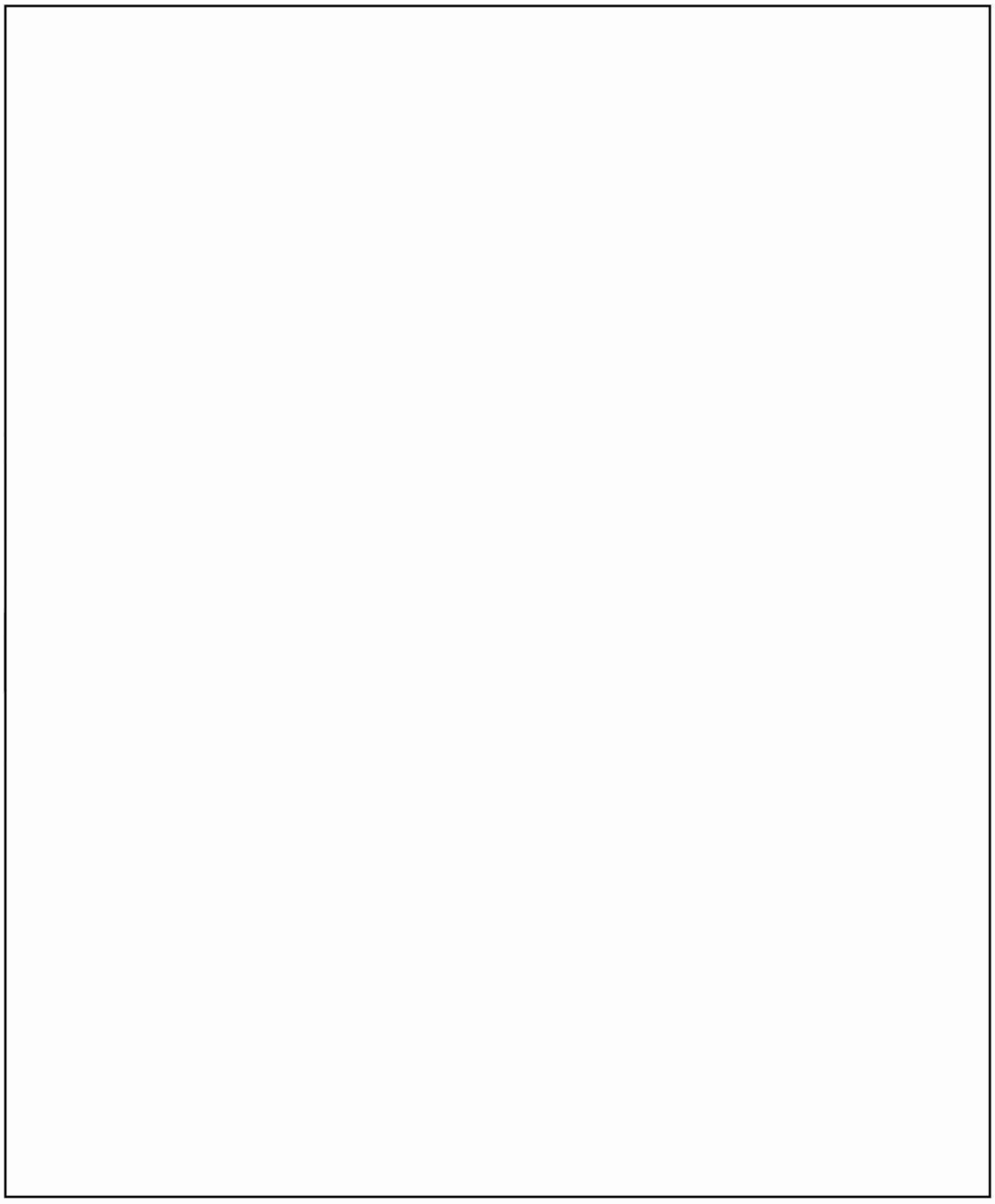
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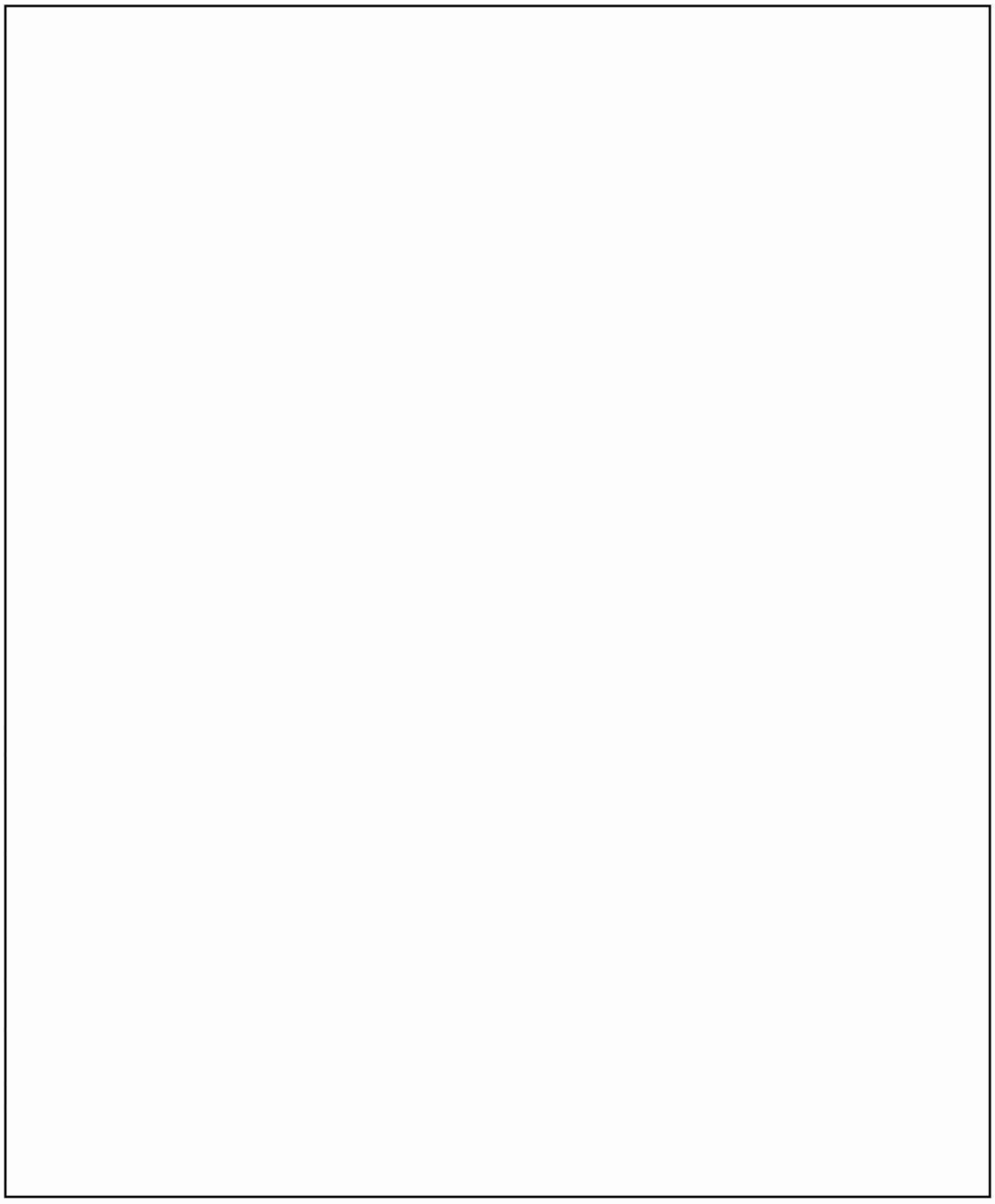
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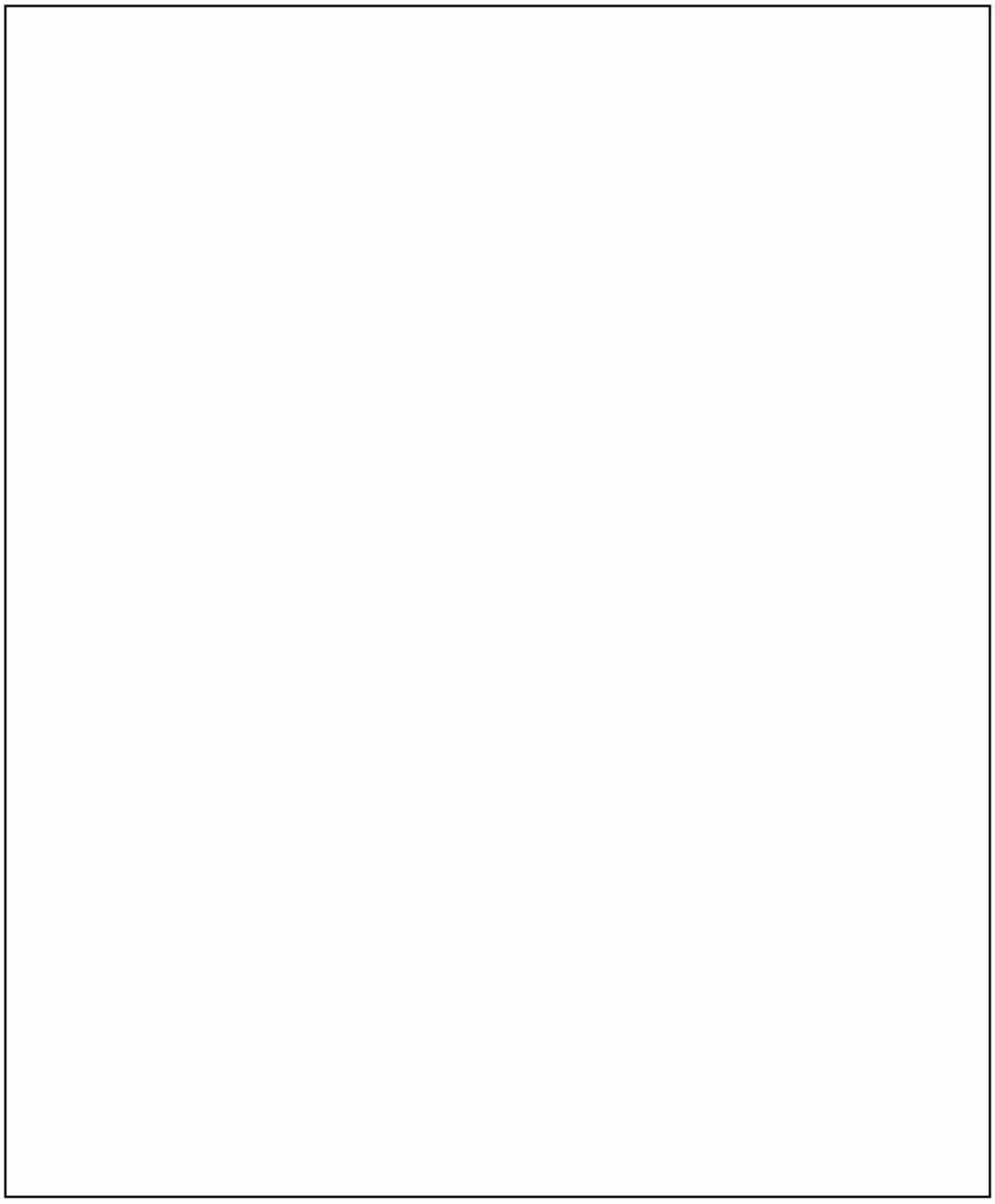
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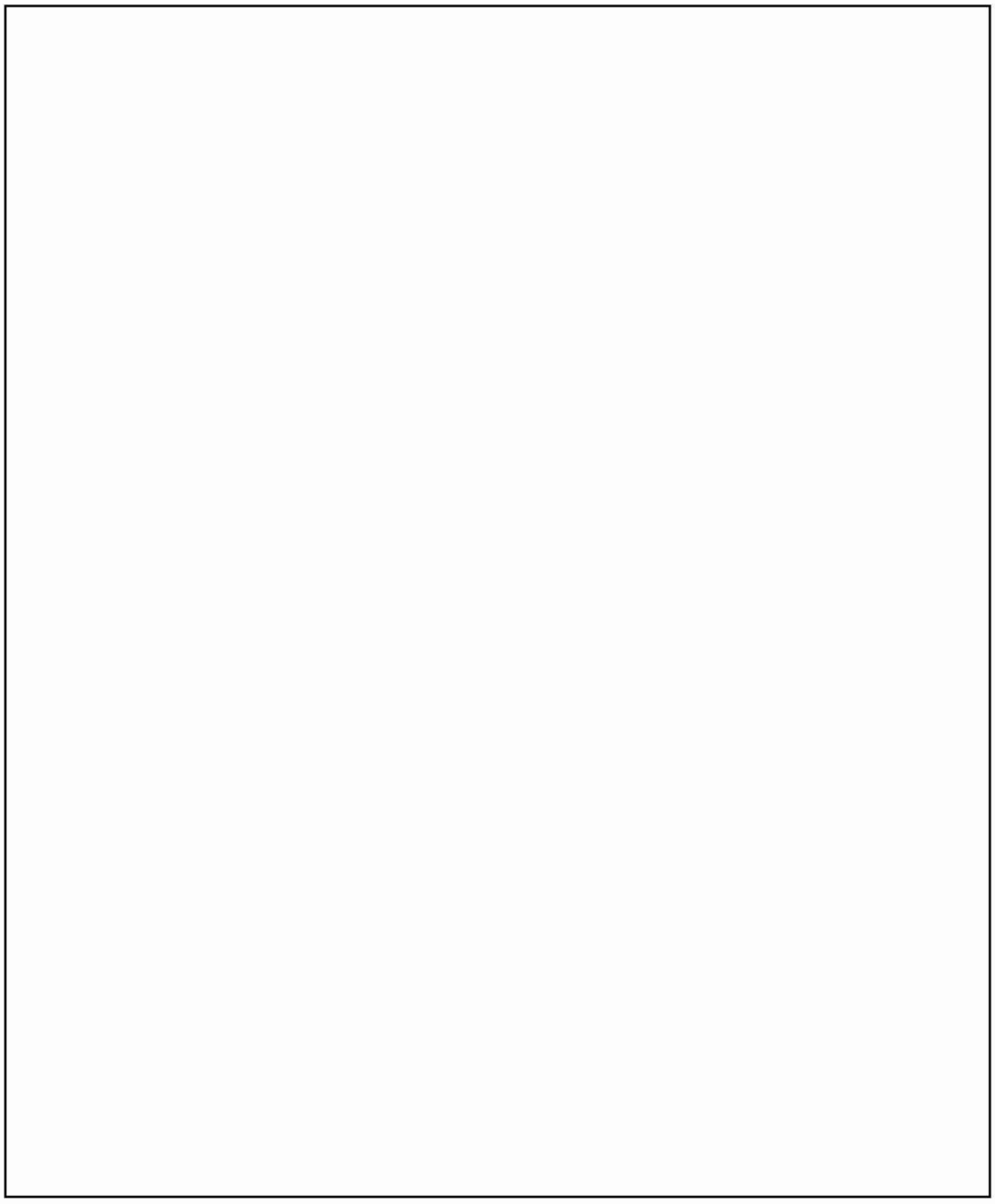
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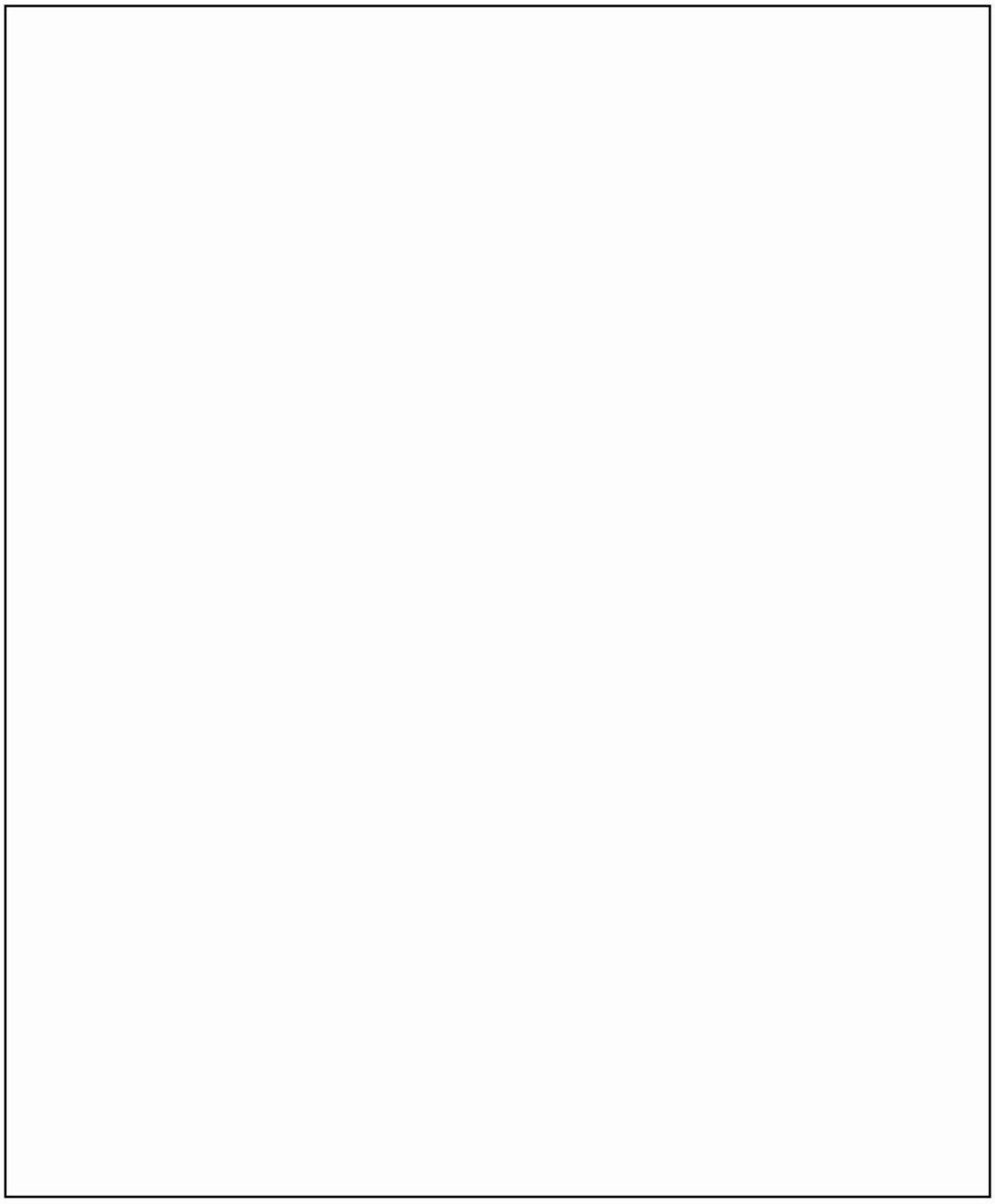
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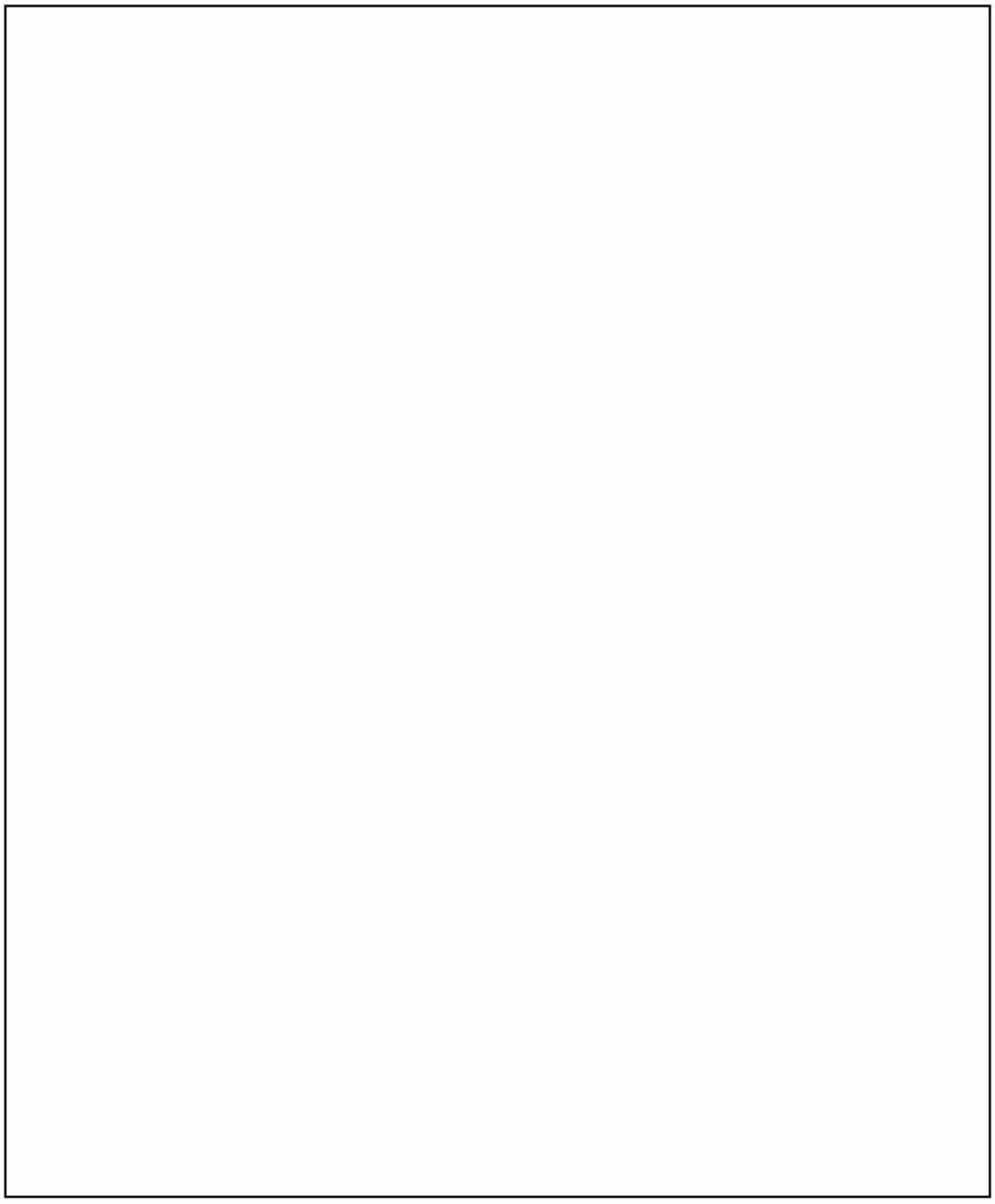
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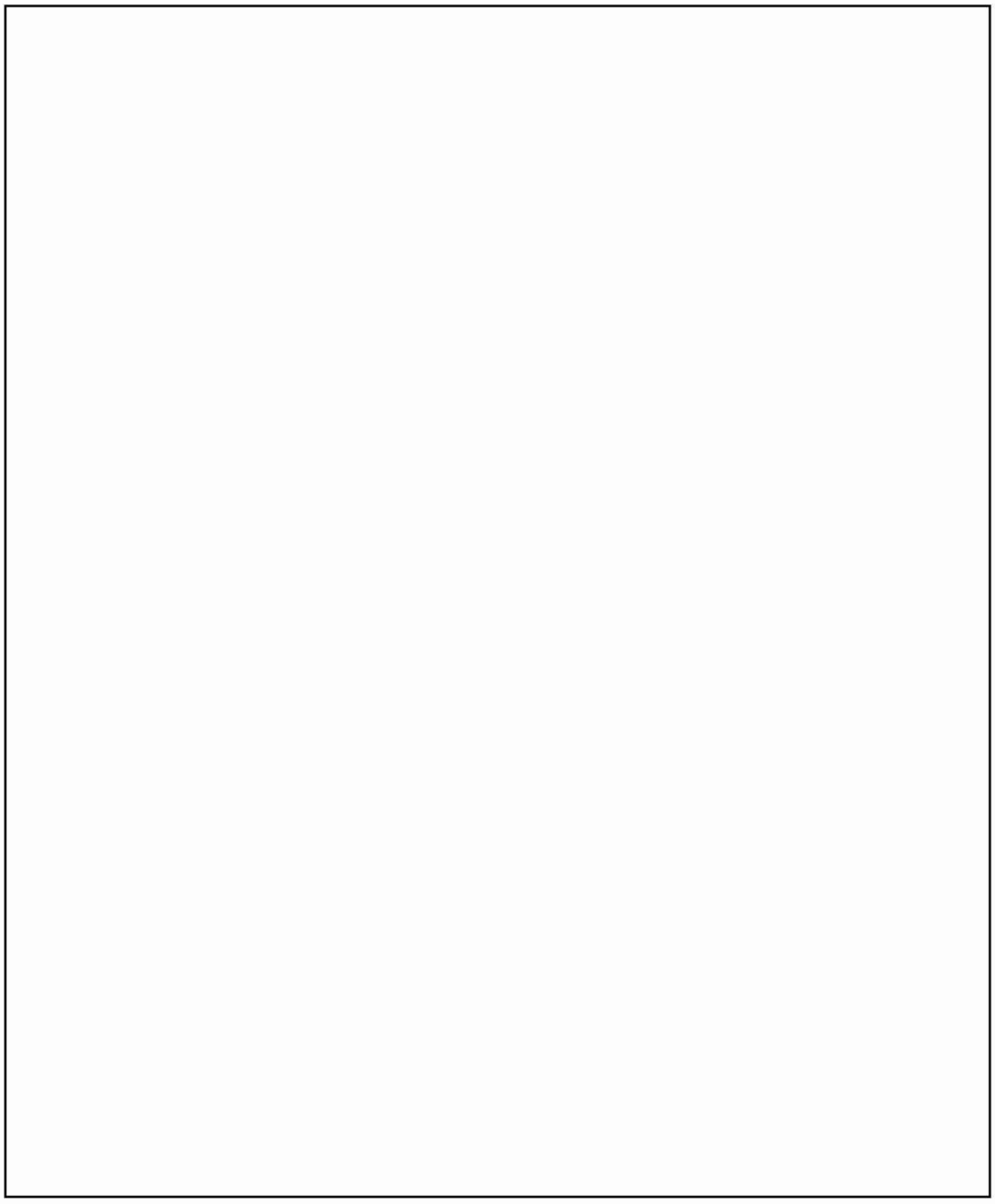
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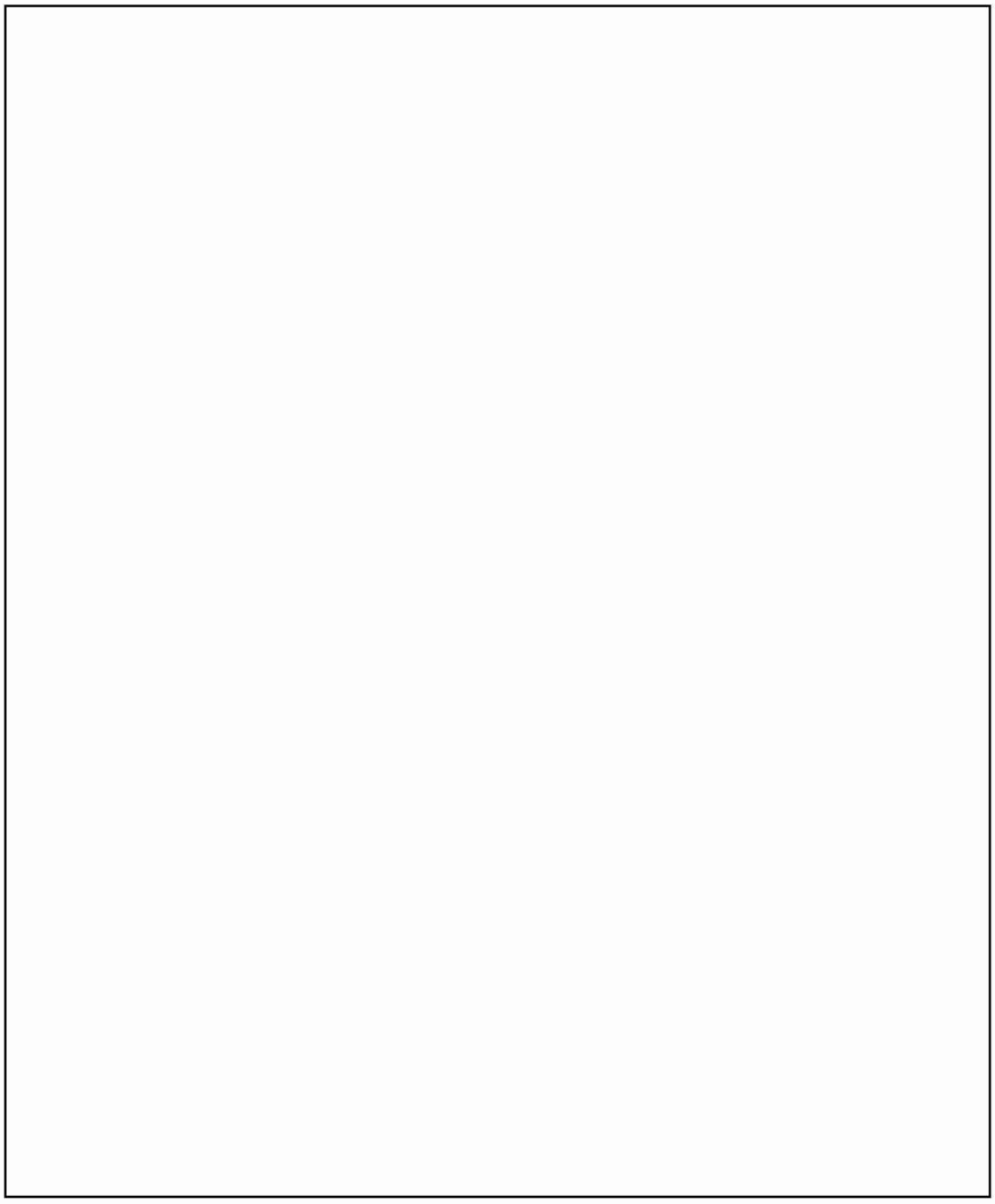
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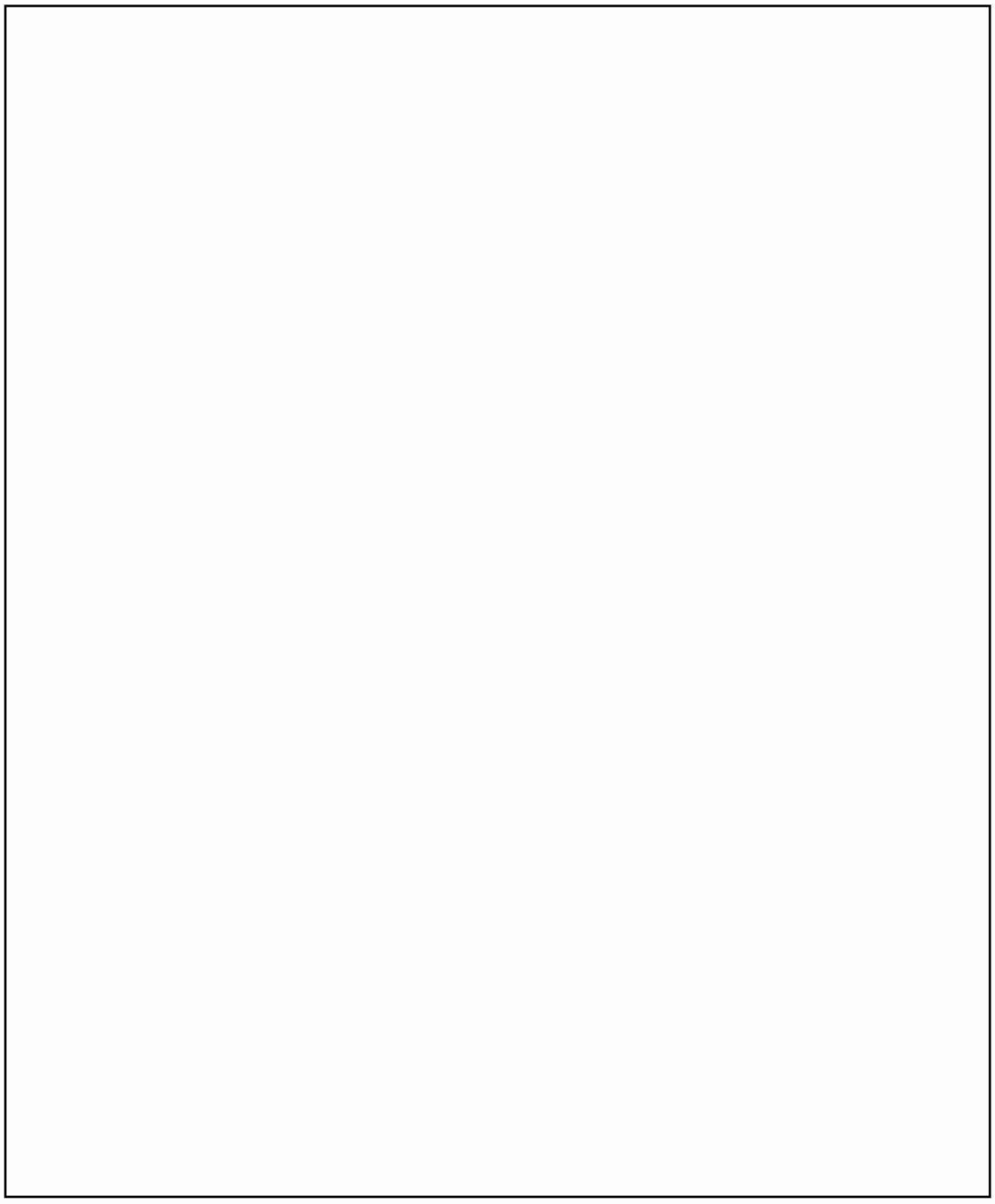
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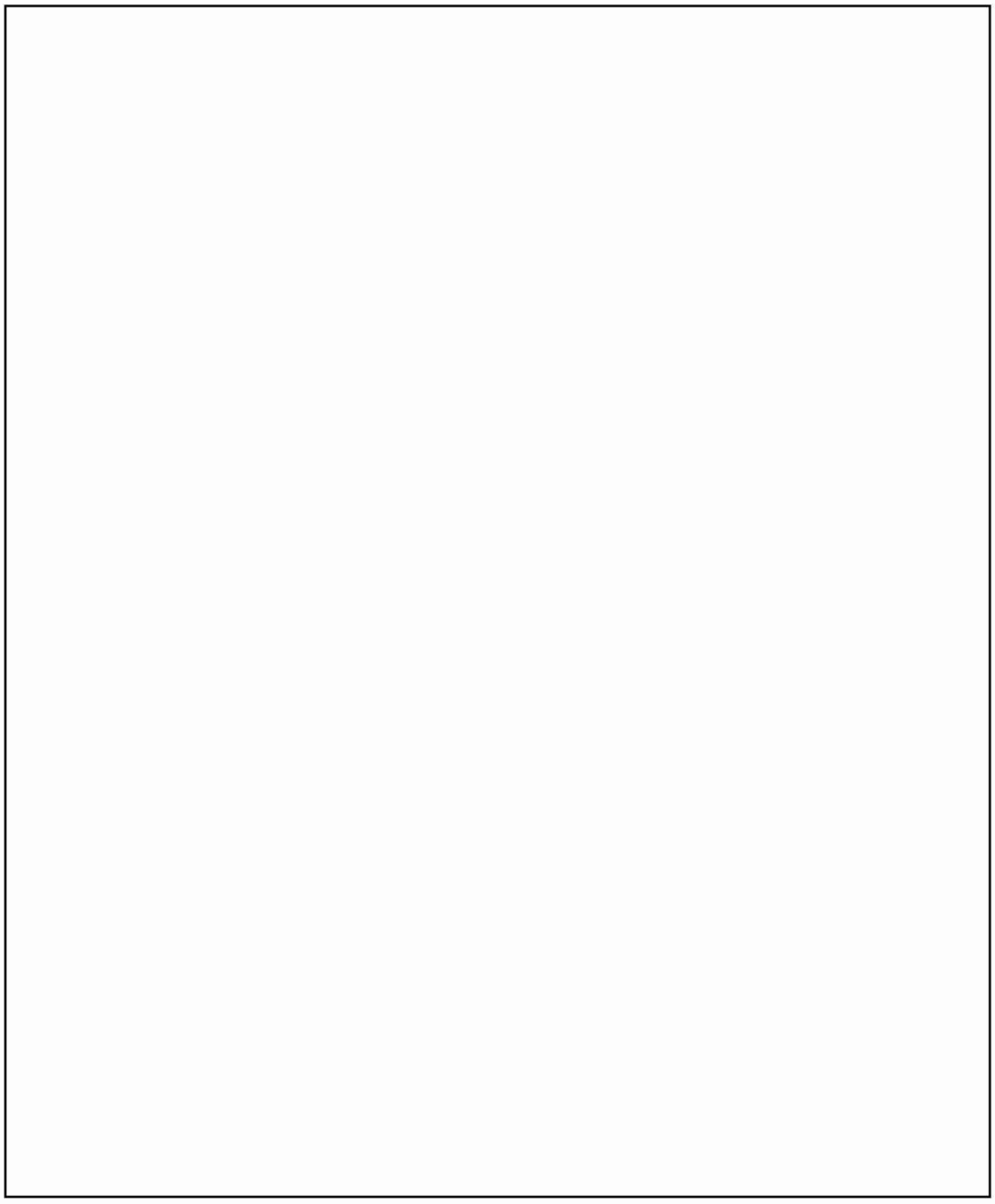
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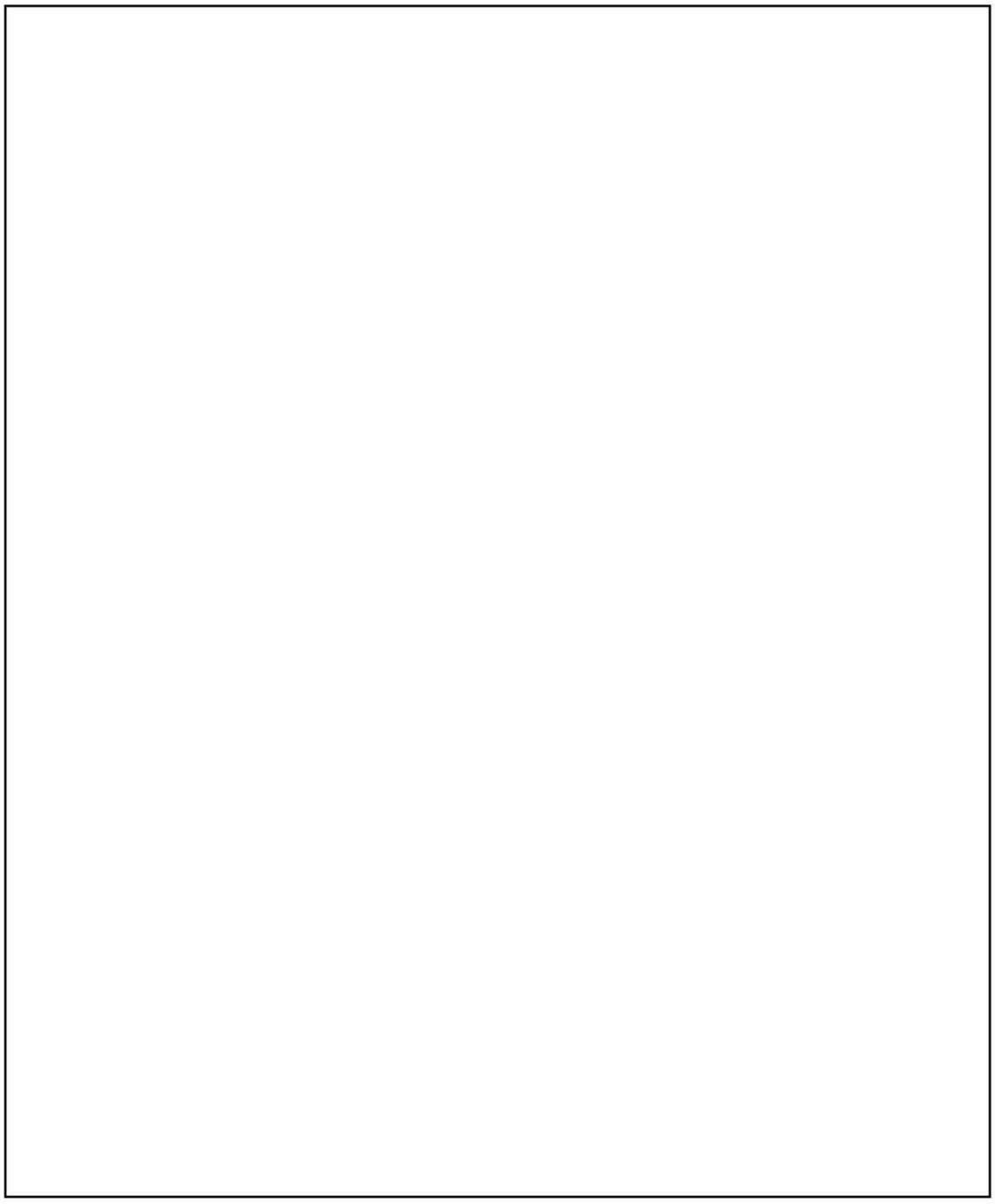
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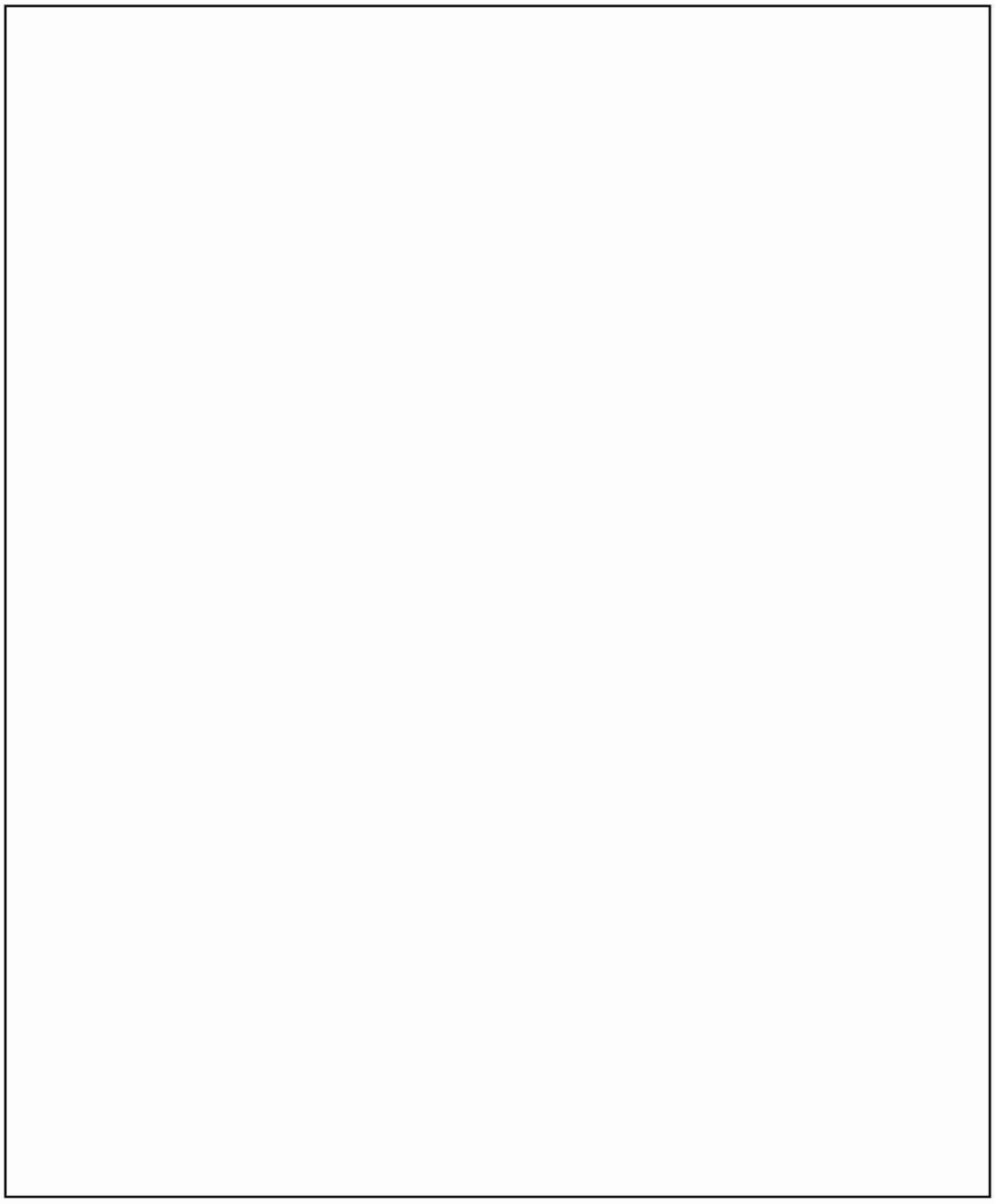
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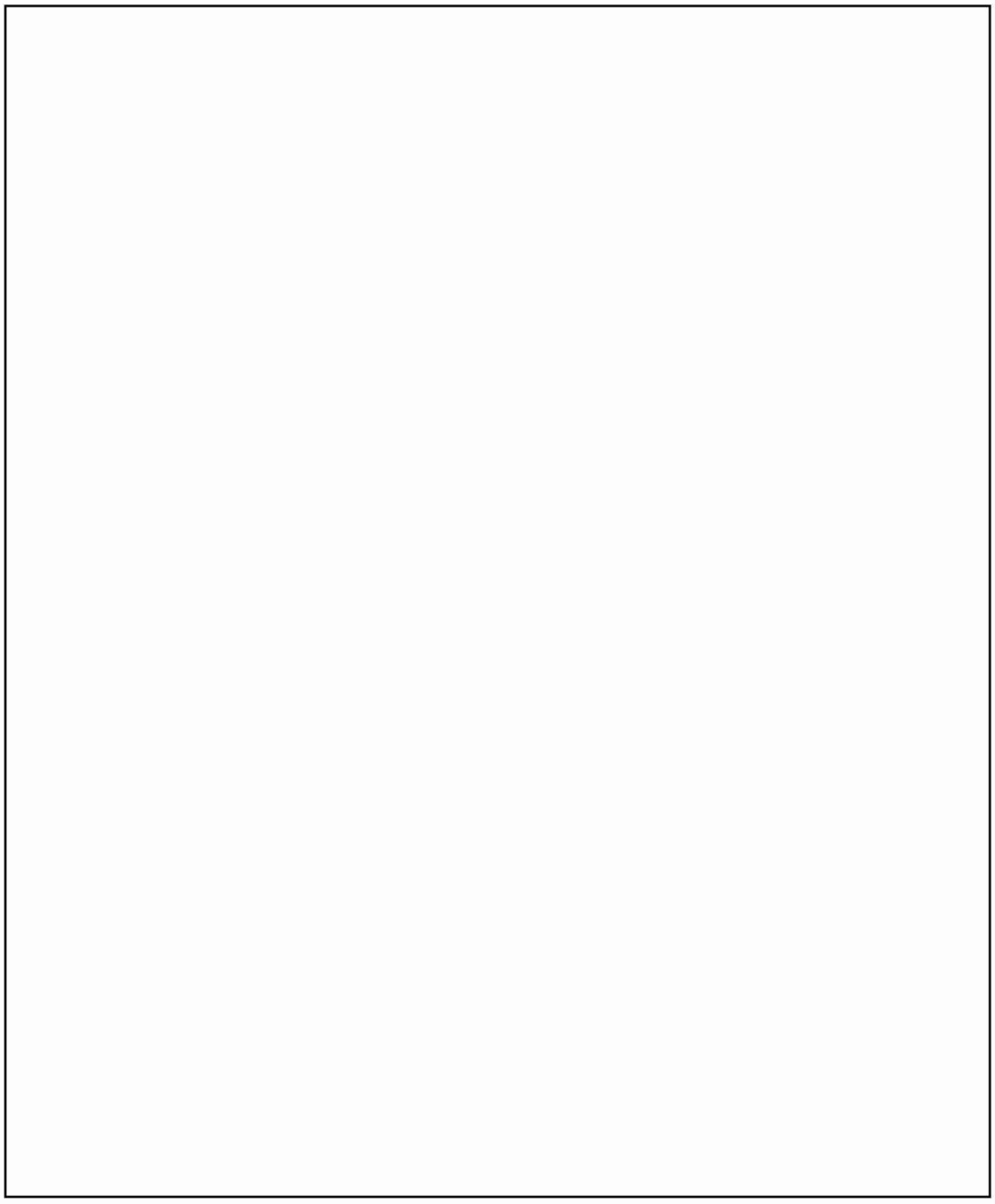
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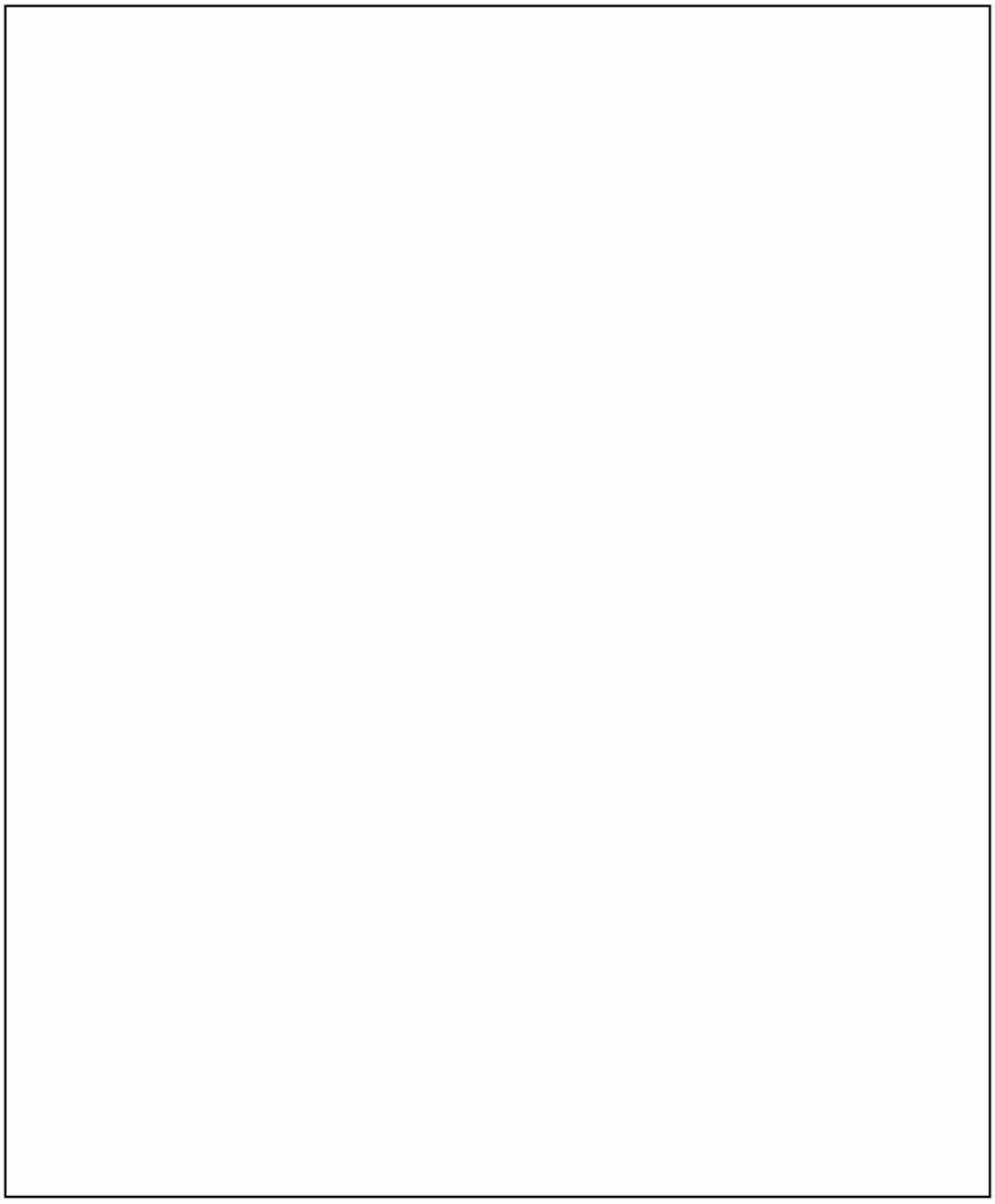
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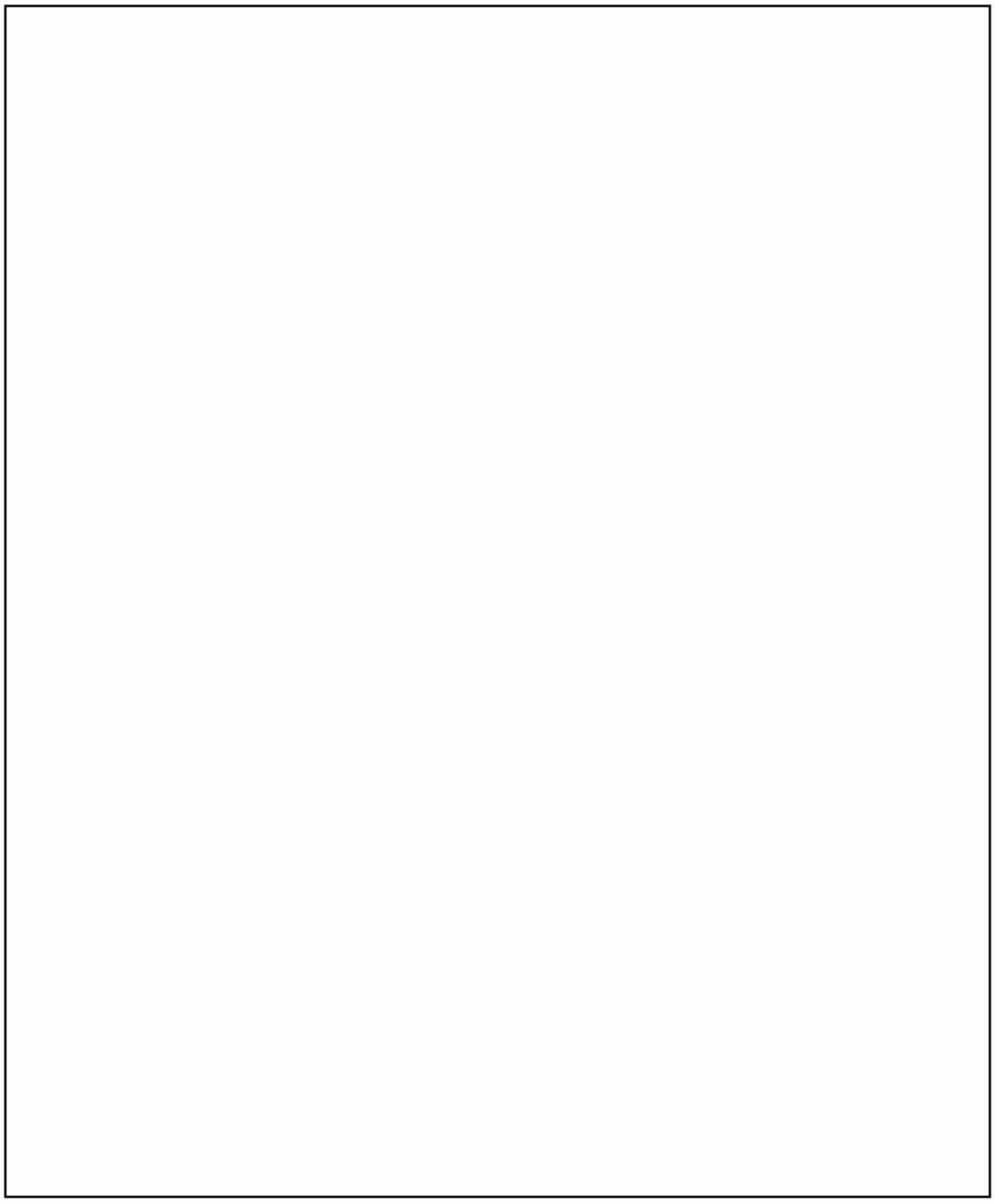
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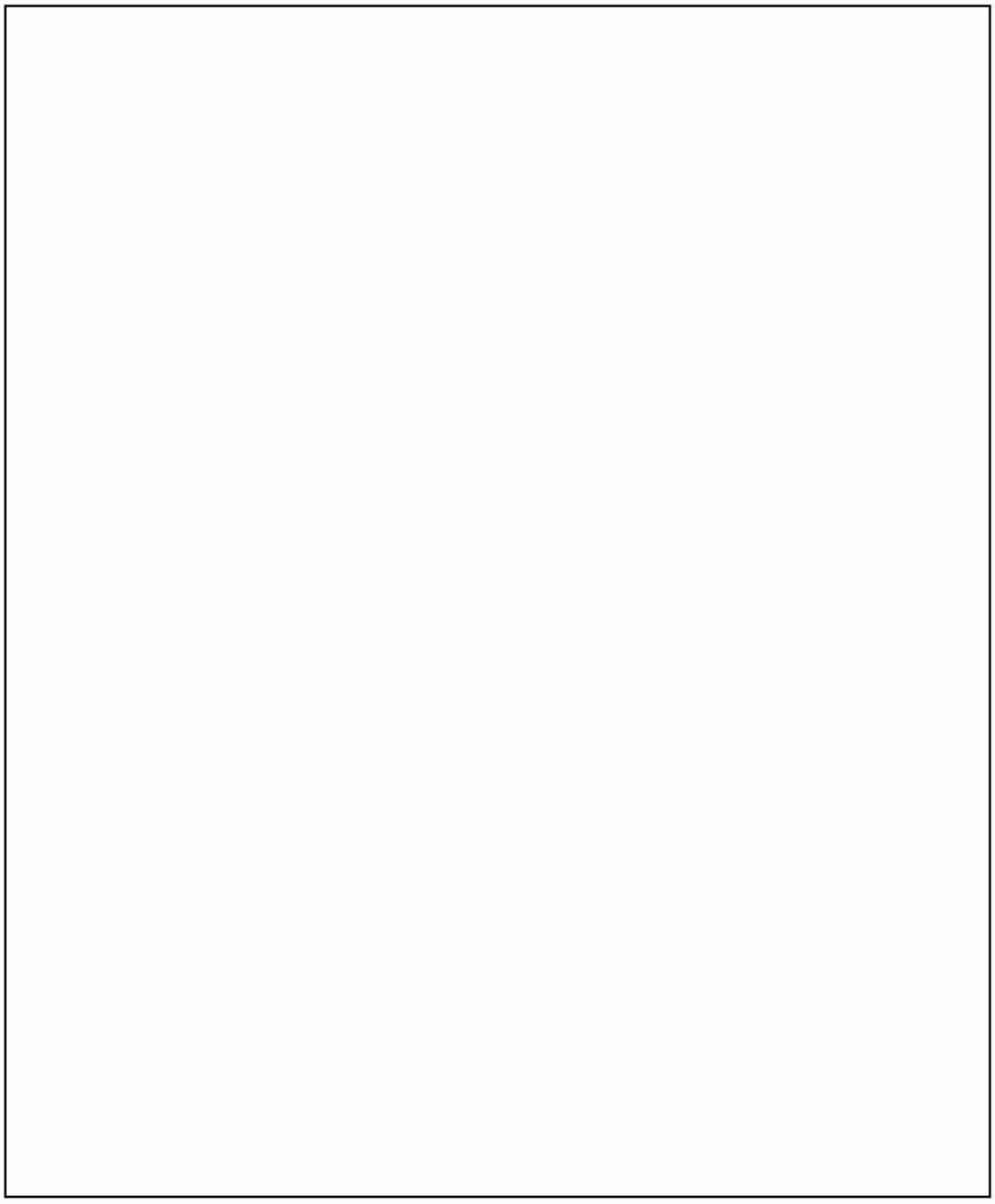
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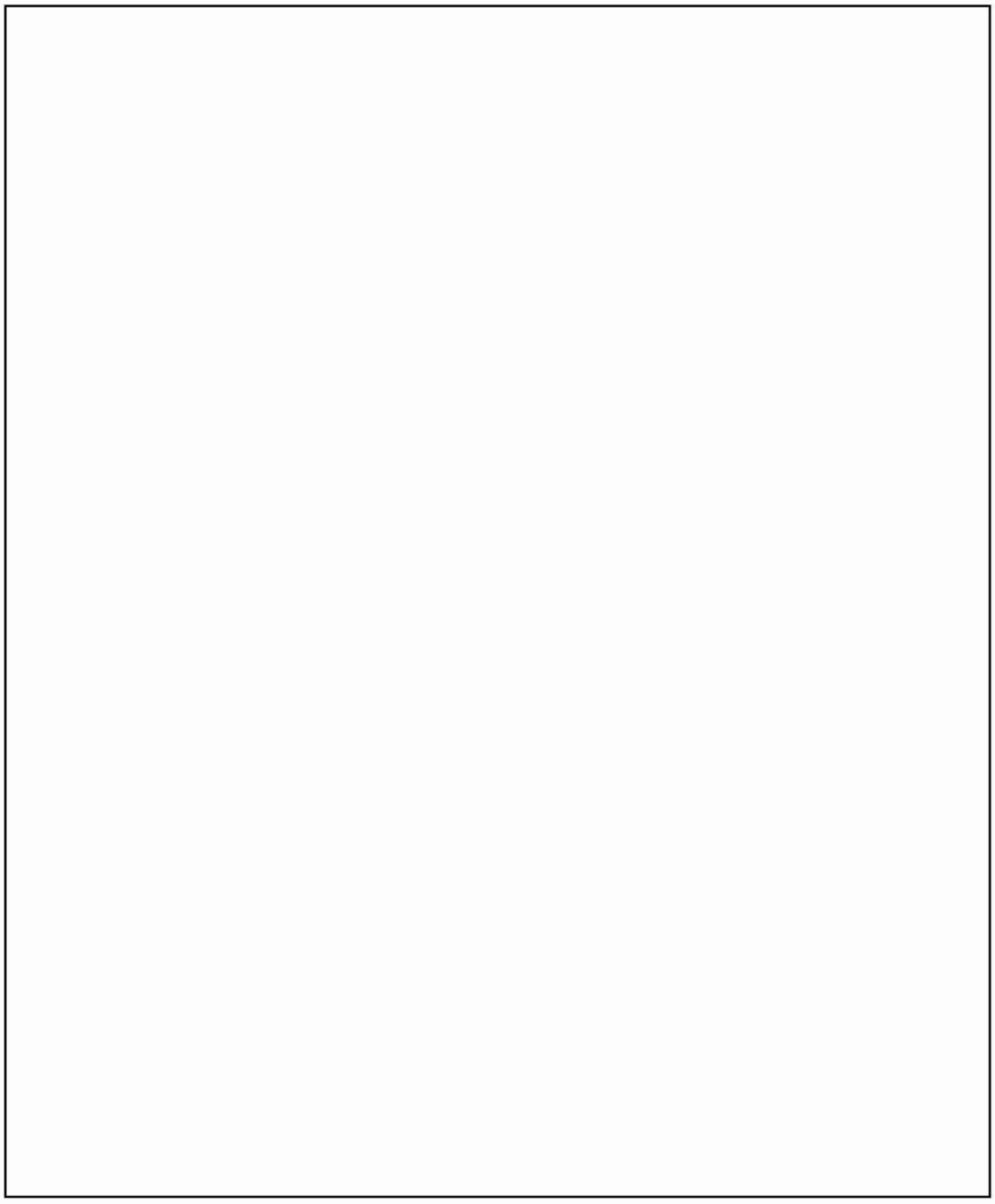
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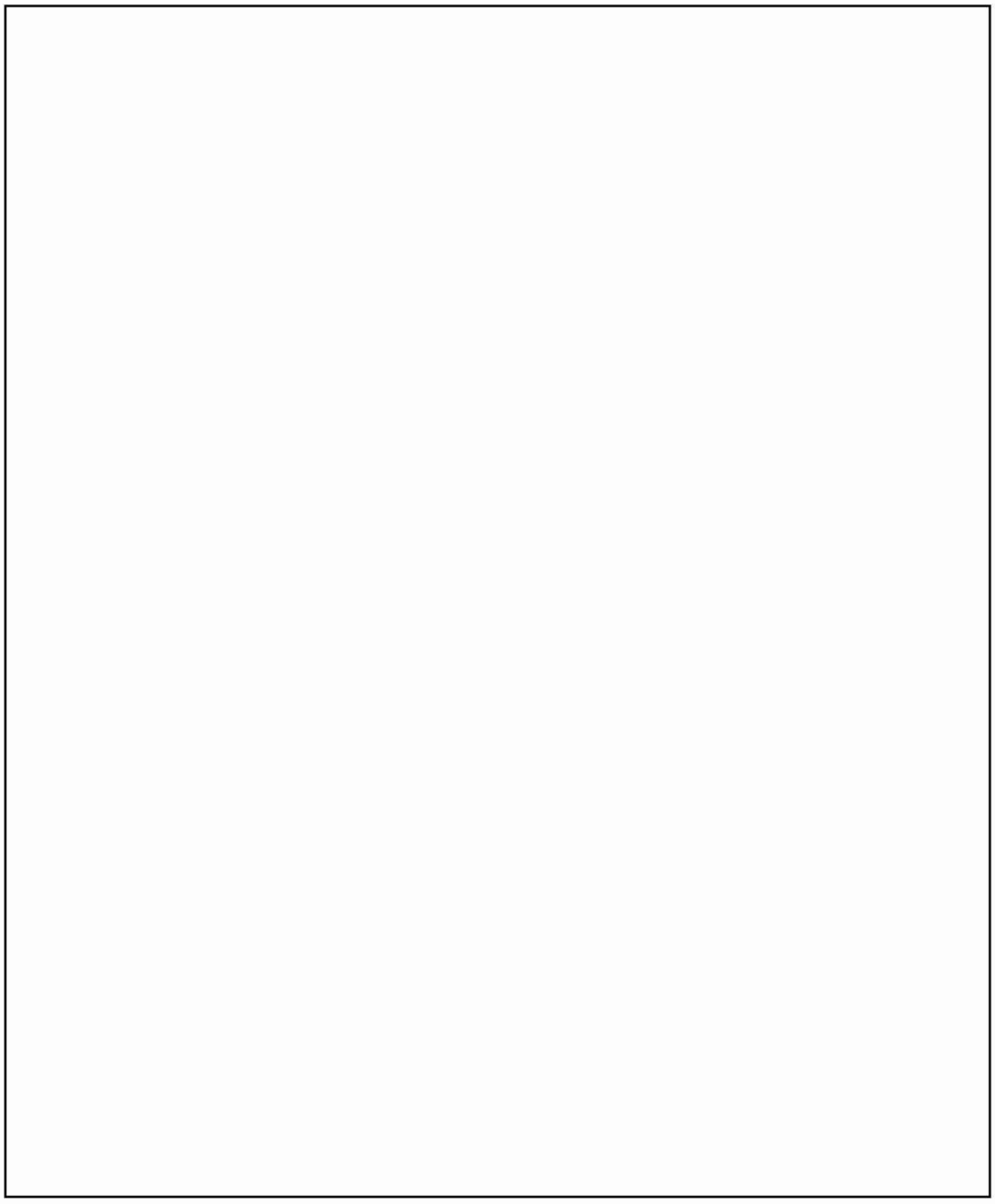
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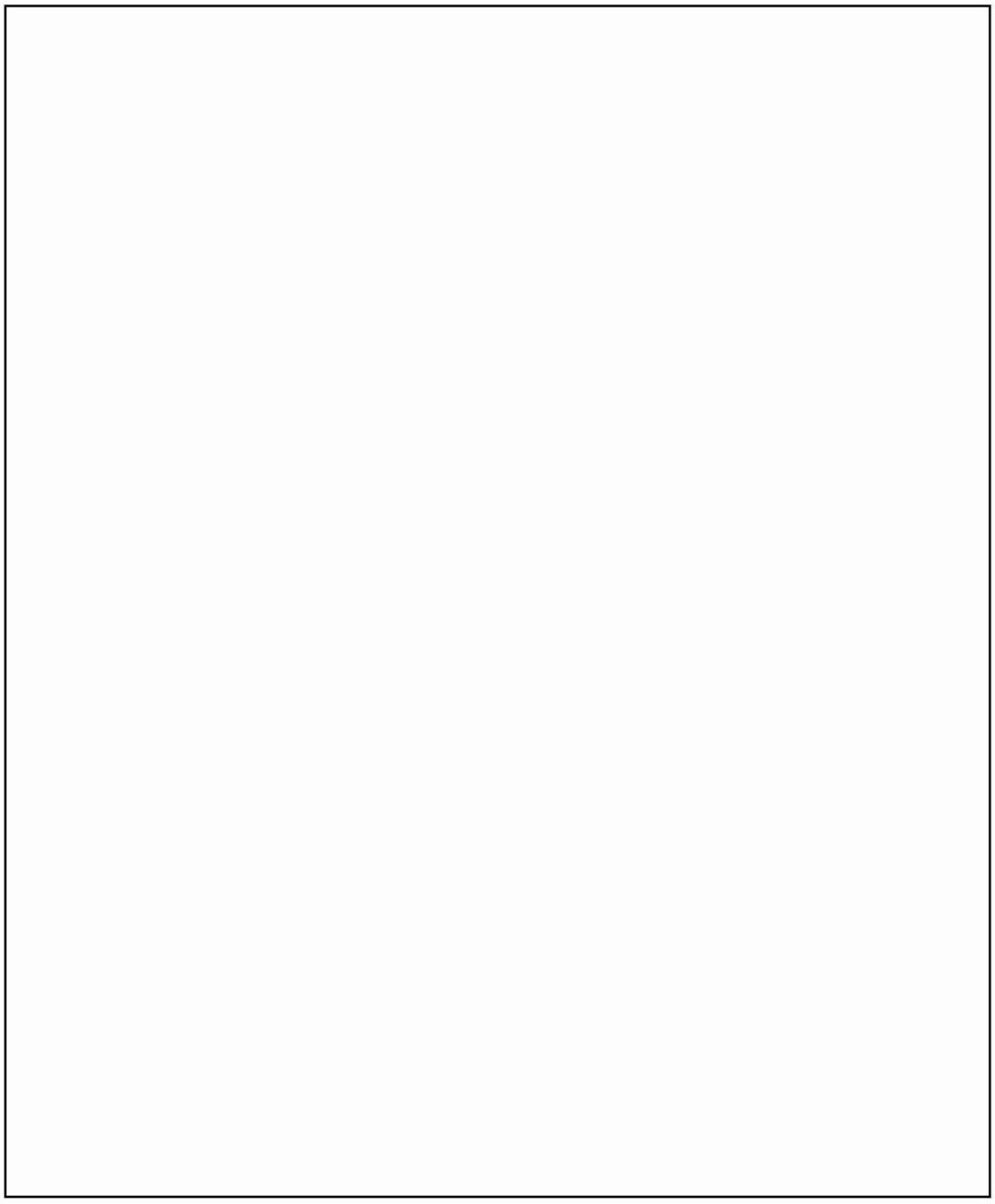
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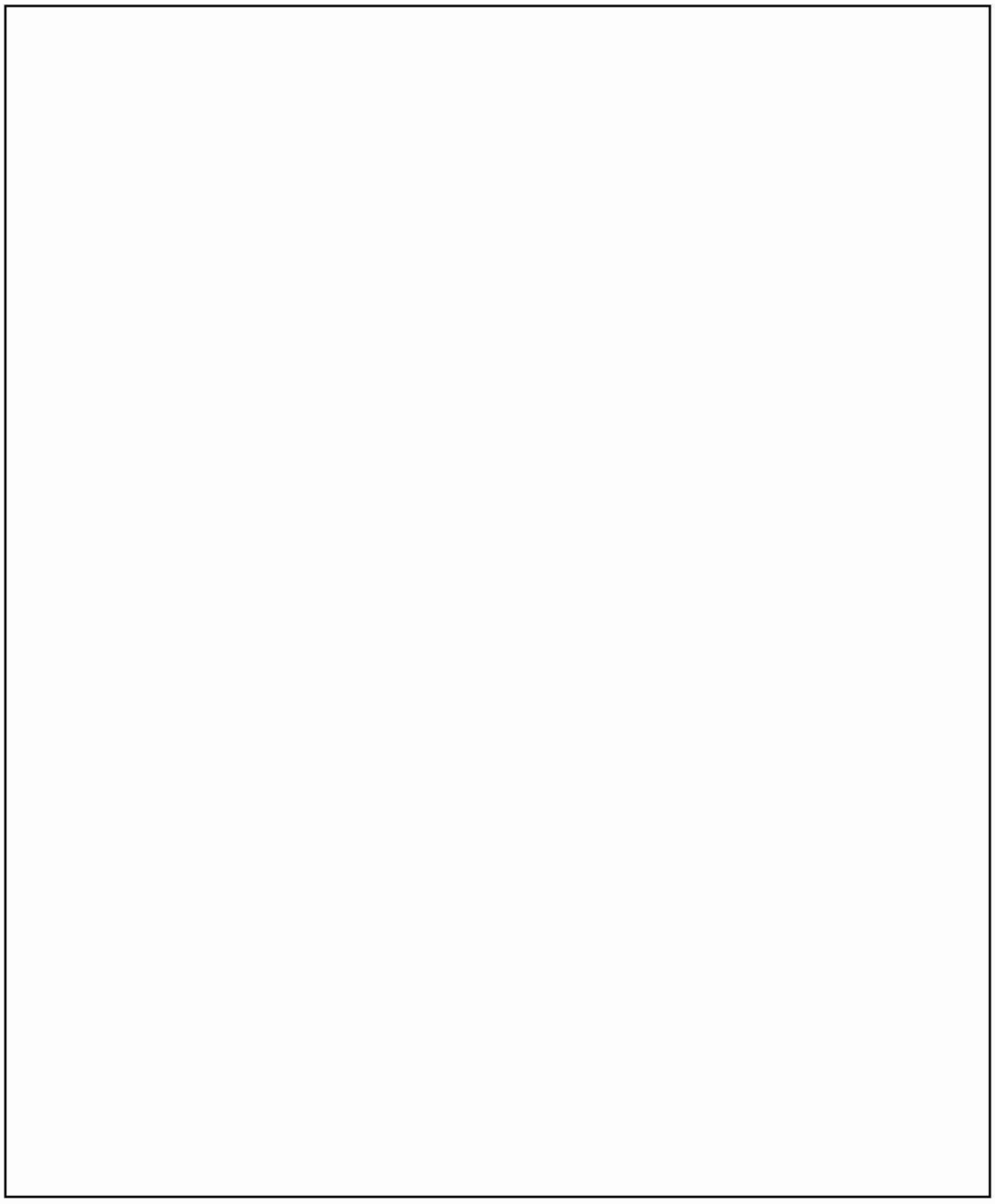
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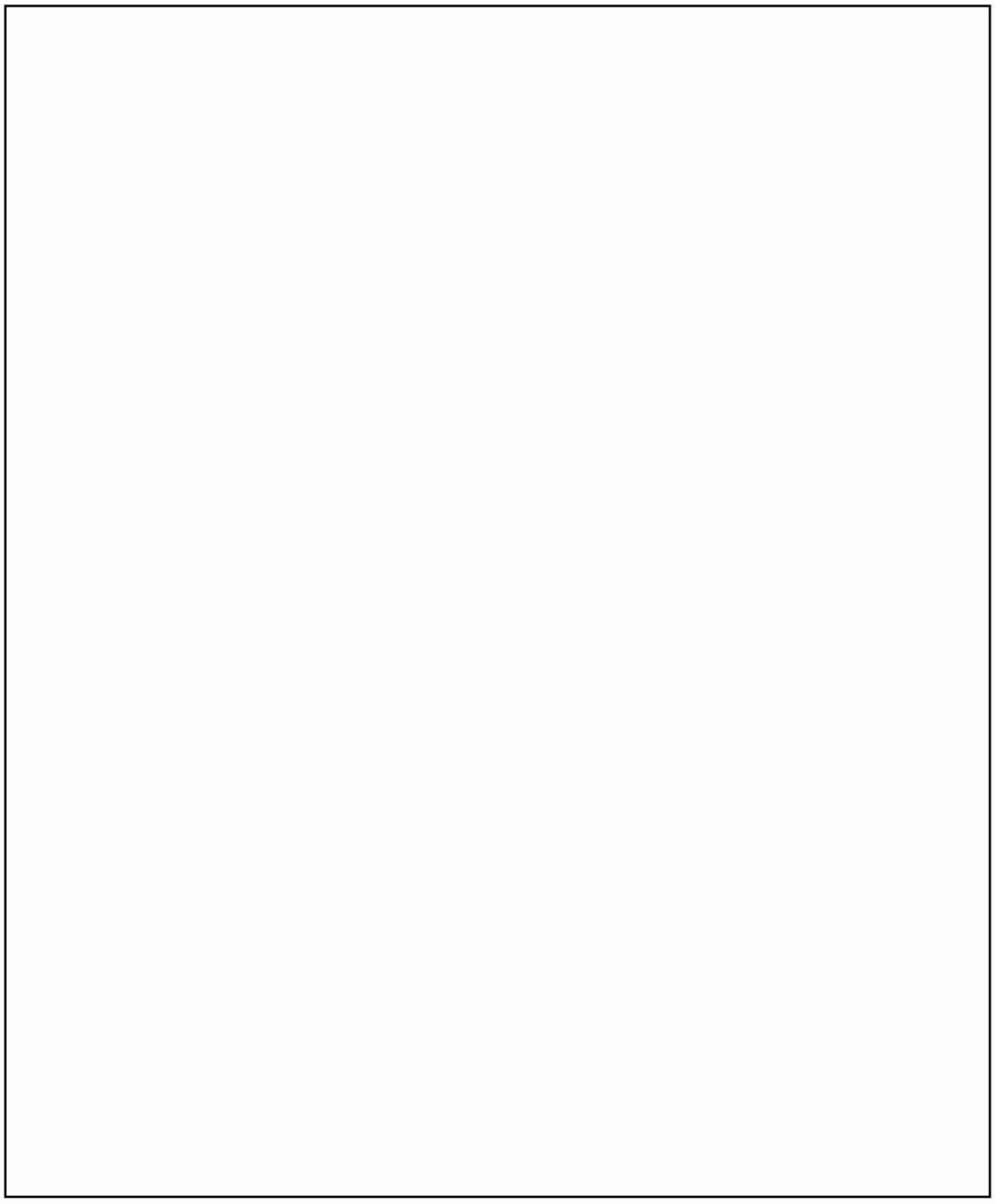
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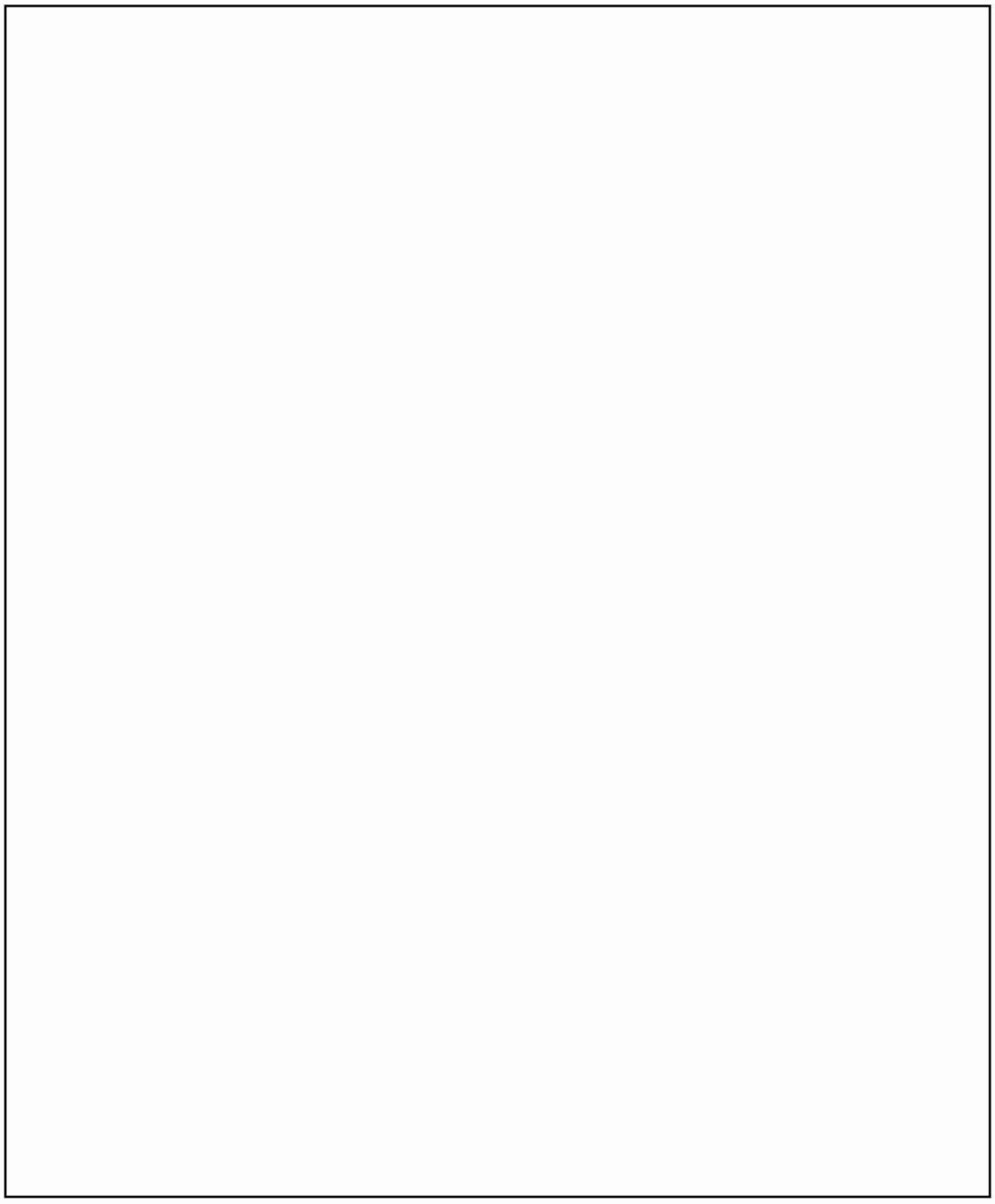
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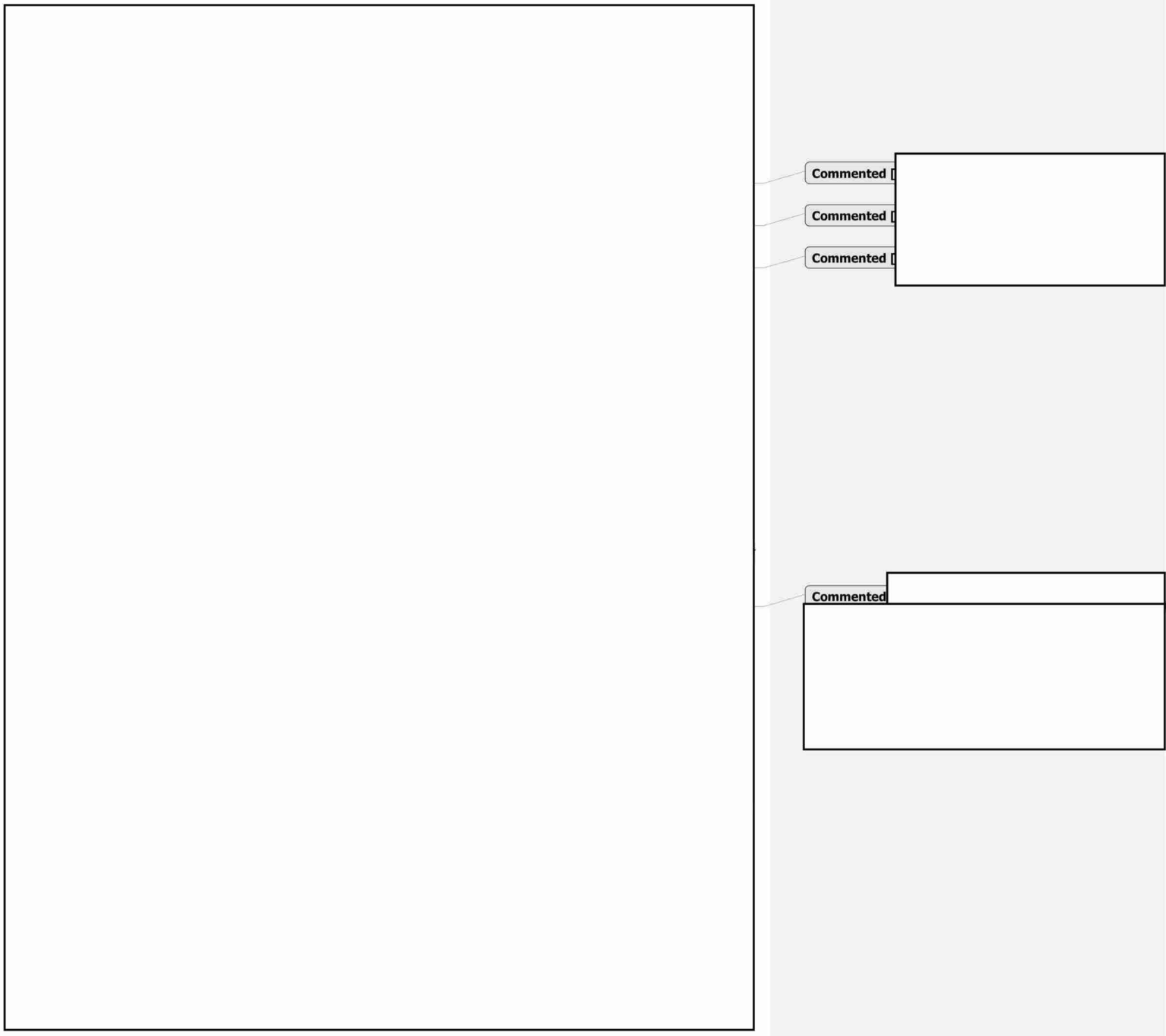
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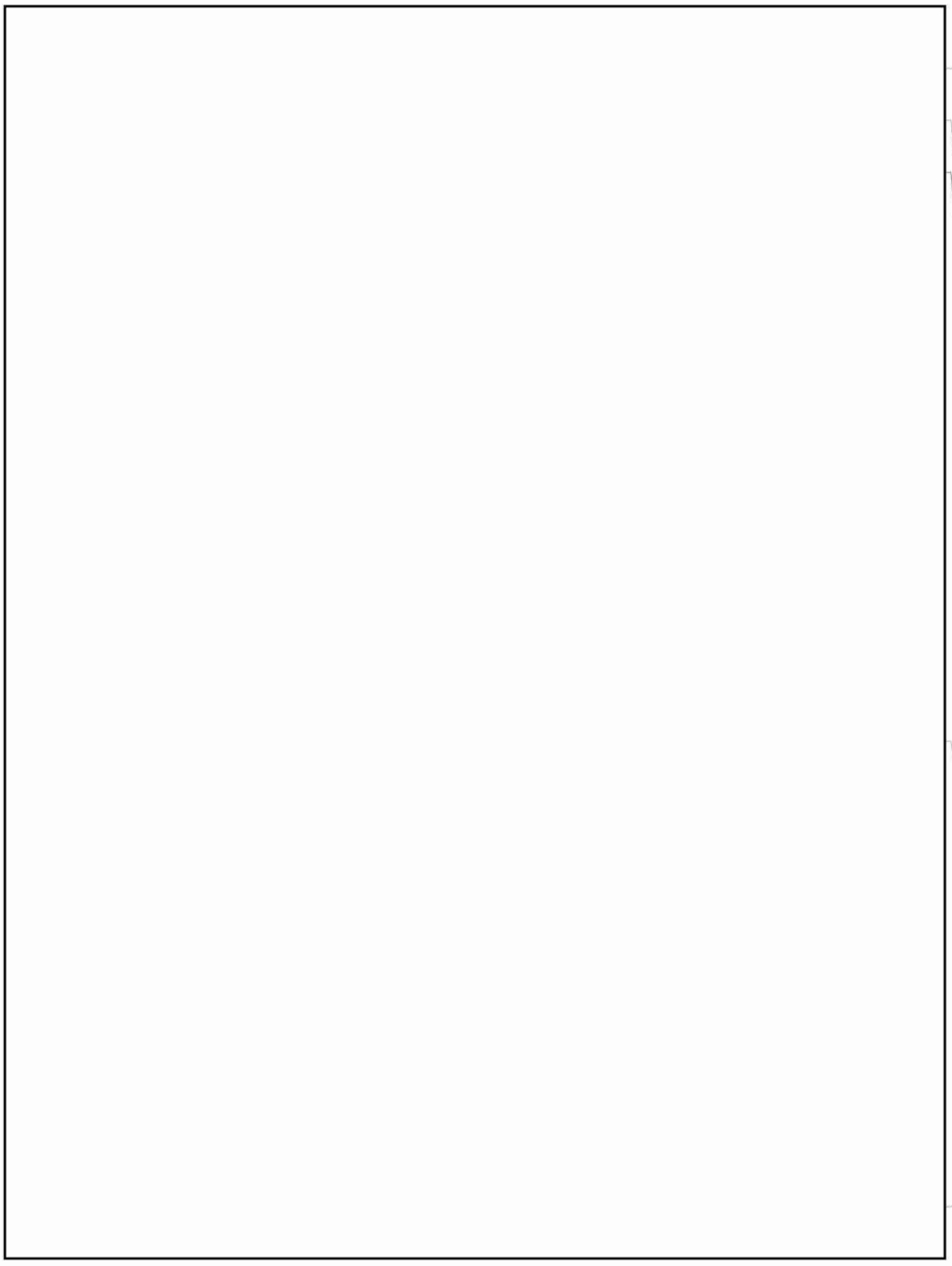
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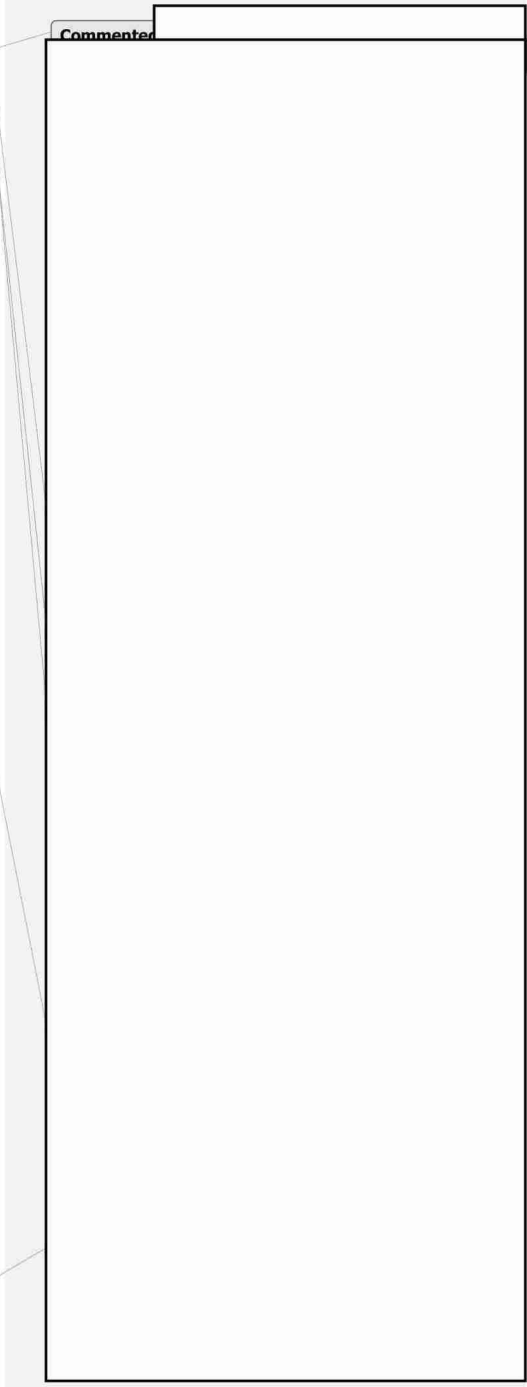


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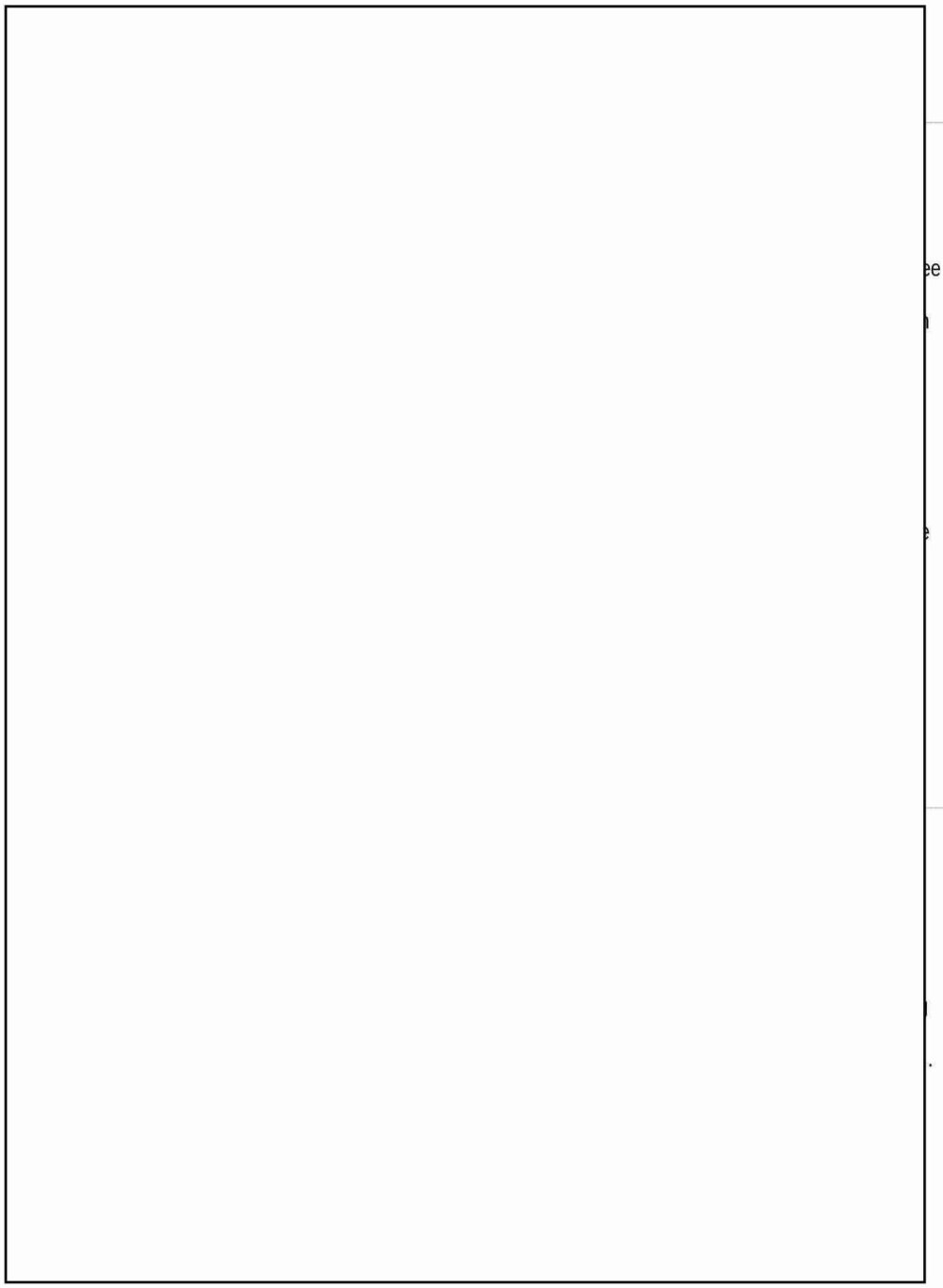


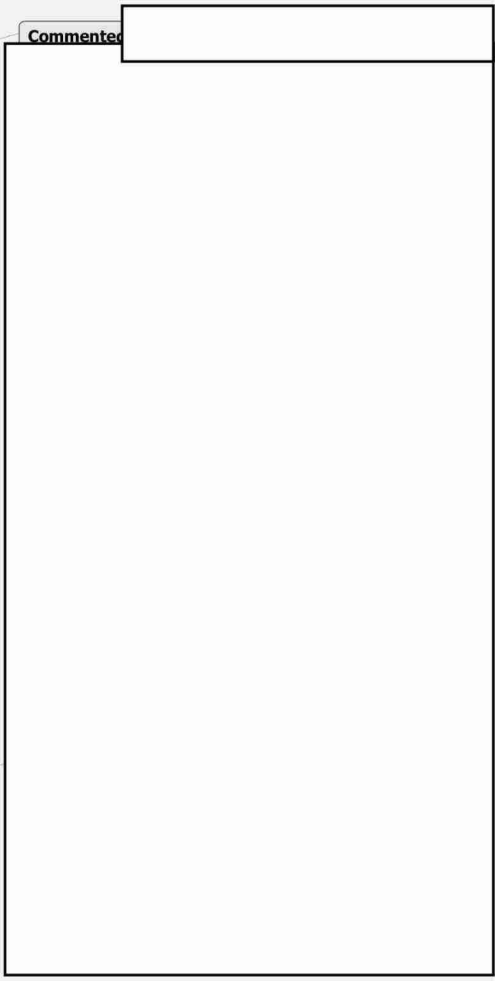


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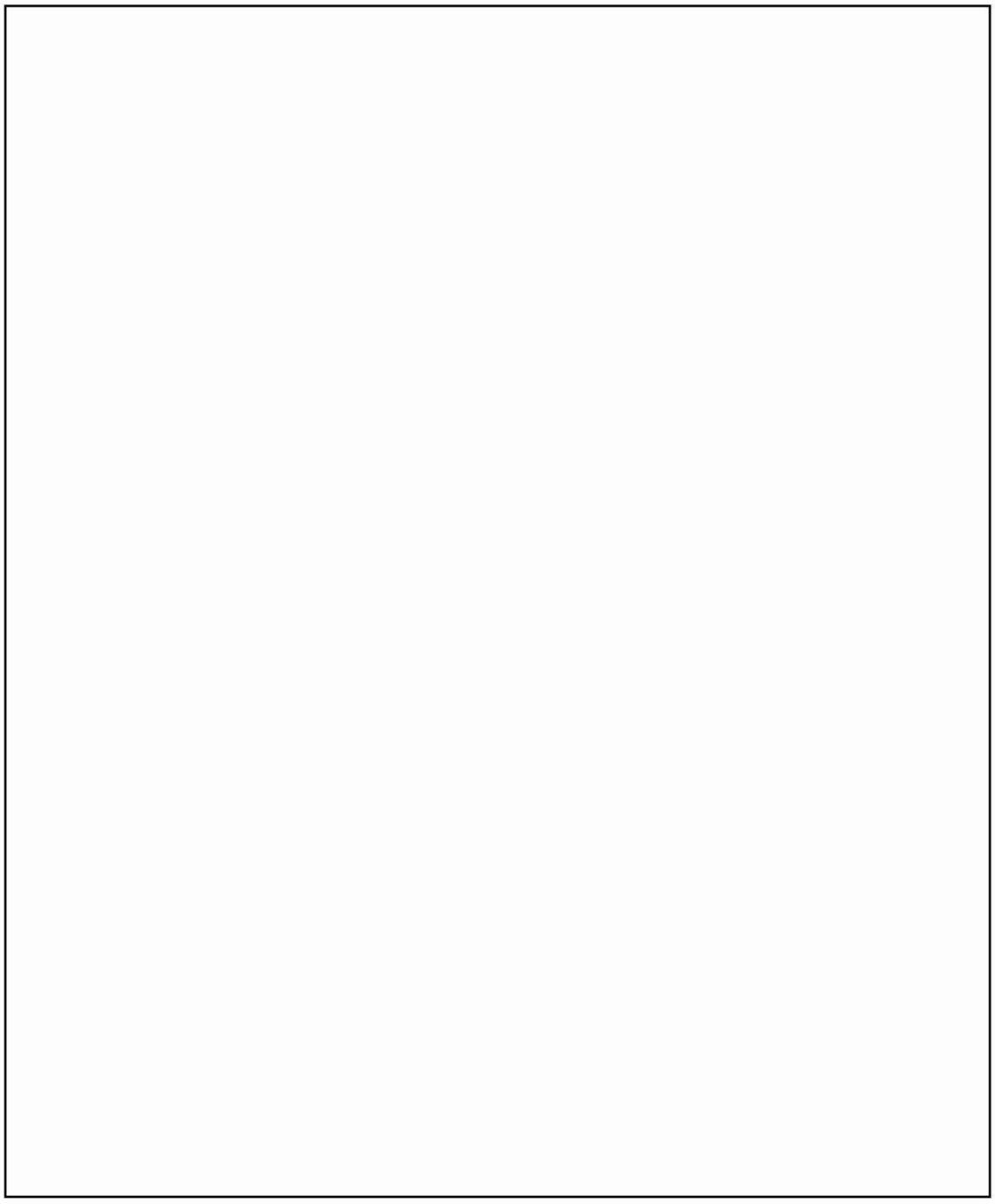




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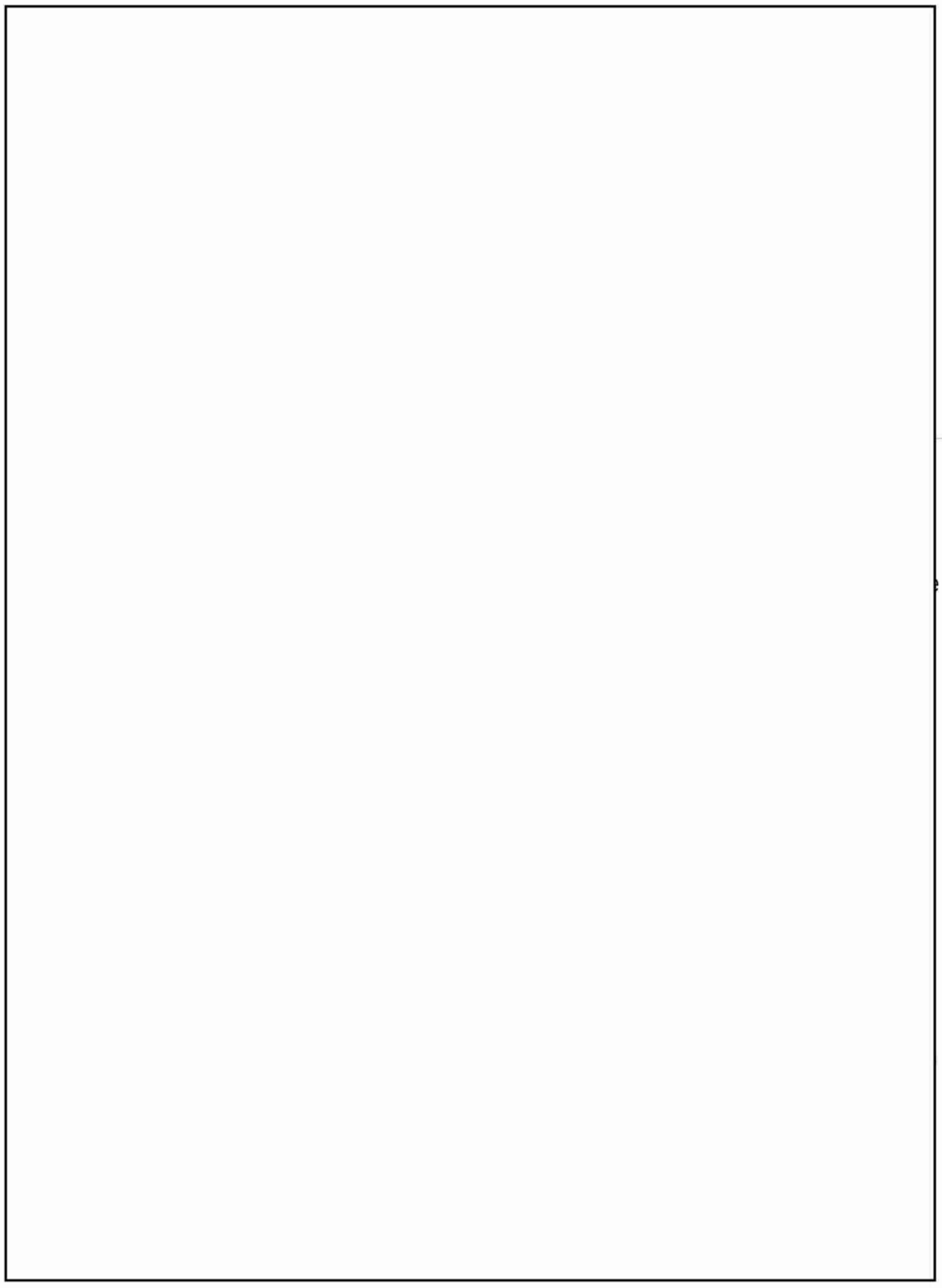
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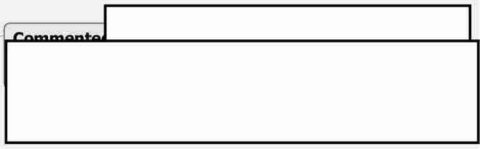
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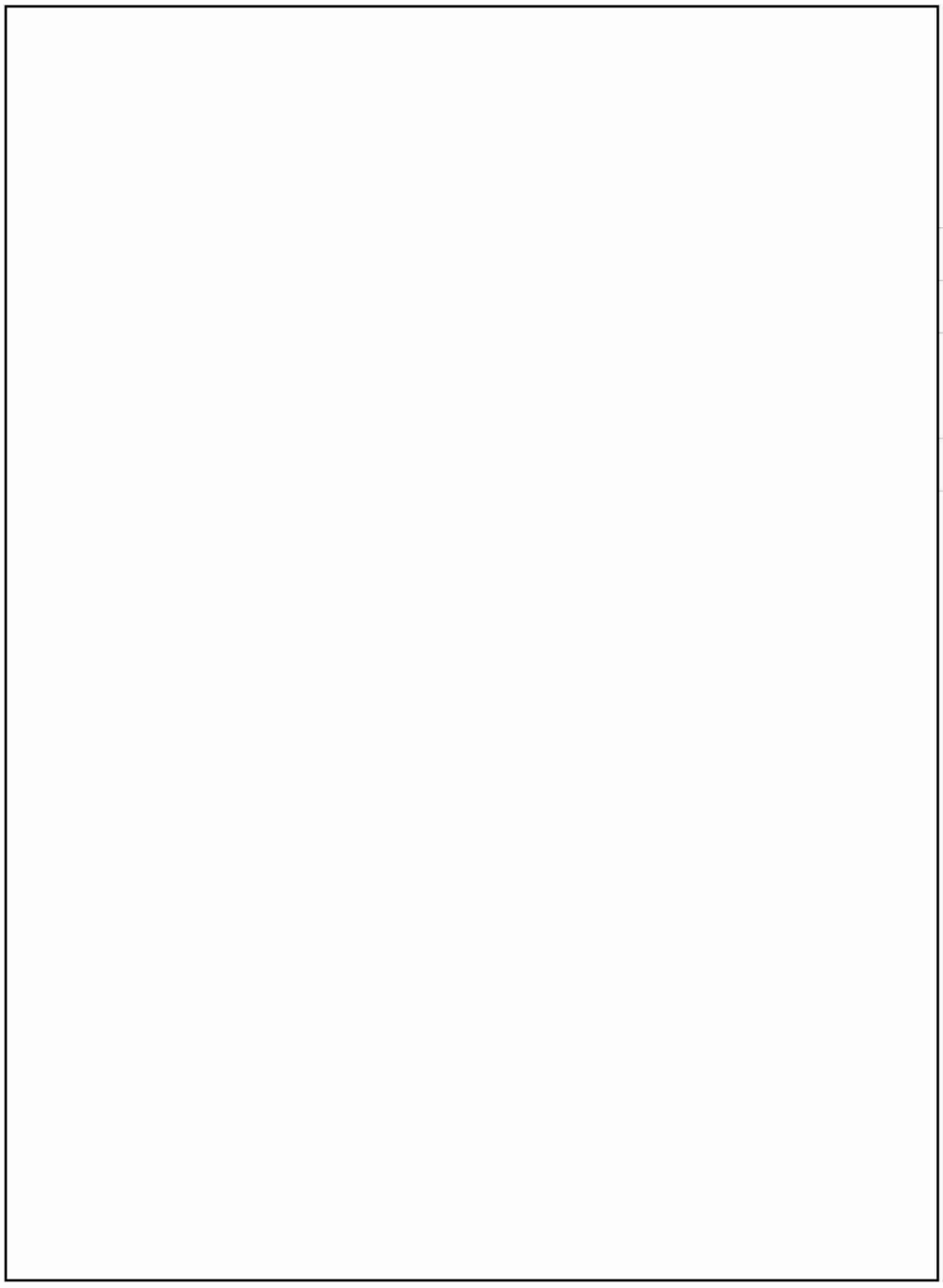


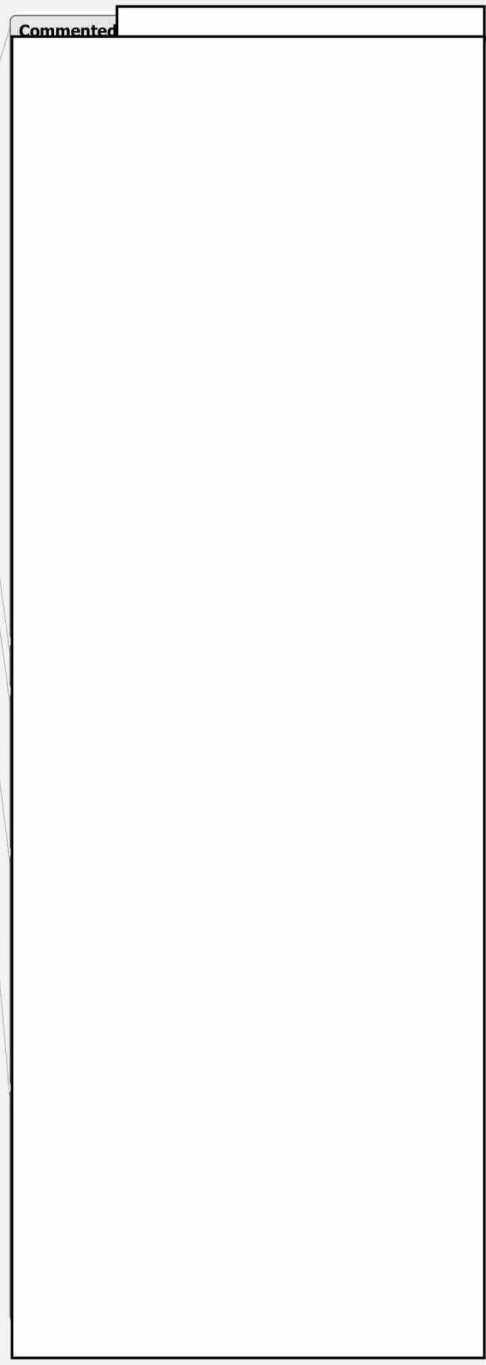


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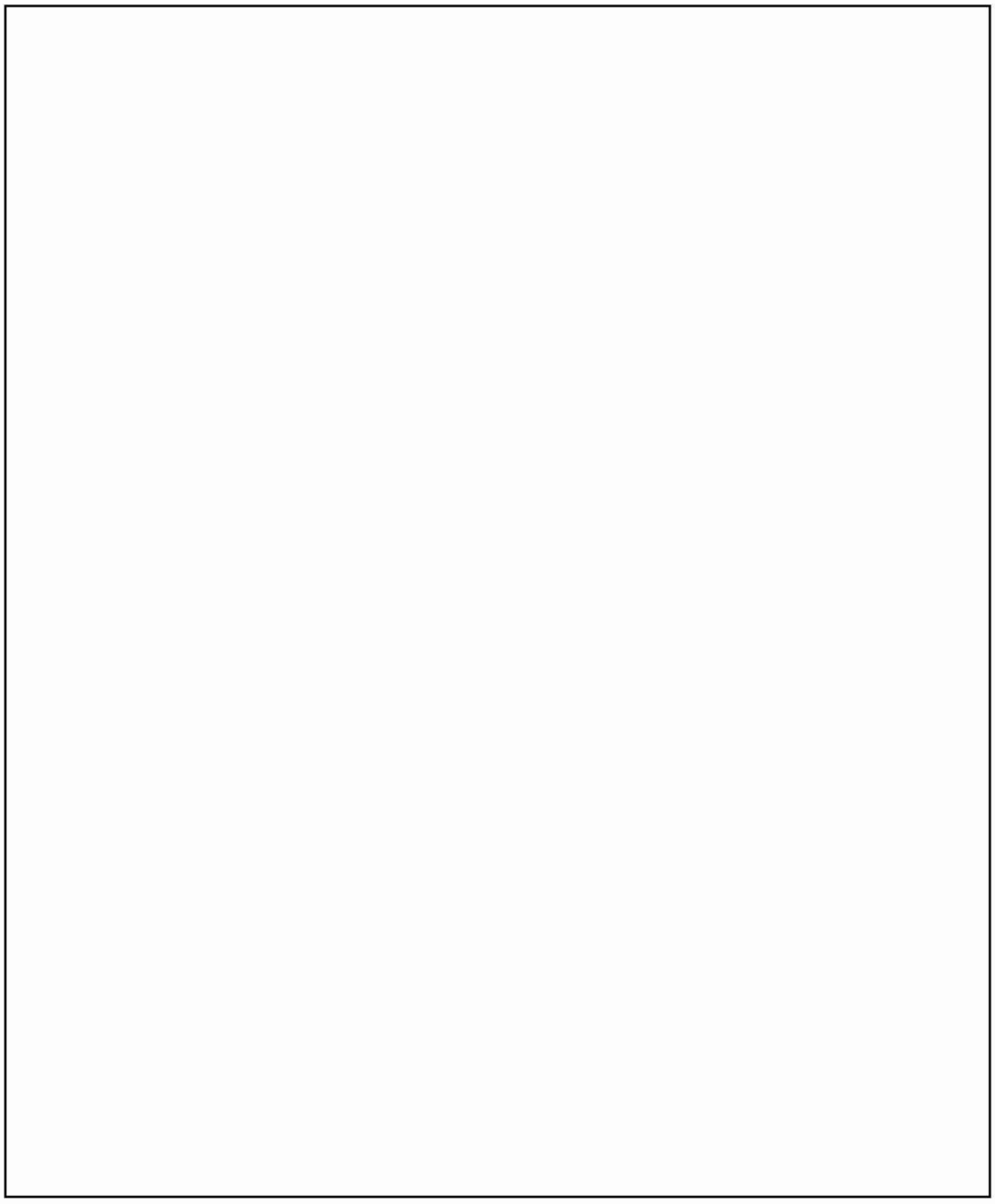




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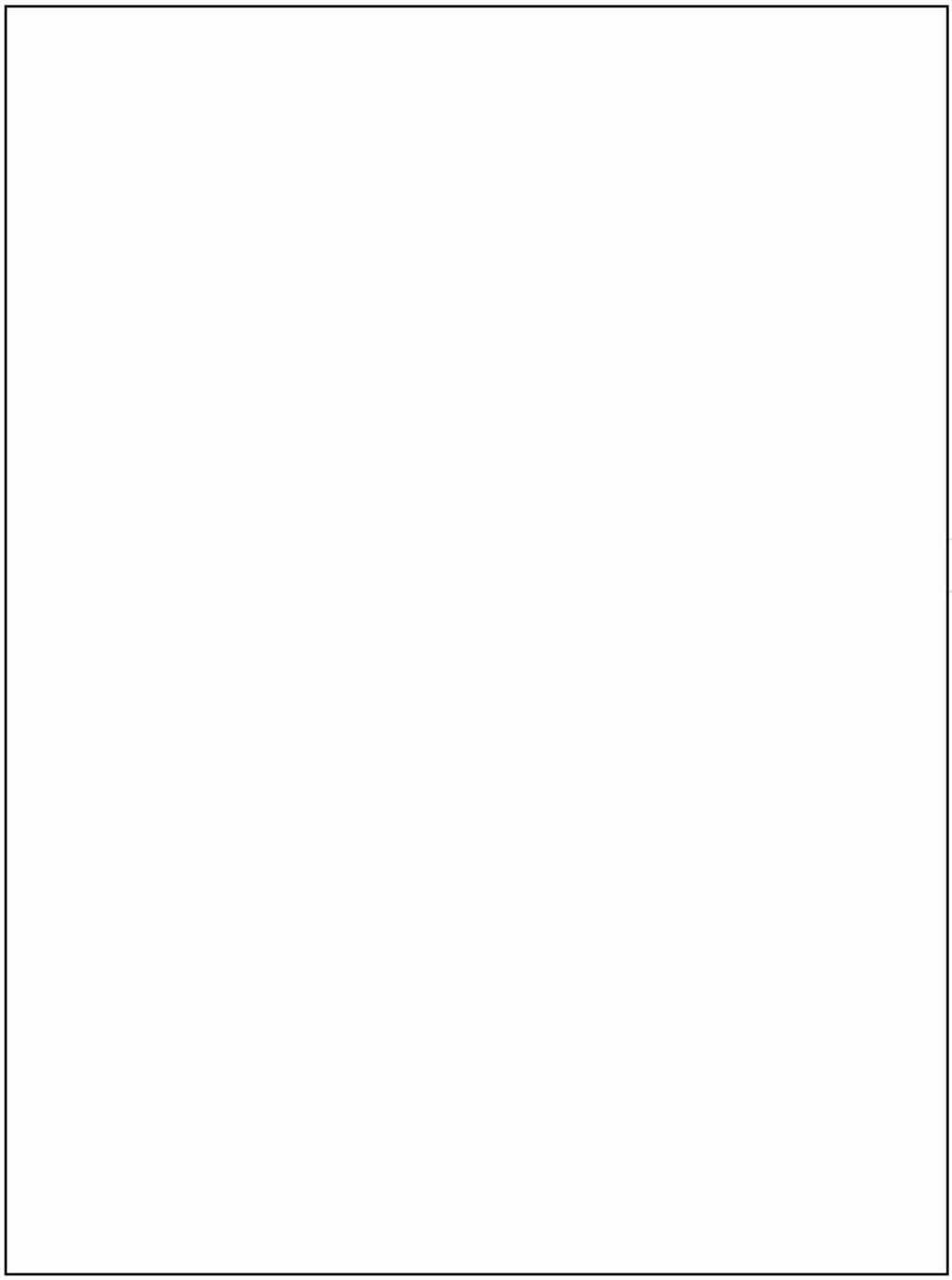
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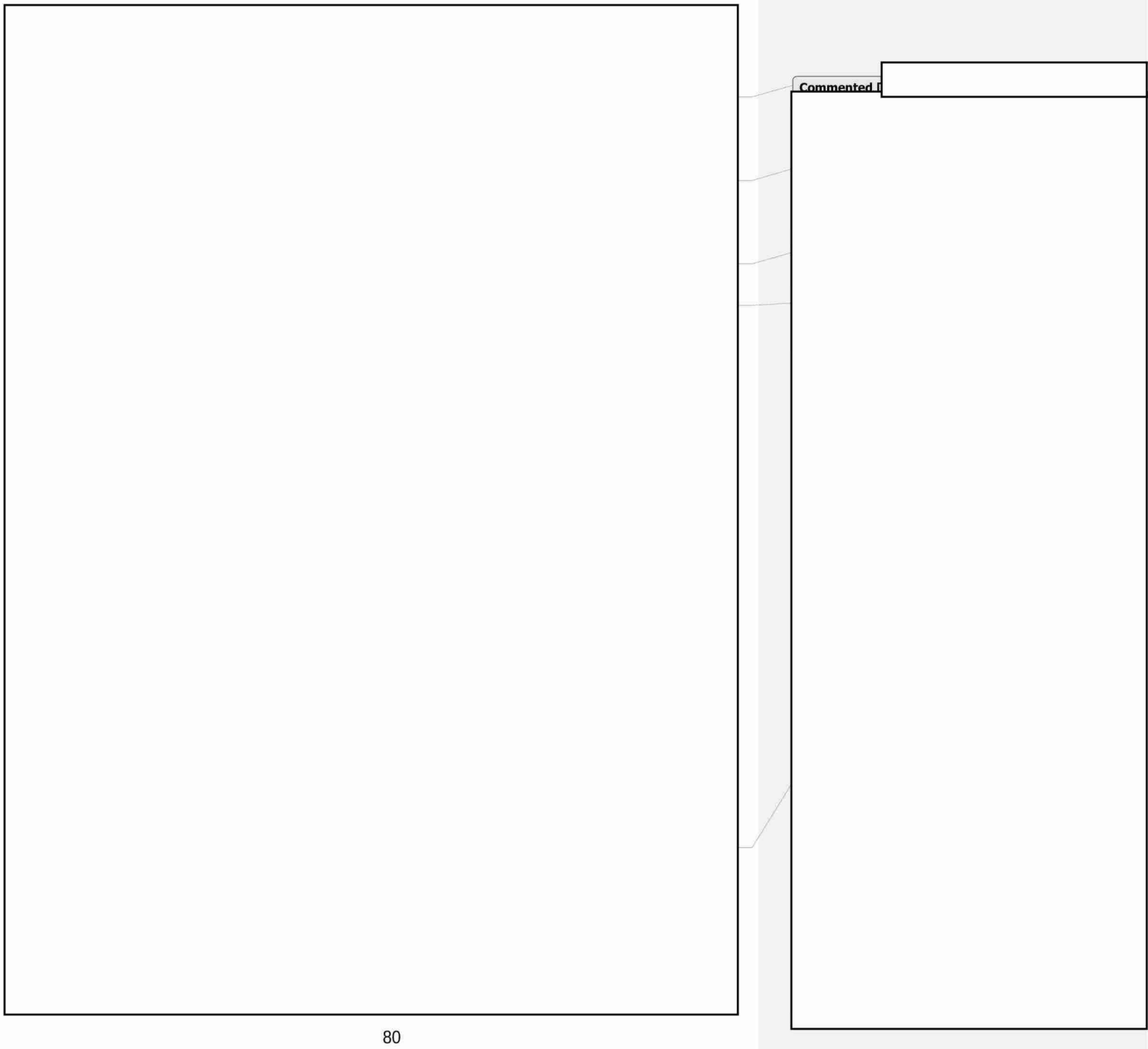
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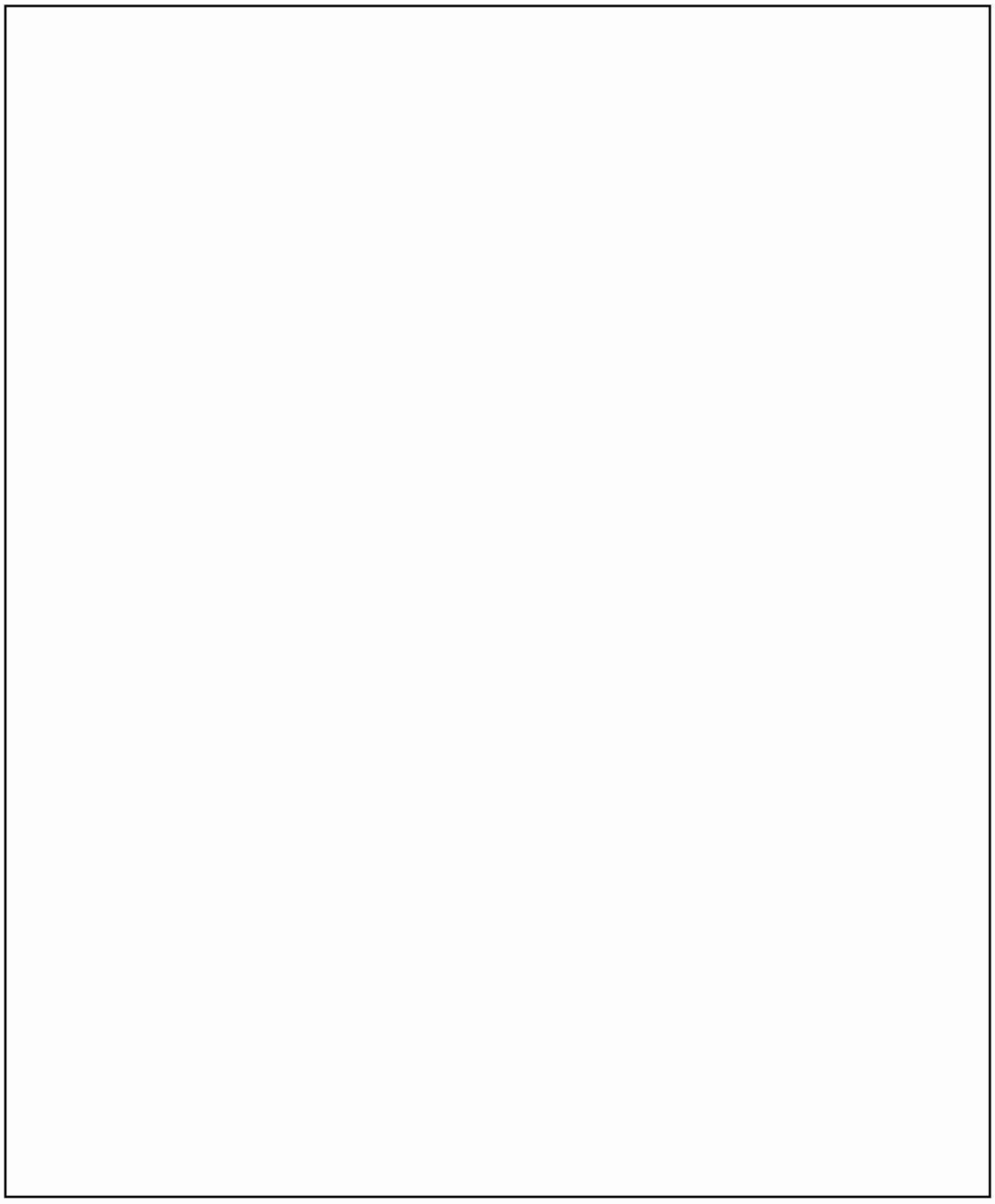


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From: King, Alexander R
Subject: FW: URGENT | G-1056 Review | H-1B Registration Selection IFR due by 4pm Tuesday, 9.15.20
To: Piateski, Jennifer E
Sent: September 15, 2020 11:09 AM (UTC-05:00)
Attached: H-1B Registration Selection by Wage Levels IFR Clean.docx, H-1B Selection Process_G-1056 Clearance Routing Sheet.pdf

(b)(6)

Here it is. Millie's comment is on page 22.

From: Willis, Antonia T (Tony)
Sent: Friday, September 11, 2020 12:11 PM
To: AAO-Clearance; Renwick, William K (Ken); Dibbins, Susan P; Federwisch Webb, Victoria N (Tory); Titus, Deanne A; OCC-Clearance; USCIS Privacy Inquiries; Hawkins, Donald K; USCIS MGT Tasks; Dawson, Inga I; SCOPS-EXSO; Bae, Connie J; King, Alexander R; Simpson, Erica L
Cc: Taylor, Kelisha C; Deshommes, Samantha L; Boivin, Mark R; Compton, Dana C; FDNSExecSec; Krebs, Kristie L; EXA Clearance Distribution List; USCIS Regs; Rigdon, Jerry L; Law, Robert T; Parascandola, Ciro A; Gramiccioni, Jennifer L; Freiberger, Andrea L (Ande); Leal, Jessica; Buten, Elizabeth C; Lin, Peggy P
Subject: URGENT | G-1056 Review | H-1B Registration Selection IFR due by 4pm Tuesday, 9.15.20

Good afternoon all,

Urgent Request
Please review the IFR related to the Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions. Please limit your comments/edits on the IFR to only showstoppers, as the document has already received significant leadership input.

Concurrence

- Please include a completed G-1056 when responding, and submit your comments/concurrence to
- Concurrence responses from AAO, OCC, MGT, PRIV and SCOPS are required **NLT 4pm Tuesday, September 15, 2020**.
- Responses from other offices are optional.
- The required Front Office clearance will occur after USCIS clearance.

Please let me know if you have any questions.

Thanks,

Tony

AMERICAN OVERSIGHT

Antonia T. Willis

(b)(6)

Project Manager, Regulatory Management Branch
U.S. Citizenship and Immigration Services | Office of Policy and Strategy
Office: [redacted] Cell: [redacted]
(b)(6)

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. ####-20; DHS Docket No. USCIS-####-####]

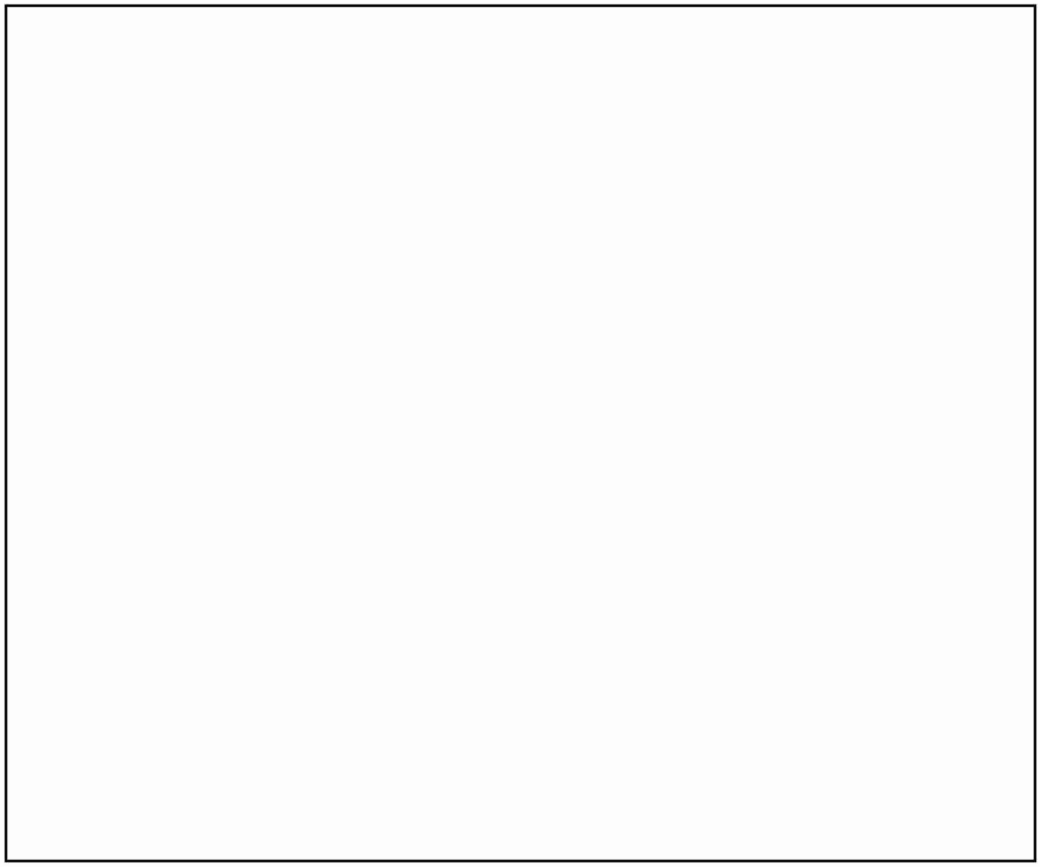
RIN 1615-AC61

Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

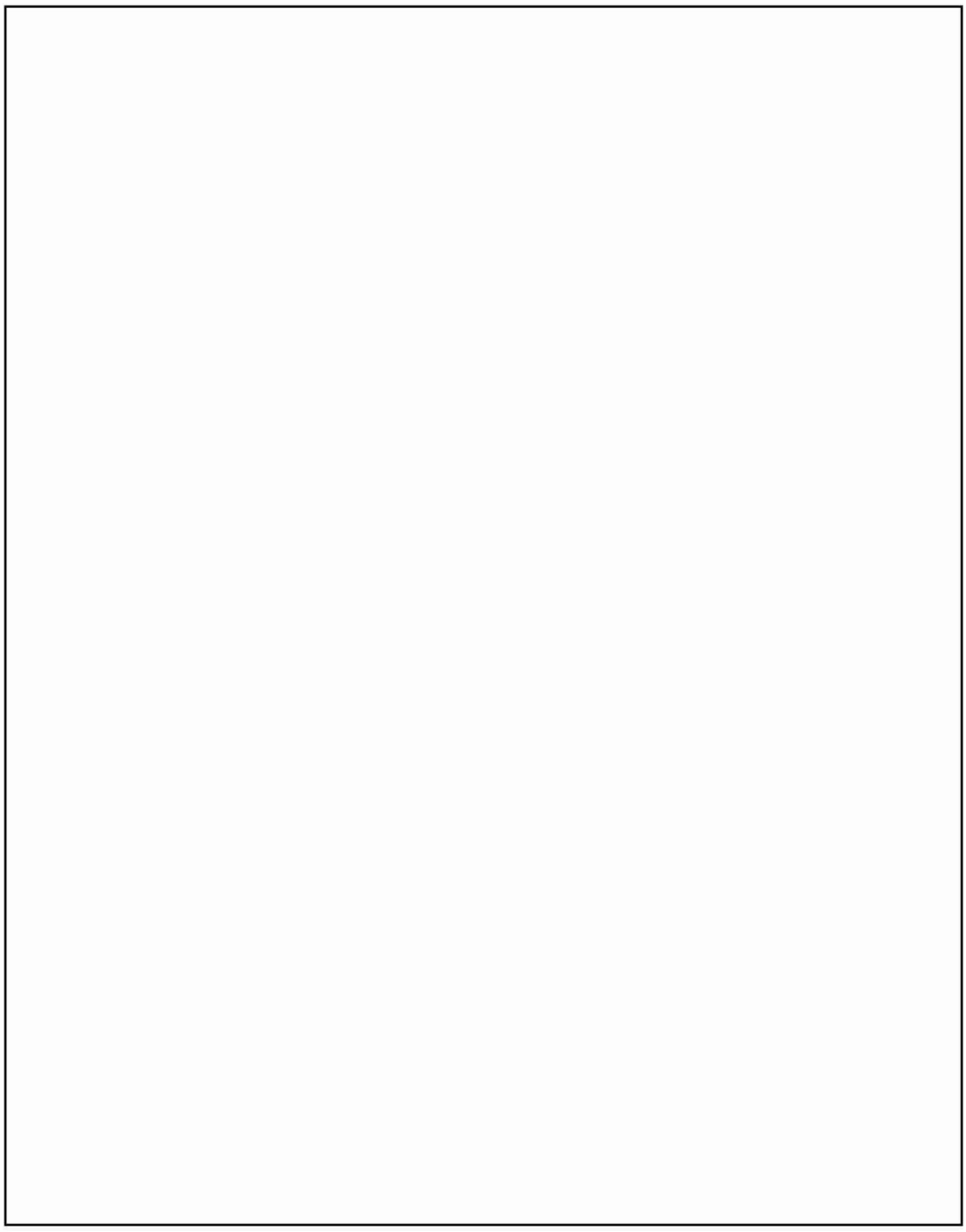
ACTION: Interim Final Rule.

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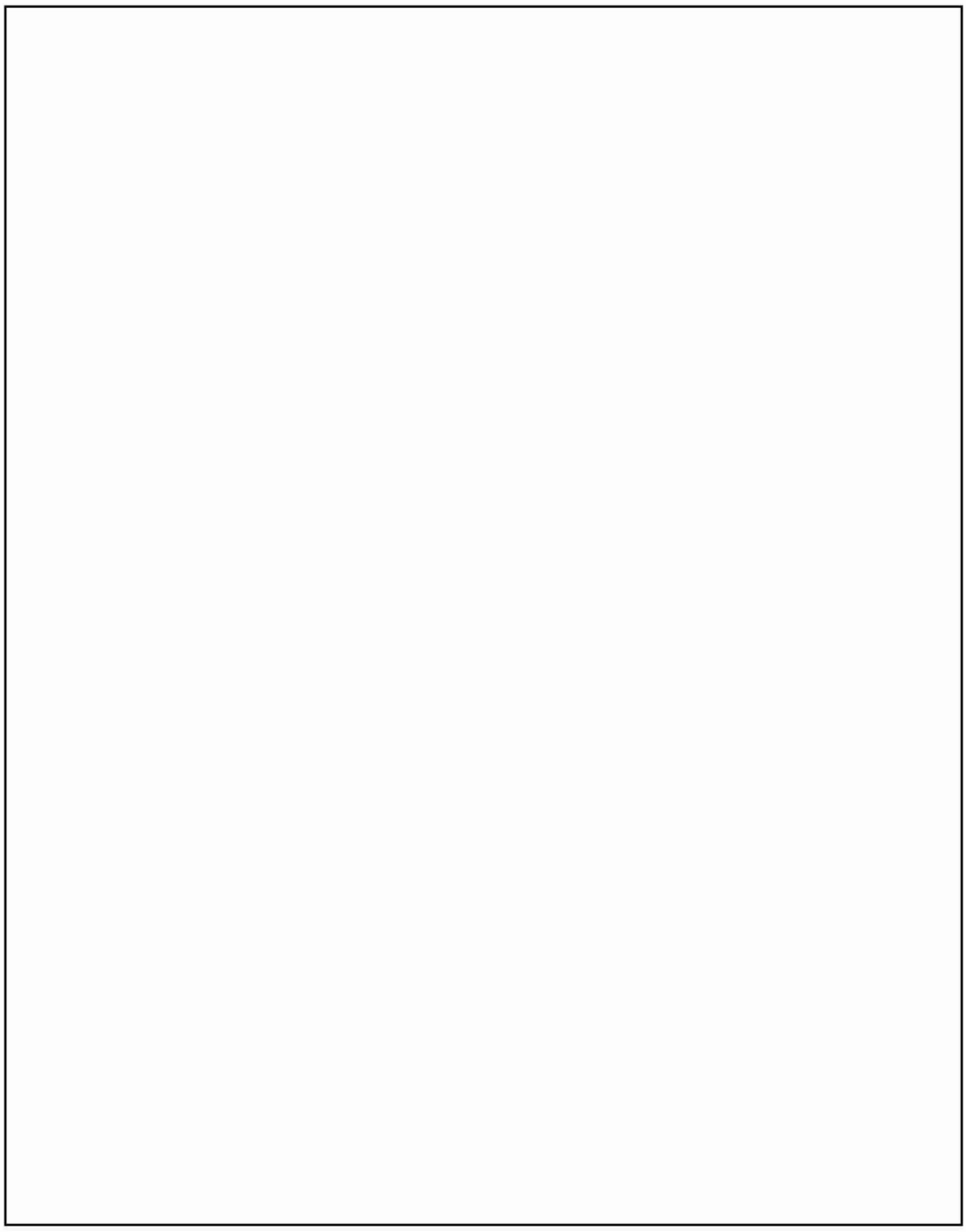
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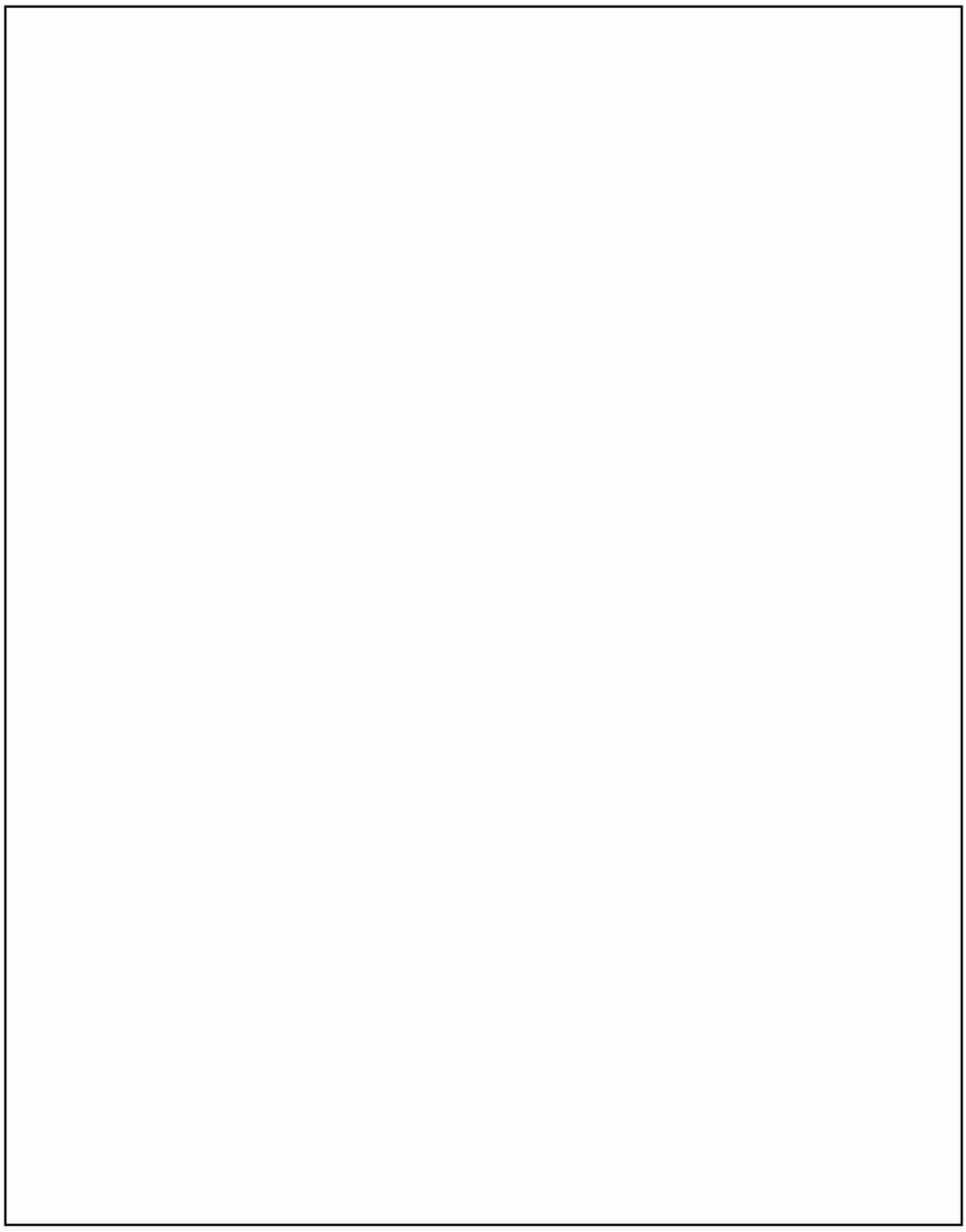
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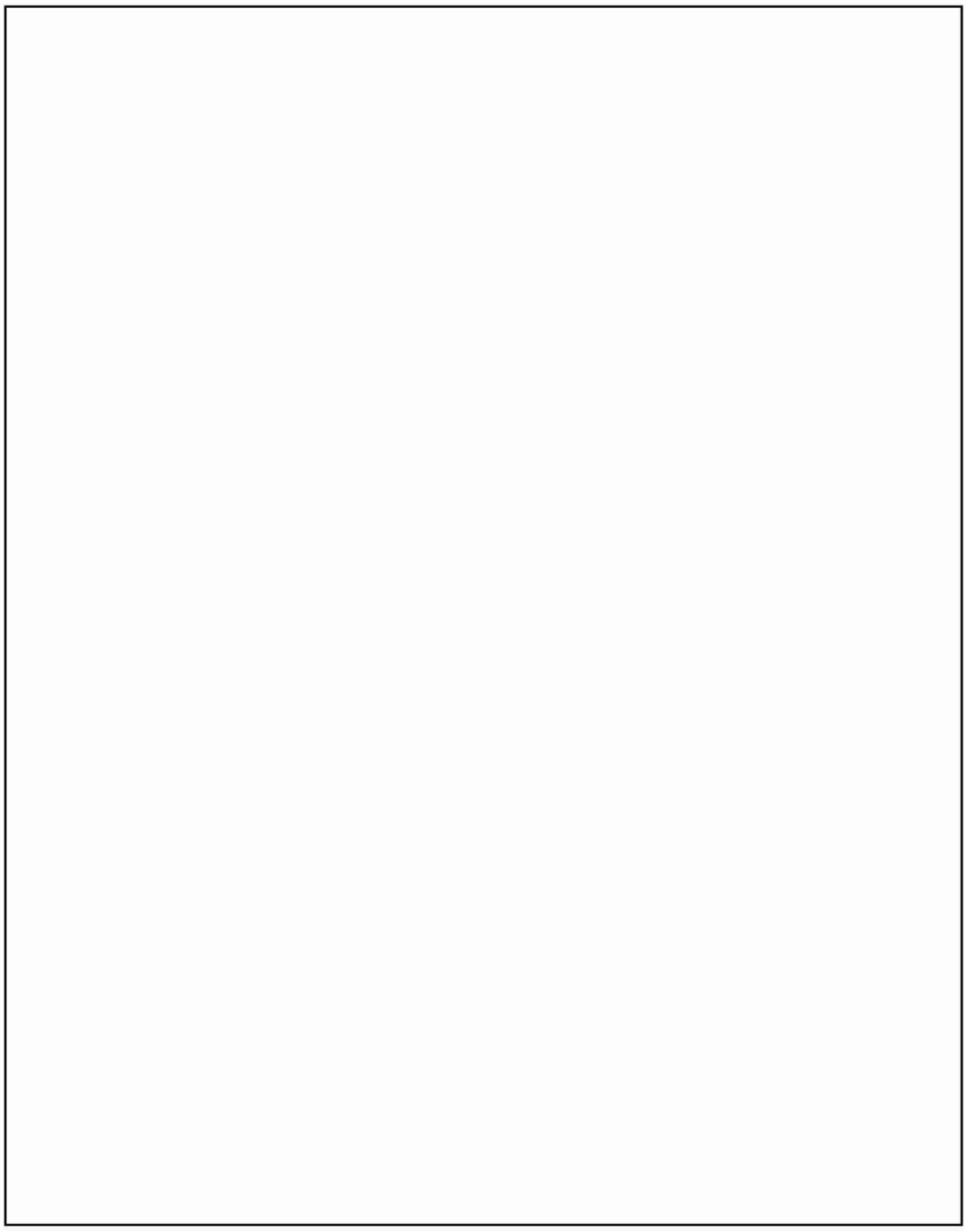
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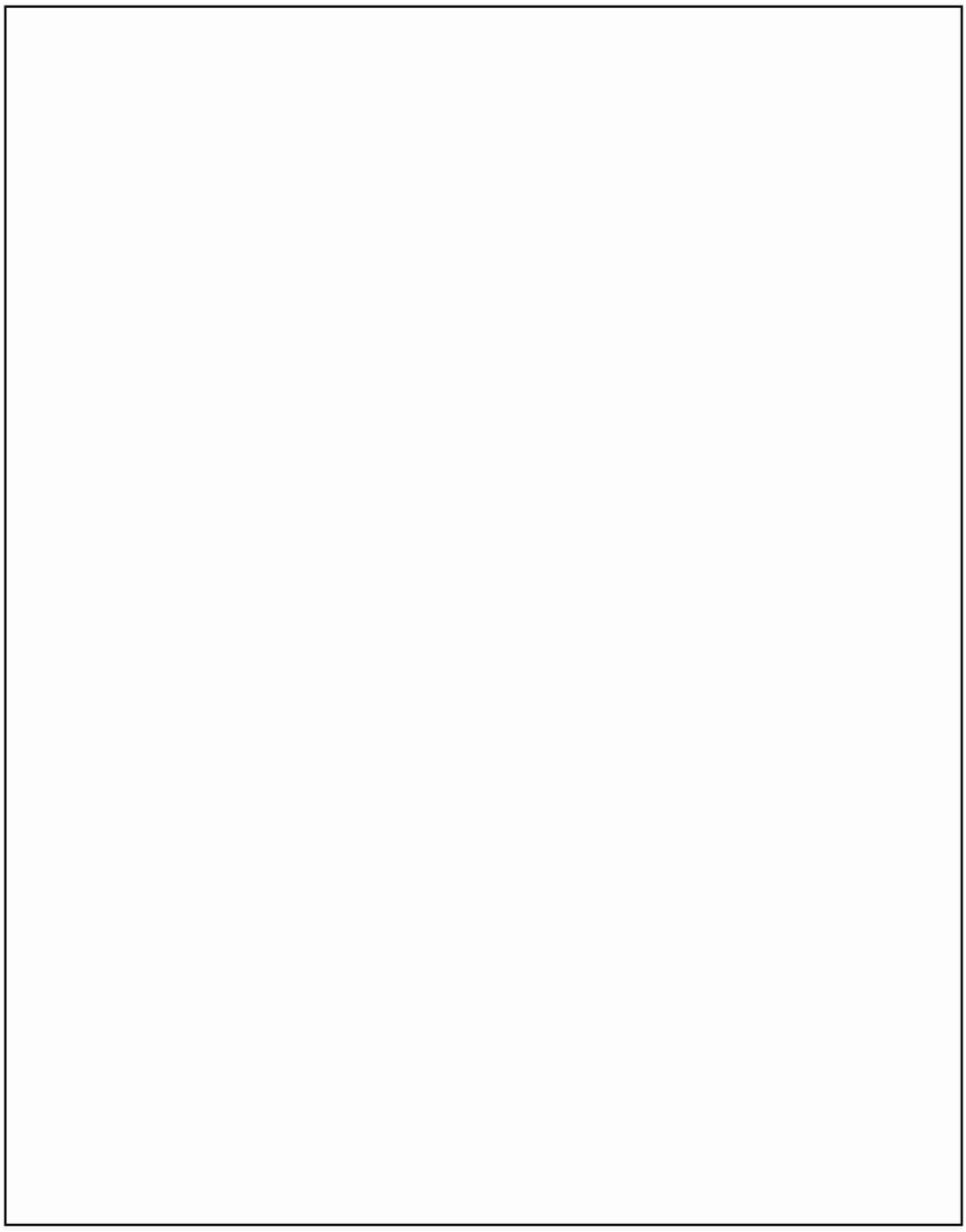
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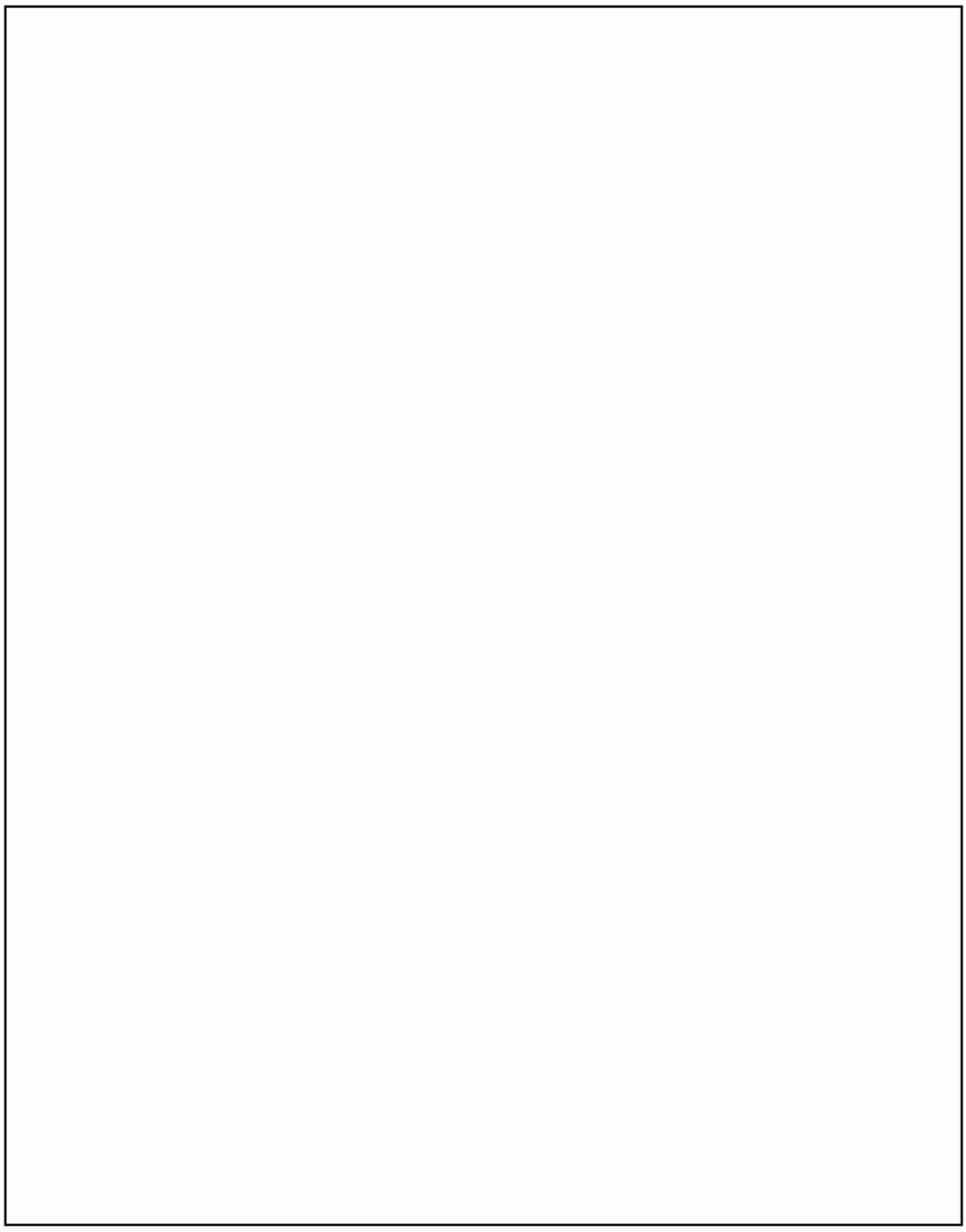
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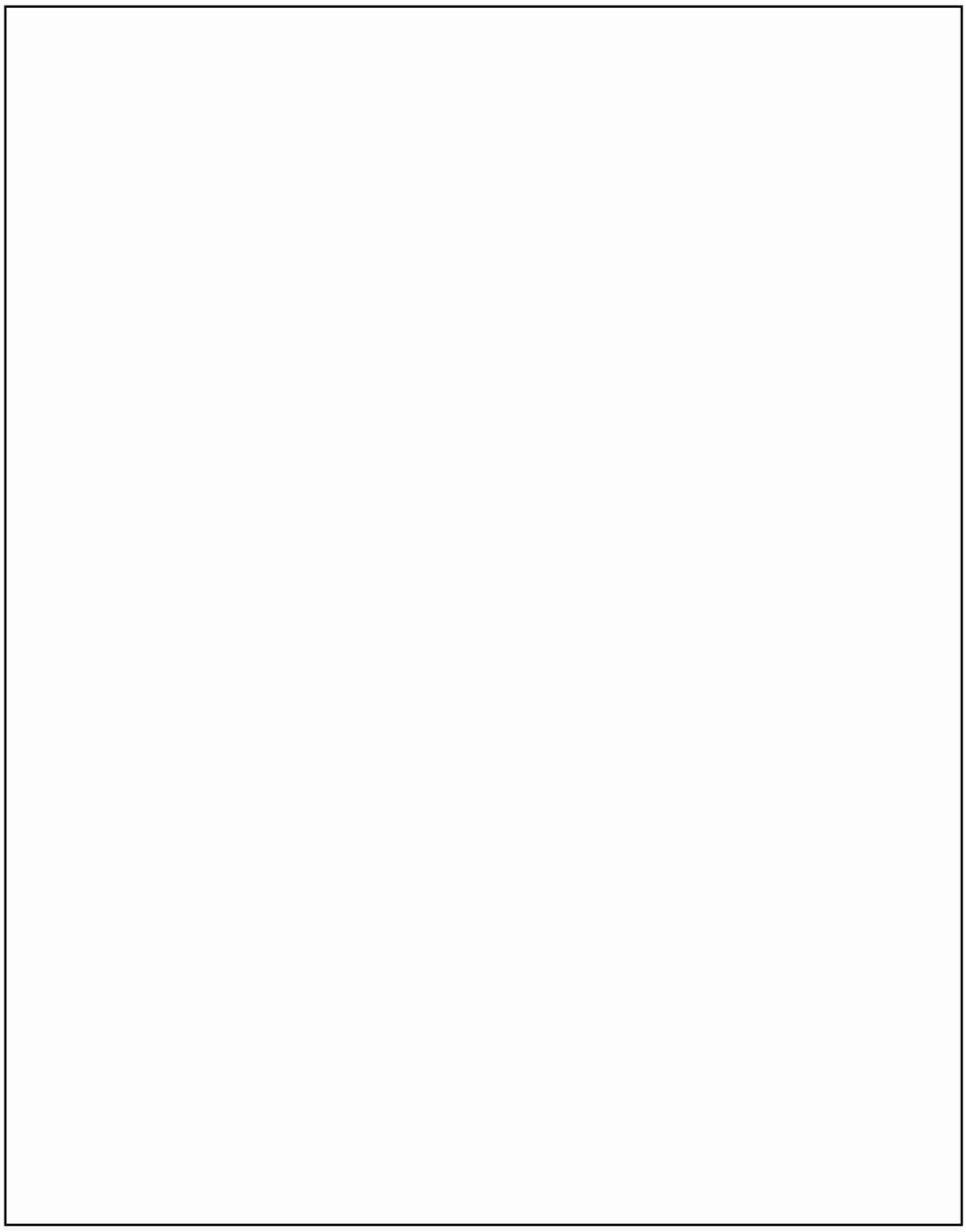
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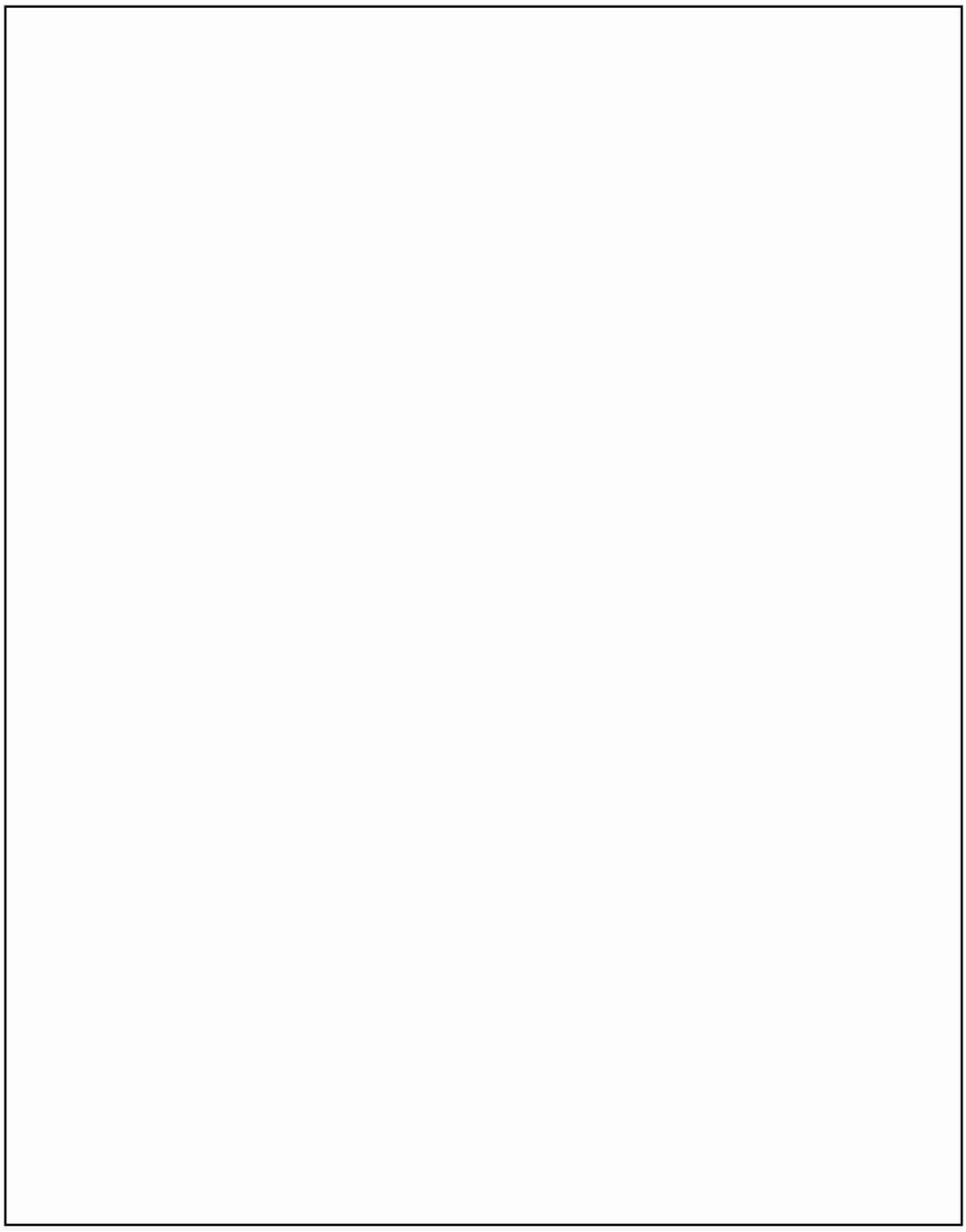
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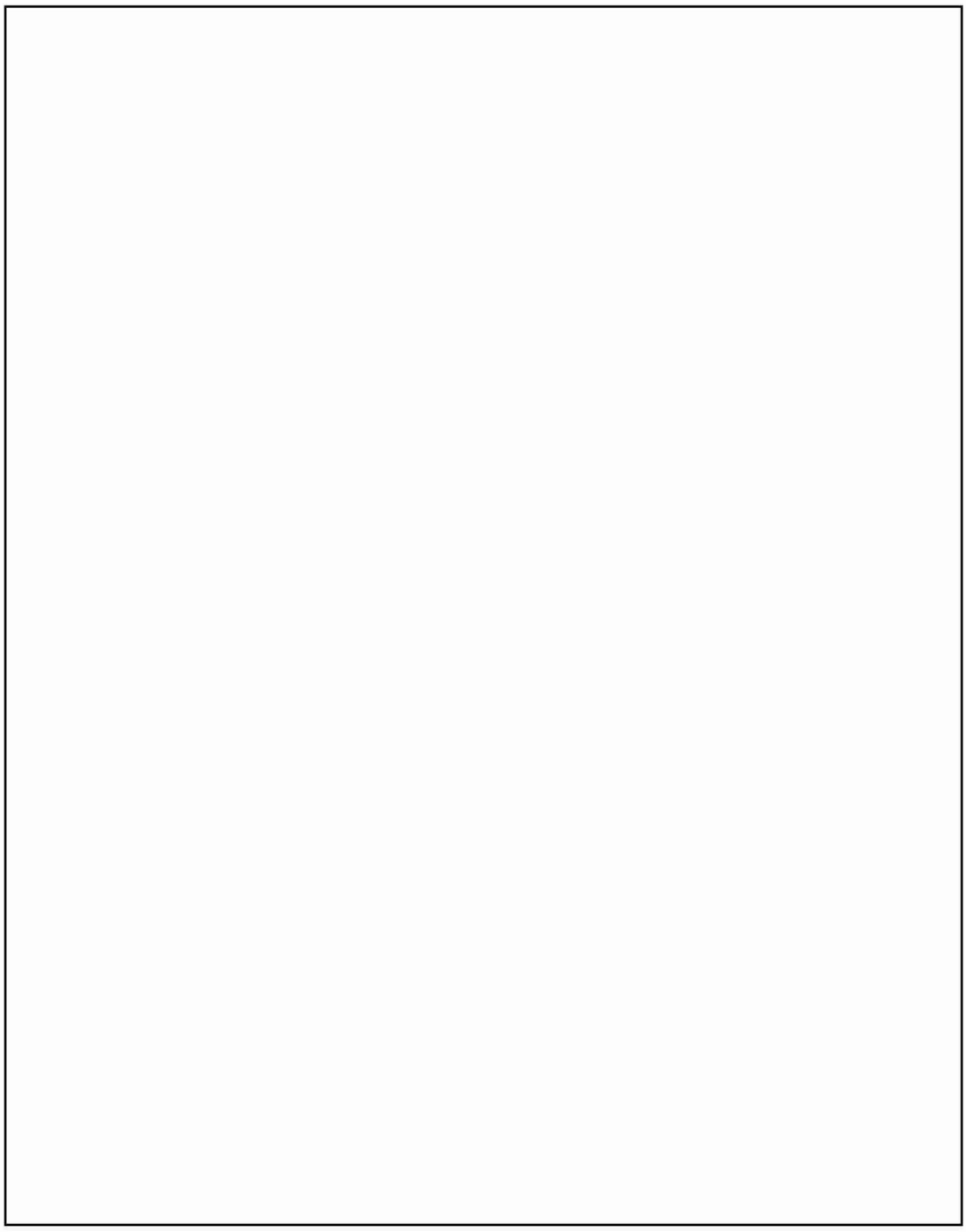
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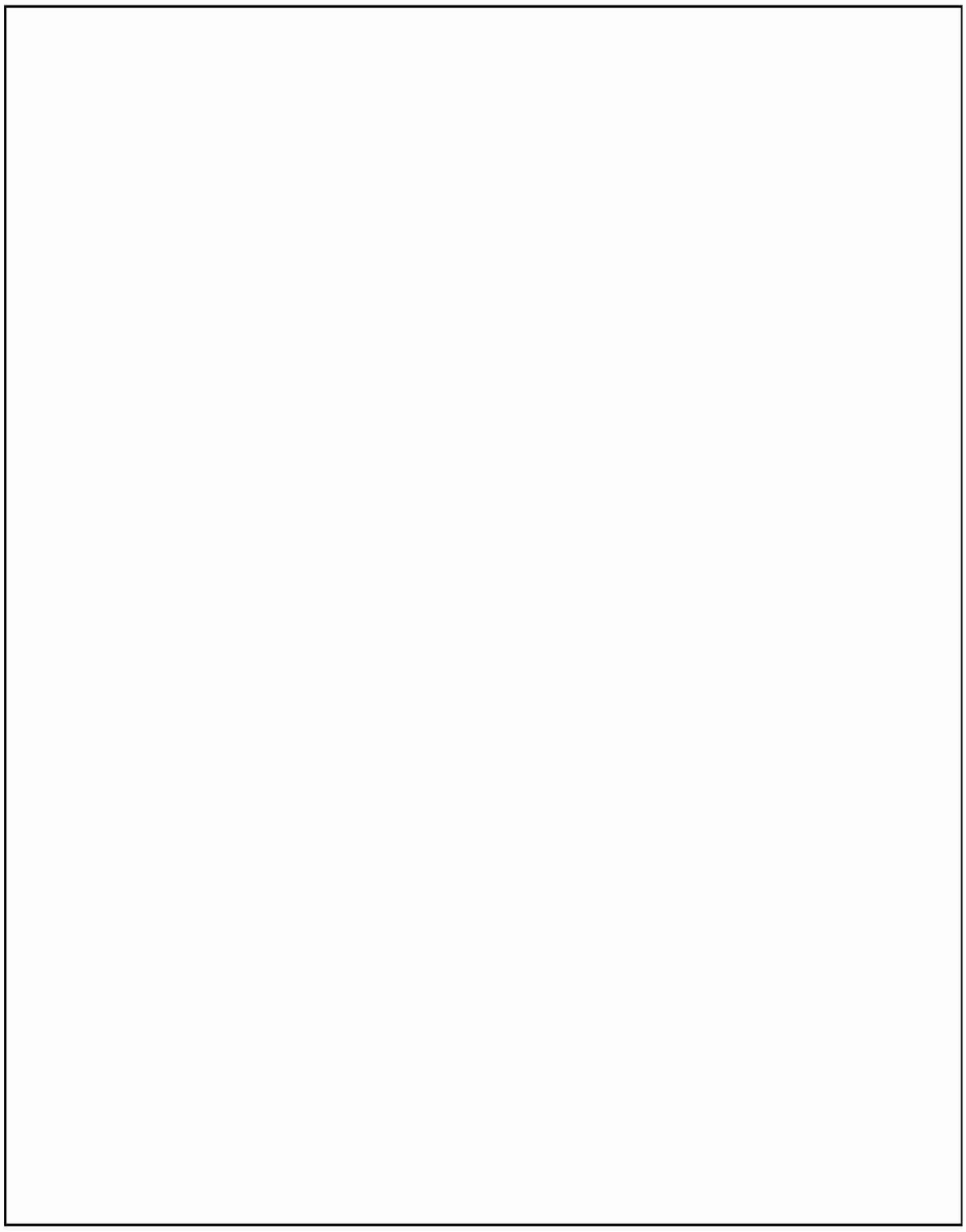
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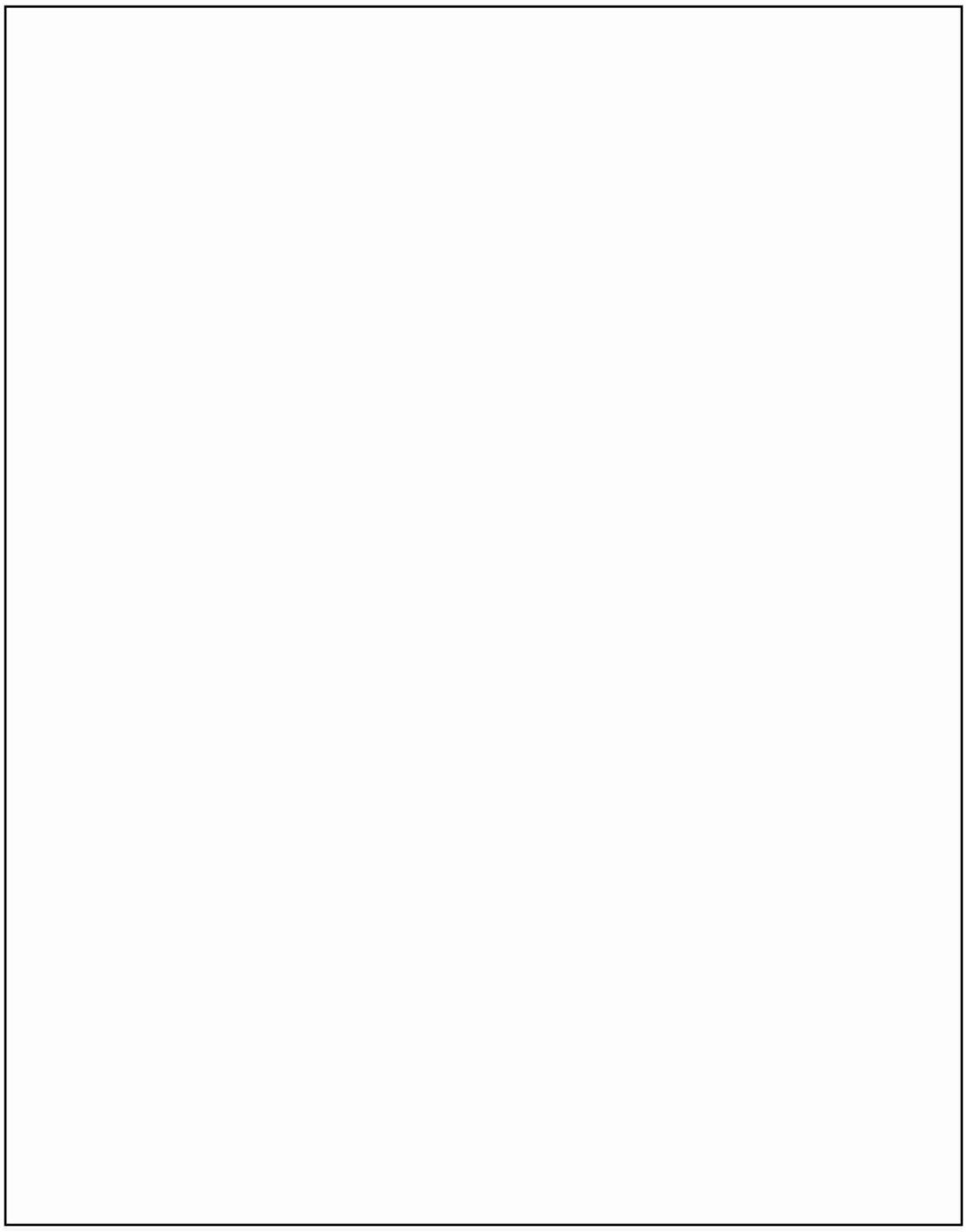
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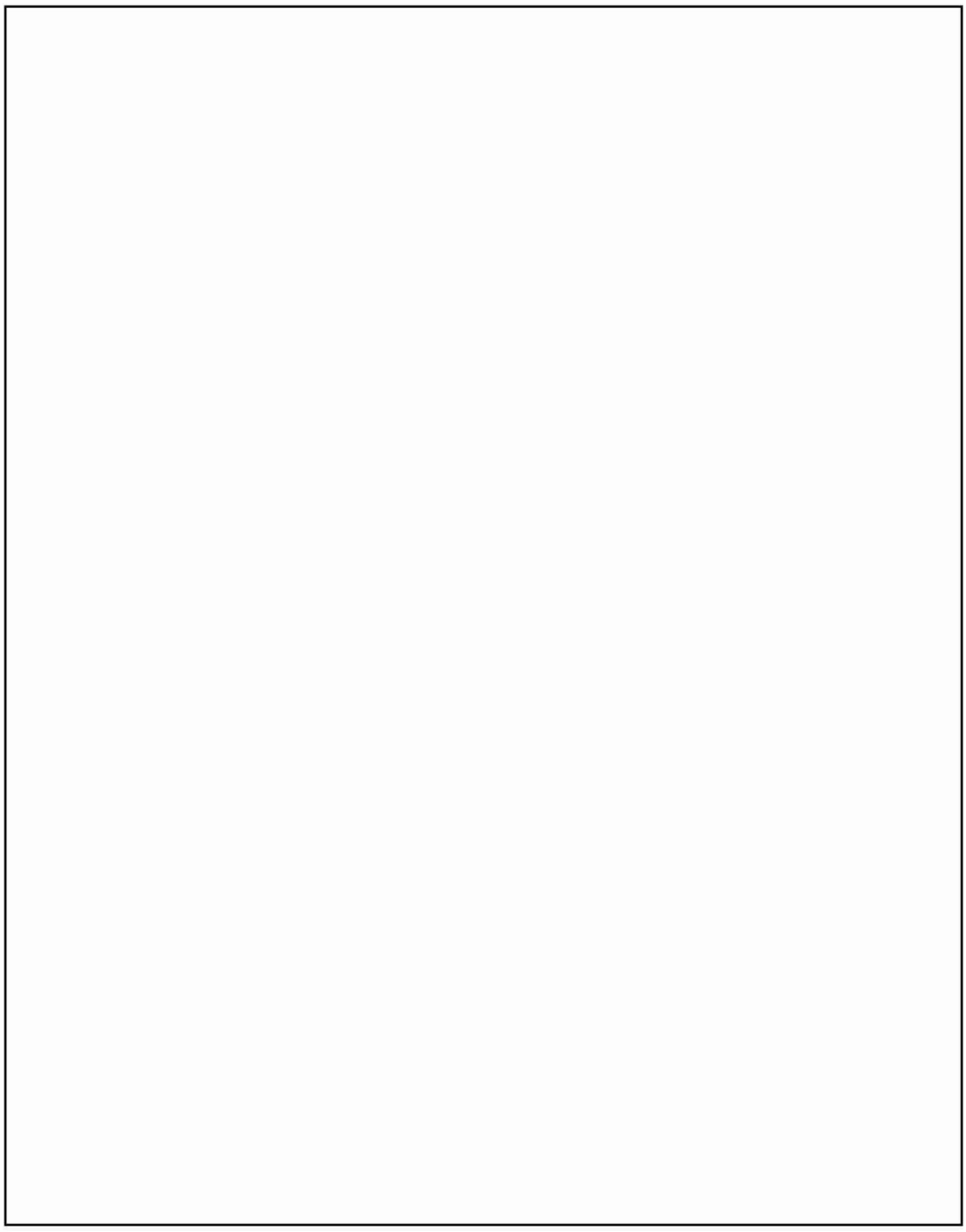
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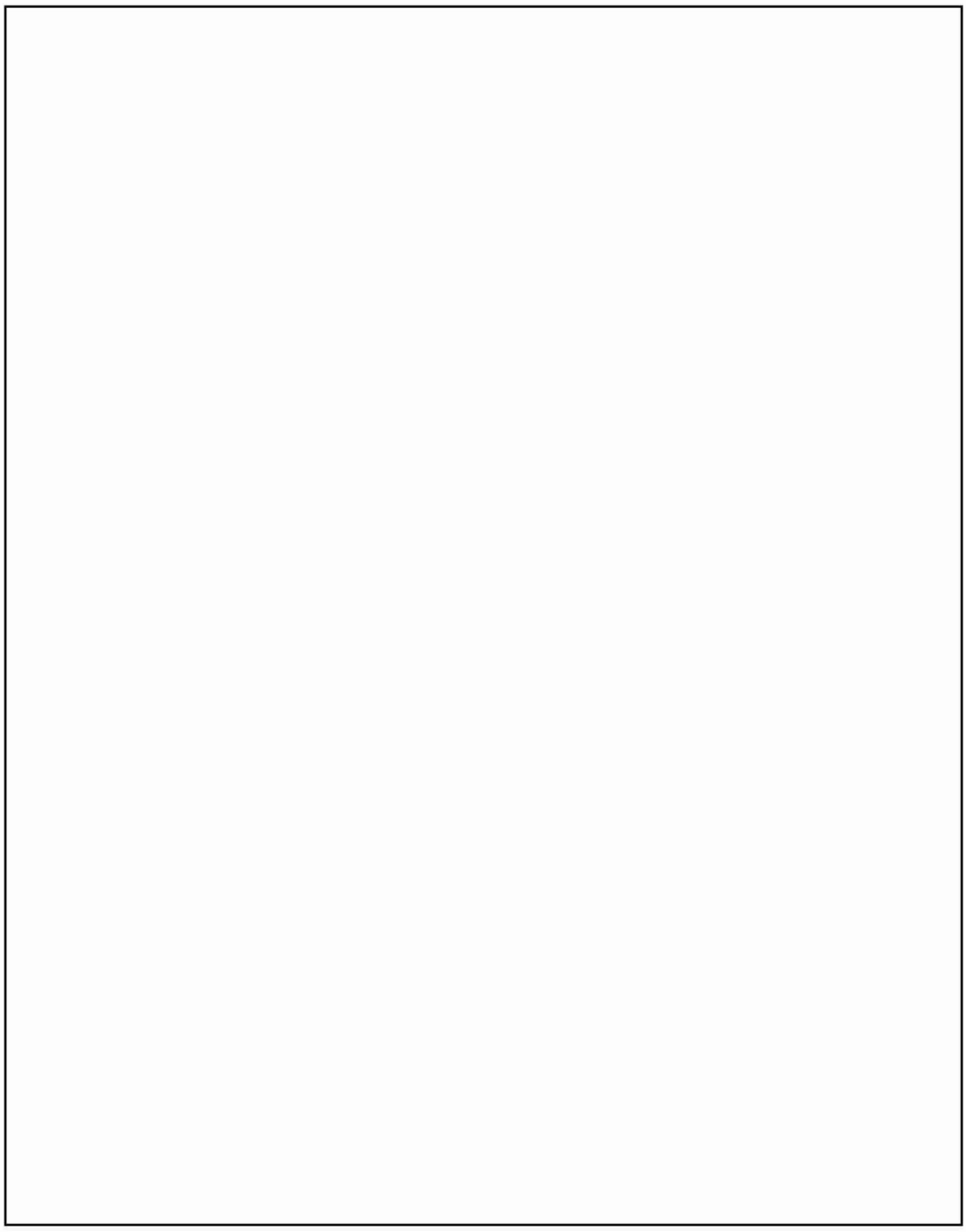
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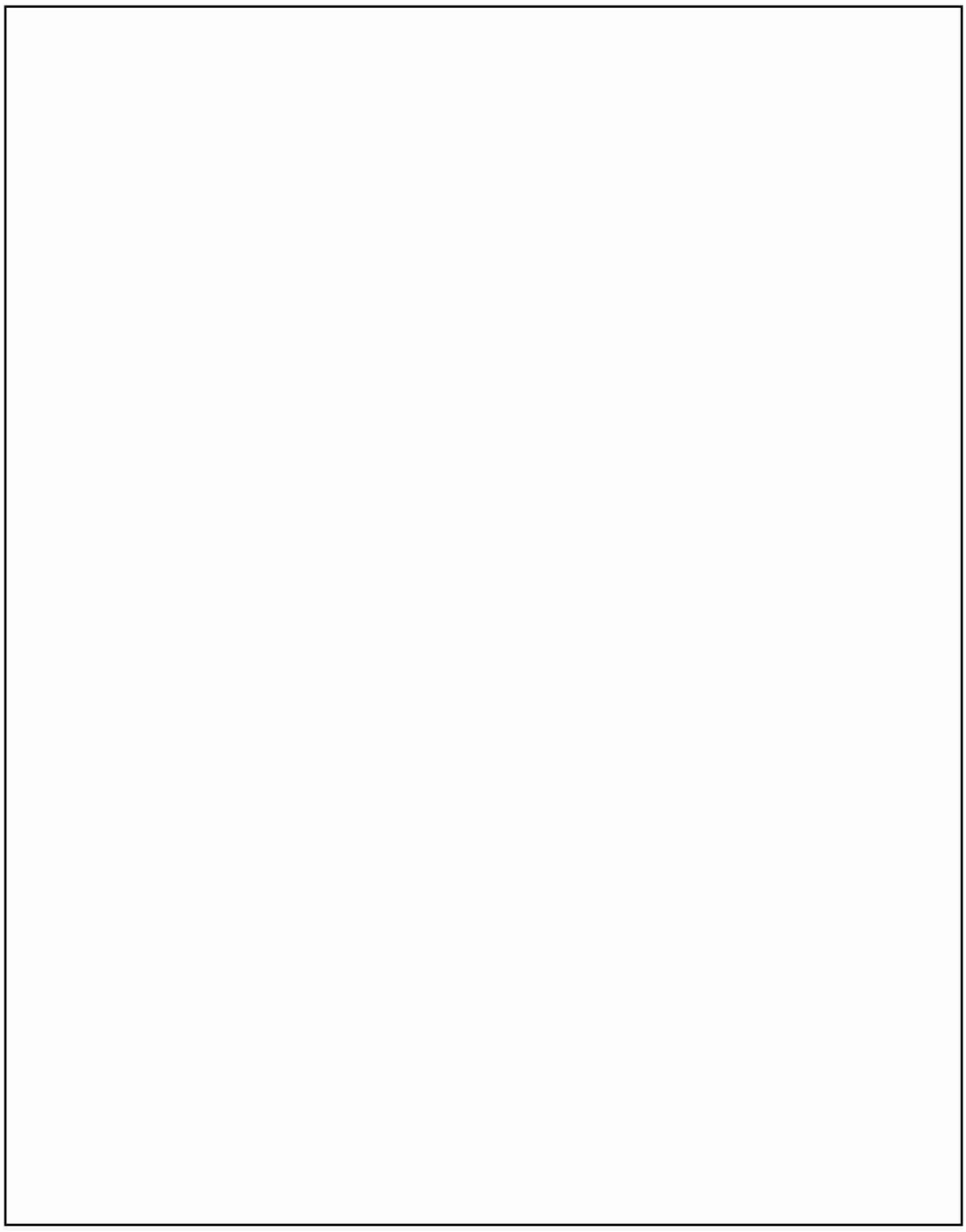
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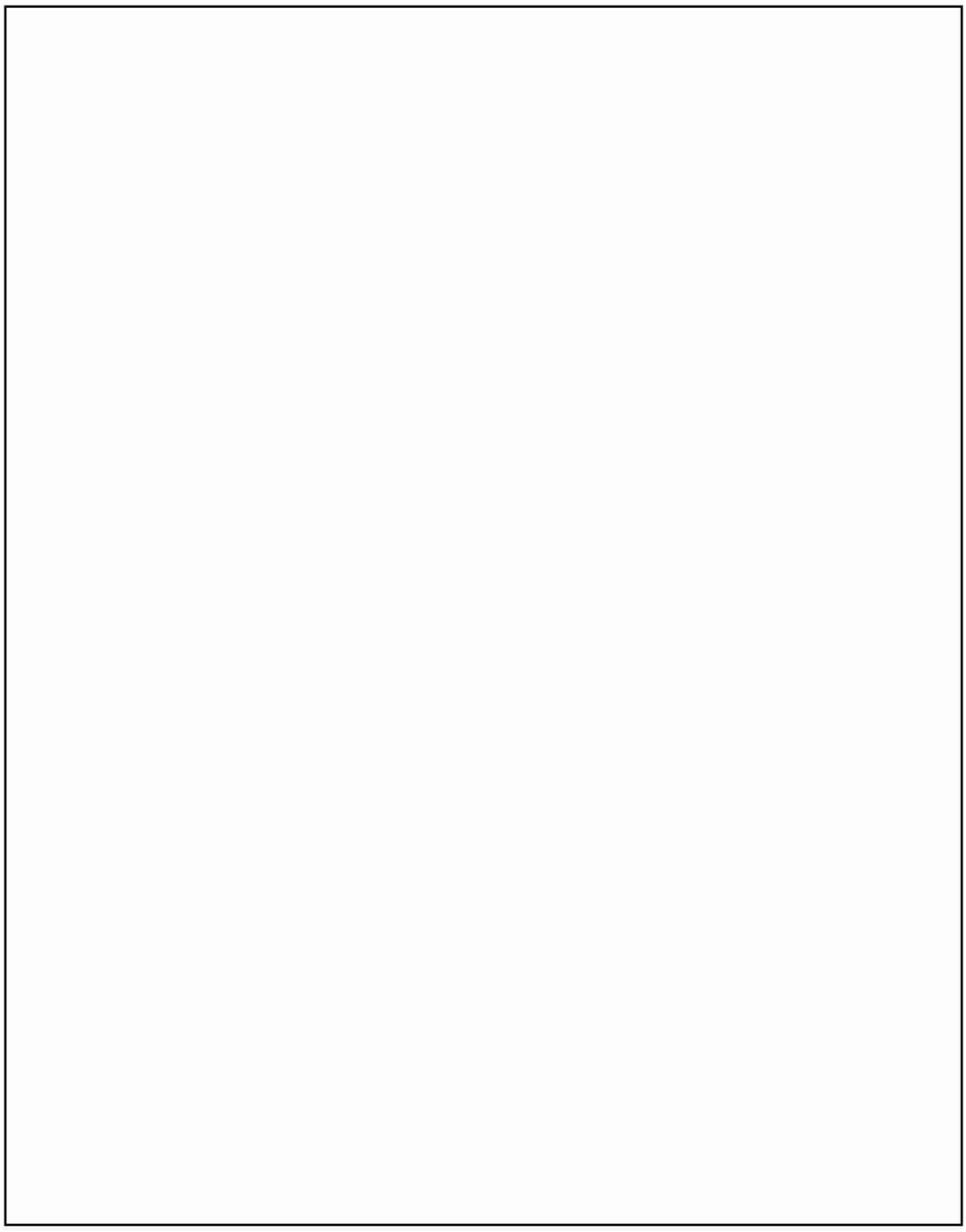
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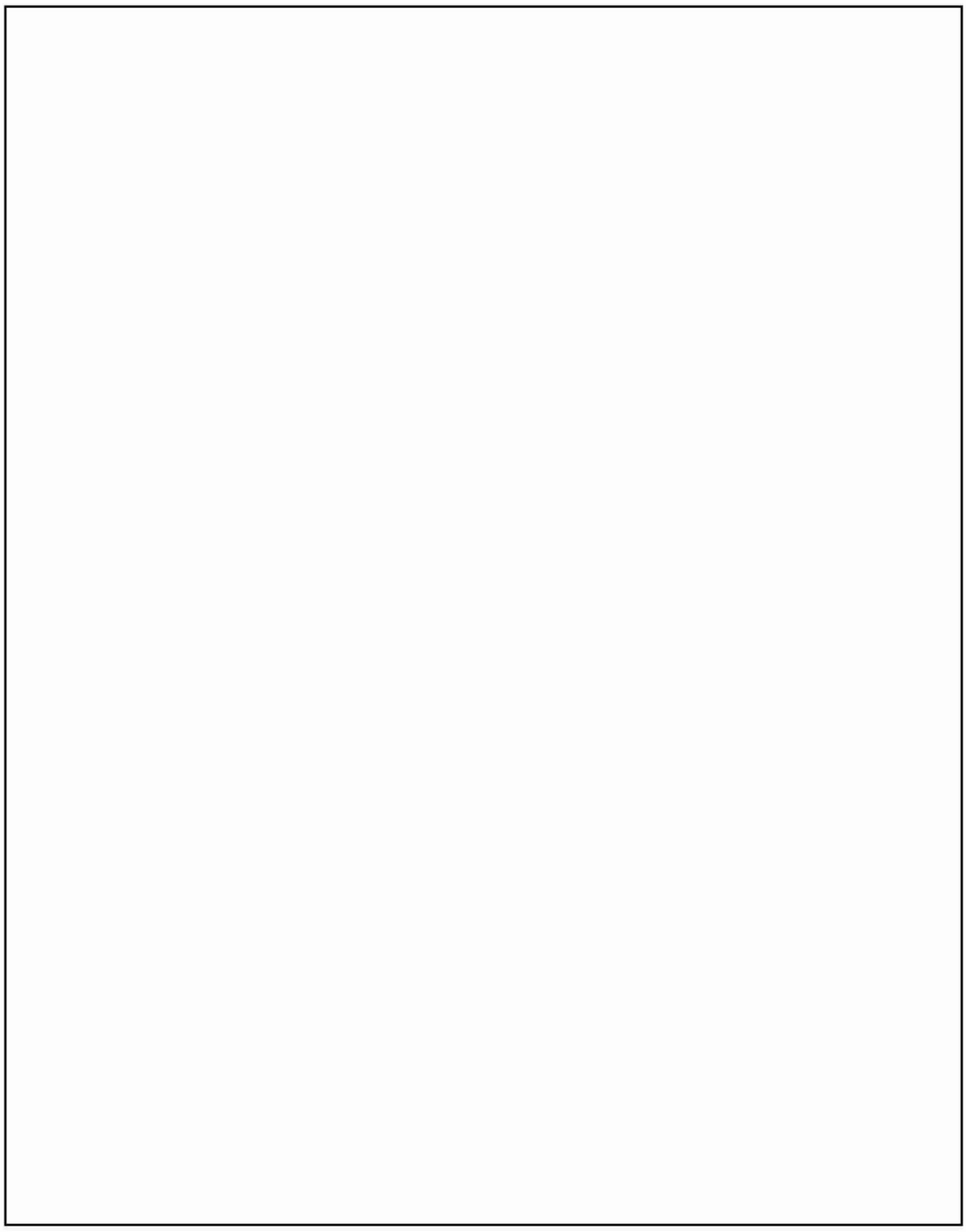
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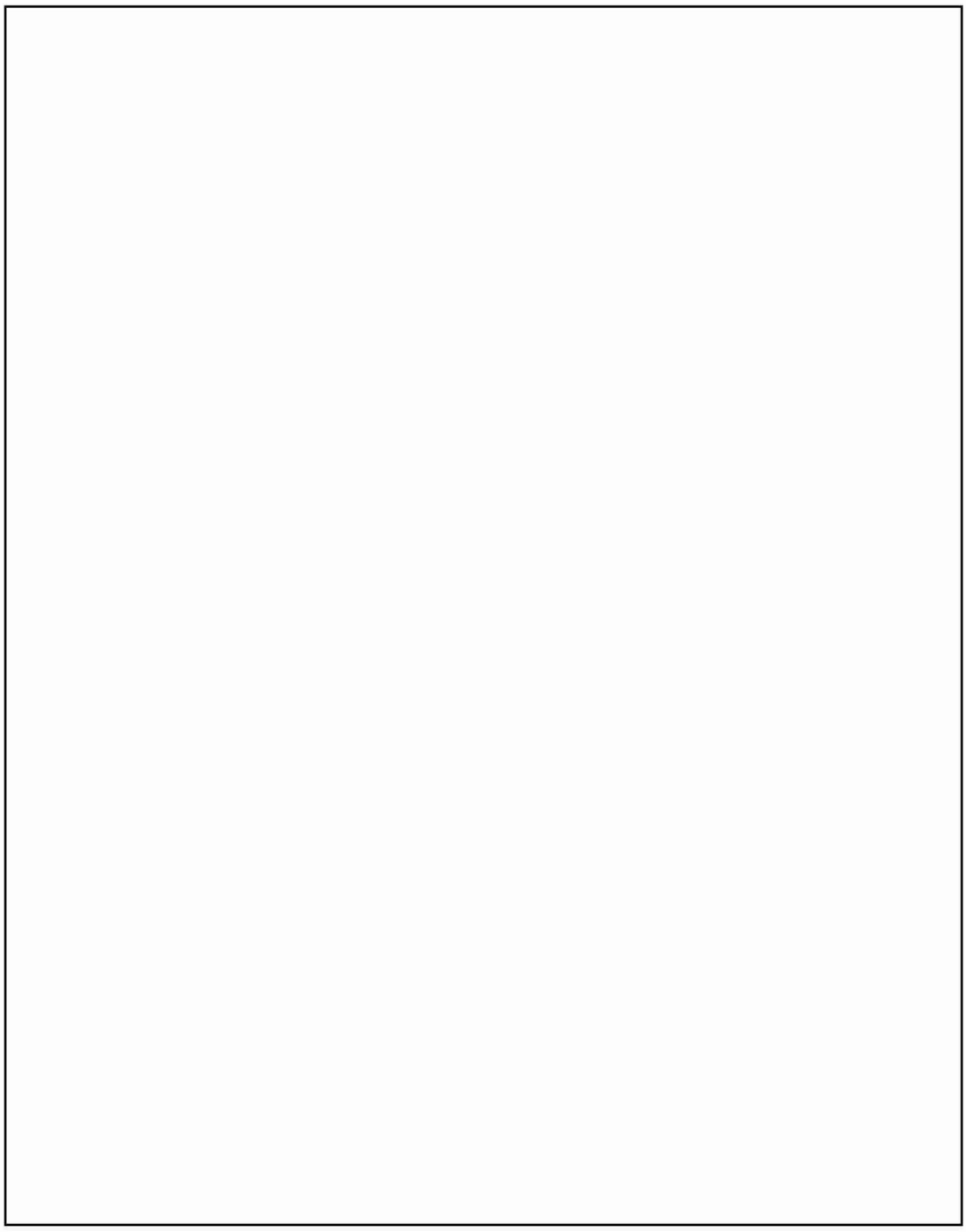
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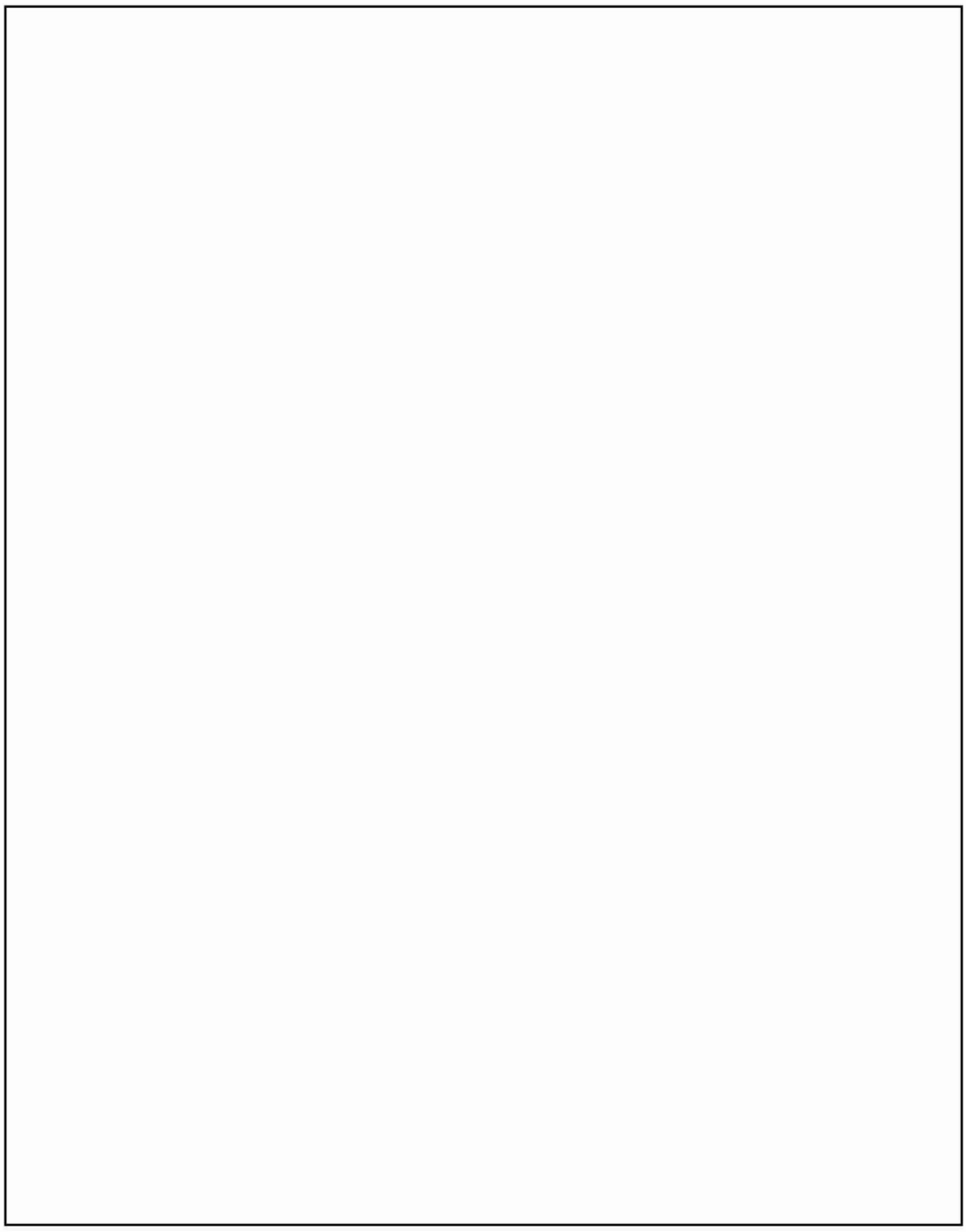
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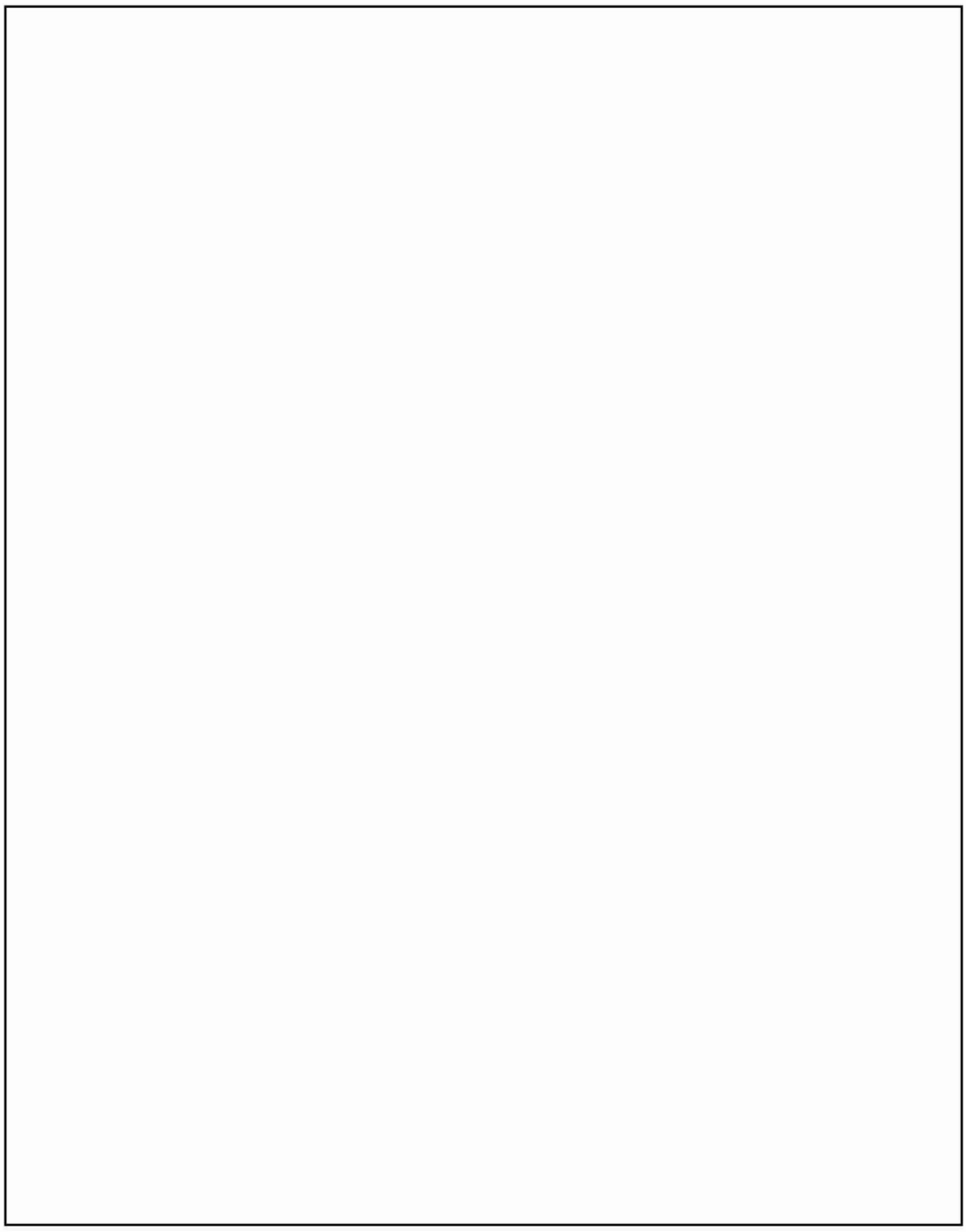
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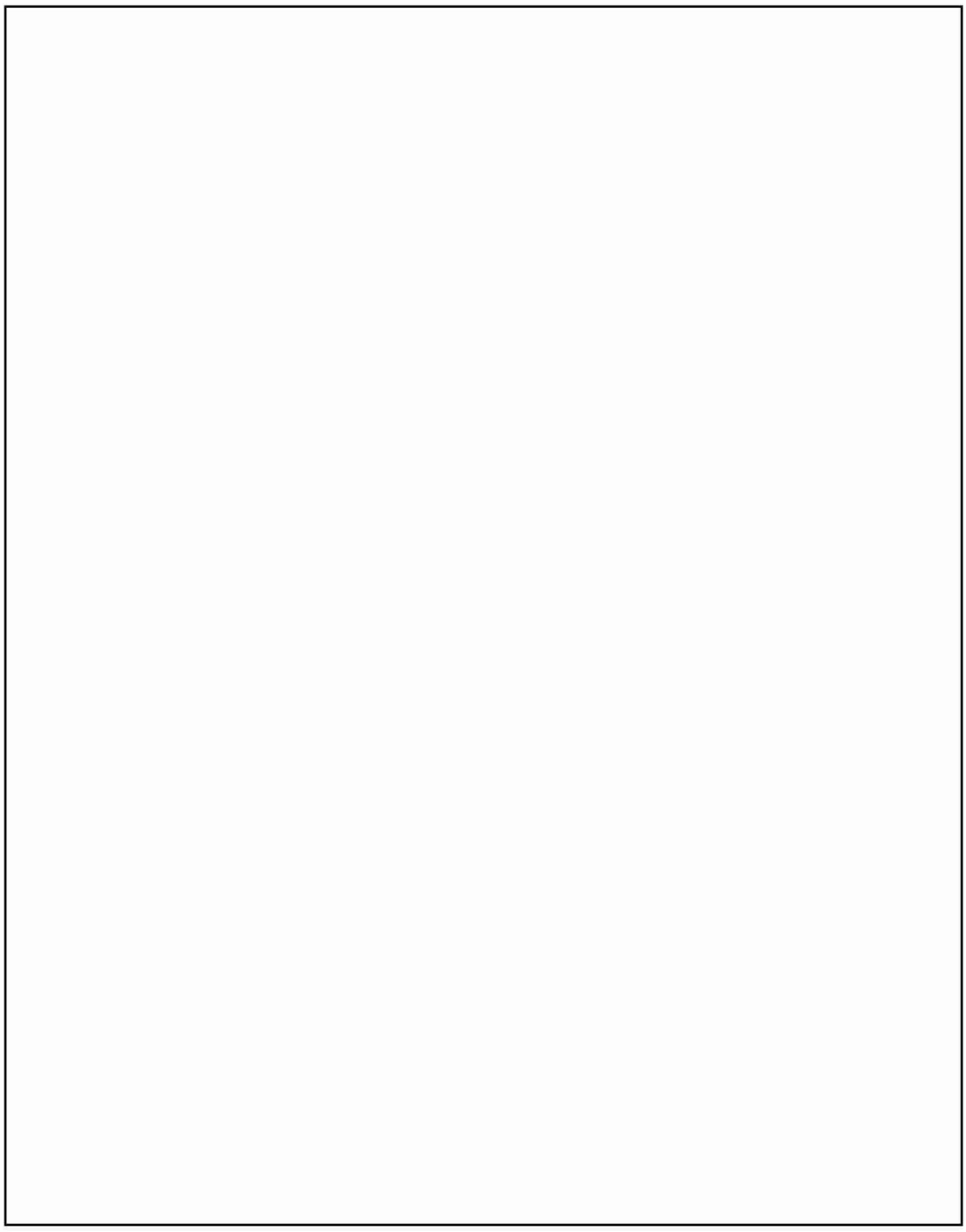
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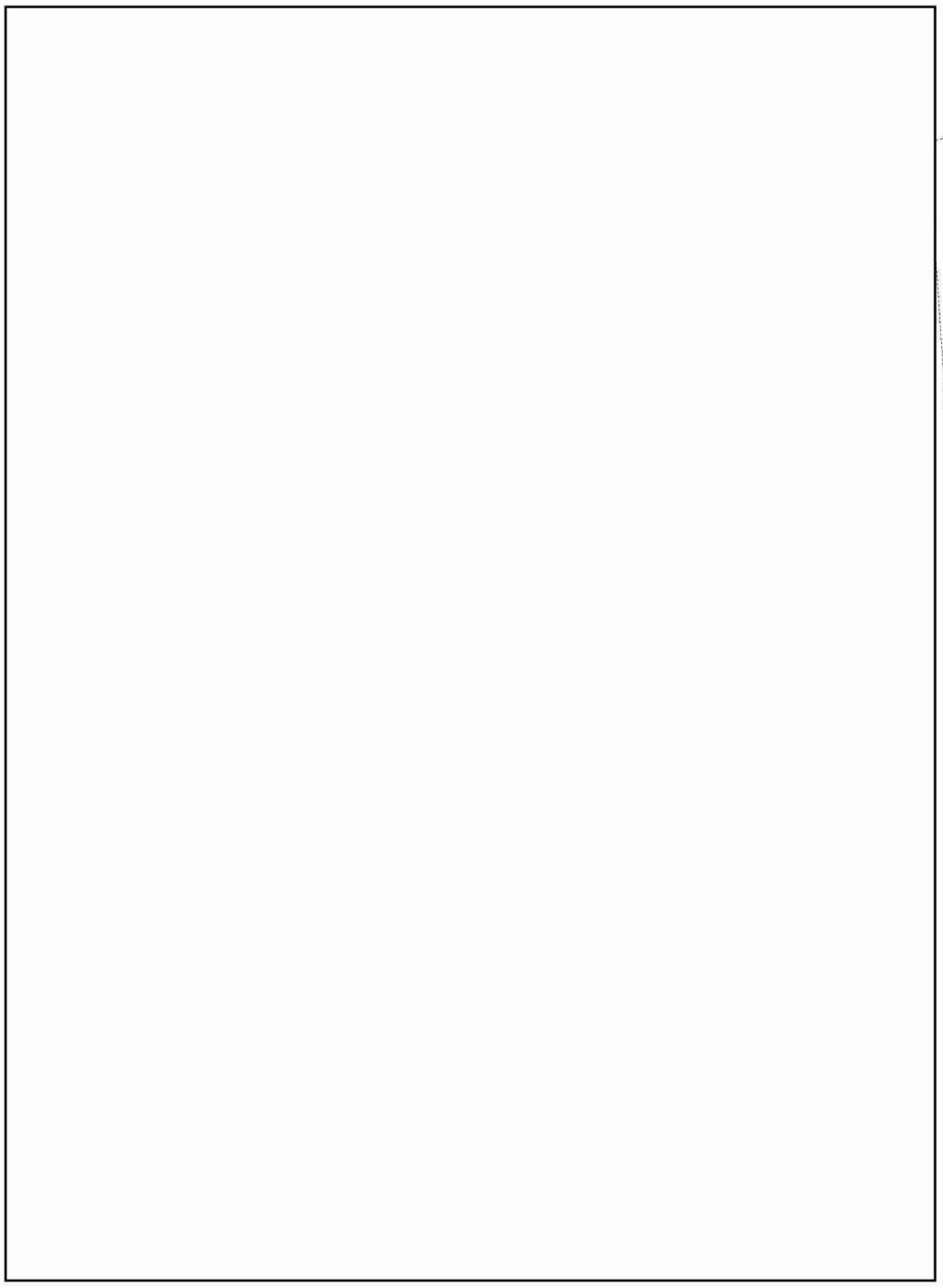
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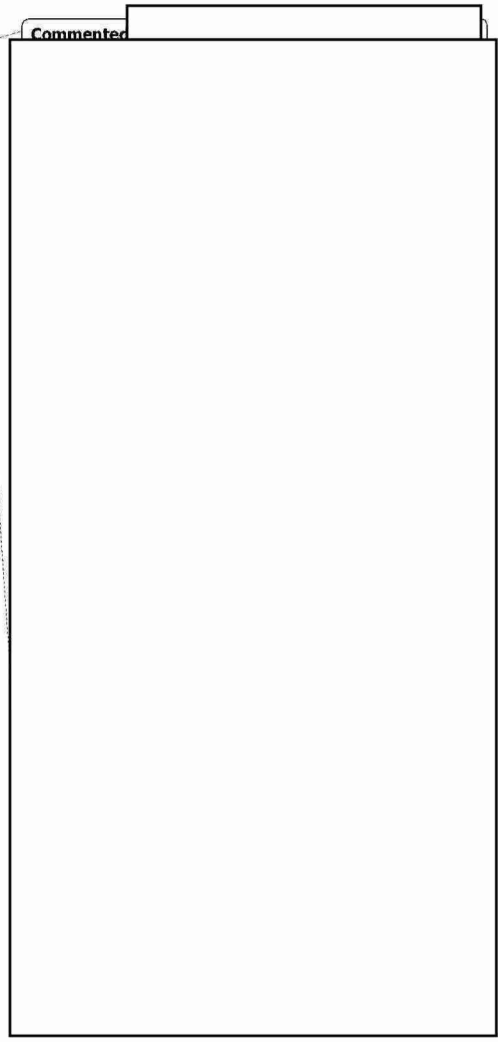
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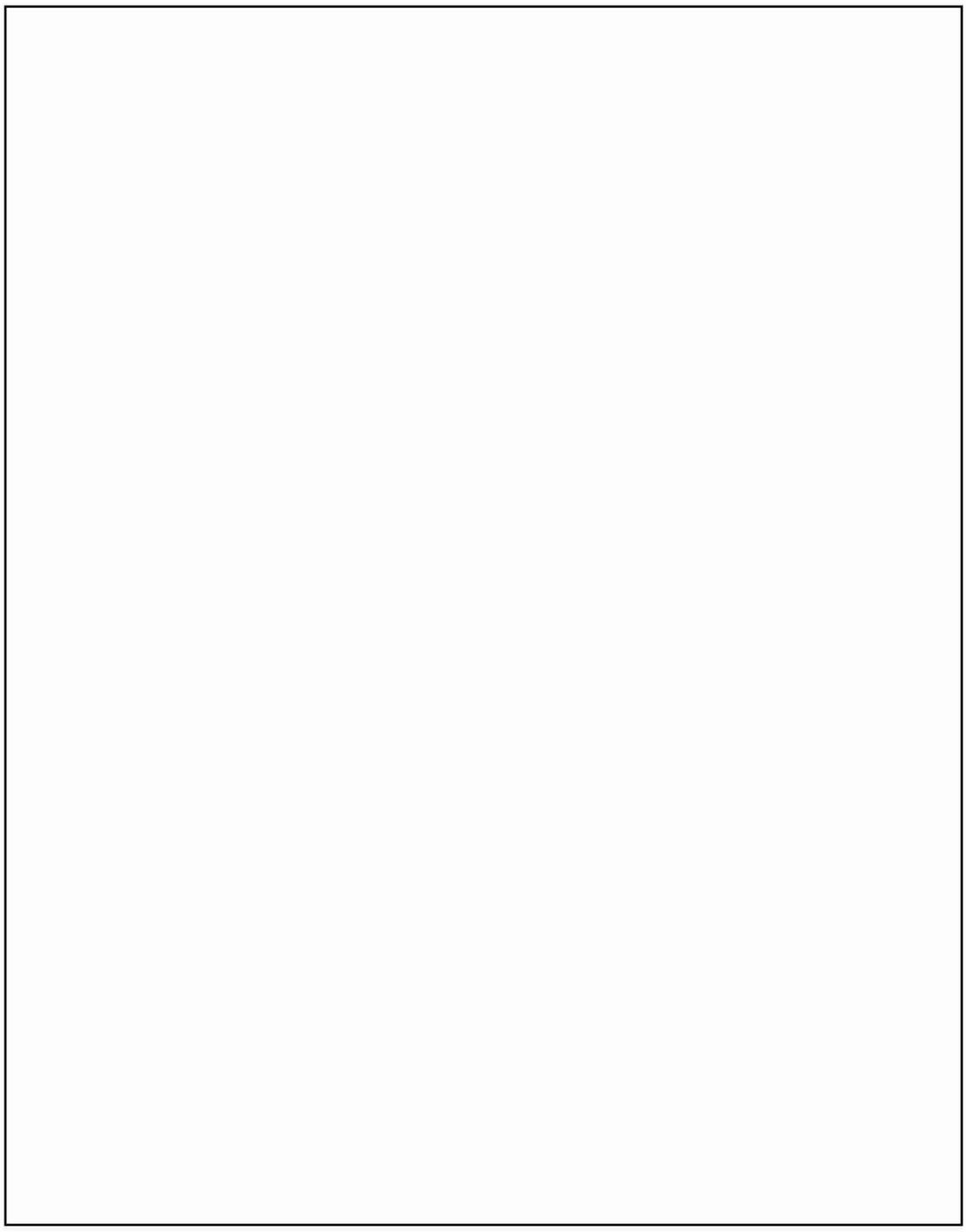




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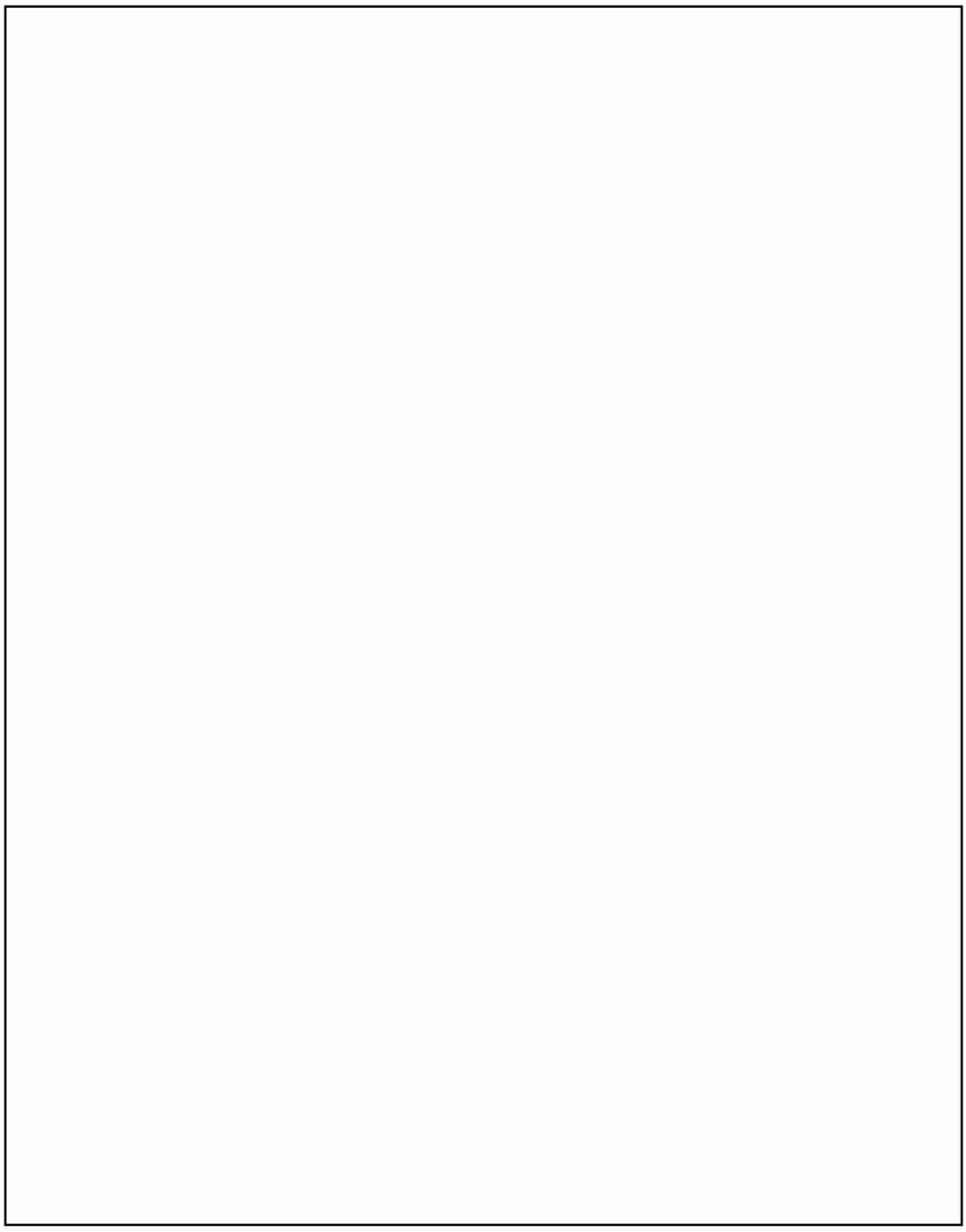
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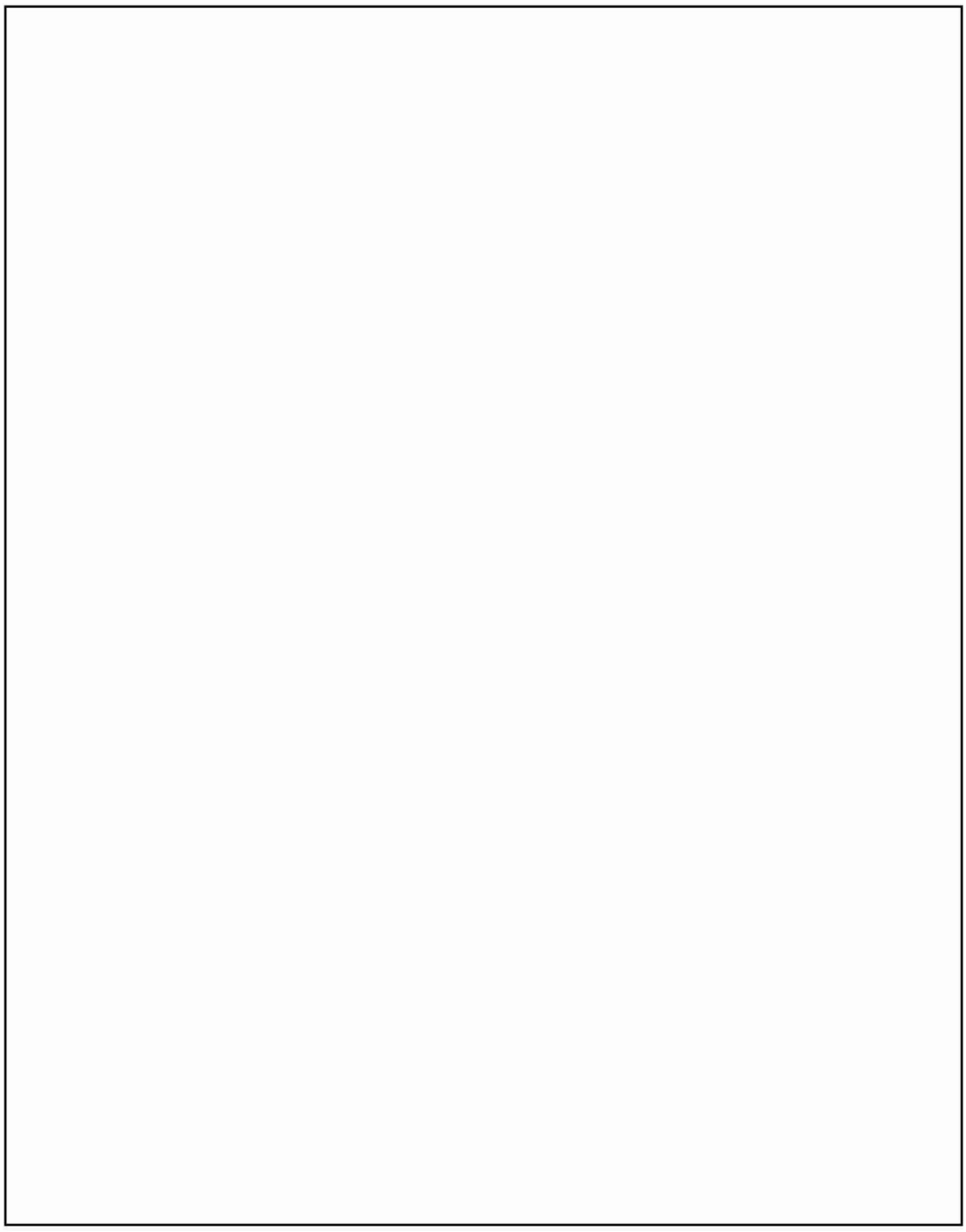
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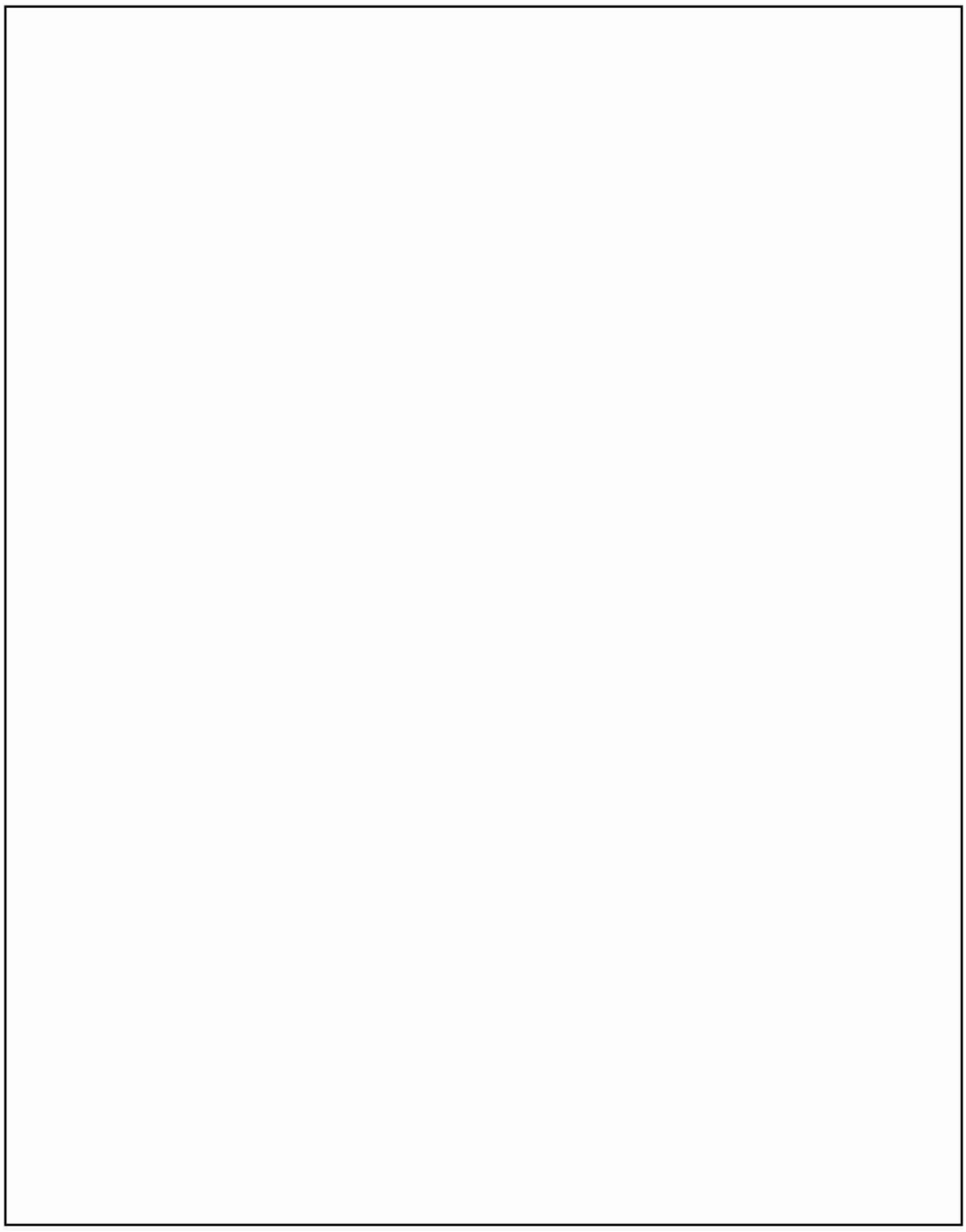
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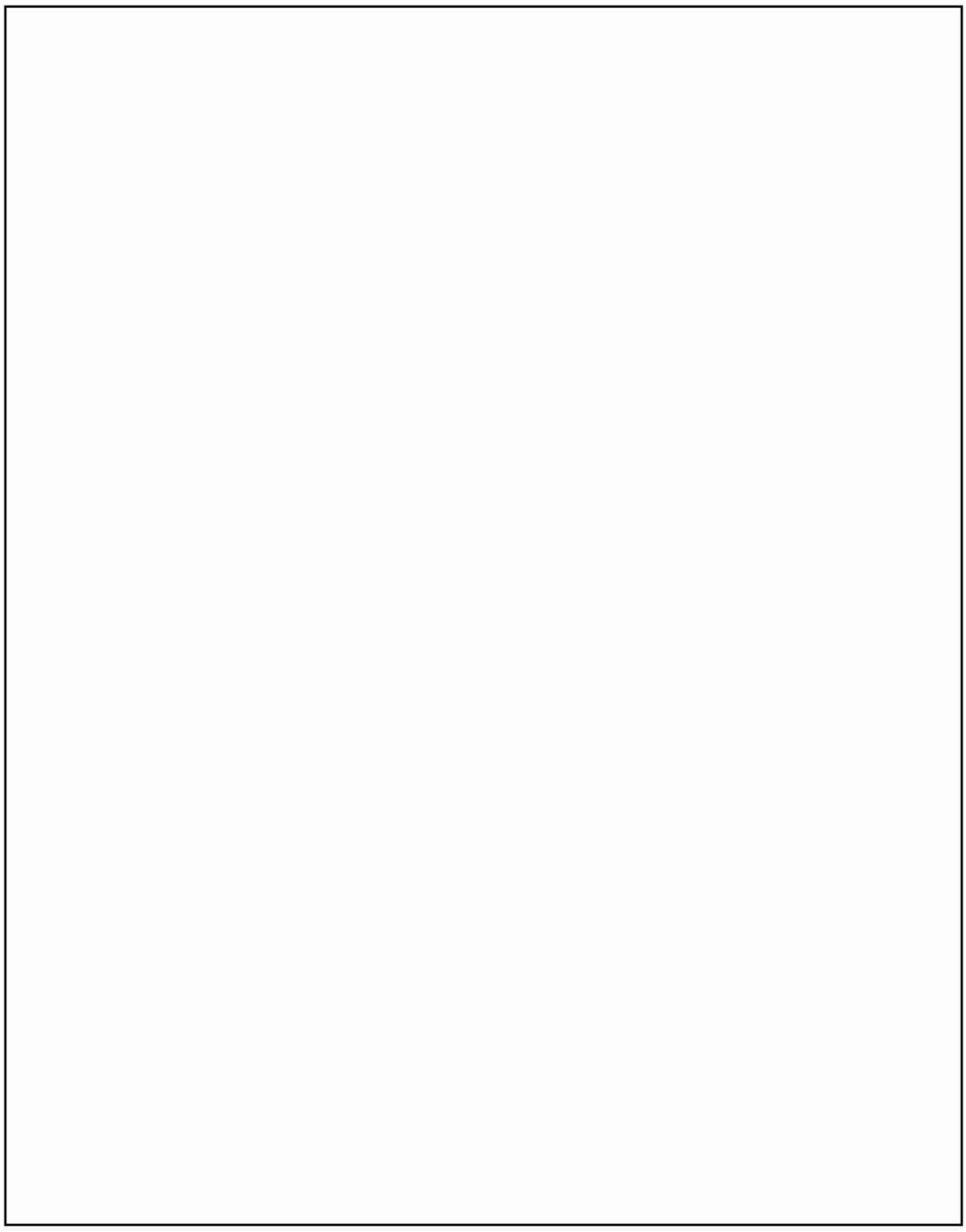
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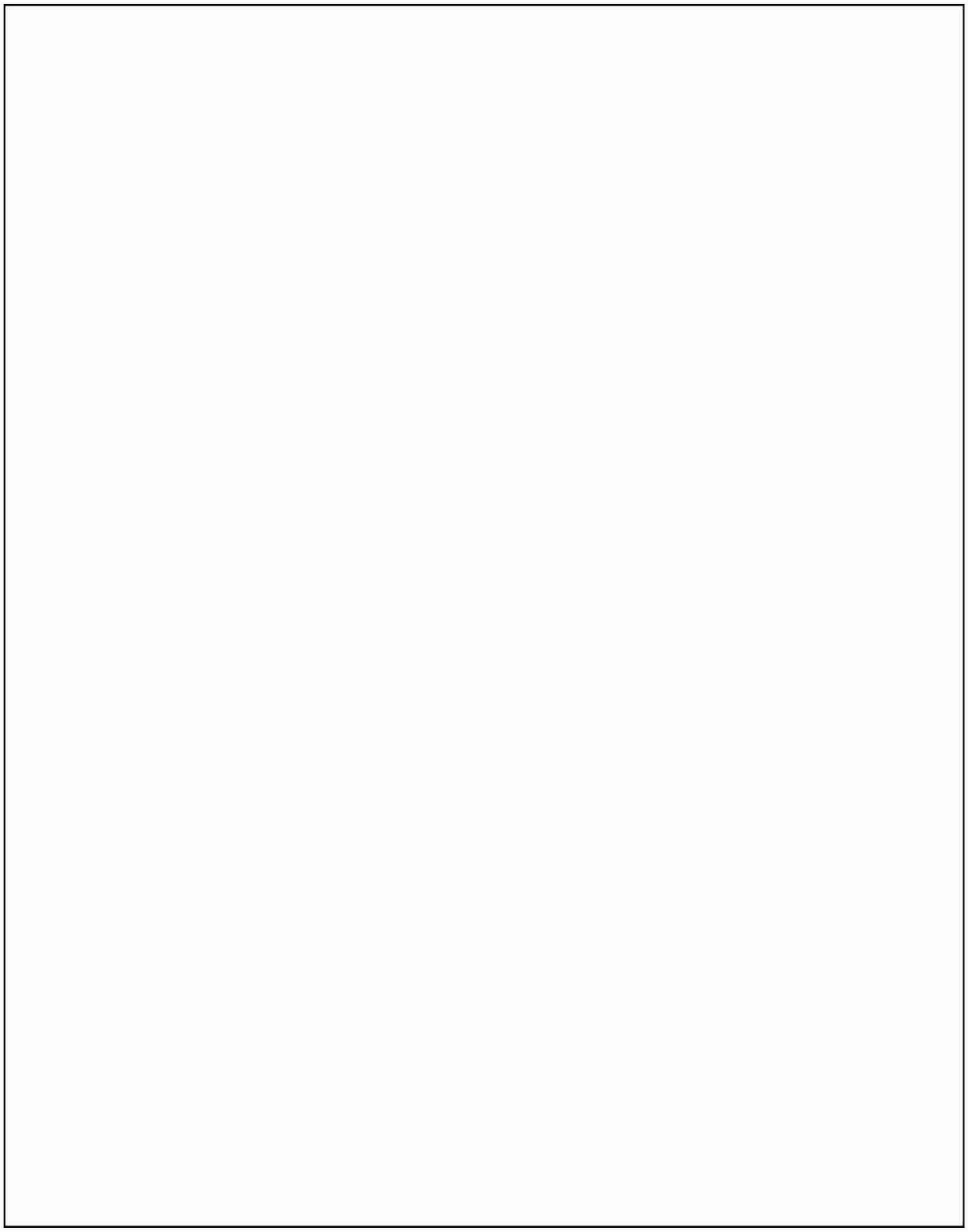
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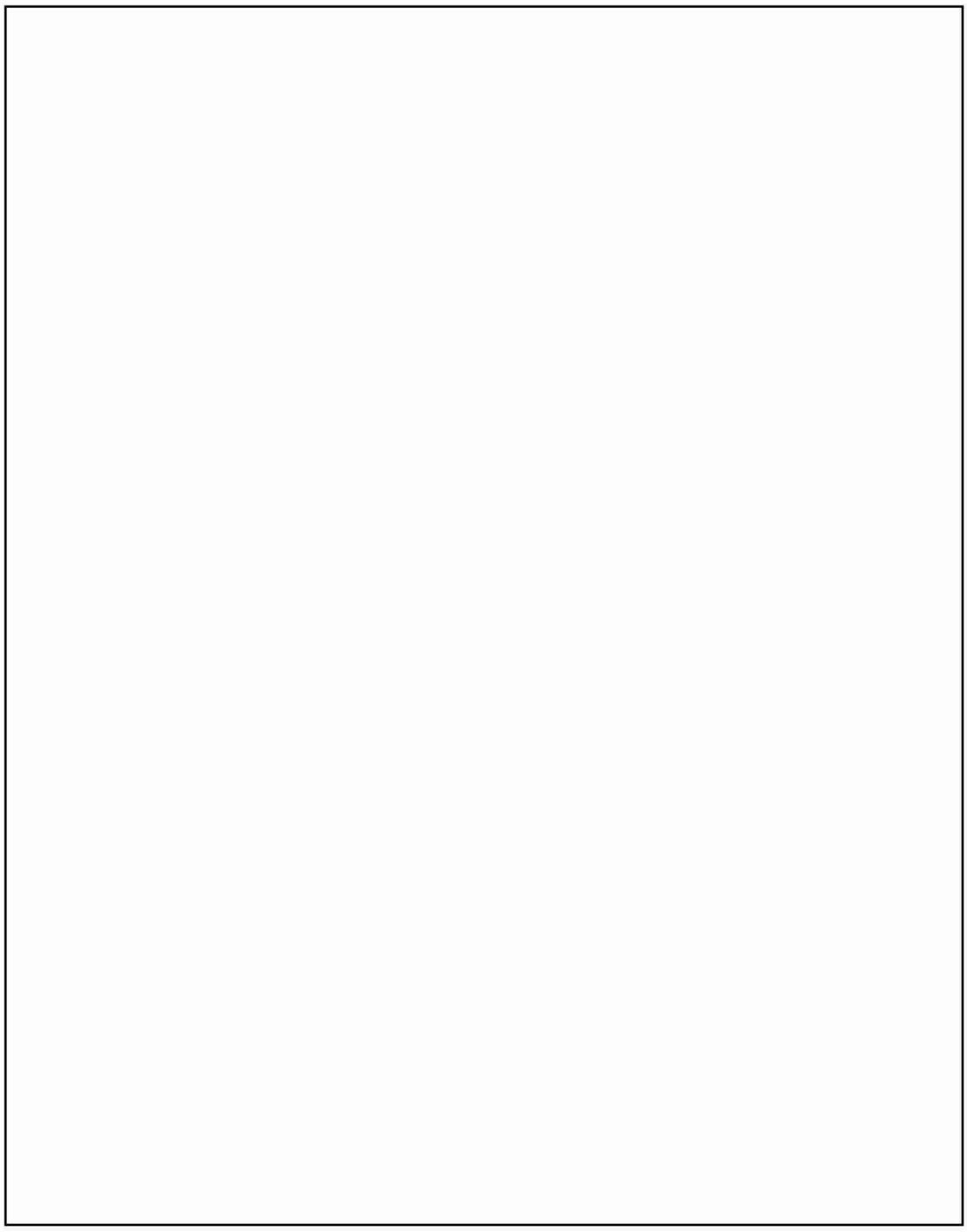
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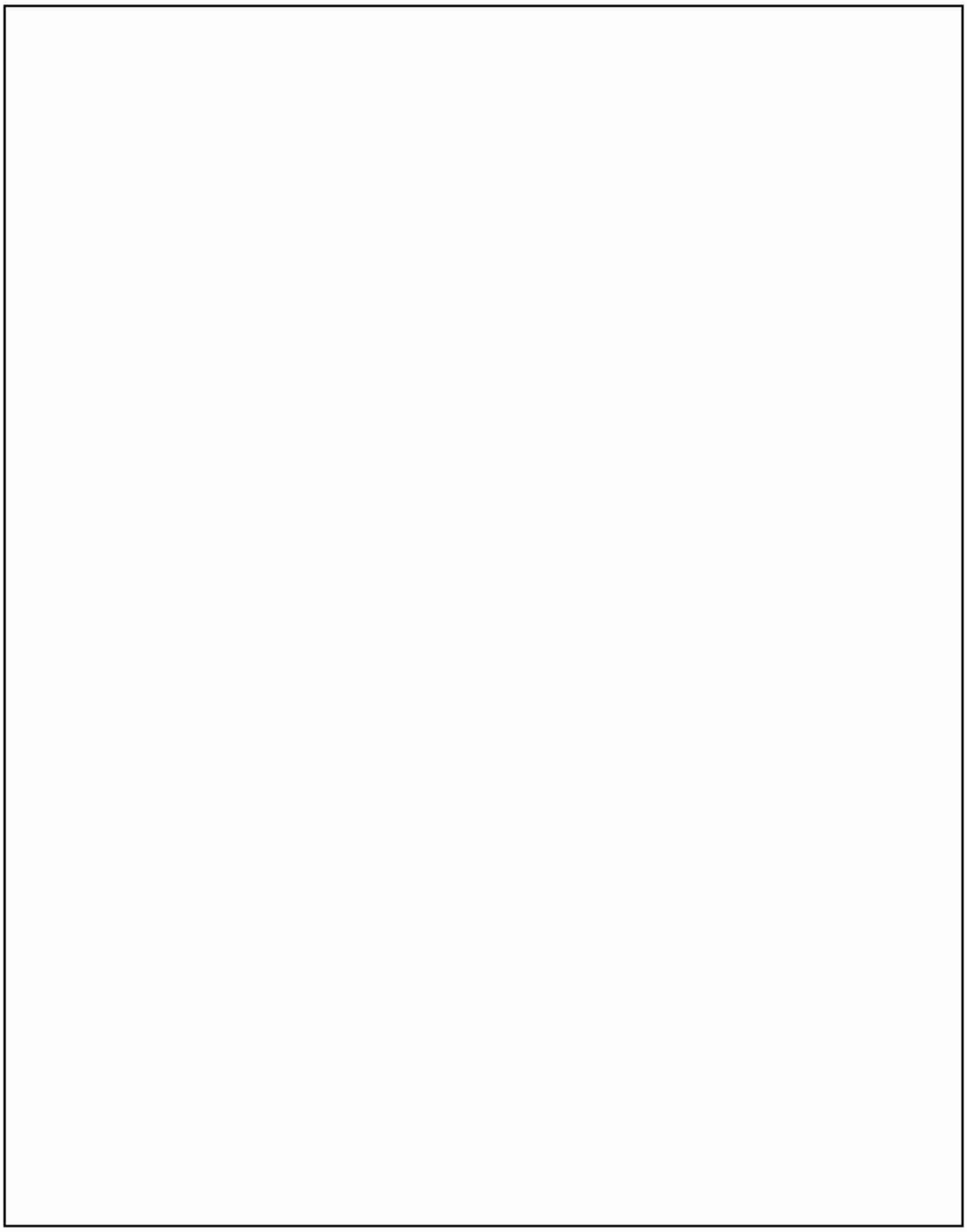
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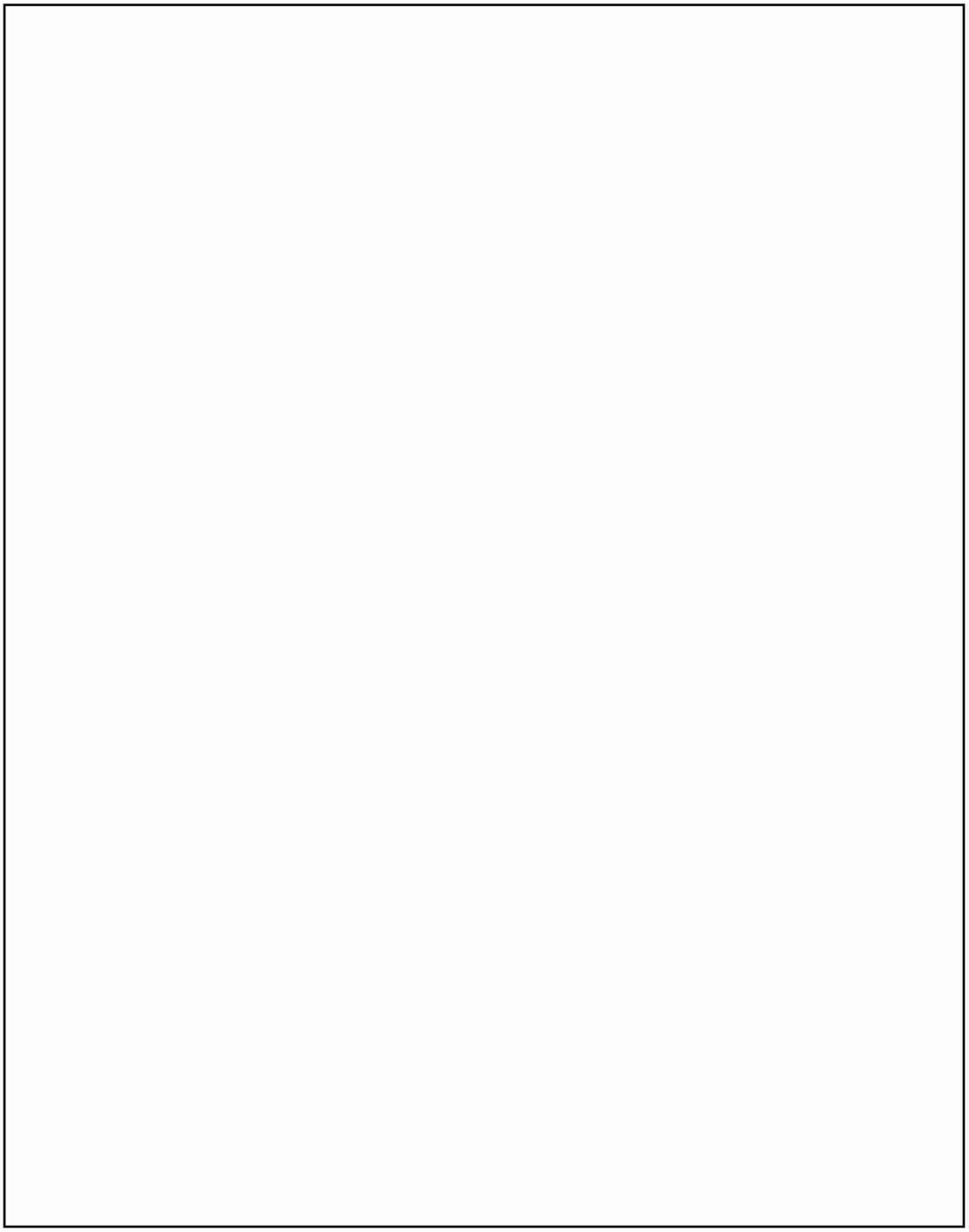
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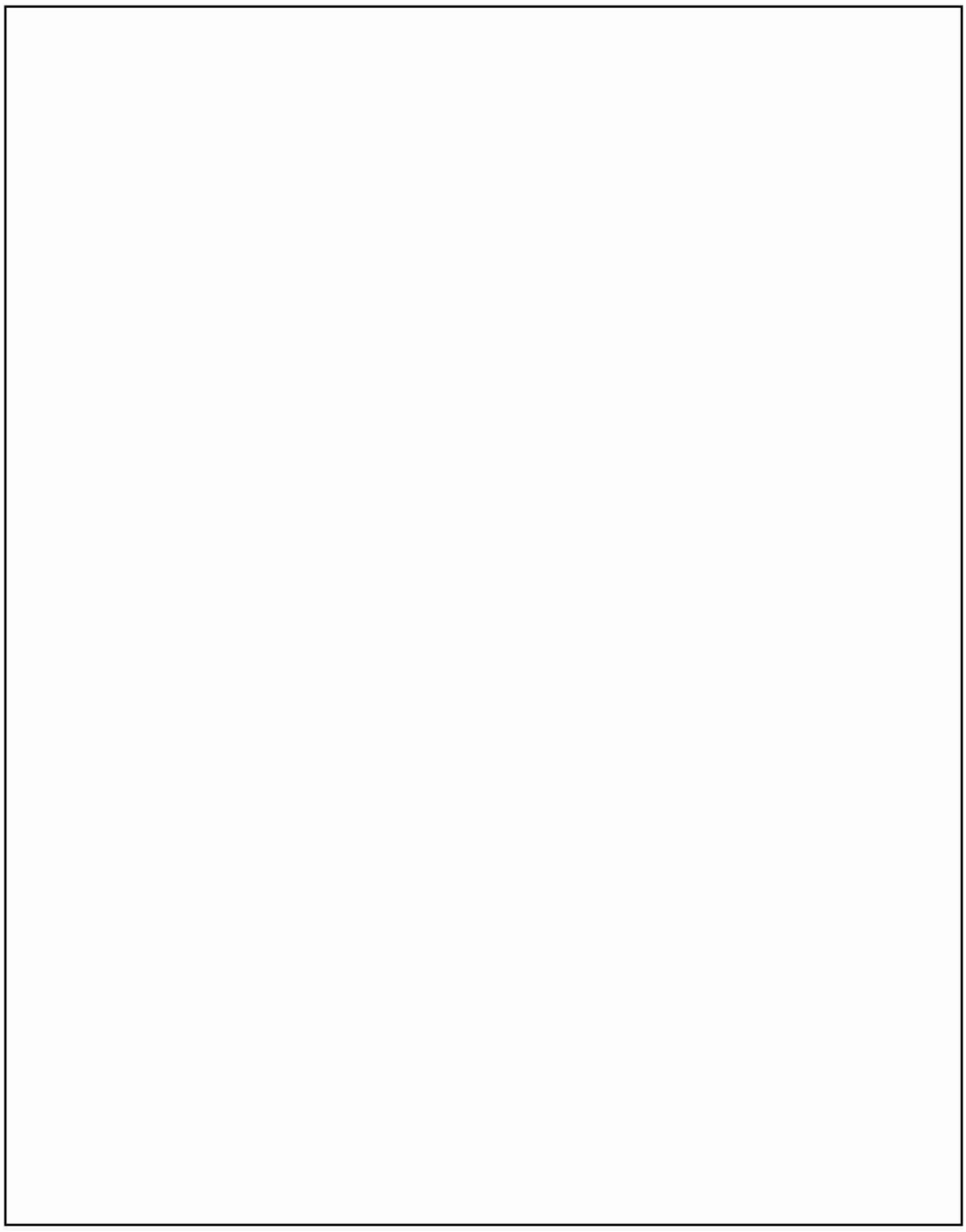
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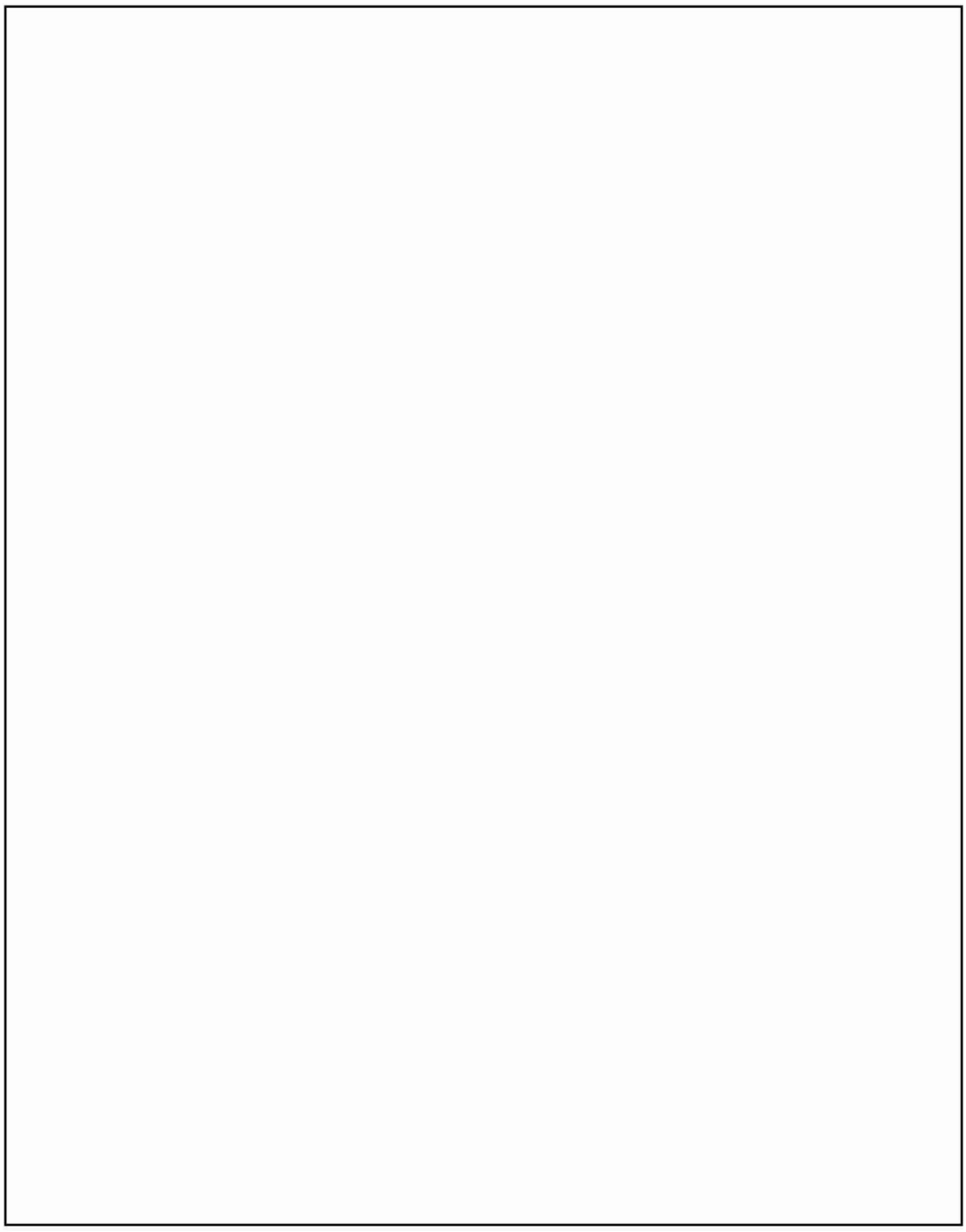
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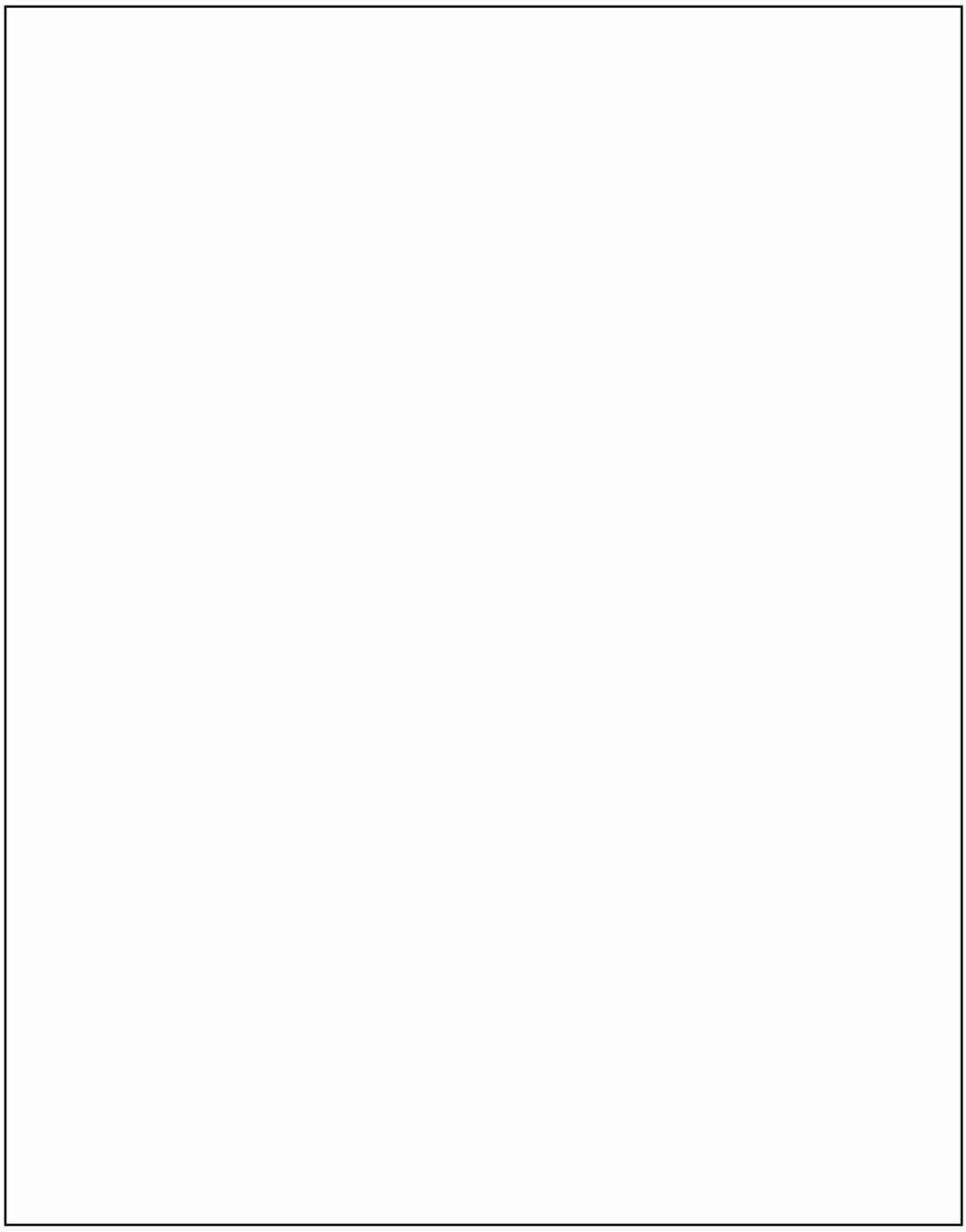
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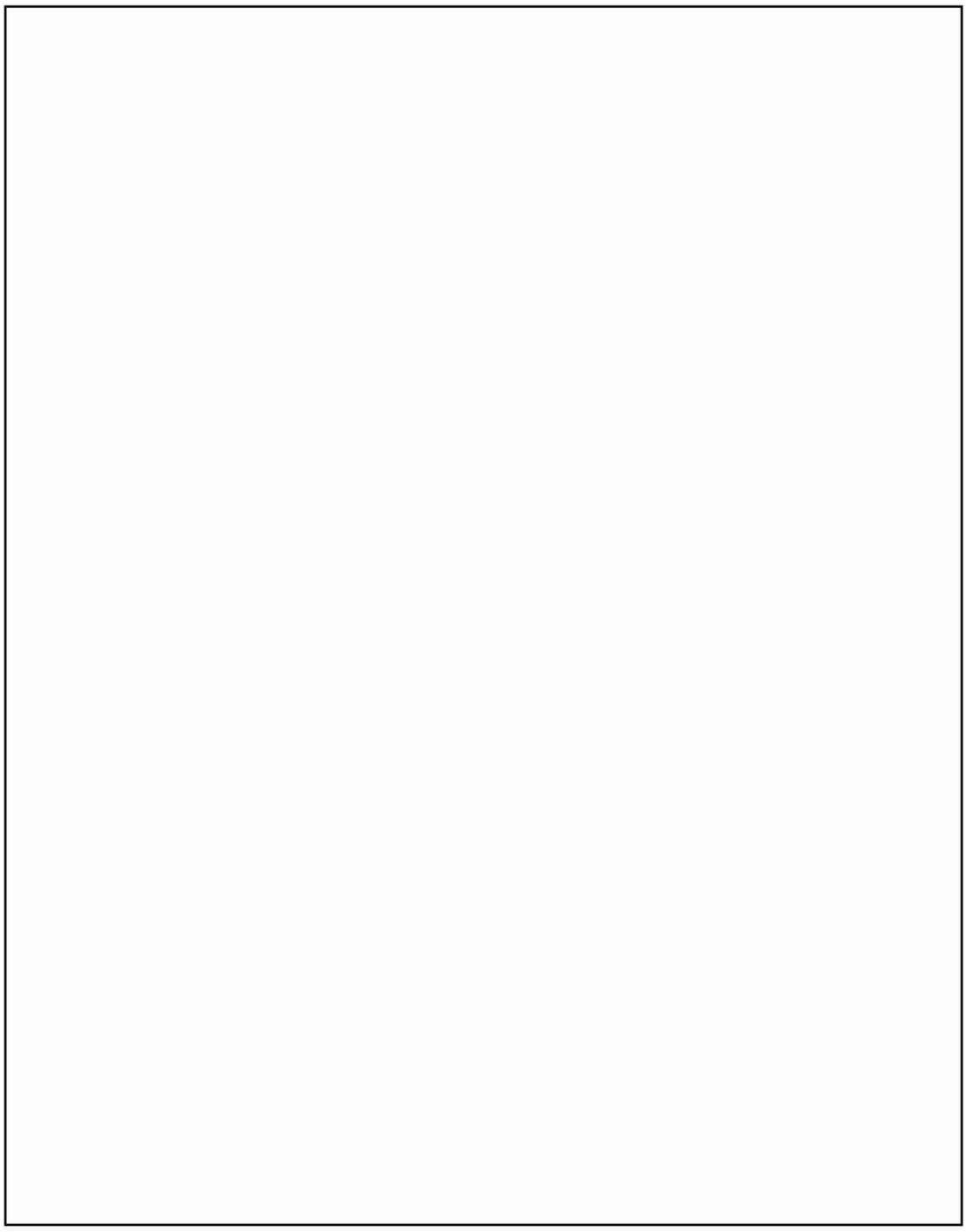
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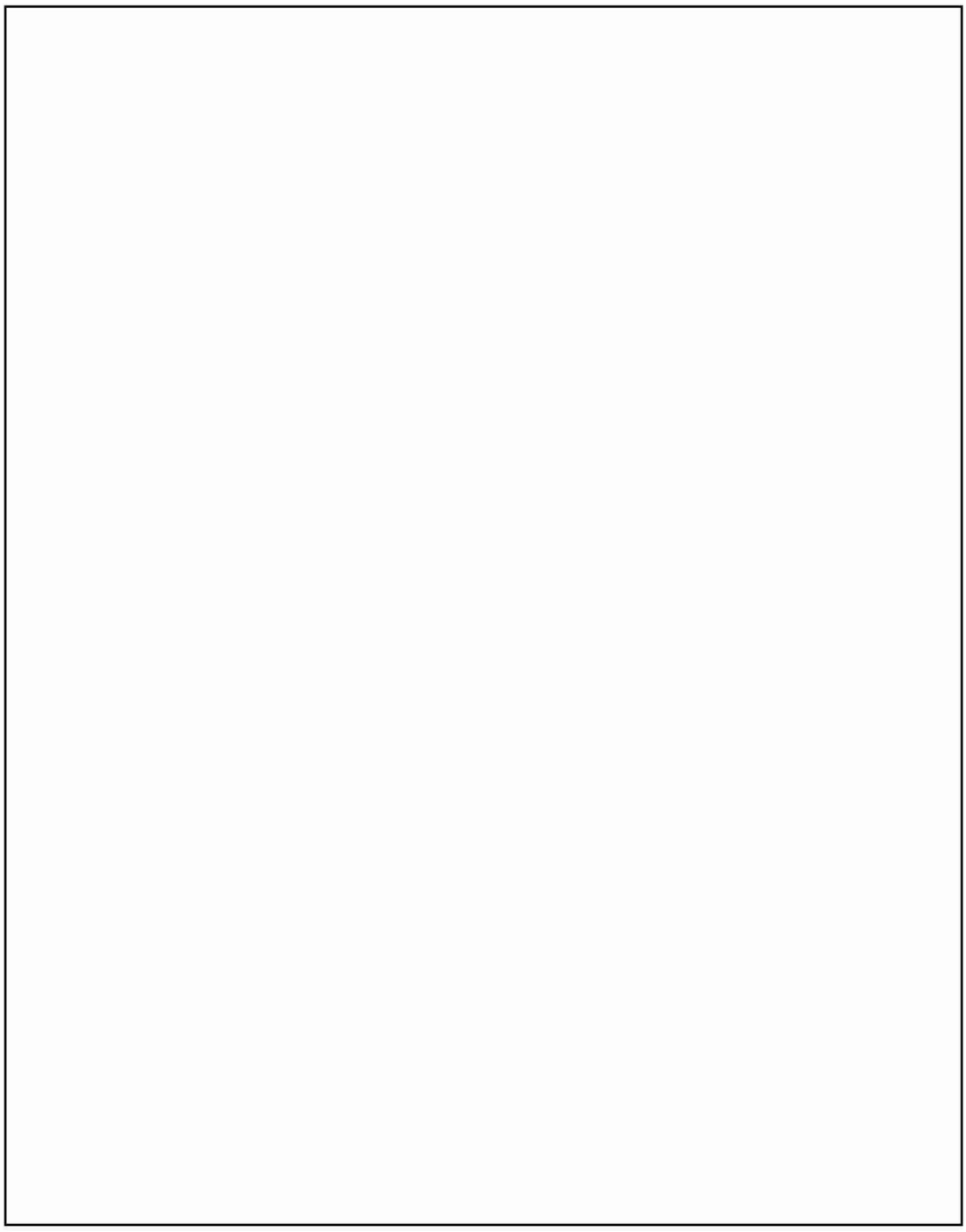
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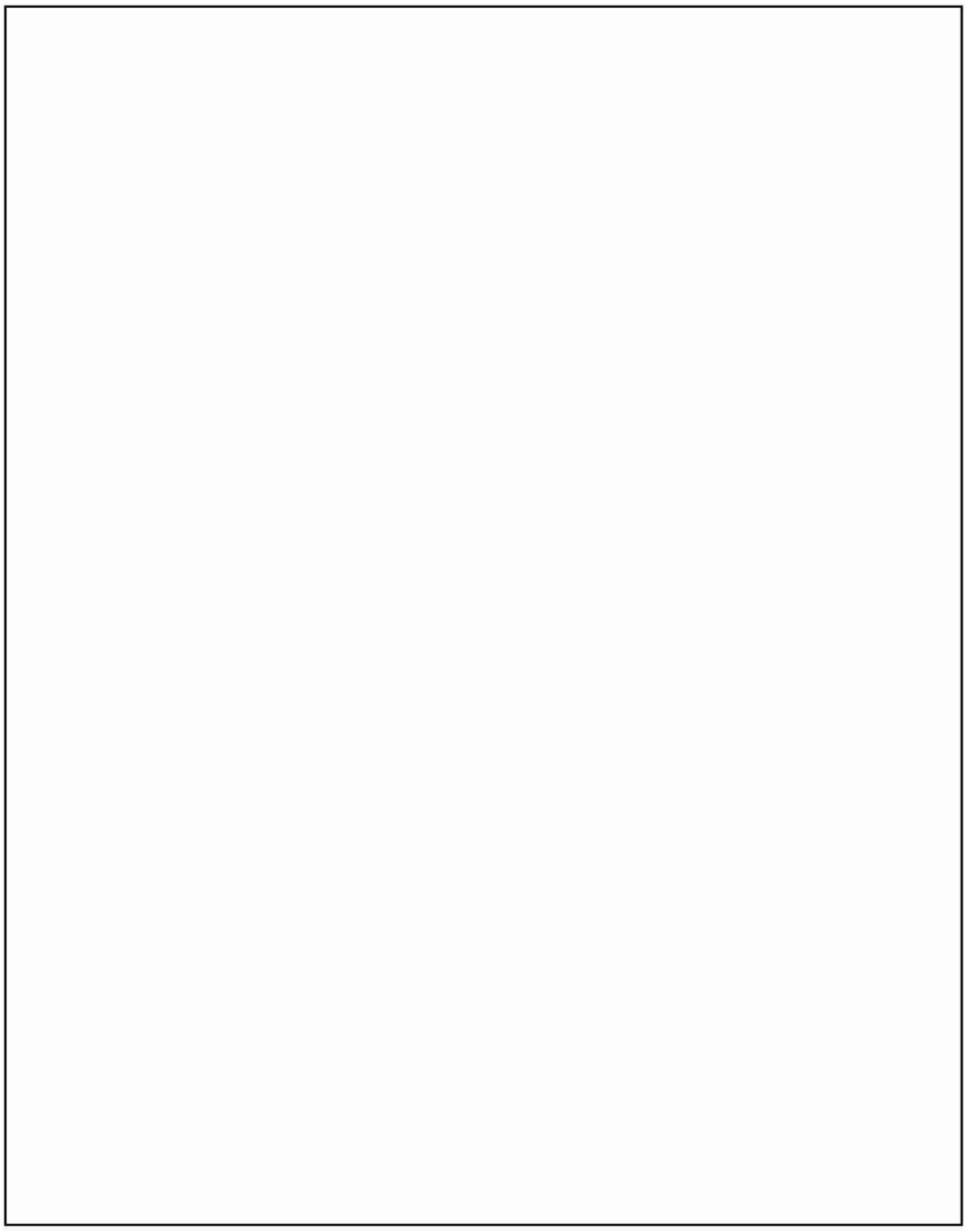
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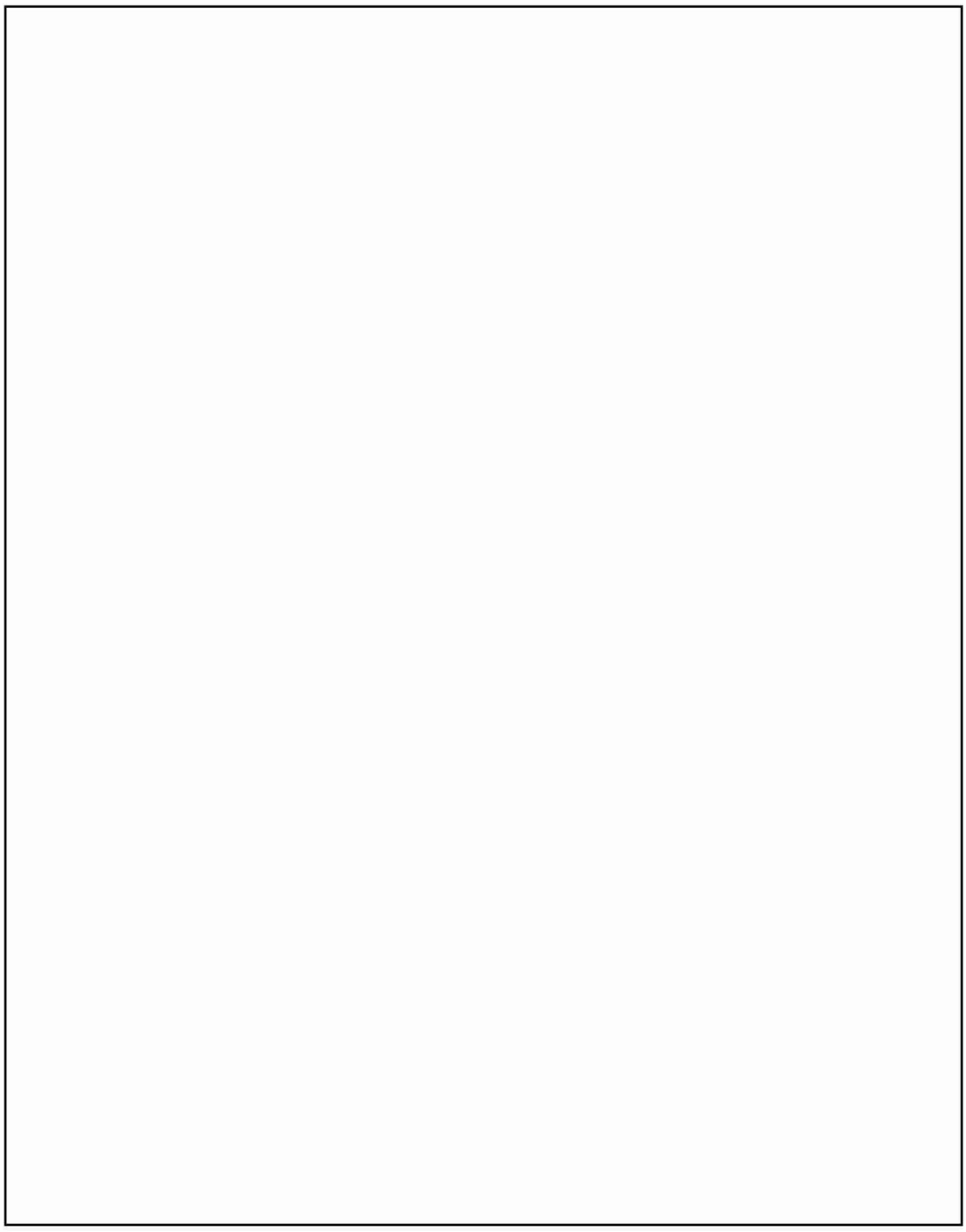
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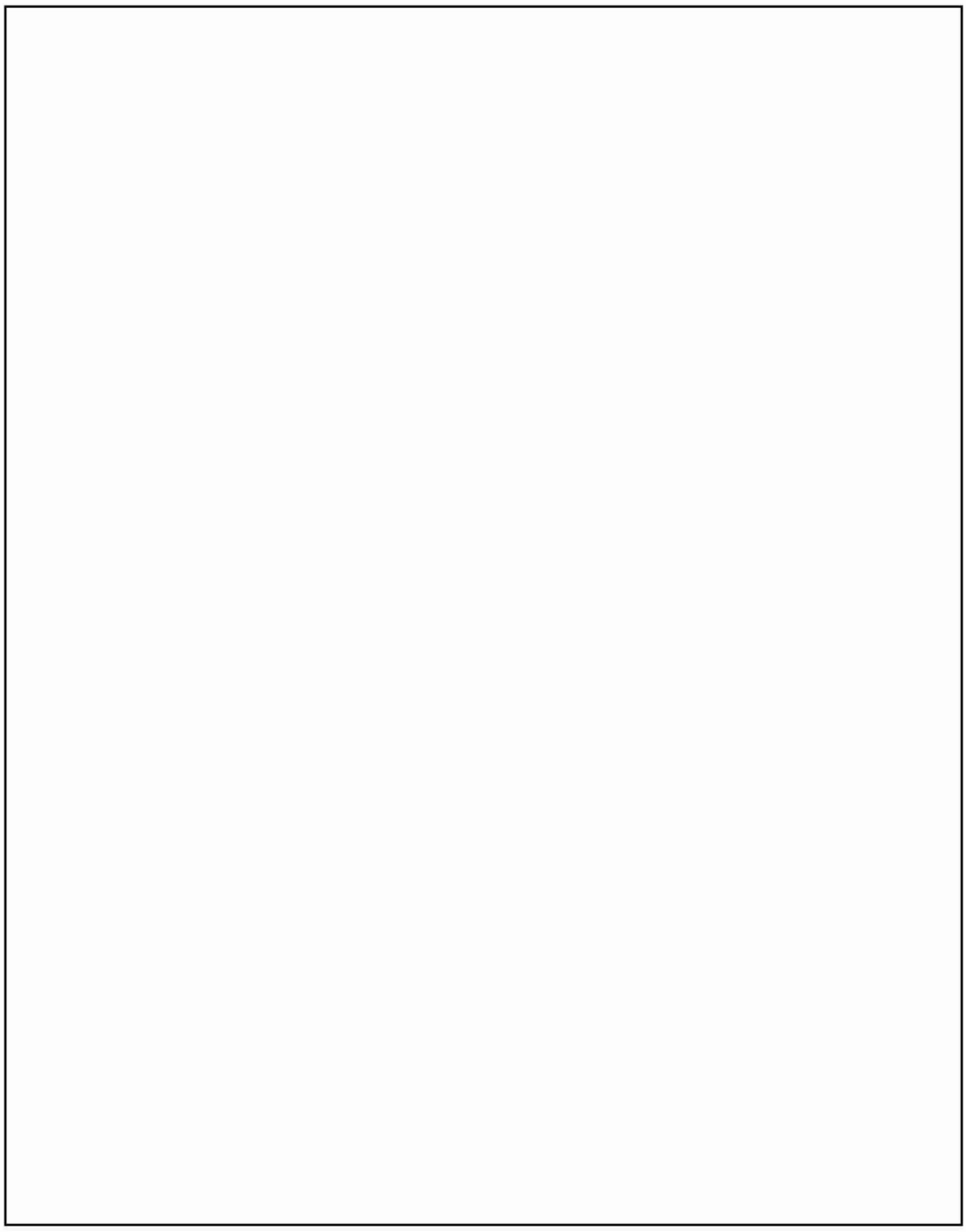
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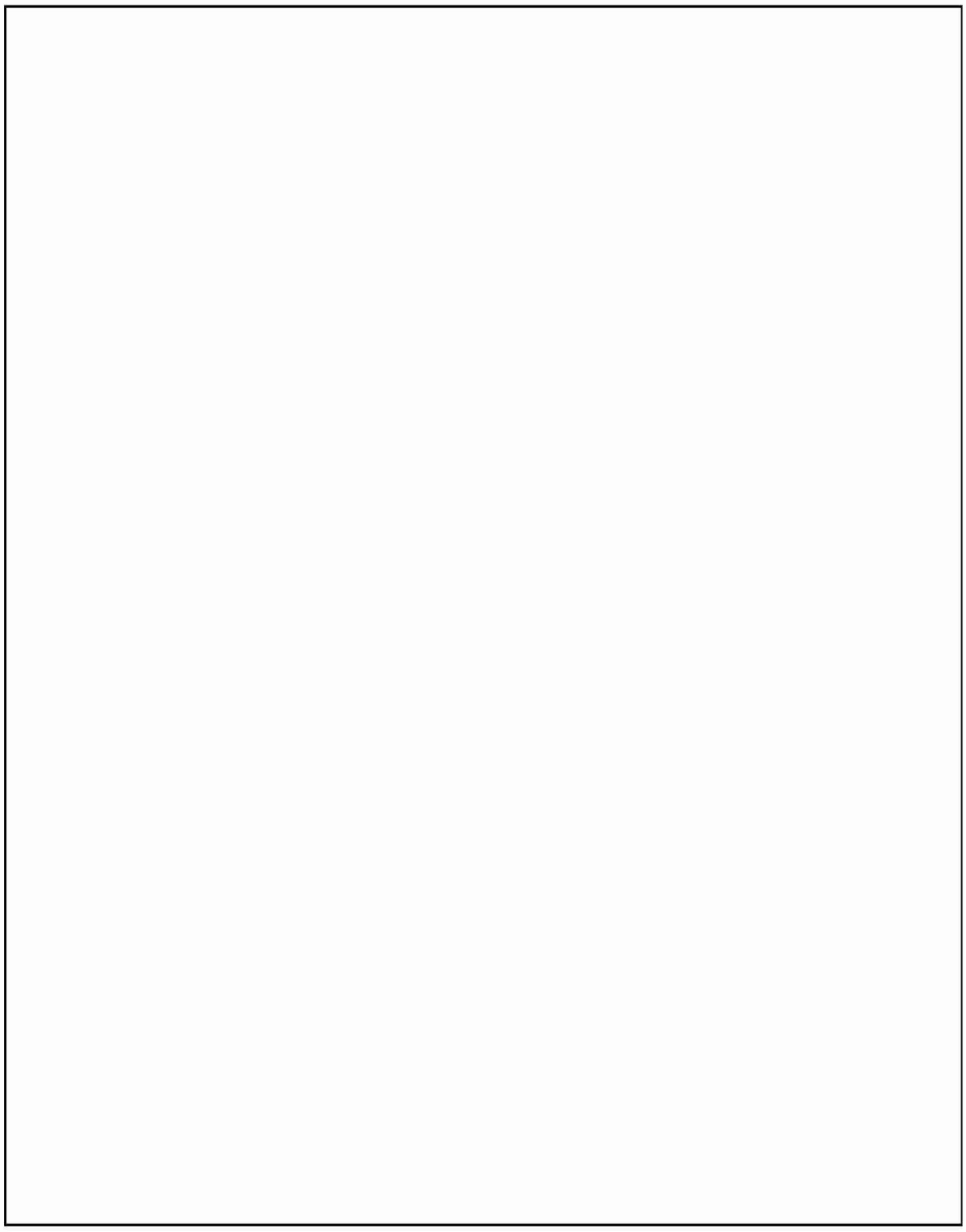
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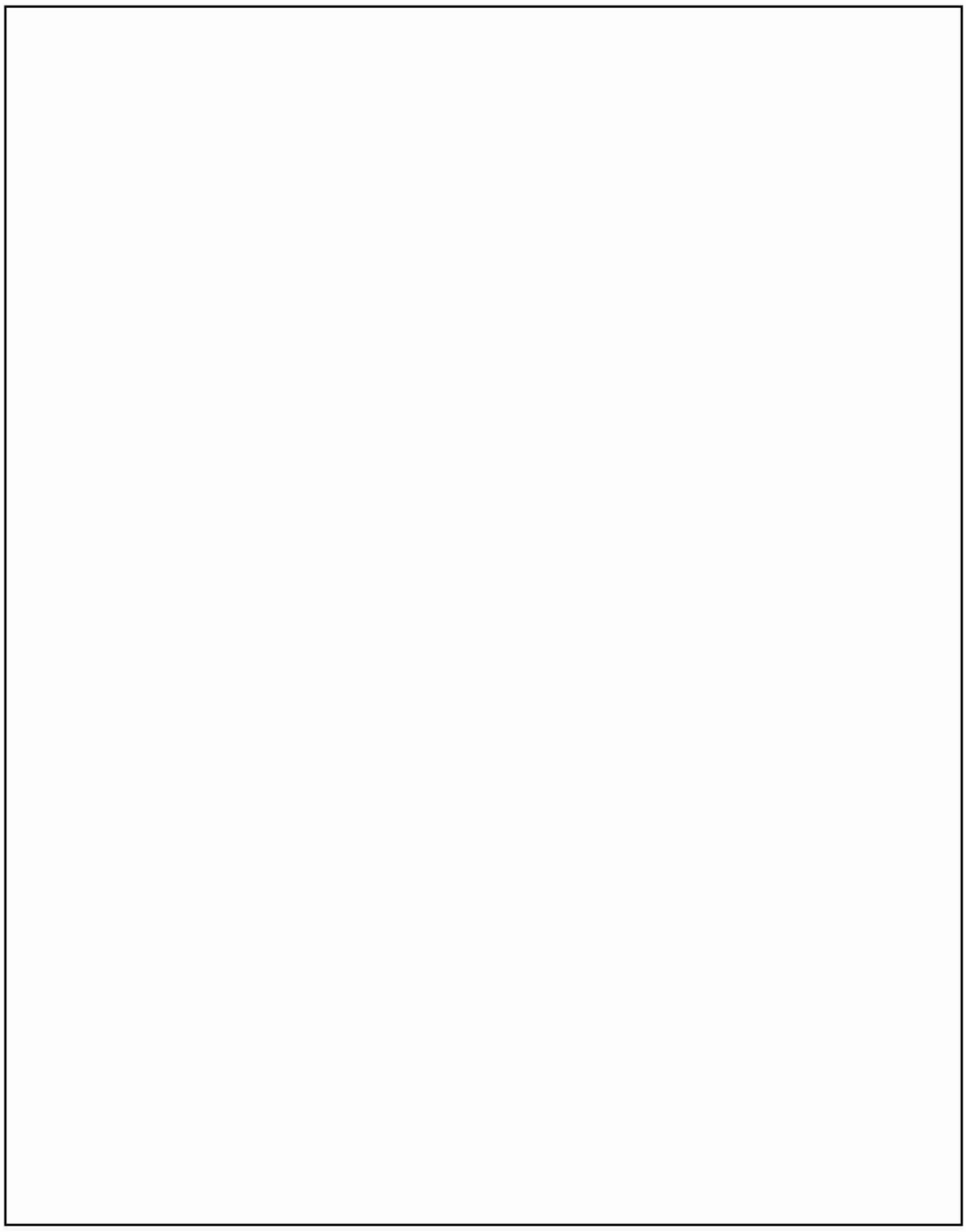
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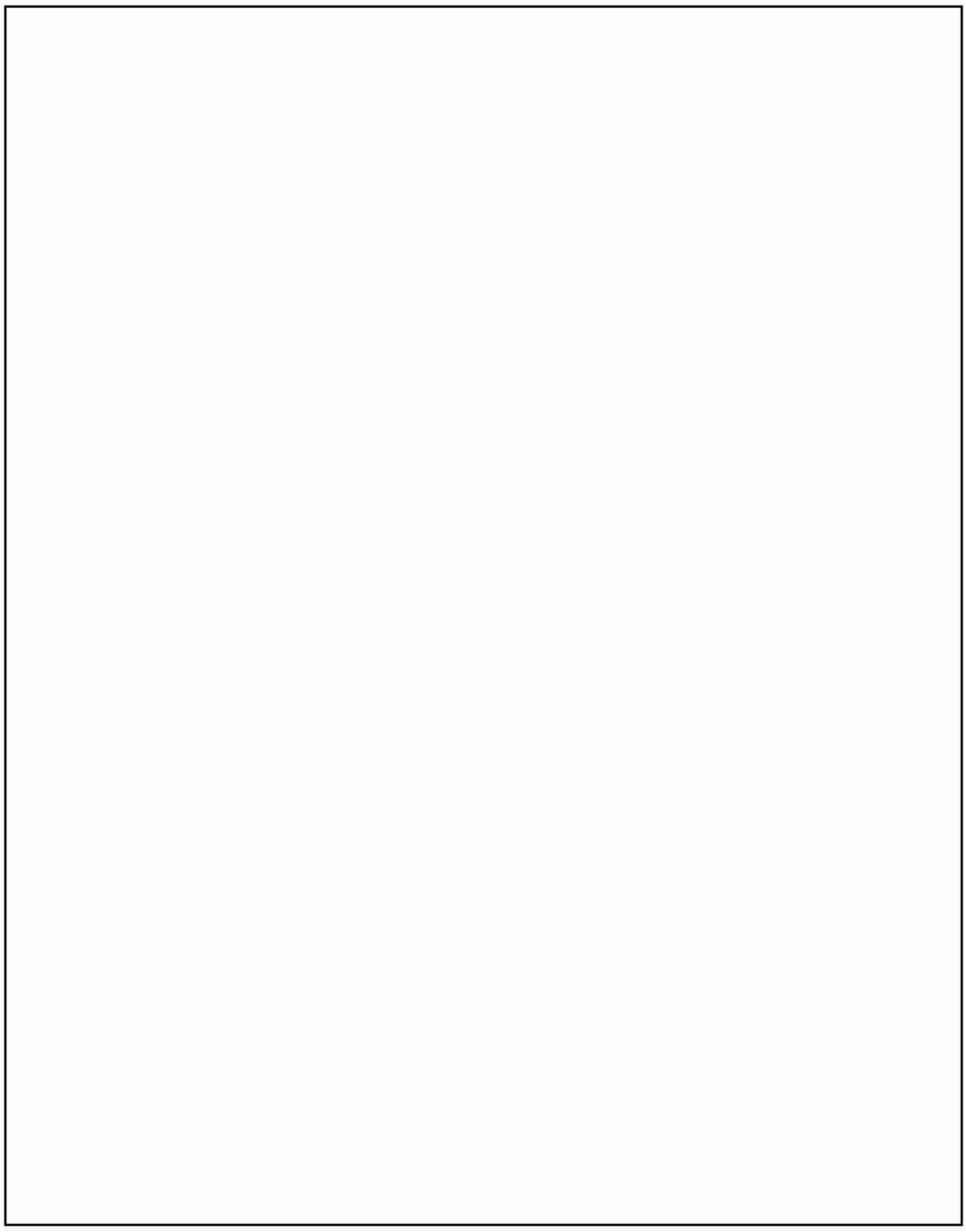
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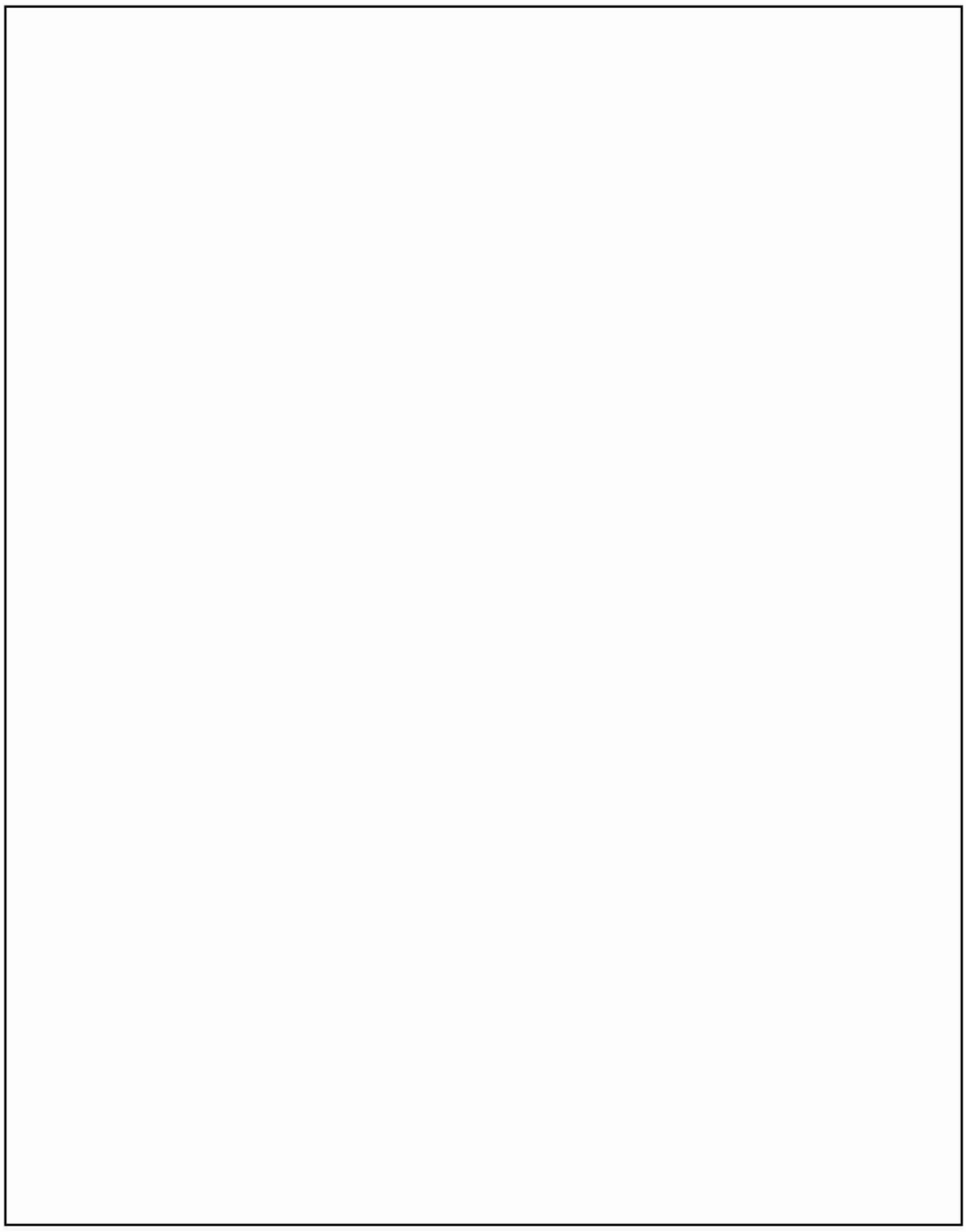
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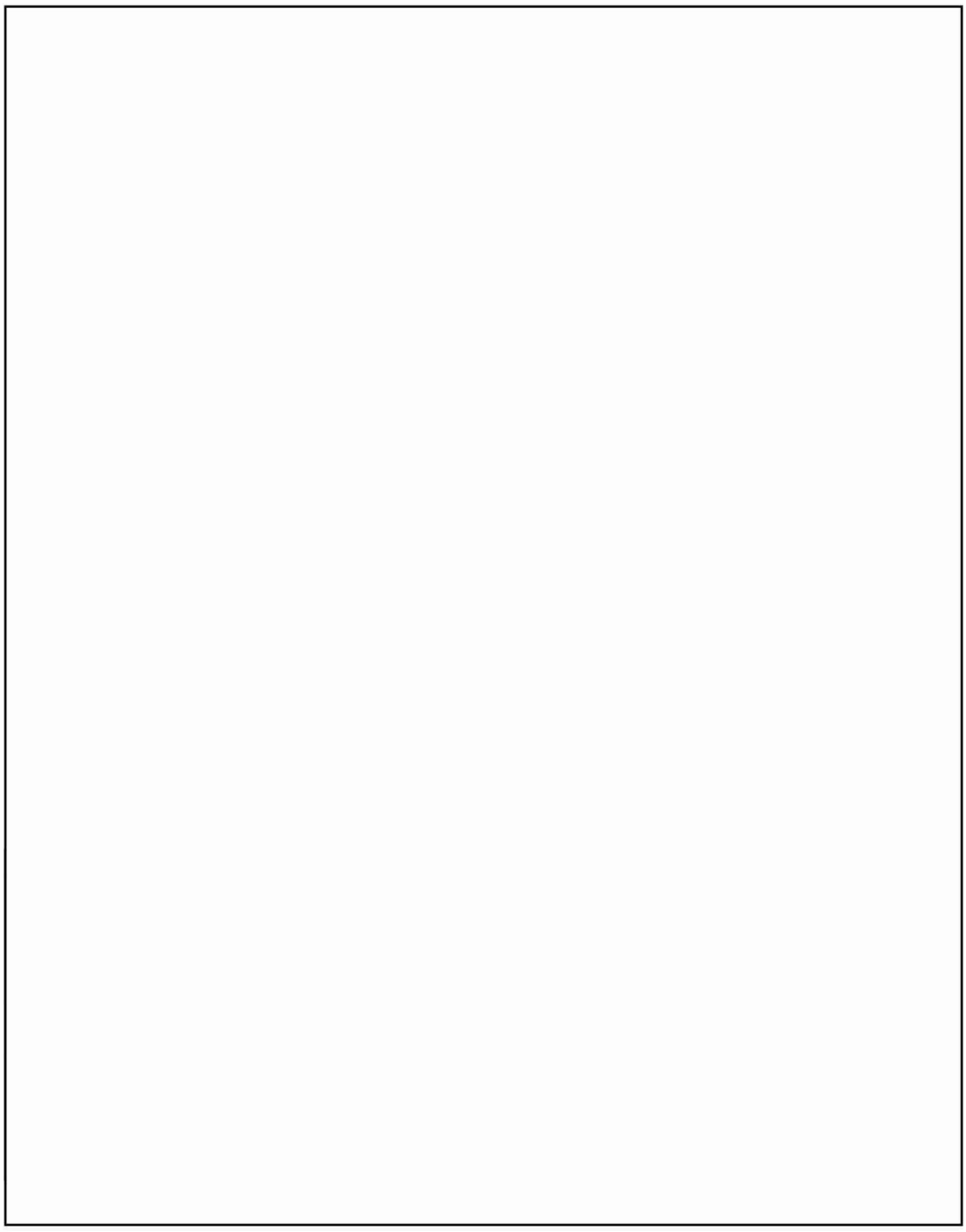
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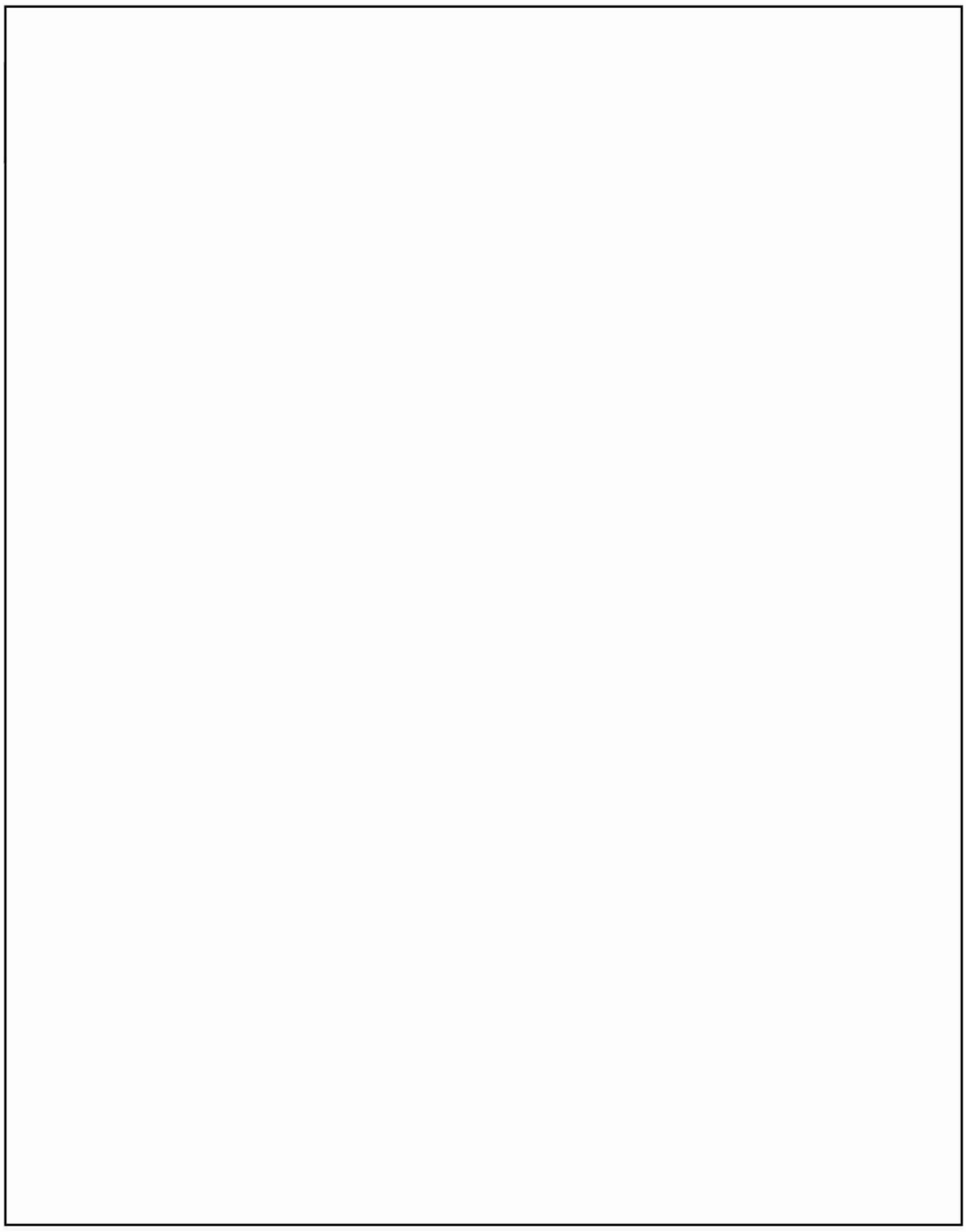
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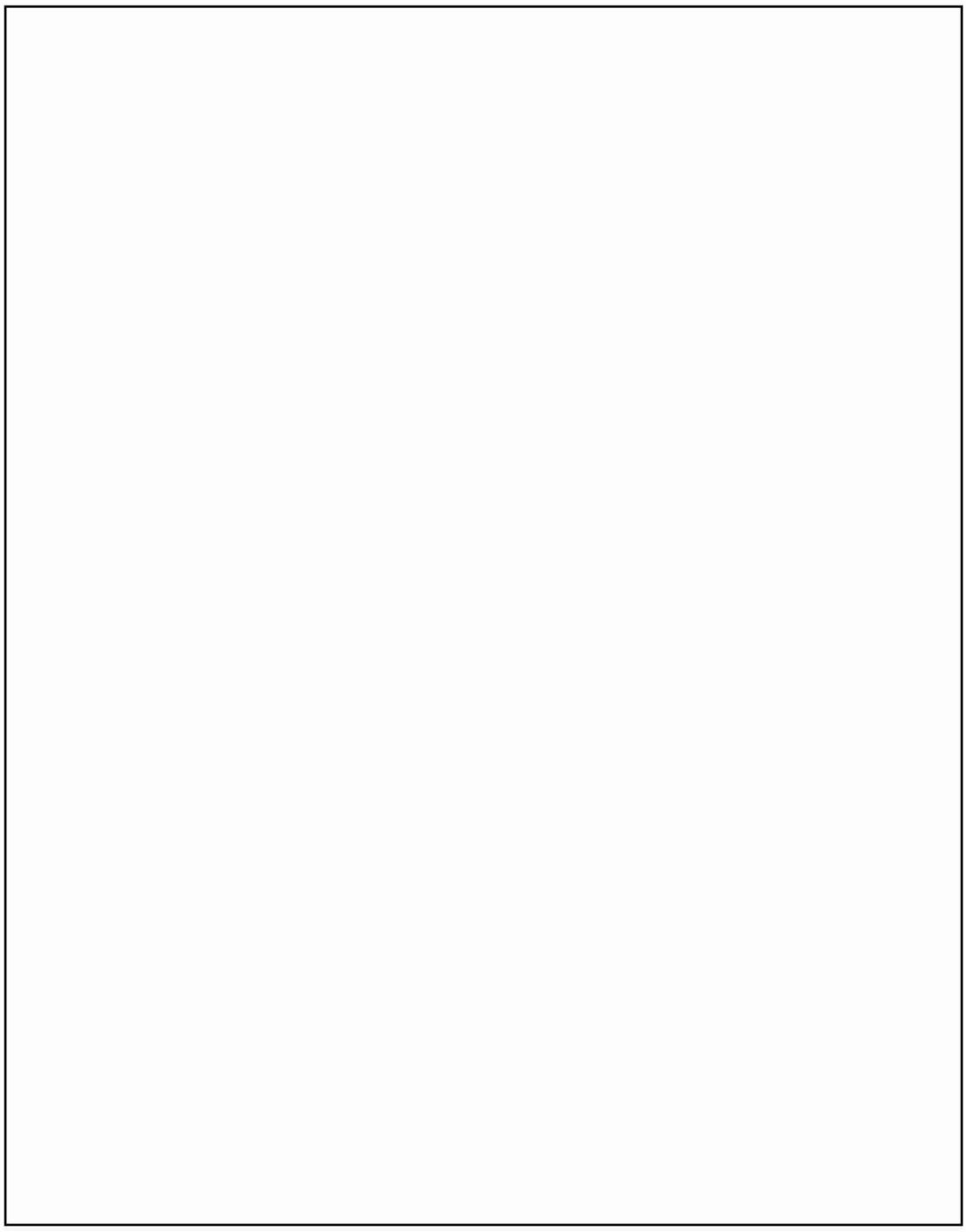
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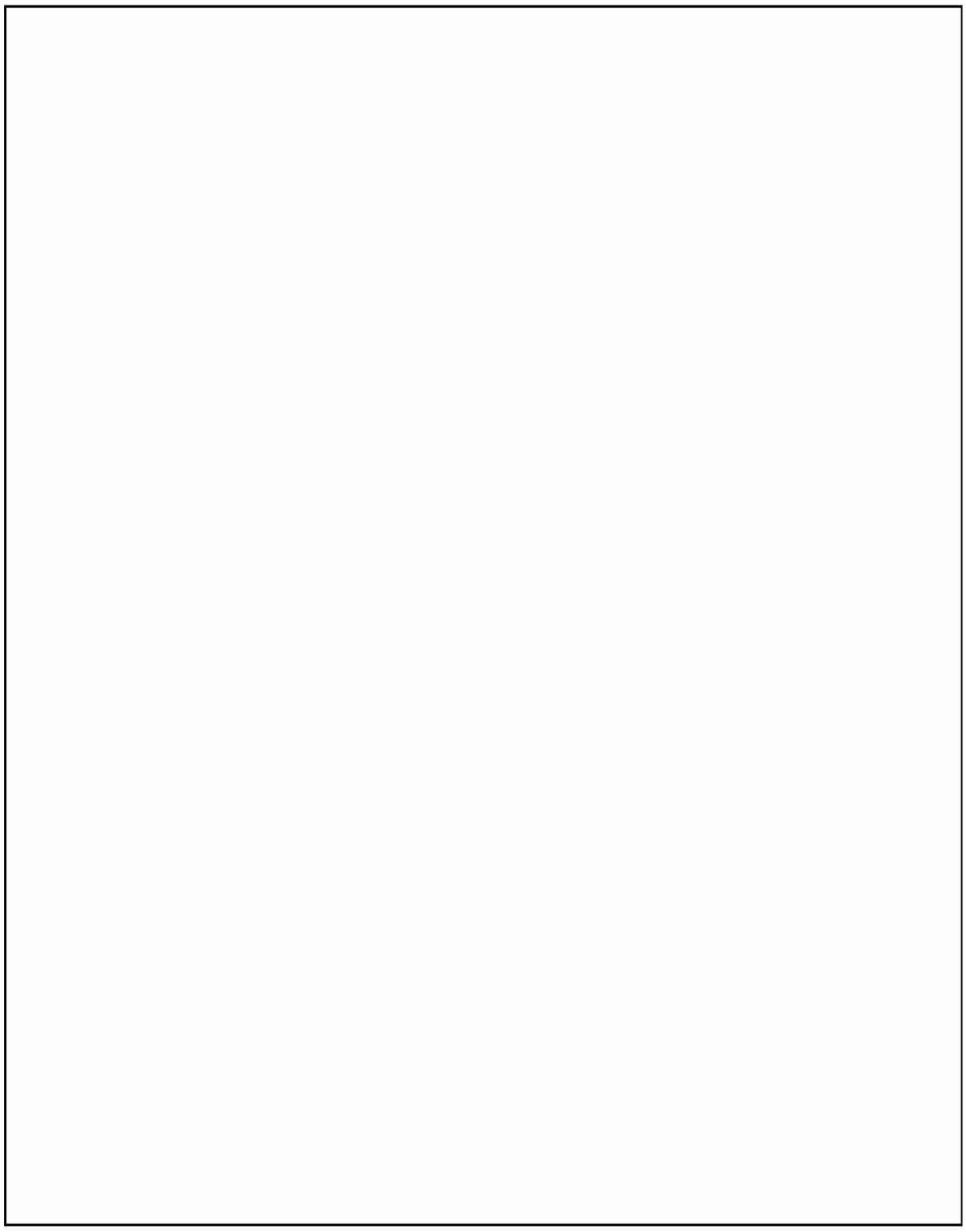
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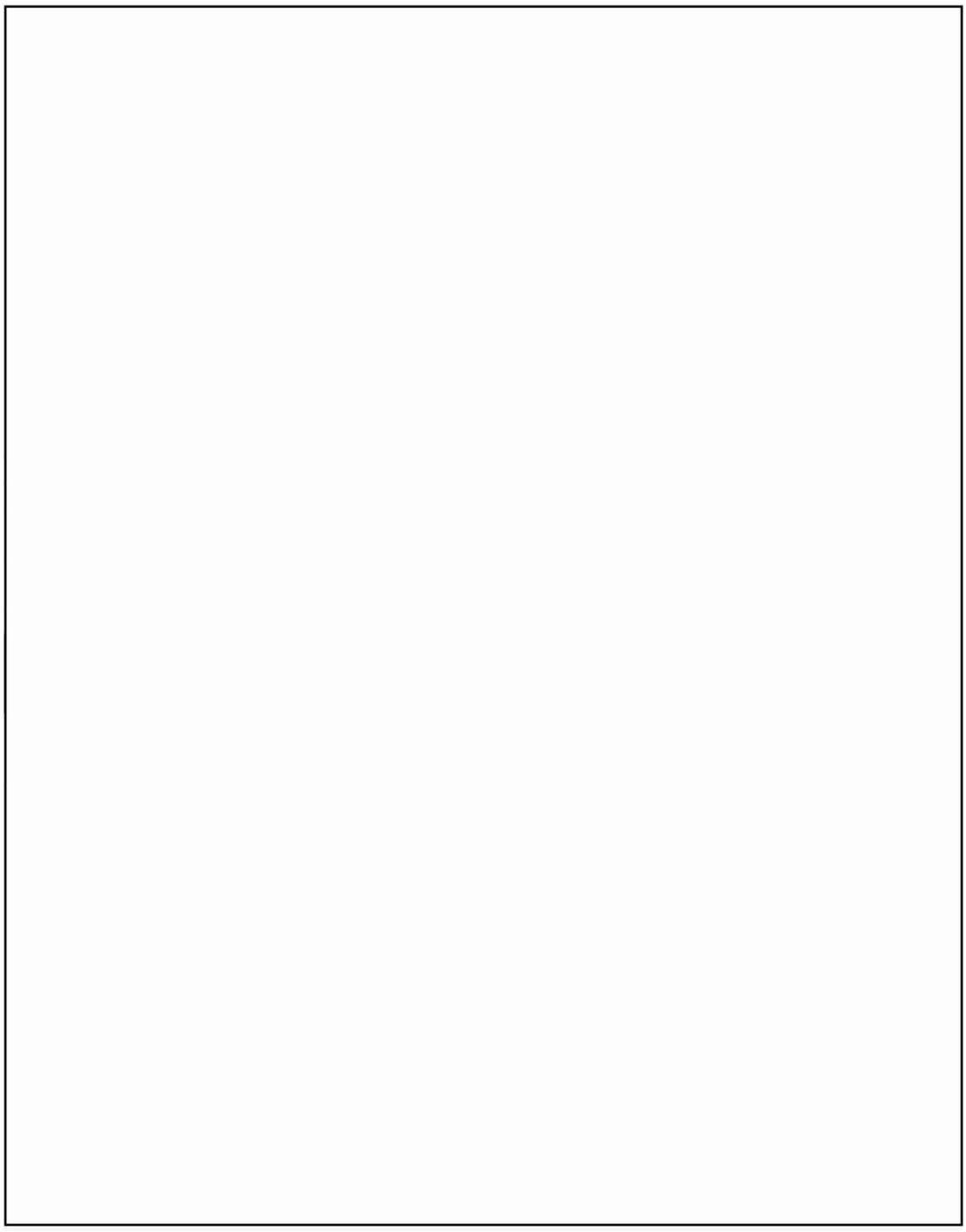
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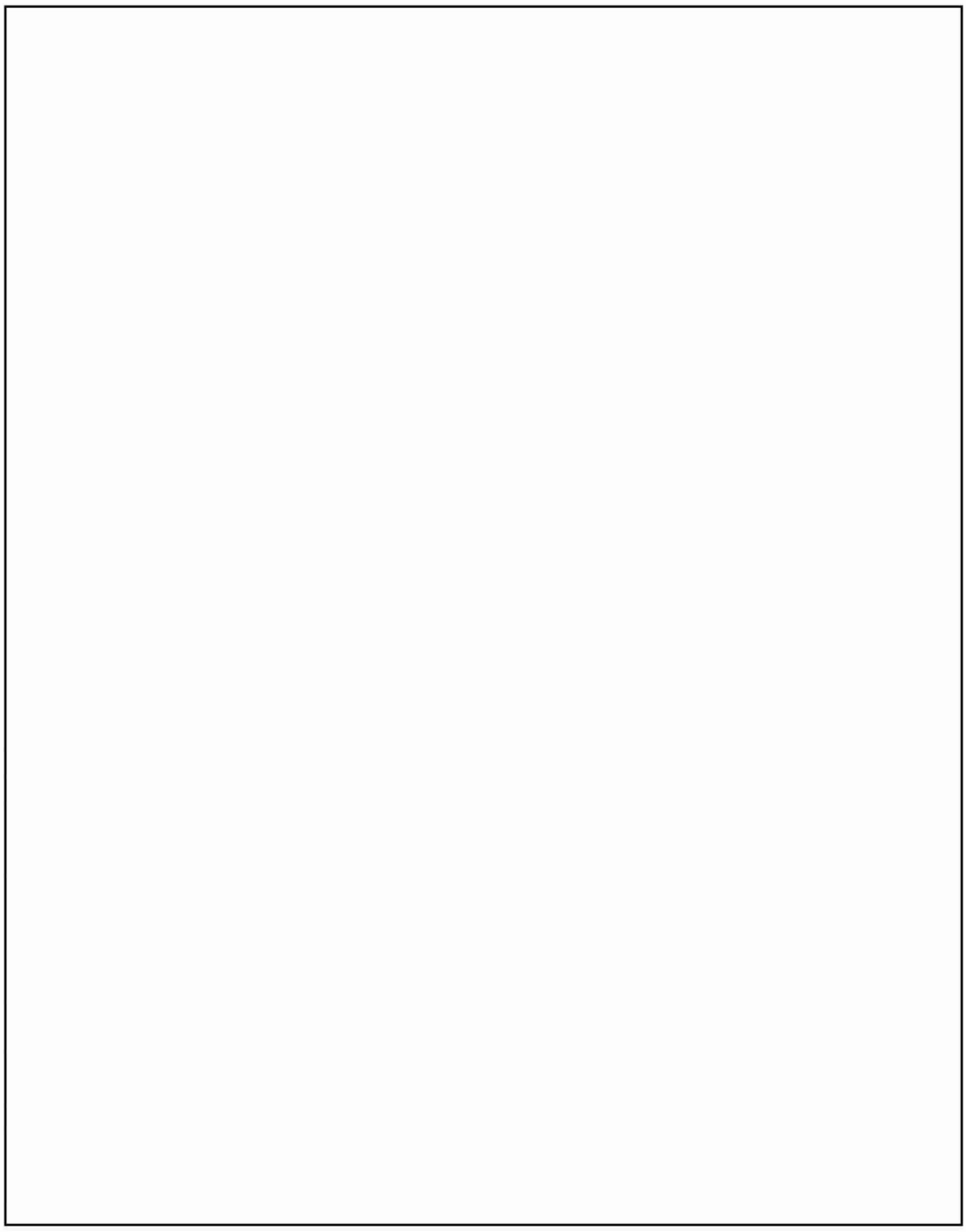
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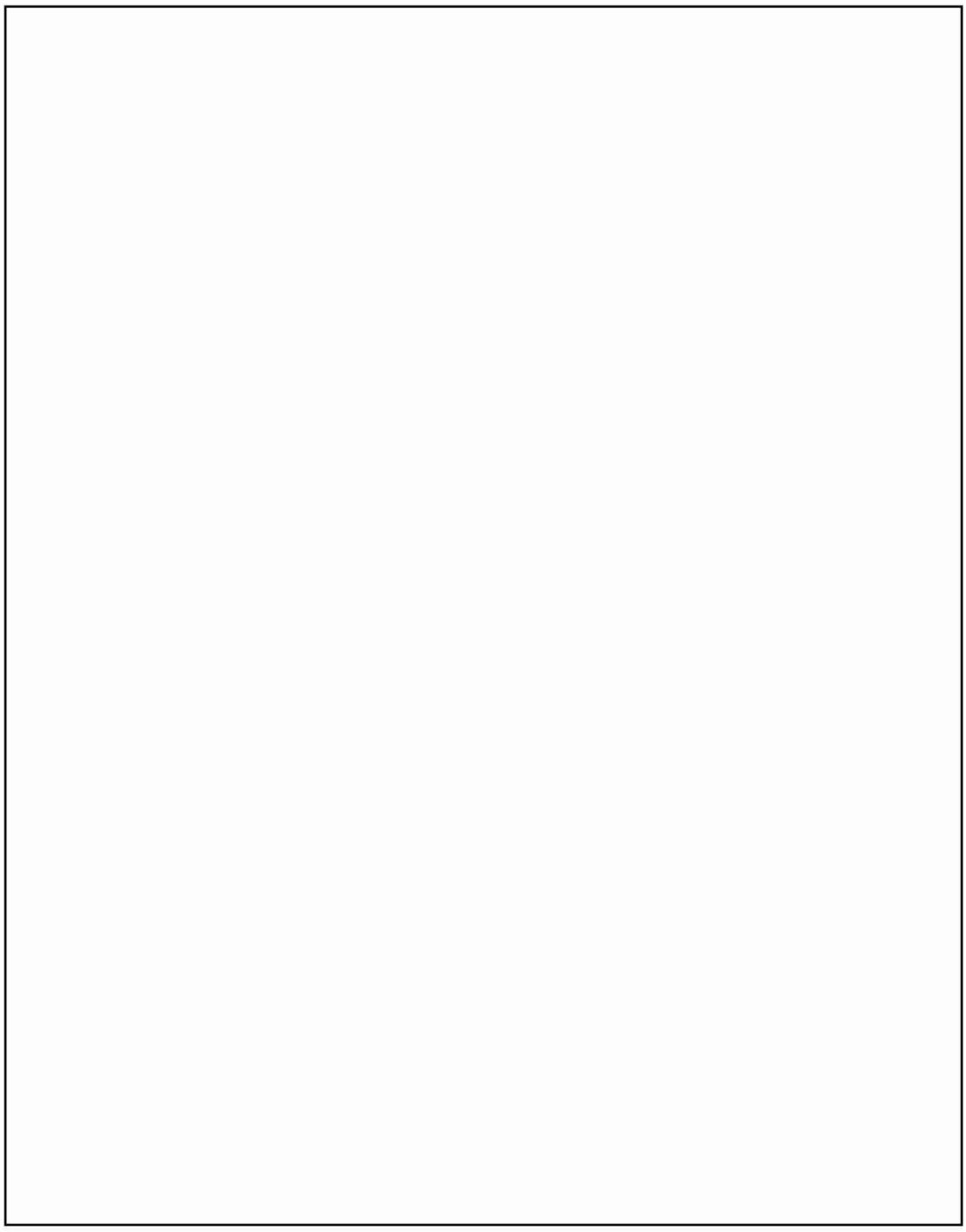
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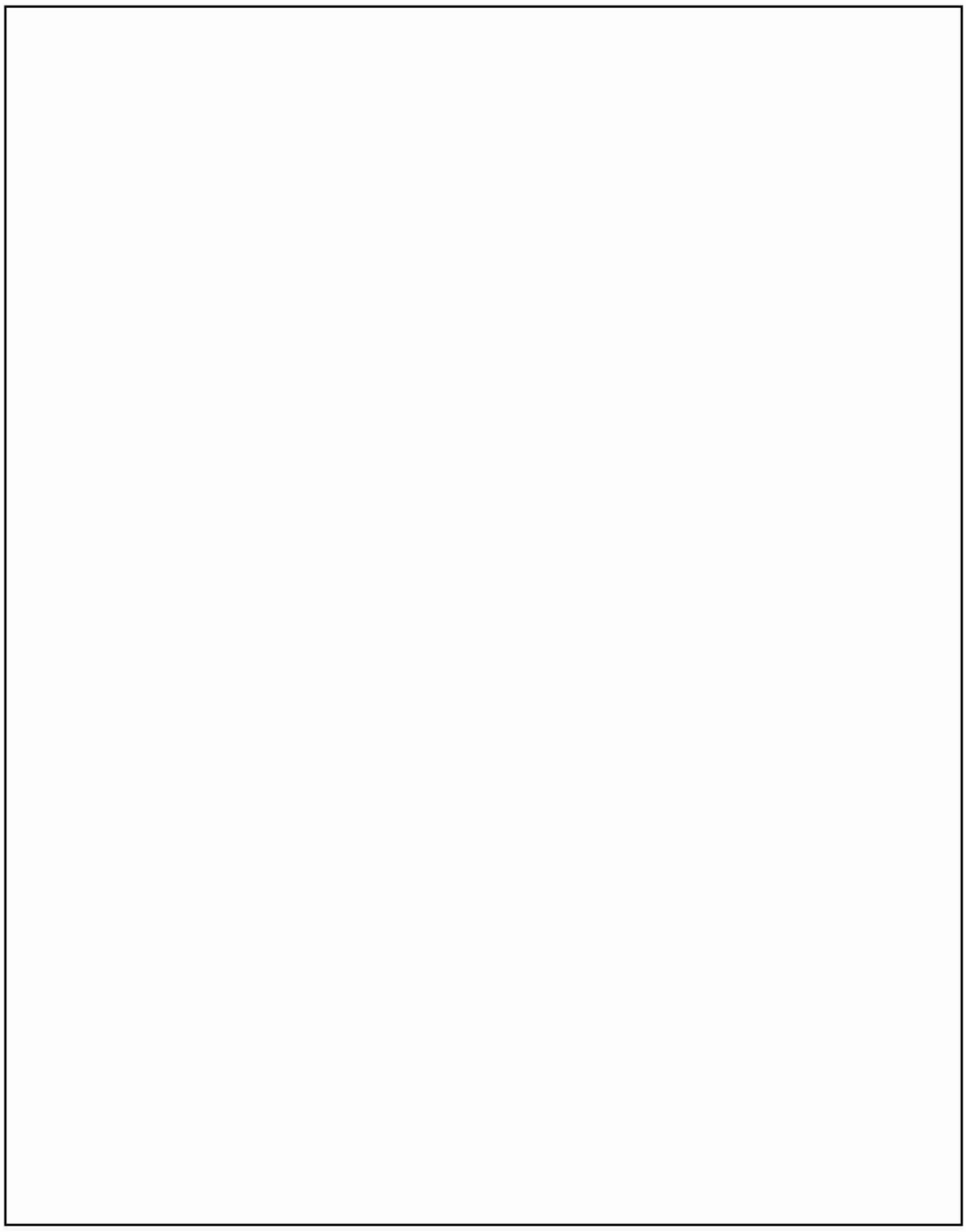
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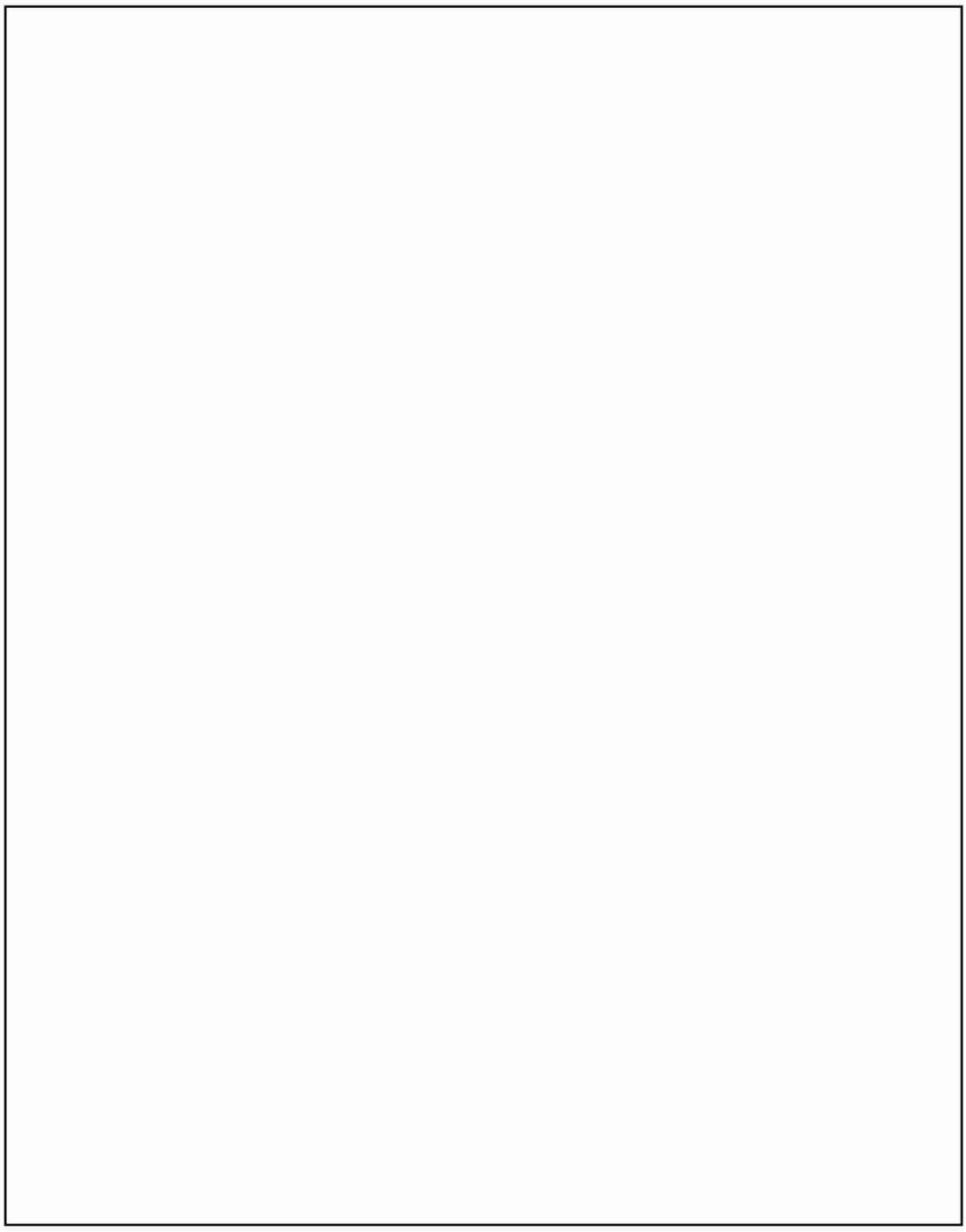
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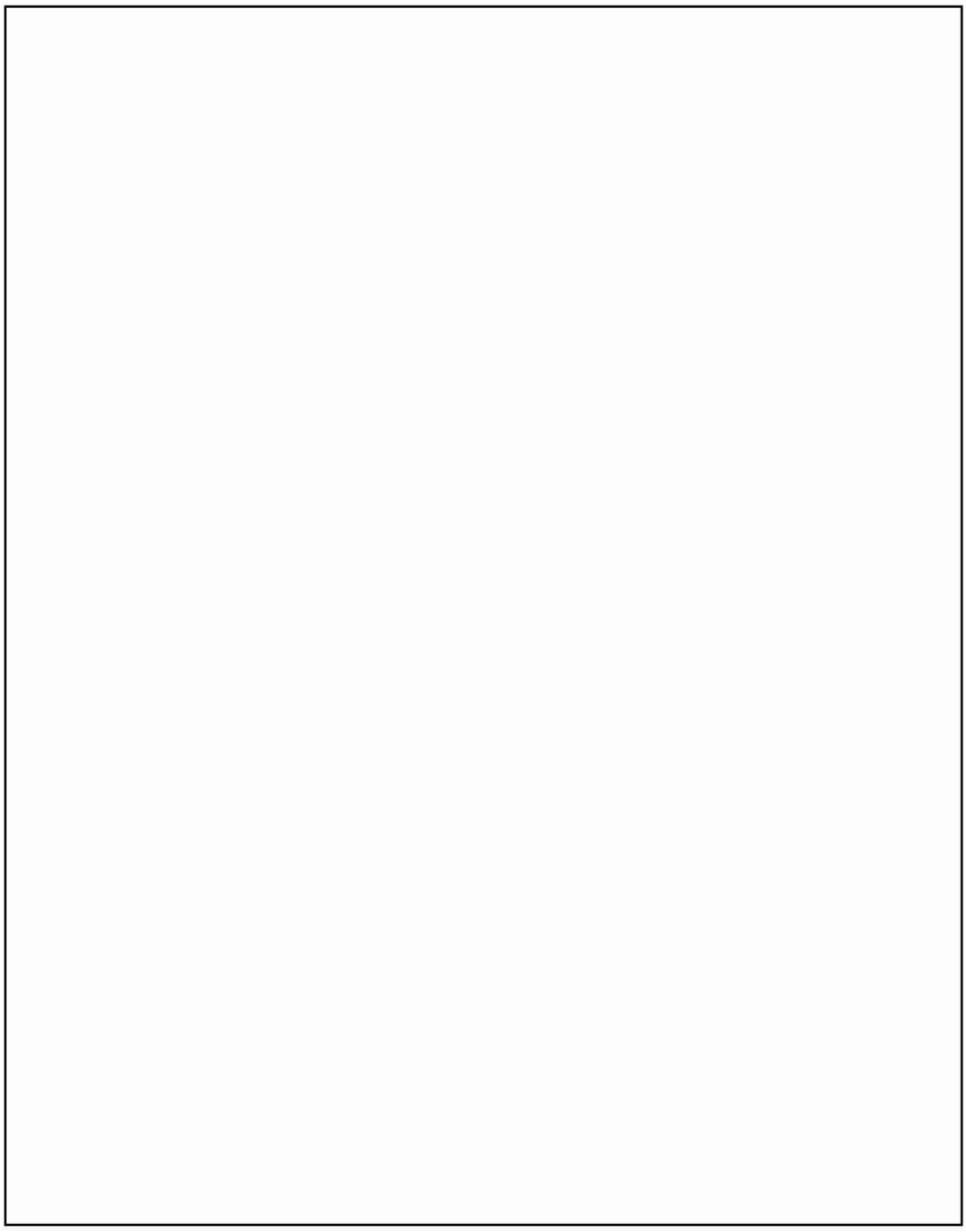
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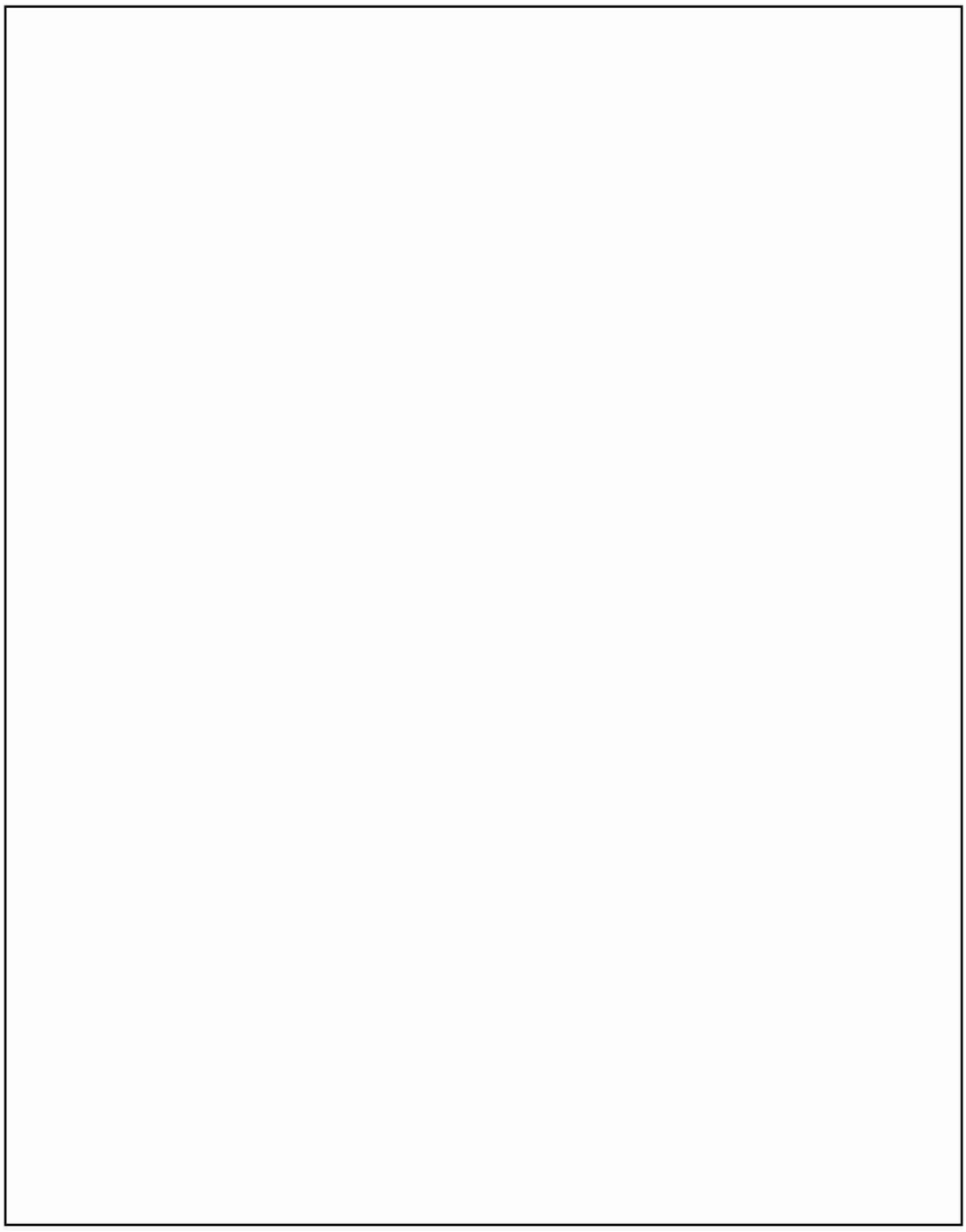
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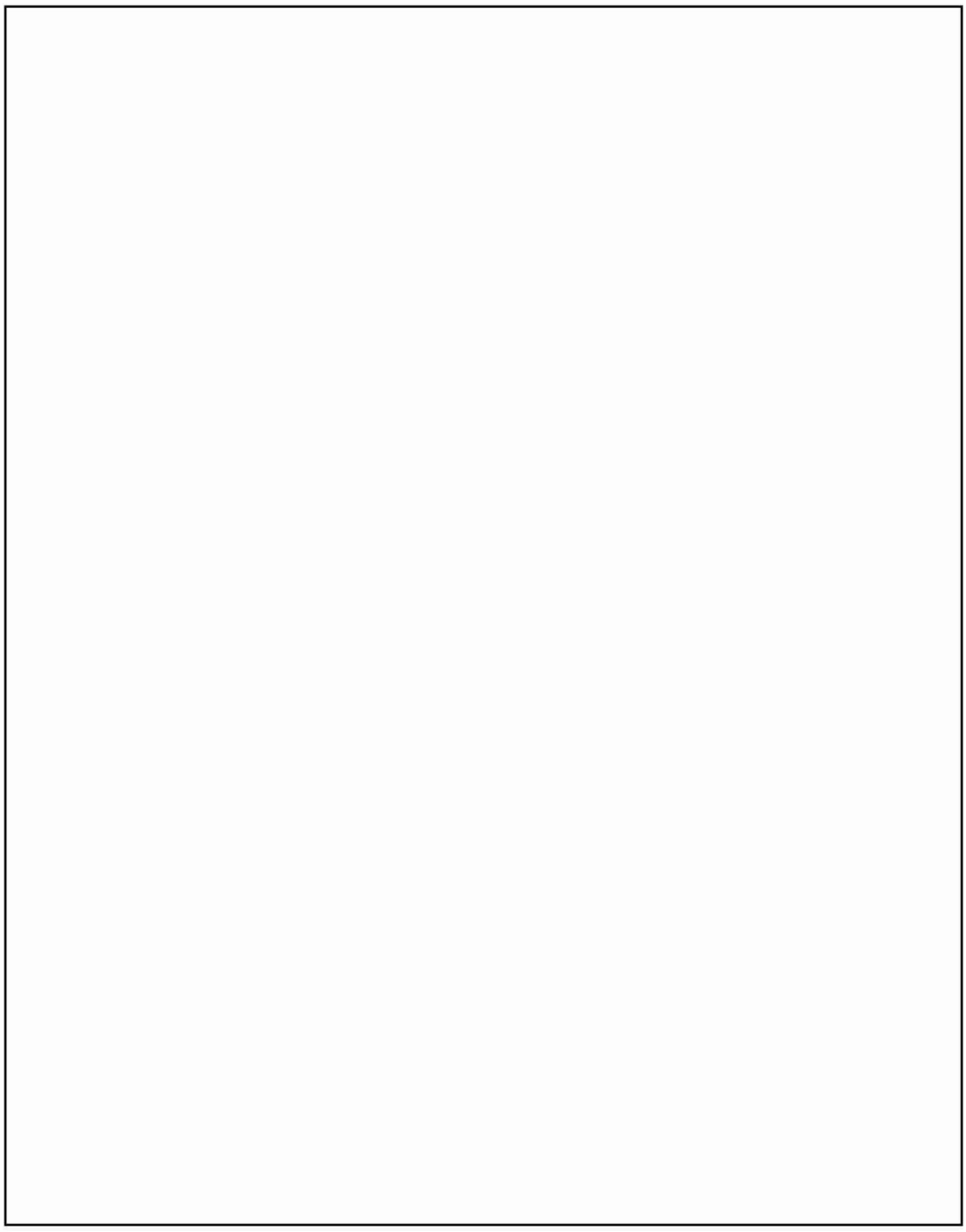
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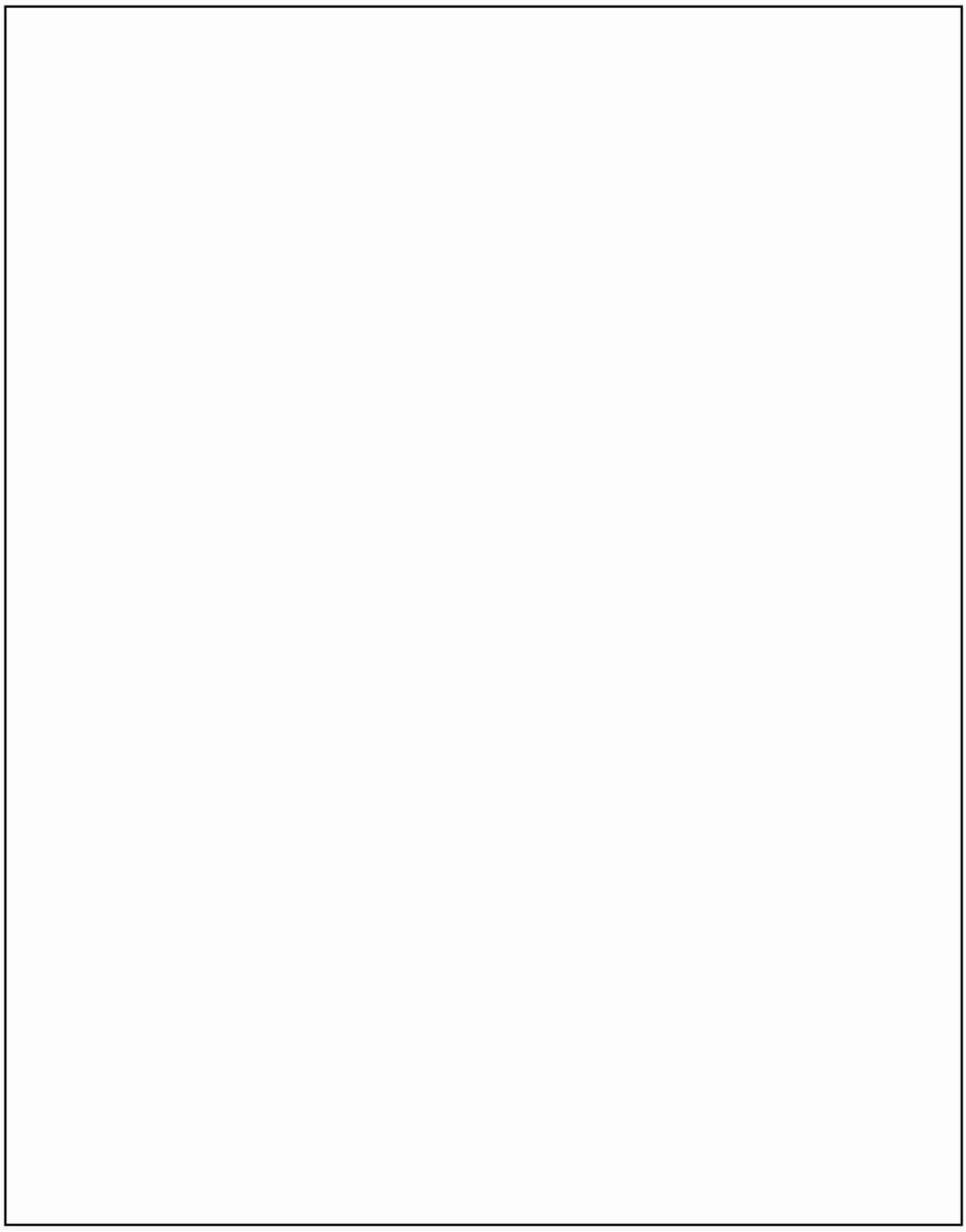
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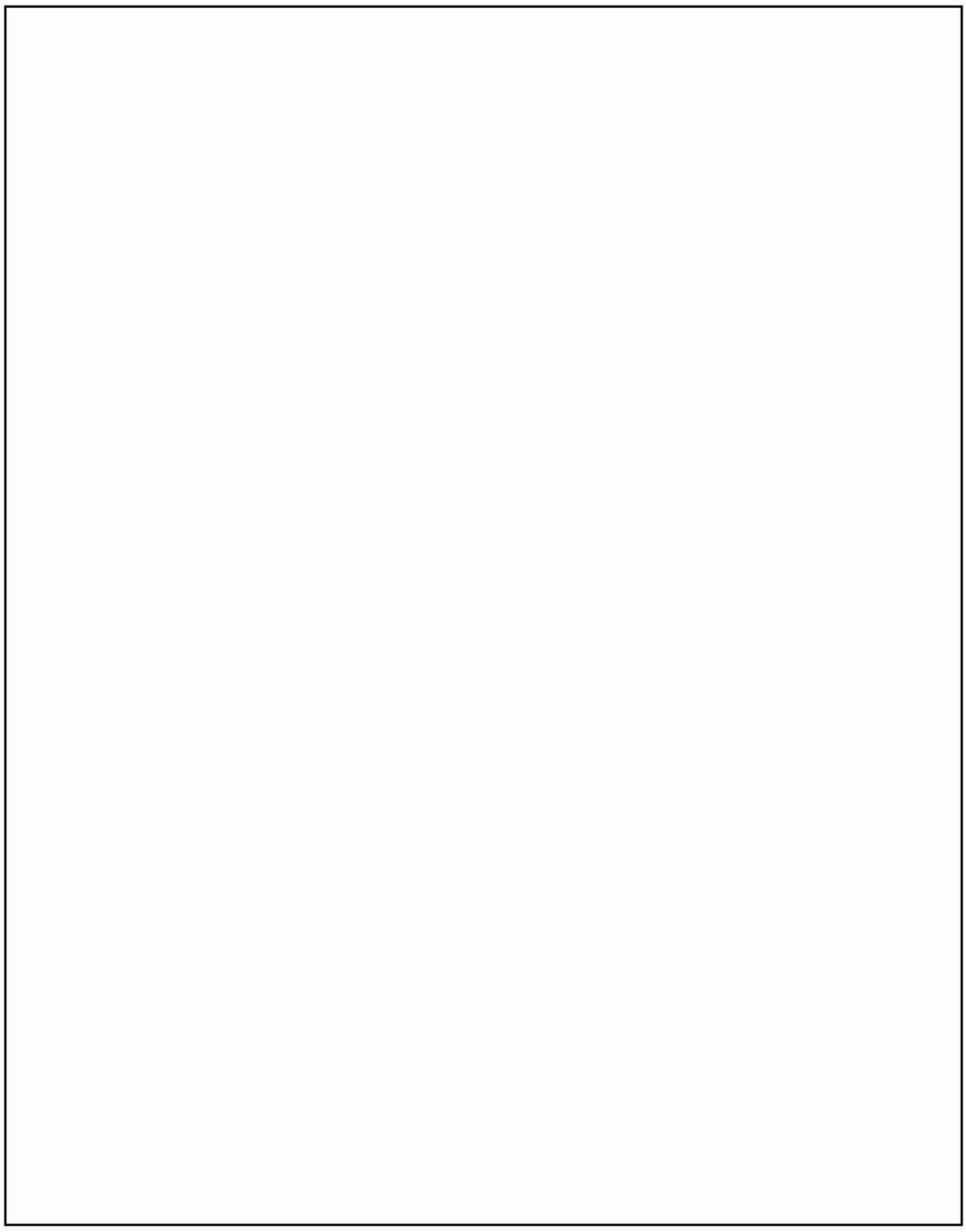
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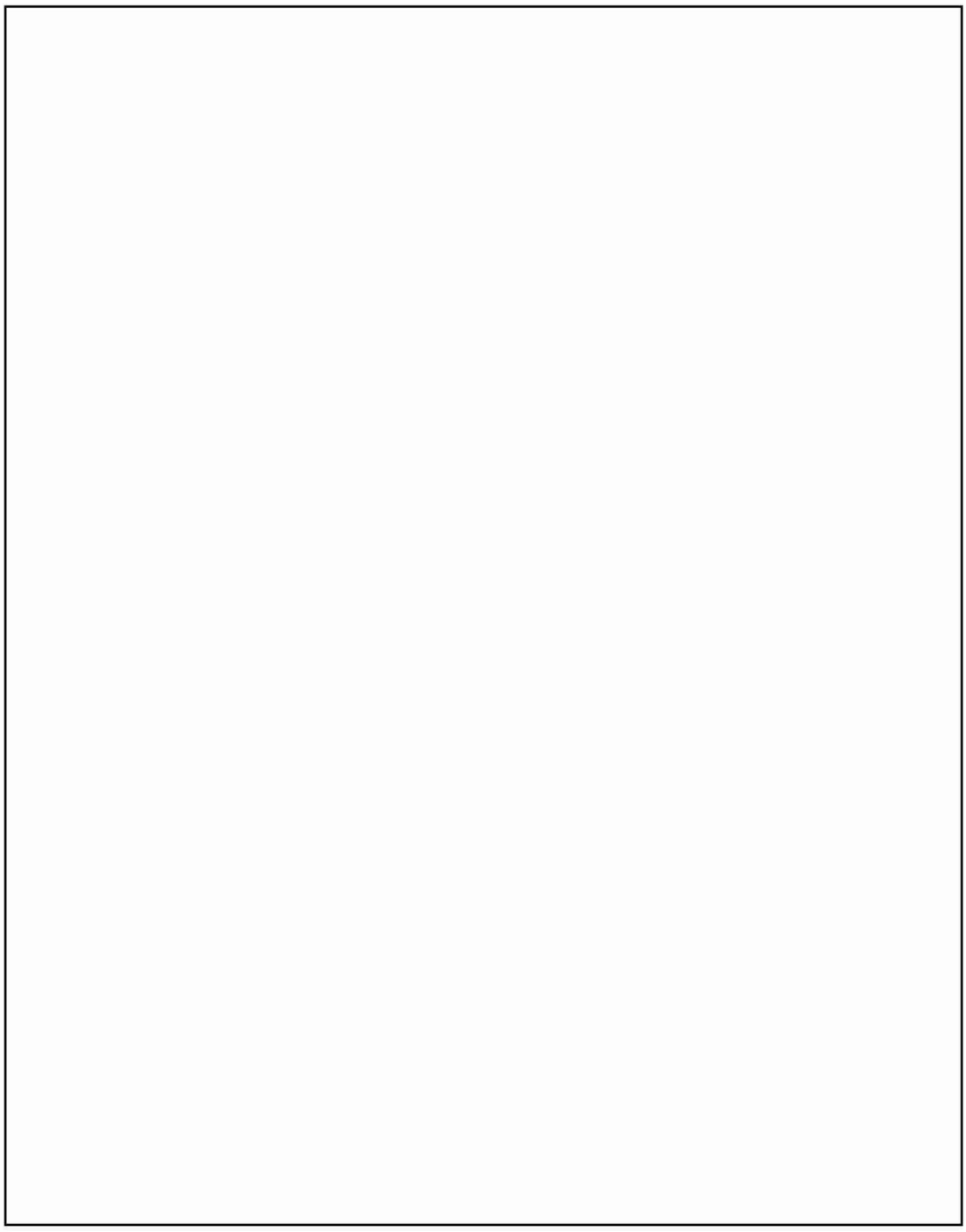
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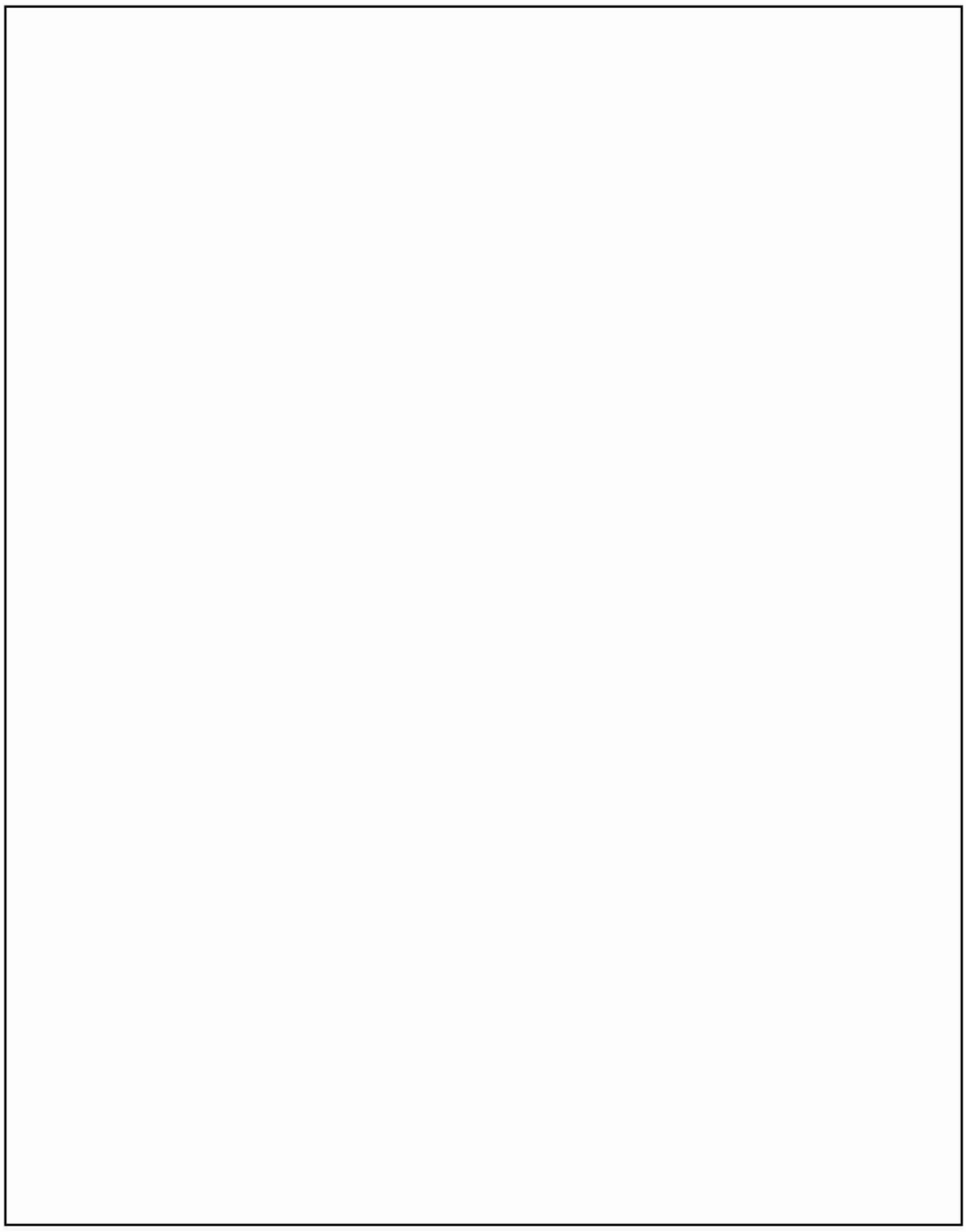
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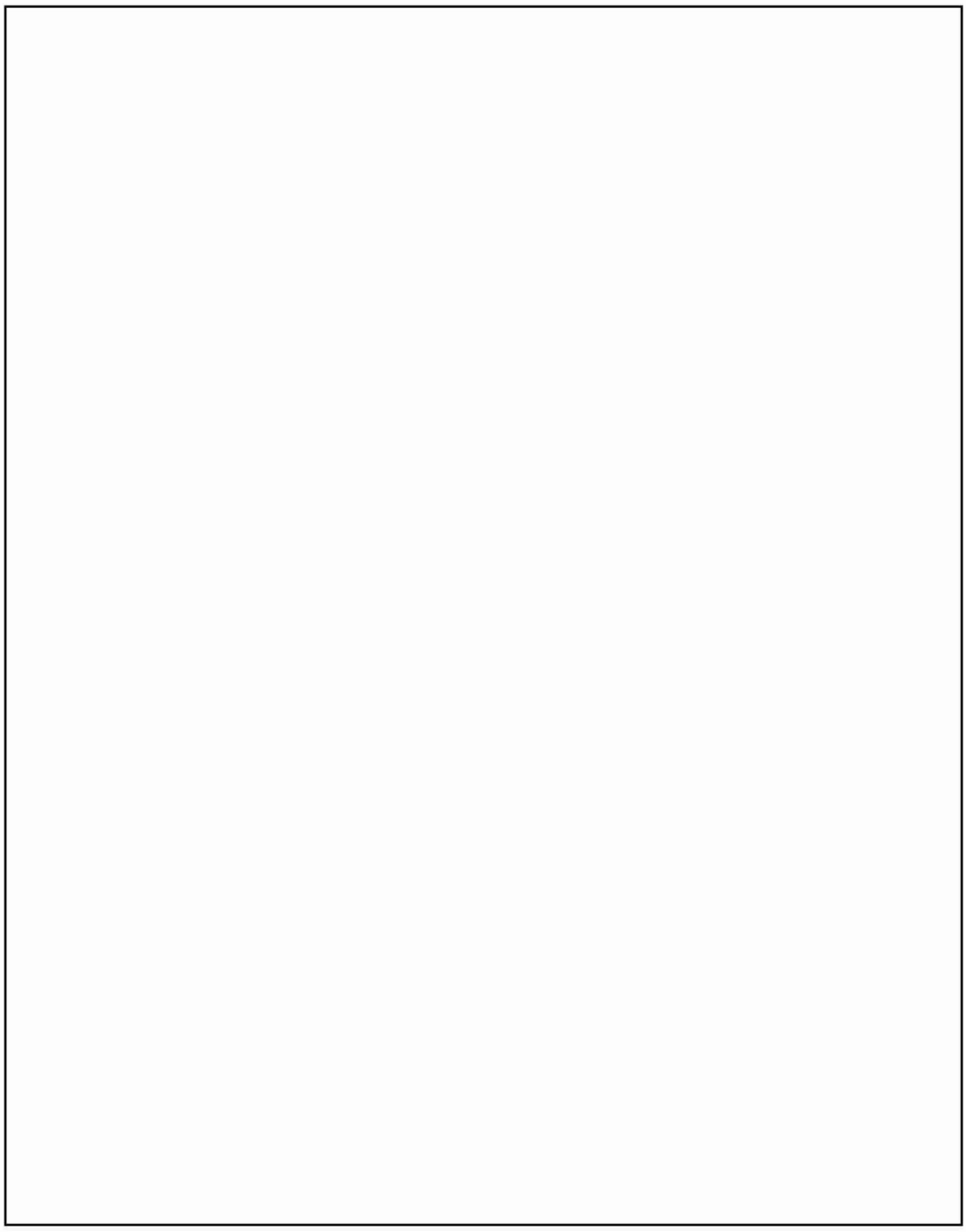
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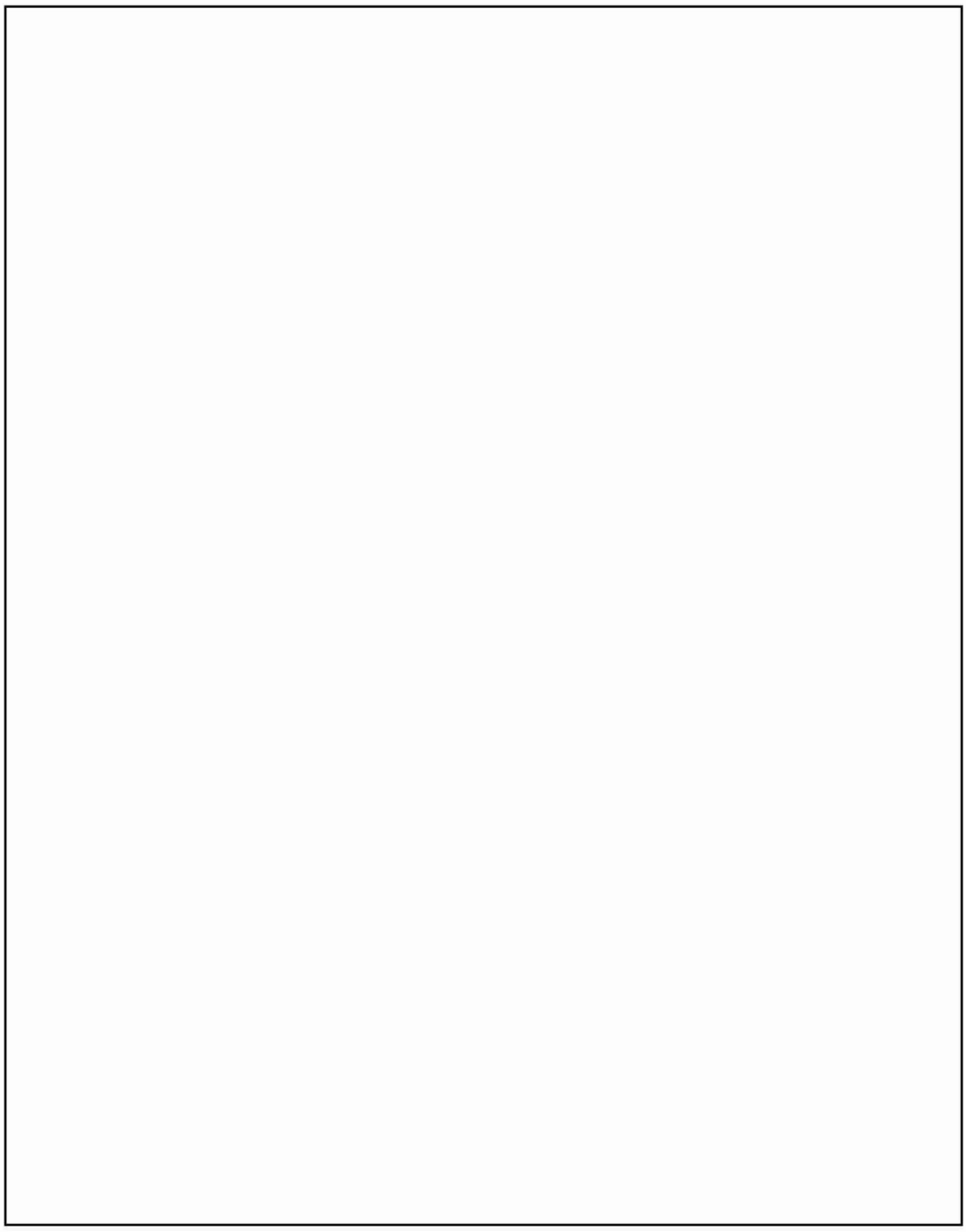
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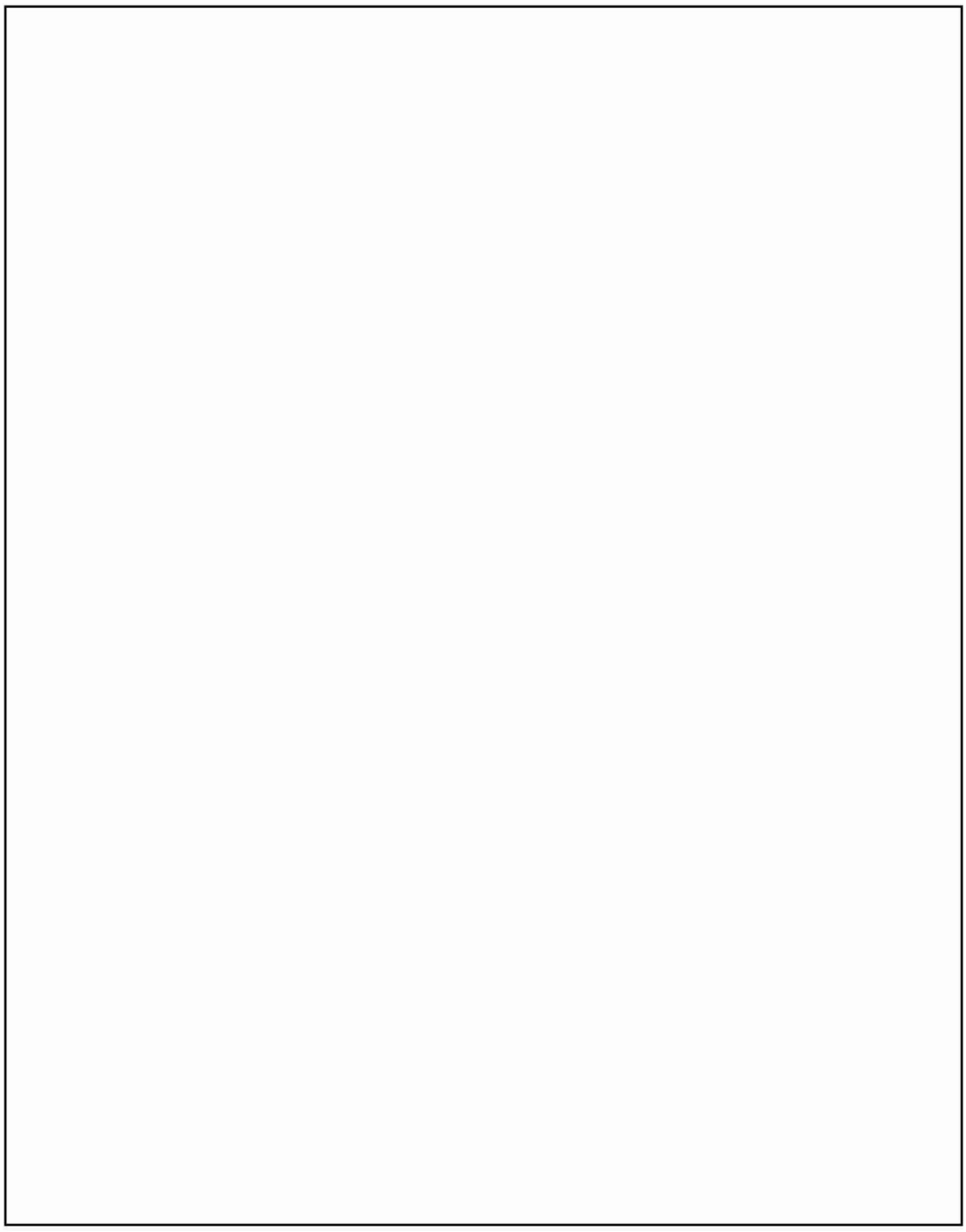
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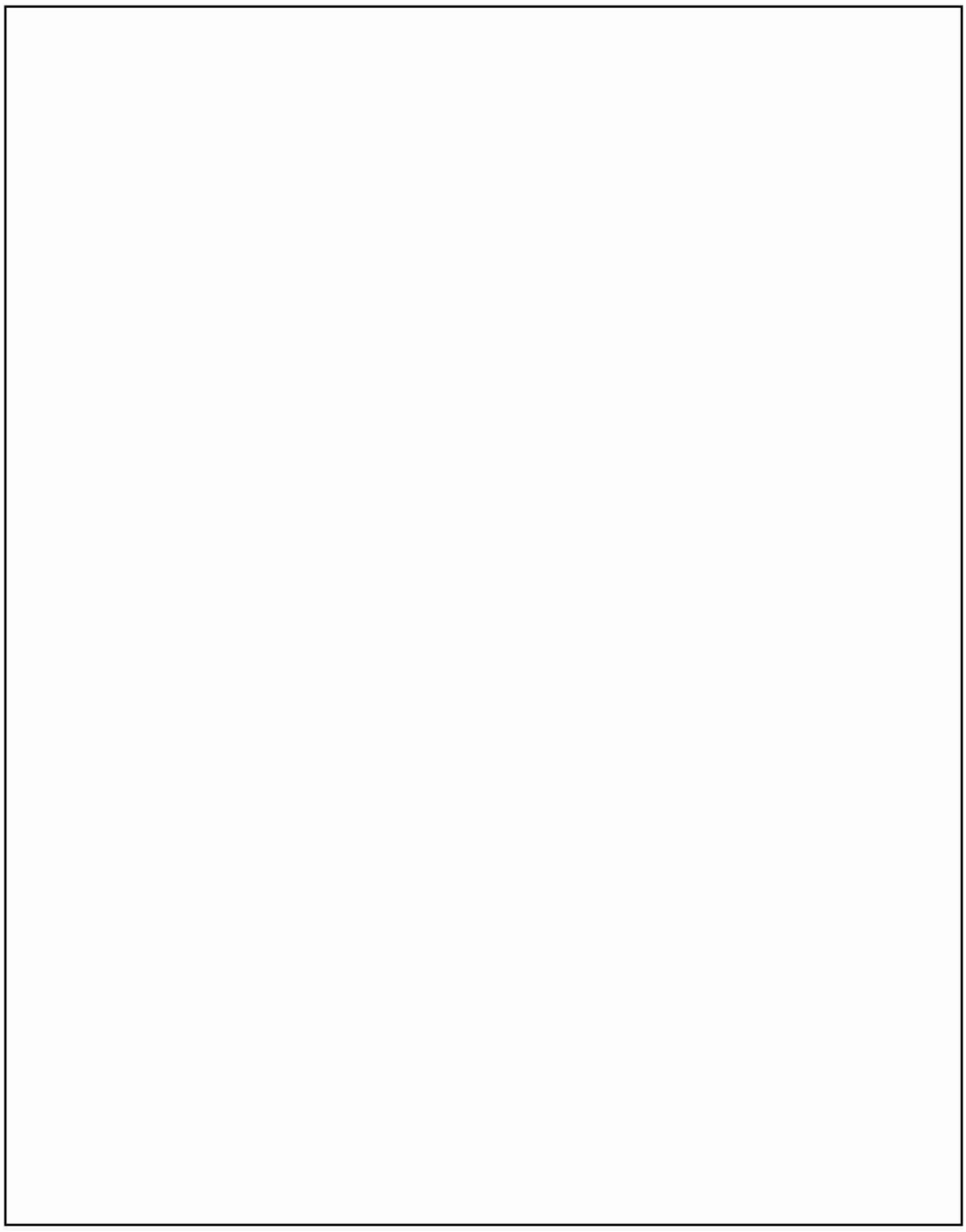
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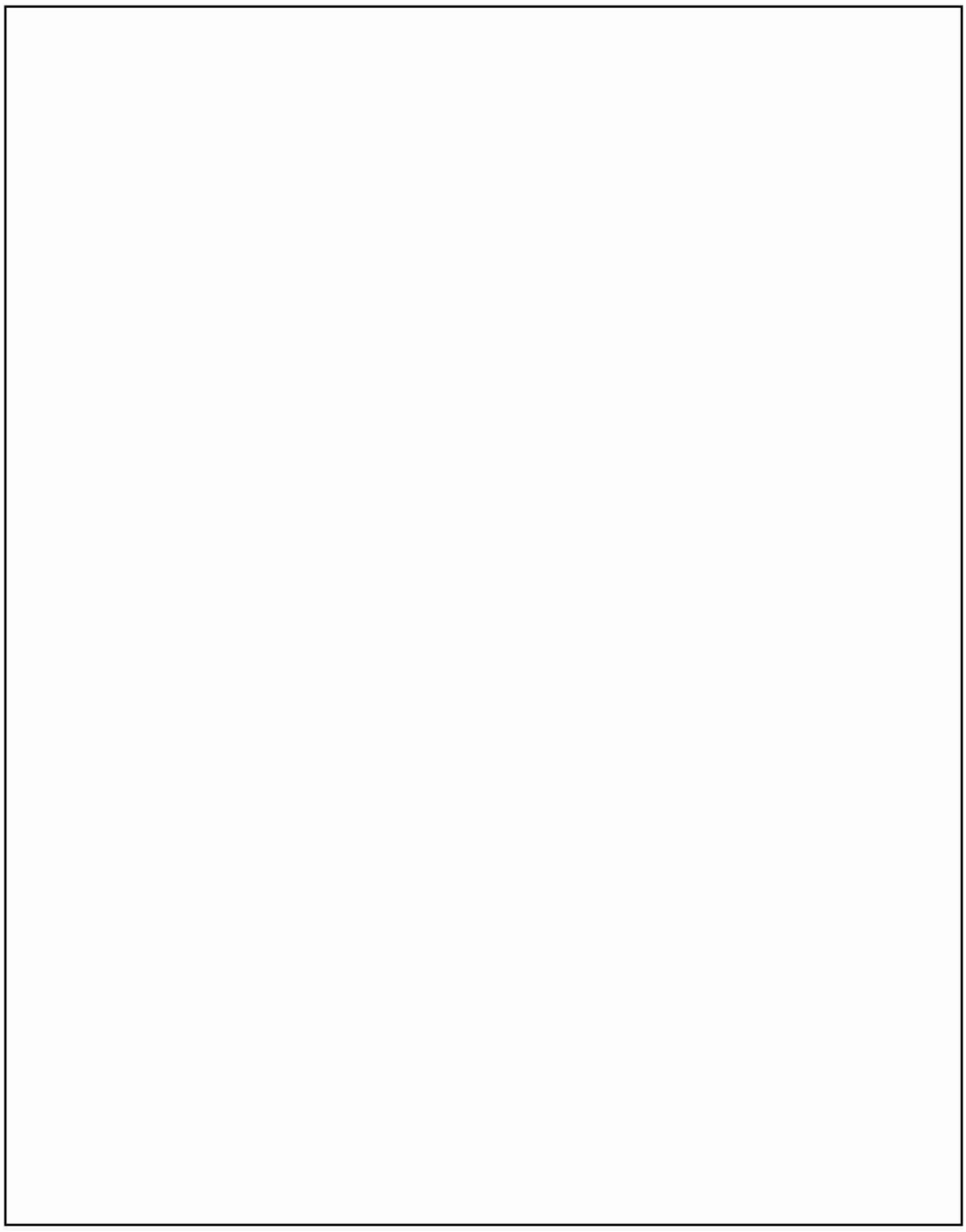
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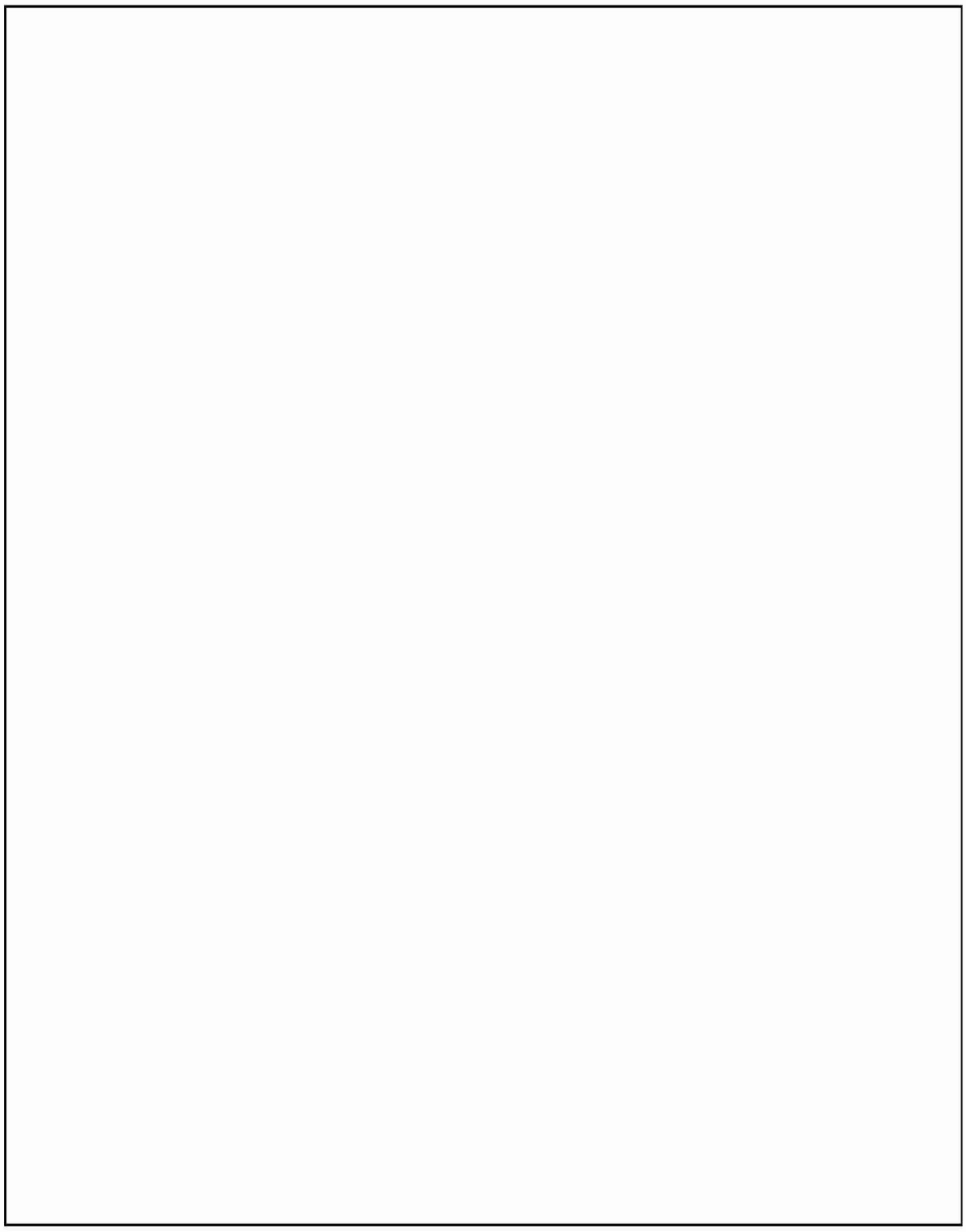
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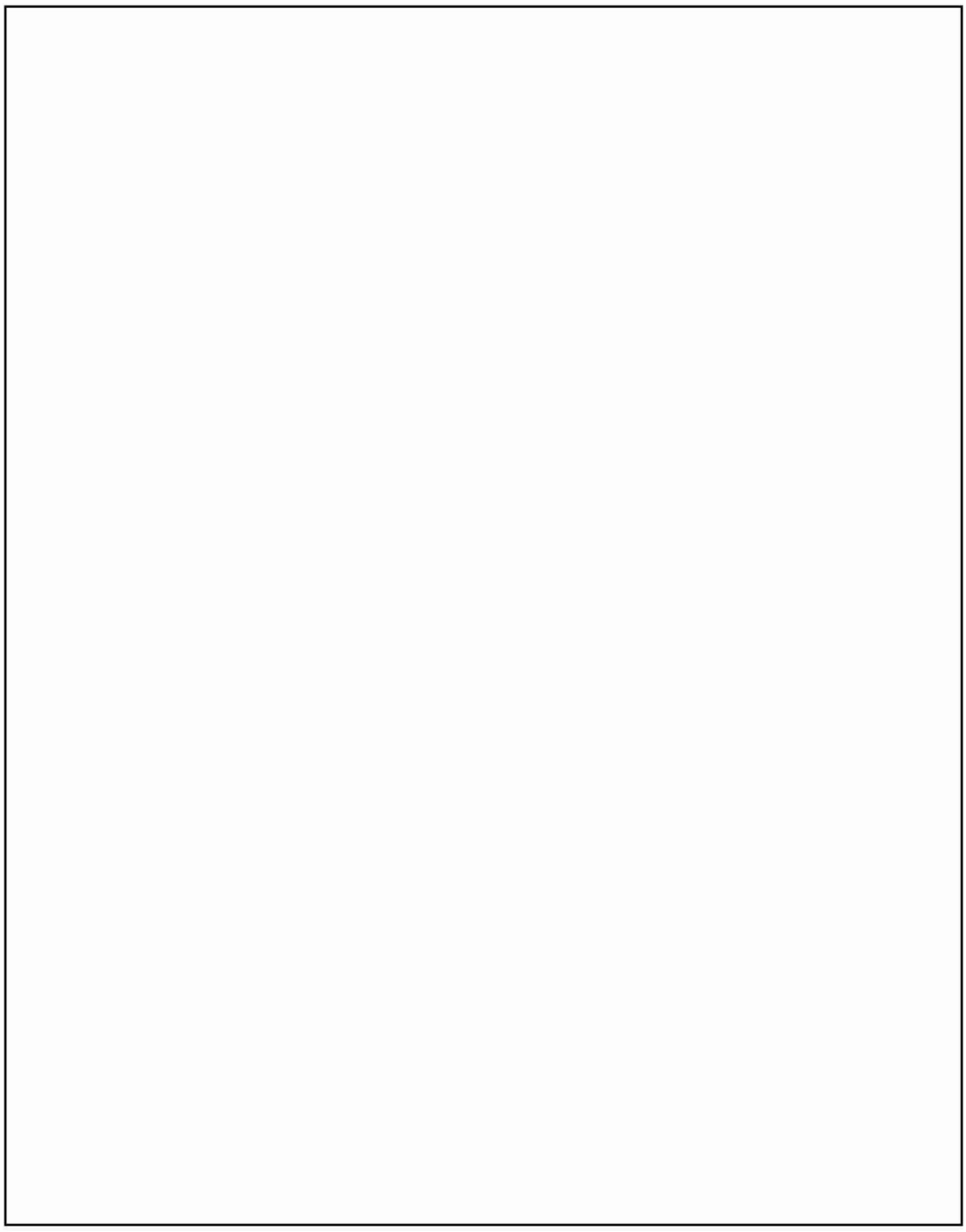
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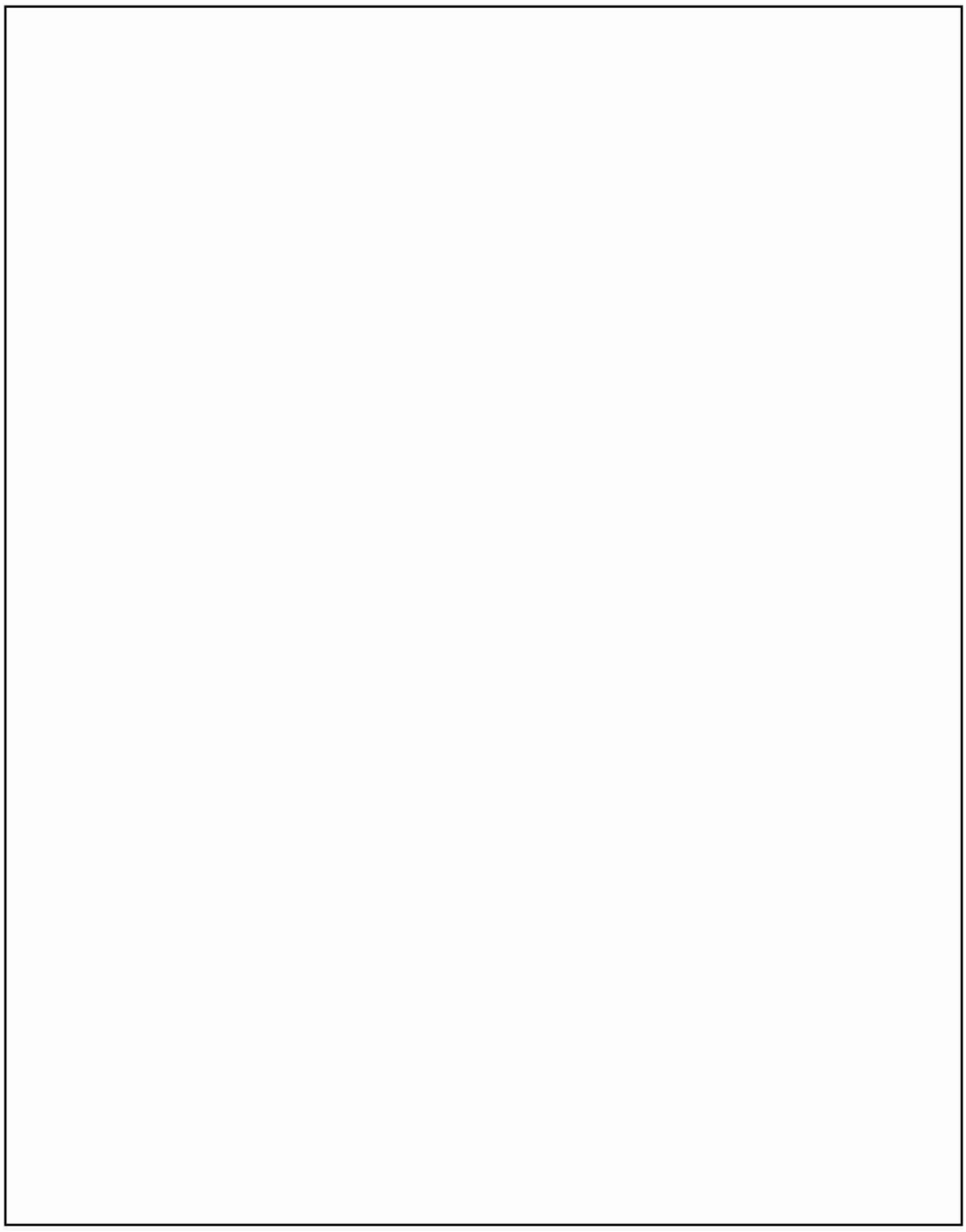
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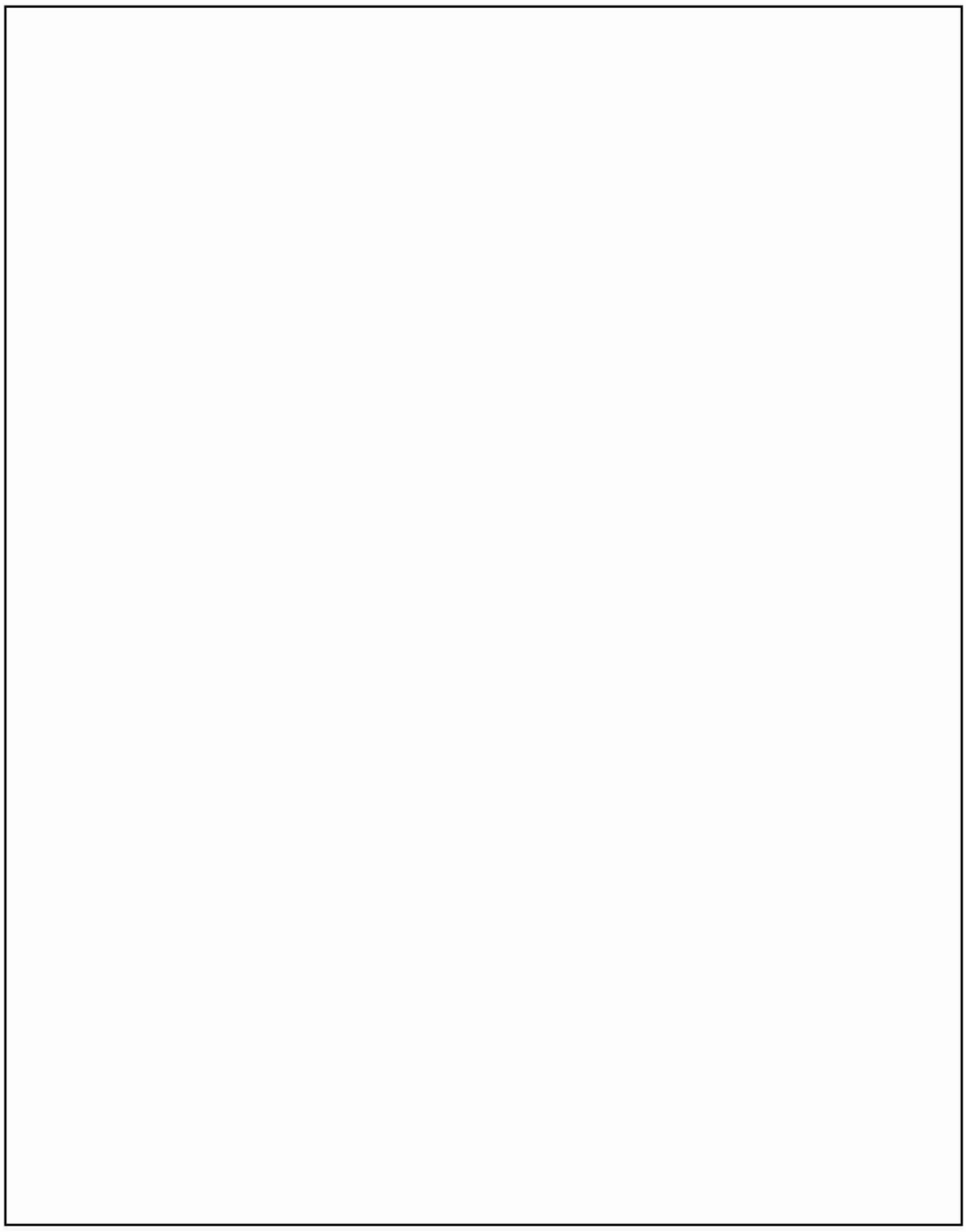
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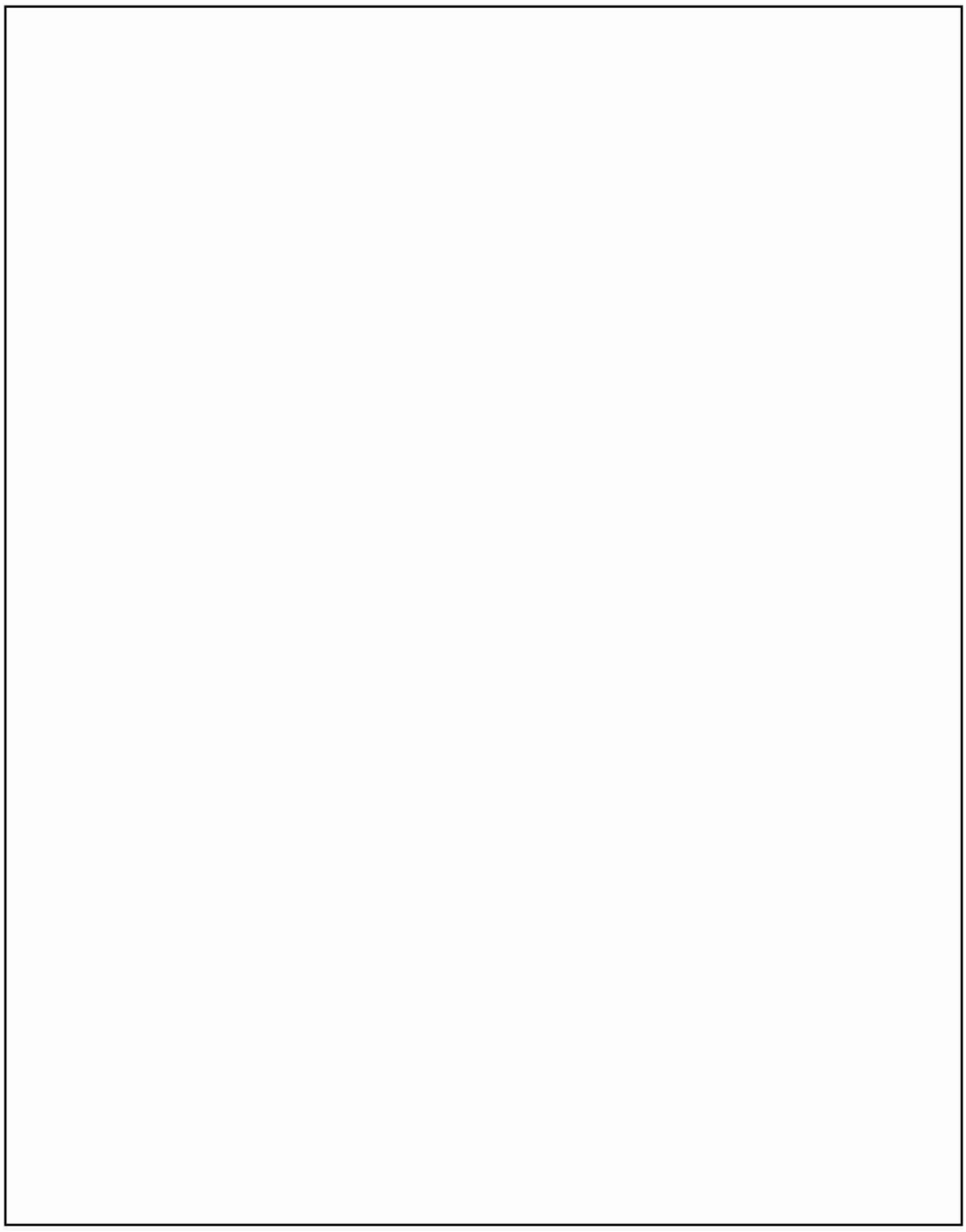
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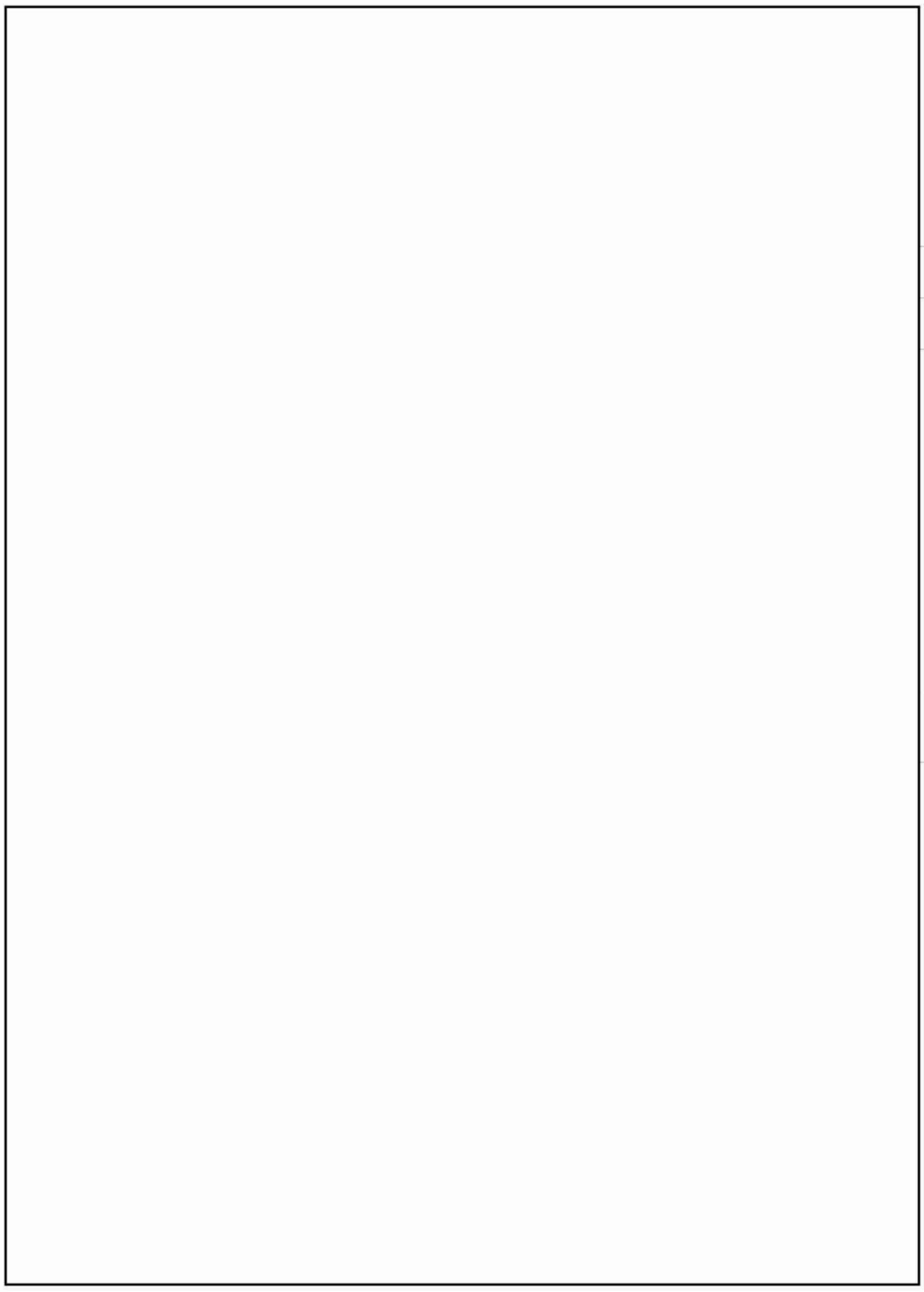
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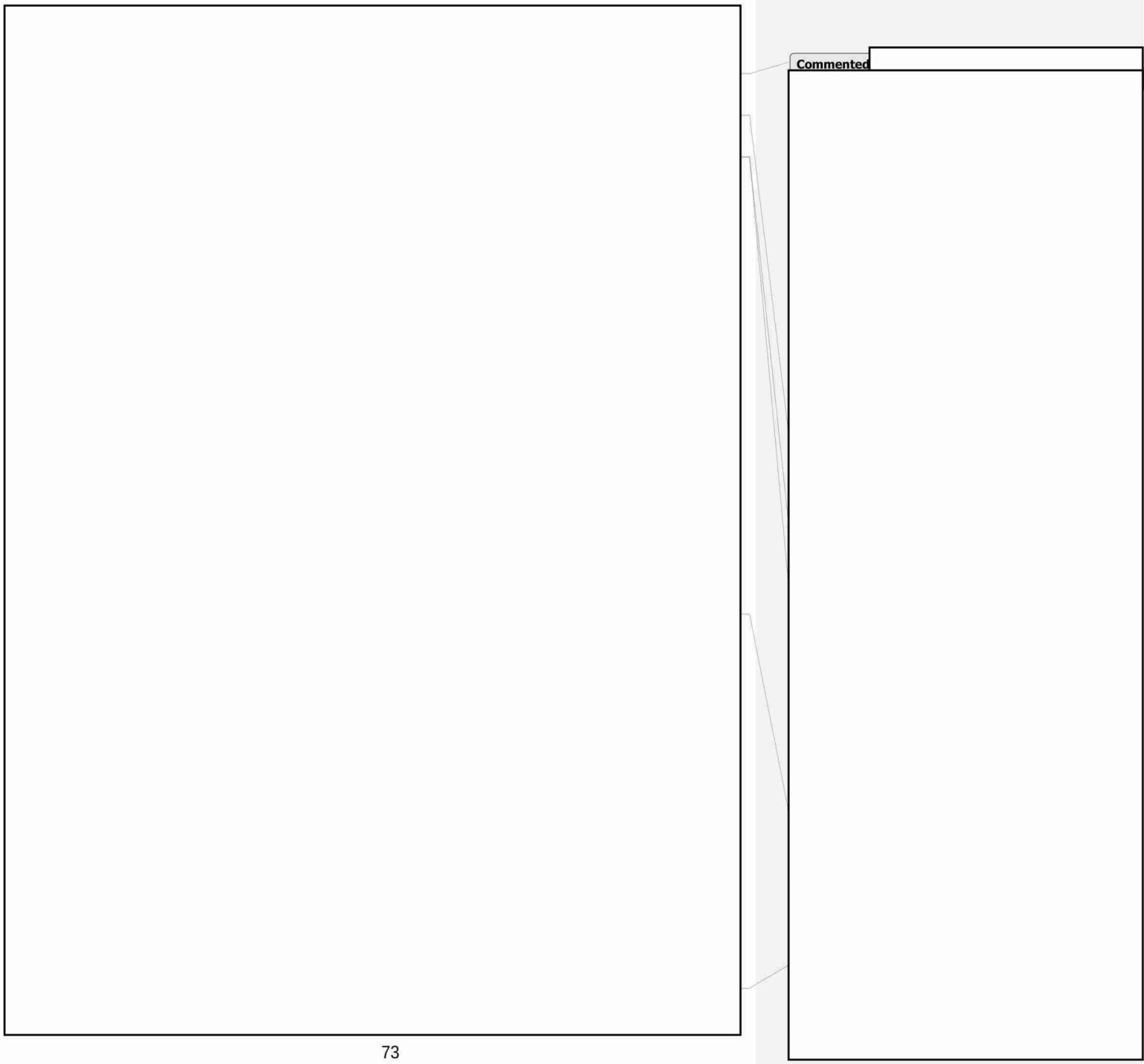
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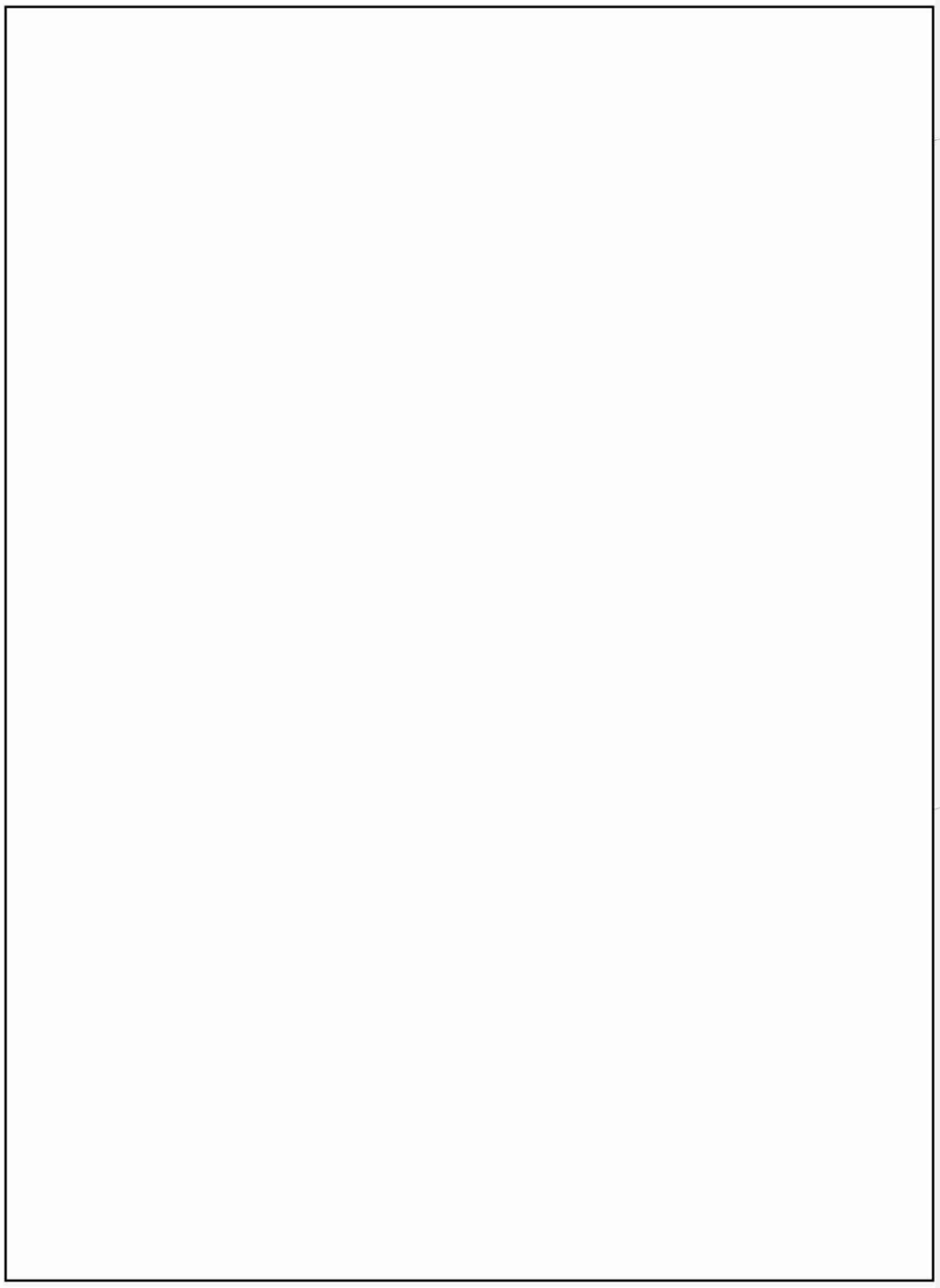
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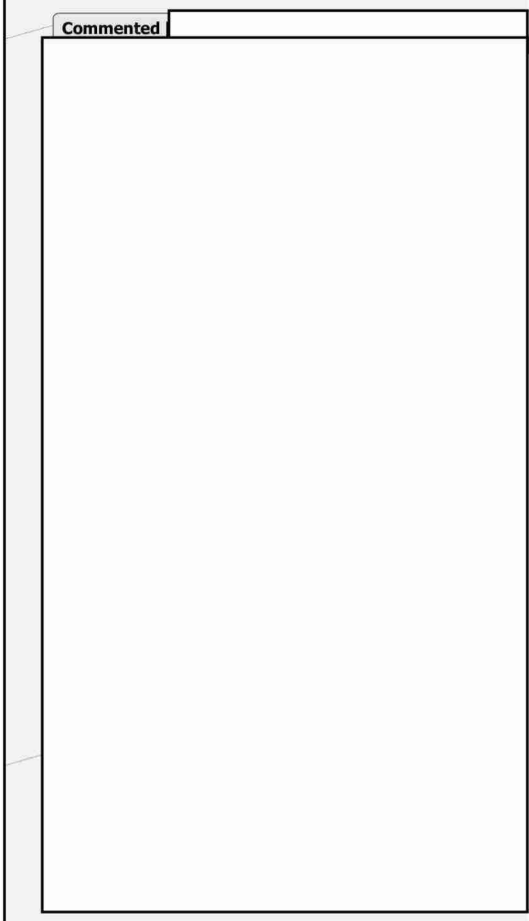


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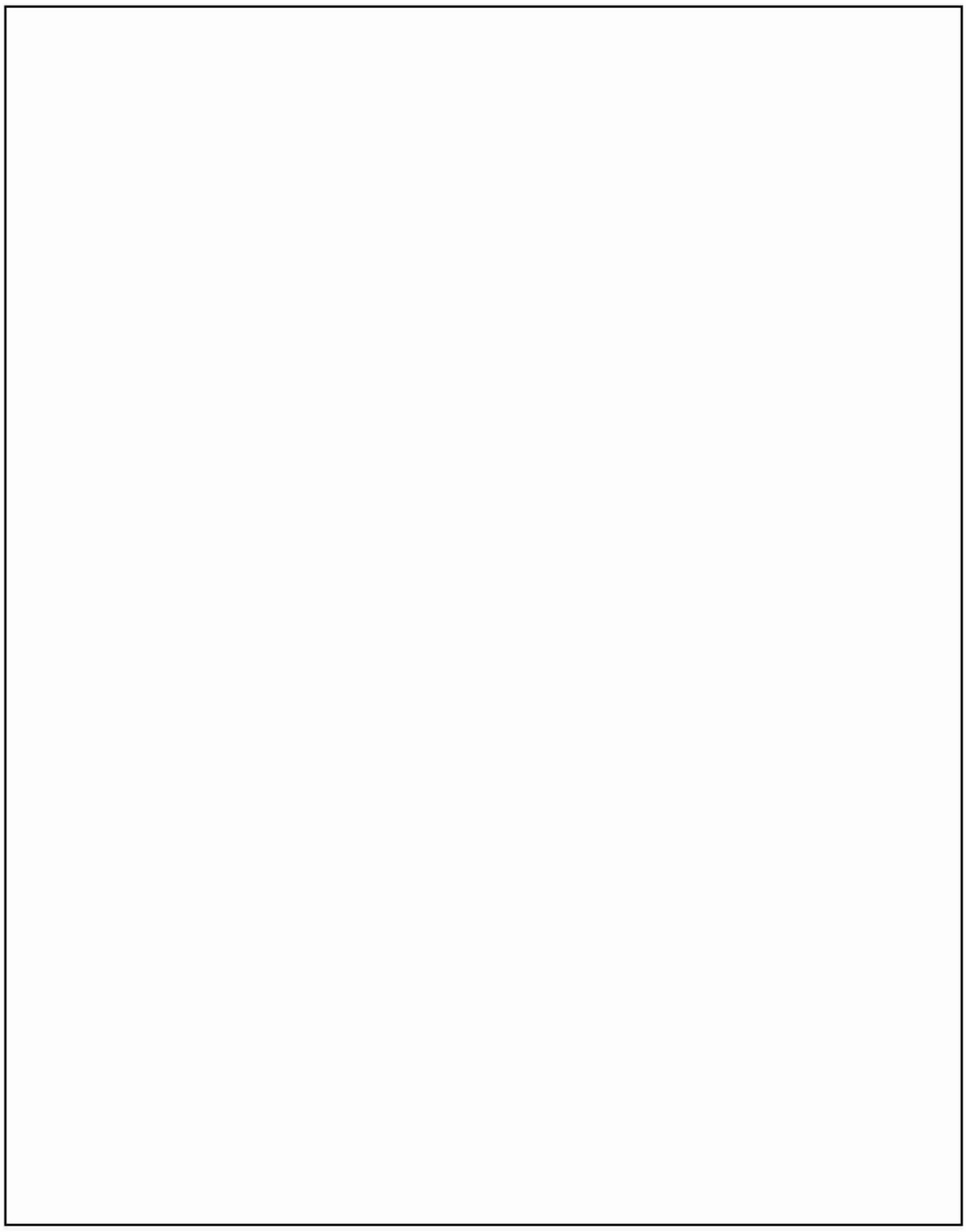




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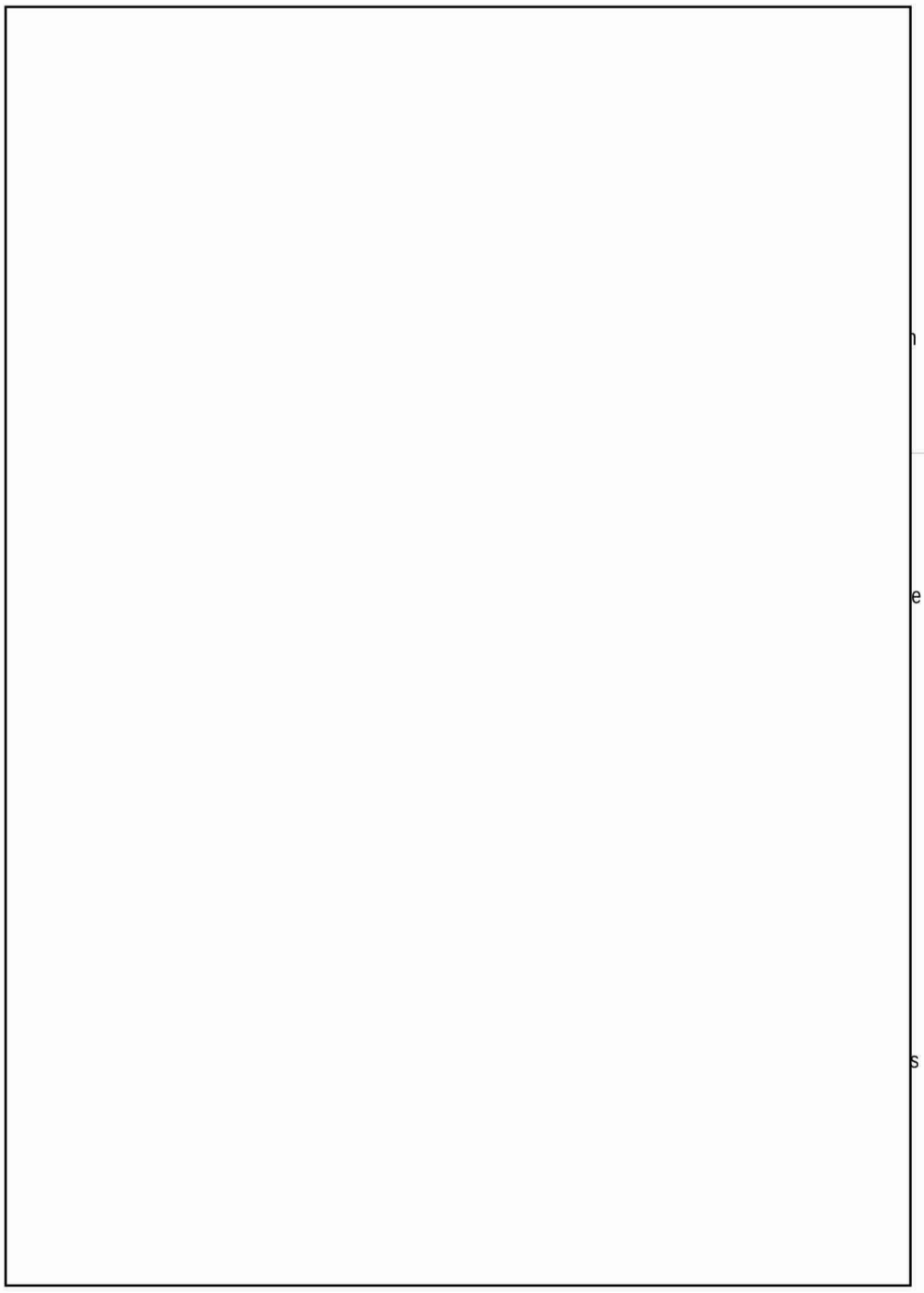
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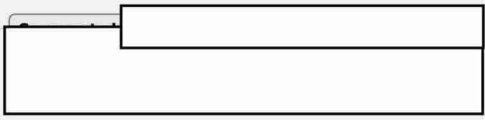
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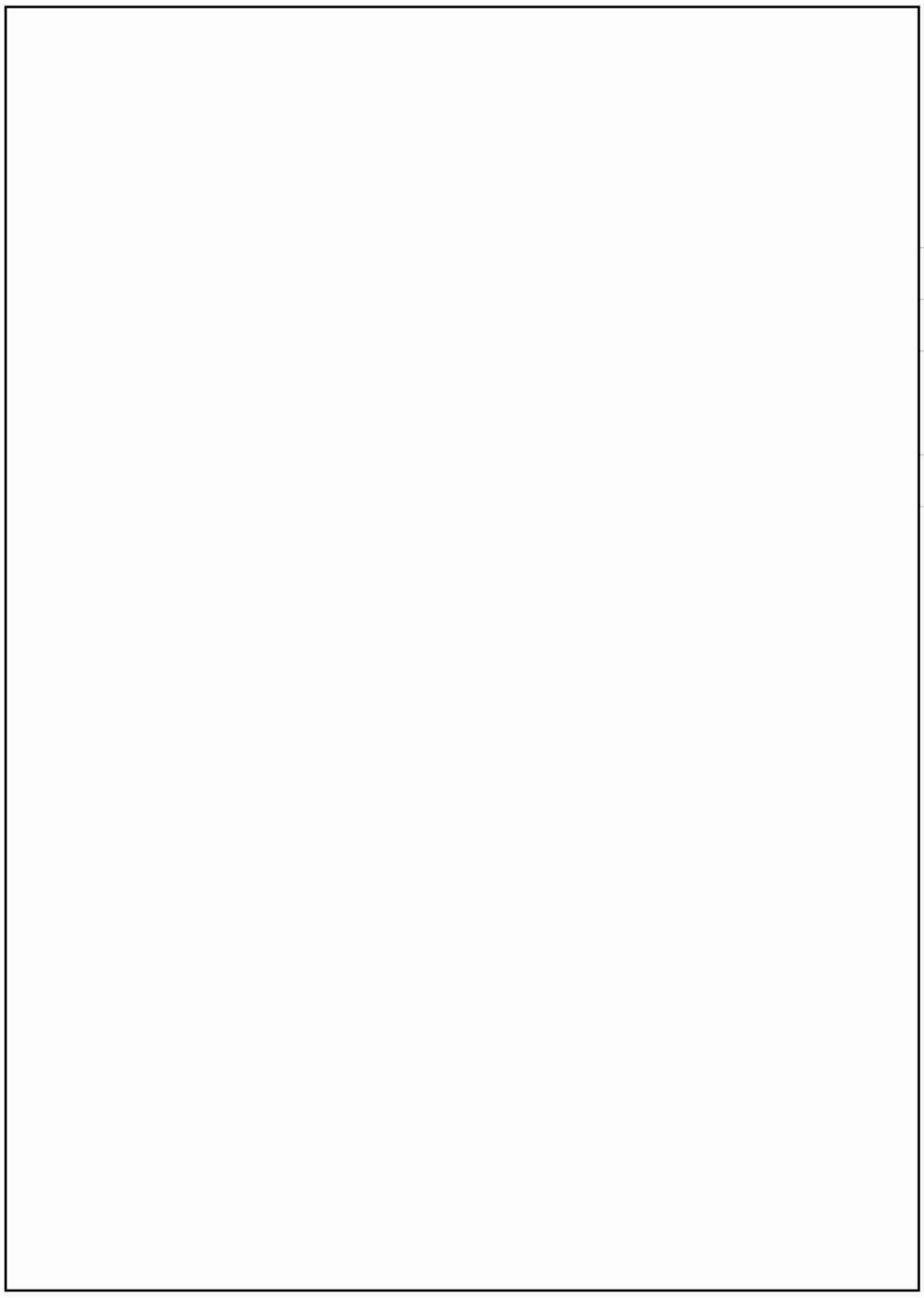


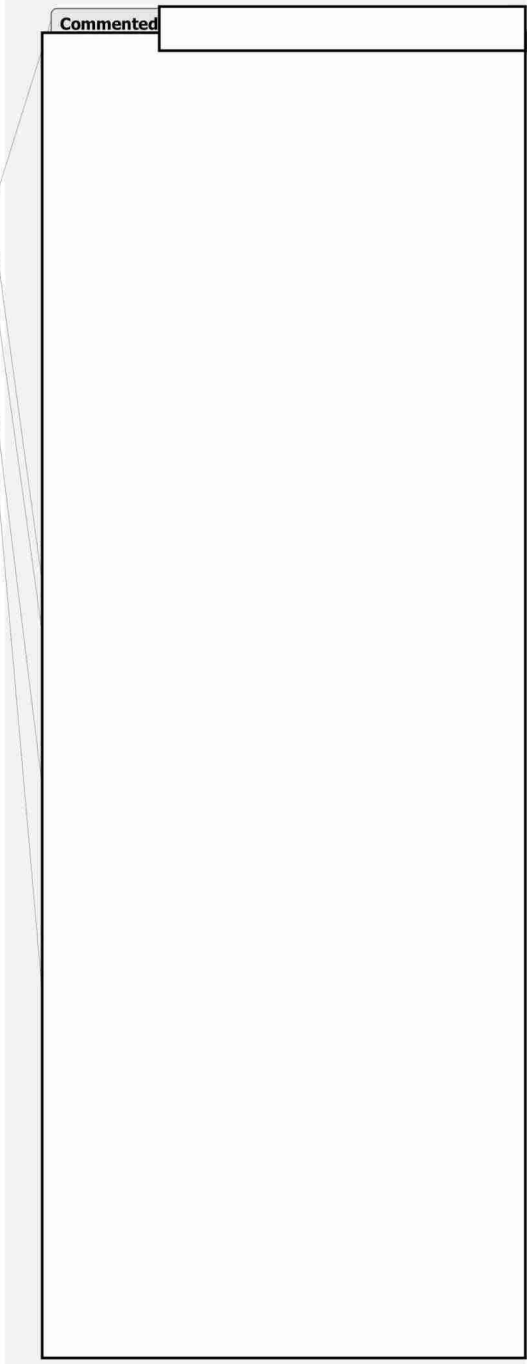


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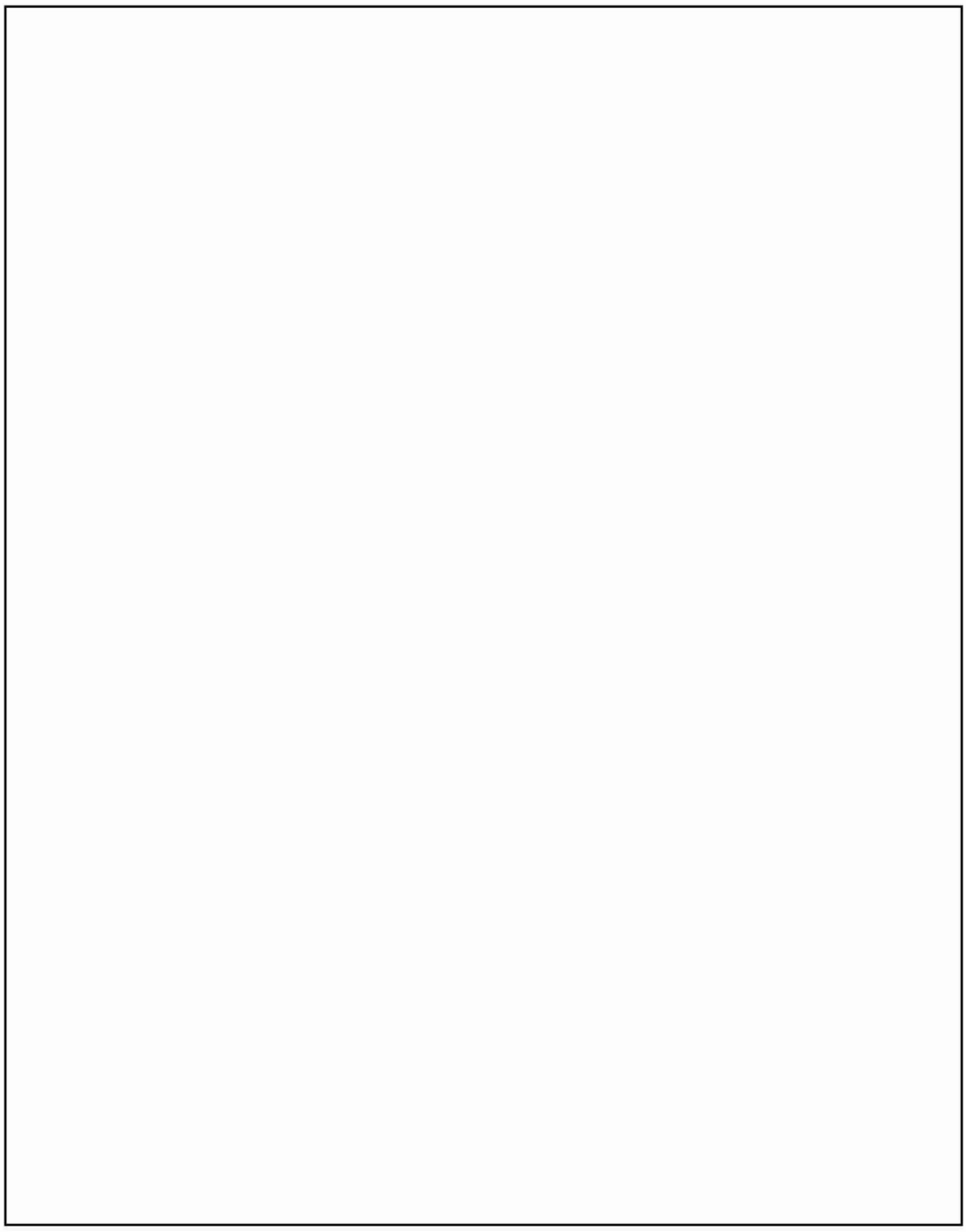




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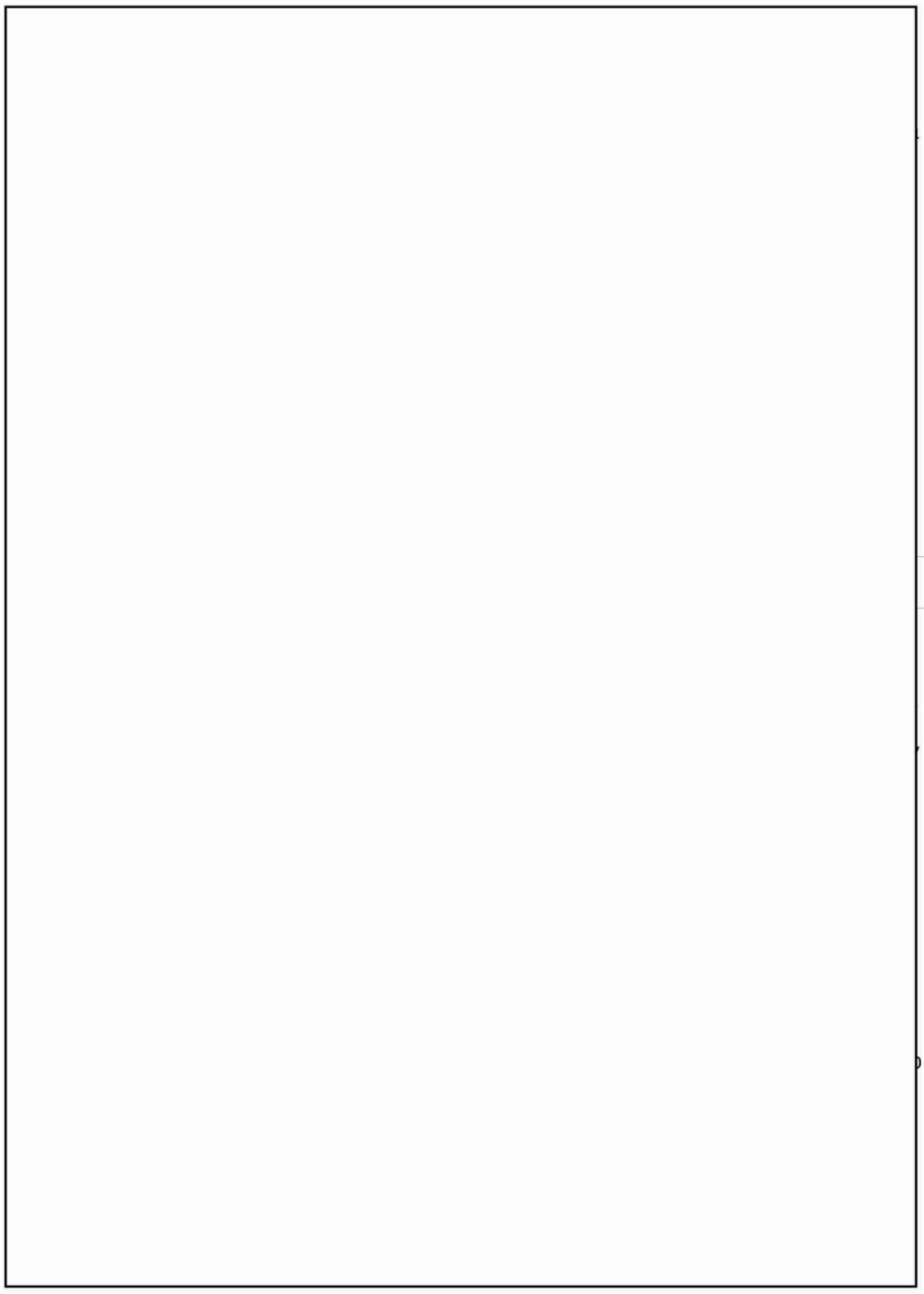
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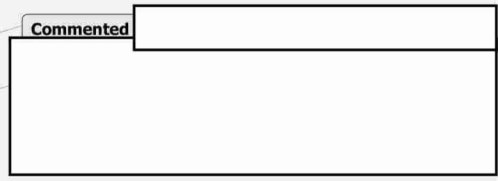
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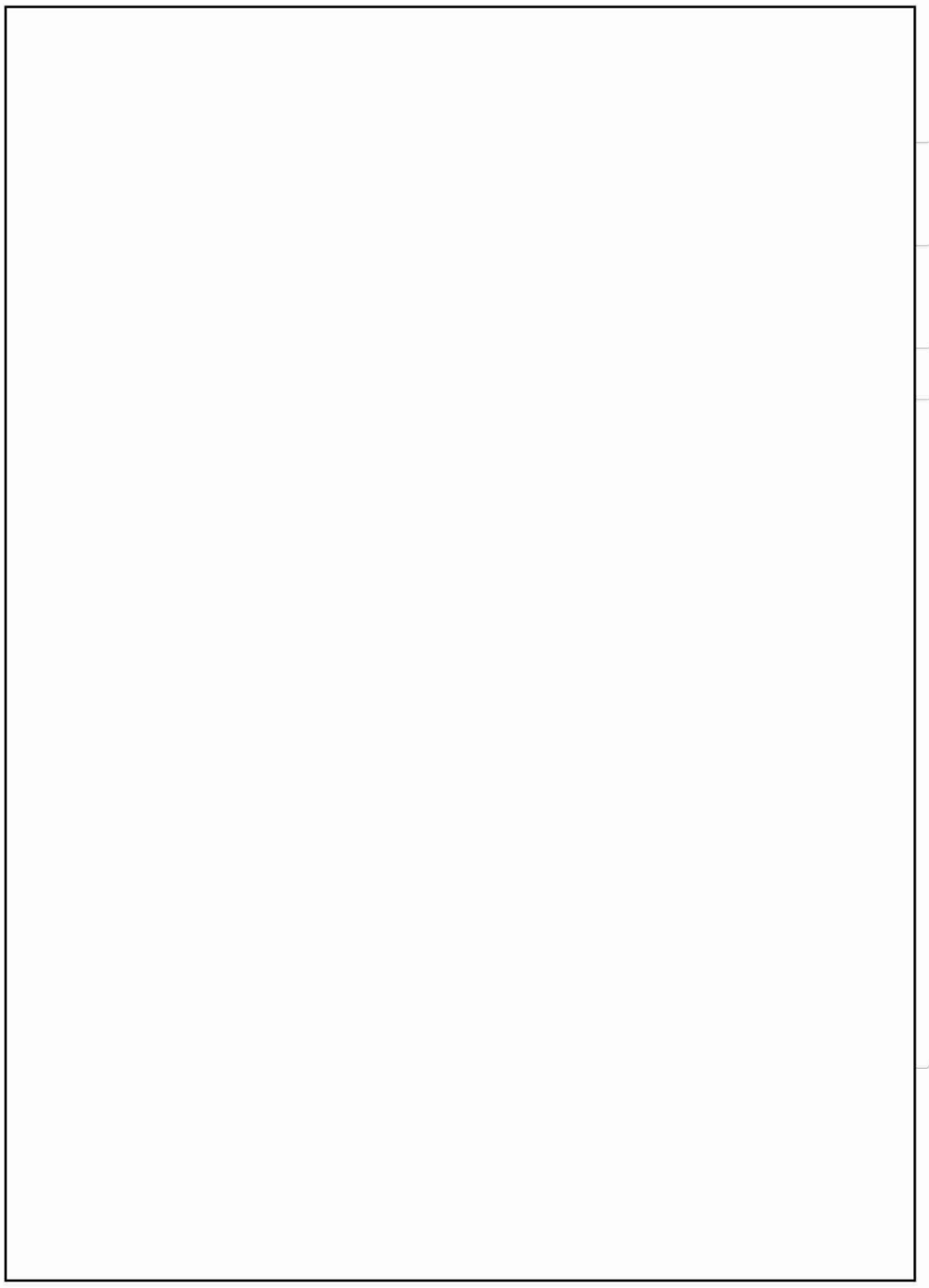


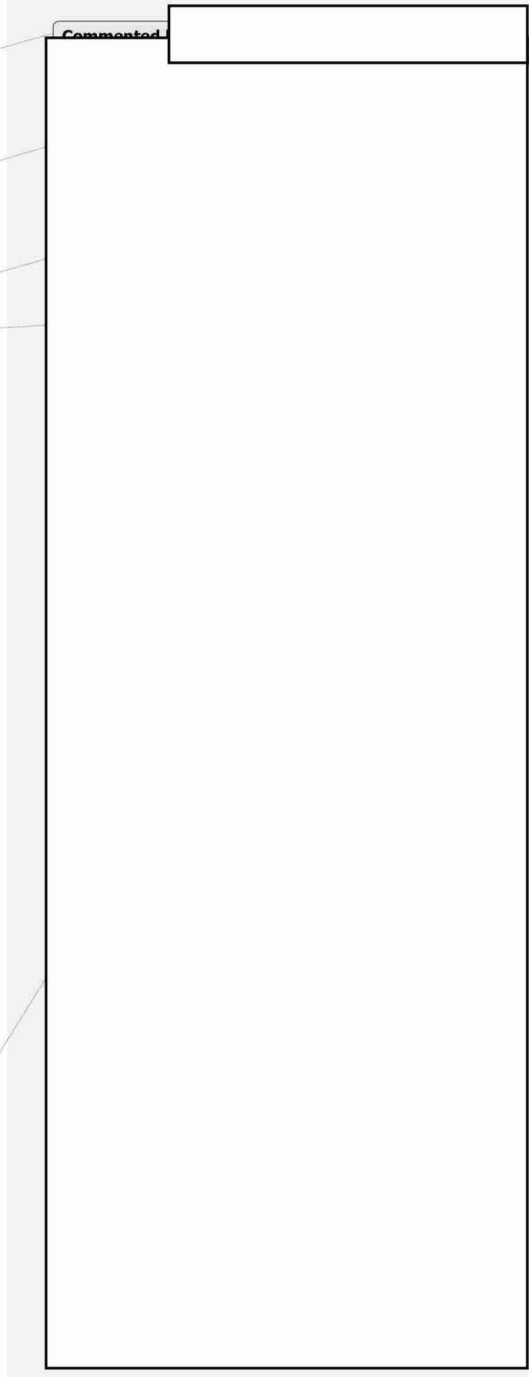


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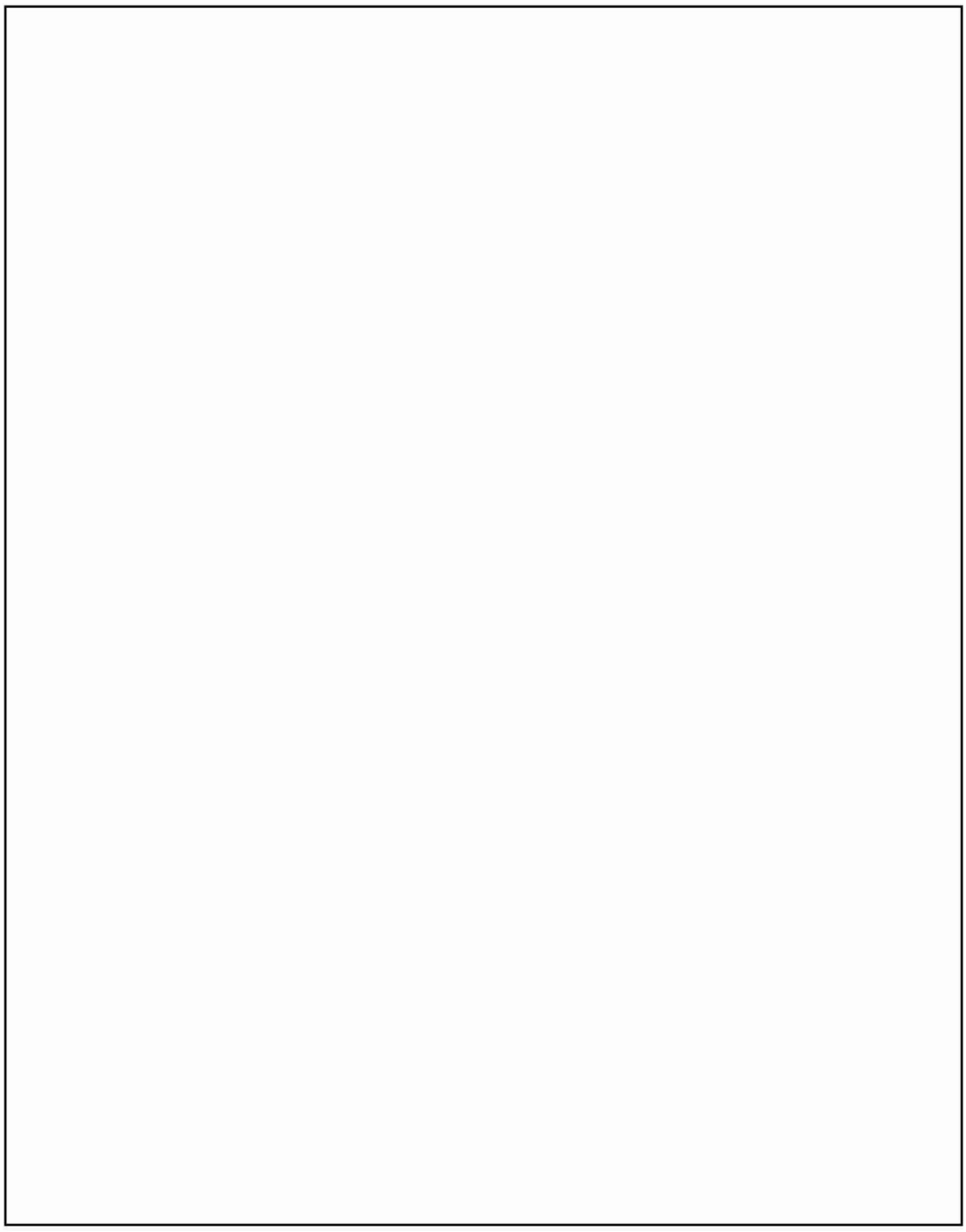


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USCIS Internal Clearance Routing Sheet

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form G-1056
Internal Use

Originating/Sponsoring Office: OP&S **Originating Official:** [redacted]

Contact Officer's Name [redacted] **Email:** [redacted] (b)(6)

Phone Number [redacted] **Date Clearance Initiated:** 09/11/2020 **Suspense Date:** 09/15/2020

Subject: Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B

PRIORITY LEVEL (Select **only one** box): ☐ **Routine** ☐ **Prompt** ☒ **Urgent**

EXECUTIVE SUMMARY (Briefly describe the project and, if Prompt or Urgent, explain Priority Level.)

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FINAL PUBLICATION, INFORMATION DISSEMINATION, AND WEB PUBLISHING (Select **all applicable** boxes)

☐ *Unrestricted Dissemination -- includes all "Internal Dissemination Only " items, plus:*	☐ *Internal Dissemination Only -- includes intranet, USCIS Broadcast, Leadership Guidance, and:*	☒ *Restricted Dissemination -- Justification/explanation required:*
☐ **Internet (www.uscis.gov)** ☐ **Press needed** ☐ **All outlets** ☐ _____	☐ _____ ☐ _____ ☐ _____ ☐ _____	Deliberative product for review and clearance being routed through USCIS directorates and offices prior to being submitted to USCIS Front Office for review.

Web Content Declarations *(Select **all applicable** boxes)*
☐ This web content does not duplicate or conflict with any existing USCIS.gov or intranet posting.
☐ This web content is consistent with the USCIS.gov branding guidelines and is written in plain language.

ORIGINATOR'S ROUTING SELECTIONS Select one box (C/NC or FYI) for each office:

USCIS Office	C/NC	FYI	USCIS Office	C/NC	FYI	USCIS Office	C/NC	FYI
Administrative Appeals	X		Investigations			Mgt (continued)		
Chief Counsel	X		IRIS Directorate			Security & Integrity		
Equal Opp & Inclusion			Management Directorate	X		Policy & Strategy		
Executive Secretariat			Administration			Privacy	X	
External Affairs Directorate		X	Chief Financial Officer		X	RAIO Directorate		
Citizenship & Applicant Information Services			Contracting			Service Center Ops Directorate	X	
Legislative & Intergovernmental Affairs			Human Capital & Training					
Public Affairs			Intake & Document Prod.		X			
Field Operations Directorate			Information Technology		X			
FDNS Directorate		X	Performance & Quality		X	Front Office (Through EXSO)		

REVIEWING OFFICE'S CONCURRENCE OR NON-CONCURRENCE ACTION: (NOTE: The reviewing office's decision to Concur, Concur with Edits, or Non-Concur applies to BOTH the content of the document AND the Publication/Dissemination/Web Publishing instructions.)

Select one:
☐ Concur
☐ Concur with Edits (attached)
☐ Non-Concur (attach explanation)

Remarks:

Office: _____ Telephone Number: _____ Date: _____

Name & Signature of Reviewer: _____

AMERICAN OVERSIGHT

From: Blanco, Patricia J
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
To: DDCLEAR
Cc: USCIS Directors Office Clearance-EXSO; USCIS Exec Congr Corresp
Sent: September 14, 2020 10:35 AM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (Redline) 9.14.20.docx, Revised Draft Response Neal (Final) 9.11.20.docx, Draft Enclosure (Final) 9.14.20.docx

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 19, 2020**

Request: Director's Office clearance for the draft response to Chm. Neal +1 prior to going to the DHS Component clearance.

Background: Chairman Neal +1 wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052. DHS ESEC has requested OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA:

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Attachments:

1. Incoming 8.4.20
2. Draft Enclosure (Redline) 9.14.20
3. Revised Draft Response Neal (Final) 9.11.20
4. Draft Enclosure (Final) 9.14.20

*********Please reply to all on this email ********

Thank you,

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat

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U.S. Citizenship and **Immigration Services' Response to Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. **How will the "substantial public health benefit/secondary effect"** exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

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[redacted]

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

[redacted]

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[redacted]

[7] https://protect-public.hhs.gov/.

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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

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[redacted]

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4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

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U.S. Citizenship and Immigration Services' Response to Chairman Neal's August 4, 2020 Letter

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Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

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underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

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Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

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Thank you for your August 4, 2020 letter expressing support for H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.



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Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

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From: Bailey, Morgan
Subject: FW: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR
To: Dove, Stephen W (Steve); Carter, Constance L; Kilgore, Garry R
Cc: Weinhold, Kasey D
Sent: September 11, 2020 1:27 PM (UTC-05:00)
Attached: H-1B Registration Selection by Wage Levels IFR Clean.docx

Please print today for D2P to review. It is 80 pages.

Thank you!

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. ####-20; DHS Docket No. USCIS-####-####]

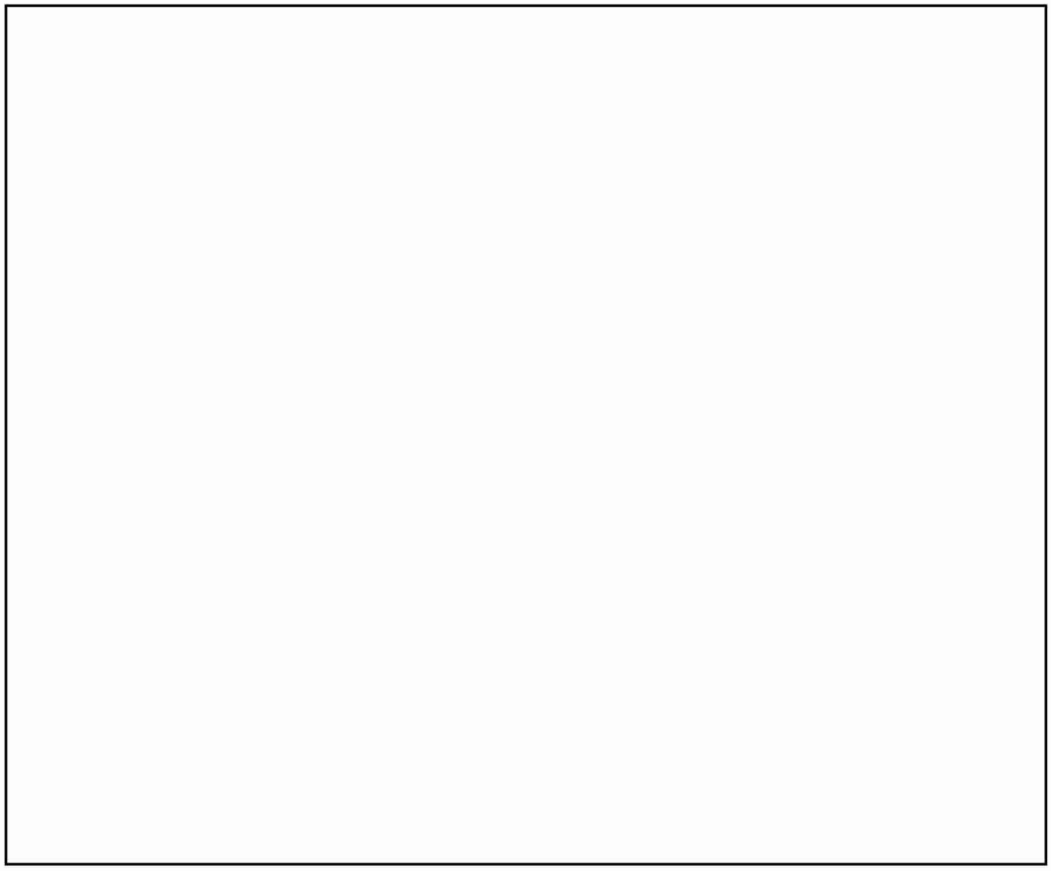
RIN 1615-AC61

Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions

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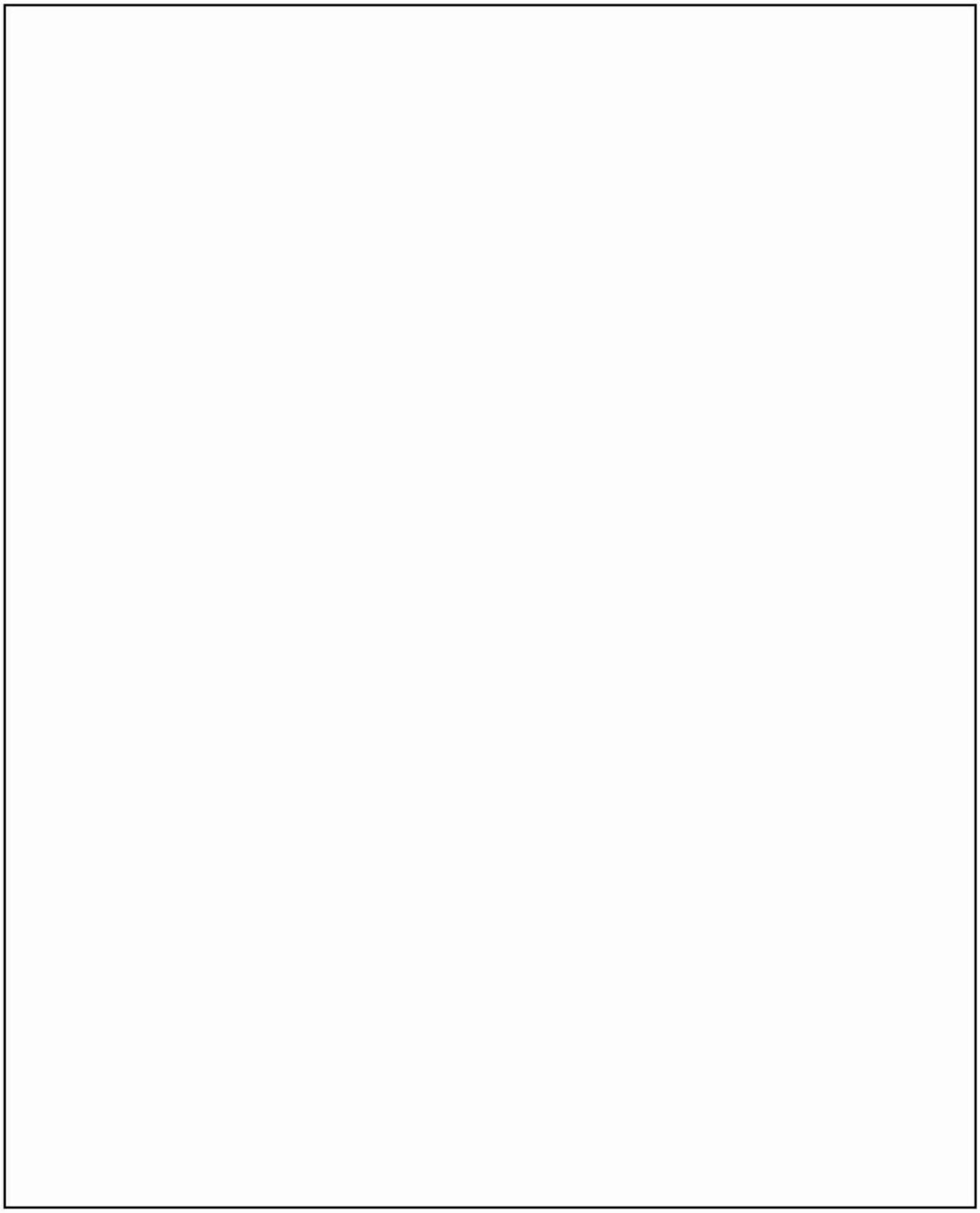
AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim Final Rule.



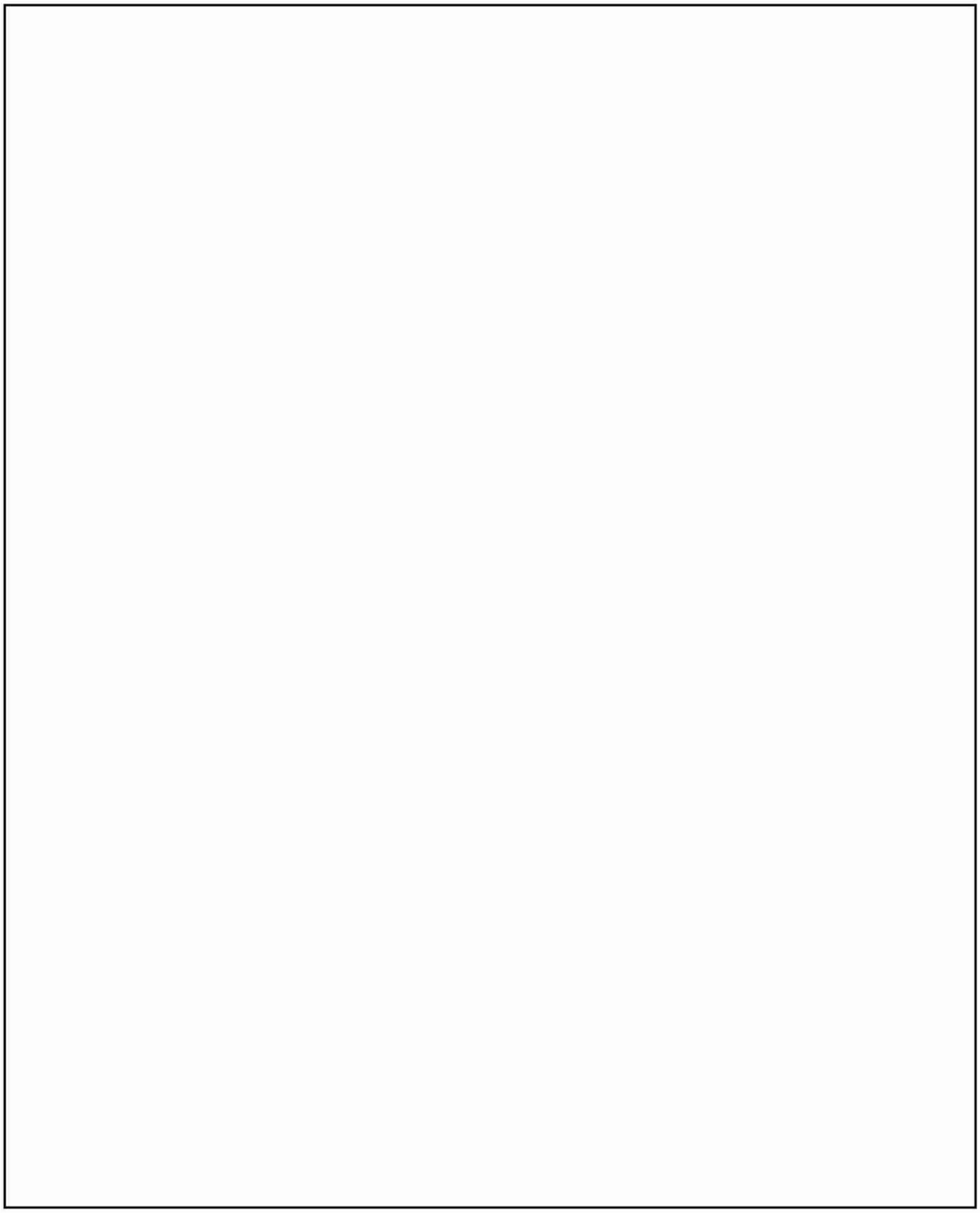
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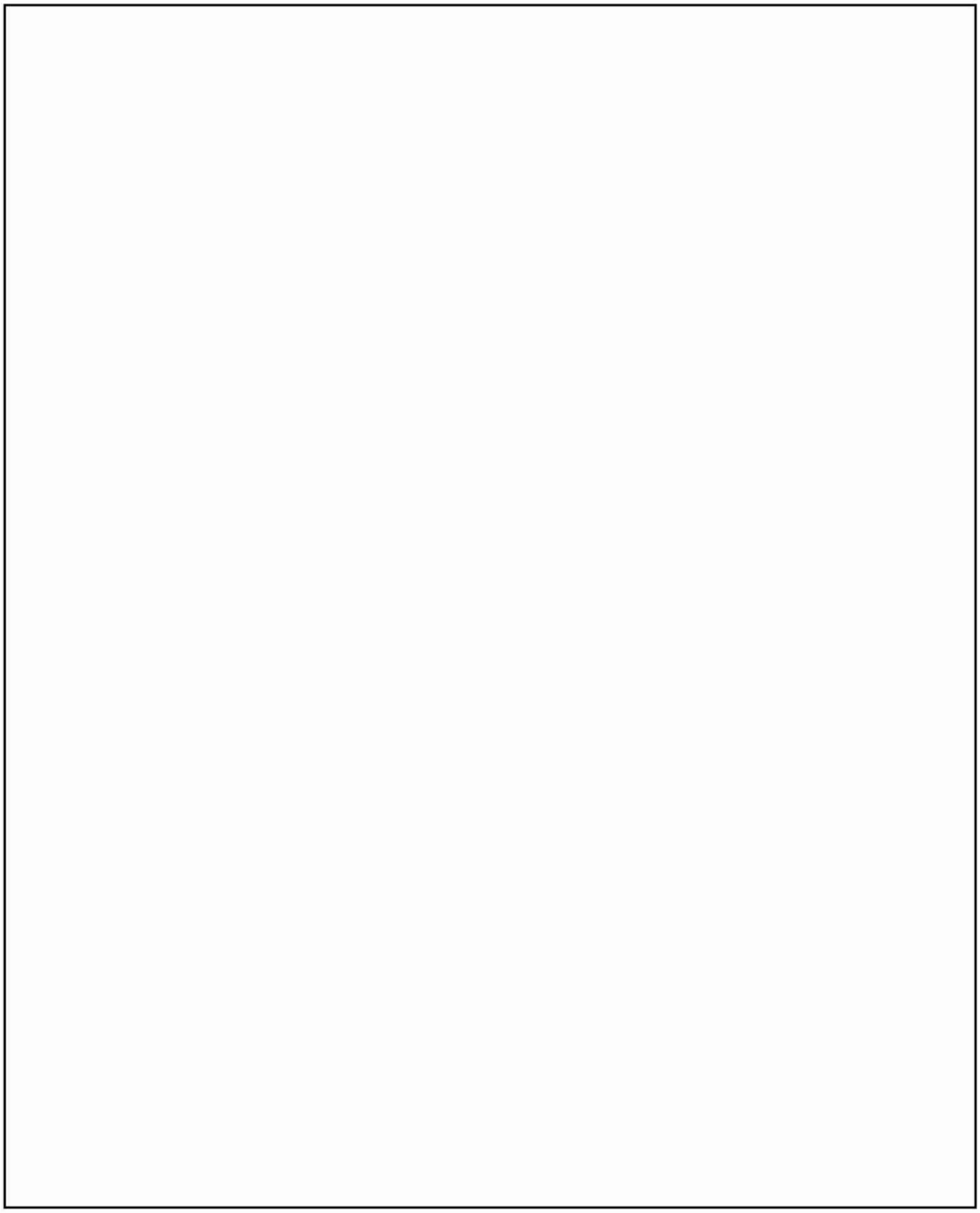
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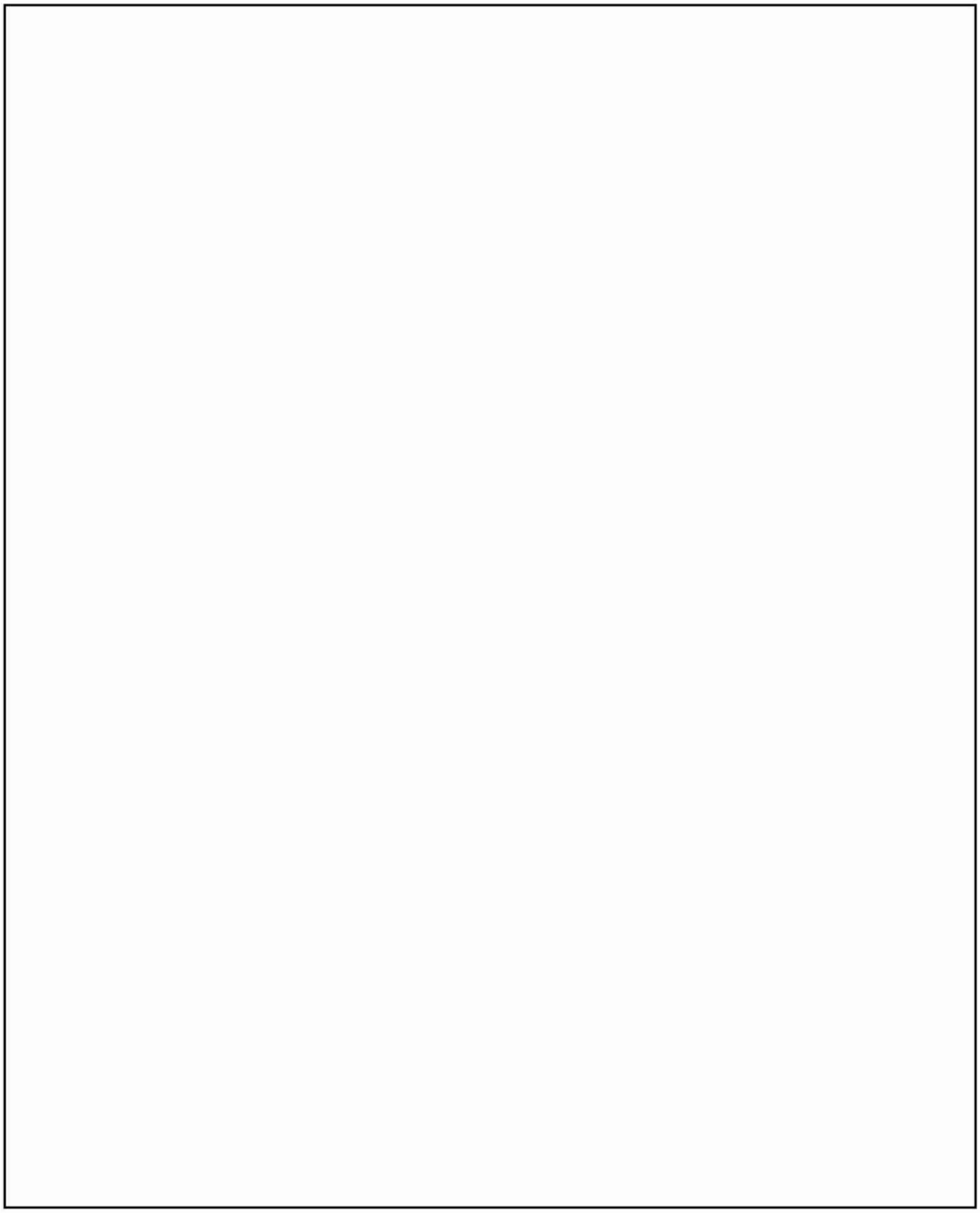
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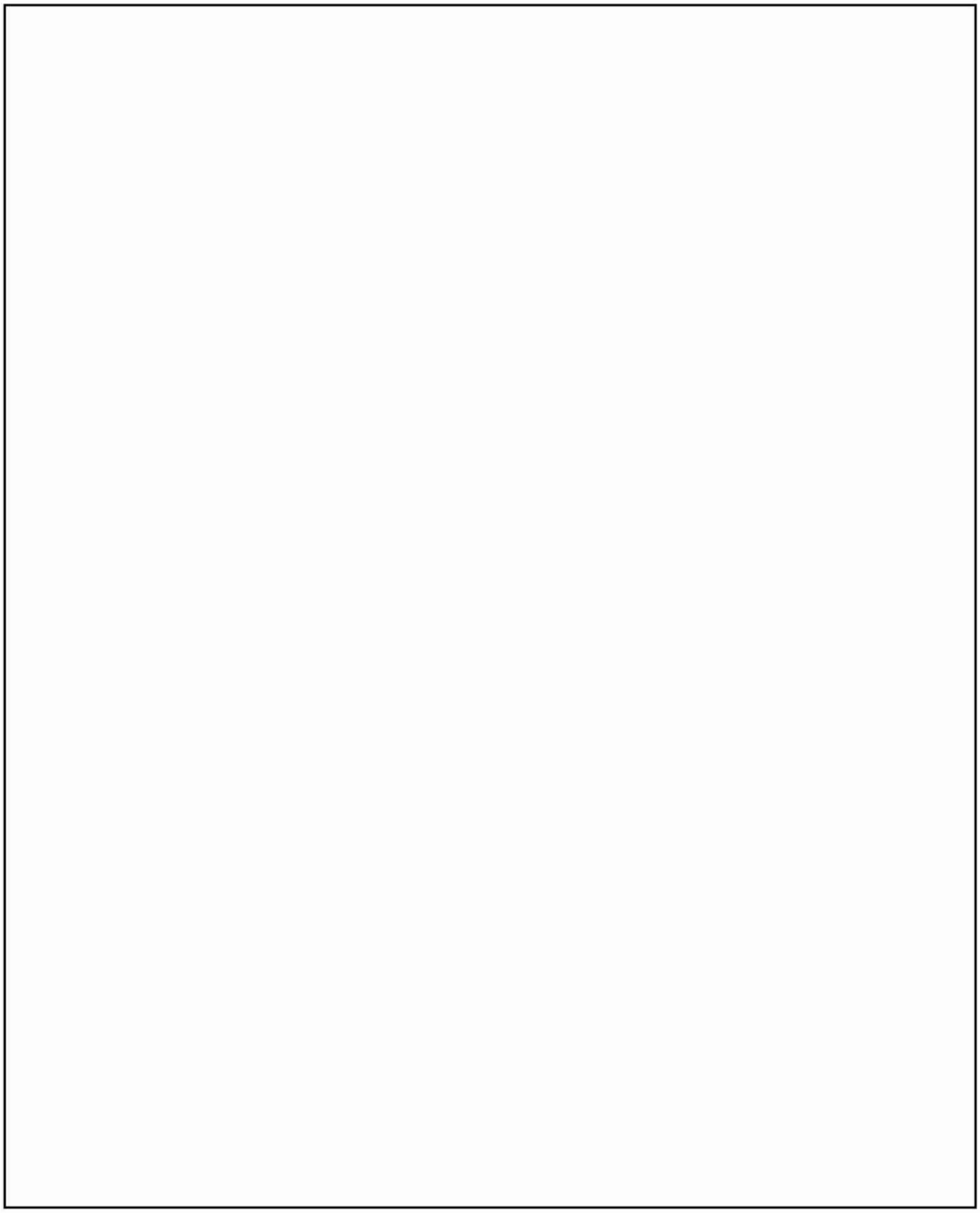
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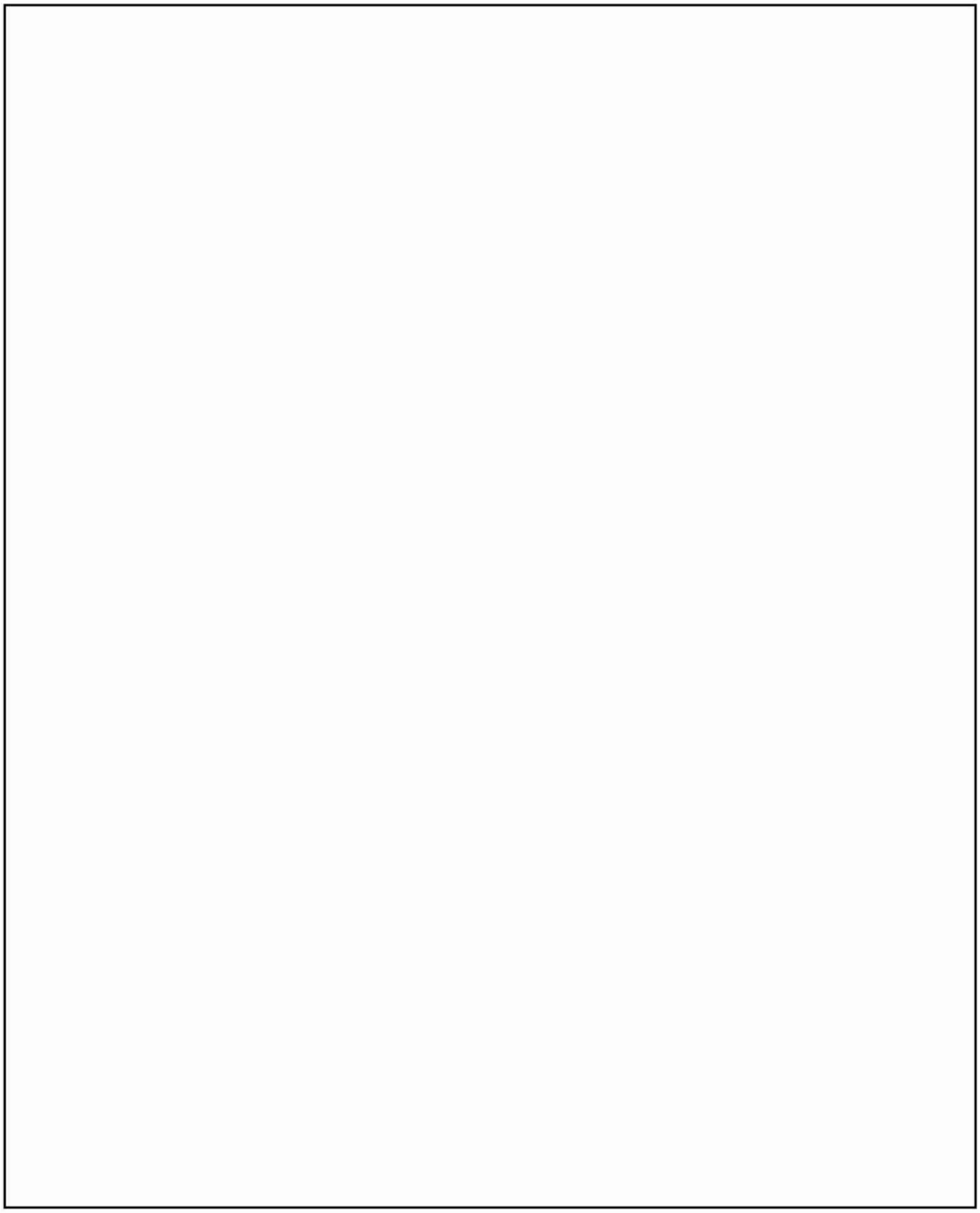
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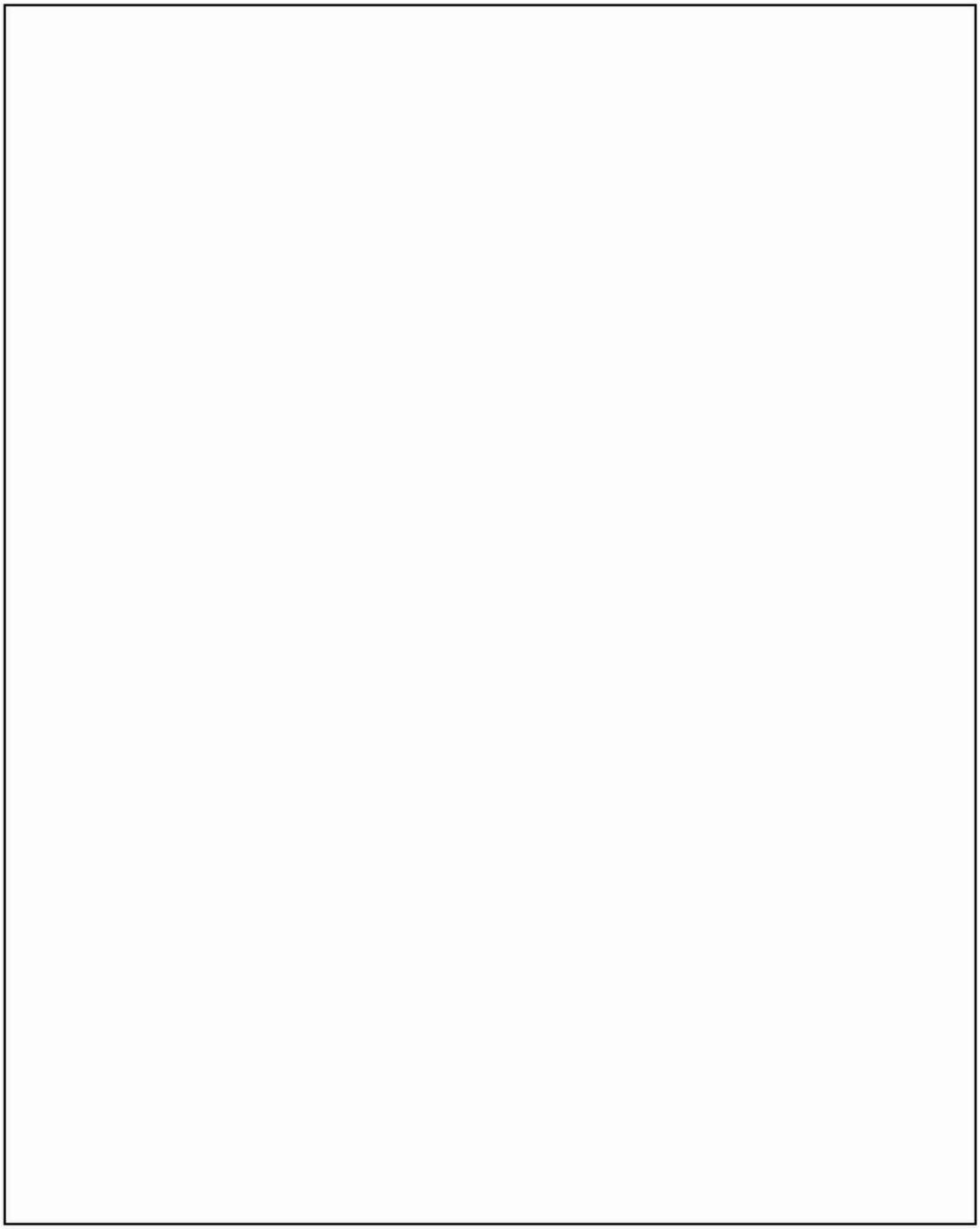
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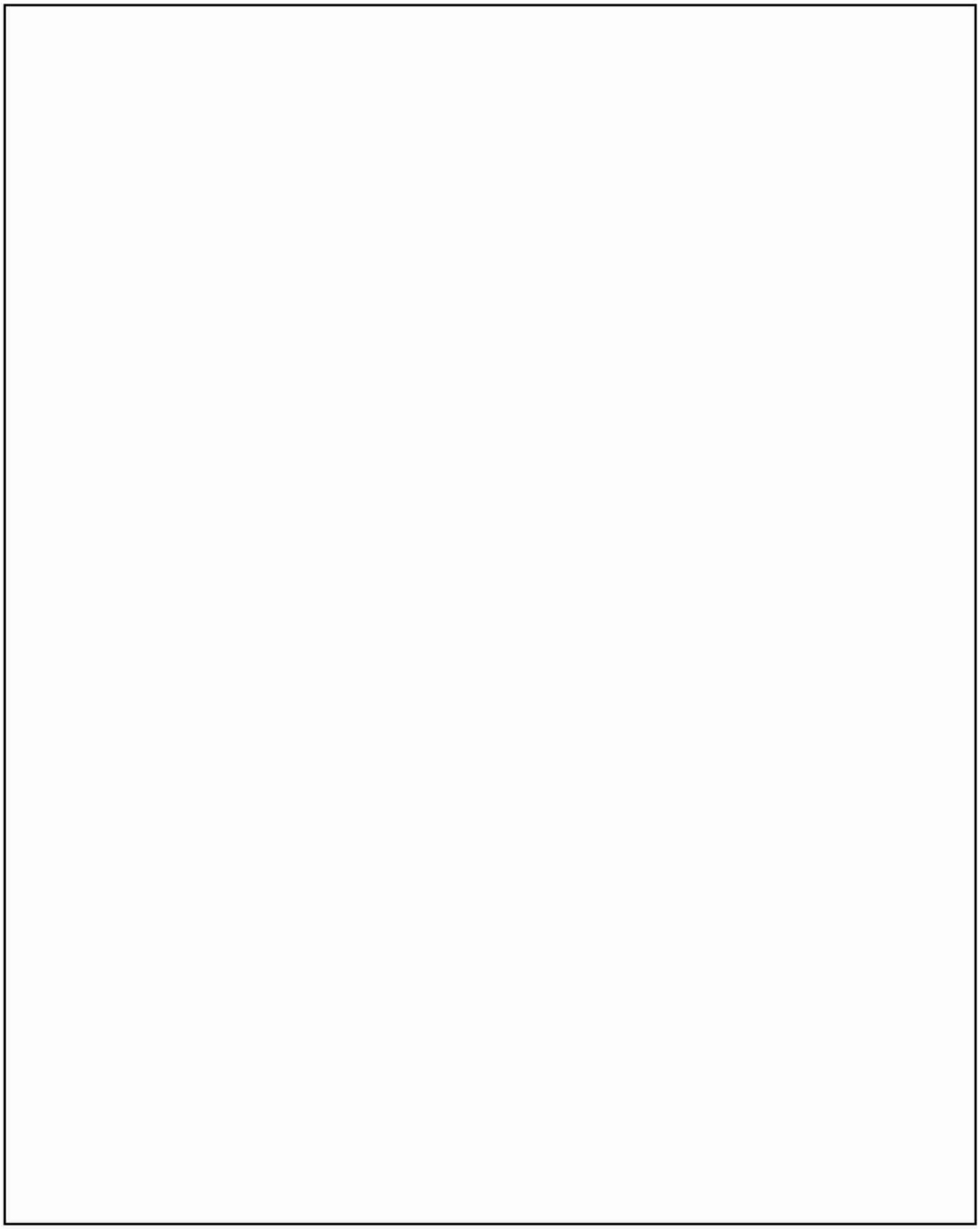
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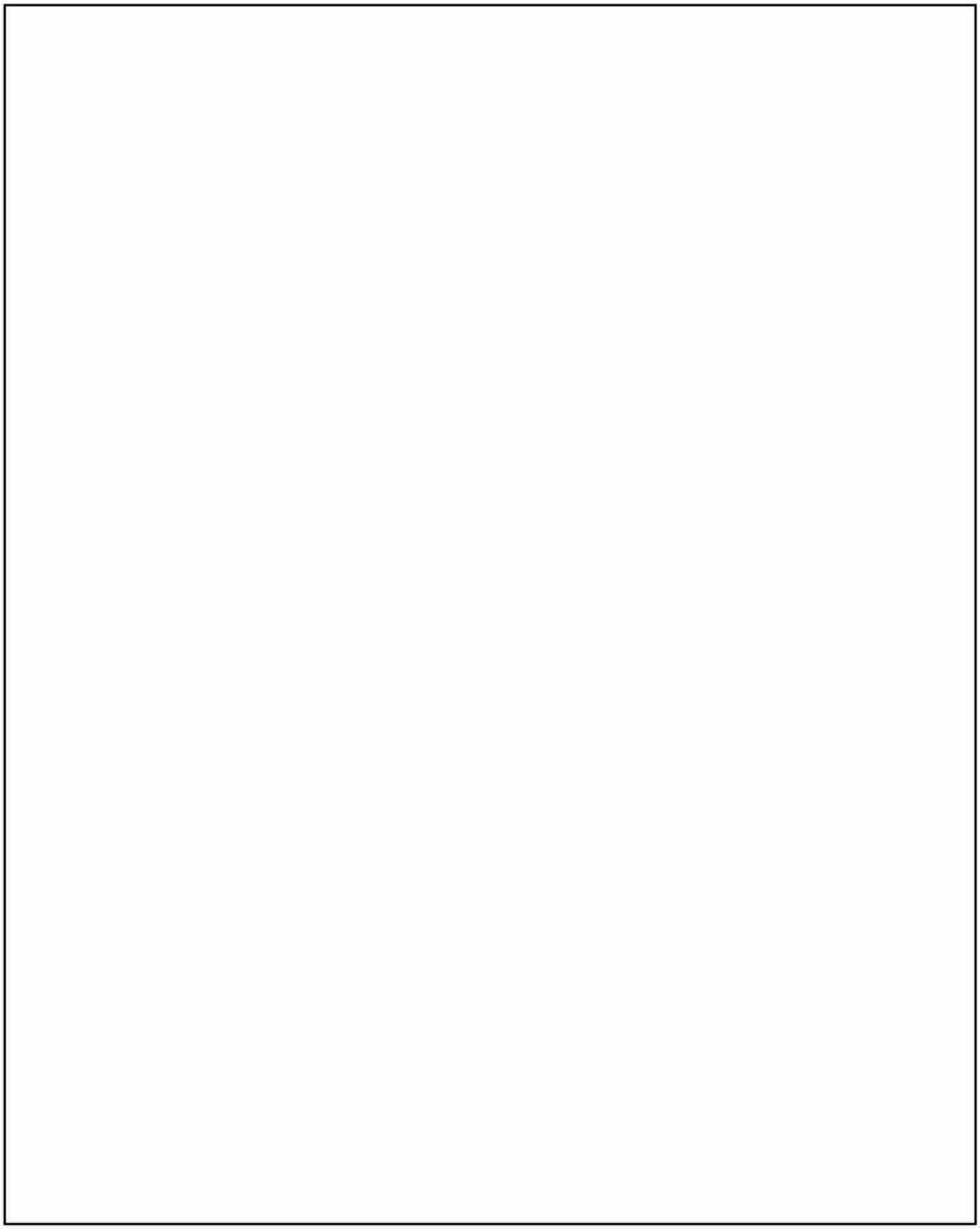
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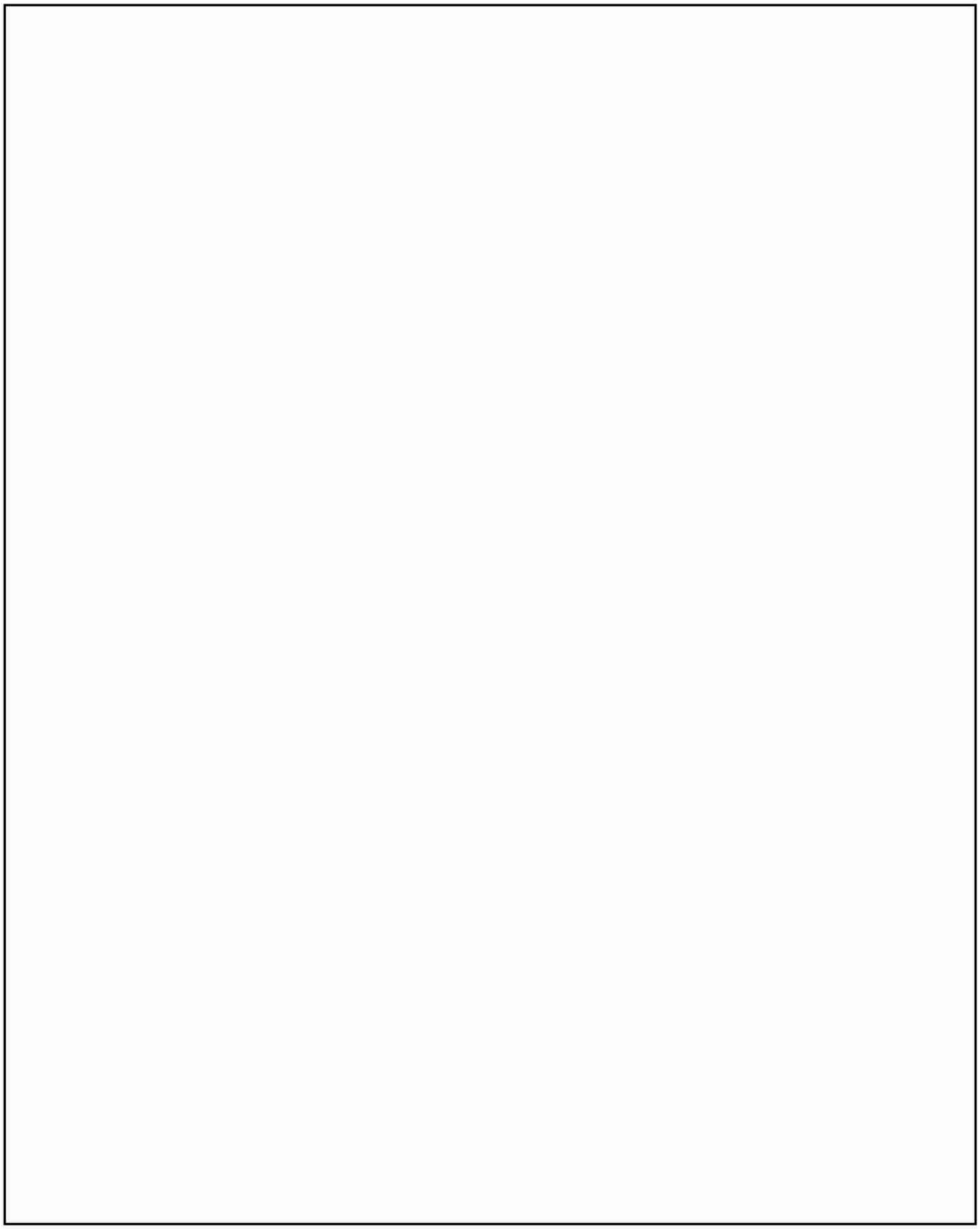
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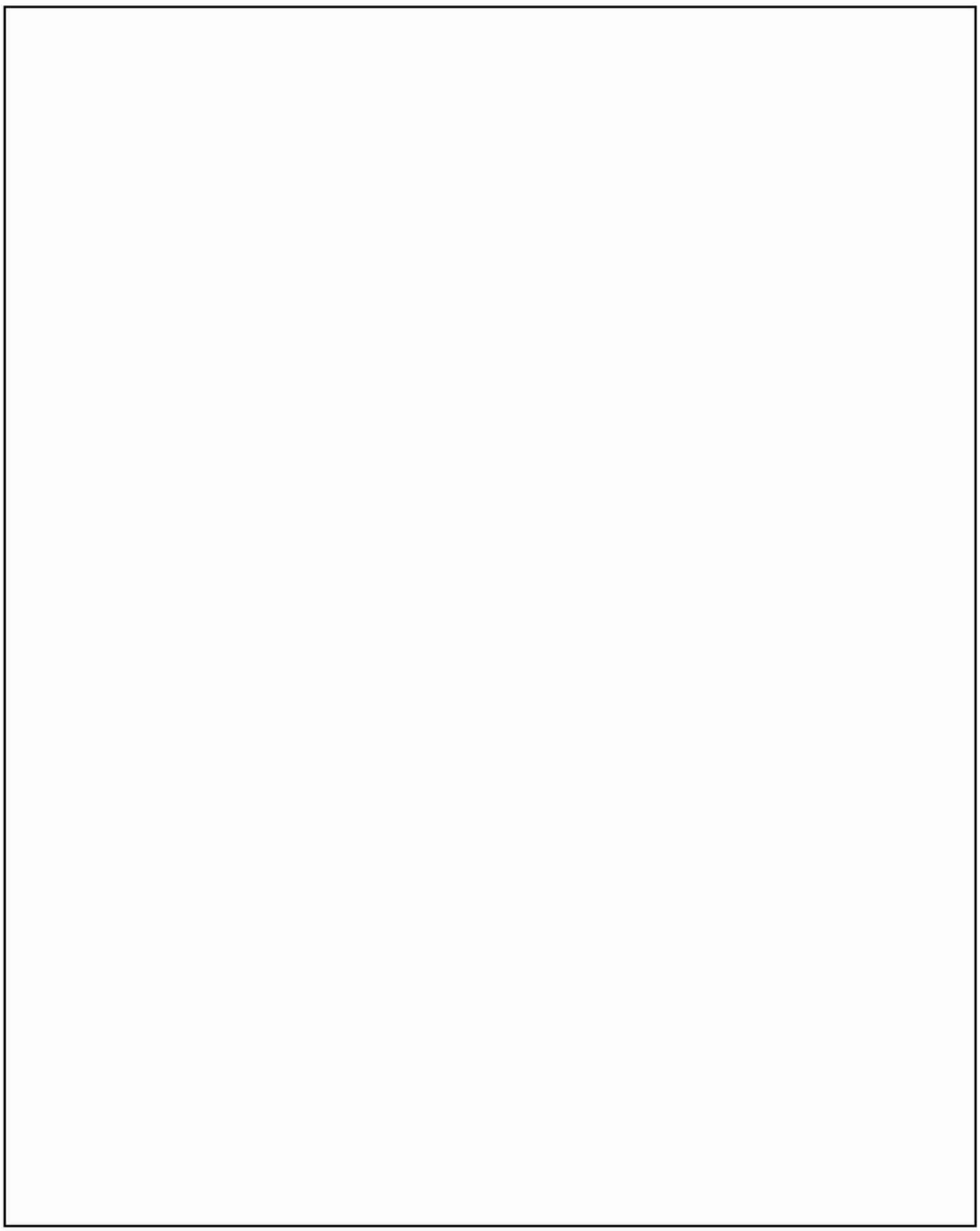
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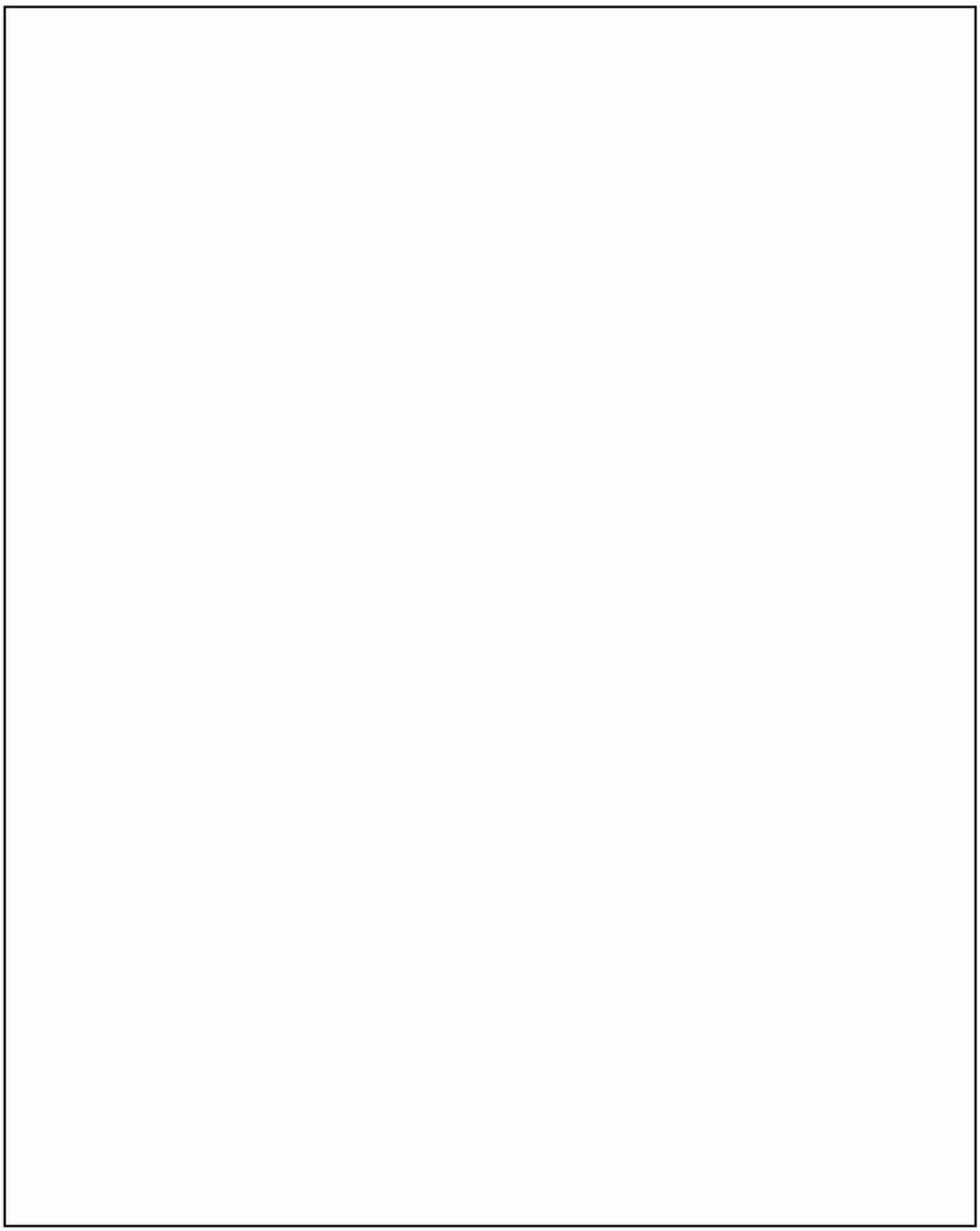
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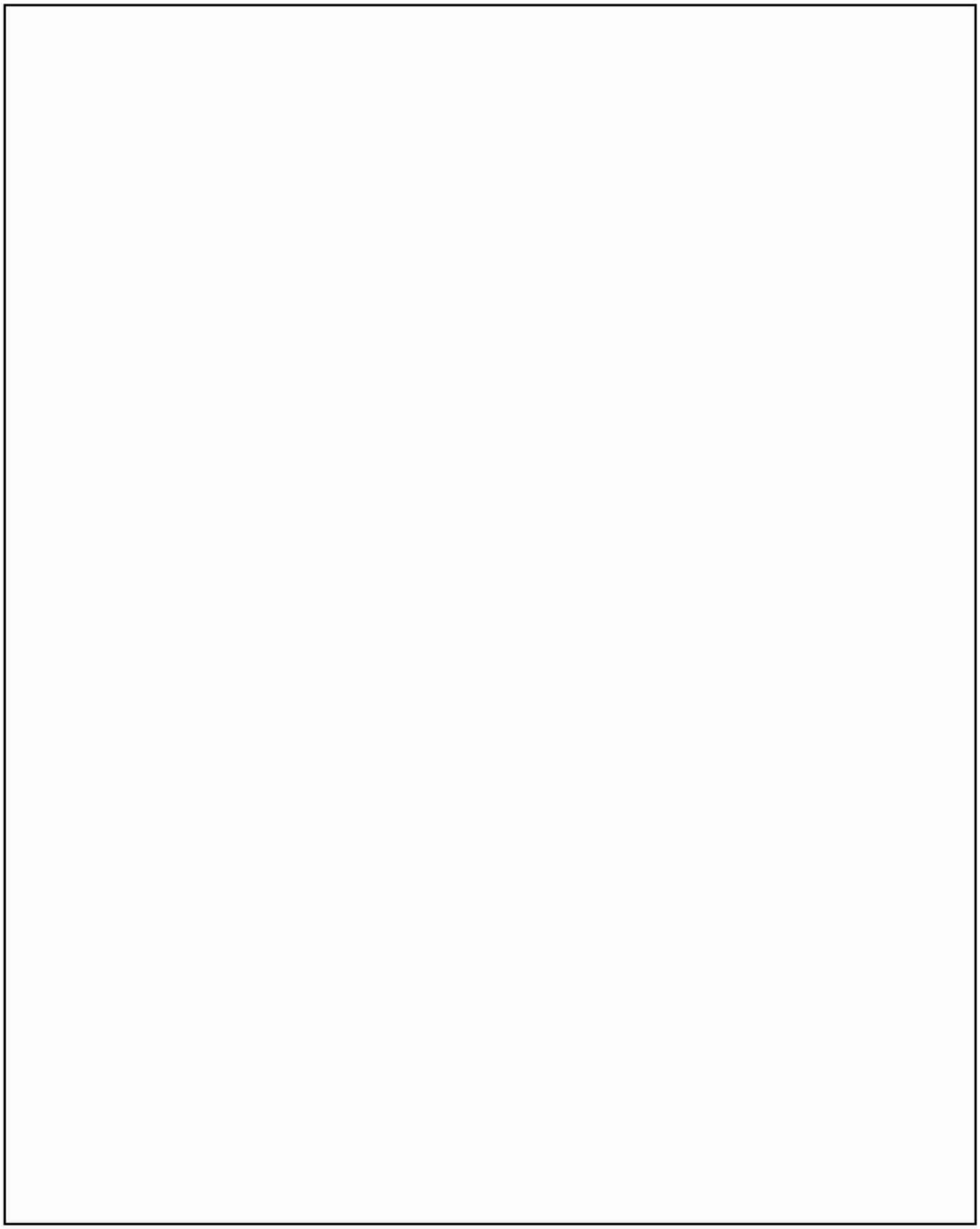
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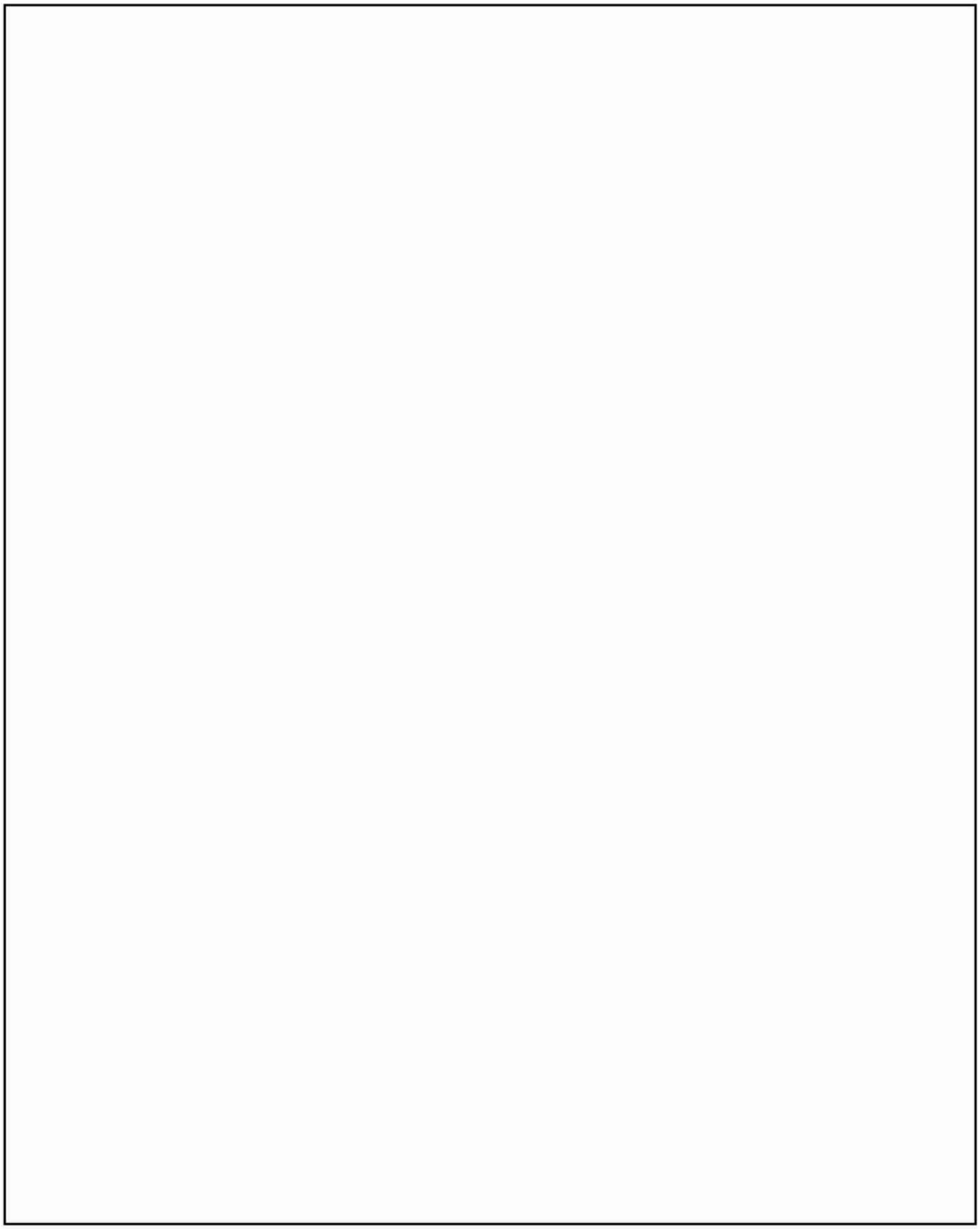
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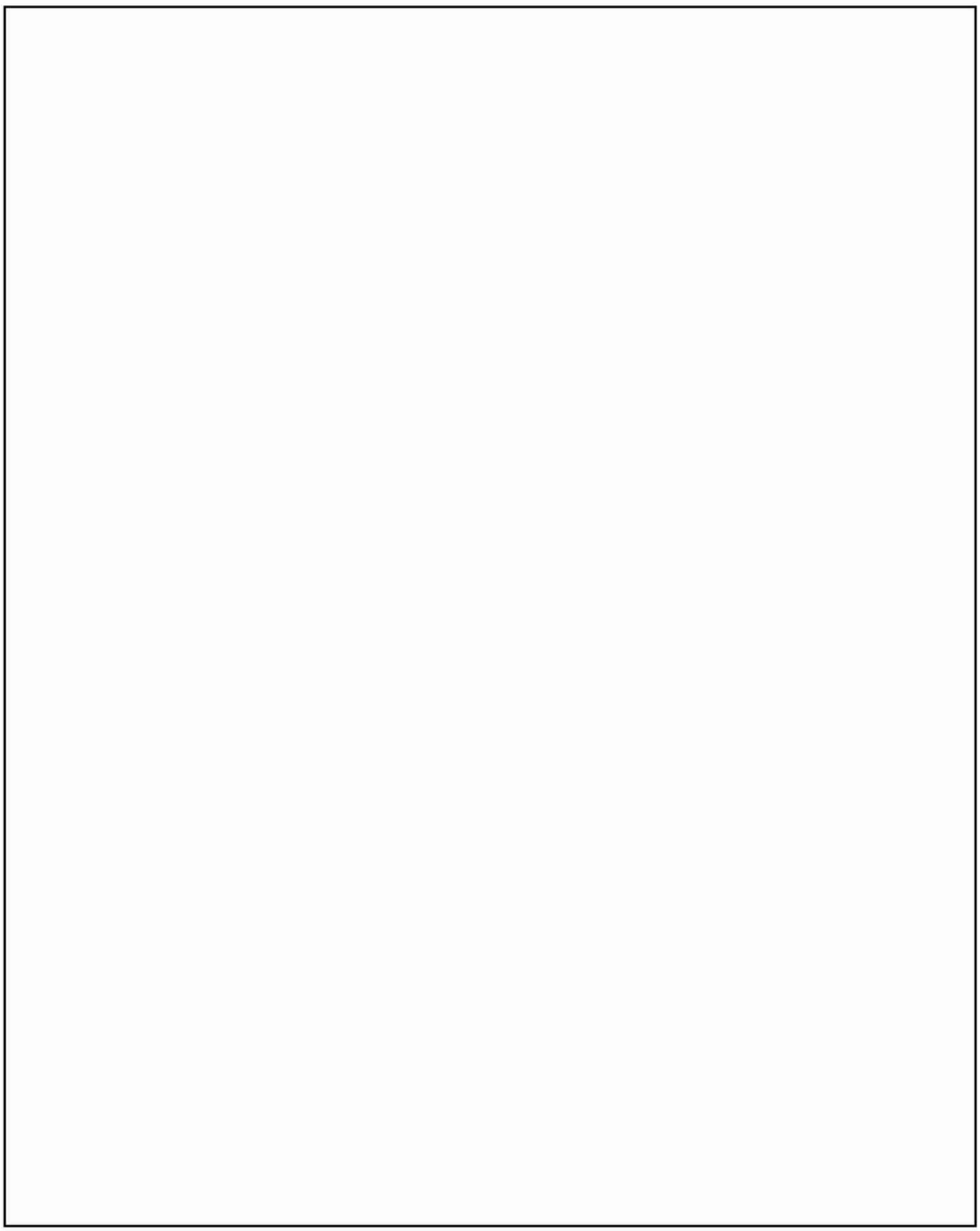
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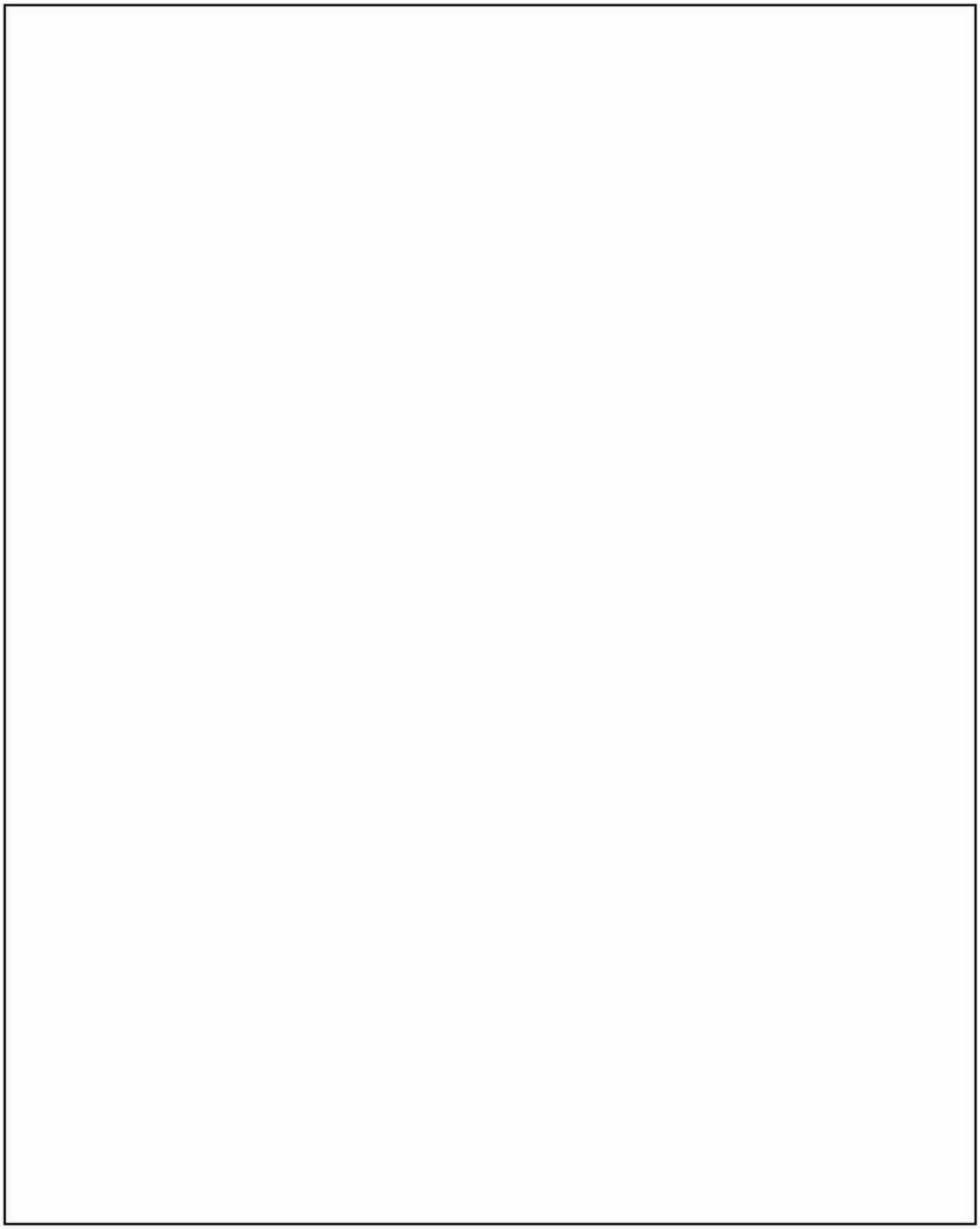
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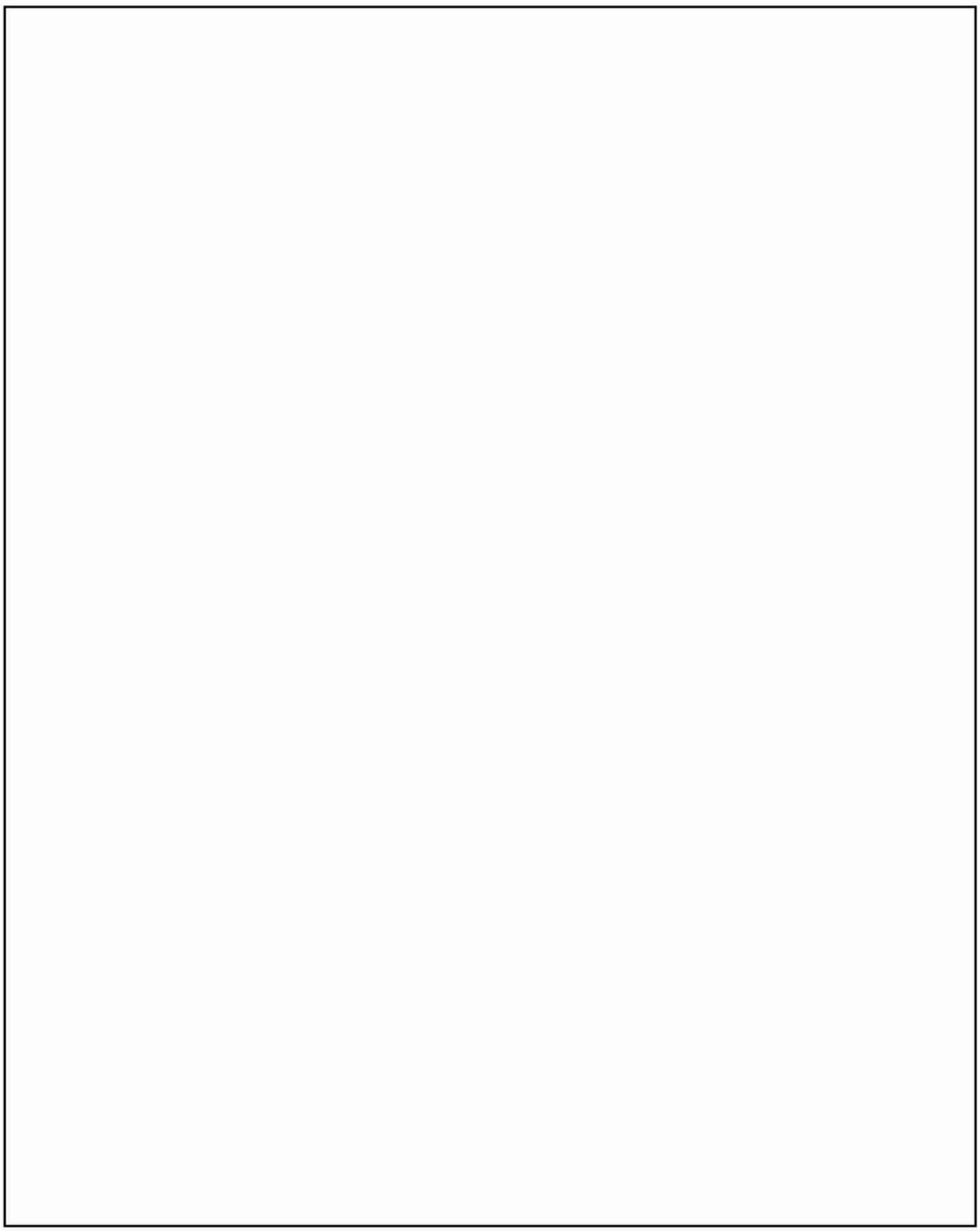
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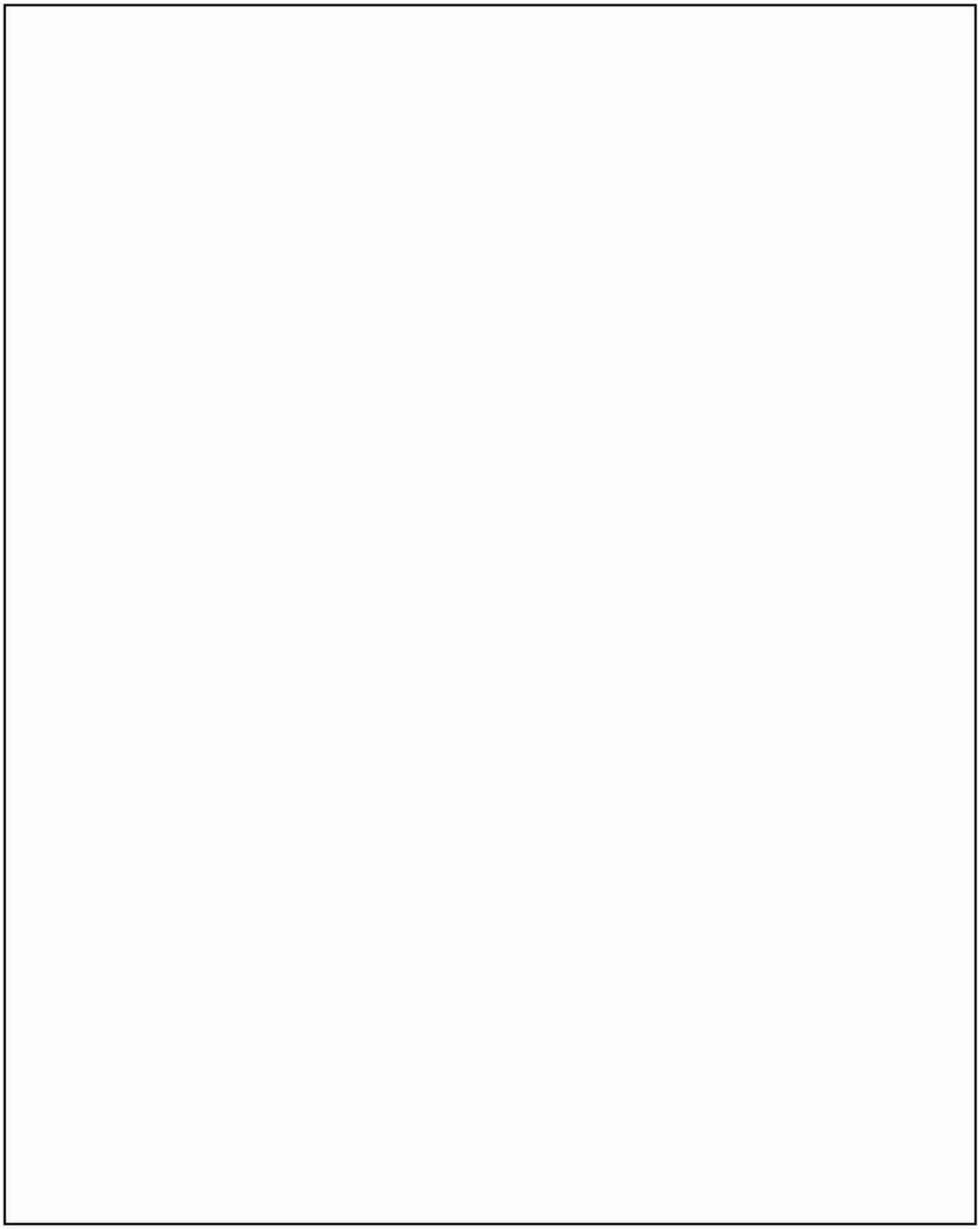
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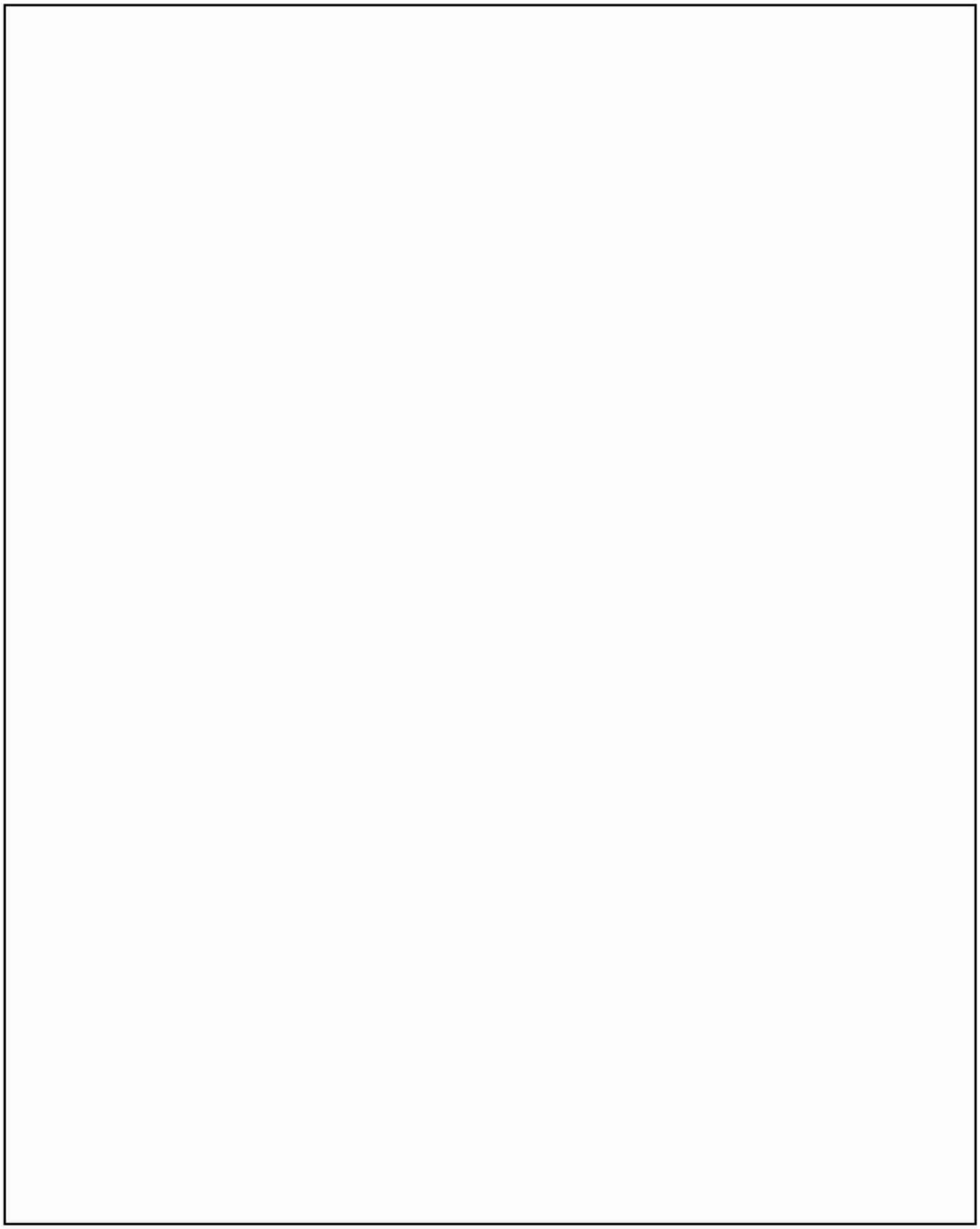
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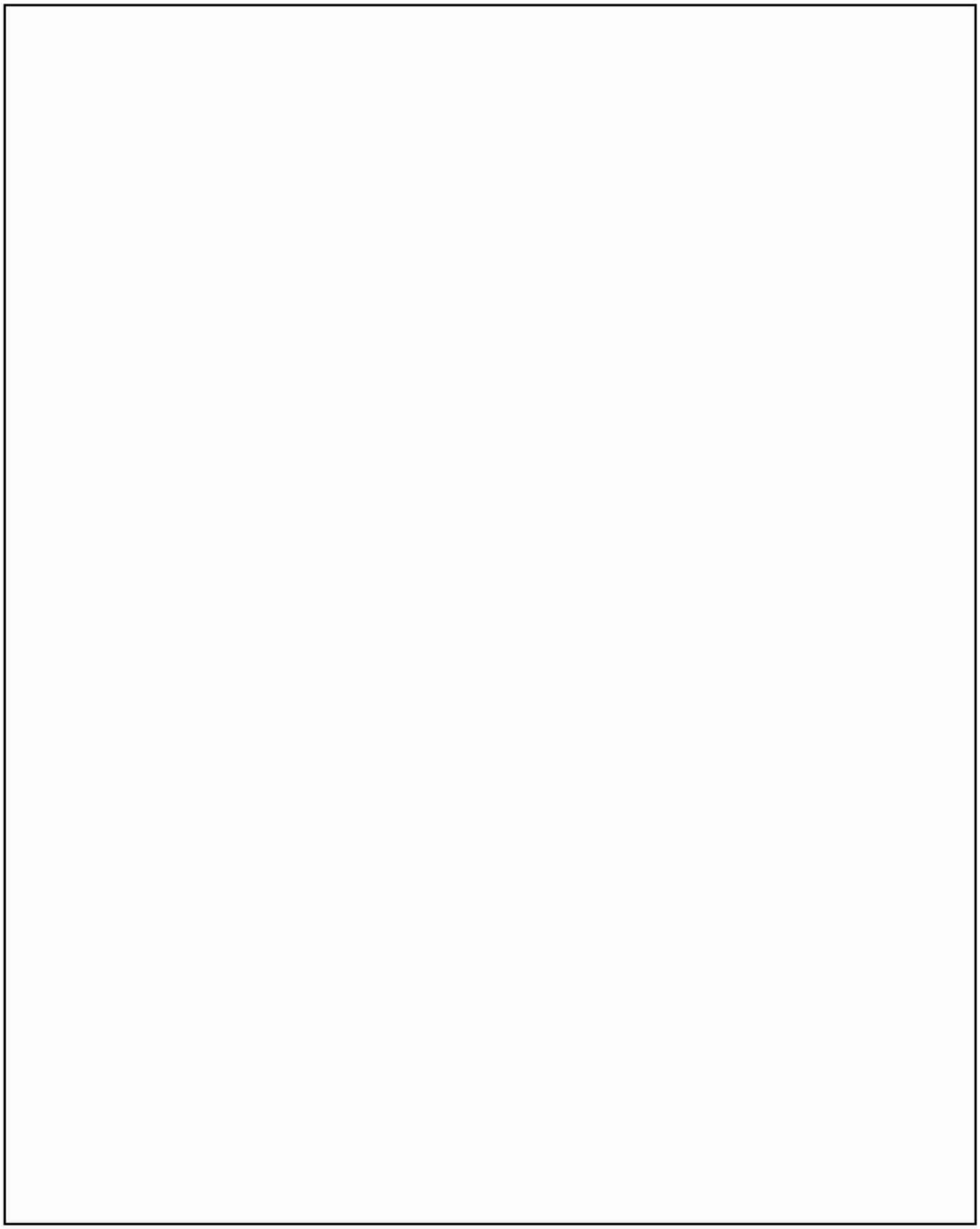
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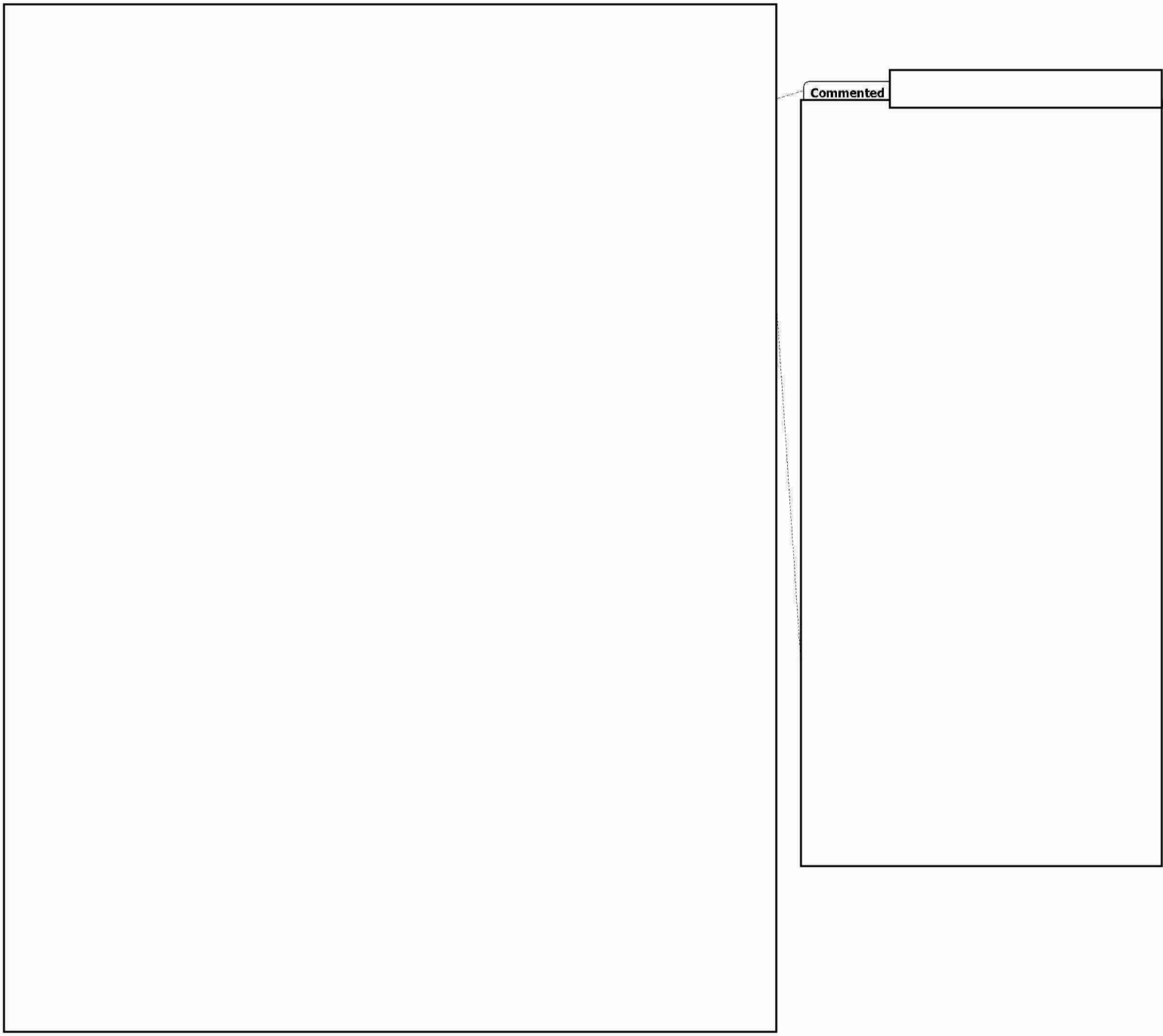
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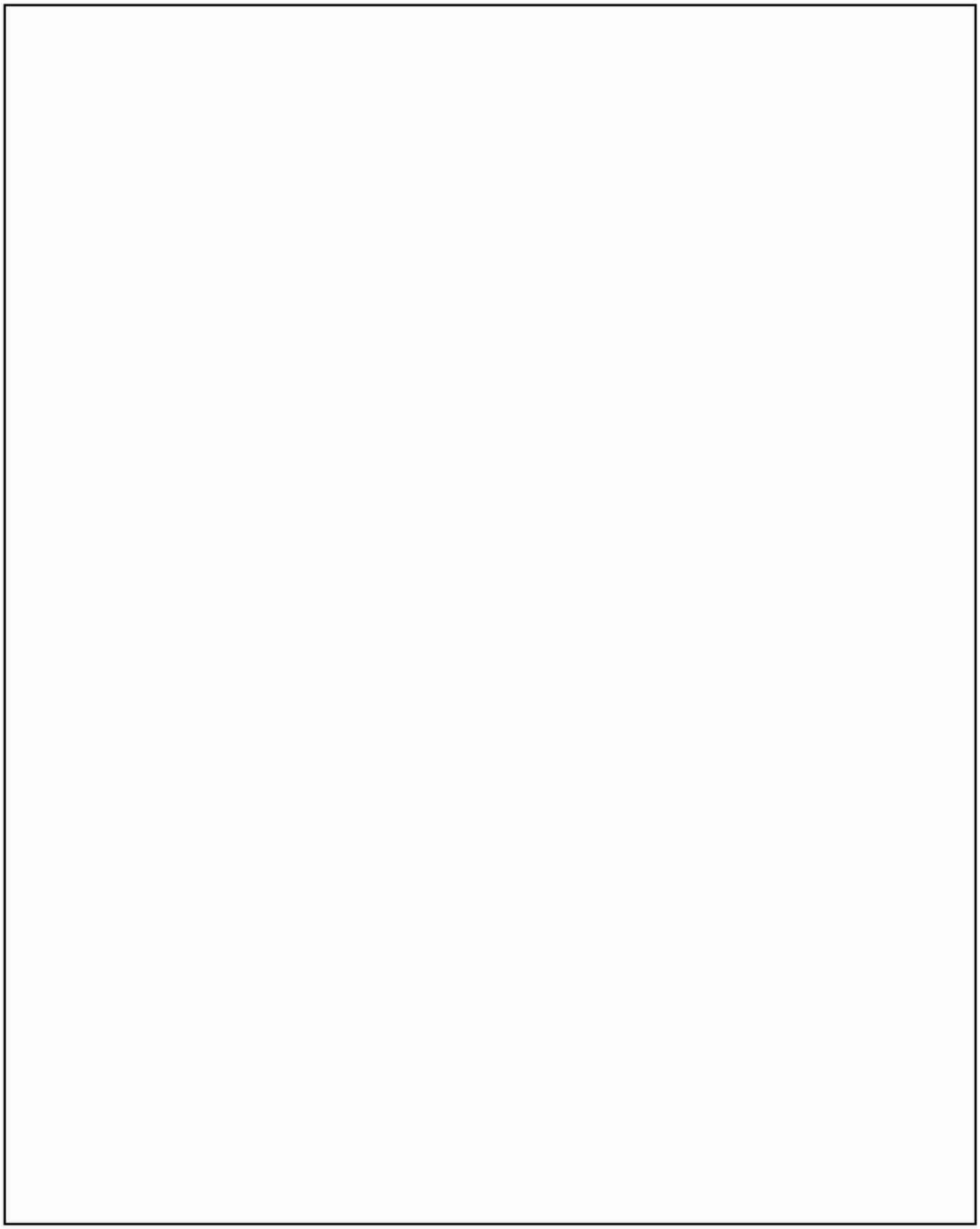
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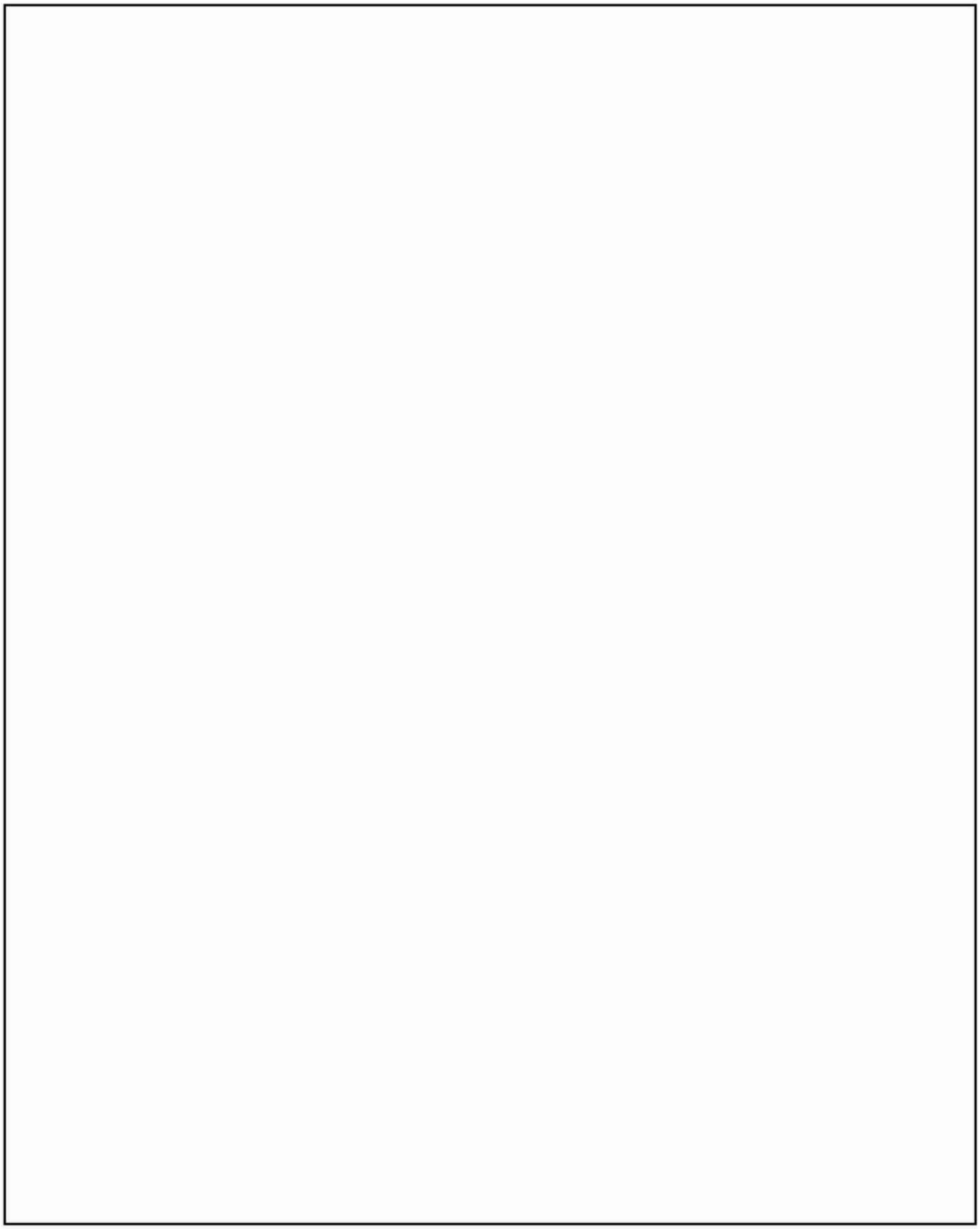
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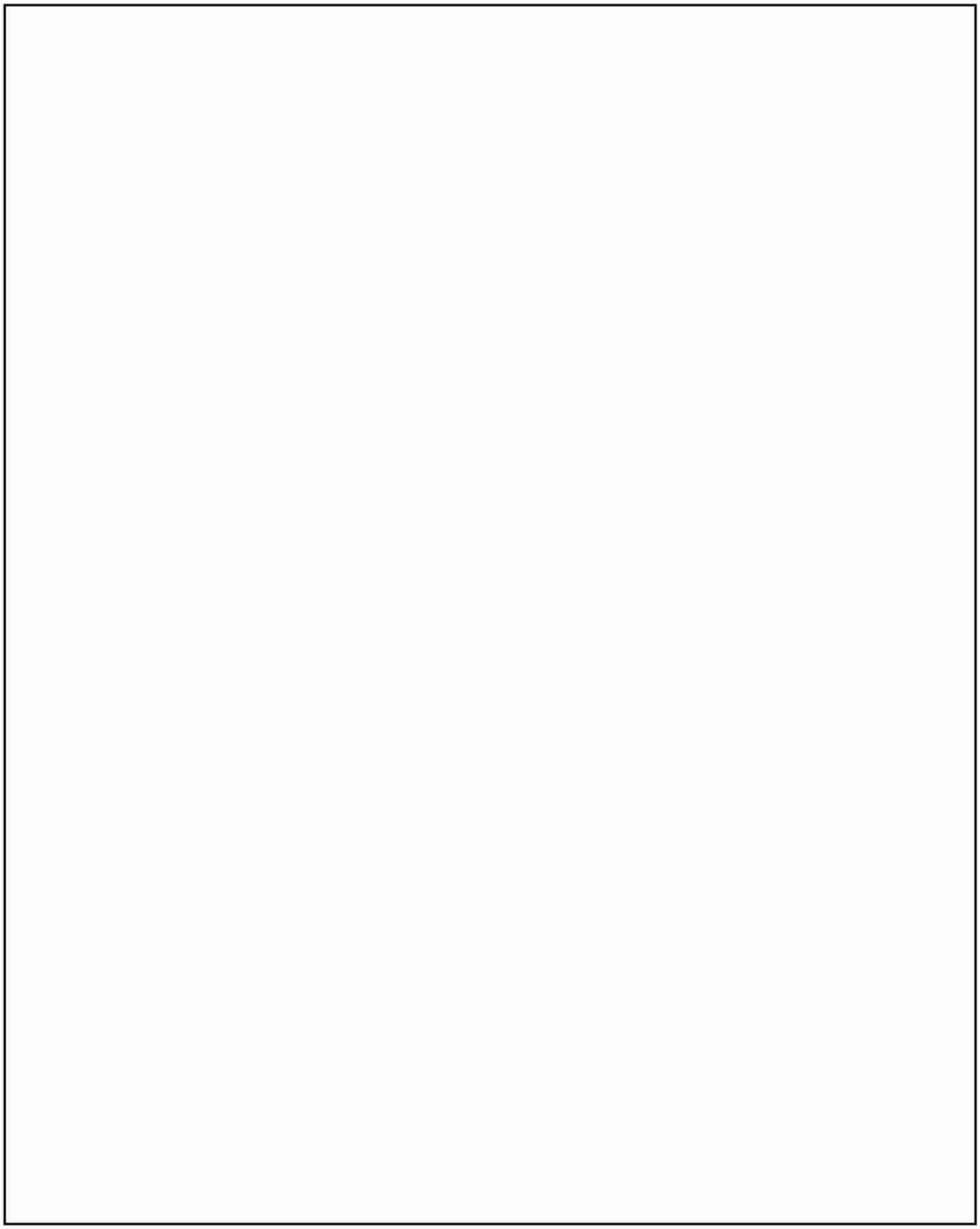
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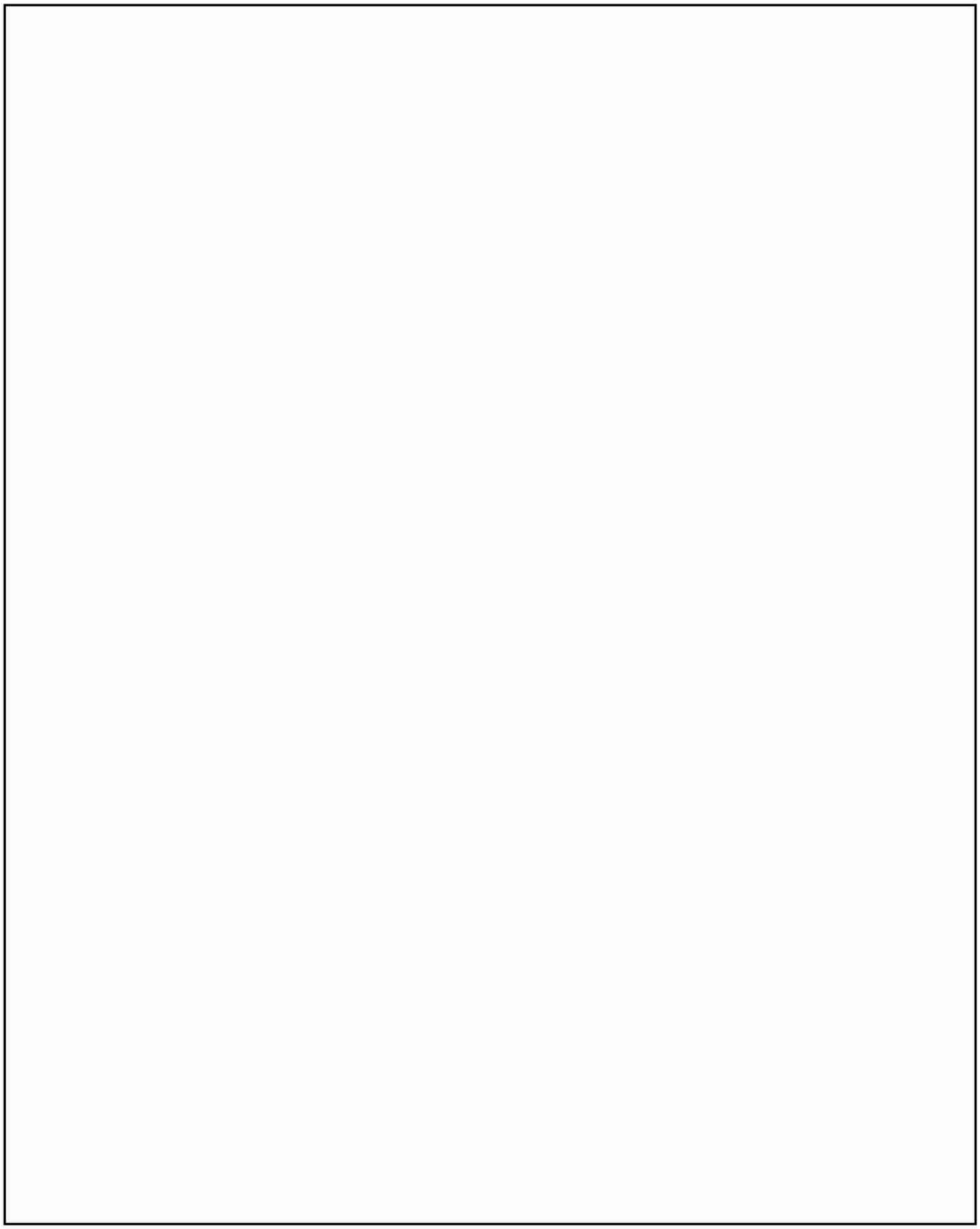
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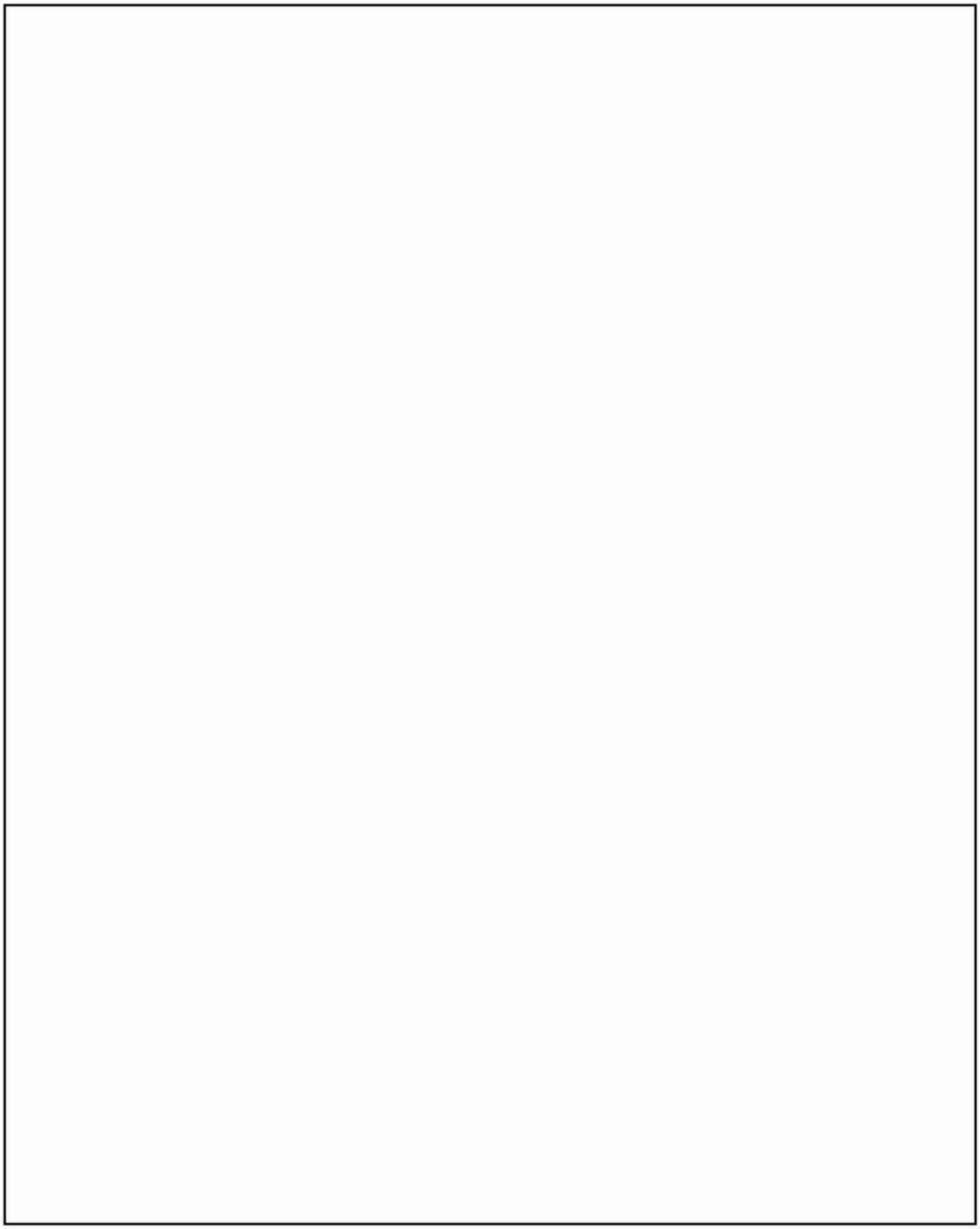
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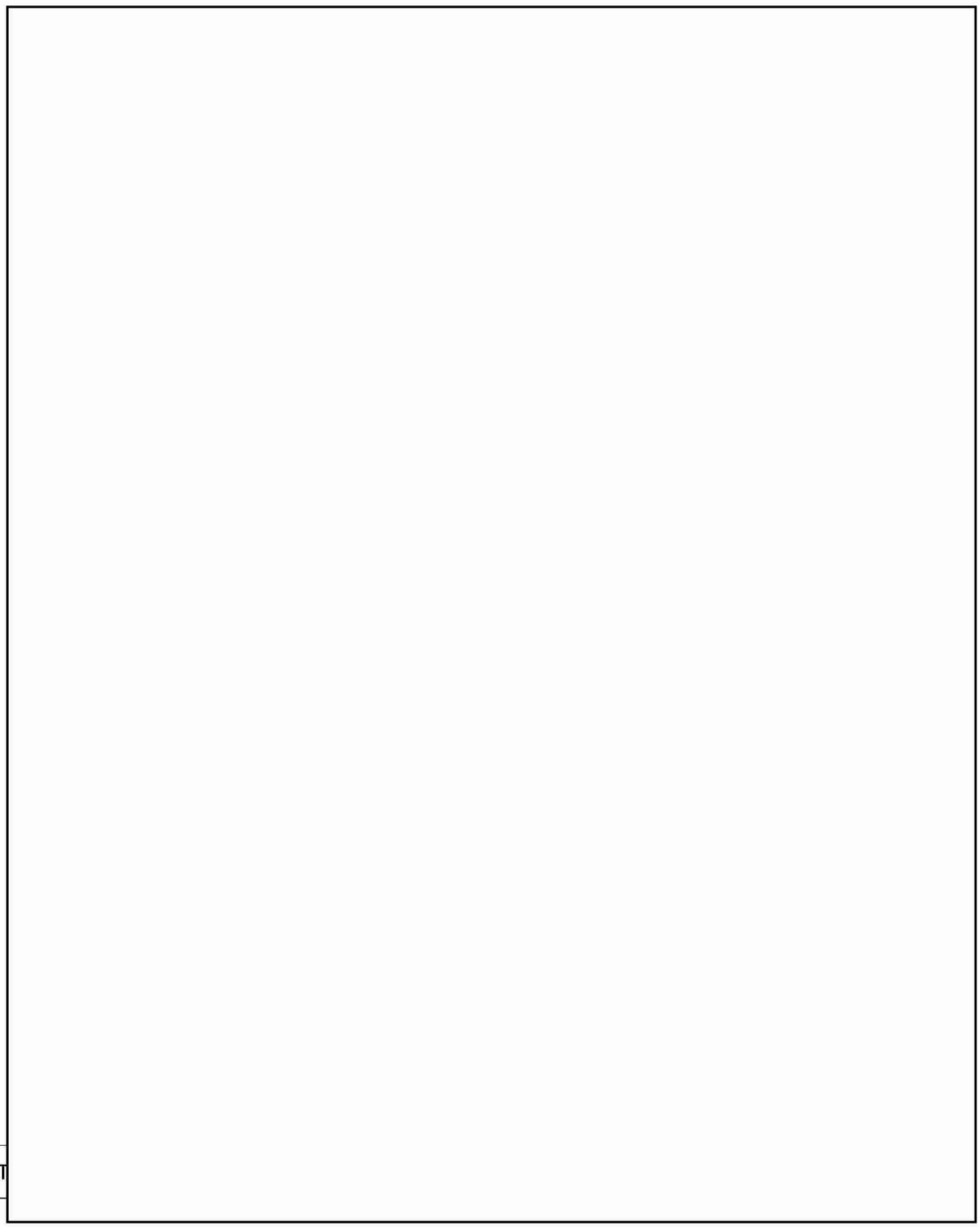
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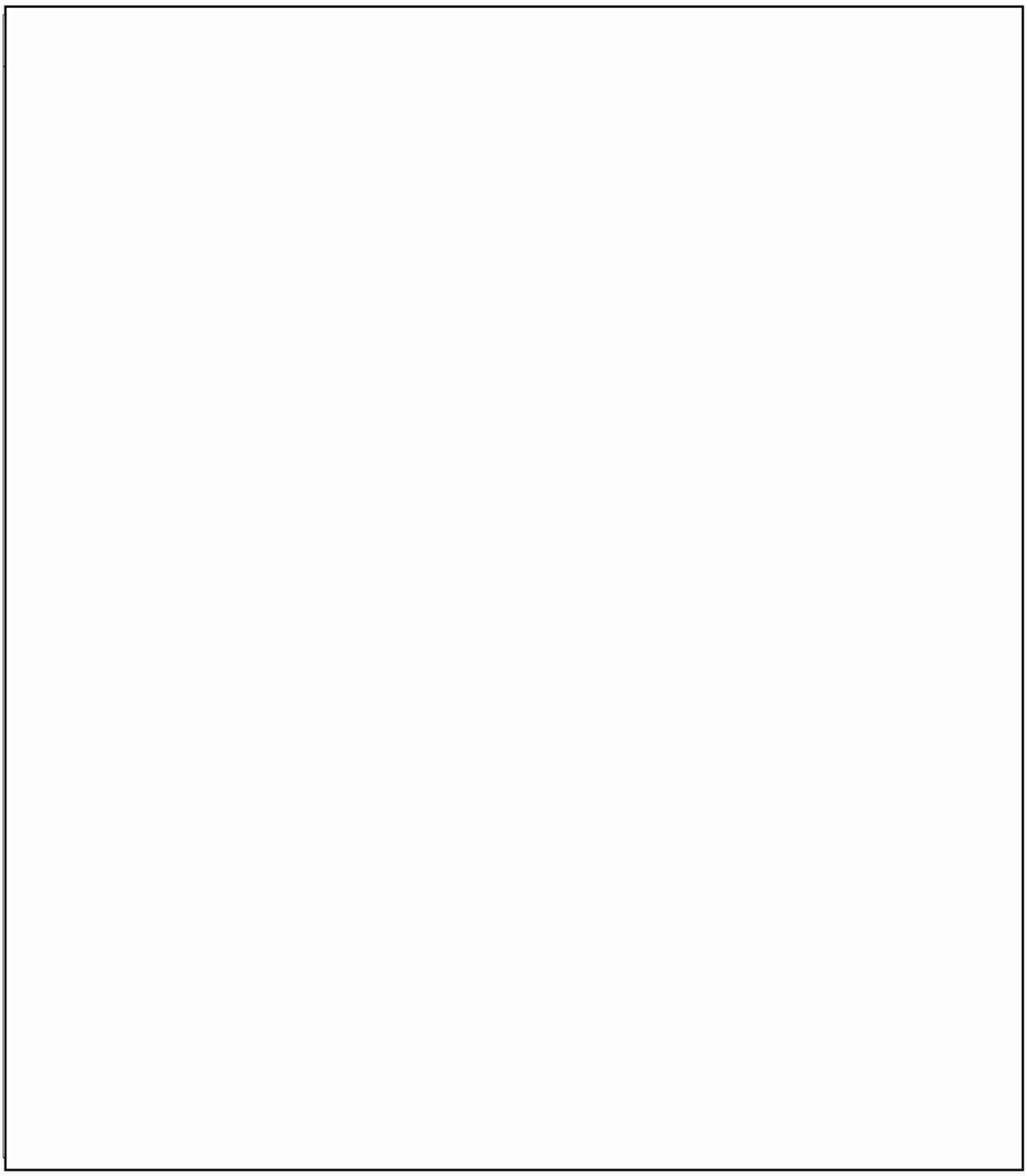


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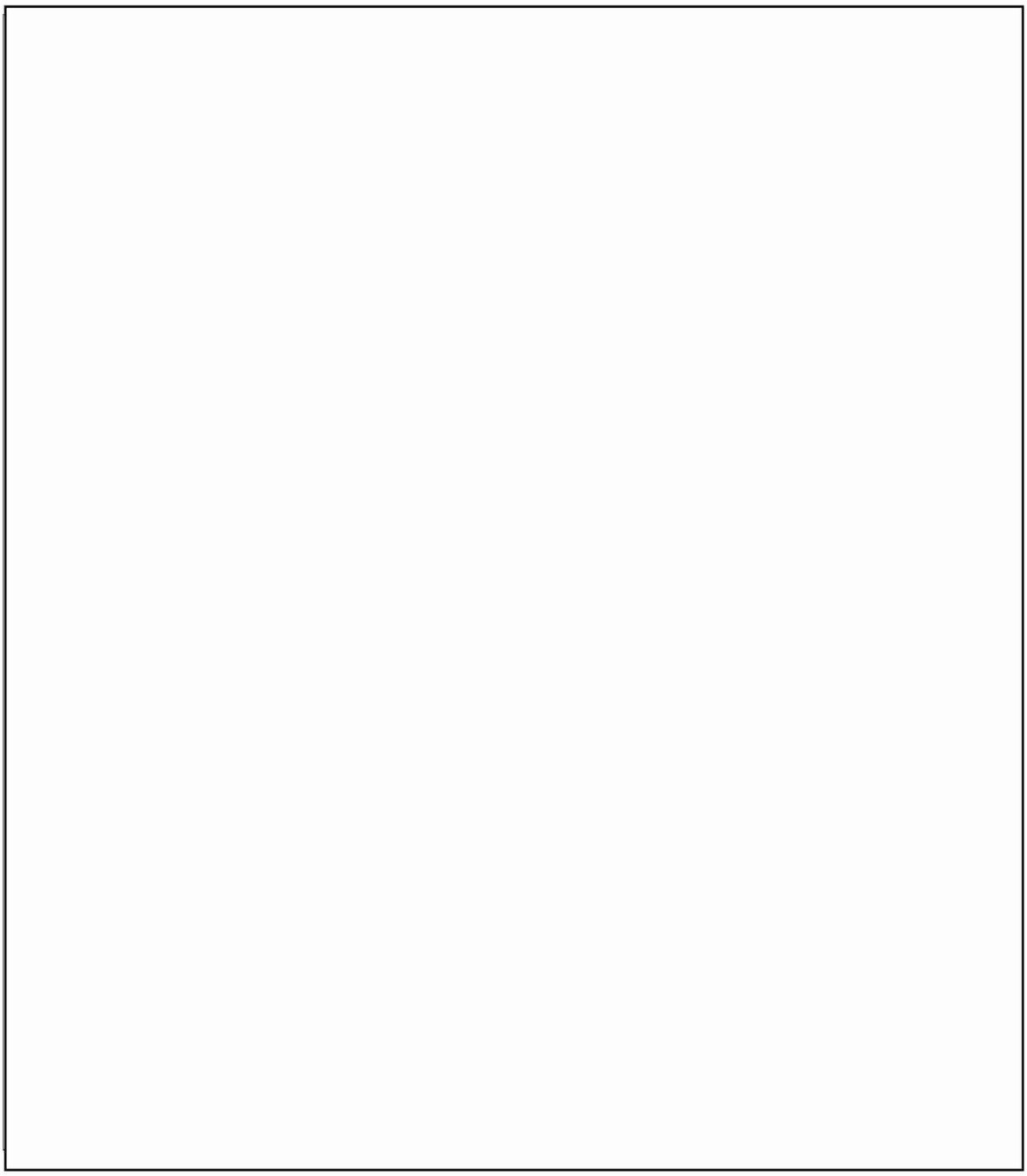


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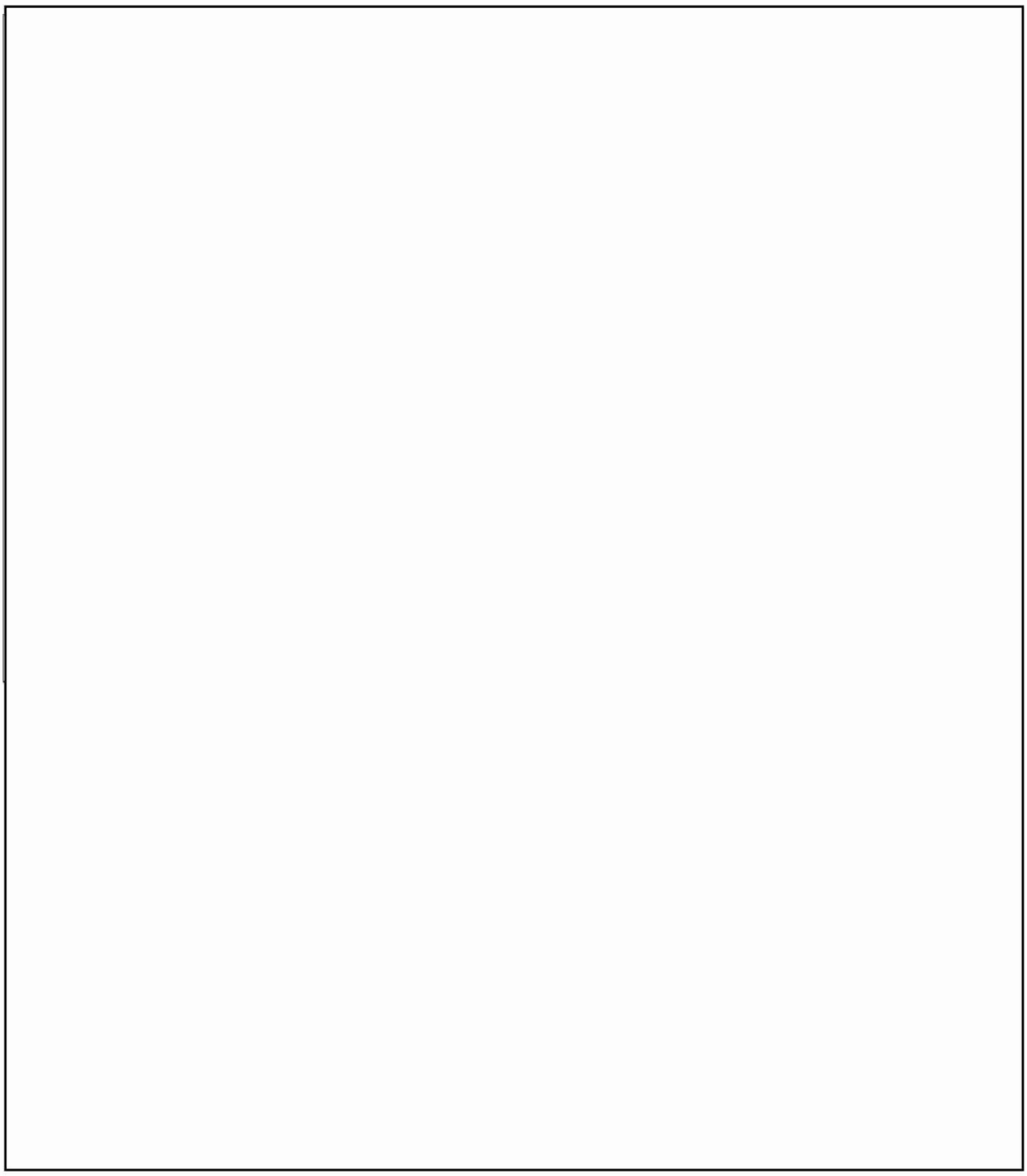
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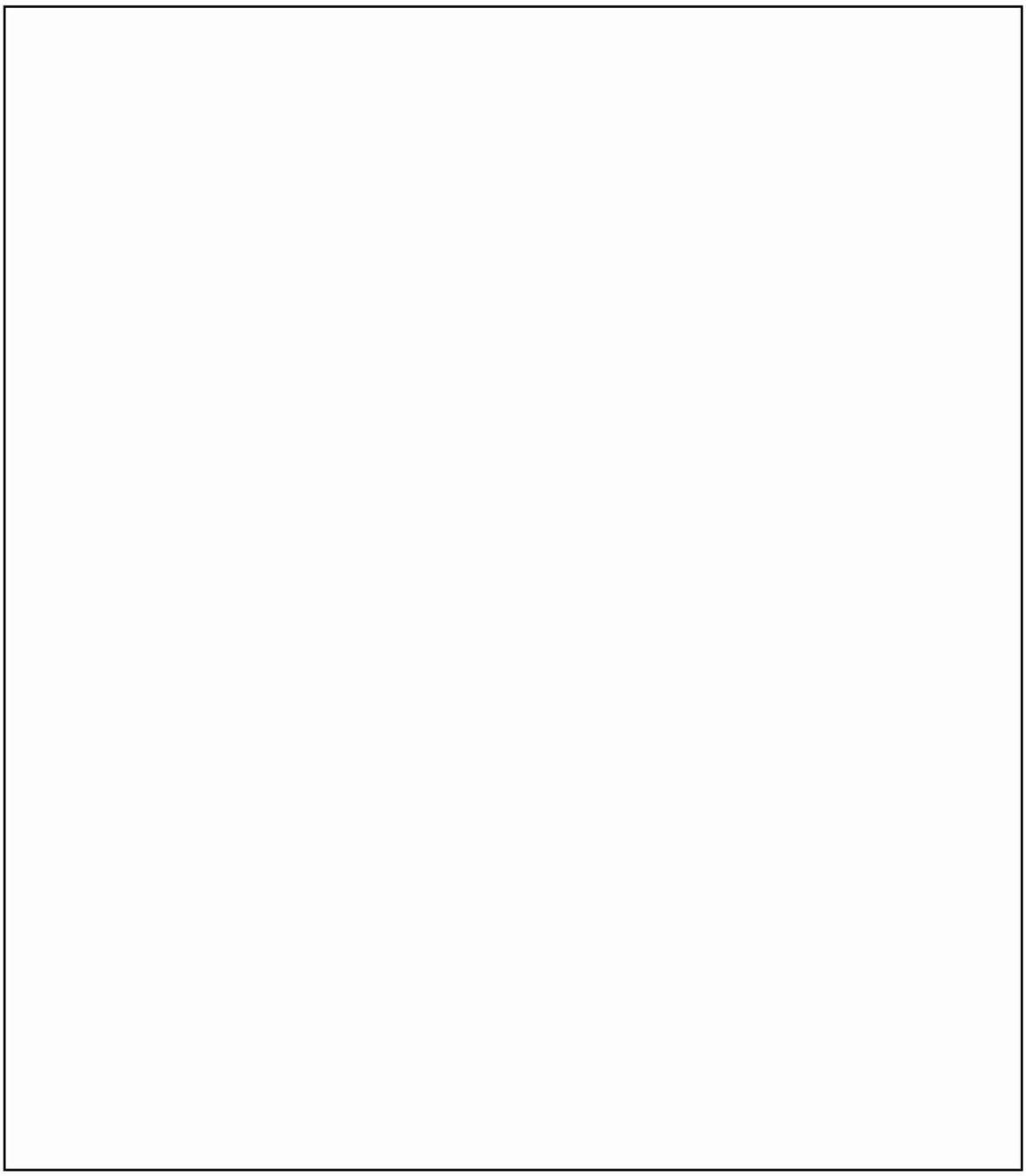
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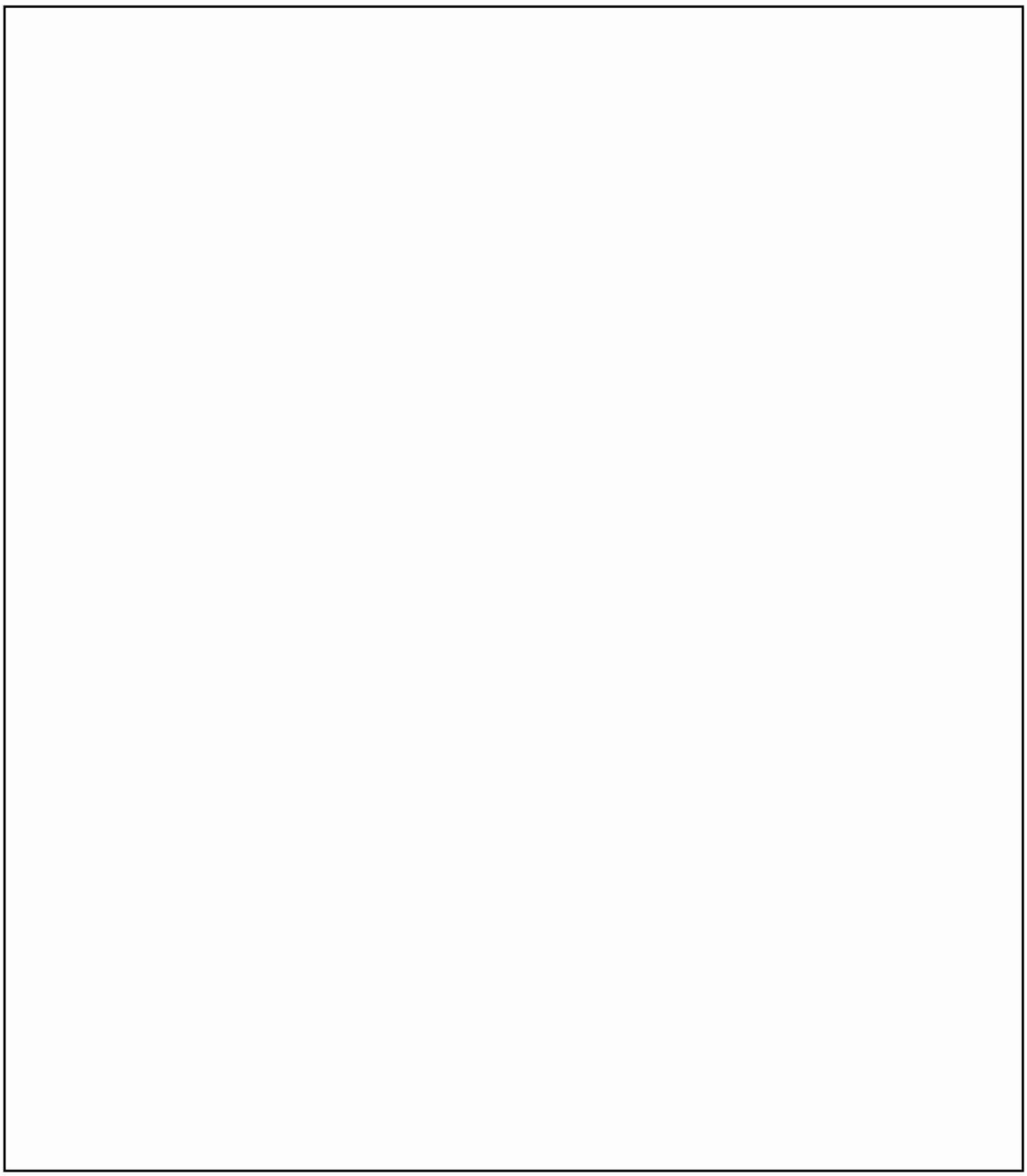
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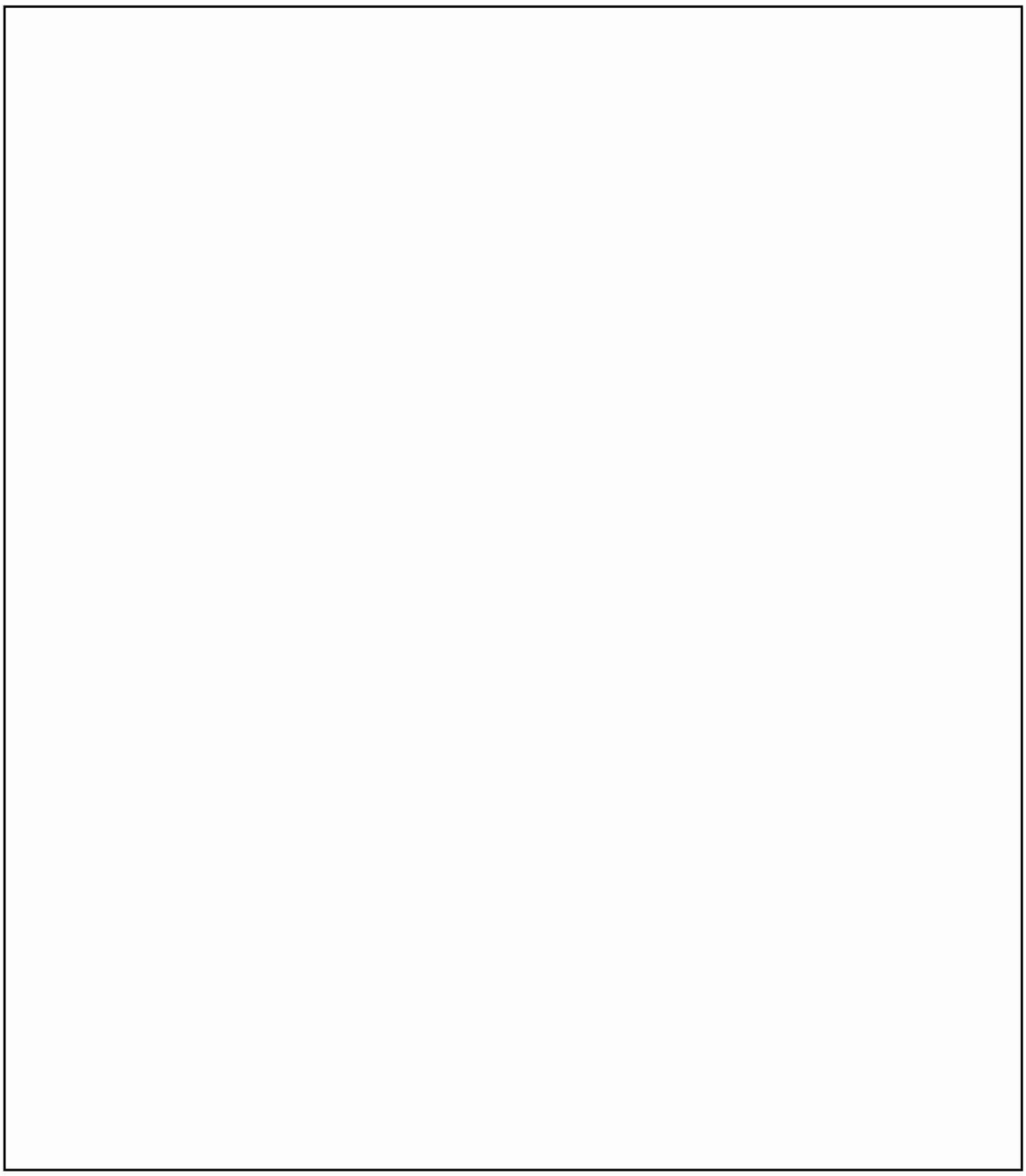
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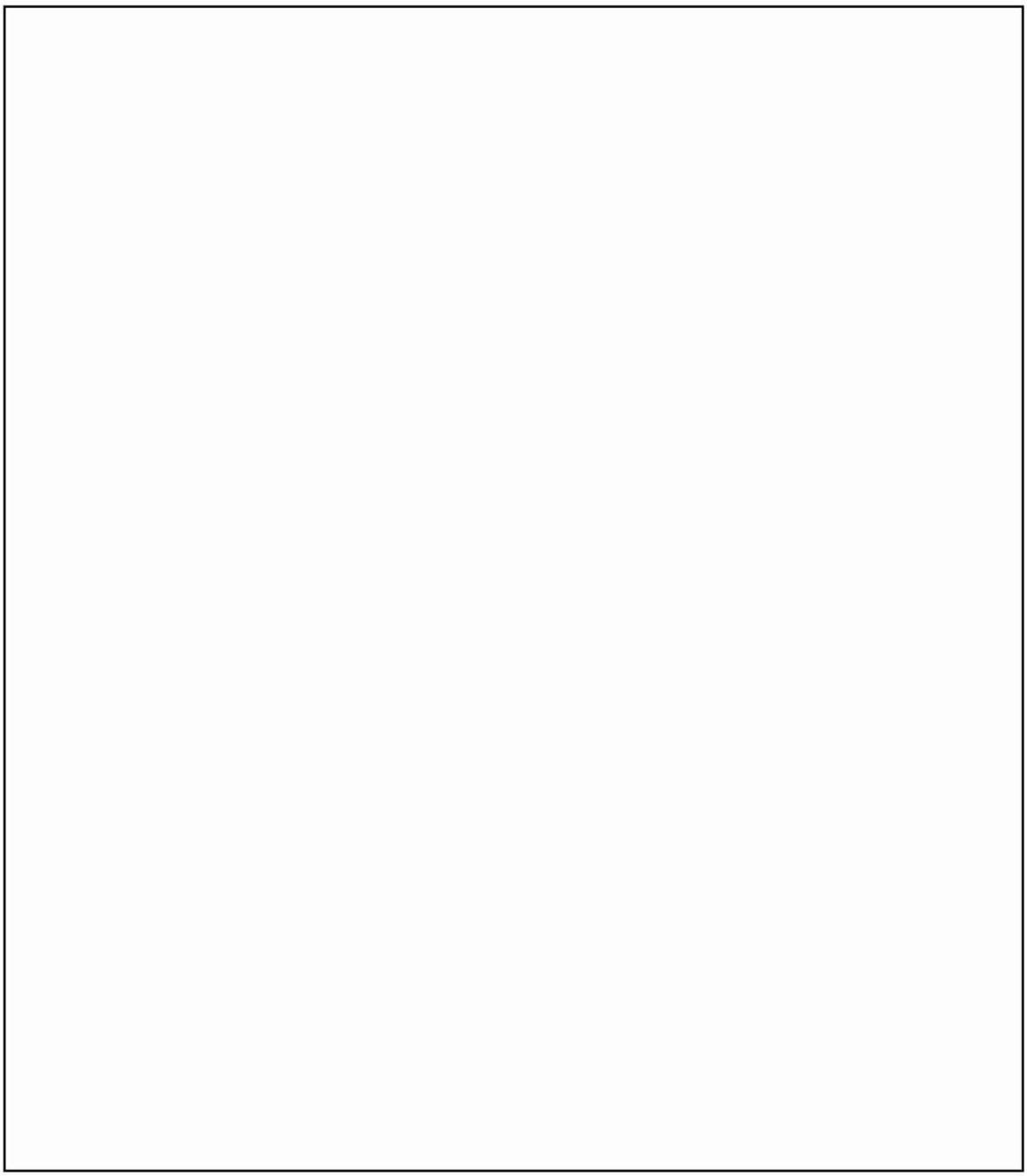
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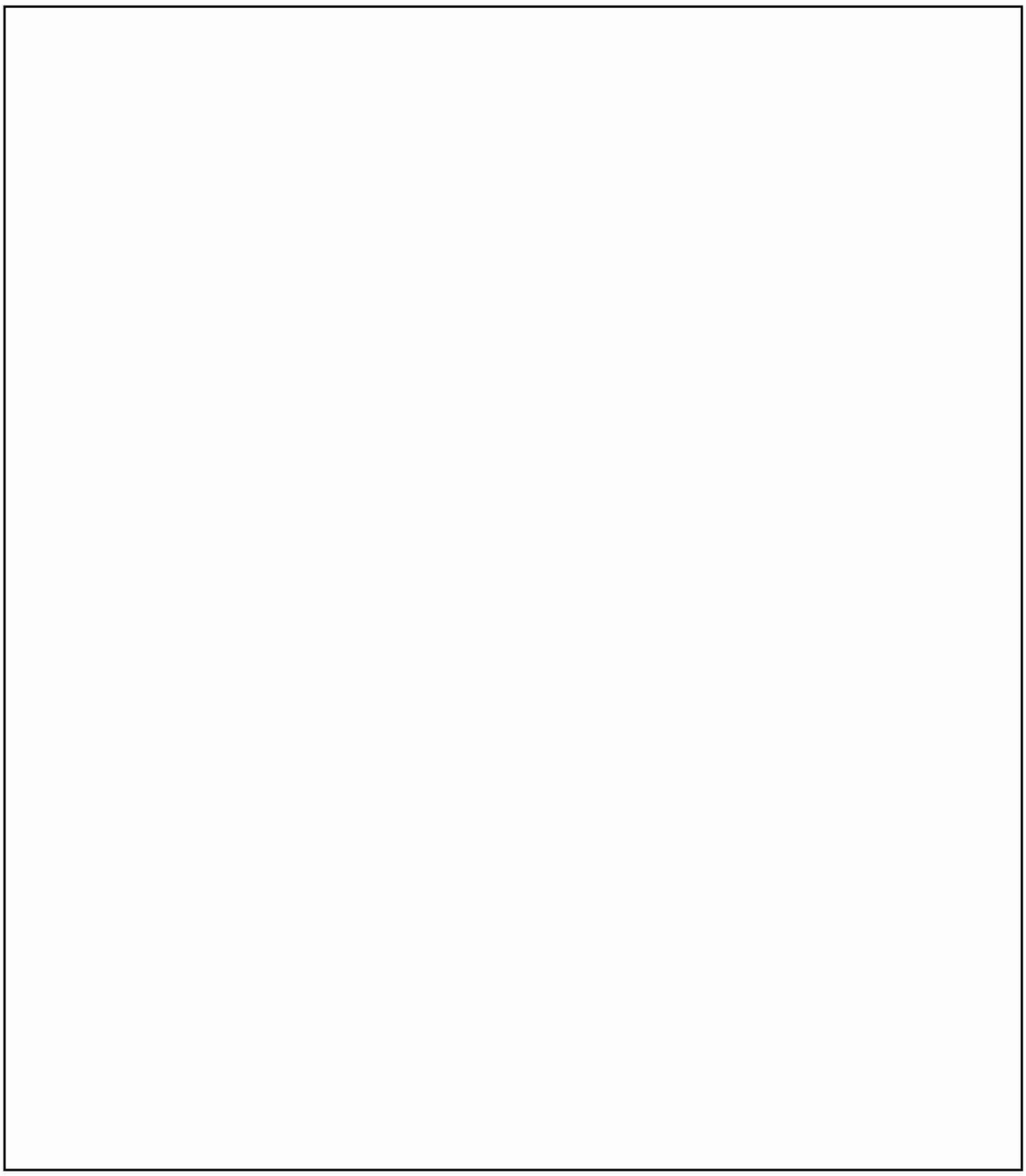
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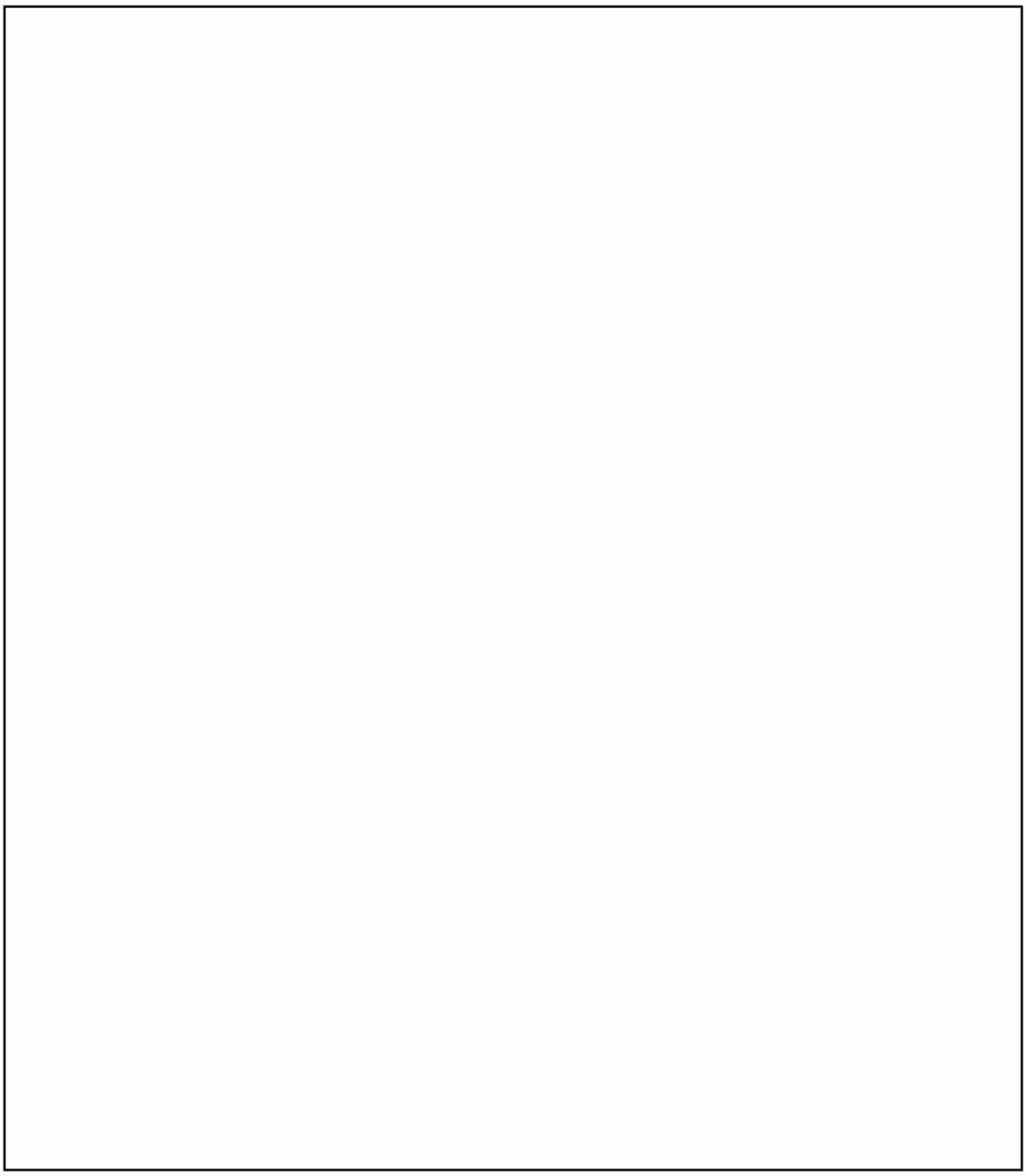
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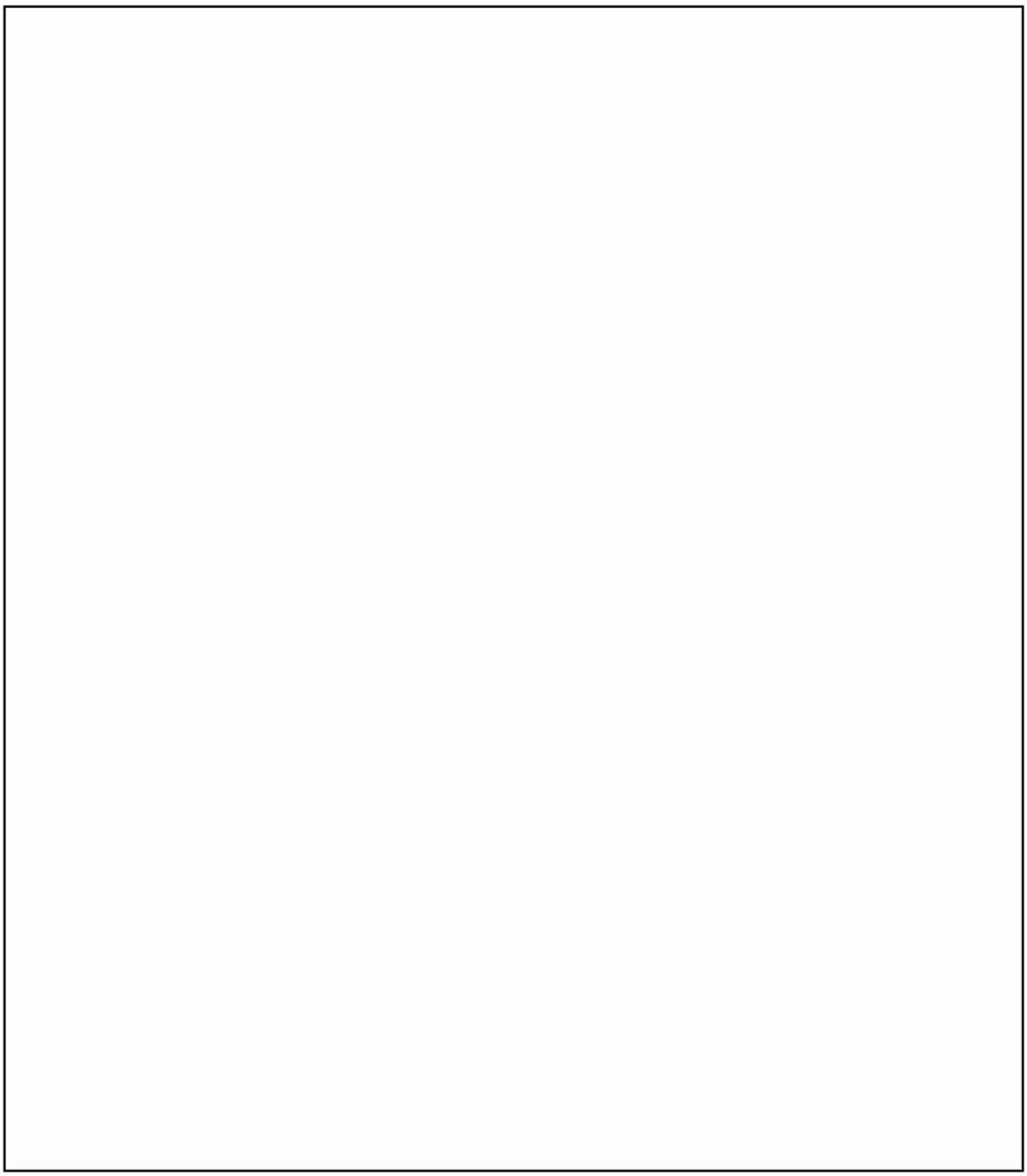
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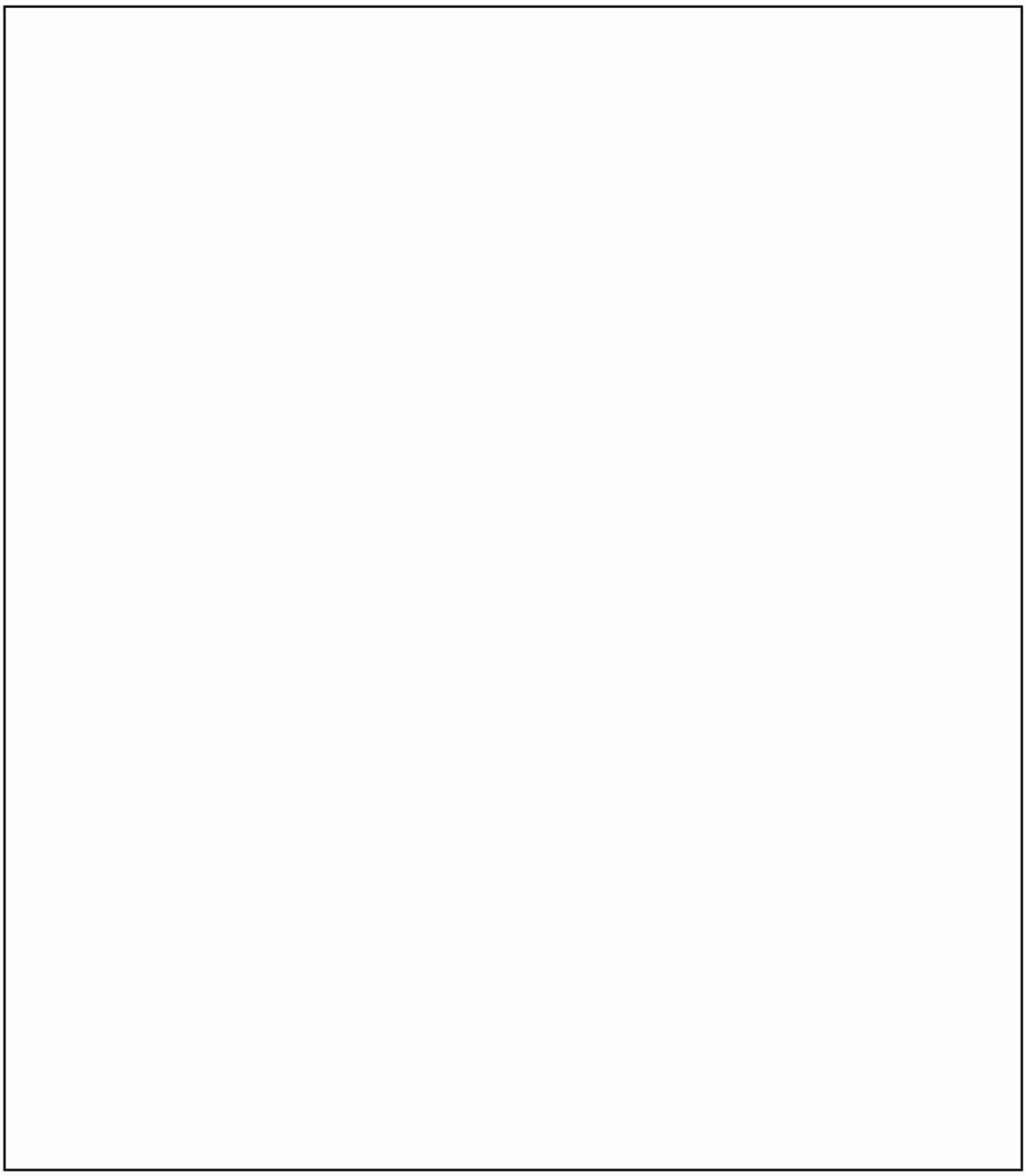
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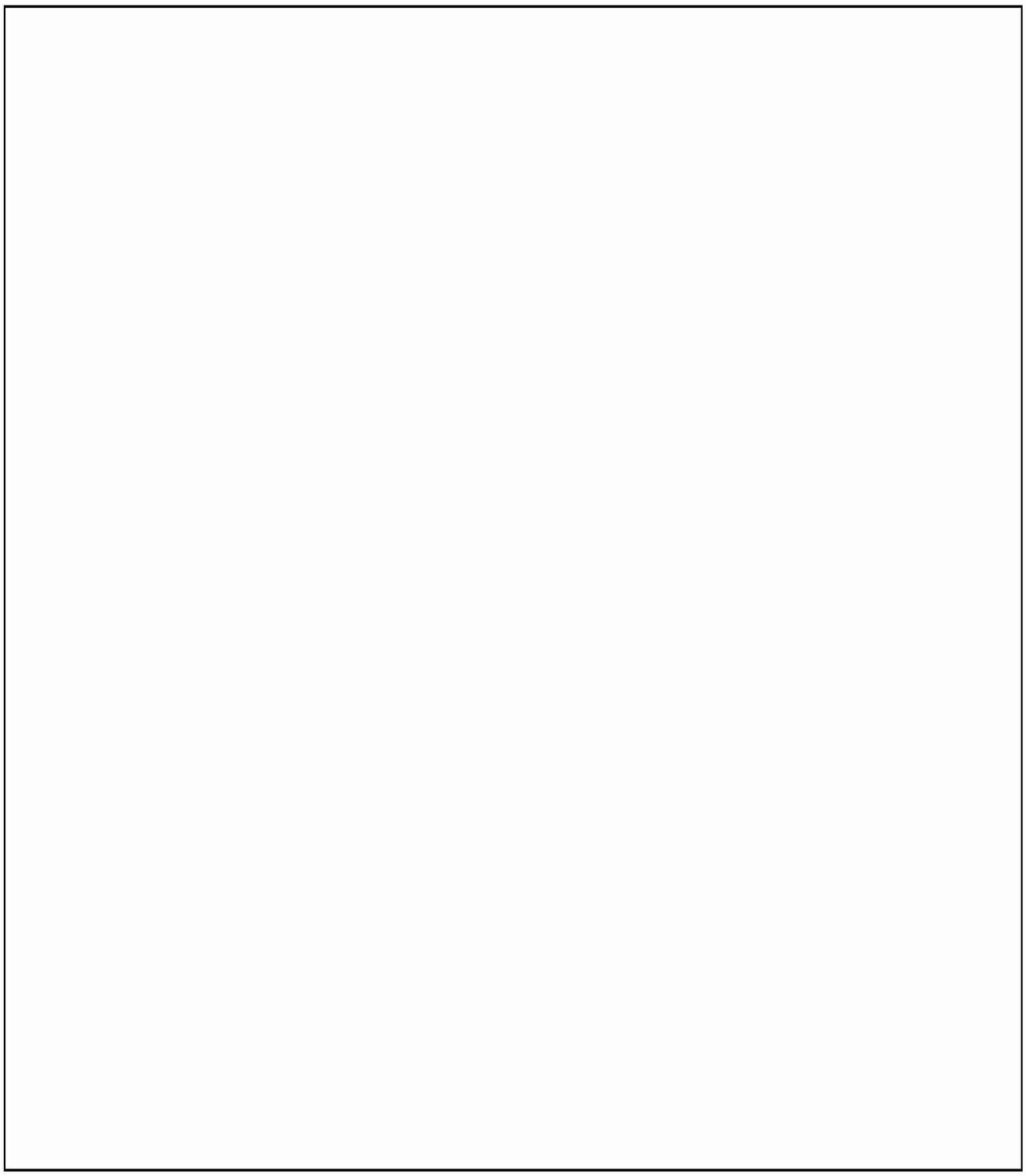
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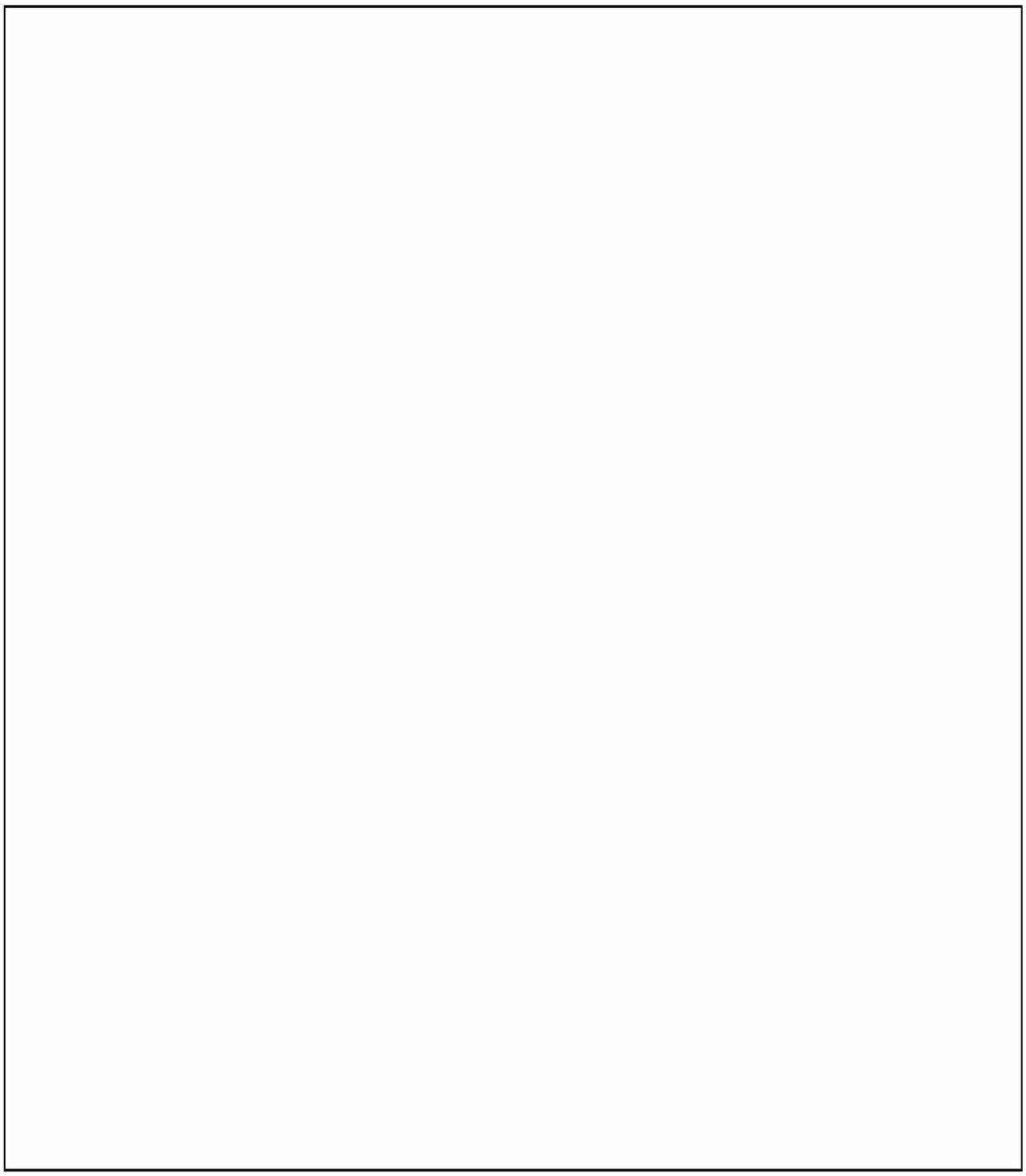
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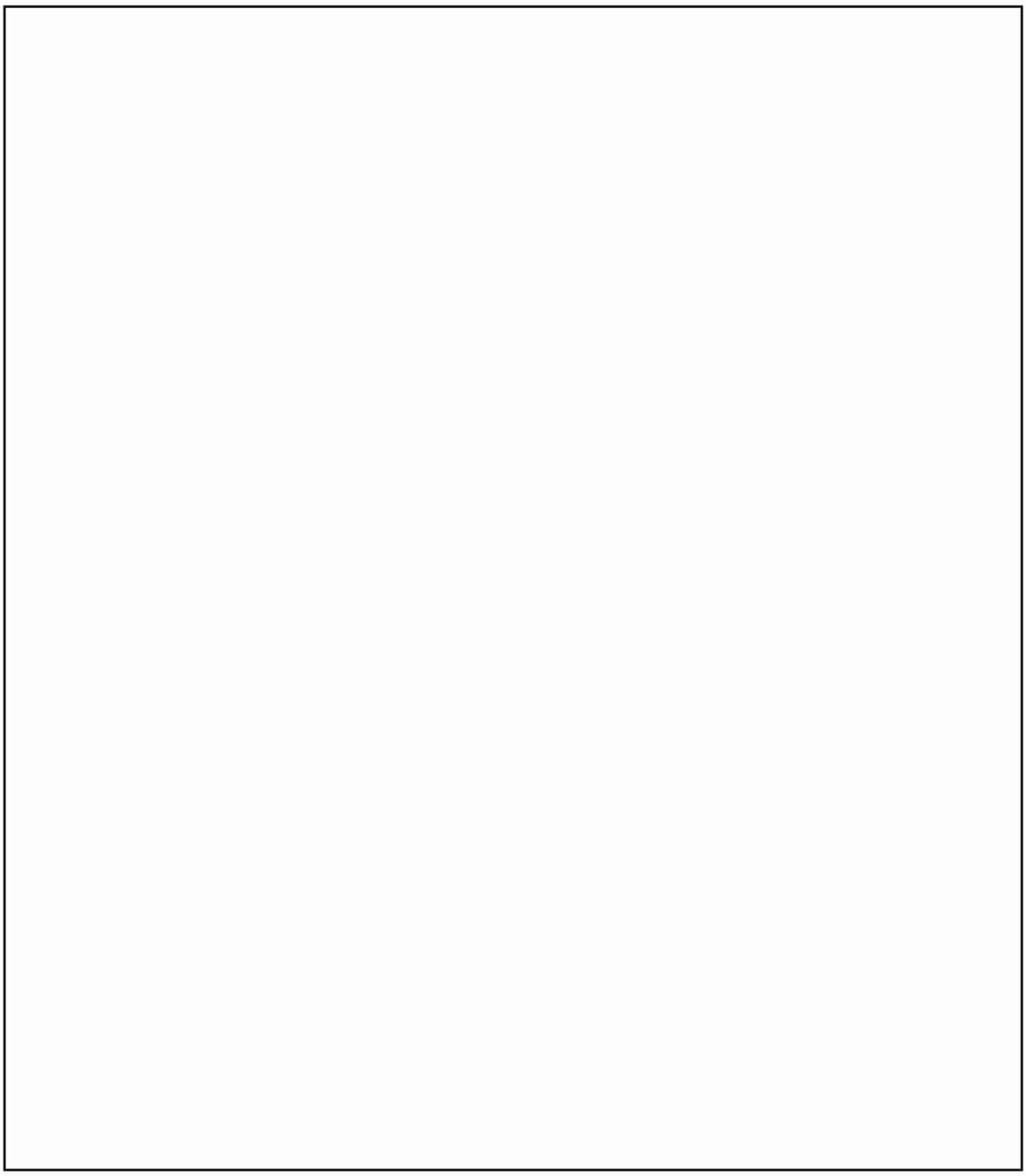
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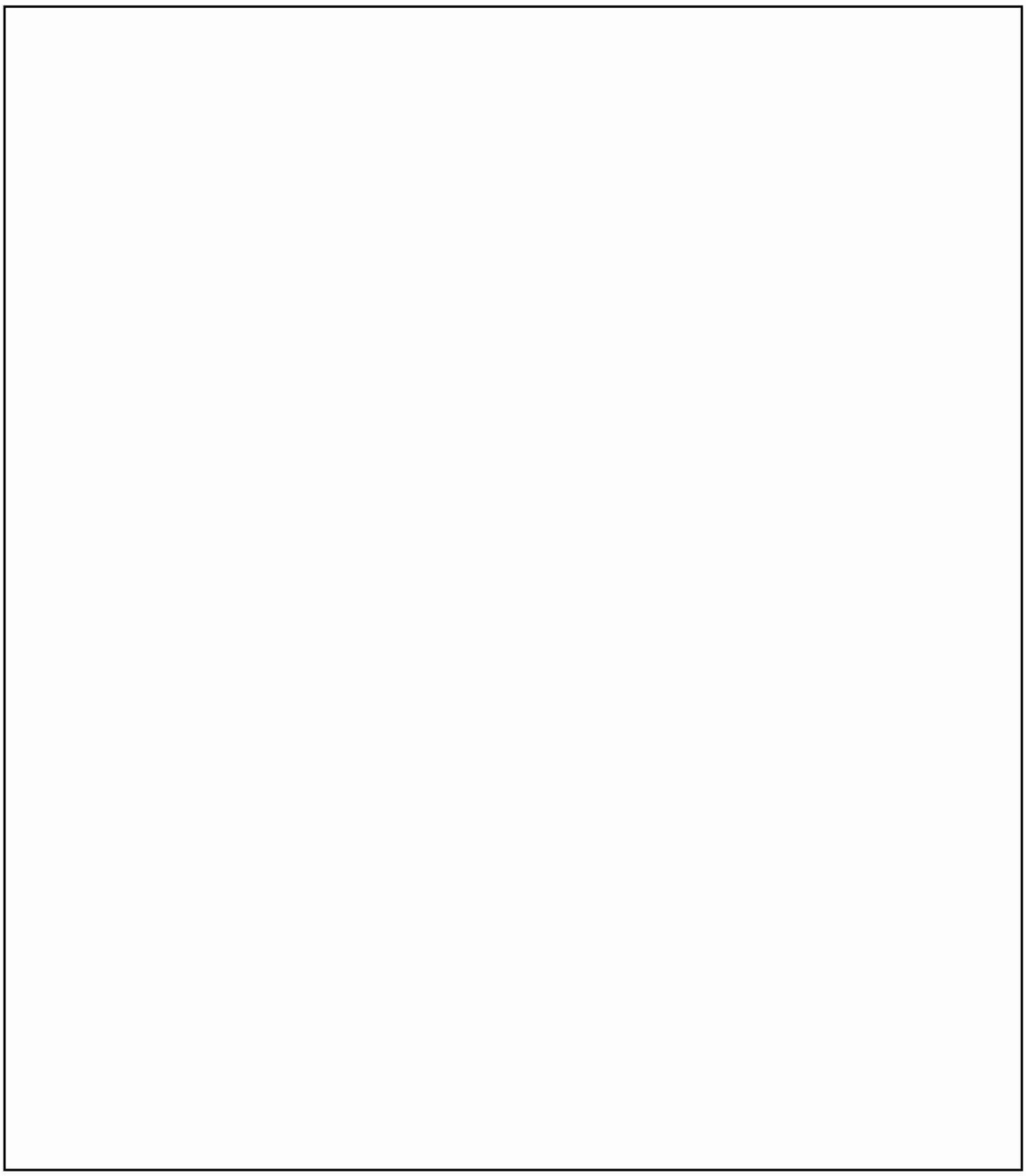
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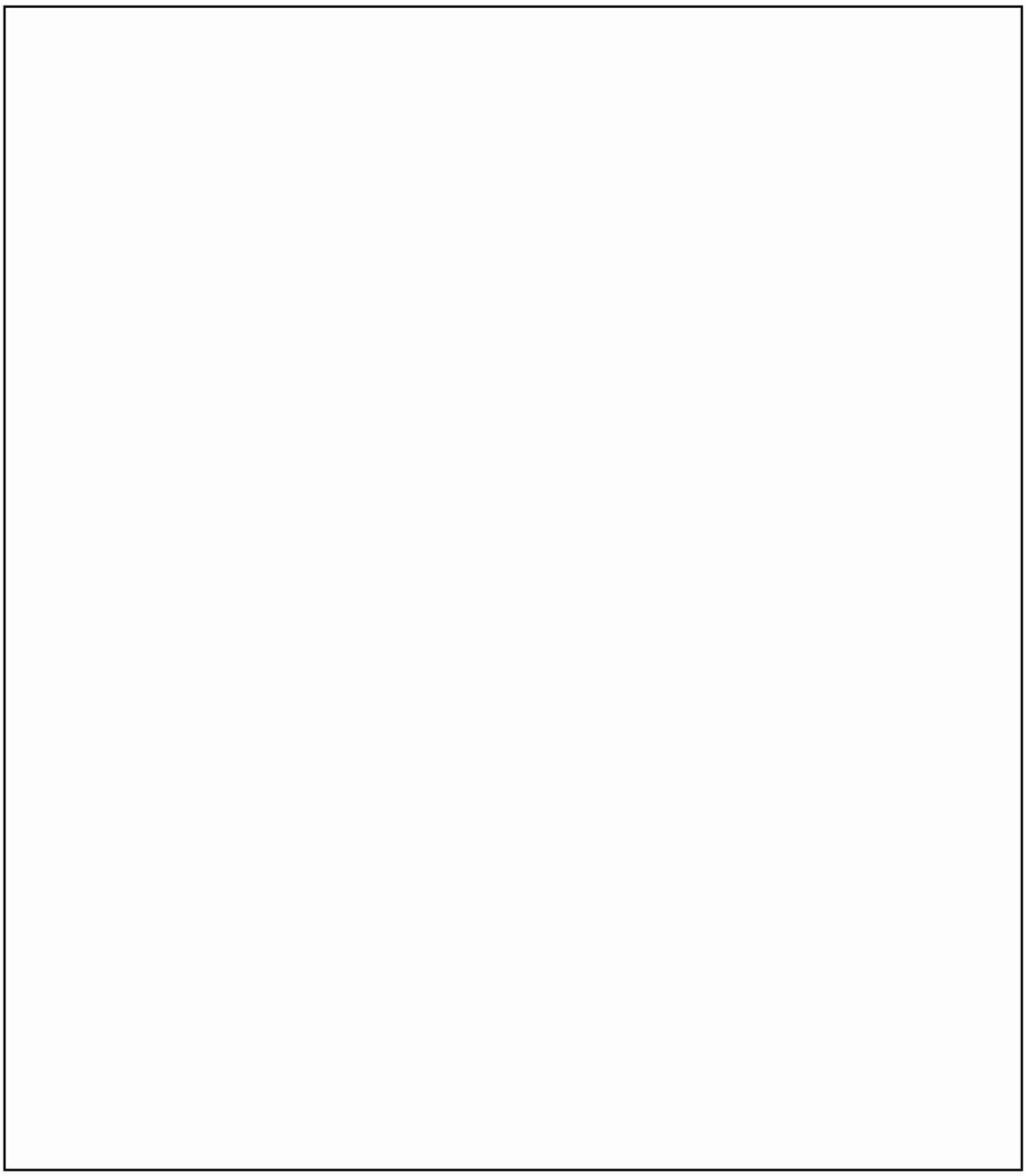
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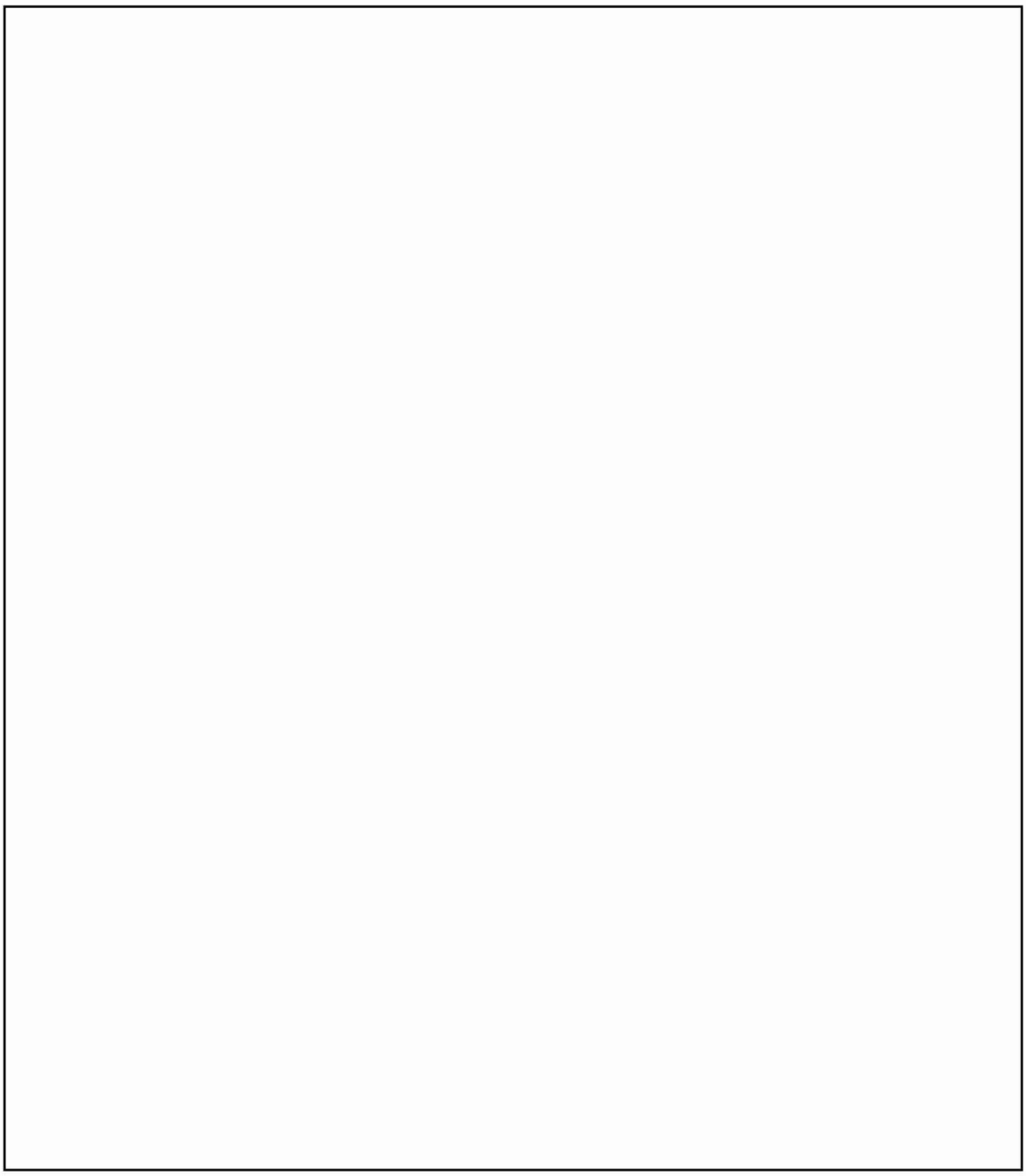
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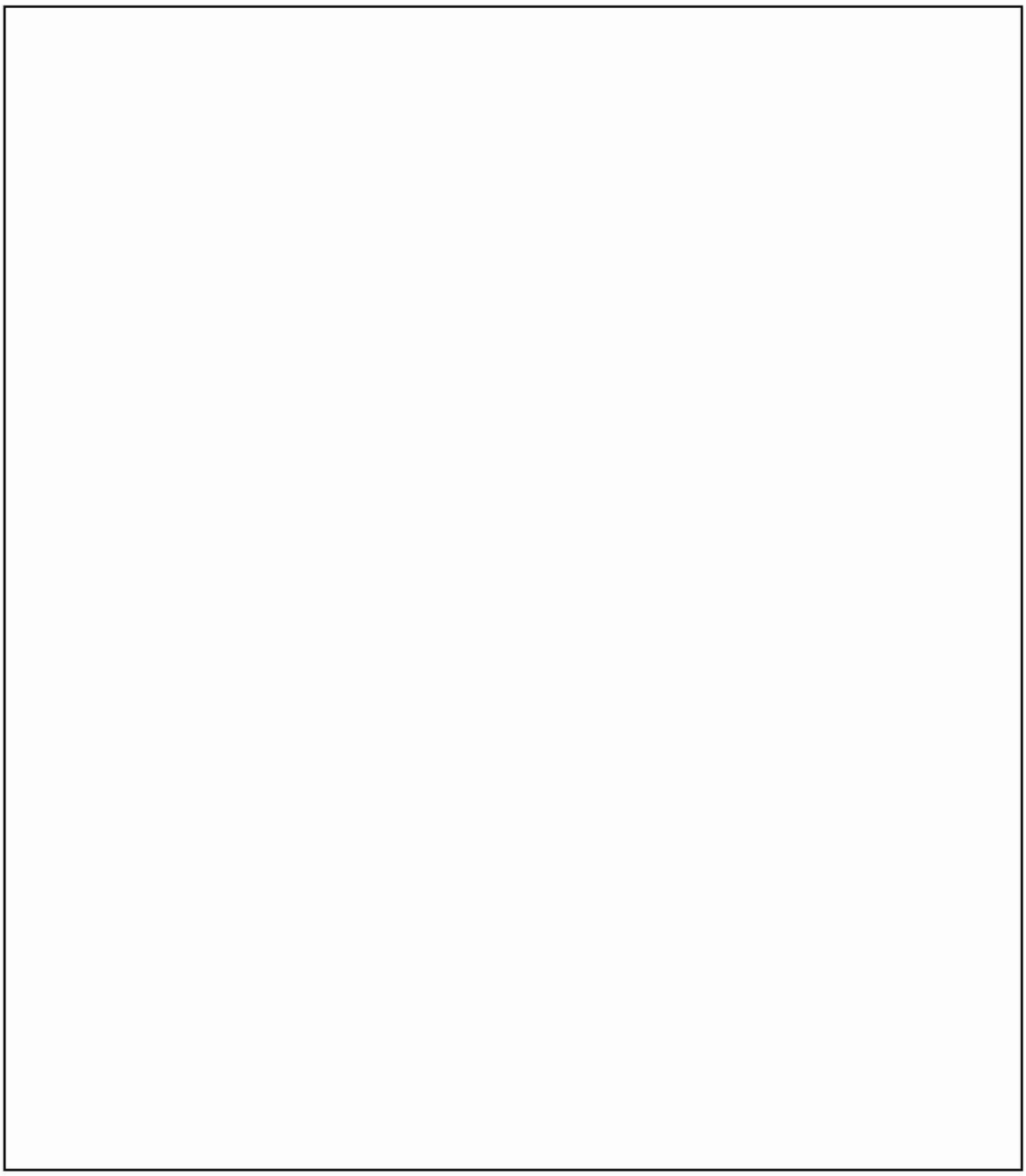
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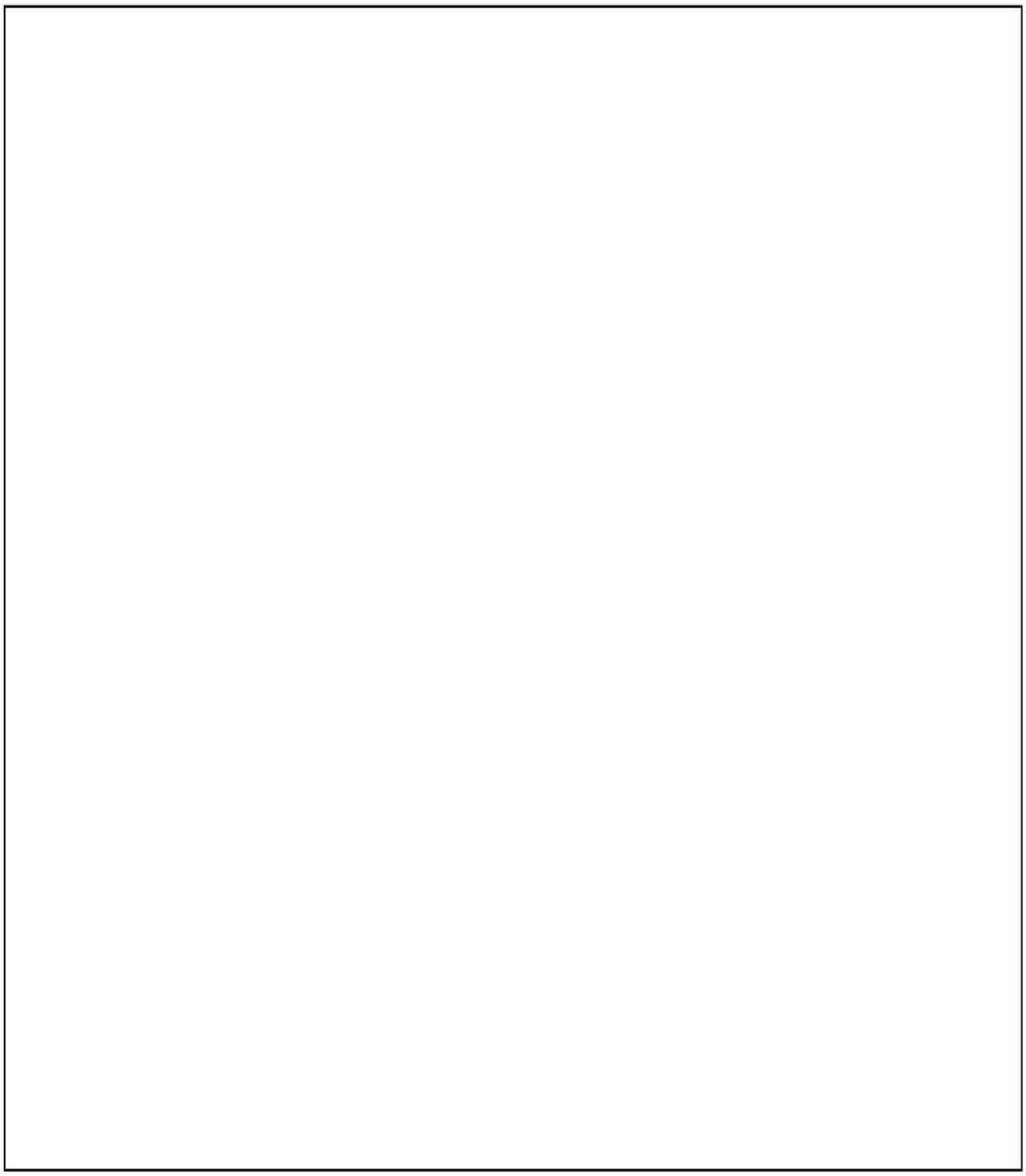
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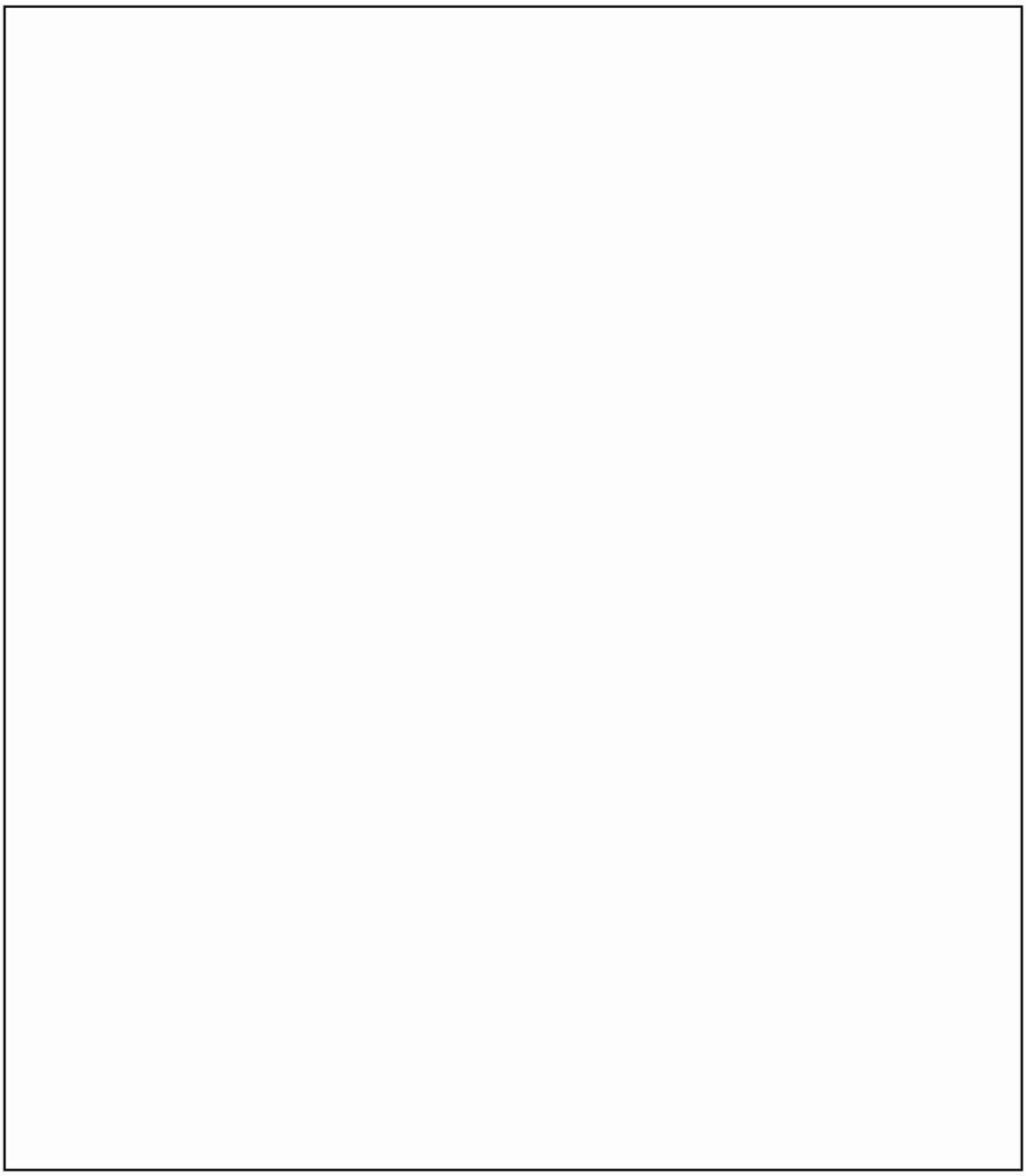
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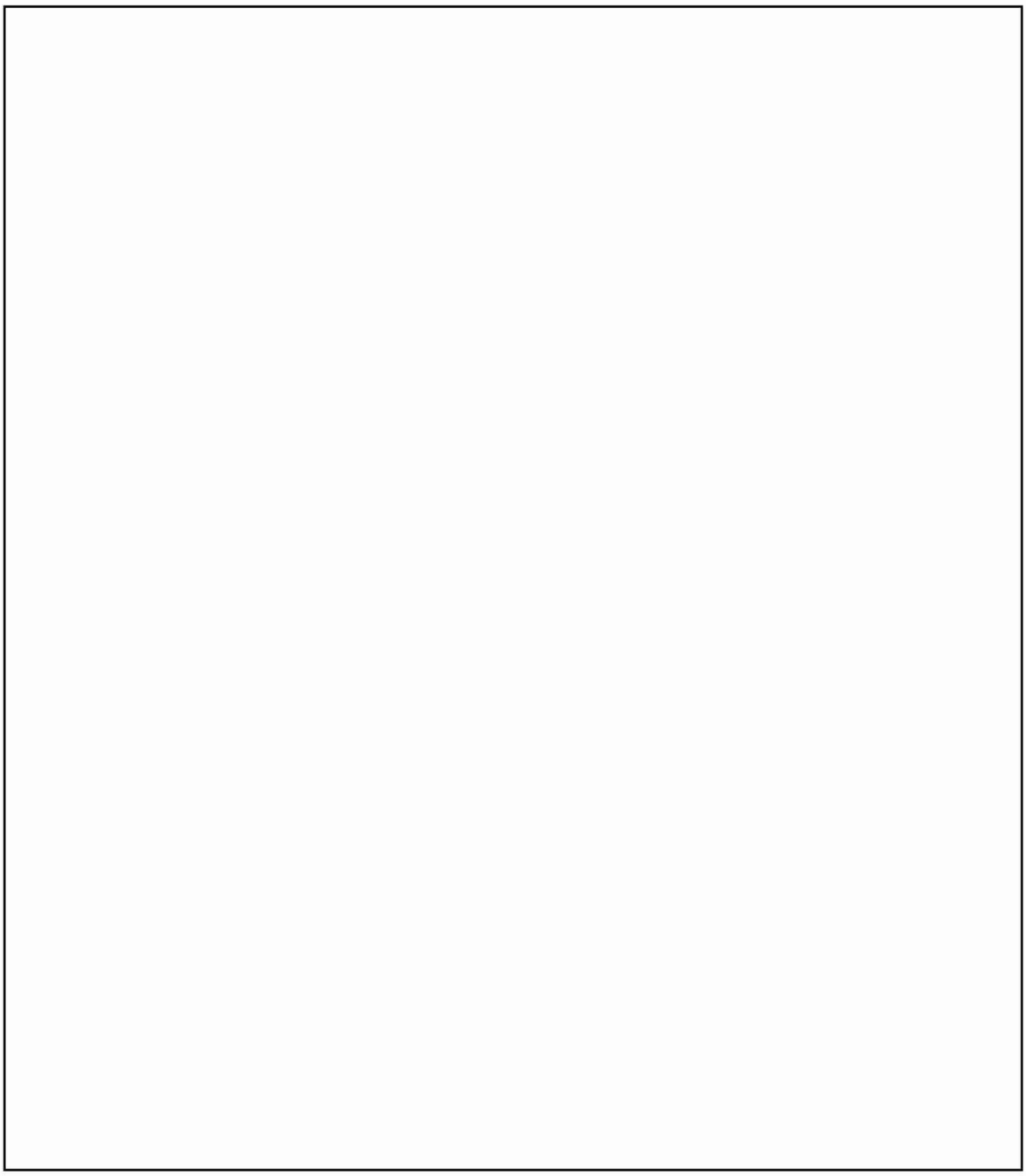
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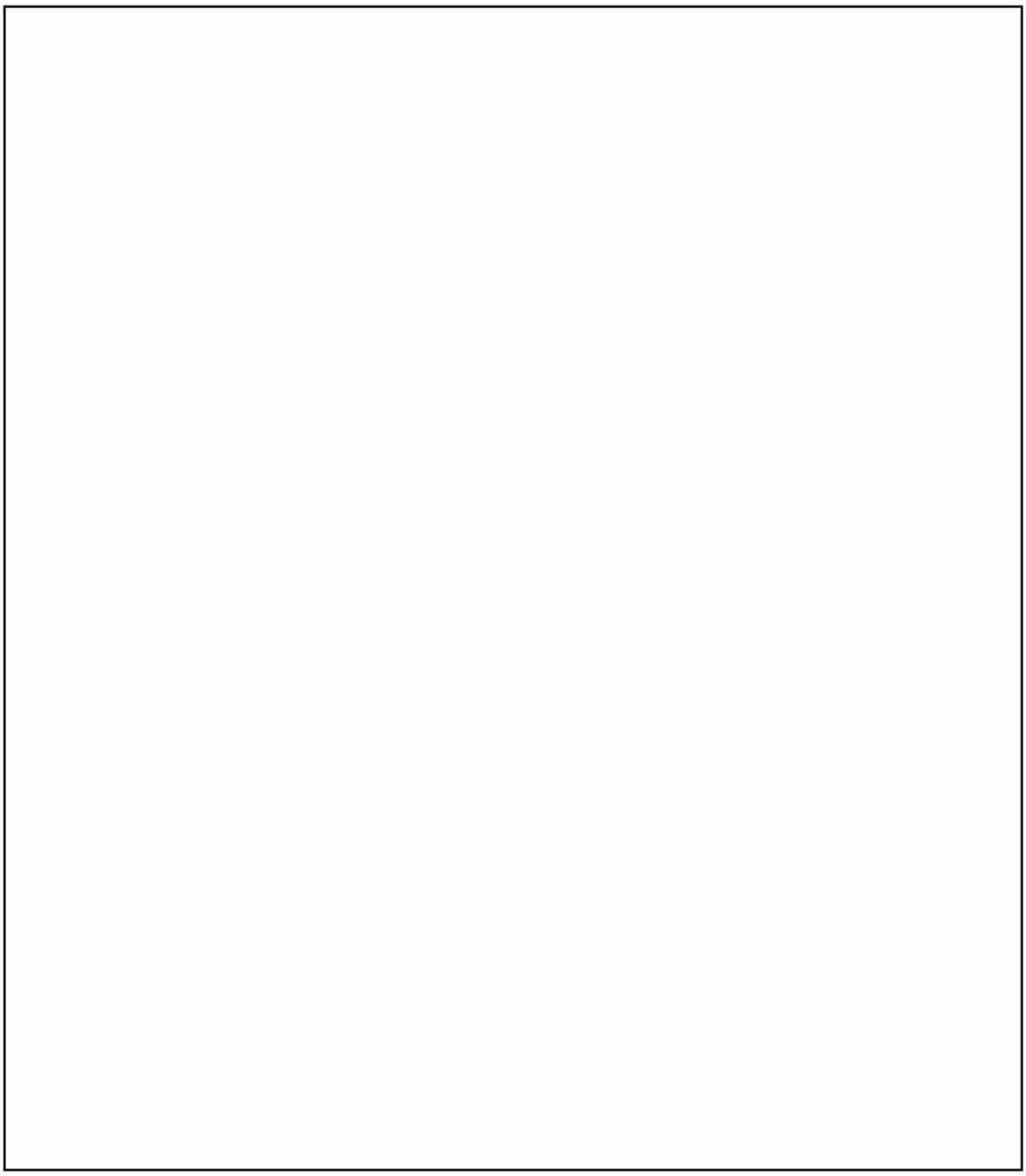
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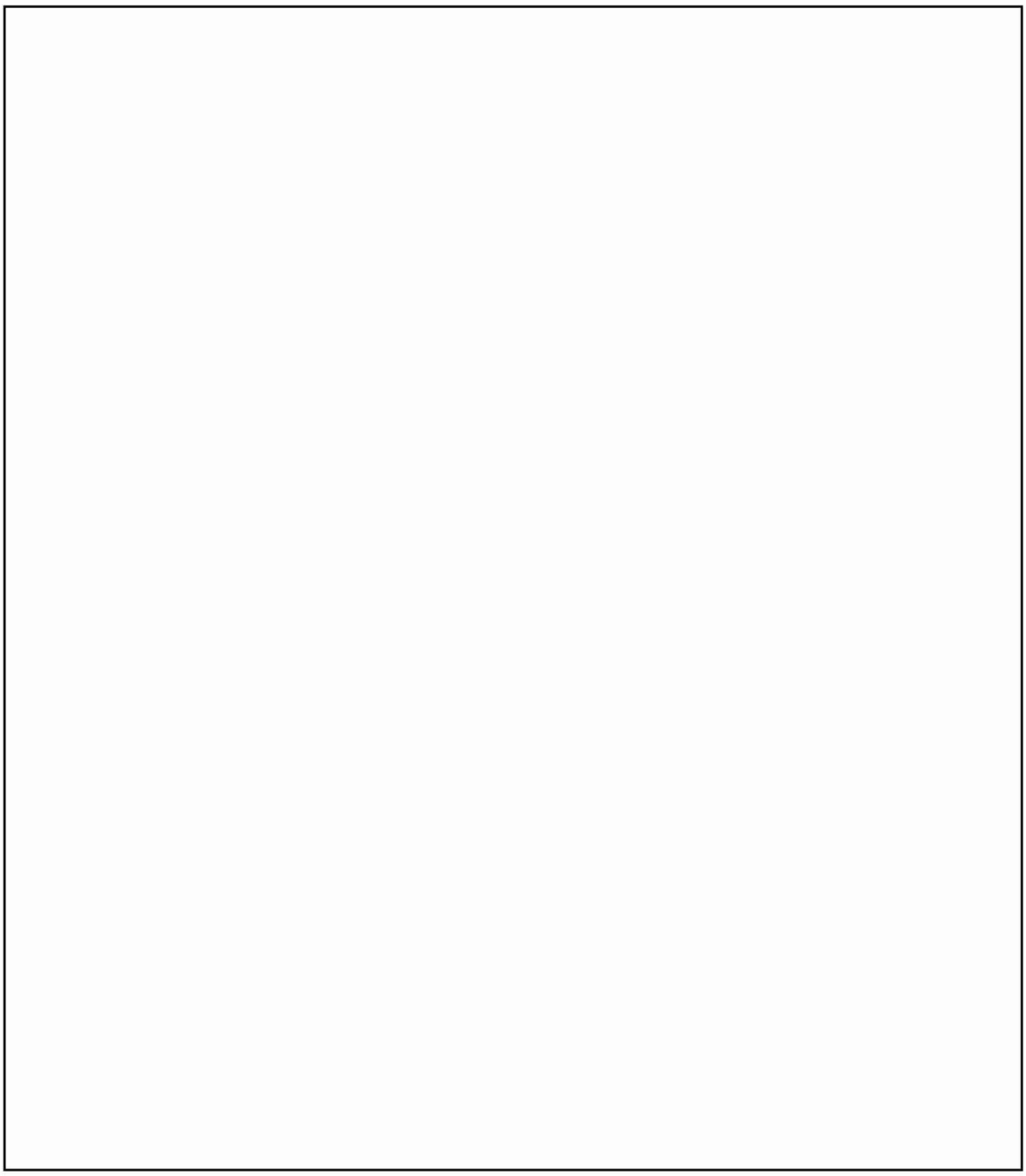
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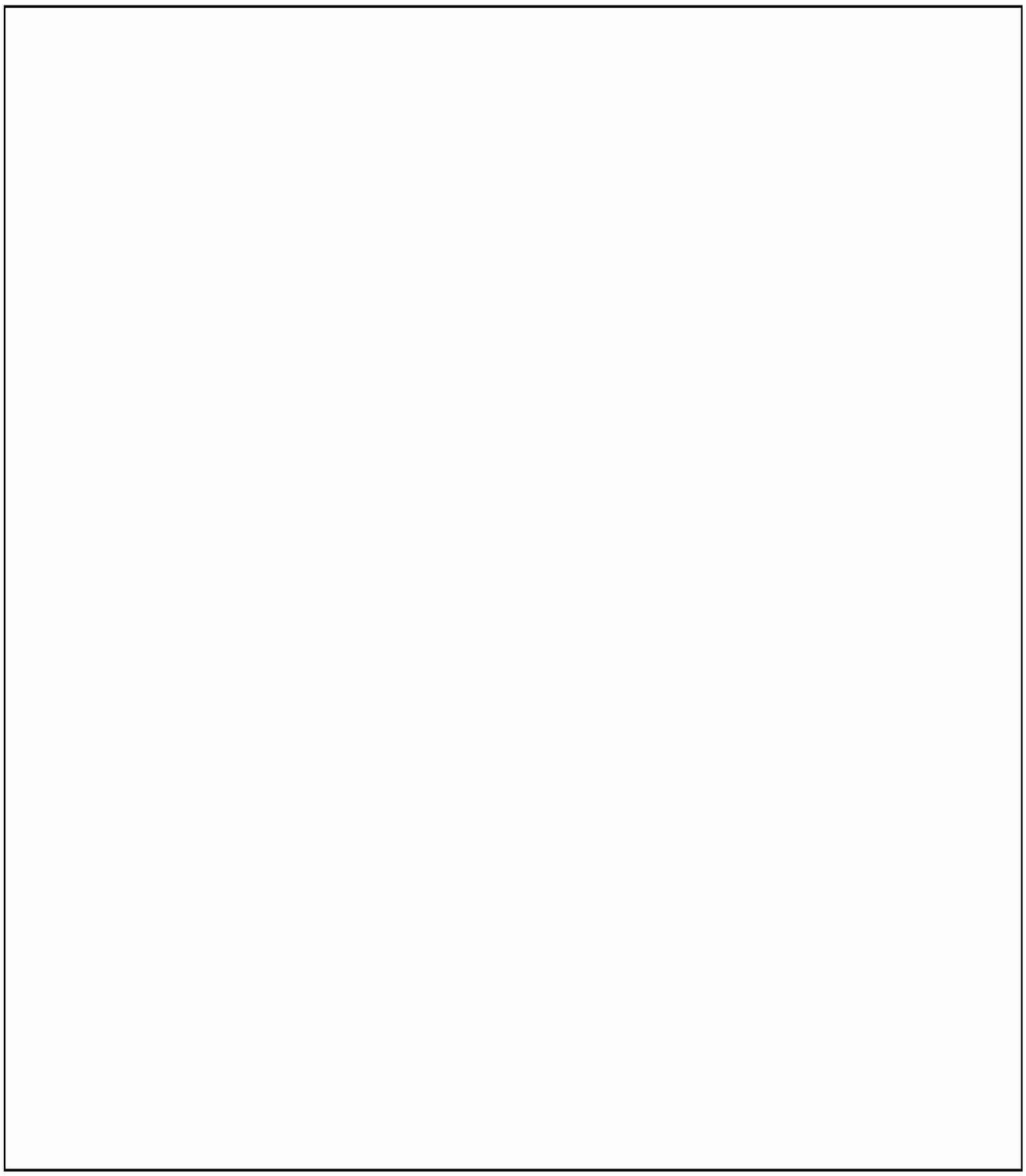
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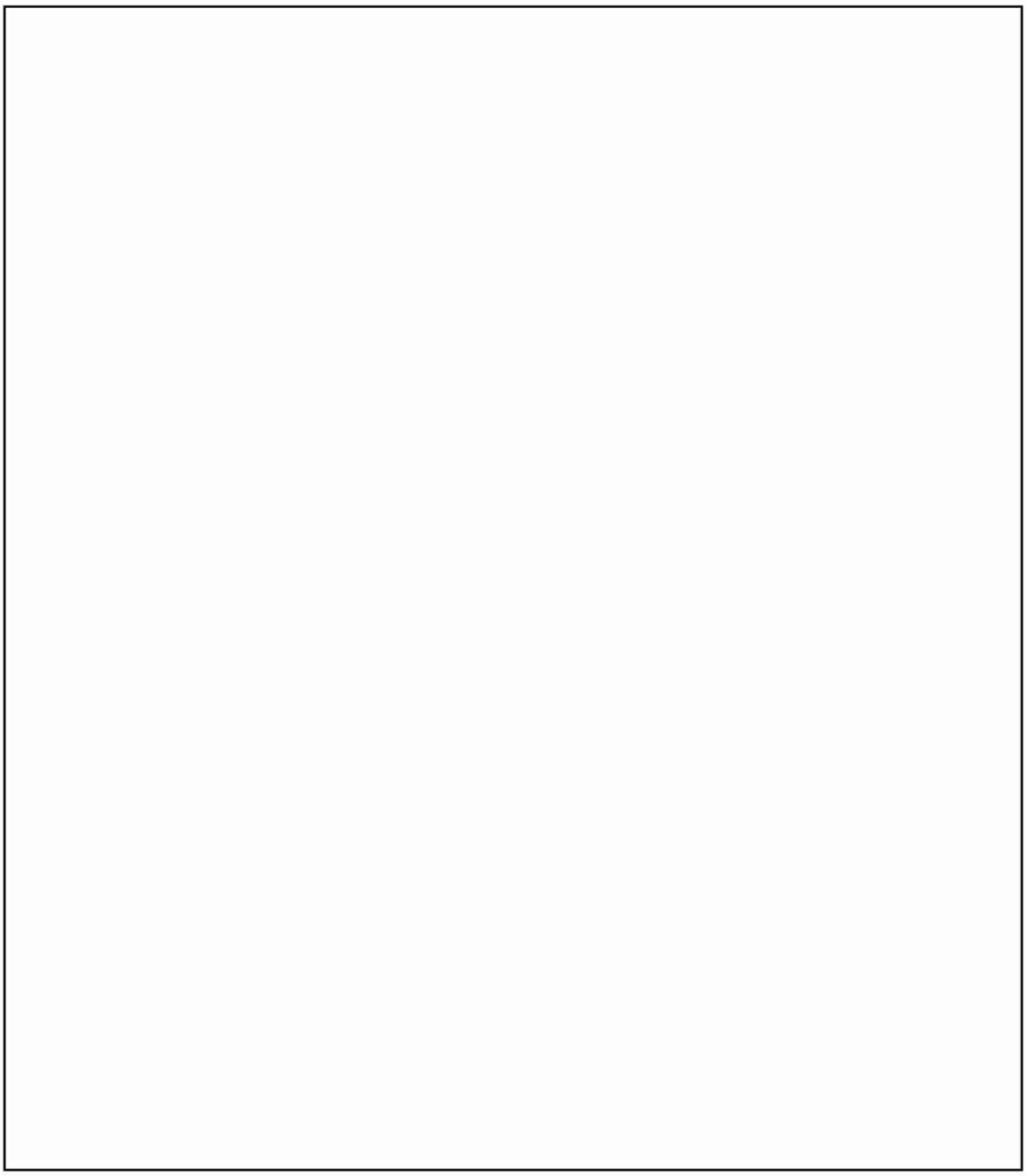
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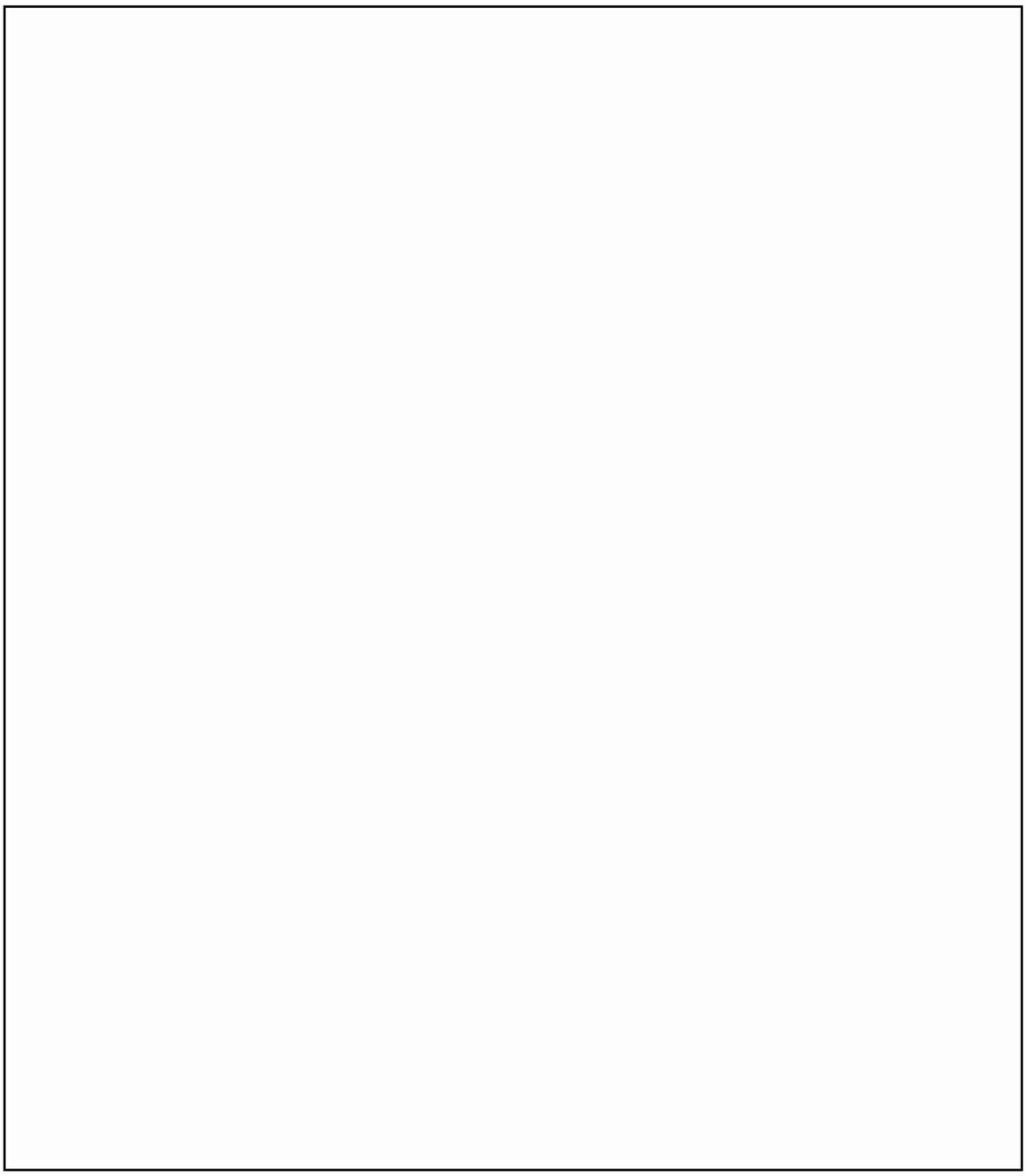
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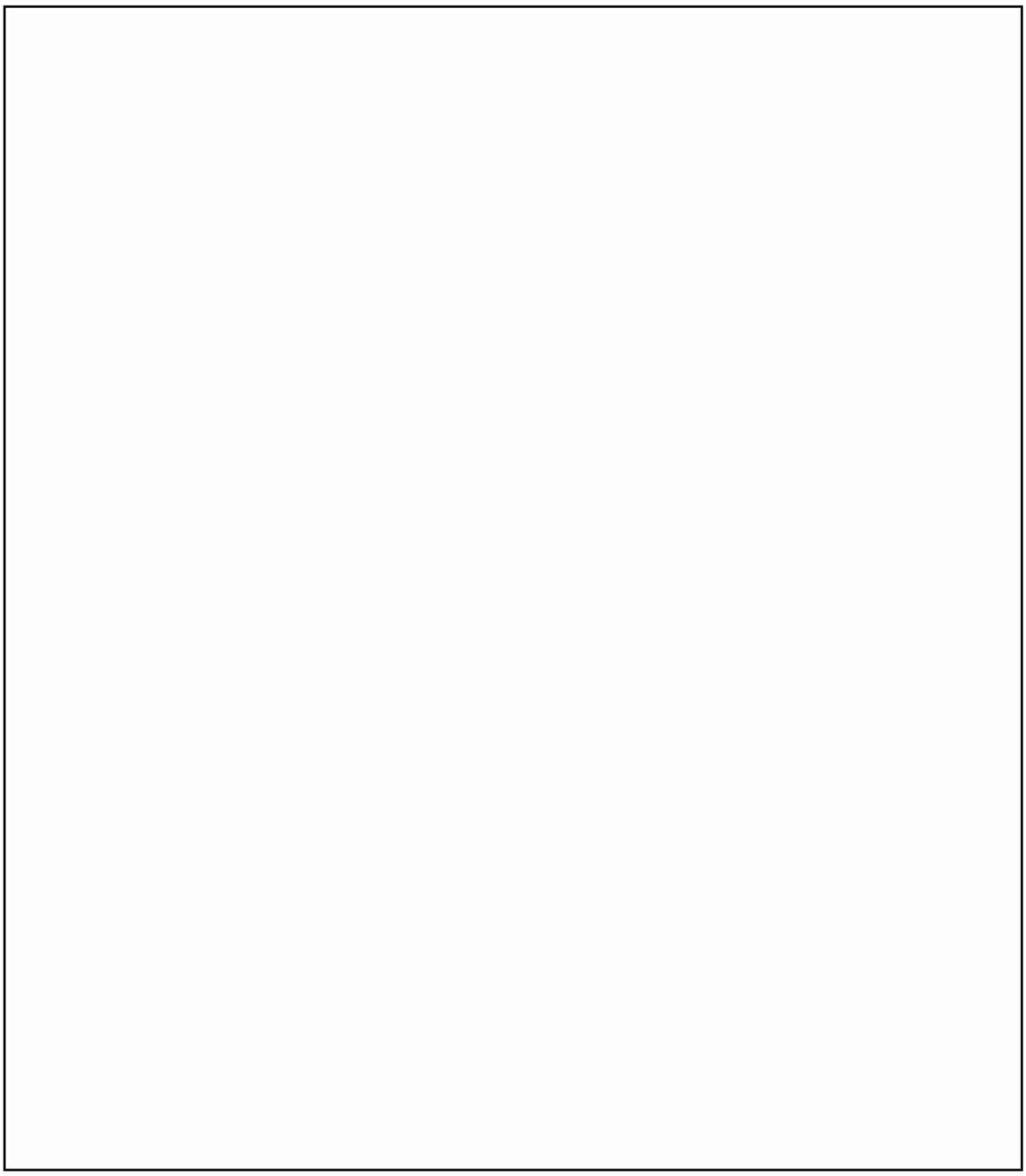
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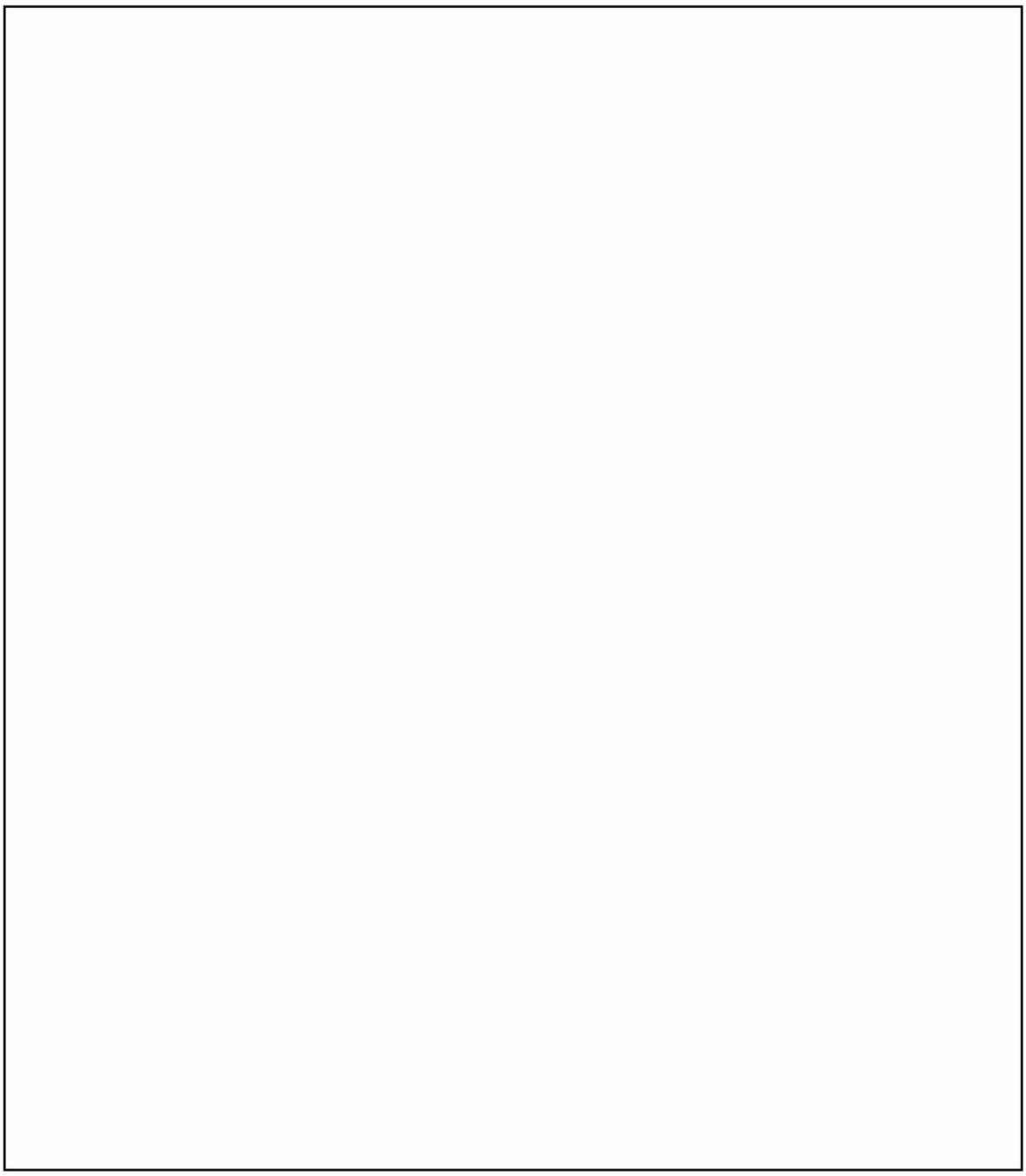
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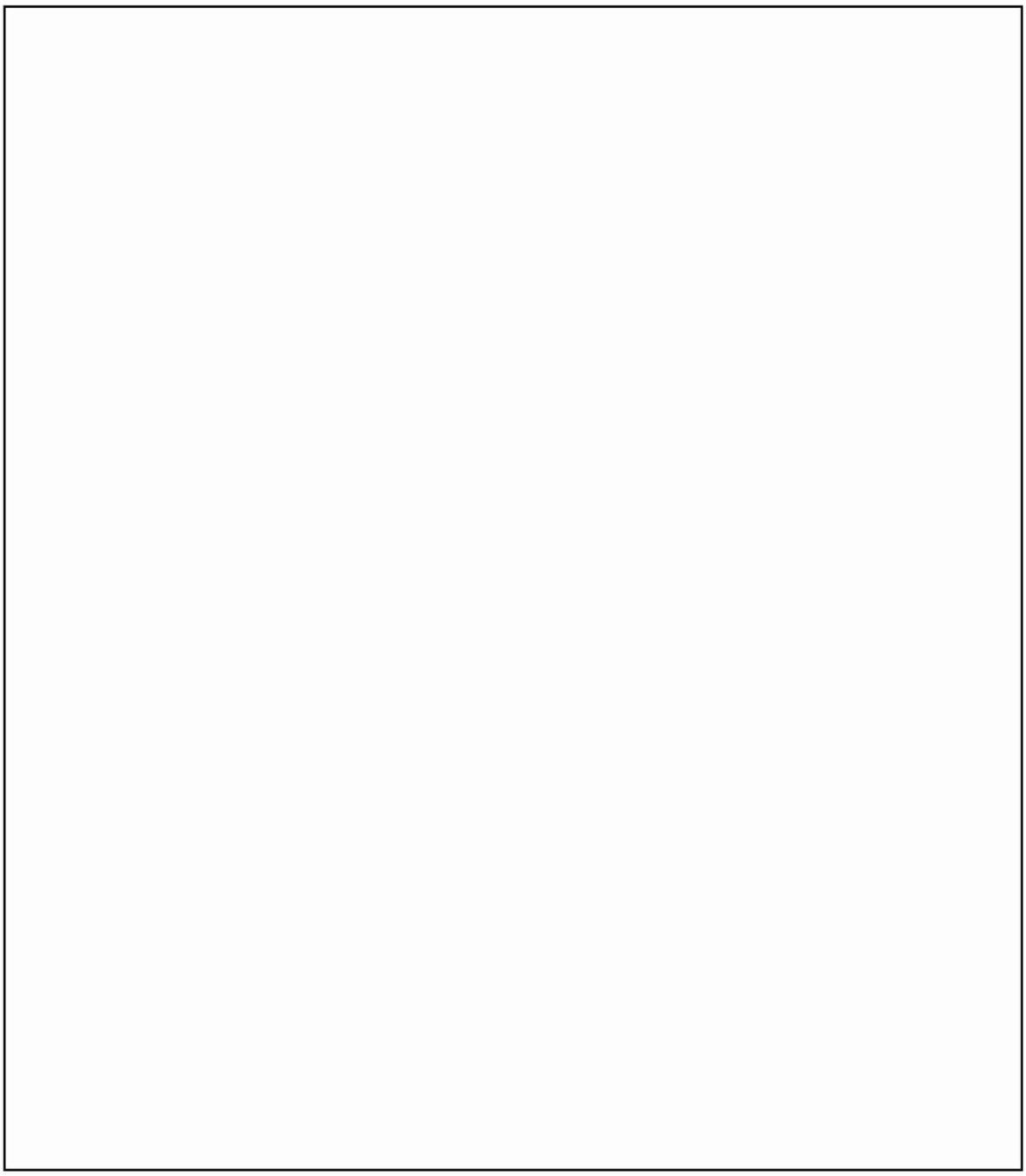
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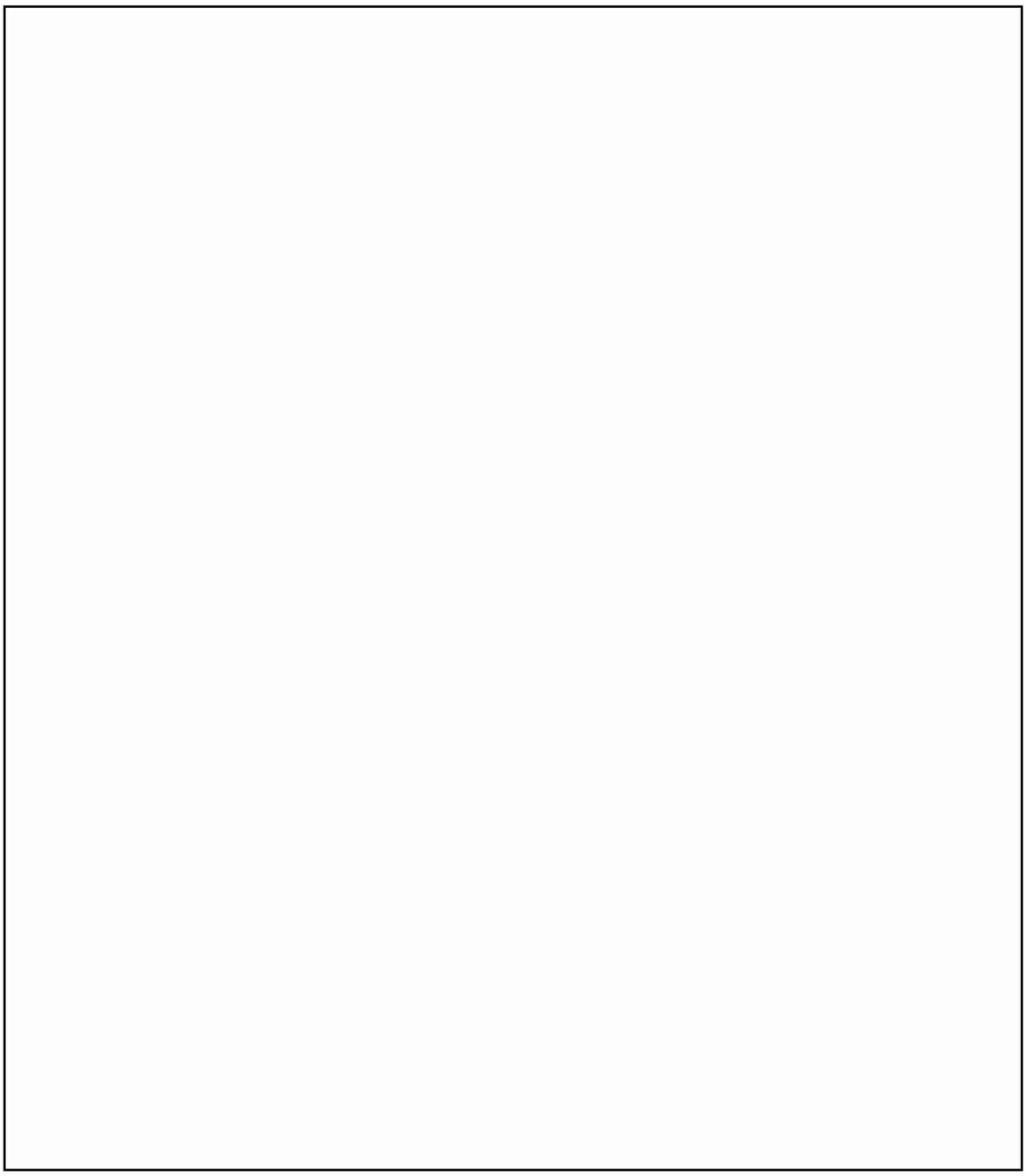
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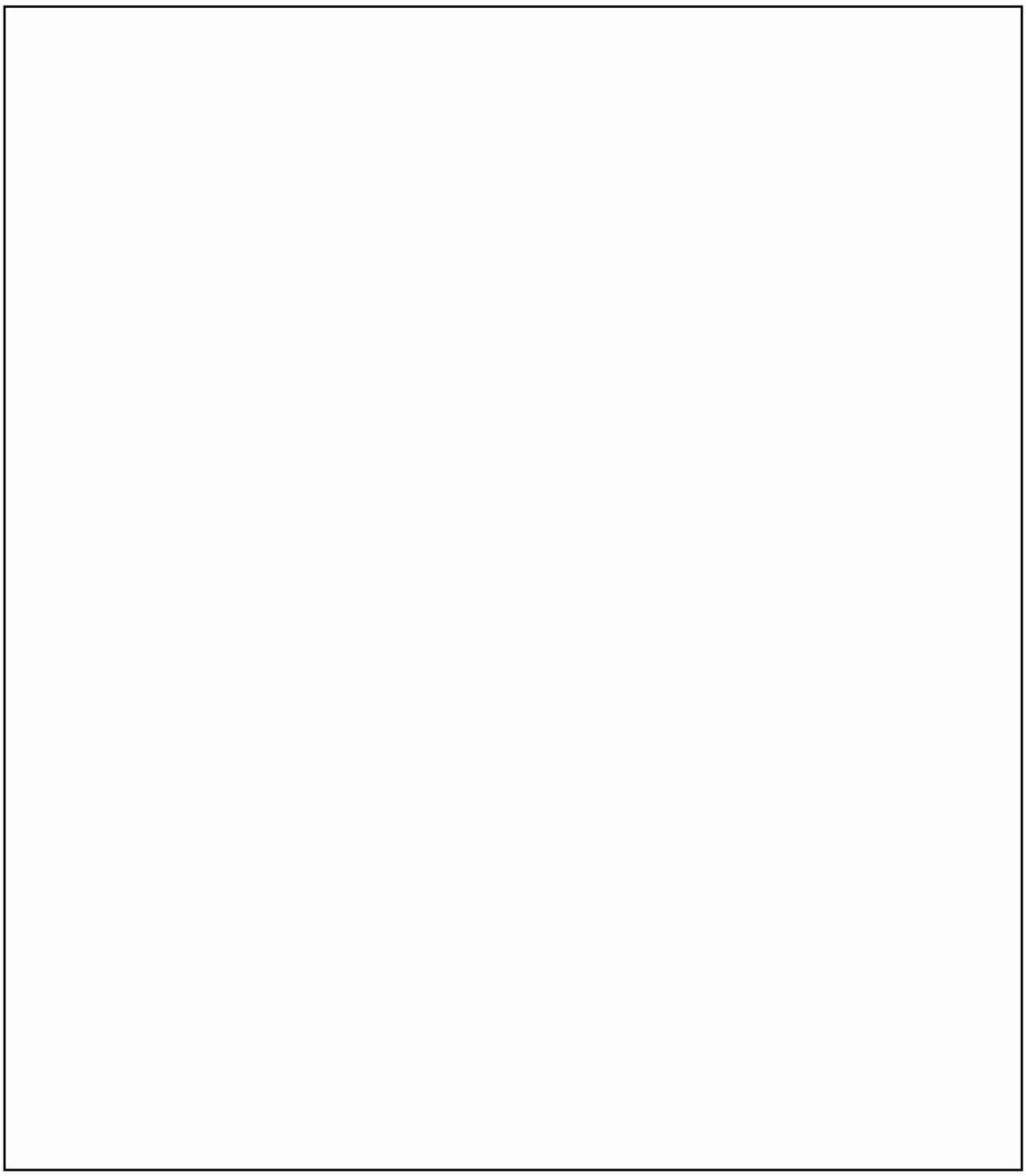
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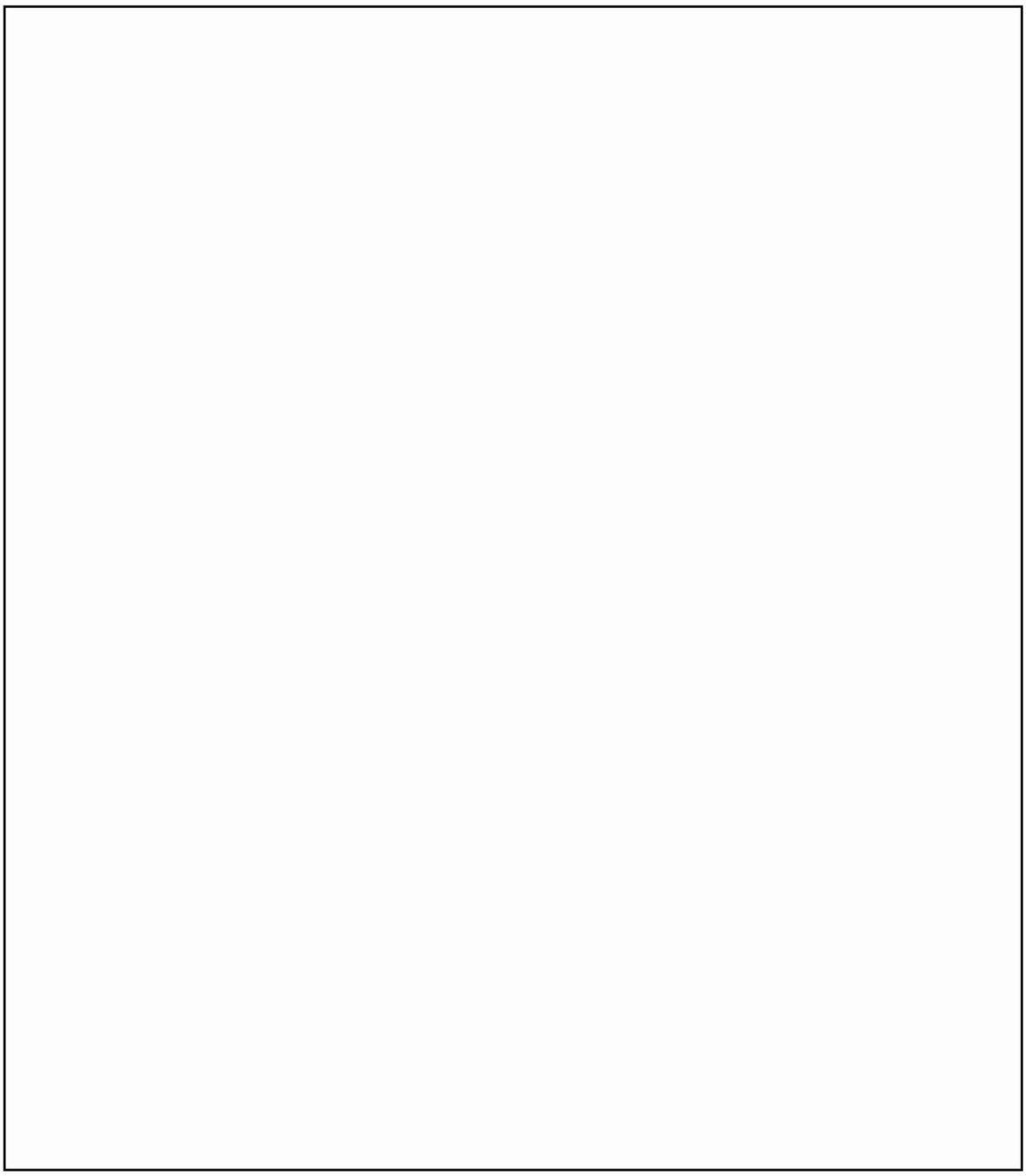
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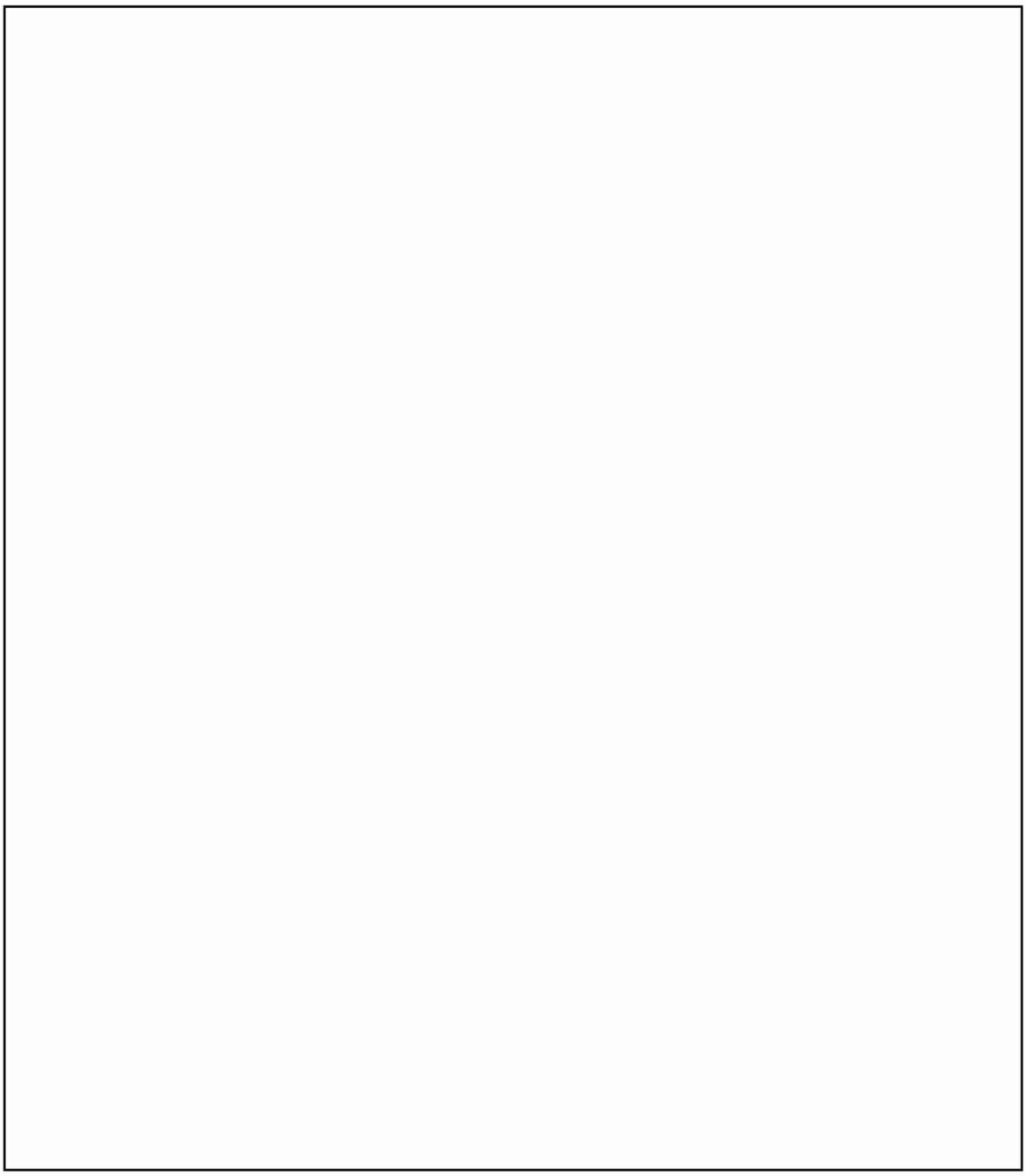
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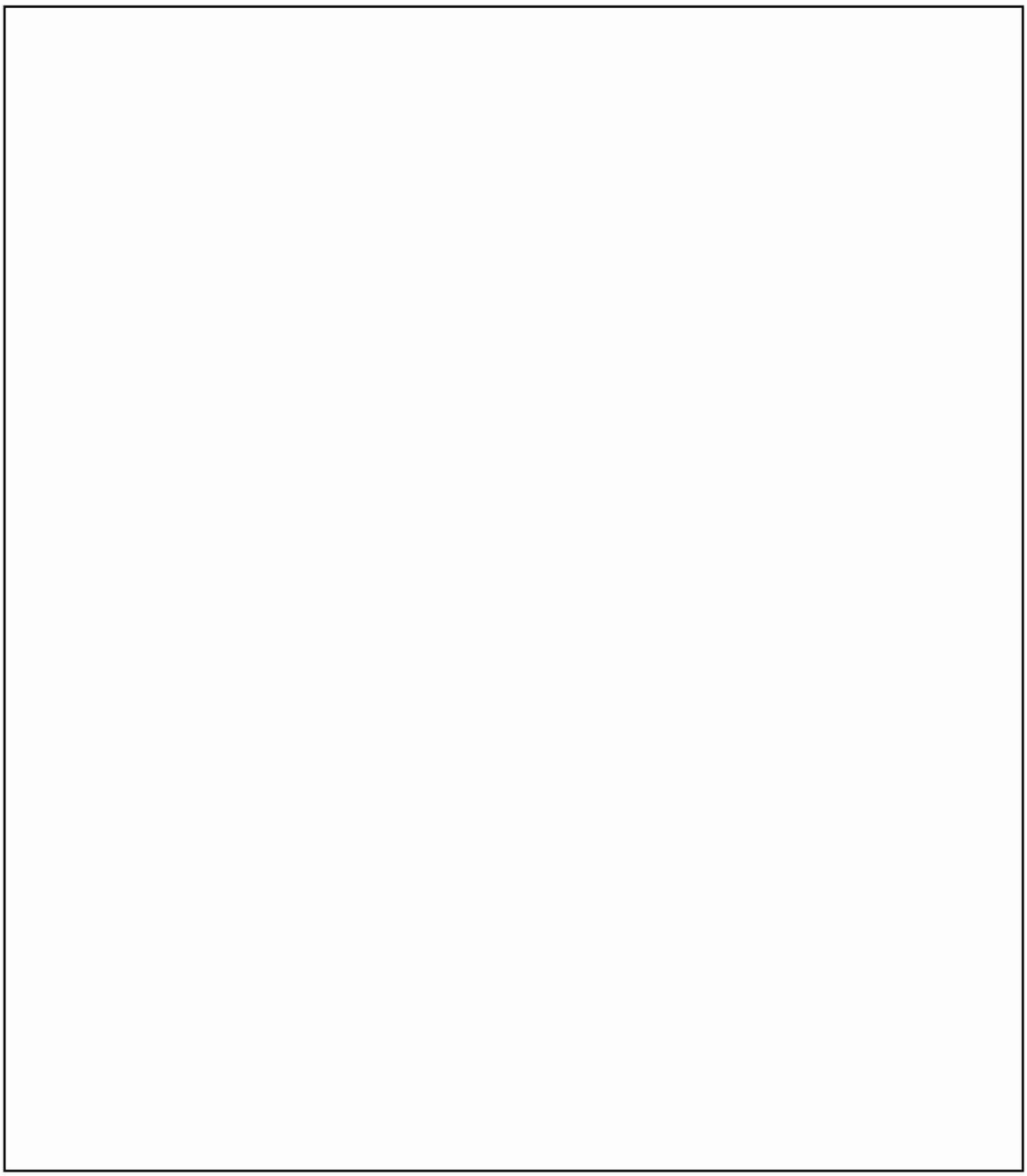
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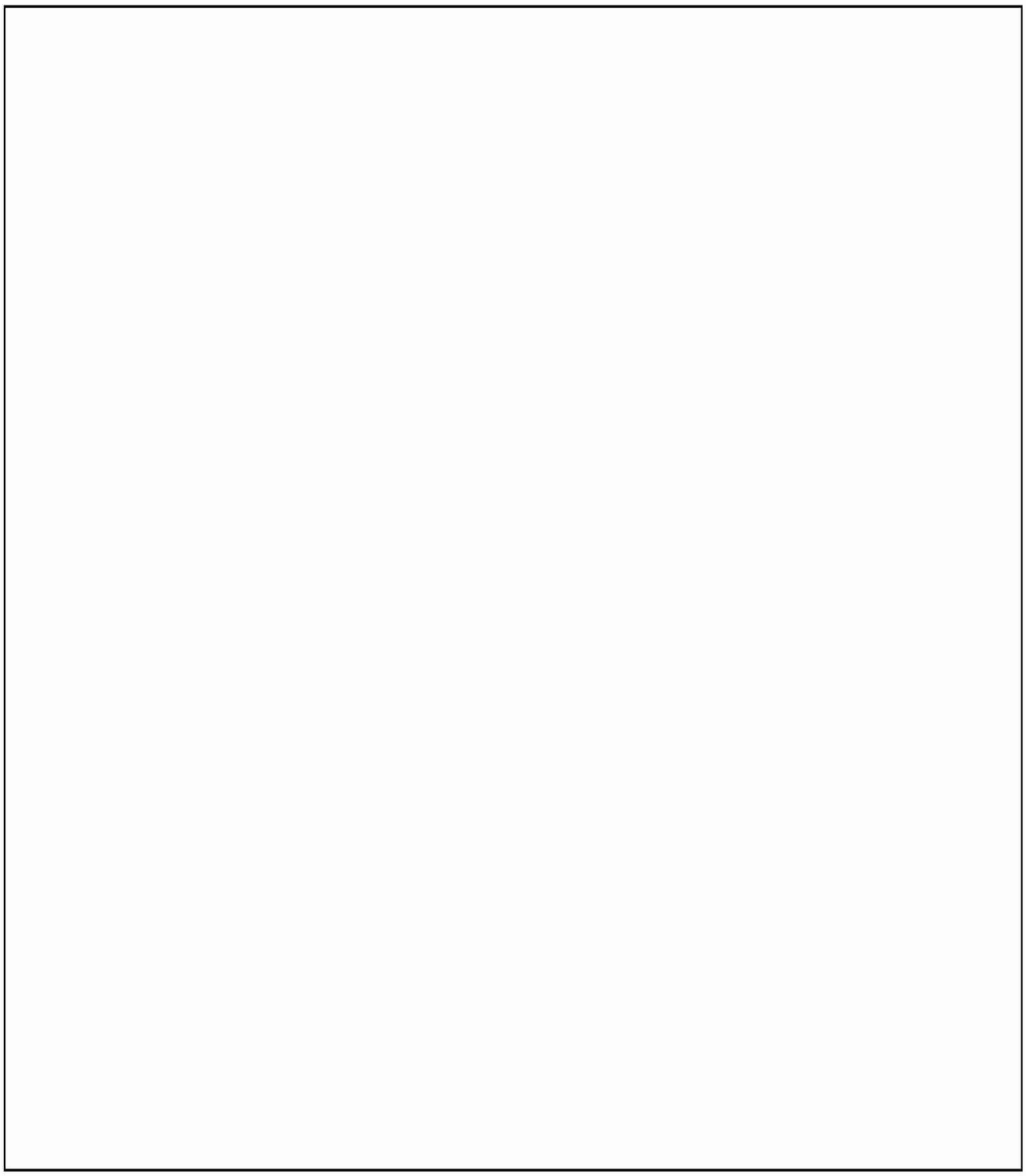
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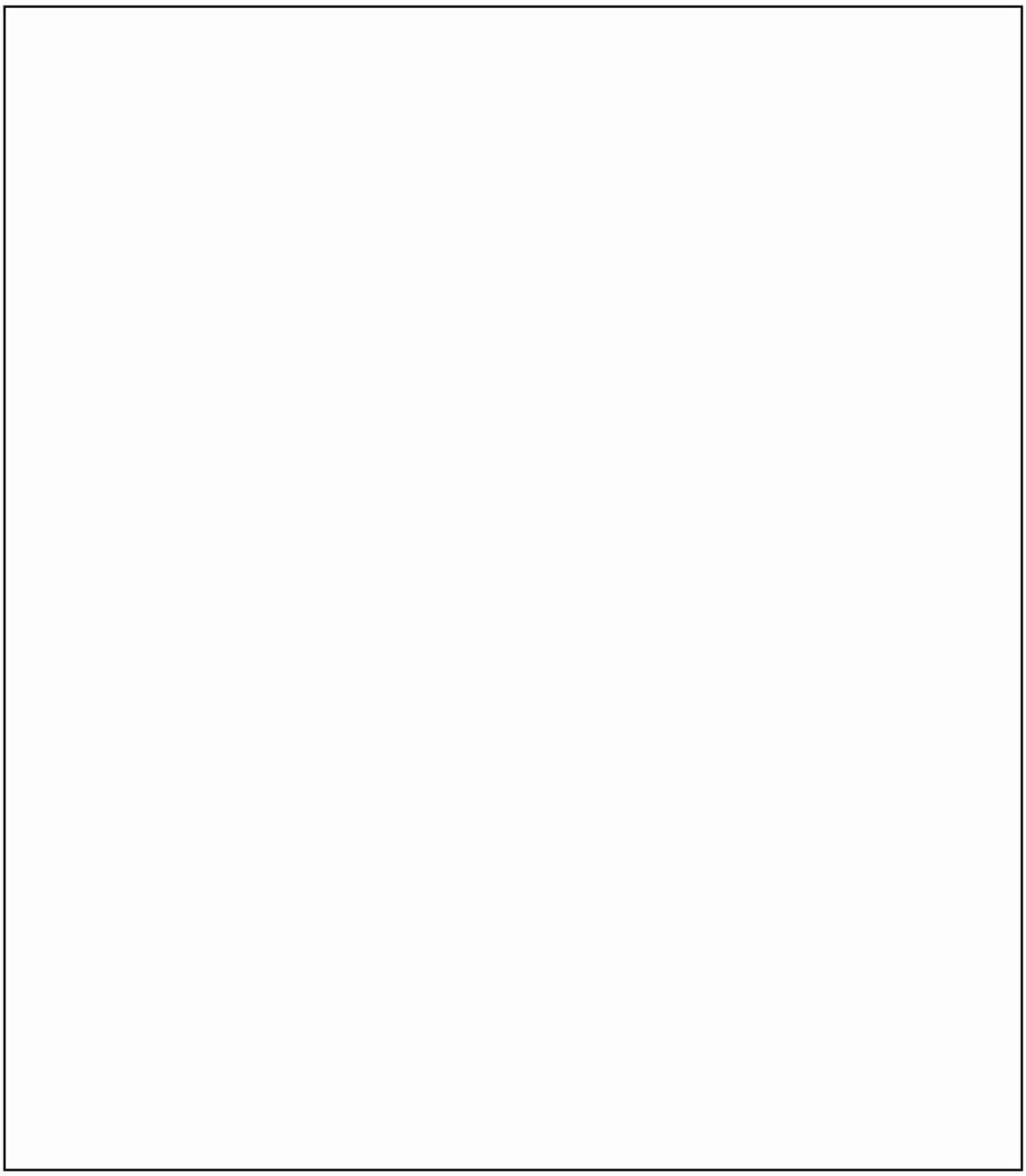
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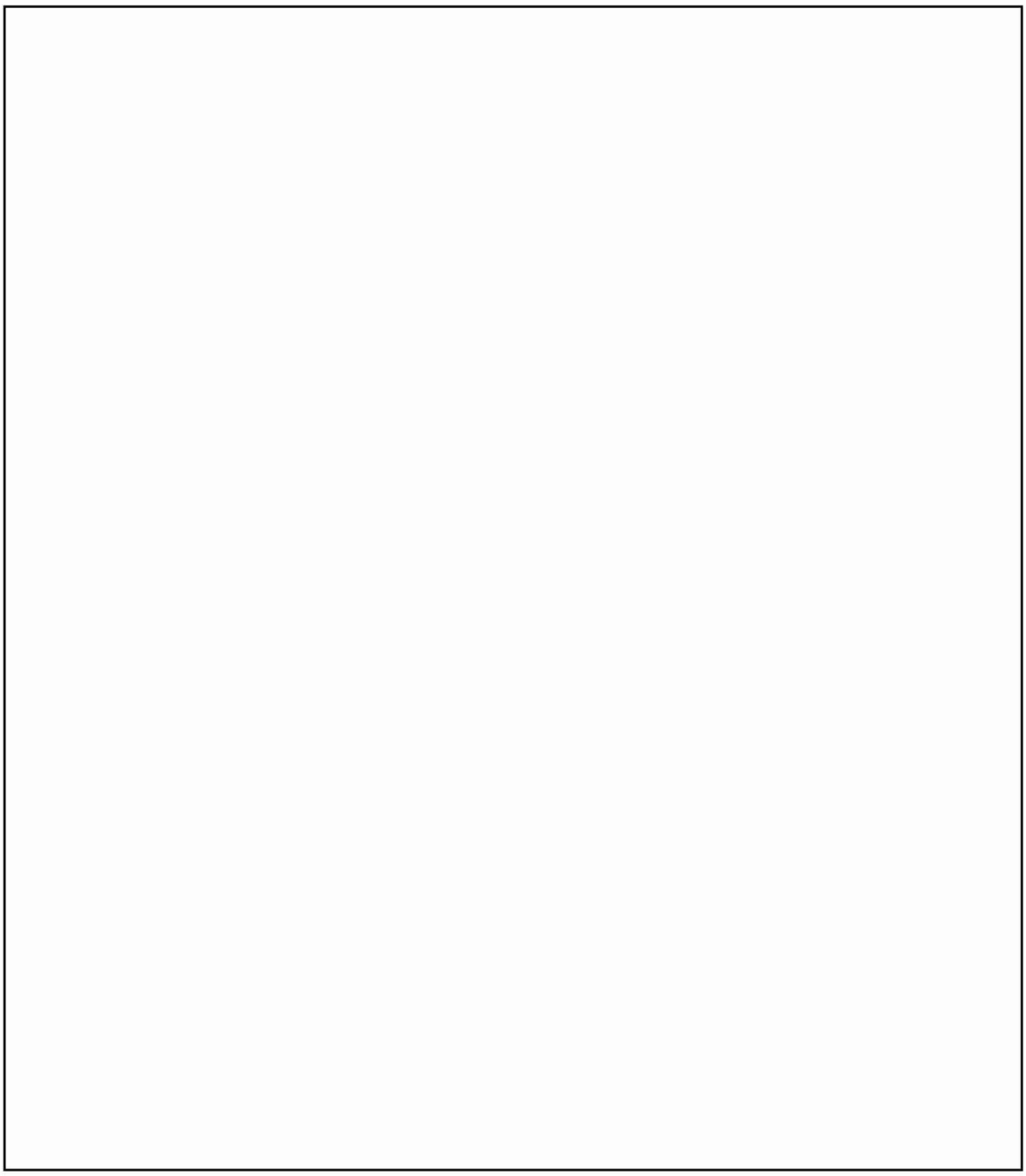
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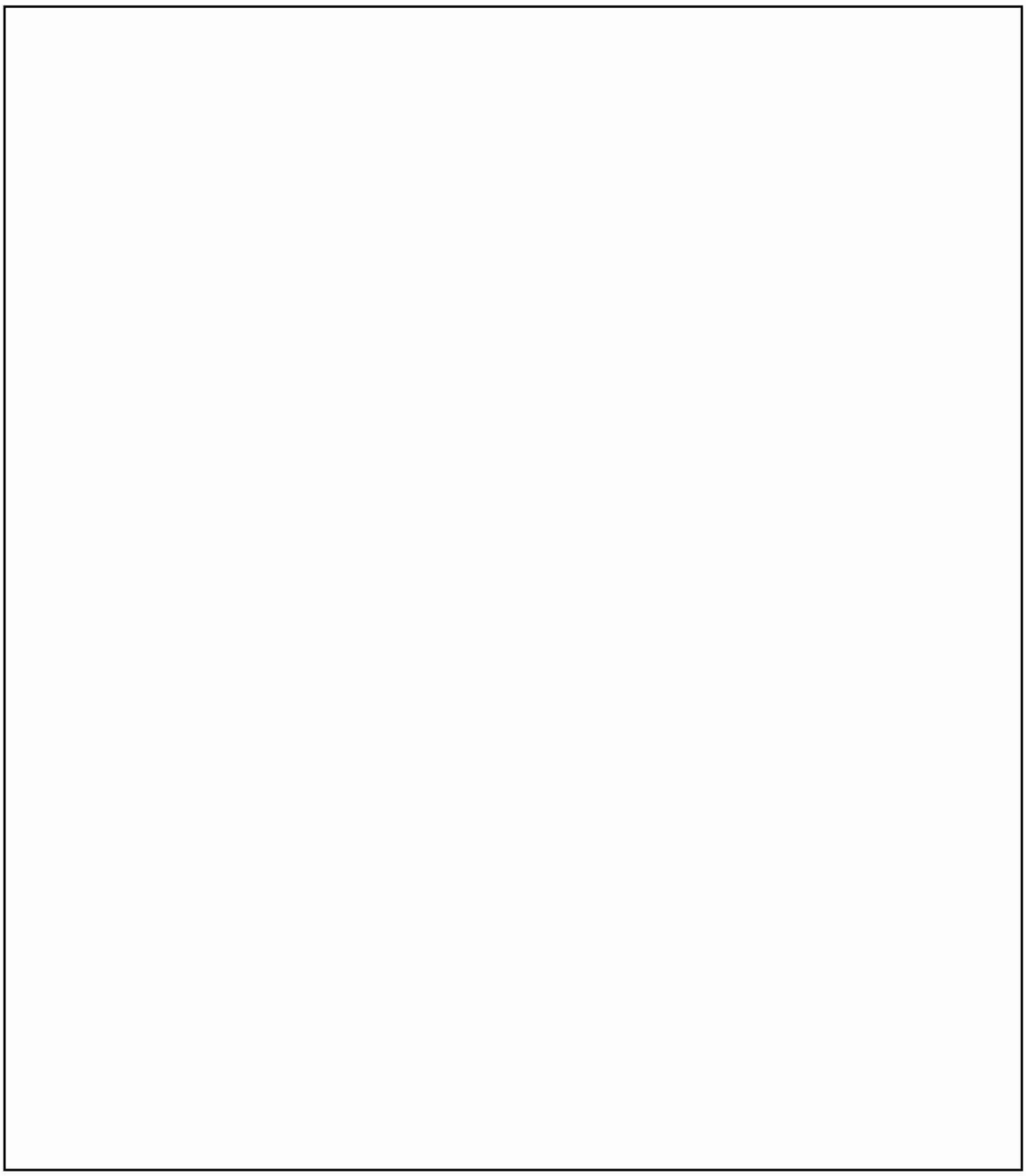
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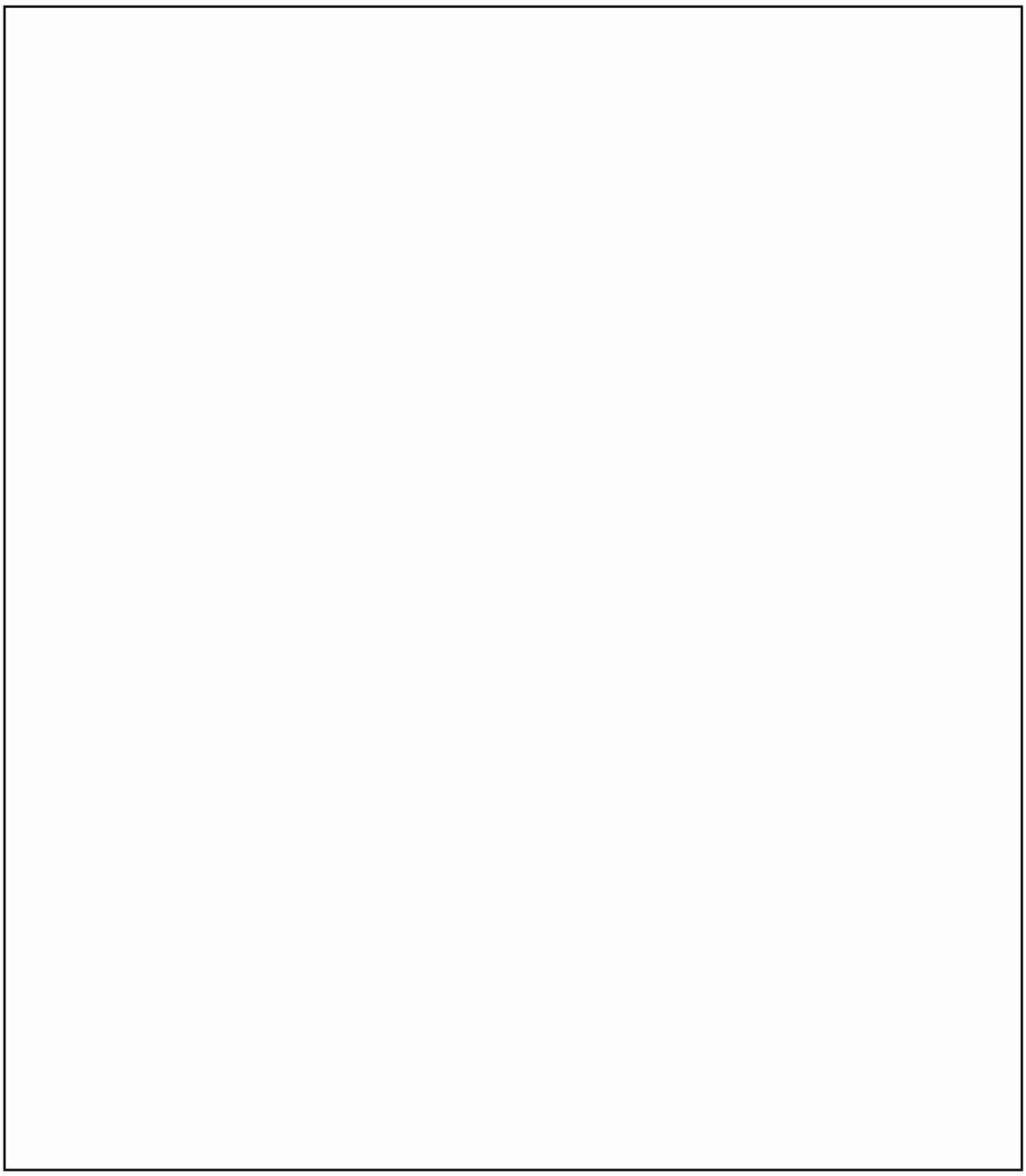
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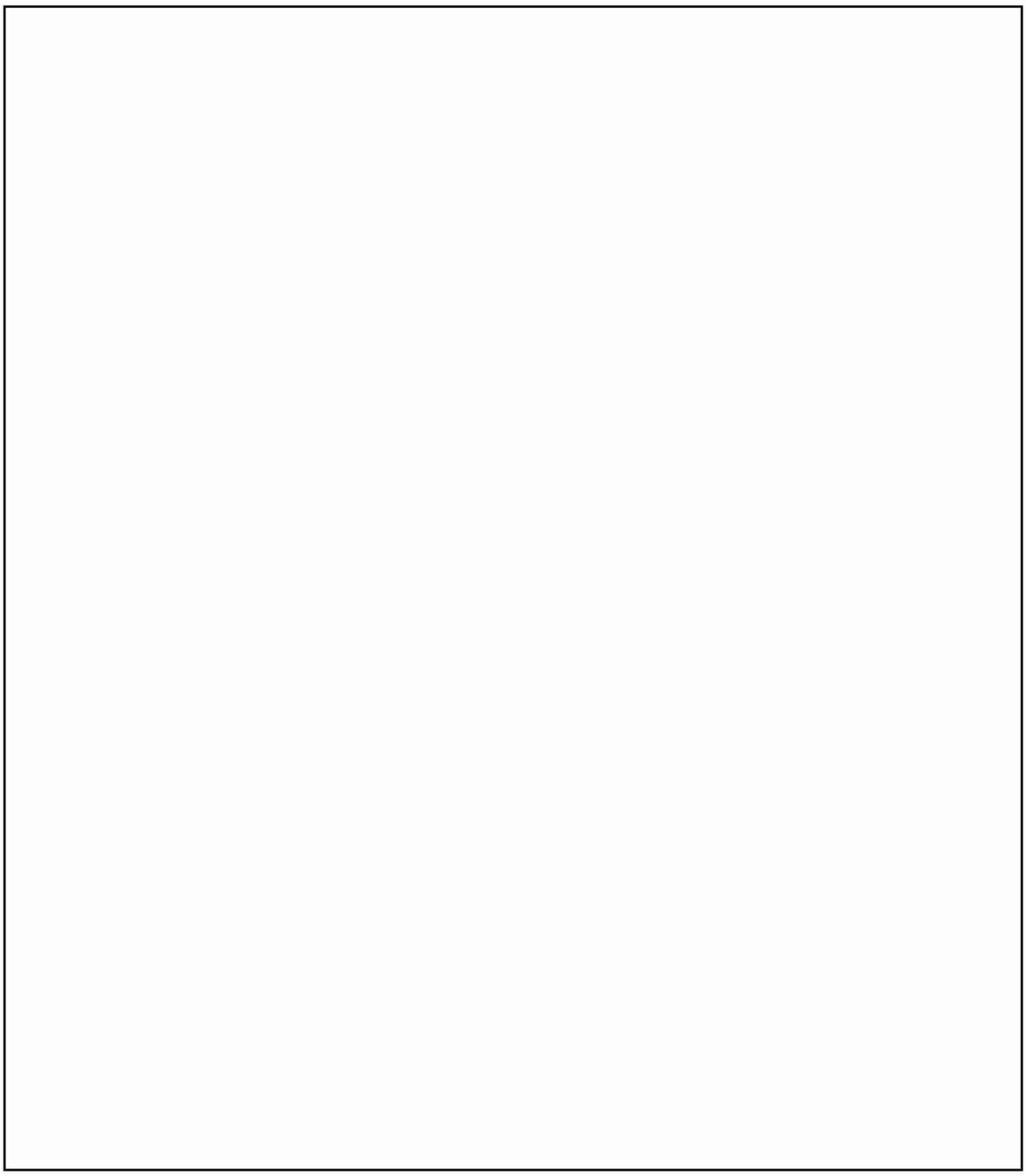
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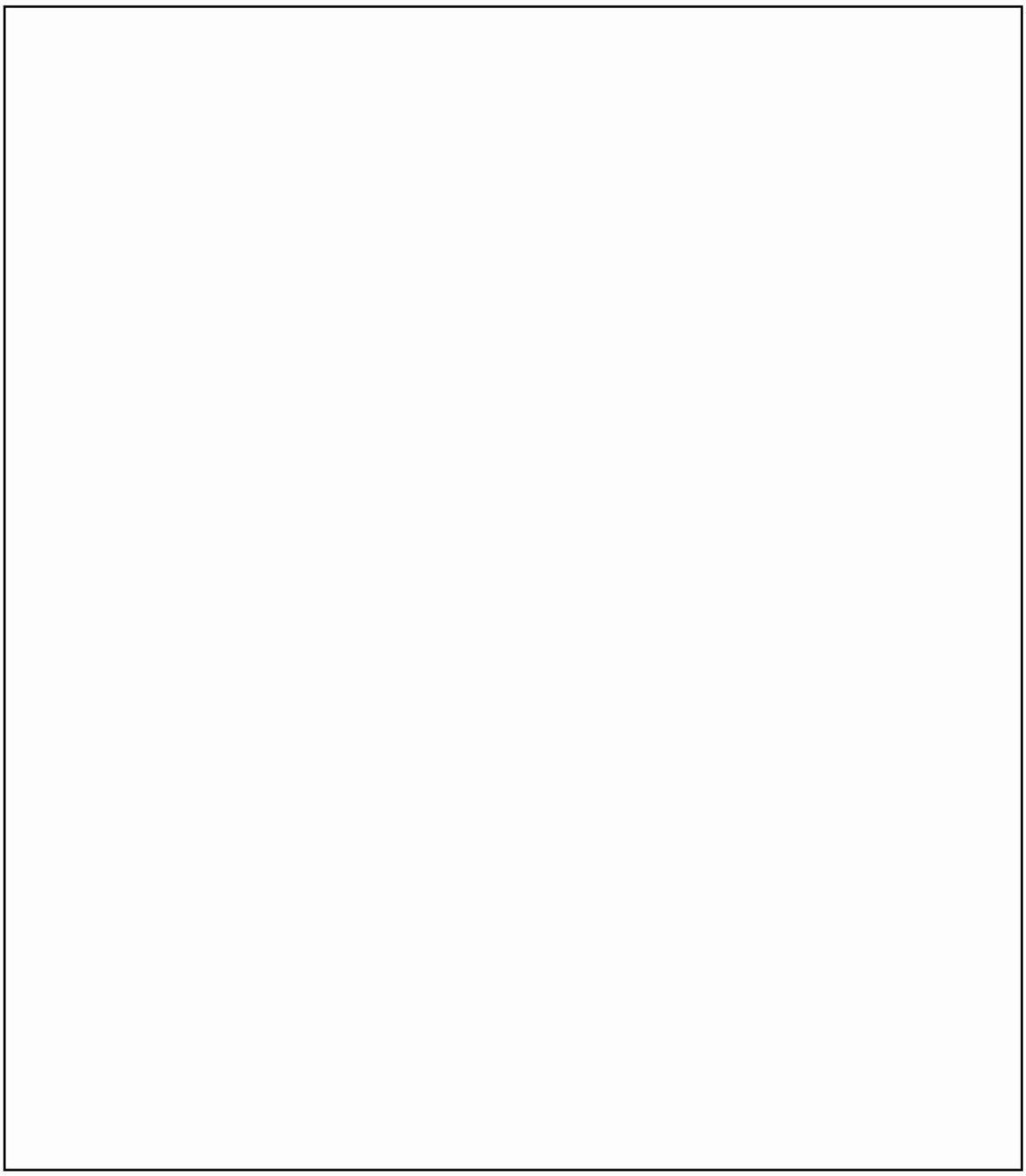
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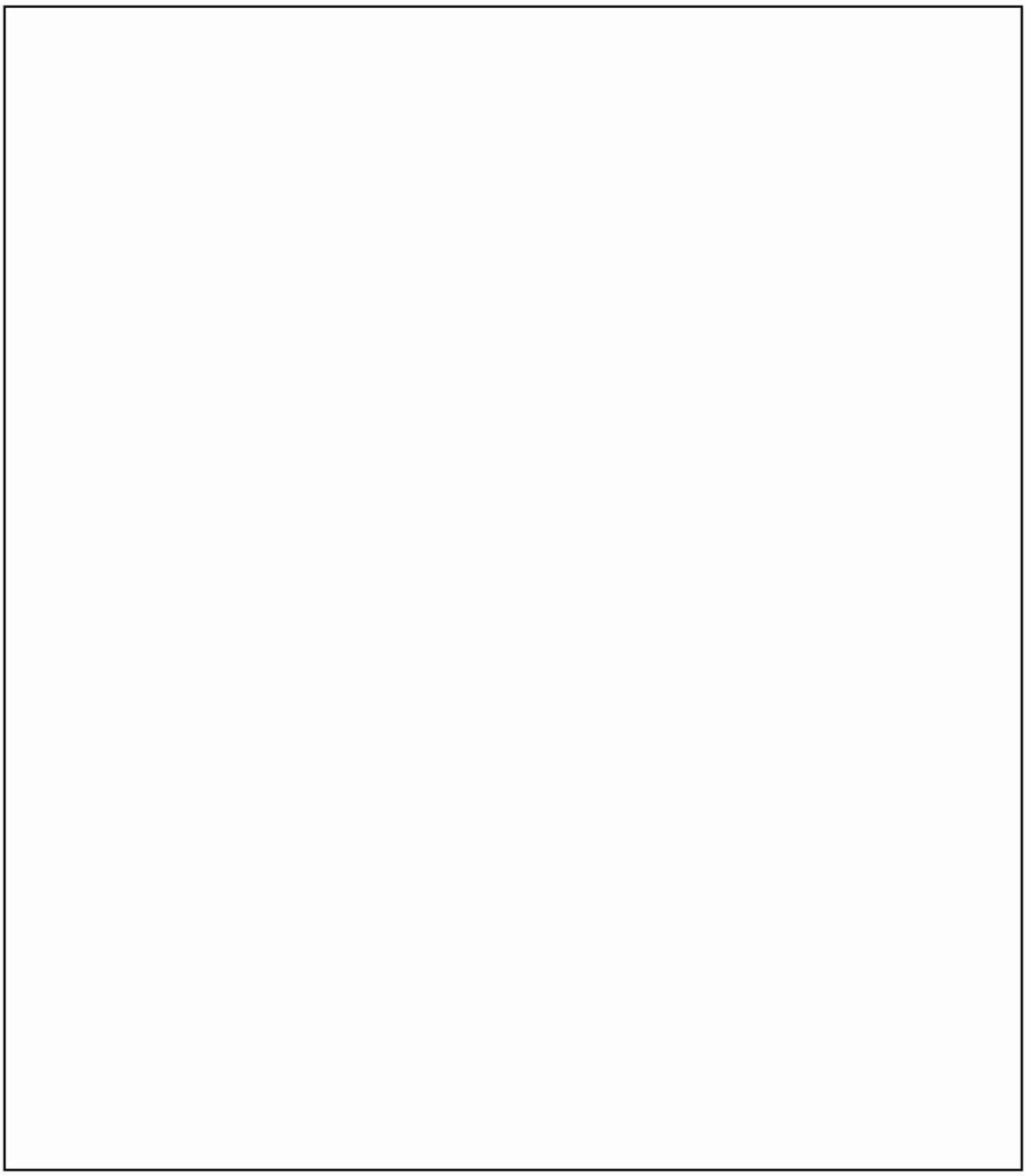
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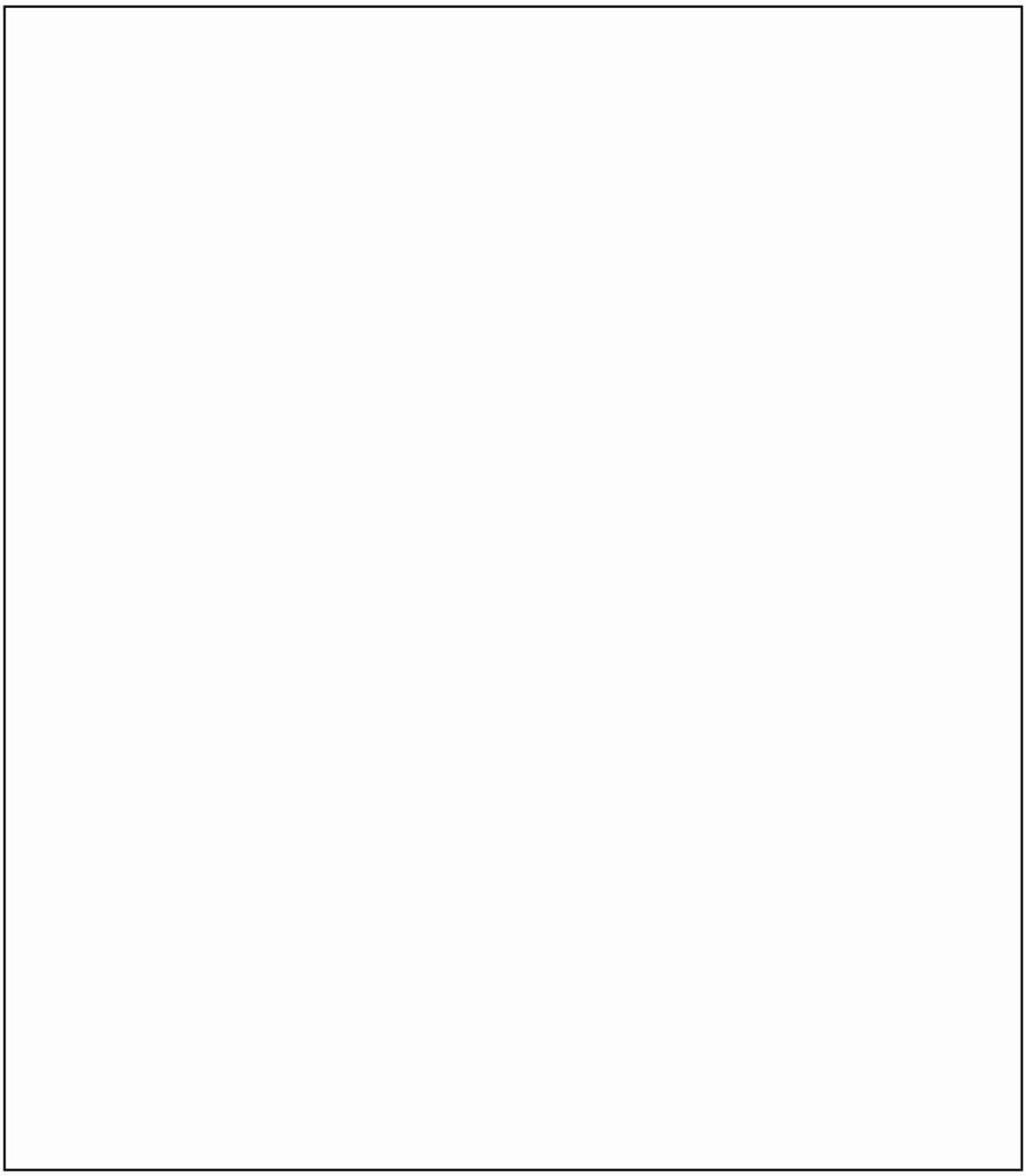
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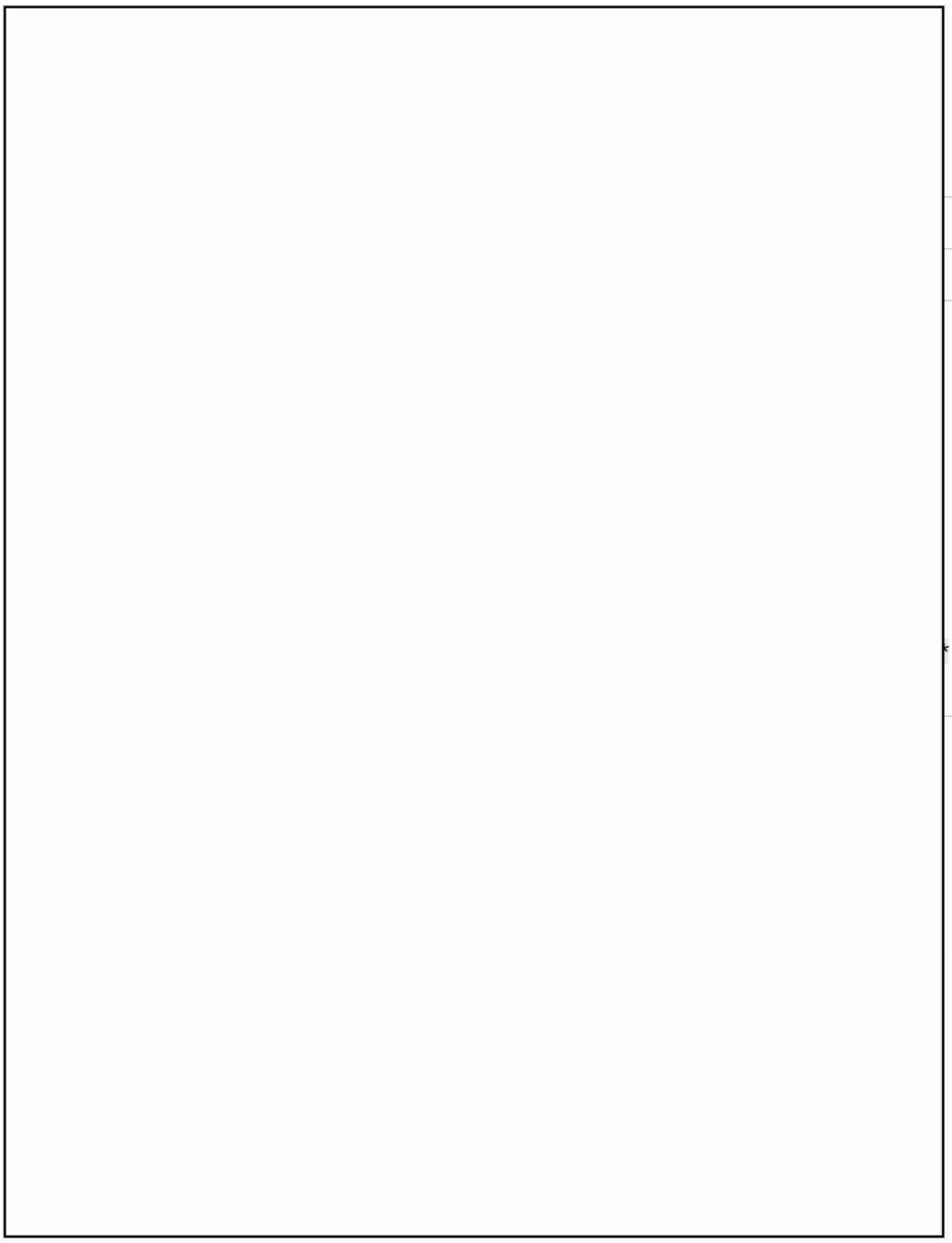
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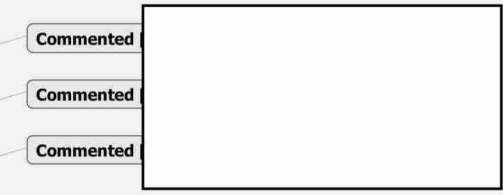


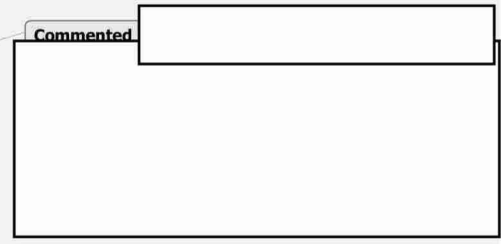
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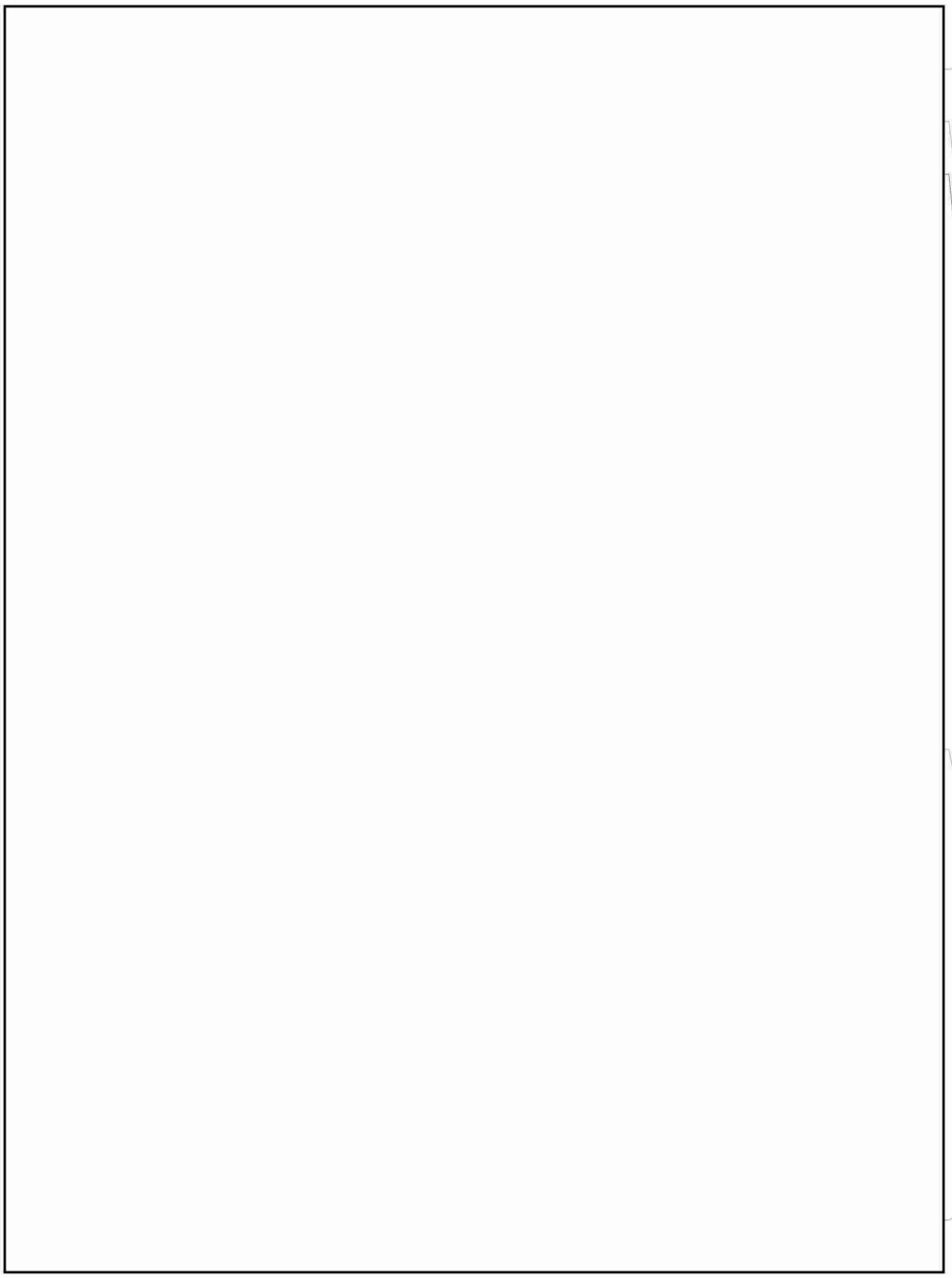


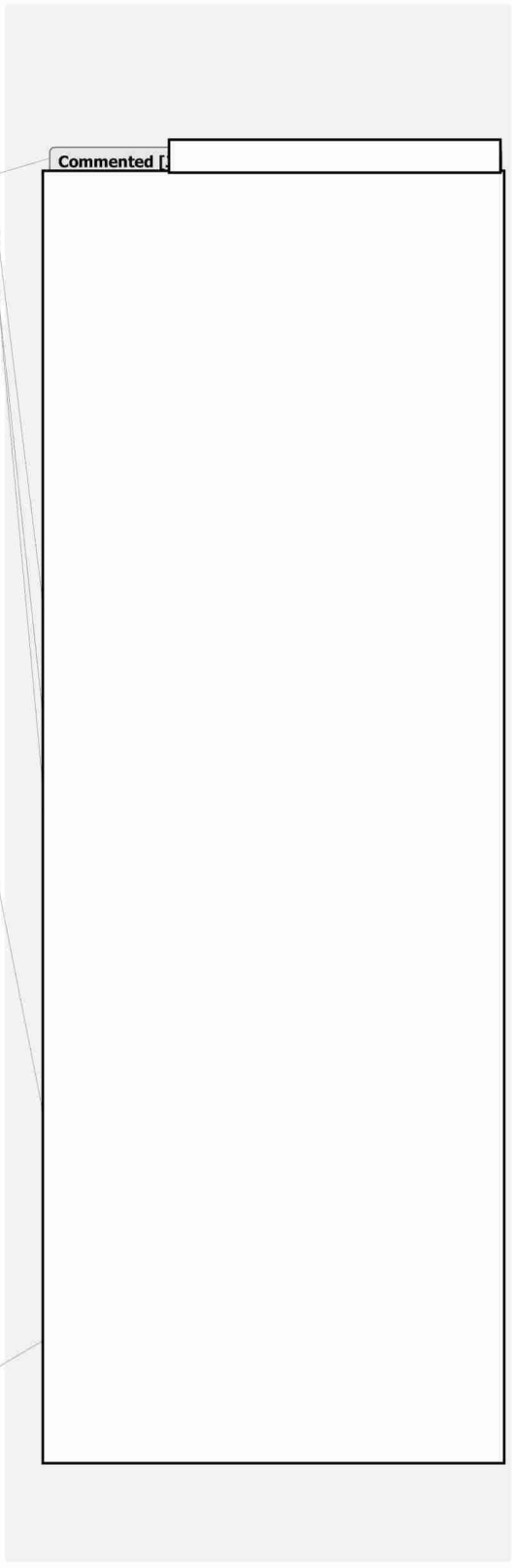


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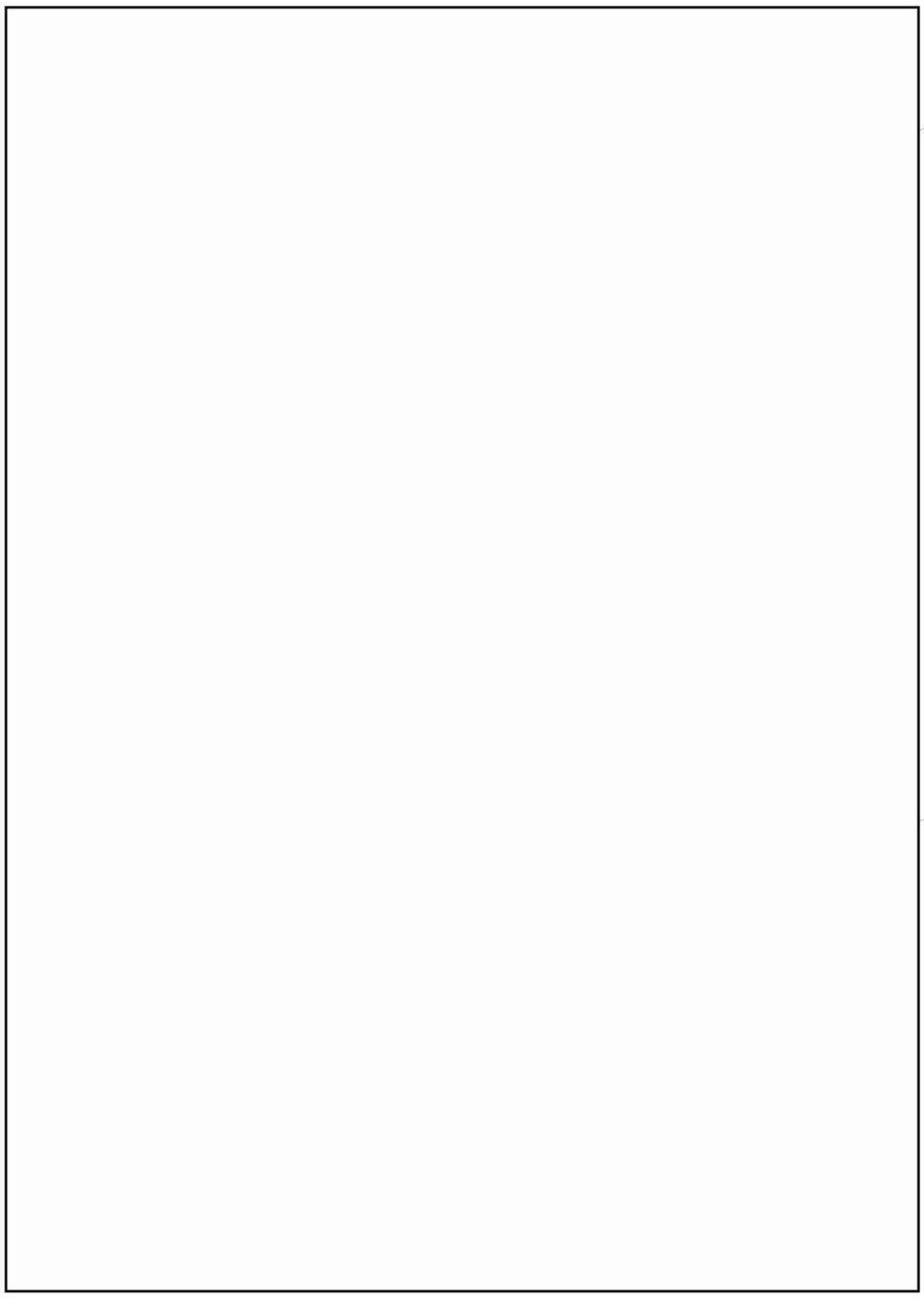


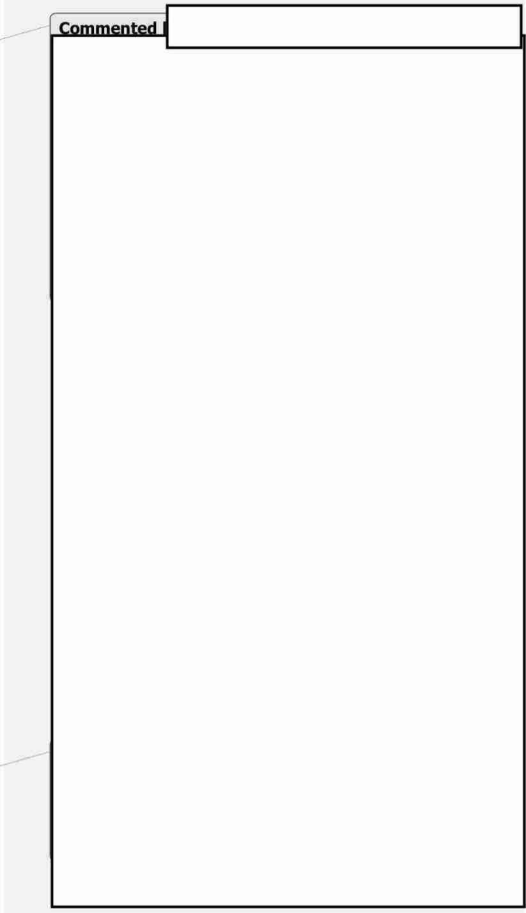


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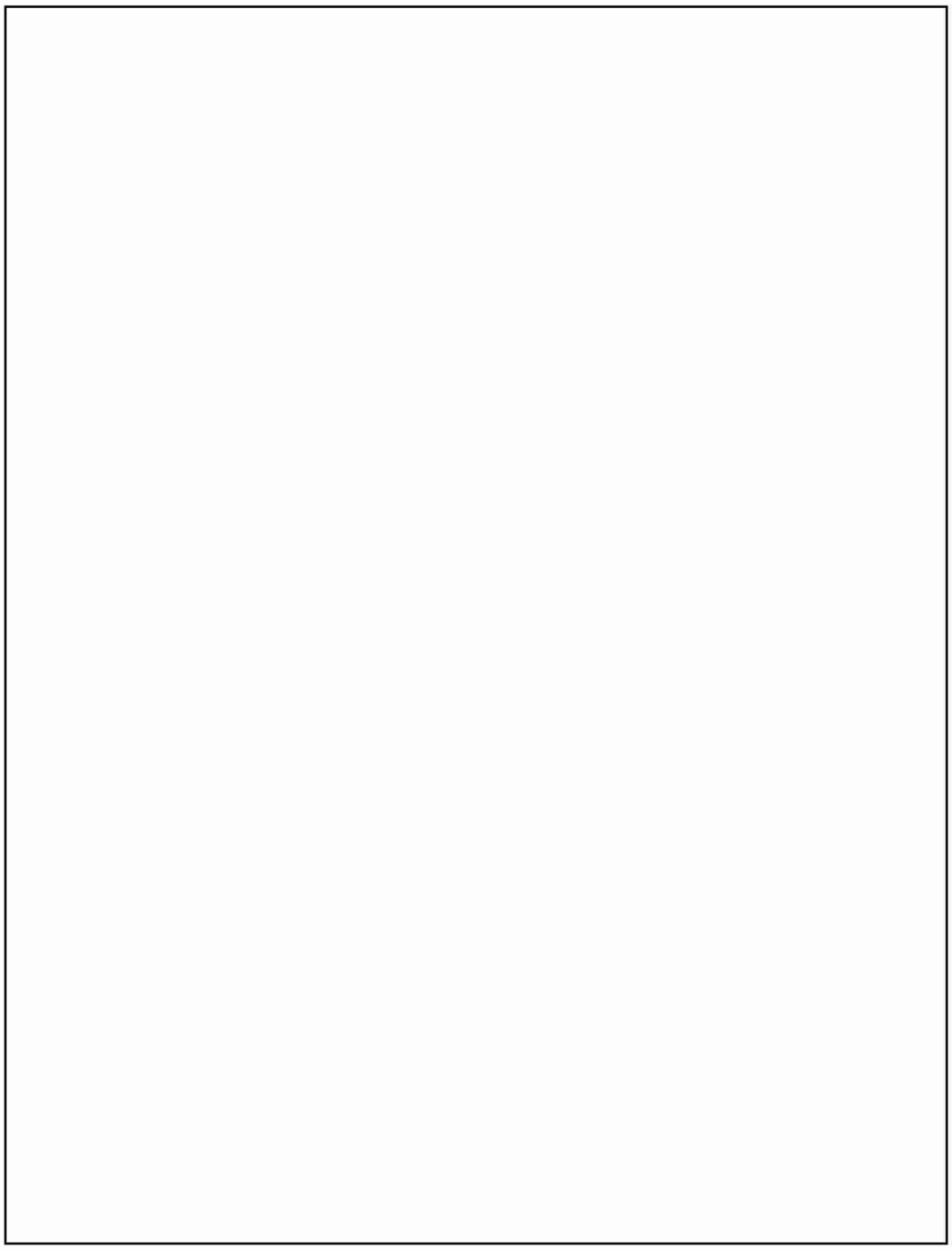




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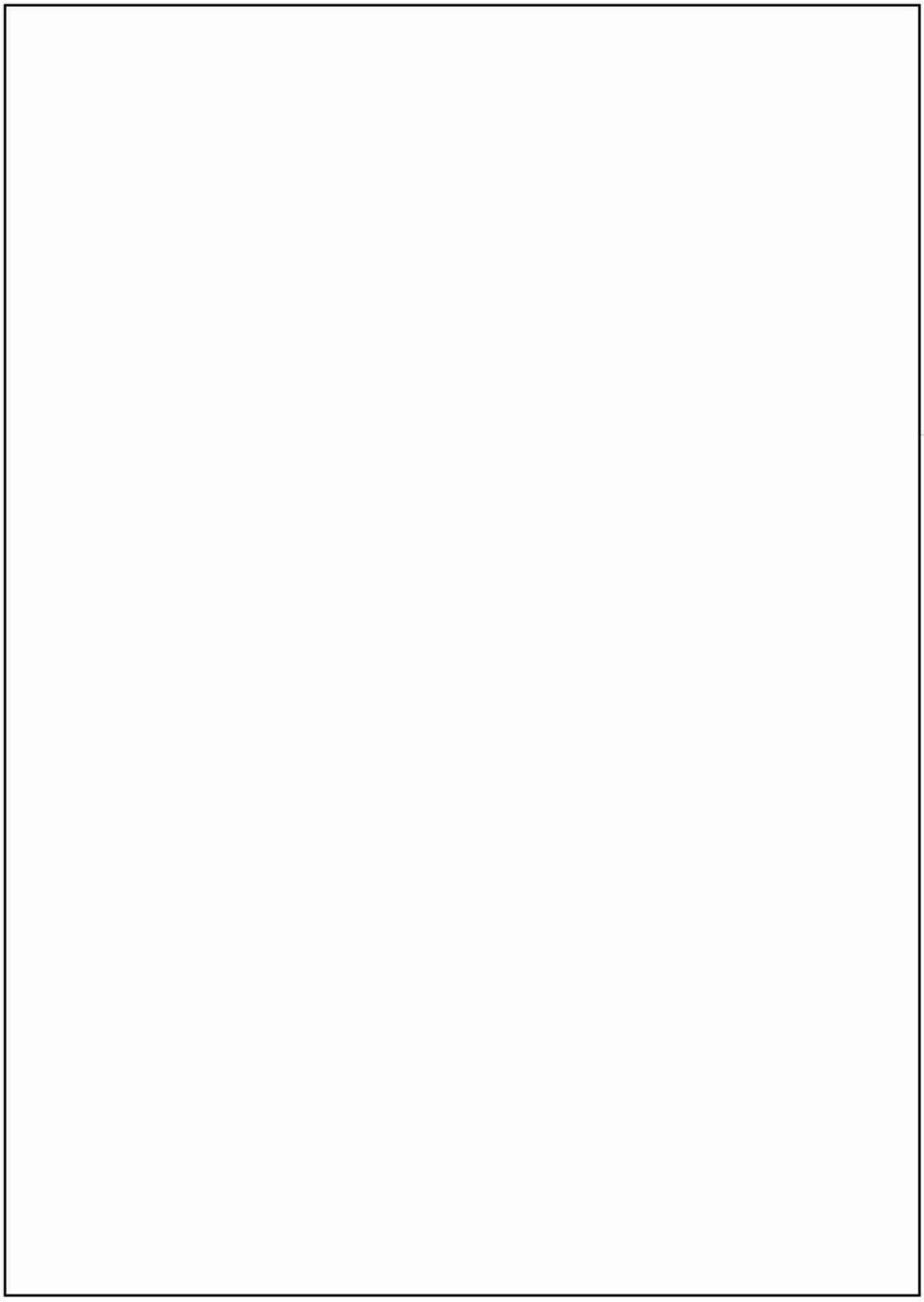
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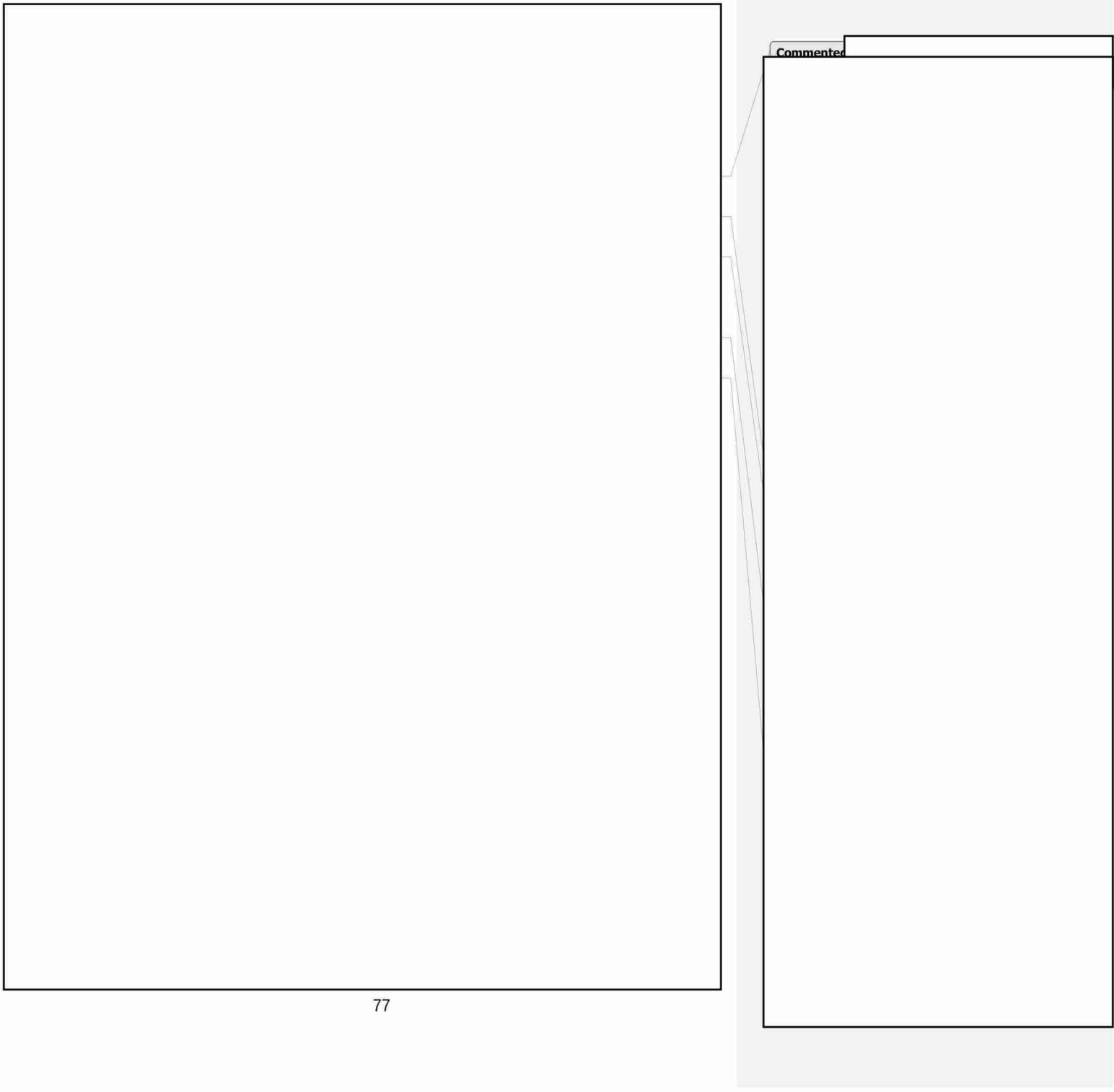
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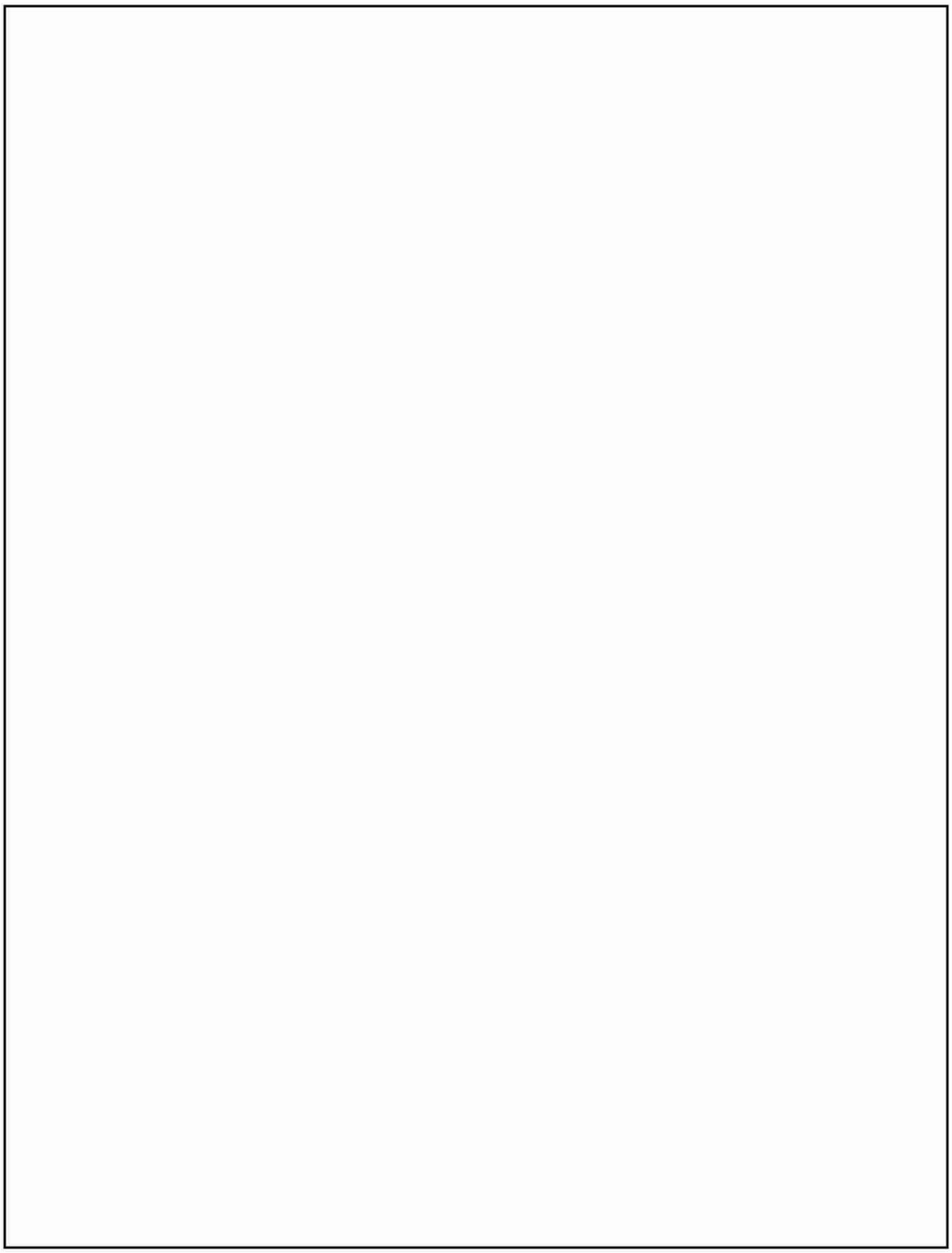


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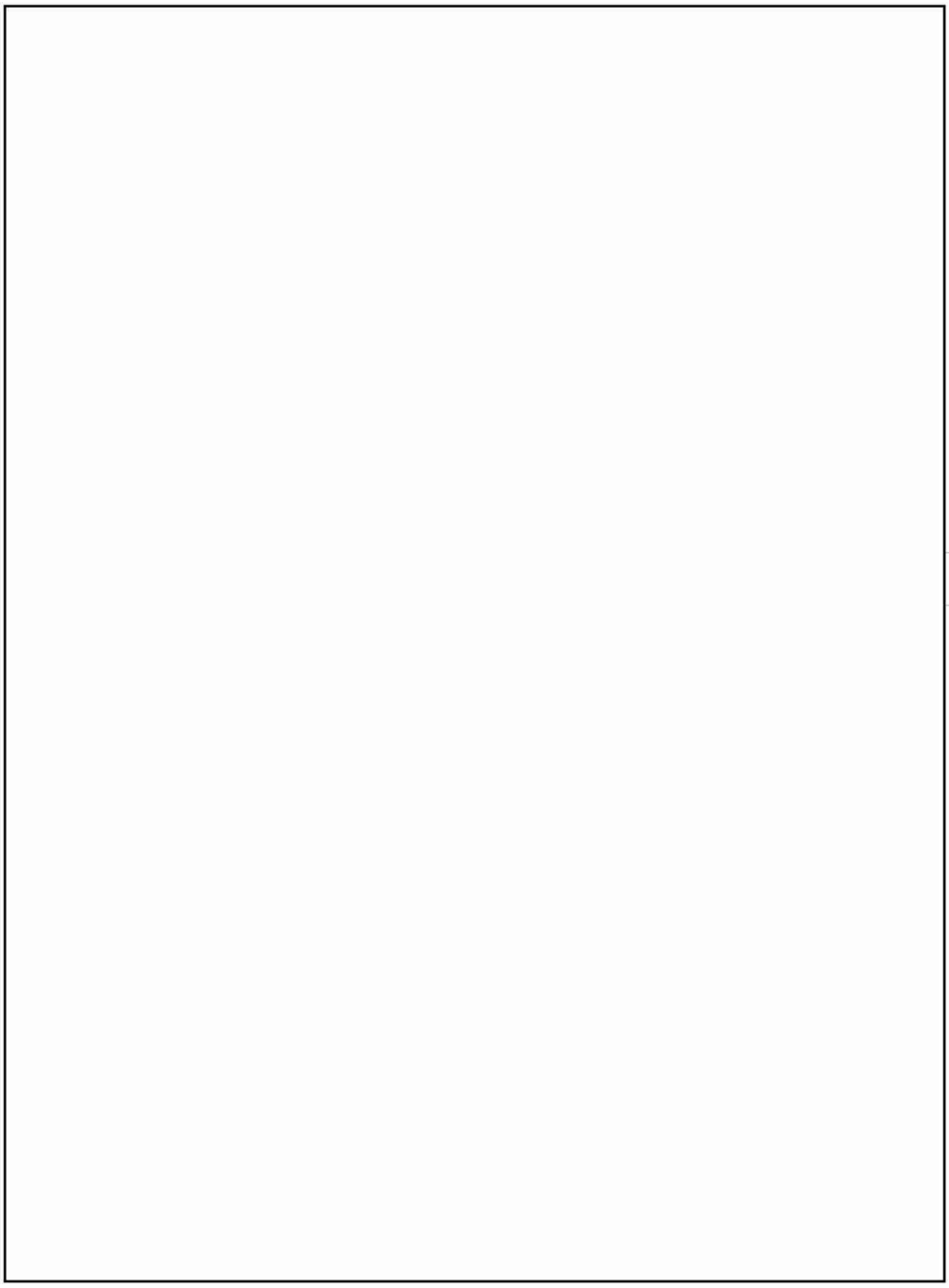
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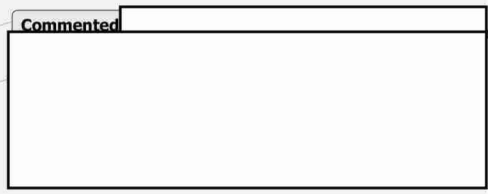
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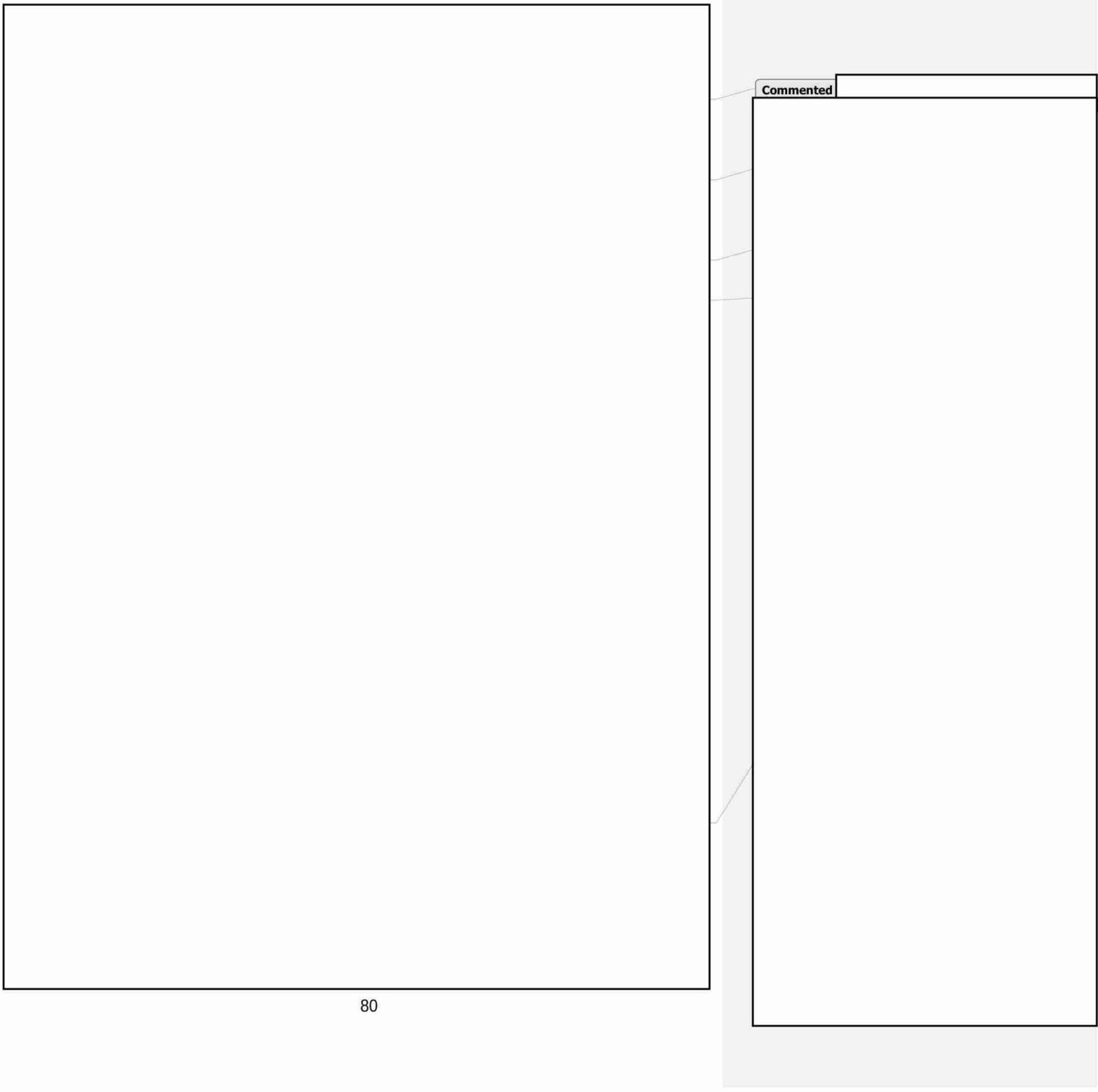




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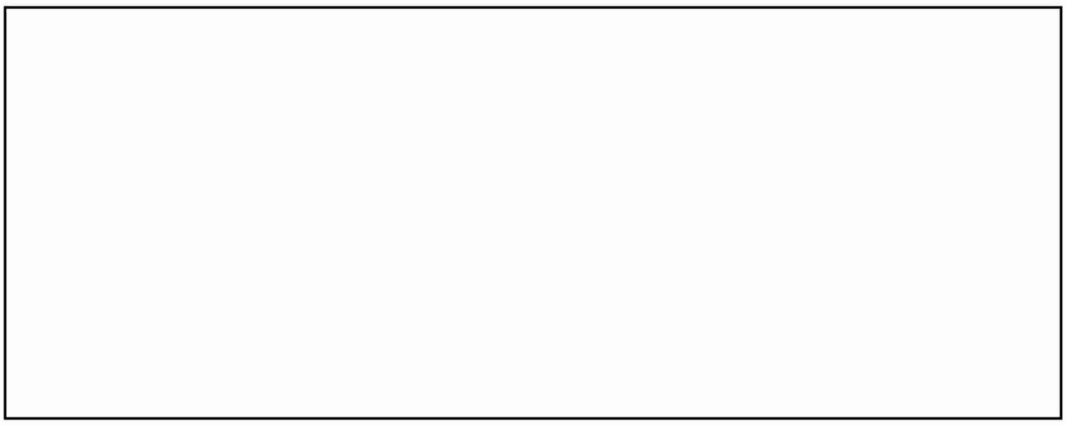
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* * * * *

Chad R. Mizelle,
Senior Official Performing the Duties of the General Counsel,
U.S. Department of Homeland Security.

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AMERICAN OVERSIGHT

From: Willis, Antonia T (Tony)
Subject: RE: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR
To: Law, Robert T; Bailey, Morgan; Deshommes, Samantha L
Cc: Boivin, Mark R; Taylor, Kelisha C
Sent: September 11, 2020 11:41 AM (UTC-05:00)
Attached: H-1B Registration Selection by Wage Levels IFR Clean.docx

(b)(6)

Hi Morgan,

Please see attached version that was submitted for G-1056 clearance this afternoon. Please let me know if you have any questions or concerns. Thanks,

Tony

From: Law, Robert T <
Sent: Friday, September 11, 2020 12:29 PM
To: Bailey, Morgan >; Deshommes, Samantha L
Cc: Boivin, Mark R ; Taylor, Kelisha C ; Willis, Antonia T (Tony)
Subject: RE: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR

Just 80 pages. A light read!

Robert Law
(office)
(cell)

From: Bailey, Morgan <
Sent: Friday, September 11, 2020 12:25 PM
To: Deshommes, Samantha L
Cc: Law, Robert T ; Boivin, M ; Taylor, Kelisha C ; Willis, Antonia T (Tony)
Subject: RE: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR

Hi Sam,

How long is the document?

Thanks,
Morgan

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉
☎

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From: Deshommes, Samantha L <
Sent: Friday, September 11, 2020 12:13 PM
To: Bailey, Morgan <
Cc: Law, Robert T ; Boivin, Mark R ; Taylor, Kelisha C

AMERICAN OVERSIGHT

(b)(6)

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[redacted] Willis, Antonia T (Tony) [redacted]

Subject: Heads-up: Concurrent FO Review | USCIS H-1B Selection IFR
Importance: High

Good Morning Morgan,

Happy Friday! I wanted to give you a heads-up and status update of where we are with the H-1B Selection IFR, which I know is already on the radar of DP2 and Mr. Calkins. We are a bit behind schedule with delivering this to DHS OGC for further review, so in an effort to recoup some of that time, we're hoping that we can ask the FO to review an informal copy and provide feedback at the same time that USCIS offices and directorates are reviewing. In that way, we'll be able to obtain and incorporate any major concerns or edits from the Director's Office at the same time we are considering feedback from other offices (e.g. OCC, SCOPS, MGMT), and when the formal submission occurs through STARS, it can just be a simple approval process. We are seeking feedback from USCIS offices and directorates within 2 business days. Tony Willis, cc'd, will send the version that we're putting into G-1056 circulation.

If it would help alleviate any concerns, I am happy to produce an offline compare document to show what changes have occurred between the start of the informal FO team review and the formal FO review. Just let me know and please don't hesitate to reach out.

Thanks,
Sam

Samantha Deshommes
Chief, Regulatory Coordination Division
USCIS, Office of Policy & Strategy
Office: [redacted]
Mobile (b)(6)

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AMERICAN OVERSIGHT

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. ####-20; DHS Docket No. USCIS-####-####]

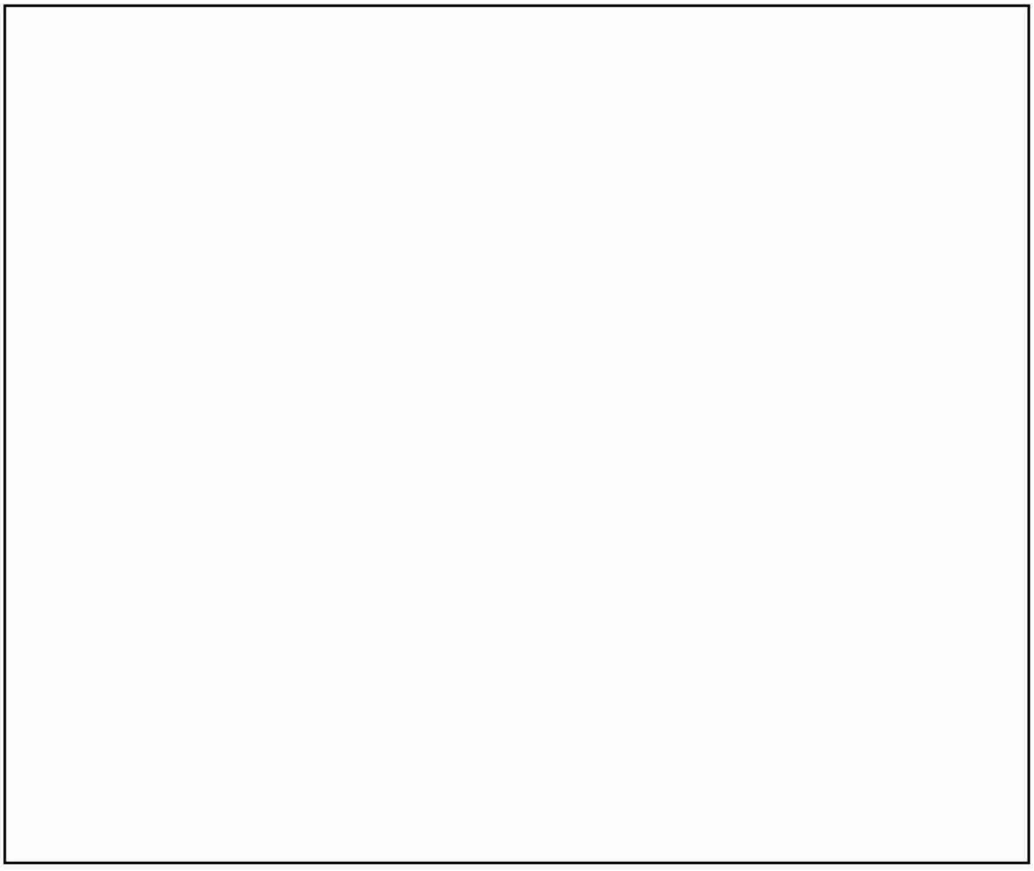
RIN 1615-AC61

Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

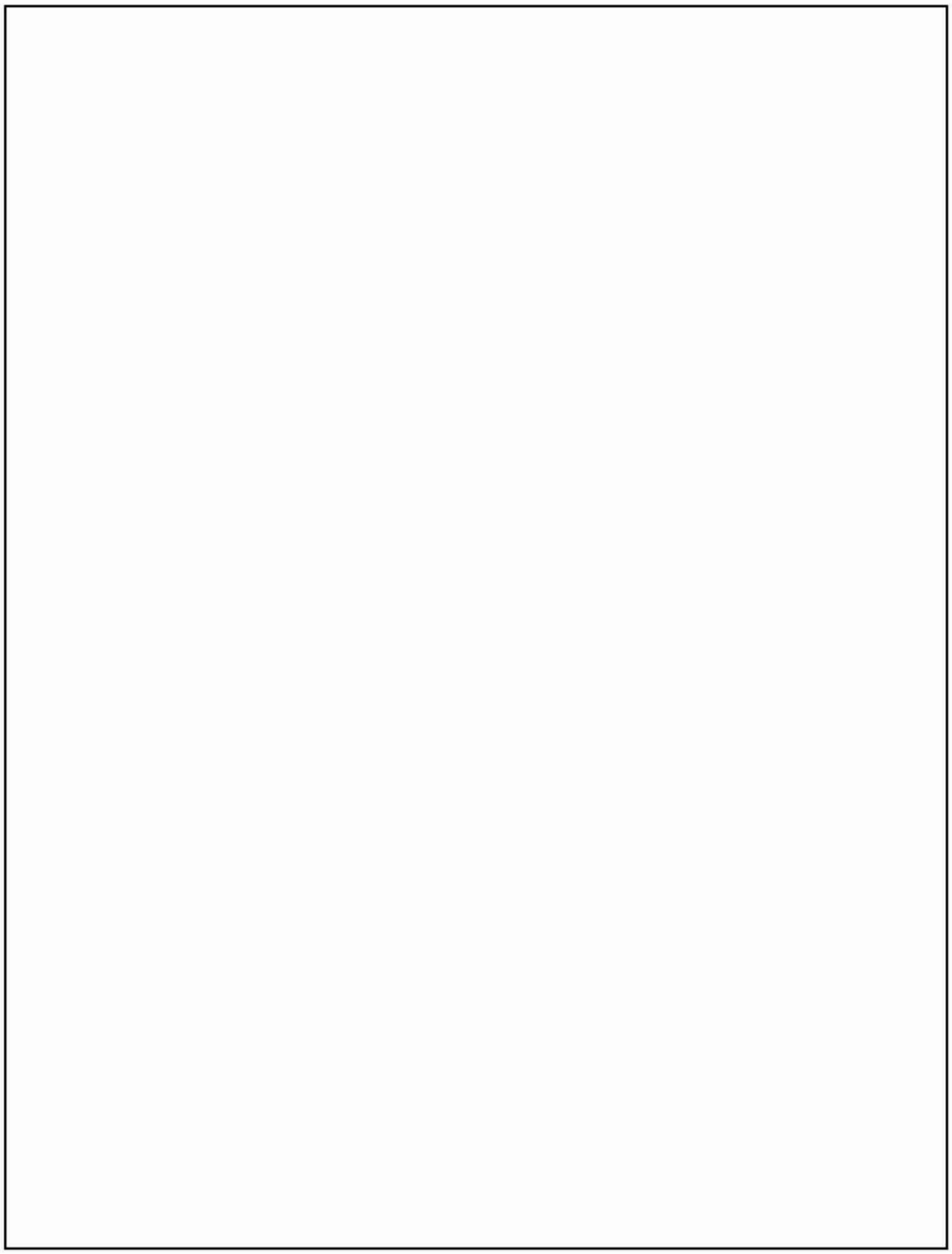
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ACTION: Interim Final Rule.



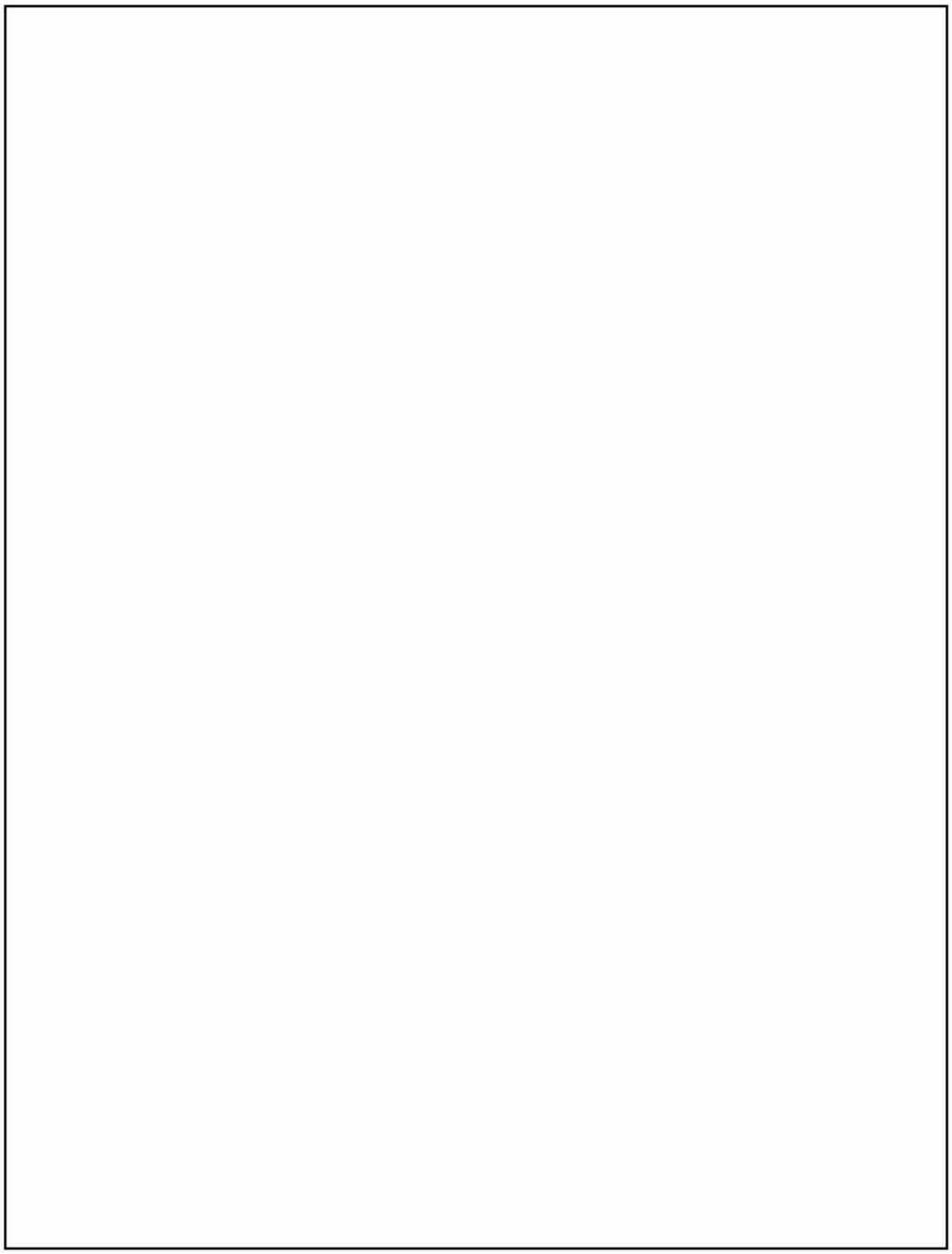
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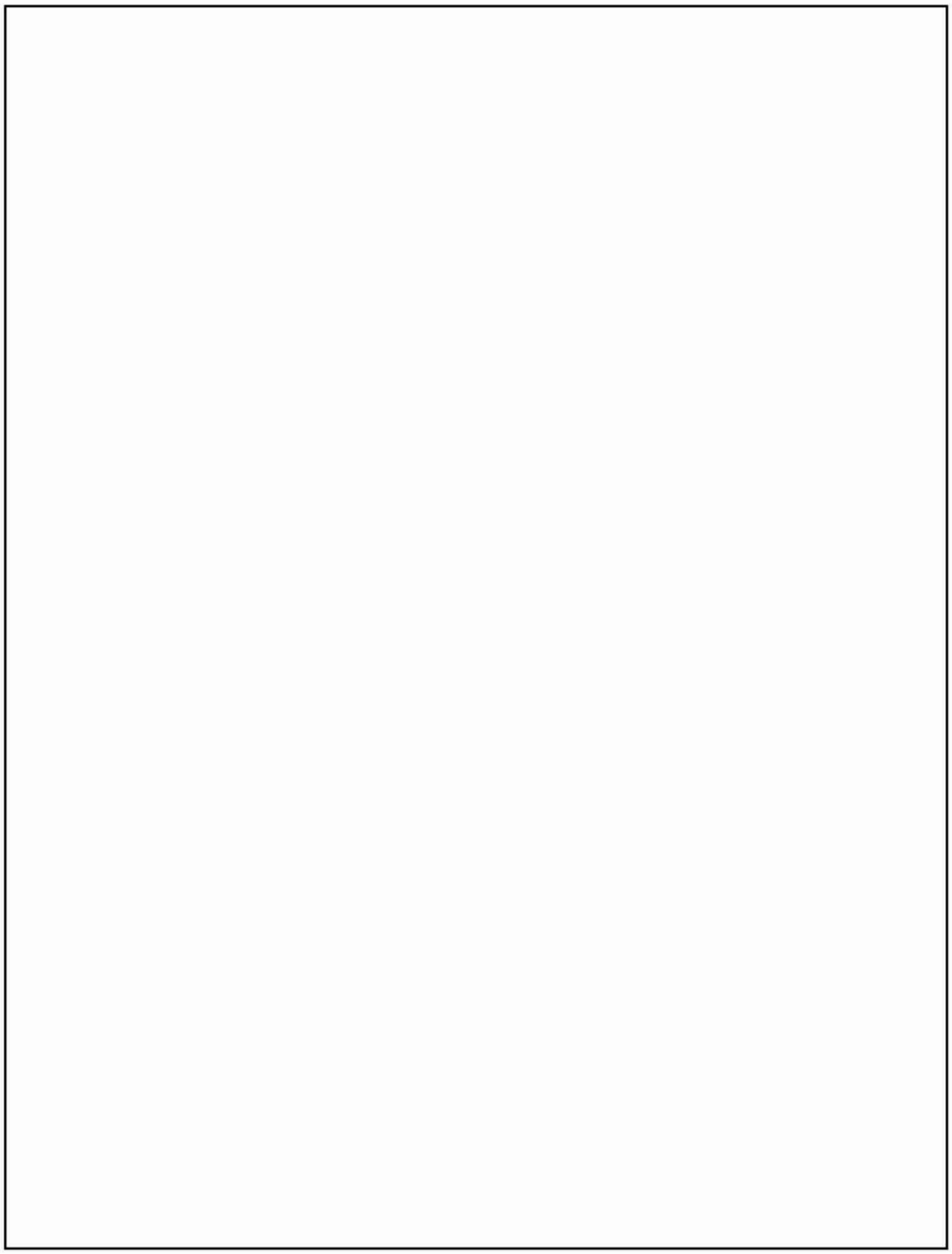
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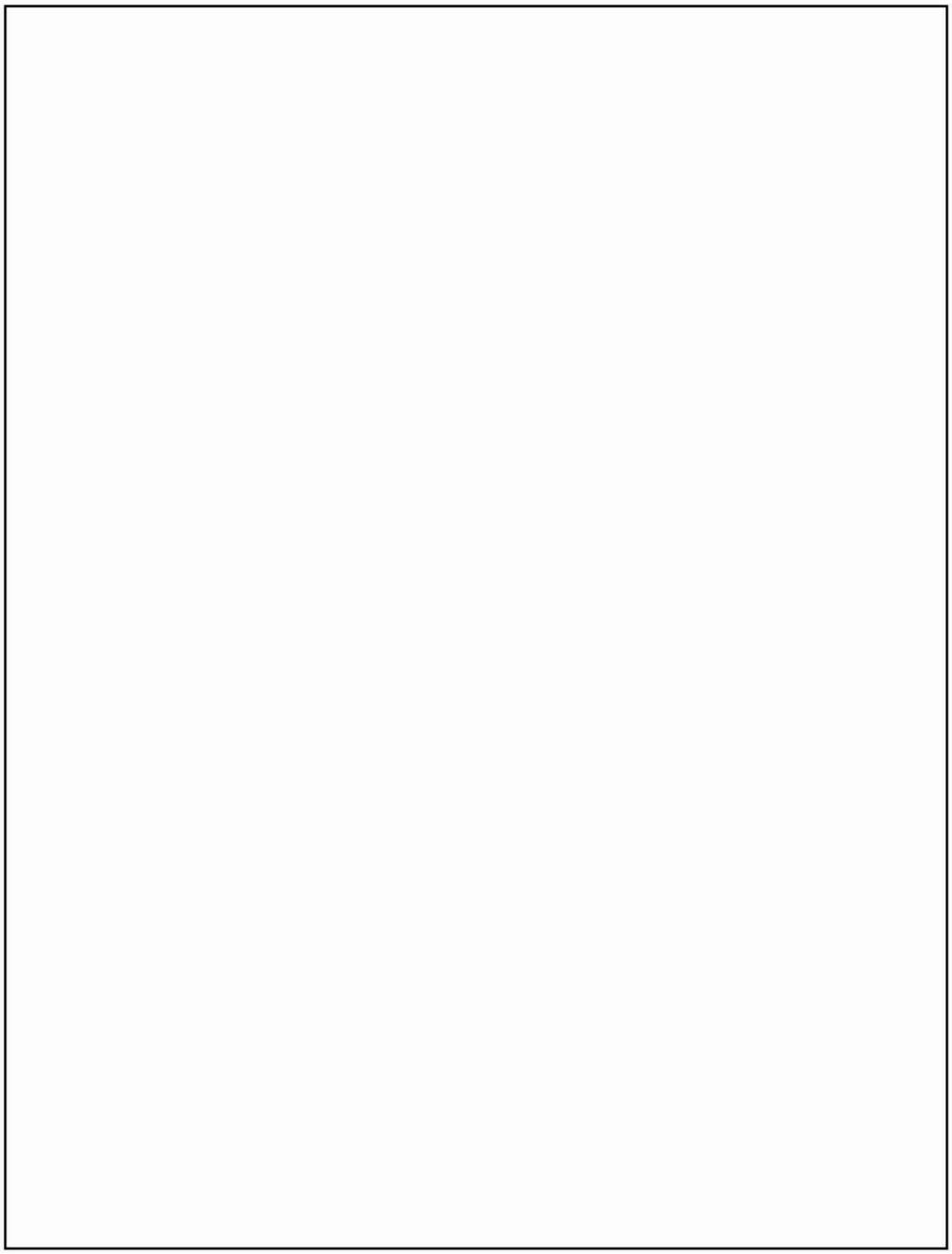
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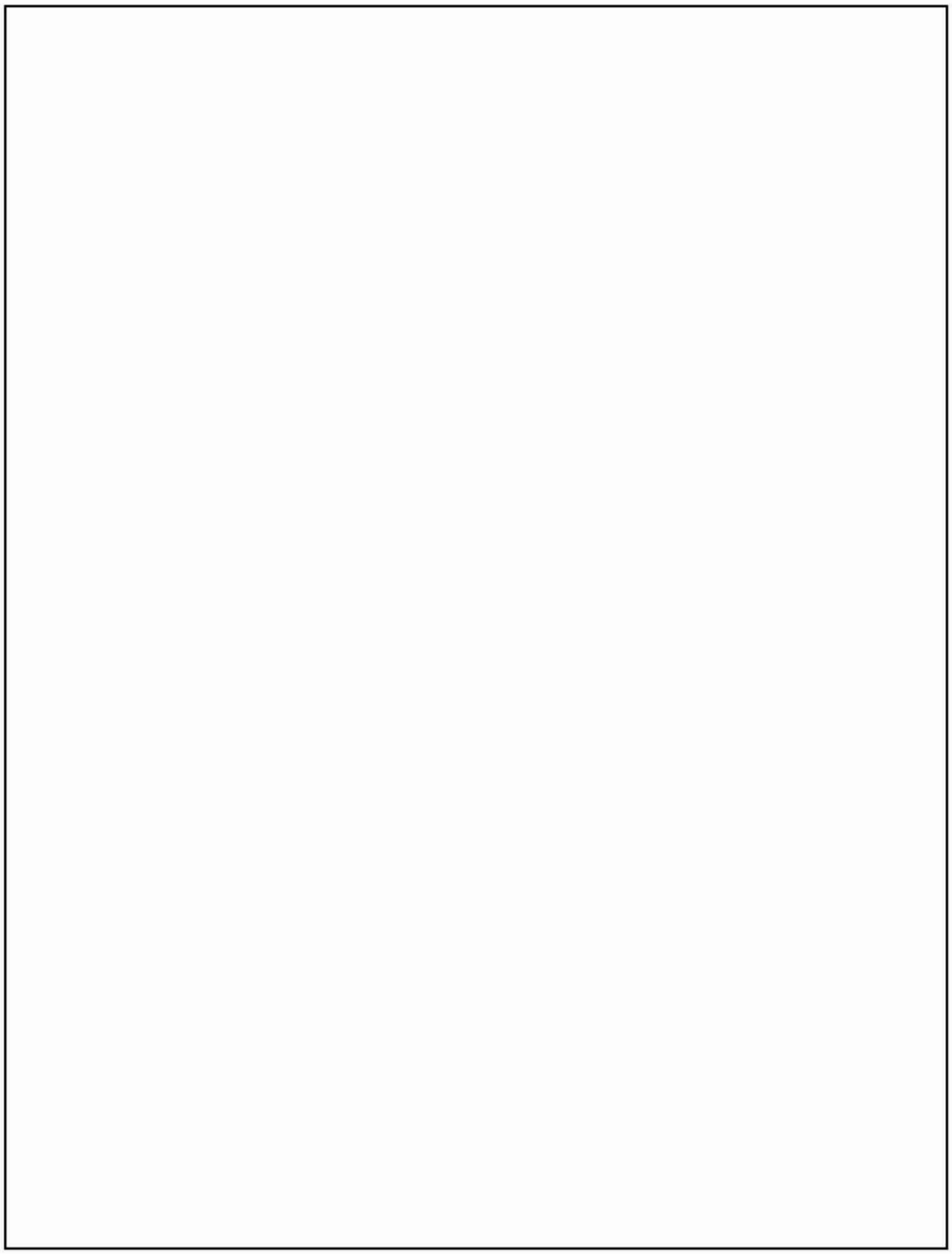
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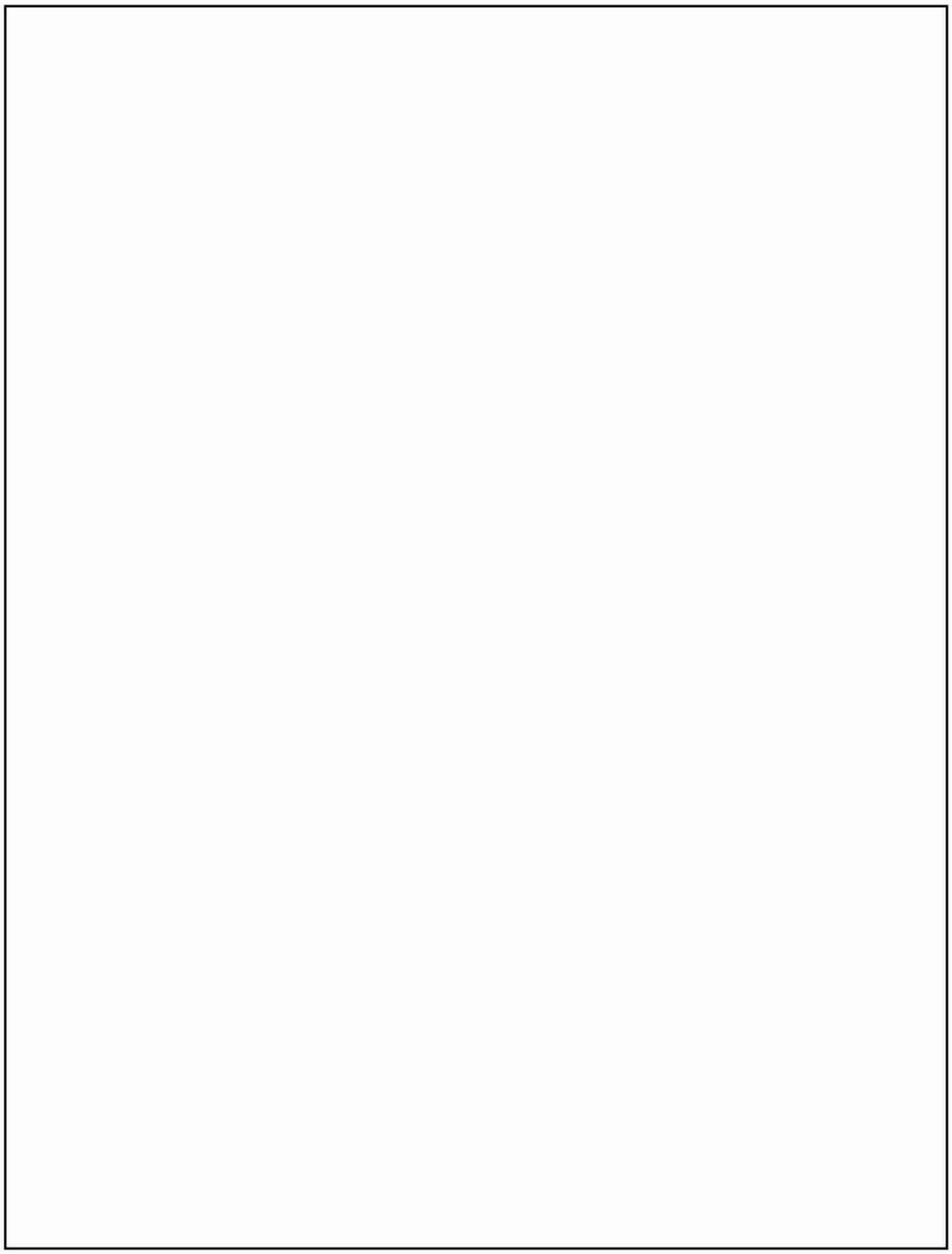
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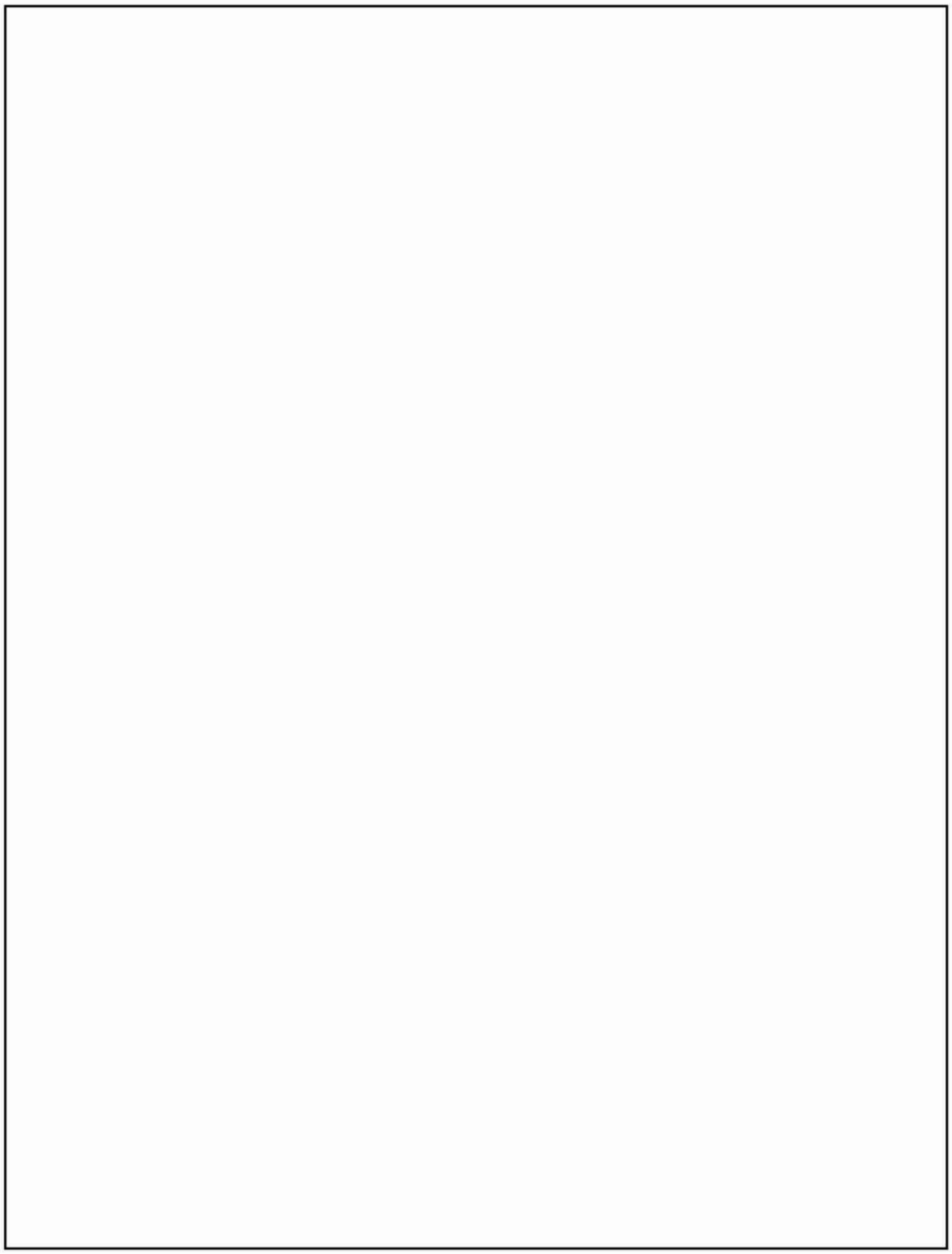
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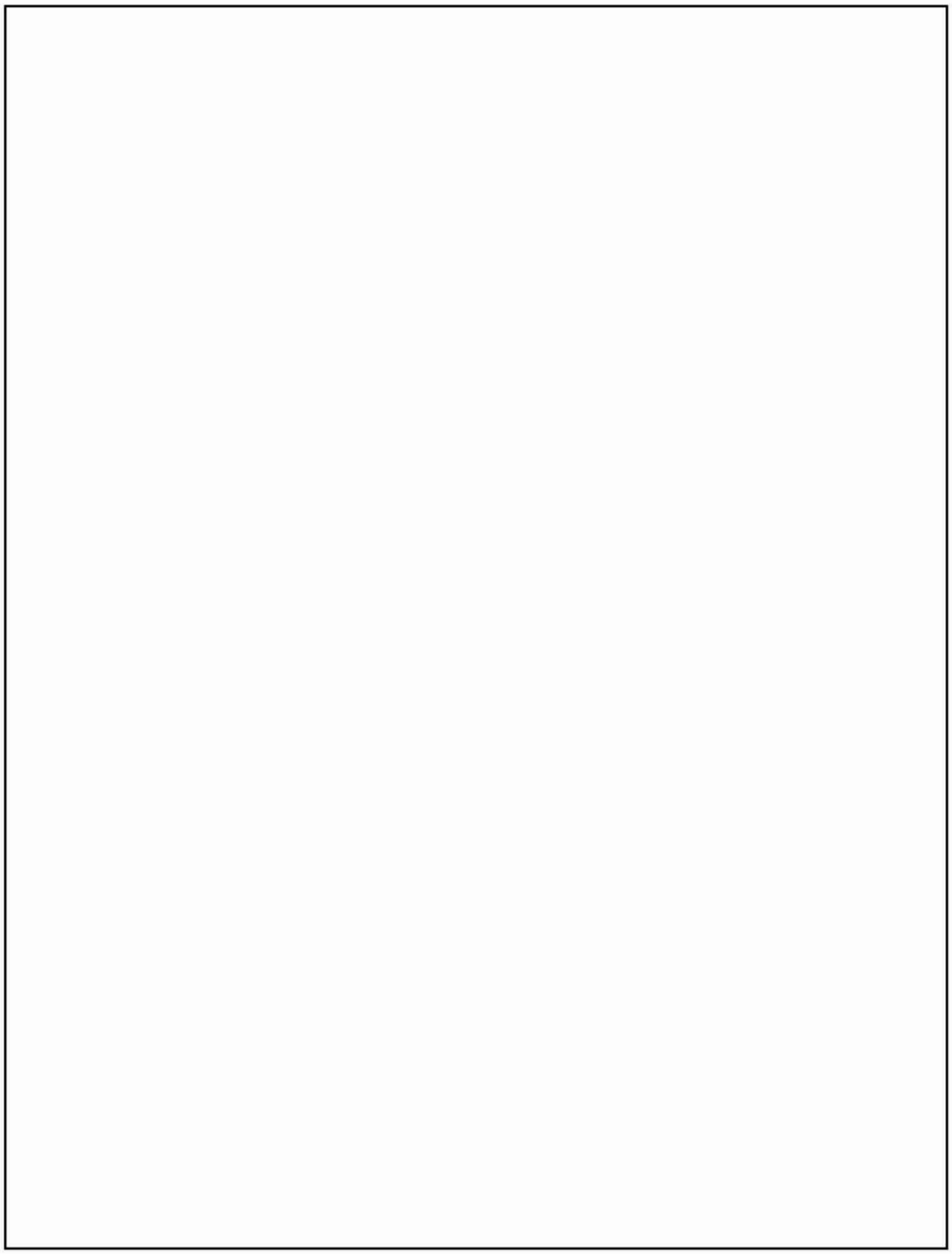
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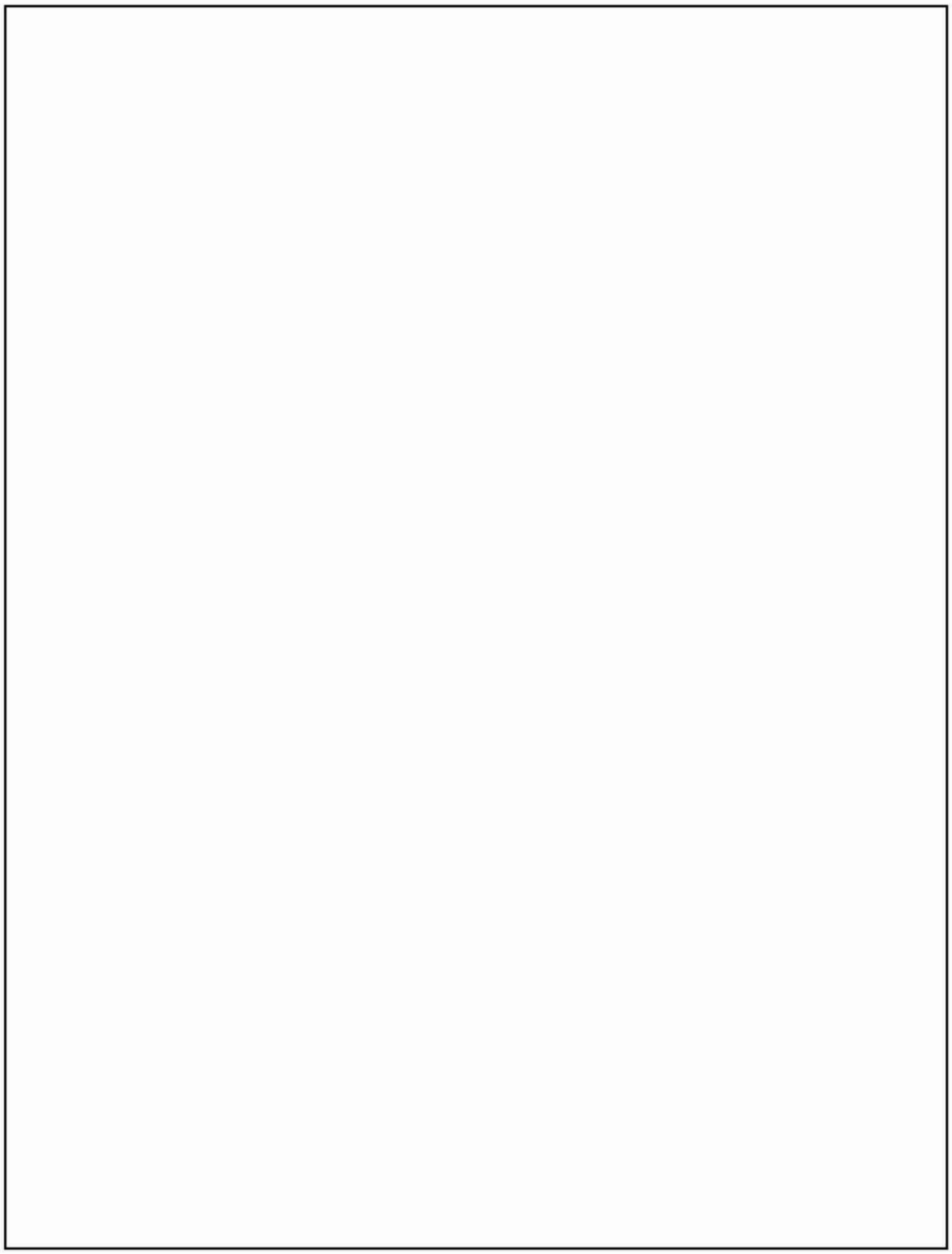
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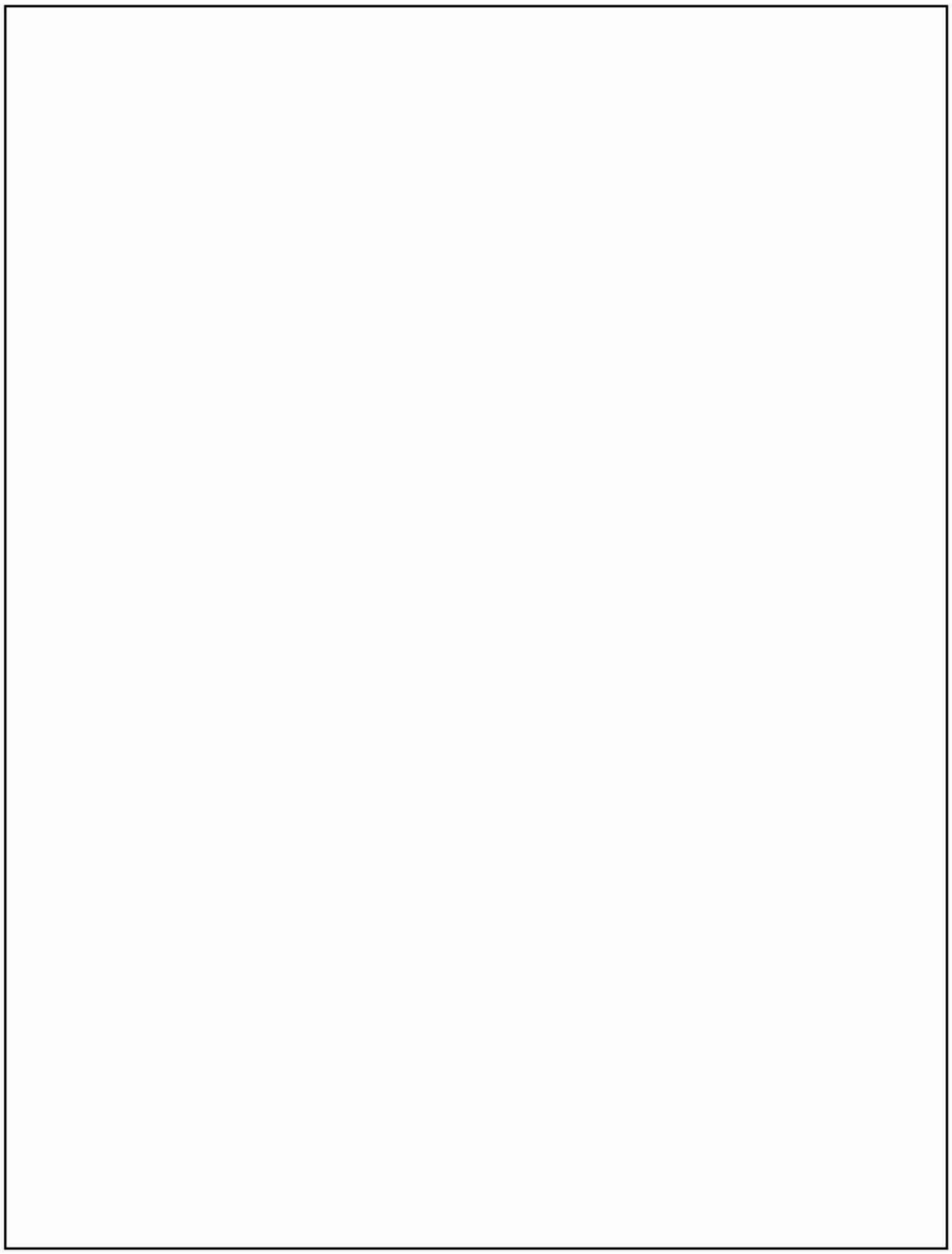
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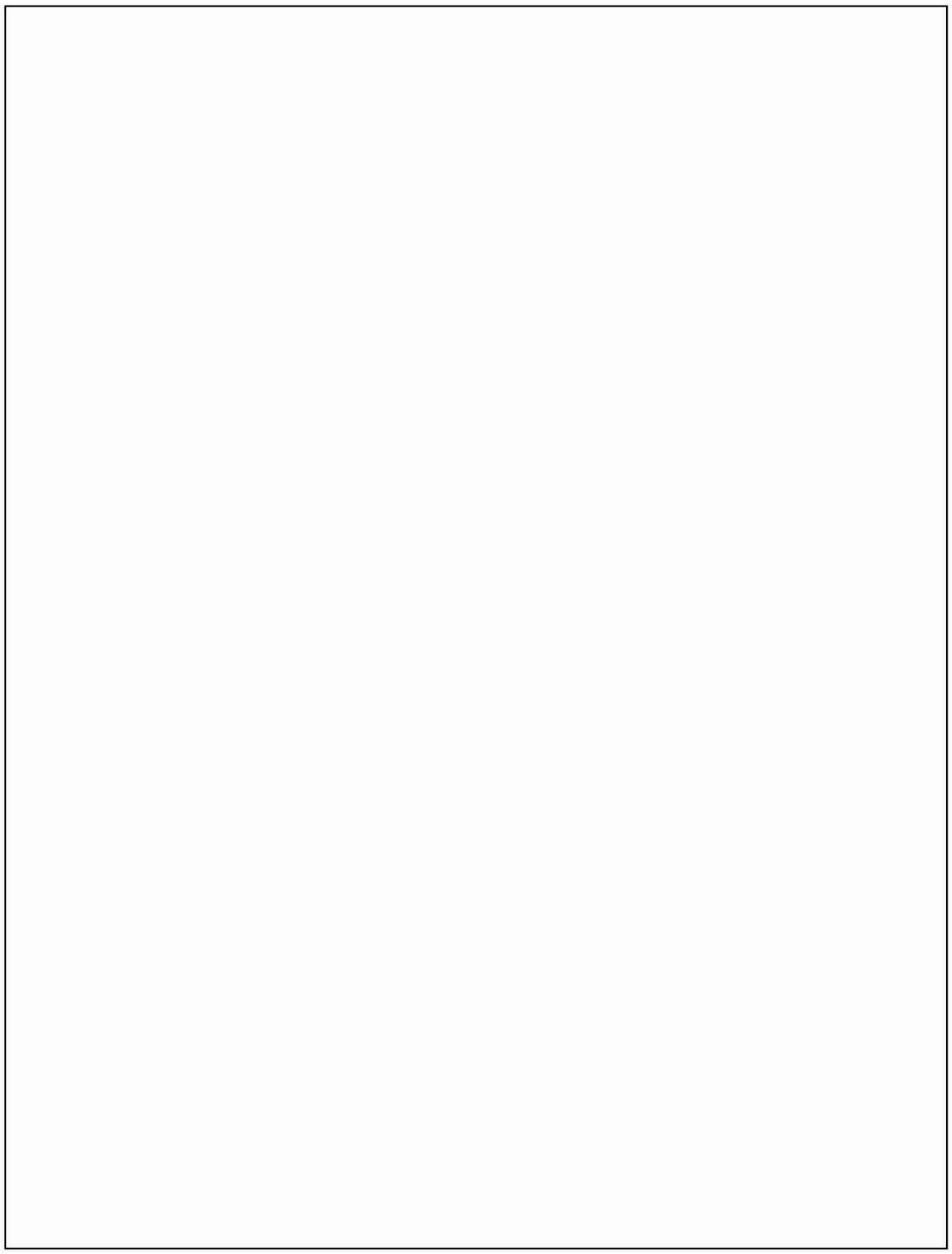
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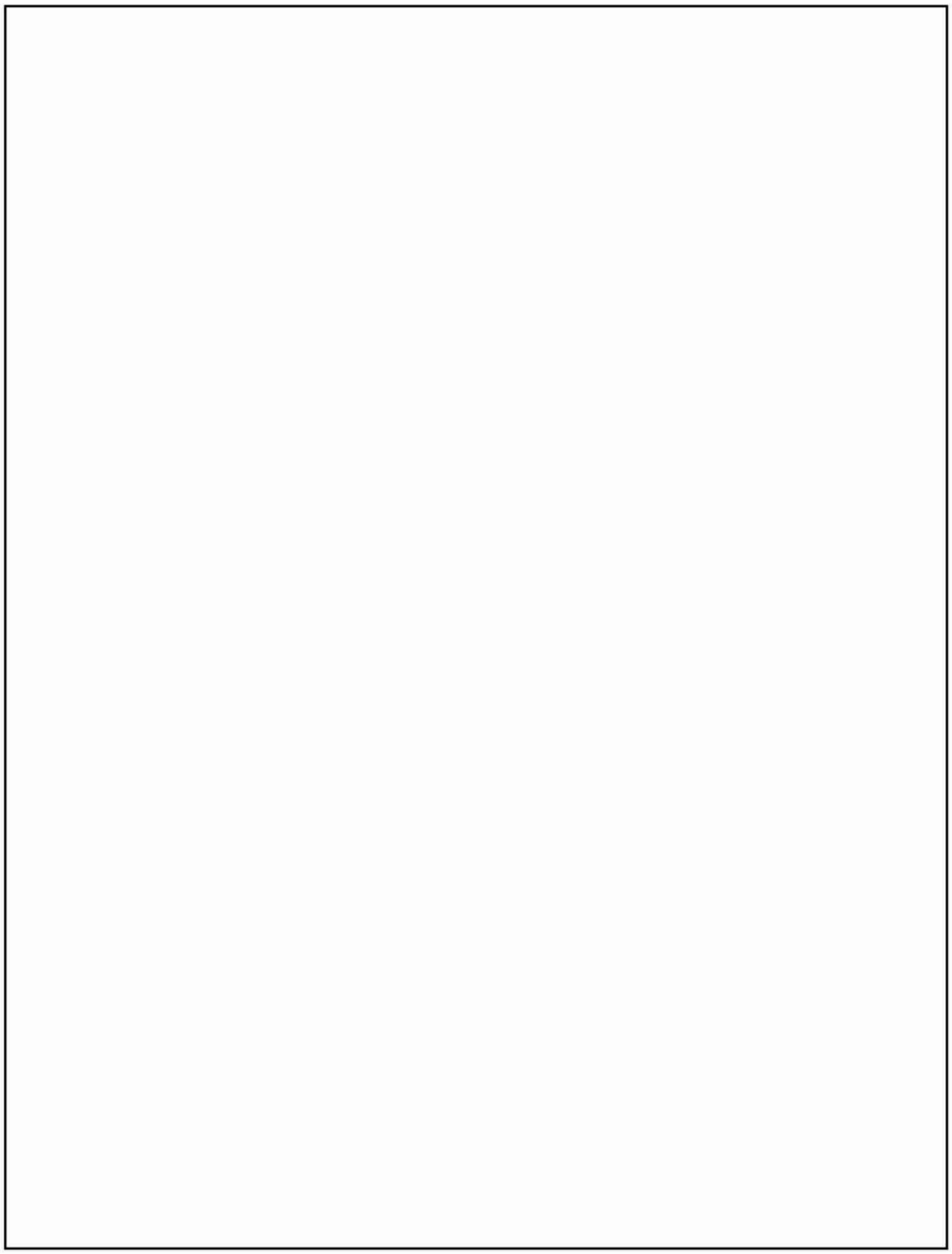
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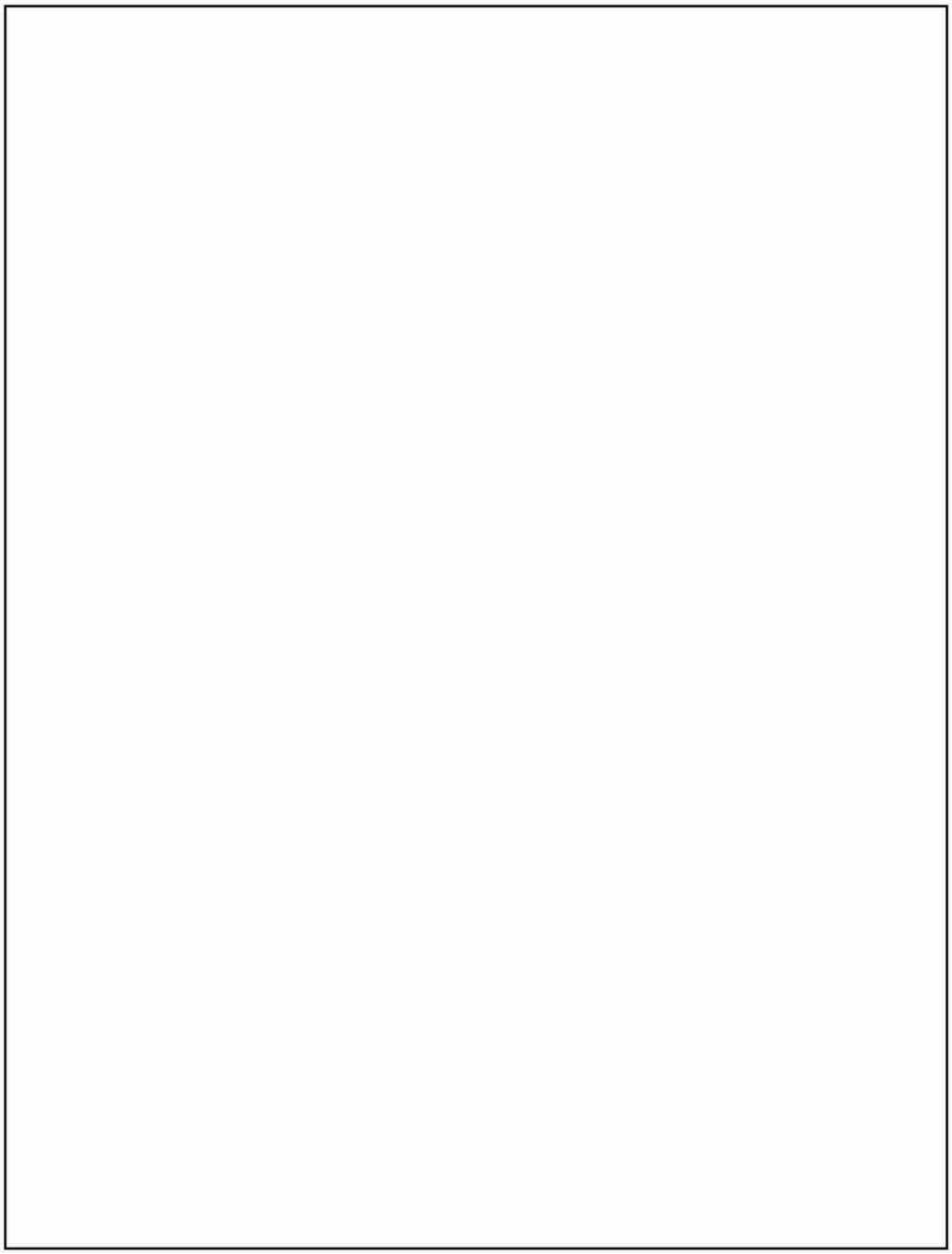
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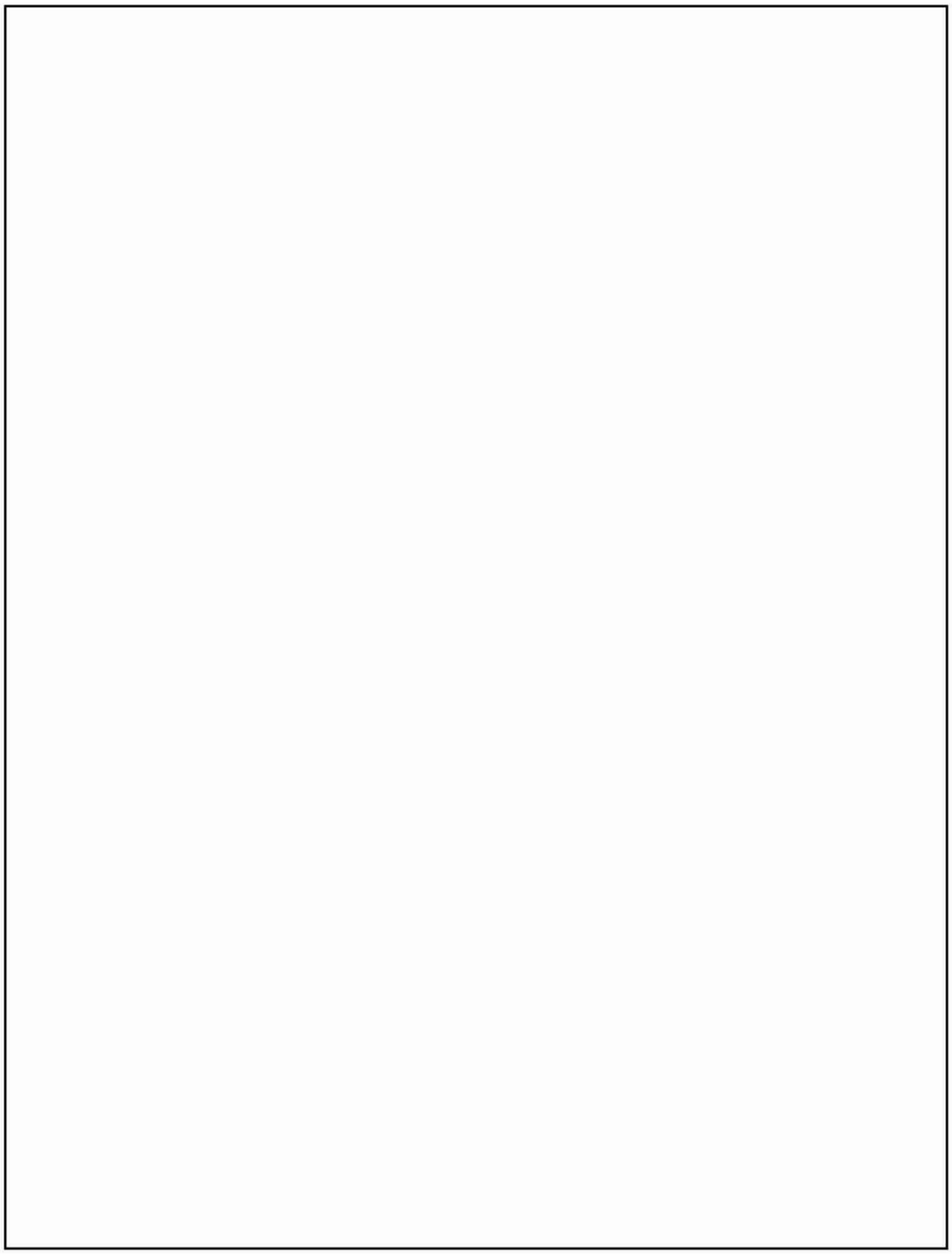
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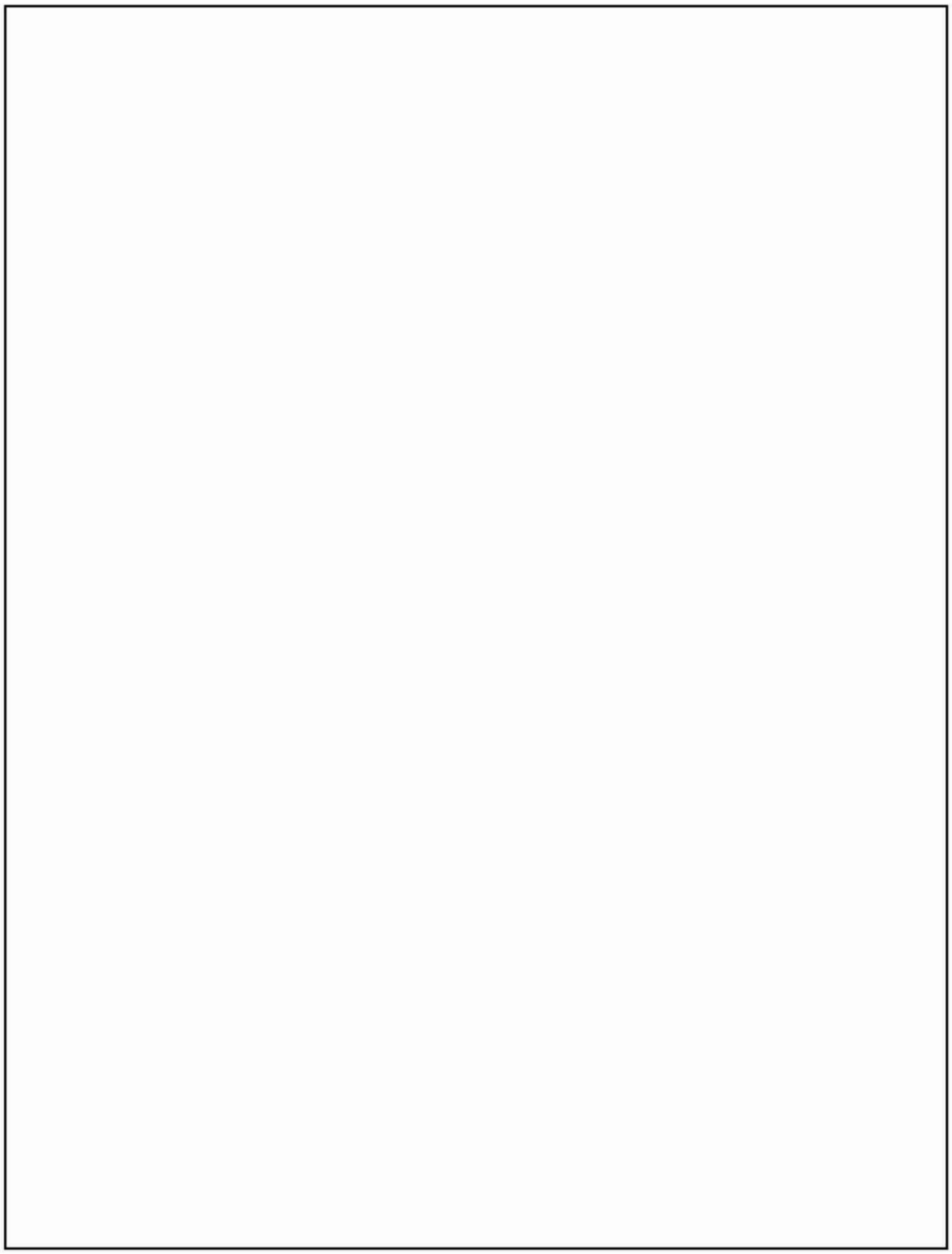
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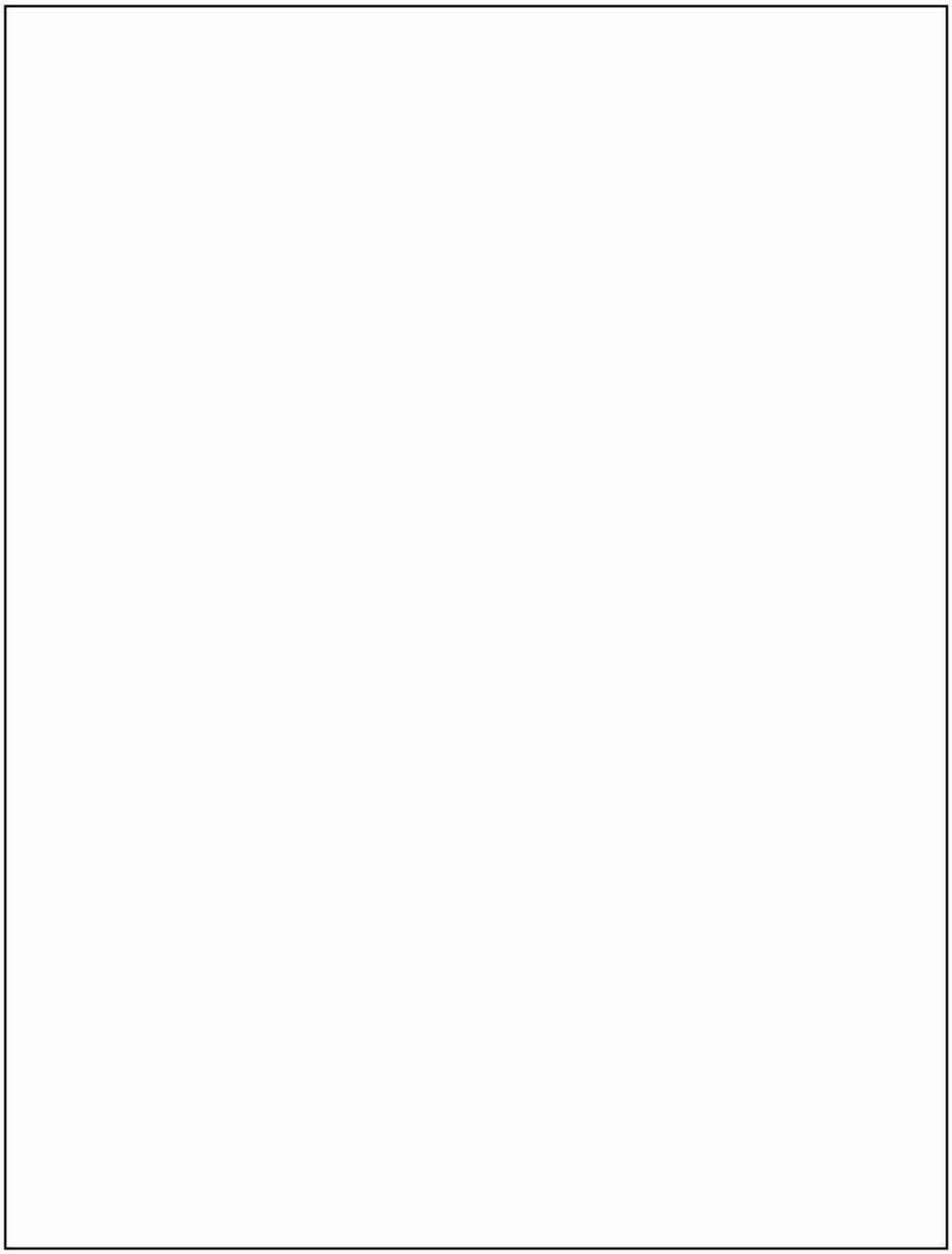
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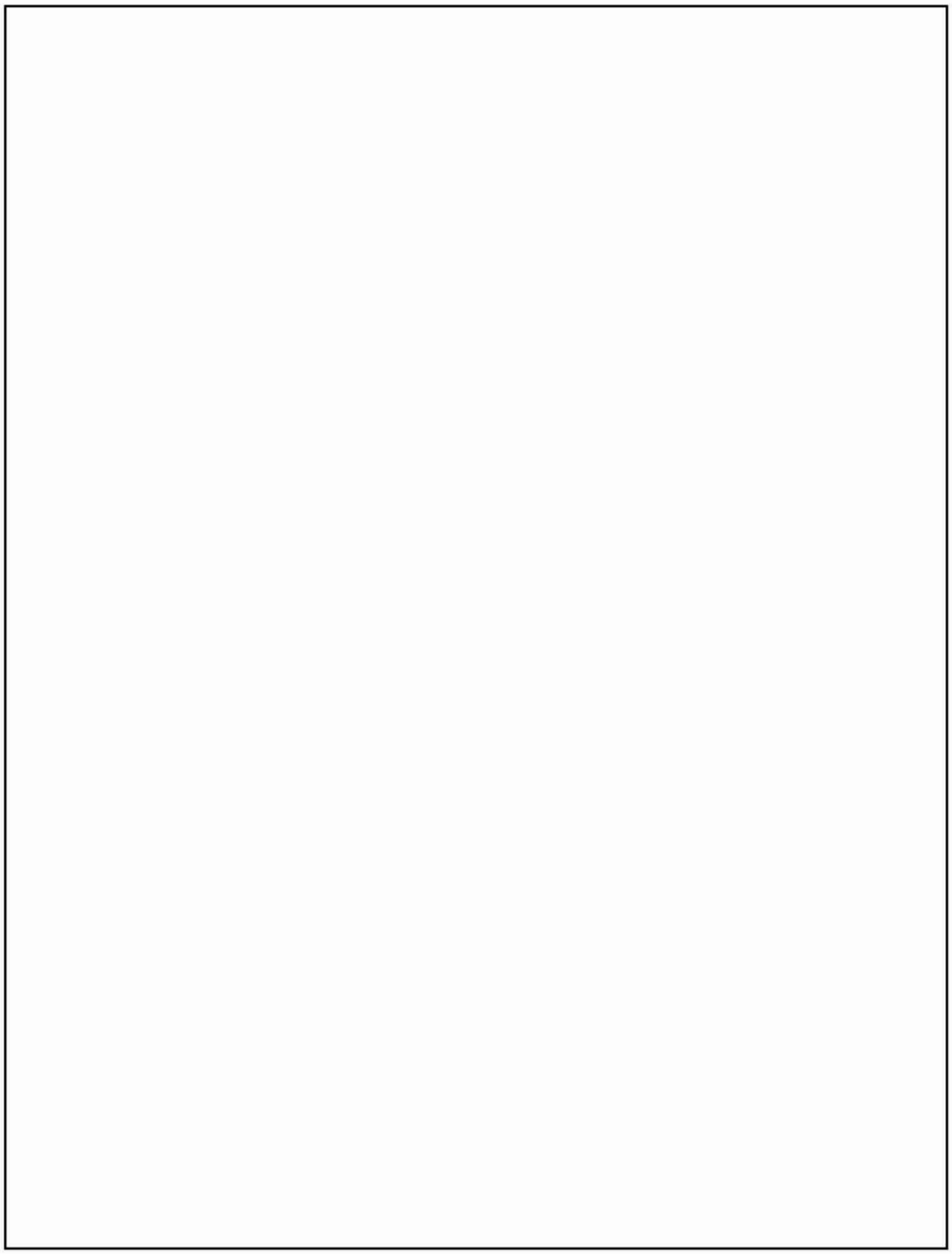
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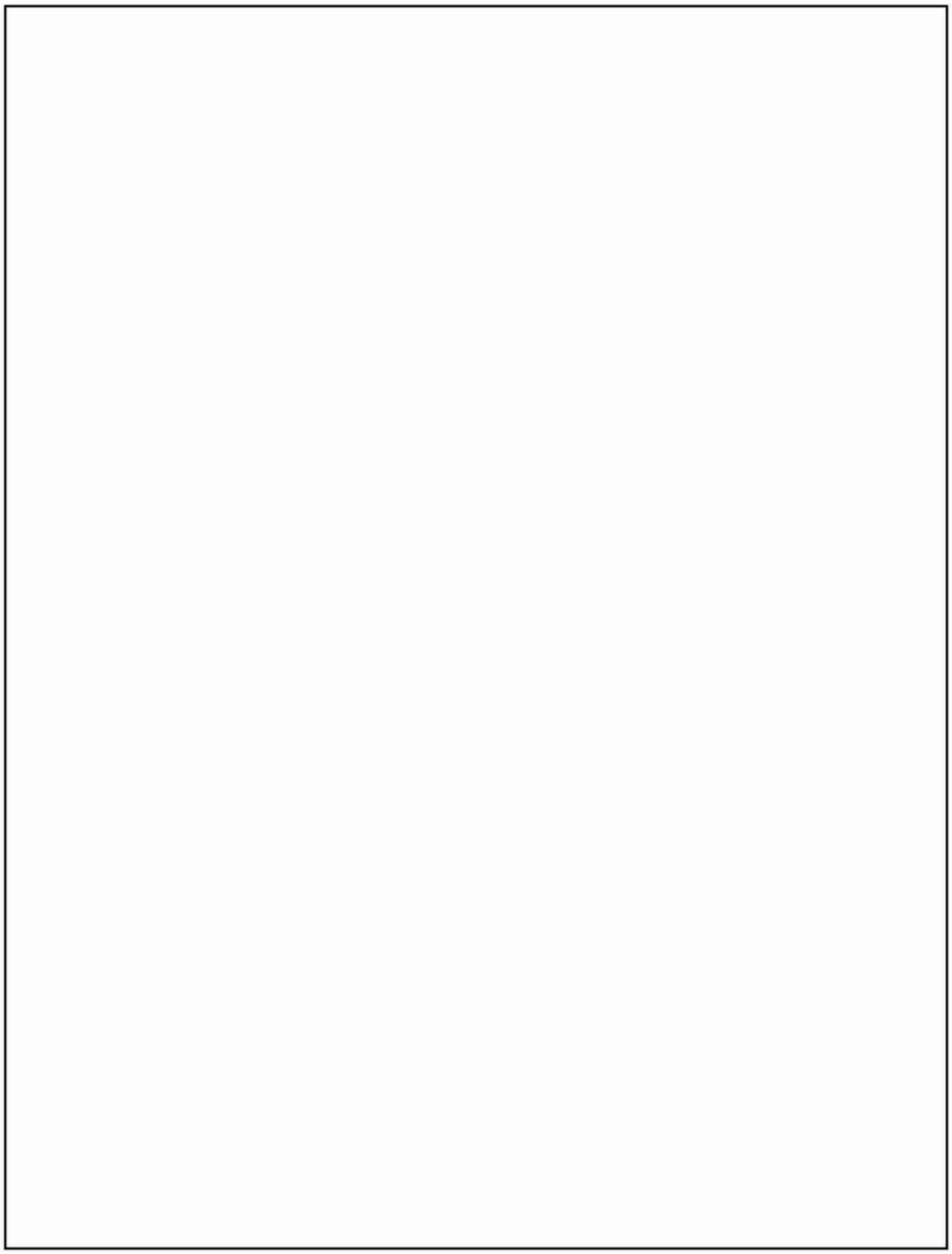
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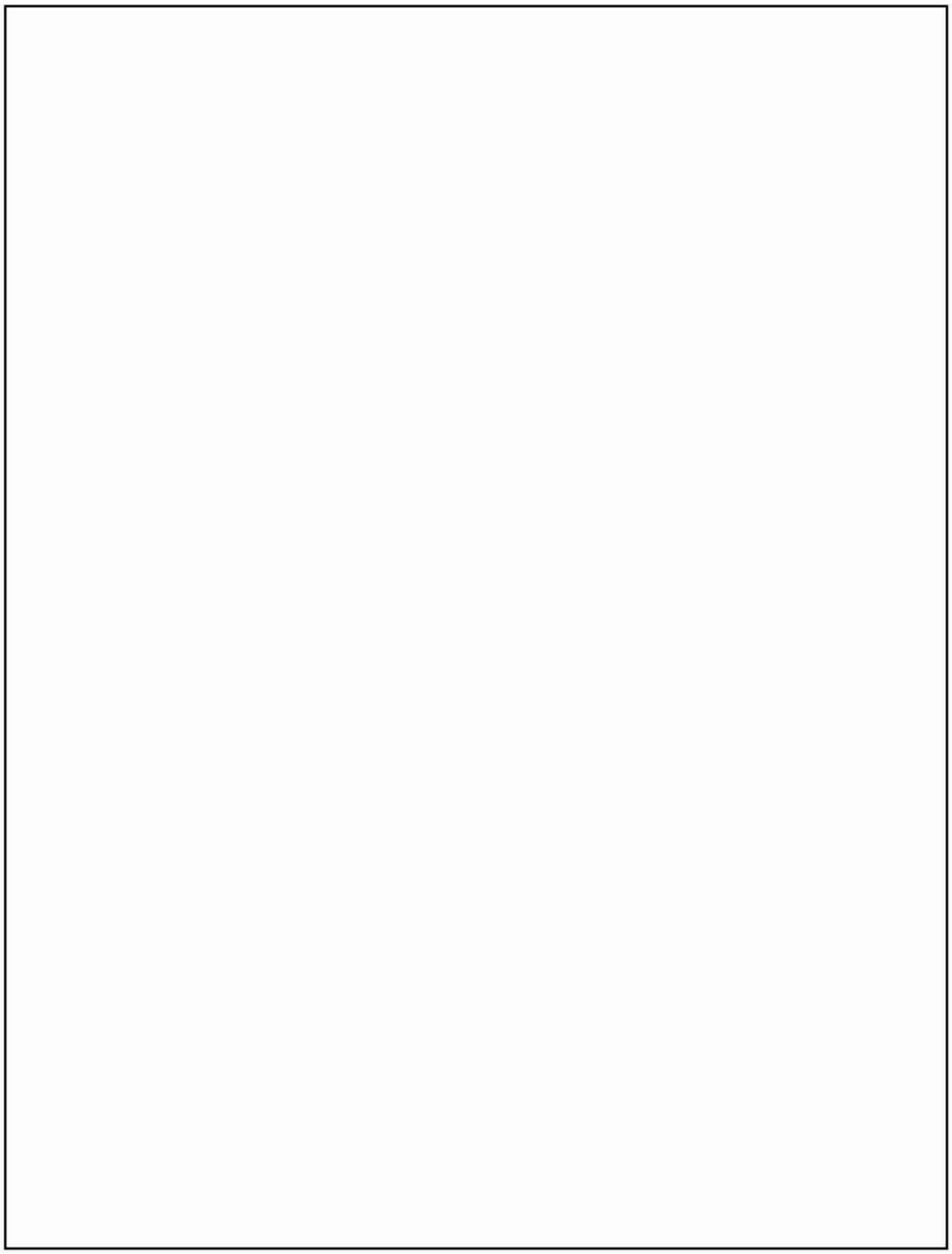
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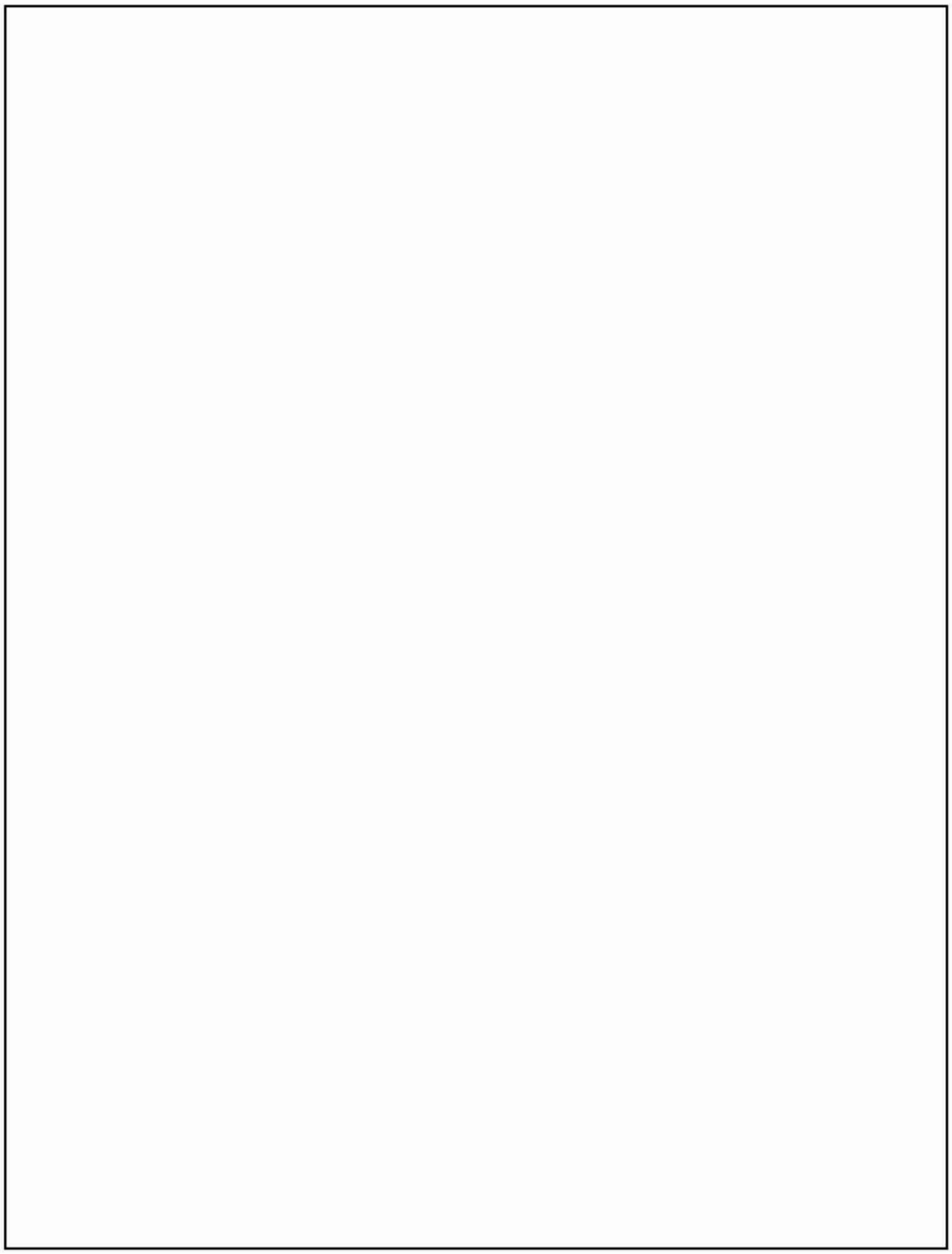
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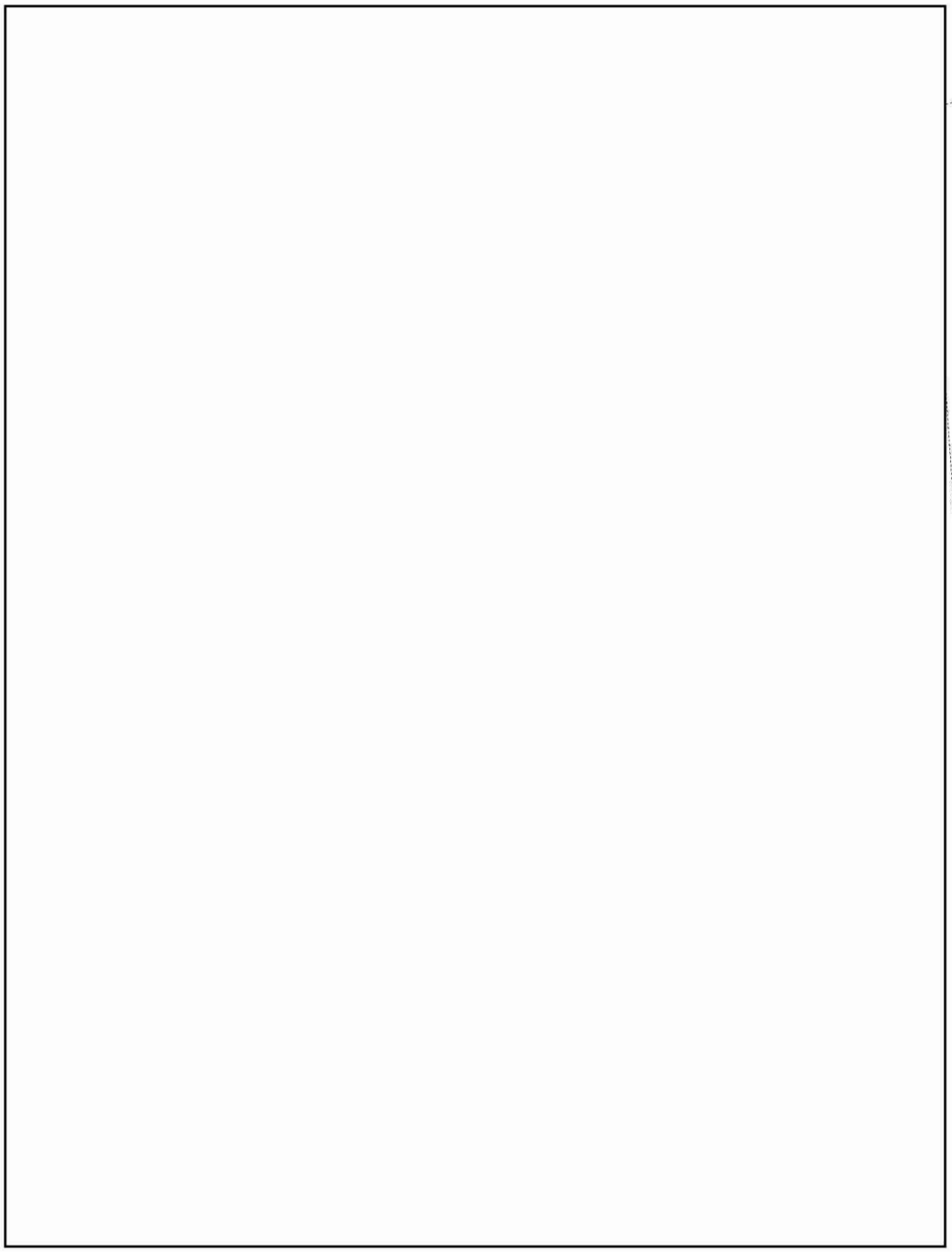
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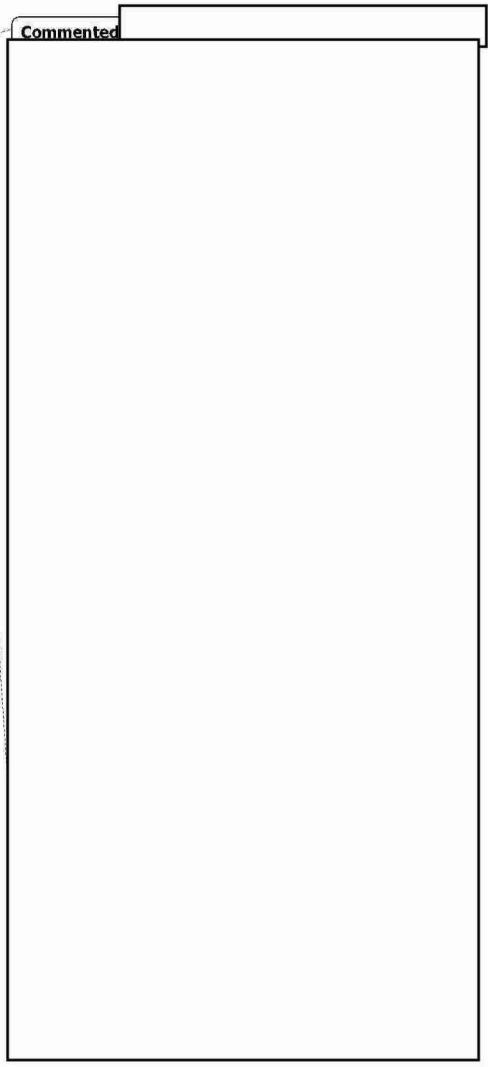
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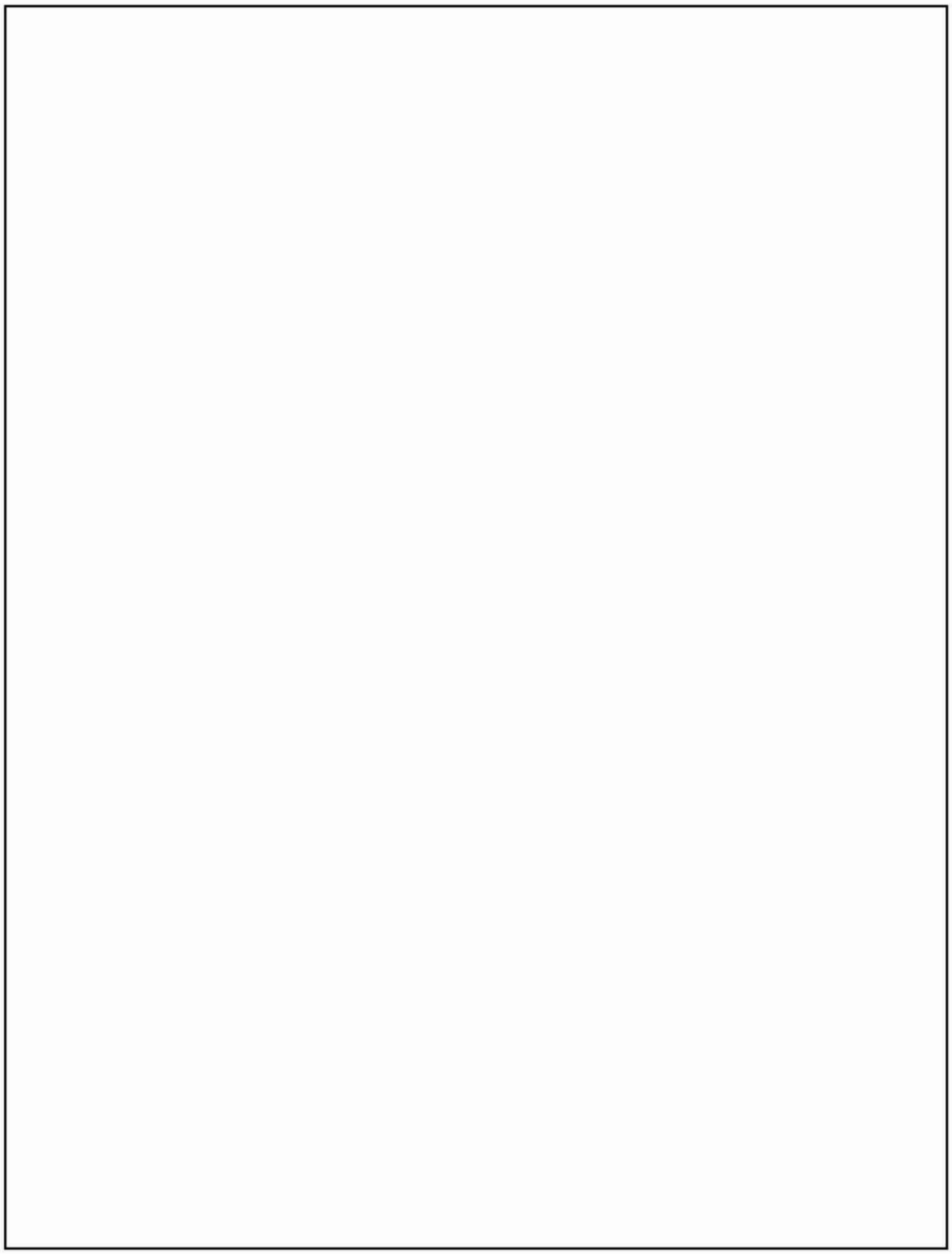




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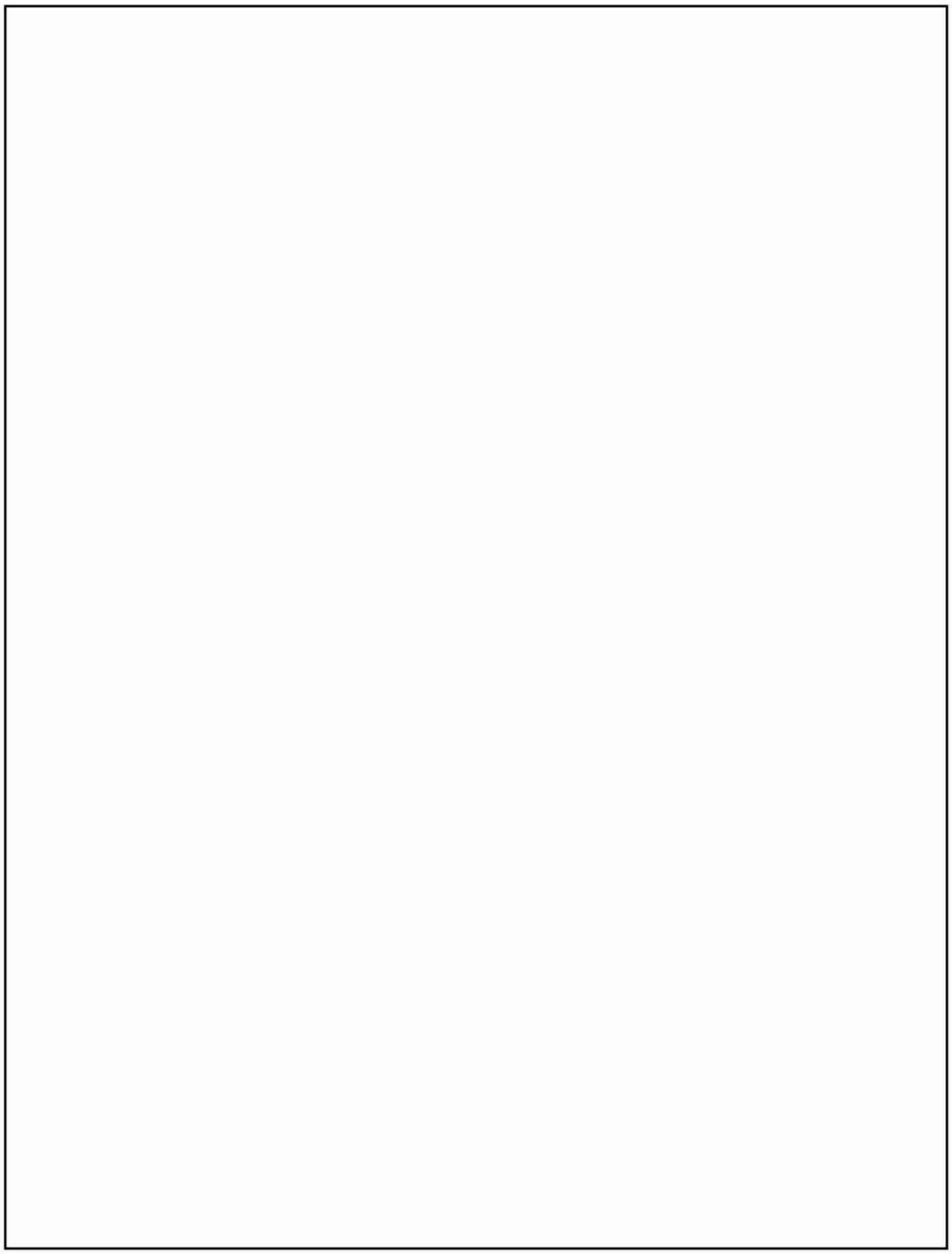
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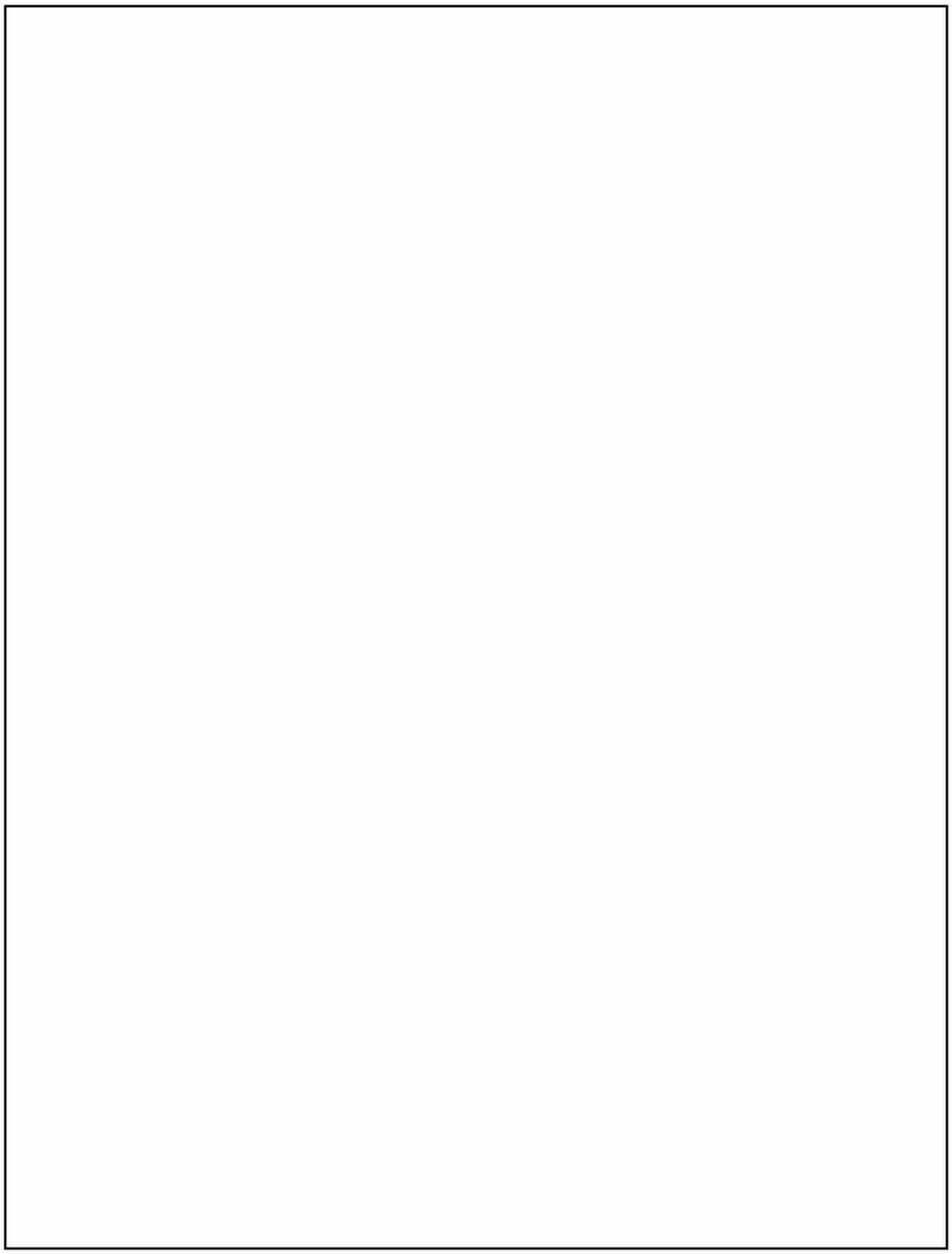
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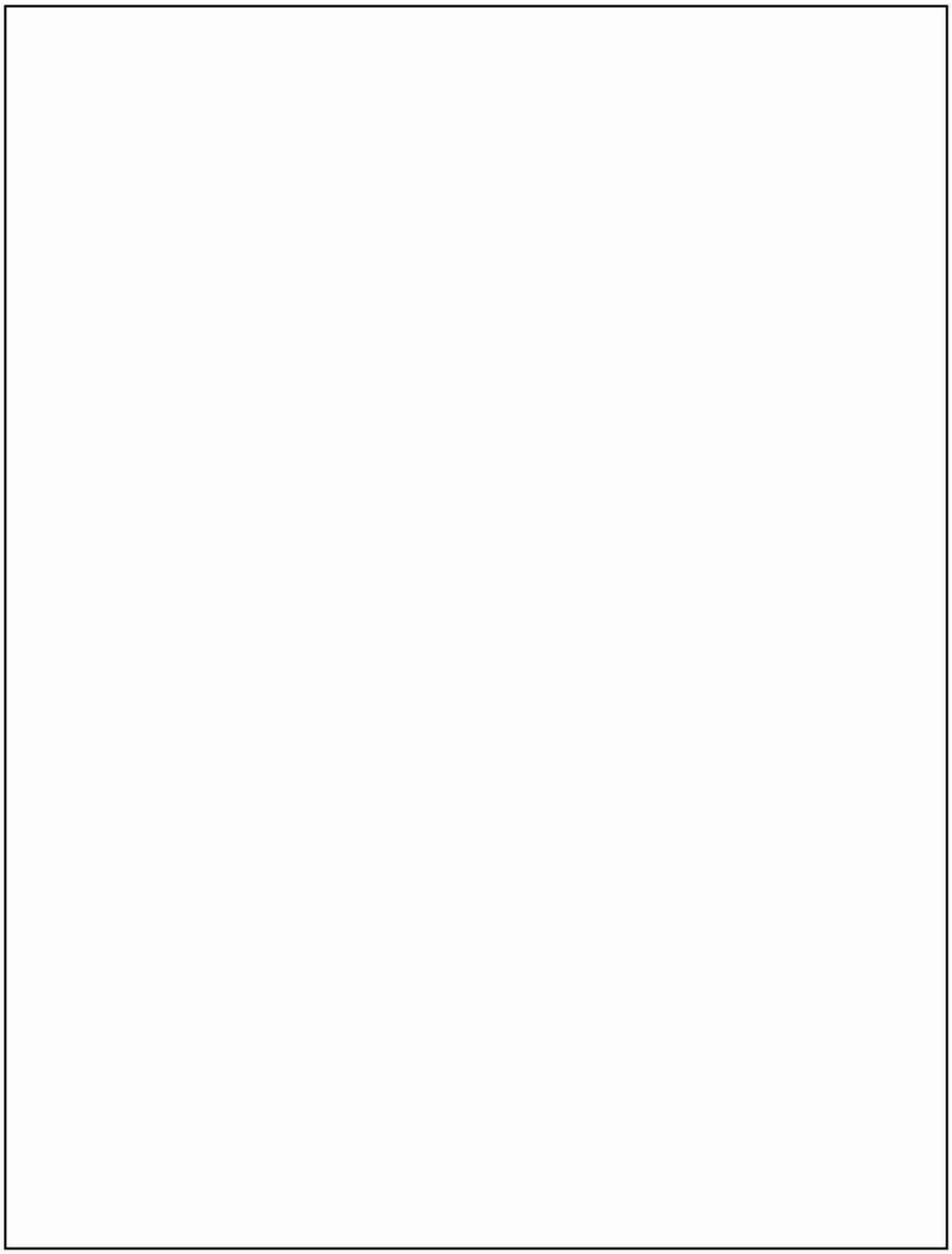
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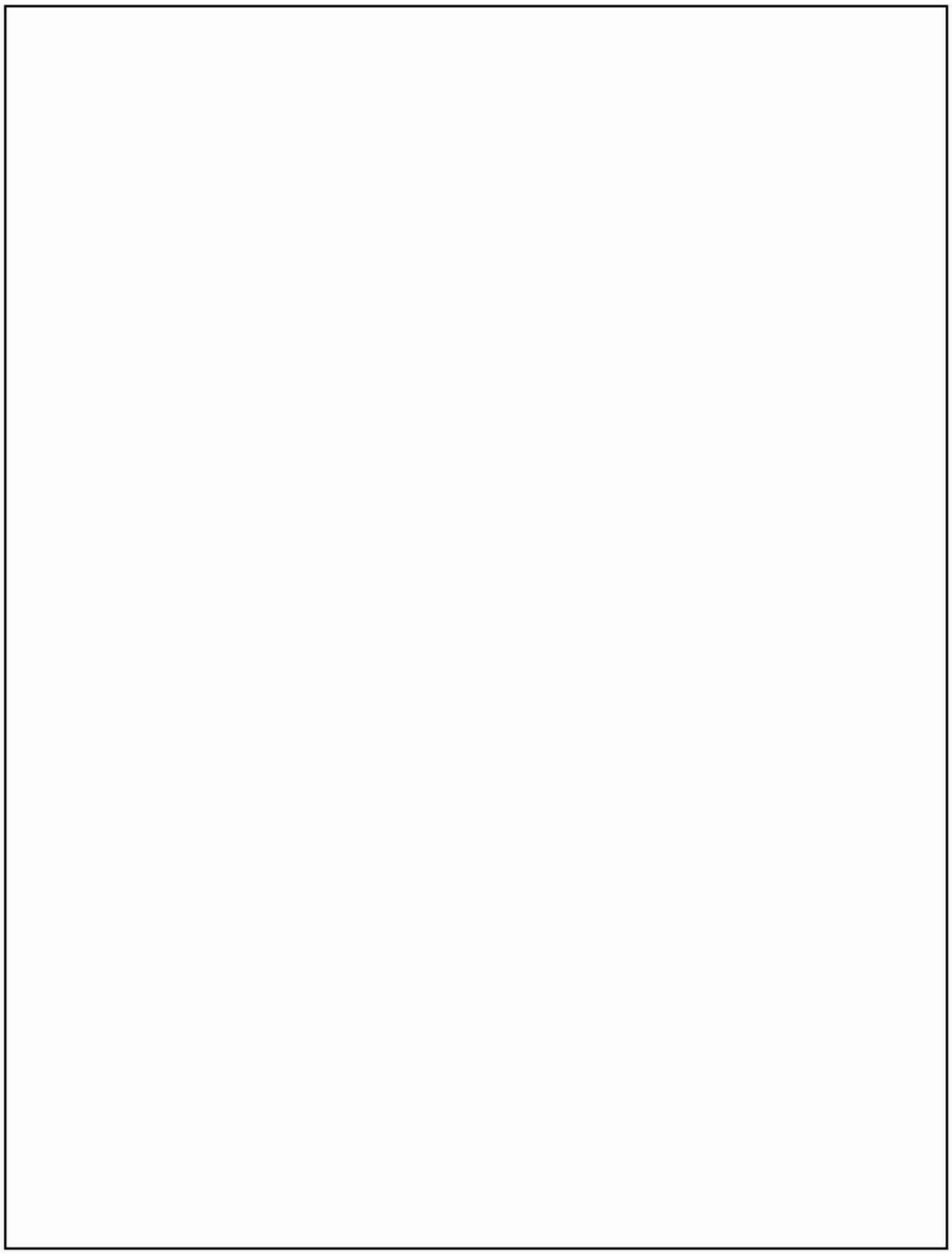
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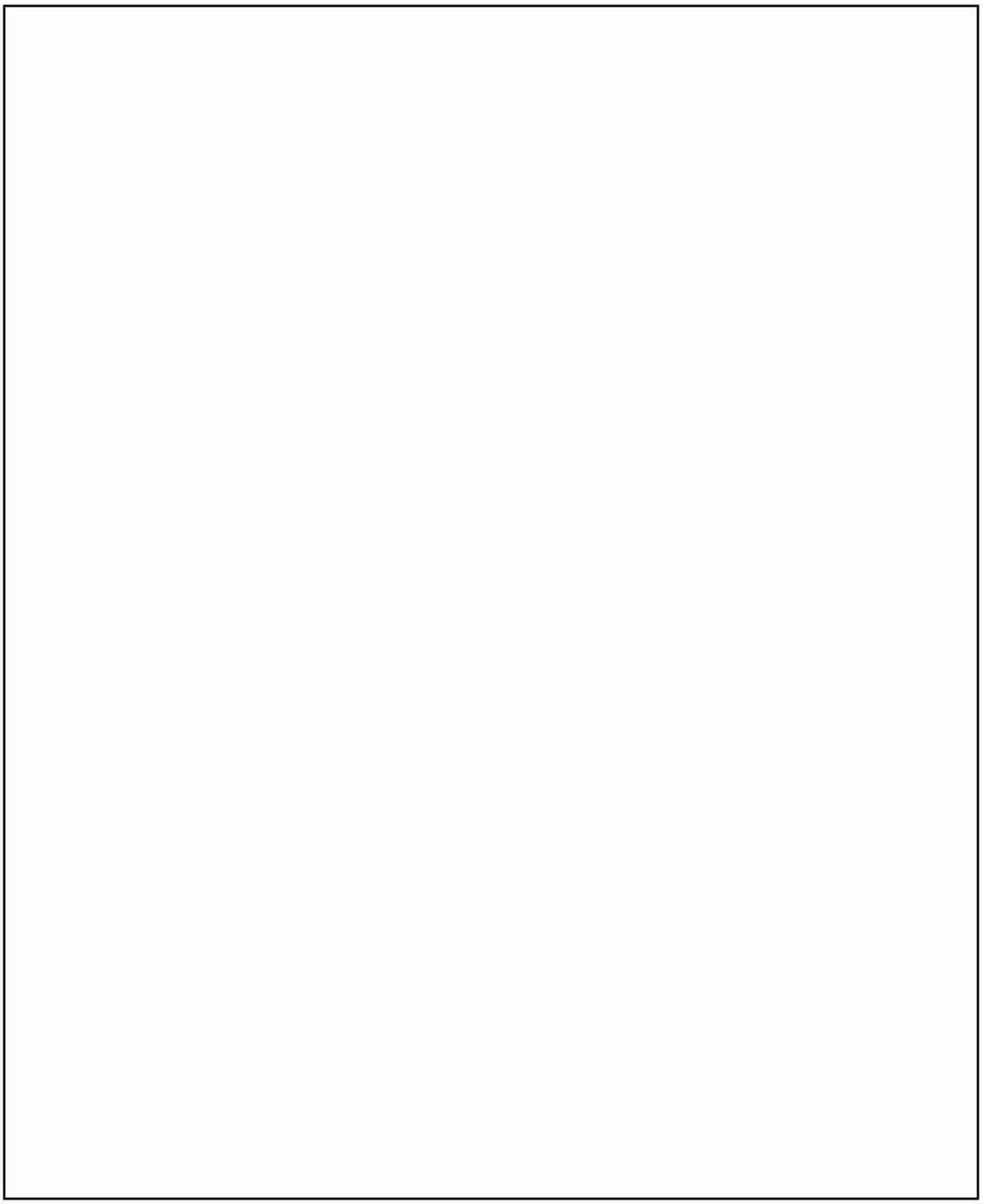
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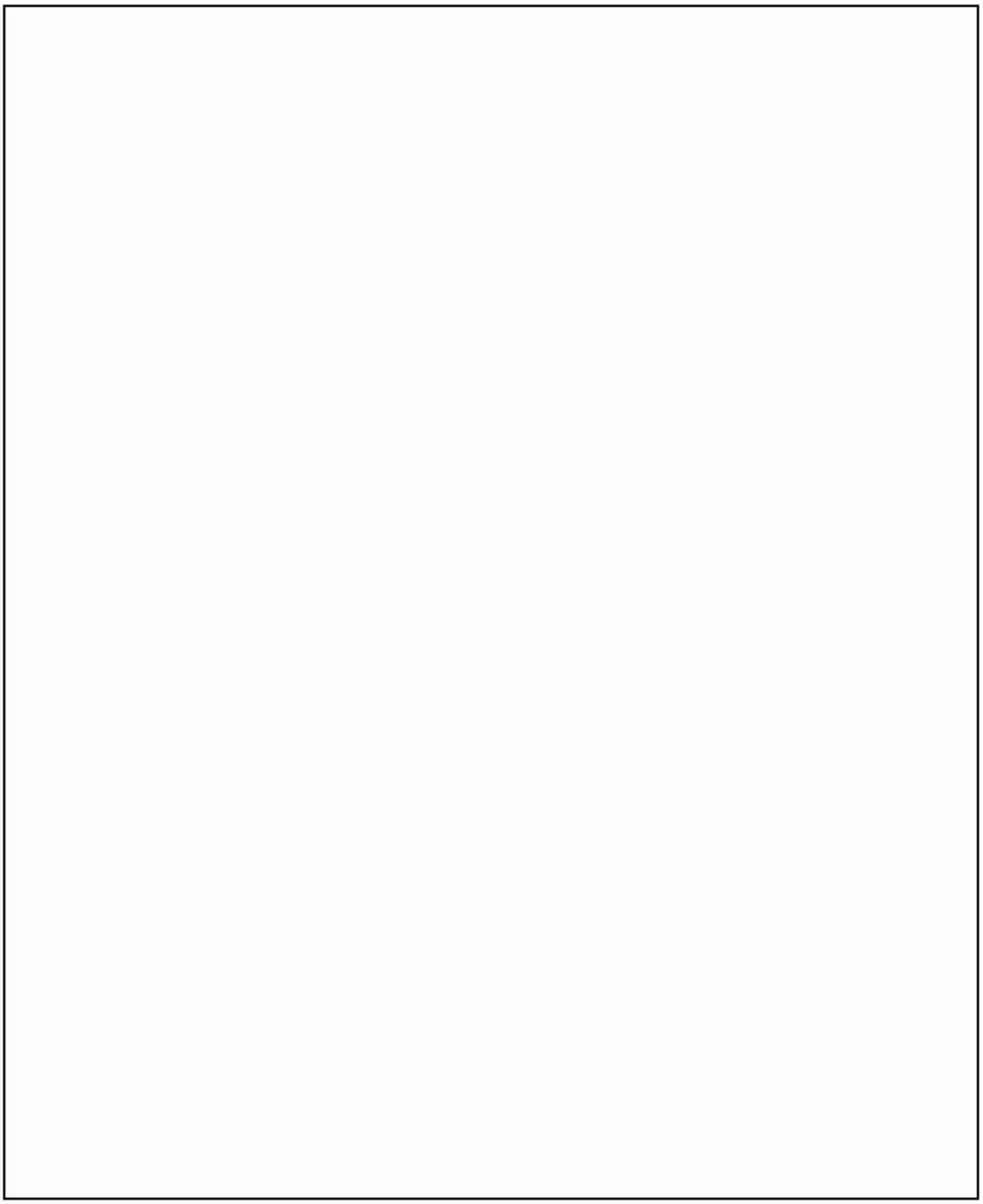
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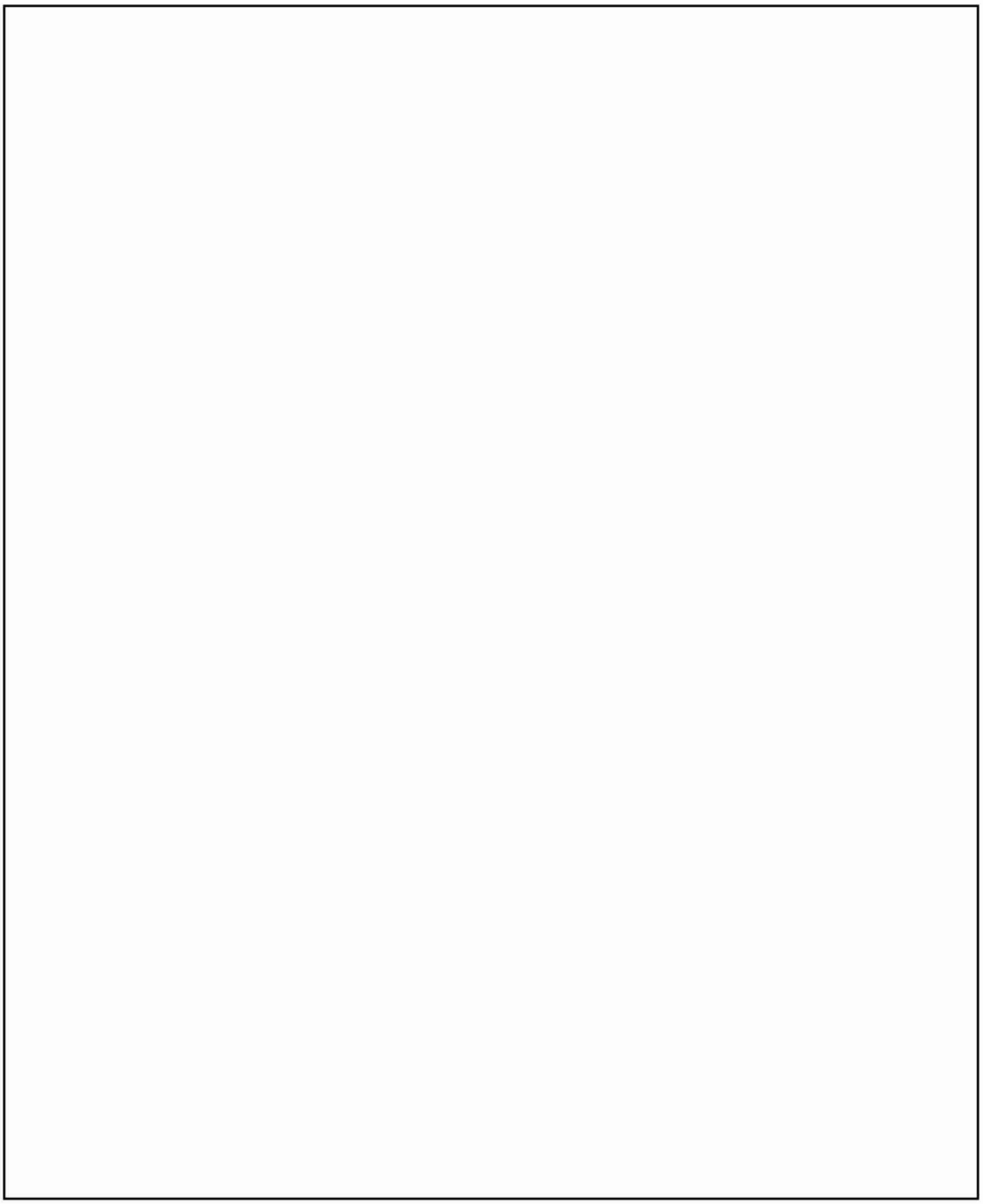
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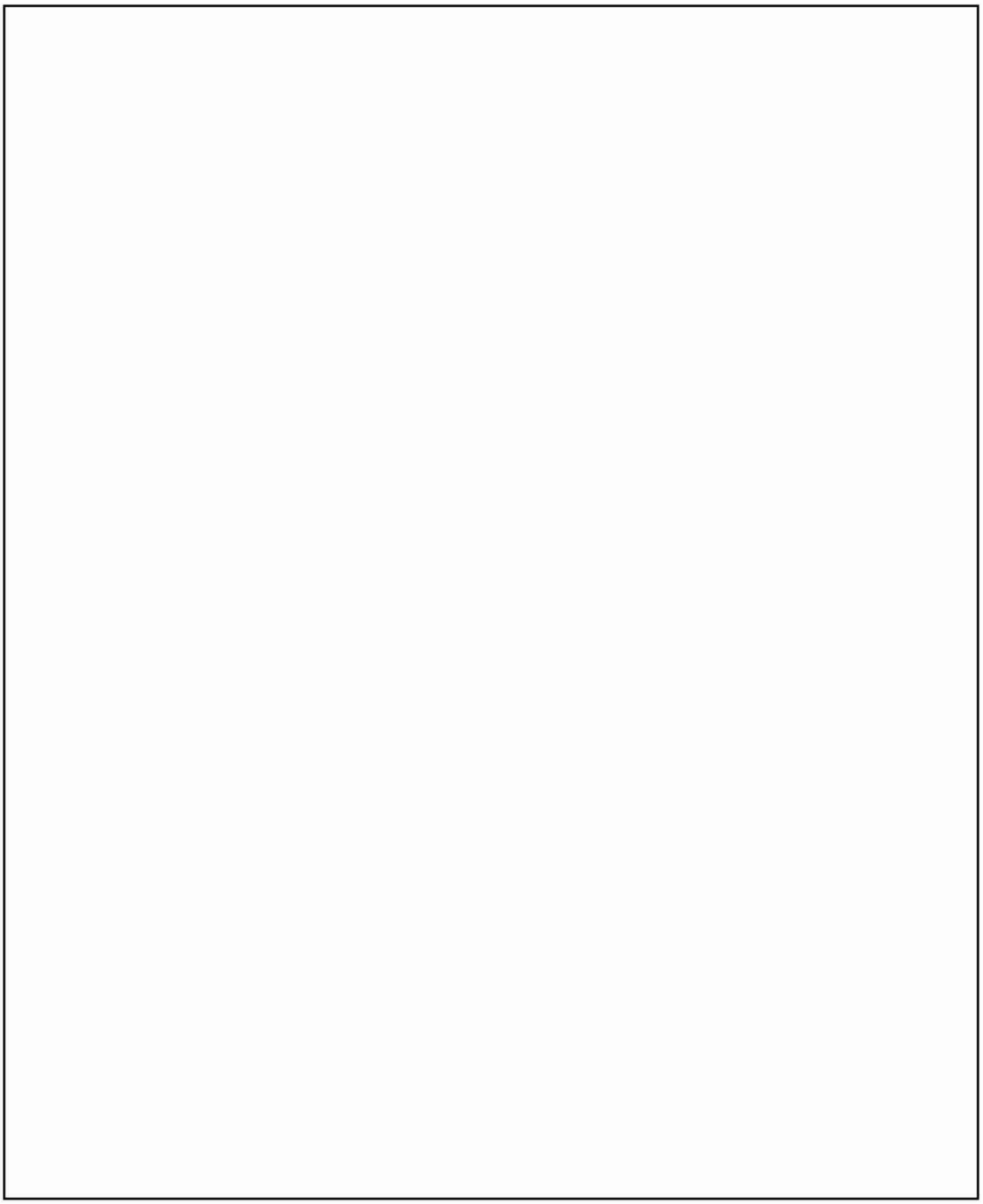
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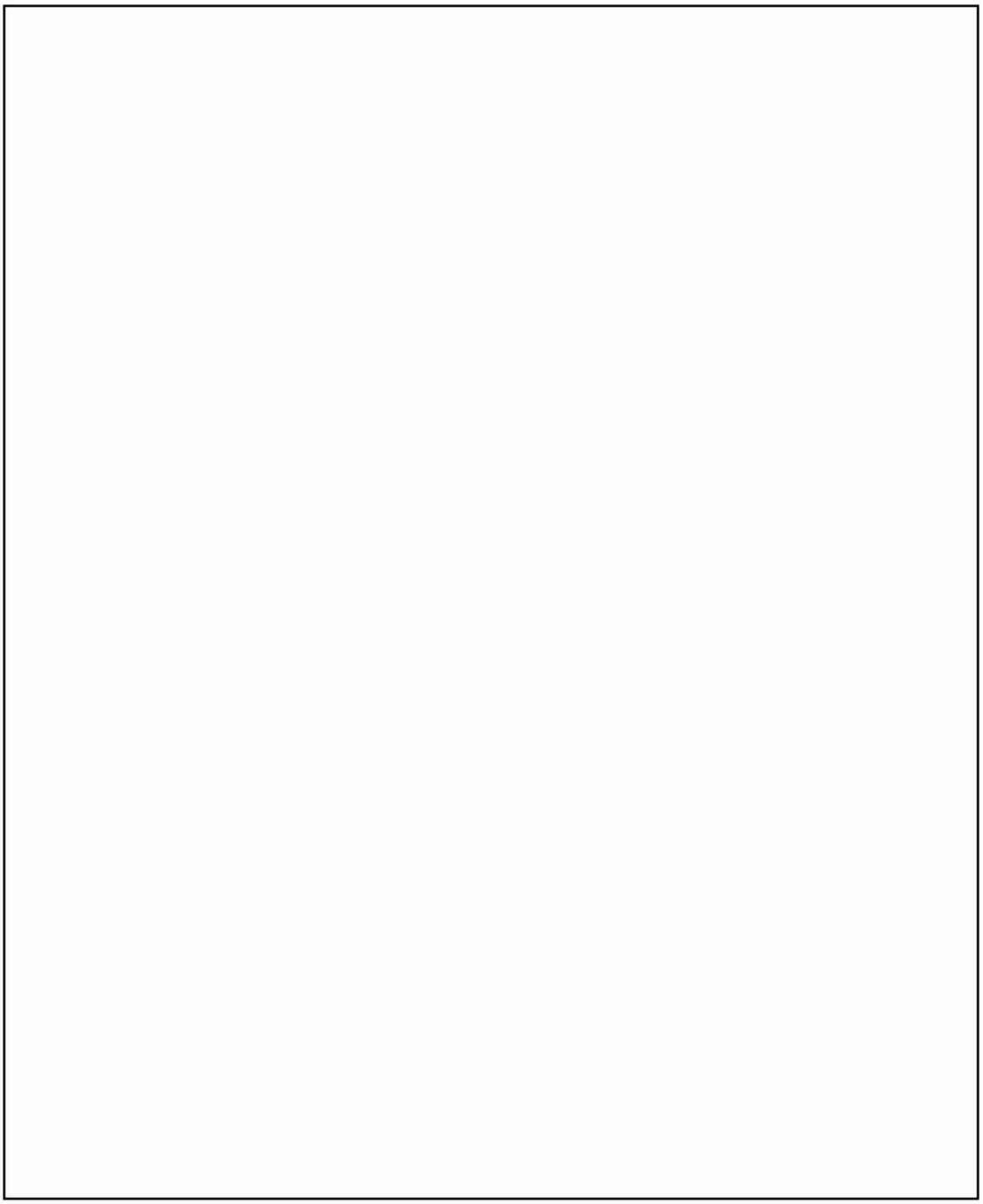
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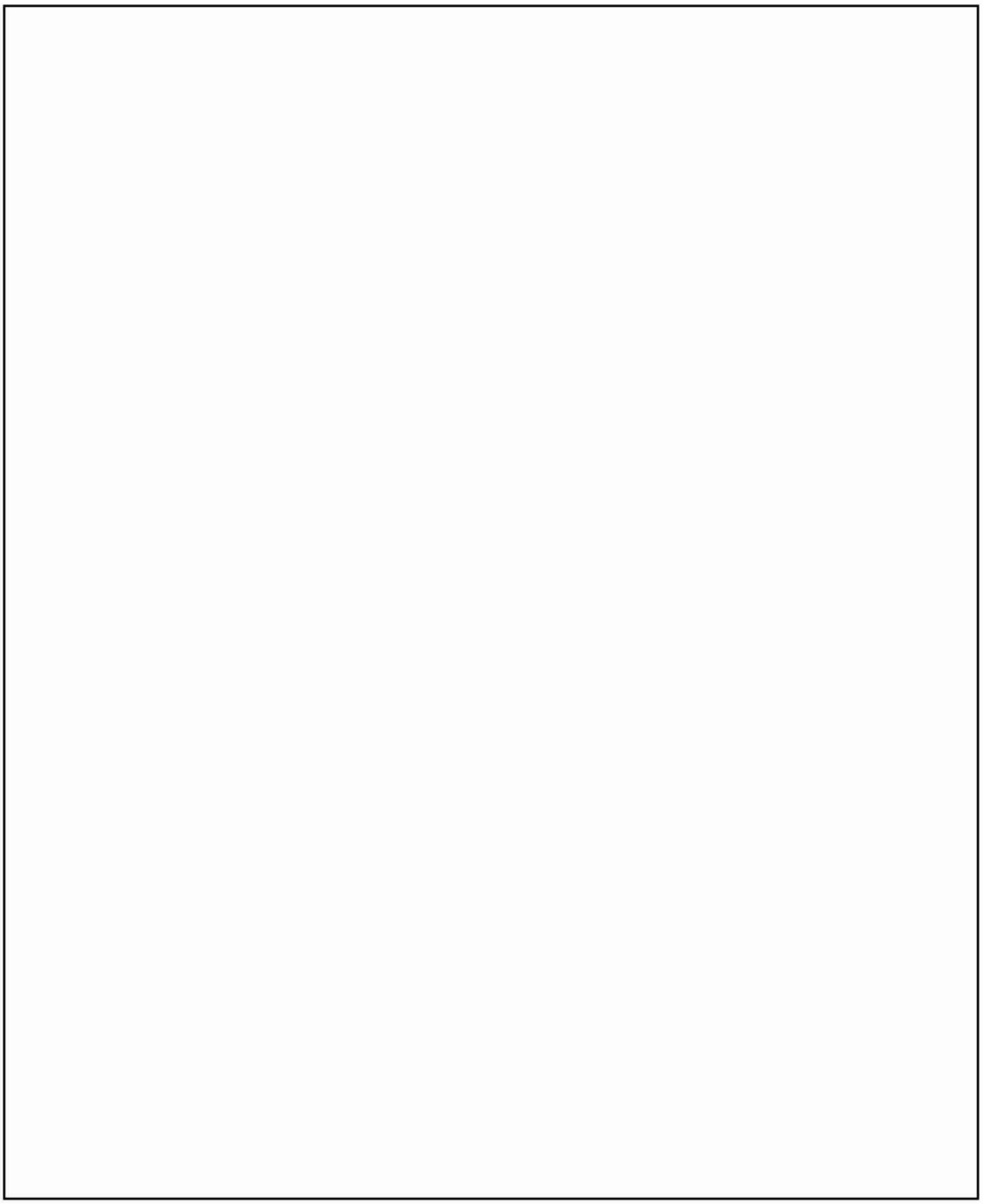
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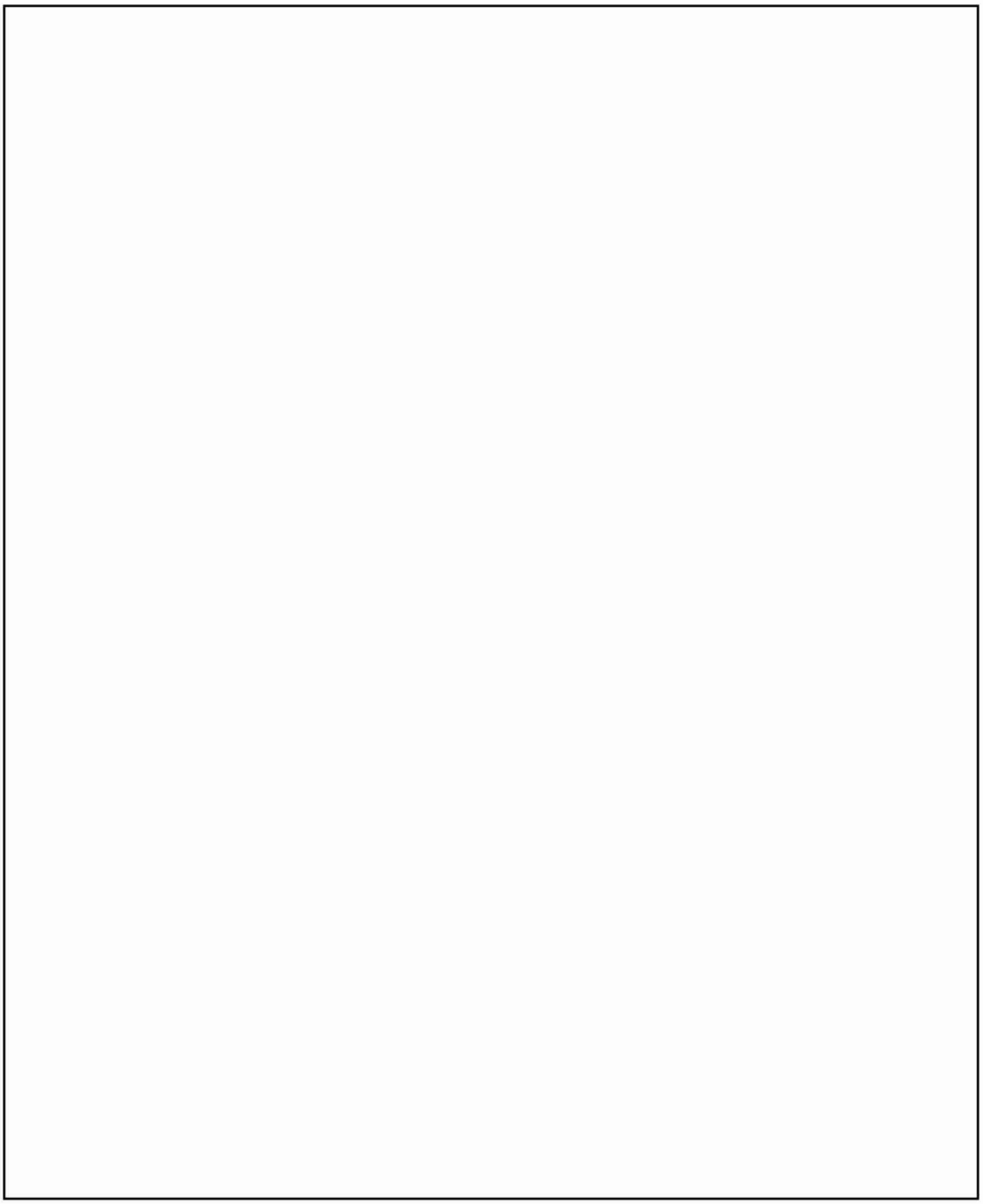
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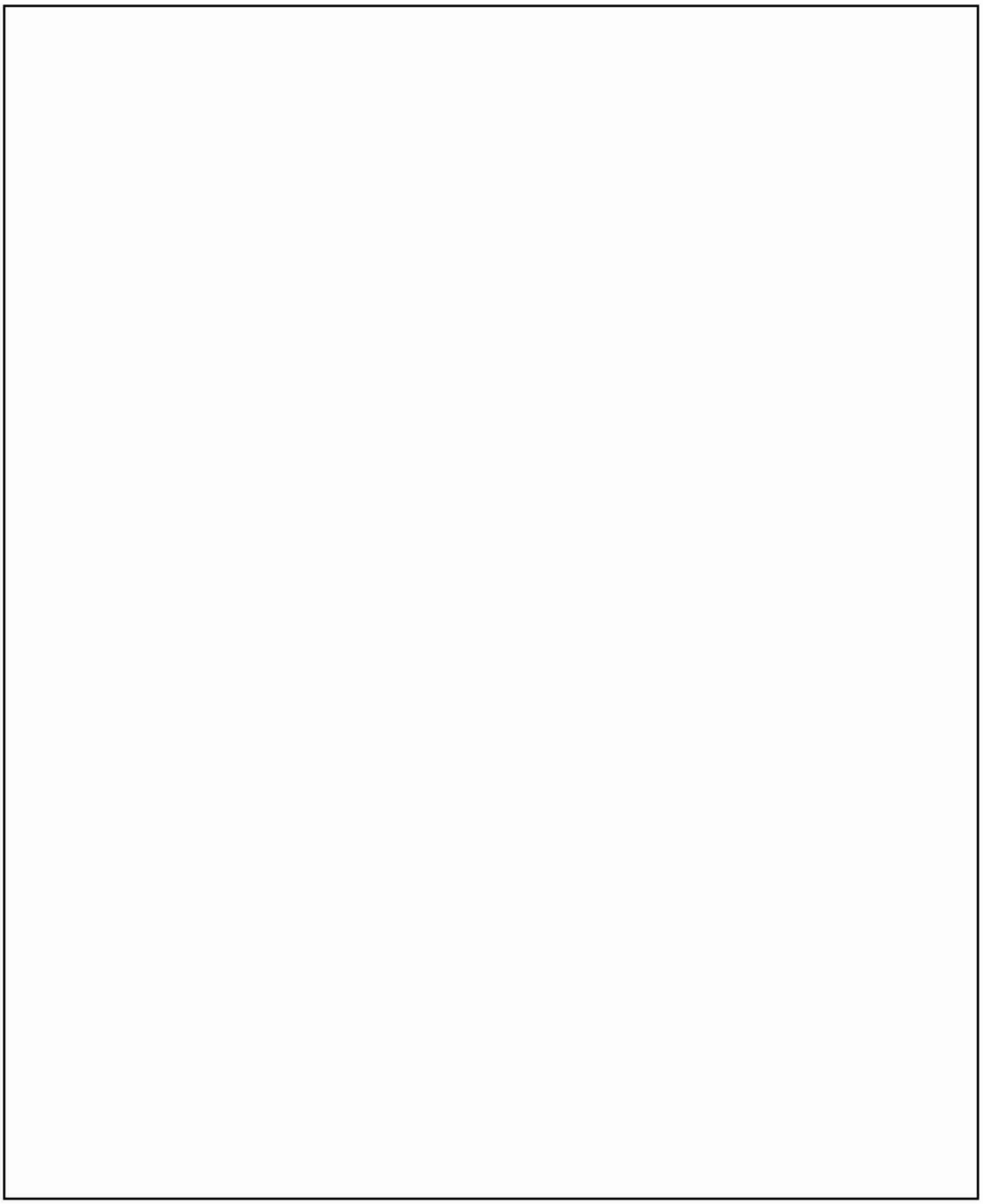
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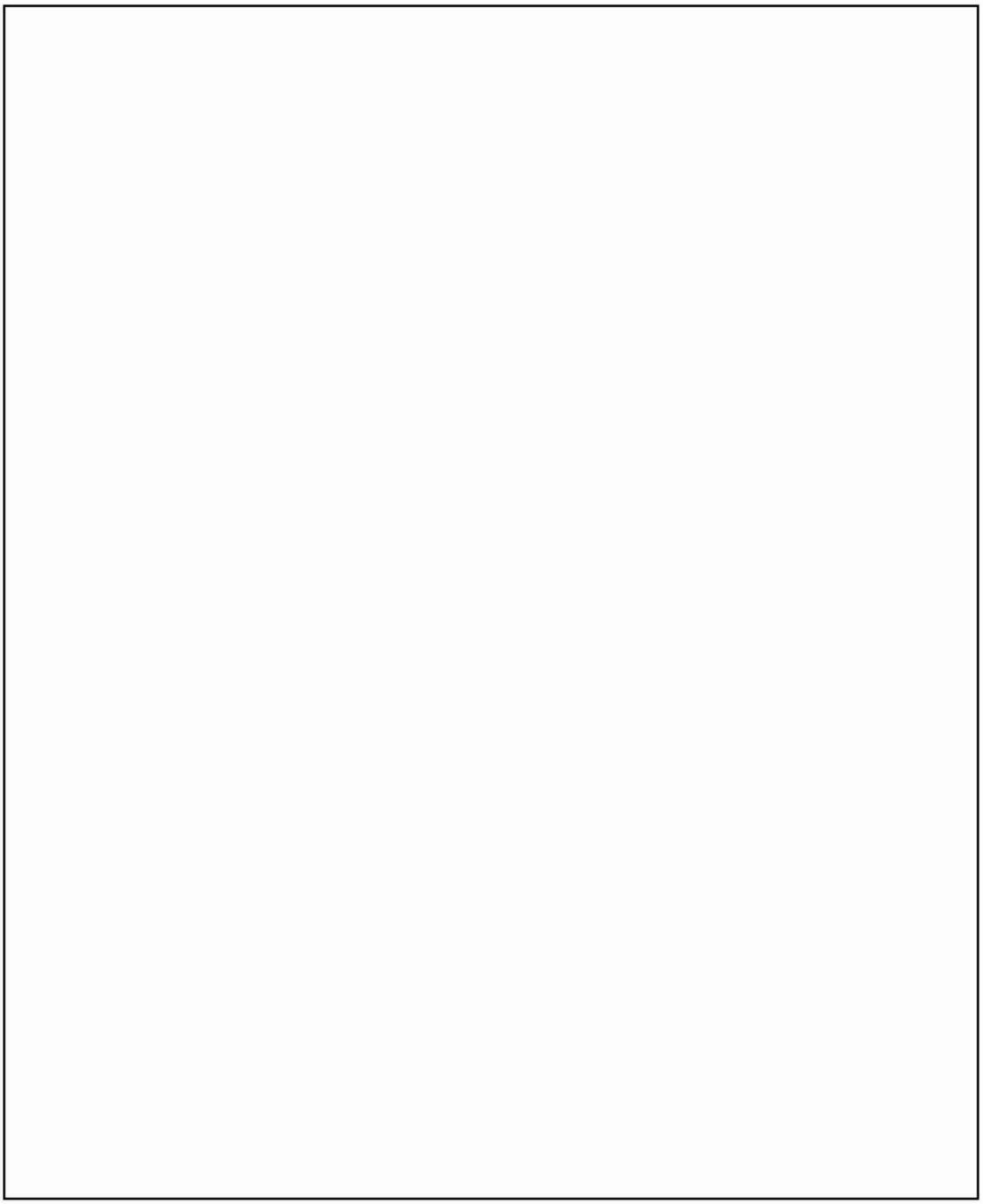
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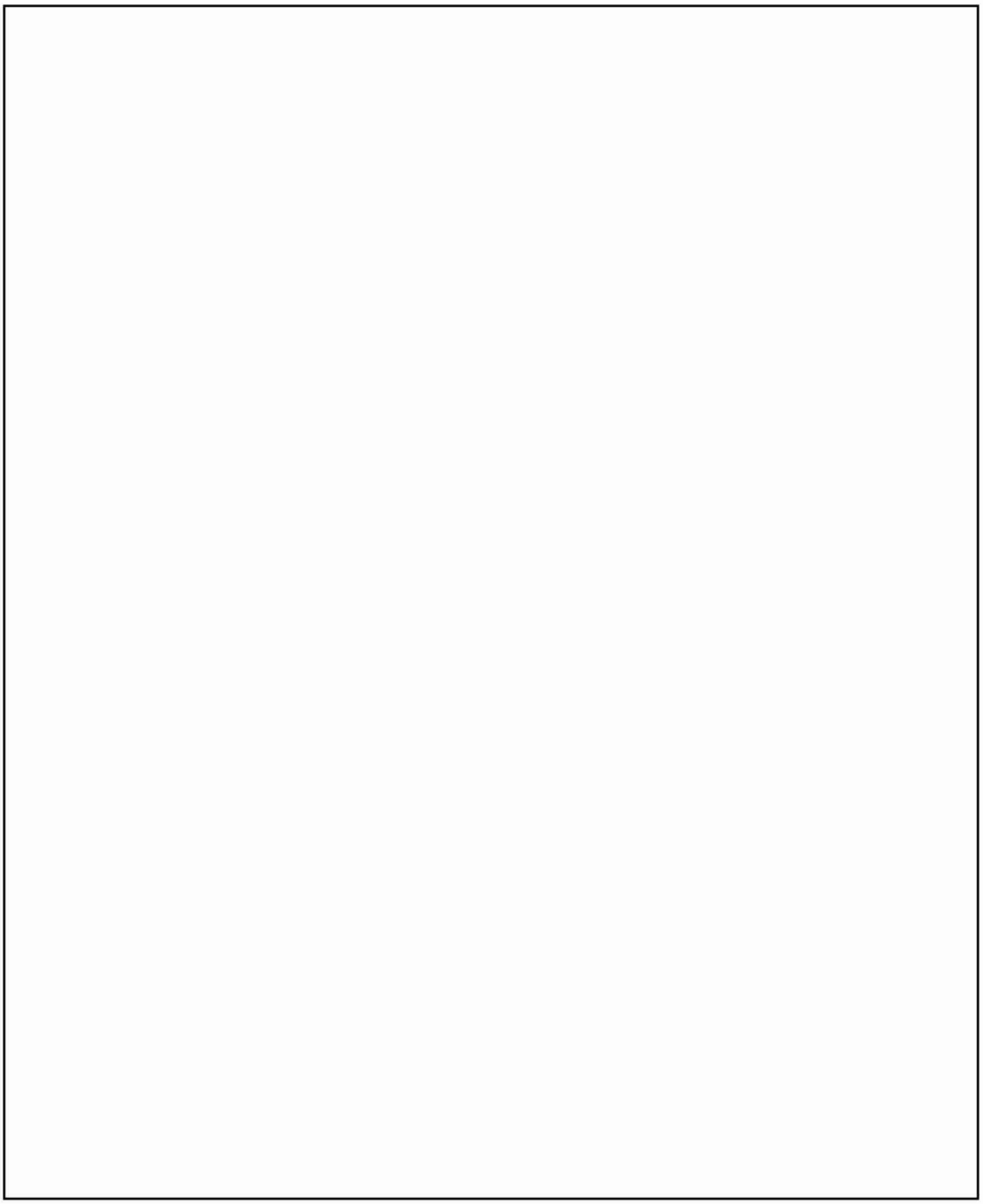
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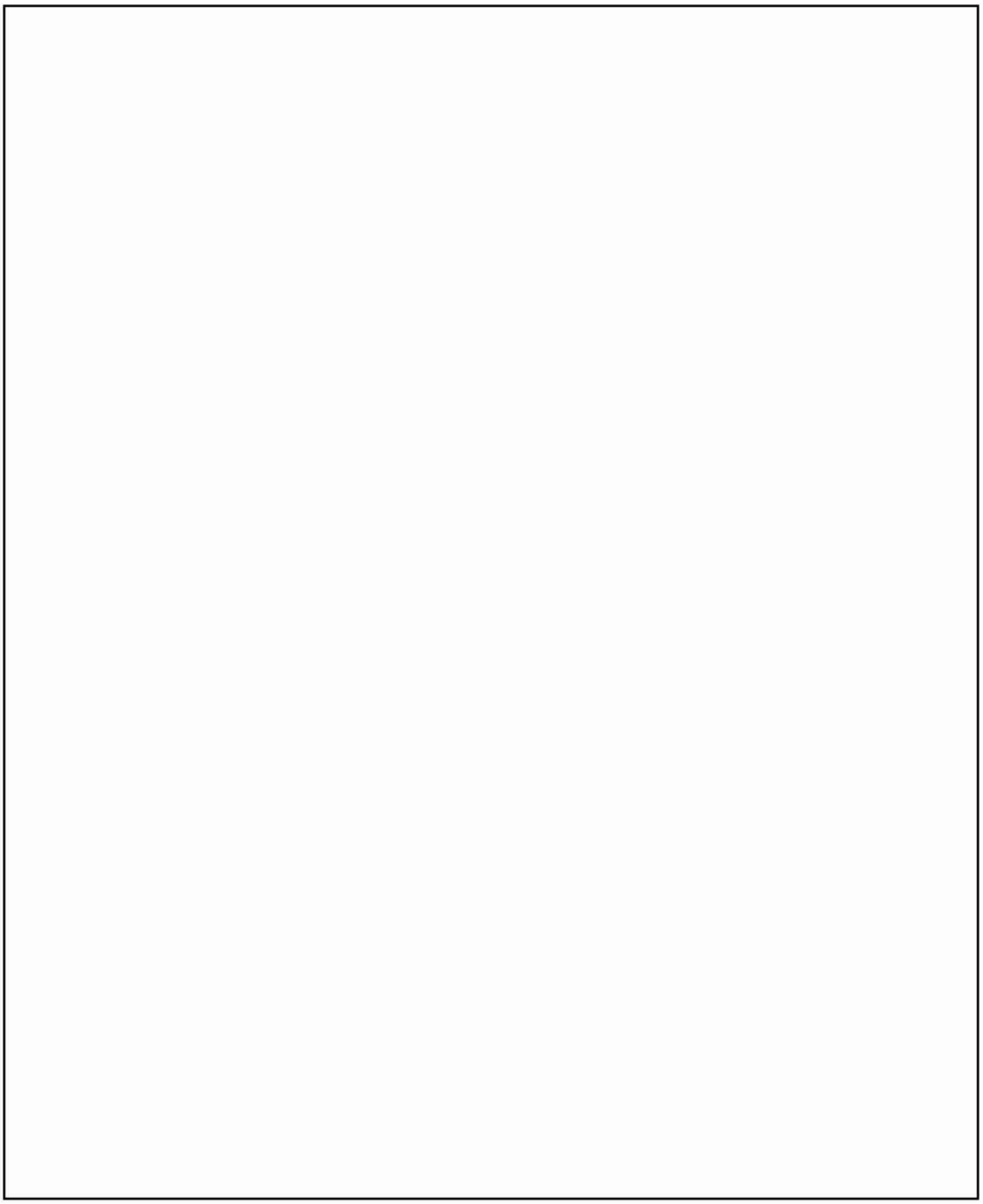
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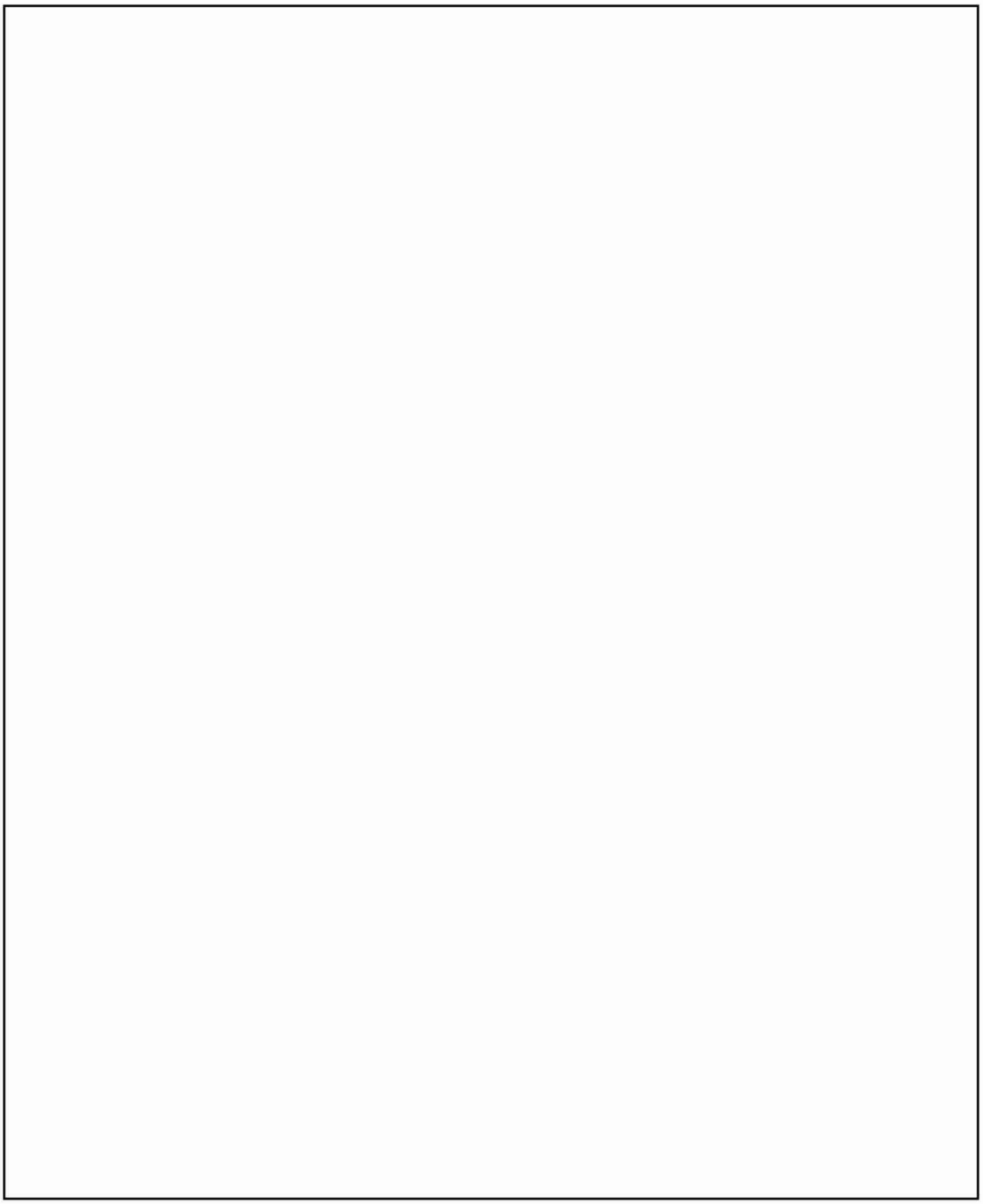
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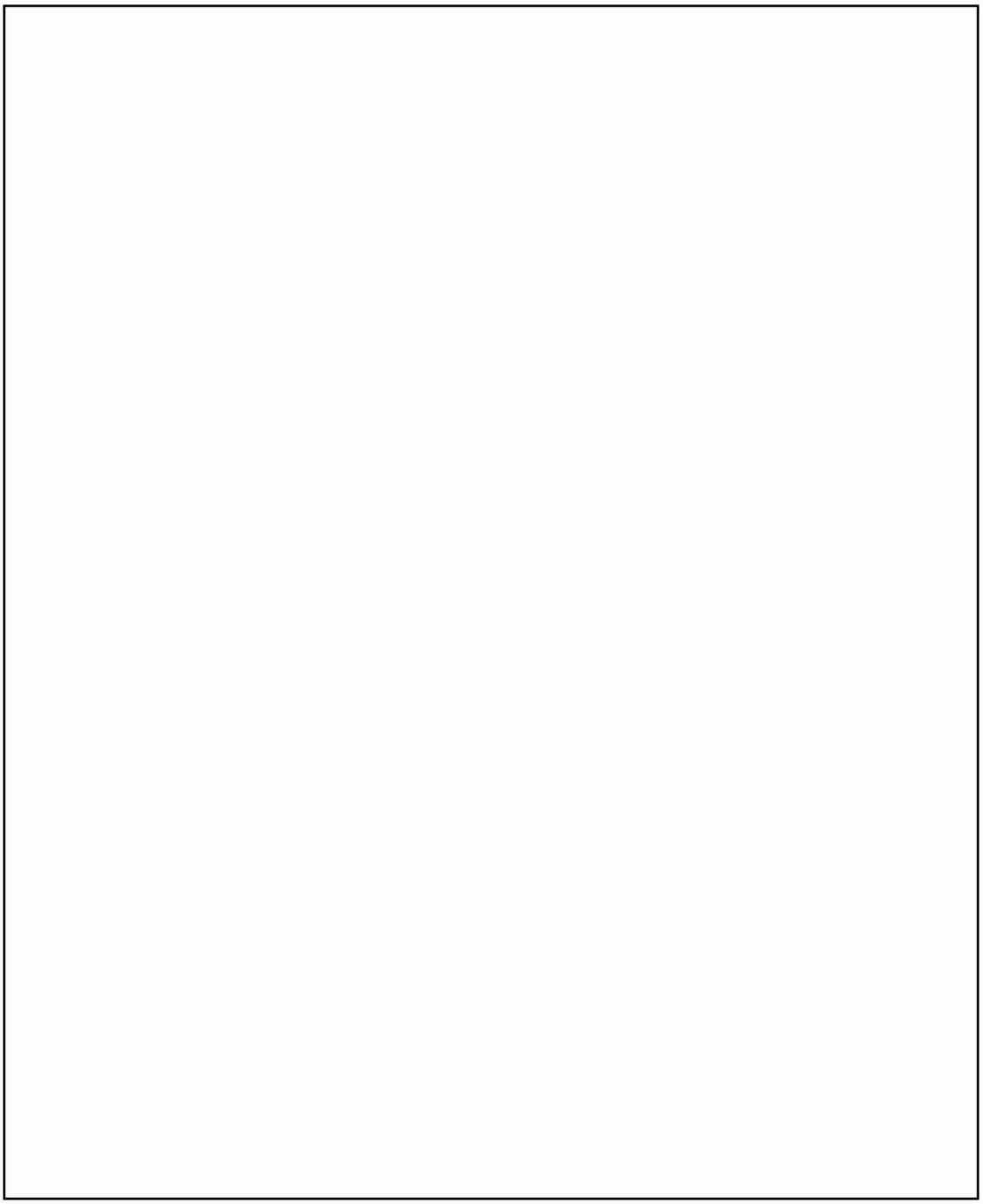
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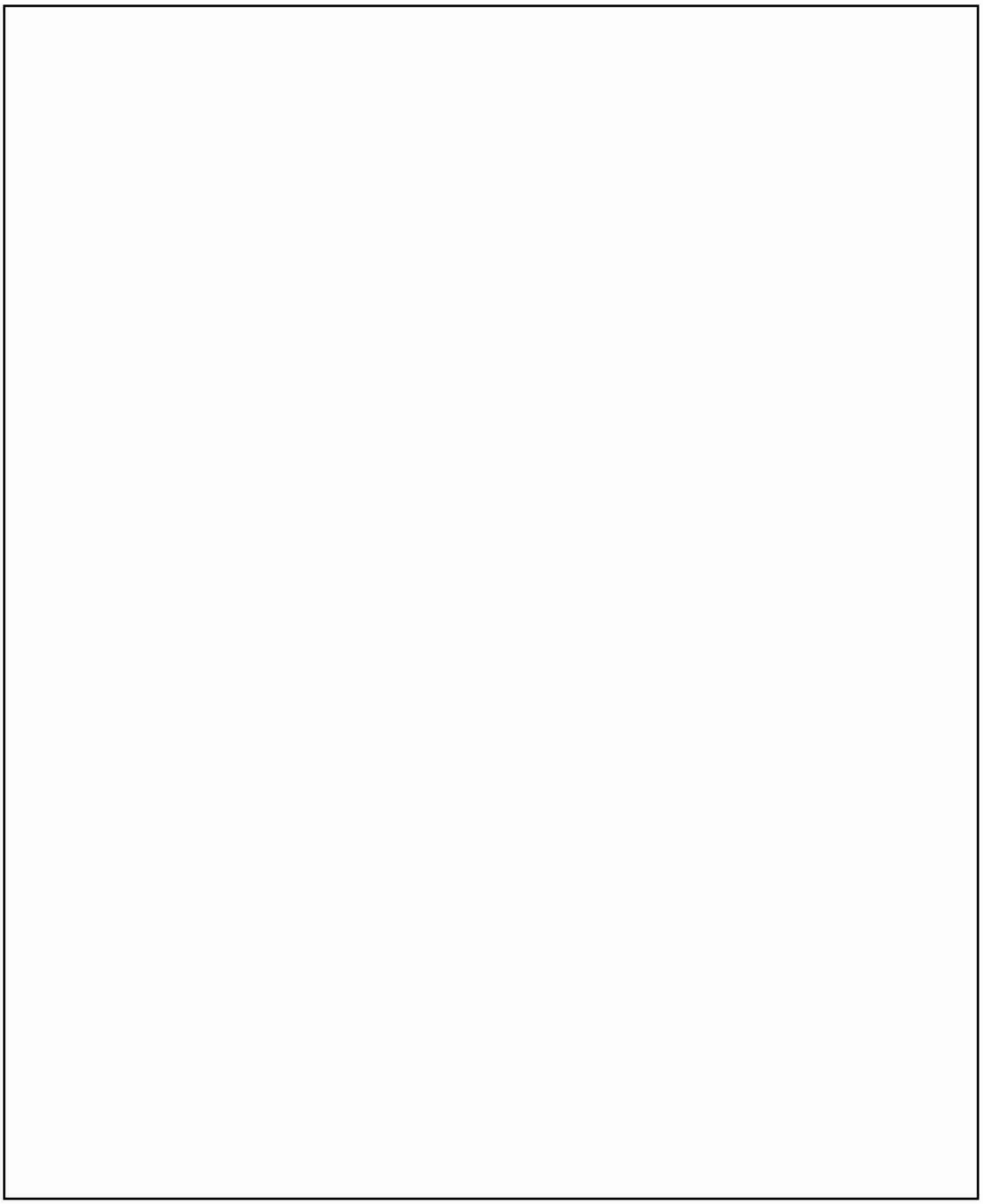
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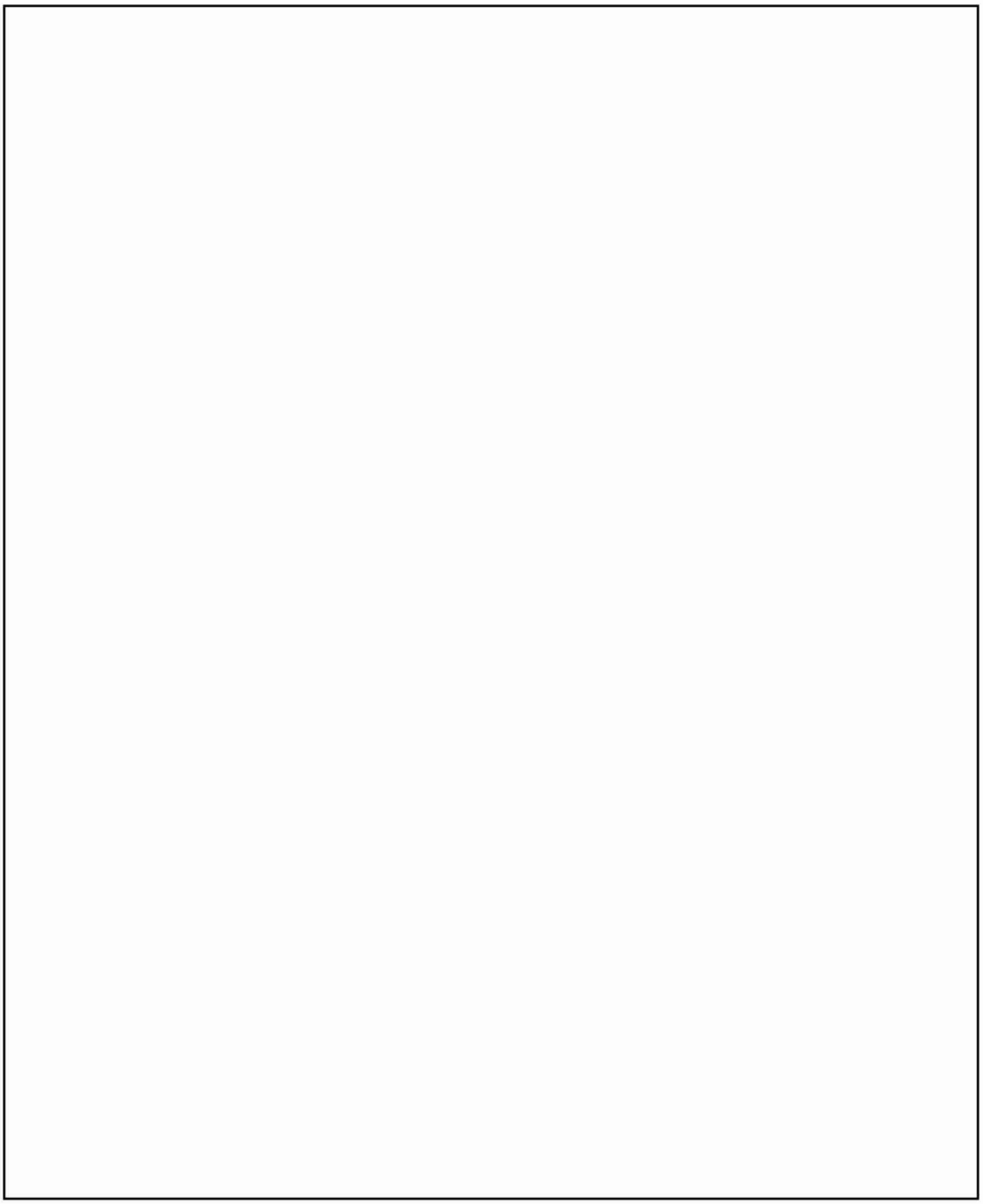
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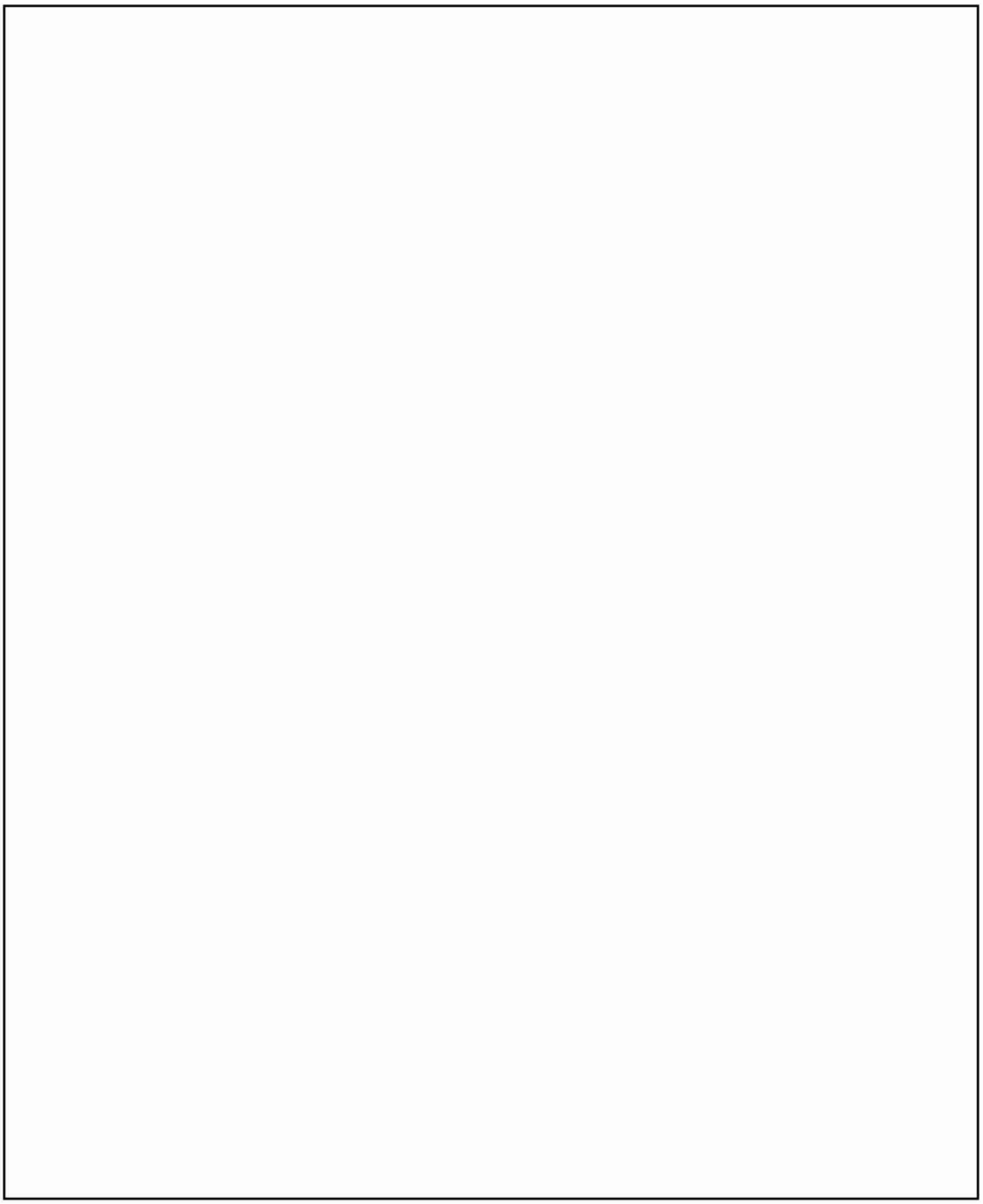
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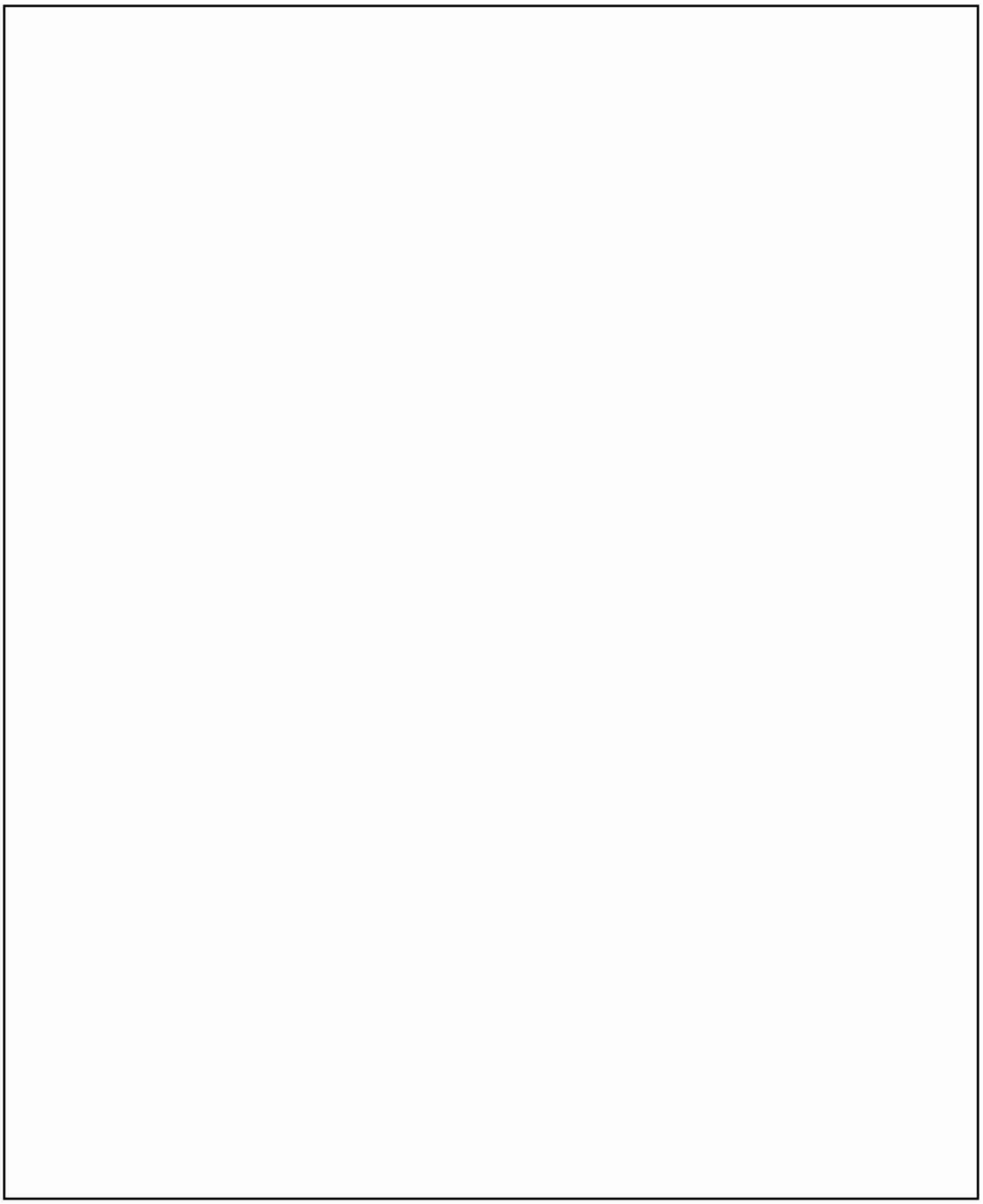
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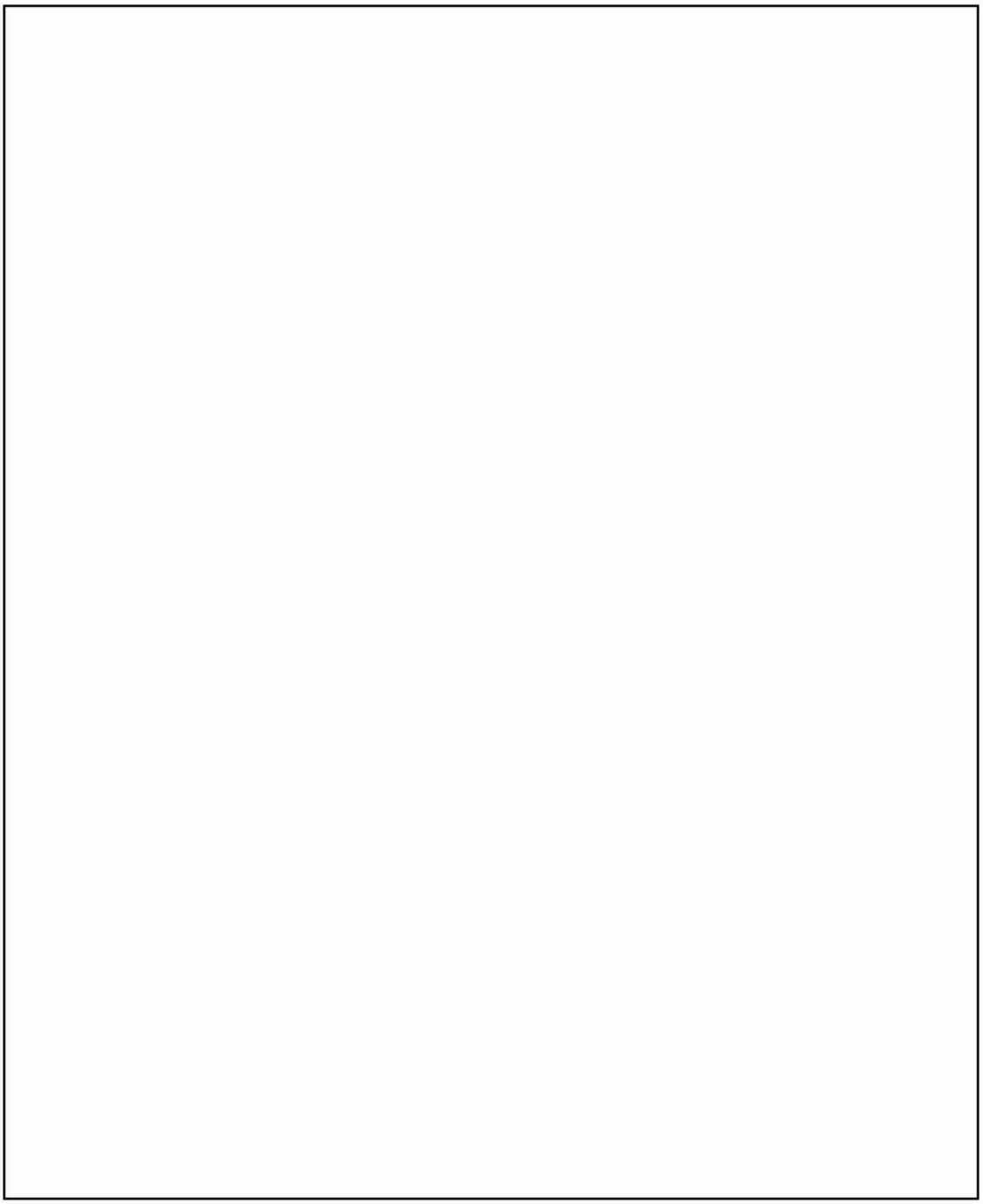
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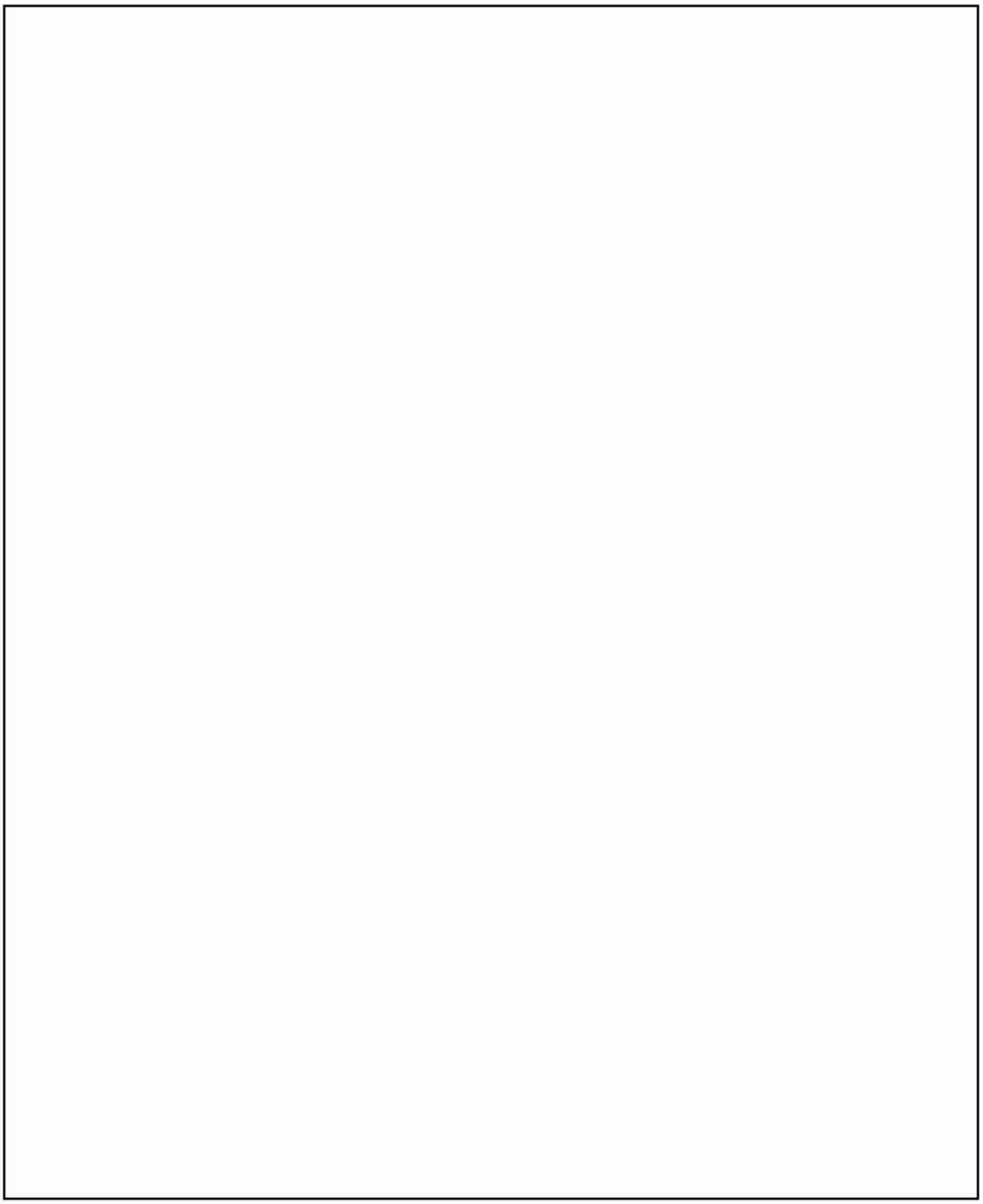
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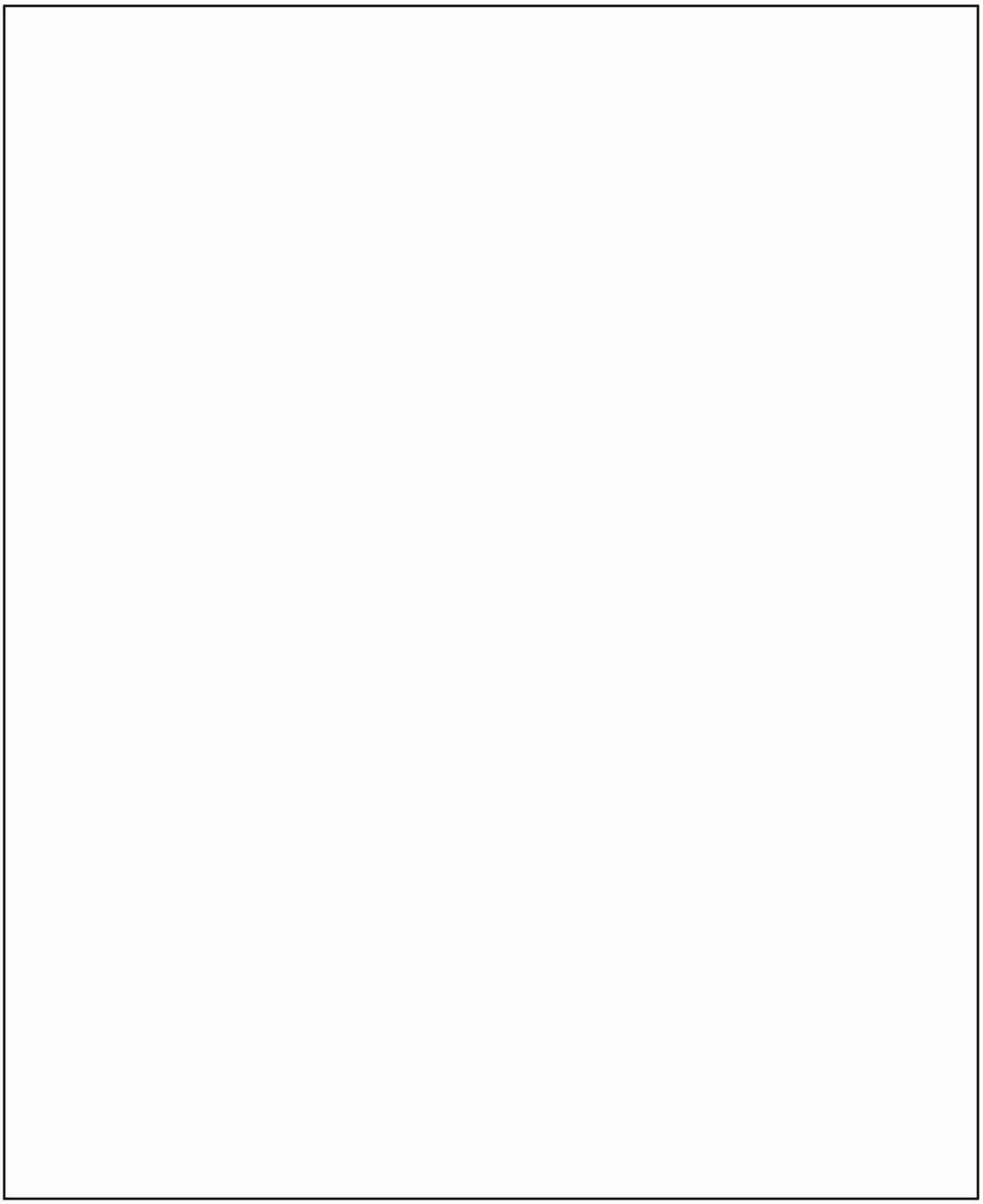
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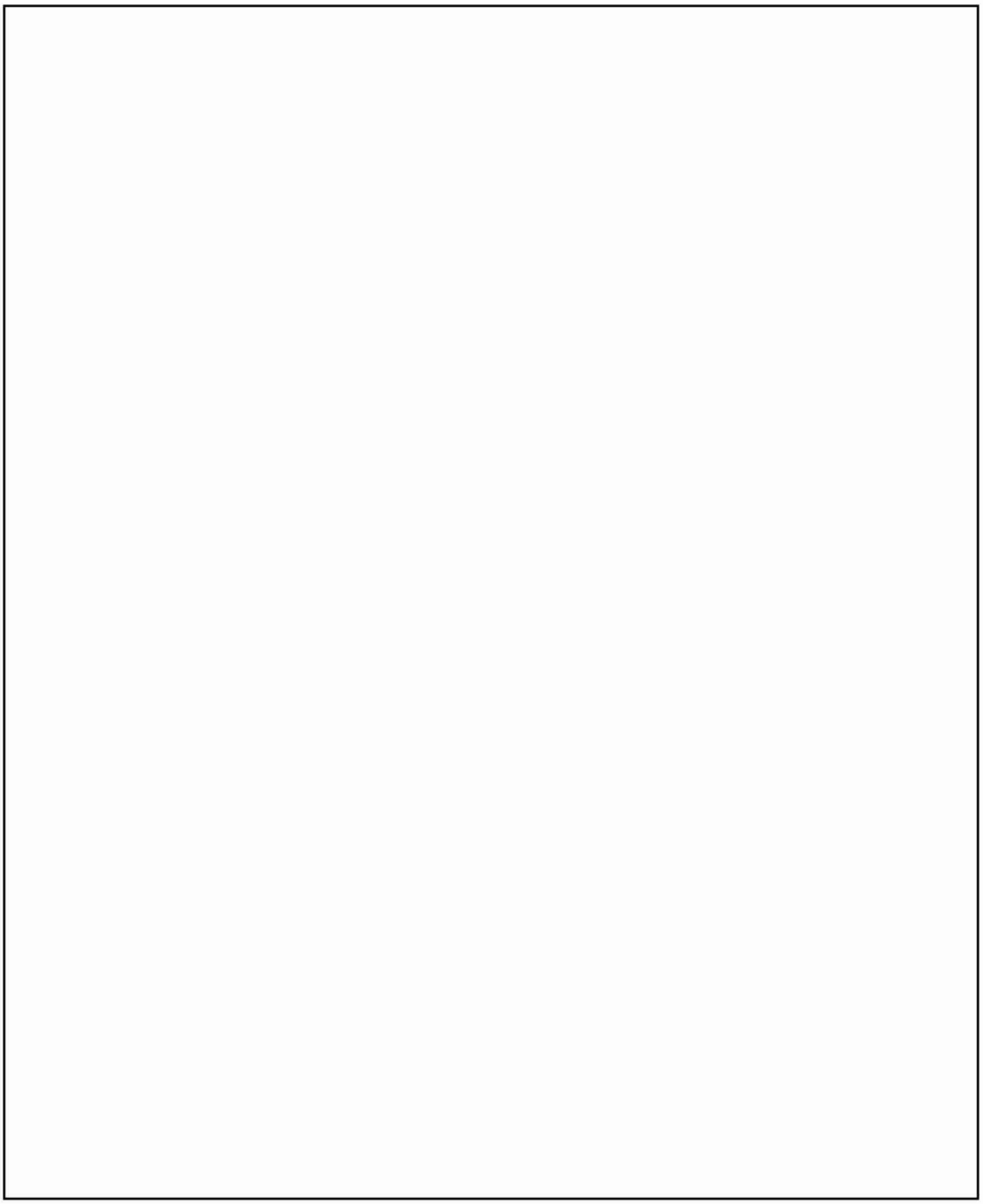
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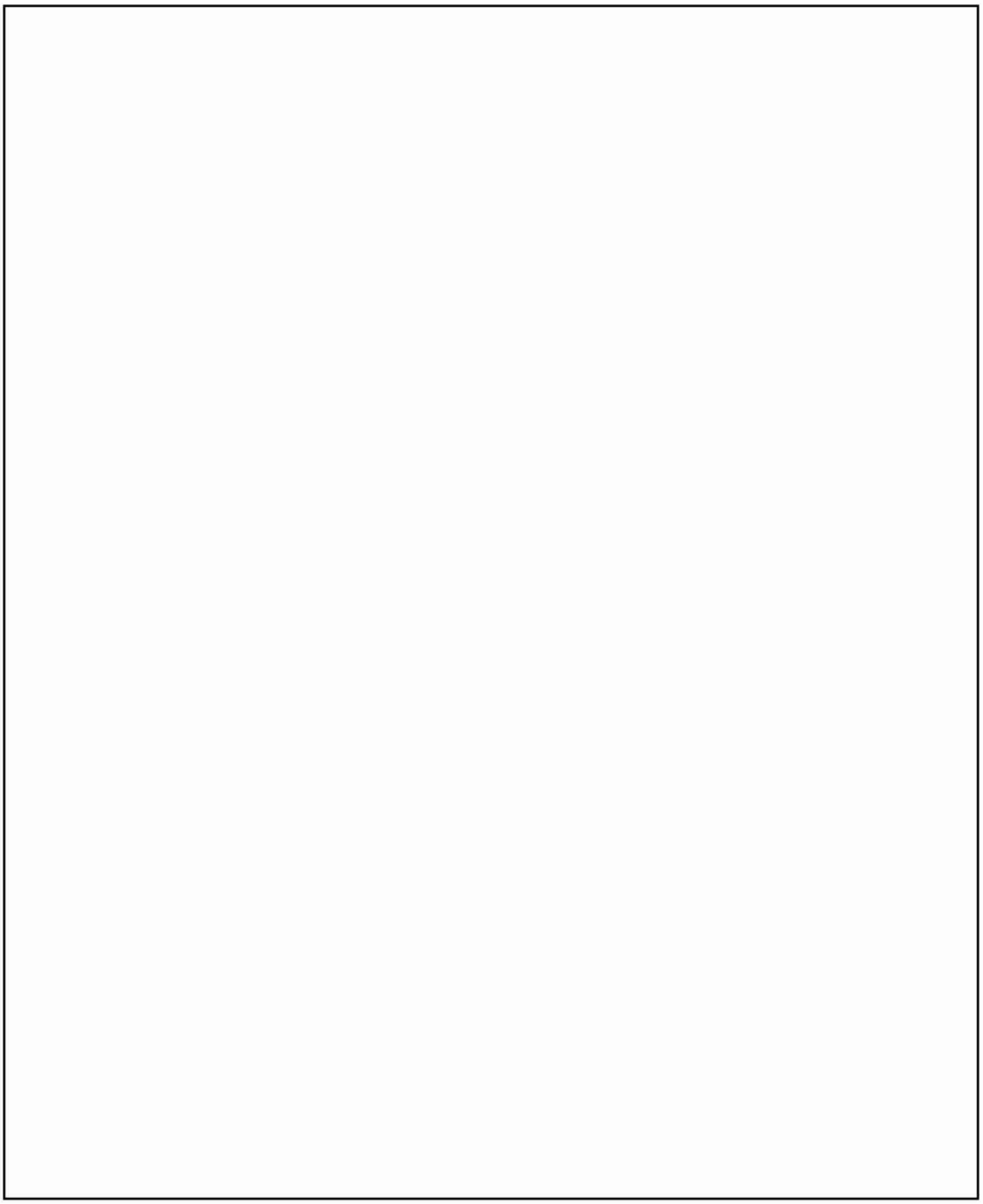
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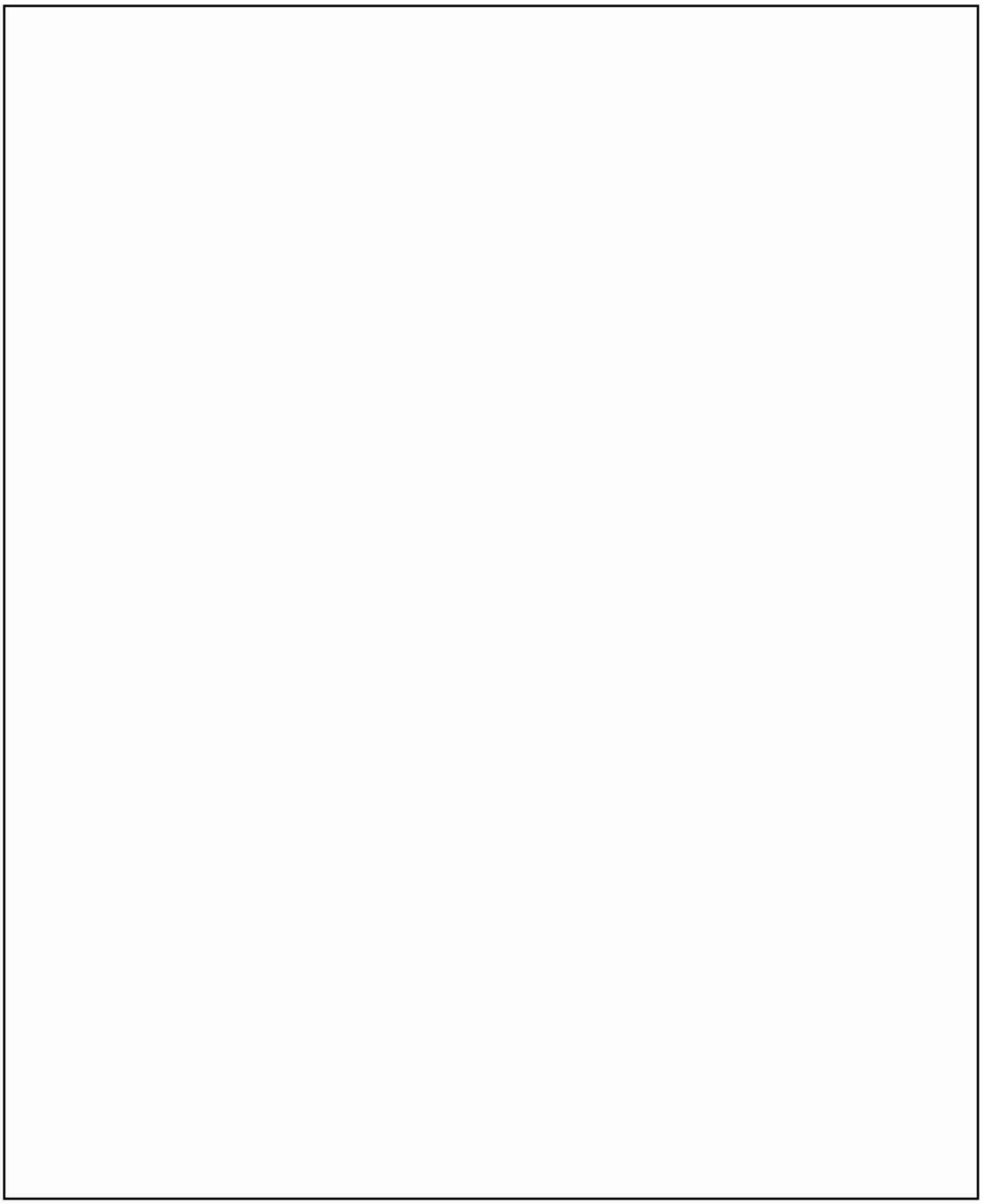
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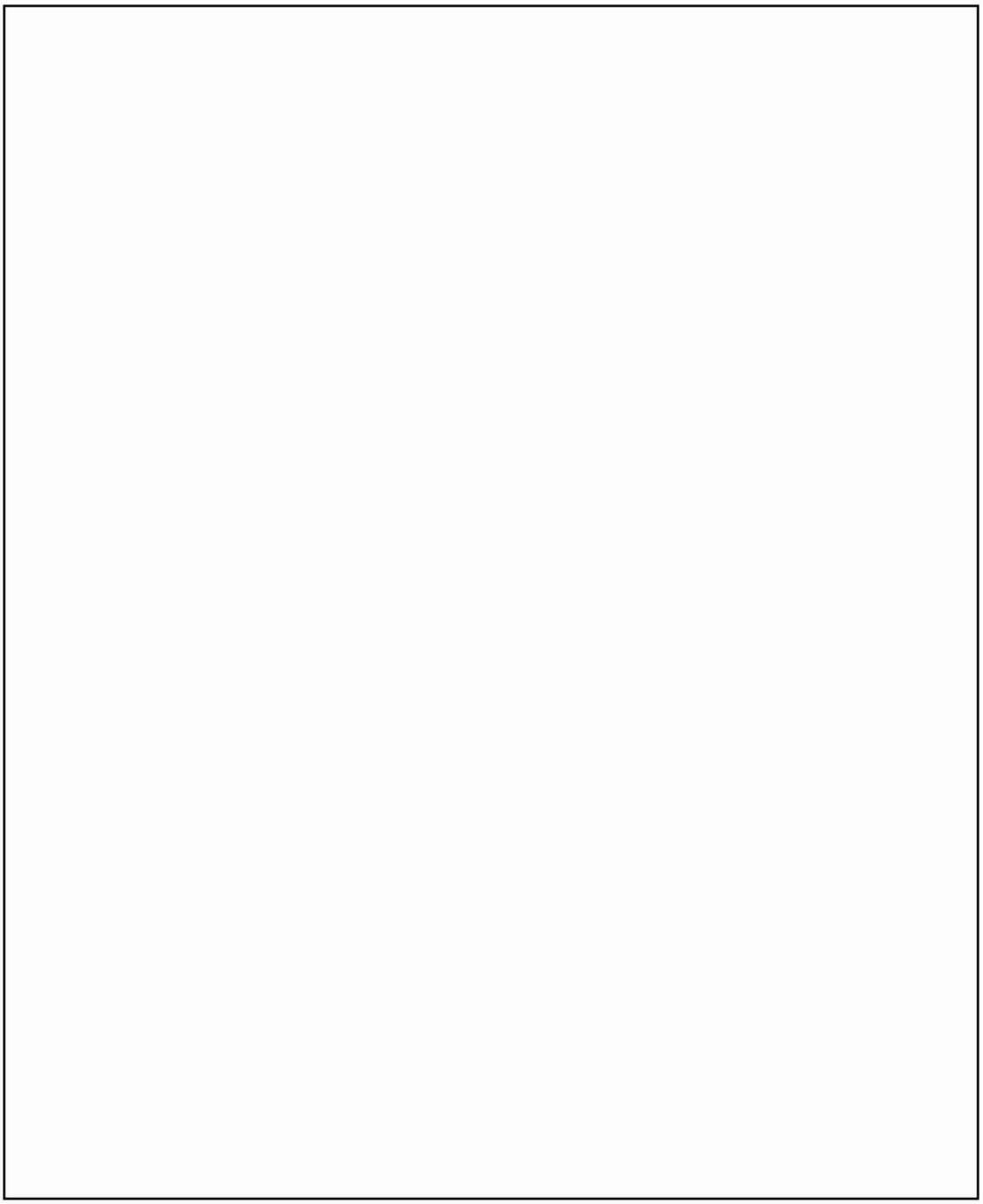
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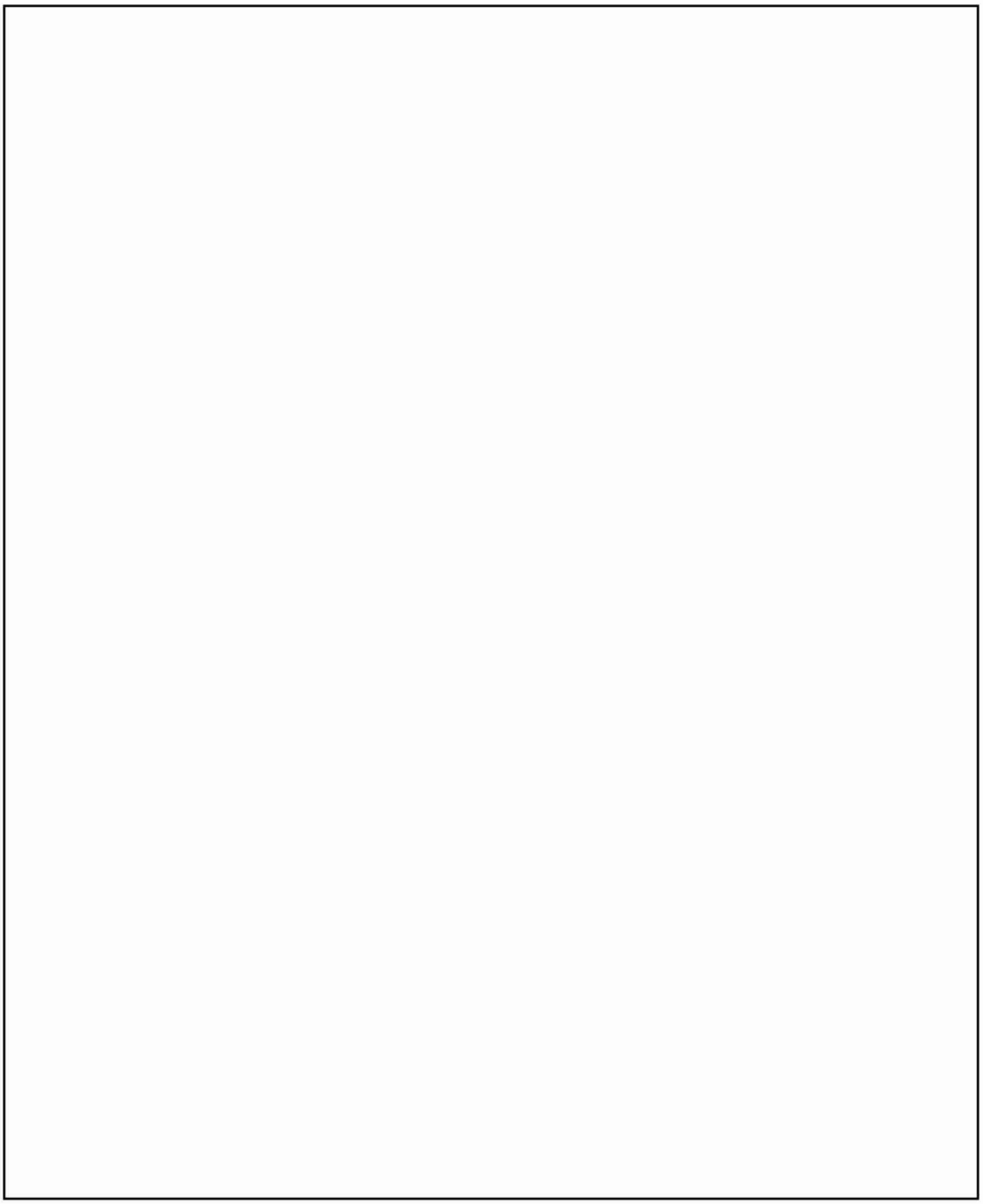
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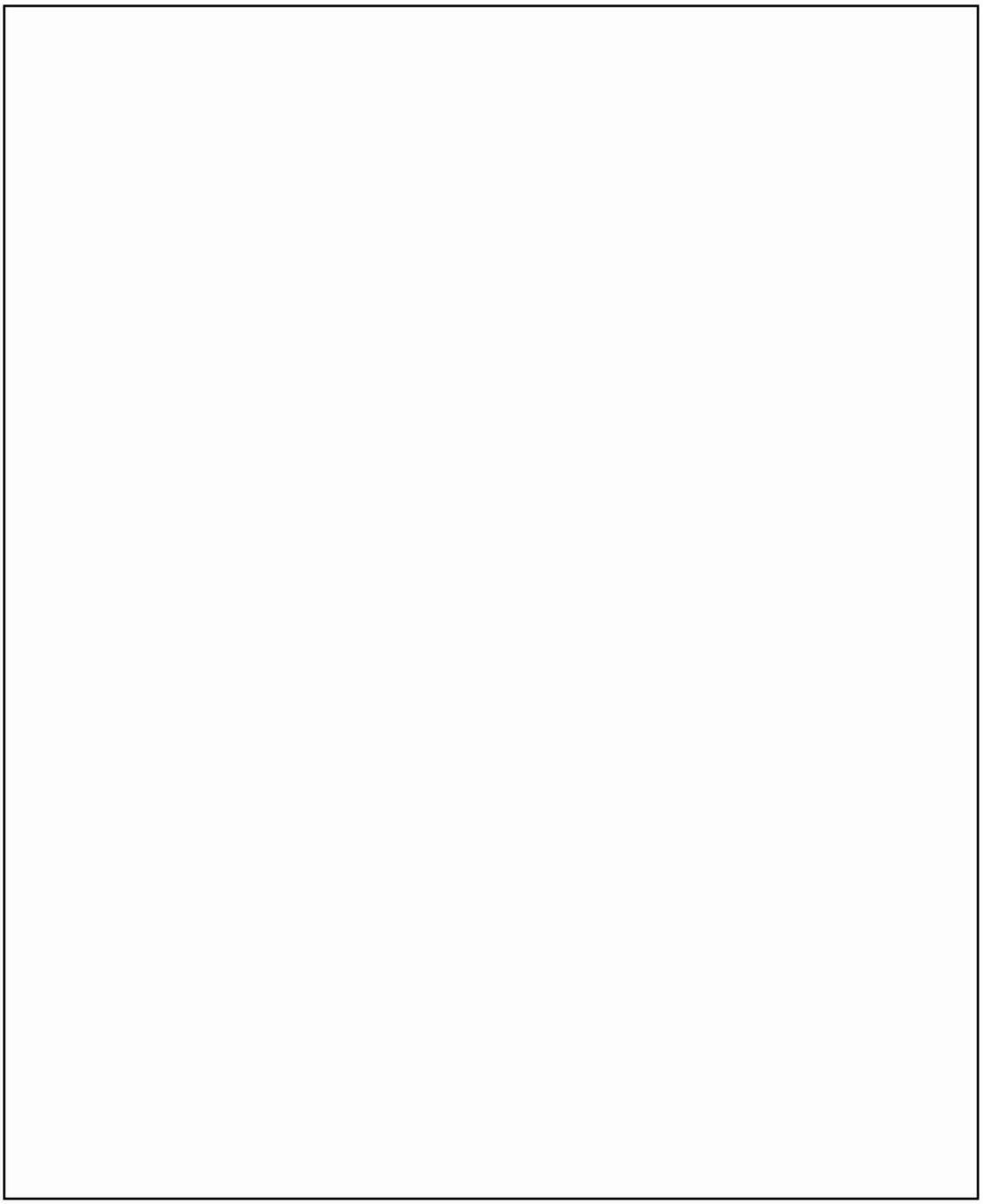
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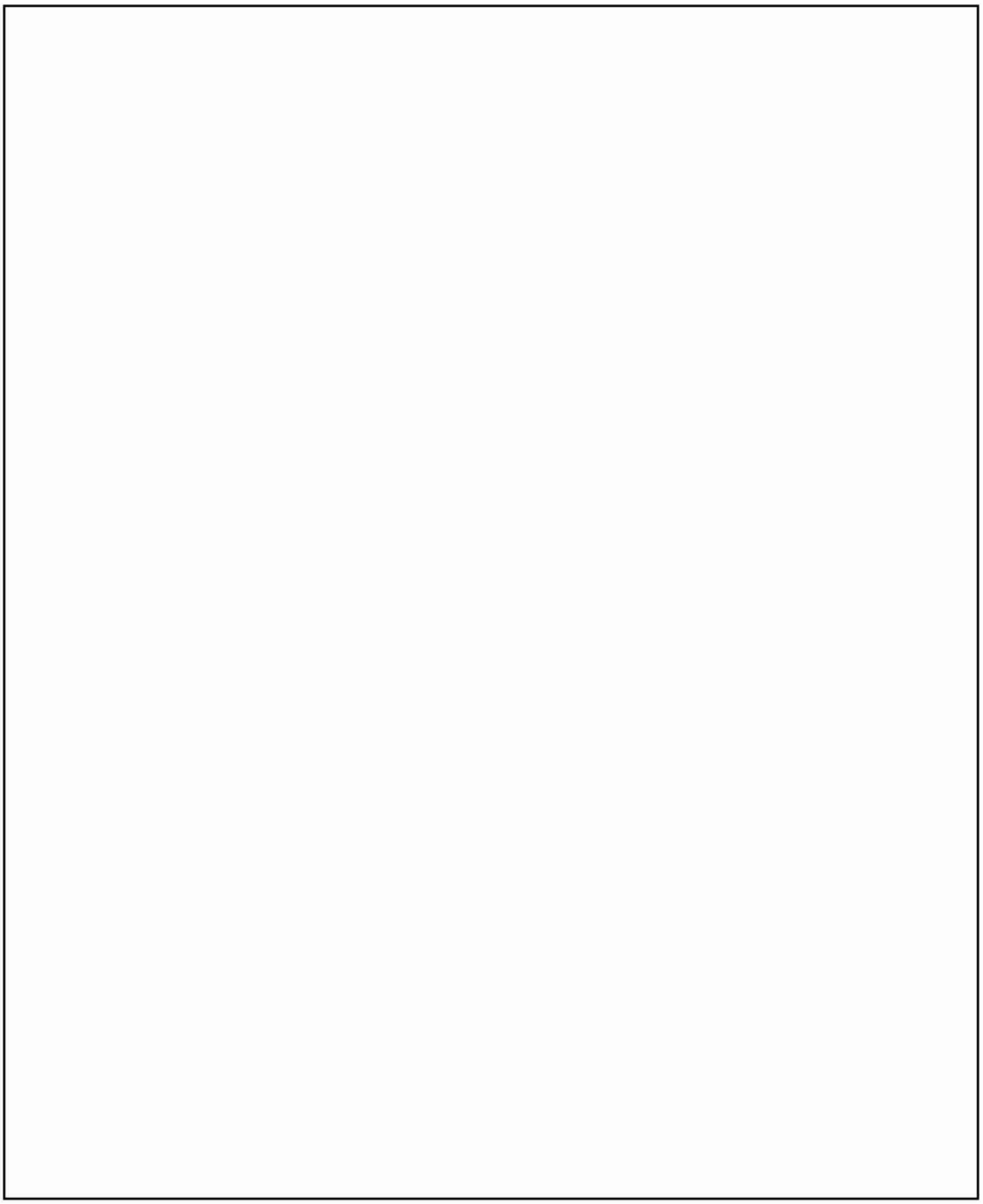
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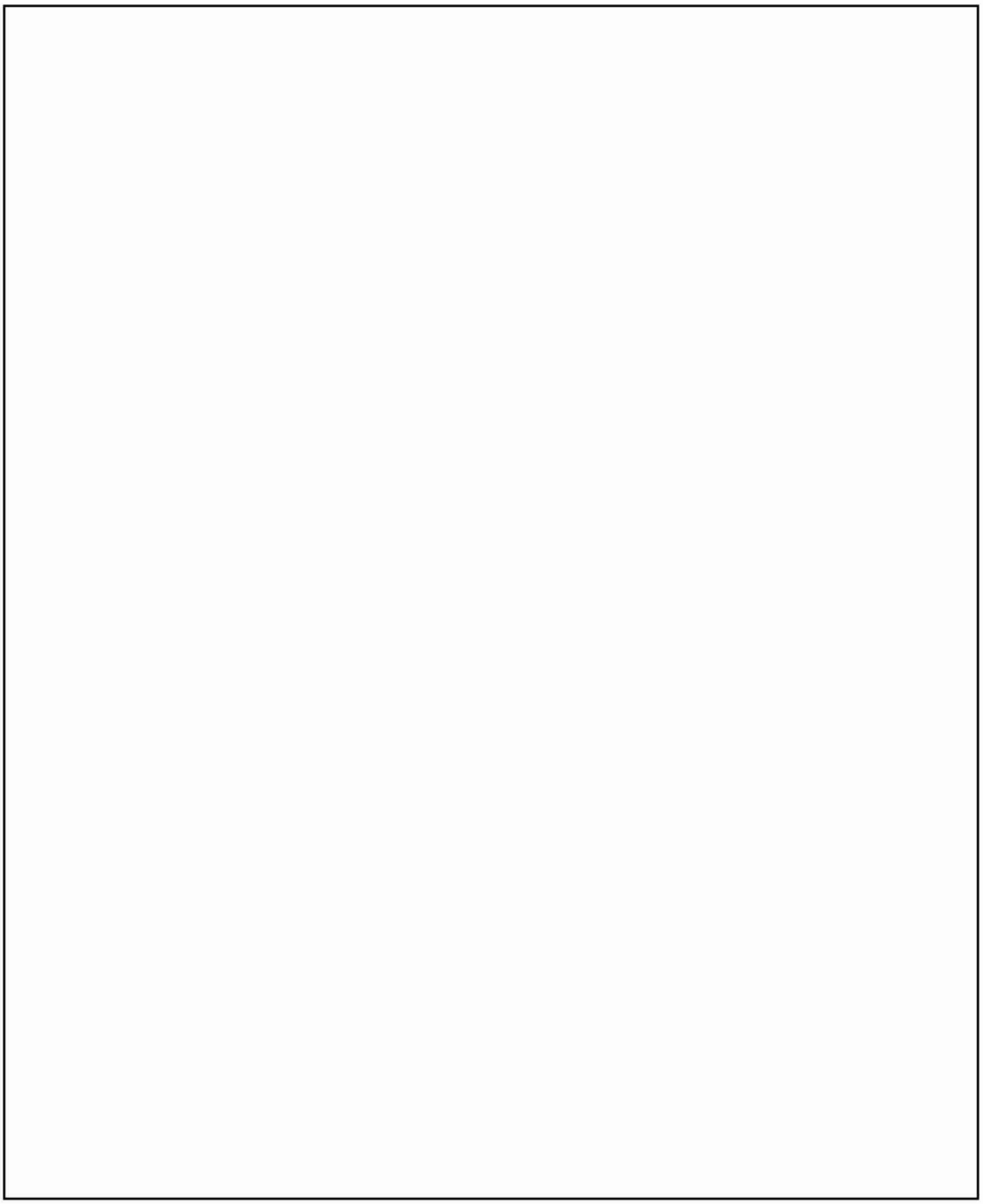
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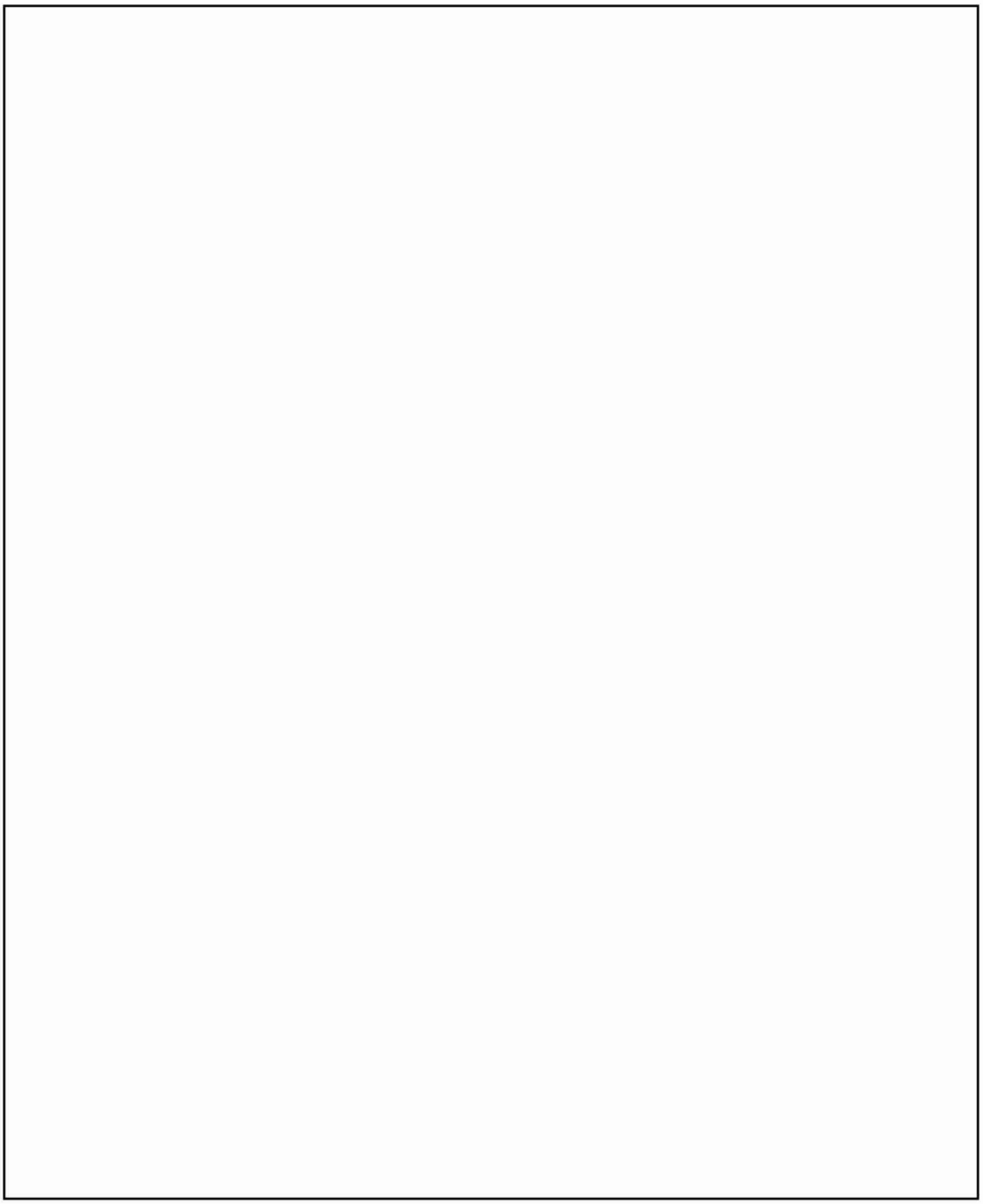
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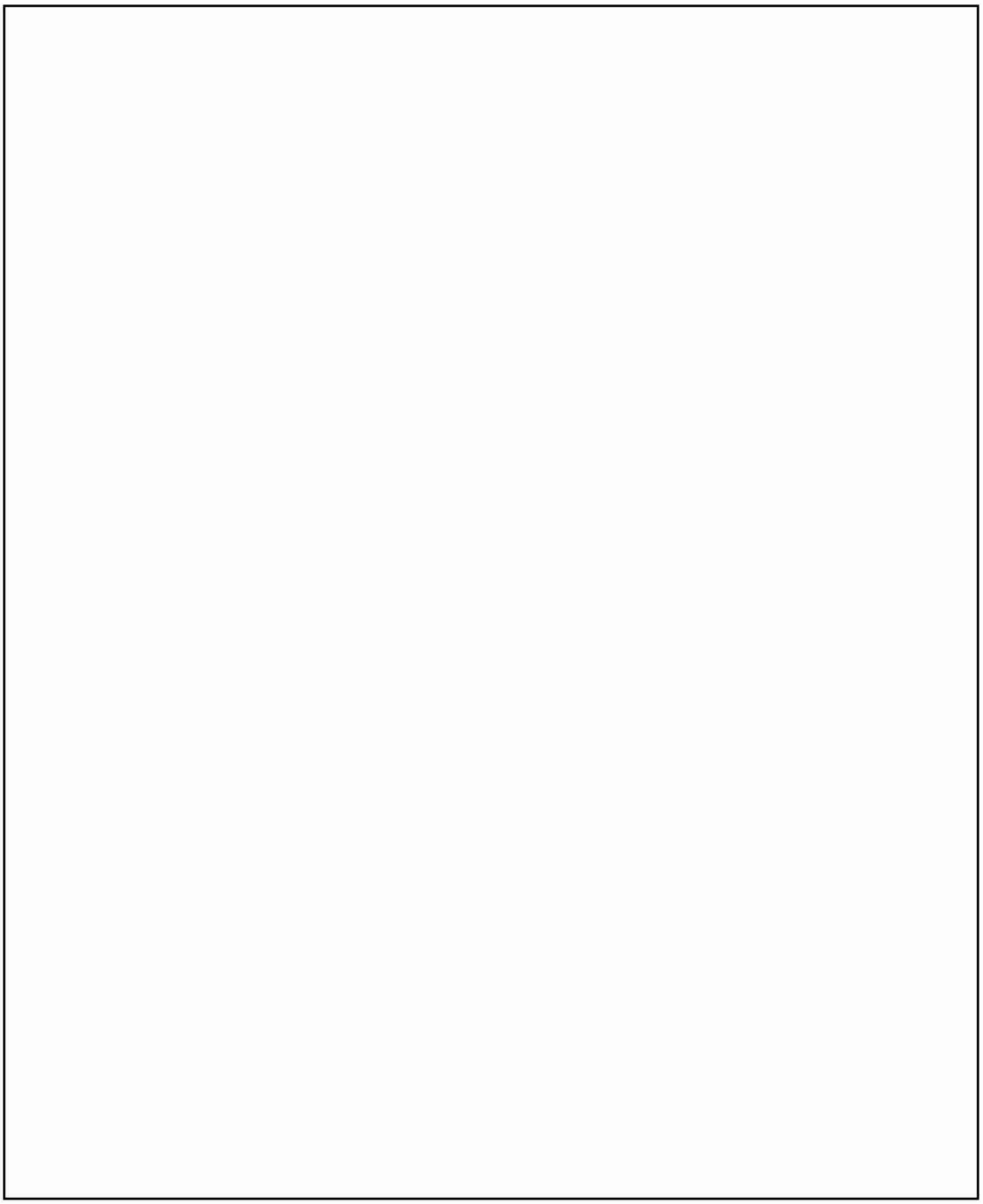
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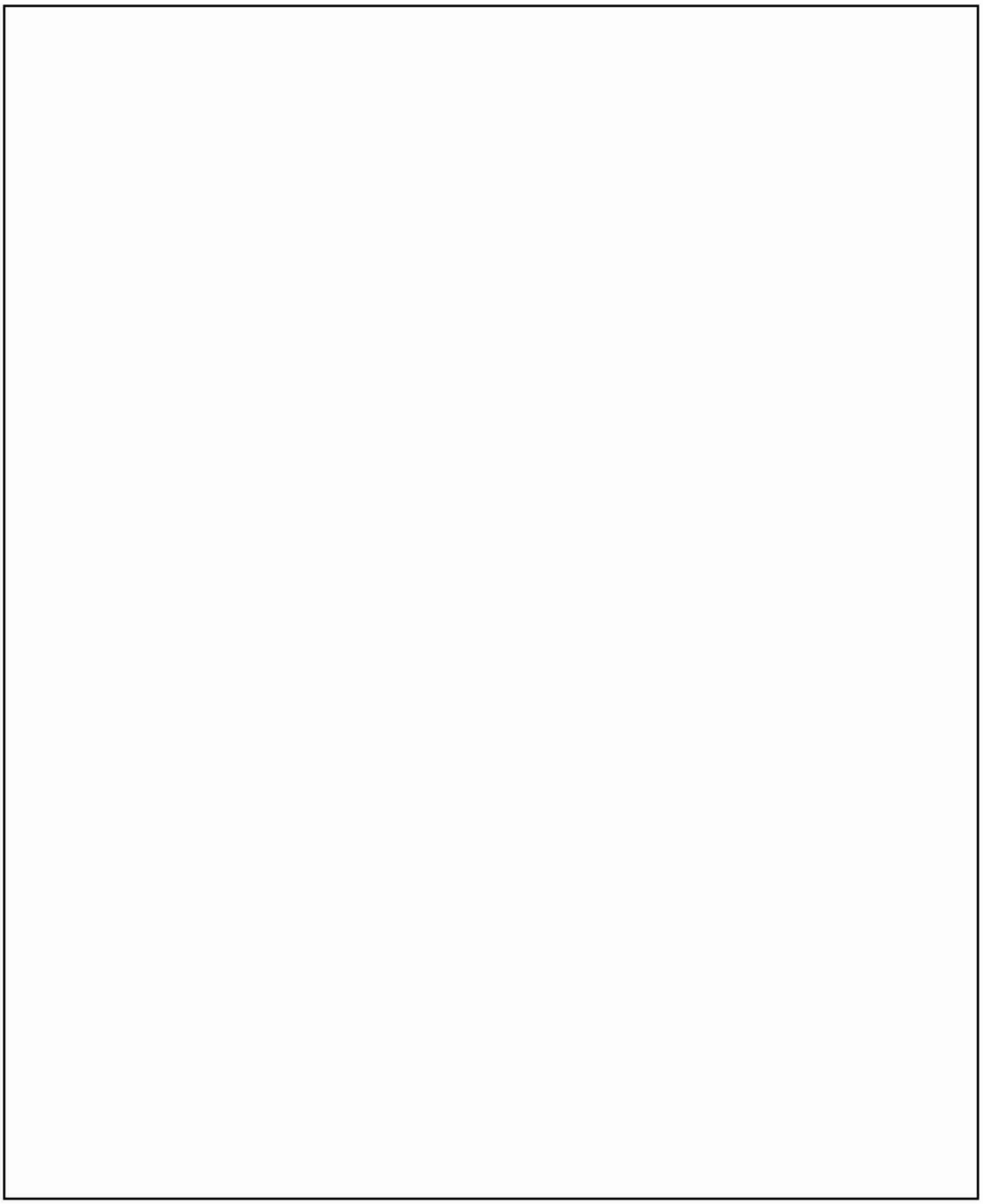
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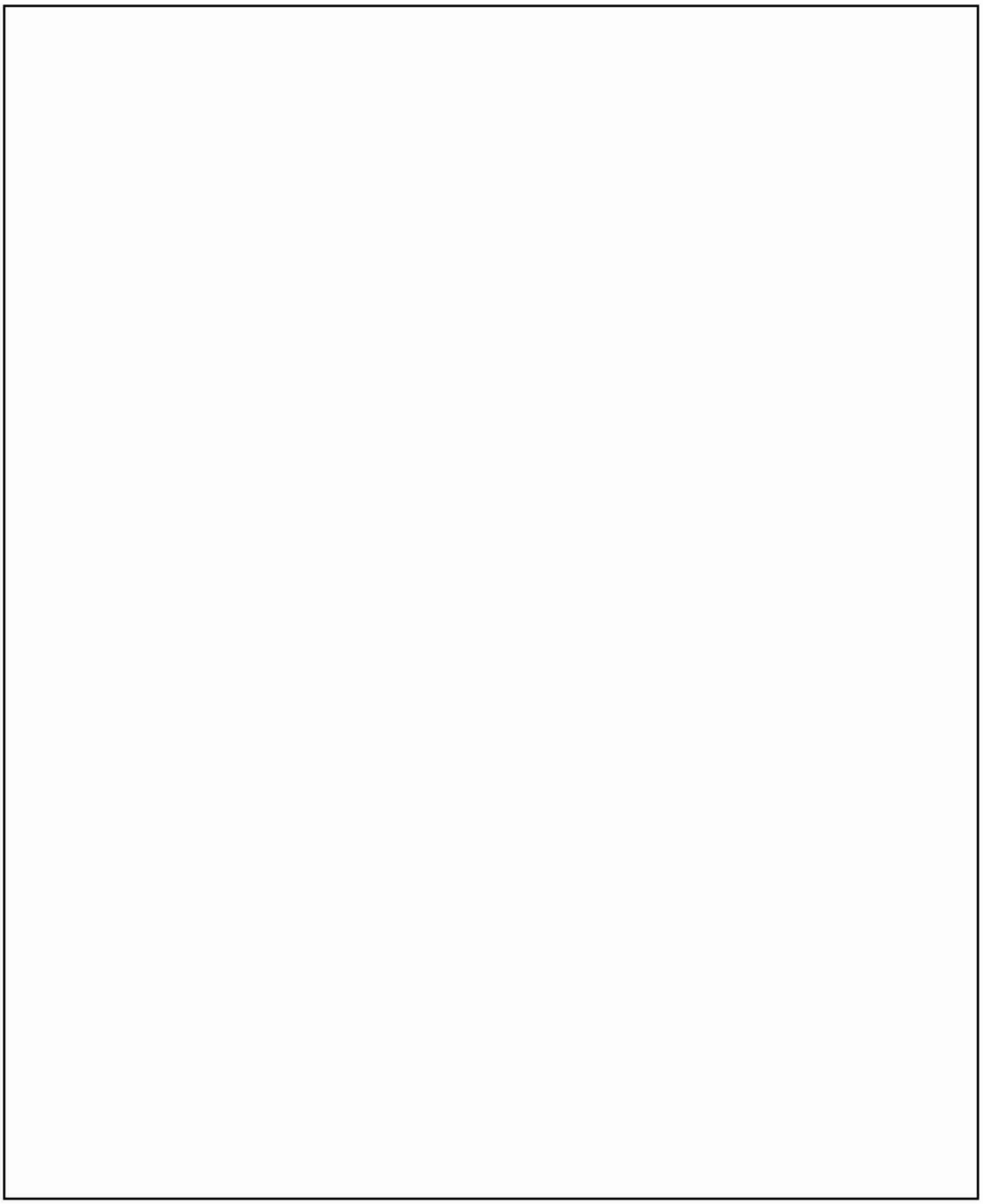
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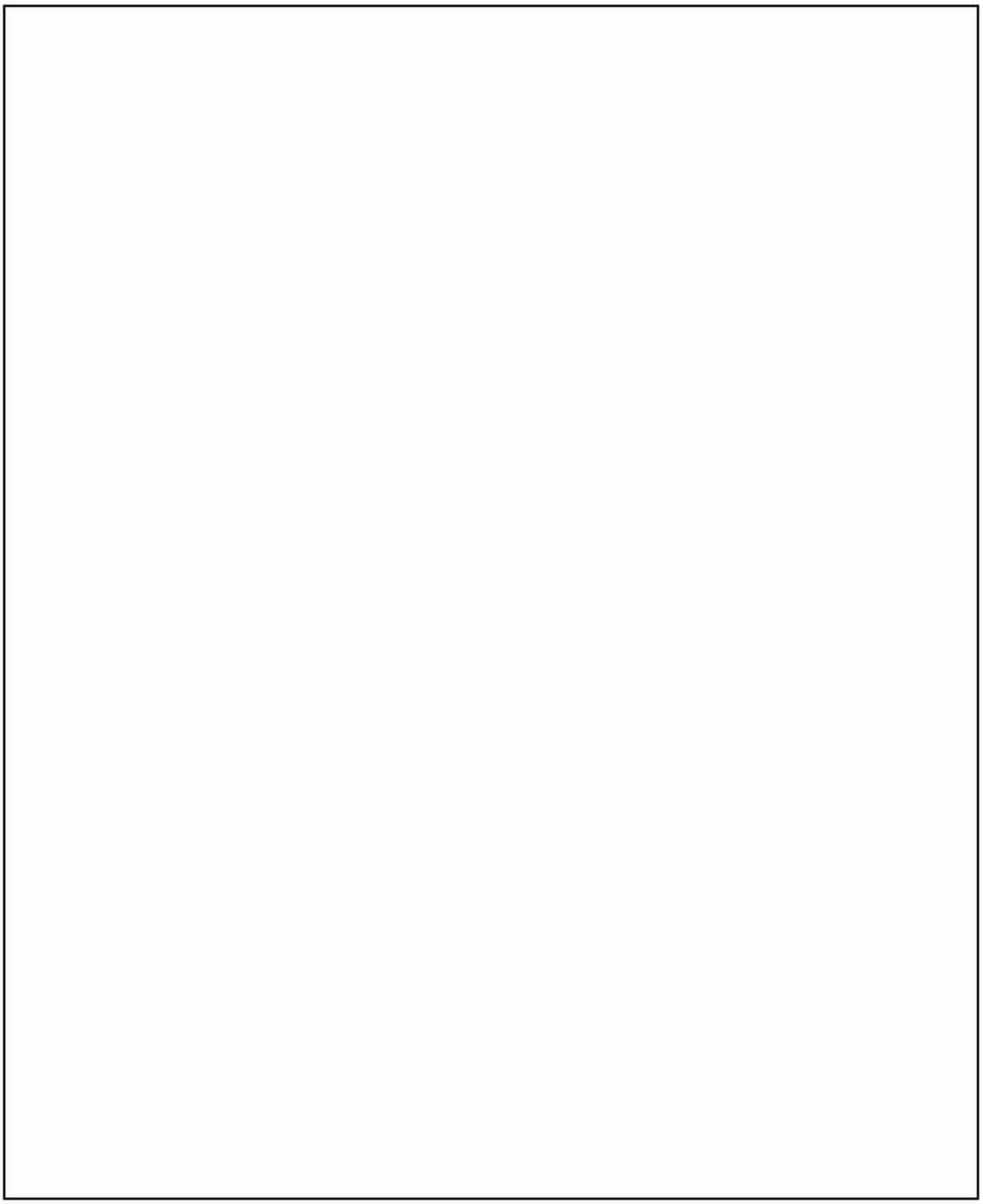
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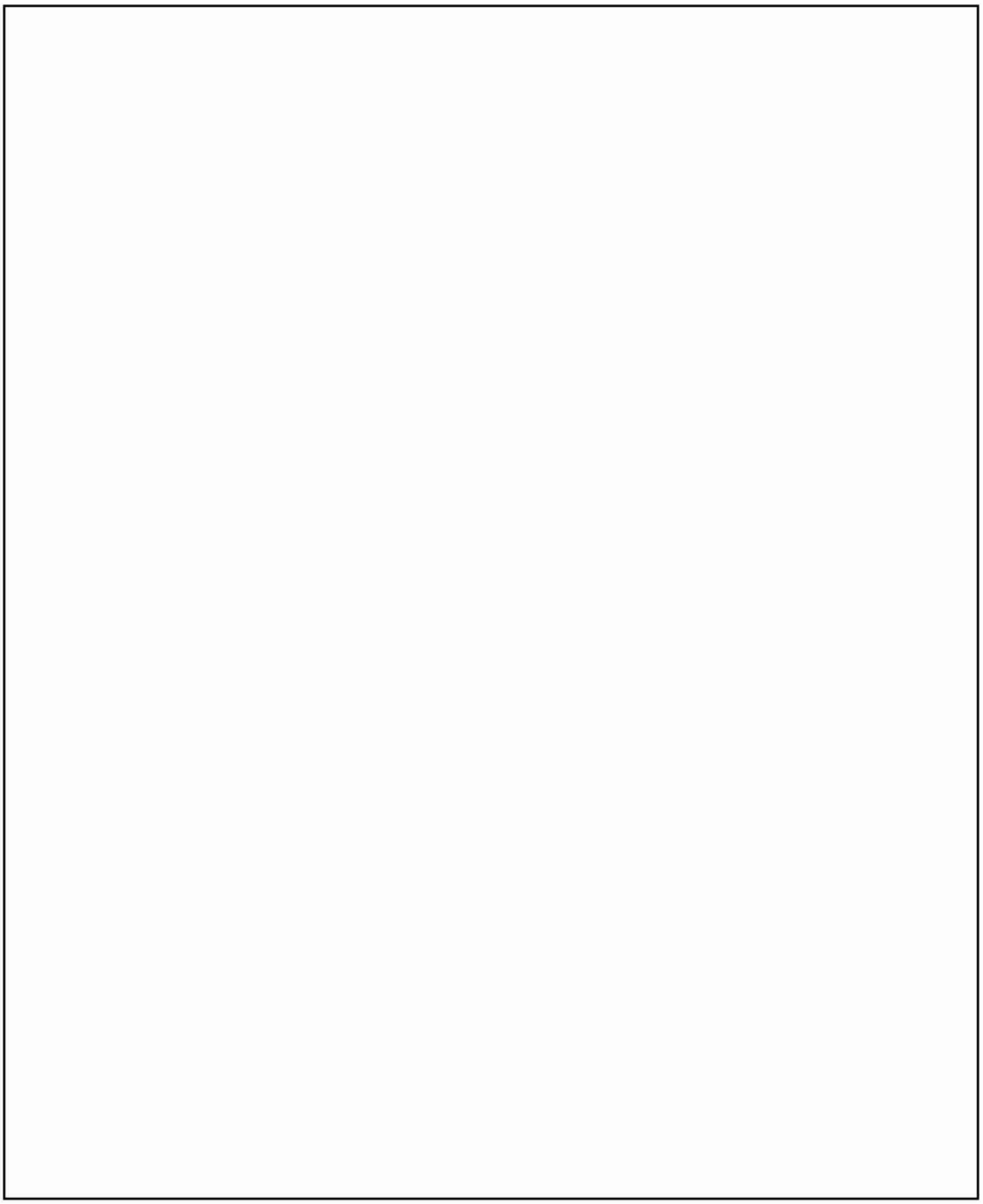
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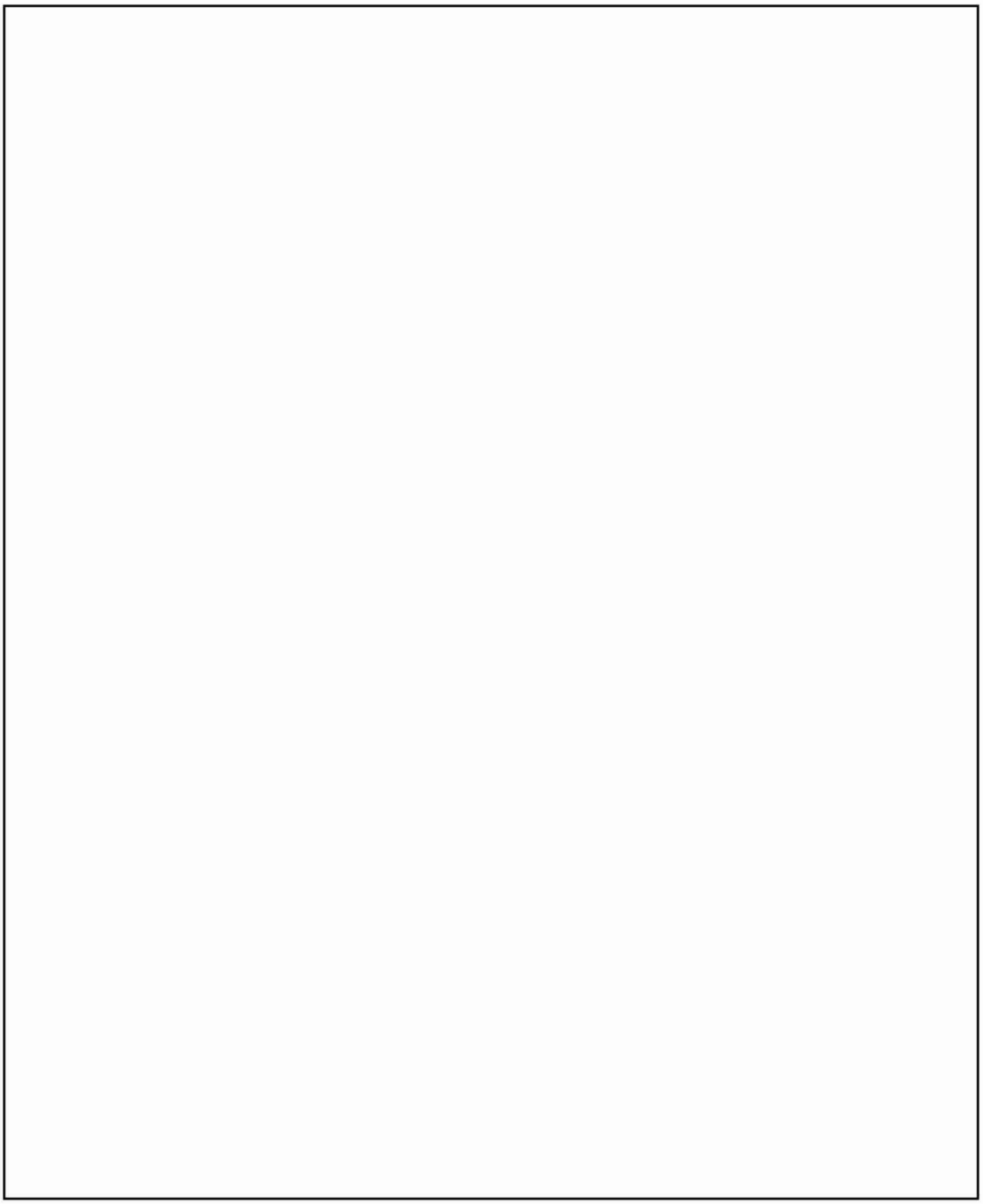
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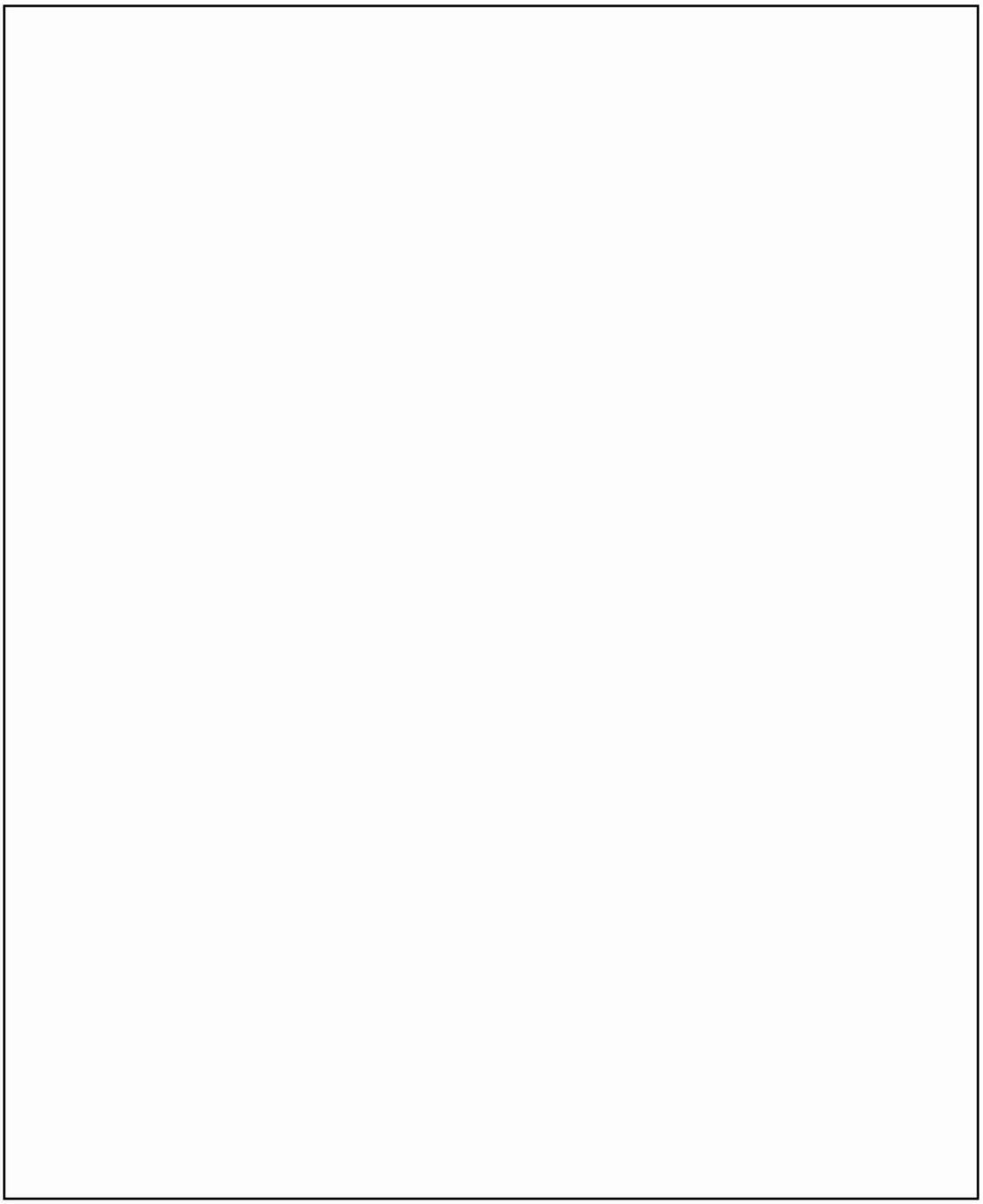
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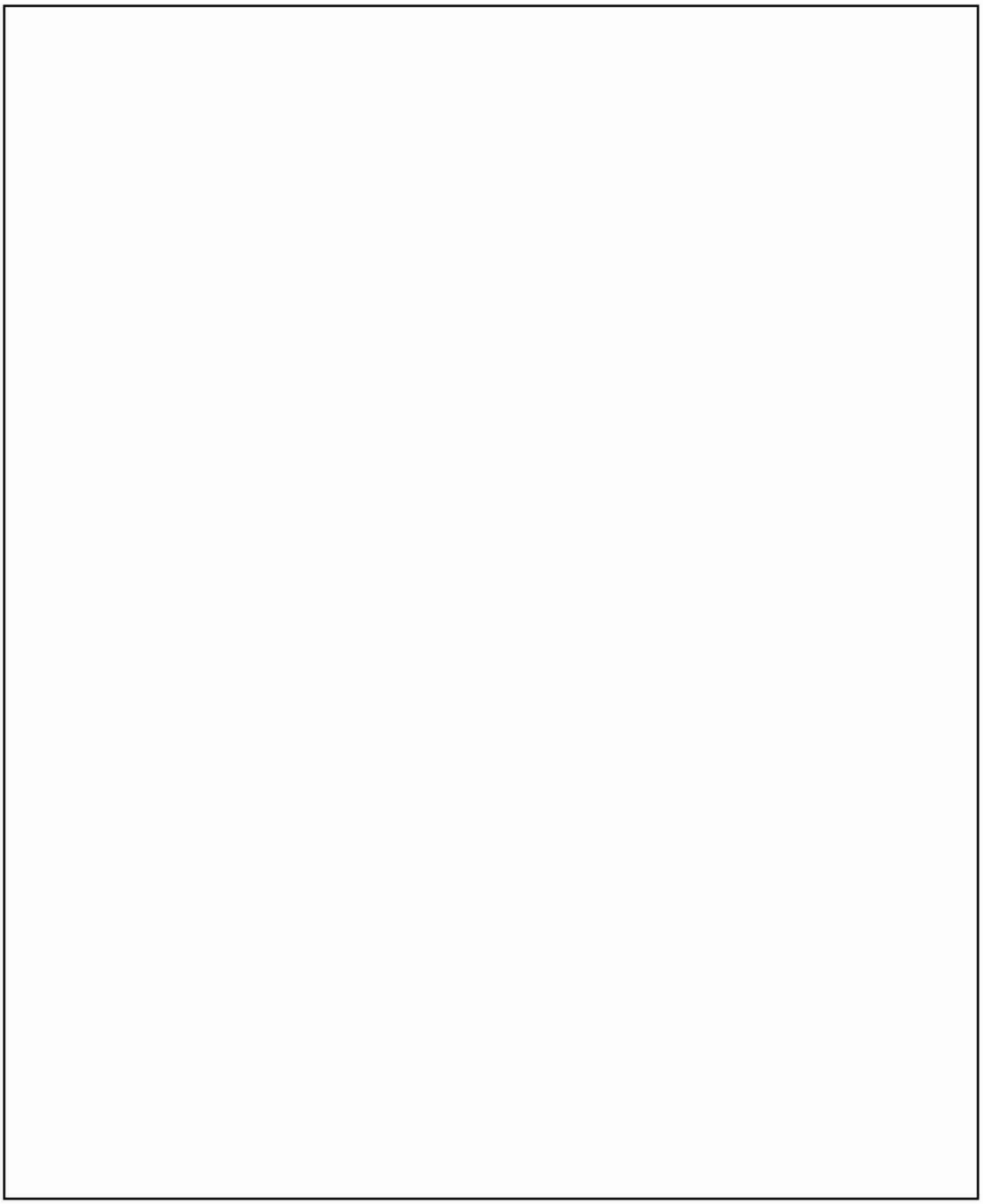
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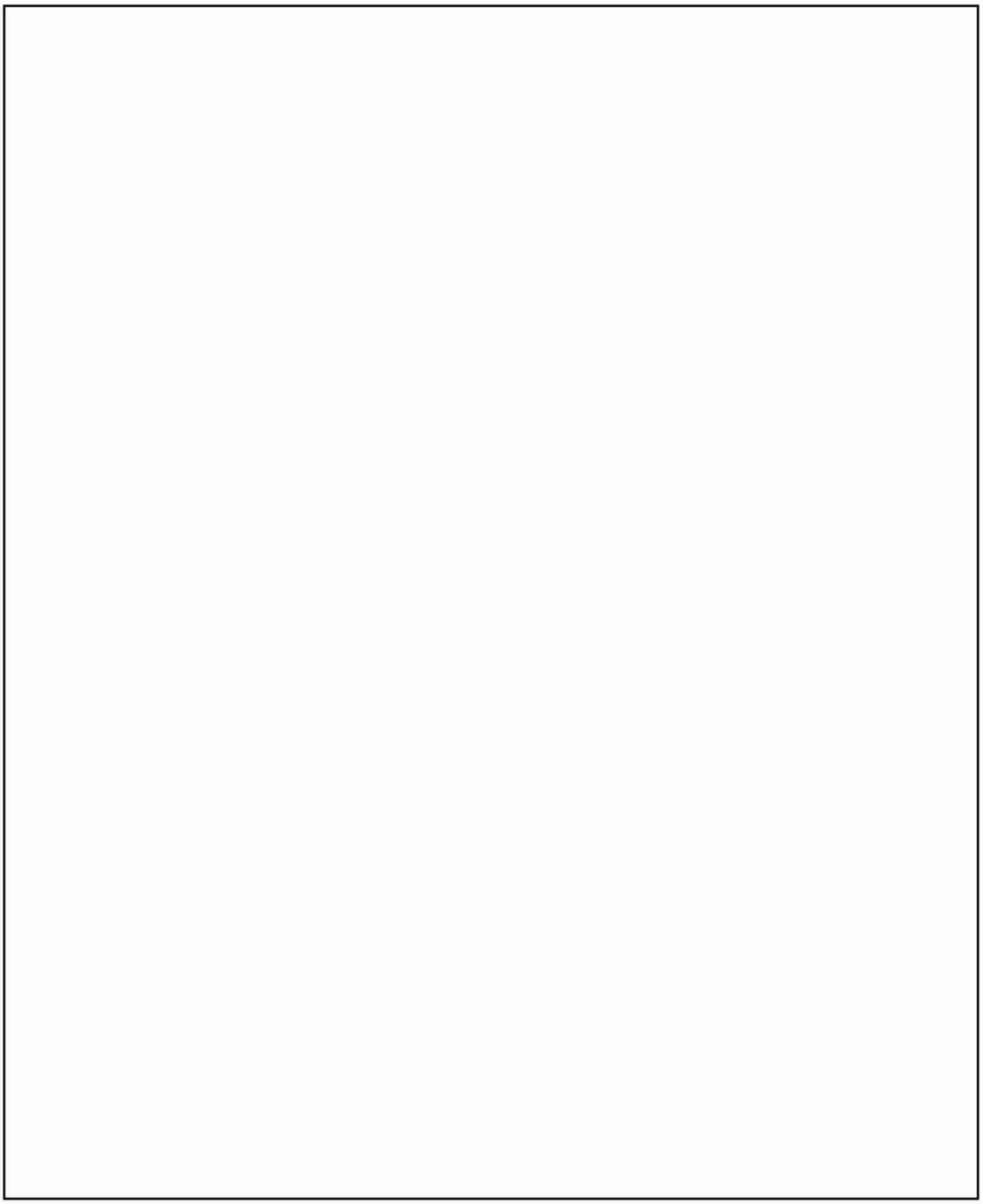
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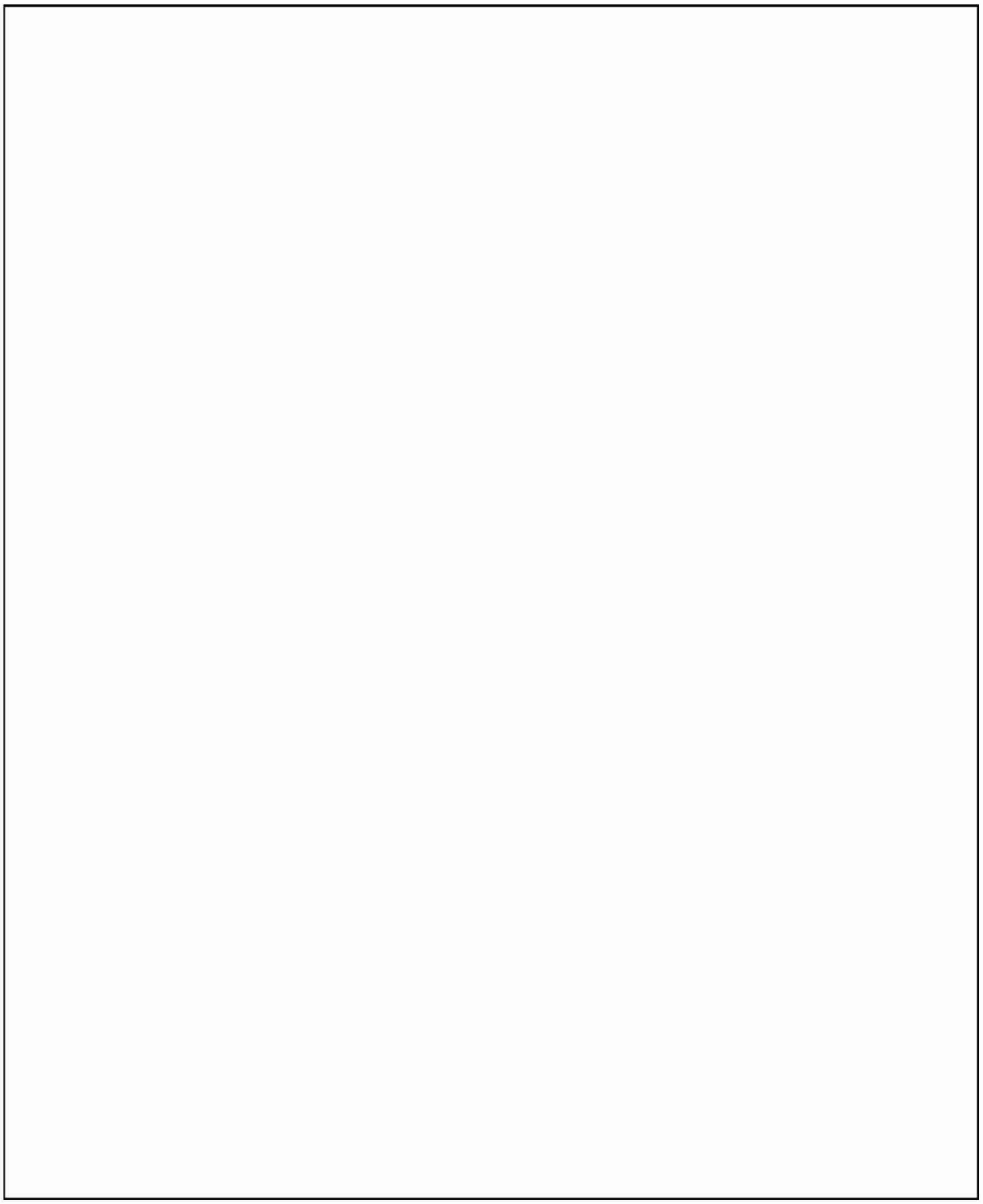
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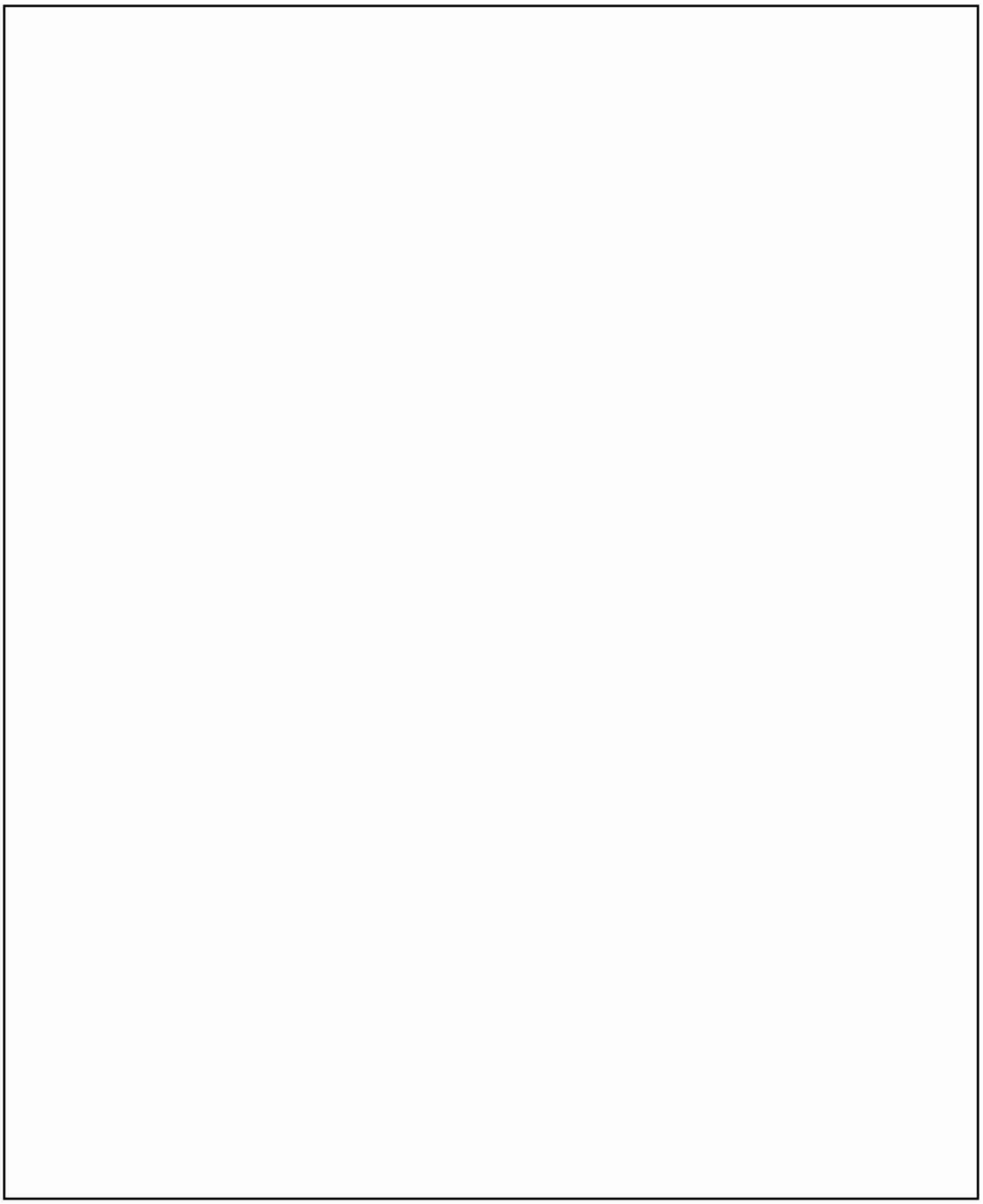
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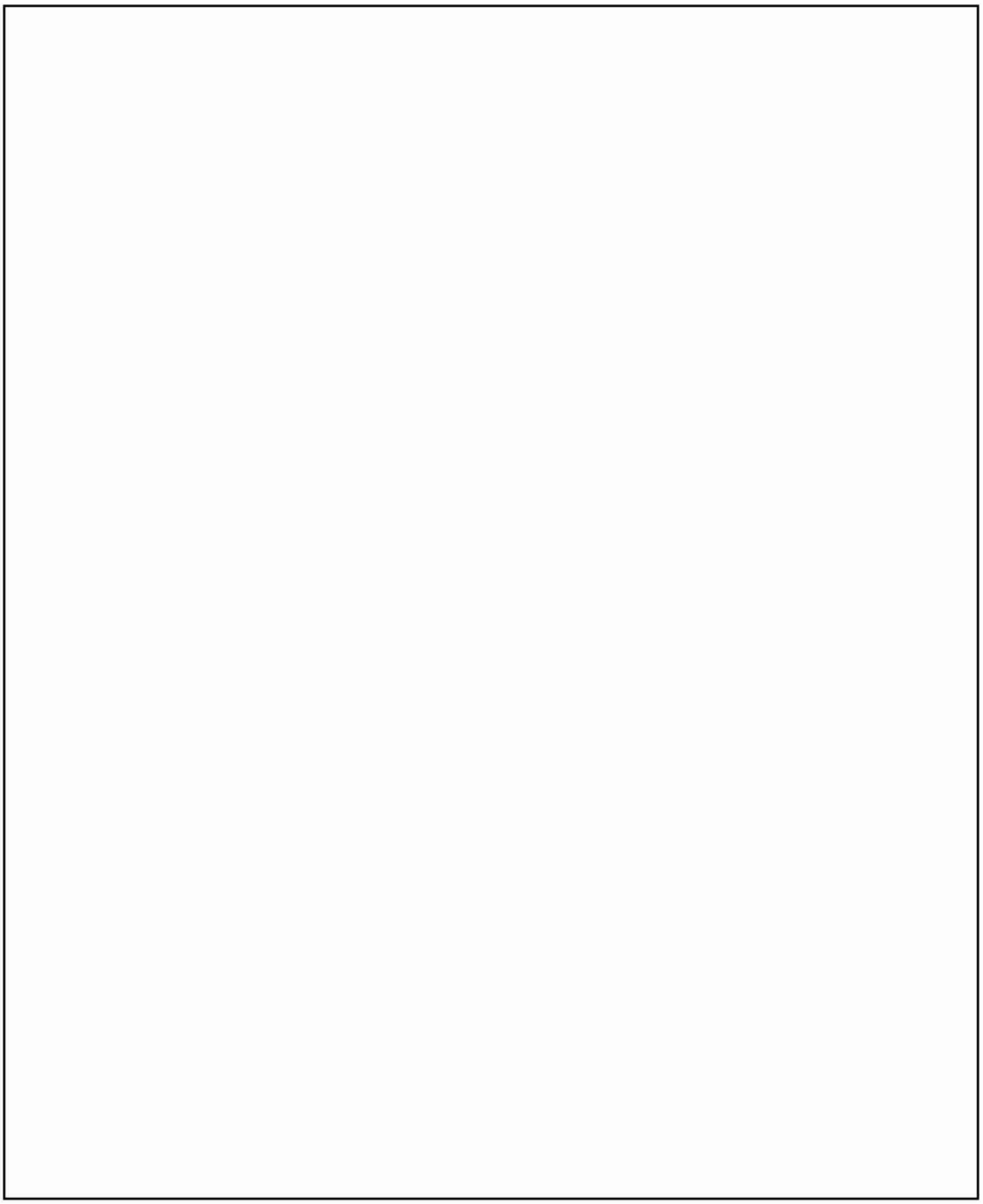
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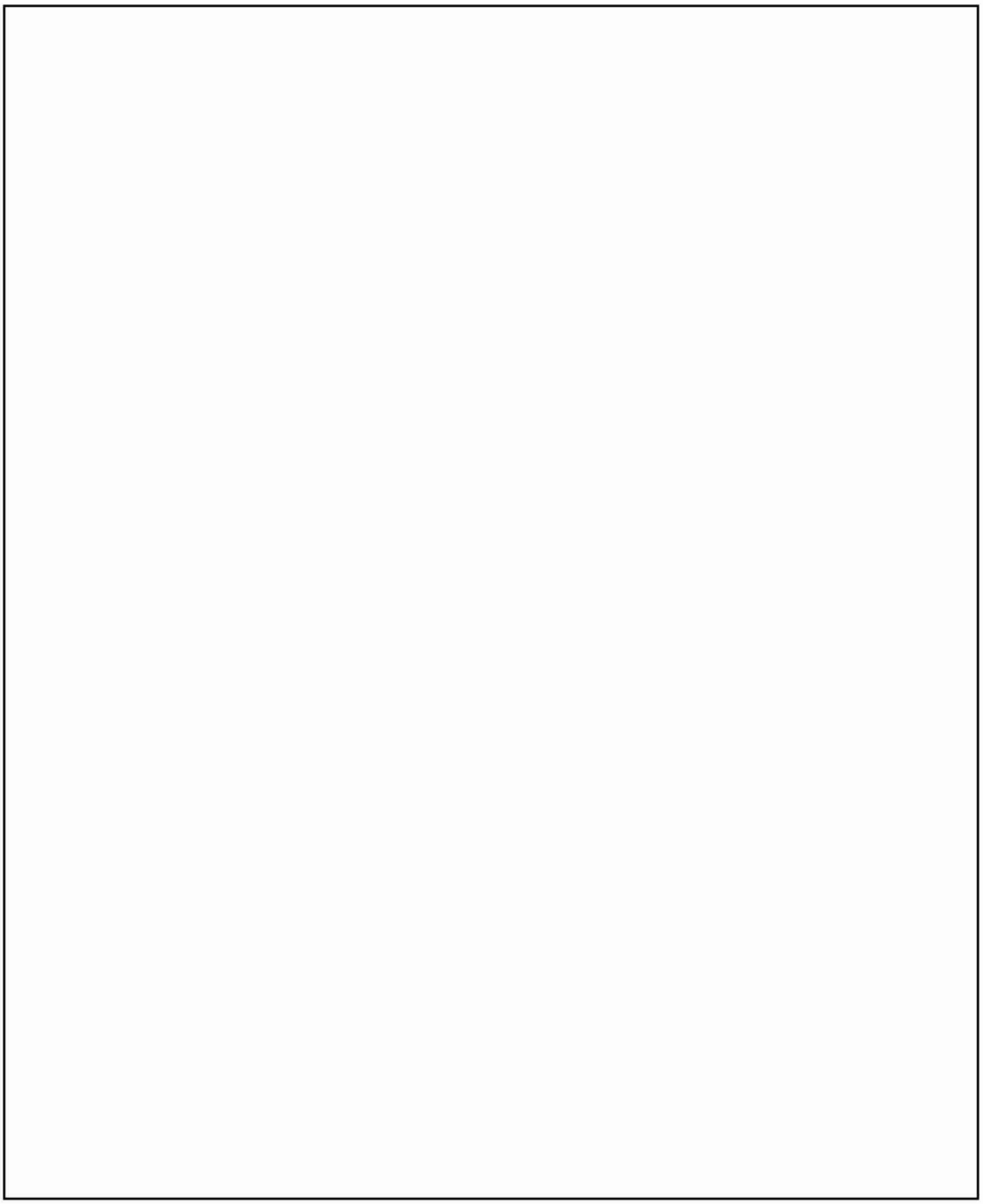
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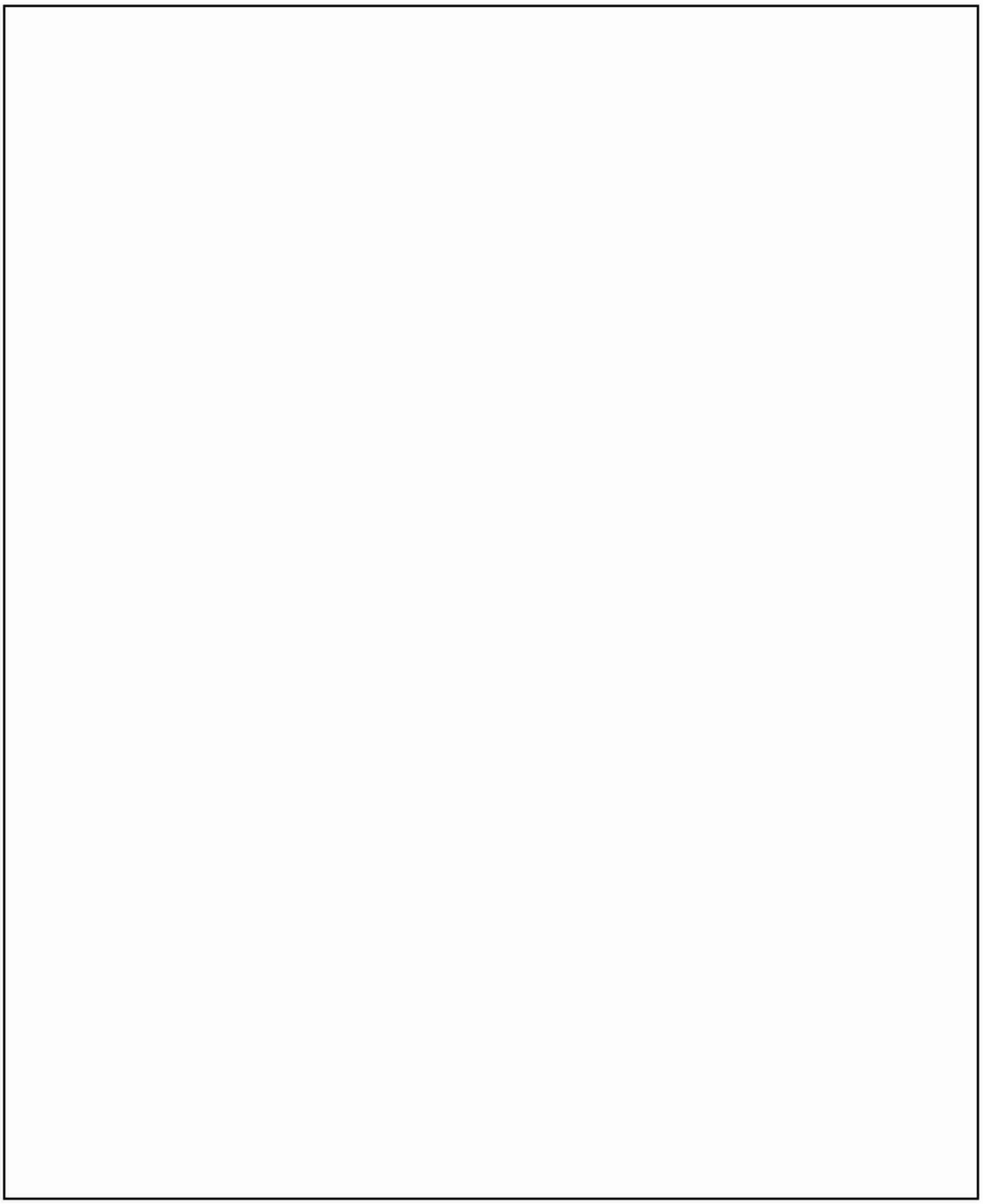
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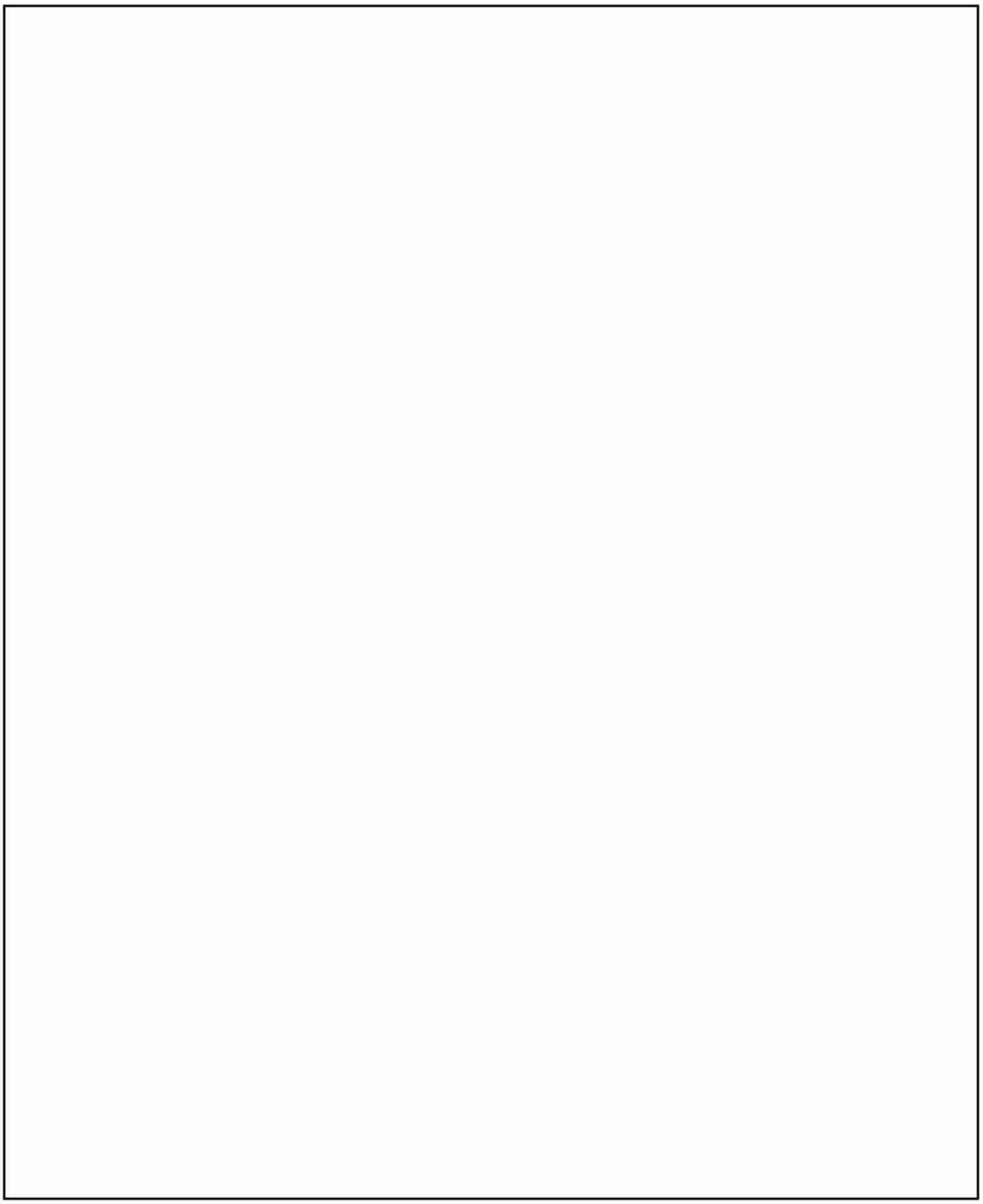
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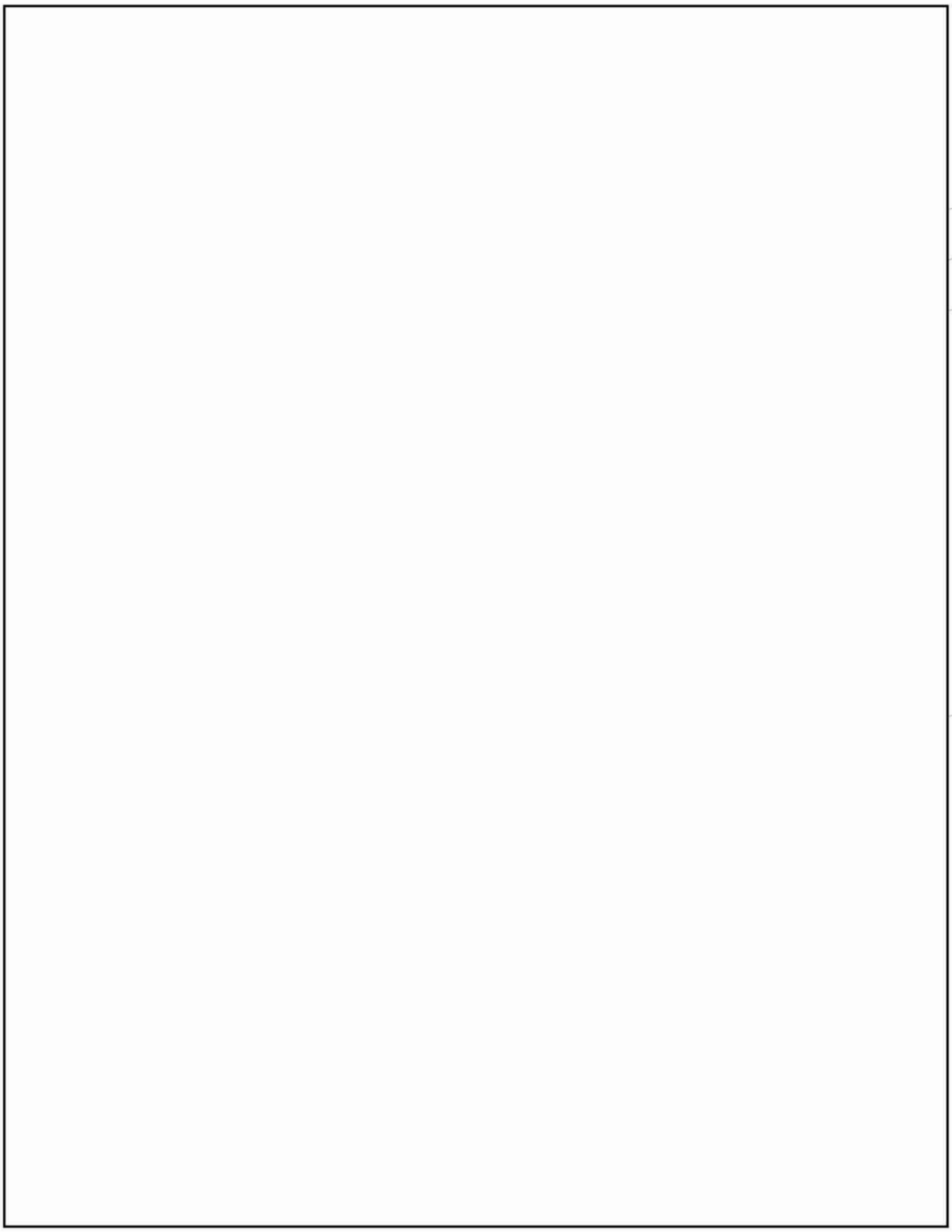
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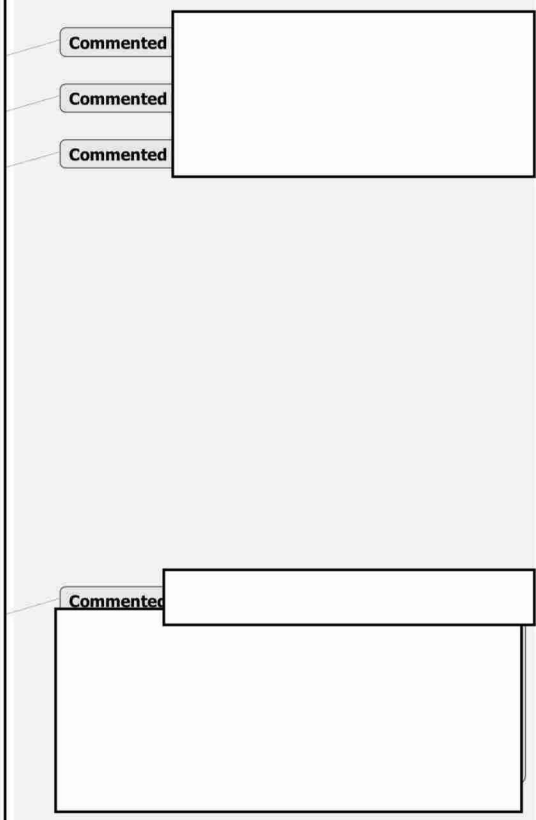
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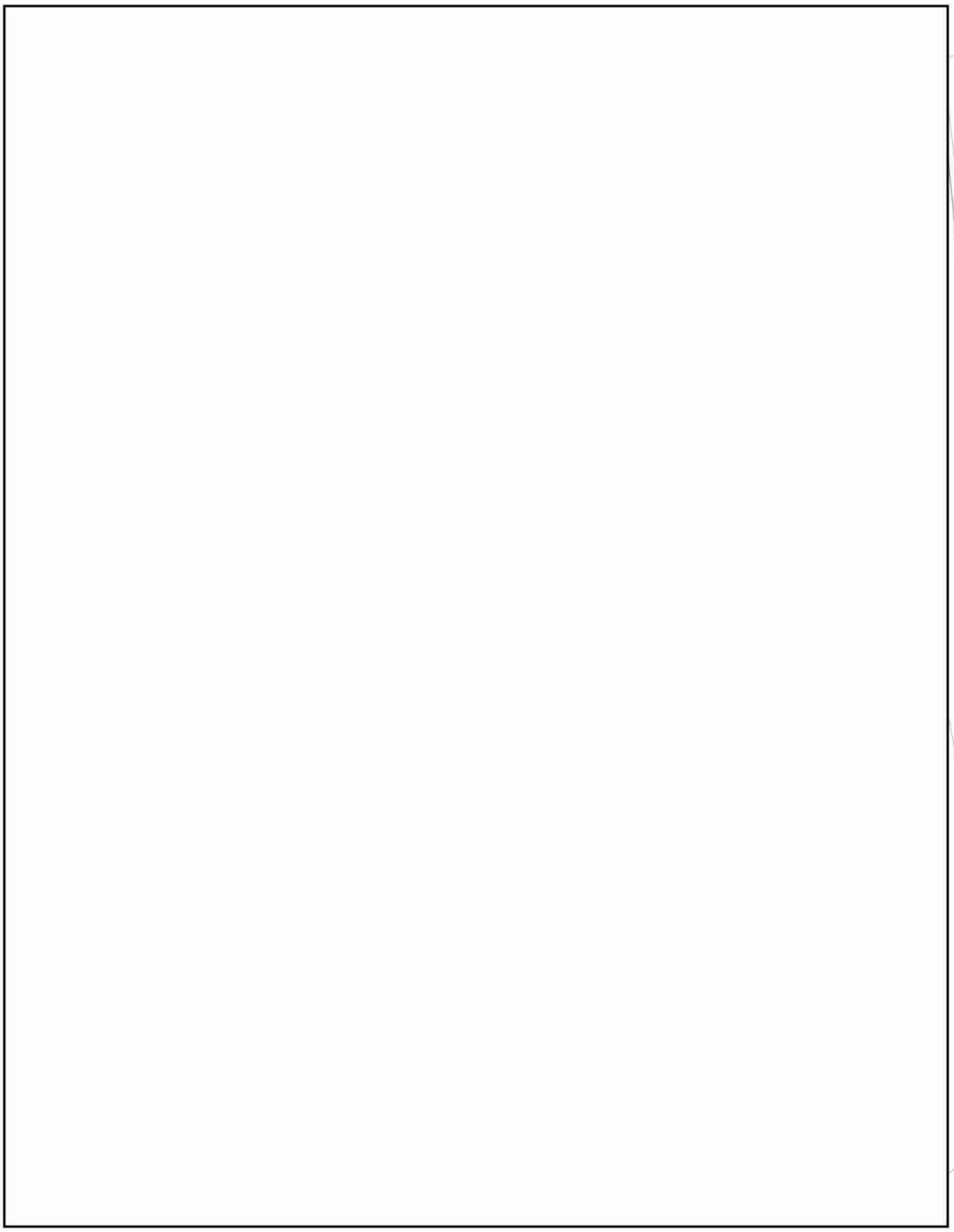
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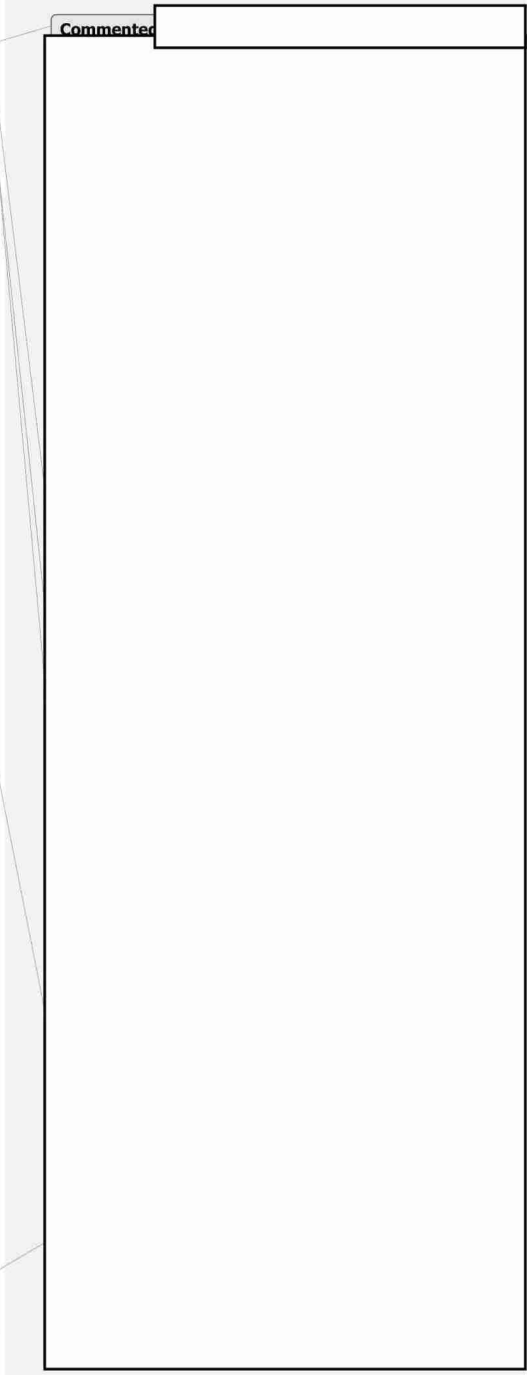


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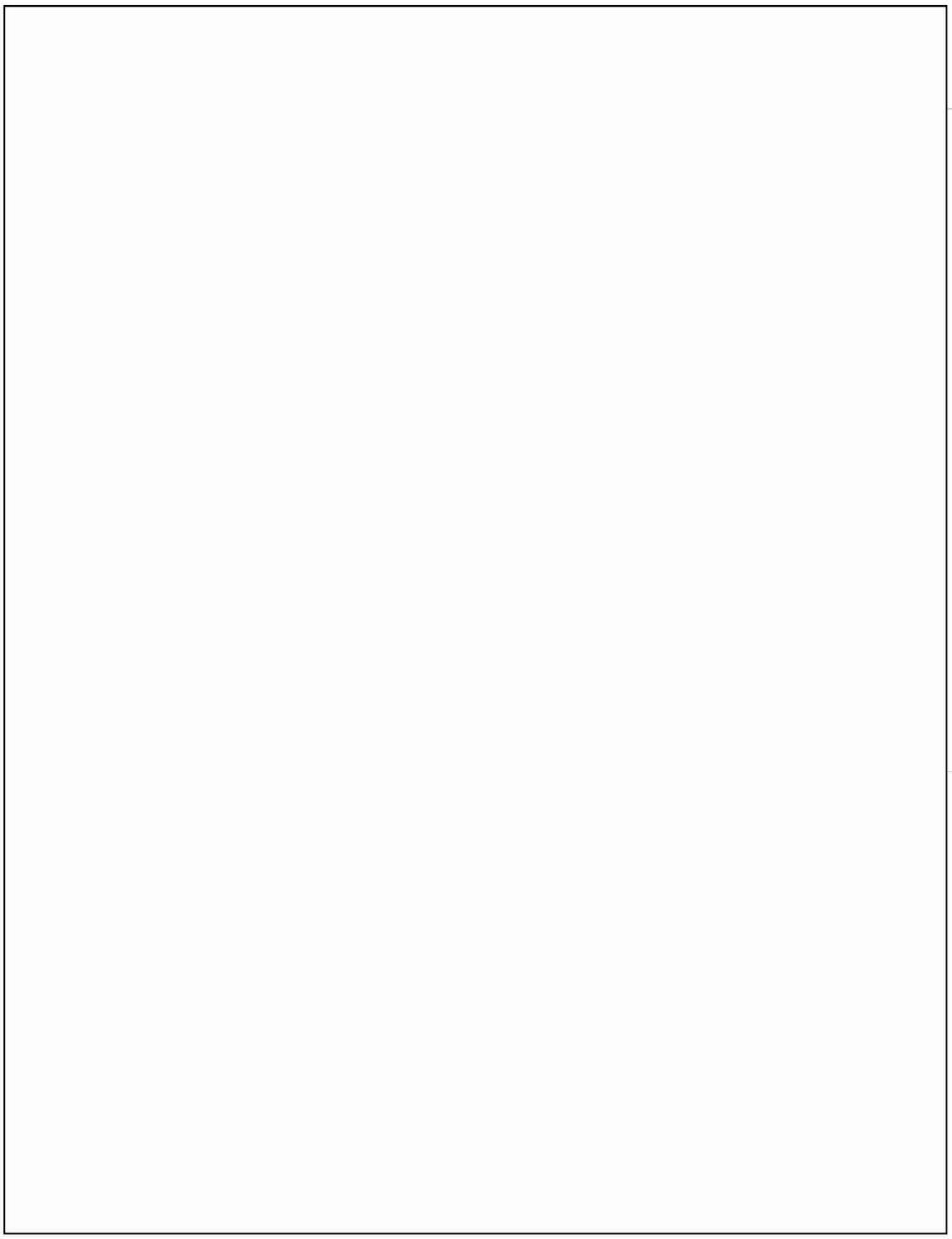
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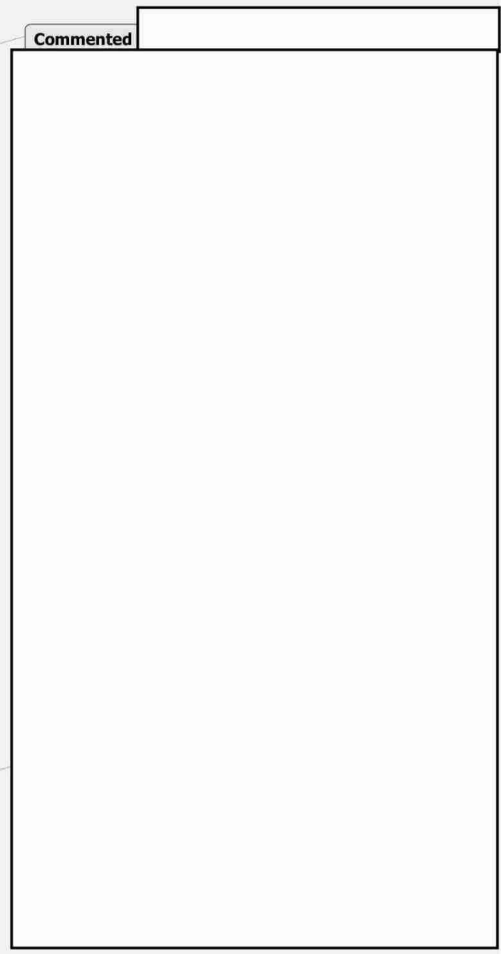


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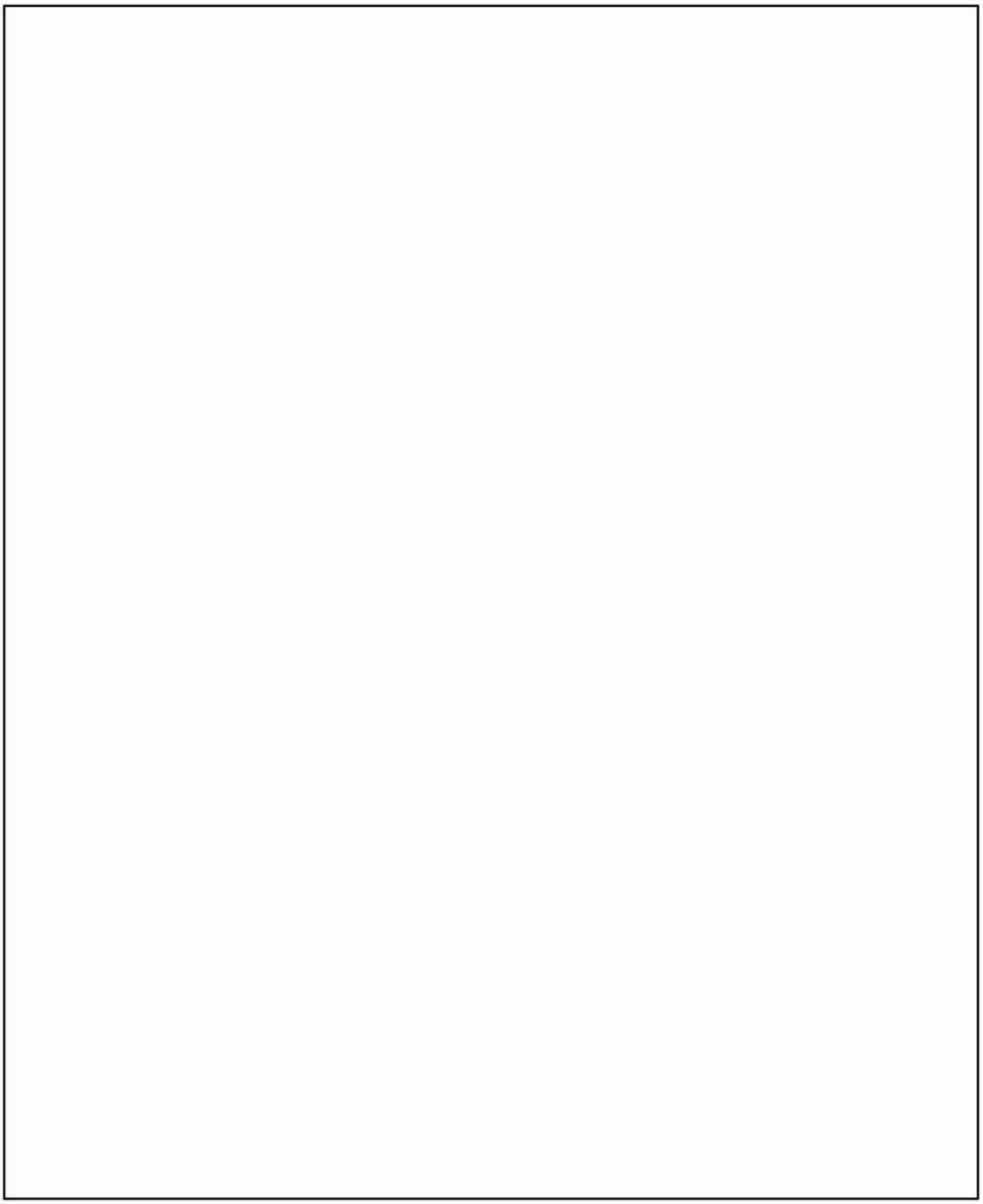




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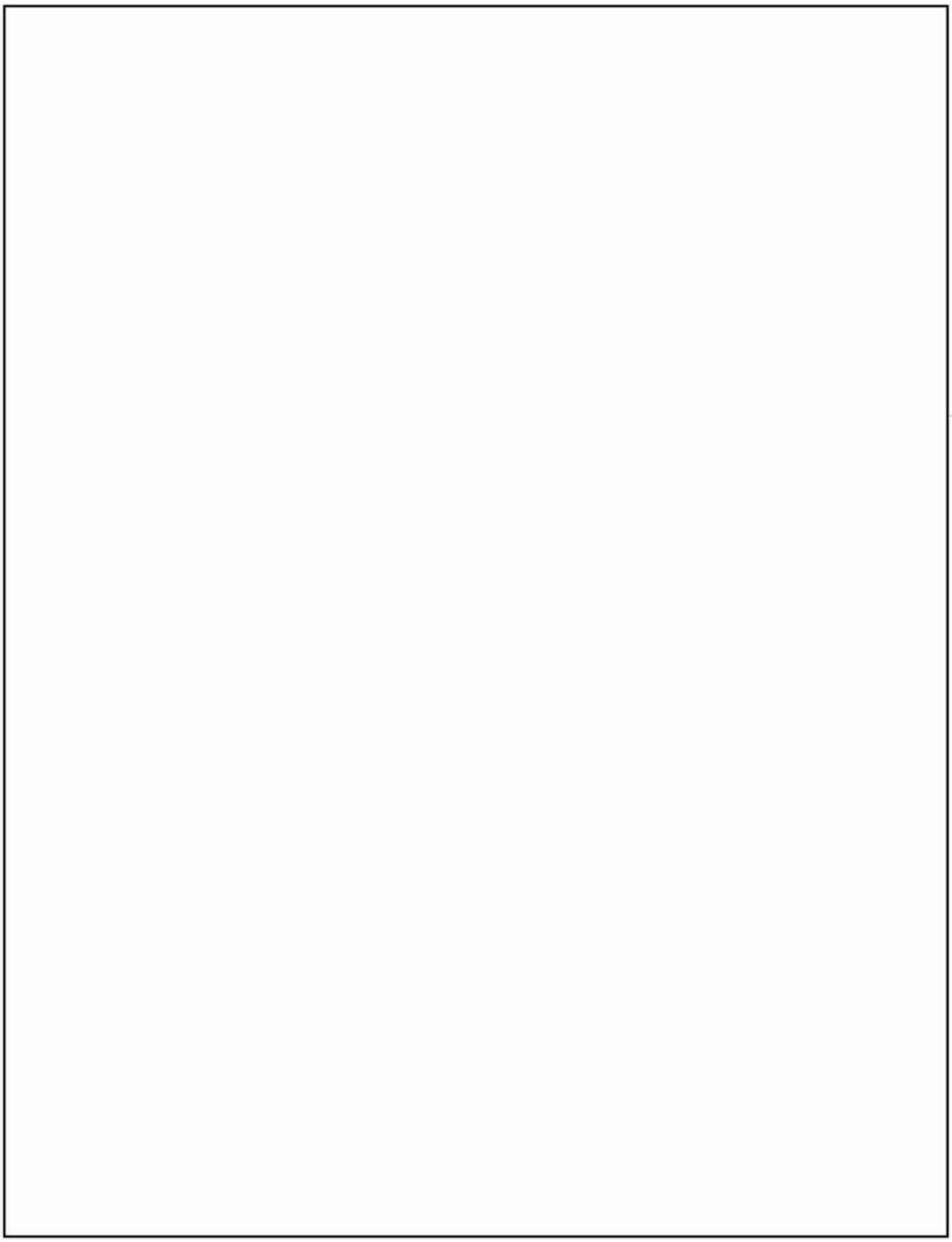
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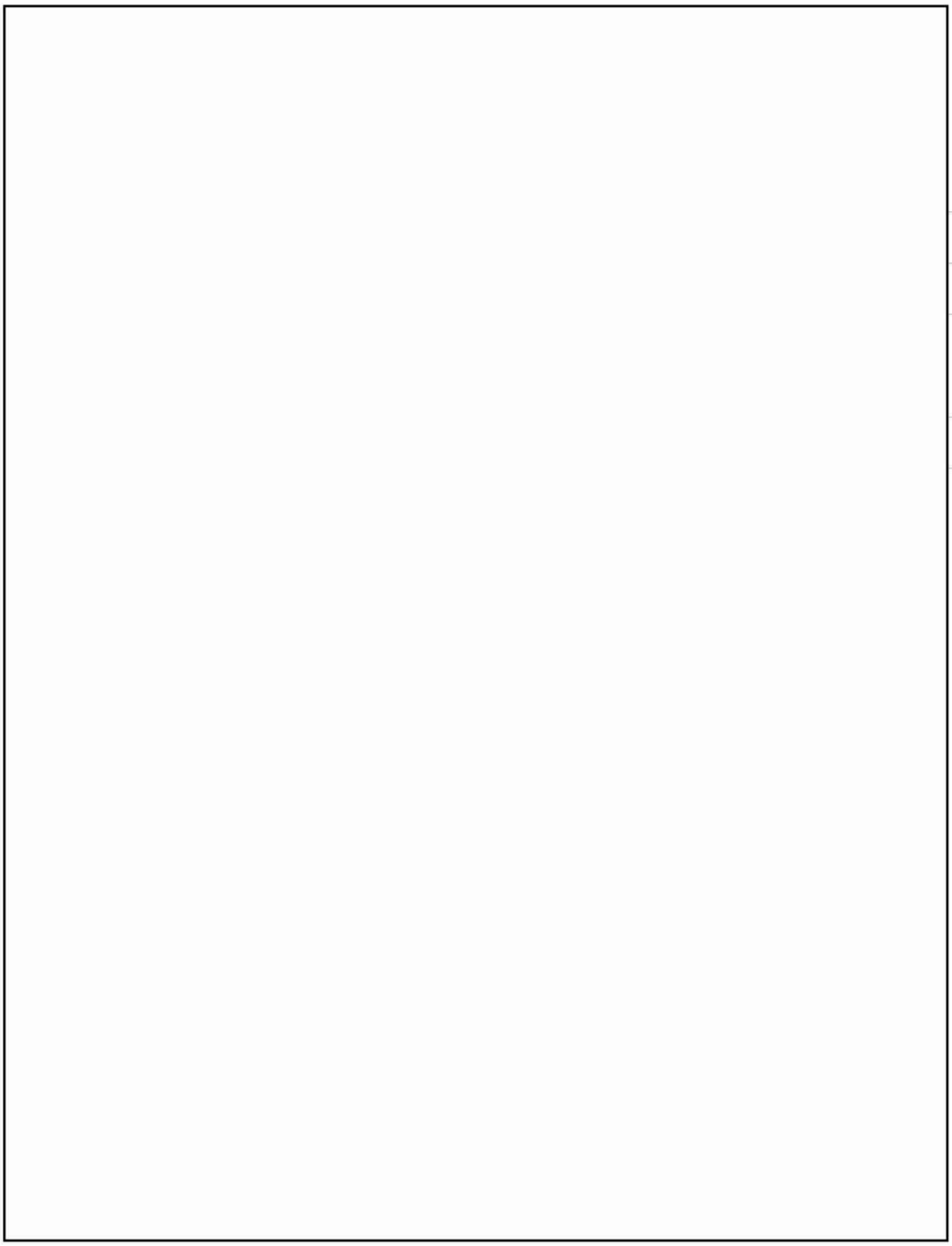


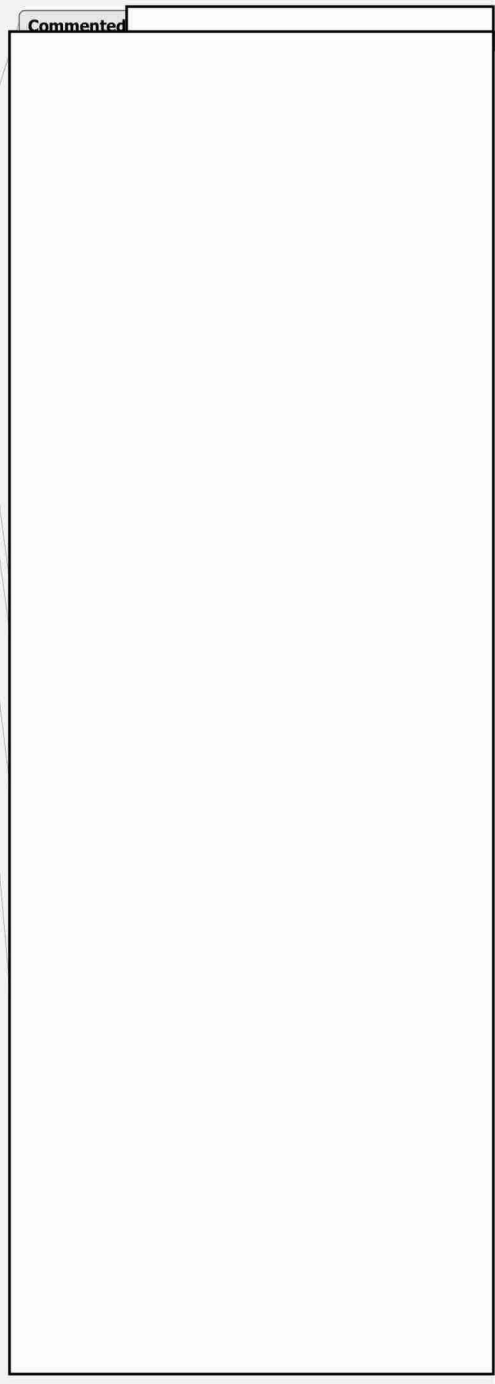
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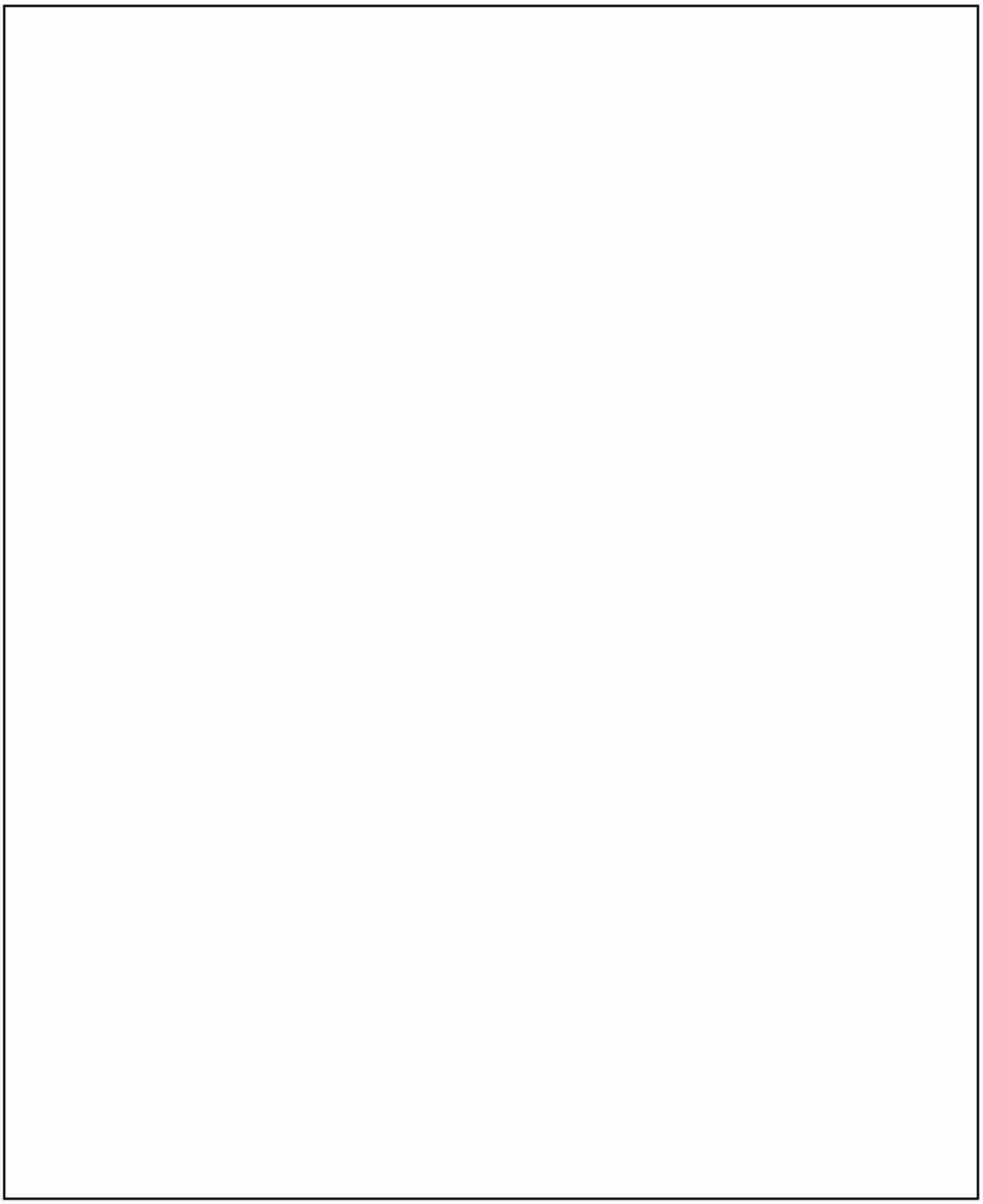




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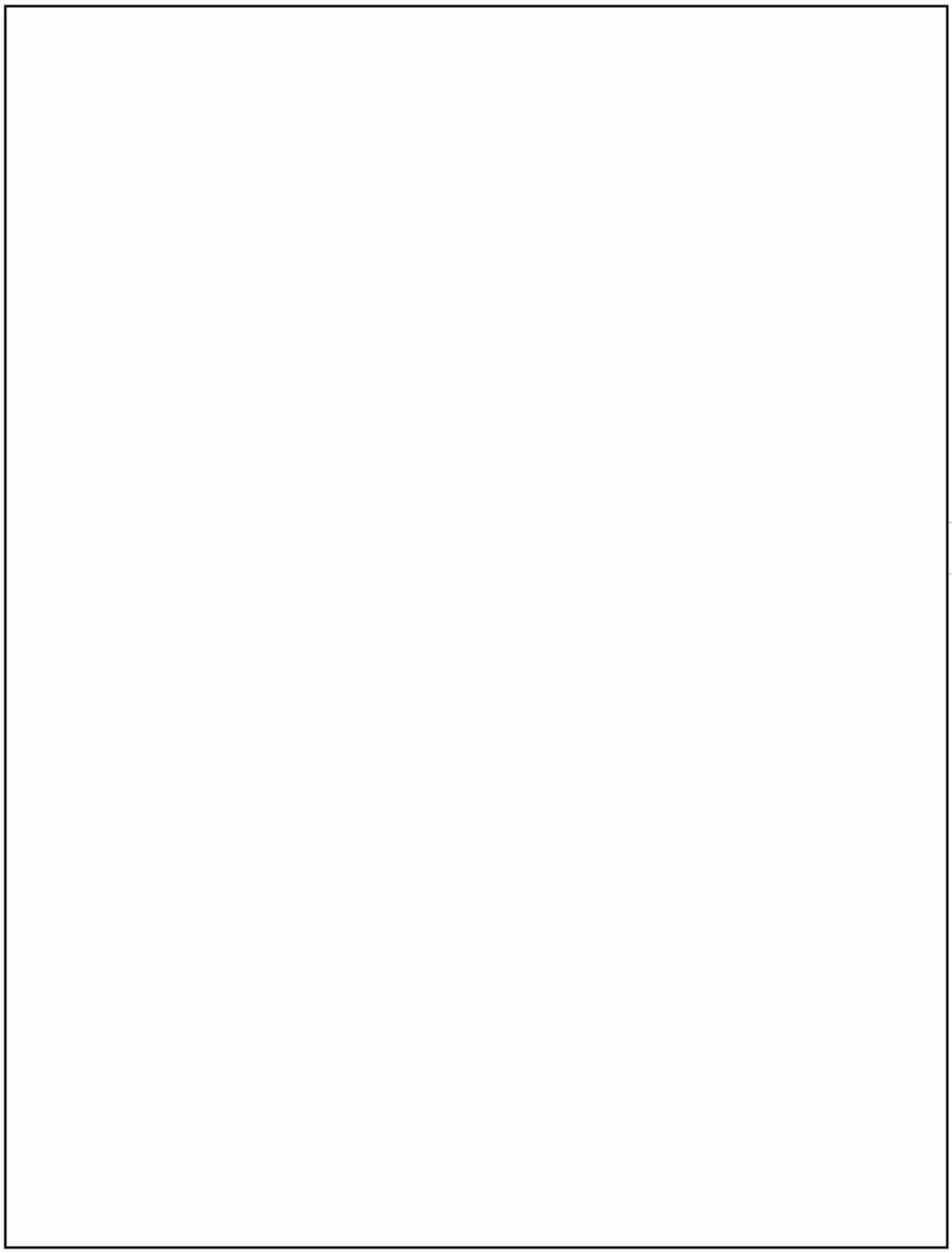
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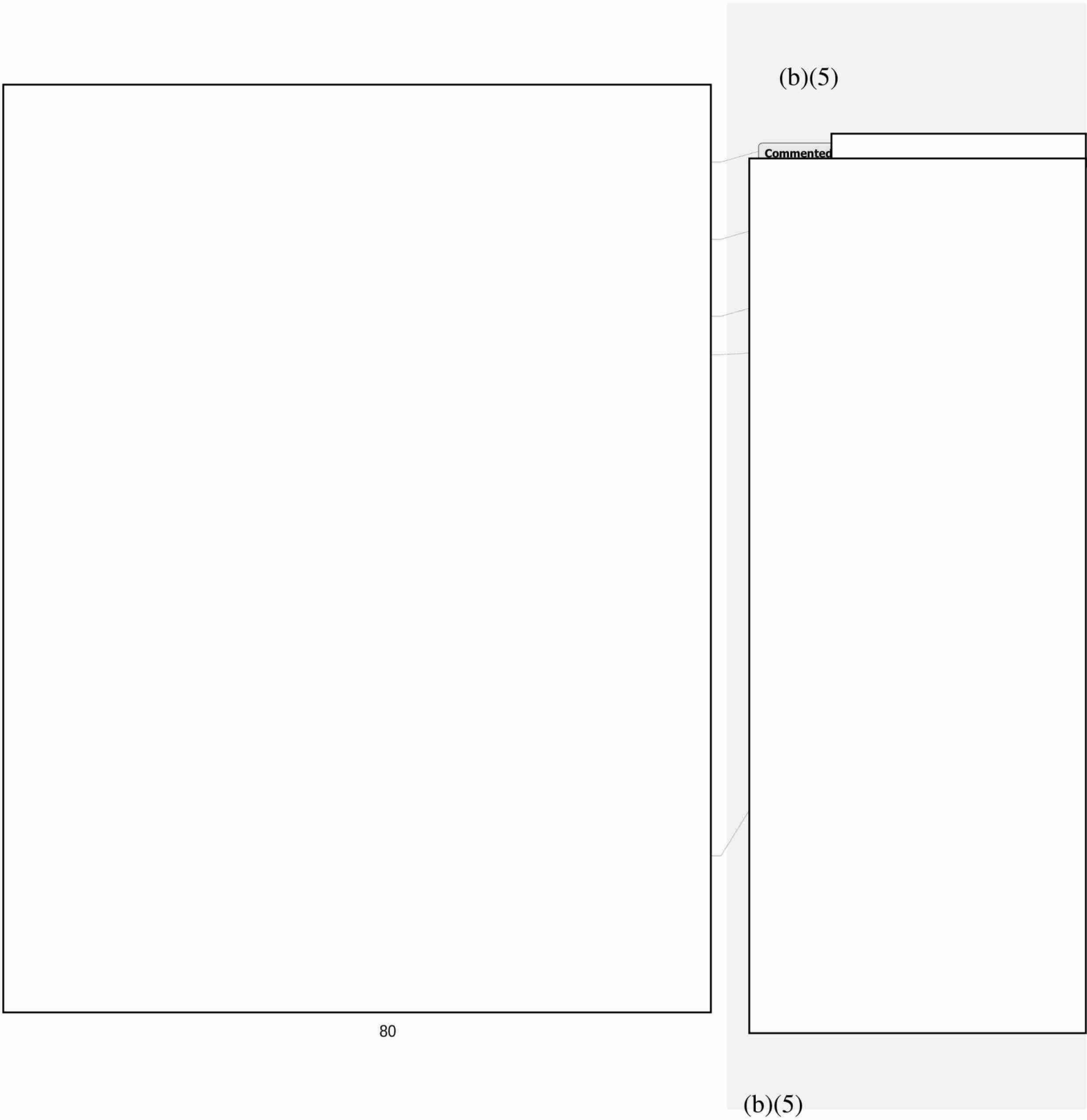
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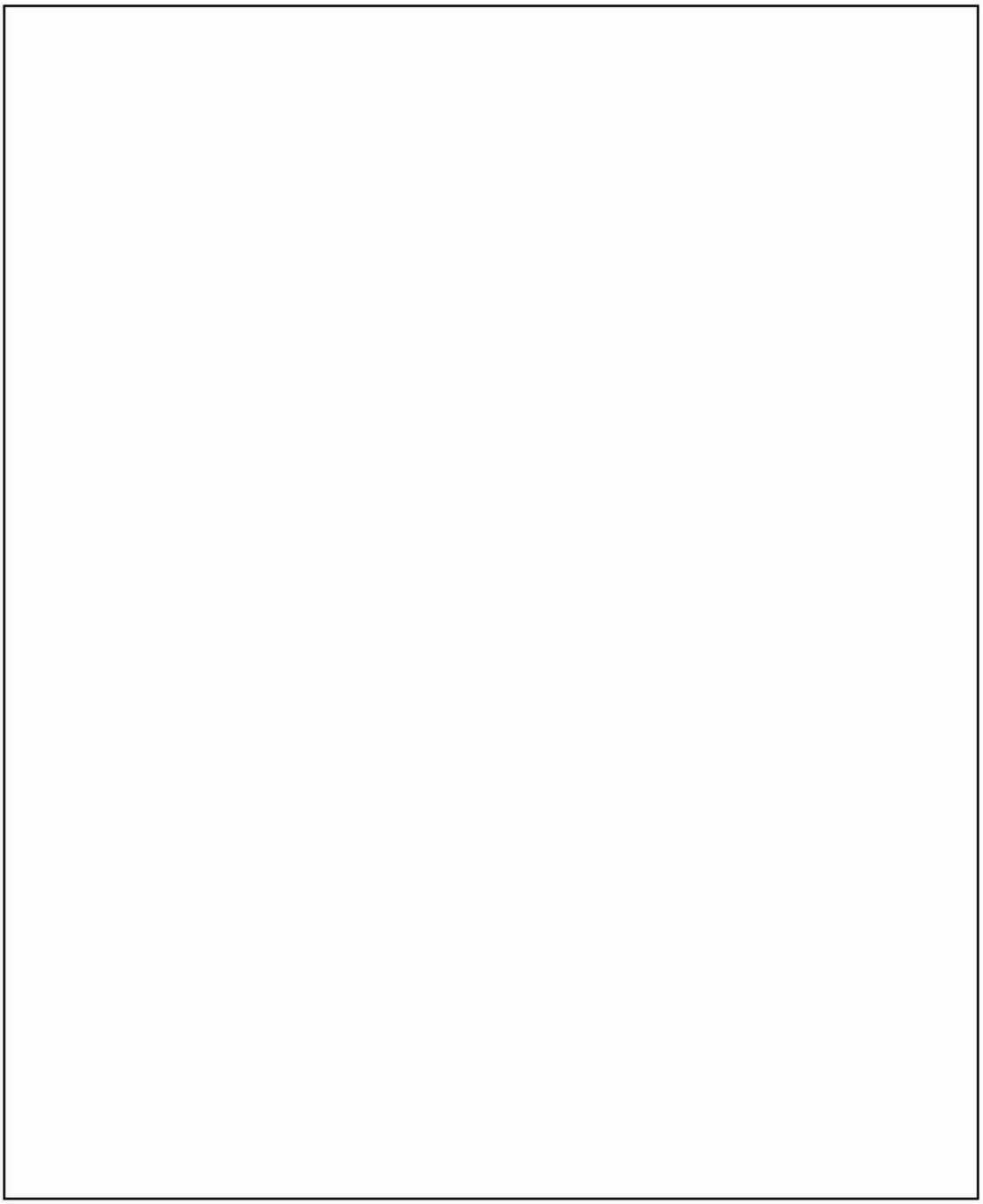
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AMERICAN OVERSIGHT

From: Law, Robert T
Subject: H-1B rules
To: Edlow, Joseph B
Sent: September 10, 2020 3:19 PM (UTC-05:00)
Attached: 20-3432 Signed AS1 Action Memo 08.31.20.pdf

Hey Joe,

Do you have time after 4:30 today or sometime tomorrow to discuss the H-1B rules? The OGC memo on H-1B strengthening is attached for your reference.

-Rob

Robert Law
Chief | Office of Policy & Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel [redacted] (b)(6)

AMERICAN OVERSIGHT

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 28, 2020

Privileged; Attorney-Client Communication

MEMORANDUM FOR THE ACTING SECRETARY

THROUGH: Kenneth T. Cuccinelli II
SENIOR OFFICIAL PERFORMING
THE DUTIES OF THE DEPUTY SECRETARY

FROM: Chad R. Mizelle **/s/**
SENIOR OFFICIAL PERFORMING THE DUTIES OF
THE GENERAL COUNSEL

SUBJECT: USCIS Interim Final Rule: Strengthening the H-1B Nonimmigrant Visa Classification Program

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Purpose

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AMERICAN OVERSIGHT

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From: Barrow, Clark
Subject: RE: OSUP
To: McDonald, Christina; Gountanis, John; Law, Robert T; Calkins, Aaron L; Rehberg, Sarah
Cc: Lee, Jennifer
Sent: September 2, 2020 3:31 PM (UTC-05:00)
Attached: 20-3407 Signed AS1 Action Memo 08.31.20.pdf, 20-3432 Signed AS1 Action Memo 08.31.20.pdf, 20-3432 Signature Page 08.31.20.pdf

Attached are the signed docs. ESEC auto-penned on Monday and OGC should've received a notification in IQ yesterday around noon. Let me know if you need anything else.

From: McDonald, Christina
Sent: Wednesday, September 2, 2020 3:57 PM
To: Gountanis, John; Law, Robert T; Aaron L. Calkins; Rehberg, Sarah
Cc: Barrow, Clark; Lee, Jennifer
Subject: RE: OSUP

Thanks for the update, John. We will take this as approval.

In the meantime, Clark, we look forward to receiving the signed decision document.

Thanks.

Christina E. McDonald
(phone)

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Gountanis, John
Sent: Wednesday, September 2, 2020 3:55 PM
To: Law, Robert T; Aaron L. Calkins; Rehberg, Sarah
Cc: Barrow, Clark; McDonald, Christina; Lee, Jennifer
Subject: RE: OSUP

Clark & Christina,

I approved the OSUP employment authorization rule the same time as the H1-B rule. If the folder has been misplaced, please take this message as an approval.

Thanks,

John

From: Law, Robert T
Sent: Wednesday, September 2, 2020 3:40 PM
To: Gountanis, John <john.gountanis@hq.dhs.gov>; Aaron L. Calkins; Rehberg, Sarah
Subject: OSUP

AMERICAN OVERSIGHT

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Hi John,

Sarah shared with me the other night the exciting news that AS1 approved both H-1B strengthening and OSUP for OIRA submission. The H-1B rule has been sent to OIRA but I understand that staff level OGC has still not received official word that AS1 approved OSUP so it has not yet been transmitted to OIRA. I'm sorry to bother you with this but can you please help with whatever steps need to occur so OGC can send the rule to OIRA?

Thanks,
Rob

Robert Law
Chief | Office of Policy & Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel [redacted] (b)(6)

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AMERICAN OVERSIGHT

From: Law, Robert T
Subject: H-1B strengthening TP
To: Edlow, Joseph B
Sent: September 1, 2020 2:51 PM (UTC-05:00)
Attached: Talking Points - H1B Strengthening IFR.docx

Hey Joe,

AS1 now wants these today instead of tomorrow. Let me know if you have any edits.

-Rob

Robert Law
Chief | Office of Policy & Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
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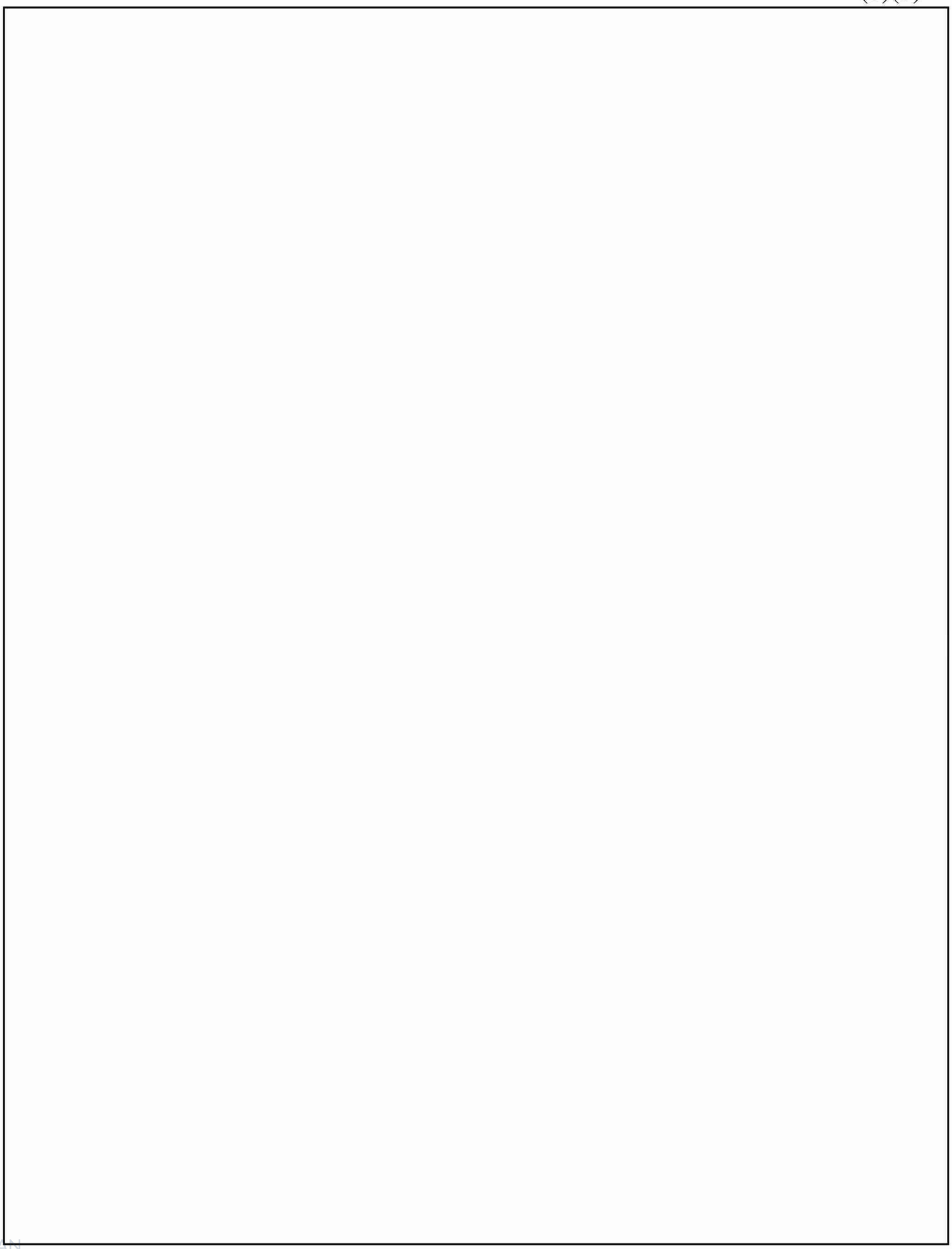
H-1B Strengthening Interim Final Rule Talking Points

September 1, 2020

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AMERICAN OVERSIGHT

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From: Edlow, Joseph B
Subject: FW: PP 10052 NIE
To: Garza, Regina M
Sent: September 1, 2020 2:50 PM (UTC-05:00)
Attached: USCIS Recommendations on National Interest Exceptions to Presidential Proclamations - H1B.docx, Improving Implementation of Presidential Proclamation 10052 Final.doc, ALDAC PP 10052 Clarification.docx

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From: Law, Robert T <[redacted]>
Sent: Wednesday, August 26, 2020 10:14 AM (b)(6)
To: Edlow, Joseph B[redacted]; Calkins, Aaron [redacted]; King, Alexander R [redacted]
Subject: PP 10052 NIE

Joe,

Attached are the documents you've requested [redacted]

[redacted] (b)(5)

-Rob

Robert Law
Chief | Office of Policy & Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. [redacted] (b)(6)

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AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Fraud Detection and National Security Directorate
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date: August 24, 2020

To: HQFDNS Front Office

From: HQFDNS Fraud Division

Re. Ensuring Appropriate Implementation of Presidential Proclamation 10052, Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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Background

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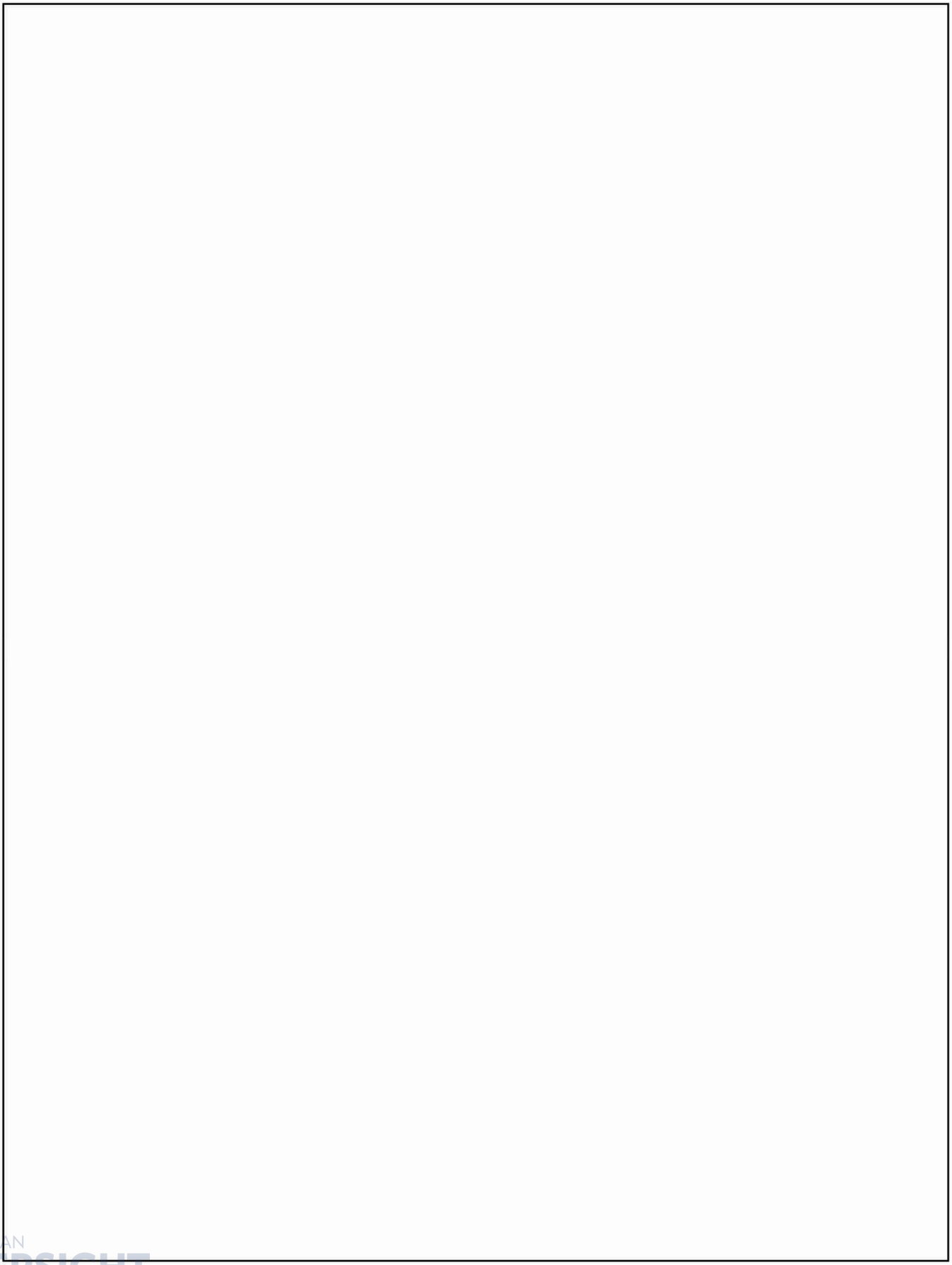
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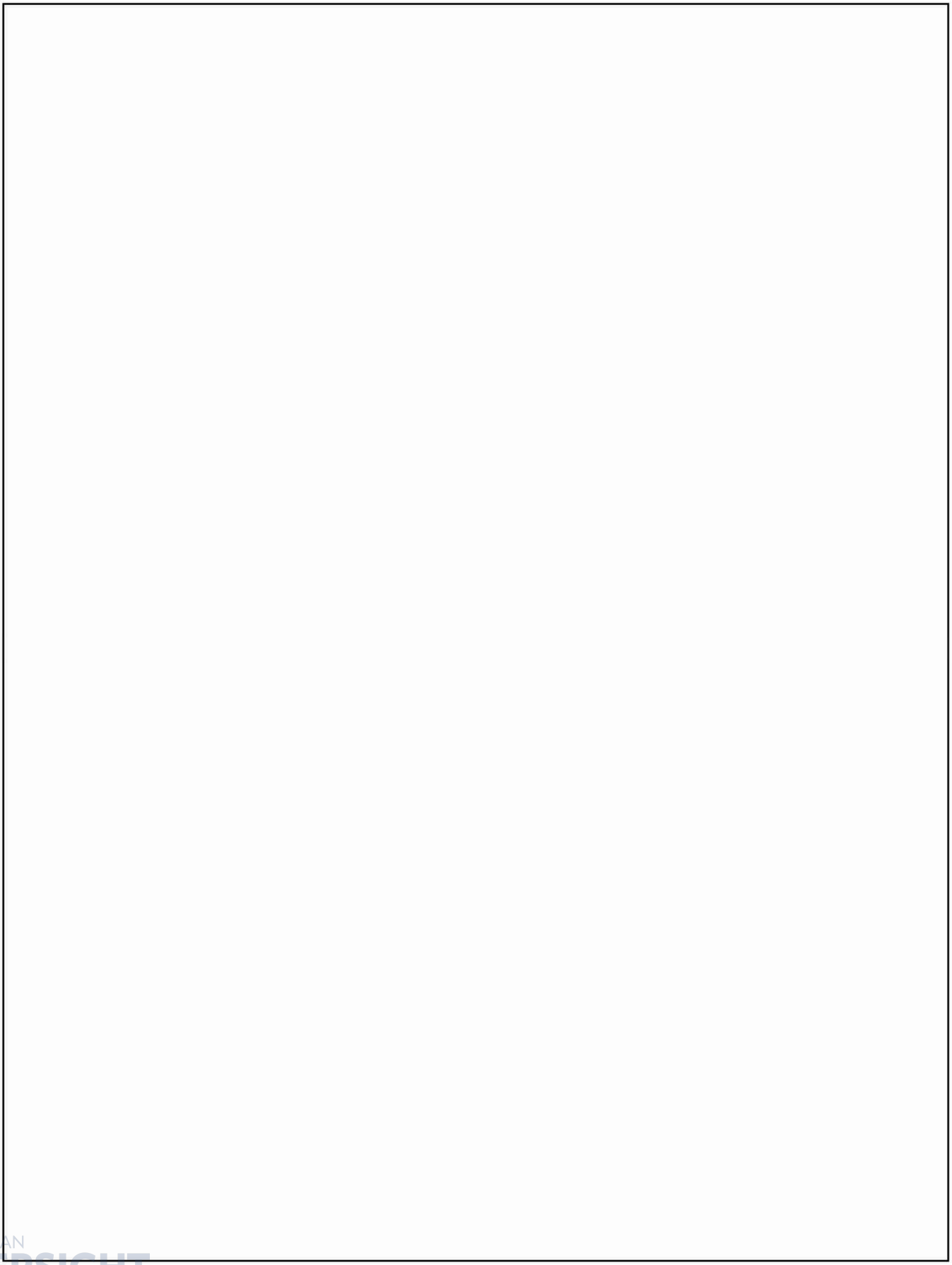
USCIS Recommendations on National Interest Exceptions to the Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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AMERICAN OVERSIGHT



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AMERICAN OVERSIGHT

From:
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To:
Sent: August 28, 2020 2:30 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Cover Memo Nadler 7.29.20.pdf, Draft Response Nadler FINAL 7.29.20.docx, Enclosure Nadler FINAL 7.29.20.docx, Enclosure Nadler (Redline - DHS Components) 7.29.20 (003).docx, Draft Response Nadler (Redline - DHS Components) 7.29.20.docx

Hi Aaron,

This is the Nadler response. DHS sent it to us late last night. We have an opportunity to review their changes. The edits are fairly minor and primarily stylistic.

Before we clear the revisions, you will need to electronically sign the cover memo (attached).

Cover Memo	For your digital signature
Draft Response (redline and clean) Draft Enclosure (redline and clean)	For review
Incoming Letter	Background

(b)(6)

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:44 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: 3:00 PM on Friday, 07/10/2020

Request: Director's Office review and COS signature on the Rep. Nadler cover memo.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and was cleared by the DHS Components (MGMT, OLA, and PLCY). ESEC will obtain final approval from the OGC. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:
OCC:
EXA:

[redacted]

(b)(6)

AMERICAN OVERSIGHT

Attachments:
Incoming - Nadler 6.23.20
Cover Memo Nadler 7.29.20
Draft Response Nadler (Redline – DHS Components) 7.29.20
Enclosure Nadler (Redline – DHS Components) 7.29.20
Draft Response Nadler FINAL 7.29.20
Enclosure Nadler FINAL 7.29.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted] (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron L. Calkins
Chief of Staff

SUBJECT: **Request for Approval: Response to Chairman Nadler's June 23, 2020 Letter Regarding the Authorized Amount of Immigrant Visas for Fiscal Years 2020 and 2021 (WF 1197960).**

Context: Chairman Nadler+1 wrote to Acting Secretary Wolf and Secretary Pompeo to ensure that DHS and the Department of State are granting the full number of statutorily authorized immigrant visas for fiscal year (FY) 2020 and FY 2021.

(b)(6)

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted], Deputy Chief, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since her review.

Clearance: The following Components have cleared the proposed response:

(b)(6)

MGMT:
OLA:
PLCY:

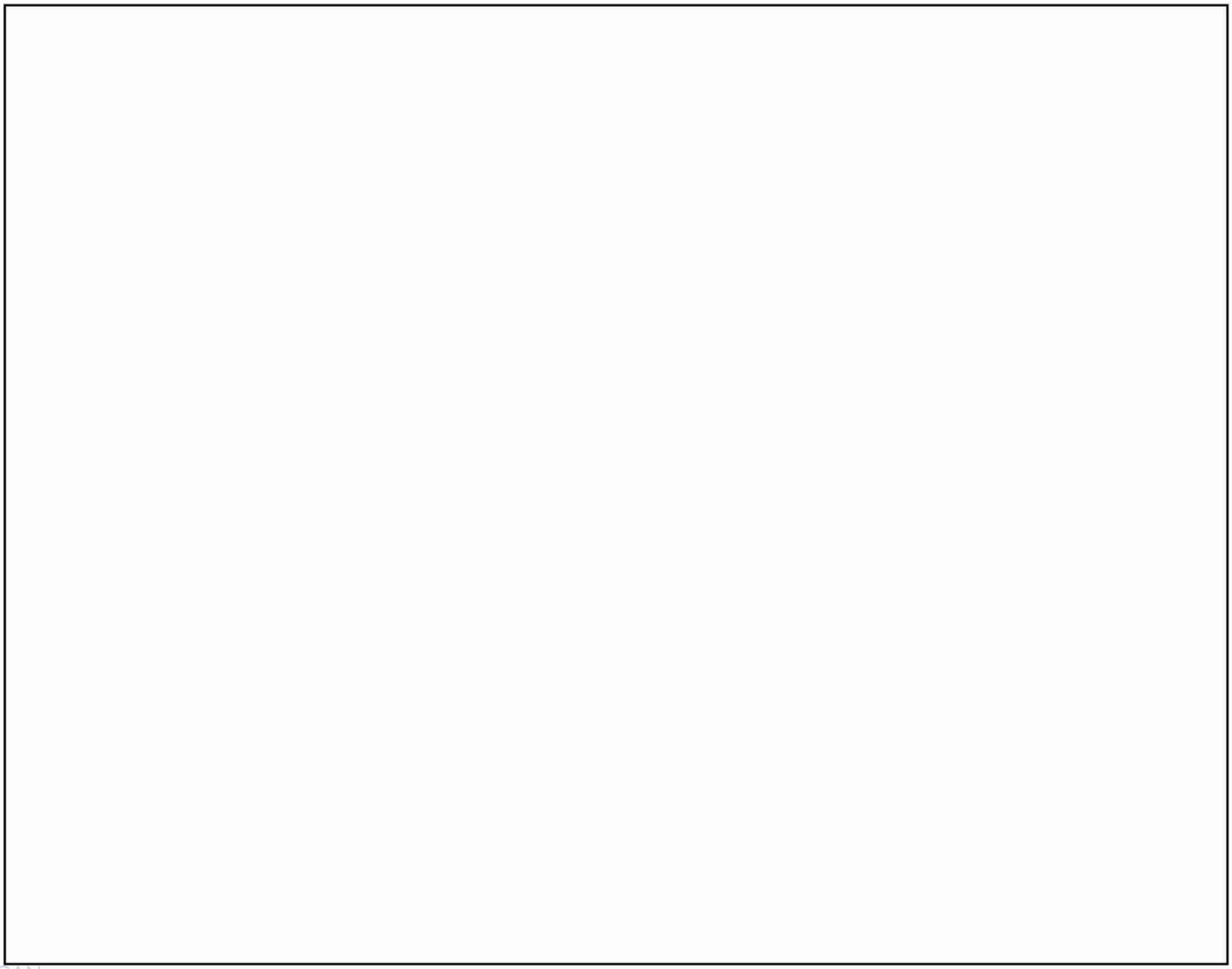
Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. The Acting Secretary ~~Wolf has~~ asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

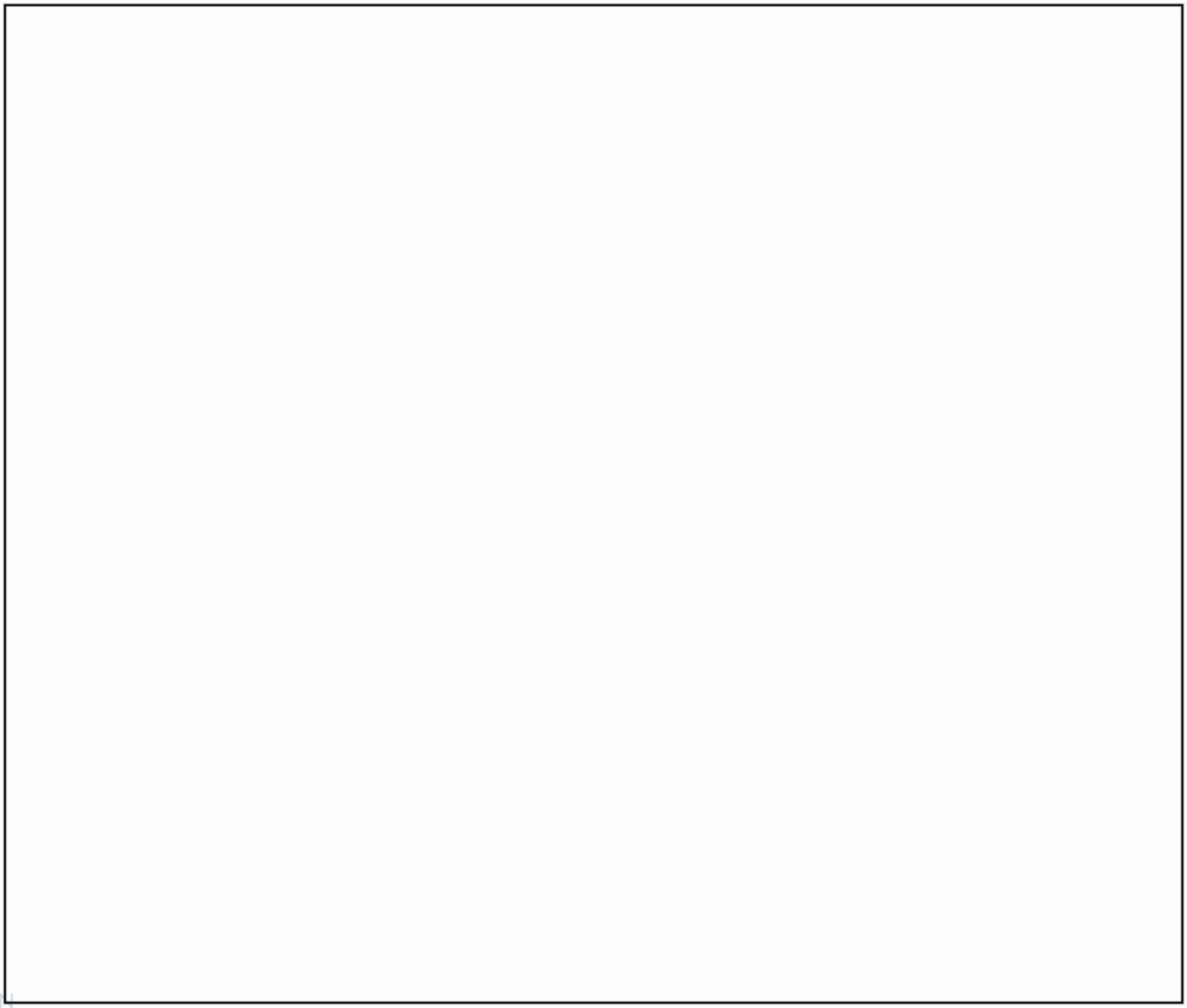
AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY) 2020 and 2021. Acting Secretary Wolf asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

Please see our enclosed response to your specific questions. Thank you again for your letter and interest in this issue. Chairwoman Lofgren will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

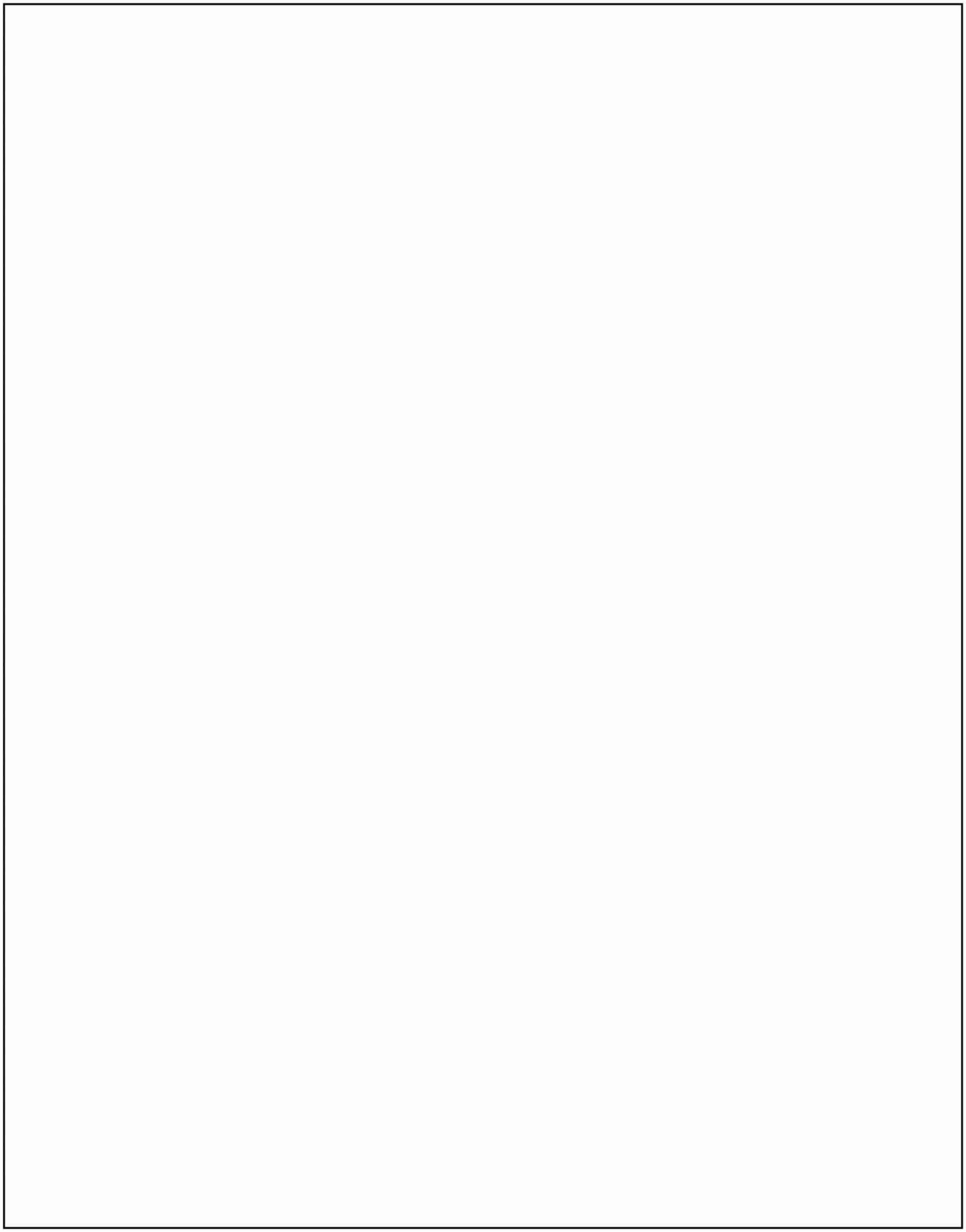
Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

AMERICAN OVERSIGHT

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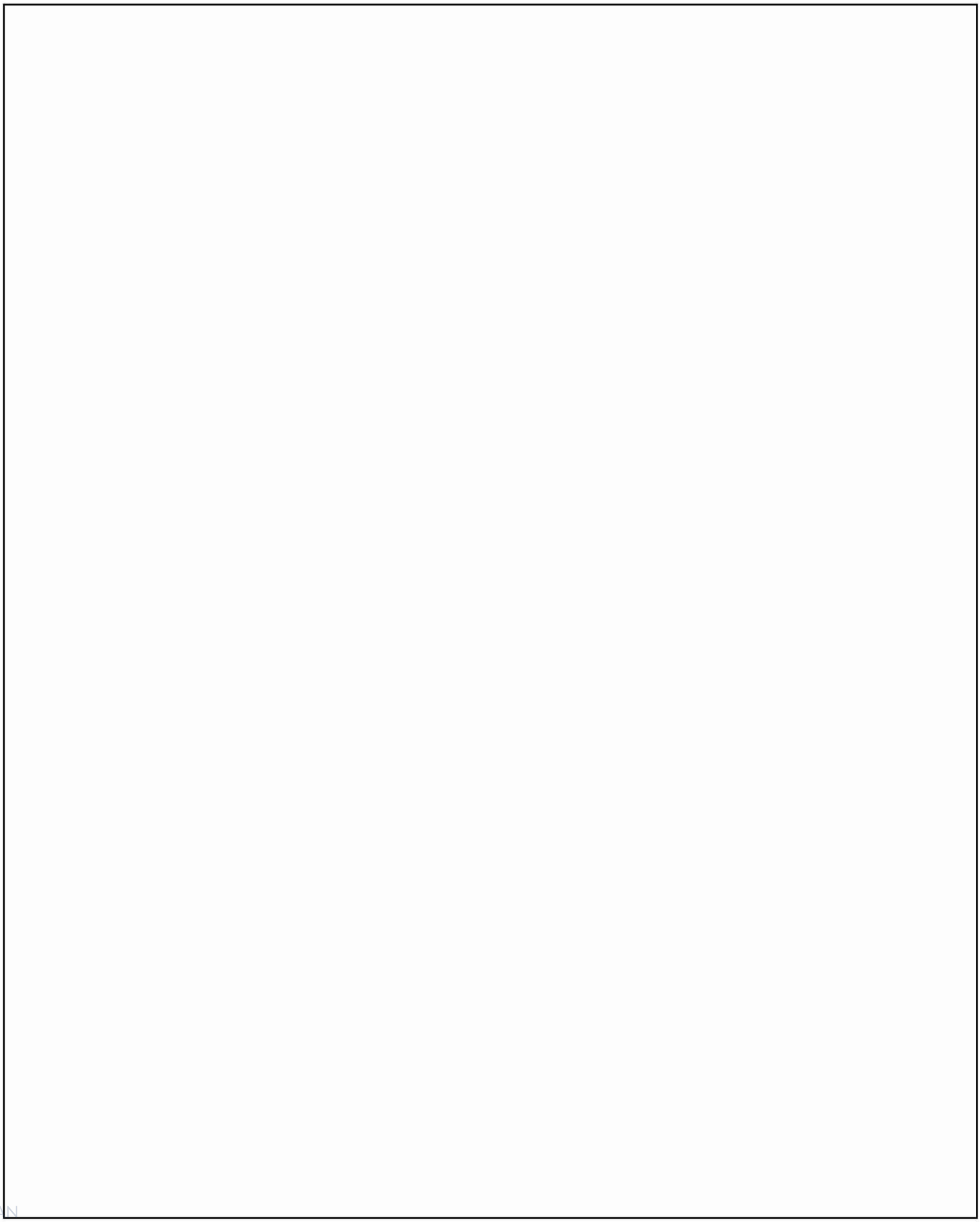
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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

AMERICAN OVERSIGHT

consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

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Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: DOS input for response to Chm. Neal
To: Stoddard, Kaitlin V
Sent: August 26, 2020 3:09 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (CBP input) 8.13.20.docx, URGENT - Request for DOS input to Response to Chm. Neal.eml, [URGENT - OVERDUE] Request for DOS input to Response to Chm. Neal.eml

Hi Kaitlin,

I hope you are well! I'm writing to see if you can help us push through a clearance request that is pending with DOS. (About a week ago, we heard that the DOS team was working on it but we haven't heard anything since then.)
It is for a Congressional inquiry from Chair Richard Neal about a Presidential Proclamation, and we would like DOS to provide input to question #2.

Can you help?

AMERICAN OVERSIGHT

From: Carter, Constance L
Subject: [URGENT - OVERDUE] Request for DOS input to Response to Chm. Neal
To: DOSExecSec; [redacted]@state.gove; [redacted]@state.gov [redacted]@state.gov
Cc: Brown, James R; USCIS Exec Congr Corresp; Dove, Stephen W (Steve)
Sent: August 26, 2020 10:01 AM (UTC-05:00)

Adding [redacted]@state.gov.

Please provide a status update on this overdue action.

Thank you.

Constance L. Carter, Deputy Chief
Office of the Executive Secretariat | EXSO
U.S. Citizenship and Immigration Services
Office: [redacted]

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From: Carter, Constance L
Sent: Wednesday, August 26, 2020 10:00 AM
To: DOSExecSec [redacted]@state.gov> [redacted]@state.gove; [redacted]@state.gov
Cc: Brown, James R [redacted]>; USCIS Exec Congr Corresp [redacted]>; Dove, Stephen W (Steve) [redacted]>
Subject: RE: URGENT - Request for DOS input to Response to Chm. Neal
Importance: High

Good morning,

Kindly provide your clearance ASAP and if you are not able to clear the material please advise the cause of the delay.

Thank you.

Constance L. Carter, Deputy Chief
Office of the Executive Secretariat | EXSO
U.S. Citizenship and Immigration Services
Office: [redacted]

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From: Carter, Constance L
Sent: Tuesday, August 25, 2020 11:06 AM
To: DOSExecSec [redacted]@state.gov>; [redacted]@state.gov; [redacted]@state.gove; [redacted]@state.gov
Cc: Brown, James R [redacted]; USCIS Exec Congr Corresp [redacted]>
Subject: URGENT - Request for DOS input to Response to Chm. Neal

AMERICAN OVERSIGHT

Importance: High

Good Morning All,

I am following up on an urgent matter and request for the clearance of the attached Chairman Neal Enclosure. Your clearance is overdue as of 8/17. *Please provide input to Question #2 on the attached response.*

Thank you in advance for your attention to this urgent request.

Constance L. Carter, Deputy Chief
Office of the Executive Secretariat | EXSO
U.S. Citizenship and Immigration Services
Office [redacted]
(b)(6)

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AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the **"substantial public health benefit/secondary effect" exemption in** the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption. (b)(5)

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

AMERICAN OVERSIGHT

more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

AMERICAN OVERSIGHT

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

(b)(6)

From: Carter, Constance L
Subject: URGENT - Request for DOS input to Response to Chm. Neal
To: DOSExecSec; [redacted]@state.gov; [redacted]@state.gove; [redacted]@state.gov
Cc: Brown, James R; USCIS Exec Congr Corresp
Sent: August 25, 2020 10:06 AM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (CBP input) 8.13.20.docx

Good Morning All,

I am following up on an urgent matter and request for the clearance of the attached Chairman Neal Enclosure. Your clearance is overdue as of 8/17. *Please provide input to Question #2 on the attached response.* Kindly provide your clearance ASAP today, and please advise the status immediately.

Thank you in advance for your attention to this urgent request.

Constance L. Carter, Deputy Chief
Office of the Executive Secretariat | EXSO
U.S. Citizenship and Immigration Services
Offic[redacted]

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(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter

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AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.[1] Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

[1] U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

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more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), "[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress."[2] Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.[3] According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers "to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research)."[4] The guidance states that this includes H-1B nonimmigrants whose work will "alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic."[5] While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.[6] As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.[7] Many of the physicians who serve our

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[2] https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas.

[3] Dep't of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020.

[4] *Id.*

[5] *Id.*

[6] https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/.

[7] https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities.

AMERICAN OVERSIGHT

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation's full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means

AMERICAN OVERSIGHT



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

AMERICAN OVERSIGHT

(b)(6)

From: Carter, Constance L
Subject: [Request for DCOS Assistance] - DOS input to Response to Chm. Neal
To: Bailey, Morgan
Cc: Dove, Stephen W (Steve); Kilgore, Garry R; Brown, James R; Weinhold, Kasey D
Sent: August 26, 2020 2:48 PM (UTC-05:00)
Attached: Incoming 8.4.20.pdf, Draft Enclosure (CBP input) 8.13.20.docx, URGENT - Request for DOS input to Response to Chm. Neal.eml, [URGENT - OVERDUE] Request for DOS input to Response to Chm. Neal.eml

Hi Morgan,

Can you please assist with obtaining a response from DOS on the Draft Enclosure for the Chm Neal letter?
DOS has not provided their clearance on the Draft Enclosure Attached. USCIS needs DOS to provide input on Question #2 of the Enclosure.

The DOS response was due on 8/17/20. We pinged them twice today and also 8/19, 8/18, 8/21, 8/24, and 8/25.

On 8/19 DOS replied they were working on the material. On 8/25, [redacted] Office of International Religious Freedom, responded "This does not appear to be a religious freedom concern so I will defer to others on the Distro list." (Distro List: [redacted]@state.gov; [redacted]@state.gov; [redacted]@state.gov; [redacted]@state.gov; and [redacted]@state.gov).

Background: The Letter is to AS1 regarding Health Workforce Implications of Proclamation 10052 it's for Assistant Secretary OLA signature." STARS # 29504.

Attachments:
Incoming Letter
Draft Enclosure (CBP input)
Email – Urgent Request for DOS input
Email – Urgent – Overdue Request for DOS input.

Please advise if you need anything additional.

Thank you.

Constance L. Carter, Deputy Chief
Office of the Executive Secretariat | EXSO
U.S. Citizenship and Immigration Services
Office: [redacted]

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

(b)(6)

AMERICAN OVERSIGHT

(b)(6)

From: Edlow, Joseph B
Subject: Requested Scenarios
To: AS2KTC; [redacted]gmail.com; ALFONSO-ROYALS, ANGELICA
Cc: Calkins, Aaron L
Sent: August 19, 2020 8:11 PM (UTC-05:00)
Attached: Cash Flow Scenarios 8 and 9.xlsx

Sir,
Per your request, attached is the updated [redacted]

[redacted]

(b)(5)

Joe

Joseph B. Edlow
Deputy Director for Policy
U.S. Citizenship and Immigration Services
Department of Homeland Security
w
c: [redacted]

(b)(6)

AMERICAN OVERSIGHT

From: Scott, Kika M
Subject: Updated Scenario 7 USCIS Cash Flow Analysis
To: Edgar, Troy
Cc: Marcott, Stacy; Mehringer, Holly; Denayer, Larry C; Edlow, Joseph B; Wearmouth, James C II; Reilly, Richard M; Cribbs, Carol S; Tozzolo, Anthony T (Tony)
Sent: August 19, 2020 6:31 PM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7 DHS.xlsx

Good evening Troy,

Thank you for today's meeting. We have incorporated your requested changes to scenario 7 for your review.

The scenario accounts for:

Fee Rule Enjoined
No Furloughs
No Hill assistance
Change of September Revenue from $240M to $217M.
Takes out the $480M GE cuts in FY 2021.

I have discussed these updates with Mr. Edlow and he cleared us sending the updated scenario.

Please let us know if you have additional questions or need clarifications.

Thank you

Get Outlook for iOS

AMERICAN OVERSIGHT

From: Denayer, Larry C
Subject: Fwd: Scenarios 7 - 9.3
To: Edlow, Joseph B
Sent: August 19, 2020 4:11 PM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7.xlsx

From: Scott, Kika M
Sent: Wednesday, August 19, 2020 3:30:03 PM
To: Denayer, Larry C
Subject: Scenarios 7 - 9.3

Larry,

Per your request, please find attached the requested scenarios.

- Scenario 7 – this is the unchanged original scenario from last Friday
- Scenario 8.1 – Scenario 7 + 30 day furlough of 7,000 in September
- Scenario 8.2 – Scenario 7 + 60 day furlough of 7,000 September and October
- Scenario 8.3 – Scenario 7 + 90 day furlough of 7,000 September, October, and November
- Scenario 9.1 – Scenario 7 + 30 day furlough of 7,000 in September + Fee Rule enjoined
- Scenario 9.2 – Scenario 7 + 60 day furlough of 7,000 September and October + Fee Rule enjoined
- Scenario 9.3 – Scenario 7 + 90 day furlough of 7,000 September, October, and November + Fee Rule enjoined

As a quick note: If the fee rule is enjoined, we would need to sustain the 7,000 furlough for 11 months September 2020 – July 2021 in order to spend less money than what is anticipated in revenue i.e. maintain carryover flat from the end of FY 2020 to the end of FY 2021.

Thanks

From: Wearmouth, James C II
Sent: Wednesday, August 19, 2020 3:11 PM
To: Scott, Kika M; Tozzolo, Anthony T (Tony)
Cc: Cribbs, Carol S; Reilly, Richard M
Subject: RE: Scenario 7

Kika,

Please see attached:

- Scenario 7 – this is the unchanged original scenario from last week
- Scenario 8.1 – Scenario 7 + 30 day furlough of 7,000 in September
- Scenario 8.2 – Scenario 7 + 60 day furlough of 7,000 September and October
- Scenario 8.3 – Scenario 7 + 90 day furlough of 7,000 September, October, and November
- Scenario 9.1 – Scenario 7 + 30 day furlough of 7,000 in September + Fee Rule enjoined
- Scenario 9.2 – Scenario 7 + 60 day furlough of 7,000 September and October + Fee Rule enjoined
- Scenario 9.3 – Scenario 7 + 90 day furlough of 7,000 September, October, and November + Fee Rule enjoined

As a quick note if the fee rule is enjoined we would need to sustain the 7,000 furlough for 11 months September 2020 – July 2021 in order to spend less money than what is anticipated in revenue i.e. maintain carryover flat from the end of FY 2020 to the end of FY 2021.

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Thanks,

Jim

From: Denayer, Larry C [redacted]
Sent: Tuesday, August 18, 2020 6:20 PM
To: Scott, Kika M [redacted]
Subject: RE: Scenario 7

(b)(6)

To make the 7,000 furlough assumption/modeling as simple as possible, would it be okay to apply the following to the scenarios as required?

- Sep payroll savings of $104M (this is 7000/13400 * $199M)
- Oct payroll savings of $69.21M (this is 7000/13400 * $132M)
- Nov payroll savings of $69.21M (this is 7000/13400 * $132M)

Payroll savings by Furlough length

- 30 day: $104M
- 60 day: $173.21M
- 90 day: $242.42M

AMERICAN OVERSIGHT

From: Marcott, Stacy
Subject: RE: USCIS Updated Scenario for Discussion
To: Scott, Kika M; Edgar, Troy
Cc: Edlow, Joseph B; Mehringer, Holly; Denayer, Larry C; Cribbs, Carol S; Wearmouth, James C II; Tozzolo, Anthony T (Tony); Reilly, Richard M; Nowak, Philip A; Correa, Soraya; SPIVEY, BETH; COURTNEY, PAUL; Bailey, Angela; Eldredge, Deborah
Sent: August 17, 2020 9:24 AM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7.xlsx

Hello Kika, Thanks for sending the additional scenario last Friday. Joe walked us thru some of the high level assumptions and his perspective on execution. We agreed that our teams will work together to evaluate in much more detail over this week through Thursday. Troy has updated AS2 and DUSM of this scenario and they have asked for a meeting on Friday. The following is our observations followed by specific questions we have.

(b)(5)

Initial Observation:

AMERICAN OVERSIGHT

(b)(5)

[redacted]

Please let me know if you have any questions or need clarifications. We will set up a review meeting for Joe and Troy on Thursday, with CPO, CHCO, and OLA, to conclude our review of this scenario, next steps and preparation to update AS2 on Friday.

Sincerely, Stacy

(b)(6)

From: Scott, Kika M [redacted]
Sent: Friday, August 14, 2020 11:41 AM
To: Edgar, Troy [redacted]
Cc: Edlow, Joseph [redacted]; Marcott, Stacy [redacted]; Mehringer, Holly [redacted]; Denayer, Larry C [redacted]; Cribbs, Carol S [redacted]; Wearmouth, James C Ii [redacted]; Tozzolo, Anthony T (Tony) [redacted]; Reilly, Richard M [redacted]
Subject: USCIS Updated Scenario for Discussion
Importance: High

(b)(6)

Good morning Mr. Edgar,

Due to the deadlock on the Hill, USCIS created an additional scenario where we try to help ourselves out by performing the following actions:

AMERICAN OVERSIGHT

[redacted]

(b)(5)

(b)(5)

In anticipation of your meeting with Mr. Edlow this afternoon, I wanted to provide in advance for your review and would be happy to walk you through it.

Please let me know if you have questions or concerns.

Thank you

Kika Scott, Chief Financial Officer
DHS | U.S. Citizenship and Immigration Services (USCIS)
Office of the Chief Financial Officer
✉
☎

(b)(6)

AMERICAN OVERSIGHT

From: Edlow, Joseph B
Subject: FW: USCIS Updated Scenario for Discussion (b)(6)
To: [redacted]
Cc: ALFONSO-ROYALS, ANGELICA
Sent: August 14, 2020 10:44 AM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7.xlsx

Sir,
Please see the attached forecast. [redacted] (b)(5)
[redacted] Happy to discuss at your convenience. I will be speaking with Troy at 1PM.
Joe

From: Scott, Kika M [redacted] (b)(6)
Sent: Friday, August 14, 2020 11:41 AM
To: Edgar, Troy [redacted]
Cc: Edlow, Joseph B [redacted]; Marcott, Stacy [redacted]; Mehringer, Holly [redacted]; Denayer, Larry C [redacted]; Cribbs, Carol S [redacted]; Wearmouth, James C II [redacted]; Tozzolo, Anthony T (Tony) [redacted]; Reilly, Richard M [redacted] (b)(6)
Subject: USCIS Updated Scenario for Discussion
Importance: High

Good morning Mr. Edgar,

Due to the deadlock on the Hill, USCIS created an additional scenario where we try to help ourselves out by performing the following actions:

[redacted] (b)(5)

In anticipation of your meeting with Mr. Edlow this afternoon, I wanted to provide in advance for your review and would be happy to walk you through it.

Please let me know if you have questions or concerns.

Thank you

Kika Scott, Chief Financial Officer
DHS | U.S. Citizenship and Immigration Services (USCIS)
Office of the Chief Financial Officer
✉ [redacted]
☎ [redacted] (b)(6)

AMERICAN OVERSIGHT

From: Scott, Kika M
Subject: FW: Scenario 7
To: Edlow, Joseph B; Denayer, Larry C
Cc: Cribbs, Carol S; Reilly, Richard M; Tozzolo, Anthony T (Tony); Wearmouth, James C II
Sent: August 14, 2020 9:52 AM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7.xlsx

Joe/Larry,

Before we send to Troy, we wanted to

(b)(5)

Thanks

(b)(6)

From: Wearmouth, James C II
Sent: Friday, August 14, 2020 10:26 AM
To: Scott, Kika M; Tozzolo, Anthony T (Tony)
Cc: Cribbs, Carol S; Reilly, Richard M
Subject: RE: Scenario 7

Please see attached 7.1 and 7.2 based on the below. Can talk about it at 10:30!

From: Scott, Kika M
Sent: Friday, August 14, 2020 10:08 AM
To: Wearmouth, James C II; Tozzolo, Anthony T (Tony)
Cc: Cribbs, Carol S; Reilly, Richard M
Subject: RE: Scenario 7

Can you get these 2 scenarios done ASAP? Make it 7.1 and 7.2. I need to send to Troy before 11am in anticipation of a meeting between Troy and Joe at 1pm and we will need to pre-brief Troy.

Thanks

From: Denayer, Larry C
Sent: Friday, August 14, 2020 9:06 AM
To: Scott, Kika M; Wearmouth, James C II
Tozzolo, Anthony T (Tony)
Cc: Edlow, Joseph B
Subject: RE: Scenario 7

(b)(6)

Kika,
For the update, could you

(b)(5)

no hill assistance; reimbursable details

AMERICAN OVERSIGHT

From: Scott, Kika M
Sent: Thursday, August 13, 2020 6:23 PM

(b)(6)

To: Denayer, Larry C [redacted]>; Wearmouth, James C II [redacted]>;
Tozzolo, Anthony T (Tony) [redacted]> (b)(6)
Cc: Edlow, Joseph B [redacted]>
Subject: RE: Scenario 7

Thanks Larry, I agree [redacted]
(b)(5)

From: Denayer, Larry C [redacted]
Sent: Thursday, August 13, 2020 5:45 PM (b)(6)
To: Scott, Kika M [redacted]; Wearmouth, James C II [redacted];
Tozzolo, Anthony T (Tony) [redacted]
Cc: Edlow, Joseph B [redacted]
Subject: Scenario 7

Kika, Jim, Tony,
Just chatting with Joe this afternoon [redacted]

(b)(5)

AMERICAN OVERSIGHT

(b)(6)

From: Wearmouth, James C II
Subject: RE: for meeting
To: Denayer, Larry C
Cc: Scott, Kika M
Sent: August 13, 2020 2:17 PM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Scenario_7.xlsx

Larry,

Just added you to the Team! Also, attached is the soft copy of Scenario 7 that we were discussing this morning.

Thanks,

Jim

From: Denayer, Larry C [redacted]
Sent: Thursday, August 13, 2020 2:59 PM
To: Wearmouth, James C II [redacted]
Cc: Scott, Kika M [redacted]
Subject: RE: for meeting

Thanks again for the non-stop efforts on the modeling and coming into the office to brief Joe today. I just got off the phone with [redacted] is working up a list of contracts which we can assess by expiration date – starting with those renewing in September. Could I get read only access to your MS Teams page with the budget submissions so I can get familiar with the asks?

From: Wearmouth, James C II [redacted]
Sent: Thursday, August 13, 2020 12:44 PM
To: Denayer, Larry C [redacted]
Subject: for meeting

Jim Wearmouth
Chief, Budget and Planning Division
OCFO/USCIS
[redacted] (work)
(mobile)

(b)(6)

AMERICAN OVERSIGHT

From: Kilgore, Garry R
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/24/20 - DHS Congressional Correspondence -Rep. Pocan - Regarding Processing K-1 Visas During COVID-19 - STARS 29471
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: August 11, 2020 12:41 PM (UTC-05:00)
Attached: Mark Pocan STARS 29471.pdf, Pocan 8.10.20 - Final LH.doc

Good afternoon all,

Please see the attached signed letter and Word version for reference.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

From: Kilgore, Garry R [redacted]
Sent: Tuesday, August 11, 2020 9:45 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Drake, Johnetta [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/24/20 - DHS Congressional Correspondence -Rep. Pocan - Regarding Processing K-1 Visas During COVID-19 - STARS 29471

Requestor Directorate/Office: DHS ESEC

Due Date: **Monday, August 24, 2020**

Request: D2P signature.

Background: Rep. Pocan wrote to Acting Secretary Wolf regarding processing K-1 Visas during COVID-19. DHS ESEC requested USCIS sign the final response and provide them with a copy of the signed response.

Clearance:

SCOPS: [redacted]
OCC:
EXA:

Attachments:

1. Incoming 8.3.20
2. Pocan Draft Response – OCC and EXA Redline Edits
3. Pocan – 8.10.20 – Final LH

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August 11, 2020

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your August 3, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The recent Presidential Proclamation regarding certain aliens who present a risk to the U.S. labor market during COVID-19 was not applicable to Form I-129F, Petition for Alien Fiance(e). U.S. Citizenship and Immigration Services (USCIS) continues to process these petitions as usual and is ahead of normal processing time for this form. If an individual constituent has a petition pending outside normal processing times, he or she may reach out to our Contact Center to inquire about the case status or request expedited processing, or your office may contact our USCIS Office of Legislative Affairs on his or her behalf.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

DHS-20-2156-A-001595

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August XX, 2020

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your August 3, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The recent Presidential Proclamation regarding certain aliens who present a risk to the U.S. labor market during COVID-19 was not applicable to Form I-129F, Petition for Alien Fiance(e). U.S. Citizenship and Immigration Services (USCIS) continues to process these petitions as usual and is ahead of normal processing time for this form. If an individual constituent has a petition pending outside normal processing times, he or she may reach out to our Contact Center to inquire about the case status or request expedited processing, or your office may contact our USCIS Office of Legislative Affairs on his or her behalf.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

DHS-20-2156-A-001596

(b)(6)

From: Weinhold, Kasey D
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/24/20 - DHS Congressional Correspondence -Rep. Pocan - Regarding Processing K-1 Visas During COVID-19 - STARS 29471
To: Bailey, Morgan
Sent: August 11, 2020 9:01 AM (UTC-05:00)
Attached: Incoming 8.3.20.pdf, Pocan Draft Repsonse- OCC and EXA Redline Edits.docx, Pocan 8.10.20 - Final LH_edit.doc

Hi Morgan,

I had one minor edit. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] | **Mobile:** [redacted] | **E-mail** [redacted]

From: Kilgore, Garry R <[redacted]>
Sent: Tuesday, August 11, 2020 9:45 AM
To: USCIS Directors Office Clearance-EXSO [redacted]>; Drake, Johnetta [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/24/20 - DHS Congressional Correspondence -Rep. Pocan - Regarding Processing K-1 Visas During COVID-19 - STARS 29471

Requestor Directorate/Office: DHS ESEC

Due Date: **Monday, August 24, 2020**

Request: D2P signature.

Background: Rep. Pocan wrote to Acting Secretary Wolf regarding processing K-1 Visas during COVID-19. DHS ESEC requested USCIS sign the final response and provide them with a copy of the signed response.

Clearance:

SCOPS:
OCC:
EXA: [redacted]

Attachments:

1. Incoming 8.3.20
2. Pocan Draft Response – OCC and EXA Redline Edits
3. Pocan – 8.10.20 – Final LH

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

AMERICAN OVERSIGHT

(b)(6)

MARK POCAN
2ND DISTRICT, WISCONSIN

COMMITTEE ON APPROPRIATIONS

SENIOR WHIP



10 EAST DOTY STREET, SUITE 405
MADISON, WI 53703
(608) 258-9800

1421 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2906

POCAN.HOUSE.GOV

UNITED STATES
HOUSE OF REPRESENTATIVES

August 3, 2020

RECEIVED
By ESEC External at 1:58 pm, Aug 03, 2020

The Honorable Michael Pompeo
Secretary
Department of State
2201 C Street, NW
Washington, DC 20520

Mr. Chad Wolf
Acting Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW M.S. 2090
Washington, DC 20529

Dear Secretary Pompeo, Acting Secretary Wolf and Mr. Cuccinelli:

I write to ask for relief for Americans who are separated from their fiancés due to the COVID-19 pandemic. I urge your agencies to begin processing K-1 or "fiancé" visas as soon as possible.

While spouses of U.S. citizens and lawful permanent residents (LPRs) are exempted from bans on entering the U.S. during the COVID-19 public health emergency, your agencies are not processing K-1 visas that allow non-citizens to travel to the U.S. in order to marry a U.S. citizen.

One of my constituents is separated from their fiancé because the fiancé's K-1 visa application remains unprocessed. The State Department Bureau of Consular Affairs posted on Twitter on July 11, 2020 that depending on local conditions, some embassies and consulates may begin routine visa services. I urge you to prioritize K-1 visa processing and resume full visa services in a manner that is safe for both applicants and embassy and consulate workers. Thank you for your attention in this matter.

Sincerely,

Mark Pocan
Member of Congress

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August XX, 2020

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your August 3, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The recent Presidential Proclamation regarding certain aliens who present a risk to the U.S. labor market during the coronavirus pandemic~~COVID-19~~ was not applicable to Form I-129F, Petition for Alien Fiance(e). U.S. Citizenship and Immigration Services (USCIS) continues to process these petitions as usual and is ahead of normal processing time for this form. If an individual constituent has a petition pending outside normal processing times, he or she may reach out to our Contact Center to inquire about the case status or request expedited processing, or your office may contact our USCIS Office of Legislative Affairs on his or her behalf.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

DHS-20-2156-A-001599

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your August 3, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The recent Presidential Proclamation regarding certain aliens who present a risk to the U.S. labor market during COVID-19 was not applicable to Form I-129F, Petition for Alien Fiance(e). USCIS continues to process these petitions as usual and is ahead of normal processing time for this form. If an individual constituent has a petition pending outside normal processing times, he or she may reach out to our Contact Center to inquire about the case status or request expedited processing, or your office may contact our USCIS Office of Legislative Affairs on his or her behalf.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

(b)(6)

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/24/20 - DHS Congressional Correspondence -Rep. Pocan - Regarding Processing K-1 Visas During COVID-19 - STARS 29471
To: USCIS Directors Office Clearance-EXSO; Drake, Johnetta
Sent: August 11, 2020 8:45 AM (UTC-05:00)
Attached: Incoming 8.3.20.pdf, Pocan Draft Repsonse- OCC and EXA Redline Edits.docx, Pocan 8.10.20 - Final LH.doc

Requestor Directorate/Office: DHS ESEC

Due Date: **Monday, August 24, 2020**

Request: D2P signature.

Background: Rep. Pocan wrote to Acting Secretary Wolf regarding processing K-1 Visas during COVID-19. DHS ESEC requested USCIS sign the final response and provide them with a copy of the signed response.

Clearance:

SCOPS:
OCC:
EXA:

Attachments:

1. Incoming 8.3.20
2. Pocan Draft Response – OCC and EXA Redline Edits
3. Pocan – 8.10.20 – Final LH

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted]office)
STARS Issues: [redacted]

(b)(6)

AMERICAN OVERSIGHT

MARK POCAN
2ND DISTRICT, WISCONSIN

COMMITTEE ON APPROPRIATIONS

SENIOR WHIP



10 EAST DOTY STREET, SUITE 405
MADISON, WI 53703
(608) 258-9800

1421 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2906

POCAN.HOUSE.GOV

UNITED STATES
HOUSE OF REPRESENTATIVES

August 3, 2020

RECEIVED
By ESEC External at 1:58 pm, Aug 03, 2020

The Honorable Michael Pompeo
Secretary
Department of State
2201 C Street, NW
Washington, DC 20520

Mr. Chad Wolf
Acting Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW M.S. 2090
Washington, DC 20529

Dear Secretary Pompeo, Acting Secretary Wolf and Mr. Cuccinelli:

I write to ask for relief for Americans who are separated from their fiancés due to the COVID-19 pandemic. I urge your agencies to begin processing K-1 or "fiancé" visas as soon as possible.

While spouses of U.S. citizens and lawful permanent residents (LPRs) are exempted from bans on entering the U.S. during the COVID-19 public health emergency, your agencies are not processing K-1 visas that allow non-citizens to travel to the U.S. in order to marry a U.S. citizen.

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Sincerely,

Mark Pocan
Member of Congress

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August XX, 2020

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pocan:

Thank you for your August 3, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The recent Presidential Proclamation regarding certain aliens who present a risk to the U.S. labor market during COVID-19 was not applicable to Form I-129F, Petition for Alien Fiance(e). U.S. Citizenship and Immigration Services (USCIS) continues to process these petitions as usual and is ahead of normal processing time for this form. If an individual constituent has a petition pending outside normal processing times, he or she may reach out to our Contact Center to inquire about the case status or request expedited processing, or your office may contact our USCIS Office of Legislative Affairs on his or her behalf.

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Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

The Honorable Mark Pocan
U.S. House of Representatives
Washington, DC 20515

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Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Scott, Kika M
Subject: Latest USCIS Cash Flow Scenarios (with Scenarios 7 & 8)
To: Edlow, Joseph B; Denayer, Larry C
Sent: August 10, 2020 1:27 PM (UTC-05:00)
Attached: Copy of USCIS Cash Flow Scenarios - w-7-8.xlsx

Hi Joe,

Per your request, I have included scenarios 7 and 8 that accounts for

Scenario 7: No Furlough, $45 million funding sweeps in 20, 32% cut in FY 21, no Q1 deficit spending
Scenario 8: Scenario 7 + Fee rule enjoined.

Let me know if you want to discuss.

Thanks

AMERICAN OVERSIGHT

From: Scott, Kika M
Subject: FW: USCIS Cash Flow Scenarios - w-7-8.xlsx
To: Denayer, Larry C
Sent: August 10, 2020 12:36 PM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - w-7-8.xlsx

From: Wearmouth, James C II [redacted]
Sent: Monday, August 10, 2020 12:12 PM
To: Scott, Kika M [redacted]
Subject: USCIS Cash Flow Scenarios - w-7-8.xlsx

(b)(6)

Kika,

Please see attached, with Scenarios 7 & 8 that we discussed:

[redacted] (b)(5)

Thanks,

Jim

AMERICAN OVERSIGHT

(b)(6)

From: Mehringer, Holly
Subject: RE: Hill Request - USCIS Cash Flow Projections and Scenarios
To: Edgar, Troy; Marcott, Stacy; Scott, Kika M
Cc: Edlow, Joseph B; Alles, Randolph
Sent: August 8, 2020 11:48 AM (UTC-05:00)
Attached: FW_ Capturing get backs.eml

Mr Edgar

Email was sent to the Hill...attached for your reference.

Holly

From: Edgar, Troy
Sent: Friday, August 7, 2020 10:05 PM
To: Mehringer, Holly; Marcott, Stacy; Scott, Kika M
Cc: Edlow, Joseph B; Alles, Randolph
Subject: Fwd: Hill Request - USCIS Cash Flow Projections and Scenarios

Hi Holly/Stacy/Kika,
Please confirm when sent to the Hill.
Thanks,

Troy Edgar
Chief Financial Officer
Department of Homeland Security
Office:
Mobile

From: Alles, Randolph
Sent: Friday, August 7, 2020 9:58:13 PM
To: AS1
Cc: Edgar, Troy; SPIVEY, BETH; AS2; Edlow, Joseph B; Gountanis, John; Erickson, Scott; SPERO, ADRIENNE; ALFONSO-ROYALS, ANGELICA; Mehringer, Holly; Marcott, Stacy; Corrado, Janene
Subject: RE: Hill Request - USCIS Cash Flow Projections and Scenarios

Understand, will send over as directed.

V/R
R. D. "Tex" Alles
(O)

From: AS1
Sent: Friday, August 7, 2020 21:43
To: Alles, Randolph; AS2
Cc: Edgar, Troy; SPIVEY, BETH; Edlow, Joseph B; Gountanis, John; Erickson, Scott; SPERO, ADRIENNE; ALFONSO-ROYALS, ANGELICA; Mehringer, Holly; Marcott, Stacy; Corrado, Janene <janene.corrado@hq.dhs.gov>
Subject: RE: Hill Request - USCIS Cash Flow Projections and Scenarios

AMERICAN OVERSIGHT

(b)(6)

I have questions but for the sake of expediency, please revert to the Hill.

From: Alles, Randolph [redacted] (b)(6)
Sent: Friday, August 7, 2020 7:01 PM
To: AS1 [redacted]; AS2 [redacted]
Cc: Edgar, Troy [redacted]; SPIVEY, BETH [redacted]; Edlow, Joseph B [redacted]; Gountanis, John [redacted]; Erickson, Scott [redacted]; SPERO, ADRIENNE [redacted]; ALFONSO-ROYALS, ANGELICA [redacted]; Mehringer, Holly [redacted]; Marcott, Stacy [redacted]; Corrado, Janene [redacted] (b)(6)
Subject: Hill Request - USCIS Cash Flow Projections and Scenarios

Gentlemen,

BLUF: The Hill sent us six scenarios to evaluate and are looking for an immediate response. We have discussed with USCIS and OMB and none of the six are workable as a way ahead. OMB has cleared our response (in the attachment).

[redacted] (b)(5)

As you are aware a supplemental remains a question mark as Executive Orders are on the table.

[redacted] (b)(5)

Before we submitted these requested scenarios to the Hill, wanted to provide to you for situational awareness. We are standing by if you have any questions.

V/R
R. D. "Tex" Alles
[redacted] (b)(6)

AMERICAN OVERSIGHT

From: Thai, Brian
Subject: FW: Capturing get backs
To: Mehringer, Holly
Cc: Toms, Christopher
Sent: August 8, 2020 11:39 AM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Getback to Hill 8.5.20 (Print Ready).xlsx

Good Afternoon Holly,

Hope you're enjoying your weekend. USCIS deferred the transmission of the file to DHS. Please see attached and below.

Thank you and enjoy the rest of your weekend,
Brian

From: Thai, Brian
Sent: Saturday, August 8, 2020 12:38 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov> (b)(6)
Cc: Nguyen, Xuan-Huong T; Tozzolo, Anthony T; Wearmouth, James C li; Nasir, Syed A >; Toms, Christopher
Subject: RE: Capturing get backs (b)(6)

Good Afternoon All,

Thank you for your continued patience. Please see attached for USCIS's most updated cash flow projection, which includes the five (5) additional scenarios requested by the Committees (summarized below and outlined in further detail in the attachment).

(b)(5)

We would be happy to schedule a brief next week, if you are available.

Thank you,
Brian

From: Toms, Christopher < (b)(6)
Sent: Thursday, August 6, 2020 10:25 AM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; Nasir, Syed A >; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena (b)(6)

AMERICAN OVERSIGHT

<Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Thai, Brian [redacted]>; Nguyen, Xuan-Huong T [redacted]
Tozzolo, Anthony T [redacted]>; Wearmouth, James C II [redacted]>; Howard, Lia [redacted]
Subject: RE: Capturing get backs

(b)(6)

Kami, All,

Understand and absolutely – we are working this as top priority and the immediacy has been shared up the chain. Should move quickly.

v/r,
Chris Toms
[redacted] (D)
(C)

From: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Sent: Thursday, August 6, 2020 10:20 AM
To: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; Nasir, Syed A <azmat.nasir1@uscis.dhs.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher <[redacted]>; Thai, Brian [redacted]>; Nguyen, Xuan-Huong T [redacted]>; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]>; Howard, Lia [redacted]>
Subject: RE: Capturing get backs

Good morning – I'd like to echo Bob's comments below. Appreciate work on this but the fact that it is starting clearance is worrisome given the time that step takes. Would the Department please fast track clearance of the requested information? As you are aware, we are all working to address USCIS' fee shortfall and delays in getting information amplify that challenge. Thanks.

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Thursday, August 6, 2020 9:28 AM
To: Nasir, Syed A [redacted]>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Li [redacted]>
Subject: RE: Capturing get backs

Hi – just checking on these. We really needed these yesterday with a briefing to go over them today. I don't think you all want us to be in a position of having to say, "Apologies for the delay in funding. We were still finalizing analysis when this supplemental went through. Maybe we can something on a future one."

Please expedite because we do not know when or if we'll be asked to engage on this supplemental on your behalf.

From: Nasir, Syed A [redacted]
Sent: Wednesday, August 5, 2020 11:04 AM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations)

(b)(6)

AMERICAN OVERSIGHT

(b)(6)

<Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Bob –

Yes, we are finalizing those getbacks internally today and will get it in final clearance ASAP.

Apologies for the delay.

Regards,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Wednesday, August 5, 2020 10:46 AM
To: Nasir, Syed A [redacted]; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Thank you! What is the status of the get-backs from a couple weeks ago related to the attached? Can we get these today please?

From: Nasir, Syed A [redacted]
Sent: Wednesday, August 5, 2020 10:39 AM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Morning, all –

Attached is the semiweekly report as of 7/31.

Regards,
~Azmat

(b)(6)

AMERICAN OVERSIGHT

From: Nasir, Syed A

(b)(6)

Sent: Thursday, July 30, 2020 12:19 PM
To: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; 'White, Kamela (Appropriations)' <Kamela_White@appro.senate.gov>; 'Babb, Peter (Appropriations)' <Peter_Babb@appro.senate.gov>; 'Newby, Darek' <Darek.Newby@mail.house.gov>; 'Baron, Dena' <Dena.Baron@mail.house.gov>; 'Piatt, Jenn (Appropriations)' <Jenn_Piatt@appro.senate.gov>; 'Nance, Scott (Appropriations)' <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Good Afternoon –

Attached are the 7/22, 7/24, and 7/29 semiweekly reports.

Thanks,
~Azmat

From: Nasir, Syed A
Sent: Tuesday, July 28, 2020 11:34 AM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Morning, Bob –

Yes, that is correct. We are finalizing the 7.22 and 7.24 semiweekly reports, and will have it everyone as soon as its cleared.

Sorry for the delay in acknowledging your e-mail.

Regards,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Monday, July 27, 2020 3:33 PM
To: Nasir, Syed A [redacted]; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs (b)(6)

Hi – I've noticed that we are only getting this once a week, and the intent was to get it twice. We now have data that is over 10 days old. I'm assuming we'll get two files tomorrow, but can we get back to providing this semi-weekly? So

AMERICAN OVERSIGHT

after tmrw's update we should get another update later this week.

Thanks,
Bob

(b)(6)

From: Nasir, Syed A [redacted]
Sent: Tuesday, July 21, 2020 3:19 PM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Babb, Peter (Appropriations) <Peter_Babb@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Good Afternoon –

Kindly find attached our semi-weekly reports as of 7/15 and 7/17.

Thanks,
~Azmat

From: Nasir, Syed A
Sent: Thursday, July 16, 2020 9:27 AM
To: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; 'White, Kamela (Appropriations)' <Kamela_White@appro.senate.gov>; 'Newby, Darek' <Darek.Newby@mail.house.gov>; 'Baron, Dena' <Dena.Baron@mail.house.gov>; 'Piatt, Jenn (Appropriations)' <Jenn_Piatt@appro.senate.gov>; 'Nance, Scott (Appropriations)' <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Morning, all –

Attached is our semi-weekly revenue update as of 7/10.

Thanks,
~Azmat

From: Nasir, Syed A
Sent: Monday, July 13, 2020 12:55 PM
To: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; 'White, Kamela (Appropriations)' <Kamela_White@appro.senate.gov>; 'Newby, Darek' <Darek.Newby@mail.house.gov>; 'Baron, Dena' <Dena.Baron@mail.house.gov>; 'Piatt, Jenn (Appropriations)' <Jenn_Piatt@appro.senate.gov>; 'Nance, Scott (Appropriations)' <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted];

(b)(6)

AMERICA FIRST POLICIES

(b)(6)

Wearmouth, James C II [redacted]>; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Good Afternoon –

Attached is our semi-weekly revenue update as of 7/8.

Thanks,
~Azmat

From: Nasir, Syed A
Sent: Friday, July 10, 2020 3:44 PM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]>; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]>; Tozzolo, Anthony T [redacted]
Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Yes, that's fine.

Thanks,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Friday, July 10, 2020 3:16 PM
To: Nasir, Syed A [redacted]>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]>; Tozzolo, Anthony T [redacted]
Wearmouth, James C II [redacted]>; Howard, Lia [redacted]
Subject: RE: Capturing get backs

May we share this with our authorizers? (Also, going forward, I will assume I can unless you tell me otherwise.)

From: Nasir, Syed A [redacted]
Sent: Friday, July 10, 2020 12:54 PM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]>;
Wearmouth, James C II [redacted]>; Howard, Lia [redacted]>
Subject: RE: Capturing get backs

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Bob –

(b)(6)

At a high-level, we can touch on some of your feedback during the 1pm call, but USCIS is still assessing the recent policy decisions and how it will impact workforce/operations.

Thanks,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Friday, July 10, 2020 9:45 AM
To: Nasir, Syed A <azmat.nasir1@uscis.dhs.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov> (b)(6)
Cc: Toms, Christopher [redacted] Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted] Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs (b)(6)

Azmat -

Thanks for the update.

I'm not quite sure I follow how the states plans impact USCIS's revenue – at least, not at the level that would prohibit a delay in the planned furlough date [redacted]

(b)(5)

Have the recent policy choices had that much of an impact that we can't do that for USCIS's workforce?

Thanks,
Bob

From: Nasir, Syed A [redacted] (b)(6)
Sent: Friday, July 10, 2020 9:05 AM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted] Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted]; (b)(6)

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(b)(6)

Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Hi, Bob –

Yes without Congressional assistance, USCIS is still planning to proceed with the furlough on August 3rd. Although the recent revenue updates have shown improvement in collections, there are many states that are now having to backtrack on re-opening plans and we are not certain what impact that will have on revenue for the remainder of FY 2020.

Regards,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Thursday, July 9, 2020 6:06 PM
To: Nasir, Syed A [redacted]>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted] Nguyen, Xuan-Huong T [redacted]>; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Just checking. Are you still planning to furlough people on August 3?

From: Nasir, Syed A [redacted]
Sent: Thursday, July 9, 2020 5:38 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Toms, Christopher [redacted]; Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]>; Tozzolo, Anthony T [redacted]; Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Hi,

Attached are our semi-weekly updates as of 6/30 and 7/2.

Thanks,
~Azmat

(b)(6)

From: Nasir, Syed A
Sent: Wednesday, June 24, 2020 12:32 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Bob Joachim (Bob.Joachim@mail.house.gov) <bob.joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>

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(b)(6)

Cc: Toms, Christopher [redacted] Thai, Brian [redacted]; Nguyen, Xuan-Huong T [redacted]; Tozzolo, Anthony T [redacted] Wearmouth, James C II [redacted]; Howard, Lia [redacted]
Subject: FW: Capturing get backs

Good afternoon –

Attached is the semi-weekly revenue update as of 6/19. The format has been revised per your request during our call on Friday, 6/19.

Please let me know if the revised format meets the expectation and we'll use the same consistent format for future updates.

Thanks,
~Azmat

From: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Sent: Thursday, June 18, 2020 9:57 AM
To: Nasir, Syed A [redacted]; Joachim, Bob <Bob.Joachim@mail.house.gov>; Thai, Brian [redacted] Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II [redacted] Tozzolo, Anthony T [redacted] Nguyen, Xuan-Huong T [redacted] Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Thanks Azmat. It would be helpful to go over the spreadsheet you sent yesterday. How does Friday morning look?

From: Nasir, Syed A [redacted]
Sent: Wednesday, June 17, 2020 5:33 PM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; Thai, Brian [redacted]; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II [redacted] Tozzolo, Anthony T [redacted] Nguyen, Xuan-Huong T [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Hi,

Attached is the semi-weekly revenue update as of 6.12.20. This now includes Premium Processing.

Thanks,
~Azmat

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Tuesday, June 16, 2020 5:12 PM
To: Thai, Brian [redacted]; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt,

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(b)(6)

Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C I[redacted]; Tozzolo, Anthony T[redacted]; Nguyen, Xuan-Huong T[redacted]; Nasir, Syed A[redacted]; Toms, Christopher <[redacted]>; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Thank you.

From: Thai, Brian[redacted]
Sent: Tuesday, June 16, 2020 5:11 PM
To: Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C Ii[redacted]; Tozzolo, Anthony T[redacted]; Nguyen, Xuan-Huong T[redacted]; Nasir, Syed A[redacted]; Toms, Christophe[redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Hi Bob,

We're working one last issue, but we're hoping to get it over to you soon to include Premium Processing.

Thanks,
Brian

From: Joachim, Bob <Bob.Joachim@mail.house.gov>
Sent: Tuesday, June 16, 2020 5:07 PM
To: Thai, Brian <brian.thai@hq.dhs.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C Ii[redacted]; Tozzolo, Anthony T[redacted]; Nguyen, Xuan-Huong T[redacted]; Nasir, Syed A[redacted]; Toms, Christophe[redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

Thank you. Do you have an updated semi-weekly file ready?

From: Thai, Brian[redacted]
Sent: Tuesday, June 16, 2020 5:06 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C Ii[redacted]; Tozzolo, Anthony T[redacted]; Nguyen, Xuan-Huong T[redacted]; Nasir,

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Syed A [redacted]; Toms, Christophe [redacted]; Howard, Lia [redacted]

Subject: RE: Capturing get backs (b)(6)

Good Afternoon –

Please see below for the latest status of the outstanding questions.

OUTSTANDING (status changes have been highlighted in yellow):

- HAC/SAC Get Backs from 5.18.20 Briefing: Partial responses submitted on: 6.3.20, 6.8.20; 12 response in clearance.
  - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1" (Submitted 6.3.20)
  - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 2" (Submitted 6.8.20)
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 4 responses in clearance, with 1 briefing for Premium Processing scheduled and completed June 11 @ 3PM.
  - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1" (Submitted 6.3.20)
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD:
  - File Names: "May receipts v2"; "Copy of USCIS Form Descriptions"; "Copy of DATAREQUEST_05292020_Monthly_RECEIPTS_byFormType_FY14_forward" (Submitted 6/12/20)
- Data on amount of refunds USCIS has made:
  - File Name: "USCIS Historical IEFA Fee Refunds FY17_FY20APR_CLEAN" (Submitted 6/12/20)
- HAC/SAC Get Backs from the USCIS Cost Model "101" Walkthrough (6.5.20):
  - File Name: "Cost Model 101 Get Back" (Submitted 6/16/20)
- HAC/SAC Get Backs from the Revenue Assumptions Walkthrough (6.5.20): 2 get backs in clearance; 2 left outstanding.

Thank you,
Brian

From: Thai, Brian
Sent: Friday, June 12, 2020 5:06 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C Ji [redacted] Tozzolo, Anthony T [redacted]; Nguyen, Xuan-Huong T [redacted]; Nasir, Syed A [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs (b)(6)

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Good Afternoon –

Please see below for the latest status of the outstanding questions. I am reattaching our submission to Bob's questions for Darek and Scott, as they were not on the original email thread. For your consideration, I will be out of the office Monday (6/15) and will not be able to provide you a status update that day; however, I will follow up with a status update Tuesday Morning (6/16). I hope this will not be an inconvenience.

NOTE: For your awareness, I am also making a correction to the number of get backs left outstanding for the "Revenue Assumptions Walkthrough (6.5.20)". In my last update, I incorrectly listed one get back as outstanding; however, it is in fact two (see below for correction in RED).

OUTSTANDING (status changes have been highlighted in yellow.):

- HAC/SAC Get Backs from 5.18.20 Briefing: Partial responses submitted on: 6.3.20, 6.8.20; 11 response in clearance, 1 questions left outstanding.
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1" (Submitted 6.3.20)
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 2" (Submitted 6.8.20)
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 4 responses in clearance, with 1 briefing for Premium Processing scheduled and completed June 11 @ 3PM.
    - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1" (Submitted 6.3.20)
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD:
    - File Names: "May receipts v2"; "Copy of USCIS Form Descriptions"; "Copy of DATAREQUEST_05292020_Monthly_RECEIPTS_byFormType_FY14_forward" (Submitted 6/12/20)
- Data on amount of refunds USCIS has made:
    - File Name: "USCIS Historical IEFA Fee Refunds FY17_FY20APR_CLEAN" (Submitted 6/12/20)
- HAC/SAC Get Backs from the USCIS Cost Model "101" Walkthrough (6.5.20): In clearance
- HAC/SAC Get Backs from the Revenue Assumptions Walkthrough (6.5.20): 2 get backs in clearance; 2 left outstanding.

Thank you and have a good weekend,
Brian

From: Thai, Brian
Sent: Wednesday, June 10, 2020 5:52 PM
To: 'White, Kamela (Appropriations)' <Kamela_White@appro.senate.gov>; 'Piatt, Jenn (Appropriations)' <Jenn_Piatt@appro.senate.gov>; 'Baron, Dena' <Dena.Baron@mail.house.gov>; 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; 'Newby, Darek' <Darek.Newby@mail.house.gov>; 'Nance, Scott (Appropriations)' <Scott_Nance@appro.senate.gov> (b)(6)
Cc: Wearmouth, James C Ii [redacted] Tozzolo, Anthony T [redacted]; Nguyen, Xuan-Huong T [redacted]; 'Nasir, Syed A [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs (b)(6)

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Good Afternoon –

Please also below for the latest status of the outstanding questions:

OUTSTANDING (status changes have been highlighted in yellow.):

-

- HAC/SAC Get Backs from 5.18.20 Briefing: Partial responses submitted on: 6.3.20, 6.8.20; 11 response in clearance, 1 questions left outstanding.
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1" (Submitted 6.3.20)
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 2" (Submitted 6.8.20)
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 4 responses in clearance, 1 sub-part left outstanding; with 1 briefing for Premium Processing scheduled for June 11 @ 3PM.
    - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1" (Submitted 6.3.20)
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: In clearance
- Data on amount of refunds USCIS has made: In clearance
- HAC/SAC Get Backs from the USCIS Cost Model "101" Walkthrough (6.5.20): Preparing response
- HAC/SAC Get Backs from the Revenue Assumptions Walkthrough (6.5.20): 2 get backs in clearance; 1 left outstanding.

Thank you,
Brian

From: Thai, Brian (b)(6)
Sent: Monday, June 8, 2020 10:25 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C [redacted]; Tozzolo, Anthony T [redacted]; Nguyen, Xuan-Huong [redacted]; Nasir, Syed A [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Good Evening all,

Sorry for the late night email, but in my haste I realized I attached the wrong file. Please see attached for the correct file, and excuse my Monday brain.

Thank you,
Brian (b)(6)

From: Thai, Brian
Sent: Monday, June 8, 2020 7:21 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations)

AMERICAN OVERSIGHT

(b)(6)

<Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II [redacted]; Tozzolo, Anthony T [redacted]; Nguyen, Xuan-Huong T [redacted]; Nasir, Syed A [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

Good Afternoon All,

Please see attached for the latest cleared response. As a note and for your convenience, I have added comments to clearly distinguish the new responses from the old.

Please also below for the latest status of the outstanding questions:

OUTSTANDING (status changes have been highlighted in yellow.):

- HAC/SAC Get Backs from 5.18.20 Briefing: Partial responses submitted on: 6.3.20, 6.8.20; 12 questions left outstanding.
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1" (Submitted 6.3.20)
    - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 2" (Submitted 6.8.20)
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 3 questions in clearance, 1 questions left outstanding; with 1 briefing for Premium Processing scheduled for June 11 @ 3PM.
    - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1" (Submitted 6.3.20)
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: In clearance
- Data on amount of refunds USCIS has made: In clearance
- HAC/SAC Get Backs from the USCIS Cost Model "101" Walkthrough (6.5.20): Compiling list of get backs
- HAC/SAC Get Backs from the Revenue Assumptions Walkthrough (6.5.20): Compiling list of get backs

If you have any additional questions or concerns, please feel free to let me know.

Thanks,
Brian

From: Thai, Brian
Sent: Friday, June 5, 2020 5:32 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C I [redacted]; Tozzolo, Anthony T [redacted]; Nguyen, Xuan-Huong T [redacted]; Nasir, Syed A [redacted]; Toms, Christopher [redacted]; Howard, Lia [redacted]
Subject: RE: Capturing get backs

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Good Afternoon All,

(b)(6)

Following up on the briefings from this morning, there were a number of get backs recorded, and I understand that there may be additional get backs forthcoming. We will gladly begin tracking those as of Monday or as they come in.

Please see below for the latest status of the outstanding questions:

OUTSTANDING (status changes have been highlighted in yellow.):

- HAC/SAC Get Backs from 5.18.20 Briefing: Initial responses cleared; 16 questions left outstanding.
  - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1"
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 3 questions in clearance, 1 questions left outstanding; with 1 briefing for Premium Processing scheduled for June 11 @ 3PM.
  - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1"
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: In clearance
- Data on amount of refunds USCIS has made: In clearance

Hope everyone has a good weekend,
Brian

From: Thai, Brian (b)(6)
Sent: Wednesday, June 3, 2020 5:02 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II <[redacted]>; Tozzolo, Anthony T [redacted] Nguyen, Xuan-Huong T [redacted]>; Nasir, Syed A [redacted]>; Toms, Christopher [redacted]>; Howard, Lia [redacted]
Subject: RE: Capturing get backs

(b)(6)

Good Afternoon All,

Thank you for your continued patience as we continue to work your get backs. Please see attached for the first sets of cleared responses, which contain embedded files. If you happen to run into an issue opening the file, I would be more than happy to send that you as a separate attachment. Please also note that we have highlighted questions which remain outstanding.

OUTSTANDING (status changes have been highlighted in yellow.):

- HAC/SAC Get Backs from 5.18.20 Briefing: Initial responses cleared; 16 questions left outstanding.
  - File Name: "TA HAC SAC Getbacks 5.18.20_USCIS.HAC and SAC comments - Response Part 1"
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial responses cleared; 4 questions left outstanding.
  - File Name: "5.18 Questions to USCIS_clean 5.29.2020 - Response Part 1"
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: In clearance

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- Data on amount of refunds USCIS has made: In clearance (b)(6)

As always, please feel free to let us know if you have any concerns or additional questions.

Thanks,
Brian

From: Nasir, Syed A [redacted]
Sent: Wednesday, June 3, 2020 4:28 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Thai, Brian [redacted]; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C [redacted]; Tozzolo, Anthony T [redacted]; Toms, Christopher [redacted]; Nguyen, Xuan-Huong T [redacted]
Subject: RE: Capturing get backs

Hi, Kami –

To your question about the furlough/notice date: At the moment, USCIS plans to issue notices to affected employees with a furlough date of July 20th. As far as the number of employees being furloughed, the 13,400 estimate is subject to change. Additional information will be provided in the coming weeks.

Thanks,
~Azmat

From: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Sent: Tuesday, June 2, 2020 6:22 PM
To: Thai, Brian [redacted]; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C [redacted]; Tozzolo, Anthony T [redacted]; Toms, Christopher [redacted]; Nguyen, Xuan-Huong T [redacted]; Nasir, Syed A [redacted]
Subject: RE: Capturing get backs

Hi Brian,

I'm concerned with the length of time for responses to our initial questions. Any eta on when we will get them?

Also, want to confirm some data. Two weeks ago during our discussion I believe the furlough date was July 13th but hearing that it will now start on July 20th. Is that correct? And has the total number of employees impacted stayed the same? 13,400?

Thanks,

Kami (b)(6)

AMERICAN OVERSIGHT

From: Thai, Brian
Sent: Monday, June 1, 2020 5:08 PM
To: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II; Tozzolo, Anthony T; Toms, Christopher; Nguyen, Xuan-Huong T; Nasir, Syed A
Subject: RE: Capturing get backs

Good Afternoon All,

I hope everyone enjoyed their weekend. There has been one status update since Friday, but we are continuing to push the get backs through the clearance process. For your convenience, the change has been highlighted in yellow.

OUTSTANDING:

- HAC/SAC Get Backs from 5.18.20 Briefing: Initial response pending clearance; 16 questions left outstanding.
- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): Initial response pending clearance; 4 questions left outstanding.
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: Is still being compiled.
- Data on amount of refunds USCIS has made: Is still being compiled.

As always, please feel free to let us know if you have any concerns or additional questions.

Thanks,
Brian

From: Thai, Brian
Sent: Friday, May 29, 2020 6:40 PM
To: Nasir, Syed A; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C; Tozzolo, Anthony T; Toms, Christopher; Nguyen, Xuan-Huong T
Subject: RE: Capturing get backs

Good Evening All,

The Department is providing the first of the Semi-Weekly Revenue Forecasts and a Revenue Forecasts Comparison.

Following up on Thursday's Weekly Migration Call, we will begin providing you regular updates on where deliverables/get backs are in the clearance process. The intent is to provide you updates by COB Monday, Wednesday, and Fridays. If this schedule seems excessive, I am happy to scale that back. Please see below for the current status of outstanding get backs that we are tracking (please feel free to offer corrections/additions):

AMERICAN OVERSIGHT

OUTSTANDING:

- HAC/SAC Get Backs from 5.18.20 Briefing: Initial response pending OMB clearance; 16 questions left outstanding which USCIS is working.

- Questions from Jenn P. and Scott N. from the 5.18.20 Briefing (captured separately from above): DHS reviewed, USCIS adjudicating.
- Monthly breakdown of applications/petitions filed, by benefit, by Premium/Non-Premium from 2014 – YTD: USCIS is still working this.
- Data on amount of refunds USCIS has made: USCIS is still working this.

Please feel free to let us know if you have any questions or additional questions.

Thanks,
Brian

From: Nasir, Syed A
Sent: Friday, May 29, 2020 2:58 PM
To: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II; Tozzolo, Anthony T; Thai, Brian; Toms, Christopher; Nguyen, Xuan-Huong T
Subject: RE: Capturing get backs

Good Afternoon –

Update:
We've updated the earlier submitted file by incorporating two more (FY 2016 and FY 2017). We had received a getback from the Authorizing Committee staffers and their request included going back to FY 2016, so we wanted to share a copy of the revised file with you all as well.

Thanks,
~Azmat

From: Nasir, Syed A
Sent: Wednesday, May 27, 2020 6:22 PM
To: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Newby, Darek <Darek.Newby@mail.house.gov>; Nance, Scott (Appropriations) <Scott_Nance@appro.senate.gov>
Cc: Wearmouth, James C II; Tozzolo, Anthony T; Thai, Brian; Toms, Christopher; Nguyen, Xuan-Huong T
Subject: RE: Capturing get backs

All –

Per discussion with Jenn on 5/21, the highlighted getback below has been updated with execution data for FY 2018, FY 2019, and FY 2020 YTD.

Thanks,
~Azmat

AMERICAN OVERSIGHT

From: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>
Sent: Thursday, May 21, 2020 9:11 AM
To: Nasir, Syed A [redacted]; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Cc: Wearmouth, James C II [redacted] Tozzolo, Anthony T [redacted]; Thai, Brian [redacted]
Subject: RE: Capturing get backs

That is the preferred approach for me.

Thank you.

From: Nasir, Syed A [redacted]
Sent: Thursday, May 21, 2020 9:01 AM
To: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Cc: Wearmouth, James C II [redacted]; Tozzolo, Anthony T [redacted]; Thai, Brian <[redacted]
Subject: RE: Capturing get backs

Morning, All –

As soon as deliverables get completed/cleared, we'll just send them in a piecemeal fashion. Hope that works?

Attached please find our FY 2018-FY 2020 Annual Operating Plans broken out by Pay/Non-Pay and by directorates/program offices.

Thanks,
~Azmat

From: Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>
Sent: Tuesday, May 19, 2020 10:05 AM
To: Nasir, Syed A [redacted]
Cc: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>; Joachim, Bob <Bob.Joachim@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>
Subject: RE: Capturing get backs

Hi Azmat,

Attached is a tracked changes (what I consider addressed from the briefing) along with a clean version of my questions for your convenience.

My top four questions are:

- Copy of the two most recent 'Annual Operating Plans;'
- Copy of detailed 'gap analysis' which projected the forecasted shortfall;
- Provide the expenditure data for the last three years for USCIS, including detail into the actual spending of the agency;
- Describe all agreements between DOJ and USCIS that involve a transfer of funds from USCIS to DOJ, including the EAJA fees.

Please let me know if you have any questions.
Kindly,

AMERICAN OVERSIGHT

Jenn

From: Nasir, Syed A [redacted] (b)(6)
Sent: Monday, May 18, 2020 5:48 PM
To: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Cc: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov>
Subject: RE: Capturing get backs

Hi, Kami –

Yes, I plan to work on the list of getbacks with the team and will send it to you.

Yep, I got that one about the breakout.

Thanks,
~Azmat

From: White, Kamela (Appropriations) <Kamela_White@appro.senate.gov>
Sent: Monday, May 18, 2020 5:29 PM
To: Nasir, Syed A [redacted]
Cc: 'Joachim, Bob' <Bob.Joachim@mail.house.gov>; Baron, Dena <Dena.Baron@mail.house.gov>; Piatt, Jenn (Appropriations) <Jenn_Piatt@appro.senate.gov> (b)(6)
Subject: Capturing get backs

Hi Azmat,

Would you please send us a list of the getbacks from today's call – just to make sure we are all on the same page – Thanks!

And one to add, a breakout of the reductions USCIS has taken – looking for more details than was provided in the table.

AMERICAN OVERSIGHT

From: Edgar, Troy
Subject: FW: Hill Request - USCIS Cash Flow Projections and Scenarios
To: Alles, Randolph; Edlow, Joseph B; SPIVEY, BETH
Cc: Mehringer, Holly; Marcott, Stacy
Sent: August 7, 2020 4:09 PM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Getback to Hill 8.5.20.xlsx

----------PROPOSED EMAIL----------

Mr Secretary / Deputy Secretary

I want to make sure we are aligned on the Hill's request for USCIS to provide (6) scenarios to be developed based on adjusted assumptions.

(b)(5)

Before we submitted these requested scenarios to the Hill, wanted to provide to you for situational awareness. We are standing by if you have any questions.

V/r, Tex

AMERICAN OVERSIGHT

From: Edlow, Joseph B
Subject: Fwd: Updated USCIS Cash Flow Scenarios
To: Calkins, Aaron L
Sent: August 7, 2020 9:01 AM (UTC-05:00)
Attached: USCIS Cash Flow Scenarios - Getback to Hill 8.5.20.xlsx

Get Outlook for iOS

From: Scott, Kika M [redacted]>
Sent: Friday, August 7, 2020 9:37:02 AM
To: Edlow, Joseph B [redacted]>; Denayer, Larry C [redacted]
Subject: Updated USCIS Cash Flow Scenarios

(b)(6)

Hi Joe and Larry,

Per my earlier phone call, I wanted you to be aware of 6 scenarios that the staffers requested July 20th. The scenarios include:

(b)(5)

If you'd like my team to walk you through today, we'd be happy to but all scenarios still show us needing help.

Thanks

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Referred to Department of Homeland Security

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From:
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7
To: Nuebel Kovarik, Kathy
Sent: August 5, 2020 8:59 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056 Consolidated Comments Received.docx

I finished reviewing this. I recognized a lot of the language from AAO decisions. I really tried to keep my edits and comments to a minimum.

(b)(5)

(b)(6)

From: Nuebel Kovarik, Kathy
Sent: Tuesday, July 7, 2020 9:25 AM
To: Piateski, Jennifer E; Bailey, Morgan; King, Alexander R
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

perfect

From: Piateski, Jennifer E
Sent: Tuesday, July 07, 2020 8:25 AM
To: Nuebel Kovarik, Kathy; Bailey, Morgan; King, Alexander R
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Yes, Morgan and I are reviewing on MS Teams. Joe asked to see it yesterday so I sent him a copy. Not sure if he was going to review it or not, but he does have it.

From: Nuebel Kovarik, Kathy
Sent: Tuesday, July 7, 2020 9:22 AM
To: Piateski, Jennifer E; Bailey, Morgan; King, Alexander R
Subject: FW: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Are you all reviewing this? I got to about page 40, but wanted to check with you all and see if Joe wanted to review concurrently.

From: USCIS Regs
Sent: Monday, July 06, 2020 3:50 PM
To: USCIS Exec Sec
Cc: Smith, Mirna; Boivin, Mark R; Deshommes, Samantha L; Rigdon, Jerry L; Dove, Stephen W (Steve); Carter, Constance L; Law, Robert T; Culver, Anthony J; Lapp, Meredith M

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; Stiefel, Nathaniel I ; Gramiccioni, Jennifer L ; Freiberger, Andrea L (Ande) ; Parascandola, Ciro A ; Nuebel Kovarik, Kathy ; Bailey, Morgan ; Lin, Peggy P ; Buono, Paul M ; Nimick, Charles L (Locky) ; Smith, Mirna

Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The G-1056 review of H-1B Strengthening IFR completed this afternoon at 4 PM. As promised I am sending the consolidated G-1056 comments. Please note that G-1056 review just concluded so most of the comments have not been responded to. We look forward to receiving EXSO/FO comments **by 6 PM on Tuesday, 7/7.**

Thank you!
Mirna

From: USCIS Regs
Sent: Tuesday, June 30, 2020 4:22 PM
To: USCIS Exec Sec
Cc: USCIS Regs ; Smith, Mirna ; Boivin, Mark R ; Deshommes, Samantha L ; Rigdon, Jerry L ; Dove, Stephen W (Steve) ; Carter, Constance L ; Law, Robert T ; Culver, Anthony J (Jared) ; Lapp, Meredith M ; Stiefel, Nathaniel I ; Gramiccioni, Jennifer L ; Freiberger, Andrea L (Ande) ; Parascandola, Ciro A ; Nuebel Kovarik, Kathy ; Bailey, Morgan ; Lin, Peggy P ; Buono, Paul M ; Nimick, Charles L (Locky) ; Smith, Mirna

Subject: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The attached **H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes** have been submitted **in STARS (service item 00028331)**. Please provide feedback via track changes to and by 6 PM on Tuesday, 7/7. (b)(6)

Important note: G-1056 review is occurring in parallel and will conclude on 7/6. I will send a consolidated list of all G-1056 comments by COB on 7/6.

Summary: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program

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AMERICAN OVERSIGHT

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Thank you,
Mirna

AMERICAN OVERSIGHT

9111-97P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

RIN ####-XX##

Strengthening the H-1B Nonimmigrant Visa Classification Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim Final Rule with Request for Comments.

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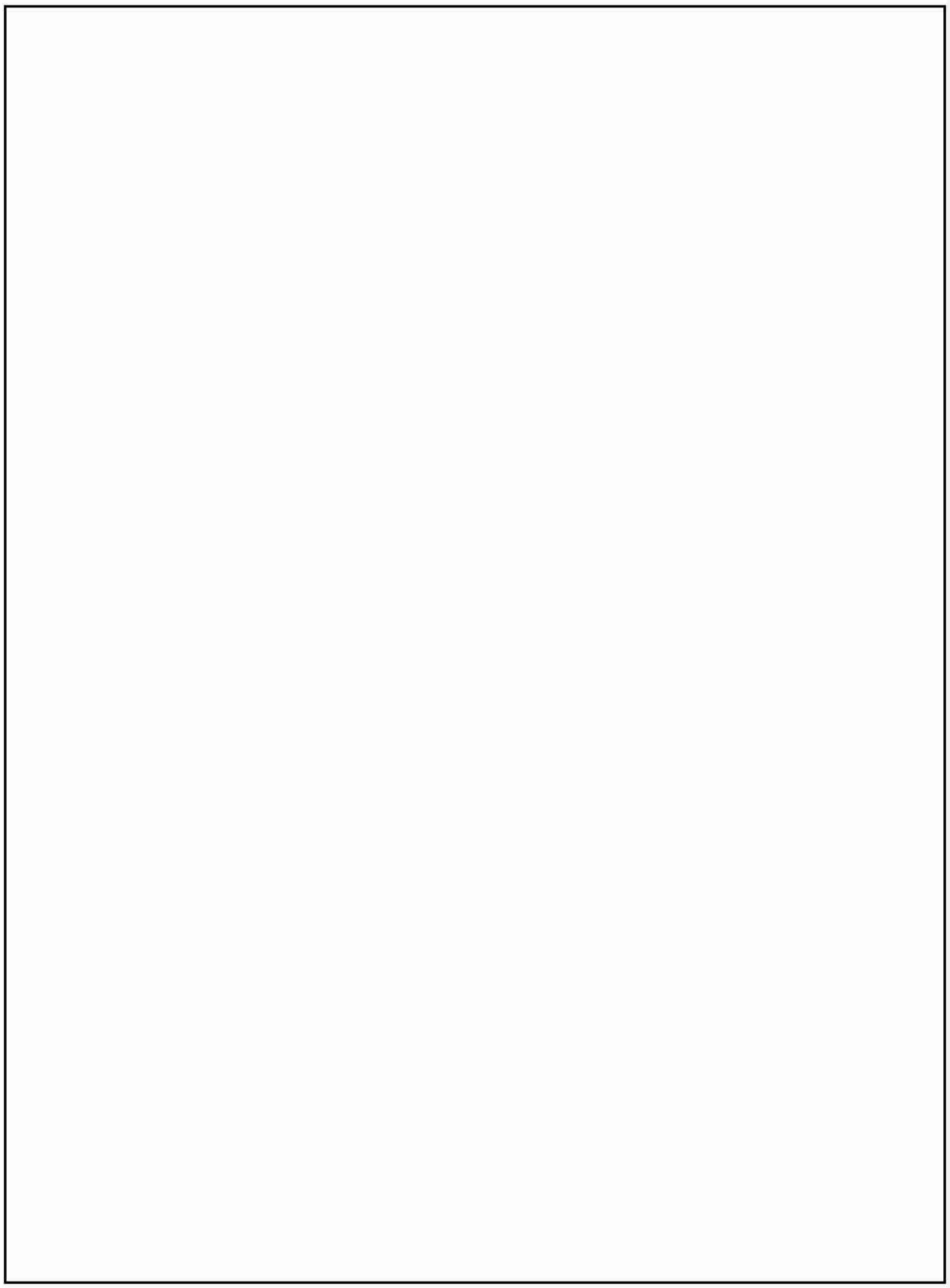
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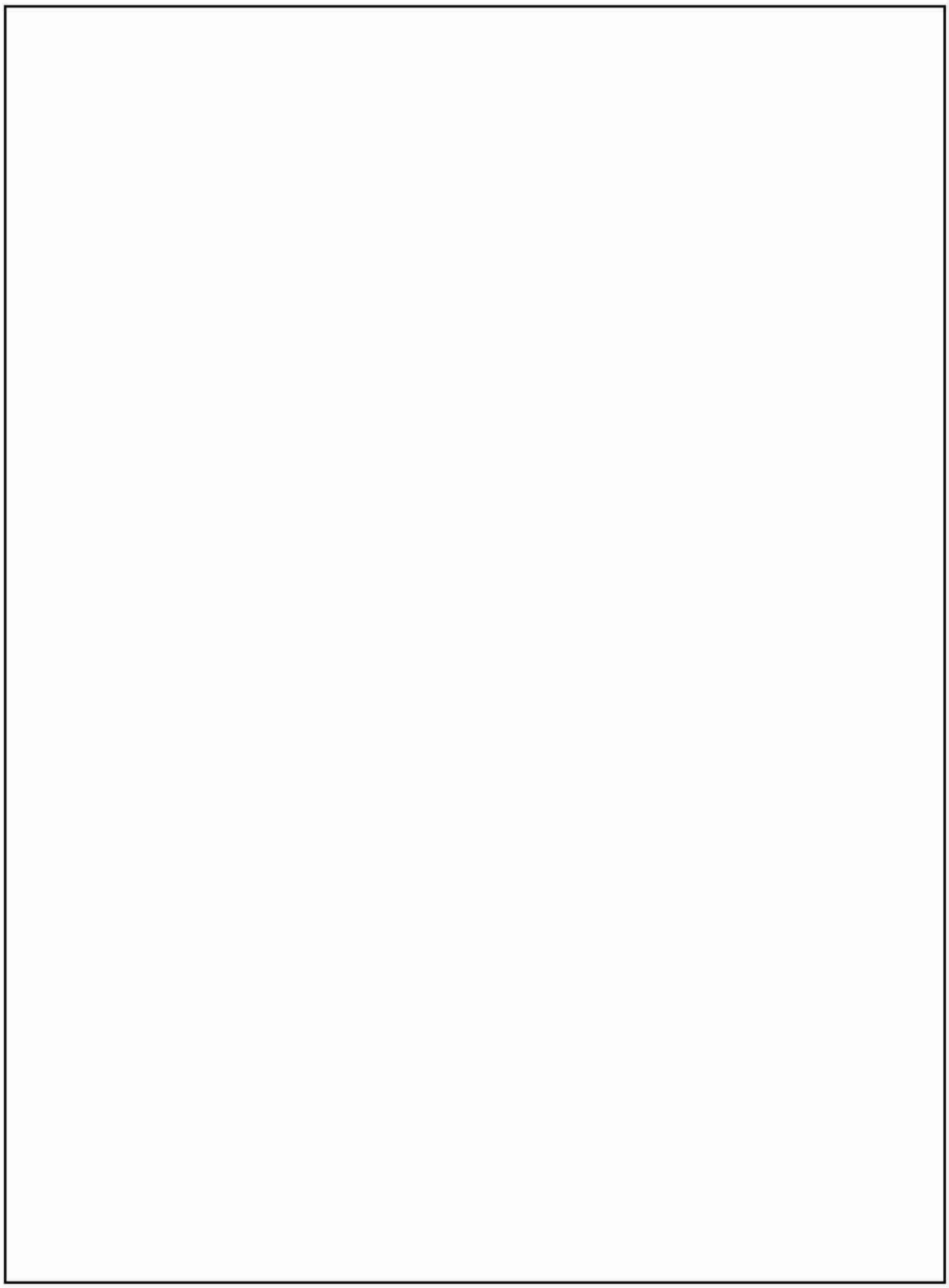
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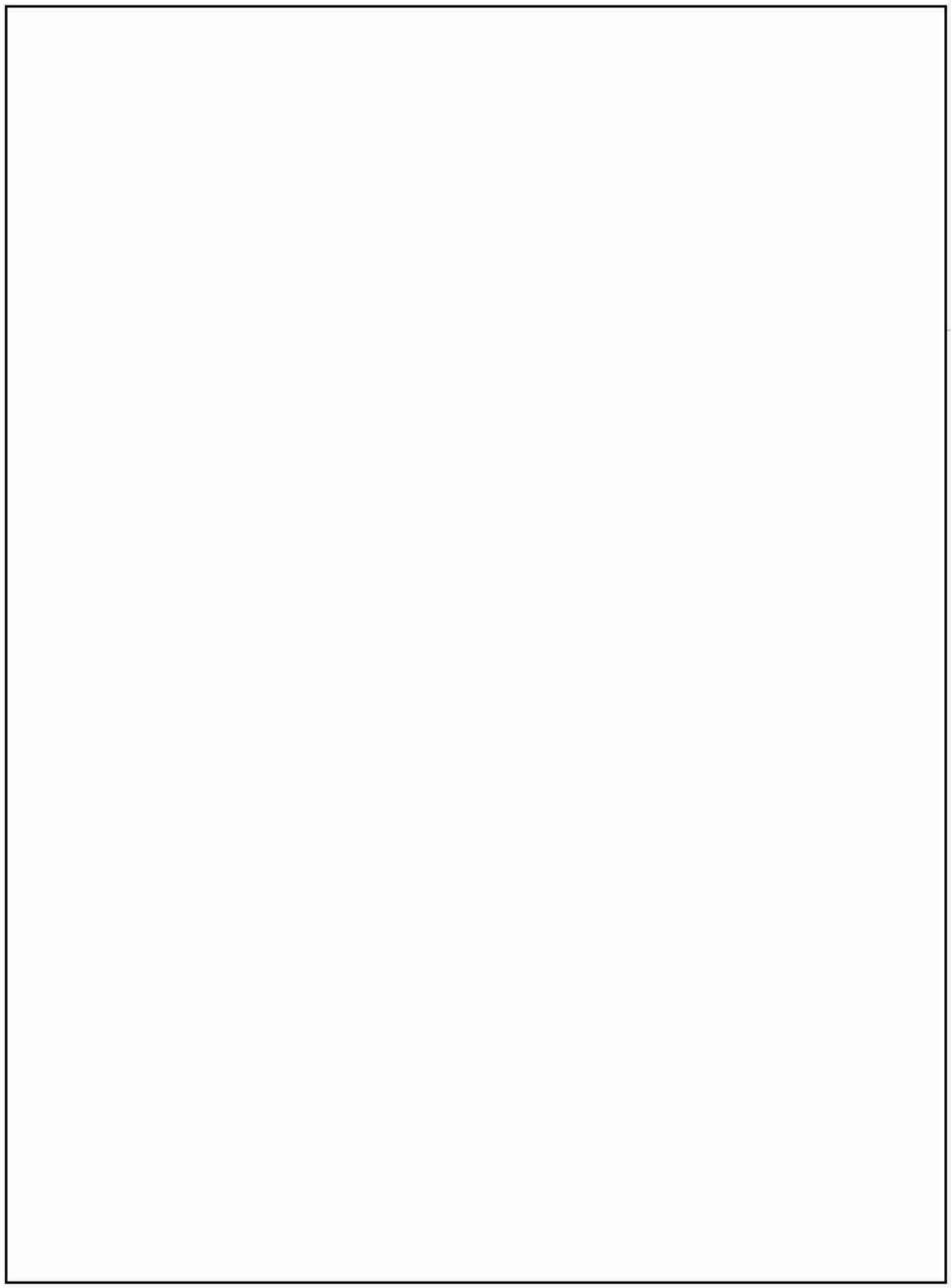


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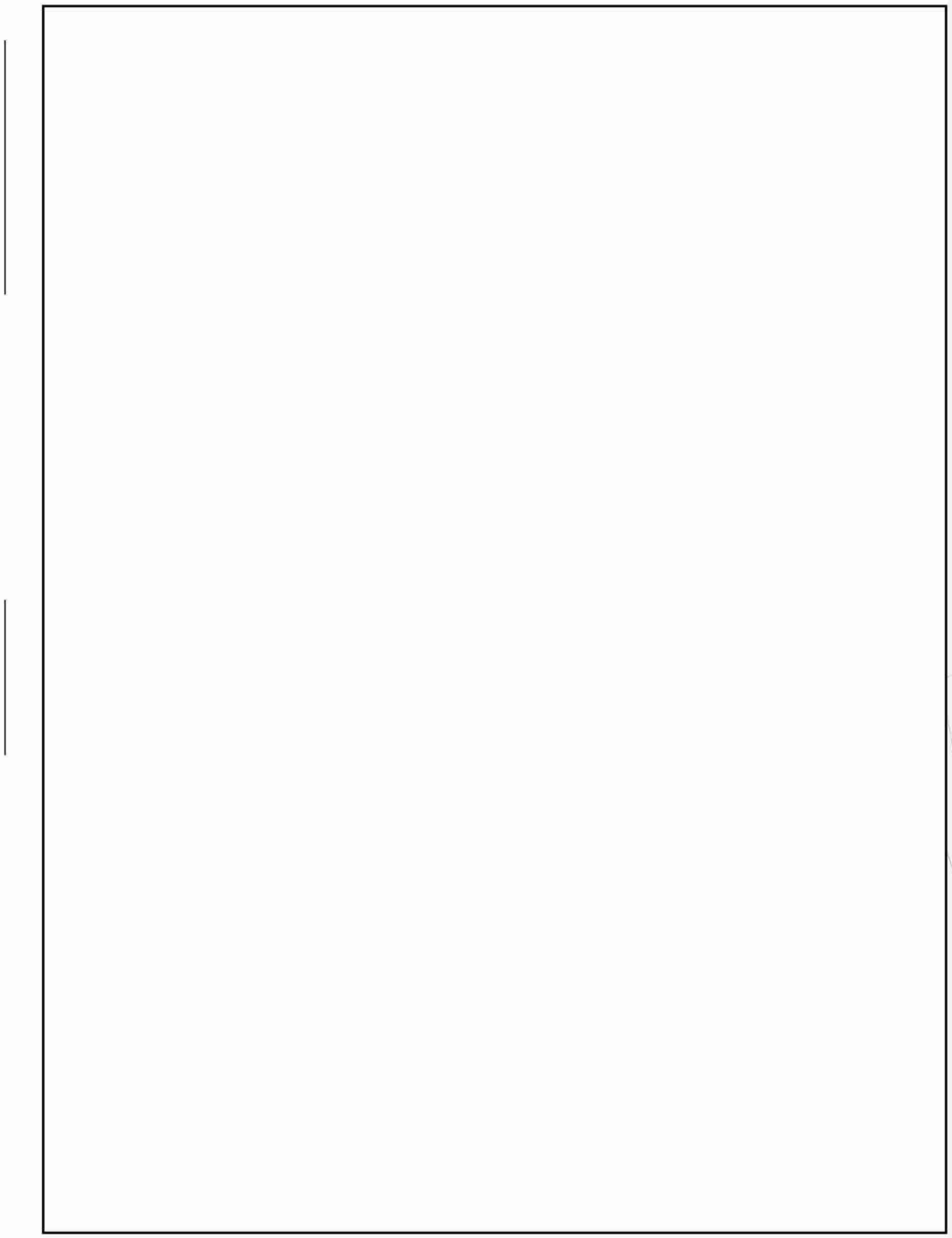
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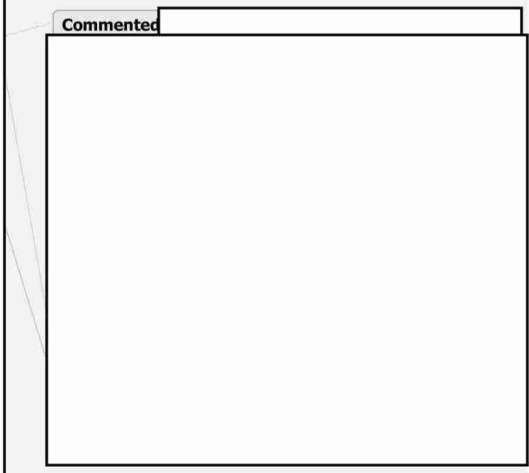
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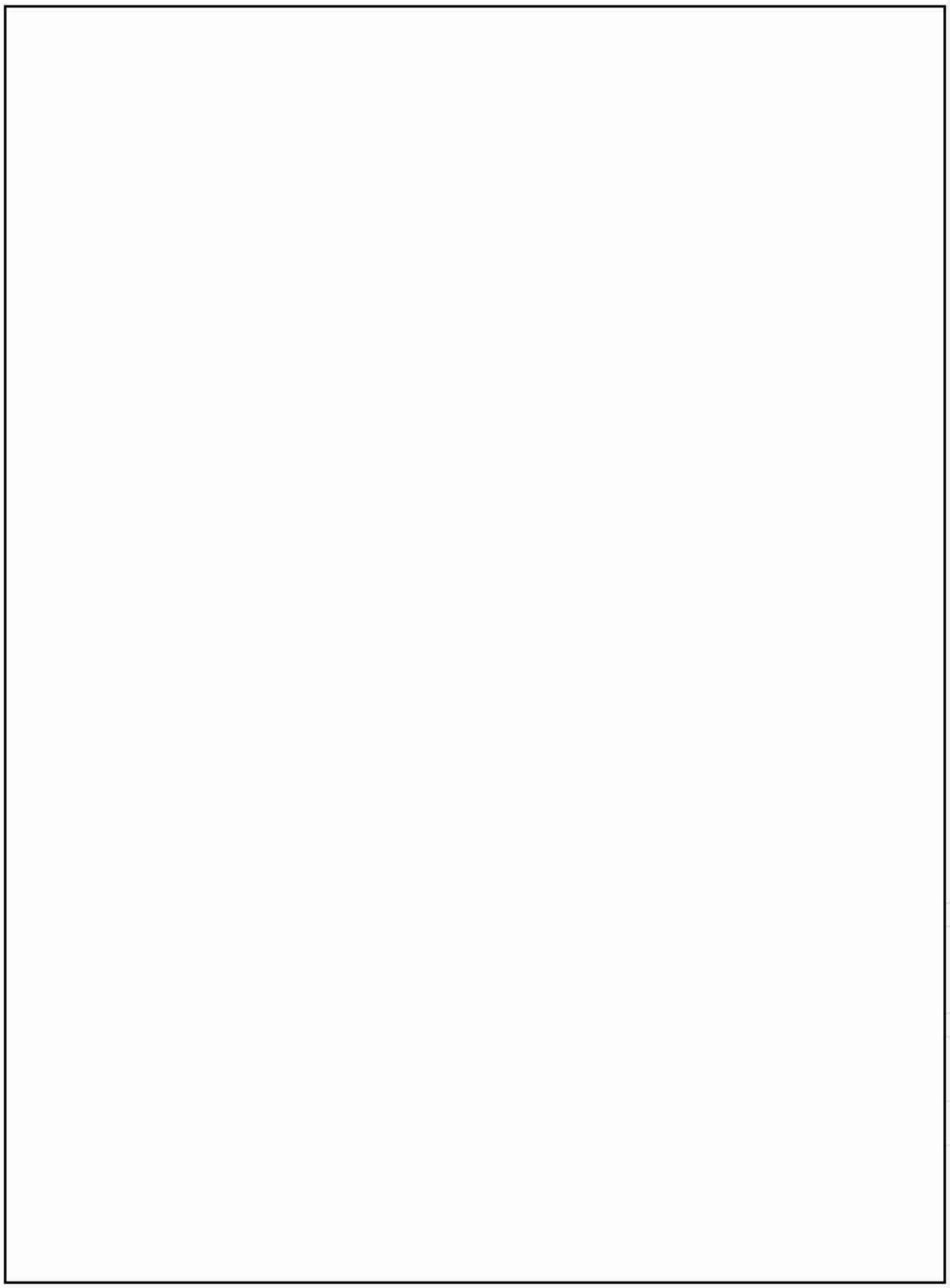




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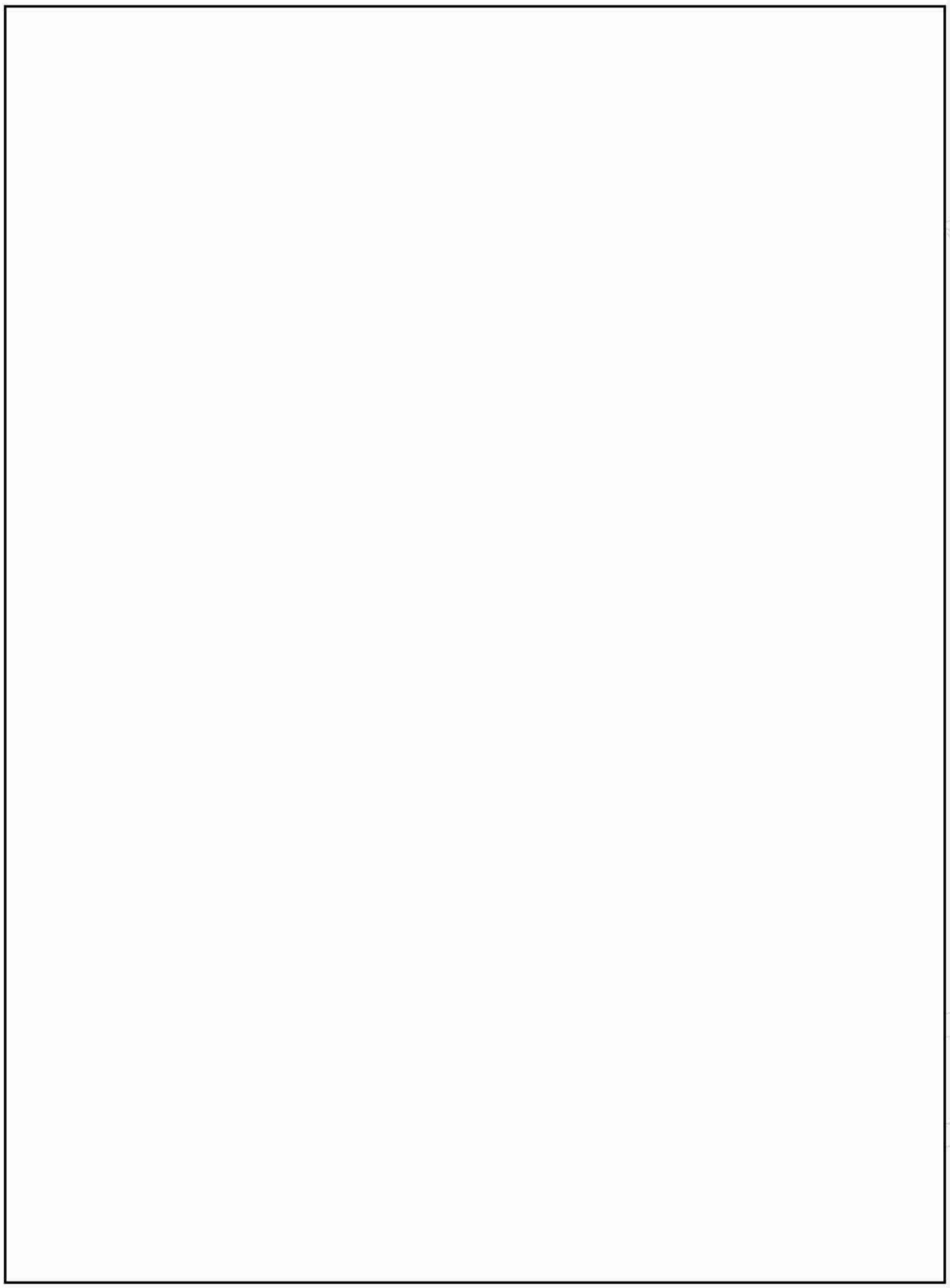
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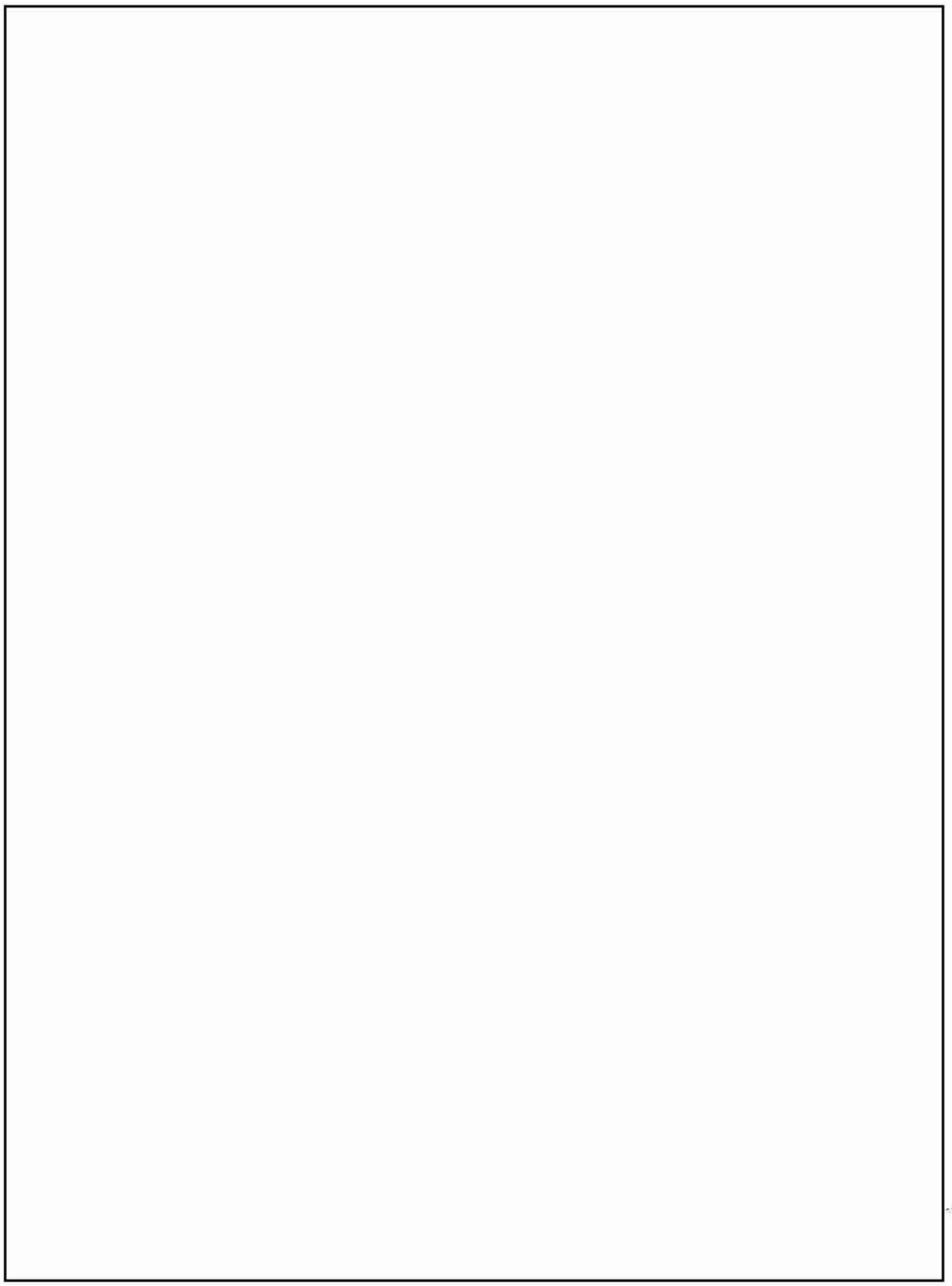
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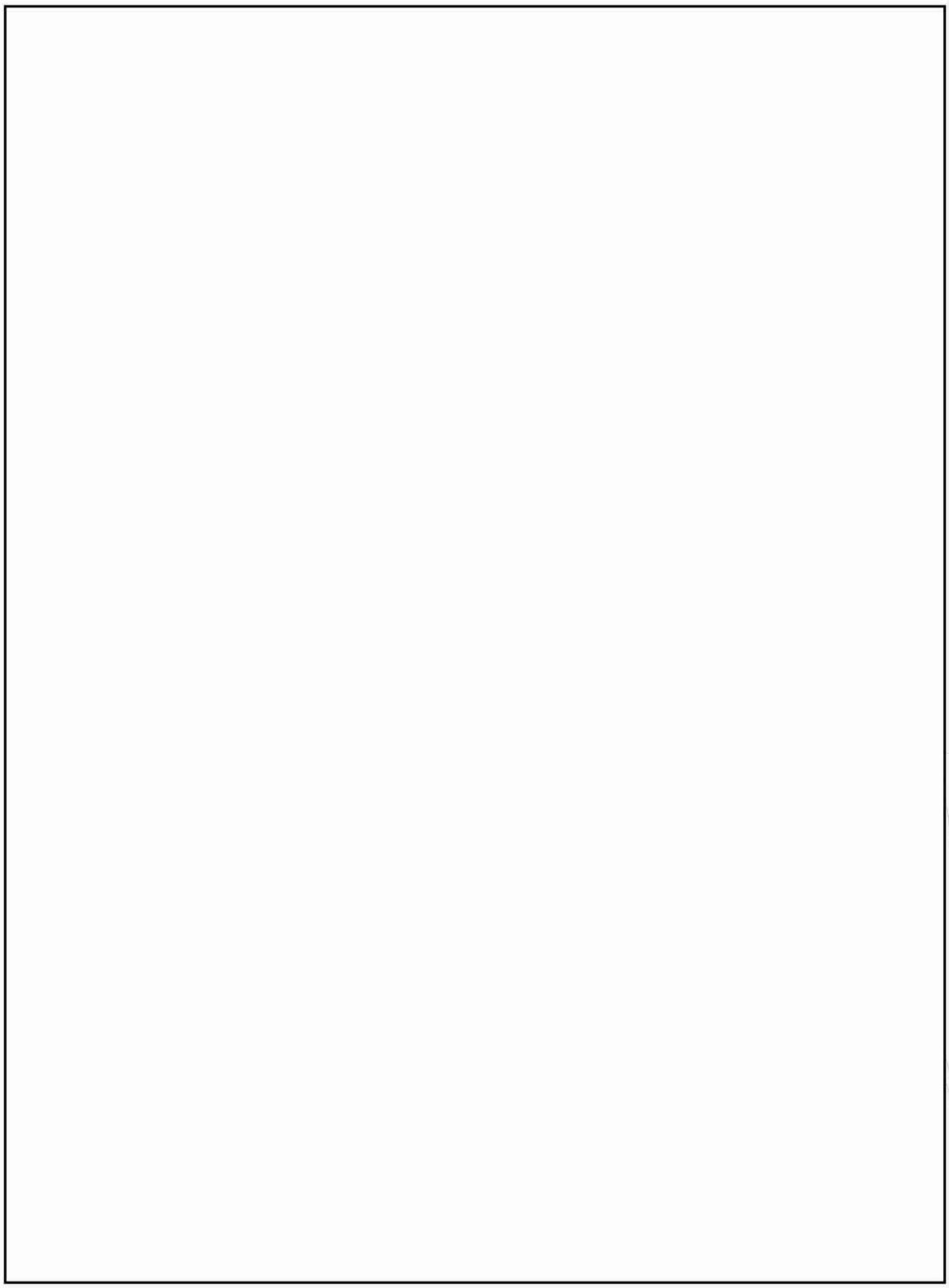
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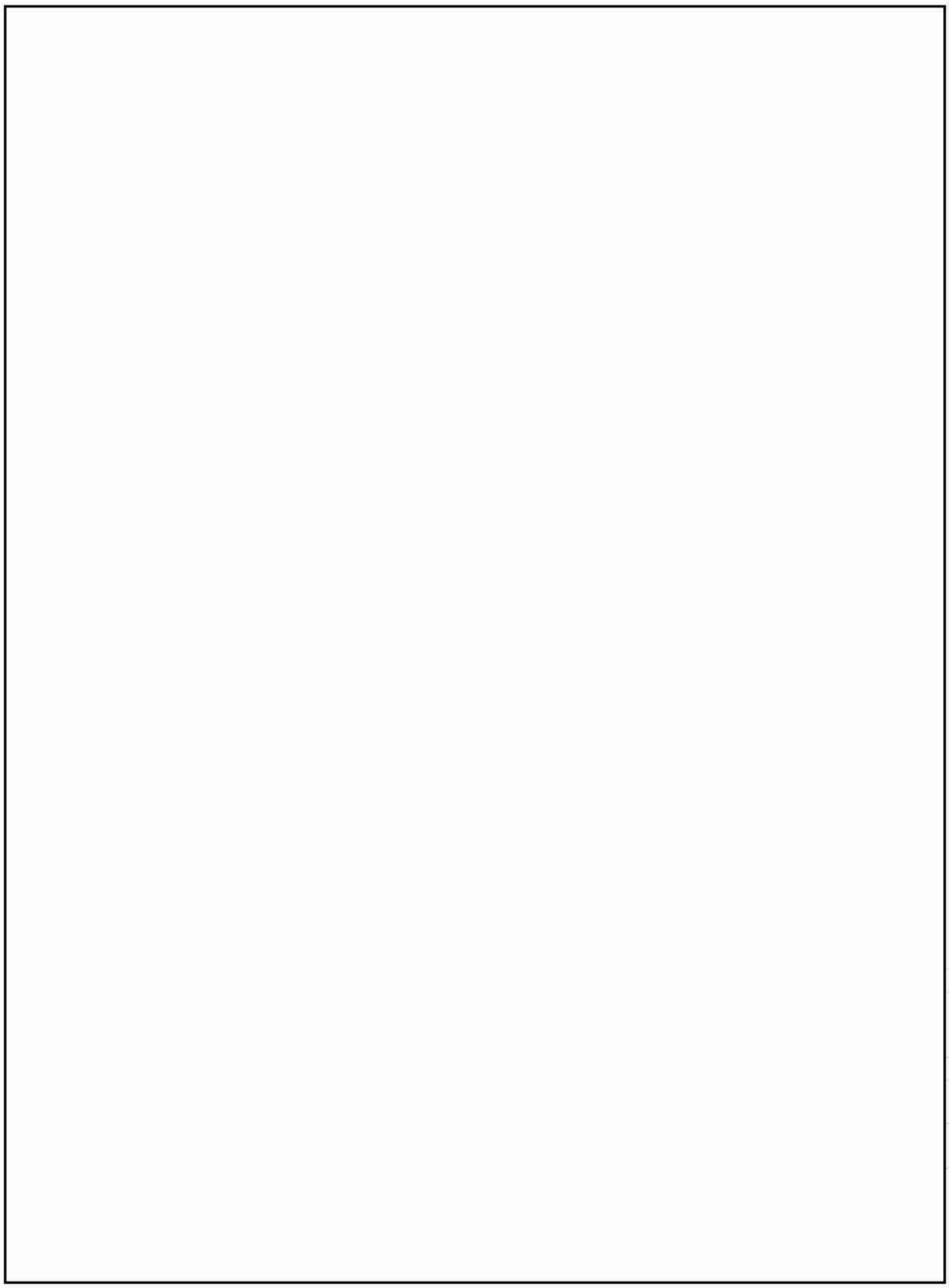
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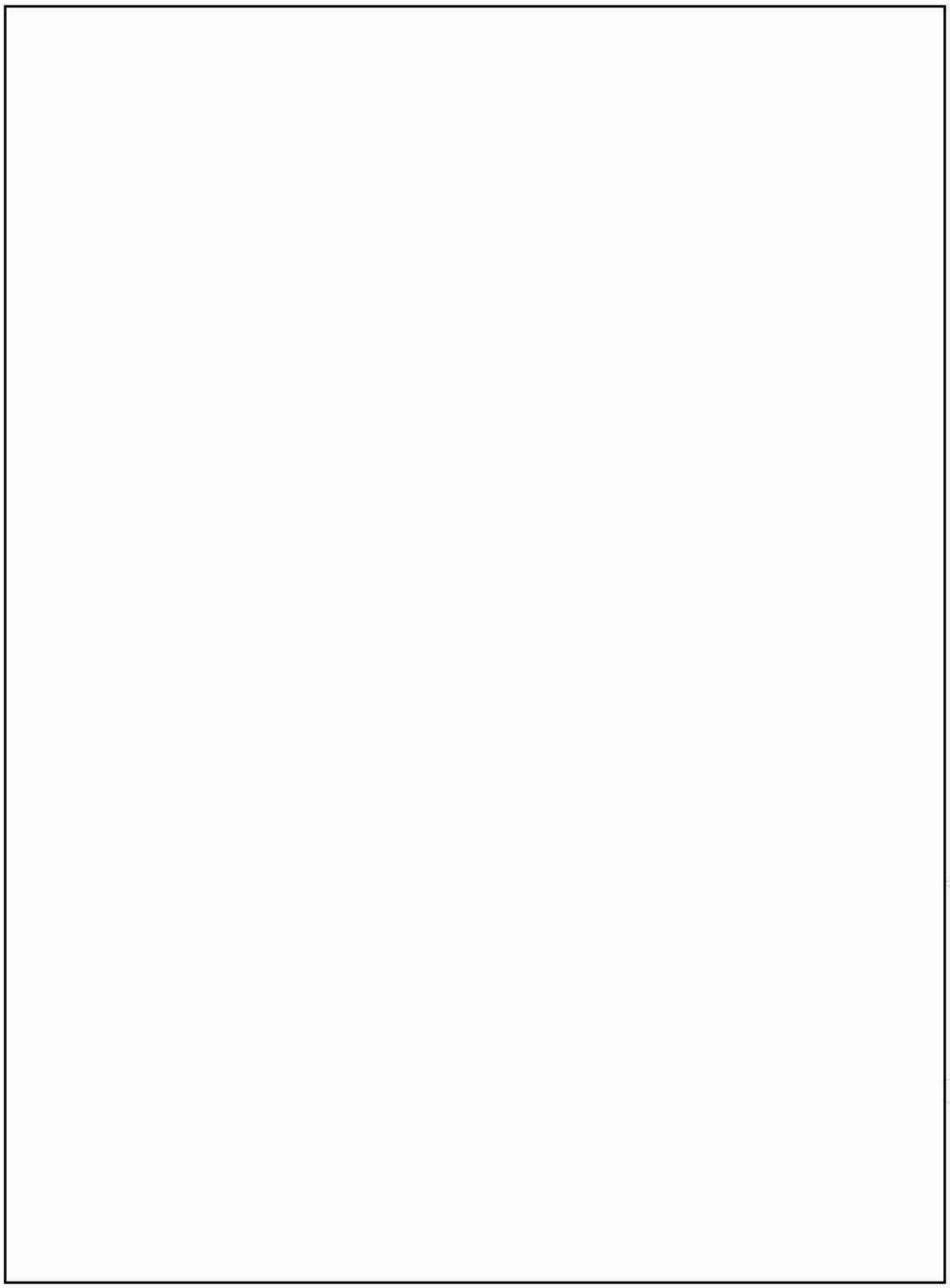
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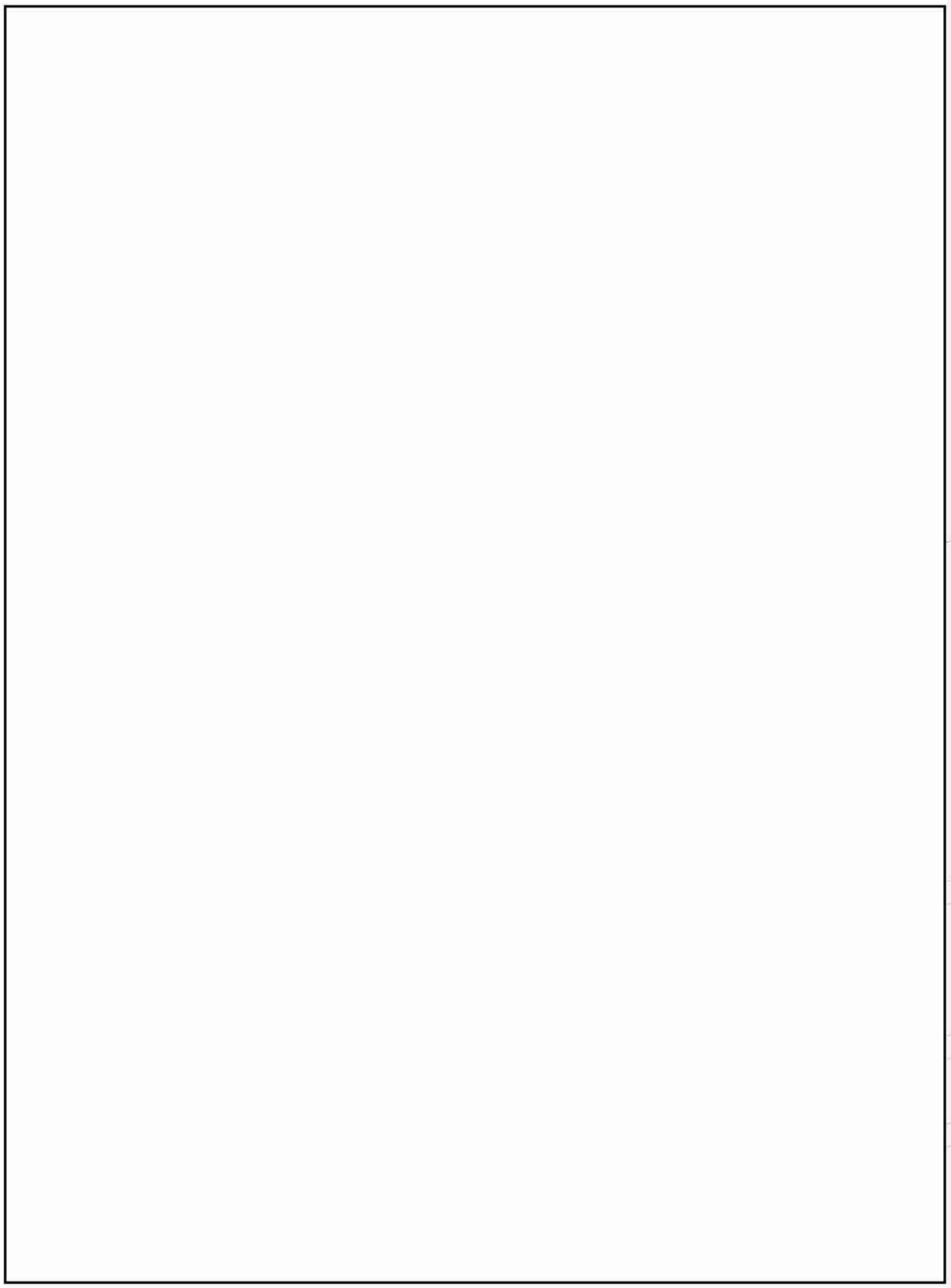
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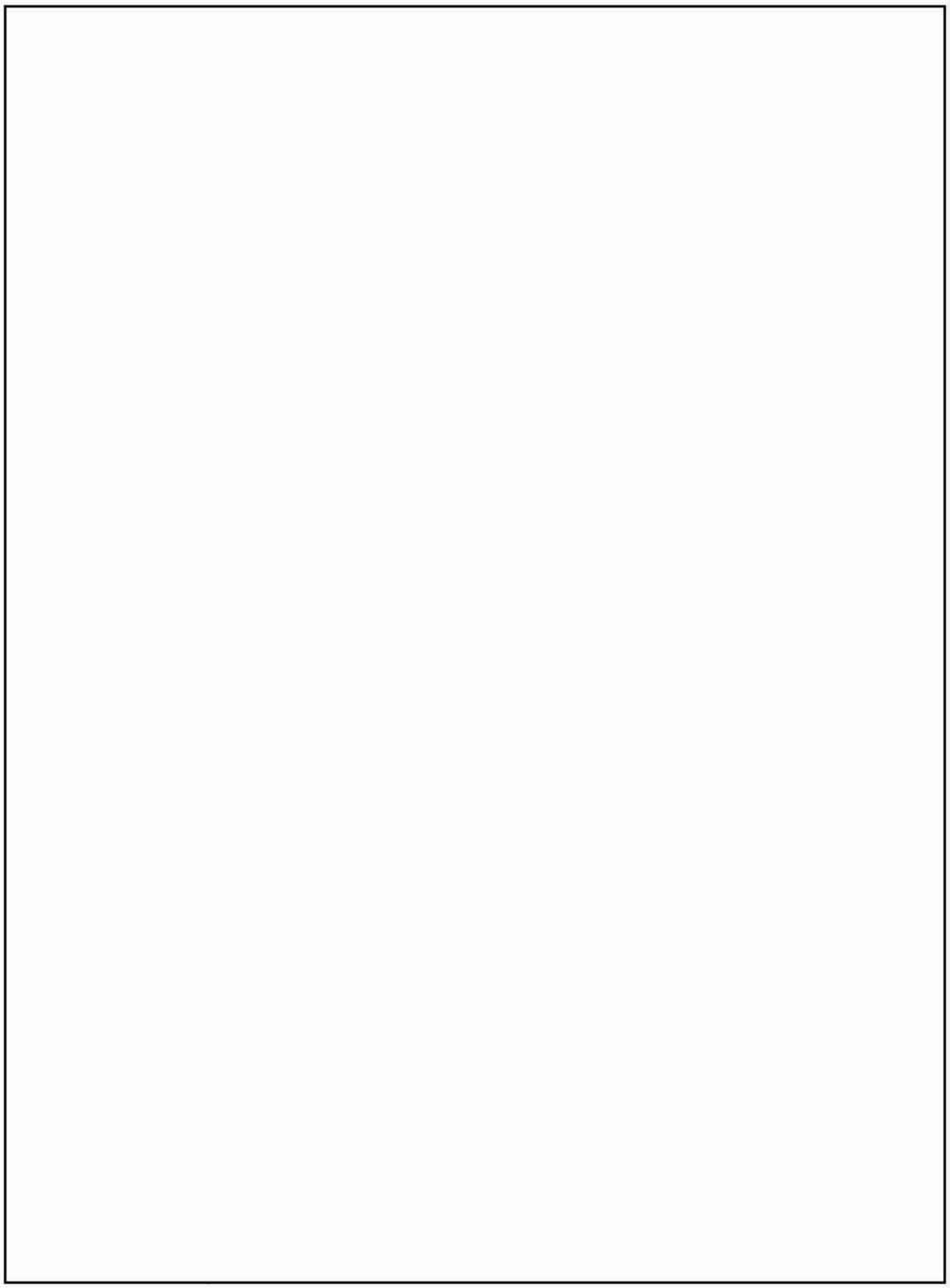
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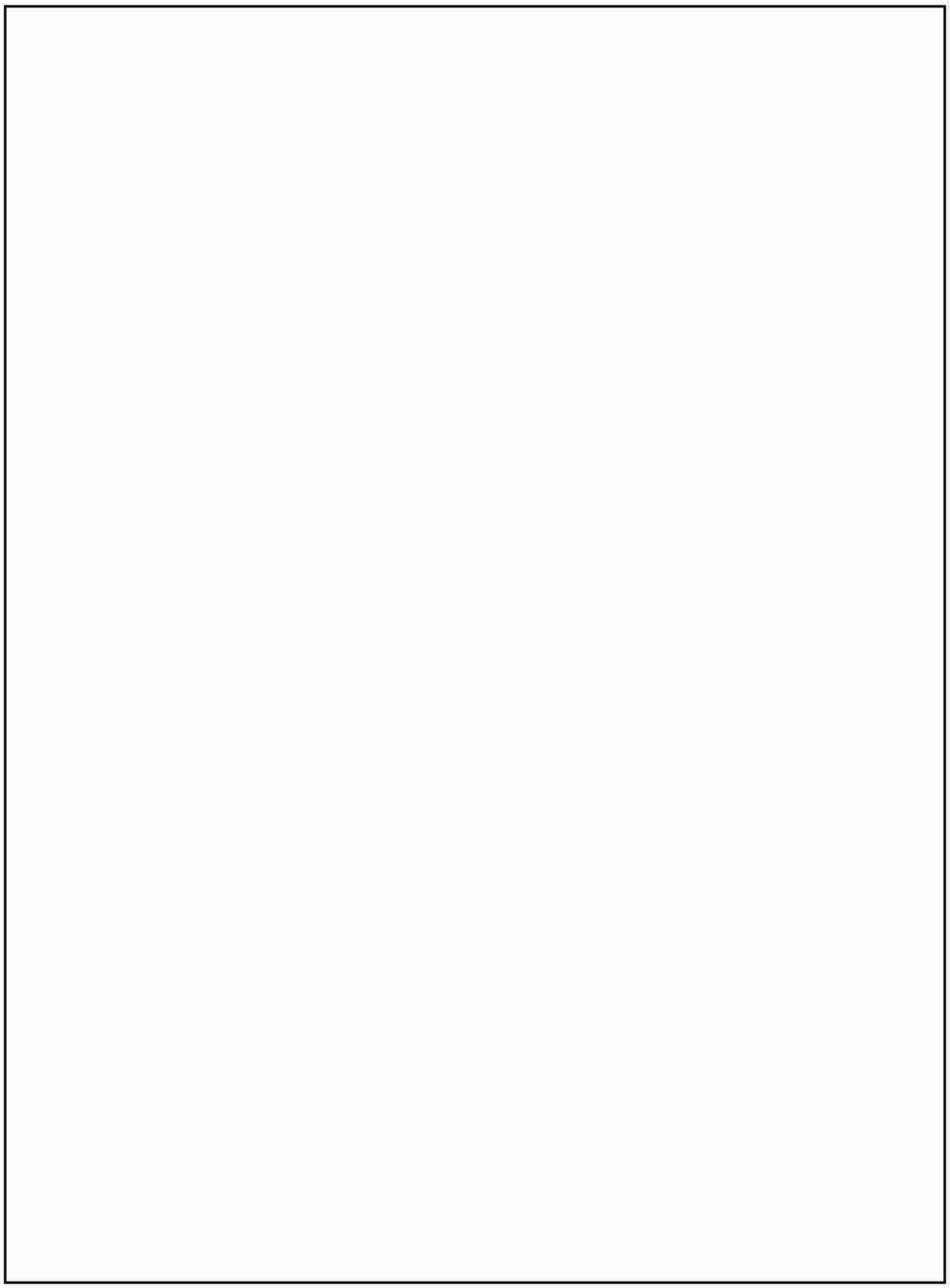
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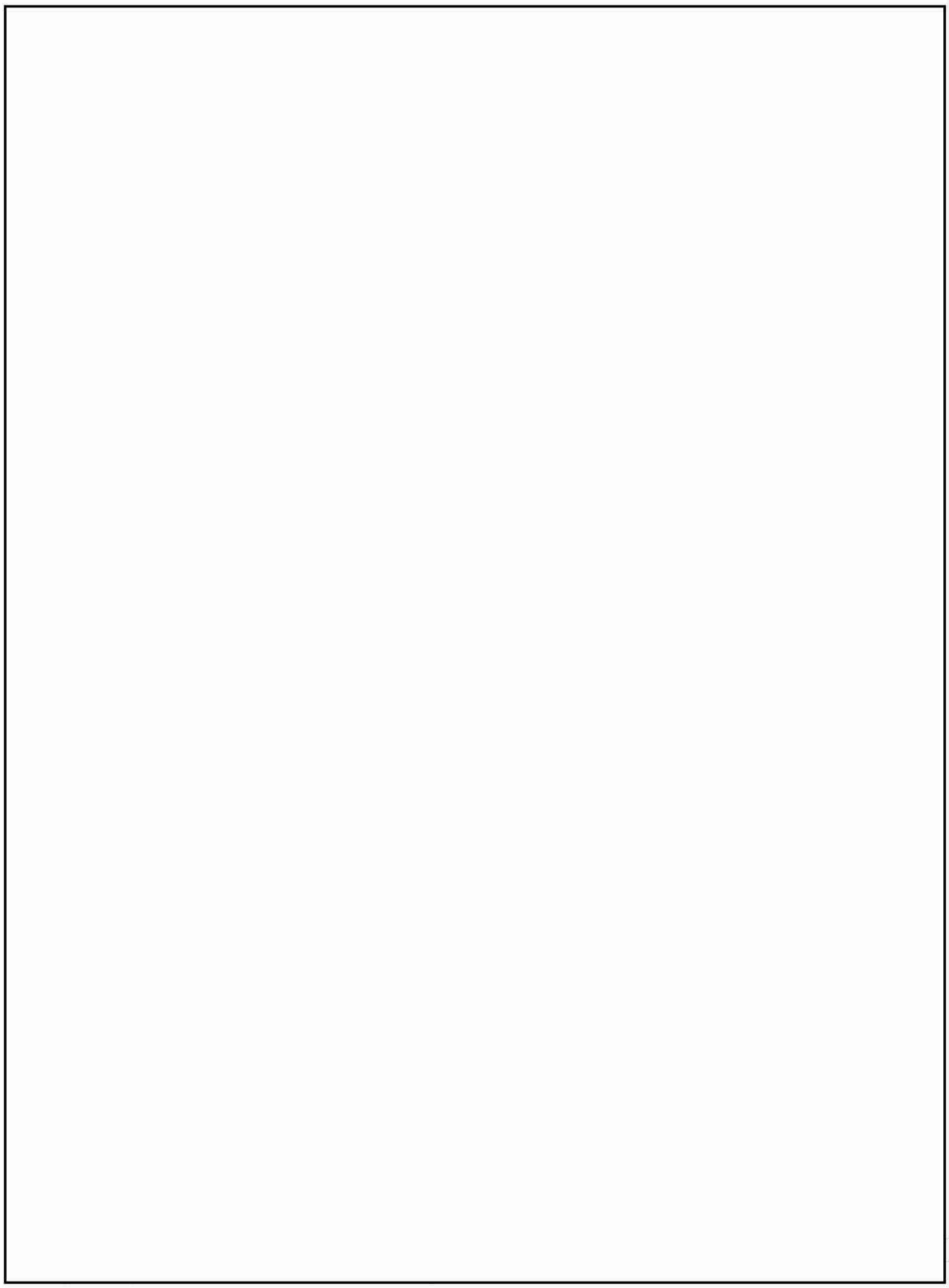
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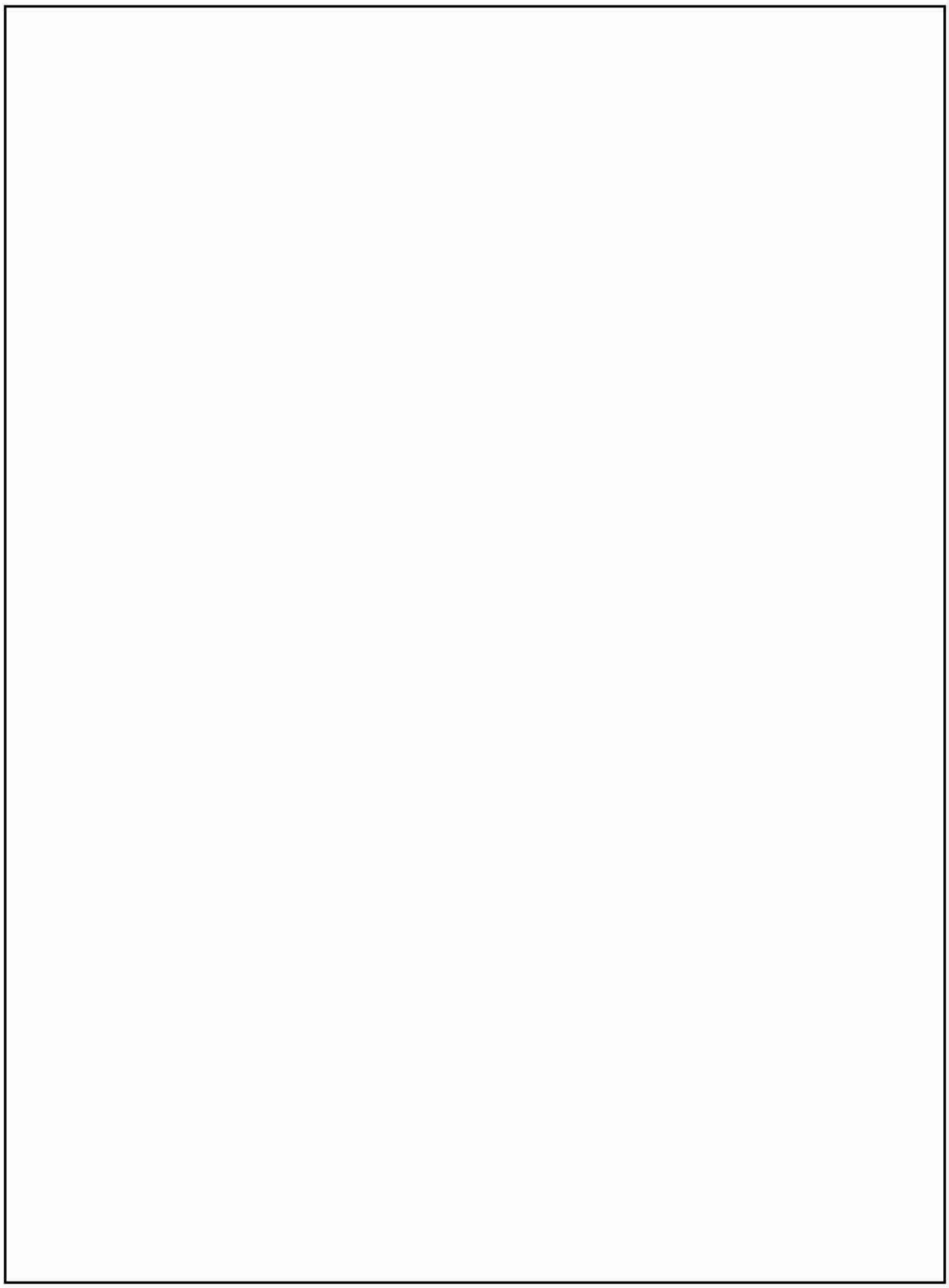
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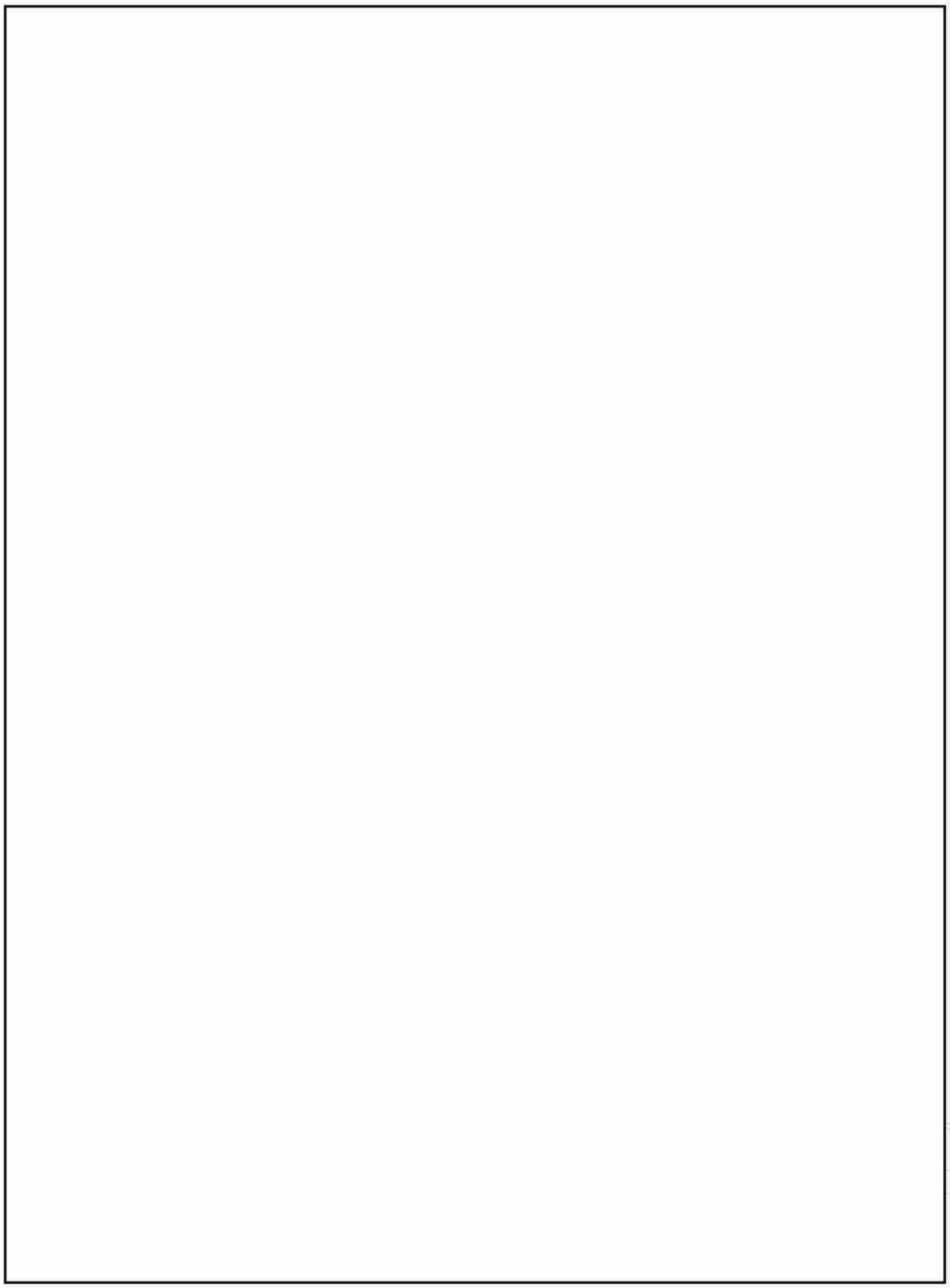
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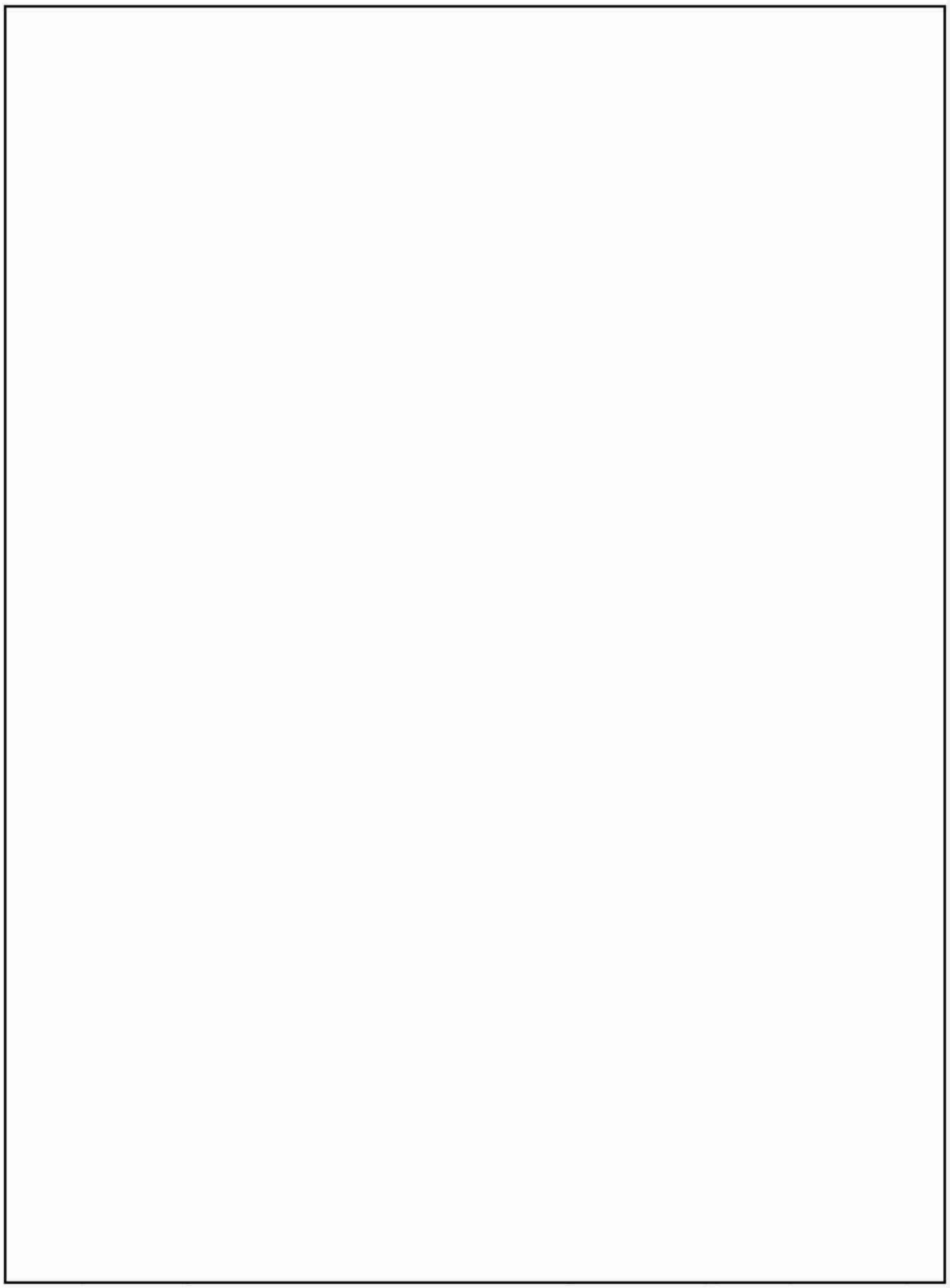
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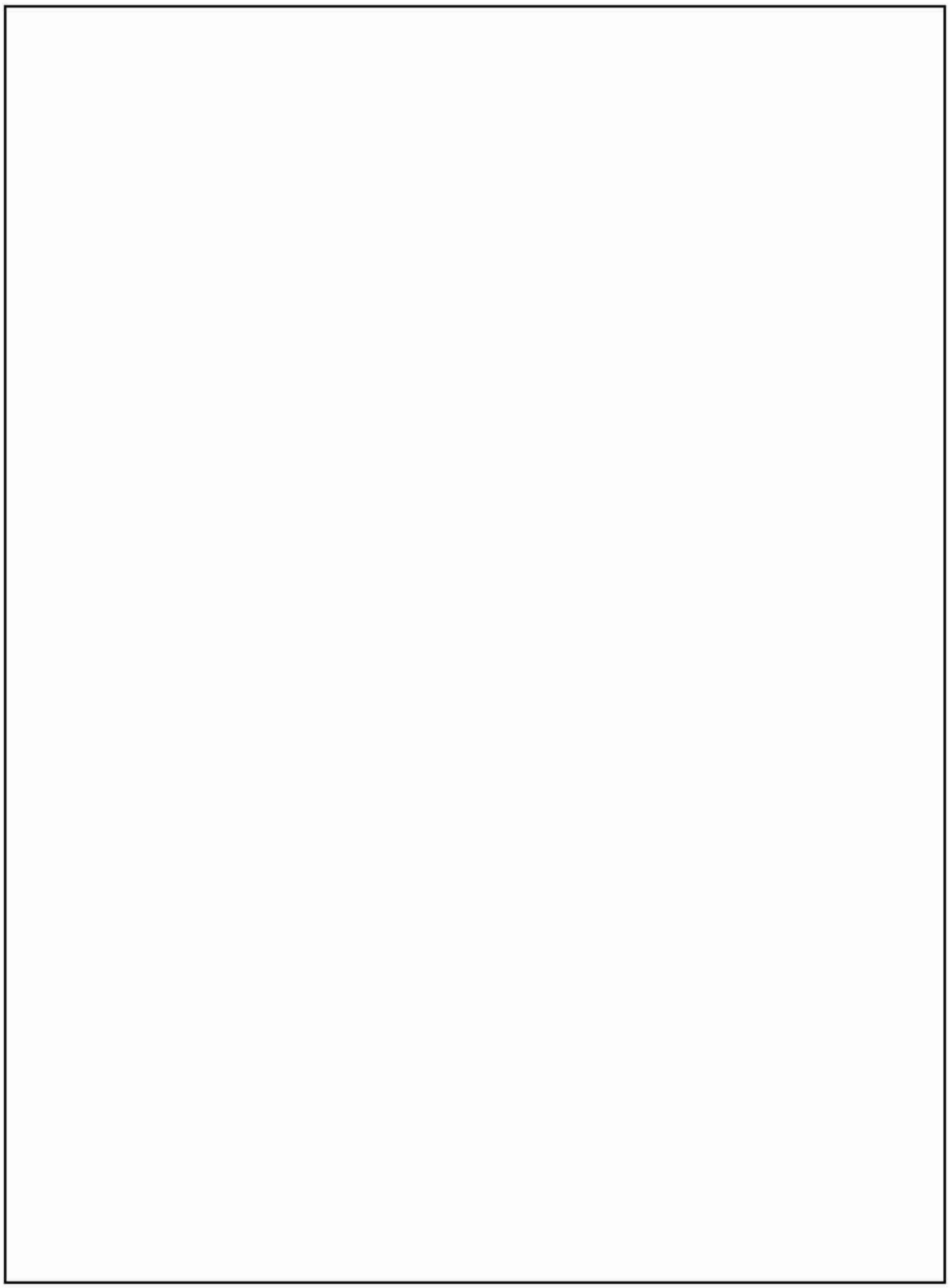
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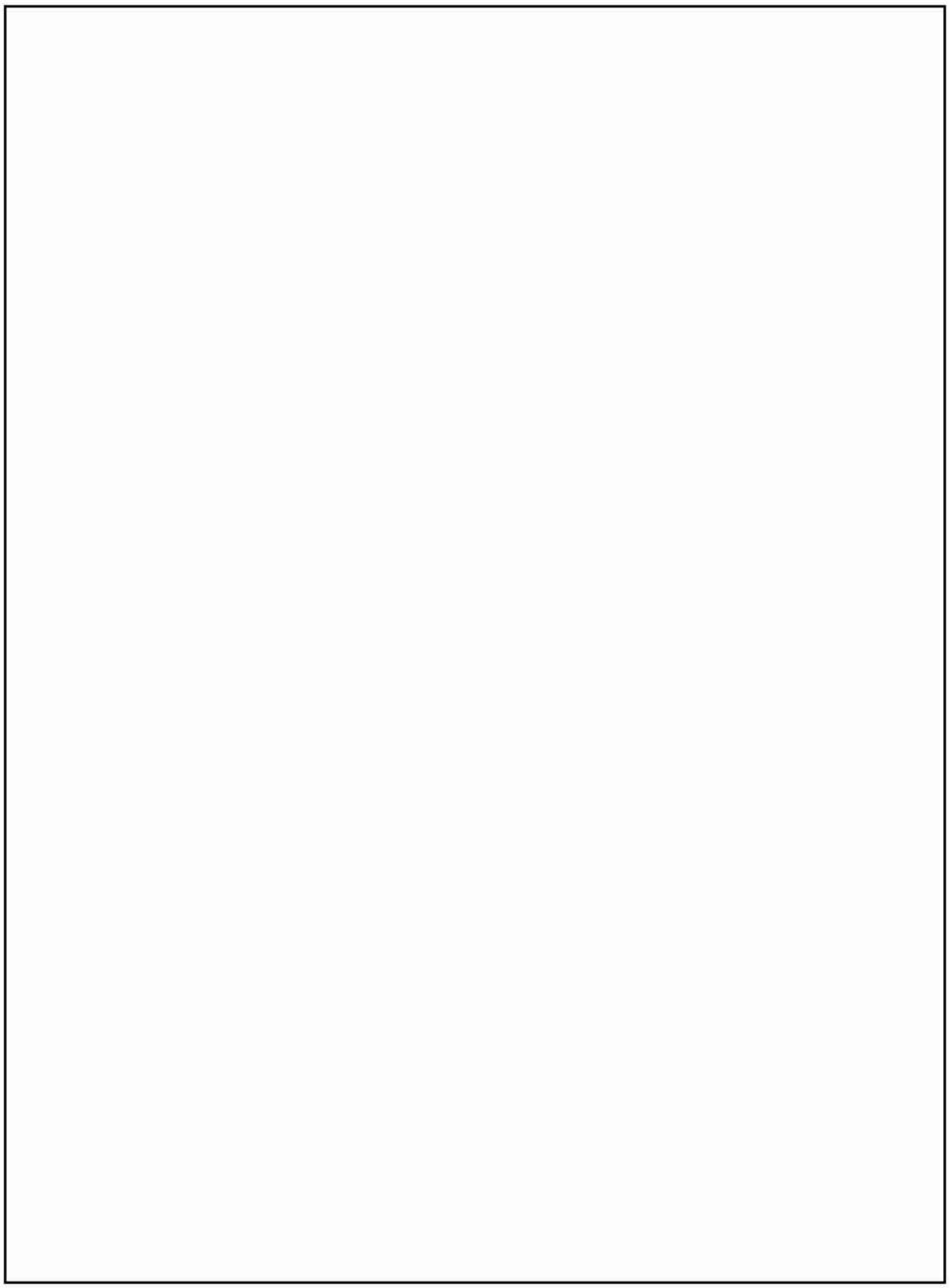
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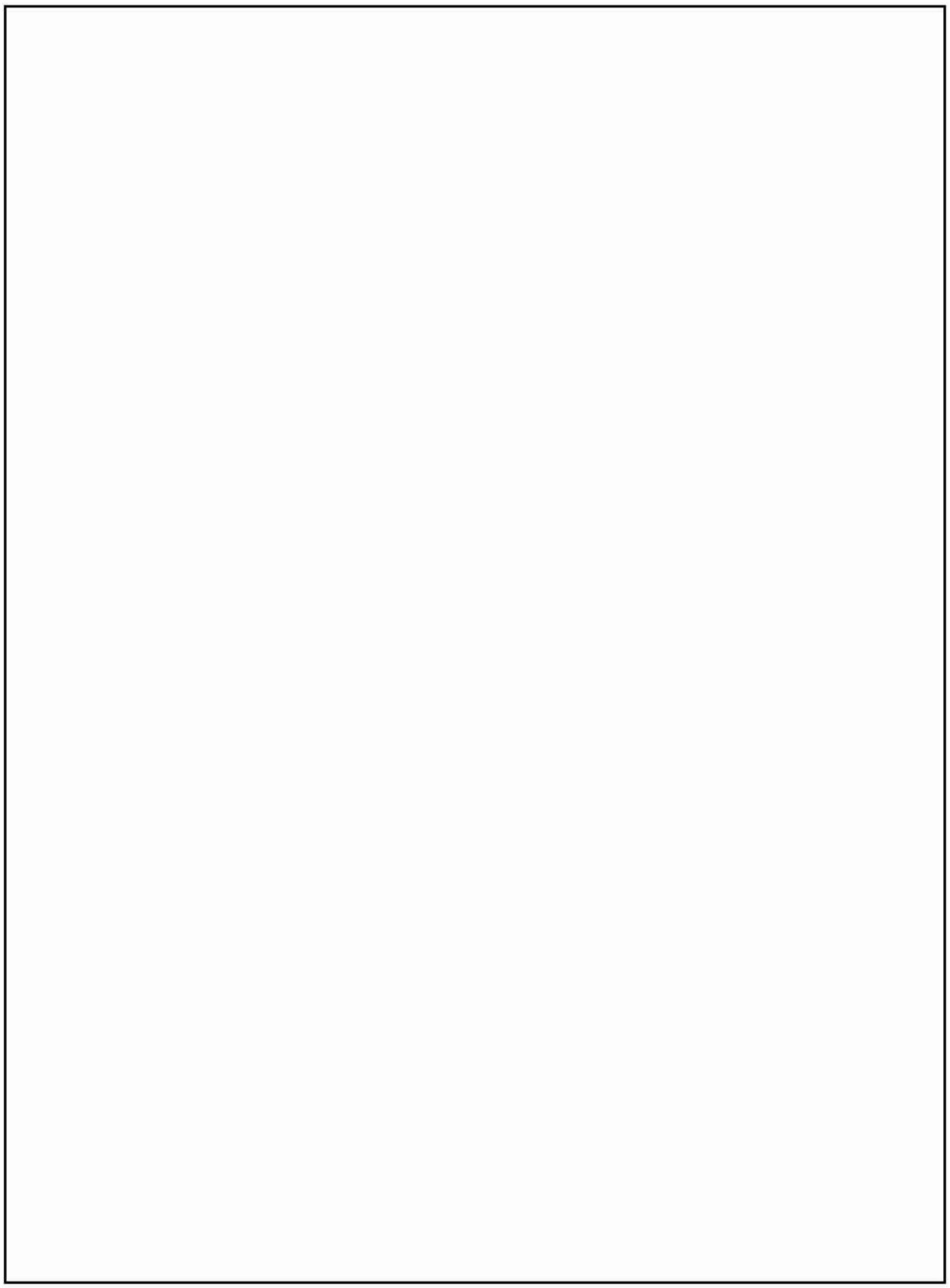
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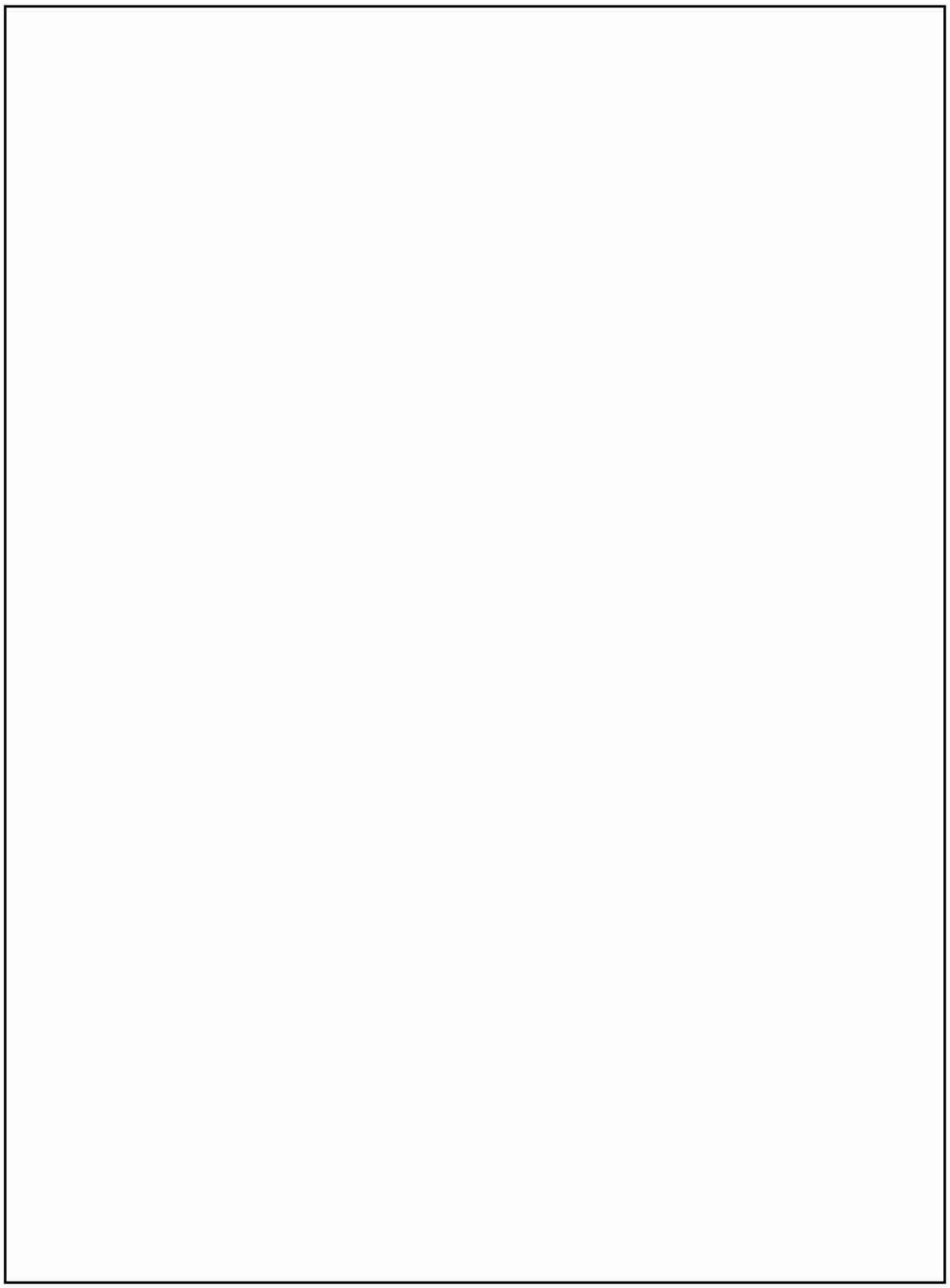
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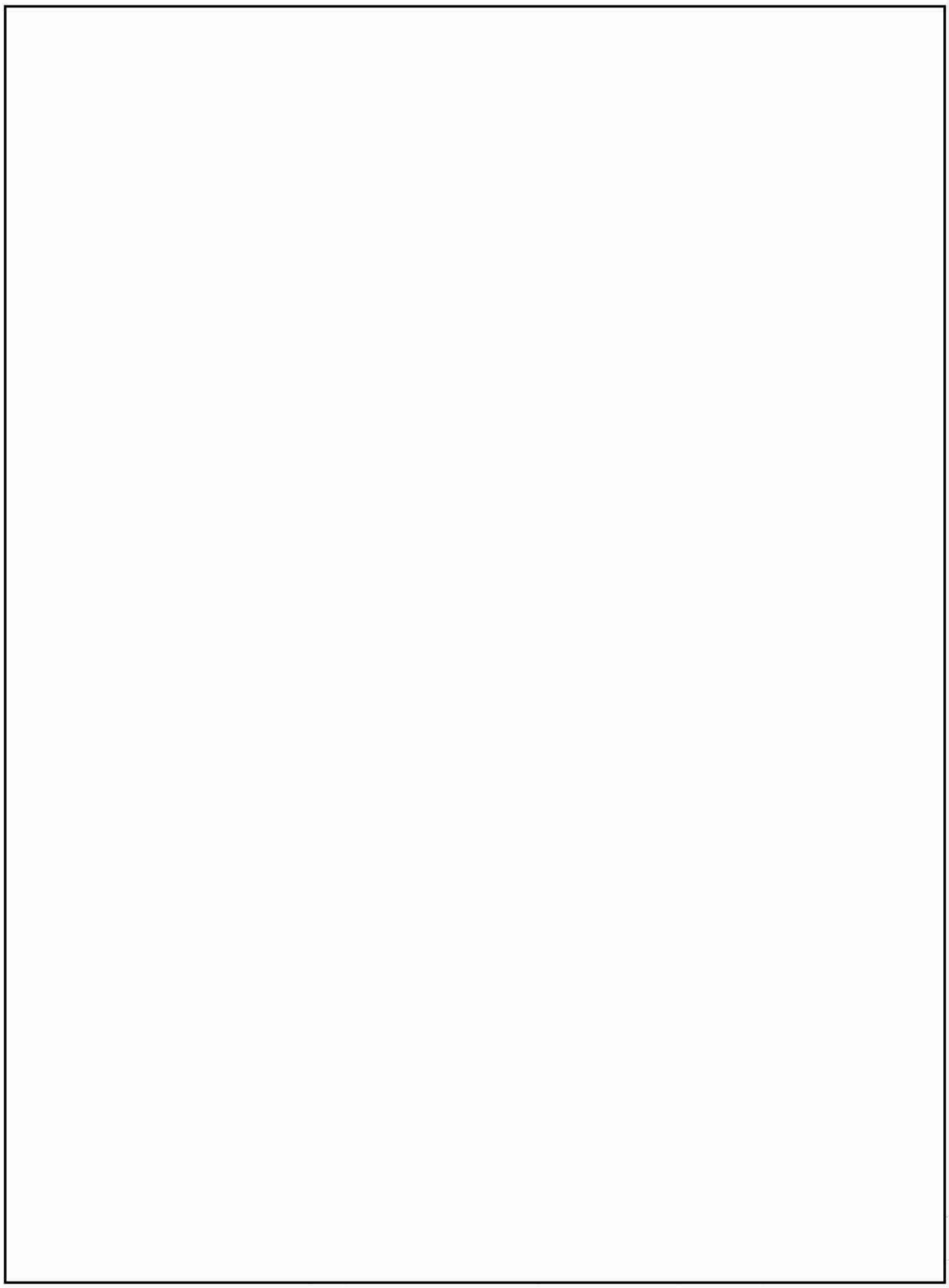


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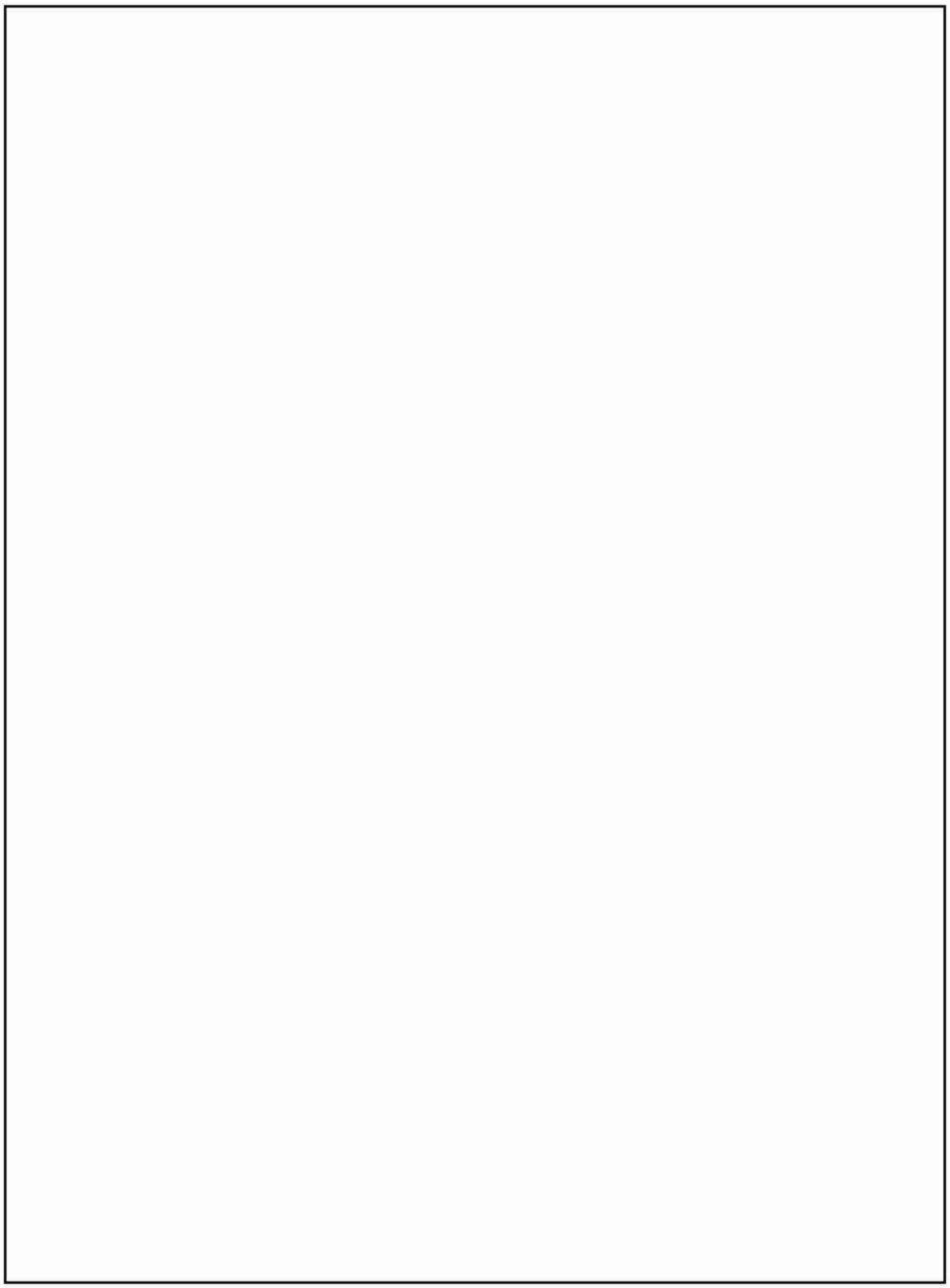
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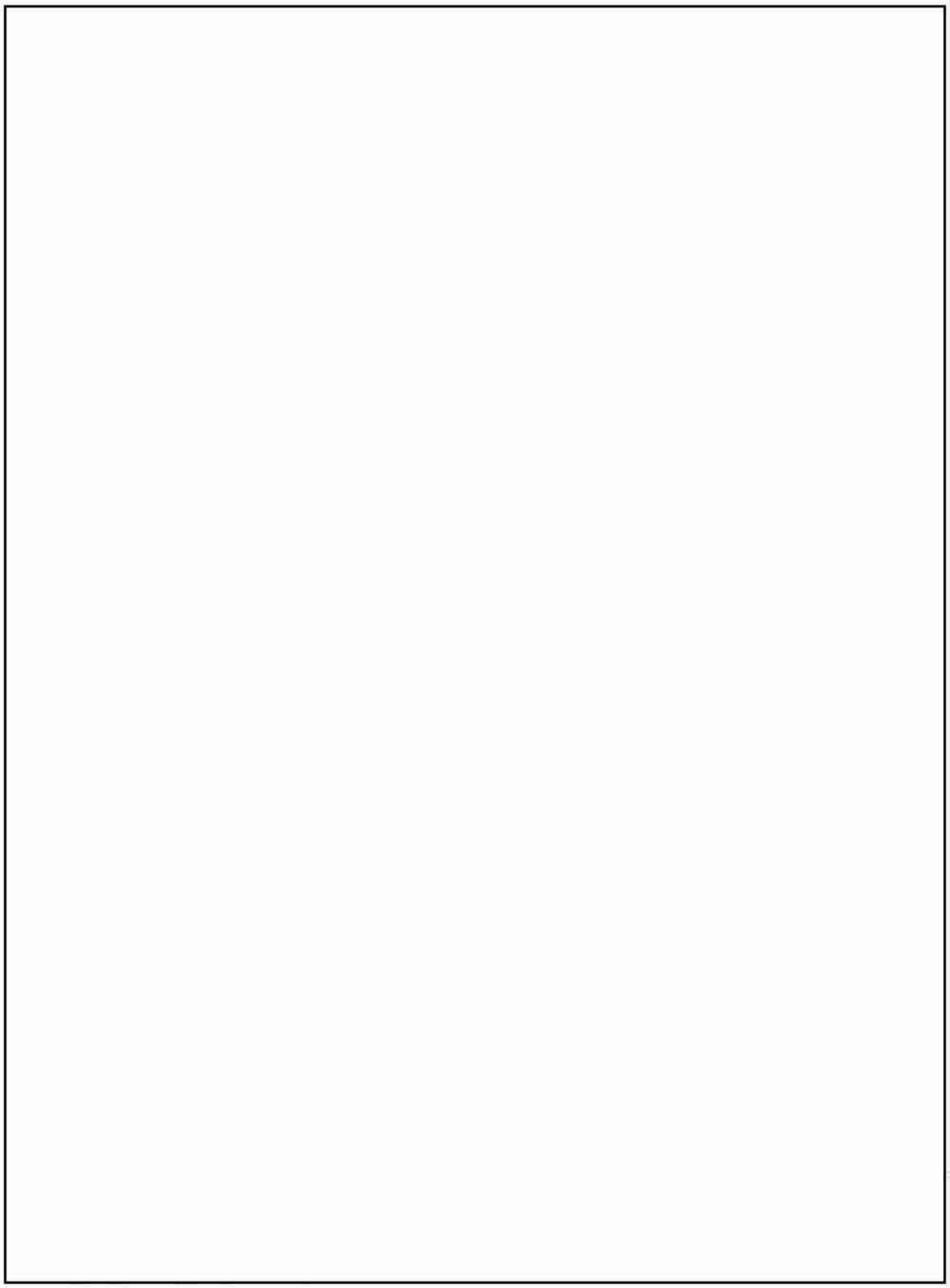
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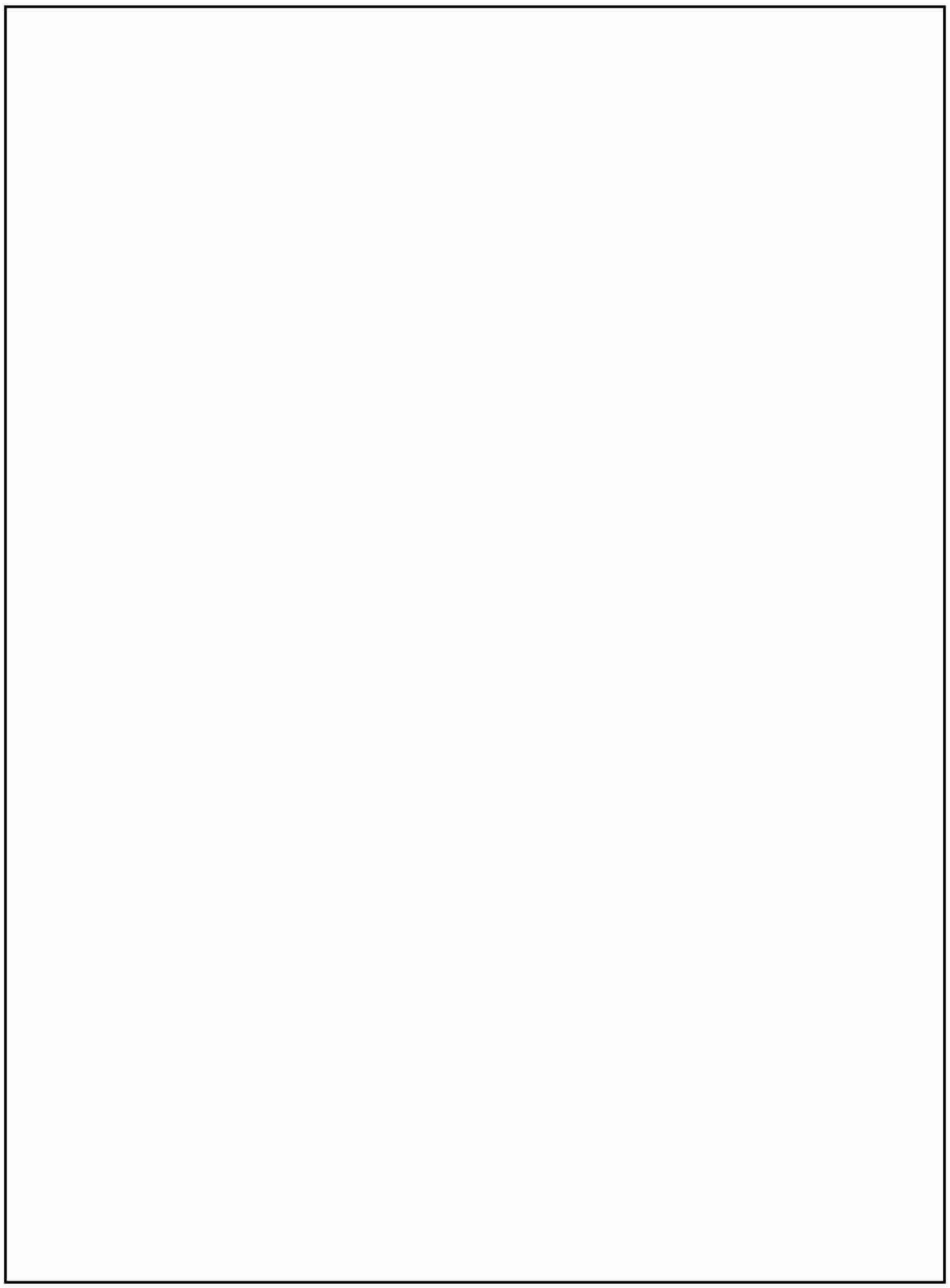
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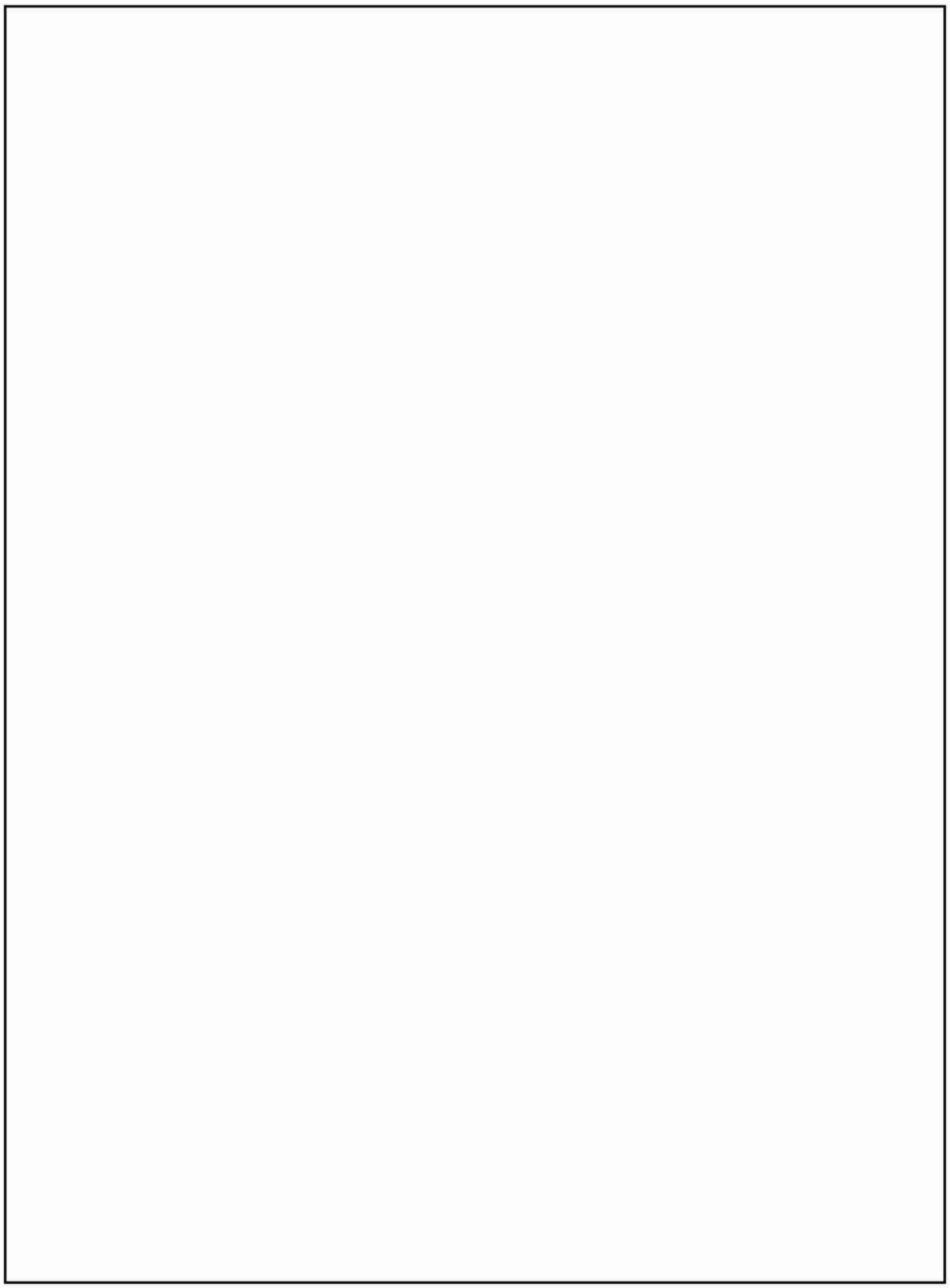
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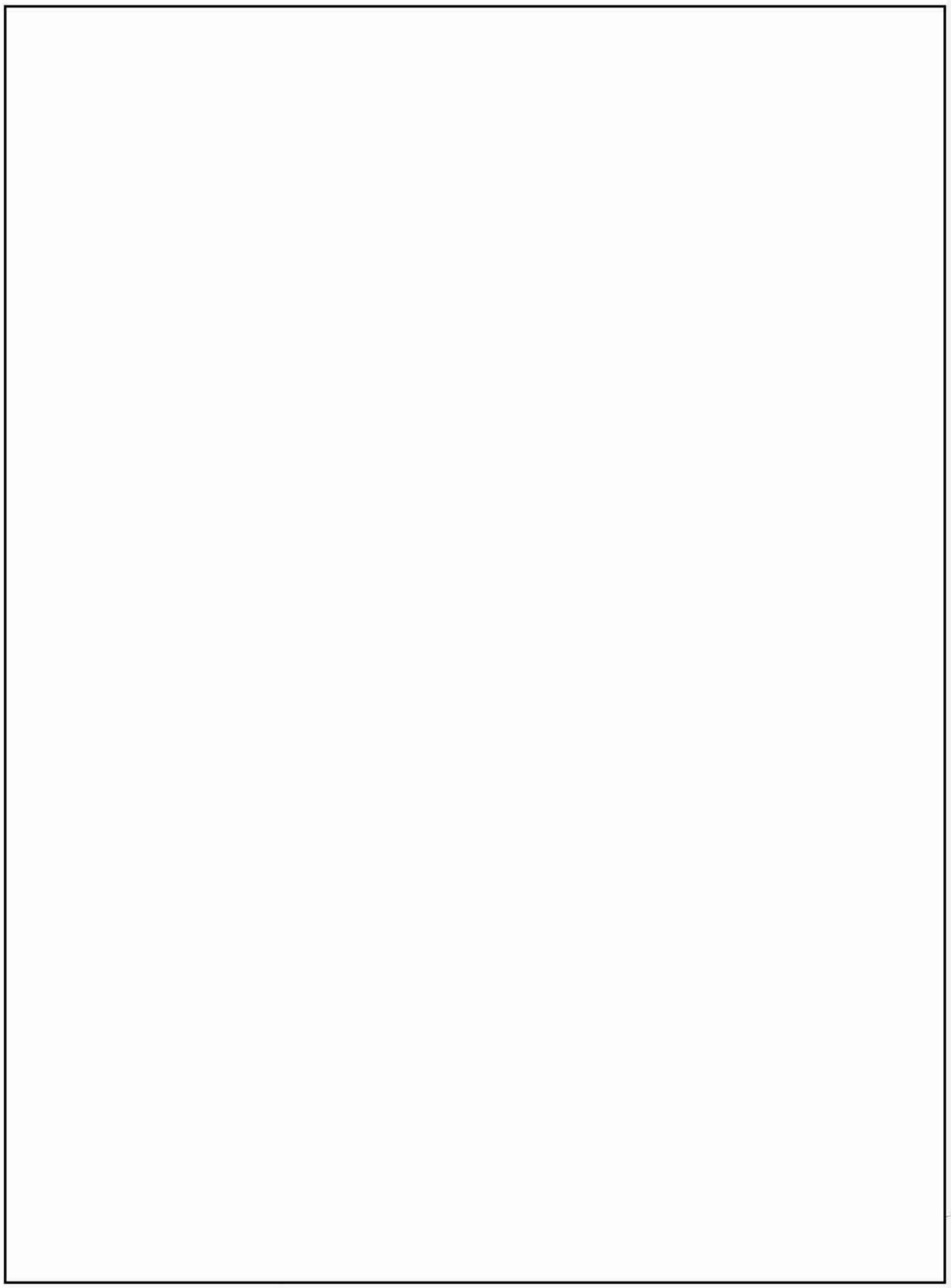
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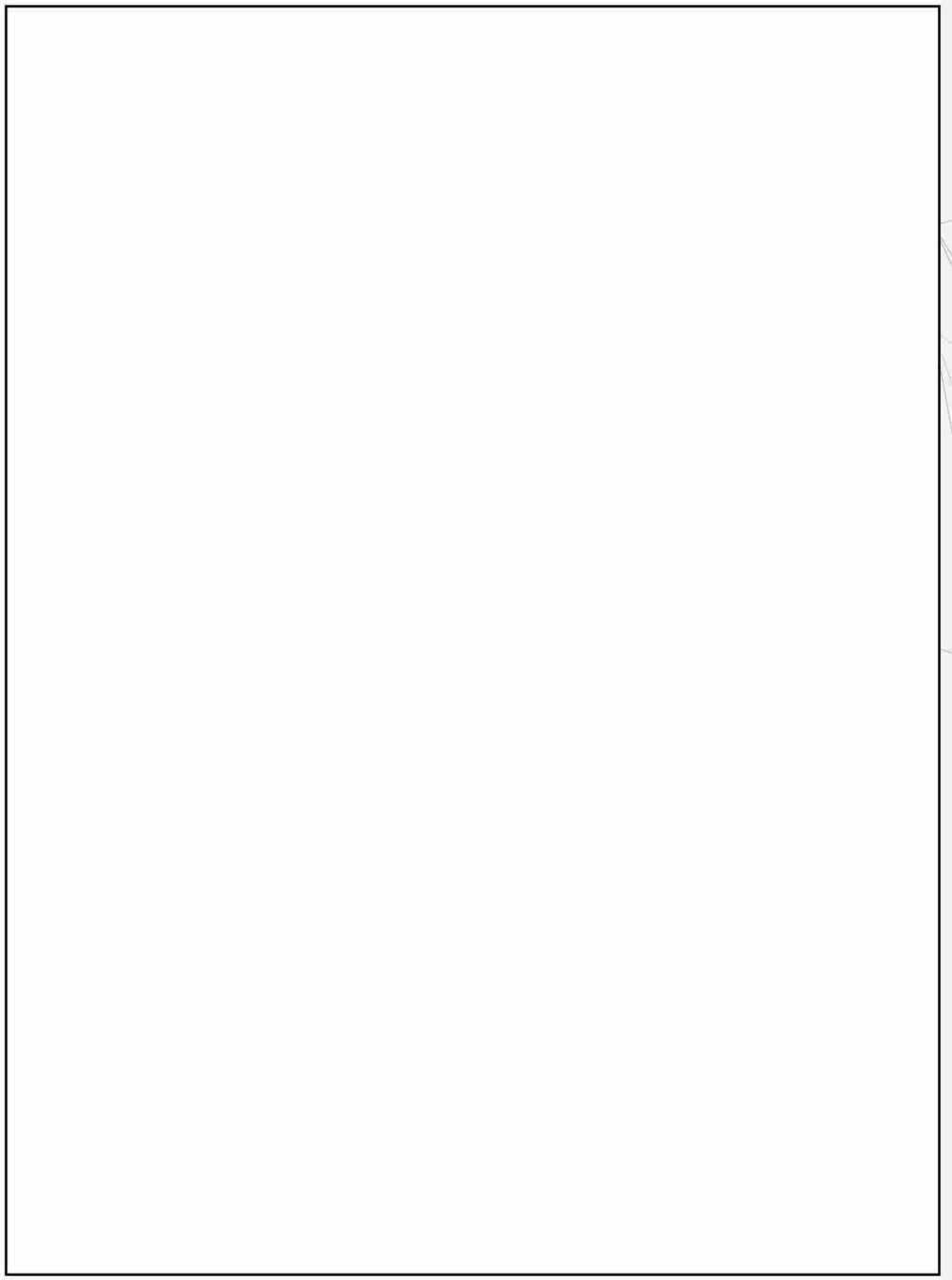
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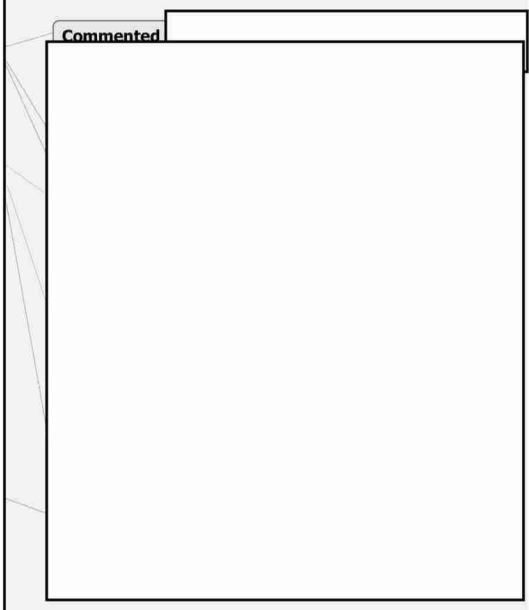


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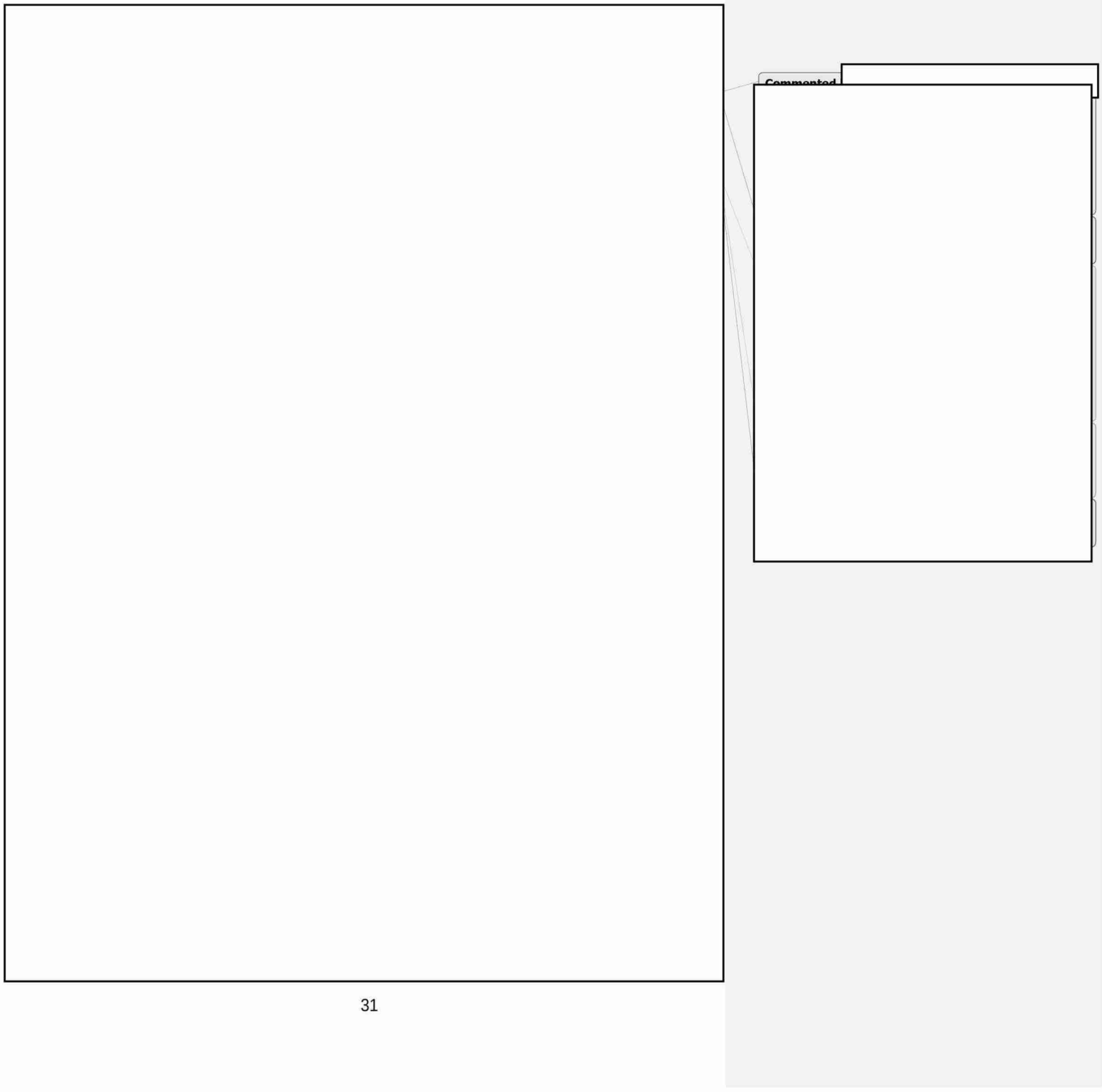




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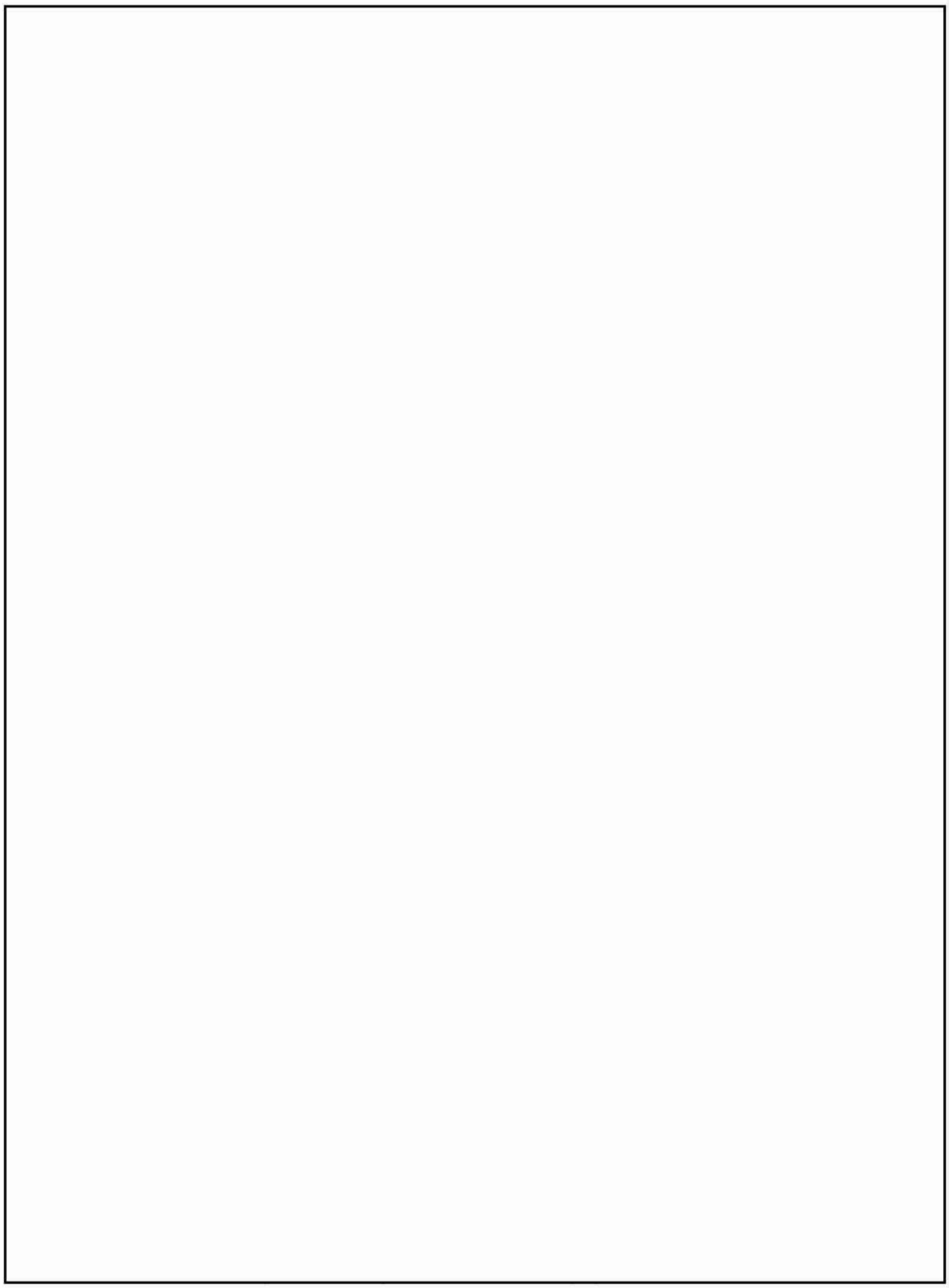
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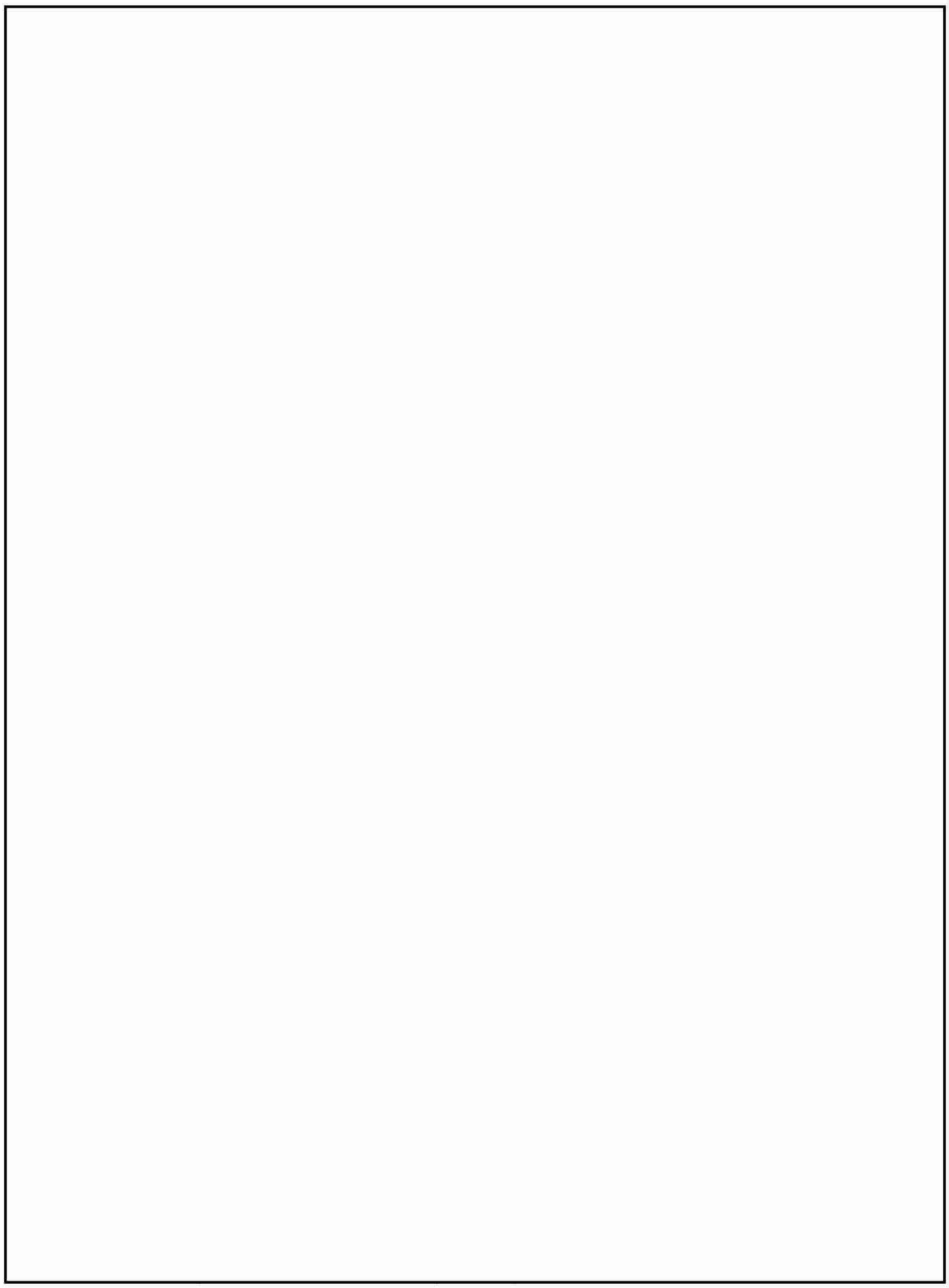


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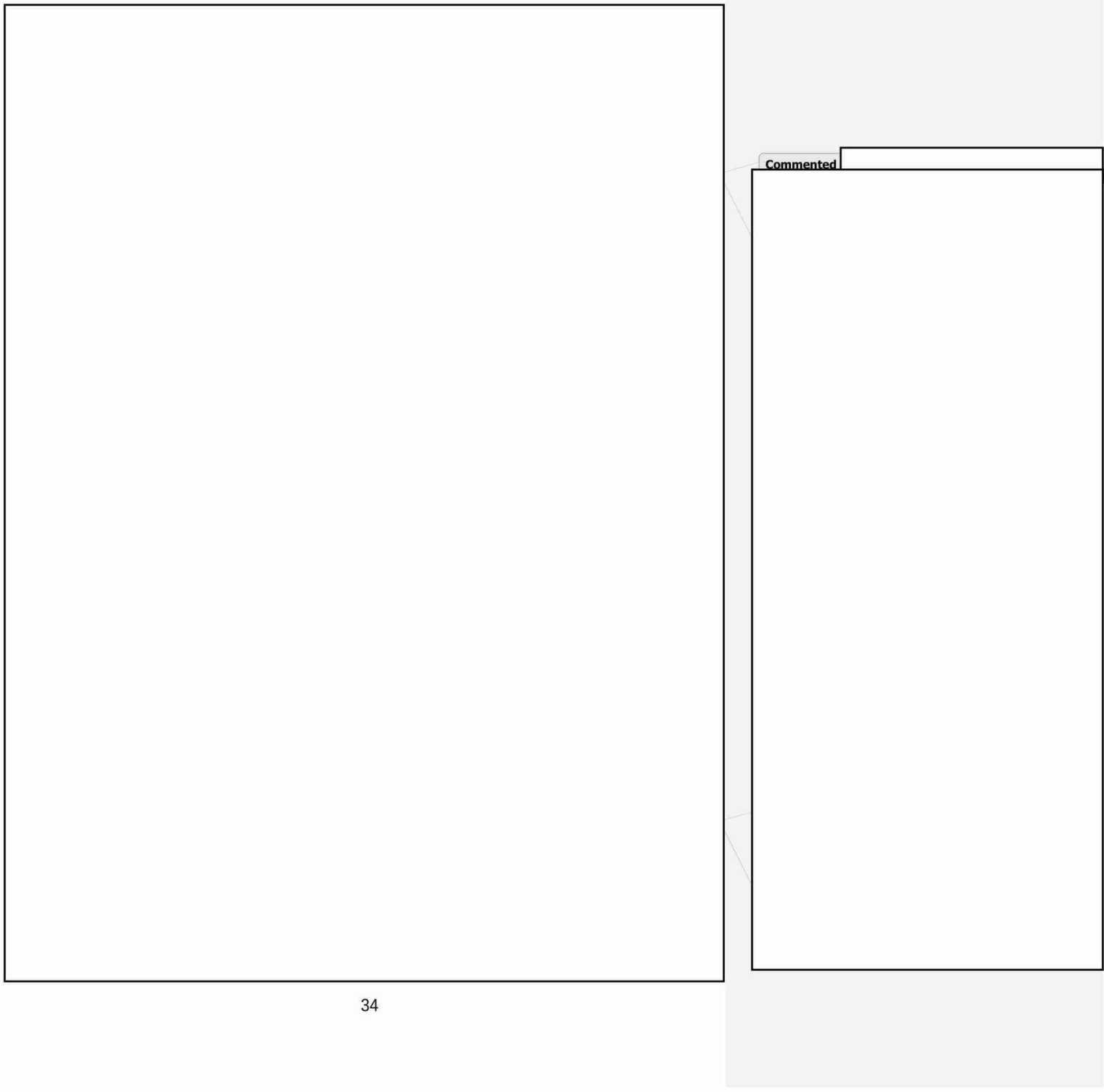


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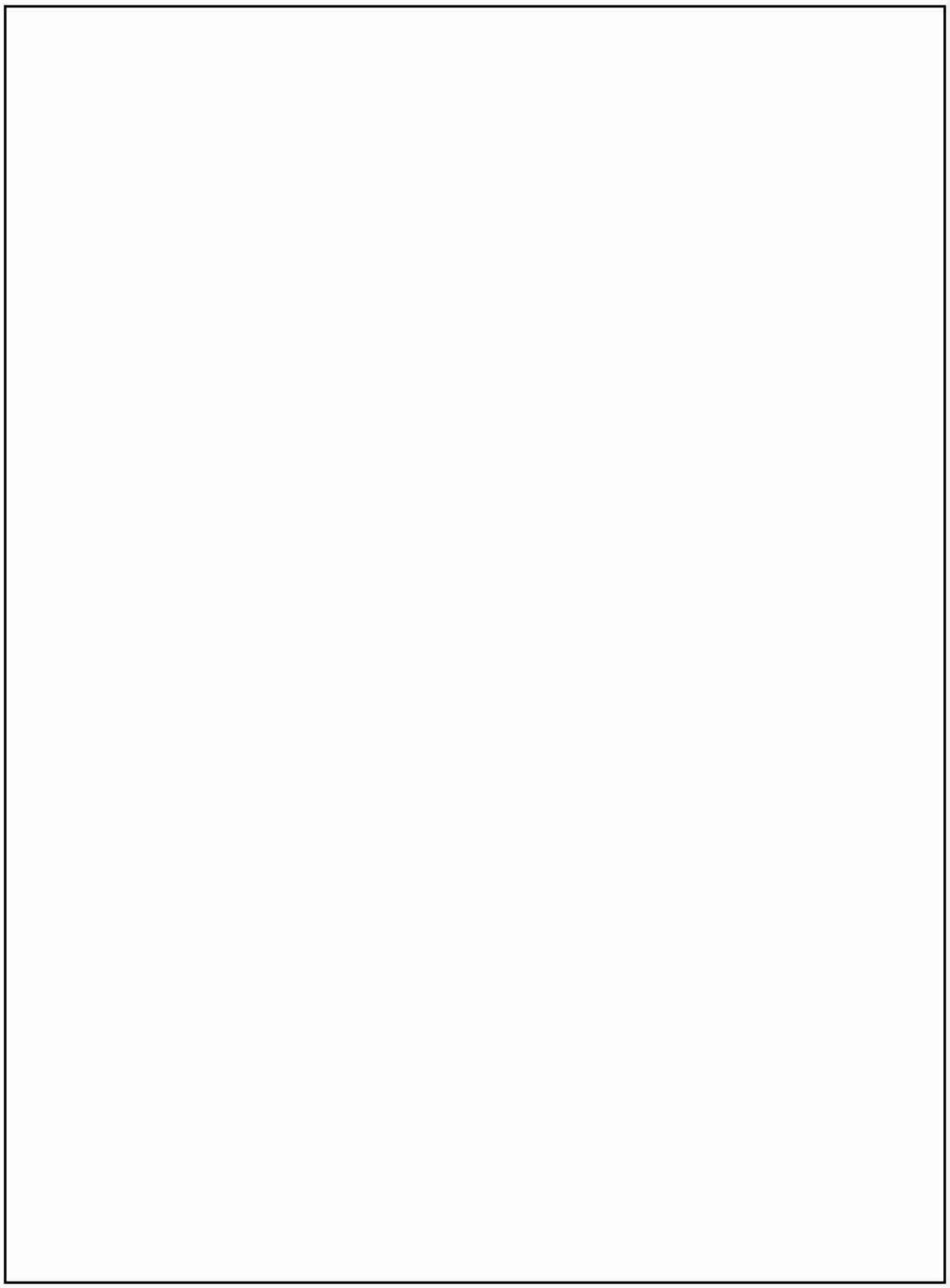
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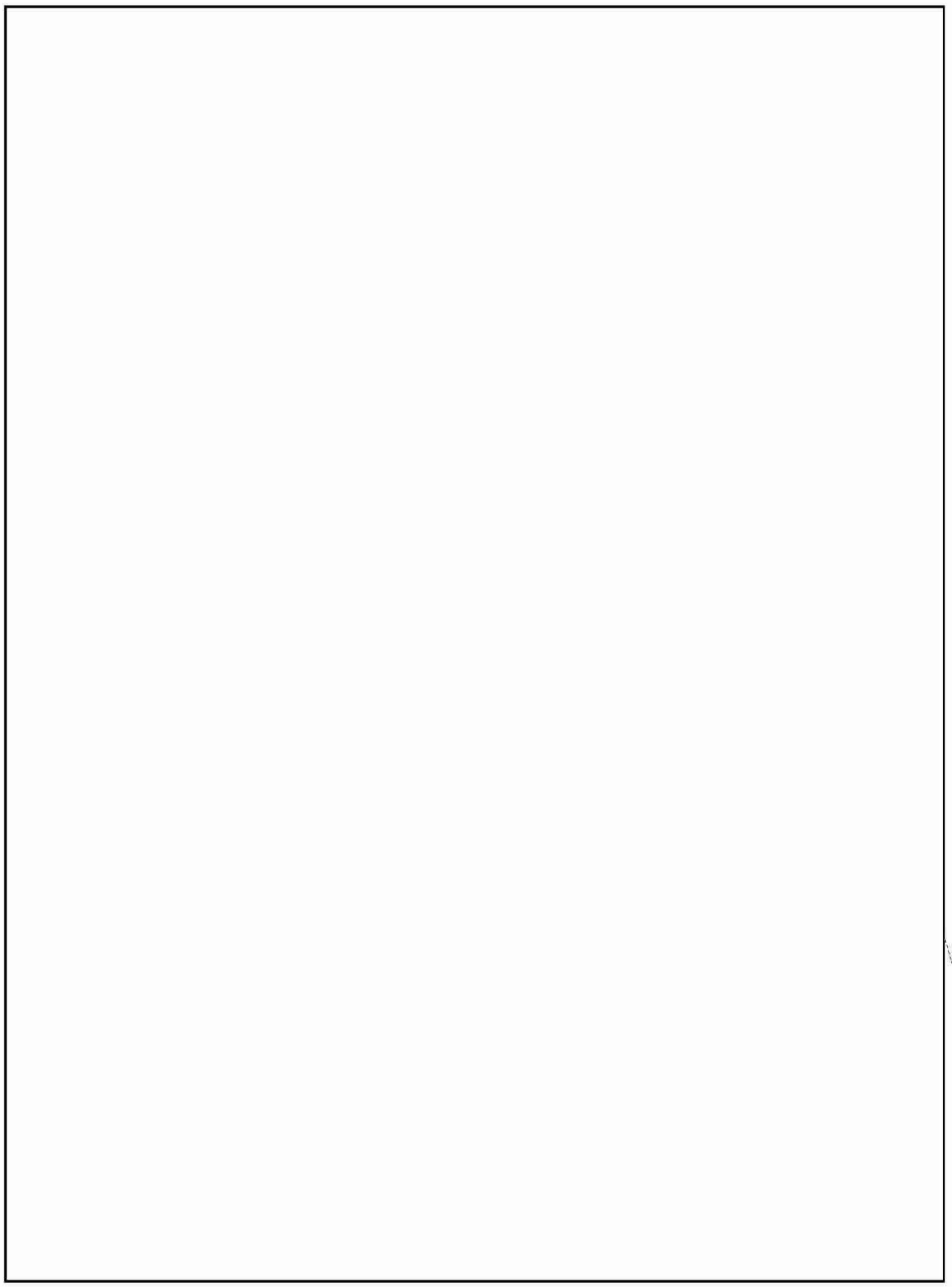
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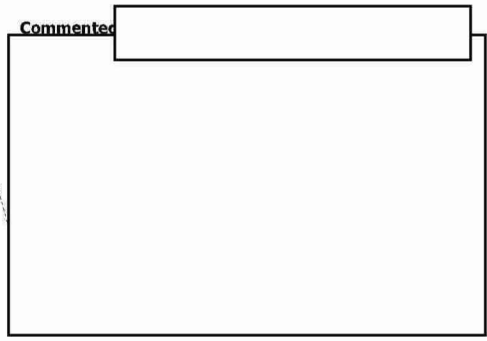
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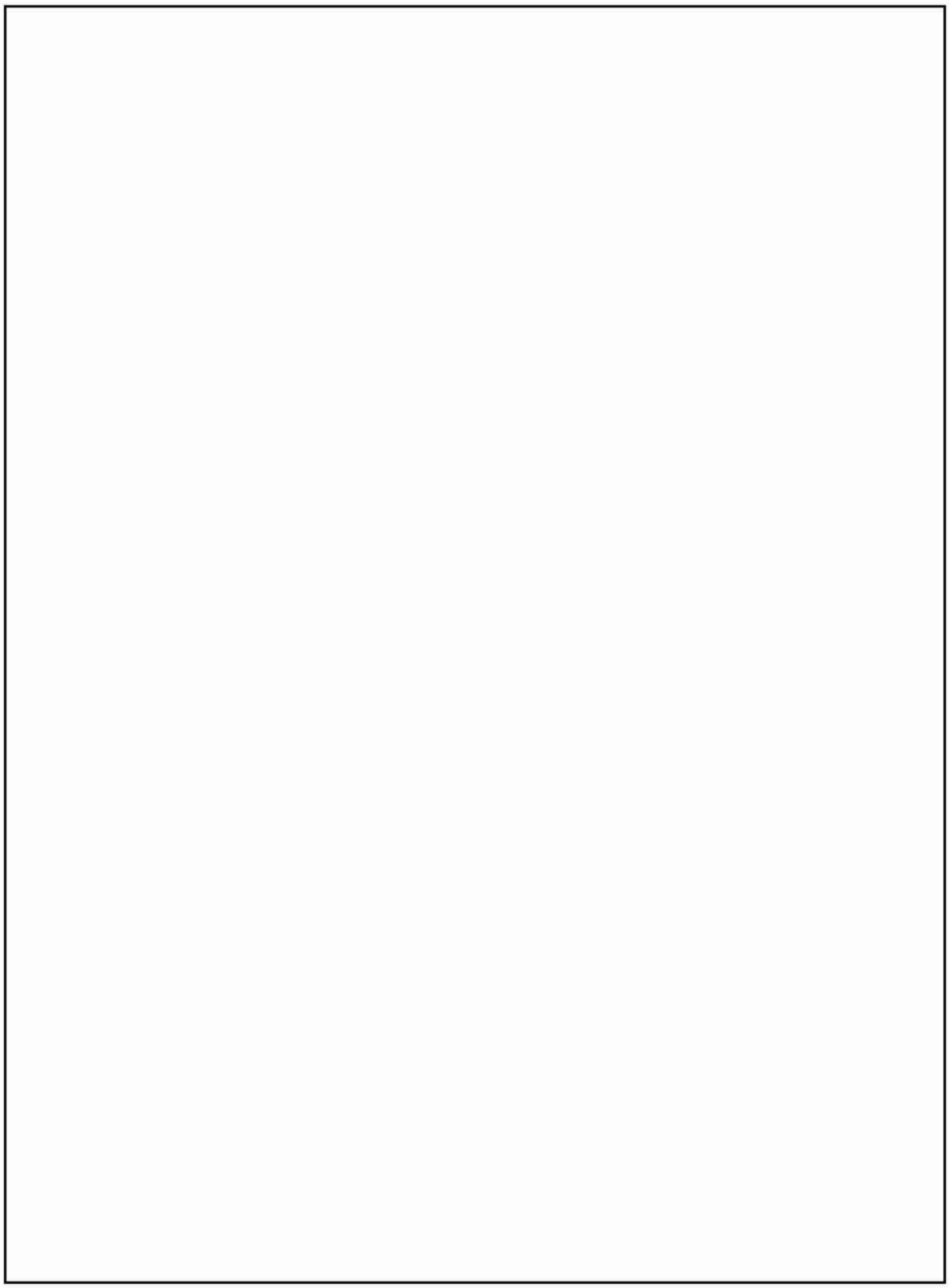
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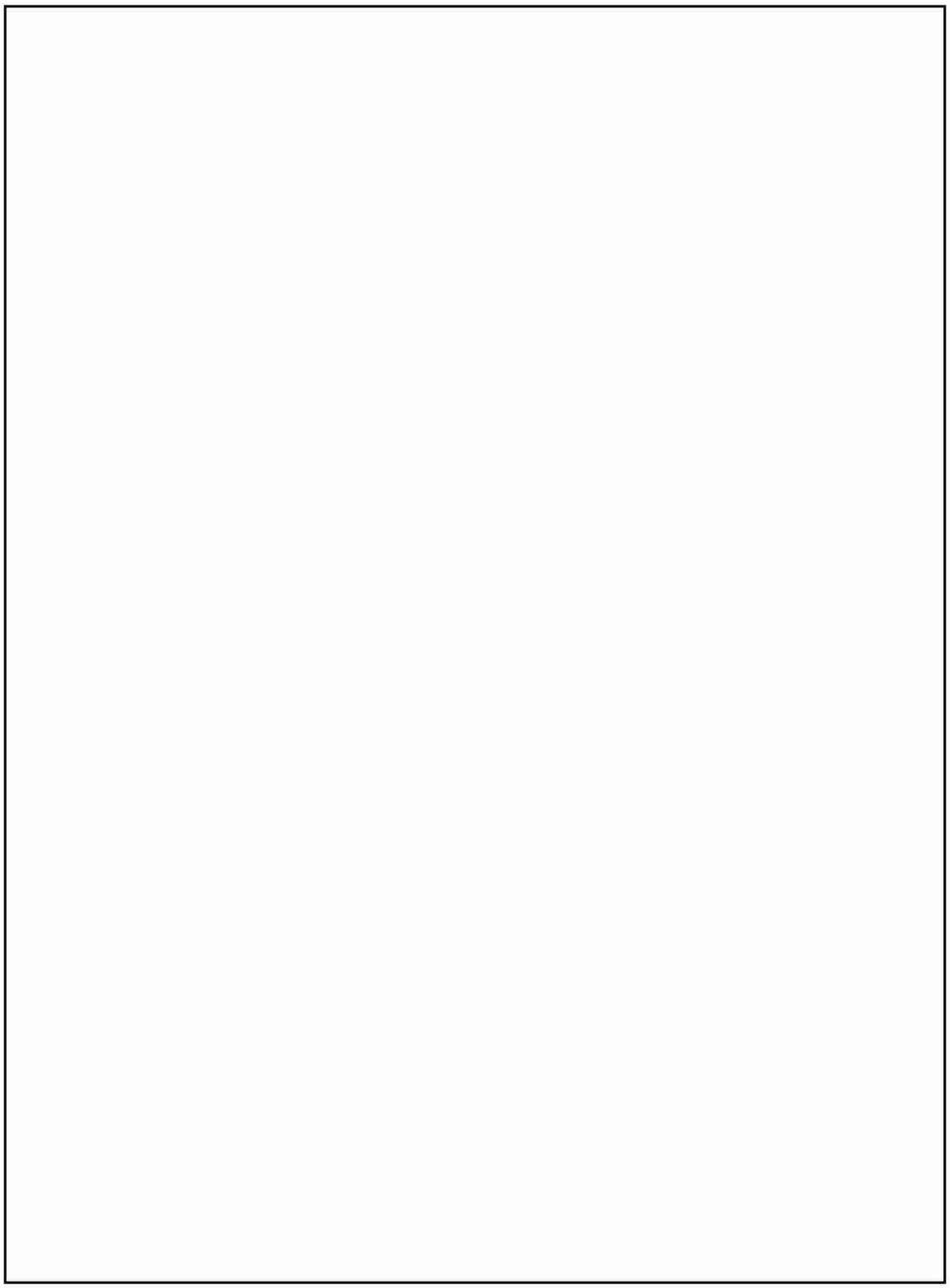


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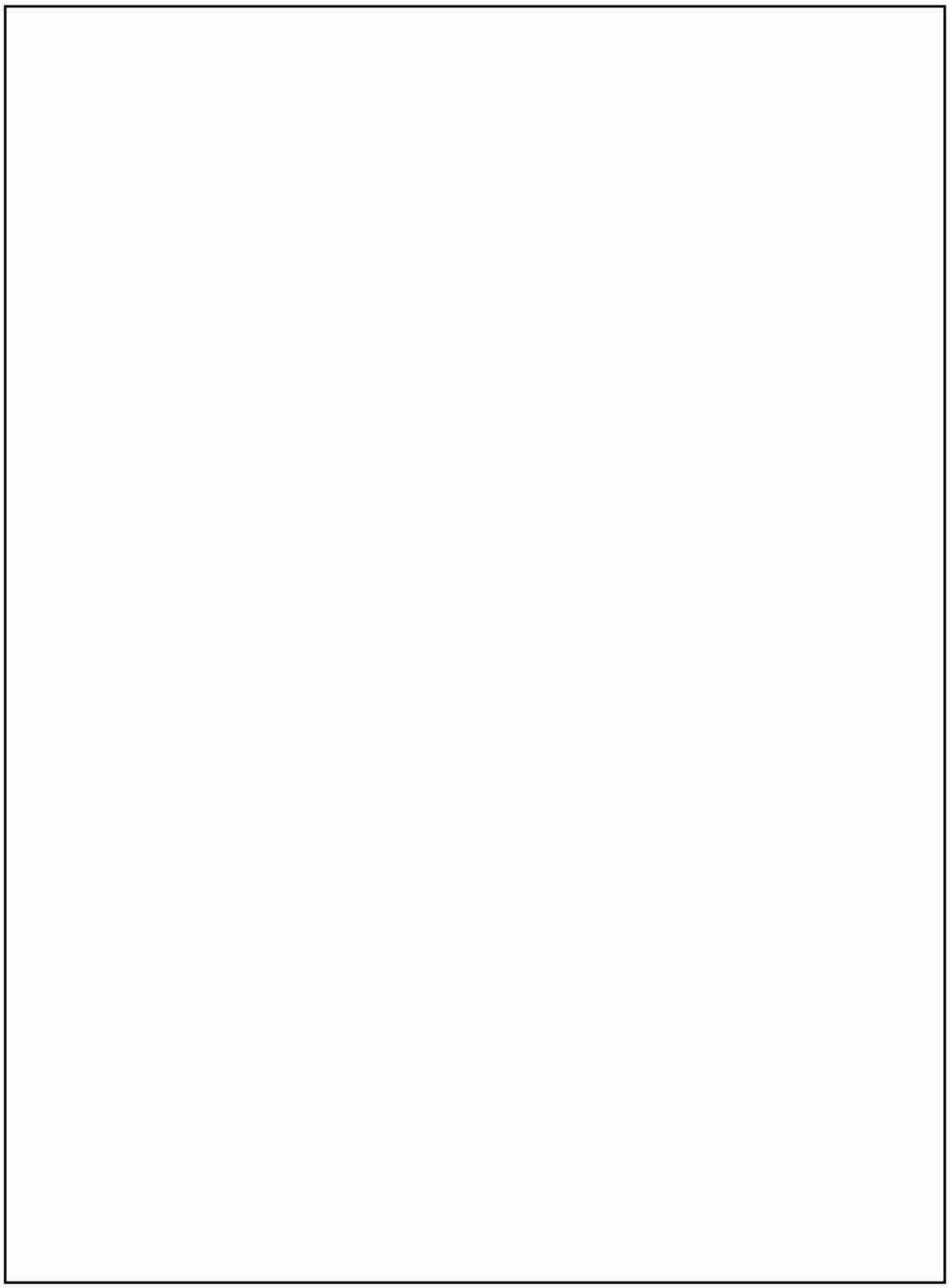
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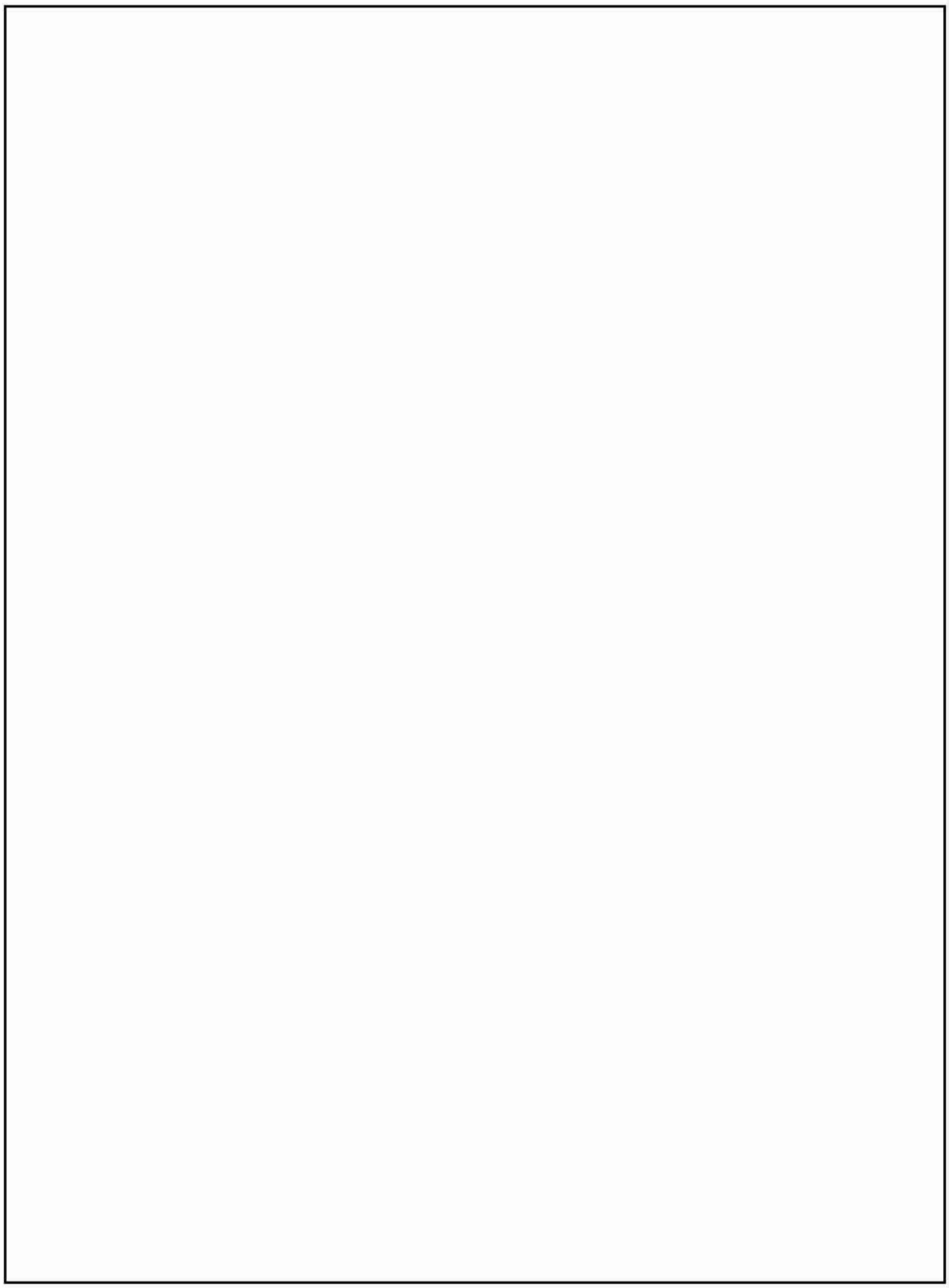
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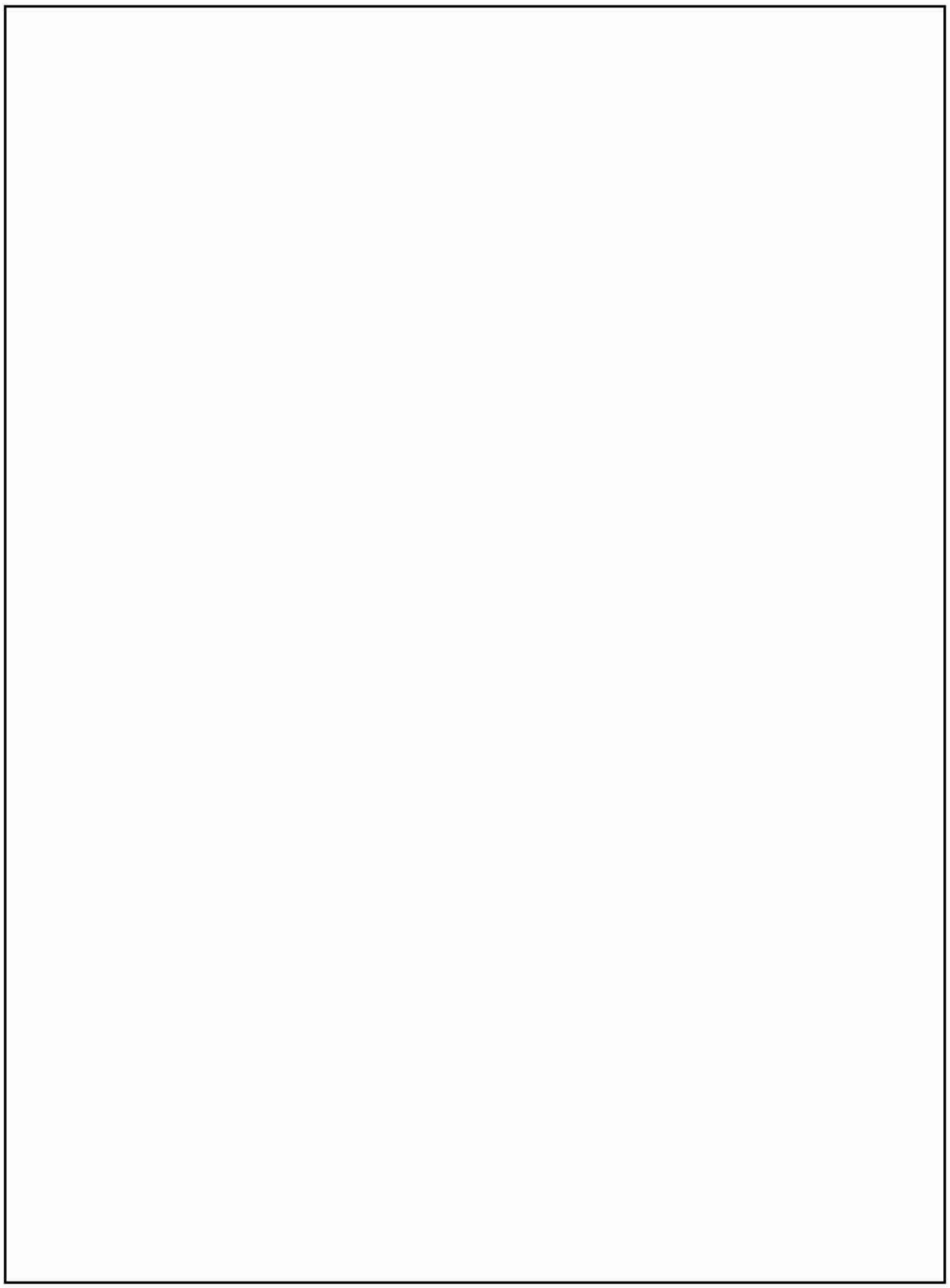


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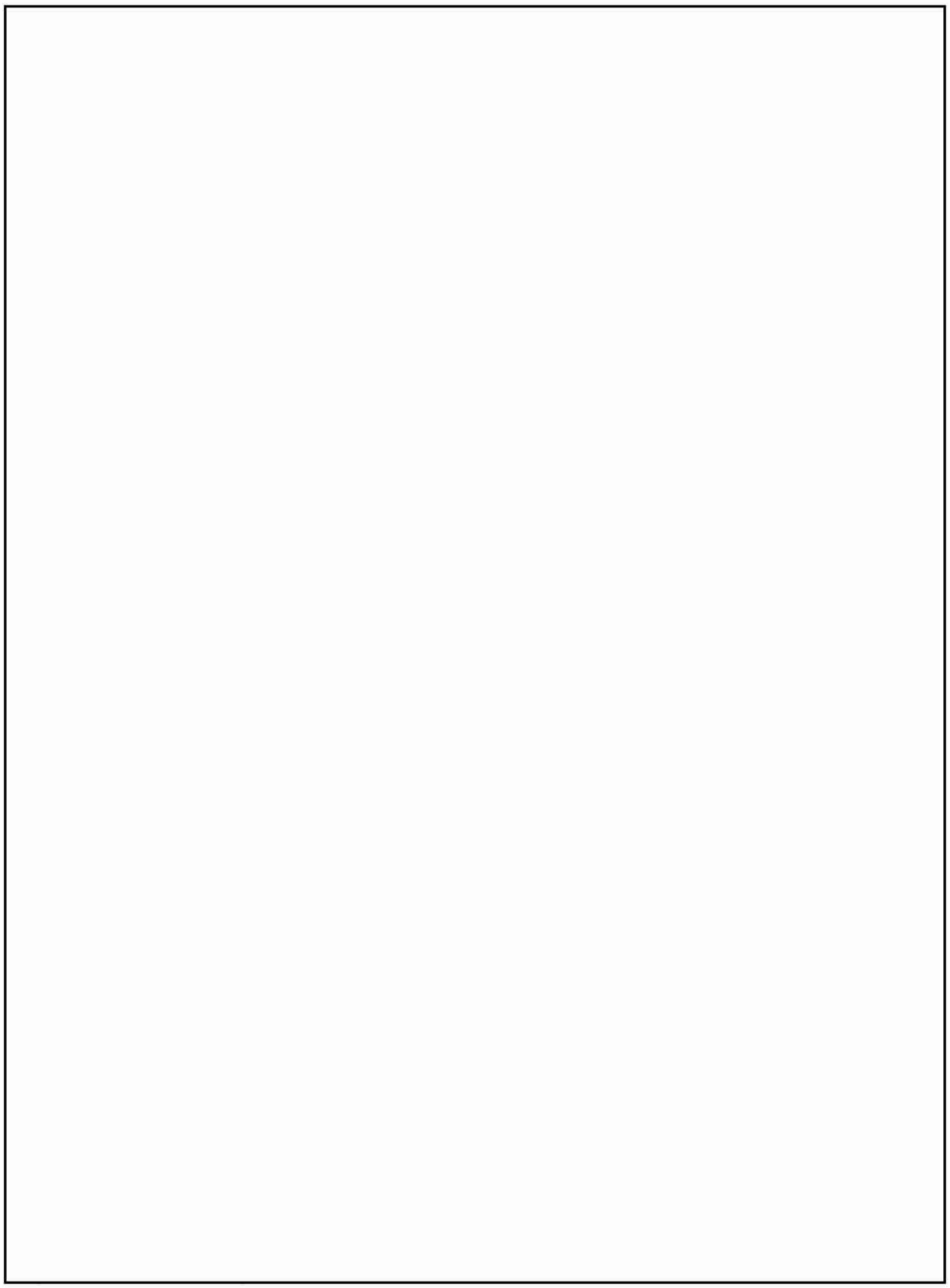
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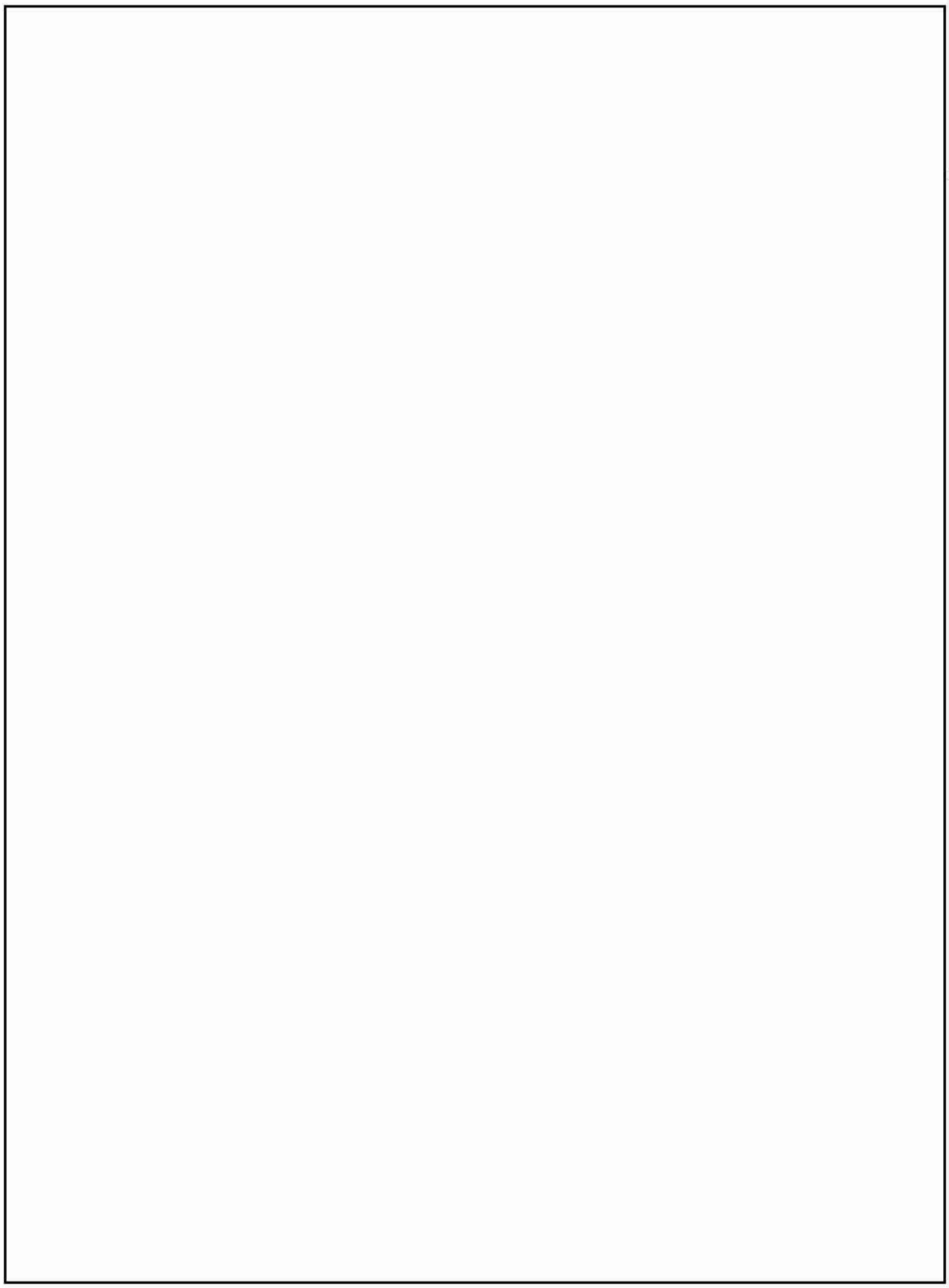
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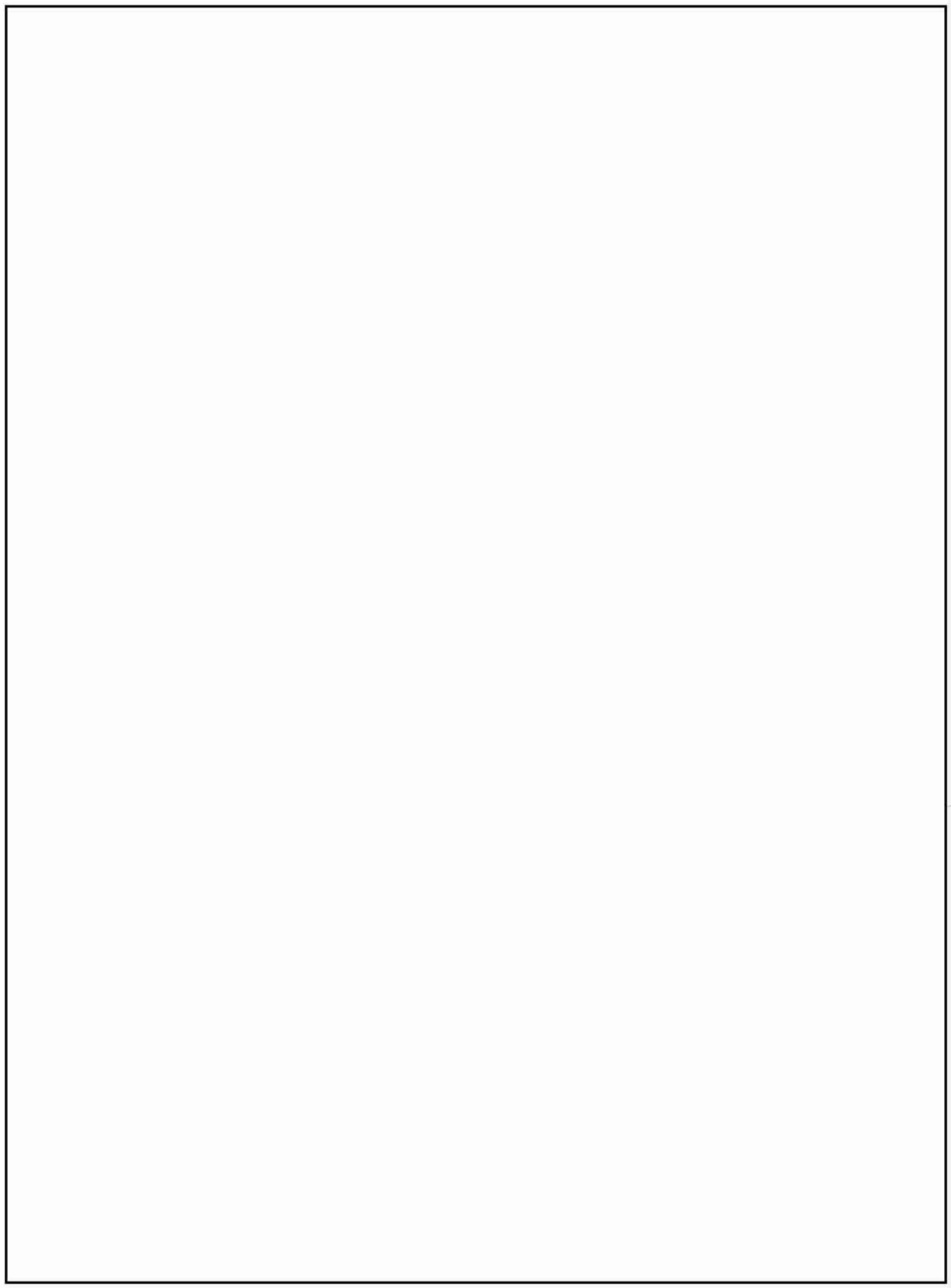


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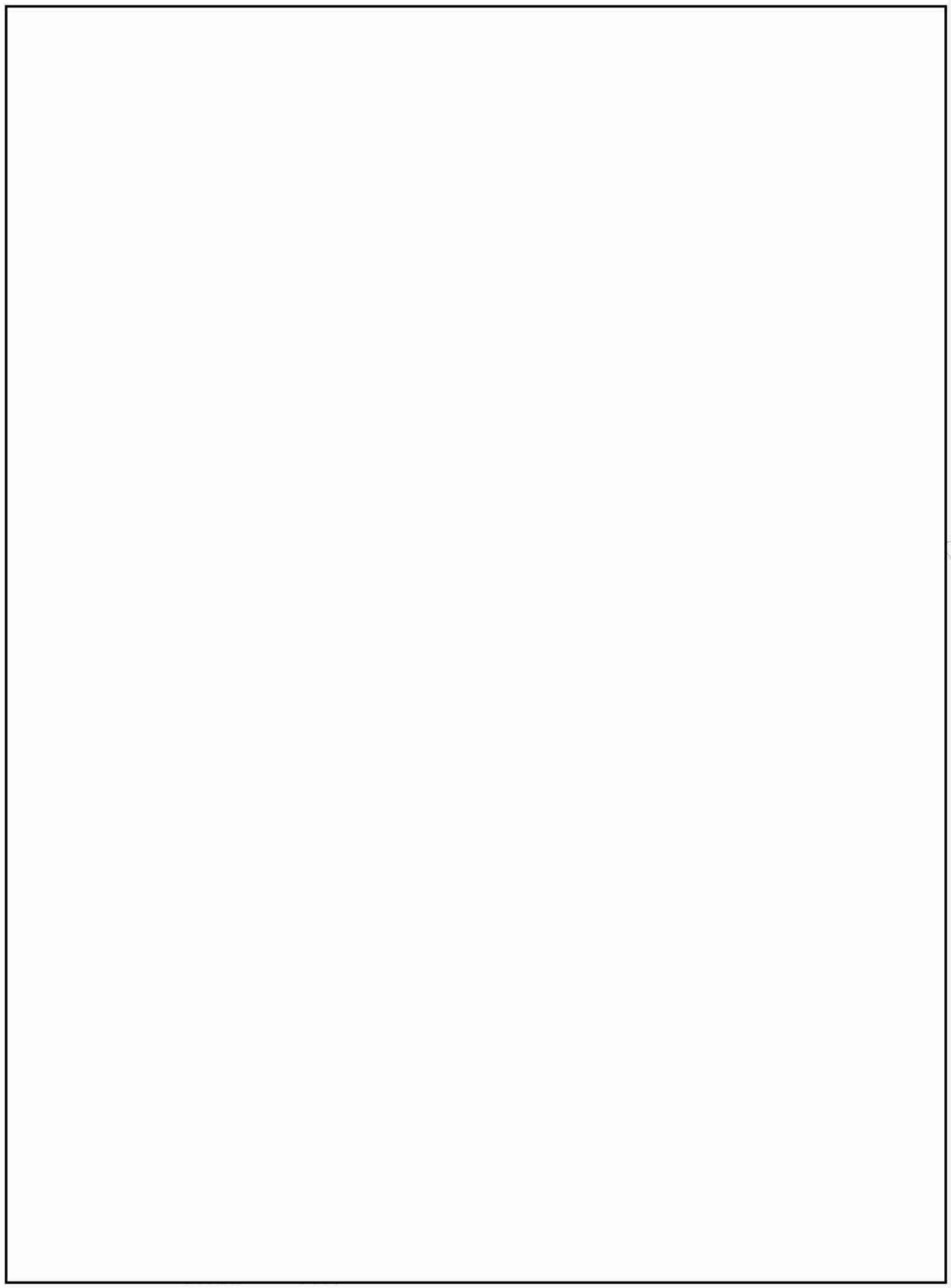


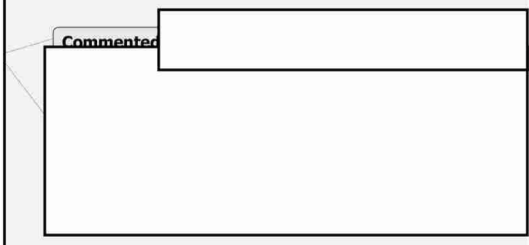
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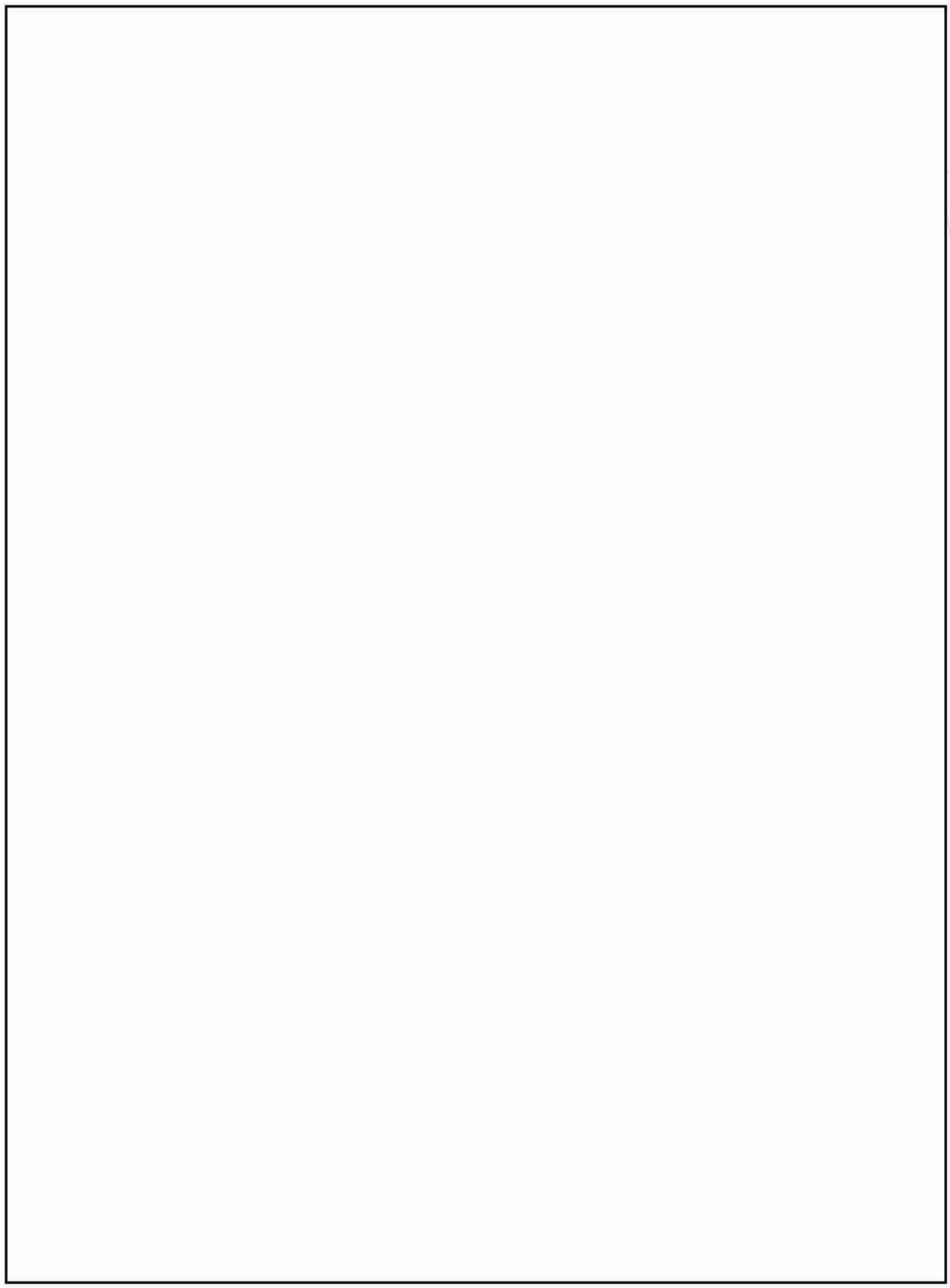


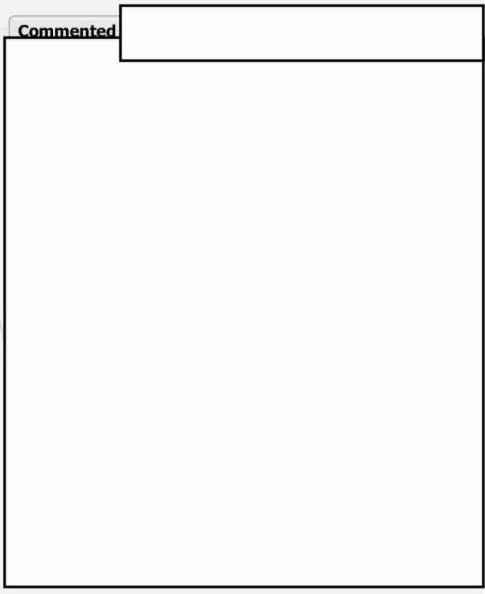


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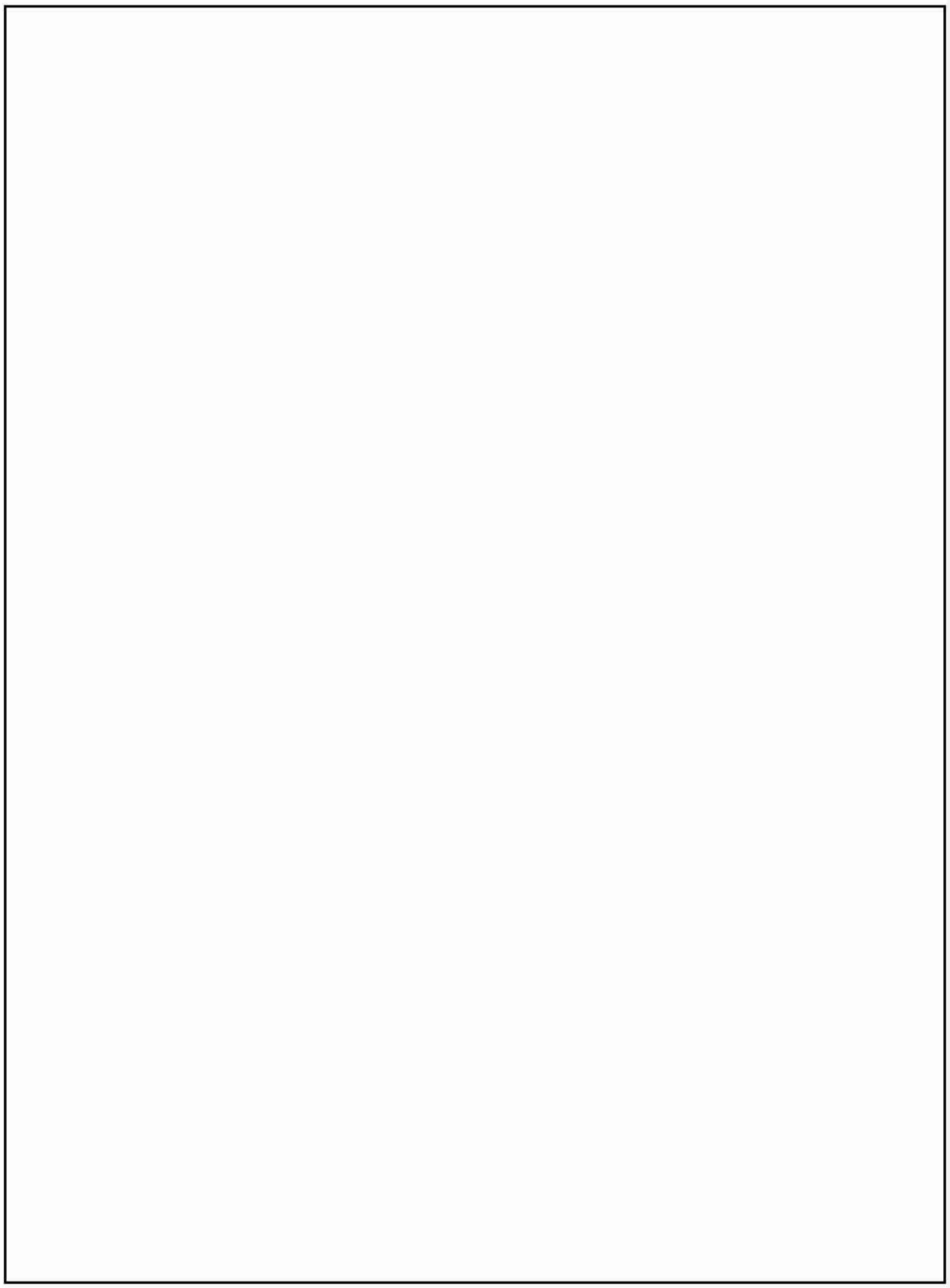
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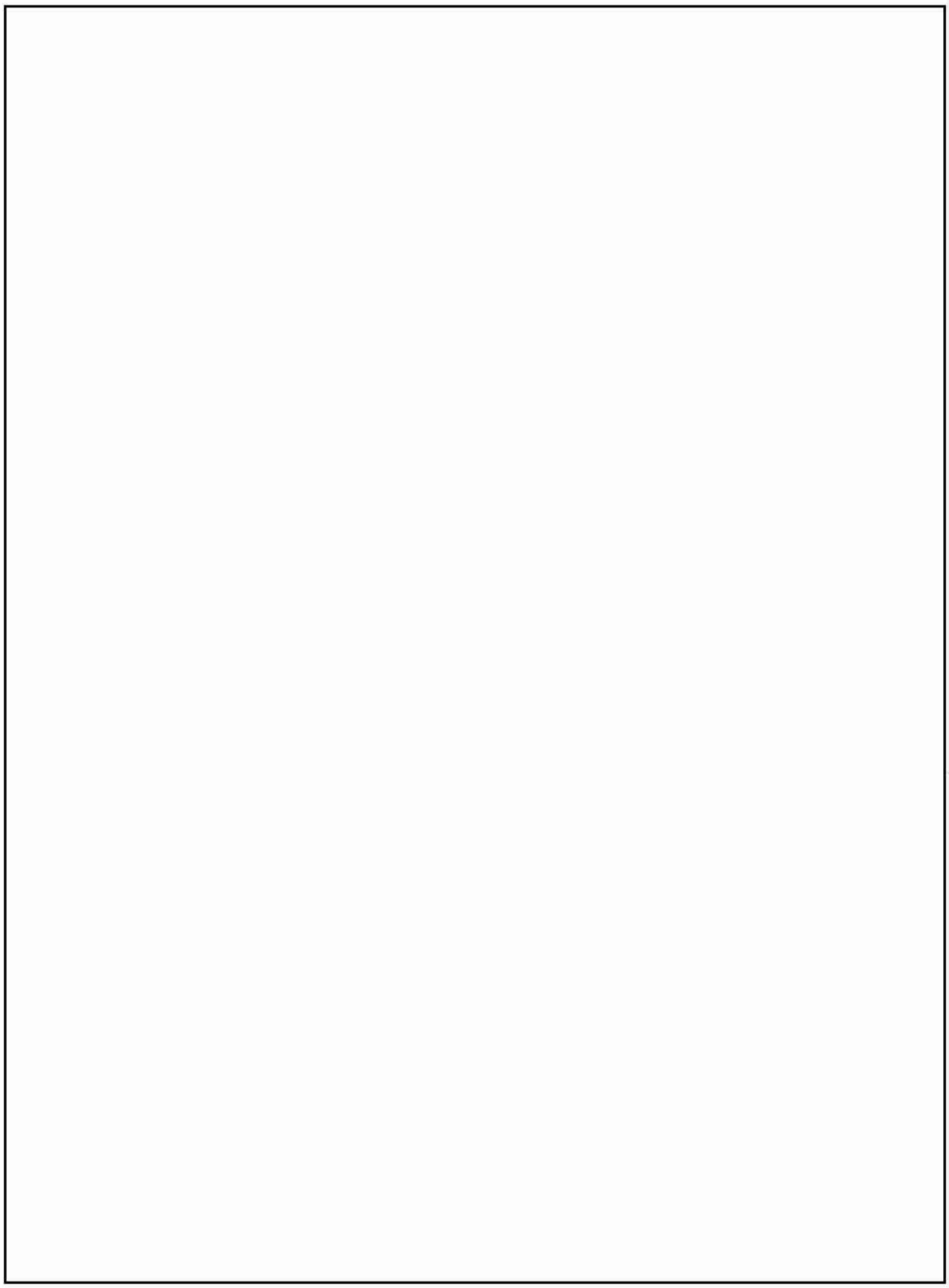
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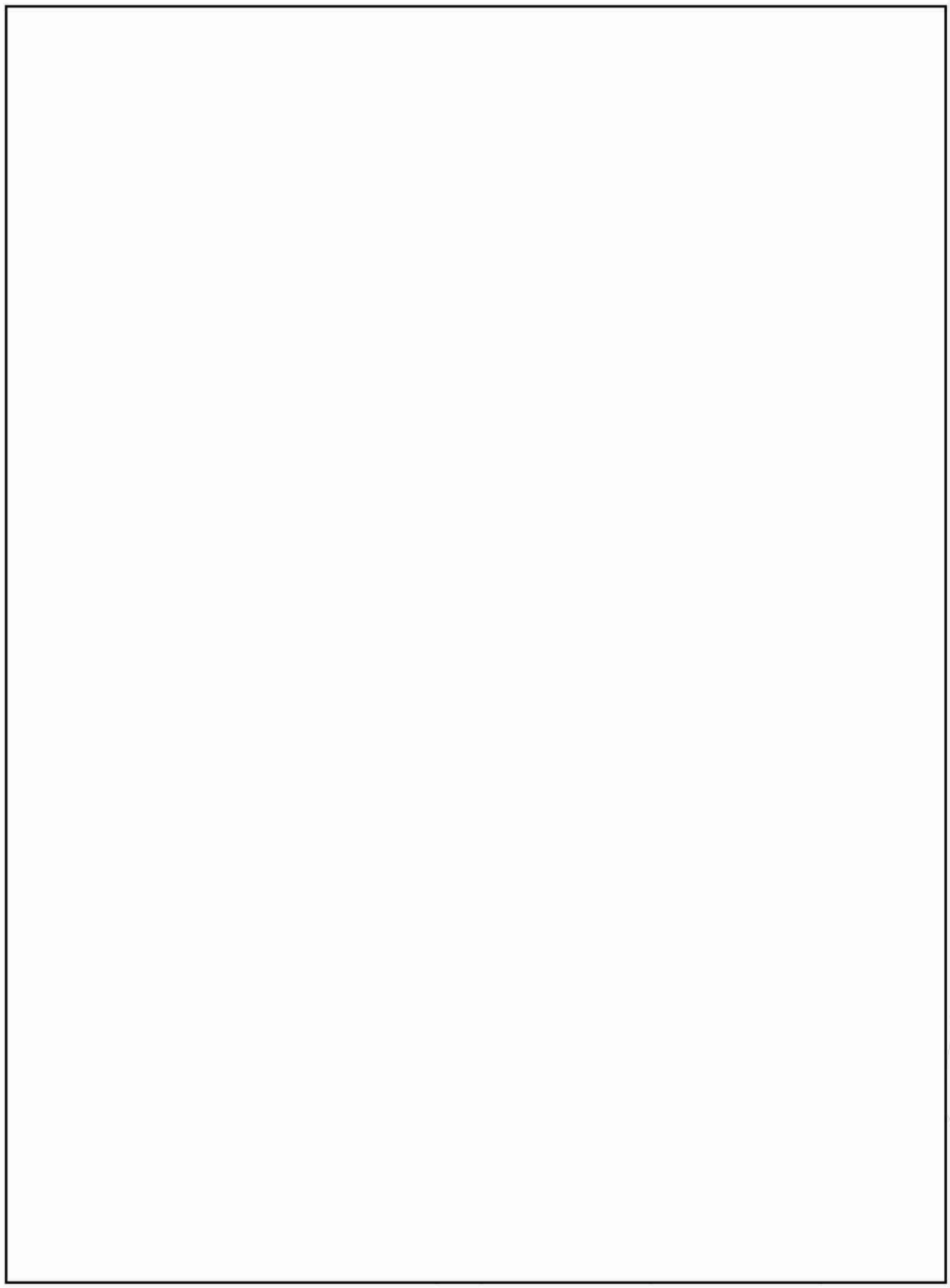


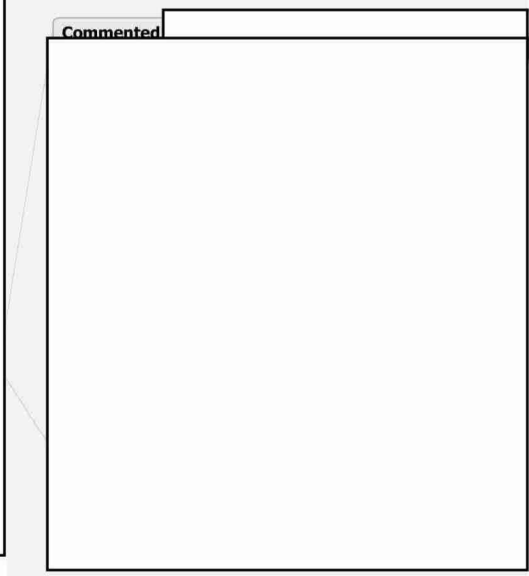
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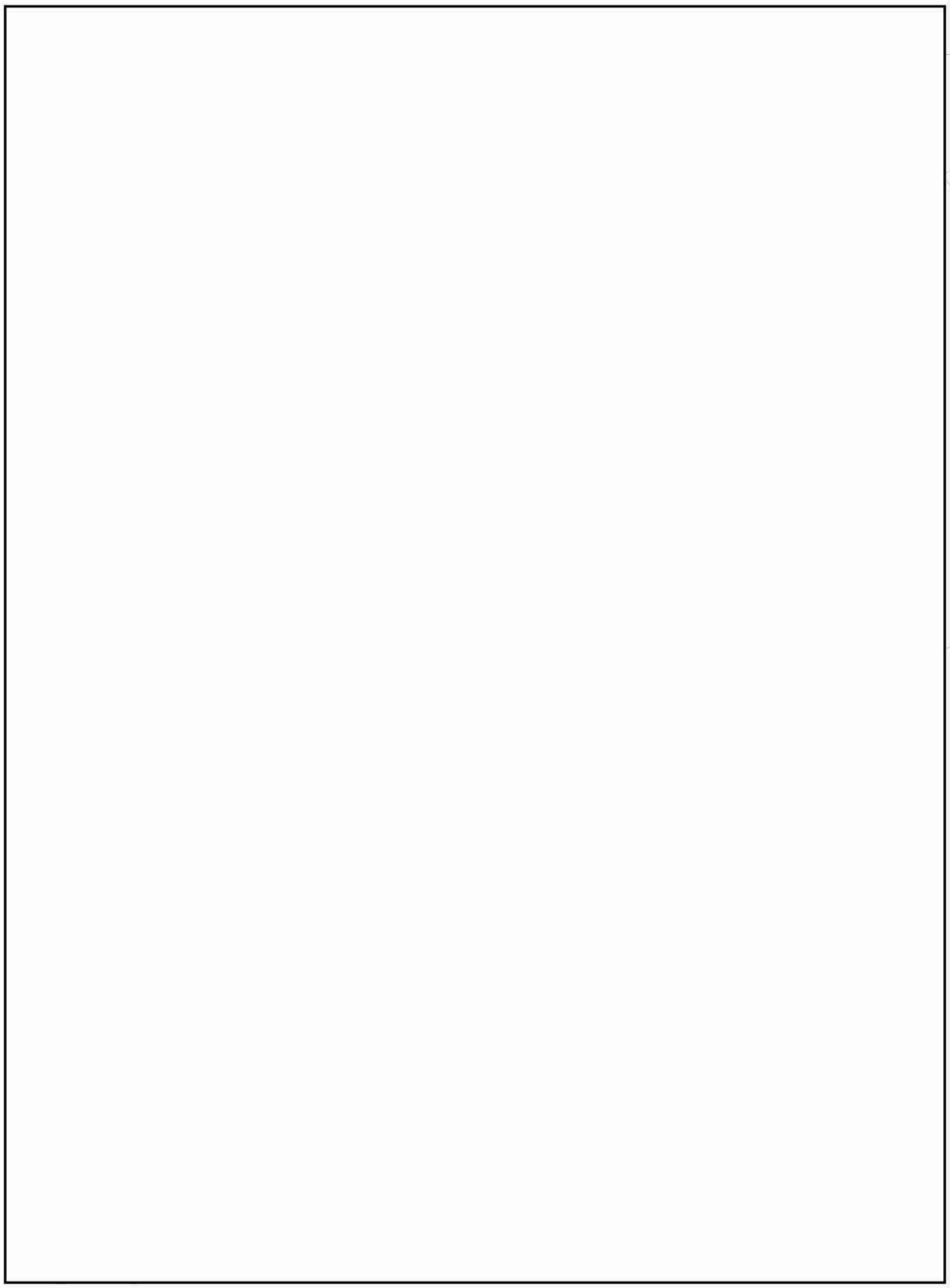
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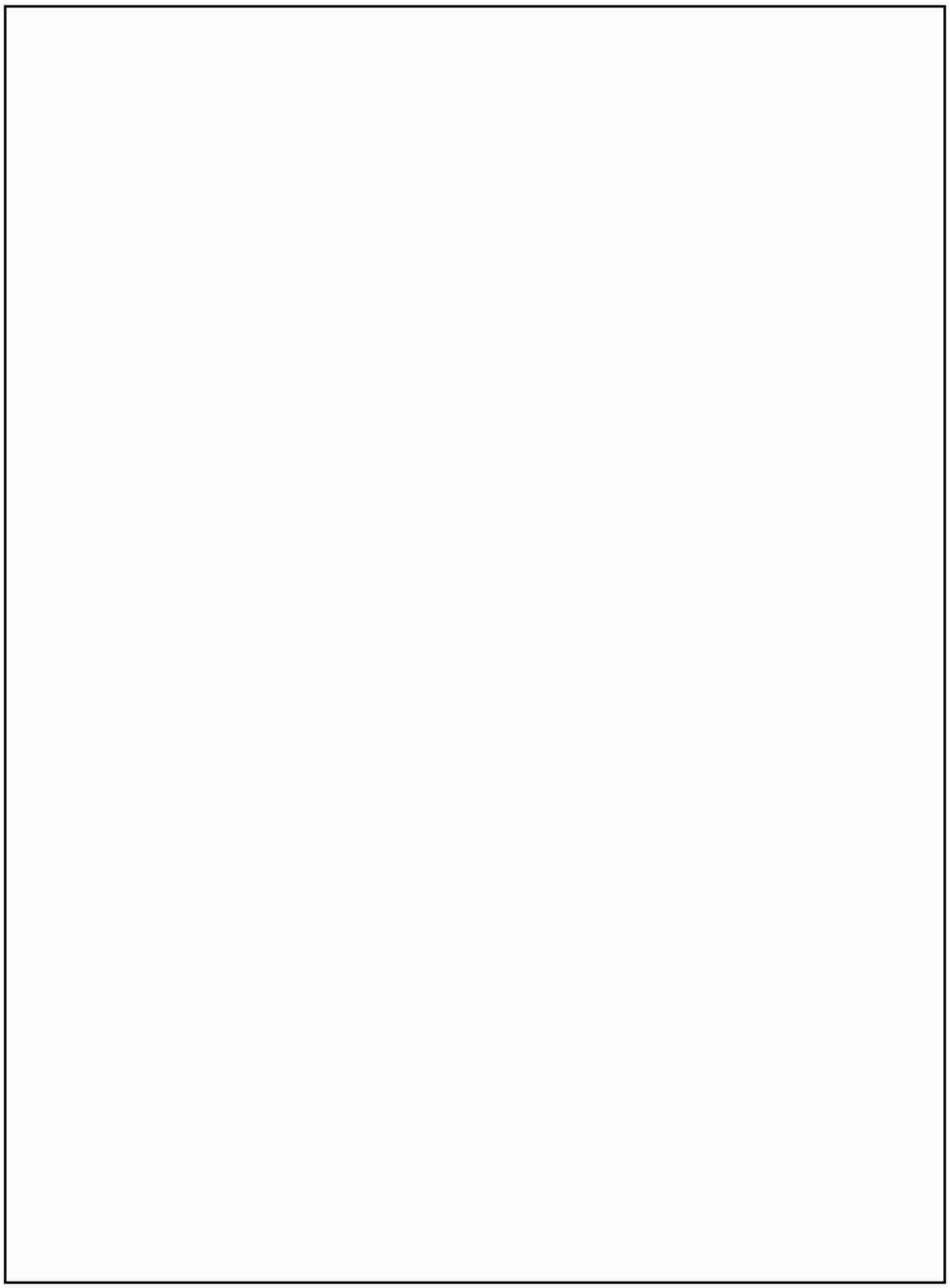
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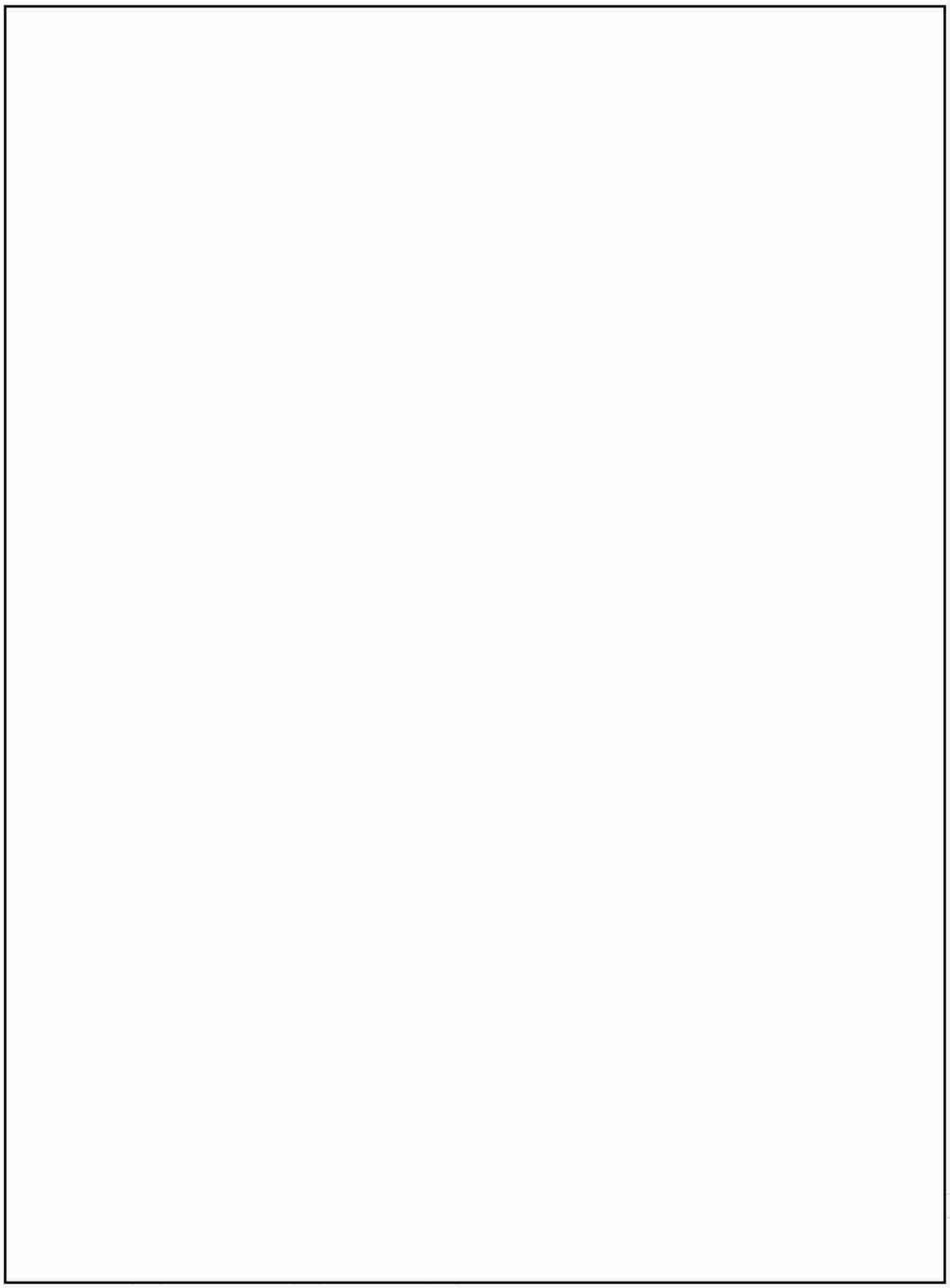
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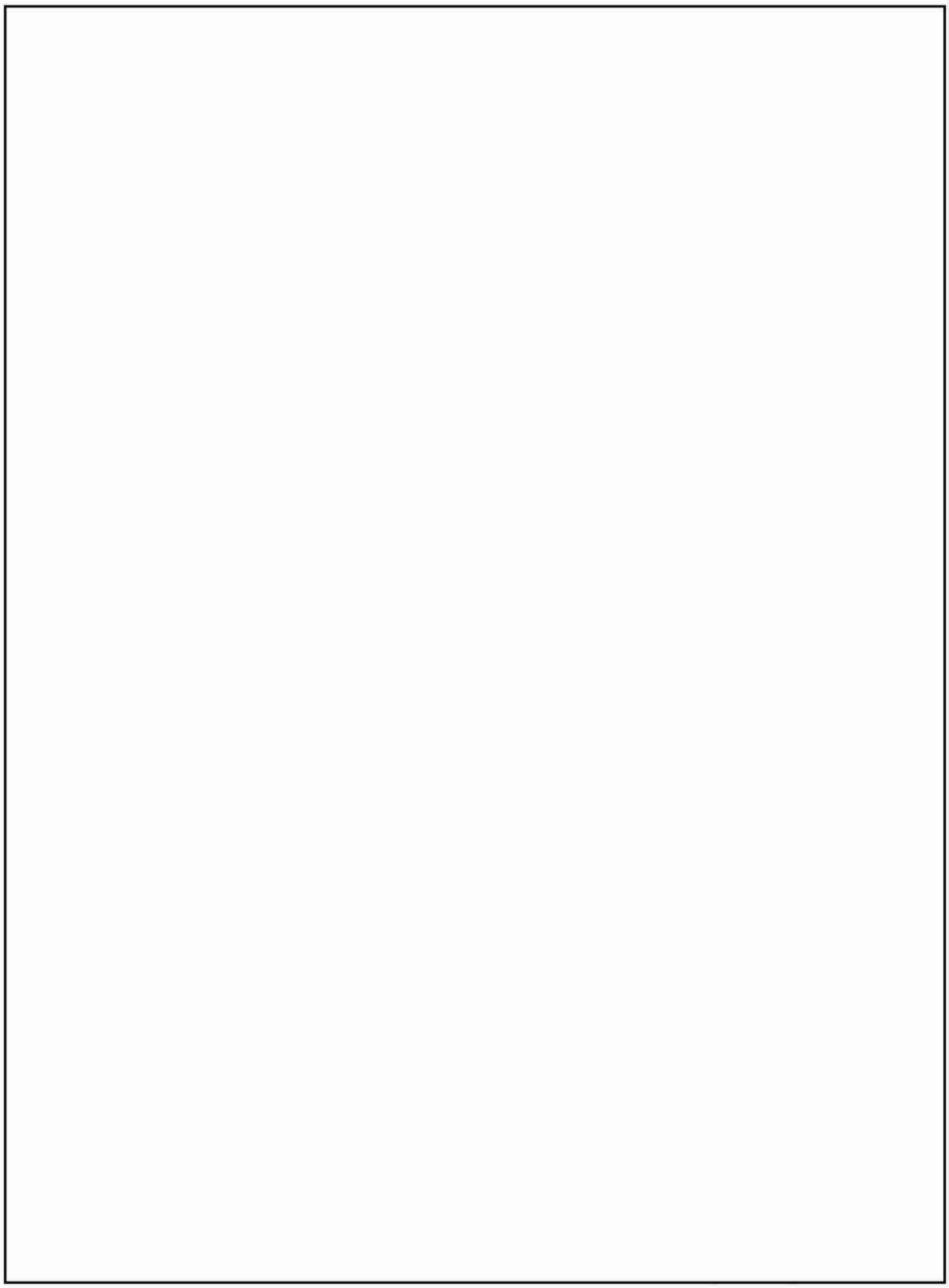
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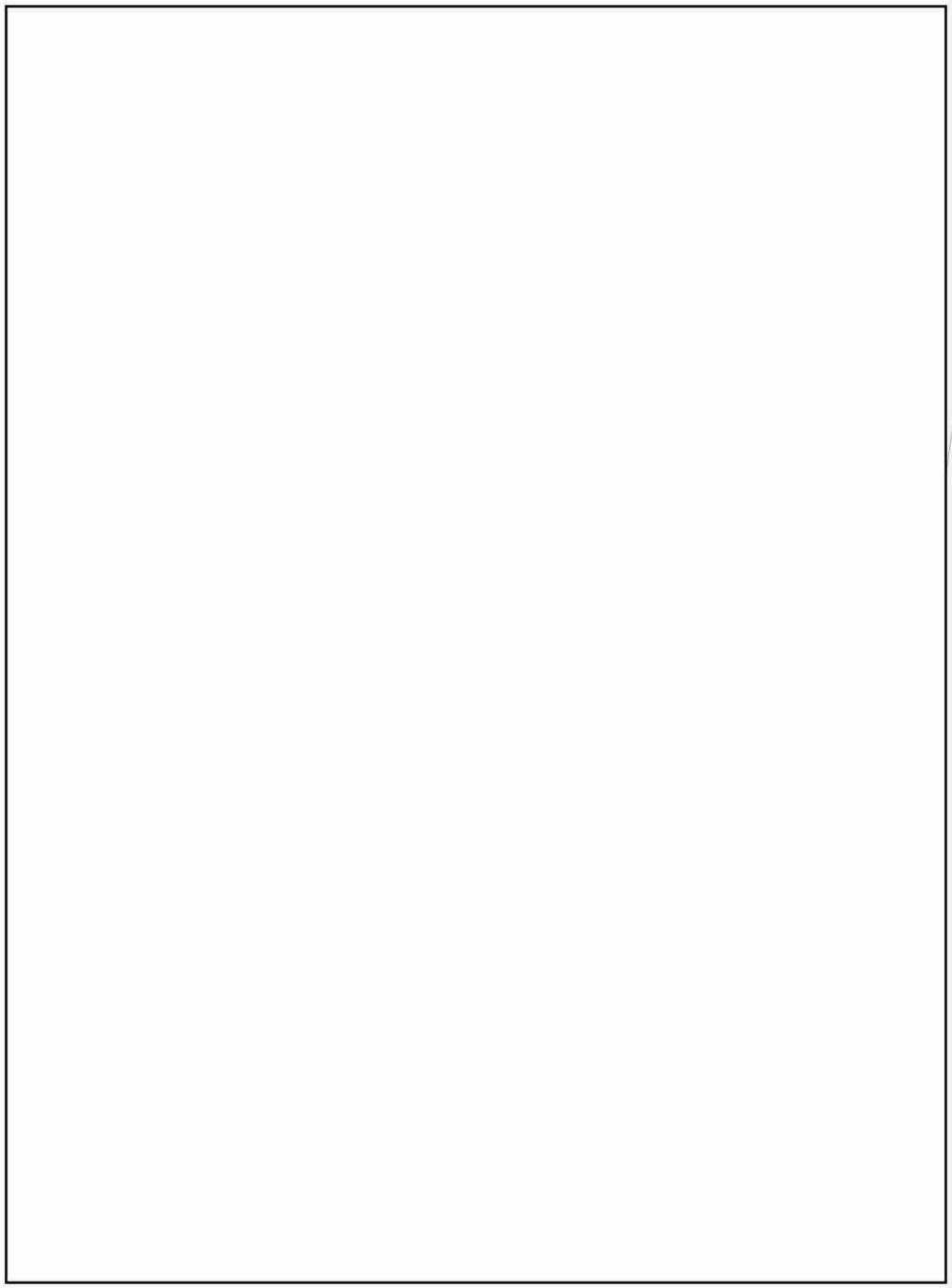
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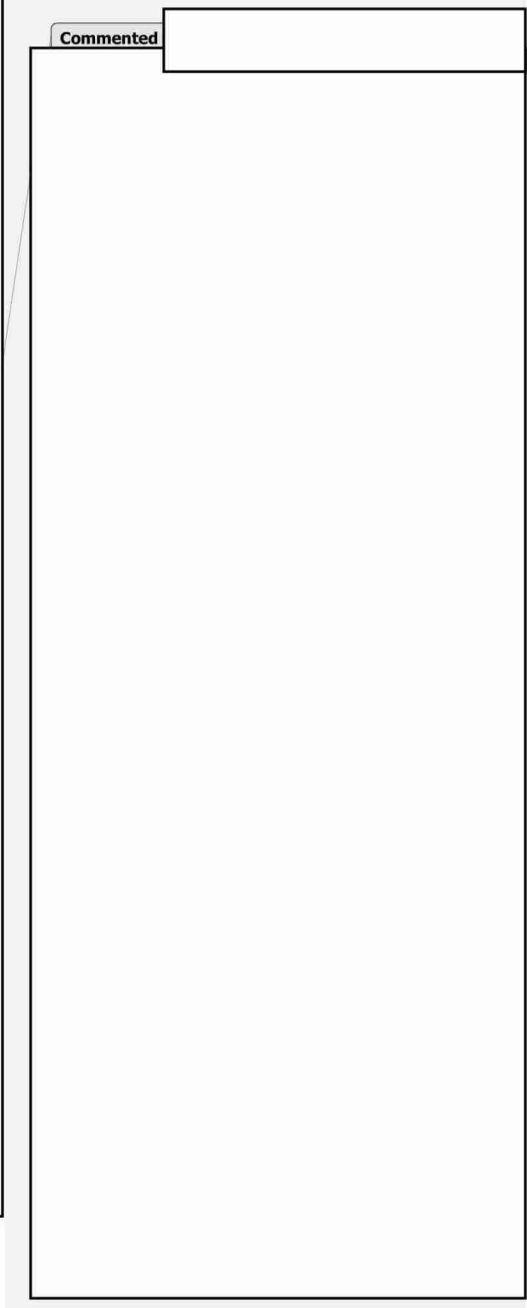
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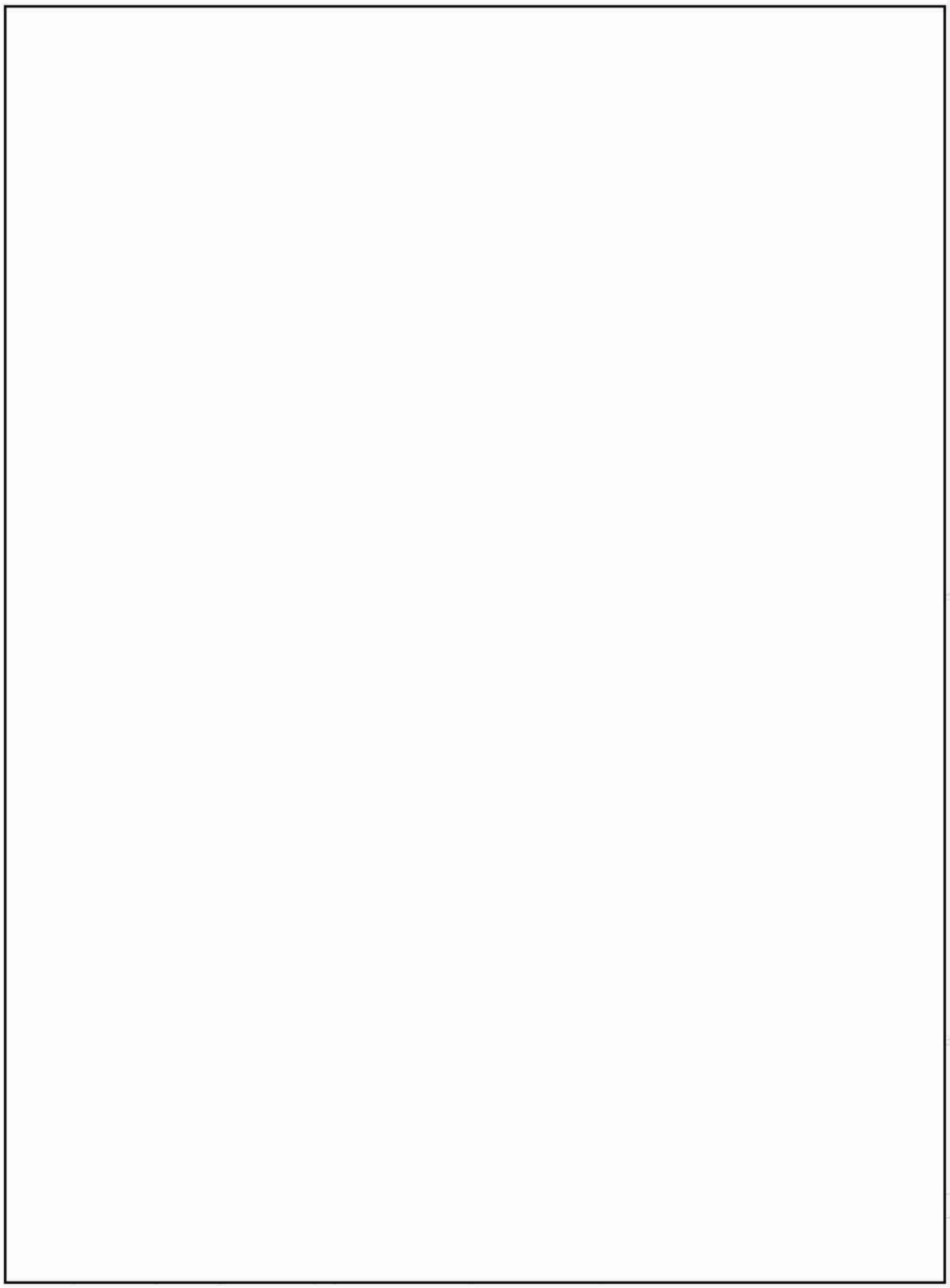




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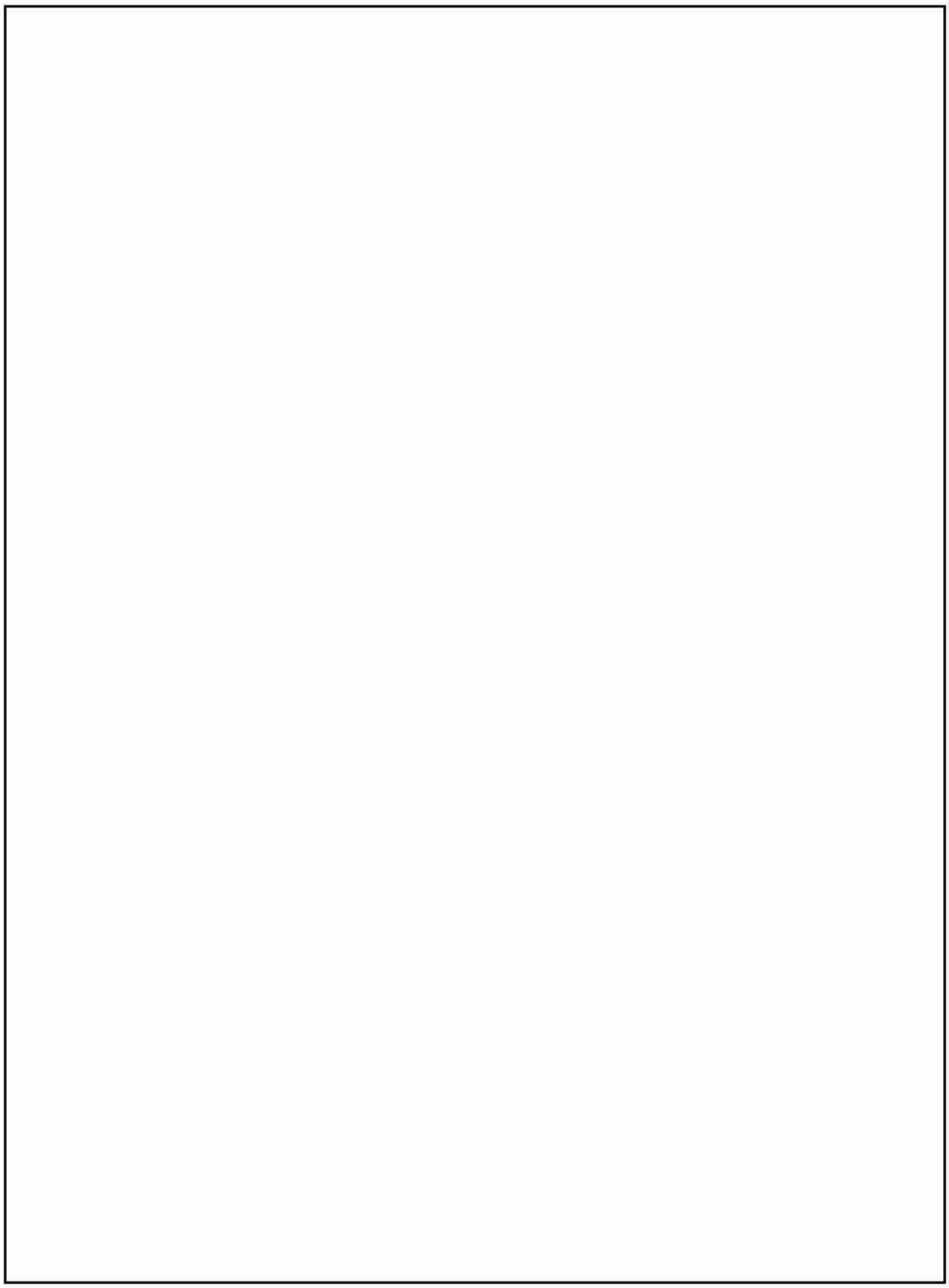
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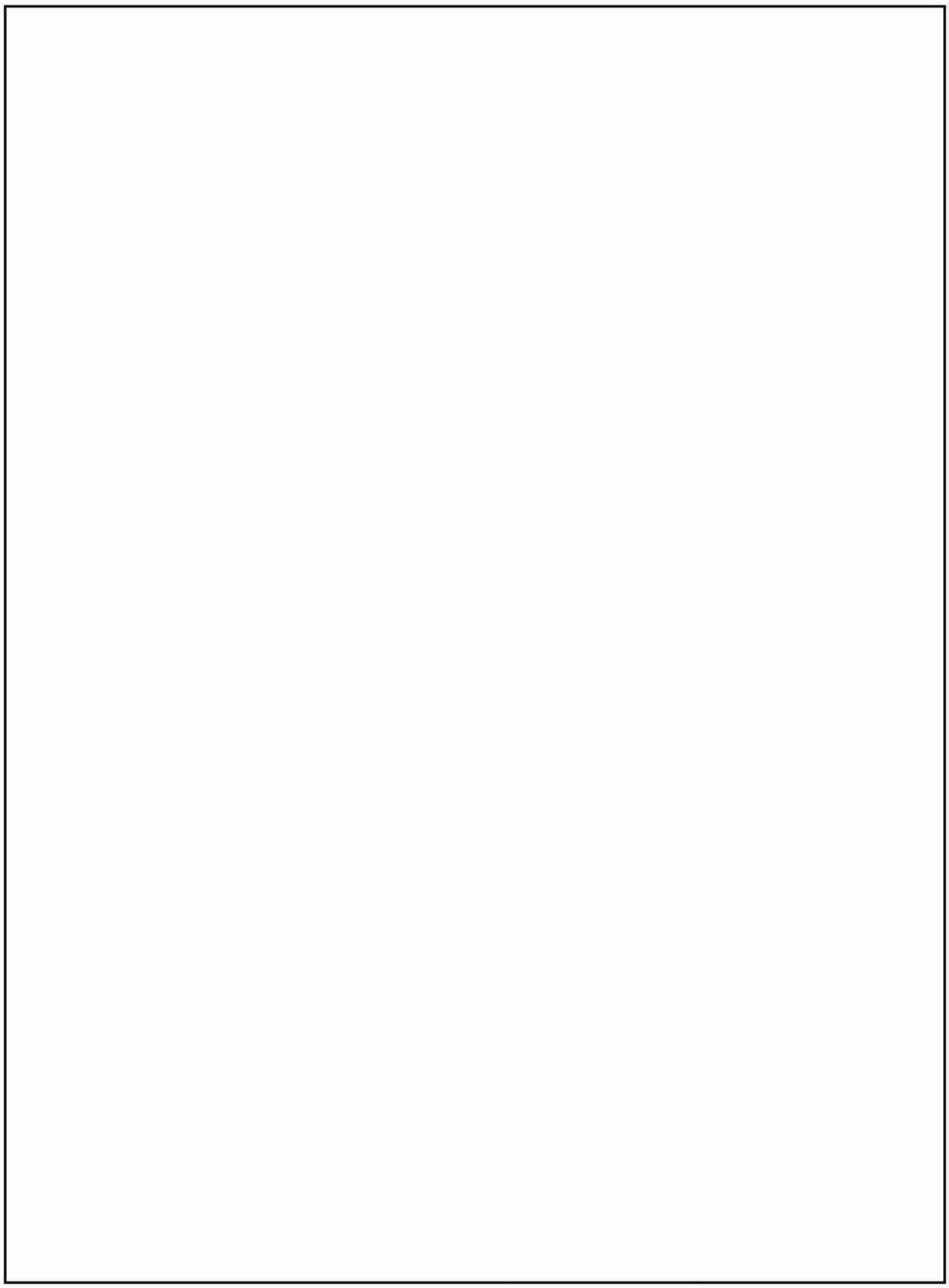
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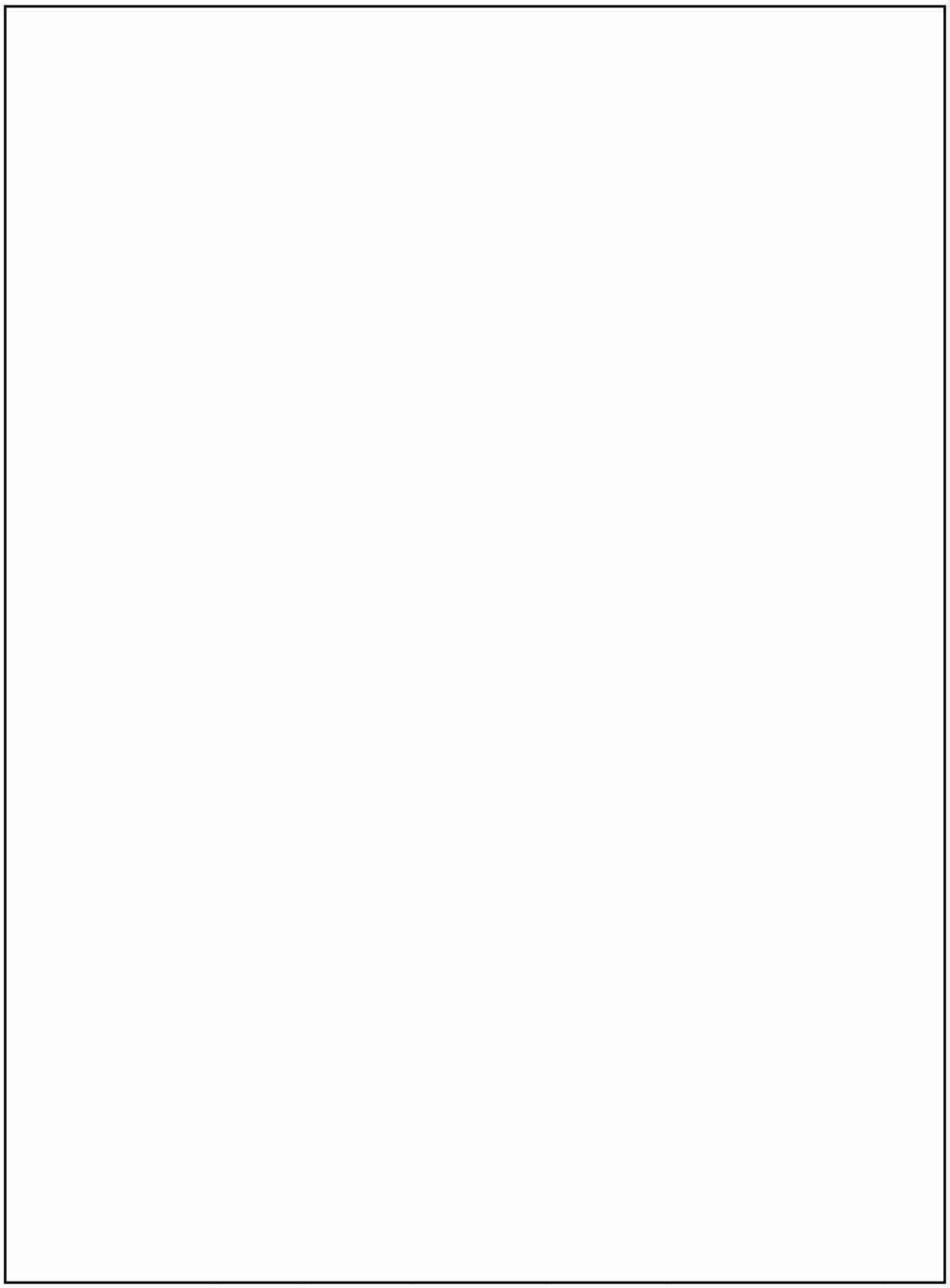
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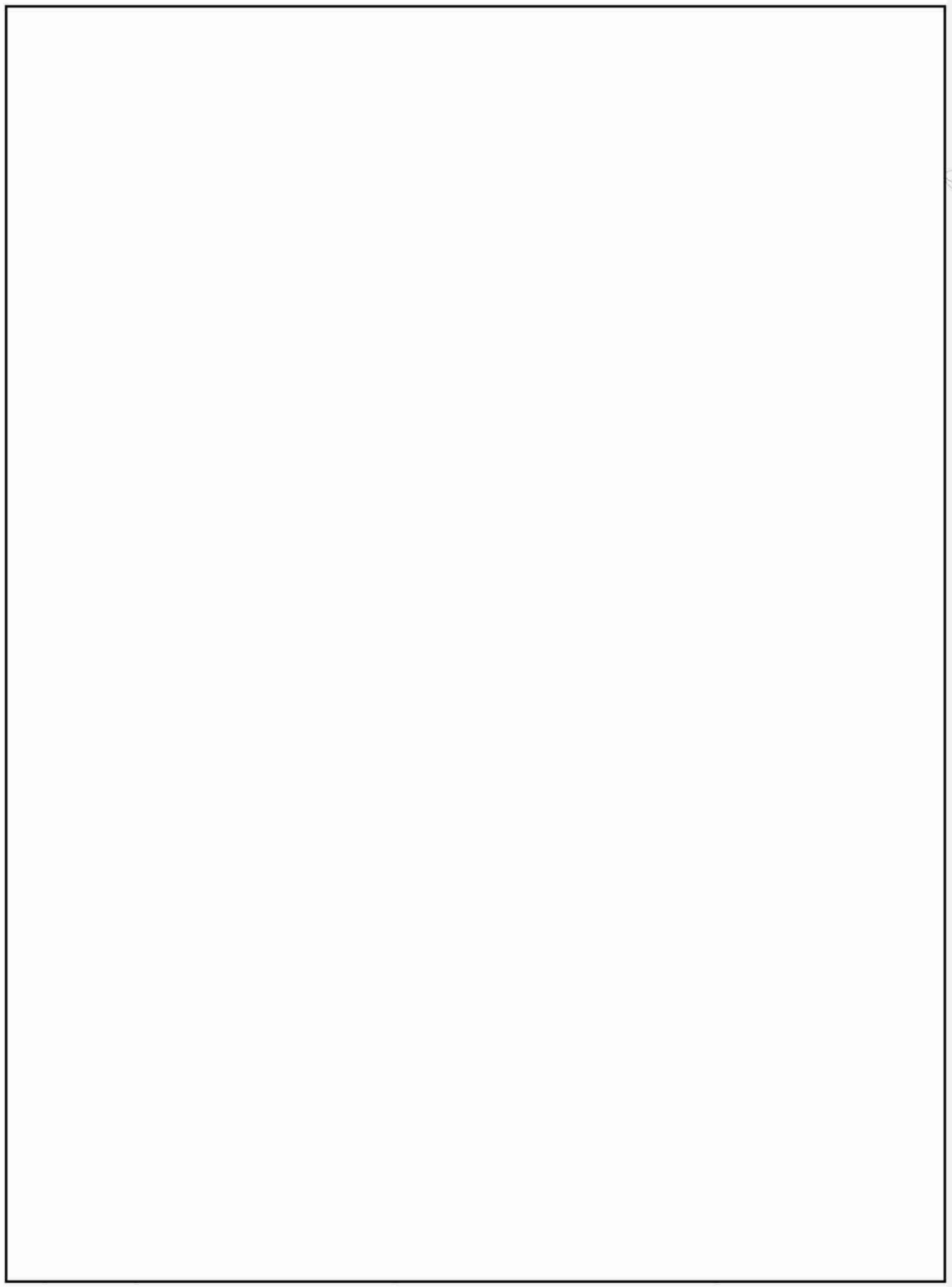


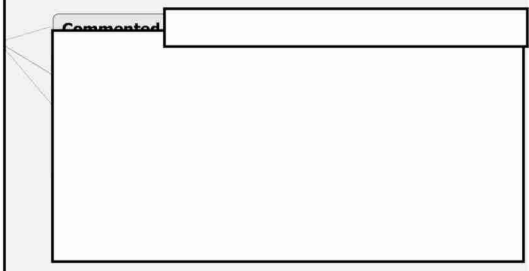
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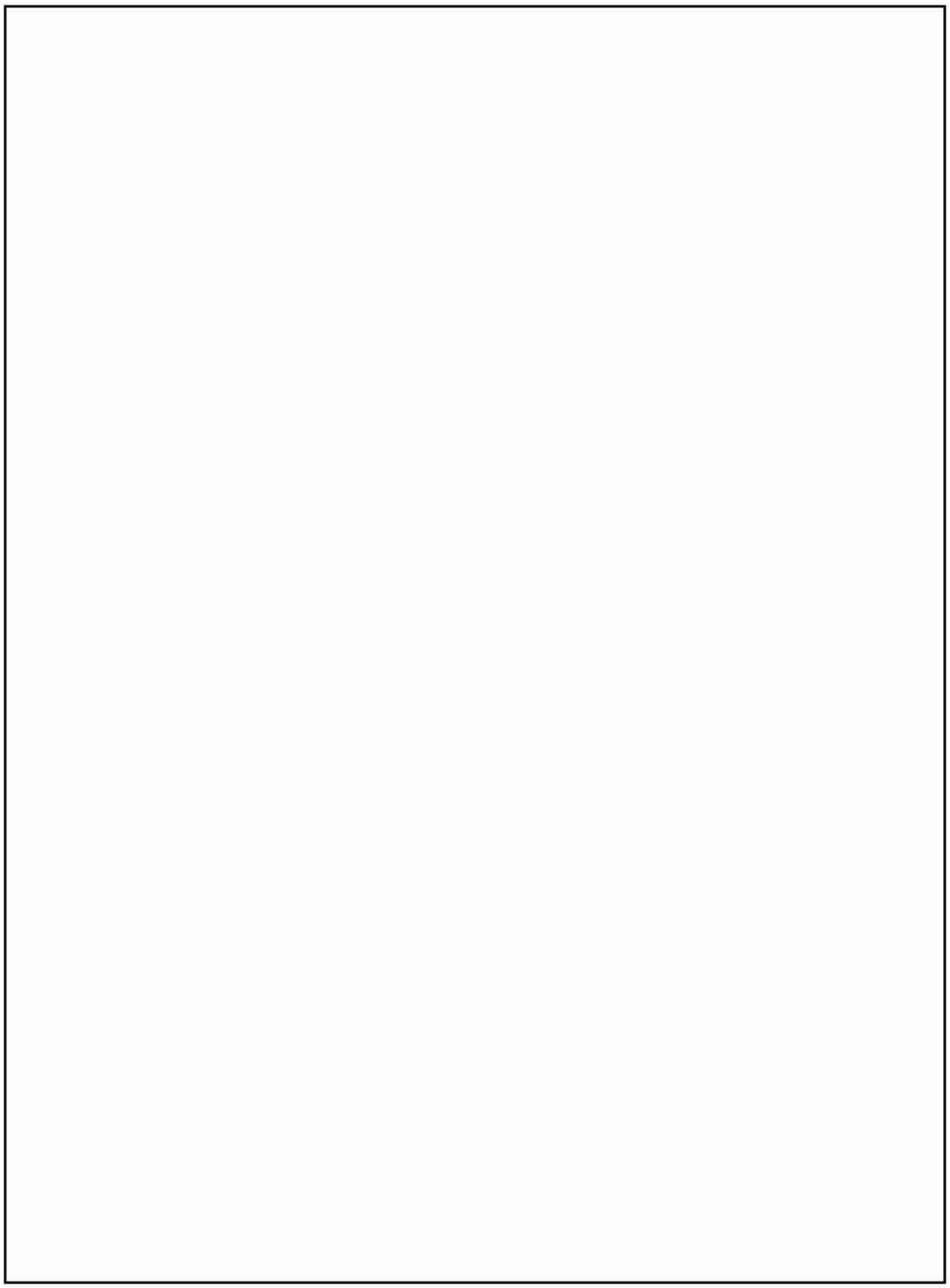


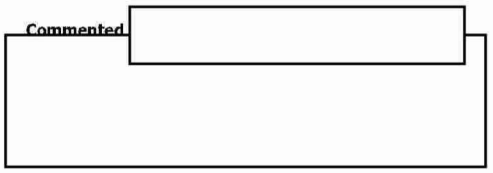


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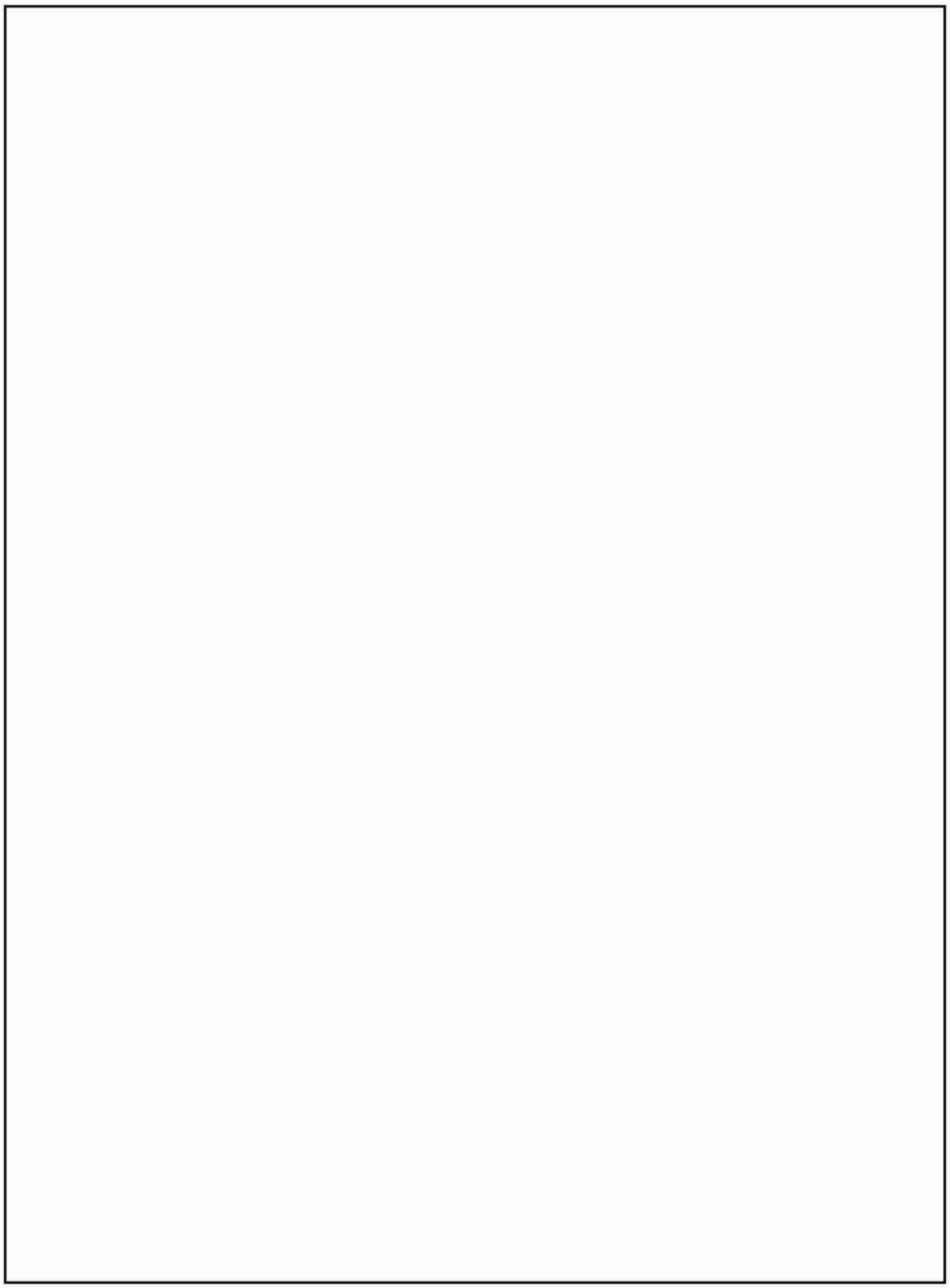
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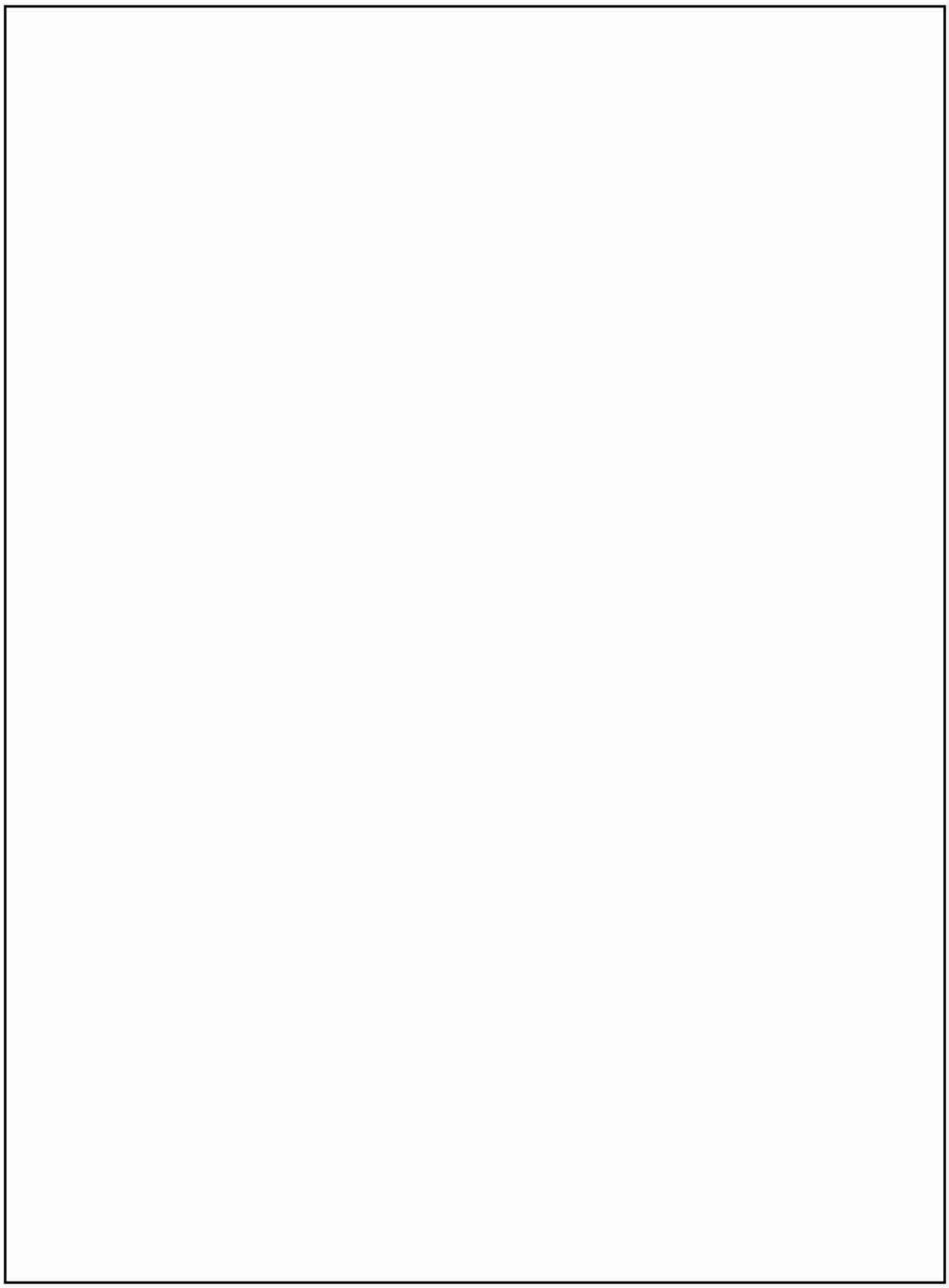


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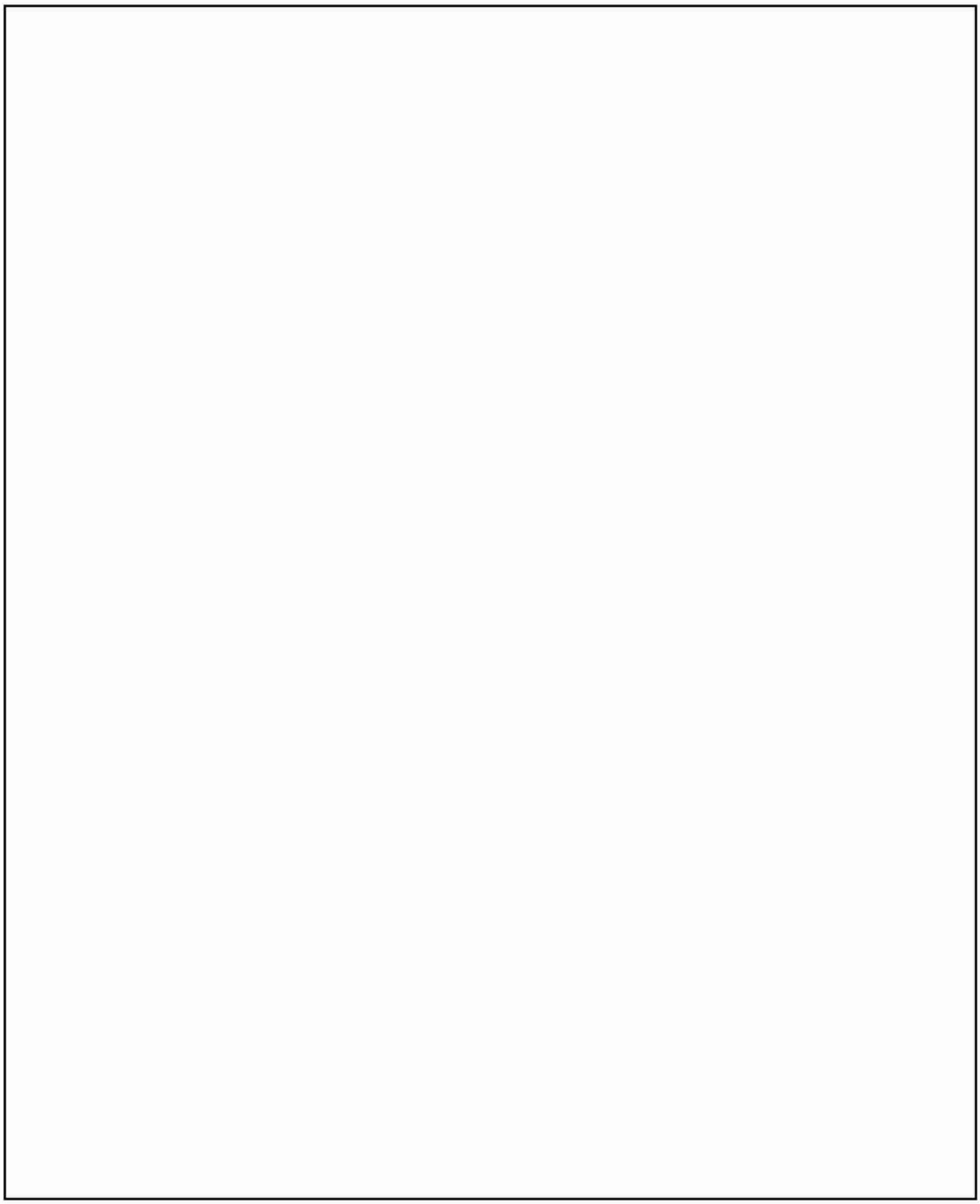
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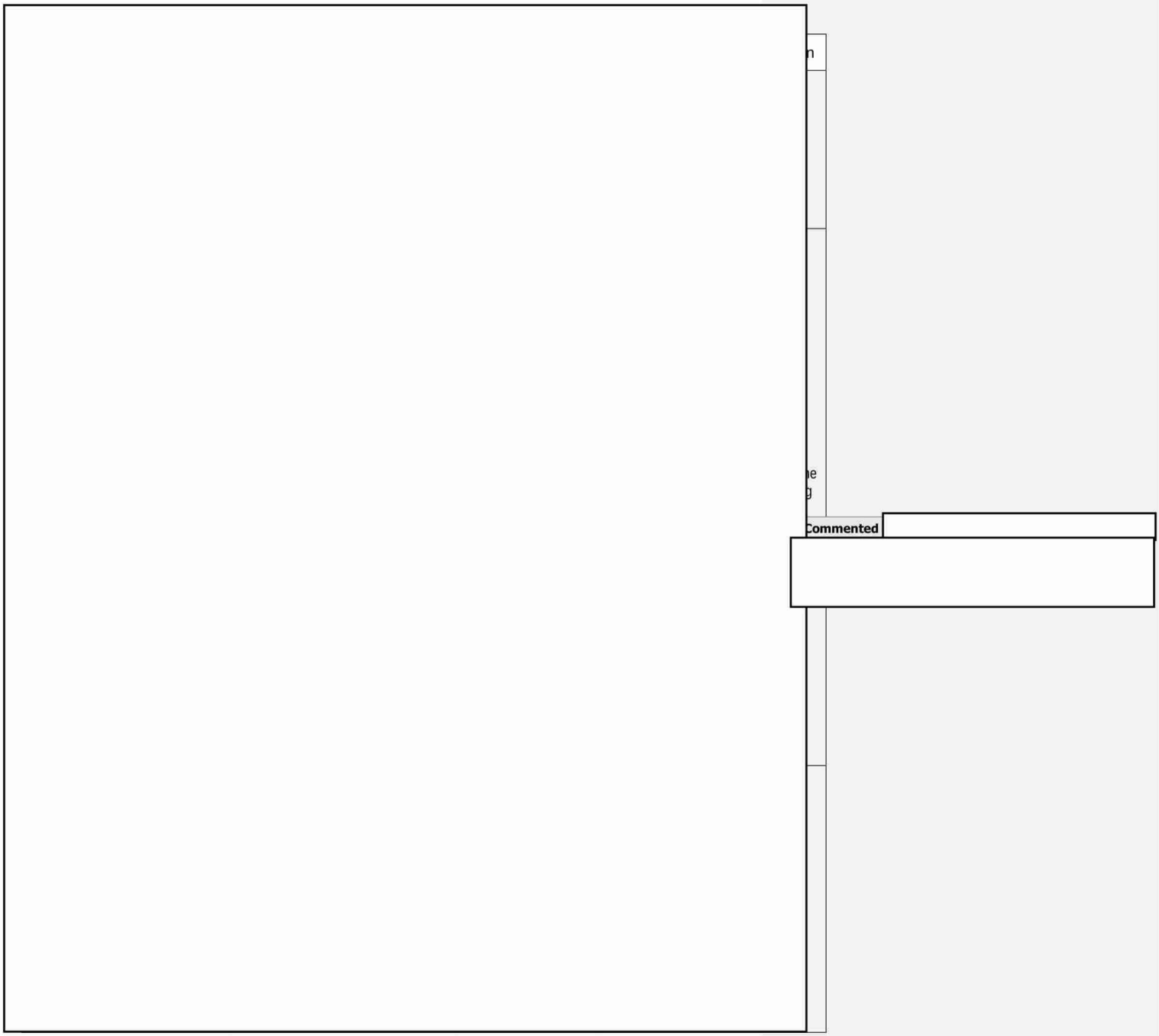


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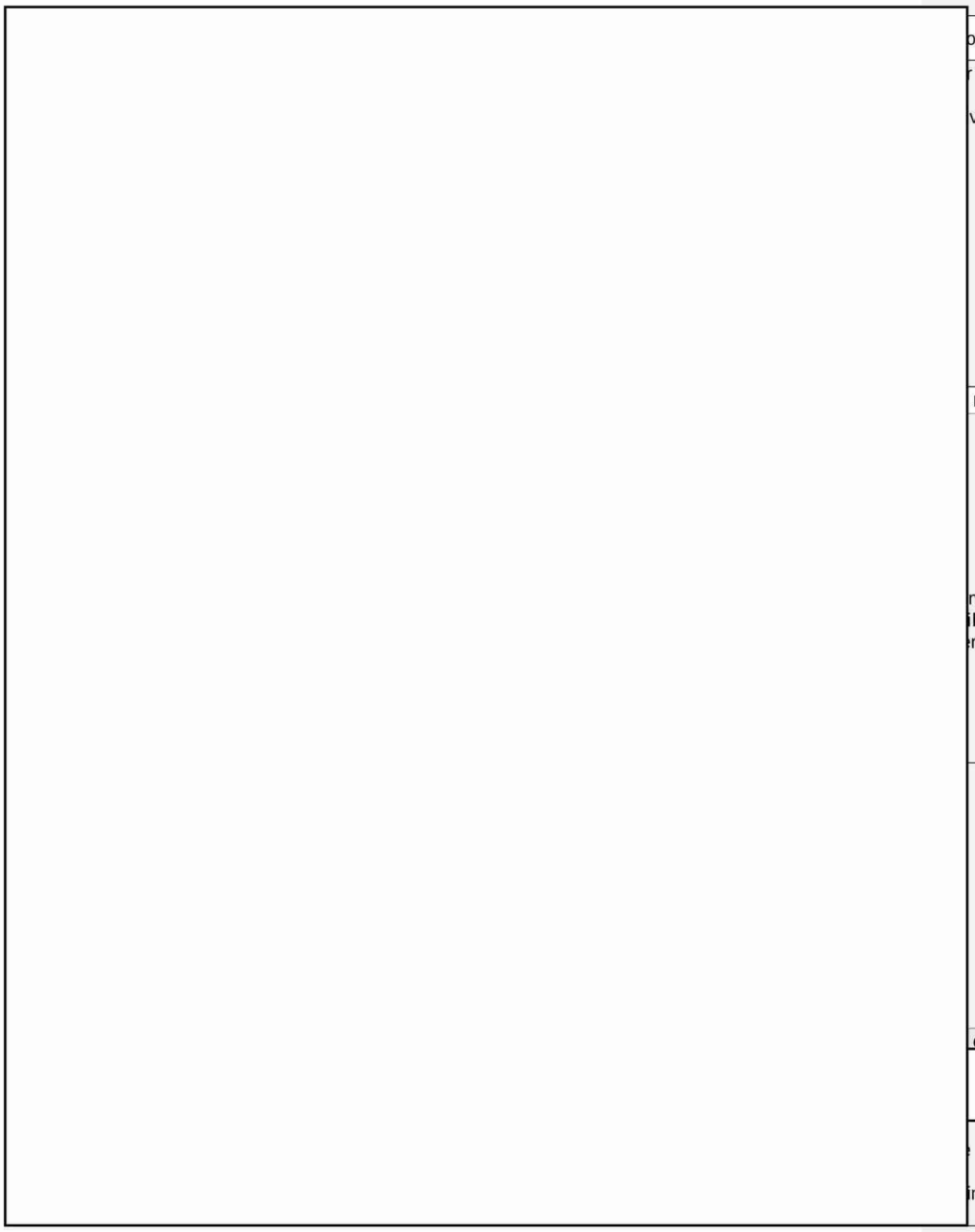


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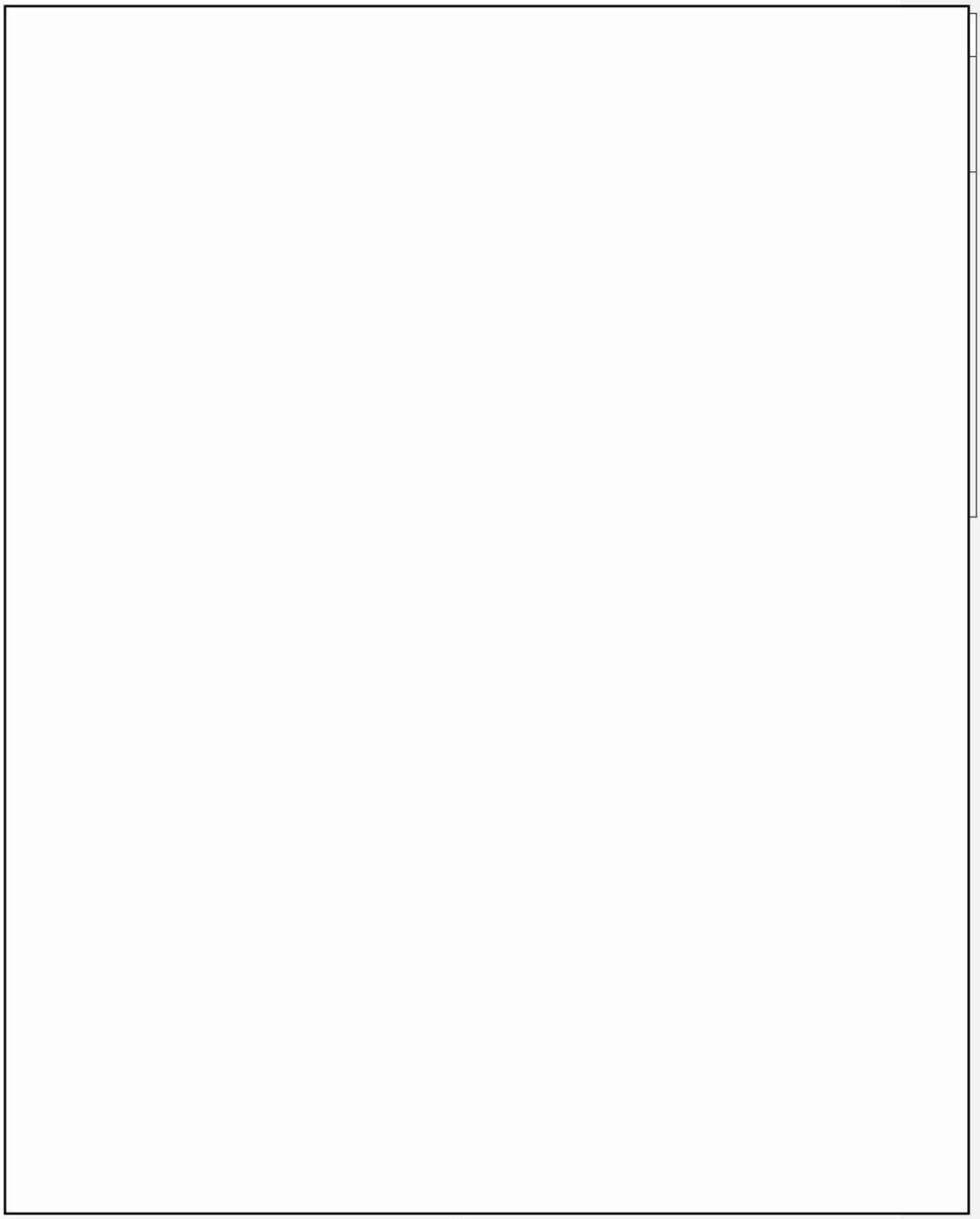
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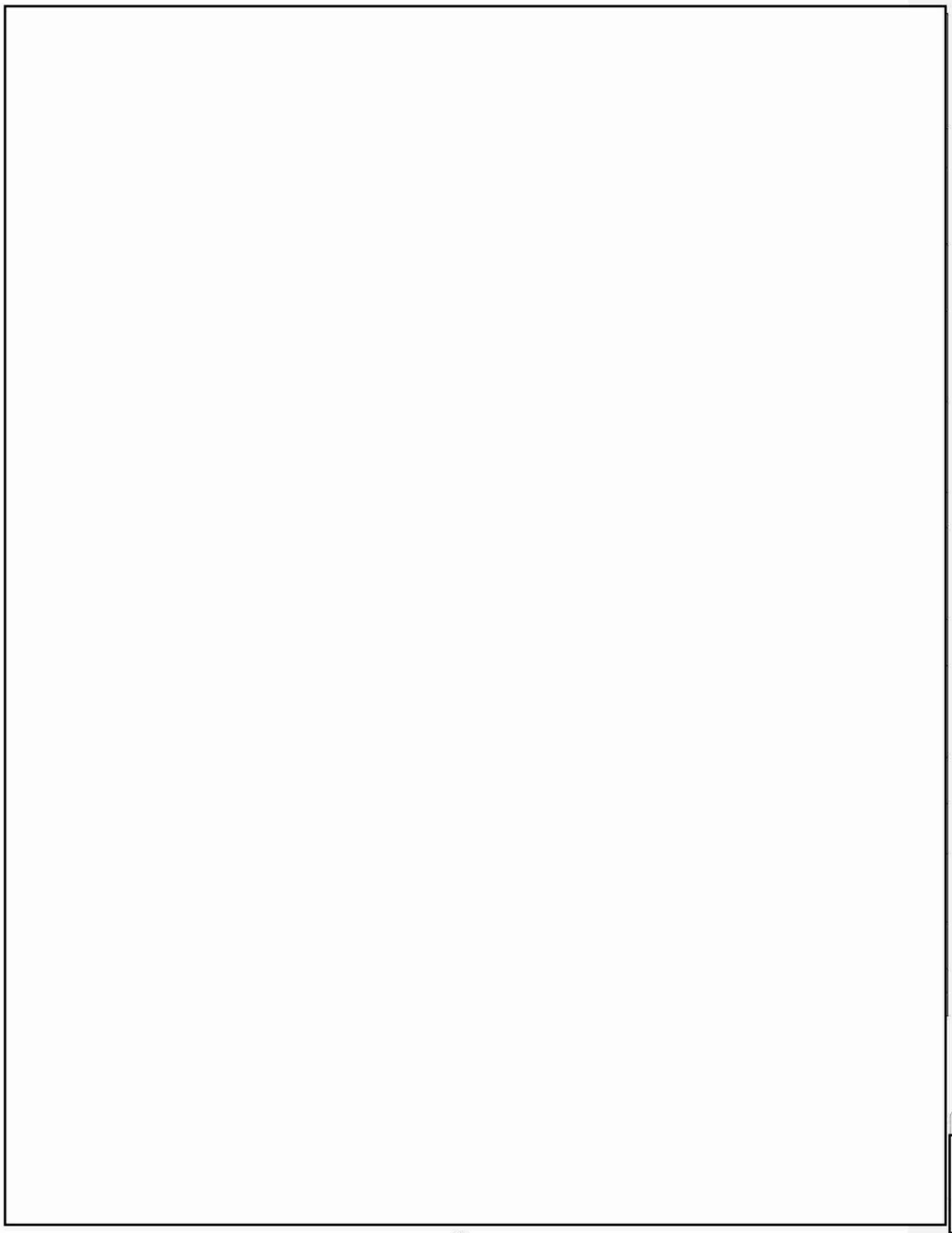
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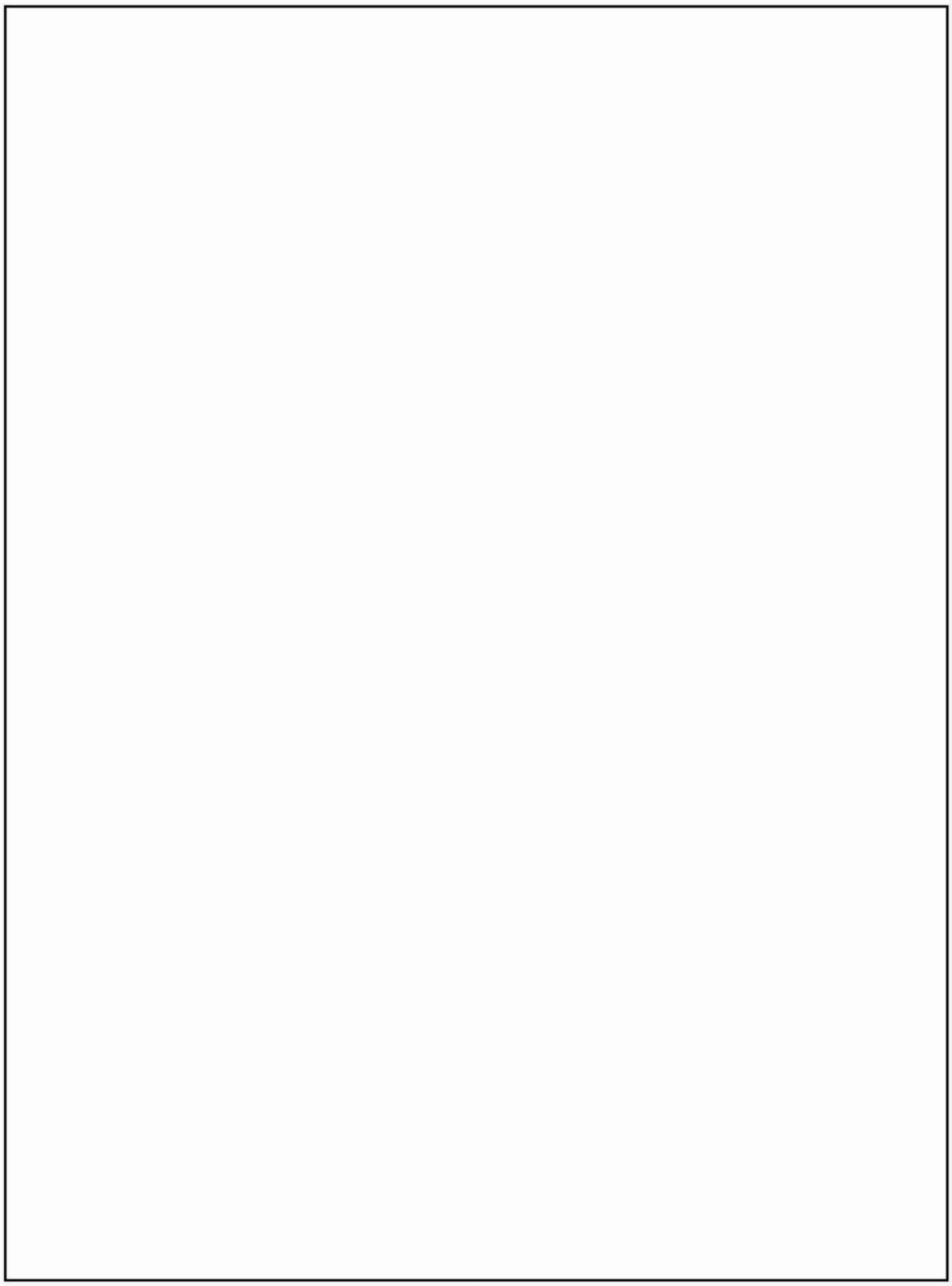


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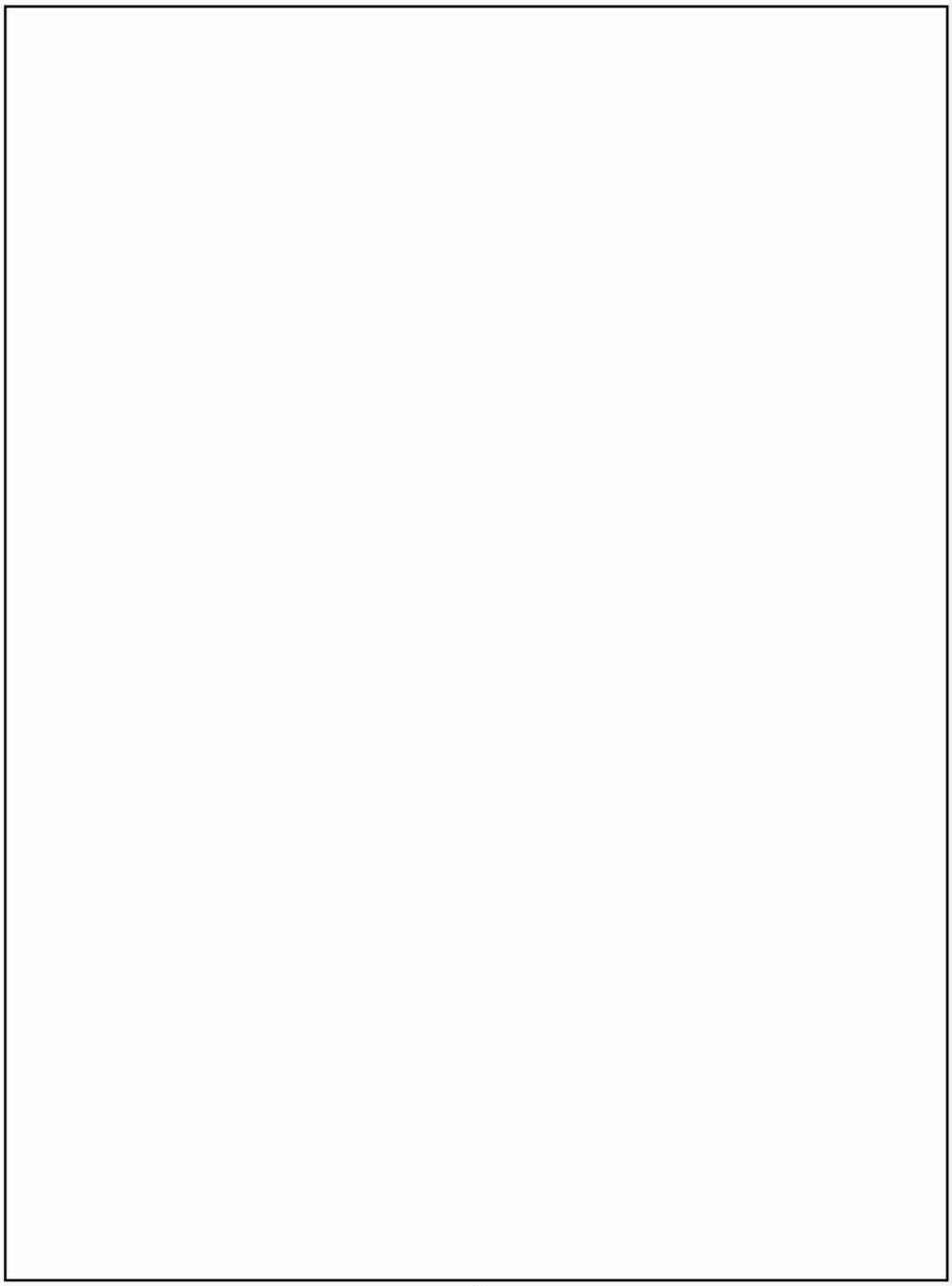
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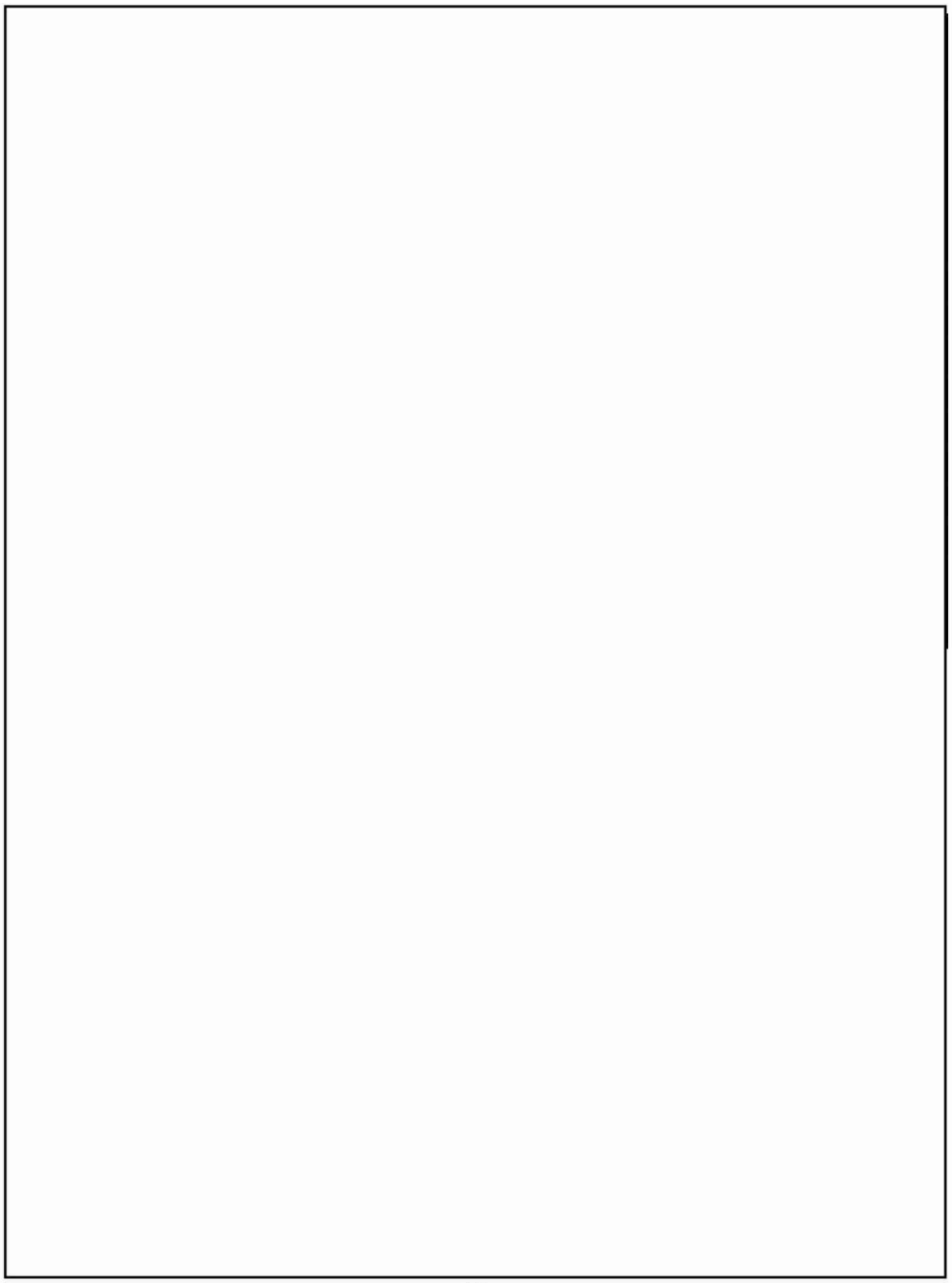
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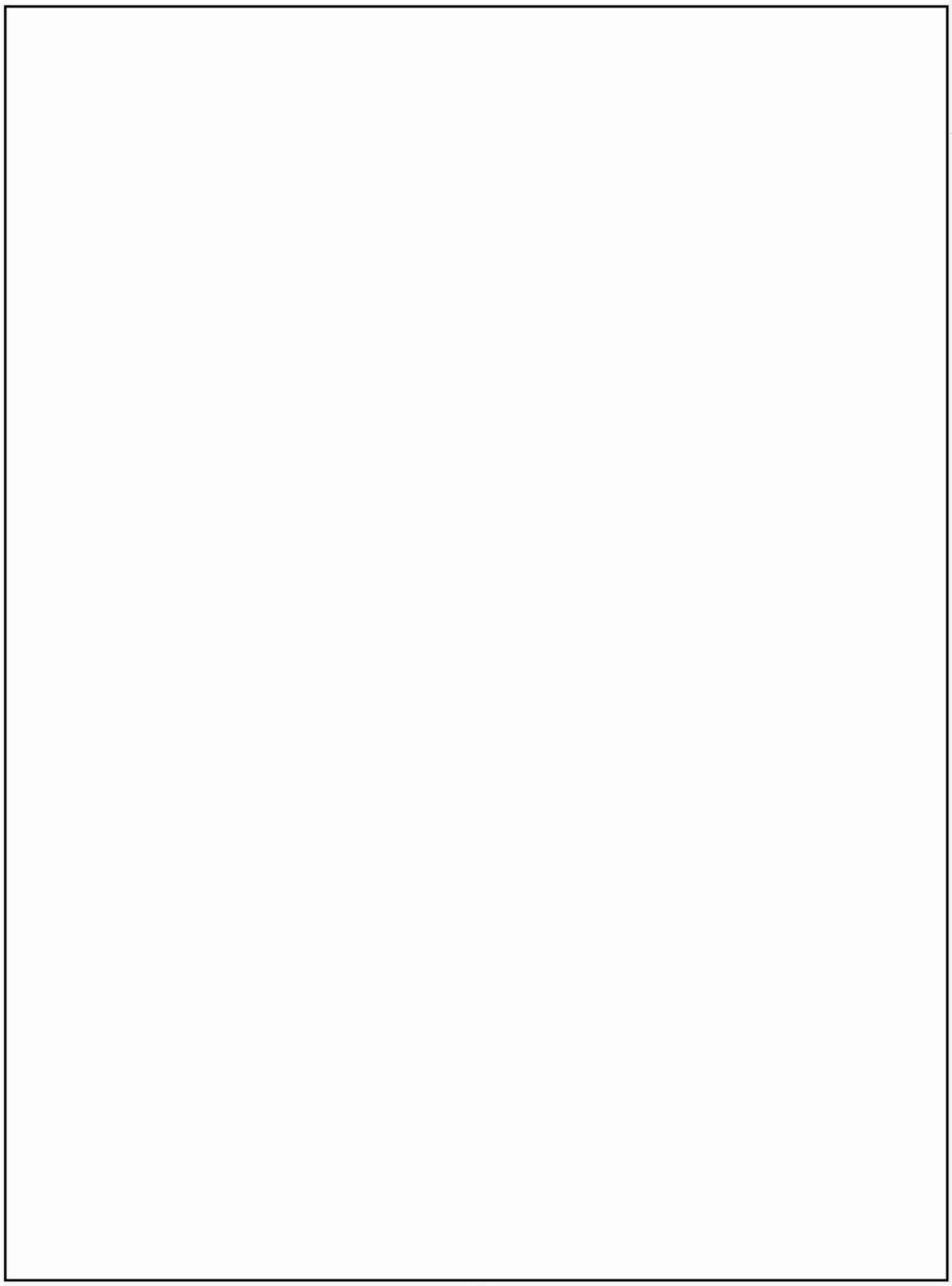
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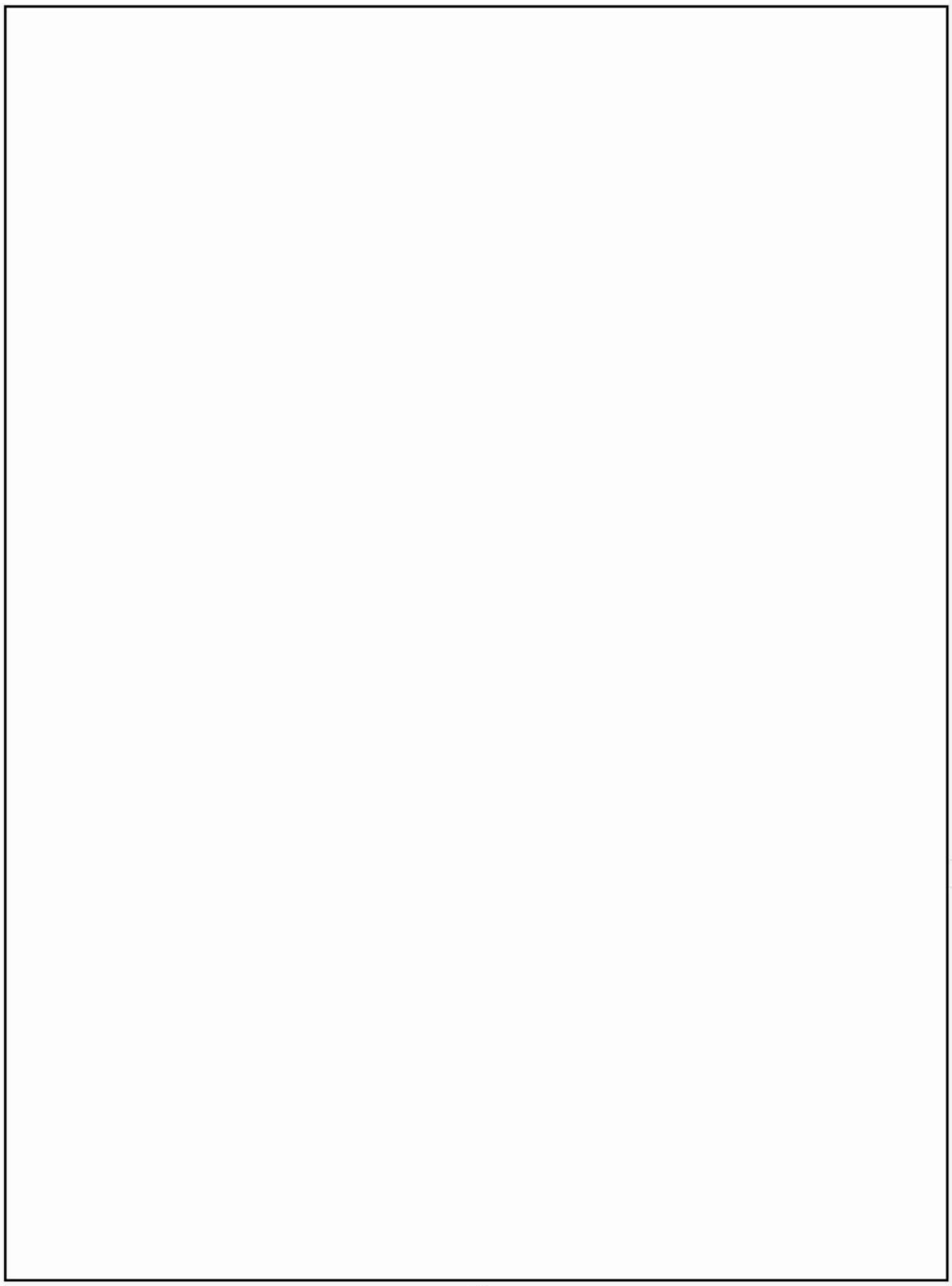
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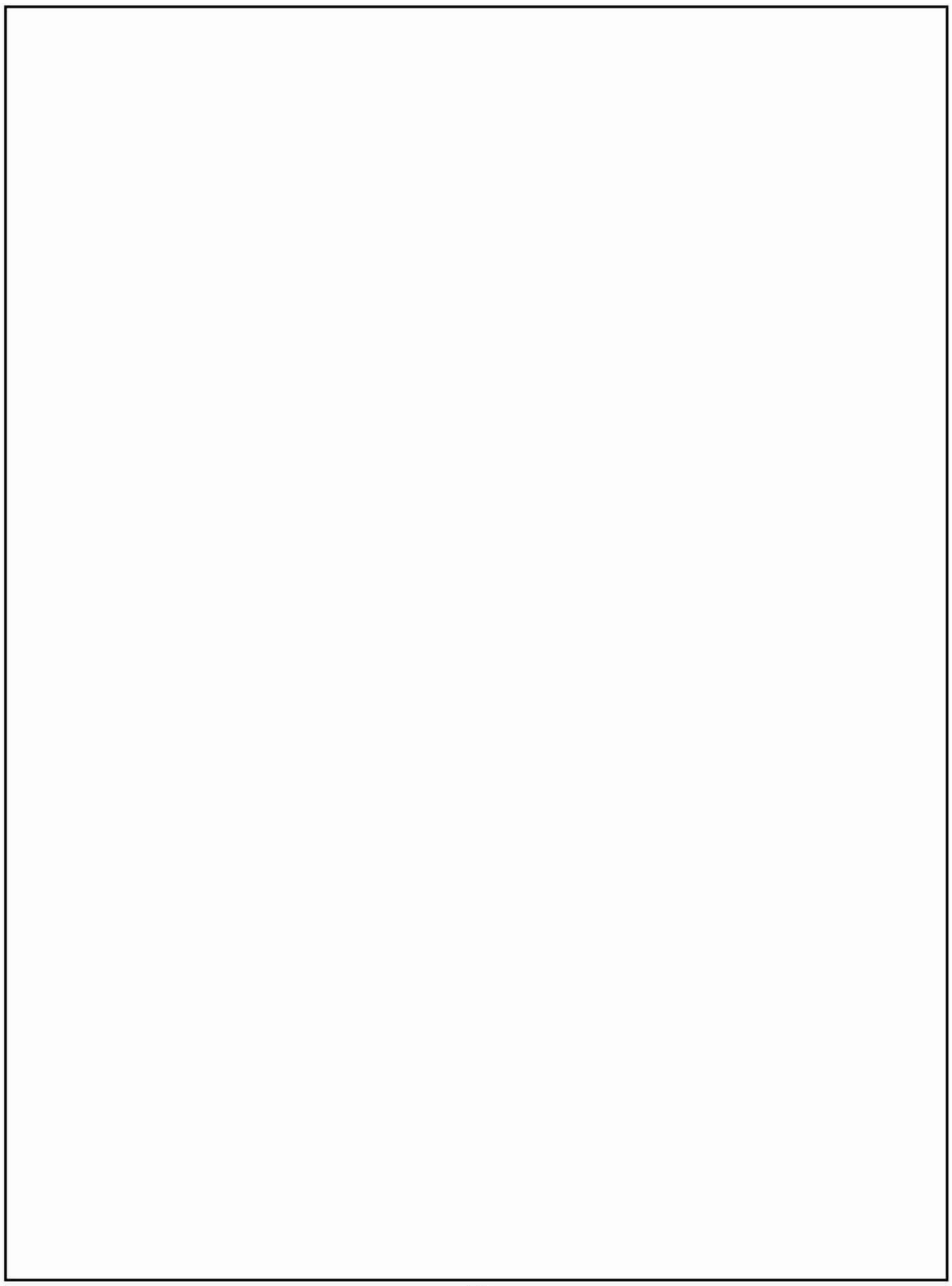


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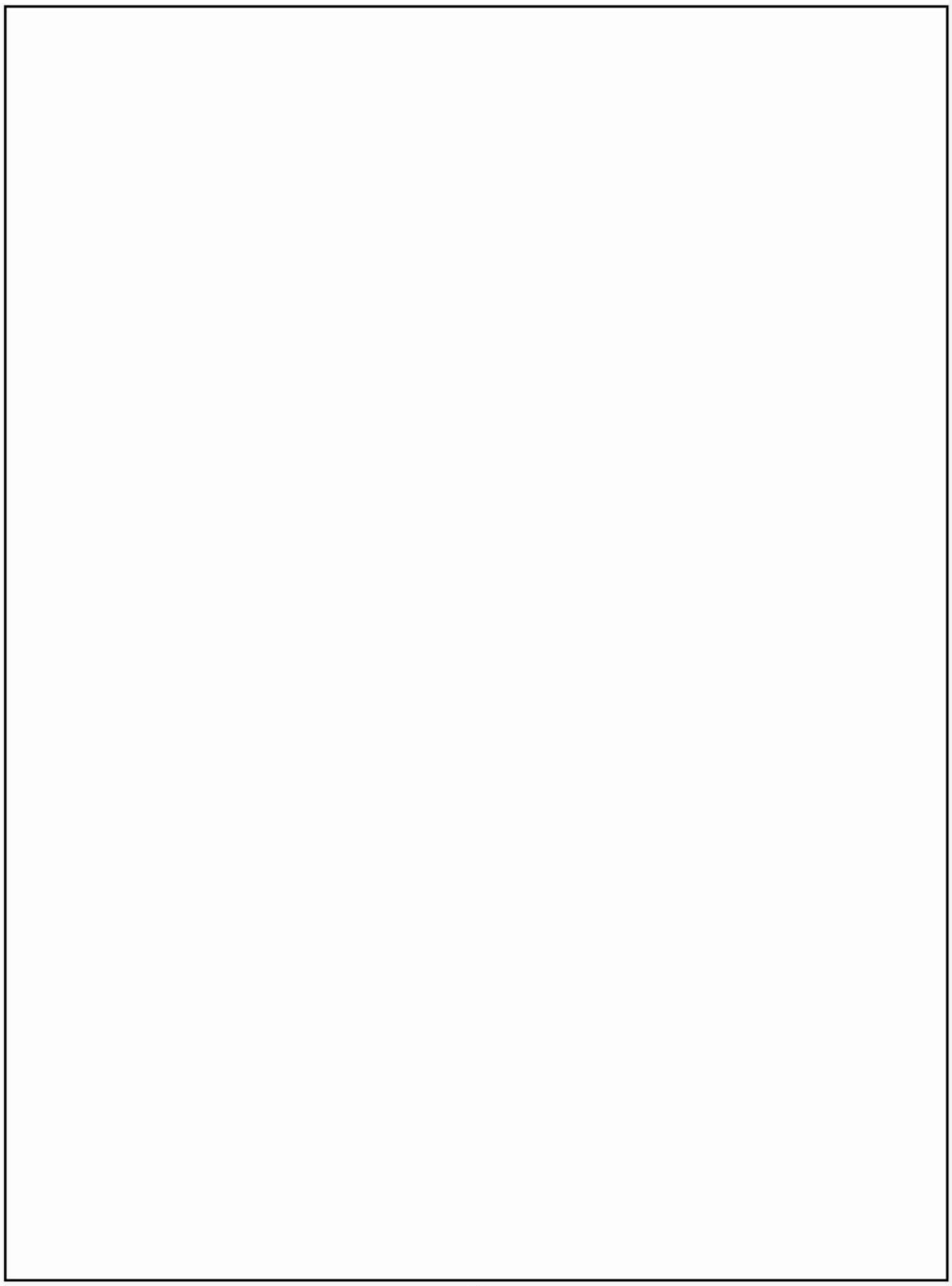
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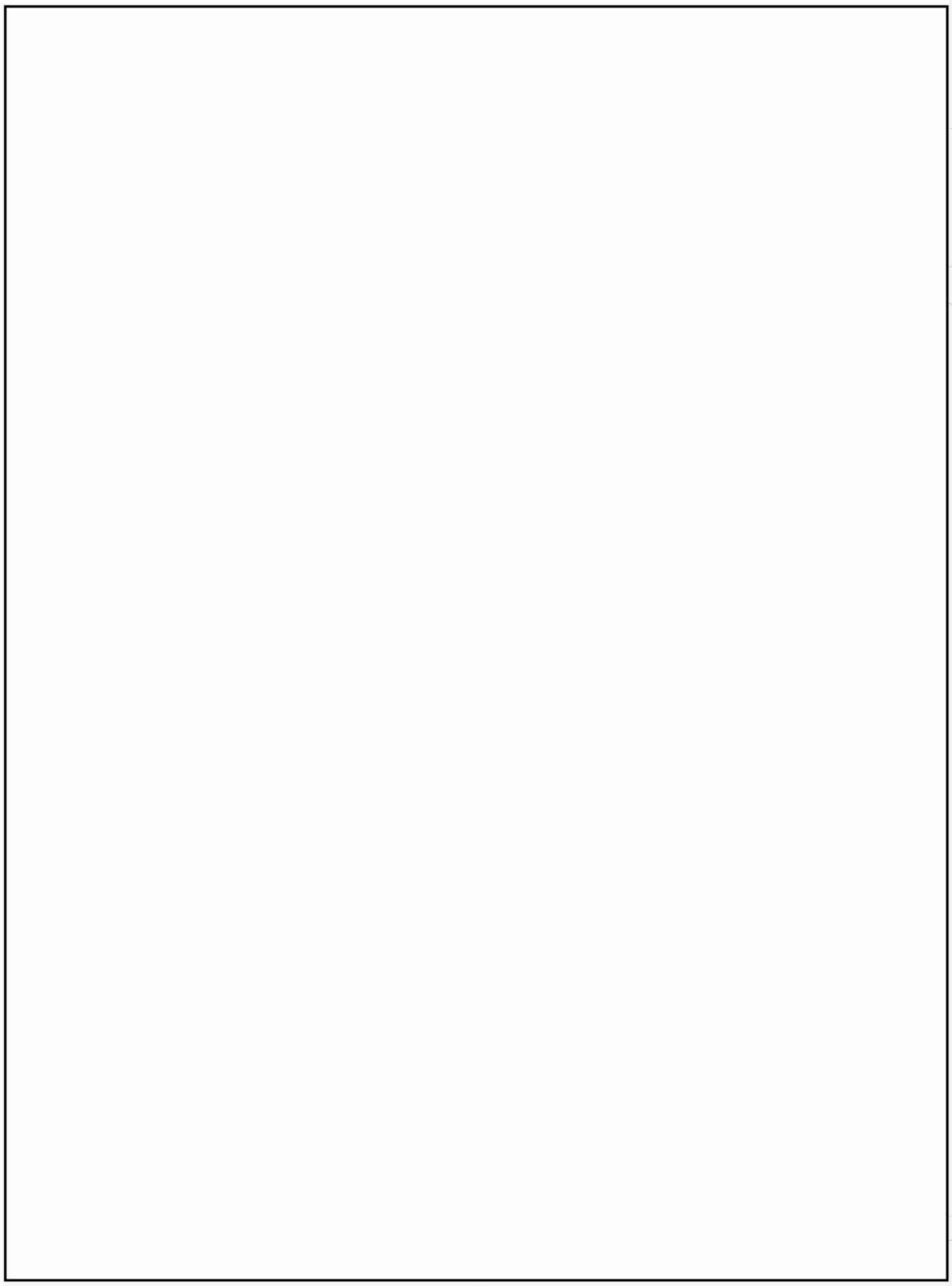
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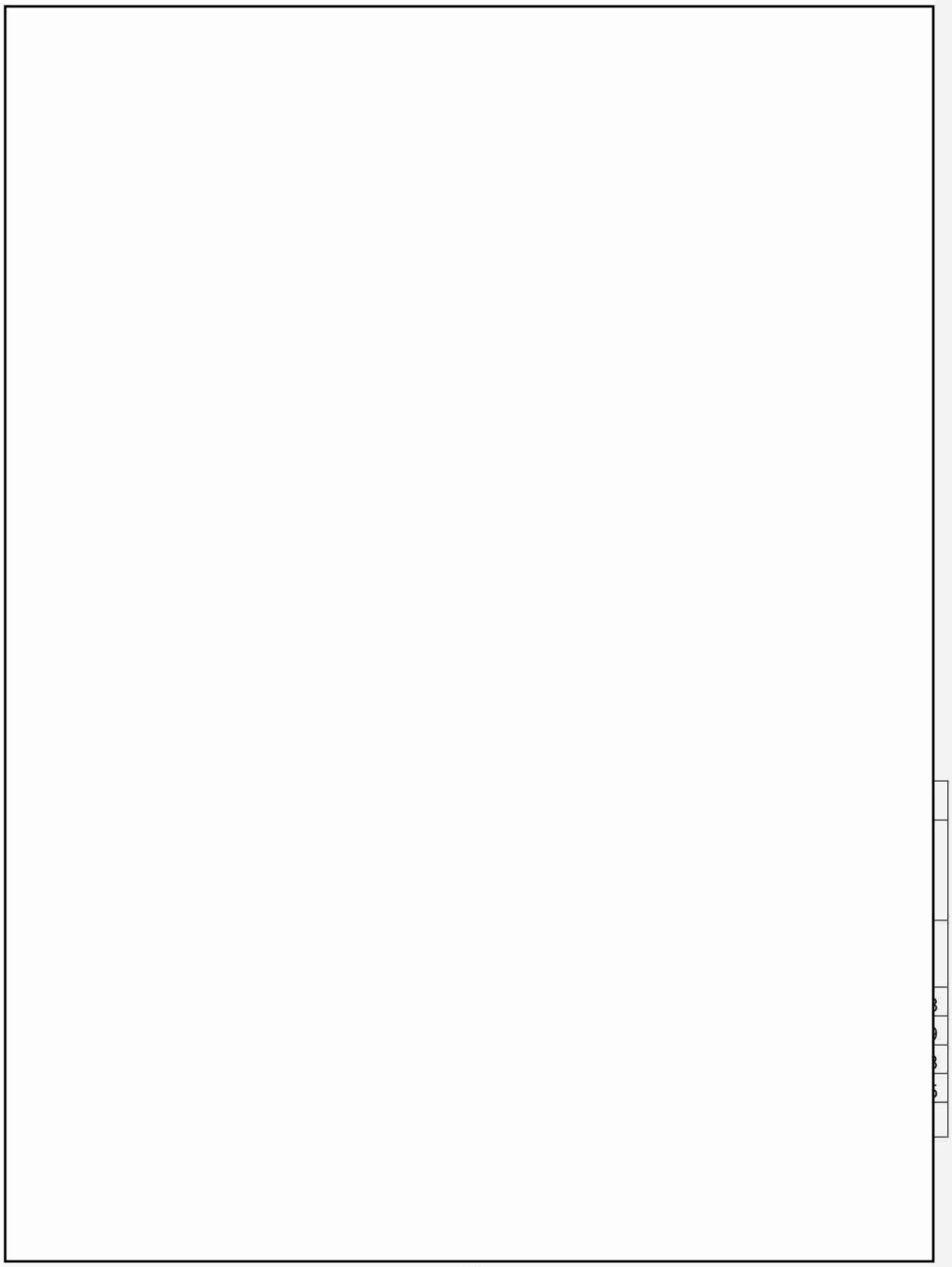
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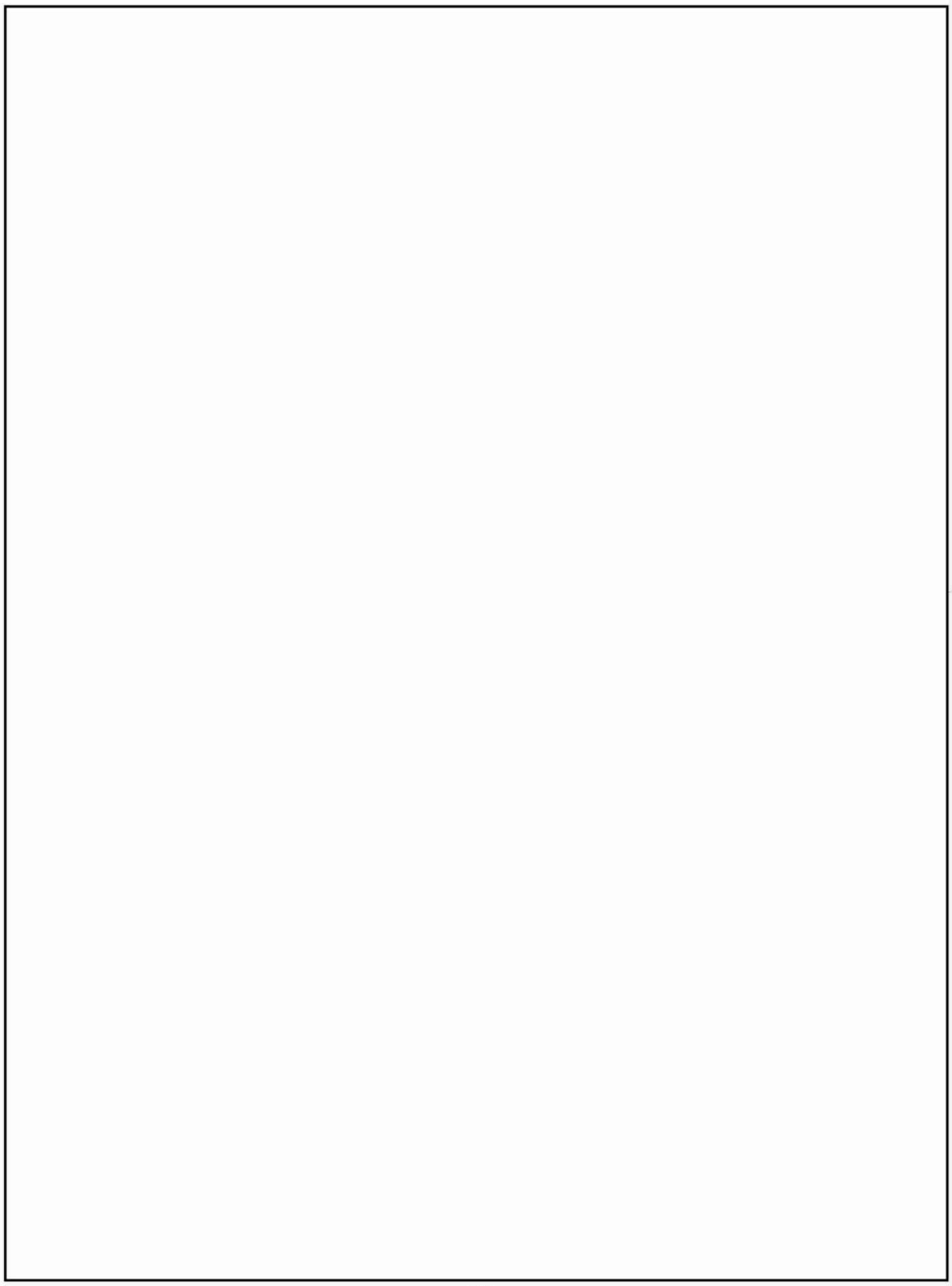
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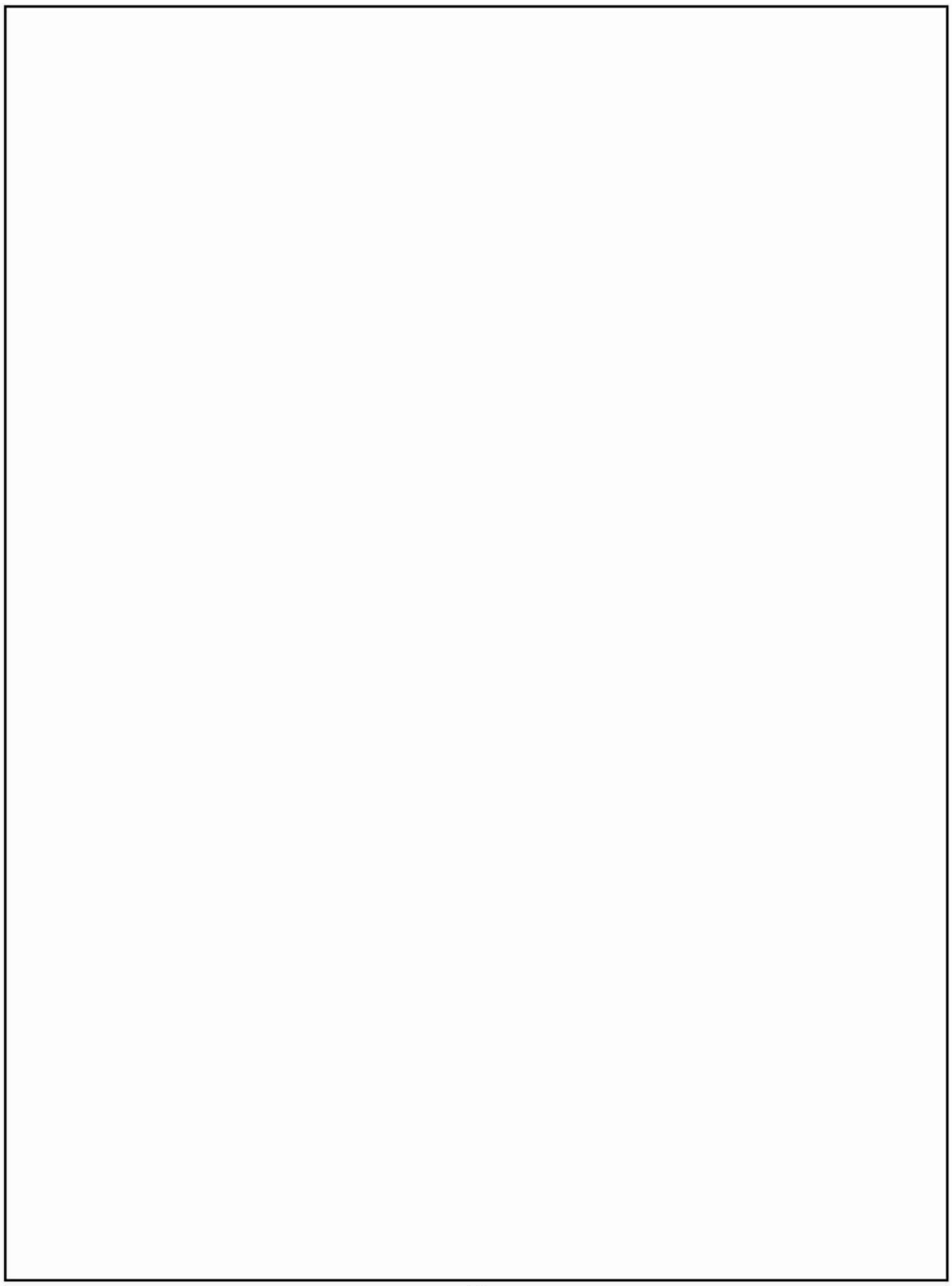


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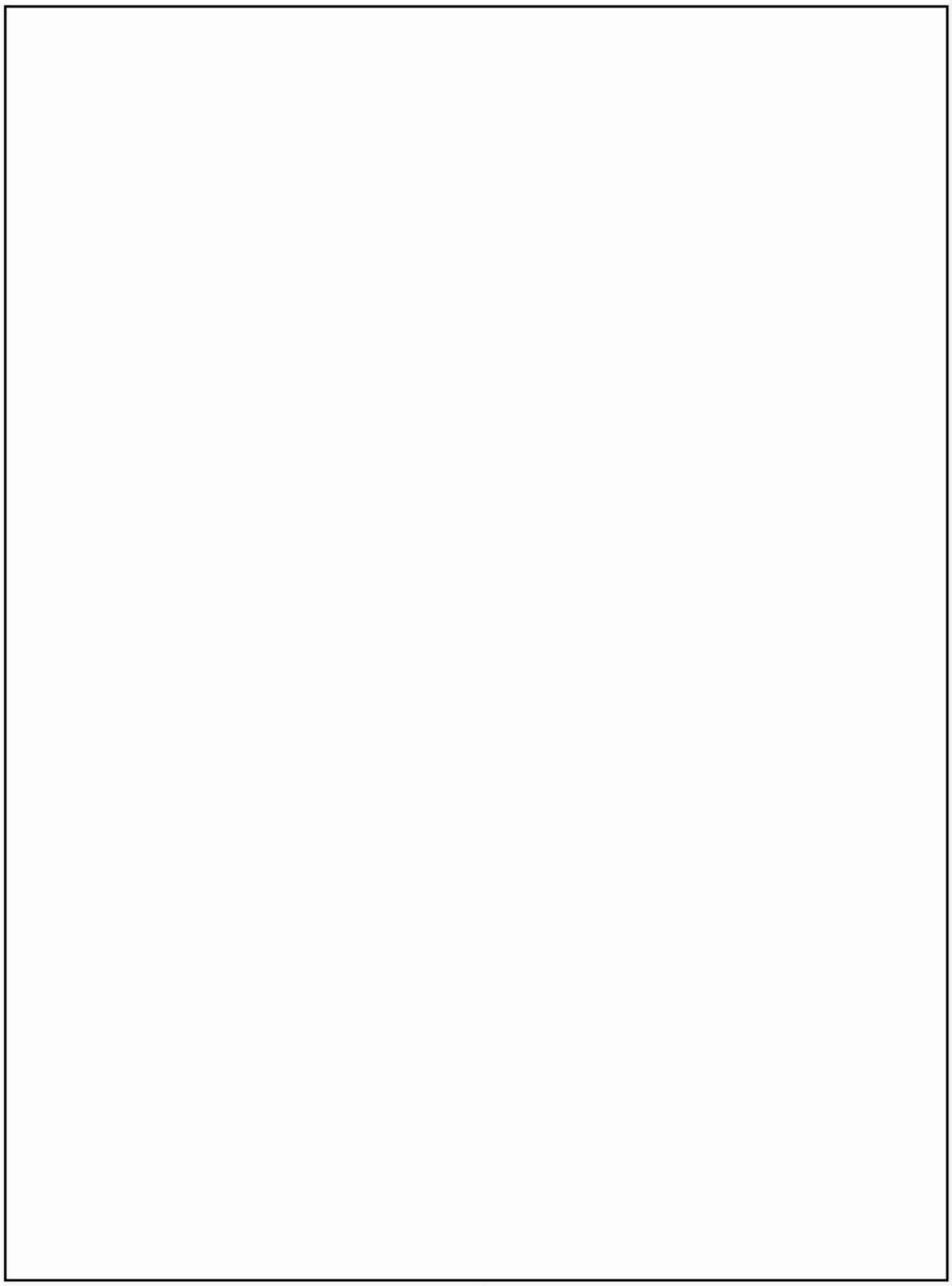
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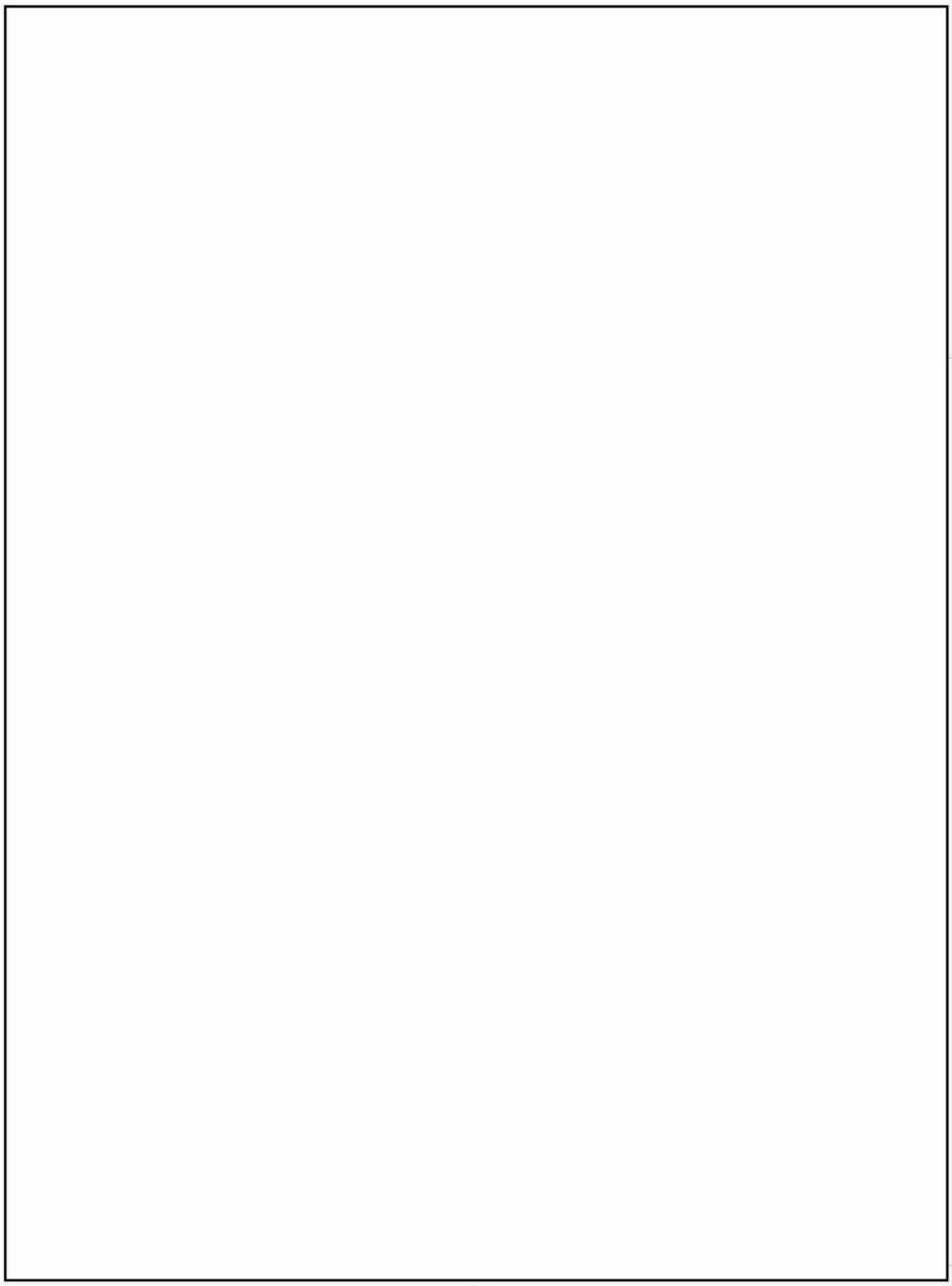
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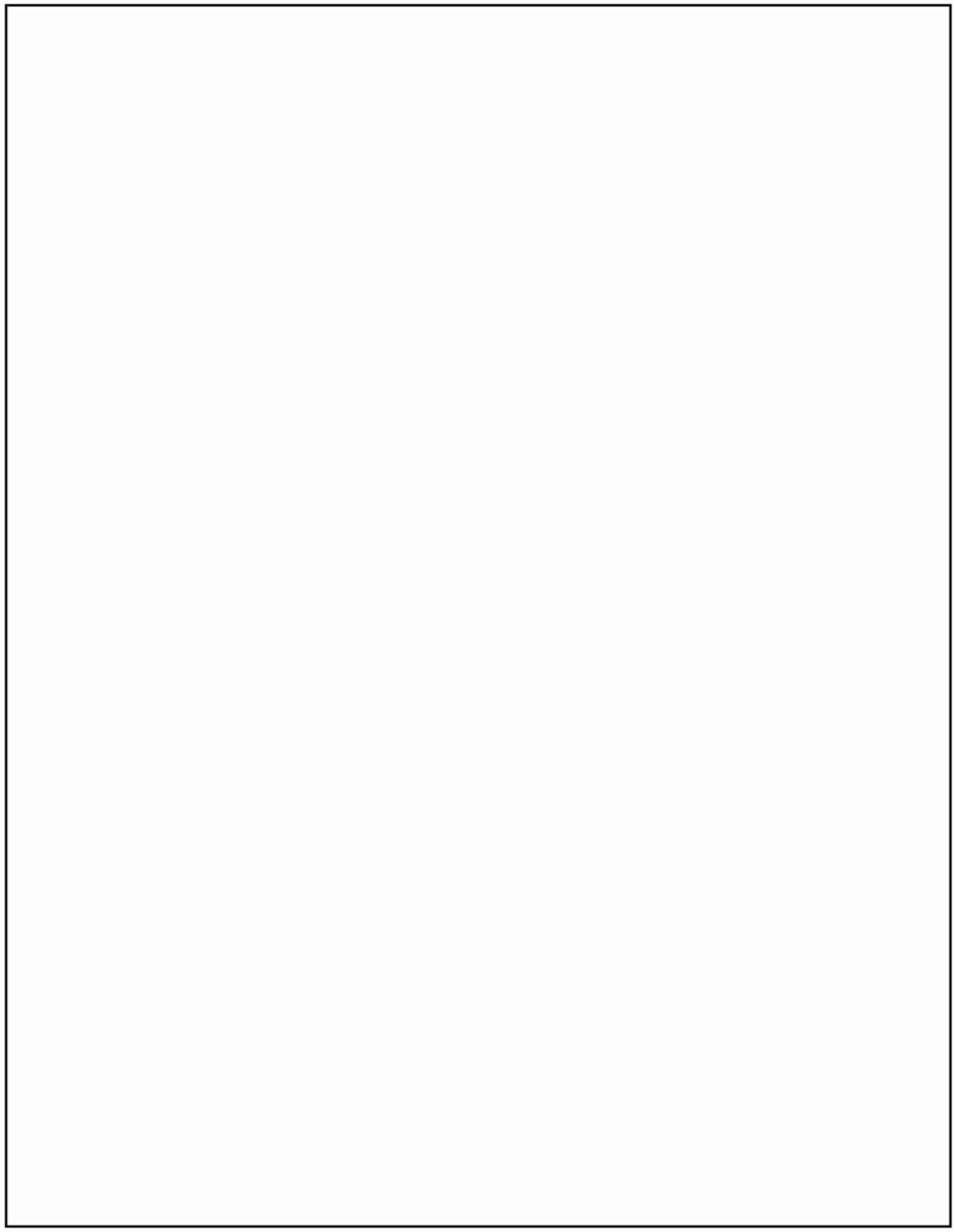
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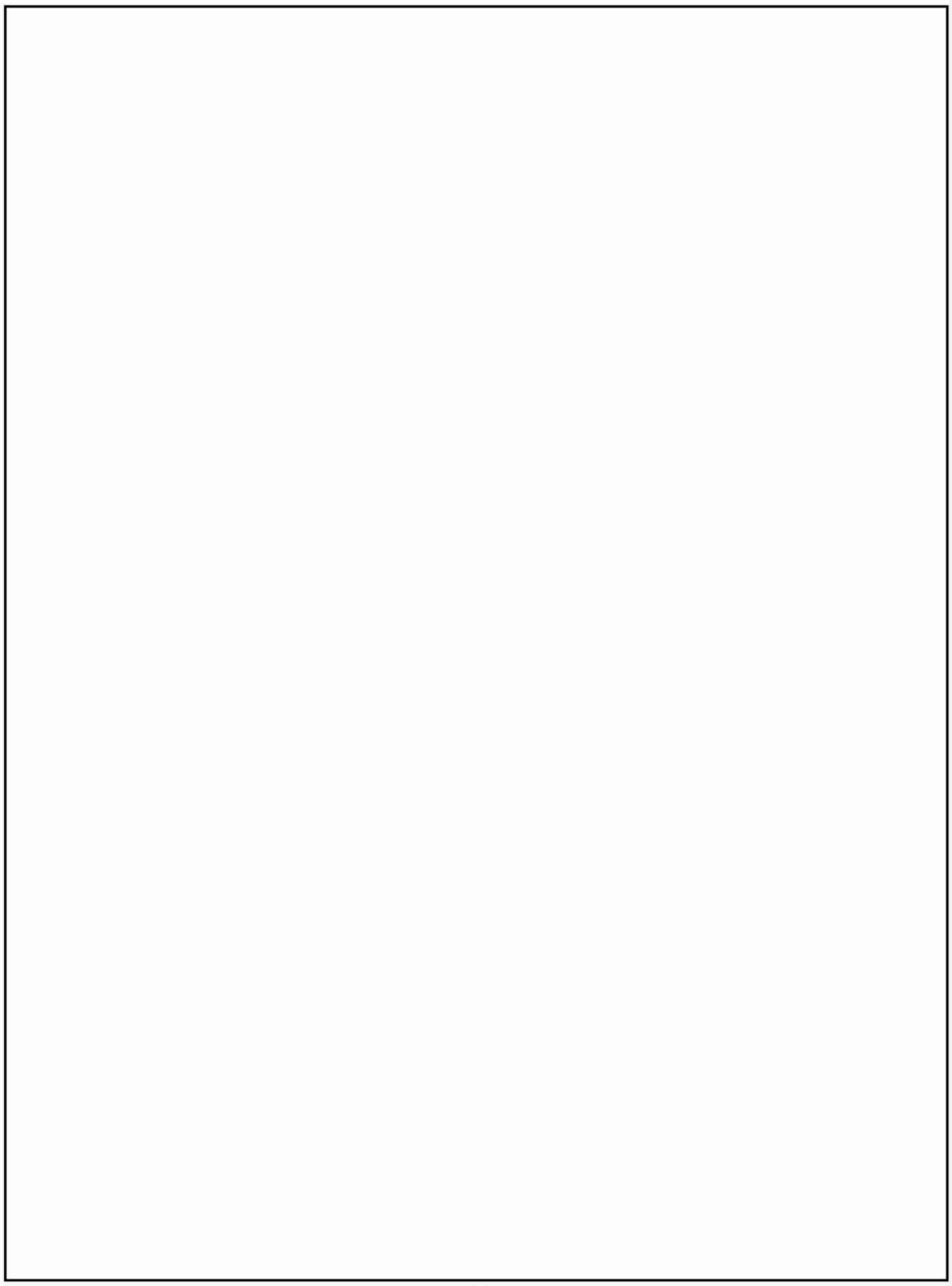
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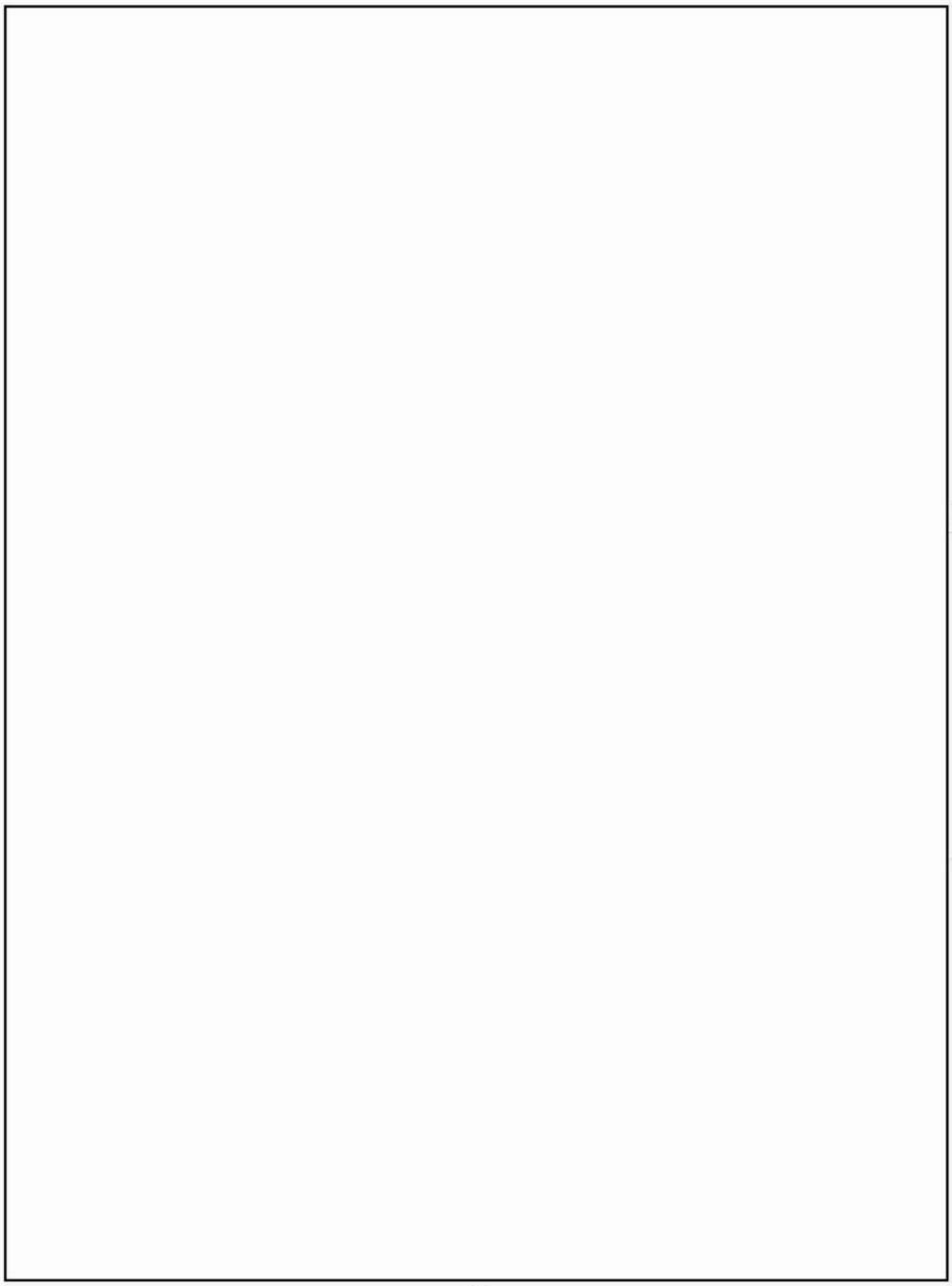
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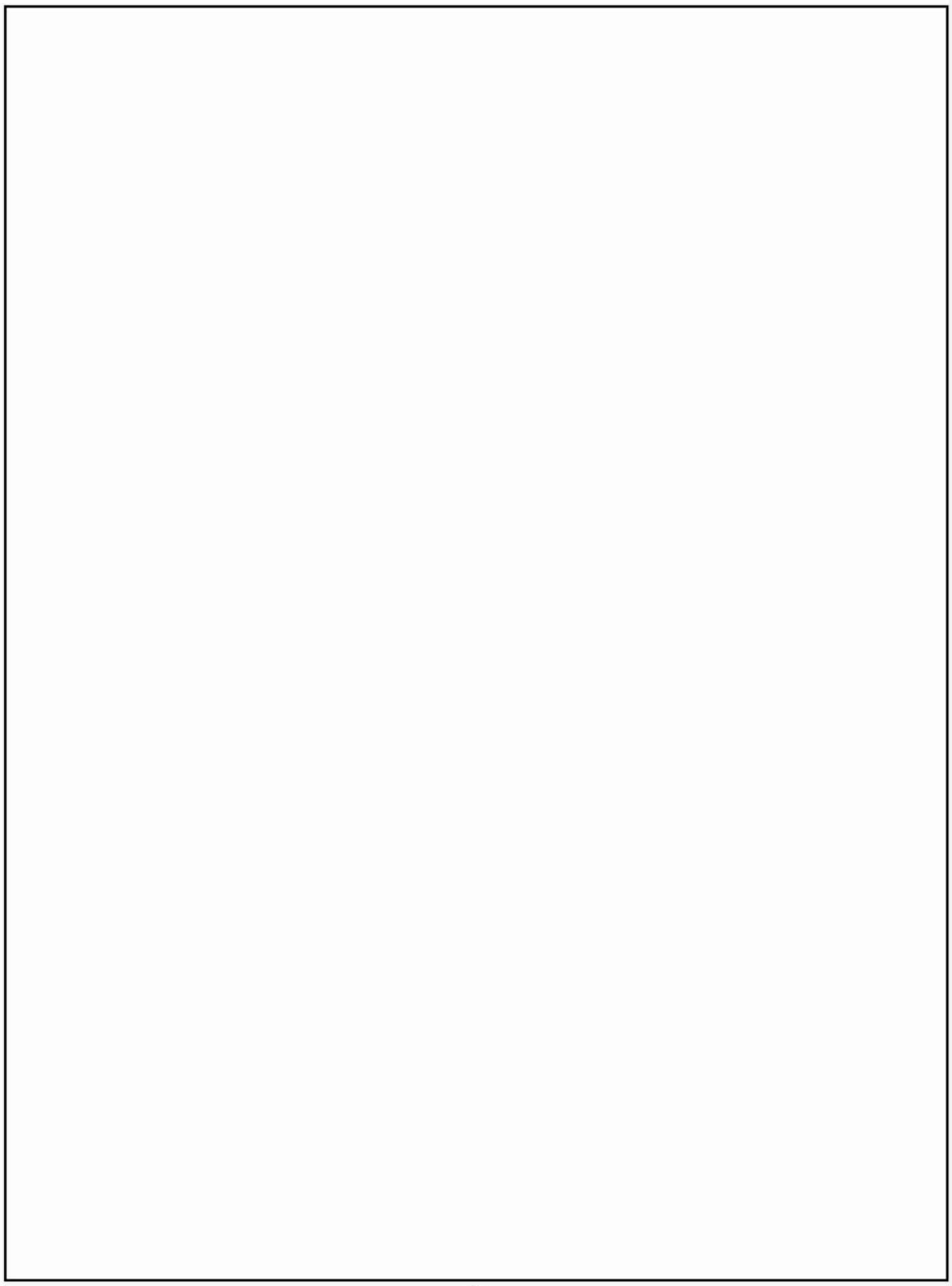
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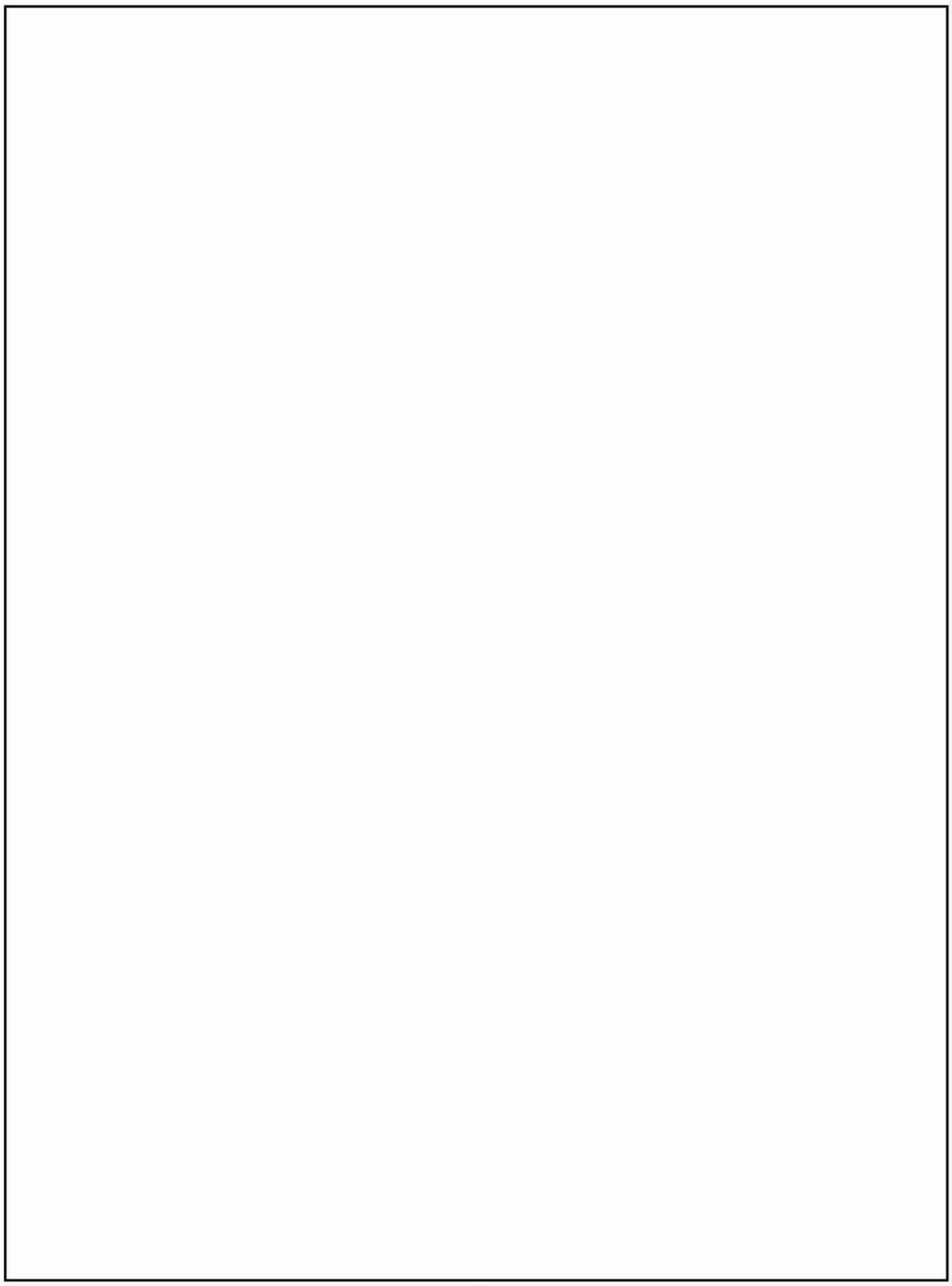
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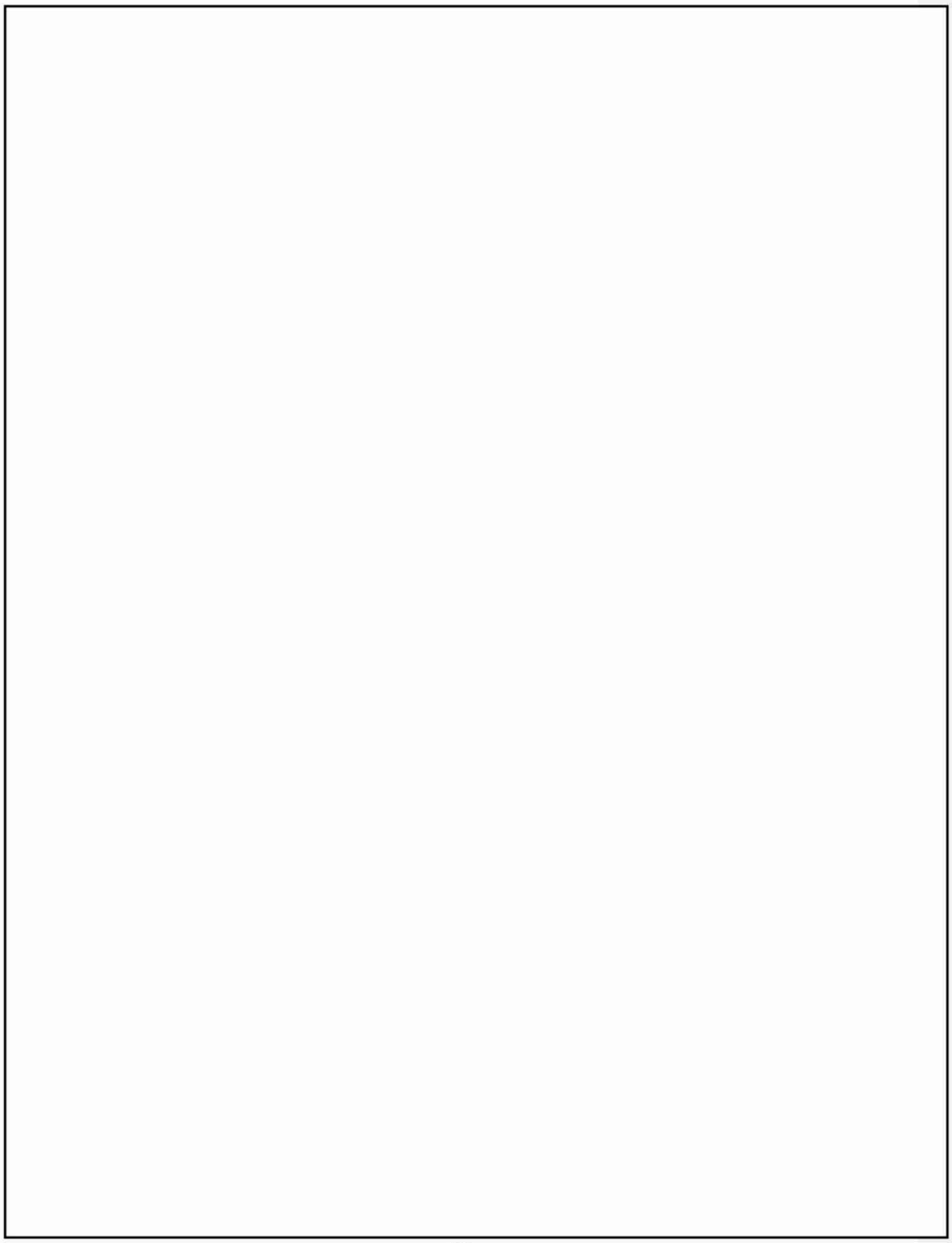
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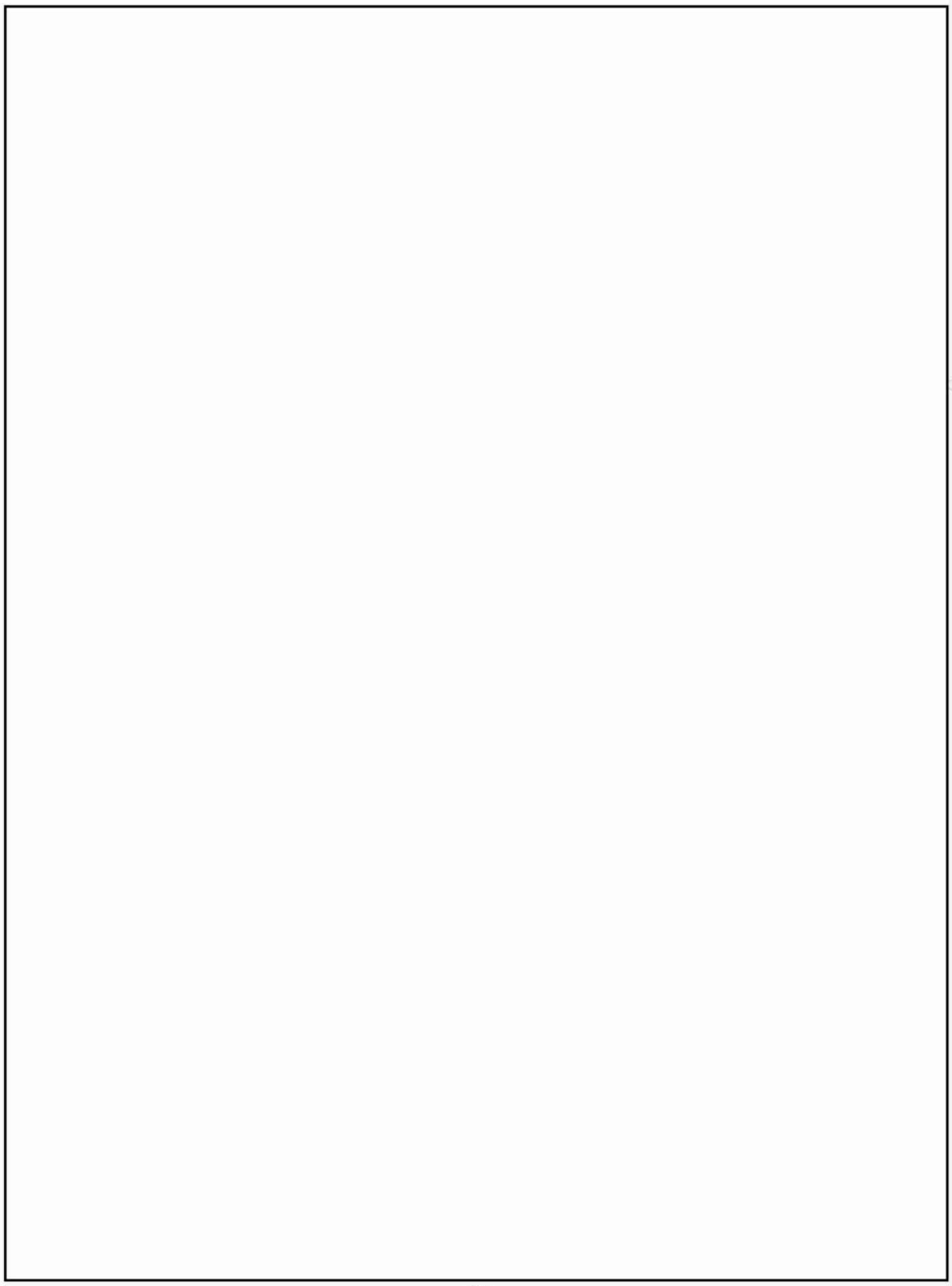
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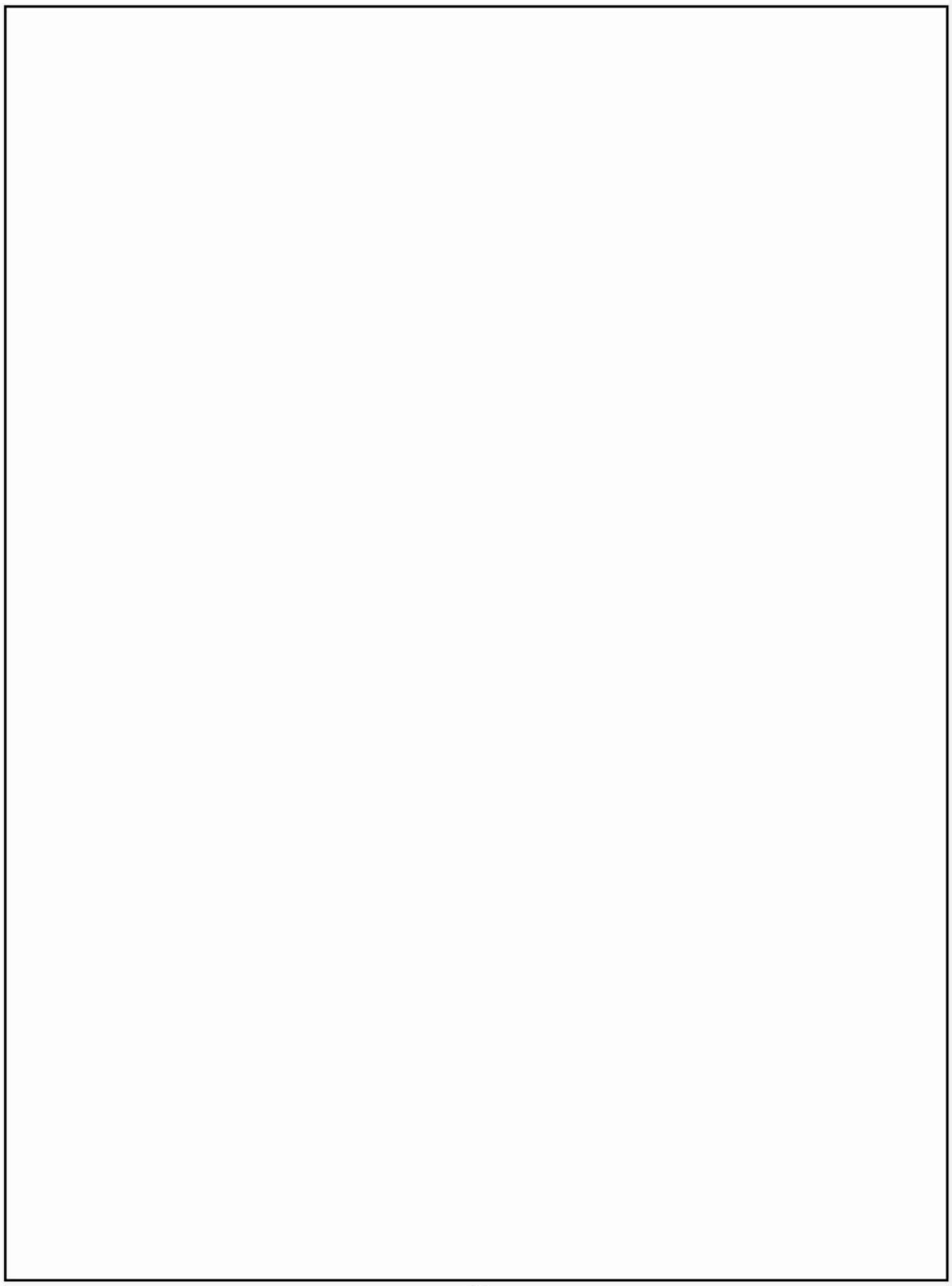
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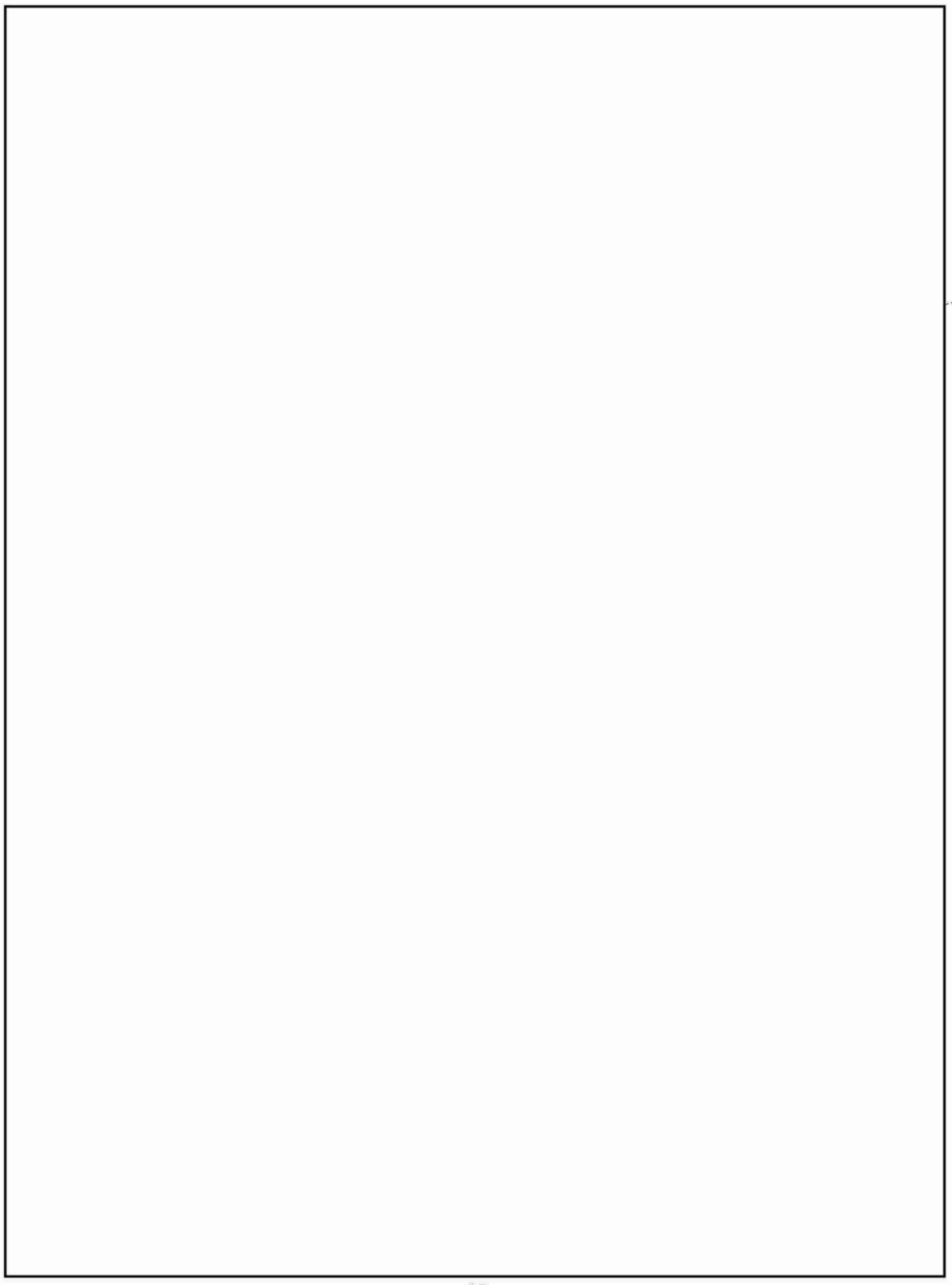
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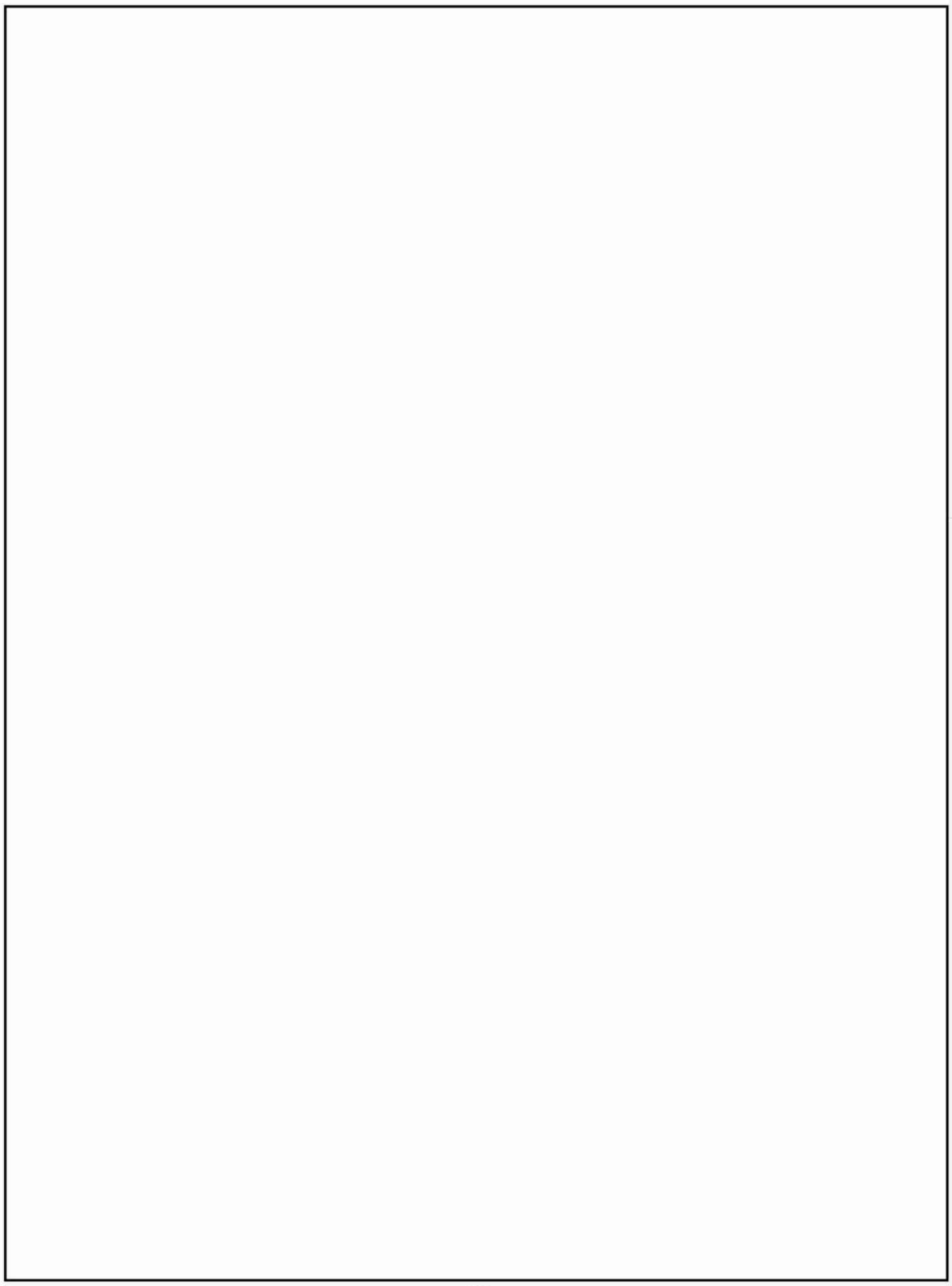
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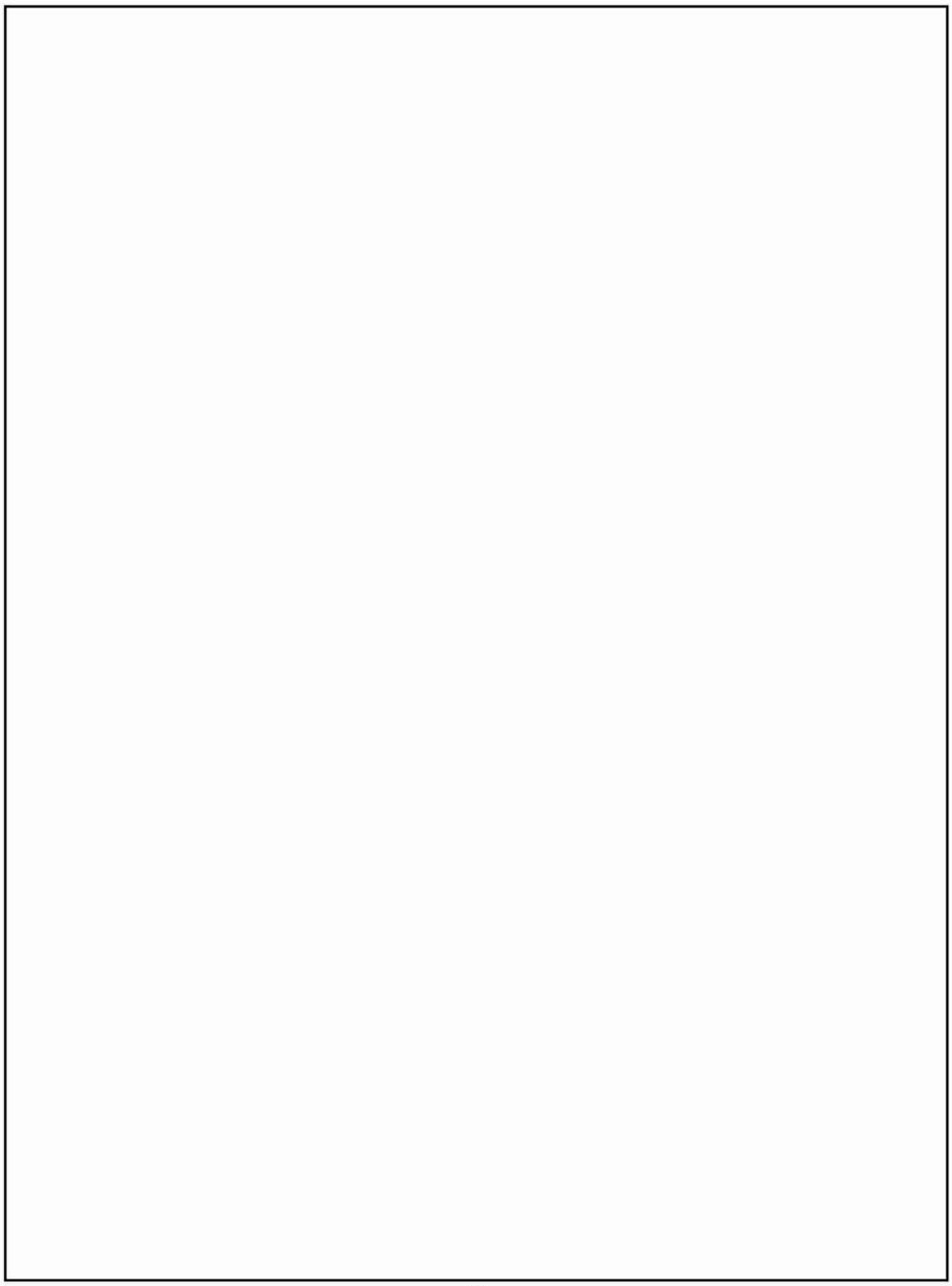
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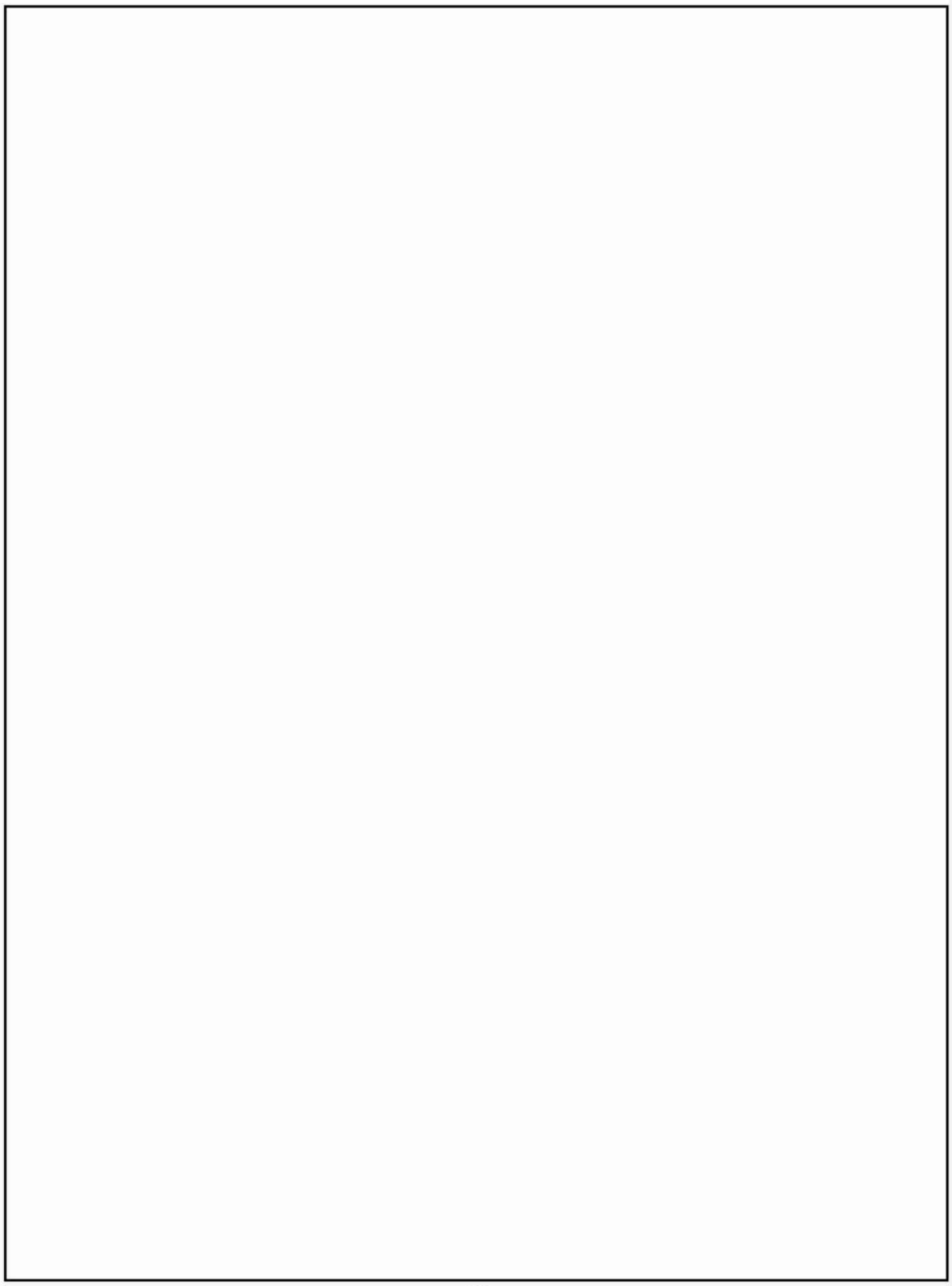
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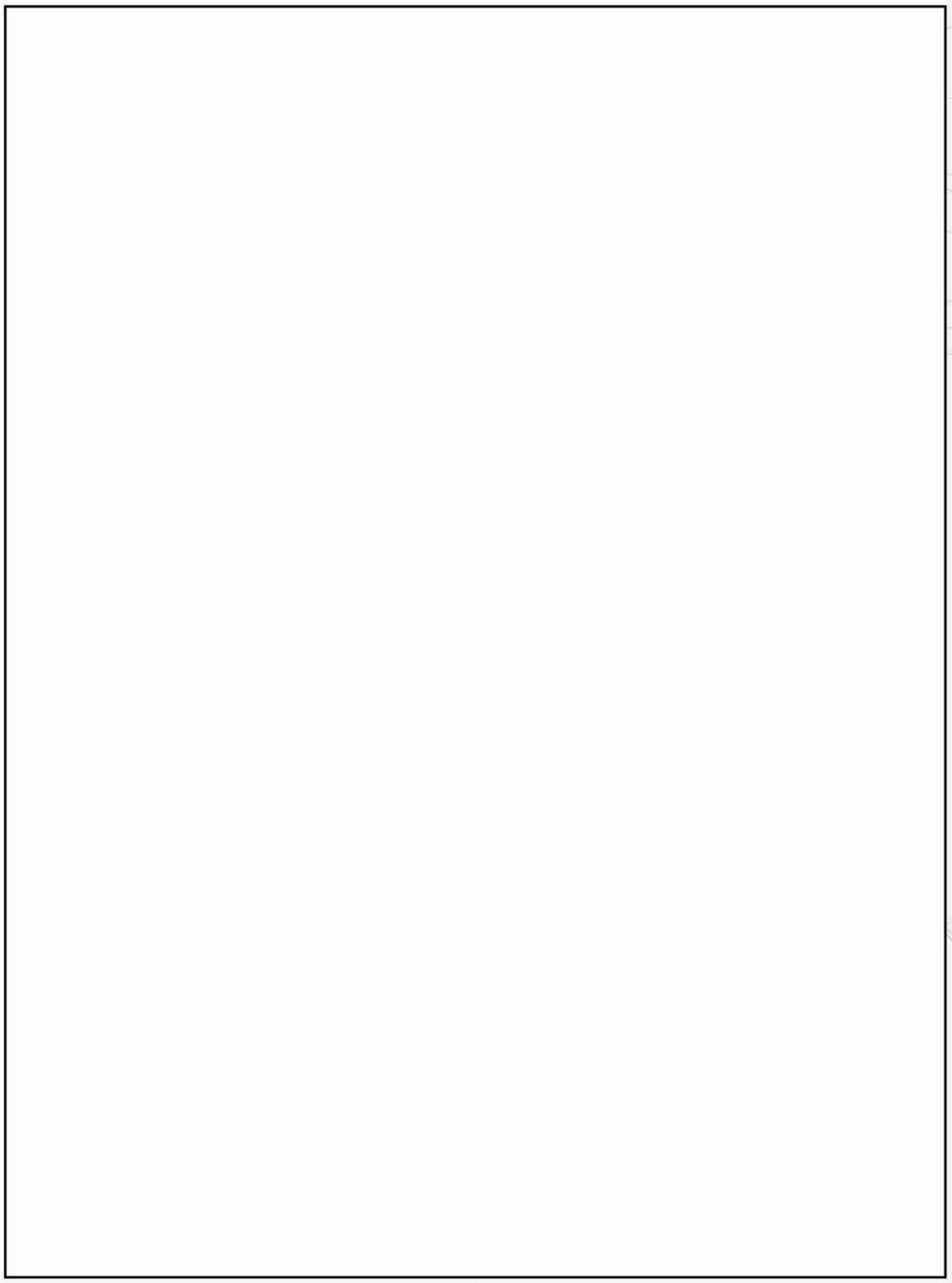
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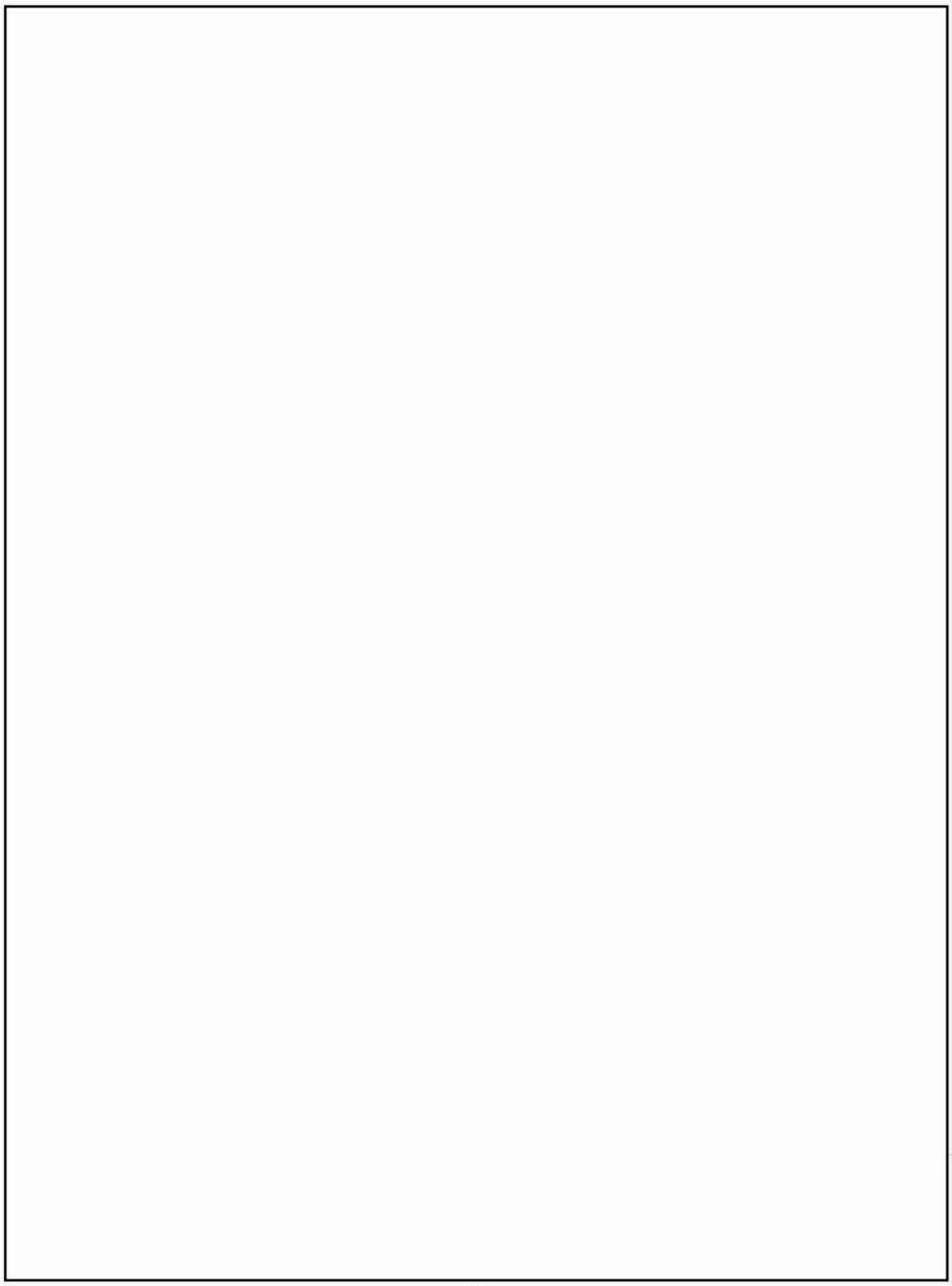
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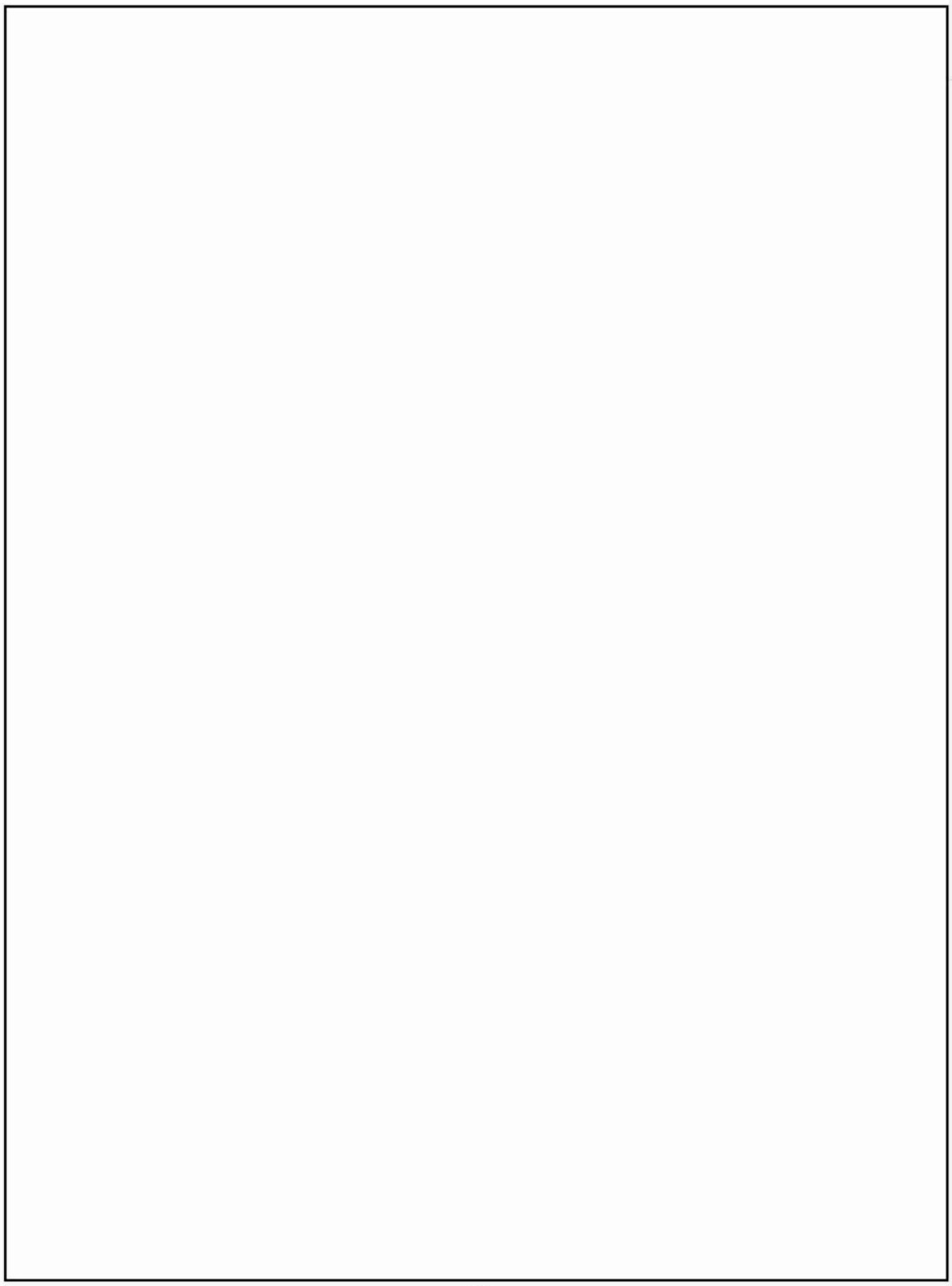
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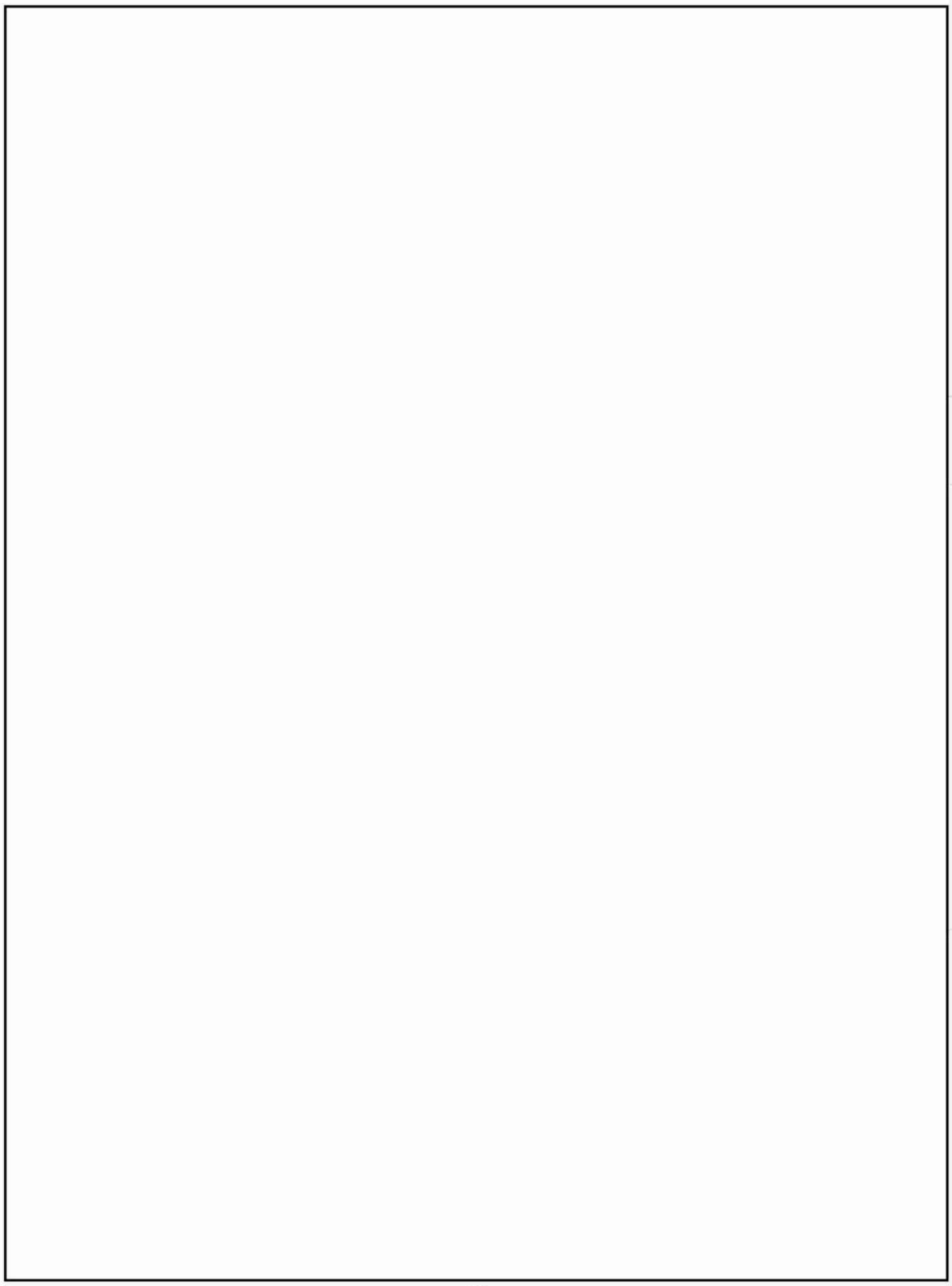
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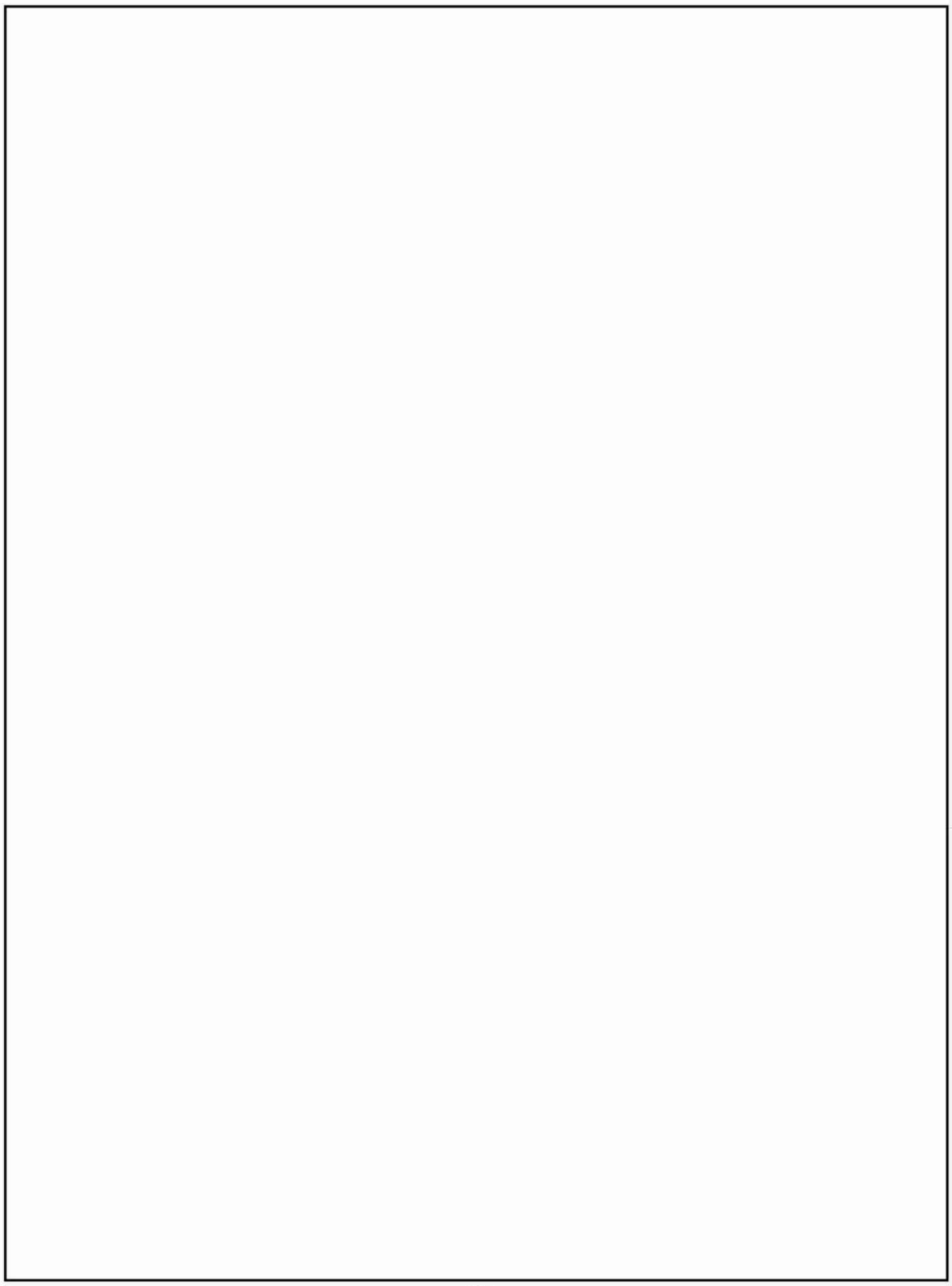
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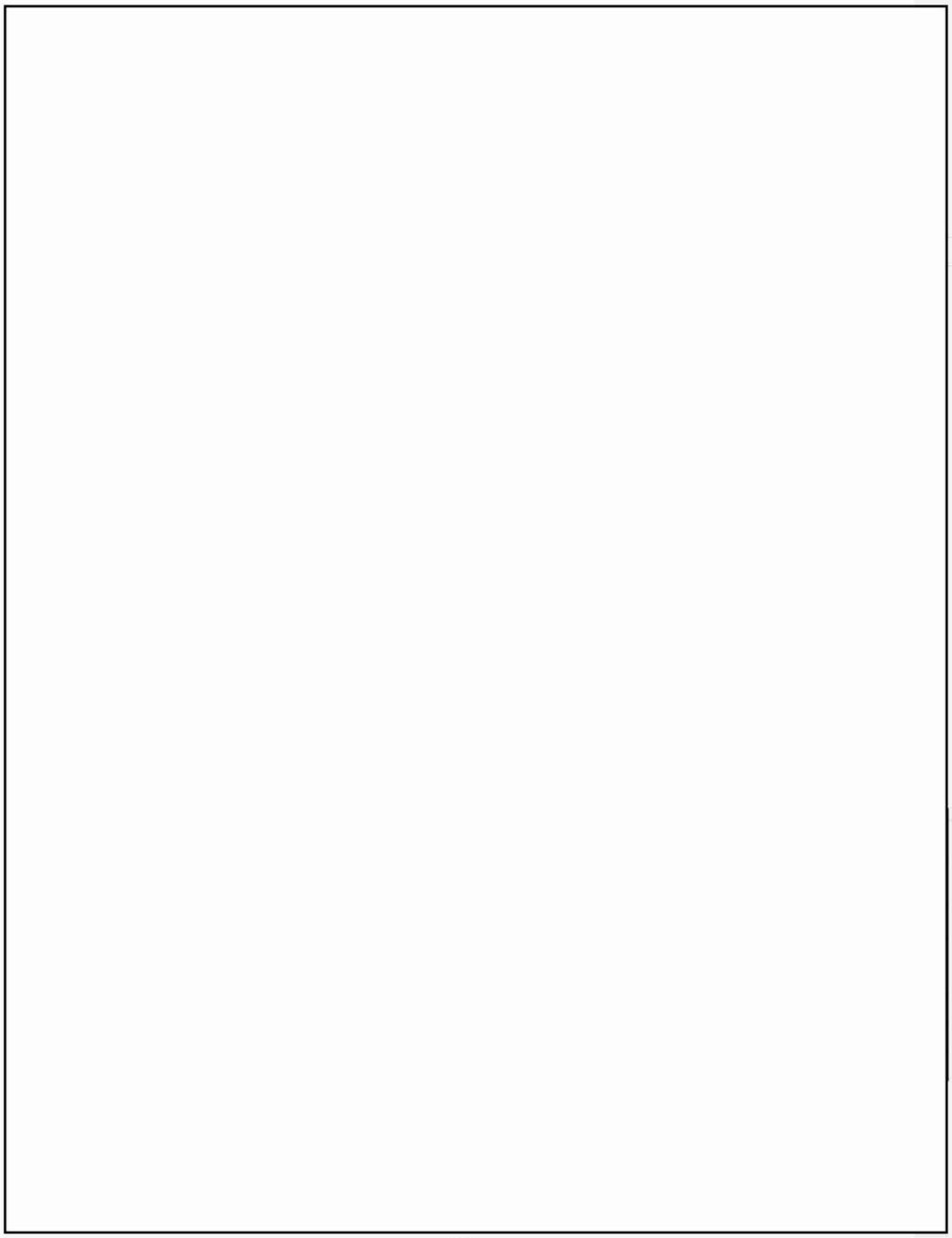
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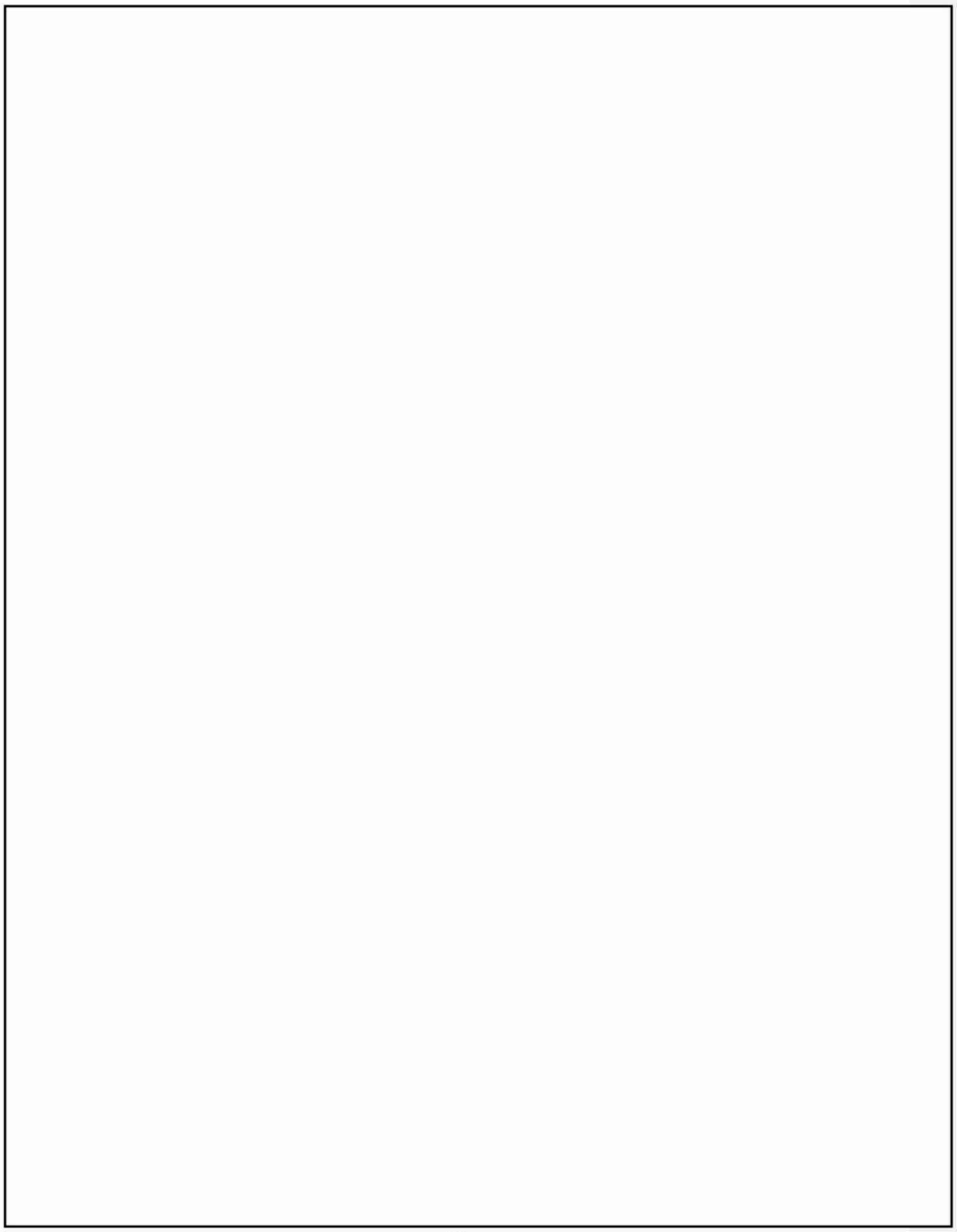
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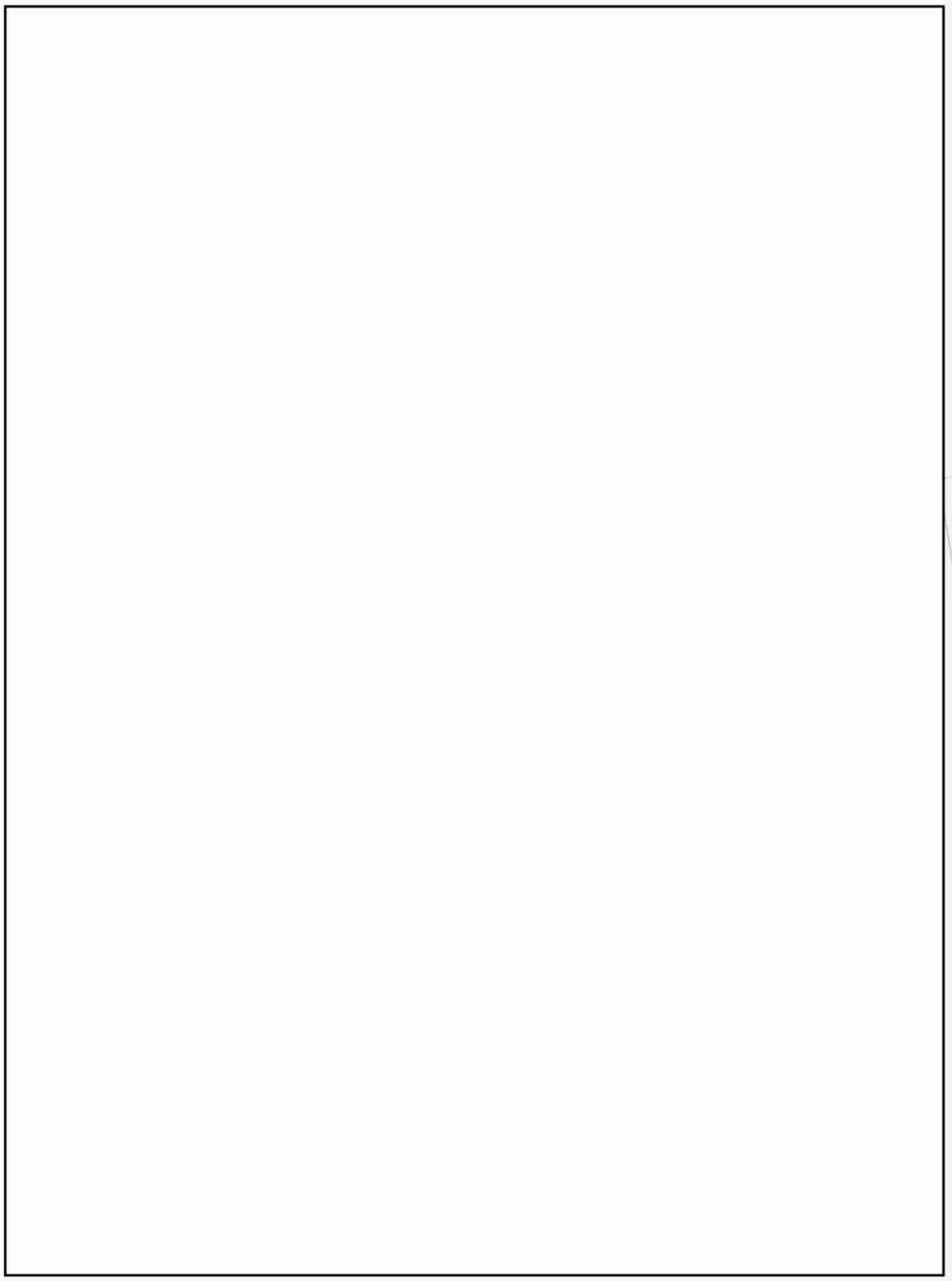
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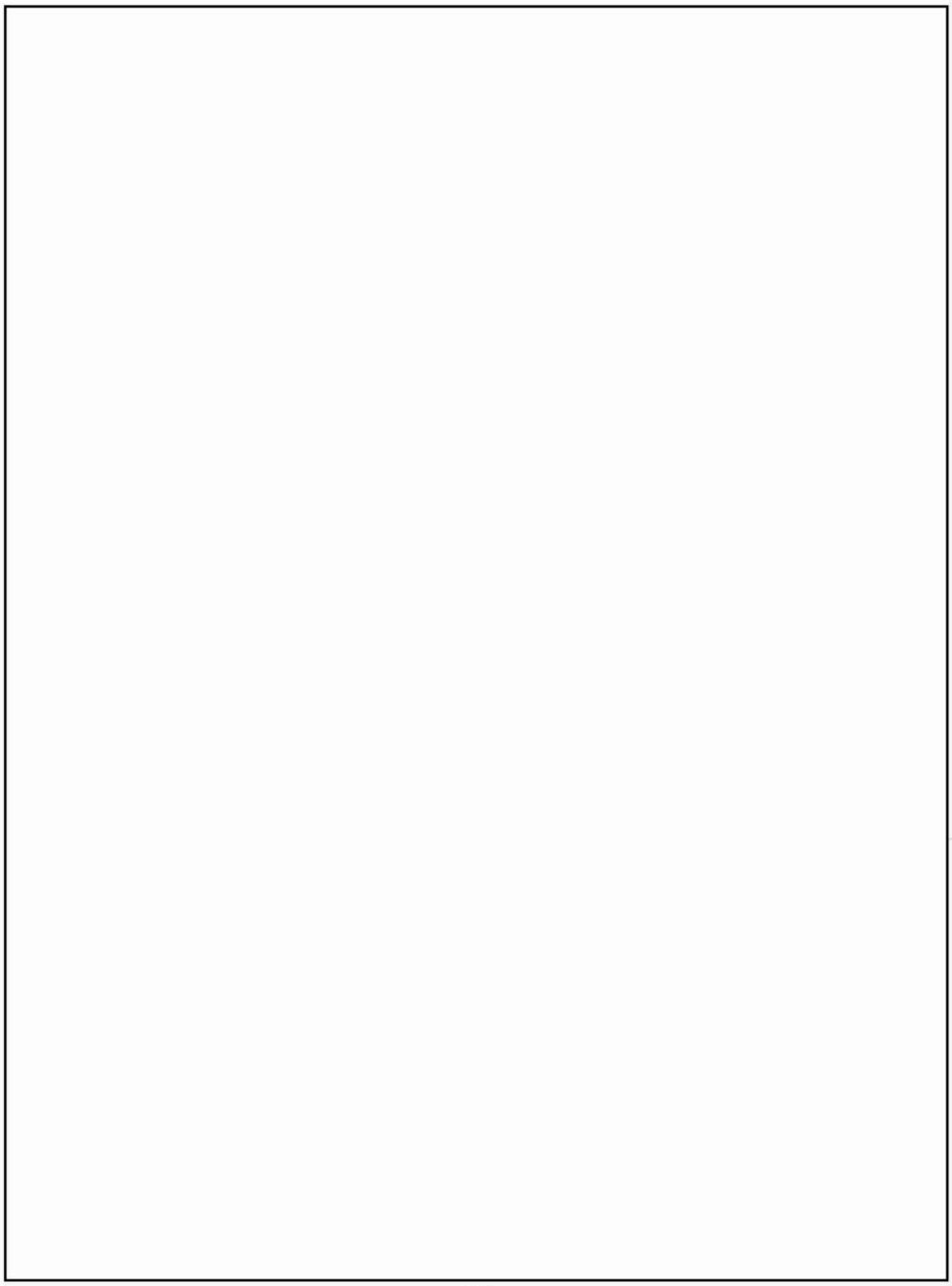
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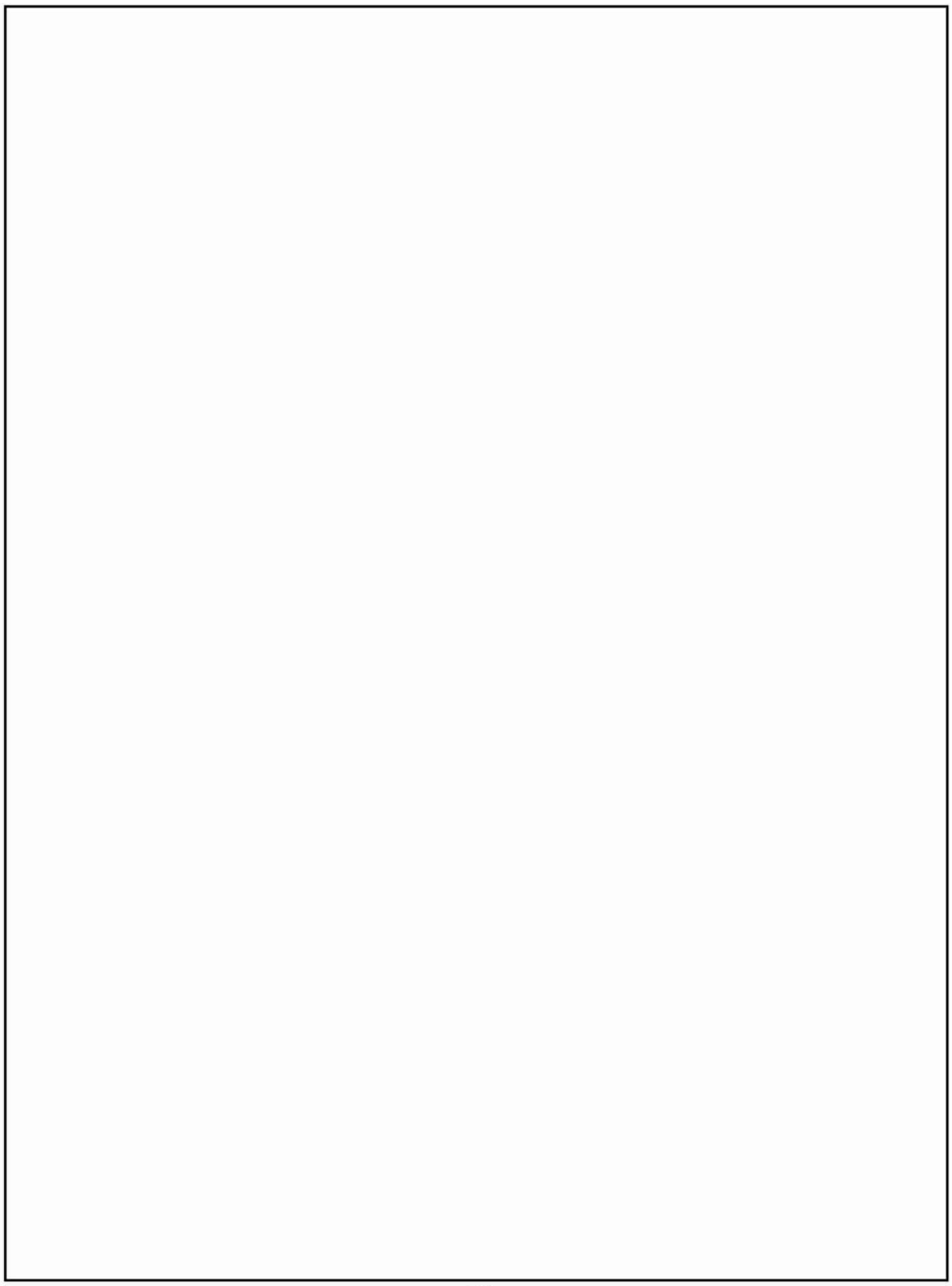
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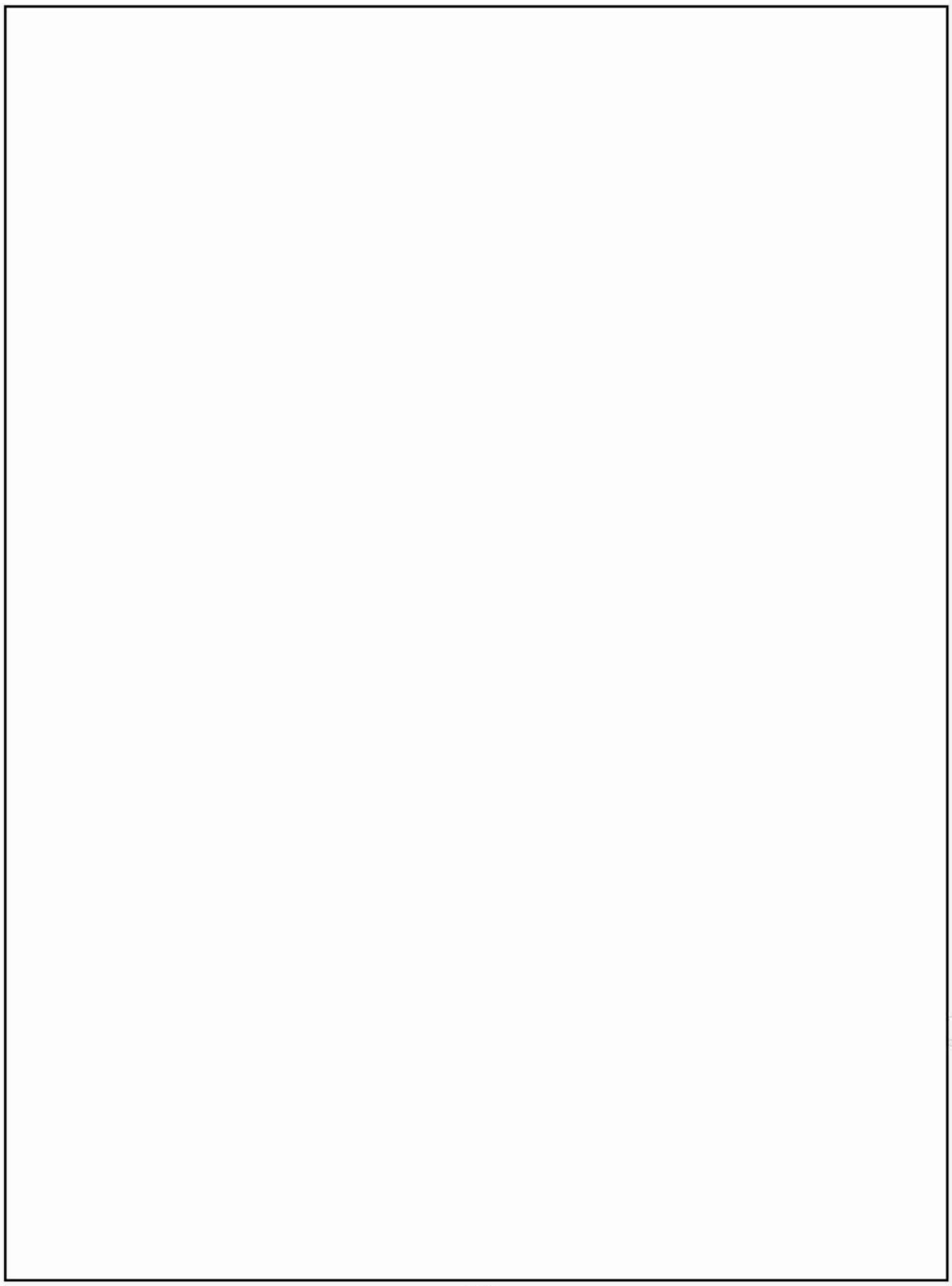
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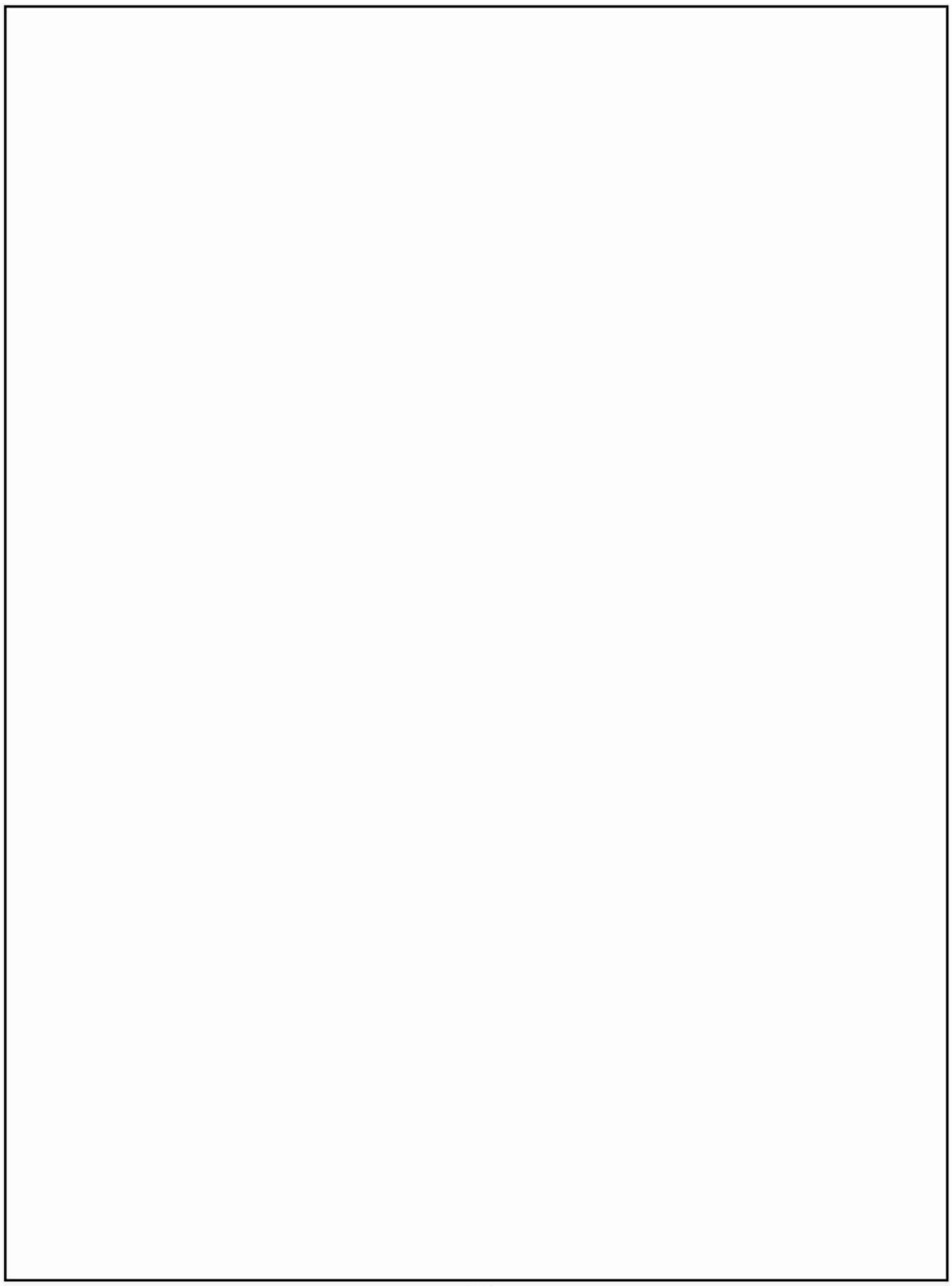
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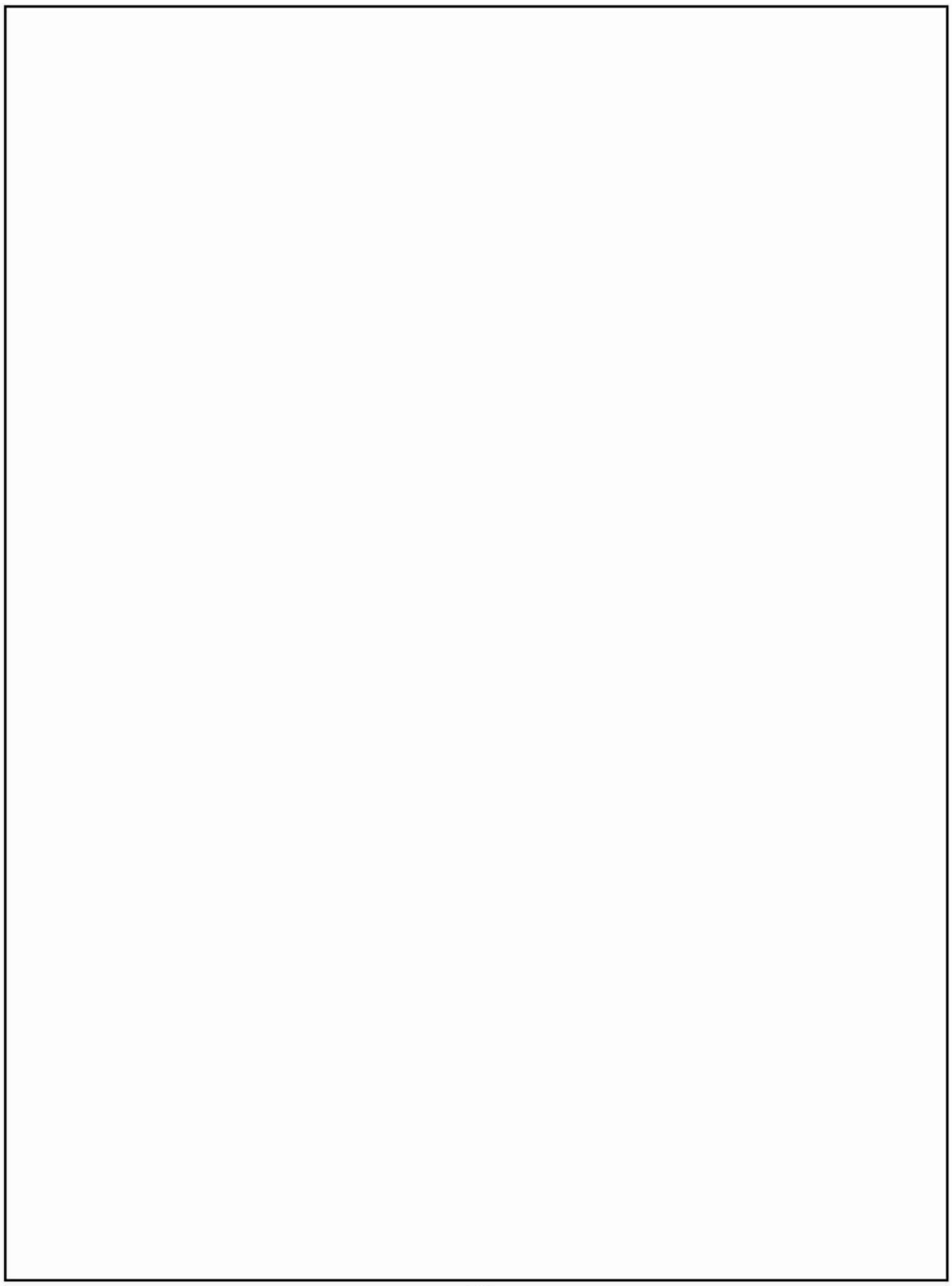
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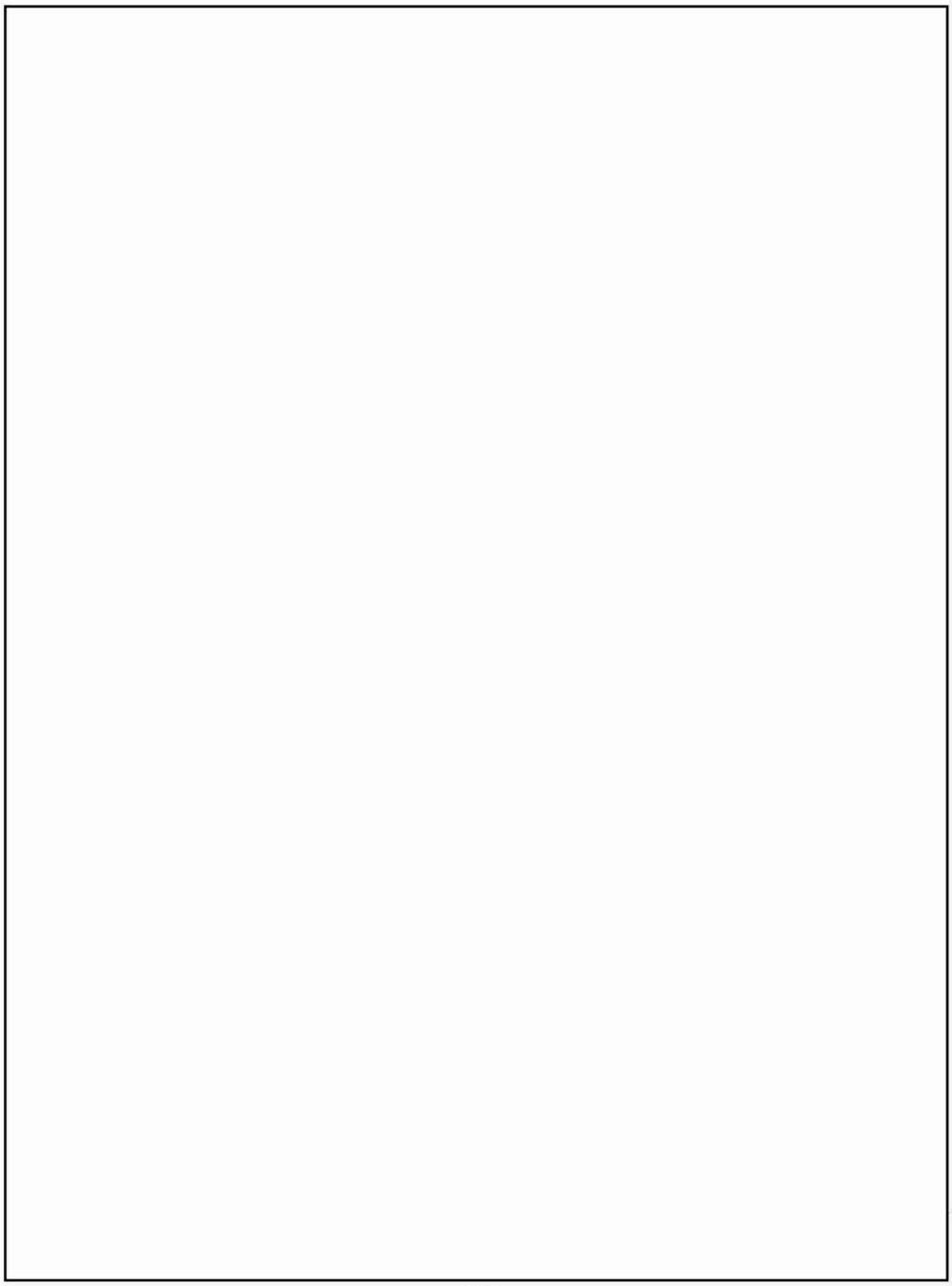
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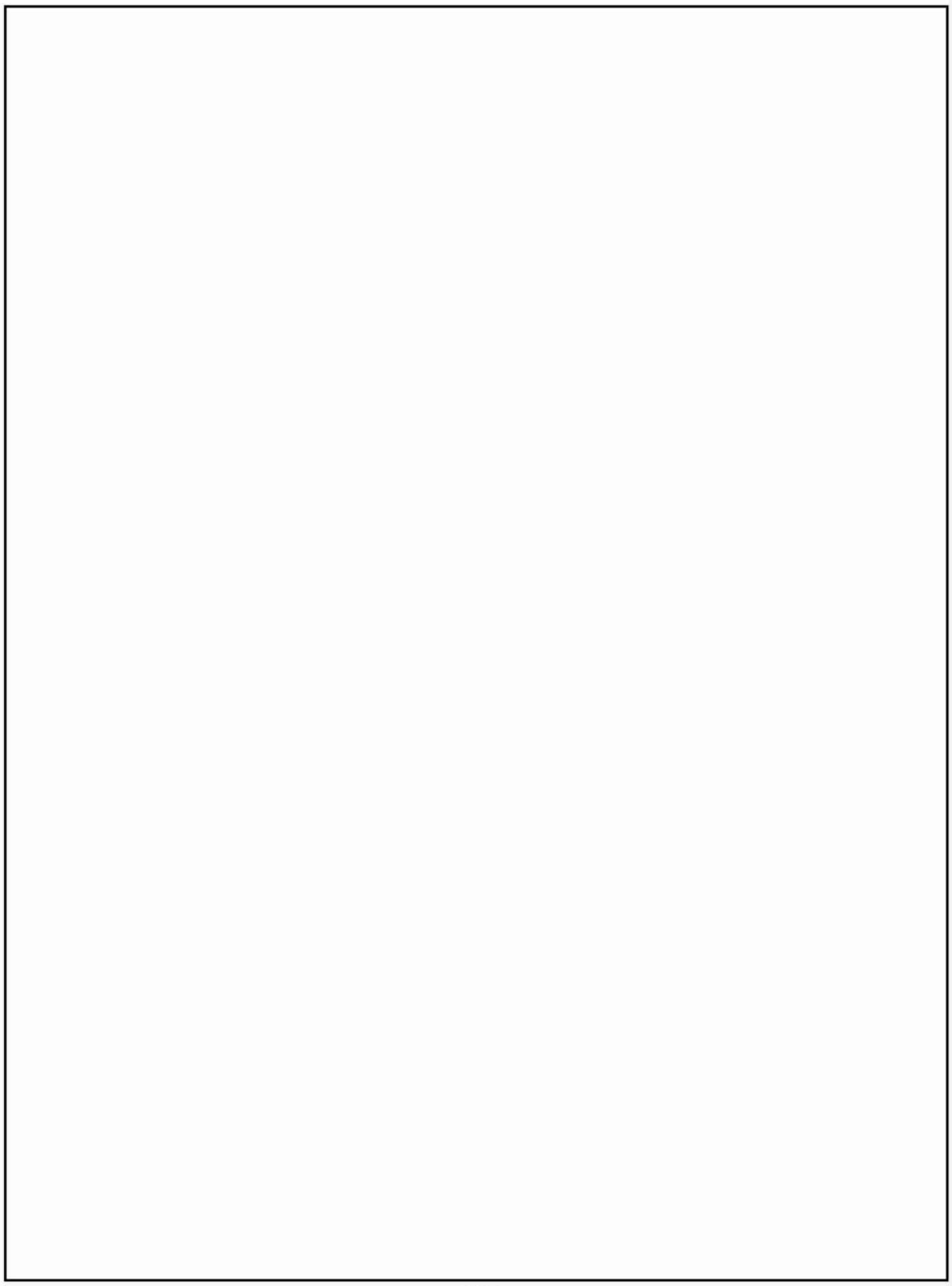
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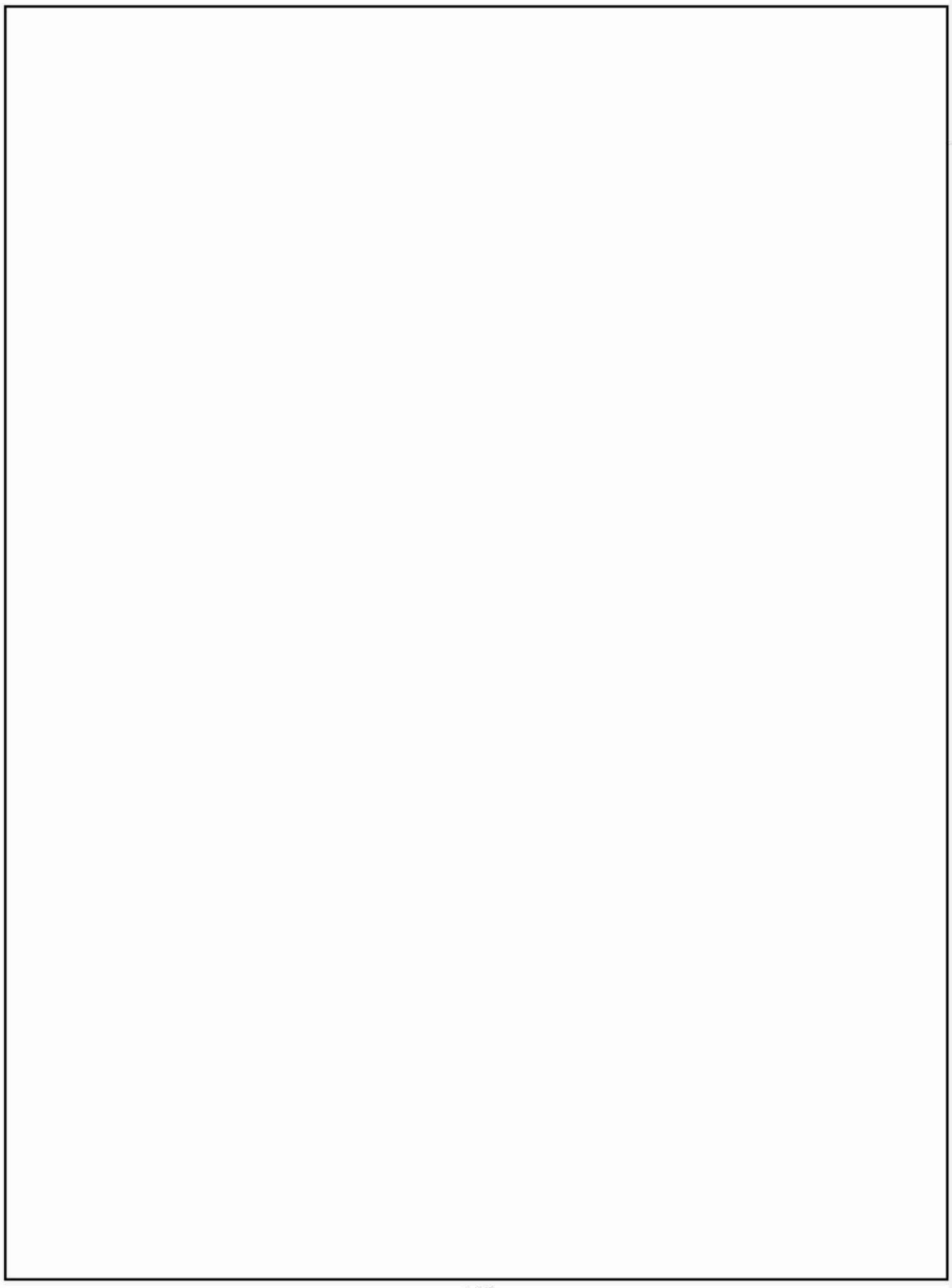
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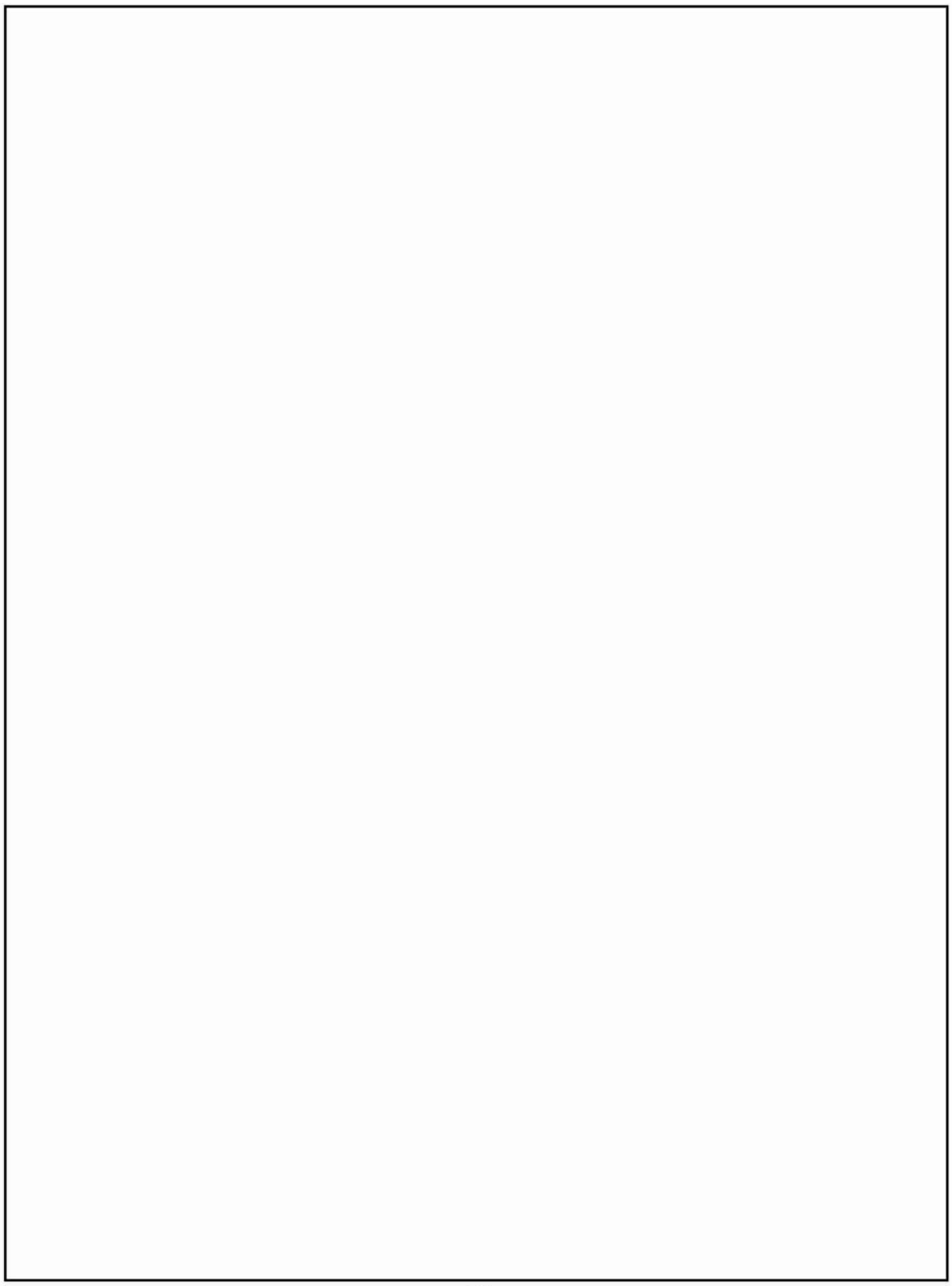


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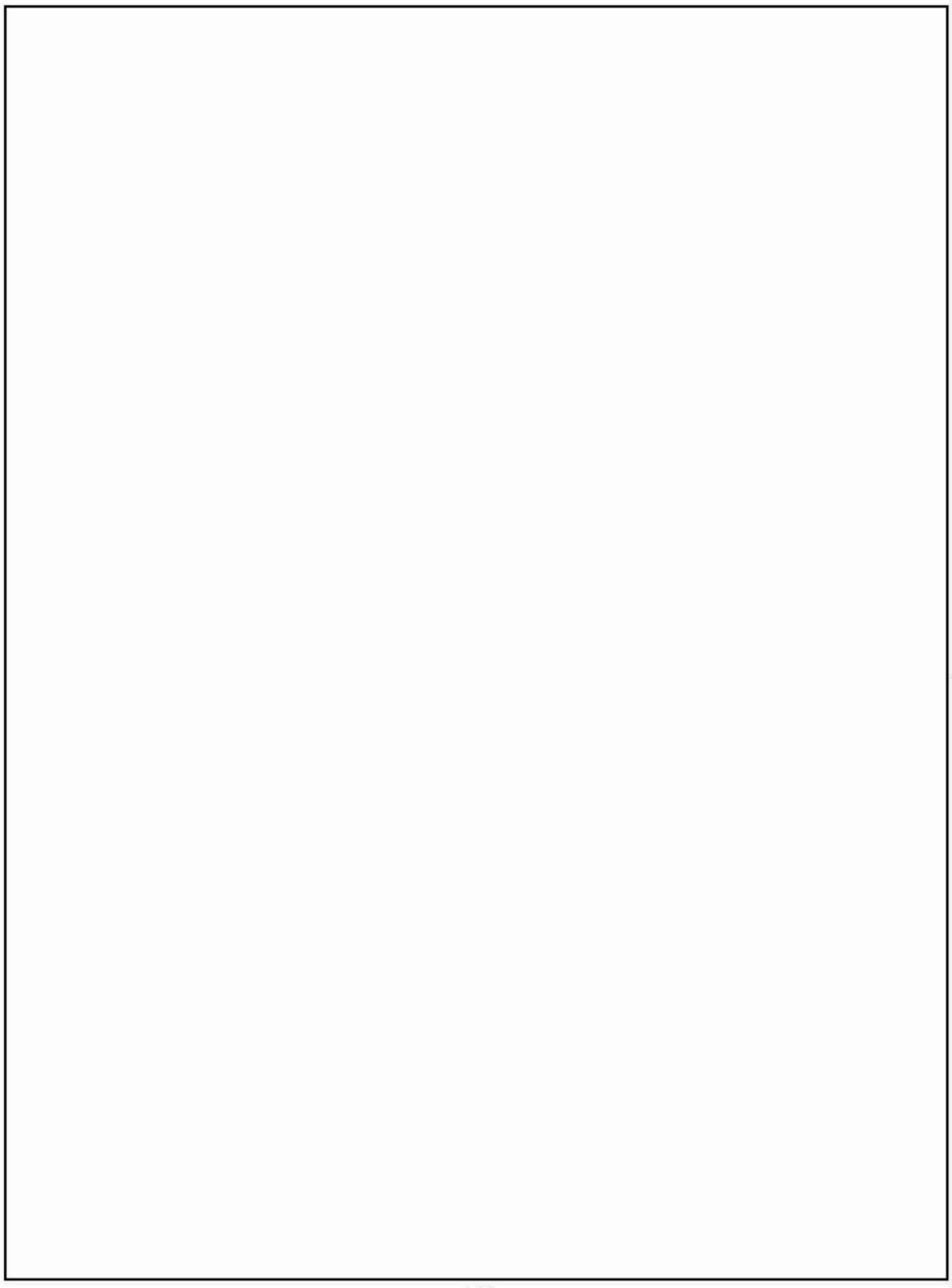
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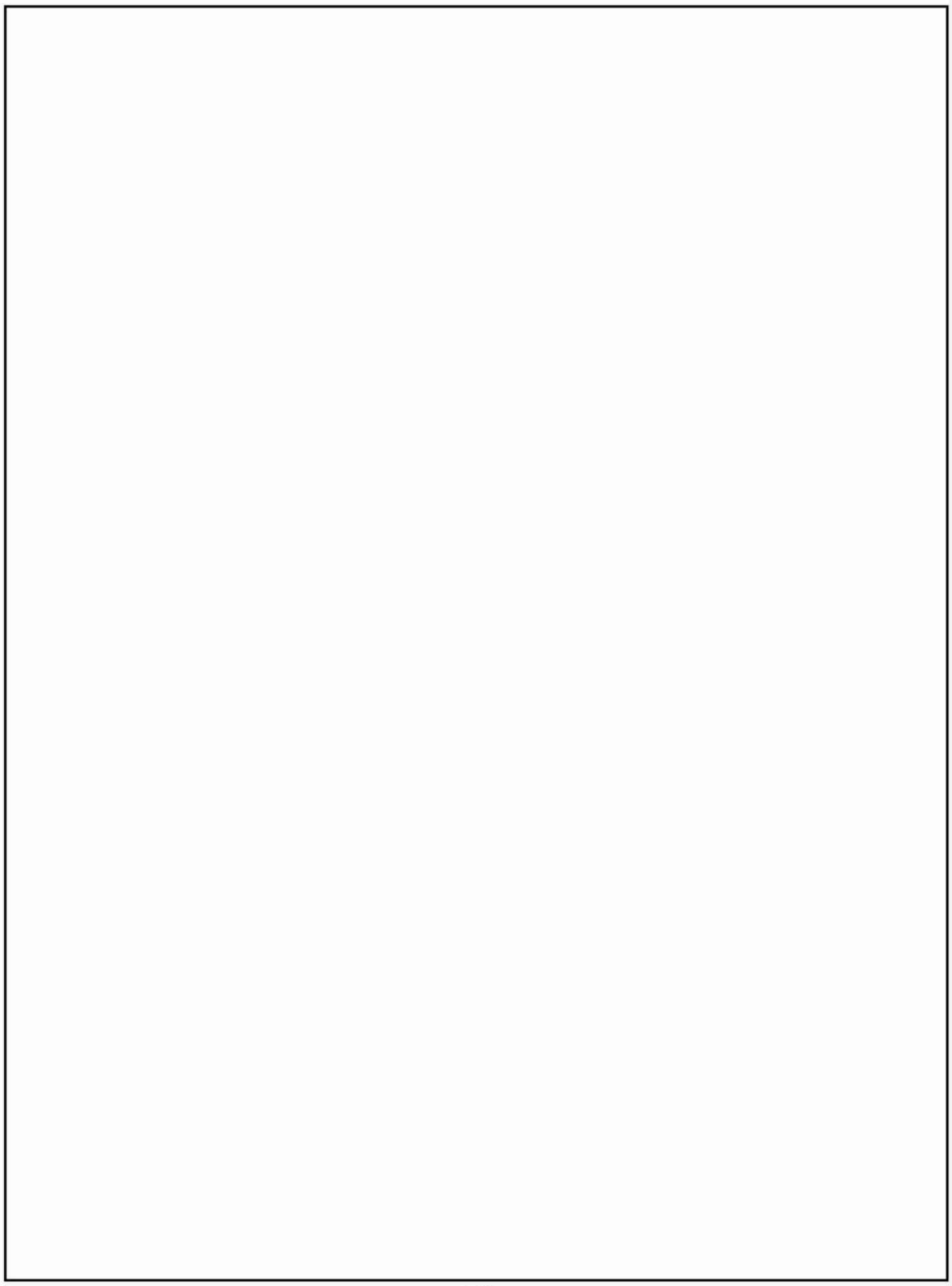
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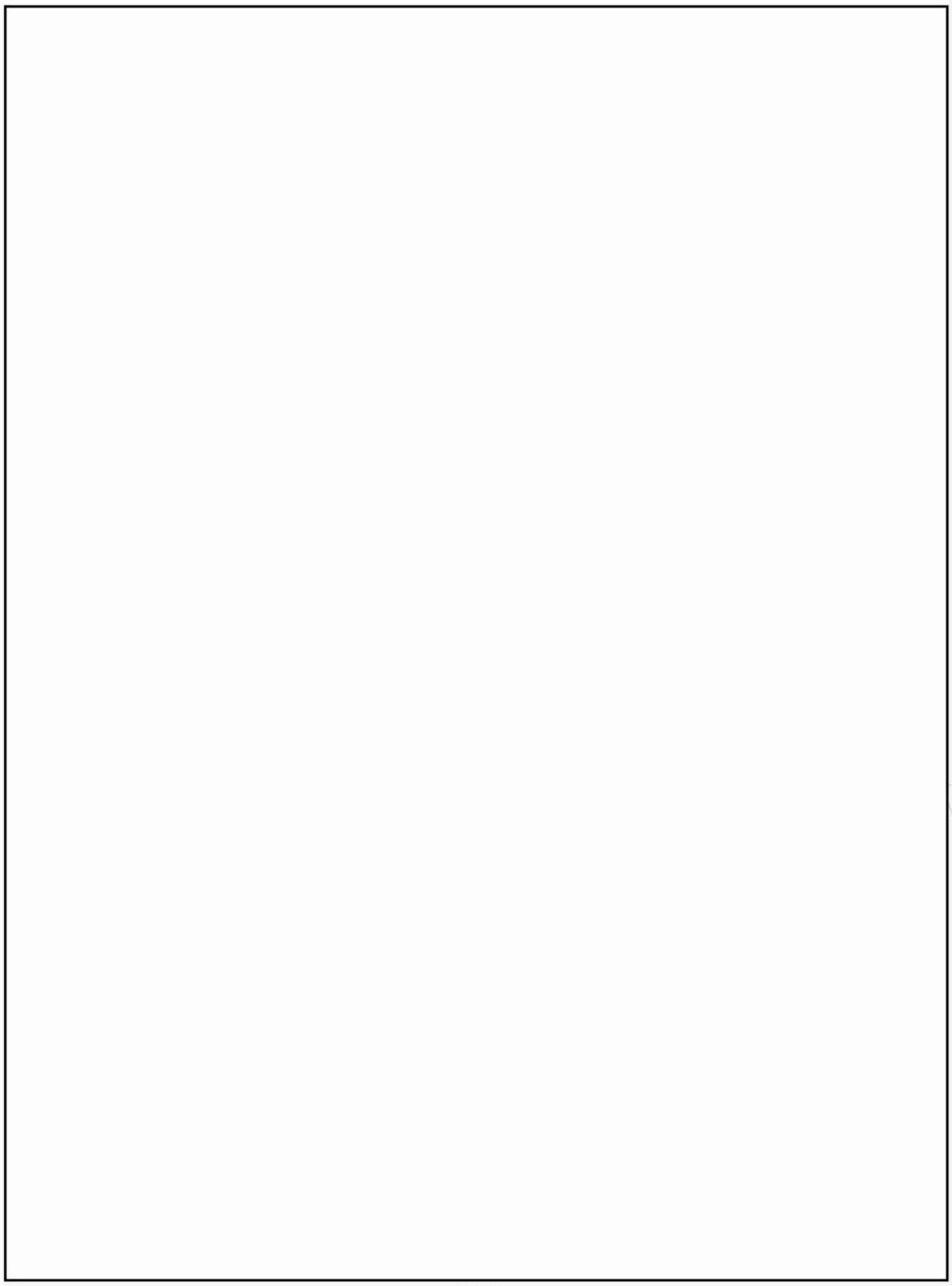
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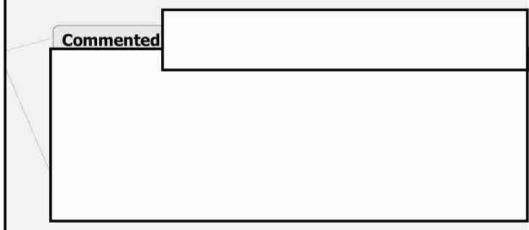
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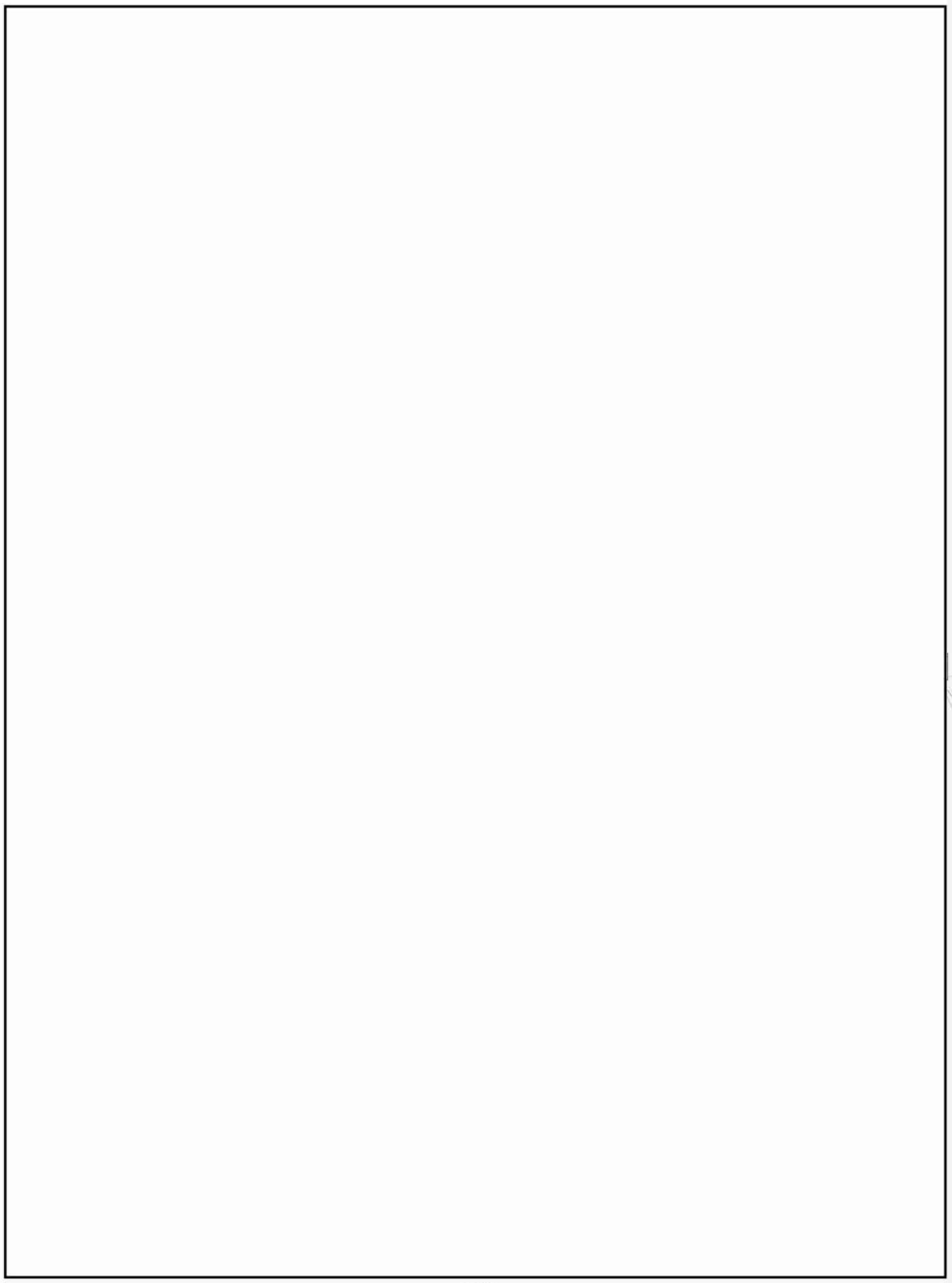




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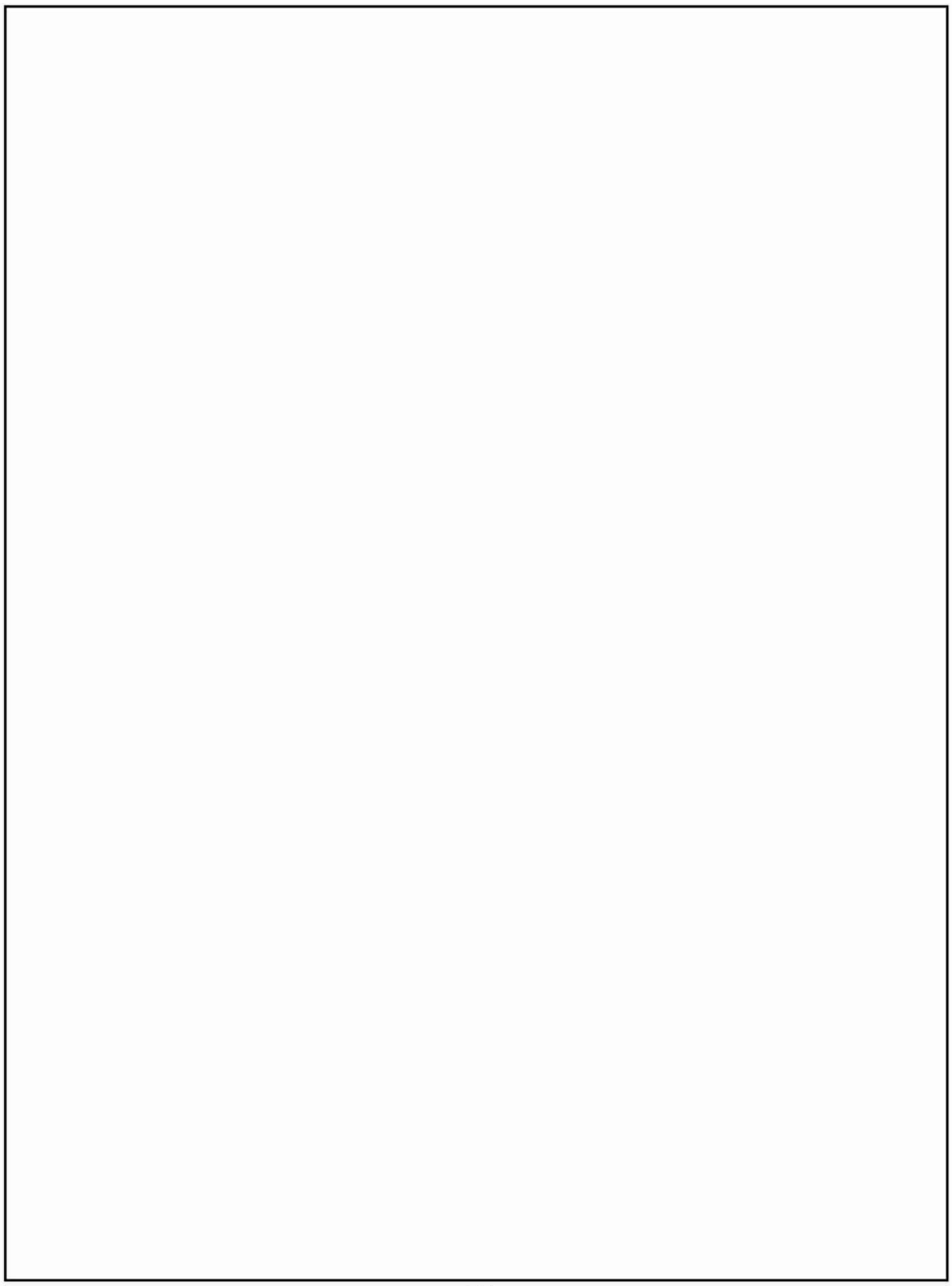
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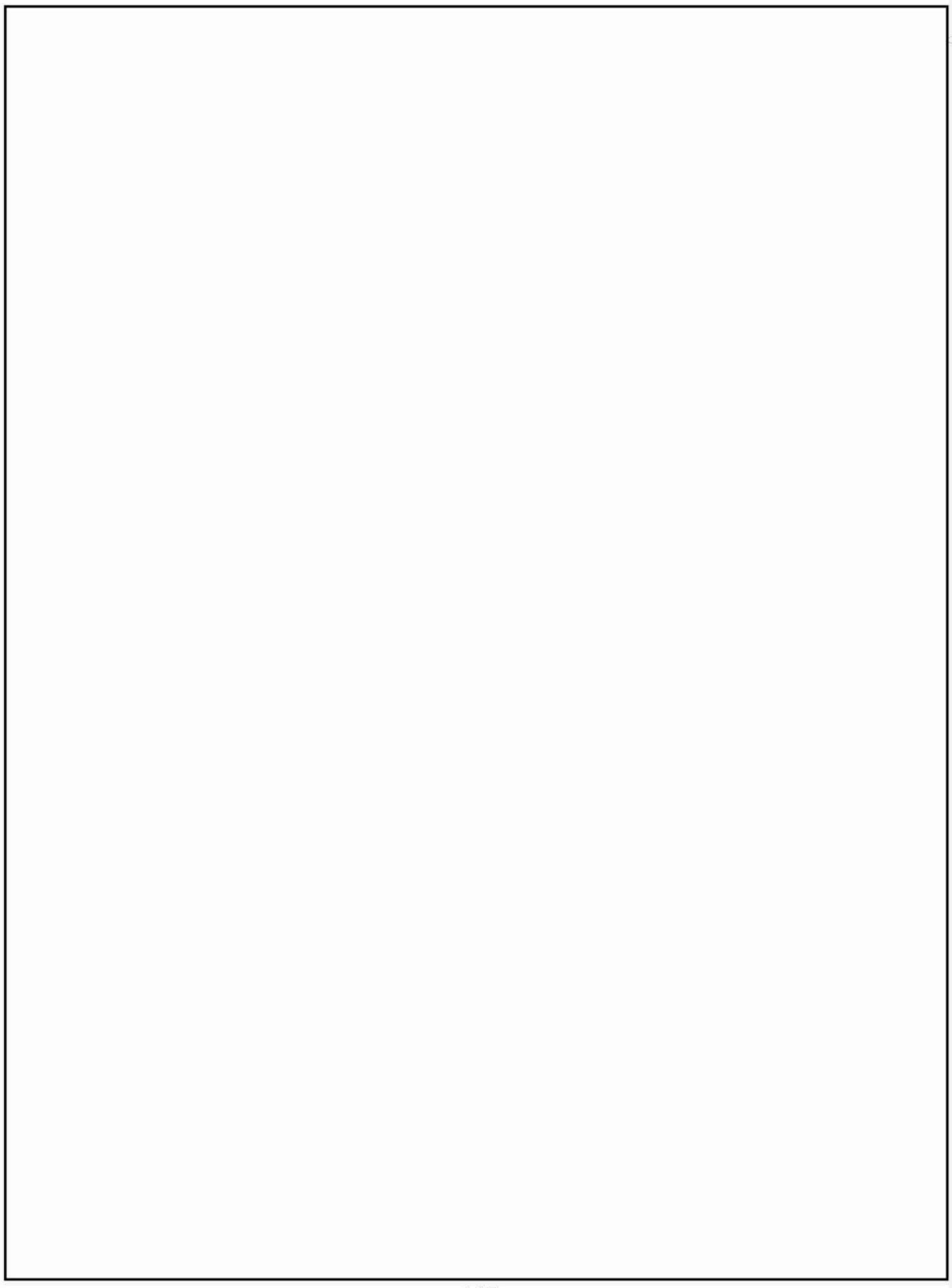


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AMERICAN OVERSIGHT

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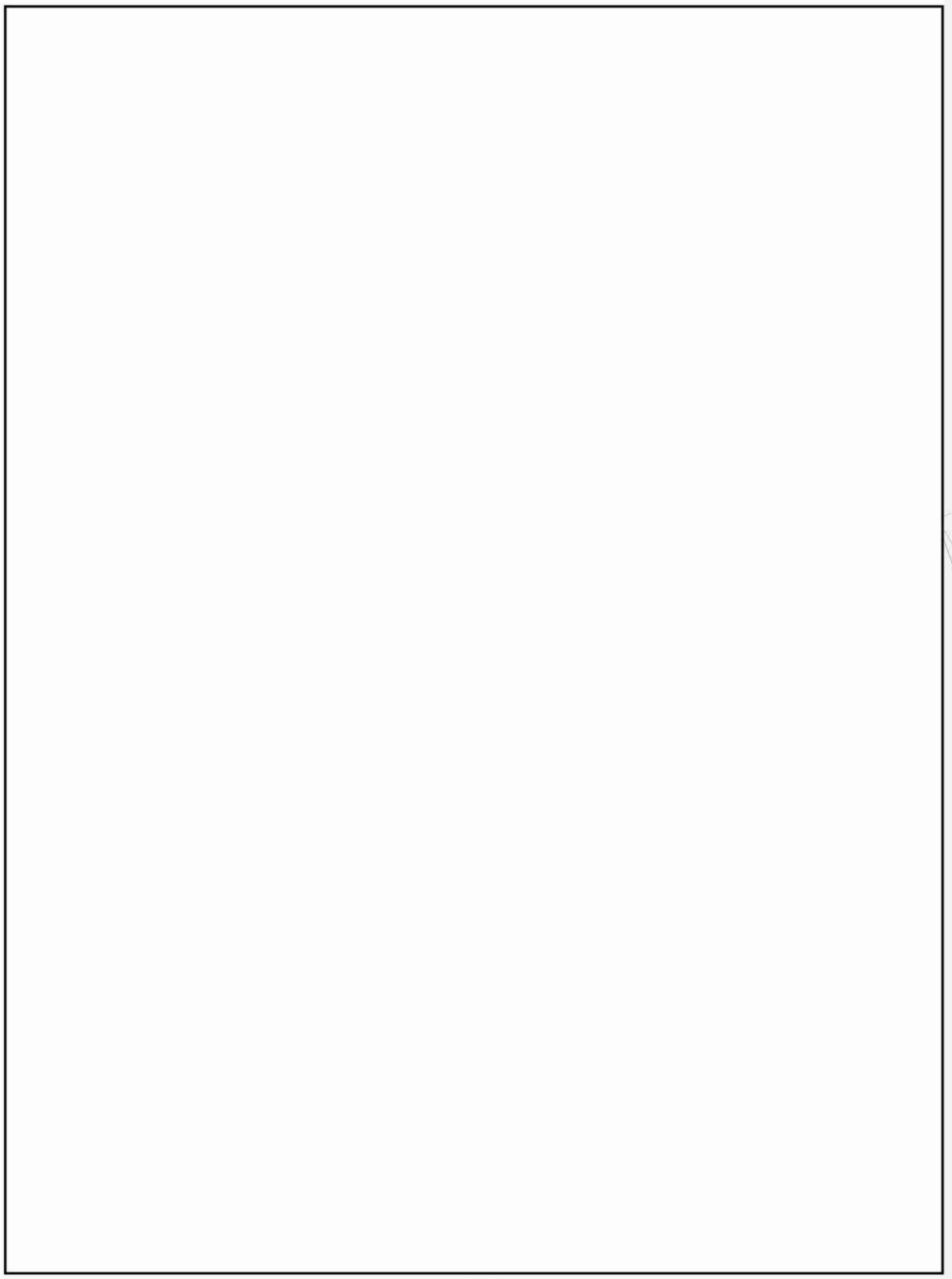


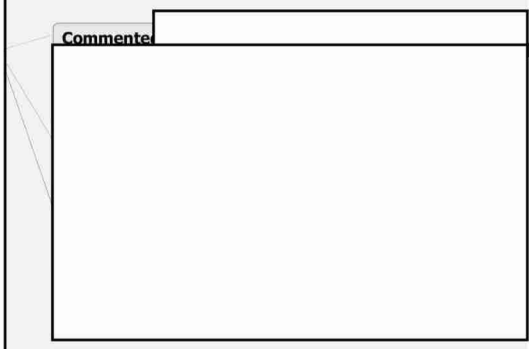
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AMERICAN OVERSIGHT

(b)(5)



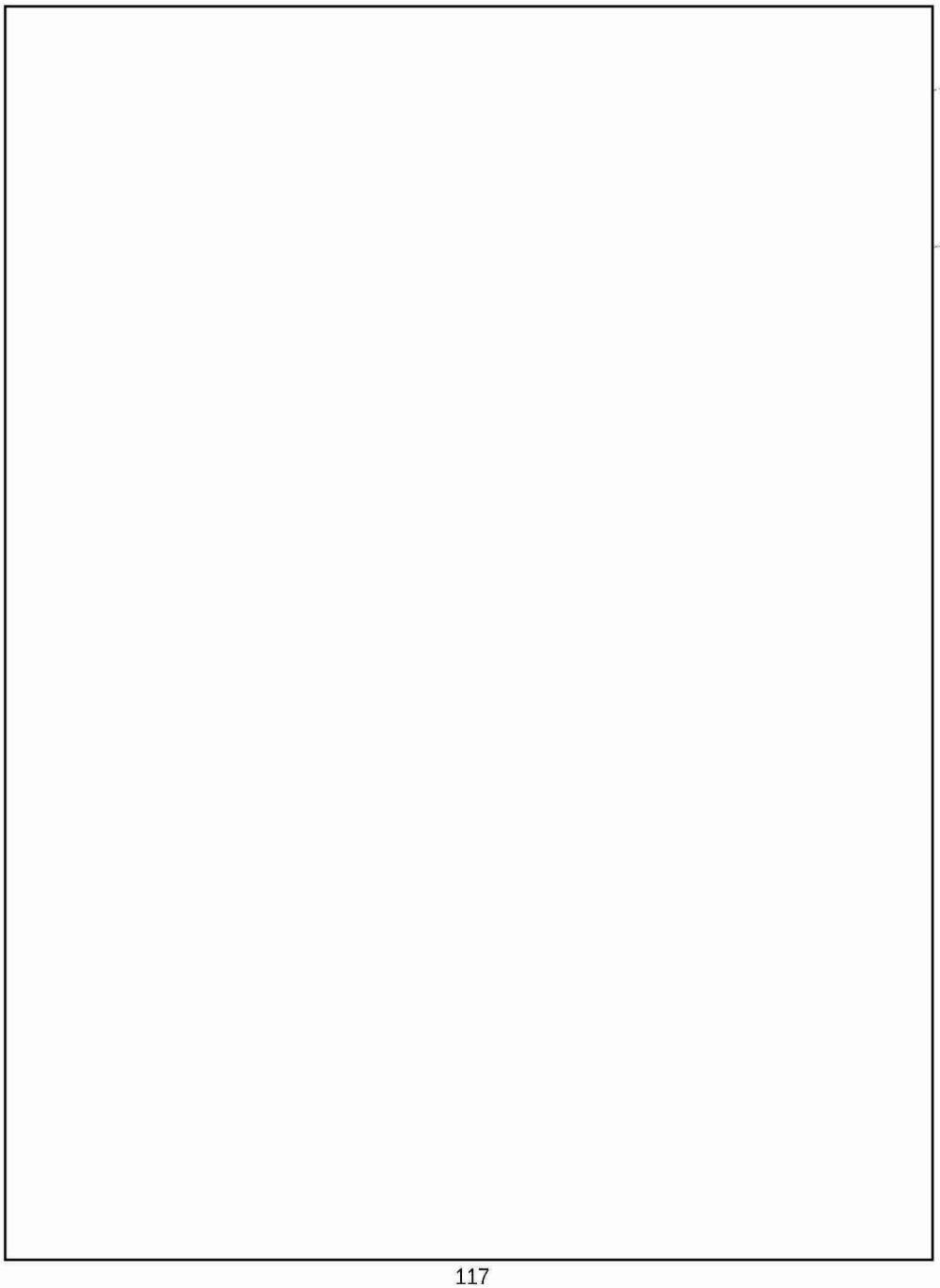


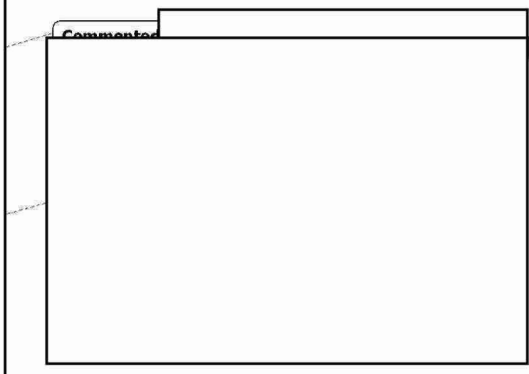
AMERICAN OVERSIGHT

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DHS-20-2156-A-001766

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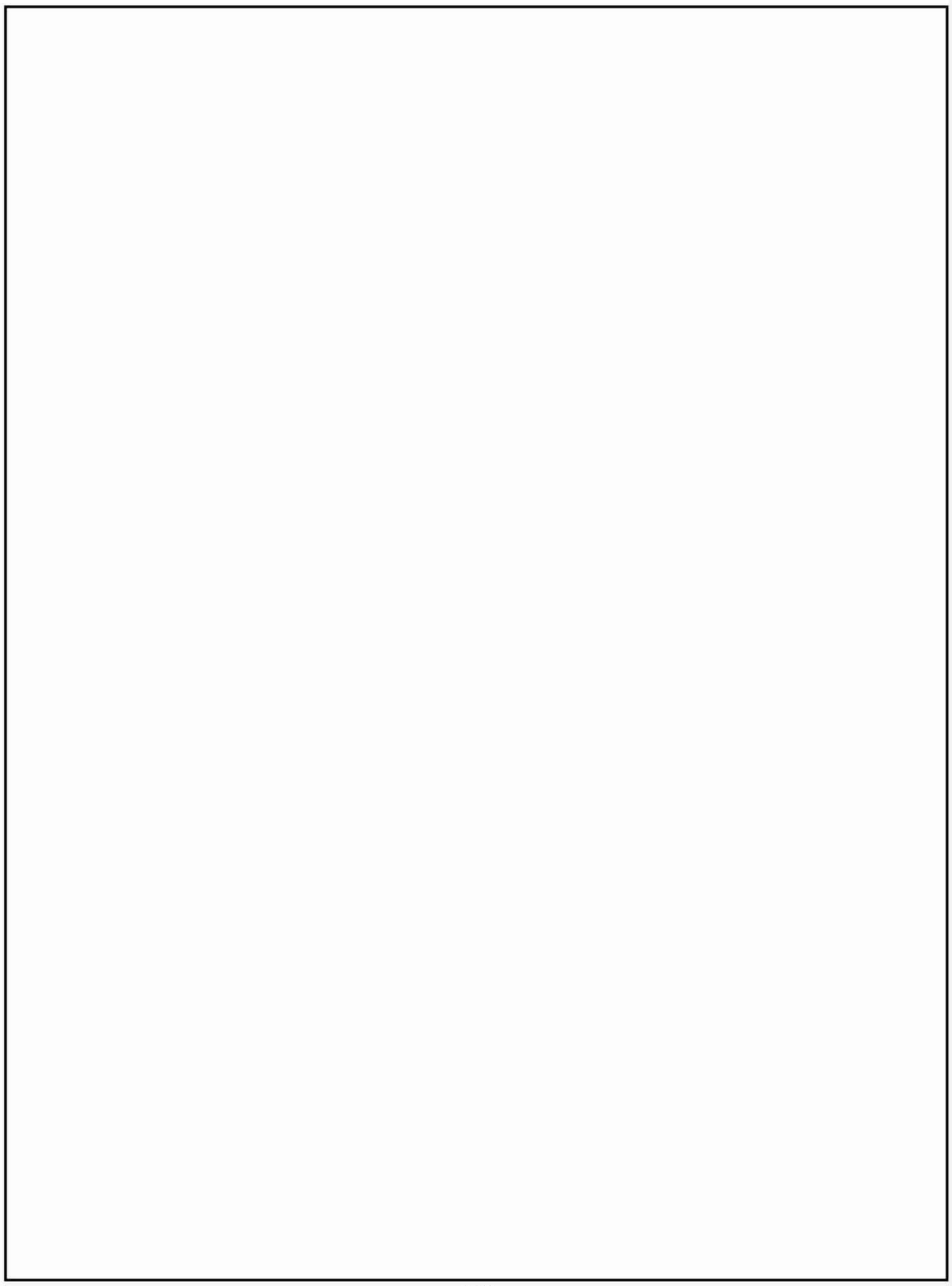


117

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AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence - Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203
To: Weinhold, Kasey D
Sent: August 5, 2020 1:52 PM (UTC-05:00)
Attached: Sisolak D2P Signed 8-5-20 STARS 29203.pdf, Sisolak Response 7.29.2020 STARS 29203.docx

Please add this to our library too. Thank you!

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉
☎ [redacted]

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Kilgore, Garry R <[redacted]>
Sent: Wednesday, August 5, 2020 2:49 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence -Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

Good afternoon all,

Please see the attached signed letter and Word version for reference.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:59 AM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence - Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 5, 2020**

Request: D2P signature.

Background: Governor Sisolak wrote to Acting Secretary Wolf regarding the impact of Proclamation 10014. DHS ESEC sent to USCIS to handle as appropriate. The Director's Office provided the Darr response as a base language for OCC and EXA to review and clear.

AMERICAN OVERSIGHT

Clearance:

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OCC:
EXA:

(b)(6)

Attachments:

1. Sisolak - Incoming
2. Sisolak – 7.29.20 – OCC and EXA Edits
3. Sisolak – 7.29.20 – Final LH

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
office)
STARS Issues

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AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August 5, 2020

The Honorable Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter to President Trump expressing support for J-1 nonimmigrant educators. You sent a copy of the letter to the Department of Homeland Security (DHS), and Acting Secretary Wolf asked that I respond on his behalf.

DHS is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals, employers, and others face immigration-related challenges as a direct result of the coronavirus (COVID-19) national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the pandemic.

In addition to Proclamation 10014 of April 22, 2020, President Trump issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" on June 22, 2020 (Proclamation 10052).[1] The Presidential Proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The Proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the Proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

It is also important for us to emphasize that the Proclamation does not affect U.S. Citizenship and Immigration Services processing or our adjudication of immigration benefit requests, including petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

---

[1] On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

[2] For policy updates, operational changes and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

DHS-20-2156-A-001771

You recommended that nonimmigrants who will be filling certain educator positions be exempt from the limitations imposed by the Proclamation. For individuals who are outside the United States without a valid work visa, we kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August 5, 2020

The Honorable Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter to President Trump expressing support for J-1 nonimmigrant educators. You sent a copy of the letter to the Department of Homeland Security (DHS), and Acting Secretary Wolf asked that I respond on his behalf.

DHS is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals, employers, and others face immigration-related challenges as a direct result of the coronavirus (COVID-19) national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the pandemic.

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It is also important for us to emphasize that the Proclamation does not affect U.S. Citizenship and Immigration Services processing or our adjudication of immigration benefit requests, including petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

---

[1] On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

[2] For policy updates, operational changes and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

DHS-20-2156-A-001773

You recommended that nonimmigrants who will be filling certain educator positions be exempt from the limitations imposed by the Proclamation. For individuals who are outside the United States without a valid work visa, we kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: Congressional and VIP responses
To: Kilgore, Garry R; Weinhold, Kasey D
Sent: August 5, 2020 8:37 AM (UTC-05:00)
Attached: Leahy Incoming 7.21.20.pdf, Leahy Response 7.29.2020.doc, Bennet Incoming 7.9.20.pdf, Bennet Response 7.29.2020.doc, Bennet - Enclosure 7.29.2020.docx, Sisolak Incoming 7.2.2020.pdf, Sisolak Response 7.29.2020.docx

AMERICAN OVERSIGHT

1. If granted, how will the $1.2 billion of additional funding be used towards ensuring that applications are processed in a timely manner? What steps will DHS take to remedy delayed processing times of petitions already filed at USCIS?

2. What steps is DHS taking to ensure that additional scrutiny of applications is not unnecessarily causing added burden to petitioners?

(b)(5)

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 11:24 am, Jul 09, 2020

July 9, 2020

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

The Honorable L. Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, D.C. 20529

Dear Acting Secretary Wolf and Director Cissna:

I write to request clarification on the June 29, 2020 decision to furlough 13,400 employees of United States Citizenship and Immigration Services (USCIS). I also request that USCIS provide my office with an explanation of how the agency's $1.2 billion request for additional funding will address the existing processing backlog.

Over 95 percent of USCIS' total budget comes from petitioner fees. Recent Department of Homeland Security (DHS) policies have contributed to the processing and funding challenges that now jeopardize an estimated 13,400 employees. Since the Trump Administration took office, the agency has implemented stricter scrutiny of applications, increased the number of USCIS staff, and suspended new applications for a number of visa programs through December 2020. These actions shrink the agency's effective spending ability and leave petitioners with uncertain futures. 650,000 citizenship applications were already pending as of December 31, 2019. The furlough of over half of USCIS employees will further limit operations and increase hurdles to the processing of visas and immigration petitions.

To that end, I request that you clarify the following:

1. If granted, how will the $1.2 billion of additional funding be used towards ensuring that applications are processed in a timely manner? What steps will DHS take to remedy delayed processing times of petitions already filed at USCIS?
2. What steps is DHS taking to ensure that additional scrutiny of applications is not unnecessarily causing added burden to petitioners?

AMERICAN OVERSIGHT

Our immigrant communities are the lifeblood of the nation's identity and a vital engine of economic success. It is critical that USCIS assist those with already existing applications in a timely manner.

I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable Michael F. Bennet
United States Senate
Washington, DC 20510

(b)(5)

Dear Senator Bennet:

AMERICAN OVERSIGHT

Please see the enclosure for responses to the specific questions in your inquiry.

Thank you again for your letter and interest in this important issue. I look forward to working with you and other members of Congress on this critical matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

Enclosure

AMERICAN OVERSIGHT

RICHARD C. SHELBY, ALABAMA, CHAIRMAN

MITCH McCONNELL, KENTUCKY
LAMAR ALEXANDER, TENNESSEE
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
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ROY BLUNT, MISSOURI
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JACK REED, RHODE ISLAND
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JEANNE SHAHEEN, NEW HAMPSHIRE
JEFF MERKLEY, OREGON
CHRISTOPHER A. COONS, DELAWARE
BRIAN SCHATZ, HAWAII
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER S. MURPHY, CONNECTICUT
JOE MANCHIN, III, WEST VIRGINIA
CHRIS VAN HOLLEN, MARYLAND

SHANNON HUTCHERSON HINES, STAFF DIRECTOR
CHARLES E. KIEFFER, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
http://appropriations.senate.gov

July 21, 2020

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
Washington, DC 20528

Joseph Edlow
Deputy Director for Policy
U.S Citizen and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20001

Dear Secretary Wolf and Deputy Director Edlow:

We write to you today about the fact that United States Citizenship and Immigration Services (USCIS) currently projects to end the fiscal year with a surplus and a sufficient balance to pay its employees for the remainder of the fiscal year. We ask that you take immediate action to save USCIS employees from unnecessary furloughs.

A surplus is certainly in stark contrast to the revenue forecast provided to Congress earlier this year that indicated a $571 million deficit for FY 2020. Yet, despite this welcome reversal in revenue estimates, USCIS has perplexingly chosen to proceed with furloughs of over 13,000 federal employees. During this pandemic with record unemployment, needlessly forcing these hardworking Americans into unemployment will crush the morale of the workforce and put an untold number of families into unnecessary financial distress.

With regard to your projected deficit for FY 2021, we are committed to addressing this issue in the next coronavirus supplemental so that USCIS can continue accomplishing its missions without a furlough.

Now that USCIS is no longer projecting a deficit for FY 2020, you must not sit by as thousands of American jobs are on the line, particularly during a time of unprecedented unemployment. We hope you will do everything in your power to ensure that the hardworking Americans carrying out the critical mission of USCIS do not go without a paycheck this fiscal year.

It is not just these employees and their families that will be impacted by your decision to furlough them – thousands of United States Citizens, employers, and students rely on USCIS work, including members of the military. The loss of these valuable jobs will also cause hardship to the communities where these federal workers live and work – communities already struggling with the pandemic.

AMERICAN OVERSIGHT

Please take action today.

Sincerely,

PATRICK LEAHY
Vice Chairman

JON TESTER
Ranking Member, Subcommittee
on Homeland Security

AMERICAN OVERSIGHT

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

(b)(5)

Dear Vice Chairman Leahy:

Thank you for your July 21, 2020 letter regarding the U.S. Citizenship and Immigration Services (USCIS) furlough. Acting Secretary Wolf asked that I respond on his behalf.

Thank you again for your letter and interest in this important issue. I look forward to working with you and other members of Congress on this critical matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow

AMERICAN OVERSIGHT

Deputy Director for Policy

cc:

The Honorable Jon Tester
Ranking Member, Subcommittee
On Homeland Security

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter to President Trump expressing support for J-1 nonimmigrant educators. You sent a copy of the letter to the Department of Homeland Security (DHS), and Acting Secretary Wolf asked that I respond on his behalf.

DHS is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals, employers, and others face immigration-related challenges as a direct result of the coronavirus (COVID-19) national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the pandemic.

In addition to Proclamation 10014 of April 22, 2020, President Trump issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" on June 22, 2020 (Proclamation 10052).[1] The Presidential Proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The Proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the Proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

It is also important for us to emphasize that the Proclamation does not affect U.S. Citizenship and Immigration Services processing or our adjudication of immigration benefit requests, including petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

---

[1] On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

[2] For policy updates, operational changes and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

DHS-20-2156-A-001786

You recommended that nonimmigrants who will be filling certain educator positions be exempt from the limitations imposed by the Proclamation. For individuals who are outside the United States without a valid work visa, we kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Weinhold, Kasey D
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence - Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203
To: Bailey, Morgan
Sent: July 29, 2020 1:12 PM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Sisolak - 7.29.20- OCC and EXA Edits.docx, Sisolak - 7.29.20- Final LH.docx

Hi Morgan,

(b)(6)

I have no edits or comments. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile** [redacted] **E-mail:** [redacted]

From: Kilgore, Garry R [redacted]>
Sent: Wednesday, July 29, 2020 11:59 AM
To: USCIS Directors Office Clearance-EXSO [redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence -Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 5, 2020**

Request: D2P signature.

Background: Governor Sisolak wrote to Acting Secretary Wolf regarding the impact of Proclamation 10014. DHS ESEC sent to USCIS to handle as appropriate. The Director's Office provided the Darr response as a base language for OCC and EXA to review and clear.

Clearance:

OCC:
EXA: [redacted]

Attachments:
1. Sisolak - Incoming
2. Sisolak – 7.29.20 – OCC and EXA Edits
3. Sisolak – 7.29.20 – Final LH

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter expressing support for J-1 nonimmigrant educators and their employers. The White House forwarded your letter to the Department of Homeland Security (DHS) for response. Acting Secretary Wolf asked that I respond on his behalf.

DHS is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals, employers, and others face immigration-related challenges as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

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You recommended that nonimmigrants who will be filling certain educator positions be exempt from the limitations imposed by the Proclamation. We kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

[1] On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-001789

It is also important for us to emphasize that the Proclamation does not affect U.S. Citizenship and Immigration Services processing or adjudication of benefit requests, including petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic. For policy updates, operational changes and COVID-19 information, please visit www.uscis.gov/coronavirus.

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

~~Mr.~~ Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear ~~Mr.~~Governor Sisolak:

(b)(5)

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AMERICAN OVERSIGHT

(b)(5)

Commented

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

(b)(5)

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

(b)(6)

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Kilgore, Garry R; USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 29, 2020 11:25 AM (UTC-05:00)
Attached: Cover Memo Nadler 7.29.20_alc.pdf, Incoming - Nadler 6.23.20.pdf, Draft Response Nadler FINAL 7.29.20.docx, Enclosure Nadler FINAL 7.29.20.docx, Enclosure Nadler (Redline - DHS Components) 7.29.20 (003).docx, Draft Response Nadler (Redline - DHS Components) 7.29.20.docx

CLEARED WITH EDITS from Front Office – **Please expedite**
On behalf of the Director's Office, I clear USCIS' response to Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117 with edits/comments (formatting issue on enclosure). Attached is the signed cover memo. Thanks!

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:44 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and COS signature on the Rep. Nadler cover memo.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and was cleared by the DHS Components (MGMT, OLA, and PLCY). ESEC will obtain final approval from the OGC. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	

Attachments:
Incoming - Nadler 6.23.20
Cover Memo Nadler 7.29.20
Draft Response Nadler (Redline – DHS Components) 7.29.20
Enclosure Nadler (Redline – DHS Components) 7.29.20
Draft Response Nadler FINAL 7.29.20
Enclosure Nadler FINAL 7.29.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)

AMERICAN OVERSIGHT

(b)(6)

STARS Issues: [redacted] (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron L. Calkins
Chief of Staff
AARON L CALKINS Digitally signed by AARON L CALKINS Date: 2020.07.29 12:19:41 -04'00'

SUBJECT: **Request for Approval: Response to Chairman Nadler's June 23, 2020 Letter Regarding the Authorized Amount of Immigrant Visas for Fiscal Years 2020 and 2021 (WF 1197960).**

Context: Chairman Nadler+1 wrote to Acting Secretary Wolf and Secretary Pompeo to ensure that DHS and the Department of State are granting the full number of statutorily authorized immigrant visas for fiscal year (FY) 2020 and FY 2021.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Deputy Chief, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since her review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT:
OLA:
PLCY: [redacted] (b)(6)

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

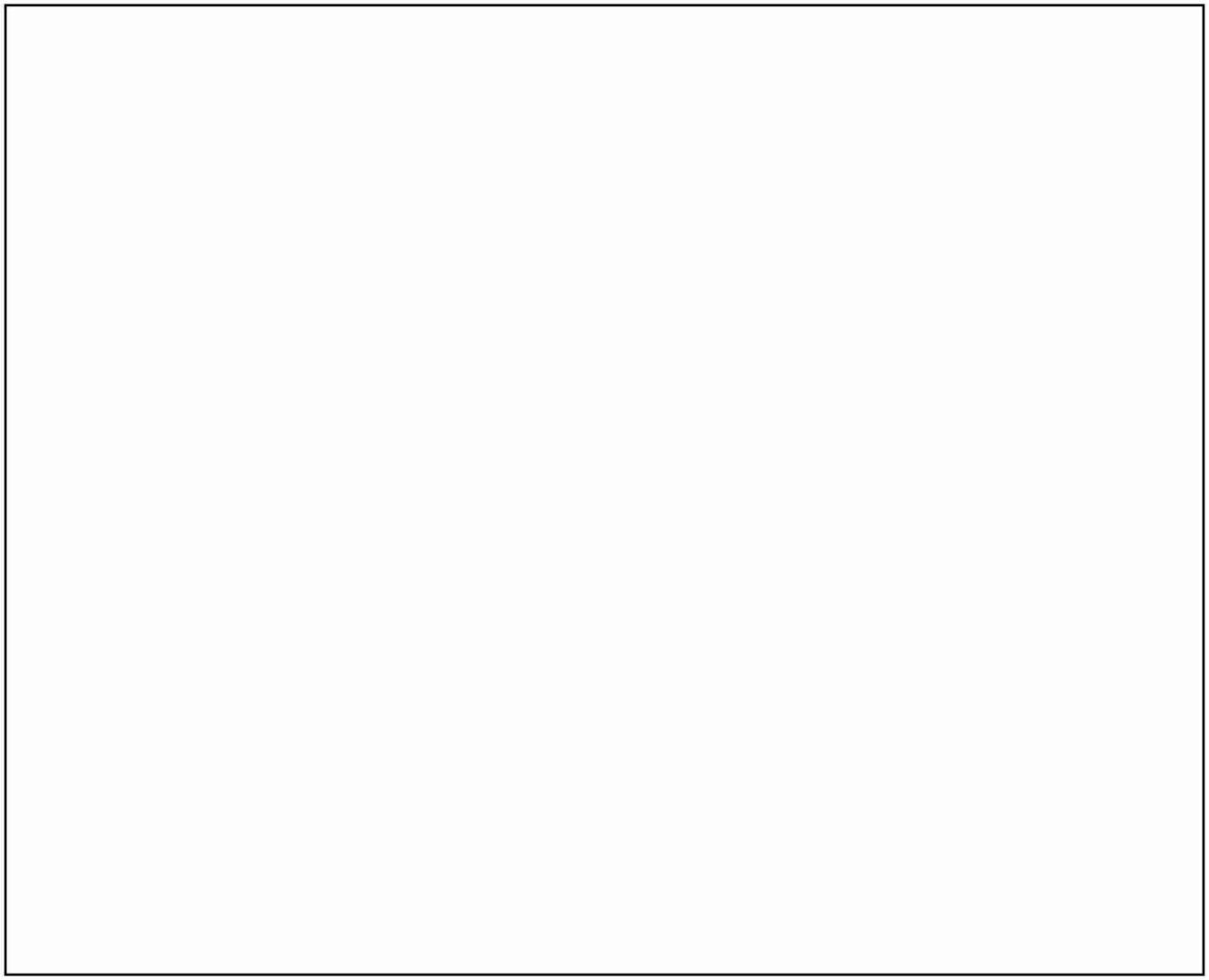
AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. The Acting Secretary ~~Wolf has~~ asked that I respond on his behalf.

(b)(5)



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

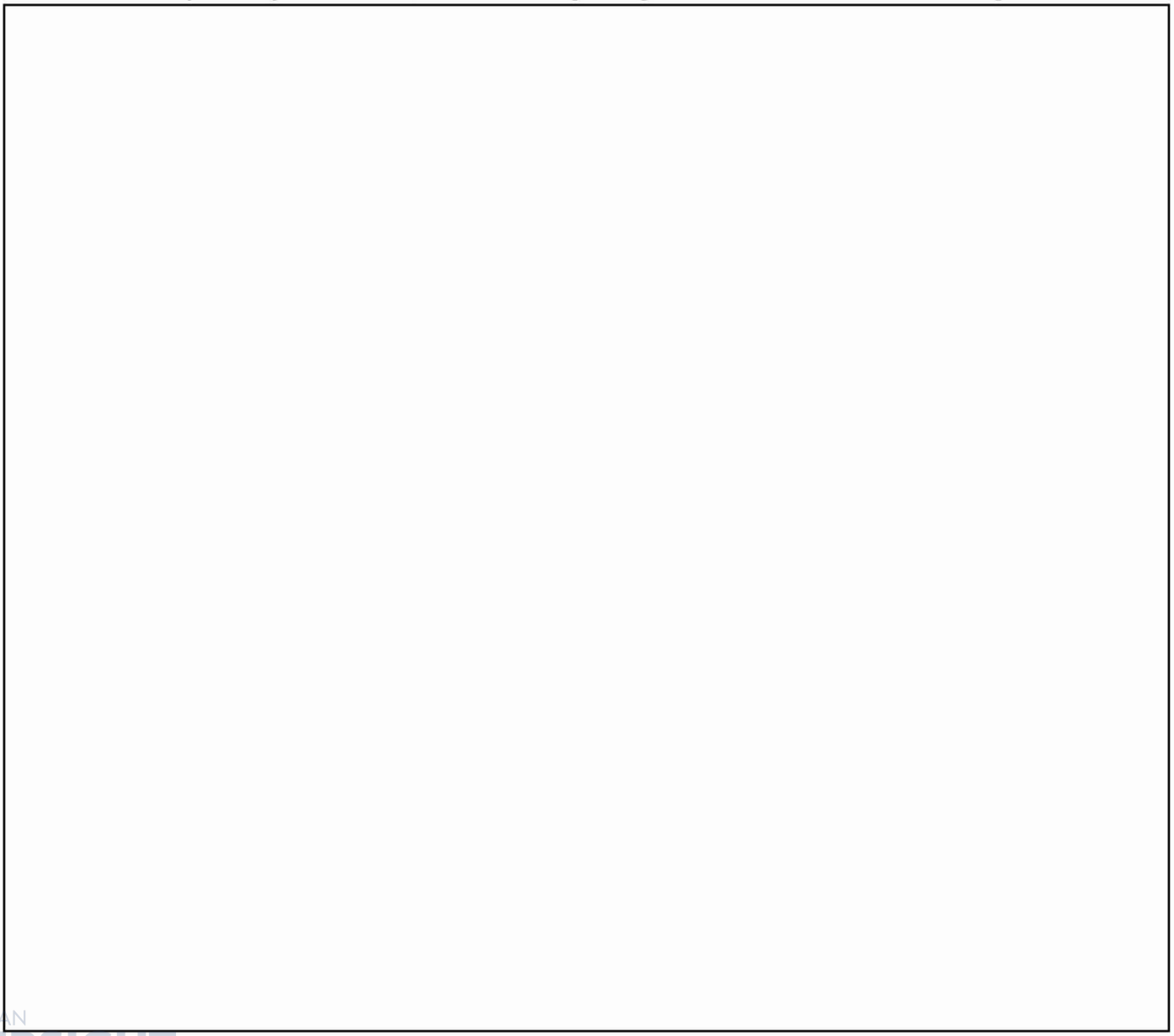
AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant



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(b)(5)

Please see our enclosed response to your specific questions. Thank you again for your letter and interest in this issue. Chairwoman Lofgren will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

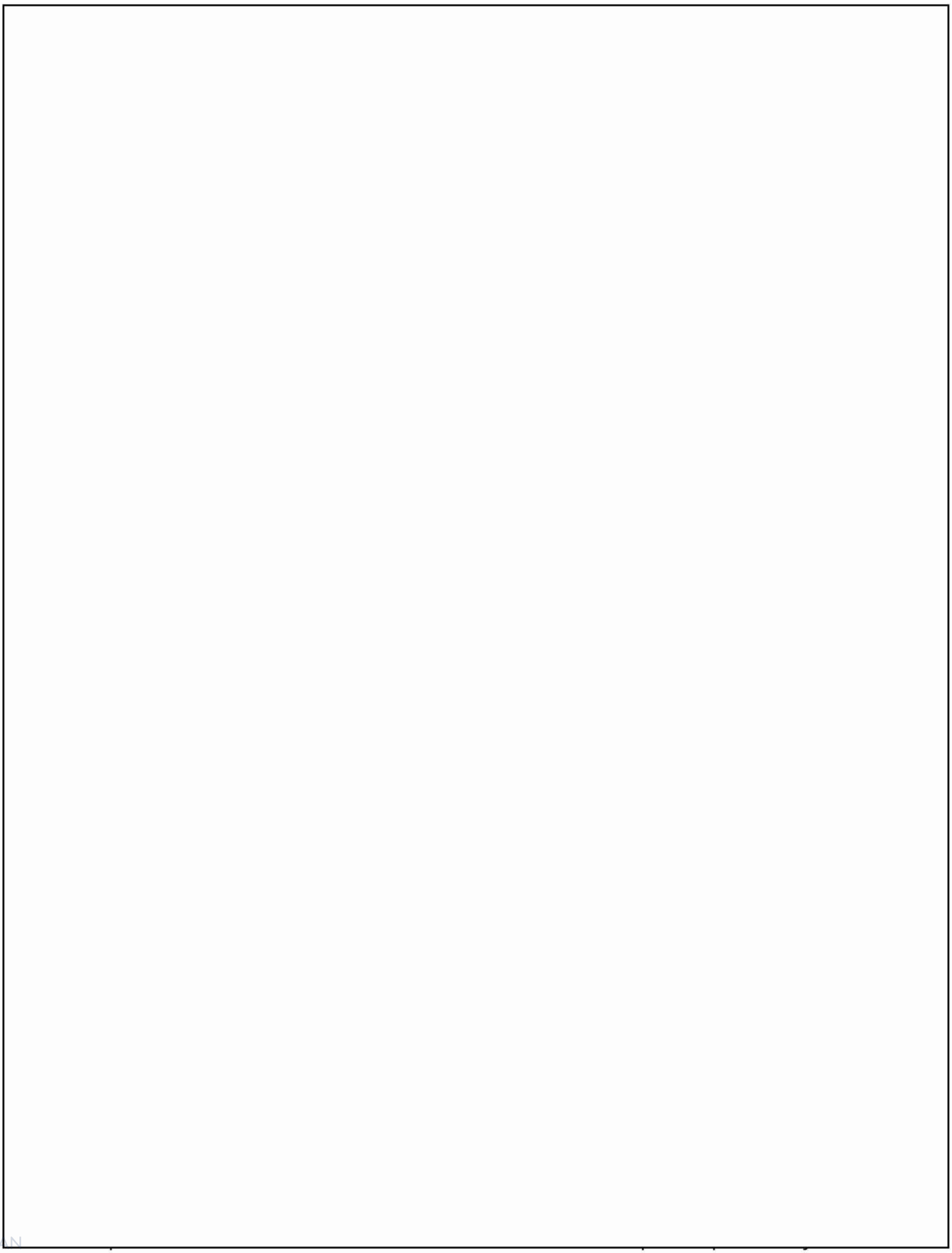
Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

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consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

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Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

(b)(6)

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence - Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203
To: Calkins, Aaron L
Sent: July 29, 2020 11:21 AM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Sisolak - 7.29.20- Final LH.docx

This is our response to an inquiry from the governor of Nevada. It is based upon a template. Jenny did not have any concerns.
Do you have any edits?

From: Bailey, Morgan
Sent: Wednesday, July 29, 2020 12:11 PM
To: Piateski, Jennifer E [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence -Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

The response is based upon a template. Would you like to review?

From: Kilgore, Garry R <[redacted]>
Sent: Wednesday, July 29, 2020 11:59 AM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence - Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 5, 2020**

Request: D2P signature.

Background: Governor Sisolak wrote to Acting Secretary Wolf regarding the impact of Proclamation 10014. DHS ESEC sent to USCIS to handle as appropriate. The Director's Office provided the Darr response as a base language for OCC and EXA to review and clear.

Clearance:

.
OCC:
EXA: [redacted]

Attachments:
1. Sisolak - Incoming
2. Sisolak – 7.29.20 – OCC and EXA Edits
3. Sisolak – 7.29.20 – Final LH

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services

(b)(6)

AMERICAN OVERSIGHT

Department of Homeland Security
[redacted] (office)
STARS Issue [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

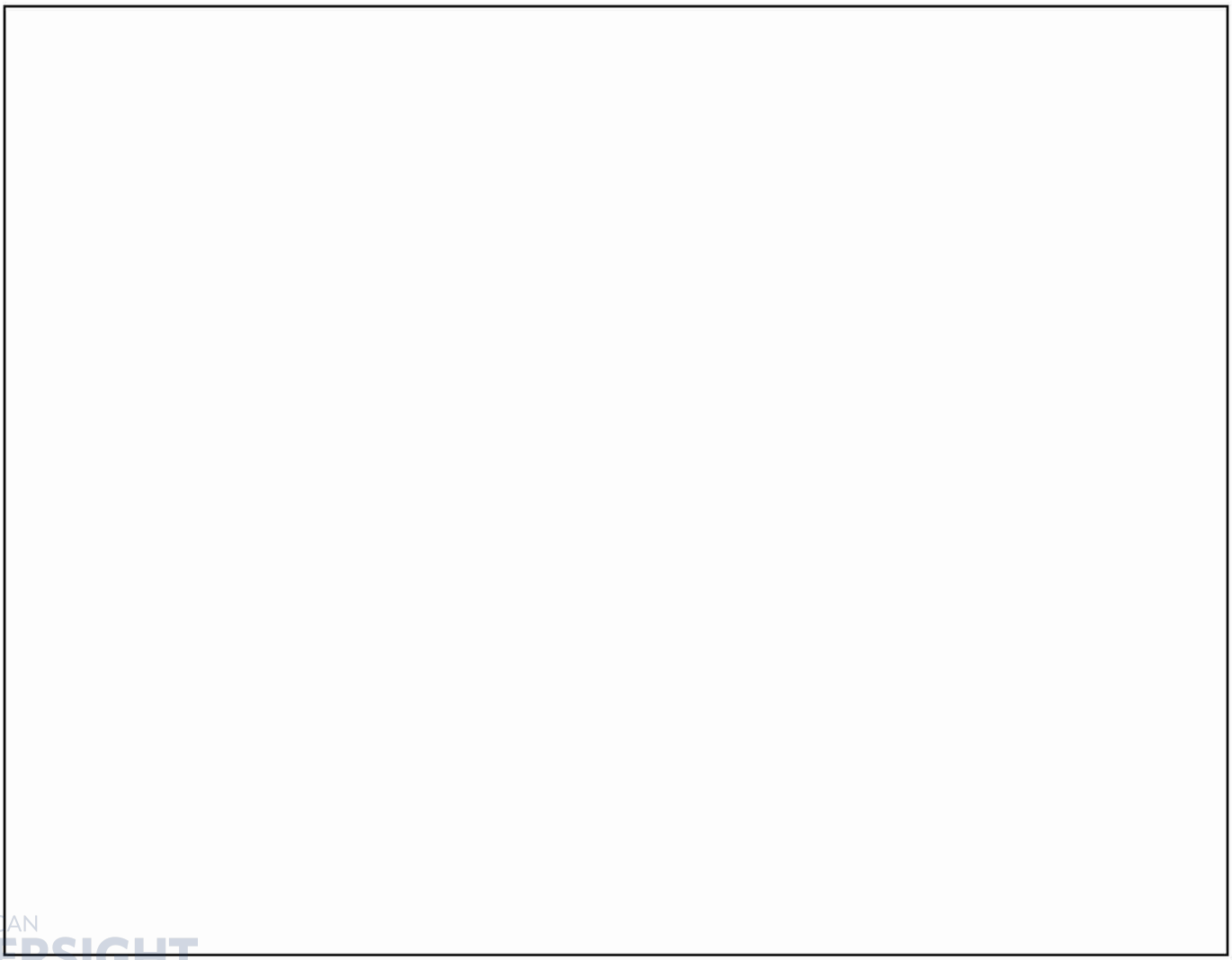
July XX, 2020

Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

(b)(5)

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter expressing support for J-1 nonimmigrant educators and their employers. The White House forwarded your letter to the Department of Homeland Security (DHS) for response. Acting Secretary Wolf asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

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To: Piateski, Jennifer E
Sent: July 29, 2020 11:11 AM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Sisolak - 7.29.20- Final LH.docx (b)(6)

The response is based upon a template. Would you like to review?

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:59 AM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence -Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203

Requestor Directorate/Office: DHS ESEC

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Request: D2P signature.

Background: Governor Sisolak wrote to Acting Secretary Wolf regarding the impact of Proclamation 10014. DHS ESEC sent to USCIS to handle as appropriate. The Director's Office provided the Darr response as a base language for OCC and EXA to review and clear.

Clearance:

.
OCC:
EXA: [redacted]

Attachments:
1. Sisolak - Incoming
2. Sisolak – 7.29.20 – OCC and EXA Edits
3. Sisolak – 7.29.20 – Final LH

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted](office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

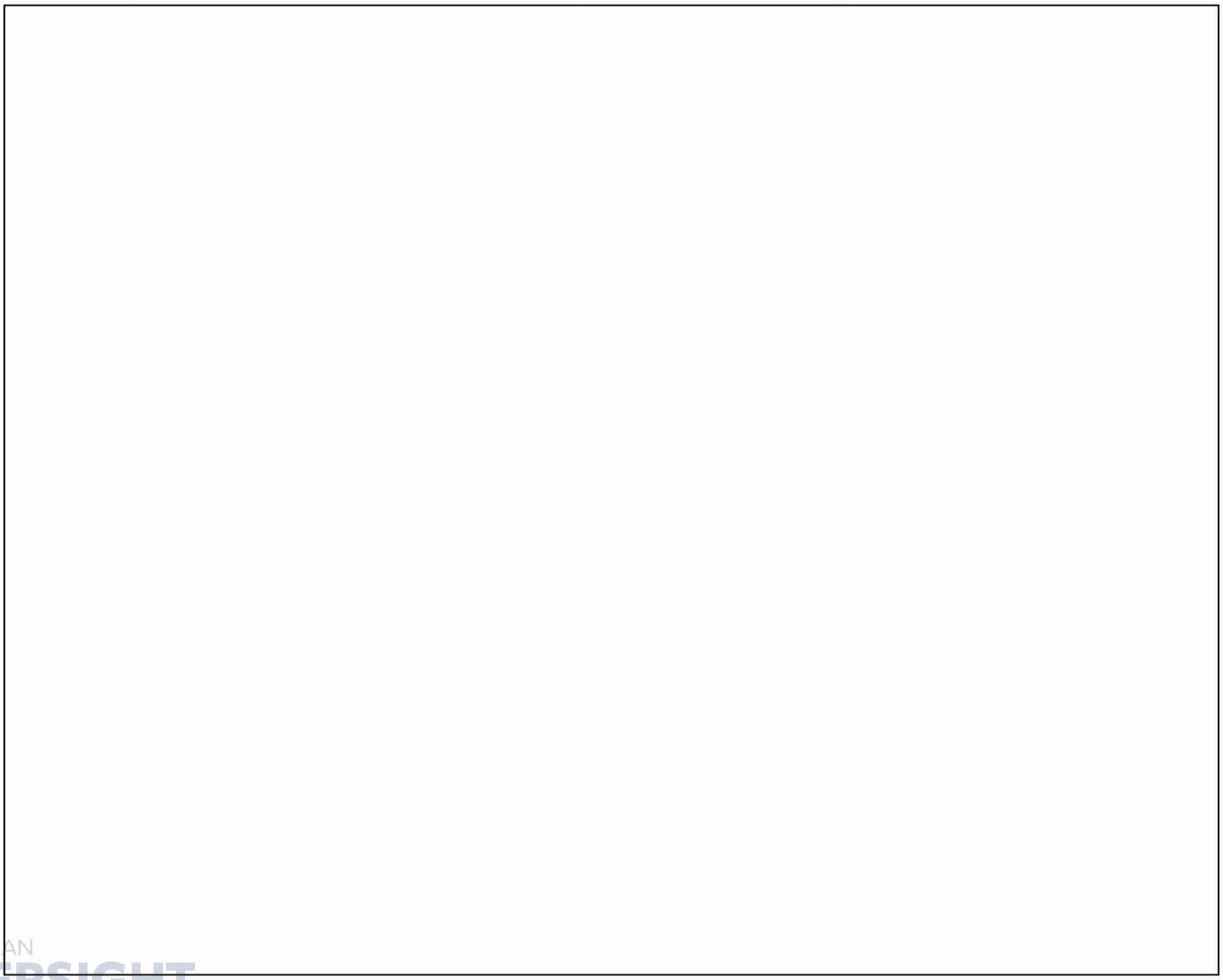
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State of Nevada
100 One North Carson Street
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AMERICAN OVERSIGHT

(b)(5)

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Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
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555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

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President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

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Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Edlow, Joseph B
Sent: July 29, 2020 11:07 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Cover Memo Nadler 7.29.20.pdf, Draft Response Nadler FINAL 7.29.20.docx, Enclosure Nadler FINAL 7.29.20.docx, Enclosure Nadler (Redline - DHS Components) 7.29.20 (003).docx, Draft Response Nadler (Redline - DHS Components) 7.29.20.docx

Let me know if you have concerns or if you are ok with this.

(b)(6)

Thanks,

Aaron L. Calkins
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Bailey, Morgan [redacted]>
Sent: Wednesday, July 29, 2020 12:06 PM
To: Calkins, Aaron L[redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Hi Aaron,

This is the Nadler response. DHS sent it to us late last night. We have an opportunity to review their changes. The edits are fairly minor and primarily stylistic.

Before we clear the revisions, you will need to electronically sign the cover memo (attached).

Cover Memo	For your digital signature
Draft Response (redline and clean) Draft Enclosure (redline and clean)	For review
Incoming Letter	Background

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:44 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: 3:00 PM on Friday, 07/10/2020

(b)(6)

AMERICAN OVERSIGHT

(b)(6)

Request: Director's Office review and COS signature on the Rep. Nadler cover memo.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and was cleared by the DHS Components (MGMT, OLA, and PLCY). ESEC will obtain final approval from the OGC. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:
OCC:
EXA:

Attachments:
Incoming - Nadler 6.23.20
Cover Memo Nadler 7.29.20
Draft Response Nadler (Redline – DHS Components) 7.29.20
Enclosure Nadler (Redline – DHS Components) 7.29.20
Draft Response Nadler FINAL 7.29.20
Enclosure Nadler FINAL 7.29.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron L. Calkins
Chief of Staff

SUBJECT: **Request for Approval: Response to Chairman Nadler's June 23, 2020 Letter Regarding the Authorized Amount of Immigrant Visas for Fiscal Years 2020 and 2021 (WF 1197960).**

Context: Chairman Nadler+1 wrote to Acting Secretary Wolf and Secretary Pompeo to ensure that DHS and the Department of State are granting the full number of statutorily authorized immigrant visas for fiscal year (FY) 2020 and FY 2021.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Deputy Chief, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since her review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT
OLA:
PLCY: [redacted] (b)(6)

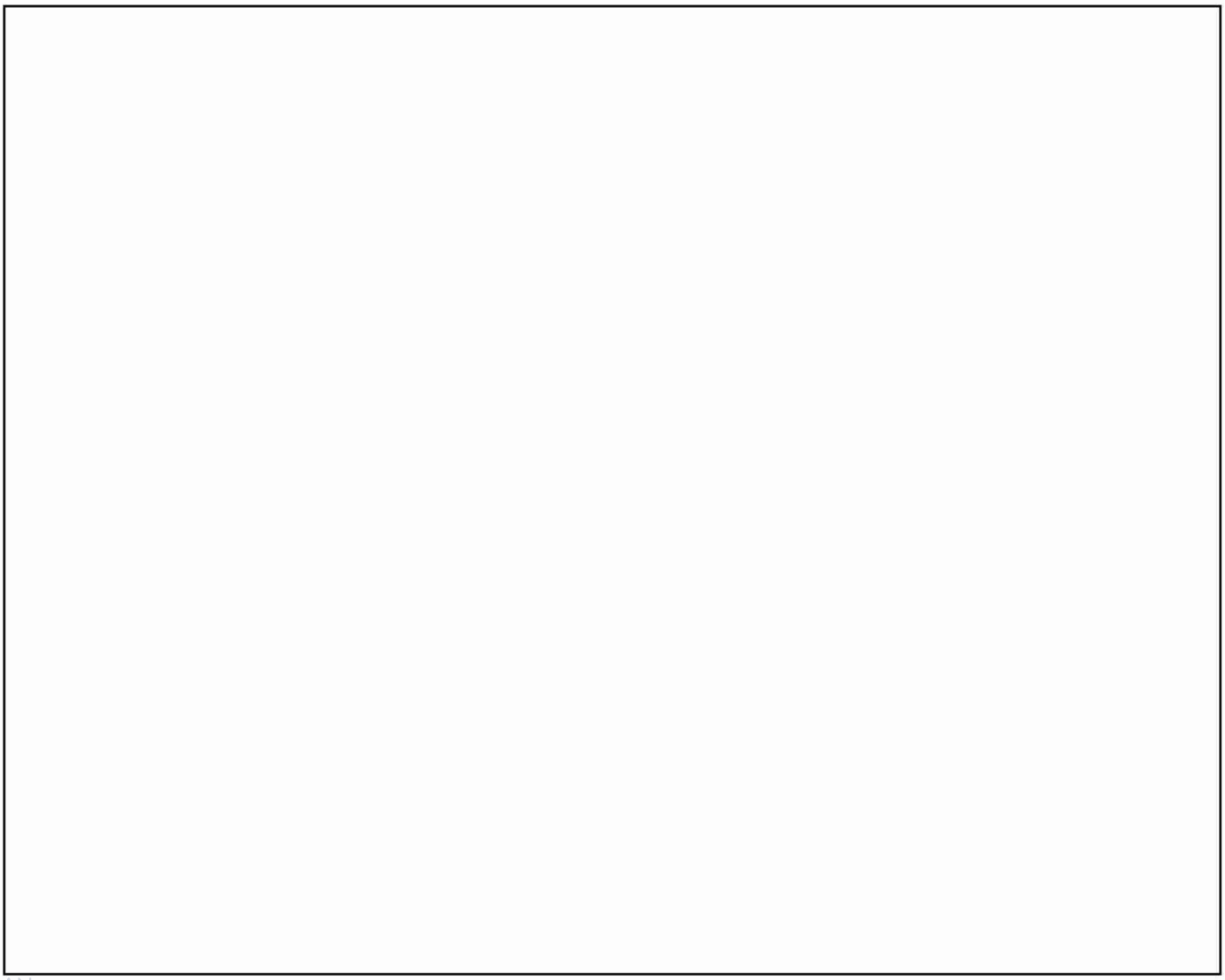
Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. The Acting Secretary ~~Wolf has~~ asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

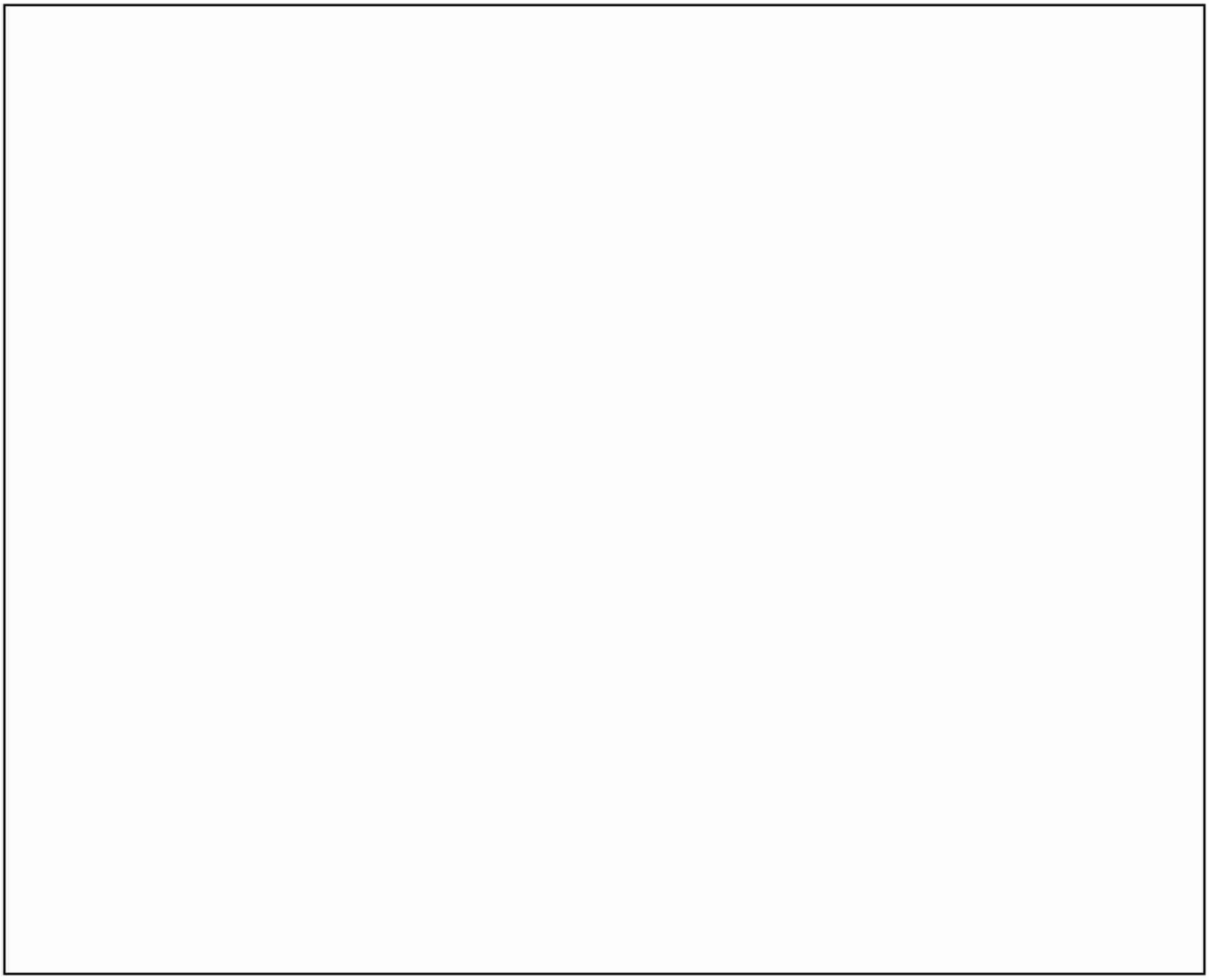
Enclosure

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY) 2020 and 2021. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Please see our enclosed response to your specific questions. Thank you again for your letter and interest in this issue. Chairwoman Lofgren will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

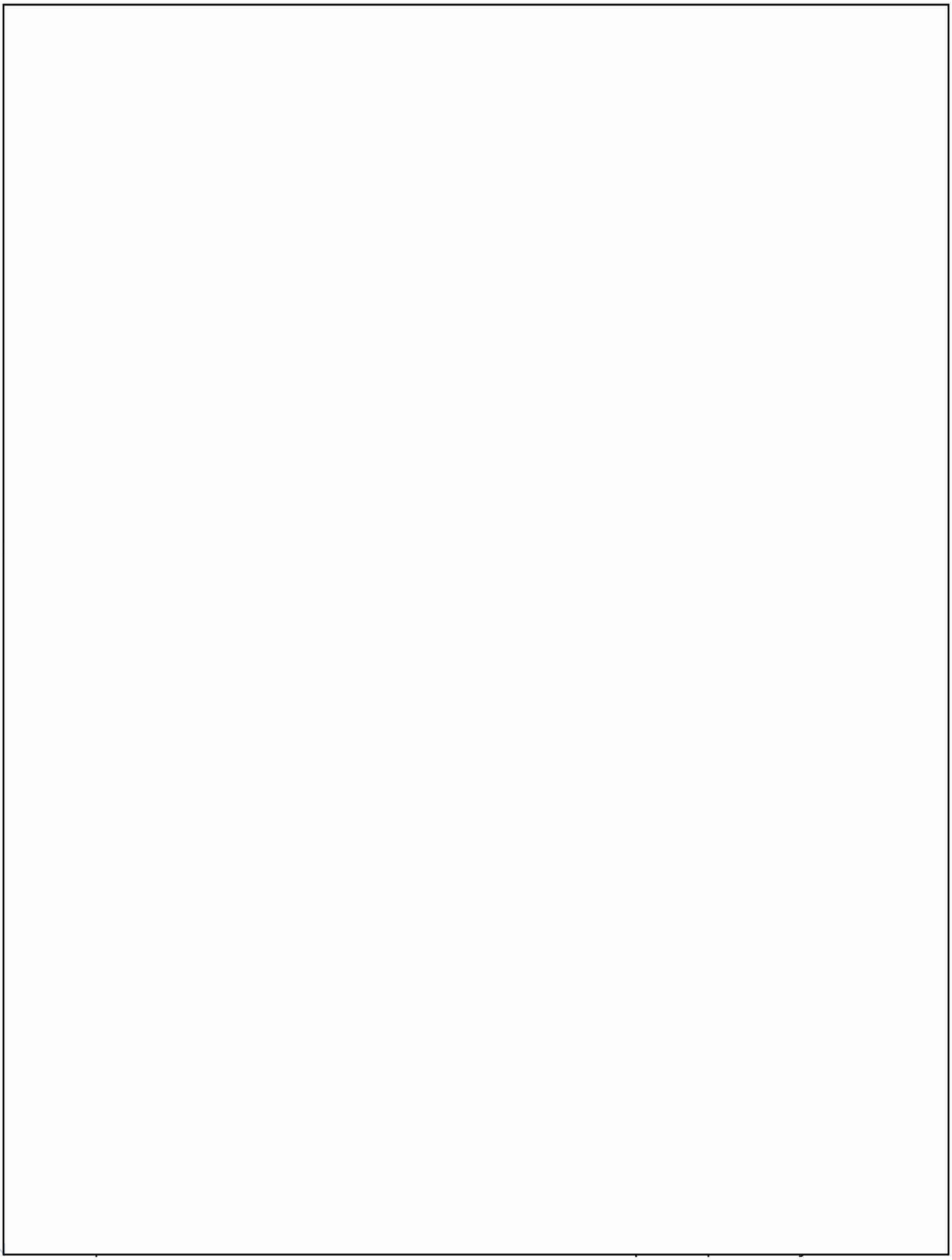
Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

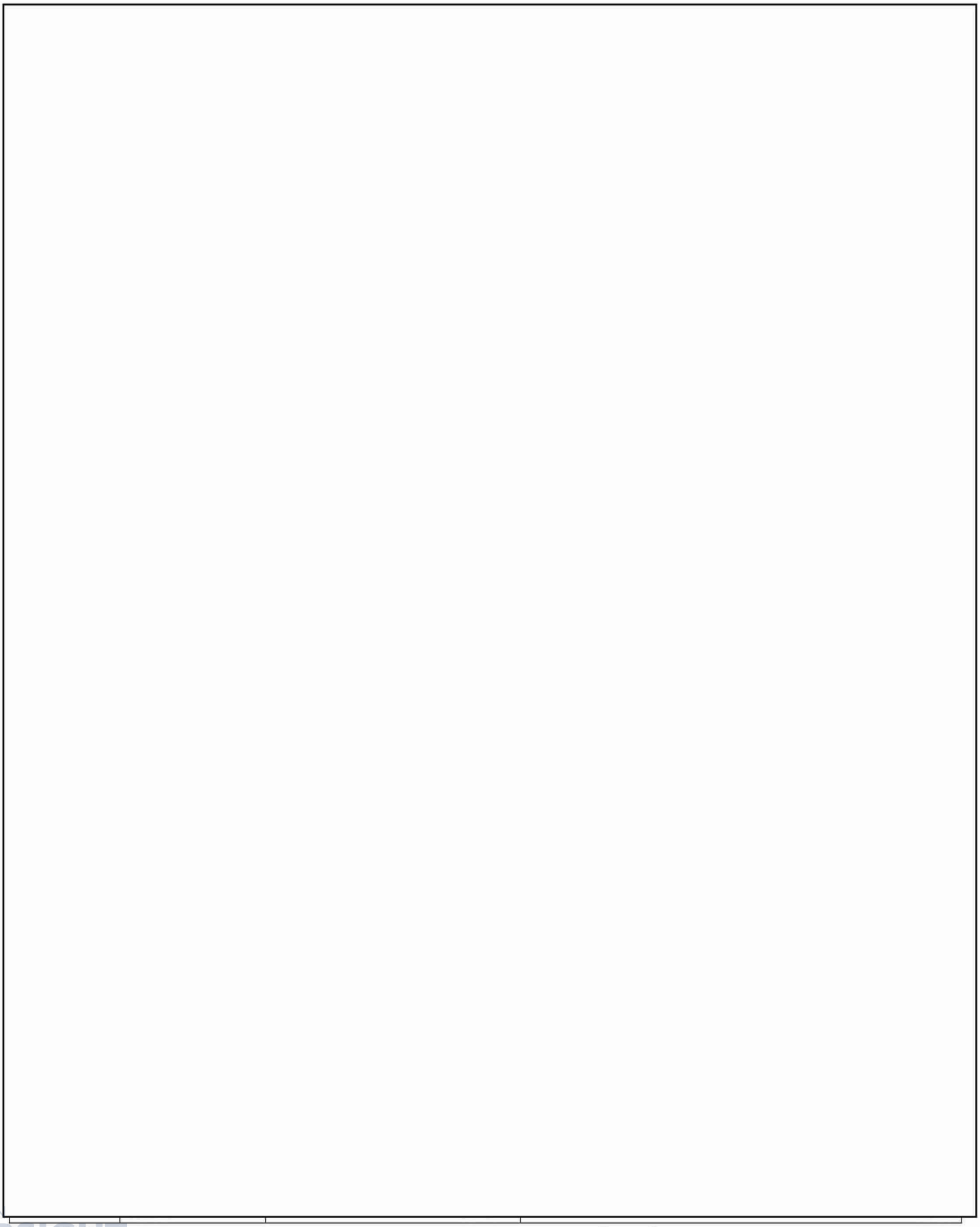


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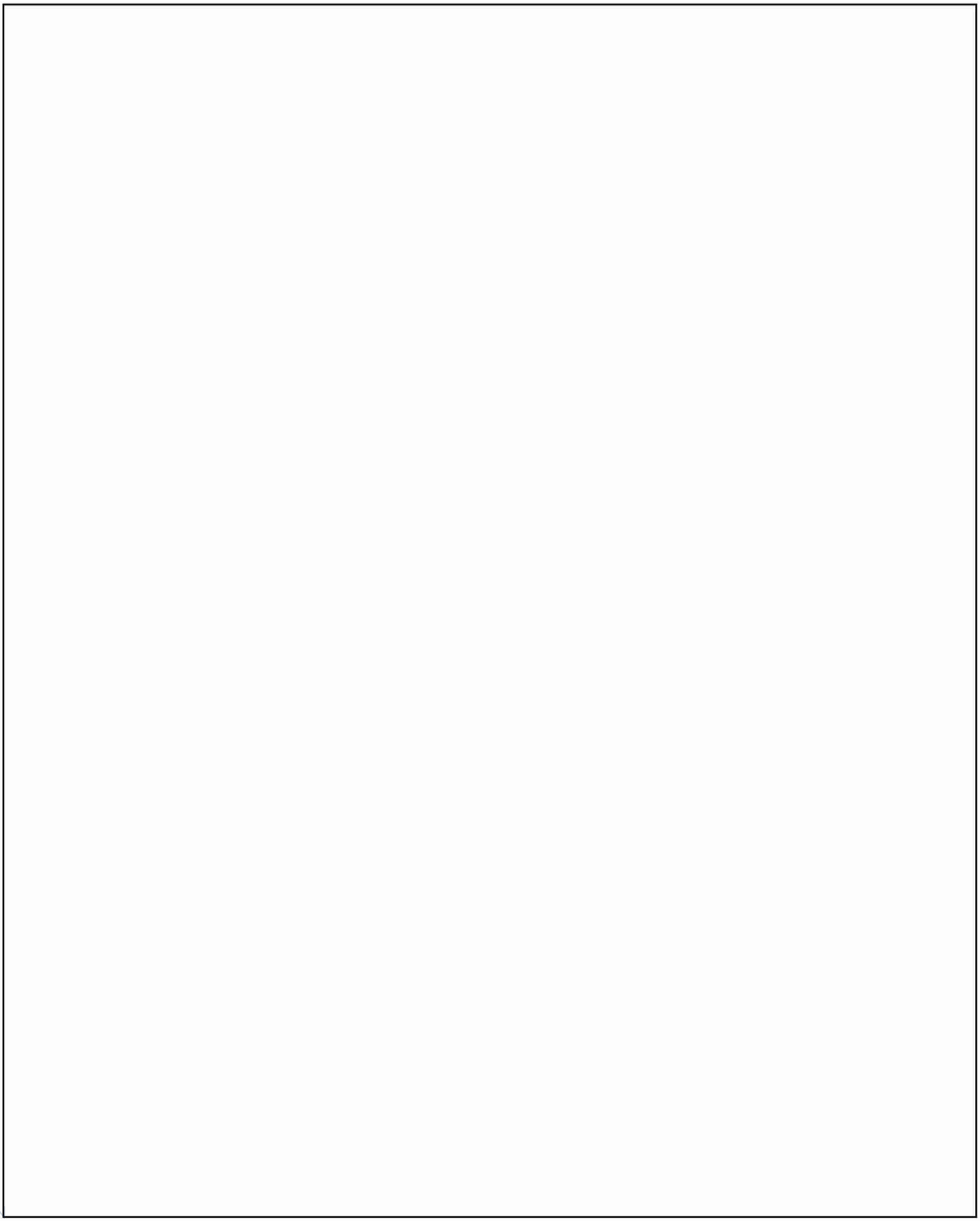
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AMERICAN OVERSIGHT

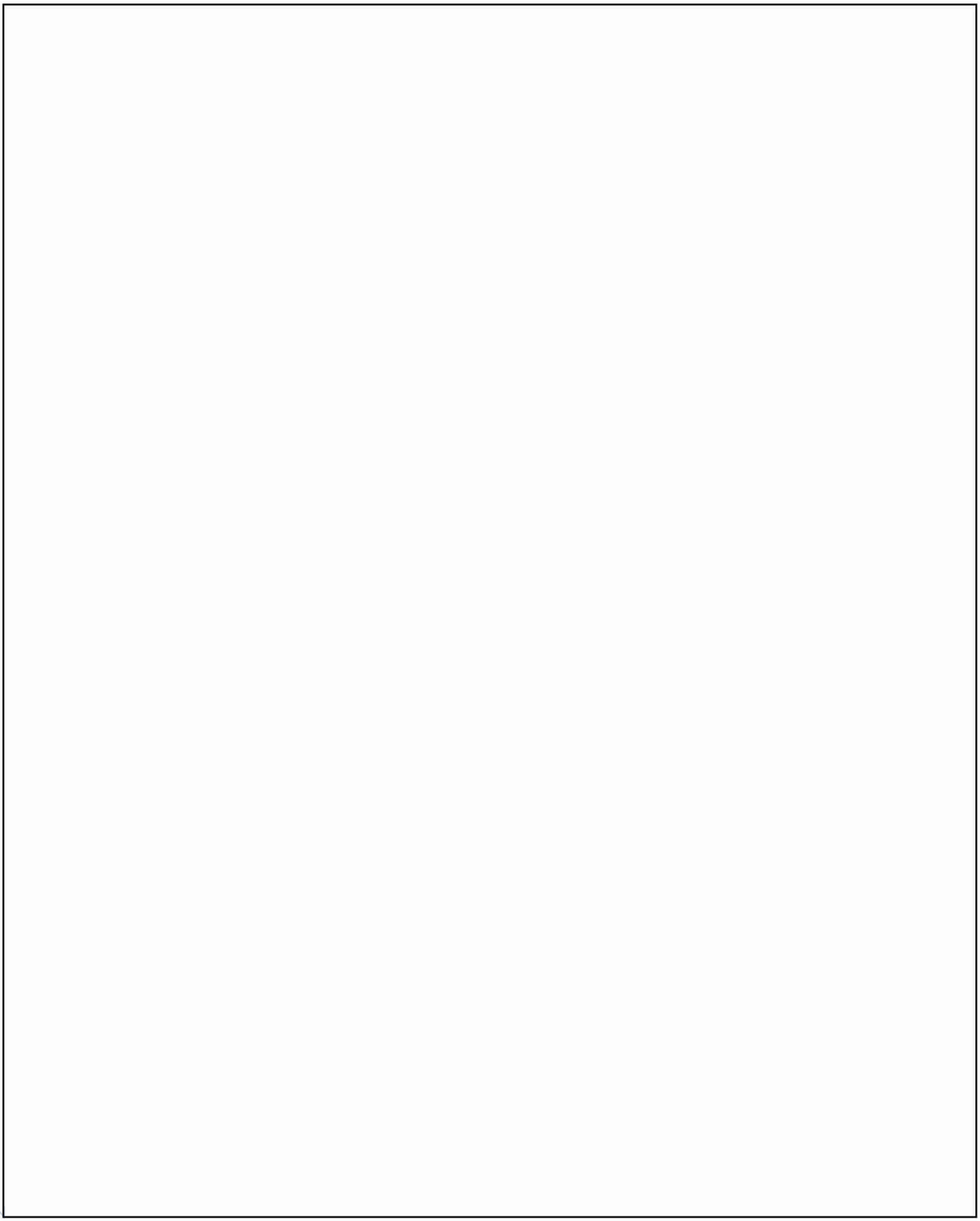
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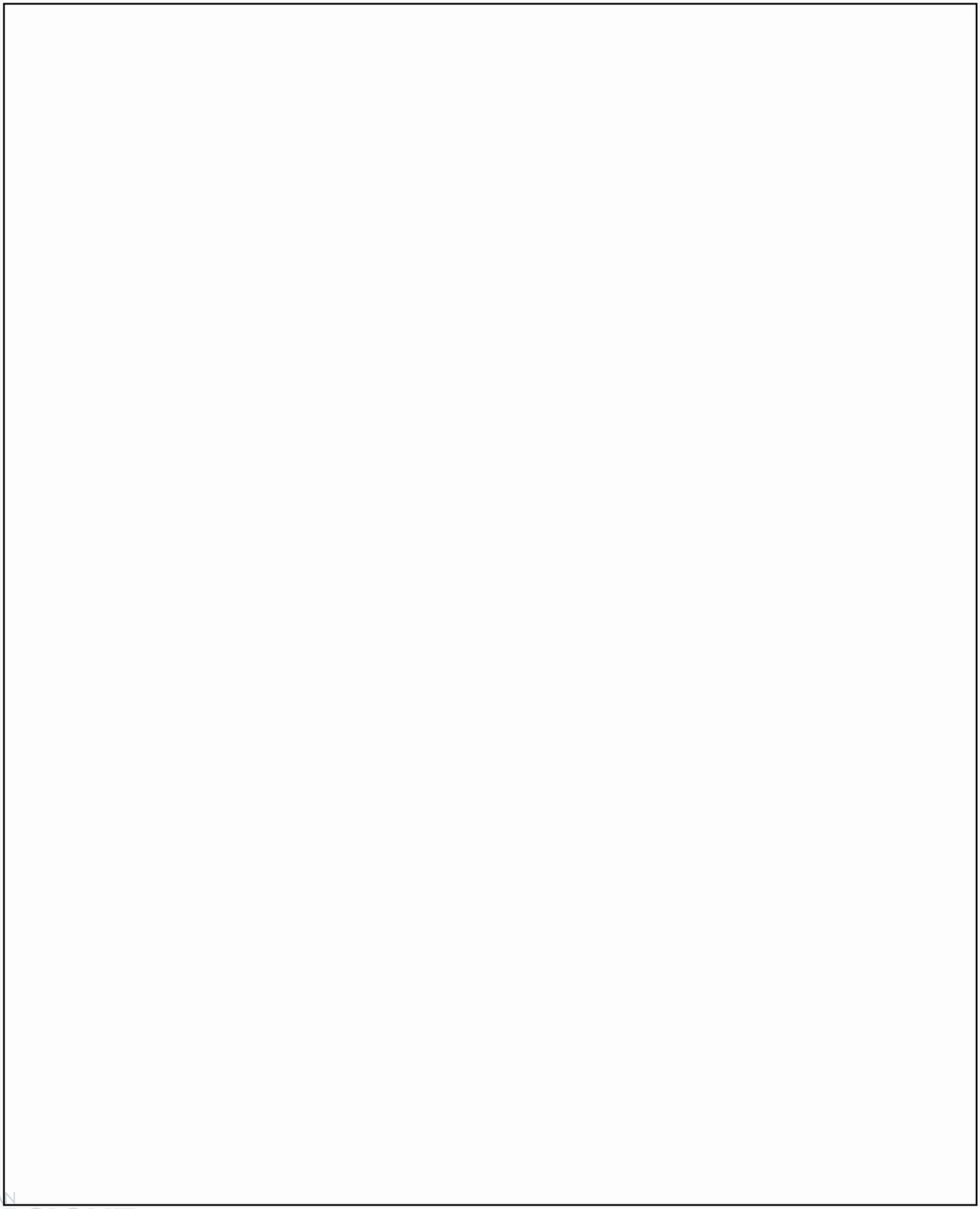
AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

AMERICAN OVERSIGHT

consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

AMERICAN OVERSIGHT

Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Calkins, Aaron L
Sent: July 29, 2020 11:06 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Cover Memo Nadler 7.29.20.pdf, Draft Response Nadler FINAL 7.29.20.docx, Enclosure Nadler FINAL 7.29.20.docx, Enclosure Nadler (Redline - DHS Components) 7.29.20 (003).docx, Draft Response Nadler (Redline - DHS Components) 7.29.20.docx

Hi Aaron,

This is the Nadler response. DHS sent it to us late last night. We have an opportunity to review their changes. The edits are fairly minor and primarily stylistic.

Before we clear the revisions, you will need to electronically sign the cover memo (attached).

Cover Memo	For your digital signature
Draft Response (redline and clean) Draft Enclosure (redline and clean)	For review
Incoming Letter	Background

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:44 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: 3:00 PM on Friday, 07/10/2020

Request: Director's Office review and COS signature on the Rep. Nadler cover memo.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and was cleared by the DHS Components (MGMT, OLA, and PLCY). ESEC will obtain final approval from the OGC. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:
OCC:
EXA:

[redacted]

AMERICAN OVERSIGHT

Attachments: (b)(6)

Incoming - Nadler 6.23.20
Cover Memo Nadler 7.29.20
Draft Response Nadler (Redline – DHS Components) 7.29.20
Enclosure Nadler (Redline – DHS Components) 7.29.20
Draft Response Nadler FINAL 7.29.20
Enclosure Nadler FINAL 7.29.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron L. Calkins
Chief of Staff

SUBJECT: **Request for Approval: Response to Chairman Nadler's June 23, 2020 Letter Regarding the Authorized Amount of Immigrant Visas for Fiscal Years 2020 and 2021 (WF 1197960).**

Context: Chairman Nadler+1 wrote to Acting Secretary Wolf and Secretary Pompeo to ensure that DHS and the Department of State are granting the full number of statutorily authorized immigrant visas for fiscal year (FY) 2020 and FY 2021.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Deputy Chief, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since her review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT:
OLA:
PLCY: [redacted] (b)(6)

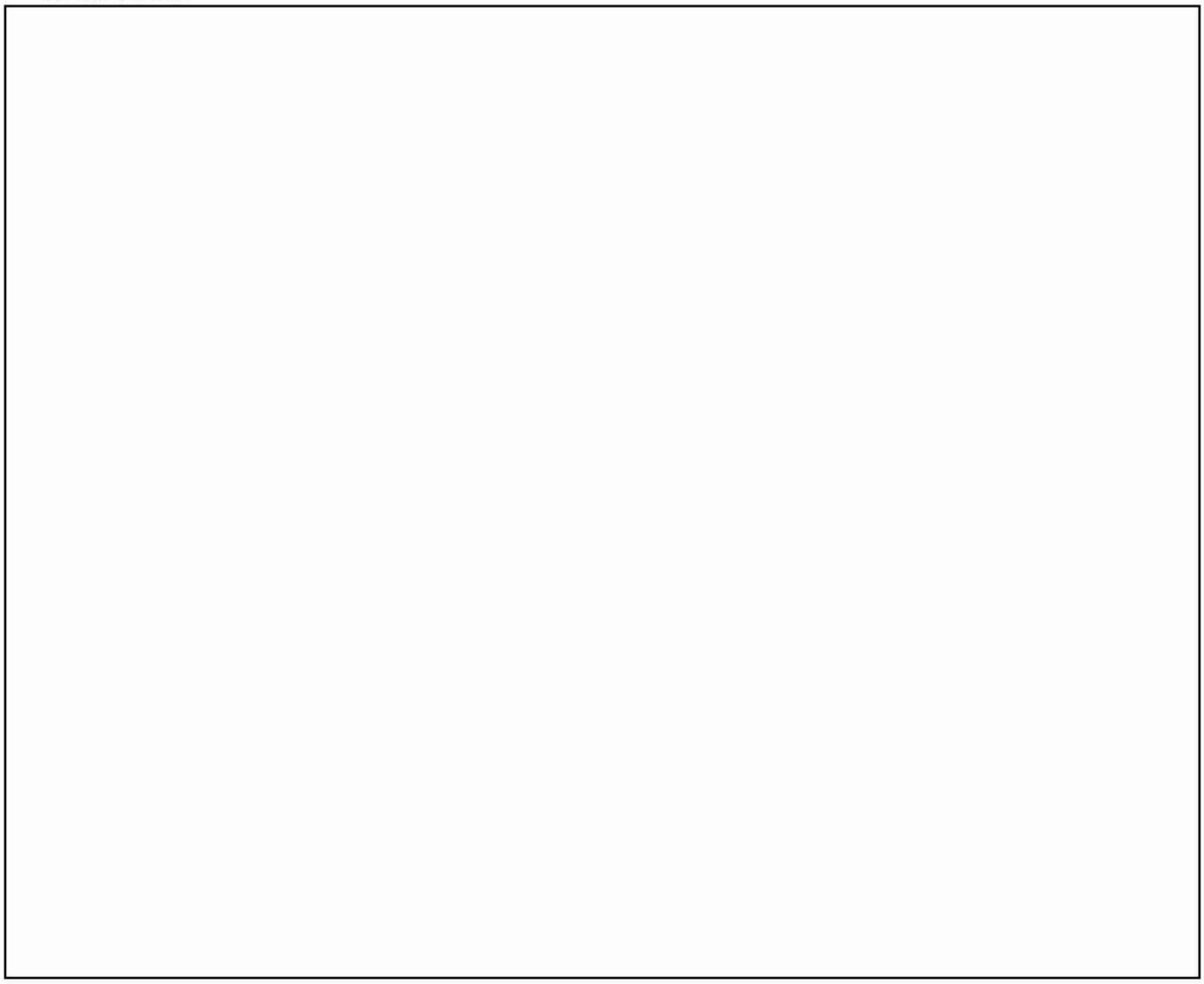
Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. The Acting Secretary ~~Wolf has~~ asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

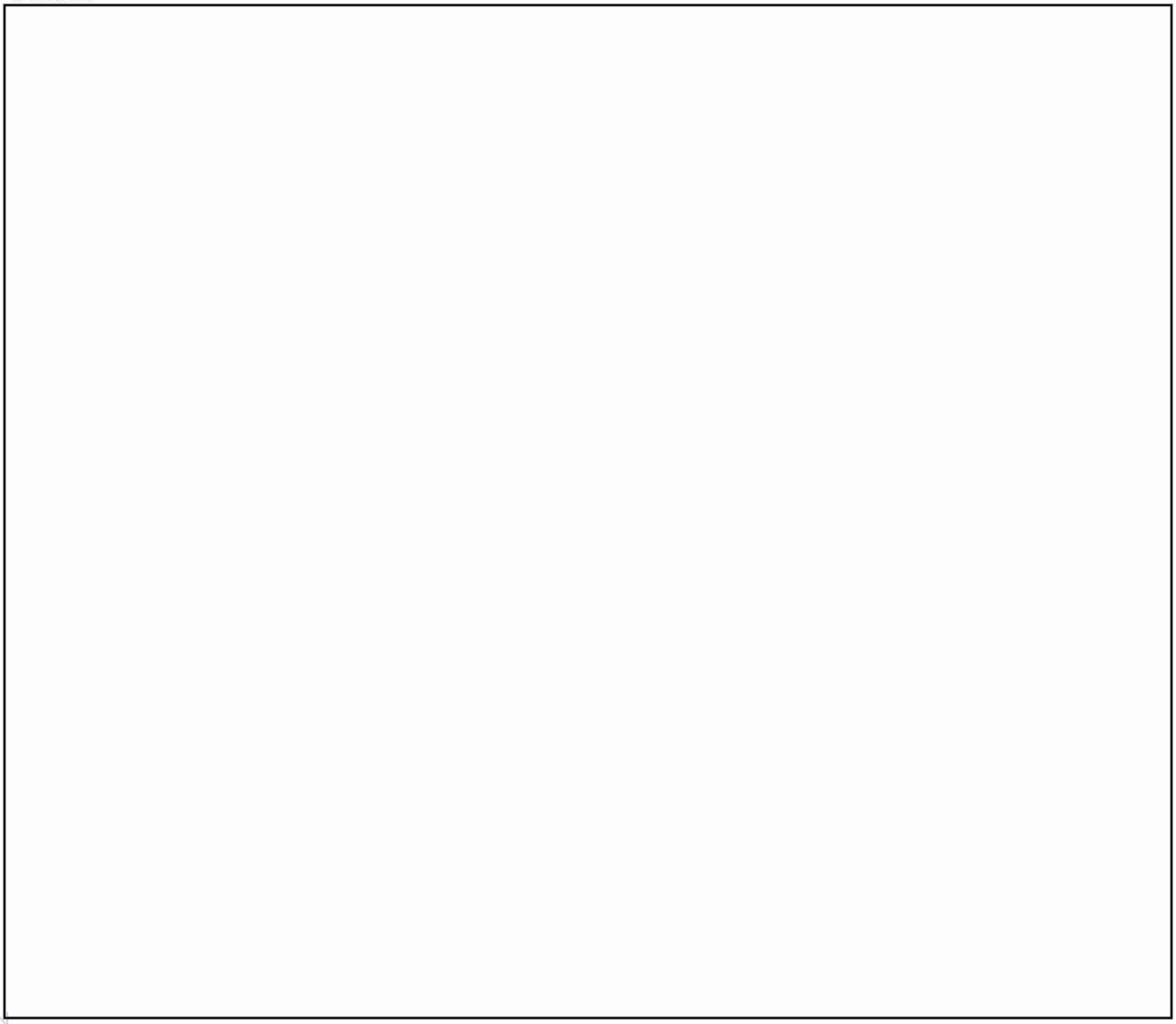
AMERICAN OVERSIGHT

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U.S. House of Representatives
Washington, DC 20515

(b)(5)

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AMERICAN OVERSIGHT

(b)(5)

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Senior Official Performing the Duties of the Deputy Secretary

Enclosure

AMERICAN OVERSIGHT

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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

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AMERICAN OVERSIGHT

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On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

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EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

AMERICAN OVERSIGHT

Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

(b)(6)

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/5/20 - DHS VIP Correspondence -Governor Sisolak - Regarding Impact of Proclamation10014 - STARS 29203
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 29, 2020 10:59 AM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Sisolak - 7.29.20- OCC and EXA Edits.docx, Sisolak - 7.29.20- Final LH.docx

Requestor Directorate/Office: DHS ESEC

Due Date: **Wednesday, August 5, 2020**

Request: D2P signature.

Background: Governor Sisolak wrote to Acting Secretary Wolf regarding the impact of Proclamation 10014. DHS ESEC sent to USCIS to handle as appropriate. The Director's Office provided the Darr response as a base language for OCC and EXA to review and clear.

Clearance:

.
OCC:
EXA:

Attachments:

1. Sisolak - Incoming
2. Sisolak – 7.29.20 – OCC and EXA Edits
3. Sisolak – 7.29.20 – Final LH

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear Governor Sisolak:

Thank you for your July 2, 2020 letter expressing support for J-1 nonimmigrant educators and their employers. The White House forwarded your letter to the Department of Homeland Security (DHS) for response. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)

AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

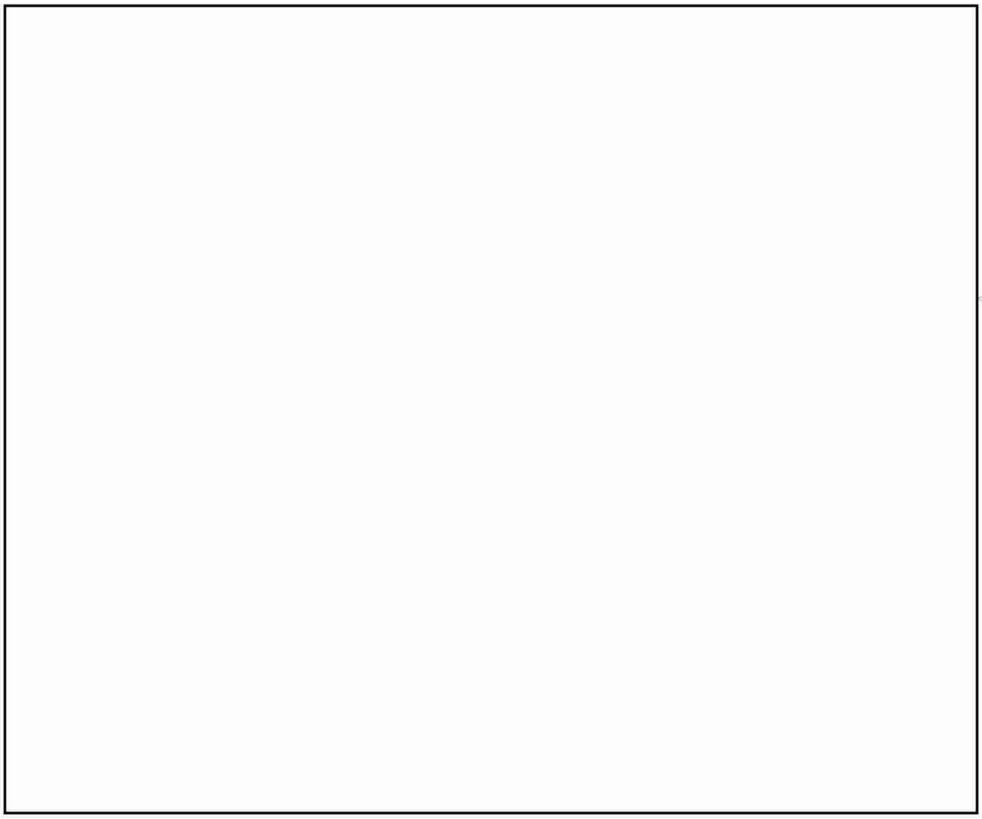
U.S. Citizenship and Immigration Services

July XX, 2020

~~Mr.~~ Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

Dear ~~Mr.~~Governor Sisolak: (b)(5)

Thank you for your July 2, 2020 letter expressing support for J-1 nonimmigrant educators and their employers. The White House forwarded your letter to the Department of Homeland Security (DHS) for response. Acting Secretary Wolf asked that I respond on his behalf.



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AMERICAN OVERSIGHT

(b)(5)

[redacted]

Commented [redacted]

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

(b)(5)

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

From: Weinhold, Kasey D
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Bailey, Morgan
Sent: July 29, 2020 10:59 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Cover Memo Nadler 7.29.20.doc, Draft Response Nadler (Redline - DHS Components) 7.29.20.docx, Enclosure Nadler (Redline - DHS Components) 7.29.20.docx, Draft Response Nadler FINAL 7.29.20.docx, Enclosure Nadler FINAL 7.29.20.docx

Hi Morgan,

I have no edits. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile** [redacted] | **E-mail:** [redacted]

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 29, 2020 11:44 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and COS signature on the Rep. Nadler cover memo.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and was cleared by the DHS Components (MGMT, OLA, and PLCY). ESEC will obtain final approval from the OGC. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	

Attachments:
Incoming - Nadler 6.23.20
Cover Memo Nadler 7.29.20
Draft Response Nadler (Redline – DHS Components) 7.29.20
Enclosure Nadler (Redline – DHS Components) 7.29.20
Draft Response Nadler FINAL 7.29.20
Enclosure Nadler FINAL 7.29.20

AMERICAN OVERSIGHT

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron L.Calkins
Chief of Staff

SUBJECT: Request for Approval: Response to Chairman Nadler's June 23, 2020 Letter Regarding The Authorized Amount of Immigrant Visas for Fiscal Years 2020 and 2021 (WF 1197960).

Context: Chairman Nadler+1 wrote to Acting Secretary Wolf and Secretary Pompeo to ensure that DHS and the Department of State are granting the full number of statutorily authorized immigrant visas for fiscal year (FY) 2020 and FY 2021.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted], Deputy Chief, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since her review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT:
OLA:
PLCY:

(b)(6)

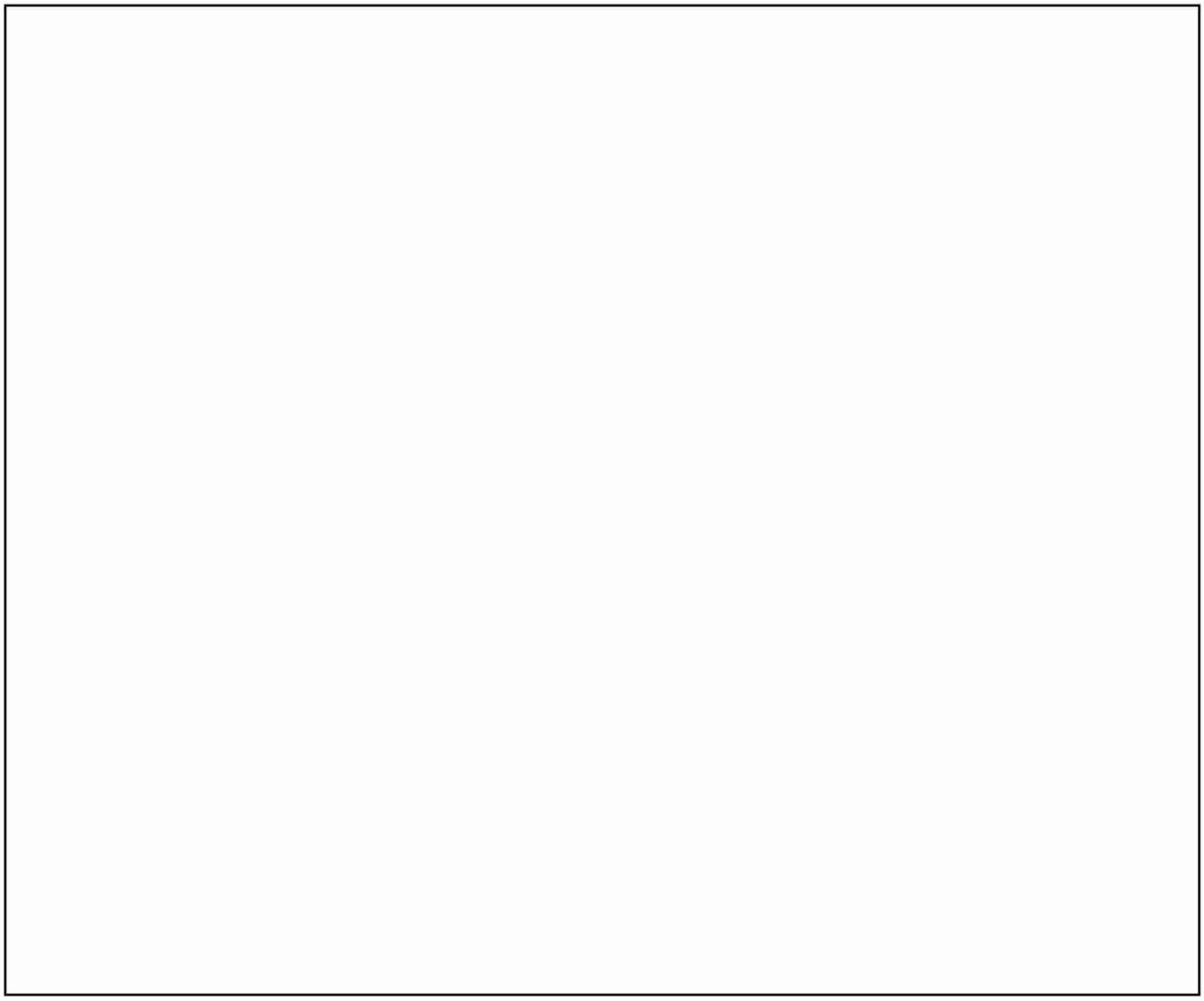
Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. The Acting Secretary ~~Wolf has~~ asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

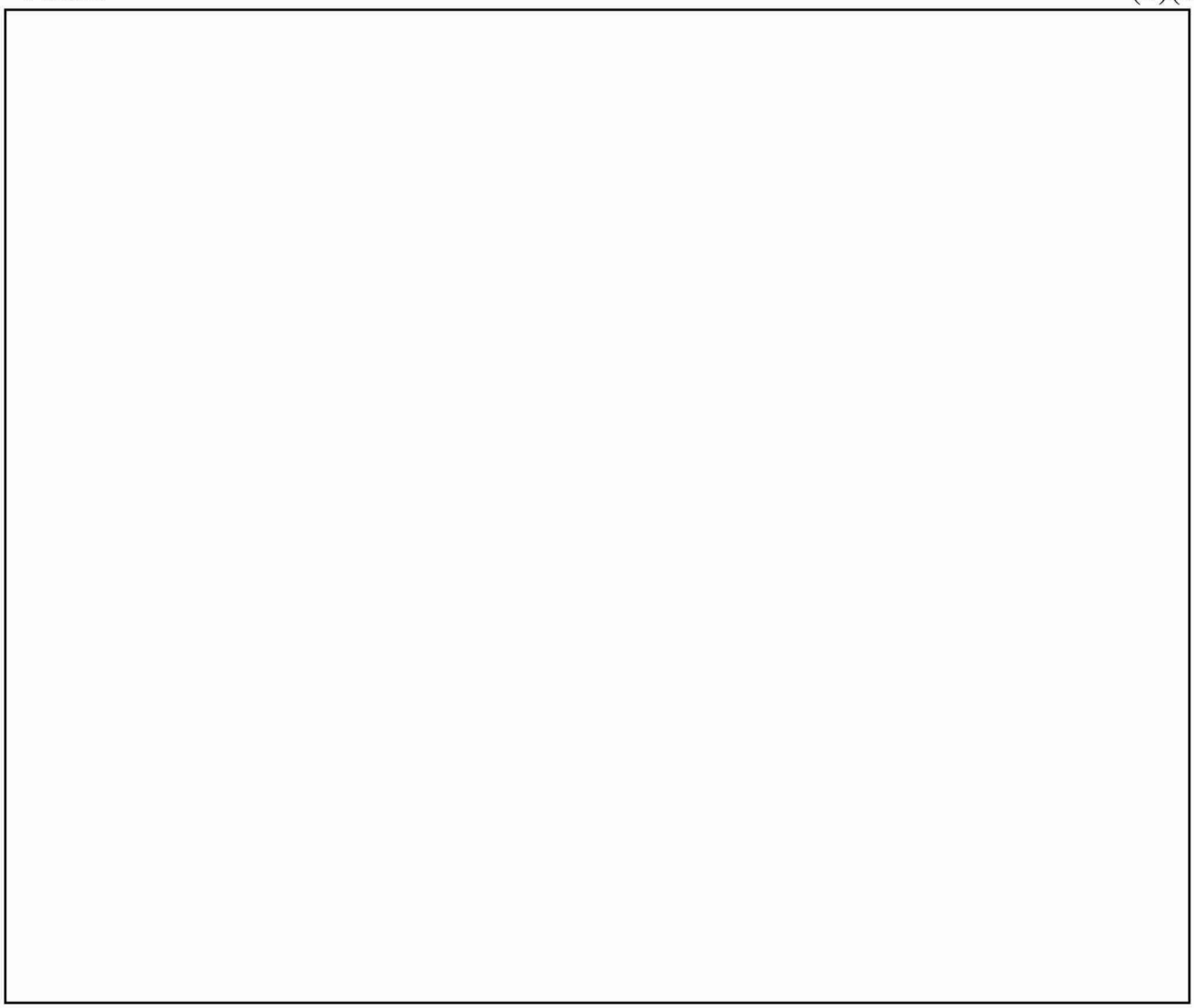
Enclosure

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY) 2020 and 2021. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

Please see our enclosed response to your specific questions. Thank you again for your letter and interest in this issue. Chairwoman Lofgren will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

AMERICAN OVERSIGHT

(b)(5)

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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

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consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

AMERICAN OVERSIGHT

Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

(b)(6)

From: Calkins, Aaron L
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Piateski, Jennifer E
Sent: July 29, 2020 10:01 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Draft Response Nadler FINAL 7.9.20 + JBE.doc, Enclosure Nadler FINAL 7.9.20.docx

Thanks,

Aaron L. Calkins
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Bailey, Morgan [redacted]
Sent: Wednesday, July 29, 2020 11:00 AM
To: Calkins, Aaron L [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Here is the incoming letter, edited version of the cover letter, and enclosure.

Thanks

From: Calkins, Aaron L [redacted]
Sent: Wednesday, July 29, 2020 10:57 AM
To: Bailey, Morgan [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

The enclosure was not included in your email.

Thanks,

Aaron L. Calkins
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Bailey, Morgan [redacted]
Sent: Wednesday, July 29, 2020 10:51 AM
To: Calkins, Aaron L [redacted]
(b)(6)
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Nadler's June 23, 2020 letter (STARS #28117) was received by DHS and assigned by ESEC to USCIS to draft a response on 6/25. This response was for AS2 signature, and required DHS Component and DHS FO review and clearance. OP&S, OCC, and EXA prepared the response – which consisted of a cover letter (2 pages) and an attachment (9 pages) for AS2 sign. The draft was approved by D2P on 7/15, and sent for DHS Component clearance on that day. USCIS has checked with DHS on this several times. DHS Policy was the last Component to clear (last night at 10:45 p.m.)

AMERICAN OVERSIGHT

The other letter from Nadler (STARS #28025) was also addressed to DHS and managed by ESEC [redacted] (b)(5)

[redacted] USCIS (b)(5)
communicated this to ESEC, and they agreed and closed the tasking for a response.

(b)(6)

From: Edlow, Joseph B [redacted]
Sent: Wednesday, July 15, 2020 12:37 PM
To: Nuebel Kovarik, Kathy [redacted] Bailey, Morgan [redacted]
Calkins, Aaron L [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Minor edits to the letter attached.

From: Nuebel Kovarik, Kathy <[redacted]
Sent: Friday, July 10, 2020 2:39 PM
To: Edlow, Joseph B [redacted]; Bailey, Morgan <[redacted]
Subject: Fwd: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

I discussed this with Joe, and he wants to review the letter, possibly sign it himself. We will await Joe's guidance.

From: Bailey, Morgan <[redacted]
Sent: Thursday, July 9, 2020 3:16:19 PM
To: Nuebel Kovarik, Kathy <[redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117 (b)(6)

This response consists of a cover letter (2 pages) and an attachment (9 pages) for Ken Cuccinelli to sign. He provided

[redacted] (b)(5)

[redacted] What do you think?

From: Stout, Kelsey L <[redacted]
Sent: Thursday, July 9, 2020 1:46 PM (b)(6)
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Clearance-EXSO <[redacted]>; USCIS Exec Congr Corresp <[redacted]>; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

(b)(6)

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and clearance on the Rep. Nadler draft response prior to DHS Component clearance.

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Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and requires DHS Component

clearance by MGMT, OLA, and PLCY. ESEC will obtain final approval from the OGC. A comment from OP&S is included on the Enclosure that was flagged for the Director's Office. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:
OCC:
EXA:

[redacted] (b)(6)

***Attachments:**
Incoming - Nadler 6.23.20
Draft Response Nadler (Redline) 7.9.20
Enclosure Nadler (Redline) 7.9.20
Draft Response Nadler FINAL 7.9.20
Enclosure Nadler FINAL 7.9.20

*******Please reply to all on this email ******

Kelsey Stout
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted] (b)(6)

AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. Acting Secretary Wolf has asked that I respond on his (b)(5) behalf.



AMERICAN OVERSIGHT

(b)(5)

[redacted]

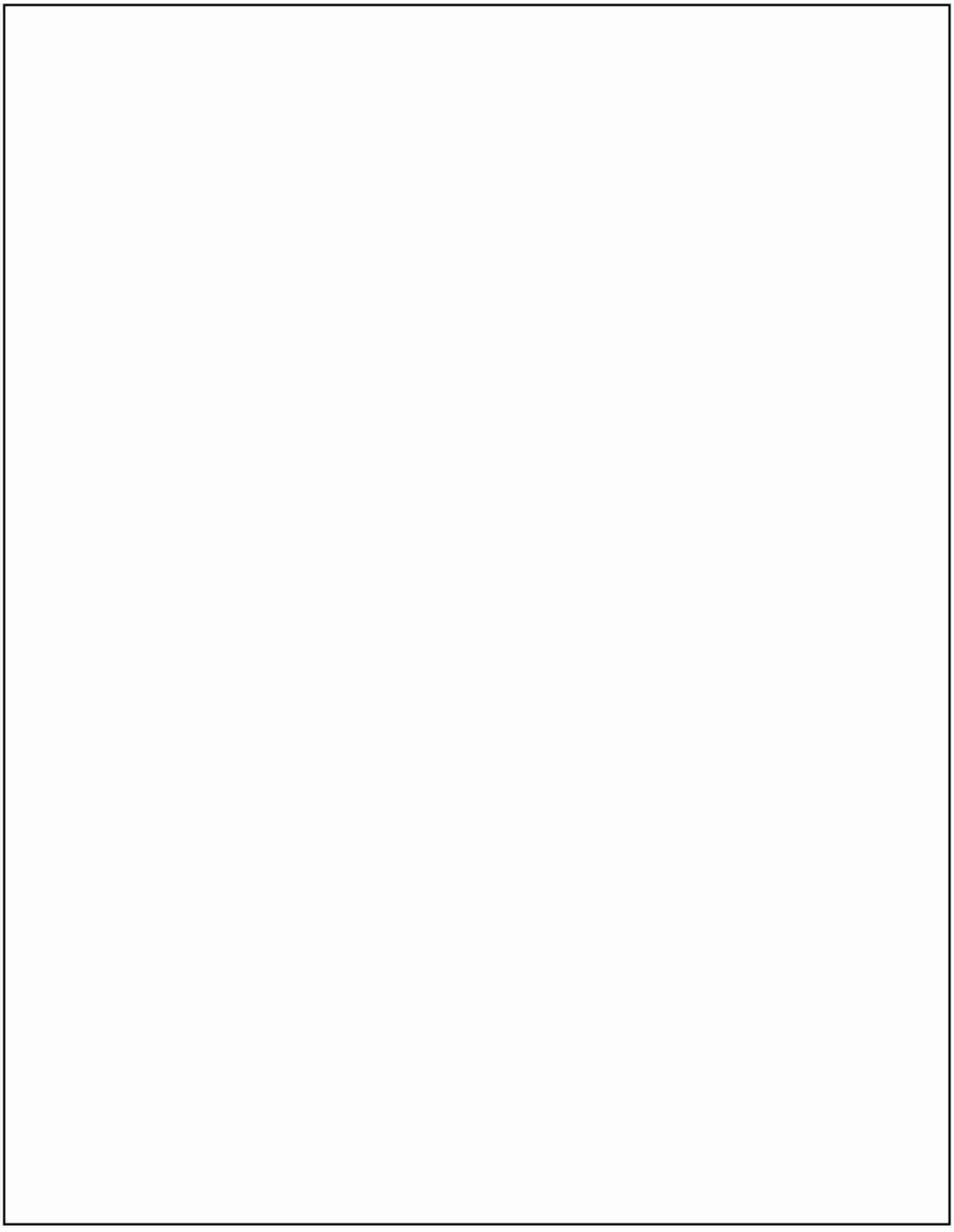
Thank you again for your letter and interest in this ~~t~~issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

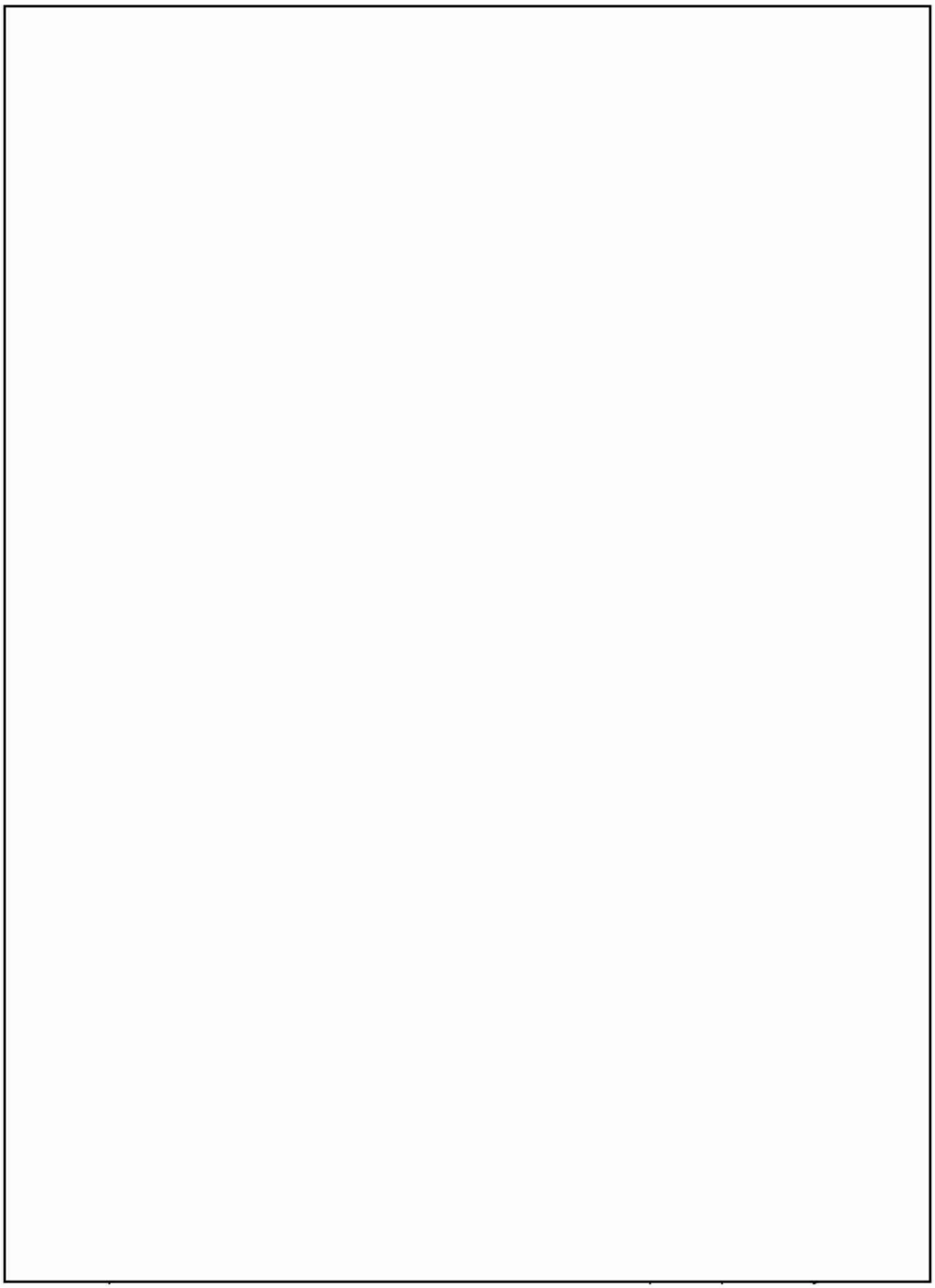
Enclosure

AMERICAN OVERSIGHT



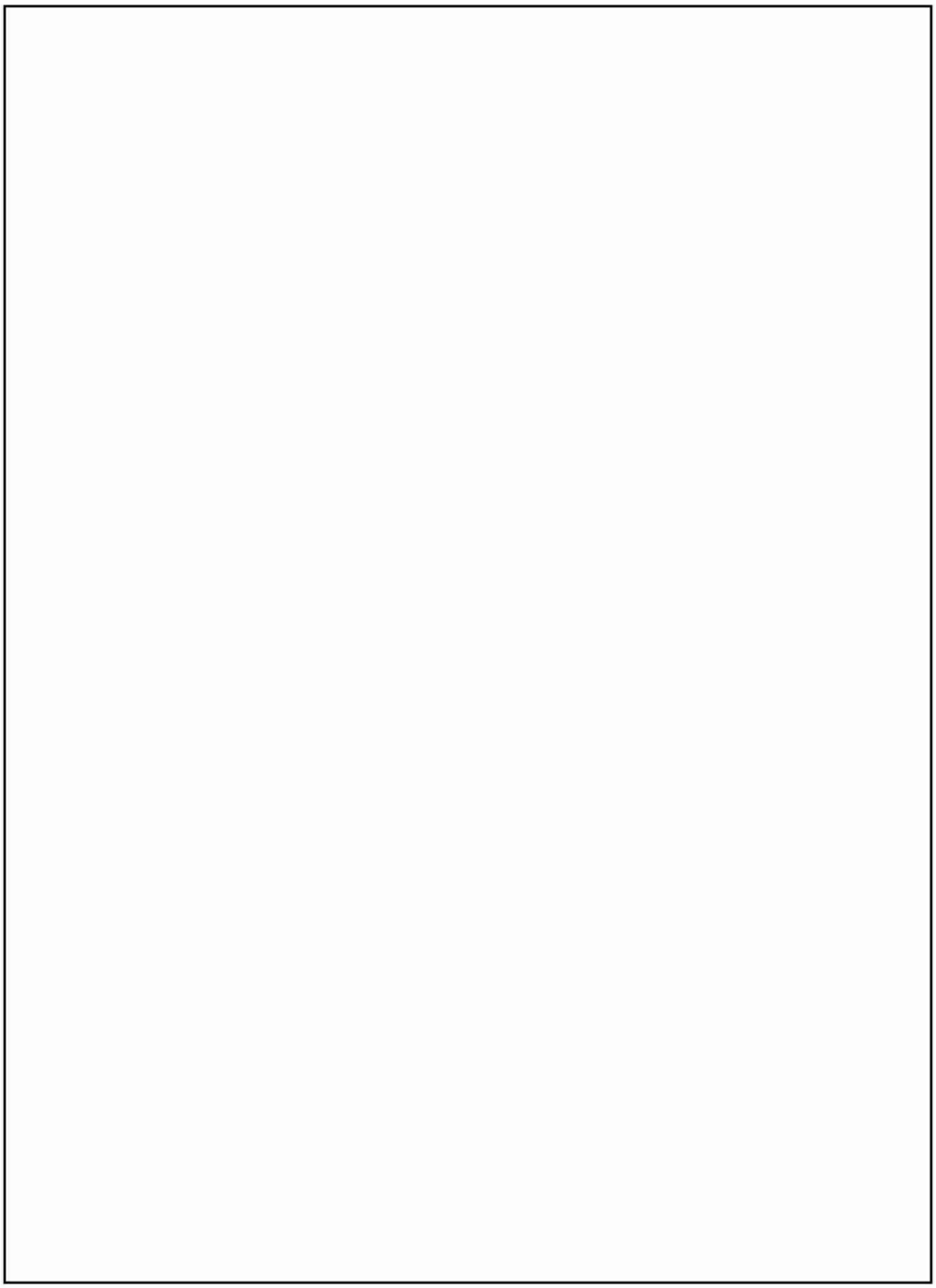
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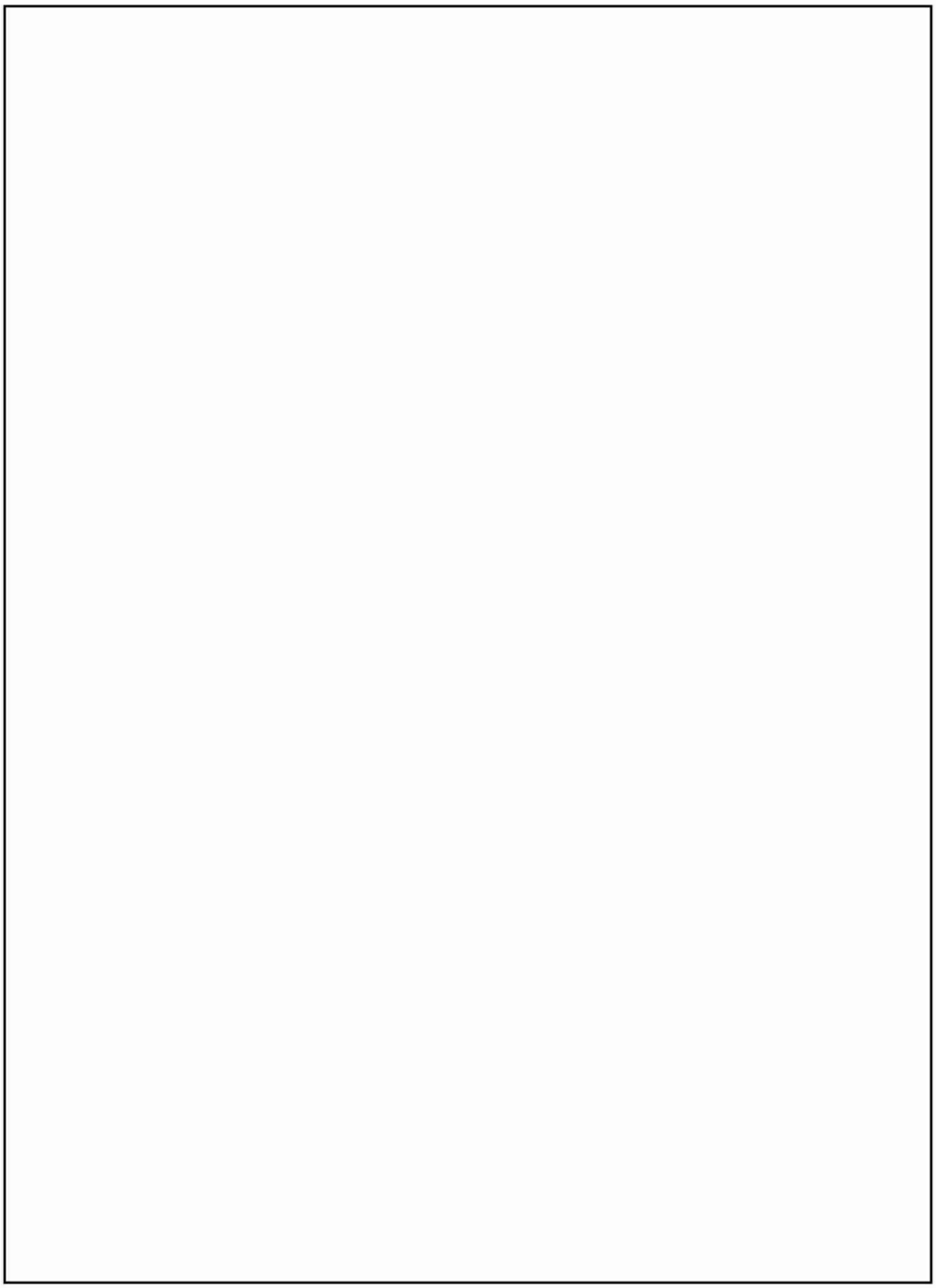
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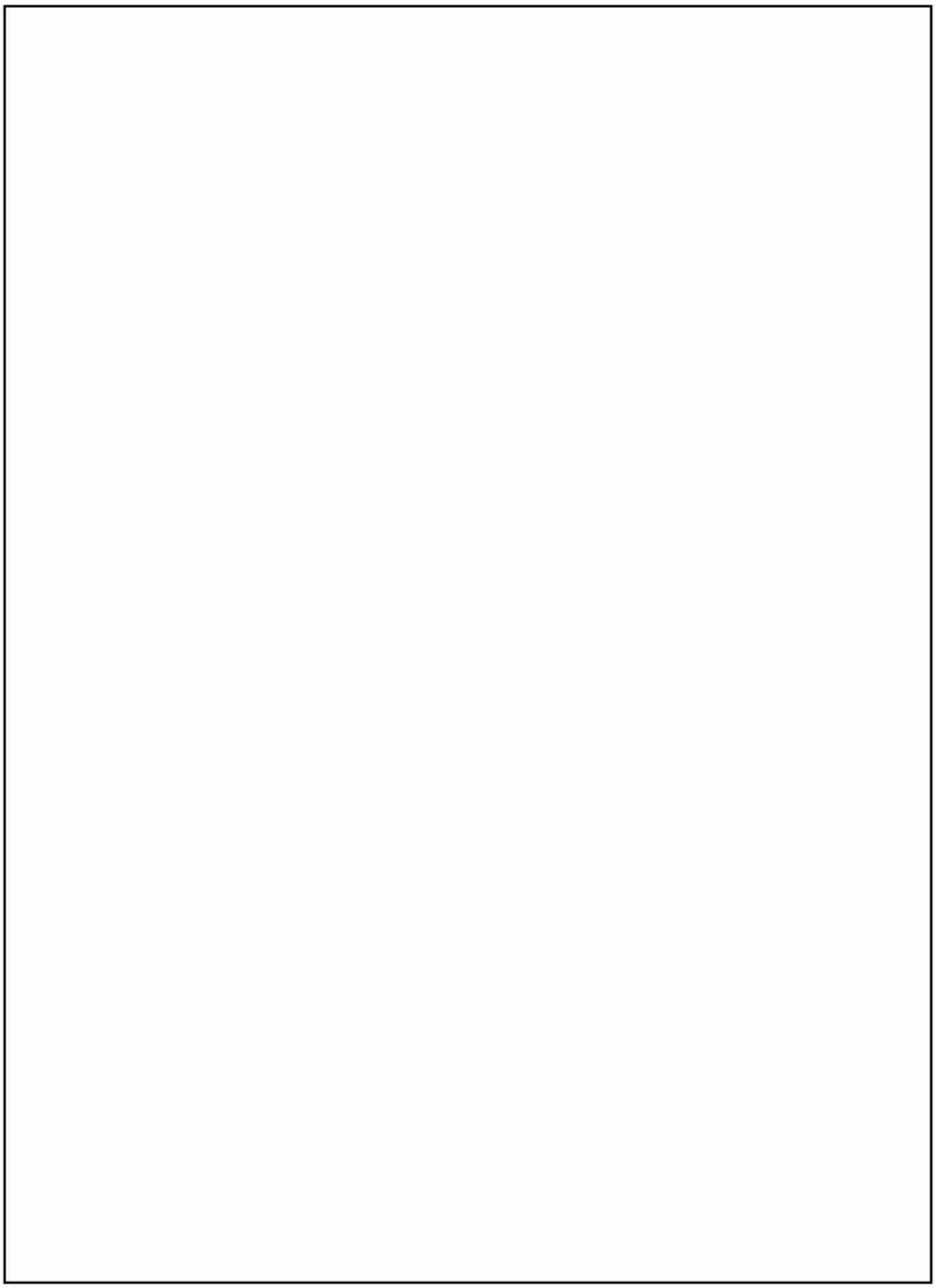
AMERICAN OVERSIGHT

(b)(5)



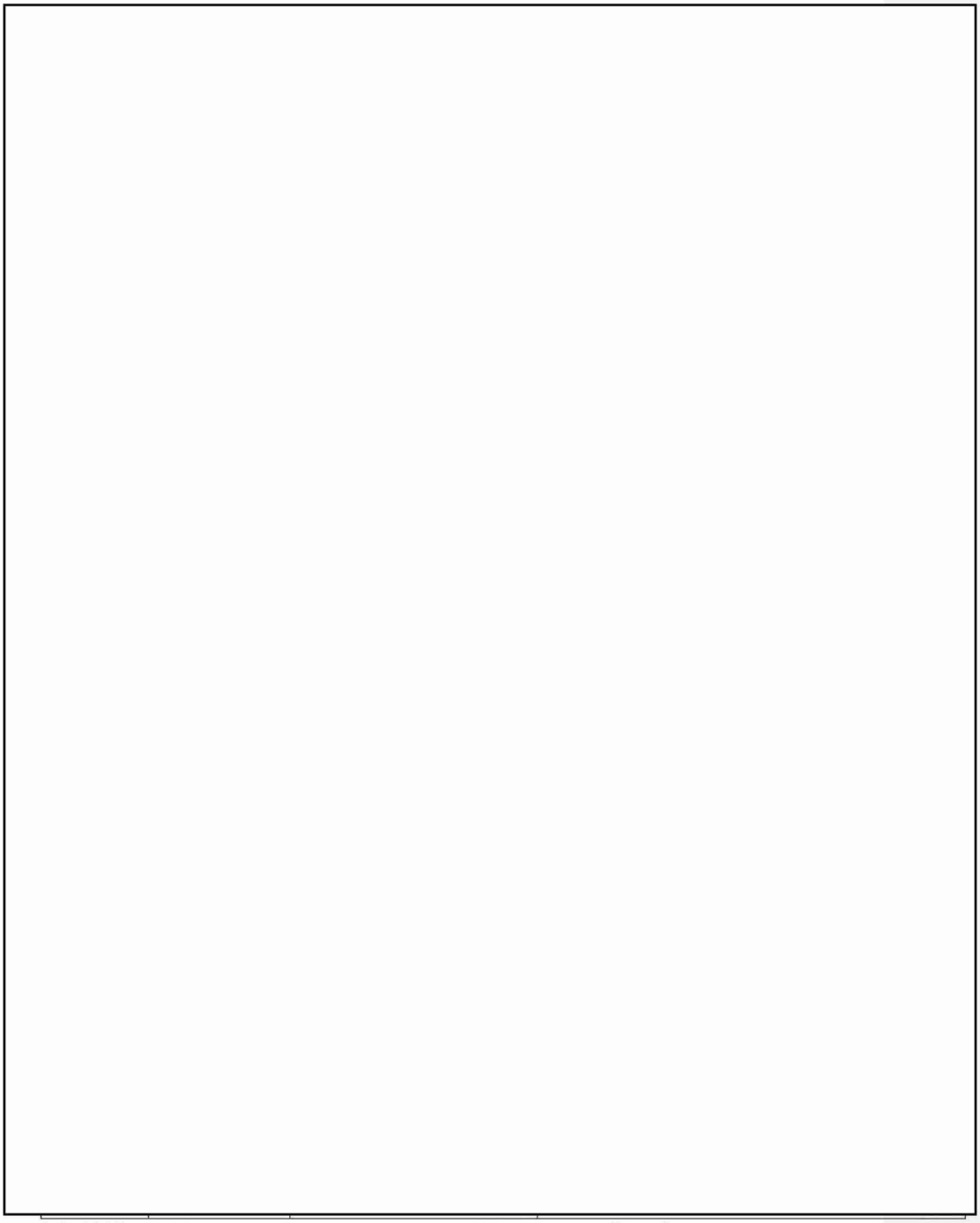
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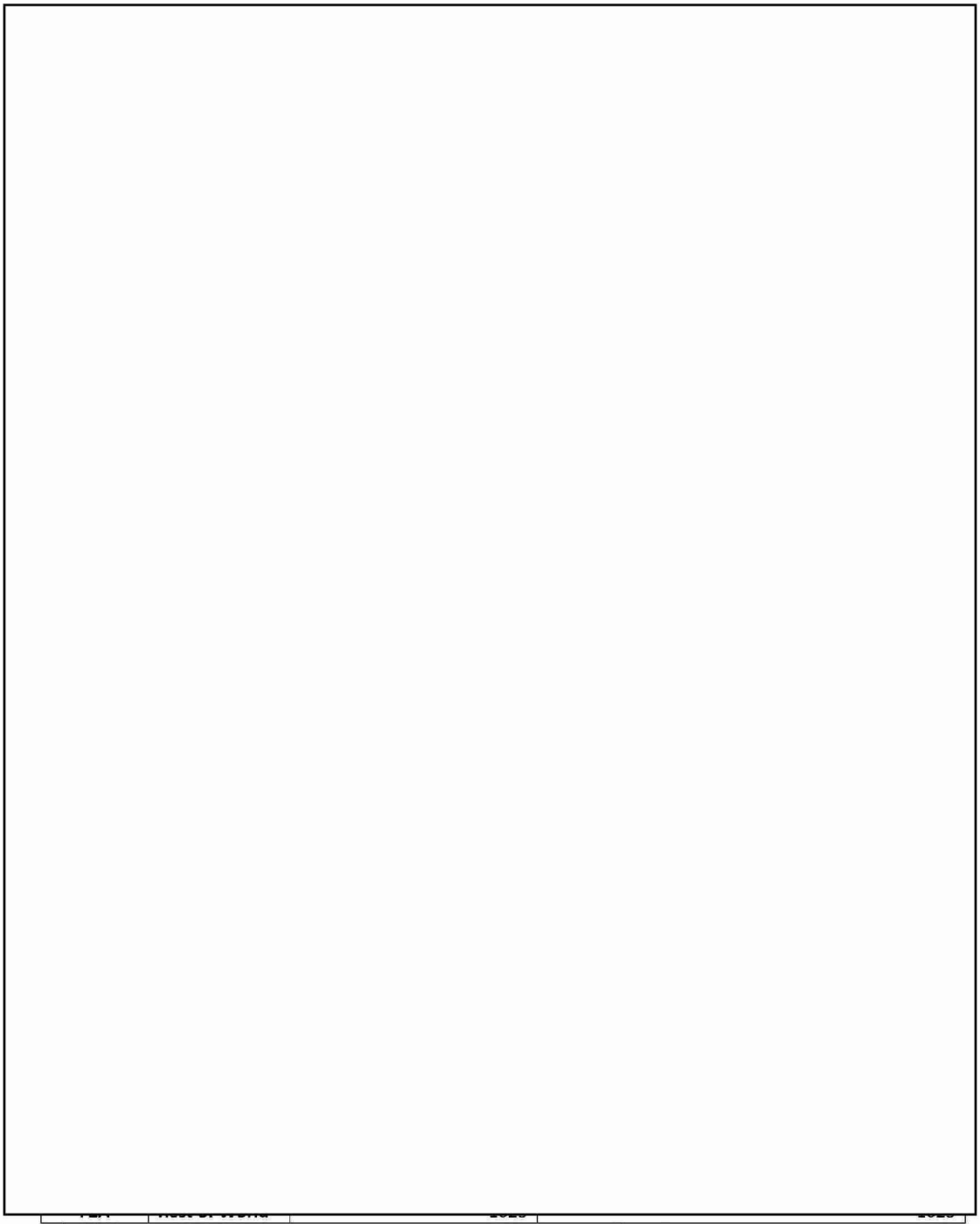
AMERICAN OVERSIGHT

(b)(5)



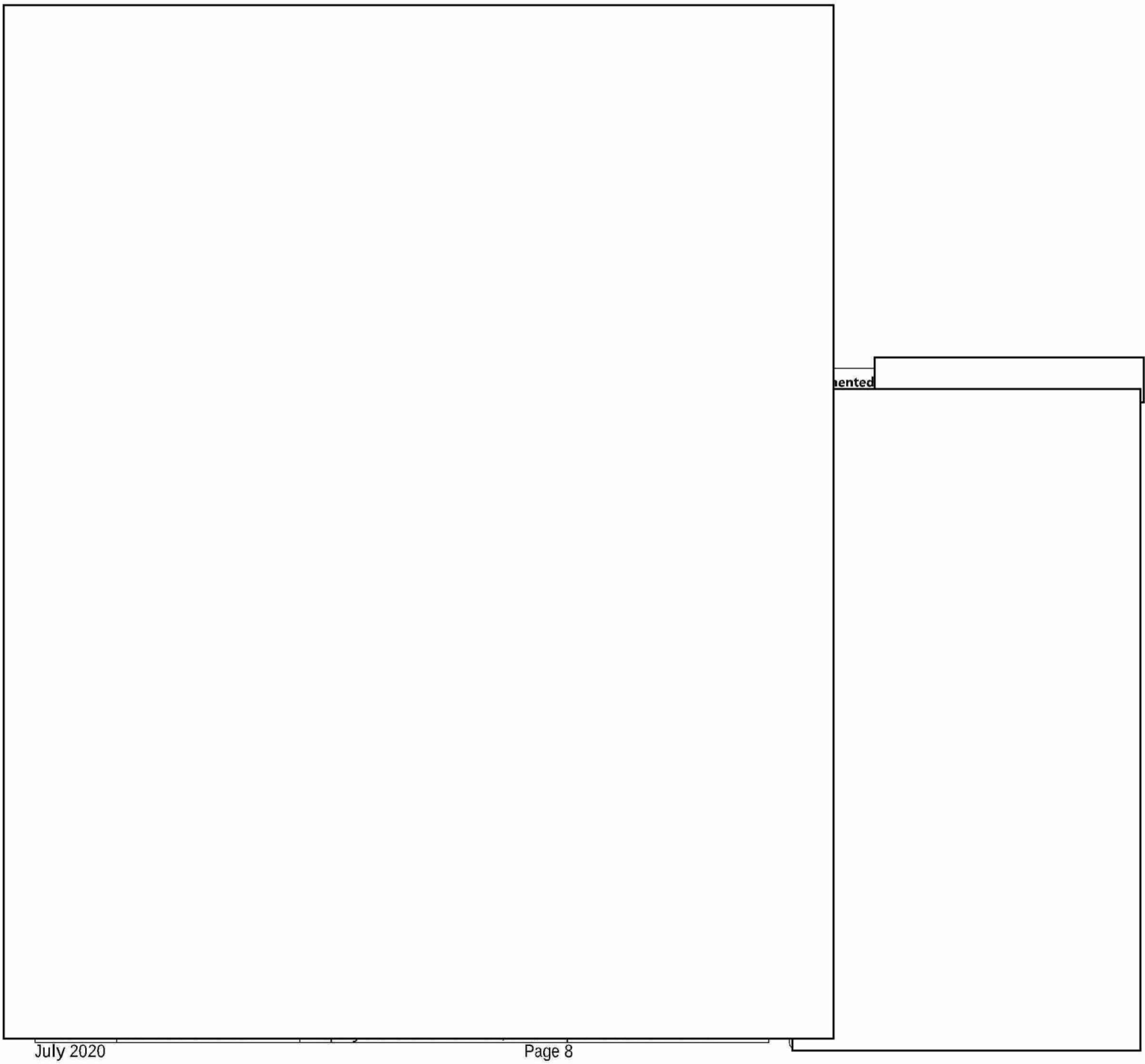
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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

AMERICAN OVERSIGHT

consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
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Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

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Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
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        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

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4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry
To: Stephen W Dove (Steve) [redacted]; Carter, Constance L
Cc: Weinhold, Kasey D
Sent: July 27, 2020 11:00 AM (UTC-05:00)
Attached: Sisolak.docx, Sisolak - Incoming.pdf

Hi Steve and Constance,

The draft for Sisolak is attached. It is based upon Darr, which already cleared and was sent out. Can we move forward with clearing the document? Who else needs to review?

Thanks,
Morgan

From: Brown, James R [redacted]>
Sent: Monday, July 27, 2020 11:26 AM
To: Bailey, Morgan [redacted]>
Cc: USCIS Exec Congr Corresp [redacted]>; USCIS EXSO External [redacted]>; Weinhold, Kasey D <[redacted]>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry

Good Morning Morgan,

Please see the following message from OP&S regarding a response for the attached incoming: (b)(5)

[redacted]

Please advise how the Director's Office wants to handle this matter.

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted] Office
Cell

From: Bailey, Morgan <[redacted]>
Sent: Thursday, July 23, 2020 5:47 PM
To: Brown, James R [redacted]>; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External <[redacted]>; Weinhold, Kasey D <[redacted]>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry

AMERICAN OVERSIGHT

D2P will respond. Please ask the PODs to use the response to Darr as a template or starting point.

Thanks!

(b)(6)

From: Brown, James R [redacted]
Sent: Wednesday, July 22, 2020 4:00 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry

Good Afternoon,

EXSO received the attached incoming from DHS ESEC to handle as appropriate.

EXSO has not created a STARS number for this action because we wanted to confirm if D2P would be interested in responding first.

Would D2P like to sign?

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted]

(b)(6)

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ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Mr. Steve Sisolak
Governor
State of Nevada
100 One North Carson Street
Carson City, Nevada 89701

(b)(5)

Dear Mr. Sisolak:

Thank you for your July 2, 2020 letter expressing support for nonimmigrant educators and their employers. Acting Secretary Wolf asked that I respond on his behalf.

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(b)(5)

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

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From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Stephen W Dove (Steve) ([redacted]) Carter, Constance L
Cc: Weinhold, Kasey D
Sent: July 24, 2020 8:40 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Draft Response Nadler FINAL 7.9.20 + JBE.doc, Enclosure Nadler FINAL 7.9.20.docx

Hi Steve and Constance,

Did DHS PLY clear the Nadler letter STARS# 28117? What are the next steps? Do you need someone from the Front Office to reach out to anyone at DHS?

Thank you,
Morgan

Rep. Nadler	**28117**	Regarding the authorized immigrant visas for FY 2020 and FY 2021	Prepare for Deputy Secretary Signature	Obtain clearance from MGMT, OLA, and PLCY. 7/21/2020 - DHS component clearance, with OLA should get back 7/22/2020 -EXSO is working with DHS PLY 07/23/2020 - Just need DHS PLY to clear, should have complete by COB.	**6/25/20**

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉ [redacted]
☎

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Bailey, Morgan <[redacted]v>
Sent: Wednesday, July 15, 2020 12:46 PM
To: Stout, Kelsey L[redacted]
Cc: USCIS Directors Office Clearance-EXSO <[redacted]; USCIS Exec Congr Corresp [redacted]>; USCIS EXSO External <[redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117 with edits/comments from the Director's Office.
Thanks!

AMERICAN OVERSIGHT

From: Stout, Kelsey L [redacted]
Sent: Thursday, July 9, 2020 2:46 PM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Clearance-EXSO [redacted]; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]

Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and clearance on the Rep. Nadler draft response prior to DHS Component clearance.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and requires DHS Component clearance by MGMT, OLA, and PLCY. ESEC will obtain final approval from the OGC. A comment from OP&S is included on the Enclosure that was flagged for the Director's Office. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S: [redacted]
OCC:
EXA:

***Attachments:**
Incoming - Nadler 6.23.20
Draft Response Nadler (Redline) 7.9.20
Enclosure Nadler (Redline) 7.9.20
Draft Response Nadler FINAL 7.9.20
Enclosure Nadler FINAL 7.9.20

*******Please reply to all on this email ******

Kelsey Stout
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted]

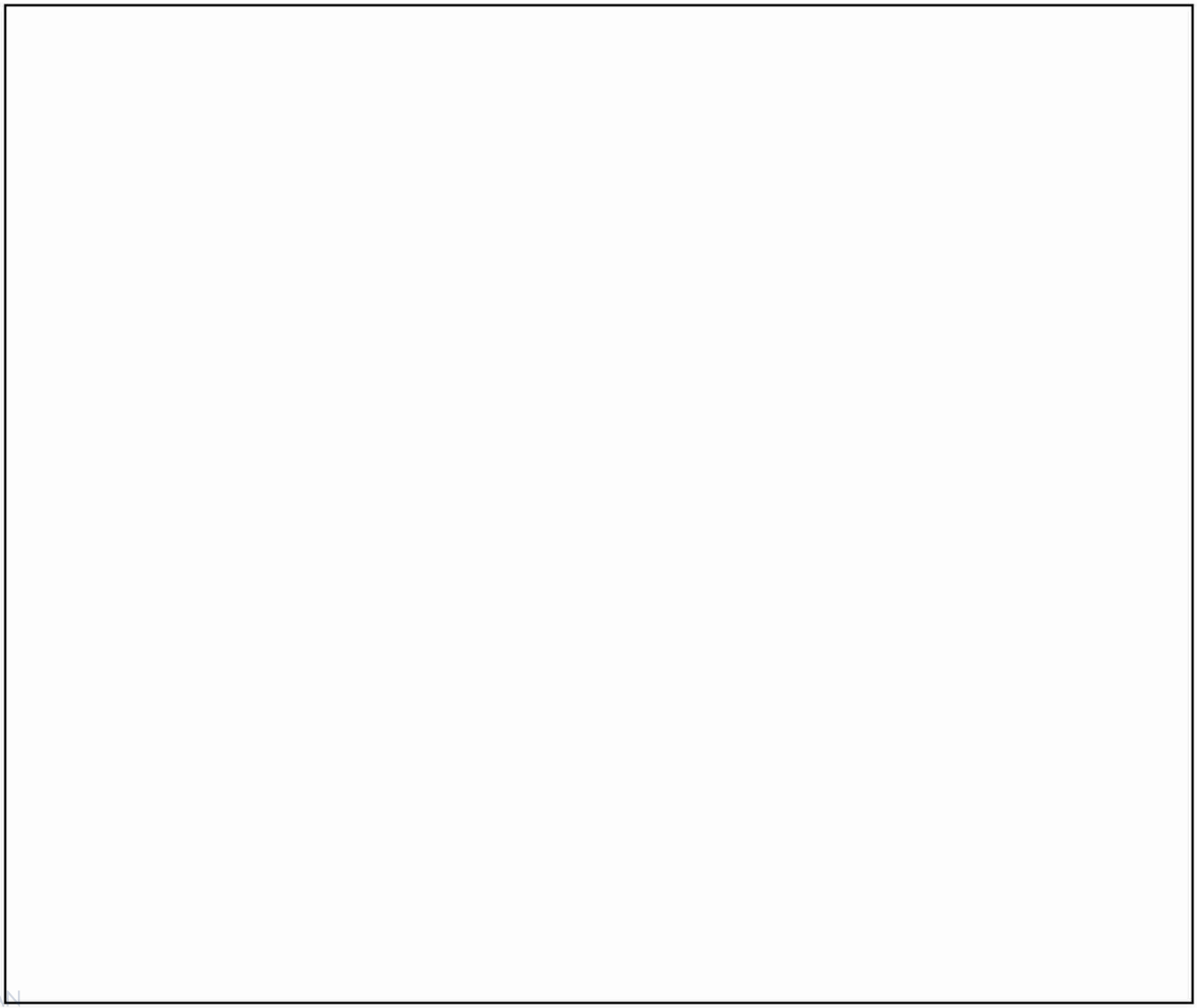
AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

(b)(5)

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. Acting Secretary Wolf has asked that I respond on his behalf.



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[redacted]

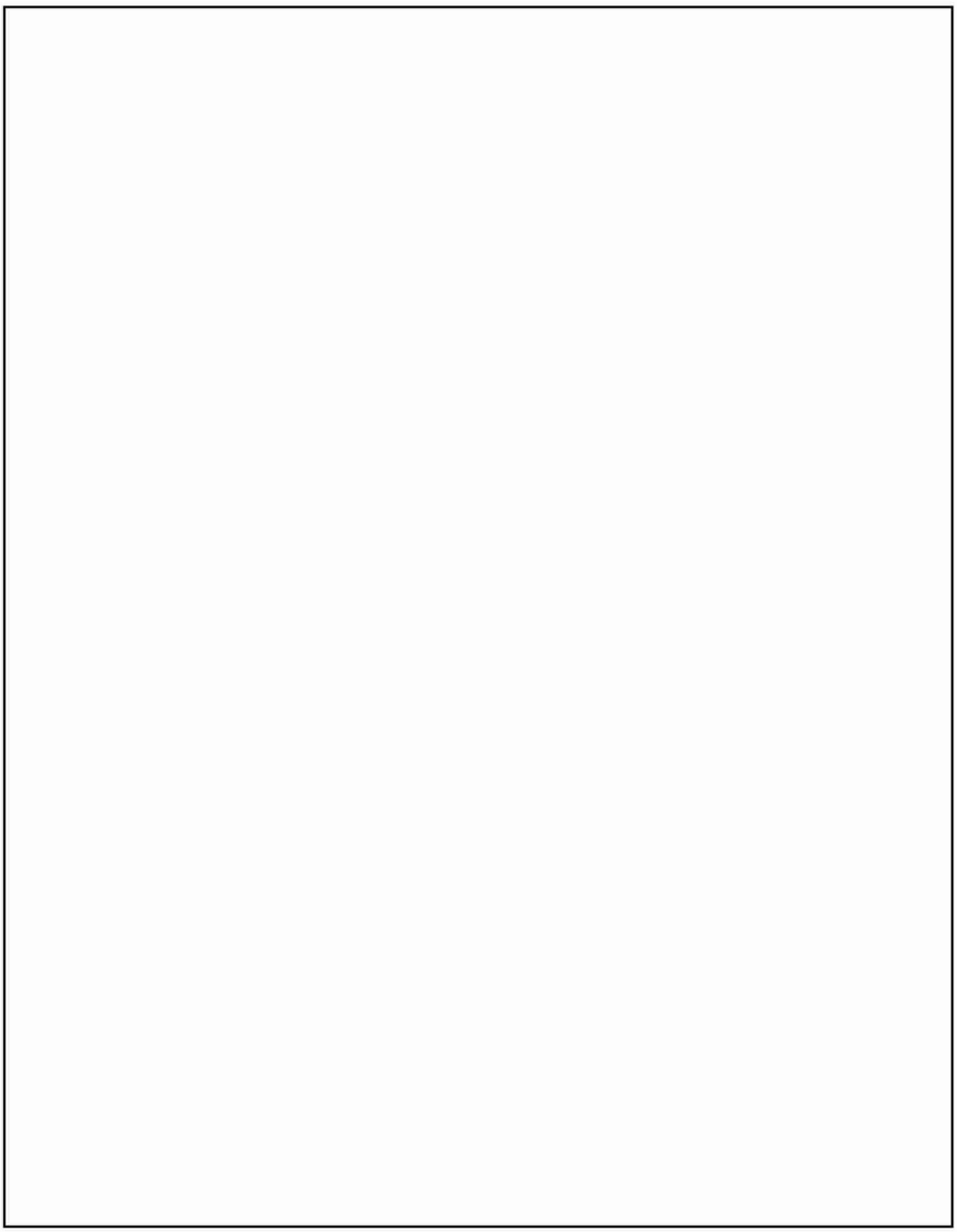
Thank you again for your letter and interest in this ~~t~~issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

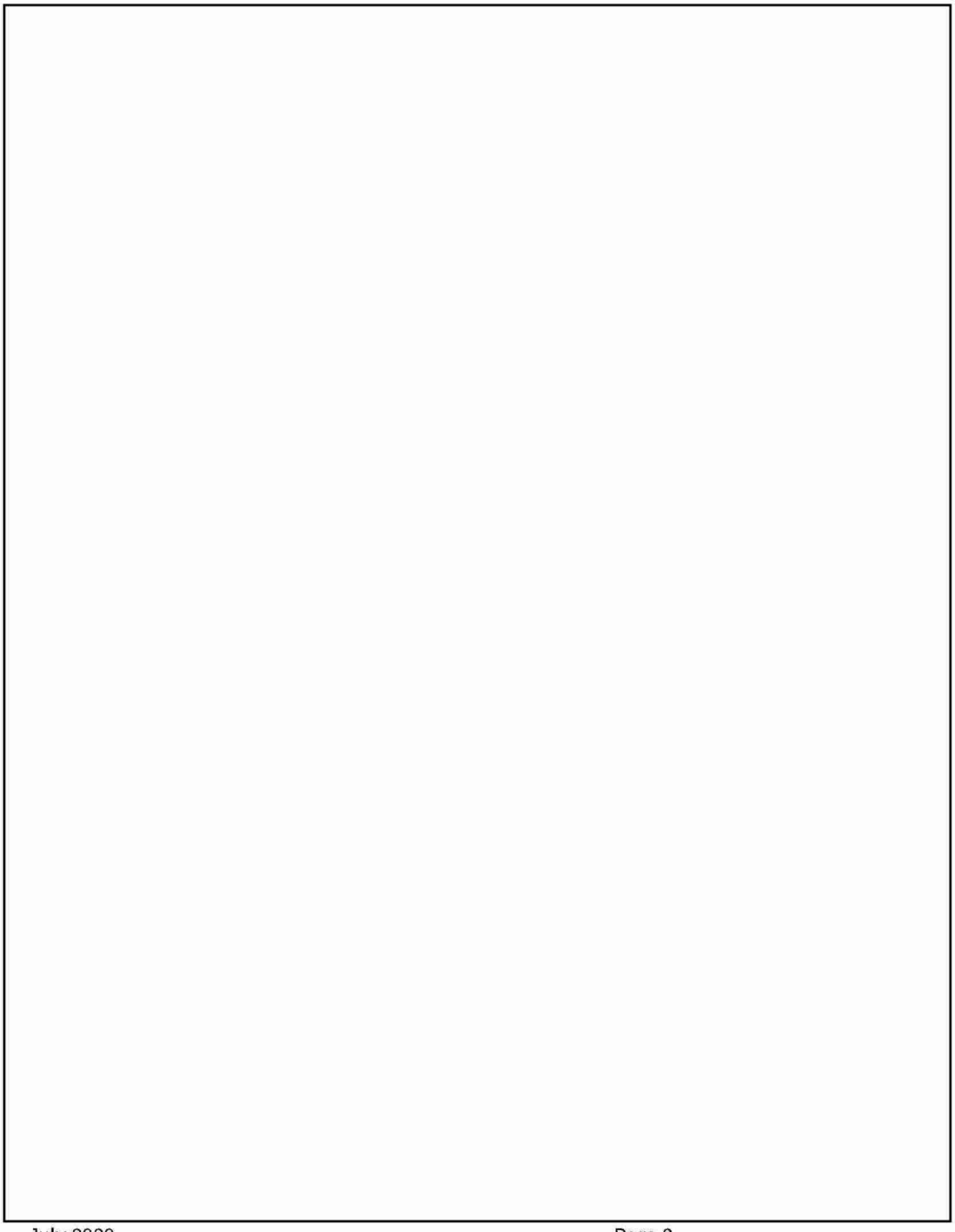
Enclosure

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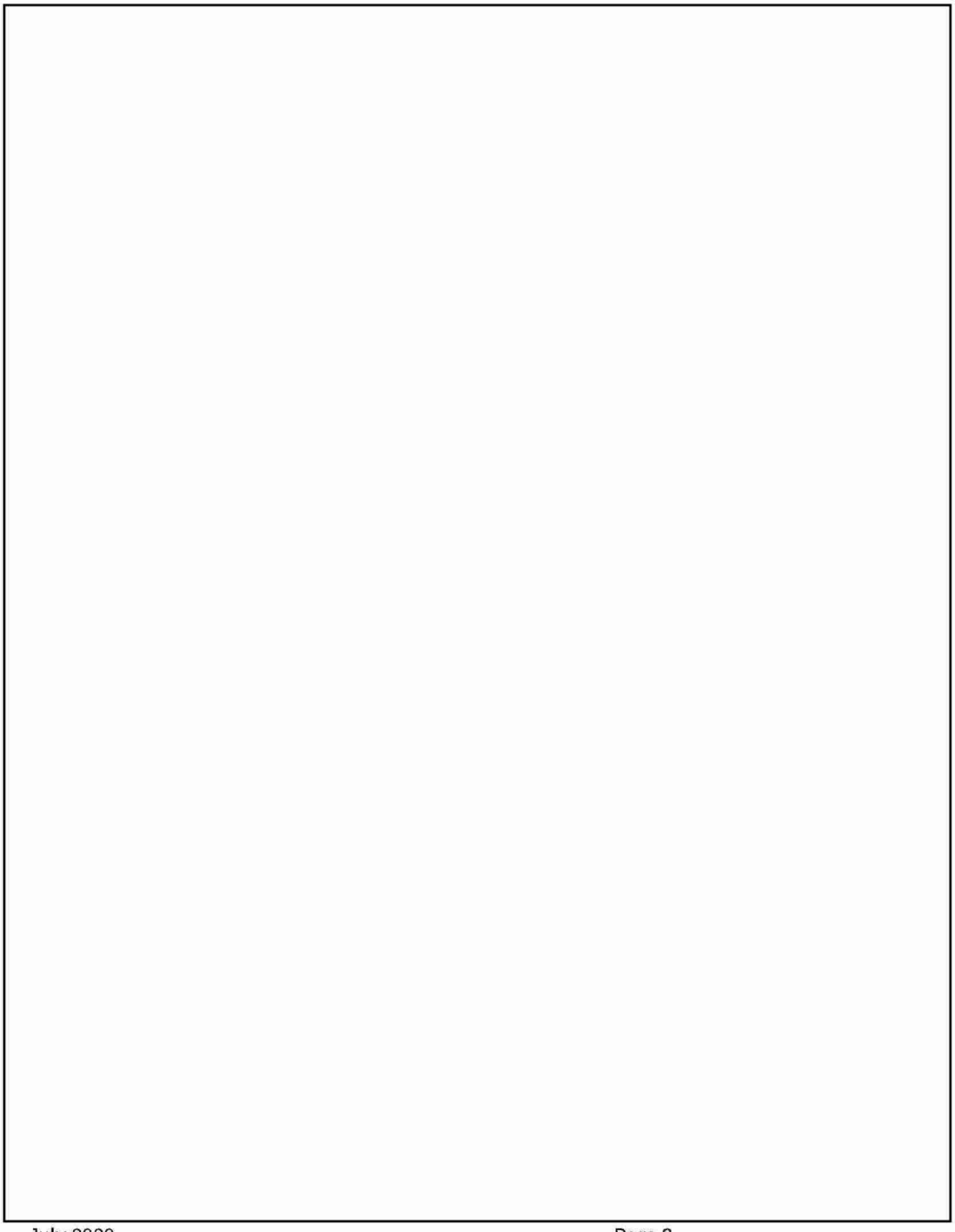
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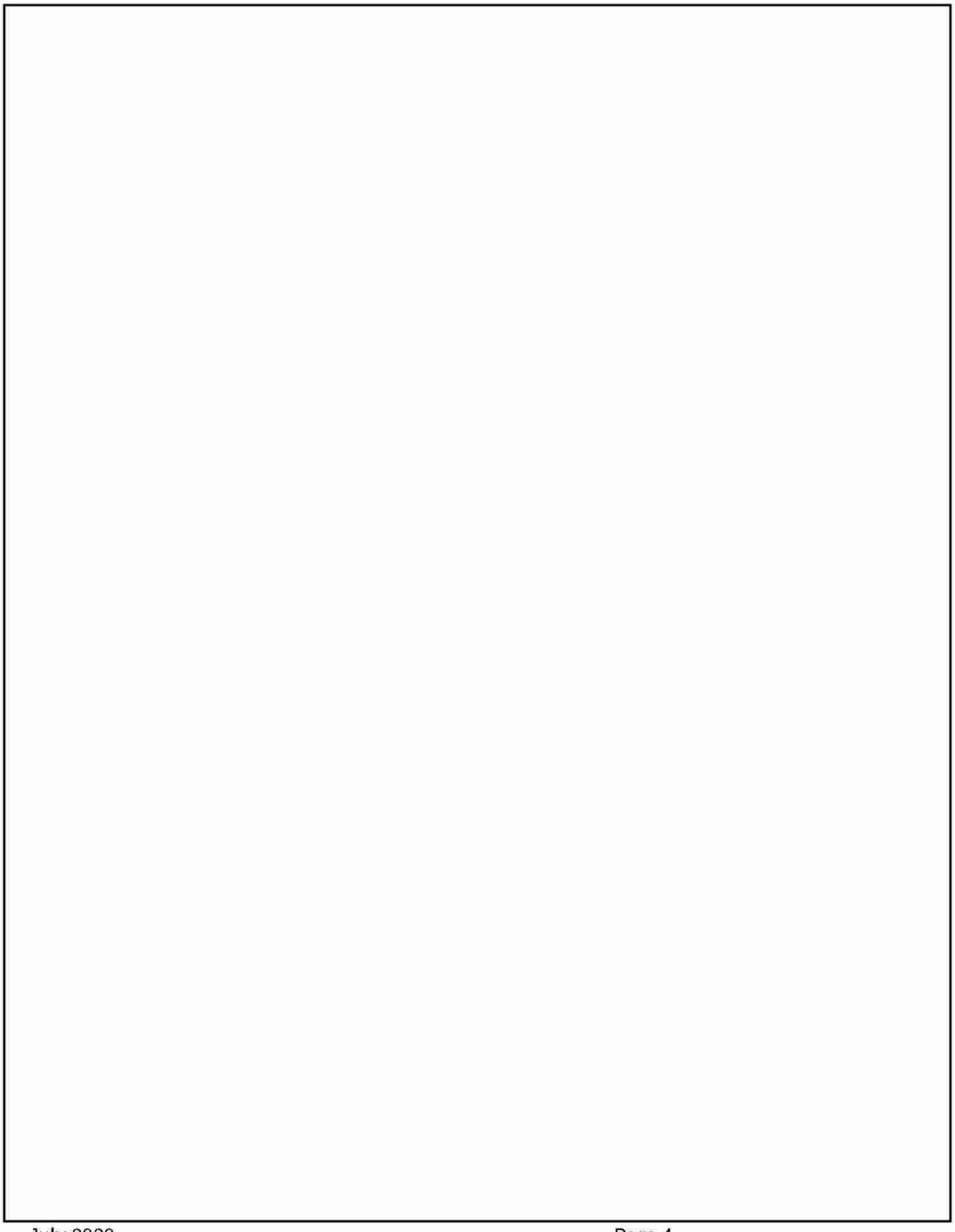
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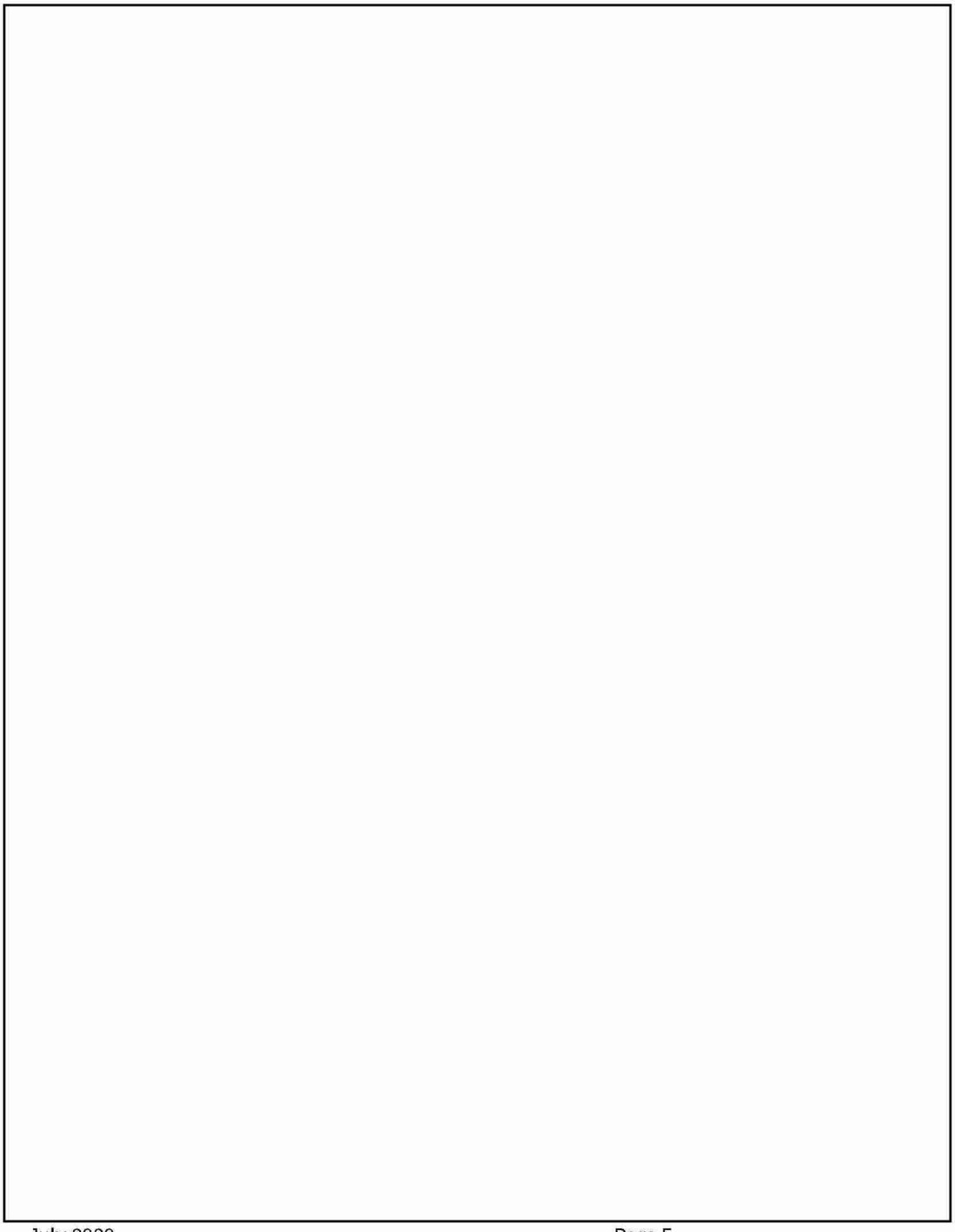
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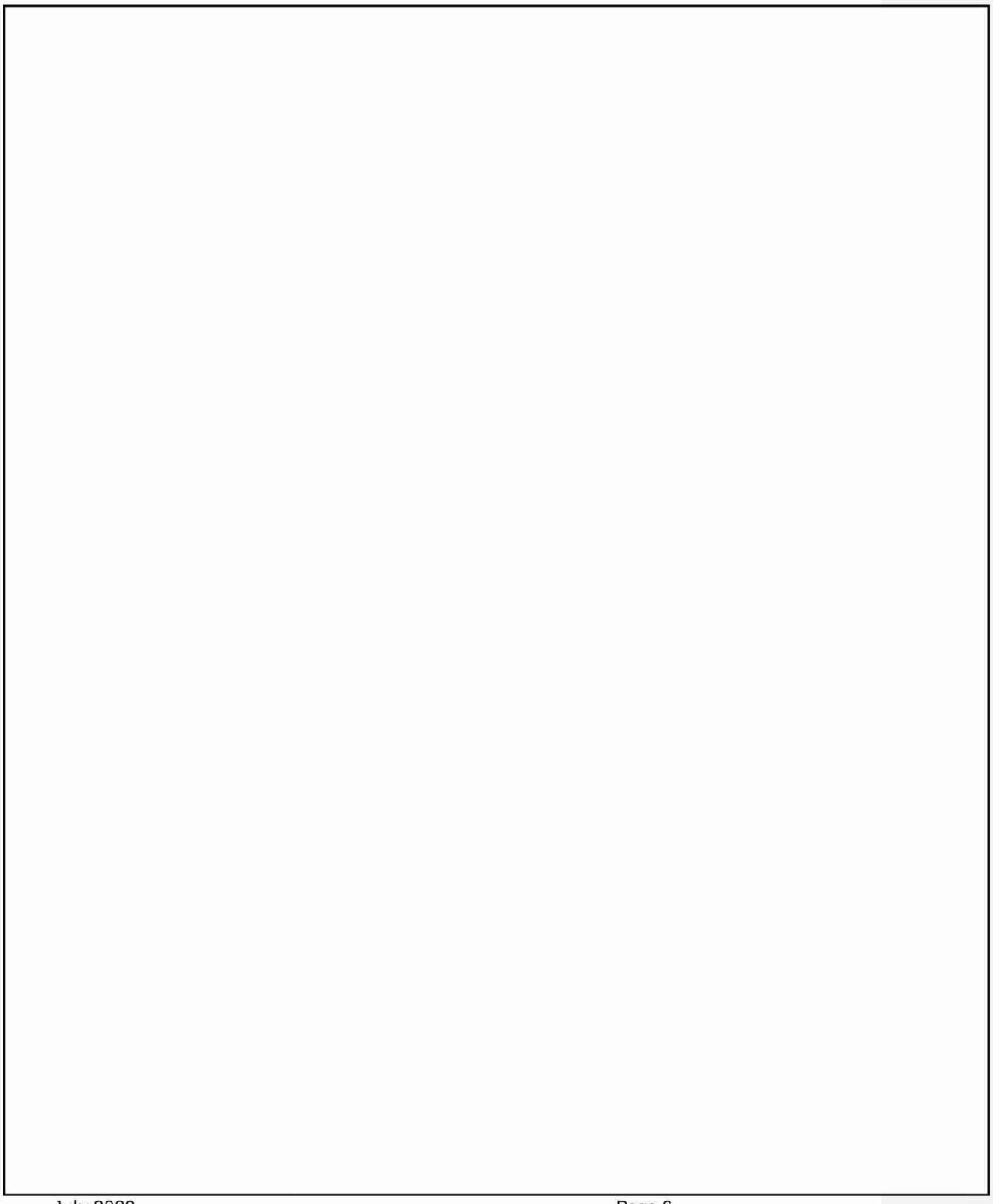
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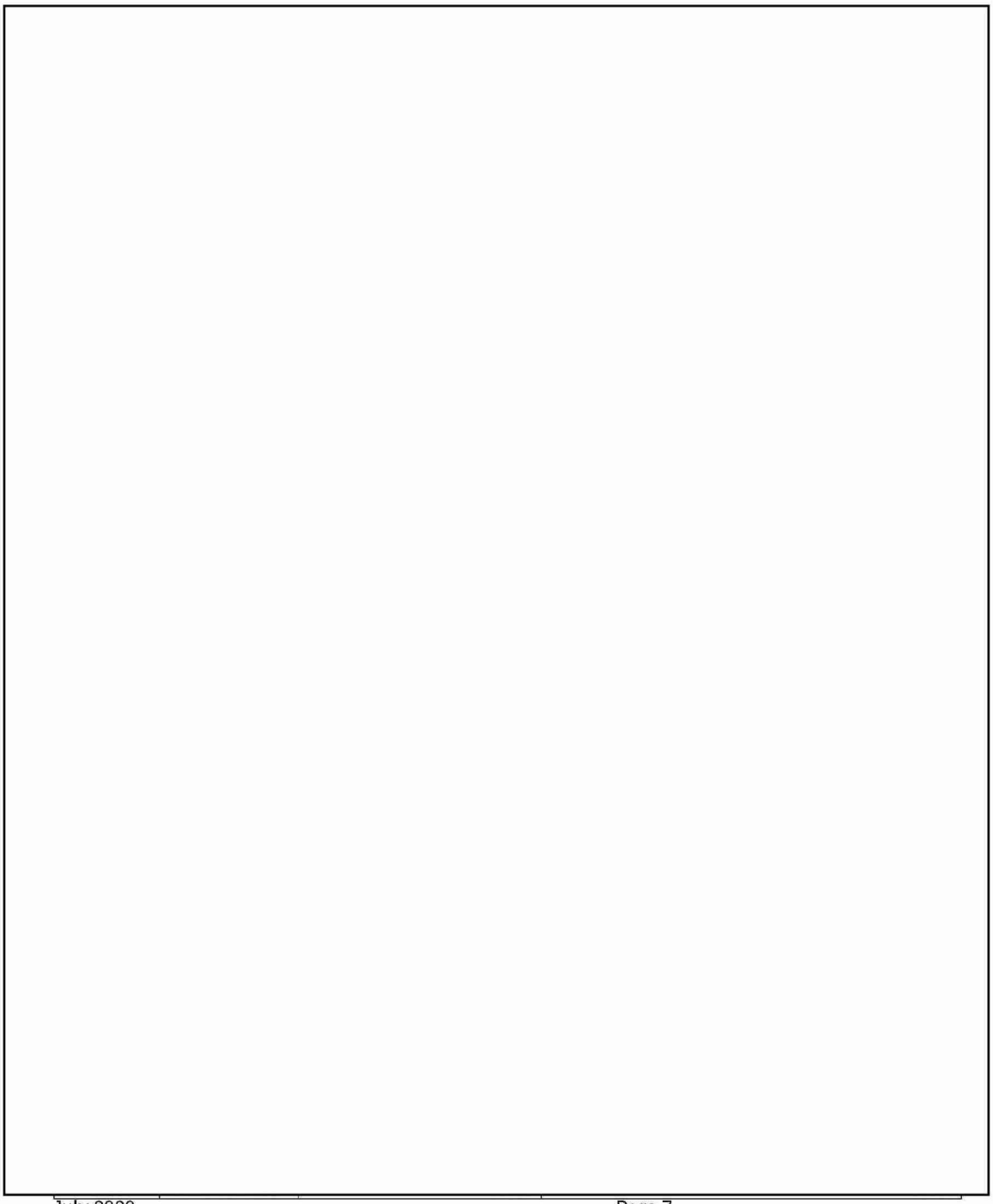
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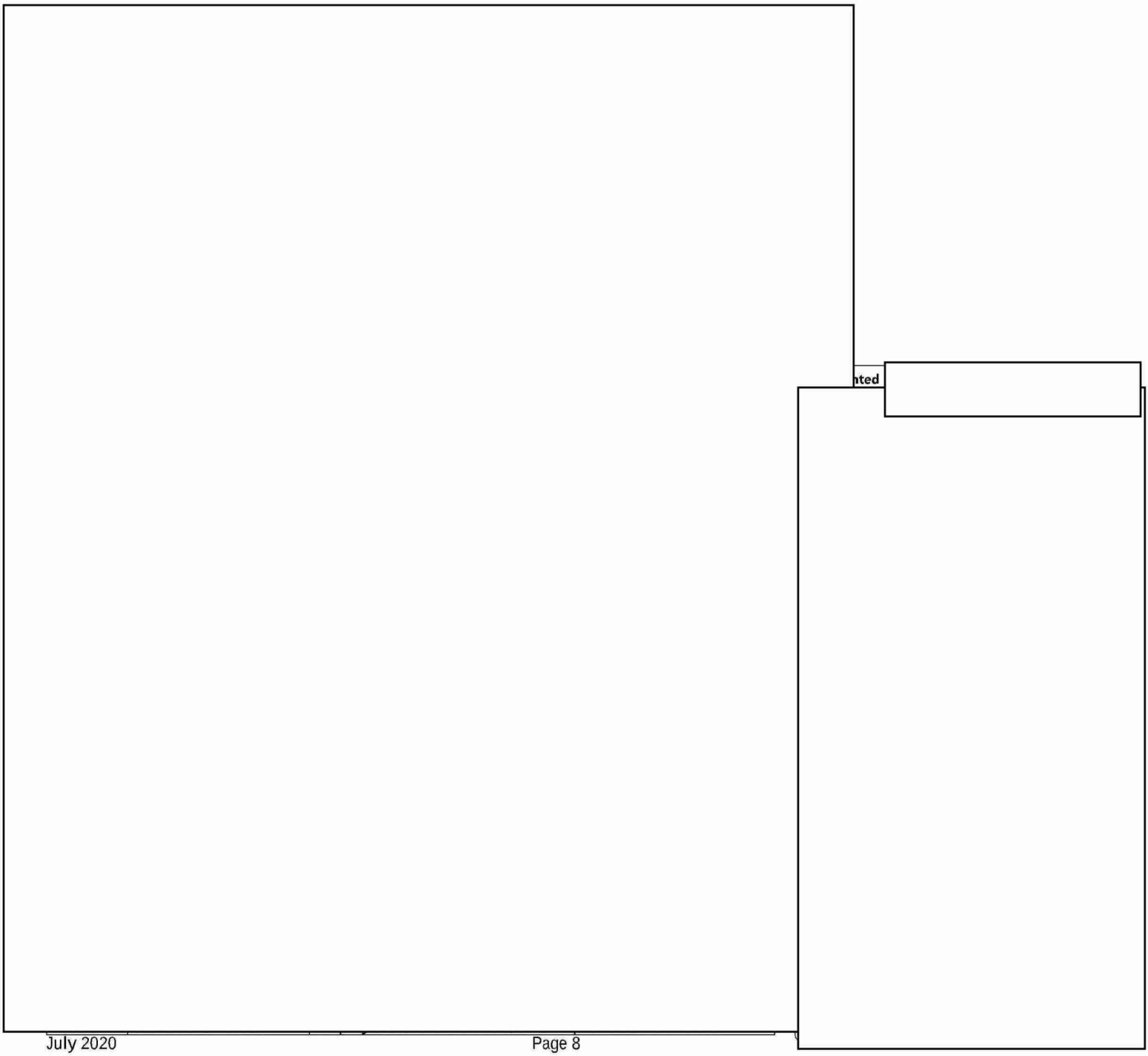
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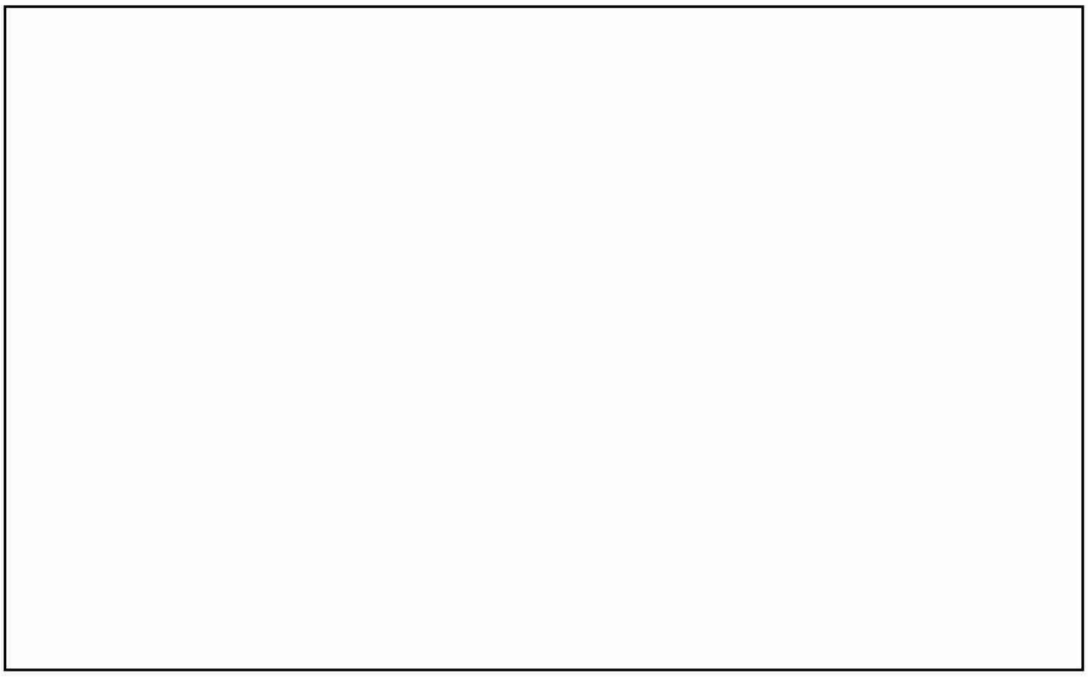
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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

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Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

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3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

From:
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry
To: Brown, James R
Cc: USCIS Exec Congr Corresp; USCIS EXSO External; Weinhold, Kasey D
Sent: July 23, 2020 4:46 PM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Draft Response - Darr - OCC Clean 7.16.20.docx

D2P will respond. Please ask the PODs to use the response to Darr as a template or starting point. (b)(6)

Thanks!

From: Brown, James R [redacted]
Sent: Wednesday, July 22, 2020 4:00 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry

Good Afternoon,

EXSO received the attached incoming from DHS ESEC to handle as appropriate.

EXSO has not created a STARS number for this action because we wanted to confirm if D2P would be interested in responding first.

Would D2P like to sign?

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

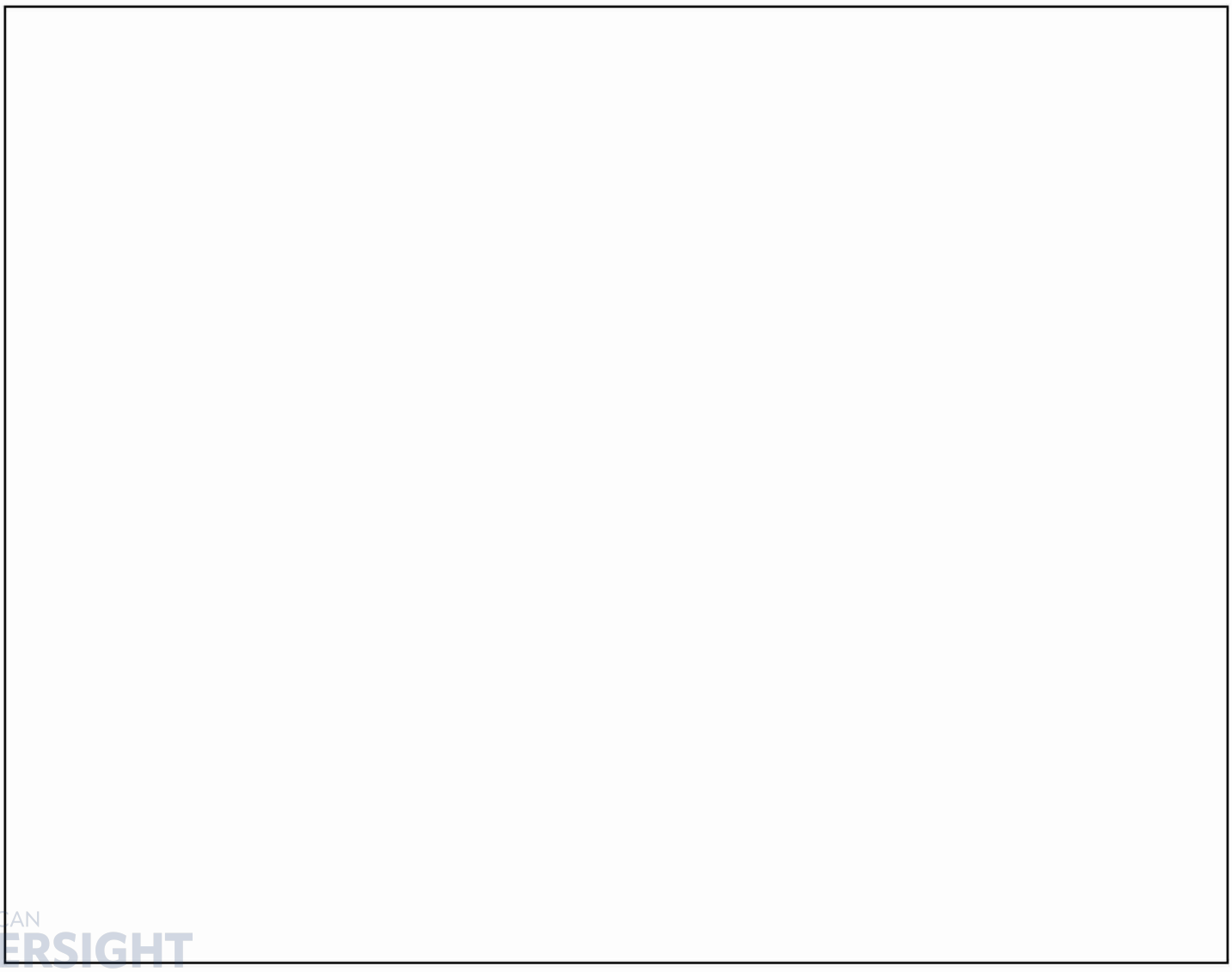
July XX, 2020

Ms. Linda Bauer Darr
President and Chief Executive Officer
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

(b)(5)

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing support for nonimmigrant engineering professionals and their employers. Acting Secretary Wolf asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Re: Request for teacher exemption from Proclamation 10014

Dear President Trump:

As Governor of the State Nevada, I write to express my profound concerns with the suspension of the J-1 visa program for our educators. The suspension of these visas undermines access to talents and skills that have historically enriched and enhanced our State and our nation and will potentially leave thousands of special education students without a teacher.

According to the Nevada Department of Education, there are about 250 educators on a J-1 visa at any given time in our State. While we are thankful that your Proclamation does not impact teachers already in the country, it will hinder our State's ability to hire approximately 100 teachers for the upcoming school year.

The Clark County School District (CCSD), one of the largest school districts in the country, recruited 135 teachers benefiting from a J-1 visa, and extended offers to 95. Importantly, 88 of the 95 teachers were recruited by CCSD to fill critical special education vacancies in our State. These teachers were scheduled to arrive in our State as early as this month and begin instruction in the upcoming school year. However, unless immediate action is taken to exclude these teachers from the suspension, additional students will be deprived of licensed and highly qualified teachers.

I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Signature Authority Inquiry
To: Calkins, Aaron L
Sent: July 22, 2020 3:39 PM (UTC-05:00)
Attached: Sisolak - Incoming.pdf, Draft Response - Darr - OCC Clean 7.16.20.docx

Hi Aaron – We received an inquiry that ExecSec referred it to us as "handle as appropriate." (If we respond, we do not need DHS HQ or the components to clear. We can just have the USCIS PODs and FO clear.)

Generally, D2P wants to respond to letters. This inquiry is regarding the presidential proclamation and foreign teachers. We have a response that we prepared for another inquiry that can be modified (attached).

In the past, I have responded to these requests from EXSO about whether Joe wants to respond - and just consulted Kathy or Joe if I wasn't sure. If you would prefer to handle these differently, just let me know.

(b)(6)

From: Brown, James R [redacted]
Sent: Wednesday, July 22, 2020 4:00 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: USCIS Exec Congr Corresp [redacted] USCIS EXSO External [redacted]
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James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

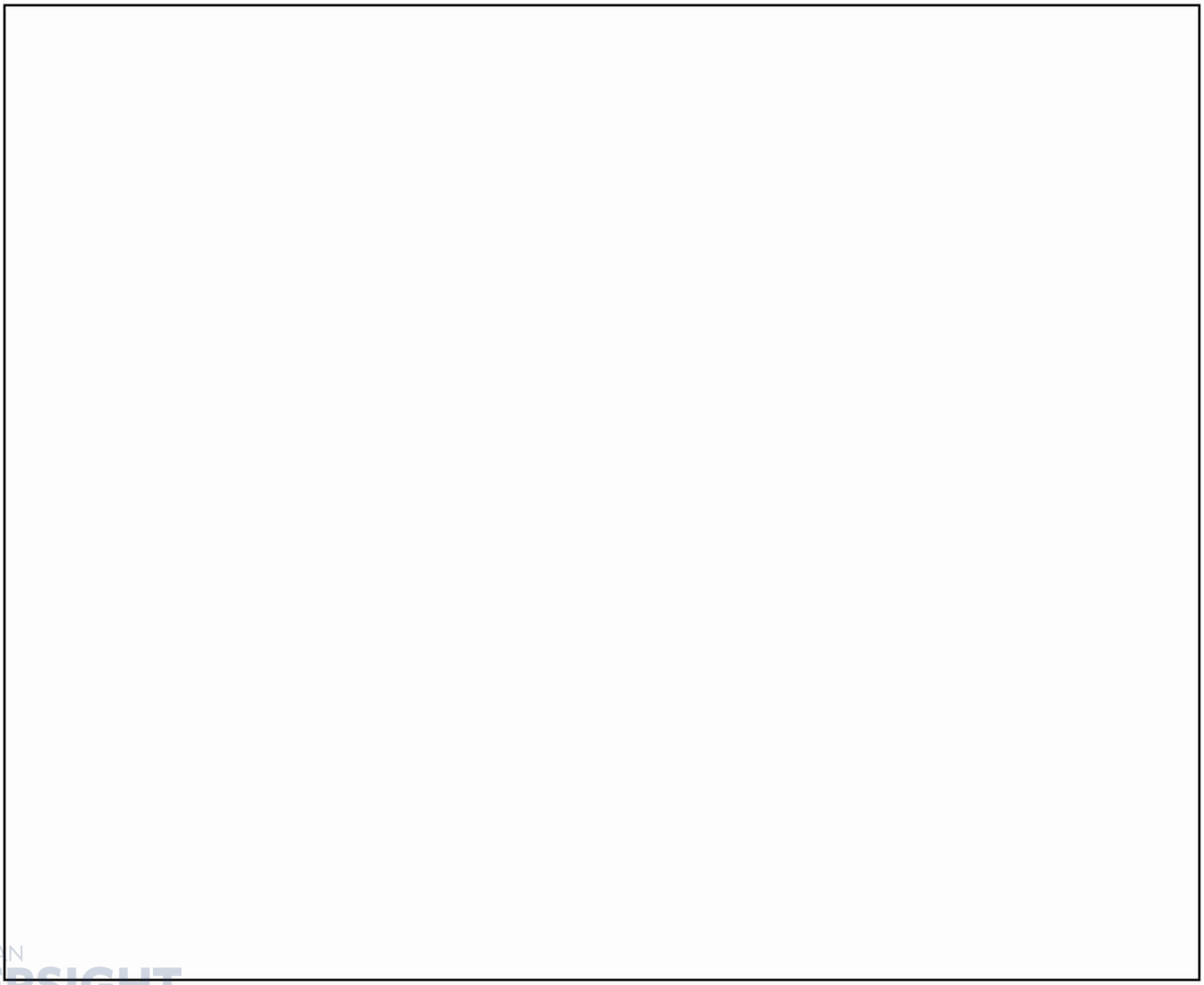
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AMERICAN OVERSIGHT

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Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

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555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of Governor Steve Sisolak

July 2, 2020

RECEIVED
By ESEC External at 11:45 am, Jul 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

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I know we both share a common interest for our children's future. As such, I urge you to amend the Proclamation and provide an immediate exemption for these teachers. I strongly believe that an exemption is necessary to avoid a devastating impact on our most vulnerable students, not just in Nevada, but across our entire nation. Thank you in advance for your time and consideration.

Sincerely,

Governor Steve Sisolak
State of Nevada

Cc: Secretary Betsy DeVos, U.S. Department of Education
Acting Secretary Chad F. Wolf, U.S. Department of Homeland Security
Secretary Michael R. Pompeo, U.S. Department of State
Secretary Eugene Scalia, U.S. Department of Labor

AMERICAN OVERSIGHT

From: Weinhold, Kasey D
Subject: RE: [URGENT CLEARANCE REQUEST] Hearing Prep / D2P Talking Points - Due by 1:00 pm today
To: O'Brien, Elizabeth A; USCIS Directors Office Advisors
Cc: EXA Clearance Distribution List; Rexrode, Kathryn S
Sent: July 21, 2020 8:53 AM (UTC-05:00)
Attached: TPs H-2 TFRs 07.20.20.docx, TPs Litigation List 07.08.20 (1).docx, TPs Presidential Proclamations 07.16.20.docx, TPs Reopening 07.16.20.docx, TPs RFE-NOID flexibility 07.17.20.docx, TPs Untimely Filing and Extraordinary Circumstances 07.20.20.docx, USCIS COVID-19 Financial Impact one-pager 07.16.20.docx, Copy of USCIS Furlough and Retain Statistics 7-7-20 Updated.xlsx, TPs Foreign Medical Professionals 07.20.20.docx

CLEARED WITH EDITS from Front Office

On behalf of the Director's Office, I clear USCIS' response to Hearing Prep / D2P Talking Points, with edits/comments from the Director's Office. Thanks!

(b)(6)

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] **Mobile** [redacted] | **E-mail** [redacted]

From: O'Brien, Elizabeth A <[redacted]>
Sent: Tuesday, July 21, 2020 8:39 AM
To: USCIS Directors Office Advisors <[redacted]>
Cc: EXA Clearance Distribution List [redacted]; Rexrode, Kathryn S [redacted]
Subject: [URGENT CLEARANCE REQUEST] Hearing Prep / D2P Talking Points - Due by 1:00 pm today

Good morning DO,

Your expedited review and clearance are requested on the attached nine documents for the July 29 oversight hearing:

1. Copy of USCIS Furlough and Retain Statistics
2. Foreign Medical Professionals
3. Untimely Filed and Extraordinary Circumstances
4. H-2 TFRs
5. RFE-NOID flexibility
6. Reopening
7. Presidential Proclamations
8. COVID-19 one-pager
9. Litigation List

Three additional documents related to the oversight hearing will be sent later today.

Due date:
Today, by 1:00 pm

Clearance:
OP&S [redacted]
OCC

(b)(6)

Please let me know if you have any questions.

AMERICAN OVERSIGHT

Thank you,
Elizabeth

Elizabeth A. O'Brien
U.S. Citizenship and Immigration Services
Writer/Editor | External Affairs Directorate

(b)(6)

AMERICAN OVERSIGHT

Temporary Policy Changes for Certain Foreign Medical Graduates

BACKGROUND

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

H-2B Temporary Final Rule

BACKGROUND

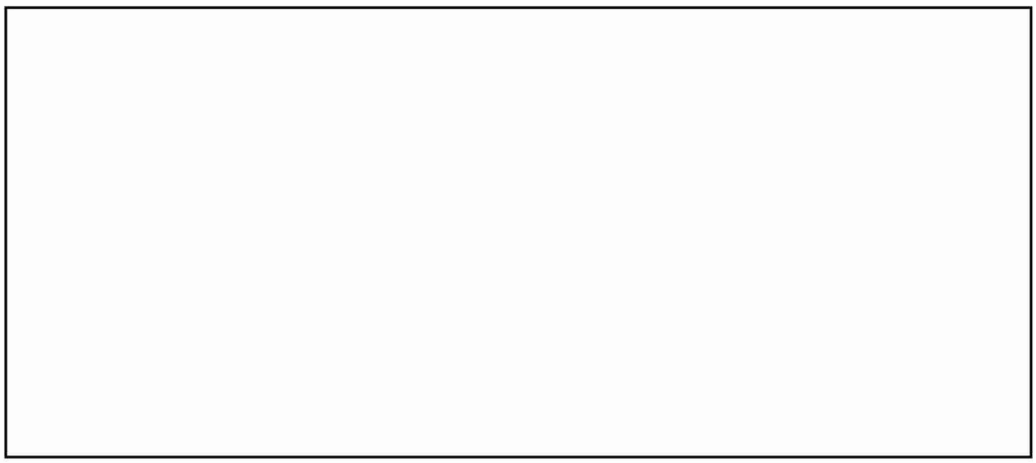
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TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

(b)(5)

H-2A Temporary Final Rule

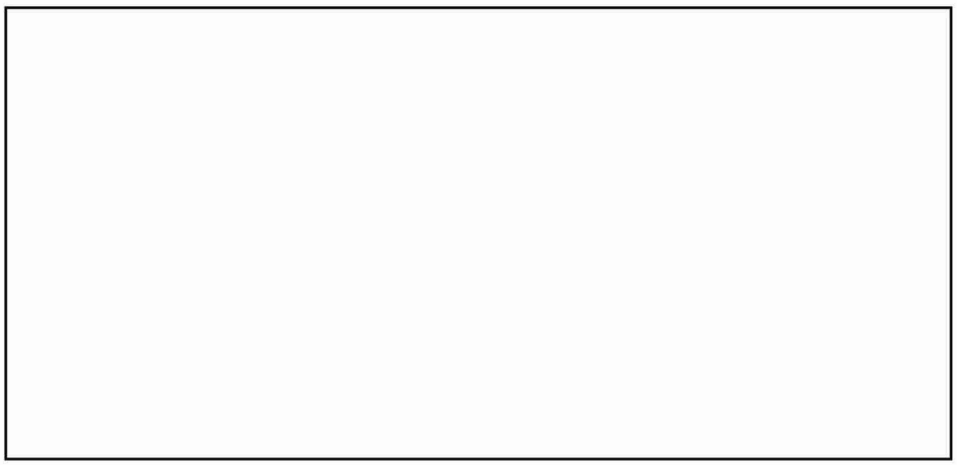
BACKGROUND

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

TOPICS IN LITIGATION (b)(5)

The following list was developed by LNSCD (OCC) on July 8, 2020. The topics are under active litigation and answers beyond the most general information could raise complicated issues.

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

Presidential Proclamation

(b)(5)

BACKGROUND:

- On April 22, 2020, President Trump issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.

AMERICAN OVERSIGHT

- On June 22, 2020, President Trump signed a proclamation, Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak, expanding and extending the April 22 proclamation through December 31, 2020. President Trump determined that the entry of certain persons would be detrimental to the interests of the United States and temporarily suspended visa issuance for and entry of certain foreign nationals outside of the United States who seek to enter the United States on H-1B, H-2B, J or L-1 nonimmigrant visas. This temporary suspension also applies to all dependents seeking to accompany or follow to join such individual. On June 29, President Trump issued a proclamation clarifying certain terms in the June 22 proclamation.

TALKING POINTS:

AMERICAN OVERSIGHT

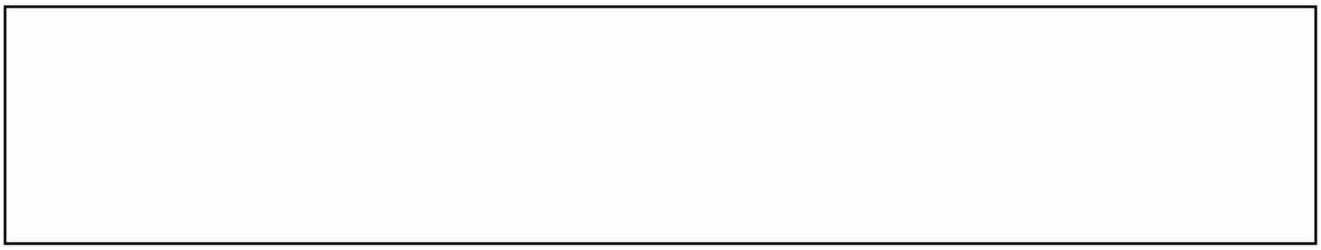
BACKGROUND

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

(b)(5)



AMERICAN OVERSIGHT

(b)(5)

Response and Filing Flexibility

BACKGROUND

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

Extension of Stay/Untimely Filing in Extraordinary Circumstances

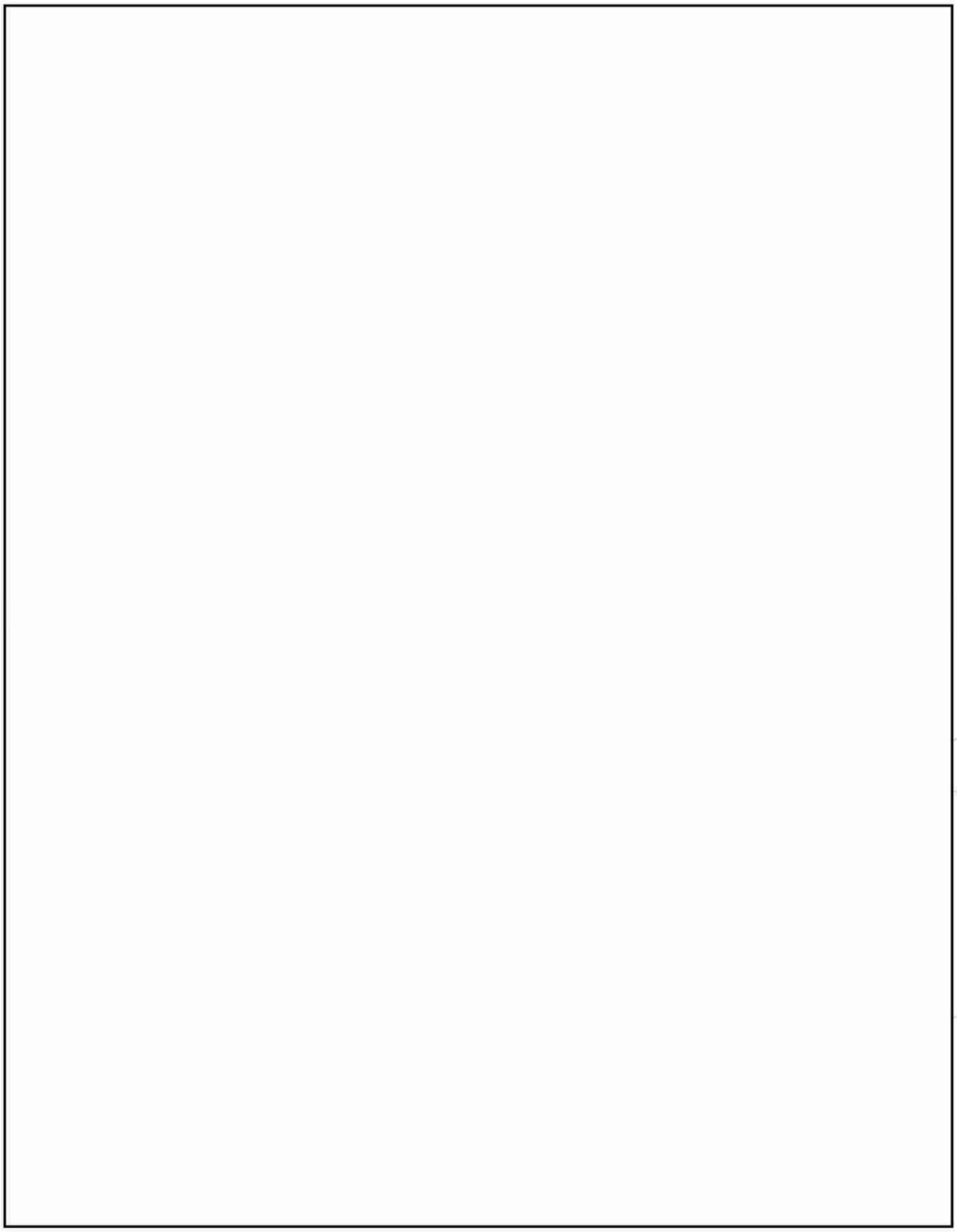
BACKGROUND

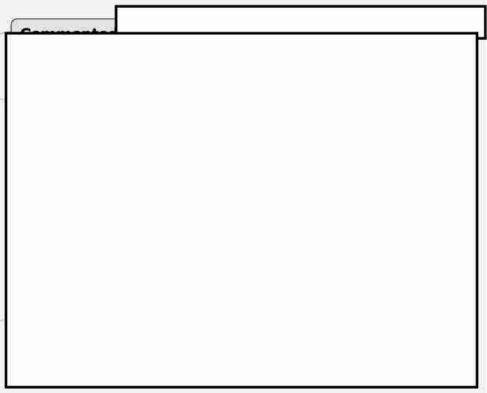
TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

FY 2020 COVID-19 Impact on USCIS' Immigration Examinations Fee Account (IEFA)





(b)(5)

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [URGENT CLEARANCE REQUEST] Hearing Prep / D2P Talking Points - Due by 1:00 pm today
To: Calkins, Aaron L
Sent: July 21, 2020 8:34 AM (UTC-05:00)
Attached: TPs Foreign Medical Professionals 07.20.20.docx, Copy of USCIS Furlough and Retain Statistics 7-7-20 Updated.xlsx, TPs RFE-NOID flexibility 07.17.20.docx, TPs Presidential Proclamations 07.16.20.docx, USCIS COVID-19 Financial Impact one-pager 07.16.20.docx, TPs Litigation List 07.08.20 (1).docx, TPs Reopening 07.16.20.docx, TPs Untimely Filing and Extraordinary Circumstances 07.20.20.docx, TPs H-2 TFRs 07.20.20.docx

Hi Aaron – EXA is requesting that we review this before 1:00 today. There are nine documents.
I had some edits. It is ready for you to review.

From: O'Brien, Elizabeth A [redacted] (b)(6)
Sent: Tuesday, July 21, 2020 8:39 AM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted] Rexrode, Kathryn S [redacted]
Subject: [URGENT CLEARANCE REQUEST] Hearing Prep / D2P Talking Points - Due by 1:00 pm today

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9. Litigation List

Three additional documents related to the oversight hearing will be sent later today.

Due date:
Today, by 1:00 pm

Clearance:
OP&S
OCC [redacted]

Please let me know if you have any questions.

Thank you, (b)(6)
Elizabeth

Elizabeth A. O'Brien
U.S. Citizenship and Immigration Services
Writer/Editor | External Affairs Directorate

AMERICAN OVERSIGHT

Mobile [redacted]

(b)(6)

AMERICAN OVERSIGHT

(b)(5)

Temporary Policy Changes for Certain Foreign Medical Graduates

BACKGROUND

- In response to the COVID-19 pandemic, USCIS has announced new flexibilities for certain

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

H-2B Temporary Final Rule

BACKGROUND

- The Department of Homeland Security made certain temporary changes to its regulations

[redacted]

Commented [redacted]

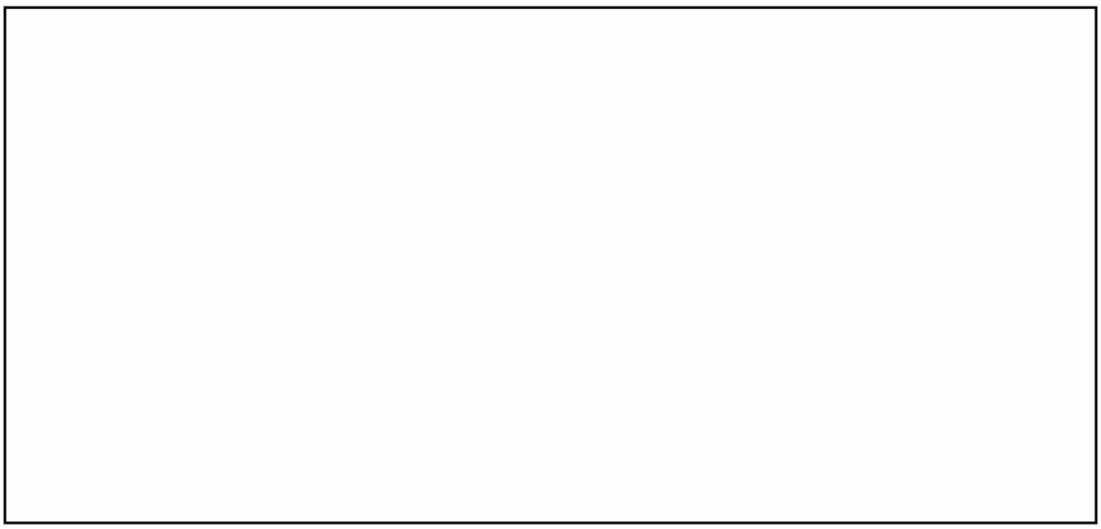
TALKING POINTS

[redacted]

AMERICAN OVERSIGHT

(b)(5)

(b)(5)



AMERICAN OVERSIGHT

H-2A Temporary Final Rule (b)(5)

BACKGROUND

- Due to travel restrictions and visa processing limitations as a result of actions taken to

[redacted]

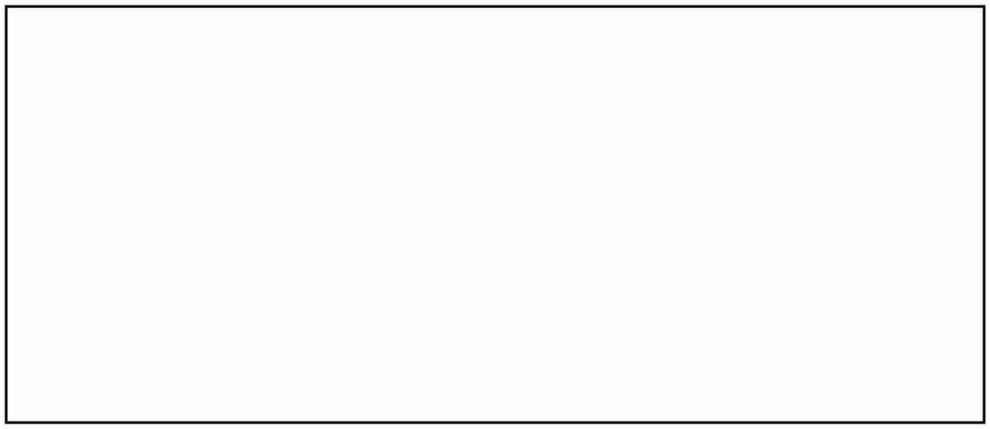
TALKING POINTS

[redacted]

(b)(5)

AMERICAN OVERSIGHT

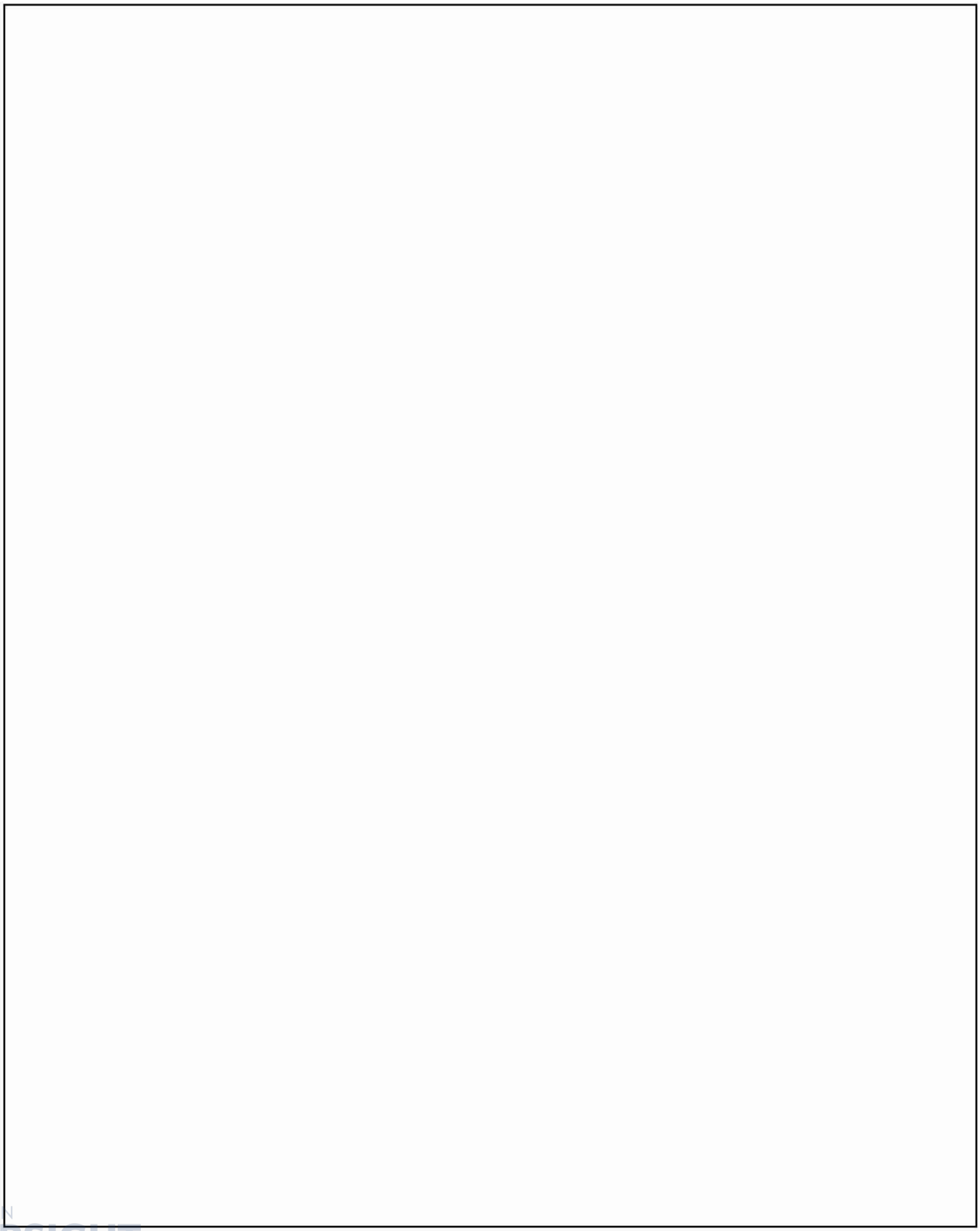
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AMERICAN OVERSIGHT

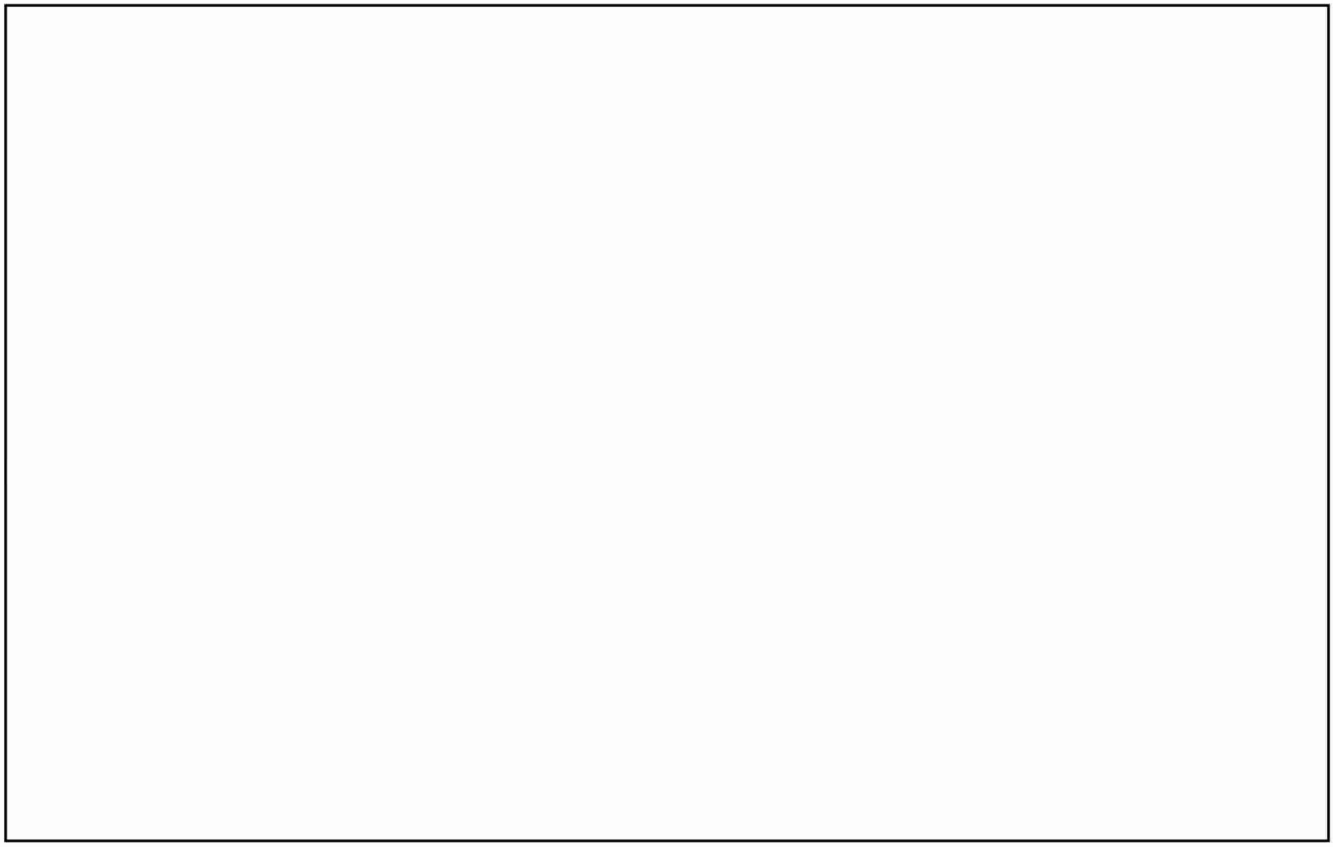
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TOPICS IN LITIGATION



AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

Presidential Proclamation

BACKGROUND: (b)(5)

- On April 22, 2020, President Trump issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.

AMERICAN OVERSIGHT

(b)(5)

TALKING POINTS:

AMERICAN OVERSIGHT

(b)(5)

Reopening

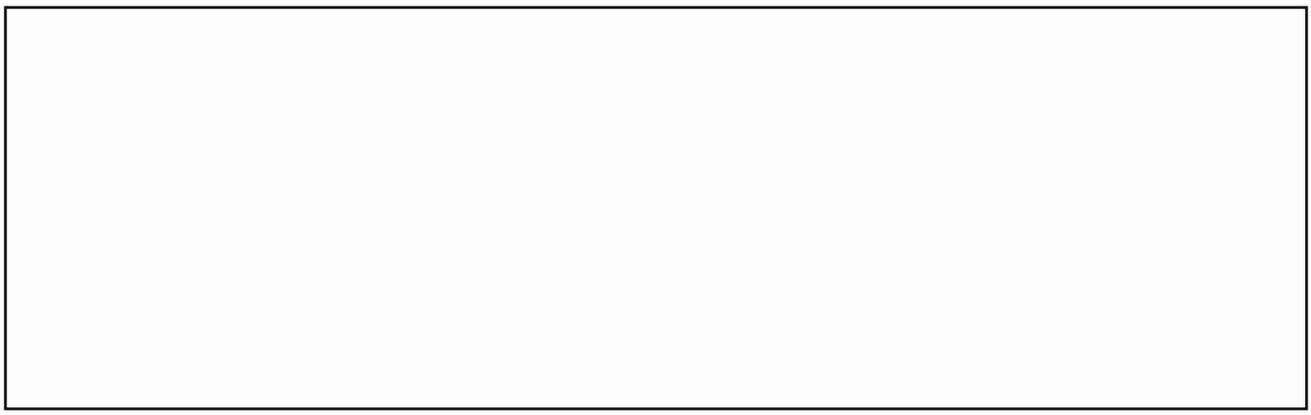
BACKGROUND

- On March 18, U.S. Citizenship and Immigration Services (USCIS) suspended routine in-person services to help slow the spread of COVID-19.

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

Response and Filing Flexibility (b)(5)

BACKGROUND

- USCIS is adopting several measures to protect our workforce and community and to minimize the immigration consequences for those seeking immigration benefits during this time.
- In response to COVID-19, USCIS has extended flexibilities to assist applicants and petitioners who are responding to certain agency requests:

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

Extension of Stay/Untimely Filing in Extraordinary Circumstances

BACKGROUND

- In March 2020, ~~T~~to slow the spread of COVID-19, USCIS ~~had~~ temporarily suspended all

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

FOR OFFICIAL USE ONLY

FY 2020 COVID-19 Impact on USCIS' Immigration Examinations Fee Account (IEFA)

U.S. Citizenship and Immigration Services (USCIS) is seeking $1.221 billion to address COVID-19's impact on the agency's fee funding. This includes:

The Situation:
COVID-19 has significantly reduced USCIS revenue collections. Below are noteworthy items:

(b)(5)

AMERICAN OVERSIGHT

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Subject: FW: [URGENT CLEARANCE REQUEST] Hearing Prep / D2P Talking Points - Due by 1:00 pm today
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Good morning,

(b)(6)

I have no edits, there is a short turn around. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] | **Mobile:** [redacted] | **E-mail** [redacted]

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Clearance:
OP&S
OCC [redacted]

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AMERICAN OVERSIGHT

(b)(6)

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Elizabeth

Elizabeth A. O'Brien
U.S. Citizenship and Immigration Services
Writer/Editor | External Affairs Directorate
Mobile [redacted]

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AMERICAN OVERSIGHT

Temporary Policy Changes for Certain Foreign Medical Graduates

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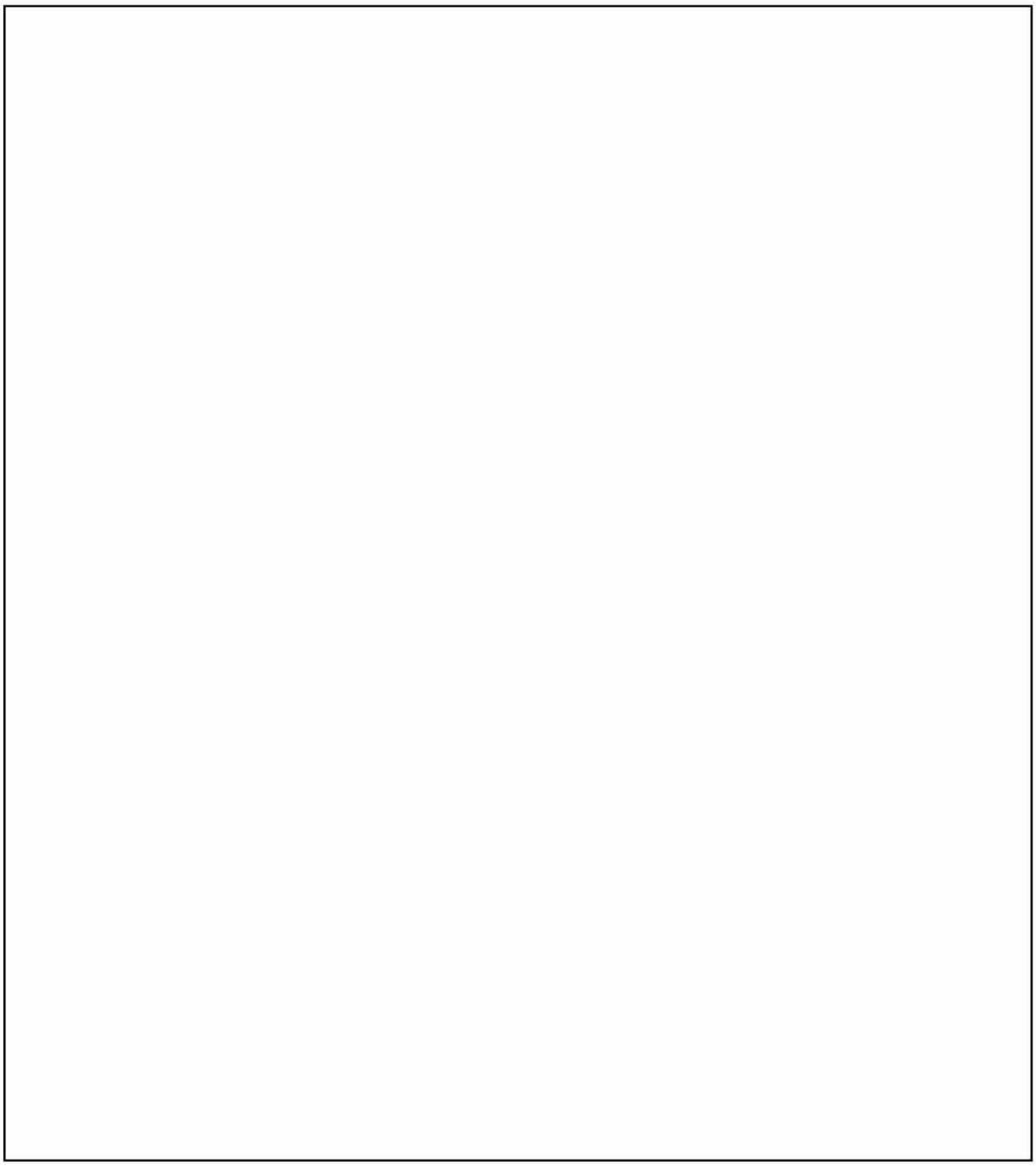
TALKING POINTS

AMERICAN OVERSIGHT

H-2B Temporary Final Rule

BACKGROUND

(b)(5)



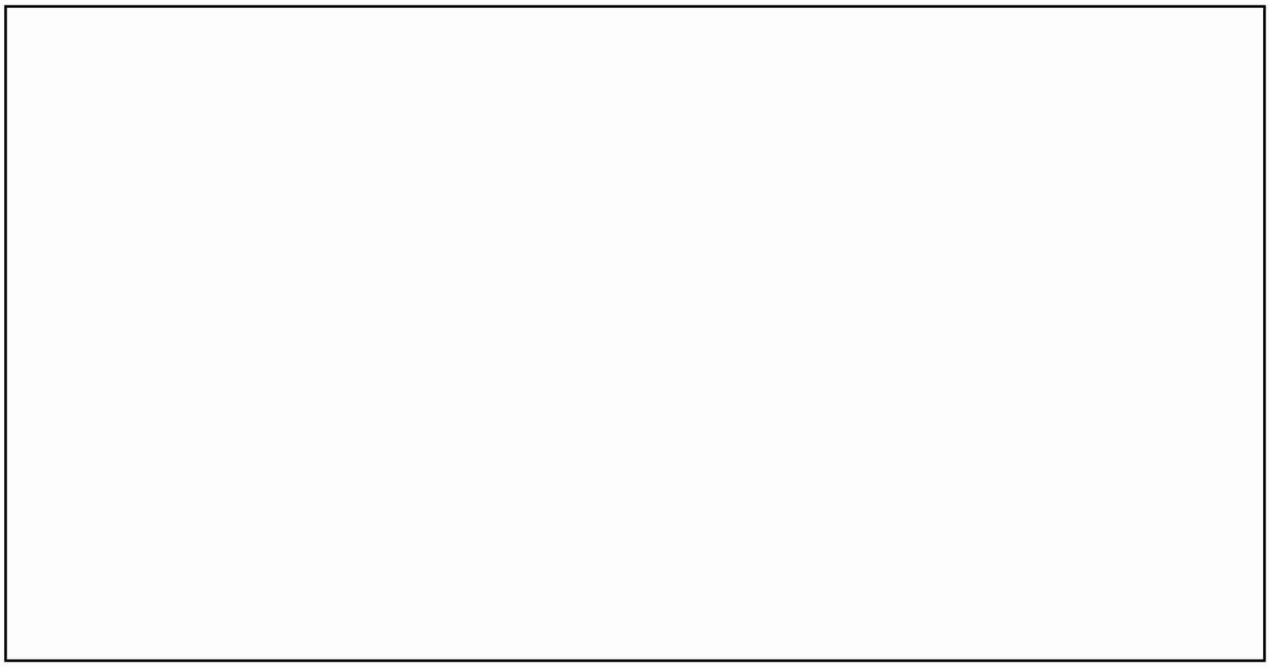
TALKING POINTS



AMERICAN OVERSIGHT

(b)(5)

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AMERICAN OVERSIGHT

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BACKGROUND

- Due to travel restrictions and visa processing limitations as a result of actions taken to mitigate the spread of coronavirus (COVID-19), as well as the possibility that some H-2A

[redacted]

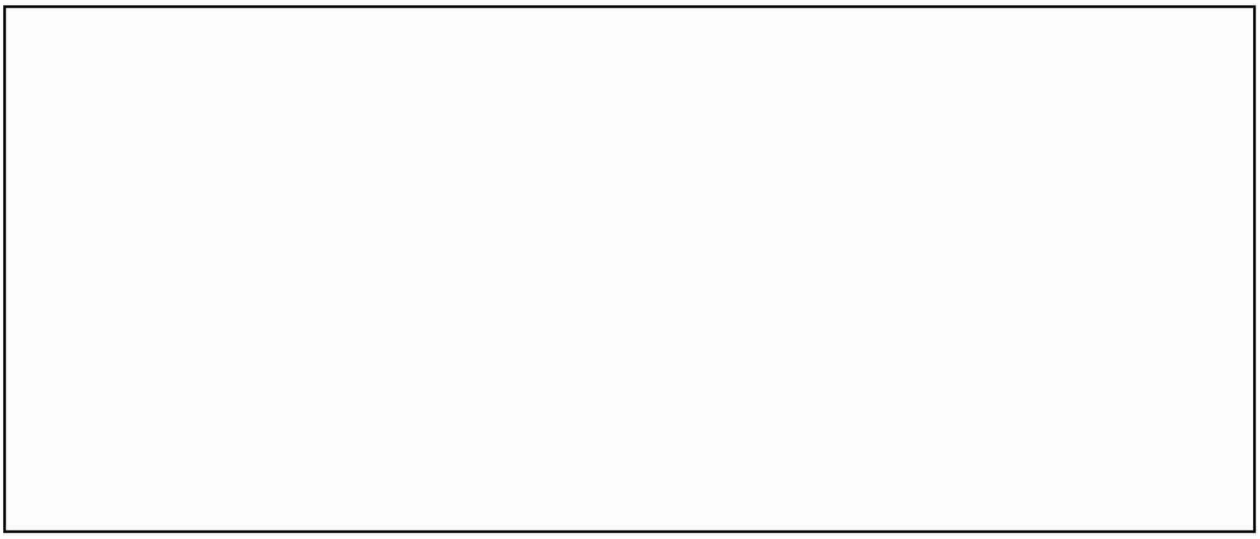
TALKING POINTS

[redacted]

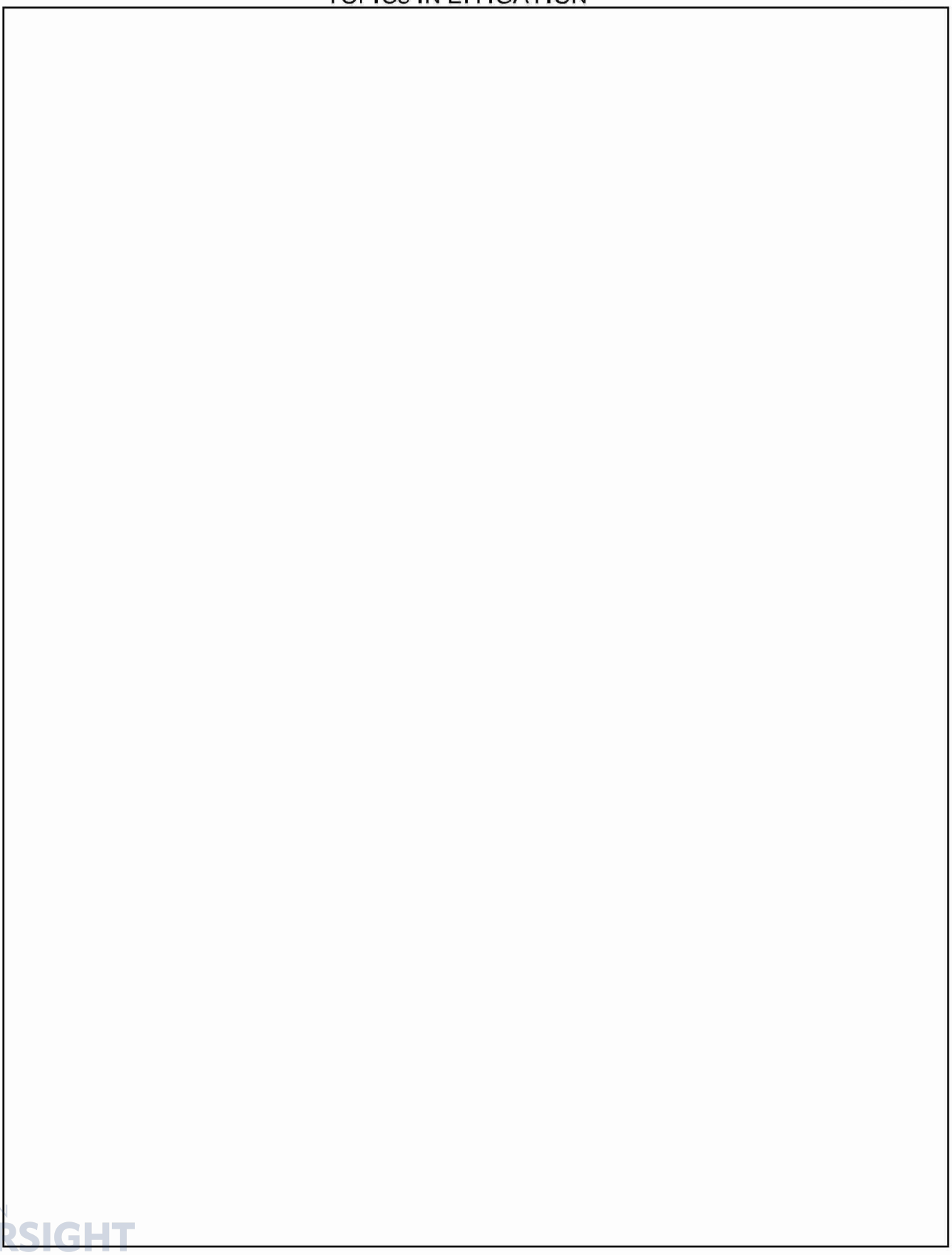
AMERICAN OVERSIGHT

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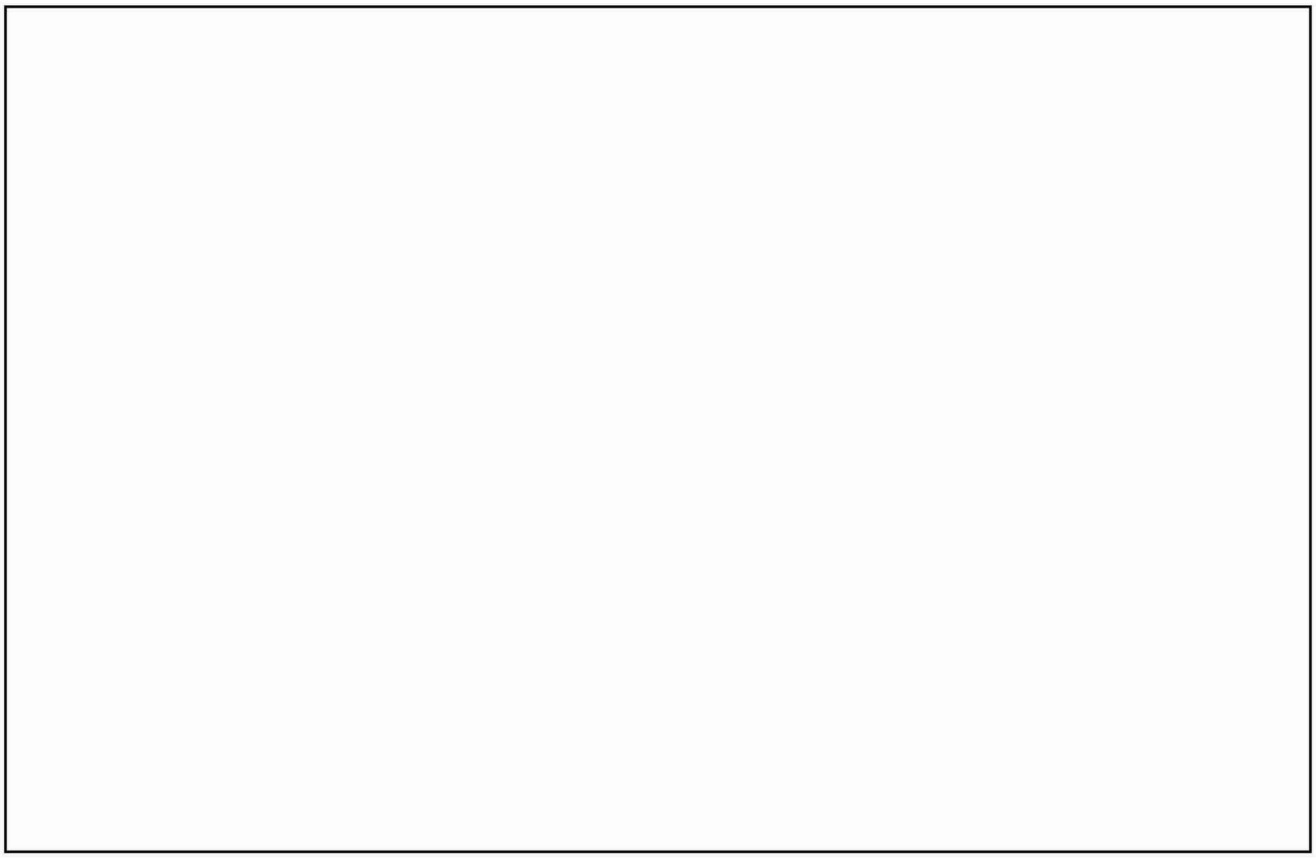


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(b)(5)



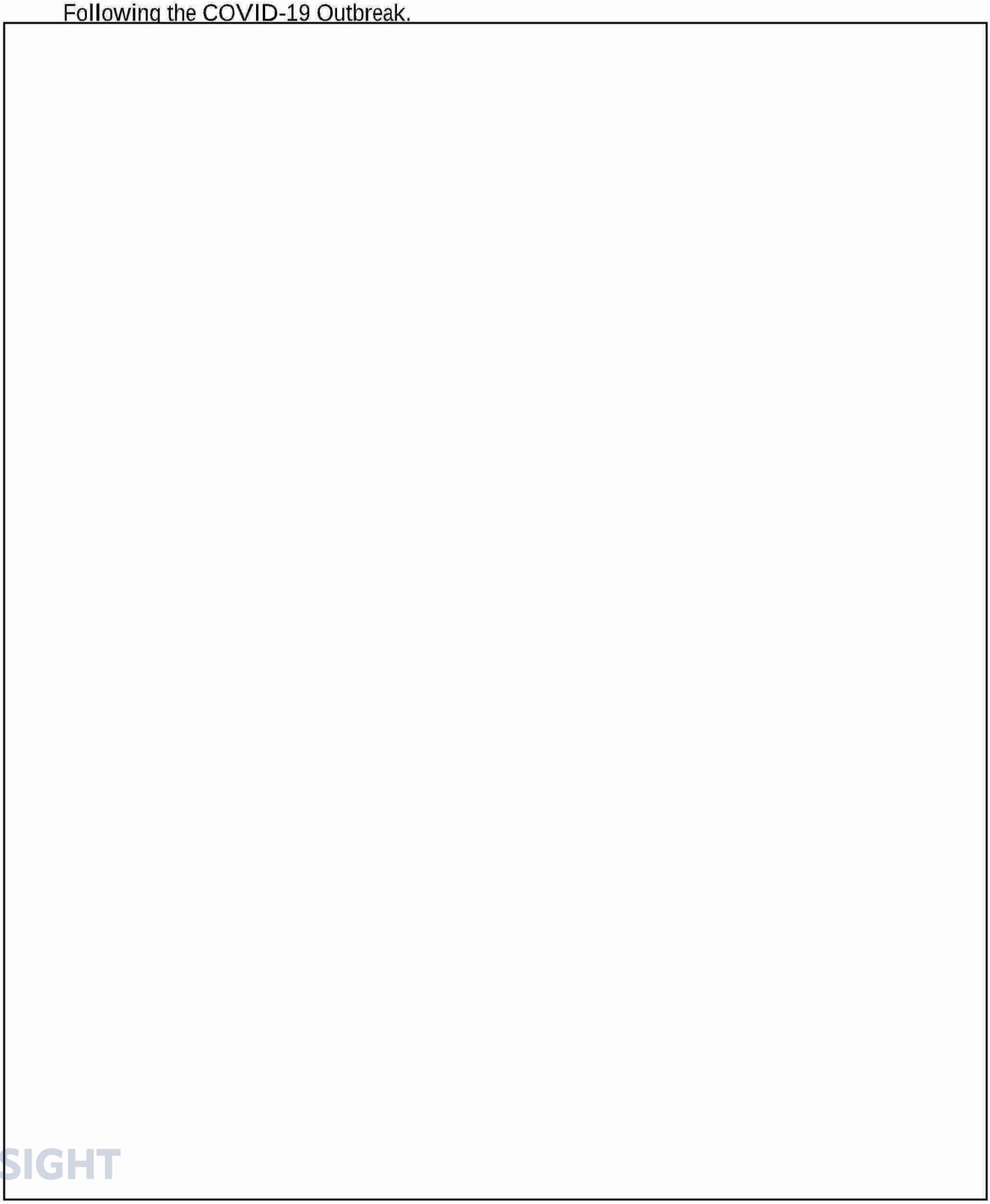
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(b)(5)

Presidential Proclamation

BACKGROUND:

- On April 22, 2020, President Trump issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.



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TALKING POINTS:

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Reopening

BACKGROUND

- On March 18, U.S. Citizenship and Immigration Services (USCIS) suspended routine in-person services to help slow the spread of COVID-19.

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

Response and Filing Flexibility

BACKGROUND

- USCIS is adopting several measures to protect our workforce and community and to minimize the immigration consequences for those seeking immigration benefits during this time.
- In response to COVID-19, USCIS has extended flexibilities to assist applicants and petitioners who are responding to certain agency requests:

TALKING POINTS

(b)(5)

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Extension of Stay/Untimely Filing in Extraordinary Circumstances

BACKGROUND

- To slow the spread of COVID-19, USCIS had suspended all in person services. We recognize this may result in immigration-related challenges. On June 4, certain USCIS field offices and asylum offices resumed non-emergency face-to-face services to the public.

TALKING POINTS

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(b)(5)

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FY 2020 COVID-19 Impact on USCIS' Immigration Examinations Fee Account (IEFA)

U.S. Citizenship and Immigration Services (USCIS) is seeking $1.221 billion to address COVID-19's impact on the agency's fee funding. This includes:

The Situation:

Commented

(b)(5)

AMERICAN OVERSIGHT

From: Edlow, Joseph B
Subject: Fwd: partial hearing prep materials attached
To: Askew, Marineka P
Sent: July 20, 2020 12:40 PM (UTC-05:00)
Attached: 07.17.2020 Talking Points Document for Hearing (partial).pdf, 07.17.2020 Background materials for Hearing Prep (partial).pdf

(b)(6)

Could you add all of this into onenote as hearing prep? More will be coming.
Get Outlook for iOS

From: Calkins, Aaron L [redacted]
Sent: Friday, July 17, 2020 4:42:12 PM
To: Edlow, Joseph B [redacted]
Subject: Fwd: partial hearing prep materials attached

Get Outlook for iOS

From: Koncar, Steven A [redacted]
Sent: Friday, July 17, 2020 4:06 PM
To: Calkins, Aaron L
Cc: Rexrode, Kathryn S
Subject: partial hearing prep materials attached

Per your request, see first doc of all our cleared TP's and second doc is all the background material thus far

Steve Koncar, Chief
DHS | USCIS | Office of Legislative Affairs
[redacted]cell) | [redacted]ffice) | [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

USCIS Statement on Supreme Court's DACA Decision

Release Date: June 19, 2020

WASHINGTON — U.S. Citizenship and Immigration Services Deputy Director for Policy Joseph Edlow issued the following statement on today's Supreme Court decision on the Deferred Action for Childhood Arrivals program:

Today's court opinion has no basis in law and merely delays the President's lawful ability to end the illegal Deferred Action for Childhood Arrivals amnesty program.

"DACA was created through an Executive Branch memorandum after President Obama said repeatedly that it was illegal for him to do so unilaterally and despite the fact that Congress affirmatively rejected the proposal on multiple occasions. The constitutionality of this de facto amnesty program created by the Obama administration has been widely questioned since its inception. The fact remains that under DACA, hundreds of thousands of illegal aliens continue to remain in our country in violation of the laws passed by Congress and to take jobs Americans need now more than ever. Ultimately, DACA is not a long-term solution for anyone, and if Congress wants to provide a permanent solution for these illegal aliens it needs to step in to reform our immigration laws and prove that the cornerstone of our democracy is that presidents cannot legislate with a 'pen and a phone."

For more information on USCIS and its programs, please visit uscis.gov or follow them on Twitter (@uscis), Instagram (/uscis), YouTube (/uscis), Facebook (/uscis) and LinkedIn (/uscis).

Last Reviewed/Updated: 06/19/2020

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DHS-20-2156-A-002021

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

October 23, 2017 PM-602-0151

Policy Memorandum

SUBJECT: Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status

Purpose

This policy memorandum (PM) supersedes and rescinds the April 23, 2004 memorandum titled "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity" and section VII of the August 17, 2015 policy memorandum titled "L-1B Adjudications Policy."

Scope

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

Authority

- Section 291 of the Immigration and Nationality Act (INA), Title 8, United States Code, section 1361.
- Title 8 Code of Federal Regulations (CFR), sections 103.2(b)(1) and 214.1(c)(5).

Policy

On April 23, 2004, USCIS issued a memorandum titled "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity." This memorandum directed adjudicators, when adjudicating petition extensions involving the same parties and underlying facts as the initial

AMERICAN OVERSIGHT

petition, to defer to prior determinations of eligibility, except in certain, limited circumstances.[1] On August 17, 2015, USCIS issued a policy memorandum titled "L-1B Adjudications Policy" which directed USCIS adjudicators, in the context of L-1B petition extensions, to give deference to the prior determinations of eligibility by USCIS, except in certain, limited circumstances.[2]

For the reasons detailed below, USCIS is rescinding the policy of requiring officers to defer to prior determinations in petitions for extension of nonimmigrant status as articulated in the above memoranda. USCIS is also providing updated guidance that is both more consistent with the agency's current priorities and also advances policies that protect the interests of U.S. workers.

In adjudicating petitions for immigration benefits, including nonimmigrant petition extensions, adjudicators must, in all cases, thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought.[3] The burden of proof in establishing eligibility is, at all times, on the petitioner.[4] The fundamental issue with the April 23, 2004 memorandum is that it appeared to place the burden on USCIS to obtain and review a separate record of proceeding to assess whether the underlying facts in the current proceeding have, in fact, remained the same. Not only did this improperly shift the burden of proof to the agency contrary to INA § 291, but it was also impractical and costly to properly implement, especially when adjudicating premium processing requests.

---

[1] The April 23, 2004 memo provided in part:

> In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference. A case where a prior approval of the petition need not be given deference includes where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new material information that adversely impacts the petitioner's or beneficiary's eligibility. [Footnote omitted]

[2] The August 17, 2015 memo provided in part:

> In matters relating to an extension of L-1B status involving the same parties (i.e., the same petitioner and beneficiary employee) and the same underlying facts, USCIS officers should give deference to the prior determination by USCIS approving L-1B classification. In such cases, USCIS officers should re-examine a finding of L-1B eligibility only where it is determined that: (1) there was a material error with regard to the previous approval for L-1B classification; (2) there has been a substantial change in circumstances since that approval; or (3) there is new material information that adversely impacts the petitioner's or beneficiary's eligibility. [Footnotes omitted]

[3] Adjudicator's Field Manual, Chapter 10.3(a).

[4] INA § 291.

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Accordingly, this memorandum makes it clear that the burden of proof remains on the petitioner, even where an extension of nonimmigrant status is sought.[5] While the April 23, 2004 memorandum explicitly acknowledged that USCIS has the authority to review prior adjudicative decisions and deny certain requests for extensions of status, the memorandum unduly limited adjudicators' inherent fact-finding authority in certain cases.[6]

An adjudicator's fact-finding authority, as was the case prior to April 23, 2004, should not be constrained by any prior petition approval, but instead, should be based on the merits of each case. In this regard, USCIS acknowledges that the regulations in certain instances do not require supporting documents to be submitted as initial evidence when an employer files a petition extension without change on behalf of the same alien.[7] However, although these regulatory provisions govern what is required to be submitted at the time of filing the petition extension, they do not limit, and, in fact, reiterate, USCIS' authority to request additional evidence. While adjudicators should be aware of these regulatory provisions, they should not feel constrained in requesting additional documentation in the course of adjudicating a petition extension, consistent with existing USCIS policy regarding requests for evidence, notices of intent to deny, and the adjudication of petitions for nonimmigrant benefits.

Further, because it was viewed as a default position upon beginning review of a filing, the deference policy may, in some cases, have had the effect of limiting the ability of adjudicators to conduct a thorough review of the facts and assessment of eligibility in each case. In addition, that policy likely had the unintended consequence of officers not discovering material errors in prior adjudications. While adjudicators may, of course, reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point.

In accordance with the foregoing, the above-referenced April 23, 2004 memorandum and section VII of the August 17, 2015 memorandum articulating a default policy of deference are therefore rescinded.

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[5] See 8 CFR § 103.2(b)(1) ("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); 8 CFR § 214.1(c)(5) ("Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service.")

[6] The following guidance from the April 23, 2004 memo is preserved and hereby incorporated:

> [US]CIS has the authority to question prior determinations. Adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. Matter of Church Scientology Intl, 19 I&N Dec. 593, 597 (Commissioner 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 CFR § 103.8(d) [(2011)].

[7] See, e.g., 8 CFR §§ 214.2(h)(14), (l)(14)(i), (o)(11), and (p)(13).

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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.

AMERICAN OVERSIGHT

From: USCIS Deputy Director
Subject: Message from the Deputy Director for Policy – Update on Fiscal Outlook
Date: Friday, July 17, 2020 12:55:54 PM
Attachments: image001.png

U.S. Citizenship and Immigration Services

Dear Colleagues,

(b)(5)

Thank you for your continued work to secure the homeland. As you are acutely aware, it is imperative that we receive funding from Congress before Aug. 3, 2020 for our operations to not be significantly impacted.

(b)(5)

Sincerely,

AMERICAN OVERSIGHT

(b)(5)

Joseph Edlow
Deputy Director for Policy

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COVID-19 Impact: IEFA Revenue (April - September 2020)				
Form Name	**Initial Revenue Forecast**	**Revised Revenue Forecast**	**$ Change**	**% Change**
N-400 Application for Naturalization - Full Fee	$ 317,918,720	$ 84,410,240	$ (233,508,480)	-73%
I-129 Petition for a Nonimmigrant Worker - Premium	$ 212,474,880	$ -	$ (212,474,880)	-100%
I-485 Application to Register Permanent Residence or Adjust Status	$ 293,070,720	$ 98,738,130	$ (194,332,590)	-66%
I-130 Petition for Alien Relative	$ 218,063,860	$ 118,220,555	$ (99,843,305)	-46%
I-765 Application for Employment Authorization	$ 151,379,380	$ 62,636,520	$ (88,742,860)	-59%
I-90 Application to Replace Permanent Resident Card	$ 142,423,190	$ 58,610,370	$ (83,812,820)	-59%
Biometric Volume and Revenue (Including TPS Volumes)	$ 103,127,864	$ 34,640,457	$ (68,487,407)	-66%
I-140 Immigrant Petition for Alien Worker - Premium	$ 60,606,720	$ -	$ (60,606,720)	-100%
Immigrant Visa	$ 59,507,580	$ 4,817,780	$ (54,689,800)	-92%
I-129 Petition for a Nonimmigrant Worker	$ 165,156,560	$ 124,602,040	$ (40,554,520)	-25%
I-765 DACA (including Biometrics)	$ 85,262,760	$ 49,716,810	$ (35,545,950)	-42%
I-140 Immigrant Petition for Alien Worker	$ 51,517,900	$ 20,634,600	$ (30,883,300)	-60%
I-131 Application for Travel Document	$ 36,083,125	$ 6,515,995	$ (29,567,130)	-82%
I-751 Petition to Remove the Conditions of Residence	$ 48,276,515	$ 22,010,835	$ (26,265,680)	-54%
I-539 Application to Extend/Change Nonimmigrant Status	$ 40,515,370	$ 20,599,010	$ (19,916,360)	-49%
N-600 Application for Certification of Citizenship	$ 23,493,600	$ 4,465,890	$ (19,027,710)	-81%
I-192 Application for Advance Permission to Enter as Nonimmigrant	$ 9,605,970	$ 714,240	$ (8,891,730)	-93%
I-601A, Provisional Unlawful Presence Waiver	$ 18,489,240	$ 10,502,100	$ (7,987,140)	-43%
I-129F Petition for Alien Fiance(e)	$ 11,439,370	$ 6,506,670	$ (4,932,700)	-43%
N-565 Application for Replacement Naturalization/Citizenship Document	$ 6,133,860	$ 1,623,375	$ (4,510,485)	-74%
I-526 Immigrant Petition by Alien Entrepreneur	$ 4,494,525	$ 426,300	$ (4,068,225)	-91%
I-829 Petition by Entrepreneur to Remove Conditions	$ 5,535,000	$ 1,747,500	$ (3,787,500)	-68%
I-601 Application for Waiver of Grounds of Inadmissibility	$ 8,553,210	$ 5,373,540	$ (3,179,670)	-37%
I-212 Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal	$ 3,012,270	$ 1,297,350	$ (1,714,920)	-57%
N-600K Application for Citizenship and Issuance of Certificate	$ 2,157,480	$ 535,860	$ (1,621,620)	-75%
I-824 Application for Action on an Approved Application or Petition	$ 2,491,470	$ 1,312,695	$ (1,178,775)	-47%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$ 960,930	$ 71,180	$ (889,750)	-93%
N-400 Application for Naturalization - Reduced Fee	$ 1,200,960	$ 328,320	$ (872,640)	-73%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$ 1,803,200	$ 1,041,600	$ (761,600)	-42%
I-102 Replacement/Initial Nonimmigrant Arrival/Departure Record	$ 1,000,805	$ 440,995	$ (559,810)	-56%
I-131A (Boarding Letters) RAIO	$ 1,108,025	$ 583,050	$ (524,975)	-47%
I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country	$ 716,100	$ 334,800	$ (381,300)	-53%
I-612 Application for Waiver of the Foreign Residence Requirement	$ 324,570	$ 29,760	$ (294,810)	-91%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$ 757,770	$ 522,870	$ (234,900)	-31%
I-290B Notice of Appeal or Motion	$ 10,331,550	$ 10,165,500	$ (166,050)	-2%
I-910 Civil Surgeon Request	$ 198,605	$ 96,555	$ (102,050)	-51%
I-924A Annual Certification of Regional Center	$ 103,190	$ 6,070	$ (97,120)	-94%
I-800A Supplement 3 Request for Action on Approved Form I-800A	$ 132,440	$ 54,670	$ (77,770)	-59%
G-1041 Genealogy Records Request	$ 146,770	$ 70,720	$ (76,050)	-52%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	$ 73,245	$ -	$ (73,245)	-100%
I-600A Application for Advance Processing of Orphan Petition	$ 206,150	$ 150,350	$ (55,800)	-27%
I-600 Petition to Classify Orphan as an Immediate Relative	$ 113,925	$ 66,650	$ (47,275)	-41%
G-1041A Genealogy Records Request	$ 91,195	$ 44,005	$ (47,190)	-52%
I-191 Application for Advance Permission to Return to Unrelinquished Domicile	$ 52,080	$ 26,970	$ (25,110)	-48%
I-929 Petition for a Qualifying Family Member of a U-1 Nonimmigrant	$ 109,940	$ 90,390	$ (19,550)	-18%
I-193 Application for Waiver of Passport and/or Visa	$ 15,795	$ -	$ (15,795)	-100%
N-470 Application to Preserve Residence for Naturalization Purposes	$ 26,980	$ 13,490	$ (13,490)	-50%
I-690 Application for Waiver of Grounds of Inadmissibility	$ 7,865	$ -	$ (7,865)	-100%
I-800 Petition to Classify Convention Adoptee as an Immediate Relative	$ 17,825	$ 10,850	$ (6,975)	-39%
I-698 Application to Adjust Status from Temporary to Permanent Resident	$ 6,680	$ -	$ (6,680)	-100%
N-300 Application to File Declaration of Intention	$ 4,050	$ -	$ (4,050)	-100%
I-694 Notice of Appeal of Decision	$ 3,560	$ -	$ (3,560)	-100%
I-687 Application for Status as a Temporary Resident	$ -	$ -	$ -	N/A
I-821 Application for Temporary Protected Status	$ -	$ -	$ -	N/A
I-941 International Parole	$ -	$ -	$ -	N/A
N-644 Application for Posthumous Citizenship	$ -	$ -	$ -	N/A
I-817 Application for Family Unity Benefits	$ 73,800	$ 123,000	$ 49,200	67%
Grand Total	**$ 2,100,379,144**	**$ 754,930,657**	**$ (1,345,448,487)**	**-64%**

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U.S. Citizenship and Immigration Services

COVID-19 Financial Impact

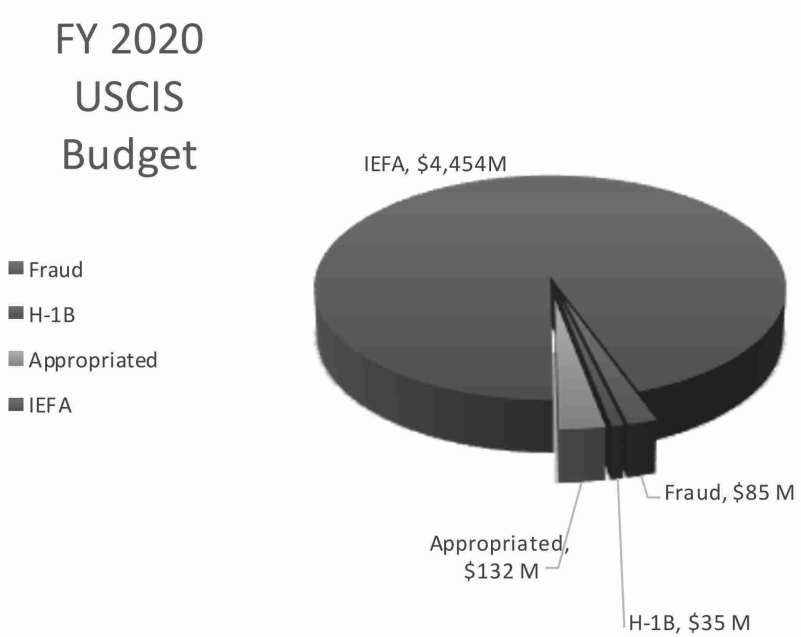
Office of the Chief Financial Officer

May 19, 2020

AMERICAN OVERSIGHT

FY 2020 Original Budget ($ in millions)

U.S. Citizenship and Immigration Services



- 96% of the total USCIS Budget is from the Immigration Examinations Fee Account (IEFA).
- IEFA comprised of premium and non-premium funding. Premium funds can only be used to cover the cost of providing premium processing services as well as infrastructure and customer service improvements in the adjudicative process.
- USCIS relies on a combination of current year revenue collections and carryover balances to meet anticipated obligations.
- IEFA funds are used for a variety of general operating purposes; including, staffing, contracts, IT, etc.

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FY 2020 Detailed Original Budget Look

U.S. Citizenship and Immigration Services

FY 2020 Annual Operating Plan (AOP) - IEFA

in thousands

Directorate/Office ($ in thousands)	AOP	Reductions	Realigned Pay HP/HB	Revised AOP
Directorates				
External Affairs Directorate	$148,543	-$4,903		$143,640
Field Operations	$893,928	-$27,647		$866,281
Fraud Detection & National Security	$214,954	-$6,172	-$37,565	$171,217
Immigration Records & Identity Services	$321,794	-$9,263		$312,531
Management (Total)	$1,415,469	-$63,753		$1,351,716
Administration	$112,114	$0		$112,114
Chief Financial Officer	$24,214	-$240		$23,974
Chief Information Officer	$863,934	-$52,957		$810,977
Contracting	$13,145	$0		$13,145
Human Capital & Training	$78,485	-$1,556		$76,929
Intake & Document Production	$155,927	-$4,643		$151,284
Management Directorate - Front Office	$11,612	-$120		$11,492
Performance & Quality	$43,634	-$873		$42,761
Security & Integrity	$112,404	-$3,364		$109,040
Refugee, Asylum & International Operations	$345,760	-$5,150		$340,610
Service Center Operations	$651,650	-$129	-$20,000	$631,521
Directorates Total	**$3,992,097**	**-$117,017**	**-$57,565**	**$3,817,515**
Program Offices				
Administrative Appeals	$19,567	-$566		$19,001
Chief Counsel	$65,174	-$961		$64,213
Director	$4,157	$0		$4,157
Equal Opportunity & Inclusion	$8,966	-$59		$8,907
Executive Secretariat	$3,763	-$115		$3,648
Investigations	$12,710	-$390		$12,320
Policy & Strategy	$24,829	-$768		$24,061
Privacy	$4,588	-$141		$4,447
Program Offices Total	**$143,754**	**-$3,000**	**$0**	**$140,754**
Agency Wide Costs				
Additional Operating Costs	$62,182	$0		$62,182
IAA w/Dept. of State	$10,000	$0		$10,000
Overhead & Service Wide Charges	$424,384	$0		$424,384
Agency Wide Costs Total	**$496,566**	**$0**	**$0**	**$496,566**
Grand Total	**$4,632,416**	**-$120,017**	**-$57,565**	**$4,454,834**

- The table to the left reflects Directorate and Program Office approved IEFA spending levels for FY 2020.
- While the USCIS budget submissions are aligned to Program, Project, and Activity, internally we budget based on needs by Directorates and Program Offices.
- Due to the anticipated funding constraints in FY20, Directorates and Program Offices were tasked to take a 3.1% reduction.
- Delays in the implementation of the FY 2019/2020 Fee Rule have had a minimal impact on USCIS operations.
- In the reprogramming submitted to Congress on May 7 there is a one-time realignment of $58 million of costs from the IEFA account to the Fraud and H1-B accounts, to stay within anticipated resources for FY 2020.

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FY 2020 IEFA Revenue ($M)

U.S. Citizenship and Immigration Services

FY 2020	Actual Revenue-EX	Forecast Revenue-EX	EX-Delta $	EX-Delta %	Actual Revenue-EP	Forecast Revenue-EP	EP-Delta $	EP-Delta %	IEFA Actual Revenue	IEFA Forecast Revenue	Delta $	Delta %
OCT	317.9	251.4	66.4	26.4%	50.4	34.2	16.2	47.3%	368.2	285.6	82.6	28.9%
NOV	270.6	253.7	16.9	6.7%	43.0	33.1	9.9	29.8%	313.6	286.8	26.8	9.3%
DEC	289.9	247.4	42.4	17.1%	47.6	33.3	14.3	42.8%	337.4	280.8	56.7	20.2%
JAN	288.7	217.4	71.3	32.8%	46.6	32.4	14.2	44.0%	335.3	249.7	85.6	34.3%
FEB	257.3	279.9	(22.6)	-8.1%	47.3	34.2	13.1	38.2%	304.6	314.1	(9.5)	-3.0%
MAR	319.3	327.3	(8.0)	-2.5%	35.7	39.9	(4.2)	-10.6%	354.9	367.2	(12.3)	-3.3%
APR	209.6	351.4	(141.8)	-40.4%	(0.0)	57.0	(57.0)	-100.0%	209.6	408.4	(198.8)	-48.7%
MAY		283.0				45.1				328.1		
JUN		270.3				44.8				315.1		
JUL		273.1				42.9				316.0		
AUG		414.0				43.1				457.0		
SEP		235.5				40.3				275.8		
TOTAL	**1,953.2**	**3,404.4**	**24.7**	**1.3%**	**270.6**	**480.2**	**6.4**	**2.4%**	**2,223.7**	**3,884.6**	**31.1**	**1.4%**

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The Forecast Revenue columns reflect pre-COVID-19 projections as of September 2019.

Top 10 Revenue Generating Forms

U.S. Citizenship and Immigration Services

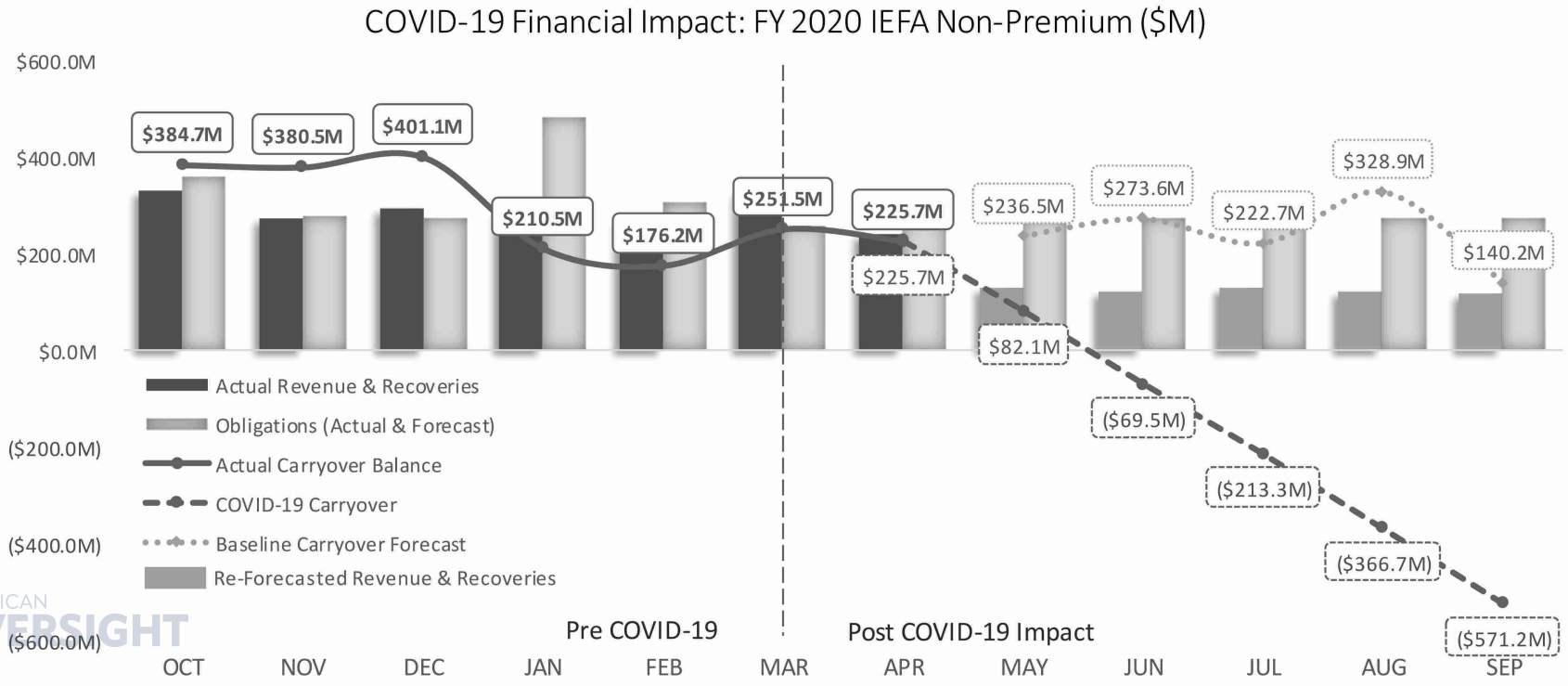
COVID-19 Impact: IEFA Revenue Forecast (April - September 2020)				
Form Name	**Initial Revenue Forecast**	**Revised Revenue Forecast**	**$ Change**	**% Change**
N-400 Application for Naturalization - Full Fee	$ 317,918,720	$ 84,410,240	$ (233,508,480)	-73%
I-129 Petition for a Nonimmigrant Worker - Premium	$ 212,474,880	$ -	$ (212,474,880)	-100%
I-485 Application to Register Permanent Residence or Adjust Status	$ 293,070,720	$ 98,738,130	$ (194,332,590)	-66%
I-130 Petition for Alien Relative	$ 218,063,860	$ 118,220,555	$ (99,843,305)	-46%
I-765 Application for Employment Authorization	$ 151,379,380	$ 62,636,520	$ (88,742,860)	-59%
I-90 Application to Replace Permanent Resident Card	$ 142,423,190	$ 58,610,370	$ (83,812,820)	-59%
Biometric Volume and Revenue (Including TPS Volumes)	$ 103,127,864	$ 34,640,457	$ (68,487,407)	-66%
I-140 Immigrant Petition for Alien Worker - Premium	$ 60,606,720	$ -	$ (60,606,720)	-100%
Immigrant Visa	$ 59,507,580	$ 4,817,780	$ (54,689,800)	-92%
I-129 Petition for a Nonimmigrant Worker	$ 165,156,560	$ 124,602,040	$ (40,554,520)	-25%
Other	$ 376,649,670	$ 168,254,565	$ (208,395,105)	-55%
TOTAL	**$ 2,100,379,144**	**$ 754,930,657**	**$ (1,345,448,487)**	**-64%**

Top ten forms account for $1.1 billion in decreased revenue; full list is attached.

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COVID-19 Financial Impact Summary

U.S. Citizenship and Immigration Services



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Mission Critical Needs

U.S. Citizenship and Immigration Services

COVID-19 Impact: USCIS IEFA			
Funding Through September 30, 2020	Mission Critical Non-Premium ($M)	Mission Critical Premium ($M)	Mission Critical Total ($M)
Anticipated Resources*	$ 1,047.4	$ 495.7	$ 1,543.1
Planned Spending	$ (1,649.8)	$ (464.5)	$ (2,114.3)
Pay	$ (1,078.5)	$ (71.0)	$ (1,149.5)
Non-Pay	$ (571.3)	$ (393.5)	$ (964.8)
Deficit	$ (602.4)	$ 31.2	$ (571.2)
Carryover Reserve	$ 650.0	$ -	$ 650.0
Supplemental Request	$ 1,252.4	$ (31.2)	$ 1,221.2

* Includes available carryover as of March 31 as well as projected revenue and recoveries of prior year obligations from April 1 - September 30.

IEFA Non-Premium Non-Pay Spending Rollup	
Activity	Amount ($M)
IT	$ 200
Rent & FPS	$ 150
EXA	$ 45
FOD	$ 40
Lockboxes	$ 28
FBI Name & Fingerprint Checks	$ 22
ASC	$ 12
Overseas Support	$ 6
Other	$ 68
Total	**$ 571**

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Purpose of Carryover

U.S. Citizenship and Immigration Services

- Maintain IEFA minimum carryover reserve amount of at least $650M to better position the agency for FY 2021. This will ensure USCIS is able to:
  - Support ongoing operations in FY 2021 Q1 and avoid the risk of Anti-deficiency Act (ADA) violations when spending exceeds current year fee revenue collections;
  - Soften the financial impact if variable economic conditions are unexpectedly experienced, or other unforeseen events (i.e. COVID-19) lead to unexpected workload and/or revenue fluctuations.

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Re-opening of USCIS Offices

U.S. Citizenship and Immigration Services

- **USCIS continues to process applications even as offices remain closed.**
- **USCIS is reviewing and assessing each office based upon local circumstances as we work to safely resume in-office operations and open our offices to the public.**
- **Anticipate following a phased approach. The initial phase will begin as early as June 4.**
- **As we work toward reopening our facilities, USCIS has identified and are implementing measures to make the workplace safe for employees and the public. These measures include:**
  - Physical barriers and markings to aid in socially distancing within offices;
  - Limiting how many people are permitted in an office at any given time; and
  - Requiring face coverings.
- **Developing plans that are specific to each directorate and each workplace, that identify the areas and job tasks with potential exposure to COVID-19 and include control measures to reduce or eliminate such exposures. Each program office and directorate are to establish their respective re-open plans in accordance with state and local stay-at-home orders.**
- **Over the coming weeks, specific guidance will be issued on the use of face coverings, facilities cleaning, social distancing within the office, expectations for visitors to USCIS facilities, telework flexibilities, and other guidance as needed.**

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Contingency Furlough Planning

U.S. Citizenship and Immigration Services

- Absent appropriated assistance, USCIS will need to furlough a large number of its employees to stay within projected available funding.
- OPM requires advance notification to employees of a furlough. Current projections estimate furlough notices need to be sent sometime in June with an effective date of July or August through the end of September 2020. Should an appropriation occur before the start of a furlough, furlough notices will be withdrawn.

AMERICAN OVERSIGHT

Pay it Forward Proposal

Legislative Language:

U.S. Citizenship and Immigration Services

Sec. XXX. Citizenship and Immigration Services Surcharge. (a) For this fiscal year, and for each fiscal year hereafter until the amount of surcharge collected under this section equals the amount of the supplemental appropriation provided in this Act for "Operations and Support", any applicant paying a fee authorized by the Secretary of Homeland Security under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) shall pay a surcharge in addition to each such fee. The surcharge shall be 10 percent of such fee rounded up to the nearest dollar. Notwithstanding any other provision of law, including the Administrative Procedure Act (5 U.S.C. 551 et seq.) and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), beginning 60 days after the enactment of this Act, the Secretary of Homeland Security shall begin collecting the surcharge prescribed by this section and shall reject any benefit request submitted without payment for such surcharge, if applicable. Notwithstanding any other provision of law, including the provisions of section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) regarding payment of certain fees to the treasury of Guam or the Virgin Islands and section 286(n) of such Act, the Secretary shall transfer all surcharges collected under this section into the general fund of the Treasury.

(b) Budgetary Effects—(1) Notwithstanding any other provision of law, the amounts collected by the surcharge described in subsection (a) are designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided, That such amounts shall only be collected if the President designates such amounts as an emergency requirement pursuant to section 251(b)(2)(A)(i).

(2) The budgetary effects of this provision are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

(3) In the Senate, this provision is designated as an emergency requirement pursuant to section 4112(a) of H. Con. Res. 71 (115th Congress), the concurrent resolution on the budget for fiscal year 2018.

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Pay it Forward – IEFA Surcharge

U.S. Citizenship and Immigration Services

IEFA Surcharge to Payback Supplemental in Full			
Surcharge Rate	Annual Revenue from Surcharge*	Approximate Payback Period (# of Years)	Total Supplemental Repayment (Rounded)
10%	$ 400,000,000	3.00	$ 1,200,000,000

- Assumes IEFA non-premium annual revenue collections of $4.0B.
- Implements a surcharge cost recovery approach that will result in no additional cost to the American Taxpayer and does not increase the deficit.
- This is illustrative of a payback timeline, actual payback period is dependent on receipts.

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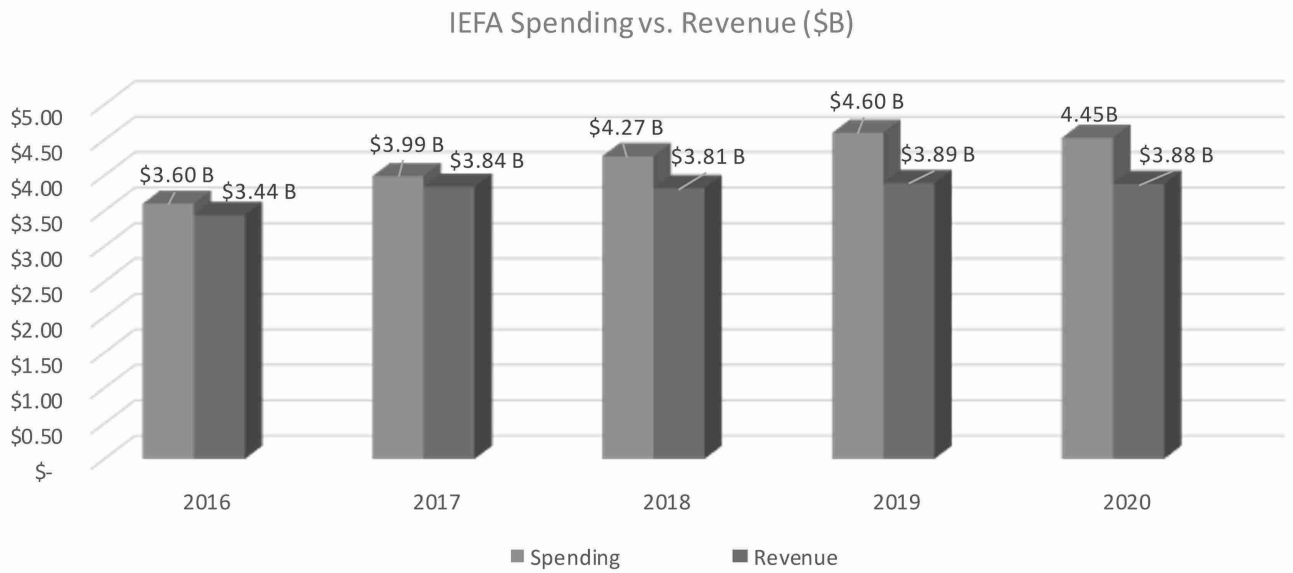
U.S. Citizenship and Immigration Services

APPENDIX

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Historical IEFA Spending vs Revenue

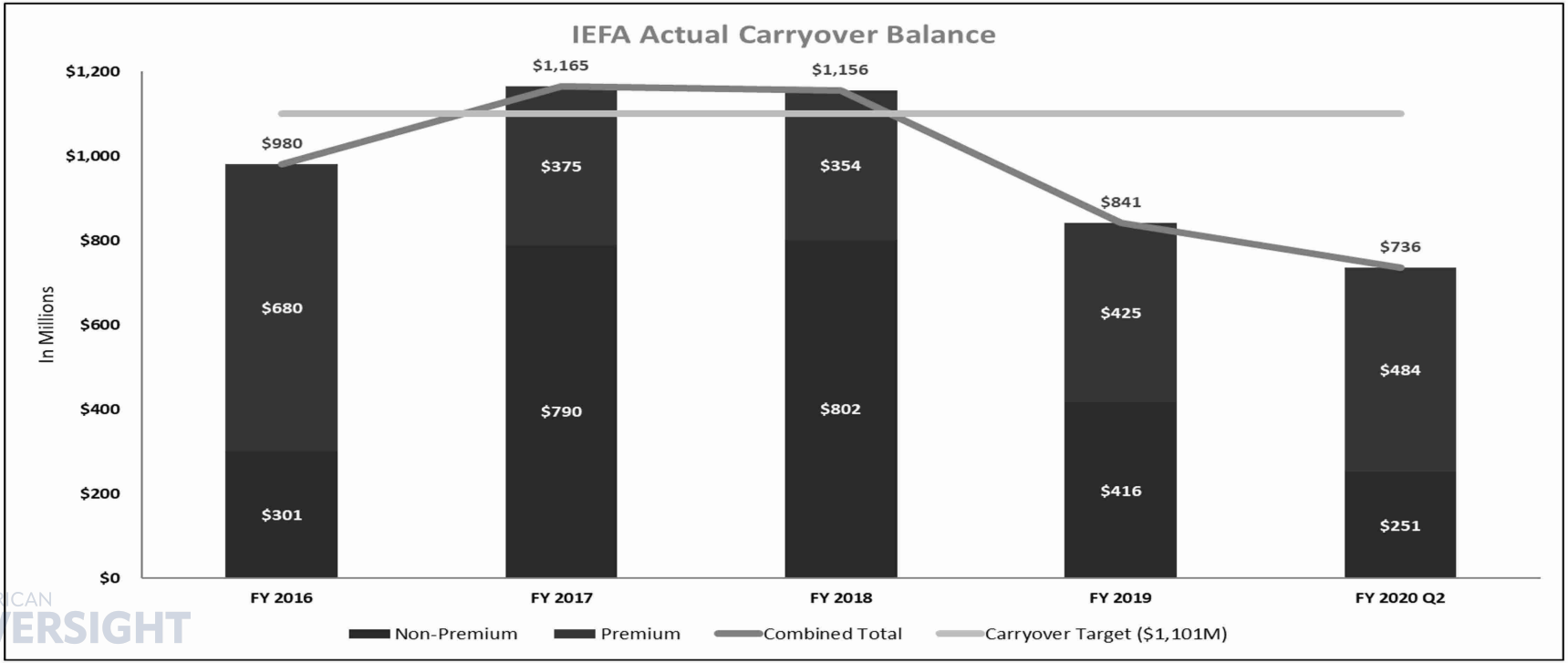
U.S. Citizenship and Immigration Services



IEFA spending grew by $1 billion or 28% between FY 2016 and FY 2019; revenue grew by only $406 million or 12%.

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Historical IEFA Carryover



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Pay vs. Non-Pay ($s in Thousands)

U.S. Citizenship and Immigration Services

FY 2020 AOP Summary by Directorate/Program Office			
in thousands	IEFA		
Directorate/Program Office	**FY 2020 Payroll**	**FY 2020 General Expense**	**FY 2020 Overall AOP**
External Affairs Directorate	$ 76,705	$ 66,935	$ 143,640
Field Operation Directorate	$ 733,445	$ 132,835	$ 866,281
Fraud Detection and National Security Directorate	$ 158,303	$ 12,913	$ 171,217
Immigration Records and Identity Services Directorate	$ 81,333	$ 231,198	$ 312,531
Management	$ 281,751	$ 1,069,965	$ 1,351,716
Refugee, Asylum & International Operations	$ 251,823	$ 88,787	$ 340,610
Service Center Operations Directorate	$ 521,158	$ 110,363	$ 631,521
Directorates Total	**$ 2,104,519**	**$ 1,712,996**	**$ 3,817,515**
Administrative Appeals	$ 17,944	$ 1,057	$ 19,001
Chief Counsel	$ 63,271	$ 942	$ 64,213
Director	$ 3,398	$ 759	$ 4,157
Equal Opportunity & Inclusion	$ 4,736	$ 4,172	$ 8,907
Executive Secretariat	$ 3,418	$ 230	$ 3,648
Investigation	$ 11,780	$ 540	$ 12,320
Policy & Strategy	$ 21,180	$ 2,881	$ 24,061
Privacy	$ 4,224	$ 223	$ 4,447
Program Offices Total	**$ 129,950**	**$ 10,804**	**$ 140,754**
Additional Operating Costs	$ 25,718	$ 36,464	$ 62,182
IAA w/Dept. of State	---	$ 10,000	$ 10,000
USCIS Overheads & Shared Services	---	$ 424,384	$ 424,384
Agency Wide Costs Total	**$ 25,718**	**$ 470,848**	**$ 496,566**
Grand Total	**$ 2,260,186**	**$ 2,194,648**	**$ 4,454,834**

AMERICAN OVERSIGHT

July 15, 2020

Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800
Falls Church, VA 22041

RE: EOIR Docket No. 18-0002; A.G. Order No. 4714-2020, RIN: 1615-AC42, 1125-AA94, Joint Notice of Proposed Rulemaking: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review.

Dear Assistant Director Reid:

We, the undersigned Members of Congress, submit this comment in opposition to the Department of Homeland Security (DHS) and Department of Justice (DOJ) (hereinafter "the Departments") joint notice of proposed rulemaking, Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (hereinafter "proposed rule").[1] As Members of Congress, we are responsible for ensuring that the Departments exercise their authority to interpret and enforce the immigration laws in accordance with the statutory framework established by Congress.

For the reasons described herein, we are deeply troubled by the proposed rule, which would upend long-established substantive and procedural standards pertaining to asylum, withholding of removal, and protection under the Convention Against Torture (CAT).[2] As a threshold matter, the 30-day comment period is entirely insufficient to provide the public with a meaningful opportunity to comment on the sweeping changes proposed in this rule.[3] Further, the proposed rule directly conflicts with the Refugee Act of 1980 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as well as the congressional intent underlying these Acts. The Departments selectively cite to legislative history to justify the proposed changes, which would prevent those seeking humanitarian protection in the United

[1] 85 Fed. Reg. 36264 (June 15, 2020).

[2] All citations to supporting evidence and authorities, including direct links and contents therein, are part of this comment and the formal administrative record for purposes of the Administrative Procedure Act (APA).

[3] See Request for 60-Day Comment Period for DHS and DOJ Joint Notice of Proposed Rulemaking – EOIR Docket No. 18-0002; A.G. Order No. 4714-2020, RIN: 1615-AC42, 1125-AA94 from Representatives Jerrold Nadler, Chairman of the House Judiciary Committee and Zoe Lofgren, Chair of the Subcommittee on Immigration and Citizenship to the Acting Secretary of DHS and the Attorney General.

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States from fully vindicating their rights. We therefore urge the Departments to withdraw the proposed rule.

I. The Proposed Rule Conflicts with the Refugee Act of 1980 and IIRIRA

More than four decades ago, Congress passed the Refugee Act of 1980, thus codifying portions of the United Nations Protocol Relating to the Status of Refugees (hereinafter "the Protocol") and establishing the framework for our current U.S. asylum laws. Sixteen years later, Congress passed IIRIRA, ushering in significant changes to the processing of individuals seeking admission to the United States. As described below, many of the changes contemplated by this proposed rule are in direct conflict with both these Acts.

a. The proposed rule conflicts with the letter and intent of the Refugee Act of 1980 and the Immigration and Nationality Act.

Congress enacted the Refugee Act of 1980 to establish a fair, humane, and inclusive system for individuals fleeing persecution to request asylum or withholding of removal in the United States. Applicants for these forms of protection must undergo thorough vetting and must meet high evidentiary standards—as dictated by statute—at every stage of the application process. This requires applicants, who are often at their most vulnerable when they arrive in this country, to relive past trauma and produce exhaustive documentary evidence in support of their claims.[4] Recognizing these unique challenges, Congress sought to establish comprehensive, uniform, and fair standards and procedures for individuals seeking protection on our shores.

As the Supreme Court recognized in INS v. Cardoza-Fonseca over 30 years ago, "If one thing is clear from the legislative history . . . of the [Refugee Act], it is that one of Congress' primary purposes was to bring United States refugee law into conformance with the [Protocol] to which the United States acceded in 1968."[5] By implementing international nonrefoulement obligations into domestic law, Congress thus created a "broad class of refugees who are eligible for a discretionary grant of asylum."[6] In the first section of the Act, Congress boldly "declar[ed] that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands[.]"[7]

The Departments' proposed rule violates the Refugee Act and the Immigration and Nationality Act (INA) by adopting new standards for asylum and withholding eligibility that contradict Congress' intent as recognized by the Supreme Court.[8] For example, the proposed

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[4] See, e.g., Katrin Schock, Rita Rosner, and Christine Knaevelsrud, Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seekers, 6 EUR. J. PSYCHOTRAUMATOLOGY 26286 (Sept. 1, 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4558273/.

[5] I.N.S. v. Cardoza-Fonseca, 40 U.S. 421, 436-37 (1987);

[6] Id., at 424; INA § 208(a)(2)(A).

[7] Refugee Act of 1980 § 101(a), Pub. L. No. 96-212 (Mar. 17, 1980).

[8] Although there are numerous examples of provisions in the proposed rule that are contrary to statute, we focus in this comment on only a few for the sake of brevity. Examples of other provisions with which we are equally

AMERICAN OVERSIGHT

rule includes new restrictions on the definition of "particular social group" that will effectively exclude categories of individuals that have long been recognized under domestic and international law. The new definition provides that a particular social group "cannot be defined exclusively by the alleged harm."[9] This change, in combination with changes to the "nexus" requirement that effectively prohibit claims based on gender and other characteristics and circumstances,[10] has the potential to disallow many groups cognizable within society from obtaining asylum, such as young women of the Tchamba-Kusuntu Tribe at risk of female genital mutilation, as recognized in Matter of Kasinga almost 25 years ago.[11]

Further, the proposed definition sets forth nine types of social group claims that the Attorney General "in general, will not favorably adjudicate."[12] This, however, is contrary to the INA which clearly articulates the groups of individuals who are barred from asylum or withholding of removal in INA section 208(b)(2)(A). These individuals include those who ordered, incited, assisted, or participated in the persecution of others; have been convicted of particularly serious crimes; have committed serious non-political crimes outside the United States; are a danger to the security of the United States; or were firmly resettled in another country. Congress also excluded individuals who have engaged in the persecution of others from the INA's definition of "refugee."[13] By effectively barring additional categories of individuals from asylum eligibility—categories that Congress chose not to bar—the proposed rule is unlawful.

Moreover, by listing these limitations in the proposed definition of "particular social group," the Departments are blatantly attempting to circumvent a judicial order preventing the Administration from adopting a definition that categorically excludes claims based on gender or gang violence. In Grace v. Whitaker, the U.S. District Court for the District of Columbia held that "[a] general rule that effectively bars [] claims based on general categories of persecutors (i.e. domestic abusers or gang members) or claims related to certain kinds of violence is inconsistent with Congress' intent to bring 'United States refugee law into conformance with the [Protocol].'"[14] And yet, the proposed rule does just that—proclaiming that "in general" social group claims will not be favorably adjudicated where, for example, such a social group consists

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concerned include: the new definition of "political opinion" at 85 Fed. Reg. at 36280; the new definition of "persecution" at 85 Fed. Reg. at 36280; the new definition of "internal relocation" at 85 Fed Reg. at 38282; new and dramatic restrictions related to asylum seekers' travel and manner of entry at 85 Fed. Reg. at 36285 -86; and new restrictions related to "nexus" requirements at 85 Fed. Reg. at 36281.

[9] 85 Fed. Reg. at 36278–79.

[10] 85 Fed. Reg. at 36281 ("[T]he Secretary of Homeland Security and Attorney General, in general, will not favorably adjudicate asylum or statutory withholding of removal claims based on persecution . . .[on the basis of] gender[.]".

[11] 21 I&N Dec. 357 (BIA 1996).

[12] Proposed 8 C.F.R. §§ 208.1(c), 1208.1(c).

[13] INA § 101(a)(42); 8 U.S.C. 1101(a)(42).

[14] 344 F.Supp.3d 96 (2018), citing Cardoza-Fonseca, 480 U.S. at 436-37, 107 S. Ct. 1207.

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of or is defined by "[p]ast or present criminal activity or association (including gang membership); . . . interpersonal disputes of which governmental authorities were unaware or uninvolved, . . . [or] presence in a country with generalized violence or a high crime rate[.]"[15]

In enacting the Refugee Act, Congress purposefully refrained from narrowly defining "particular social group" because, as the Supreme Court recognized in INS v. Cardoza-Fonseca, Congress' "primary purpose[]" was to adopt the established definition of "refugee," rather than fleshing out a new idea.[16] Moreover, the concept of "particular social group" was intended to be flexible so that it could apply to new and varied circumstances that Congress could not fully anticipate. As such, the Departments and the courts have applied the definition flexibly, in a manner consistent with international norms and U.S. nonrefoulement obligations—the opposite of the approach now proposed by the Departments. Indeed, contrary to the proposed rule, past membership in or association with a gang has been recognized by several courts as a viable social group.[17] Further, although it has long been held that generalized claims of civil unrest or political instability are insufficient to support an asylum claim, it is also well-established that fear based on a specific ground is not negated because of such unrest or instability.[18] For this reason, the proposed rule's categorical exclusion of social groups that may in part be defined by an environment rife with violence and crime is wholly inappropriate.

Beyond these discrete examples, it is clear that the proposed rule is generally aimed at furthering the Administration's goal of restricting asylum eligibility, without regard to our nonrefoulement obligations under domestic and international law. While the plain text and legislative history of the Refugee Act of 1980 serve as evidence of Congress' intent to make our asylum system fair and accessible,[19] the proposed rule seeks to restrict relief by expanding the grounds under which adjudicators may deny asylum,[20] adopting extremely narrow interpretations

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[15] Proposed 8 C.F.R. §§ 208.1(c), 1208.1(c).

[16] See 480 U.S. at 436-37.

[17] See e.g., Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014); Urbina-Mejia v. Holder, 597 F.3d 360 (6th Cir. 2010); Benitez Ramos v. Holder, 589 F.3d 426 (7th Cir. 2009).

[18] See e.g., Ordonez-Quino v. Holder, 760 F.3d 80 (1st Cir. 2014); Mengstu v. Holder, 560 F. 3d 80 (9th Cir. 2009).

[19] 125 Cong. Rec. 23231 (1979) (floor statement of Sen. Edward Kennedy, indicating that the Act "deals with one of the oldest and most important themes in our Nation's history: Welcoming homeless refugees to our shores."); id. at 23232 ("We have a proud record of accomplishment in offering a helping hand to refugees, and I believe our national policy of welcome to the homeless has served our country and our traditions well."); id. at 23234 (letter from the American Council of Voluntary Agencies, noting that such agencies have "resettled over a million and a half refugees from all walks of life, with various religious convictions from all parts of the world, demonstrating a true national commitment on the part of the American people to provide a haven for the homeless."); Statement of Rep. Elizabeth Holtzman, Hearing before Subcommittee on Immigration, Refugees, and International Law, 1 (May 3, 1979) ("In good measure, our country's humanitarian tradition of extending a welcome to the world's homeless has been accomplished in spite of, not because of, our laws relating to refugees.").

[20] 85 Fed. Reg. at 36283 (defining "three specific but nonexhaustive factors" for adjudicators to consider when exercising discretion to grant or deny asylum).

AMERICAN OVERSIGHT

of the standards for granting asylum,[21] and making procedural changes intended to prevent lawful asylum seekers from appearing before an immigration judge or pursuing relief in removal proceedings under INA section 240.

b. The proposed rule conflicts with the letter and intent of IIRIRA.

In 1996, Congress enacted IIRIRA, making sweeping changes to our immigration laws. While IIRIRA upended decades of agency practice and continues to be the subject of litigation challenging its constitutionality,[22] the drafters of the legislation made clear their intent to provide full due process protections to asylum seekers with viable claims by exempting them from summary removal through the expedited removal process.[23]

Under IIRIRA, Congress created a new "expedited removal" process for individuals attempting to enter the United States who (1) committed fraud or willfully misrepresented a material fact in an effort to obtain an immigration benefit; (2) made a false claim to U.S. citizenship; or (3) lack valid travel documents.[24] As the Departments correctly note, "Congress intended the expedited removal process to be streamlined, efficient, and truly 'expedited'" for individuals subject to it.[25] However, the Departments incorrectly claim that Congress intended these "streamlining" measures to apply to asylum seekers. In fact, the text and legislative history of IIRIRA make it clear that the opposite is true: most individuals who would otherwise be subject to expedited removal, but who are determined to have a credible fear of persecution are referred for removal proceedings under INA section 240, where they receive full consideration of their claims.[26] Congress created one exception to this general rule in INA section 235(a)(1)(2); stowaways who pass a credible fear screening are ineligible for a "hearing under section 240" and must instead pursue their claims in asylum- and withholding-only proceedings.[27] For all

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[21] See e.g. 85 Fed. Reg. at 36281 (setting forth "eight nonexhaustive situations" where the "nexus" requirement is not satisfied, including persecution on the basis of gender); 85 Fed. Reg. at 36287 (defining "rogue official" to exclude torture claims based on government officials who do not act under color of law when inflicting pain or suffering).

[22] See e.g. DHS v. Thuraissigiam, 591 U.S. ___ (2020) (upholding IIRIRA's limitations on habeas review as applied to an individual subject to expedited removal); Make the Road New York v. Wolf, No. 1:19-cv-02369 (D.C. Cir. June 23, 2020) (holding that IIRIRA's jurisdiction stripping provisions did not preclude review of the decision to expand expedited removal proceedings to all individuals without documentation who have resided in the United States for less than two years); INS v. St. Cyr, 533 U.S. 289 (2001) (holding that IIRIRA's jurisdiction stripping provisions did not extend to habeas petitions raising pure questions of law in light of the Suspension Clause).

[23] 142 Cong. Rec. S11491 (daily ed. Sept. 27, 1996) (statement of Sen. Orrin Hatch: "The [credible fear] standard adopted in the conference report is intended to be a low screening standard for admission into the usual full asylum process.") (emphasis added).

[24] INA § 235(b) (expedited removal applies only to individuals deemed inadmissible under INA §§ 212(a)(6)(C) or (a)(7)).

[25] 85 Fed. Reg. at 36267.

[26] INA § 235(b)(1)(B)(ii).

[27] 8 C.F.R. § 208.2(c)(1) (DHS regulations concerning asylum- and withholding-only procedures); 8 C.F.R. § 1208.2(c)(1) (same for DOJ). Notably, there are a few other statutory provisions prohibiting section 240

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others, regular section 240 proceedings apply. As the Supreme Court has previously held, "additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent."[28] In this case, congressional intent is entirely consistent with the statute: As noted in the Conference Report accompanying IIRIRA, "[i]f the officer finds that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum under normal non-expedited removal proceedings."[29]

Having clearly preserved regular asylum processing in section 240 proceedings for individuals who pass the "low [credible fear] screening standard,"[30] it is astonishing that the Departments seek to strip these protections away under the guise of congressional intent. Under the proposed rule, individuals who pass the credible fear screening would no longer be allowed to have their claims heard in section 240 proceedings, which DHS and DOJ acknowledge are "more detailed and provide additional procedural protections, including greater administrative and judicial review[.]"[31] Instead, all such asylum seekers would be placed in "asylum-and-withholding-only" proceedings.[32] Clearly contrary to the plain language of the statute and congressional intent, this proposed regulation cannot stand.

Further, the Departments propose raising the evidentiary standard individuals must meet to raise claims for withholding of removal or protection under CAT at the initial credible fear screening stage. Under current law, asylum officers conducting credible fear screenings apply a single, uniform standard, to determine if there is a "significant possibility" of a claim for asylum, withholding of removal, or CAT.[33] DHS and the legacy Immigration and Naturalization Service (INS) have applied this "significant possibility" standard since 1997, when the INS concluded

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proceedings for individuals who are otherwise eligible to apply for asylum. See e.g., INA § 217(b)(2) (requiring Visa Waiver Program entrants to waive their right to a hearing under section 240, except "on the basis of an application for asylum"); INA § 212(l)(2) (same for the Guam and Northern Mariana Islands Visa Waiver Program).

[28] United States v. Smith, 499 U.S. 160, 167 (1991) (internal quotations marks omitted) (citing Andrus v. Glover Construction Co., 446 U.S. 608, 616-17 (1980)).

[29] H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.) (emphasis added).

[30] 142 Cong. Rec. S11491 (1996) (statement of Sen. Orrin Hatch).

[31] 85 Fed. Reg. at 36266.

[32] 85 Fed. Reg. at 36267; 8 C.F.R. § 208.2(c)(1); 8 C.F.R. § 1208.2(c)(1).

[33] 8 C.F.R. § 208.30(e)(2)-(3). While the Departments cite to legislative history acknowledging that Congress "intended [the "reasonable possibility" standard] to be a low screening standard for admission into the usual full asylum process," 142 Cong. Rec. S11491 (Sept. 27, 1996) (statement of Sen. Orrin Hatch) (emphasis added), the Departments erroneously suggest that this "process" was intended only to assess eligibility for asylum, excluding claims for withholding and CAT. The 104th Congress considered and debated IIRIRA in the shadow of other statutory requirements and legal obligations, including the INA's withholding provisions introduced as part of the Refugee Act of 1980, see 8 U.S.C. 1231(b)(3); Refugee Act § 201(e) (amending then-section 243(h) of the INA), and the United States' obligations under the Convention Against Torture, which became effective on November 20, 1994 and were later codified in regulations. Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999). Congress legislated in full view of these other forms of legal protection under our asylum laws, setting a low, uniform evidentiary standard at the credible fear stage to allow for full consideration of these other forms of protection.

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that it was sufficient to "provide[] for fair resolution of claims to protection . . . in the expedited removal context, without disrupting the streamlined process established by Congress to circumvent meritless claims."[34] Current law also provides that if an individual establishes a credible fear of persecution but appears to be subject to a statutory bar to asylum or withholding, such individual is still placed in removal proceedings under section 240, during which an immigration judge will determine if any such bar actually applies.[35]

The Departments now choose to break from more than two decades of agency practice, proposing to further "streamline" credible fear screenings by requiring asylum officers to apply two evidentiary standards: assessing eligibility for asylum under the well-established "significant possibility standard," and assessing eligibility for withholding of removal or protection under CAT under the more restrictive "reasonable possibility" standard.[36] The Departments acknowledge that this will require officers "to spend additional time eliciting more detailed testimony from aliens to account for the higher standard of proof."[37] Further still, the proposed rule would require asylum officers to assess during the screening process whether any of the mandatory bars to relief apply.[38]

Defying all logic, the Departments claim, without citing any supporting evidence, that requiring asylum officers to evaluate an applicant's eligibility under two legal standards and assess whether mandatory bars to relief apply will somehow allow them "to more efficiently and promptly distinguish between aliens whose claims are more likely or less likely to ultimately be meritorious."[39] However, by blurring the line between the credible fear screening and full adjudication of an asylum claim, the Departments will instead create a burdensome screening procedure for all migrants—even those with clearly meritless claims—while simultaneously depriving potentially eligible applicants of the opportunity for full consideration of their claims.

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[34] 64 Fed. Reg. at 8485; see also Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10320 (Mar. 6, 1997) ("Once an alien establishes a credible fear of persecution, the purpose behind the expedited removal provisions of section 235 of the Act to screen out arriving aliens with fraudulent documents or no documents and with no significant possibility of establishing a claim to asylum has been satisfied.") (emphasis added).

[35] 8 C.F.R. § 208.30(e)(5)(i).

[36] See 85 Fed. Reg. at 36268 ("Congress has not required that considerations of eligibility for asylum, statutory withholding of removal, and protection under the CAT regulations in the 'credible fear' screening process be considered in the same manner."); id. at 36271 (selectively citing to legislative history regarding the credible fear screening standard); see also id. at 36271 ("The 'reasonable possibility' standard is equivalent to the 'well-founded fear' standard in section 101(a)(42) of the [INA], 8 U.S.C. § 1101(a)(42), which is used to determine ultimate eligibility for asylum.")

[37] 85 Fed. Reg. at 36271.

[38] 85 Fed. Reg. at 36272 & n. 16. In a comment submitted in response to a prior rulemaking, Members of this body argued that the Departments' interpretation of these bars is unreasonably broad, categorically denying asylum to individuals who pose no danger to our community. Comments in Opposition to Proposed Rulemaking: Procedures for Asylum and Bars to Asylum Eligibility (Jan. 21, 2020) (comment submitted in response to 84 Fed. Reg. 69640, EOIR Docket No. 18-002, A.G. Order No. 4592-2019; RIN 1125-AA87, 1615-AV41).

[39] 85 Fed. Reg. at 36271.

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In other words, the Department's convoluted proposal undermines clear congressional intent to streamline—and to exempt asylum seekers from—the expedited removal process.

II. Endangering Due Process Rights of Asylum Seekers

The Departments also propose a number of changes that are contrary to the principles of due process and fair procedure. Individuals seeking asylum are guaranteed certain procedural rights under our asylum laws. Under section 208(a)(1) of the INA, any person "physically present in the United States or who arrives in the United States . . . irrespective of such [person's] status, may apply for asylum[.]"[40] Section 208(a)(2) outlines three narrow exceptions to this, and exempts unaccompanied minors from two such exceptions.[41] While the Secretary of Homeland Security may "provide by regulation for any other conditions or limitations" on asylum procedures, such conditions or limitations must be consistent with the INA.[42] However, the procedural changes proposed by the Departments are inconsistent with section 208 of the INA. Taken together, these changes will make it more difficult for asylum applicants to exercise their rights under our nation's asylum laws and make it nearly impossible for individuals to present their claims for full consideration before an immigration judge.

For example, the proposed rule would require immigration judges to "pretermit and deny" applications for asylum, withholding, and CAT relief without a hearing, if the individual "has not established a prima facie claim for relief or protection under the applicable laws and regulations."[43] To invoke this harsh provision, DHS need only make an "oral or written motion" before the judge.[44] This is entirely inconsistent with section 208(b)(1)(B)(ii) of the INA, which sets forth ways in which an applicant can sustain the burden of proving eligibility for asylum, including through credible testimony and "other evidence of record."[45] In codifying this pretermission authority, applicants will be denied the opportunity to have their credibility assessed and their eligibility for relief determined on the basis of a complete record, including their own testimony.[46]

Similarly, under current law, individuals who knowingly file frivolous asylum applications can be found permanently ineligible for any immigration benefit, provided such individual had notice of these consequences prior to filing.[47] For the last two decades, Congress' intent has been embodied in the current regulation interpreting this statutory provision, which states that "an asylum application is frivolous if any of its material elements is deliberately

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[40] 8 U.S.C. § 1158(a)(1).

[41] 8 U.S.C. § 1158(a)(2).

[42] INA § 208(d)(1); 8 U.S.C. § 1158(d)(5).

[43] 85 Fed. Reg. at 36277.

[44] Proposed 8 C.F.R. 1208.13(e).

[45] 8 U.S.C. § 1158(b)(1)(B)(ii).

[46] 8 U.S.C. § 1158(b)(1)(B)(iii).

[47] INA § 208(d)(4)(A) and (d)(6); 8 U.S.C. § 1158(d)(4)(A) and (d)(6).

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fabricated."[48] Therefore, in assessing whether an application is frivolous, adjudicators make no judgment as to the merits of the asylum claim; instead, the inquiry focuses on the applicant's intent and the presence of fabricated statements or evidence that is material to the claim.

The Departments propose to dramatically expand the definition of "frivolous" to include cases in which an asylum seeker files an application "without regard to the merits of the claim," or including a claim that is "clearly foreclosed by applicable law."[49] This proposed expansion would undoubtedly penalize newly-arrived asylum seekers, who are understandably ignorant of the nuances of our complex immigration laws, and are often forced to navigate the process without the benefit of representation. Further, the proposed rule broadens the statutory "knowledge" requirement to include "willful blindness," such that an individual would be deemed to have "knowingly" filed a frivolous application if they were "aware of a high probability" that the application was frivolous, or "deliberately avoided learning otherwise."[50] However, this expanded definition of "knowledge," which is derived from a Supreme Court case concerning patent law, is wholly inappropriate for assessing asylum claims, where the consequences of dismissal can involve certain death.[51]

Finally, the proposed rule also weakens the statutory notice requirement, summarily concluding that "an alien is on notice at the time of filing the application that it may be deemed frivolous," hence "there is no reason to require multiple opportunities for an alien to disavow or explain a knowingly frivolous application."[52] Individually and collectively, these changes would effectively nullify Congress' intent in dissuading truly frivolous claims by unfairly punishing individuals for not having a full and complete understanding of U.S. asylum law.

III. Conclusion

The Departments should immediately withdraw the joint notice of proposed rulemaking as the legal defects contained therein cannot be addressed through simple modifications. The proposed rule upends congressional intent in establishing our nation's asylum laws and distorts clear statutory standards in pursuit of unlawful policy goals.

In establishing U.S. asylum law, Congress recognized that individuals seeking our protection face significant obstacles, often arriving in the United States as "homeless refugees" with few resources.[53] The Refugee Act of 1980 is intended to guarantee that each of these individuals would have a full and fair opportunity to present a claim for asylum. Indeed, "[t]he objectives of [the] Act are to provide a permanent and systematic procedure for the admission to

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[48] 8 C.F.R. § 1208.20 (emphasis added).

[49] 85 Fed. Reg. at 36295.

[50] 85 Fed. Reg. at 36273.

[51] Id. (citing to Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754, 769-70 (2011)).

[52] 85 Fed. Reg. at 36276.

[53] See supra note 19.

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this country of refugees of special humanitarian concern to the United States,"[54] based on a "uniform" process."[55] The Departments' proposal runs directly counter to these goals by creating a less inclusive, irregular, and inefficient asylum system that is inconsistent with "one of the oldest and most important themes in our nation's history: [w]elcoming homeless refugees to our shores."[56]

Sincerely,

Rep. Jerrold Nadler	Rep. Zoe Lofgren
Rep. Peter Aguilar	Sen. Dianne Feinstein
Rep. Nanette Diaz Barragán	Sen. Richard Blumenthal
Rep. Suzanna Bonamici	Rep. Julia Brownley
Rep. Salud O. Carbajal	Rep. Tony Cárdenas
Rep. Joaquin Castro	Rep. Judy Chu
Rep. David N. Cicilline	Rep. Yvette D. Clarke
Rep. Wm. Lacy Clay	Rep. Jim Cooper
Rep. J. Luis Correa	Rep. Jason Crow
Rep. Madeleine Dean	Rep. Diana DeGette
Rep. Rosa L. DeLauro	Rep. Mark DeSaulnier
Rep. Veronica Escobar	Rep. Anna G. Eshoo

[54] Refugee Act of 1980 § 101(b), Pub. L. No. 96-212 (Mar. 17, 1980).

[55] S. Rep. No. 96-960, at 19 (1980) (Conf. Rep.); see also 126 Cong. Rec. 96th Cong. 2nd Session 3757 (Feb. 26, 1980) (statement of Senator Kennedy regarding submission of Conference Report of the Refugee Act of 1980, "It is the intention of the Conferees that the Attorney General should immediately create a uniform procedure for the treatment of asylum claims filed in the United States or at our ports of entry.").

[56] 125 Cong. Rec. 23231 (1979) (floor statement of Sen. Edward Kennedy, indicating that the Act "deals with one of the oldest and most important themes in our Nation's history: Welcoming homeless refugees to our shores.").

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Rep. Adriano Espaillat

Rep. Jesús G. "Chuy" García

Rep. Sylvia R. Garcia

Rep. Raúl Grijalva

Rep. Jahana Hayes

Rep. Jared Huffman

Rep. Sheila Jackson-Lee

Rep. Pramila Jayapal

Rep. Eddie Bernice Johnson

Rep. Henry C. "Hank" Johnson, Jr.

Rep. Joseph P. Kennedy, III

Rep. Ro Khanna

Rep. Ann Kirkpatrick

Rep. Barbara Lee

Rep. John Lewis

Rep. Ted W. Lieu

Rep. Alan Lowenthal

Rep. James P. McGovern

Rep. Jerry McNerney

Rep. Debbie Mucarsel-Powell

Rep. Grace F. Napolitano

Del. Eleanor Holmes Norton

Rep. Jimmy Panetta

Rep. Scott H. Peters

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Rep. Mark Pocan

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Rep. David E. Price

Rep. Jamie Raskin

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Rep. Linda T. Sánchez

Rep. Mary Gay Scanlon

Rep. Jan Schakowsky

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Rep. Mike Thompson

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Rep. Juan Vargas

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Rep. Nydia M. Velázquez

Rep. Frederica S. Wilson

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DHS-20-2156-A-002056

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Field Operations Directorate
Washington, DC 20529

U.S. Citizenship and Immigration Services

Decision Memorandum

TO: Joseph B. Edlow
Deputy Director for Policy

FROM: Daniel M. Renaud
Associate Director

SUBJECT: **Action on a Comprehensive Interview Strategy Review**

Purpose: Historically, the U.S. Citizenship and Immigration Services (USCIS) approach to interviewing applicants and other benefit requestors has been driven by process and available technology. This means that USCIS generally made decisions about who to interview based on the particular benefit the individual requested rather than on an individualized risk profile of applicants. Field Operations Directorate (FOD) proposes to move toward a more strategic, data-driven approach to determining who to interview.

Background: In response to Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States, DHS and Federal partners developed a strategy to improve screening and vetting standards and procedures. Part of this strategy included reassessing interview waiver categories and expanding interviews to the employment-based (EB) Form I-485 with an underlying approved Form I-140 (EB Form I-485), among others. The interview requirement for EB Form I-485 became effective on October 1, 2017, for all affected applications filed on or after March 6, 2017.

Discussion: New enabling technology can collect and filter data points and categorize processing requirements based on a risk and complexity-based assessments. This presents a unique opportunity to re-engineer our existing framework to utilize applicant information to make individualized interview determinations. In this way, we can better direct our limited human resources (interviewers) toward those cases where they have the best opportunity to identify fraud and national security risks and away from those where the interview historically had little impact on the outcome. This proposed risk-based interview framework would allow a case-by-case determination on whether an interview requirement could be waived, but would never prohibit or impede an officer from determining an interview was needed, even in cases where new technology did not identify risk factors.

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We hope to gain capacity through risk- and complexity-based assessments in order to more strategically determine whether an applicant or other requestor should be interviewed. This gain of human capacity and efficiency could be achieved through the identification of risk indicators in advance of an interview and for enhanced interview scheduling that provides sufficient time for targeted lines of inquiry where needed. This approach is based on identification of field-developed factors to measure potential risks associated with individual cases. This exercise begins with an analysis of a particular case type and ultimately develops into a partial or fully automated identification of risk or complexity for officer consideration. This general strategy allows for flexibility to add or modify risk-factors to address changes in filing or fraud patterns.

Moving forward, FOD intends to apply a risk-focused analysis to various applicant groups, with the objective of identifying populations (regardless of benefit type) that present a risk or complexity level wherein an interview would enable the agency to better assess eligibility or detect and deter fraud and national security concerns. This may mean that individuals from certain populations that previously were not subject to an interview (e.g., students or U-visa petitioners, etc.) may be scheduled for an interview due to elevated risk factors present in their specific case.

Initial Analysis - EB Form I-485

After two years of interviewing EB Form I-485s, FOD sought to understand the differences between the kinds of cases (and applicants) that generally resulted in denials and those that did not. On October 1, 2019, FOD began reviewing data and A-files with completed EB Form I-485 applications. FOD explored whether interviewing EB Form I-485s resulted in any substantive changes in case outcomes and/or the ability of USCIS to vet and screen these applicants. Based on the results of the analysis, FOD recommends establishing initial interview criteria consistent with our authority to require or waive interviews, as applicable.

General Data Review

FOD reviewed data and files associated with both interview-waived and interview-required EB Form I-485 populations. 2016 data represented the interview-waived population; 2018 data represented the interview-required population, and included cases that were initially part of the interview-waived population but were referred for interview based on previously established criteria used within Service Center Operations (SCOPS).

SCOPS identified ten criteria for officers to refer for interview:

- Applicant entered the United States without inspection;
- Applicant has a criminal IDENT or arrest record (i.e., not petty, juvenile, or strictly immigration offense);
- Applicant has unclassifiable fingerprints after two attempts to capture prints;
- Applicant's A-File is not available, cannot be obtained, and is not digitized;

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- Other eligibility fraud, identified on a case-by-case basis, where FDNS/CFDO or BCU recommends interview (e.g., suspect F-1 school attendance);
- Derivative spouse marriage bona fides are not established or are suspect;
- Applicant is in active removal proceedings (EOIR has sole Form I-485 jurisdiction);
- Applicant has conflicting or multiple identities that cannot be resolved; and
- Applicant has Class A medical condition that cannot be downgraded and waived as Class B after RFE and follow-up, and may now require Form I-601, Application for Waiver of Grounds of Inadmissibility.

Decisional data from 2016 and 2018 is depicted in Appendix 1, Table 1. Approval and denial rates, by country of birth and preference category associated with the Form I-140, were compared. Although there was an overall increase in denial rates from 2016 to 2018, the difference is negligible. When considering the difference in denial rates by preference category or preference category and country of birth, that difference in any category was less than 5%. In other words, this data review did not identify a significant change in denial rates as a result of imposing an interview requirement, with one exception. The denial rate of first-preference cases from China showed an increase from .5% to 4.2% for the sampled years. And, while this percentage increase appears substantial, it represents a difference of 28 cases out of the over 5,700 cases included in the data review.

For both interview-waived and interview-required populations in 2016 and 2018, Fraud Detection and National Security (FDNS) provided information identifying those in the total population of cases that were referred for administrative investigation. This information is depicted in Appendix 1, Table 2. As a reminder, generally the 2016 population did not receive an adjudicative interview; therefore, none of the referrals to FDNS in this population resulted in a referral for interview. For the 2018 population, the data does not reflect whether the referral to FDNS occurred pre or post interview. In reviewing the available data, we can see that the total volume of referrals for investigation increased by .9% in the interview-required population. This difference could be consistent with normal year-to-year variations in data and supports FDNS' conclusion[1] that rates of referrals did not appear attributable to the interview process. When considering referral rates by preference category alone or preference category and country of birth, we found that second preference adjustment had the lowest change in referral rates, with an increase of .5% overall, with the exception of China. Some preferences and countries of birth showed a decrease in referral rates and only third-preference referrals were higher than a 1% increase. Considering that the data cannot identify whether the referral occurred before or after the interview where an interview occurred or whether the referral was based on the Form I-485 or underlying Form I-140, we are not able to determine whether these results can be attributed to the interview.

Physical Case Review

Given that a review of data alone could not identify whether changes in denial or referral rates could be attributed to the interview requirement, a physical case review was conducted on sample cases from the interview-waived and interview-required data set. The randomly-selected

[1] Source document: FDNS Reports and Analysis Branch analysis dated May 2019.

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samples were drawn from three sub-categories within each population: referred/denied (96 cases), not referred/denied (316 cases), and referred/approved (256 cases). Where an interview was conducted, referrals were found to have occurred prior to the interview in all sampled cases that were referred to FDNS. As a reminder, the interview-required population does include cases that were initially identified as interview-waived but were referred for interview based on established criteria.

Referred/Denied

The basis for referral for each data set is depicted in Appendix 1, Tables 3 & 4. There is no significant rate difference in the number or basis of referrals between interview-waived and interview-required populations, regardless of preference category or when considering preference category and country of birth.

The basis for denial for each data set is depicted in Appendix 1, Tables 5 & 6. Denial reasons based on preference category show no significant rate difference between interview-waived and interview-required populations; there is a marginal difference when considering both preference category and country of birth.

Reviewers determined that the interview generally clarified or substantiated information already available in the record. However, in five cases, the interview substantially assisted the officer in a way not available through a standard Request for Evidence (RFE). For example, suspected fraud and misrepresentation issues were identified in background checks, but through the interview, the officer received verbal confirmation of visa fraud. It should be noted though, that even if interview-waived, these cases would have been referred for interview based on previously established referral criteria used by SCOPS.

Not Referred/Denied

The basis for denial for each data set is depicted in Appendix 1, Tables 7 & 8. Denial reasons based on preference category show no significant rate difference between interview-waived and interview-required populations; there is a marginal difference in withdrawals (increased from 2016 to 2018) and administrative closures (decreased from 2016 to 2018). File reviews indicate that several withdrawal letters requested consular processing as a result of lengthy processing times at USCIS. The decrease in administrative closures was primarily attributed to a reduction in officer errors in performing system updates.

Reviewers determined that the interview generally, but not exclusively, clarified or substantiated information already available in the record. In one case involving an INA § 245(c) ineligibility concern, the interview allowed the officer to confirm crewmember status which was already in the record but not established by evidence or in the response to the RFE. But even if interview-waived, this case would have been referred for interview based on established referral criteria established for use by SCOPS.

Referred/Approved

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The basis for referral for each data set is depicted in Appendix 1, Tables 9 & 10. There is no significant rate difference in the overall number of referrals between interview-waived and interview-required populations, regardless of preference category or when considering preference category and country of birth. The most common reason for referral was suspected fraud, either with the Form I-485 or with the underlying Form I-140. In 25 of the interview-waived cases reviewed, the Form I-140s were referred to FDNS as a result of a random sampling of cases. In all 25 cases, there were no findings of fraud. If we remove these 25 cases from the count of total cases referred, the findings become nominal.

Reviewers determined that the interview generally clarified or substantiated information already available in the record. In five cases, the interview substantially assisted the officer in a way not available through a standard RFE. Of these cases, one case involved criminal issues that were resolved with a sworn statement, and the other four cases included suspected fraud involving concerns with suspect documents or employer-related fraud. Again, even if interview-waived, these cases would have been referred for interview based on established referral criteria.

Conclusion

A review of data and physical files found that in particular EB Form I-485 categories there is minimal difference in approval/denial rates, referral rates, or denial basis in interview-waived and interview-required employment based adjustment of status cases. While no one can question the benefit of an in-person interview when clarifying or substantiating information, interviews of employment-based adjustment cases generally did not identify information that was not otherwise available to USCIS. Further, the current adjudicative process initiates a risk-based approach by strategically placing officer review of the underlying Form I-140 separate from the adjustment application and includes security checks as part of pre-adjudicative processing. Considering this, FOD recommends that USCIS continue to separate the Form I-140 adjudication from the Form I-485 adjudication, and refer Form I-485s for interview using pre-identified criteria and in cases where the officer feels that an interview would yield new or provide clarifying information.

If any of the below criteria are met, the adjustment of status applicant would be interviewed and the interview requirement could not be waived; unless the EB-Form I-485 could be denied without interview:

1. Applicant entered the United States without inspection, overstayed or was out of status at any point in time and has not established INA §245(i) eligibility or an INA §245(k) exemption;
2. Applicant has a criminal IDENT or arrest record;
3. Applicant has an articulable national security or terrorism-related ground of inadmissibility concern;
4. Applicant has unclassifiable fingerprints after two attempts to collect biometrics;
5. Applicant's A-File is not available, cannot be obtained, and is not digitized;
6. FDNS/CFDO or BCU have found fraud or identified sufficient indicators about the intended permanent employment to recommend a worksite compliance or similar investigation;

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7. Other eligibility fraud, identified on a case-by-case basis, where FDNS/CFDO or BCU recommends interview (e.g., suspect F-1 school attendance);
8. Derivative spouse marriage bona fides are not established or are suspect;
9. Applicant is in removal proceedings or was in removal proceedings at any time;
10. Applicant has conflicting or multiple identities, other than properly documented name changes as a result of marriage;
11. Applicant has Class A medical condition that cannot be downgraded and waived as Class B after RFE and follow-up, and may now require Form I-601, Application for Waiver of Grounds of Inadmissibility, to overcome inadmissibility;
12. A sworn statement is required to address any deficiency;
13. An interview would yield clarifying information, such as with an unclear response to a request for evidence, required to render a final decision
14. Derivative applicant where the relationship to the principal is based on a marriage that is less than 24 months old at the time of filing;
15. Applicant is a citizen of, or last habitually resided in, a country that is a state sponsor of terrorism; and
16. The officer has any other articulable concern regarding identity, eligibility, national security, public safety, or fraud, and believes that an interview will help to resolve that concern.

In rough order of magnitude, the historic "hit" rate of the SCOPS referral criteria, which includes 10 of the criteria listed above, resulted in just less than 10% referrals and denials (9.7%). Given that rate, we estimate the additional criteria would add between 2-4% more hits, meaning that of the approximately 120,000 employment-based adjustment of status determinations made last year, around 14,000 to 16,000 cases would result in interviews. Given that the paper-based adjudications for the 86-88% of applicants would take officers approximately 33% less time (saving an average of 15 minutes per adjudication), we estimate that this change would enable FOD to redirect officer time that is equivalent to approximately 35,000 interviews to other priority work in an effort to reduce processing times.

Implementation Plan

FOD's implementation plan will address impacted pending EB Form I-485s not already scheduled for interview. FOD will proceed with an interview for those cases already scheduled. Considering that Form I-140-based adjustment cases are adjudicated within FOD and are already routed to the NBC from the lockbox, there is no required change to pre-processing steps for case review or initiation of security checks. We recommend initiating this plan by third quarter, to account for cases already scheduled for interview and ensuring process changes. The following additional steps would be required to implement the new approach to interview waivers for adjustment of status applicants:

- Request OP&S review of relevant policy to determine whether an edit is necessary.
- Compose notice to NBC and field offices of upcoming change.
- Prepare guidance to the field outlining the interview criteria. Prepare a draft CHAP entry for review. Publish the CHAP entry.
- Coordinate with EXA to determine if public notice is required.

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- Communicate prioritization of employment-based adjustment cases to the field in order to fully utilize yearly visa allocations.
- Discontinue requirement to schedule interviews/order files.
- Develop a schedule to begin weekly shipments of cases to field offices with jurisdiction. (Note: Districts to distribute within their respective offices, as needed, to balance workloads and achieve consistency in processing times across field offices.)
- Instruct field offices to assign out cases for adjudication, and locally schedule any cases requiring interview based on the set criteria.
- All other processing requirements remain unchanged.

While we conduct the above actions, USCIS will perform the appropriate risk assessment work to determine where to direct any freed up resources.

FOD will annually update the Office of the Director on the progress made with the recurring analysis (including data on interviews, fraud referrals, approvals, denials, etc.) and the risk factors leading to interview and interview waivers.

Recommendation: We recommend that USCIS implement the employment-based adjustment interview determination process described herein and further recommend USCIS determine future interview requirements after assessing the appropriate data to identify risk and complexity factors. This recurring analysis, in addition to existing benefit fraud assessments, will evaluate risk and consider changes in filing or fraud patterns and allow us to mitigate that risk and focus officer resources to cases and or populations that would provide the greatest value to USCIS.

Approve/date 3/13/2020 Disapprove/date_____

Modify_____ Needs discussion/date_____

Attachment: Appendix 1

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APPENDIX 1

Table 1: General Decision Data

Preference Category		Approval Rates		Denial Rates			Total # of Cases	
		Interview Waived FY2016	Interview Conducted FY 2018	Interview Waived FY2016	Interview Conducted FY2018	Difference from IW to IC	Interview Waived FY2016	Interview Conducted FY2018
EB1	China	99.5%	95.8%	0.5%	4.2%	+3.7%	5,722	1,764
	India	99.6%	98.5%	0.4%	1.5%	+1.1%	10,505	2,752
	Mexico	98.9%	96.4%	1.1%	3.6%	+2.5%	1,625	506
	Rest of World (ROW)	99.3%	96.7%	0.7%	3.3%	+2.6%	21,903	8,801
	ALL	99.4%	97%	0.6%	3%	+2.4%	39,755	13,823
EB2	China	99.2%	98%	0.8%	2%	+1.2%	2,865	763
	India	99%	96.7%	1%	3.3%	+2.3%	4,263	1,020
	Mexico	99.7%	98.4%	0.3%	1.6%	+1.3%	1,392	879
	ROW	99.4%	98.6%	0.6%	1.4%	+0.8%	26,785	17,985
	ALL	99.3%	98.5%	0.7%	1.5%	+0.8%	35,305	20,647
EB3	China	99.7%	99.2%	0.3%	0.8%	+0.5%	1,850	2,278
	India	97.4%	95.9%	2.6%	4.1%	+1.5%	4,305	884
	Mexico	99.6%	96.7%	0.4%	3.3%	+2.9%	1,297	1,202
	ROW	99%	97.1%	1%	2.9%	+1.9%	16,055	12,556
	ALL	98.8%	97.3%	1.2%	2.7%	+1.5%	23,507	16,920
TOTAL		99.2%	97.6%	0.8%	2.4%	+1.6%	98,567	51,390

Table 2: General Referral Data

Preference Category		Fraud Referral Rates			Total # of Cases	
		Interview Waived FY2016	Interview Conducted FY2018	Difference from IW to IC	Interview Waived FY2016	Interview Conducted FY2018
EB1	China	1.0%	3.9%	+2.9%	5,722	1,764
	India	0.3%	0.3%	0	10,505	2,752
	Mexico	0.2%	1.4%	+1.2%	1,625	506
	ROW	0.2%	0.4%	+0.2%	21,903	8,801
	ALL	0.3%	0.9%	+0.6%	39,755	13,823
EB2	China	0.5%	5.0%	+4.5%	2,865	763
	India	1.7%	1.4%	-0.3%	4,263	1,020
	Mexico	0%	0.2%	+0.2%	1,392	879
	ROW	0.6%	1.0%	+0.4%	26,785	17,985
	ALL	0.7%	1.2%	+0.5%	35,305	20,647
EB3	China	0.3%	0.7%	+0.4%	1,850	2,278
	India	1.8%	2.3%	+0.5%	4,305	884
	Mexico	0.6%	0.5%	-0.1%	1,297	1,202
	ROW	0.8%	2.8%	+2.0%	16,055	12,556
	ALL	0.9%	2.3%	+1.4%	23,507	16,920
TOTAL		0.6%	1.5%	+0.9%	98,567	51,390

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Table 3: Referred/Denied Interview-Waived - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	0	0	0	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	1 (4%)	3 (12%)	0	0	0
	ALL	1 (4%)	3 (12%)	0	0	0
EB2	China	0	0	0	0	0
	India	2 (8%)	1 (4%)	0	0	2
	Mexico	0	0	0	0	0
	ROW	2 (8%)	1 (4%)	0	0	0
	ALL	4 (16%)	2 (8%)	0	0	2 (8%)
EB3	China	0	0	0	1 (4%)	0
	India	1 (4%)	2 (8%)	0	0	0
	Mexico	0	0	0	0	0
	ROW	3 (12%)	2 (8%)	2 (8%)	0	2 (8%)
	ALL	4 (16%)	4 (16%)	2 (8%)	1 (4%)	2 (8%)
TOTAL		9 (36%)	9 (36%)	2 (8%)	1 (4%)	4 (16%)

Table 4: Referred/Denied Interview-Required - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	1 (5%)	2 (10%)	0	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	0	1 (5%)	0	0	0
	ALL	1 (5%)	3 (15%)	0	0	0
EB2	China	0	0	1 (5%)	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	3 (15%)	2 (10%)	1 (5%)	0	0
	ALL	3 (15%)	2 (10%)	2 (10%)	0	0
EB3	China	0	0	0	0	0
	India	0	0	0	0	0
	Mexico	2 (10%)	0	0	0	0
	ROW	4 (20%)	1 (5%)	0	0	2 (10%)
	ALL	6 (30%)	1 (5%)	0	0	2 (10%)
TOTAL		10 (50%)	6 (30%)	2 (10%)	0	2 (10%)

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Table 5: Referred/Denied Interview-Waived - Basis for Denial

Preference Category		Denial Reasons					
		Abandon	Withdraw	Fraud/ Misrep	I-140 Denied/ Revoked	Inadmiss/ Ineligible	Deriv – Principal Denied
EB1	China	0	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	0	0	0	3 (12%)	1 (4%)	0
	ALL	0	0	0	3 (12%)	1 (4%)	0
EB2	China	0	0	0	0	0	0
	India	2 (8%)	0	0	0	1 (4%)	2 (8%)
	Mexico	0	0	0	0	0	0
	ROW	0	1 (4%)	0	0	0	0
	ALL	2 (8%)	1 (4%)	0	0	1 (4%)	2 (8%)
EB3	China	0	0	0	0	0	1 (4%)
	India	2 (8%)	0	0	1 (4%)	0	0
	Mexico	0	0	0	0	0	0
	ROW	1 (4%)	2 (8%)	1 (4%)	1 (4%)	2 (8%)	4 (16%)
	ALL	3 (12%)	2 (8%)	1 (4%)	2 (8%)	2 (8%)	5 (20%)
TOTAL		5 (20%)	3 (8%)	1 (4%)	5 (20%)	4 (16%)	7 (28%)

Table 6: Referred/Denied Interview-Required – Basis for Denial

Preference Category		Denial Reasons					
		Abandon	Withdraw	Fraud/ Misrep	I-140 Denied/ Revoked	Inadmiss/ Ineligible	Deriv – Principal Denied
EB1	China	3 (15%)	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	0	1 (5%)	0	0	0	0
	ALL	3 (15%)	1 (5%)	0	0	0	0
EB2	China	0	0	0	0	0	1 (5%)
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	2 (10%)	1 (5%)	1 (5%)	0	1 (5%)	1 (5%)
	ALL	2 (10%)	1 (5%)	1 (5%)	0	1 (5%)	2 (10%)
EB3	China	0	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	2 (10%)	0	0	0
	ROW	5 (25%)	1 (5%)	1 (5%)	0	0	0
	ALL	5 (25%)	1 (5%)	3 (15%)	0	0	0
TOTAL		10 (50%)	3 (15%)	4 (20%)	0	1 (5%)	2 (10%)

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Table 7: Not Referred/Denied Interview-Waived - Denial Reasons

Preference Category		Denial Reasons					
		Abandon	With-drawal	Admin Close/ Term/ Other*	I-140 Denied/ Revoked	Inadmiss/ Ineligibile	Deriv – Principal Denied
EB1	China	0	0	1 (0.9%)	1 (0.9%)	0	3 (2.7%)
	India	0	0	3 (2.7%)	0	0	1 (0.9%)
	Mexico	0	0	1 (0.9%)	1 (0.9%)	0	3 (2.7%)
	ROW	1 (0.9%)	6 (5.4%)	2 (1.8%)	6 (5.4%)	1 (0.9%)	4 (3.6%)
	ALL	1 (0.9%)	6 (5.4%)	7 (6.3%)	8 (7.1%)	1 (0.9%)	11 (9.8%)
EB2	China	0	1 (0.9%)	3 (2.7%)	0	1 (0.9%)	0
	India	0	1 (0.9%)	6 (5.4%)	0	0	1 (0.9%)
	Mexico	0	0	0	0	0	0
	ROW	2 (1.8%)	1 (0.9%)	10 (8.9%)	5 (4.5%)	3 (2.7%)	5 (4.5%)
	ALL	2 (1.8%)	3 (2.7%)	19 (17.0%)	5 (4.5%)	4 (3.6%)	6 (5.4%)
EB3	China	0	0	0	0	0	0
	India	8 (7.1%)	3 (2.7%)	6 (5.4%)	0	1 (0.9%)	0
	Mexico	0	0	0	0	1 (0.9%)	0
	ROW	2 (1.8%)	3 (2.7%)	3 (2.7%)	2 (1.8%)	3 (2.7%)	7 (6.3%)
	ALL	10 (8.9%)	6 (5.4%)	9 (8.0%)	2 (1.8%)	5 (4.5%)	7 (6.3%)
TOTAL		13 (11.6%)	15 (13.4%)	35 (31.3%)	15 (13.4%)	10 (8.9%)	24 (21.4%)

* NOTE: This includes 21 cases denied in error and immediately corrected, and 14 cases where LPR status was obtained by other means.

Table 8: Not Referred Interview-Required - Denial Reasons

Preference Category		Denial Reasons					
		Abandon	With-drawal	Admin Close/ Term/ Other**	I-140 Denied/ Revoked	Inadmiss/ Ineligibile	Deriv – Principal Denied
EB1	China	1 (0.7%)	2 (1.4%)	1 (0.7%)	0	1 (0.7%)	2 (1.4%)
	India	0	2 (1.4%)	0	0	0	0
	Mexico	0	1 (0.7%)	0	0	0	0
	ROW	5 (3.5%)	24 (16.7%)	2 (1.4%)	1 (0.7%)	1 (0.7%)	5 (3.5%)
	ALL	6 (4.2%)	29 (20.1%)	3 (2.1%)	1 (0.7%)	2 (1.4%)	7 (4.9%)
EB2	China	0	1 (0.7%)	0	0	0	1 (0.7%)
	India	1 (0.7%)	2 (1.4%)	0	0	2 (1.4%)	0
	Mexico	0	1 (0.7%)	0	0	3 (2.1%)	0
	ROW	16 (11.1%)	16 (11.1%)	5 (3.5%)	2 (1.4%)	1 (0.7%)	0
	ALL	17 (11.8%)	20 (13.9%)	5 (3.5%)	2 (1.4%)	6 (4.2%)	1 (0.7%)
EB3	China	0	2 (1.4%)	0	0	0	2 (1.4%)
	India	0	1 (0.7%)	1 (0.7%)	0	0	0
	Mexico	0	1 (0.7%)	1 (0.7%)	0	0	1 (0.7%)
	ROW	7 (4.9%)	11 (7.6%)	3 (2.1%)	0	8 (5.6%)	7 (4.9%)
	ALL	7 (4.9%)	15 (10.4%)	5 (3.5%)	0	8 (5.6%)	10 (6.9%)
TOTAL		30 (20.8%)	64 (44.4%)	13 (9.0%)	3 (2.1%)	16 (11.1%)	18 (12.5%)

**NOTE: This includes 11 cases where the applicant obtained LPR status by other means, 1 case where the applicant had died, and 1 case where the EOIR had jurisdiction.

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Table 9: Referred/Approved Interview-Waived - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	1 (0.6%)	5 (3.2%)	11 (7.0%)	1 (0.6%)	0
	India	0	1 (0.6%)	0	2 (1.3%)	1 (0.6%)
	Mexico	0	2 (1.3%)	0	0	0
	ROW	1 (0.6%)	4 (2.5%)	0	0	1 (0.6%)
	ALL	2 (1.3%)	12 (7.6%)	11 (7.0%)	3 (1.9%)	2 (1.3%)
EB2	China	1 (0.6%)	0	2 (1.3%)	0	0
	India	2 (1.3%)	5 (3.2%)	4 (2.5%)	0	1 (0.6%)
	Mexico	0	0	0	0	0
	ROW	1 (0.6%)	21 (13.3%)	14 (8.9%)	14 (8.9%)	0
	ALL	4 (2.5%)	26 (16.5%)	20 (12.7%)	14 (8.9%)	1 (0.6%)
EB3	China	1 (0.6%)	0	1 (0.6%)	0	0
	India	4 (2.5%)	11 (7.0%)	2 (1.3%)	2 (1.3%)	12 (7.6%)
	Mexico	1 (0.6%)	0	0	0	0
	ROW	5 (3.2%)	11 (7.0%)	3 (1.9%)	2 (1.3%)	8 (5.1%)
	ALL	11 (7.0%)	22 (13.9%)	6 (3.8%)	4 (2.5%)	20 (12.7%)
TOTAL		17 (10.8%)	60 (38.0%)	37 (23.4%)	21 (13.3%)	23 (14.6%)

Table 10: Referred/Approved Interview-Required - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	11 (7.0%)	0	2 (1.3%)	2 (1.3%)	0
	India	0	0	0	0	0
	Mexico	0	0	1 (0.6%)	0	0
	ROW	0	0	7 (4.4%)	1 (0.6%)	0
	ALL	11 (7.0%)	0	10 (6.3%)	3 (1.9%)	0
EB2	China	7 (4.4%)	0	1 (0.6%)	0	1 (0.6%)
	India	0	1 (0.6%)	1 (0.6%)	0	1 (0.6%)
	Mexico	1 (0.6%)	0	0	0	0
	ROW	7 (4.4%)	1 (0.6%)	19 (12.0%)	8 (5.1%)	4 (2.5%)
	ALL	15 (9.5%)	2 (1.3%)	21 (13.3%)	8 (5.1%)	6 (3.8%)
EB3	China	2 (1.3%)	0	1 (0.6%)	0	0
	India	2 (1.3%)	3 (1.9%)	2 (1.3%)	0	0
	Mexico	0	0	0	0	0
	ROW	37 (23.4%)	5 (3.2%)	3 (1.9%)	11 (7.0%)	16 (10.1%)
	ALL	41 (25.9%)	8 (5.1%)	6 (3.8%)	11 (7.0%)	16 (10.1%)
TOTAL		67 (42.4%)	10 (6.3%)	37 (23.4%)	22 (13.9%)	22 (13.9%)

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APPENDIX 1

Table 1: General Decision Data

Preference Category		Approval Rates		Denial Rates			Total # of Cases	
		Interview Waived FY2016	Interview Conducted FY 2018	Interview Waived FY2016	Interview Conducted FY2018	Difference from IW to IC	Interview Waived FY2016	Interview Conducted FY2018
EB1	China	99.5%	95.8%	0.5%	4.2%	+3.7%	5,722	1,764
	India	99.6%	98.5%	0.4%	1.5%	+1.1%	10,505	2,752
	Mexico	98.9%	96.4%	1.1%	3.6%	+2.5%	1,625	506
	Rest of World (ROW)	99.3%	96.7%	0.7%	3.3%	+2.6%	21,903	8,801
	ALL	99.4%	97%	0.6%	3%	+2.4%	39,755	13,823
EB2	China	99.2%	98%	0.8%	2%	+1.2%	2,865	763
	India	99%	96.7%	1%	3.3%	+2.3%	4,263	1,020
	Mexico	99.7%	98.4%	0.3%	1.6%	+1.3%	1,392	879
	ROW	99.4%	98.6%	0.6%	1.4%	+0.8%	26,785	17,985
	ALL	99.3%	98.5%	0.7%	1.5%	+0.8%	35,305	20,647
EB3	China	99.7%	99.2%	0.3%	0.8%	+0.5%	1,850	2,278
	India	97.4%	95.9%	2.6%	4.1%	+1.5%	4,305	884
	Mexico	99.6%	96.7%	0.4%	3.3%	+2.9%	1,297	1,202
	ROW	99%	97.1%	1%	2.9%	+1.9%	16,055	12,556
	ALL	98.8%	97.3%	1.2%	2.7%	+1.5%	23,507	16,920
TOTAL		99.2%	97.6%	0.8%	2.4%	+1.6%	98,567	51,390

Table 2: General Referral Data

Preference Category		Fraud Referral Rates			Total # of Cases	
		Interview Waived FY2016	Interview Conducted FY2018	Difference from IW to IC	Interview Waived FY2016	Interview Conducted FY2018
EB1	China	1.0%	3.9%	+2.9%	5,722	1,764
	India	0.3%	0.3%	0	10,505	2,752
	Mexico	0.2%	1.4%	+1.2%	1,625	506
	ROW	0.2%	0.4%	+0.2%	21,903	8,801
	ALL	0.3%	0.9%	+0.6%	39,755	13,823
EB2	China	0.5%	5.0%	+4.5%	2,865	763
	India	1.7%	1.4%	-0.3%	4,263	1,020
	Mexico	0%	0.2%	+0.2%	1,392	879
	ROW	0.6%	1.0%	+0.4%	26,785	17,985
	ALL	0.7%	1.2%	+0.5%	35,305	20,647
EB3	China	0.3%	0.7%	+0.4%	1,850	2,278
	India	1.8%	2.3%	+0.5%	4,305	884
	Mexico	0.6%	0.5%	-0.1%	1,297	1,202
	ROW	0.8%	2.8%	+2.0%	16,055	12,556
	ALL	0.9%	2.3%	+1.4%	23,507	16,920
TOTAL		0.6%	1.5%	+0.9%	98,567	51,390

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Table 3: Referred/Denied Interview-Waived - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	0	0	0	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	1 (4%)	3 (12%)	0	0	0
	ALL	1 (4%)	3 (12%)	0	0	0
EB2	China	0	0	0	0	0
	India	2 (8%)	1 (4%)	0	0	2
	Mexico	0	0	0	0	0
	ROW	2 (8%)	1 (4%)	0	0	0
	ALL	4 (16%)	2 (8%)	0	0	2 (8%)
EB3	China	0	0	0	1 (4%)	0
	India	1 (4%)	2 (8%)	0	0	0
	Mexico	0	0	0	0	0
	ROW	3 (12%)	2 (8%)	2 (8%)	0	2 (8%)
	ALL	4 (16%)	4 (16%)	2 (8%)	1 (4%)	2 (8%)
TOTAL		9 (36%)	9 (36%)	2 (8%)	1 (4%)	4 (16%)

Table 4: Referred/Denied Interview-Required - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	1 (5%)	2 (10%)	0	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	0	1 (5%)	0	0	0
	ALL	1 (5%)	3 (15%)	0	0	0
EB2	China	0	0	1 (5%)	0	0
	India	0	0	0	0	0
	Mexico	0	0	0	0	0
	ROW	3 (15%)	2 (10%)	1 (5%)	0	0
	ALL	3 (15%)	2 (10%)	2 (10%)	0	0
EB3	China	0	0	0	0	0
	India	0	0	0	0	0
	Mexico	2 (10%)	0	0	0	0
	ROW	4 (20%)	1 (5%)	0	0	2 (10%)
	ALL	6 (30%)	1 (5%)	0	0	2 (10%)
TOTAL		10 (50%)	6 (30%)	2 (10%)	0	2 (10%)

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Table 5: Referred/Denied Interview-Waived - Basis for Denial

Preference Category		Denial Reasons					
		Abandon	Withdraw	Fraud/ Misrep	I-140 Denied/ Revoked	Inadmiss/ Ineligible	Deriv – Principal Denied
EB1	China	0	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	0	0	0	3 (12%)	1 (4%)	0
	ALL	0	0	0	3 (12%)	1 (4%)	0
EB2	China	0	0	0	0	0	0
	India	2 (8%)	0	0	0	1 (4%)	2 (8%)
	Mexico	0	0	0	0	0	0
	ROW	0	1 (4%)	0	0	0	0
	ALL	2 (8%)	1 (4%)	0	0	1 (4%)	2 (8%)
EB3	China	0	0	0	0	0	1 (4%)
	India	2 (8%)	0	0	1 (4%)	0	0
	Mexico	0	0	0	0	0	0
	ROW	1 (4%)	2 (8%)	1 (4%)	1 (4%)	2 (8%)	4 (16%)
	ALL	3 (12%)	2 (8%)	1 (4%)	2 (8%)	2 (8%)	5 (20%)
TOTAL		5 (20%)	3 (8%)	1 (4%)	5 (20%)	4 (16%)	7 (28%)

Table 6: Referred/Denied Interview-Required – Basis for Denial

Preference Category		Denial Reasons					
		Abandon	Withdraw	Fraud/ Misrep	I-140 Denied/ Revoked	Inadmiss/ Ineligible	Deriv – Principal Denied
EB1	China	3 (15%)	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	0	1 (5%)	0	0	0	0
	ALL	3 (15%)	1 (5%)	0	0	0	0
EB2	China	0	0	0	0	0	1 (5%)
	India	0	0	0	0	0	0
	Mexico	0	0	0	0	0	0
	ROW	2 (10%)	1 (5%)	1 (5%)	0	1 (5%)	1 (5%)
	ALL	2 (10%)	1 (5%)	1 (5%)	0	1 (5%)	2 (10%)
EB3	China	0	0	0	0	0	0
	India	0	0	0	0	0	0
	Mexico	0	0	2 (10%)	0	0	0
	ROW	5 (25%)	1 (5%)	1 (5%)	0	0	0
	ALL	5 (25%)	1 (5%)	3 (15%)	0	0	0
TOTAL		10 (50%)	3 (15%)	4 (20%)	0	1 (5%)	2 (10%)

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Table 7: Not Referred/Denied Interview-Waived - Denial Reasons

Preference Category		Denial Reasons					
		Abandon	With-drawal	Admin Close/ Term/ Other*	I-140 Denied/ Revoked	Inadmiss/ Ineligibile	Deriv – Principal Denied
EB1	China	0	0	1 (0.9%)	1 (0.9%)	0	3 (2.7%)
	India	0	0	3 (2.7%)	0	0	1 (0.9%)
	Mexico	0	0	1 (0.9%)	1 (0.9%)	0	3 (2.7%)
	ROW	1 (0.9%)	6 (5.4%)	2 (1.8%)	6 (5.4%)	1 (0.9%)	4 (3.6%)
	ALL	1 (0.9%)	6 (5.4%)	7 (6.3%)	8 (7.1%)	1 (0.9%)	11 (9.8%)
EB2	China	0	1 (0.9%)	3 (2.7%)	0	1 (0.9%)	0
	India	0	1 (0.9%)	6 (5.4%)	0	0	1 (0.9%)
	Mexico	0	0	0	0	0	0
	ROW	2 (1.8%)	1 (0.9%)	10 (8.9%)	5 (4.5%)	3 (2.7%)	5 (4.5%)
	ALL	2 (1.8%)	3 (2.7%)	19 (17.0%)	5 (4.5%)	4 (3.6%)	6 (5.4%)
EB3	China	0	0	0	0	0	0
	India	8 (7.1%)	3 (2.7%)	6 (5.4%)	0	1 (0.9%)	0
	Mexico	0	0	0	0	1 (0.9%)	0
	ROW	2 (1.8%)	3 (2.7%)	3 (2.7%)	2 (1.8%)	3 (2.7%)	7 (6.3%)
	ALL	10 (8.9%)	6 (5.4%)	9 (8.0%)	2 (1.8%)	5 (4.5%)	7 (6.3%)
TOTAL		13 (11.6%)	15 (13.4%)	35 (31.3%)	15 (13.4%)	10 (8.9%)	24 (21.4%)

* NOTE: This includes 21 cases denied in error and immediately corrected, and 14 cases where LPR status was obtained by other means.

Table 8: Not Referred Interview-Required - Denial Reasons

Preference Category		Denial Reasons					
		Abandon	With-drawal	Admin Close/ Term/ Other**	I-140 Denied/ Revoked	Inadmiss/ Ineligibile	Deriv – Principal Denied
EB1	China	1 (0.7%)	2 (1.4%)	1 (0.7%)	0	1 (0.7%)	2 (1.4%)
	India	0	2 (1.4%)	0	0	0	0
	Mexico	0	1 (0.7%)	0	0	0	0
	ROW	5 (3.5%)	24 (16.7%)	2 (1.4%)	1 (0.7%)	1 (0.7%)	5 (3.5%)
	ALL	6 (4.2%)	29 (20.1%)	3 (2.1%)	1 (0.7%)	2 (1.4%)	7 (4.9%)
EB2	China	0	1 (0.7%)	0	0	0	1 (0.7%)
	India	1 (0.7%)	2 (1.4%)	0	0	2 (1.4%)	0
	Mexico	0	1 (0.7%)	0	0	3 (2.1%)	0
	ROW	16 (11.1%)	16 (11.1%)	5 (3.5%)	2 (1.4%)	1 (0.7%)	0
	ALL	17 (11.8%)	20 (13.9%)	5 (3.5%)	2 (1.4%)	6 (4.2%)	1 (0.7%)
EB3	China	0	2 (1.4%)	0	0	0	2 (1.4%)
	India	0	1 (0.7%)	1 (0.7%)	0	0	0
	Mexico	0	1 (0.7%)	1 (0.7%)	0	0	1 (0.7%)
	ROW	7 (4.9%)	11 (7.6%)	3 (2.1%)	0	8 (5.6%)	7 (4.9%)
	ALL	7 (4.9%)	15 (10.4%)	5 (3.5%)	0	8 (5.6%)	10 (6.9%)
TOTAL		30 (20.8%)	64 (44.4%)	13 (9.0%)	3 (2.1%)	16 (11.1%)	18 (12.5%)

**NOTE: This includes 11 cases where the applicant obtained LPR status by other means, 1 case where the applicant had died, and 1 case where the EOIR had jurisdiction.

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Table 9: Referred/Approved Interview-Waived - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	1 (0.6%)	5 (3.2%)	11 (7.0%)	1 (0.6%)	0
	India	0	1 (0.6%)	0	2 (1.3%)	1 (0.6%)
	Mexico	0	2 (1.3%)	0	0	0
	ROW	1 (0.6%)	4 (2.5%)	0	0	1 (0.6%)
	ALL	2 (1.3%)	12 (7.6%)	11 (7.0%)	3 (1.9%)	2 (1.3%)
EB2	China	1 (0.6%)	0	2 (1.3%)	0	0
	India	2 (1.3%)	5 (3.2%)	4 (2.5%)	0	1 (0.6%)
	Mexico	0	0	0	0	0
	ROW	1 (0.6%)	21 (13.3%)	14 (8.9%)	14 (8.9%)	0
	ALL	4 (2.5%)	26 (16.5%)	20 (12.7%)	14 (8.9%)	1 (0.6%)
EB3	China	1 (0.6%)	0	1 (0.6%)	0	0
	India	4 (2.5%)	11 (7.0%)	2 (1.3%)	2 (1.3%)	12 (7.6%)
	Mexico	1 (0.6%)	0	0	0	0
	ROW	5 (3.2%)	11 (7.0%)	3 (1.9%)	2 (1.3%)	8 (5.1%)
	ALL	11 (7.0%)	22 (13.9%)	6 (3.8%)	4 (2.5%)	20 (12.7%)
TOTAL		17 (10.8%)	60 (38.0%)	37 (23.4%)	21 (13.3%)	23 (14.6%)

Table 10: Referred/Approved Interview-Required - Referral Reasons

Preference Category		Referral Reasons				
		Fraud Suspected with Applicant	Fraud Suspected with I-140 Petition	Criminal/ Background/ Security	Other	Derivative – Referred with Principal
EB1	China	11 (7.0%)	0	2 (1.3%)	2 (1.3%)	0
	India	0	0	0	0	0
	Mexico	0	0	1 (0.6%)	0	0
	ROW	0	0	7 (4.4%)	1 (0.6%)	0
	ALL	11 (7.0%)	0	10 (6.3%)	3 (1.9%)	0
EB2	China	7 (4.4%)	0	1 (0.6%)	0	1 (0.6%)
	India	0	1 (0.6%)	1 (0.6%)	0	1 (0.6%)
	Mexico	1 (0.6%)	0	0	0	0
	ROW	7 (4.4%)	1 (0.6%)	19 (12.0%)	8 (5.1%)	4 (2.5%)
	ALL	15 (9.5%)	2 (1.3%)	21 (13.3%)	8 (5.1%)	6 (3.8%)
EB3	China	2 (1.3%)	0	1 (0.6%)	0	0
	India	2 (1.3%)	3 (1.9%)	2 (1.3%)	0	0
	Mexico	0	0	0	0	0
	ROW	37 (23.4%)	5 (3.2%)	3 (1.9%)	11 (7.0%)	16 (10.1%)
	ALL	41 (25.9%)	8 (5.1%)	6 (3.8%)	11 (7.0%)	16 (10.1%)
TOTAL		67 (42.4%)	10 (6.3%)	37 (23.4%)	22 (13.9%)	22 (13.9%)

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 11, 2020

PM-602-0178

Policy Memorandum

SUBJECT: Temporary Policy Changes for Certain Foreign Medical Graduates During the COVID-19 National Emergency

Purpose

This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers in relation to H-1B foreign medical graduates who have received a waiver of the 2-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (INA) through the practice of medicine with or based on the recommendation of an Interested Government Agency (IGA)[1] or through the Conrad State 30 program[2] in response to the Public Health Emergency prompted by Coronavirus Disease 2019 (COVID-19). USCIS is issuing this PM to introduce temporary policy changes regarding the full-time work requirement for such foreign medical graduates and the provision of telehealth services by those foreign medical graduates in light of the evolving Public Health Emergency concerning the COVID-19 pandemic.

Authorities

- INA 212(e), 8 U.S.C. 1182(e) – 2-year foreign residence requirement.
- INA 214(l), 8 U.S.C. 1184(l) – Restrictions on waiver.
- Title 8 Code of Federal Regulations (CFR) 212.7(c)(9) – Waivers under Pub. L. 103-416 based on a request by a State Department of Public Health (or equivalent).
- 22 CFR 41.63 – Two-year home-country physical presence requirement.

Background

Certain J-1 exchange visitors are subject to a 2-year foreign residence requirement under INA 212(e), which requires them to return to their country of nationality or country of last residence for at least two years in the aggregate prior to being eligible to apply for an immigrant visa;

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[1] Currently, there are four agencies that have dedicated waiver programs for physicians: Department of Veterans Affairs, Department of Health and Human Services, the Appalachian Regional Commission, and the Delta Regional Authority. The agency must establish why a waiver is in the public interest.

[2] A state agency of public health or its equivalent may sponsor a physician through the Conrad 30 Waiver program to address the shortage of qualified doctors in medically underserved areas.

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DHS-20-2156-A-002074

adjustment of status; or a nonimmigrant visa, such as H-1B (with limited exceptions).[3] However, INA 214(l) contains provisions authorizing waivers of the 2-year foreign residence requirement for certain aliens, including foreign medical graduates who agree to work full-time (at least 40 hours per week) in H-1B classification for not less than three years in a shortage area designated by the U.S. Department of Health and Human Services (HHS) with a recommendation from an IGA or state agency of public health or its equivalent, or with the Department of Veterans Affairs (VA).[4]

On January 31, 2020, the Secretary of HHS declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19 (Public Health Emergency).[5] On March 13, 2020, the President of the United States declared a National Emergency concerning the COVID-19 outbreak to control the spread of the virus in the United States.[6] On March 19, 2020, the Department of Homeland Security (DHS) identified occupations in healthcare and public health as essential critical infrastructure workers to assist state and local jurisdictions and the private sector while responding to COVID-19.

Policy

1. Assessment of Full Time Work Requirement During COVID-19 Public Health Emergency

Foreign medical graduates seeking a waiver of the 2-year foreign residence requirement under INA 214(l)(1) by practicing medicine for not less than 3 years in an HHS-designated shortage area are required to agree to work full-time in H-1B classification. The same is true for foreign medical graduates employed by the U.S. Department of Veterans Affairs (VA) who are not required to practice medicine in an HHS-designated shortage area.[7] The foreign medical graduate will work in H-1B classification, and the contract must state that they will be working full-time, which is defined as not less than 40 hours per week.[8]

A failure to fulfill the terms of the contract with the health facility or health care organization named in the waiver application will generally result in the re-imposition of the 2-year home residence requirement.[9]

In order to address situations in which an H-1B foreign medical graduate is temporarily unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic during the declared Public Health Emergency period, USCIS officers will not consider such a failure to work full-time to be a failure to fulfill the terms of the contract under INA 214(l)(2)(B), as a matter of policy. This is a limited flexibility based on the authorities cited in

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[3] See INA 212(e). See INA 248.
[4] See INA 214(l). See also 8 CFR 212.7(c)(9).
[5] HHS, *Determination of Public Health Emergency*, 85 FR 7316 (Feb. 7, 2020).
[6] Proclamation 9994 of March 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak*, 85 FR 15337 (Mar. 18, 2020).
[7] See INA 214(l)(C) and (D).
[8] See INA 214(l)(1)(C) and (D). See also 22 CFR 41.63(c)(4)(i) and (e)iii).
[9] See INA 214(l)(2)(B). See also 8 CFR 212.7(c)(9)(iv).

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this memorandum and only relates to the foreign medical graduate's eligibility for future immigration benefits that would be affected by the re-imposition of the 2-year home residence requirement as the result of a contract violation. It does not affect a petitioning employer's responsibilities under the statutes and regulations relating to H-1B nonimmigrants.

2. Telehealth Services

The INA, as well as DHS and Department of State (DOS) regulations, are silent as to whether Conrad State 30 or IGA foreign medical graduates may provide telehealth services[10] to meet their service requirement. Given this silence, USCIS and DOS have decided to interpret the authorities cited herein as providing flexibility to these foreign medical graduates during the Public Health Emergency. Specifically, USCIS will allow the following:

For those foreign medical graduates currently employed by an IGA or through the Conrad State 30 program, USCIS interprets current regulations to allow those physicians to provide telehealth services during the Public Health Emergency. Those foreign medical graduates, if not working for the VA, must still be providing medical services through their contracting facility located in an HHS-designated shortage area, or through their contracting facility that serves patients who reside in such a designated area (FLEX 10). In no instance should the foreign medical graduate, other than a graduate employed by the VA, provide telehealth services to patients outside of the state of their contracting facility. Also, USCIS will not interpret the provision of such telehealth services to be a failure to fulfill the contract for the purposes of INA 214(l)(2)(B).

USCIS notes that if an employer offers foreign medical graduates currently employed by an IGA or through the Conrad State 30 program the flexibility to telework from their home, it must offer those same flexibilities to its U.S. workers similarly employed.[11]

Effective Date

Provisions relating to the full-time work requirement will apply to any lapse in full-time employment related to COVID-19 that occurred from the beginning of the Public Health Emergency on January 27, 2020, through the end of the Public Health Emergency.

Telehealth services provisions will be effective from the publication date of this policy memorandum through to the end of the Public Health Emergency.

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[10] The Health Resources and Services Administration (HRSA) defines telehealth as "the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include video conferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications." See HRSA, Telehealth Programs, https://www.hrsa.gov/rural-health/telehealth (last visited Apr. 16, 2020).

[11] See U.S. Department of Labor, "COVID-19 Frequently Asked Questions, Round 3" (Apr. 9, 2020), *available at* https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%203.pdf (last visited Apr. 10, 2020).

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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties but it does not remove their discretion in making adjudicatory decisions. It 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 regarding this PM, they should direct them through their appropriate chains of command to the Office of Policy and Strategy.

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U.S. Citizenship and Immigration Services

JOINT WRITTEN TESTIMONY

OF

Don Neufeld
Associate Director, Service Center Operations Directorate
U.S. Citizenship and Immigration Services

Michael Valverde
Deputy Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services

and

Michael Hoefer
Chief, Office of Performance and Quality, Management Directorate
U.S. Citizenship and Immigration Services

FOR A HEARING ON
POLICY CHANGES AND PROCESSING DELAYS
AT USCIS

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP

July 16, 2019

AMERICAN OVERSIGHT

Chairwoman Lofgren, Ranking Member Buck, Chairman Nadler, and Ranking Member Collins, we are pleased to be here today to represent U.S. Citizenship and Immigration Services (USCIS) and discuss the work of our agency. We represent three of USCIS' seven directorates. Don Neufeld serves as the Associate Director for Service Center Operations, Michael Valverde serves as the Deputy Associate Director for Field Operations, and Michael Hoefer serves as the Chief of the Office of Performance and Quality within the Management Directorate. All of us have been with USCIS since it was created in 2003, and combined we represent more than eighty-five years of immigration experience at USCIS and its predecessor—the Immigration and Naturalization Service.

USCIS administers our nation's lawful immigration system. The agency's mission is to safeguard the integrity and promise of that system by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

We at USCIS recognize that while the individual applicants and petitioners are most directly affected by backlogs, so too are U.S. citizen families and employers. Across our agency, we work continuously to improve the quality, integrity, and efficiency of the work we do. When possible, we have sought to realize process and organizational efficiencies, adopt technological solutions, and standardize and simplify guidance. We recognize and anticipate patterns and trends in immigration application and petition filing volumes. We allocate resources and adjust processes to account for them. We recognize fee increases, presidential elections, and humanitarian crises can increase or decrease immigration applications and petitions. We also know process changes or technological improvements can have short-term negative effects on efficiency and cause processing delays. As we look forward to each new fiscal year, we apply what we have learned, anticipate new or unusual demands, and establish plans to accomplish our anticipated workloads. That said, unanticipated events and impacts can and do occur so we cannot perfectly forecast future years' demand.

Today in our testimony, we will discuss factors that traditionally drive demand for our services, and our responses to them. We will also recognize the factors that we believe have driven our current backlog and processing delays. Lastly, we discuss actions we are taking to address the backlog and increase efficiency.

There has been an extraordinary and growing demand for our services in recent years, and the number of adjudications that we completed increased between fiscal year (FY) 2017 and 2018. In FY 2018, we adjudicated more than 8 million applications and petitions, up by 9 percent since FY 2017, and 30 percent over the past five fiscal years. In FY 2018, we completed the most naturalizations since FY 2013, a 5-year high in new oaths of citizenship.

Despite these efforts, however, the volume of cases pending beyond our targeted processing goals ("backlog") has steadily been growing and stood at 2.4 million cases at the end of FY 2018, accounting for 43 percent of the agency's total pending inventory. Although many factors relating to an individual's case can affect processing times, the most significant drivers of the current backlog include: receipt increases, especially during the presidential election and before the implementation of a final fee rule in 2016; statutory changes; new programs and policies;

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court-ordered continuation of accepting renewal requests for Deferred Action for Childhood Arrivals (DACA); added security requirements; and insufficient staffing levels and facilities.

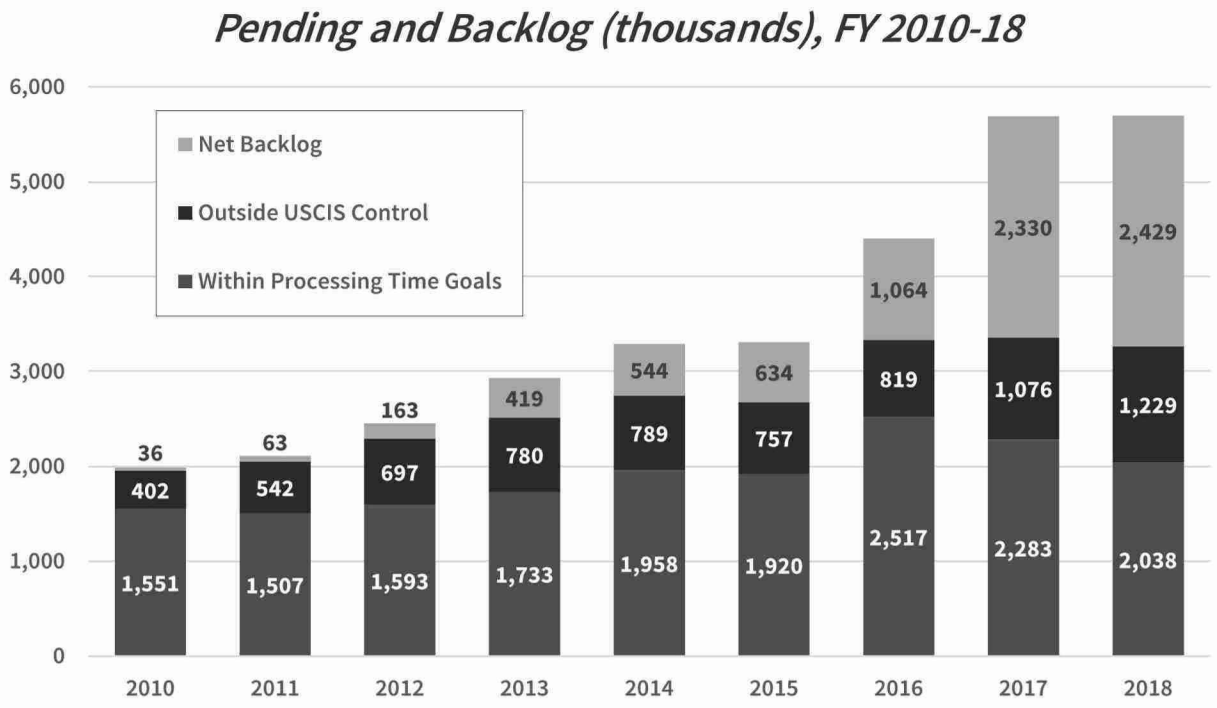
In FY 2018, our backlog did not grow as much as in previous fiscal years due to operational reforms and receipts decreasing. As part of our agency's commitment to efficiently and fairly adjudicating all requests, we have launched a series of initiatives to reduce the net backlog. We have already begun to implement meaningful reforms, hire additional staff, and expand facilities to ensure our ability to keep pace with extraordinary demand for services. We are also working to eliminate the backlog and improve processing by focusing on efficiency. We are transitioning more pre-, post-, and non-adjudicative work to non-adjudicators, allowing adjudicators to focus solely on functions requiring their expertise. We are centralizing the delivery of information services through the USCIS Contact Center to allow applicants to receive case status updates more quickly, without having to visit a USCIS office. We are also continuing to leverage electronic processing and automation to modernize the agency and increase efficiency. Furthermore, we have reintroduced performance metrics to ensure timelier processing and update processing time goals to reflect operational realities, and we continue to hire additional staff.

BACKGROUND:

Backlog Definition:
The backlog is the number of pending cases that have been in process longer than the processing goals set by USCIS. Applications and petitions that are not ready for adjudication (due to visa number unavailability) or are outside of USCIS control (pending Requests for Evidence or re-exam for naturalization) are not counted as part of the net backlog. At the close of FY 2018, the USCIS net backlog was 2.4 million cases, accounting for 43 percent of total pending inventory of 5.7 million. The chart below shows the breakdown of the net backlog, cases outside of USCIS control, and cases within processing time goals by fiscal year.

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Pending and Backlog (thousands), FY 2010-18



Historical Perspective:
Backlogs of immigration benefits are not a new phenomenon. Throughout the agency's history, multiple factors have driven the backlog, notably increases in applications. New laws and policies may expand benefit eligibility criteria, causing an uptick in new receipts. Events such as the 9/11 terrorist attacks ushered in a new era of greater security and background checks. Humanitarian crises, political instability, and armed conflicts can cause unexpected migratory flows or a spike in workload as individuals seek refugee status, asylum, or Temporary Protected Status. Immigrant visa availability, as published in the Department of State's Visa Bulletin, ebbs and flows based on worldwide demand subject to congressionally-set limits. A pending increase in fees for immigration benefits, legislative or executive policy change, or presidential election can affect an individual's decision whether to apply for a benefit or naturalize. It is against this backdrop that we perform our work.

We have faced and addressed larger backlogs in the past. We had a backlog of 3.6 million receipts in 2003 after introducing new security measures following 9/11. Another contributing factor was growth in petitions for family members following the filing deadlines for the LIFE Act 245(i) adjustment in 2001. That law allowed individuals who were the beneficiary of a qualifying labor certification or immigrant visa petition but who had entered without inspection to apply for adjustment of status in the United States if they paid a $1,000 penalty. Congress appropriated funds to help combat the backlog, and we used the funds for term hires and overtime.

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Additionally, the number of adjudications is generally increasing over time. We approved or denied 7.3 million applications and petitions in FY 2016, 7.5 million in FY 2017, and 8 million in FY 2018. These totals exclude international operations and refugee decisions.

DRIVERS OF THE CURRENT BACKLOG:

Receipt increases: Historically, we have experienced increased receipts during years when we implemented a new fee structure, followed by reduced applications the following fiscal year. In an unanticipated change, filings did not decrease in FY 2017 after the implementation of new fees in December 2016 and the presidential election in November 2016. As a result, the increase in receipts, coupled with the other factors noted below, outpaced our capability to adjudicate and complete applications within processing time goals. The backlog grew by 70 percent from January 2016 to January 2017. In FY 2018, however, our backlog did not continue to grow at the same rate as the previous two fiscal years, in part because receipts declined.

Deferred Action for Childhood Arrivals: Since the inception of the Deferred Action for Childhood Arrivals (DACA) policy in June 2012 through February 2019, nearly 910,000 individuals have requested an initial grant of DACA and employment authorization, and there have been roughly 1,511,000 renewal requests. The backlog grew by 77 percent from January 2013 (290,000) to January 2014 (512,000), in part due to the diversion of USCIS resources to adjudicating DACA requests. The current Administration sought to rescind the DACA policy in September 2017, but the rescission has since been enjoined by several courts, pending final resolution of litigation.

New security requirements and policies: Enhanced vetting, such as additional interview requirements for multiple benefits, have increased workloads, required additional security checks, and impacted overall adjudication times.

Presidential election: As is typical with a presidential election year, naturalization applications increased in 2016, contributing to the backlog. Unlike recent past history, naturalization applications did not return to lower levels after the election.

Resources: We develop annual Staffing Allocation Models (SAMs) and forecast volumes for each form type to estimate its resource needs. Due to cost concerns, we could not authorize staffing at the levels recommended by the SAMs. Hiring lags are caused by the significant amount of time required to complete and post announcements, assess applicants, conduct interviews, complete background checks, and confirm an entrance on duty date. Furthermore, newly hired staff members are not fully productive until they have completed BASIC training and other on-the-job trainings, creating a lag in productivity.

Facilities: The existing USCIS-occupied facilities cannot accommodate a large number of additional staff, and it generally takes GSA from 18 to 36 months to deliver space that is ready to occupy.

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Quality workplace initiative: We changed the focus for employee evaluations to the quality of their work product and away from numerical case production metrics in FY 2014. This change appears to have affected processing times.

BACKLOG REDUCTION PLAN:

We have gradually increased our staffing to keep pace with the record number of immigration benefit requests we receive. Since FY 2009, we have almost doubled authorized staffing, from 10,695 to 20,390 (a 91 percent increase). In FY 2019, we authorized an additional 737 employees (a 5 percent increase) in the operational directorates that conduct adjudications. This follows an increase of 908 authorized positions in FY 2018 (a 7 percent increase). Additionally, with the proposed rulemaking to adjust the Immigration Examinations Fee Account fee schedule in FY 2020, we plan to increase staff to reduce the backlog and keep up with the projected workloads.

We have opened three new field offices in the past three years and expanded more than 10 others in an effort to increase processing capacity for naturalization applications and other immigration benefits. We are also expanding our space in select locations to accommodate additional staff where possible.

Aside from adding resources, we are working to reduce the backlog by focusing on efficiency. USCIS aims to (1) transition more pre-, post-, and non-adjudicative work to non-adjudicators; (2) centralize the delivery of information services through the USCIS Contact Center; (3) reintroduce performance metrics; (4) leverage electronic processing and automation; (5) redefine some publicly stated processing time goals; and (6) hire additional staff.

1. Transition Pre-, Post- and Non-Adjudicative Work from Adjudicators to Non-Adjudicators

We are implementing changes to allow adjudicators to employ their skills on the aspects of case adjudication that require their level of expertise, not on other matters. These measures will improve processing times.

- **Work Redistribution.** We have transferred the handling of immigrant visa processing and returned Employment Authorization Documents and Green Cards from the adjudicative staff in the Service Center Operations Directorate to the Office of Intake and Document Production. This shift will allow adjudicative staff to adjudicate petitions and applications instead of perform administrative work.

- **Efficiency Pilot Projects.** We are testing 16 potential new processing methods in the field, including moving non-decisional tasks from the benefit interview into the check-in stage, so that interviewing officers can concentrate on the interview. We are also testing whether we can centralize certain tasks, such as performing pre-interview assessments of eligibility, risk, and complexity to inform scheduled interview lengths and provide suggested lines of inquiry, and centrally processing Notices to Appear for individuals who are out of status following denial of their benefit requests. We are shifting administrative tasks from the interview and placing them in the front and back end of the adjudication process. For example, removing

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tasks such as identity verification, the history and government exam, and review of interpreter forms and Forms G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) from the interview allows the interviewing officer to focus on the person applying for the benefit, increases the number of interviews a field office can schedule, and makes the adjudications process more efficient.

- **Address Changes.** We may move the change of address workload from the service centers to the External Affairs Directorate. In doing so, administrative work will be shifted from adjudicators to other staff allowing adjudicators to focus on adjudicating petitions and applications.

2. Centralize the Delivery of Information Services through the USCIS Contact Center

- **Enhance online and Contact Center self-help features**. We continue to enhance online self-help service through USCIS online accounts and expand Contact Center capabilities by implementing new technologies such as a speech-enabled integrated voice response system and artificial intelligence. These features will allow applicants to receive case status updates more quickly. Expanding the level of case status information provided to the public through USCIS online accounts, including proactive case status messages and more detailed responses tailored to the benefit type, will reduce follow-up calls and inquiries to operational components.

- **Complete the implementation of the Information Services Modernization initiative**. Known as "InfoMod," this initiative encourages applicants to use our online information resources and the USCIS Contact Center for general "how-to" information and case inquiries rather than through in-person appointments. Applicants who need essential documentary services, such as advance parole and Alien Documentation Identification and Telecommunication (ADIT/I-551) stamps, can request in-person appointments through the USCIS Contact Center. Staff who previously worked the information services counter are redirected to complete initial or refresher training and then assigned to conduct interviews or perform other adjudication activities. We are already realizing the benefits of this initiative. On average, the Contact Center can resolve 70 percent of inquiries without an in-office appointment. If an in-office appointment is required and the Contact Center schedules that appointment, the applicant waits an average of 4 to 5 days to attend that appointment versus around 9 days if they had self-scheduled that appointment.

3. Reintroduce Performance Metrics

- **Officer timeliness standards**. We strengthened adjudication performance standards for asylum officers to provide a metric-based method to emphasize the importance of timely case processing. For decisions that will be picked up in person, cases are considered timely when they are completed and submitted within five business days after the interview. When decisions are mailed out, cases are considered timely when completed and submitted within seven working days after the interview.

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- **Post-interview program goals**. We are designing new benchmarks to ensure applications are completed within two weeks of the affirmative asylum interview. The new IT case management system will include national tracking reports.

- **Set office production targets**. Rather than setting individual employee-level targets, the Field Operations Directorate introduced annual office-level completion targets in key workloads.

- **Placed performance metrics in employee performance evaluations**. Service Center Operations reintroduced performance metrics for immigration services officers.

4. Leverage Electronic Processing and Automation to Increase Efficiency

- **Implement eProcessing**. eProcessing is the USCIS initiative to quickly enable electronic intake, processing, and communication with applicants by integrating various systems and services. With eProcessing, we will be able to link data and handle information more efficiently than on physical paper, allowing resources to be repurposed to adjudication rather than paper management.

  We expend significant costs on producing and storing paper documentation. Asylum offices are exploring ways to adopt paperless processing. The 2018 deployment of a new IT case management system offered a new opportunity to eliminate existing paper documentation.

- **Expand streamlined processing**. We introduced streamlined processing of Form I-90, Application to Replace Permanent Resident Card, which increased efficiency by automating many tasks and freeing up officers to focus only on those adjudicative areas that required their attention. For example, areas of cases that required adjudicator review were flagged, such as an IDENT or TECS hit. By segmenting the tasks that required manual review, adjudicators did not need to spend time on other parts of the case and were able to complete more cases. This practice reduced the I-90 backlog by 75 percent at the end of FY 2018.

- **Automated assessments**. The affirmative asylum decision is supported by a case analysis summary prepared by asylum officers. Through new IT solutions, portions of the assessment may be prepopulated using case information stored within the recently modernized IT case management system. Eventually, this capability will contribute significantly to efficiency and quality of human decision-making across all directorates.

5. Redefine Processing Time Goals to Better Reflect True Cycle Times

- We are not meeting most of the target processing goals that were set after the 2007 fee rule. In March 2018, the DHS Office of Inspector General recommended that we redefine the processing goals for Form I-485, Application to Register Permanent Residence or Adjust Status, which are beyond the 120-day goal. Although revising the I-485 cycle time would not eliminate the past backlog, it would set more realistic timelines for the public on how long they should expect to wait, on average, for a Green Card.

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6. Hire Additional Staff

- To address the human and financial resource requirements associated with significantly reducing the backlog over the next five years, we plan to initiate a rulemaking to adjust the Immigration Examinations Fee Account fee schedule in late FY 2020. We expect that a fee adjustment will enable the agency to fund additional positions in a phased approach, starting in FY 2021. By modeling a 6-year expanded time horizon, we can identify the required staff earlier, which in turn allows us to start hiring earlier so that we can fill positions by the time they are needed to achieve the completion targets contained in the backlog model. It will also allow us to provide the needed space to accommodate the increased staff to avoid a delay in onboarding.

Additional Steps for Increasing Efficiency and Reducing the Backlog

Beyond the five steps outlined above, we are using several other tactics to increase efficiency and help address the backlog, including:

- **Eligibility, Resource Intensity and Complexity Assessment**. We are identifying eligibility, risk, and complexity factors before scheduling interviews. Using systems data and algorithms to understand the complexity of a case will help field offices more effectively plan, route, and schedule workloads.

- **Strategic scheduling**. Asylum offices use a strategic approach to schedule cases, comparing data in USCIS databases to identify asylum applicants who may be processed quickly outside of the regular asylum workflow. Most recently, we have prioritized asylum cases of applicants who appear to be using the asylum process to apply for cancellation of a removal in immigration court. This project has allowed for streamlined case processing and has deterred similar filings.

- **Workload and staffing shifts**. We continually monitor workload distribution and adjust workloads as necessary for quality and efficiency. For example, Service Center Operations transfers workloads from one center to another when additional capacity exists, and is moving toward an enterprise approach in handling various case types so that each center will be able to adjudicate all case types if there is a surge. Field Operations recently detailed 55 employees to Refugee, Asylum, and International Operations for one- to six-week rotations.

- **Asylum officer scheduling tool**. Asylum has prioritized an officer scheduling tool to address the challenges of redeploying staff between affirmative asylum processing at an asylum office and credible fear screenings by telephone and at detention centers. This project should more efficiently utilize interview space and reduce the productivity lost from travel and other scheduling logistics.

- **Phase out international field offices.** We are in discussions with DHS and the State Department to shift much of our international workload to U.S. operations for domestic processing, as well as to the Consular Sections of U.S. embassies and consulates abroad. We are working in close coordination with the State Department to reach an expanded

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interagency agreement for unit costs for immigration-related services. Once we receive the revised fee schedule, we will be able to calculate the anticipated savings to USCIS resources and cost savings that can be reallocated, in part, to backlog reduction efforts.

We plan to implement these new strategies to reduce the backlog as efficiently as possible. Once the new strategies are fully implemented and new staff are hired, we expect the backlog to decrease.

We do not want to leave you thinking that there are quick and easy fixes—there aren't. Realizing organizational and procedural efficiencies, staffing to appropriate levels, and providing the physical and technological resources needed to eliminate the backlog will take some time. Yet, we have full confidence in our field managers and staff, and full faith in their commitment to addressing the workloads in an efficient and secure manner. For our part, we are committed to providing them with the tools and resources they need to get the work done.

It is our privilege to be here today, and we hope that the information we provide will be useful. USCIS is dedicated to serving and safeguarding the American people and our nation. We are extremely proud of the hard work and professionalism that we see every day in service to our nation by the individuals we work with at USCIS. Again, thank you for allowing us to be here today. We look forward to answering your questions.

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House Judiciary Subcommittee on Immigration and Citizenship Holds Hearing on Citizenship and Immigration Policy Changes and Processing Delays
CQ | July 16, 2019

LOFGREN:

So, we are here today--the Subcommittee on Immigration Citizenship is in order. And we're here today to explore an aspect of our immigration system that generally receives far less attention than ICE community raids, migration flow from Central America, mistreatment of families at the border. Although these are very serious issues that this subcommittee will continue to examine, the current situation at USCIS must not be overlooked.

Record high case backlogs and policy changes that make it harder to obtain immigration benefits are extremely important matters that deserve careful attention. These are profound problems that have a direct impact on countless individuals, families, students, business, and other entities such as hospitals and research institutions. I'm sure that others on this subcommittee will agree when I say that we hear about these issues from constituents on an almost daily basis.

Although USCIS has struggled with processing delays and backlogs since its creation, the agency reports that the current net backlog, as of April 2019, stands at more than 2.4 million cases. This represents an incredible 344 percent increase from the net backlog of cases in 2014. It is the largest net backlog since 2003, when adjudications ground to a halt in the aftermath of the 9/11 terrorist attacks.

Backlogs and processing delays create real life problems for people trying to navigate our complex immigration system. Imagine a domestic violence survivor unable to escape her abuser because her request for protection has languished for months. A start-up company abandoning a key project that will lead to substantial job creation, because it is unable to get a visa for a specialty engineer. Families that remain separated for months longer than necessary, because of delays associated with enhanced vetting.

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This hearing will provide an opportunity to dig deeper into these stories and examine how USCIS processing delays impact everyday people. We will also explore with our first panel of witnesses what is causing these delays, and how USCIS plans to bring processing times back down to reasonable levels.

Although USCIS has attributed the backlog to increased filings, staffing issues, resources shortages, and other operational factors, there's clearly another driver. New policy and procedural changes implemented by the current administration are substantially changing the way immigration benefit requests are adjudicated.

Since President Trump's inauguration, the administration has eradicated a number of what I think are common-sense policies that have for years helped streamline processing in favor of new policies that add bureaucratic red tape and divert resources by adding new burdens on adjudicators. Based on USCIS published data, it appears that these new policies have also increased the odds of received a denial. And when denials are appealed and overturned, that means more delay and more red tape, but without good reason.

Processing delays and policy changes are making it more difficult than ever for qualified applicants to get immigration status. This difficulty keeps many individuals from being fully productive members of our society and our economy, that they would otherwise be. Others may be reluctant to do things that ultimately benefit our country out of fear of interacting with the administration. I look forward to today's testimony so that we can better understand the purpose and intent of recent policy changes as well as their impact on the development of immigration case backlogs.

My hope is that with today's' hearing, we not only hear about how these problems can be addressed with appropriate administrative solutions, but that we also determine whether

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legislative fix--fixes are necessary. I would turn now to the ranking member, Mr. Buck, for his opening statement.

BUCK:

I thank the chair. I appreciate the chair holding this hearing to examine USCIS adjudication wait times and policy changes. This subcommittee has an important oversight responsibly, and adjudication wait times fall squarely within the kinds of issues we should watch. That said, I wish I had heard the same concerns and outrage from my colleagues when the--when President Obama's DACA program resulted in long adjudication wait times for immediate relative green card applications, among other immigration benefits.

Even the New York Times took notice of the increase in adjudication times. A February 8th, 2014, article by Julia Preston stated, "Many thousands of Americans seeking green cards for foreign spouses or other immediate relatives have been separated from them for a year or more because of swelling bureaucratic delays at a federal immigration agency in recent months. The long waits came when the agency, Citizenship and Immigration Services, shifted attention and resources to a program President Obama started in 2012 to give deportation deferrals to young, undocumented immigrants, according to administration officials and official data," end of quote.

And I don't recall any concerns raised about what the backlogs would look like when my colleagues were marking up or passing H.R.6, the bill that would have required USCIS to process millions and millions of green card and naturalization applications, whether or not the alien was ultimately granted such status. The volume of immigration benefits requests received by USCIS varies. According to the Department of Homeland Security, in any given year, USCIS administers a broad range of programs through which it receives millions of immigration benefit applications and petitions. In Fiscal Year 2018 alone, more than 8 million immigration benefits

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were requested, and that was actually a decrease from the 9 million requested during Fiscal Year 2017.

Despite the huge volume of receipts in the last few years, USCIS still managed to naturalize nearly 757,000 U.S. citizens during Fiscal Year 2018, more than in any of the previous five years. And Fiscal Year 2018 also saw USCIS adjudicated more immigration benefits than ever in its history. They should be commended for those accomplishments. To be clear, immigration benefits should be promptly adjudicated. Everyone here would agree with that. It is important that USCIS abide by its mission, to efficiently and fairly adjudicate requests for immigration benefits.

But, it's also important for the agency to adhere to the rest of its mission, to administer the nation's lawful immigration system, safeguarding its integrity and promise, while protecting Americans, securing the homeland, and honoring our values.

Immigration benefits should not be delayed for nefarious purposes, nor should they be rubber stamped, as we have seen happen during other administrations. As we have seen, many factors contribute to the volume of benefit requests and thus the time it takes to adjudicate them. So, what kind of factors contribute to increased volume? History, presidential elections have led to increases in naturalization applications. Those who want to vote apply for naturalization right before the election, and administrative action can increase the volume.

As I noted, the DACA program to date has added 2.4 million adjudications to UC--USCIS' workload. And of course, even Congress can add to the volume. When we create a new immigration benefit or push the increased numbers in a given category, that also adds to USCIS' workload. Unfortunately, USCIS seems to be inherently behind the curve, given that its staffing ability is direct--dictated by agency funding, and funding is dependent on less-than-flexible fee rules.

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There is no doubt that USCIS should remain a fee-funded agency. U.S. taxpayers should not bear the burden of paying for immigration benefits for foreign nationals. But, I look forward to hearing from the USCIS today. Any ideas the agency has for ensuring a fee rule and other procedures that allow flexibility to increase and decrease staff with the rise and fall of receipt volume.

With regard to recent policy changes at USCIS about which the majority and some of their witnesses are raising concerns, again, ensuring the integrity of our immigration system is paramount.

BUCK:

But that should be balanced with reasonable policies and procedures. Recently, USCIS instituted a sensible change in policy to end the practice of filing an application containing a little, if any, evidence of eligibility just to reserve a place in the adjudication line. This imposes an additional burden on USCIS and adds to the backlog.

It is also important that adjudicators have the ability to issue notices to appear to protect national security and prevent fraud. I look forward to the witnesses' testimony to get a true understanding of the adjudication backlog and the factors contributing to it. I thank the chair and yield back.

LOFGREN:

The gentleman yields back. I'd recognize the chairman of the full committee, Mr. Nadler, for his opening statement.

NADLER:

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I think the chair. Today's hearing examines a critically significant issue, policy changes and processing delays at U.S. Citizenship and Immigration Services, or U.S.--or USCIS.

It is important to remember that the immigration debate in this country does not start and stop at the Southern border. Although the Trump administration has focused most of its attention on curbing the rights of asylum-seekers and threatening mass enforcement sweeps, the legal immigration--the legal immigration system is not immune from dramatic policy changes as well, changes that have significantly diminished the ability of individuals to enter and to remain in the United States illegally.

Most of the policy changes that have been implemented by the administration appear to be intended to make adjudications more complicated and therefore more time-consuming and more difficult for individuals to obtain legal status in this country. From my perspective, these policy changes seemed to fix things that were not broken to begin with and only serve to create unnecessary obstacles to legal immigration.

For example, last August USCIS suddenly announced that would imposed harsh penalties on non-immigrant students who violate their status even if the violation was not knowing or intentional, was based on a technical error, or was de minimis. Thankfully, the court stepped in and this policy is now on hold.

Another example is the USCIS' determination, without any justification, of its long-standing policy of waving the in person interview requirement for employment-based green card applicants. Most of these individuals have been in the United States for years on temporary visas and have been screened and vetted repeatedly. Waving the interview, therefore, except in cases where fraud is suspected or there--or there is some other issue was a smart may--way to make the process more efficient. Now interviews are mandatory for everyone and backlogs are growing exponentially.

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And let us not forget the public charge rule, which would dramatically heighten the standard for determine whether a person is likely to be reliant on public services and is therefore ineligible for a visa or green card. Basic services like Medicaid, SNAP, and Section 8 rental housing assistance that millions of working Americans used to supplement their income were suddenly--would suddenly render someone ineligible. Although the rule has not been finalized yet, it will likely be finalized soon.

Setting aside the fact that it is clearly unlawful and morally repugnant, if finalized as proposed, there is no doubt that this rule will make immigration adjudications infinitely more complex, over the past few--as--as--as predictions as to whether working--people with working permits will need at some point to avail themselves of Medicaid or SNAP or Section 8 rental housing assistance are other things now become necessary for these determinations on a predictive basis.

Over the past few years, we have seen significant increases in processing delays and a case backlogs at USCIS. The backlog of citizenship applications nearly doubled from 360,000--I'm sorry, from 367,000 in late 2015 to about 740,000 in September 2018. In my district, most applicants for citizenship now must wait at least a year for their application to be processed and sometimes even two years.

USCIS has said that increased receipts, staffing issues, resource shortages, and other operational factors have led to the current--have led to the current net backlog of 2.4 million cases. As of the end of Fiscal Year 2018, it appears that processing times for most applications and petitions equaled or exceeded near record long averages.

But it does not stop with processing delays. Denials of immigration benefit requests such as citizenship, permanent residence, and work permits are also on the rise. New policies, longer delays, and increasing denials have only added to the palpable fear, confusion, and uncertainty that permeates immigrant communities.

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I look forward to hearing from our USCIS witnesses about how the agency plans to bring processing times back down to reasonable levels, and from our non-government witnesses about how USCIS policy changes in case delays impact individuals and businesses alike. I thank the chair, Ms. Lofgren, for her leadership on this issue and for holding this important hearing. I yield back the balance of my time.

LOFGREN:

The gentleman yields back. And the ranking member of the full committee will be invited to submit his statement for the record unless he is able to attend, which I think he has another obligation.

So, now we will introduce our first panel. There will be two panels of witnesses for today's hearing. The first panel includes three witnesses from U.S. Citizenship and Immigration Services. This panel will be followed by a panel of witnesses from nongovernmental organizations. I'll now introduce the first panel of witnesses.

Don Neufeld is the Associate Director of the Service Center Operations Directorate of USCIS, where he oversees the activities of the five remote processing centers throughout the country that adjudicate the bulk of immigration benefit requests. He's worked for more than two decades at USCIS and the former Immigration and Nationality Service, holding various leadership positions throughout the years. Mr. Neufeld has testified before this committee once before in 2011 for a hearing on H1B visas. And we welcome him back the subcommittee today, looking forward to his testimony.

Michael Valverde is Deputy Associate Director of USCIS Field Operations Directorate, which oversees the operations of the National Benefits Center and the domestic field offices, which primarily handle applications that require in person interviews such as green card and

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naturalization applications. He has two decades of experience with USCIS and the former INS. He served as Performance Management and Planning Chief for the USCIS' RefugeeAsylum and inter nation--International Operations Directorate and Deputy Chief of USCIS' Refugee Affairs Division. And we thank him for taking the time to share his expertise with us today.

And finally, Michael Hoefer is the Chief of the Office of Performance Quality at USCIS. The office provides data and operational analysis to various governmental agencies and to Congress to oversee the efficiency of USCIS operations. Mr. Hoefer previously served as Director of DHS' Office of Immigration Statistics, and it was in that capacity that he appeared before the subcommittee in 2007 to testify on the topic of comprehensive immigration reform. We welcome him back to the committee and look forward to his testimony.

So, at this point, I would ask you all to rise, raise your right hand, and we will swear you in. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

NEUFELD:

(OFF-MIC)

VALVERDE:

(OFF-MIC)

HOEFER:

(OFF-MIC)

LOFGREN:

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Thank you. Let--let it be shown that all of the witnesses replied in the affirmative. Please be seated. And we will note that each one of your written payments will be made a part of the official record. We ask that your testimony be about five minutes. When you've got one minute left, the yellow light will go on. And it's read when you're five minutes are up. So, we will begin with you, Mr. Neufeld.

NEUFELD:

Chairwoman--Chairwoman Lofgren, Ranking Member Buck, distinguish members of the subcommittee, thank you for this opportunity to discuss our agency, USCIS, better known as--

LOFGREN:

--Would you pull the microphone a little bit closer?

NEUFELD:

Can you hear me?

LOFGREN:

Much better. Thank you.

NEUFELD:

Okay, great.

Thank you for this opportunity to discuss our agency, U.S. Citizenship and Immigration Services, and the challenges we face in ministering the nation's legal immigration system. I am Don Neufeld, Associate Director of the Service Center Operations Directorate. I have served in

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this capacity since 2010. My career with USCIS and the Immigration and Naturalization Service before that dates back to 1983.

Service Center Operations employees approximately 7,300 employees and contractors at five service centers across the country and at headquarters.

NEUFELD:

To give you an idea of the volume, in Fiscal Year 2018, service center operations processed approximately 5.5 million applications and petitions. That figure represents 66 percent of the total USCIS adjudications output. Our work generally focuses on applications and petitions that did not require face to face interviews. These include employment based and family-based petitions, applications for employment authorization, applications and petitions for certain humanitarian benefits, and applications for advance parole and travel permits.

Service center operations seek to maximize process efficiencies and use technology to provide timely and high-quality services for applicants and petitioners, all without sacrificing the integrity or security of our nation's immigration system. We strive to maintain reasonable processing times and establish goals to measure our success. We are aware of the consequences for applicants and petitioners when we are unable to meet expectations. Indeed, your staff informs us when we are missing our processing time goal goals, and they share individual stories of how delays affect businesses and individuals.

As we had detailed in our written testimony, there are a number of factors the drive backlogs. At service center operations, spikes in receipts is one major factor. Other factors include statutory changes, unanticipated or irregular workload demands, workloads related to new immigration programs or humanitarian crises, application spikes related to fee increases, and staffing shortages.

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Some specific events that have contributed to the current backlog include the spike in receipts prior to the 2016 fee role, the addition of temporary protected status for five countries, and growth in protections petitions for victims of certain qualifying criminal activity. We should note, we generally expect increased receipt to prior to a fee role and in advance of the presidential election. Following the 2016 fee increase and the 2016 presidential election, the anticipated decrease in receipts did not follow.

While we do our best to anticipate short and long-term demands, we simply cannot predict everything that will affect our workload. Even when history tells us that something will happen, it doesn't always play out the way we think. Our current backlogs are largely the product of a sustained demand for immigration benefits coupled with staffing shortages. The good news is that we believe the demand has, for the time being at least, stabilized. As we continue to bring new staff on board, will be able to better manage and reduce the backlog. At service center operations, we can adjust workloads between service centers when excess work exists in word and one service center and capacity and expertise exists at another service center.

In the future, as we realize the efficiencies of each processing, we will be able to do this in a paperless environment, saving time and money. We are also identifying administrative processes that can be moved from an adjudicator's desk to administrative or contract staff. In closing, we are committed to reducing processing times and offering superior quality services while administering our nations legal immigration system efficiently, securely, and fairly. Thank you once again for your interest in our agency and mission. I look forward to any questions you might have.

LOFGREN:

Thank you very much. Mr. Valverde, we'd be pleased to hear from you.

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VALVERDE:

Chairwoman Lofgren, Ranking Member Buck, distinguished members of the subcommittee, take you for this opportunity to discuss the workload challenges we face at USCIS. My name is Michael Valverde, and I am the Deputy Associate Director for Field Operations at USCIS. I've served in this capacity since 2015. My career with USCIS and the Immigration and Naturalization Service before that dates back to 1997.

I am proud to represent more than 7000 field operation employees across the nation who, each day, come to one of our 88 field offices, 24 district offices, 4 regional offices, the National Benefit Center, and the Immigrant Investor Program Office with the singular purpose of administering the nations immigrant--legal immigration program fairly, efficiently, and with the utmost integrity. The field operations workload largely consists of the adjudication of non-asylum applications and petitions that require face-to-face interviews and other on the groundwork including site visits. Most significantly, adjustment of status and naturalization case work occurs at field offices.

In Fiscal Year 2018, USCIS naturalized 757,000 new citizens, a five-year high. At the same time, we completed more than 640 applications for adjustment of status. Also, a many years' high. Unfortunately, backlogs are not new to USCIS. Internal and external factors have affected pending workloads across the life of the agency. Indeed, at the time it was established in 2002 as the charwoman noted, USCIS inherited a backlog of cases. That backlog largely resulted from delays in background checks and security checks that were implemented following the attacks of September 11, 2001.

Since that time, a number of factors have affected our processing times and our ability to meet--to meet workload challenges timely. Today, many factors have resulted in lengthy processing times. Significantly, increased receipts over the past several years have outpaced our ability to

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process the work. Other factors, such as statutory changes, citizenship drives, and the implementation of new procedural--procedural requirements, such as security checks, new immigration programs and policy changes have impacted--have impacted our processes and processing times.

USCIS does its best to apply lessons learned from historical workload fluctuations, and I believe we do well at it. Sometimes, however, all of these factors can stress our ability to complete our work as quickly as we would like it. Are we satisfied that applicants wait as long as they do for decisions on their requests? No, we are not.

So what are we doing to shorten the time it takes for applicants to get their decisions? We are taking advantage of the resources we have. We are hiring to increase capacity. Field operations has had an onboard percentage in the high 90s for several years running. We are evaluating key processes and procedures to maximize process integrity and minimize waste. We are at taking advantage of electronic age tools to increase accuracy and efficiency.

Just one example of these approaches, we recently implemented a program we call Information Services Modernization. This program is designed to free up a significant amount of field operations staff time to handle their core adjudicative activities and interviews rather than providing information in person, which we believe--and we believe the data are showing can be done more correctly and faster via other means.

Detailed in our written testimony are other efficiency initiatives and process reforms. These include reintroducing performance metrics for our field offices, leveraging electronic processing and automation, developing innovative scheduling methods and finding new approaches to staffing and workplace--workplace management. And we are seeing results from this work. In fiscal year 2018, the staff of field operations produced more case completions and at a greater efficiency per officer than in prior years, and we believe we are doing our work responsibly. In

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this fiscal year, we are doing a significant amount of more fraud work than other years by a--by a significant percentage, all while keeping production of case completions up.

Finally, in this fiscal year, due to our operational reforms and decreasing receipts, we have seen processing times for both citizenship and adjustment of status begin to lessen. While USCIS has too often struggled with lengthening processing times, I am confident that we have the imagination and the determination to address this latest backlog and to do so responsibly. As I expect my colleagues would agree, no solution will be immediate and comprehensive. I do think that we will continue to see improvements in processing times, backlog elimination, and backlog prevention. Thank you once more for your interest in this important matter, and I'll be happy to answer any questions you may have.

LOFGREN:

Thank you very much. We'll now go to the members of the subcommittee for their questions. Oh, I'm sorry Mr. Hoefer. I do want to hear from you. And that was an oversight. Please begin.

HOEFER:

Chairman Lofgren, Ranking Member Buck, distinguished members of the subcommittee, thank you for your invitation to address the subcommittee and the opportunity to discuss the workload challenges we face at USCIS. I am Michael Hoefer, Chief of the Office of Performance and Quality and the management director at USCIS. I've served in this capacity since 2016.

My career with USCIS and the Immigration and Naturalization Service before that began at the INS statistics office in 1982. I also served as a director of DHS Office of Immigration Statistics from 2004 to 2013. Based on that experience, I will provide you an overview of the primary factors that we believe have driven our current backlog and processing delays.

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I currently serve in the management directorate, which is responsible for multiple support functions such as procurement, facility, and financial management, IT systems, human resources, and my area of responsibility, for performance management measurement and analysis. Specifically, my office makes initial recommendations of required staffing levels based on future workload projections and efficiency rates. As you can see, while the men and women of management directorate do not directly adjudicate applications, they do provide the infrastructure and the means by which our agency performs and measures its work.

As we've heard today, backlogs are not new to USCIS. U.S. experienced its highest backlog in 2013 at 3.6 million applications and petitions, due in part to increased security vetting following 9/11. The backlog of pending applications as of May 2019 is 2.4 million. What does the backlog mean to applicants and petitioners? Let me give an example of the impact of the backlog. It is taking 10 months to process naturalizations, whereas our goal is 5 months.

We know from experience that it is possible through operational efficiencies and additional resources to reduce our backlog. The 2003 backlog was reduced by a series of initiatives, including a one-time congressional appropriation and the authority to use premium processing funds to hire additional staff. We were able to reduce the backlog to 50,000 by FY 2010, but it has risen each year since then.

Most of the recent growth in the backlog was in fiscal years 2016 and '17. The backlog grew from 634,000 in '15 to 1.1 million in '16, and it increased to 2.3 million as of September 2017. More than 70 percent of the increase in the backlog between 2010 and now occurred in those two years.

HOEFER:

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The backlog has stabilized since 2017, growing by only 110,000 during the past 20 months. There are many factors that contribute to changes in the backlog, but I want to discuss the most significant factors we identified for 2016 and 17, the timeline where we saw the most growth. We projected that our receipts would increase in 2016 and then decrease in 2017 due in--to the combined impact of two factors: the national election in November 2016 and a fee increase one month later.

Naturalization receipts previously had always increased before a national election, and then decreased in the following year. When a notice of proposed fee increase is published, it usually motivates applicants and petitioners to apply before the increases are implemented, especially for cases that are more discretionary such as naturalizations. Receipts in 2016 increased a little more than we had projected, but unlike past election year cycle experience, receipts continued to increase in 2017.

The elevated receipt levels over the two-year period were largely responsible for the growth in the backlog in 16 and 17. Receipt levels have returned to normal in 2018 and 19, which has helped us to reduce the growth in the backlog. Our total number of completions in 2018 were the highest ever, and we reached a five-year high in the number of the persons taking the Oath of Citizenship.

The growth in the receipts has allowed us to continue to hire more staff and decrease overtime. Authorized FTEs increased seven percent in 17 and five percent in 18. Increasing staff is an effective component to backlog reduction. It's effective, but not immediate. Hiring and training new staff almost always takes a few years. Not a few years, it's--we try to do as quick as we can, but it's a reactive process. Process--we have to identify funds, we have to recruit, we have to hire and train staff and that can take months.

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Recognizing this, USCIS recently began modeling for a six-year time horizon. Under this model, USCIS is able to proactively identify required staff so positions are filled by the time they're needed to achieve case completion targets. Such a process will not only allow USCIS to reduce the current backlog, but hopefully prevent a new one.

I very much appreciate the time and attention you have given to my colleagues and me. Thank you once more, and we're here to answer your questions.

LOFGREN:

Thank you very, very much. And thanks to each one of you for that useful and informative testimony. We'll now go to members of the subcommittee who have questions, under the five-minute rule. I'd recognize first the ranking member for his--his questions.

BUCK:

I thank the chair. I'm going to yield to Mr. McClintock, and then if--if it's alright with the chair I will--

LOFGREN:

--That--that--that would be fine. We'll--we'll recognize Mr. McClintock then, and you later. Mr. McClintock.

MCCLINTOCK:

Well thank you, Madam Chairman. Mr. Hoefer, didn't the--the information required of--of applicants double back in 2016? Didn't the form go from 10 pages to 20? Or, for that matter, any of the panelists who--

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VALVERDE:

If you're referring to the application for citizenship, yes sir, I think it was back in 2012 or 13 the application doubled in--

MCCLINTOCK:

--Okay, and I--I assume that means twice the information that you have to verify and consider for each application.

VALVERDE:

Yes, sir. That adds complexity and some--some length to our interviews.

MCCLINTOCK:

Now, in--in addition to that, are you seeing an uptick in applications being filed for citizenship? You--I think I heard testimony to that effect, but I didn't hear how big an uptick.

HOEFER:

Yes. We received a little bit under a million applications for naturalization in 2016, and a little under a million in 2017.

MCCLINTOCK:

Okay. And how did that compare to, say, 10 years ago?

HOEFER:

Well, we normally--I think we would average between 700 and 800,000 applications a year.

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MCCLINTOCK:

So, it's gone from roughly 700 to 800,000 up to a million.

HOEFER:

That's correct.

MCCLINTOCK:

So, roughly a 20, 25 percent increase in the number of people who are applying.

HOEFER:

That's correct, sir.

MCCLINTOCK:

Okay. Now, on--on--on the other side, how many applications you actually processing, or approving I should say.

VALVERDE:

I can do that. In the past fiscal year, Fiscal Year '18, we completed 7--we completed 750,000 approvals and it was closer to 850,000 completions for naturalization for citizenship.

MCCLINTOCK:

750,000 approvals, 850,000 completions--

VALVERDE:

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--Yes, sir--

MCCLINTOCK:

--And what were those figures, say, 10 years ago?

VALVERDE:

I don't have it to heart, but they were--they were lower than that. I can say that much.

MCCLINTOCK:

Lower? Much lower? Significantly lower?

VALVERDE:

I don't have the numbers.

HOEFER:

We did have some years where we're higher when--after a cer--there was increases in naturalizations in prior years as well, going back to the '90s and I think in one--

MCCLINTOCK:

--Would you say that the number of applications being approved are higher or lower than--than in the past?

HOEFER:

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I would say over the last five years, it has averaged to higher, but there are particular years in the past where we had more than--than--

MCCLINTOCK:

--Okay, so the--the point that I'm trying to get at is the--the--the amount of applications have increased dramatically, 20 to 25 percent. The amount of information you have to sort through has doubled with the doubling of the forms. And we're seeing a substantial increase in applications a--approved naturalizations completed.

So, is the backlog then a function of those two issues, principally more information to go through and more applications to process?

HOEFER:

Yes, I would--I would agree with that, and it--so it's partly--it's receipts that are coming in and how long it takes us to--and the resources available to us to work those cases.

MCCLINTOCK:

Great. Thank you. I yield to the ranking member.

LOFGREN:

The gentleman yields back. We will now turn to the gentleman from California, Mr. Correa.

CORREA:

Thank you, Madam Chair, and I want to thank our witnesses for good work you're doing at USCIS. Let me follow up on some of the comments made by my colleague from California.

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High, low, after 20--after 9/11/2013, the length of the application doubled, you said. Is that correct, 10 to 20 pages? And I can understand why security issues and what have you.

So, you doubled the nu--the amount of work you had to do for a citizenship application. Yet, I would imagine that the automation since 2013 has increased. Is that correct? The processing?

VALVERDE:

Yes, sir. We are contin--

CORREA:

--Personnel that you have? So, productivity-wise in terms of each individual, is that going up or down? Thorough processing per individual?

VALVERDE:

Productivity per officer has gone up this year from last, yes, sir.

CORREA:

So, it has gone up? You--you--you have seven--about 700 plus, minus, new per slots that you've been authorized to proc--correct?

VALVERDE:

Agency-wide, yes, sir.

CORREA:

To hire? How are you doing in terms of hiring those individuals?

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VALVERDE:

We've made hiring a--a focus of ours, and--and we've--and in field operations, we've been in the high 90 percentages of onboard staff (INAUDIBLE).

CORREA:

So, you were moving ahead at a pretty good pace to hire new people?

VALVERDE:

Our--doing all we can, yes, sir.

CORREA:

Thank you very much. And I say that to you before I--long time ago, before I got in a government, I used to apply--fill out applications for citizenships. One of them was for my uncle, and I remember, God rest his soul, 70 years old, applied to be a U.S. citizen lived here for fifty years.

CORREA:

As an attorney, I filled out his application, waited for a year. Called your office. They said, we lost the application. Filled it out again. Waited another year. Application was lost. Third time I didn't call. I went to Los Angeles to see what was going on and the nice lady behind the counter said, 'let me go find your application.' Two hours later she came back--they had a special line for attorneys. She came back with half the application said we lost the other half of the application. She was very nice. She said, look--I'm not going to make you wait another year. Pull over to the side here's a whole application packet. Go fill it out. And three and a half years later we finally

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made him a U.S. citizen. But I--I'm sure now we have a process system where paperwork is at a minimum am I correct in assuming that?

VALVERDE:

We have an electronic way to file but we still have a paper way of filing as well.

CORREA:

And I guess today, I'm trying to figure out you are doing a great job given what you've got in front of you--but we have a lot of folks that have fulfilled their requirements to be Americans, the American dream, full U.S. citizens. And as I read through all this information, listening to your testimony, I'm trying to figure out what can we do--what can I do to help you help those individuals that want to be Americans, fulfill that American dream of being an American? We've given you resources. Authorized new personnel for you. You're in the process of hiring them. You need more resources for automations to make sure you cross check all this information to make sure only the good people that deserve to be Americans become Americans. What else can we do to help you get your job done--in a timely manner?

HOEFER:

I spoke about the training--when we hire and the training--I think one of the things that's where it could be help is that we do have we'd like to expand our training facility at FLETC, and we have money designated for that. But we need authority from Congress to be able to expand that. So, that would really help us to get people on board and trained and ready to work.

CORREA:

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Anything else? I know, for example, hiring border patrol agents has been a challenge for us because of the lie detector test and--and the challenge there. But you don't have any--anything similar to that in terms of challenges--hiring folks to--any other problems? Anything else that we can do to help you expedite the process? Reduce the backlog?

NEUFELD:

I will say we are a fee funded agency, for the most part. We get some appropriated funds. So, our ability to hire staff is dependent on the--on the fees that we collect. And we first we need to collect those fees be--before we can spend them. And the other thing is those fees need to be set properly so they cover our costs. So, I guess what I would ask is that, when we periodically review our fee structure, that you be supportive of the fees we need to set to recover our costs.

LOFGREN:

Gentleman's time has expired.

CORREA:

Thank you, Madame Chair.

LOFGREN:

The gentlelady from Arizona is recognized for five minutes.

LESKO:

Thank you, Madame Chair. Mr. Valverde, has anyone in this administration told you to slow down processing citizenship cases?

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VALVERDE:

No, ma'am.

LESKO:

Has anyone in this administration told you to slow down any case processing?

VALVERDE:

No.

LESKO:

And Mr. Val--Mr. Valverde--what do you say to those who claim you are trying to slow processing on purpose to prevent citizenship applicants from getting naturalized and becoming voters?

VALVERDE:

I would say that the--the data and the evidence shows the opposite. I'm lucky each day to be surrounded by colleagues who come to work to process immigration requests as efficiently and with the utmost integrity as we can. And they spent their careers bringing people to the franchise. Whether they register to vote or not is another thing. But they've spent their careers helping people become citizenship--citizens. And it's some of the proudest work we do.

LESKO:

Thank you, Mr. Valverde. And isn't it true that during fiscal year '18 your agency naturalized more people than in any of the previous five years?

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VALVERDE:

Yes, ma'am.

LESKO:

OK. Mr. Neufeld, in the testimony in the next panel Mr. Cohen will testify I believe, that USCIS' new RFE/NOID policy means that any small mistake or lack of information on an application could result in a denial without giving the applicant a chance to correct the mistake. Is this an accurate description of the policy?

NEUFELD:

So, our request for evidence is that's something that we issue when the--when the evidence that was issued was insufficient to demonstrate that they are eligible for the--for the benefit that they are seeking. And we issue requests for evidence for the purpose of allowing the applicant--the petitioner--to basically perfect their filing. The change that happened there had been a--a previous to the change there had been a policy that--that said for the most part that where the evidence does not support an approval that but for a couple of circumstances that the officer should--in all circumstance--should issue a request for evidence or a notice of intent to deny. This change that you are referring to or that the witnesses are referring to is there was a change in the policy to clarify that where the evid--where the record appears to be complete that a decision can be rendered on the record without having to issue a request for evidence or issue a notice to intent to deny in all circumstances.

LESKO:

Thank you. And, Mr. Hoefer is it? Hoefer. The House recently passed H.R. 6, the American Dream and Promise Act which would provide green cards and a path to citizenship for millions

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of illegal immigrants. I'm not going to ask you your thought on the bill because you probably can't say that anyway. But I would like to ask you what the implication is going to be on operational aspects from that bill if it passed and became law?

HOEFER:

Certainly, well, I think a lot of it depends on how it gets implemented and what the rules are for this. If it--if it were 2 million people and 2 million applications obviously, that would have an immediate effect. And we've talked before about the lag. So, if 2 million people showed up in a given year and we haven't had the hiring and the money up front, say--certainly it would--it would have an impact on--on the backlogs.

LESKO:

And, thank you Madame Chair. I don't have any more questions. Mr. Ranking Member, did you want any of my time? OK. I yield back my time.

GARCIA:

Thank you, Madame Chair. And thank you to all the panel members for being here today. Obviously, we're here because of the cautionable back logs that many of us are experiencing throughout the country. Yet, this administration is adding to the problem by imposing new hurdles for applicants at every step of the process. Greater Houston area one of the fastest growing and most diverse regions, which I represent, certainly appreciates the contributions that diversity brings to the local economy and culture. However, Houston diverse economy and culture is greatly affected by these processing delays.

In March of 20--March 28th, Congressman Olson, also from Houston and I led the letter from the Houston Delegation to the former director, Mr. Cissna, outlining the harmful impact of these

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delays in the Houston community. Democrats and Republicans alike were concerned about the future of our families and businesses if the backlog problem continues. I might add that this letter was signed by all members of the Houston area delegation.

According to the most recent USCIS data the average time for an I485 or green card application in Houston is currently between 15 and 28 months. Or an N400 application for naturalization the backlog varies between 14 to 21 months. For the I765, the employment authorization the delay can be up to five months of causing loss of wages for many applicants. Certainly experienced among applicants, that those that depend on their contributions is disconcerting and unacceptable. Though we understand that staffing is up at the agency. It is a long process. Requirements of vetting for candidates and of course, we think that you all can do better.

We have identified the problem and now we must invest in solutions. Regrettably, Madame Chair, one of the questions we asked Mr. Cissna was, 'do you need additional statutory direction or funding to better respond in a timely way?' He actually answered, 'no. Although USCIS appreciates the offer for assistance. I want to begin my question with just that question to the three panel members today. Do you need additional statutory direction or funding? All three of you--just yes or no.

VALVERDE:

As my colleague said before we are a fee funded agency. So, we would appreciate the support when we next go to adjust our fees so that we get the right kind of funding for the case work that we need to do.

GARCIA:

So, your answer is yes.

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VALVERDE:

I'm answering we would appreciate the support as we look to adjust our fees.

GARCIA:

Well, I'm glad you're saying yes cause I couldn't understand why the director of course, who is no longer here is--is saying no because it seems to me that--that we can do all that we can in providing support but we need solutions coming from your agency. Now all three of you are career, right? You're nonpolitical appointees?

CORREA:

Correct.

GARCIA:

Right. So, you all know how this works. Many of you have been here through many years. Now, Mr. Hoefer, you identified and said that the increases had to come in terms of patterns right before an election or before a fee increase. Is that right? Did I hear you correctly?

HOEFER:

That's correct, ma'am.

GARCIA:

All right, we have an election coming. Have you all put in place some planning and processes to prepare for that knowing that there will be an increase?

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VALVERDE:

Yes, ma'am. Within field operations, we recognize the trend just that you refer that leading up to the election years there's often an increase in applications.

VALVERDE:

Recognize the fact that the growth in receipts is not impacted equally across the country. So some of the work that we are doing right now is to try and ensure that the impacts of receipts, the impacts of pre-election application growth are--are addressed where they are most critical. That is to say where there are places like Houston and others where the processing times are higher than we would like and higher than some of--some other places we are doing the work there to make sure that the applicants experience in Houston is more similar to an average applicants experience across the nation.

GARCIA:

Well, what really concerns me too, some of the things that we are hearing about some of the changes number one the fee increases, number two is the idea that people may not get there interviews in the same location where they made their application but they have to travel a great distance and a couple of other things that just seem to be barriers rather than a path to getting the application done. So what is it that you are proposing that would actually help people get their applications timely processed and completed?

LOFGREN:

The gentlelady's time has expired but the witnesses will please answer.

VALVERDE:

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Thank you. It's a number of things. First with respect to the changing of appointment jurisdiction we have looked at the map and where there are locations where there are two field offices that are close and we can move a ZIP Code or something like that and that enables a group of applicants to have their case seen sooner that is why we have done that. So those individuals should they be able to travel would get their case seen sooner and it's for the purpose of getting the benefit faster. We are doing a number of things as I said in my testimonies so I won't repeat it here around process reform, hiring and other things to help everyone's case go faster.

GARCIA:

Thank you. Thank you Madam Chair. I yield back.

LOFGREN:

The gentleman from North Dakota is recognized for five minutes.

ARMSTRONG:

Thank you Madam Chair and before we get into that and I just want to clarify so do we need additional congressional funding on top of the funding?

NEUFELD:

I will take that one. I think what we are saying is that our--our--one thing we should clarify none of us manage or oversee the budget for USCIS but I am as an executive I am aware of some of the constraints and at present we are unable to hire to these staffing levels that our workload would support because of our fiscal budget constraints and so I think it's safe to say that additional money would help the source of that money whether it is appropriate and or fee funds as an operator it doesn't matter, it doesn't matter it would just be helpful to have these staff.

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ARMSTRONG:

And then I also appreciate the talk about significant distance. I married an immigrant and we lived in rural North Dakota and this is 2004 and we--it's--the process in and of itself is daunting and this is coming from two pretty educated people. I had just graduated law school, she was in law school but the bureaucracy is mind-numbing when you drive 350 miles to Minneapolis and show up for a hearing that was scheduled by immigration and get there and they tell you to go home because they are not ready for you so you have to turn around and come back. It's not like going around the block and I have practiced in this area, our firm has practiced in this area through three presidents now, two Republicans, one Democrat.

And so I appreciate the fact that we are talking about the history of this because this didn't all start on January, the first week in January 2017 as throughout the campaign and throughout our office I have met with people, people who are waiting on 2008 be sent permits to be processed and these are I mean researchers who worked at the Langdon Research in North Dakota not exactly I mean there is five employees total and the frustration level for not only them but also for their employers and the community at large when you have a community of under 1200 people and I mean they become part of it.

So I am glad we are having this conversation but I do have one pretty specific question relating to EB-5 background or EB-5 the rules and that's just foreign nationals cannot apply for permanent residents if they make necessary investment in a company in targeted employment areas and I know there's a rule in place which has proposed the EB-5modernization regulation would increase the minimum investment amount significantly, transfer targeted employment areas designation from the state economic development agencies to the Department of Homeland--Homeland Security and create priority date retention for EB-5 investors to use priority data as previously approved and establish more federal oversight and regional centers, et

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cetera, et cetera, USCIS submitted the proposed EB-5 Immigration Investment Program, modernization in February 2019, correct?

VALVERDE:

Yes, sir.

ARMSTRONG:

And OMB finished its review of EB-5 in June?

VALVERDE:

I understand they just recently finished its review, yes, sir.

ARMSTRONG:

Do you have a status update on where that is that?

VALVERDE:

It is still in the process so it has not been published yet as--as you know. I would expect that it would be published relatively soon but I don't have a date to give you, sir.

ARMSTRONG:

Relatively soon. That's a pretty ambiguous--we like to use that term but we don't I mean so months?

VALVERDE:

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I would think it's less than months, sir.

ARMSTRONG:

Thank you. I don't have any other questions.

BUCK:

Yes, sir?

I--I want to clarify one point with Mr. Neufeld and Mr. Valverde. You answered the question earlier Mr. Valverde about whether you believe it would be beneficial for Congress to appropriate money and you didn't use a yes or a no and then words or put in your mouth and the answer was well, I believe that say yes. I didn't hear a yes and I want to make sure there are benefits are there not to having a fee funded system as opposed to an appropriation system for your agencies?

VALVERDE:

Not an expert in that area. I know enough to know that there is--there is some profound differences and I guess that's as much as I can say without getting myself--

BUCK:

So you just don't like yes or no answers do you?

(LAUGHTER)

LOFGREN:

With the gentleman yield?

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BUCK:

Yes.

LOFGREN:

I would just note that really these are career and they don't have really the luxury of opining. That's a policy decision for the Congress to make but I don't think anyone is proposing that we move USCIS away from a fee funded agency. Just to clarify.

BUCK:

I appreciate the chairwoman clarifying because I--I think it is important. There is a perception that your agencies are fee funded because the individuals that are applying pay those fees and not U.S. taxpayers and--and I think that is an important perception for many in this country and I appreciate the fact that you are operating under a fee schedule and I yield the balance of my time.

LOFGREN:

Yield back in the gentleman's time is expired. The gentleman from Colorado is recognized for five minutes.

NEGUSE:

Thank you, Madam Chair, for holding this important hearing. I just want to follow up on a point that was made by some of my colleagues a moment ago because this isn't just about money. In my sense I just want baseline set of facts. From Fiscal Year 2018 to Fiscal Year 2017 there is a 13 percent decrease my understanding in the volume of applications submitted. Does that sound about right?

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UNKNOWN:

I think it sounds about right, yes.

NEGUSE:

And from Fiscal Year 2018 to Fiscal Year 2017 your budget had a 6 percent increase. Does that sound about right?

UNKNOWN:

(INAUDIBLE)

NEGUSE:

So in FTEs precisely. So I'm not making the case that you don't, there may be a resource allocation issue but to the point that my colleague from Arizona made earlier when she posed the question to you as to whether or not you had been directed by anyone to slow walk applications and so forth that the central question which I think you have answered in your written testimony is have the promulgation of various policies that your agency has adopted in the last two years since the Trump administration took office and perhaps at their behest has that exacerbated the backlog? We understand that there was a backlog before January 1 of 2017 but I think your written testimony confirms that yes, that is one of the reasons that there is a backlog. Accurate to say?

HOEFER:

Well let me go back to the question of about the decrease in the receipts. I think as I testified what happened is there is some lag when we get receipts--

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NEGUSE:

I--I understand that Mr. Hoefer. I am ask--I get--it's a simple question. Again if you want I guess we will let your written testimony speak for itself. There are a variety of policies in addition to a number of other factors that have lengthened processing times. That is not a fair statement to make.

HOEFER:

No, that--that is fair.

NEGUSE:

Okay. So that's just baseline set of facts that I think we ought to operate under for purposes of this hearing. You know I would say this, I appreciate the work that you all do and I appreciate your service and I appreciate you appearing here before us today. We have a serious problem. I mean this backlog which I understand has existed for quite some time but has been exacerbated over the course of the last two fiscal years in particular is not sustainable at 344 percent increase from the net backlog of cases in 2014 when you look at a five year window and in Colorado, in my state and I know the ranking member, I suspect appreciates this as well there is a long queue that is building and building and so I appreciate your efforts but I think we ought to the point that my colleague from Texas made we ought to be focusing on solutions to these problems and one of the issues I ask you all about, the backlog reduction plan that you've submitted, where the summary that you submitted to this committee, lists as one of your goals, or I should say one of your initiatives that you intend to implement to address the backlog, it's number five in your list, redefining processing time goals to better reflect true cycle times, which I understand, based on your written testimony was a recommendation made that--by the DHS Office of Inspector General.

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The way I read this, is what you're saying is that right now because the agency is unable to fulfill the 120 day goal for a variety of different applications, permanent resident applications and so forth, you intend to simply change the goal and extend--instead of saying it's going to be 120 days, make it 180 days. And I could just tell you from my perspective, having run a regulatory agency back in Colorado with a much smaller $90 million budget, 600 employees, appearing before our legislative committees of jurisdiction would not be received well if I said, well, I'm going to simply change the processing time because we can't meet it. Anyone have a way to explain that and the--

VALVERDE:

--I'll respond to that briefly. The--the OIG statement to me said that the 120 day goal, of all the things that the agency must do to process an application for adjustment of status, they're--they're not feasible in 120 days, of all the background checks, fingerprint, appointment interview, etc., And thus we should go back and give the public a better expectation.

From my perspective as an operator, one of the things over the years that has taken time away from our core adjudicative functions is responding to people who, you know, reasonably say when is my case going to be due. And--

NEGUSE:

--Well, to that point, I would say I certainly agree that perhaps better responsiveness and increased communication throughout the process--I appreciate what you're doing with respect to the online programs that you've mentioned launching in your backlog reduction plan. And so, that would I think accomplish what you're after. But extending the timeline so that it is "more realistic" to me is not an appropriate response to what is a critical backlog.

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Last piece I will just say is you mentioned, Mr. Valverde, in respect to fees, right? Who pays your fees? Who pays the fees?

VALVERDE:

Our salaries come from the user fees.

NEGUSE:

User fees. And what do you call them?

VALVERDE:

Applicants and petitioners.

NEGUSE:

Well, for the existence, or censure agency was founded, we call them customers. That term was removed from your mission statement, as was the term nation of immigrants, a year ago. And in my view, some of this is cultural. To the extent we don't see individuals as customers, that we-- that this agency is set to serve as a result of the law that was passed by Congress back in 2002, I think it implicates the way in which we look at these delays--

LOFGREN:

--The gentleman's--

NEGUSE:

--And the plan so that we make to comport with them. So, with that, I would yield back. Thank you, Madam Chair.

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LOFGREN:

Right, gentleman's time is expired. We turn now to the gentleman from Florida.

STEUBE:

Thank you, Madam Chair. This--my first set of questions are for Mr. Valverde. In a--in his testimony for the next panel that's after you all's, Mr. Cohen highlights the--denaturalization work that USCIS is undertaking. Isn't it true that this work focuses on individuals who fraudulently obtain citizenship and that the work began under the Obama administration? Can you explain what you are doing as it relates to that?

VALVERDE:

Absolutely. The work began in the late 2008 or '09 timeframe and then--and then was highlighted in a OIG report in 2016 when USCIS really got involved.

But the short summary of the work is that, in the course of uploading old paper files into our electronic fingerprint database, we started getting matches with different sets of biographic information. So, what we were seeing in--in--in maybe simpler terms is two different identities connected to the--the same finger--same fingerprints. And what we saw is many of them had, unbeknownst to us, gone through the naturalization program and procured citizenship.

So, the work we started in 2016 and we continue today is to get those cases together. If it's one--if it's two files, or three files in some instances, compare the records and find the individuals who obtain the benefit we think through fraud and write that up. There are some that--that we don't think that was the case. But for the ones that we do, we write that up into an affidavit and work with partners at Justice to--for them to do the denaturalization process in the courts.

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STEUBE:

Okay. And also in his testimony, Mr. Cohen points out that the USCIS adjudicators are, quote, "Asking for more proof of marriage if the applicant is applying based on their marriage." If an applicant is applying based on their marriage, doesn't it only makes sense that your adjudicators would ask questions about the marriage? I assume the purpose of these questions is to find out if there is fraud. And is marriage fraud a real issue that you see in the department?

VALVERDE:

Yeah, I won't comment on specific cases, but I--you know, marriage fraud is an issue that we--we come across on a daily basis in one--in many of our offices. And it is something that we give our officers special training for so that they can pay attention to ensuring that it's a--it's a bona fide relationship that forms the relationship of either the request for permanent residence or citizenship.

STEUBE:

Well, I've even seen in my own district a case that was brought to my attention where the parties were allegedly married, and both the--the alleged wife was living with another man and the alleged husband was living with another woman. So, it's definitely an issue. At least I've seen in my district in the short time that I've been elected to Congress in the last six months. So, I certainly think there is fraud as it relates to getting married and trying to get citizenship and access into our country.

In her testimony for the next panel, Ms. Lindt refers to interviews for individuals seeking green cards through their employers as unnecessary. Getting a green card comes with significant legal benefits and rights. Is that correct?

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VALVERDE:

Yes, sir.

STEUBE:

And would you agree that ensuring an alien is in fact eligible for a green card is important and required by law?

VALVERDE:

Yes.

STEUBE:

And are the interviews for employment-based green cards adding unreasonable delays to the adjudication?

VALVERDE:

In my opinion, no, sir. I think it is--it is a measure of integrity to have a face-to-face conversation and ascertain evidence about their eligibility the benefit for someone who wants to remain here permanently, to live and travel and work here.

STEUBE:

I have questions for Mr. Neufeld. How much time do I have left, because I don't see a--

LOFGREN:

(OFF-MIC)

AMERICAN OVERSIGHT

STEUBE:

Okay. Mr. Neufeld, isn't it true that if an adjudicator is adjudicating an applicant--an application or petition and needs additional information in order to make a decision, the adjudicator has only two options, either issue a request for evidence or deny the application altogether? Is that correct?

NEUFELD:

Essentially. They can also issue a notice of intent to deny. That would afford them an opportunity to--to respond before they would make the actual decision.

STEUBE:

So, they could have an opportunity to respond, but that's it's. Either--either--

NEUFELD:

--Yes.

STEUBE:

Okay. And the late--the latest USCIS ombudsman report to Congress recommends that USCIS emphasize that petitioners and applicants verify the addresses provided for all forms filed with the USCIS. How much of a problem isn't that people do not provide their current address?

NEUFELD:

I think it's more of a problem that their address might change, and so our records don't reflect the correct--the correct address. On--in the employment context, occasionally we will find where the

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attorney's address or the employer's address will be used as if it's the beneficiary's address, and then that can create some problems with us trying to sort through that when we adjudicate the case.

STEUBE:

So, if they--if it's that type of scenario and they're not updating you of their new address, that obviously is delaying the delivery of their work permits and other documents from your agency.

NEUFELD:

Yes.

STEUBE:

How am I--how am I doing?

LOFGREN:

Your time is expired.

STEUBE:

Okay. All right. There you go. Thank you, Madam Chair.

LOFGREN:

The gentleman yields back. The gentlelady from Florida is recognized for five minutes.

MUCARSEL-POWELL:

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Hello. Hello. I--I think that an efficient and service-oriented immigration system is vital to businesses, for our economy, mostly also for families that are living here in the United States. It allows families to be reunited with loved ones and it enhances the diversity which makes this nation great.

I am actually a naturalized citizen. I remember going through the process, and am so grateful that I was allowed to that opportunity, but it did take years before we were eligible and allowed to become U.S. citizens. In recent years, we've seen that the backlog of cases at the USCIS has exploded. From 2016 to 2018, the net backlog of cases rose by nearly 1.4 million cases. In 2018, USCIS received a million fewer cases than the year before, but the average case processing delay continues to rise.

The staggering backlog of cases that USCIS has created challenges for businesses, universities, hospitals, and mostly families, like I mentioned. Despite this, earlier this year the administration announced that USCIS planned it to close all international field offices.

MUCARSEL-POWELL:

The offices are processing refugee applications, family-based visa applications and other immigration matters. My district in Miami serves a large population of Cuban-Americans. And from one day to the next the USCIS field office in Havana was closed. And as a result, families are now separated here on a daily basis. Hundreds of some of my community members that are writing to us, calling to us. They tweet asking for a resolve for this issue. They tell me that they wouldn't have left Cuba if they knew that their sons and daughters would not be able to unite them here in Miami.

So, I wanted to first ask Mr.--Mr. Valverde, who made the decision to close the office in Havana to process the parole and family related visas for the Cubans that are applying for these visas?

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VALVERDE:

I don't have the firsthand answer to that. I understand it was the former director but I wasn't--

MUCARSEL-POWELL:

OK, so now that the Havana office is closed what is the process for processing these applications and getting these families back together?

VALVERDE:

I think none of us on the panel are working in our overseas offices, administrations, so we would have to get back to you. I do understand that the Havana office was closed after the attacks on our employees.

MUCARSEL-POWELL:

Yes. But there was never any evidence that it had to do with the government there and now thousands of families are actually suffering the consequences of that closure without any responses. If--if you could please provide me with that information in the next two weeks as to what the plan is to process those applications that were already started.

And, just as a general matter, how does closing a USCIS office impact the backlog the agency has seen? Mr. Neufeld?

NEUFELD:

As my colleague mentioned none--none of us here oversee the overseas offices so we are a little bit challenged with this. As a service center executive, I would anticipate that some of that work that is presently performed overseas may be coming to the service centers and we would need to

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prepare for that. So, for instance, I am aware that on occasion family-based petitions might be adjudicated on site at a--at an international office and I would anticipate that that work would be coming to a service center instead.

MUCARSEL-POWELL:

And so, who made the decision in the agency to close all these field offices, international field offices?

NEUFELD:

Again, that's a bit of a challenge for us. As I understand it, the decision it hasn't been finalized in terms of specifically which offices are going to be closed.

MUCARSEL-POWELL:

And you are aware that a lot of these international field offices process international adoptions, they support refugee resettlement, and they handle family reunification applications. And, in addition, in response to Mr. Steube's concern on fraud they actually also deal with some of these fraudulent cases. So, I'm concerned that there's not enough (INAUDIBLE) in--in here nationally, how we are going to prepare to losing these international field offices.

Does--has USCIS or DHS conducted a cost-benefit analysis or otherwise studied the potential impact of these closures on the processing of refugees, adoptions and other services? Is there a study that has been conducted?

NEUFELD:

I don't know.

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LOFGREN:

The gentlelady's time is expired.

MUCARSEL-POWELL:

Thank you very much. I yield back.

LOFGREN:

The gentlelady from Texas is recognized for five minutes.

ESCOBAR:

Thank you, Madame Chair. And thanks to those of you on the panel for being here and thanks for your service. We have seen a theme this week with the hearings that we've had. We had a--a hearing yesterday on the horrific overcrowding in the El Paso processing facilities as documented by the office of the Inspector General.

And today, as laid out by my colleague the gentleman from Colorado we have seen also a--a terrible backlog that has been exacerbated by policy. And, the during yesterday's hearing what finally surfaced was that policy by this administration was making a challenging situation worse.

I believe that the same applies here. And just as an example of--of what we continue to have to face in October of 2018 USCIS published a notice of proposed rulemaking that would dramatically heighten the standard for determining whether an individual is likely to become a public charge. In the background information on the proposed rule DHS admitted that the new rule could lead to worse health outcomes, increased prevalence of communicable diseases, increased rates of poverty and housing instability and reduced productivity and educational attainment.

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Setting aside the fact that the rule as proposed is illegal and exceeds the agency's statutory authority, I'd like to ask either Mr. Neufeld or Mr. Valverde the following questions--when can we expect final action from the agency on this rule?

VALVERDE:

I don't have a date on that. It's still going through the rulemaking process.

ESCOBAR:

OK. If finalized as proposed, will this new rule increase the amount of time it takes to adjudicate applications for adjustment of status and other benefits? And if so, what is the estimated additional time burden?

VALVERDE:

I'll take that as well. The--the rule change, like any change, will add in complexity as we train people and try to roll it out. I don't have an estimate right now because the rule has not been finalized and we don't have the final language too. That we will have to apply to our--to our cases.

ESCOBAR:

Will you be evaluating what--what--how much extra time it will take--what kind of a burden it will add to the agency?

VALVERDE:

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Absolutely. We evaluate either in the two-year--every two-year fee process how long it takes us to do all our actions or our annual budget process. That is how we allocate the staff to do the work.

ESCOBAR:

I would request that in your subsequent budget, once the rule has been applied, that you please make a note of that at the additional time and the additional staffing that would be required in order to deal with the rule, please. Also, what steps has USCIS taken to prepare for the additional burdens that will be imposed on the adjudicatory process as a result of this rule? And what is the plan to ensure that processing delays on affected applications stay within reasonable time frames? And that doesn't mean, as Mr. Neguse pointed out--that doesn't mean changing the goal posts. That means providing customer service in the appropriate time.

VALVERDE:

As I mentioned a minute ago as--as soon as we get the final rule and we can build some processes and procedures around it we will have a better sense to answer your questions with some more specificities. But certainly, as we are aware of the rule, and as we have seen the proposed rule, we can make some guesses. And so we are doing the planning. We are taking that into account in our--in our budget process this year. At this point, they were making some assumptions about application rates and other impacts we are doing our planning as we speak right now. And we will see as the rule is finalized what its timeframe is and how our assumptions are played out in reality.

ESCOBAR:

If finalized as proposed, the new rule would require significant training for adjudicators who will be required to gain new expertise in complex areas of public benefits, including state Medicaid

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programs. However, the proposed rule includes no time or cost estimates of the necessary training. Has USCIS estimated the costs for training and implementing the new rule? If so, what are these estimated costs?

VALVERDE:

I don't have an estimate for you but I would say that when I--one of the first things that I did when I joined the agency in 1997 was (INAUDIBLE) the public charge rule that we did at that time based on the 1996 act. And it's very similar. We had to teach our adjudicators to understand what public benefits were and how they impacted these benefits. We do something very similar. I say that, to illustrate that, we are accustomed to policy changes or statutory changes or process changes and bringing our people through that with the goal of implementing it as efficiently as we can and as consistently as we can across the hundreds of thousands of applications that we will get. We are working on it now.

ESCOBAR:

And your customers will have to shoulder the burden of the new--of the added costs, correct?

LOFGREN:

Gentlelady's time has expired. The gentleman may answer.

VALVERDE:

Correct.

LOFGREN:

Gentlelady from Pennsylvania is recognized for five minutes.

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SCANLON:

Thank you. Just wanted to make clear that CIS is the agency charged with processing applications of people who are trying to follow our rules and become legal residents or get work--work authorization or become citizens, right? OK. So, they're not people hiding form the government. They actually are providing a lot of information to the government as they seek to have those applications adjudicated, right? Mr. Hoefer, I'll let you speak for the group. Thank you. And until they get citizenship they can't vote, they can't receive social security benefits, usually, sometimes people can't work. I mean there are a whole host of benefits that are intended upon either becoming a legal resident or a citizen, correct?

HOEFER:

Yes.

SCANLON:

OK. We talked a little bit about the delays and some of the factors that led to the burgeoning backlog. And I think you mentioned the increase rather than decrease in citizenship applications following the 2016 presidential election, right?

HOEFER:

That is correct. Yes.

SCANLON:

OK. So, after a presidential election there is usually some kind of drop off?

HOEFER:

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Yes.

SCANLON:

I can help you with why that happened. As a legal service attorney immediately following the election in 2016, we started encouraging people to obtain citizenship if they were eligible due to the anti-immigrant rhetoric coming from the administration and I think the administration helped deliver that message pretty forcefully when the first executive orders to come out of this White House were to ban travel by people who were from predominantly Muslim nations and to completely upend our deportation priorities going from just excluding and hombres as one might call them to anyone who did not have permanent legal status under our law so there was a huge incentive for people to try to file their paperwork and--and get whatever status they were able to.

But I--I don't think you mentioned some of their things. One thing that I noted in going through some of the testimony the inspector general did mention that the electronic documentation service, ELIS, I believe it is called has had some serious deficiencies that have also slowed down processing, correct? Who's is that? Mr. Valverde?

VALVERDE:

Yeah, I can't speak to that because we used it for citizenship and also for replacement green cards and for citizenship and I will get my years wrong, in the '15, '16 time frame when we were implementing it it was a much slower implementation because of some of those difficulties that you are referring to.

SCANLON:

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Okay. And the inspector general's report was from November 2017 at which point those difficulties were continuing weren't they?

VALVERDE:

I believe that's the right time frame. Shortly after that we had pivoted back to using the system and we have been using it since.

SCANLON:

So you had to resume using a system that you had been trying to upgrade because of deficiencies in the new system?

VALVERDE:

We had started to use it and then decided it was better to fix it and pause for a while and then resume using it when it was working the way we intended it to.

SCANLON:

And that is staring a part--a time--a period of time that was central to when this backlog started to really explode, isn't that right?

VALVERDE:

It was while the backlogs were growing but I would note that we had a parallel system, the older system we call claims for without getting too much into the jargon that we continue to use so we did not sit on our hands. We had work to do during that time as we improve the ELIS system.

SCANLON:

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Okay. But it contributed to the backlog, right?

VALVERDE:

I think that's fair.

SCANLON:

Okay. What you didn't mention is there have been a lot of policy changes during the course of this administration that have impacted your inability to process applications. Isn't that correct?

NEUFELD:

There have been a number of policy changes that impact our (INAUDIBLE).

SCANLON:

And they would include additional REIs (PH) or RFEs (PH) request for evidence that were not previously required?

NEUFELD:

The policies didn't direct that we would issue more request for evidence, no.

SCANLON:

There has been some suggestion that the request for evidence have become duplicative in some cases. You haven't heard complaints that you are requesting evidence and duplicative manners?

NEUFELD:

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Oh, that sometimes a request will be issued and then followed by a request for the same evidence?

SCANLON:

Yes.

NEUFELD:

I--I am sure that in the millions of cases we process that mistakes made--are made but that is not a common--

SCANLON:

As someone who has had to submit their attorney representation file six or eight times on the same case I think there are some issues with that.

Another policy that would seem to have increased time for response would be eliminating the 90 day deadline for processing employment authorizations, right? If there's no longer a deadline can take longer?

NEUFELD:

That--know, that didn't drive how much longer it takes to process cases--

SCANLON:

Okay.

LOFGREN:

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The gentlelady's time has expired but we will has the--we got an answer to the last question?

SCANLON:

Okay. Thank you.

LOFGREN:

Okay. Then I will--the ranking member has said he will pass on this round of questions so I will go to my questions and I think we are expecting a vote on the floor very soon so we will have to come back for the second panel after that vote.

I am concerned about how the processes have changed and the impact on the administration of the benefits program. Obviously everybody wants a system that avoids fraud and adheres to the requirements of the statute and the like but I just have some questions about the impact in certain cases and where the delay really eliminates the value of the program itself.

For example the OPT program, Optional Practical Training program, by regulation the earliest that a student can apply for OPT is 90 days before the end of the educational program. I have heard that the employment--that the delays are so extreme five months or more that in some cases you've got a student who has graduated from college, they are going to go on to their PhD, they've got their internship.

The internship is over before they even get the approval of OPT to do it. So the whole idea of having this program is undercut by the delay and so you sort of wonder what is being achieved here other than to undercut what the agency wants to do because of the delay. I have concerns about what is happening on the employment side. We have had a number of questions on the family side which is you know very important but I am seeing from the statistics that nearly 50

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percent of all H-1B petitions received RFE in the second quarter of 2019 and I am wondering why.

I will give you an example of you know I come from Silicon Valley, recently had a casual conversation with somebody I have known for many years, a serial entrepreneur, he has been CEO of very large companies and now he's got a startup and he had an H-1B visa holder that was renewing the H-1B and instead of you know getting the renewal he got a question from USC I guess was this guy's PhD really well fitted to the job.

His question was what would the USCIS no one about that PhD versus him as the employer. And secondly why this big study on a renewal of an H-1B, he said what changed? Was there first process wrong? And people are just feeling jerked around for lack of a better term and what we have God are Canadian recruiters coming into American tech centers and luring people away.

The tech economy in Toronto is growing faster than the tech economy in Silicon Valley and Washington. A lot of people think it's because of USCIS and our immigration policies. I'm wondering can you tell me about why we are doing the RFE that we are doing in the H-1B program and for renewals in particular?

NEUFELD:

So that one's mine. I can tell you that a number of changes have been made affecting H-1B processing over the last couple of years and I am sure you are familiar with them and so when there's a change that is introduced we have to first we train our folks but we also have to educate the public on what the requirements are as we now understand them and so whenever that happens regardless of what context that's usually it's pretty predictable that we will have an increase in request for evidence perhaps an increase in denials. Usually over time as the public

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becomes familiar with what the requirements are and as our adjudicators become more proficient then we usually will see that the request are the impact of those changes do become more stable.

LOFGREN:

Let me ask you another question. Somebody said why don't we have some judgment being shown in these cases. We know that there are entities that abuse the H-1B program and there's not going to be a single person on this panel that says don't scrutinize that situation. We all agree on that. But then you've got situations where that's not the case and you have people who are being denied and then they appeal and they when their appeals every single time. And so what's happened is you have just added money, cost, delay for no outcome. Is there any analysis going on--on where the appeals are always successful and the denials are always wrong and to do some assessment on what you are doing here?

NEUFELD:

So I won't say that there has been a study of the decisions coming from the--the AAO. But I will tell you that those--as we receive decisions that--from the AAO that overturn the decision of the adjudicator, we do review those and determine whether--is in a training issue or is it, you know, some other guidance it needs to be clarified or what have you.

LOFGREN:

Just a--a final question. I've also received a lot of complaints about the use of denials or FTEs as compared to the more informal notice of intent process that used to be more prevalent. For example, I've had tech people say, you know, there was a clerical error on the application. And instead of calling up saying was it the state or that date, or, you know, was there a typo on this line, they request evidence or they deny it, even worse, so you have to go through a whole expensive process. Why is that? What's the value of that?

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NEUFELD:

So, I think this gets back to the--the change in policy that--that we were discussing previously. And the prior policy did require that it--pretty much in every circumstance, even if the record seemed to be, you know, fully there, that a request for evidence would be issued. And the policy changed and allowed for folks to go straight to a decision if they felt that the record is--is complete.

I don't know that--again, I don't think we've done a study to determine the impact in as far as how many cases have gone straight to a denial as opposed to having a request for evidence issued in the interim. I--I would imagine that we could--we could get data on that.

LOFGREN:

Well, since I have asked others to keep within their five minutes, my five minutes is up. So, I will note that we've also been called to a vote. We have additional questions.

Oh, Sheila, you--you came in later. Before we end this hearing, let me turn to Ms. Jackson Lee for her five minutes, and then we will have enough time to get to the floor. The gentlelady from Texas is recognized.

JACKSON LEE:

I thank the chair, and I thank you for holding this hearing. I want to just--to the witnesses, USCIS has acknowledged that some policy changes have slowed processing and increase the overall case backlog. Has USCIS, and I know we've had probably a series of questions like this, make any efforts to improve data collection and analysis to better understand the impact of future policy changes on processing time and case backlog?

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HOEFER:

So, we do do reviews going--looking back in time to see how--the policy's effects. And certainly, when we have information about the various policies, we try to make estimates of how long things are going to take. So, we regularly do reviews every year of this nature.

JACKSON LEE:

So, what is your backlog now? If you said you had to give a--a landscape across the nation of how many backlog cases you're dealing with, do you have a handle on that?

HOEFER:

Yes. We would--we--we have 2.4 million cases in backlog. And overall, we have about 5.9 million cases pending.

JACKSON LEE:

And those individuals, do they have a document indicating pending case? Are they subject to the actions of immigration enforcers because they're not statused, or are you continuing to provide them with updated paperwork that their present status is due to your backlog?

NEUFELD:

I can take that. So, every--everybody who files a petition or application with us will receive a receipt, and that will indicate that a--their case is pending. Depending on what they're applying for, that might provide them, you know, the status or some protection from removal. It--it depends really on what--what their status was before they applied, what the status is that they're seeking.

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JACKSON LEE:

Employment authorization delays have been substantial. Delays on employment authorization have significant impact on many different stakeholders and can result in prolonged benching or even job loss. Families are put in disarray because families are dependent on the person seeking the employment status. Do you have any way of channeling the employment requests? Because these people will have a legitimate base of income. They've got family members that are dependent on them. Is there any way to stove--stovepipe those requests?

NEUFELD:

So, we are concerned with the processing times for employment authorization documents. And the--and one of the things that we did was provide for auto extensions. So, if--if somebody has an employment authorization document and they need to seek an extension, depending on the category then they can receive an automatic--their old card is automatically extended for a period of time while we process their case. That was one of the things that we try to do to--to provide some relief.

But we also--it's one of--this category of work is very important, but it also competes with the other categories of work that we have with our limited resources. So, I can tell you that we do prioritize it. And compared to other processing times for other applications, the EADs typically are handled much more quickly, but not as quickly as we would like.

JACKSON LEE:

Well, would you consider going back and analyzing to--how you would resource the employment requests in a way that you might recommend that would help you move them faster? Certainly vetting is important, but move them faster.

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NEUFELD:

Yes.

JACKSON LEE:

Are you all appointees or civil servants?

NEUFELD:

Career civil servants.

JACKSON LEE:

Well, first of all, let me thank you for your service. I probably run into you before. Are you noting the disparate directions that seem to be coming from the administration impacting staffing, impacting immigrants who are coming in for not showing up?

In terms of the--the disparate--I don't--frankly, I don't know whether this administration is for any immigration. I don't know if therefore legal or illegal--not illegal, but helping undocumented, helping people who are in the country. I have no idea. That sets the tone for the work you do and also for people accessing your services, which are very important, and the funding that we in Congress pile on to the administration. I'm not sure if it's reaching you because I notice that you have staff turnover. What's happening with staff turnover and the people that come in that you see?

NEUFELD:

The staff turnover, we actually--like any agency, we experience attrition, but that is not--I don't think that's a huge concern for us. The--the difficulty for us is in--in term--hiring can take several

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months, not only then to bring somebody on board, but then after that to get them trained and experienced enough to tackle this.

JACKSON LEE:

So, you have the resources--Congress has given you the resources to hire as you need to?

NEUFELD:

We're fee funded, so we don't usually need to look to Congress to--to authorize our staffing levels.

JACKSON LEE:

And so, you can expand your staffing levels if necessary?

NEUFELD:

With the fees, yes.

JACKSON LEE:

Right. And you will look to the stove piping of certain employment documents?

LOFGREN:

The gentlelady's time has expired.

NEUFELD:

Yes.

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JACKSON LEE:

I mean processes. Thank you. I yield back.

LOFGREN:

Thank you. The gentlelady yields back. I recognize the ranking member for a unanimous consent request.

BUCK:

I ask that a statement from the United States Chamber of Commerce dated July 16th, 2019, be included in the record.

LOFGREN:

Without objection, so ordered. I would also ask unanimous consent that the following statements be made a part of the record; from the American Council on Education, the American Immigration Counsel assisting the Asian Pacific Institute on Gender-Based Violence, the Association of American Universities, Boundless Immigration, Church World Services, the Compete America Coalition, Forward Us, Her Justice, Invest in America, National Immigration Forum, Unitas U.S., and the National Partnership for New Americans report to REAR (PH), and the--again, the Information Technology Industry Council. And without objection, those statements are made a part of the record.

Just as a parting comment, I think that planning ahead is something that would be very helpful in terms of changes of policy. I think you heard from many of us when the premium processing policy was changed after the applications had already been mailed on a Sunday when the--when the due date was Monday and people had to rip checks out of the--and rewrite them. People

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whose applications had already been sent was--were rejected because they had more money in the fee. It's--it's just a crazy way to run an outfit. I know it wasn't your decision, but that kind of stuff just creates chaos in the community and the business community and is counterproductive in terms of a--a good economy for the United States.

With this, we will recess until after the vote. We will have five legislative days to submit additional questions to each of you. We would ask if we do that you answer them promptly. We thank you very much for being here. And we will probably be back a little bit after 2:00 for planning purposes if people need to go catch a snack or something. So, we are in recess.

LOFGREN:

The subcommittee will come back into order. I--we had a number of votes and hopefully we will get some of the other members who are on their way back. But for now we will start with our second panel and I would like to introduce all of them but before I do let me ask you all to stand, raise your right hand and do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge the information and belief so help you God? And the record will show that each of the witnesses replied in the affirmative. Now we will introduce our four witnesses.

Marketa Lindt is president of the American Immigration Lawyers Association and a partner at the Chicago Office of Sidley Austin LLP where she specializes in business immigration programs and I-9 compliance. She has authored numerous pieces on business immigration for legal publications. She has served as a member of the leadership board of the national immigrant Justice Center in Chicago and currently advises several Chicago-based organizations that provide assistance to underserved immigrant communities.

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Jill Marie Bussey is director of advocacy at the Catholic legal immigration network also known as clinic. Ms. Bussey has worked in the immigration field for nearly 20 years. Prior to clinic she served as president of the board of directors at the foreign-born information and referral network, a Maryland-based nonprofit that supports immigrants, refugees and asylees. She also served as director of the global immigration counsel for PROLink global and worked in private practice at a multitude of firms.

Eric Cohen is the executive director of the immigrant legal resource center. Prior to being named executive director in 2007 he supervised the ILRC legal work as legal director and staff attorney. He has been a professor of immigration law and has supervised immigration law clinics at Stanford and the University of California Hastings School of Law. Mr. Cohen has co-authored countless publications and practice manuals for immigration attorneys and specializes in naturalization and citizenship issues.

Jessica Vaughan serves as director of policy studies for the Center for immigration studies where she has worked since 1992. Ms. Vaughan is also an instructor for senior law enforcement officer training seminars at Northwestern University's Center for public safety in Illinois. Prior to her work with the Center for Immigration Studies, Ms. Vaughan was a foreign service officer with the U.S. Department of State where she served in Belgium as well as Trinidad and Tobago.

So we think each one of you for being here. As you know we have your written statements which will be made part of the record and we ask that your testimony be about five minutes. There is a light system somewhere, maybe not. But when you are a minute away from your five minutes, the yellow light will go on and the red light is supposed to go on when your time is up. We would ask that you try and stay within that timeframe and we are eager to hear from each one of you. So with that we will start with you, Ms. Lindt.

LINDT:

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Chairwoman Lofgren and Ranking Member Buck and members of the subcommittee, thank you for the opportunity to testify before you today on the bipartisan issue of reducing processing delays at USCIS. My name is Marketa Lindt and I am the elected president of the American Immigration Lawyers Association, the private bar association of more than 15,000 immigration attorneys and law professors. I am also a partner at the law firm of Sidley Austin where I specialize in business immigration and represent a wide range of American companies. Collectively as alum members we represent businesses, families, and people seeking perfect protection before USCIS and virtually every kind of immigration application. Unfortunately our experience reveals say troubling reality.

Today's USCIS is an agency rife with processing delays that are driven by the agency's own in efficient policies and practices. Congress established USCIS to be a service-oriented immigration agency that meets the needs of American businesses and families. To accomplish this the agency must process its--its applications efficiently and timely in a manner that protects the integrity of the immigration system. The magnitude of the delays now facing USCIS customers, many of whom pay significant fees for USCIS services are extreme. USCIS has a history of chronic management problems and processing delays but the delays are particularly acute now. Analysis of USCIS data reveals that between fiscal years 2016 and 2018 the agency's average case processing time surged 546 percent and the overall backlog of delayed cases exceeded 5.69 million. This slowdown in case processing has a significant impact on U.S. business and families.

The delays restrict the ability of U.S. businesses to hire workers that they need to be competitive nationally and globally. They prolong separation of families, they endanger those who need humanitarian protection and they stalled the integration of aspiring U.S. citizens. And this is not a matter of ideology or politics. U.S. businesses and individuals are paying substantial filing fees for applications for immigration benefits. The agency's efficient implementation of our legal

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immigration system is simply a matter of good governance. Leaders in Congress on both sides of the aisle have recognize the critical impact the USCIS delays are having and with bipartisan action have called for greater accountability. In March of this year, a bipartisan delegation of 10 house members from the Houston area, some on this subcommittee wrote that the agency's inability to act in a timely way to serve the Houston area was posing a quote hindrance to our region's future. In May, 38 U.S. senators including 19 Republicans and 19 Democrats expressed alarm over USCIS quote nationwide slowdown.

In response USCIS has largely attributed its backlog to resource constraints and high numbers of applications however USCIS own data shows that in Fiscal Year 2018 the agencies budget grew and the application rate significantly declined yet during that same time case processing times still increased by 19 percent. What the evidence demonstrates is that in fact it is the agency's own in efficient policies that are driving the longer processing times.

In my testimony, I cite many of the problematic policies that USCIS has implemented. Here are three. First, in October 2017, USCIS imposed a policy mandating an in person interview for every one applying for a green card through his or her employer. Officers already had the discretion to select cases for an interview but now the agency requires in person interviews for every single applicant even if there's no indication that it's necessary. This strains the agency's valuable adjudication resources that could otherwise reduce the backlog.

Second, and 2017, USCIS changed 2004 policy from the Bush era to now require the agency to re-adjudicate every application for an extension of status even where the same employer is applying for the same employee for the same job under the same visa type and where and there has been no meaningful change in circumstances. And third, USCIS data shows significant spikes and request for evidence being issued from the agency. These requests halt case processing, often request irrelevant or previously provided information and create an additional time-consuming and resource intensive step in the process.

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In my own practice, I have witnessed the growth in case processing delays and their harmful consequences for businesses nationwide. I have seen companies workforce gaps going unfilled, I have seen workers losing employment authorization and every day I see the uncertainty that now pervades the business environment. As a result our country is losing valuable university graduates, talented professionals and entrepreneurs from abroad who are choosing destinations other than the United States because the stress, the lengthy processing times and the unpredictability of the U.S. immigration process creates an environment that is inhospitable to innovation and to attracting and retaining global talent.

So members of the subcommittee it is imperative that both USCIS and Congress act swiftly to eliminate processing delays and their destructive consequences. Most importantly USCIS should reverse inefficient policies that needlessly delay adjudications. I also urge Congress to pass legislation that strengthens accountability at USCIS and ensures that the agencies serve the American people, our families and our businesses. Congress gave USCIS a mandate and for the sake of our national interests the agency must fulfill it.

LOFGREN:

Thank you very much. We will now hear from Ms. Bussey.

BUSSEY:

Good afternoon Chair--Chairwoman Lofgren, Ranking Member Buck and members of the subcommittee. My name is Jill Marie Bussey and I am the director of advocacy at the Catholic Legal Immigration Network and an attorney with about 20 years of experience in immigration law. We are really grateful for this invitation. Guided by our Catholic identity and mission to welcome the stranger clinic promotes the rights and dignity of immigrants. Our network of over 370 nonprofit immigrant legal services agencies serve hundreds of thousands of low income

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immigrants each year providing us with valuable insights and real-life examples of the problems they face before USCIS.

Over the past two years, we have become increasingly alarmed to see the political leadership that USCIS steering this services based agency toward enforcement and away from its congressional mandated purpose. Customers provide sensitive personal information about themselves and their families to USCIS. They pay application fees with their hard-earned money and they put their trust in this agency. Under the current leadership their lives are being upended as deliberate policy choices and gross mismanagement have led to crisis level case processing backlogs. For example, longer forms and new rules asking for unnecessary information create needless redundancies and drain resources.

Cases with small errors or issues that were previously resolved through customer service have been denied forcing everyone to go back to square one. USCIS is thought processing work permits within 90 days and then made it harder for people to request expedited processing.

Slow processing times rob people of their dignity, their livelihood and their security. They also shake people's trust in our immigration system. Our written testimony explains in detail the problematic policies that we have identified as well as their human consequences. Today we lift up three. Hazam's (PH) story illustrates the harm caused when USCIS fails to process work permits on time. Hazam came to the United States in 2011 to study engineering just as Syria's Civil War was erupting. Unable to go home after his student visa ended he applied for temporary protected status and found a job at a small firm in Oregon. Hazam faced numerous consequences due to application processing delays including renewing his driver's license, gaining access to his own bank account and losing billable hours at work and much needed income.

BUSSEY:

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Delays have also deprived Americans of critical services when green card processing stalls. For example, Father Ardune (SP) is a Catholic priest from India serving a 160-mile rural area in upstate New York. He celebrates mass, officiates weddings, visits the sick, and presides over funerals. Waiting for over two years for his green card forced him and his diocese to submit multiple applications and fees to USCIS.

Because of this, his driver's license--because his driver's license is connected to his immigration status, he's experienced difficulties getting it renewed. His work permit and his driver's licenses are key tools that allow him to serve. Here, USCIS delays may cause a vulnerable parishioner to receive it--to miss receiving pastoral care at a critical time in their life, including last rites.

These are not the only cases that are being delayed. Lifesaving survivor-based applications has slowed--slowed to a near halt. Cheryl (SP) is a Jamaican national and survivor of brutal domestic violence has waited for approval for her green card under VAWA (SP) for nearly a year. That's four times the normal processing time. Cheryl fled her abuser, but without a work permit, could not provide for her children and was forced to move back. The violence immediately began again, and under current processing times, she would have to endure another six months.

This is absurd and it's immoral. Cheryl and her children should be safe right now, yet they are at the mercy of USCIS to process her case. The current situation at USCIS is wholly and completely on avoidable. It has been brought on by misdirection, mismanagement, and poor policy. To raise--raise fees now would force applicants and petitioners to pay the costs of USCIS own failures. USCIS must resend the policies they have brought to--that have brought us to this current crisis.

It must prioritize clearing the backlog of survivor-based applications and place limits on processing times for work permits and other applications to ensure the most vulnerable are protected. I thank the committee for your attention to these issues and I urge all members of

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Congress to talk with their constituents and district office staff to learn more about the harm that these backlogs are causing. Congress must hold USCIS accountable. We can right this ship and restore faith in our immigration system together. Thank you.

LOFGREN:

Thanks very much. Mr. Cohen.

COHEN:

Chairman Lofgren, Ranking Member Buck, and distinguished members of the subcommittee, thank you very much for the opportunity to hear--to appear before you to discuss naturalization, the crippling naturalization backlogs at USCIS, and the policies and process--processes have caused those backlogs. I am here representing the Immigrant Legal Resource Center, and for 40 years, we have provided immigration legal resources to practitioners. We also lead the New Americans Campaign, the single biggest naturalization collaboration in the history of the United States, which has helped over 400,000 people complete their applications.

Our nature's--our nation's naturalization program, is in a state of dysfunction, and USCIS is not adequately, fairly, and efficiently processing naturalization applications. Instead of remedying this situation, the Trump administration's policies have exacerbated unmanageable backlogs. The way to naturalize has ballooned to unacceptable levels and result is that naturalization applicants and their families are suffering. The naturalization wait time has gone from 5.8 months in 2018 to 10.3 months in 2017. As of March 2019, the average is 10 months. In Miami, Dallas, and New York, processing times for many cases has stretched to nearly 2 years.

There are several reasons for these processing delays. First, this administration does not prioritize addressing the backlogs and has not dedicated sufficient staff, resources declaring to clearing the black--backlog. In previous years where there was a backlog, USCIS made

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significant progress clearing the backlog because it was viewed as a priority. Sadly, this is not happening under the Trump administration.

Second, this administration spends an inordinate amount of time re-adjudicating determinations that were previously made, thus unduly delaying the process. In March 2019, we surveyed our NAC partners, New Americans Campaign partners, across the nation, asking them to report any changes in USCIS practice they have observed. Many of those surveys reported that naturalization interviews are lasting longer, in fact on average, approximately twice as long in the past, thus contributing to the backlog. Respondents reported that USCIS adjudicators are also viewing naturalization applicants with more suspicion.

In one case, the adjudicator asked for proof of marriage even though the couple has children together and the marriage was already determined value by valid by USCIS during the green card interview. Often, adjudicator inquiries require applicants to provide information outside the scope of naturalization applications, thus delaying the adjudication. Our partners report that USCIS adjudicators are asking for travel history beyond the five-year required statutory, and are questioning legitimacy of fee waiver applicants' low-income status by asking irrelevant questions, even after the fee waiver has been approved.

In one recent case, an 82-year-old Iranian woman applied for naturalization. During the interview, the USCIS adjudicator decided to revisit details of her asylum case, including the trauma she suffered in Iran, even though these details were vetted during the asylum interview nine years earlier. She broke down during the interview and was unable to complete the interview, causing her to be denied naturalization.

Lastly, USCIS policy directives have shifted its mission from a benefit granting agency to one that erects barriers and serves as an enforcer. These include proposing changes to new naturalization application by adding vague and legally overbroad questions, inviting arbitrary

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and inconsistent adjudications, ramping up denaturalization efforts, engaging in 'extreme vetting,' proposing restrictions to fee waivers, and considering substantial fee increase.

Naturalization not only benefits applicant, it also benefits the US economy. Studies show that increasing citizenship results in an increased GDP, an increase in individual earnings, and billions in additional tax revenue. In 2013, I was fortunate enough to be invited to speak on a panel at the George W. Bush Presidential Library in Dallas, Texas. The event's focus was on naturalization, and included a naturalization swearing-in ceremony, at which President George W. Bush gave a wonderful speech.

At one very powerful moment in the speech, President Bush told the soon-to-be American citizens 'In a few moments, we will share the same title, a title that has meant more to me than any other, and I've had a lot. That would be citizen of the United States. Citizenship is an important part of the foundation of our democracy, and we should all work to ensure that our naturalization process is administrated fairly, efficiently, and reasonably.' Thank you very much for letting me speak today, and I look forward to taking your questions.

LOFGREN:

Thank you very much. Ms. Vaughan, we'd be very happy to hear from you.

VAUGHAN:

Thank you. Every single day, USCIS officers face the challenge of balancing their responsibility to make the correct decision on sometimes complicated applications with the need to do so within a reasonable timeframe. It's something I did on a daily basis when I was a counselor officer adjudicating visa applications. Officers always have to be on the lookout for fraud, which is sometimes rampant depending on the category, or for people who are safety or security risks, and that's not always easy to detect.

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On top of that, the agencies are constantly subject to pressure from special interest groups, such as employers that sponsor foreign workers and immigration attorneys who are sometimes pressuring the agency to a top adopt policies or practices that they believe favored their business or clients, and especially to make decisions faster.

Too often, USCIS leadership has succumbed to this pressure and, as a result, has overemphasized swift processing at the expense of correct and fair adjudication with disastrous results for American workers and others who suffer harm because of rushed decisions or questionable prioritization of cases. Adding to the challenge, USCIS has to follow a cumbersome procedure for setting and collecting fees that cover the actual cost of adjudicating applications and subsidizing some applications. This leads to chronic understaffing, which hinders productivity.

And as we've heard, USCIS has to deal with what are essentially unfunded mandates at an agency that depends almost completely on fees, such as processing record numbers of asylum applications and work permits for them. This afternoon, we've heard a lot of criticism of some changes that the Trump administration has made to improve the screening of applications and to address the fraud and the gaming of the system. Most of these, like the interview requirement and the issuance of NTAs, are just common sense and I address them in more detail in my written statement.

Others, like ending the deference policy and allowing for the refusal of frivolous applications from the get-go help unclog the system so that the legitimate applicants are not disadvantaged. Some of these changes advocates complain about actually have reduced processing times. But no--but advocates advocacy groups have been silent on a policy change that is most responsible for the backlogs before the election cycle, and that was DACA. Since 2012, DACA has added more than 2.4 million applications to the USCIS workload, 910,000 initial applications and more than 1.5 million renewals.

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If you examine the charts in the USCIS testimony, you can see that the concerning growth in the backlogs began shortly after DACA was implemented. To be sure, the naturalization and asylum surge made the backlogs worse later, but the DACA workload is still a major contributor to the problem. The USCIS testimony we've just heard confirms that DACA was responsible for about three quarters of the backlog growth that occurred before 2016. And--and the biggest growth we heard this afternoon occurred from 2016 and '17, which is before the Trump administration policy changes.

Even more consequential than the size of the DACA program is the fact that the fees for DACA did not cover the true cost of processing the application. Essentially, the DACA applicants got their benefit for half-price. This meant that USCIS couldn't hire enough staff for the job and had to cut corners in adjudicating the applications. It also meant that the applications of legal immigrants, especially family applications, were sidelined. To add insult to injury, because the DACA benefits were given at half price, these legal immigrants had to subsidize the cost of the DACA program through the visa they paid.

I commend the committee for its concern over the backlogs and I share those concerns. But, if members are looking for ways to actually improve the situation instead of just looking for pretexts to use the backlogs as a cudgel against the Trump administration, and as cover for restoring policies that are too lax, there are options.

First, don't add to the problem by creating programs that add to USCIS' workload without generating resources to cover the staff and infrastructure needed to administer the program properly. And, do not legislate changes that result in looser screening just to please employers who want it to be easier to replace U.S. workers.

Also, focus on finding ways to enable USCIS to be more nimble in seeing fees and putting them to use on behalf of the applicants. Under the Bush administration, USCIS received a large

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appropriation from Congress to address the backlog. In my view, this ideally should not come from taxpayers, but perhaps in the form of surcharges collected from employers or others who benefit from our immigration programs. Another option would be to allow USCIS to impose a surcharge on DACA renewals to help make up for the impact that that that program has had on the backlog.

Above all, remember that we must not compromise security and the integrity of our immigration system to please special interests.

LOFGREN:

Thank you very much and thanks to each one of you for your testimony, as well as your written statements that are part of our record. I would turn now to the ranking member for any questions or statements he may have.

BUCK:

First, I just want to say sorry. I wish we had more members and I wish we hadn't had votes interrupt the hearing, and--and I--I very much appreciate you being here and I--it's an important issue for both sides of the aisle and an important issue that we want to solve. We may have differences of opinion on exactly the cause of the problem, but reducing the backlog is--is something that's very important.

There are three parts of my job that I really like, and only three parts.

(LAUGHTER)

And, none of them happen in the swamp. The first is that I get to nominate students to academies, and I am extremely proud of that. And, the second is that I get to congratulate participants in the annual art competition, and I'm extremely proud of that. And, the third is that I

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get to attend naturalization ceremonies, and--and it is a thrill that I wish all Americans could participate in and understand exactly the life changing event that occurs for all those who are--are joining us as--as American citizens.

And--and I think we heard from three non-political civil servants, career individuals who have spent their lives trying to efficiently and effectively implement a program. They've identified a number of the--the challenges and I am--I am hopeful that we can, as a Congress, as a legislative body, support their efforts to make sure that we are allowing the right people to become U.S. citizens and as many of the right people as possible to become U.S. citizens, because it's something that I--I look at my grandparents who came here from Norway and I think that all of us can identify relatives who have immigrated to this country, relatives who we are very proud of, who took the risk to come here.

And, I--I am thankful for the chairwoman for calling this hearing and again, I wish we had greater participation. So, thank you very much for being here.

LOFGREN:

Gentleman yields back. I'd like to, Ms. Lindt, go to your testimony regarding the RFEs that are skyrocketing. And, it appears that in--from your testimony, that in the beginning of this fiscal year, 60 percent of the H-1B petitions had RFEs, which is a huge amount. And, I'm wondering what could be the cause of that?

What's the impact of that on the business community? And, specifically, obviously I represent Silicon Valley, but it--there are a lot of H-1B renewals and applicants in the medical arena, especially in rural underserved areas, physicians. Can you address any of those issues?

LINDT:

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Certainly. I--and thank you. I--I'm not sure I can speculate as to the cause of it, and it's particularly confounding, I think, to us who practice in this area because we're seeing requests for evidence issued on cases where the agency has already looked at that case, sometimes numerous times, for, again, the same employer, the same job, the same circumstances. And, so it is confounding to see this uptick in RFEs and having to establish yet again--and this time, with a higher level of burden at the RFE stage, why this is a specialty occupation.

I can certainly address the impact on employers, because I see this day to day in my practice. It--it's--I think the key impact is that it's making, from the employer side, very, very difficult to plan. These are companies that are trying to run a business, whether it's a software engineering firm, whether it's a manufacturing company, whether it's an R&D company. They are trying to run their business and part of running their business is recruiting and retaining talent and they're--we're in a very tight job market.

In addition, often these companies or--or universities or other employers are looking for people with particular skills so that, again, they can run their business or--or they can continue to be on the cutting edge of the sort of research that they might be doing. And, it is very difficult to plan and the delays are really exacerbating that. And, the RFEs are especially exacerbating that because it adds a whole level of uncertainty, both in terms of timeframe and in terms of outcome, to staffing these important positions.

LOFGREN:

I'd like--you know, Mr. Buck and I help lead a successful effort, a House vote on a bill to ultimately eliminate the per cap for allocation of visas on the business side. But, until that becomes law, we know that there are visa holders from certain countries that are facing these extraordinary waits.

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And, I'll just give you an example, somebody who came to me not from my district but an MD who's waiting and waiting and it's the same employer. He's the same medical doctor. He has the same patients, and now he's getting request for evidence on the renewal.

Are you seeing some of that in--in other fields as well?

LINDT:

Certainly and we see it in its--and we've also heard reports from other members in our association, also in the medical area, but we're seeing it across the board in a lot of different industries, a lot of different types of employers. I represent employers in financial services and management consulting and R&D, again in manufacturing, and we're seeing these request for evidence affect a lot of different industries, and making it difficult for these employers, again, to staff these positions.

LOFGREN:

Let me ask you Ms. Bussey your story about the priest not getting a timely approval and not being able to meet the pastoral needs of his flock including last rights was pretty striking. I am wondering can you--based on your observation can you give us some examples of how the USCIS decision to end deference to prior visa approvals for religious workers has impacted the religious community and their parishioners?

BUSSEY:

Absolutely. In fact I brought an R petition with me today so I can show you what it looks like. A couple of years ago this petition which is 269 pages long and would be filed in duplicate a couple of years ago this application would have been about 100 and some pages but because we are re-adjudicating applications and because we are--USCIS is issuing RFPs on cases the very first

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petition that is going to be filed is going to be frontloaded trying to offset and trying to mitigate and RFP but a renewal petition is also going to be a lot more evidence that the agency is going to have to get through.

This is an RFE response. This is 191 pages long when diocese and religious orders are having to respond to request for evidence of this nature and by the way the R visa is only limited--limited to five years, we don't get extensions of R beyond five years. When they are in this perpetual cycle of responding to requests for evidence they are left with having to send the pastor, the priest back home to wait for their applications to be processed.

What does that do? That takes a pastor, it--it takes a leader, a religious leader outside of their community that they have been ministering to for five years, someone who has cultural proficiency potentially in that neighborhood or in that community, language skills, it takes them out of that neighborhood back to their home country and then the congregation is waiting for an indefinite period of time for them to return if they ever return. That's a lot of money spent by the diocese frankly and the laws of hurt--hurtful--heartbreaking consequences when community members lose their pastor. They lose their connection to God.

LOFGREN:

Well, I see that my time has expired and so in fairness I will call a halt on my questions but I will note that our record is open for five days and we may have additional questions for each of you. If so I would ask that you respond if possible in a prompt way and I do appreciate your testimony. It's been very helpful to hear not just your written testimony but the material that you have provided to us and people don't realize that witnesses are volunteers, no one is paid to be here and we appreciate the effort that you have made to inform the U.S. Congress so that we can make good decisions.

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With that unless there is something further at this hearing is adjourned.

List of Panel Members and Witnesses
PANEL MEMBERS:

REP. ZOE LOFGREN (D-CALIF.), CHAIRWOMAN

REP. PRAMILA JAYAPAL (D-WASH.)

REP. LOU CORREA (D-CALIF.)

REP. SYLVIA R. GARCIA (D-TEXAS)

REP. JOE NEGUSE (D-COLO.)

REP. DEBBIE MUCARSEL-POWELL (D-FLA.)

REP. VERONICA ESCOBAR (D-TEXAS)

REP. SHEILA JACKSON LEE (D-TEXAS)

REP. MARY GAY SCANLON (D-PA.)

REP. JERROLD NADLER (D-N.Y.), EX-OFFICIO

REP. KEN BUCK (R-COLO.), RANKING MEMBER

REP. ANDY BIGGS (R-ARIZ.)

REP. TOM MCCLINTOCK (R-CALIF.)

REP. DEBBIE LESKO (R-ARIZ.)

REP. KELLY ARMSTRONG (R-N.D.)

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REP. GREG STEUBE (R-FLA.)

REP. DOUG COLLINS (R-GA.), EX-OFFICIO

WITNESSES:

CATHOLIC LEGAL IMMIGRATION NETWORK ADVOCACY DIRECTOR JILL MARIE BUSSEY

IMMIGRANT LEGAL RESOURCE CENTER EXECUTIVE DIRECTOR ERIC COHEN

U.S. CITIZENSHIP AND IMMIGRATION SERVICES OFFICE OF PERFORMANCE AND QUALITY CHIEF MICHAEL HOEFER

AMERICAN IMMIGRATION LAWYERS ASSOCIATION PRESIDENT MARKETA LINDT

U.S. CITIZENSHIP AND IMMIGRATION SERVICES SERVICE CENTER OPERATIONS ASSOCIATE DIRECTOR DONALD NEUFELD

U.S. CITIZENSHIP AND IMMIGRATION SERVICES FIELD OPERATIONS DIRECTORATE DEPUTY ASSOCIATE DIRECTOR MICHAEL VALVERDE

CENTER FOR IMMIGRATION STUDIES POLICY STUDIES DIRECTOR JESSICA VAUGHAN

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Public Charge

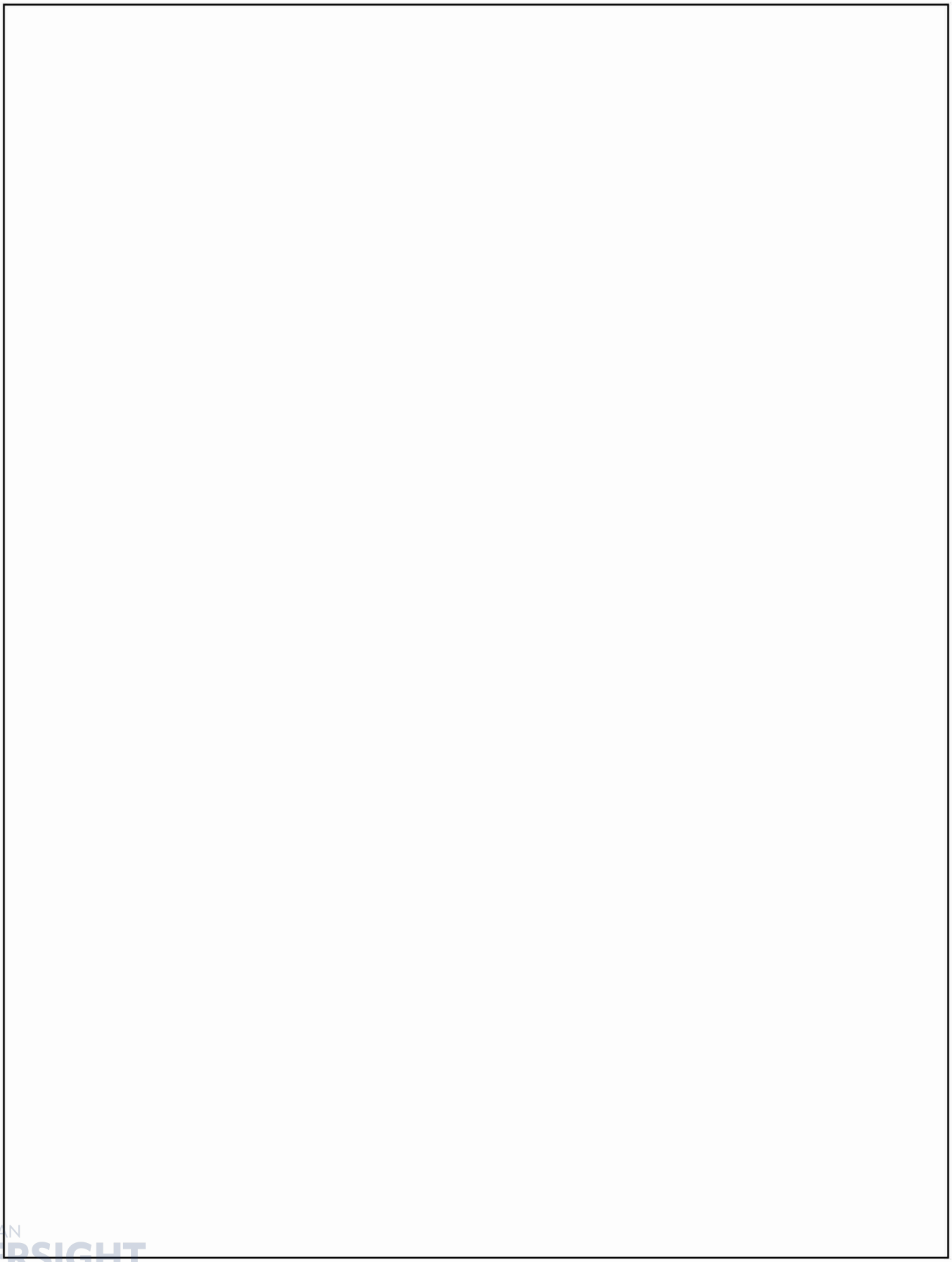
BACKGROUND

- Section 212(a)(4) of the Immigration and Nationality Act (INA) makes inadmissible any alien (that is, any individual who is not a citizen or national of the United States or otherwise

TALKING POINTS

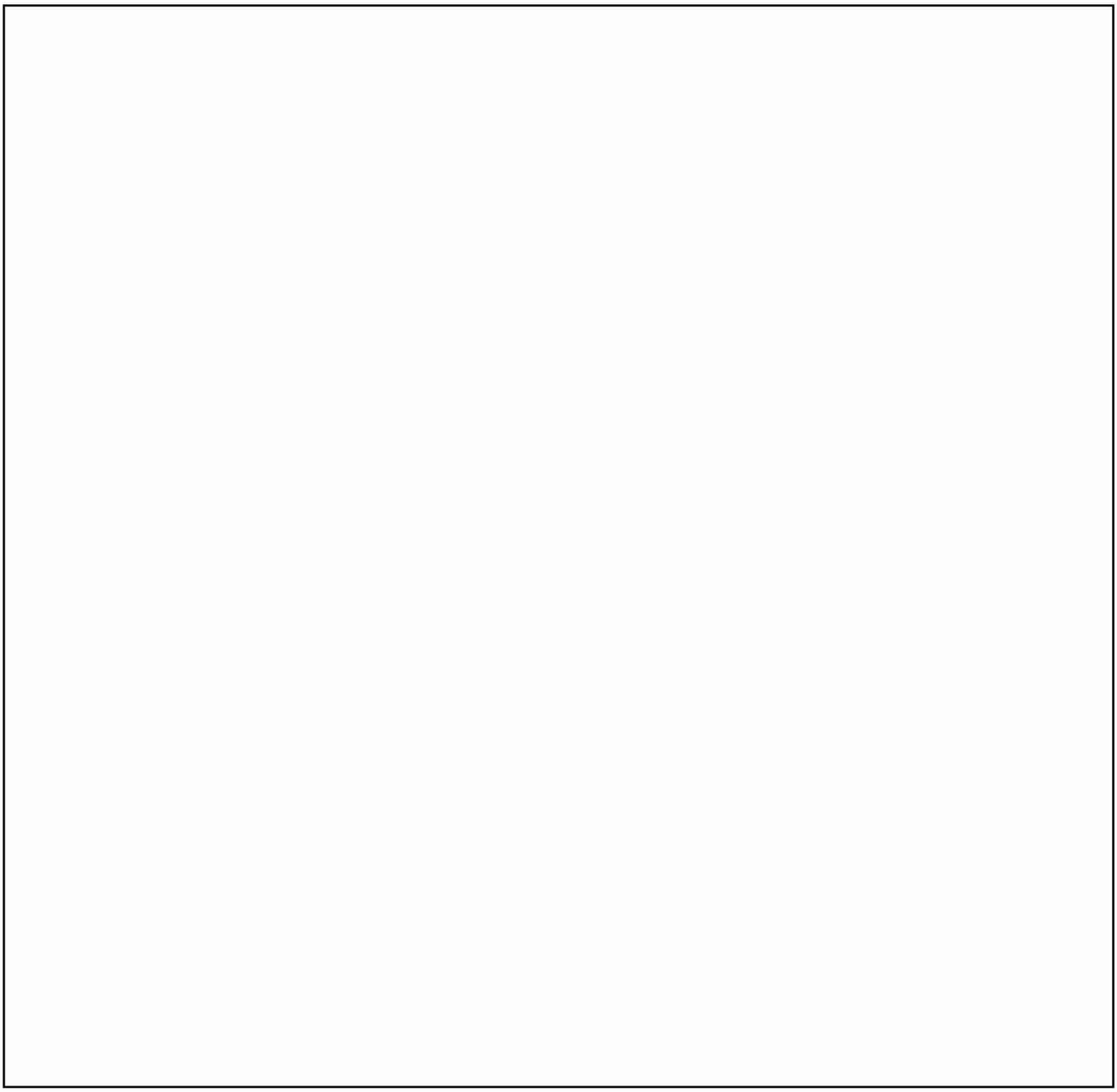
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Reopening

BACKGROUND

- On March 18, U.S. Citizenship and Immigration Services (USCIS) suspended routine in-person services to help slow the spread of COVID-19.

TALKING POINTS

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Response and Filing Flexibility

BACKGROUND

- USCIS is adopting several measures to protect our workforce and community and to minimize the immigration consequences for those seeking immigration benefits during this time.
- In response to COVID-19, USCIS has extended flexibilities to assist applicants and petitioners who are responding to certain agency requests:

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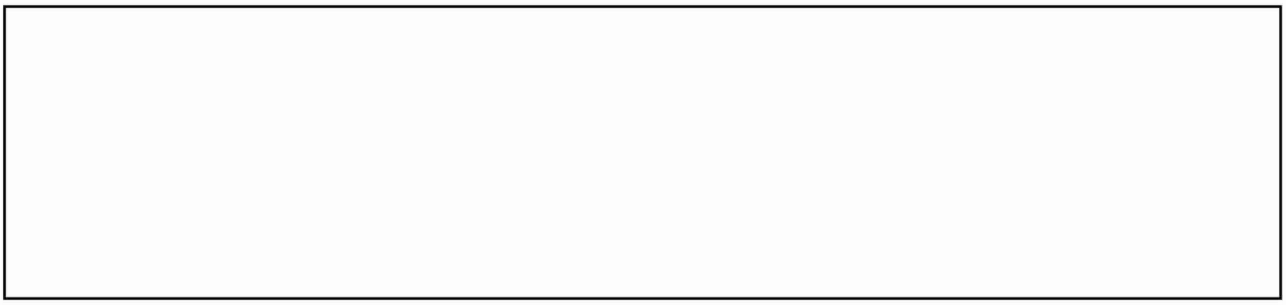
Security Bars and Processing NPRM (b)(5)

BACKGKROUND

- This proposed rule would amend existing DHS and DOJ (collectively, "the Departments") regulations to clarify that the Departments may consider emergency public health concerns based on communicable disease due to potential international threats from the spread of pandemics when making a determination as to whether "there are reasonable grounds for

TALKING POINTS

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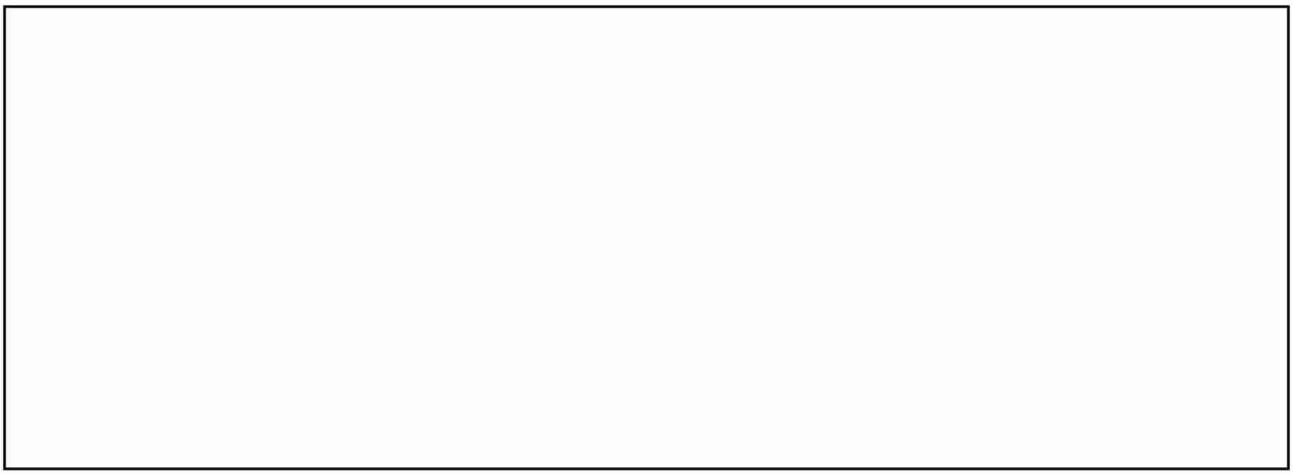
FY 2020 COVID-19 Impact on USCIS' Immigration Examinations Fee Account (IEFA)

U.S. Citizenship and Immigration Services (USCIS) is seeking $1.221 billion to address COVID-19's impact on the agency's fee funding. This includes:

The Situation:

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Deferred Action for Childhood Arrivals (DACA) (b)(5)

BACKGKROUND

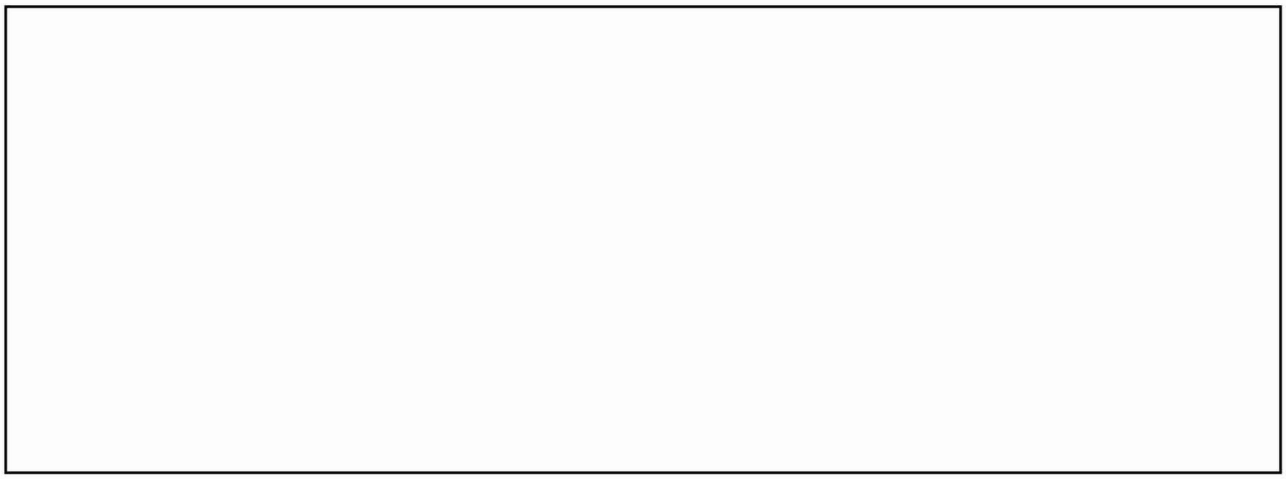
- DHS released the following statements on June 18, the day of the Supreme Court decision on DACA:

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Refugee Processing

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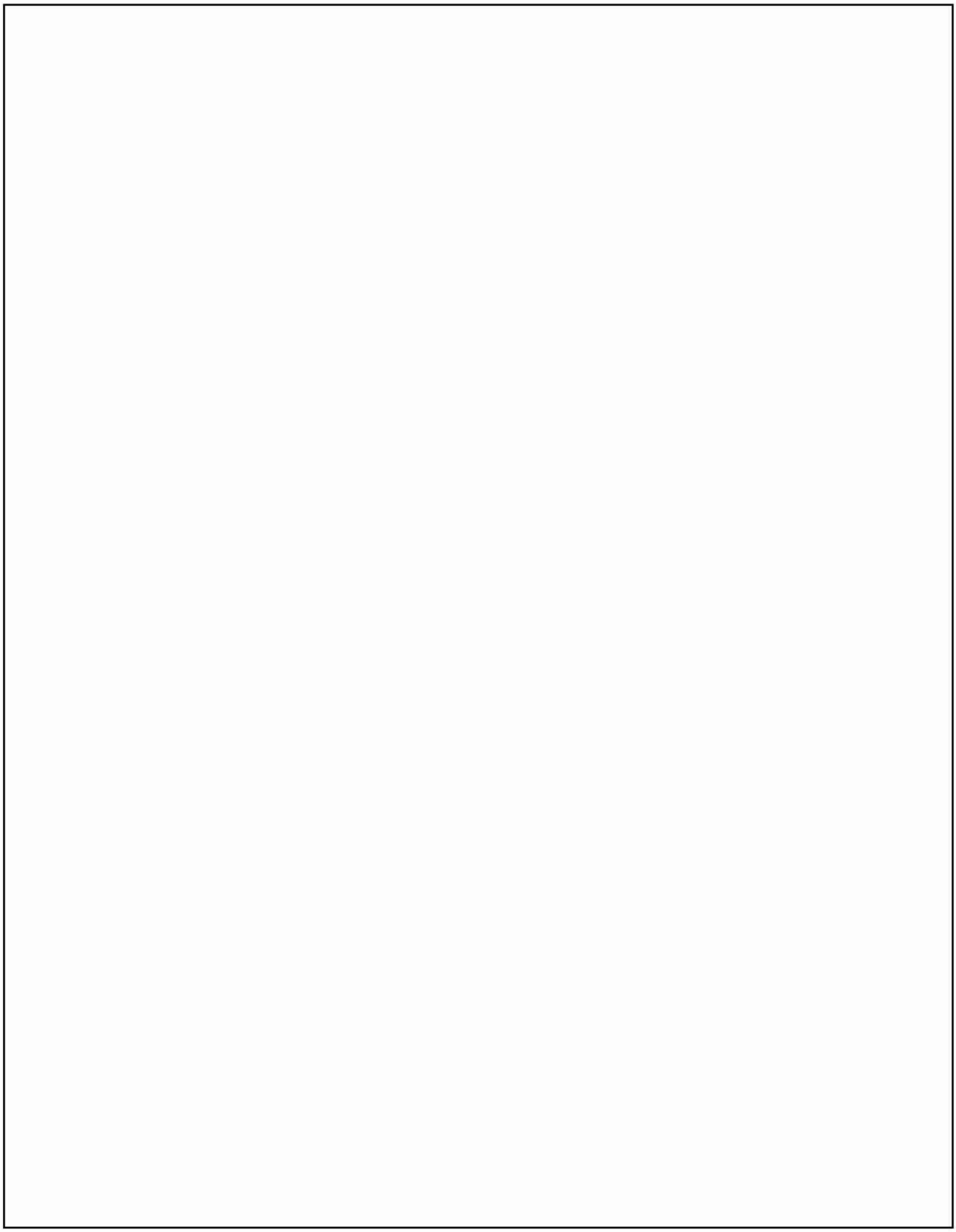
BACKGROUND

- USCIS, along with its partners, implemented a number of enhancements recommended as a result of two reviews of the U.S. Refugee Admissions Program (USRAP) pursuant to Executive Orders.

TALKING POINTS

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H-1B Wage Level Issues

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BACKGROUND:

- Ensuring the integrity of the immigration benefits system is one of this administration's guiding principles in the effort to strengthen employment-based visa programs and protect U.S. workers.

TALKING POINTS:

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ICE Arrests at USCIS Facilities

(b)(5)

BACKGROUND

TALKING POINTS

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(b)(5)

Leadership at USCIS

BACKGROUND

- Ken Cuccinelli is Principal Deputy Director of USCIS. As such, he is the Senior Official Performing the Duties of the Director of USCIS.

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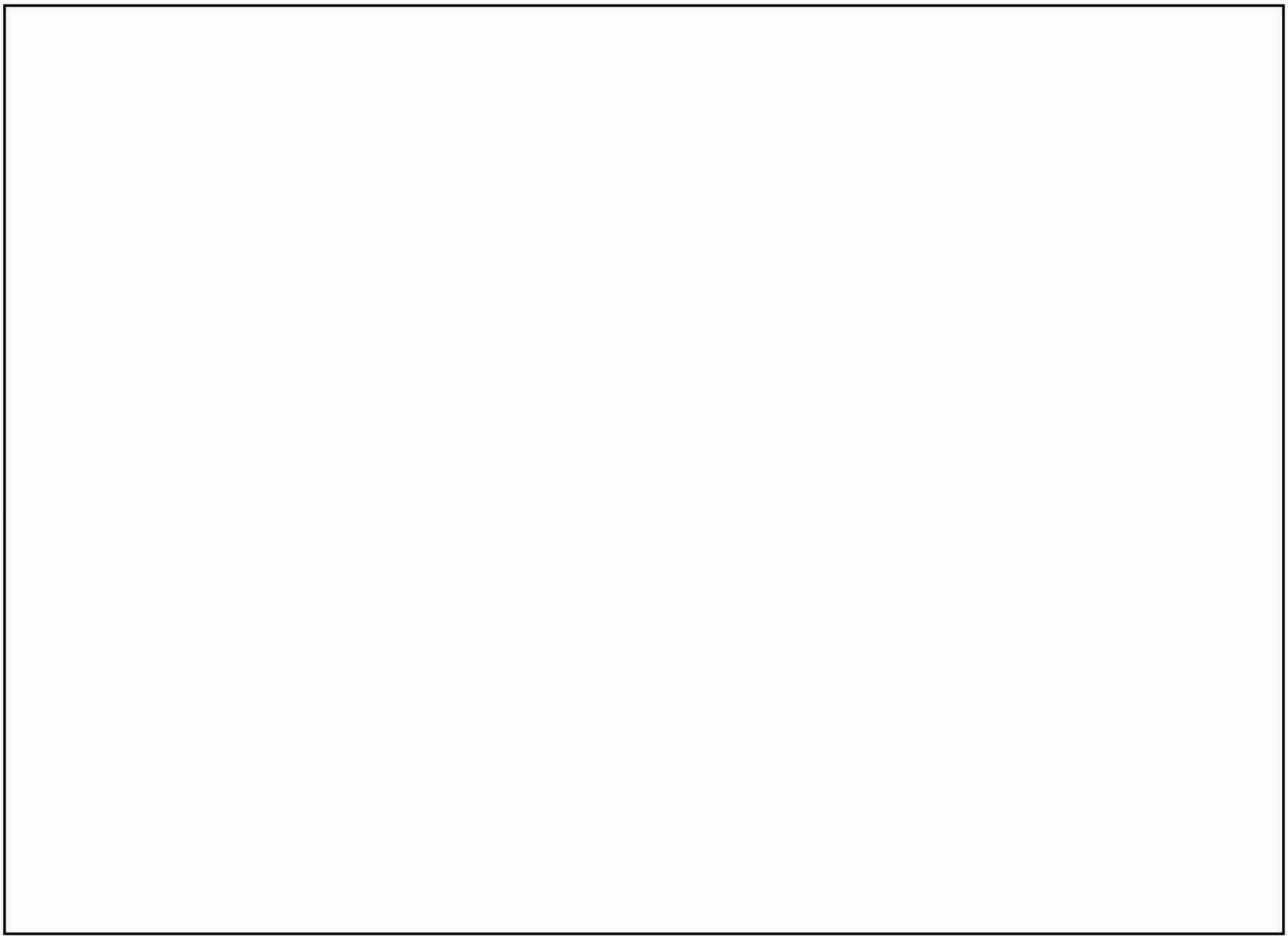
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TOPICS IN LITIGATION

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Naturalization Test Revision

BACKGROUND

- Section 312 of the Immigration and Nationality Act (INA) outlines the English and civics

TALKING POINTS

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NCIC III System

BACKGROUND:

TALKING POINTS:

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New H-1B Selection Order

(b)(5)

BACKGROUND

- Congress created the cap of 65,000 new H-1B visas per fiscal year with the Immigration Act

TALKING POINTS

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Presidential Proclamation

BACKGROUND:

- On April 22, 2020, President Trump issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.

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TALKING POINTS:

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E-Verify

BACKGROUND:

- E-Verify, authorized by the Illegal Immigration Reform and Immigrant Responsibility Act

[redacted]

TALKING POINTS:

[redacted]

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BENEFITS INTEGRITY OFFICE (BIO f.k.a. HFE) / DENATURALIZATION

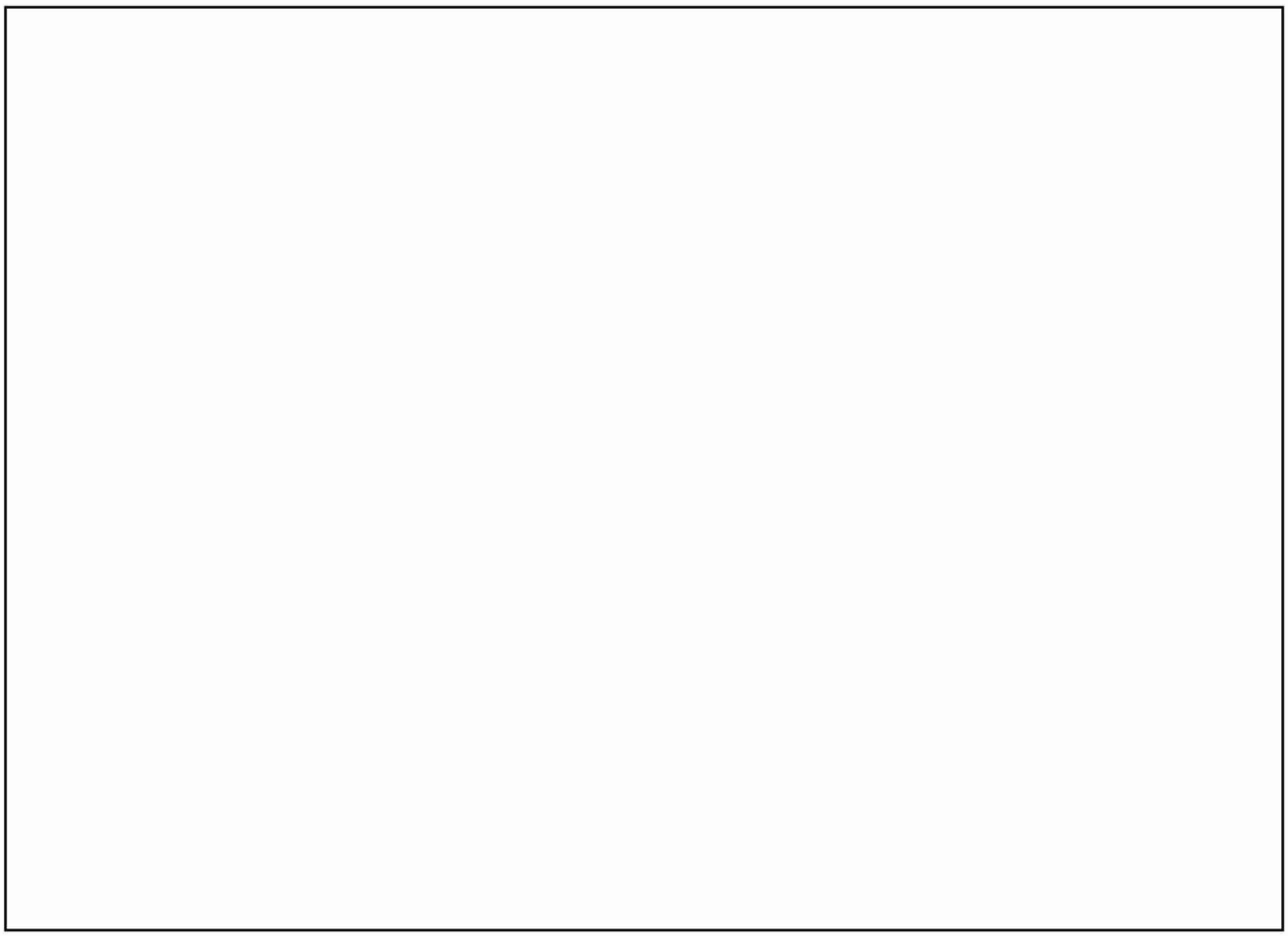
BACKGROUND

- Hundreds of thousands of fingerprint records have been uploaded from paper fingerprint

TALKING POINTS

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Deference to Previous Adjudication – Rescission Memo

BACKGROUND:

- Previously, USCIS officers deferred to the prior approval of certain nonimmigrant petitions

TALKING POINTS:

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(b)(5)

DEFERRED ACTION

BACKGROUND:

- Deferred action is a form of prosecutorial discretion exercised by the U.S. Department of

TALKING POINTS:

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Online Filing and eProcessing (b)(5)

BACKGROUND

- On May 22, 2019, USCIS announced the launch of a new technology strategy referred to as eProcessing.

TALKING POINTS

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AMERICAN OVERSIGHT

Data Sharing with Census Bureau

(b)(5)

BACKGROUND

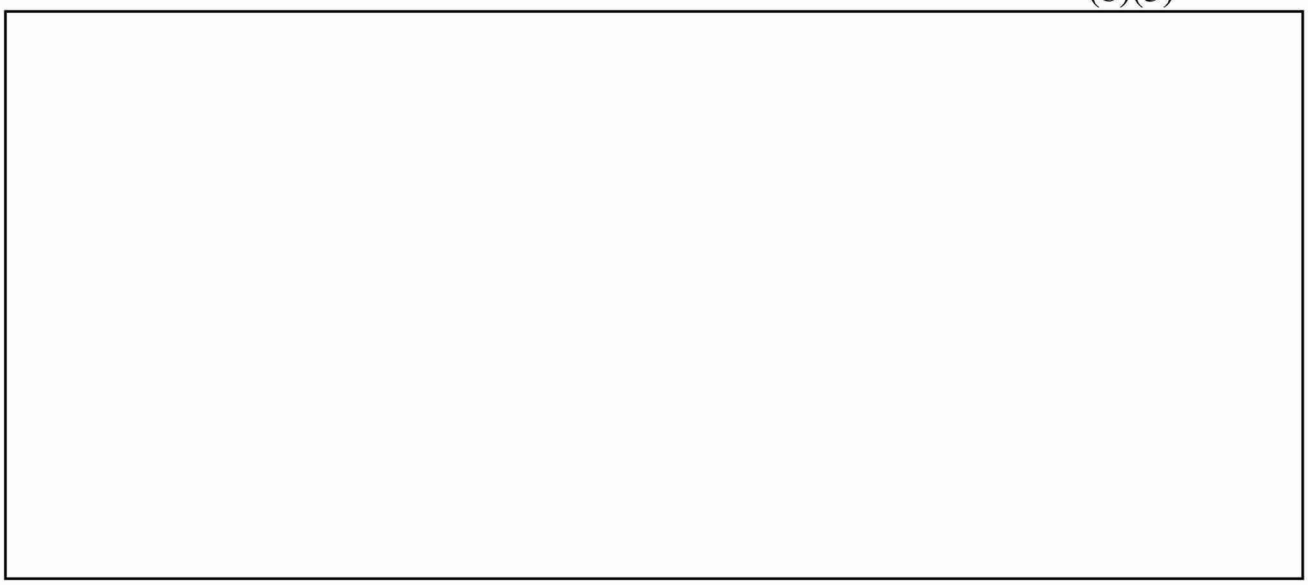
- USCIS has provided anonymized data on lawful permanent residents (LPR) and naturalized

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

(b)(5)



AMERICAN OVERSIGHT

(b)(5)

Policy Guidance Regarding False Claim to U.S. Citizenship Ground of Inadmissibility

BACKGROUND:

- On April 24, 2020, USCIS incorporated guidance into the USCIS Policy Manual regarding the false claim to U.S. citizenship ground of inadmissibility.

TALKING POINTS:

(b)(5)

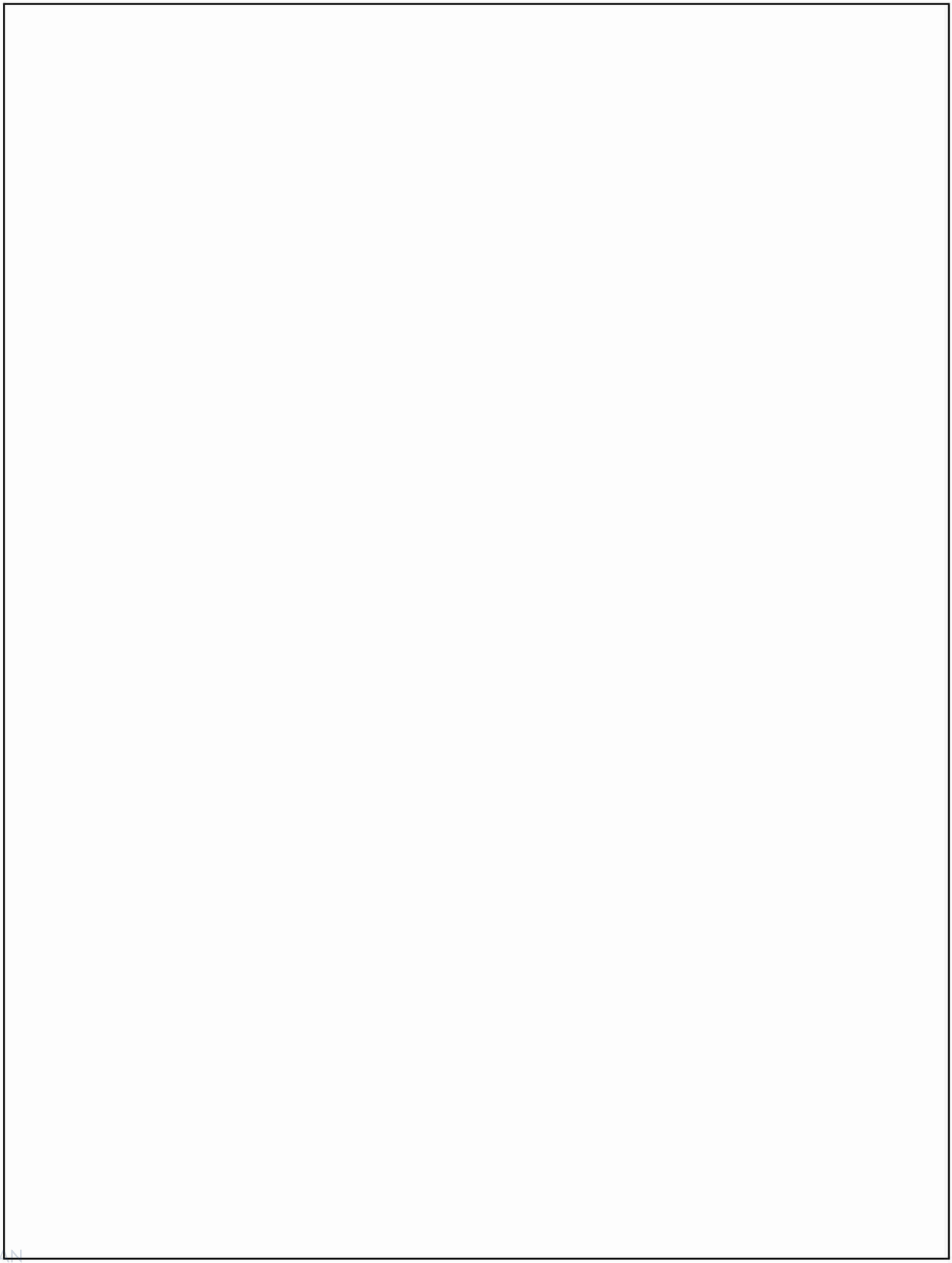
AMERICAN OVERSIGHT

USCIS FY 2019 Accomplishments and Efforts to Implement President Trump's Goals

Major Asylum Policy Reforms

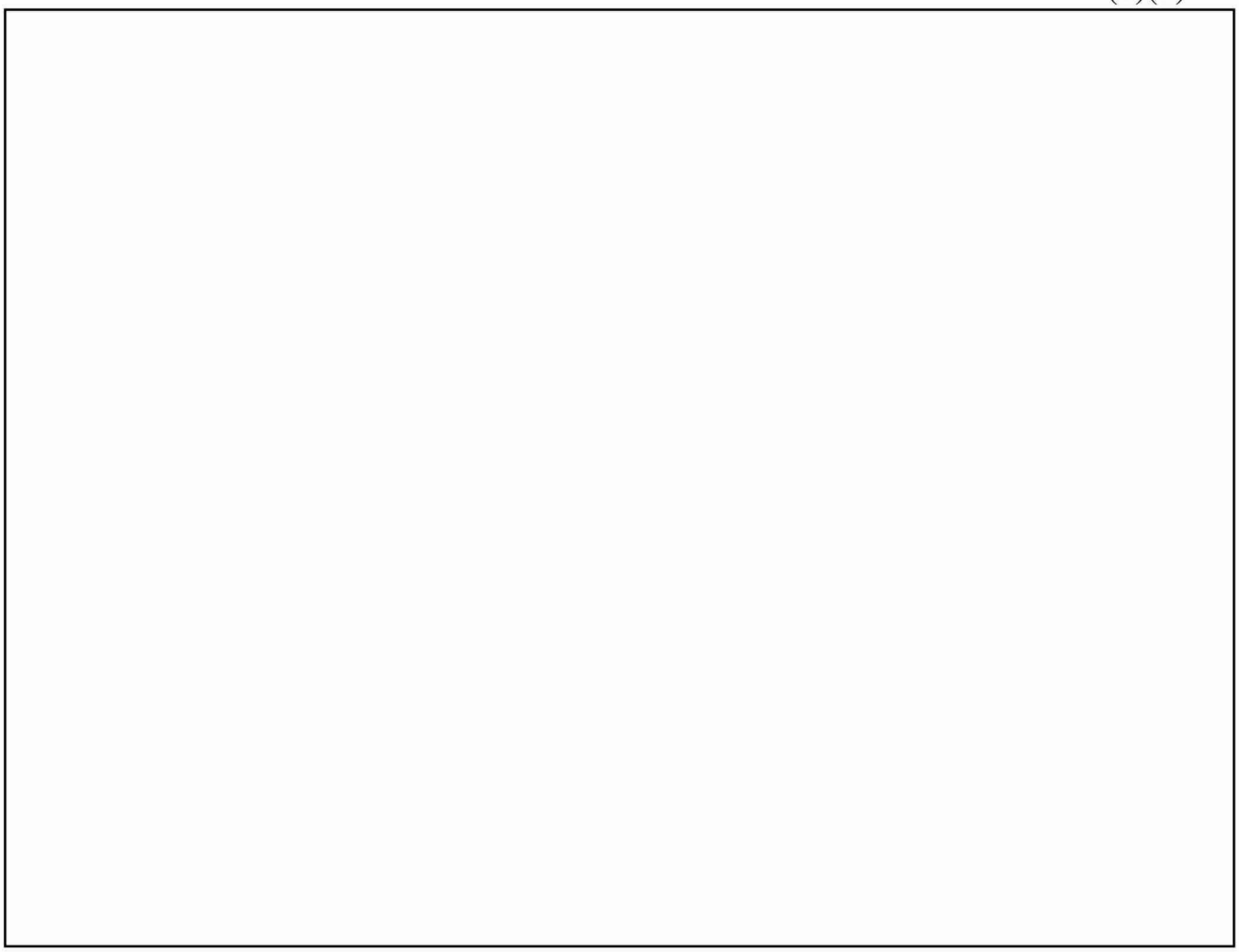
AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

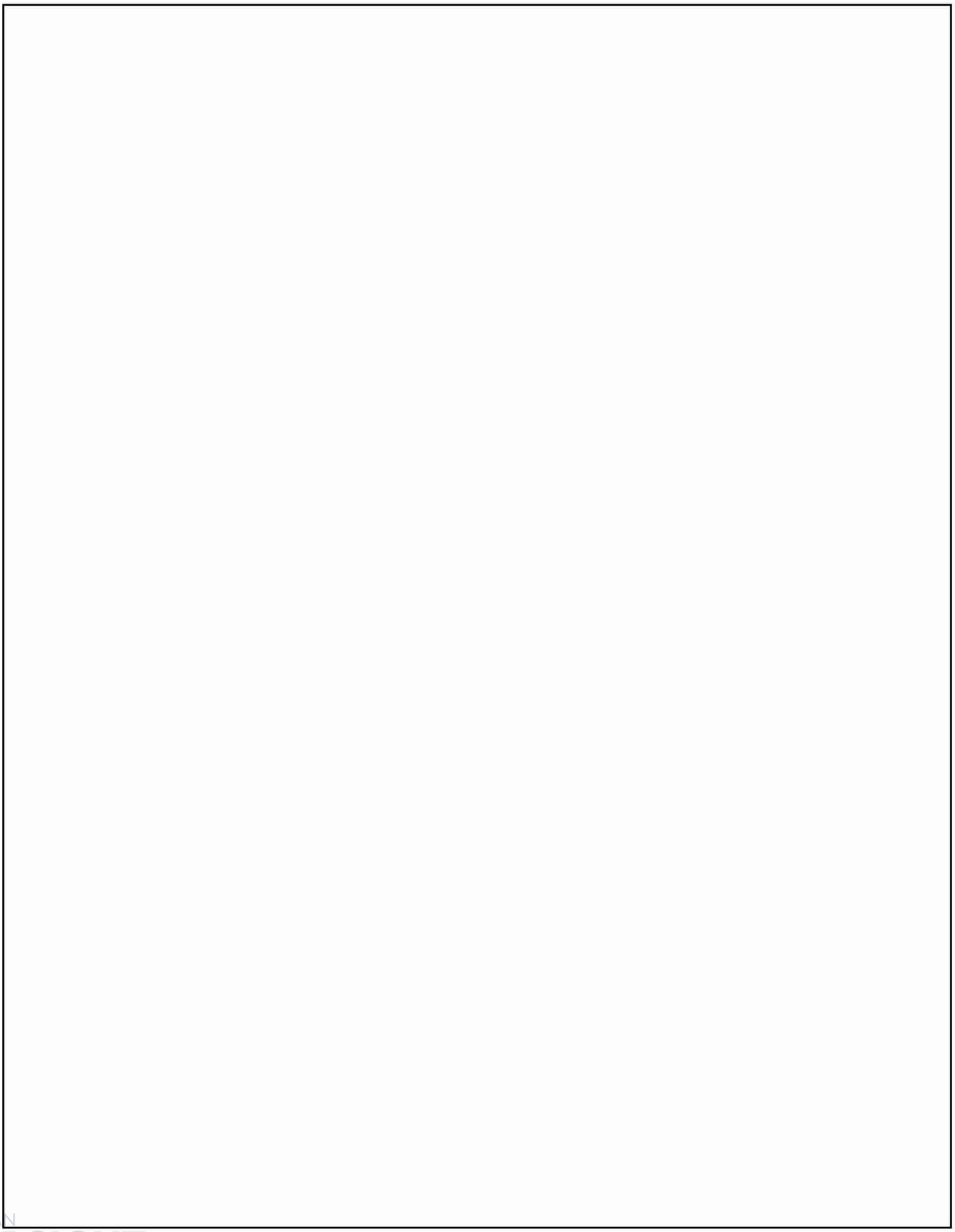
(b)(5)



AMERICAN OVERSIGHT

(b)(5)

Legislative Language for USCIS Funding Request



AMERICAN OVERSIGHT

USCIS International Footprint

(b)(5)

BACKGKROUND

[redacted]

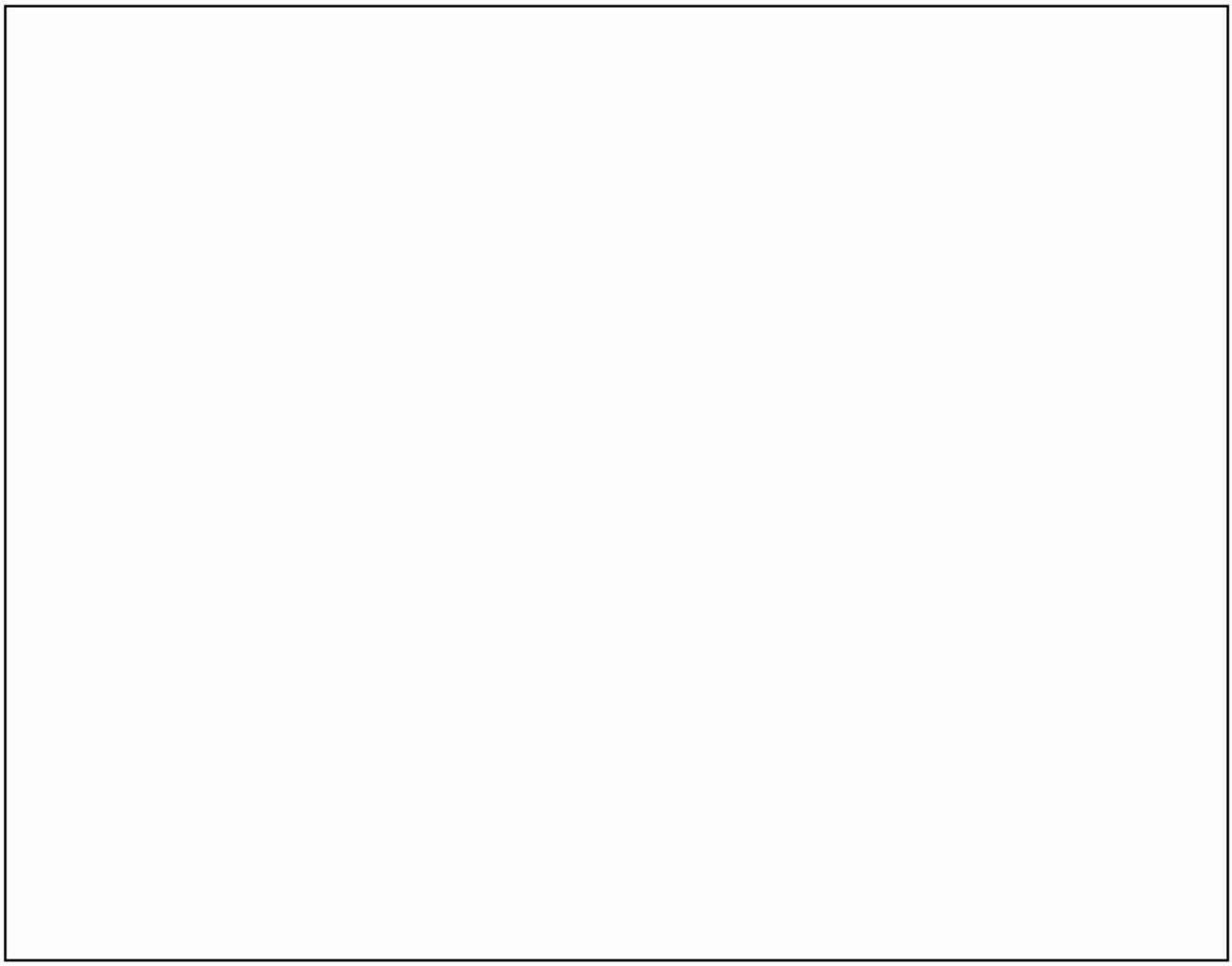
TALKING POINTS

[redacted]

AMERICAN OVERSIGHT

(b)(5)

(b)(5)



AMERICAN OVERSIGHT

Affidavit of Support Under Section 213A of the INA

BACKGROUND

- Since 1997, U.S. immigration law has required an alien's sponsor to sign an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), pledging financial support for the intending immigrant.

TALKING POINTS

AMERICAN OVERSIGHT

(b)(5)

Backlogs

BACKGROUND

- The backlog is the number of pending cases that have been in process longer than the

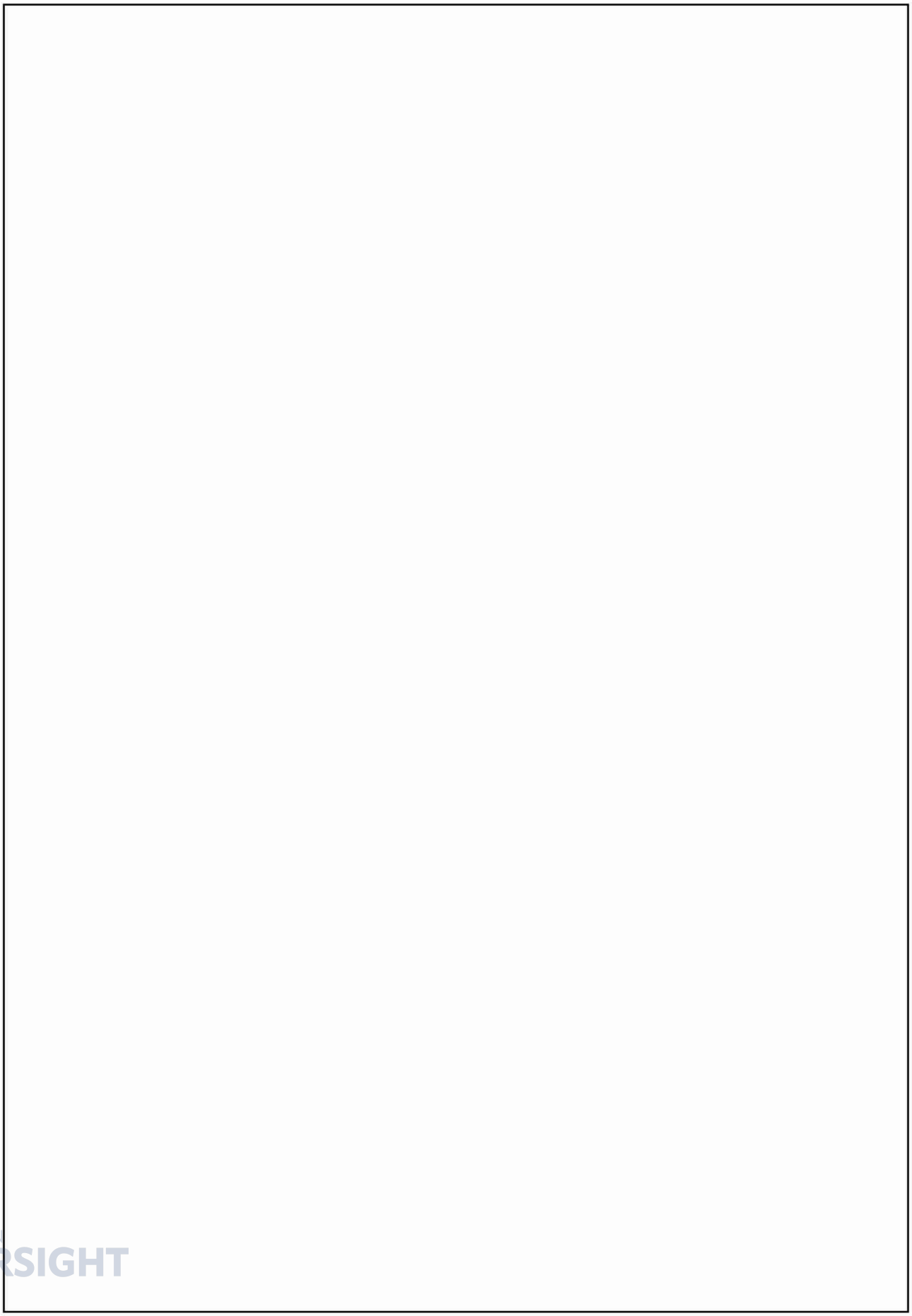
TALKING POINTS

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AMERICAN OVERSIGHT

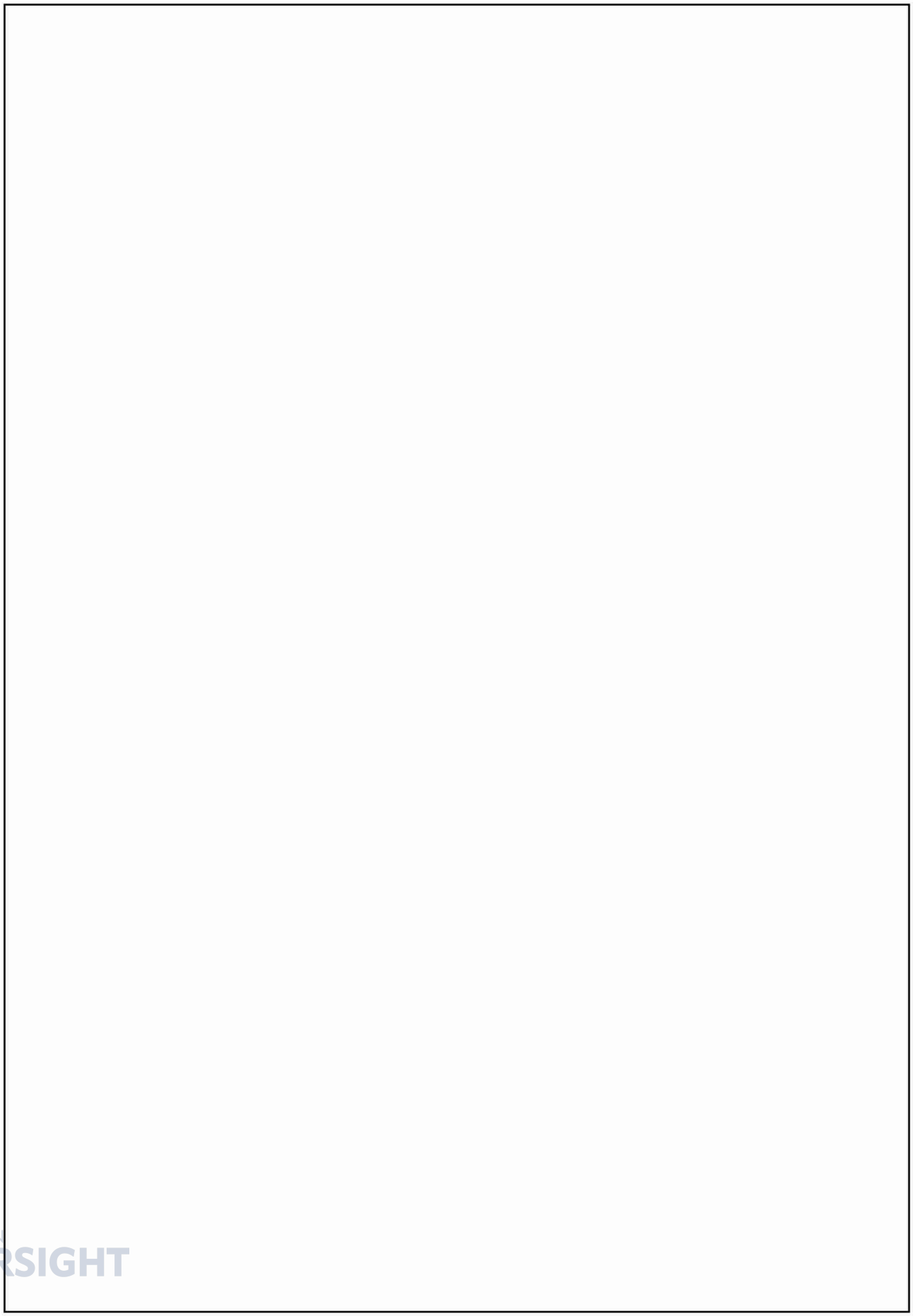
USCIS views on H.R.5038, the "Farm Workforce Modernization Act of 2019," introduced on November 12, 2019, by Rep. Zoe Lofgren (D-CA).

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 20, 2020 7:52 AM (UTC-05:00)
Attached: Incoming Bennet 7.9.20.pdf, Draft Response - Bennet - Clean 7.17.20.docx, Bennet 7.20.20.pdf

(b)(6)

CLEARED
On behalf of the Director's Office, I clear USCIS' response to DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740. The signed document and Word version are attached. Thanks!

From: Kilgore, Garry R [redacted]
Sent: Friday, July 17, 2020 5:03 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740

Requestor Directorate/Office: DHS ESEC

Due Date: **Thursday, July 30, 2020**

Request: D2P review and signature.

Background: Sen. Michael Bennet wrote to Acting Secretary Chad Wolf regarding various different labor visas. DHS ESEC requested D2P sign the final response and provide them with a copy of the signed response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:
1. Incoming Bennet 7.9.20
2. Draft Response Bennet – Redline 7.17.20
3. Draft Response – Bennet – Clean 7.17.20

*****Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues: [redacted]

AMERICAN OVERSIGHT

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 20, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

Dear Senator Bennet:

Thank you for your July 9, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

President Trump recently issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."[1] The presidential proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process benefit requests, including for the H, J, and L programs and for permanent residence ("green cards"). To the extent that you are concerned about the temporary suspension of visa issuance for individuals outside of the United States, USCIS defers to our colleagues at the Department of State.

The Secretary of Labor and the Acting Secretary of Homeland Security reviewed nonimmigrant programs and found that the admission of workers within several nonimmigrant visa categories poses a risk of displacing and disadvantaging United States workers during this economic recovery. With regard to your data requests pertaining to unemployment rates, USCIS defers to our colleagues at the Department of Labor. As for the Administration's efforts to improve and increase the talent pipeline across sectors in the United States, the goal of recent presidential proclamation is to ensure that U.S. businesses look to American workers first as the United States recovers from the economic effects of the coronavirus. Many Americans are out of work through no fault of their own due to the coronavirus pandemic and they should not remain on the sidelines while being replaced by foreign labor.

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002221

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

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U.S. Senate
Washington, DC 20515

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AMERICAN OVERSIGHT

DHS-20-2156-A-002223

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 2:52 pm, Jul 09, 2020

July 09, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Chad Wolf
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Dear President Trump and Acting Secretary Wolf:

I write to request that you revoke the Administration's June 22, 2020 proclamation to suspend H-1B, H-2B, H-4, L, and most J work visa programs and extend the green card suspension until January 2021. Furthermore, I request that the Administration clarify how this action will meaningfully address labor needs through this challenging time. This decision will drastically limit the award of petitions and will further strain American businesses, which are already battling a recession.

In the midst of the current pandemic, foreign workers have proven to be vitally important. The United States relies on these petitioners to perform critical services now more than ever. The Administration's decision will cause further damage to the health and prosperity of our nation. Further, American industry will struggle to compete with other nations if it is unable to bring in the talent necessary to spur innovation. Nearly half of all Fortune 500 companies were started by immigrants or by their children. Ongoing efforts to retain and attract talent and entrepreneurship will be critical to our economic recovery and leadership in innovation.

America's business leaders and trade associations have objected to these limitations. The Chamber of Commerce, National Association of Manufacturers, FWD.us, the Information Technology Industry Council, and the Internet Association are among the groups that have cited the likely financial losses that small businesses and technology companies will incur. Executives from Google, Facebook, Microsoft, and Twitter, have all cited the suspension's long-term detrimental effect on our ability to attract and develop talent.

To that end, I request that you clarify the following:

1. What data from the Department of Labor (DoL) and Department of Homeland Security (DHS) establishes a relationship between widespread job losses during COVID-19 and the visas suspended by the proclamation?
2. What projections or data do the Administration, DoL, and DHS cite to indicate that these actions would lower the unemployment rate during and after the COVID-19 pandemic?
3. What efforts is the Administration taking to improve and increase the talent pipeline across sectors in the United States?

AMERICAN OVERSIGHT

I strongly urge you to reconsider your recent decision. Immigrants are vital to protecting American health and preserving American prosperity.

I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740
To: Askew, Marineka P
Sent: July 17, 2020 4:34 PM (UTC-05:00)
Attached: Draft Response - Bennet - Clean 7.17.20.docx

Hi Marineka,

This is a Congressional response. Please auto sign and return as soon as possible.

Thanks,
Morgan

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

Dear Senator Bennet:

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[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002228

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Nuebel Kovarik, Kathy
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740
To: Bailey, Morgan
Cc: Calkins, Aaron L
Sent: July 17, 2020 4:32 PM (UTC-05:00)
Attached: Draft Response - Bennet - Clean 7.17.20.docx, Incoming Bennet 7.9.20.pdf

(b)(6)

I clear

From: Bailey, Morgan [redacted]
Sent: Friday, July 17, 2020 4:25 PM
To: Nuebel Kovarik, Kathy [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740

Some of this is template language but we do have some new language.

From: Kilgore, Garry R [redacted]
Sent: Friday, July 17, 2020 4:03 PM
To: USCIS Directors Office Clearance EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740

Requestor Directorate/Office: DHS ESEC

Due Date: **Thursday, July 30, 2020**

Request: D2P review and signature.

Background: Sen. Michael Bennet wrote to Acting Secretary Chad Wolf regarding various different labor visas. DHS ESEC requested D2P sign the final response and provide them with a copy of the signed response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming Bennet 7.9.20
2. Draft Response Bennet – Redline 7.17.20
3. Draft Response – Bennet – Clean 7.17.20

*****Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)

AMERICAN OVERSIGHT

(b)(6)

STARS Issues: [redacted] (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

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U.S. Senate
Washington, DC 20515

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AMERICAN OVERSIGHT

DHS-20-2156-A-002232

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 2:52 pm, Jul 09, 2020

July 09, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Chad Wolf
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Dear President Trump and Acting Secretary Wolf:

I write to request that you revoke the Administration's June 22, 2020 proclamation to suspend H-1B, H-2B, H-4, L, and most J work visa programs and extend the green card suspension until January 2021. Furthermore, I request that the Administration clarify how this action will meaningfully address labor needs through this challenging time. This decision will drastically limit the award of petitions and will further strain American businesses, which are already battling a recession.

In the midst of the current pandemic, foreign workers have proven to be vitally important. The United States relies on these petitioners to perform critical services now more than ever. The Administration's decision will cause further damage to the health and prosperity of our nation. Further, American industry will struggle to compete with other nations if it is unable to bring in the talent necessary to spur innovation. Nearly half of all Fortune 500 companies were started by immigrants or by their children. Ongoing efforts to retain and attract talent and entrepreneurship will be critical to our economic recovery and leadership in innovation.

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AMERICAN OVERSIGHT

I strongly urge you to reconsider your recent decision. Immigrants are vital to protecting American health and preserving American prosperity.

I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 17, 2020 4:16 PM (UTC-05:00)
Attached: Incoming Bennet 7.9.20.pdf, Draft Response - Bennet - Redline 7.17.20.docx, Draft Response - Bennet - Clean 7.17.20.docx

Hi Morgan,

(b)(6)

No edits. Ready for your review.

Thanks,

Ed

From: Kilgore, Garry R [redacted]
Sent: Friday, July 17, 2020 4:03 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740

Requestor Directorate/Office: DHS ESEC

Due Date: **Thursday, July 30, 2020**

Request: D2P review and signature.

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Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming Bennet 7.9.20
2. Draft Response Bennet – Redline 7.17.20
3. Draft Response – Bennet – Clean 7.17.20

*****Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted]
STARS Issues: [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

(b)(5)

Dear Senator Bennet:

[redacted]

Thank you again for your letter and your interest in this important matter. If you have further questions, please contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

(b)(5)

Dear Senator Bennet:

[redacted]

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Commented [redacted]

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

[redacted]

Commented [redacted]

Sincerely,

Joseph Edlow
Deputy Director for Policy

(b)(5)

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 2:52 pm, Jul 09, 2020

July 09, 2020

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I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/30/20 - DHS Congressional Correspondence - Sen. Bennet - Regarding labor visas - STARS #28740 (b)(6)
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 17, 2020 4:03 PM (UTC-05:00)
Attached: Incoming Bennet 7.9.20.pdf, Draft Response - Bennet - Redline 7.17.20.docx, Draft Response - Bennet - Clean 7.17.20.docx

Requestor Directorate/Office: DHS ESEC

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OP&S:	
OCC:	
EXA:	

Attachments:

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2. Draft Response Bennet – Redline 7.17.20
3. Draft Response – Bennet – Clean 7.17.20

*****Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

(b)(5)

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

Dear Senator Bennet:

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020 (b)(5)

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

Dear Senator Bennet:

[redacted]

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AMERICAN OVERSIGHT

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Sincerely,

Joseph Edlow
Deputy Director for Policy

(b)(5)

AMERICAN OVERSIGHT

RECEIVED
By ESEC at 2:52 pm, Jul 09, 2020

July 09, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Chad Wolf
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Dear President Trump and Acting Secretary Wolf:

I write to request that you revoke the Administration's June 22, 2020 proclamation to suspend H-1B, H-2B, H-4, L, and most J work visa programs and extend the green card suspension until January 2021. Furthermore, I request that the Administration clarify how this action will meaningfully address labor needs through this challenging time. This decision will drastically limit the award of petitions and will further strain American businesses, which are already battling a recession.

In the midst of the current pandemic, foreign workers have proven to be vitally important. The United States relies on these petitioners to perform critical services now more than ever. The Administration's decision will cause further damage to the health and prosperity of our nation. Further, American industry will struggle to compete with other nations if it is unable to bring in the talent necessary to spur innovation. Nearly half of all Fortune 500 companies were started by immigrants or by their children. Ongoing efforts to retain and attract talent and entrepreneurship will be critical to our economic recovery and leadership in innovation.

America's business leaders and trade associations have objected to these limitations. The Chamber of Commerce, National Association of Manufacturers, FWD.us, the Information Technology Industry Council, and the Internet Association are among the groups that have cited the likely financial losses that small businesses and technology companies will incur. Executives from Google, Facebook, Microsoft, and Twitter, have all cited the suspension's long-term detrimental effect on our ability to attract and develop talent.

To that end, I request that you clarify the following:

1. What data from the Department of Labor (DoL) and Department of Homeland Security (DHS) establishes a relationship between widespread job losses during COVID-19 and the visas suspended by the proclamation?
2. What projections or data do the Administration, DoL, and DHS cite to indicate that these actions would lower the unemployment rate during and after the COVID-19 pandemic?
3. What efforts is the Administration taking to improve and increase the talent pipeline across sectors in the United States?

AMERICAN OVERSIGHT

I strongly urge you to reconsider your recent decision. Immigrants are vital to protecting American health and preserving American prosperity.

I look forward to your response.

Sincerely,



Michael F. Bennet
United States Senator

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/31/20 - DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766
To: Kilgore, Garry R; USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 17, 2020 10:48 AM (UTC-05:00)
Attached: Incoming Darr 7.10.20.pdf, Darr 7.17.20.pdf, Draft Response - Darr - OCC Clean 7.16.20.docx

CLEARED
On behalf of the Director's Office, I clear USCIS' response to DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766. The signed document and Word version are attached. Thanks!

From: Kilgore, Garry R <[redacted]>
Sent: Thursday, July 16, 2020 2:51 PM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R <[redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/31/20 - DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, July 31, 2020**

Request: D2P review and signature.

Background: Ms. Linda Darr wrote to Acting Secretary Chad Wolf regarding concerns about H-1B visas. DHS ESEC requested D2P sign the final response.

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	

Attachments:
1. Incoming Darr 7.10.20
2. Draft Response Darr – OCC edits 7.16.20
3. Draft Response – Darr – OCC Clean 7.16.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues: [redacted]

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 17, 2020

Ms. Linda Bauer Darr
President and Chief Executive Officer
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing support for nonimmigrant engineering professionals and their employers. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

President Trump recently issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."[1] The presidential proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

You recommended that nonimmigrants who will be filling engineering positions be exempt from the limitations imposed by the Proclamation. We kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002249

It is important for us to emphasize that U.S. Citizenship and Immigration continues to accept and process requests for immigration benefits, and the Proclamation does not affect our adjudication of petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Ms. Linda Bauer Darr
President and Chief Executive Officer
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing support for nonimmigrant engineering professionals and their employers. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

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You recommended that nonimmigrants who will be filling engineering positions be exempt from the limitations imposed by the Proclamation. We kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002251

It is important for us to emphasize that U.S. Citizenship and Immigration continues to accept and process requests for immigration benefits, and the Proclamation does not affect our adjudication of petitions and applications related to the H, J and L programs. In addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

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RECEIVED
By ESEC at 1:17 pm, Jul 10, 2020

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

July 10, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Wolf:

On behalf of the American Council of Engineering Companies (ACEC) – the voice of the business of engineering – I am writing to express our concerns about the presidential proclamation signed on June 22, 2020 that would suspend H-1B and L visas, among others. This sudden barrier to employing highly-skilled engineering professionals will disrupt the operations of engineering firms across the country, and we respectfully request a waiver for the engineering industry.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America's infrastructure and built environment. Because of the critical shortage of engineers in this country, H-1B and other employment-based visa programs allow engineering firms to pursue their vital work of building the nation's infrastructure when American citizens are not available to fill these jobs.

The National Science Foundation has reported incremental growth in bachelor's degrees in engineering since 2000, but these very modest increases are not nearly enough to meet the demands of a robust and growing economy, particularly in recent years. The engineering workforce is also getting older, and nearly 30 percent of all engineering and science degree holders in the labor force are 50 or over and expected to retire in the next 15 years. Moreover, the National Science Foundation reports that in 2015 half of engineering master's degrees awarded by U.S. universities were earned by foreign nationals on temporary visas, including 70 percent of master's degrees in electrical engineering.

America's engineering industry will always hire qualified Americans first, and we support investments in STEM education and other initiatives to attract more young people to the engineering profession. However, the data above clearly demonstrates that the industry needs access to the best and brightest around the world in order to fill key

AMERICAN OVERSIGHT

positions. Engineering firms employ highly skilled, technically sophisticated professionals, often at the mid-career level, using H-1B visas as well as L-1 visas for individuals with specialized knowledge of the firm's operations that cannot easily be transferred to new hires.

During the pandemic, engineering firms have worked to ensure continuity of operations across all types of infrastructure and provided support to critical industries. These services include infrastructure safety inspections to assess deterioration; completion of ongoing construction; assessing the ability to repurpose infrastructure for pandemic response; renovating to protect public and worker health and safety; designing needed changes to existing infrastructure and new infrastructure; providing support for operations and maintenance of existing infrastructure; and similar activities.

These critical functions will be impacted directly should the proclamation remain in effect for the engineering industry. All engineering firm employees, including those with H-1B and L-1 visas, are critical to an engineering firm's ability to continue this essential work. Accordingly, we respectfully urge the Departments of Homeland Security, State and Labor to provide a waiver for engineering firms from the visa suspensions delineated in the presidential proclamation of June 22, 2020.

Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,



Linda Bauer Darr
President & CEO

AMERICAN OVERSIGHT

From: Piateski, Jennifer E
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: Garza, Regina M
Sent: July 17, 2020 10:26 AM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Draft Response Nadler FINAL 7.9.20 + JBE.doc, Enclosure Nadler FINAL 7.9.20.docx

(b)(6)

Not sure which one you wanted..

From: Bailey, Morgan <[redacted]>
Sent: Wednesday, July 15, 2020 12:46 PM
To: Stout, Kelsey L <[redacted]>
Cc: USCIS Directors Office Clearance-EXSO <[redacted]>; USCIS Exec Congr Corresp [redacted]; USCIS EXSO Externa [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117 with edits/comments from the Director's Office. Thanks!

From: Stout, Kelsey L <[redacted]>
Sent: Thursday, July 9, 2020 2:46 PM
To: DDCLEAR <[redacted]>
Cc: USCIS Directors Office Clearance-EXSO [redacted]>; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and clearance on the Rep. Nadler draft response prior to DHS Component clearance.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and requires DHS Component clearance by MGMT, OLA, and PLCY. ESEC will obtain final approval from the OGC. A comment from OP&S is included on the Enclosure that was flagged for the Director's Office. DHS ESEC has requested Mr. Cuccinelli sign the final response.

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	

AMERICAN OVERSIGHT

***Attachments:**
Incoming - Nadler 6.23.20

(b)(6)

Draft Response Nadler (Redline) 7.9.20
Enclosure Nadler (Redline) 7.9.20
Draft Response Nadler FINAL 7.9.20
Enclosure Nadler FINAL 7.9.20

*******Please reply to all on this email ******

Kelsey Stout
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted] (b)(6)

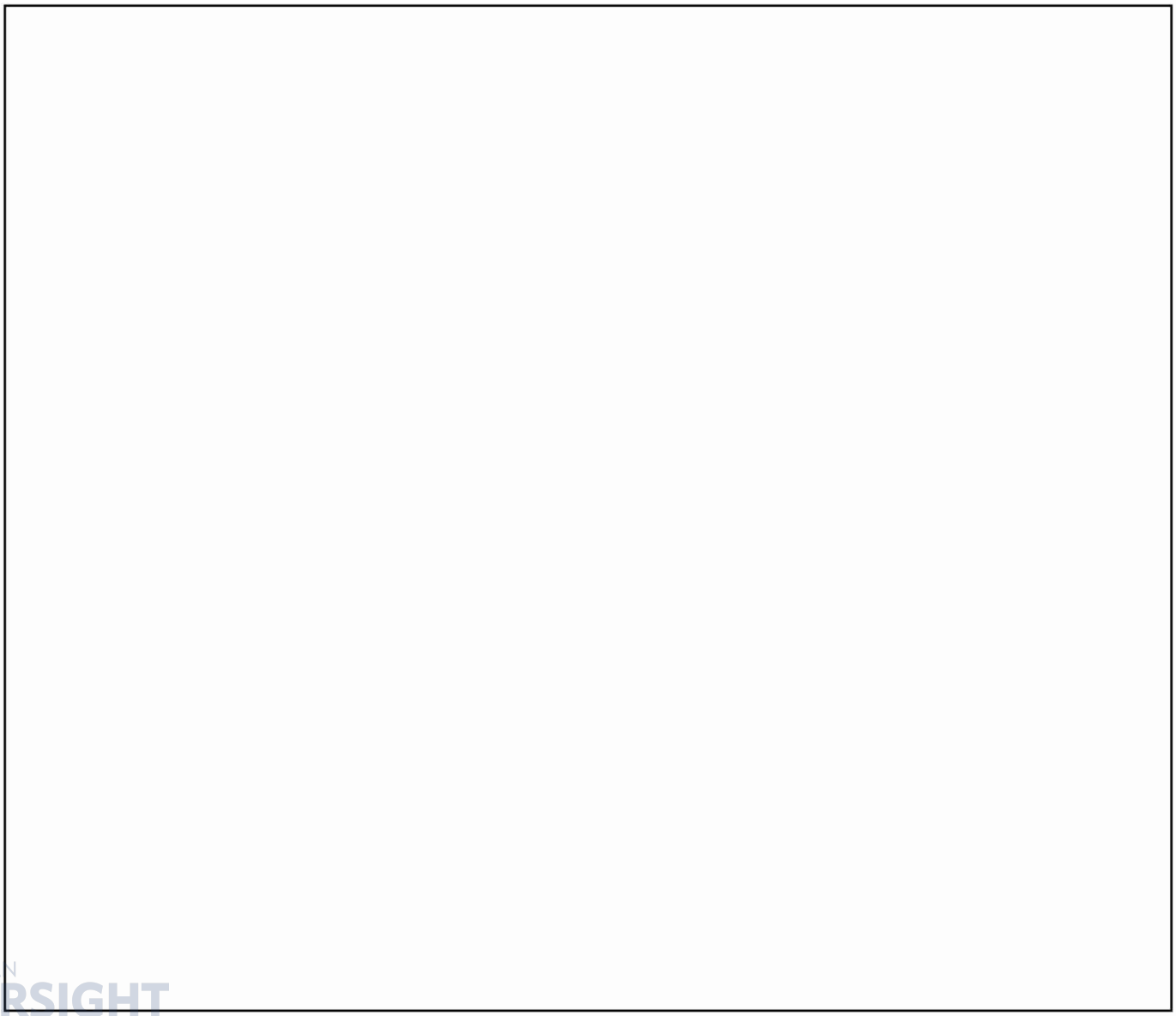
AMERICAN OVERSIGHT

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Nadler:

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. Acting Secretary Wolf has asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

[redacted]

Thank you again for your letter and interest in this ~~t~~issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

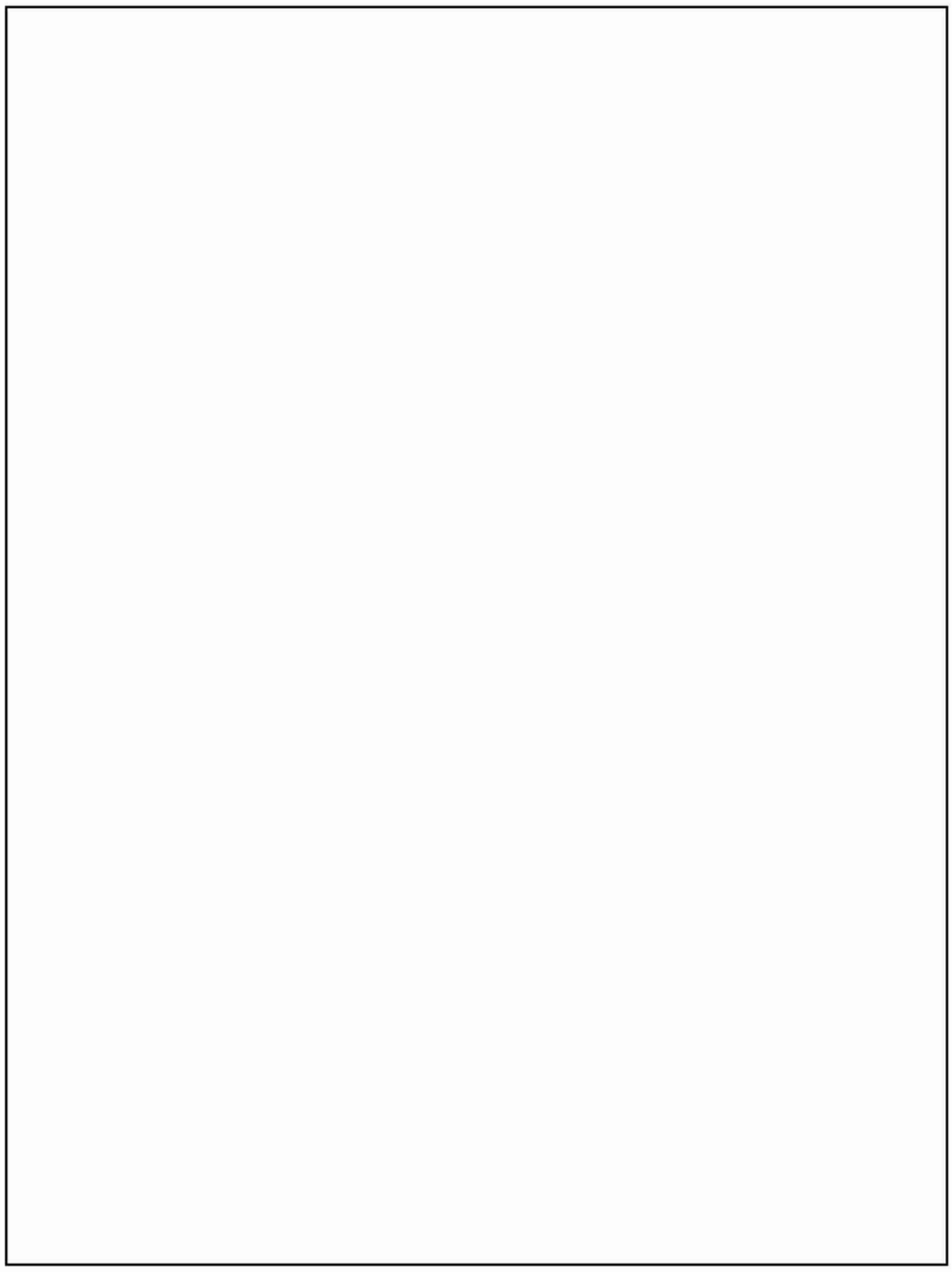
Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

AMERICAN OVERSIGHT

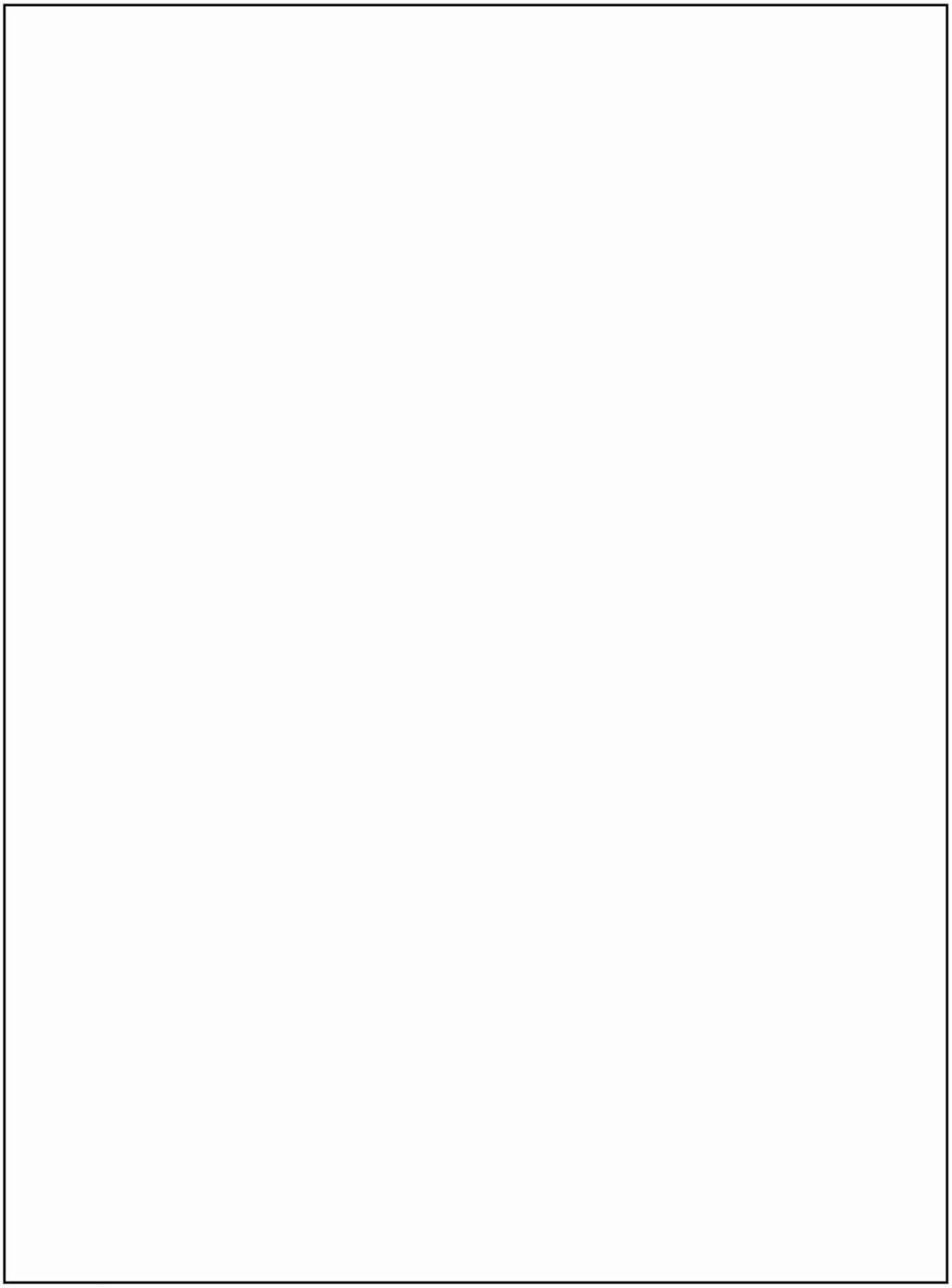
The Department of Homeland Security's Response to Representative Nadler's June 23, 2020 Letter

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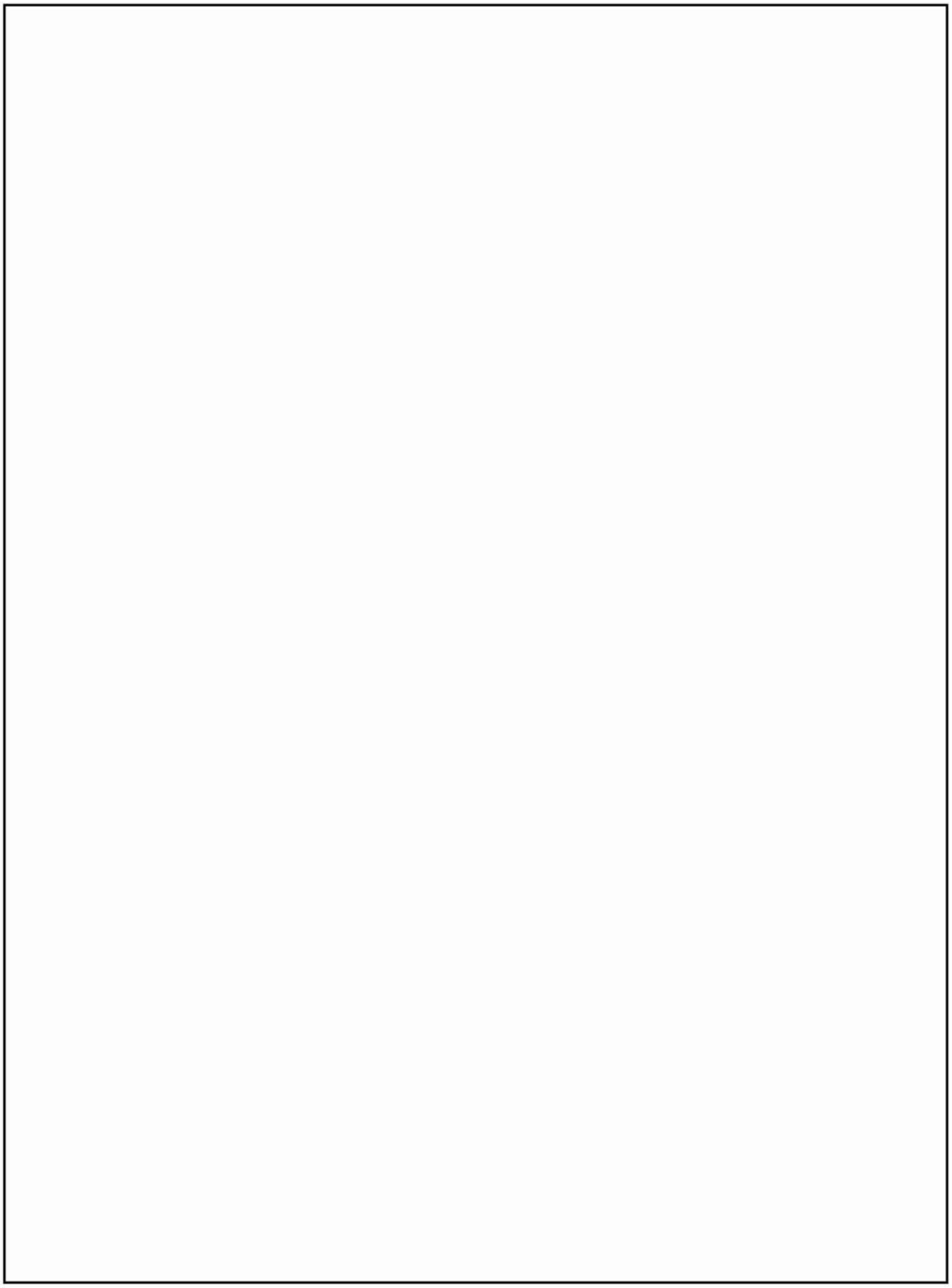
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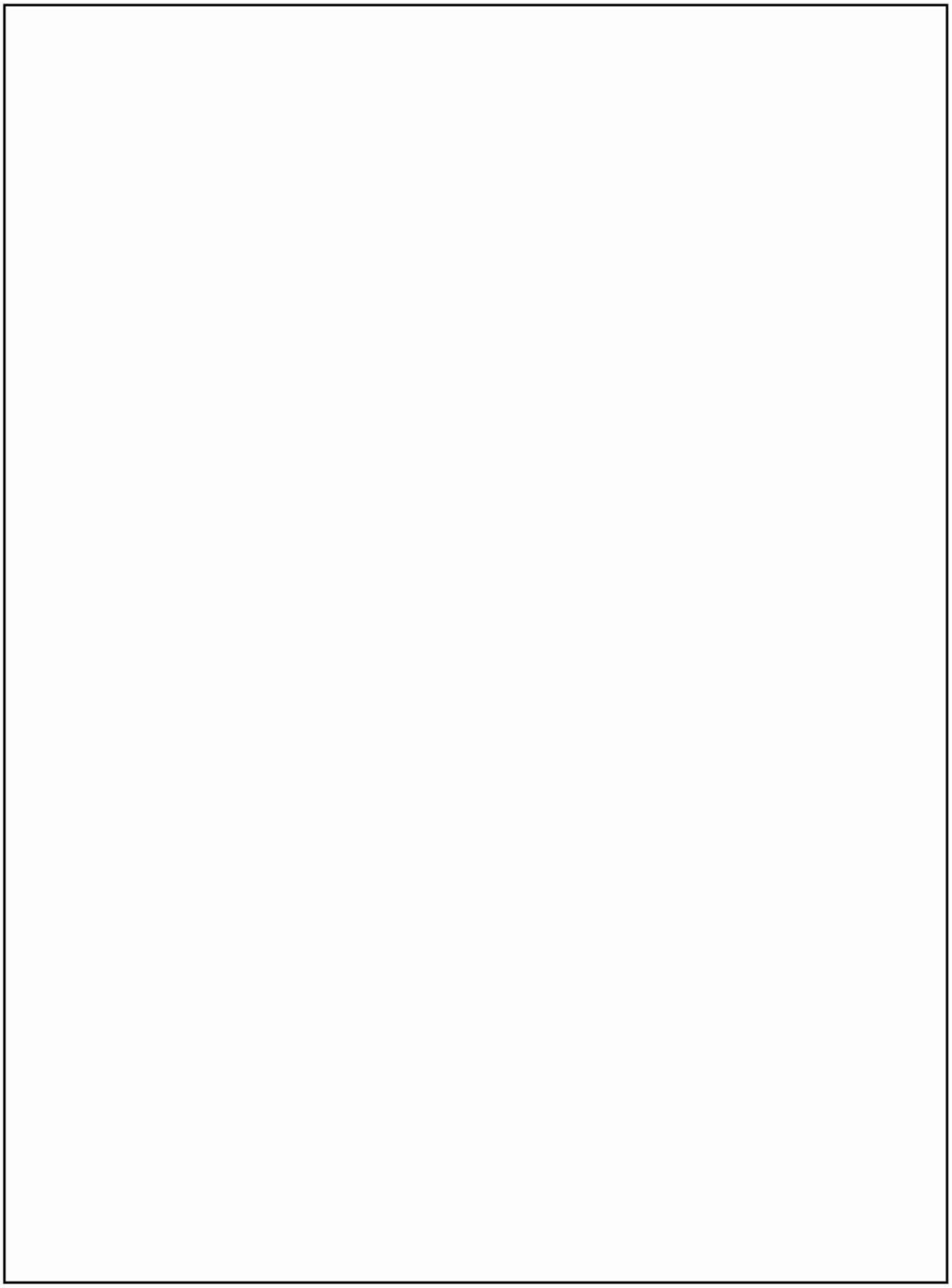
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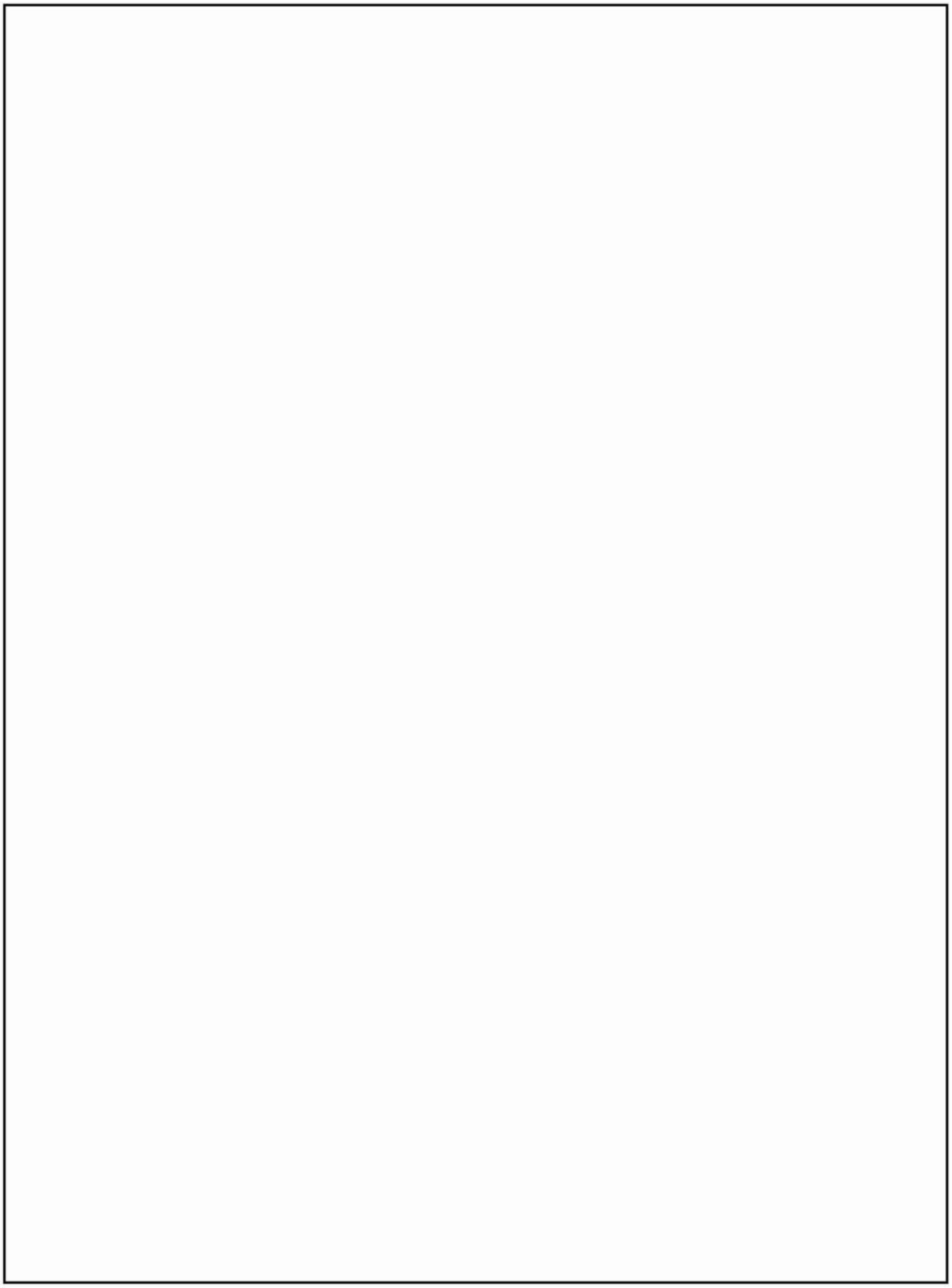
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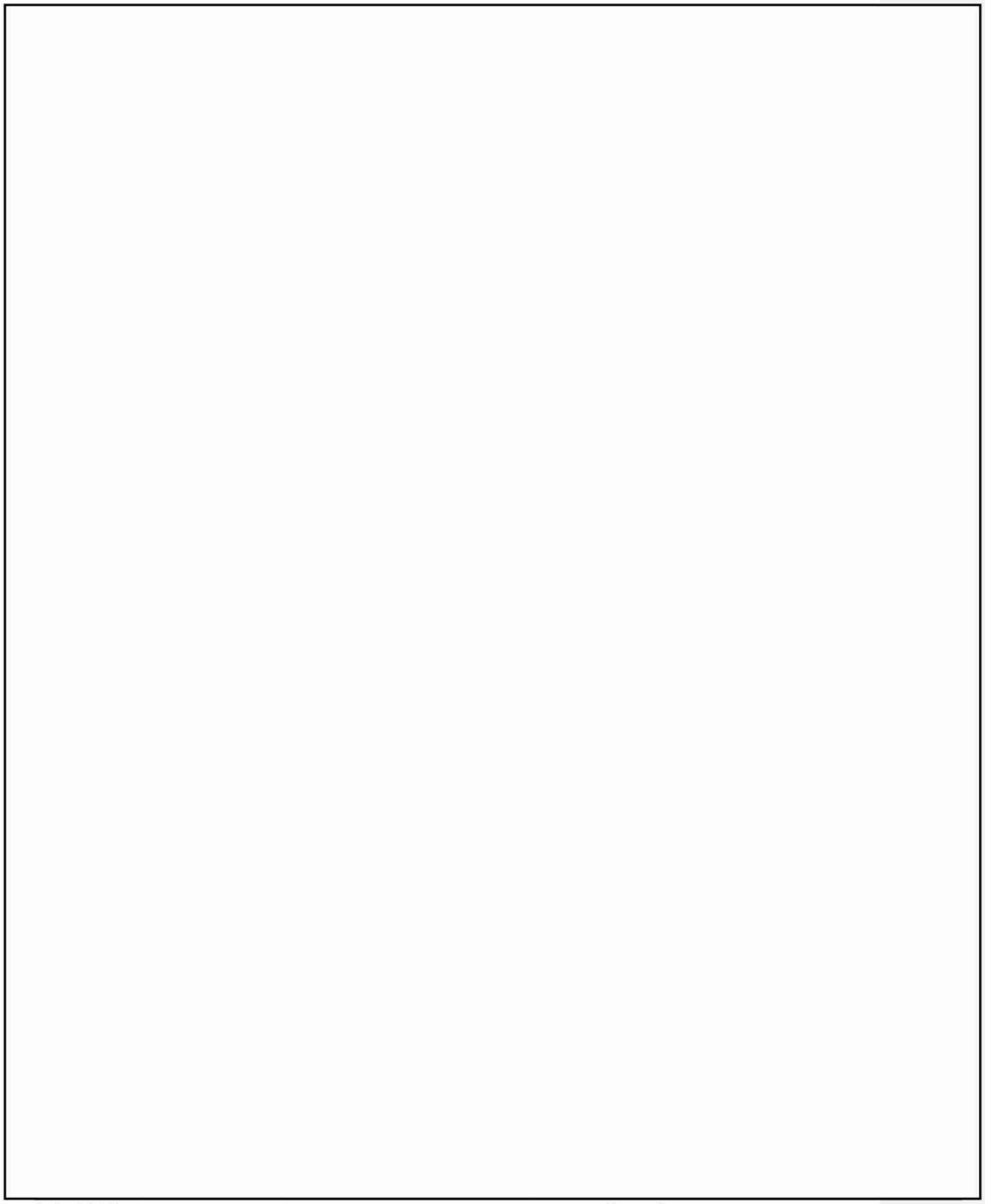
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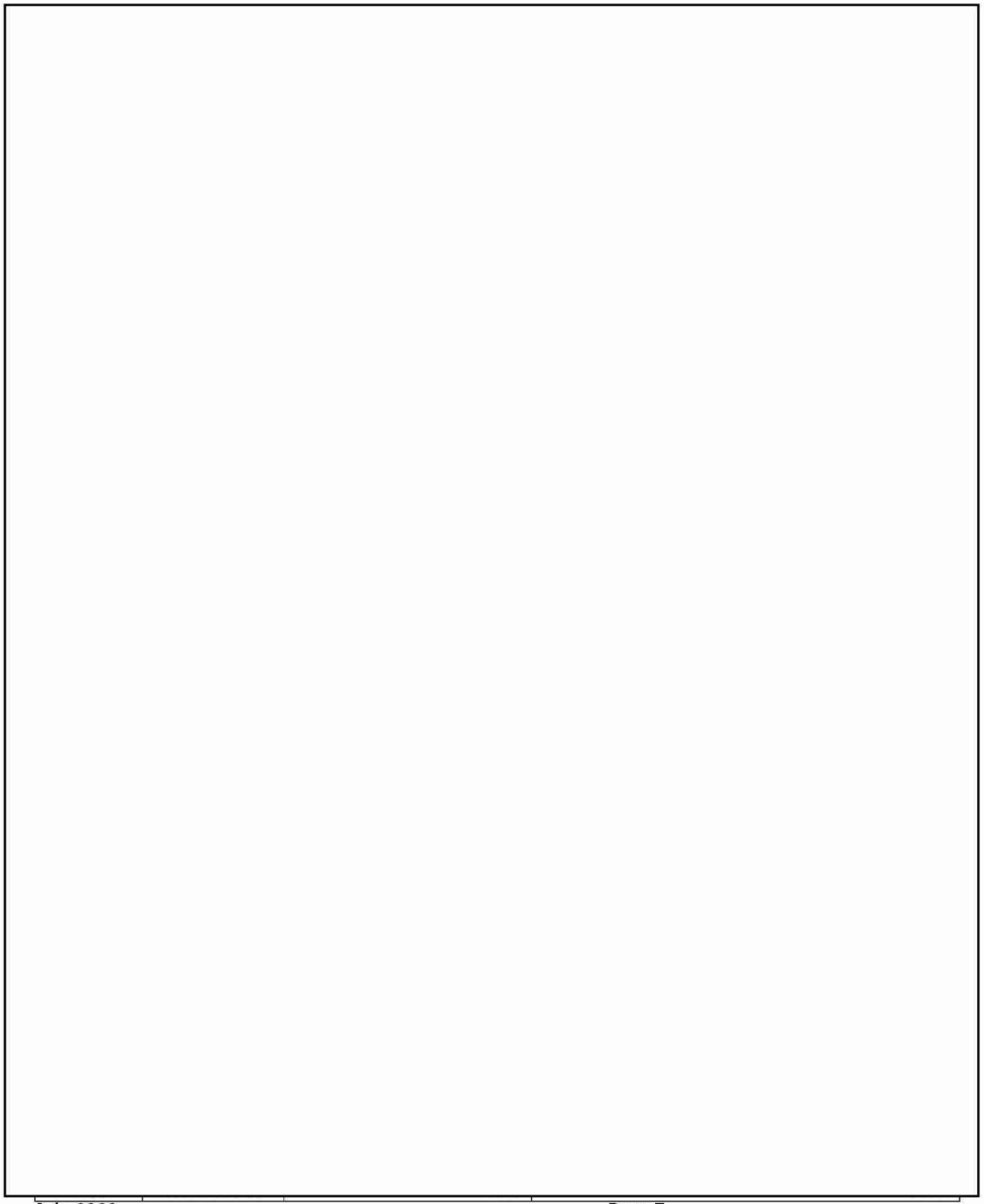
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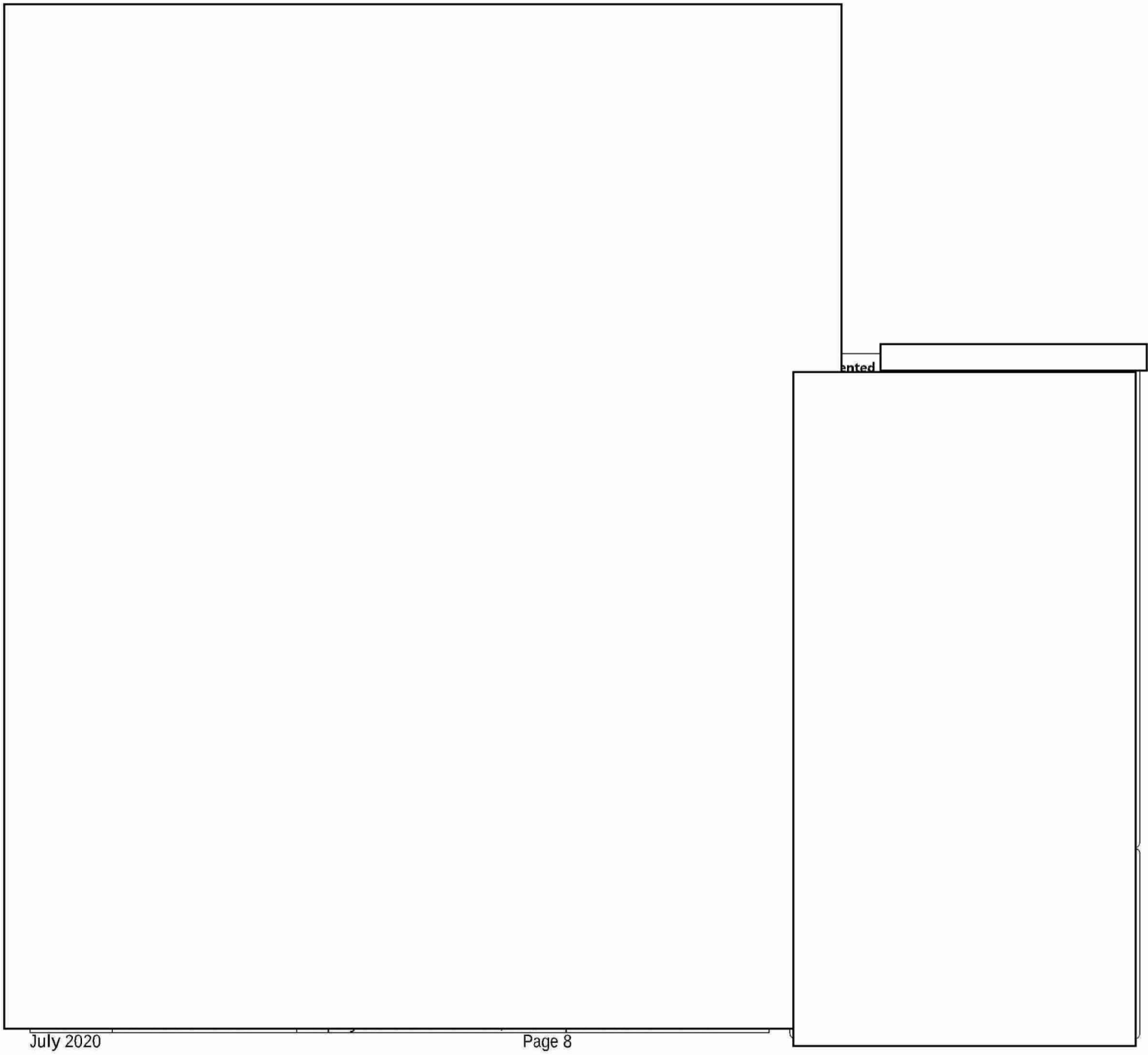
AMERICAN OVERSIGHT

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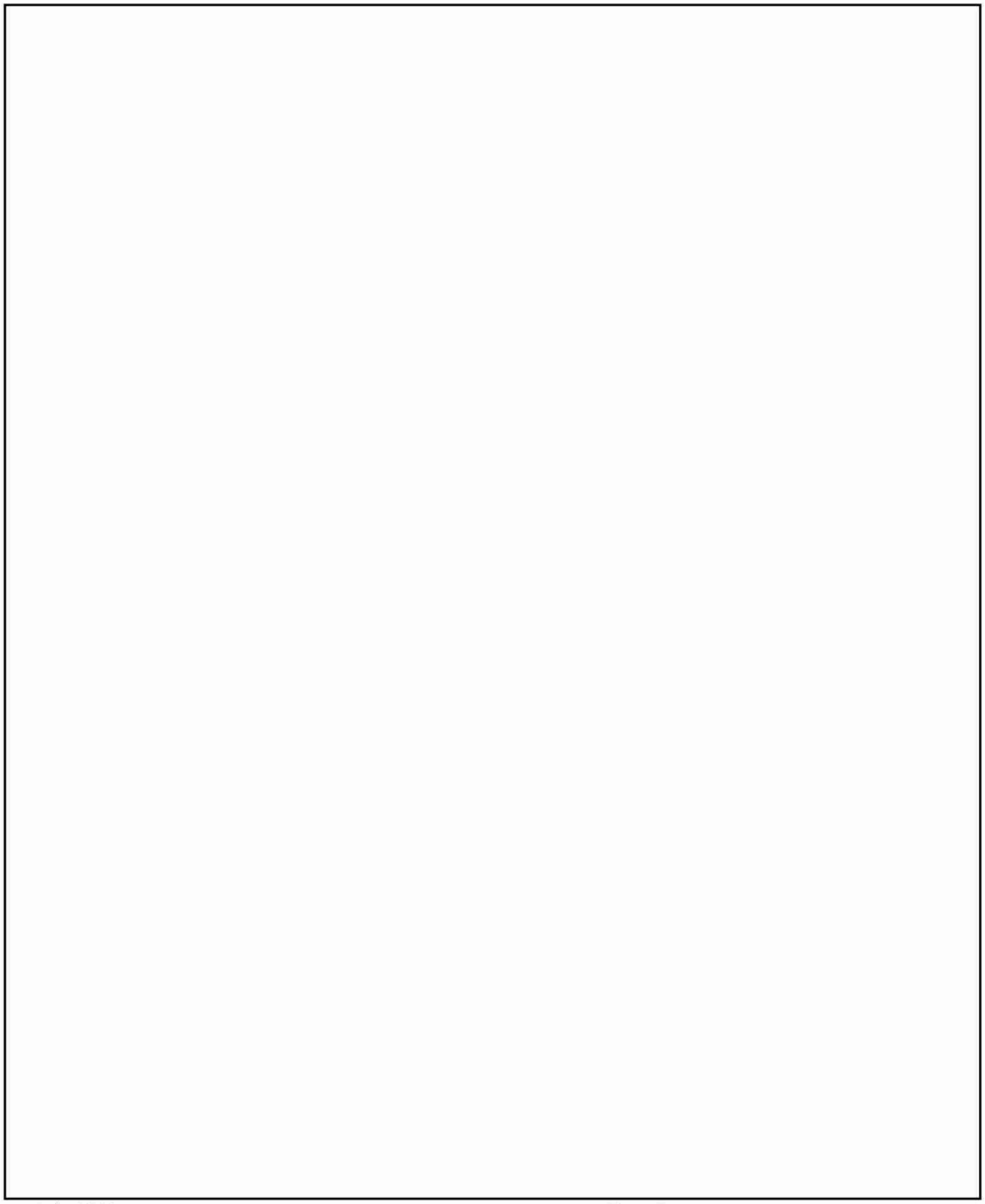
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AMERICAN OVERSIGHT

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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

AMERICAN OVERSIGHT

consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

AMERICAN OVERSIGHT

Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

AMERICAN OVERSIGHT

4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/31/20 - DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766
To: Askew, Marineka P
Sent: July 16, 2020 3:40 PM (UTC-05:00)
Attached: Draft Response - Darr - OCC Clean 7.16.20.docx

Hi Marineka,

This is ready for auto pen signature. Can you assist?

Thanks,
Morgan

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

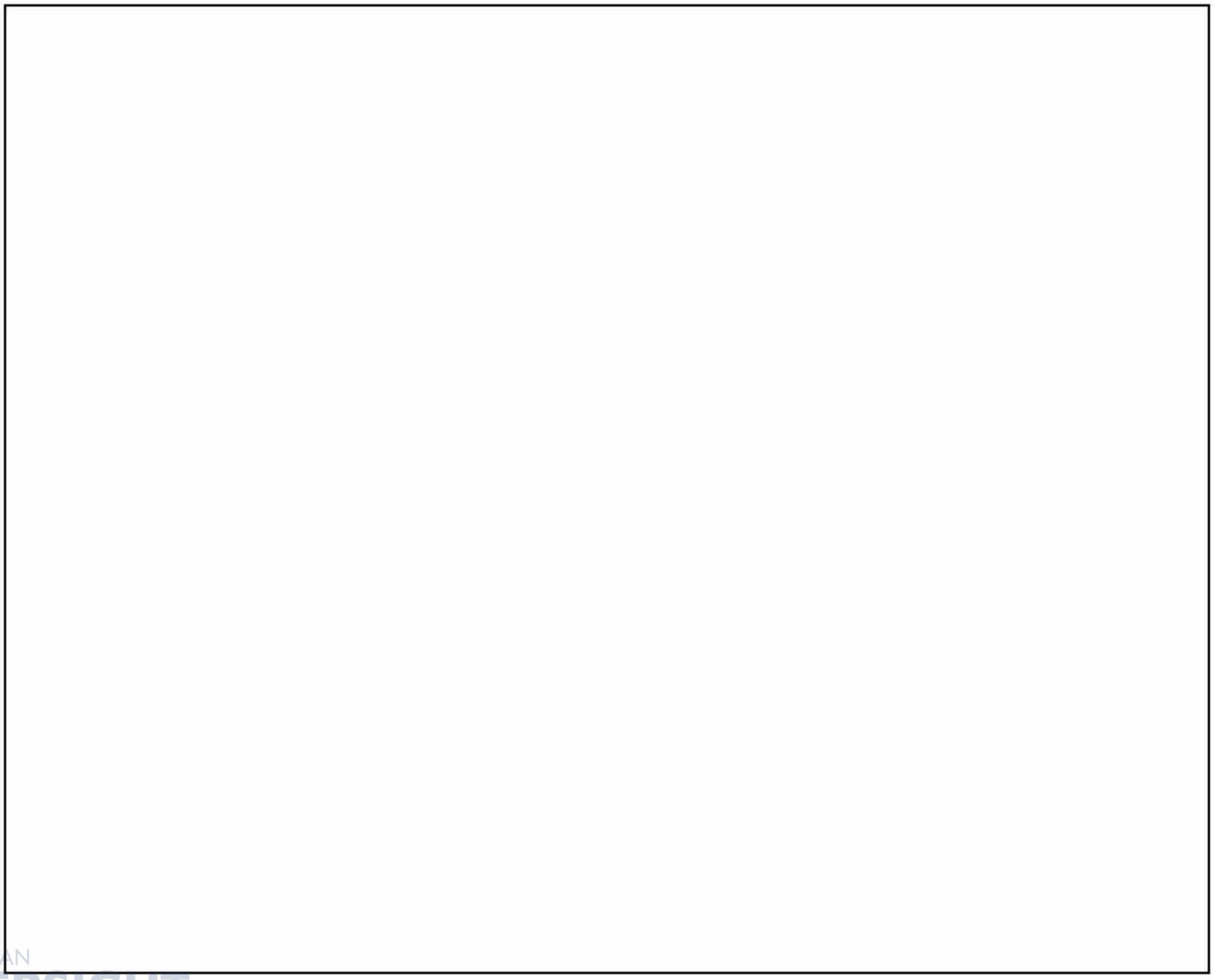
July XX, 2020

Ms. Linda Bauer Darr
President and Chief Executive Officer
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

Dear Ms. Darr:

(b)(5)

Thank you for your July 10, 2020 letter expressing support for nonimmigrant engineering professionals and their employers. Acting Secretary Wolf asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

Thank you again for your letter and your interest in this important matter.

Respectfully,

Joseph Edlow
Deputy Director for Policy

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/31/20 - DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 16, 2020 2:21 PM (UTC-05:00)
Attached: Incoming Darr 7.10.20.pdf, Draft Response - Darr - OCC edits 7.16.20.docx, Draft Response - Darr - OCC Clean 7.16.20.docx

Hi Morgan,

(b)(6)

No edits. Ready for your review.

Thanks,

Ed

From: Kilgore, Garry R [redacted]
Sent: Thursday, July 16, 2020 1:51 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/31/20 - DHS VIP Correspondence - Ms. Linda Darr regarding concerns about H-1B visas - STARS #28766

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, July 31, 2020**

Request: D2P review and signature.

Background: Ms. Linda Darr wrote to Acting Secretary Chad Wolf regarding concerns about H-1B visas. DHS ESEC requested D2P sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming Darr 7.10.20
2. Draft Response Darr – OCC edits 7.16.20
3. Draft Response – Darr – OCC Clean 7.16.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues [redacted]

AMERICA OVERSIGHT

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Ms. Linda Bauer Darr
President and Chief Executive Officer
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

(b)(5)

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing your support for certain job-related nonimmigrant visas. Acting Secretary Wolf asked that I respond on his behalf.

AMERICAN OVERSIGHT

(b)(5)

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Ms. Linda Bauer Darr
President
American Council of Engineering Companies
1015 15th Street Northwest
Washington, DC 20005

(b)(5)

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing your support for certain job-related nonimmigrant visas. The Acting Secretary has asked that I respond on his behalf.

AMERICAN OVERSIGHT

(b)(5)

[redacted]

Thank you again for your letter and your interest in this important matter.

Respectfully,

John H Hill
Assistant Secretary for Partnership & Engagement

Commente[redacted]

[redacted]

AMERICAN OVERSIGHT

(b)(5)

RECEIVED
By ESEC at 1:17 pm, Jul 10, 2020

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

July 10, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Wolf:

On behalf of the American Council of Engineering Companies (ACEC) – the voice of the business of engineering – I am writing to express our concerns about the presidential proclamation signed on June 22, 2020 that would suspend H-1B and L visas, among others. This sudden barrier to employing highly-skilled engineering professionals will disrupt the operations of engineering firms across the country, and we respectfully request a waiver for the engineering industry.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America's infrastructure and built environment. Because of the critical shortage of engineers in this country, H-1B and other employment-based visa programs allow engineering firms to pursue their vital work of building the nation's infrastructure when American citizens are not available to fill these jobs.

The National Science Foundation has reported incremental growth in bachelor's degrees in engineering since 2000, but these very modest increases are not nearly enough to meet the demands of a robust and growing economy, particularly in recent years. The engineering workforce is also getting older, and nearly 30 percent of all engineering and science degree holders in the labor force are 50 or over and expected to retire in the next 15 years. Moreover, the National Science Foundation reports that in 2015 half of engineering master's degrees awarded by U.S. universities were earned by foreign nationals on temporary visas, including 70 percent of master's degrees in electrical engineering.

America's engineering industry will always hire qualified Americans first, and we support investments in STEM education and other initiatives to attract more young people to the engineering profession. However, the data above clearly demonstrates that the industry needs access to the best and brightest around the world in order to fill key

AMERICAN OVERSIGHT

positions. Engineering firms employ highly skilled, technically sophisticated professionals, often at the mid-career level, using H-1B visas as well as L-1 visas for individuals with specialized knowledge of the firm's operations that cannot easily be transferred to new hires.

During the pandemic, engineering firms have worked to ensure continuity of operations across all types of infrastructure and provided support to critical industries. These services include infrastructure safety inspections to assess deterioration; completion of ongoing construction; assessing the ability to repurpose infrastructure for pandemic response; renovating to protect public and worker health and safety; designing needed changes to existing infrastructure and new infrastructure; providing support for operations and maintenance of existing infrastructure; and similar activities.

These critical functions will be impacted directly should the proclamation remain in effect for the engineering industry. All engineering firm employees, including those with H-1B and L-1 visas, are critical to an engineering firm's ability to continue this essential work. Accordingly, we respectfully urge the Departments of Homeland Security, State and Labor to provide a waiver for engineering firms from the visa suspensions delineated in the presidential proclamation of June 22, 2020.

Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,



Linda Bauer Darr
President & CEO

AMERICAN OVERSIGHT

(b)(6)

From: David Isaacs
Subject: SIA request for national interest exemption under Proclamation 10052
To: [redacted]state.gov[redacted]
Public Engagement; [redacted]
Sent: July 15, 2020 11:48 AM (UTC-05:00)
Attached: Exemption letter july 2020.pdf

CAUTION: This email originated from outside of the Federal Government. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the USCIS Security Operations Center with questions or click the "Report Suspicious Email" button to report it as a phishing attempt.

On behalf of the Semiconductor Industry Association (SIA), please find the attached letter requesting an exemption under Proclamation 10052 for nonimmigrant workers in the semiconductor industry.

David Isaacs
Vice President, Government Affairs
Semiconductor Industry Association
p[redacted] | m[redacted]
[redacted]org
1101 K Street NW, Suite 450
Washington, DC 20005

SEMICONDUCTOR INDUSTRY ASSOCIATION

(b)(6)

AMERICAN OVERSIGHT

SEMICONDUCTOR INDUSTRY ASSOCIATION

John Neuffer, President & CEO

July 15, 2020

The Honorable Michael R. Pompeo
Secretary of State
Washington, D.C. 20520

The Honorable Chad Wolf
Acting Secretary of Homeland Security
Washington, D.C. 20528

The Honorable Eugene Scalia
Secretary of Labor
Washington, D.C. 20210

Dear Secretaries Pompeo and Scalia and Acting Secretary Wolf:

On behalf of the Semiconductor Industry Association (SIA), I am writing regarding the president's "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" (Proclamation 10052, June 22, 2020). SIA is the voice of the U.S. semiconductor industry, one of America's top export industries and a key driver of America's economic strength, national security, and global competitiveness. Because of the critical role of the U.S. semiconductor industry in advancing our national security, supporting our health system, and enabling our economic recovery, SIA requests you provide a national interest exemption under this proclamation for workers in the semiconductor industry.

Section 3(b)(iv) of the proclamation exempts "any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees." Section 4(a)(i) directs the Secretaries of State, Homeland Security, and Labor to "establish standards to define categories of aliens" under the proclamation whose entry would be in the national interest. The proclamation highlights non-immigrant workers who are "critical to the defense . . . or national security" or are involved with "the provision of medical care . . . [and] medical research" or "are necessary to facilitate the immediate and continued economic recovery of the United States."

Semiconductors are the key enabling technology of modern electronics and drive innovation in virtually all sectors of the economy – including information technology, communications, healthcare, manufacturing, transportation, energy, agriculture, education, and others – and the entry to the U.S. of non-immigrant workers in the semiconductor industry is in the national interest.

- National security – Semiconductors are also pivotal to the military and intelligence systems that provide for our national defense. From advanced satellites and radar systems to communications networks and jets, semiconductors provide advanced capabilities critical to our national security.
- Healthcare, medical research and the pandemic – Semiconductors are integral components of medical technologies essential to treating COVID-19 patients and others, including ventilators, X-ray equipment, vital sign monitors, and drug delivery devices. Semiconductors are also vital to the ICT systems needed to deliver remote healthcare and patient monitoring during the pandemic, and semiconductors enable the information technologies that will allow researchers to discovery vaccines for COVID-19 and cures for other diseases.
- U.S. economic recovery – Advancements in semiconductor technology enable the products and services allowing tens of millions of Americans to telework and engage in

AMERICAN OVERSIGHT

remote learning during the COVID-19 pandemic. Semiconductors will help drive the technologies of the future – including artificial intelligence, quantum computing, 5G telecommunications, and others – and drive our economic recovery and economic leadership for decades to come.

For many of these same reasons, the Department of Homeland Security earlier this year designated semiconductor workers and key suppliers as essential critical infrastructure workers.[1] As recognized in this guidance, semiconductor workers help drive much of our critical infrastructure, including data centers, that power our national economy. The guidance further recognizes semiconductor manufacturing produces critical components that support continued operations for essential services and increase the remote workforce.

Given the vital role the U.S. semiconductor industry plays in our, national security healthcare system, and economy, it is imperative the industry retains access to the high-skilled talent needed to compete globally. The industry has for decades led the world and powered innovation throughout the economy with the contribution of the best scientists and engineers from around the world. Unfortunately, as applied to our industry, the proclamation risks limiting our access to high-skilled talent and thereby risks diluting the growth and global competitiveness of our industry.

SIA recognizes the need for bold actions to address the COVID-19 pandemic. But the imposition of limits on high-skilled nonimmigrant workers in the U.S. semiconductor industry offers little in terms of employment opportunities for Americans, while at the same time threatening the vibrancy of this important industry. Foreign born graduates in engineering, computer science and mathematics, and physical sciences – particularly with advanced degrees – represent a large and growing percentage of overall graduates,[2] and semiconductor companies in the U.S. rely on these highly educated individuals. Semiconductor companies also rely on temporary workers from around the world to perform specialized tasks, ranging from chip design to the installation and maintenance of equipment and manufacturing facilities. These specialized assignments may also include temporary workers coming to train American workers in skills they can learn nowhere else. Impeding access to this pool of foreign talent will be highly detrimental to the industry in the U.S., and as a result harm our country's national security, healthcare system, and economy.

For these reasons, we respectfully request your Departments establish an exemption in the national interest for nonimmigrant semiconductor workers.

Sincerely,

President & CEO

---

[1] "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 3.1 (May 19, 2020)."

[2] National Science Board, "The State of U.S. Science and Engineering: 2020 Science and Engineering Indicators" (available at https://ncses.nsf.gov/pubs/nsb20201).

AMERICAN OVERSIGHT

(b)(6)

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/24/20 - DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 15, 2020 8:54 AM (UTC-05:00)
Attached: Incoming 7.1.20.pdf, Draft Response - Rep. Curtis - Clean.doc, Signed John Curtis Final 7.14.20.pdf

CLEARED
On behalf of the Director's Office, I clear USCIS' response to DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495. The signed document and Word version are attached. Thanks!

From: Kilgore, Garry R [redacted]>
Sent: Tuesday, July 14, 2020 4:15 PM
To: USCIS Directors Office Clearance-EXSO [redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/24/20 - DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, July 24, 2020**

Request: D2P review and signature.

Background: Rep. Curtis wrote to Acting Secretary Wolf regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program. DHS ESEC has requested D2P sign the final response.

Clearance:

OP&S: [redacted]
OCC:
EXA:

Attachments:

1. Incoming 7.1.20
2. Draft Response Rep. Curtis– OCC edits 7.9.20
3. Draft Response Rep. Curtis– (Final) 7.14.20 clean

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

President Trump recently issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."[1] The presidential proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

You recommended that nonimmigrants who will be filling DLI teaching positions be exempt from the limitations imposed by the Proclamation. We kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

It is important for us to emphasize that U.S. Citizenship and Immigration (USCIS) continues to accept and process requests for immigration benefits, and the Proclamation does not affect our adjudication of petitions and applications related to the H, J and L programs. In

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002290

addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Ben McAdams
Member of Congress

The Honorable Rob Bishop
Member of Congress

The Honorable Chris Stewart
Member of Congress

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20515

RECEIVED
By ESEC External at 11:55 am, Jul 02, 2020

July 1, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia,

We write concerning the President's "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," Proclamation 10052, and its effects on the Utah Dual Language Immersion (DLI) program.

Across Utah, there are nearly 300 DLI schools utilizing over 50 international teachers teaching Chinese, German, French, Portuguese, Russian, and Spanish. Because of the skills required to teach in a DLI program, many positions do not receive any qualified American applicants, and the programs turn to international teachers as a last resort. Not only do these teachers fill important teaching positions, they also facilitate an exchange of cultures and share their fluency in languages all deemed critical by the U.S. Department of Defense.

While we understand and support the prioritization of American workers, we are concerned that the recent prohibition of J-1 and H-1B visas will put DLI students at a disadvantage this school year – when schools already face uncertainty due to the COVID-19 pandemic. The Utah DLI program utilizes J-1 and H-1B visas to fill teacher openings if, and only if, those positions cannot be filled by American applicants, thus ensuring that international teachers are not replacing American workers.

Because of the importance of education and DLI programs to the future of our nation, we respectfully ask that you consider an exemption to the J-1 and H-1B visa ban for international teachers filling critical DLI teaching positions in programs that have been unsuccessful in filling

AMERICAN OVERSIGHT

the positions with Americans. We believe that the ability to reopen schools safely in the fall and to provide a first-class education is in the national interest of Utah and American families.

If you have any clarifying questions, please have a member of your staff contact Rebekah Rodriguez (Rebekah.Rodriguez@mail.house.gov) in Representative Curtis's office. Thank you for your consideration of our request.

Sincerely,

John R. Curtis
Member of Congress

Ben McAdams
Member of Congress

Rob Bishop
Member of Congress

Chris Stewart
Member of Congress

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 14, 2020

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

President Trump recently issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."[1] The presidential proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The proclamation also does not prevent individuals in possession of valid H, J, or L visas prior to the effective date of the proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

You recommended that nonimmigrants who will be filling DLI teaching positions be exempt from the limitations imposed by the Proclamation. We kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

It is important for us to emphasize that U.S. Citizenship and Immigration (USCIS) continues to accept and process requests for immigration benefits, and the Proclamation does not affect our adjudication of petitions and applications related to the H, J and L programs. In

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002294

addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Ben McAdams
Member of Congress

The Honorable Rob Bishop
Member of Congress

The Honorable Chris Stewart
Member of Congress

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/24/20 - DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495
To: Patrick, Shirley A
Sent: July 14, 2020 6:33 PM (UTC-05:00)
Attached: Draft Response - Rep. Curtis - Clean.doc

Hi Shirley,

Can you auto pen sign?

In addition, let's chat tomorrow about the auto pen machine.

Best,
Morgan

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency and as the first phases of reopening begin. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the coronavirus (COVID-19) pandemic.

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It is important for us to emphasize that U.S. Citizenship and Immigration (USCIS) continues to accept and process requests for immigration benefits, and the Proclamation does not affect our adjudication of petitions and applications related to the H, J and L programs. In

[1] Further clarification was provided in the "Proclamation on Amendment to Proclamation 10052."

AMERICAN OVERSIGHT

DHS-20-2156-A-002297

addition, we have taken decisive actions to help accommodate applicants and petitioners during the pandemic.[2]

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Ben McAdams
Member of Congress

The Honorable Rob Bishop
Member of Congress

The Honorable Chris Stewart
Member of Congress

[2] For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/24/20 - DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 14, 2020 5:51 PM (UTC-05:00)
Attached: Incoming 7.1.20.pdf, Draft Response - Rep. Curtis OCC edits 7.9.20.docx, Draft Response - Rep. Curtis - (Final) 7.14.20 clean.docx.doc

Hi Morgan,

No edits. Ready for your review.

Thanks,

Ed (b)(6)

From: Kilgore, Garry R [redacted]
Sent: Tuesday, July 14, 2020 3:15 PM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/24/20 - DHS Congressional - Rep. Curtis - Dual Language Immersion Program - STARS 28495

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, July 24, 2020**

Request: D2P review and signature.

Background: Rep. Curtis wrote to Acting Secretary Wolf regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program. DHS ESEC has requested D2P sign the final response.

Clearance:

OP&S: [redacted]
OCC:
EXA:

Attachments:

1. Incoming 7.1.20
2. Draft Response Rep. Curtis– OCC edits 7.9.20
3. Draft Response Rep. Curtis– (Final) 7.14.20 clean

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues [redacted]

AMERICAN OVERSIGHT

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

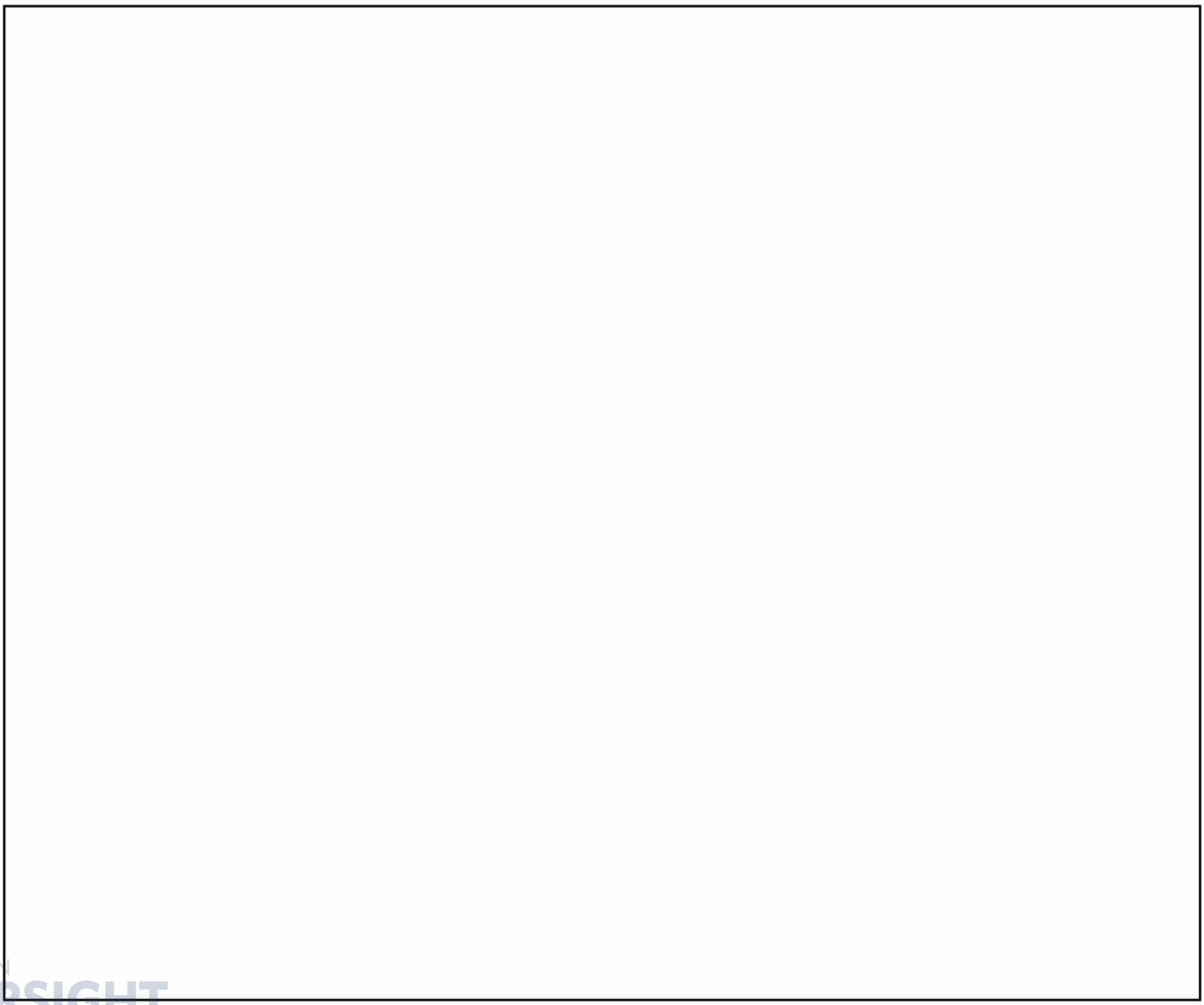
U.S. Citizenship and Immigration Services

July XX, 2020

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Ben McAdams
Member of Congress

The Honorable Rob Bishop
Member of Congress

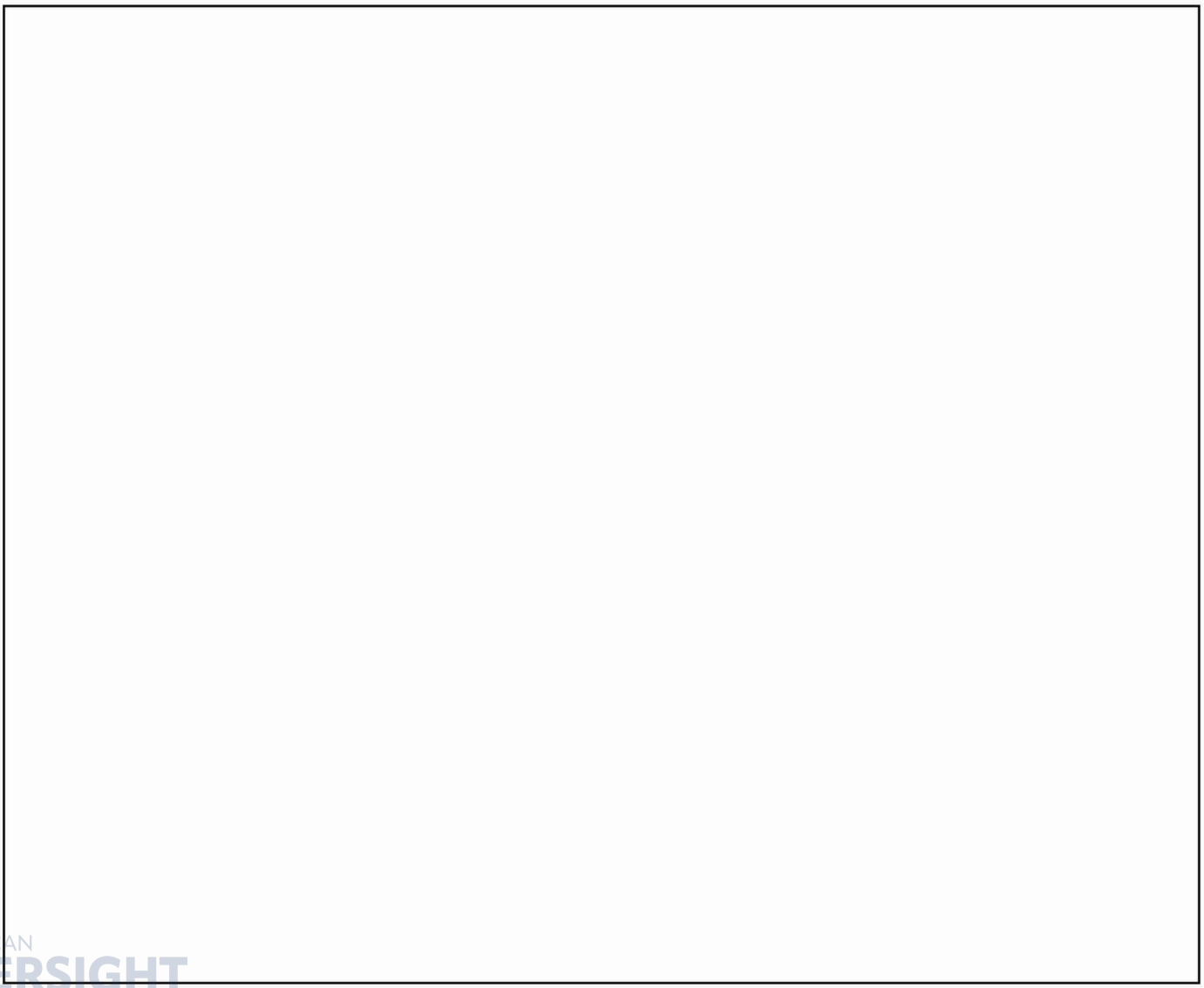
The Honorable Chris Stewart
Member of Congress

AMERICAN OVERSIGHT

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



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Thank you again for your letter and interest in this matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

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DHS-20-2156-A-002303

Congress of the United States
Washington, DC 20515

RECEIVED
By ESEC External at 11:55 am, Jul 02, 2020

July 1, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia,

We write concerning the President's "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," Proclamation 10052, and its effects on the Utah Dual Language Immersion (DLI) program.

Across Utah, there are nearly 300 DLI schools utilizing over 50 international teachers teaching Chinese, German, French, Portuguese, Russian, and Spanish. Because of the skills required to teach in a DLI program, many positions do not receive any qualified American applicants, and the programs turn to international teachers as a last resort. Not only do these teachers fill important teaching positions, they also facilitate an exchange of cultures and share their fluency in languages all deemed critical by the U.S. Department of Defense.

While we understand and support the prioritization of American workers, we are concerned that the recent prohibition of J-1 and H-1B visas will put DLI students at a disadvantage this school year – when schools already face uncertainty due to the COVID-19 pandemic. The Utah DLI program utilizes J-1 and H-1B visas to fill teacher openings if, and only if, those positions cannot be filled by American applicants, thus ensuring that international teachers are not replacing American workers.

Because of the importance of education and DLI programs to the future of our nation, we respectfully ask that you consider an exemption to the J-1 and H-1B visa ban for international teachers filling critical DLI teaching positions in programs that have been unsuccessful in filling

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the positions with Americans. We believe that the ability to reopen schools safely in the fall and to provide a first-class education is in the national interest of Utah and American families.

If you have any clarifying questions, please have a member of your staff contact Rebekah Rodriguez (Rebekah.Rodriguez@mail.house.gov) in Representative Curtis's office. Thank you for your consideration of our request.

Sincerely,

John R. Curtis
Member of Congress

Ben McAdams
Member of Congress

Rob Bishop
Member of Congress

Chris Stewart
Member of Congress

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From: Nuebel Kovarik, Kathy
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117
To: CALKINS, AARON; Bailey, Morgan; Piateski, Jennifer E
Sent: July 14, 2020 12:41 PM (UTC-05:00)
Attached: Incoming - Nadler 6.23.20.pdf, Draft Response Nadler FINAL 7.9.20.doc, Enclosure Nadler FINAL 7.9.20.docx, FW_ DHS Correspondence Moving Forward .eml

Aaron – this is what I mentioned – please discuss with Joe today. Thanks!

From: Nuebel Kovarik, Kathy [redacted] (b)(6)
Sent: Friday, July 10, 2020 1:39 PM
To: Edlow, Joseph B [redacted]; Bailey, Morgan [redacted]
Subject: Fwd: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

I discussed this with Joe, and he wants to review the letter, possibly sign it himself. We will await Joe's guidance.

From: Bailey, Morgan [redacted]
Sent: Thursday, July 9, 2020 3:16:19 PM
To: Nuebel Kovarik, Kathy [redacted] (b)(6)
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

This response [redacted]

(b)(5)

[redacted] What do you think?

From: Stout, Kelsey L [redacted] (b)(6)
Sent: Thursday, July 9, 2020 1:46 PM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Clearance-EXSO [redacted]; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 07/10/2020 – Rep. Nadler - Regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. STARS# 28117

Requestor Directorate/Office: ESEC (b)(6)

Due Date: **3:00 PM on Friday, 07/10/2020**

Request: Director's Office review and clearance on the Rep. Nadler draft response prior to DHS Component clearance.

Background: Rep. Nadler wrote to Acting Secretary Wolf regarding the authorized amount of immigrant visas for fiscal years 2020 and 2021. The correspondence was received from DHS ESEC and requires DHS Component clearance by MGMT, OLA, and PLCY. ESEC will obtain final approval from the OGC. A comment from OP&S is included on the Enclosure that was flagged for the Director's Office. DHS ESEC has requested Mr. Cuccinelli sign the final response.

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Clearance:

OP&S:
OCC:
EXA:

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***Attachments:**
Incoming - Nadler 6.23.20
Draft Response Nadler (Redline) 7.9.20
Enclosure Nadler (Redline) 7.9.20
Draft Response Nadler FINAL 7.9.20
Enclosure Nadler FINAL 7.9.20

*******Please reply to all on this email ******

Kelsey Stout
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security

(b)(6)

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The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler: (b)(5)

Thank you for your June 23, 2020 letter regarding the authorized amount of immigrant visas for fiscal years (FY)2020 and 2021. Acting Secretary Wolf has asked that I respond on his behalf.



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(b)(5)

Thank you again for your letter and interest in this t issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the DHS Office of Legislative Affairs at (202) 447-1940.

Respectfully,

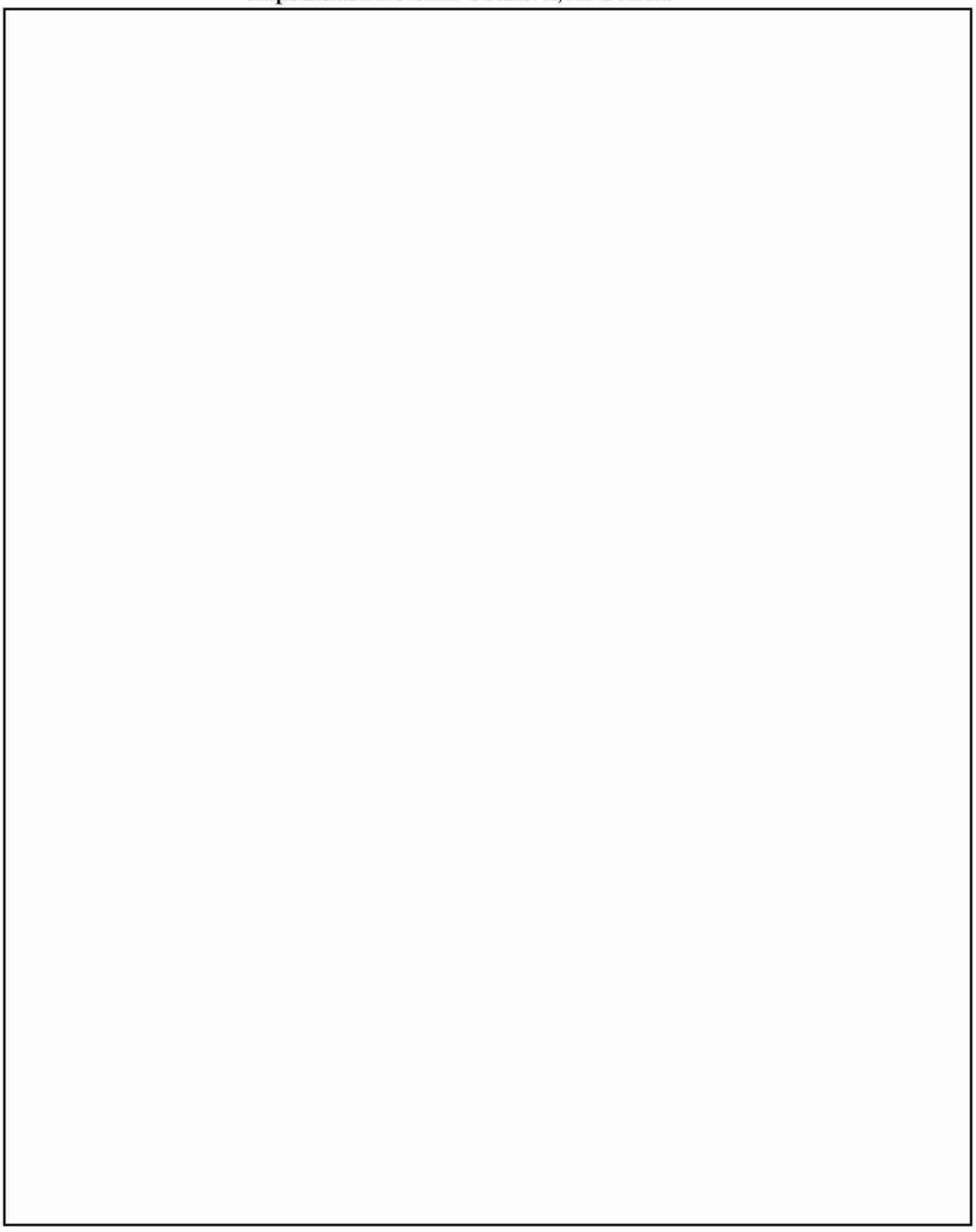
Ken Cuccinelli
Senior Official Performing the Duties of the Deputy Secretary

Enclosure

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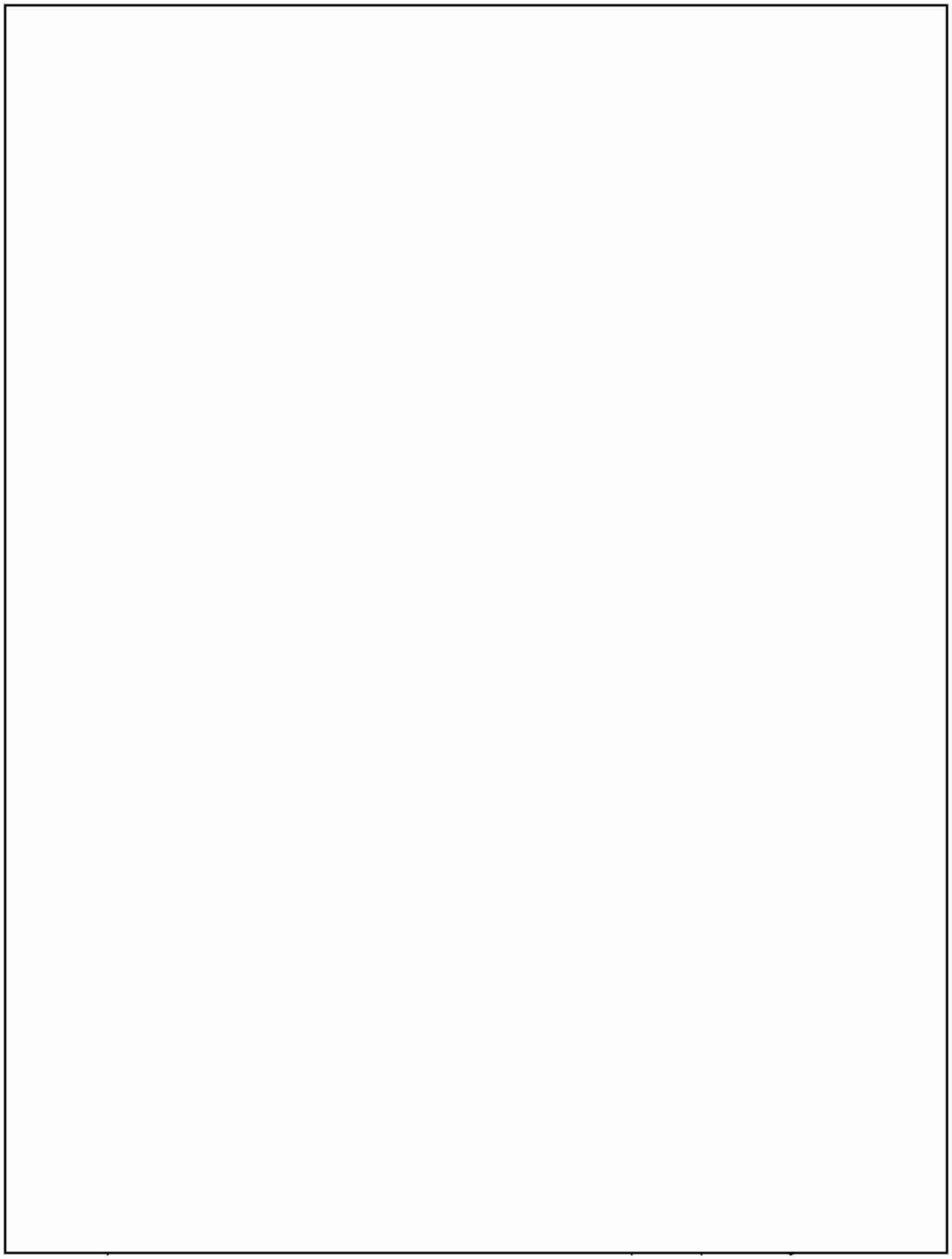
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The Department of Homeland Security's Response to Representative Nadler's June 23, 2020 Letter



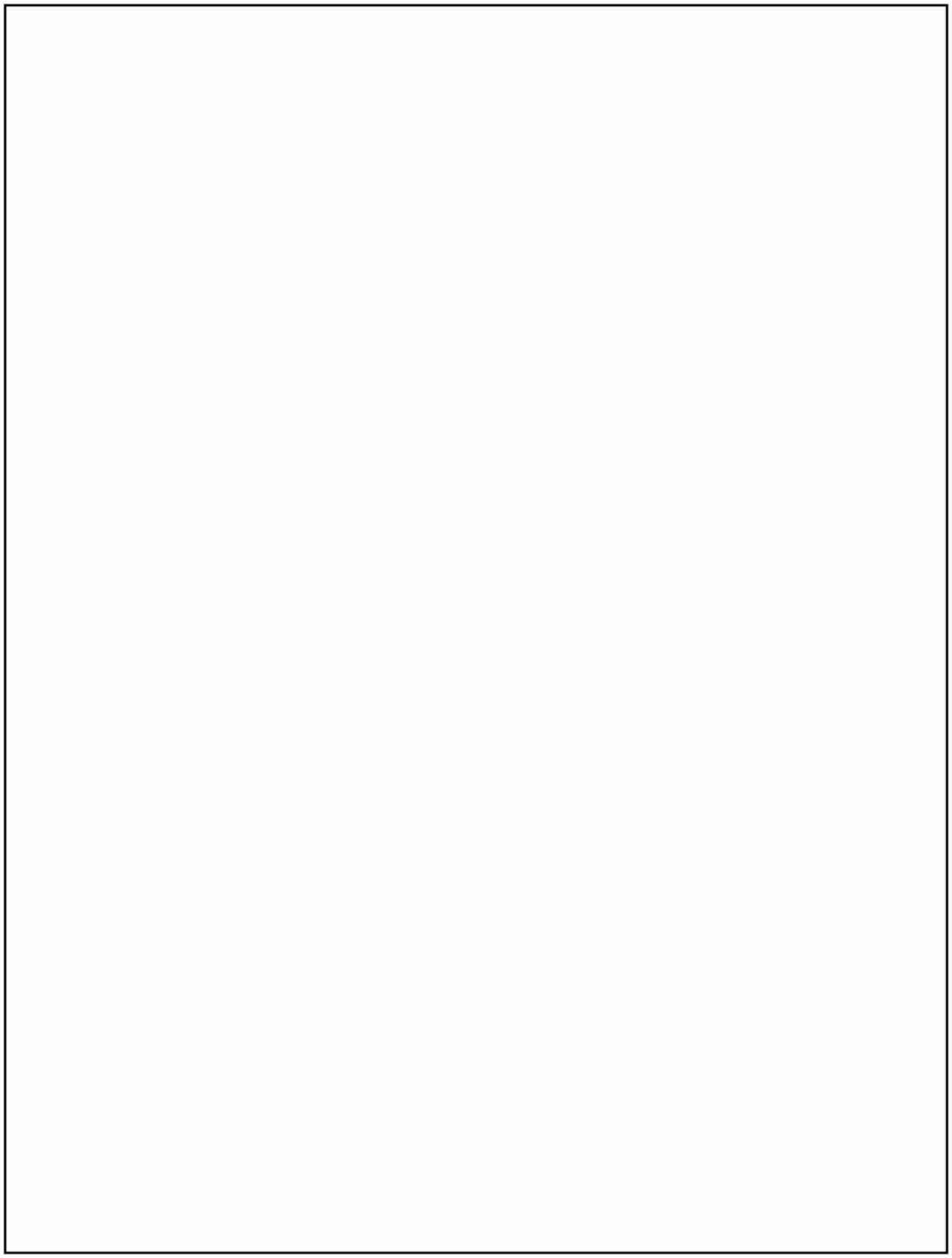
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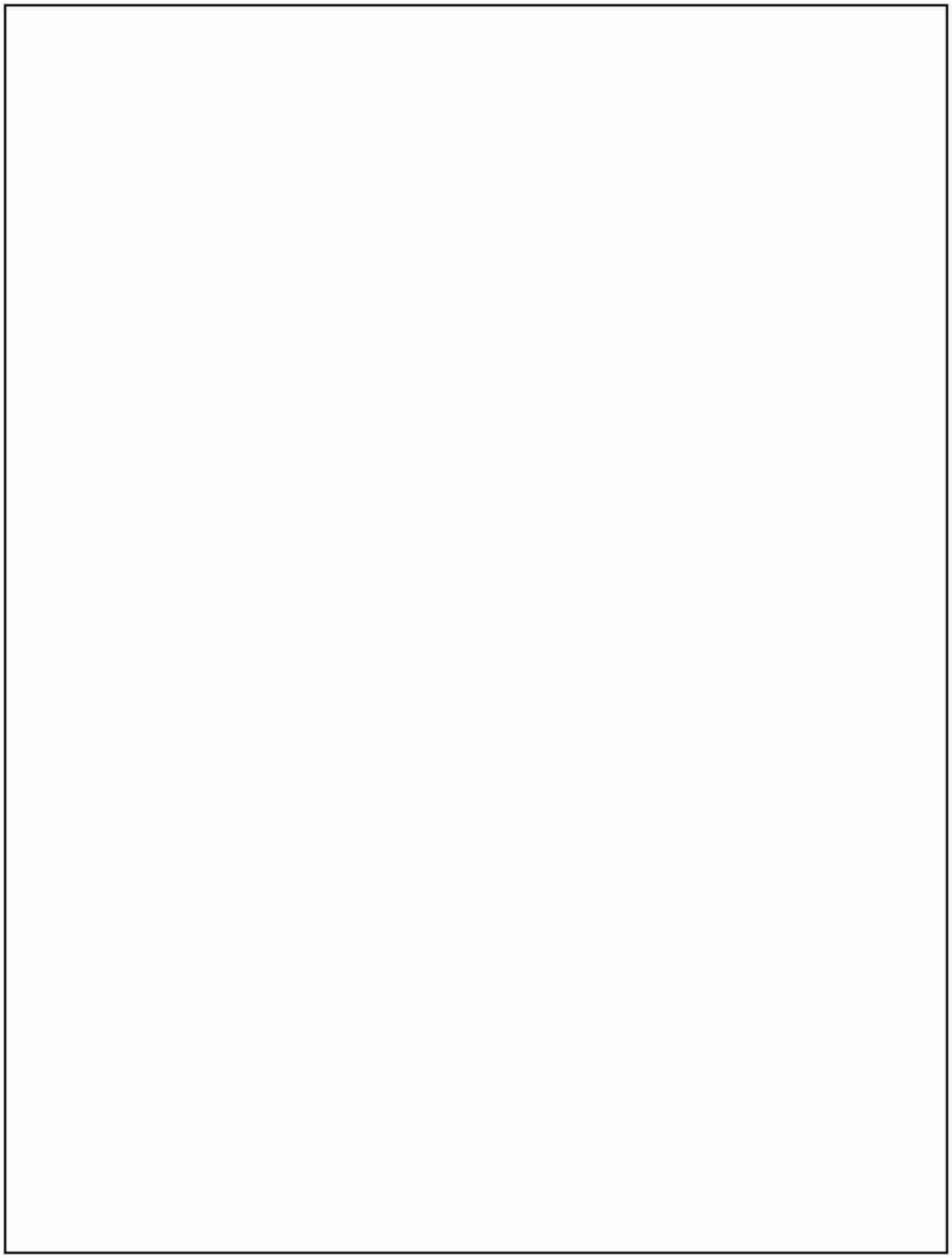
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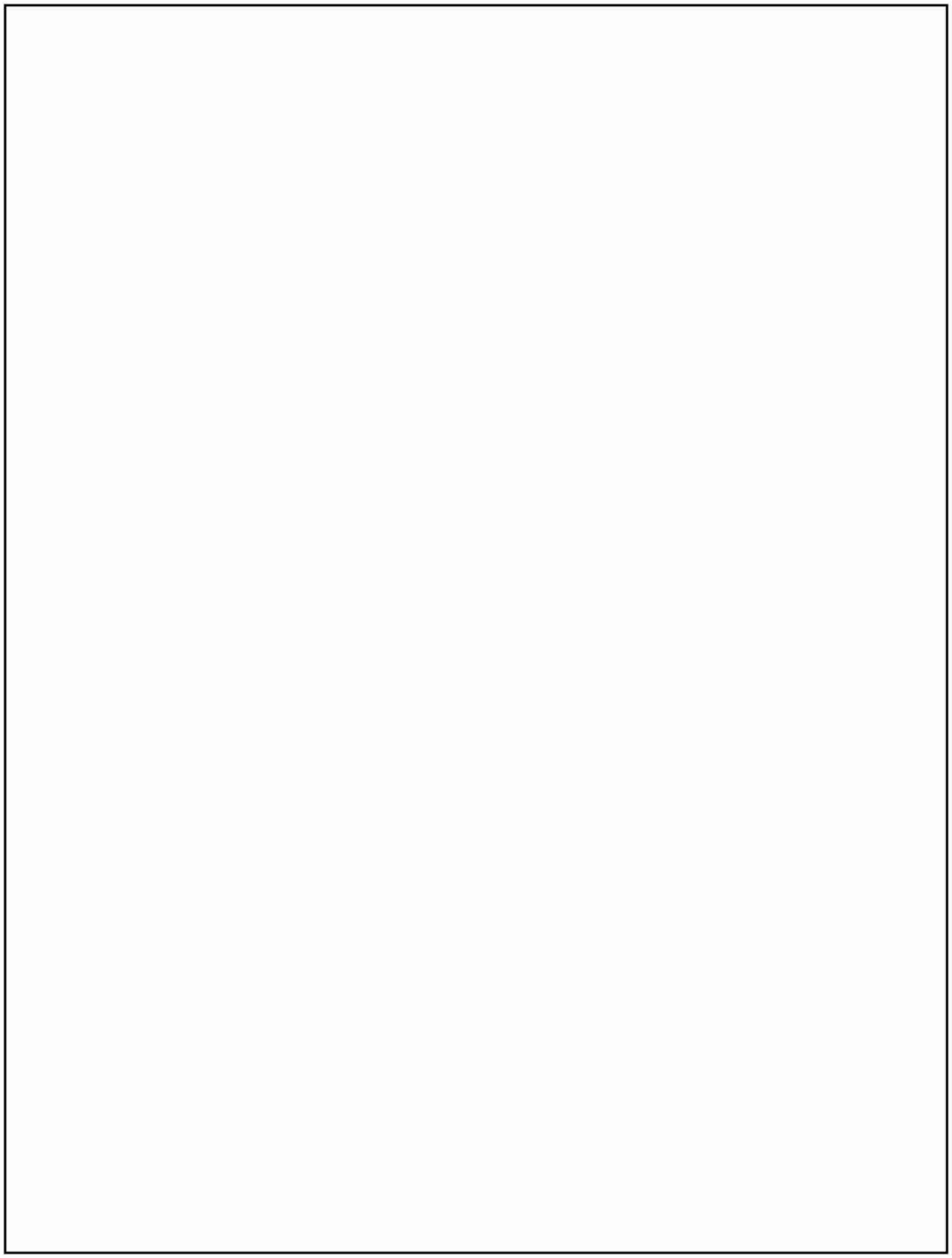
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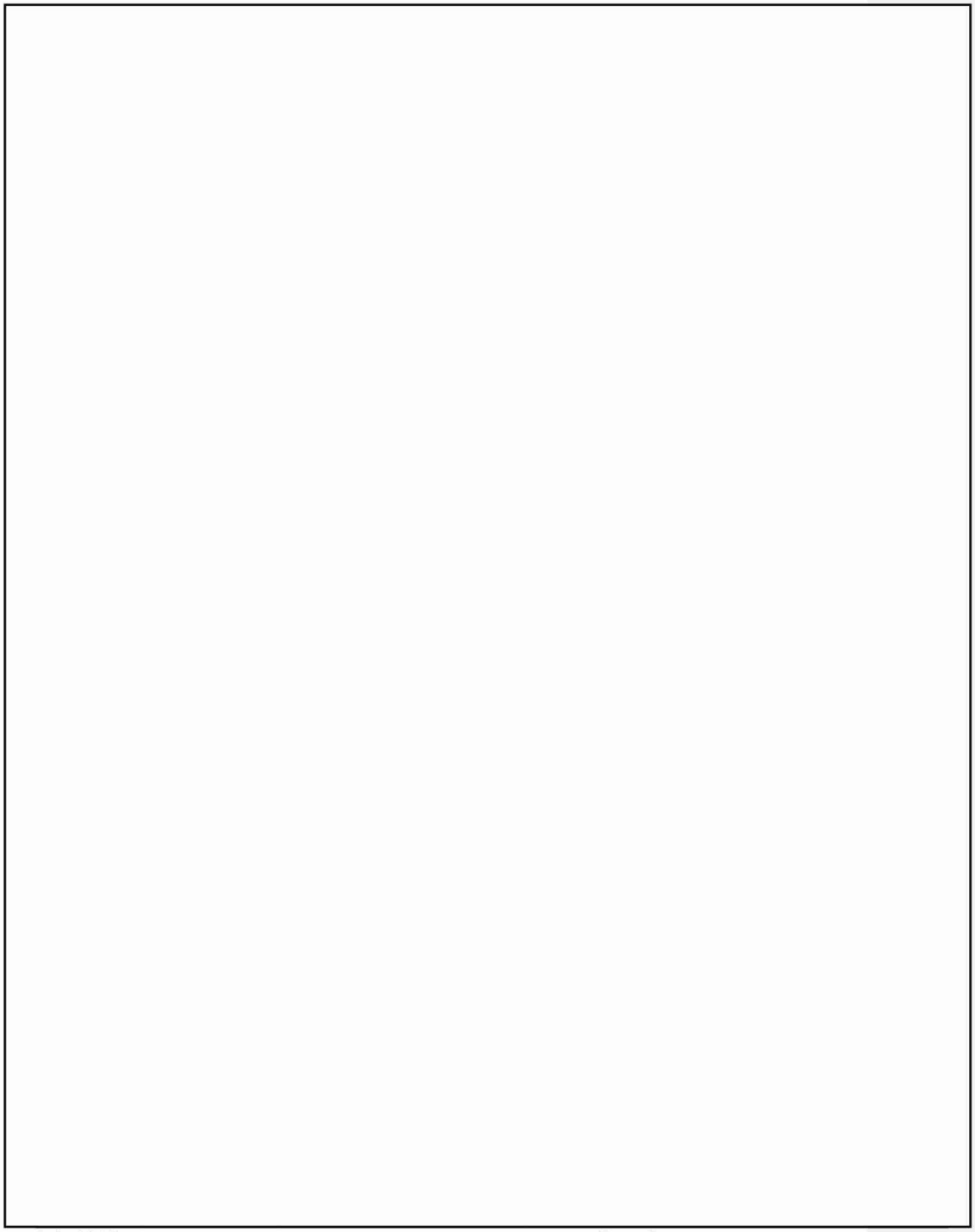
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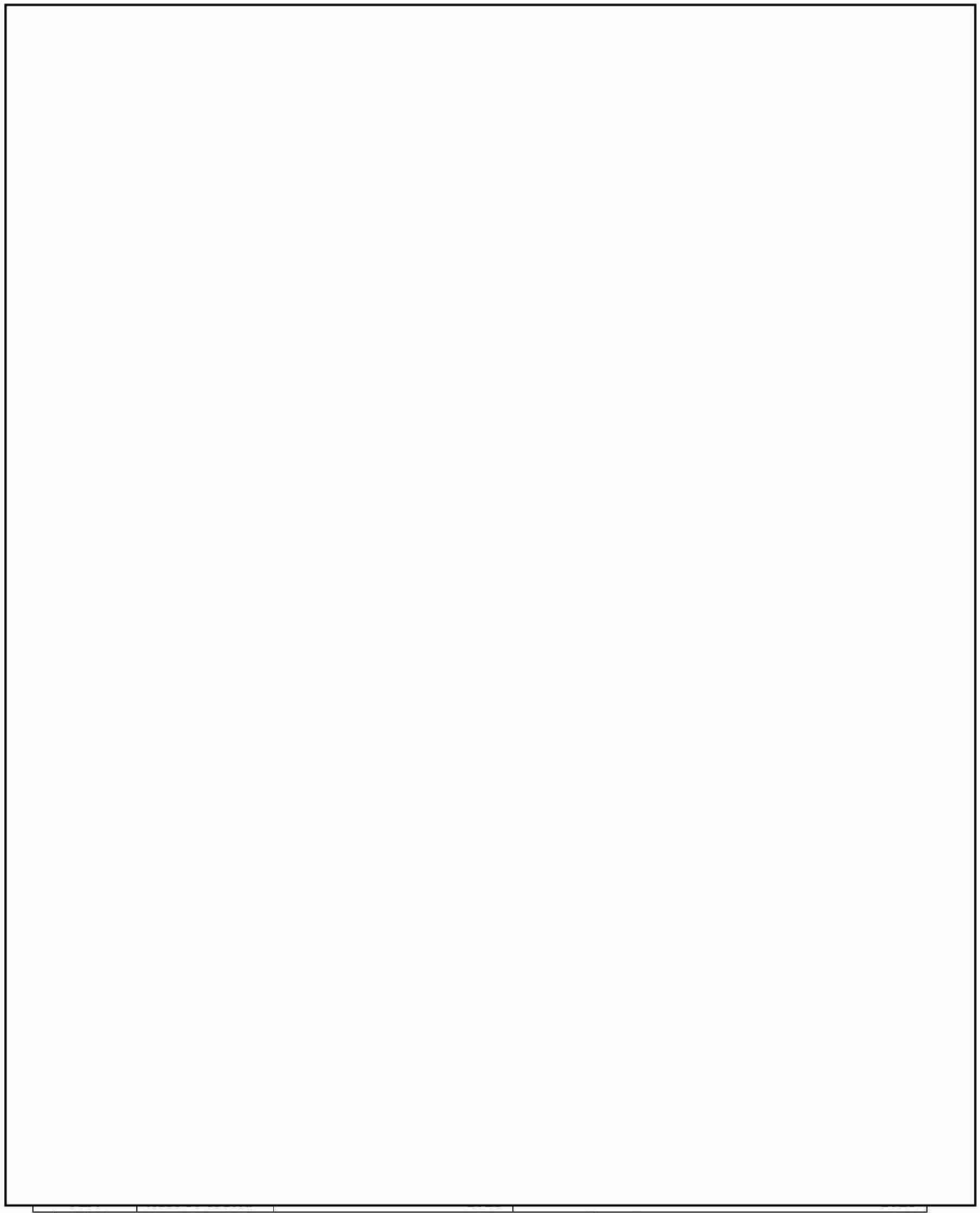
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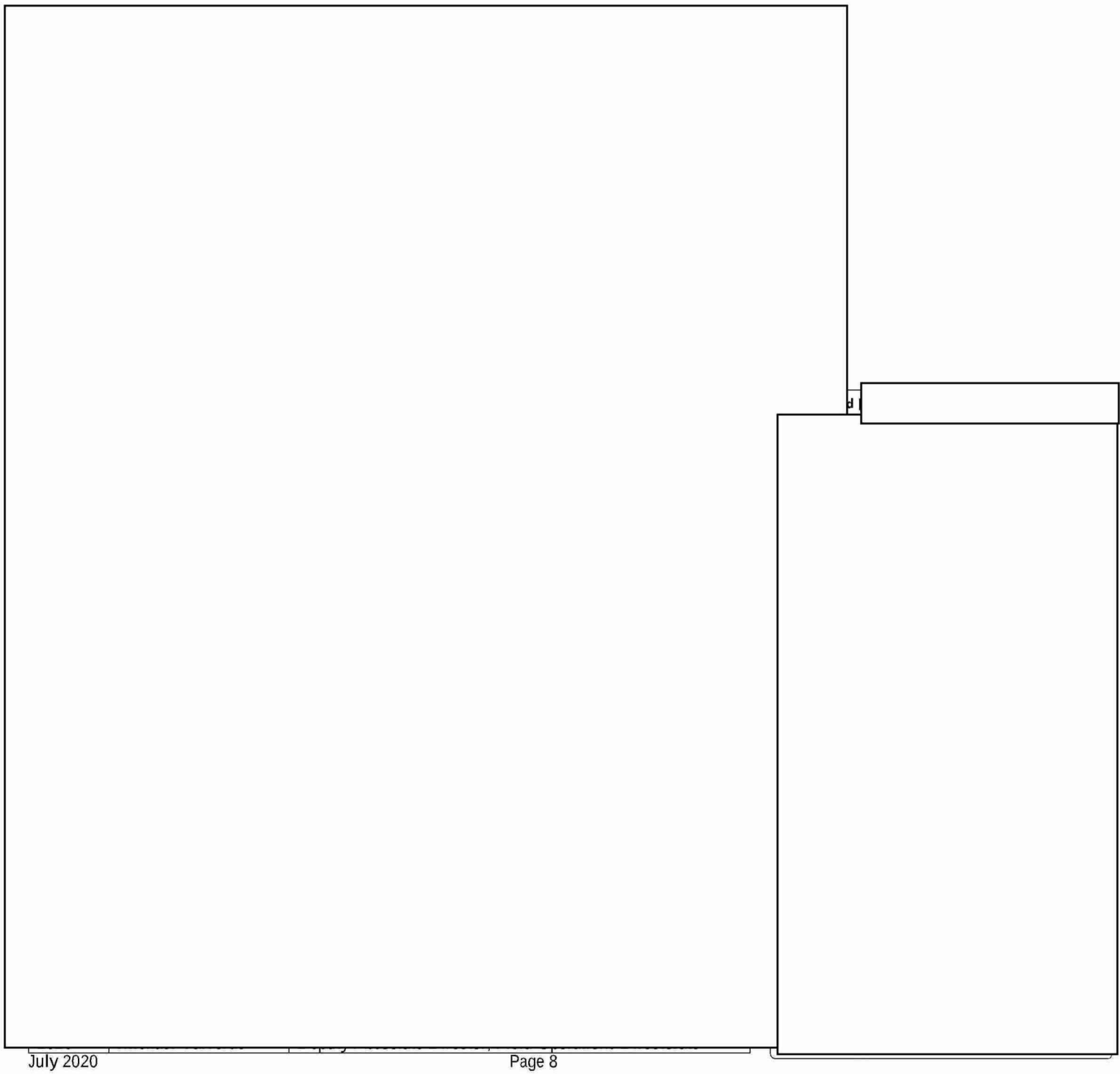
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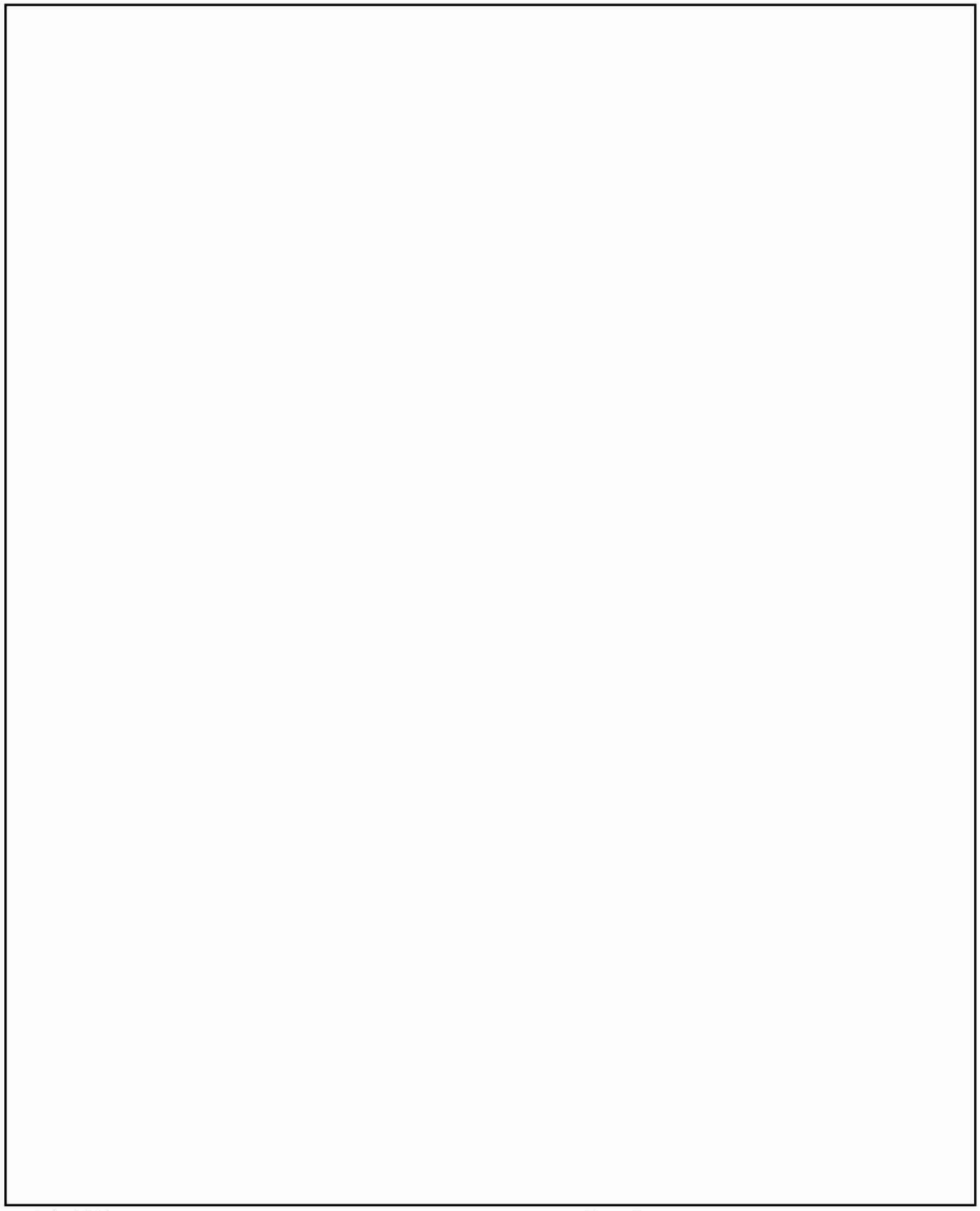
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Referred to Department of Homeland Security

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Referred to Department of Homeland Security

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JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Sixteenth Congress

RECEIVED
By ESEC External at 8:59 am, Jun 24, 2020

June 23, 2020

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Pompeo and Acting Secretary Wolf:

We write to ensure that the Department of State and the Department of Homeland Security (DHS) are faithfully complying with section 201 of the Immigration and Nationality Act (INA) to ensure full use of statutorily authorized immigrant visa numbers for fiscal years 2020 and 2021. Despite historically high demand for immigrant visa numbers, including from approved beneficiaries residing in the United States, your Departments do not appear to be on track to issue all available numbers in either fiscal year. We are particularly worried that political influence in the "Visa Bulletin" process has artificially suppressed applications for such visas, thus ensuring that visas will go unused despite the requirements of the INA.

As you are aware, section 201 of the INA provides 226,000 family-sponsored and 140,000 employment-based immigrant visas for preference category immigrants each fiscal year. This section, in conjunction with sections 202 and 203, is designed to ensure full use of immigrant visa numbers when there is sufficient demand for those visas (as is currently the case). To ensure full use of these numbers, the State Department coordinates with U.S. Citizenship and Immigration Services (USCIS) at DHS on a monthly basis to establish the availability of visa numbers for each immigrant visa preference category in the State Department's "Visa Bulletin." The State Department generally advances the priority dates in the Visa Bulletin during this process to encourage a sufficient number of eligible individuals to submit their applications and ensure full use of the immigrant visa numbers for the fiscal year.

The Departments must sometimes act aggressively to ensure that enough applications are filed to use all statutorily authorized immigrant visas. In July 2019, for example, the State Department adjusted the priority dates in the family-based second preference category for the spouses and children of lawful permanent residents "to generate new demand for use under the annual limit." Although the category had historically been subject to cutoff dates, the State Department advanced the priority date to "current" to ensure full use of available visas. Similarly, just a few weeks prior to the suspension of visa services at U.S. embassies and

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consulates around the world due to the COVID-19 pandemic, the State Department significantly advanced the priority dates for the employment-based fifth preference category (immigrant investors) for China.

On May 1, 2020, we wrote to Secretary Pompeo expressing our grave concern that notwithstanding the unprecedented backlog of approved immigrant visa petitions, an unreasonable number of immigrant visas could go unused in Fiscal Year 2020. As we noted, although overseas demand for immigrant visas had dropped significantly—due to the suspension of consular services and the president's proclamation barring the entry of most new immigrants into the United States—domestic demand from eligible beneficiaries in the United States remained at historically high levels. We therefore asked the Secretary to immediately and aggressively advance priority dates to ensure full use of visa numbers, including by ensuring sufficient filings by individuals already in the United States.

Unfortunately, based on a review of the Visa Bulletin, it appears that such aggressive action has not been taken. For example, as detailed in the chart below, from June to July 2020, priority dates for the employment-based first, second, and third preference categories (EB-1, EB-2, EB-3) for China advanced only one week. By contrast, during the same time period in 2019, these categories advanced 11, 13, and 15 weeks, respectively.

CHINA	July 2020 Visa Bulletin	June 2020 Visa Bulletin	Approximate Movement
EB-1	22AUG2017	15AUG2017	1 Week
EB-2	08NOV2015	01NOV2015	1 Week
EB-3	22JUN2016	15JUNE2016	1 Week
CHINA	July 2019 Visa Bulletin	June 2019 Visa Bulletin	Approximate Movement
EB-1	08MAY2017	22FEB2017	11 Weeks
EB-2	01NOV2016	01AUG2016	13 Weeks
EB-3	01JAN2016	15SEP2015	15 Weeks

Several weeks ago, we were advised by DHS officers that as of April 29, 2020, approximately 126,000 family-based visas and nearly 75,000 employment-based visas remained available for use in Fiscal Year 2020. With overseas processing of immigrant visas at a virtual standstill, it is thus difficult to comprehend why final action dates have not been advanced more aggressively.

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Moreover, we have reason to believe that undue political influence was exercised in the Visa Bulletin process to intentionally reduce movement in priority dates—for China and other countries—thus artificially depressing the filing of applications for visa numbers and ensuring that such numbers would go unused despite the high demand for such visas. If true, this would represent a shocking violation of your duties to faithfully execute the laws of the United States as set by Congress. In this case, exercising your duties under the INA means taking affirmative steps to ensure that immigrant visa numbers are allocated to family- and employment-based immigrants in fiscal years 2020 and 2021 to the greatest extent practicable.

As we approach the final quarter of fiscal year 2020, it is becoming increasingly clear that a significant number of immigrant visas will be lost as a result of your inaction. As such, we ask that you respond to the following questions and provide a staff-level briefing to further discuss these matters not later than July 6, 2020.

1. For each Visa Bulletin from January 2020 through July 2020, please provide:
    a. all data that were utilized in establishing the "final action dates" and "dates for filing" for each preference category and each reported country (including "rest of world"), including:
        i. the number of documentarily qualified applicants for immigrant visas reported by consular officers to the Department of State;
        ii. the number of applicants for adjustment of status reported by USCIS to the Department of State; and
        iii. all other factors and information taken into consideration in establishing the final action dates and dates for filing, including an explanation as to how such factors and information influenced the dates as established;
    b. for each preference category and each reported country (including "rest of world")—
        i. the demand that was expected to be generated (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established in the Visa Bulletin; and
        ii. the actual demand realized (in the form of new documentarily qualified immigrant visa applicants and new adjustment of status applicants) as a result of the dates established;
2. The current number of family-sponsored and employment-based visas, broken down by preference category, that remain unused for Fiscal Year 2020;
3. The current number of documentarily qualified family-sponsored and employment-based immigrant visa applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin;

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4. The current number of family-sponsored and employment-based adjustment of status applicants (principals and dependents), broken down by preference category and country of chargeability, as well as the number of such individuals for whom immigrant visas are estimated to be available pursuant to the July 2020 Visa Bulletin; and
5. The names and position titles of all individuals involved in discussions and decision-making related to the establishment of the final action dates and dates for filing as published in each Visa Bulletin since January 2020.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary

The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and Citizenship

Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State

Kenneth T. Cuccinelli. Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services

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From: Nuebel Kovarik, Kathy
Subject: Fwd: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331
To: Edlow, Joseph B
Sent: July 8, 2020 11:51 AM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056 Consolidated Comments Received.docx

(b)(6)

Making sure you knew we cleared this and sharing the DCOS edits.

From: Allsteadt, Edward [redacted]
Sent: Wednesday, July 8, 2020 10:32:41 AM
To: Kilgore, Garry R [redacted]; USCIS Directors Office Clearance-EXSO [redacted]; Drake, Johnetta [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, H-1B Strengthening IFR - STARS# 28331, with edits and/or comments from the Director's Office.

Thank you,

Ed

Edward Allsteadt
Advisor, Office of the Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
(d) [redacted]
(c)

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 8, 2020 7:50 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Drake, Johnetta [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good morning all,

This is a friendly reminder that OP&S requested DO clearance by 6pm yesterday.

Please let EXSO know if you need any additional information or support.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted]
STARS Issues: [redacted]

From: Drake, Johnetta [redacted]
Sent: Tuesday, June 30, 2020 5:24 PM
To: USCIS Directors Office Clearance-EXSO [redacted]

(b)(6)

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(b)(6)

Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good afternoon,

Requestor Directorate/Office: OP&S [redacted]

Due Date: 6:00PM Tuesday, July 7, 2020

Request: OP&S requests the Front Office review and clear the attached H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes.

Background: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Important note: The PODs review is occurring in parallel and will conclude on 7/6. Per OP&S, [redacted] **discussed and agreed to this process.**

Attachments:
H-1B Rule
1129-012-FRM-TOC
1129-012-INS-TOC

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

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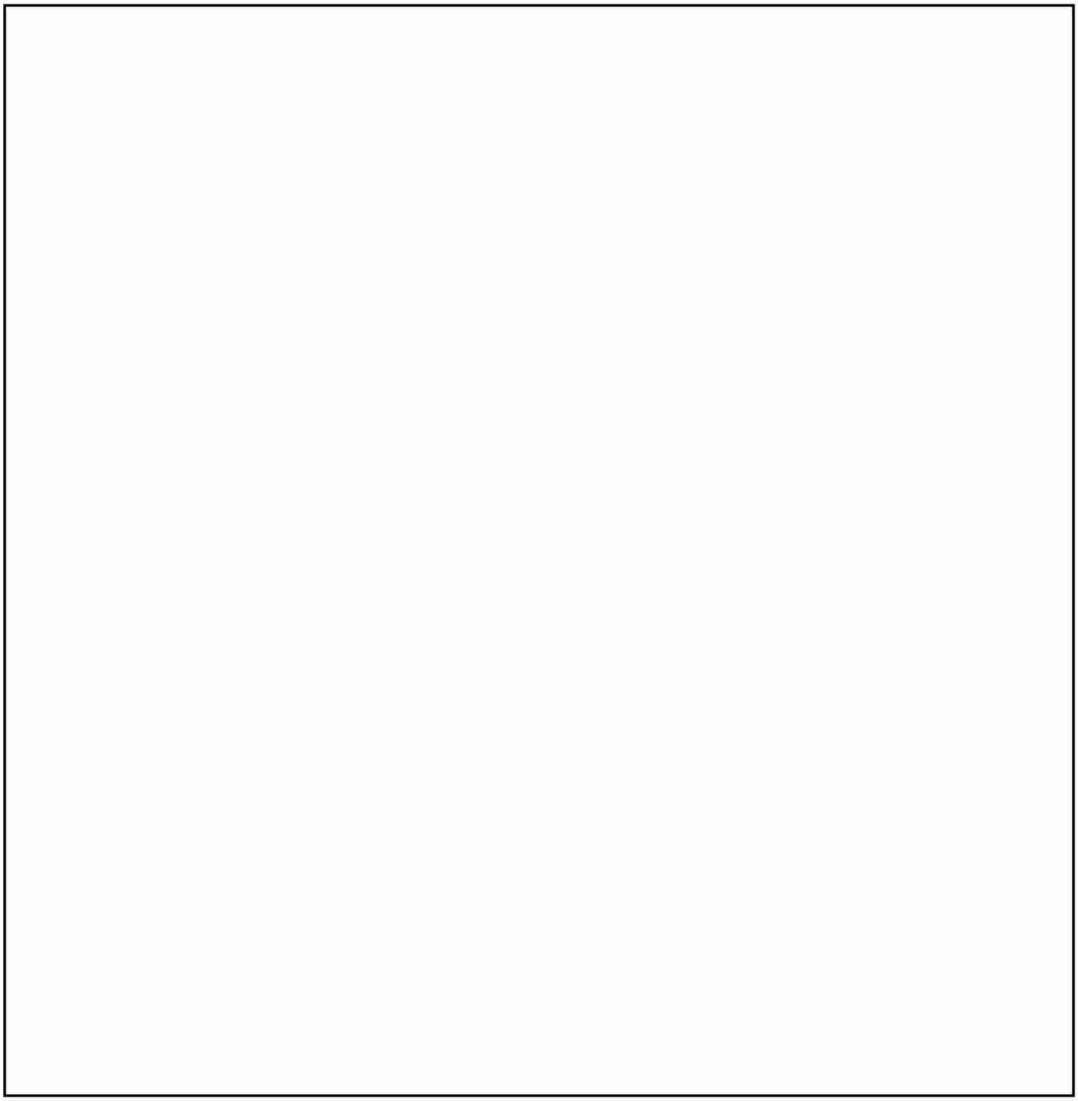
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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

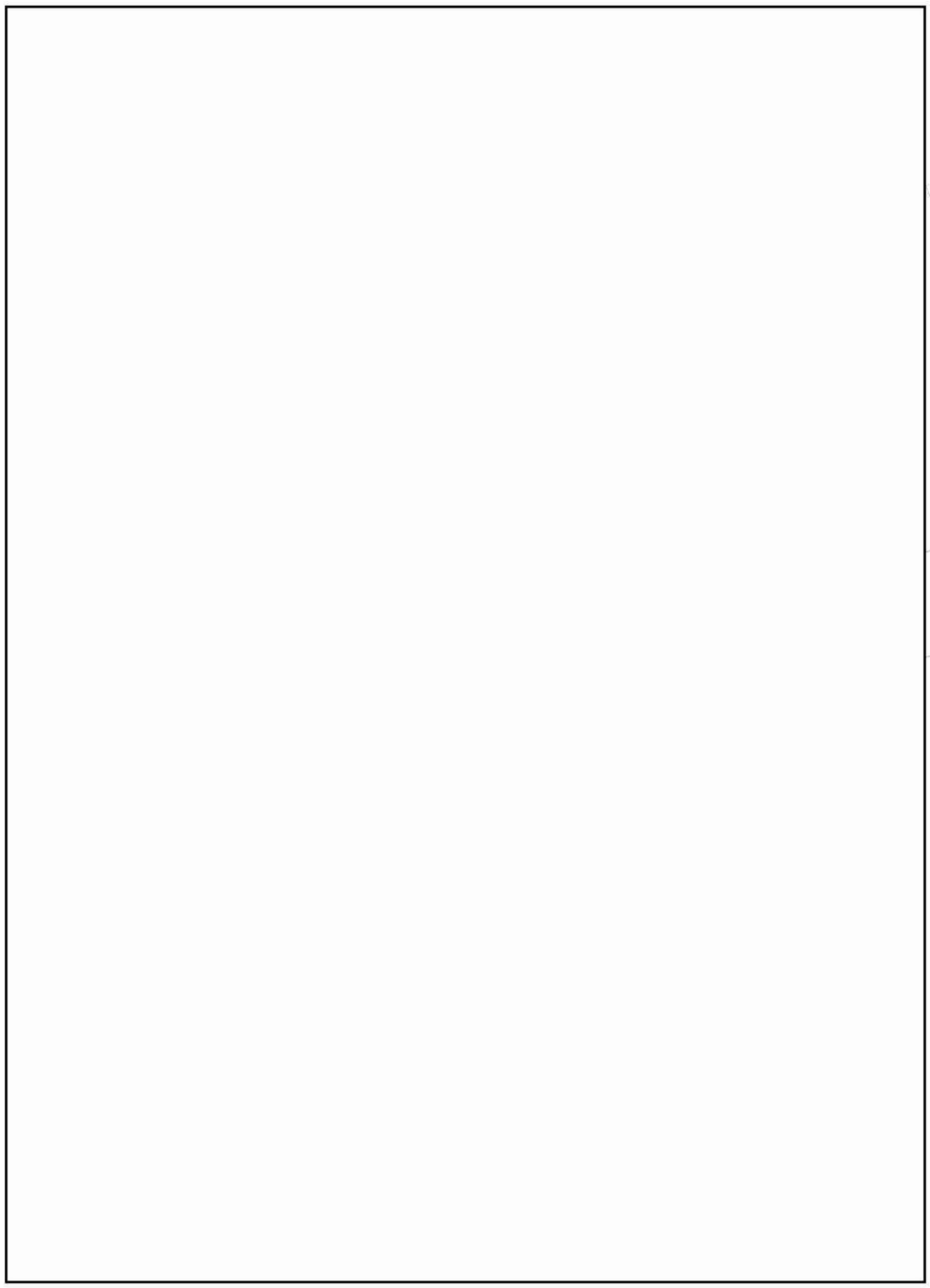
[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

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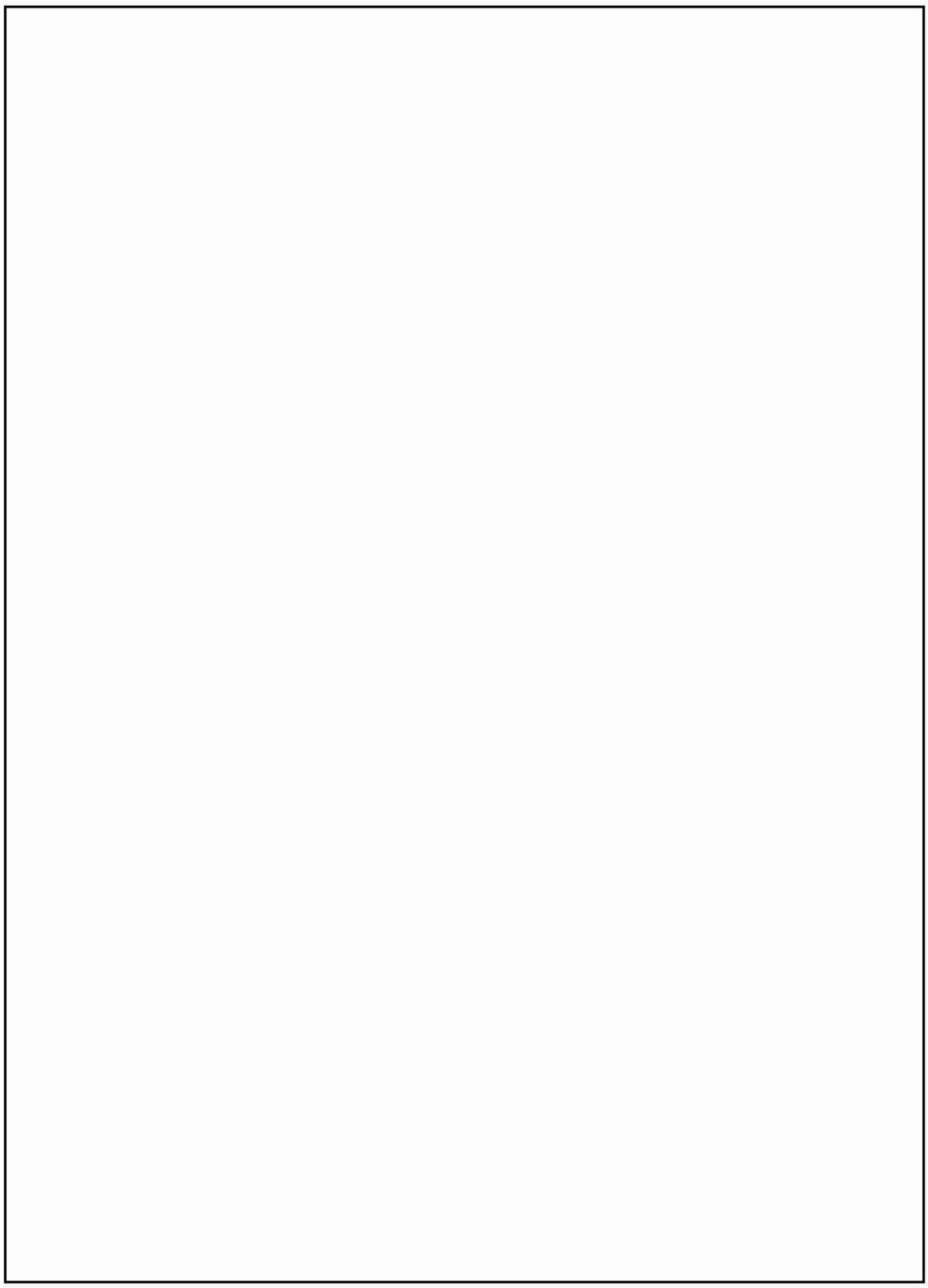


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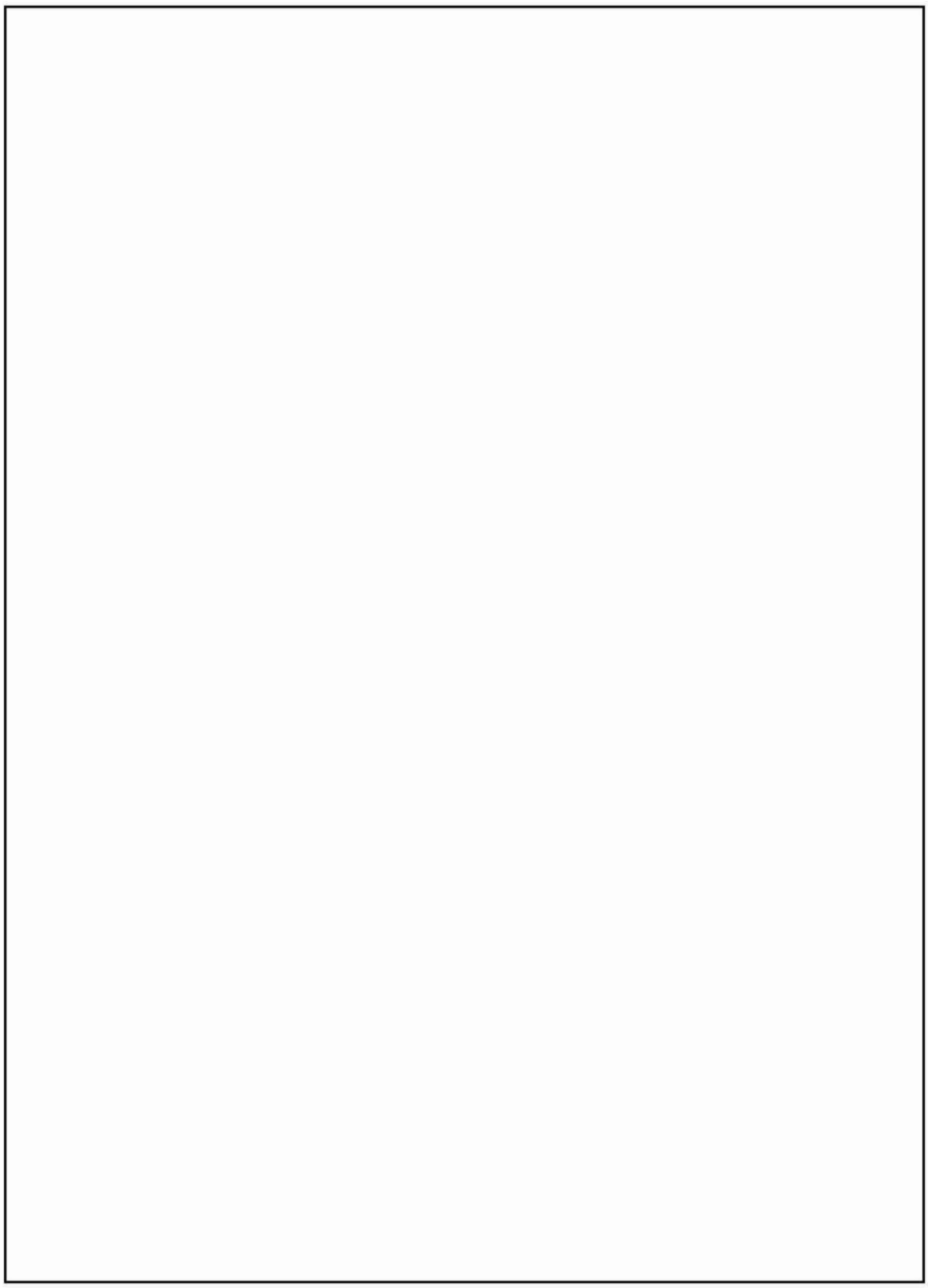
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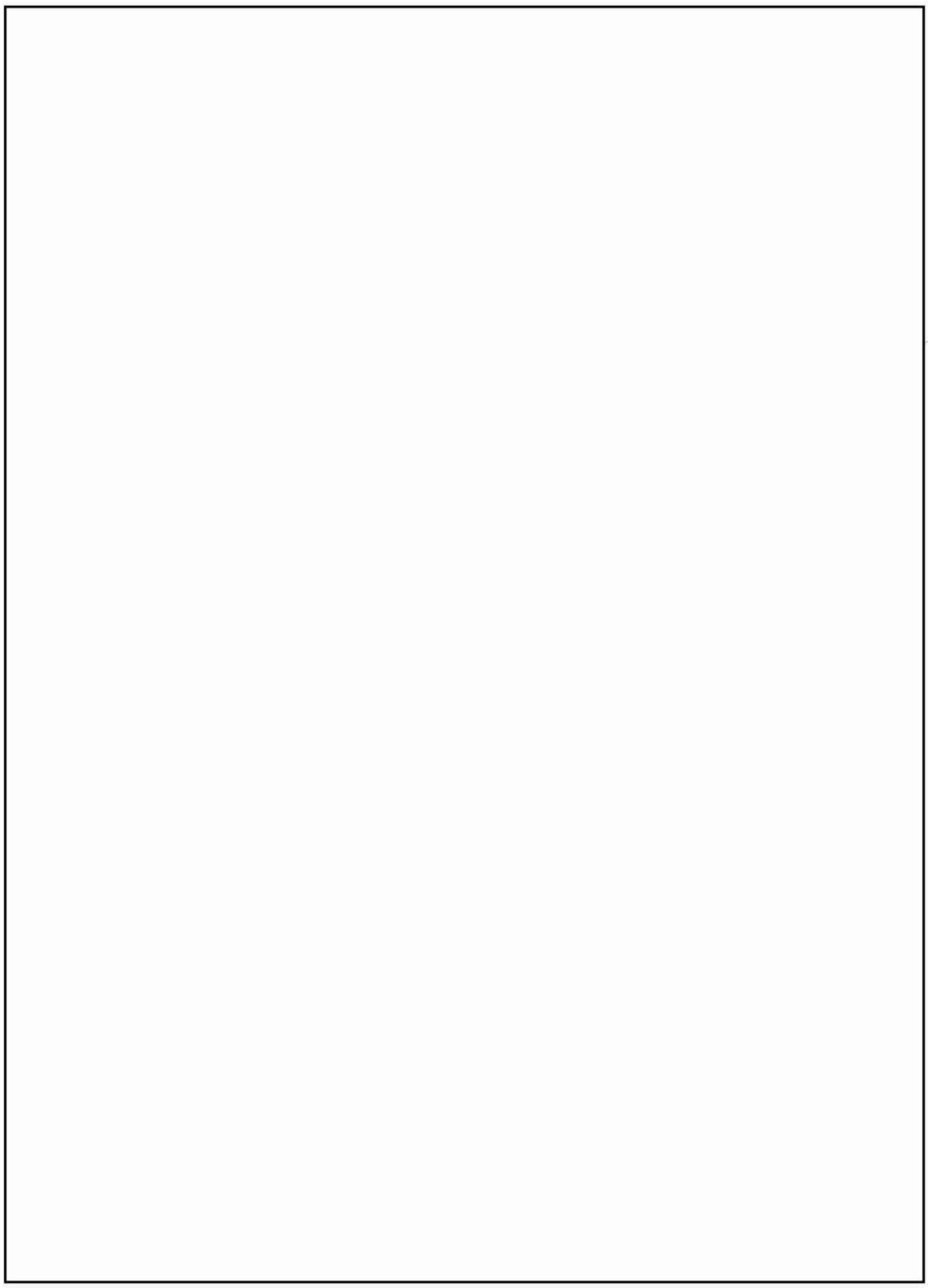
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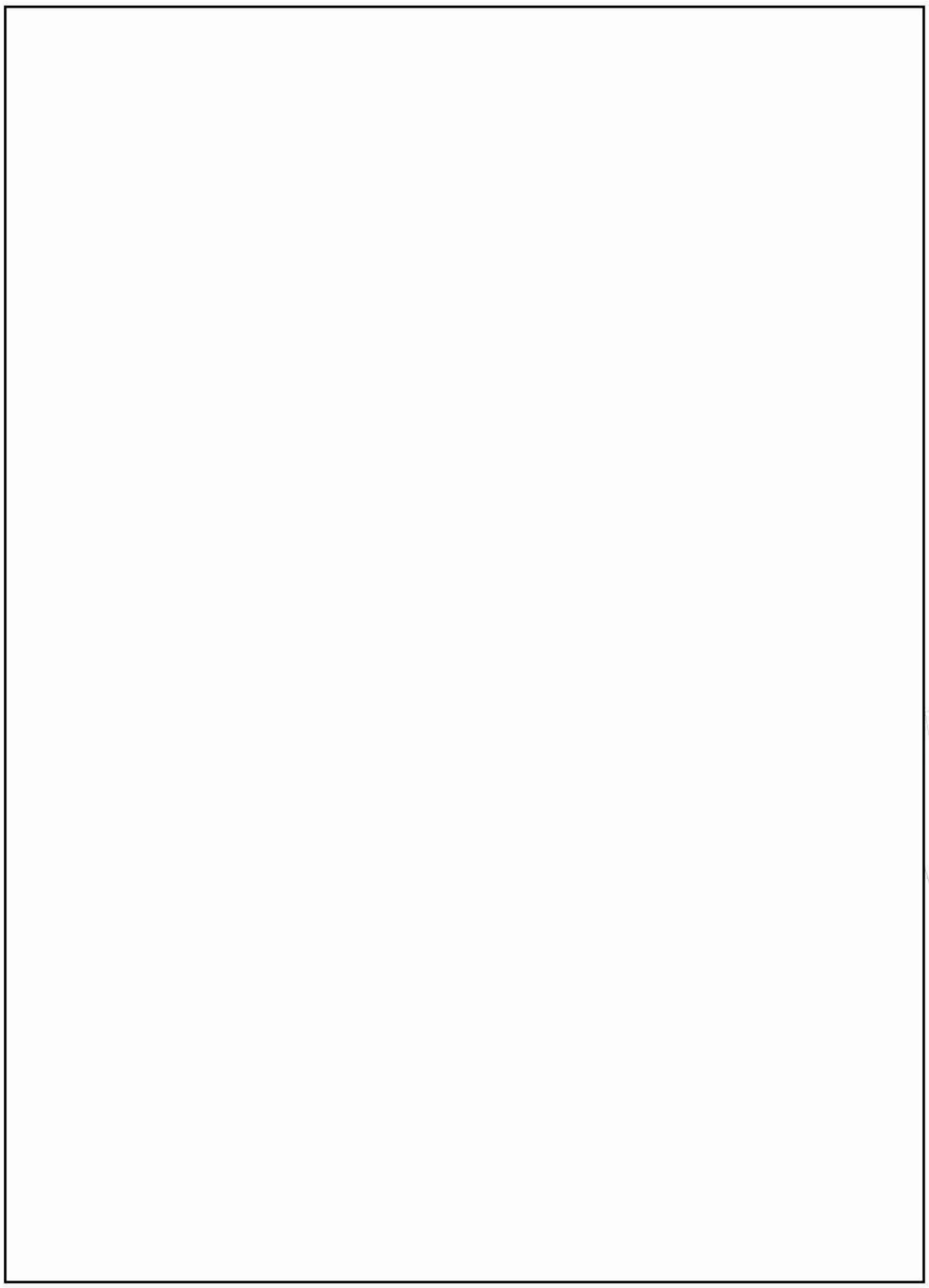


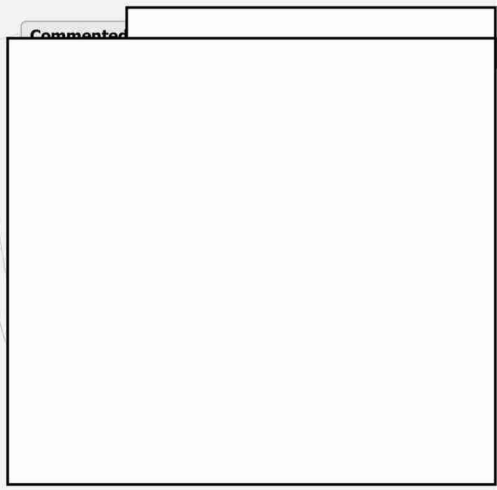
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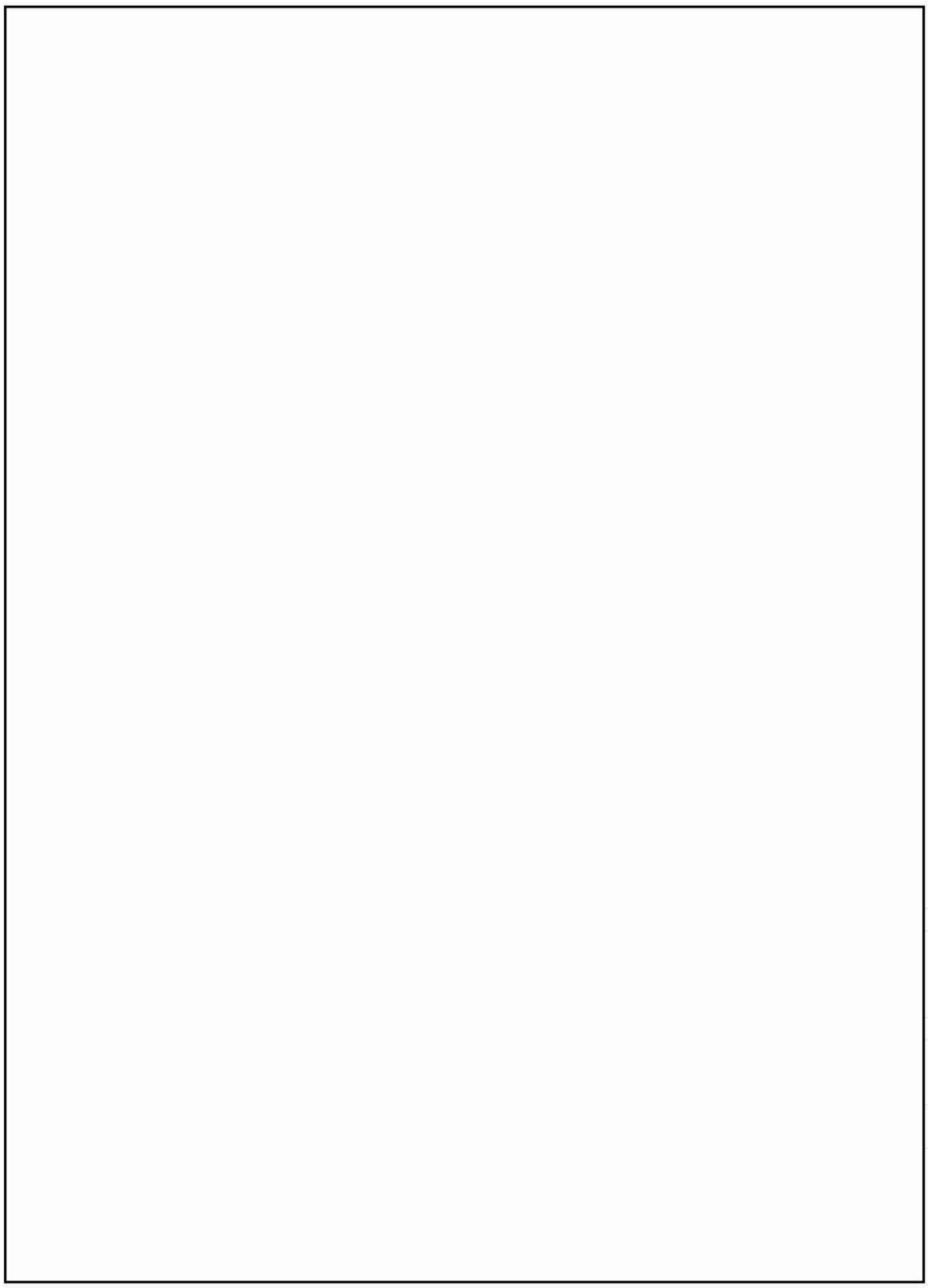




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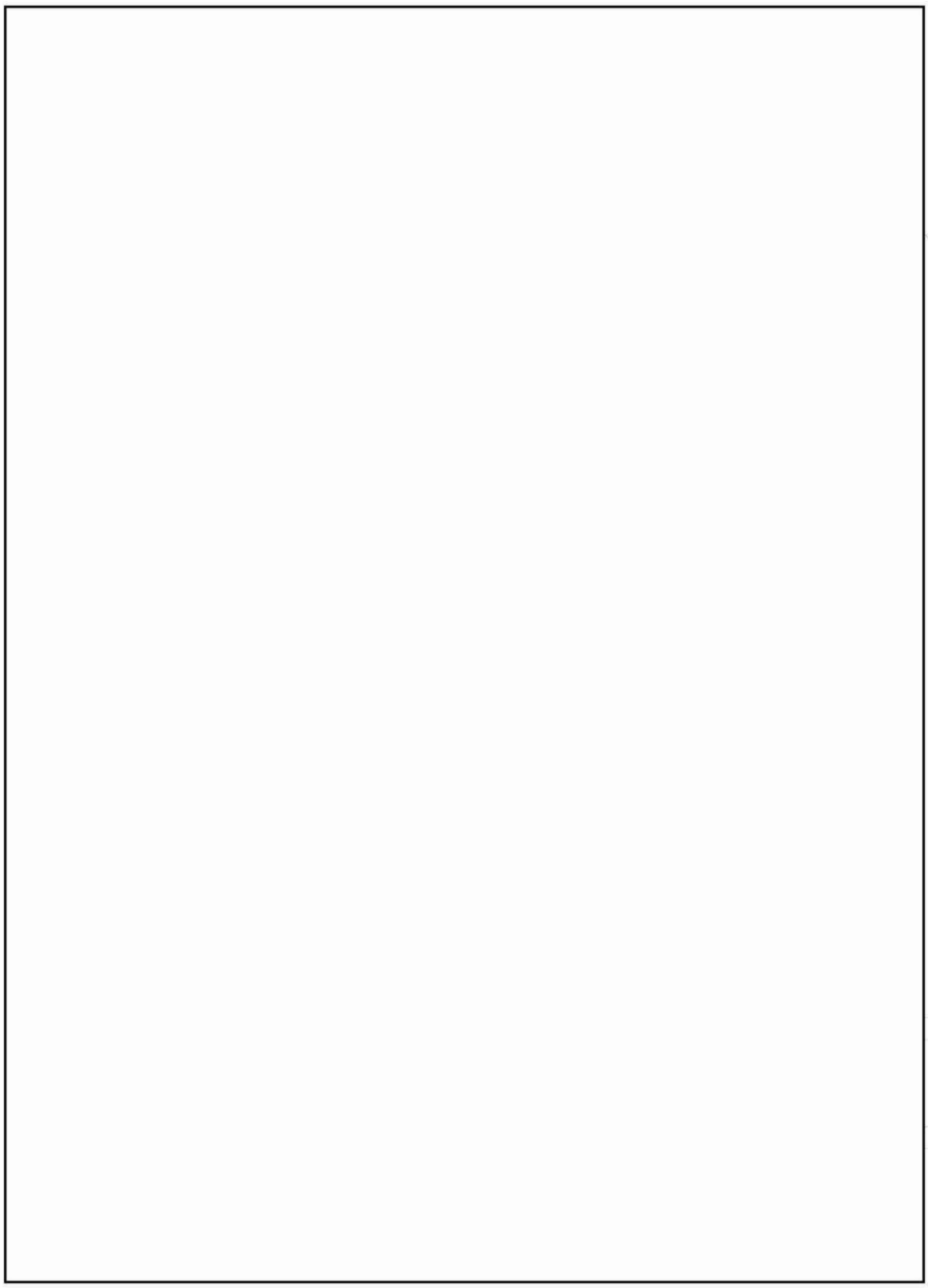
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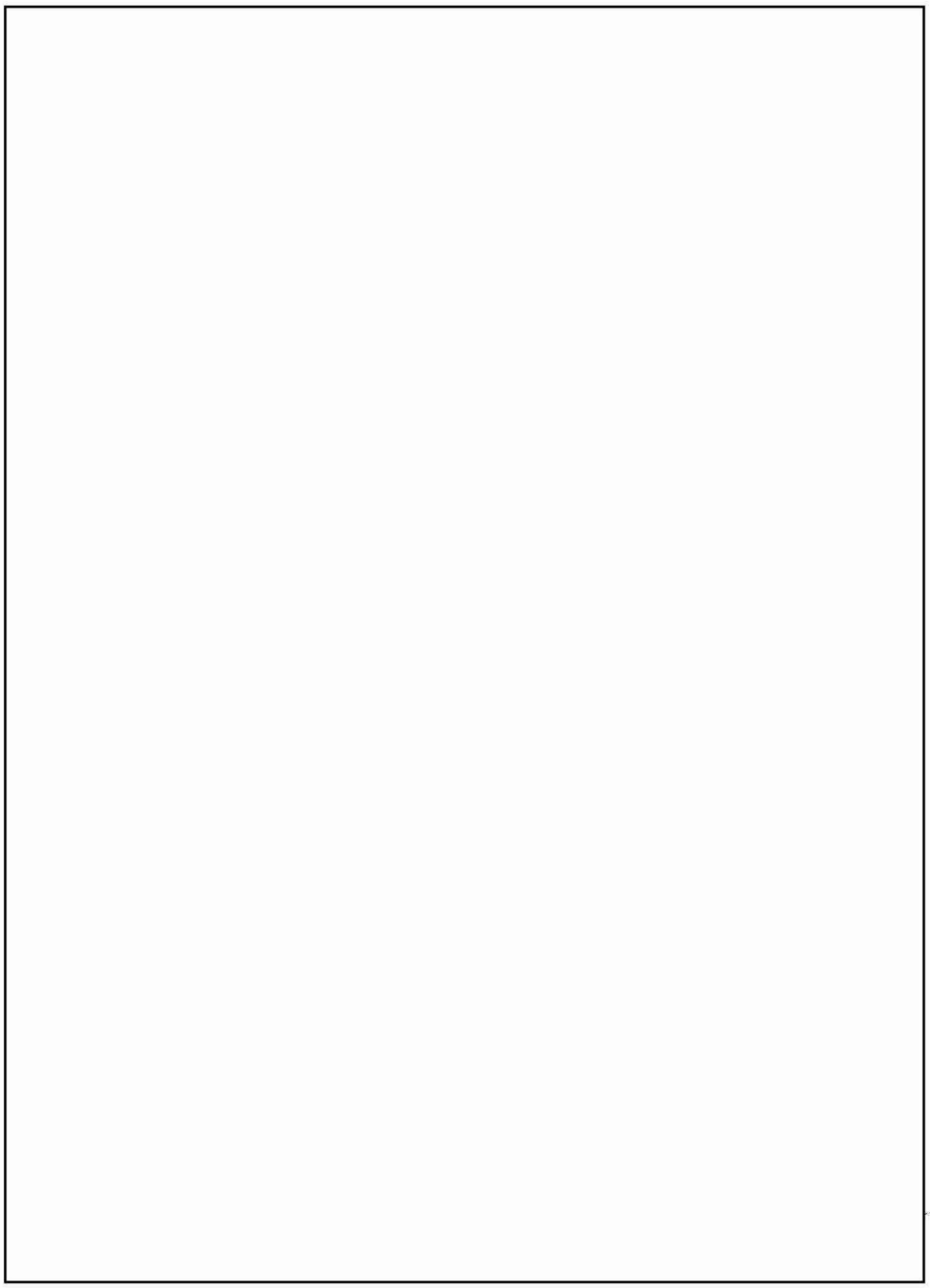
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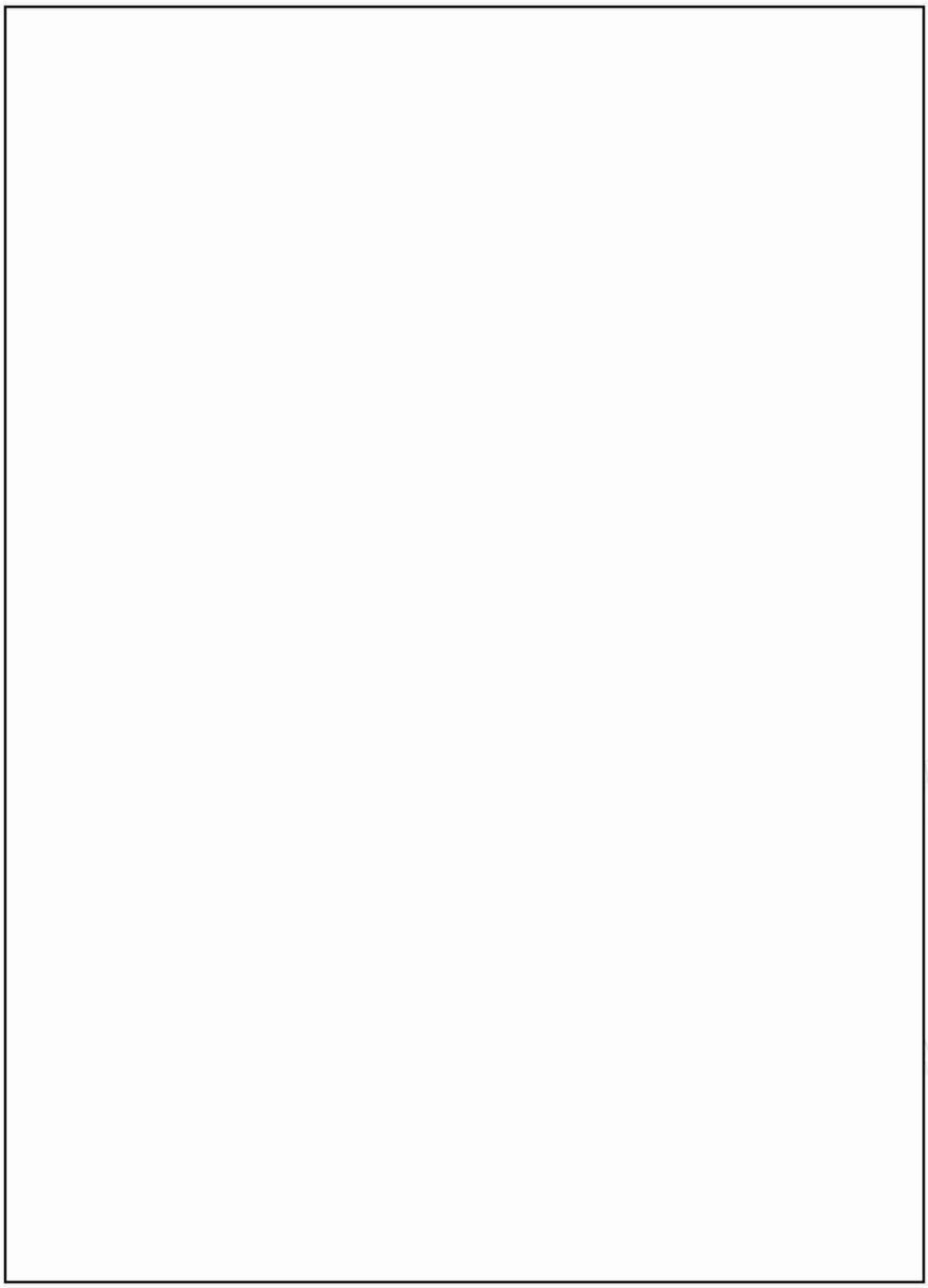


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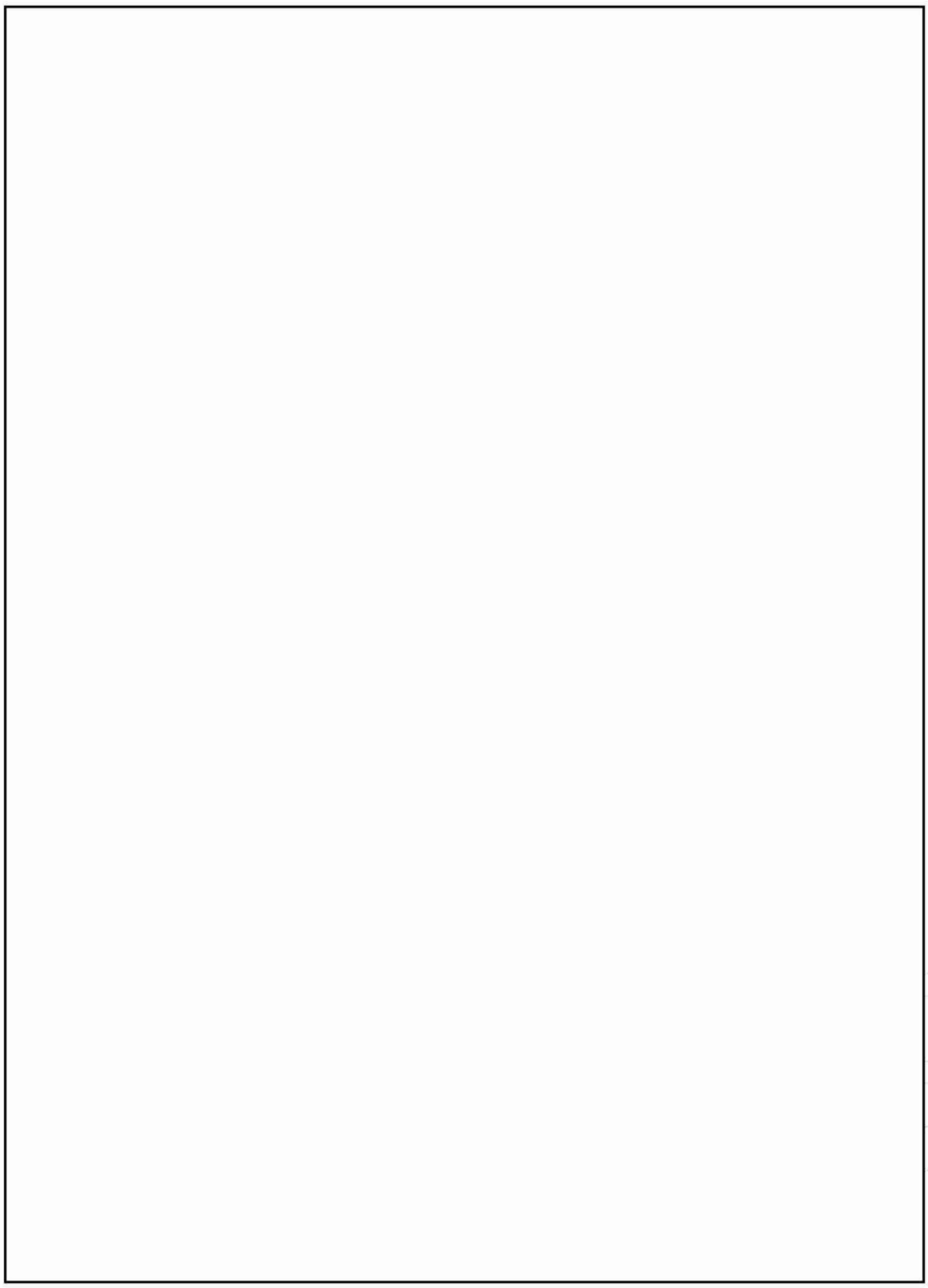
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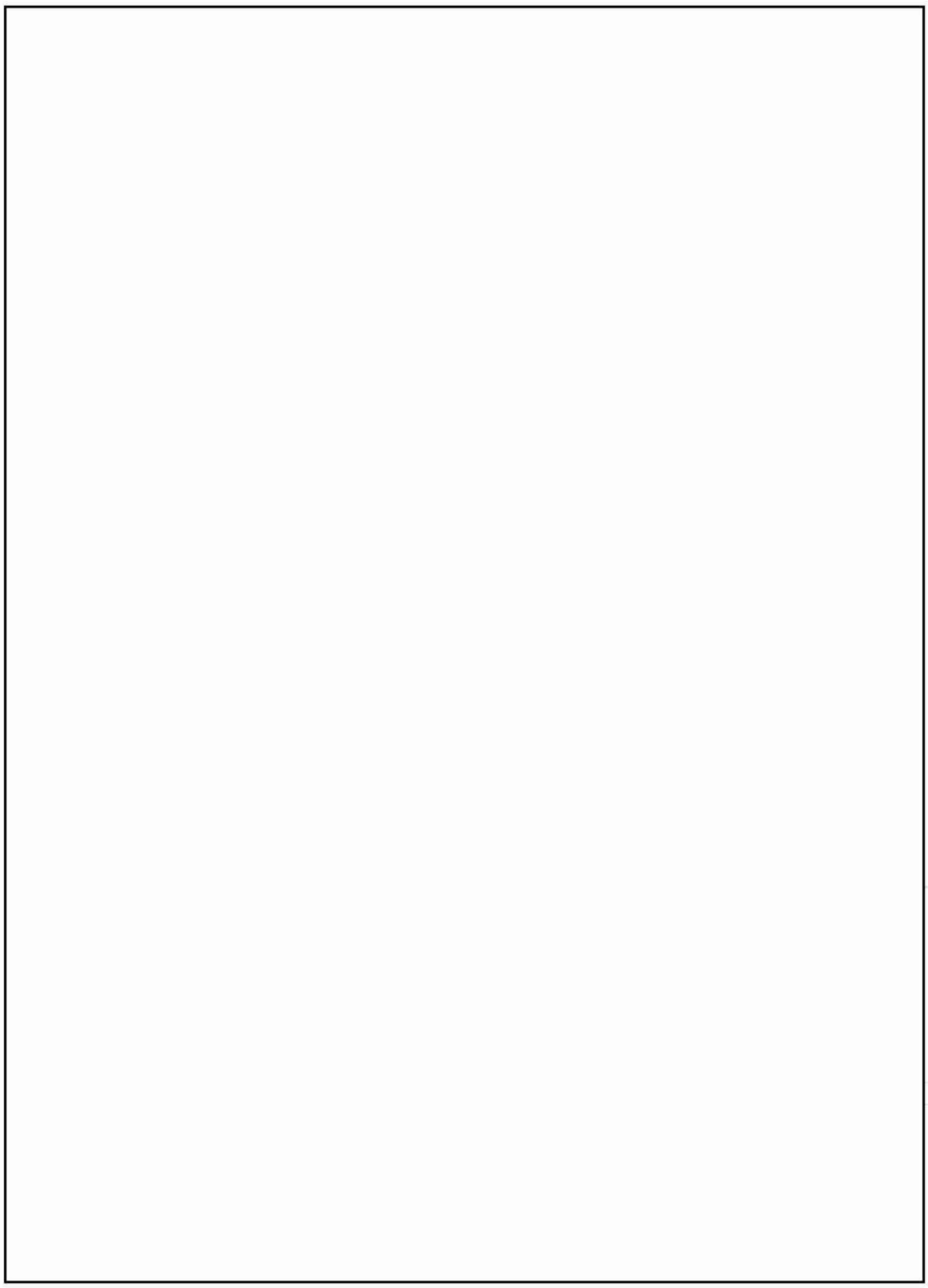
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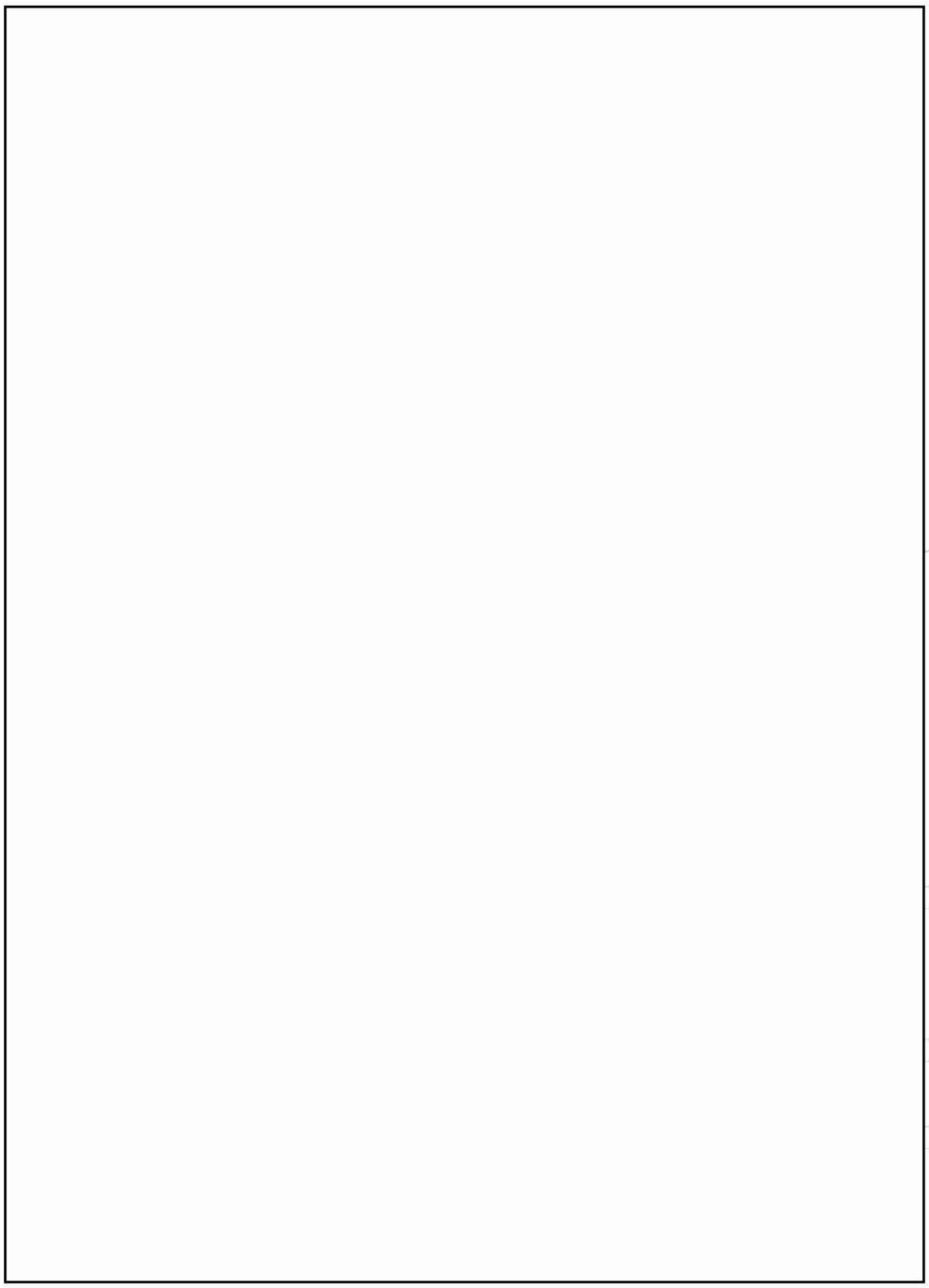
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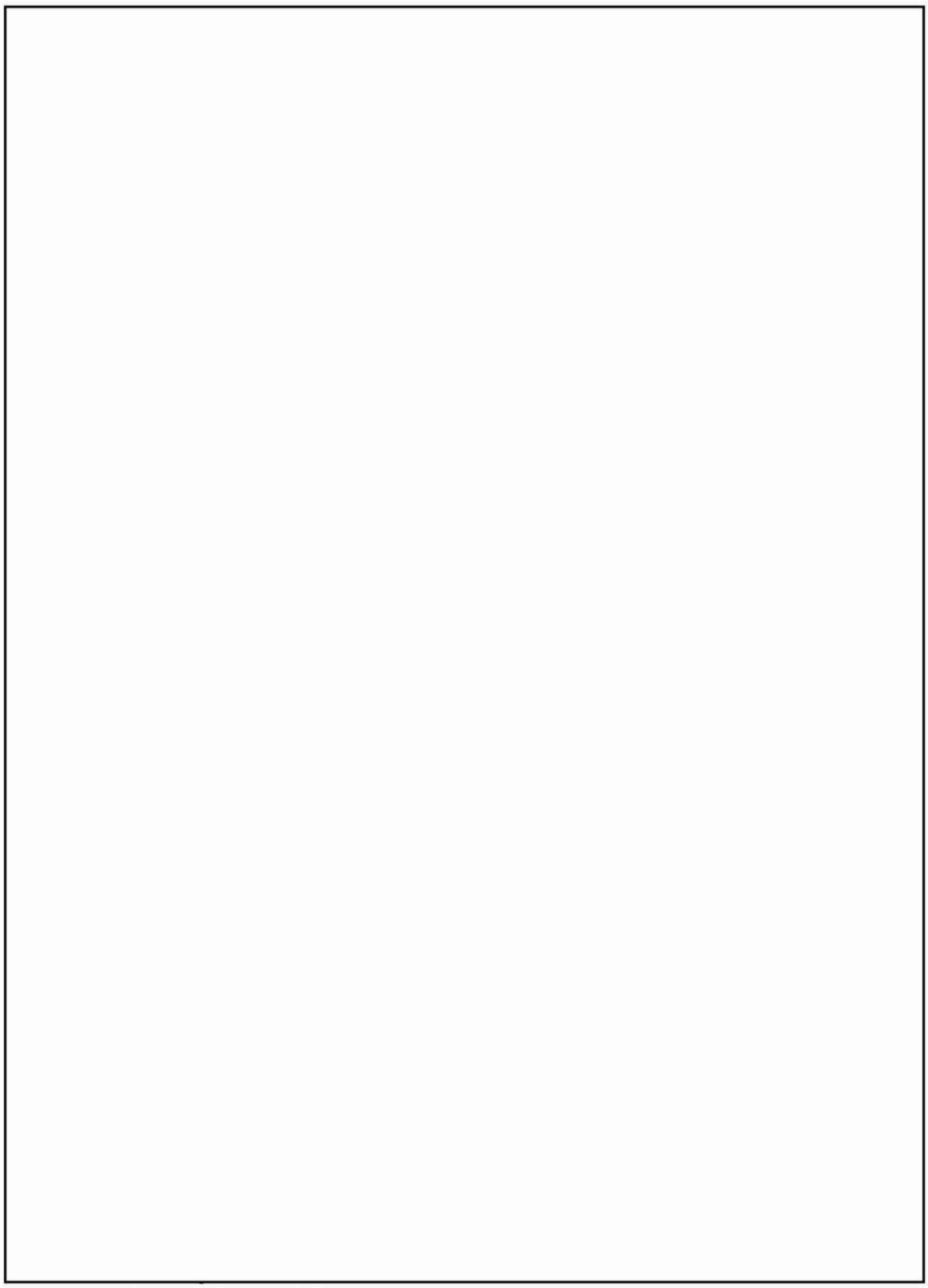
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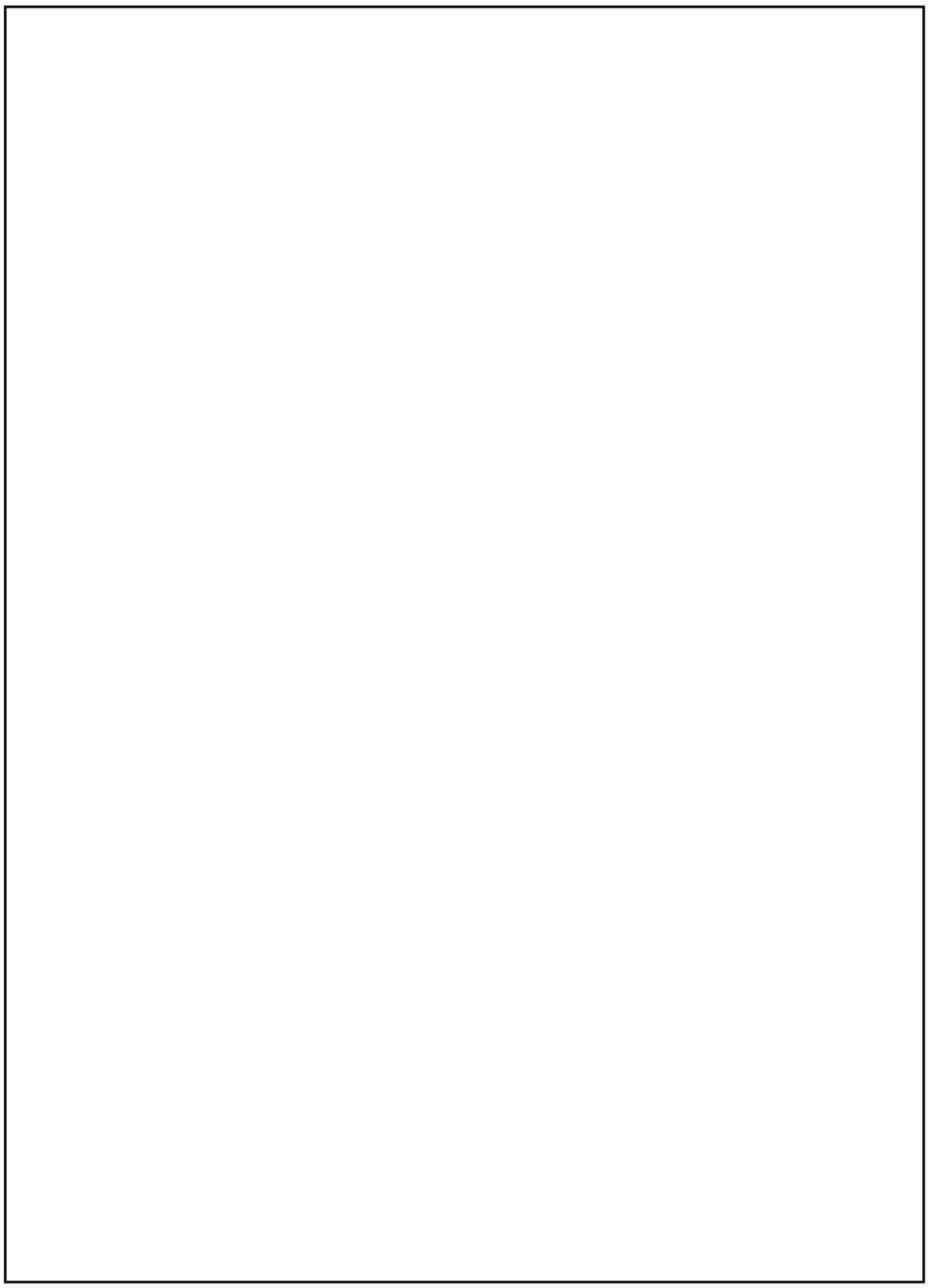
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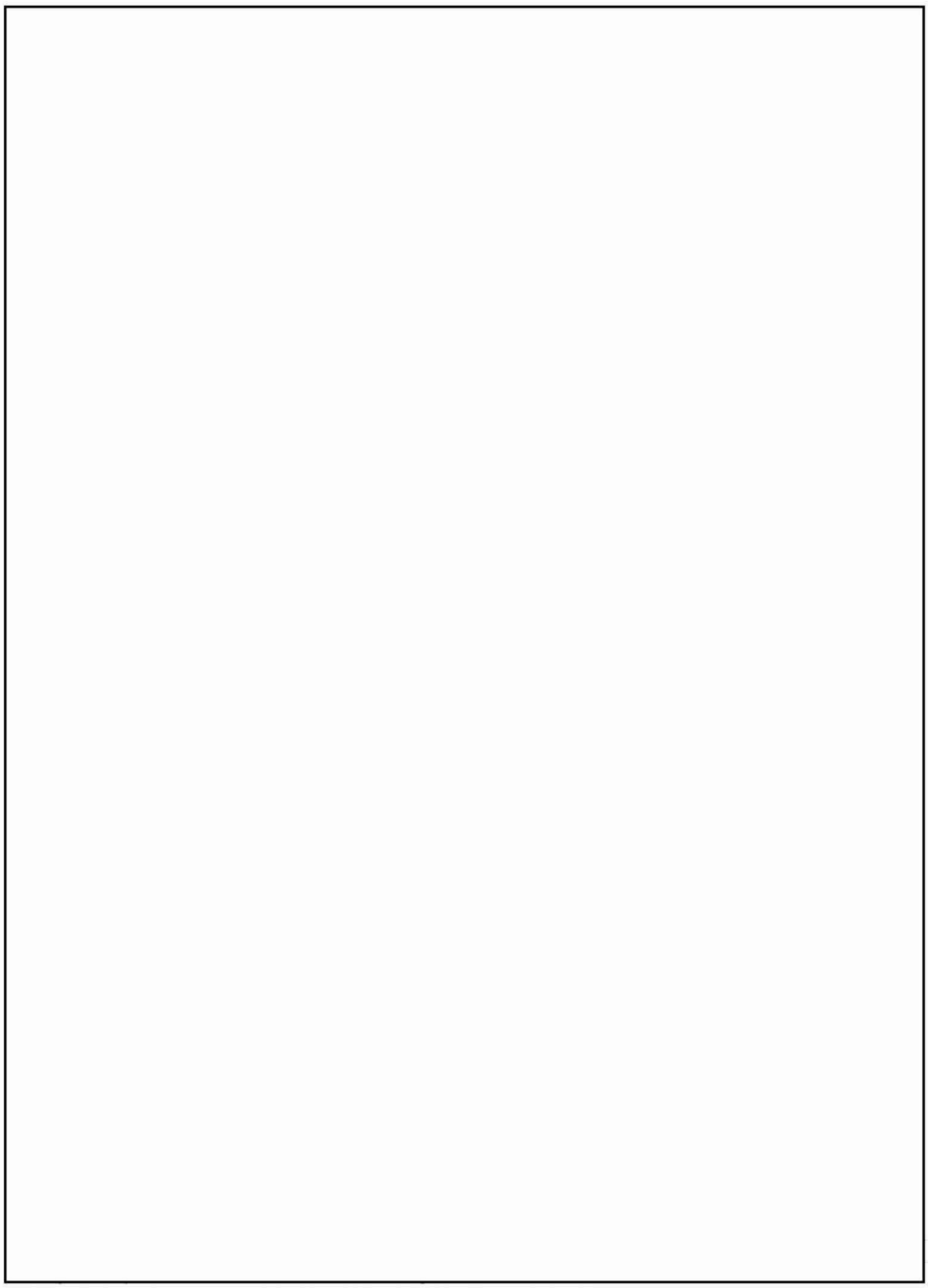
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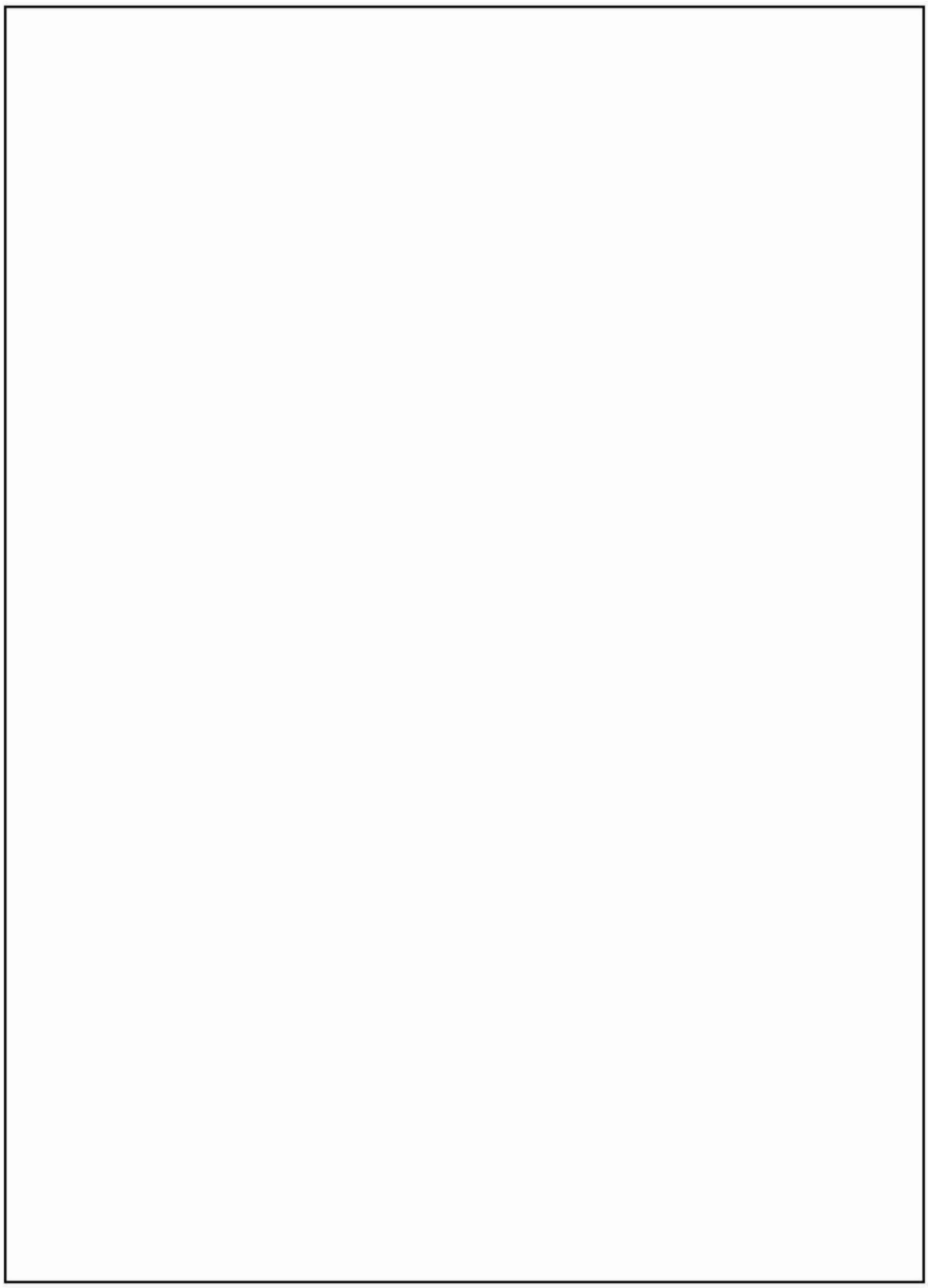
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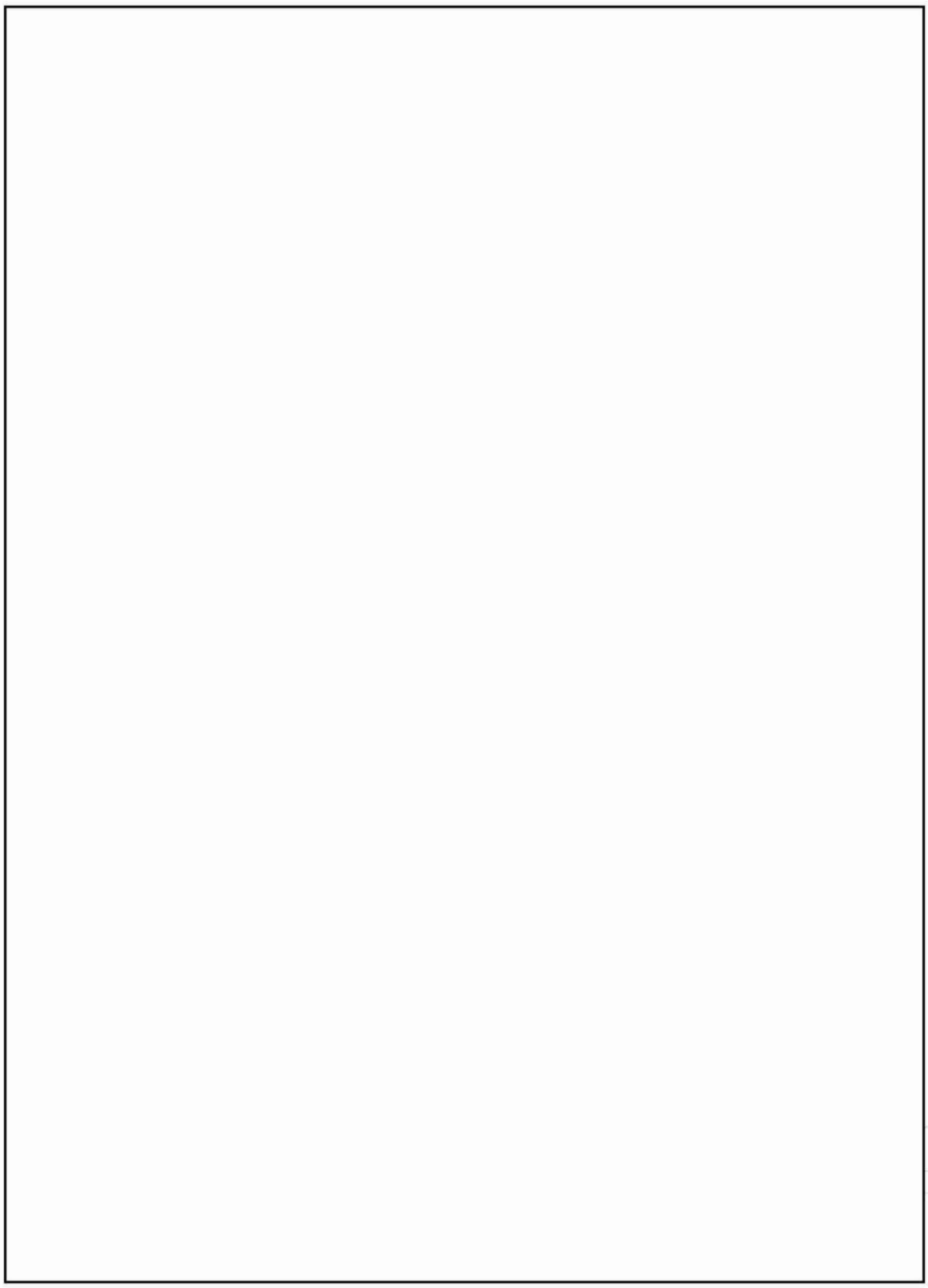
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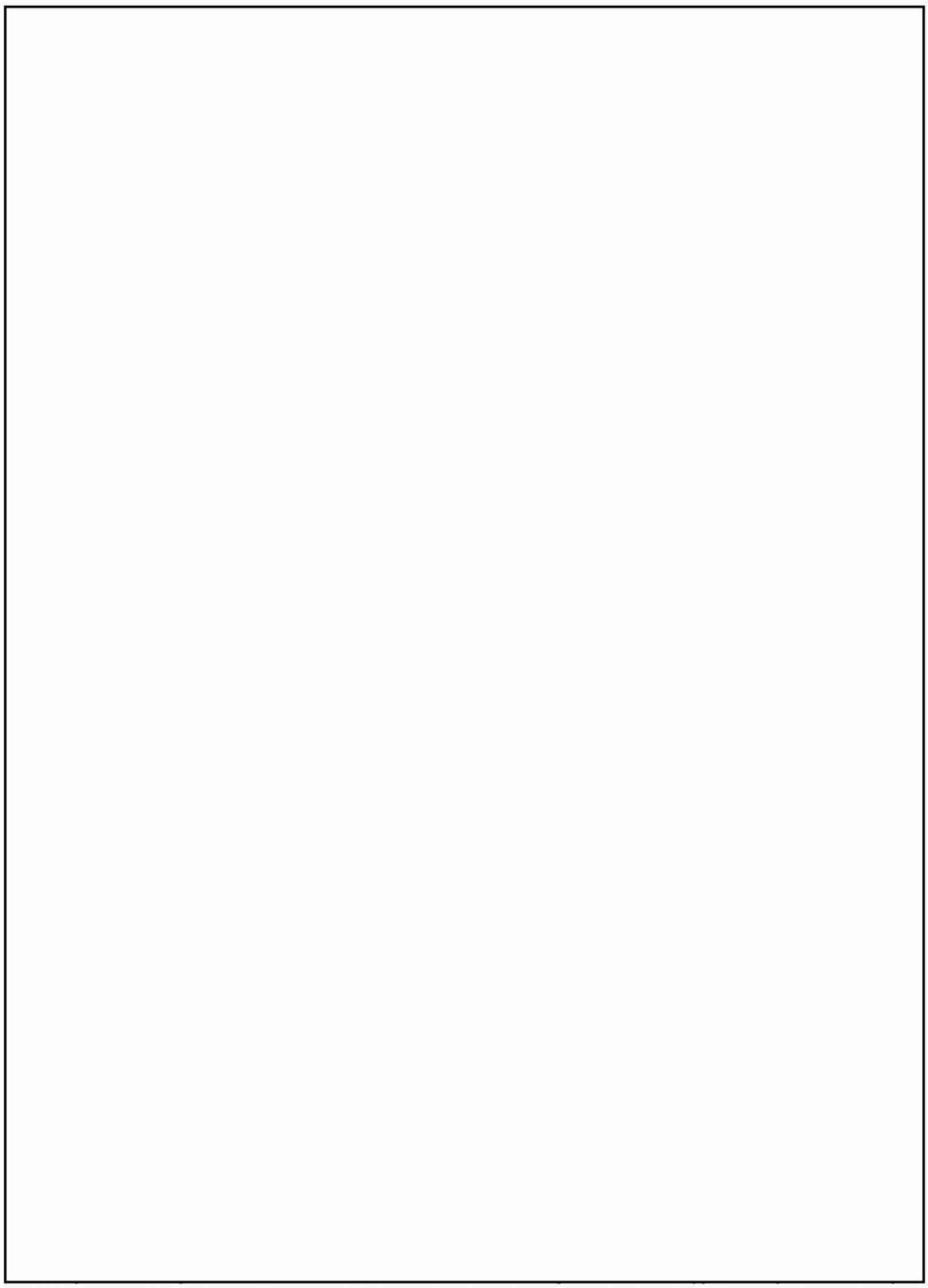
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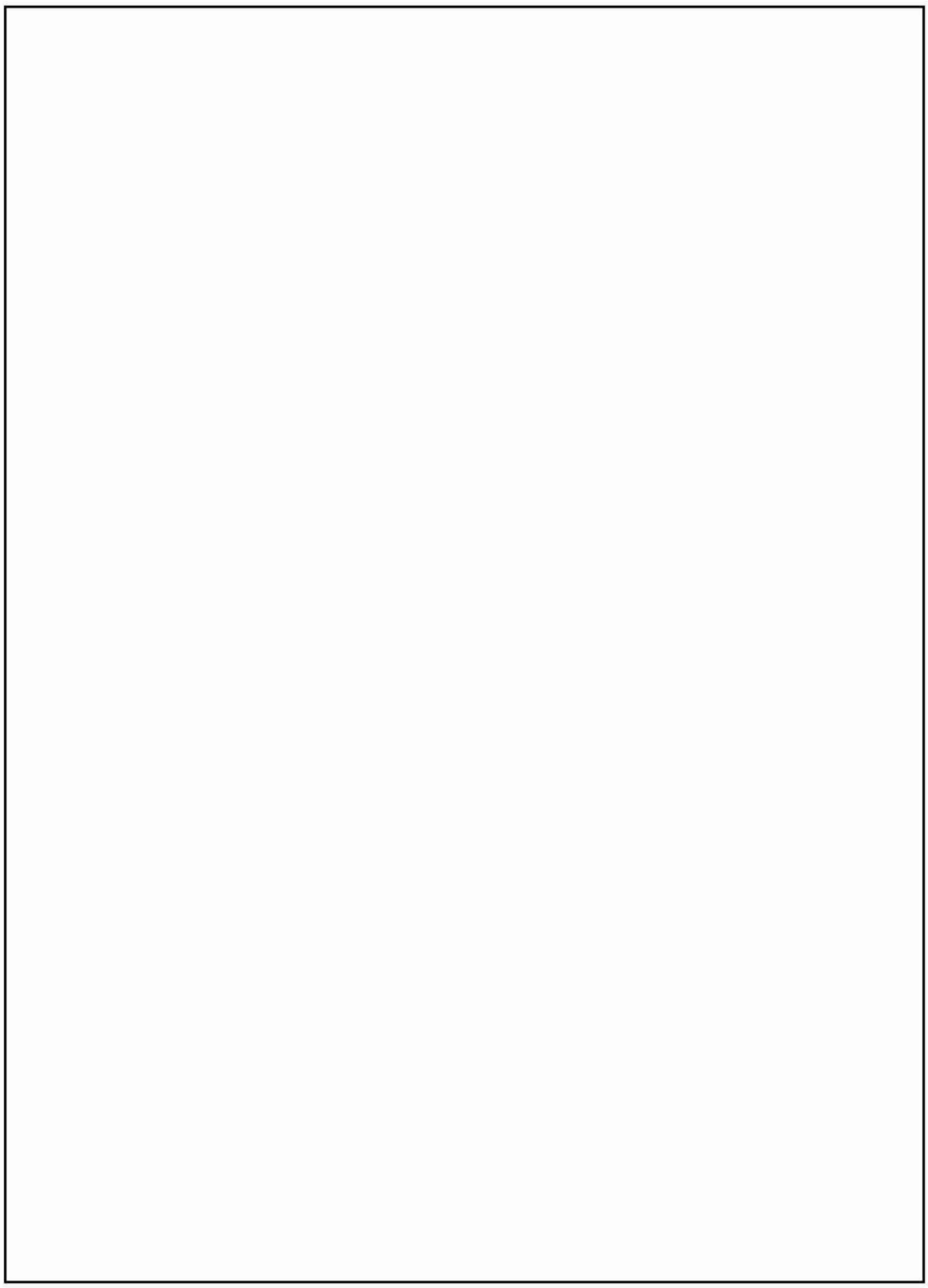
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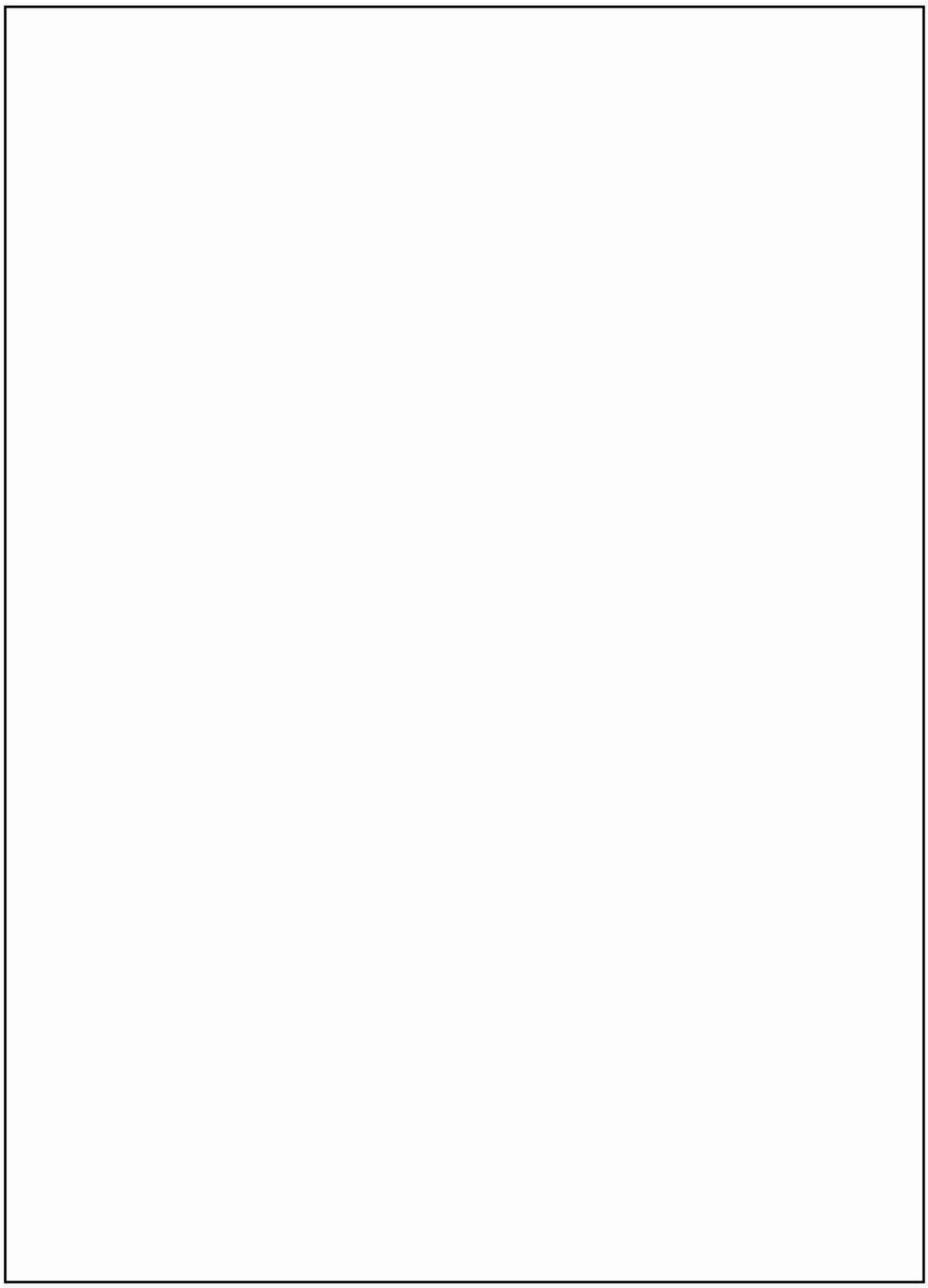
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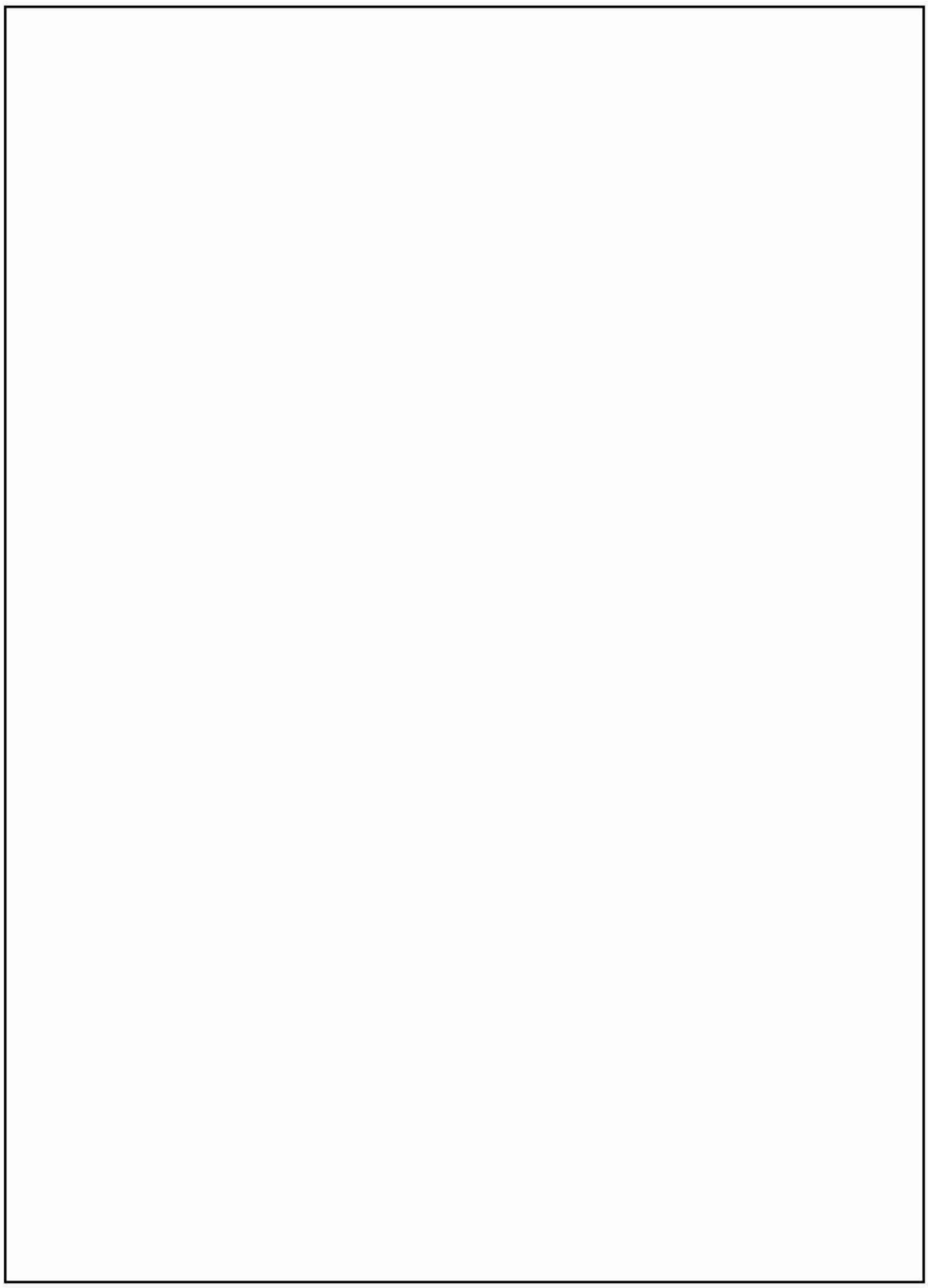
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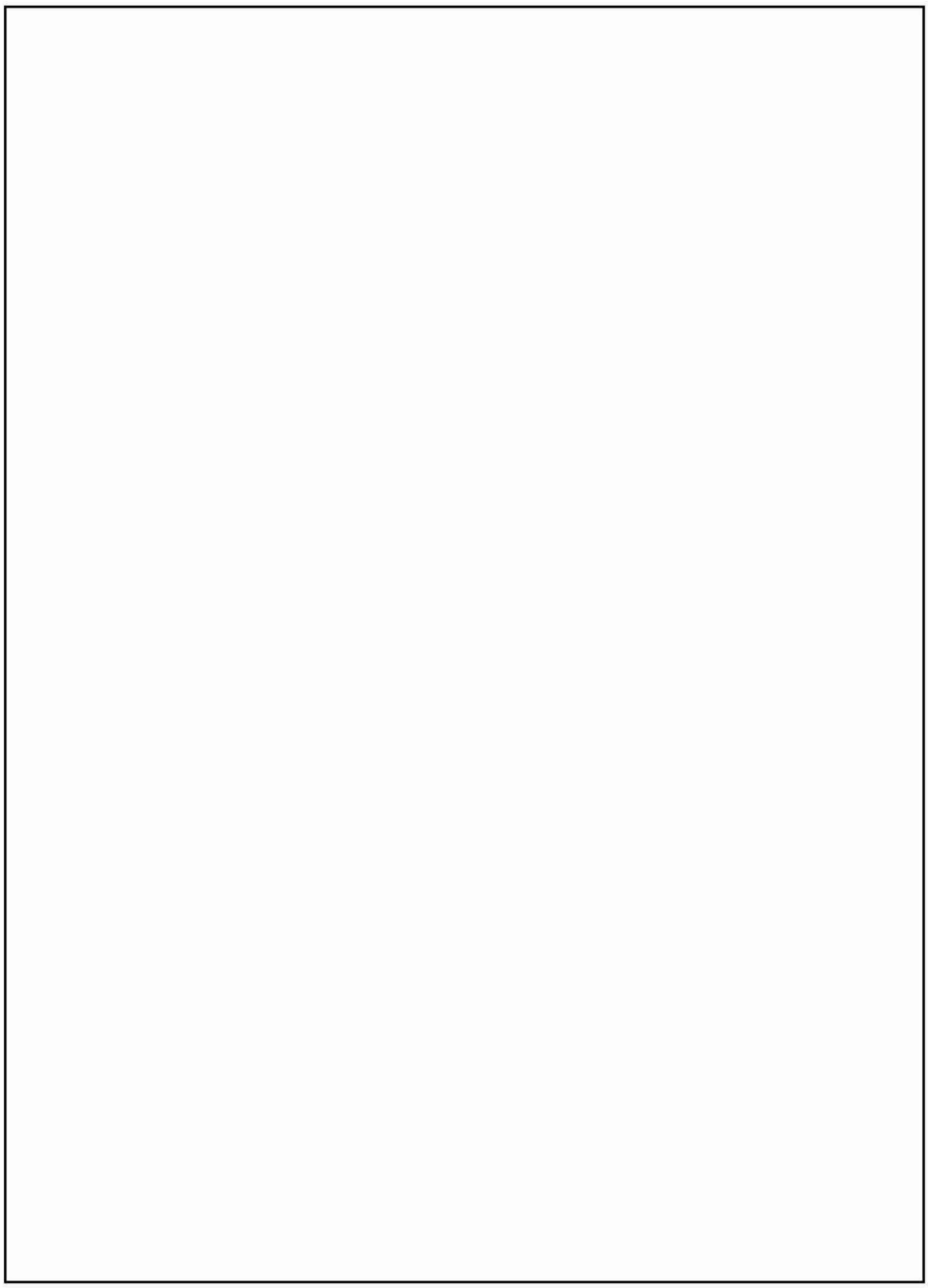
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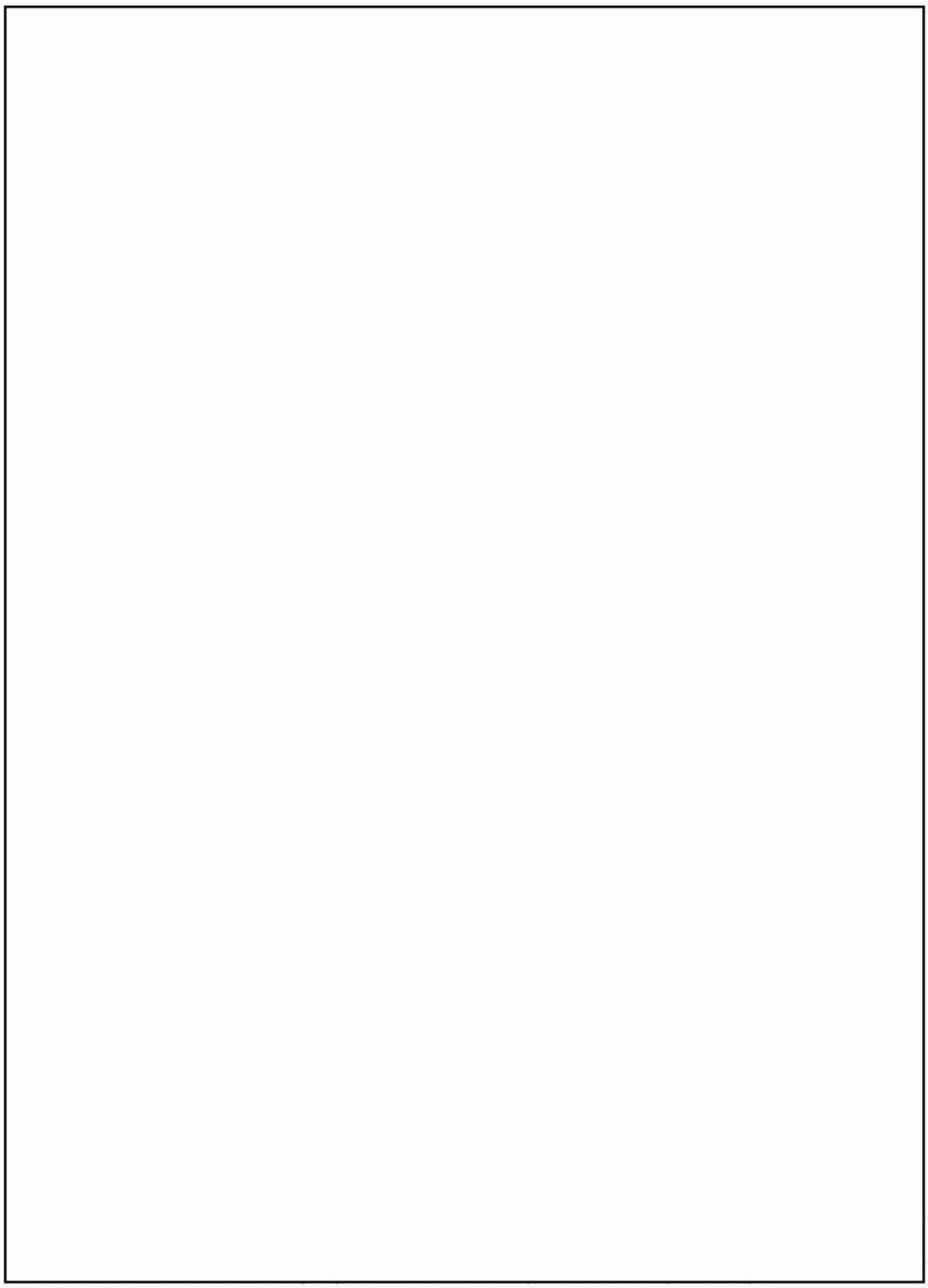
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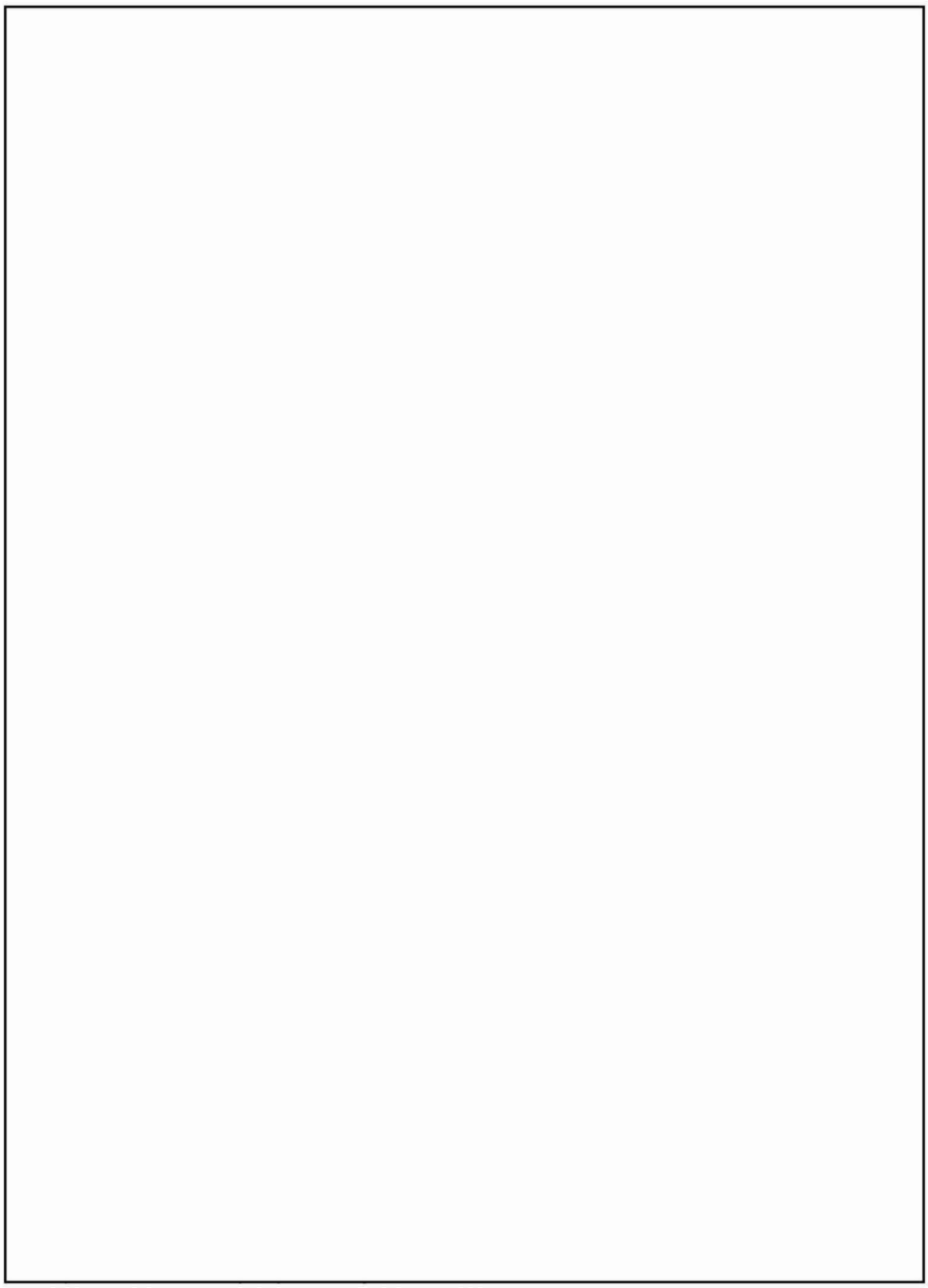


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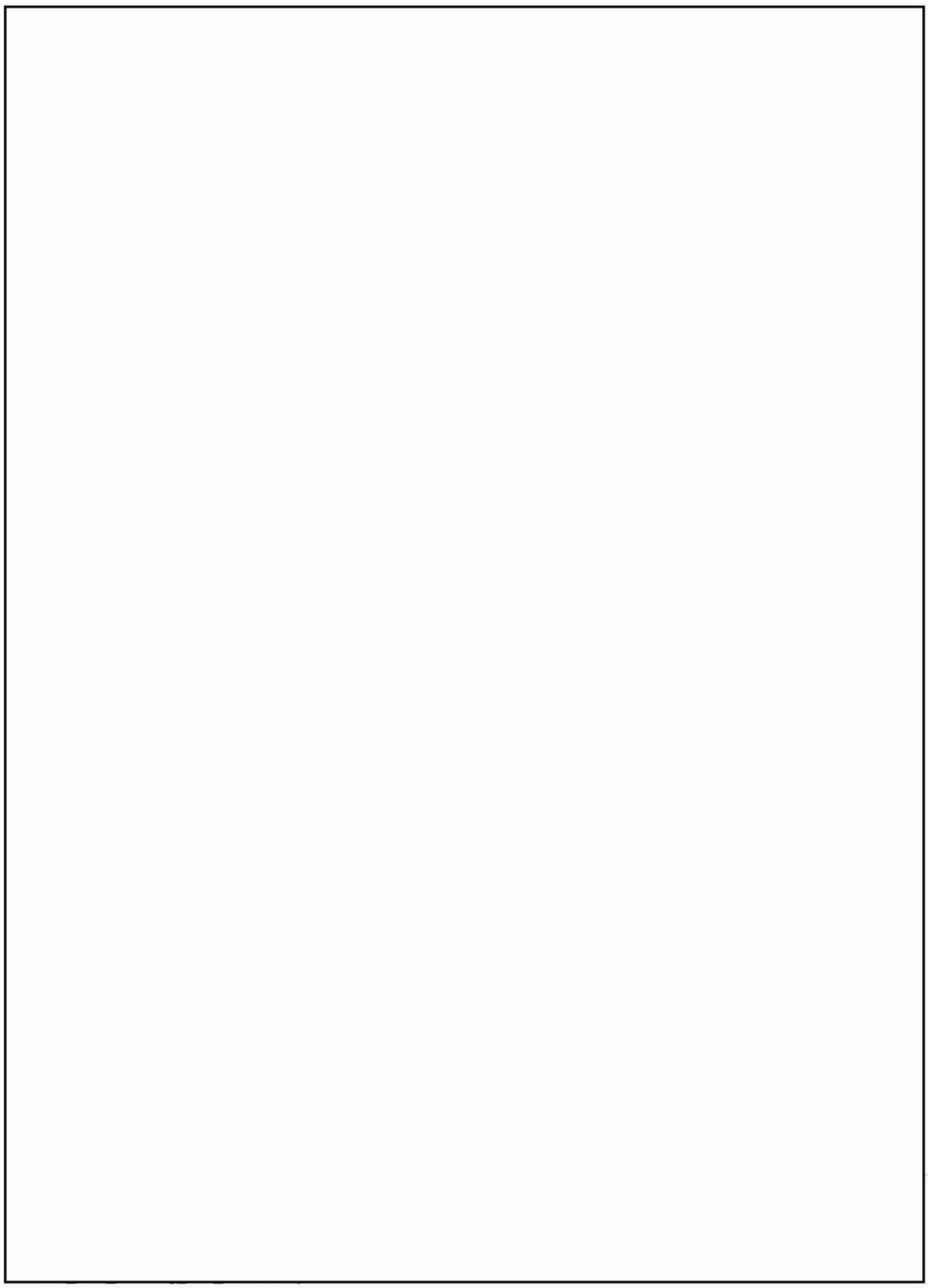
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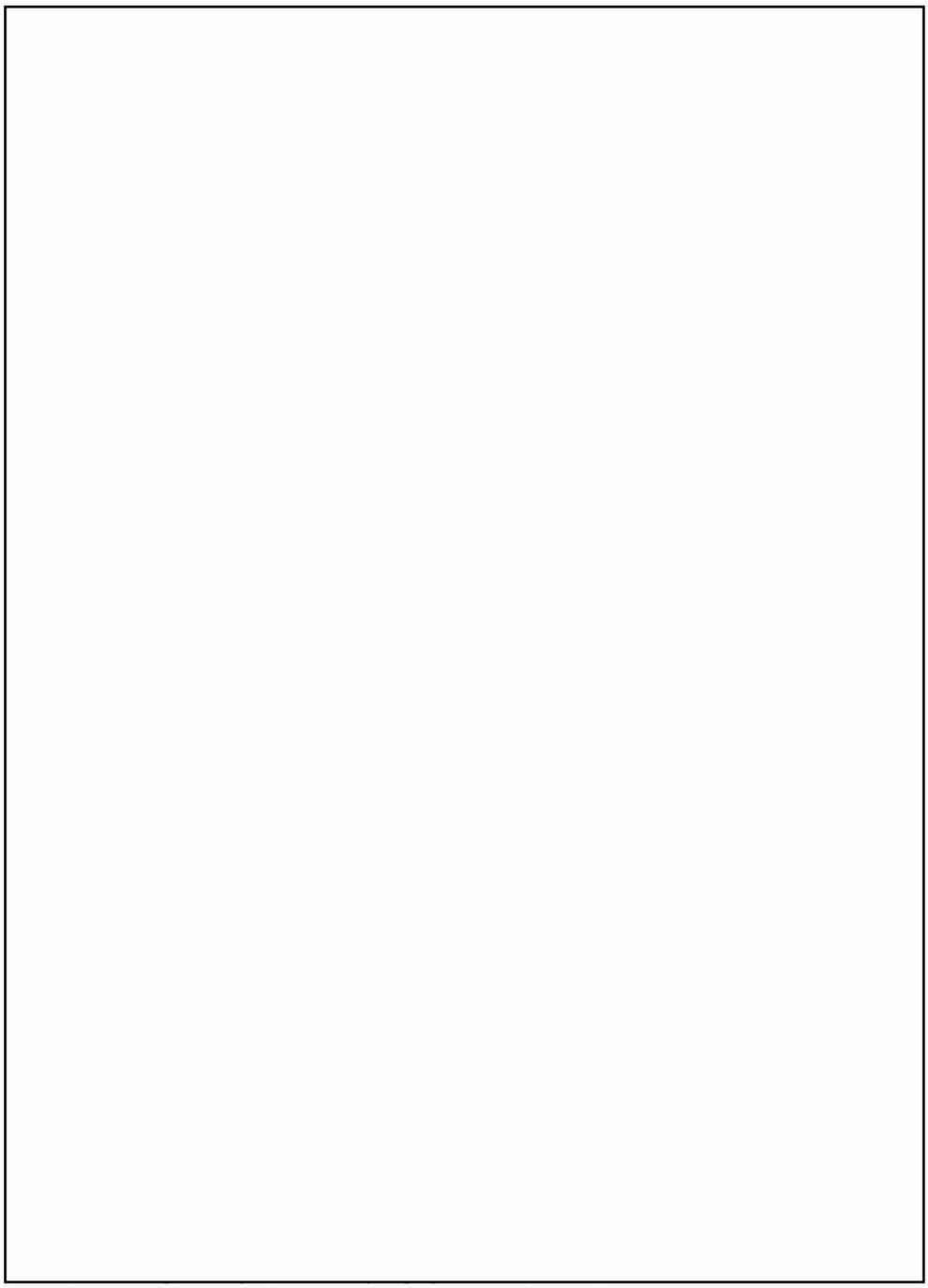


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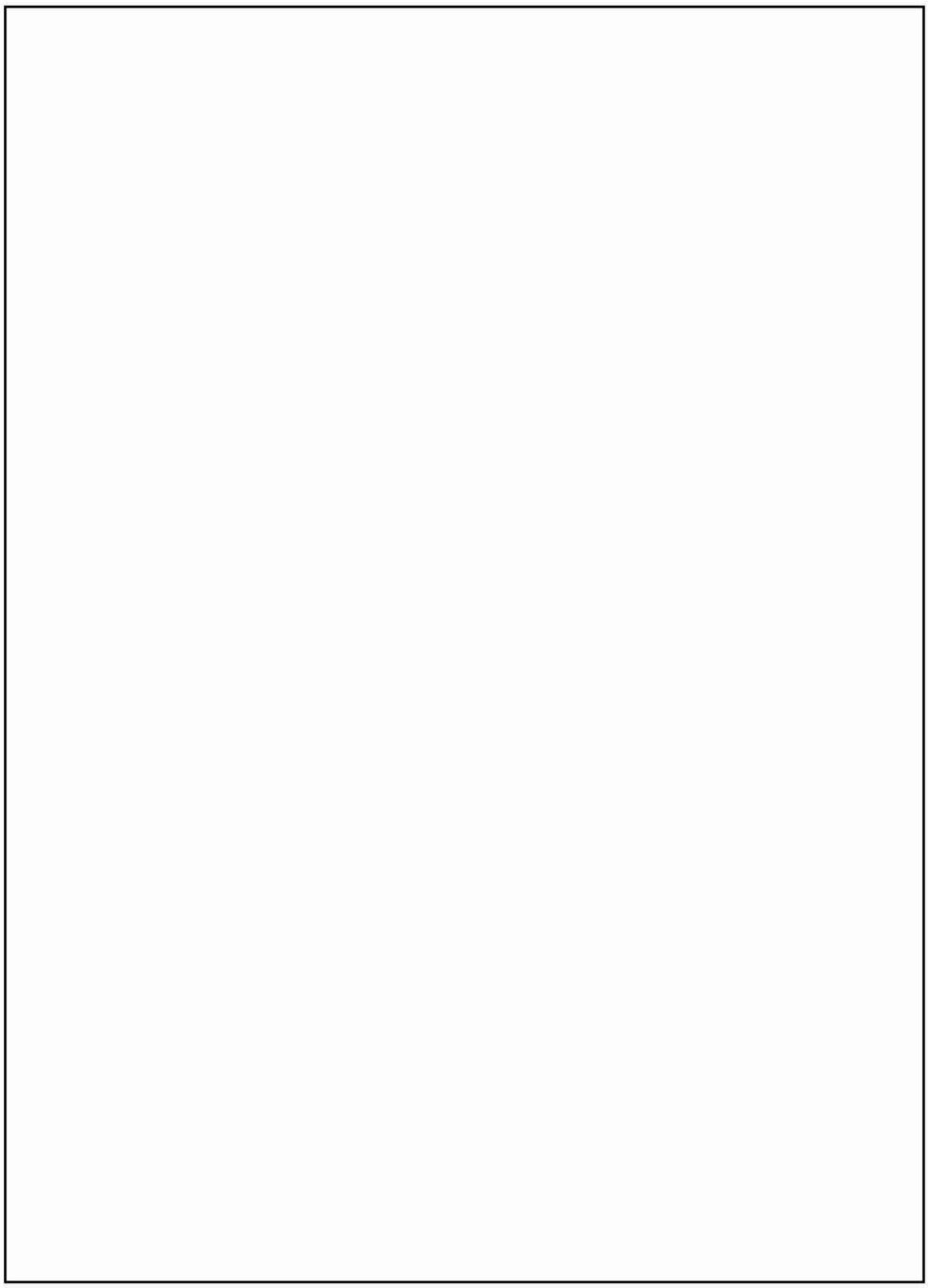
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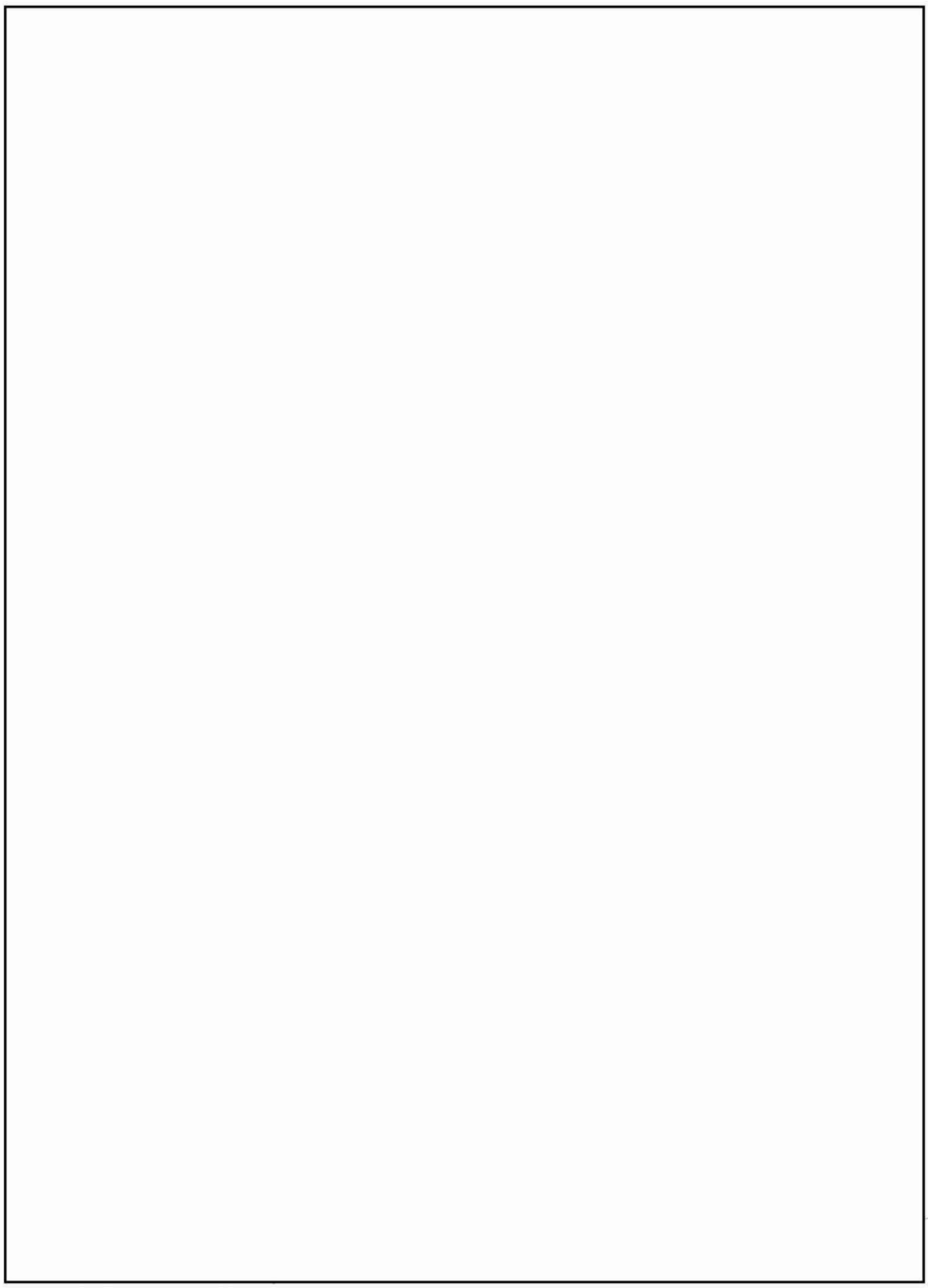
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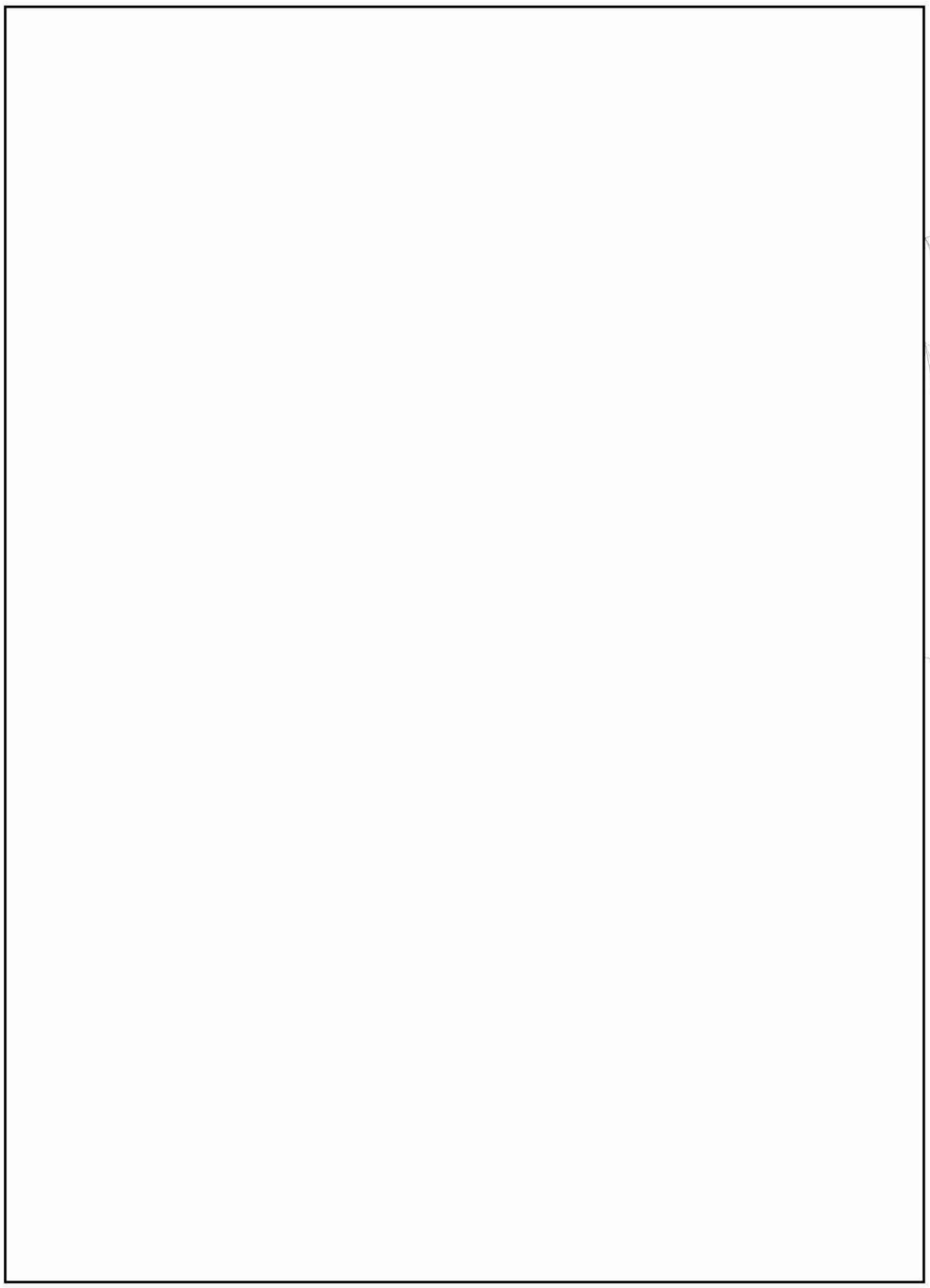


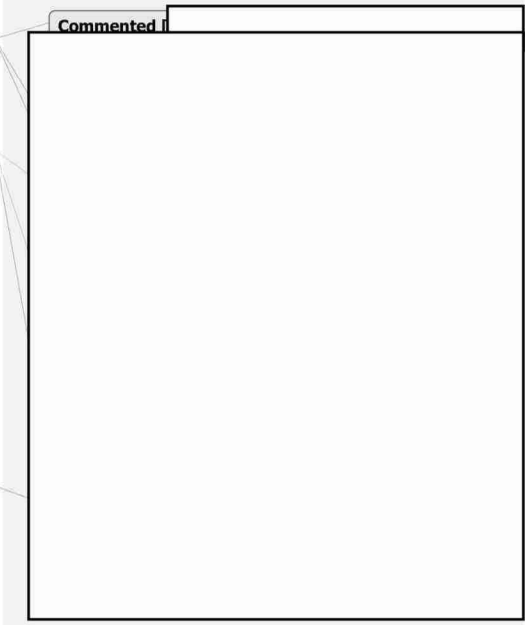
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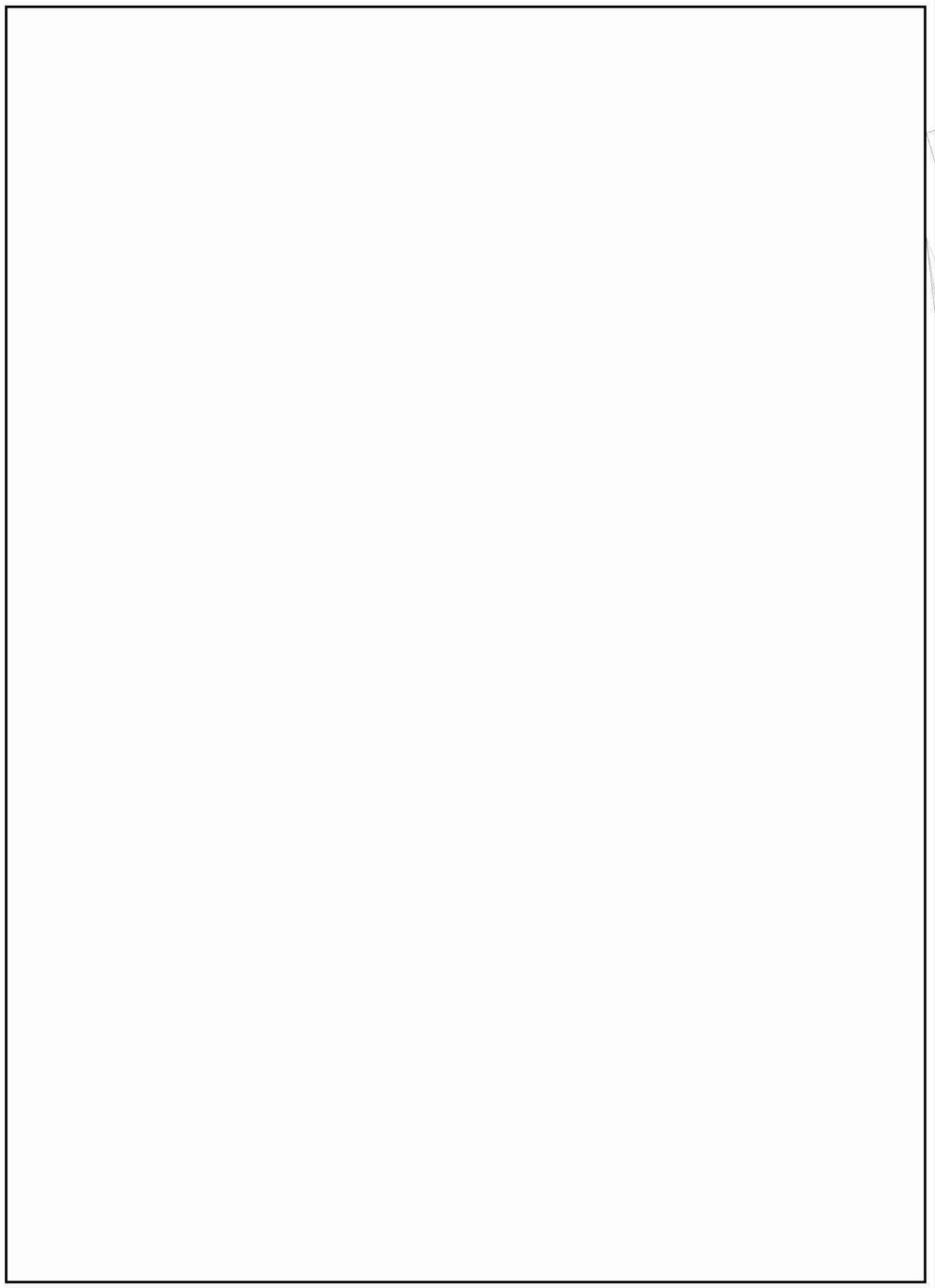


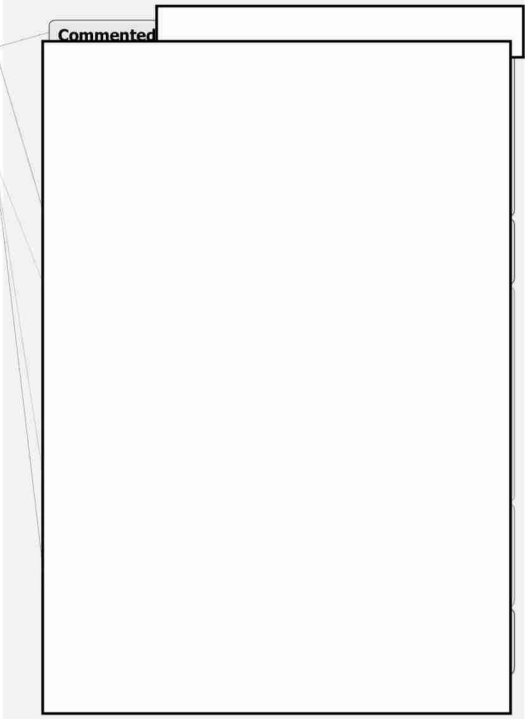


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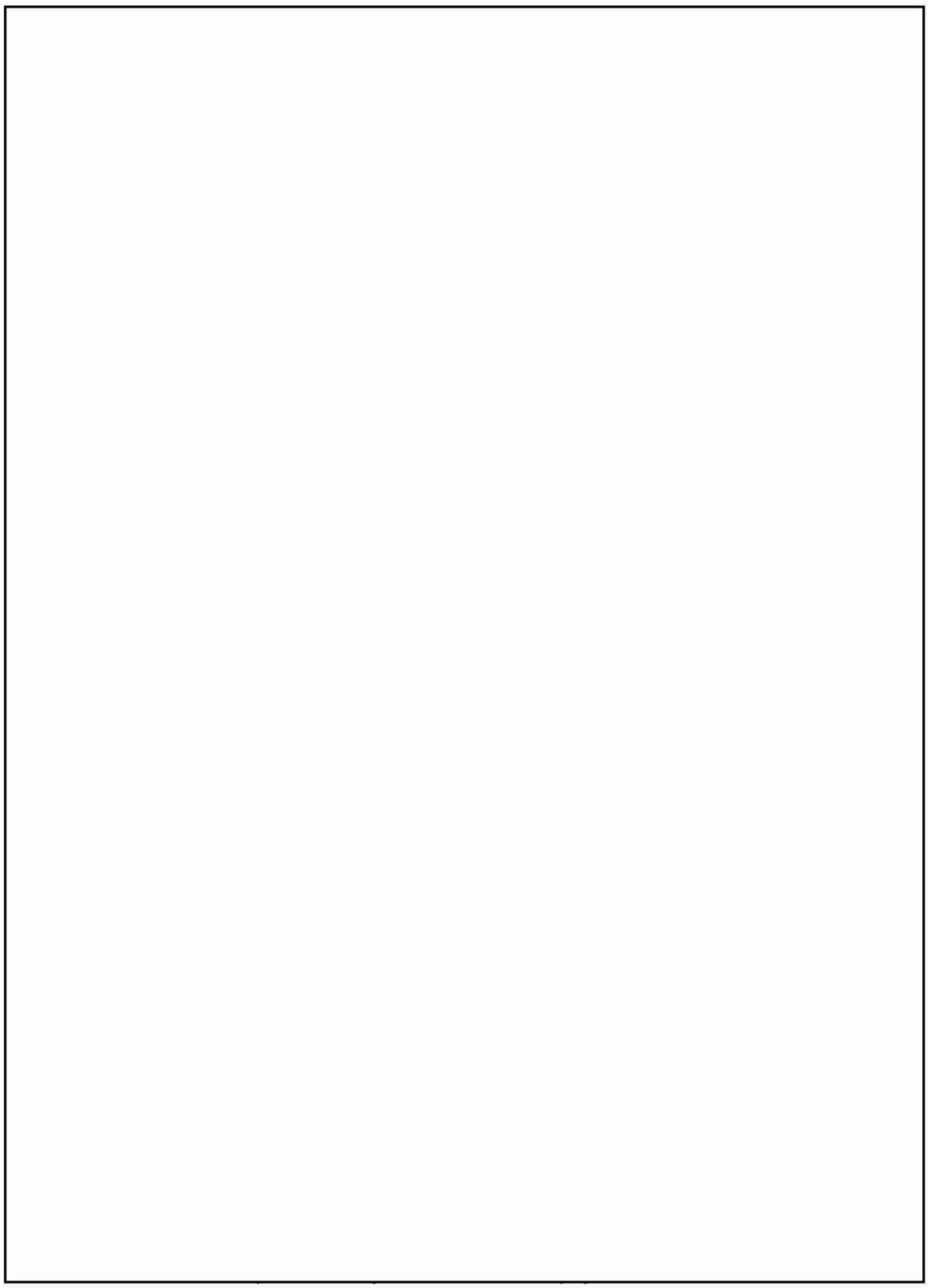




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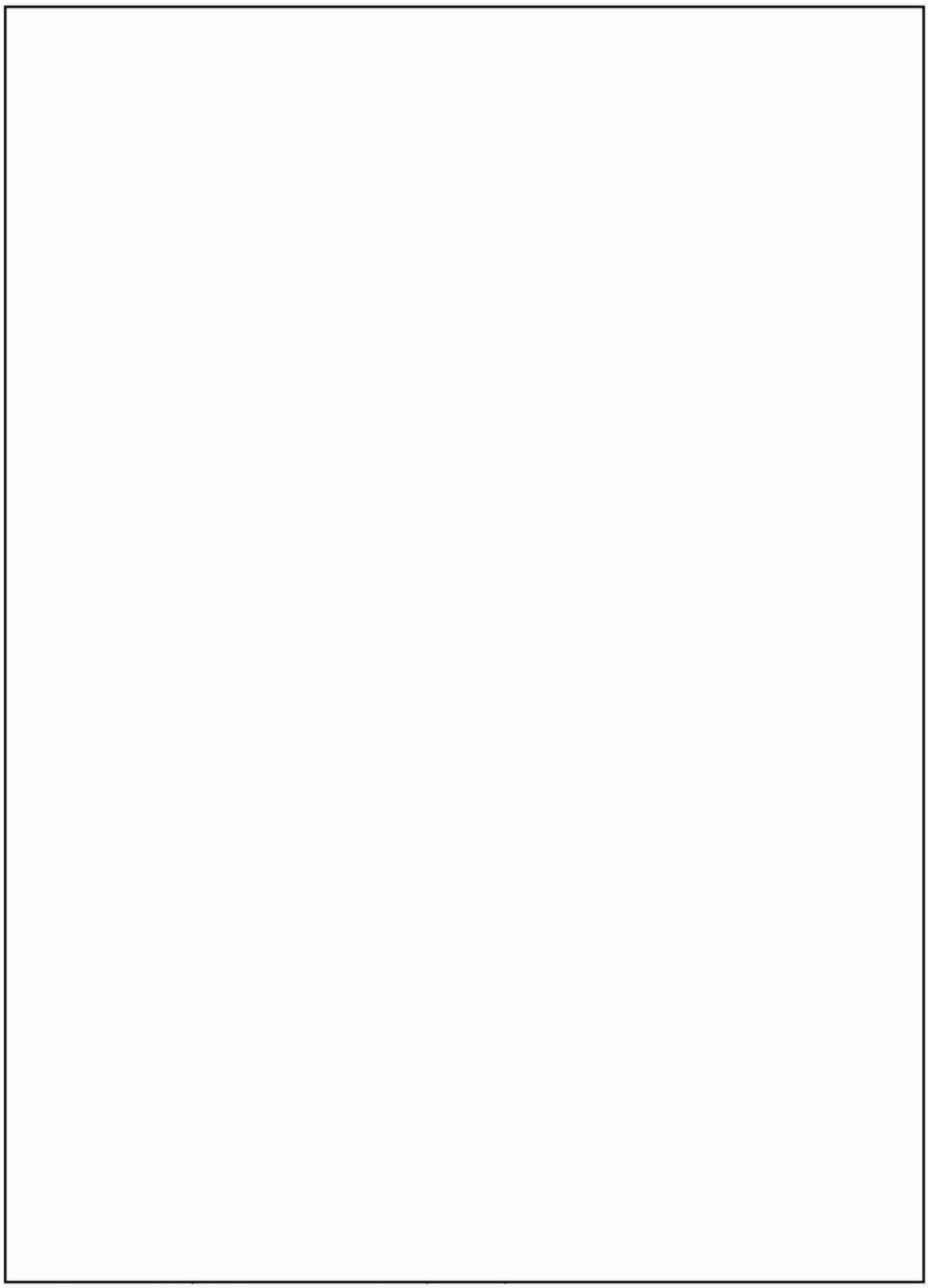
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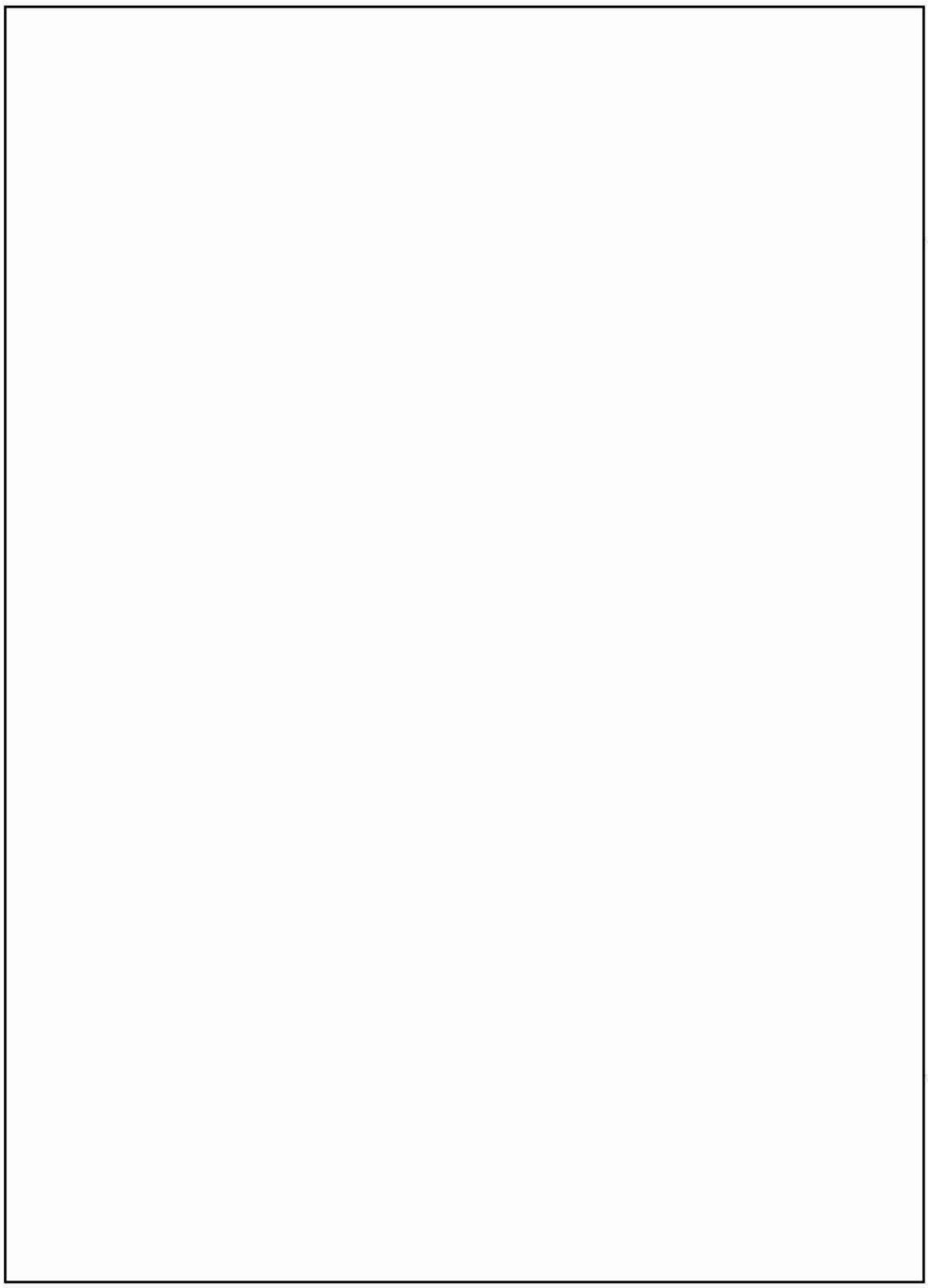
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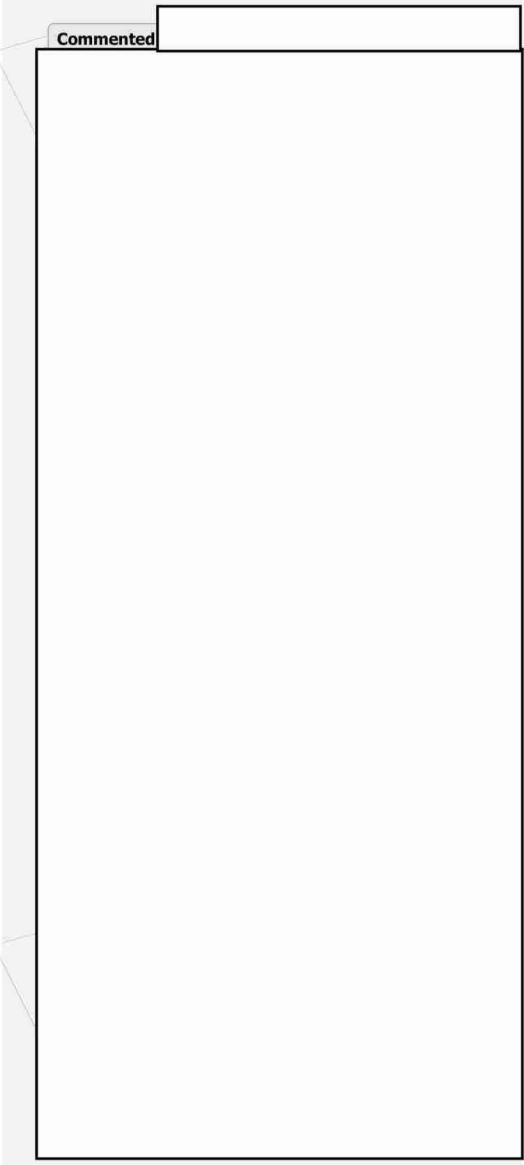


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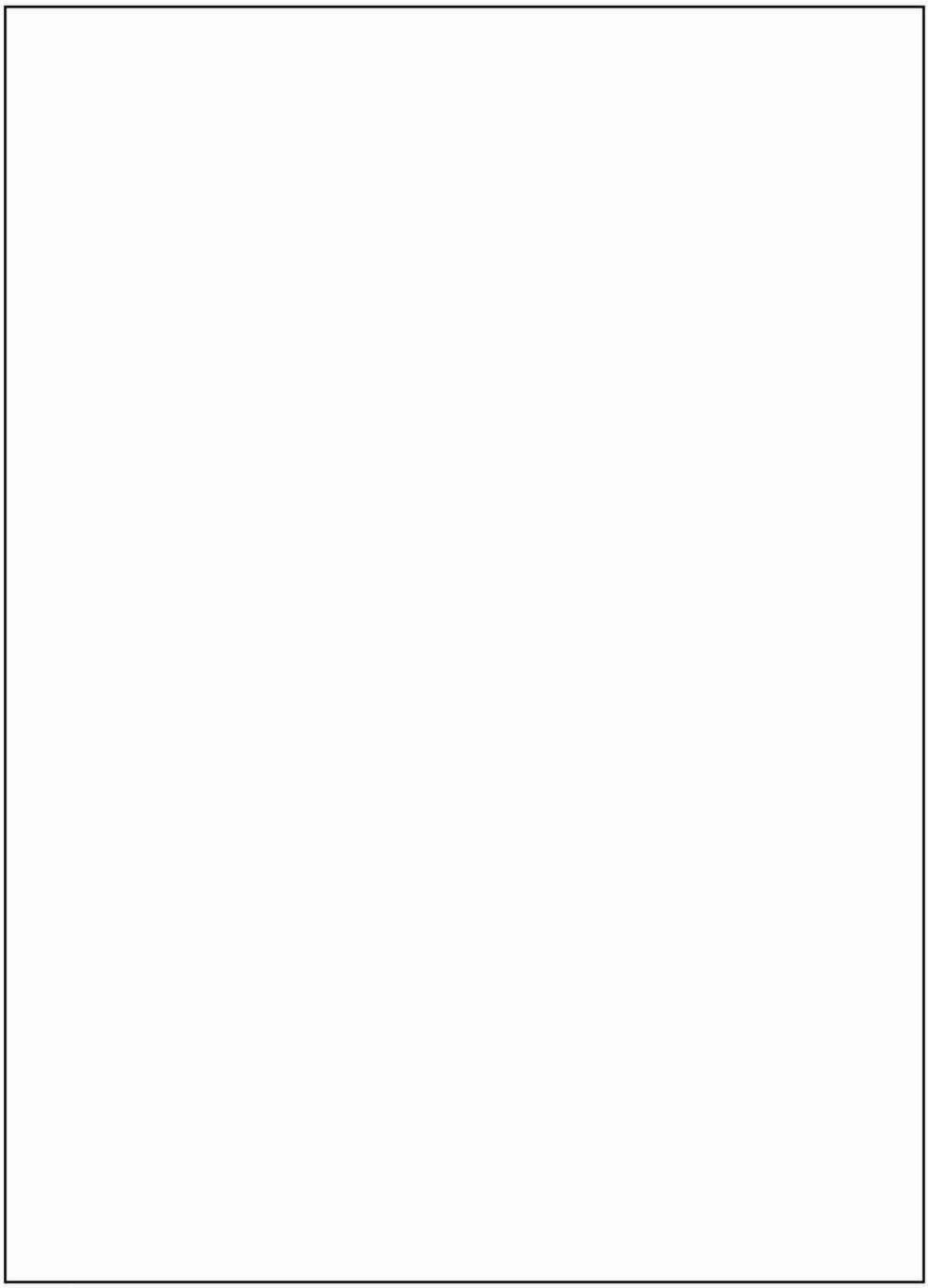




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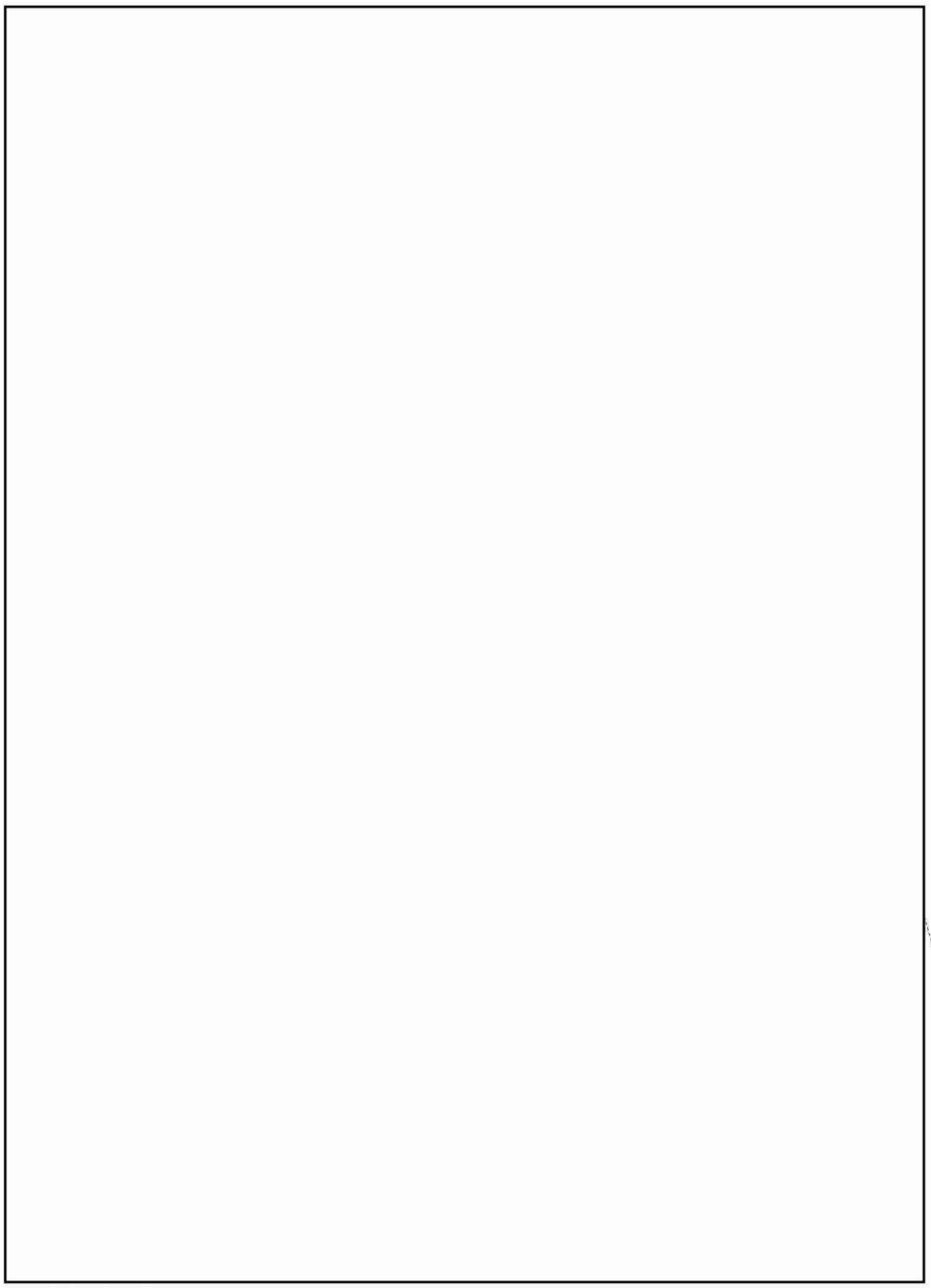
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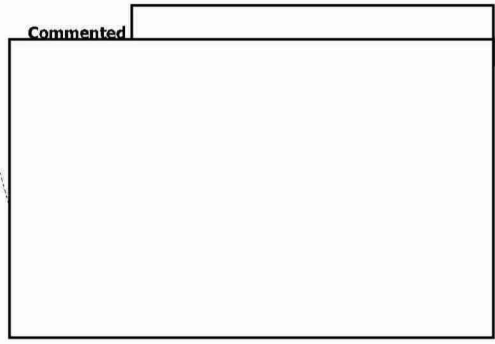


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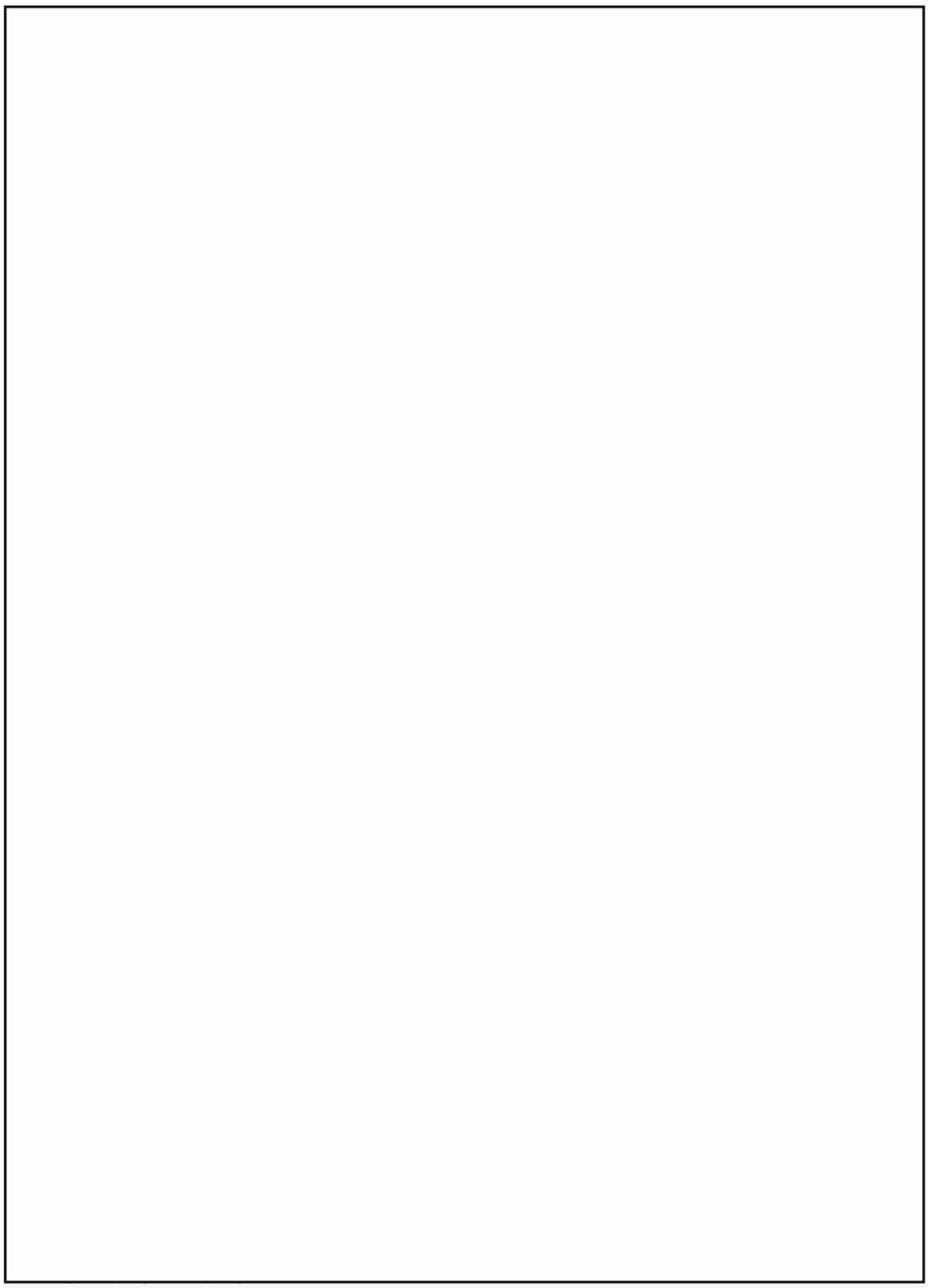




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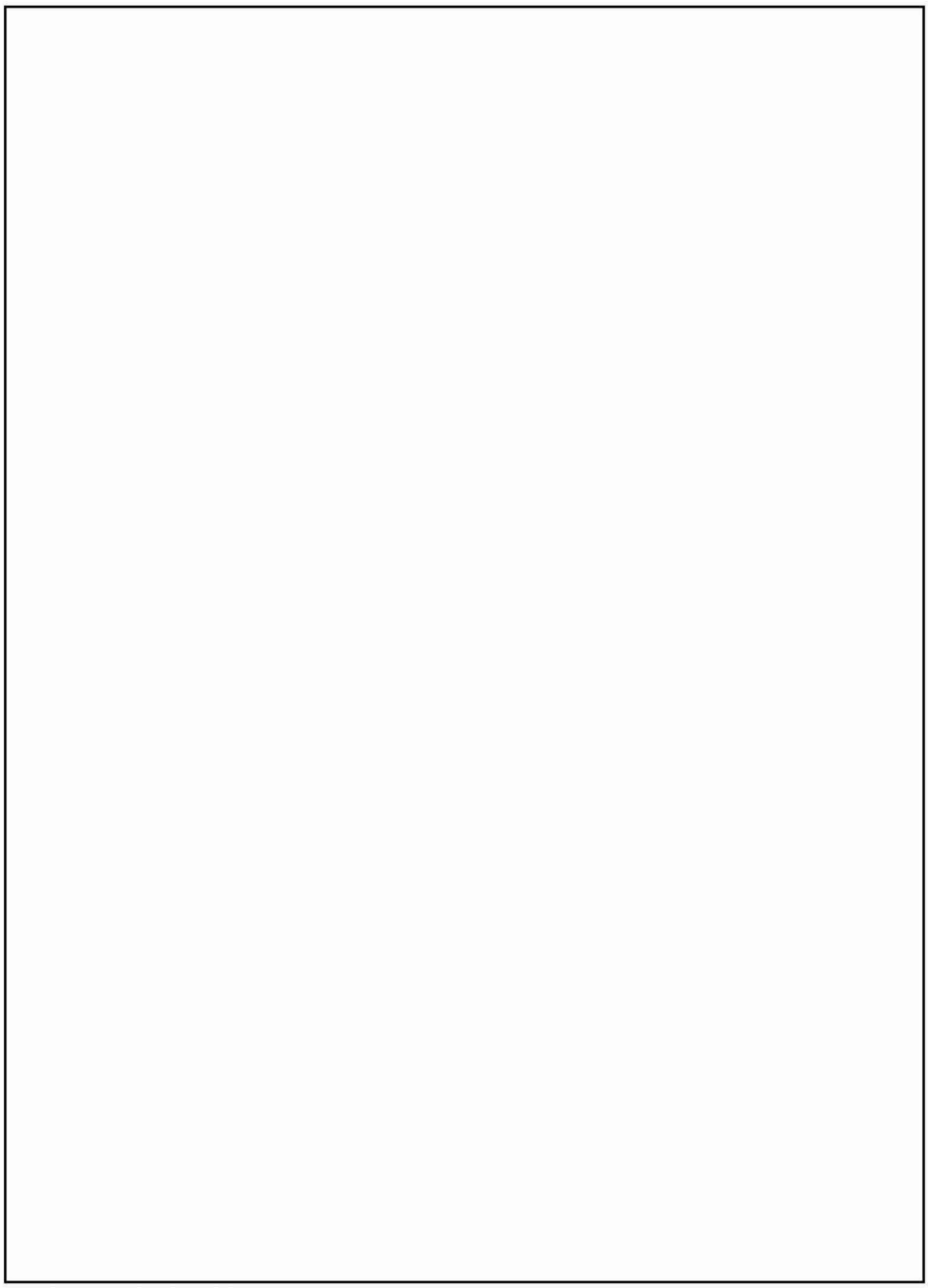
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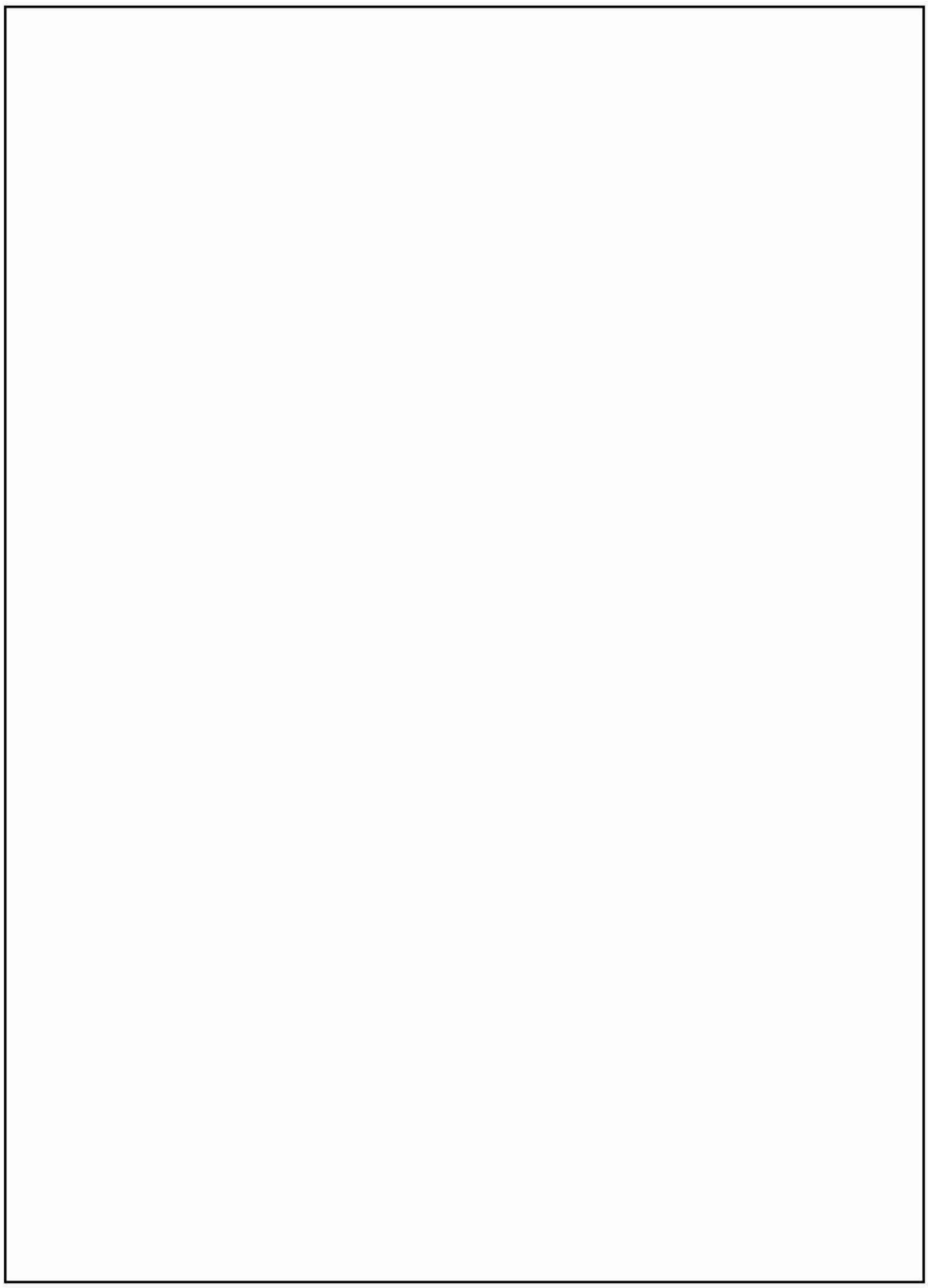
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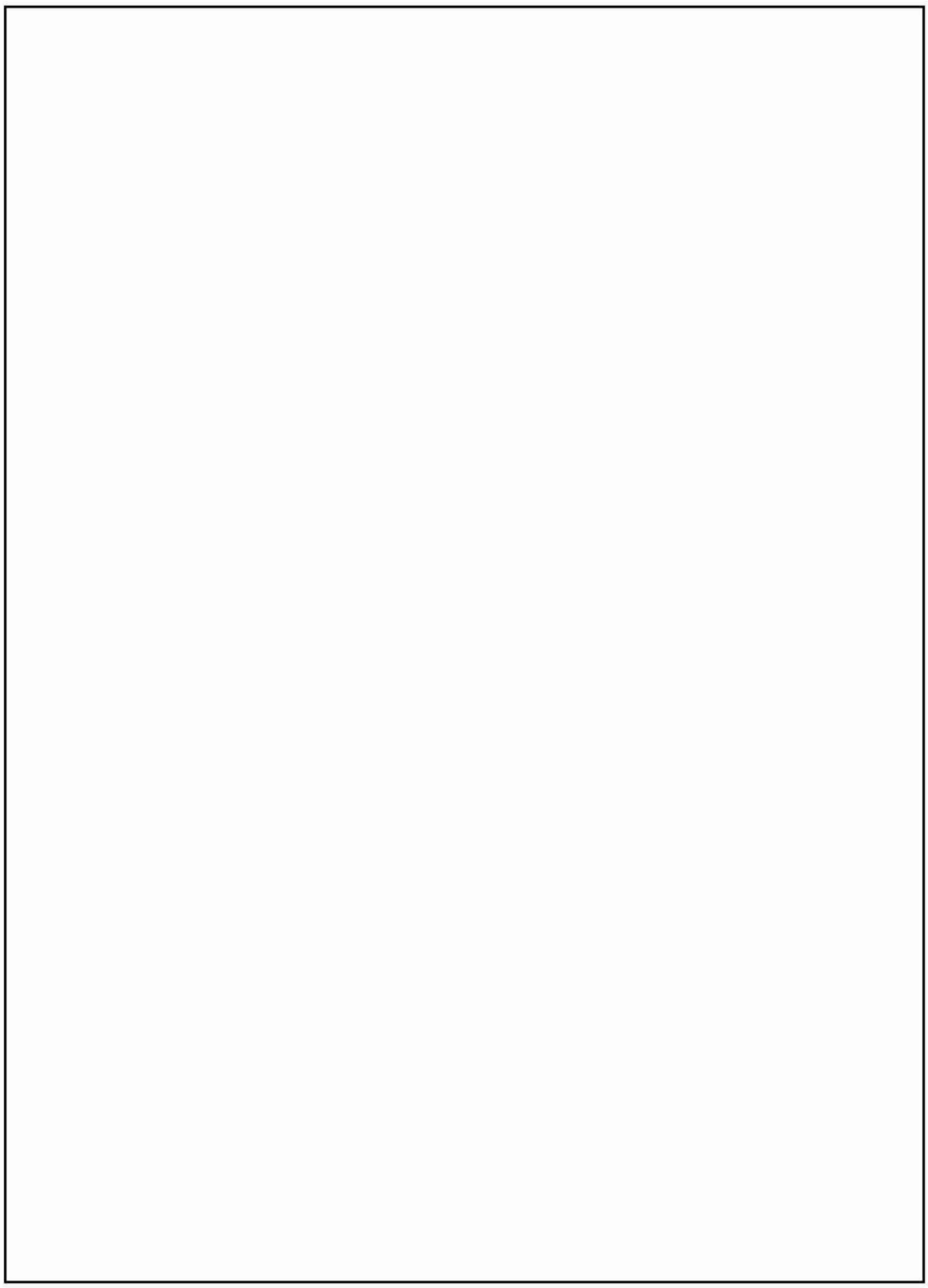
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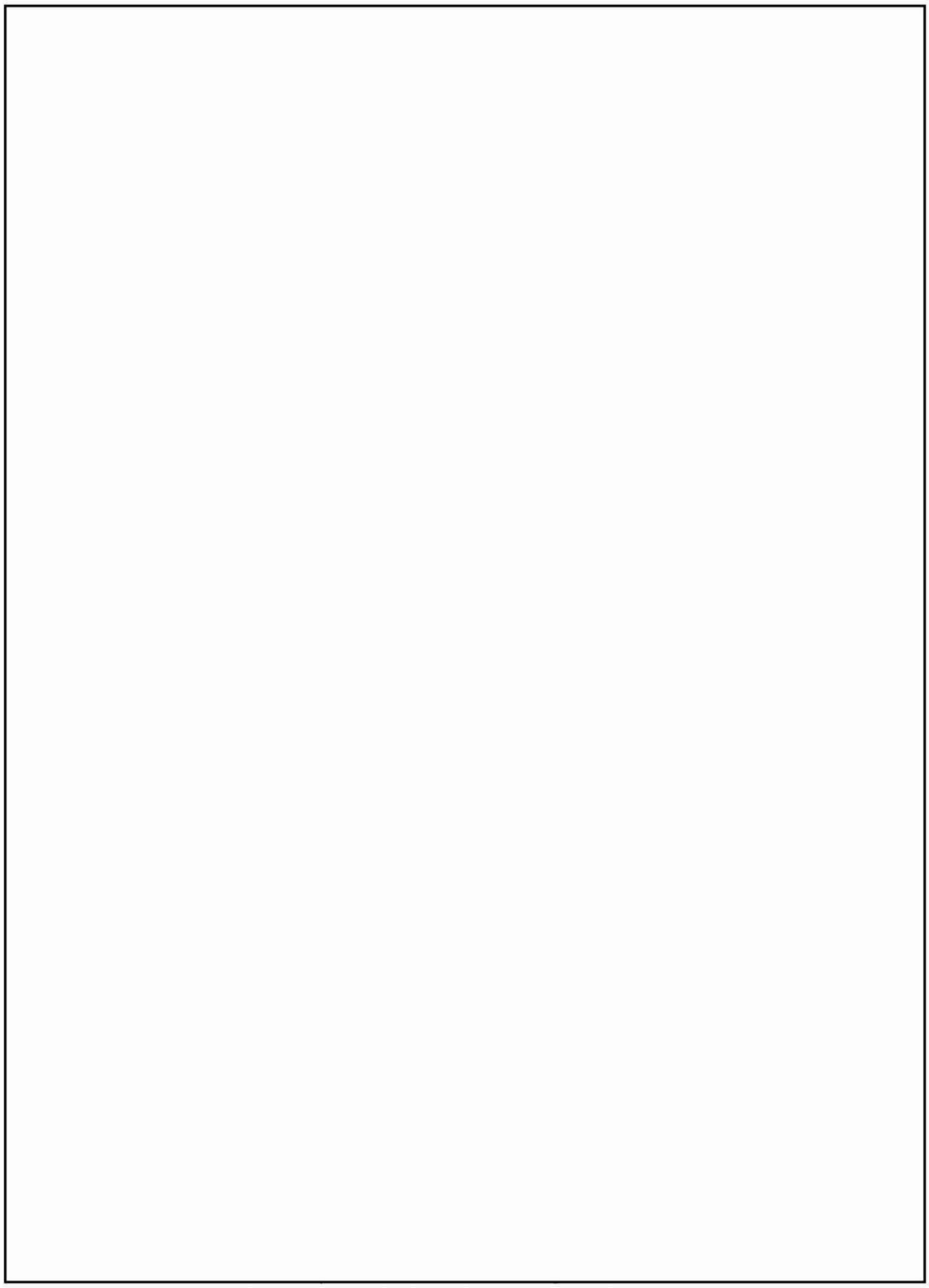
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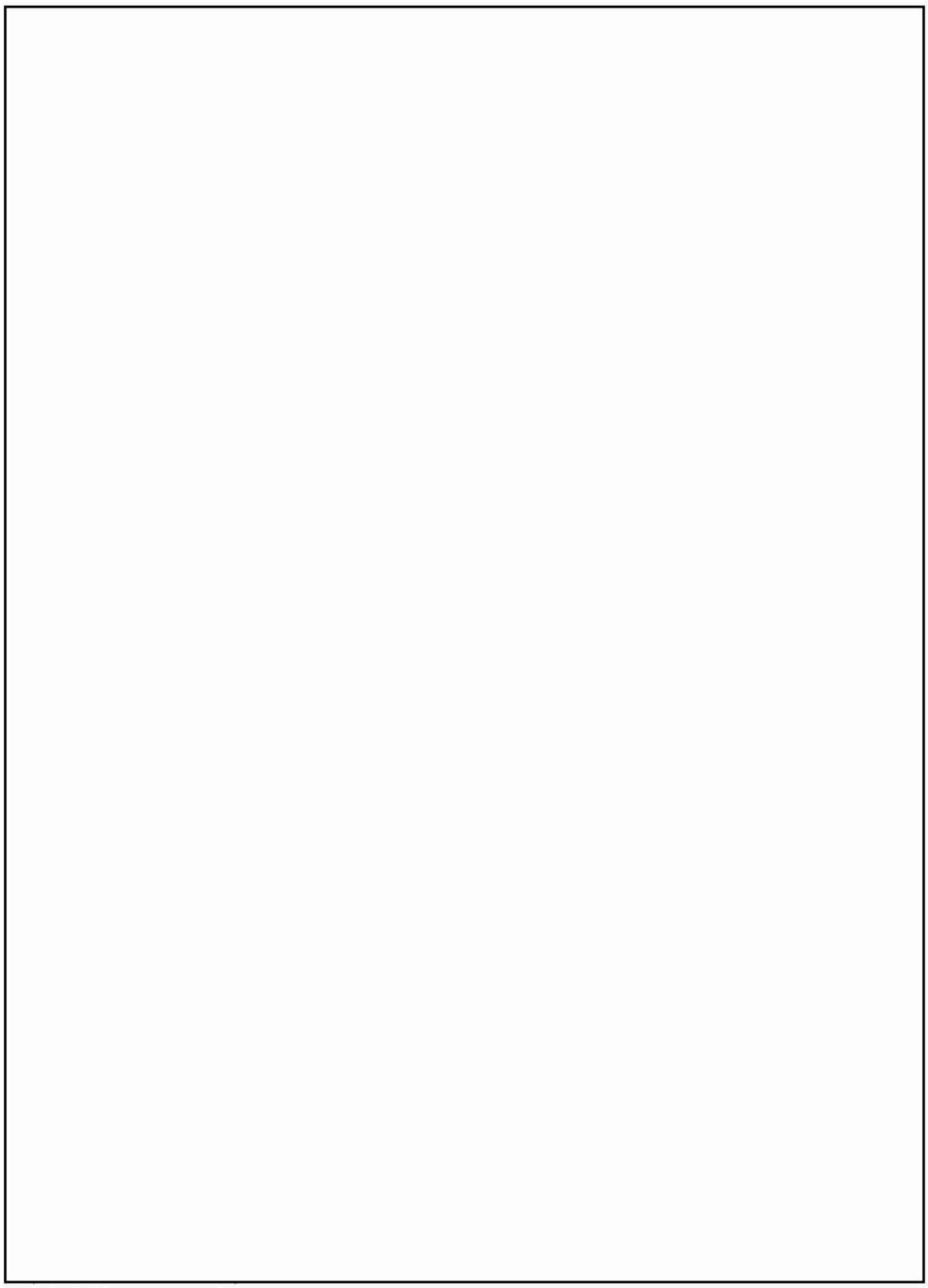
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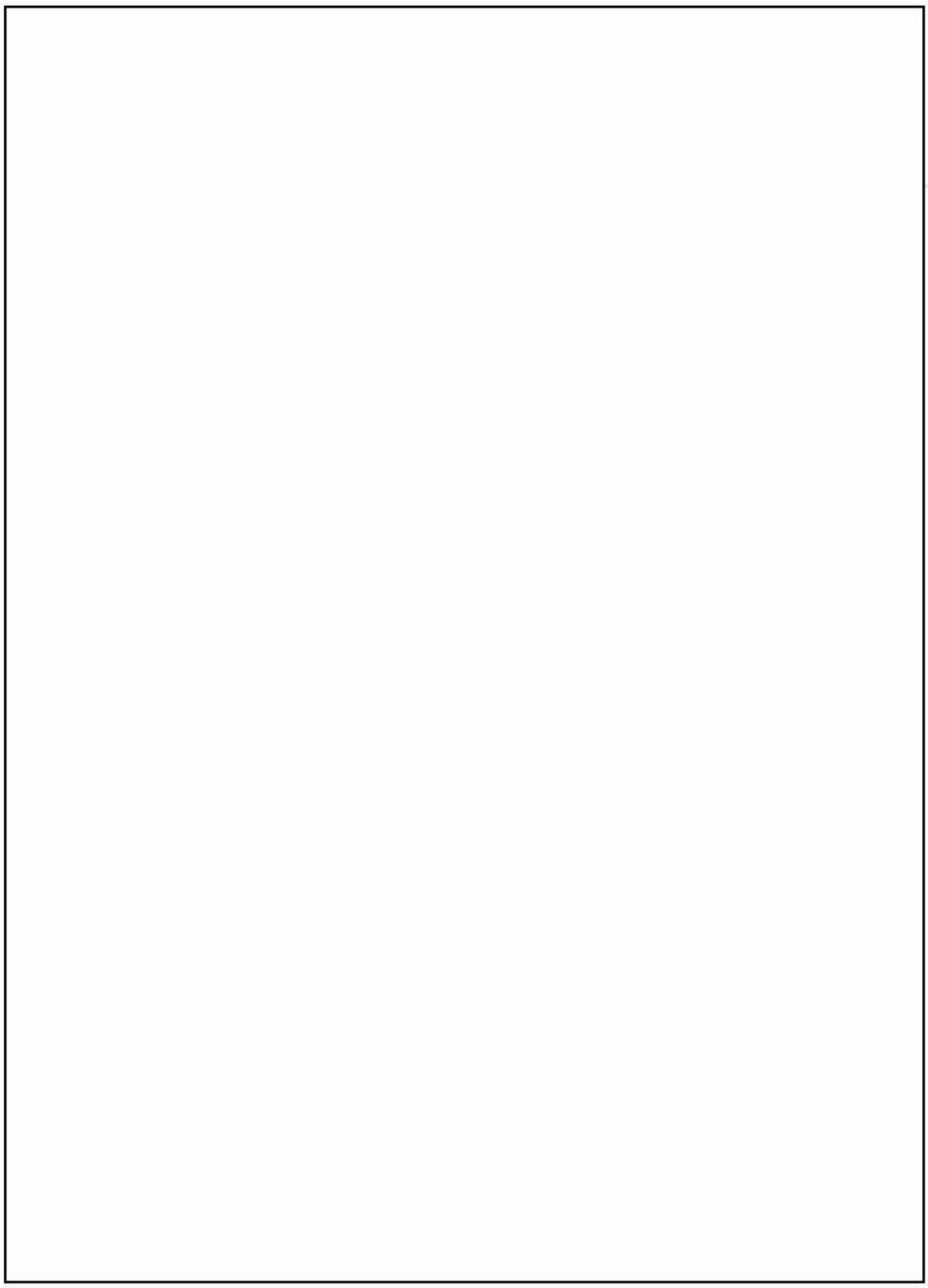
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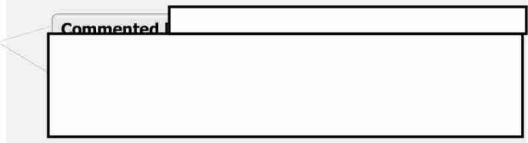
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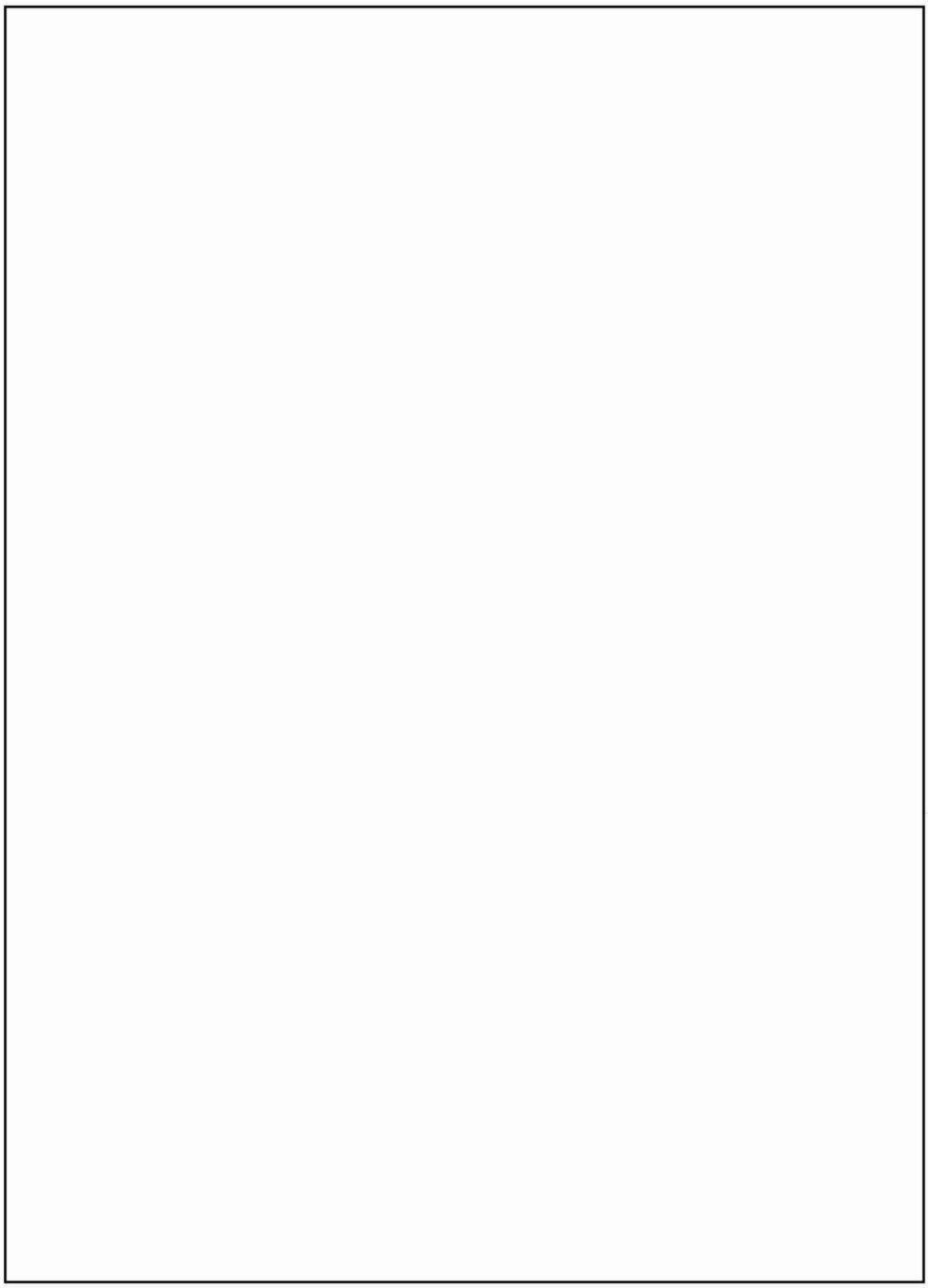




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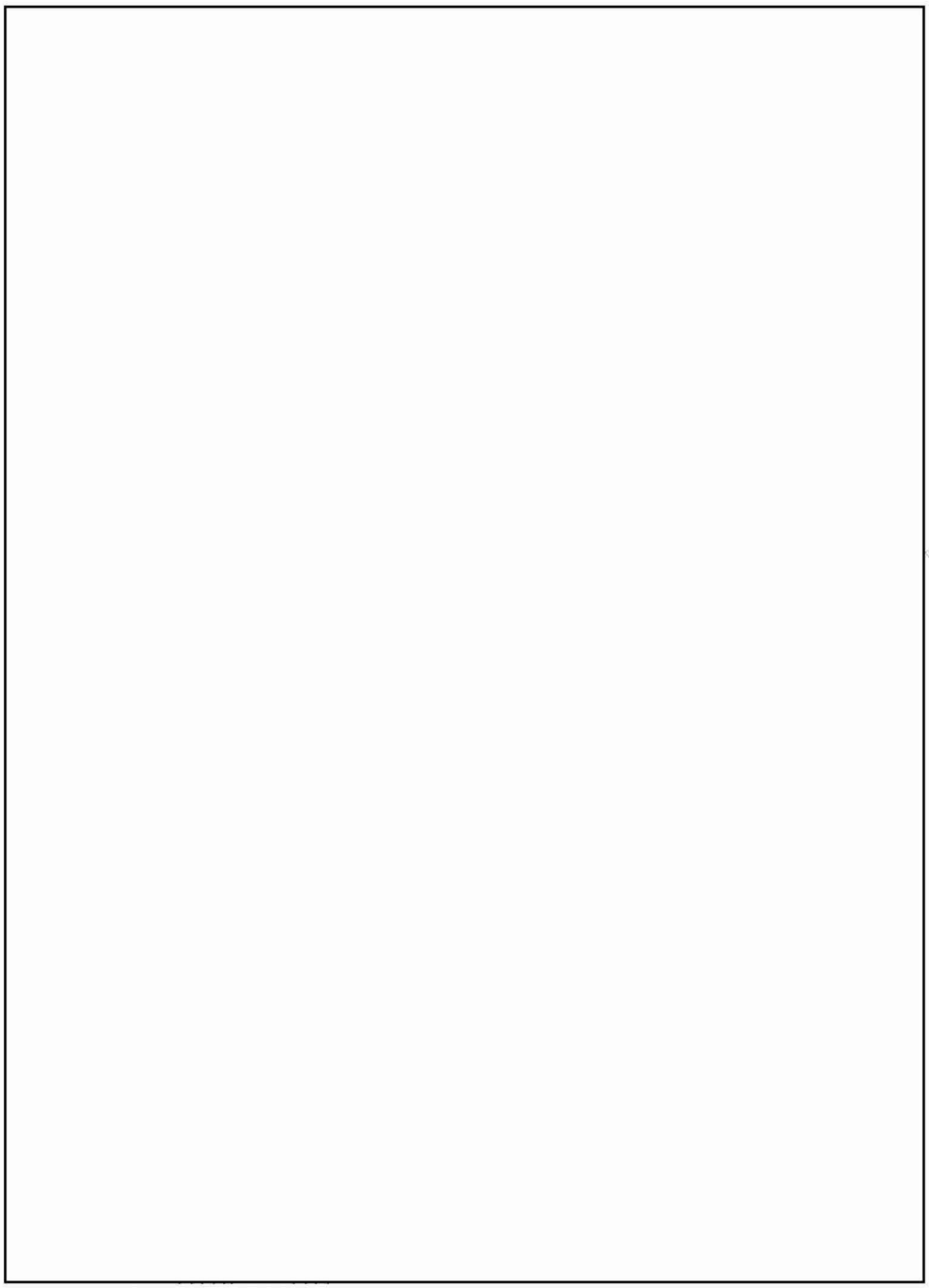


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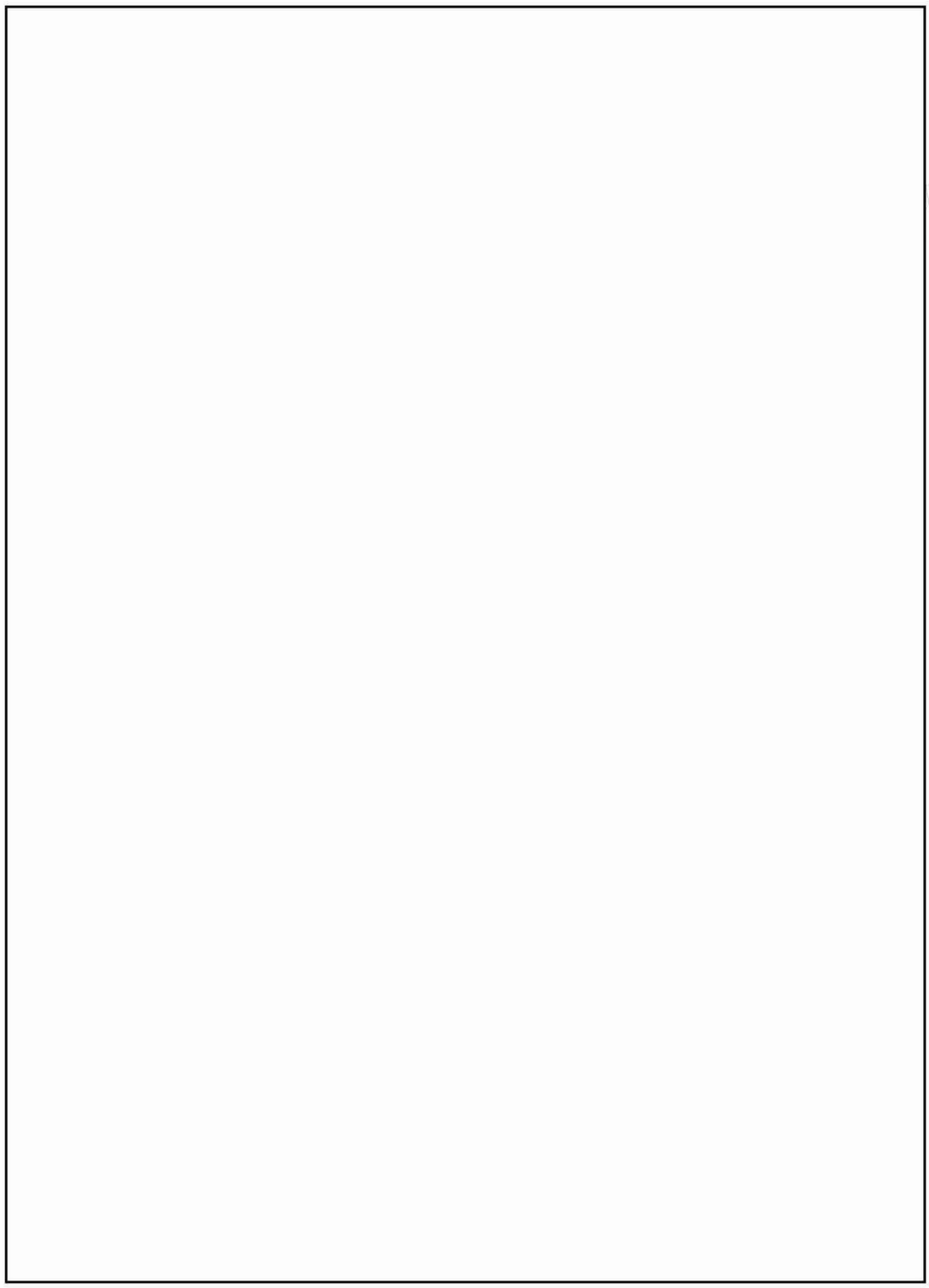


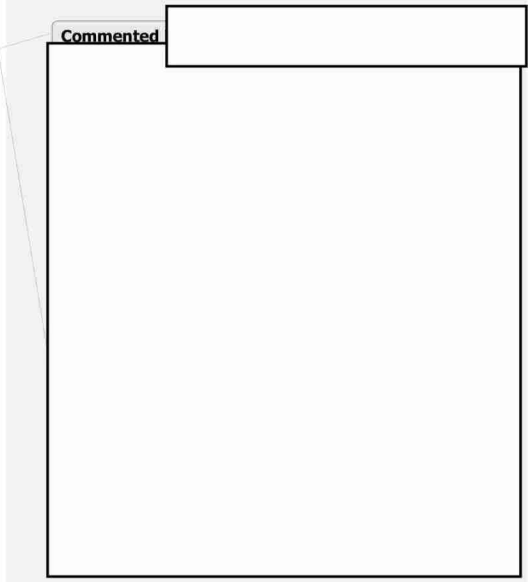
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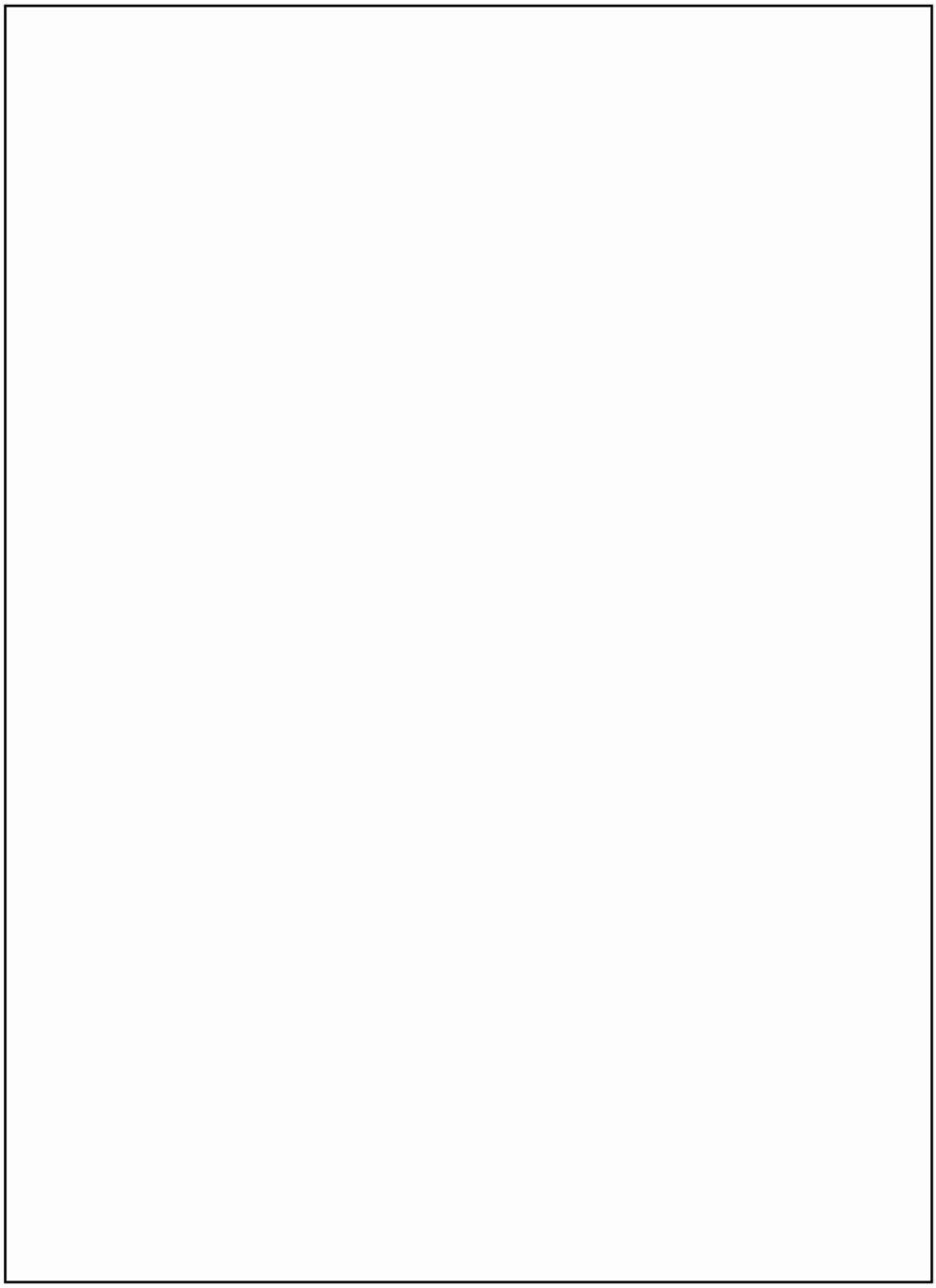




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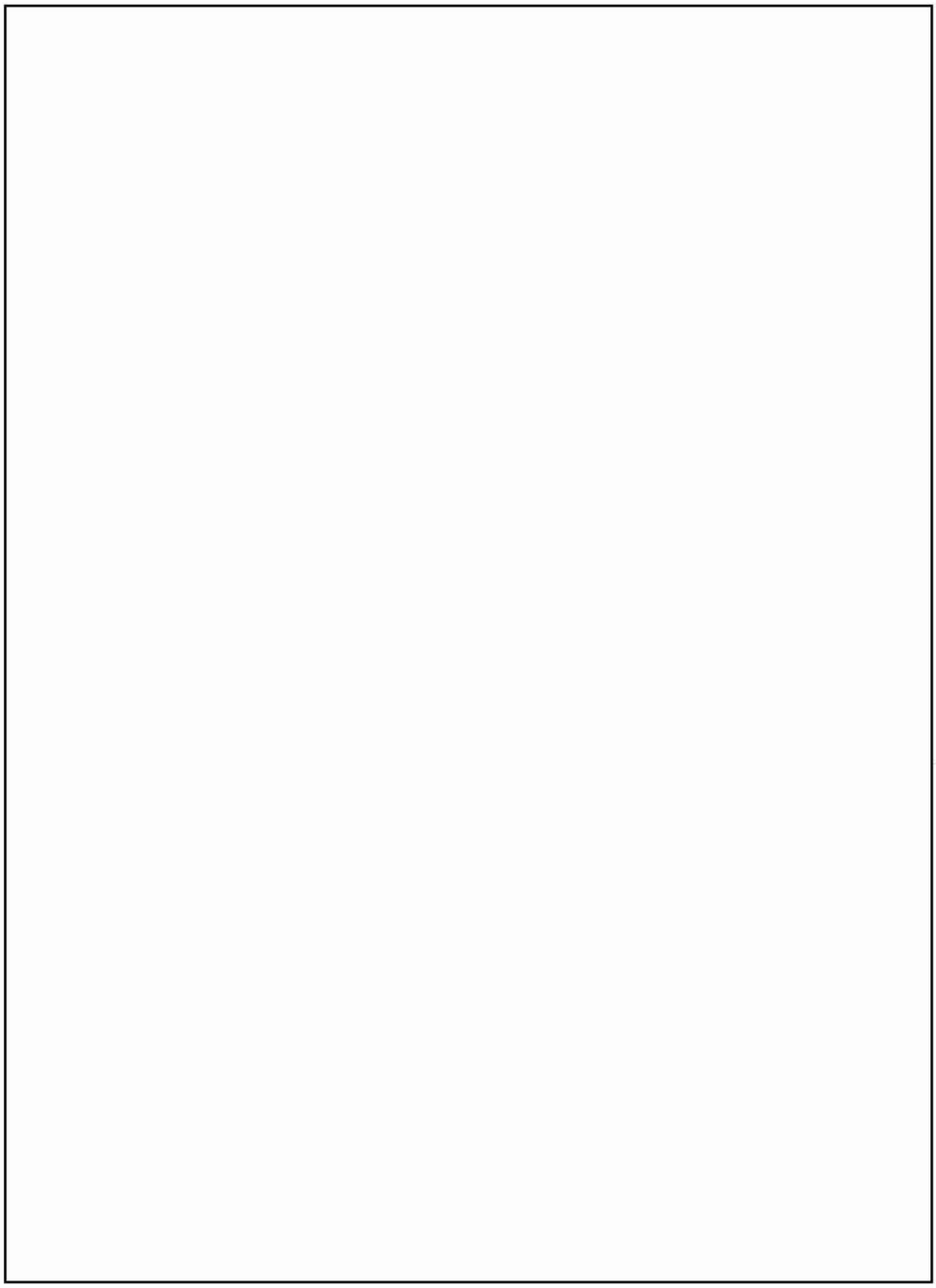
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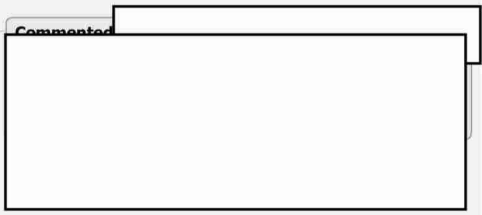


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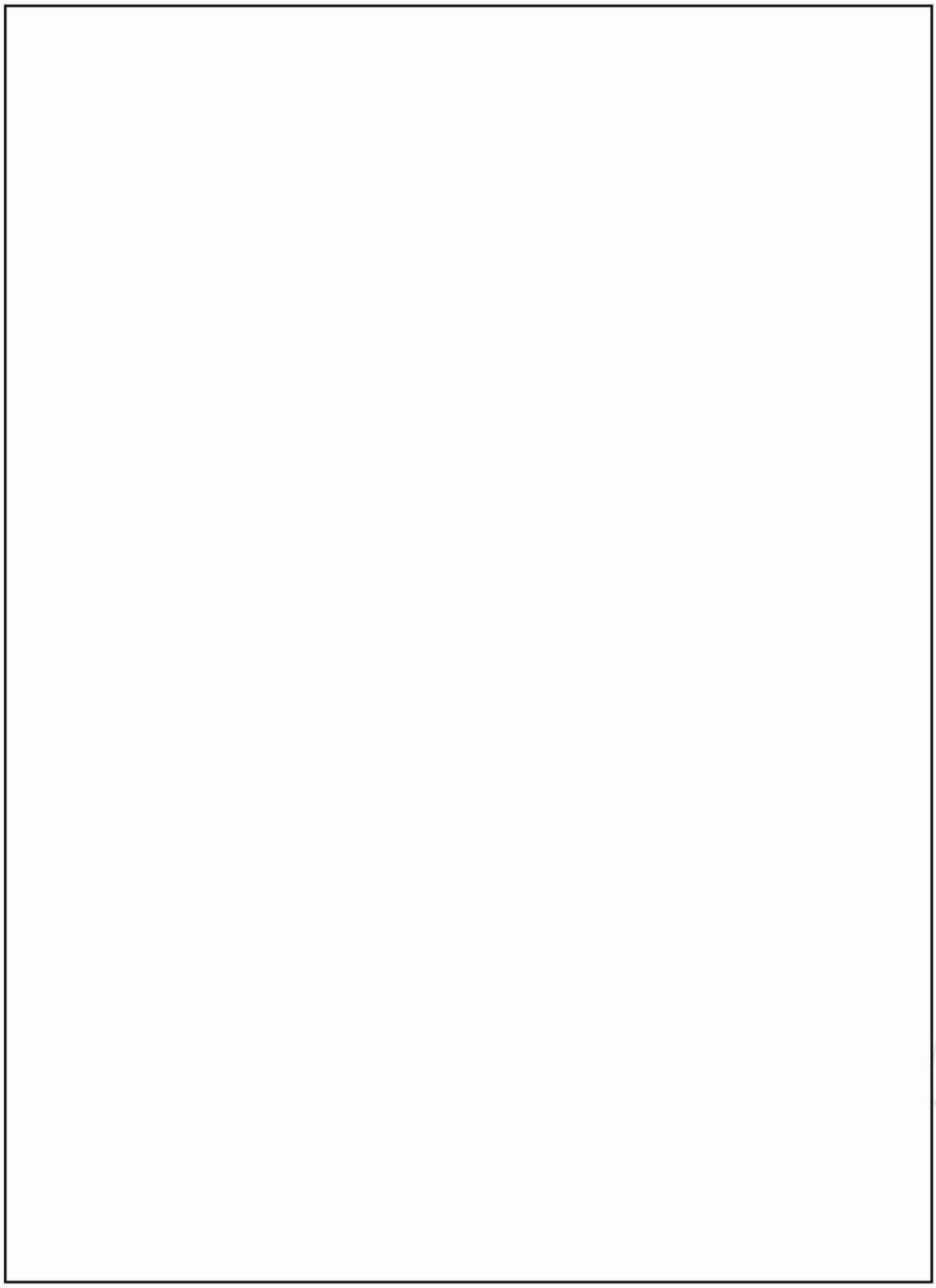


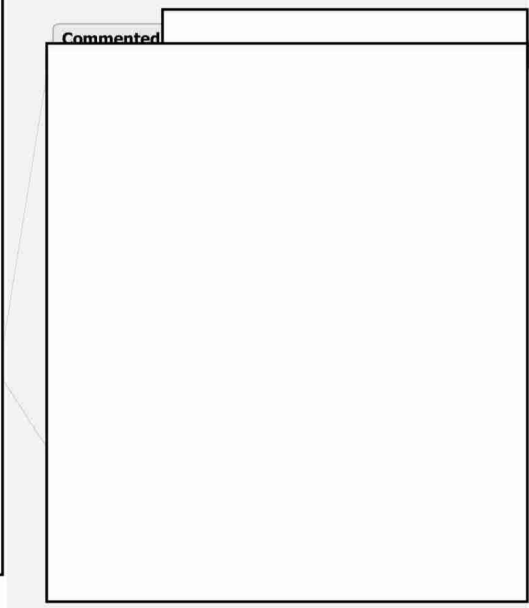


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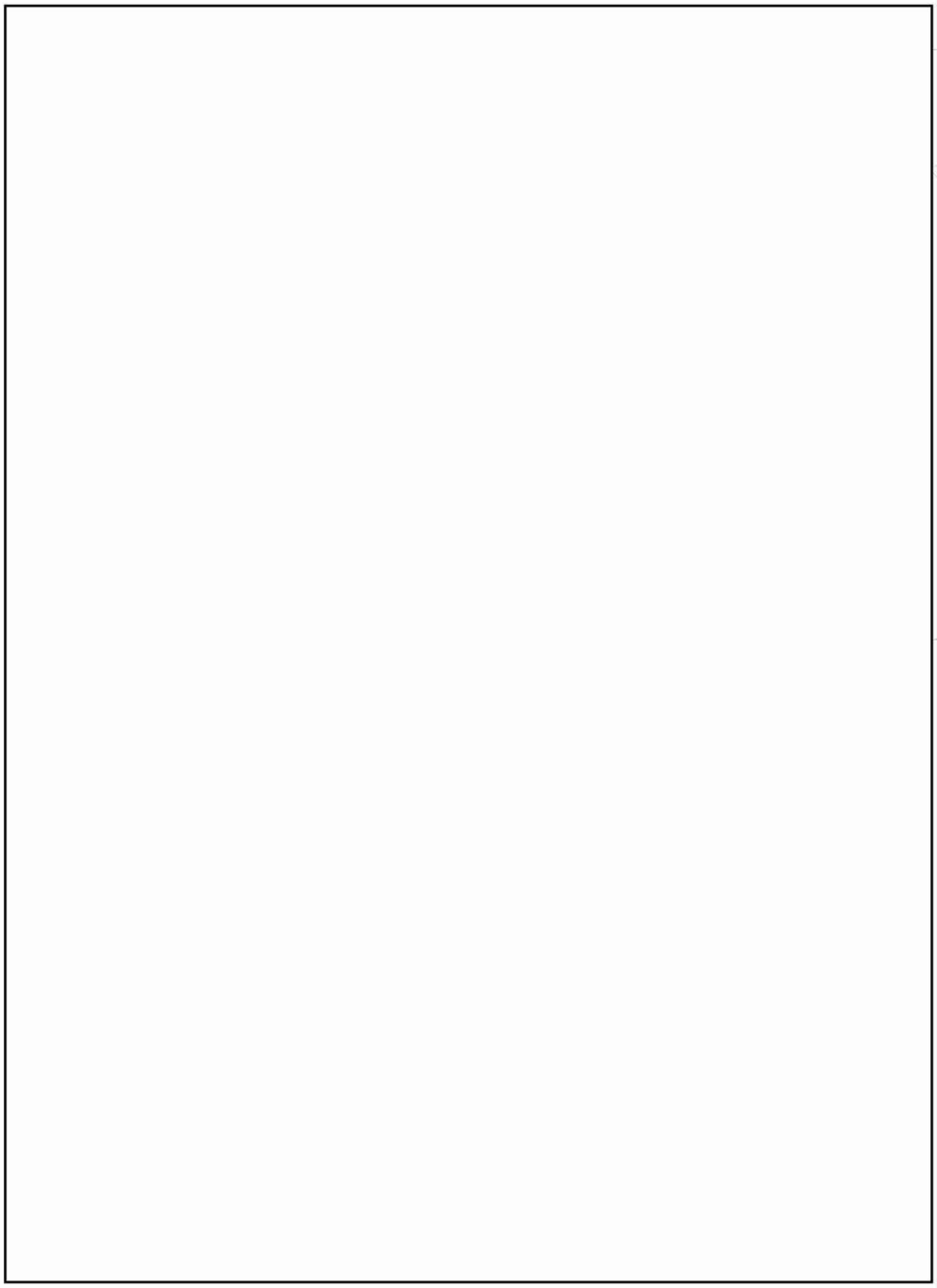




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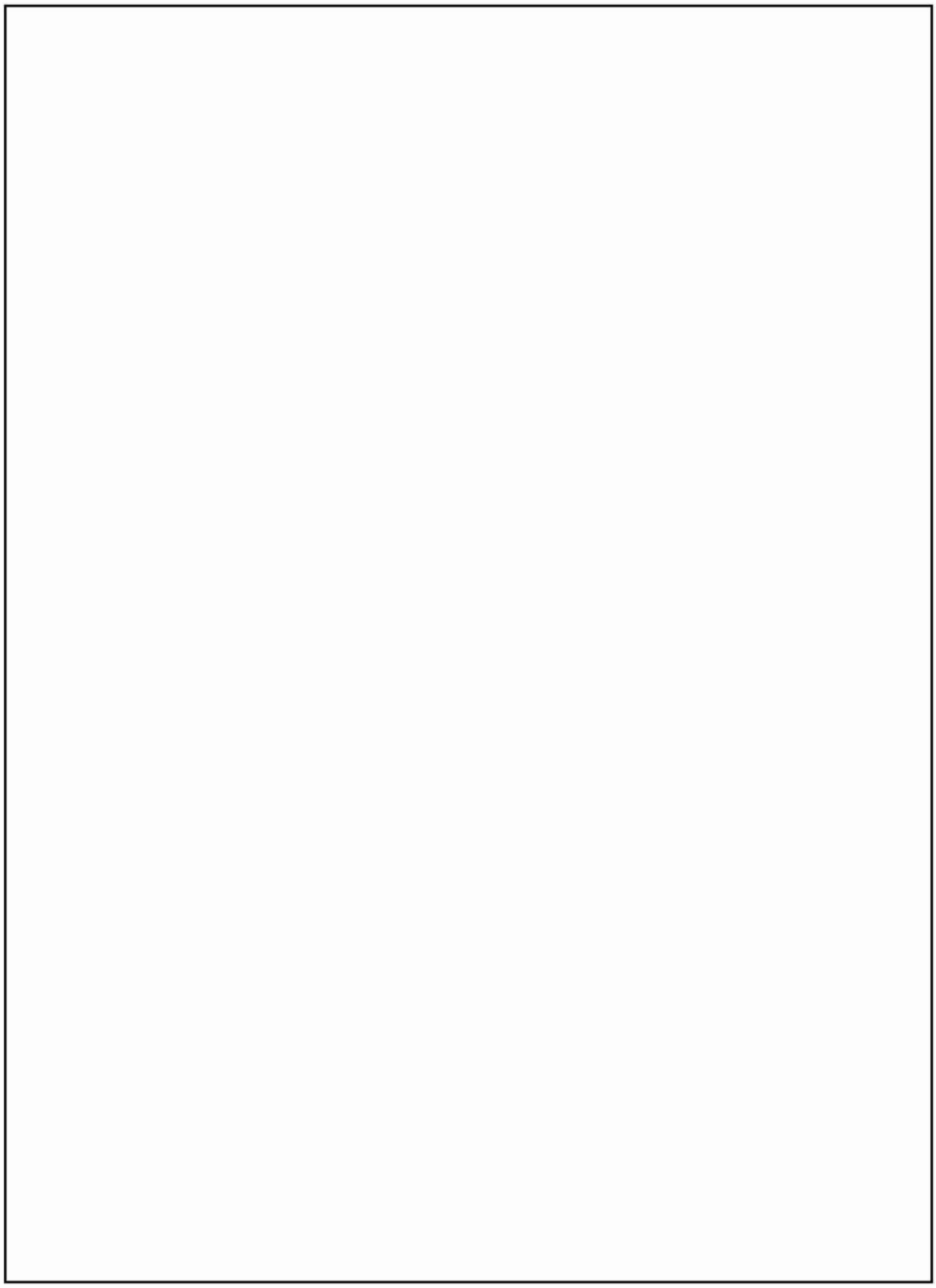
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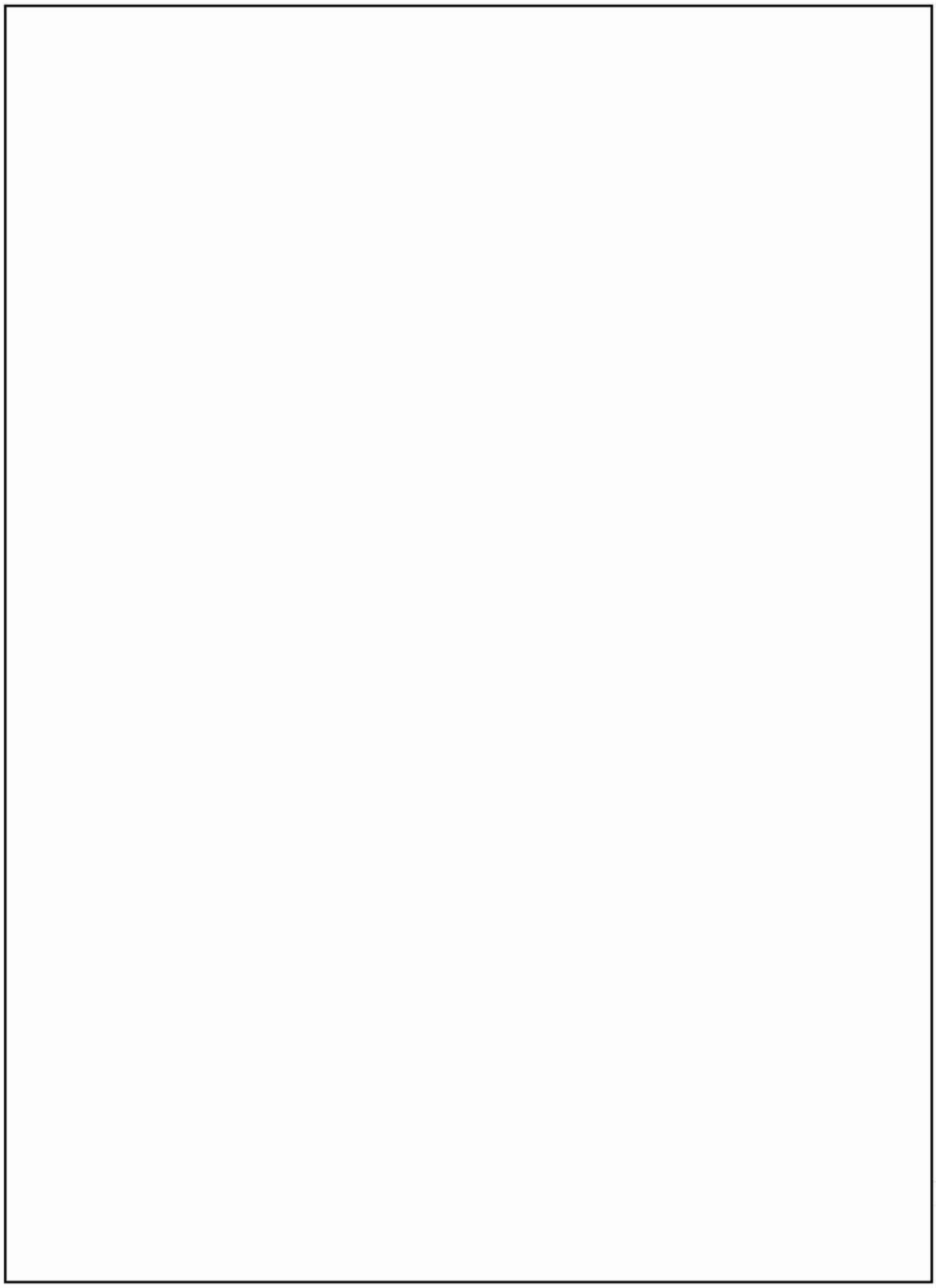
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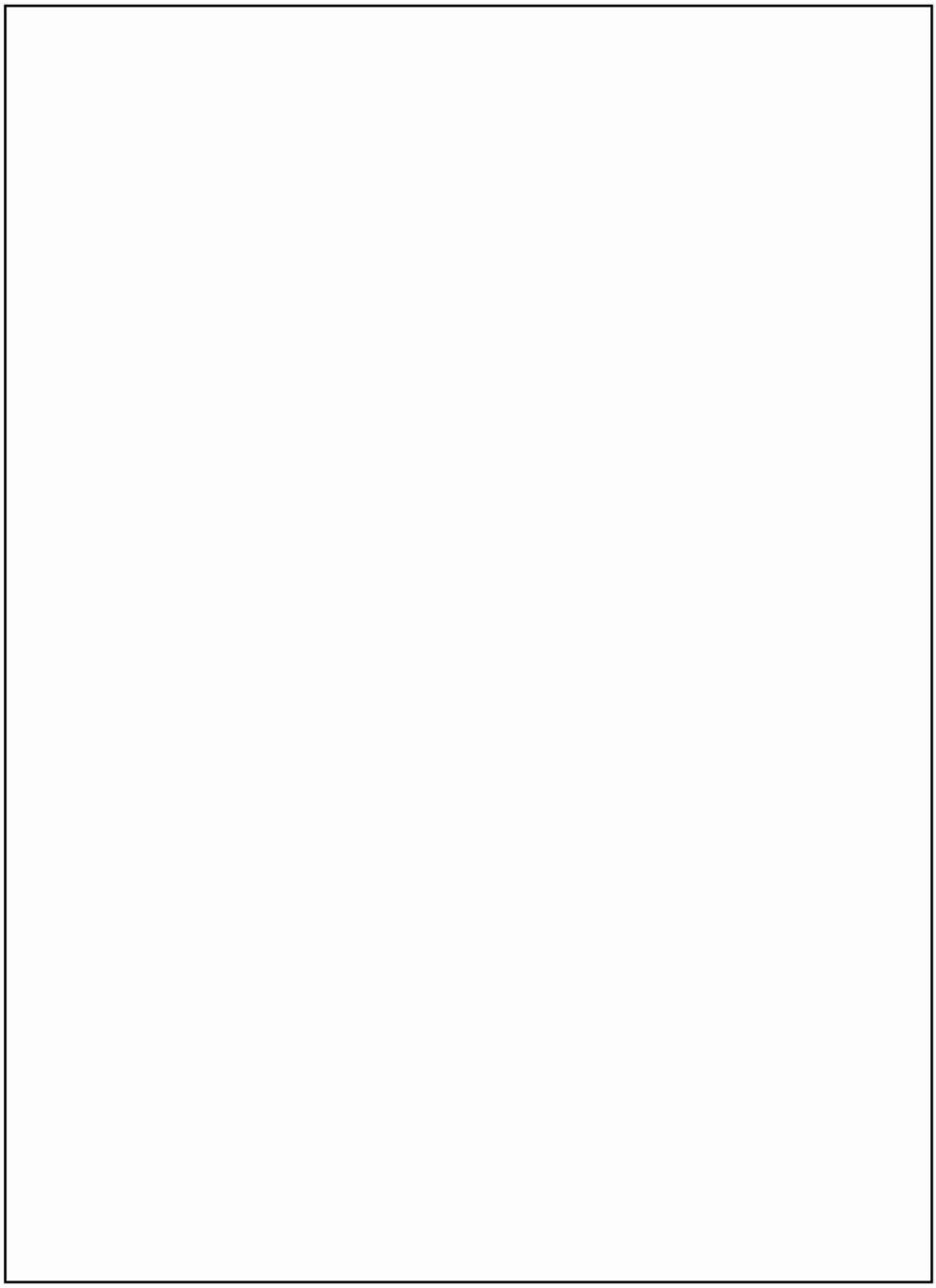
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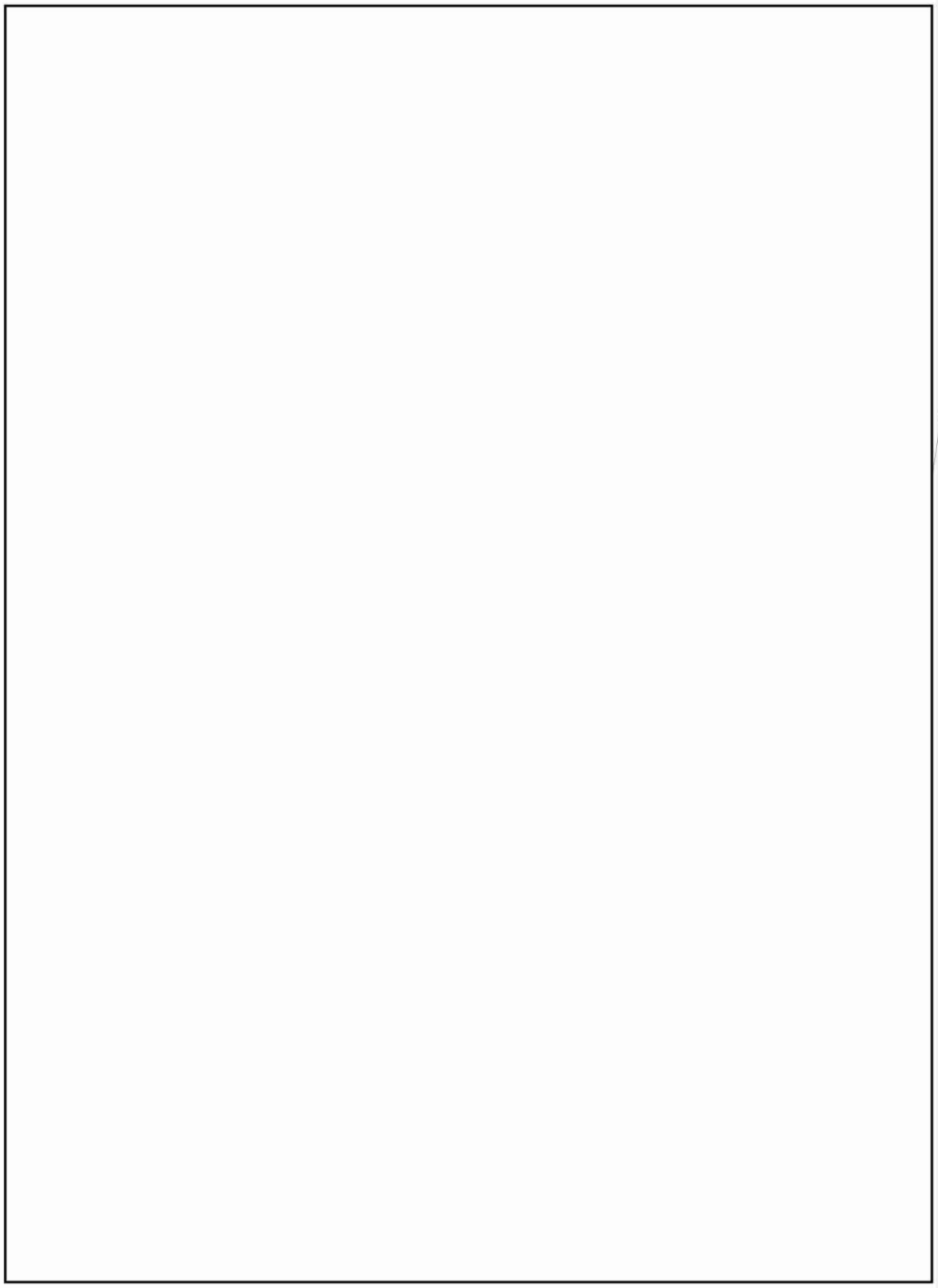


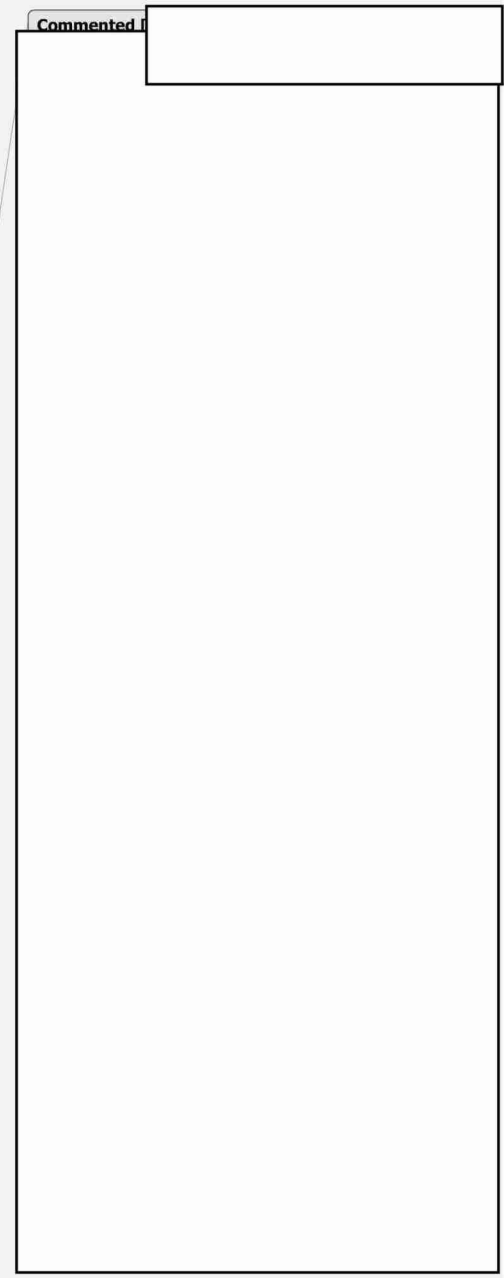
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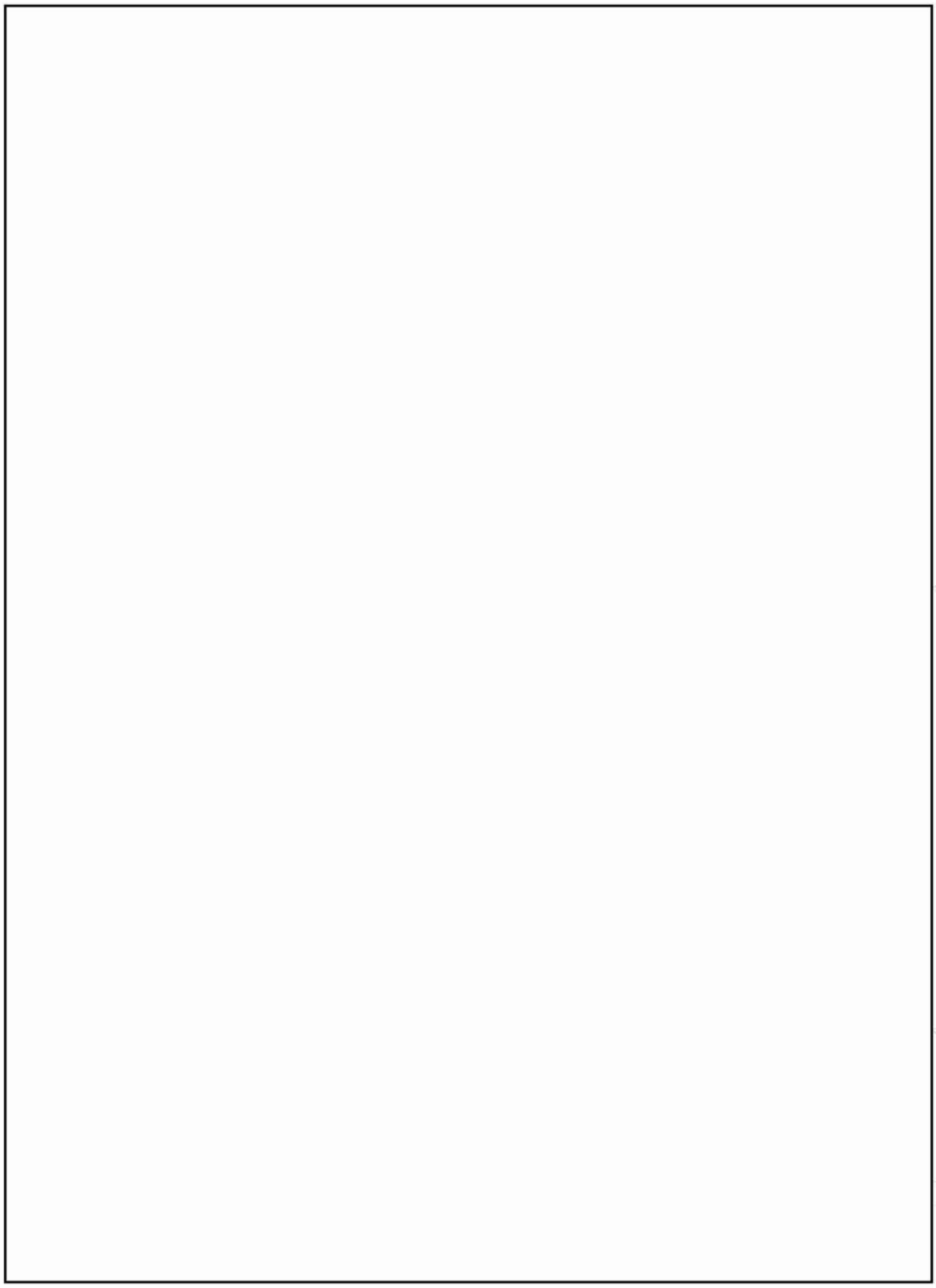




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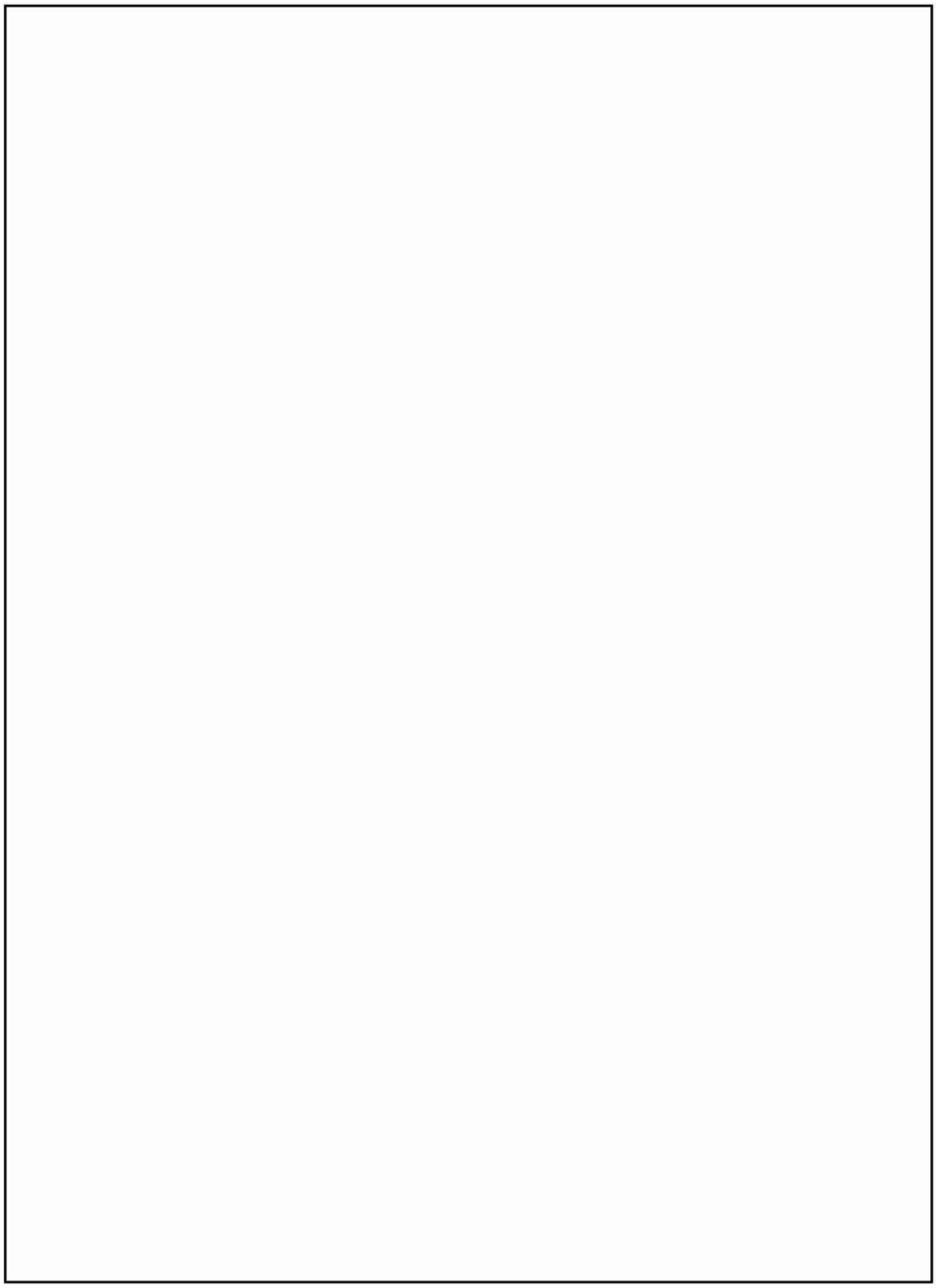
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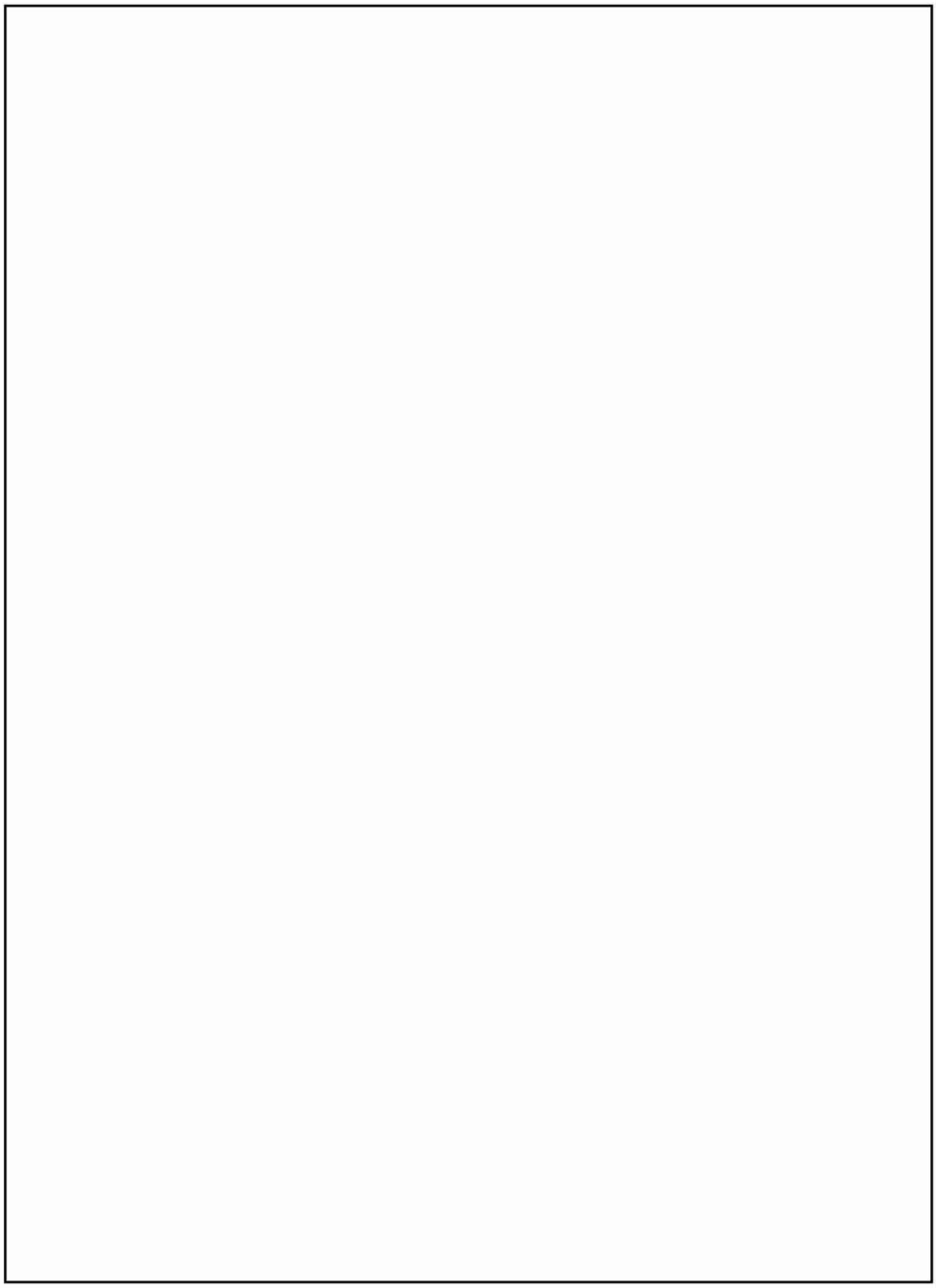
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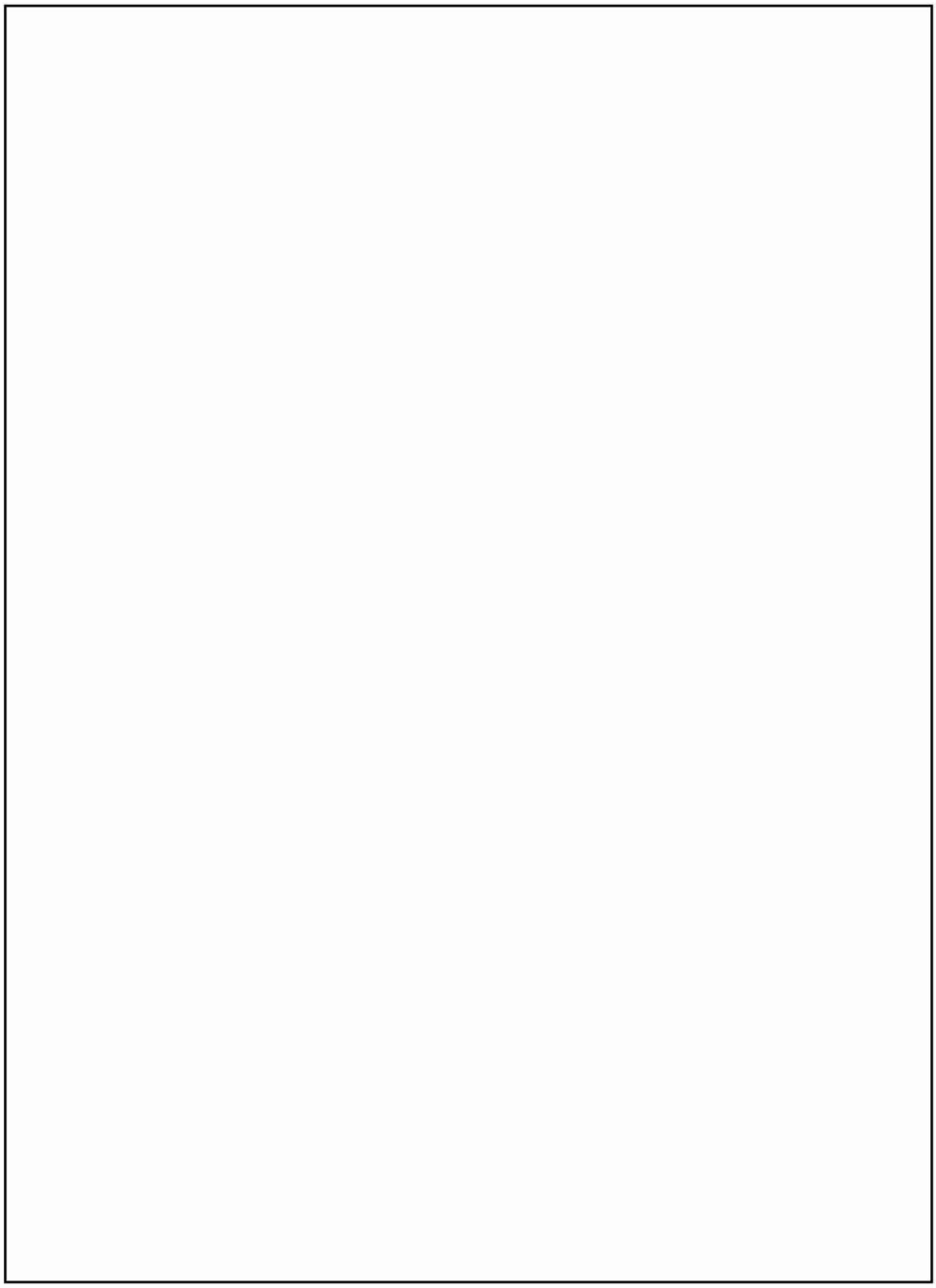
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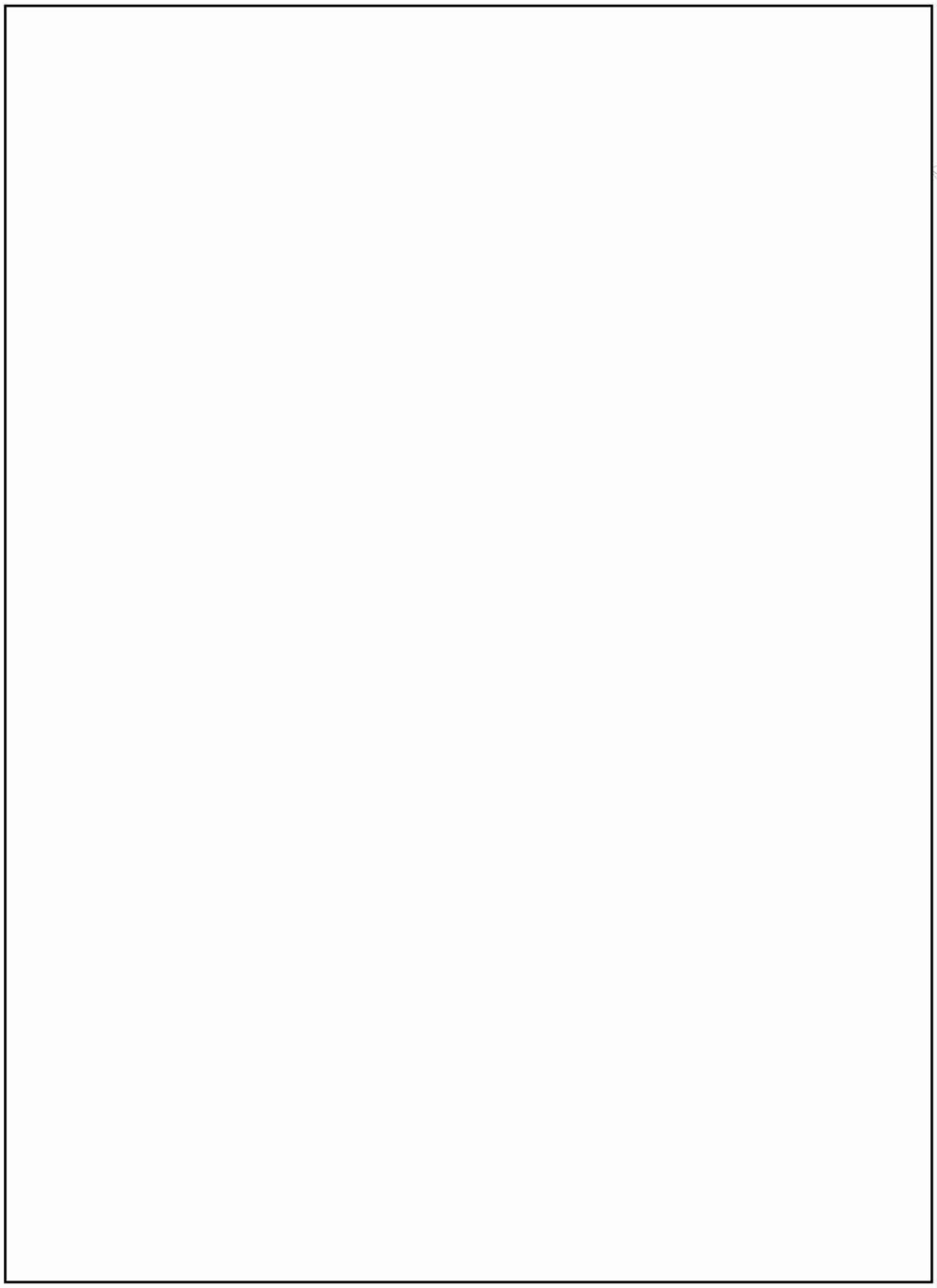


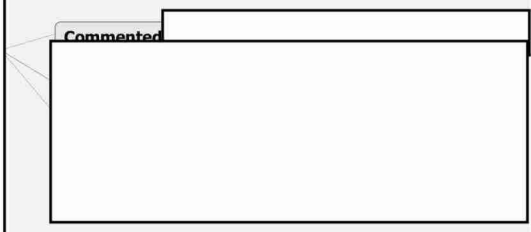
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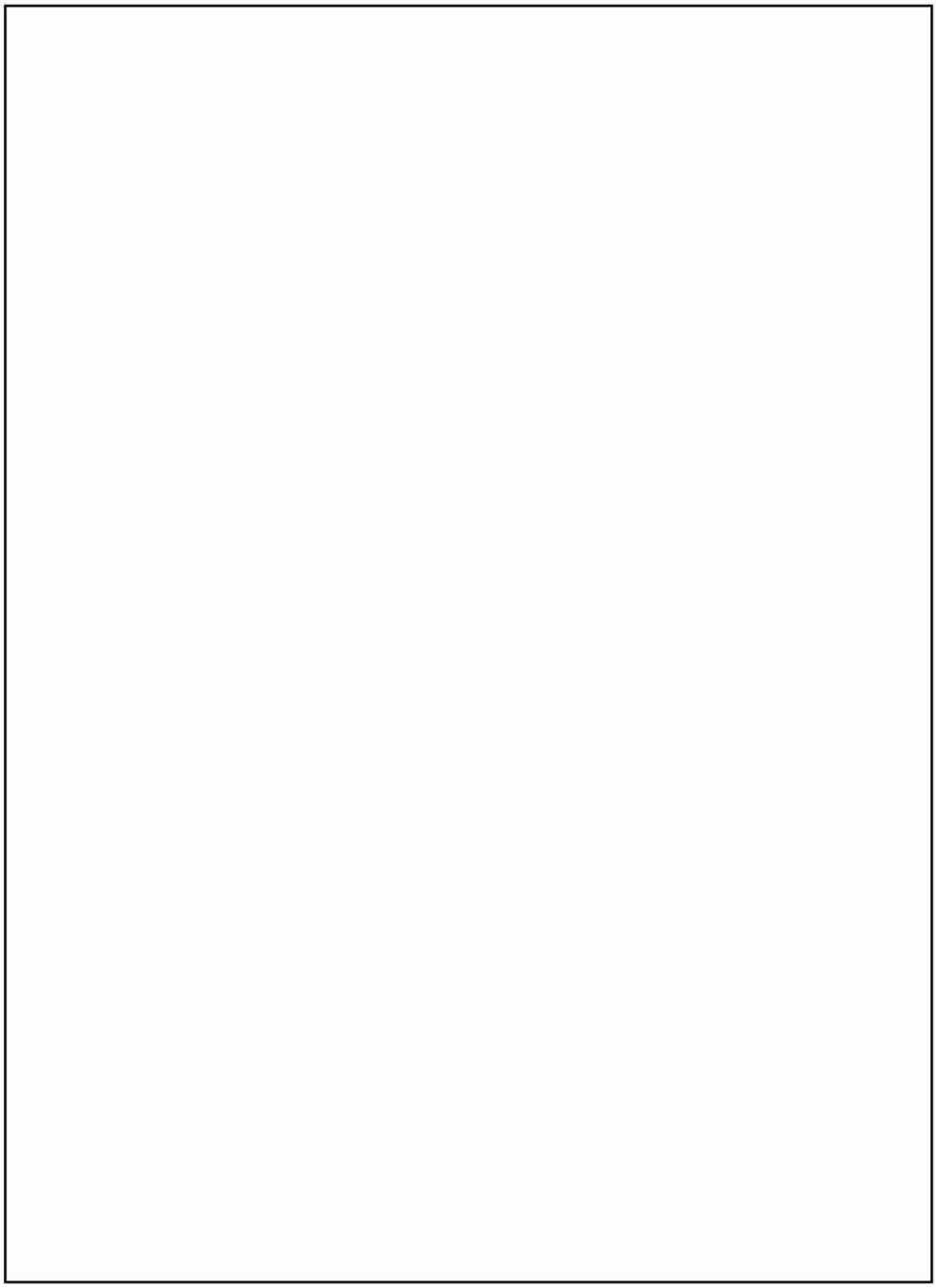




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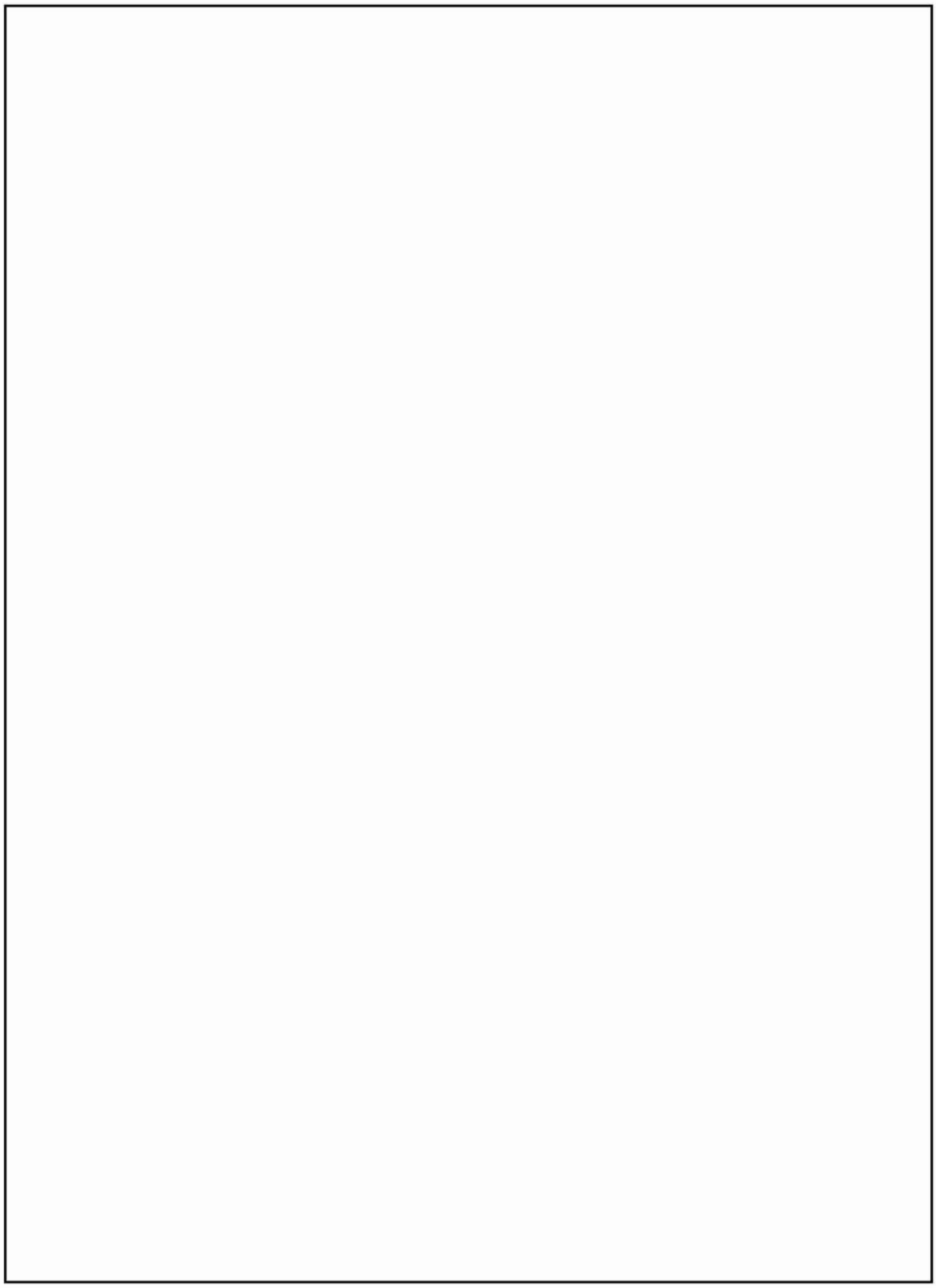


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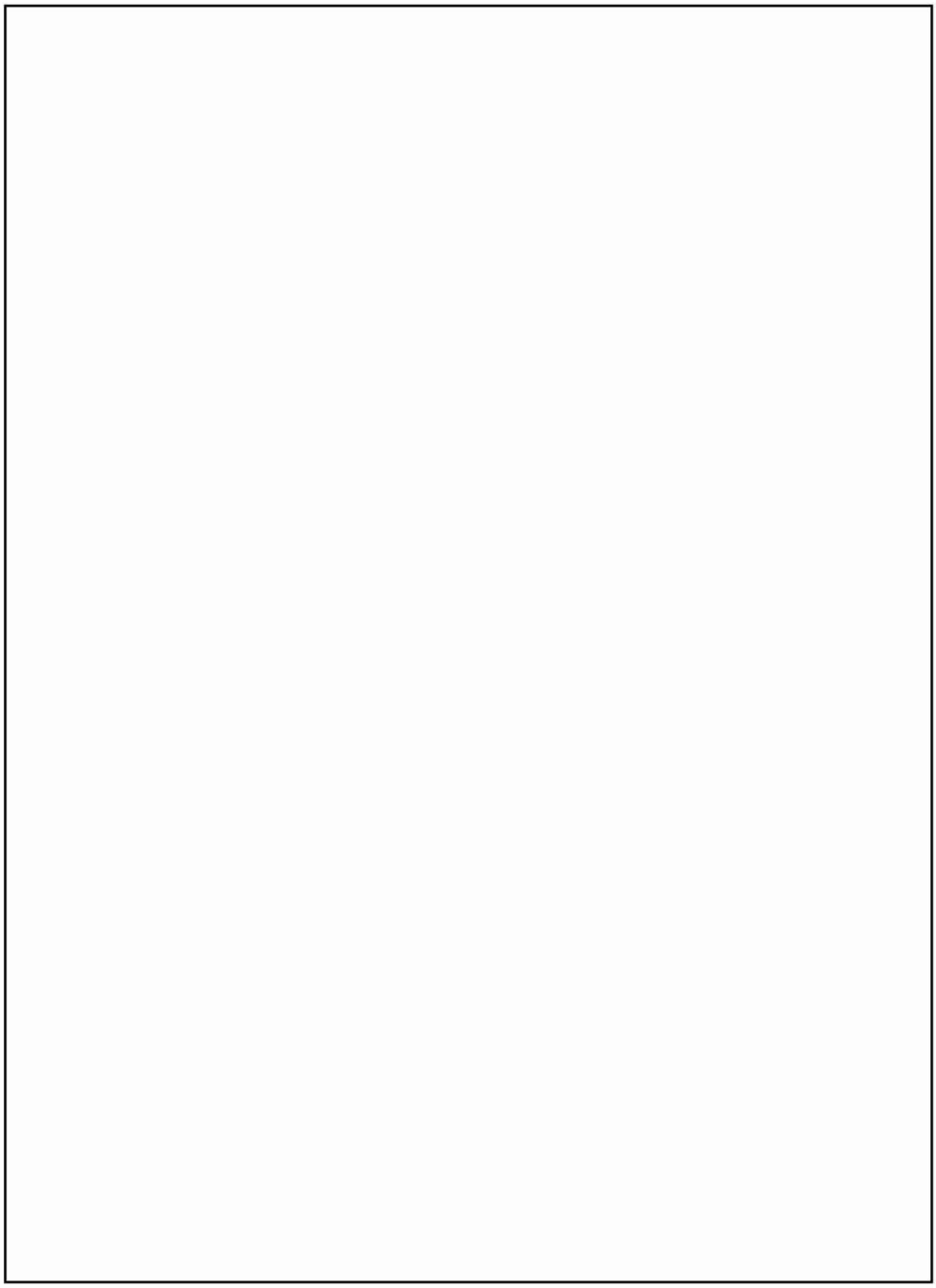
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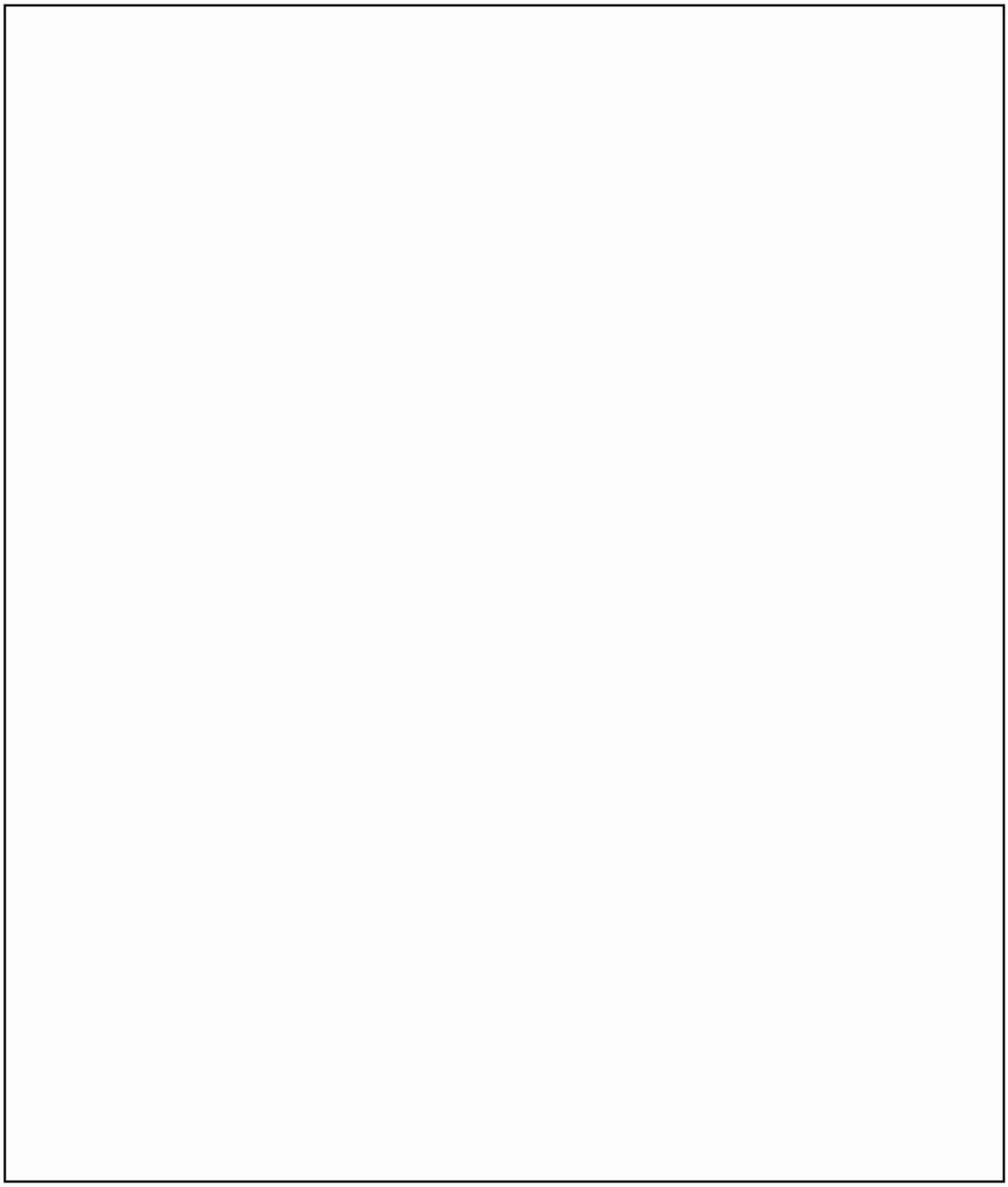


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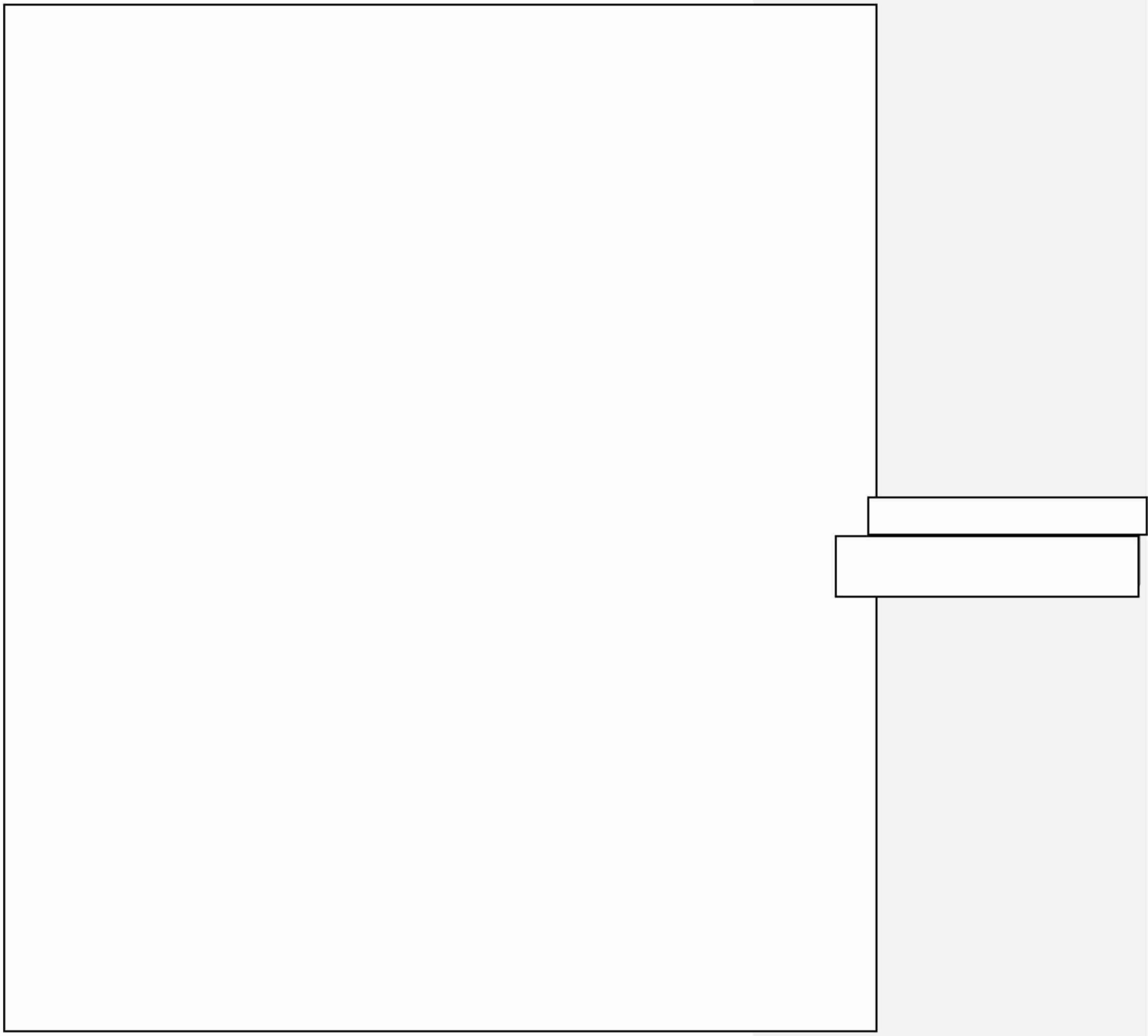
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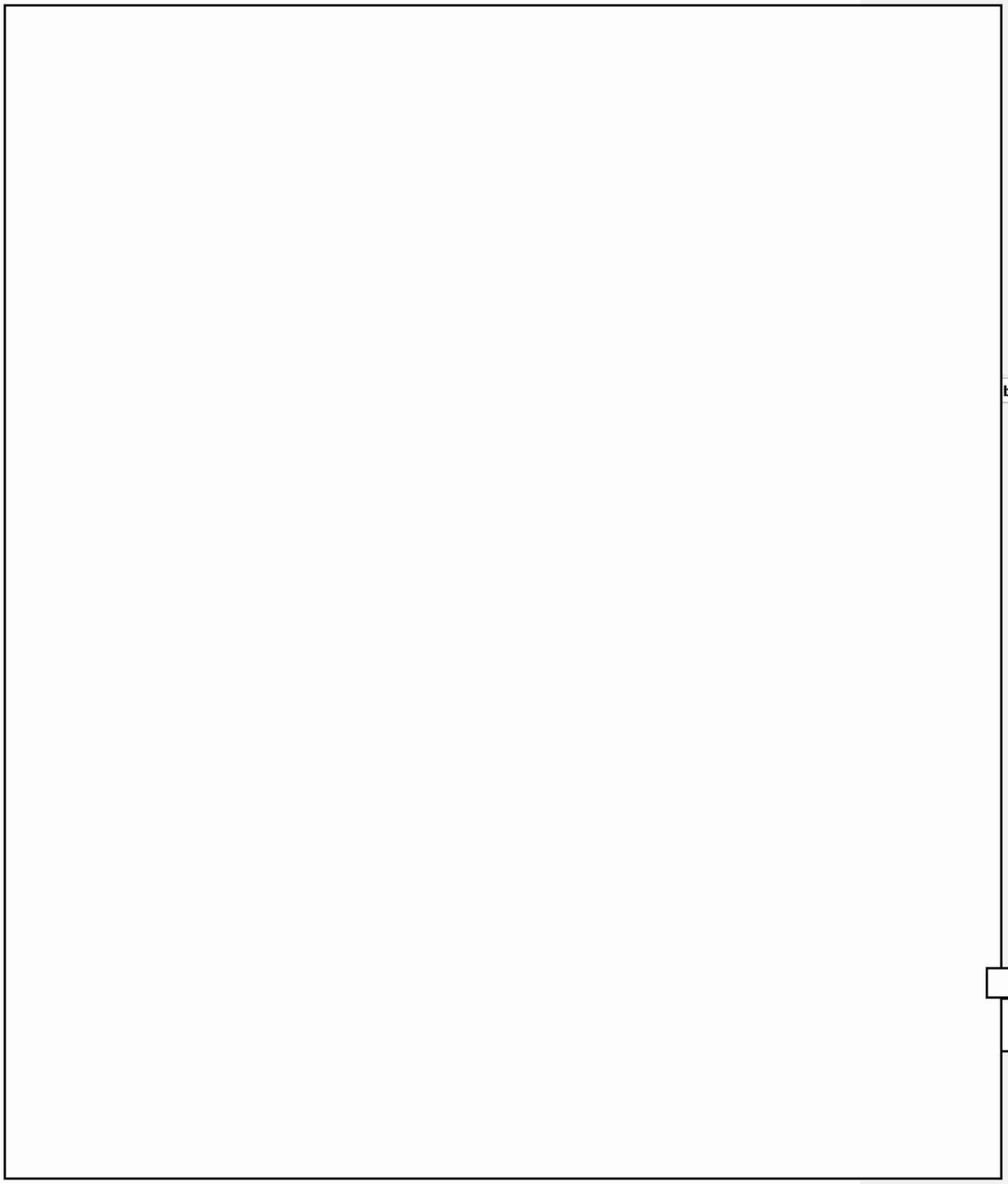
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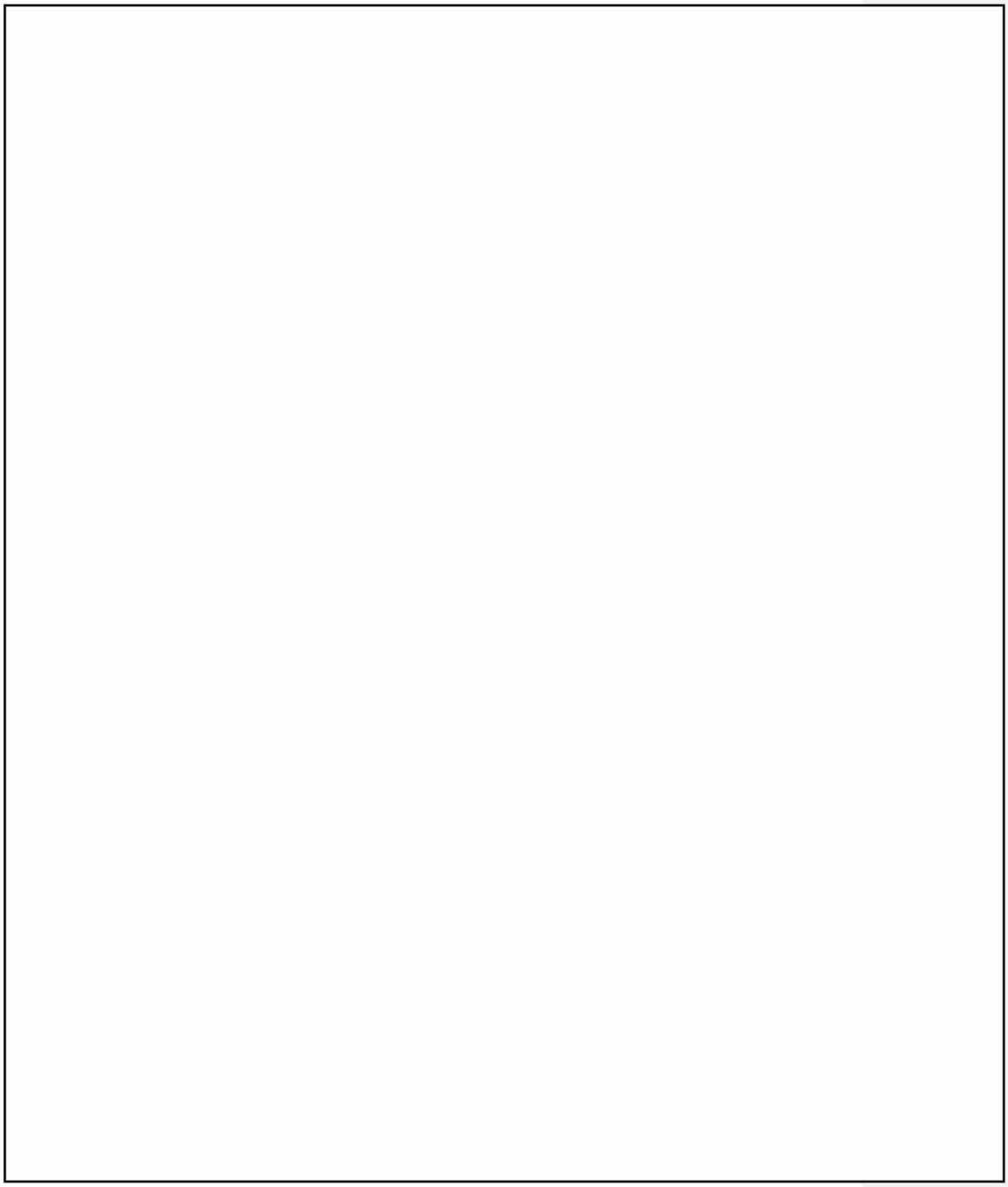
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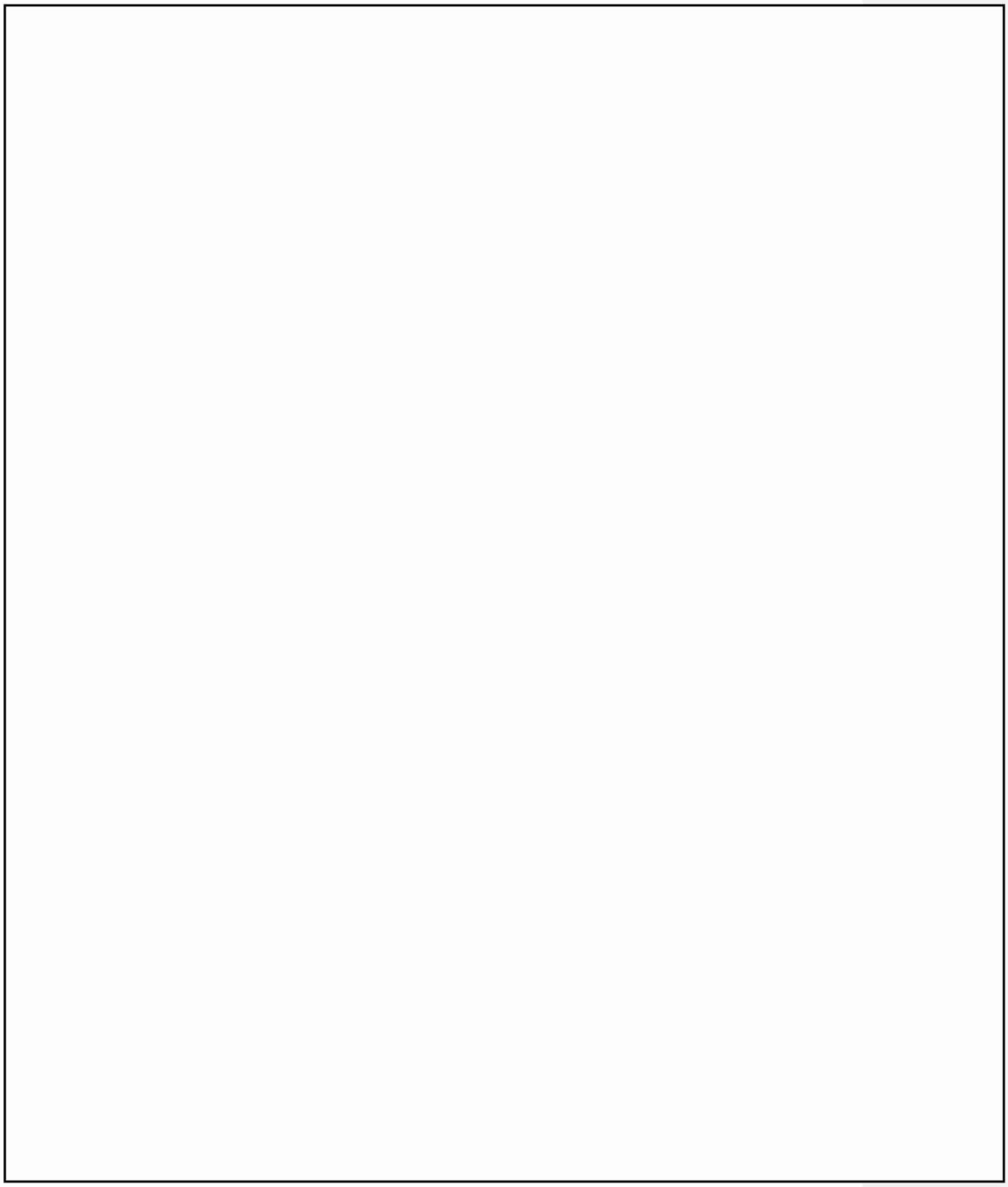
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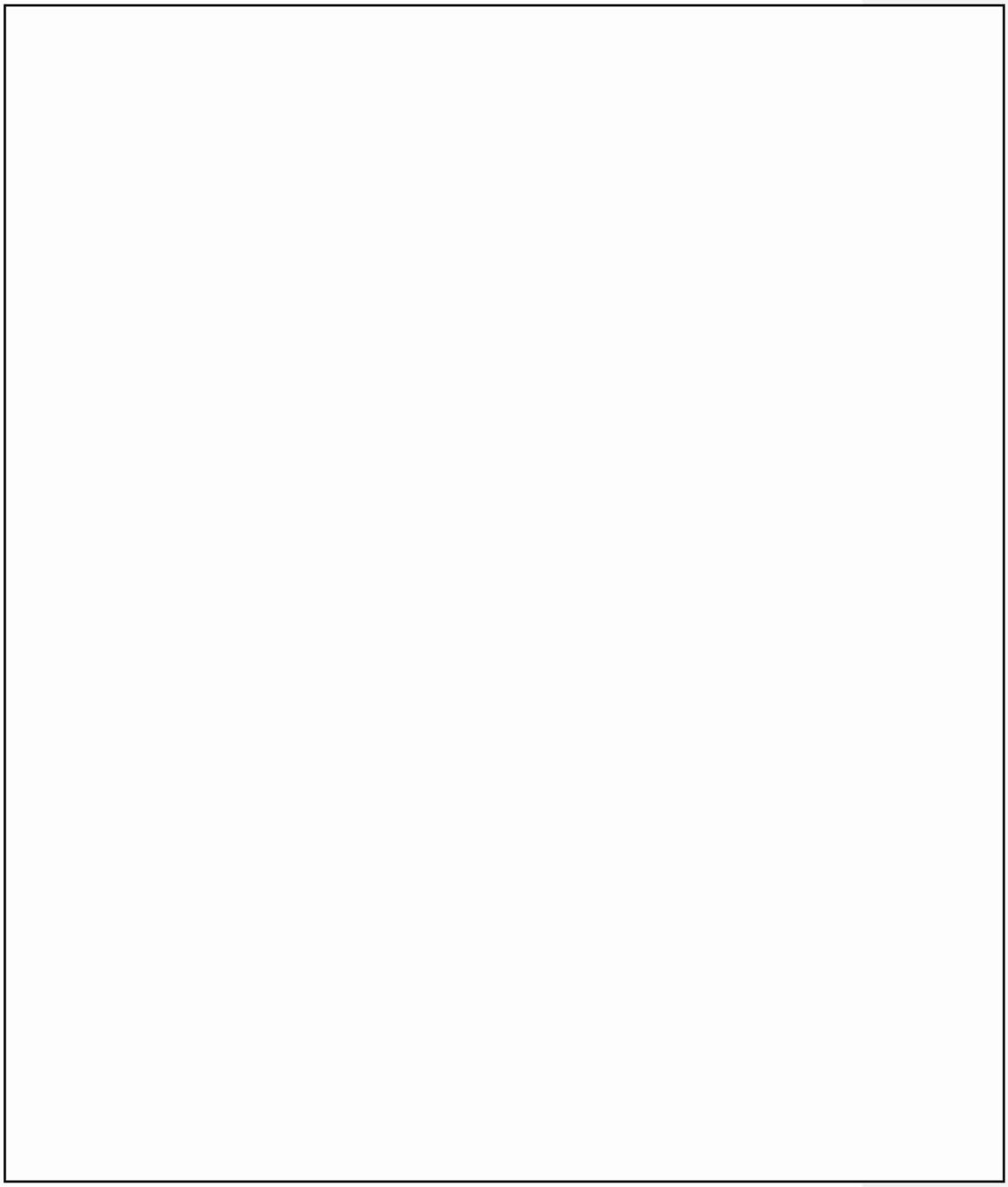
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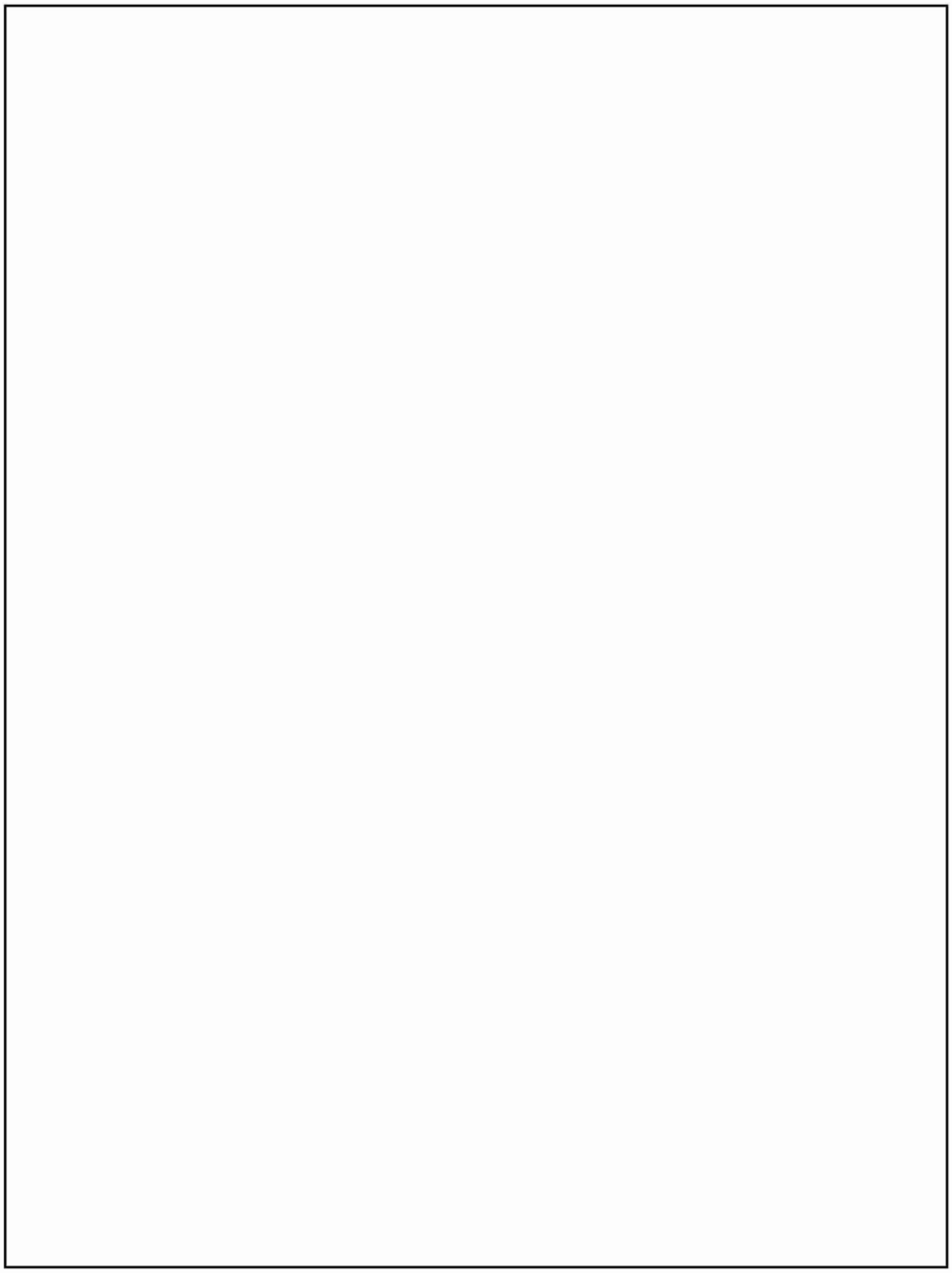
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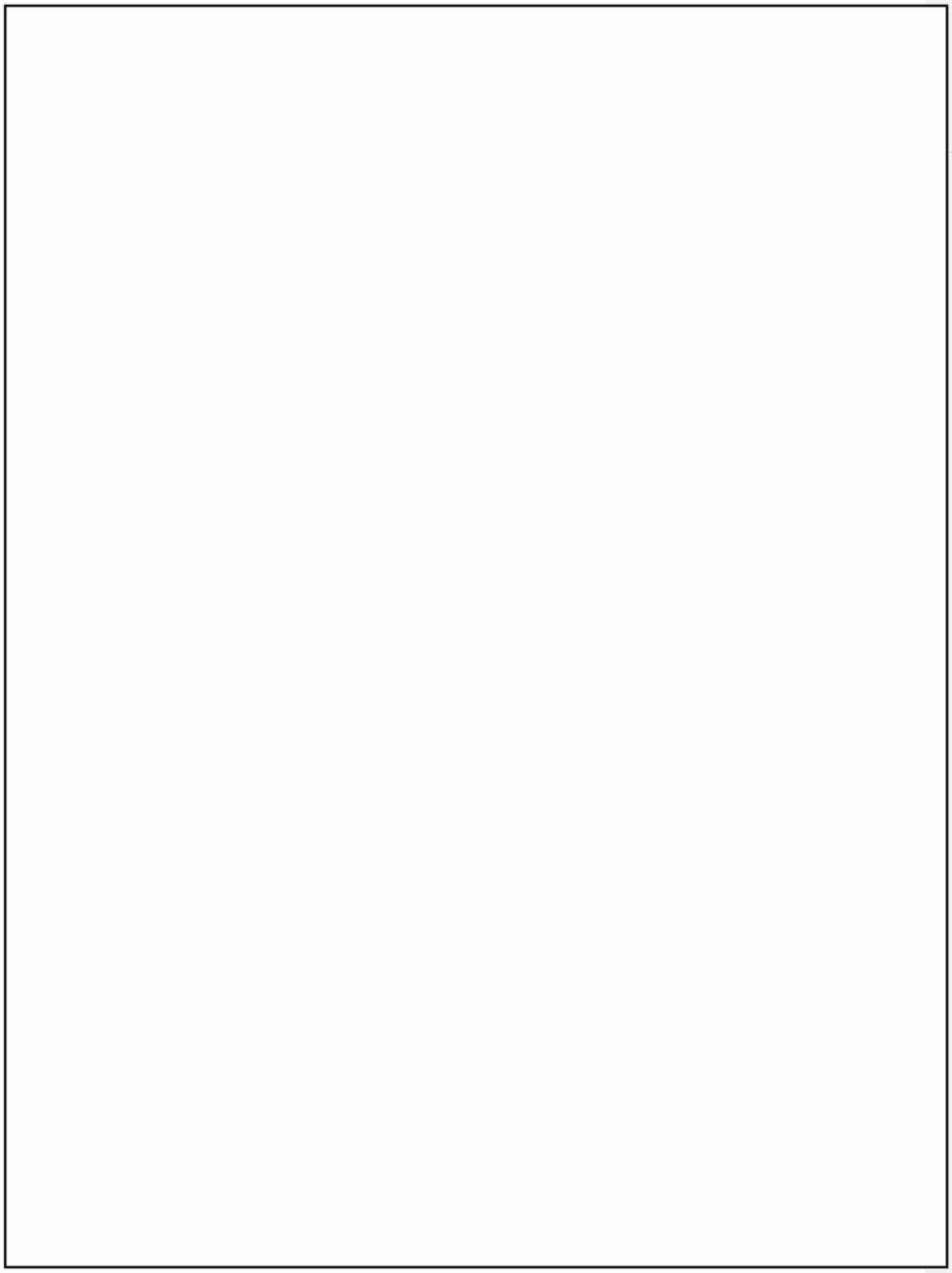
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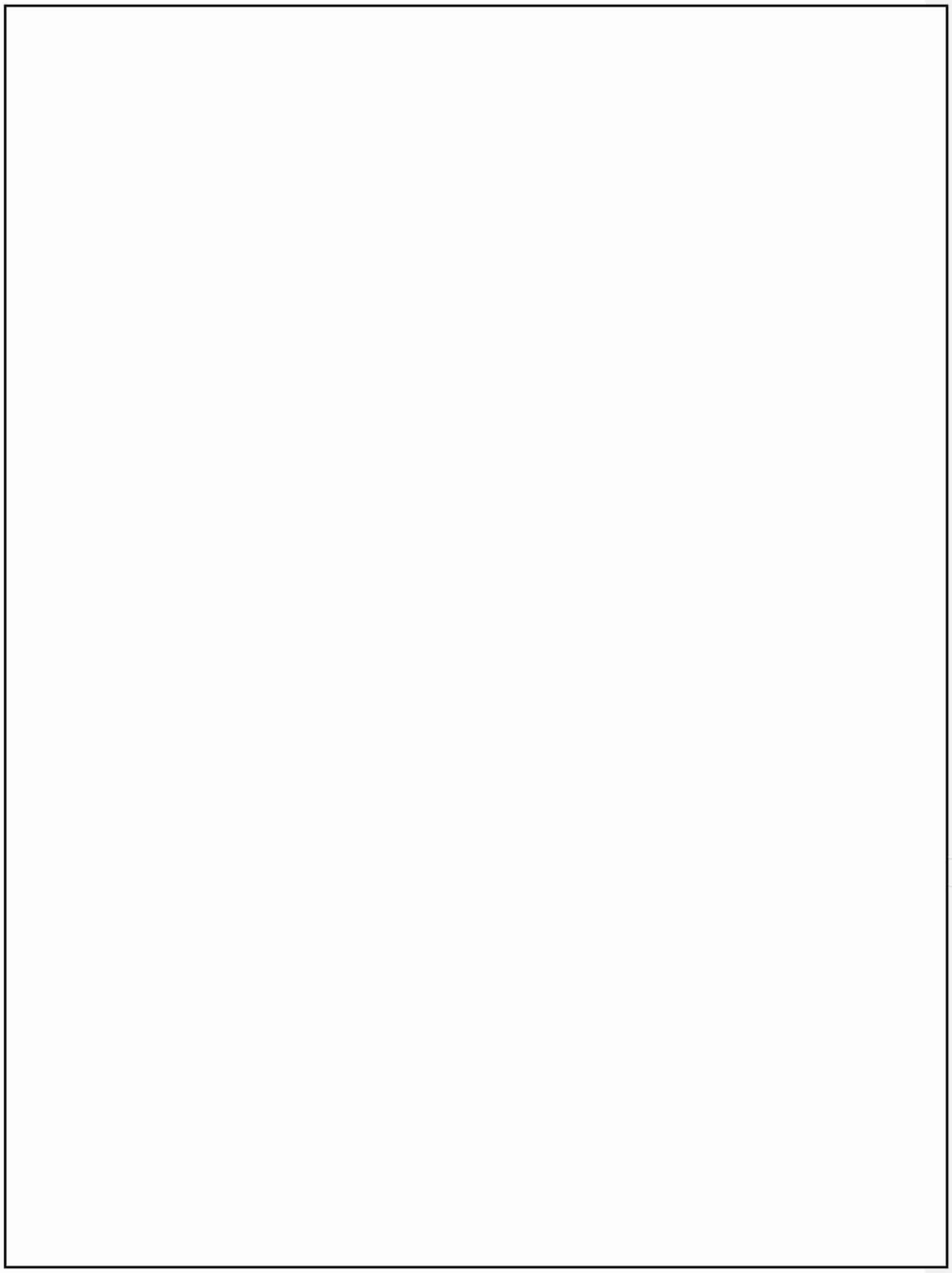


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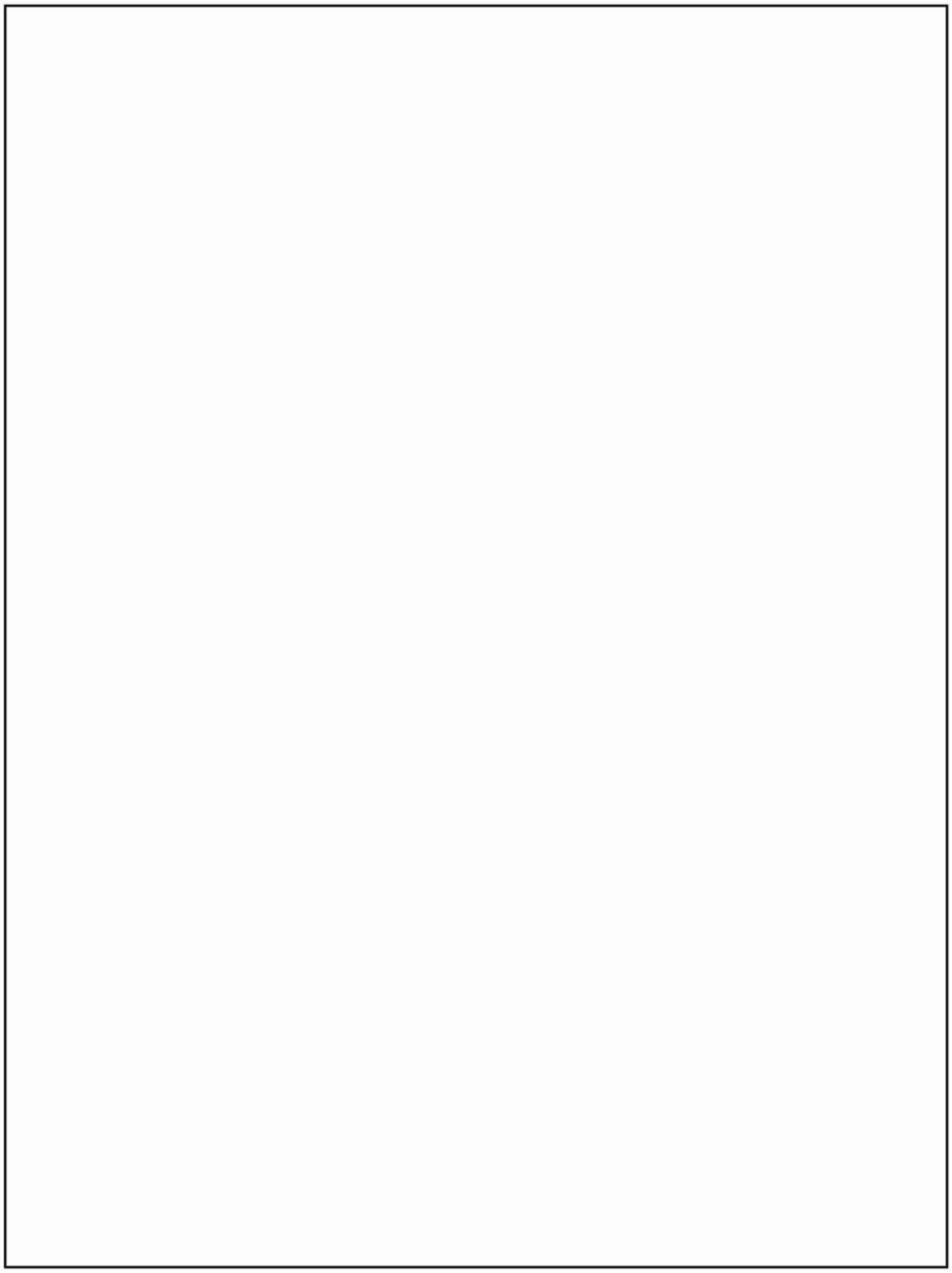
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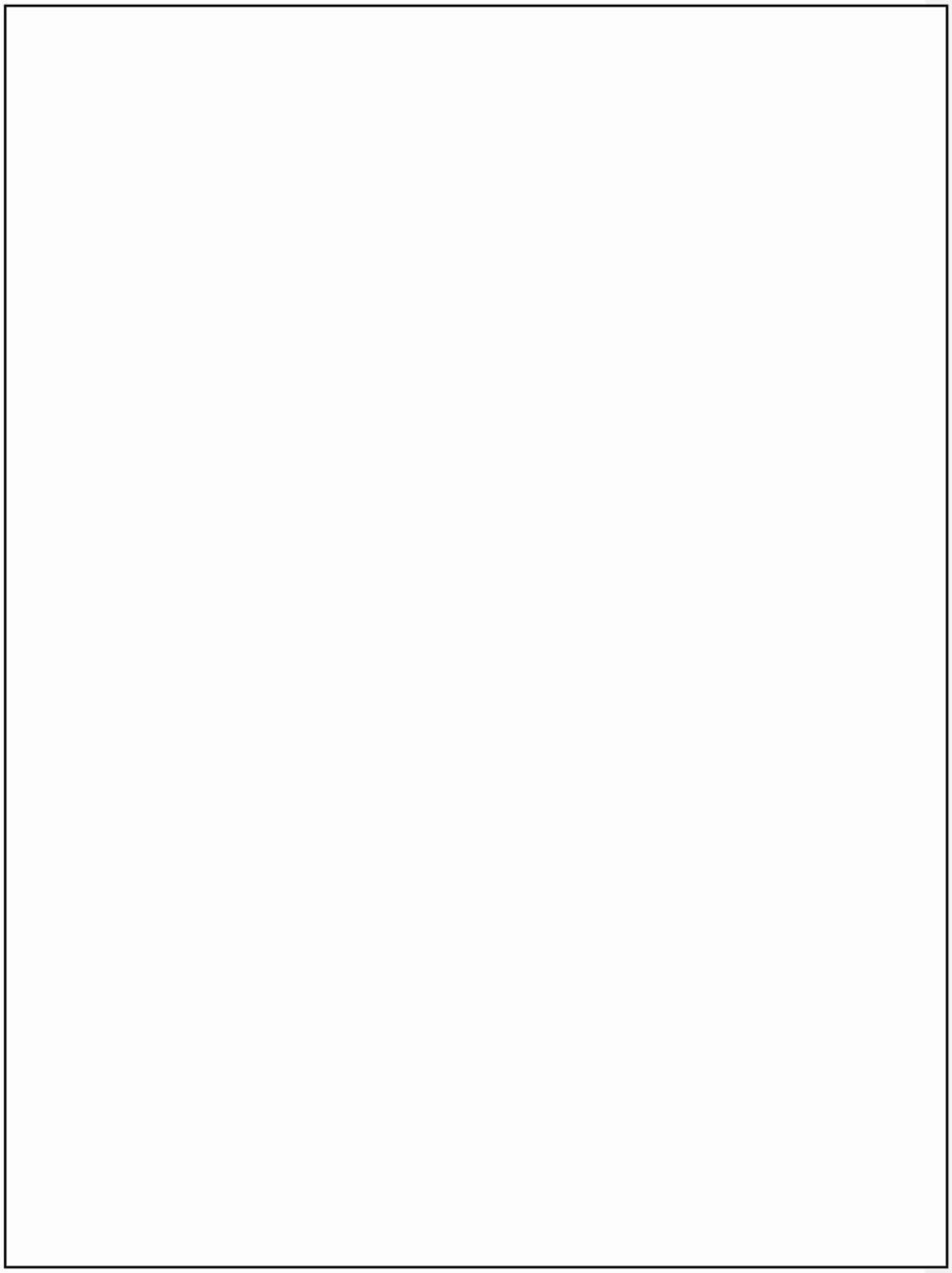
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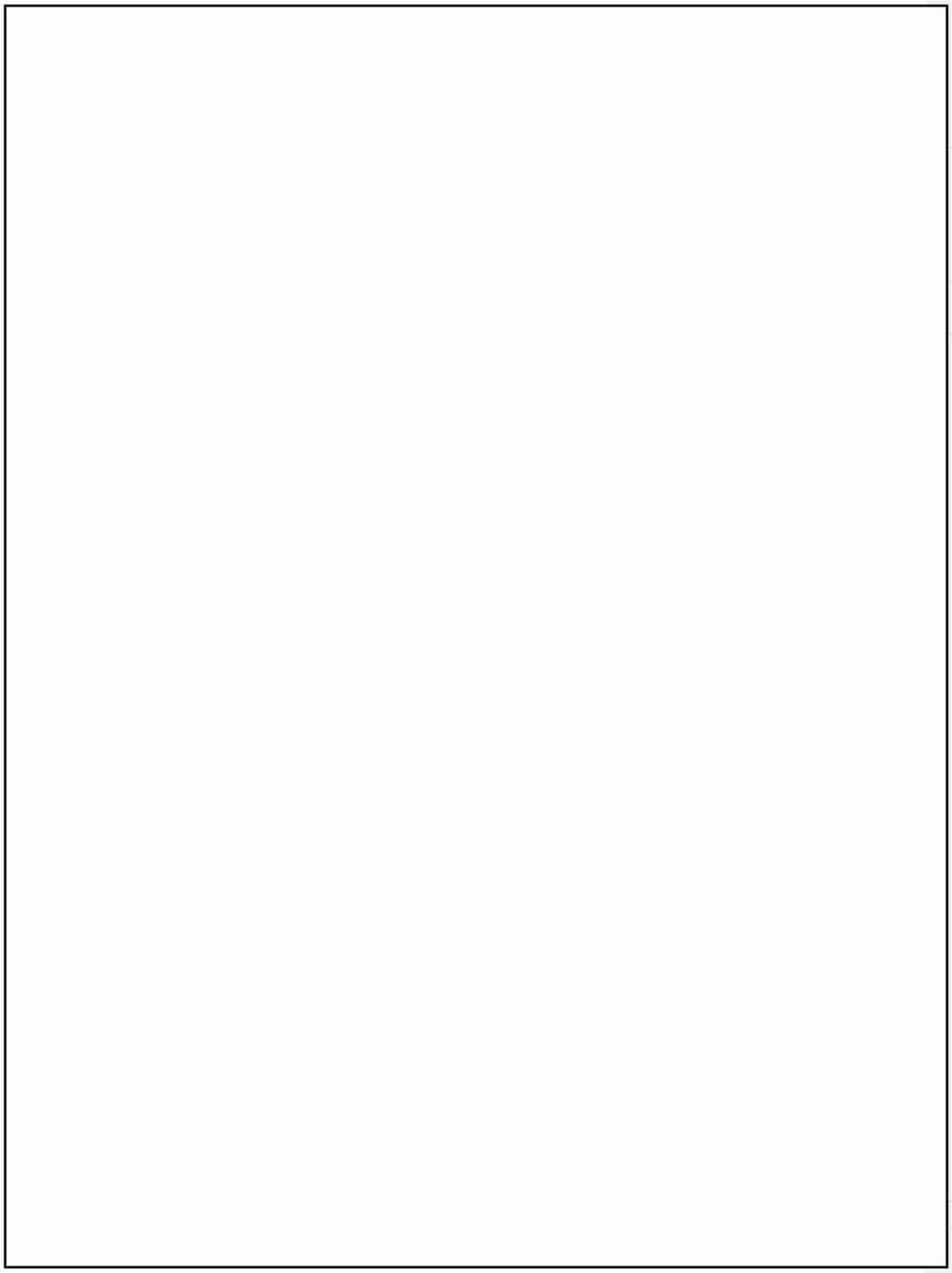
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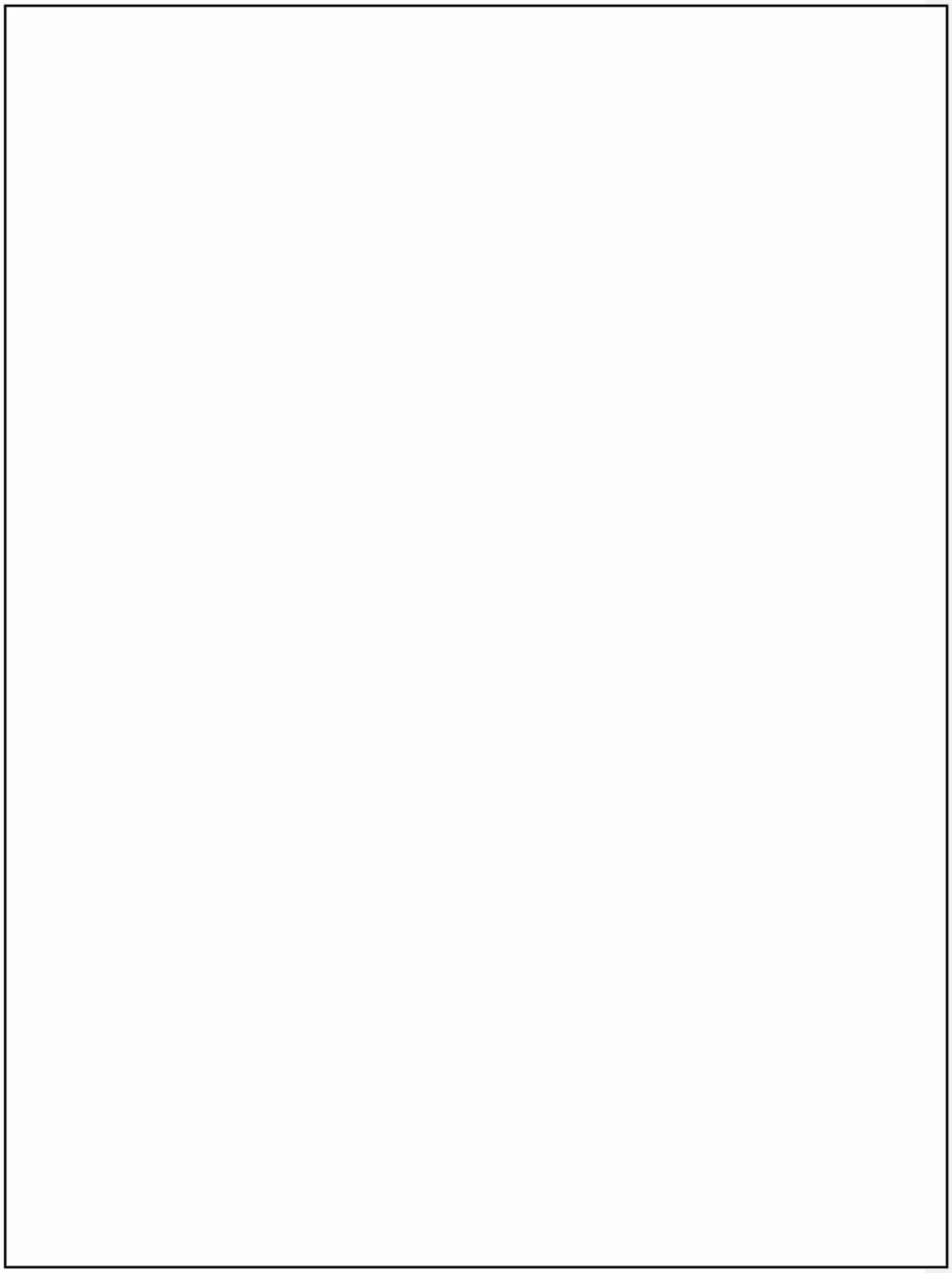
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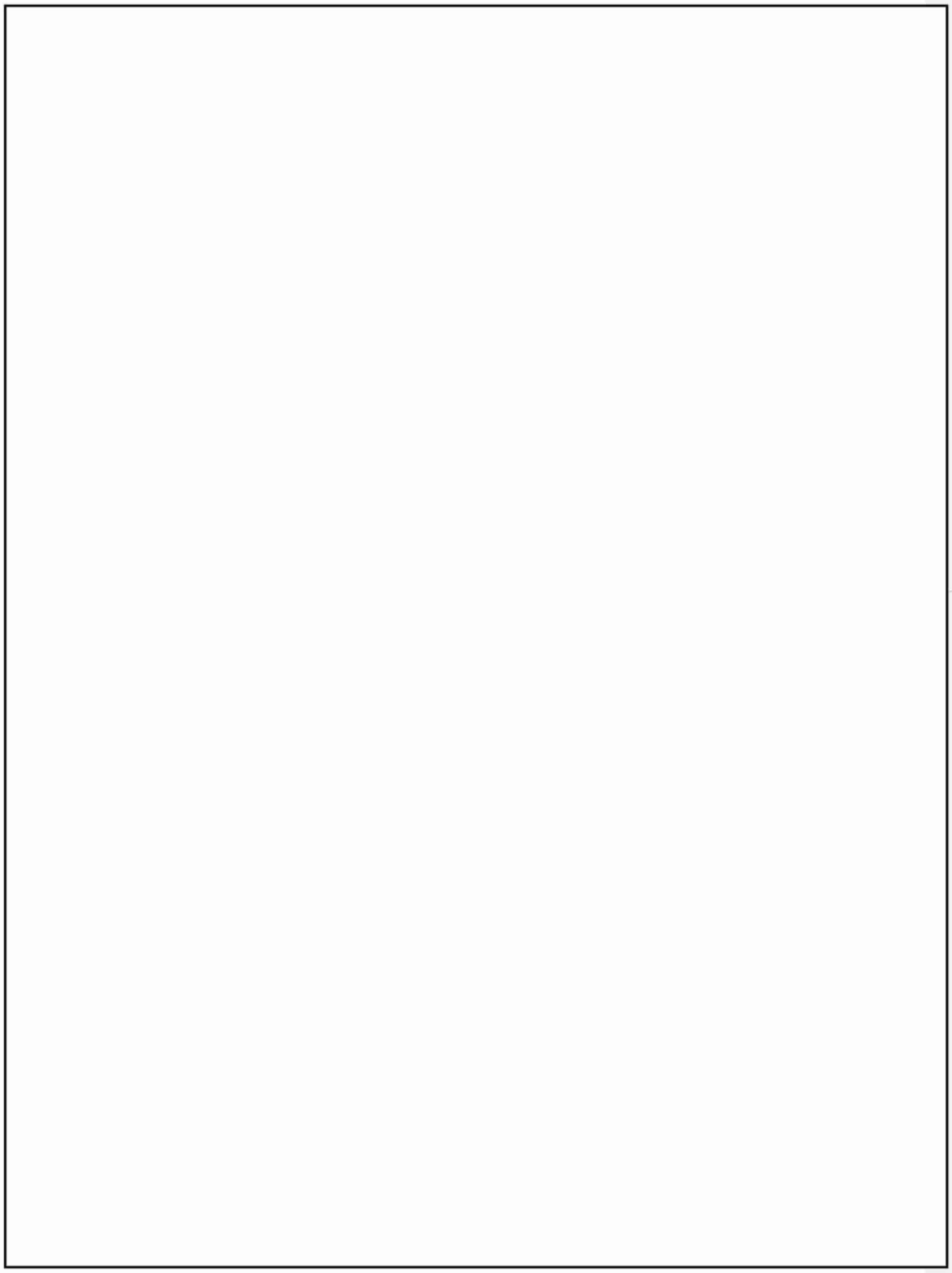
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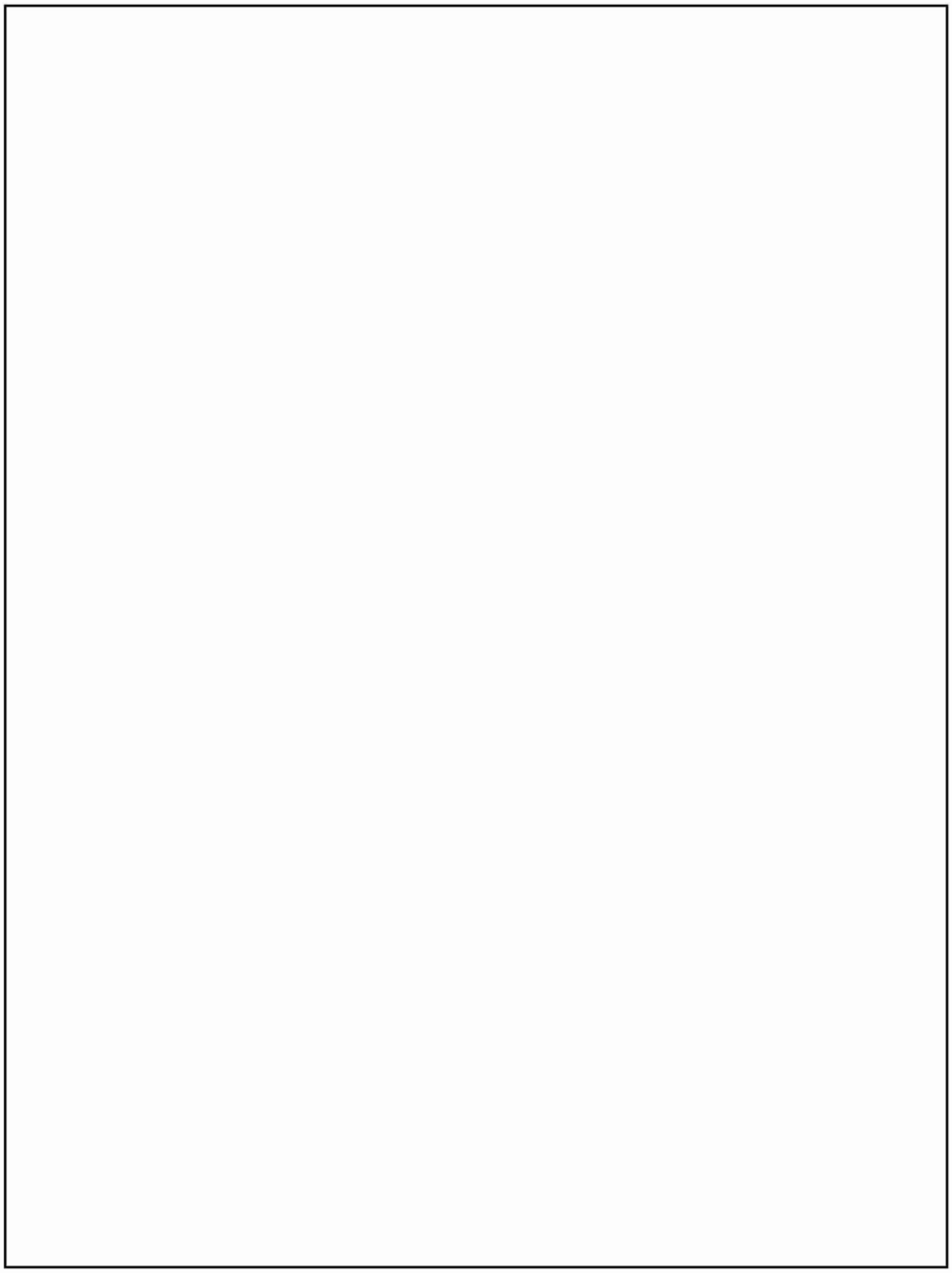


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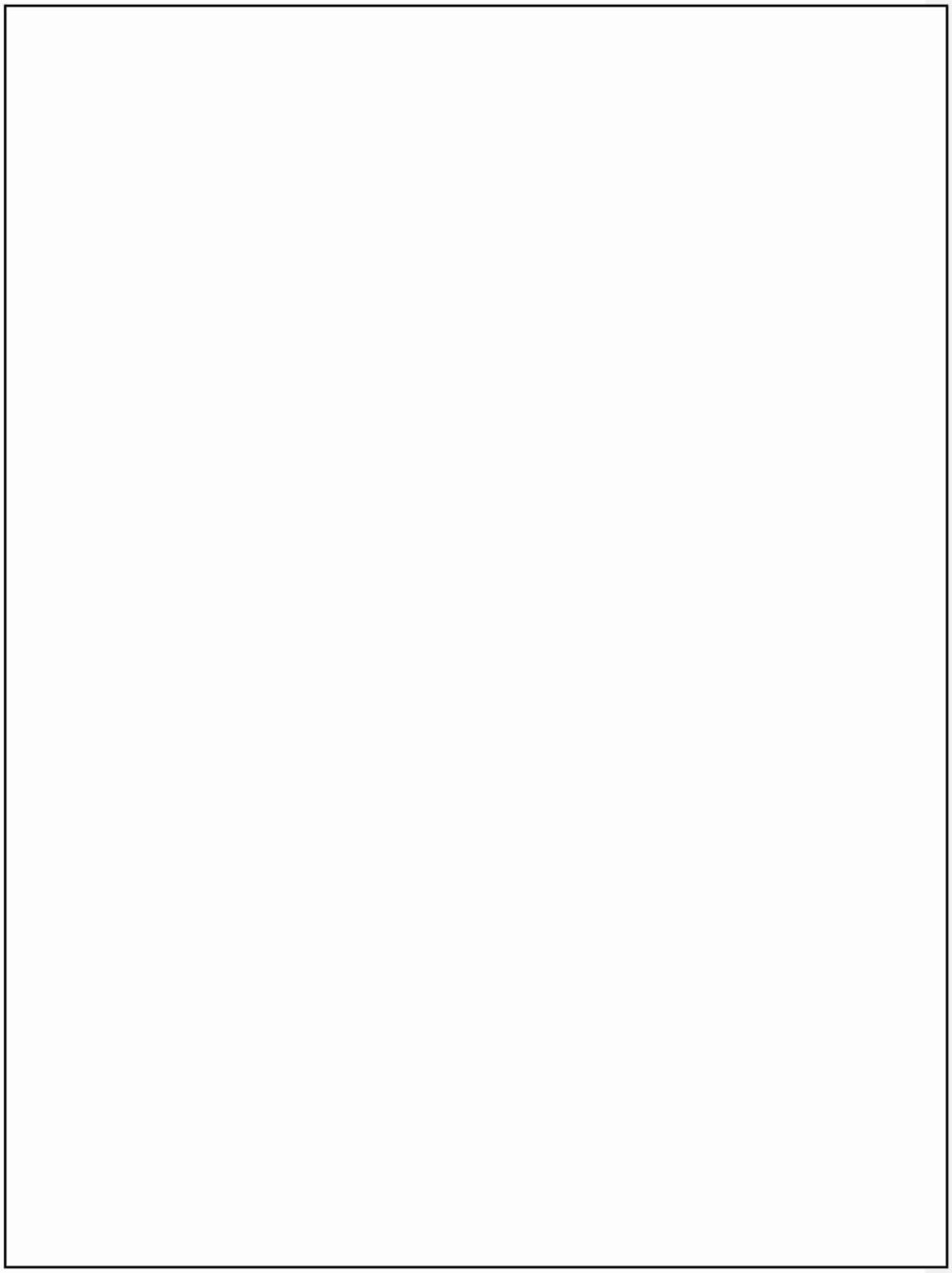
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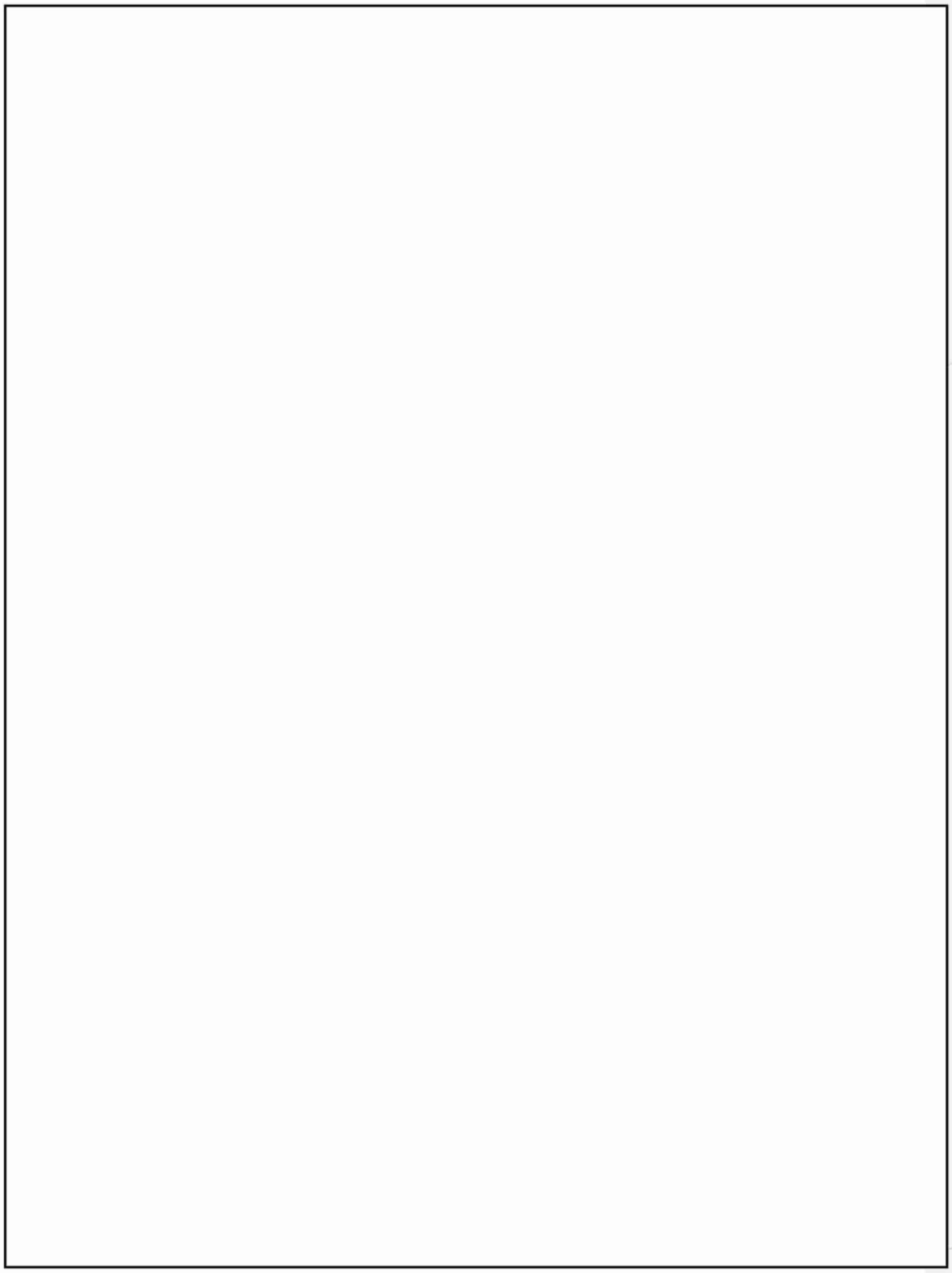
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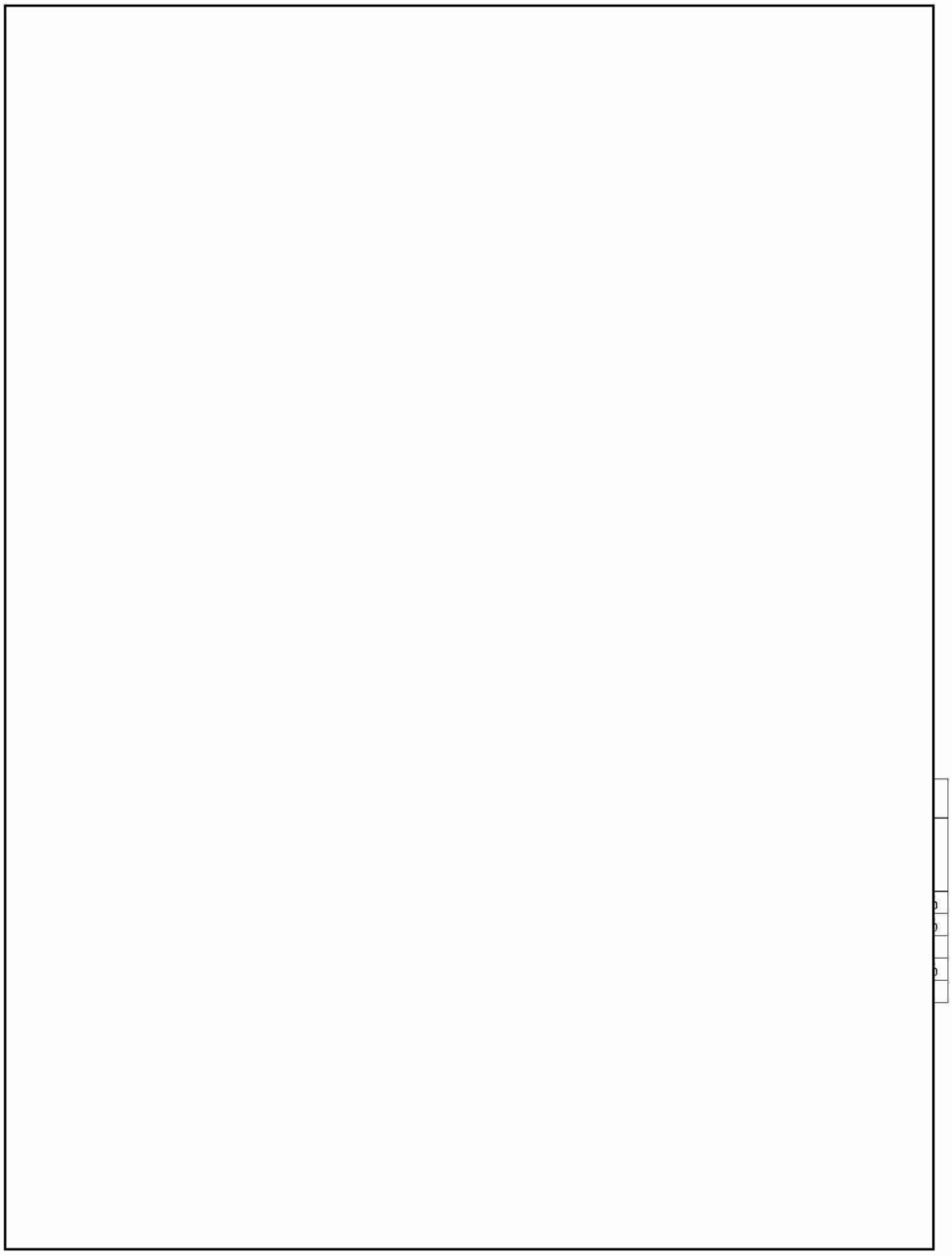
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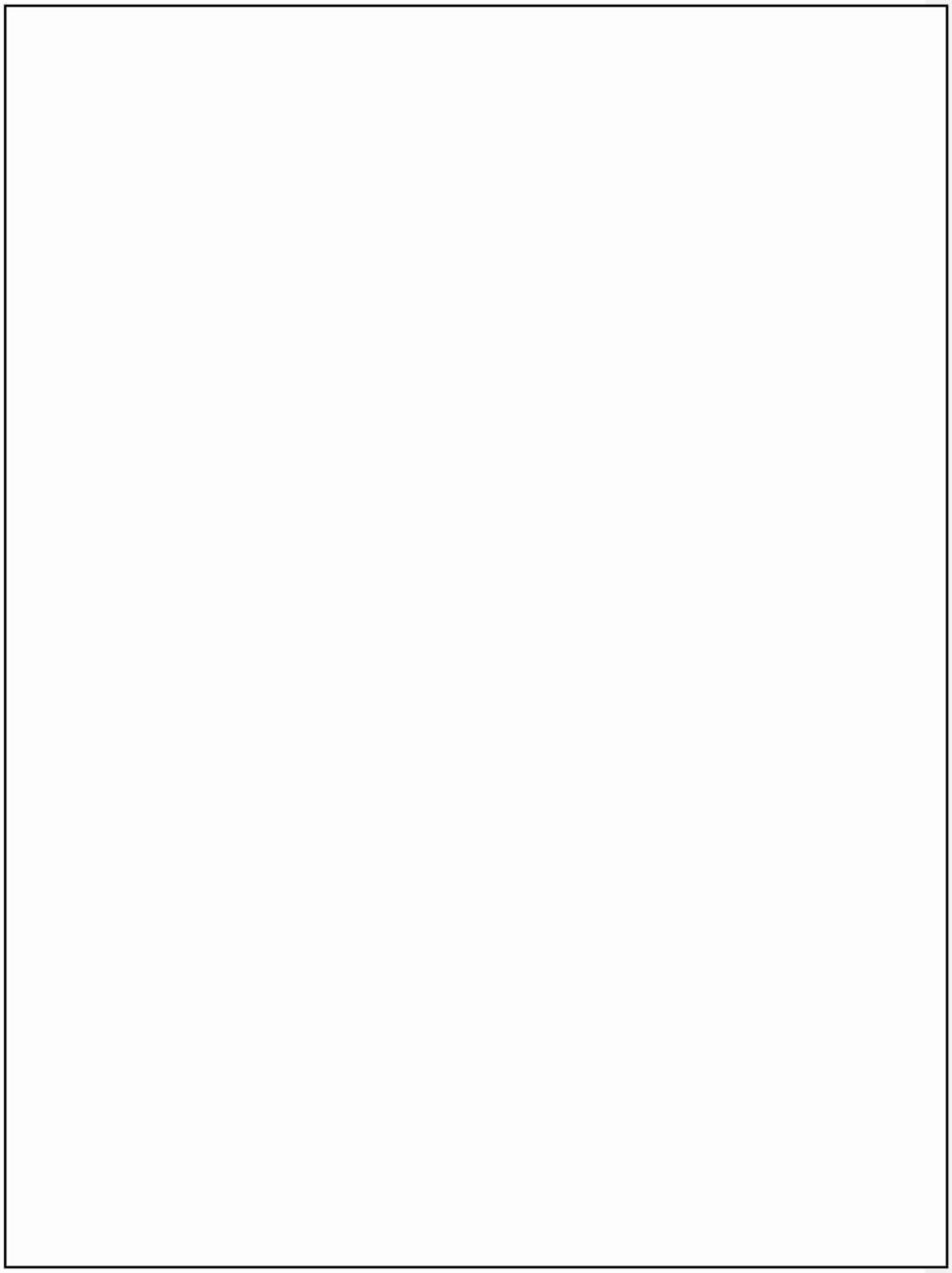


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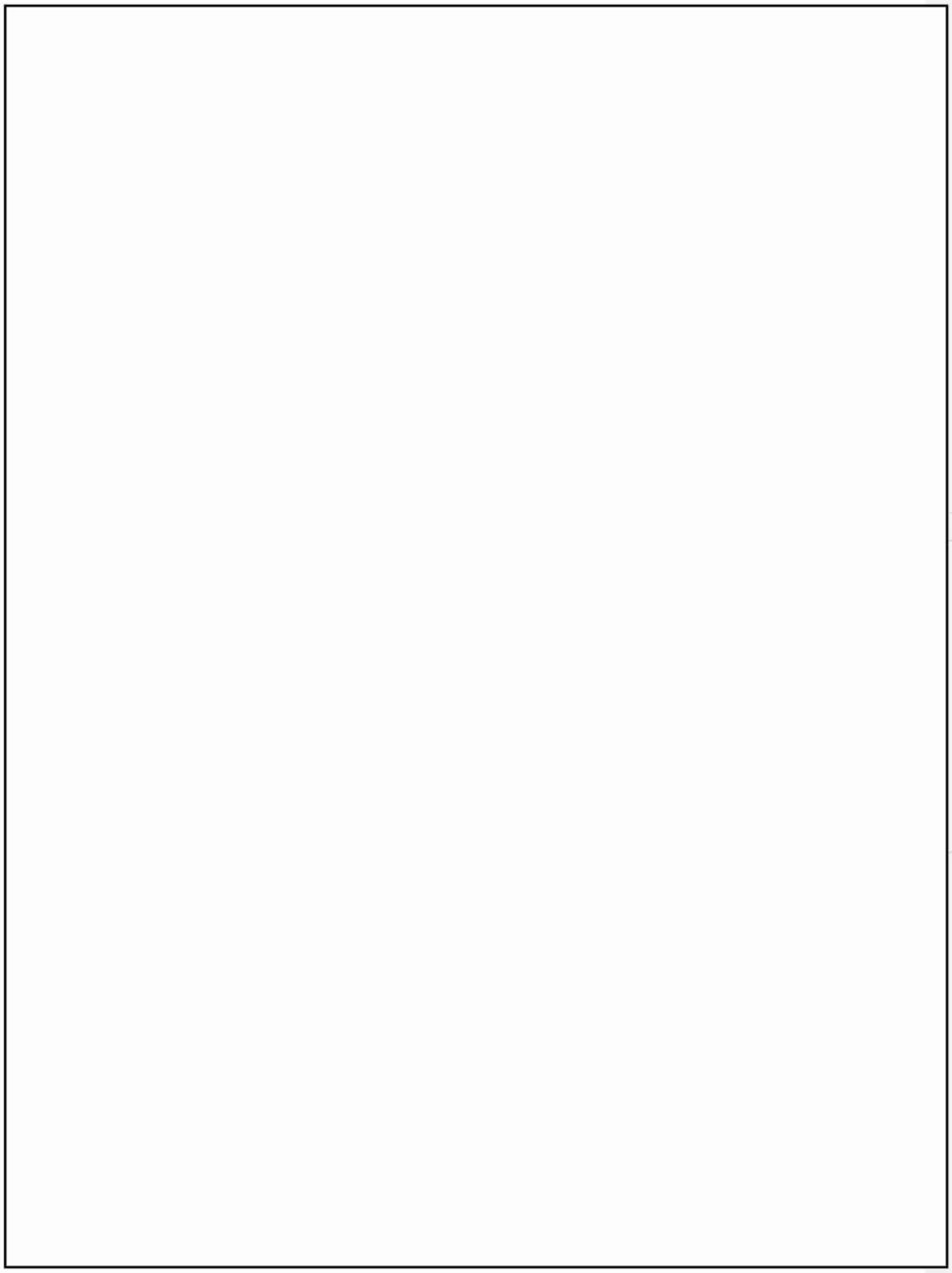
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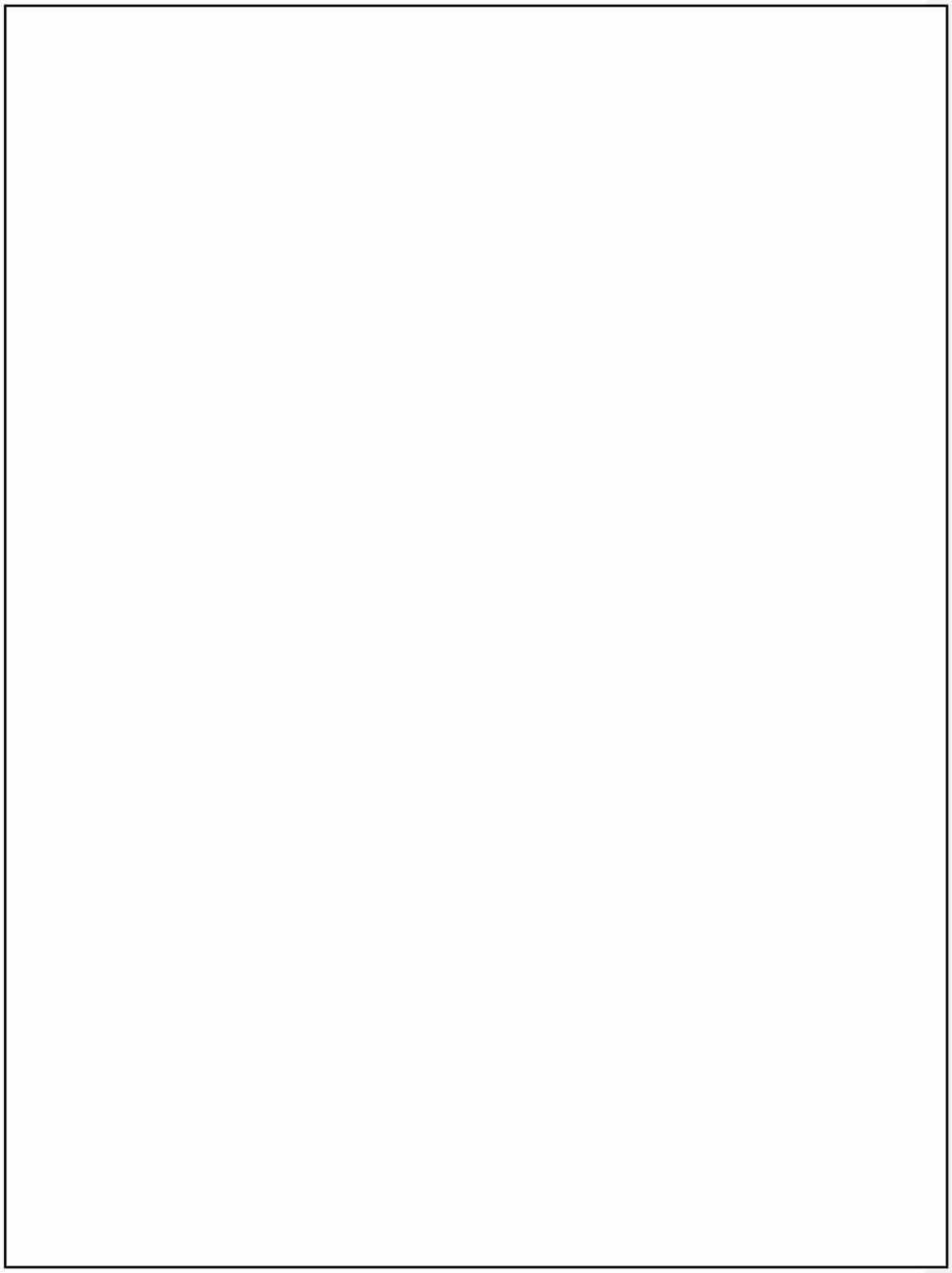
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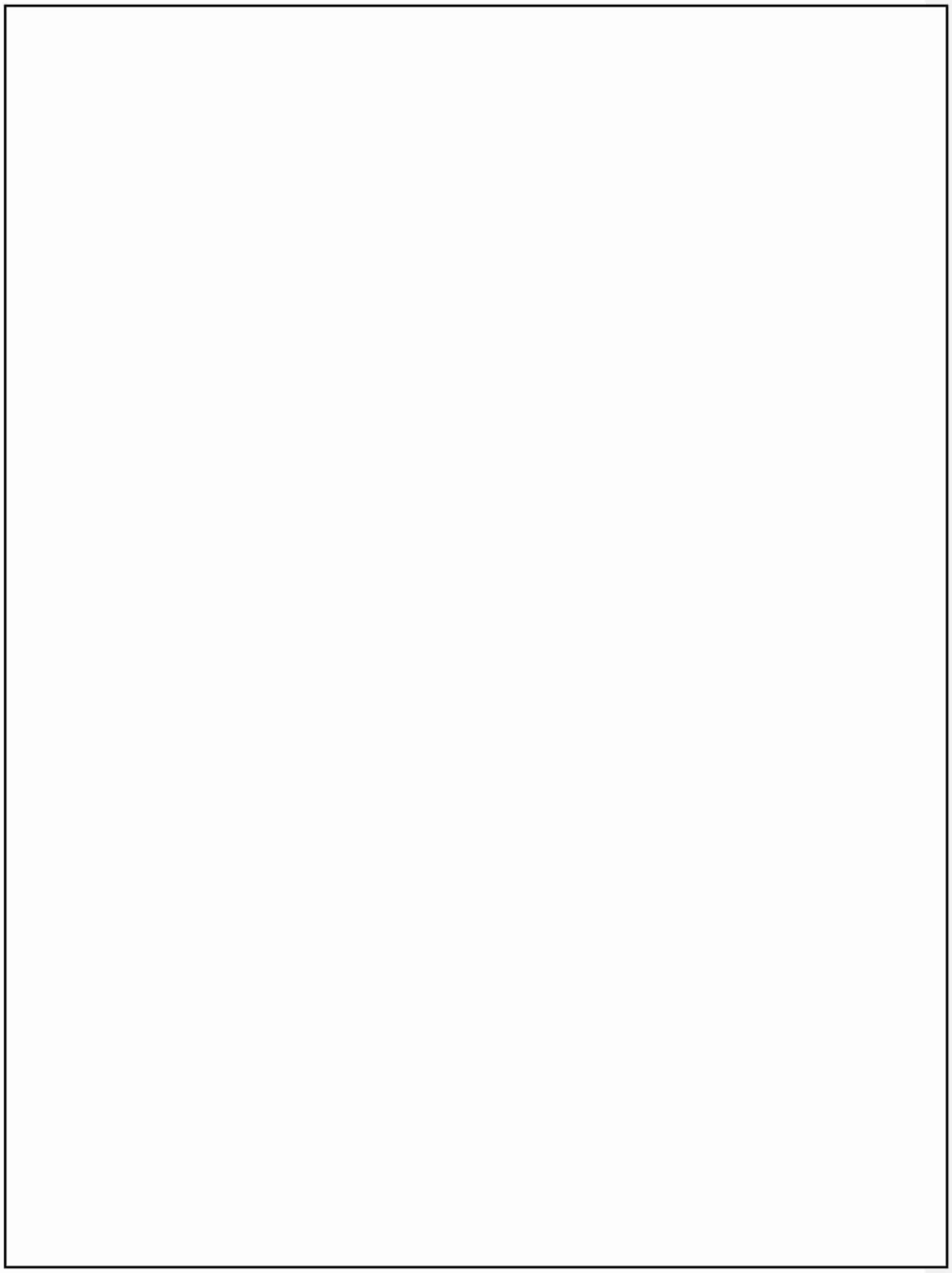
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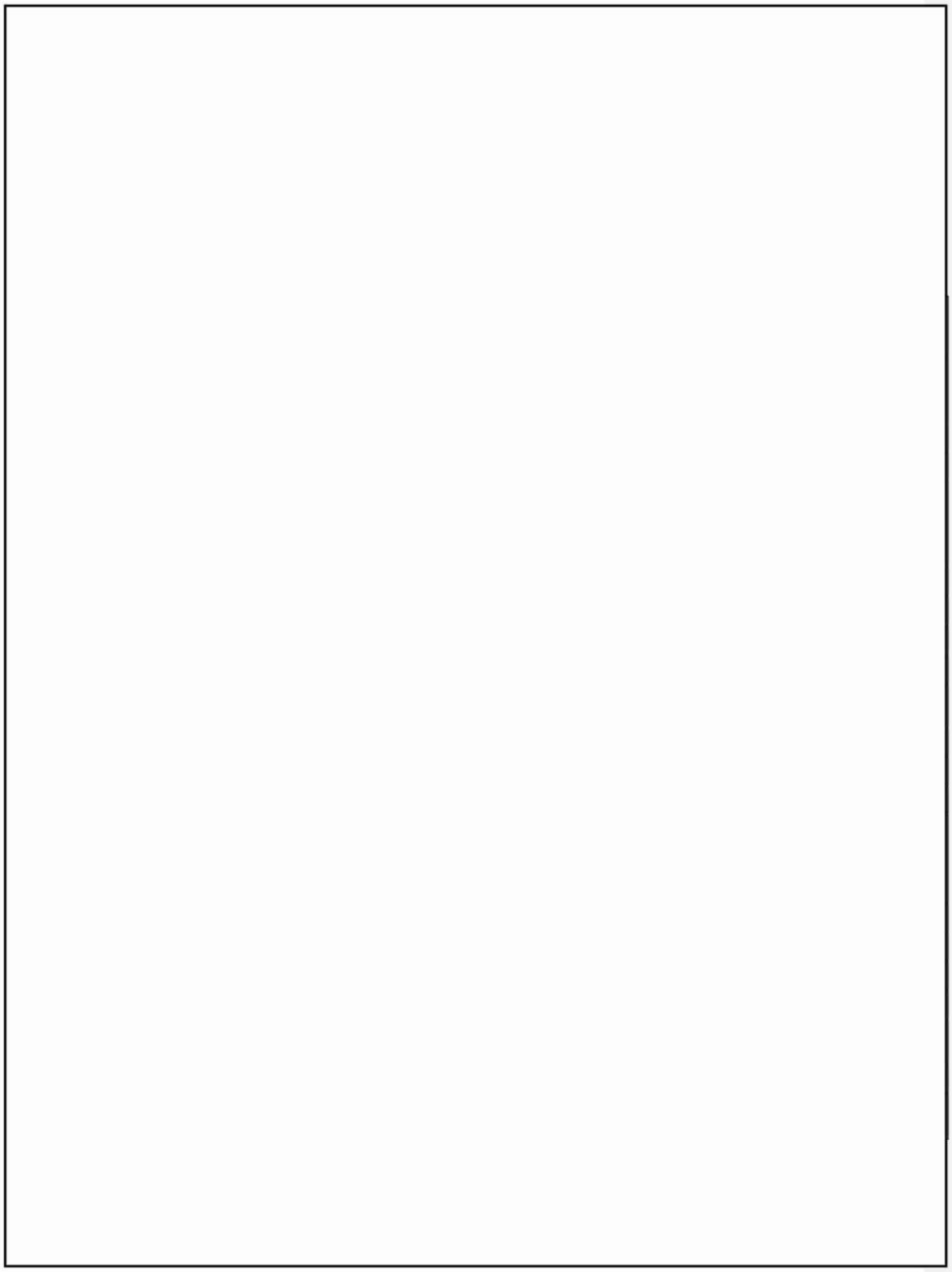
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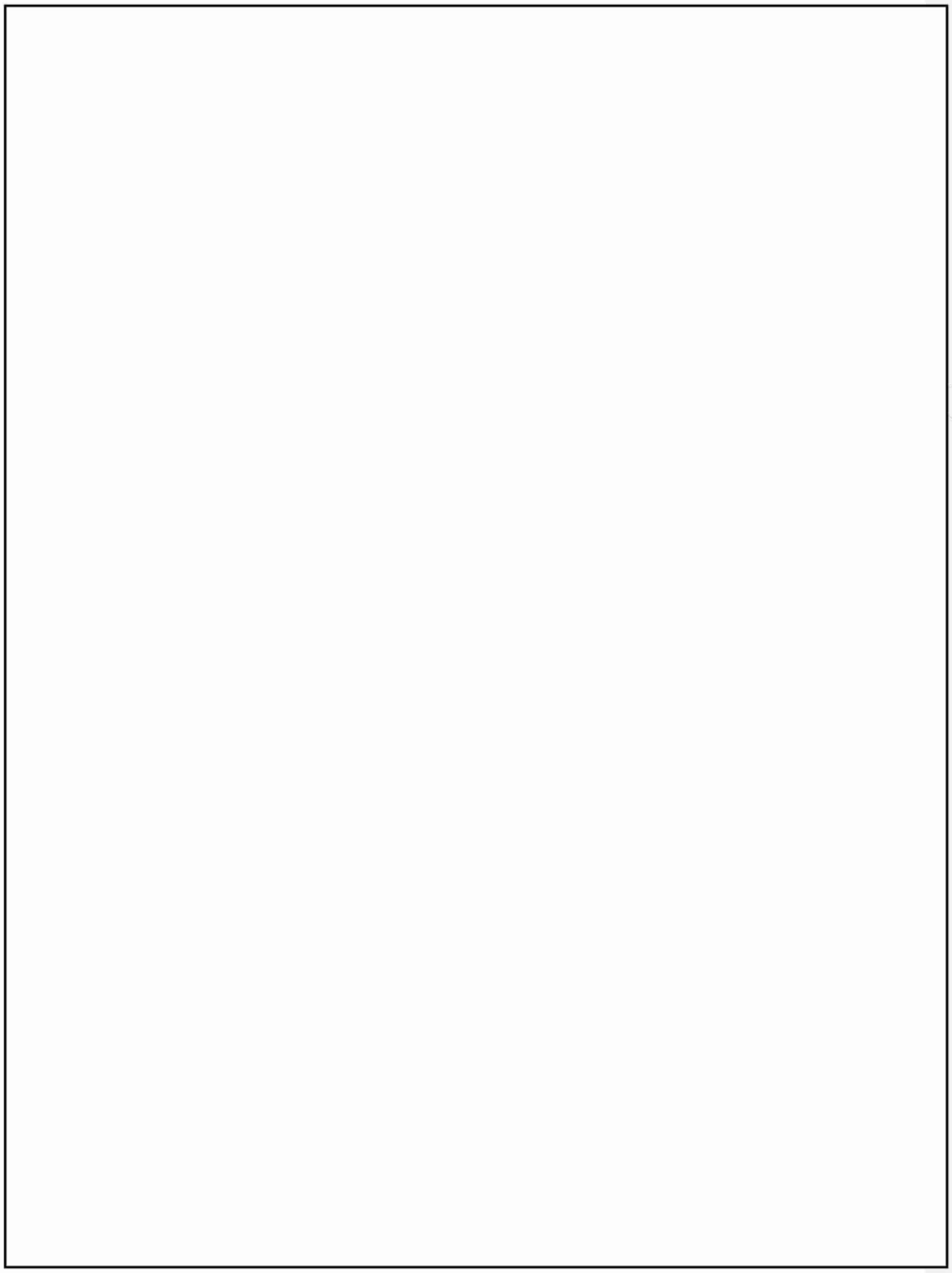
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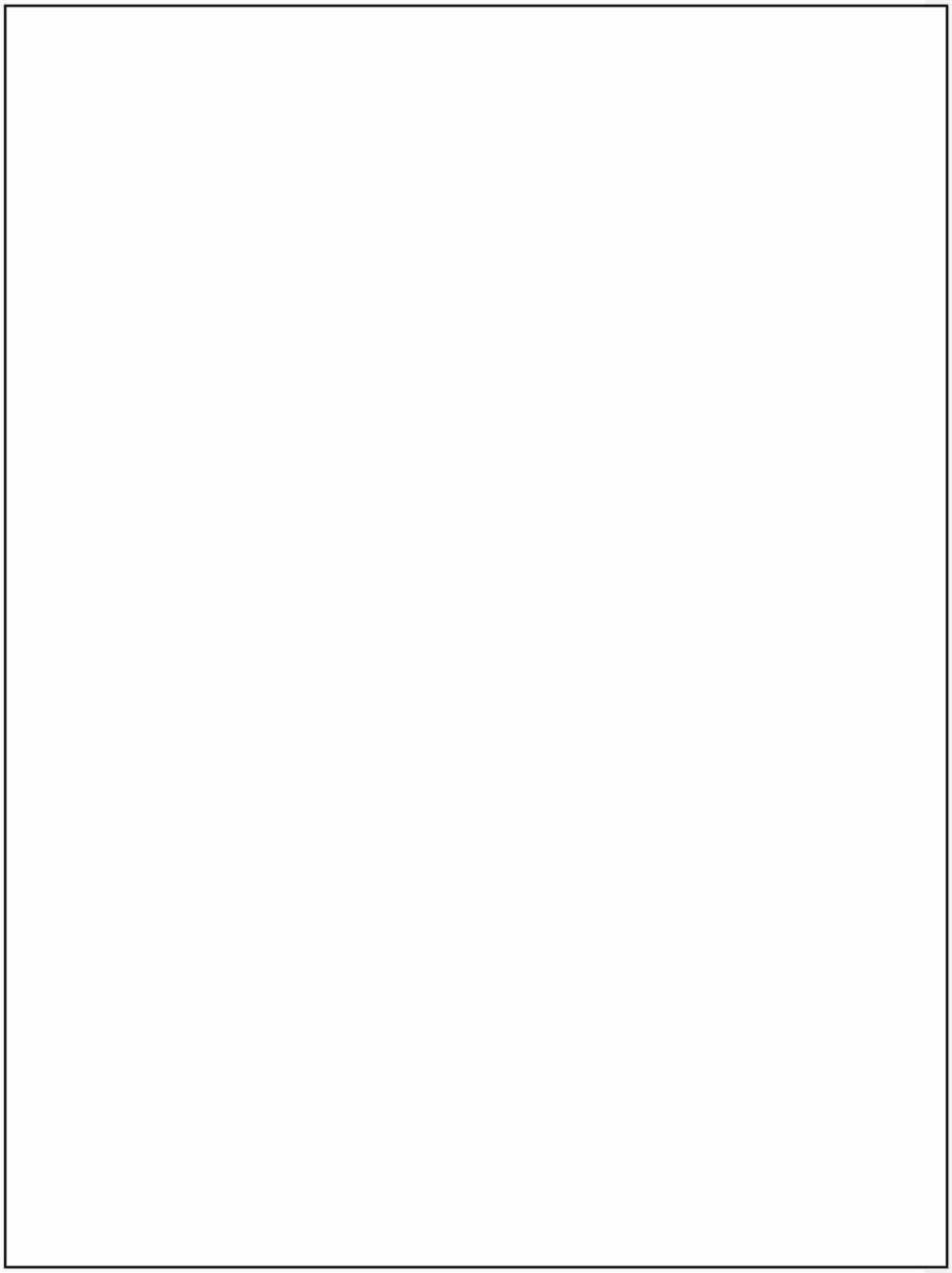


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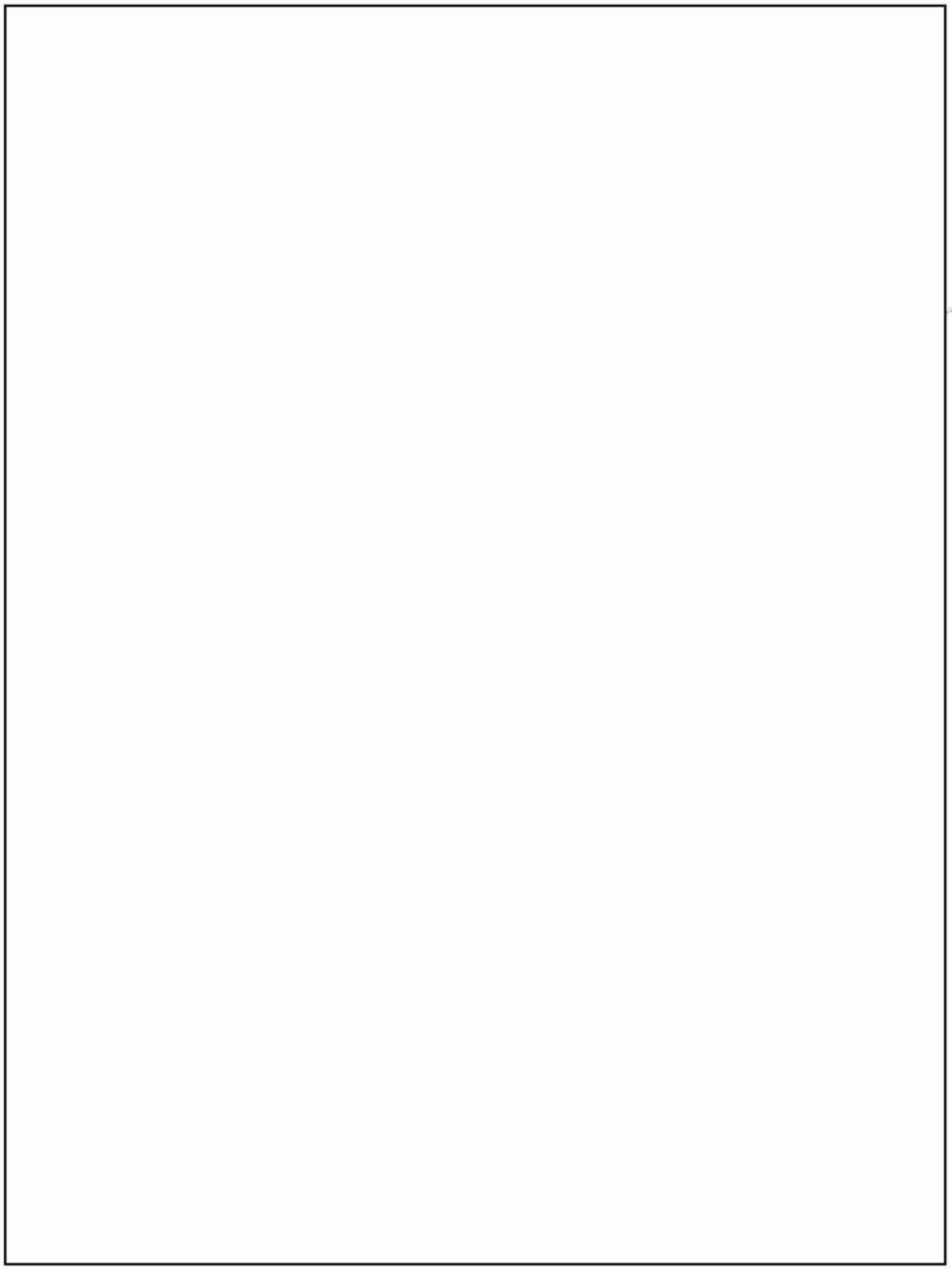


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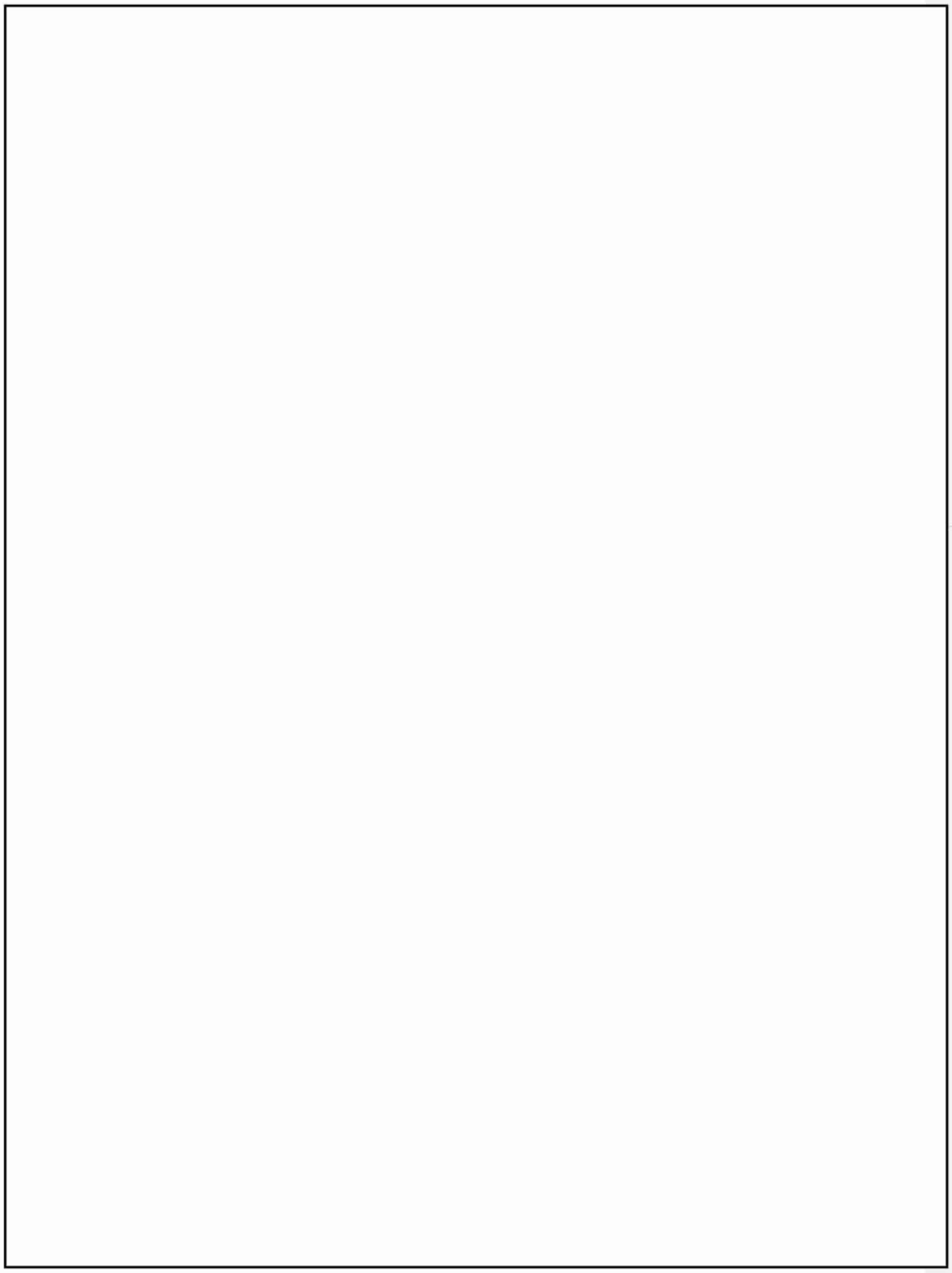
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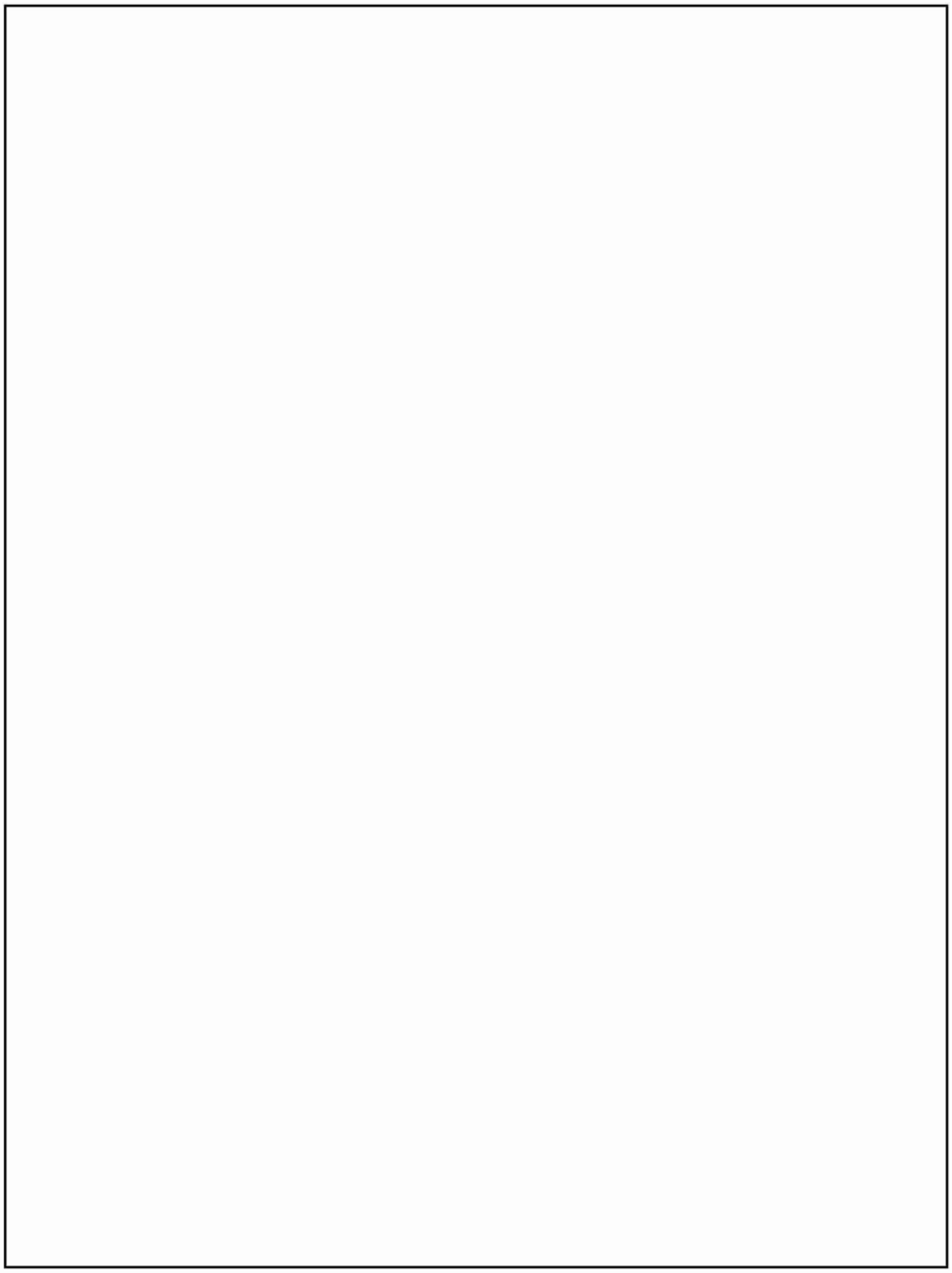
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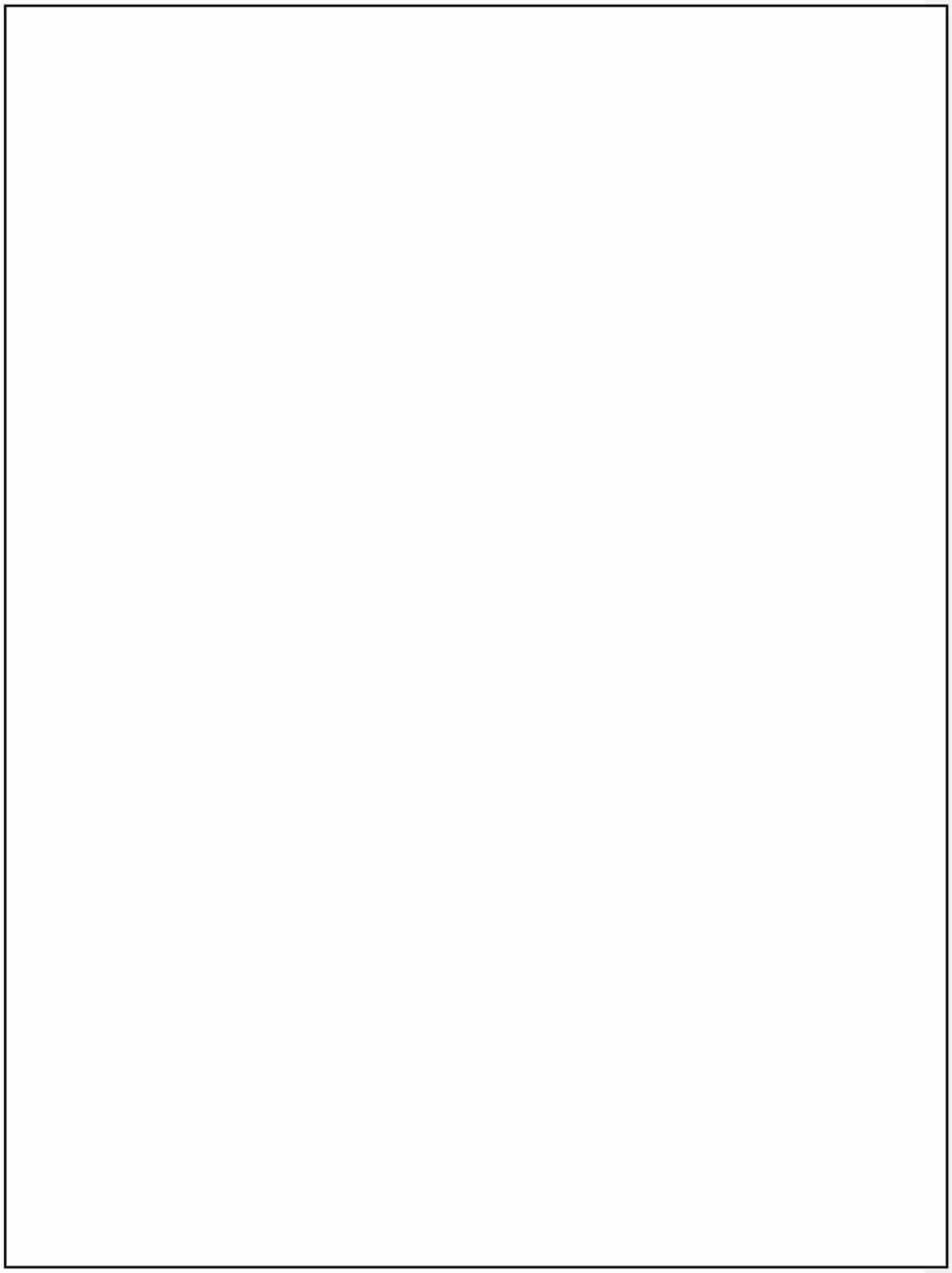
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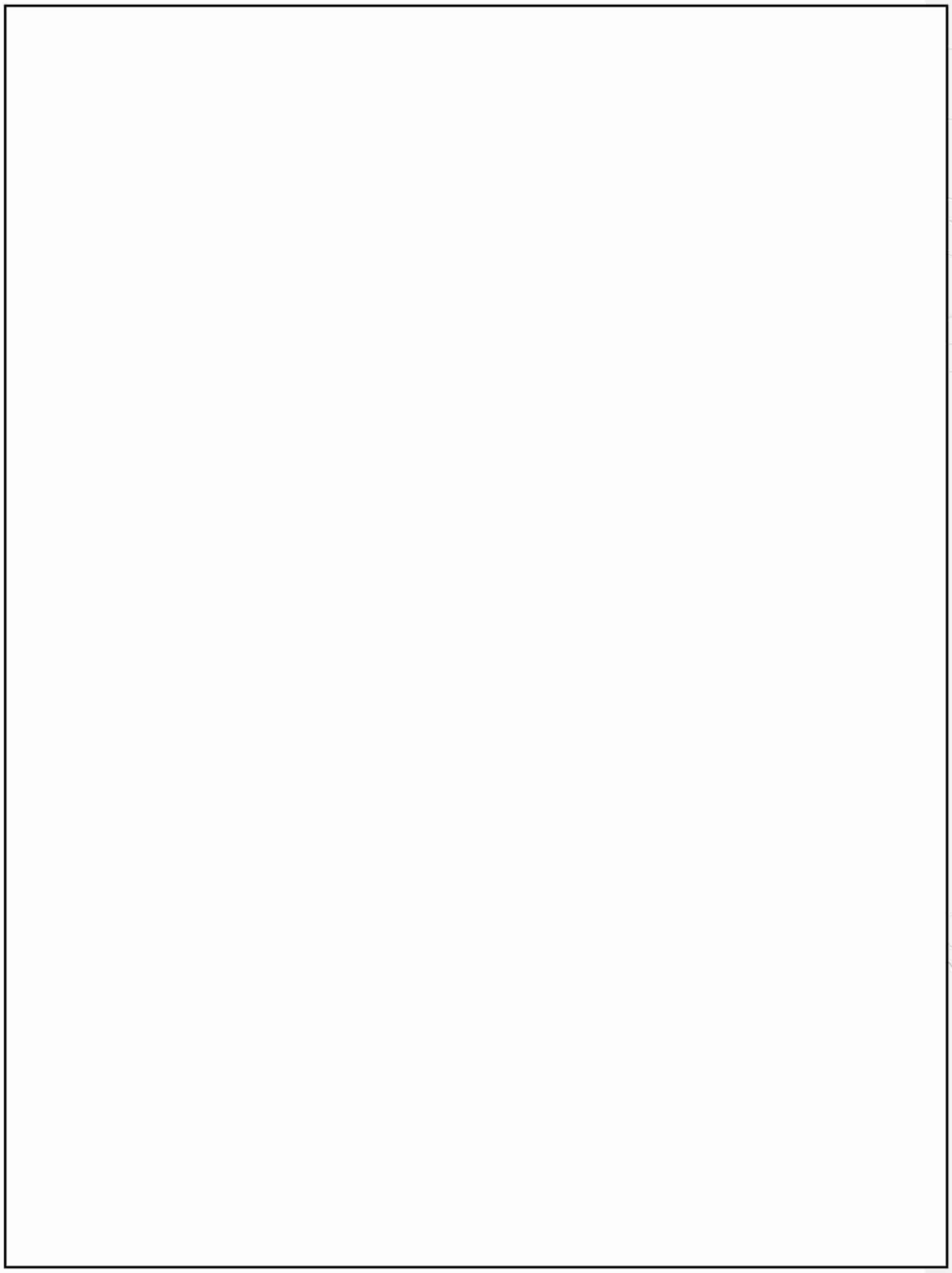
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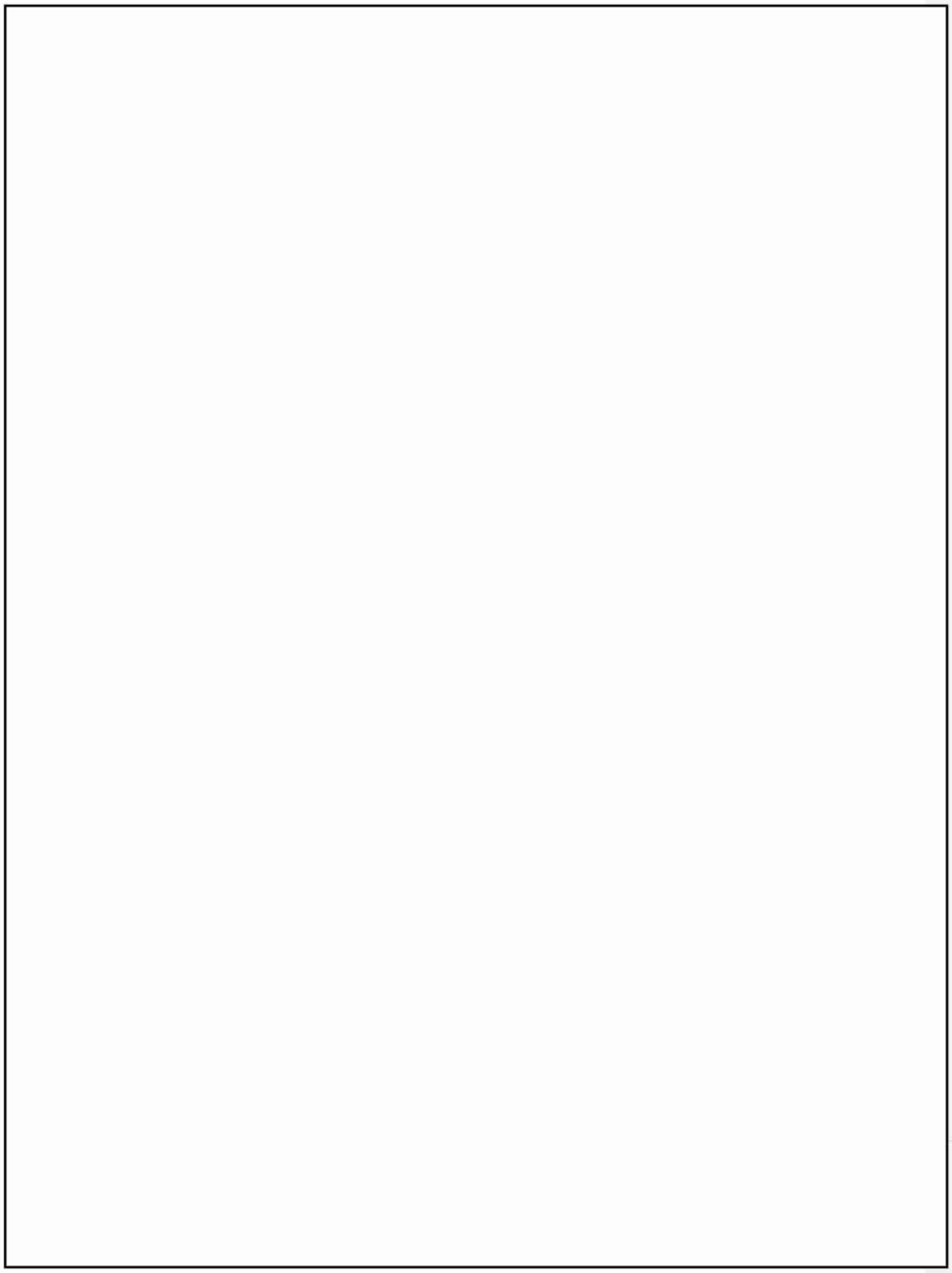
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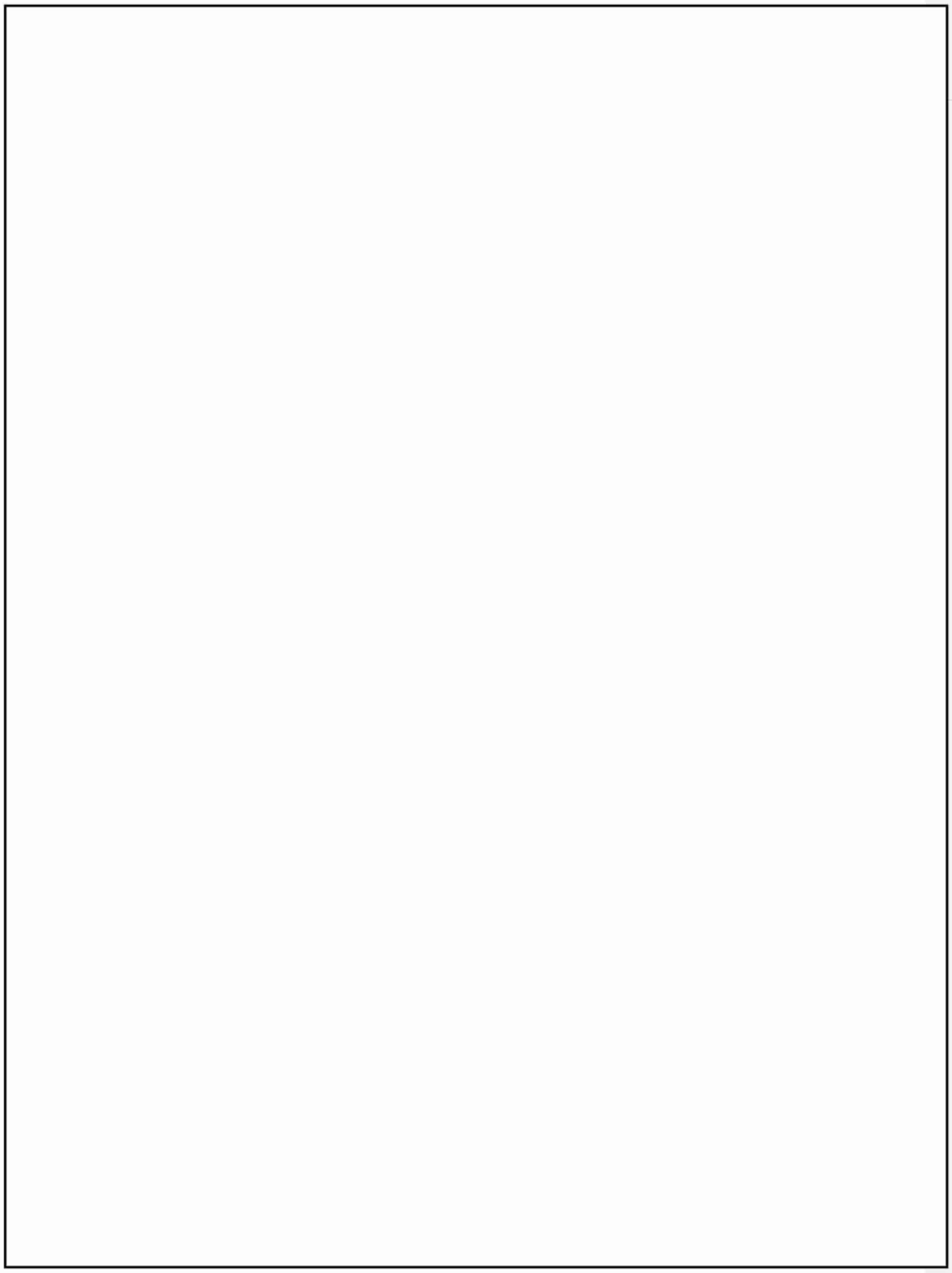


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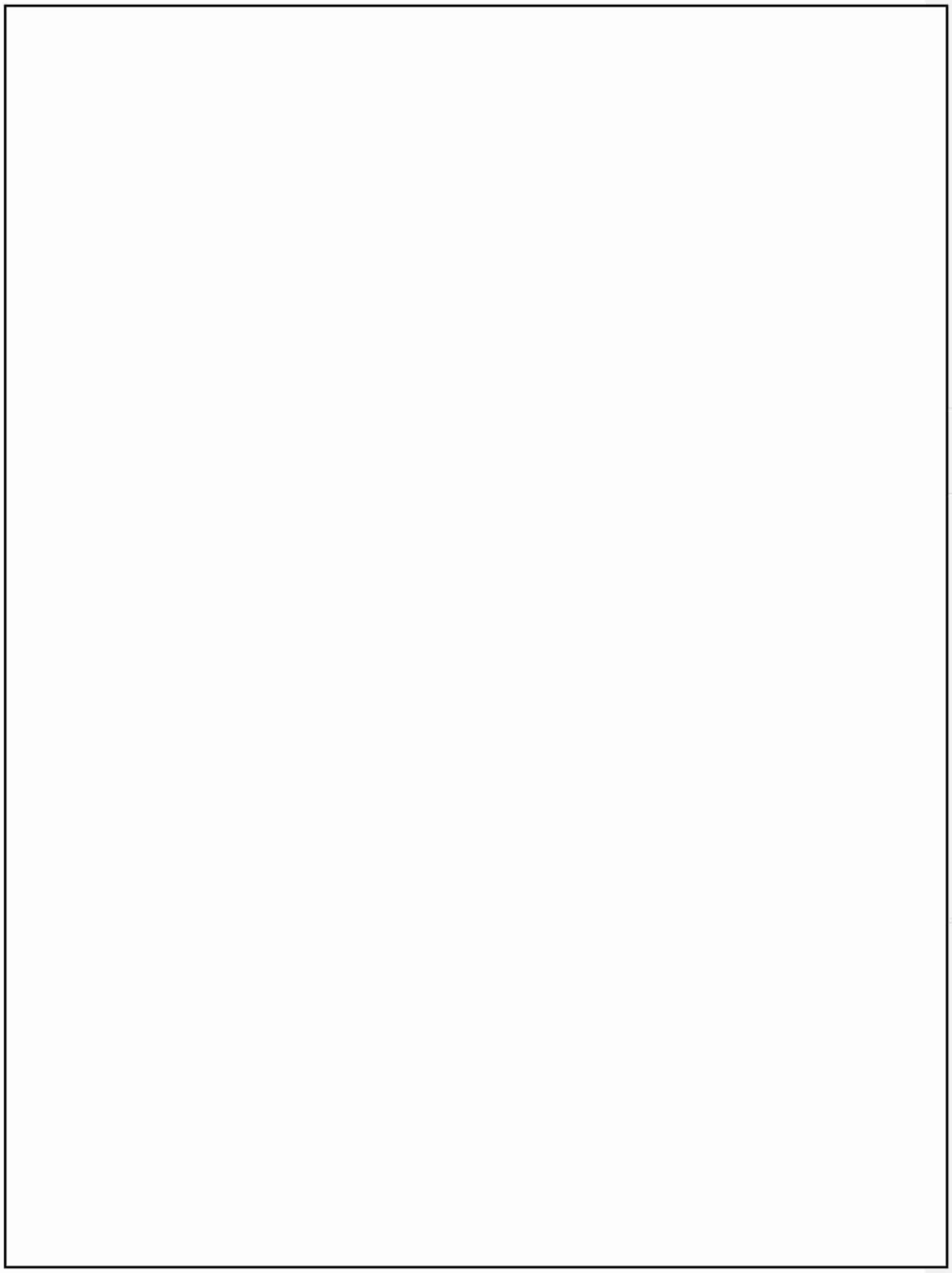


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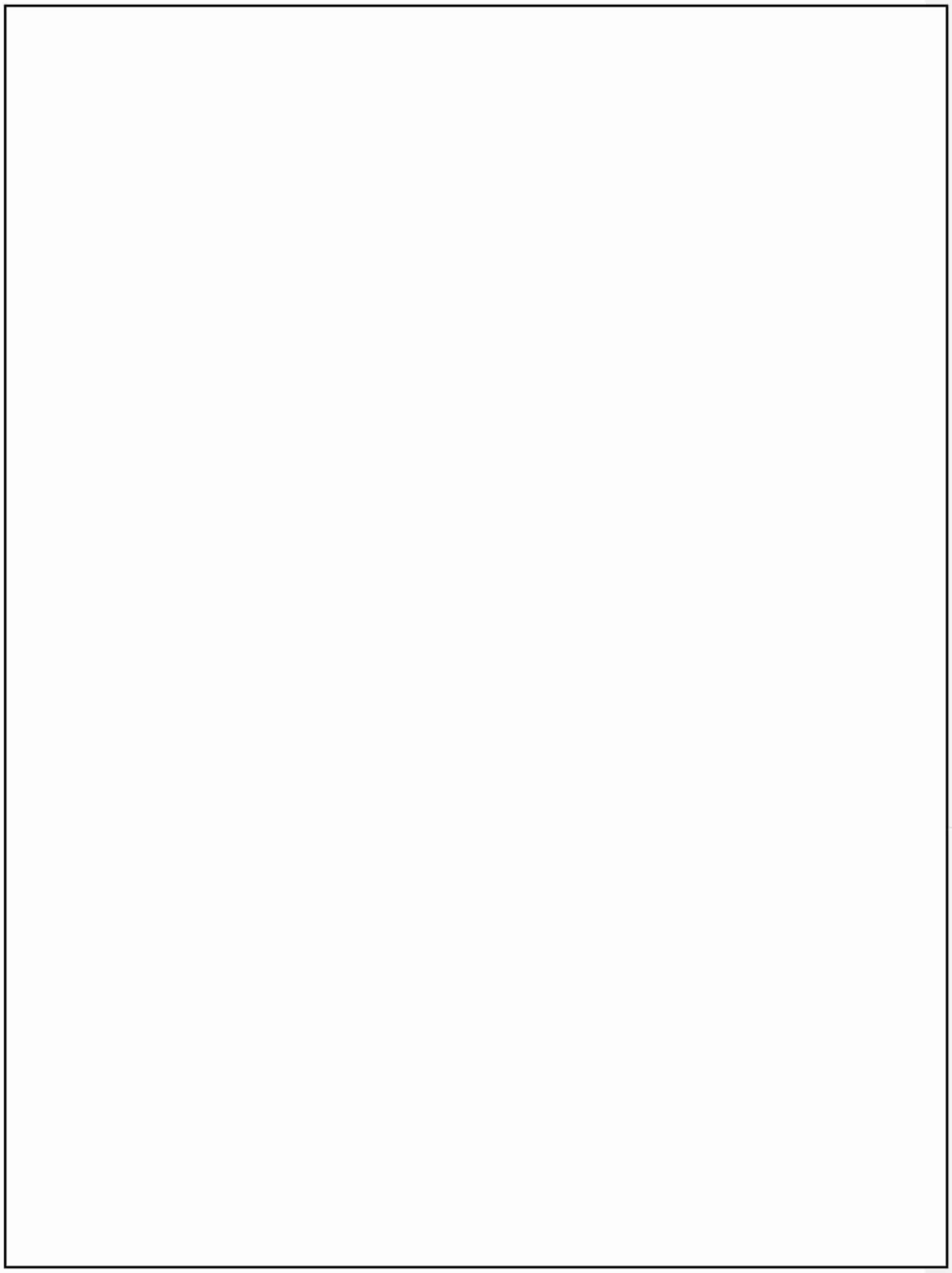
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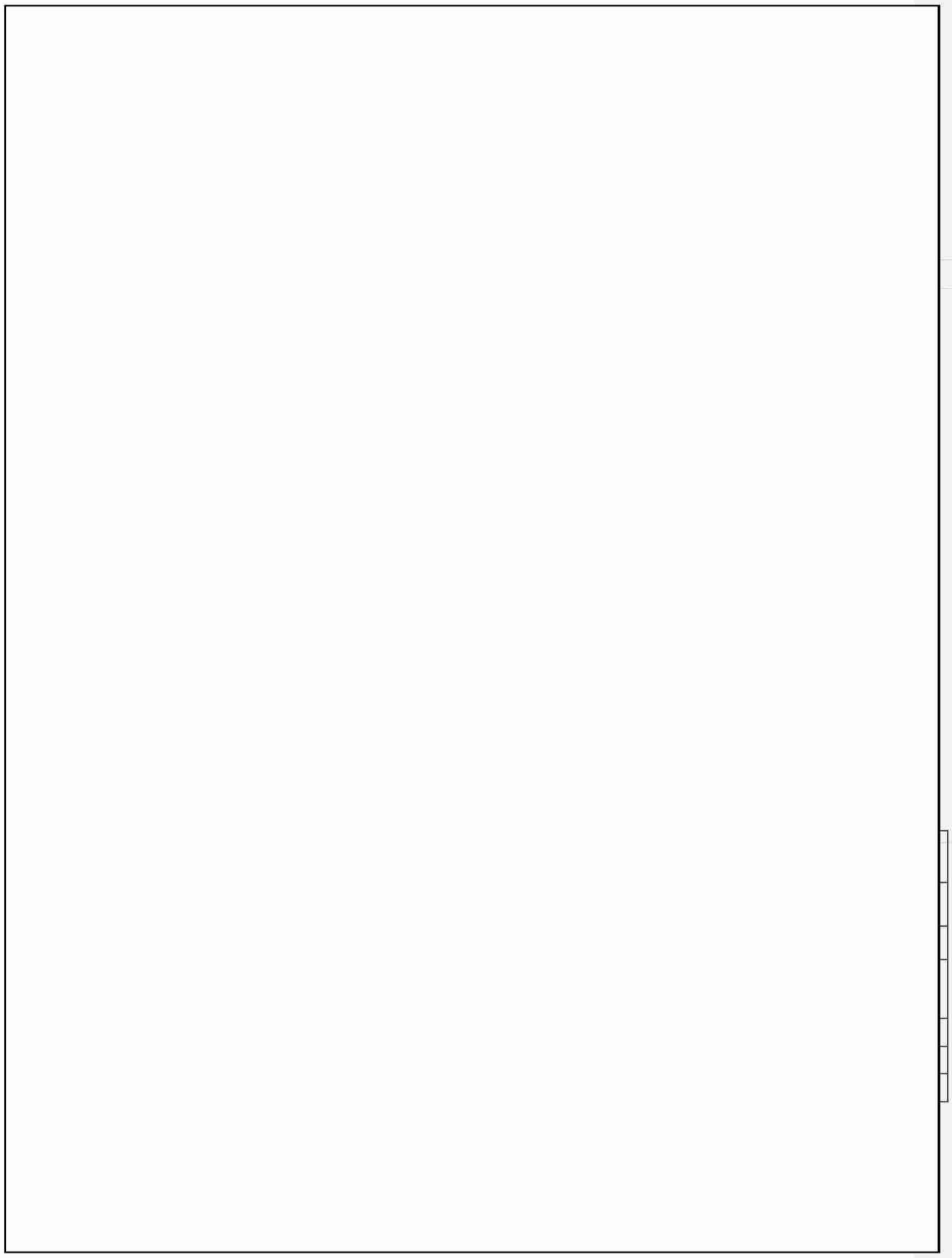
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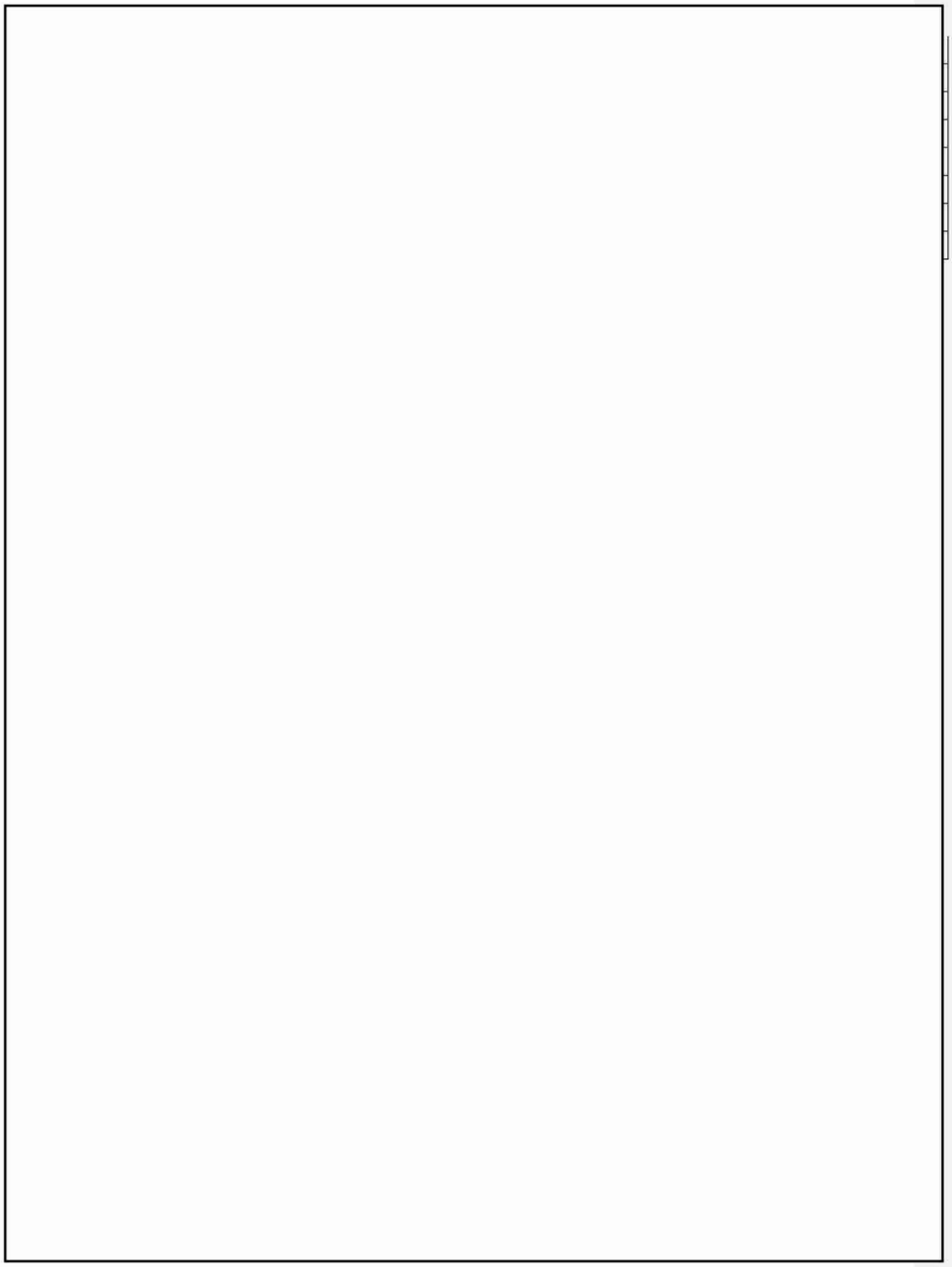
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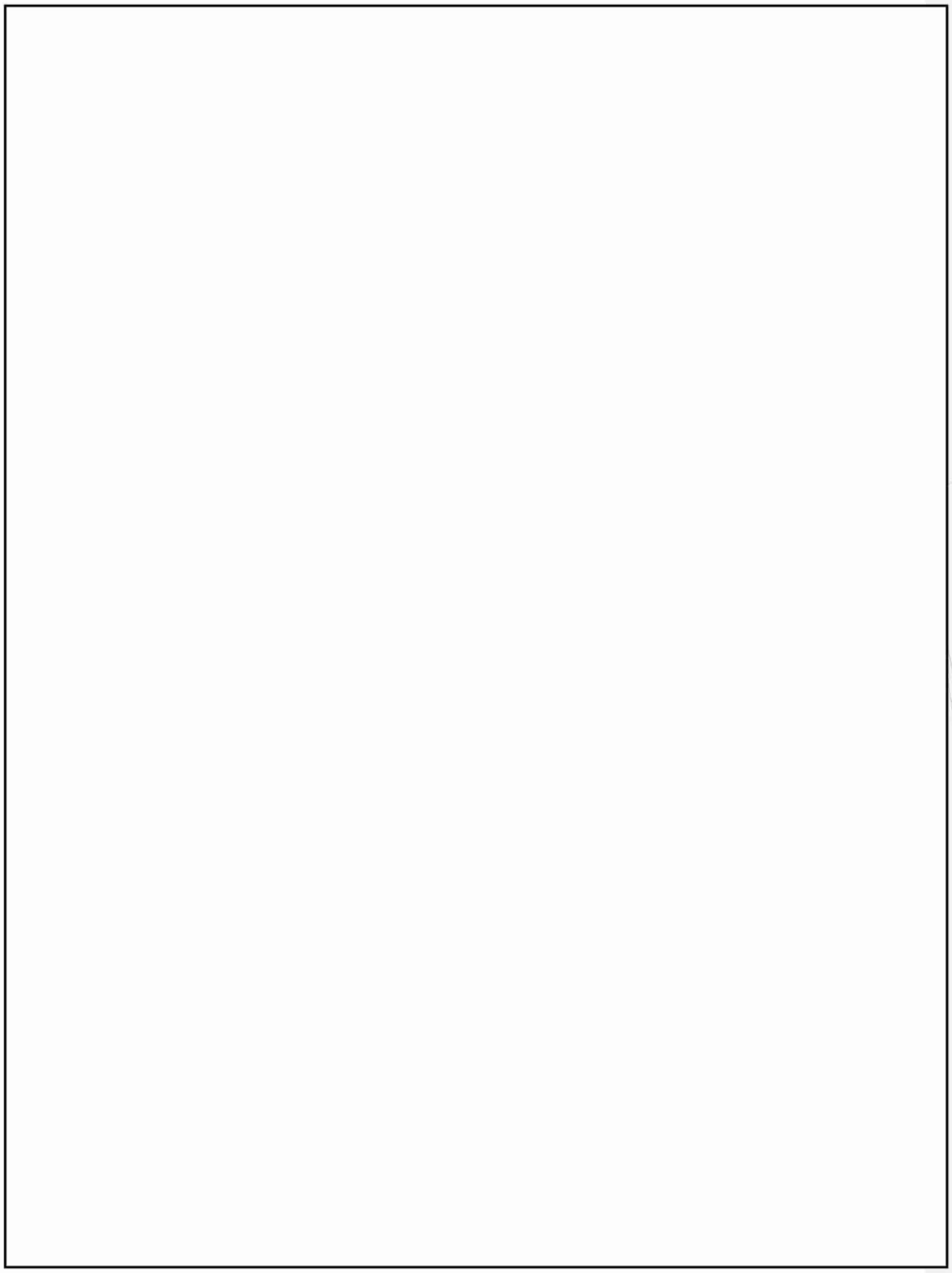
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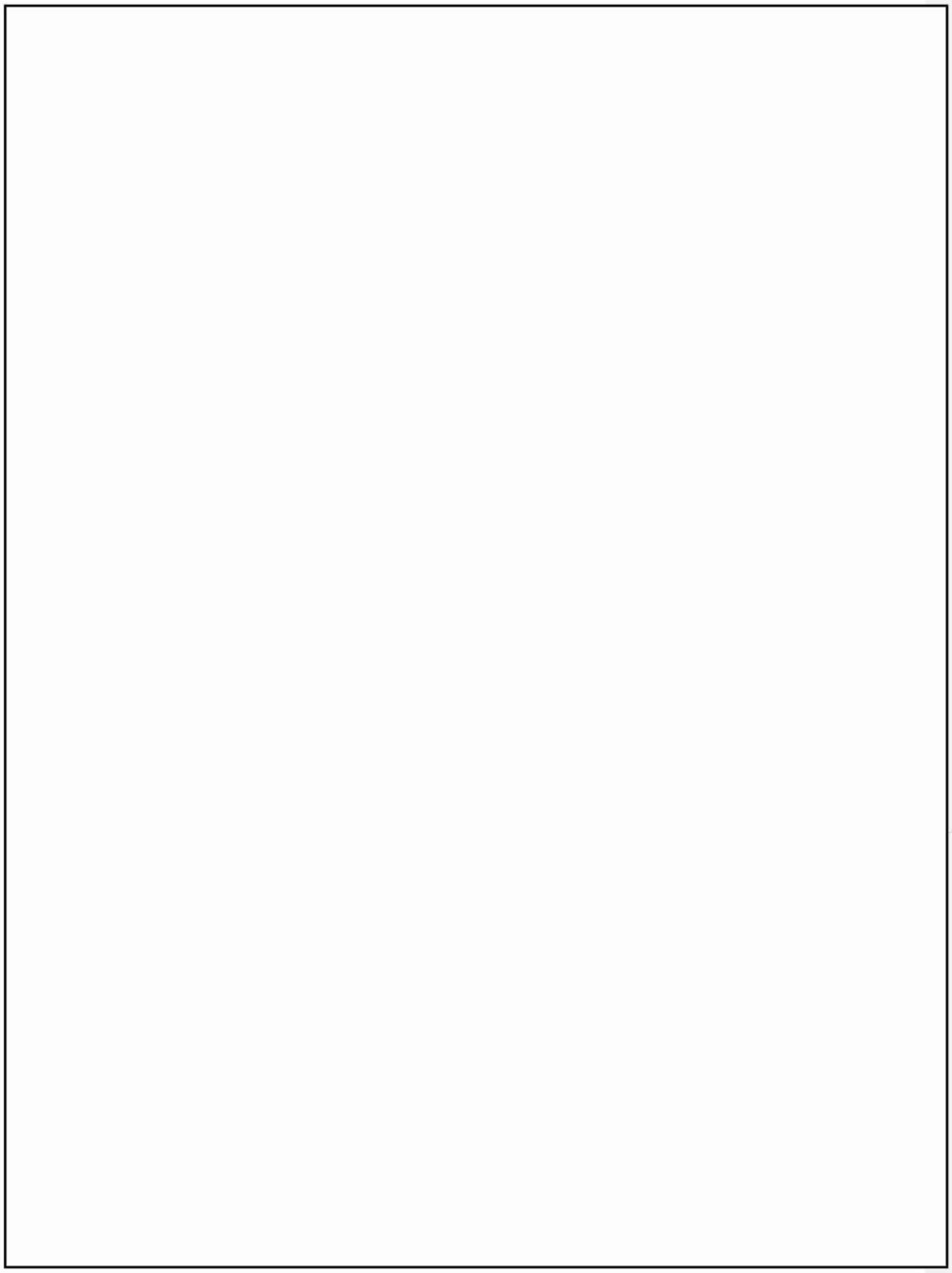
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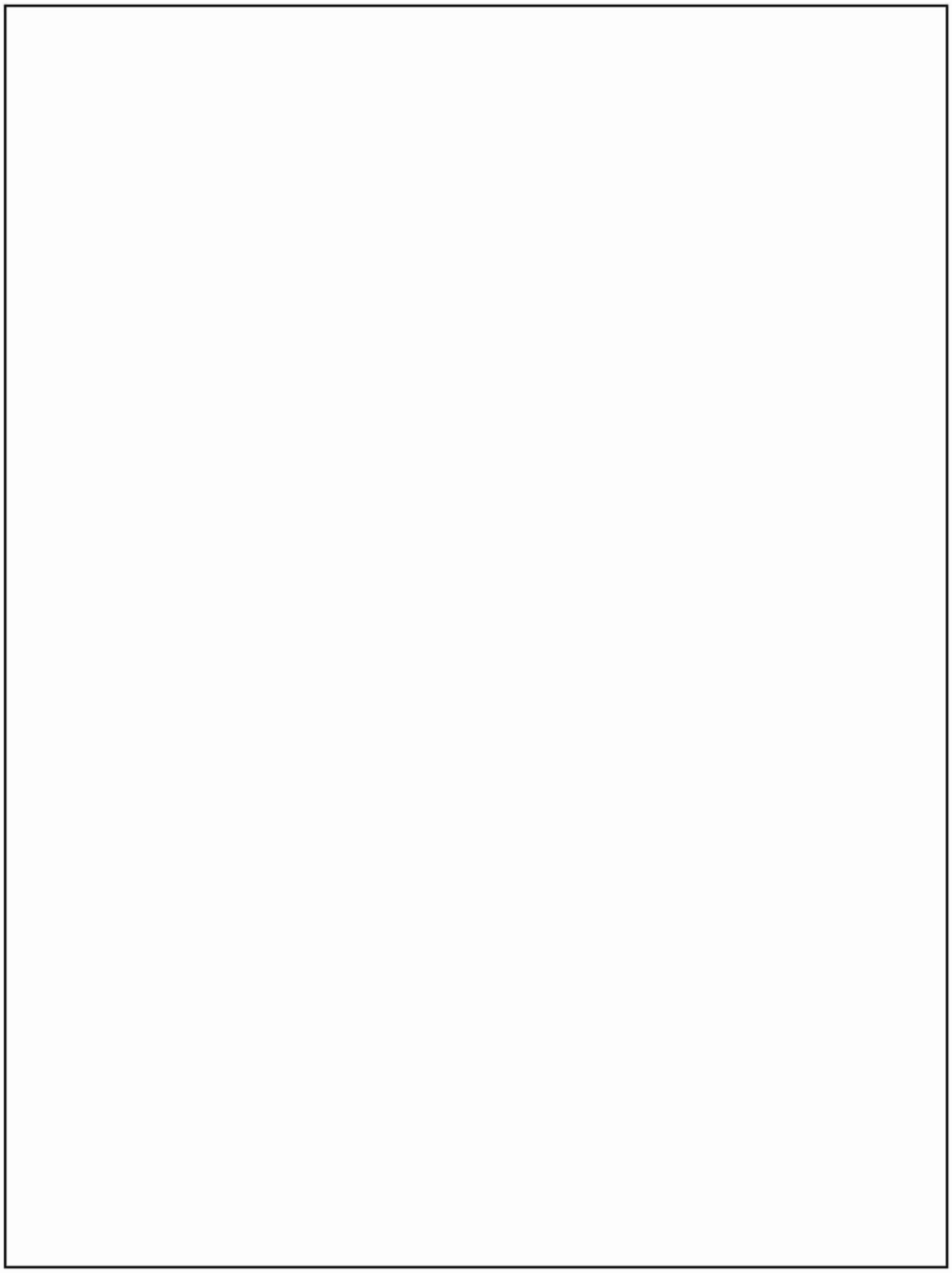
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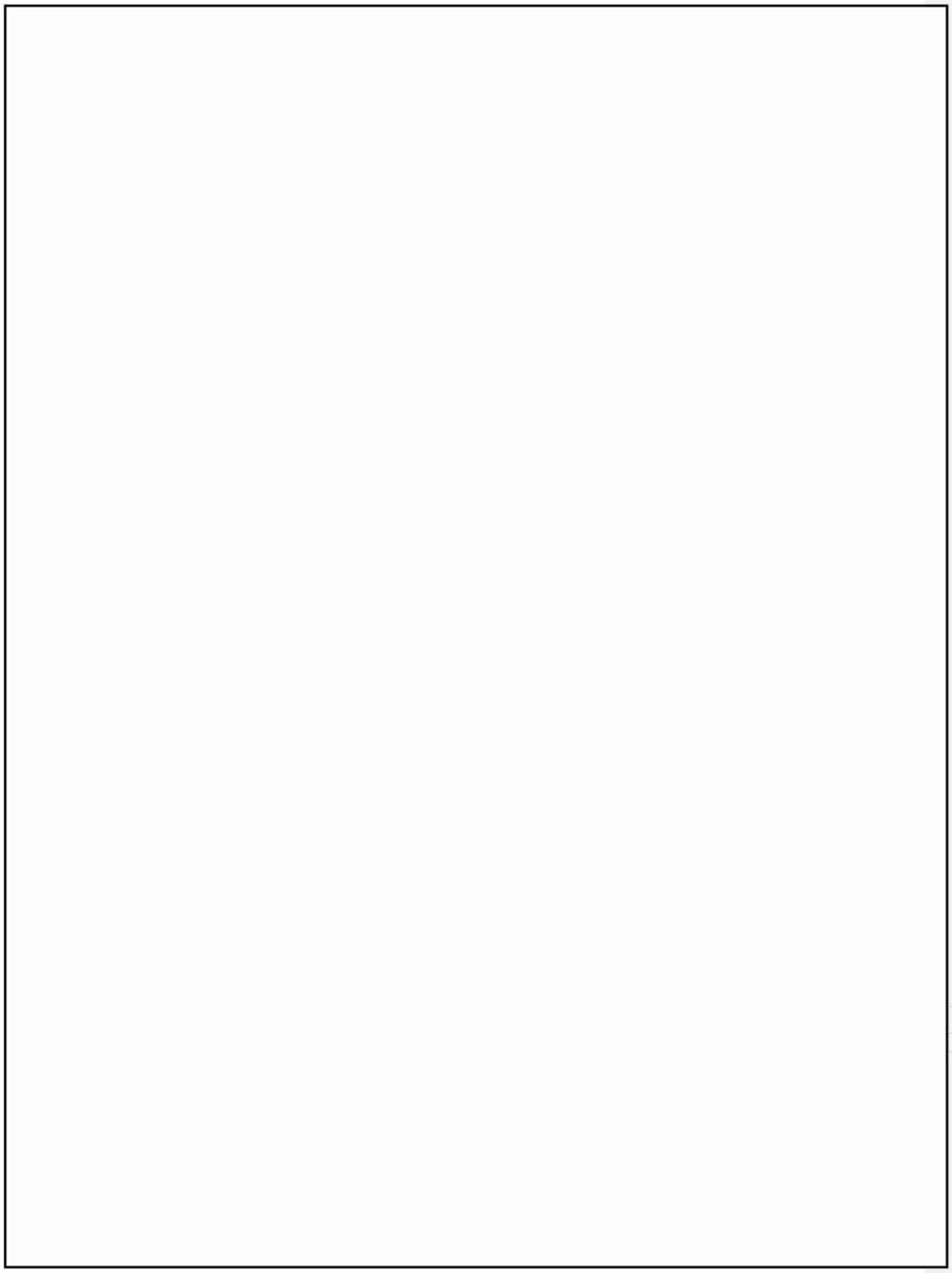
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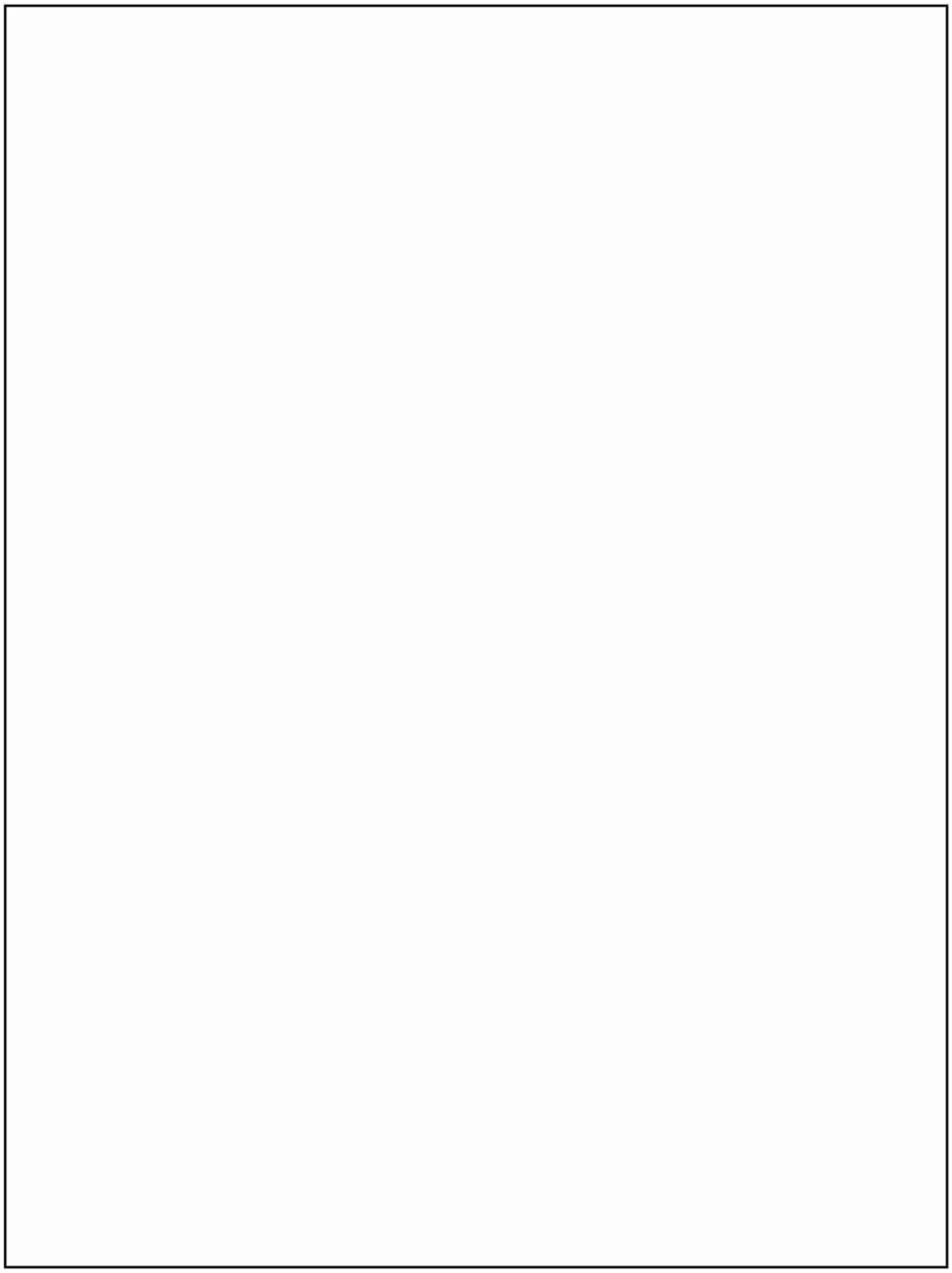
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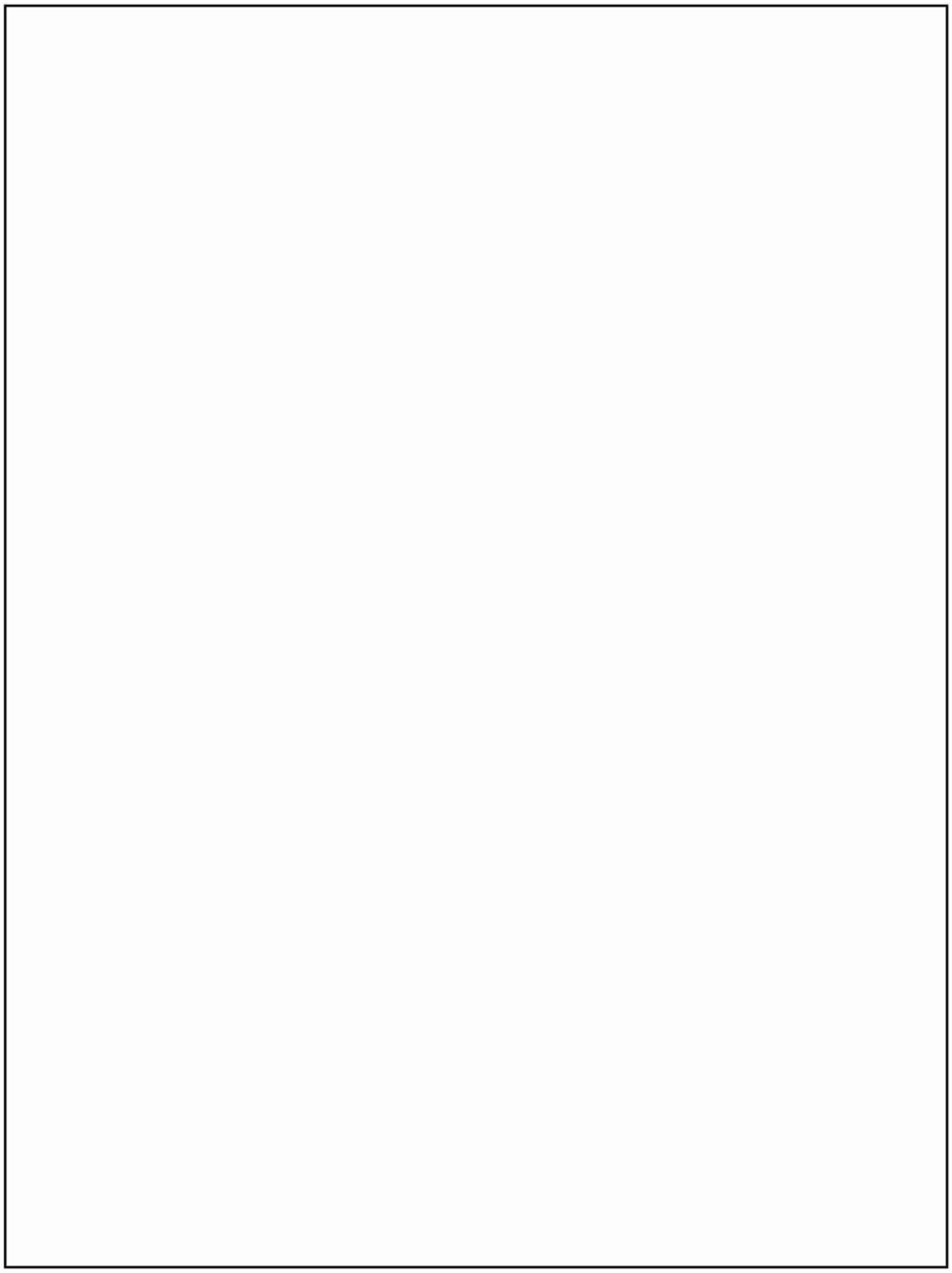


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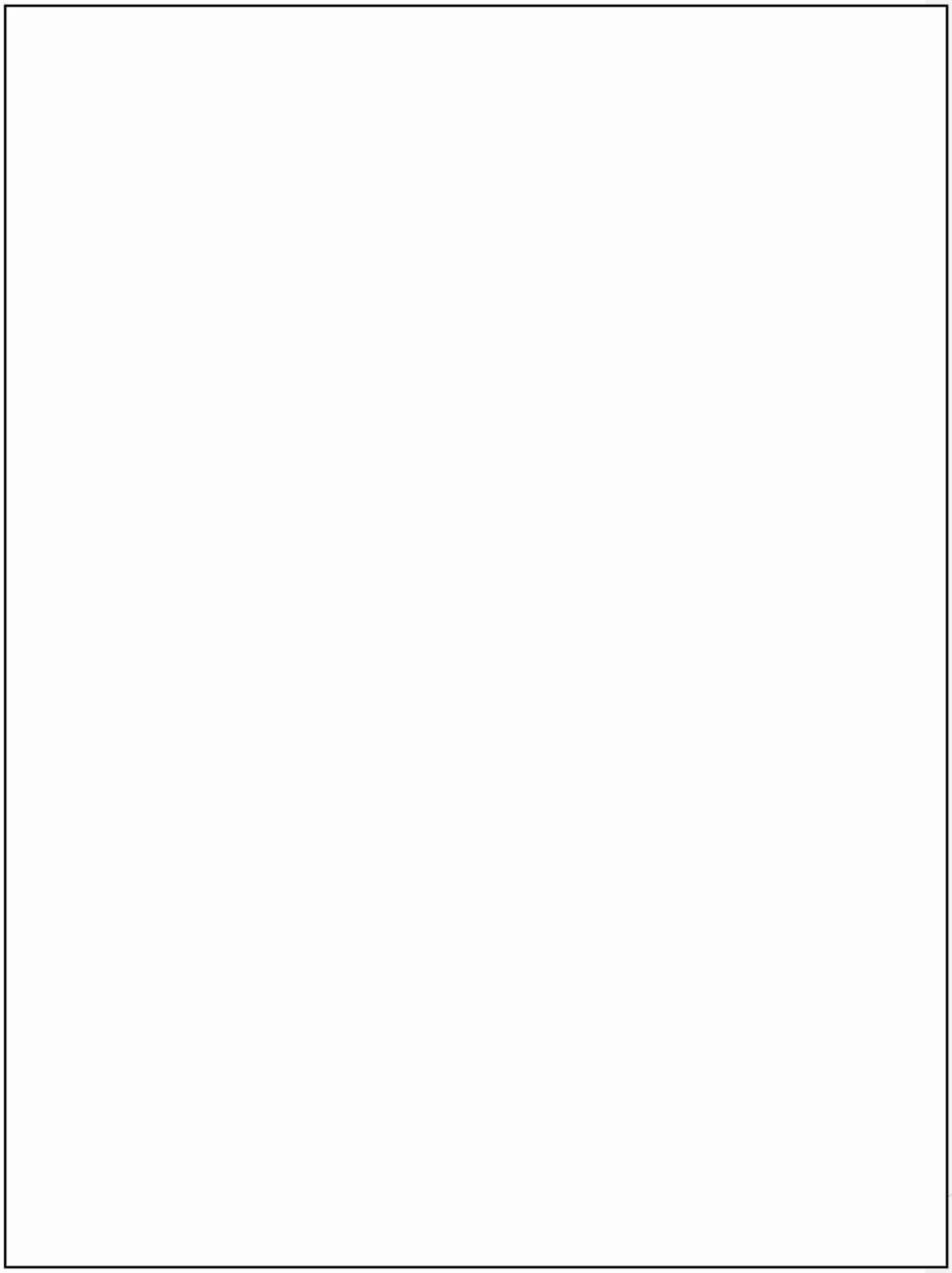


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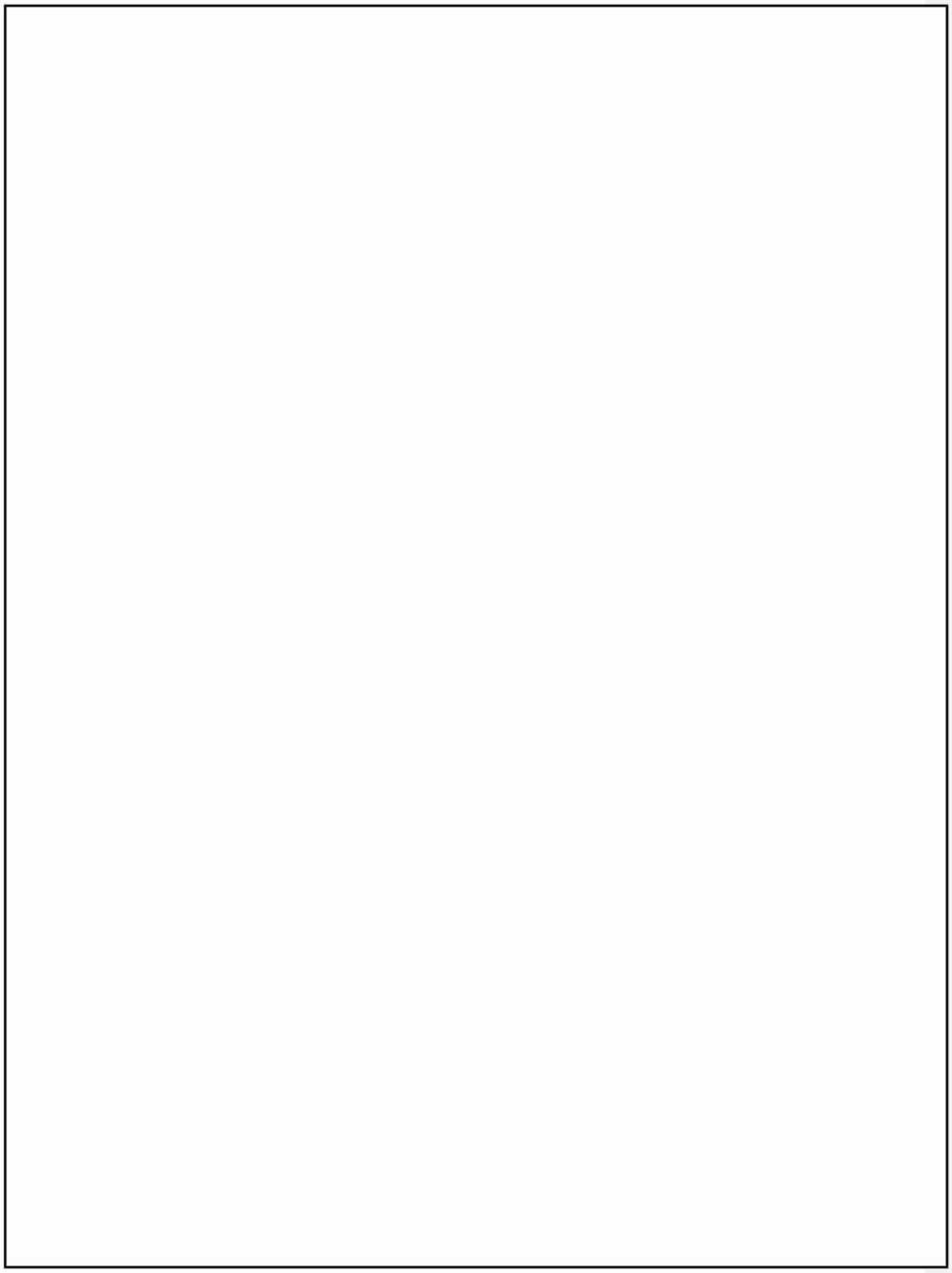
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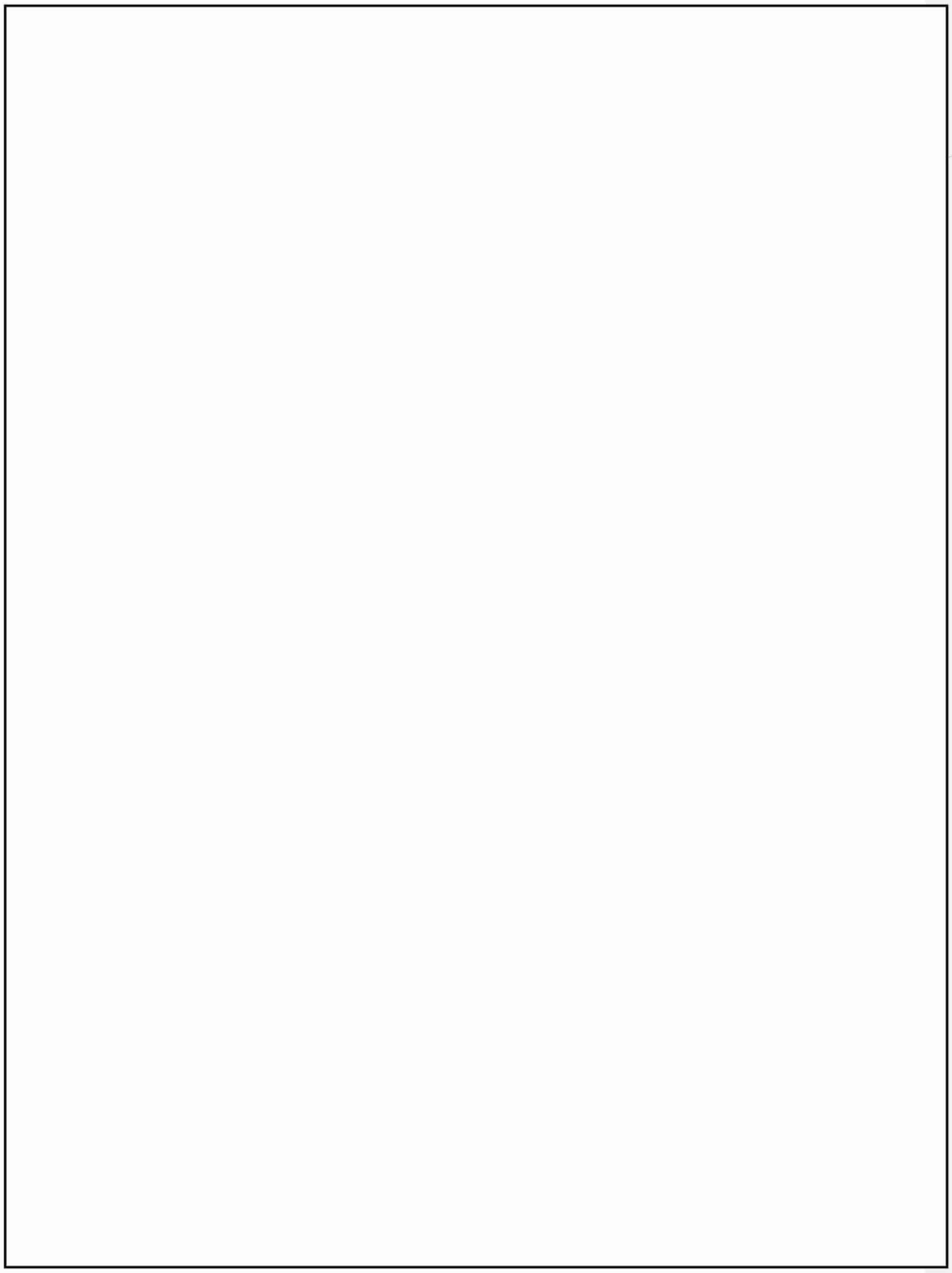
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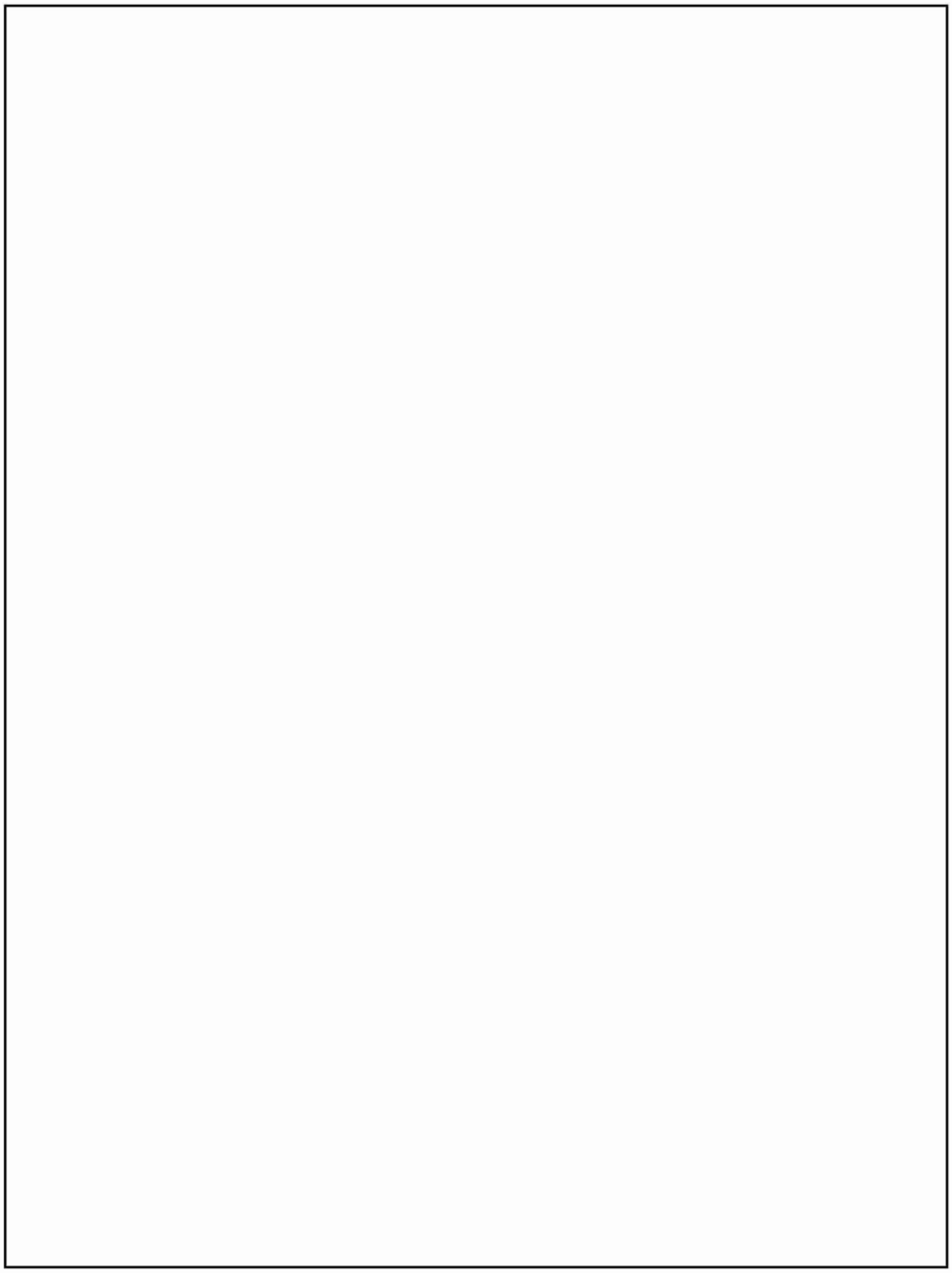
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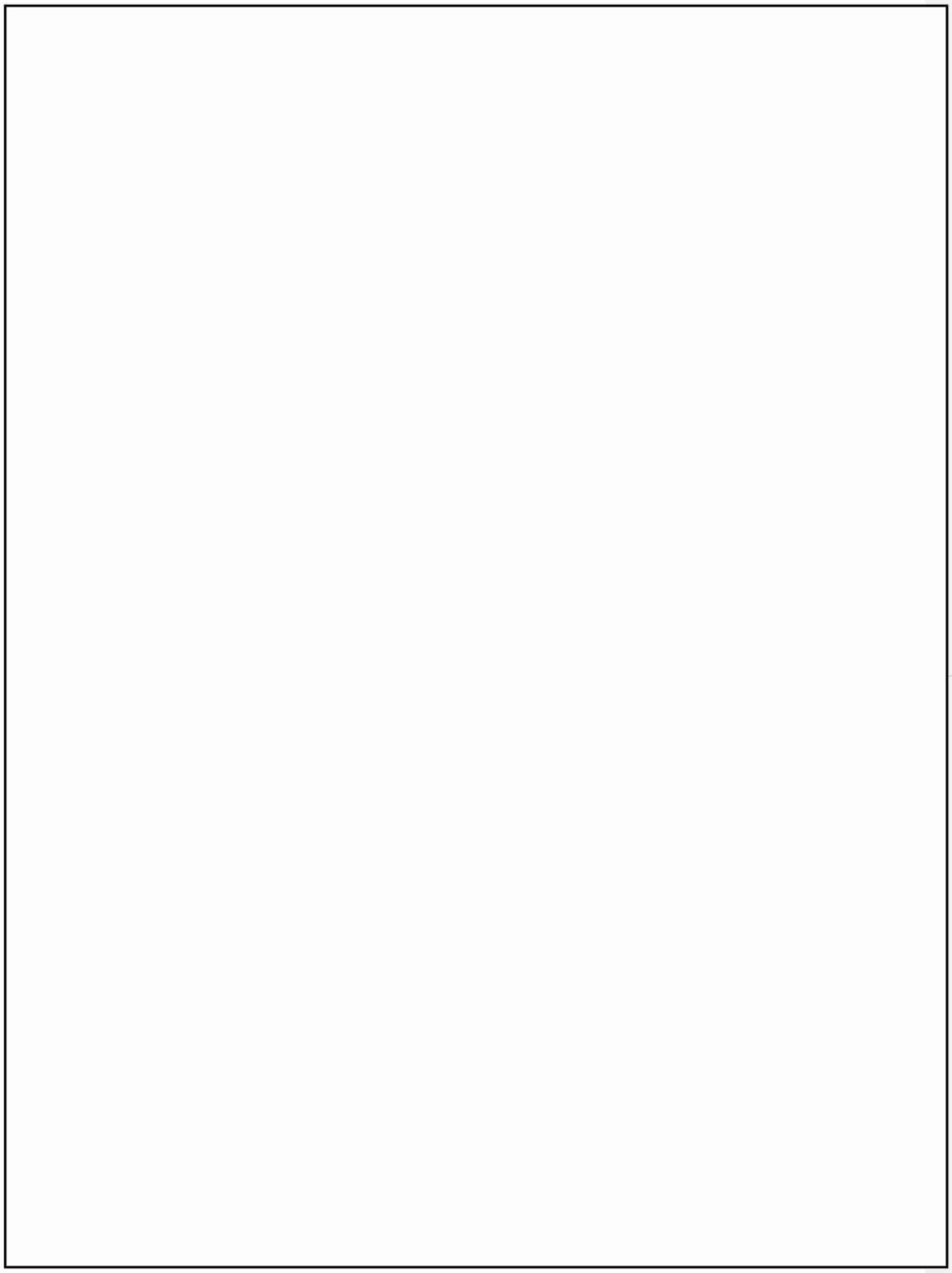
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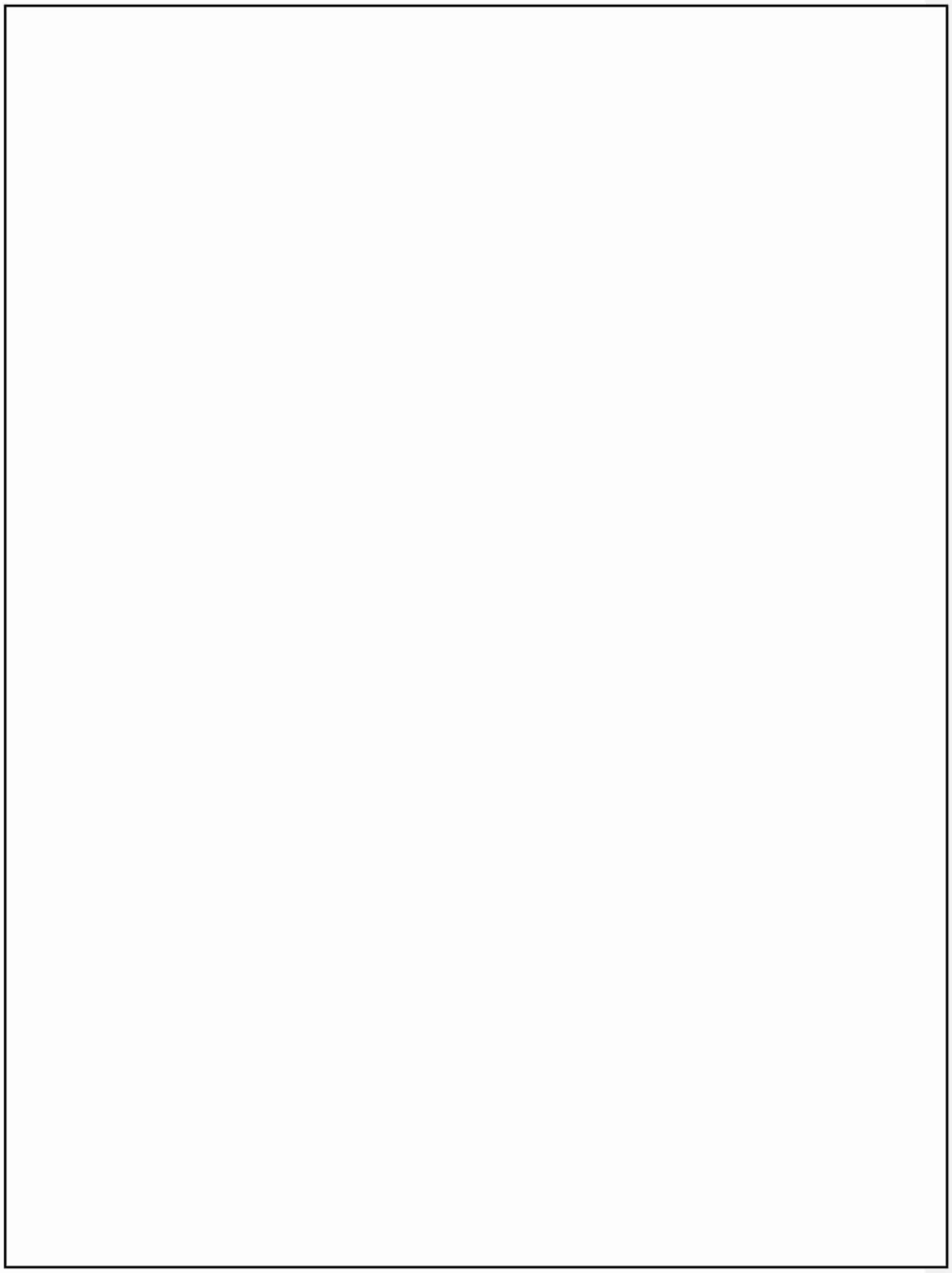


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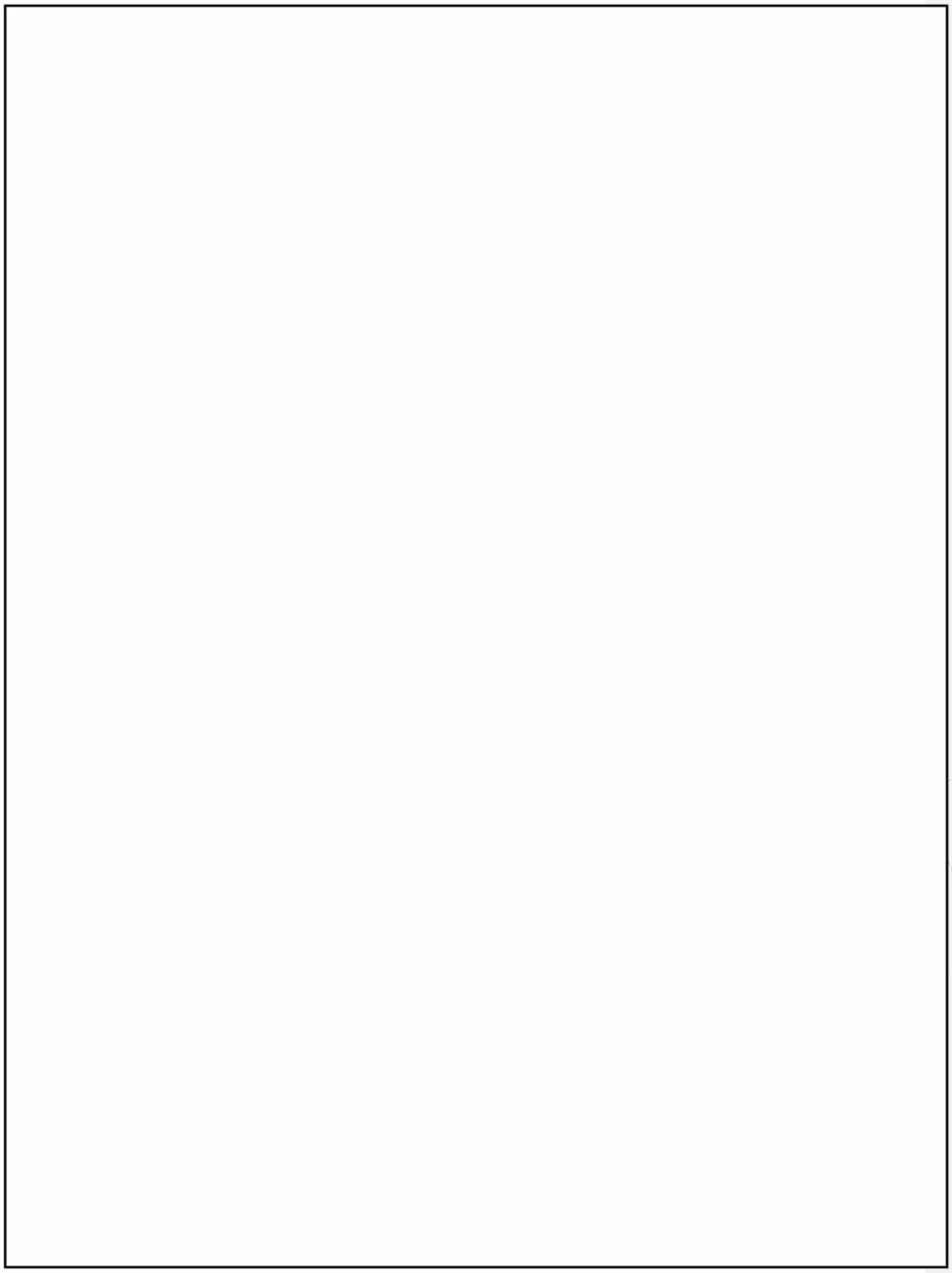


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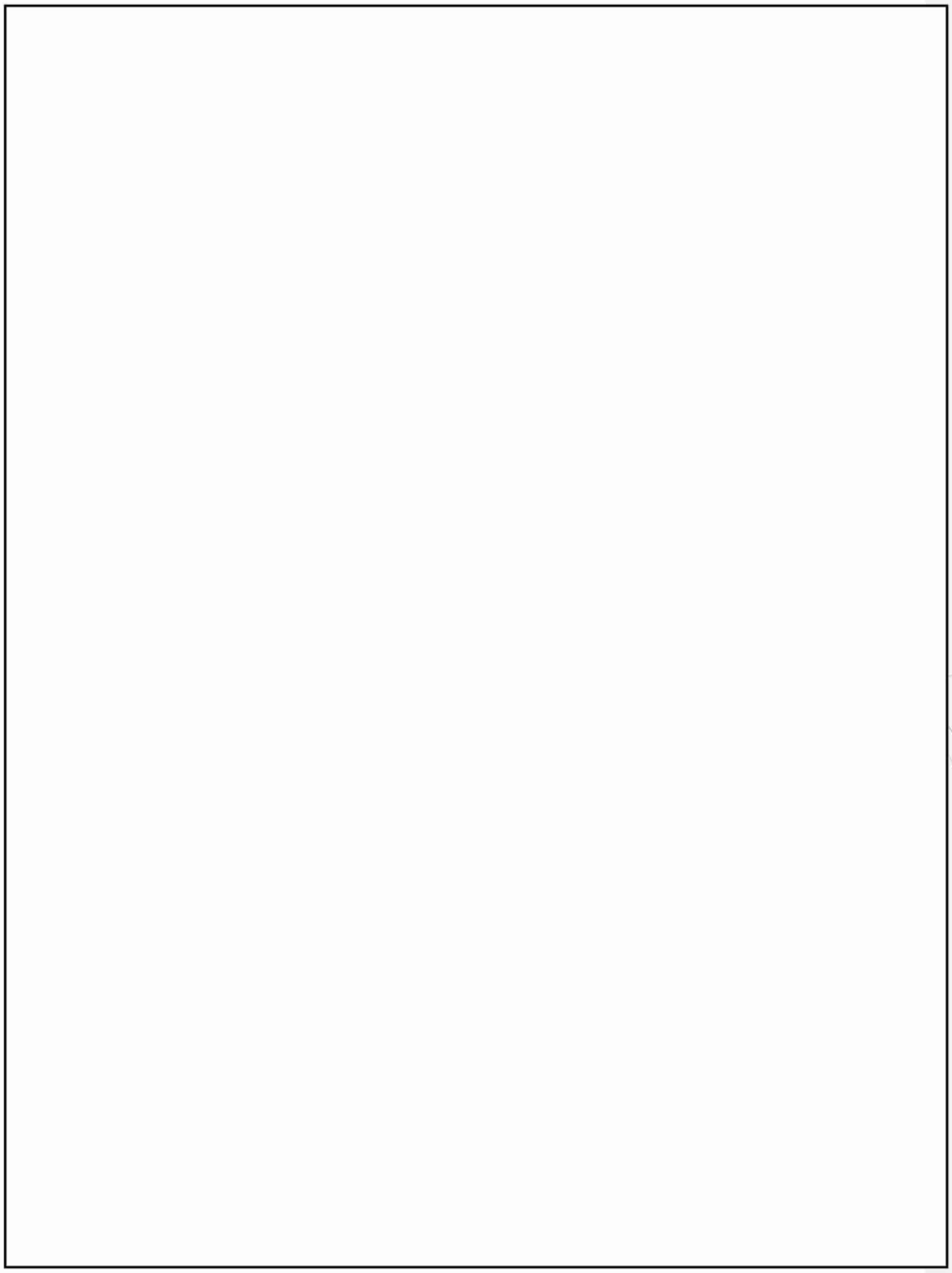
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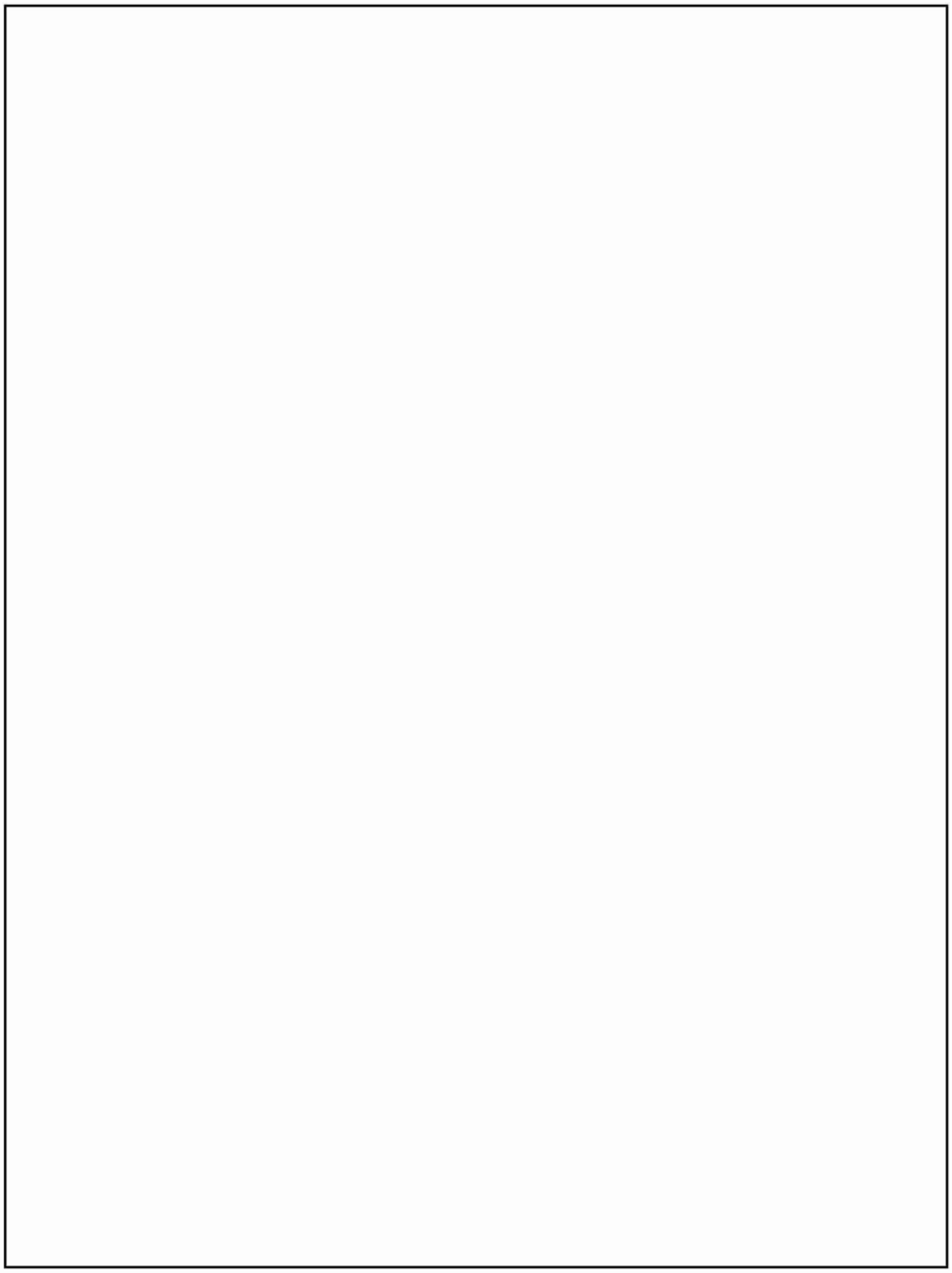
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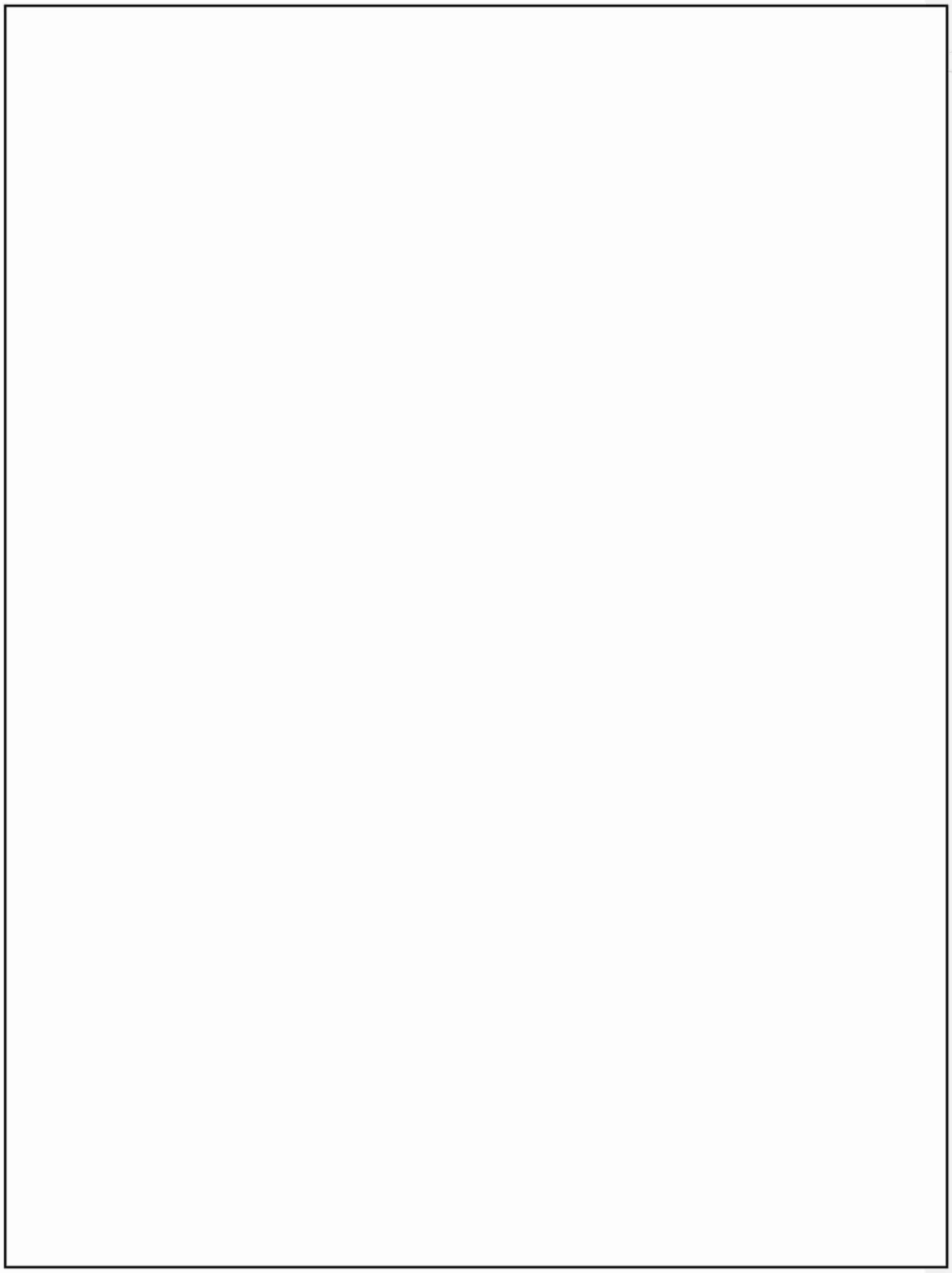


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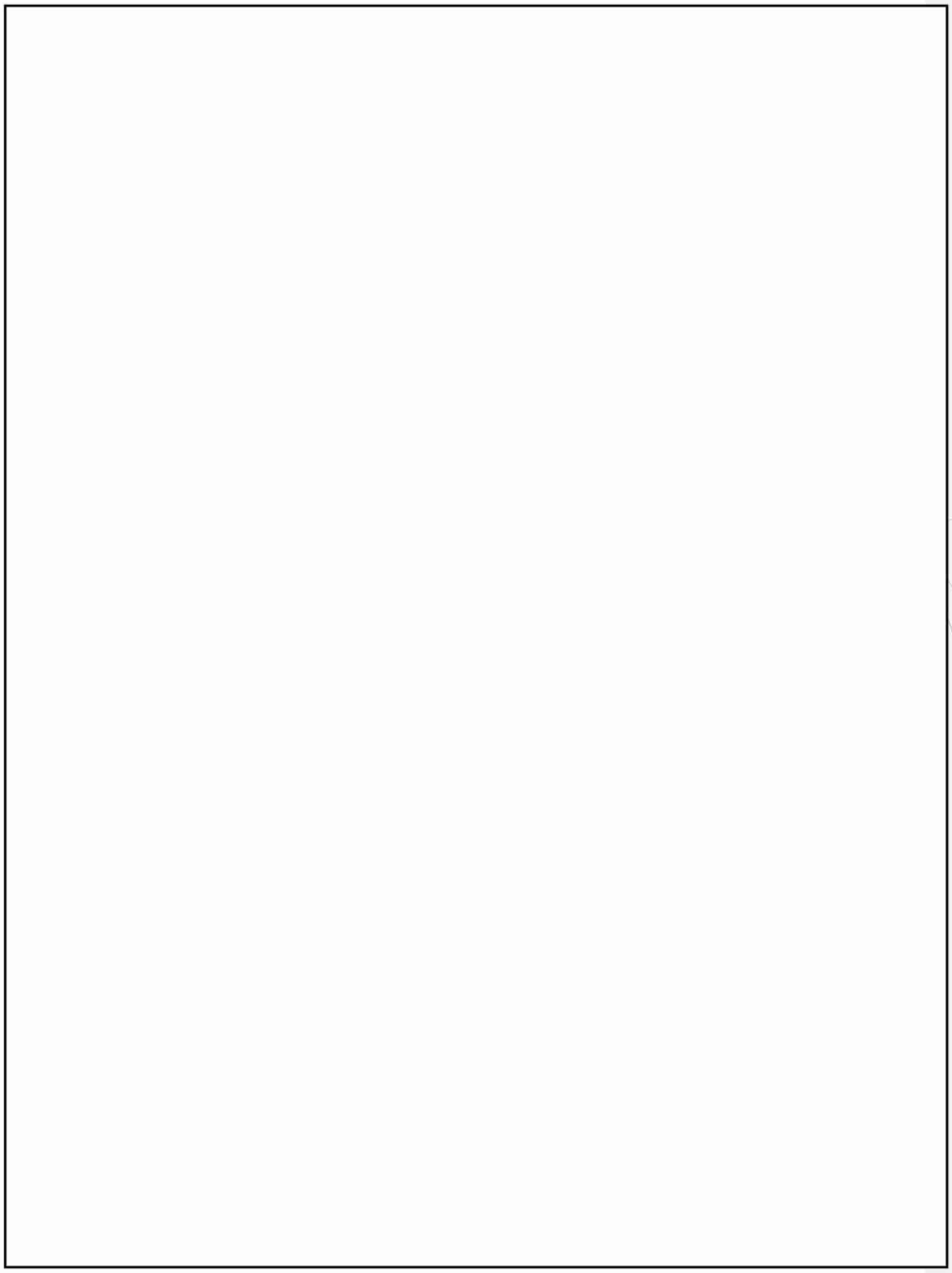


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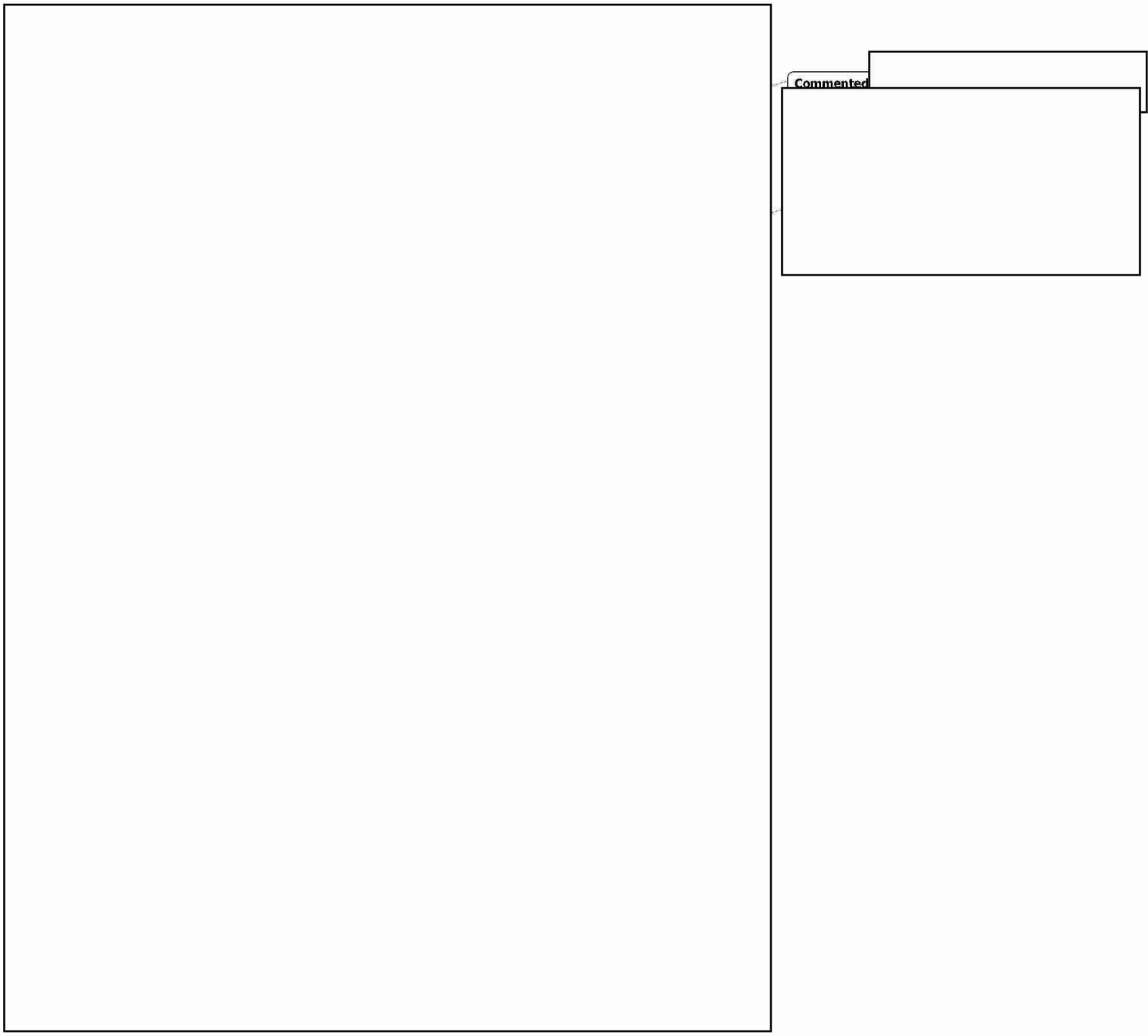


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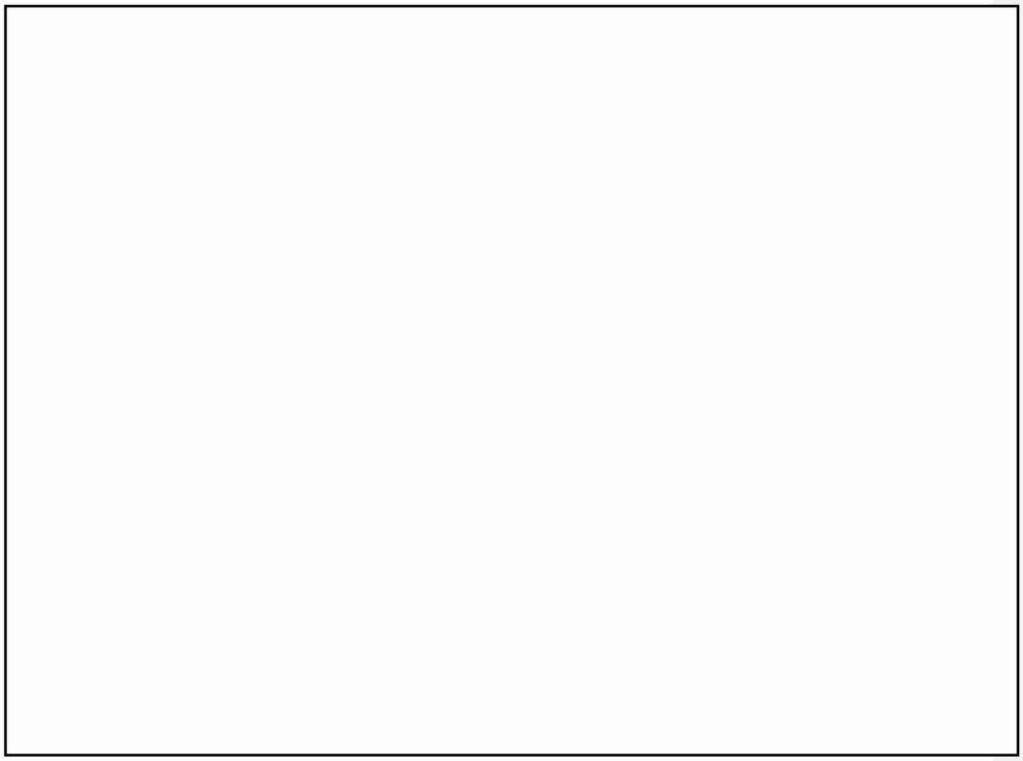


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* * * * *

Chad F. Wolf,
Acting Secretary of Homeland Security

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From: Bailey, Morgan
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7
To: Nuebel Kovarik, Kathy
Sent: July 7, 2020 8:58 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056 Consolidated Comments Received.docx

I finished reviewing this.

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From: Nuebel Kovarik, Kathy <
v>
Sent: Tuesday, July 7, 2020 9:25 AM
To: Piateski, Jennifer E ; Bailey, Morgan v>; King, Alexander R
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

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From: Piateski, Jennifer E
Sent: Tuesday, July 07, 2020 8:25 AM
To: Nuebel Kovarik, Kathy ; Bailey, Morgan
King, Alexander R
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Yes, Morgan and I are reviewing on MS Teams. Joe asked to see it yesterday so I sent him a copy. Not sure if he was going to review it or not, but he does have it.

From: Nuebel Kovarik, Kathy
Sent: Tuesday, July 7, 2020 9:22 AM
To: Piateski, Jennifer E Bailey, Morgan King, Alexander R
Subject: FW: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Are you all reviewing this? I got to about page 40, but wanted to check with you all and see if Joe wanted to review concurrently.

From: USCIS Regs <
Sent: Monday, July 06, 2020 3:50 PM
To: USCIS Exec Sec
Cc: Smith, Mirna ; Boivin, Mark R >; Deshommes,

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Samantha L [redacted]; Rigdon, Jerry L [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Law, Robert T [redacted]; Culver, Anthony J (Jared) [redacted]; Lapp, Meredith M [redacted]; Stiefel, Nathaniel I [redacted]; Gramiccioni, Jennifer L [redacted]; Freiberger, Andrea L (Ande) [redacted]; Parascandola, Ciro A [redacted]; Nuebel Kovarik, Kathy [redacted]; Bailey, Morgan [redacted]; Lin, Peggy P [redacted]; Buono, Paul M [redacted]; Nimick, Charles L (Locky) [redacted]; Smith, Mirna [redacted]

Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The G-1056 review of H-1B Strengthening IFR completed this afternoon at 4 PM. As promised I am sending the consolidated G-1056 comments. Please note that G-1056 review just concluded so most of the comments have not been responded to. We look forward to receiving EXSO/FO comments **by 6 PM on Tuesday, 7/7.**

Thank you!
Mirna

From: USCIS Regs
Sent: Tuesday, June 30, 2020 4:22 PM
To: USCIS Exec Sec [redacted]
Cc: USCIS Regs [redacted]; Smith, Mirna [redacted]; Boivin, Mark R [redacted]; Deshommes, Samantha L [redacted]; Rigdon, Jerry L [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Law, Robert T [redacted]; Culver, Anthony J (Jared) [redacted]; Lapp, Meredith M [redacted]; Stiefel, Nathaniel I [redacted]; Gramiccioni, Jennifer L [redacted]; Freiberger, Andrea L (Ande) [redacted]; Parascandola, Ciro A [redacted]; Nuebel Kovarik, Kathy [redacted]; Bailey, Morgan [redacted]; Lin, Peggy P [redacted]; Buono, Paul M [redacted]; Nimick, Charles L (Locky) [redacted]; Smith, Mirna [redacted]

Subject: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The attached **H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes** have been submitted **in STARS (service item 00028331)**. Please provide feedback via track changes to [redacted] by 6 PM on Tuesday, 7/7.

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Important note: G-1056 review is occurring in parallel and will conclude on 7/6. I will send a consolidated list of all G-1056 comments by COB on 7/6.

Summary: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including

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addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Thank you,
Mirna

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DEPARTMENT OF HOMELAND SECURITY

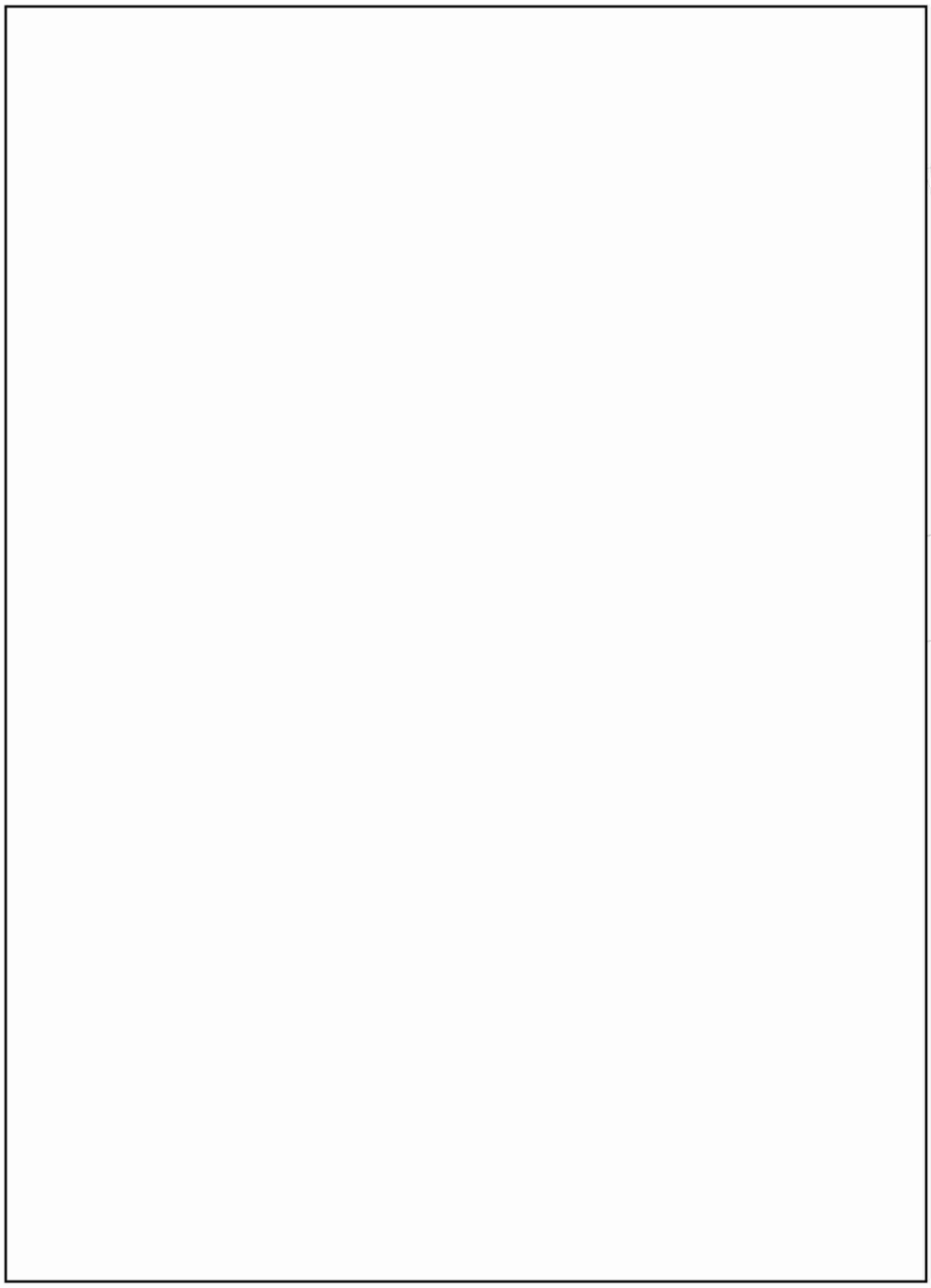
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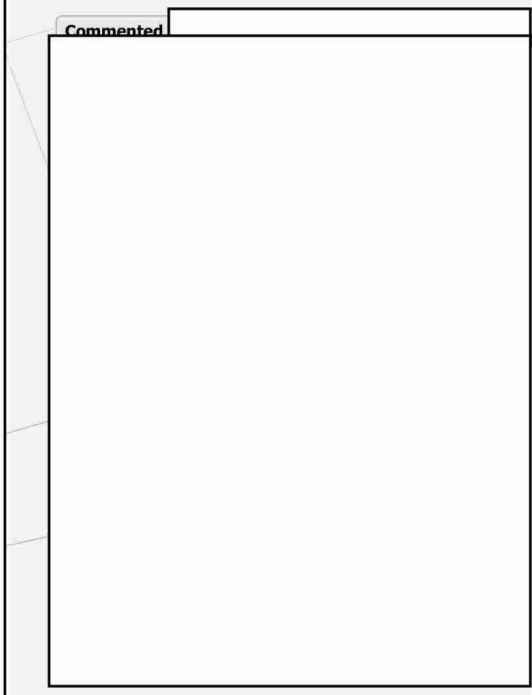
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[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

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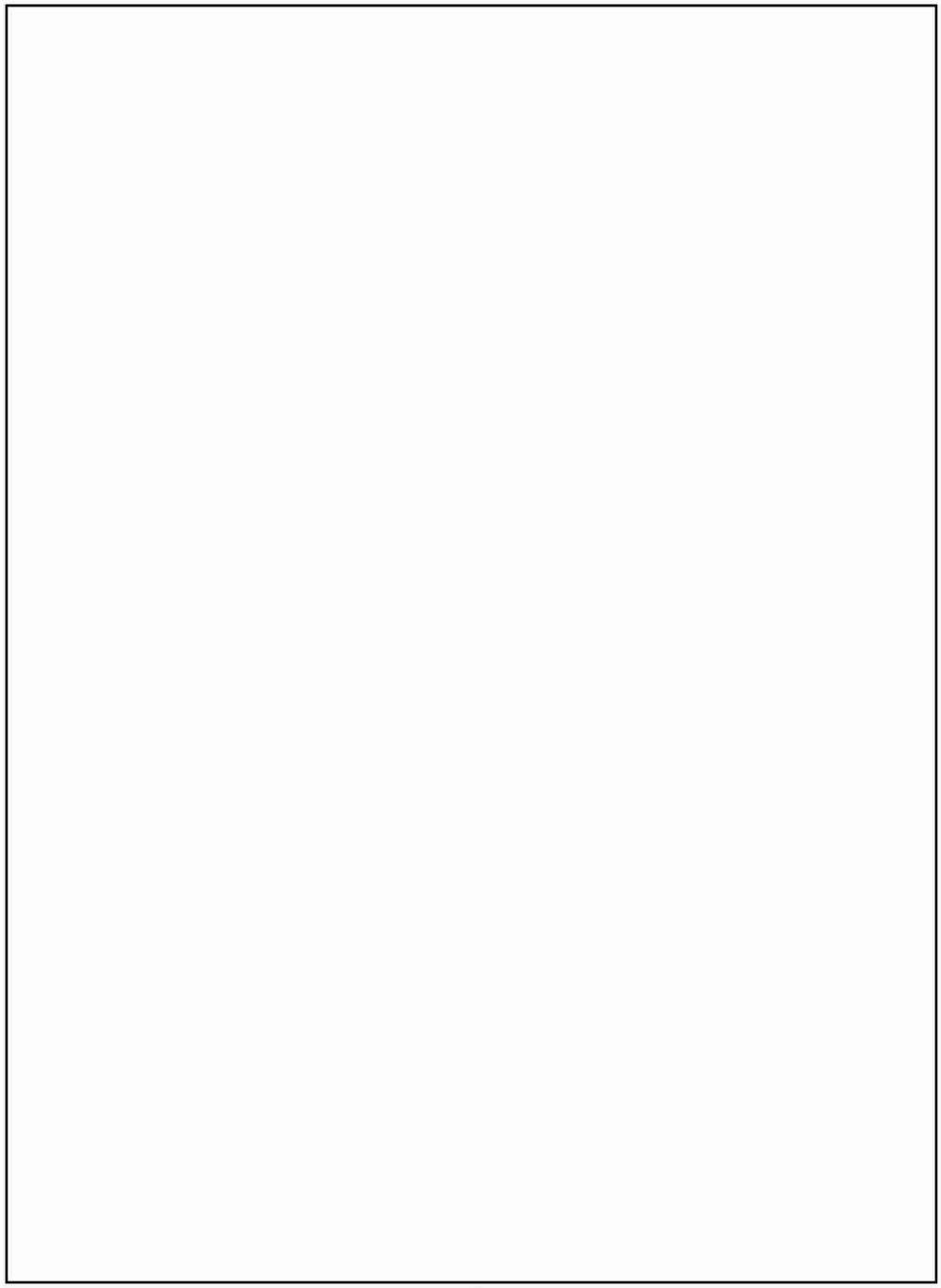


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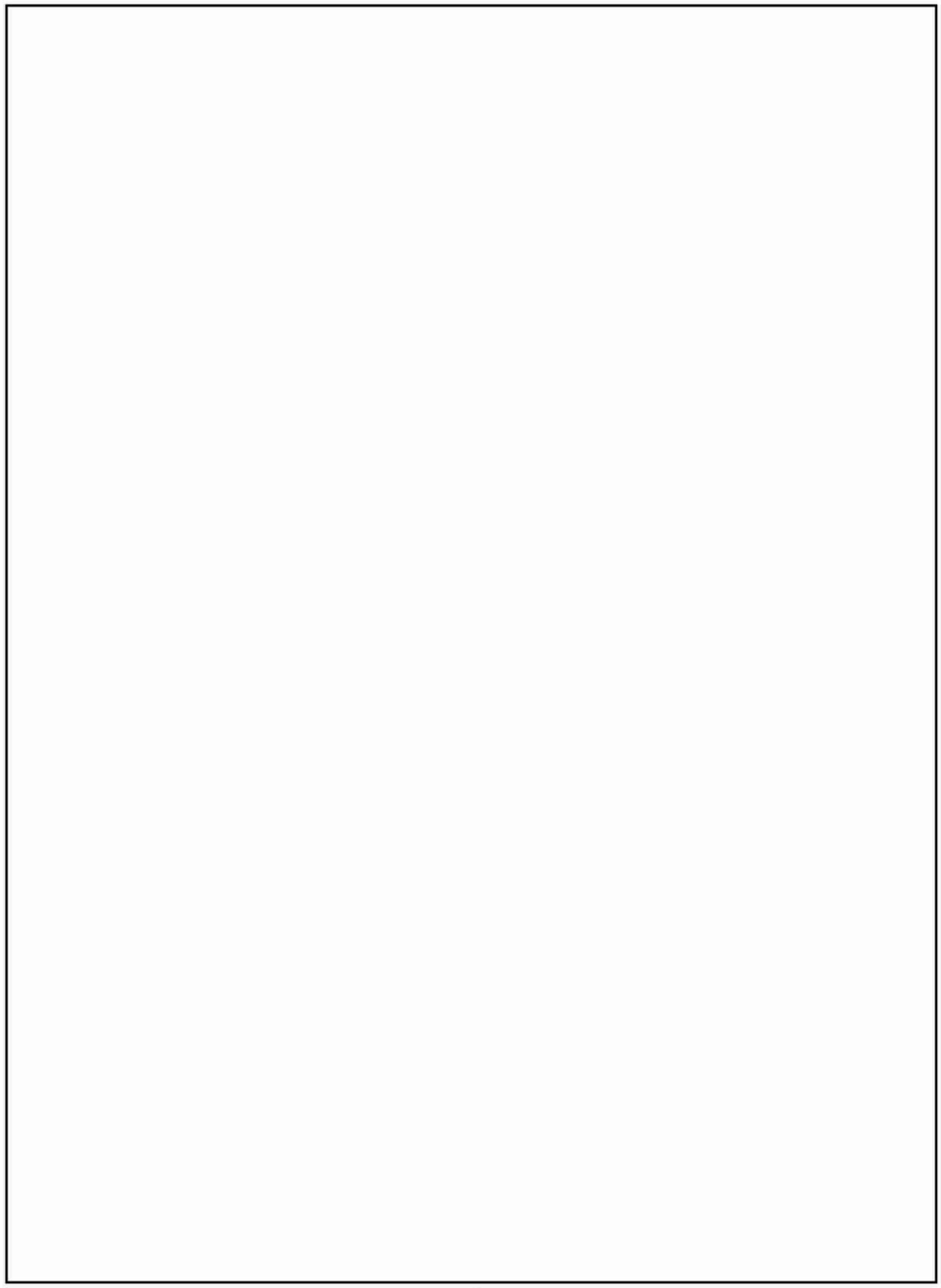
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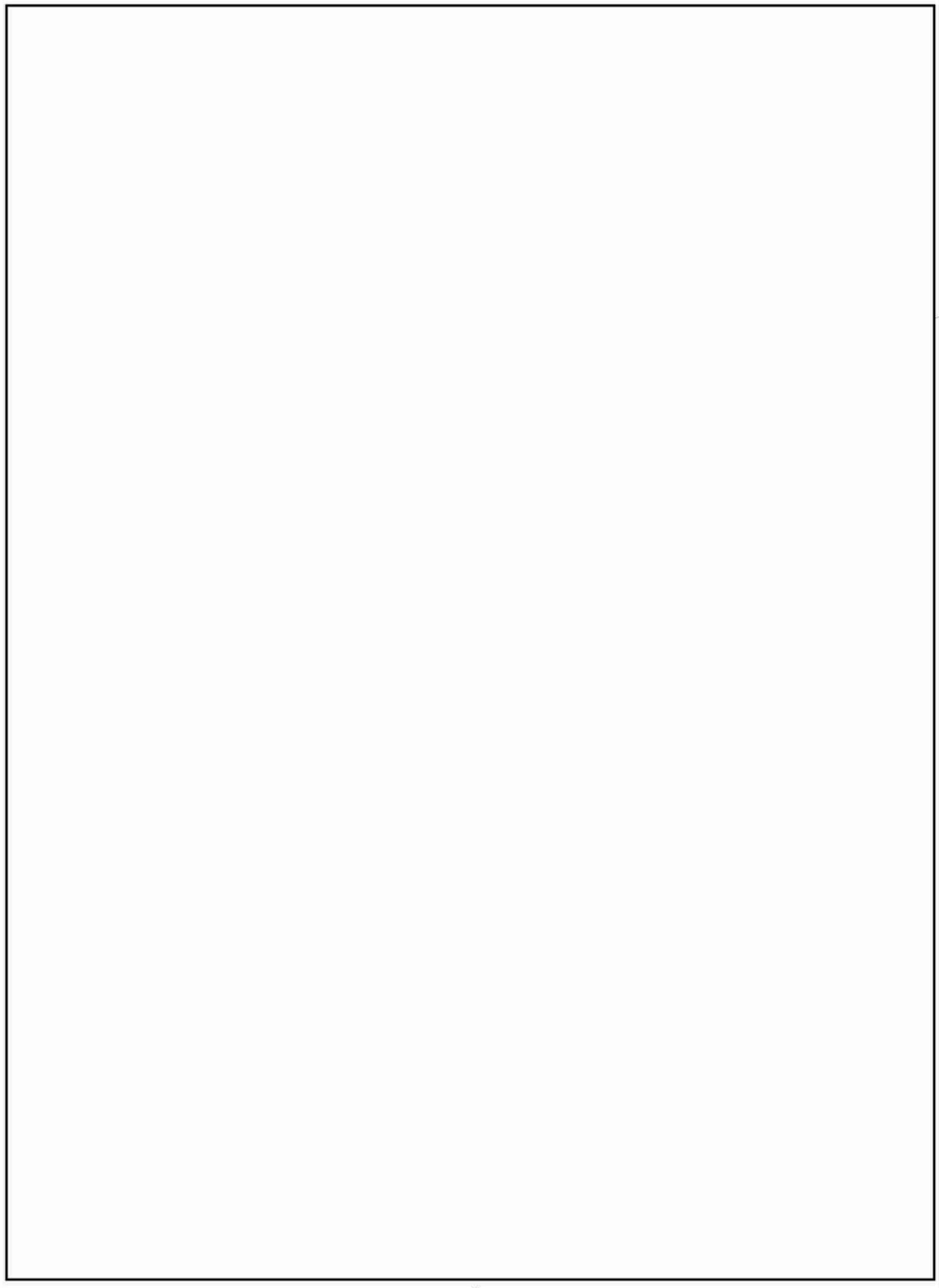
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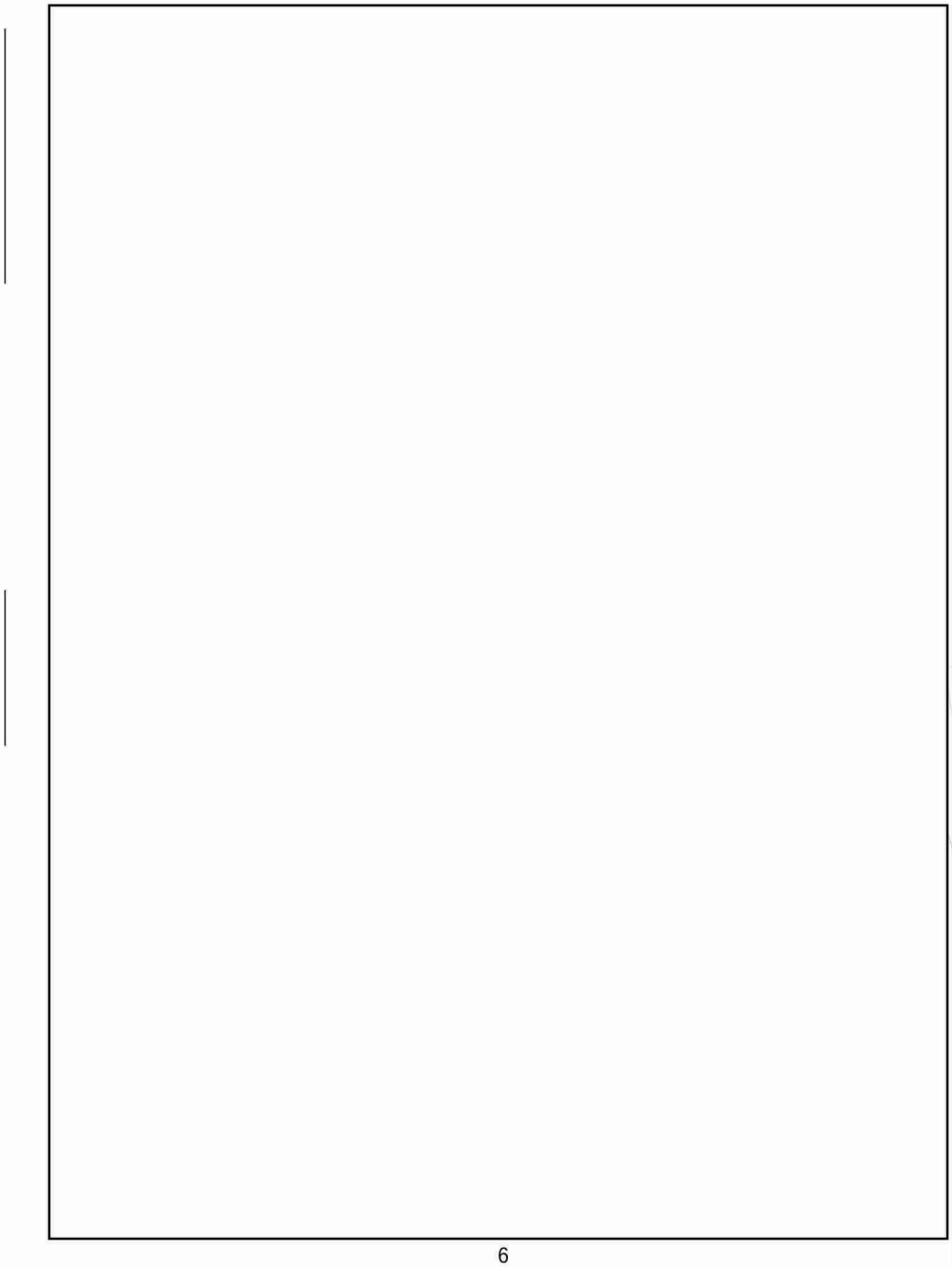


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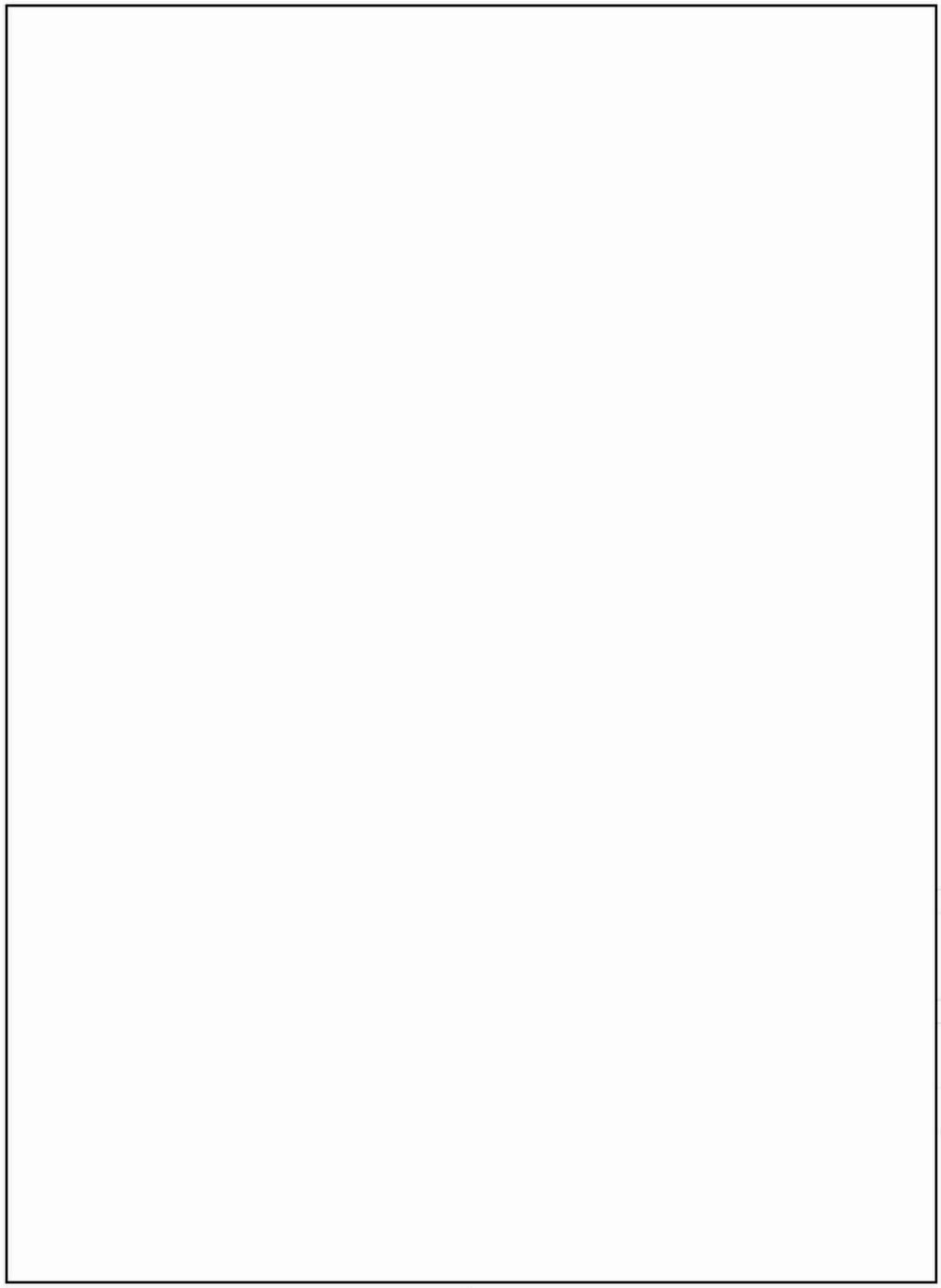
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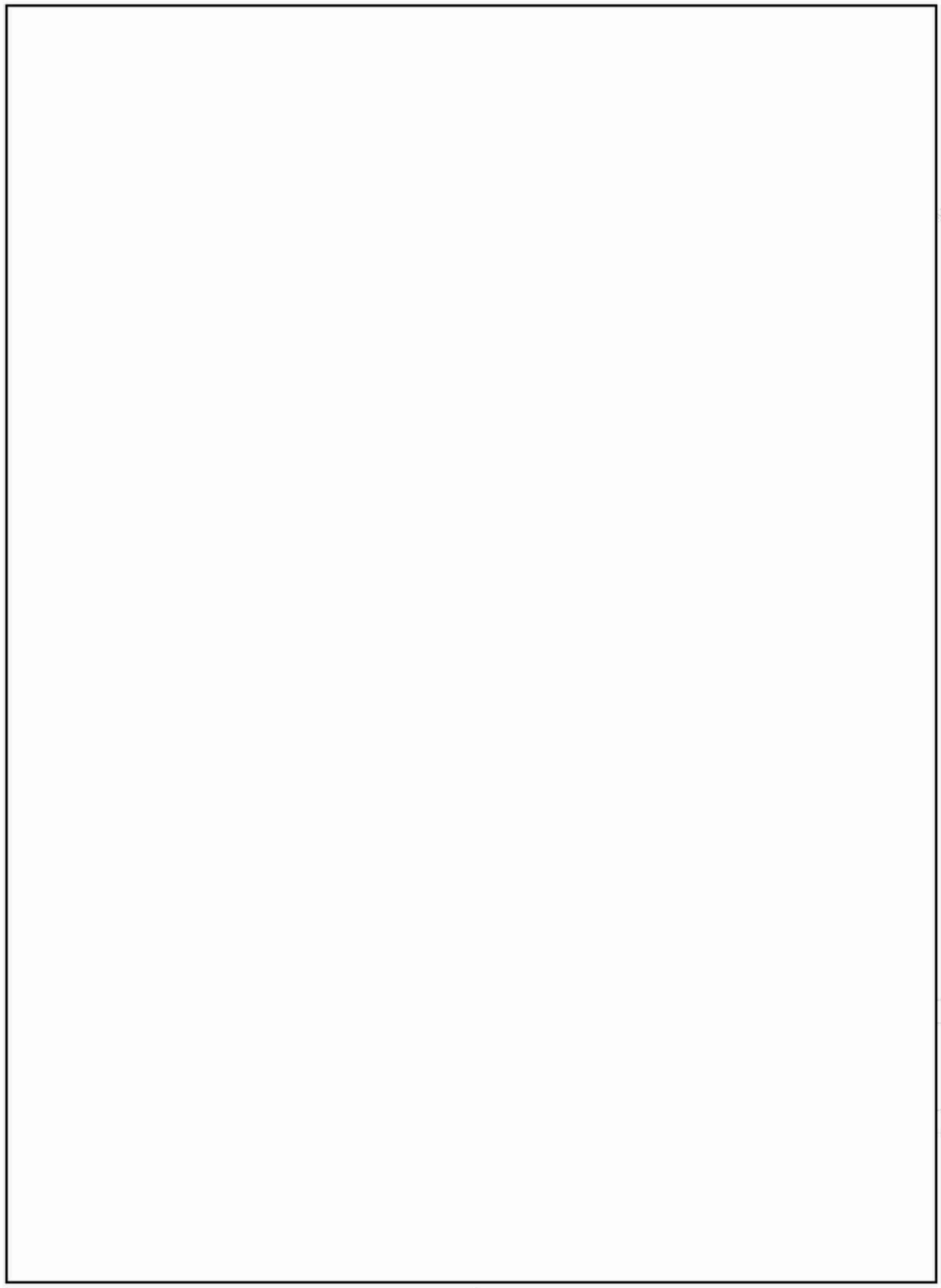
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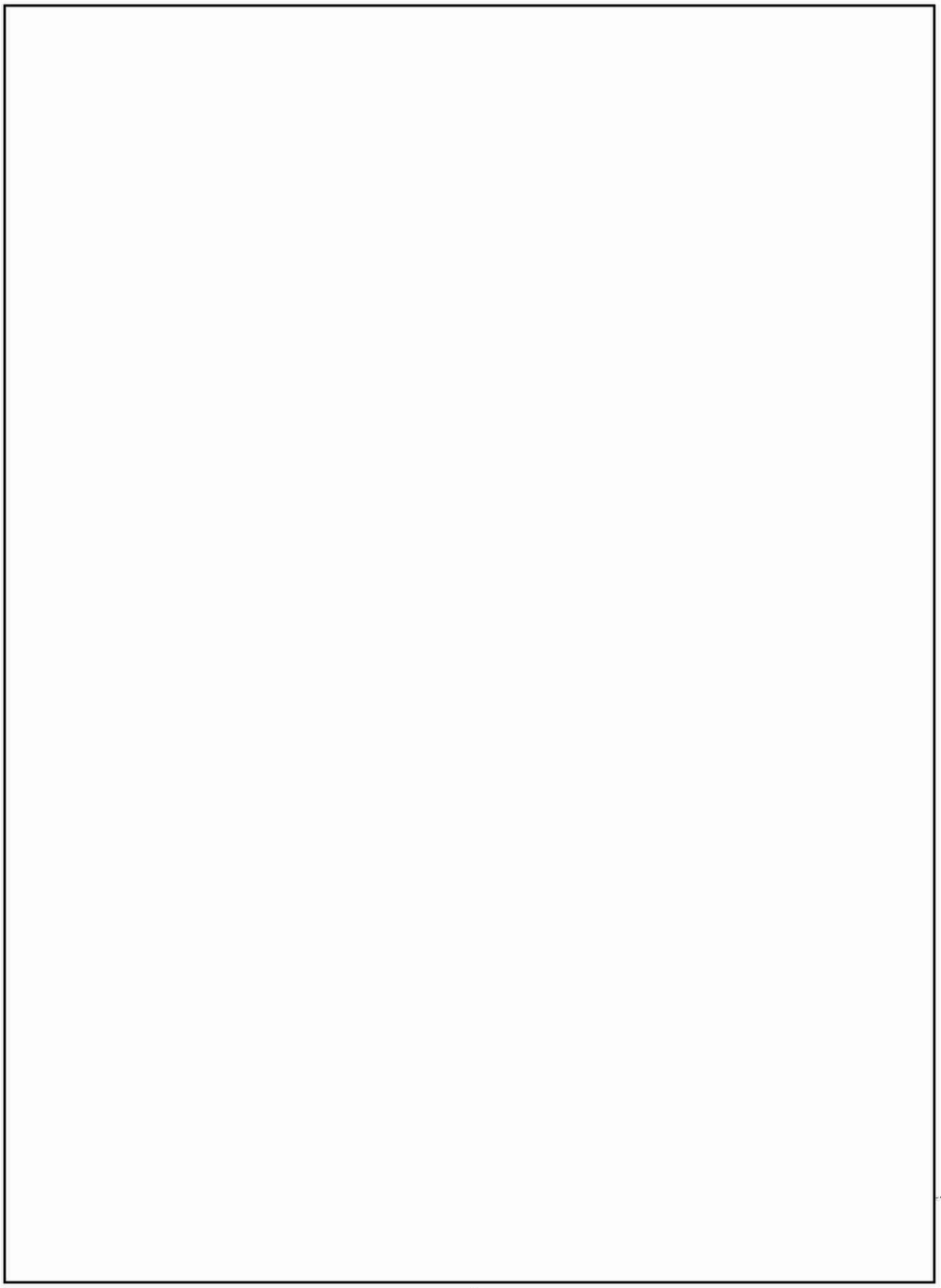
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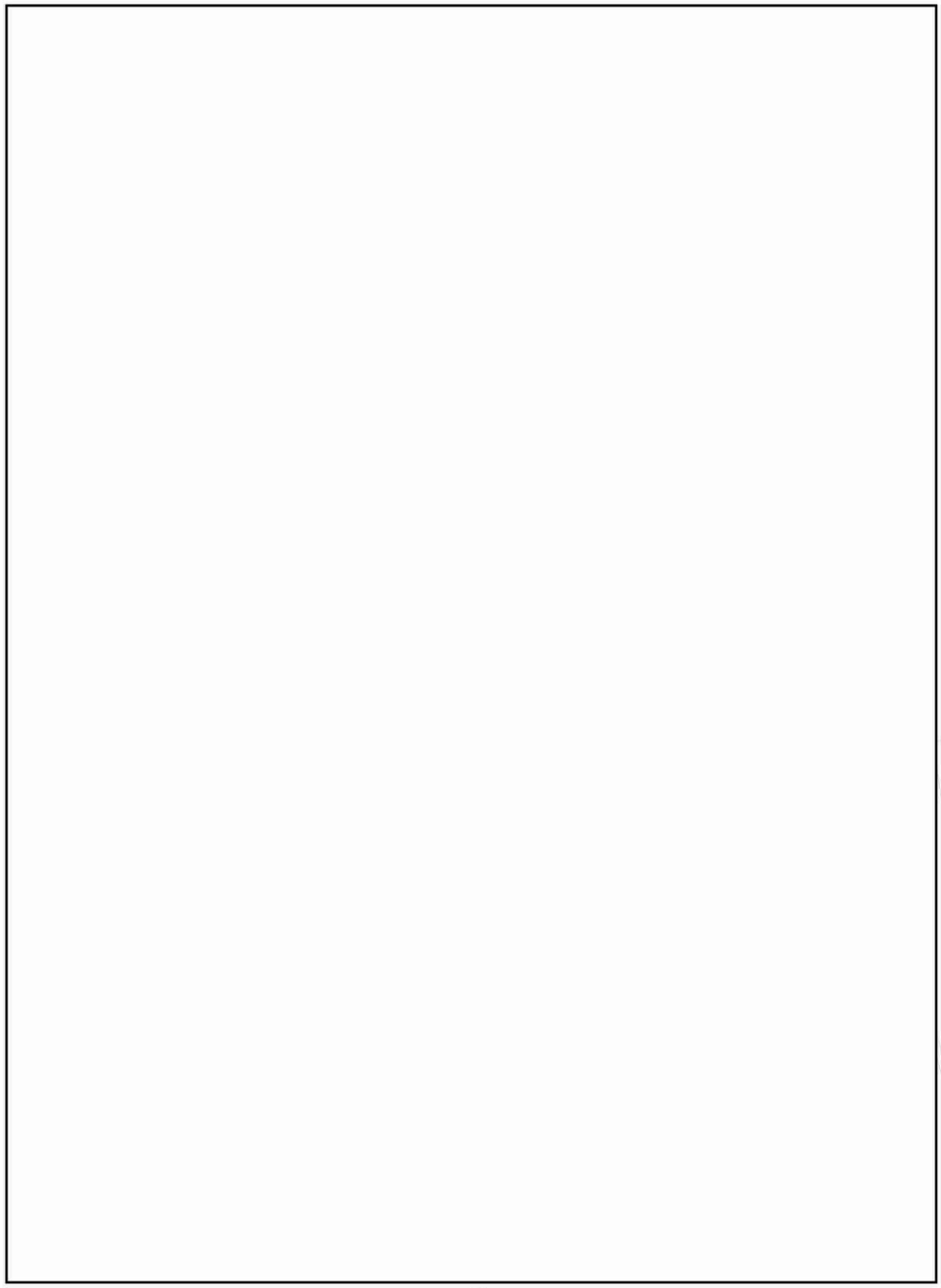
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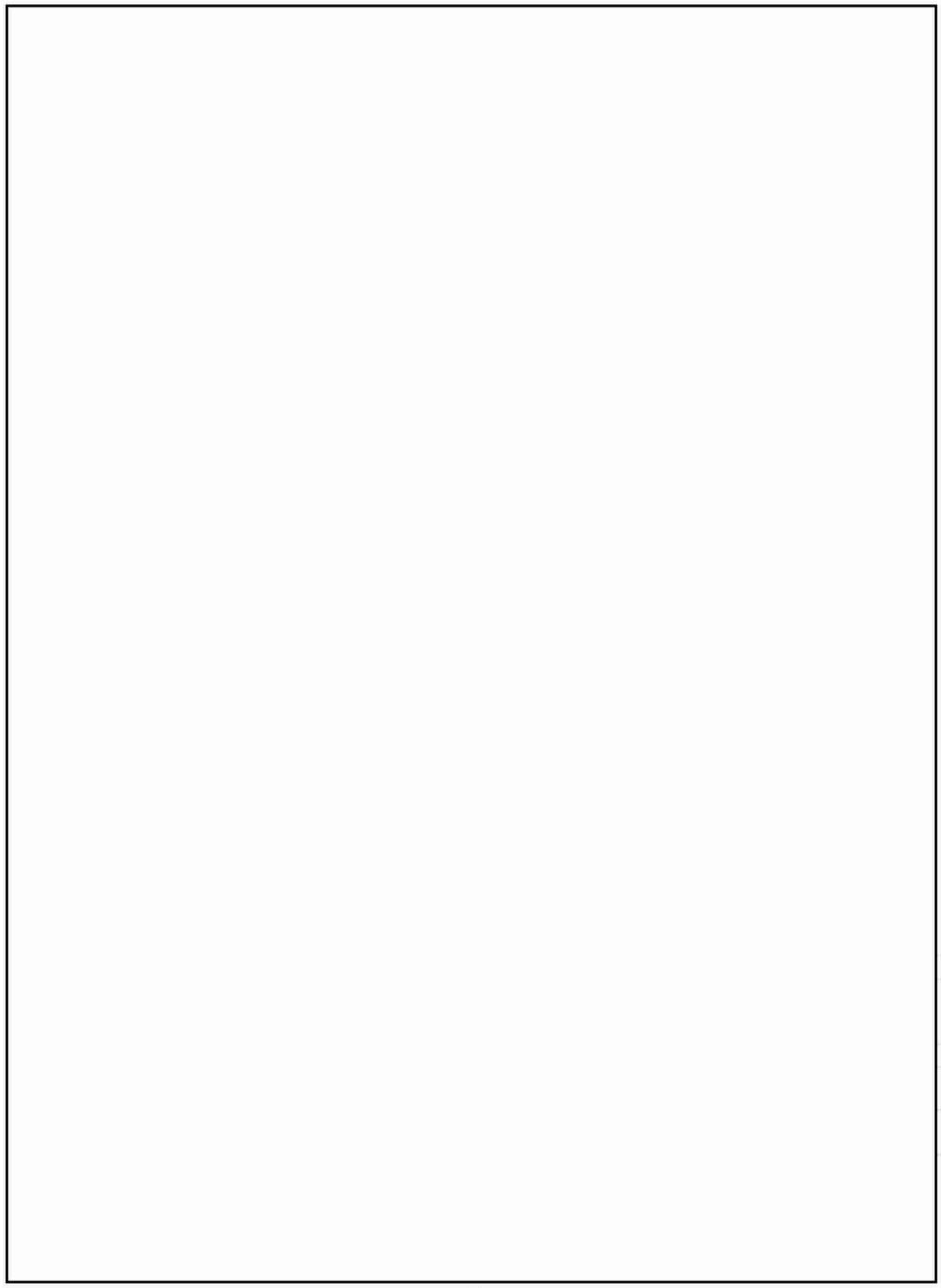
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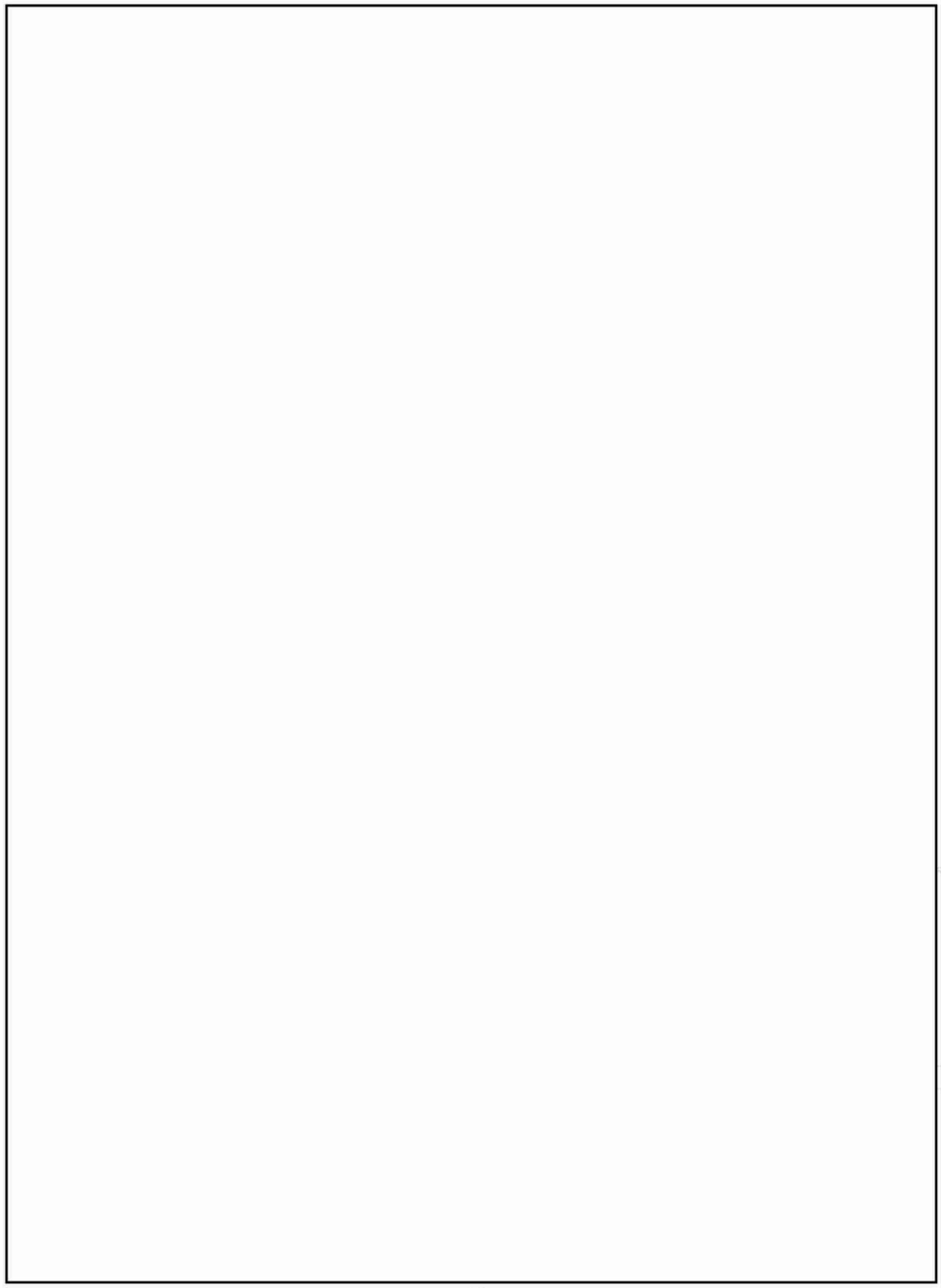
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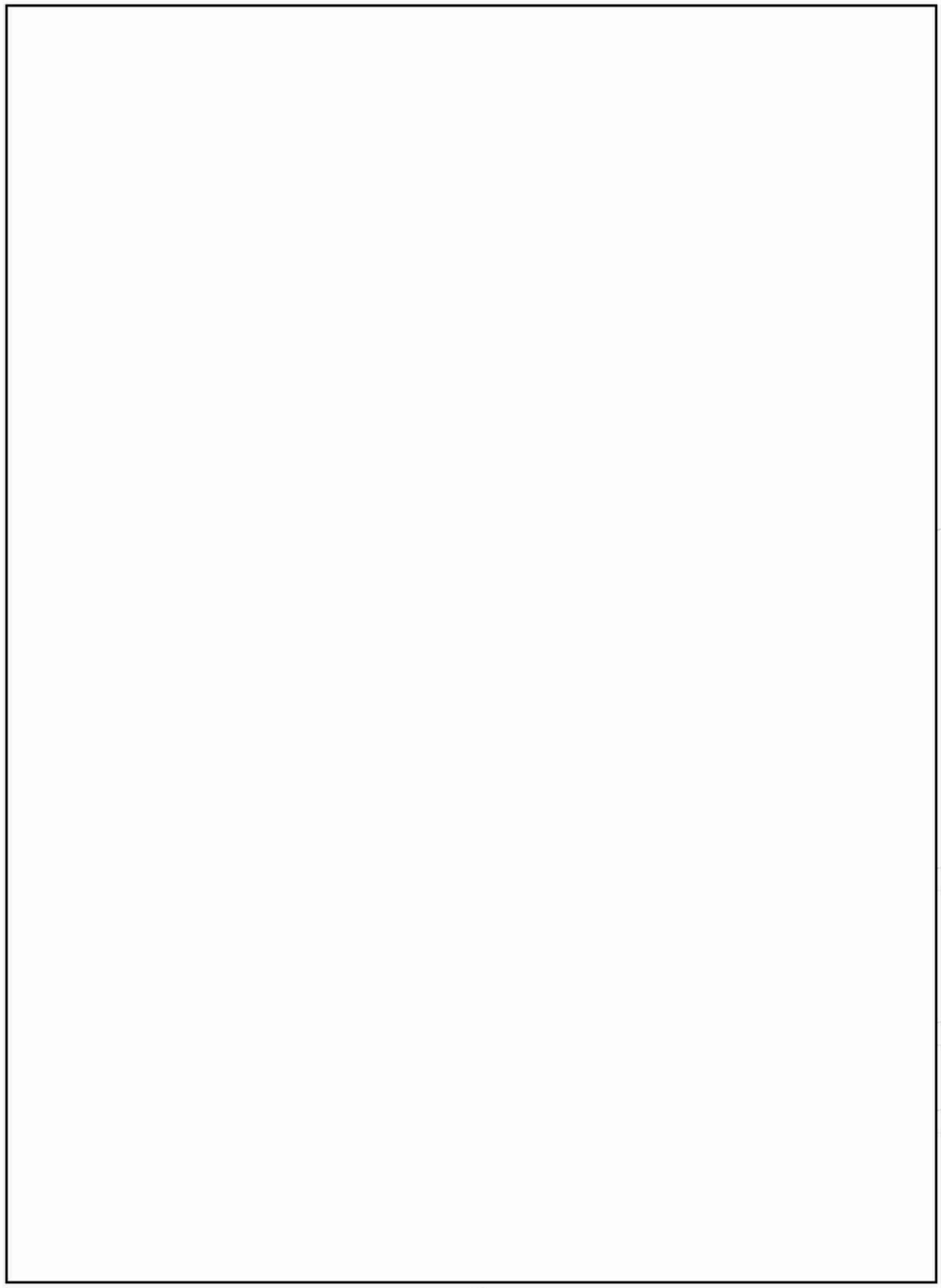
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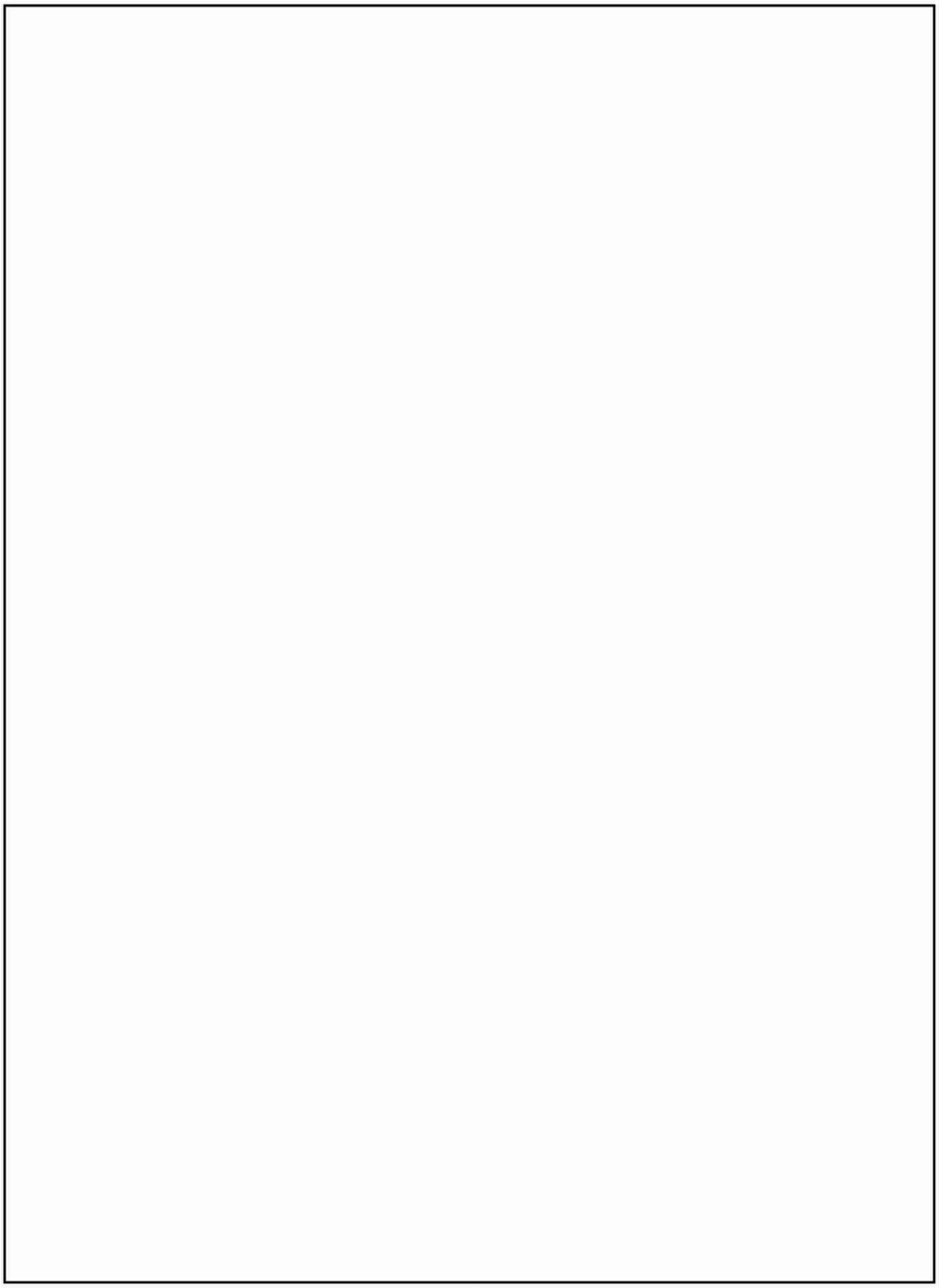
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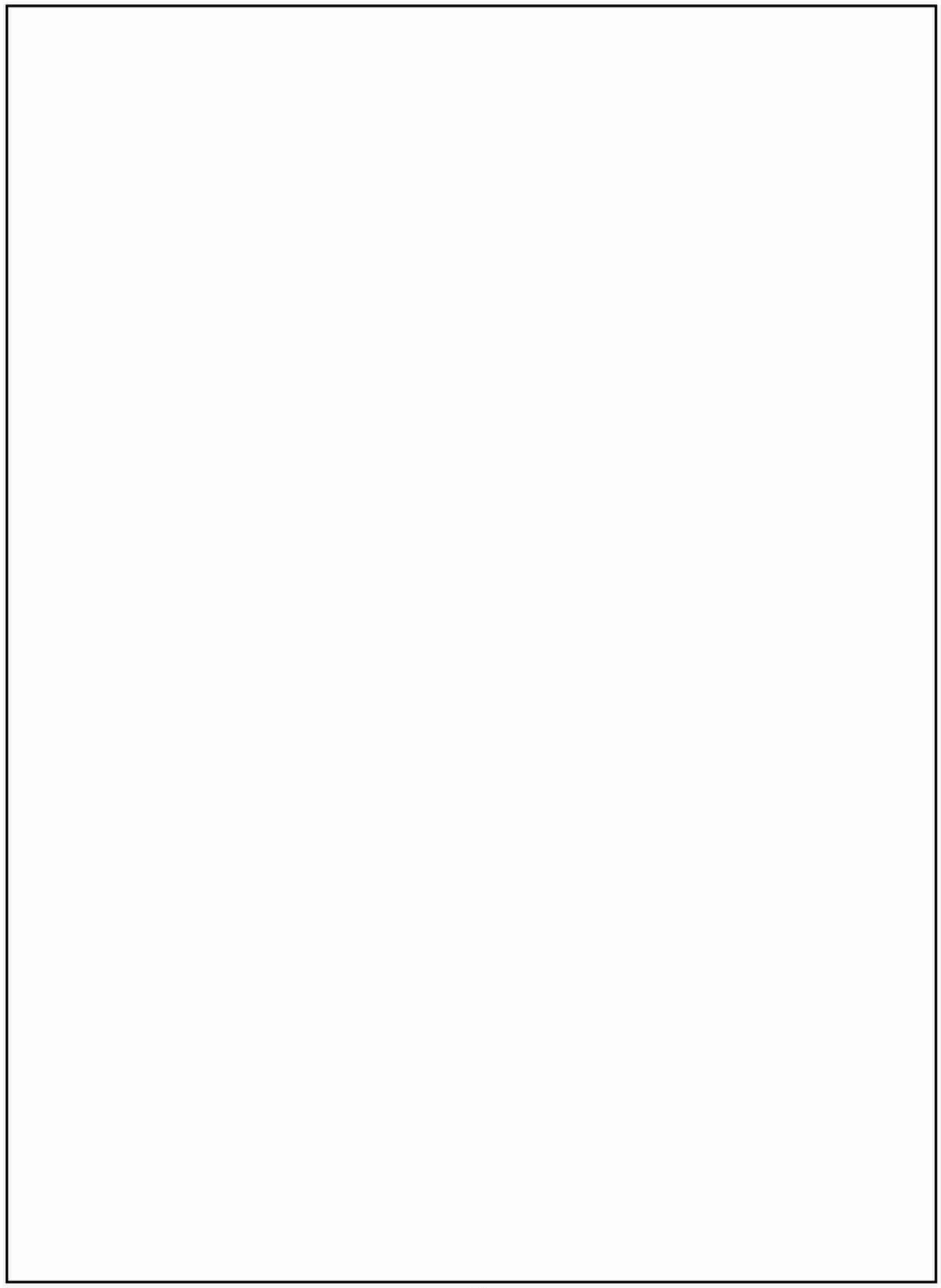
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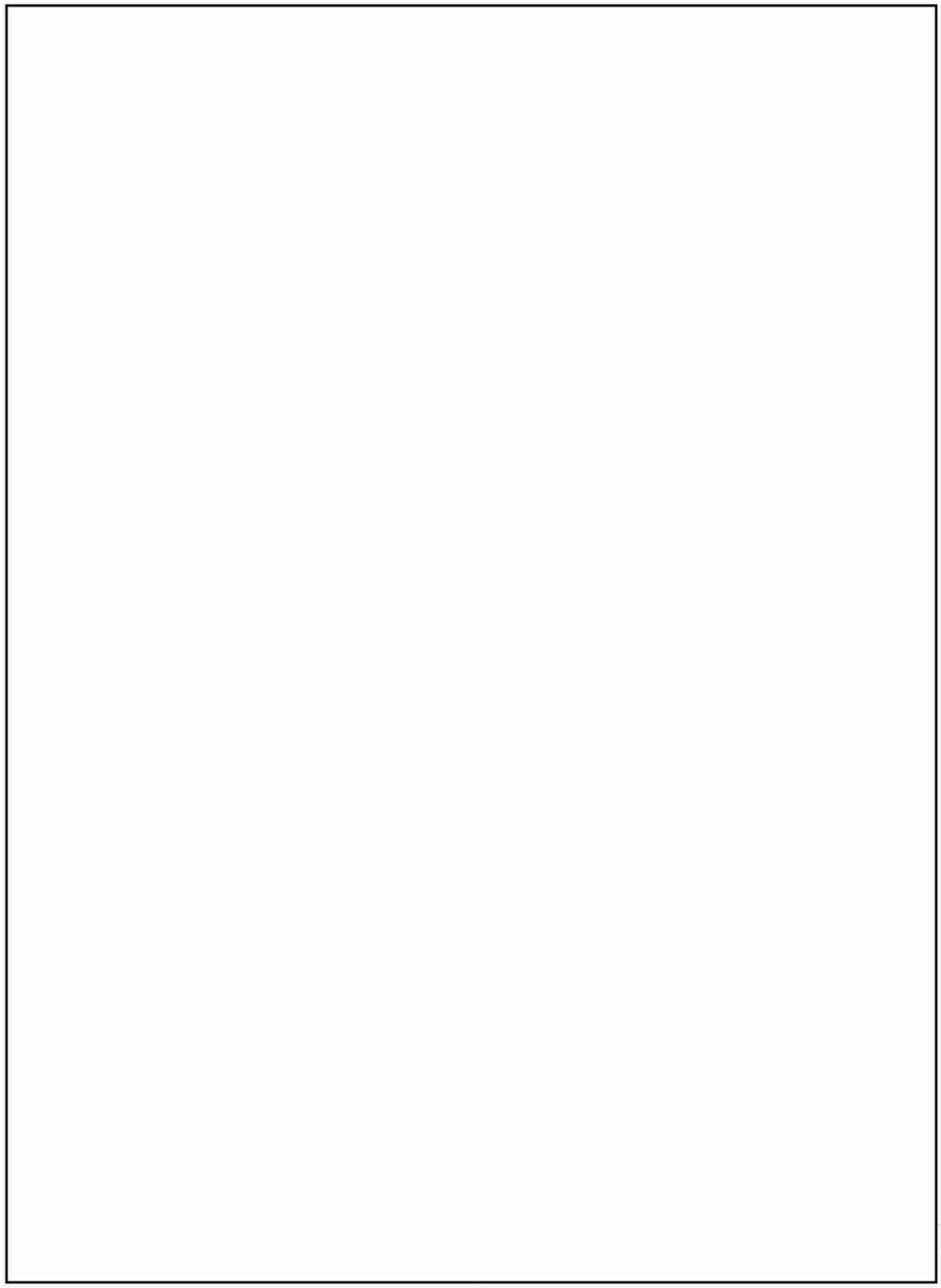
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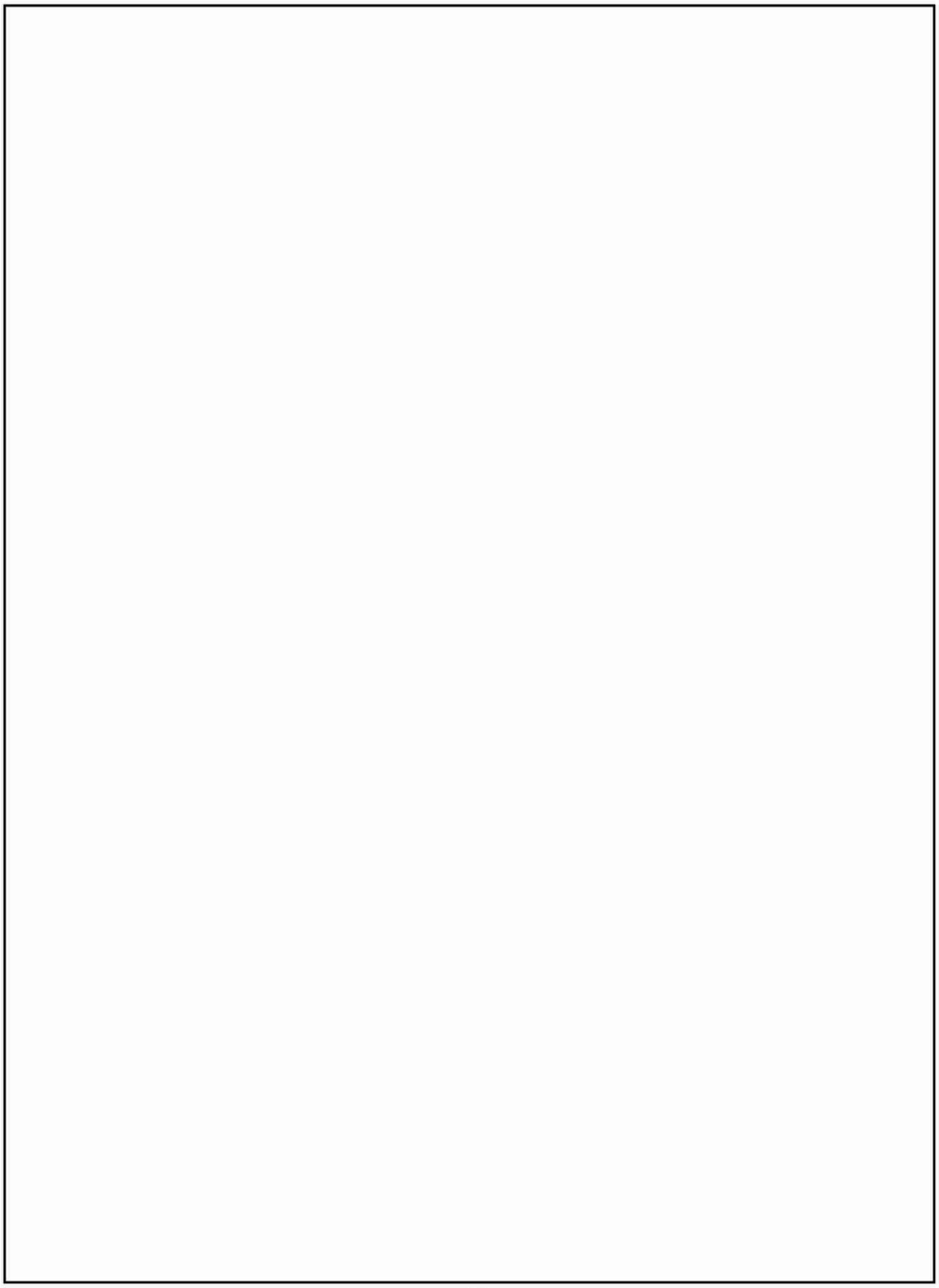


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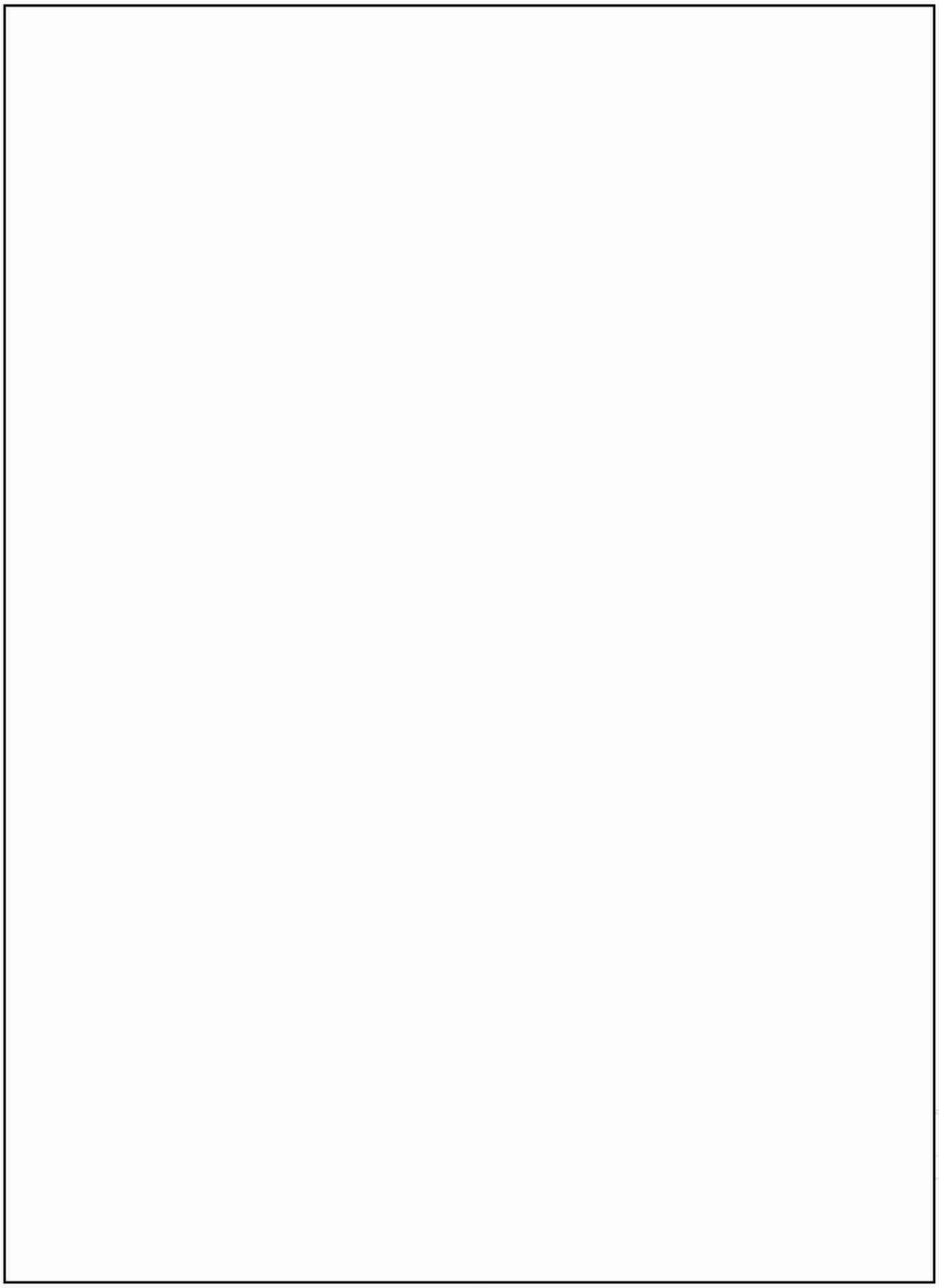
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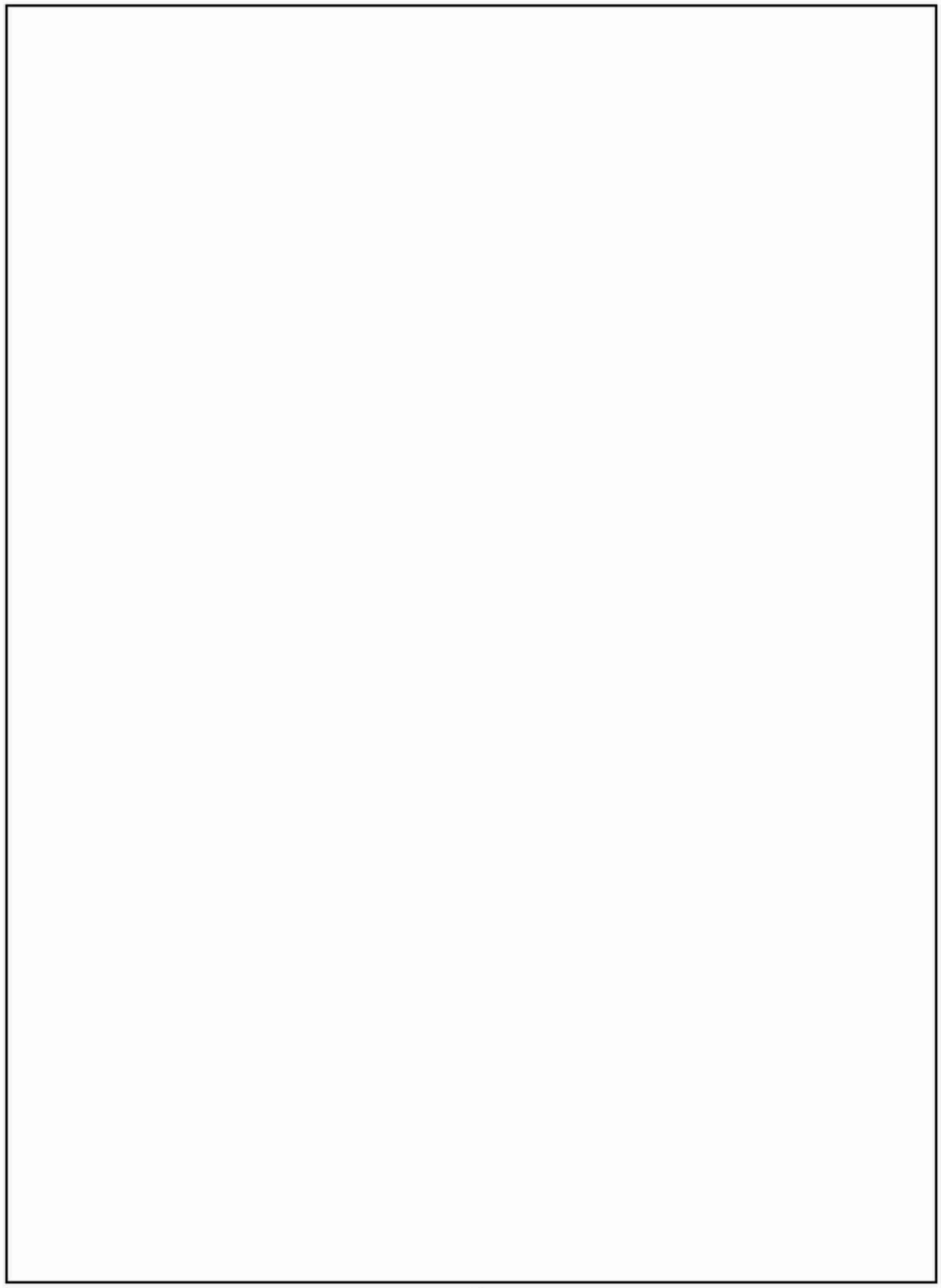
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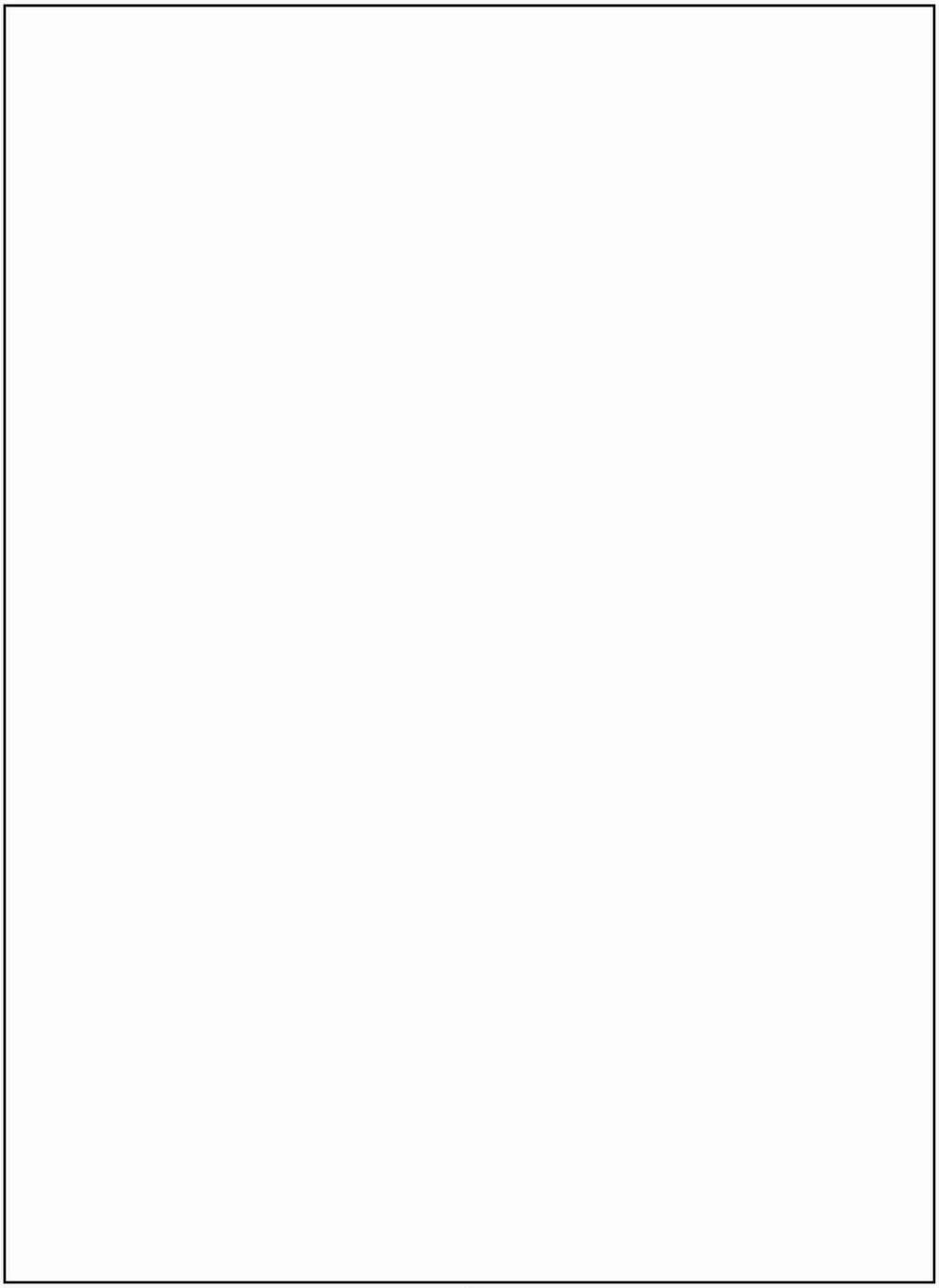
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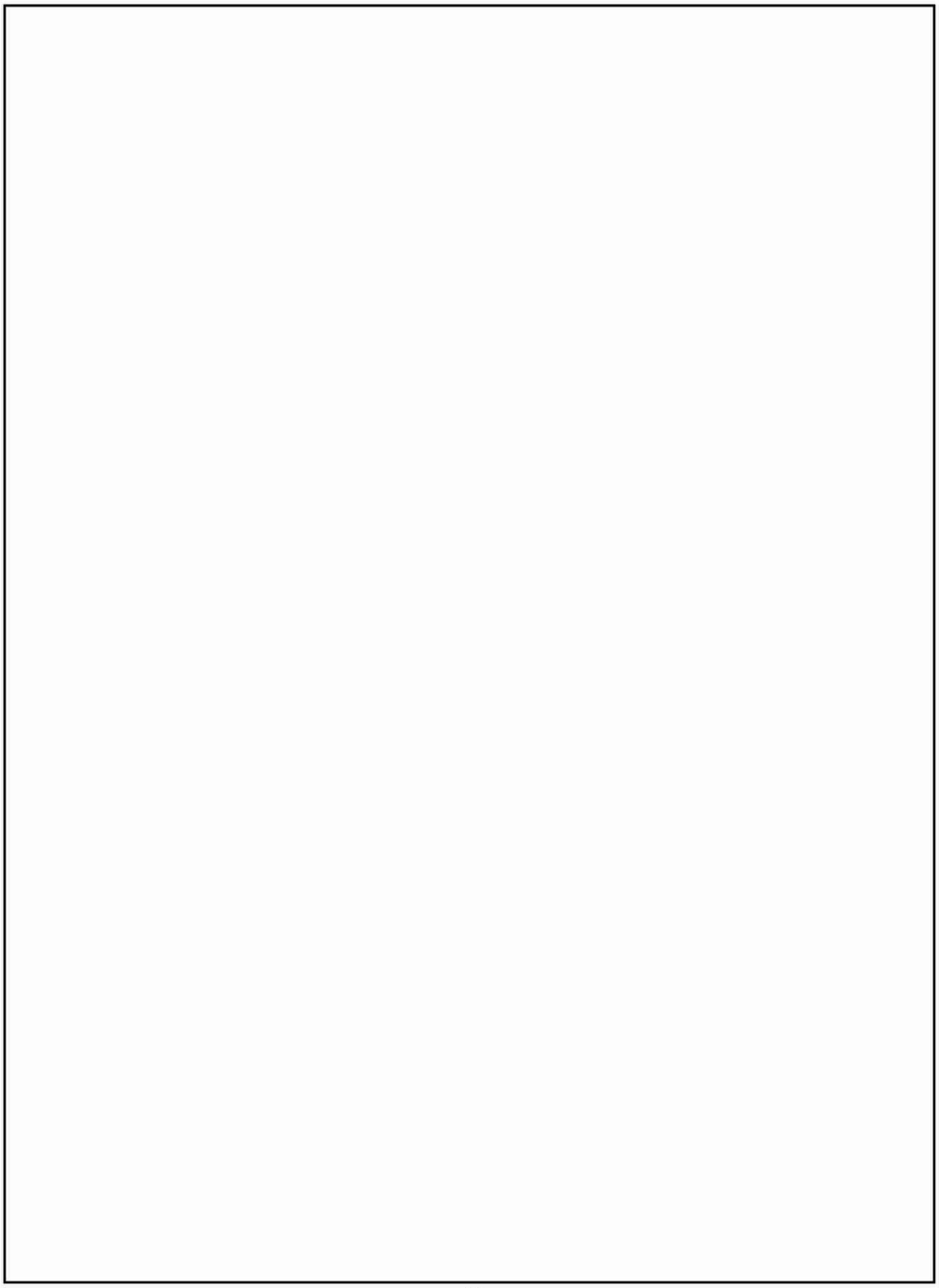
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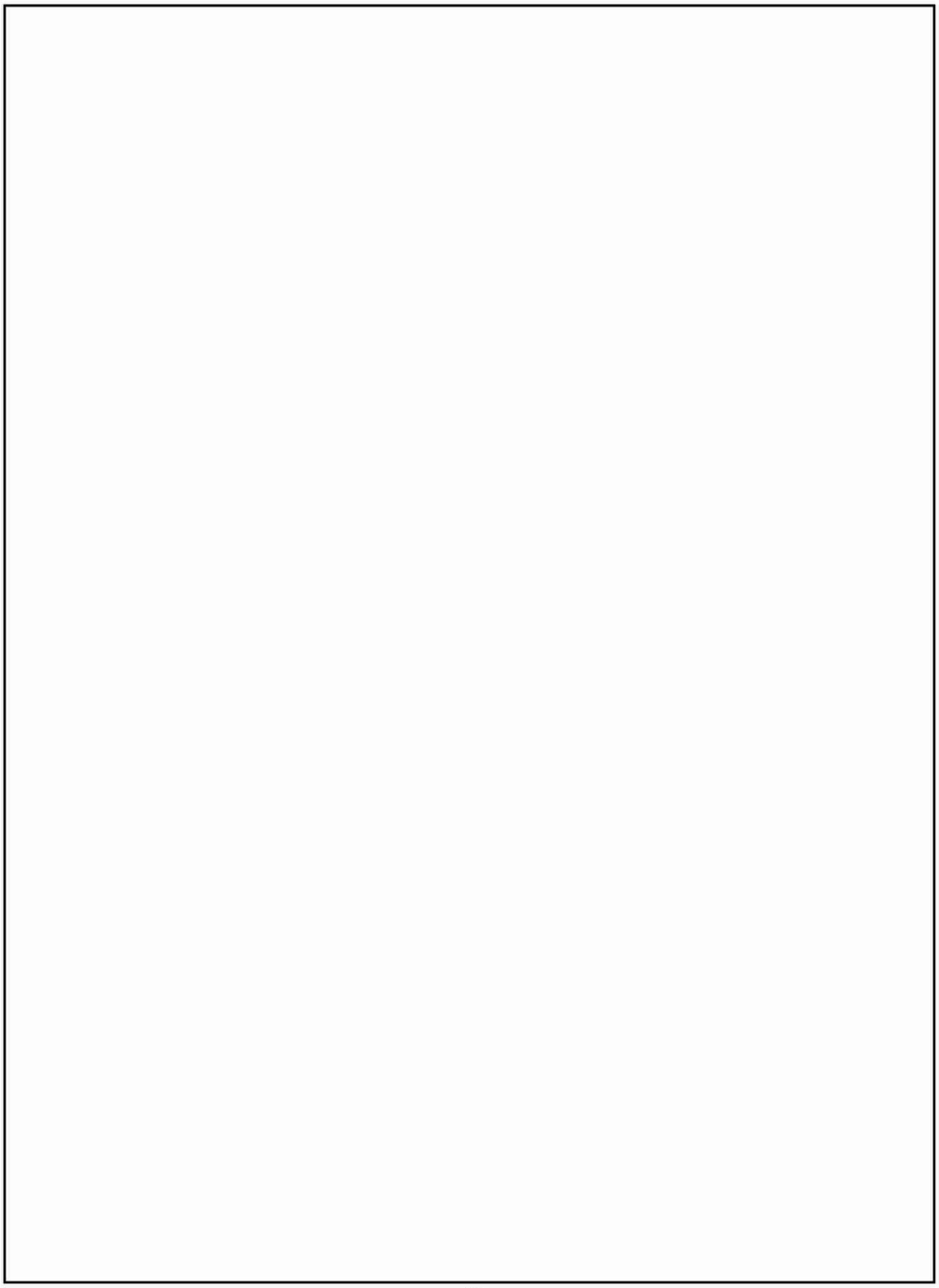
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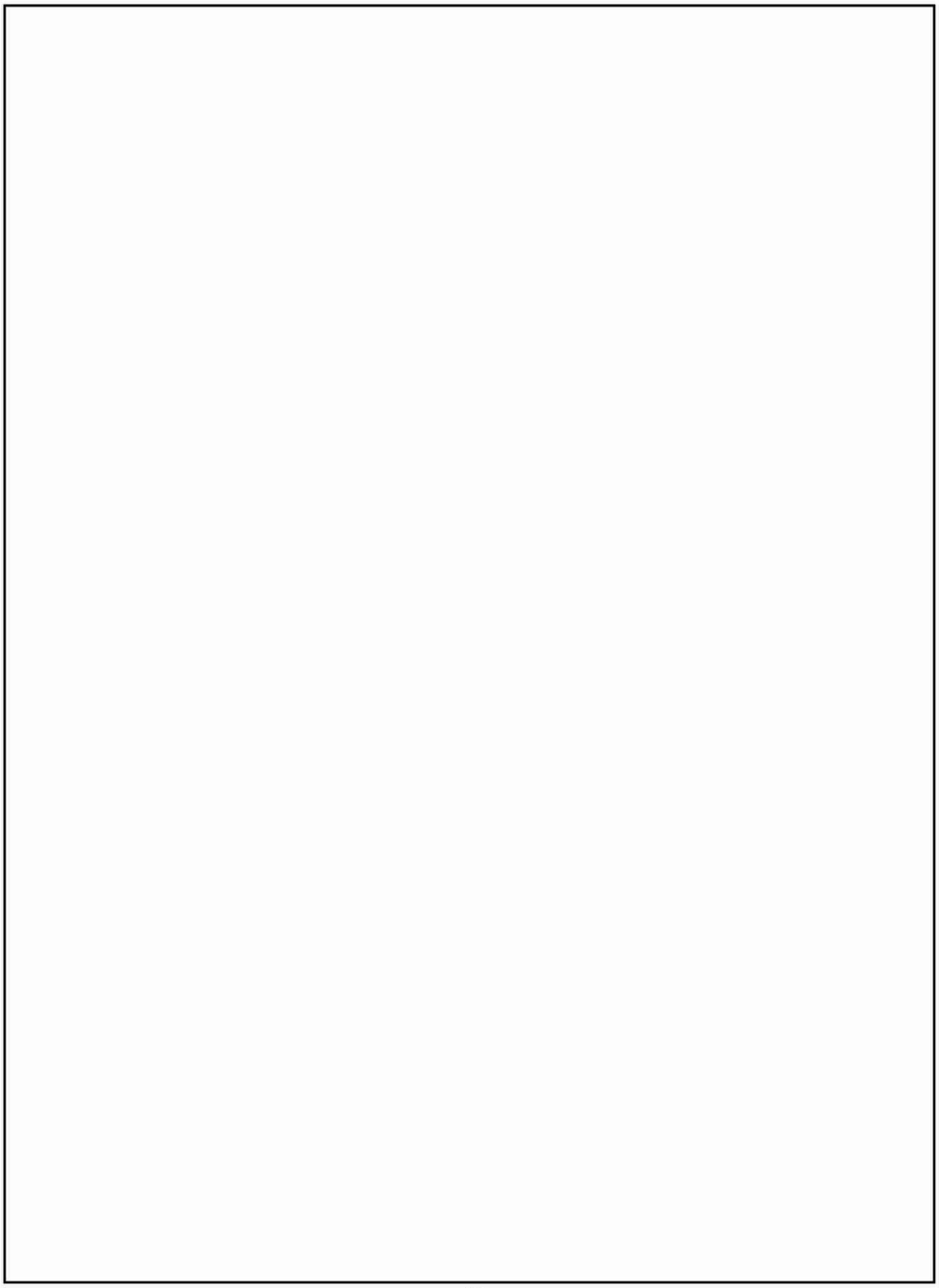
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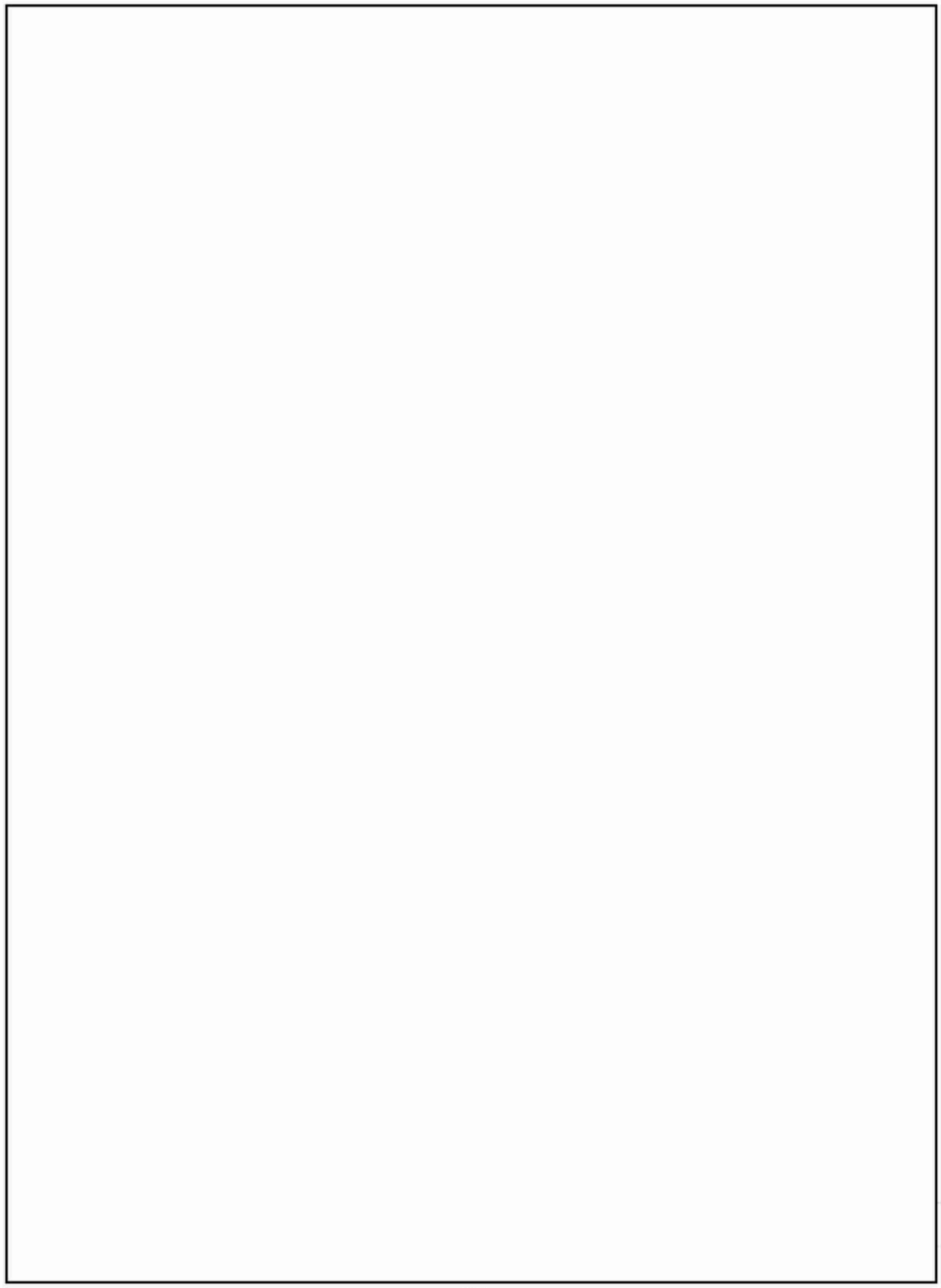
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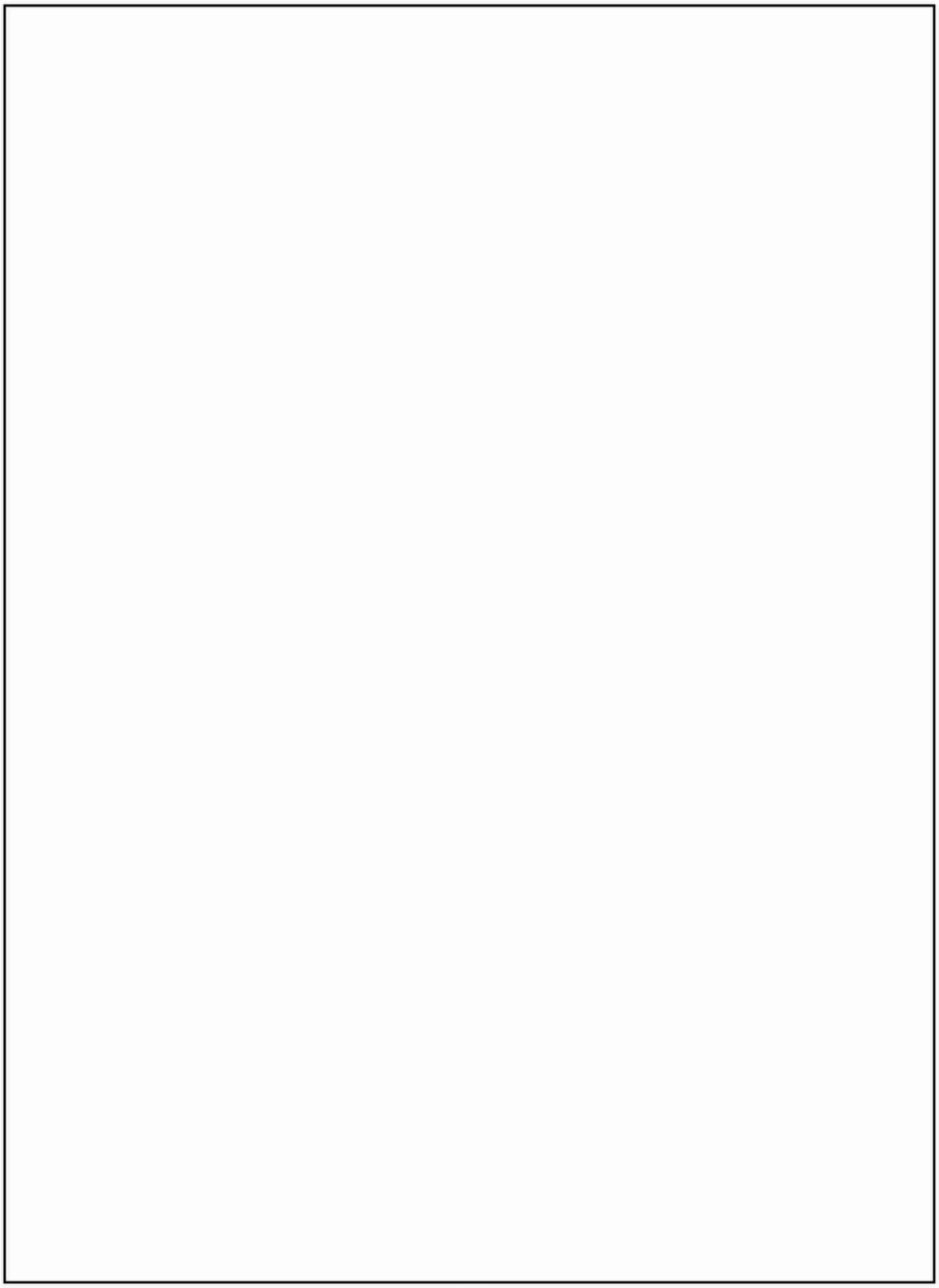


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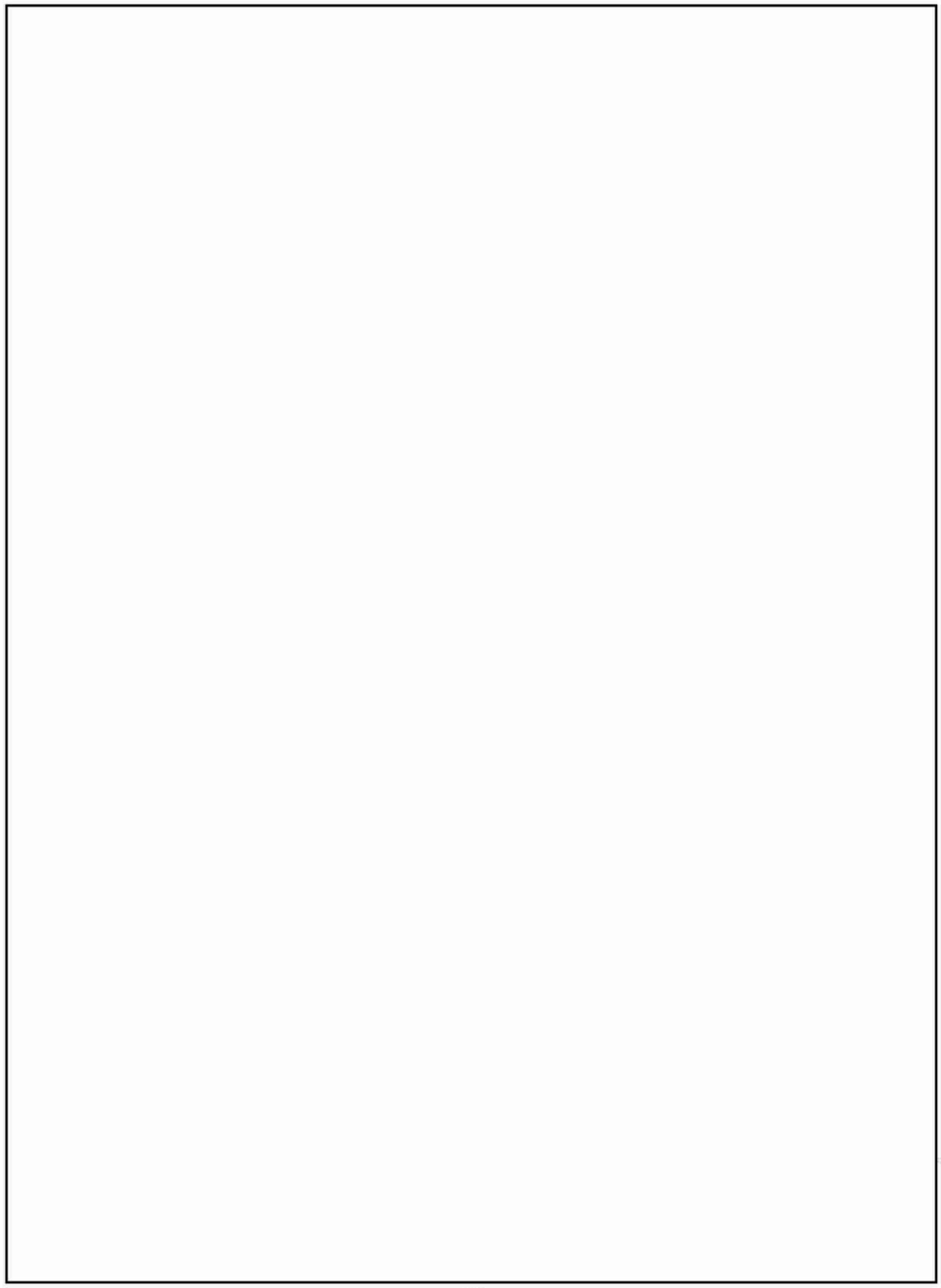
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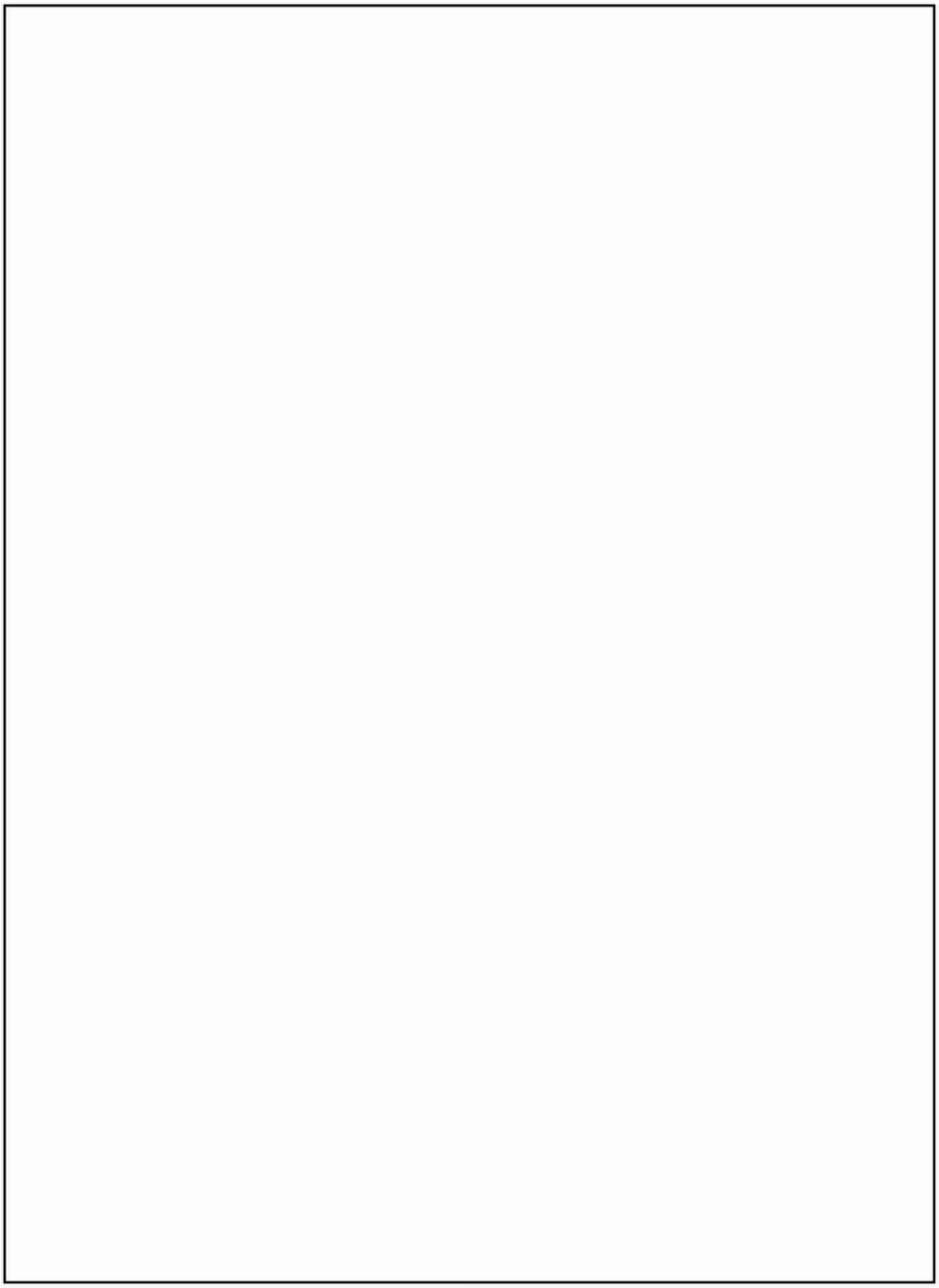


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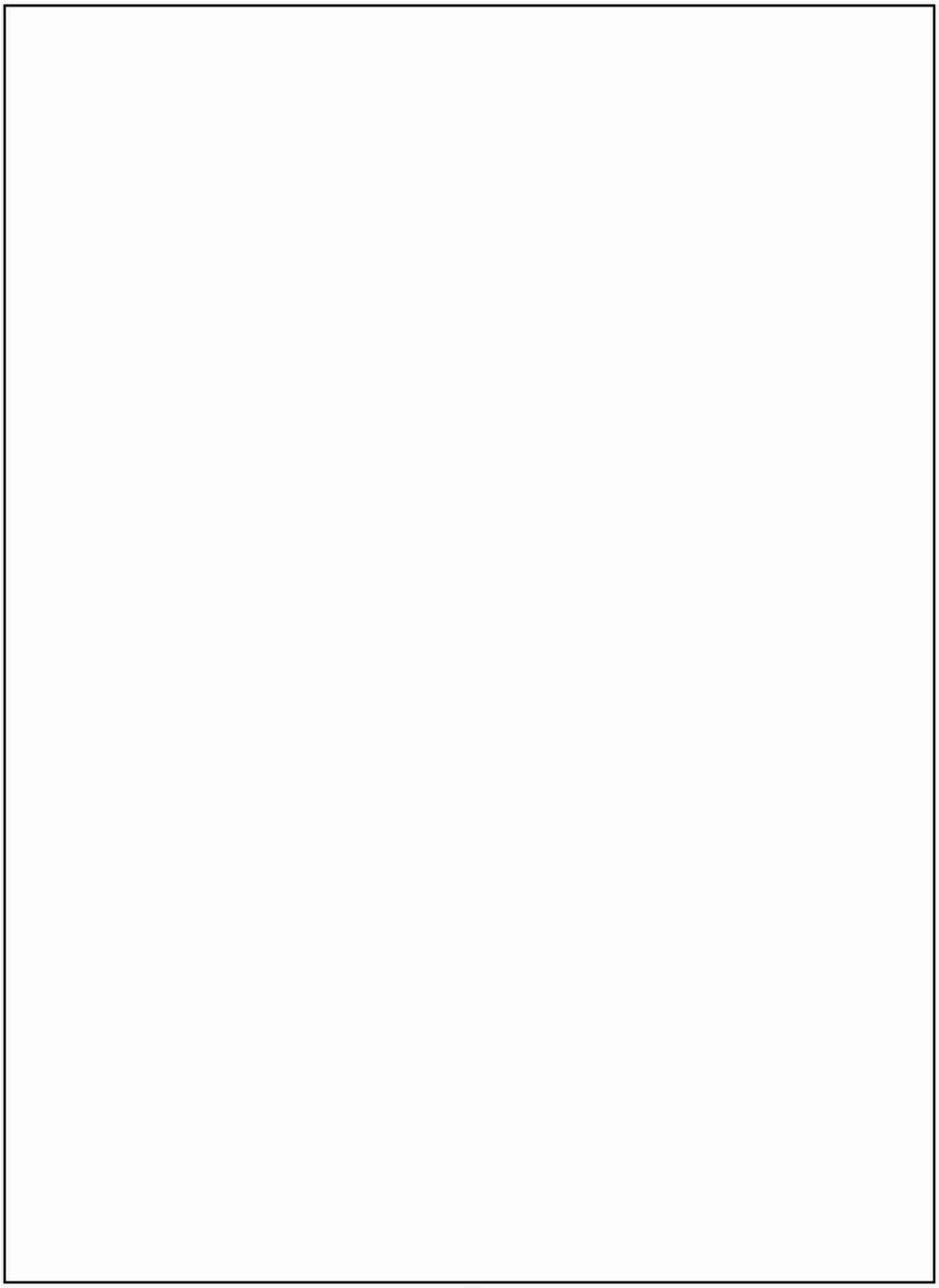
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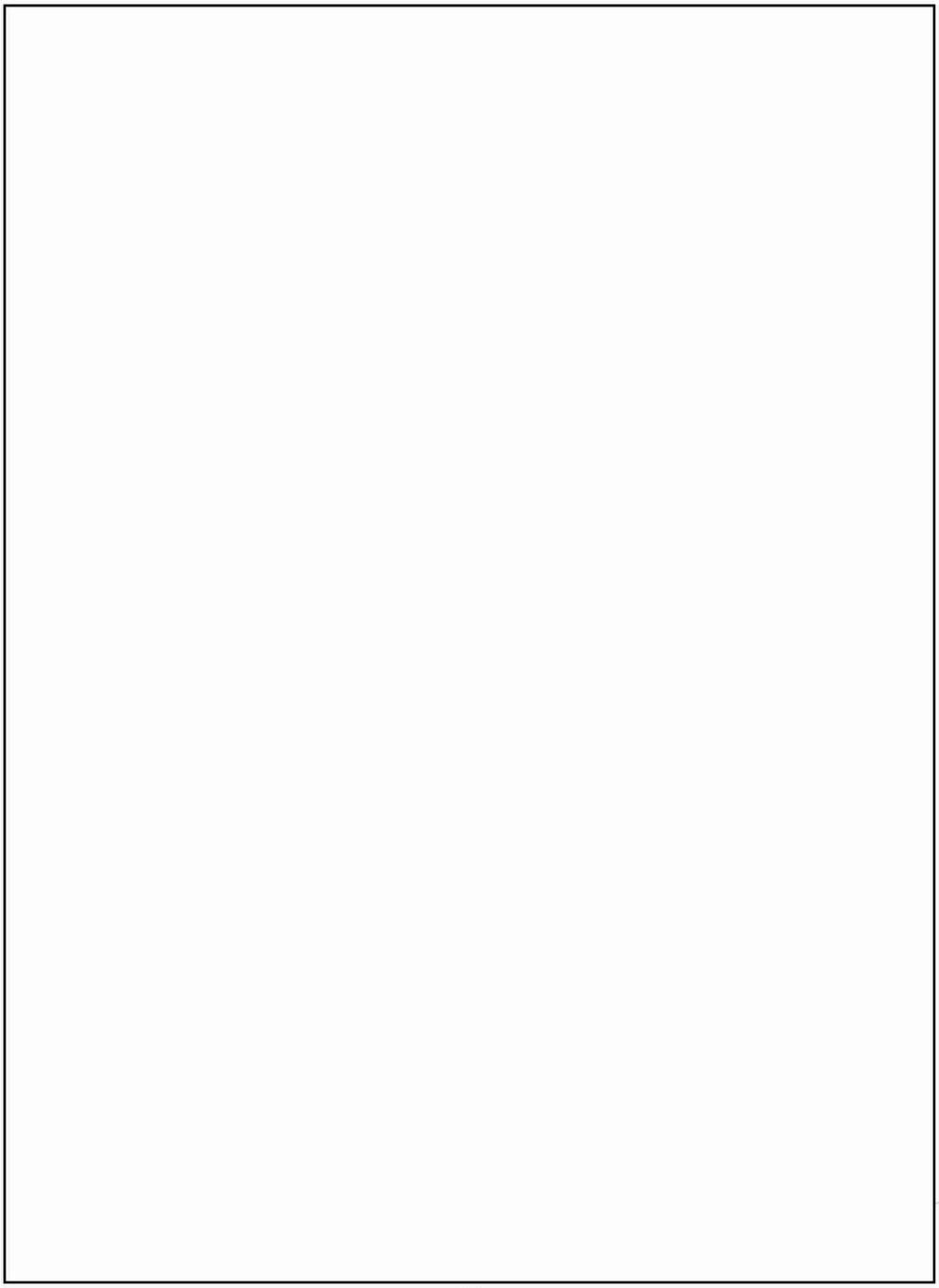
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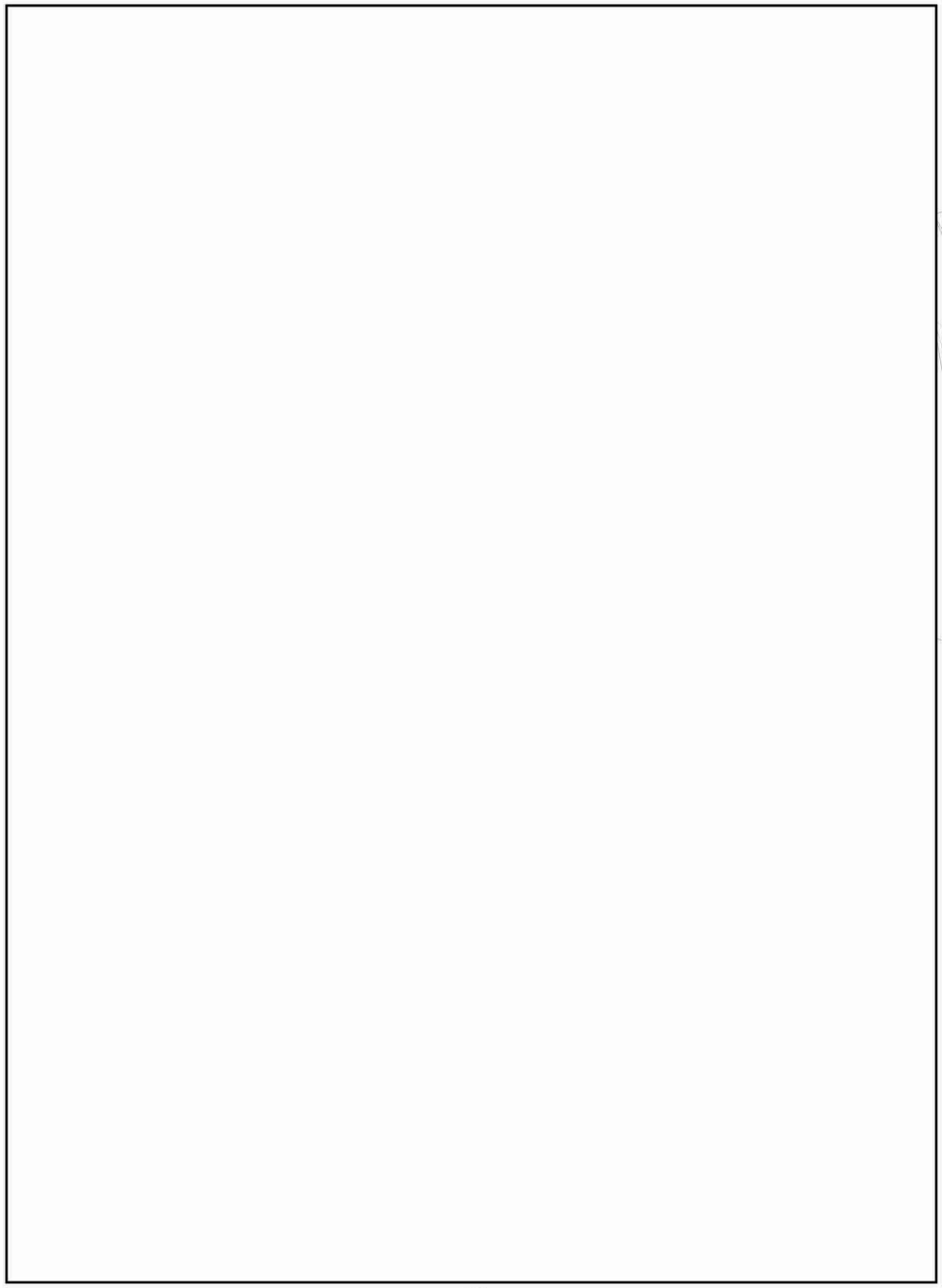
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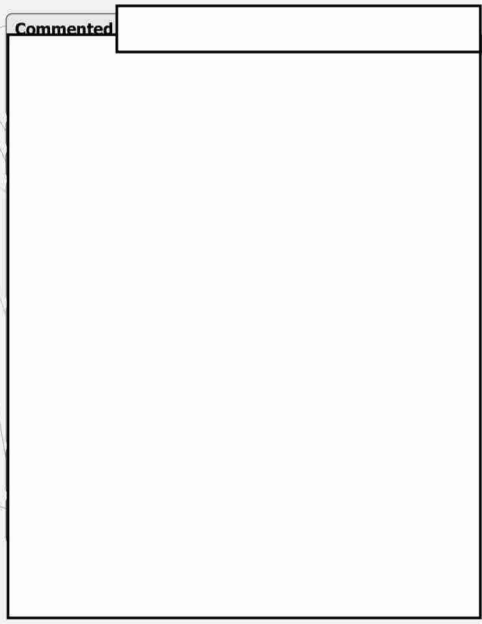


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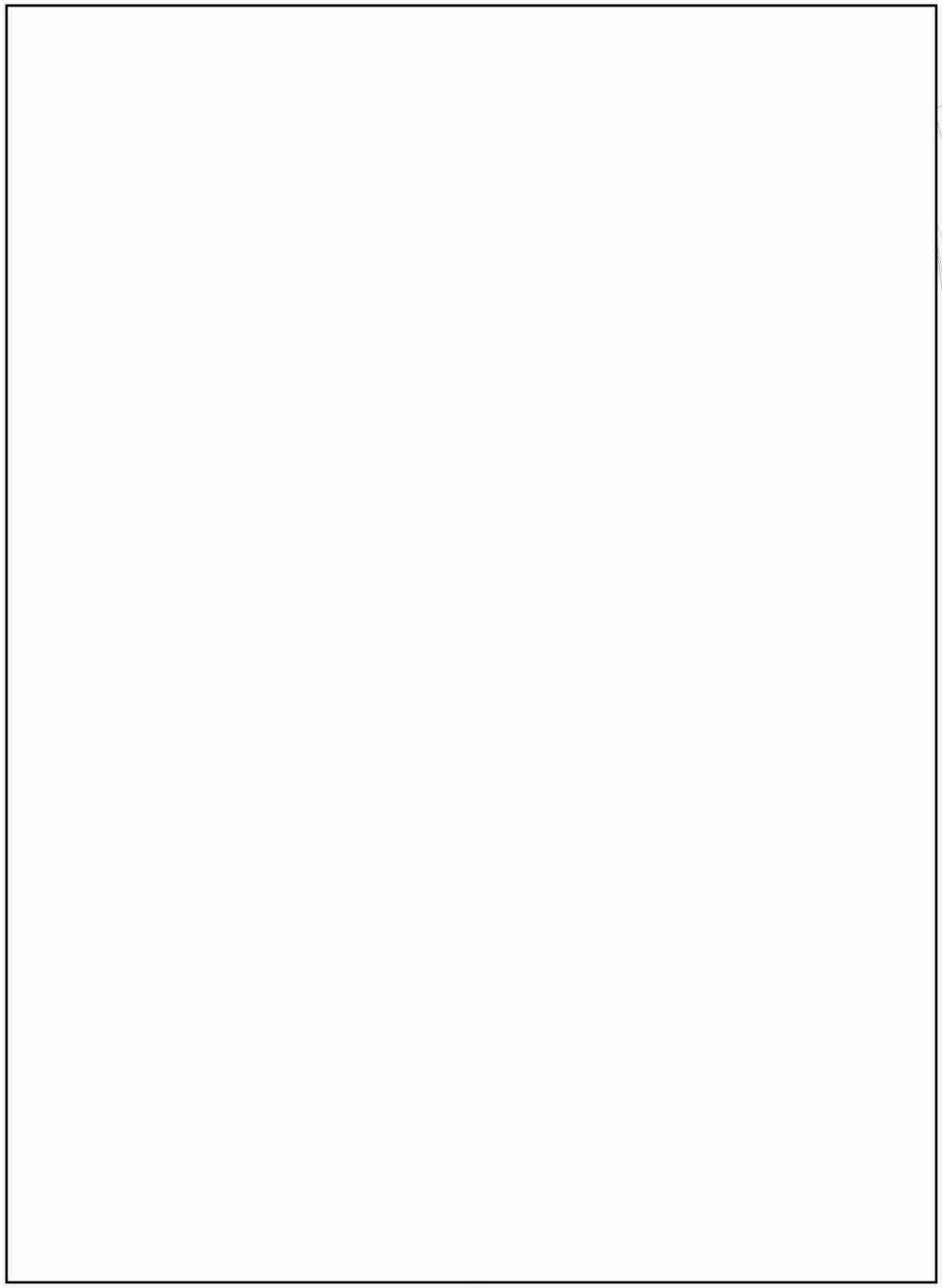


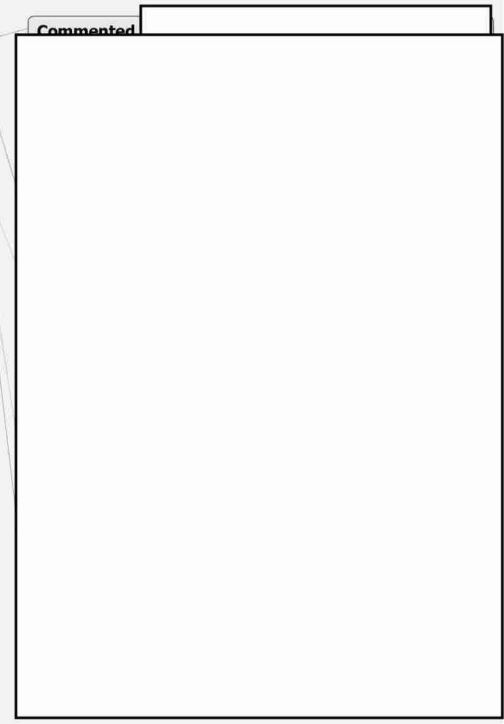


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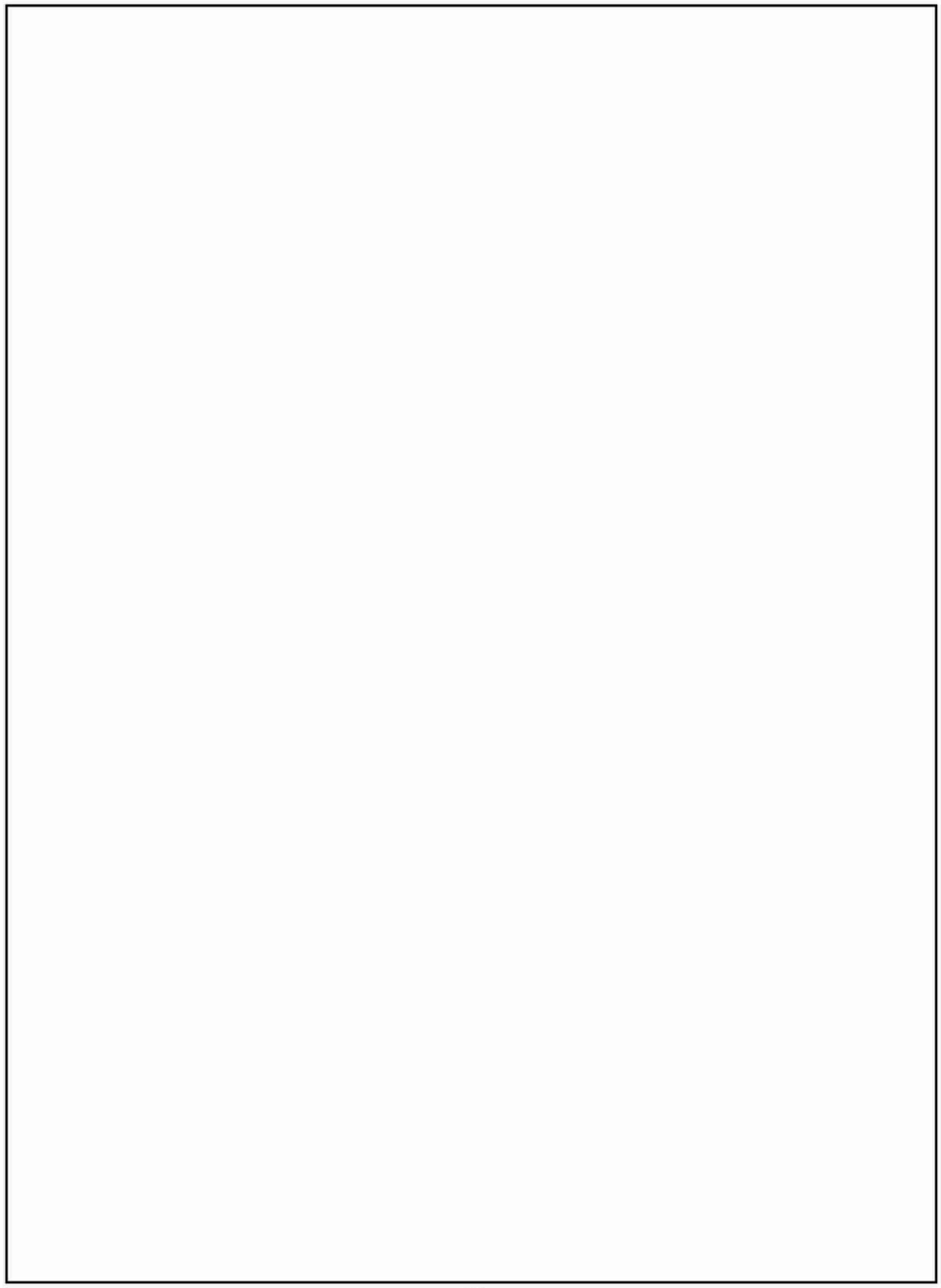




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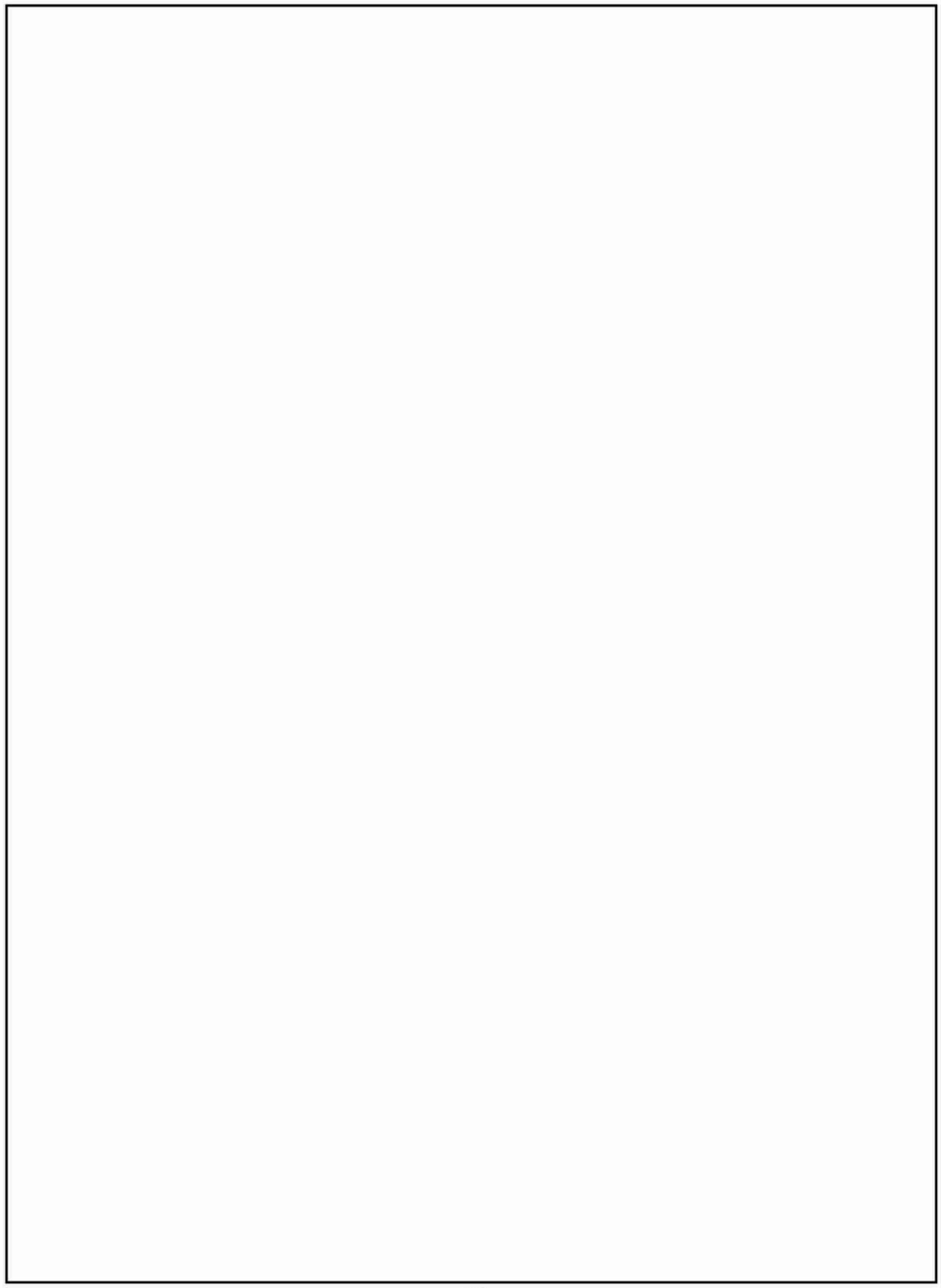
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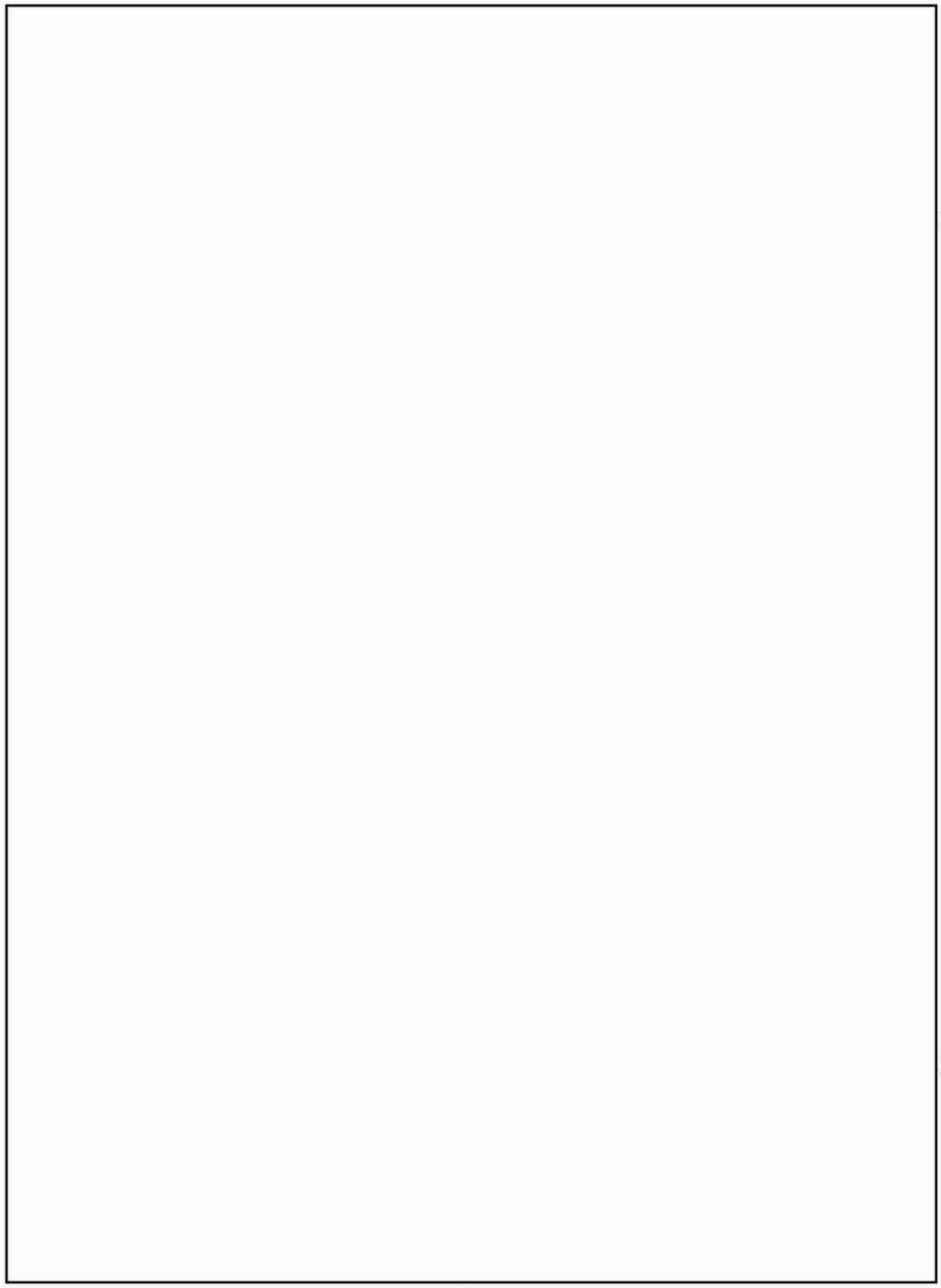
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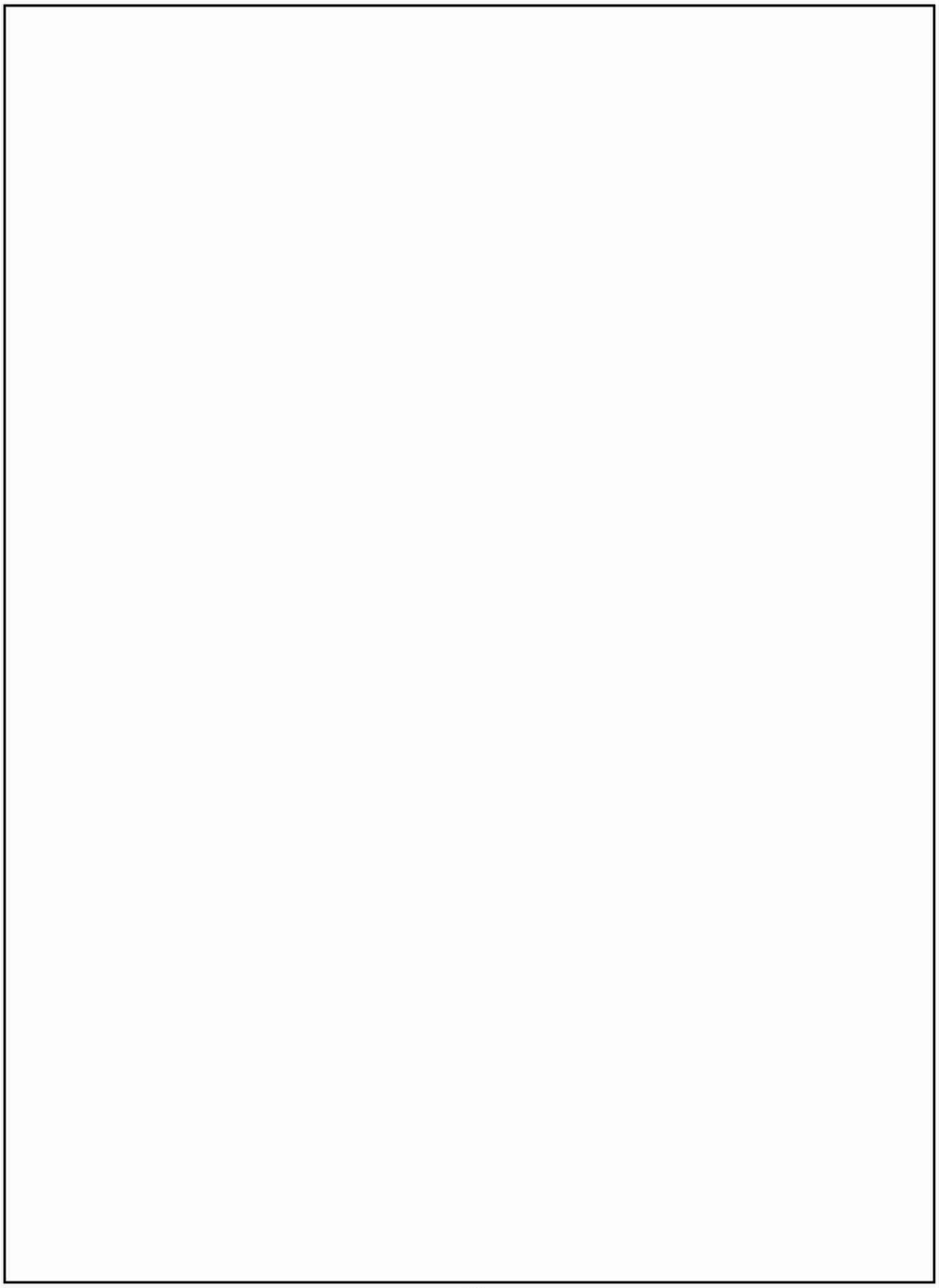


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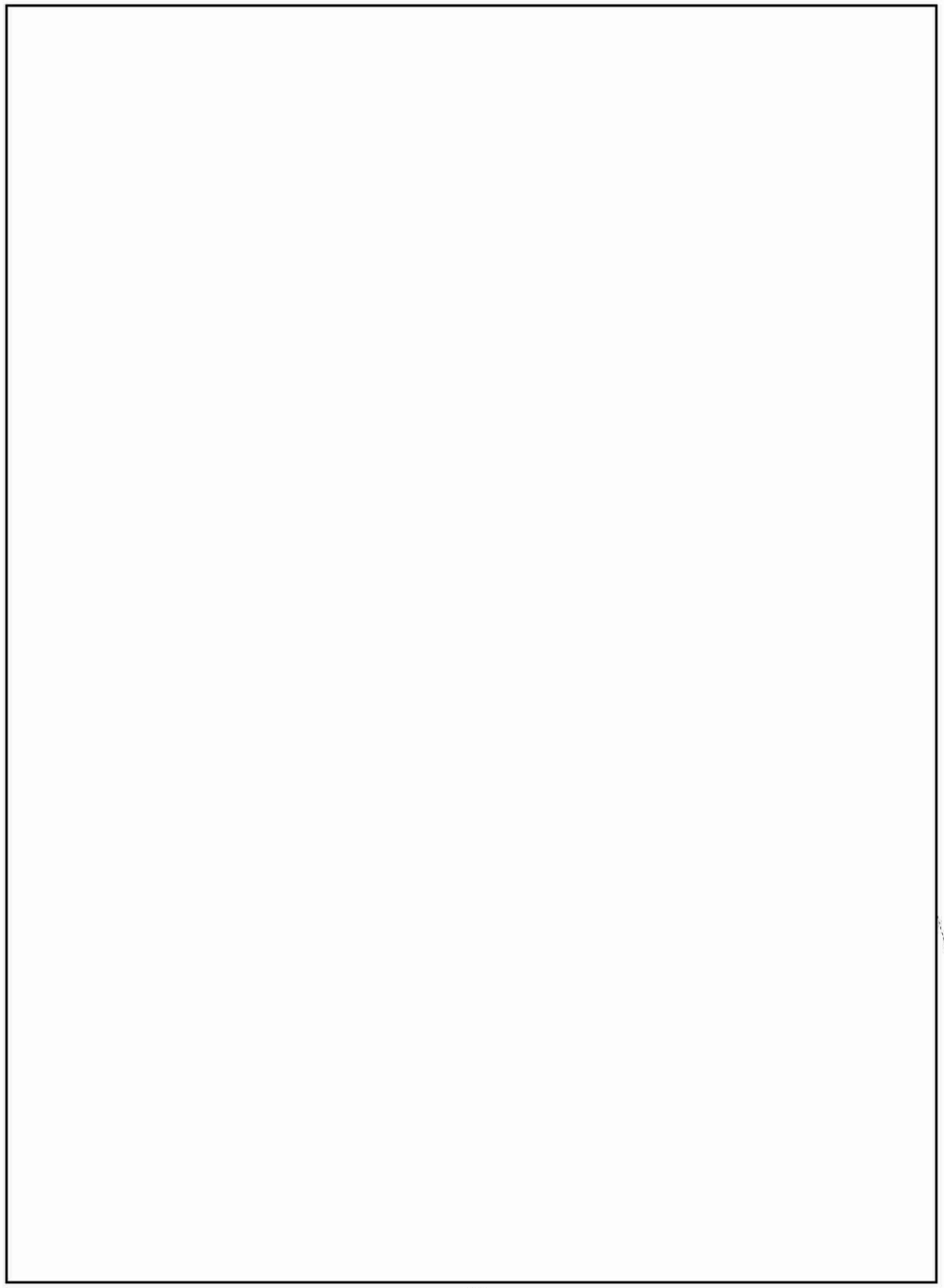
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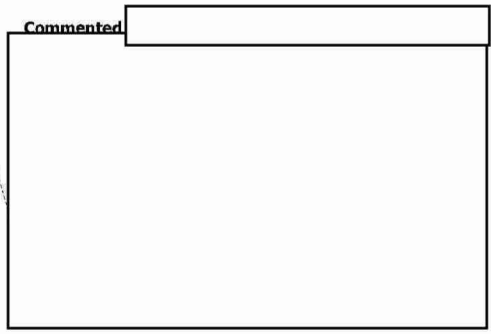
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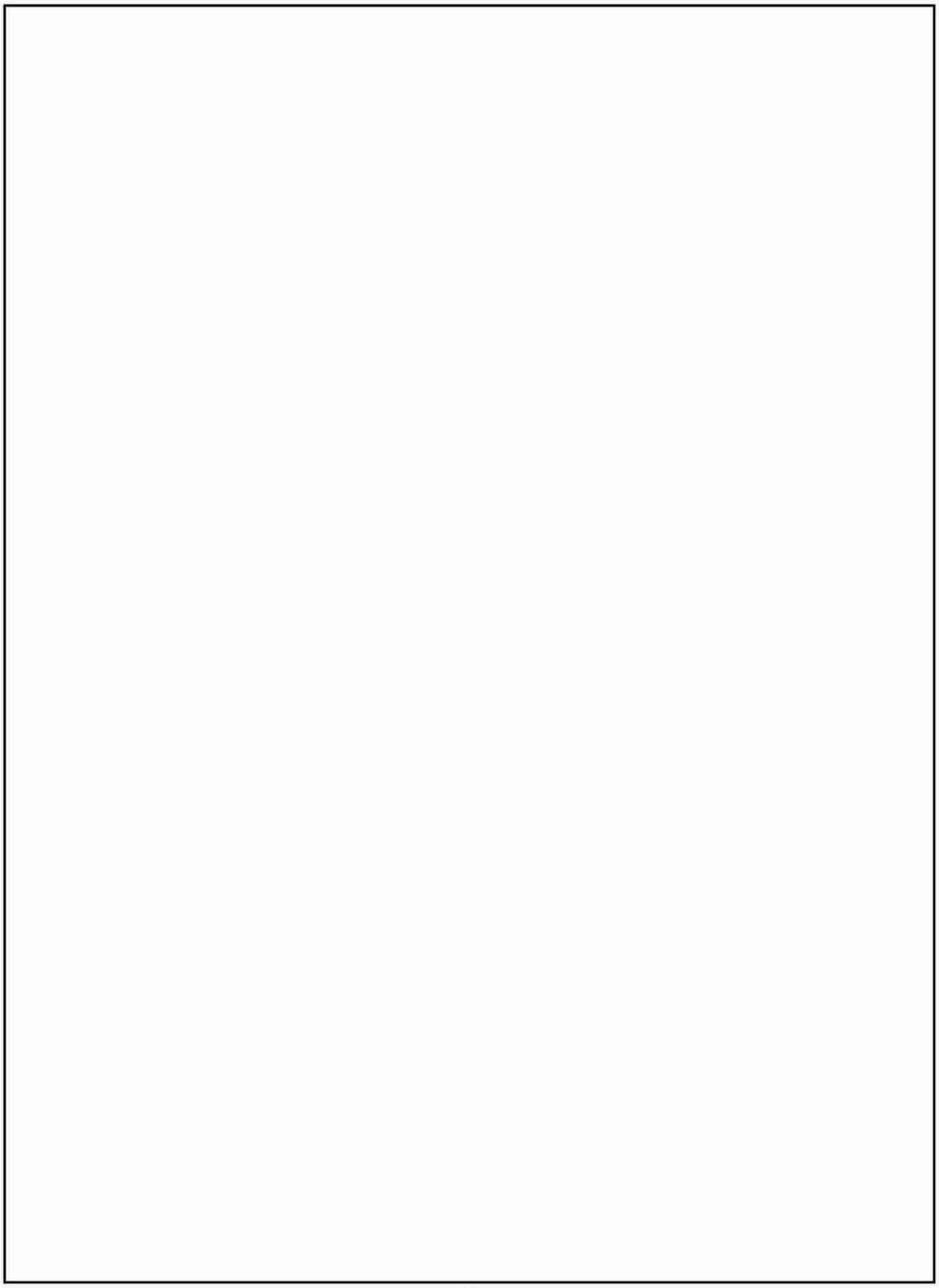




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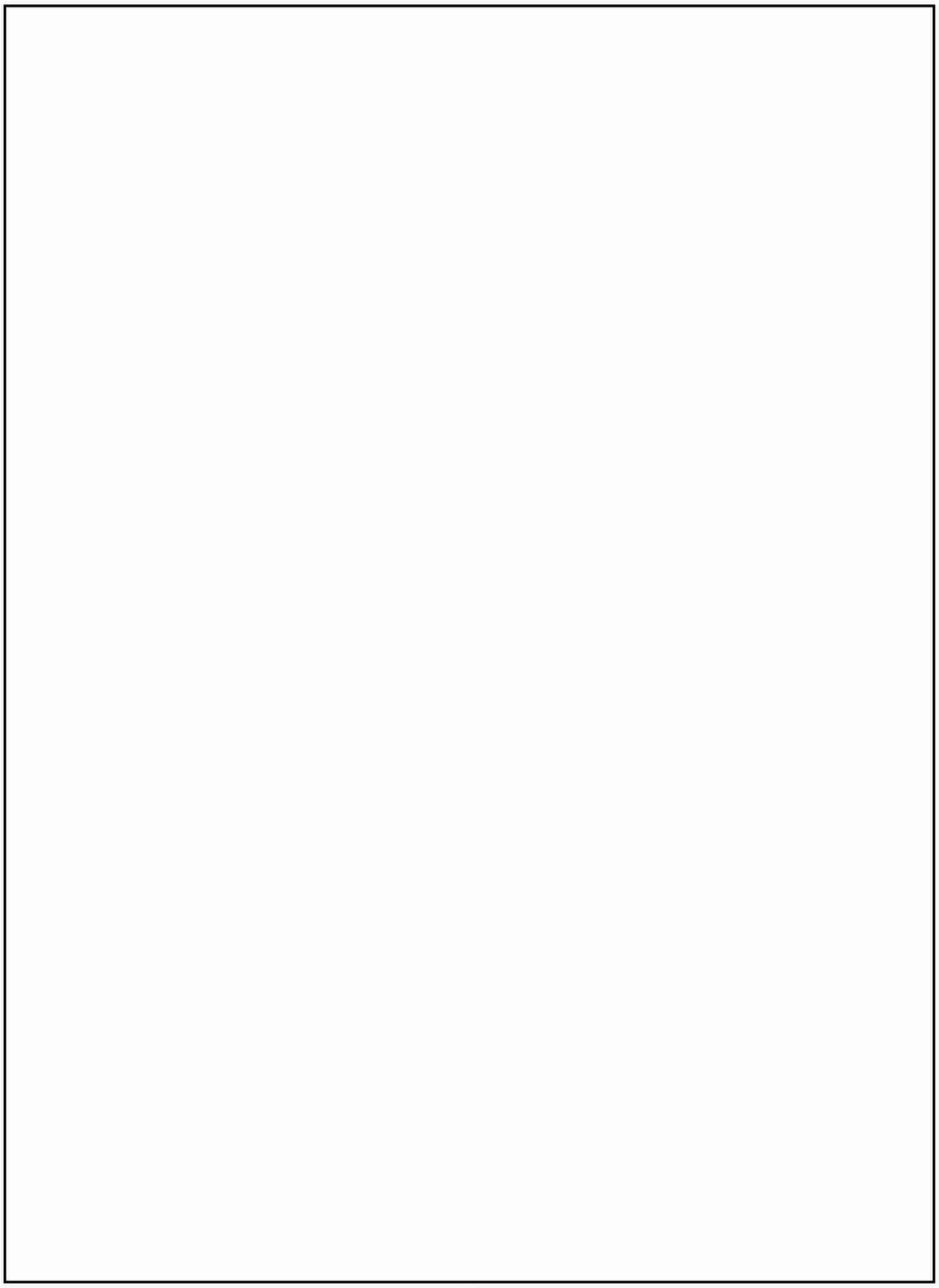
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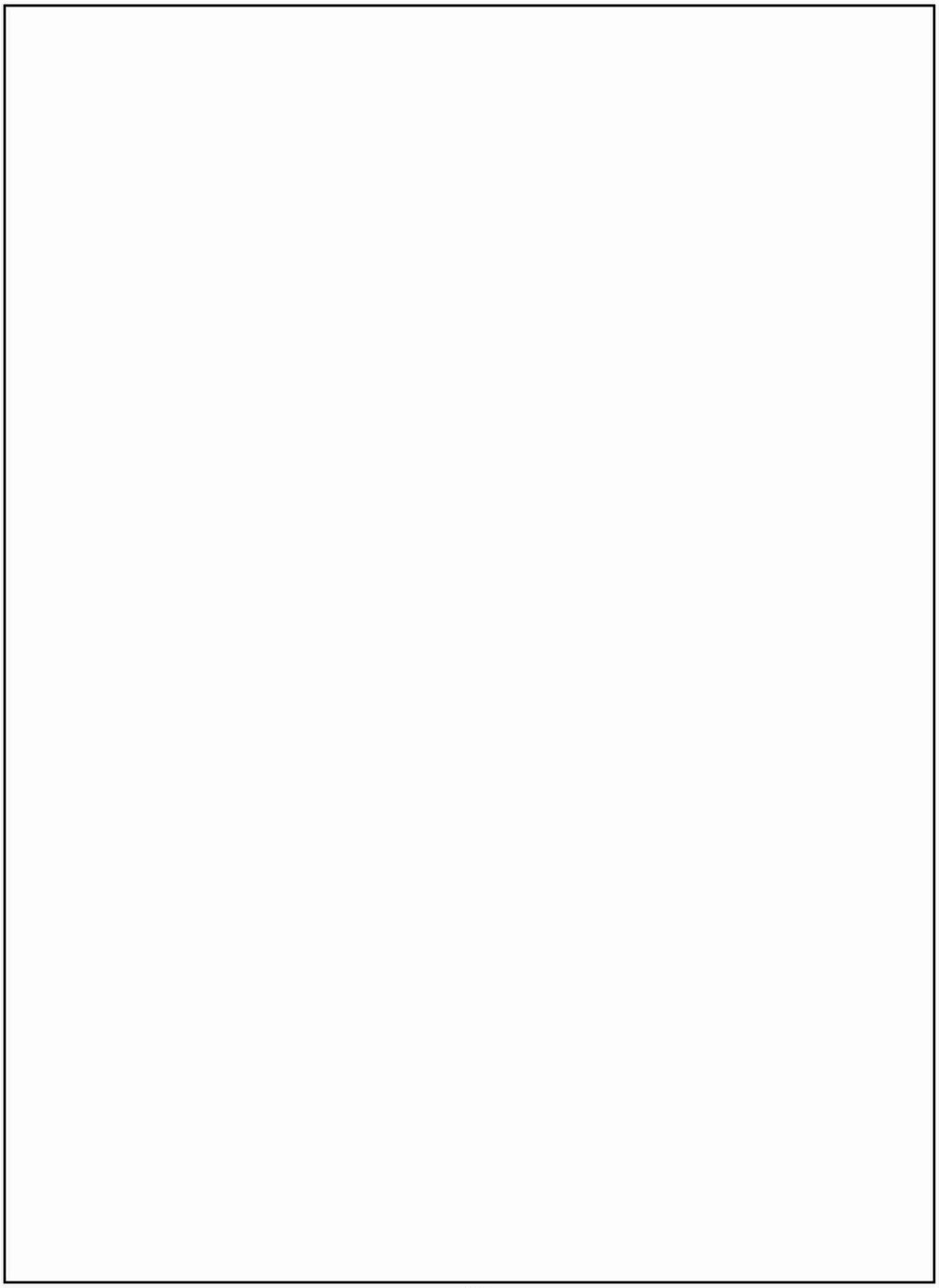
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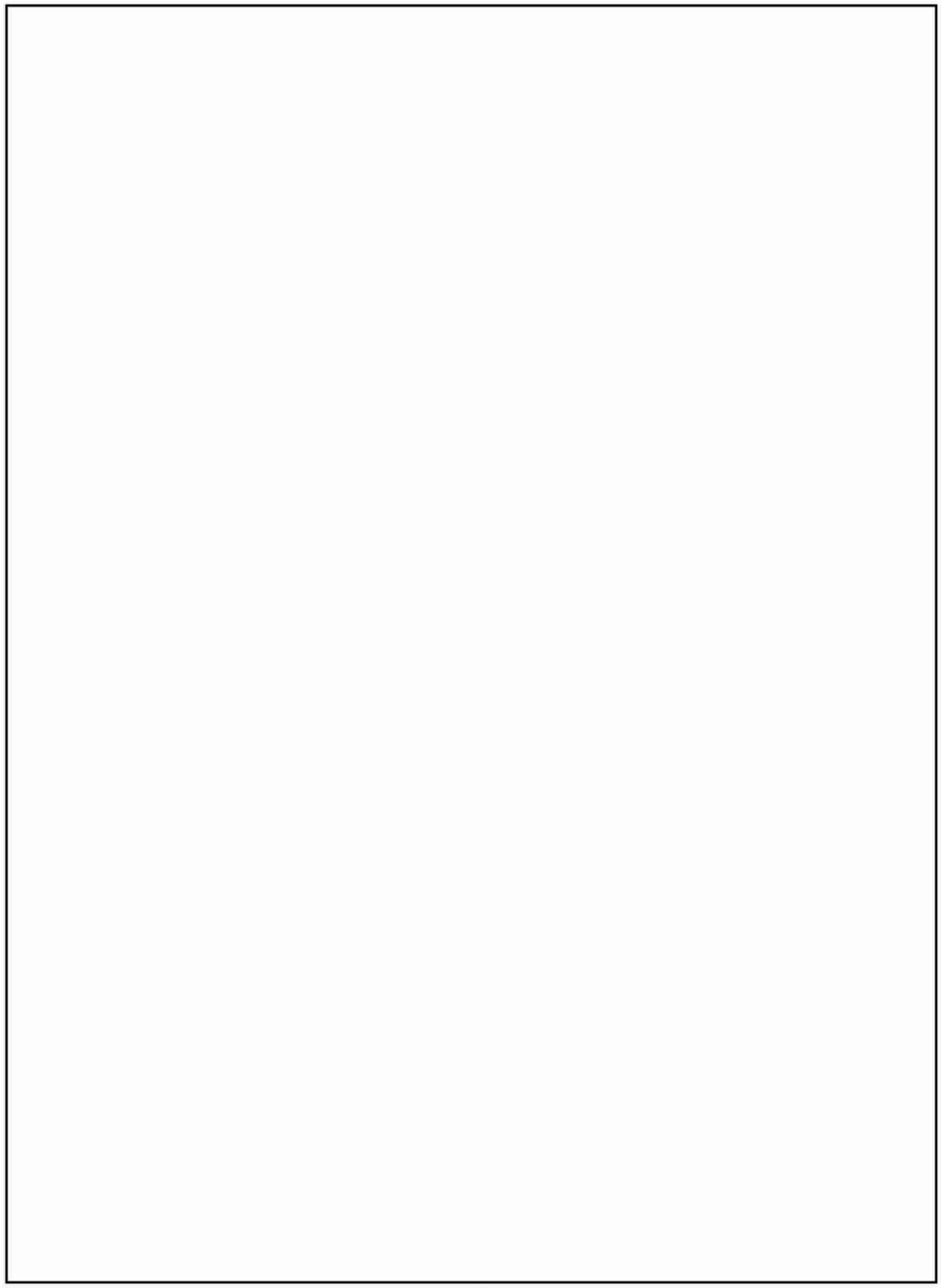
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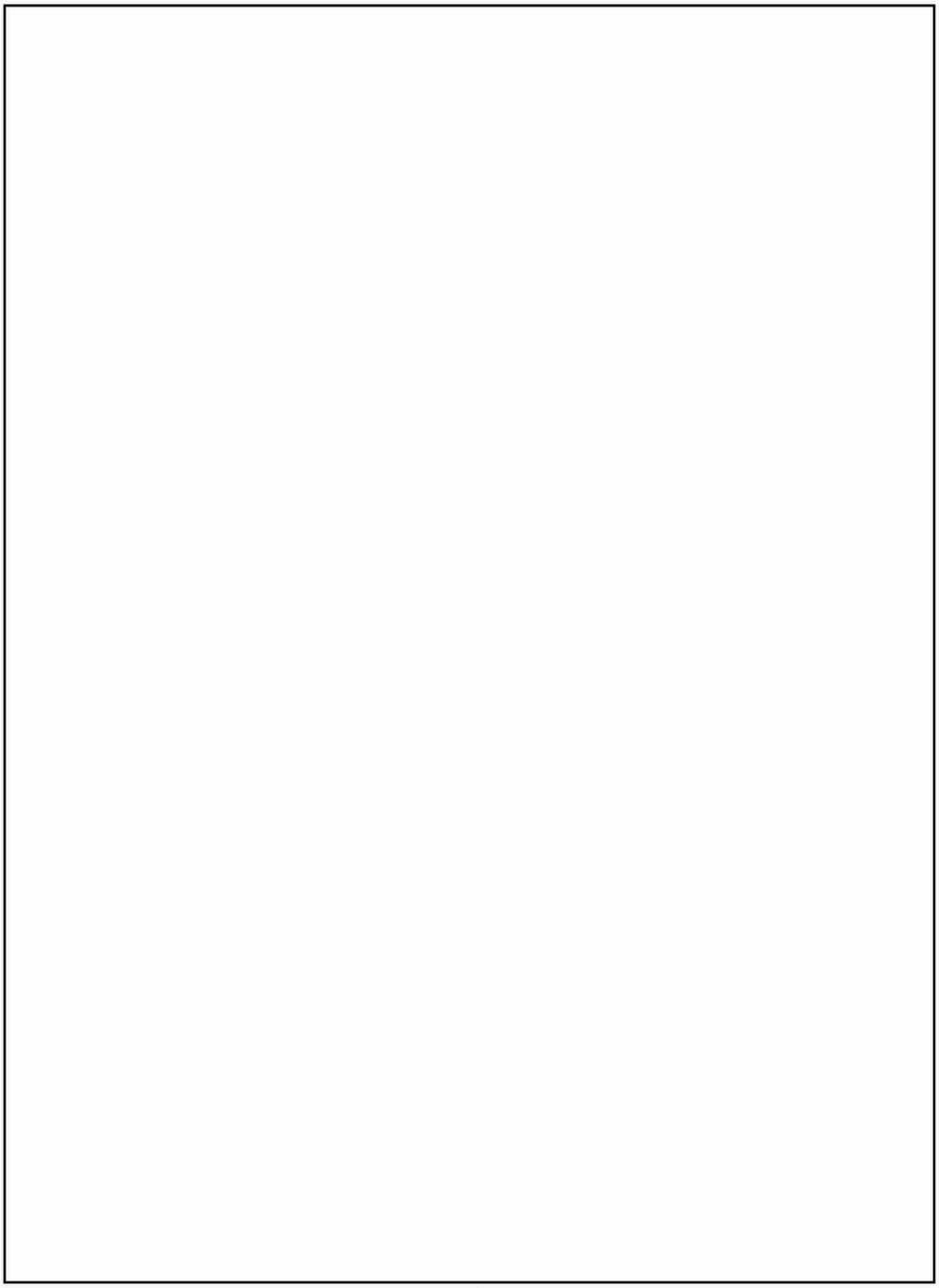
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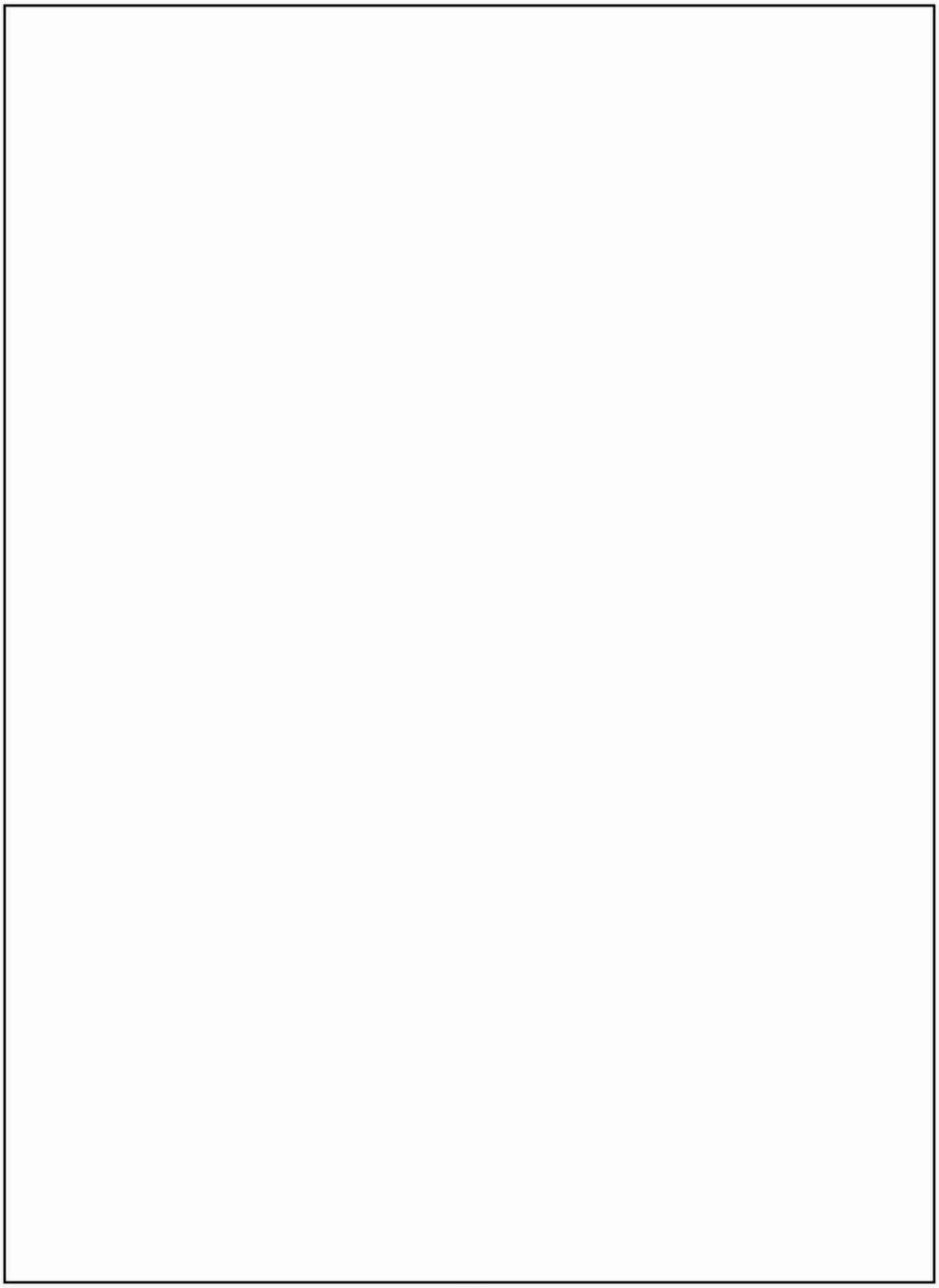


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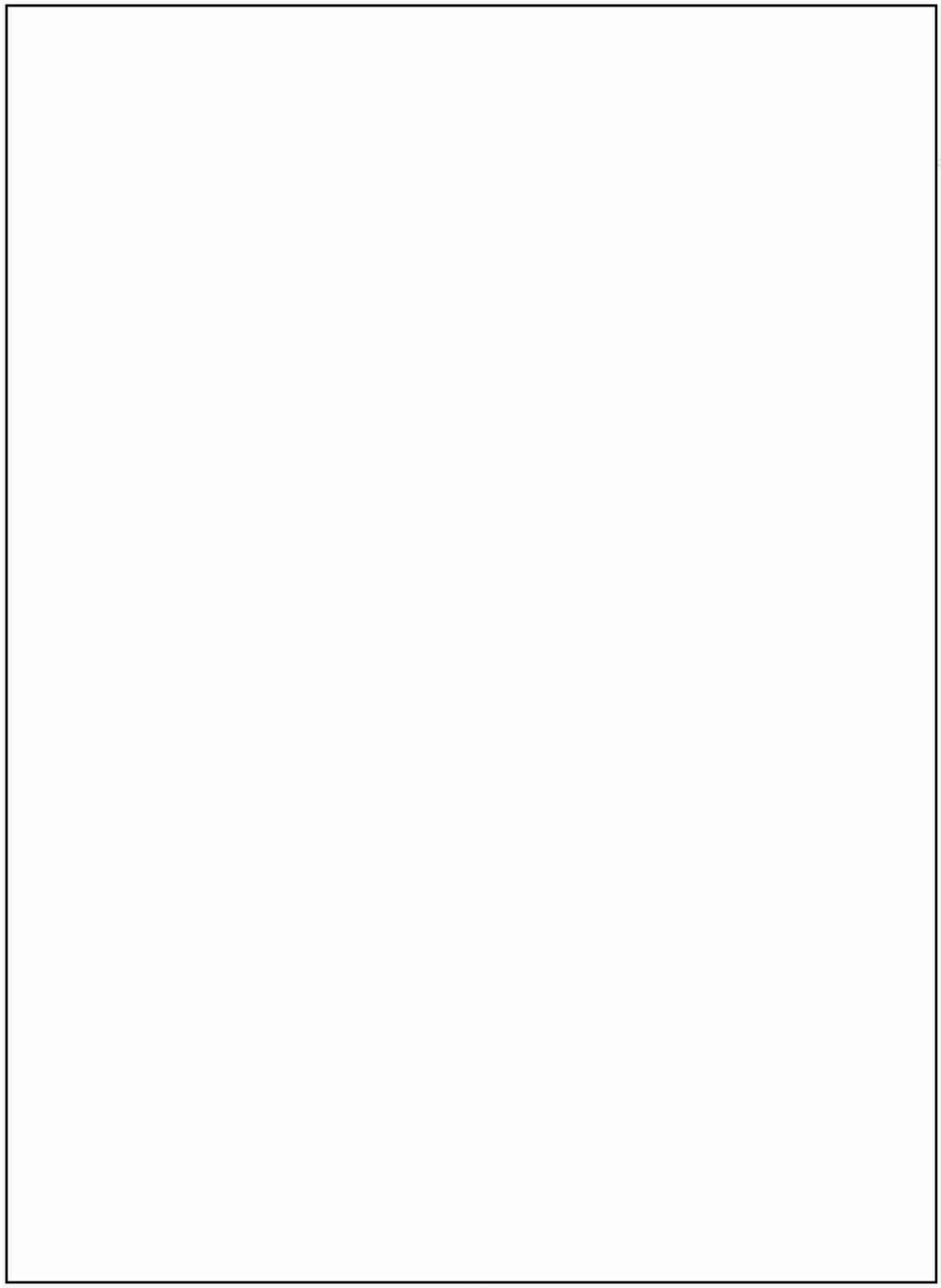
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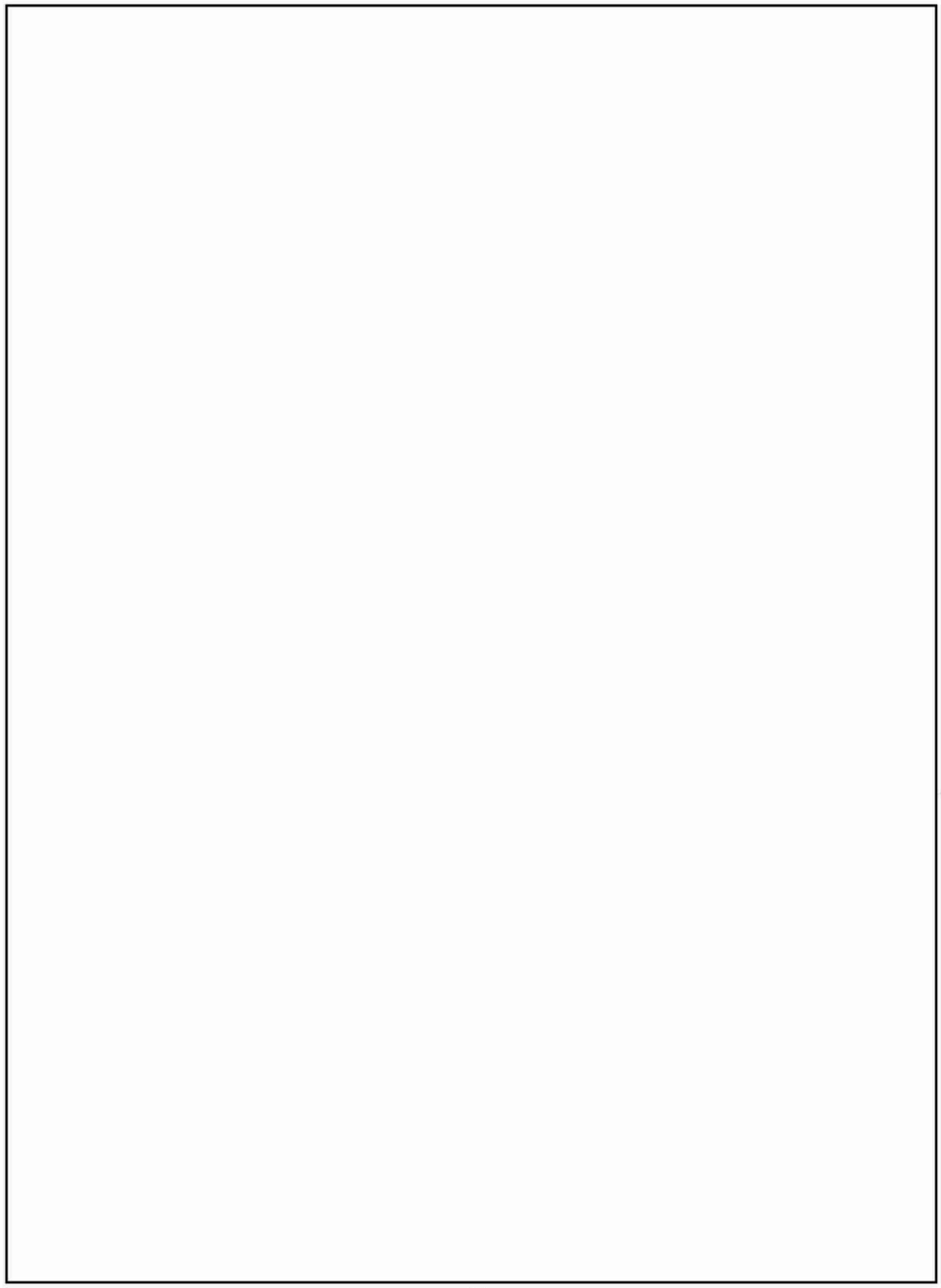


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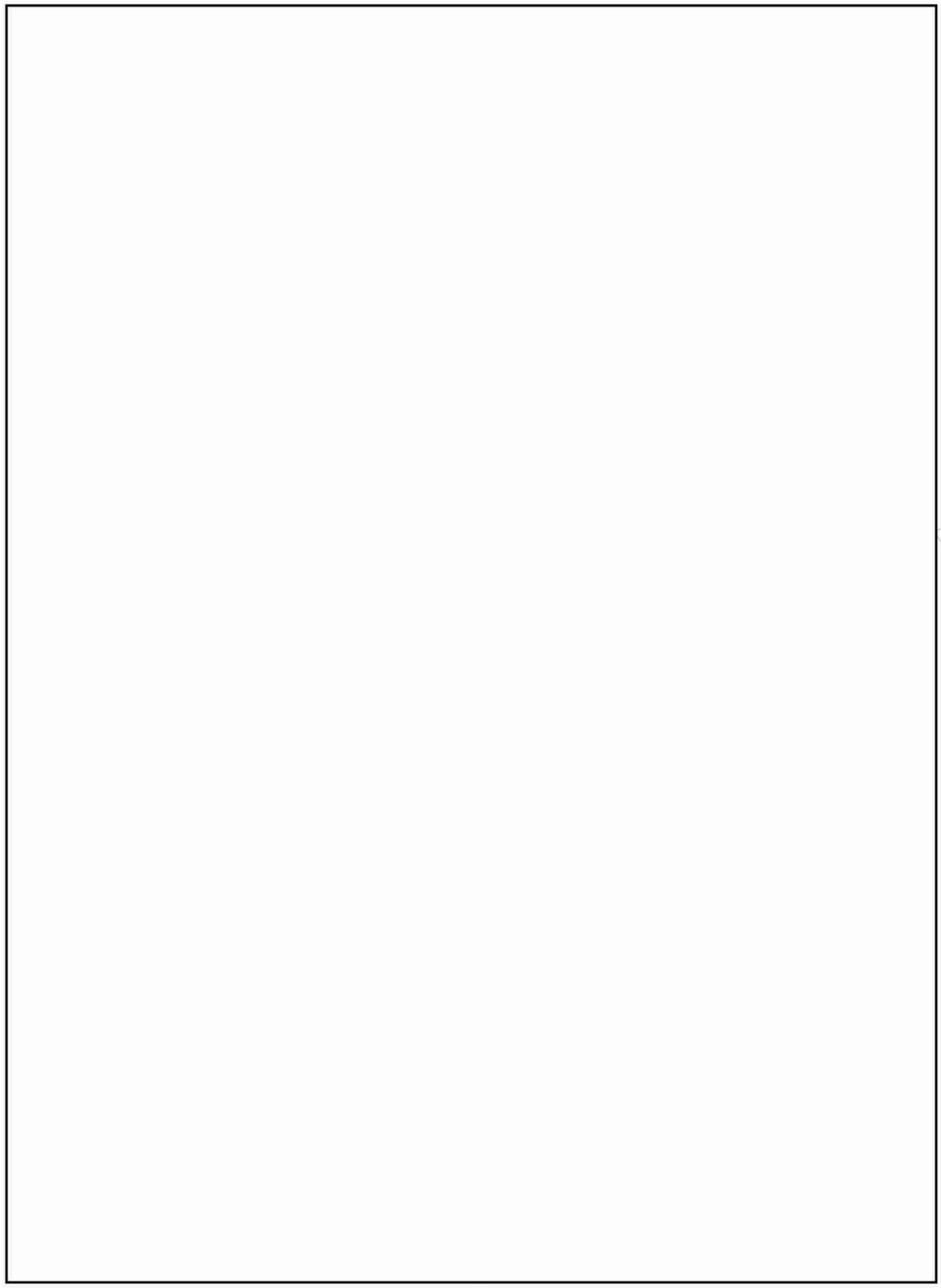


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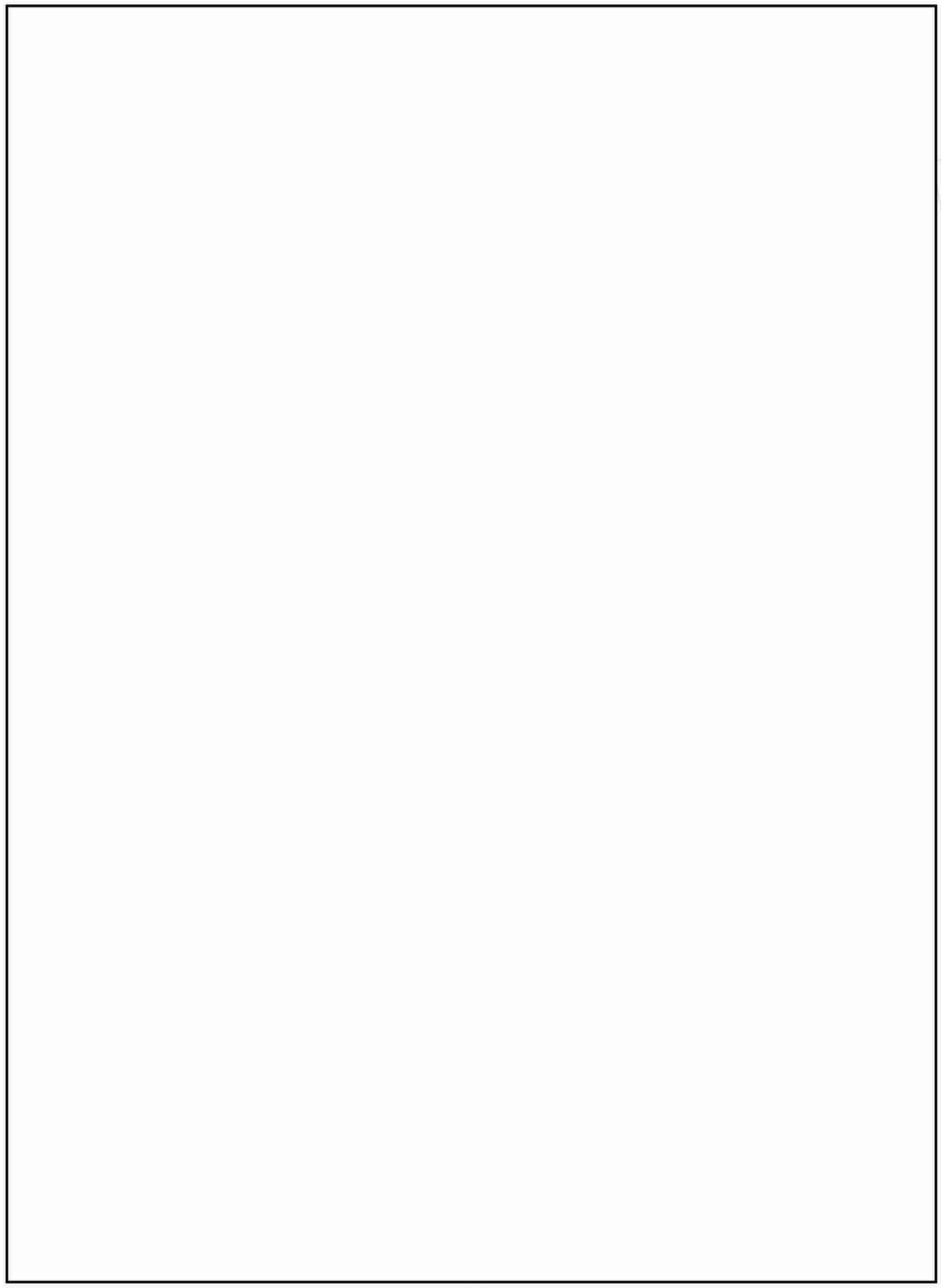


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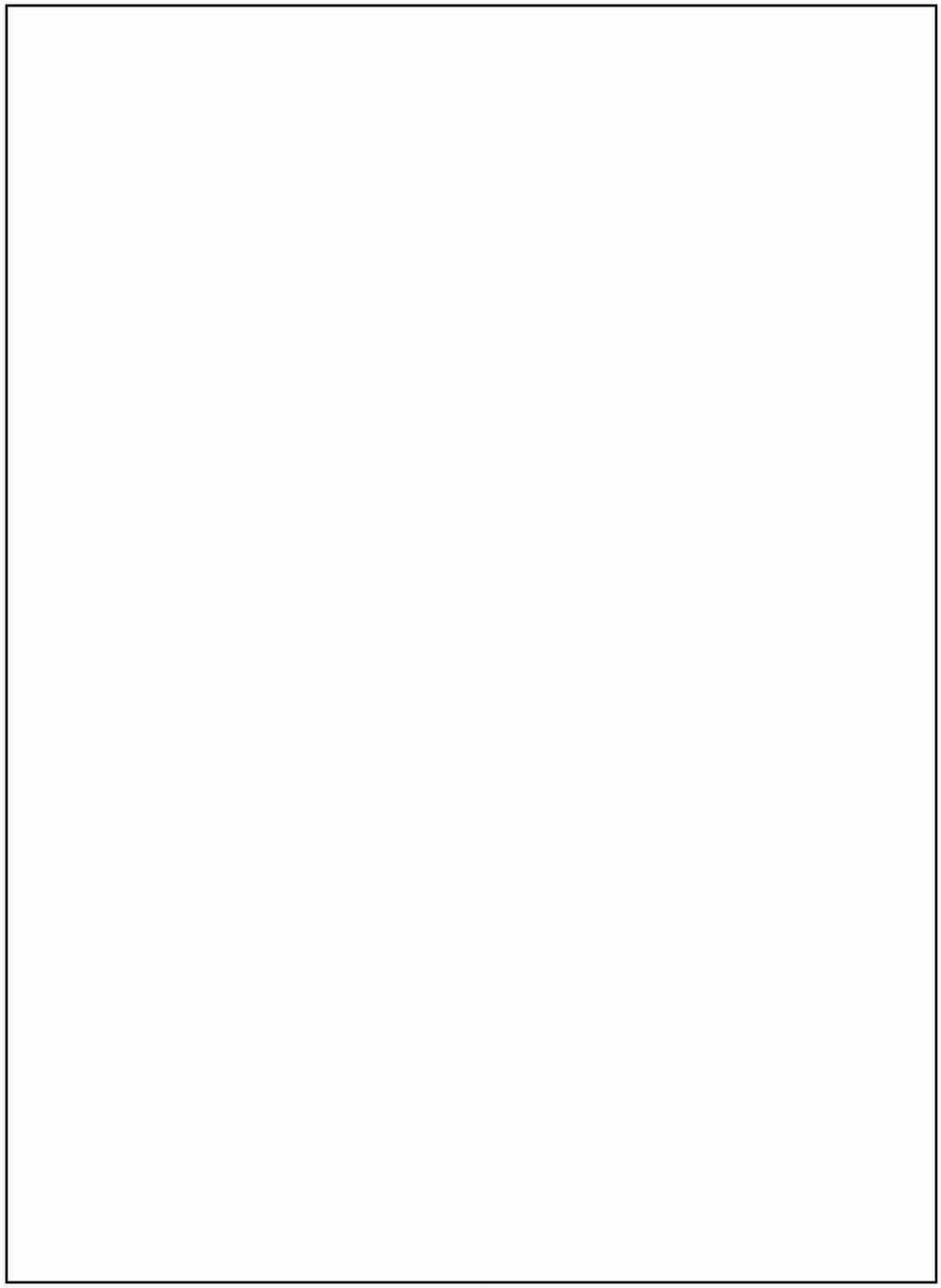
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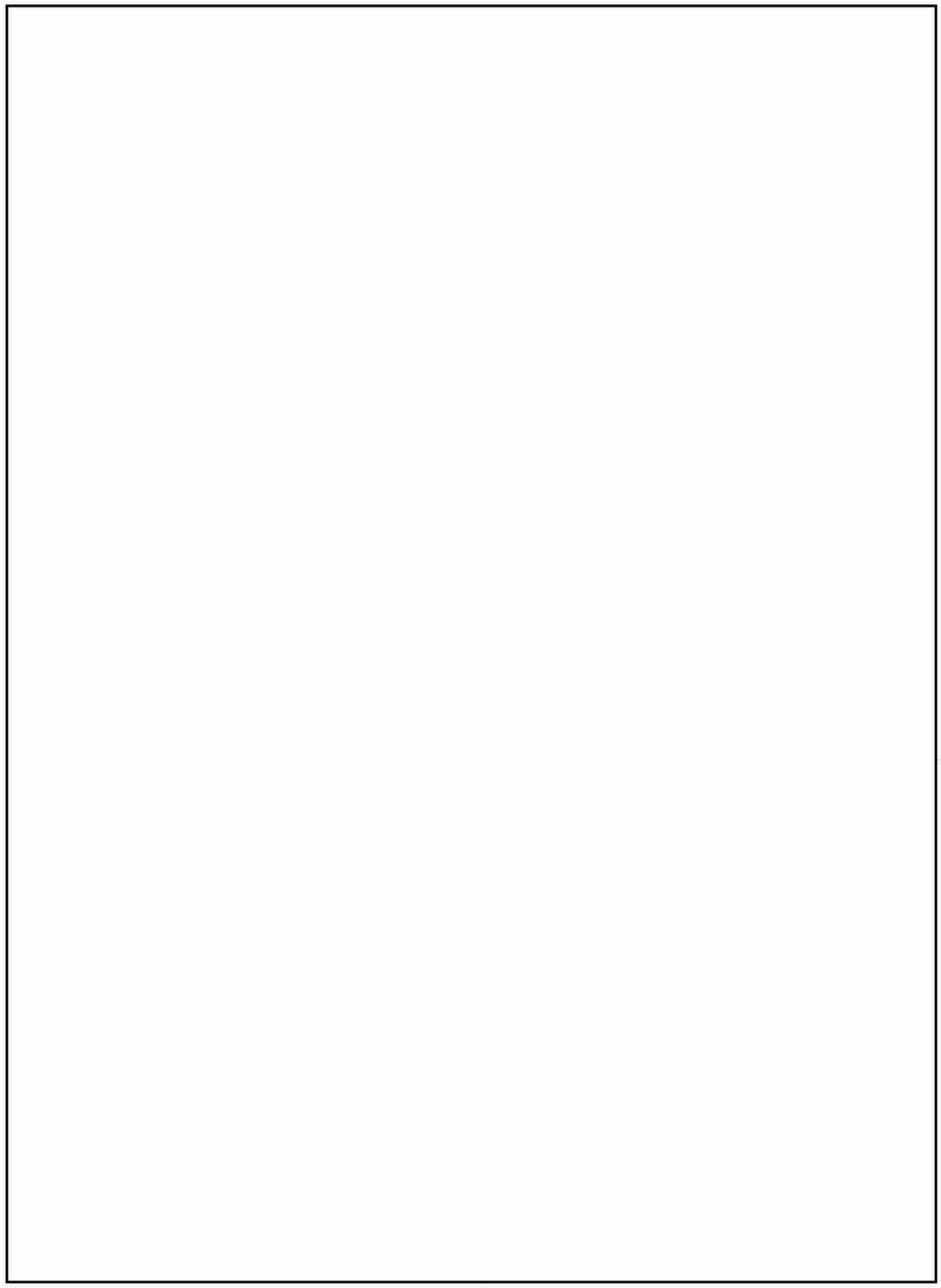
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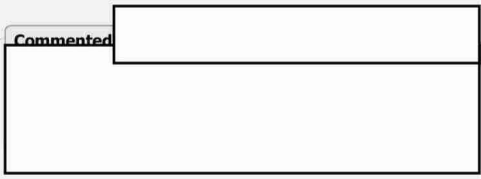
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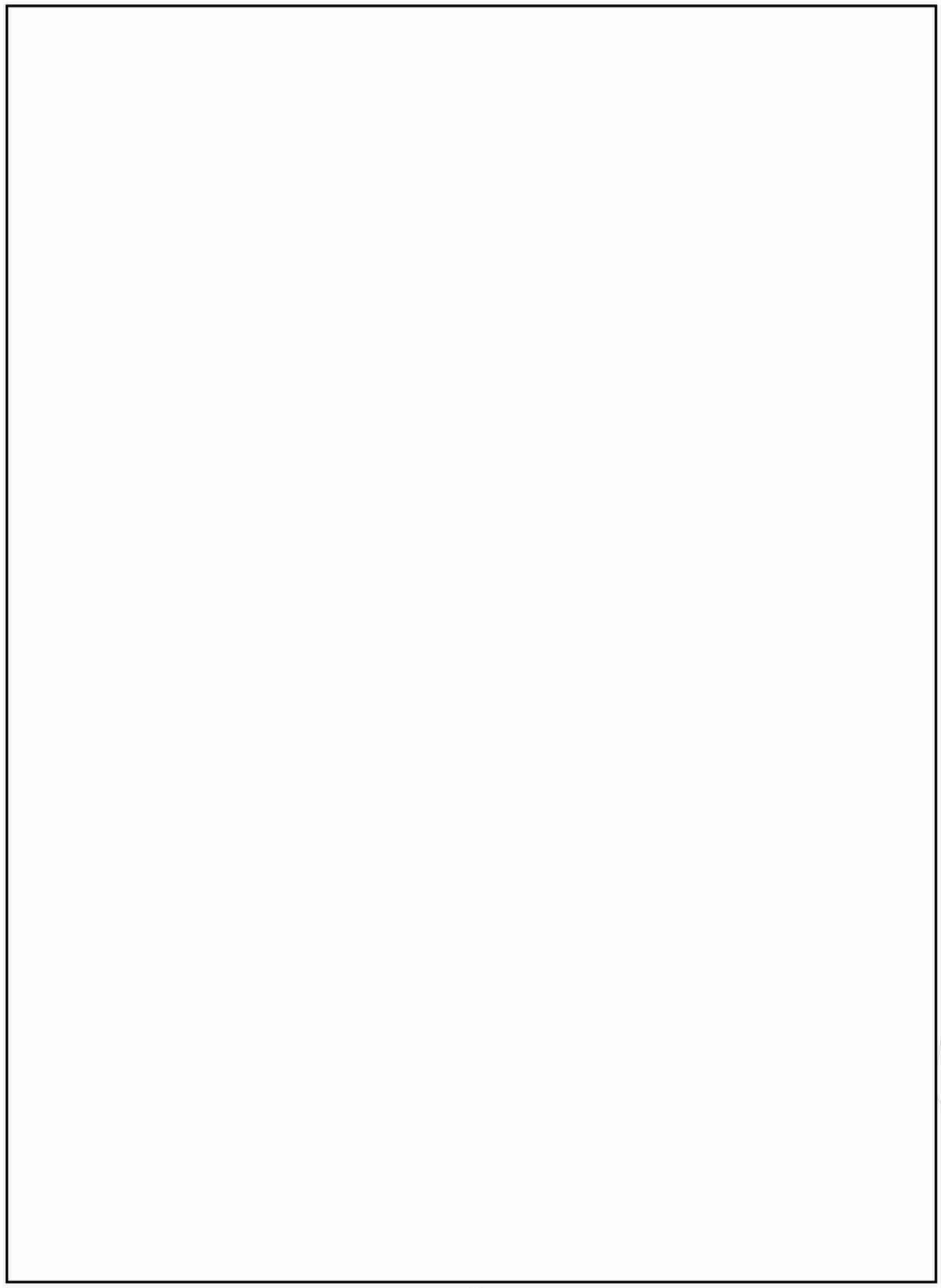




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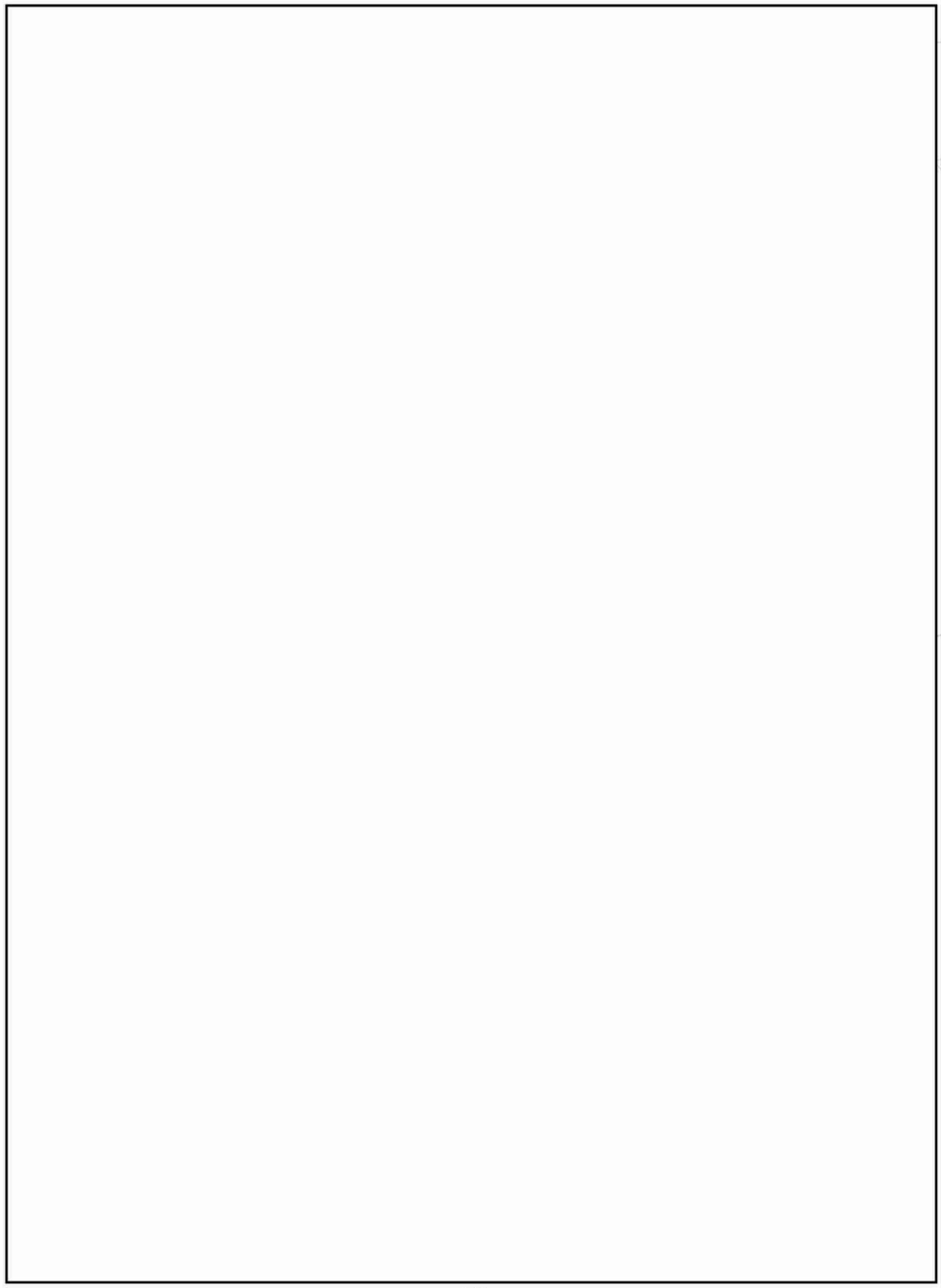


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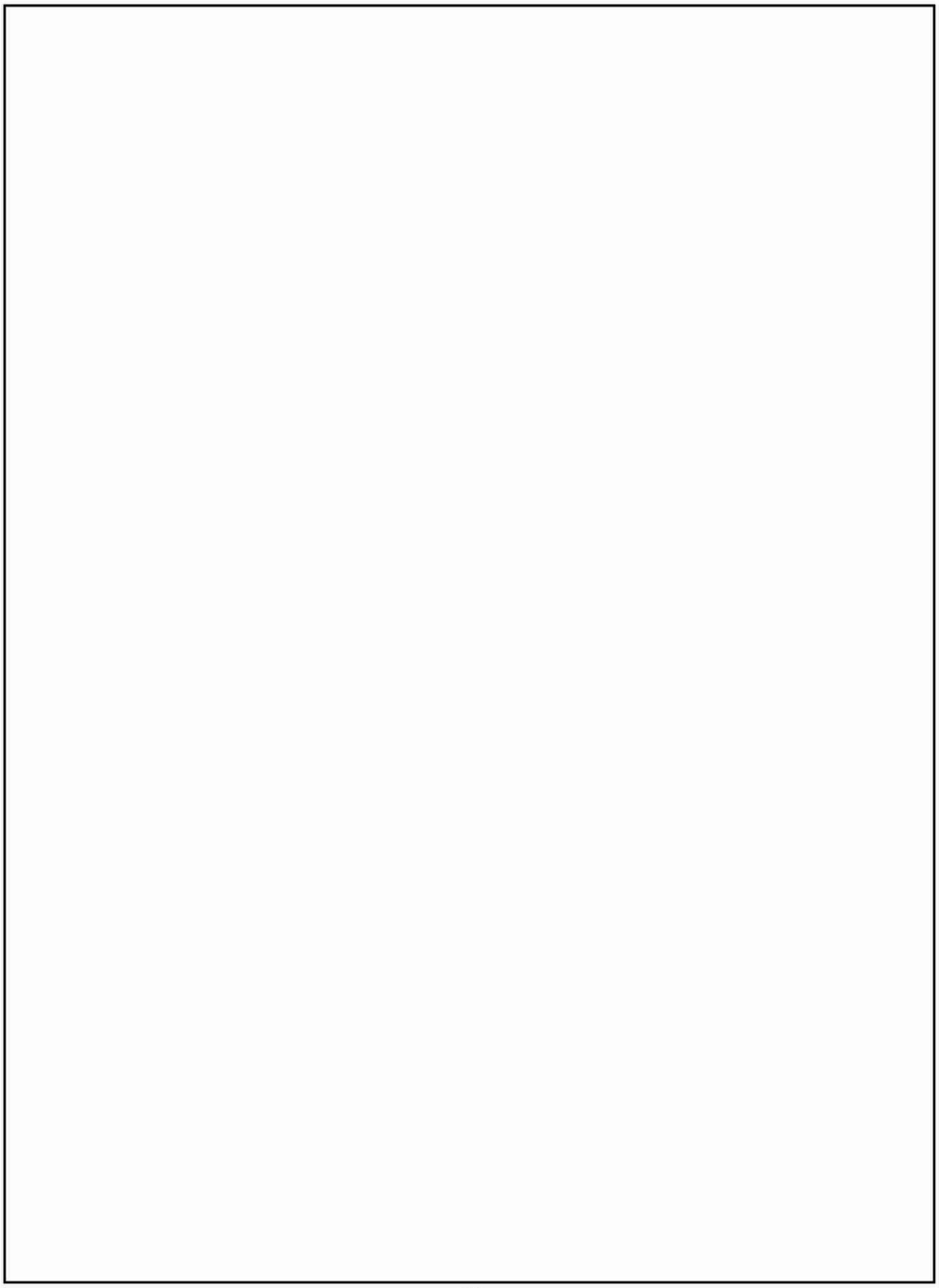
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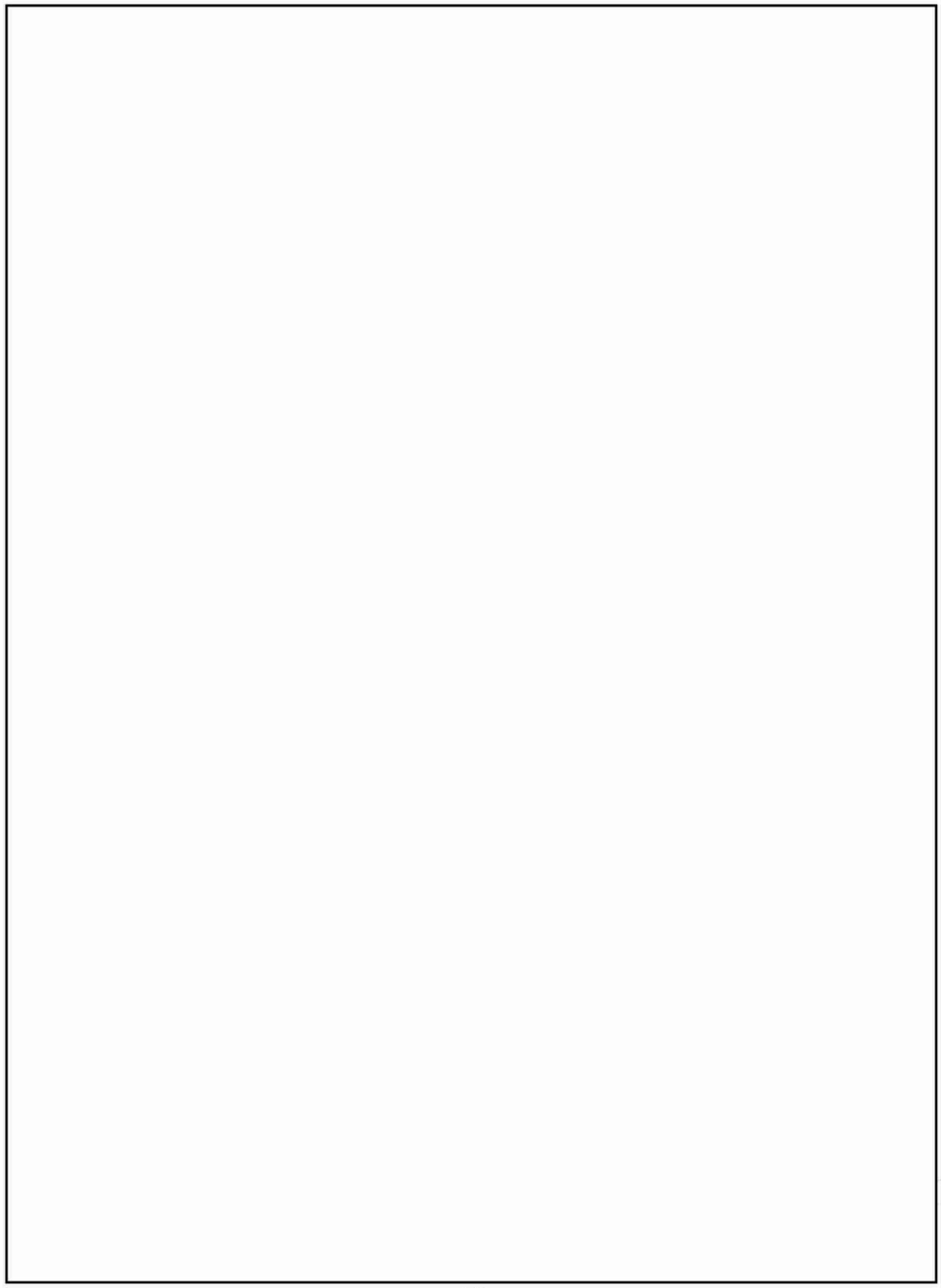
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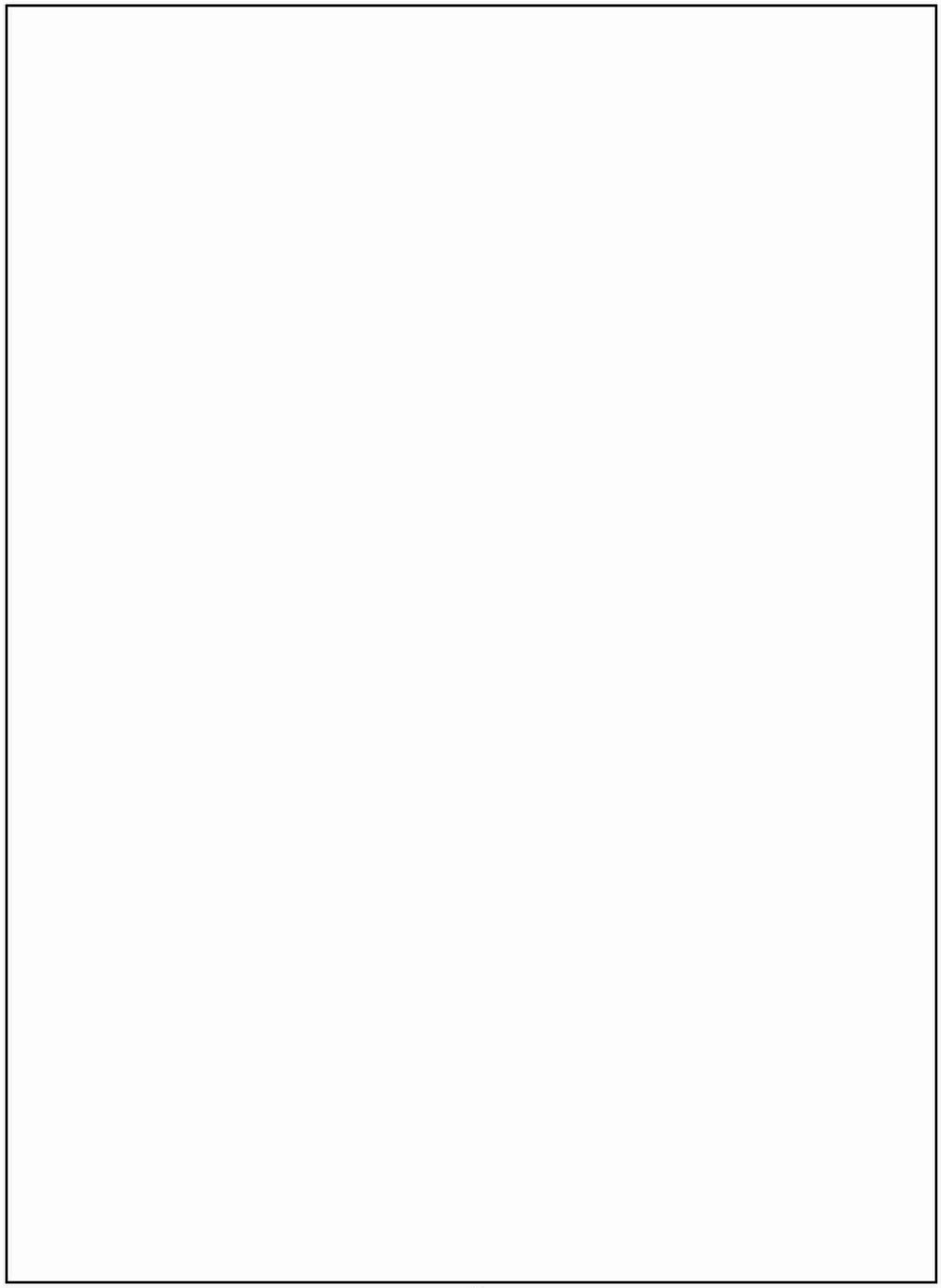


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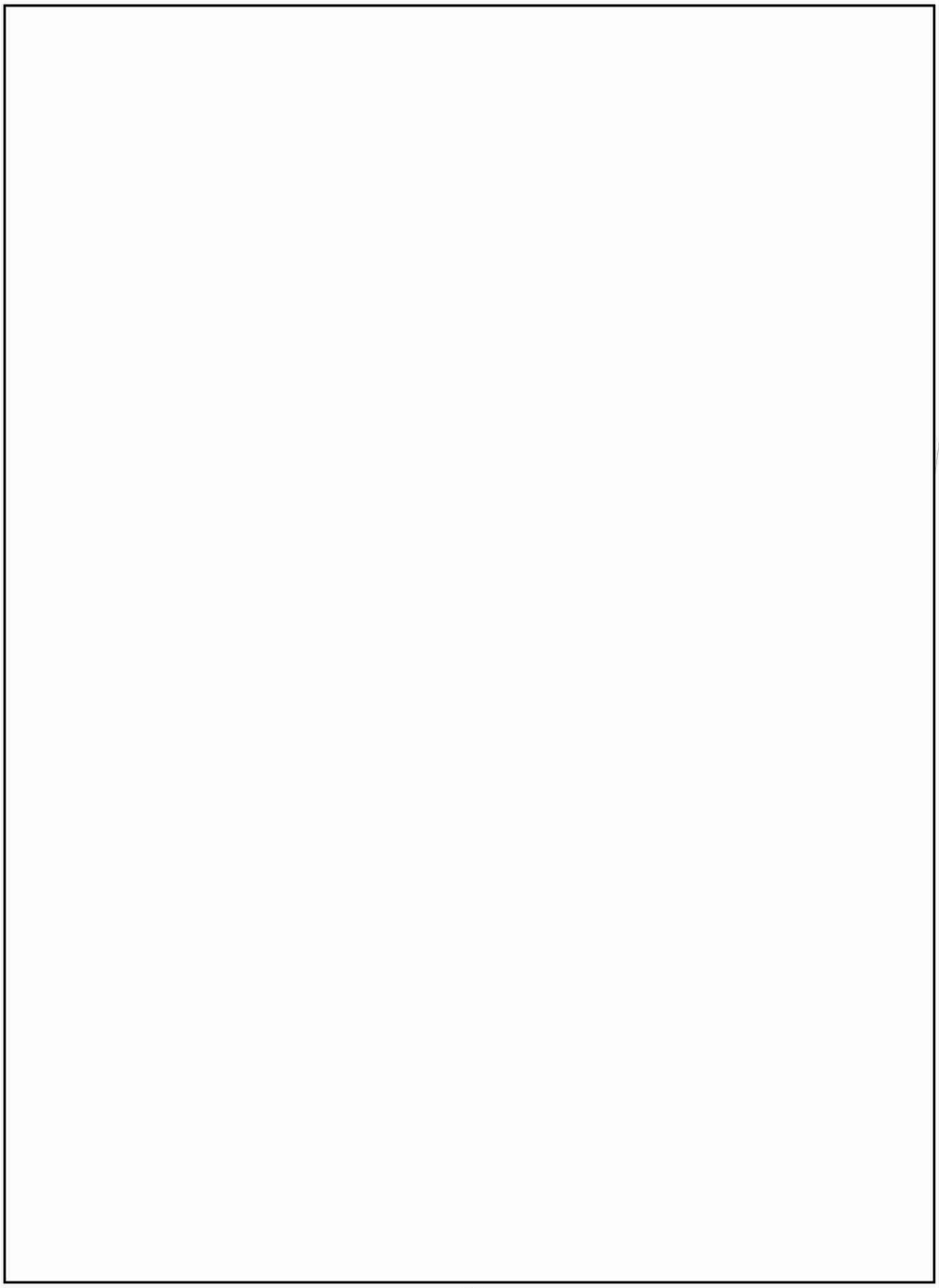
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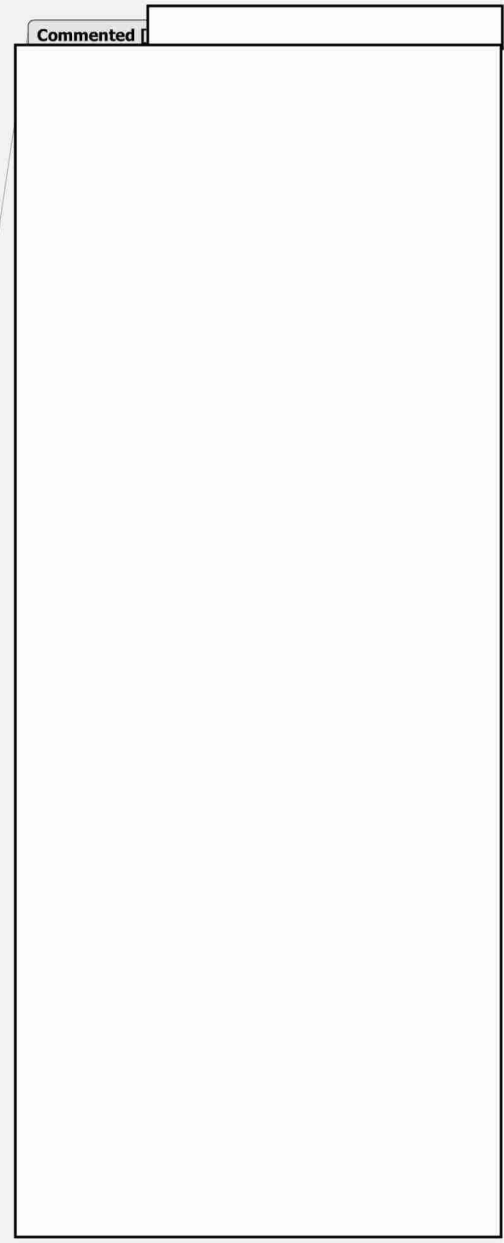
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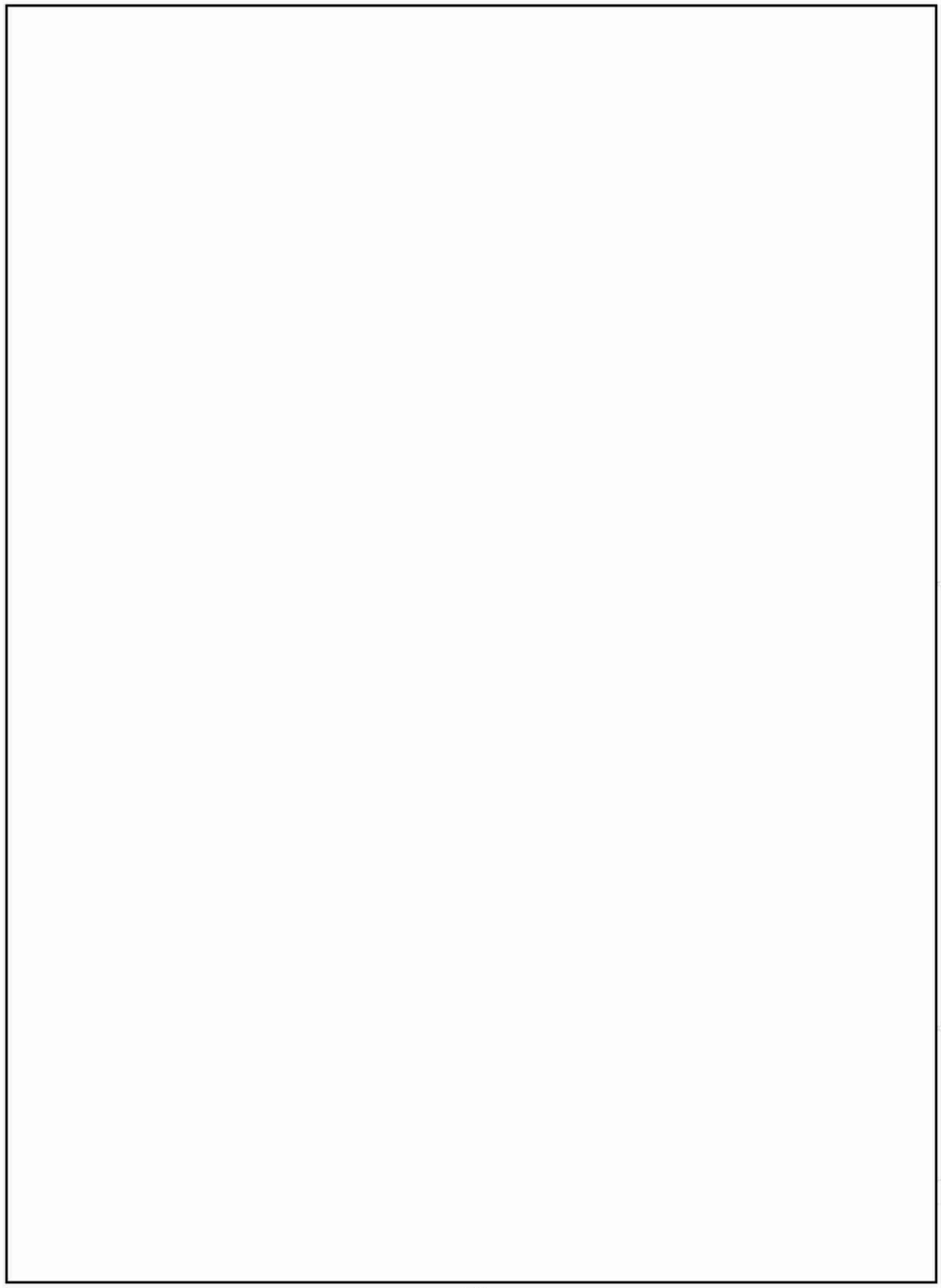




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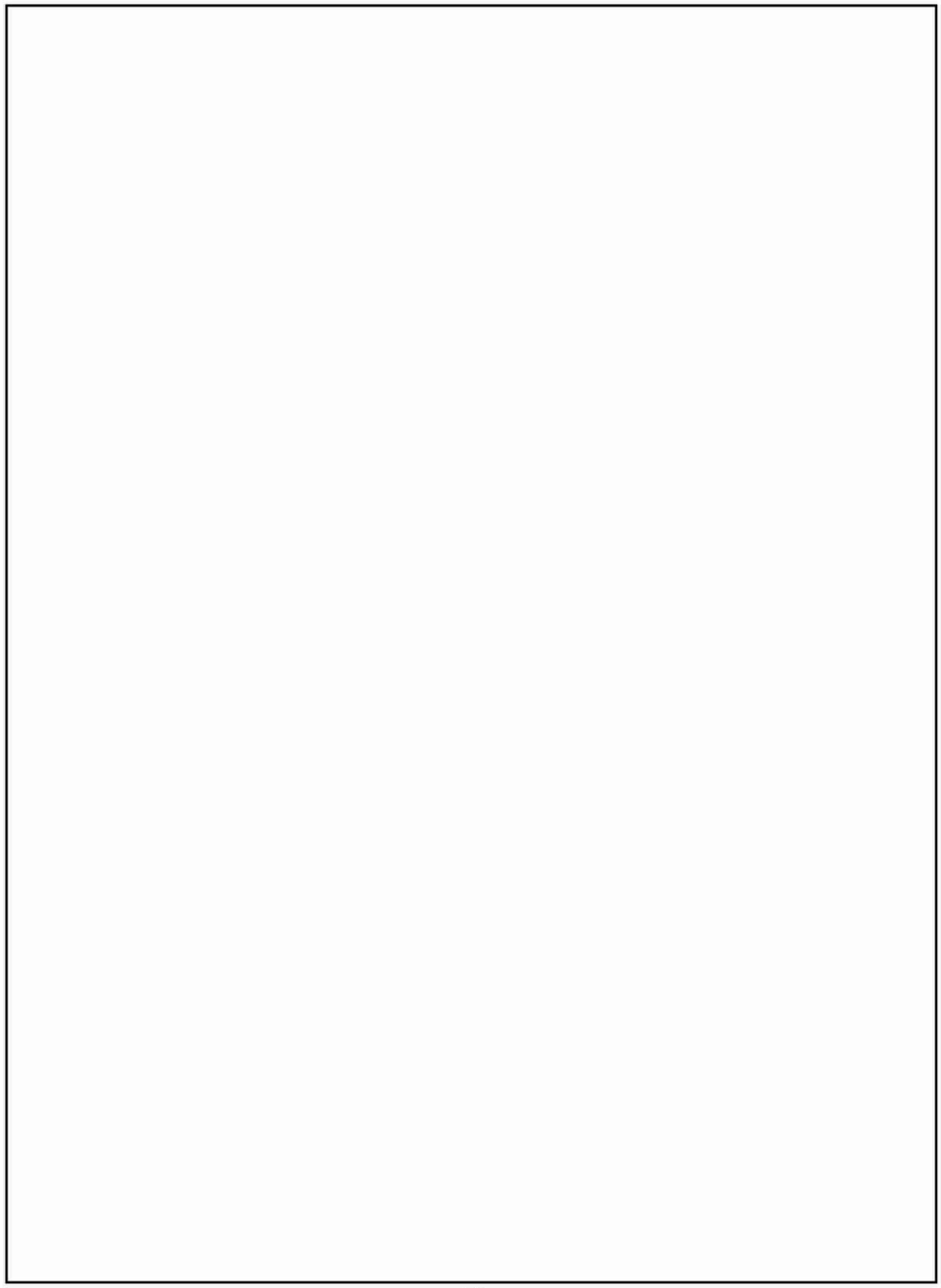
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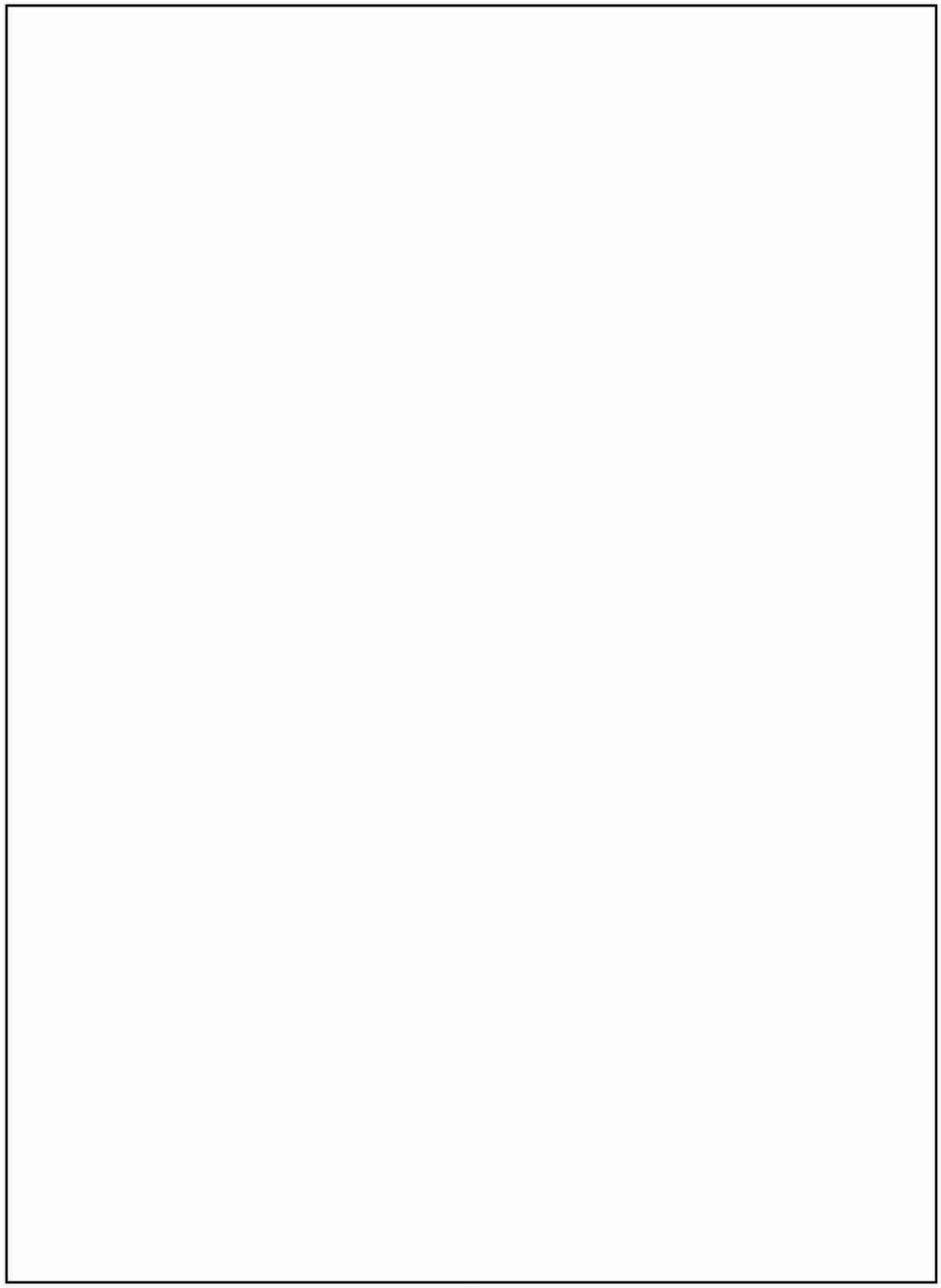
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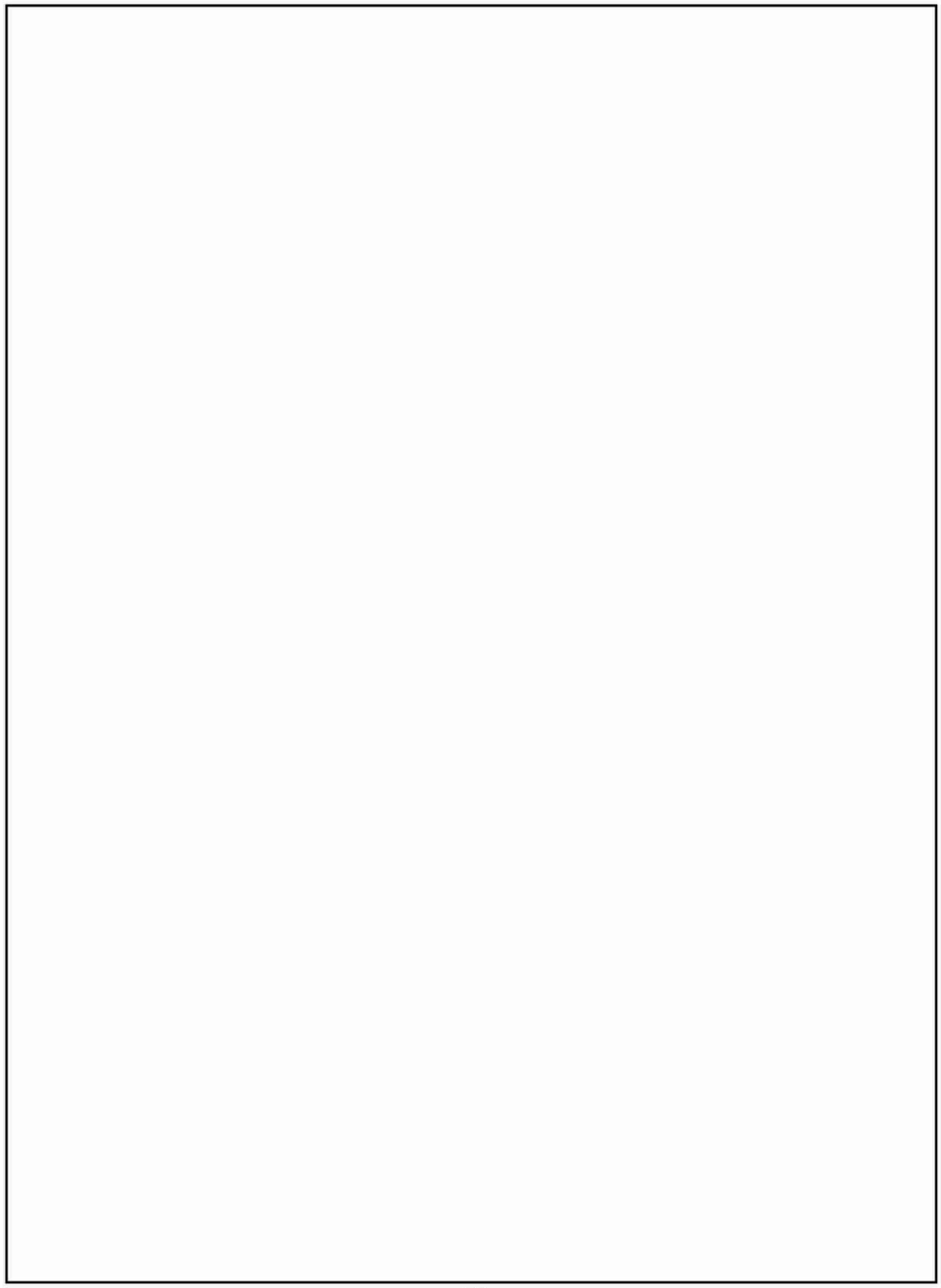
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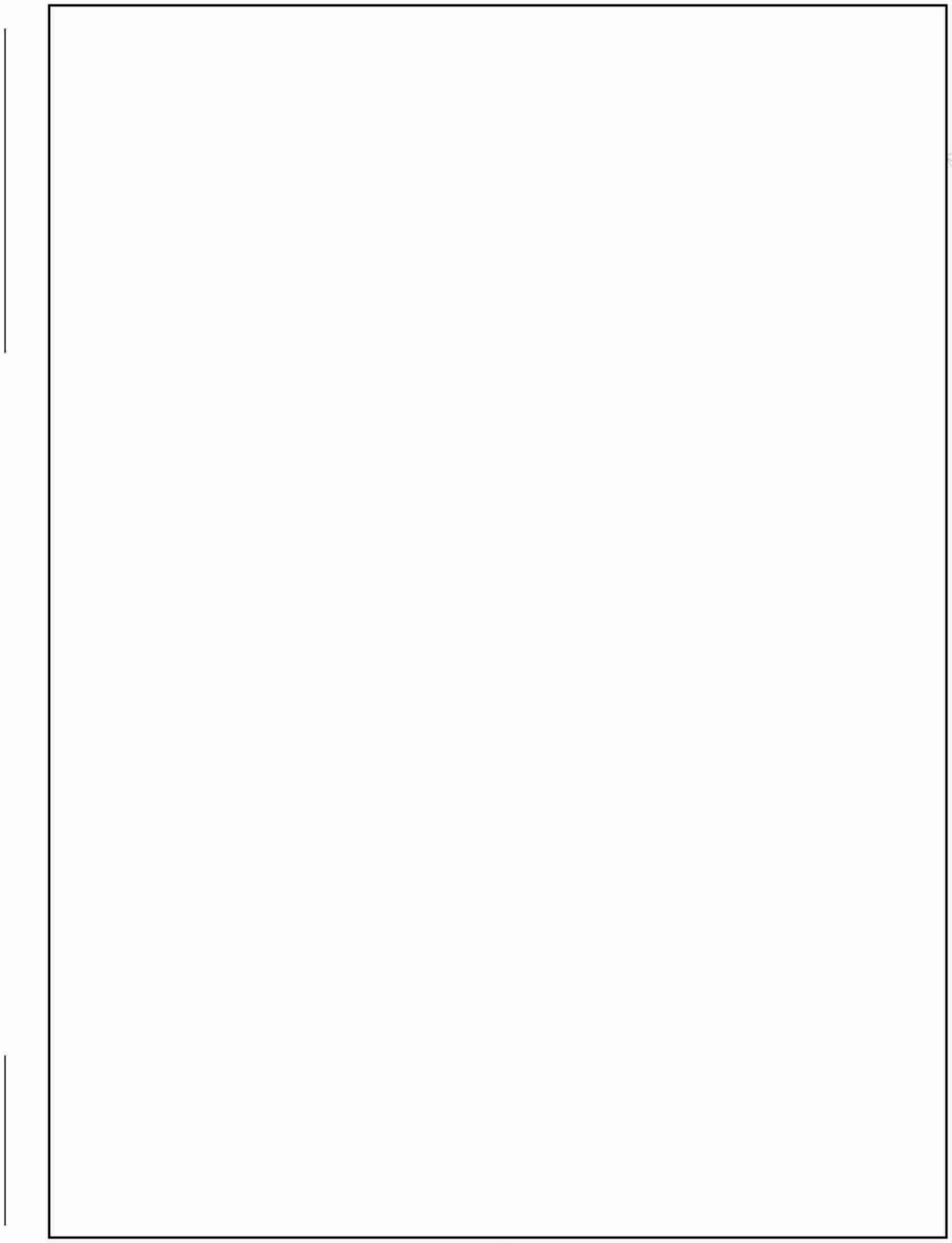
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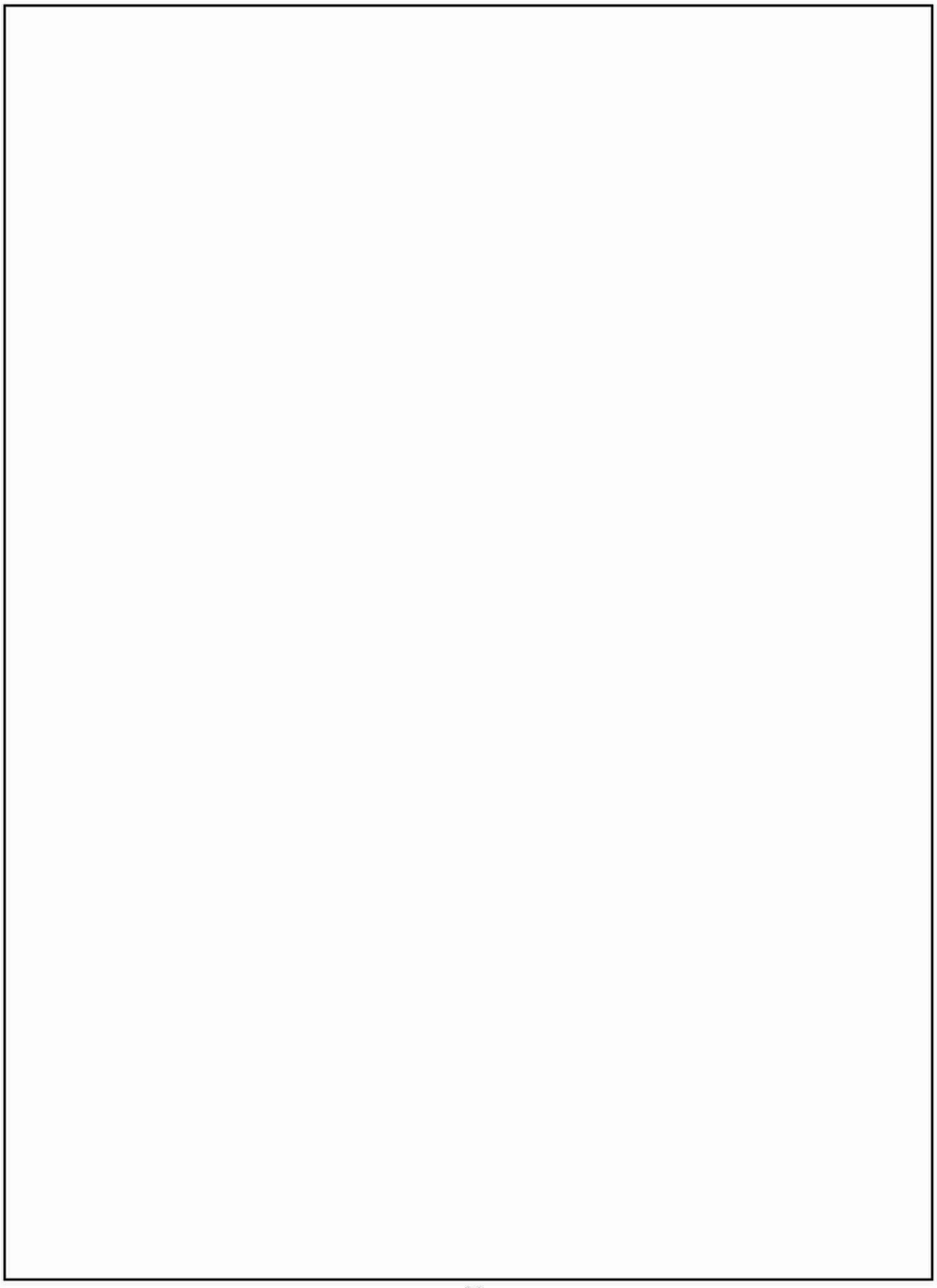
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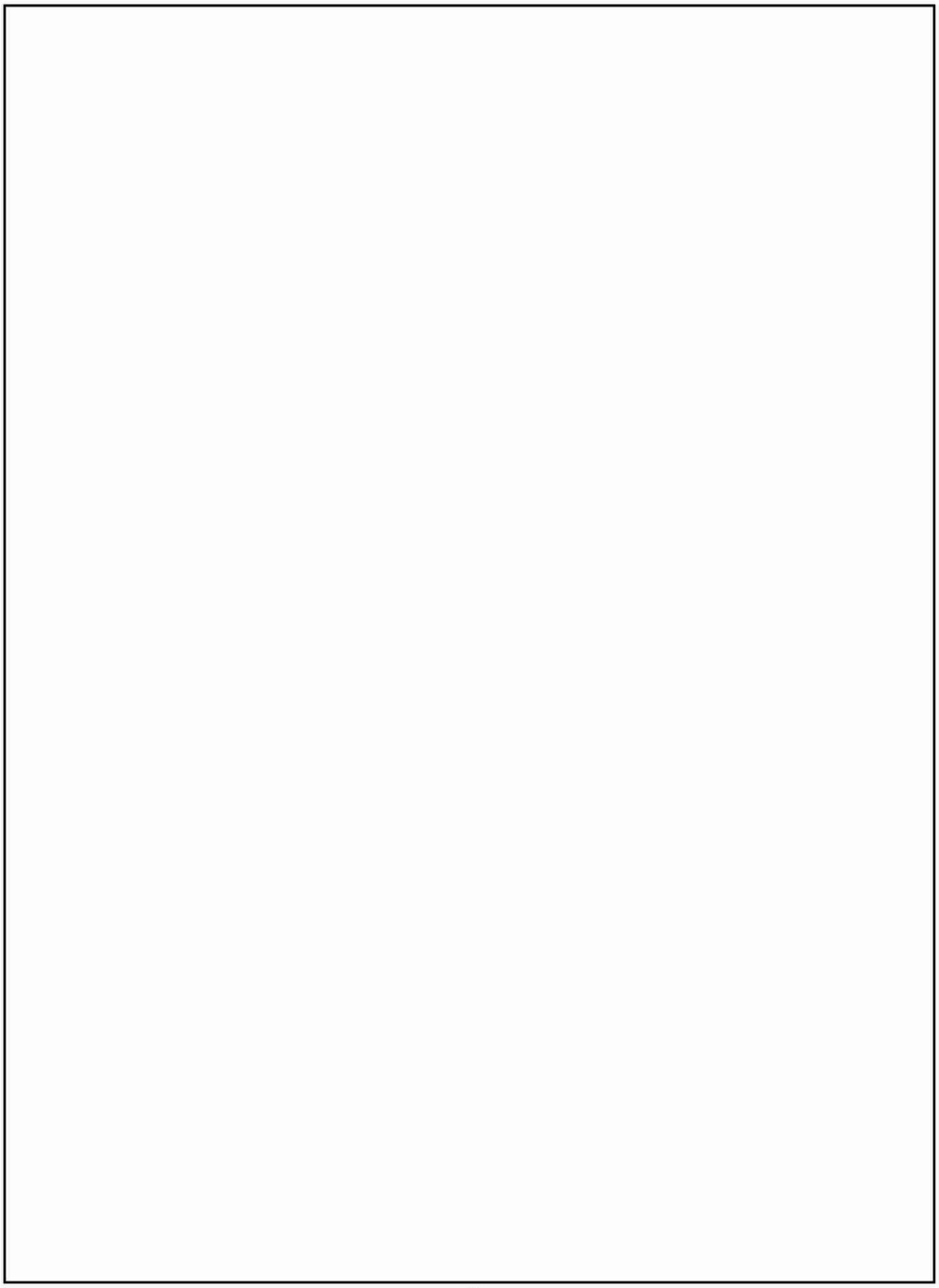


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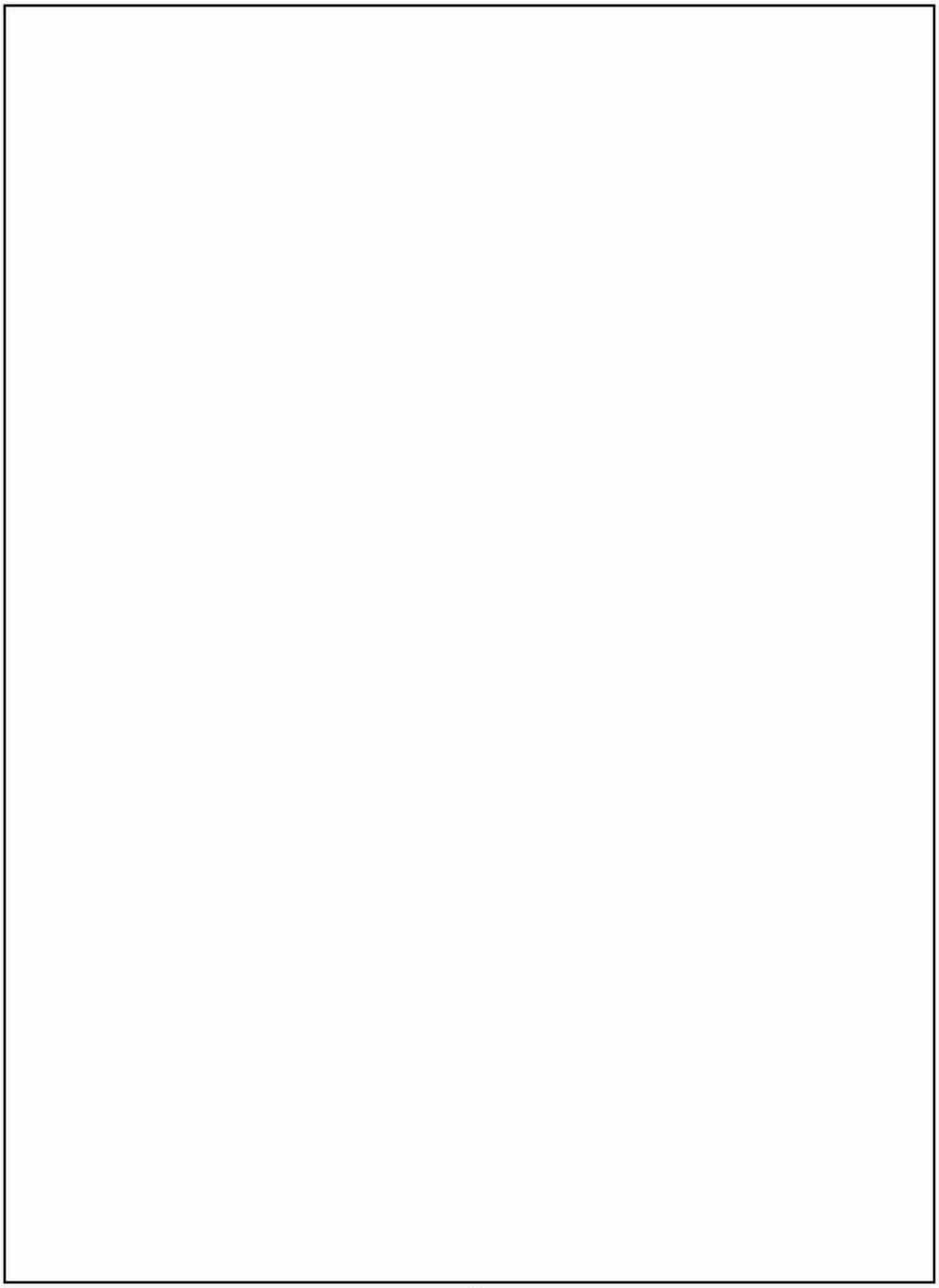
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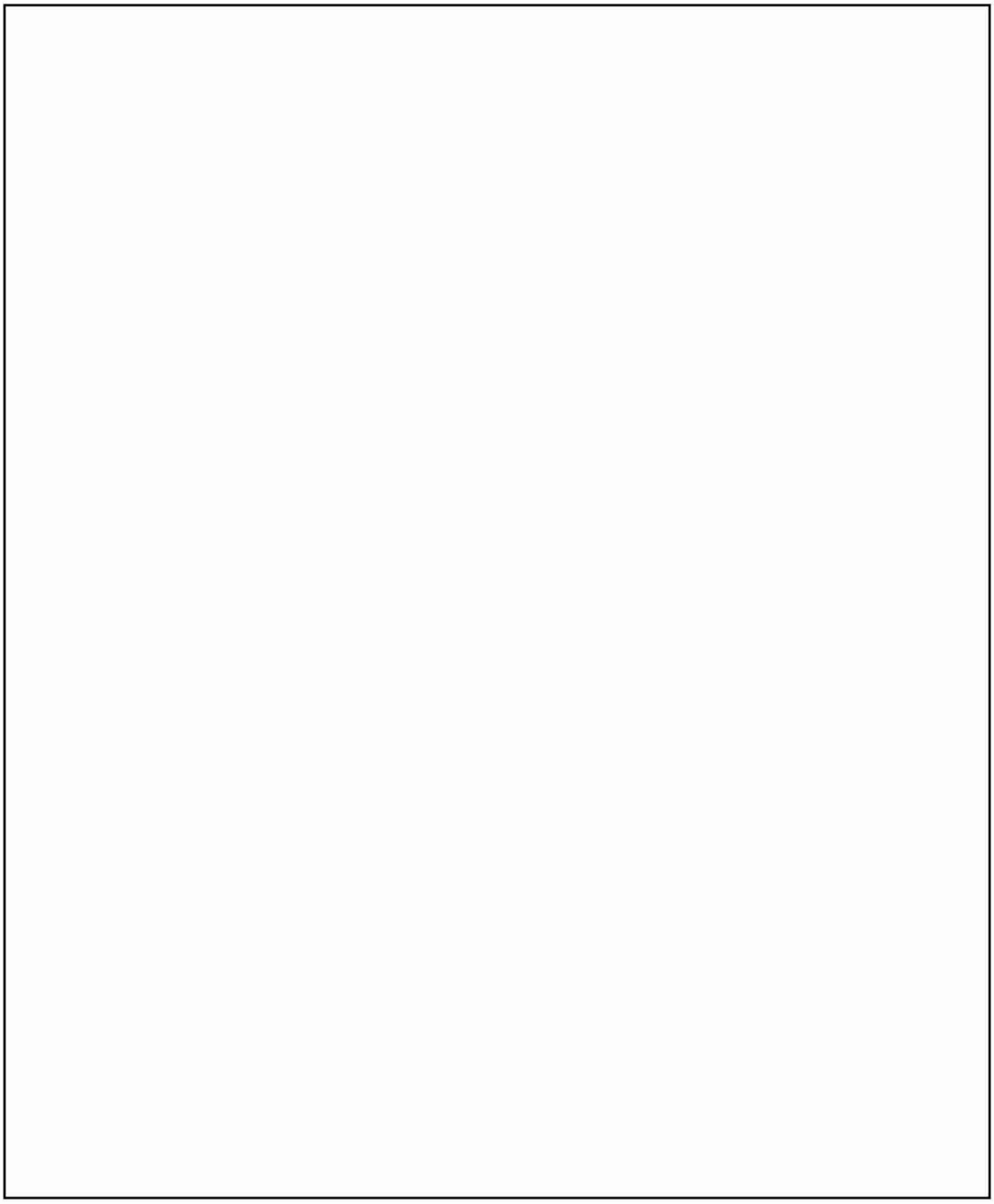
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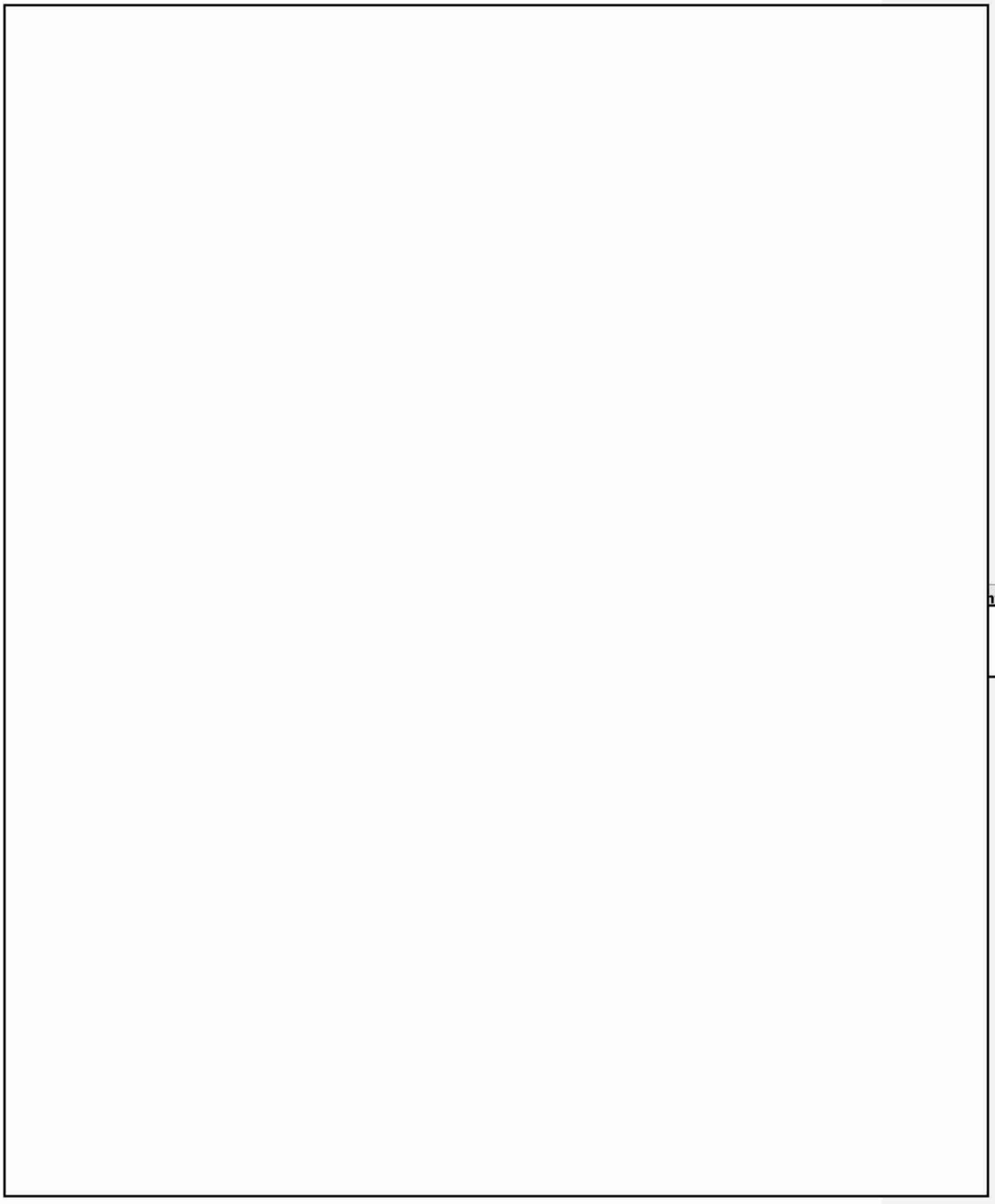
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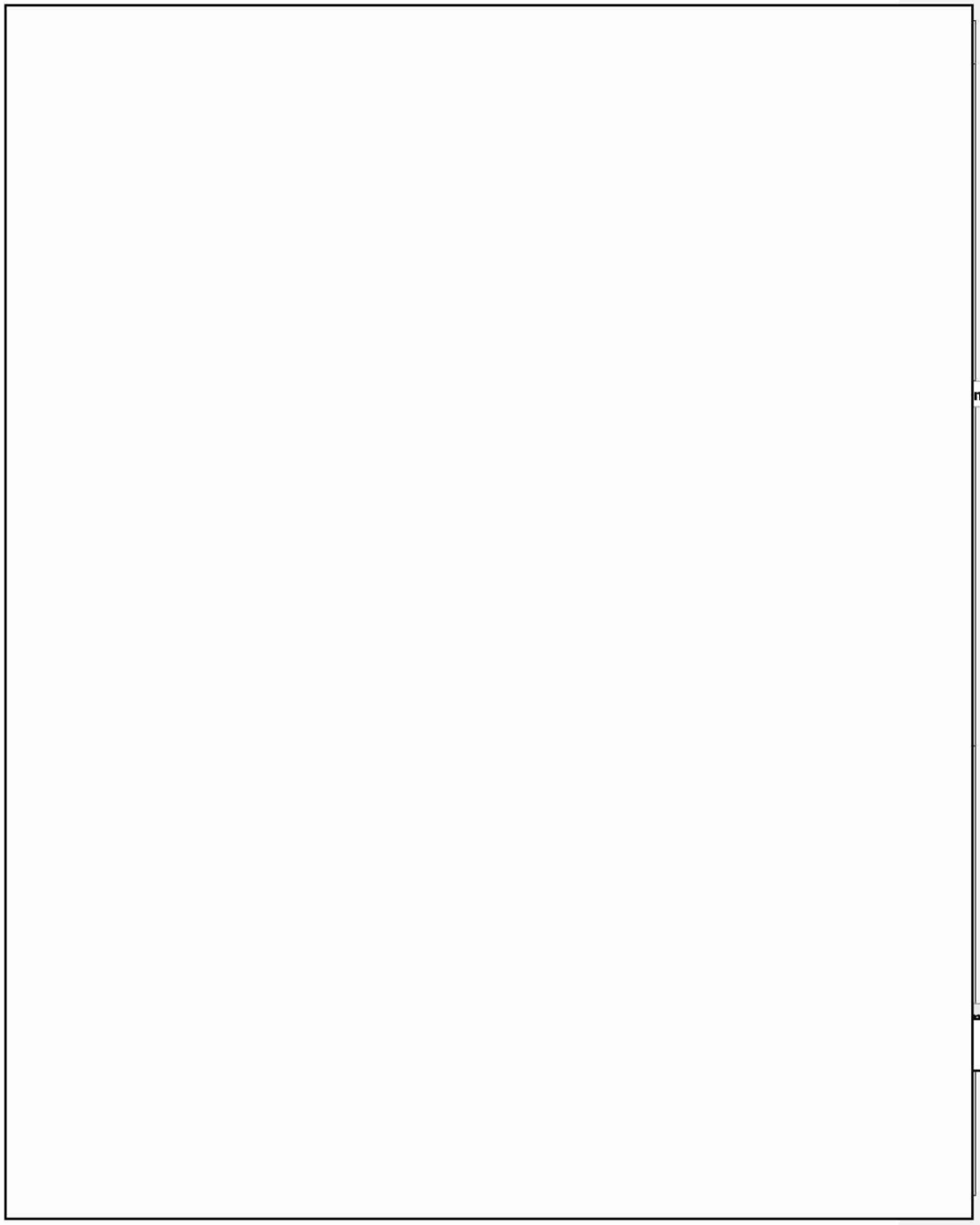
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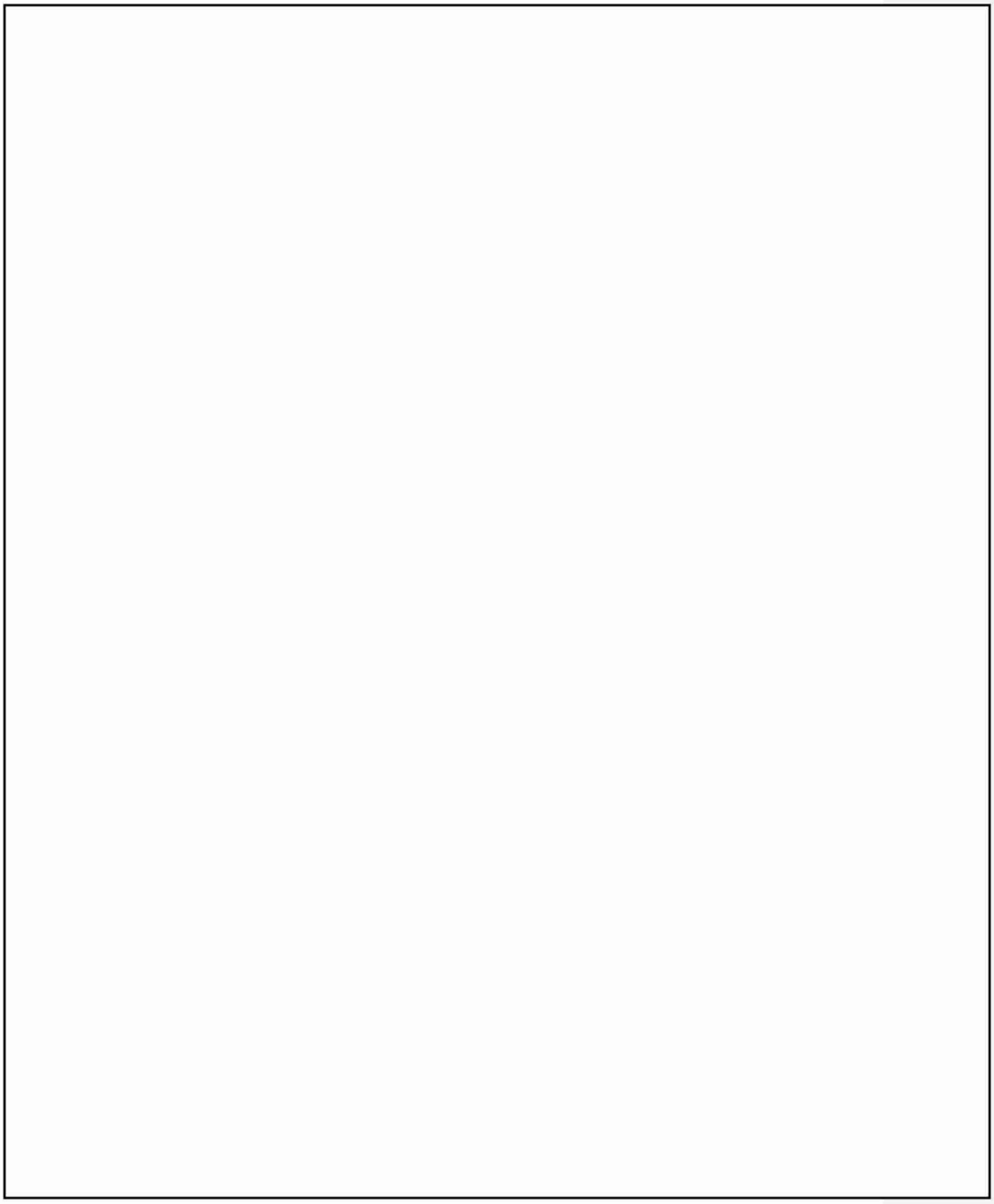
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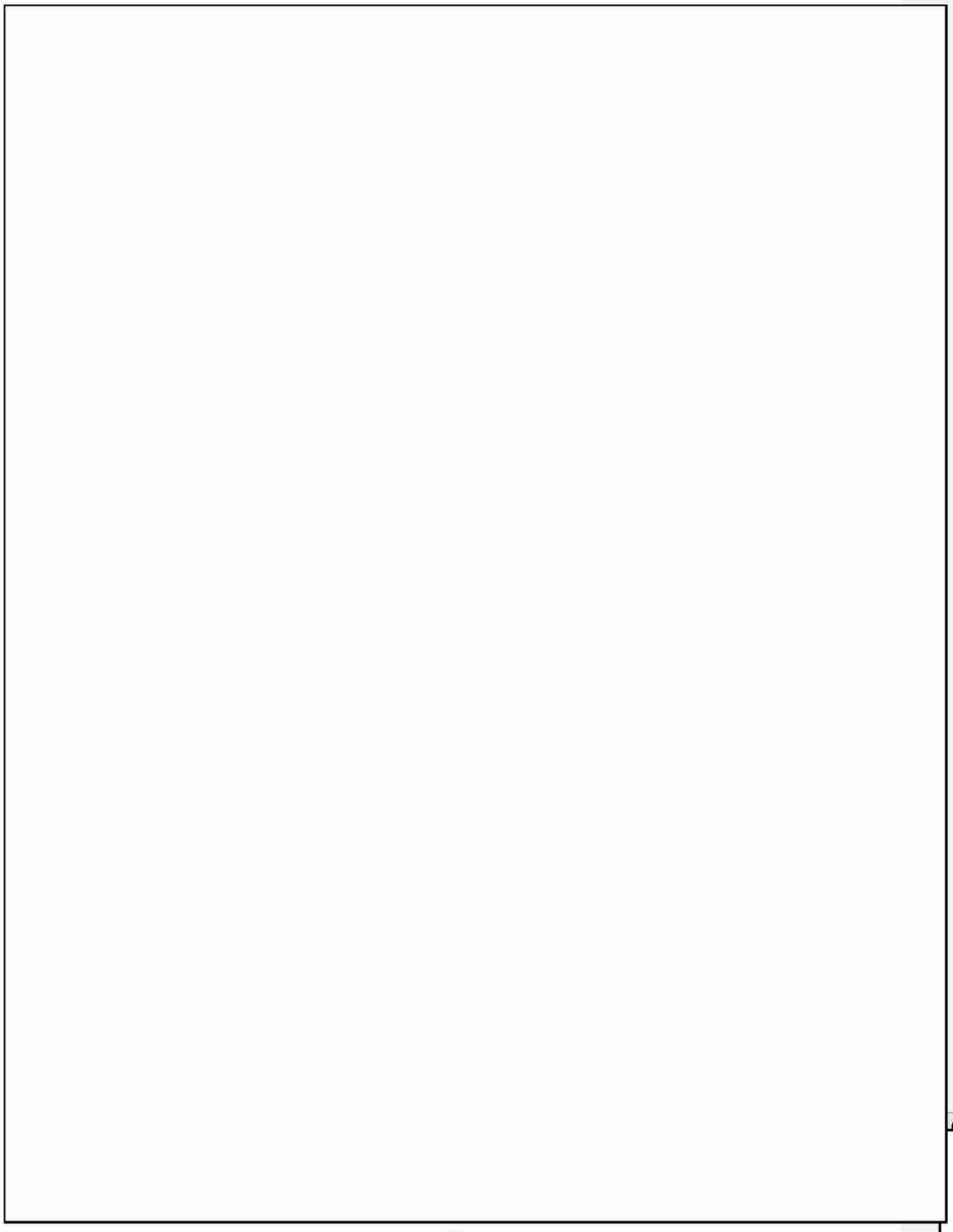
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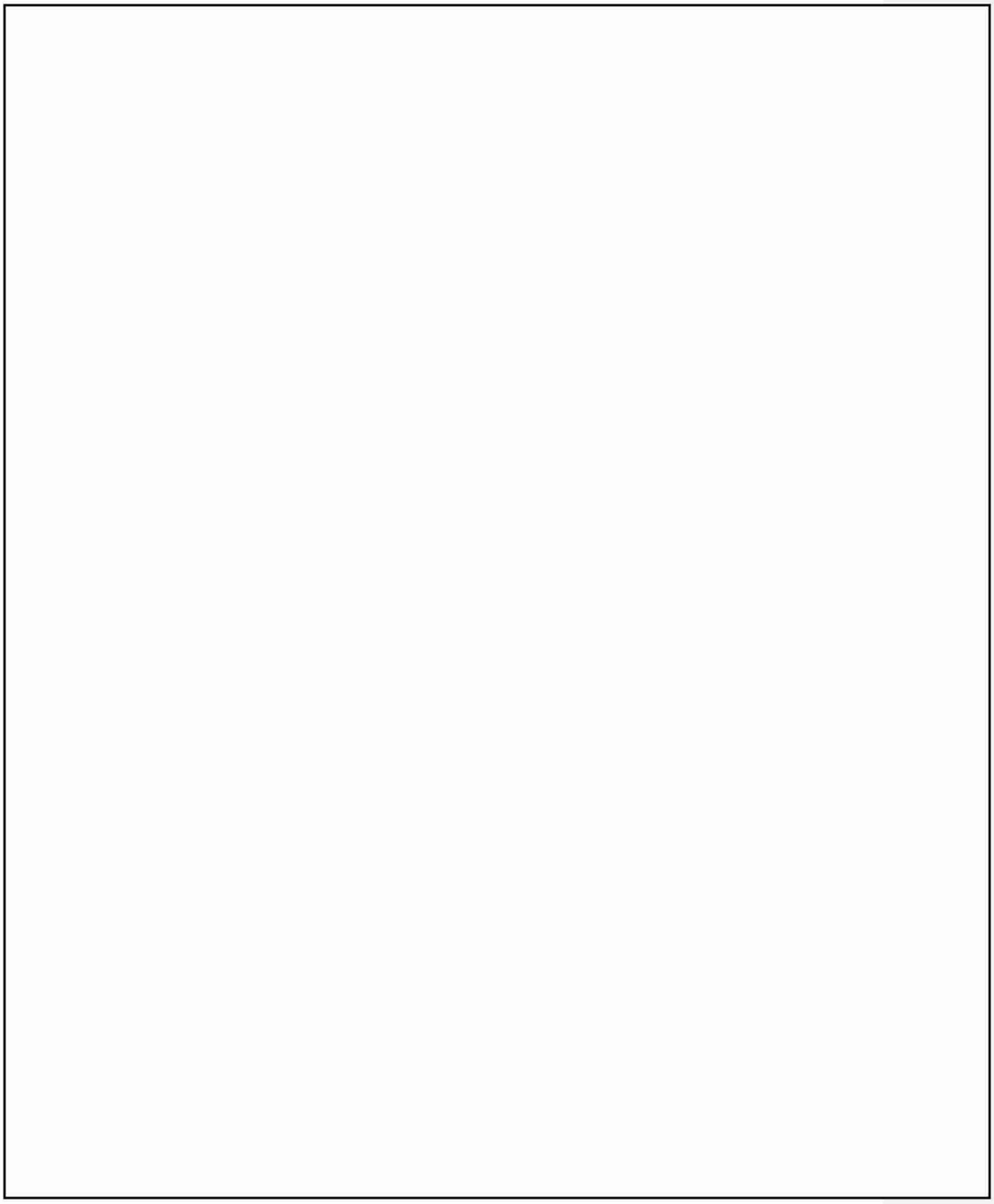


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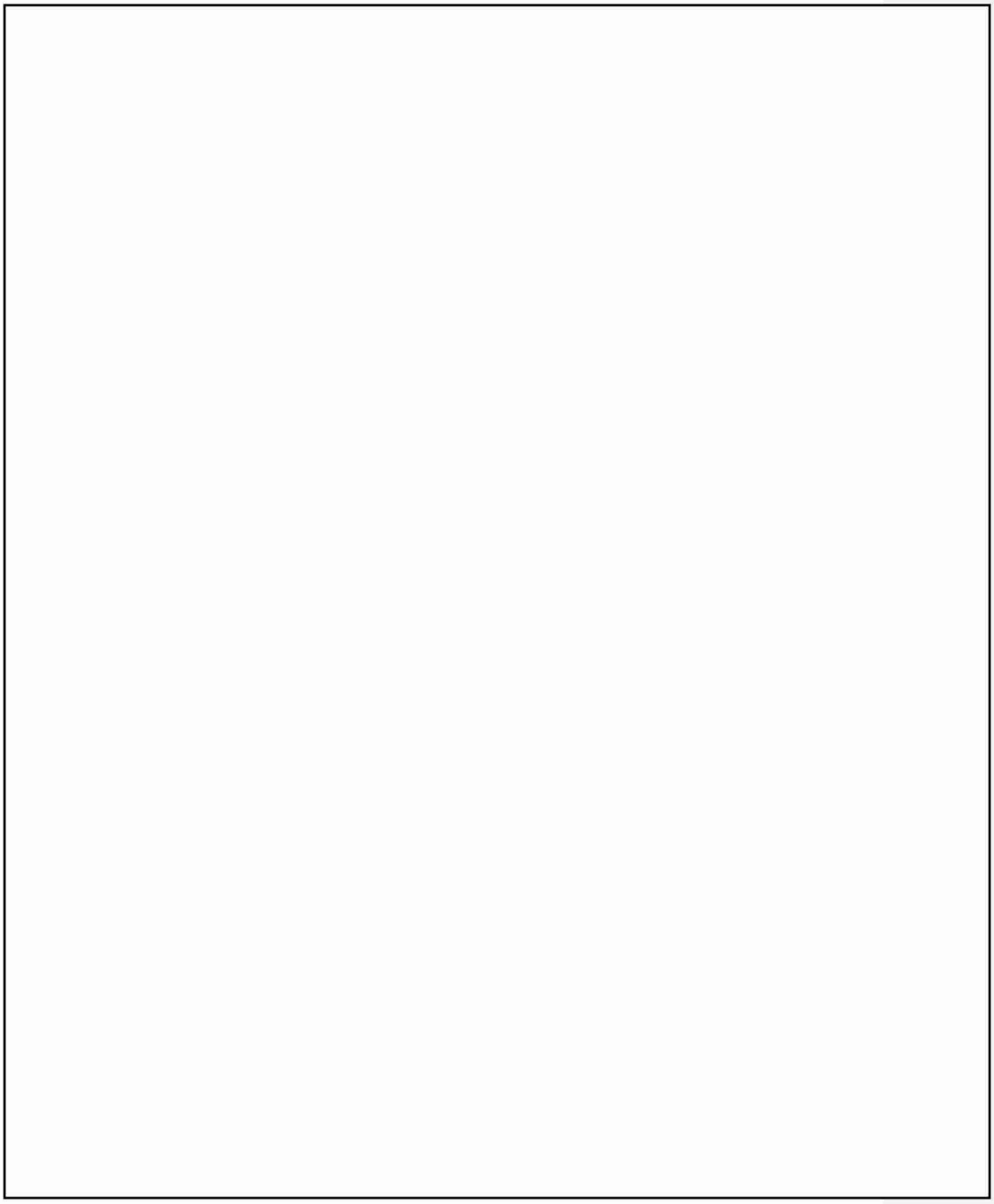
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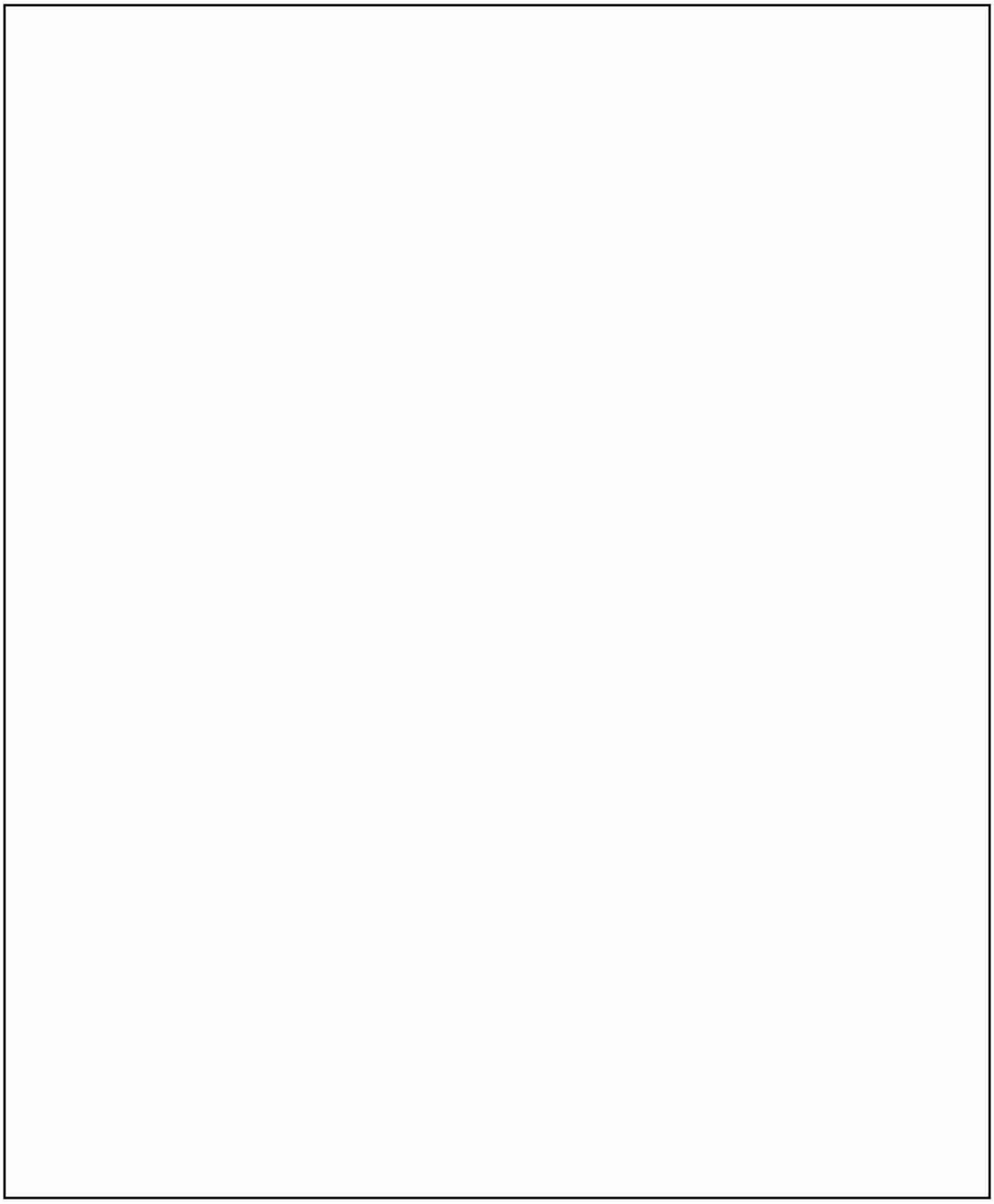
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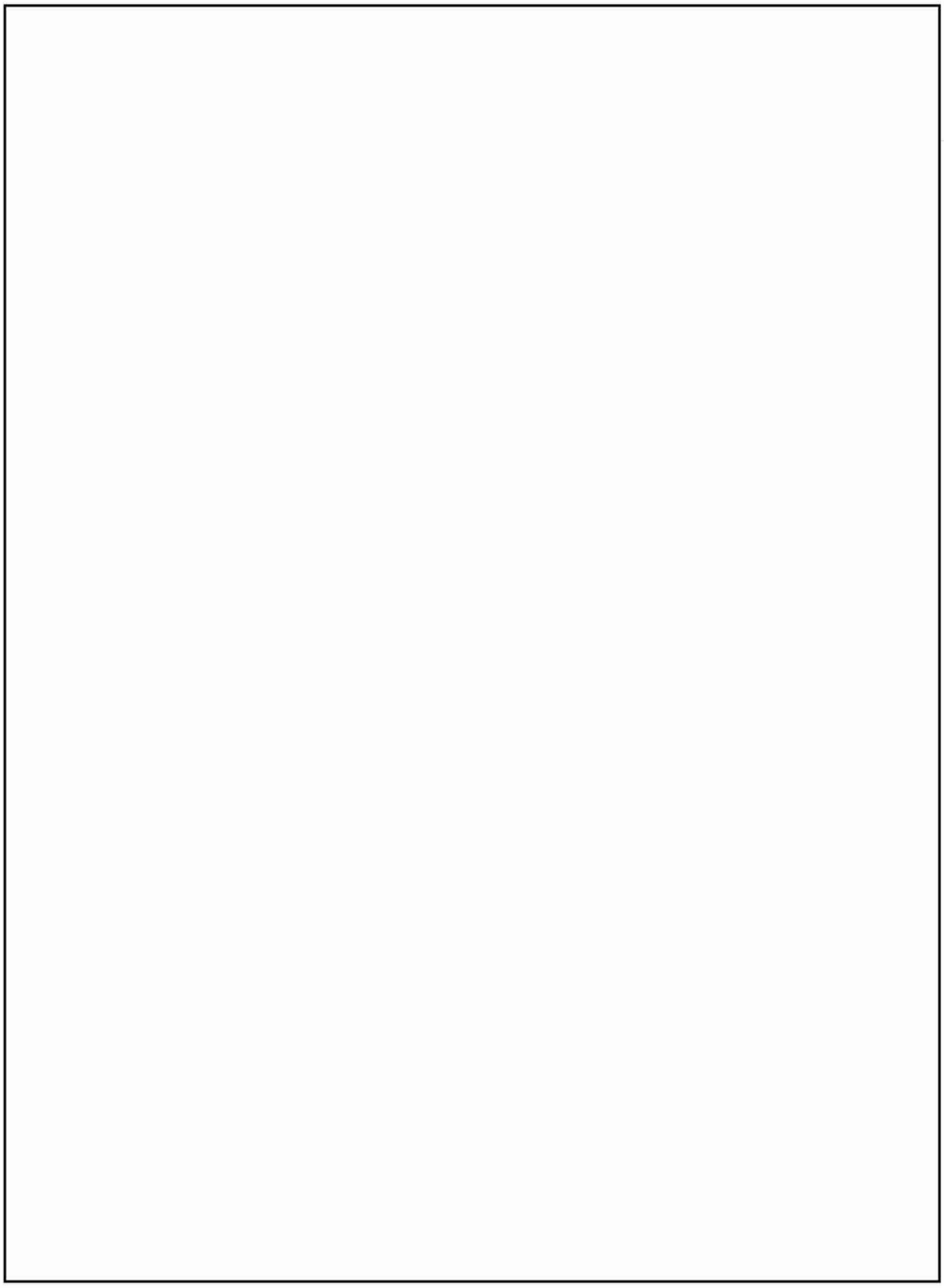
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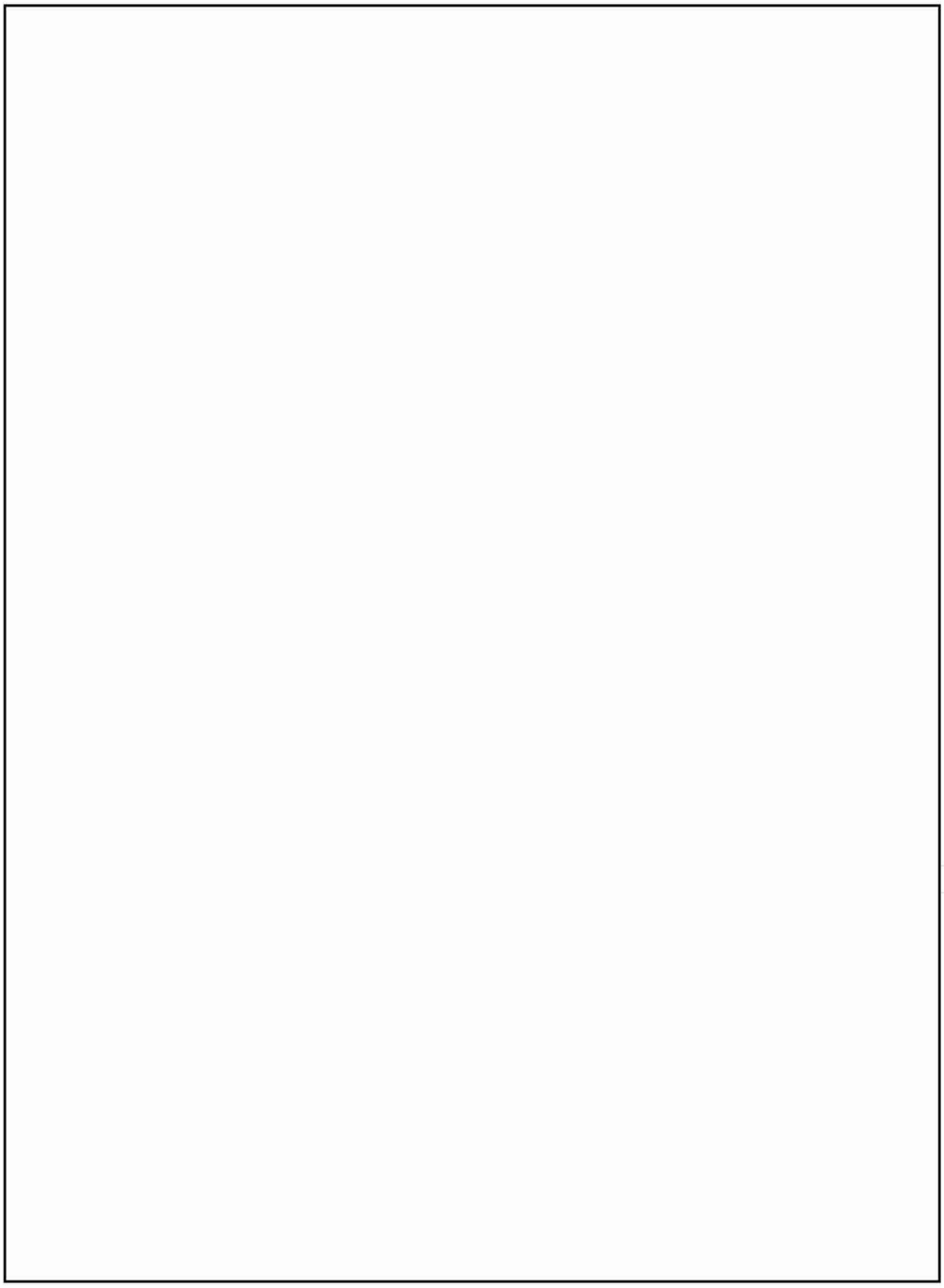
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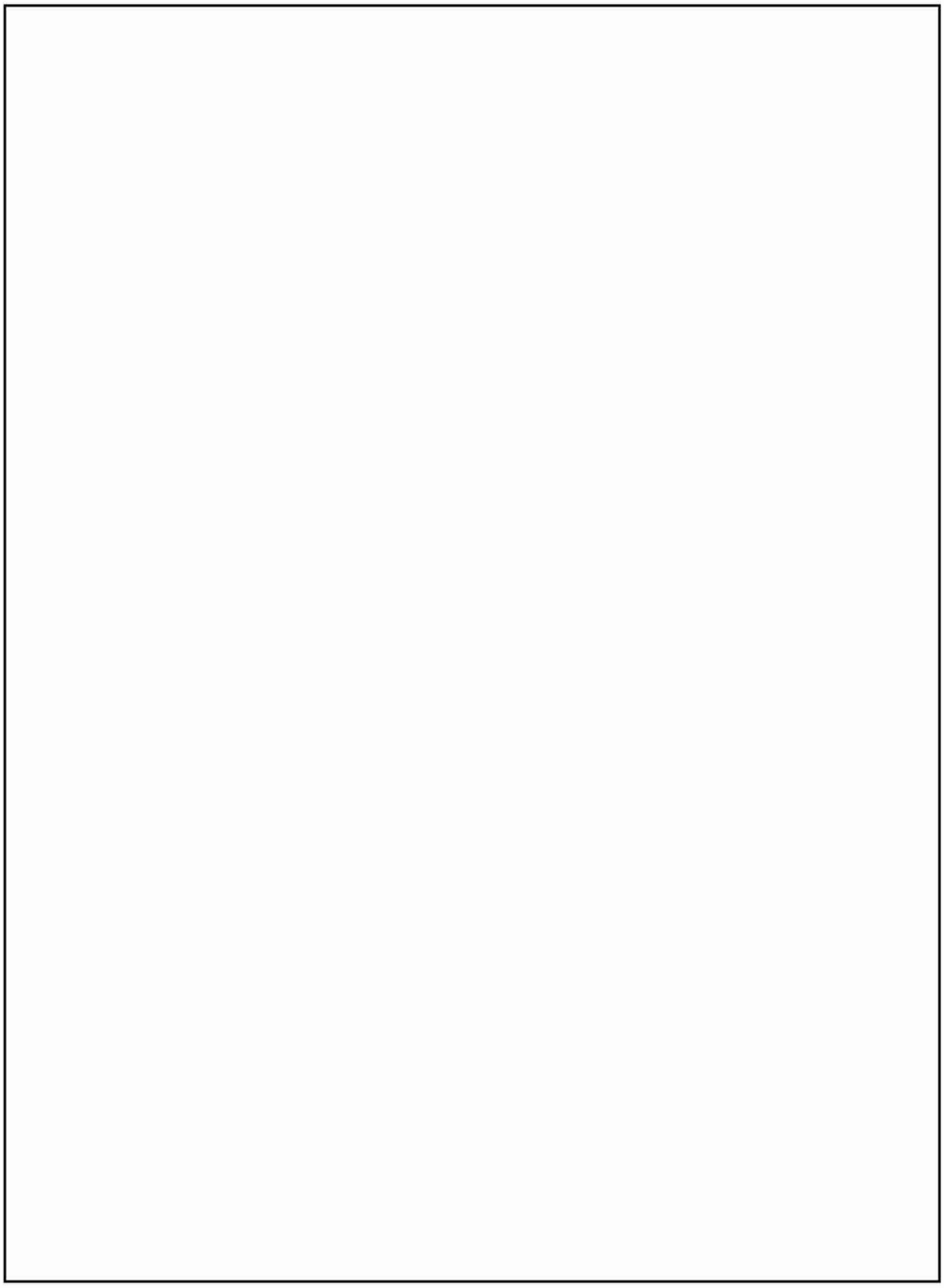


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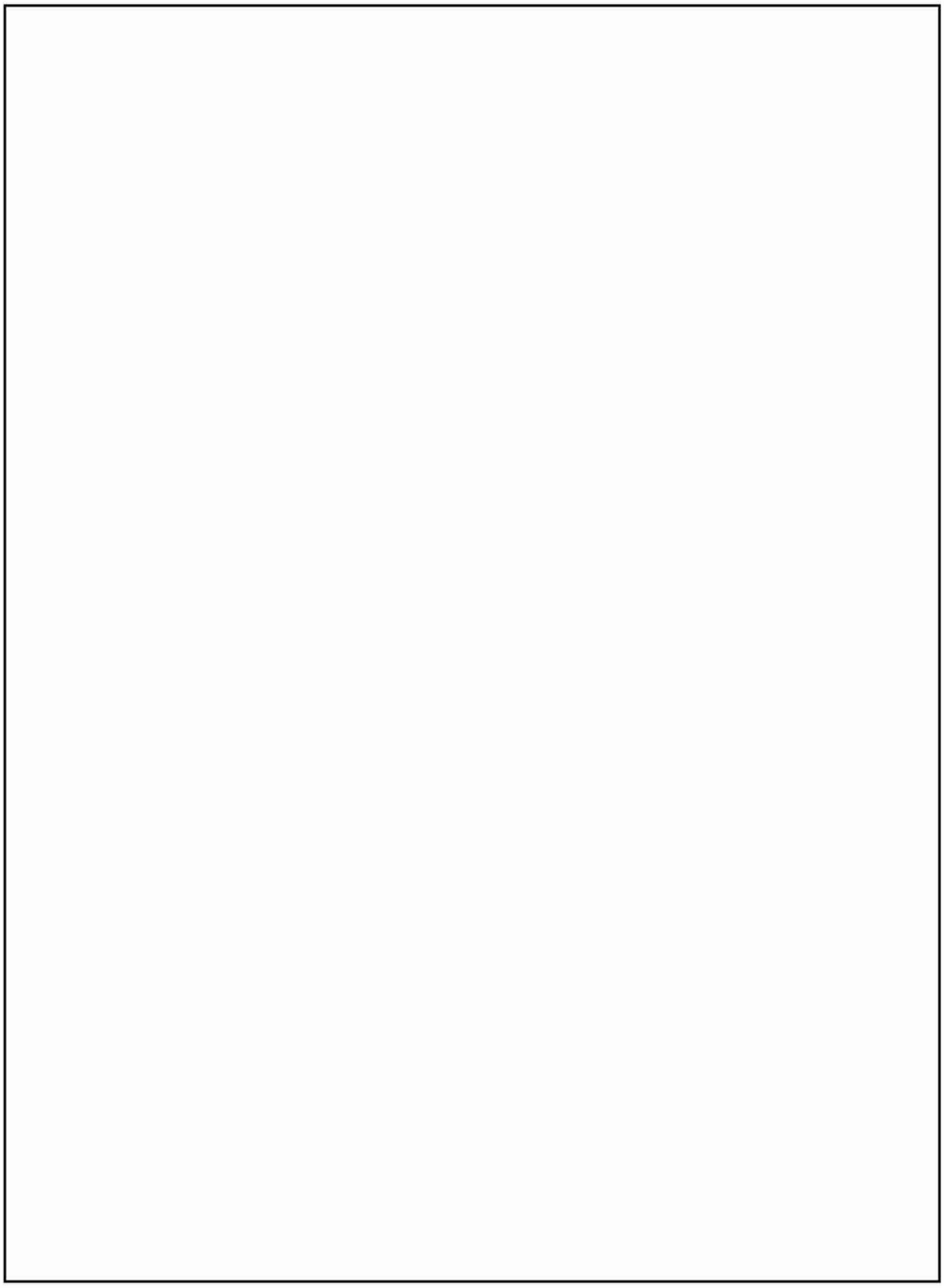
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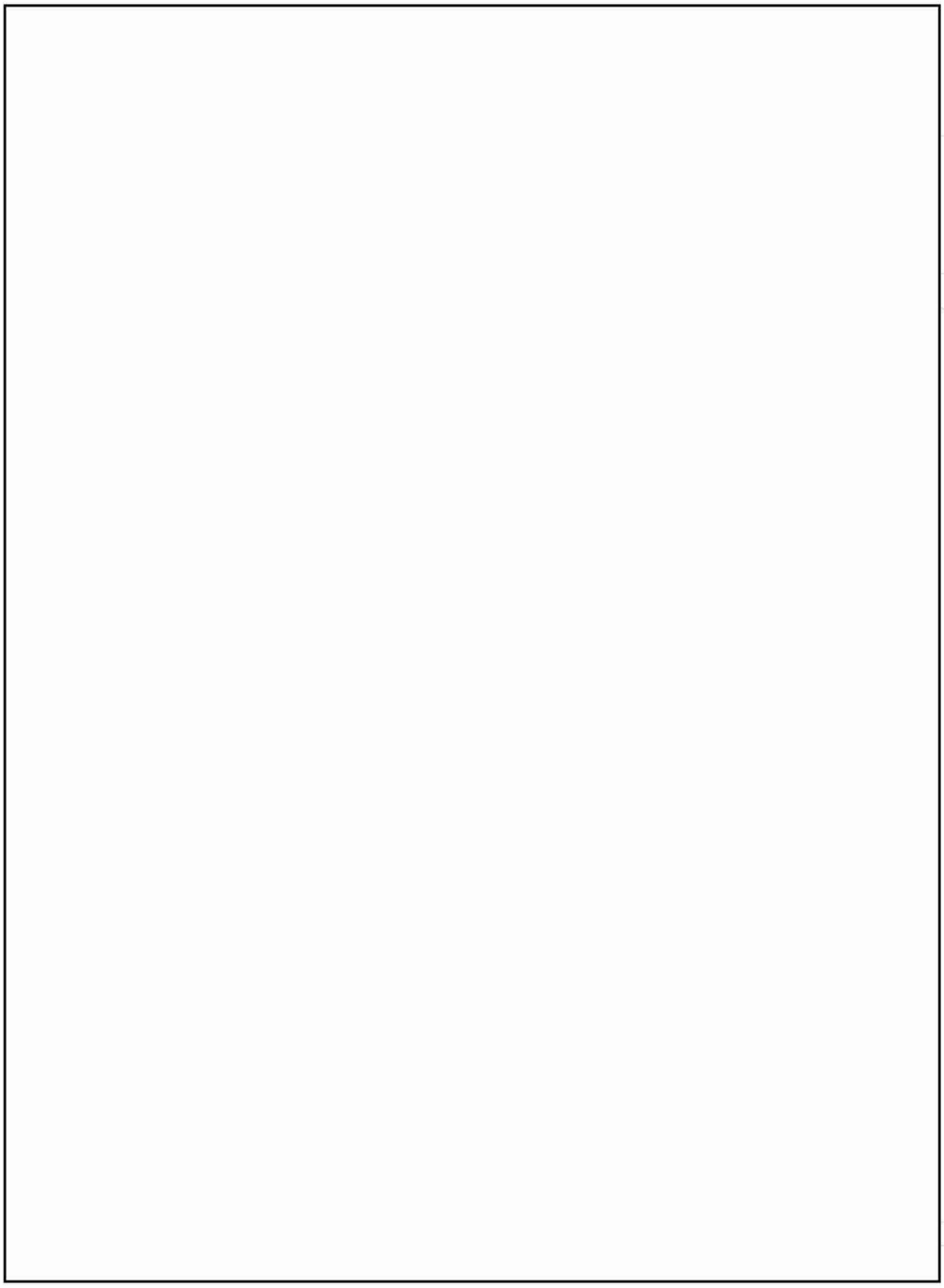
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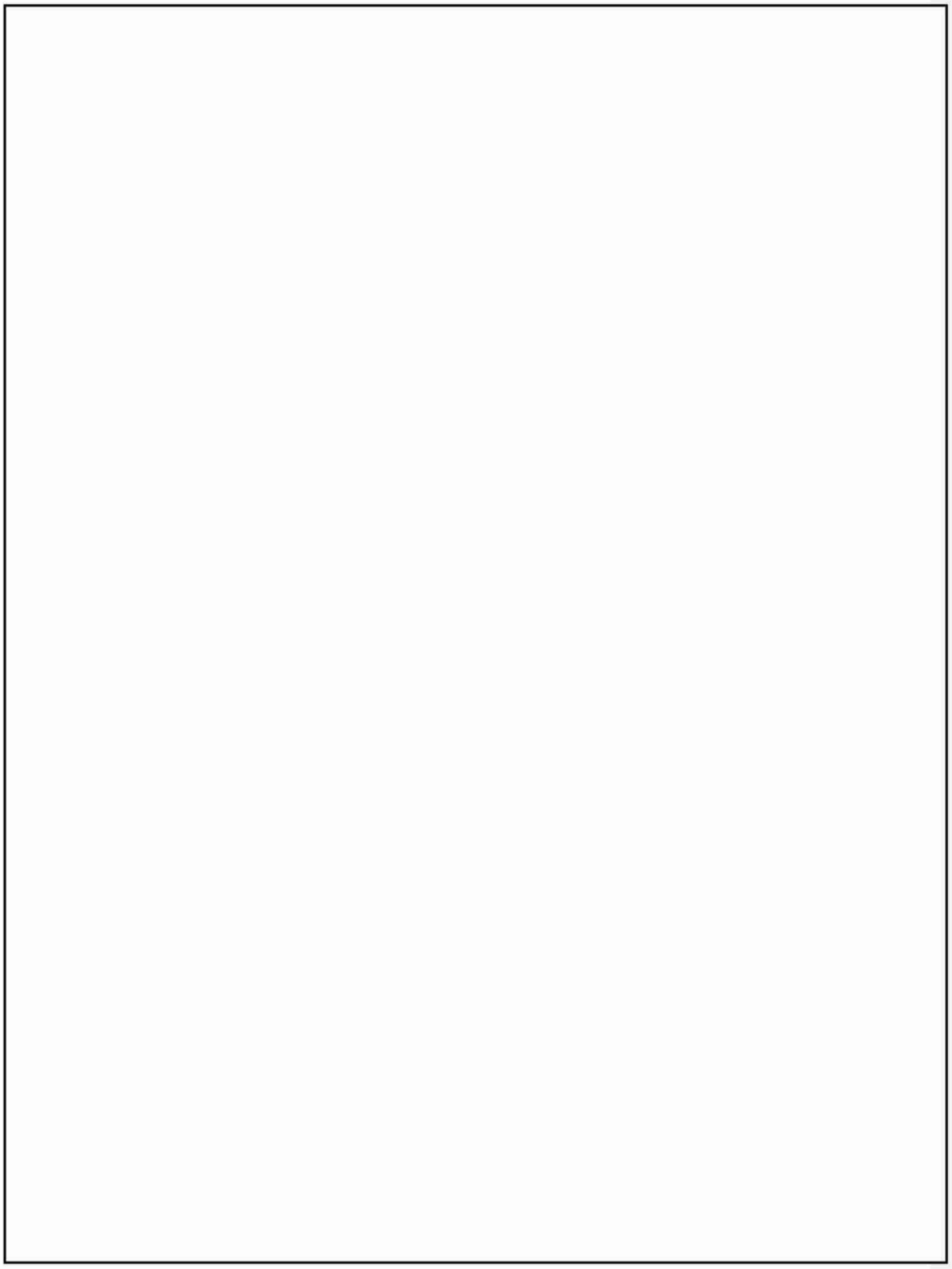
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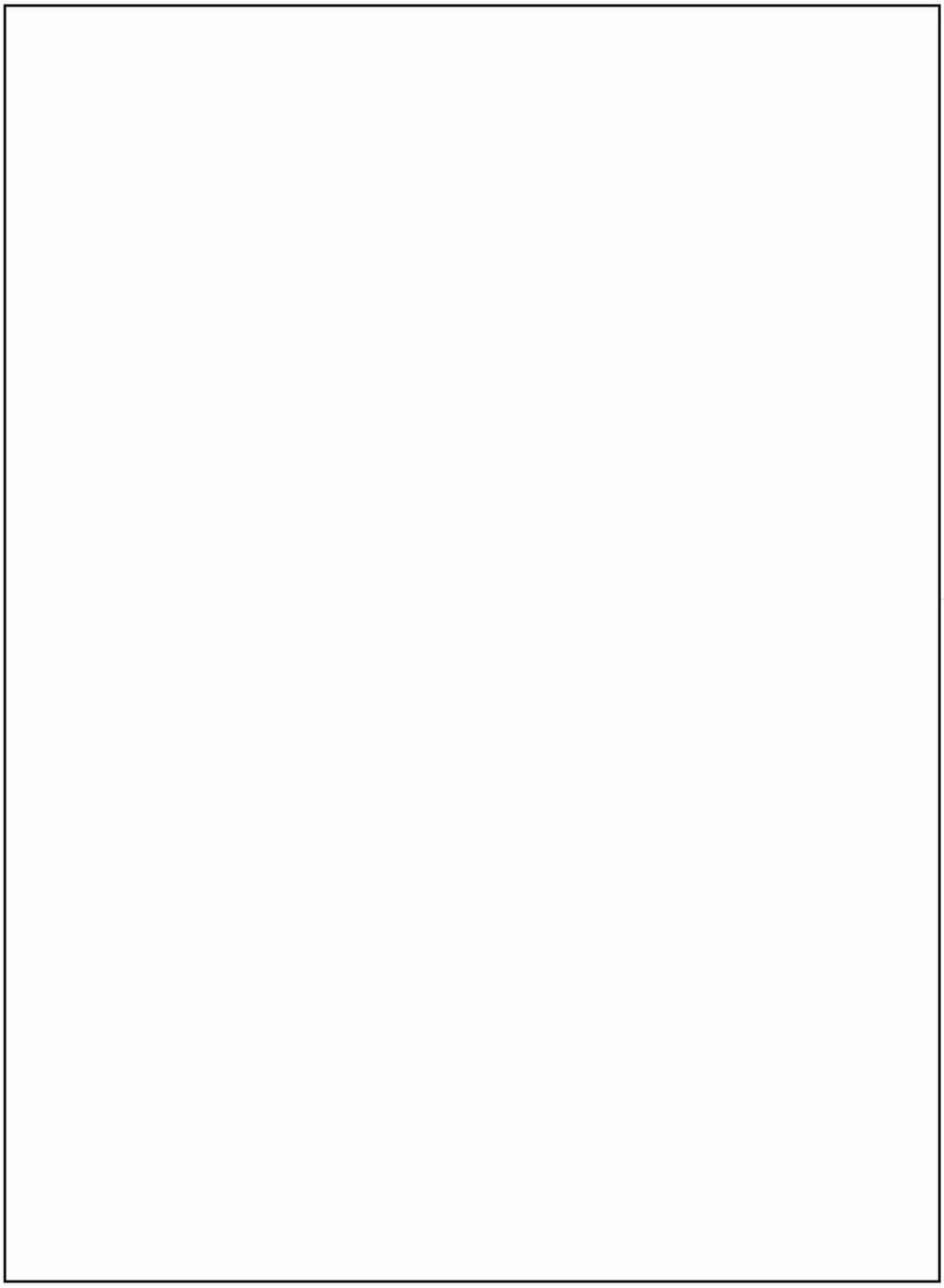
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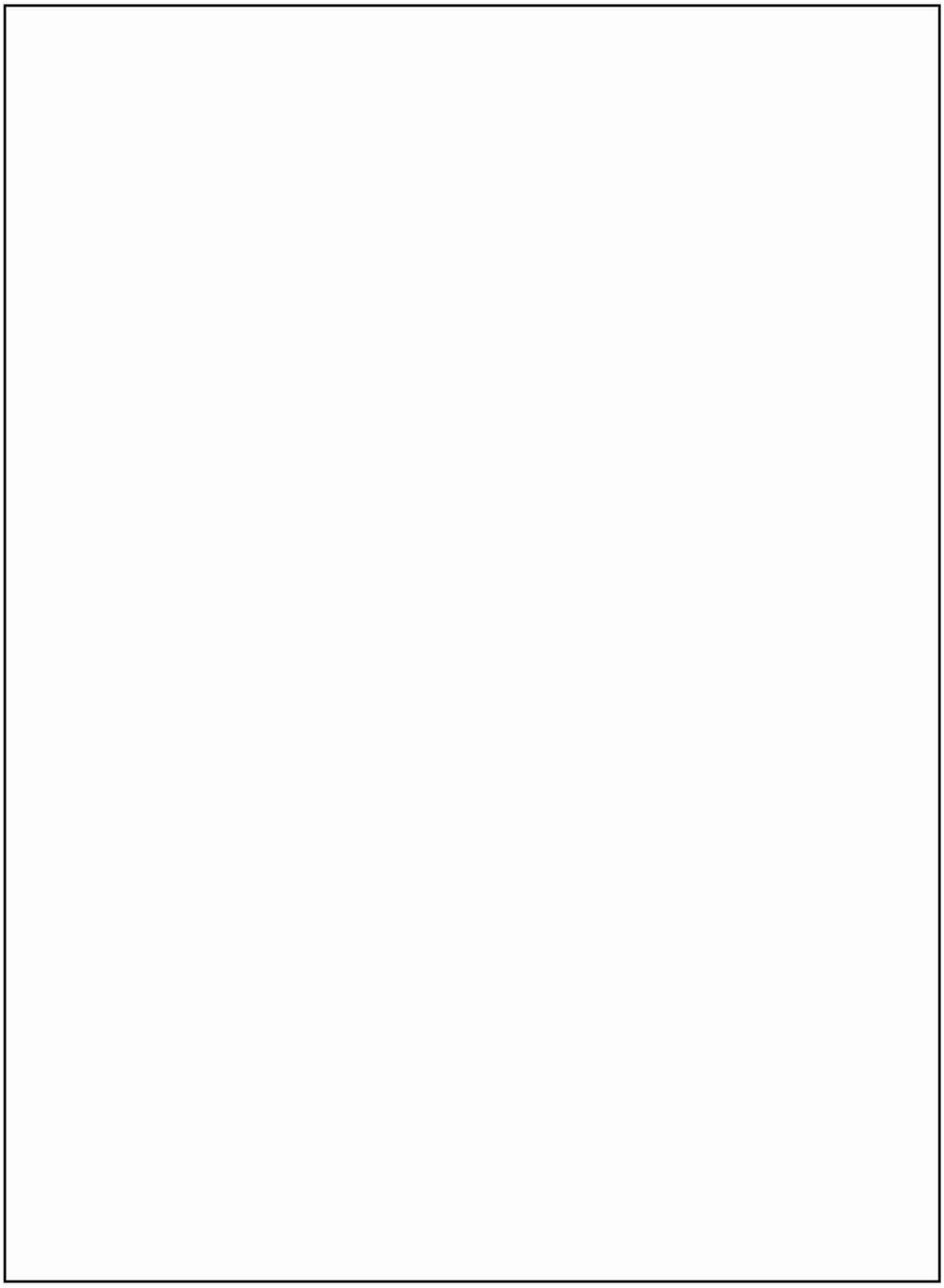
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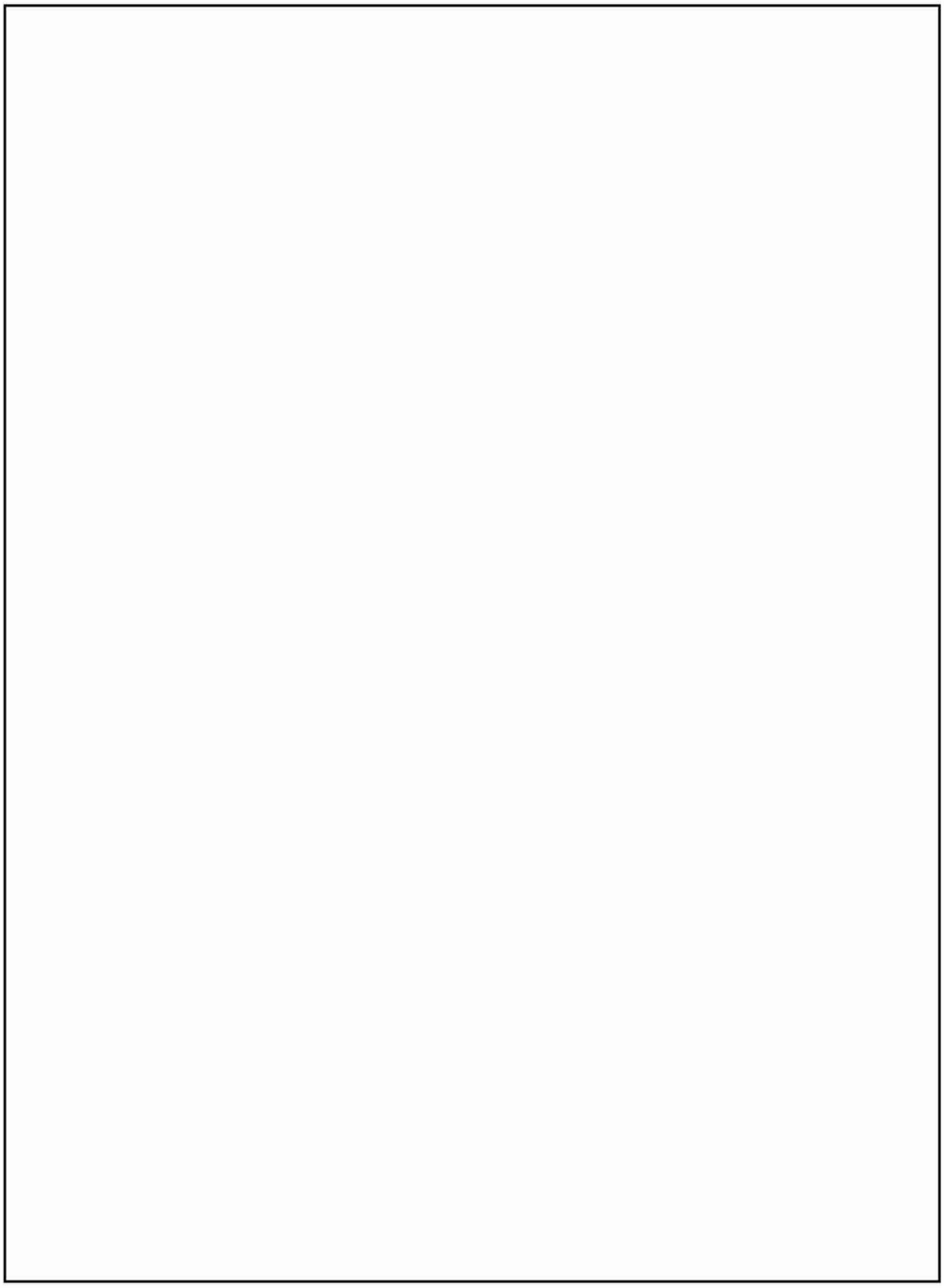
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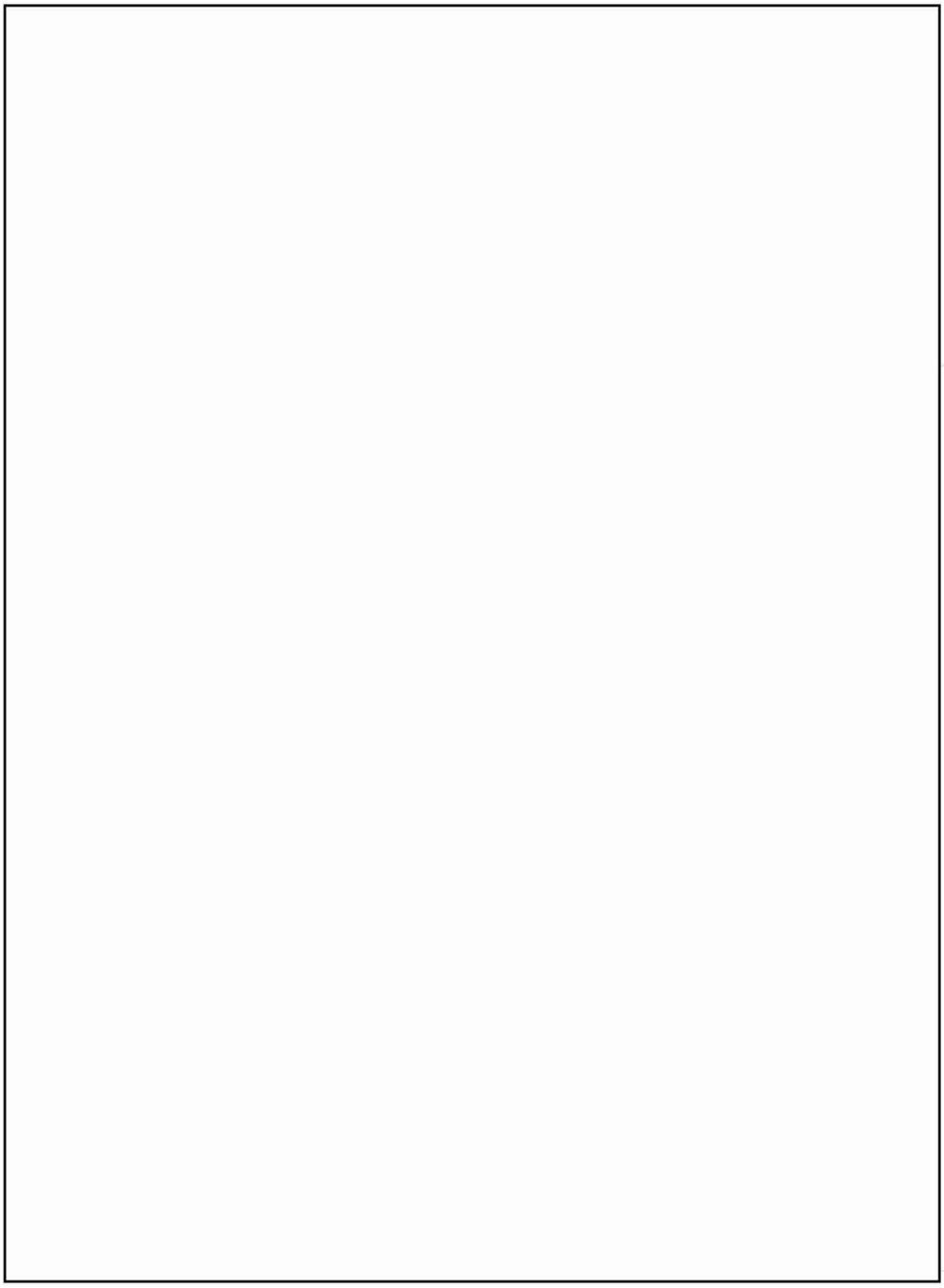
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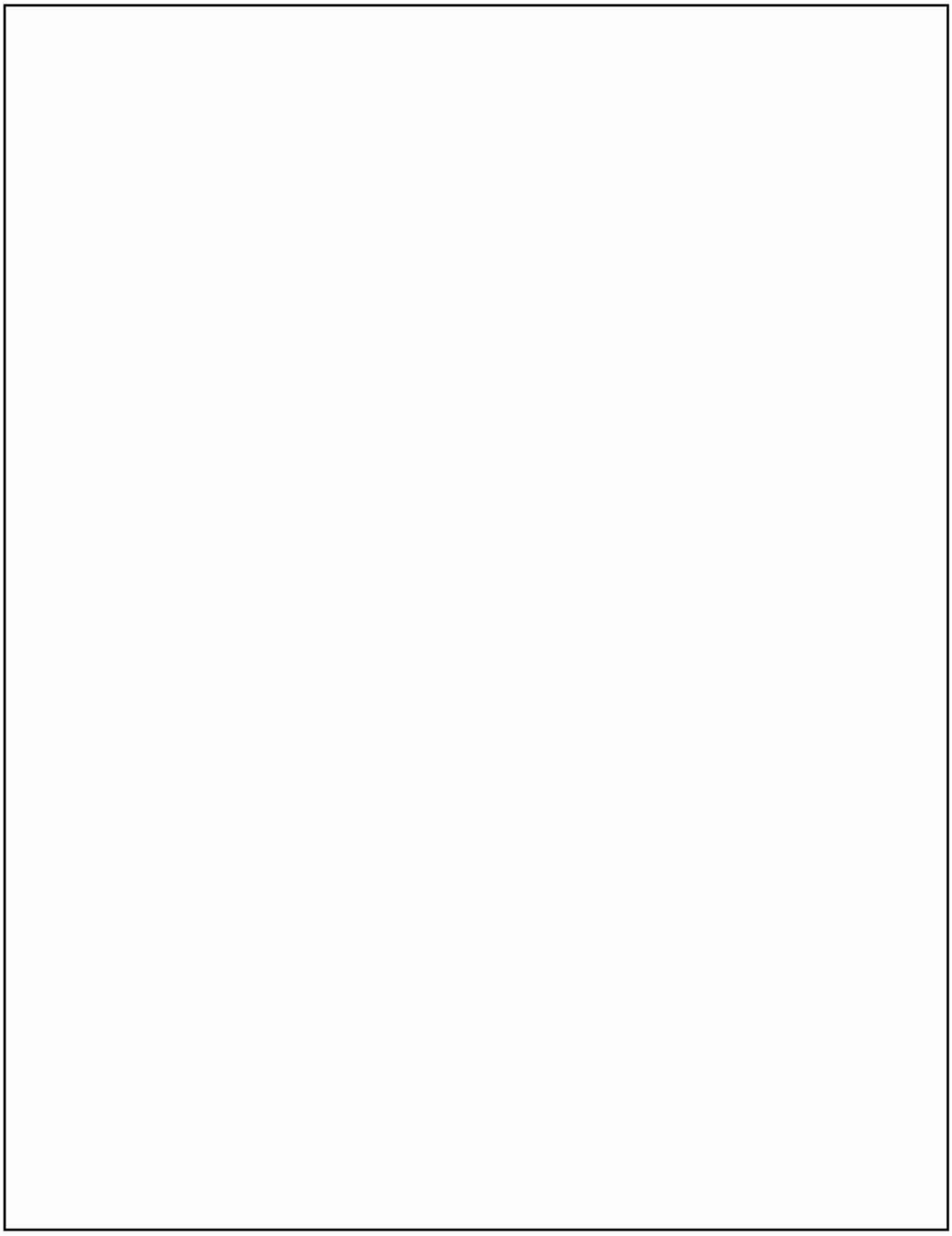
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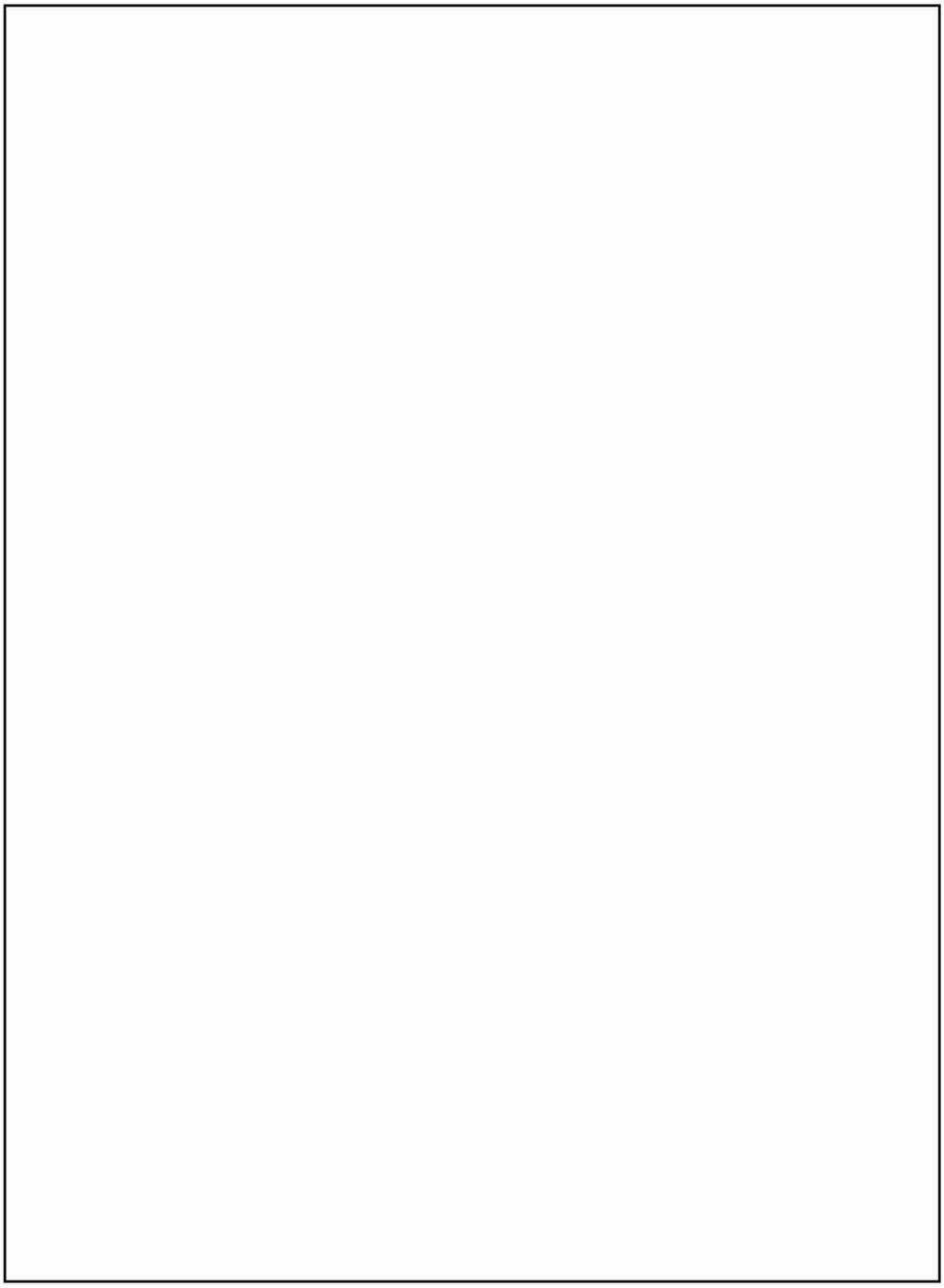
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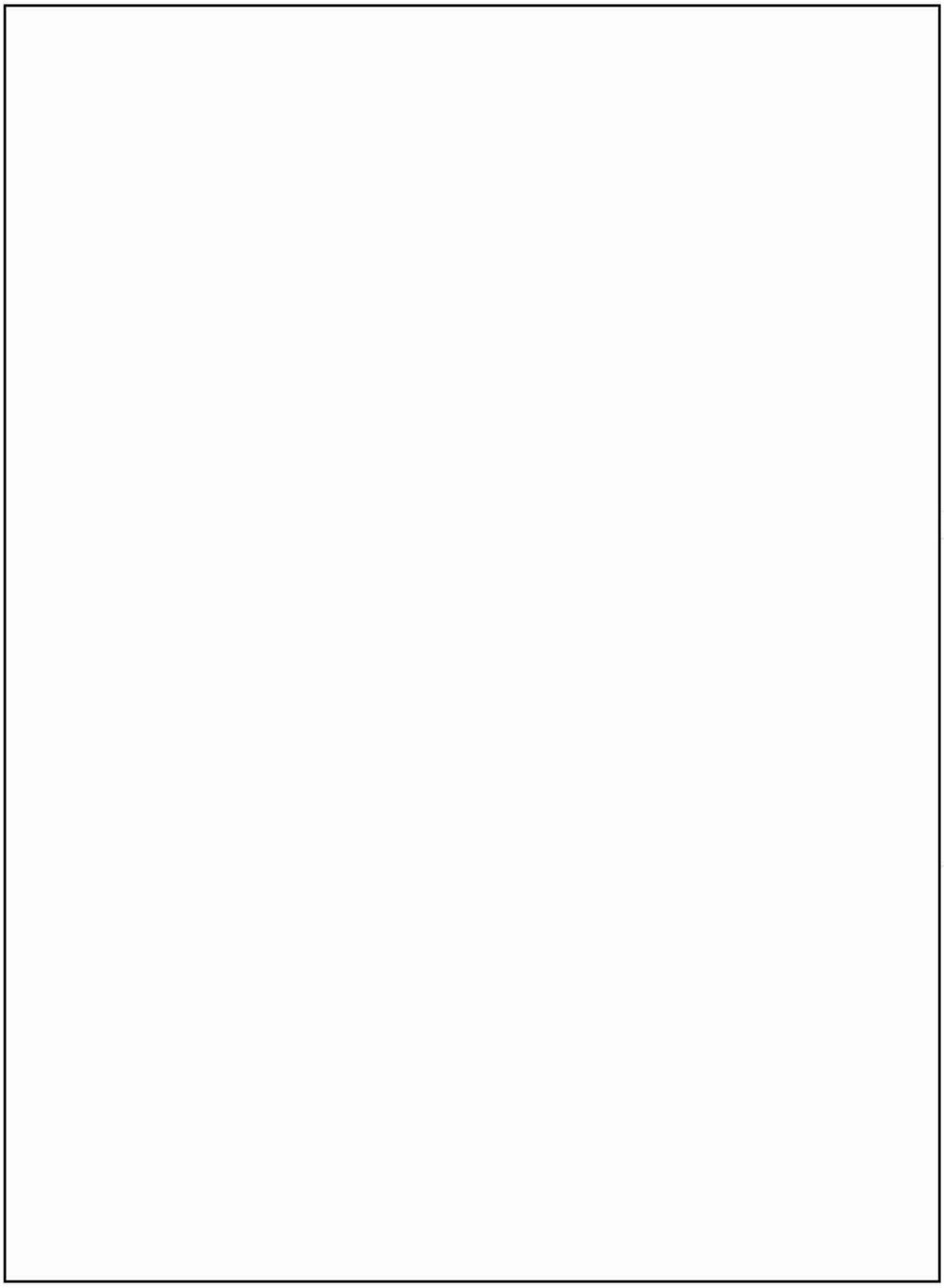
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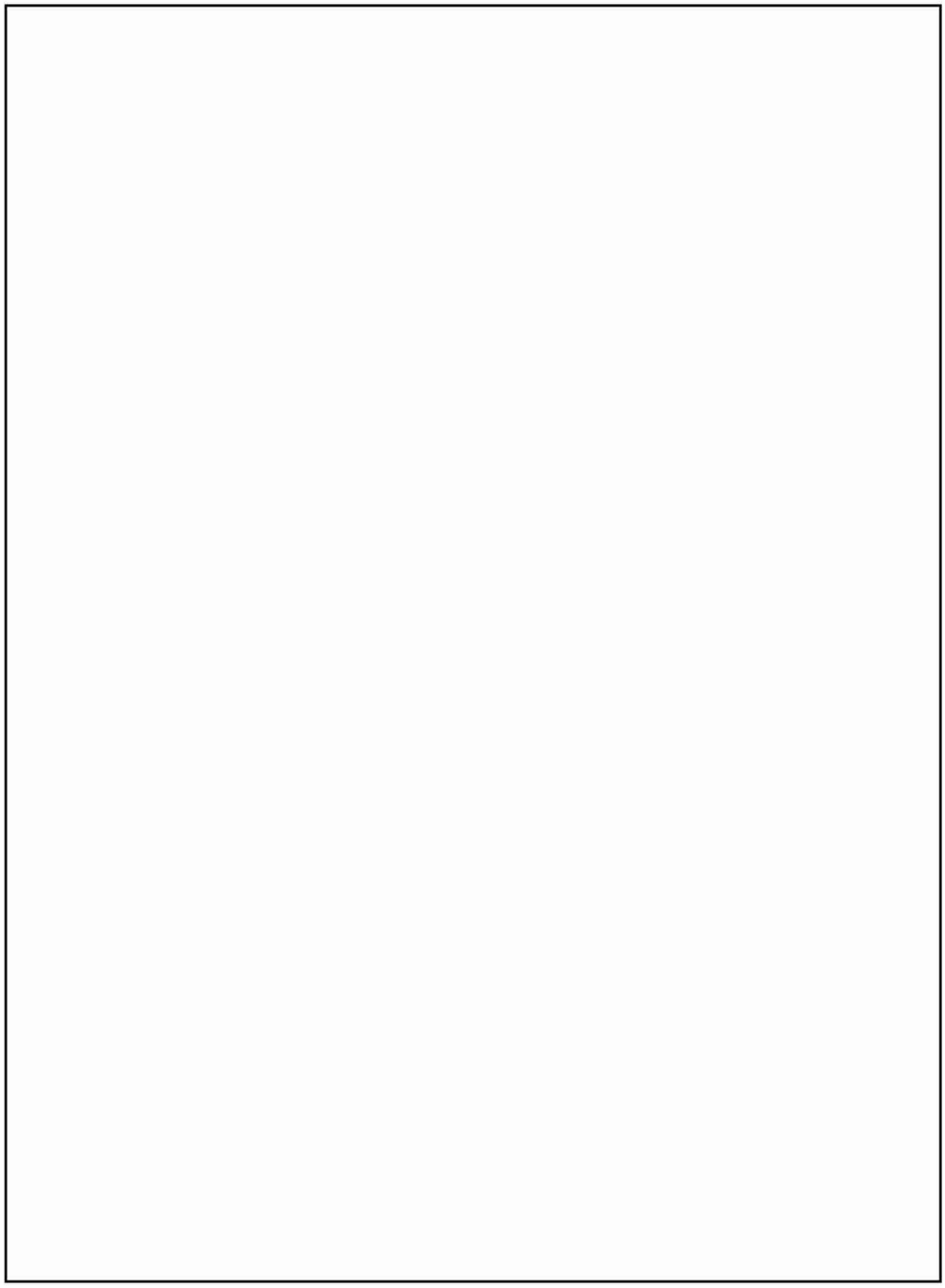
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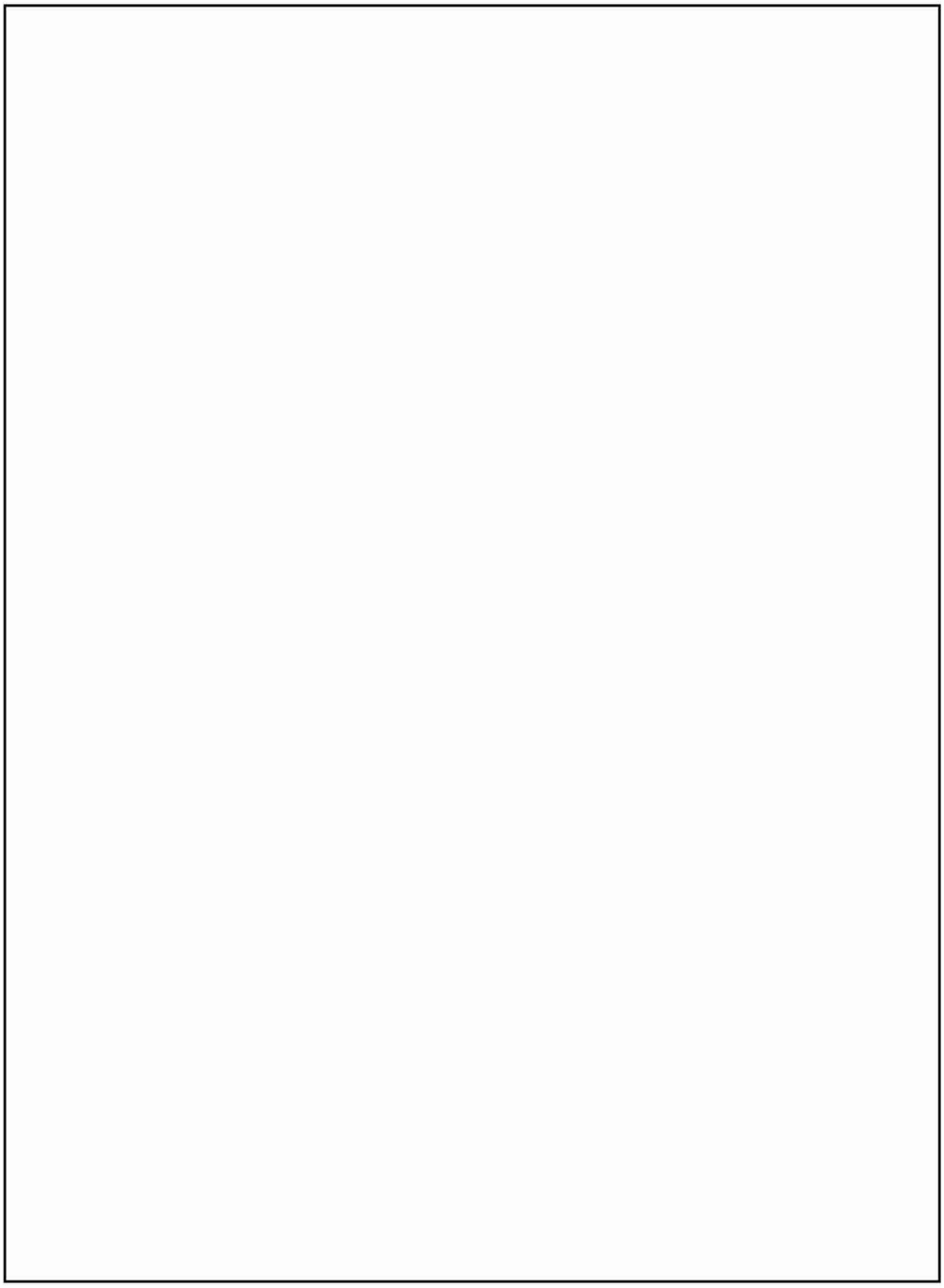
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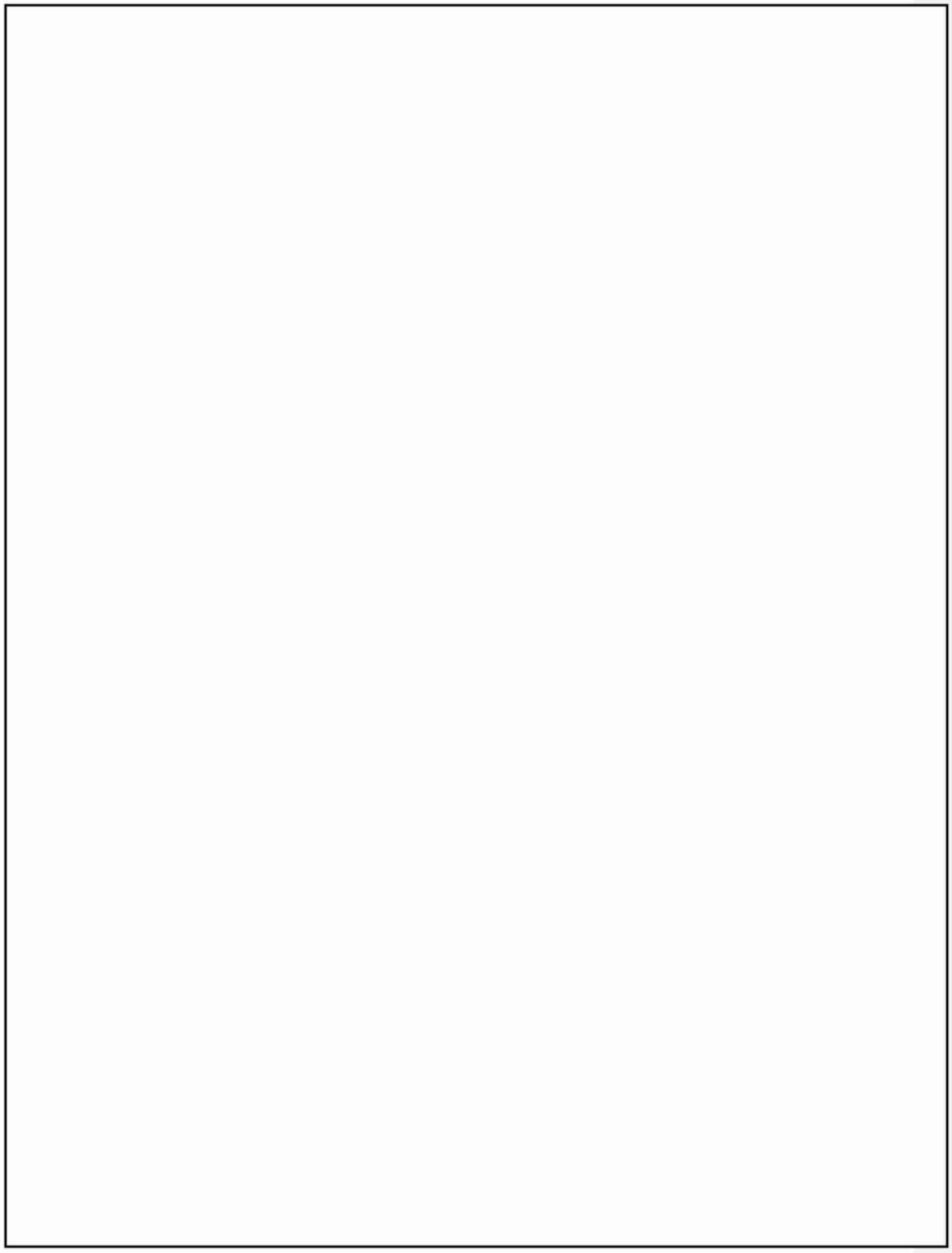
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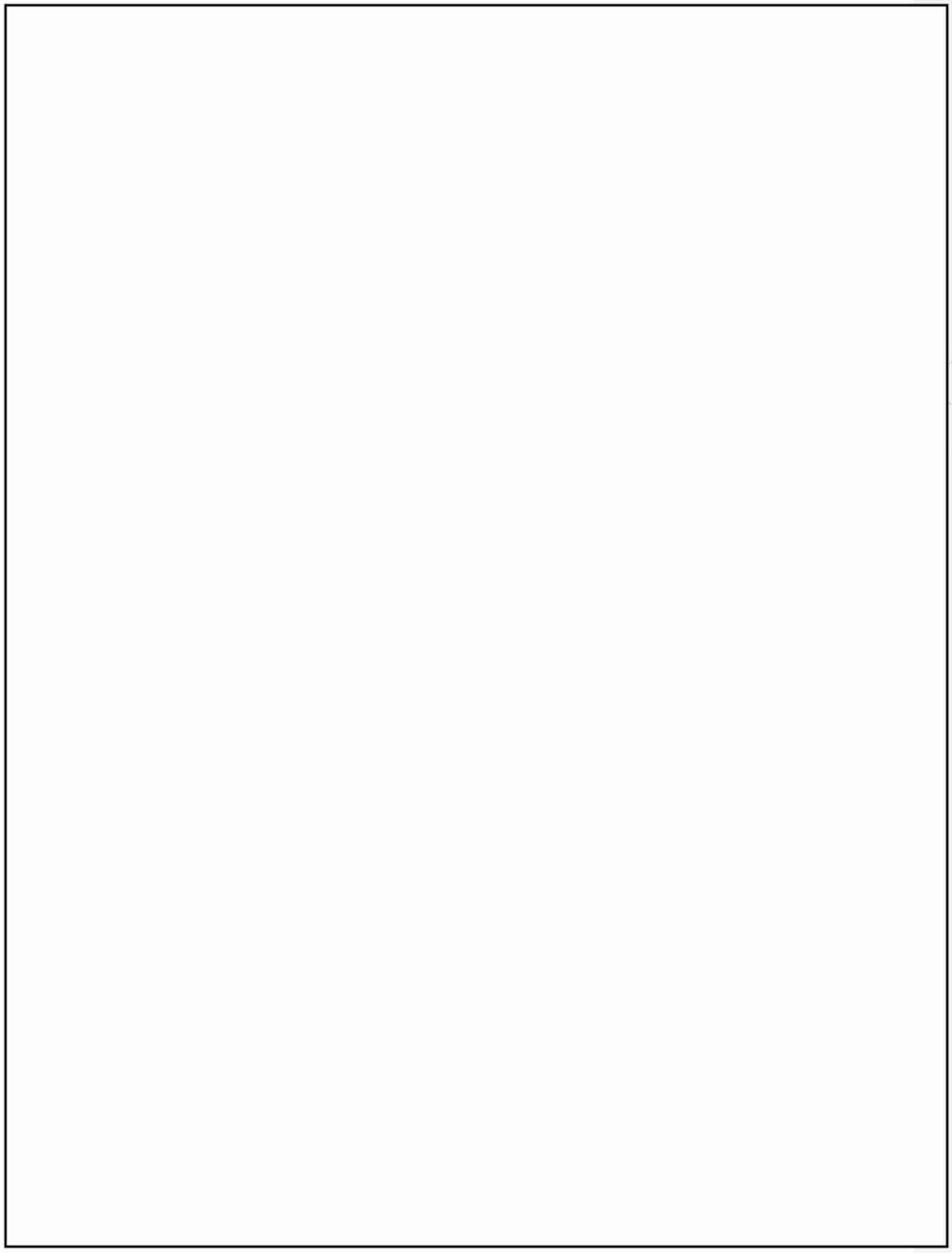
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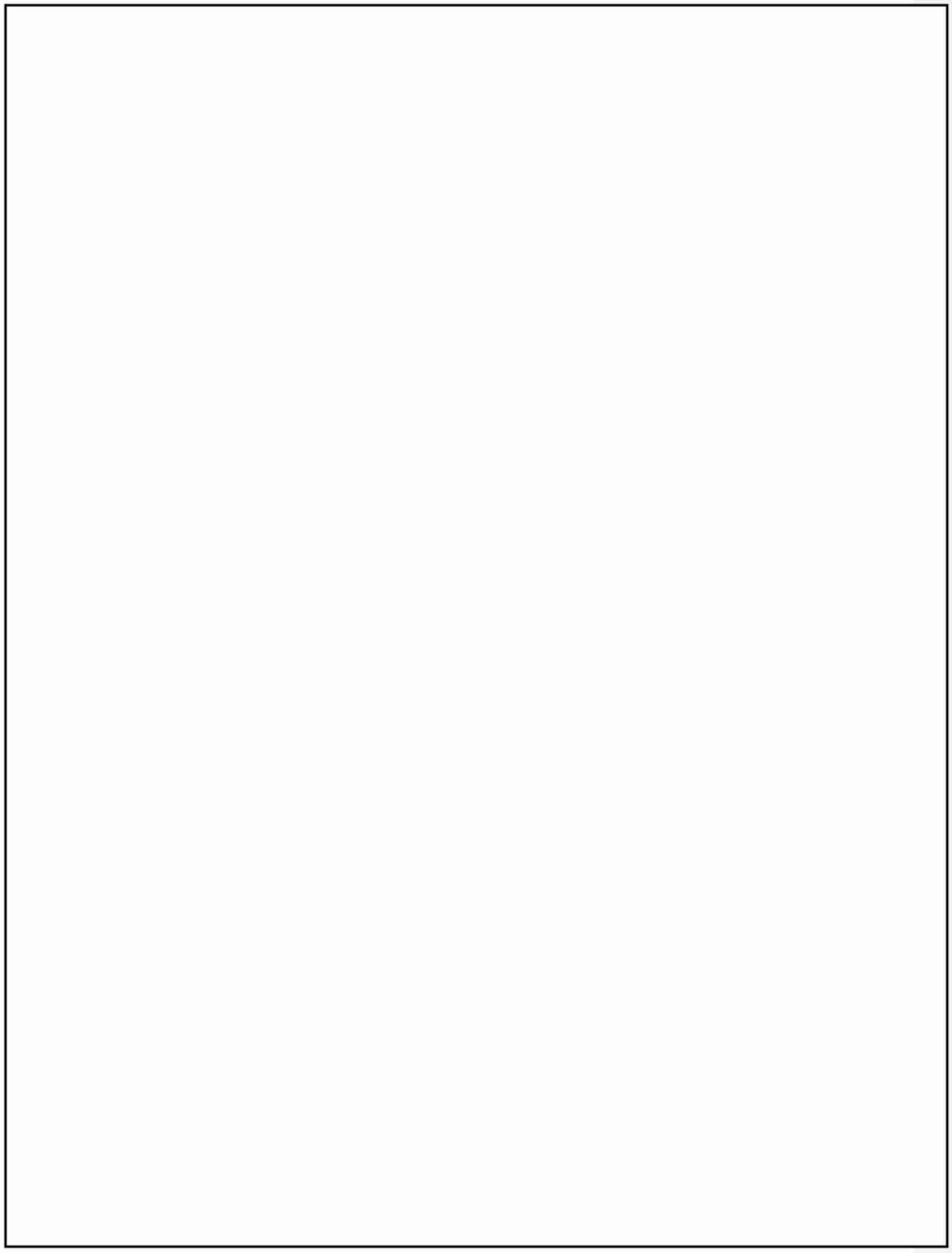
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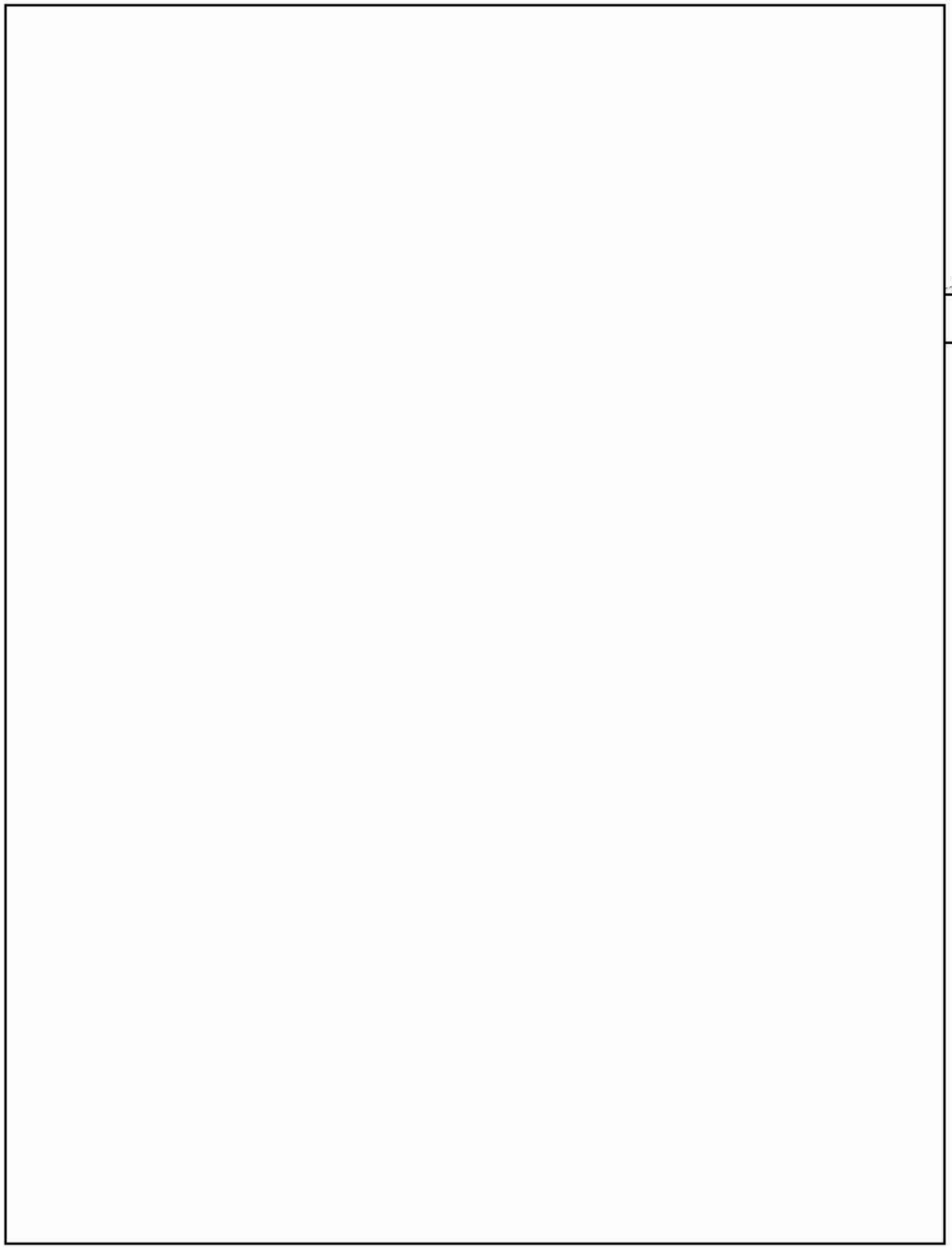
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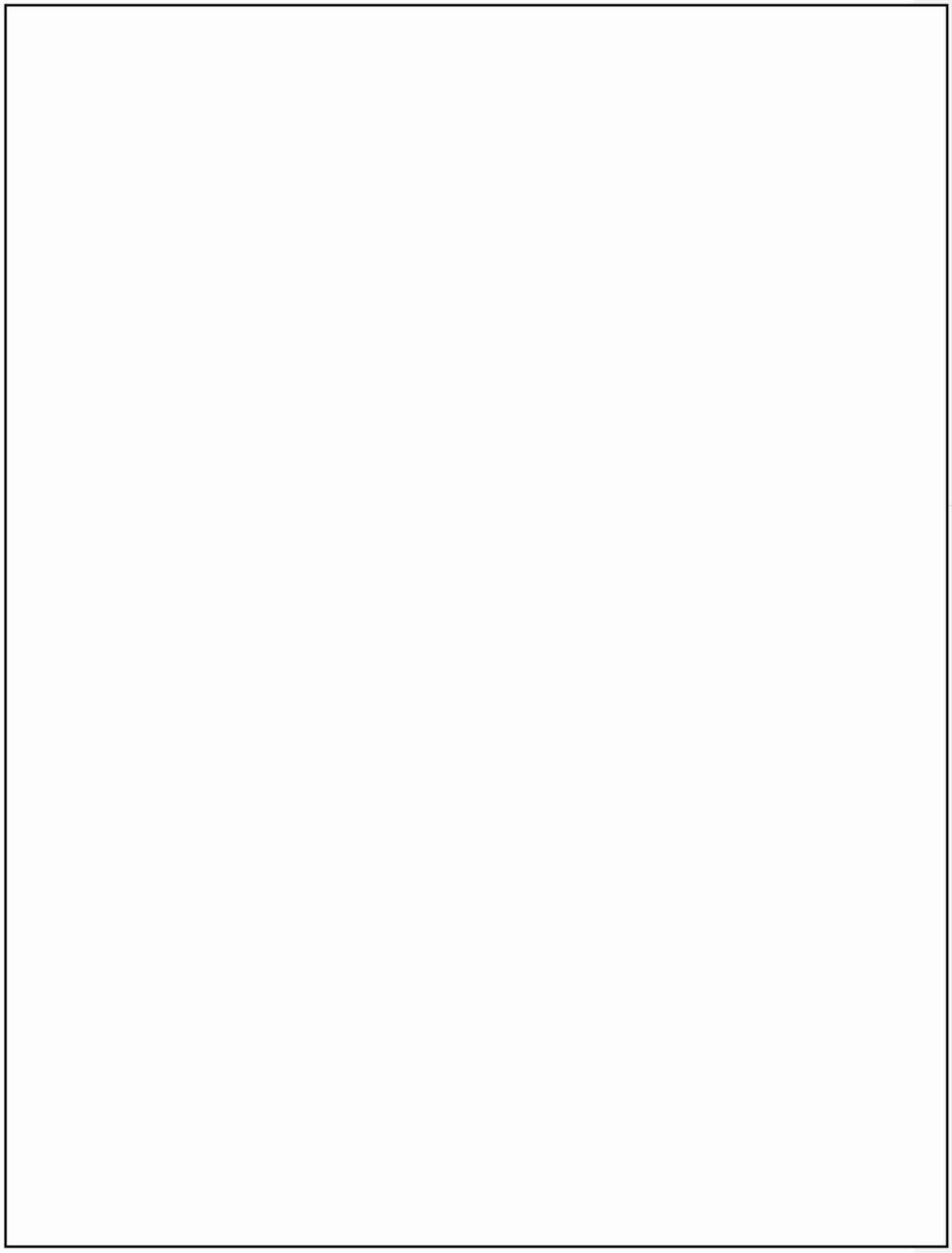
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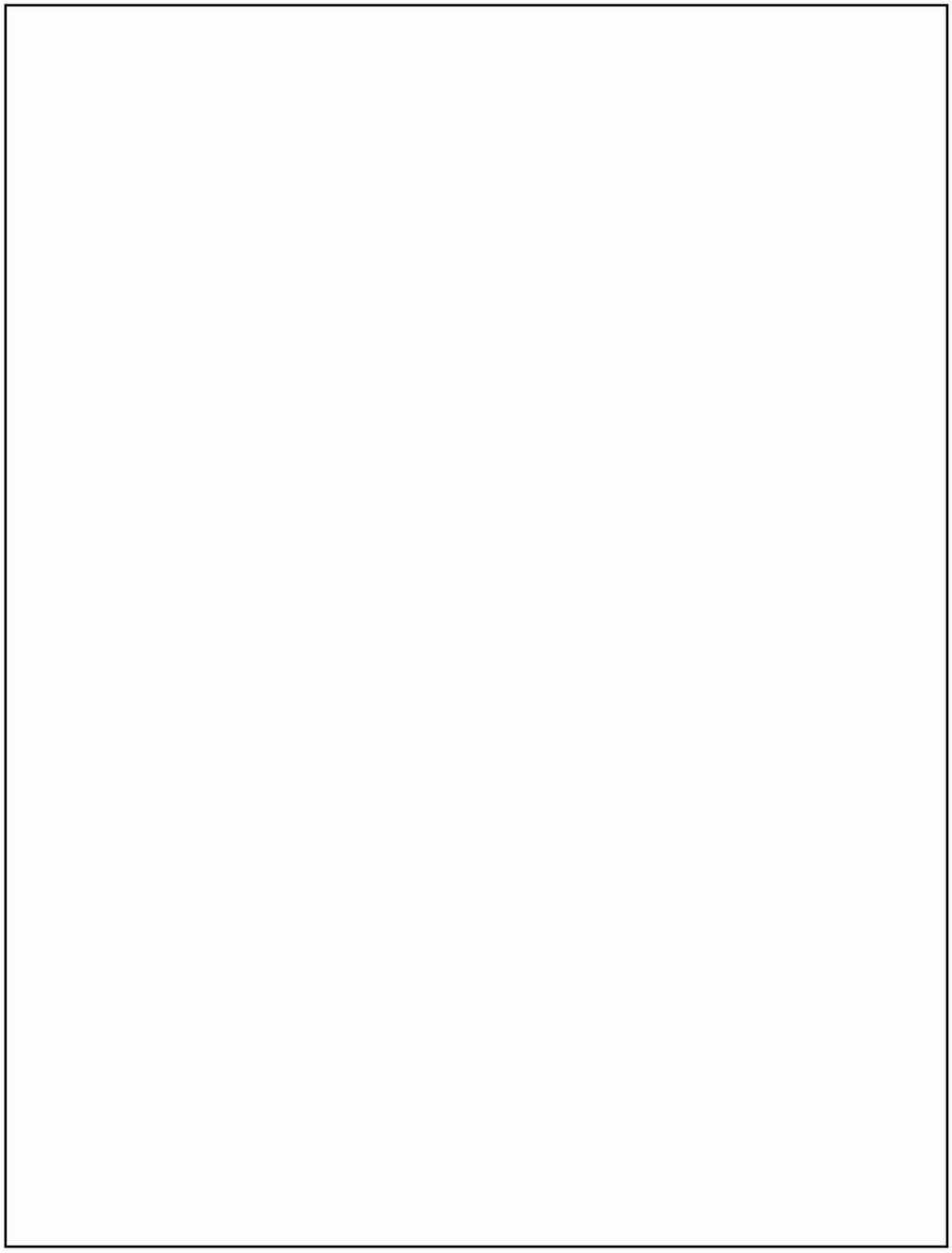
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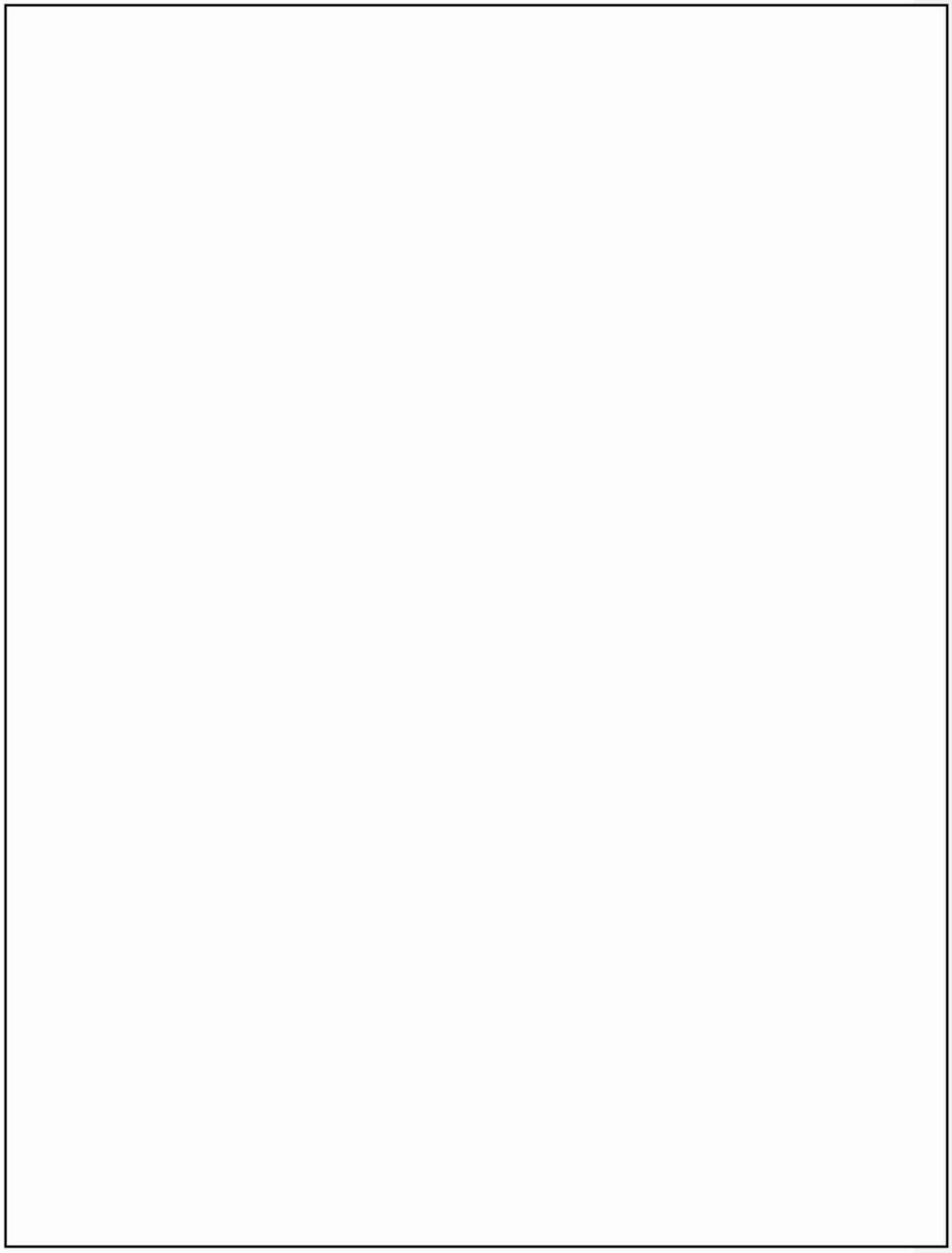
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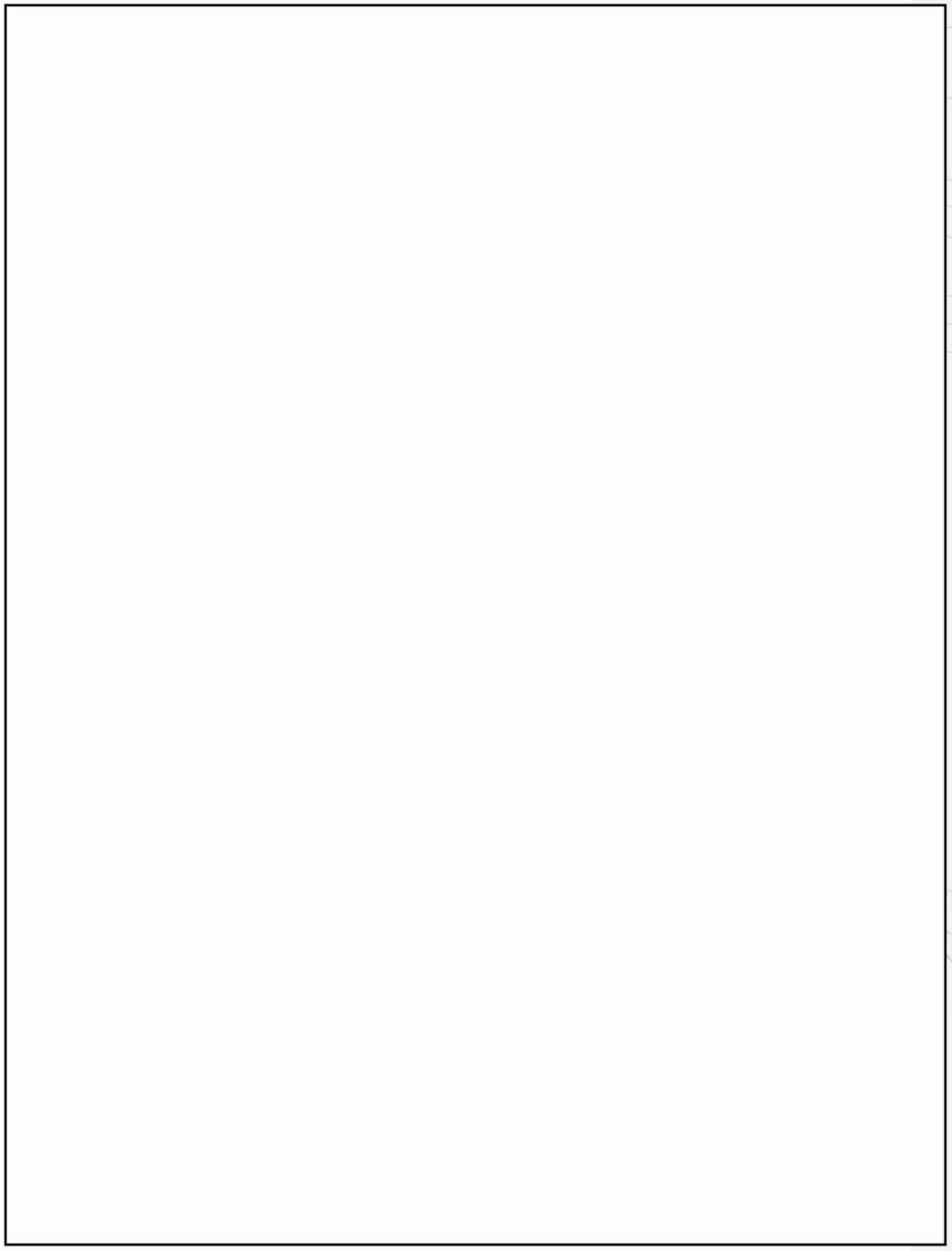
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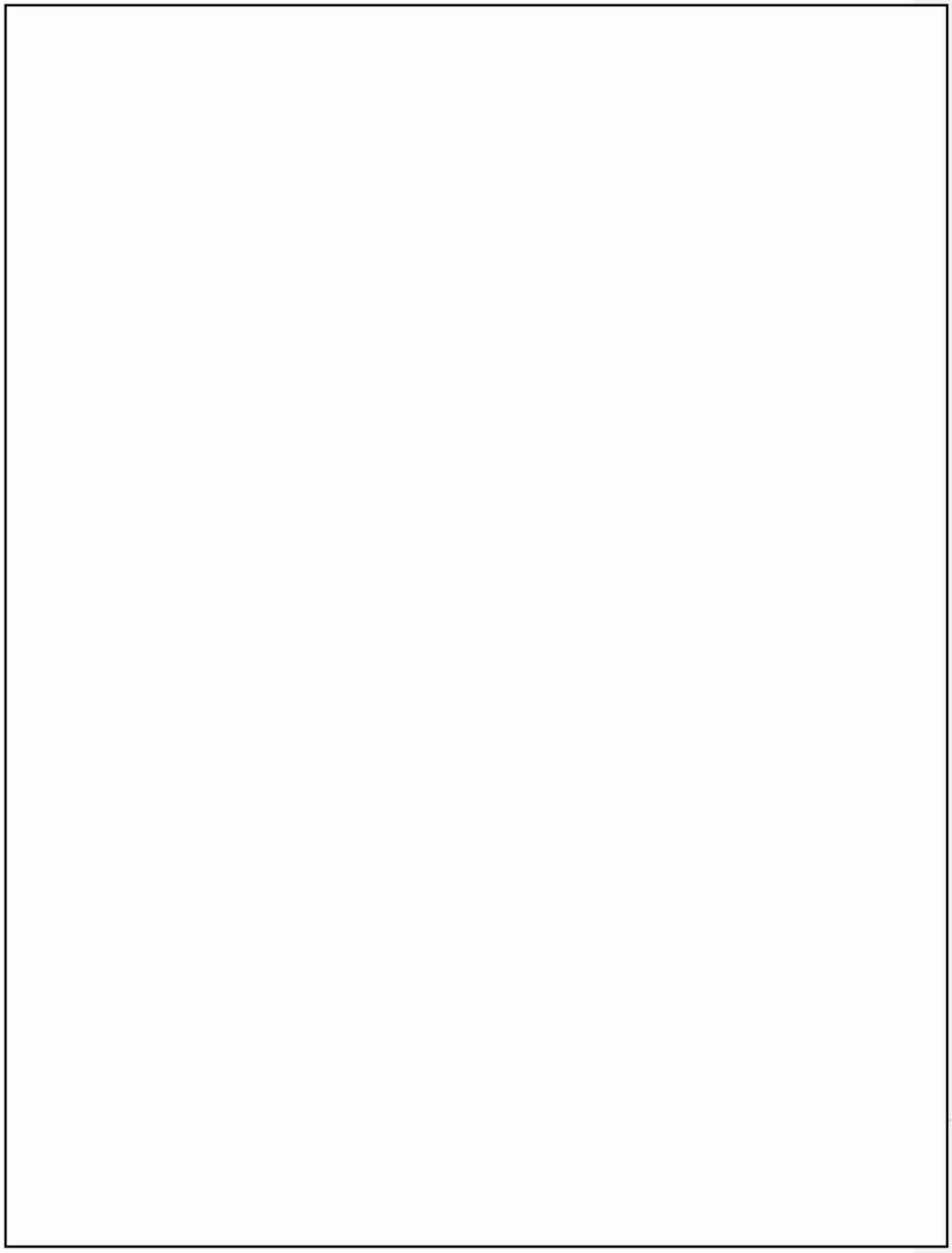
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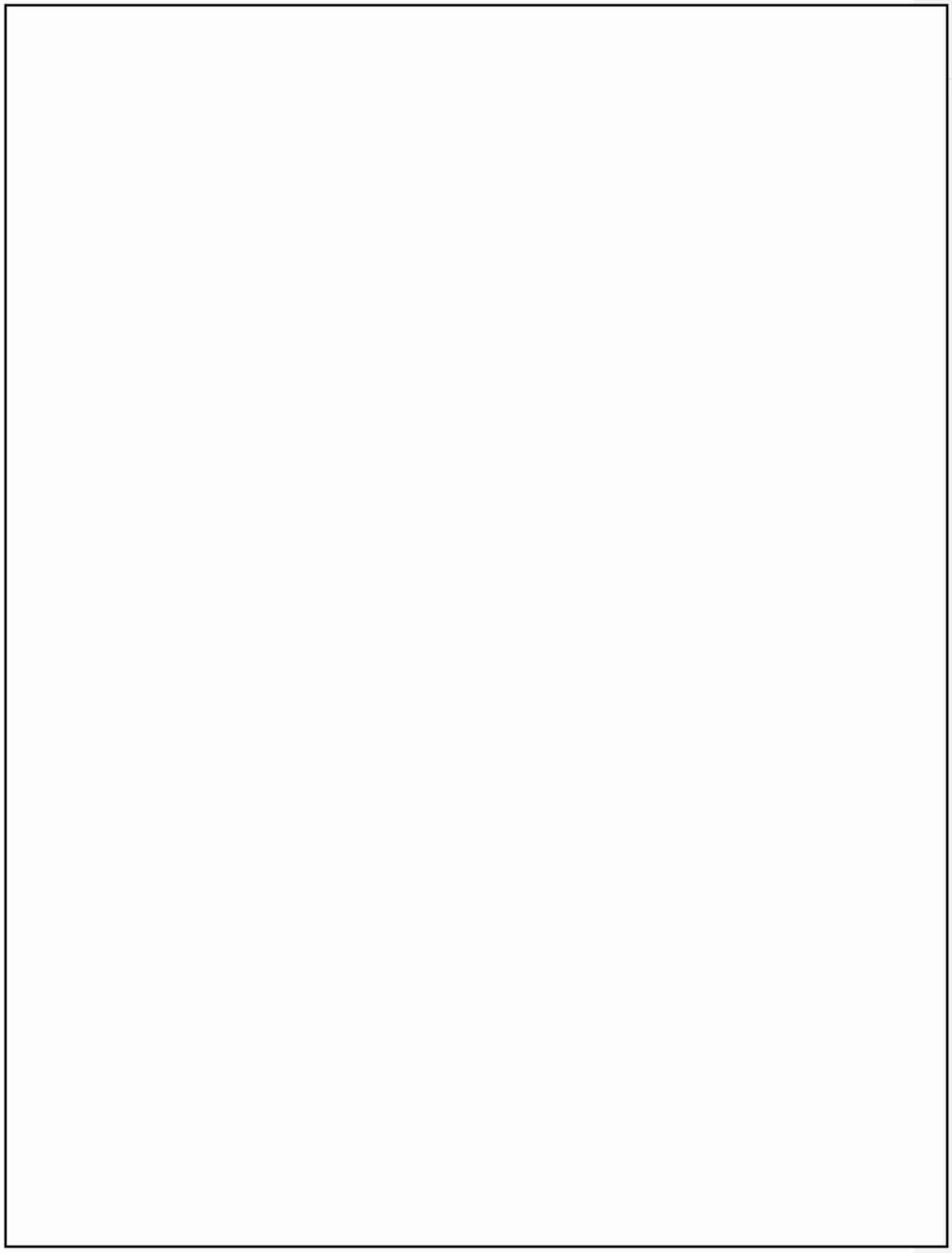
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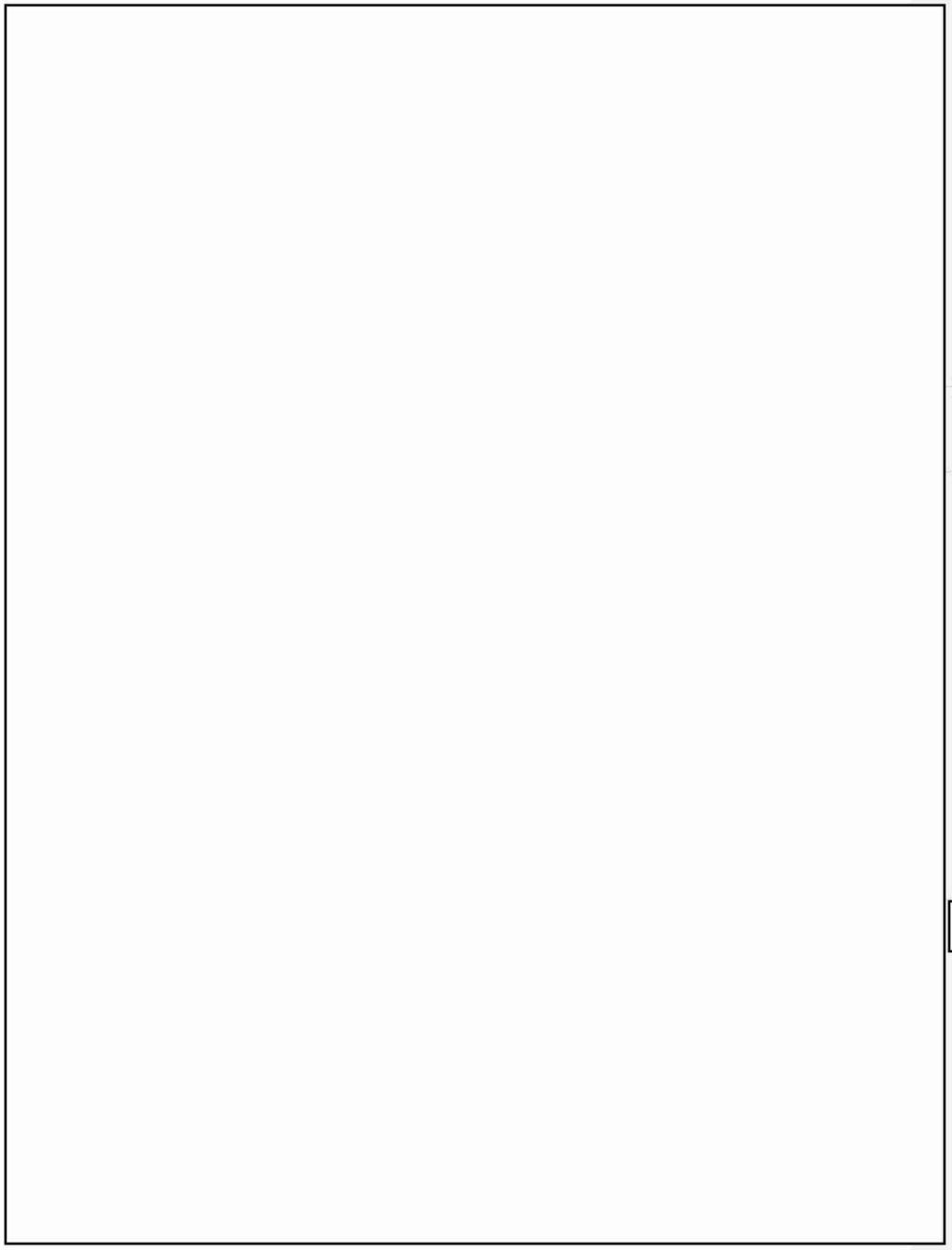
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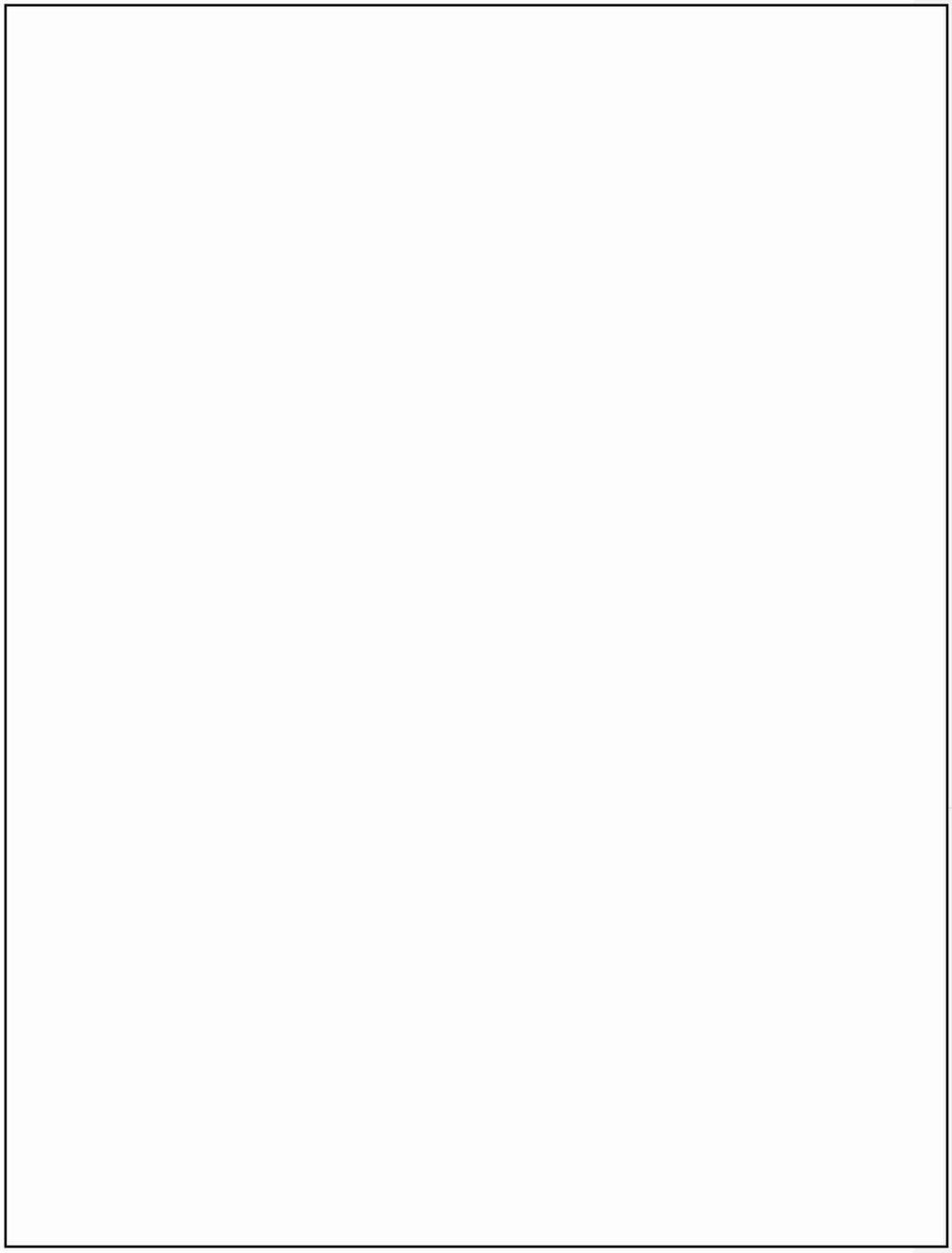
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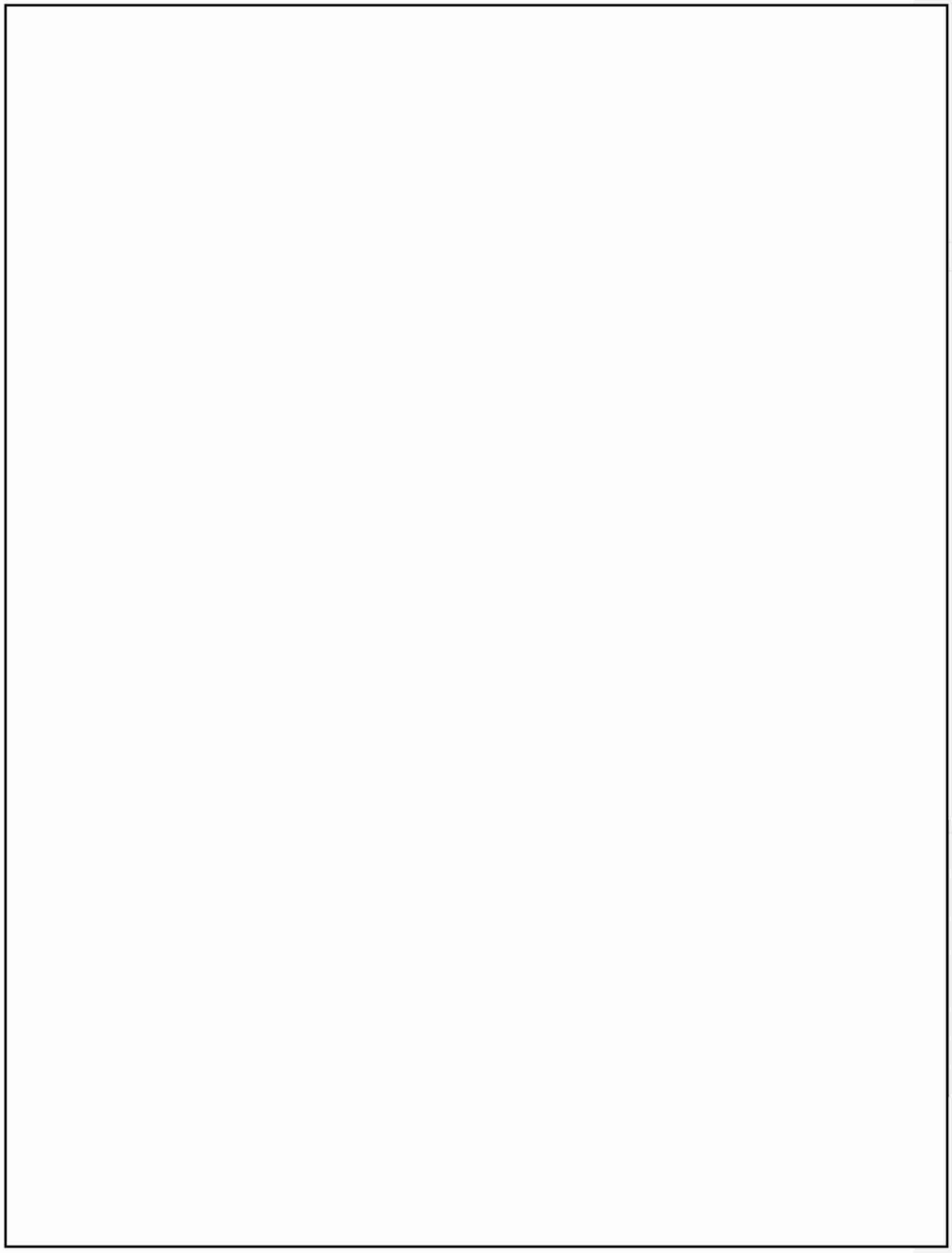
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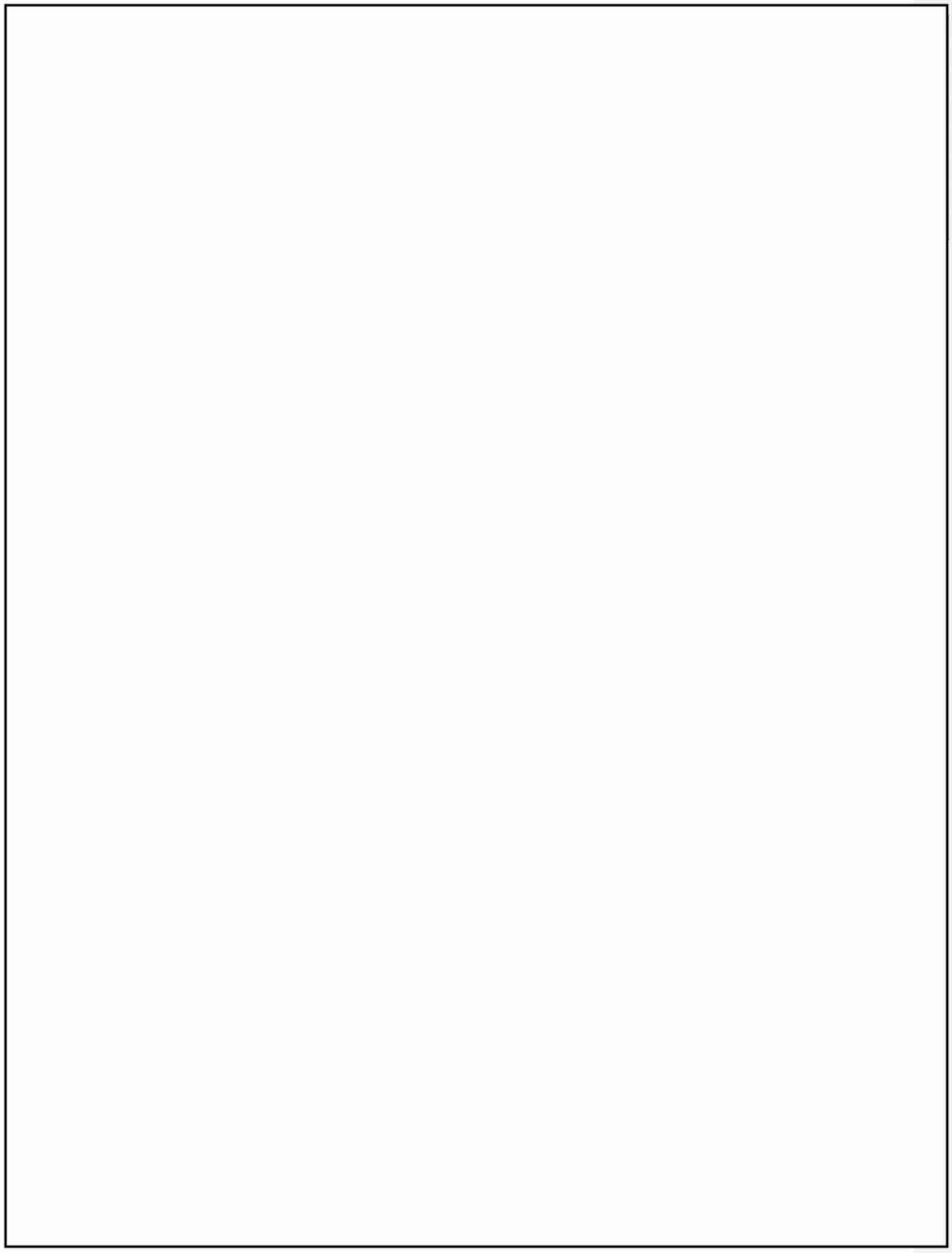
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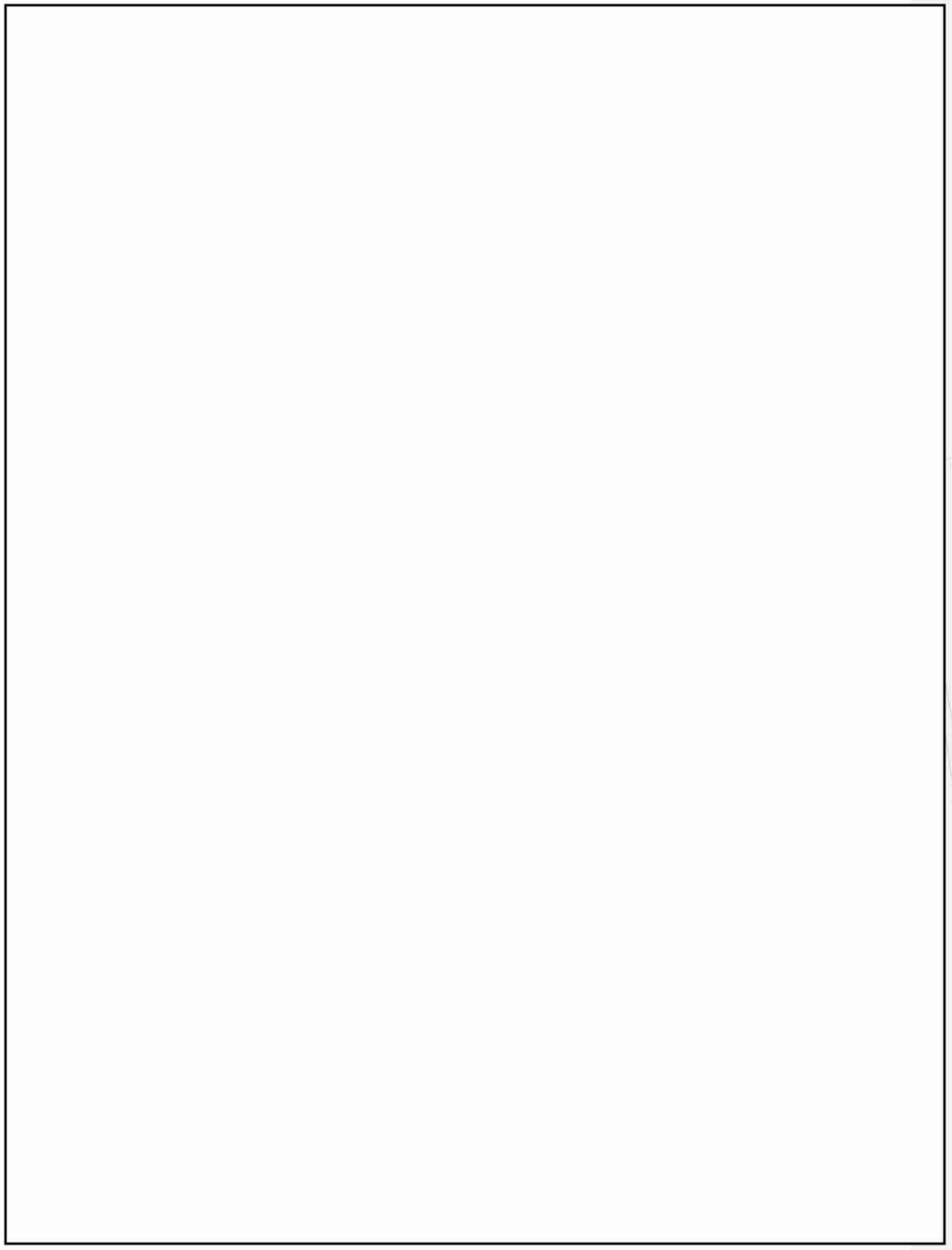
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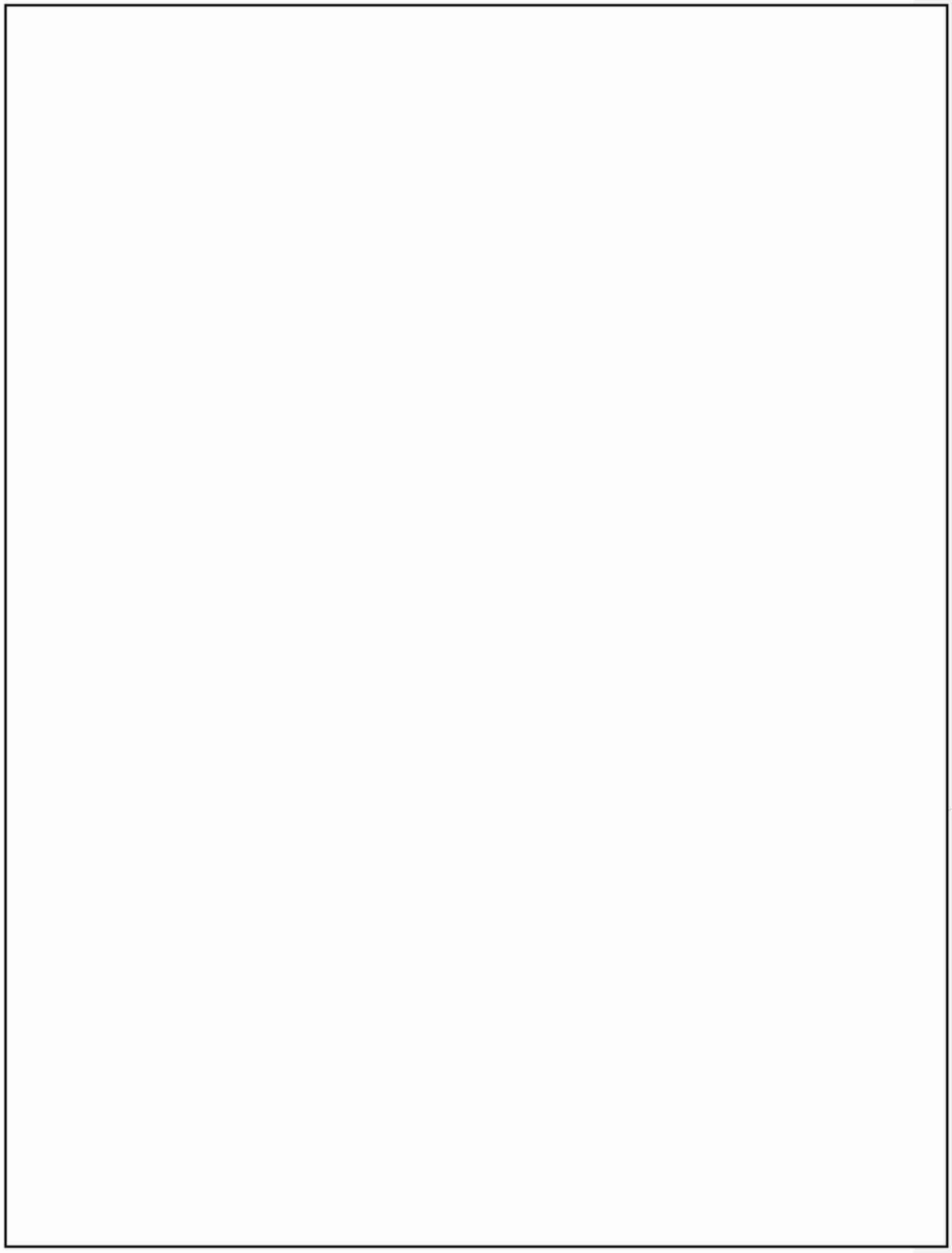
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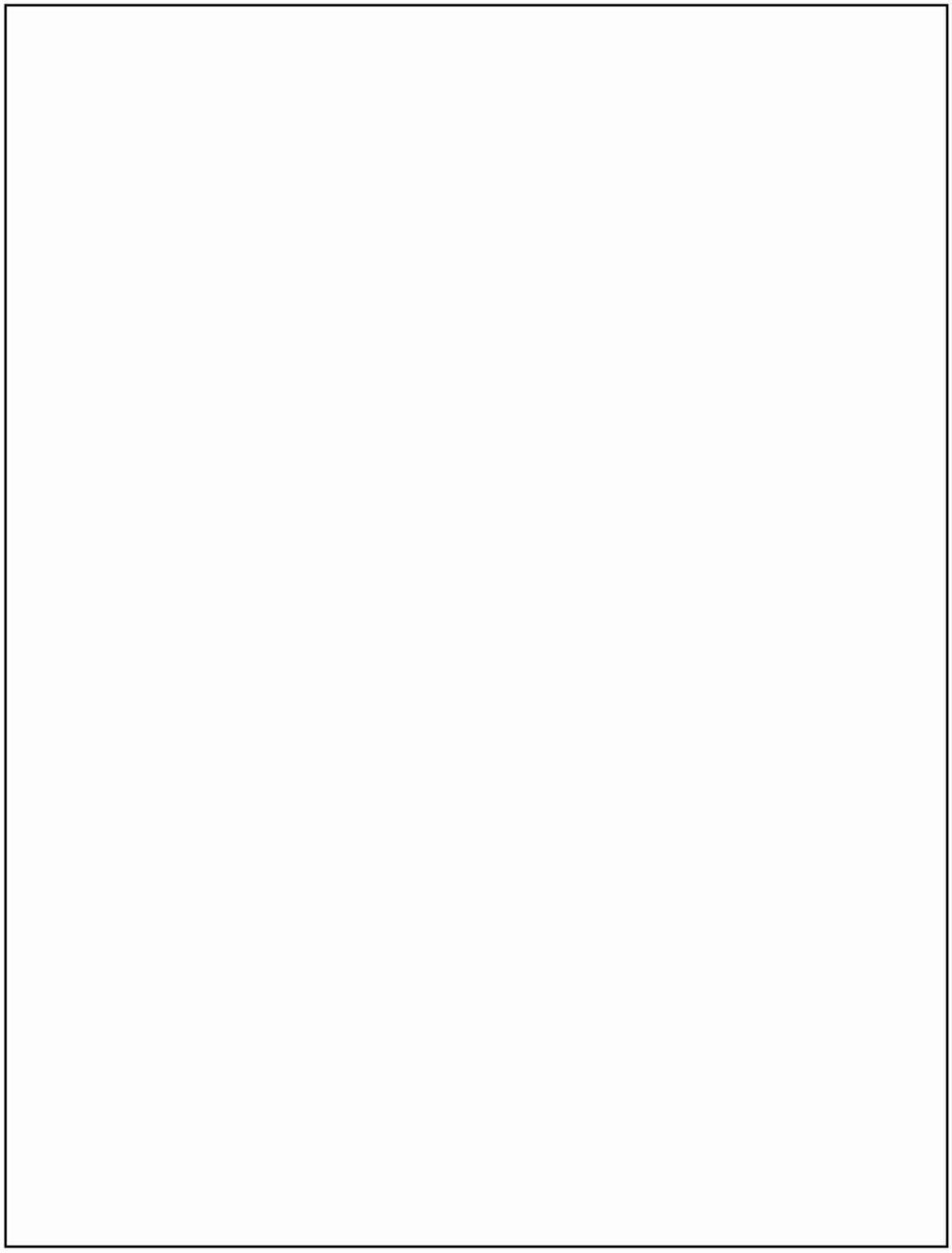
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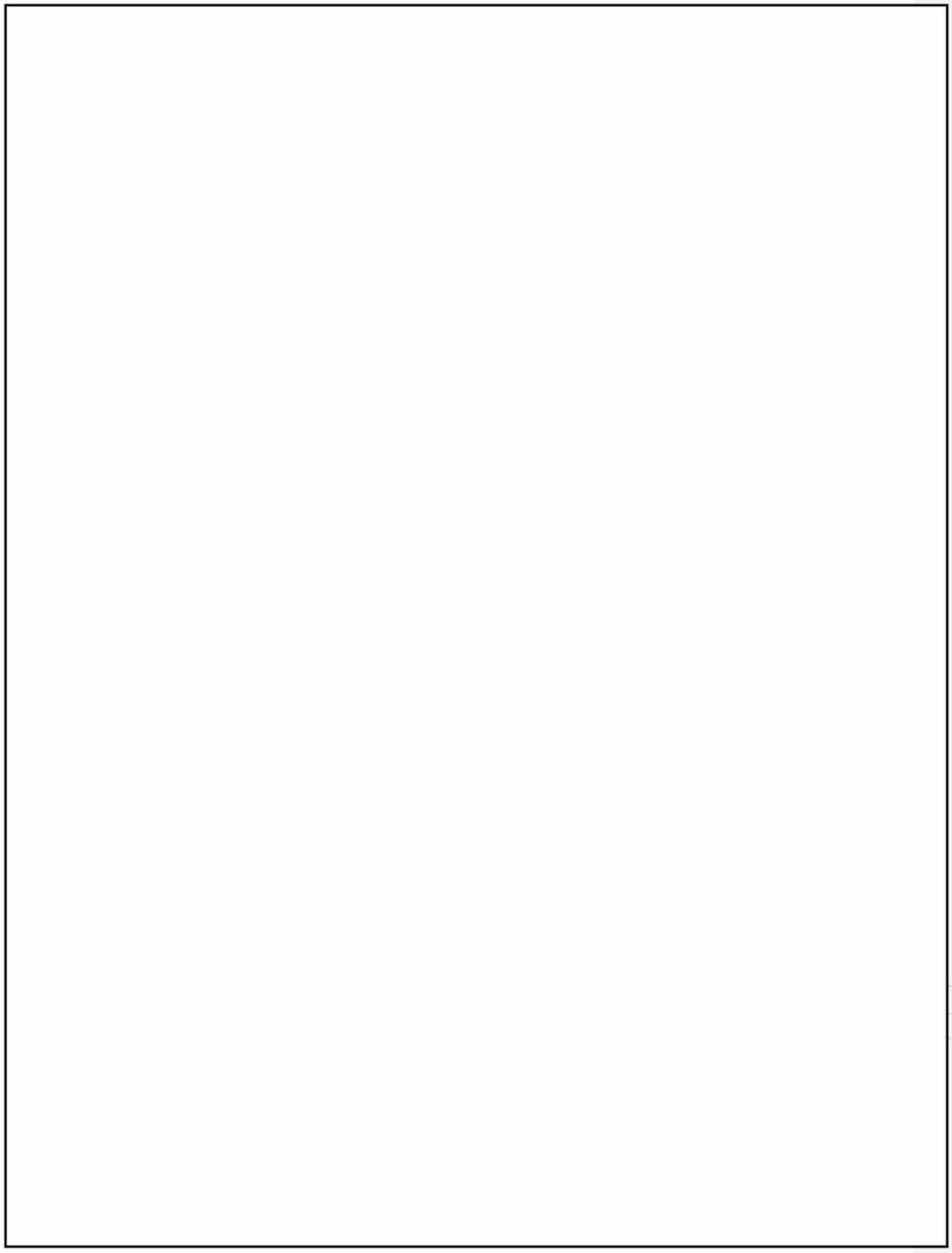
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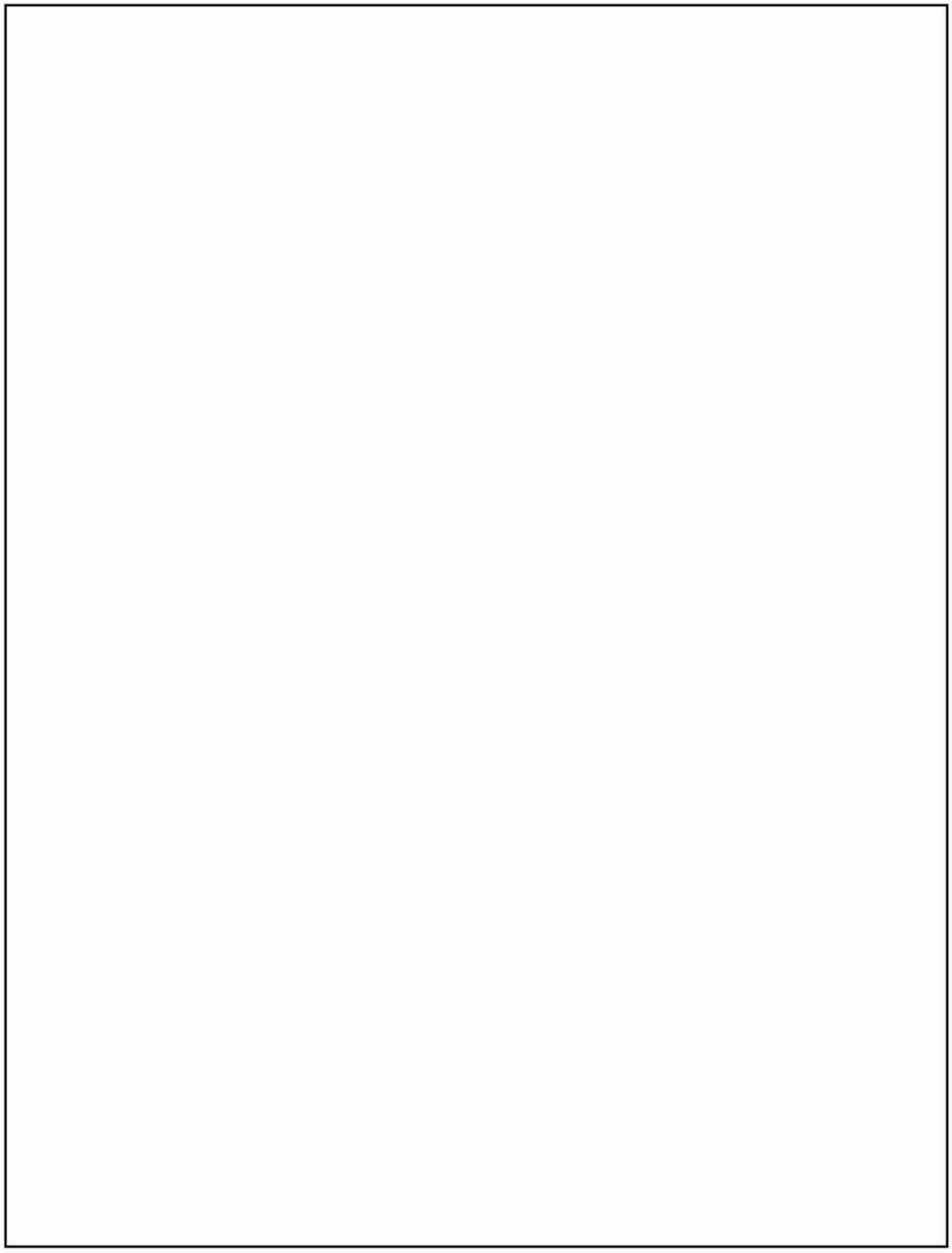
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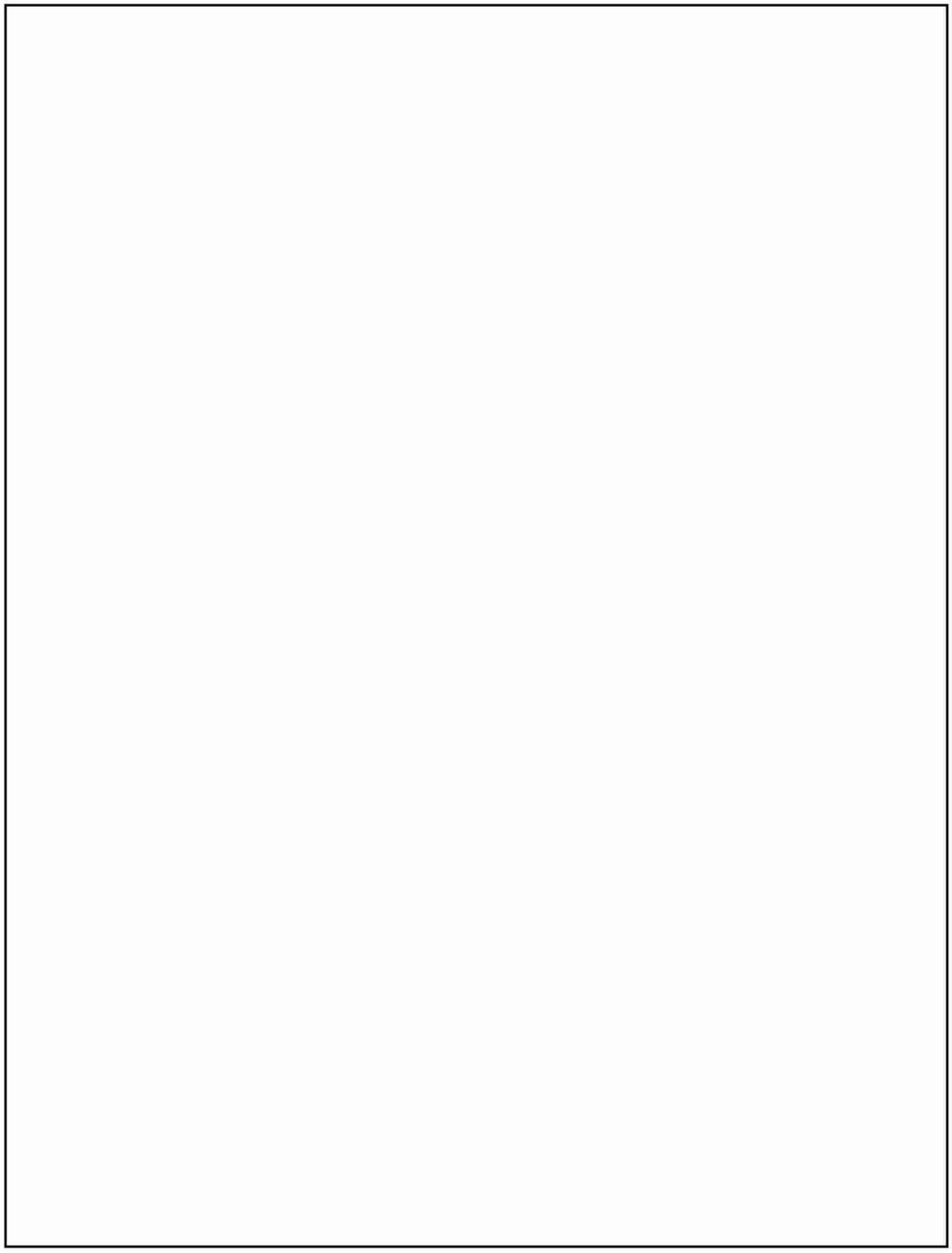
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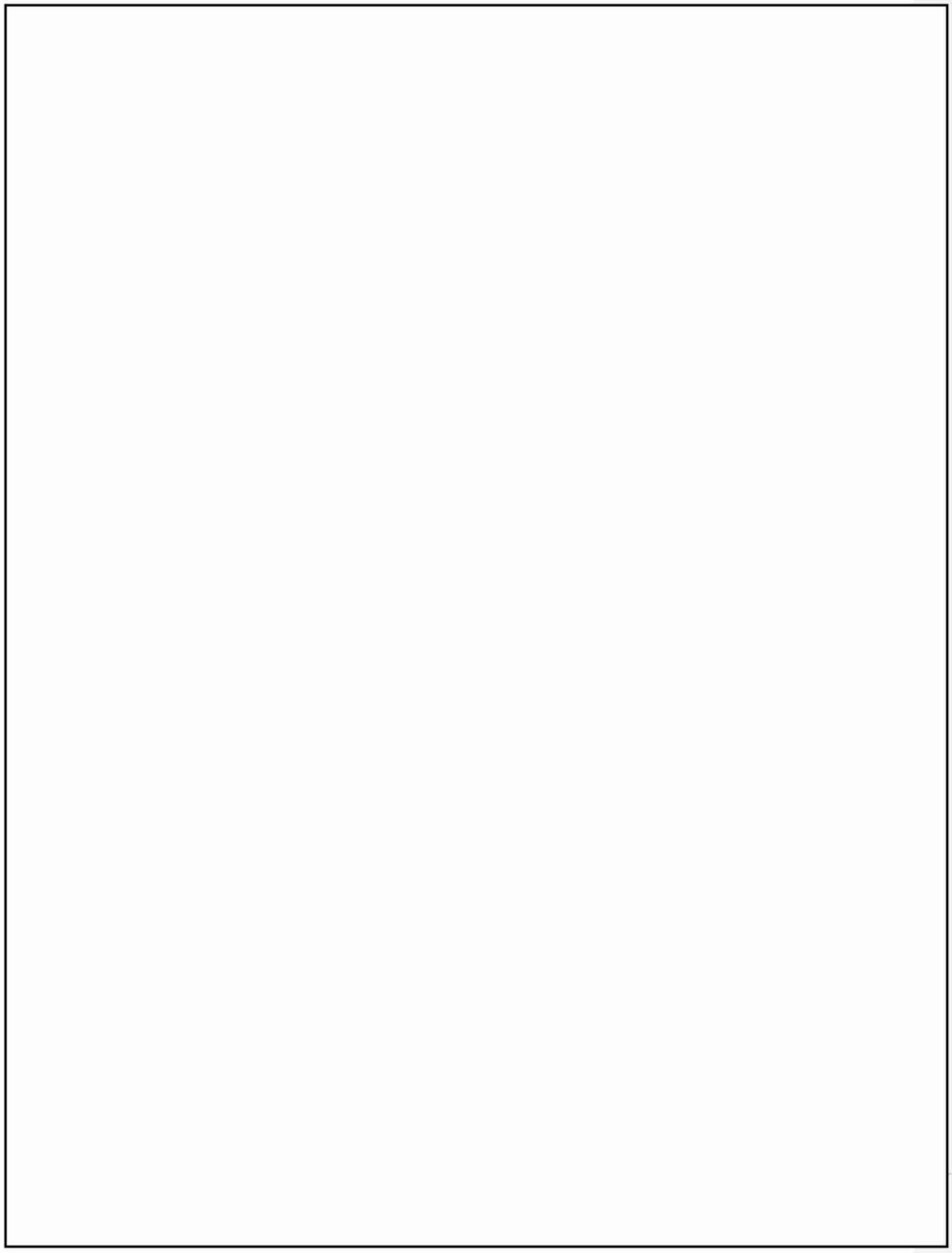
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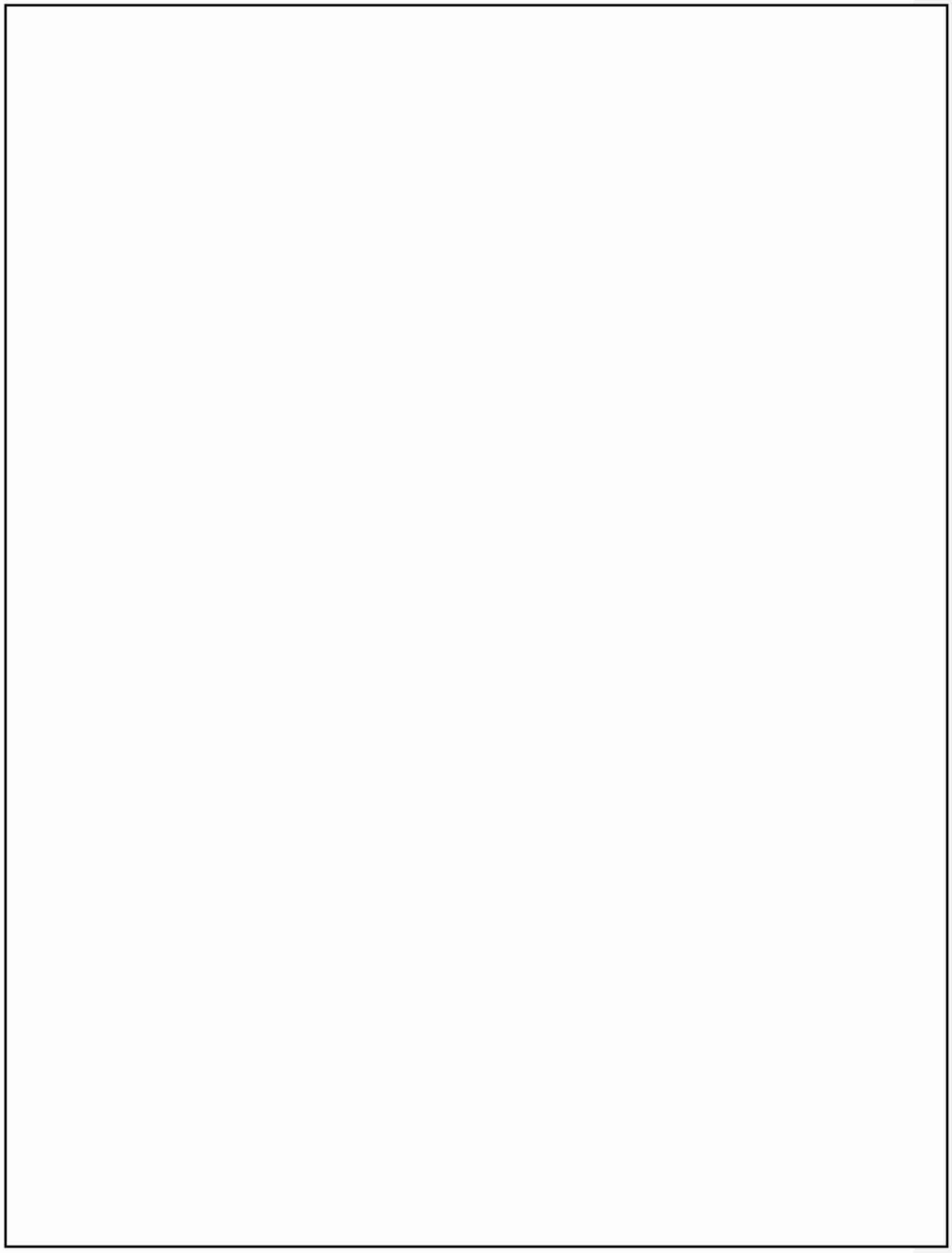
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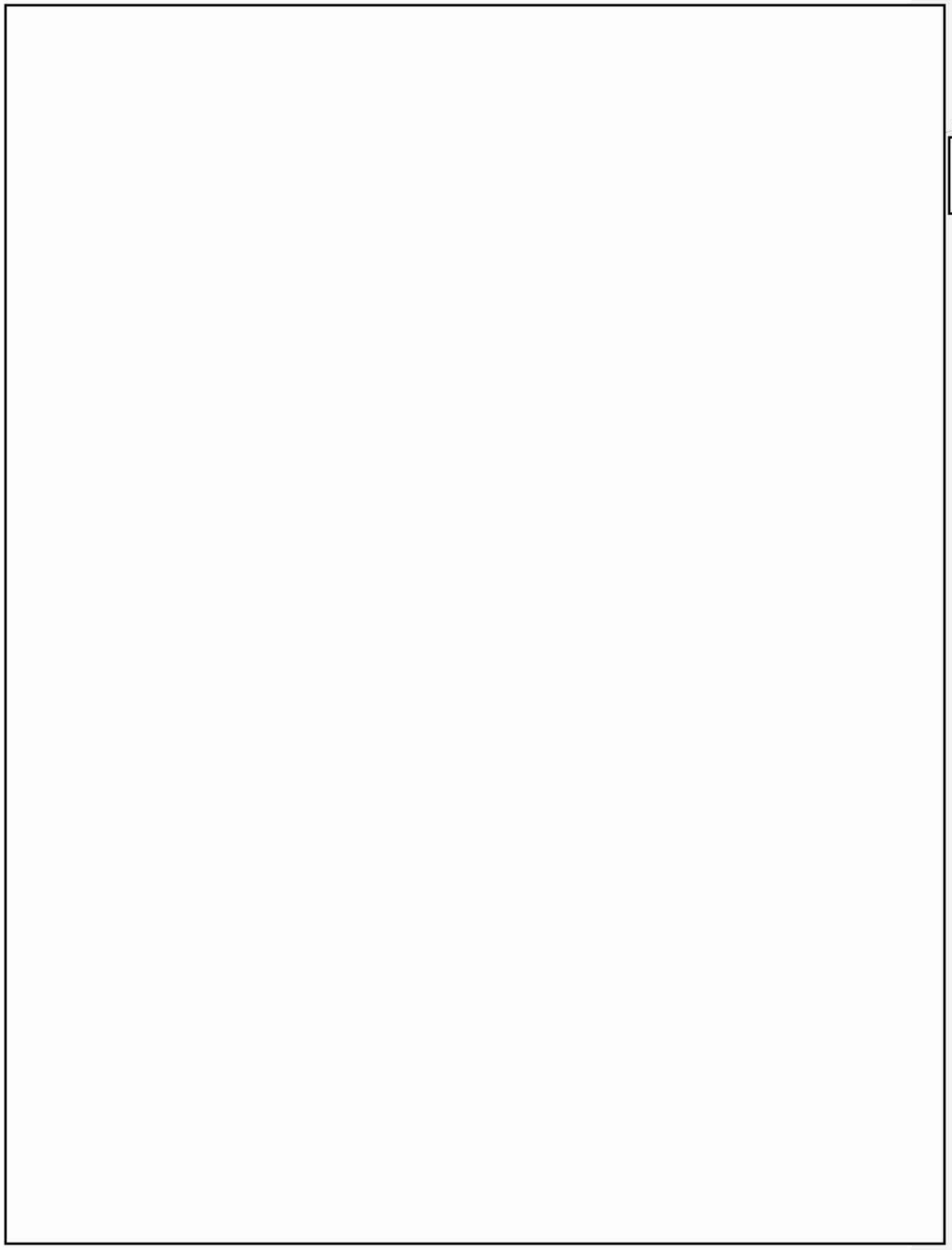
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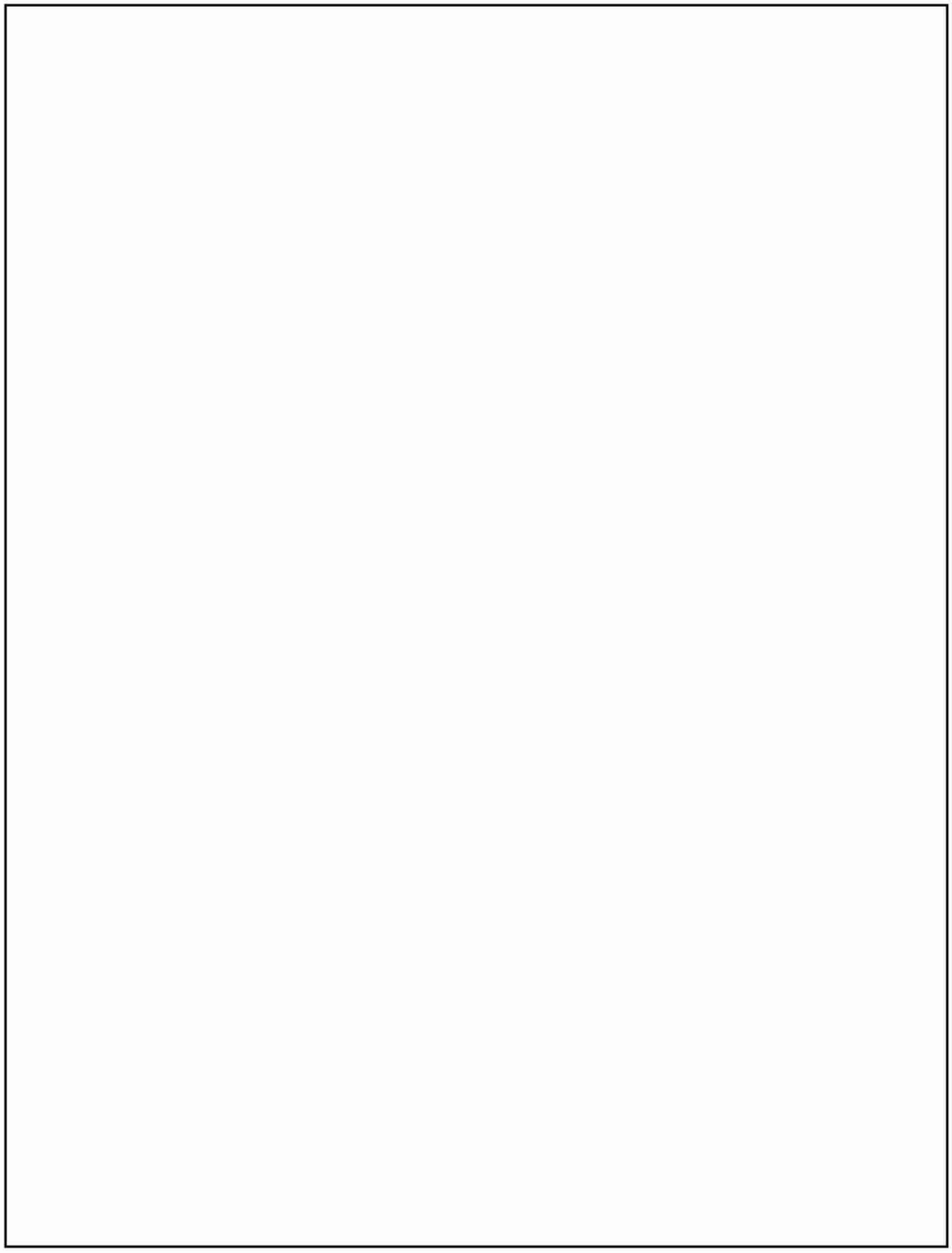


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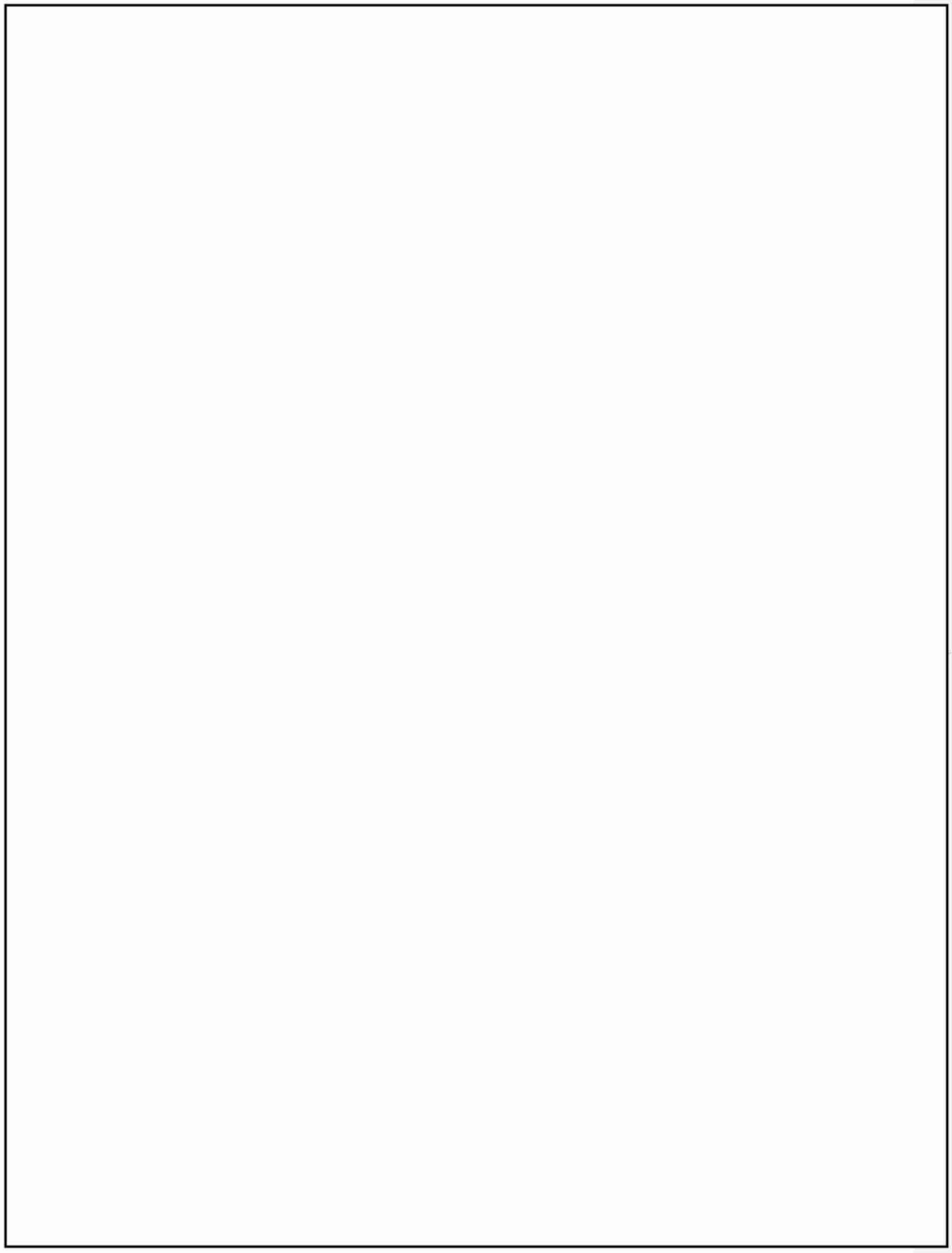
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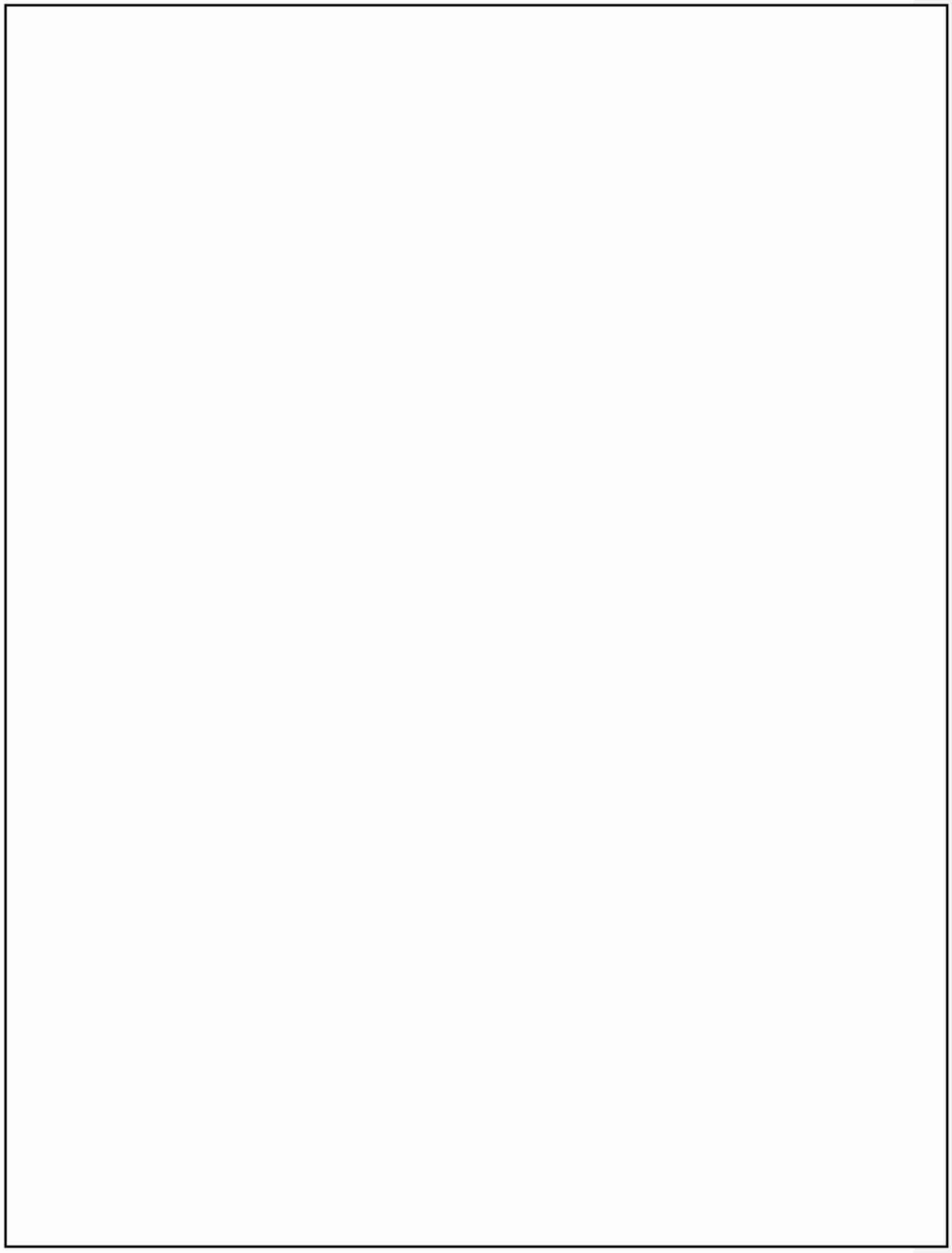
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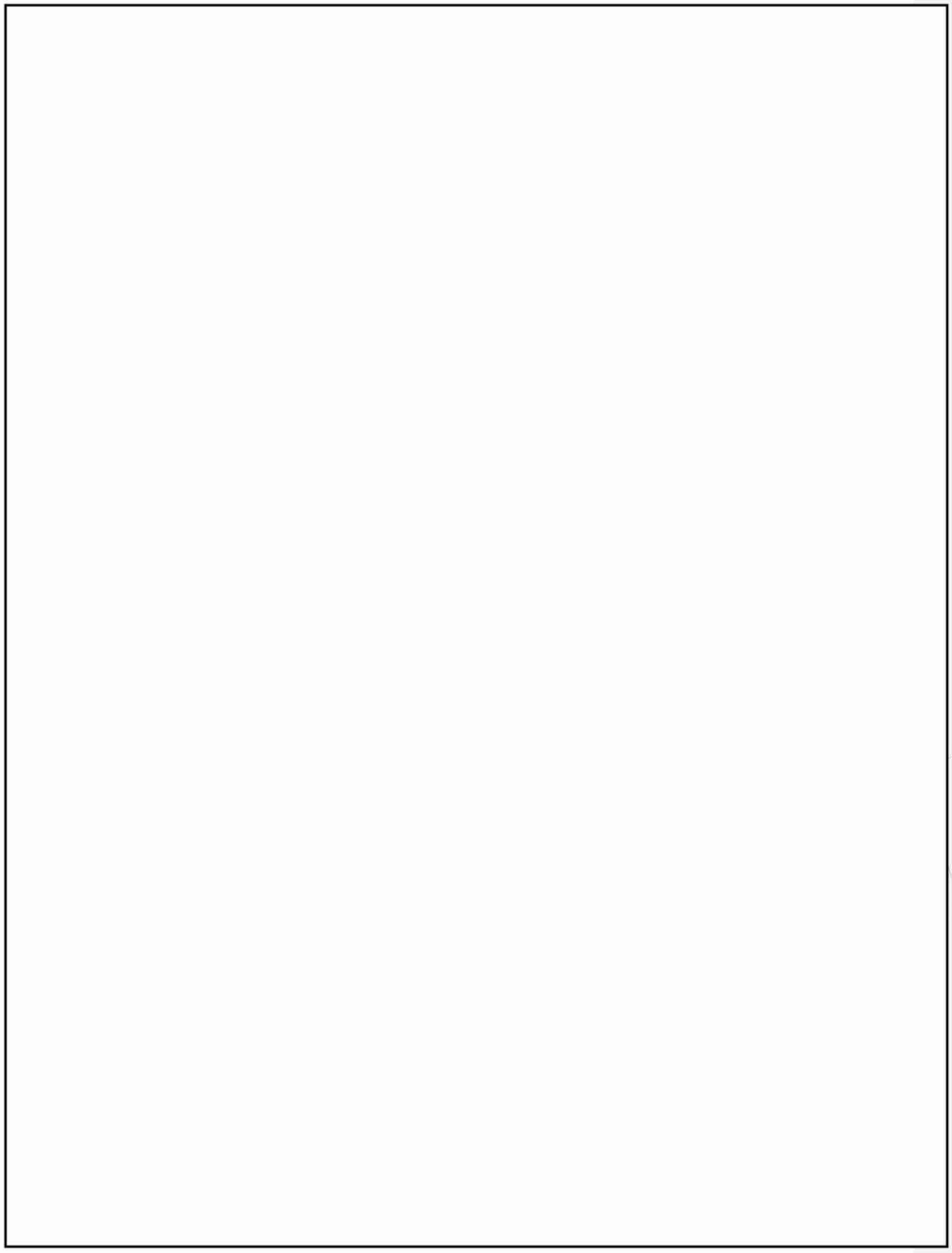
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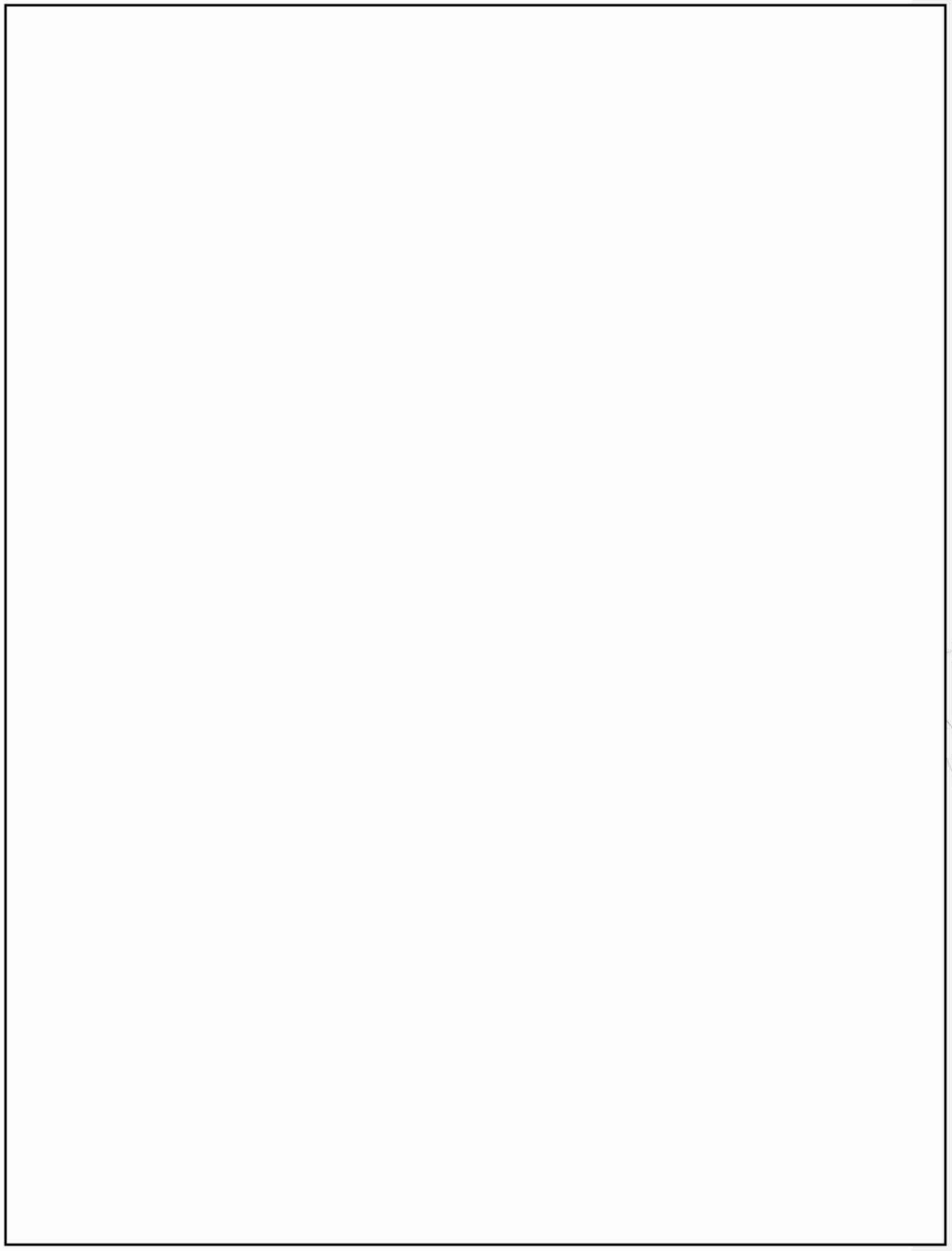


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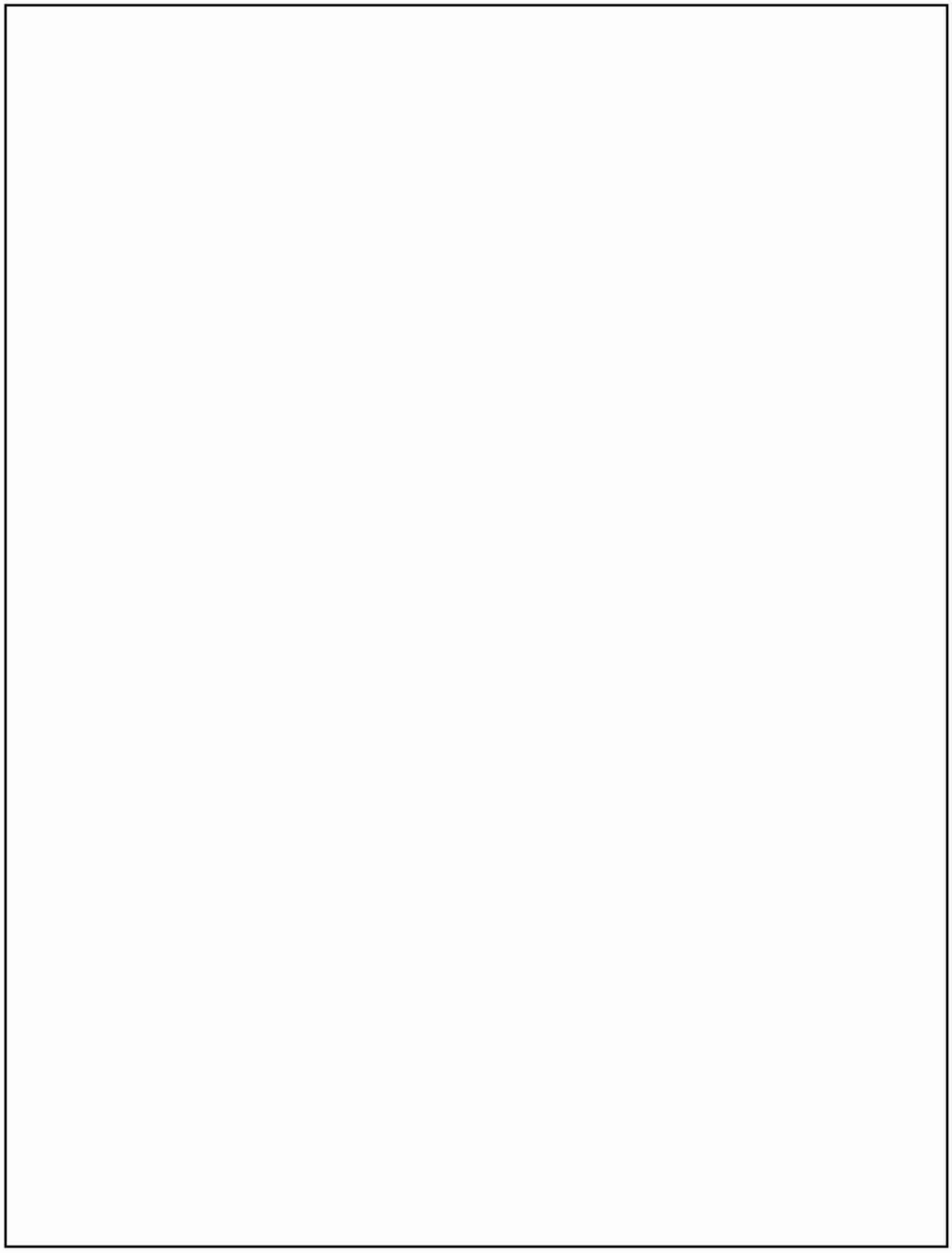
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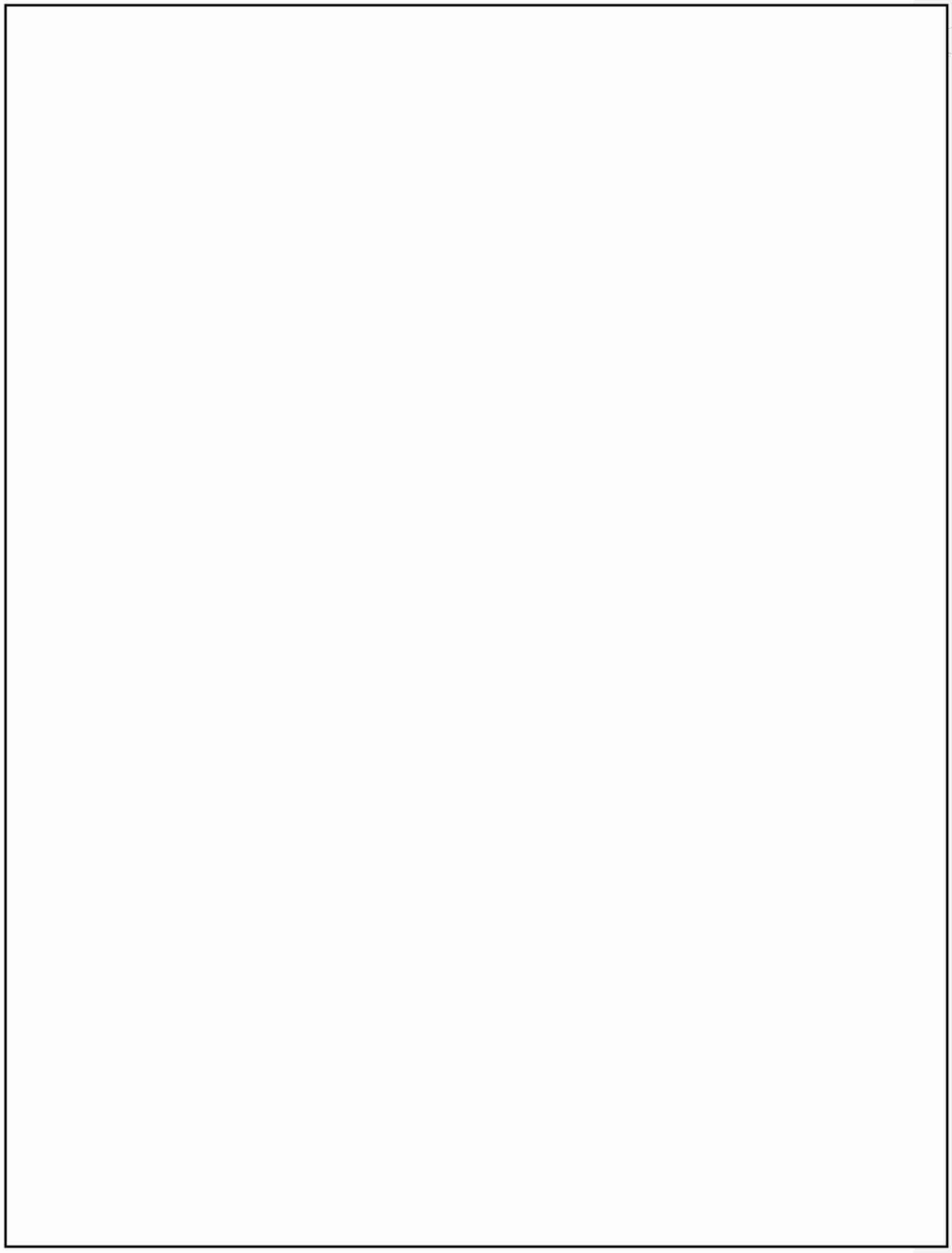
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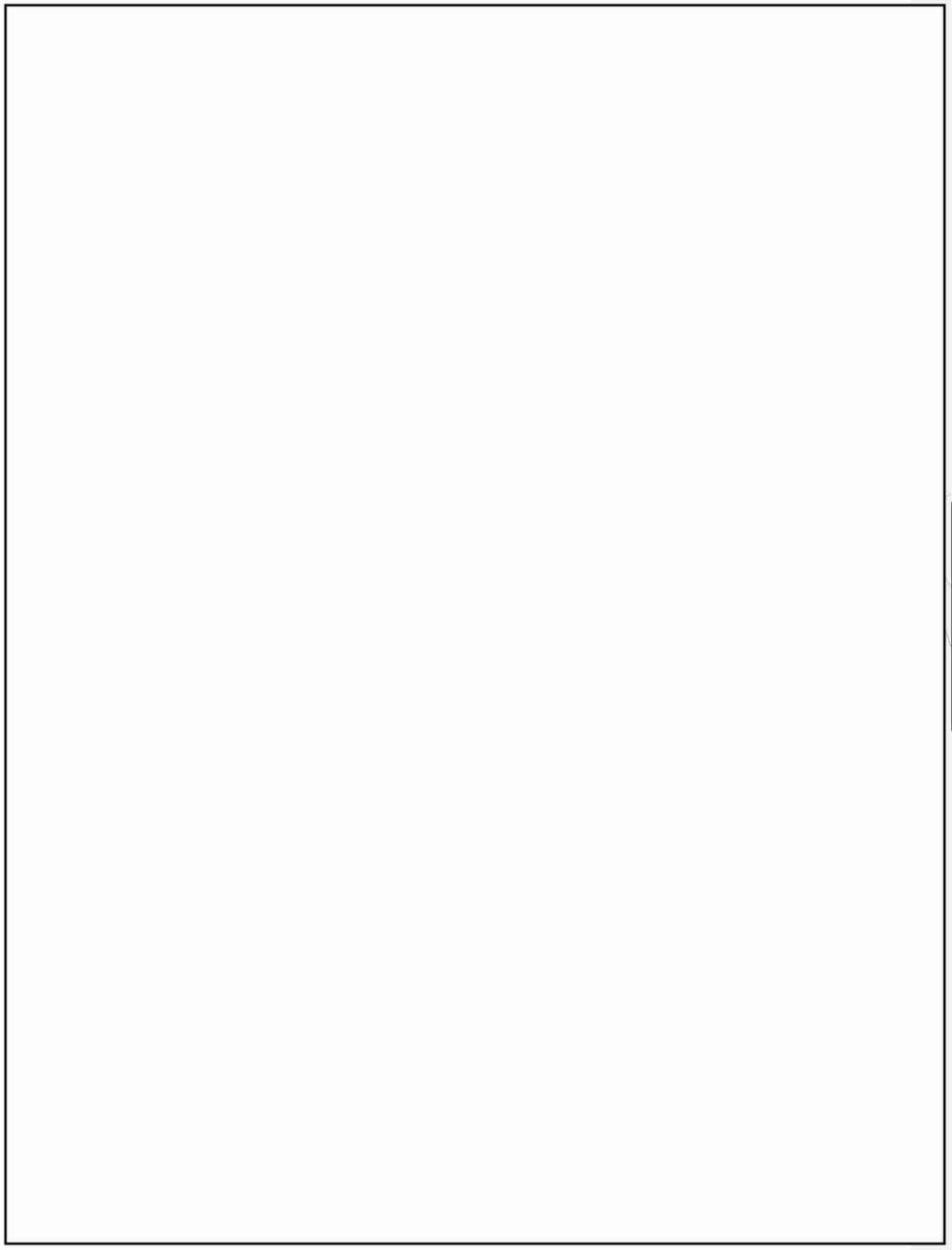
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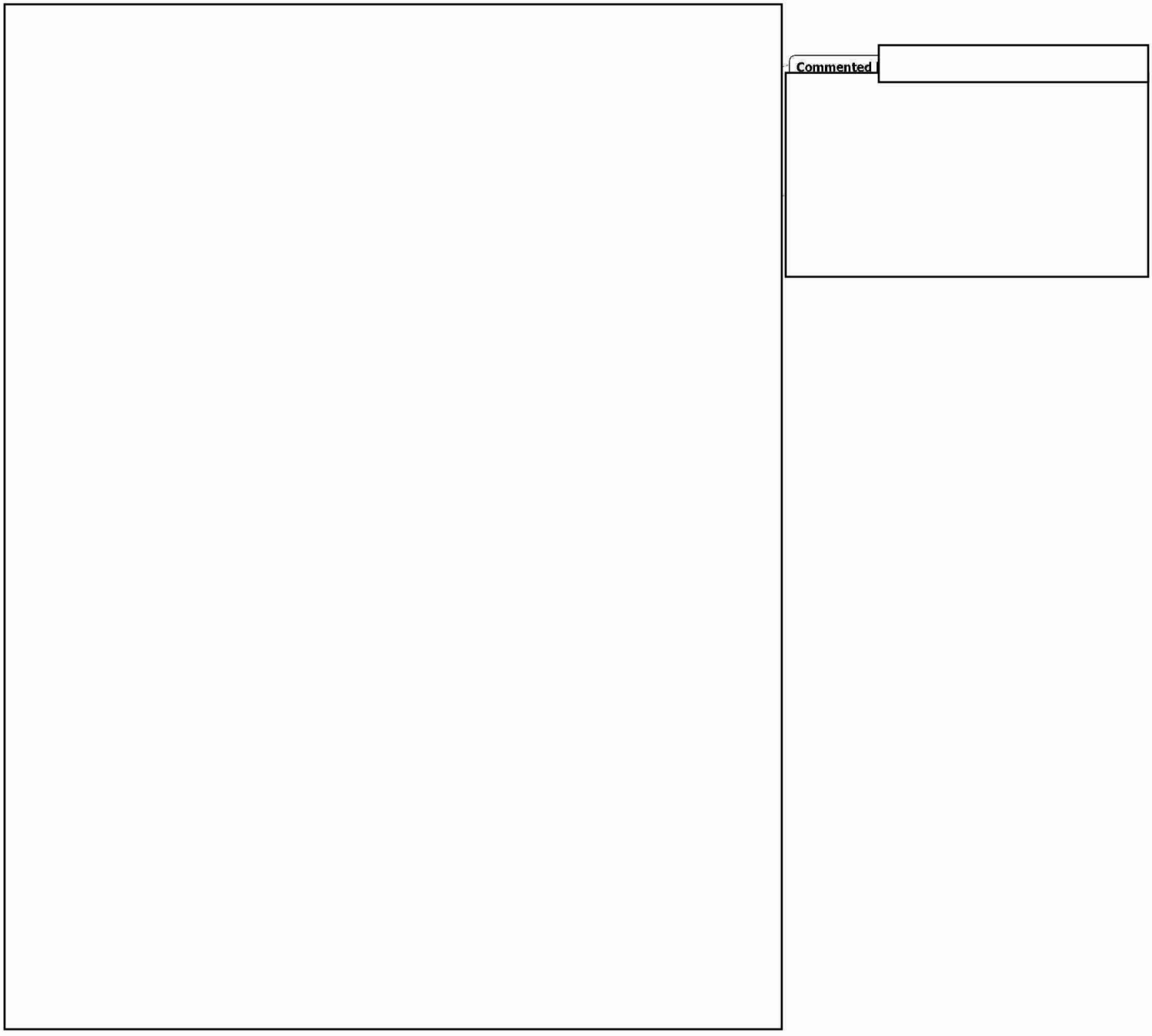


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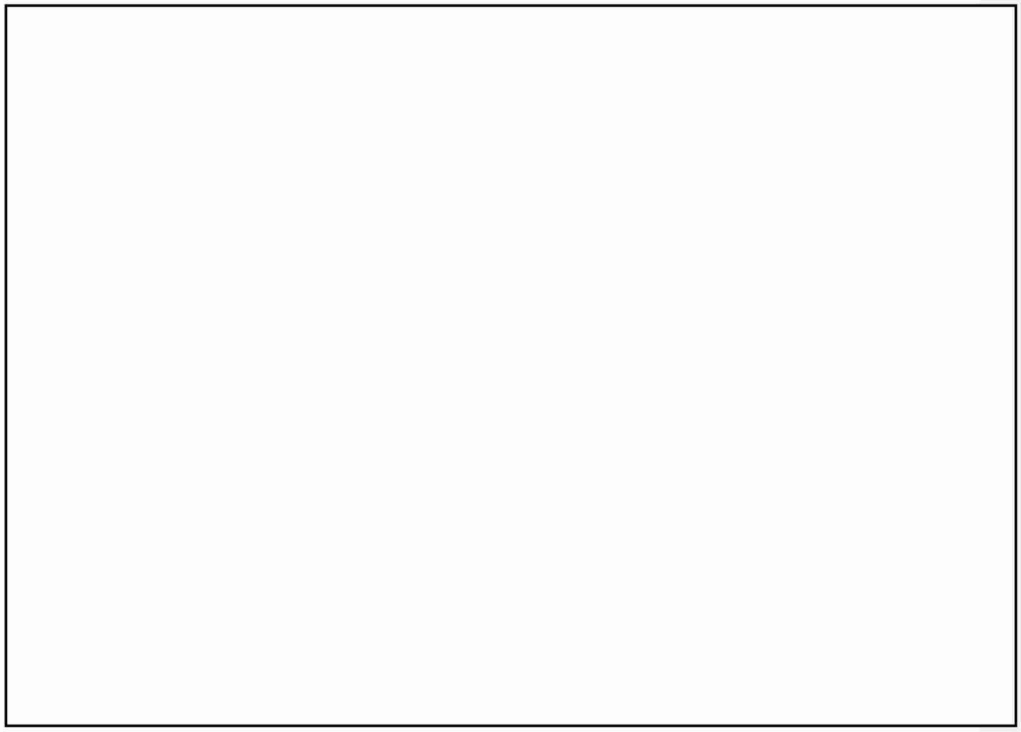
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AMERICAN OVERSIGHT

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* * * * *

_____
Chad F. Wolf,
Acting Secretary of Homeland Security

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114
To: Nuebel Kovarik, Kathy
Sent: July 7, 2020 5:57 PM (UTC-05:00)
Attached: 0-PM06G-EB5FurtherDeployment_CoverPage.docx, 2-PM06G-EB5FurtherDeployment_Update_Redlines.docx, 3-PM06G-EB5FurtherDeployment_Update_Clean.docx, 4-PM06G-EB5FurtherDeployment_TacticalRolloutPlan.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx

Hi – This alert cover page is for a the discretionary policy. Can you send me your EB5 edits? Thanks!

From: Nuebel Kovarik, Kathy [redacted]
Sent: Tuesday, July 7, 2020 10:06 AM (b)(6)
To: Bailey, Morgan [redacted]; Law, Robert T [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114

Clearing this PM on EB-5 redeployment. I had a few edits [redacted]

(b)(5)

From: Bailey, Morgan [redacted] (b)(6)
Sent: Tuesday, June 02, 2020 2:28 PM
To: Nuebel Kovarik, Kathy [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114

I had a few edits. This is ready for you to review.

From: Kilgore, Garry R [redacted]
Sent: Thursday, May 28, 2020 1:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Drake, Johnetta [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114 (b)(6)

Good afternoon ma'am,

OP&S presents the attached Policy Manual update regarding EB-5 Further Deployment. OP&S requests approval by COB Thursday, June 11, 2020.

Summary:
USCIS is issuing clarifying policy guidance in the USCIS Policy Manual regarding deployment of investment capital, including further deployment after job creation requirements are satisfied.

Attachments:

- EXSO Cover Sheet
- 0-PM06G-EB5FurtherDeployment_CoverPage
- 1-PM06G-EB5FurtherDeployment_PolicyAlert
- 2-PM06G-EB5FurtherDeployment_Update_Redlines

AMERICAN OVERSIGHT

- 3-PM06G-EB5FurtherDeployment_Update_Clean
- 4-PM06G-EB5FurtherDeployment_TacticalRolloutPlan

Respectfully,

Garry R. Kilgore

Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues [redacted]

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AMERICAN OVERSIGHT

USCIS Policy Publication Director's Office Packet COVER PAGE	Policy Manual Volume 6 Part G – EB-5 Further Deployment

Publication: TBD Upon Director's Office Clearance

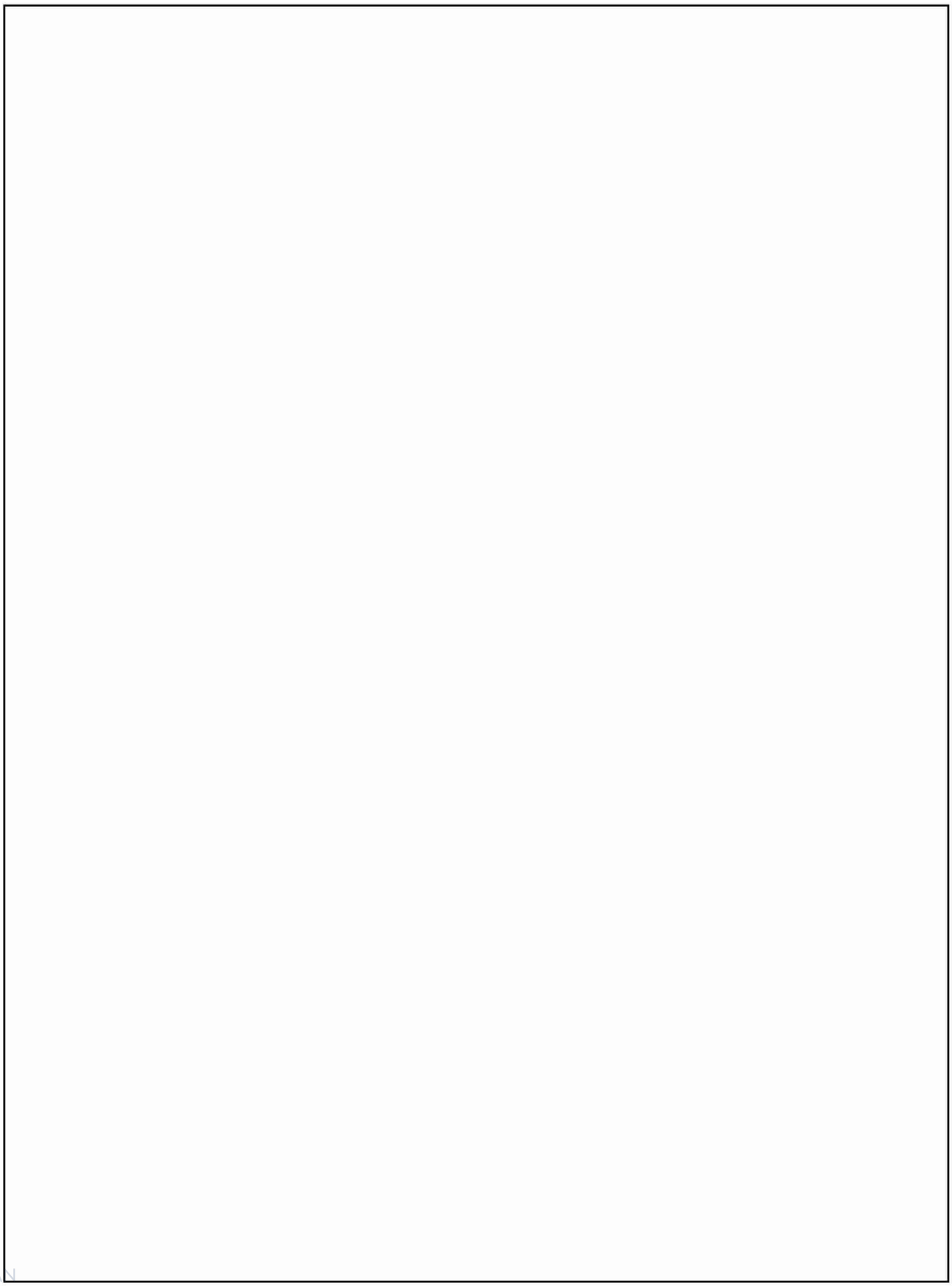
Draft Policy Item for Director's Office Review

☑ USCIS Policy Manual[1]
☐ Other_____

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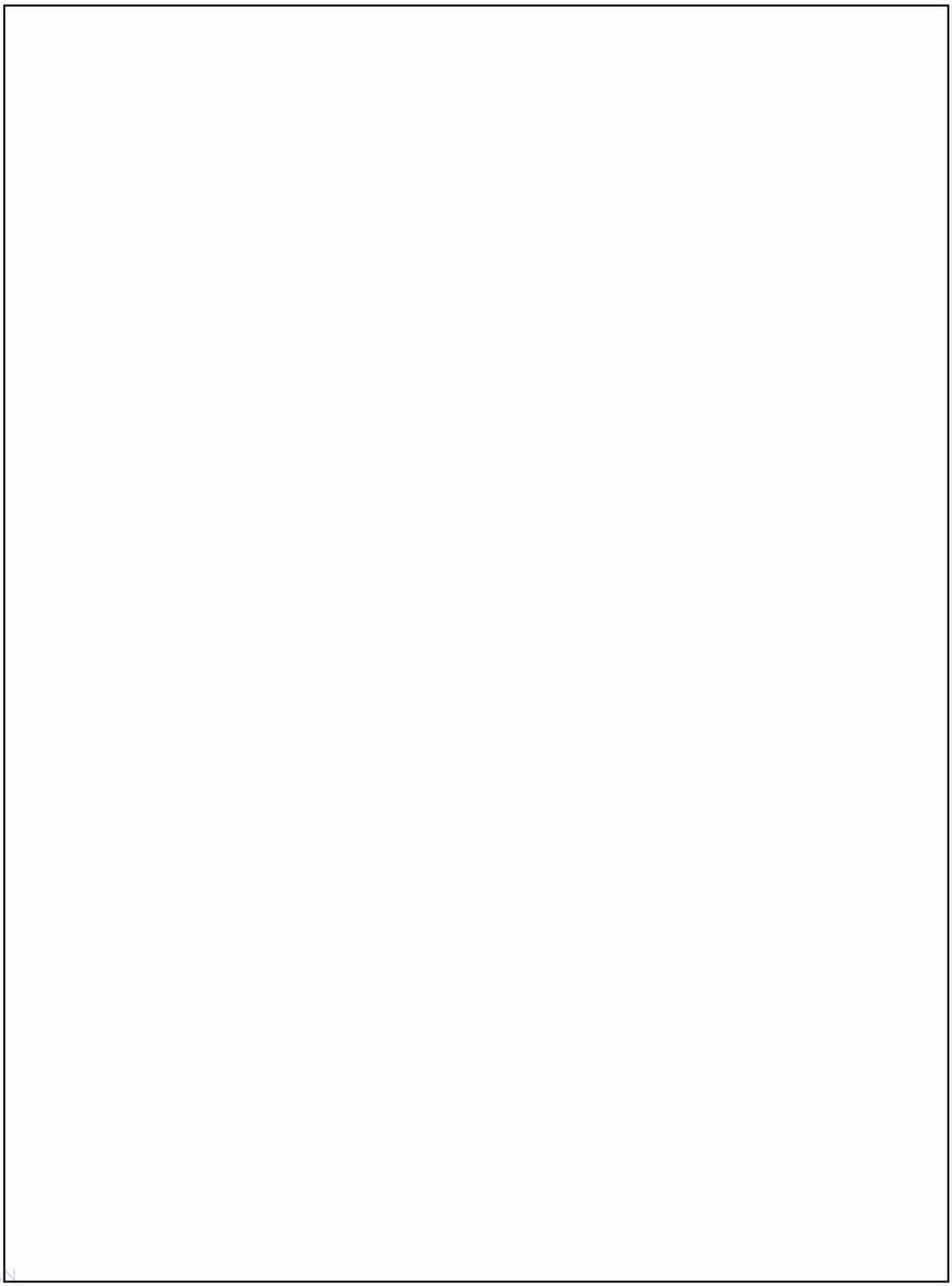
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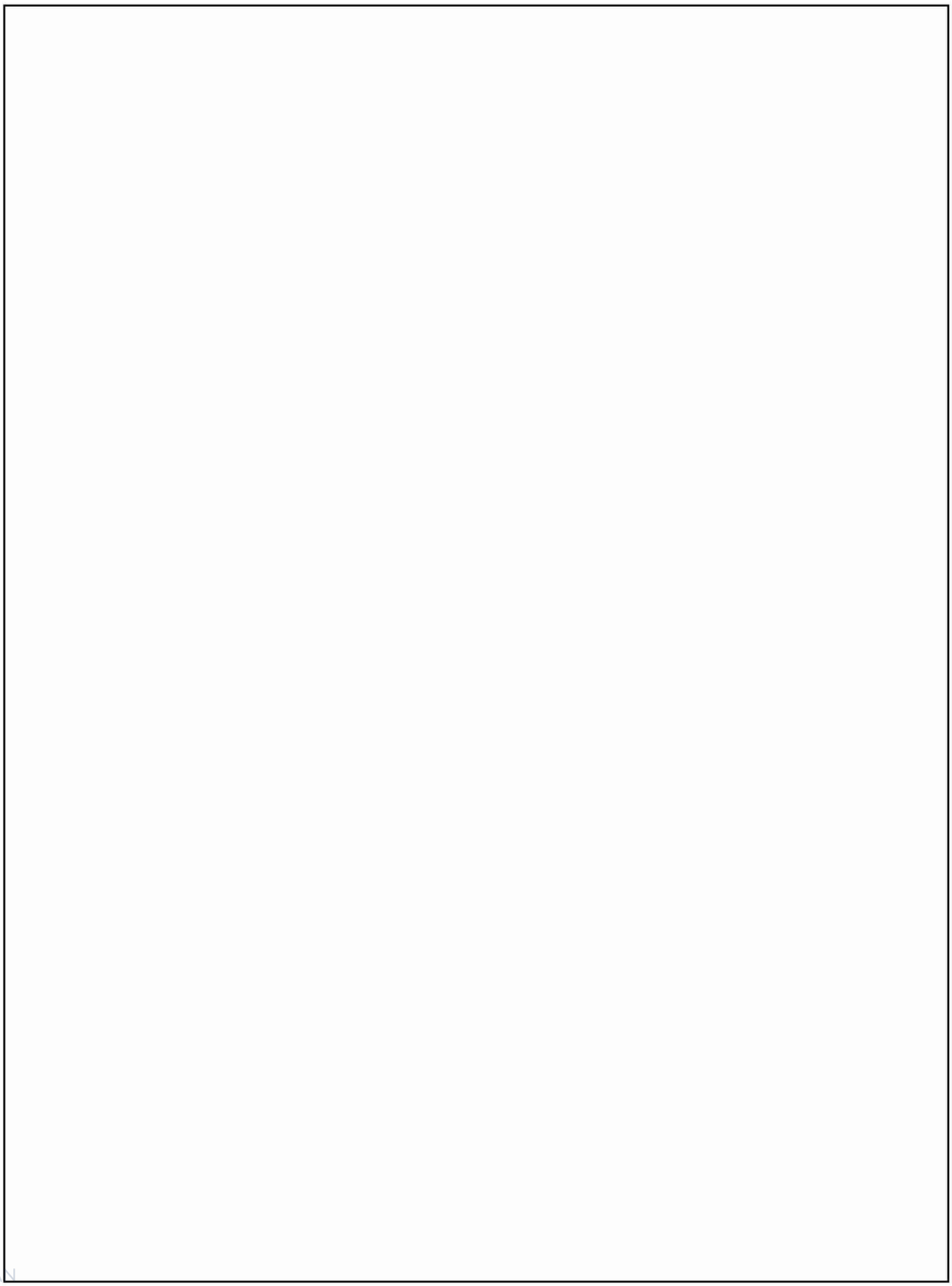
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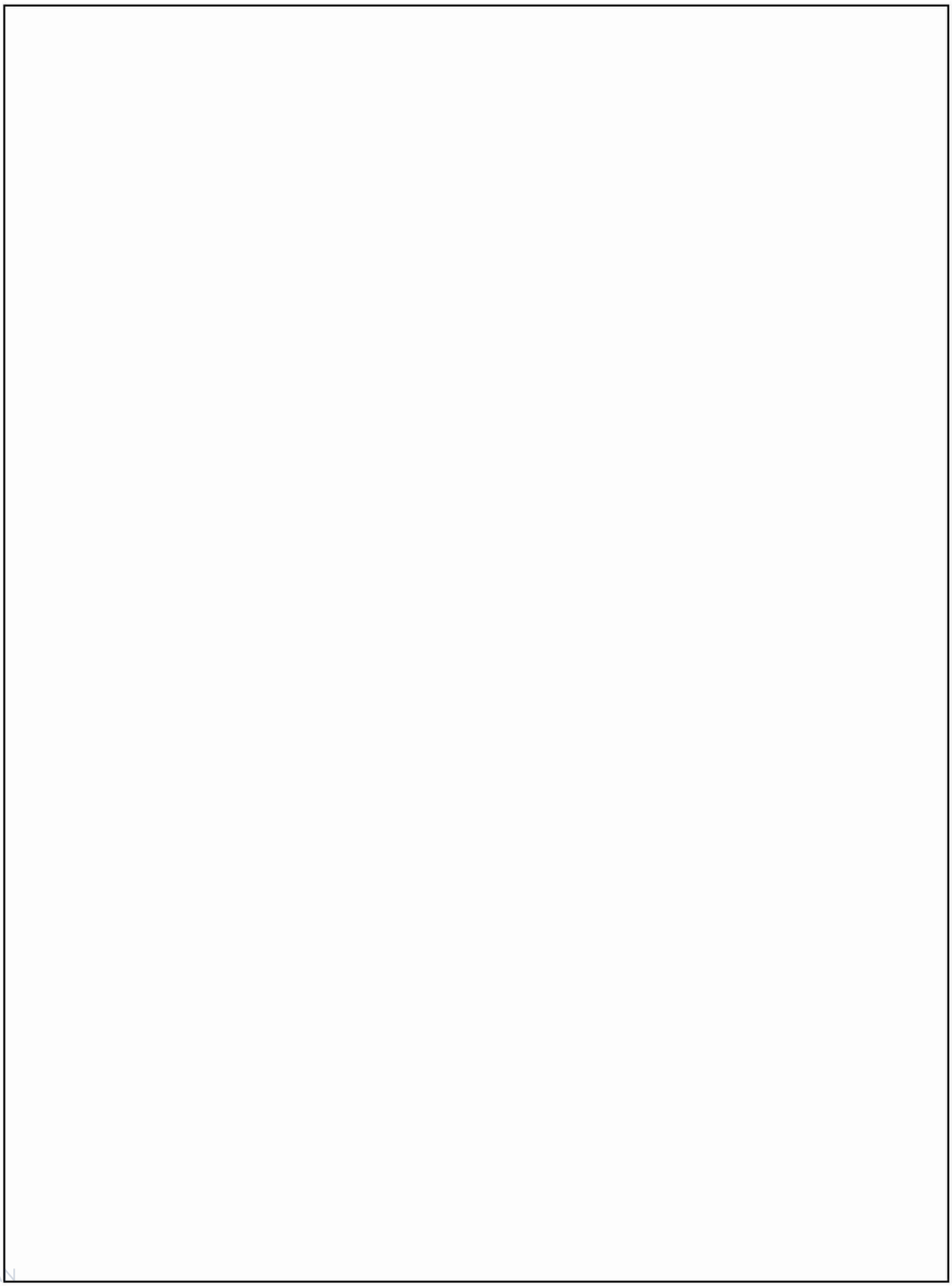
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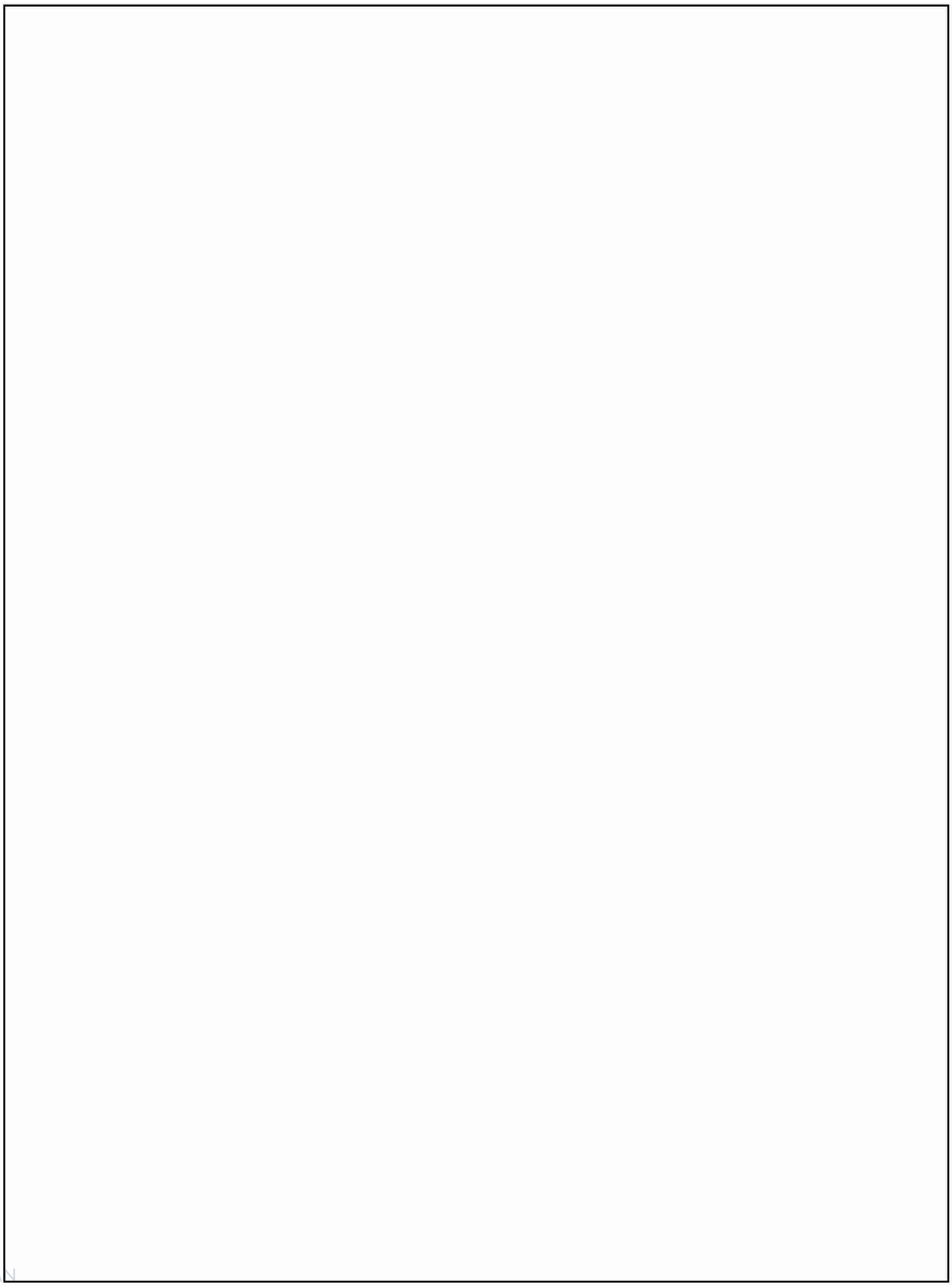
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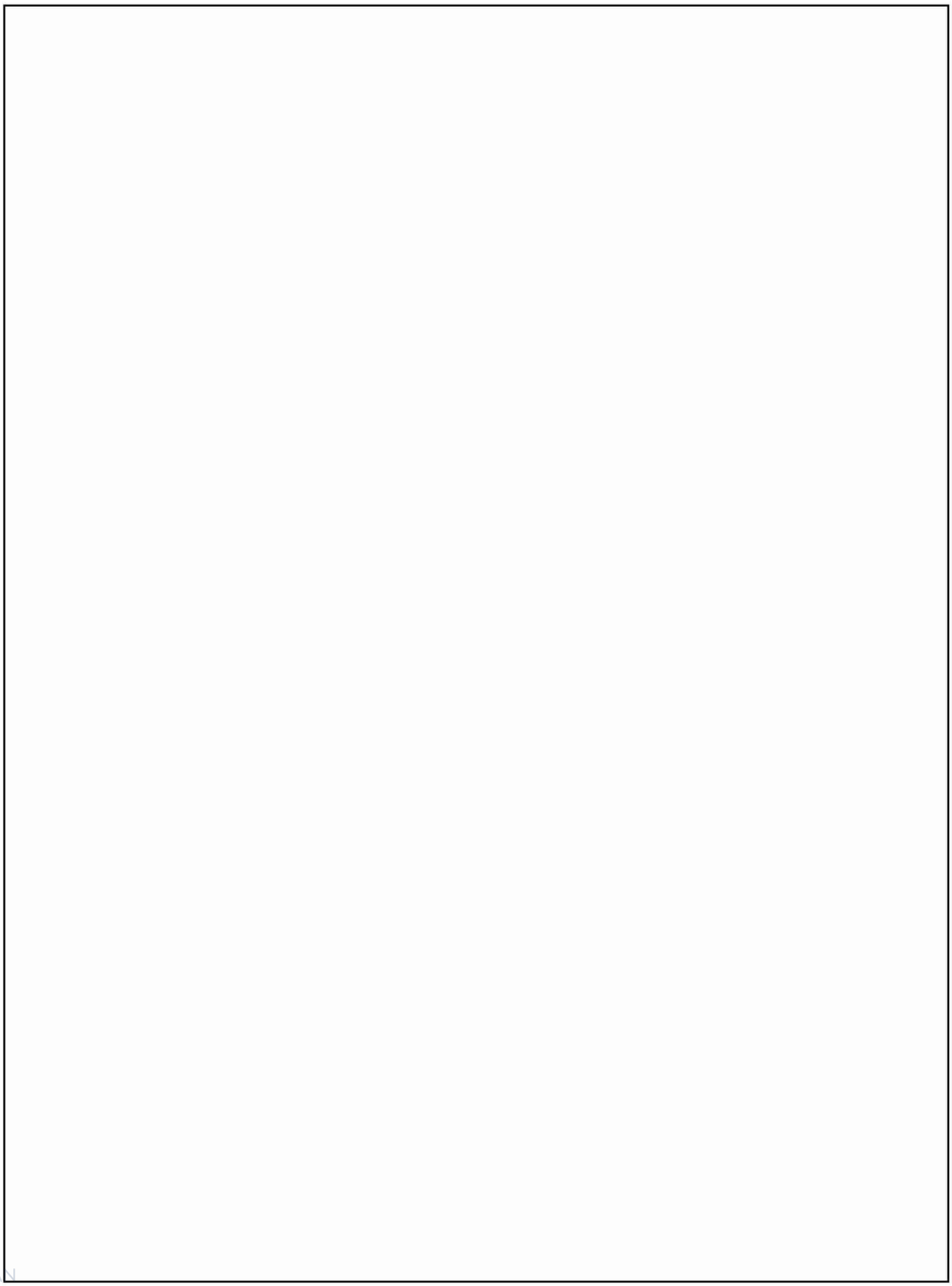
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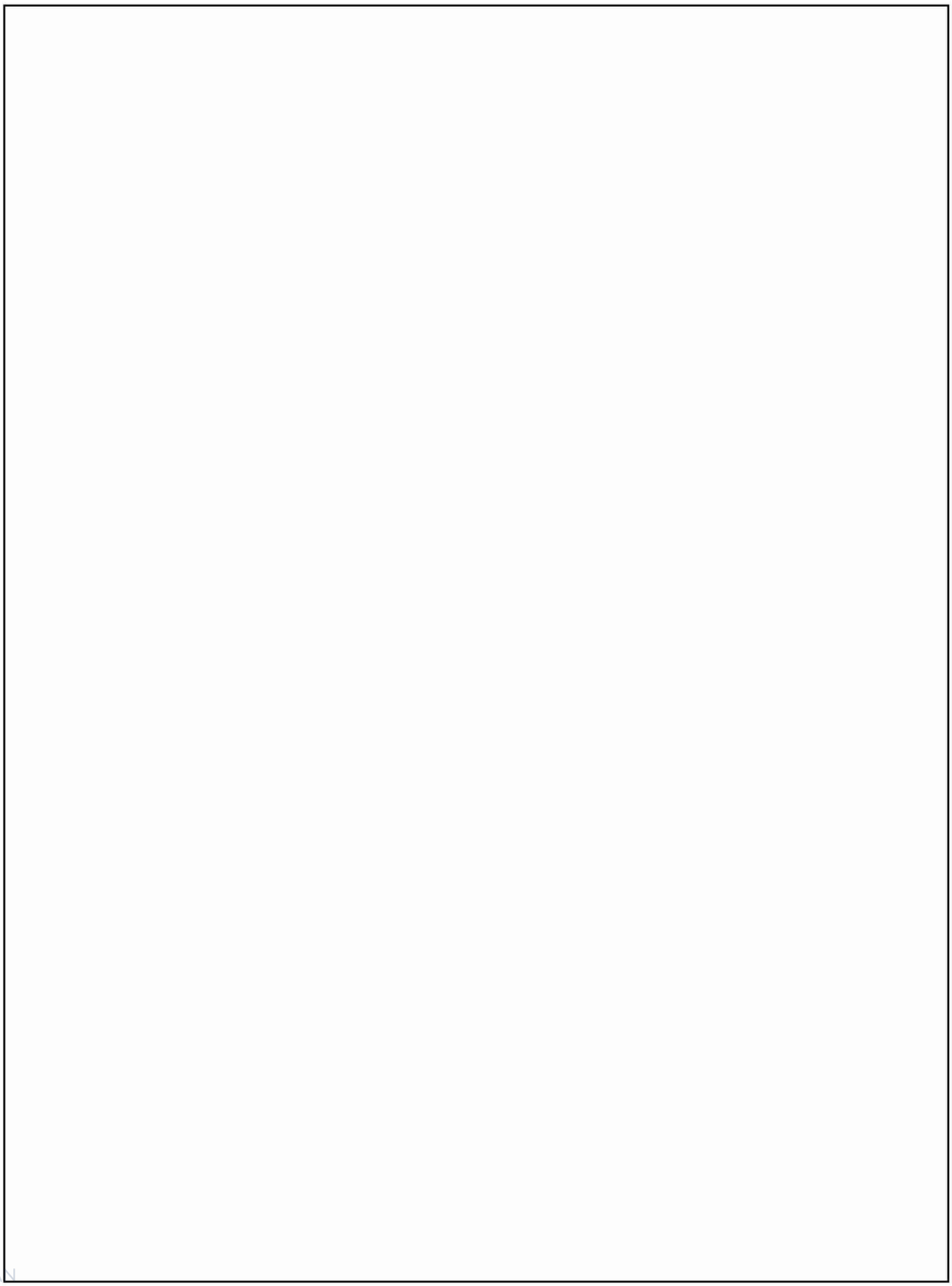
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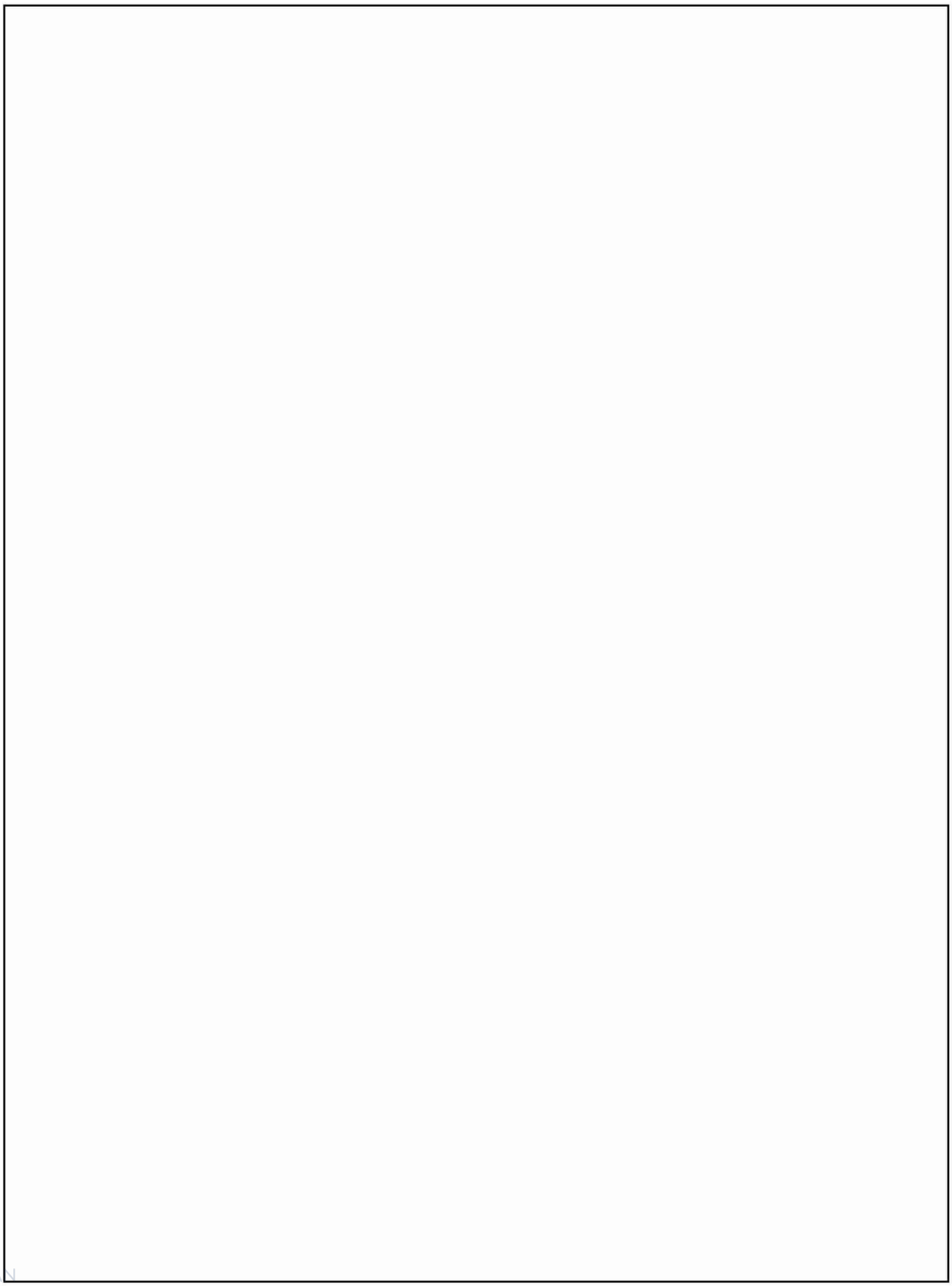
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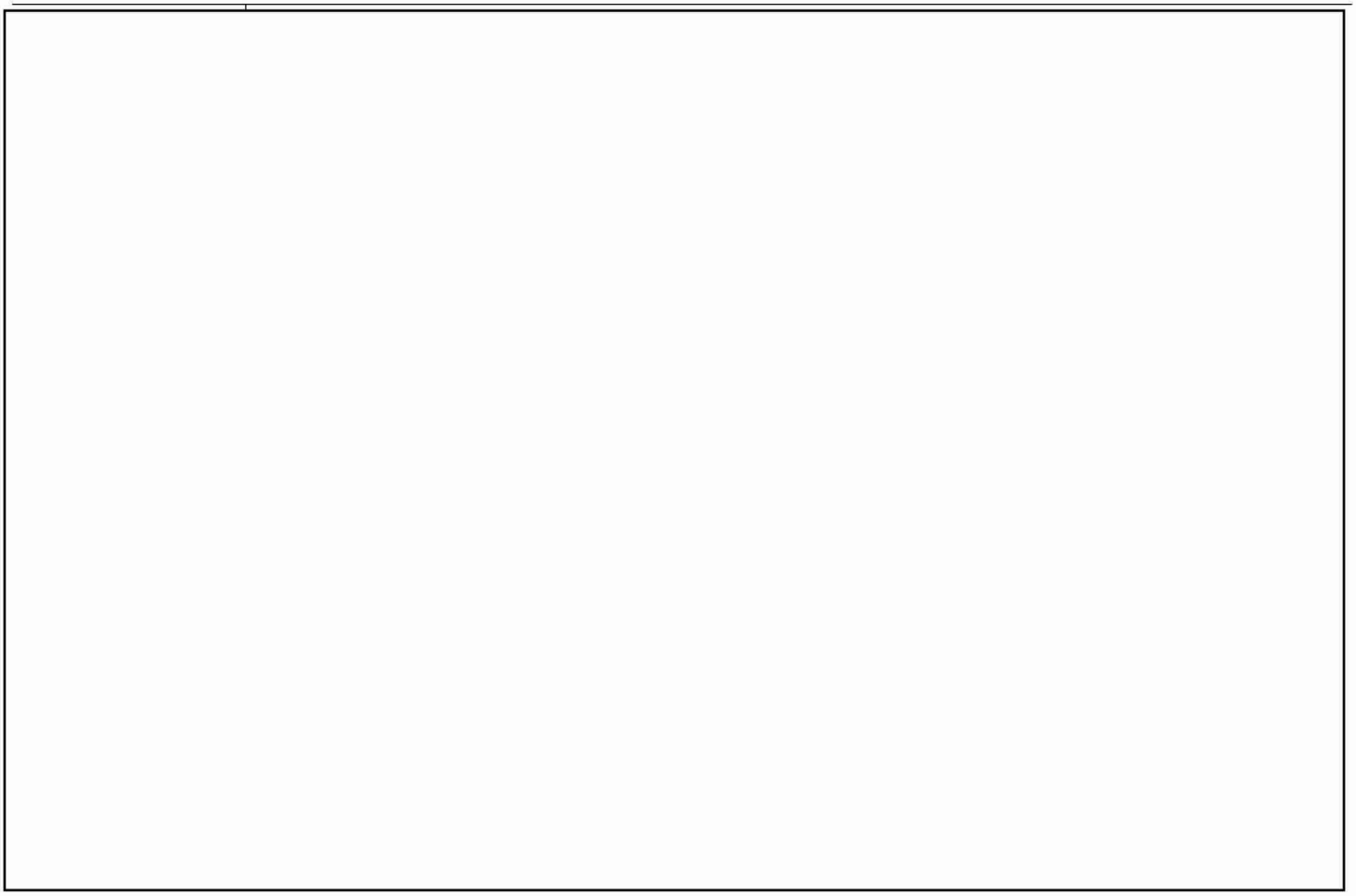
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Tactical Rollout Plan | Policy Manual Volume G, Part G (Update)
Publication Date TBD
EB-5 Further Deployment

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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DELIBERATIVE DRAFT

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-D

AMERICAN OVERSIGHT

DHS-20-2156-A-002580

From: Kilgore, Garry R
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114
To: Bailey, Morgan
Cc: Allsteadt, Edward
Sent: July 7, 2020 4:55 PM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx, 1-PM06G-EB5FurtherDeployment_PolicyAlert.docx

Good afternoon ma'am,

The first attachment was included in your below response, the second attachment is the Policy Alert that is actually associated with this clearance request.

EXSO would like to confirm if the DO had edits on the second attachment.

(b)(6)

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted](office)
STARS Issues [redacted]

From: Bailey, Morgan [redacted]
Sent: Tuesday, July 07, 2020 10:22 AM
To: USCIS Directors Office Clearance-EXSO [redacted]; Drake, Johnetta [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear EB-5 Further Deployment STARS #26114 with edits/comments from the Director's Office. Please ask OP&S if we need an effective date for this. Thanks!

From: Kilgore, Garry R [redacted]
Sent: Thursday, May 28, 2020 1:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Drake, Johnetta [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114

Good afternoon ma'am,

OP&S presents the attached Policy Manual update regarding EB-5 Further Deployment. OP&S requests approval by COB Thursday, June 11, 2020.

Summary:
USCIS is issuing clarifying policy guidance in the USCIS Policy Manual regarding deployment of investment capital, including further deployment after job creation requirements are satisfied.

AMERICAN OVERSIGHT

Attachments:

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- EXSO Cover Sheet
- 0-PM06G-EB5FurtherDeployment_CoverPage
- 1-PM06G-EB5FurtherDeployment_PolicyAlert
- 2-PM06G-EB5FurtherDeployment_Update_Redlines
- 3-PM06G-EB5FurtherDeployment_Update_Clean
- 4-PM06G-EB5FurtherDeployment_TacticalRolloutPlan

Respectfully,

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office) (b)(6)
STARS Issues [redacted]

AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Clarifying Guidance for Deployment of Capital in Employment-Based Fifth Preference (EB-5) Category

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing clarifying policy guidance in the USCIS Policy Manual regarding deployment of investment capital, including further deployment after the job creation requirement is satisfied.

Background

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Deliberative DRAFT

AMERICAN OVERSIGHT

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[redacted]

FOR OFFICIAL USE ONLY

Deliberative - Pre-Dec

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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DELIBERATIVE DRAFT

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-Dec

AMERICAN OVERSIGHT

DHS-20-2156-A-002586

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From: Piateski, Jennifer E
Subject: FW: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7
To: Bailey, Morgan
Sent: July 7, 2020 4:36 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056 Consolidated Comments Received.docx

I'm done looking at this and don't have any showstoppers to add.

From: Nuebel Kovarik, Kathy
Sent: Tuesday, July 7, 2020 9:22 AM
To: Piateski, Jennifer E; Bailey, Morgan; King, Alexander R
Subject: FW: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Are you all reviewing this? I got to about page 40, but wanted to check with you all and see if Joe wanted to review concurrently.

From: USCIS Regs
Sent: Monday, July 06, 2020 3:50 PM
To: USCIS Exec Sec
Cc: Smith, Mirna; Boivin, Mark R; Deshommes, Samantha L; Rigdon, Jerry L; Dove, Stephen W (Steve); Carter, Constance L; Law, Robert T; Culver, Anthony J (Jared); Lapp, Meredith M; Stiefel, Nathaniel I; Gramiccioni, Jennifer L; Freiberger, Andrea L (Ande); Parascandola, Ciro A; Nuebel Kovarik, Kathy; Bailey, Morgan; Lin, Peggy P; Buono, Paul M; Nimick, Charles L (Locky); Smith, Mirna
Subject: RE: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The G-1056 review of H-1B Strengthening IFR completed this afternoon at 4 PM. As promised I am sending the consolidated G-1056 comments. Please note that G-1056 review just concluded so most of the comments have not been responded to. We look forward to receiving EXSO/FO comments **by 6 PM on Tuesday, 7/7.**

Thank you!
Mirna

From: USCIS Regs
Sent: Tuesday, June 30, 2020 4:22 PM
To: USCIS Exec Sec
Cc: USCIS Regs; Smith, Mirna; Boivin, Mark R; Deshommes, Samantha L; Rigdon, Jerry L; Dove, Stephen W (Steve); Carter, Constance L; Law, Robert T; Culver, Anthony J (Jared); Lapp, Meredith M; Stiefel, Nathaniel I; Gramiccioni, Jennifer L; Freiberger, Andrea L (Ande); Parascandola, Ciro A; Nuebel Kovarik, Kathy; Bailey, Morgan; Lin, Peggy P; Buono, Paul M; Nimick, Charles L (Locky)

AMERICAN OVERSIGHT

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[redacted]; Smith, Mirna [redacted]

Subject: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7

Good Afternoon EXSO/FO:

The attached **H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes** have been submitted **in STARS (service item 00028331)**. Please provide feedback via track changes to [redacted] by 6 PM on Tuesday, 7/7.

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Important note: G-1056 review is occurring in parallel and will conclude on 7/6. I will send a consolidated list of all G-1056 comments by COB on 7/6.

Summary: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Thank you,
Mirna

AMERICAN OVERSIGHT

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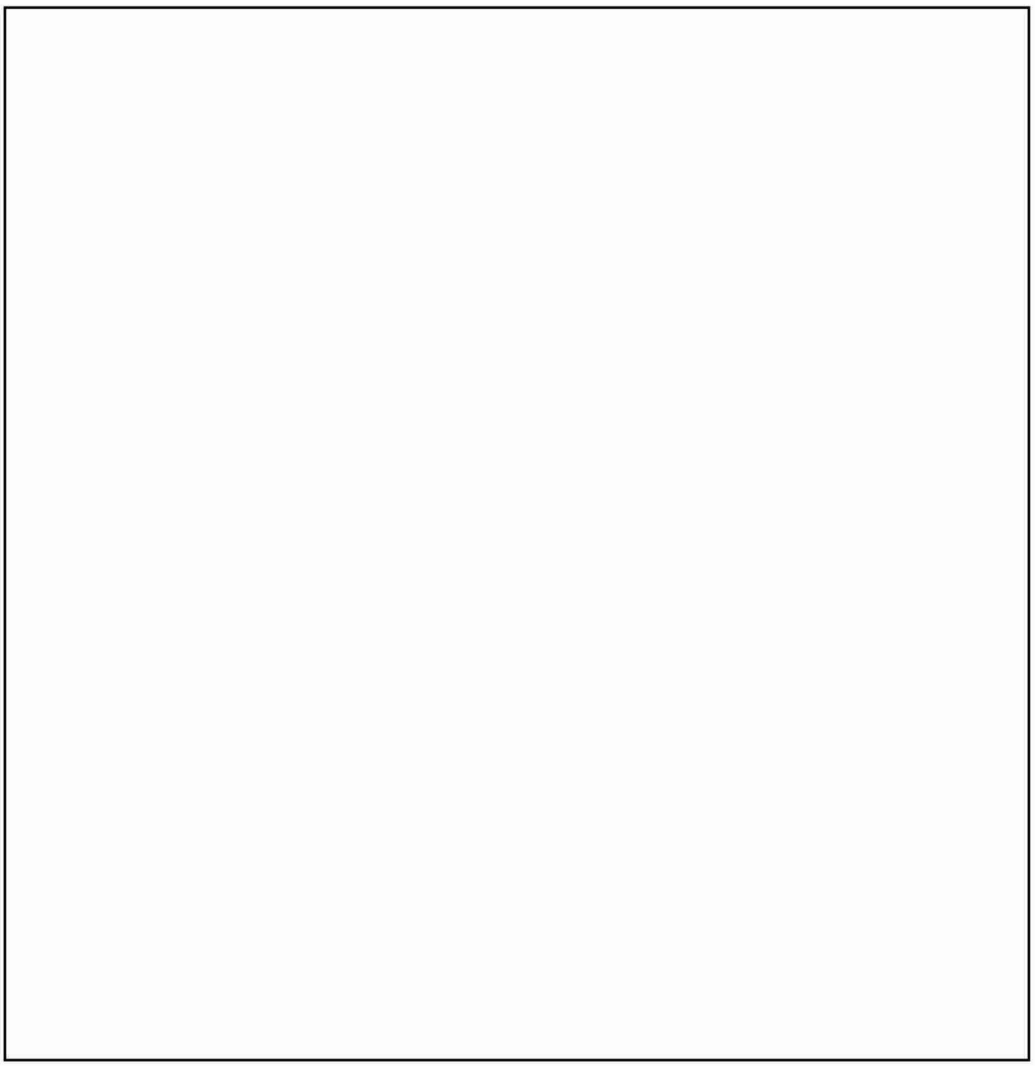
DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

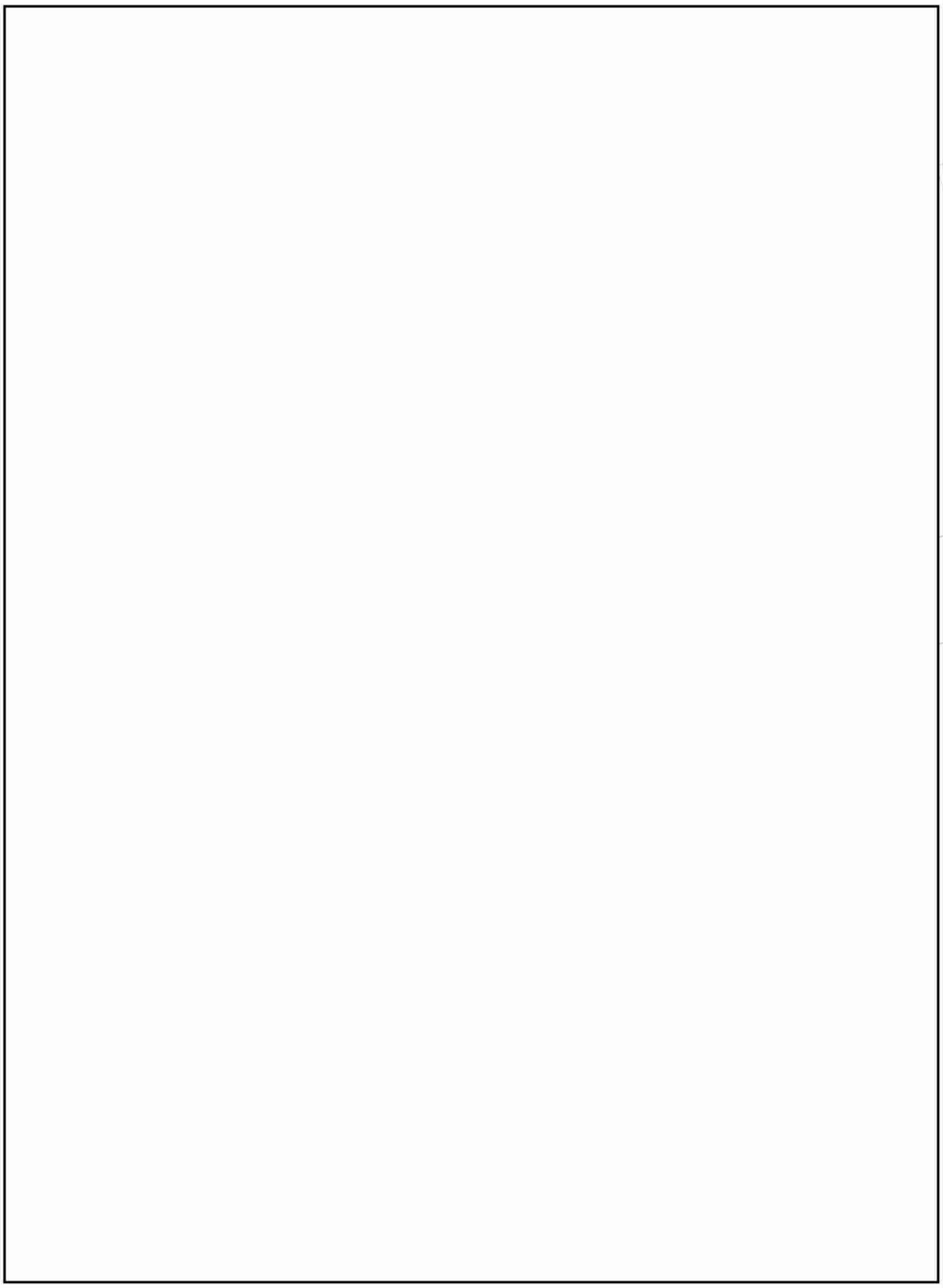
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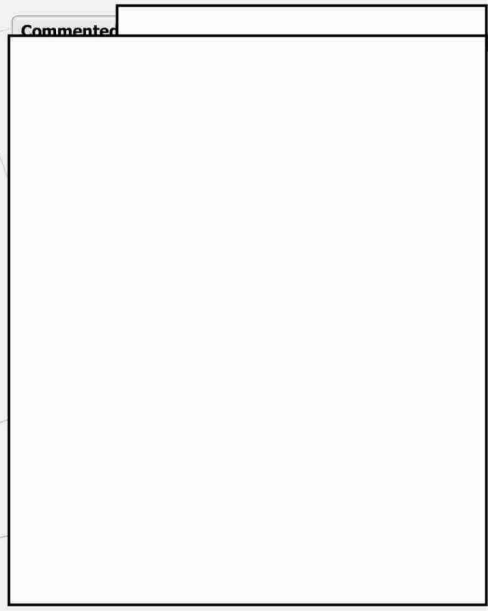
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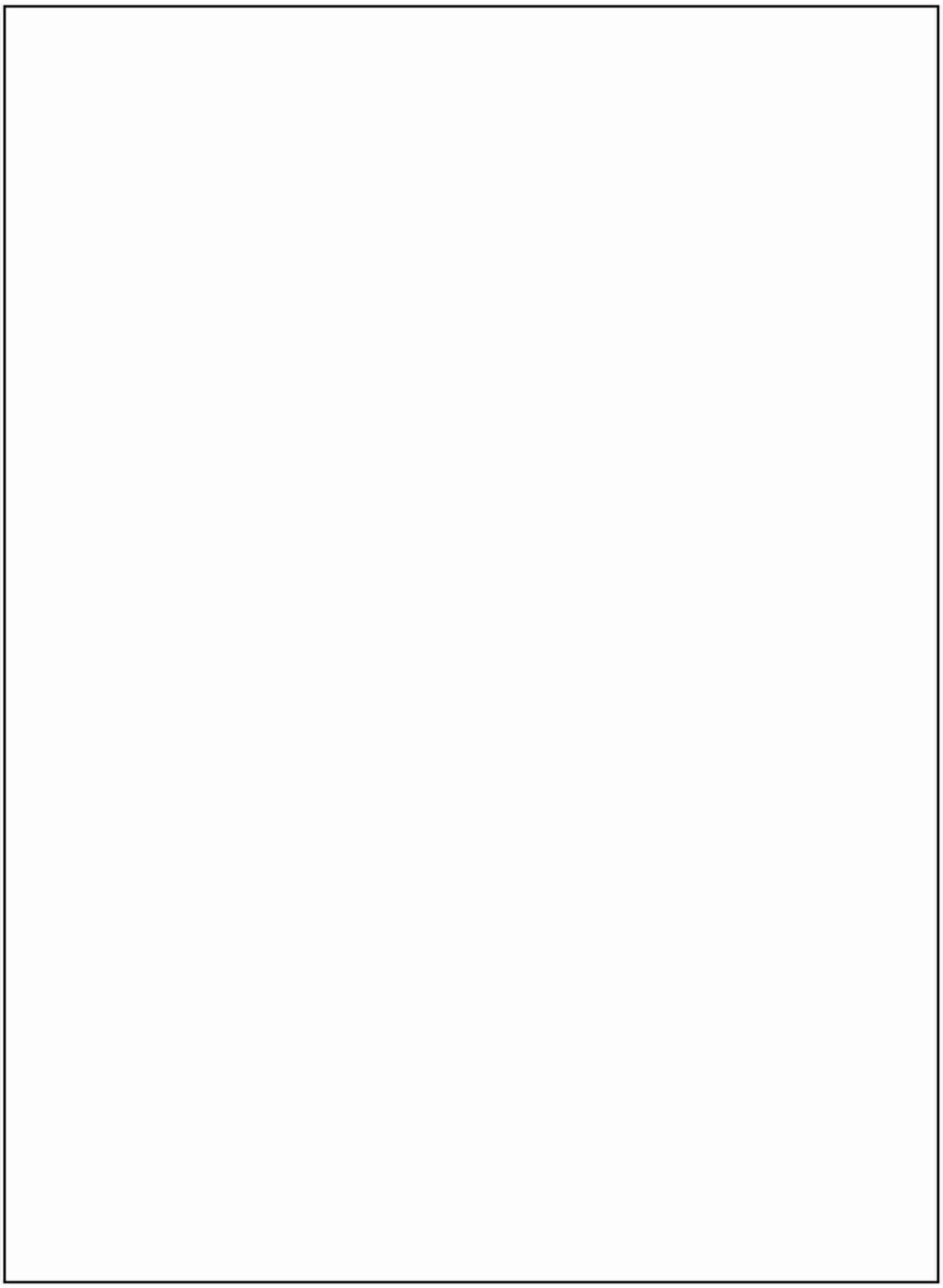




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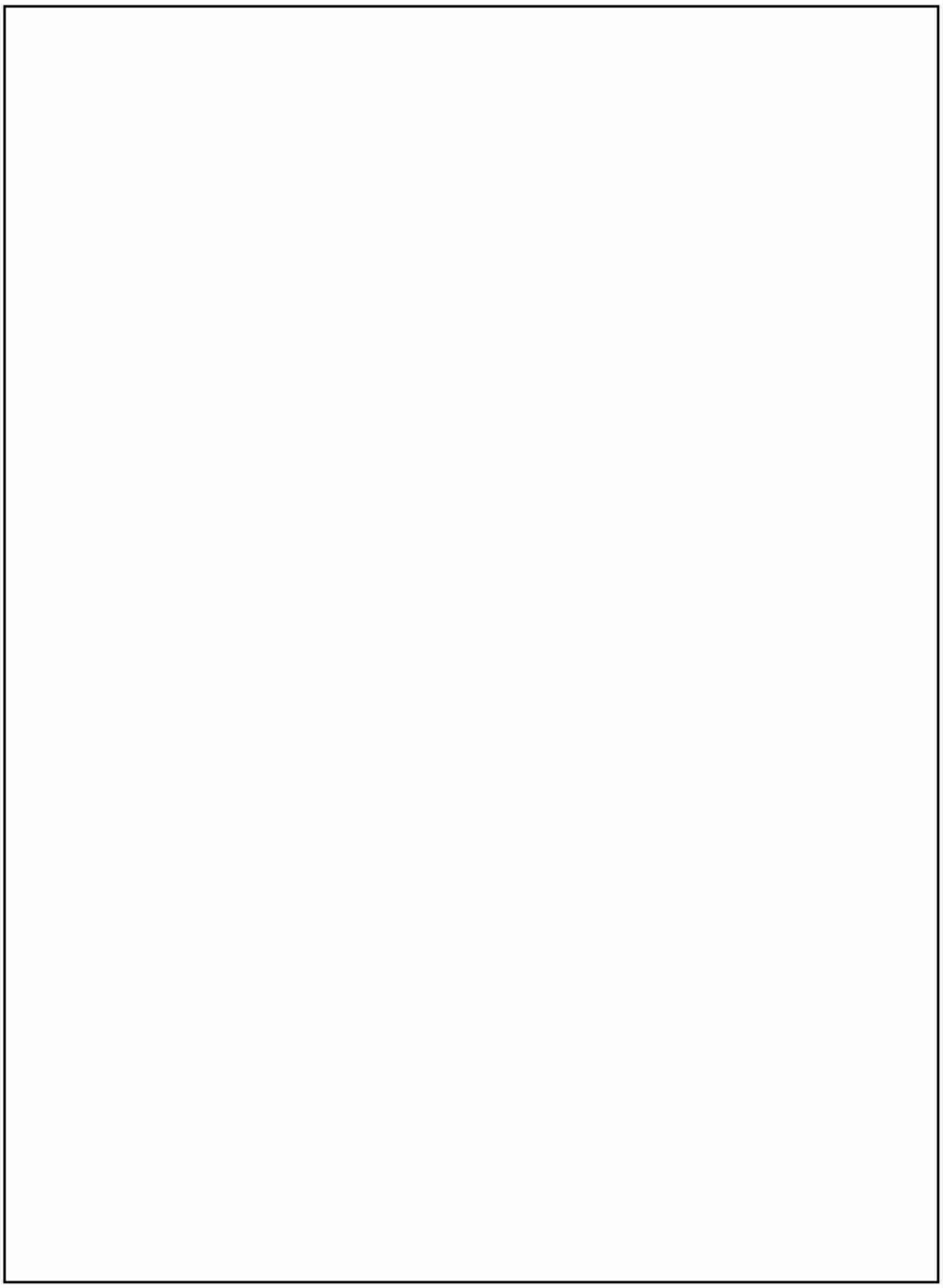
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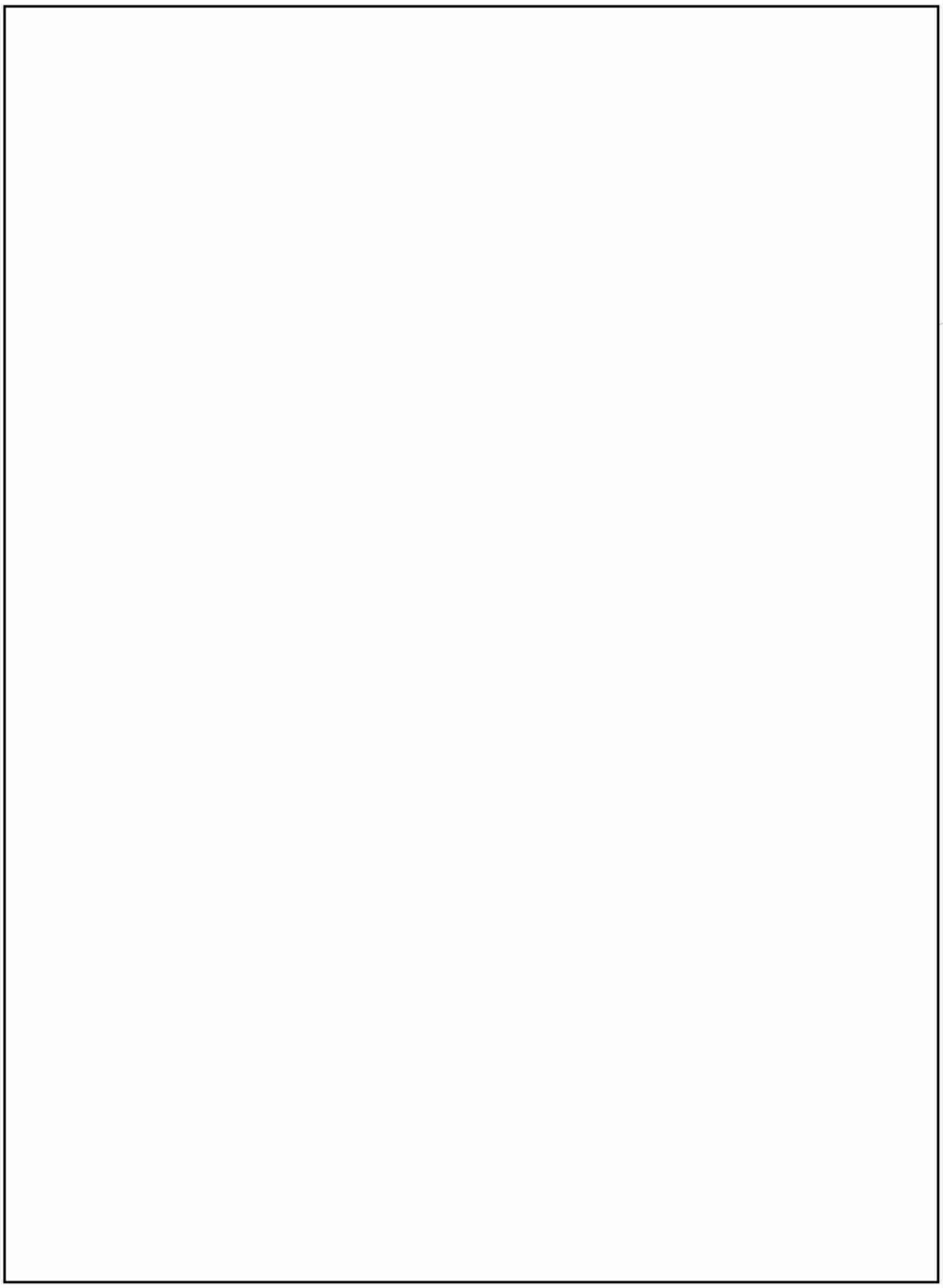
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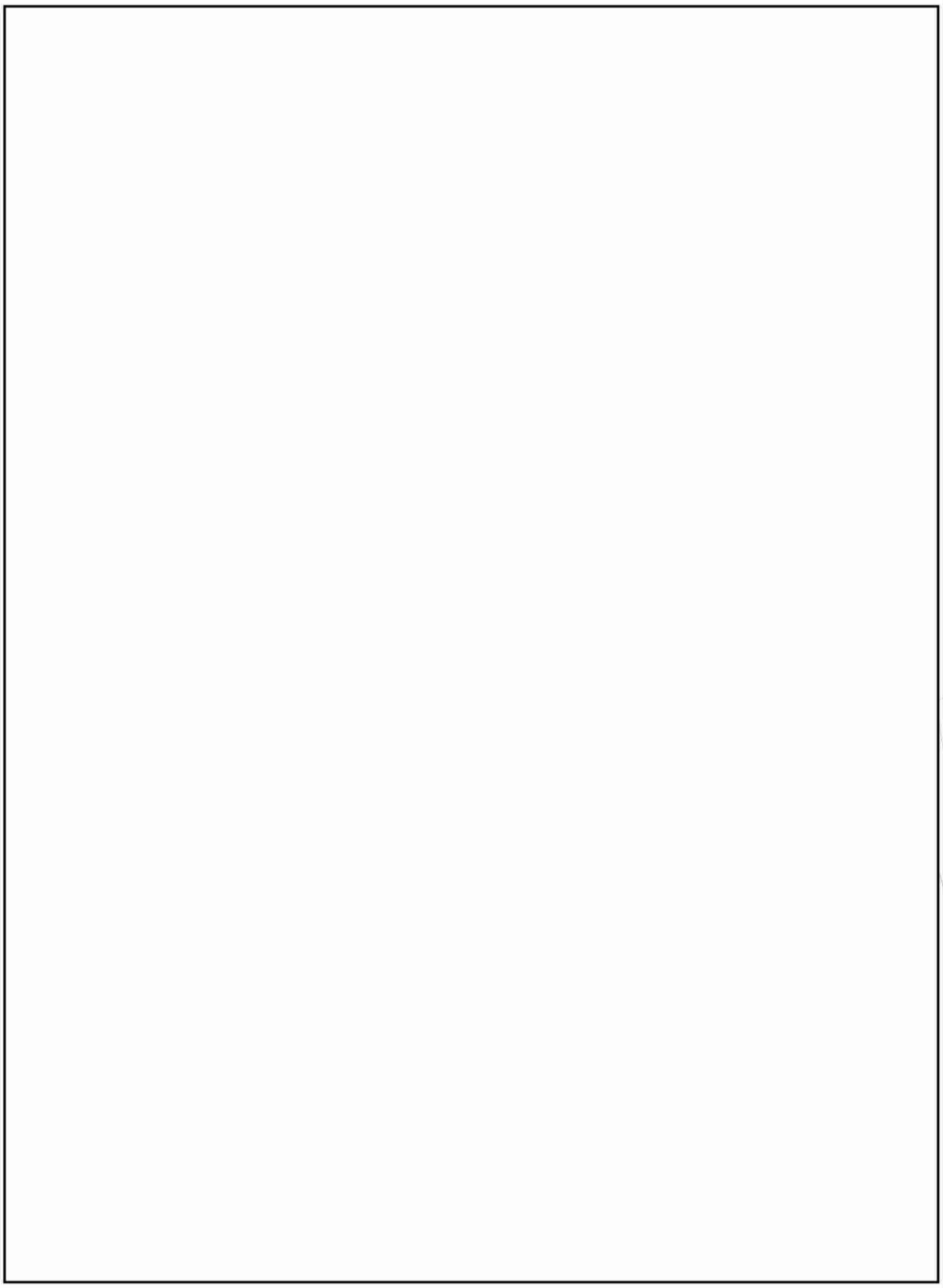


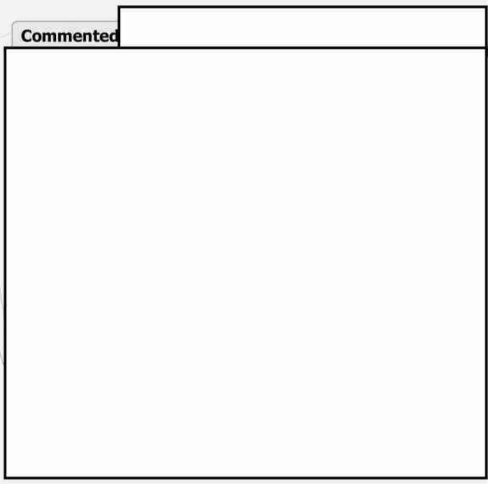
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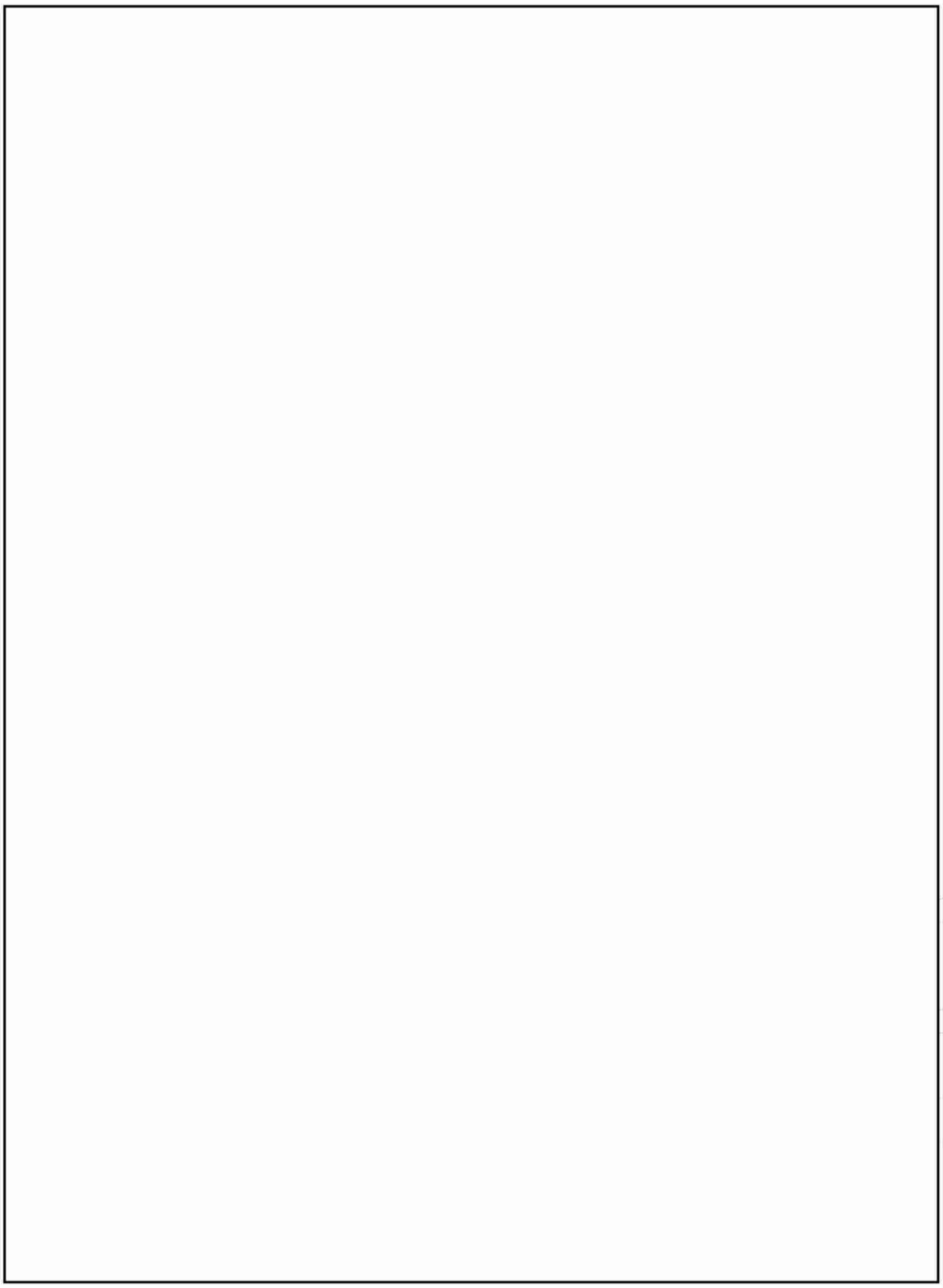




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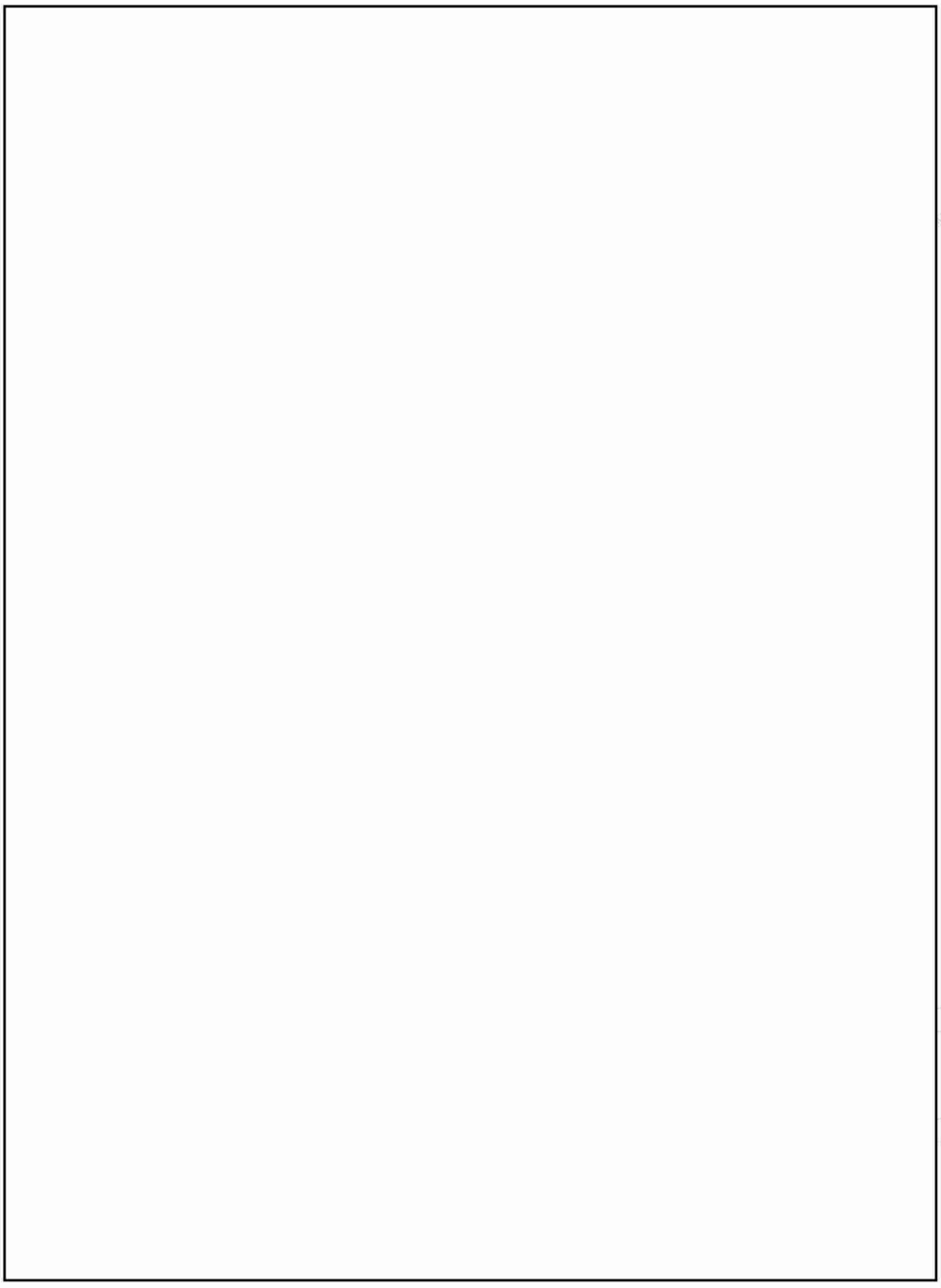
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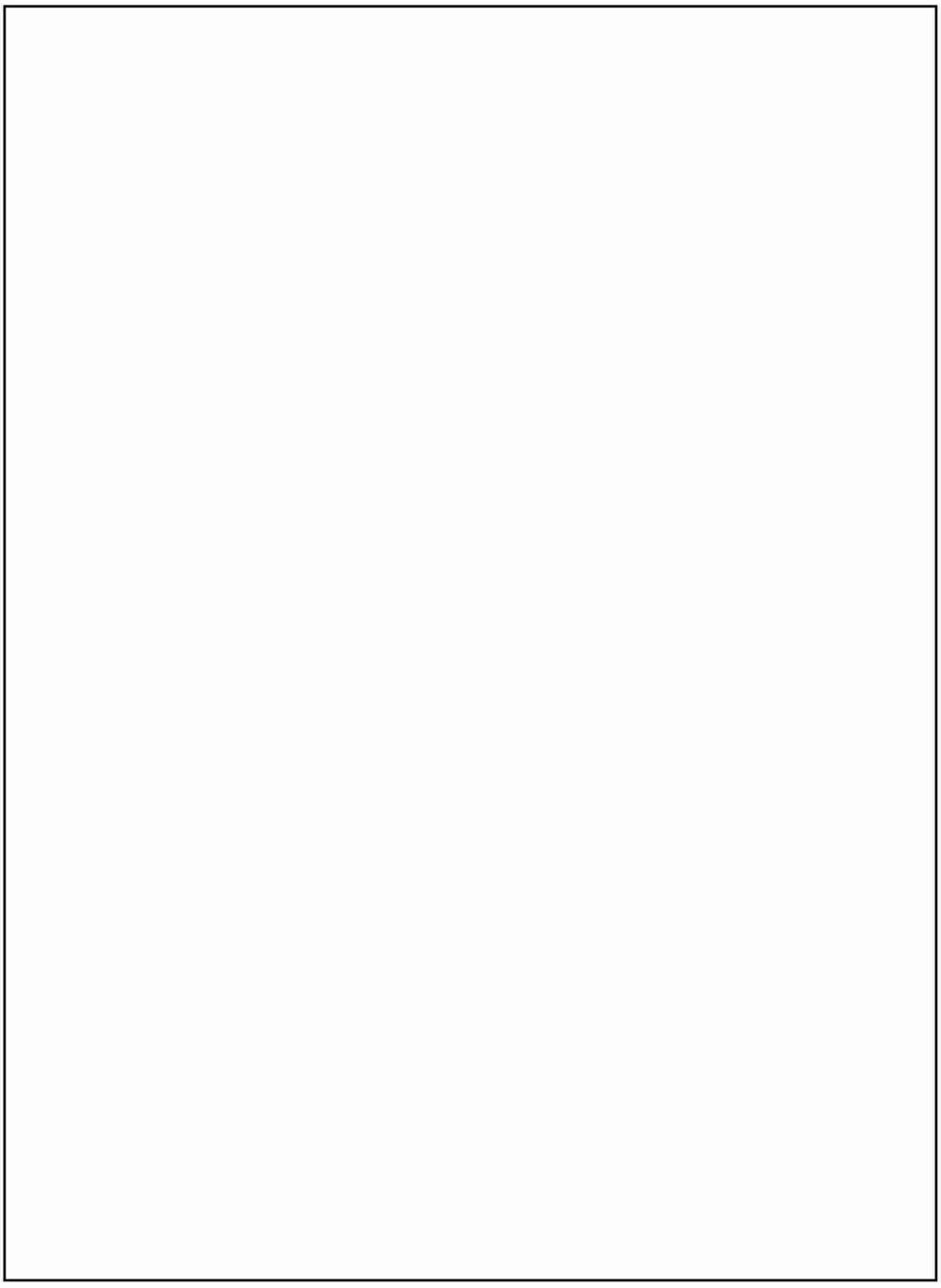
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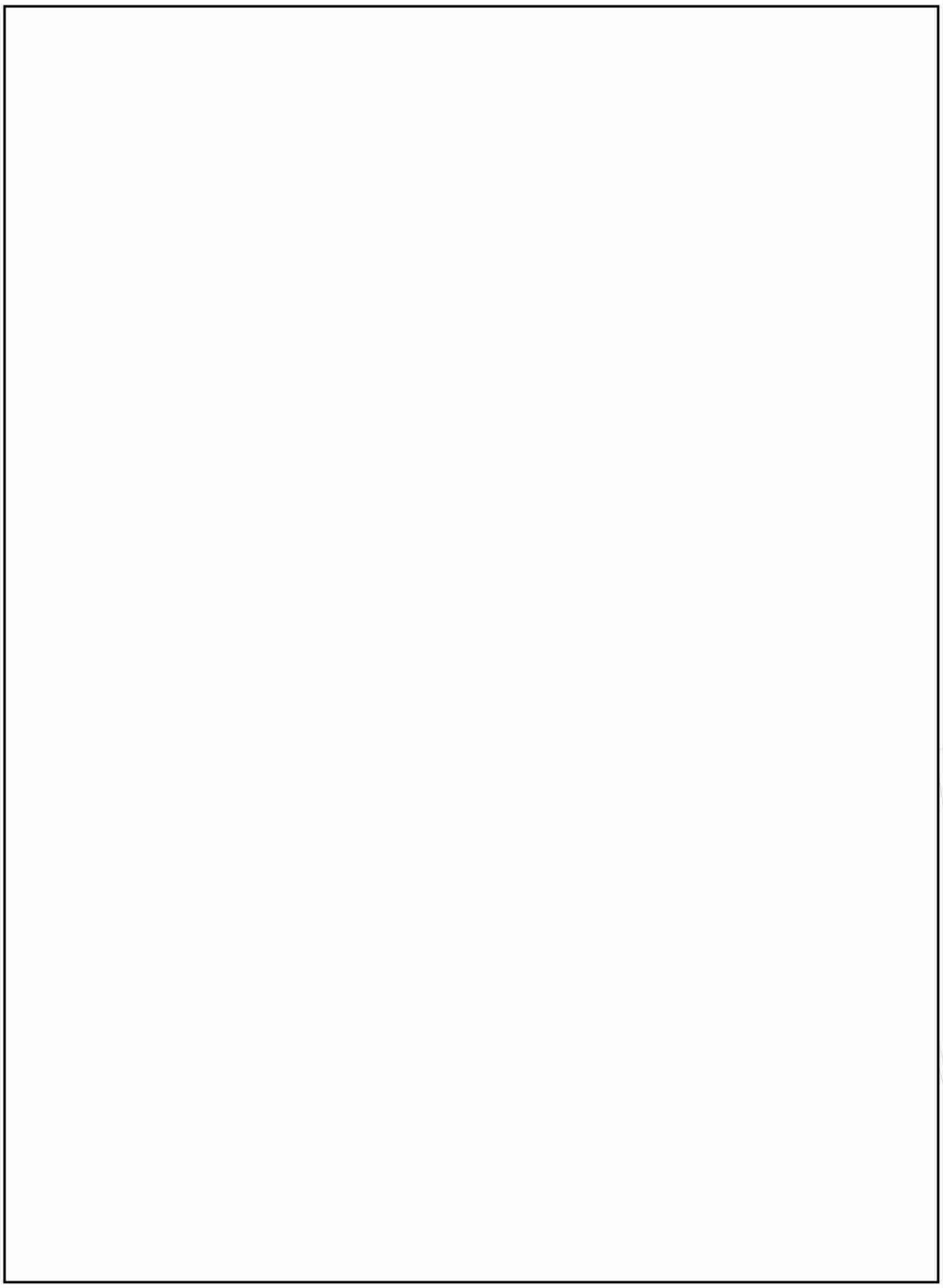
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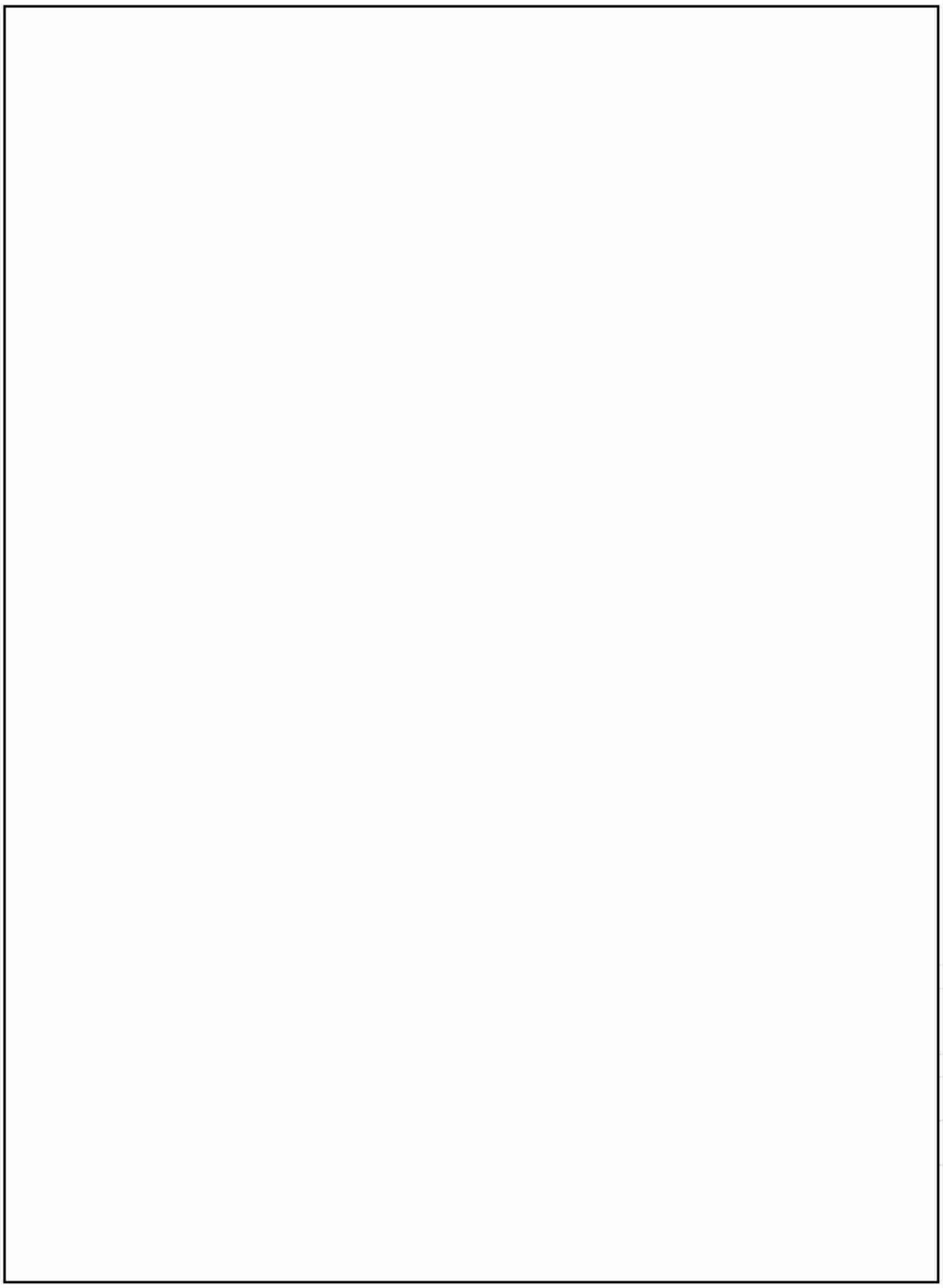
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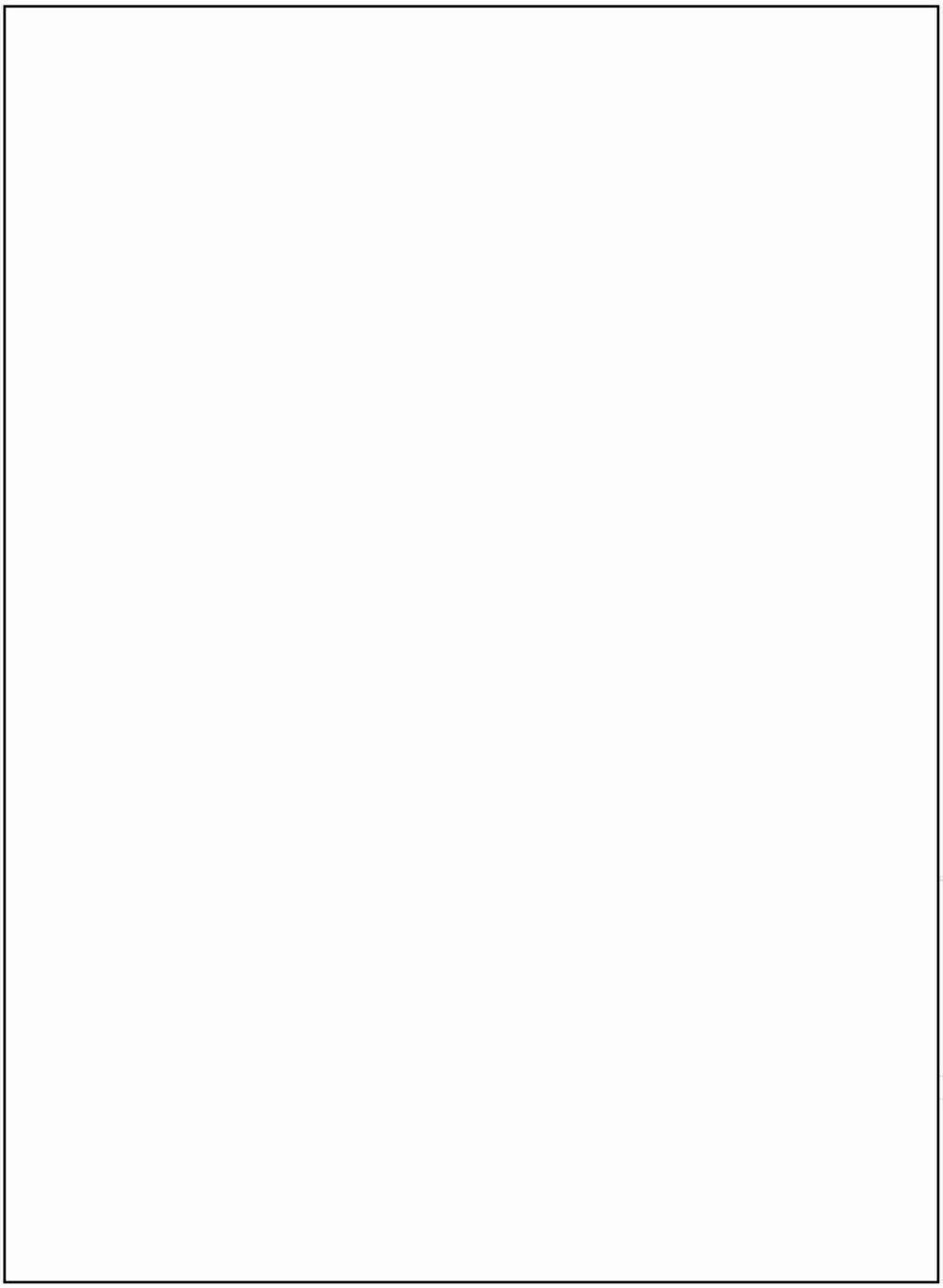
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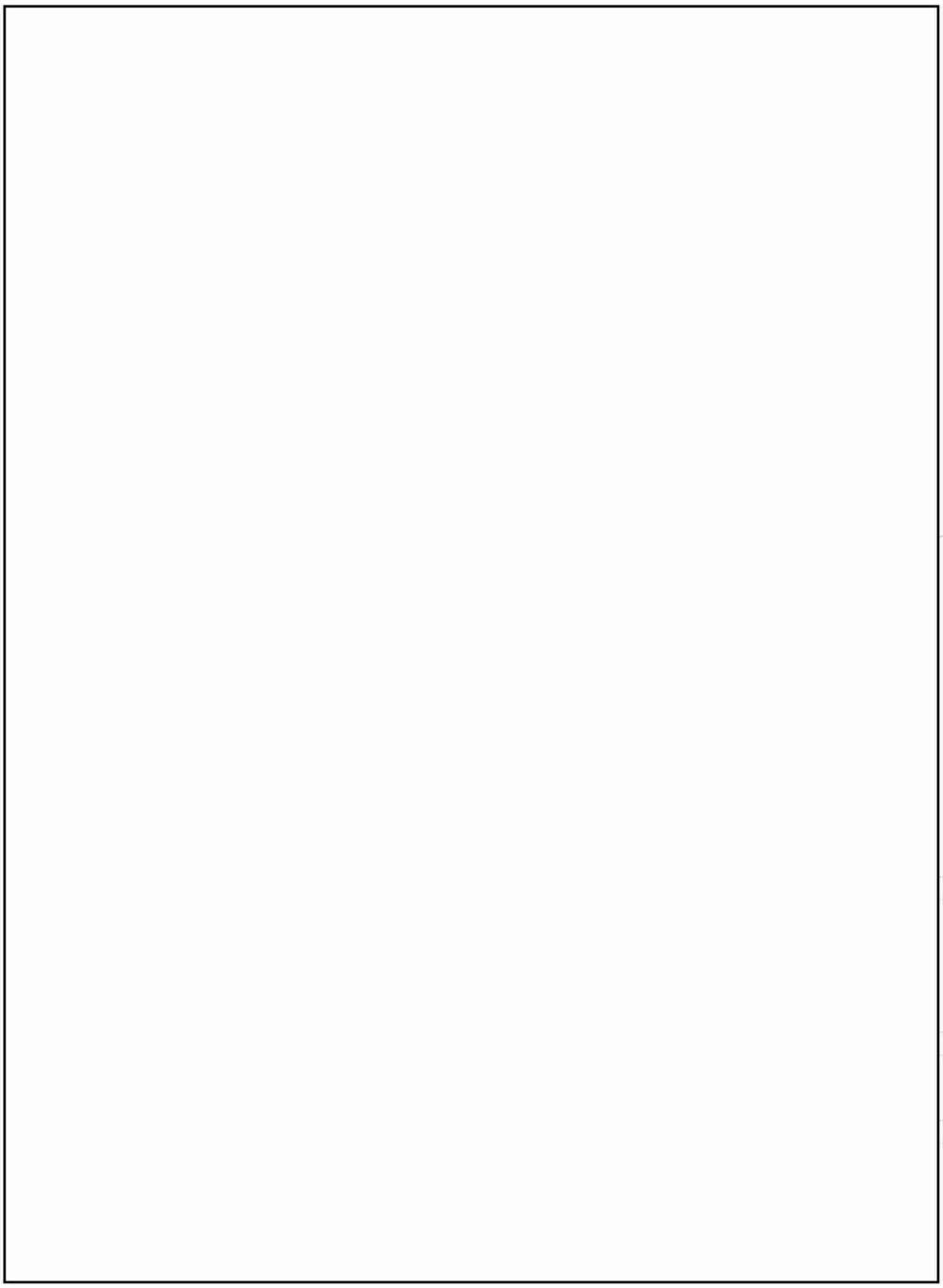
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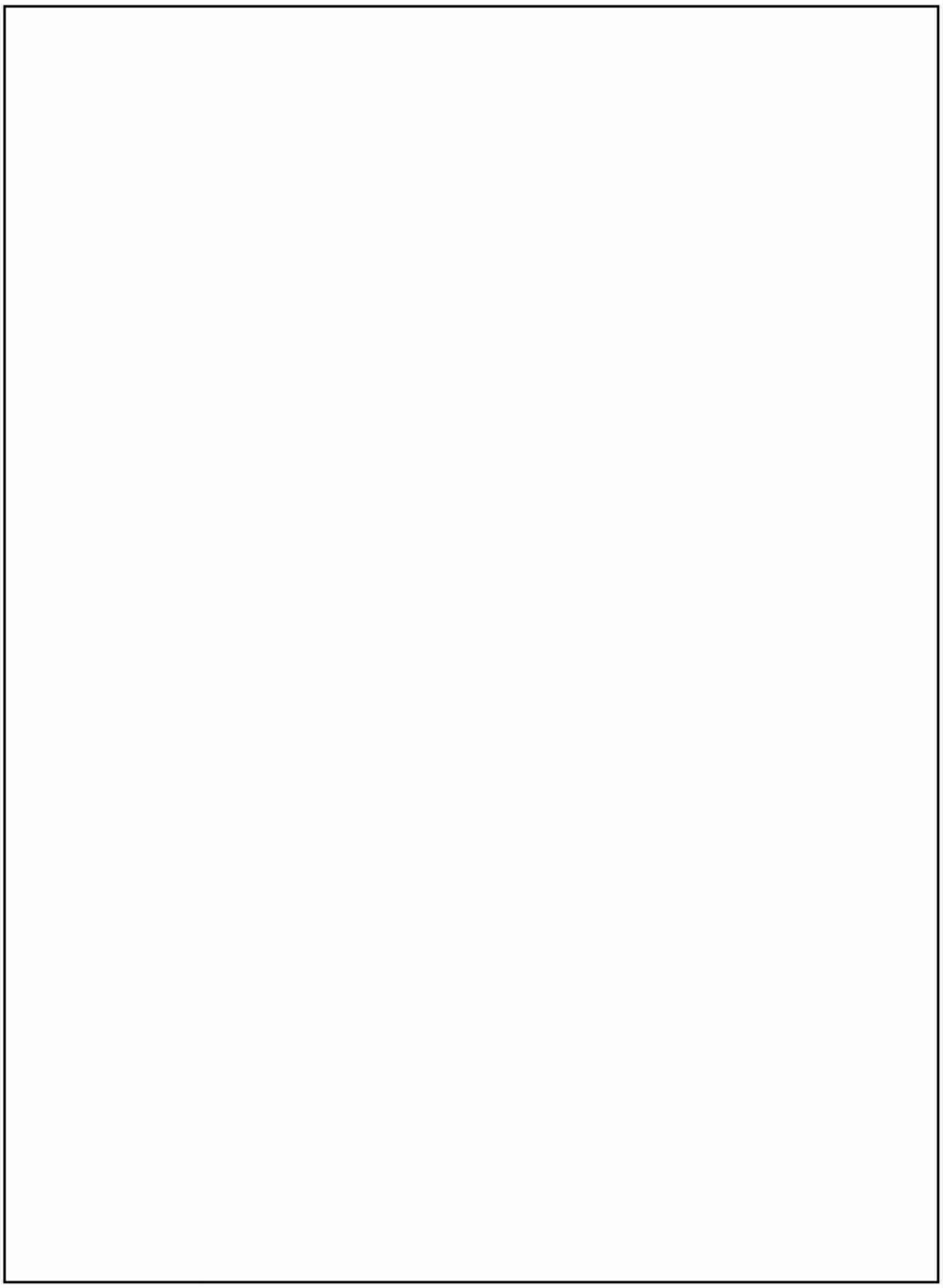
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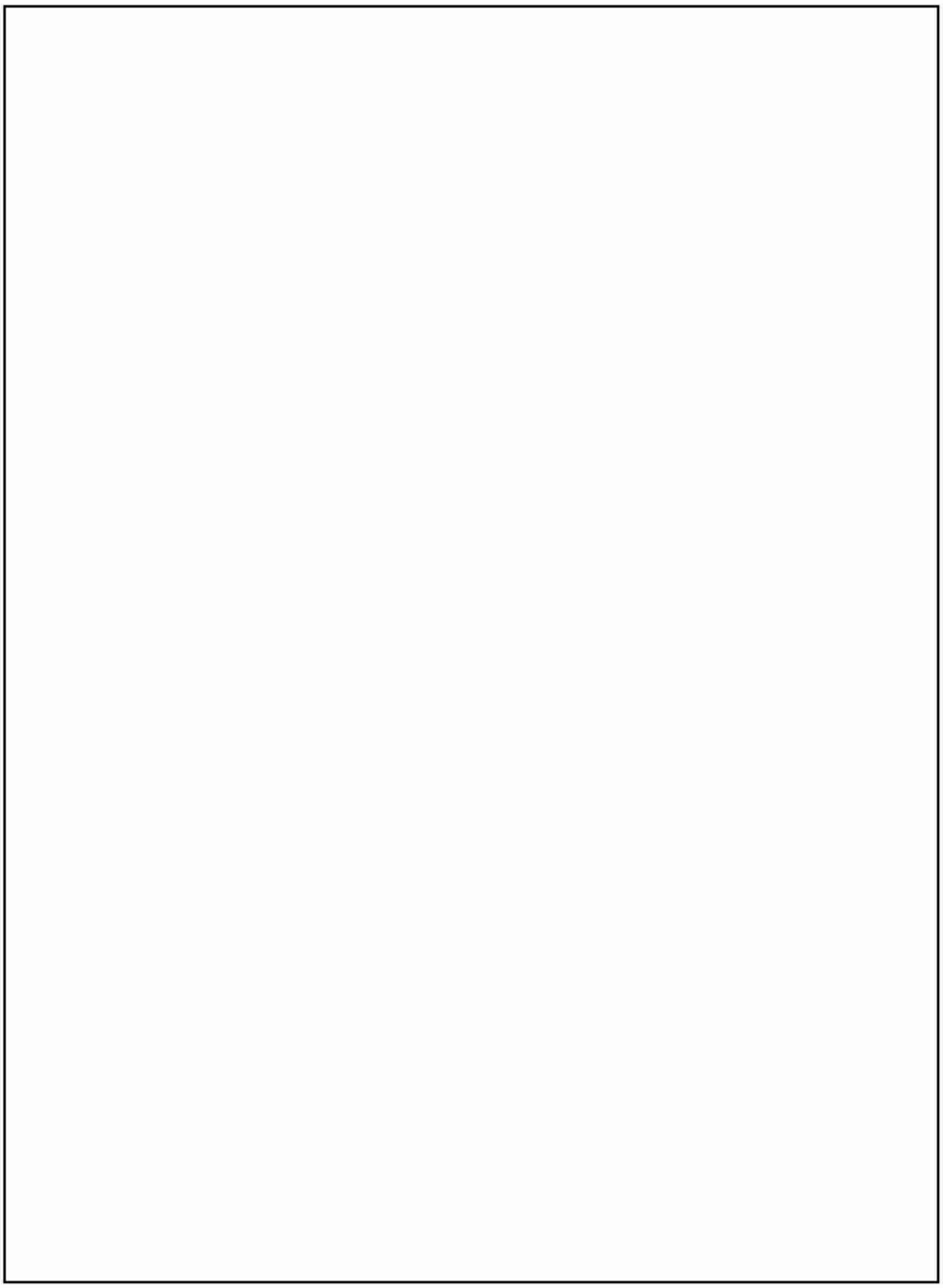
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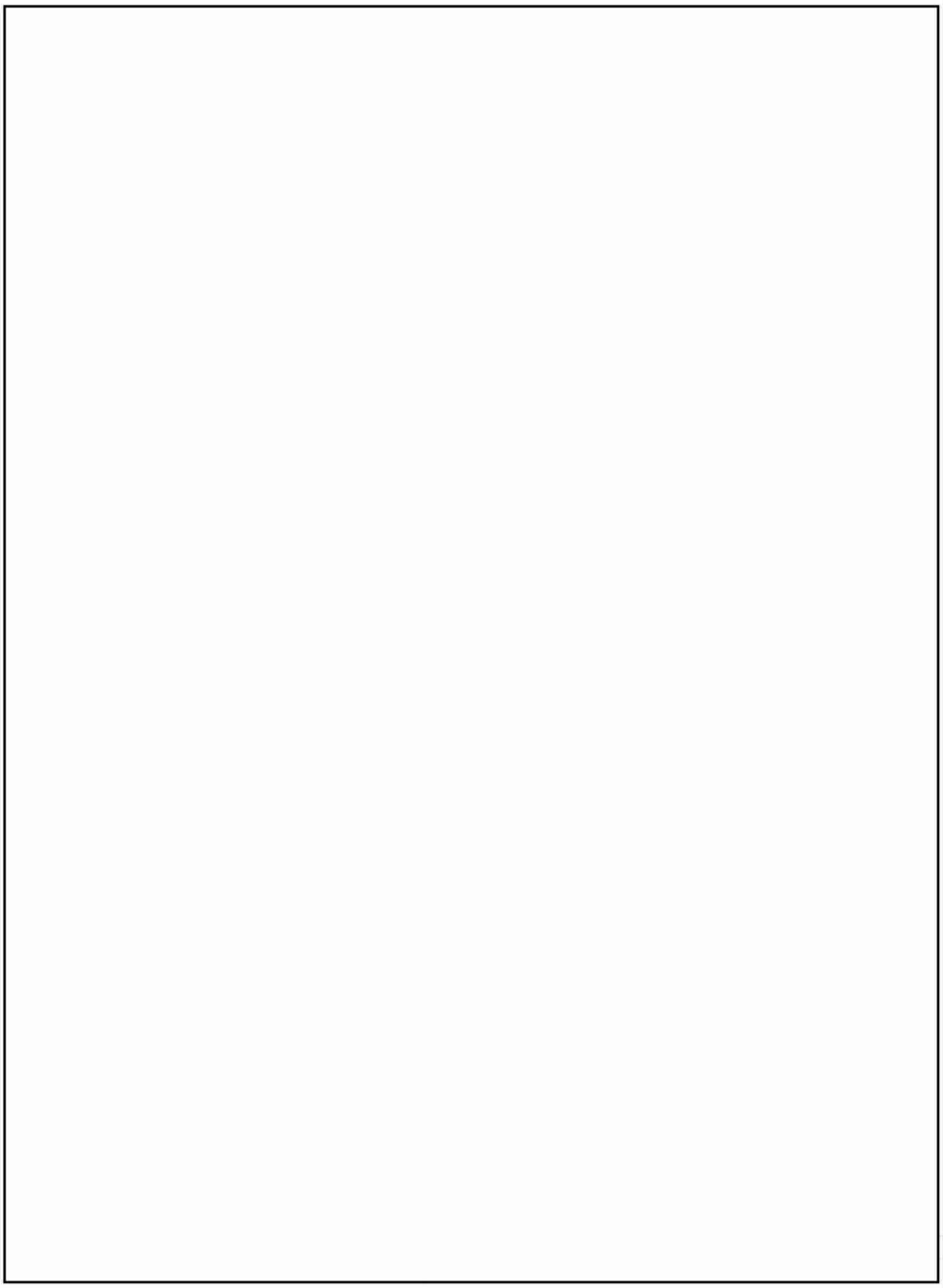
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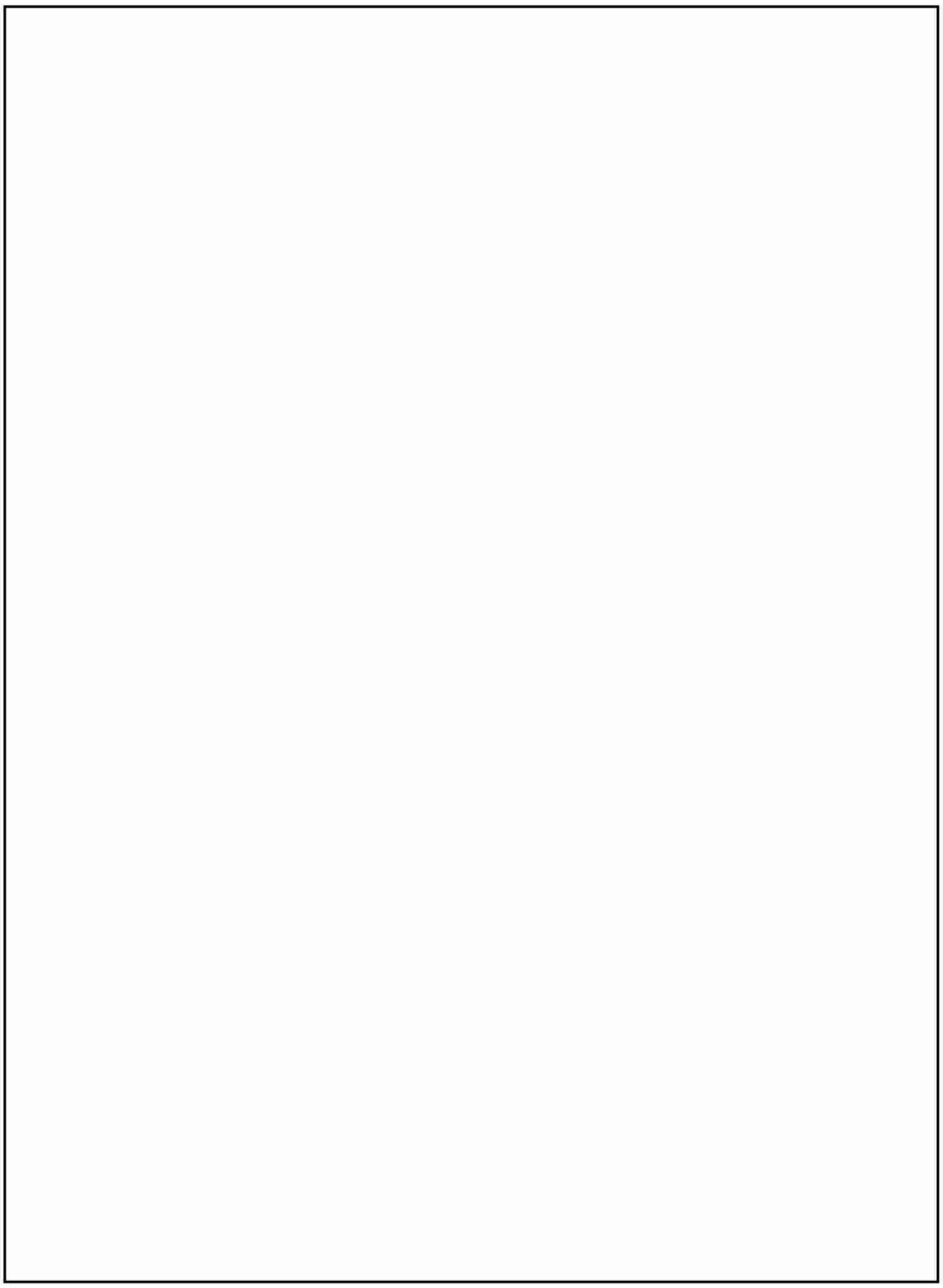


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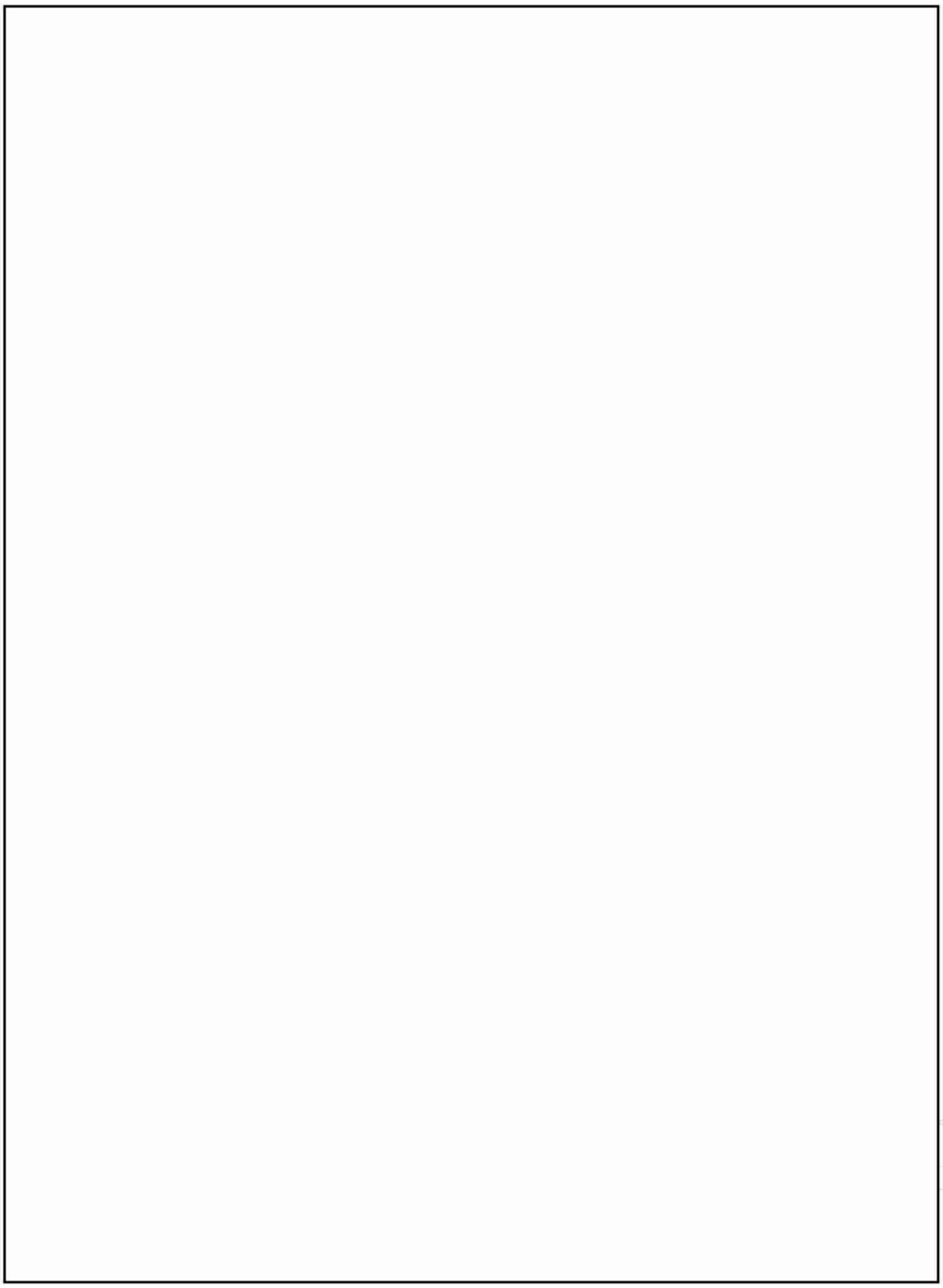
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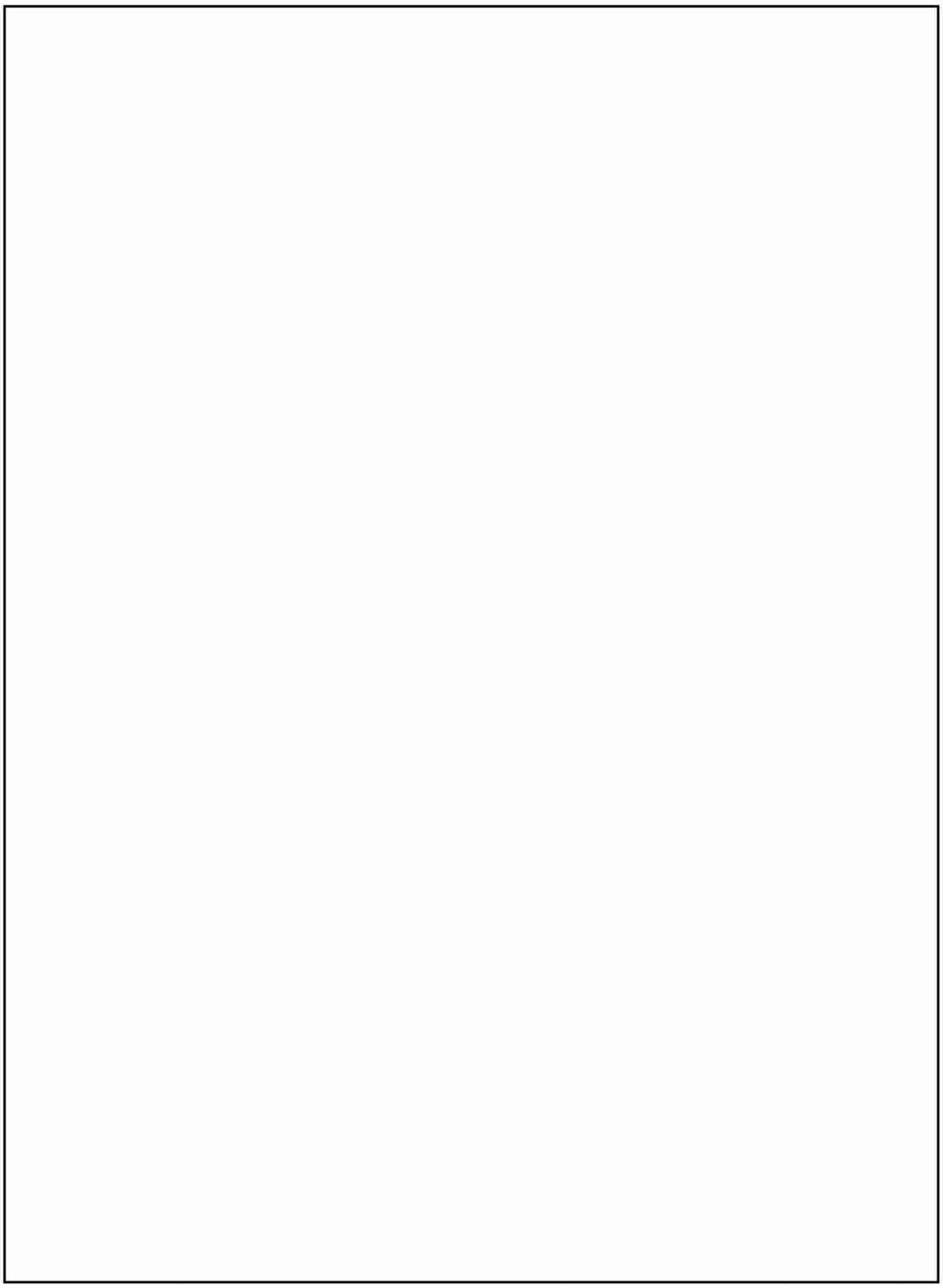
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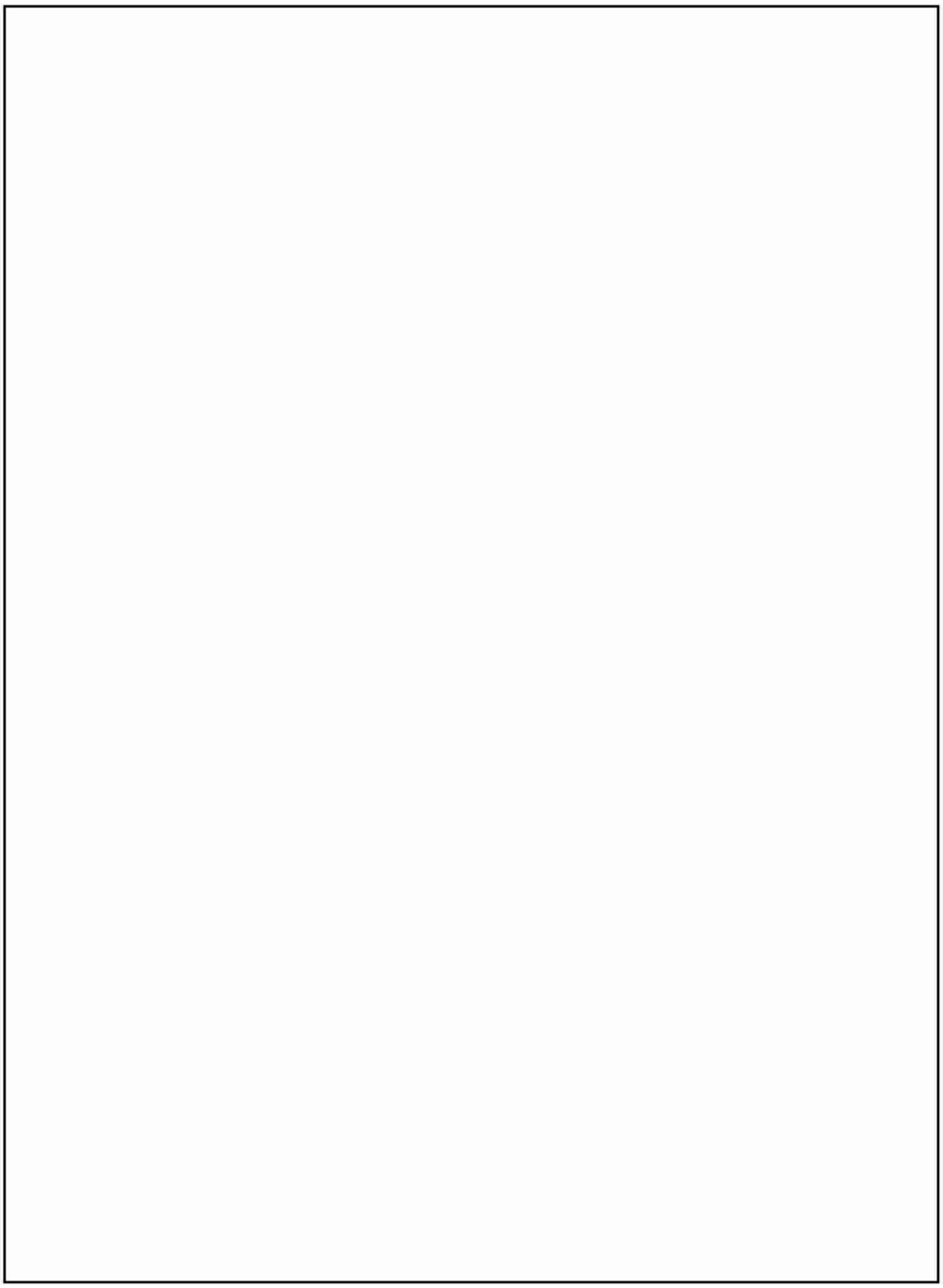
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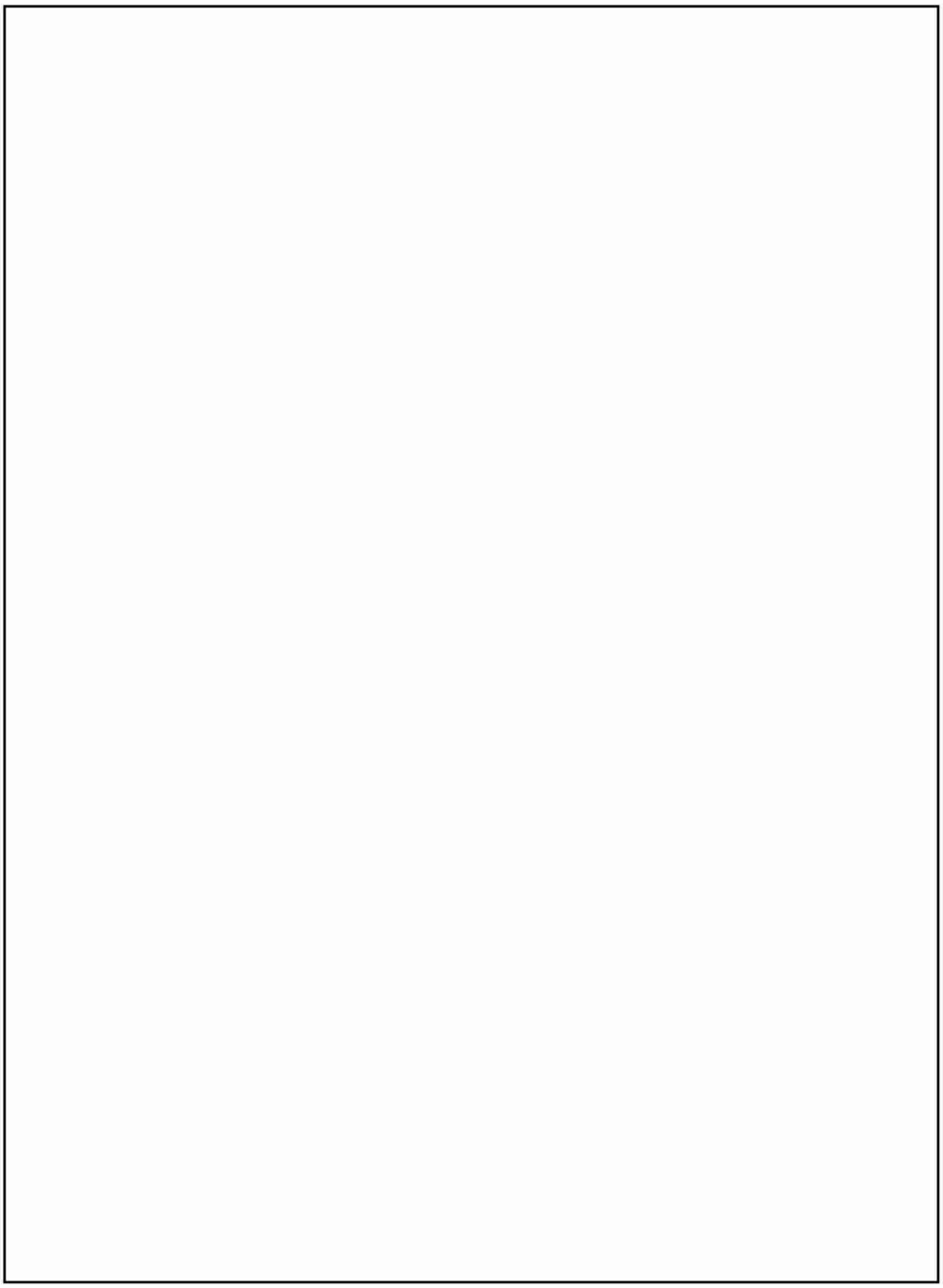
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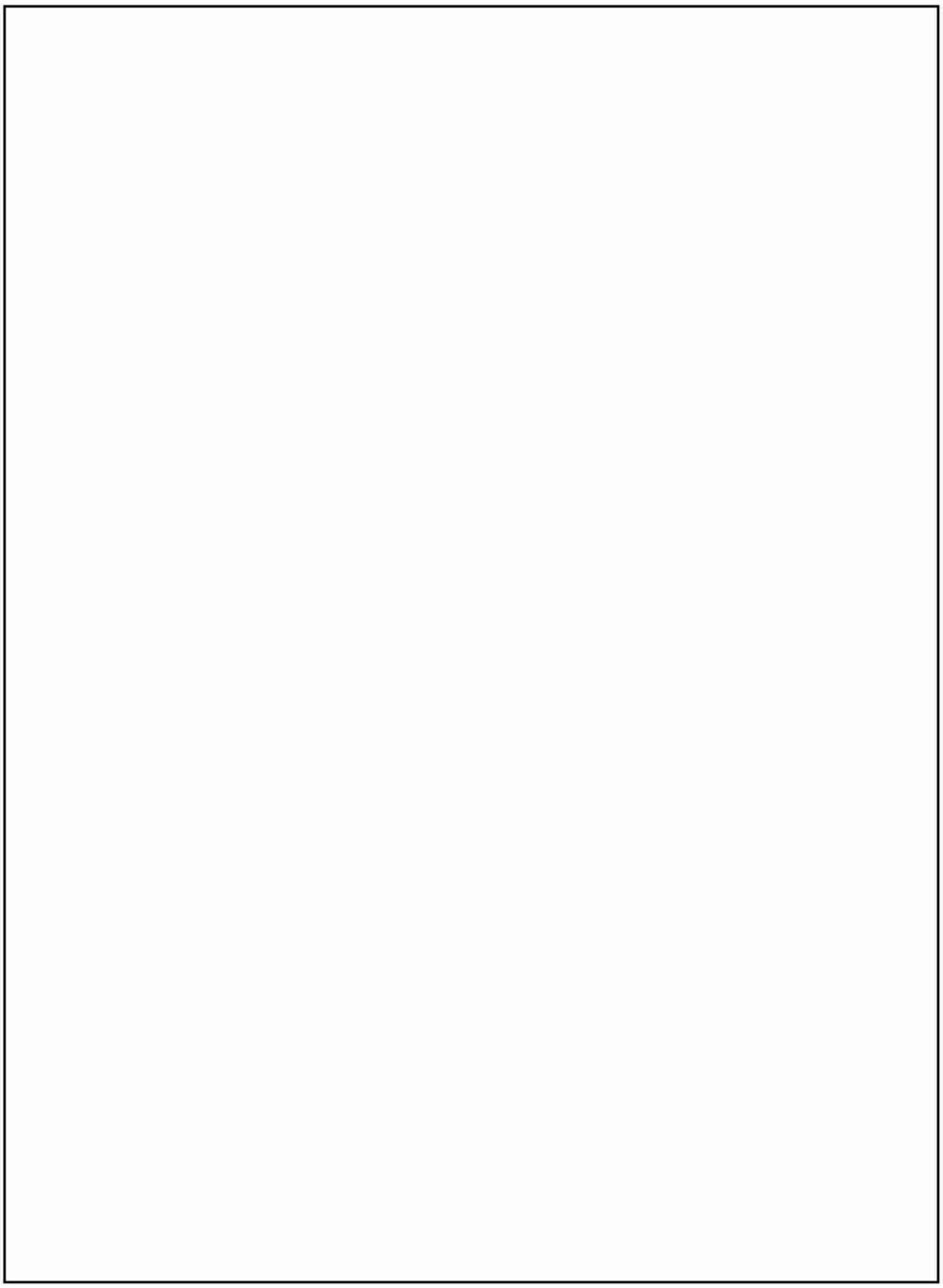
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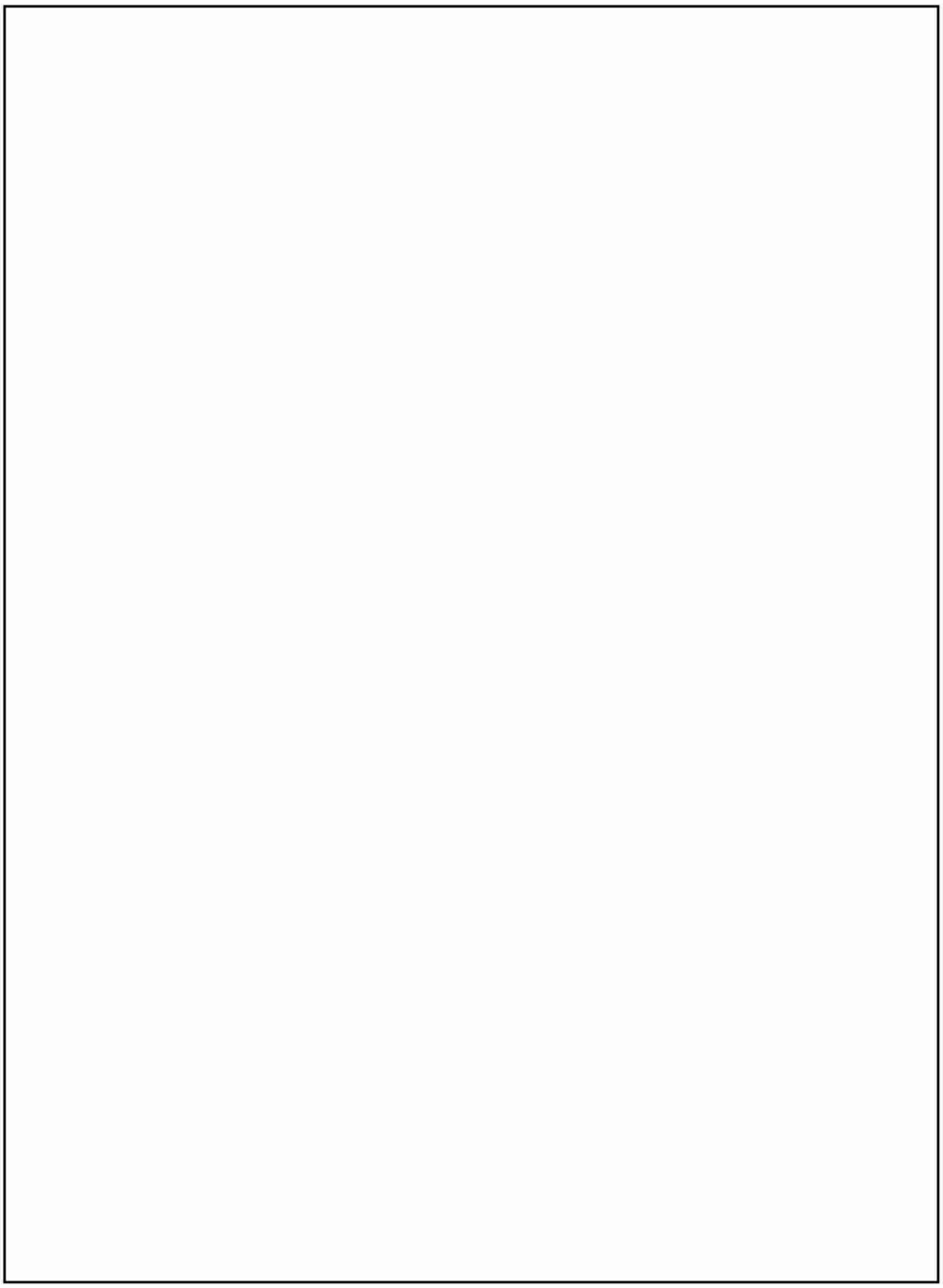
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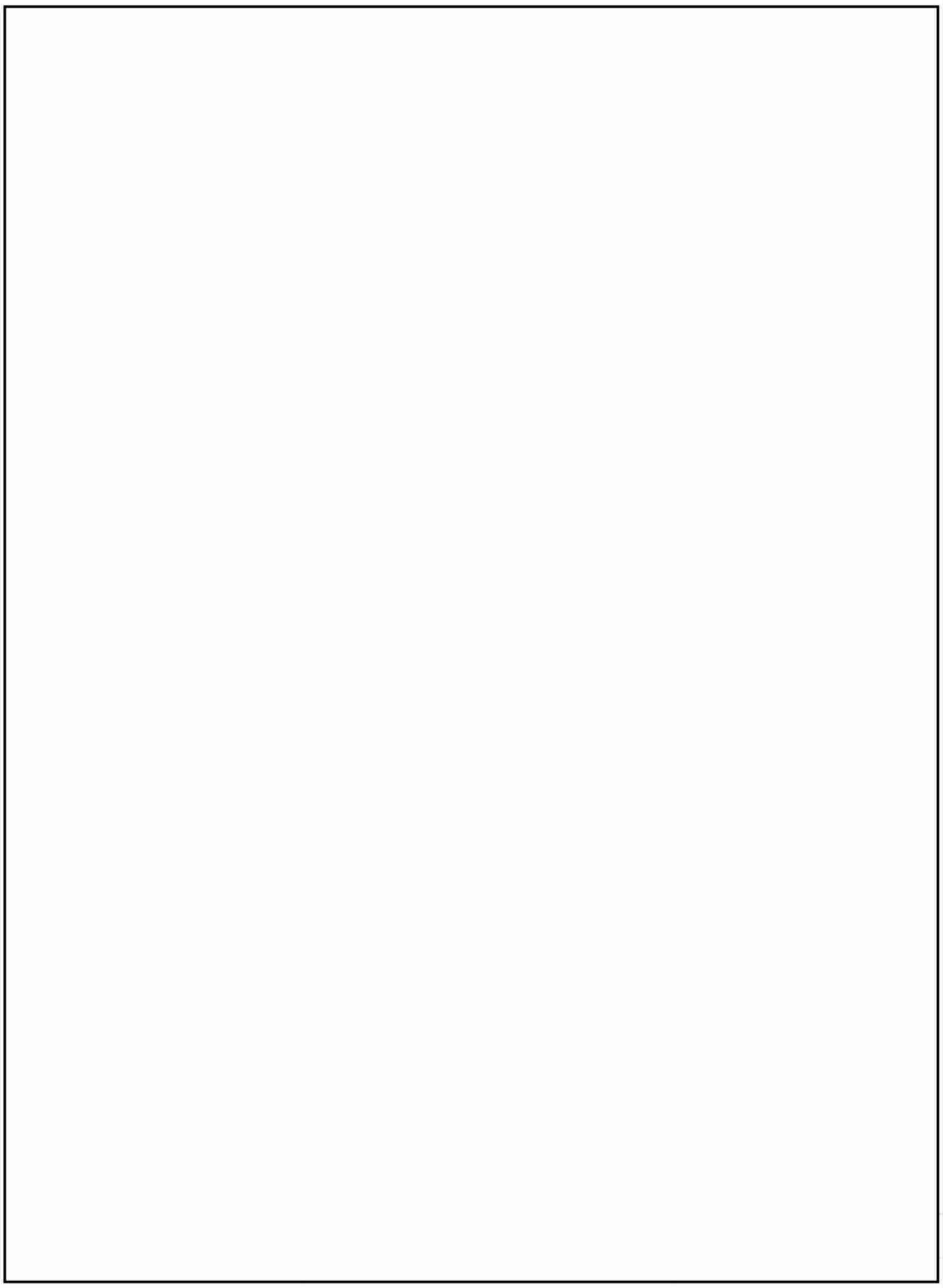
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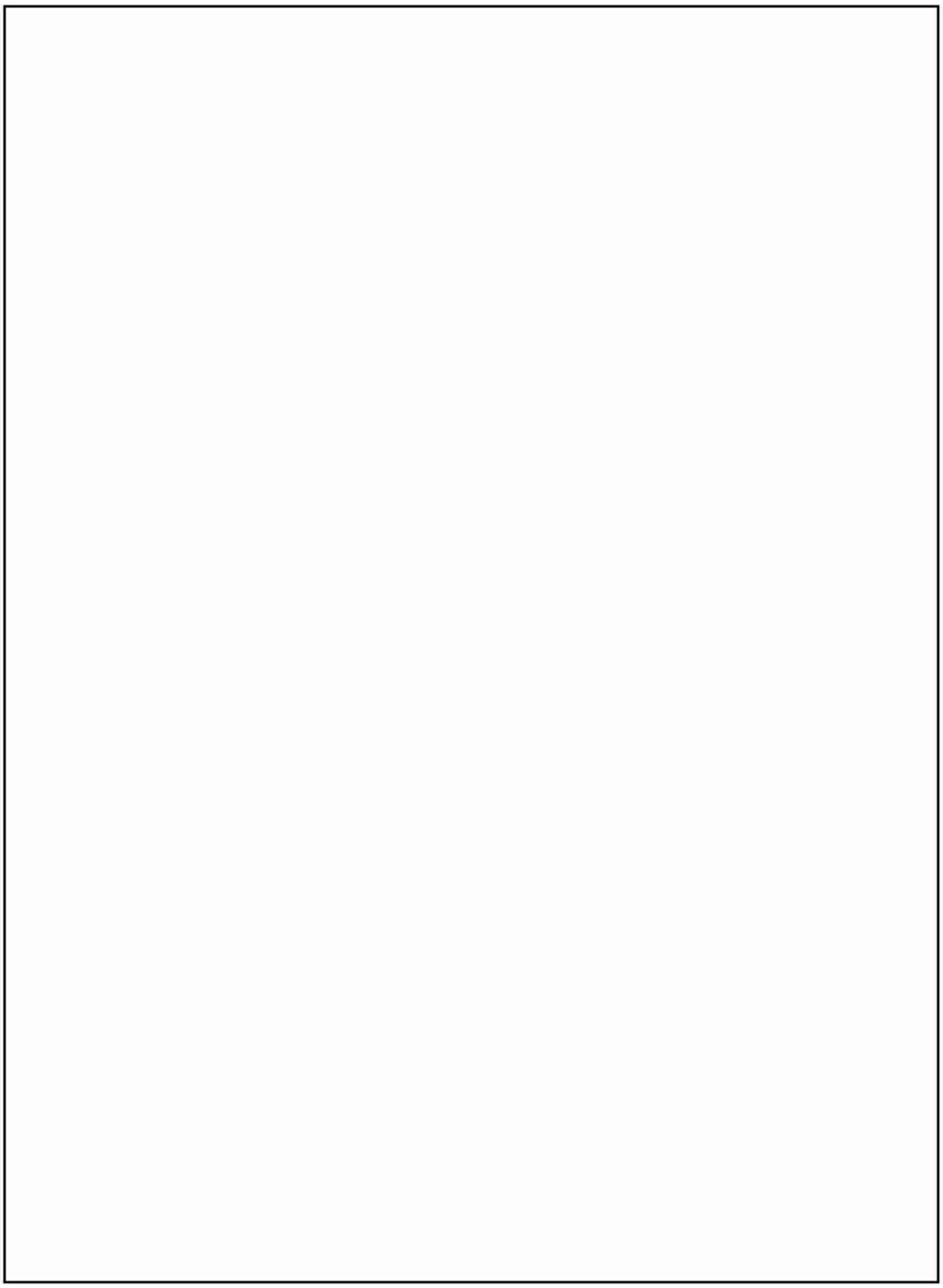


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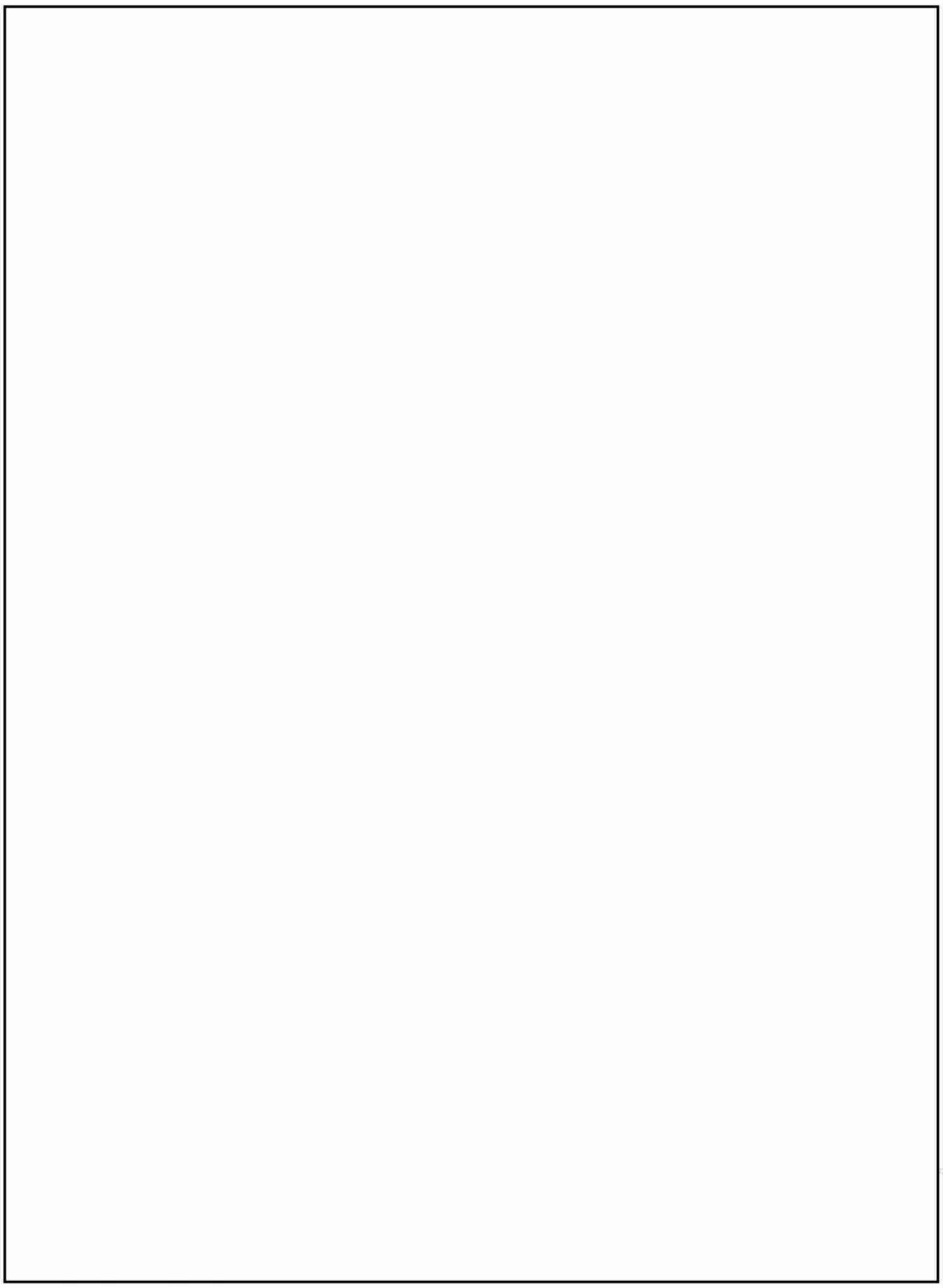
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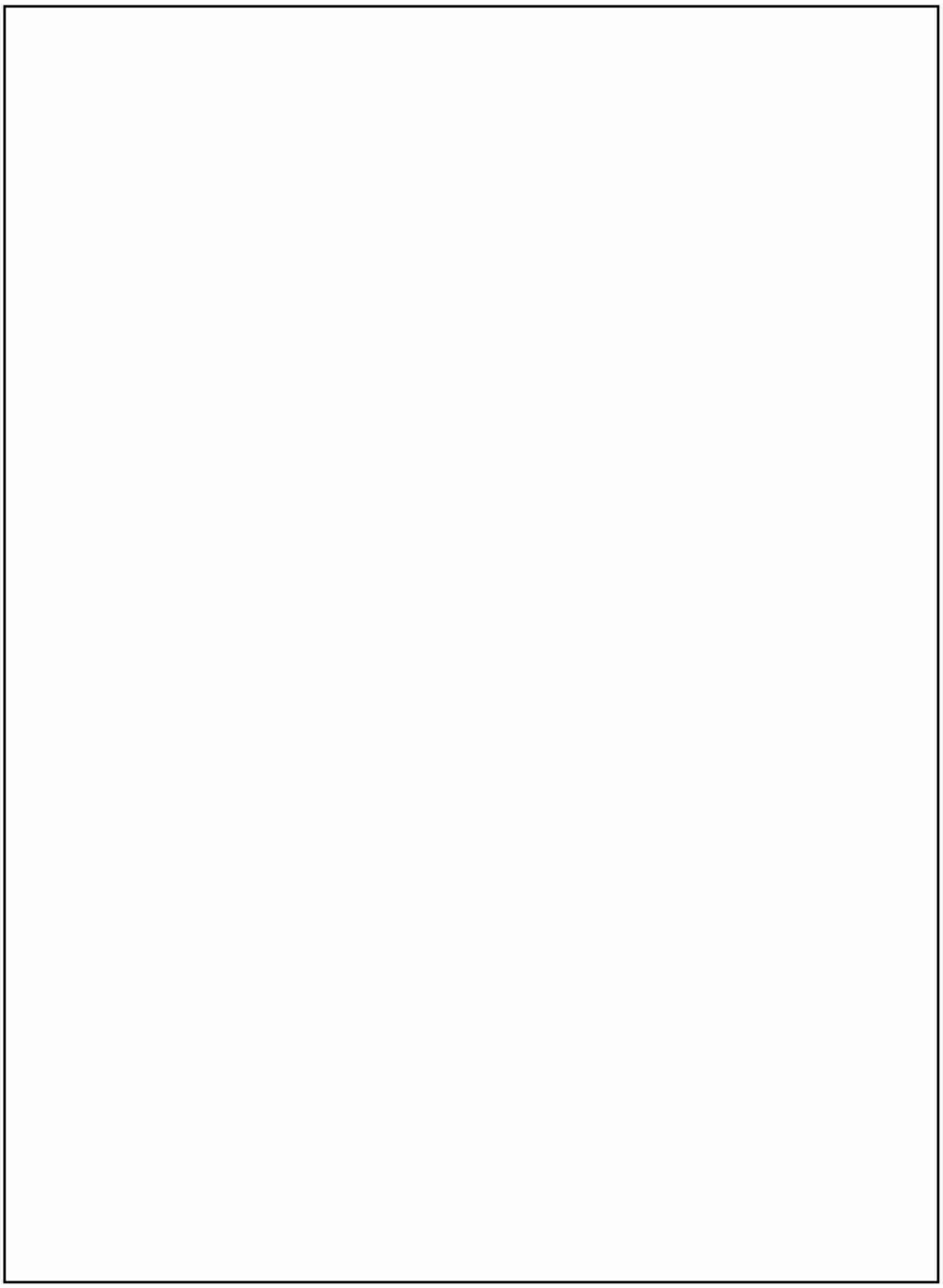


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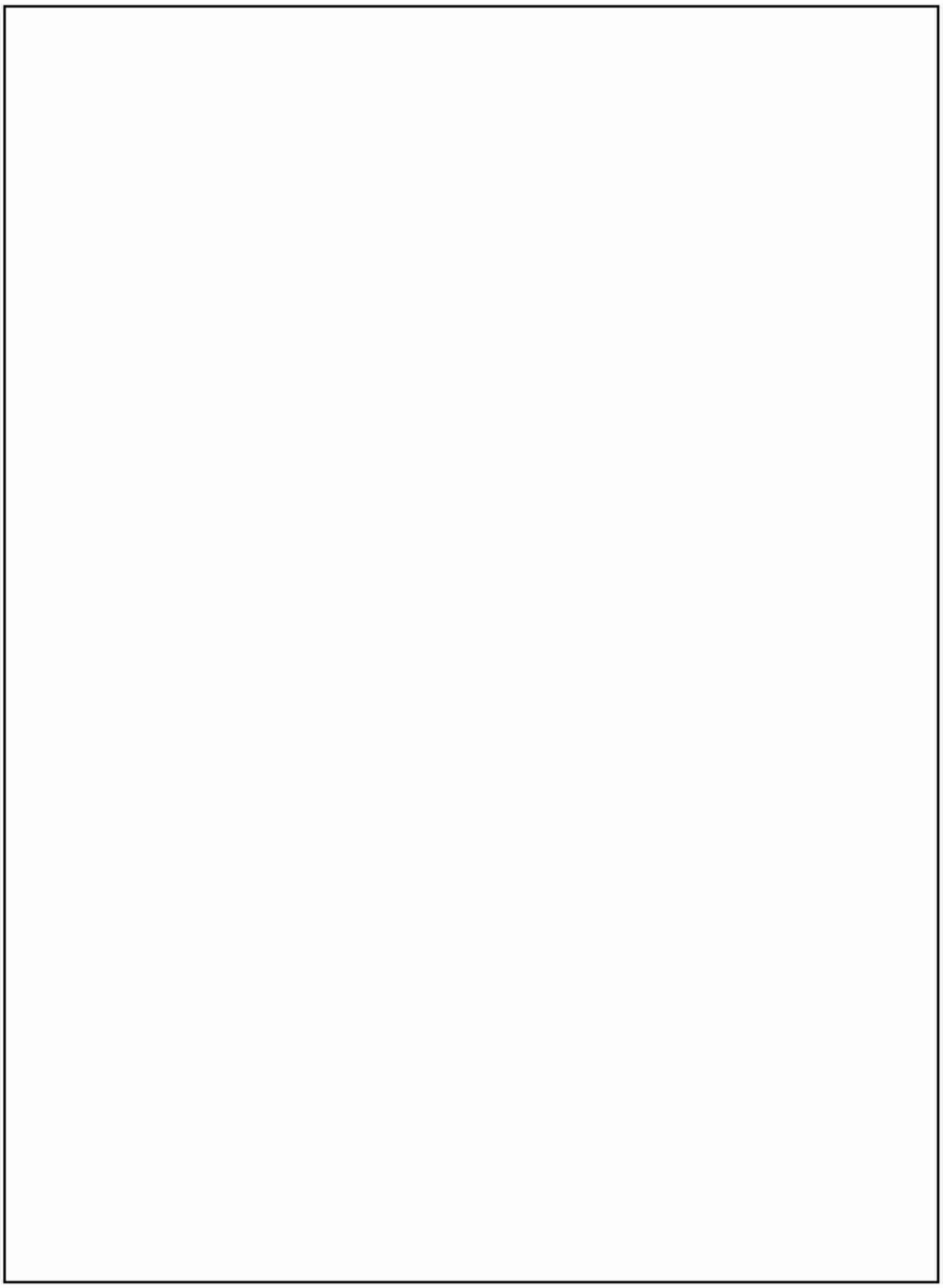
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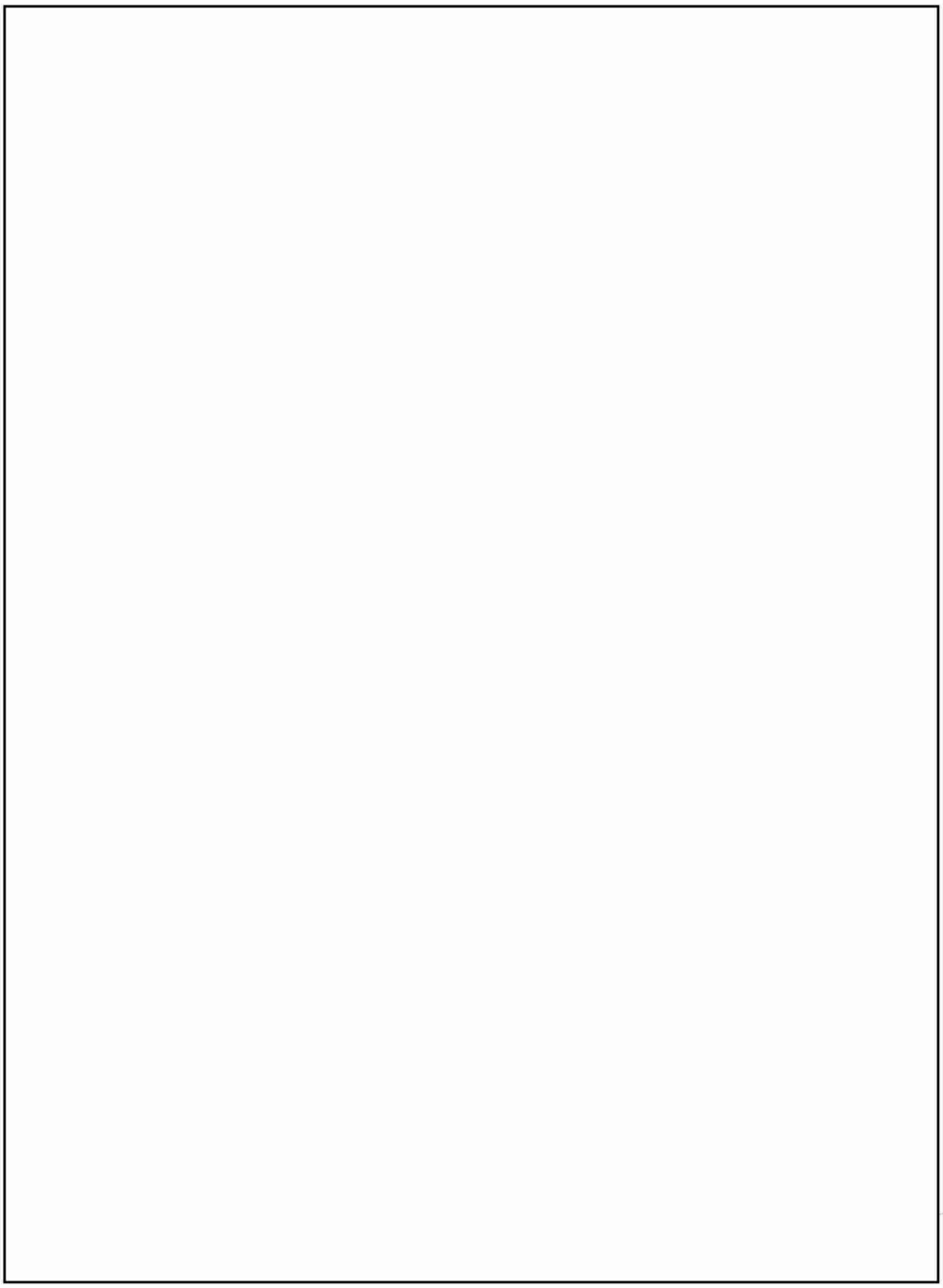
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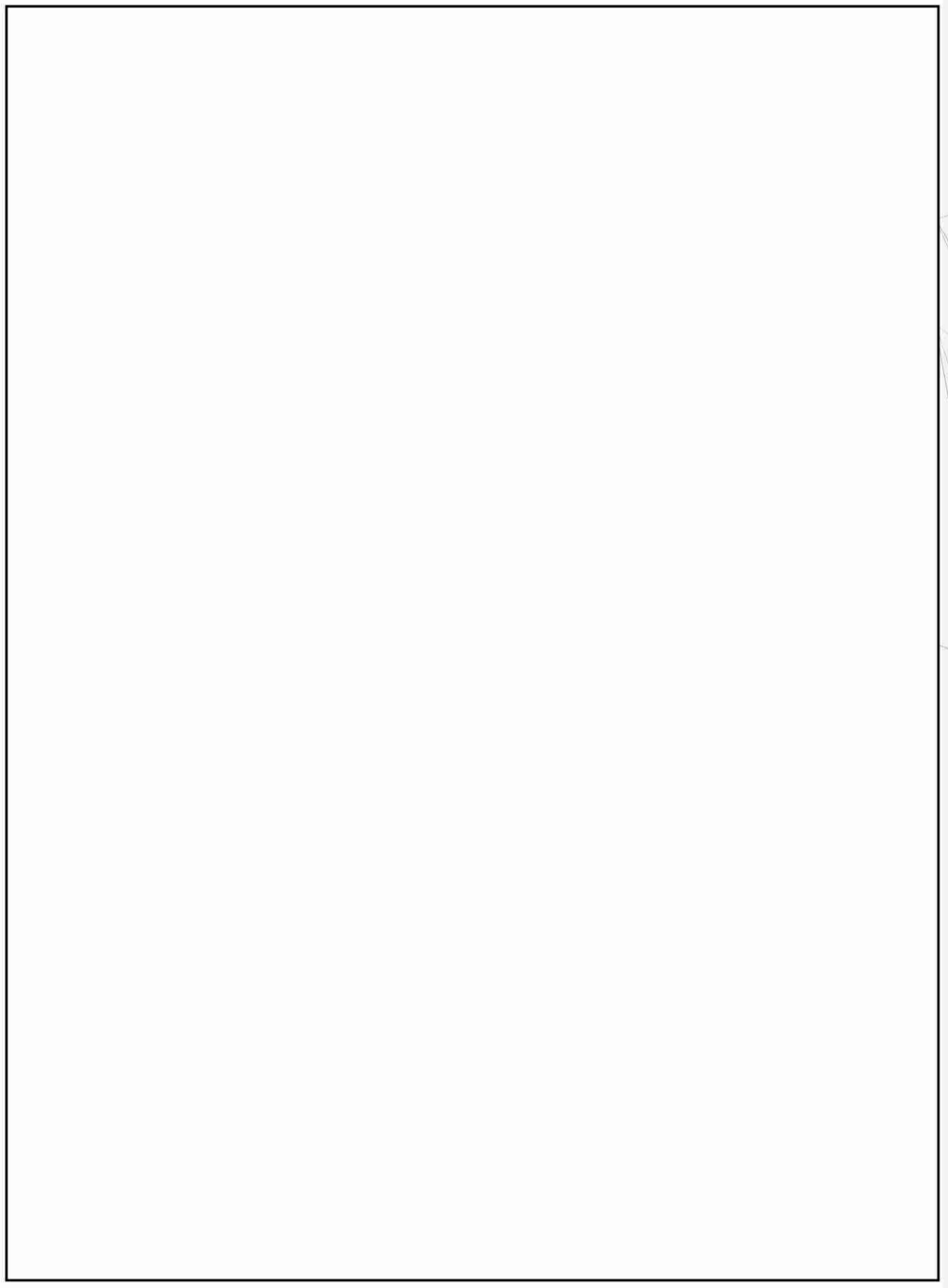
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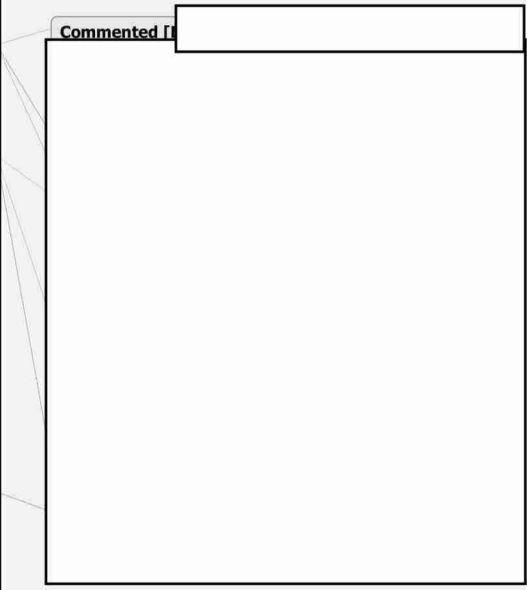


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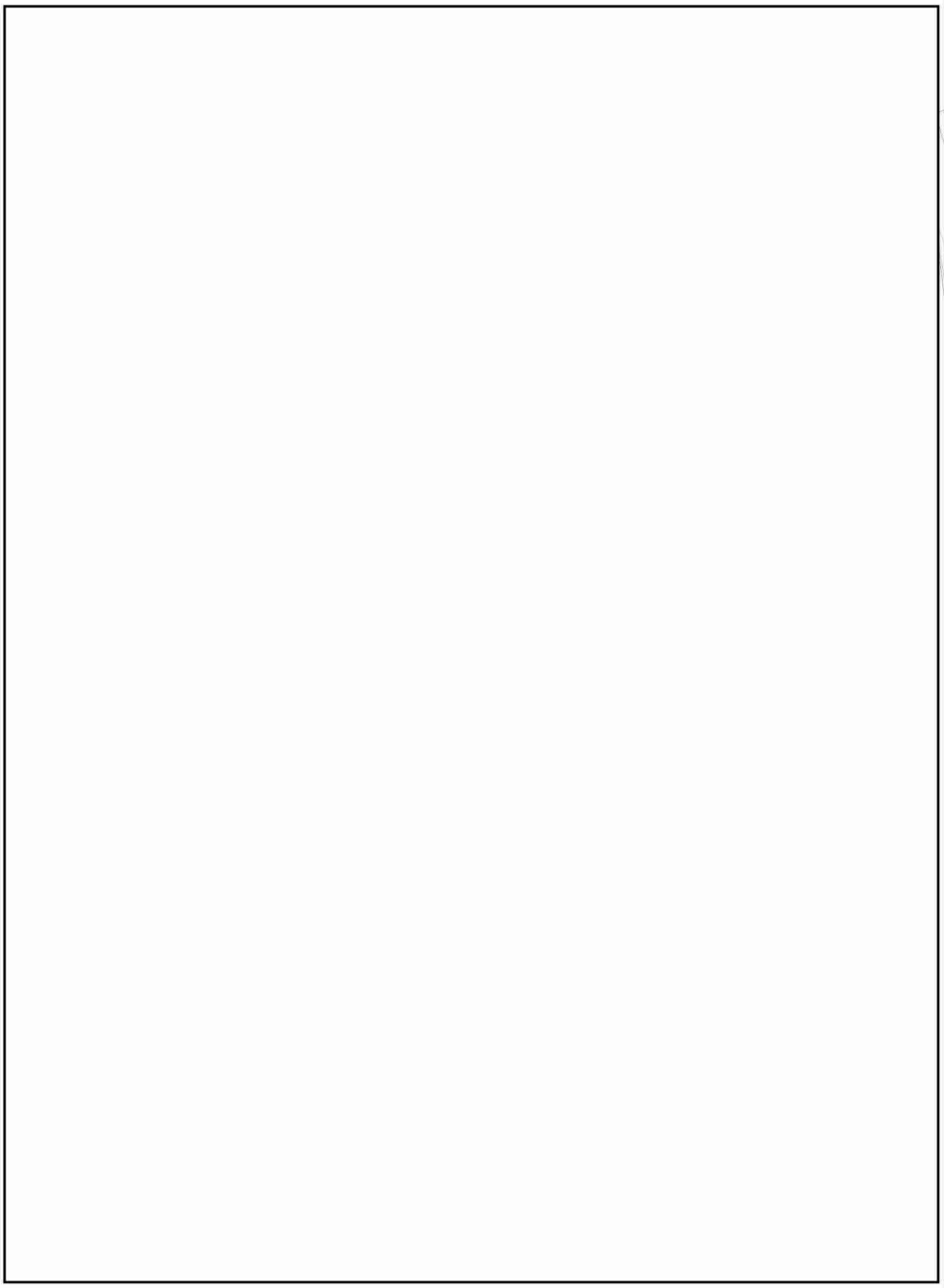


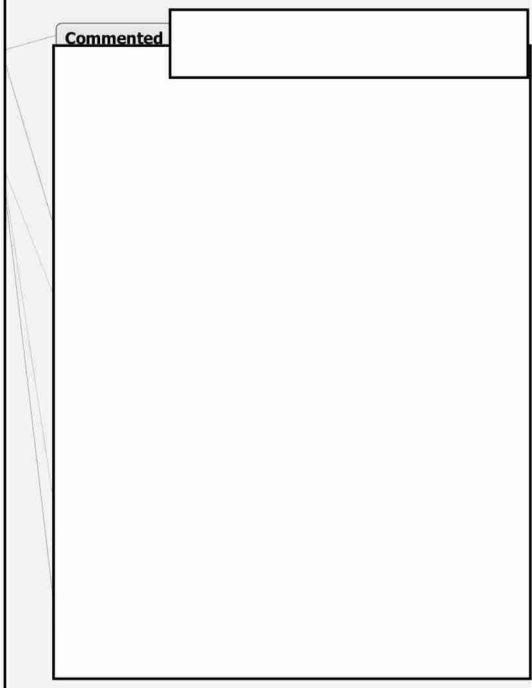


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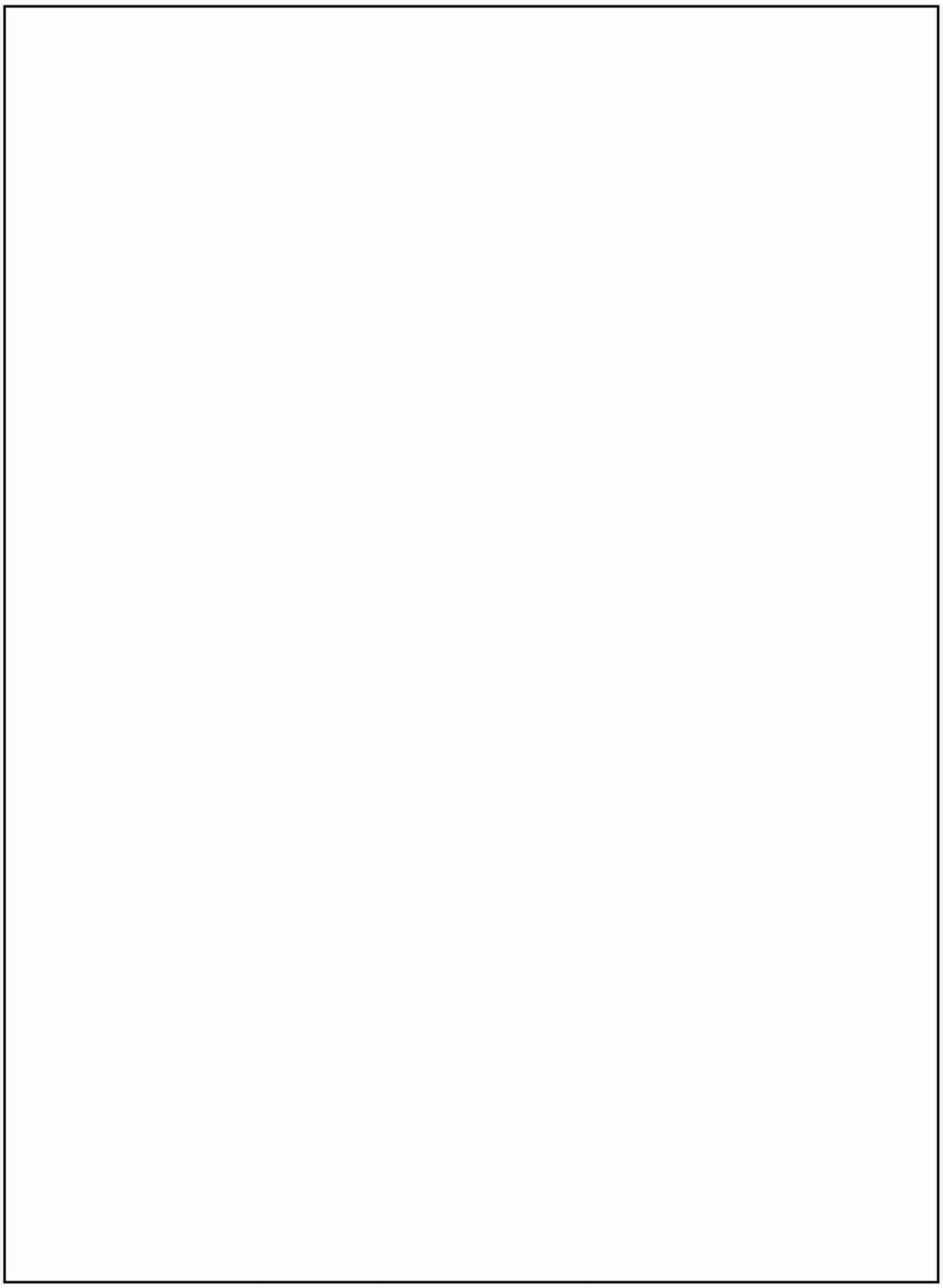


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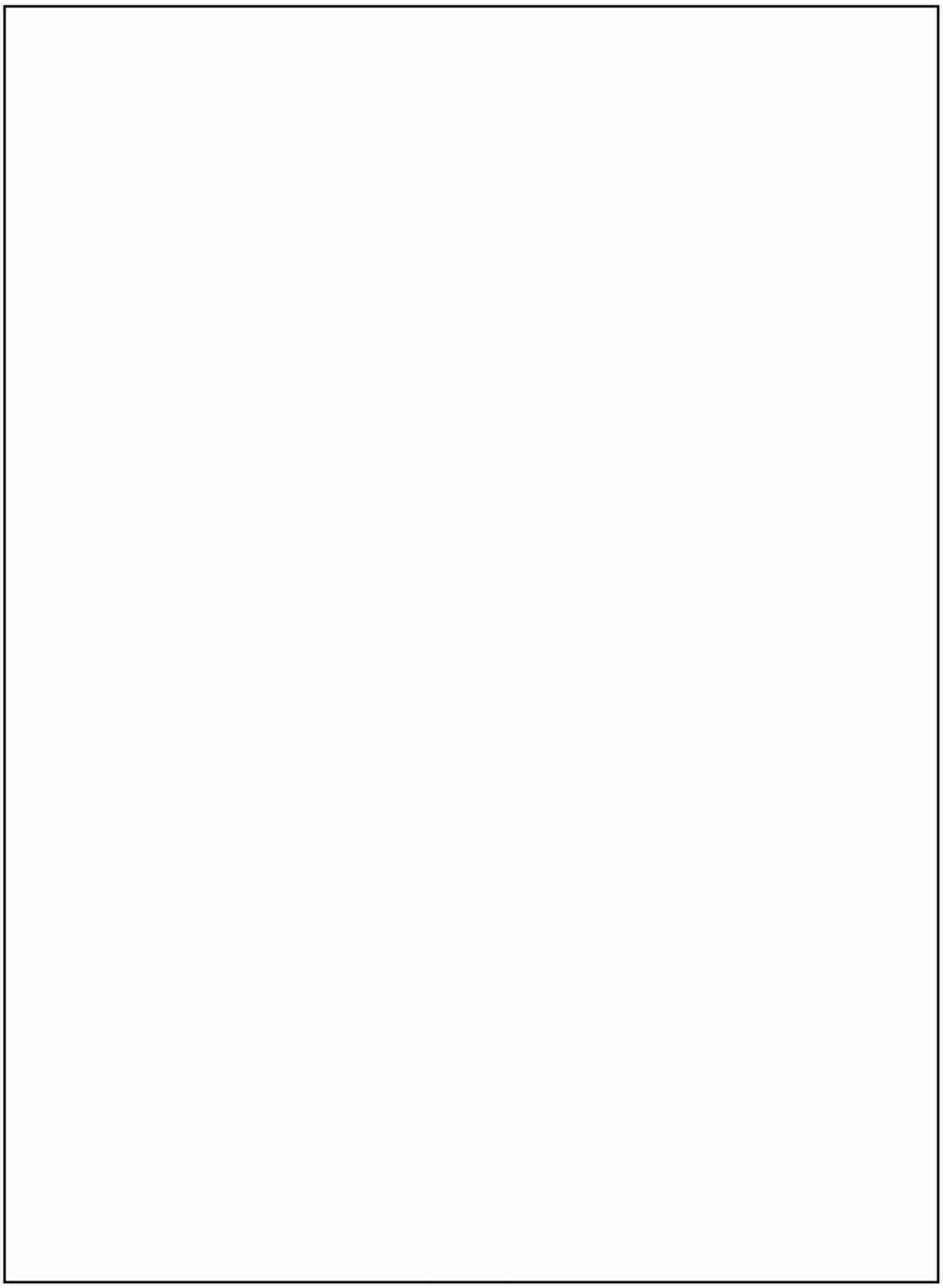
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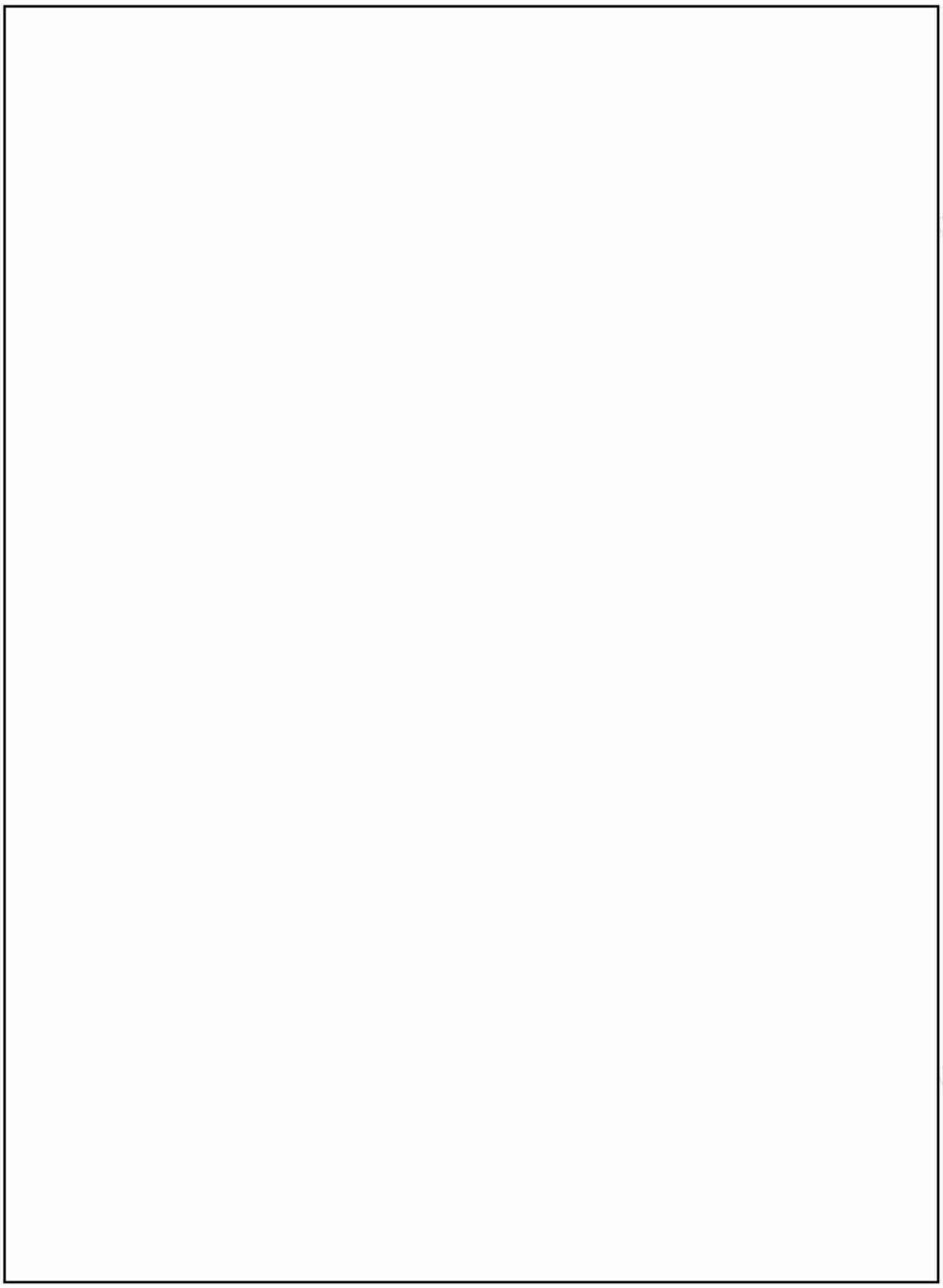
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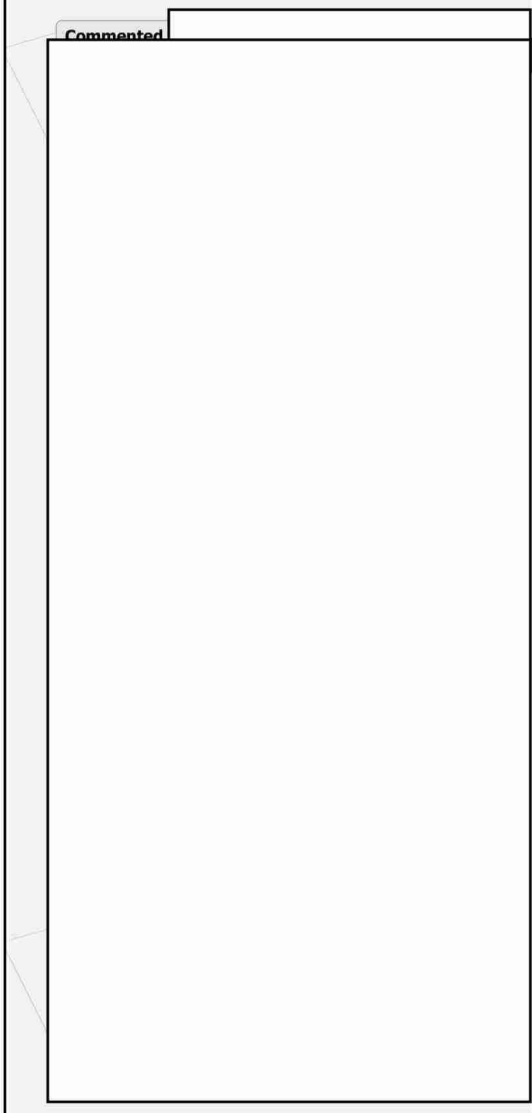
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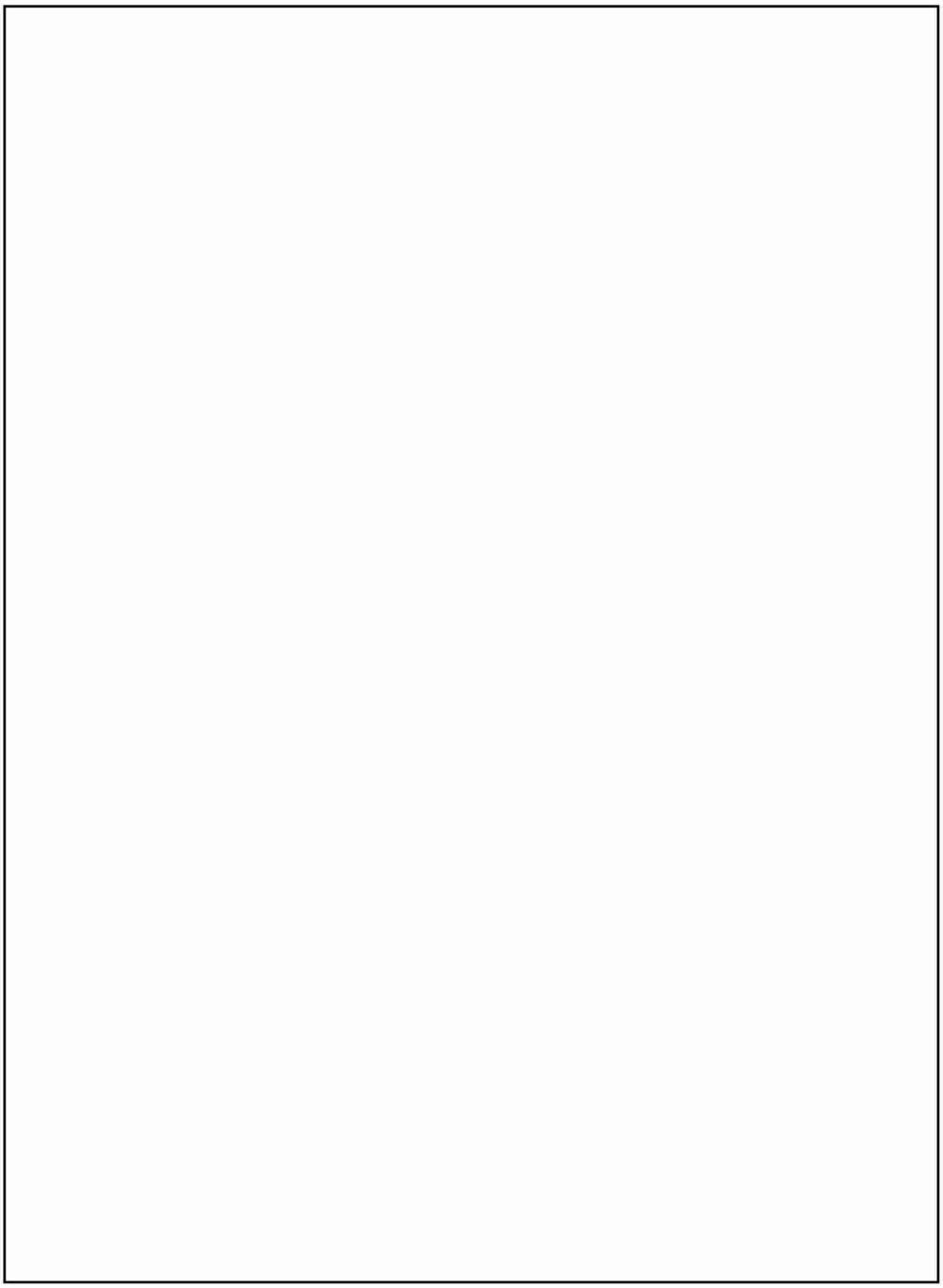




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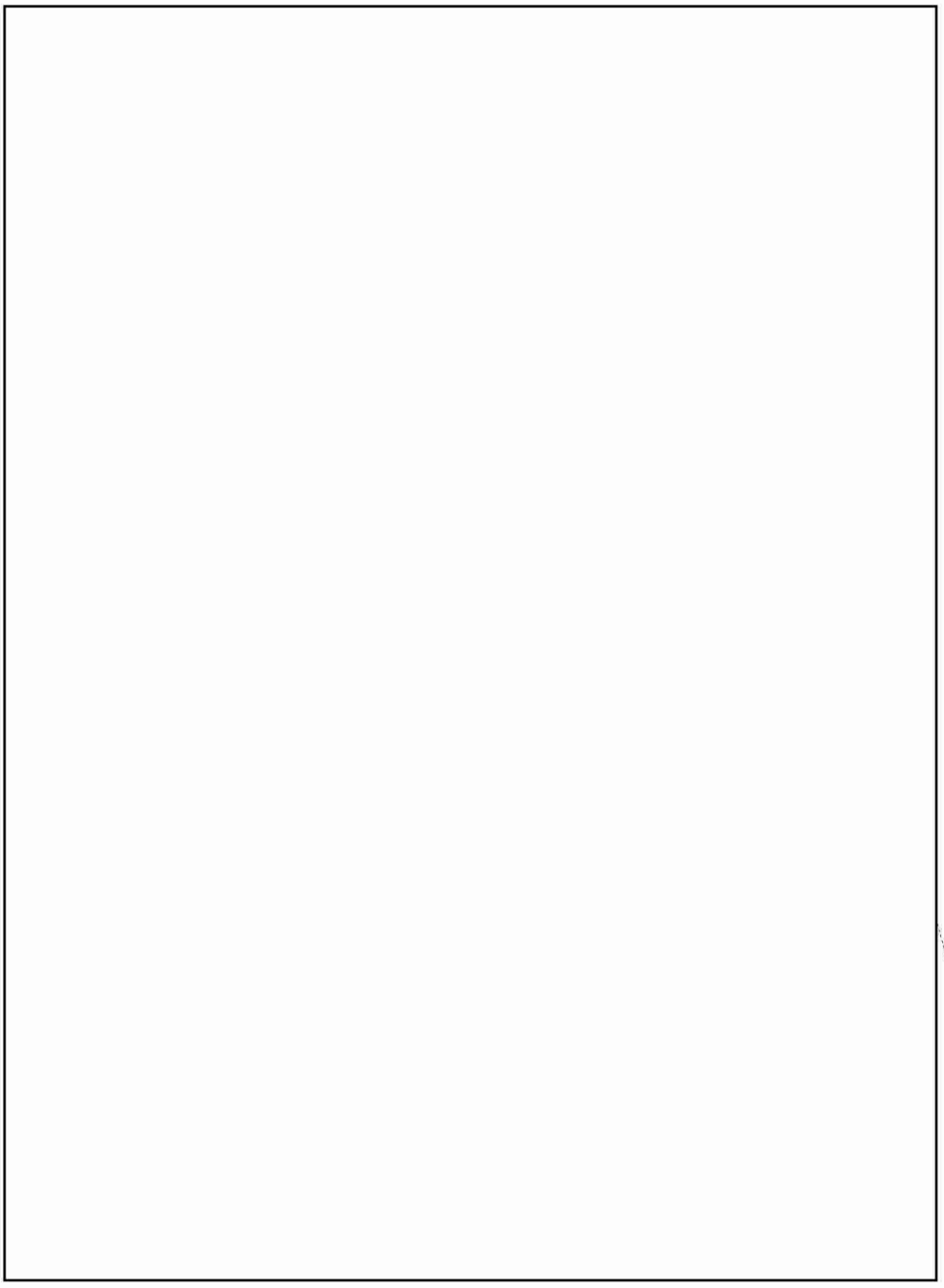
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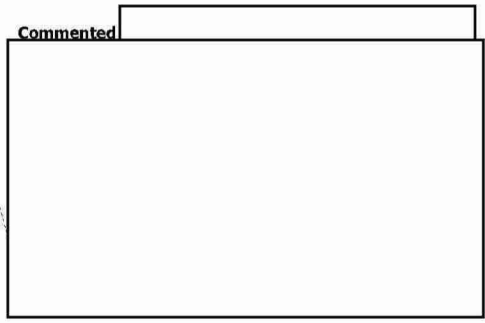
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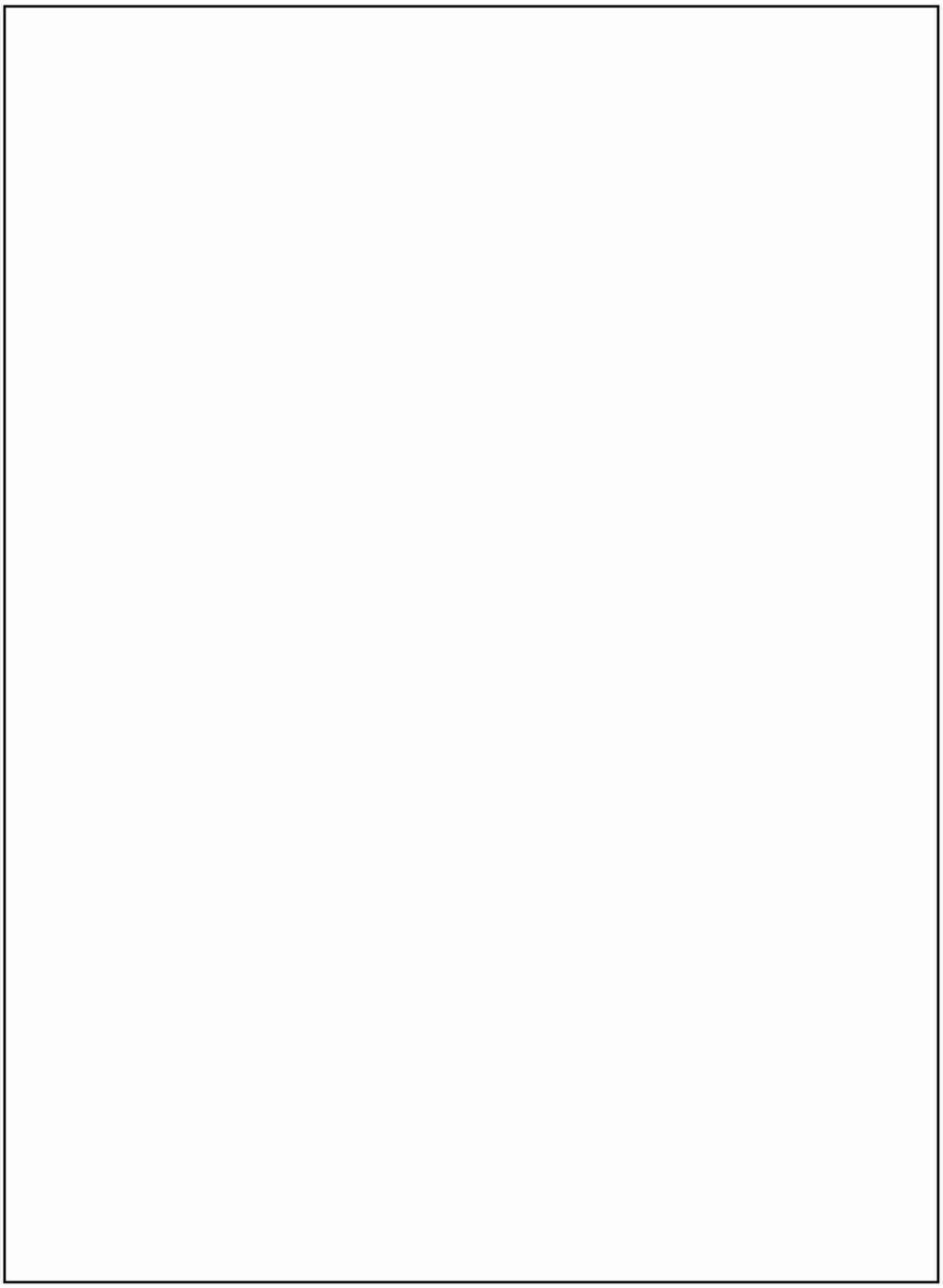




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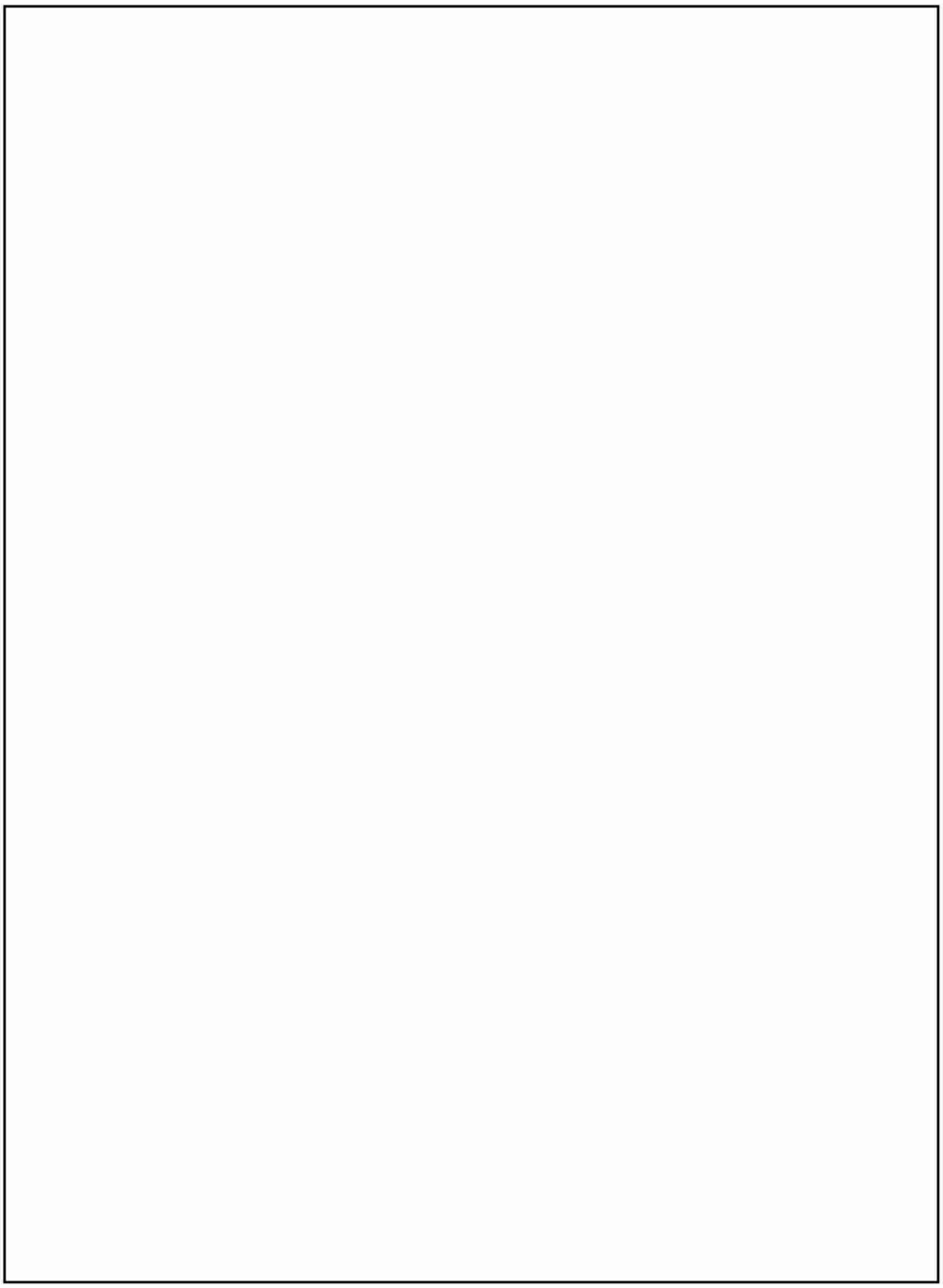
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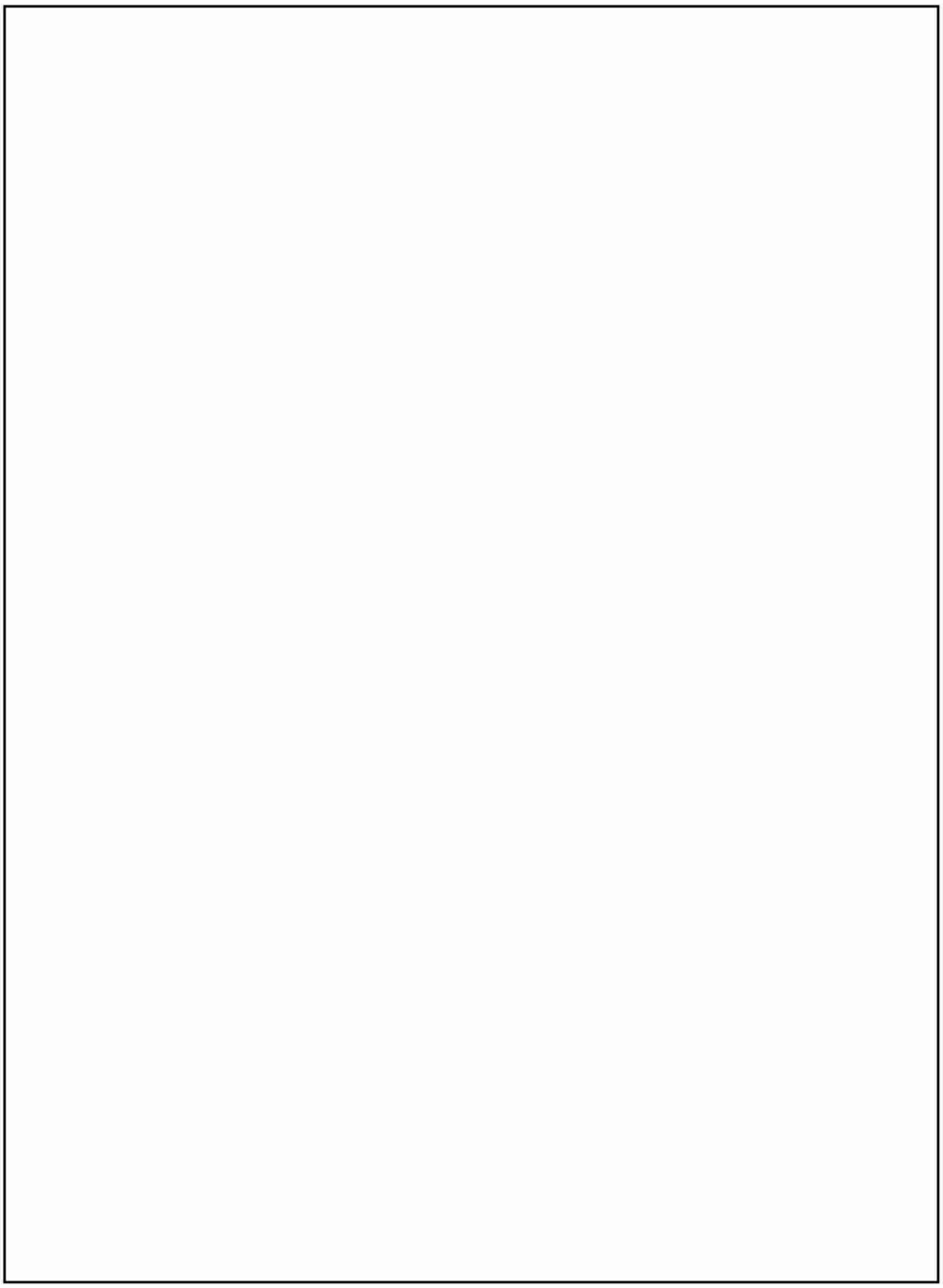
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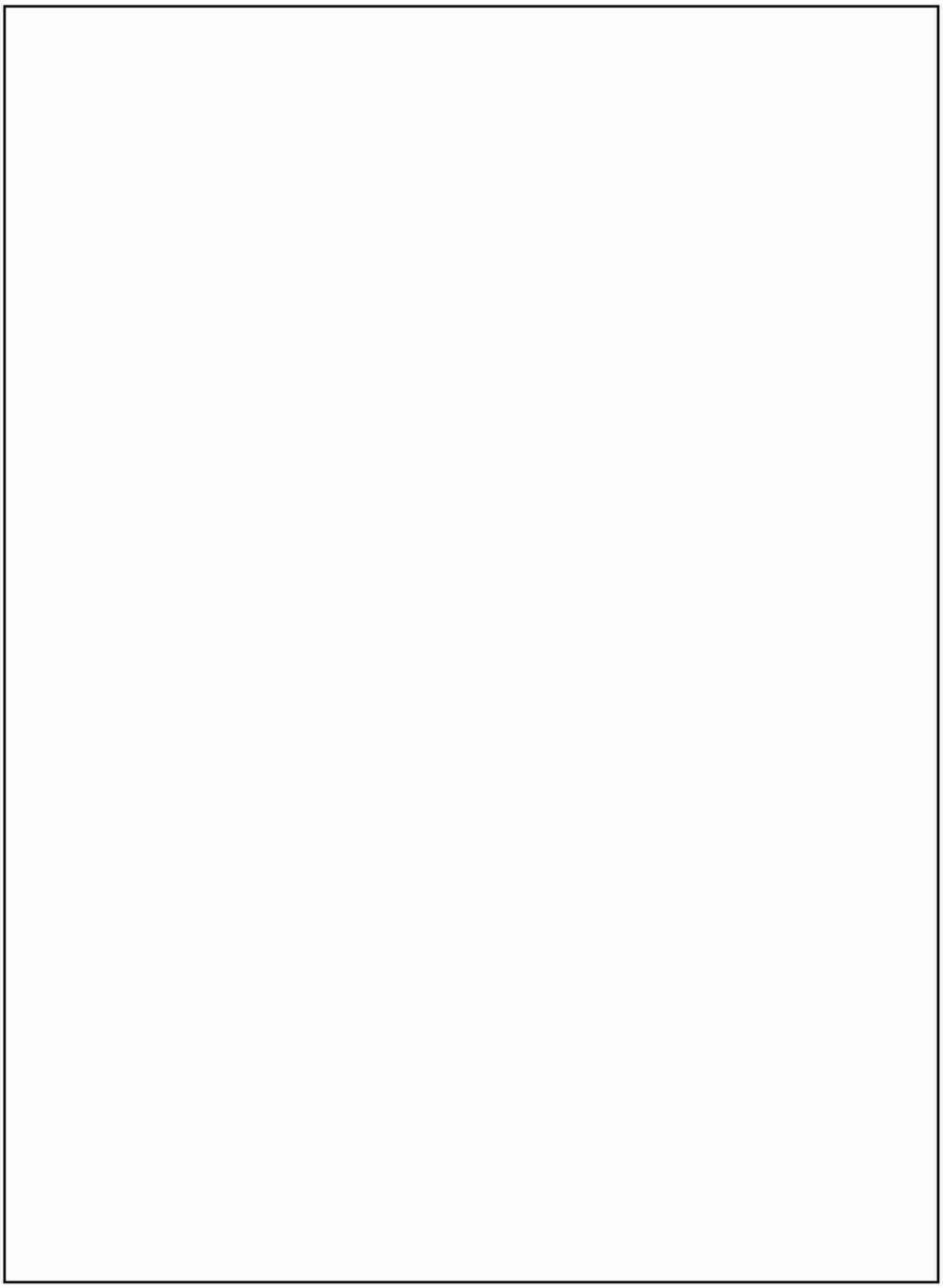
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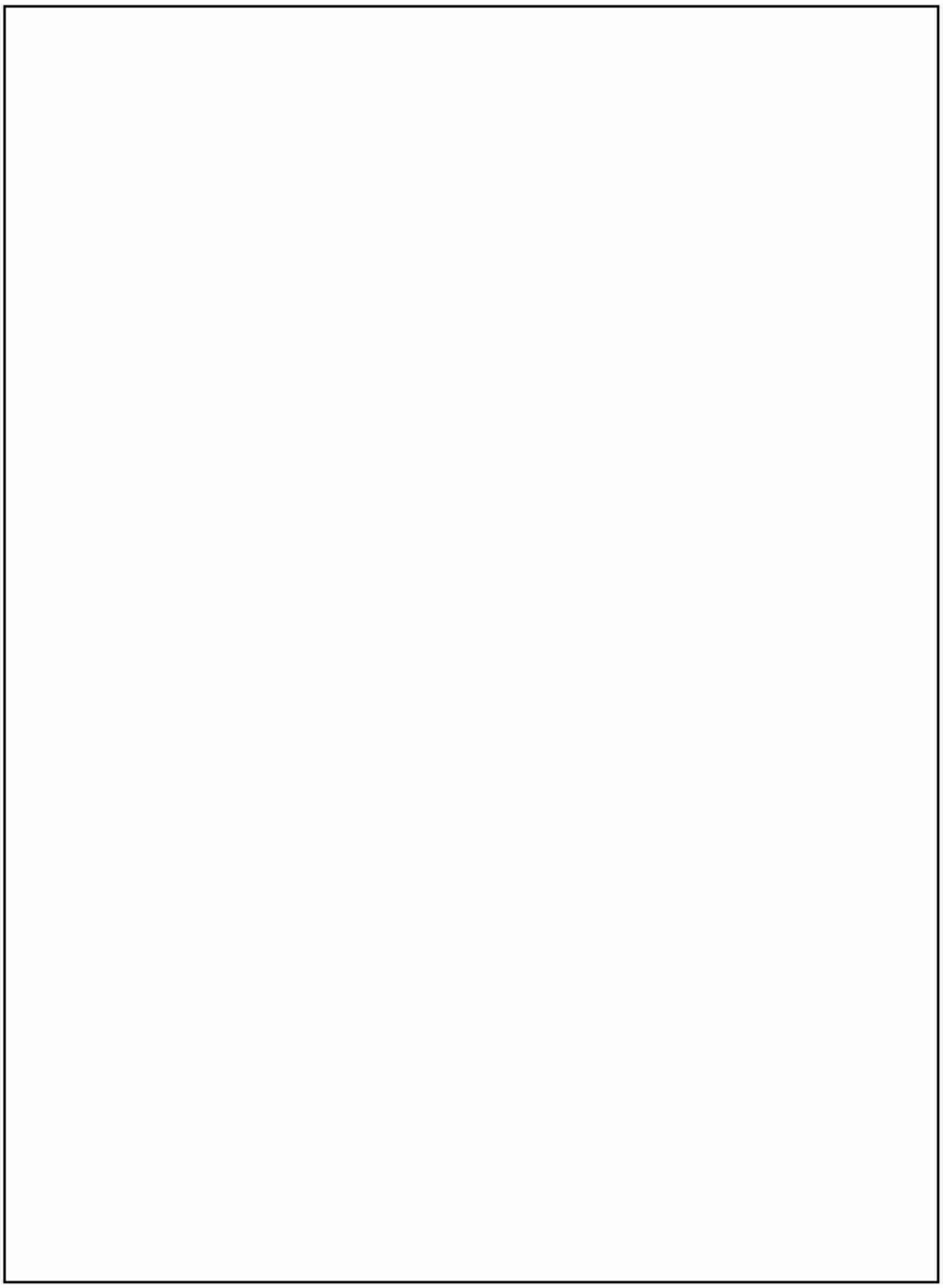
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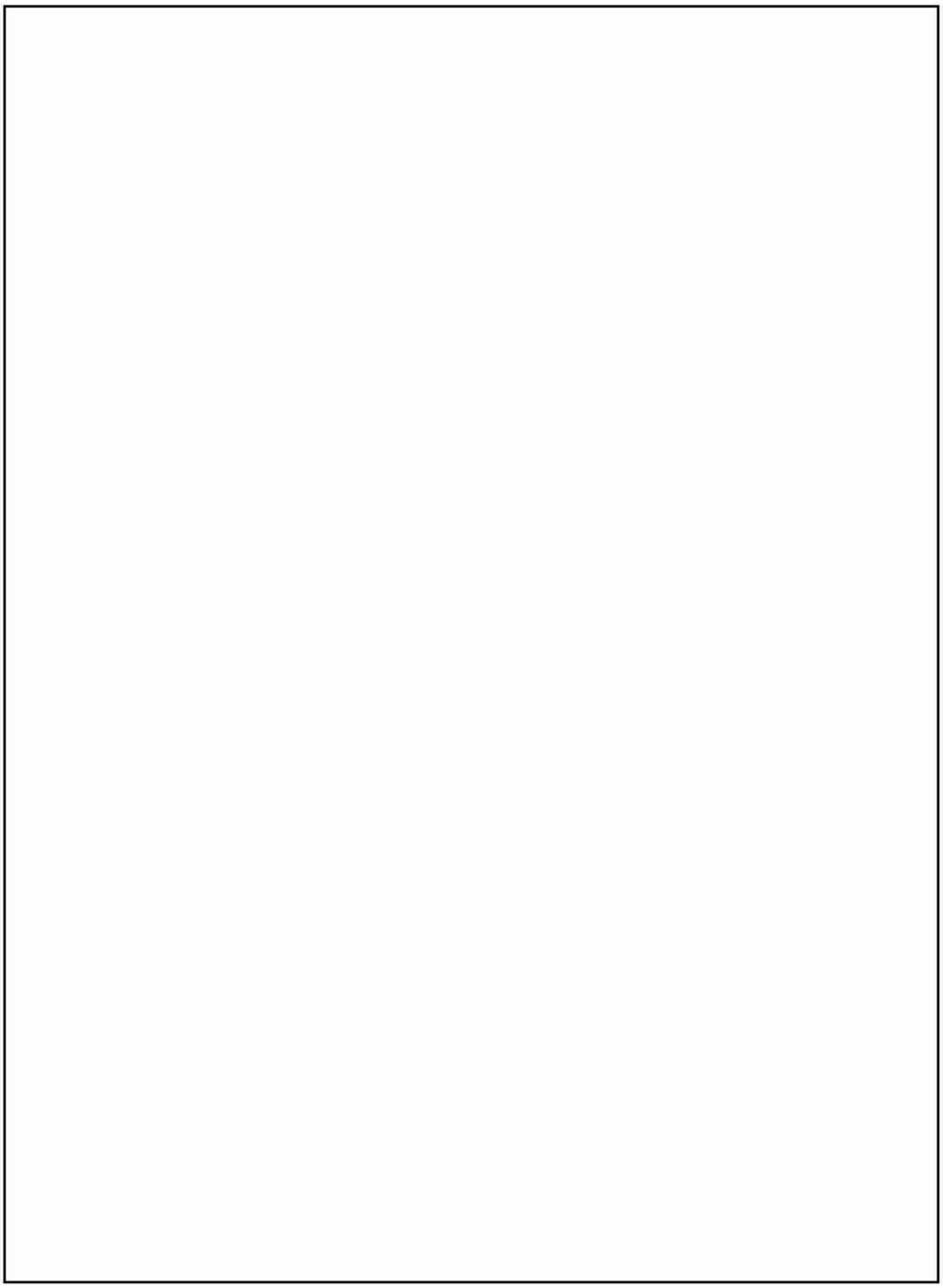


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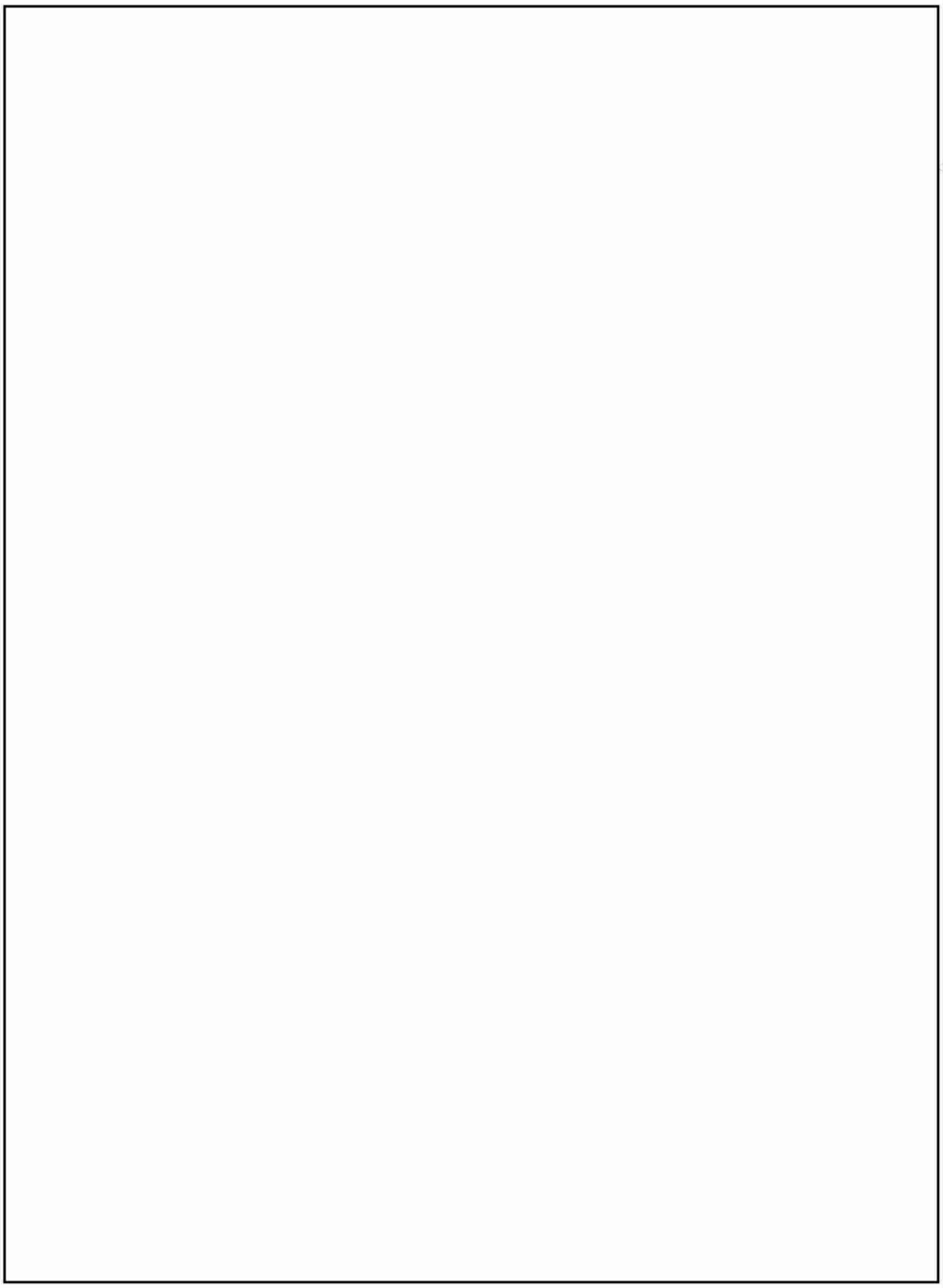
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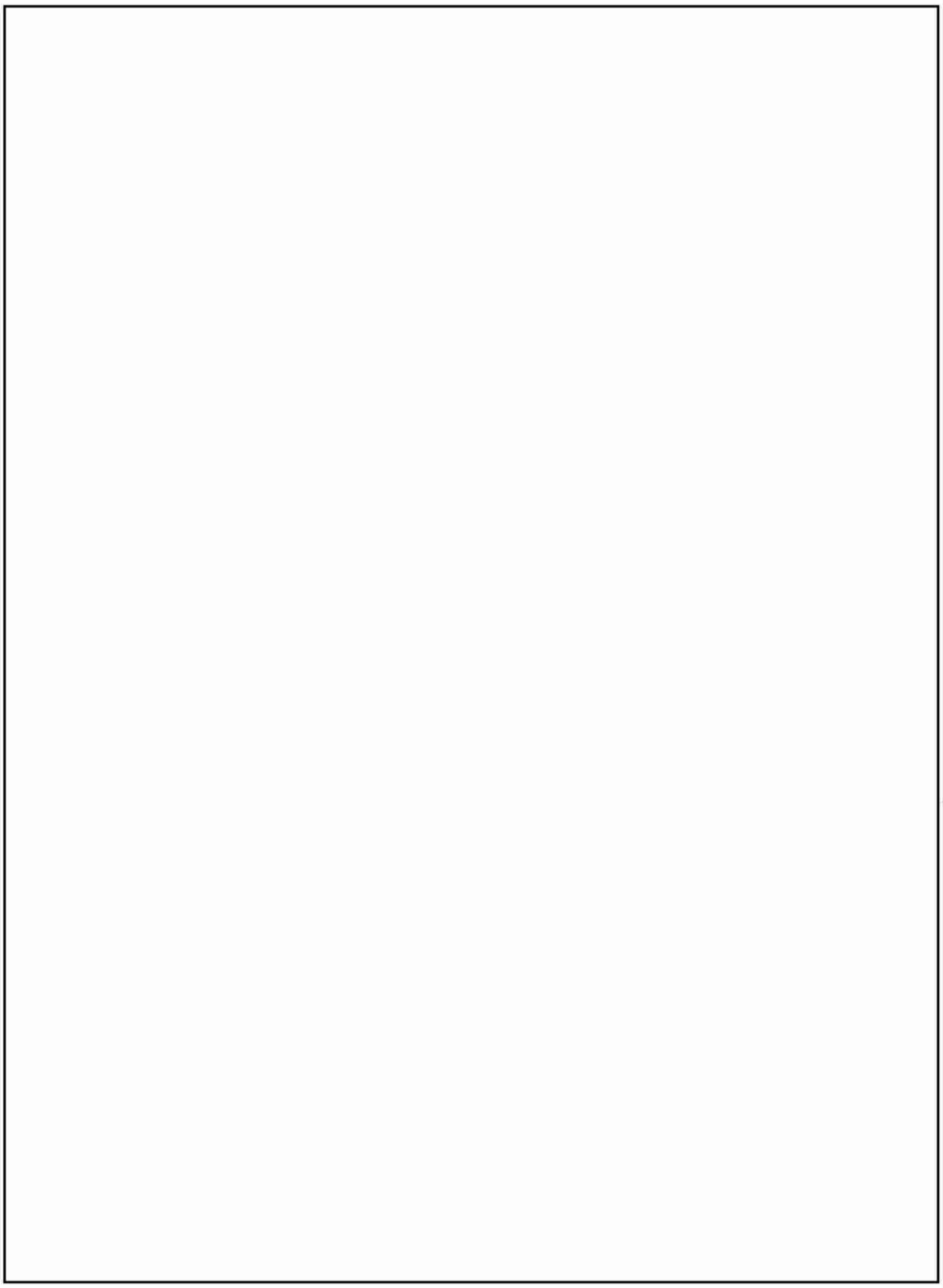


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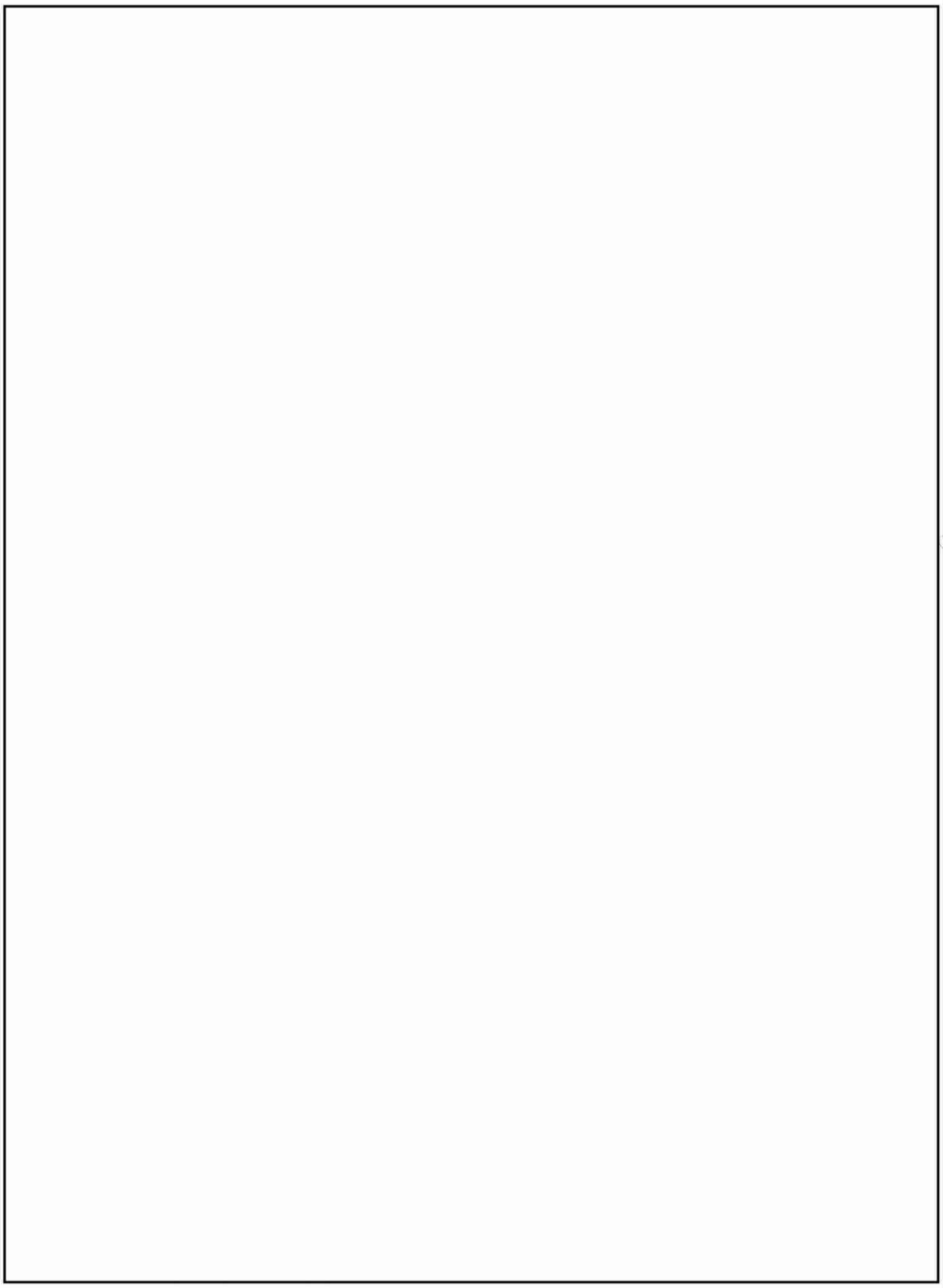


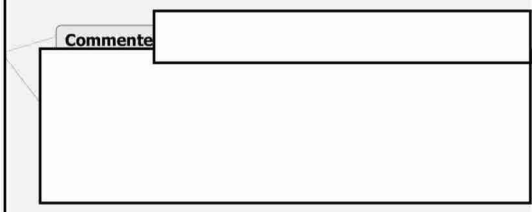
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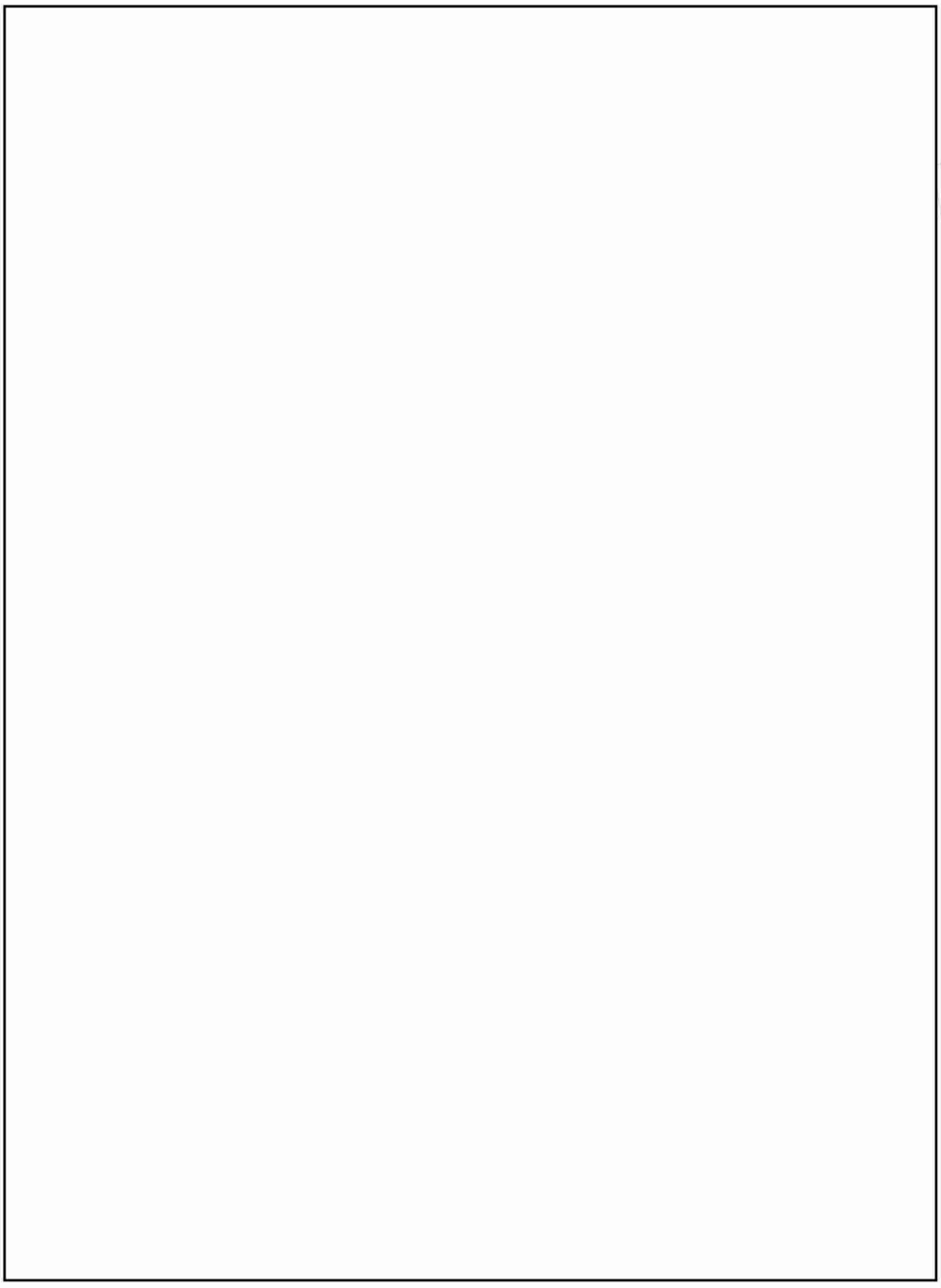


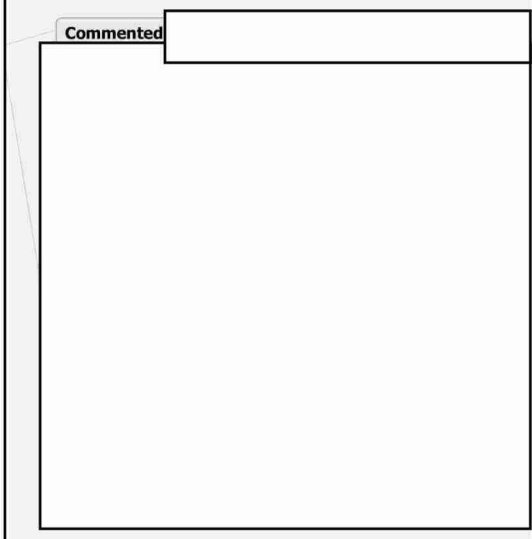


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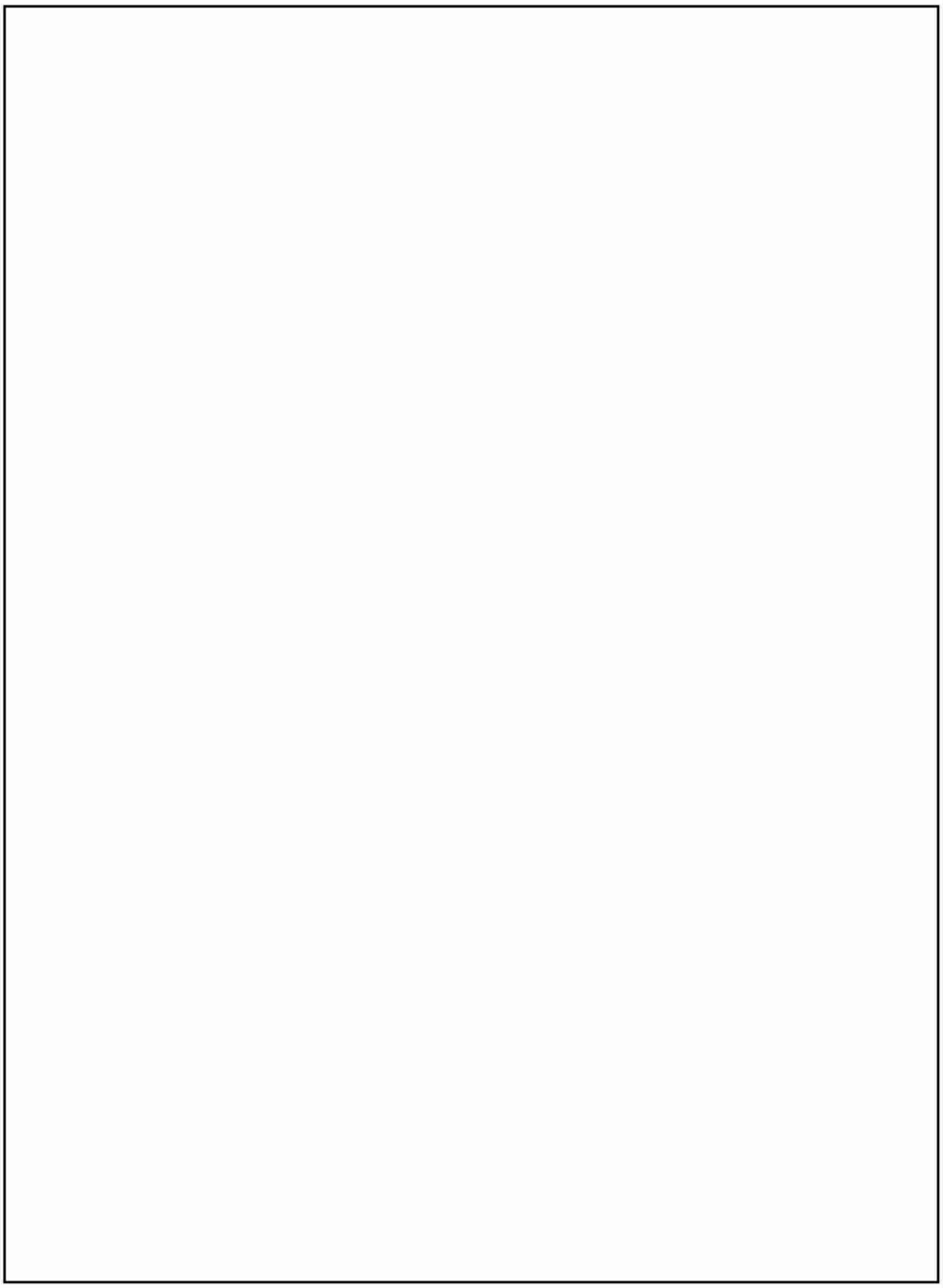


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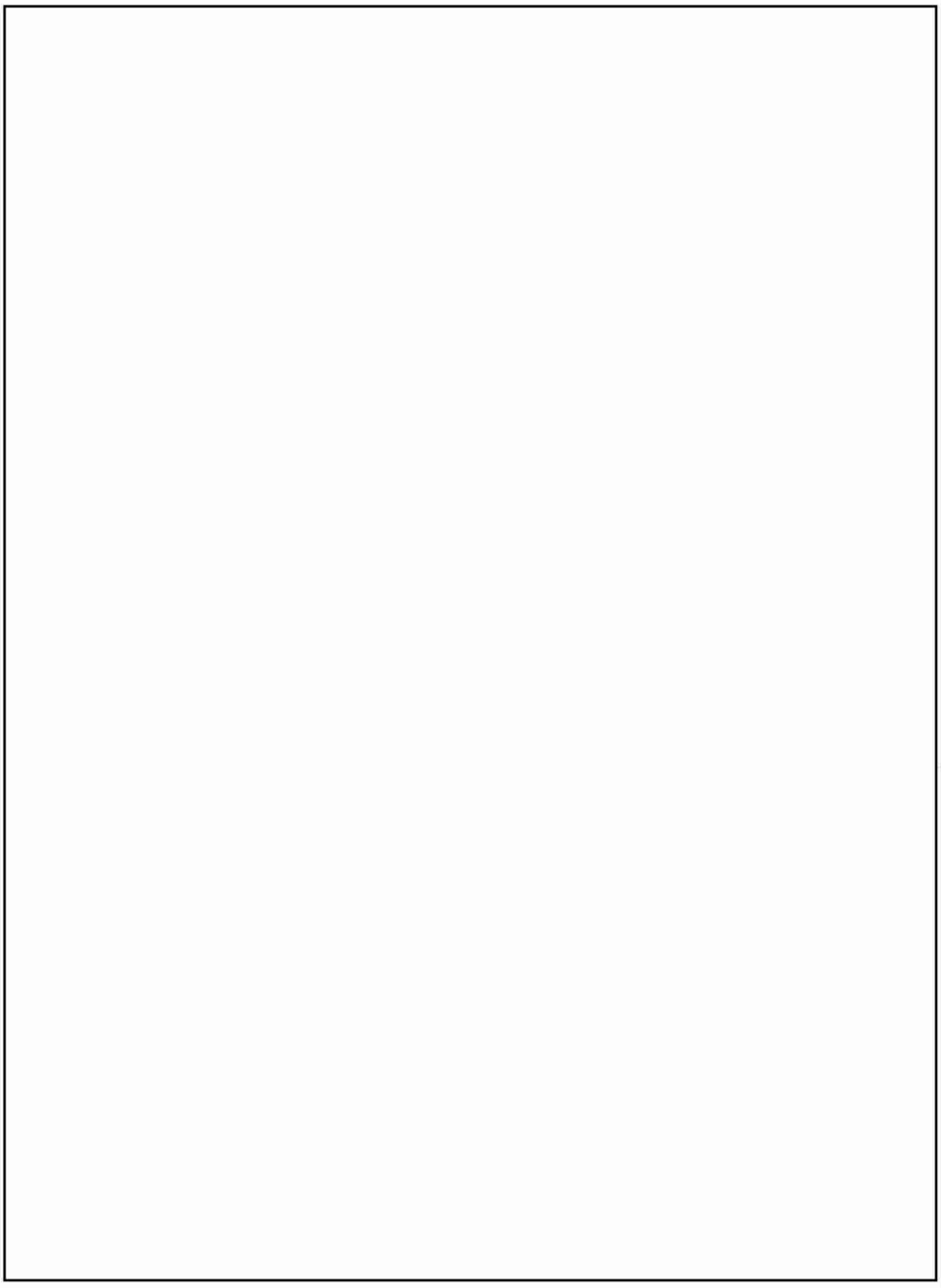
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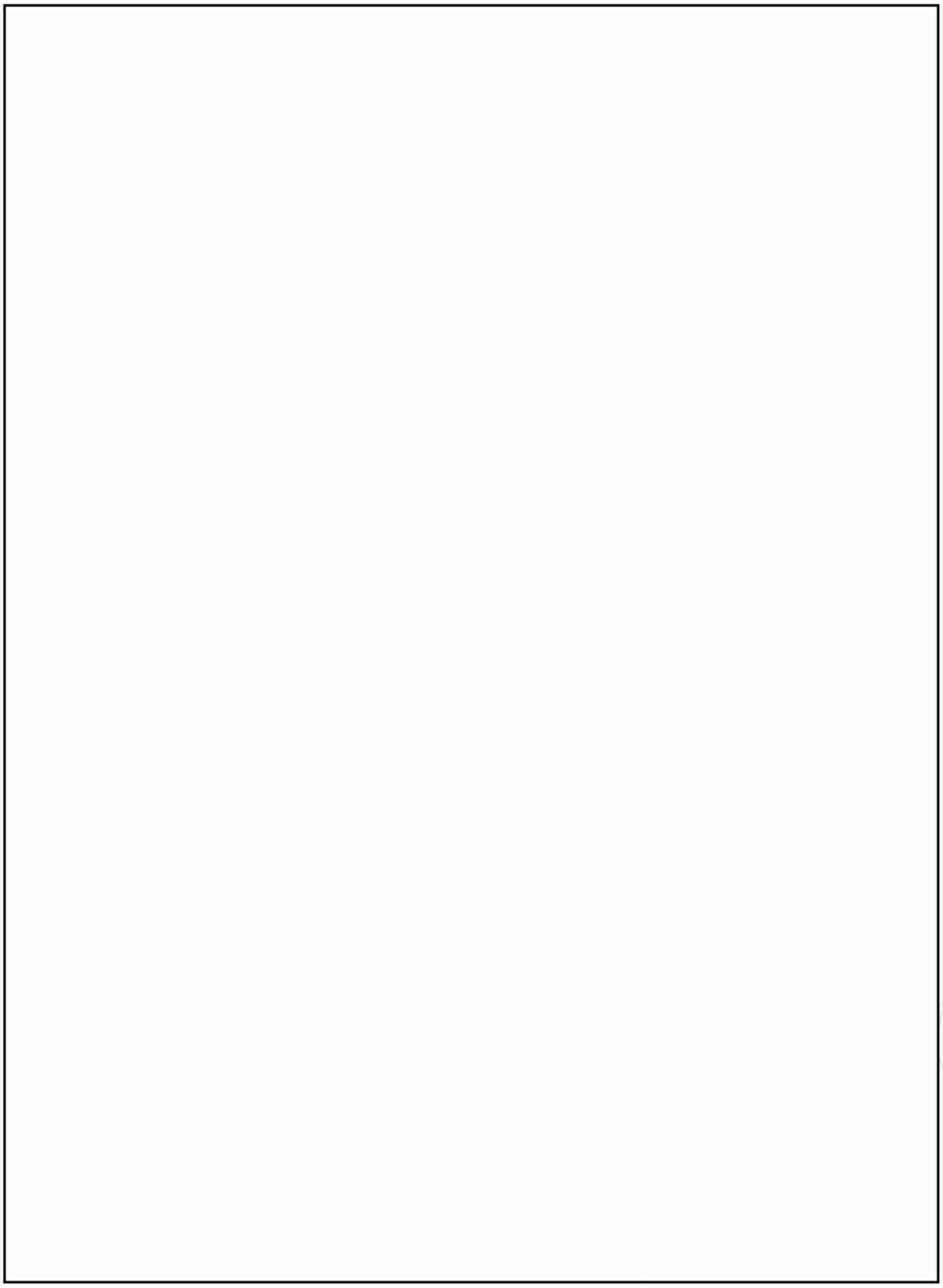


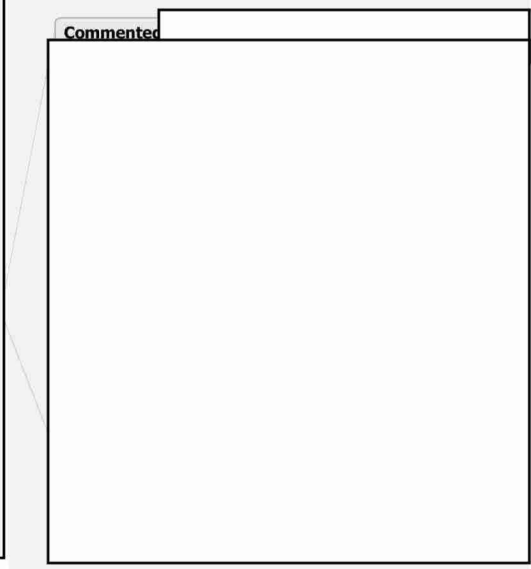
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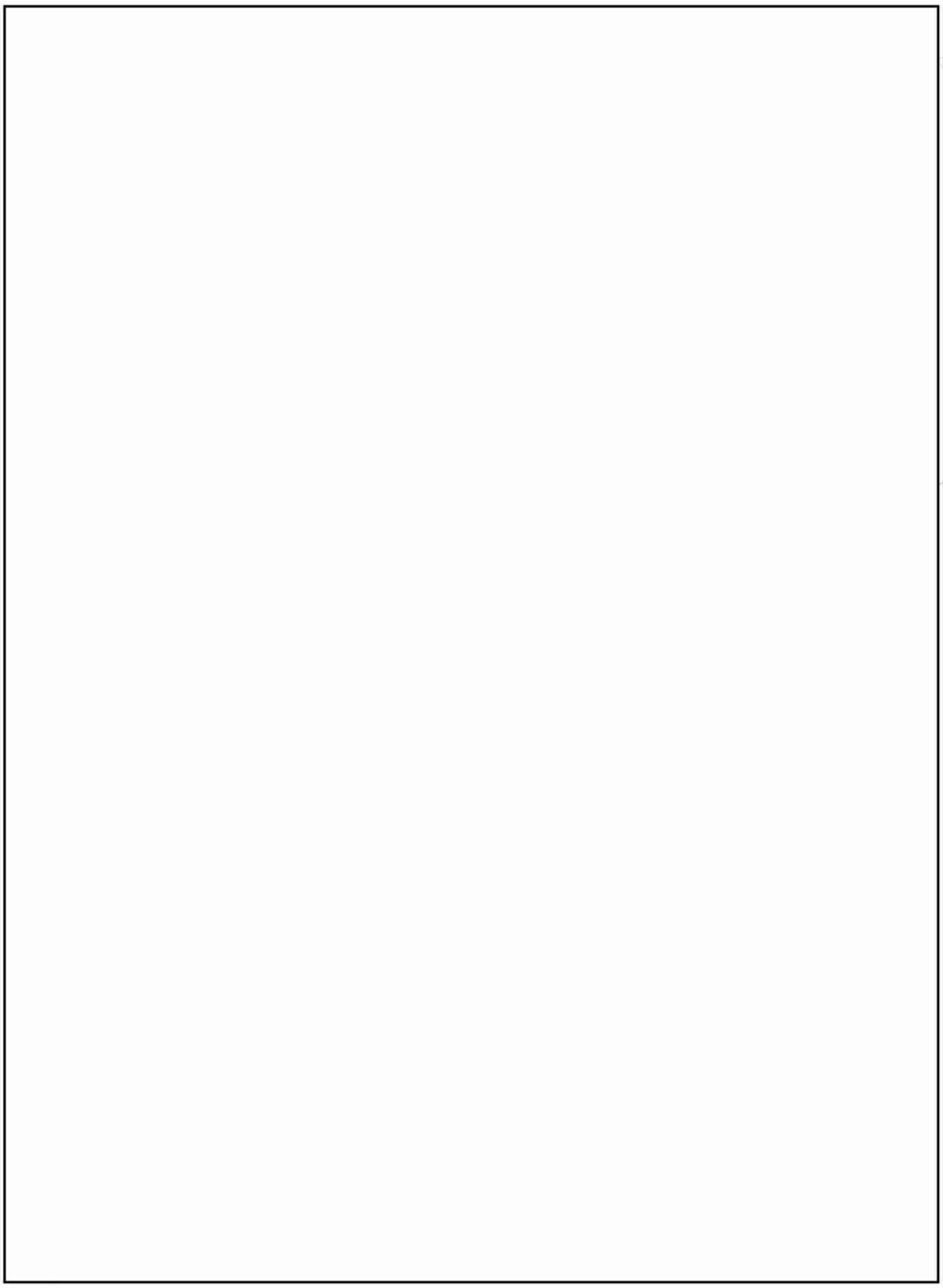




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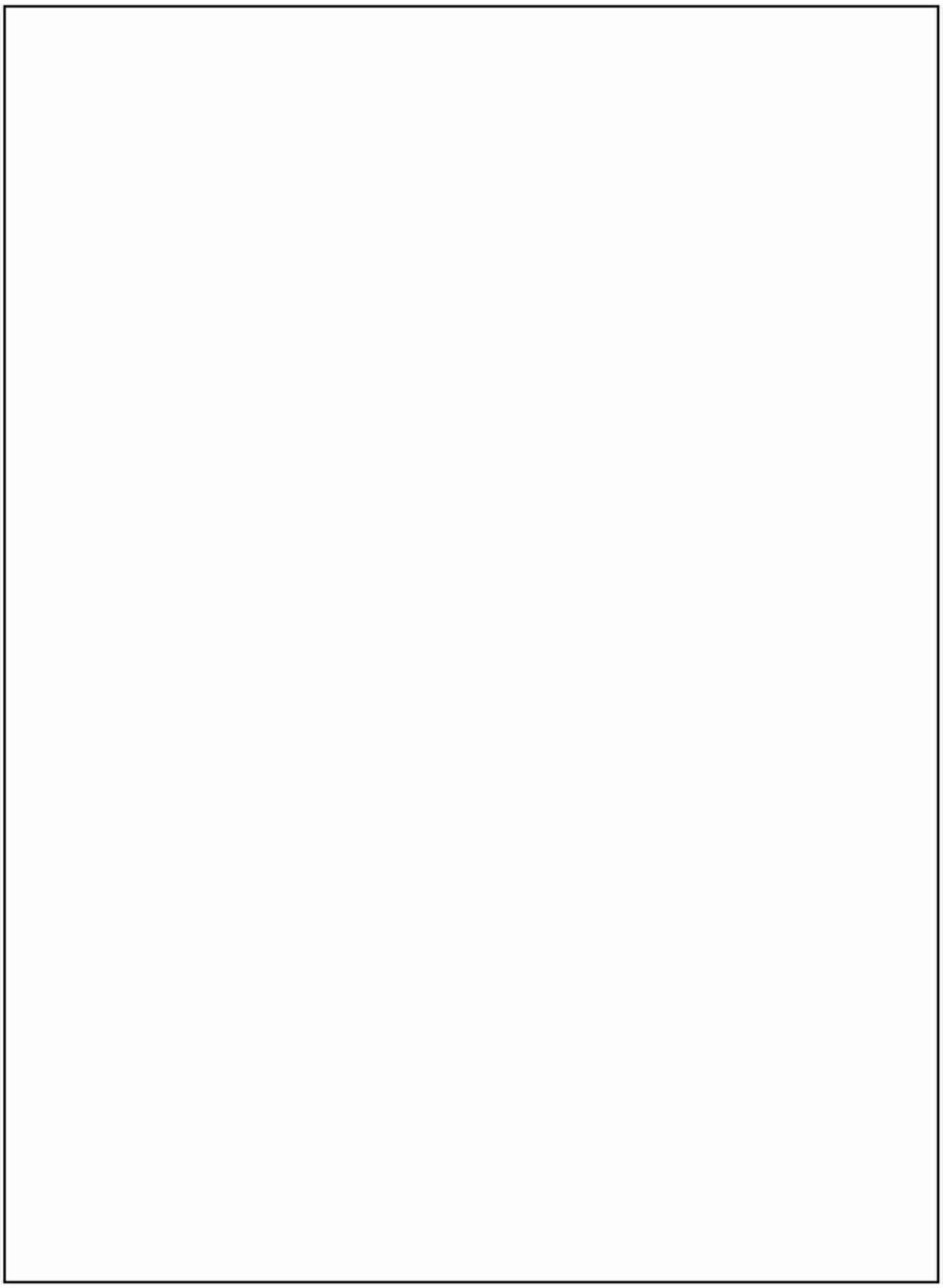


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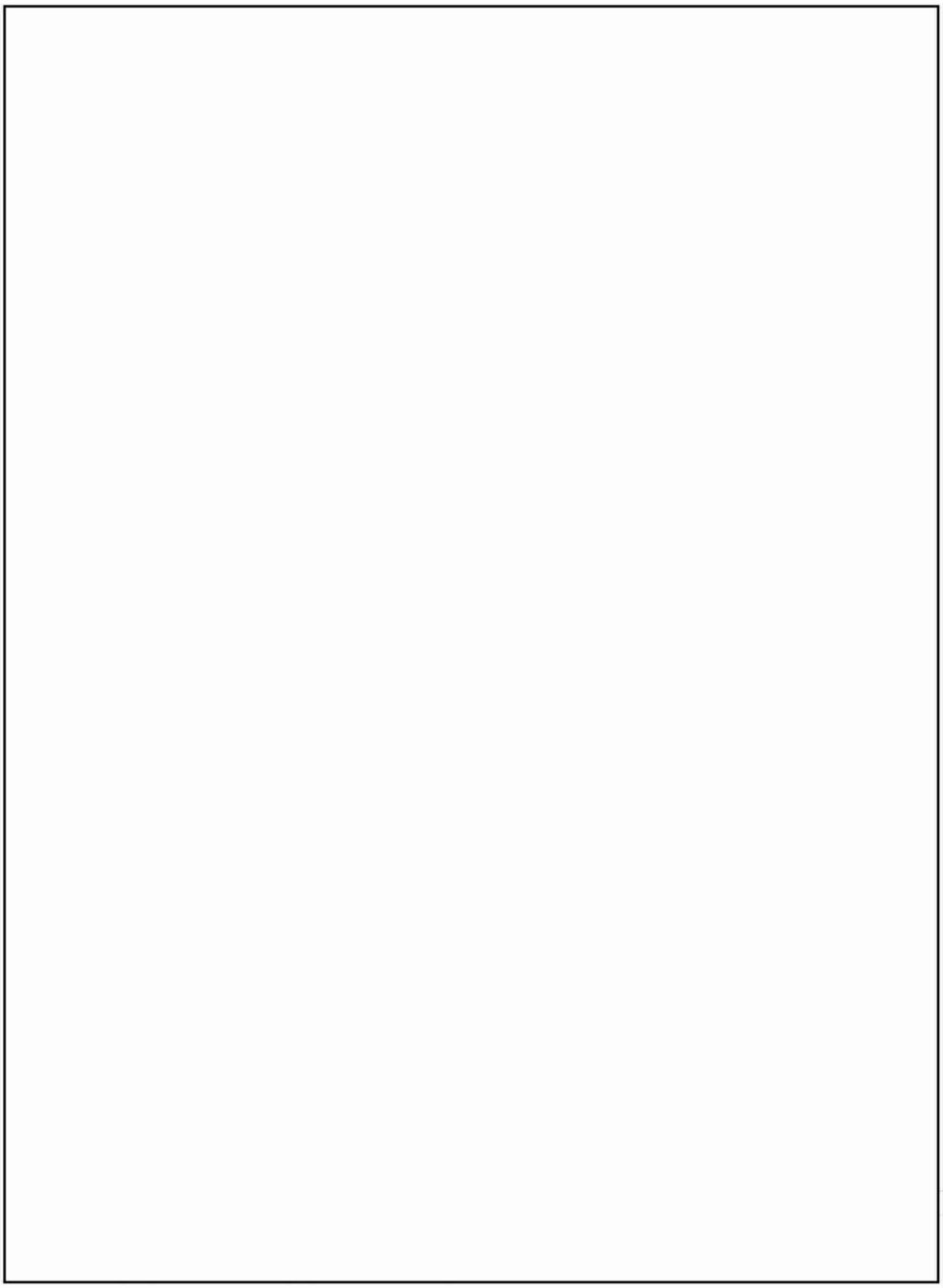
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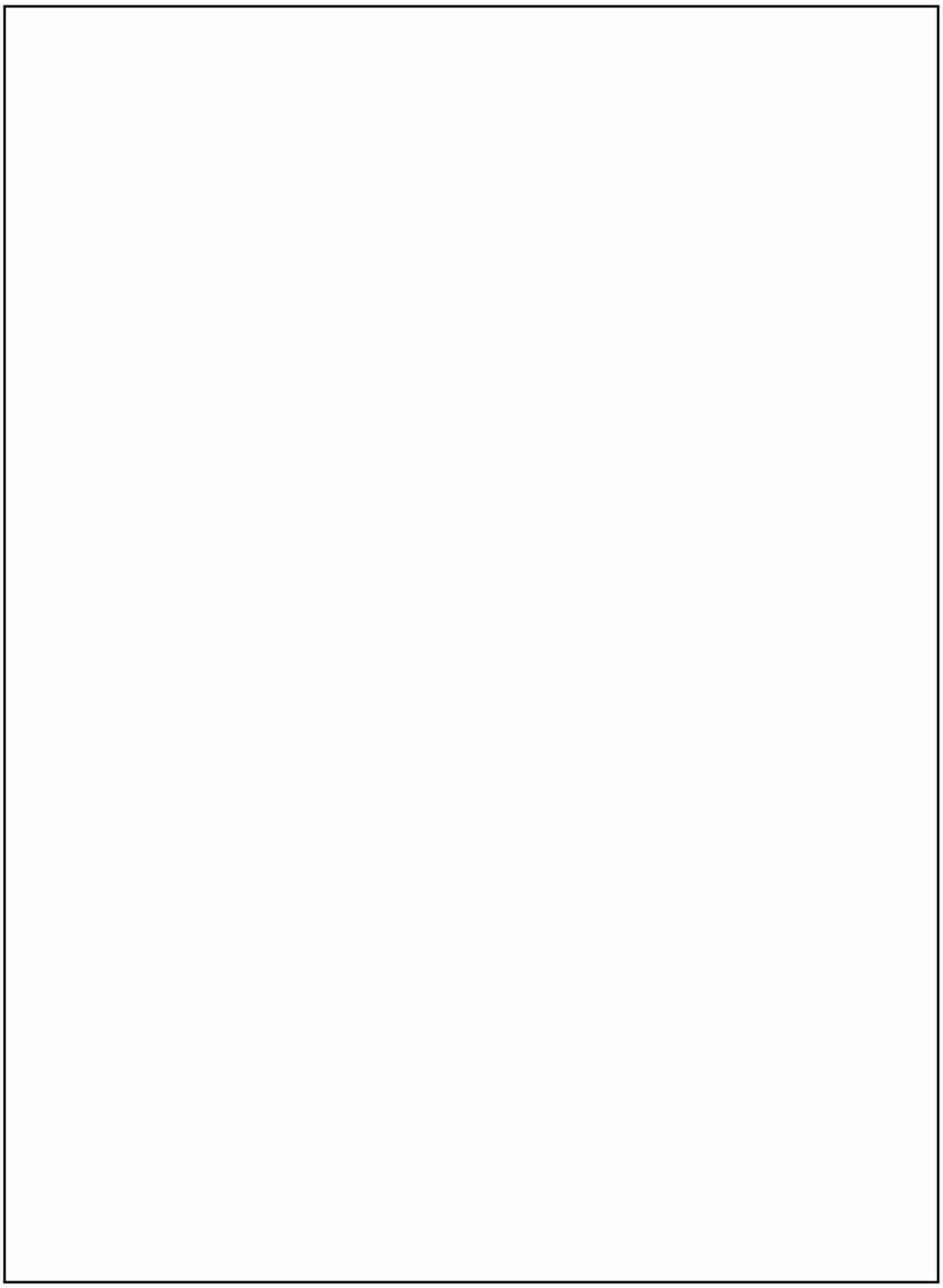


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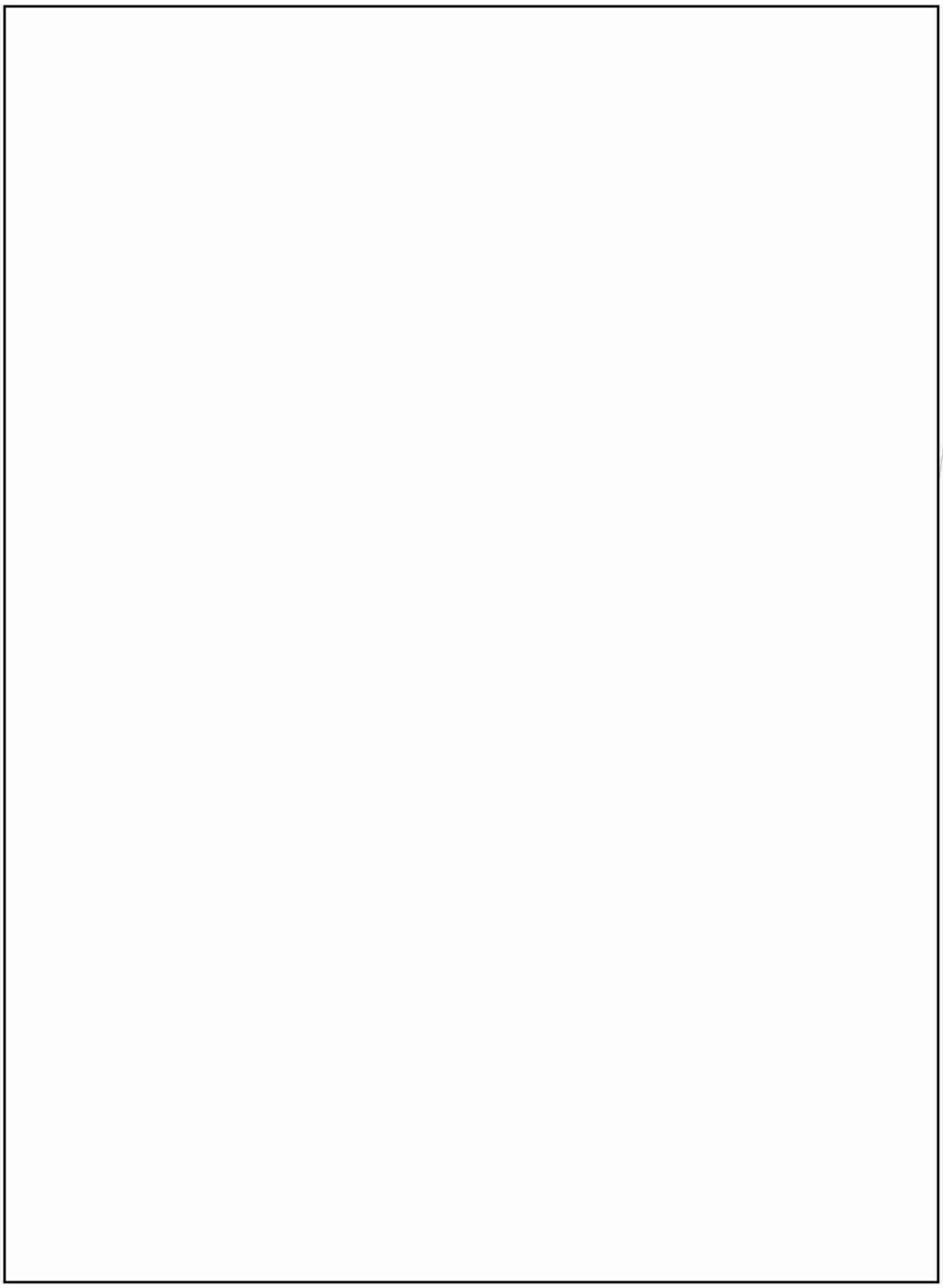
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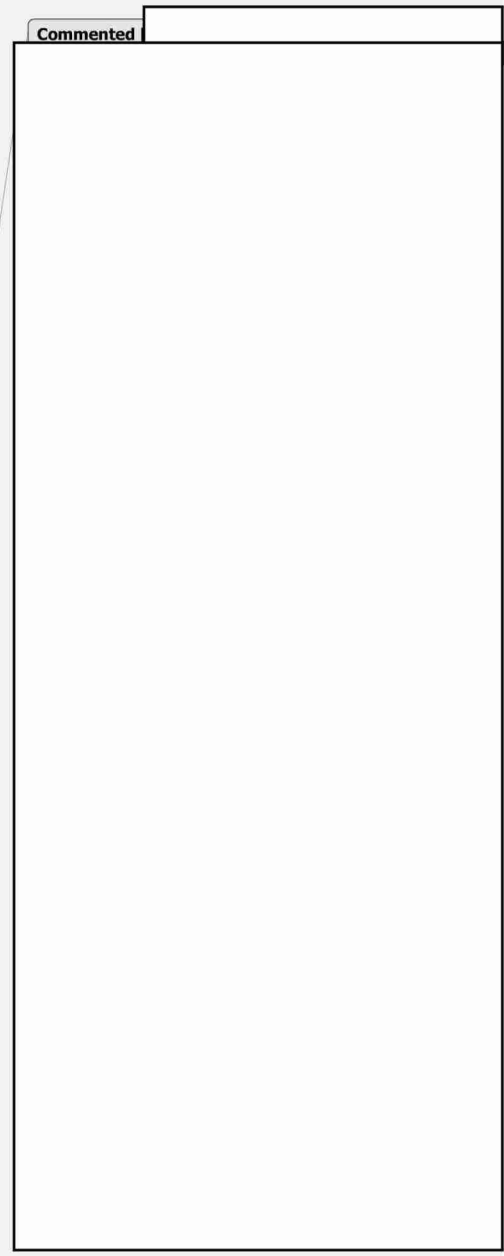
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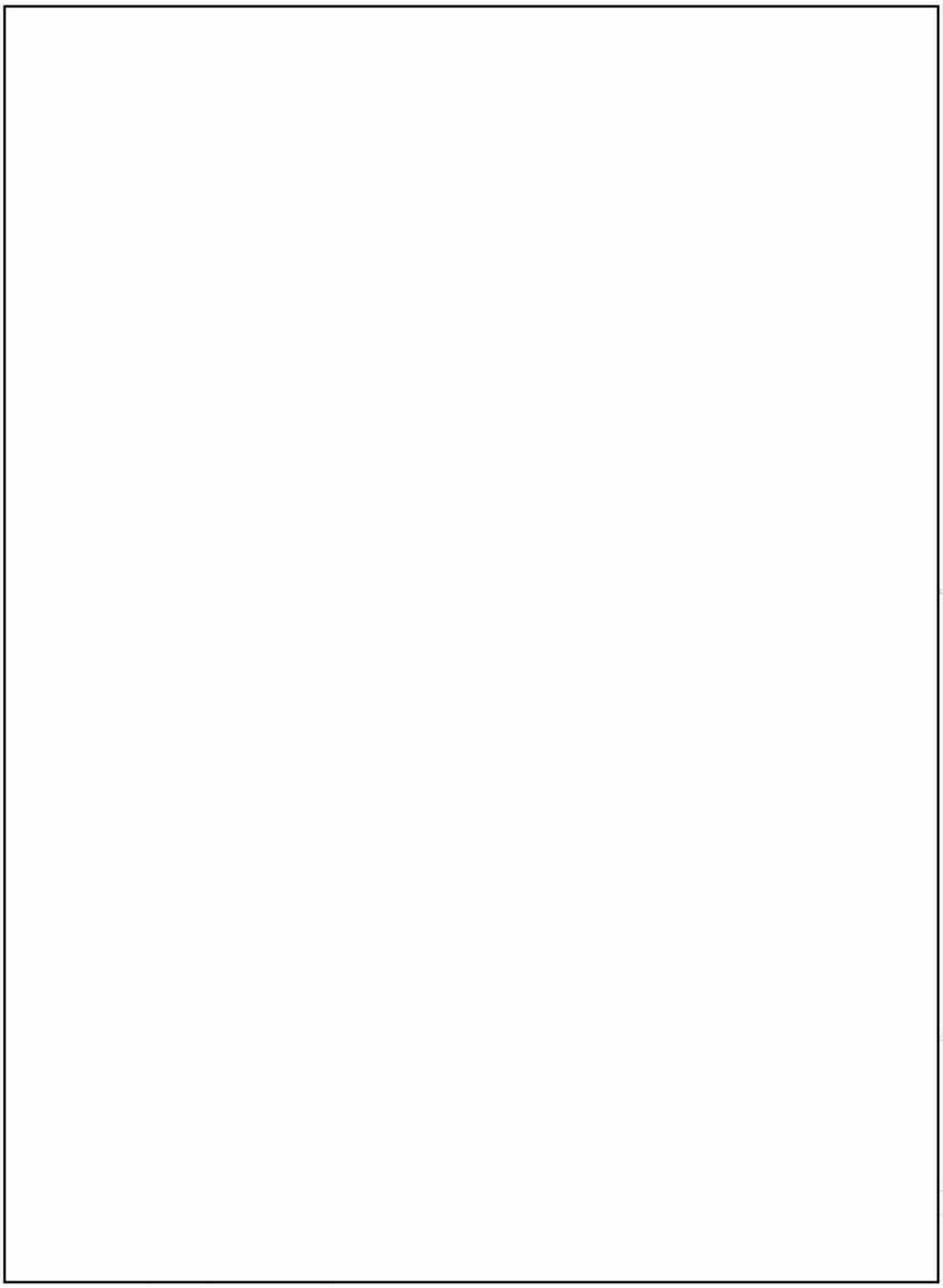




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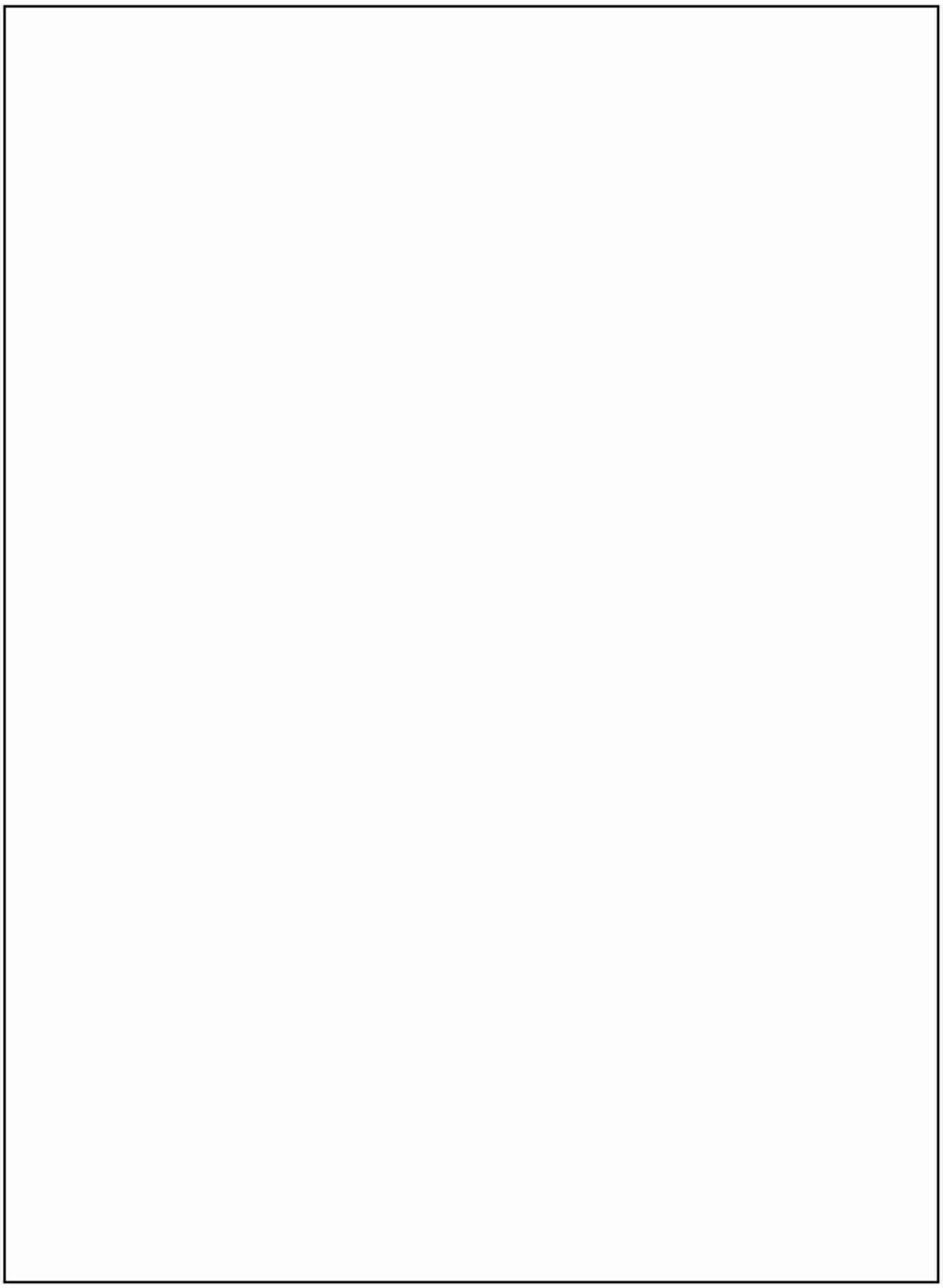
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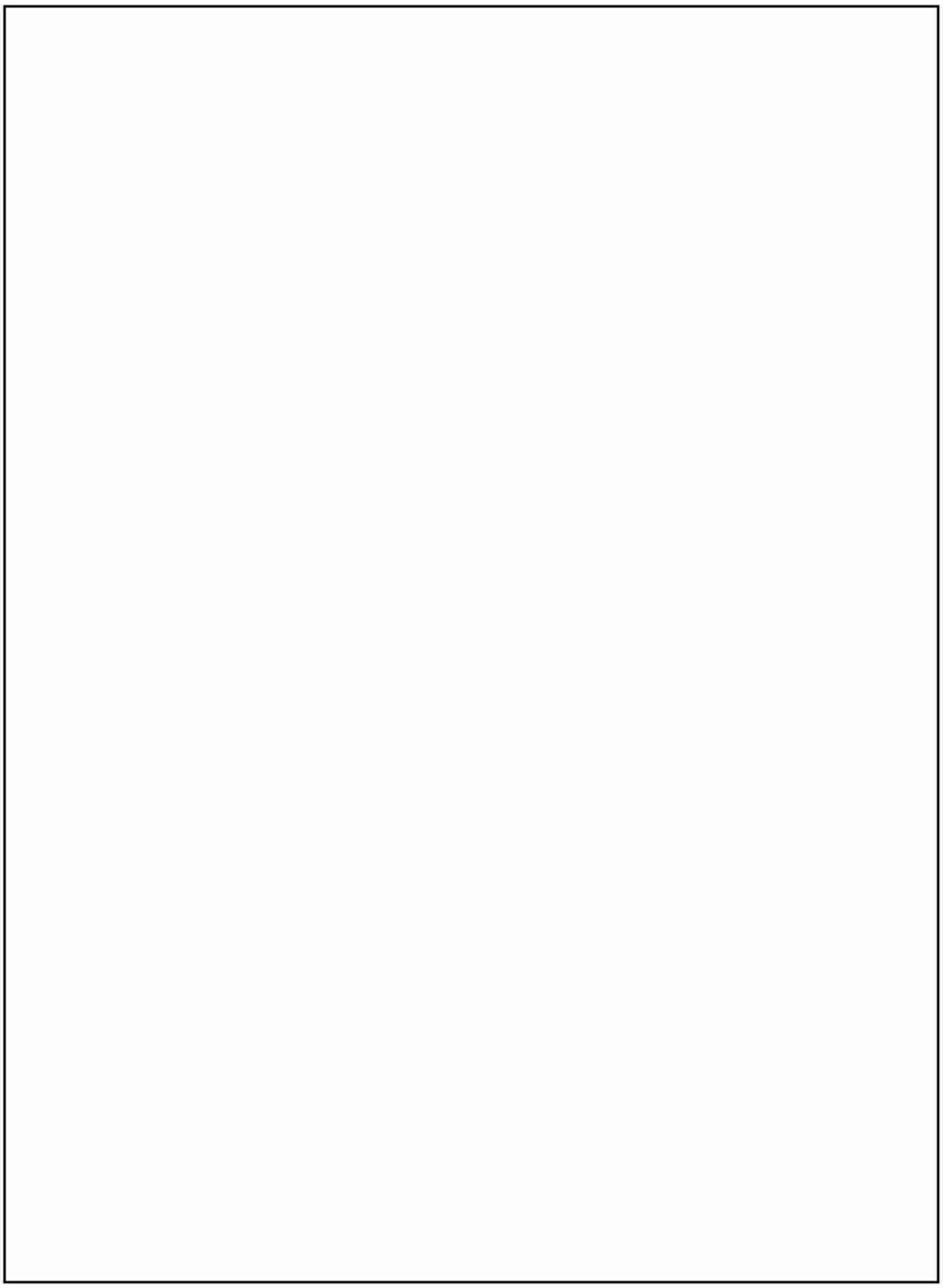
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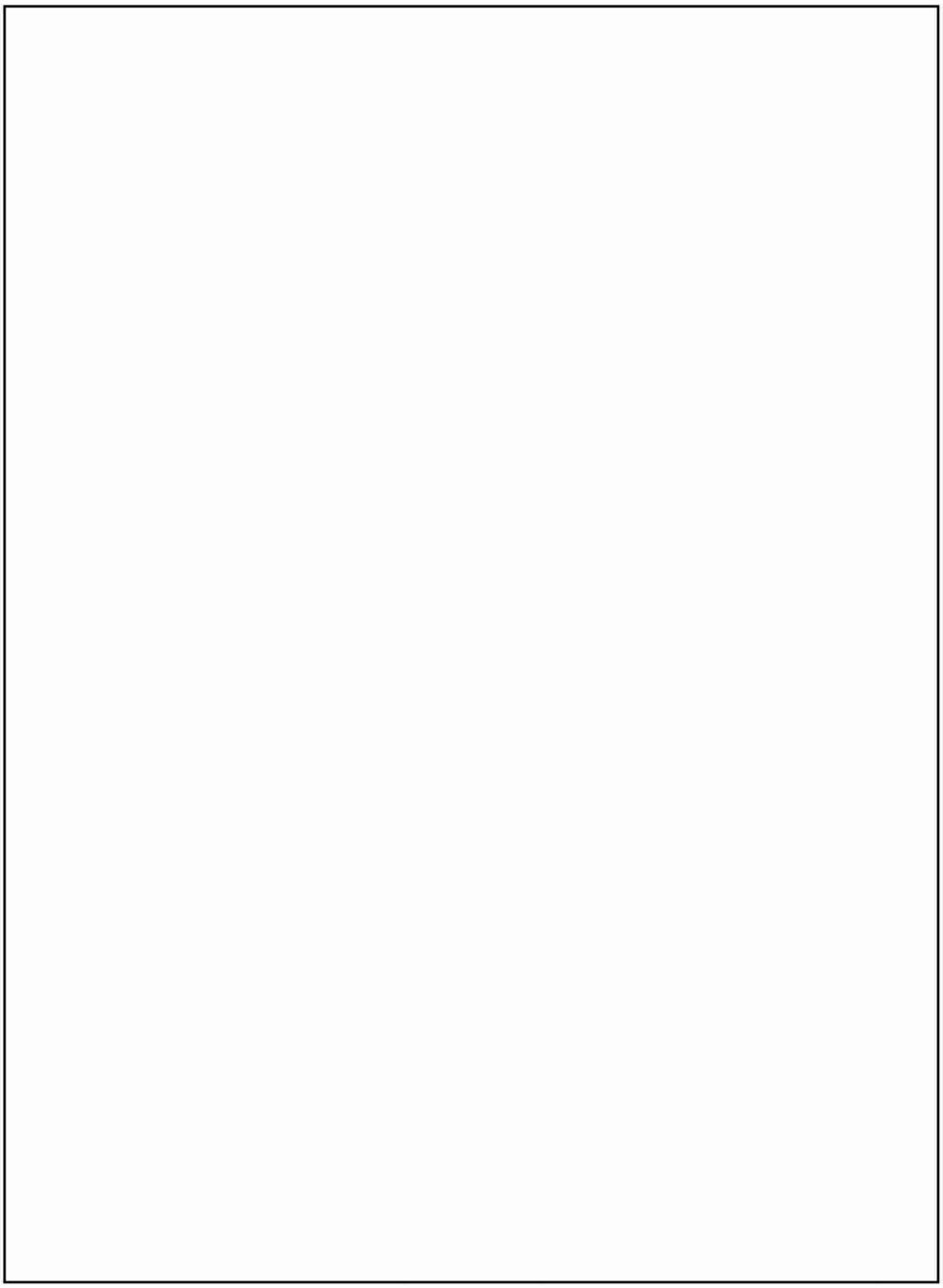
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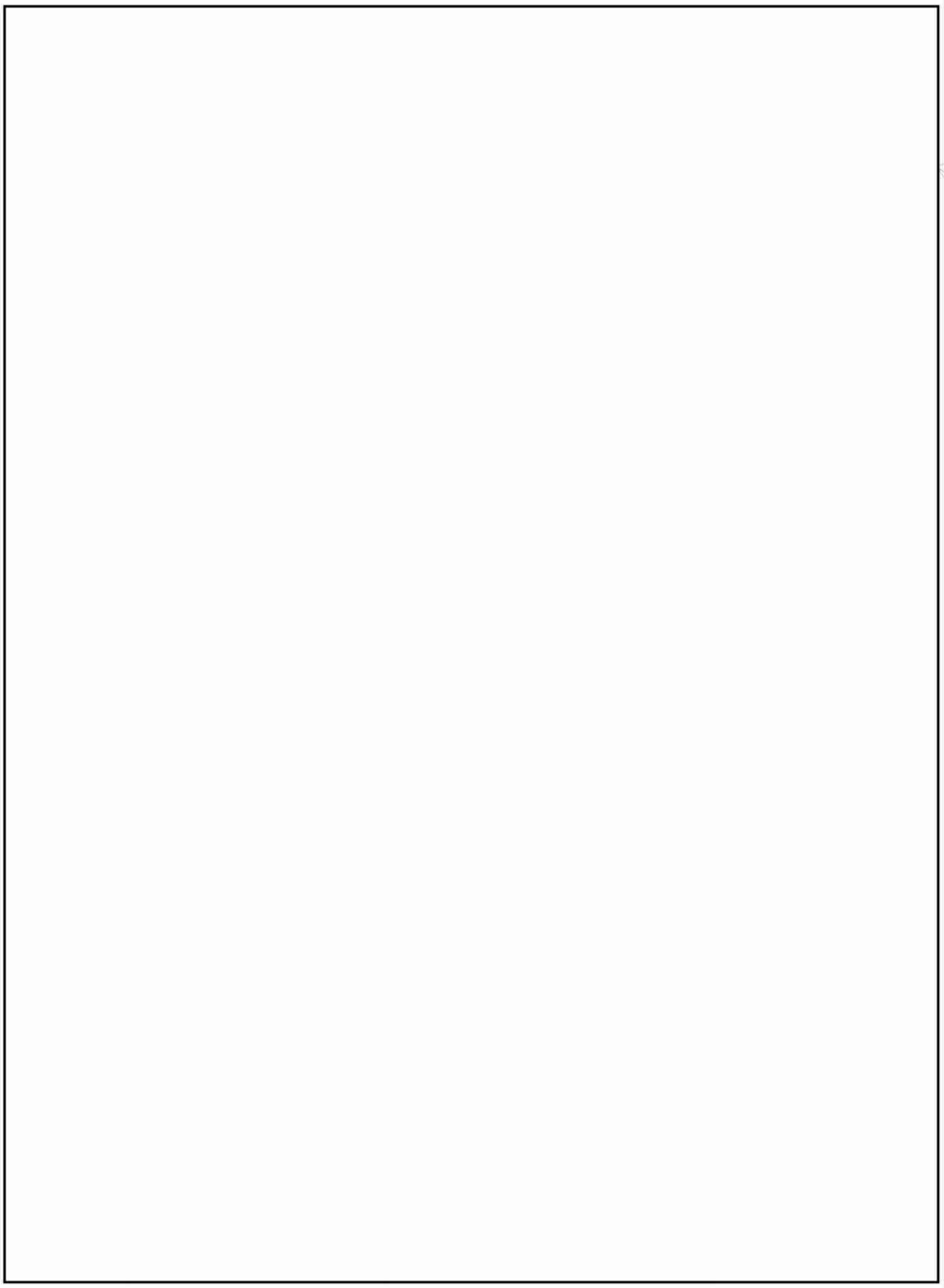
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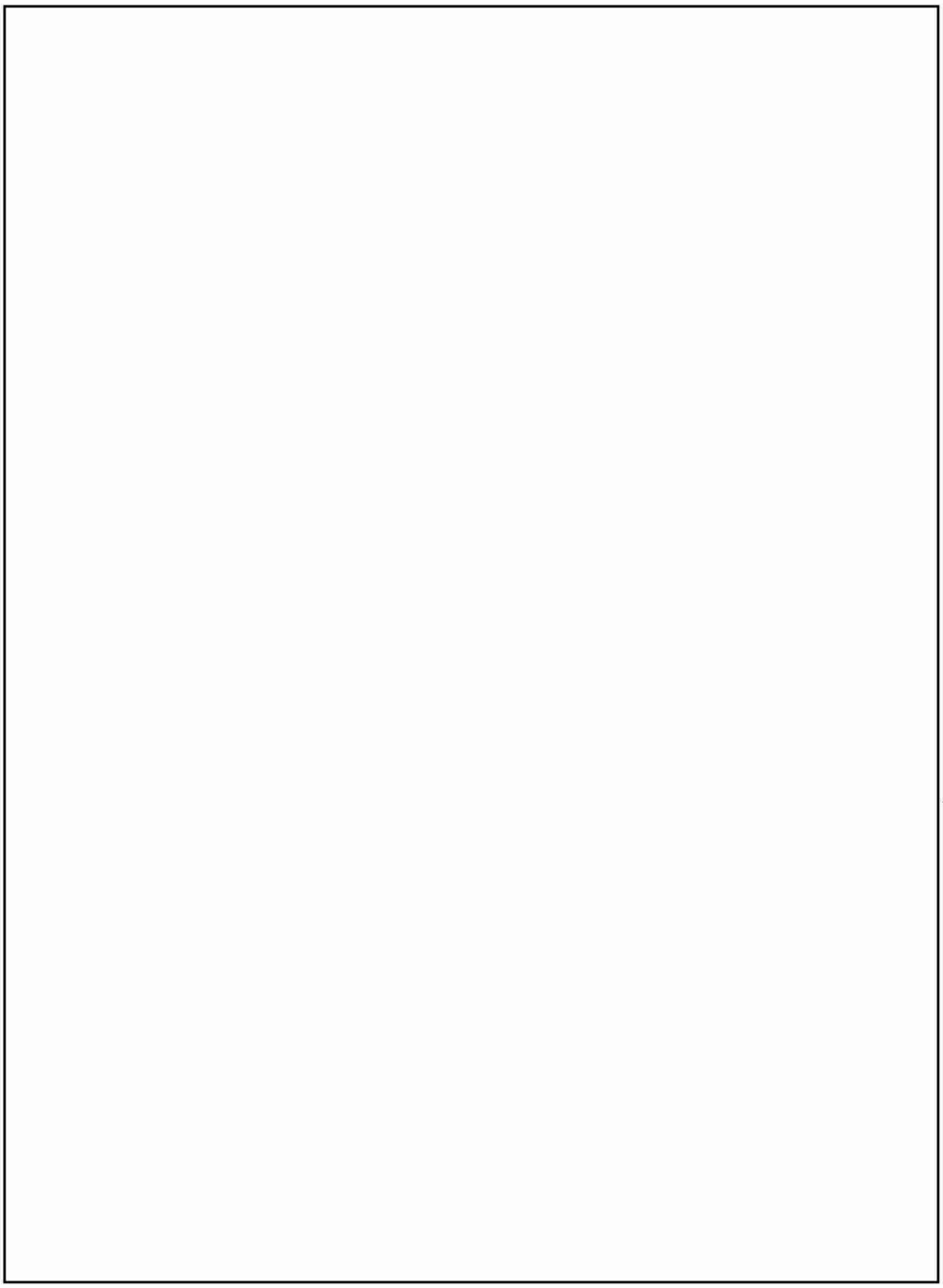


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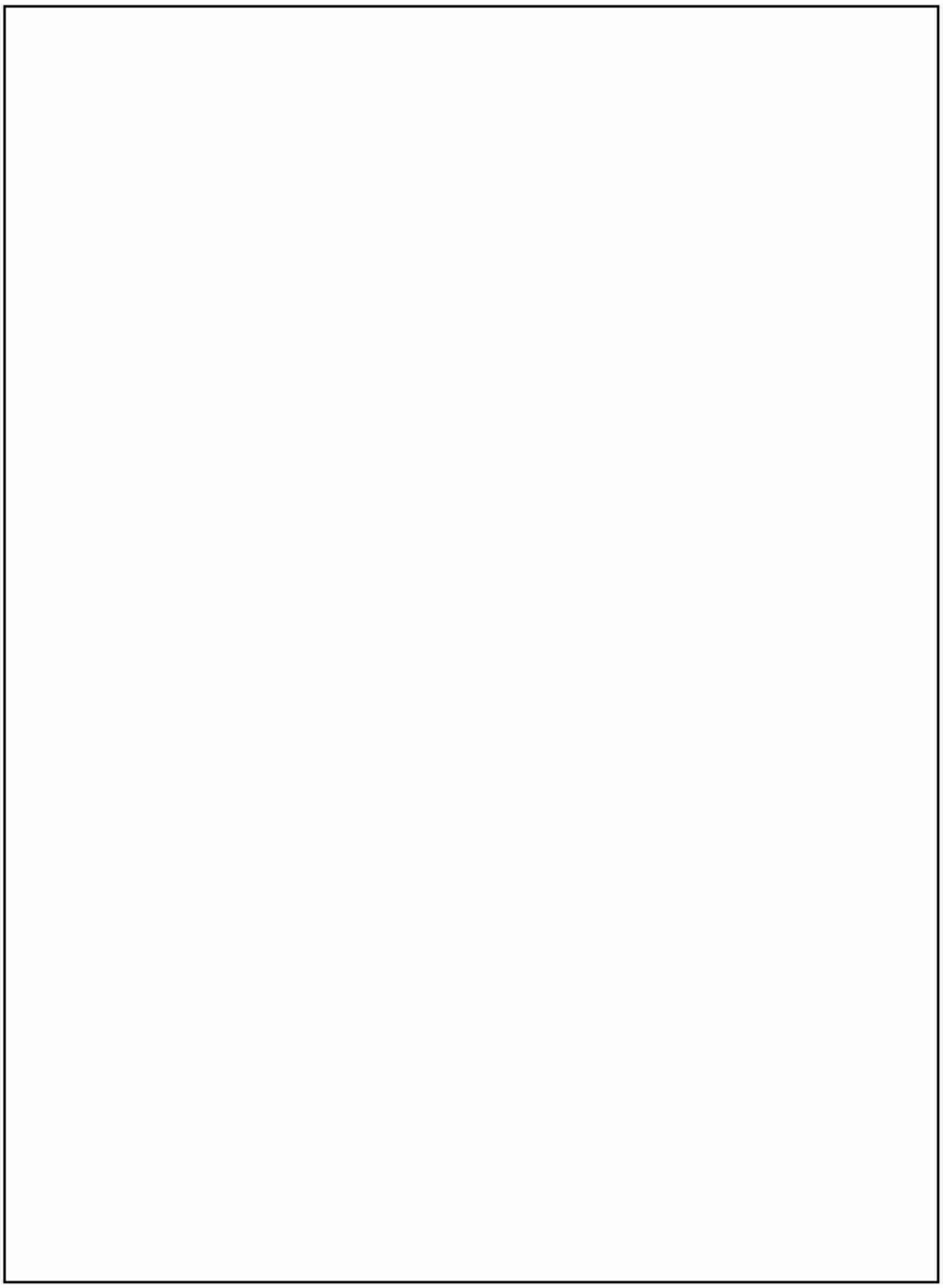
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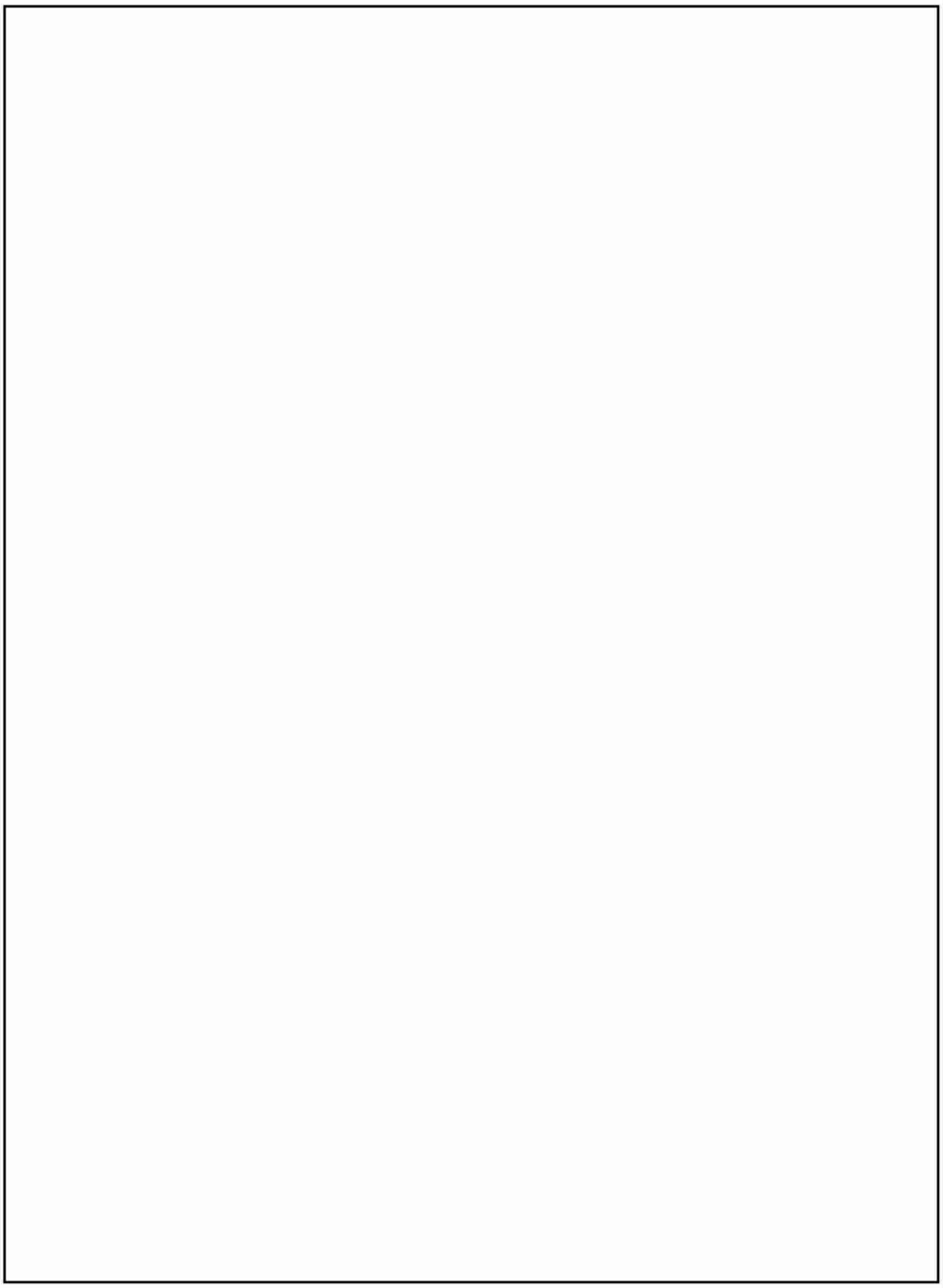
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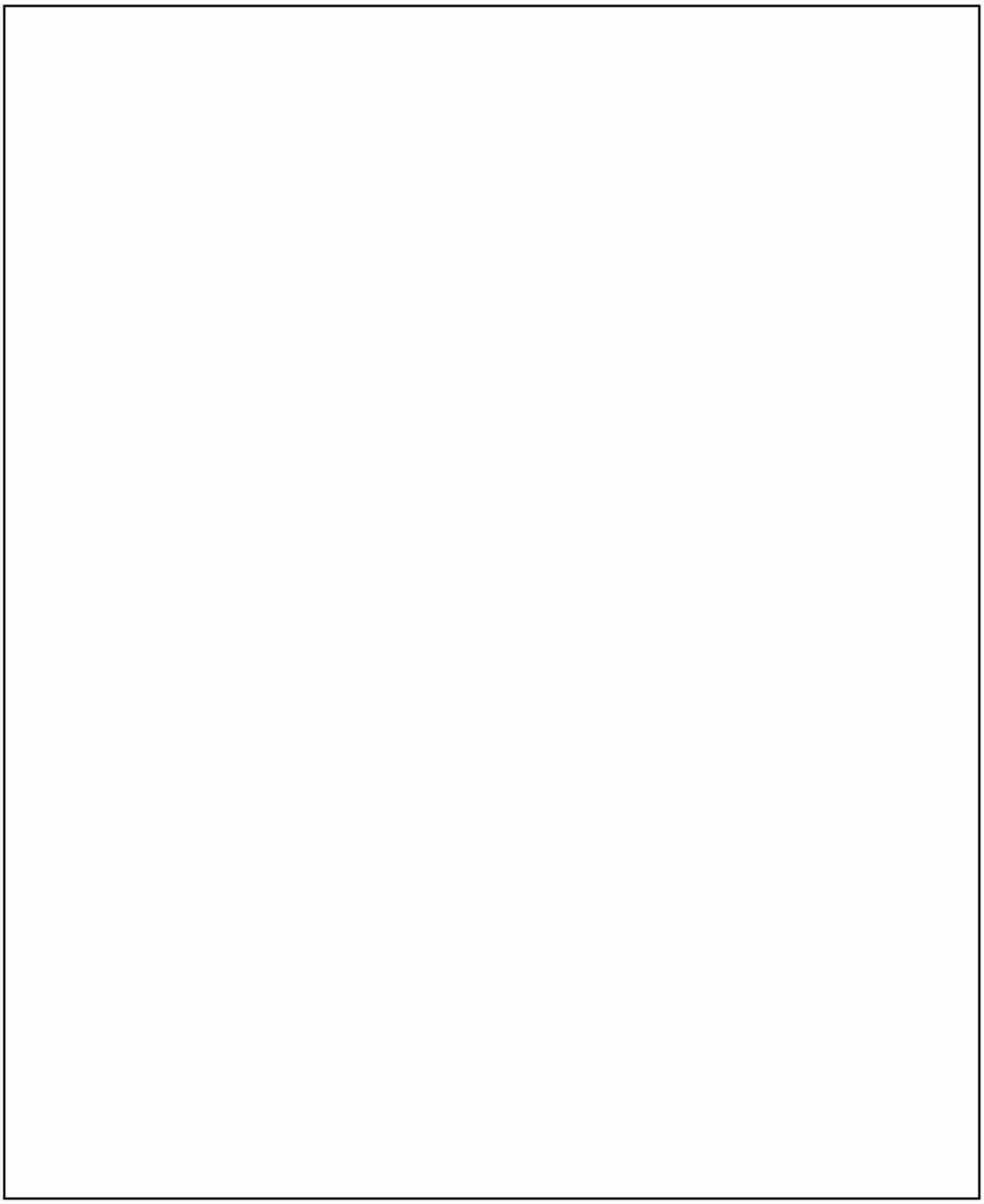
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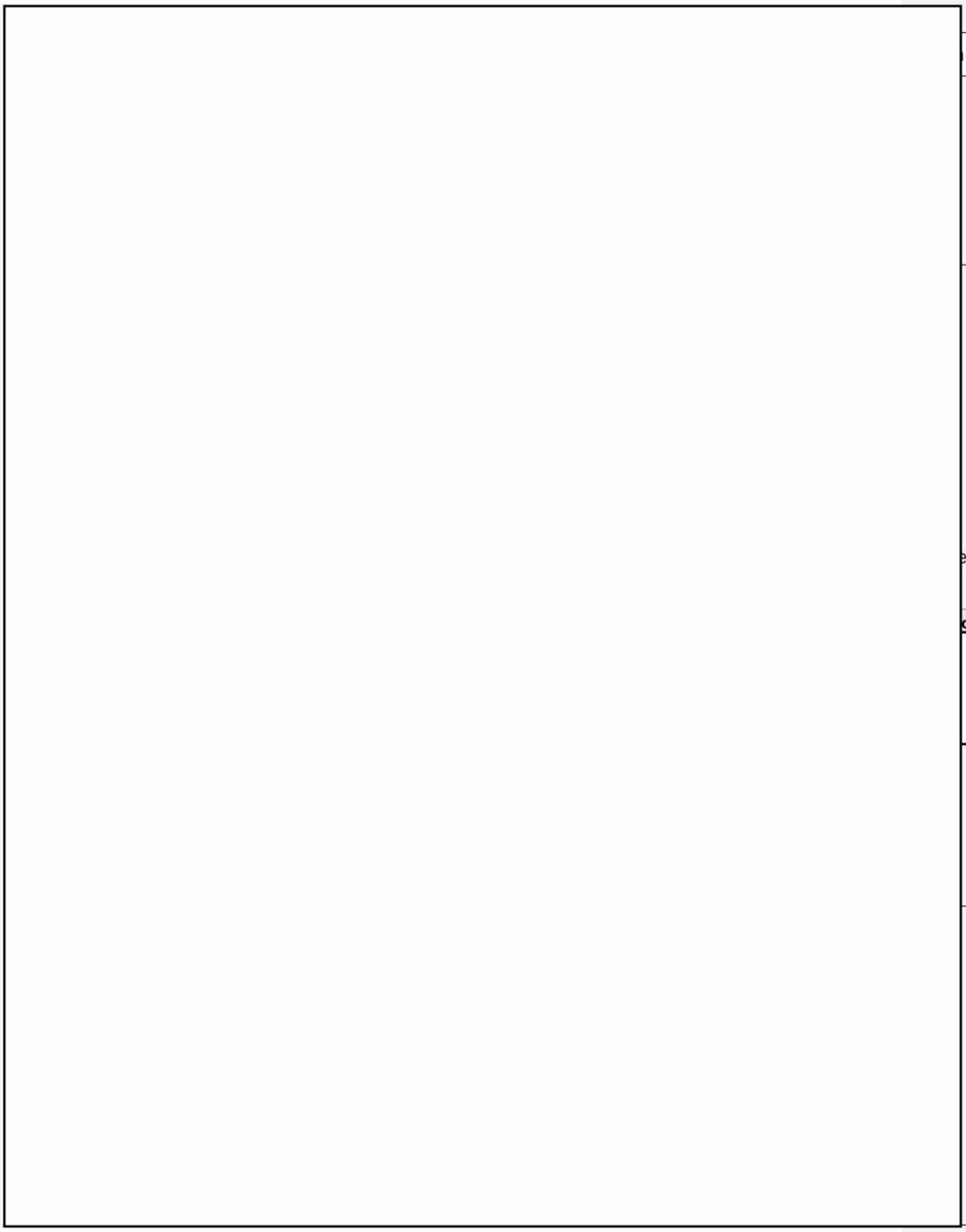
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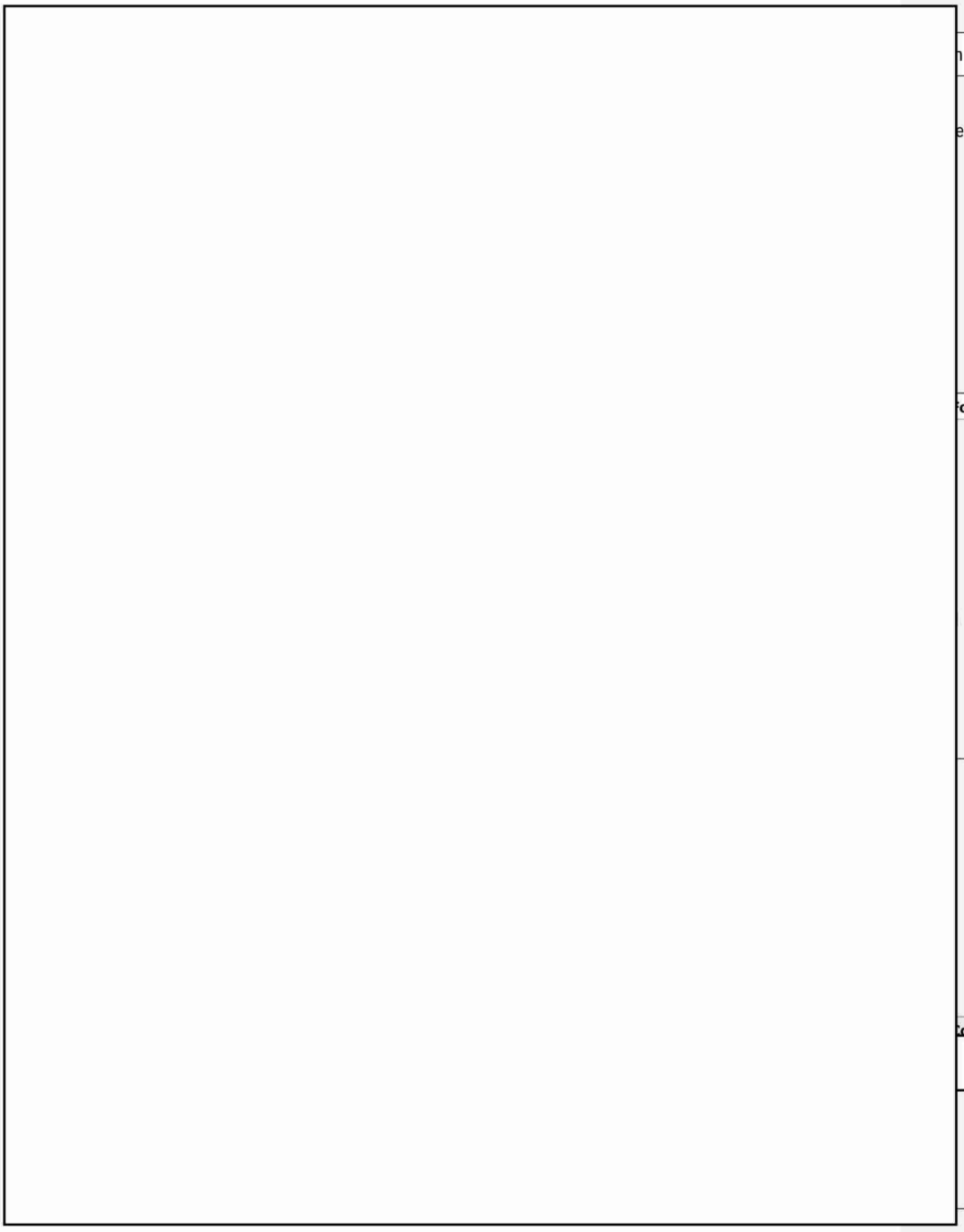


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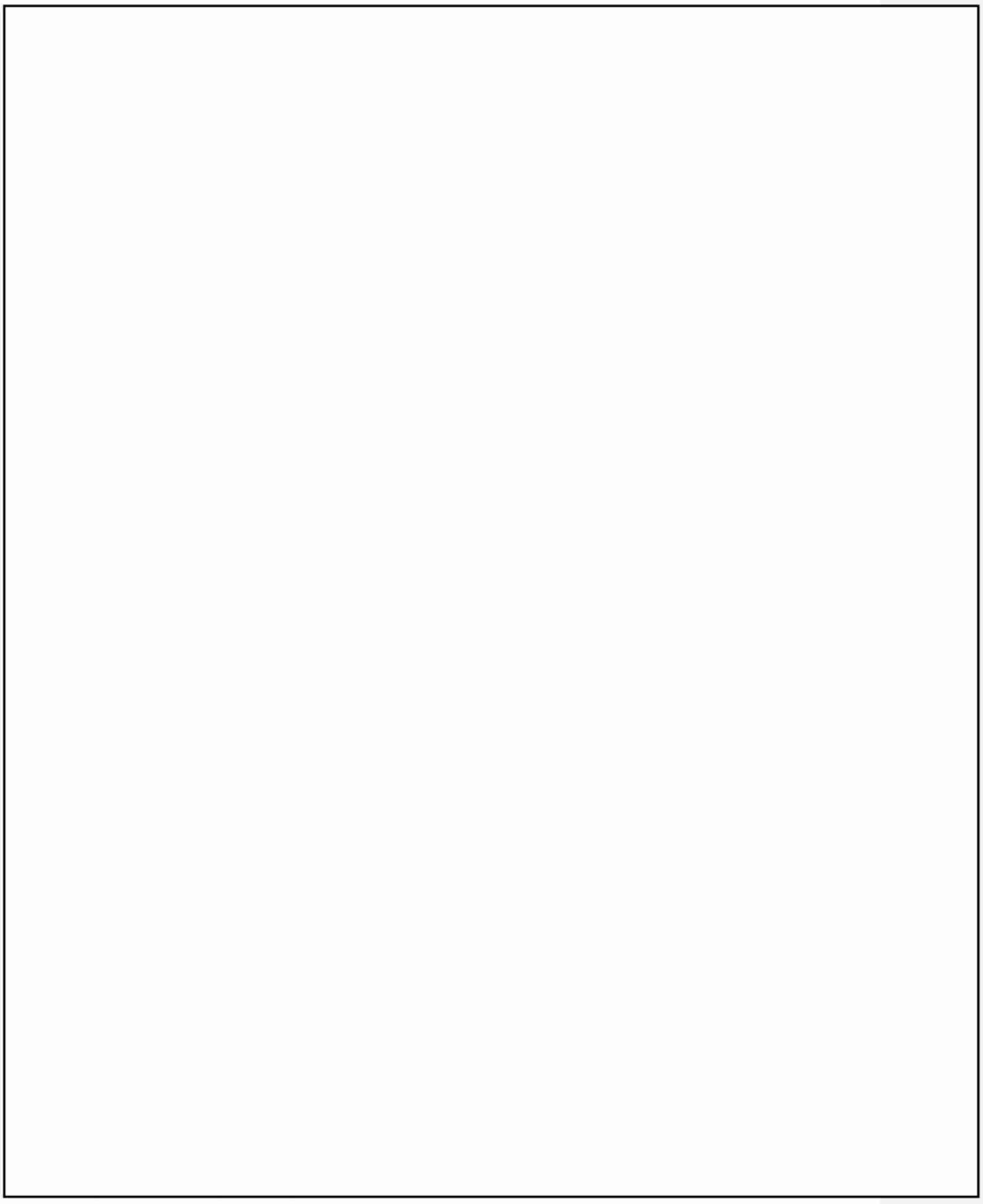
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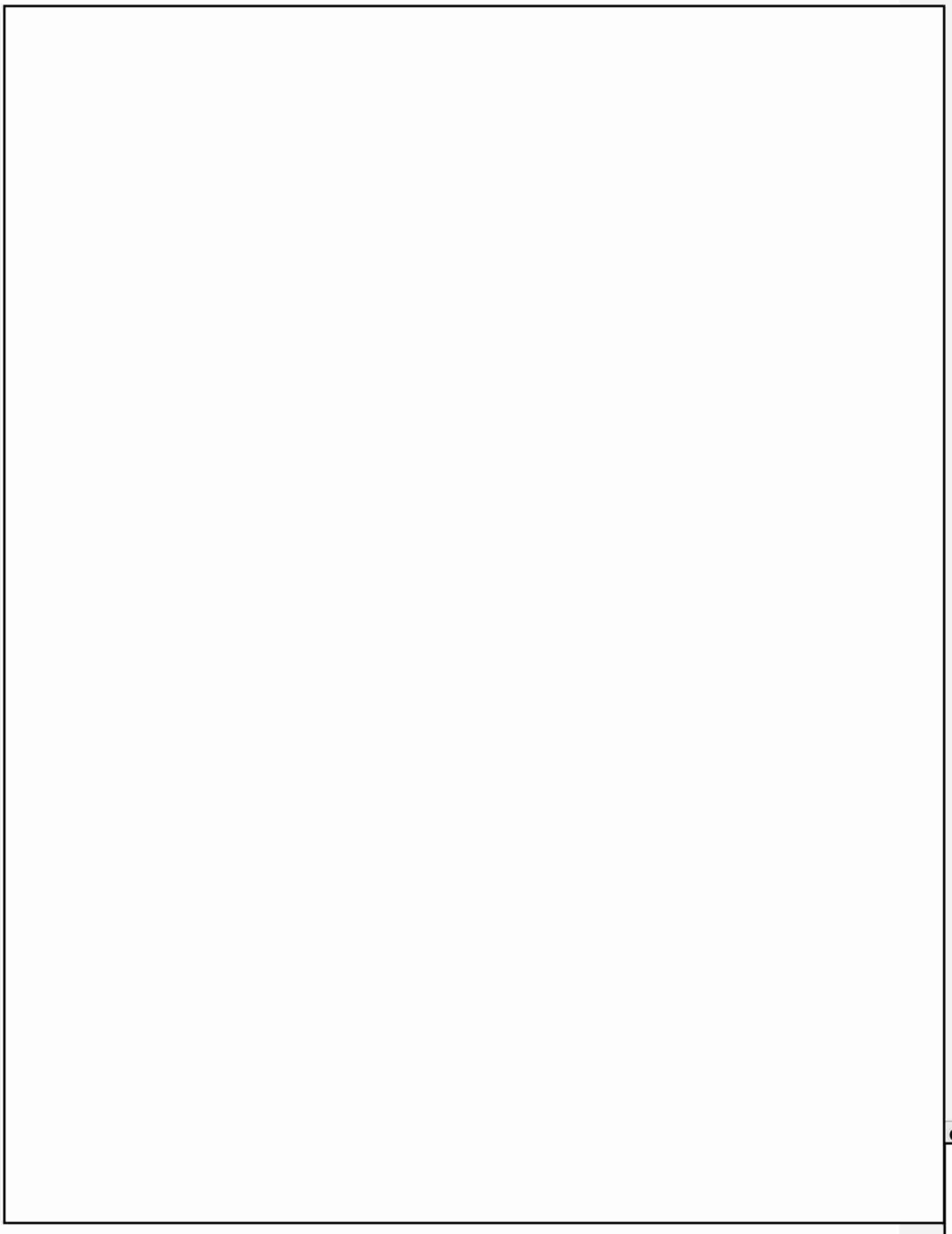
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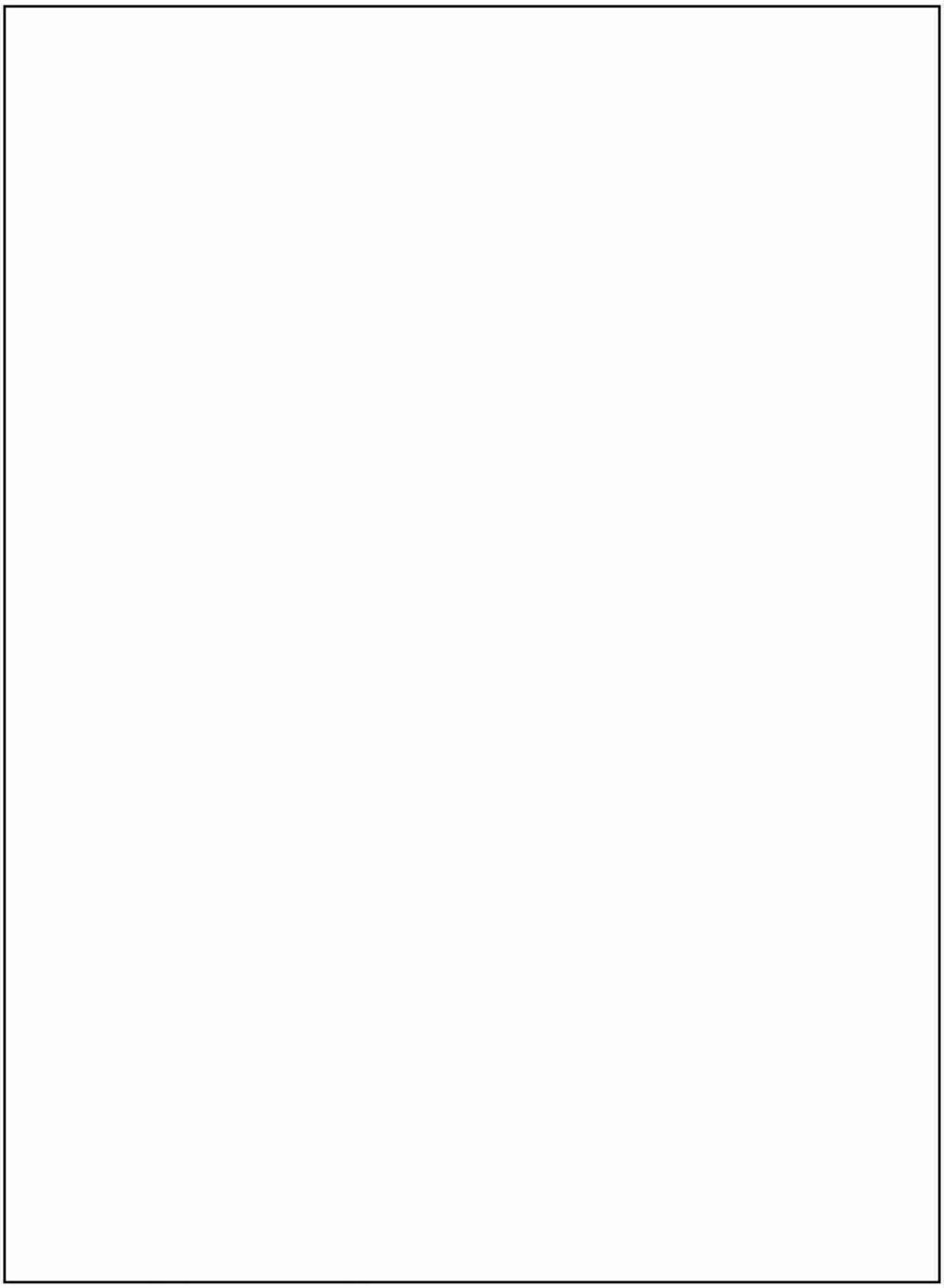


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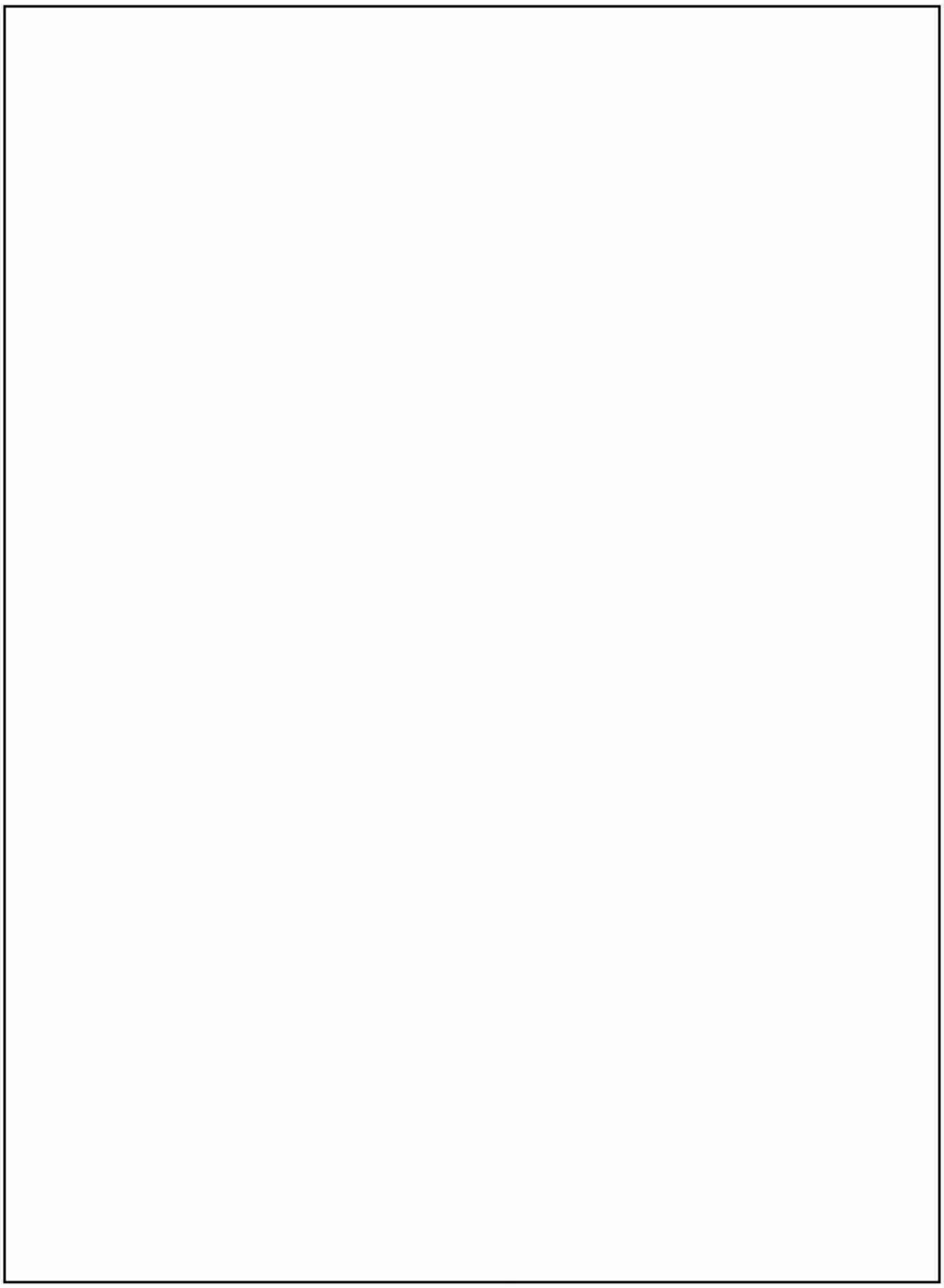
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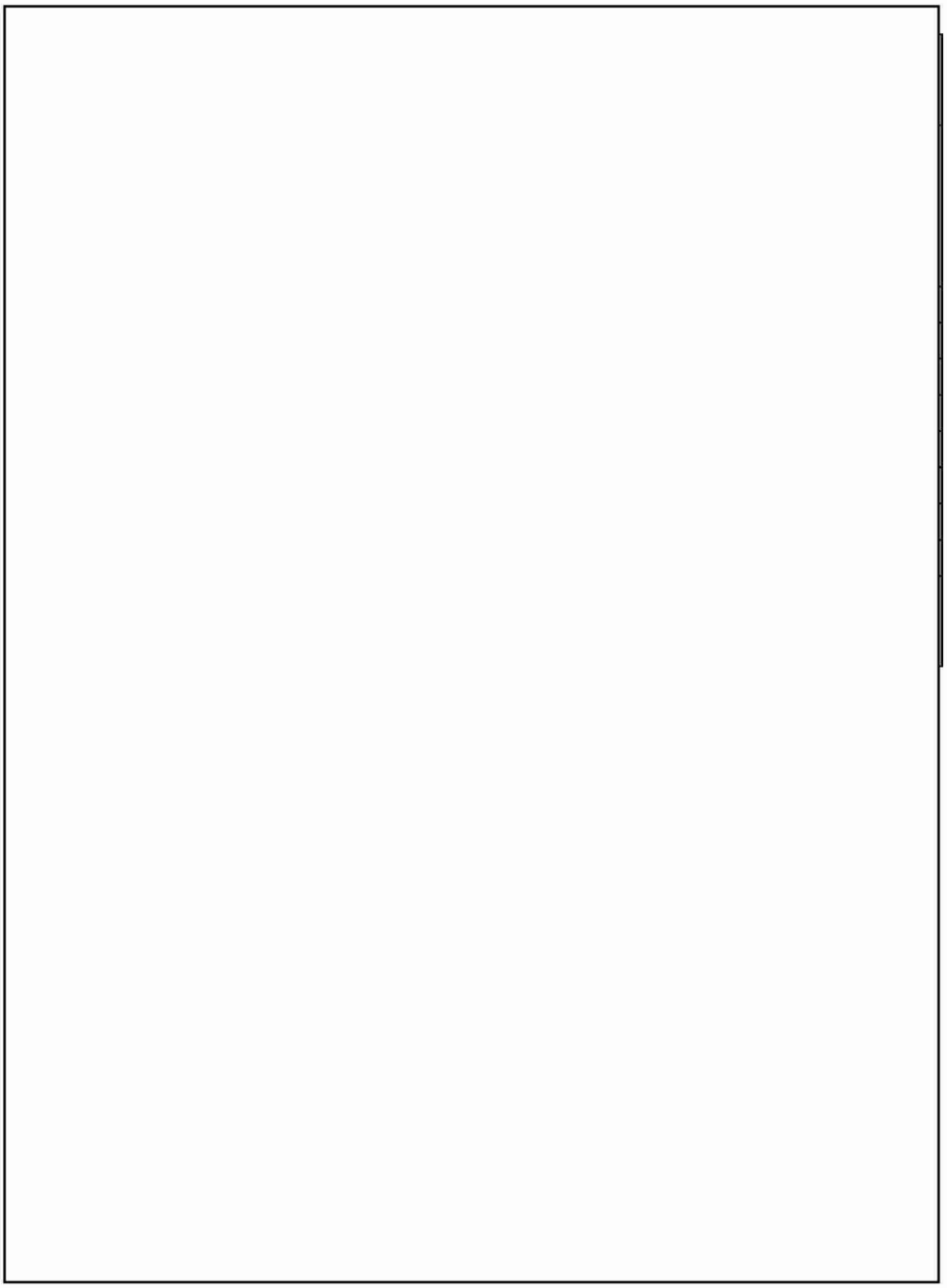
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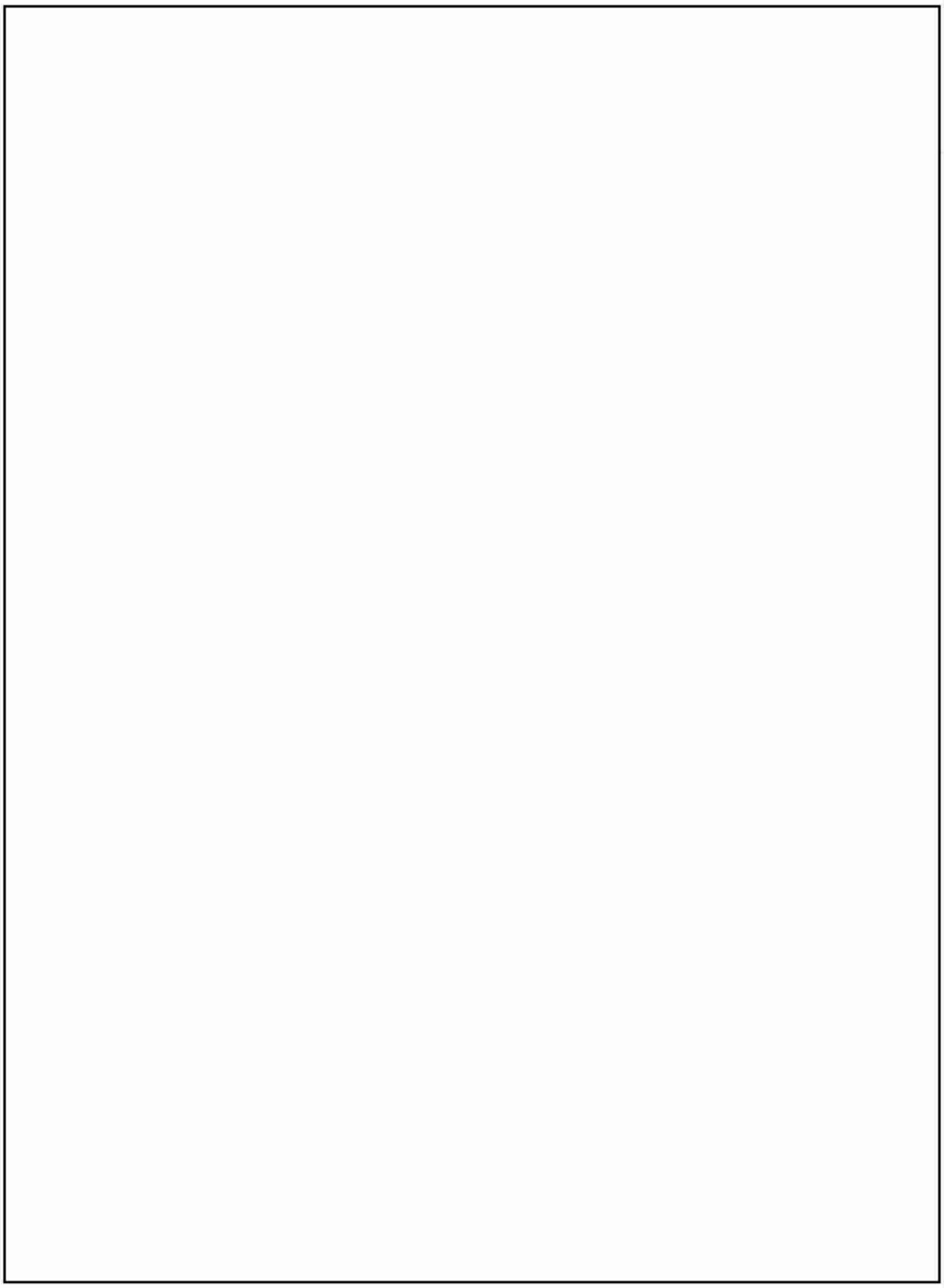
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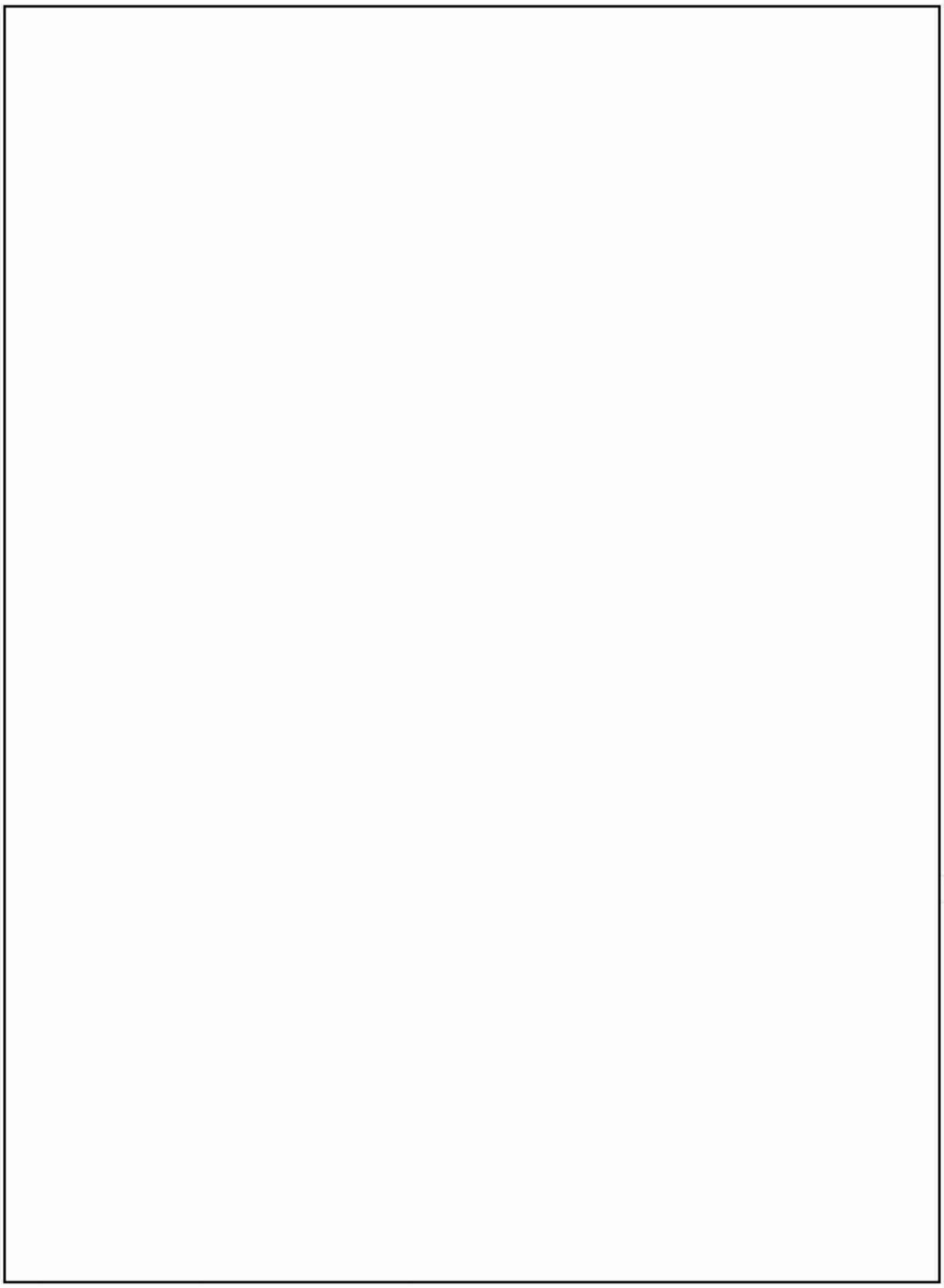
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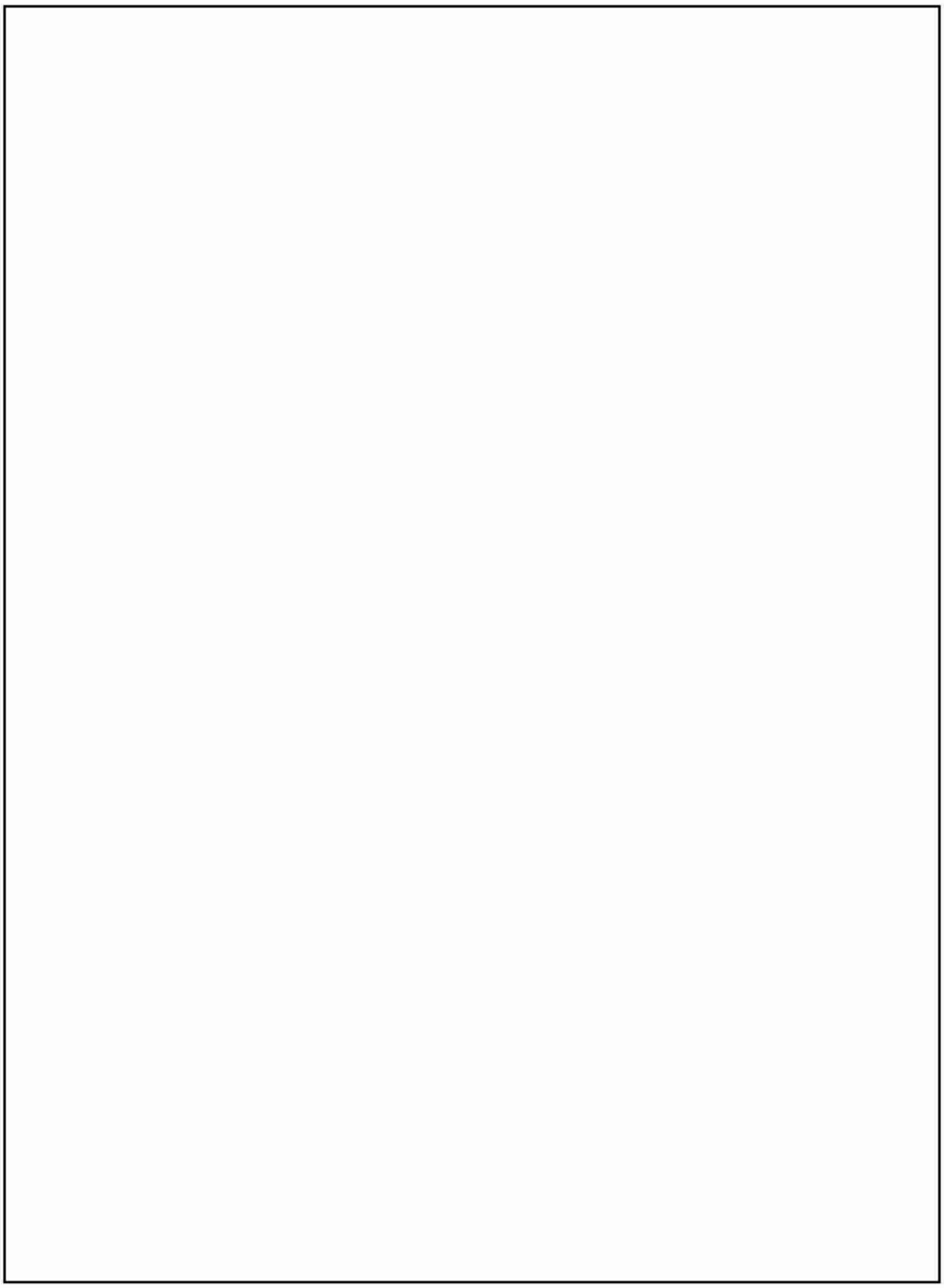


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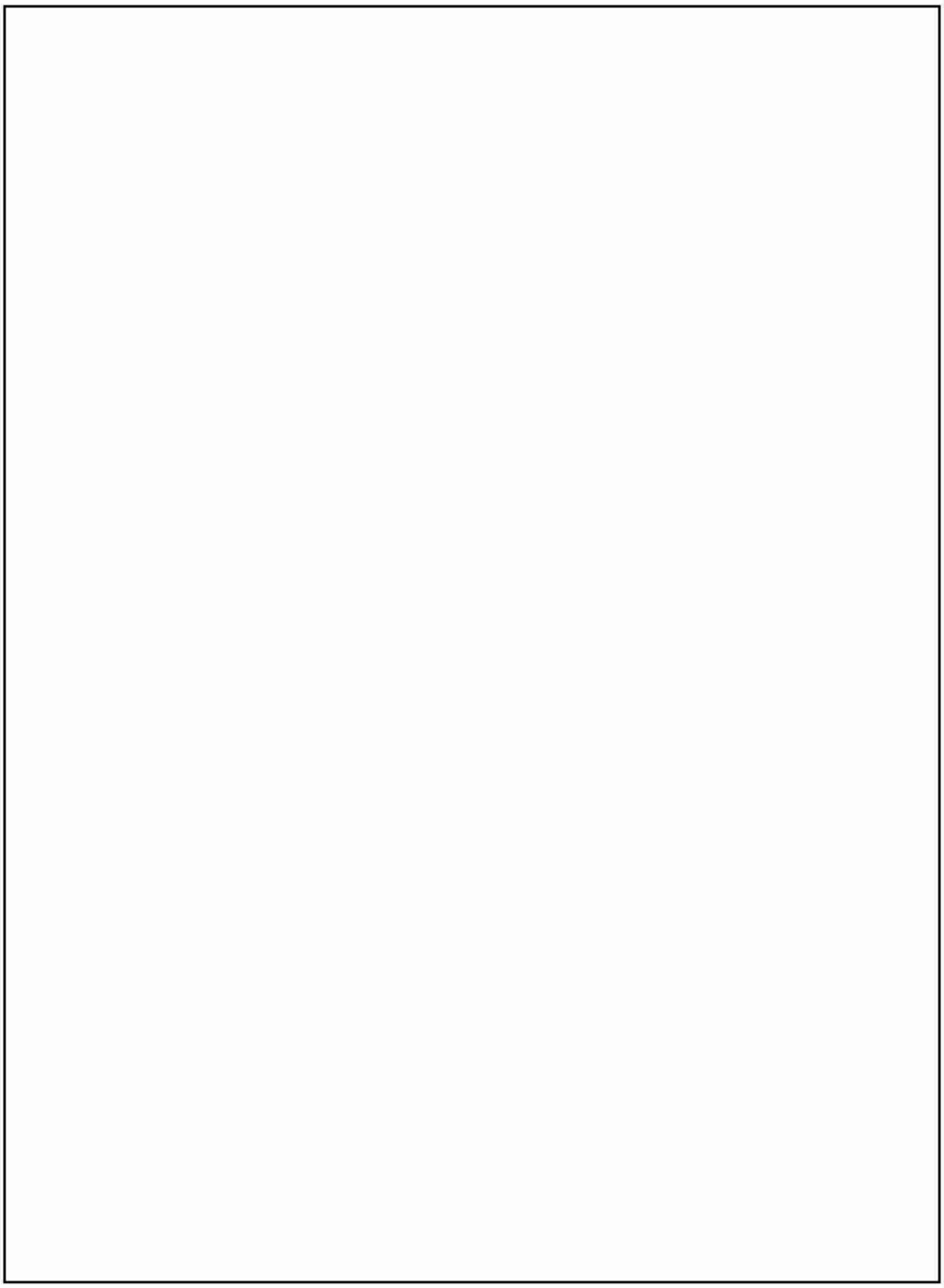
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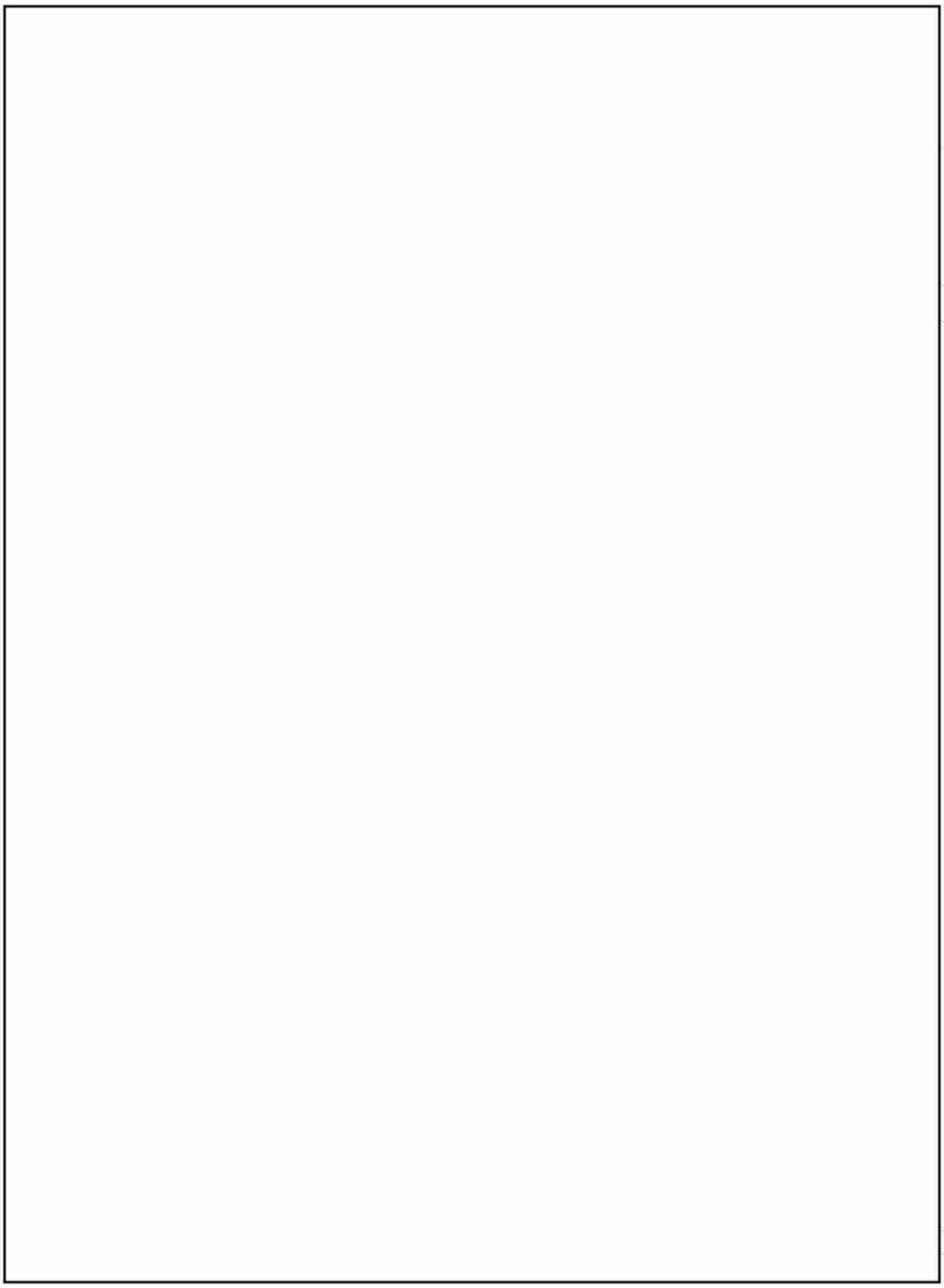
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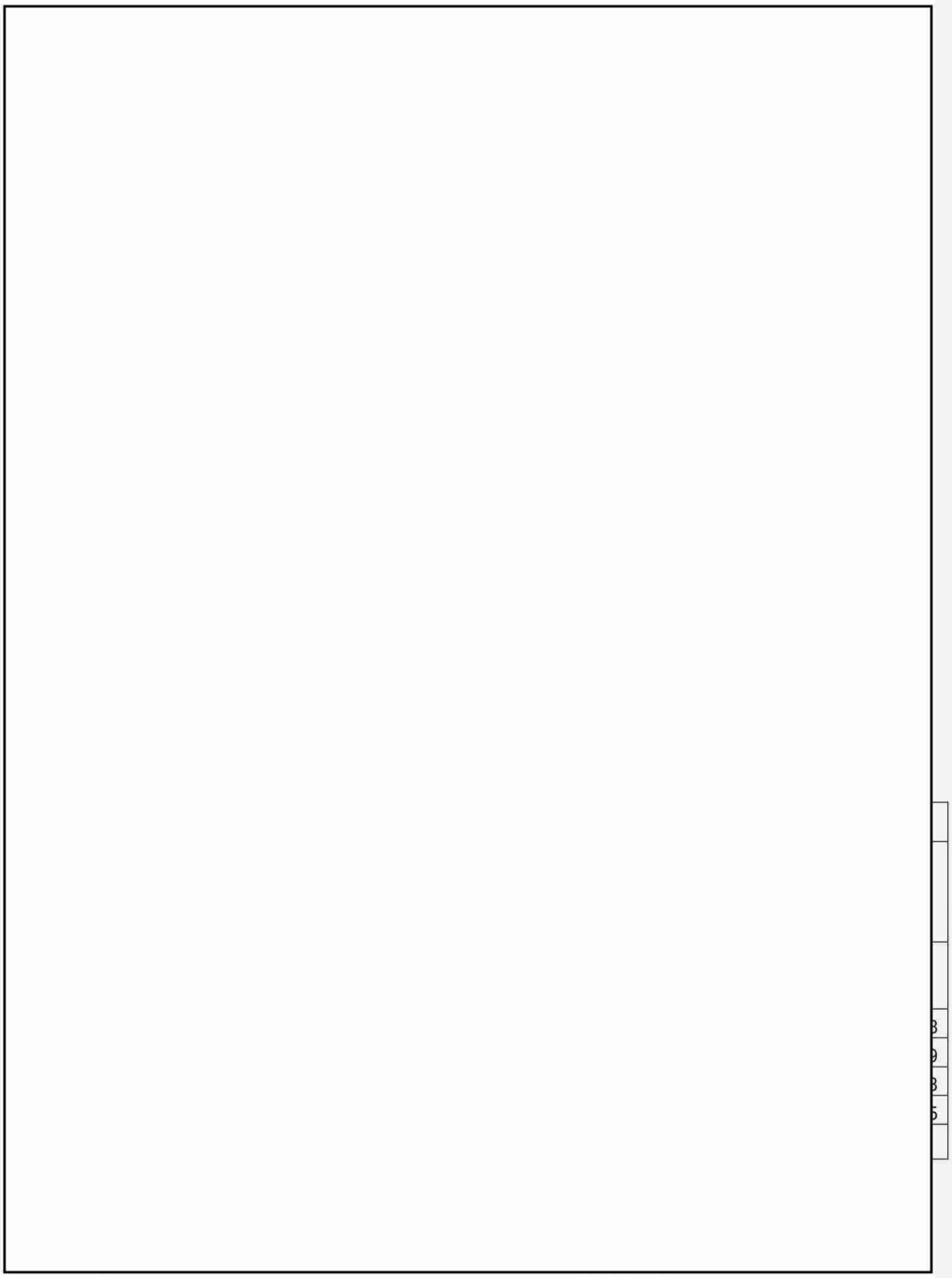
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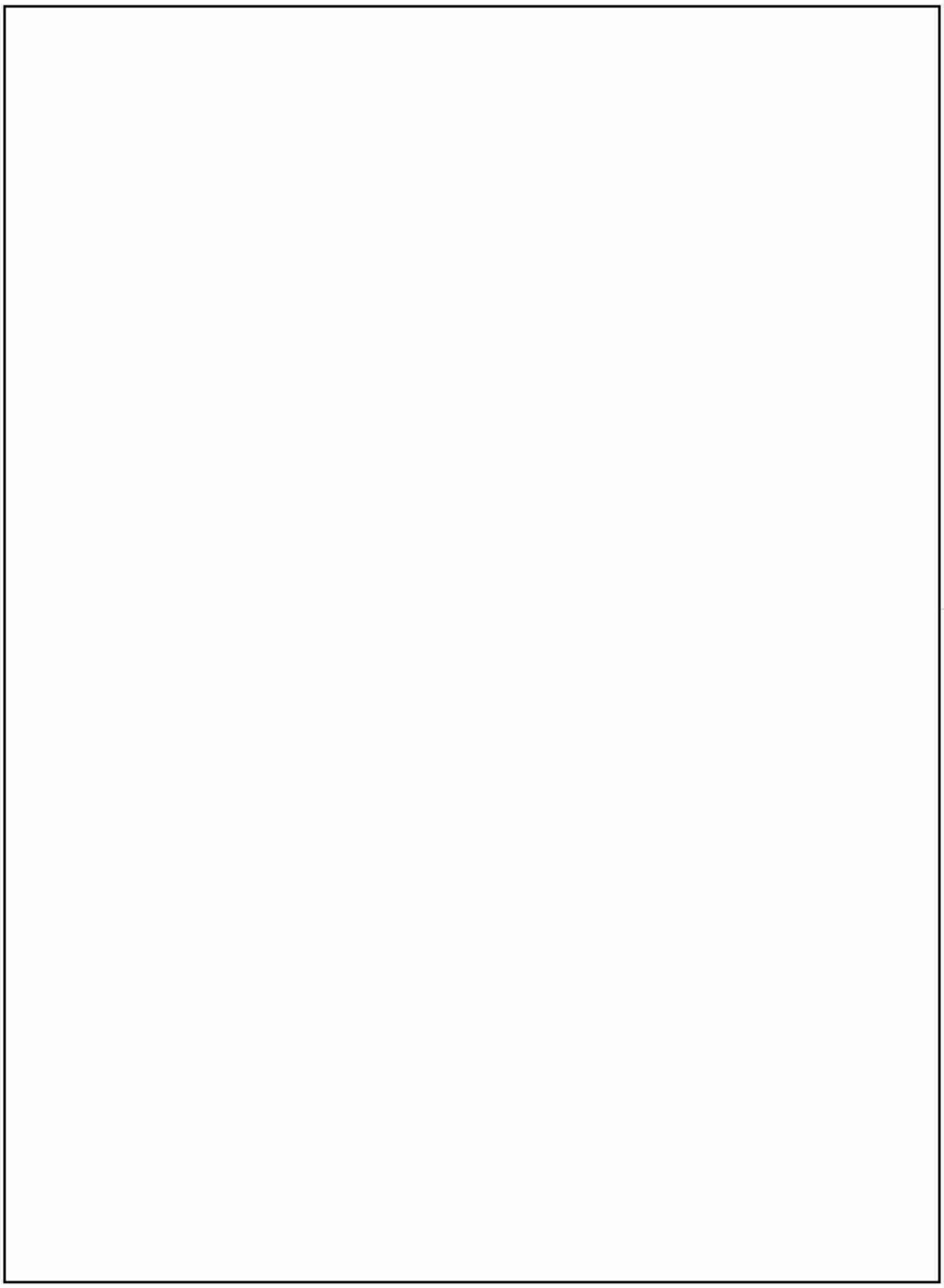
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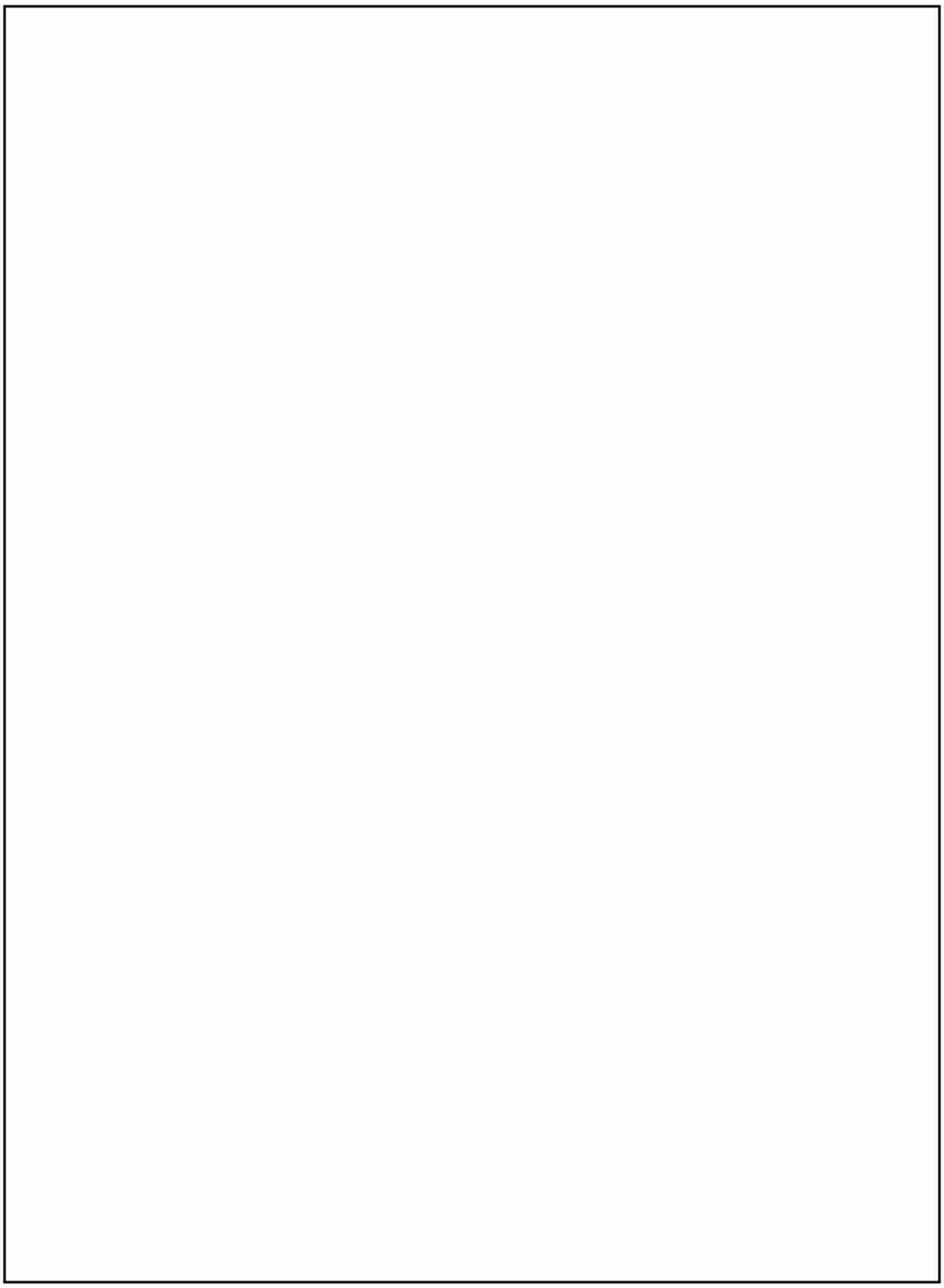
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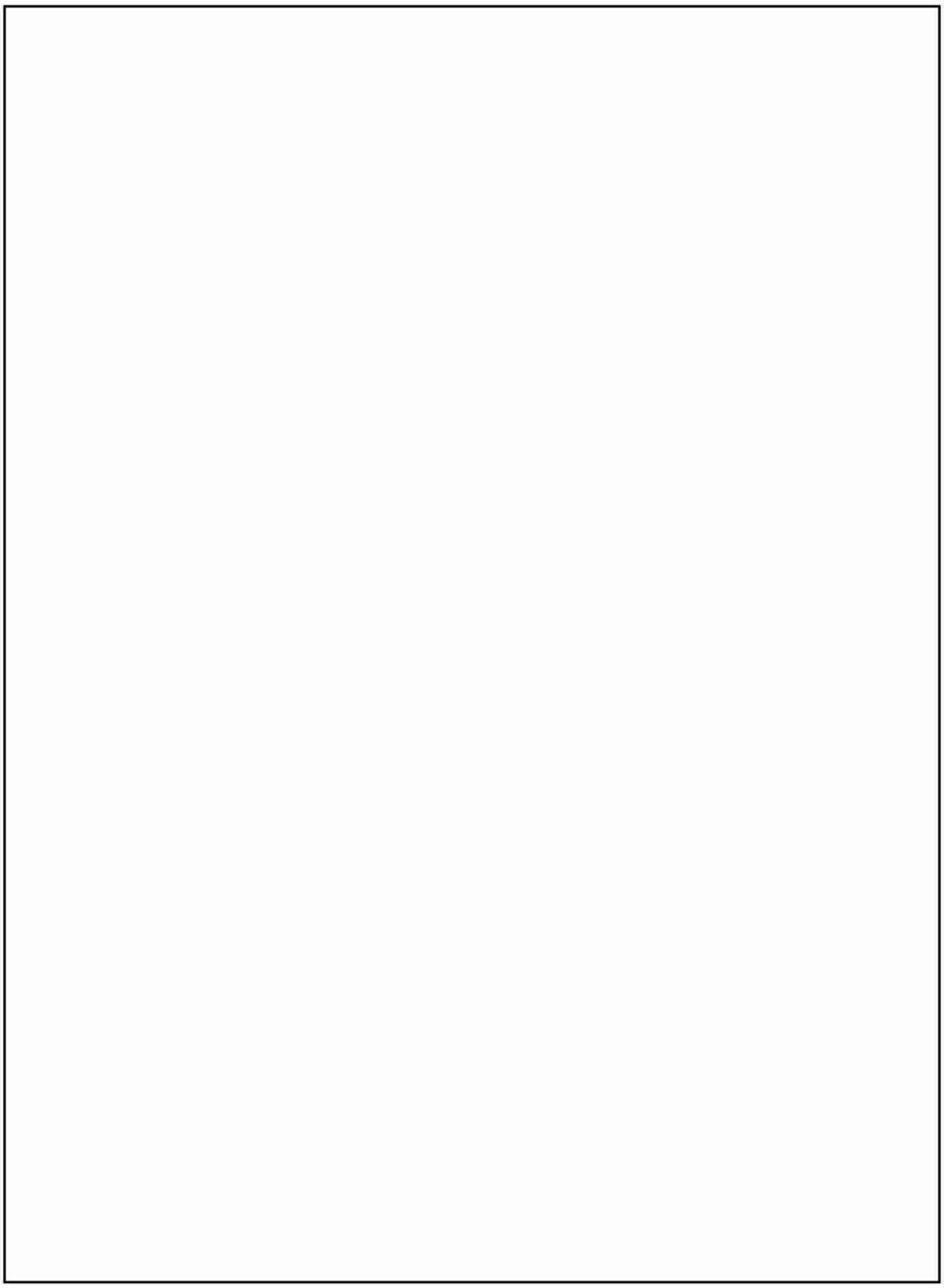
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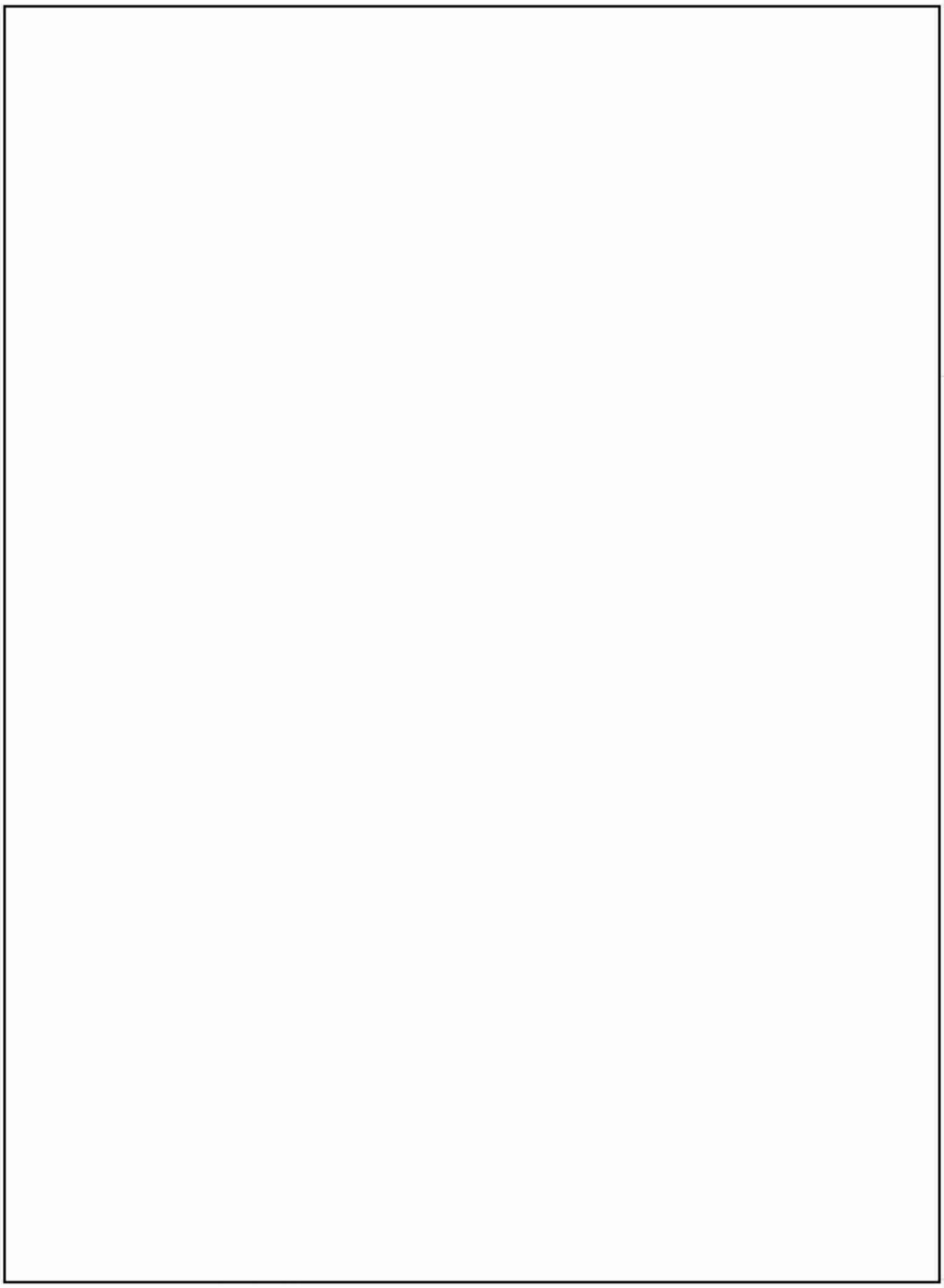
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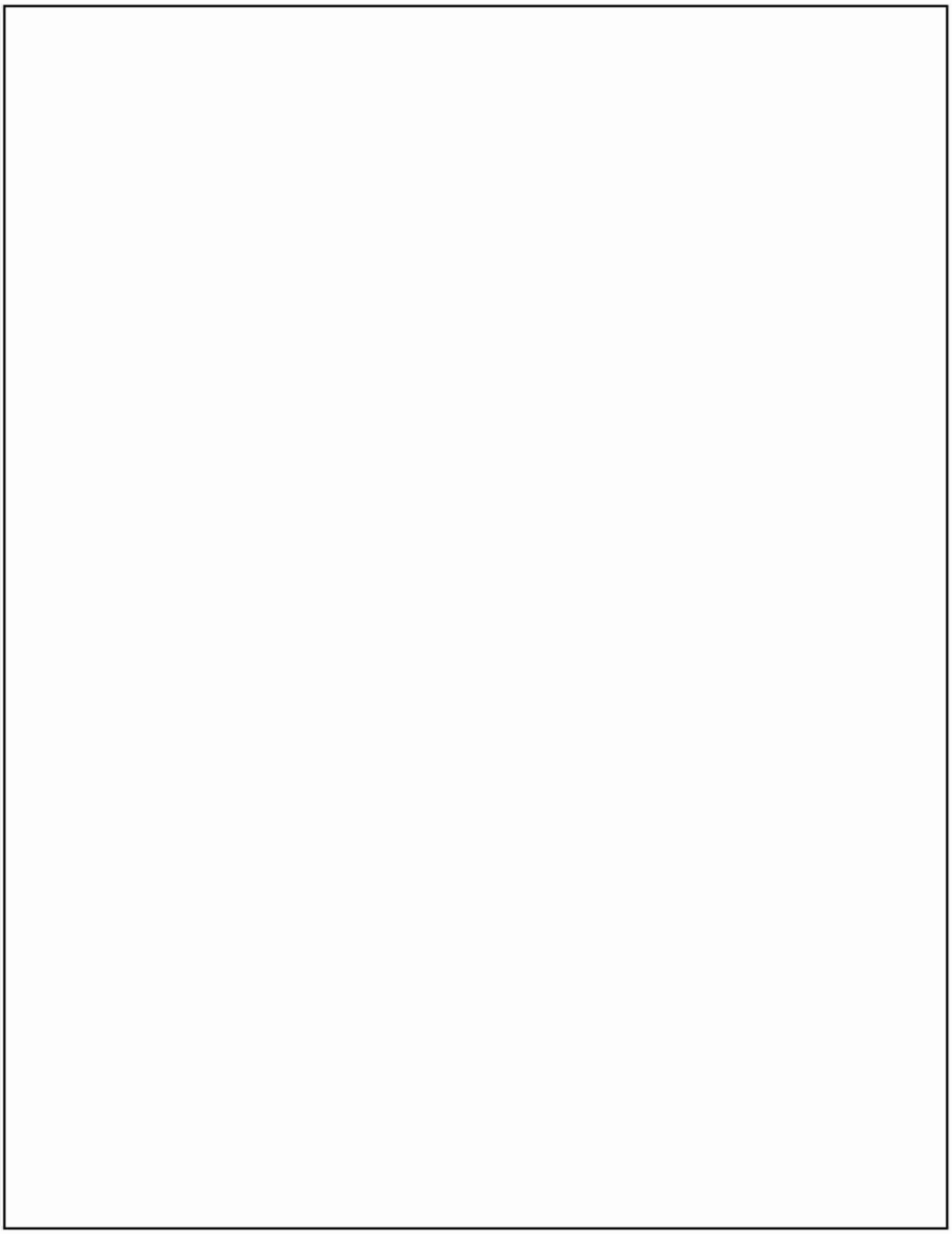
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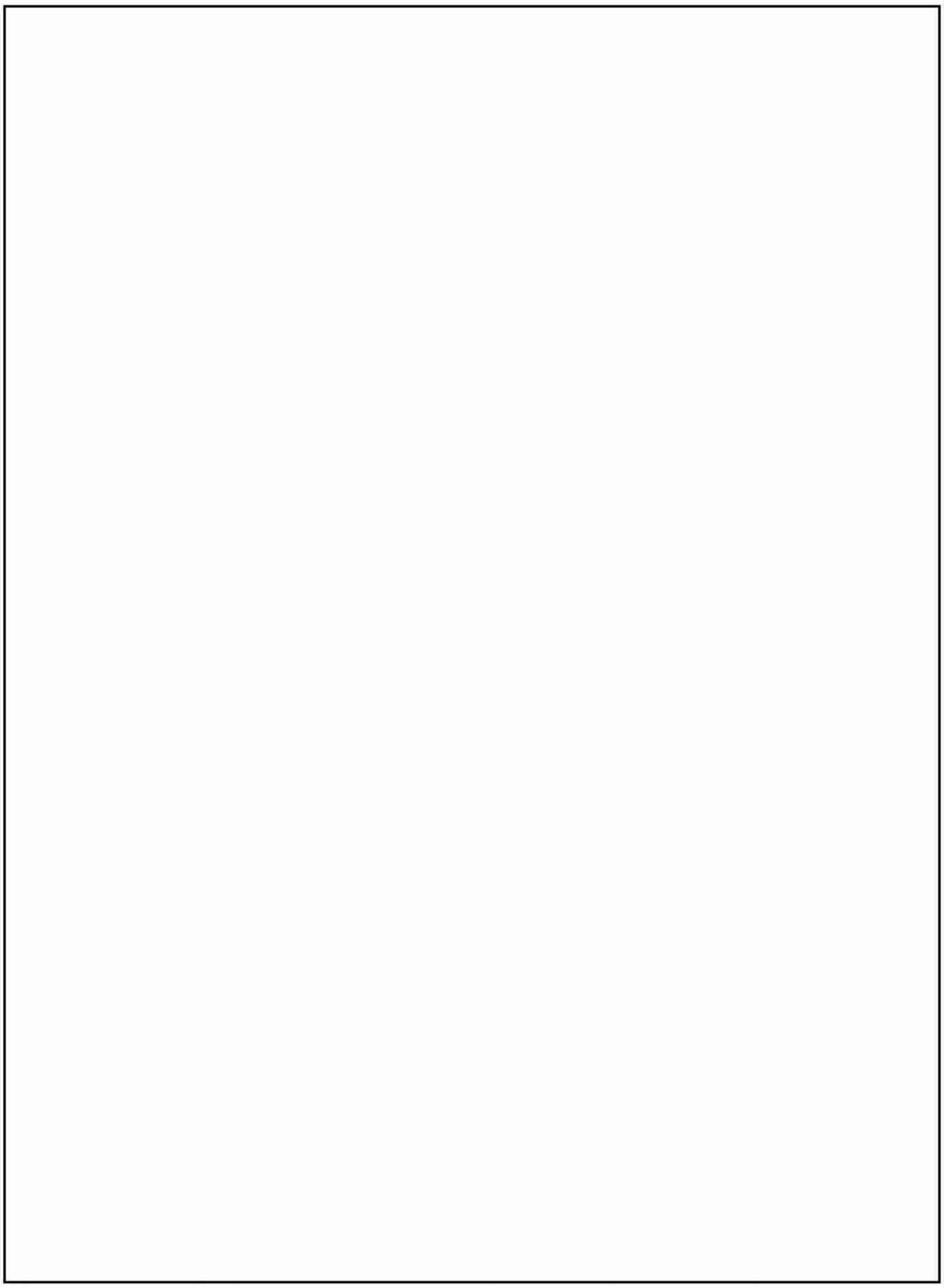
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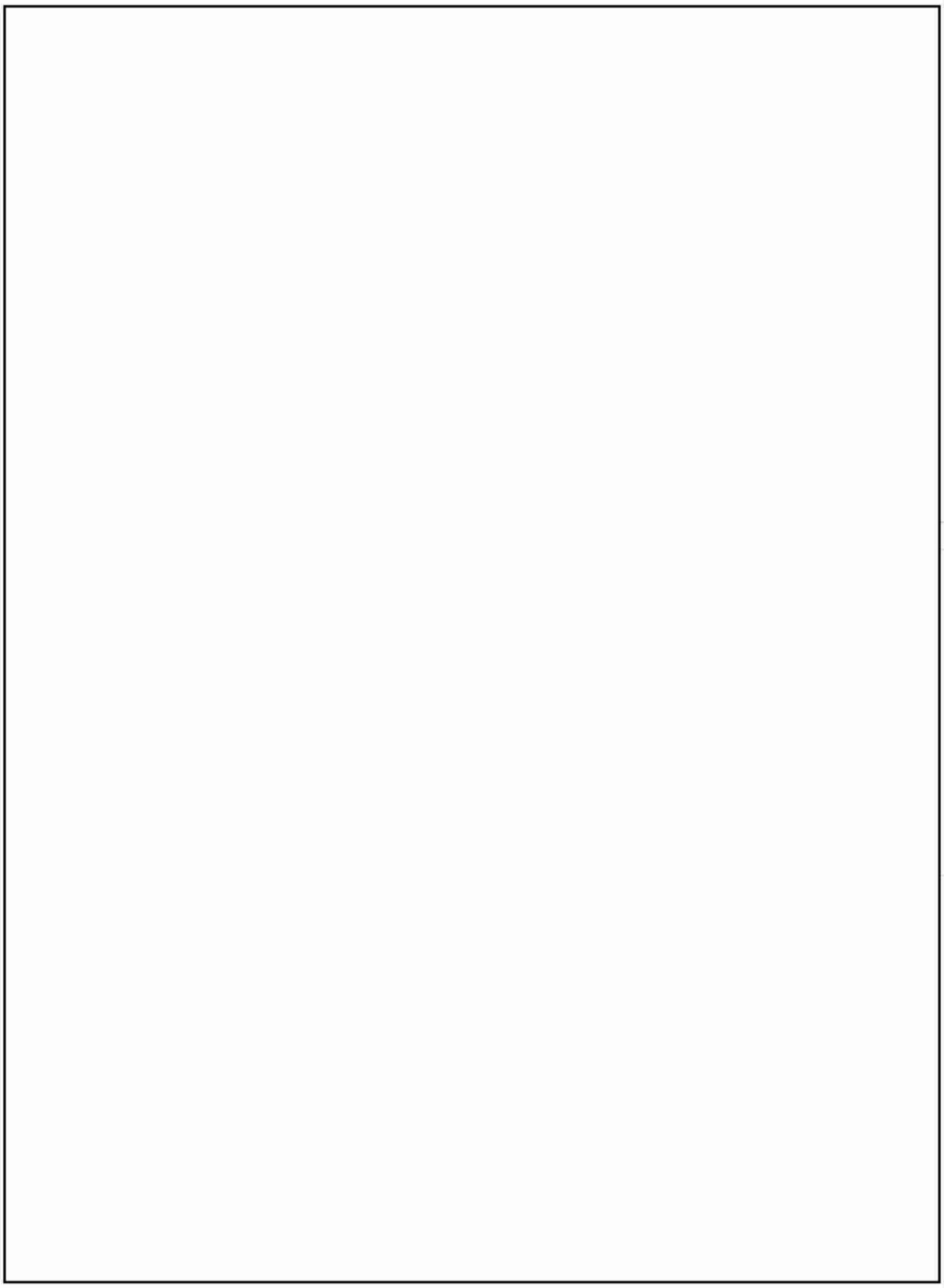
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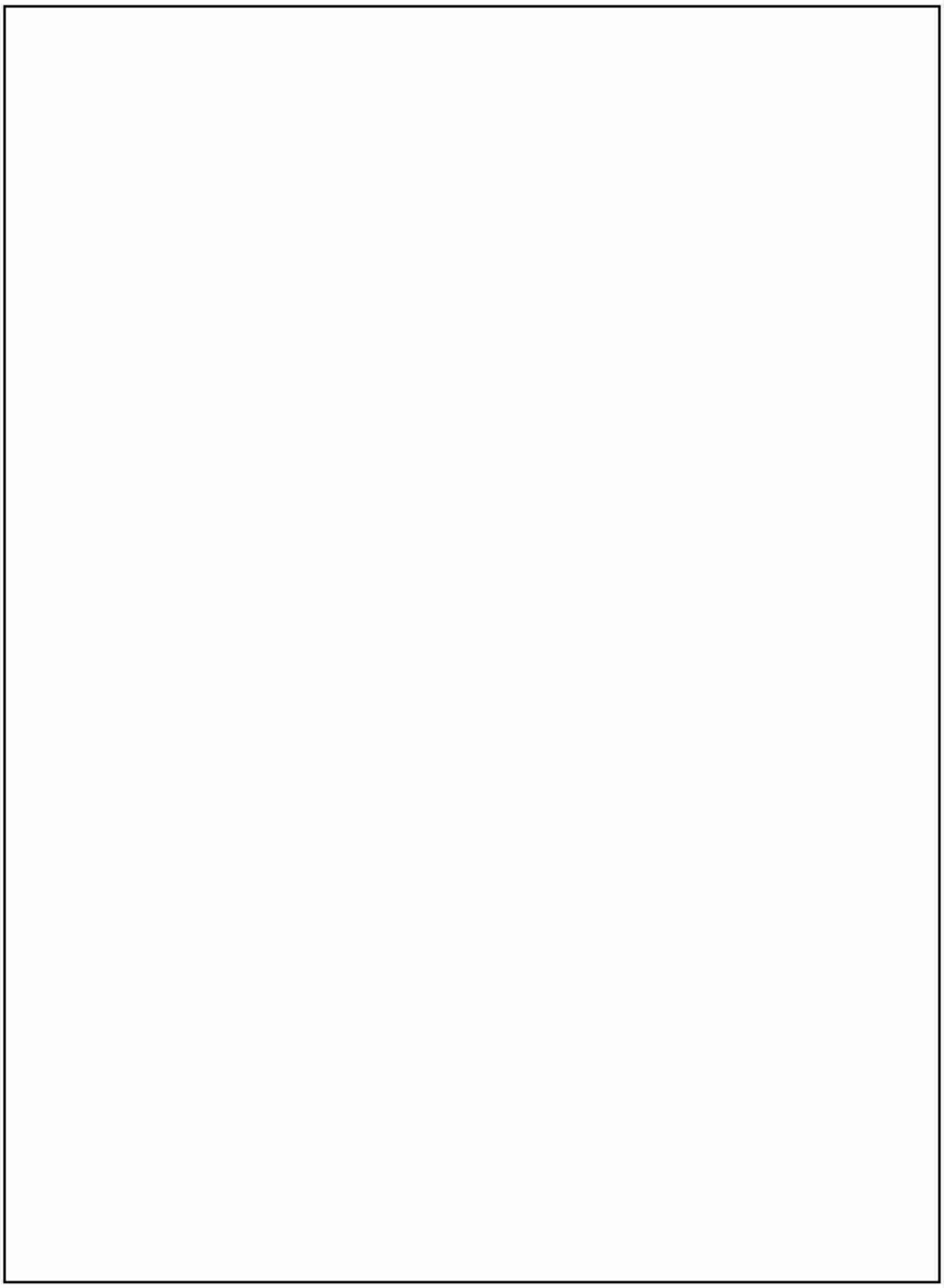
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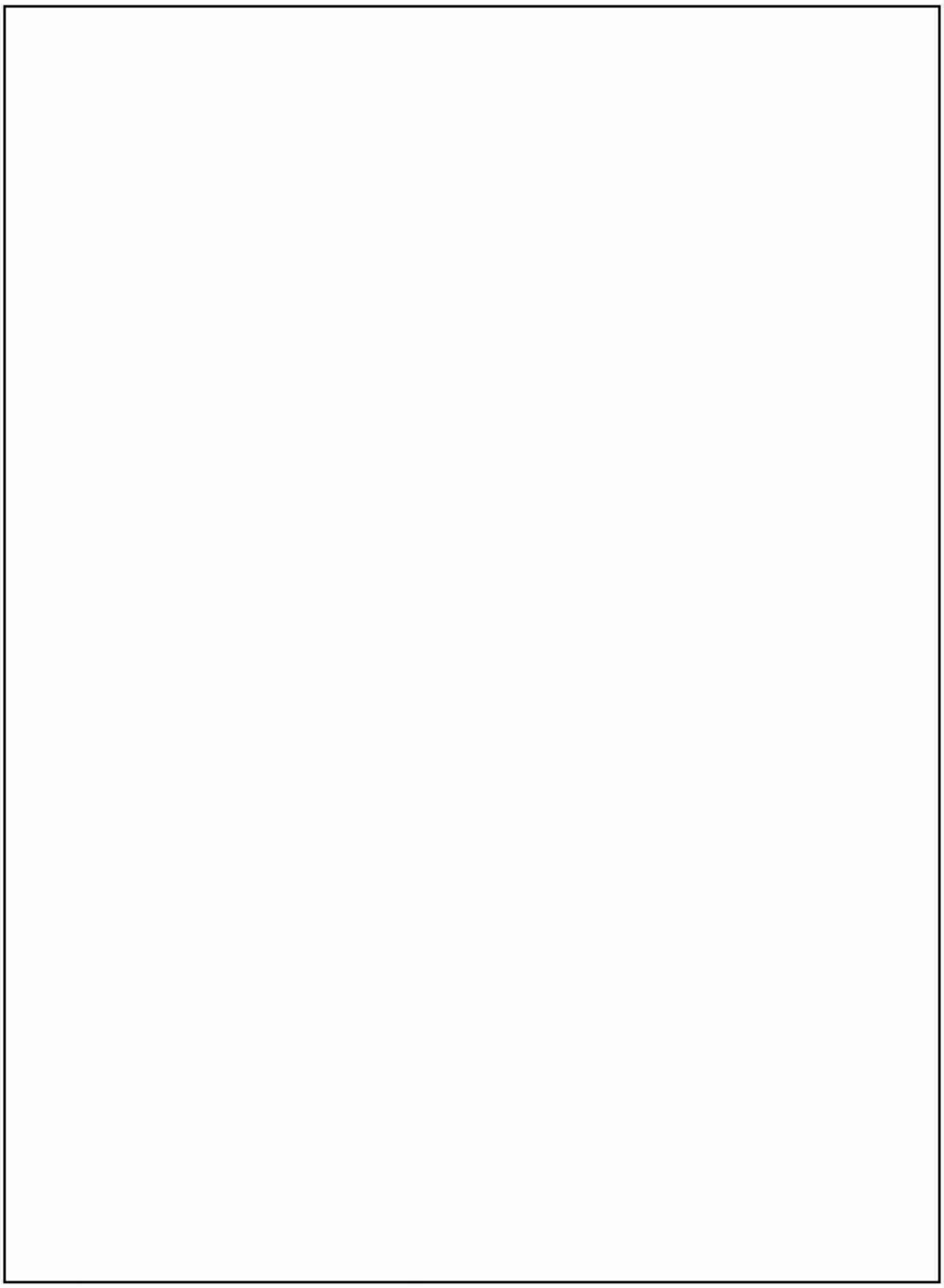
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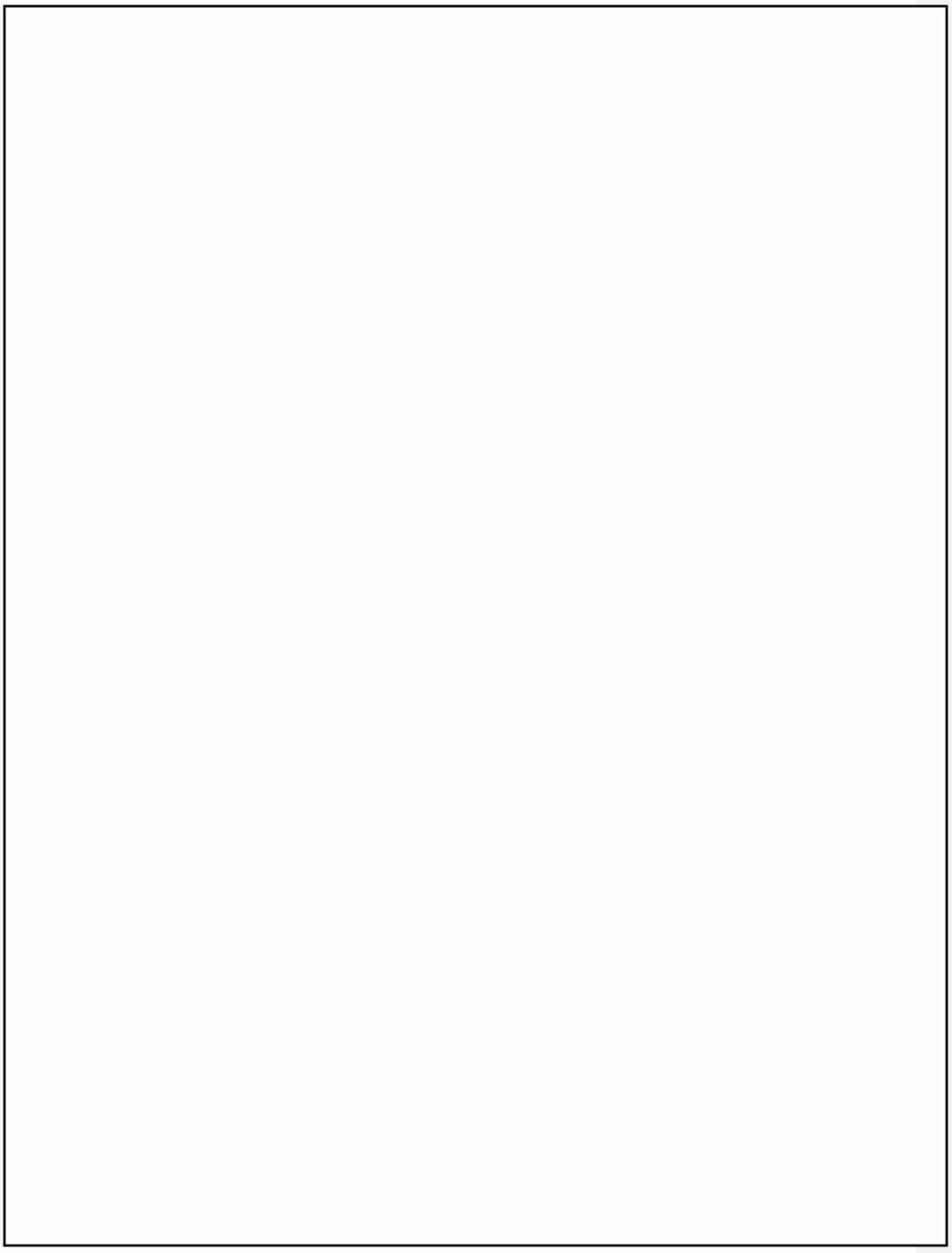
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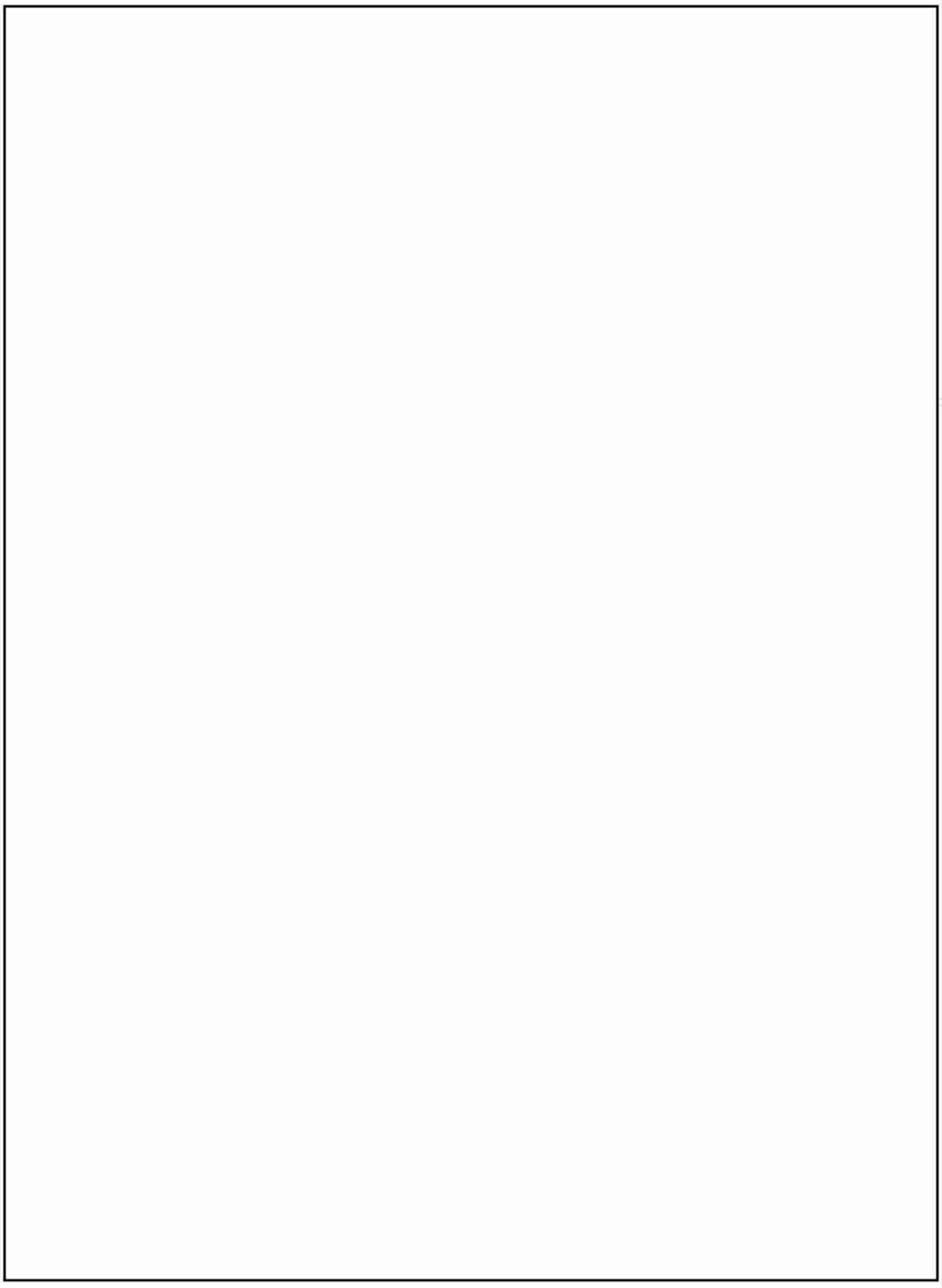
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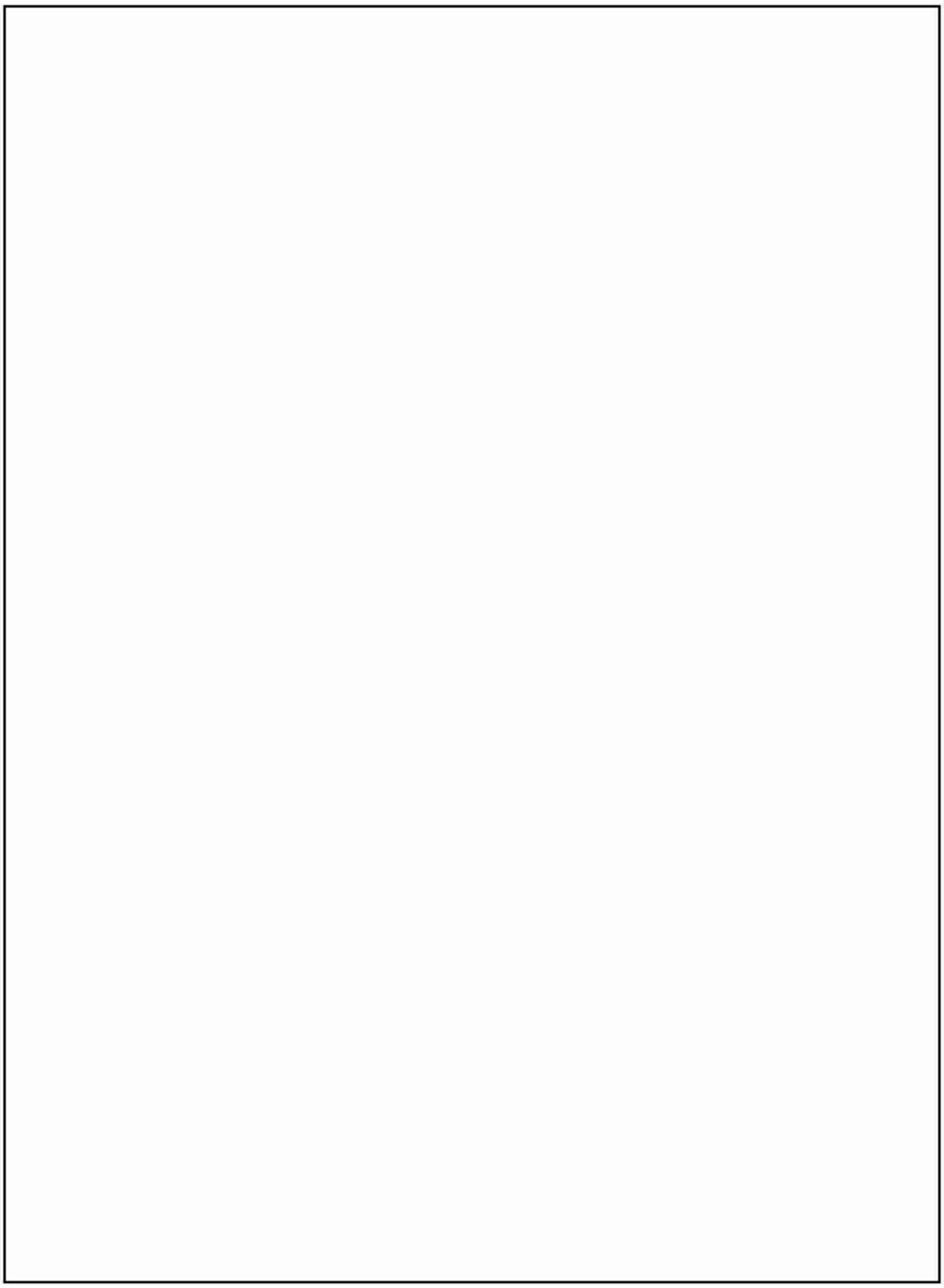
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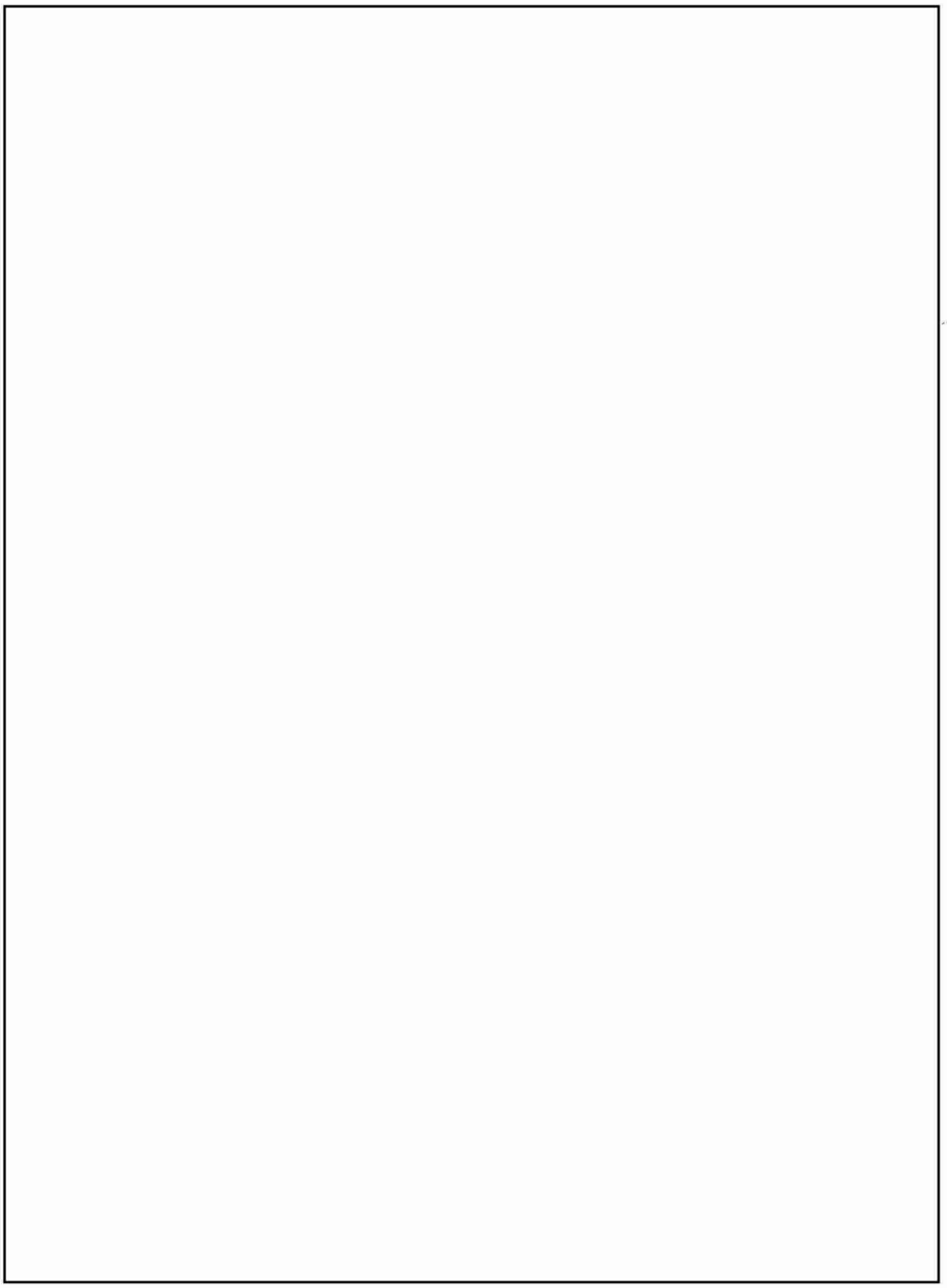
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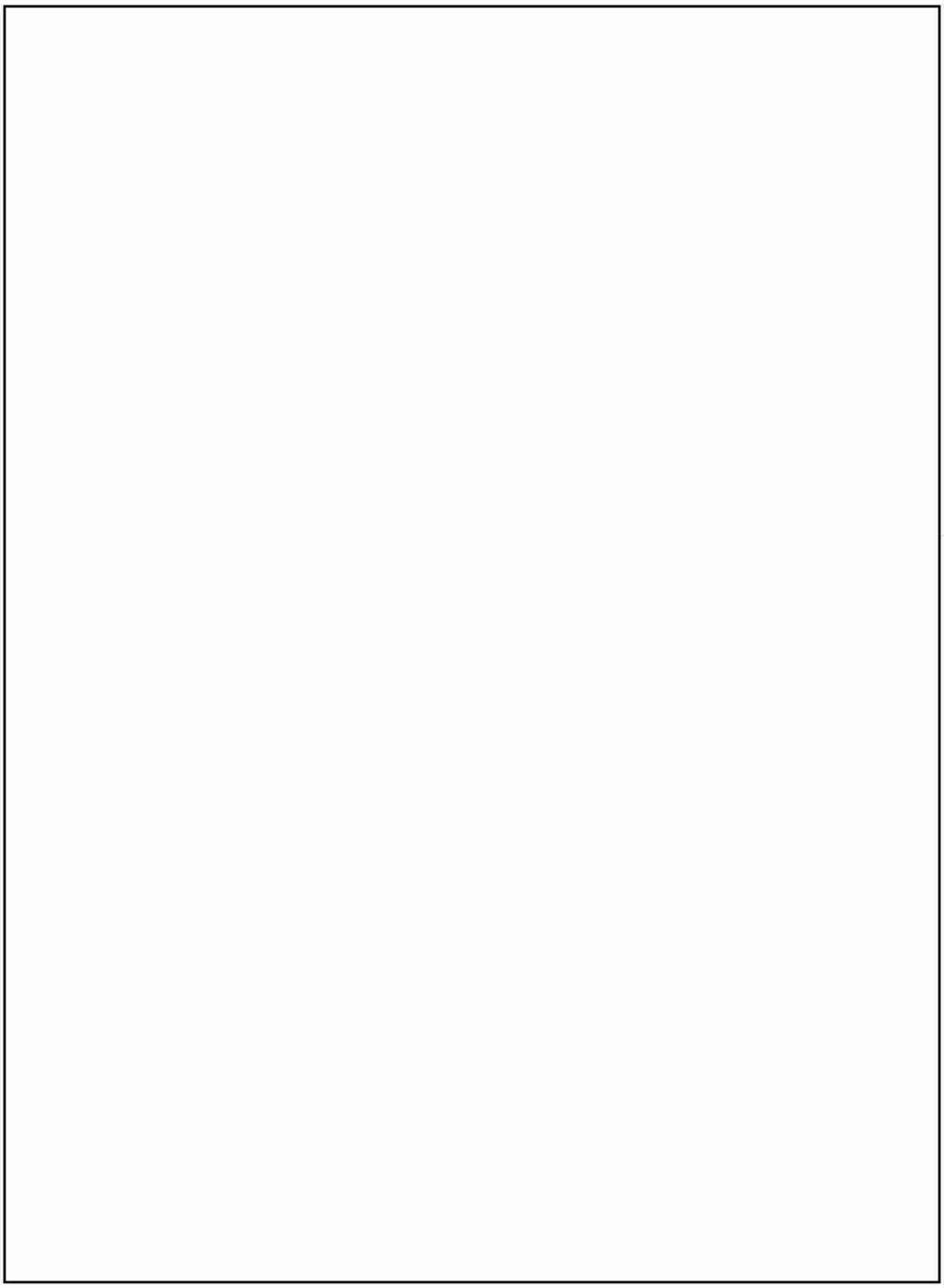
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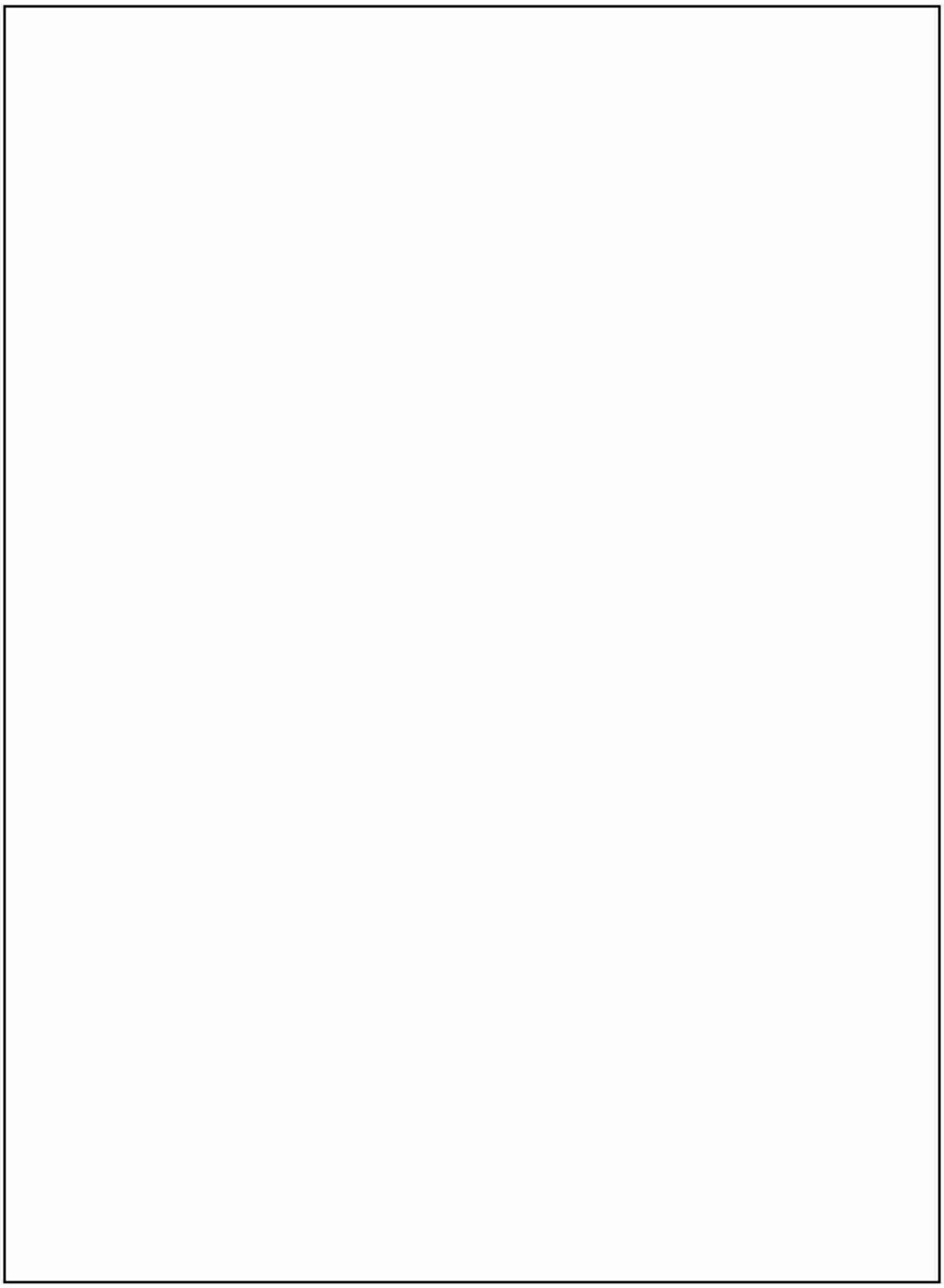
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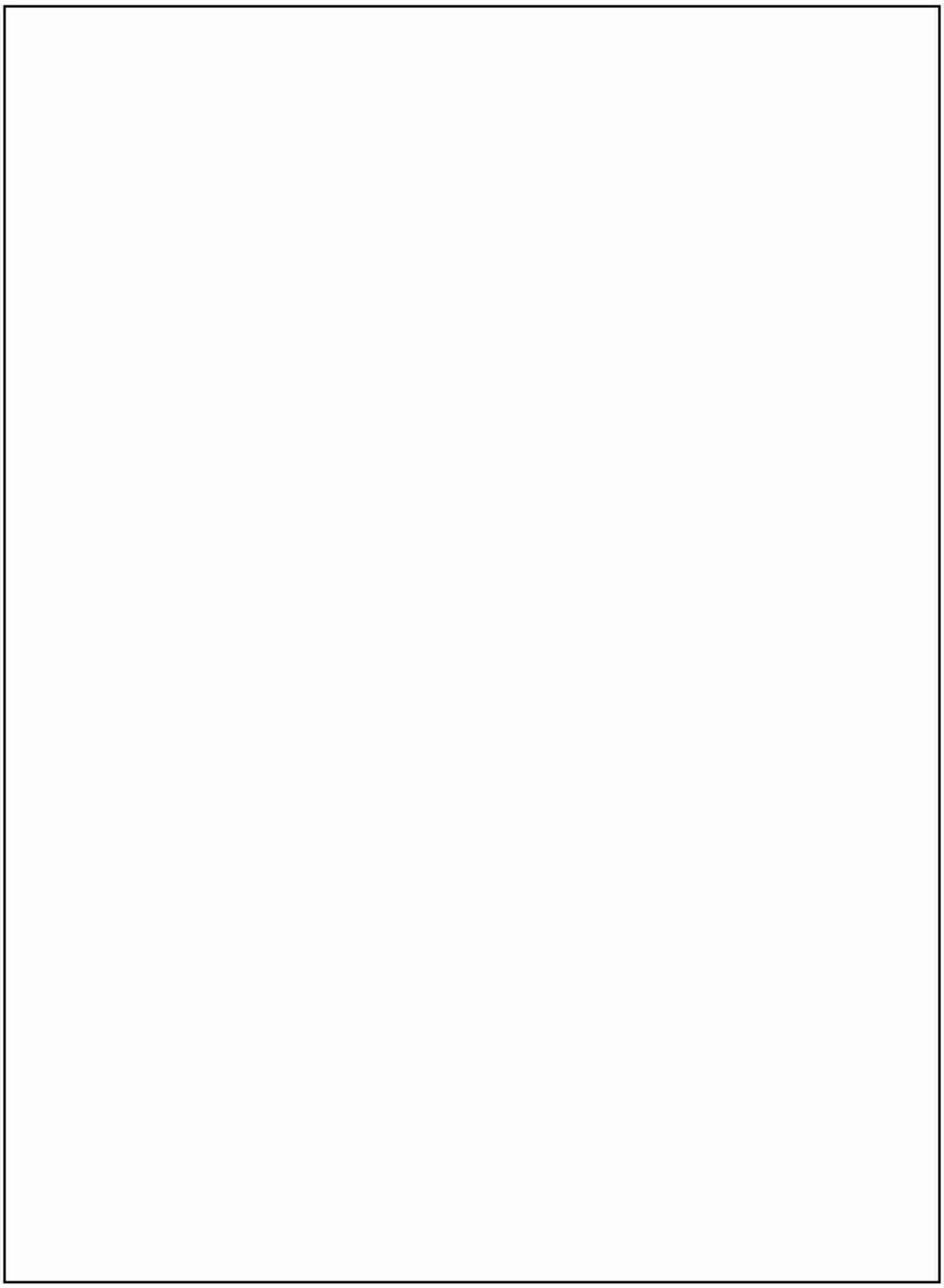
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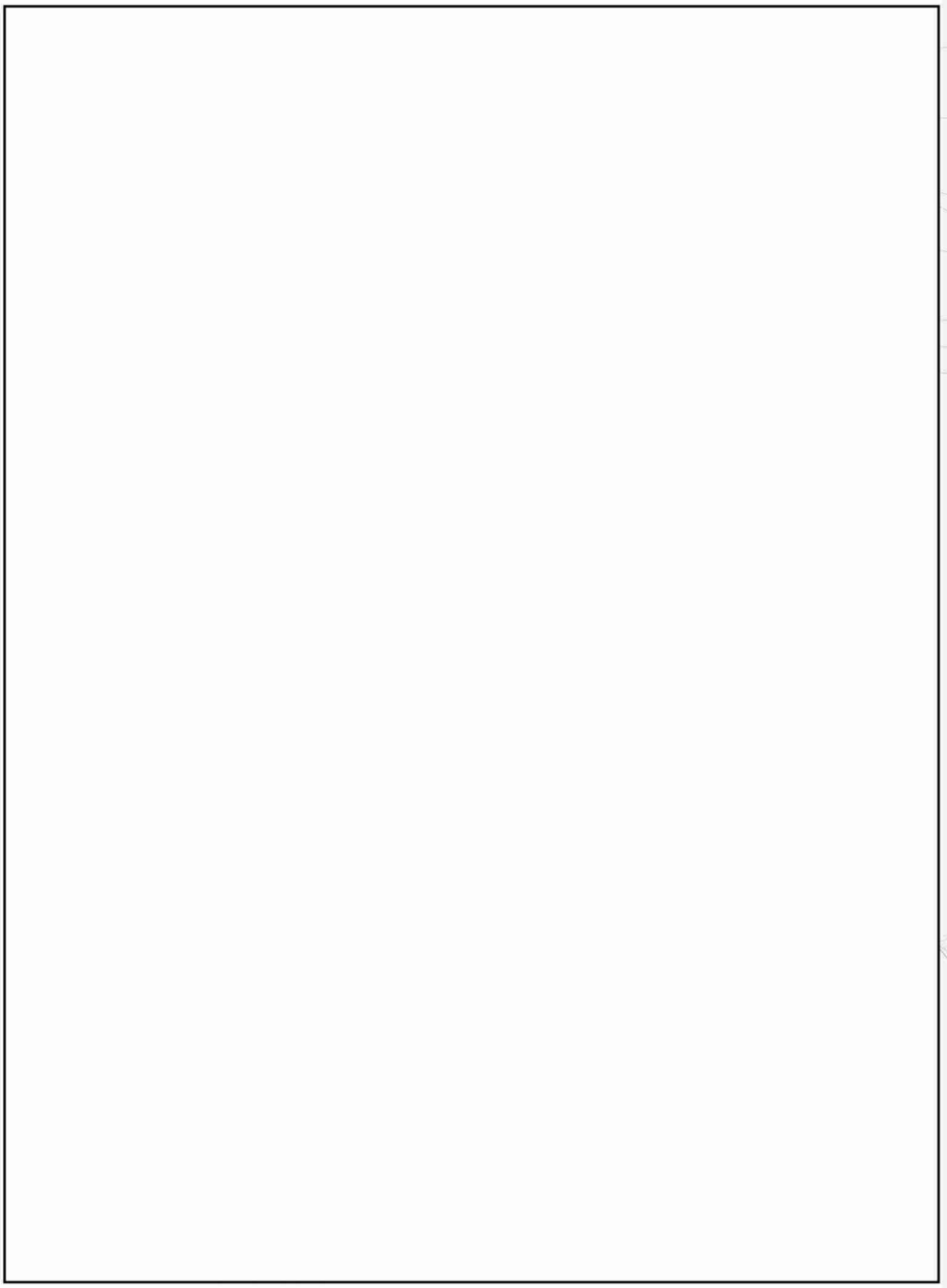
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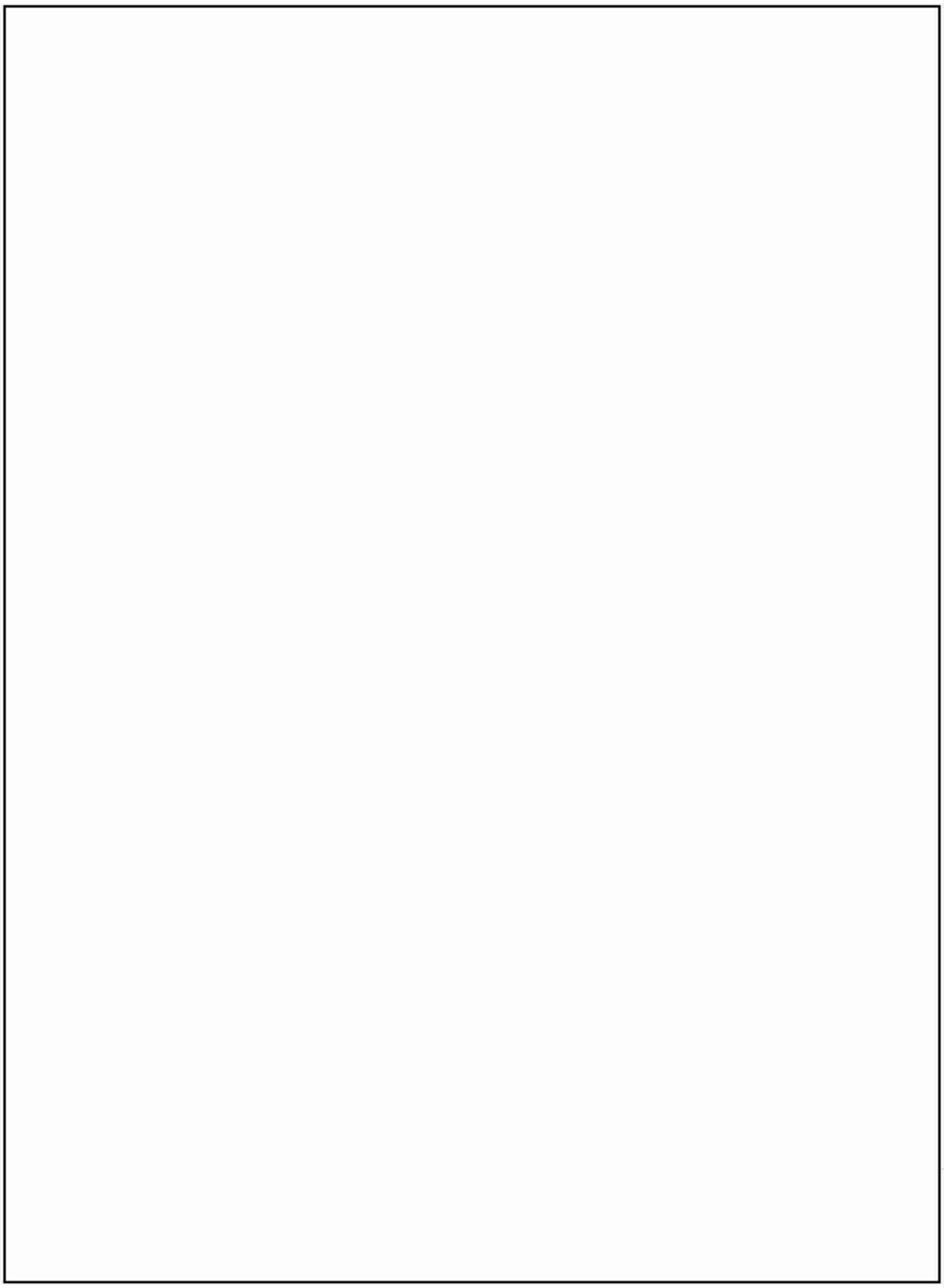
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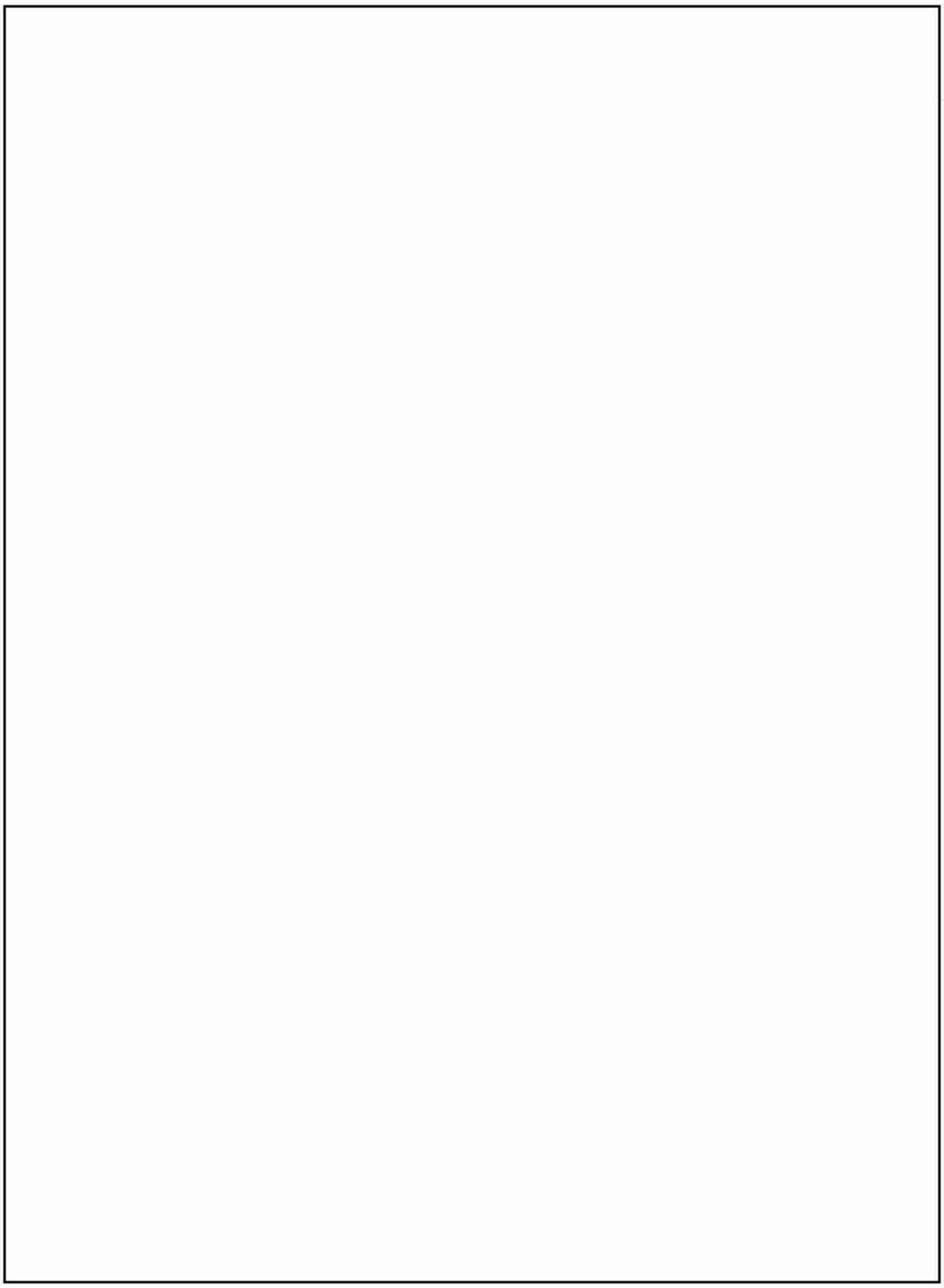
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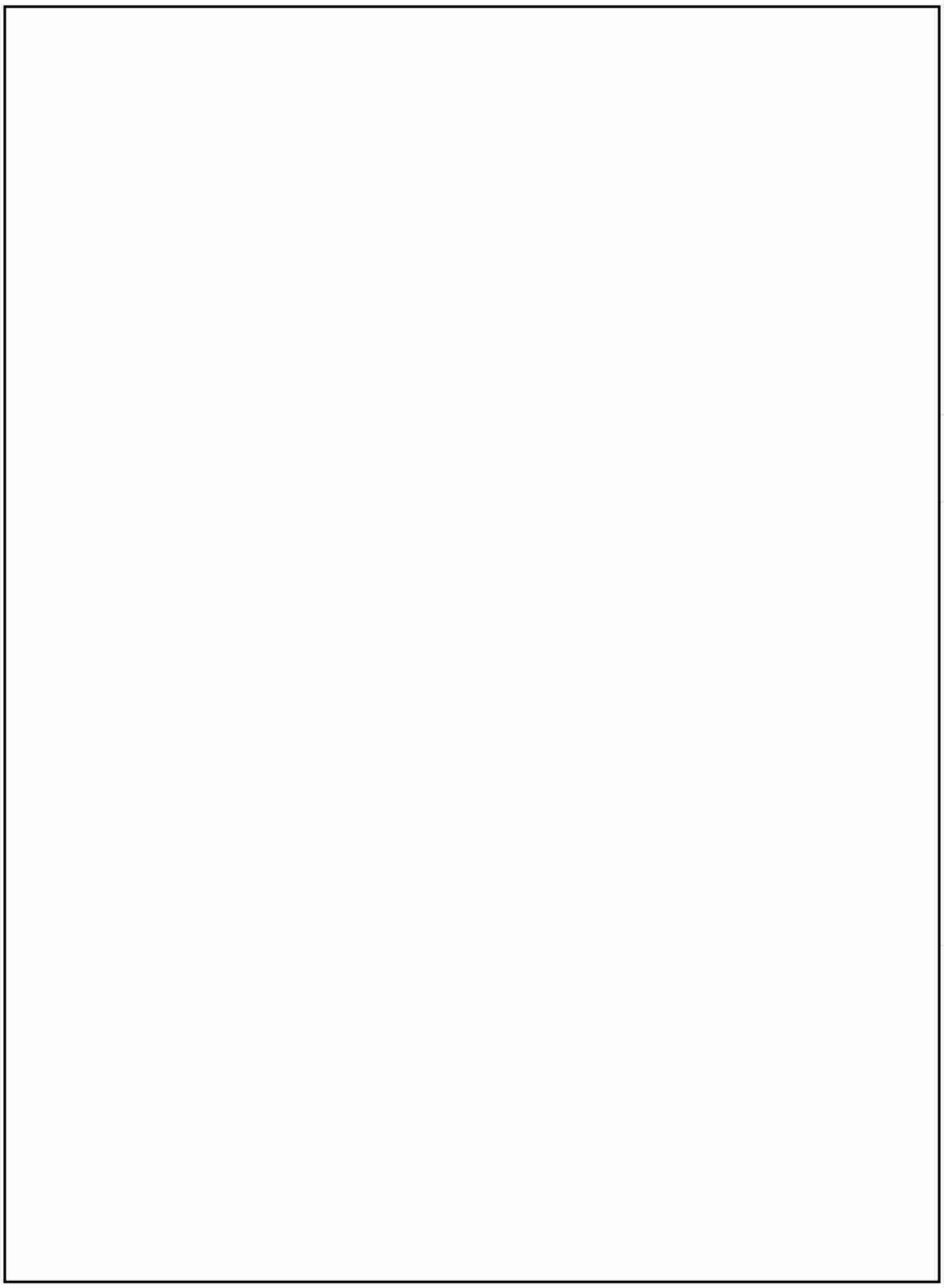
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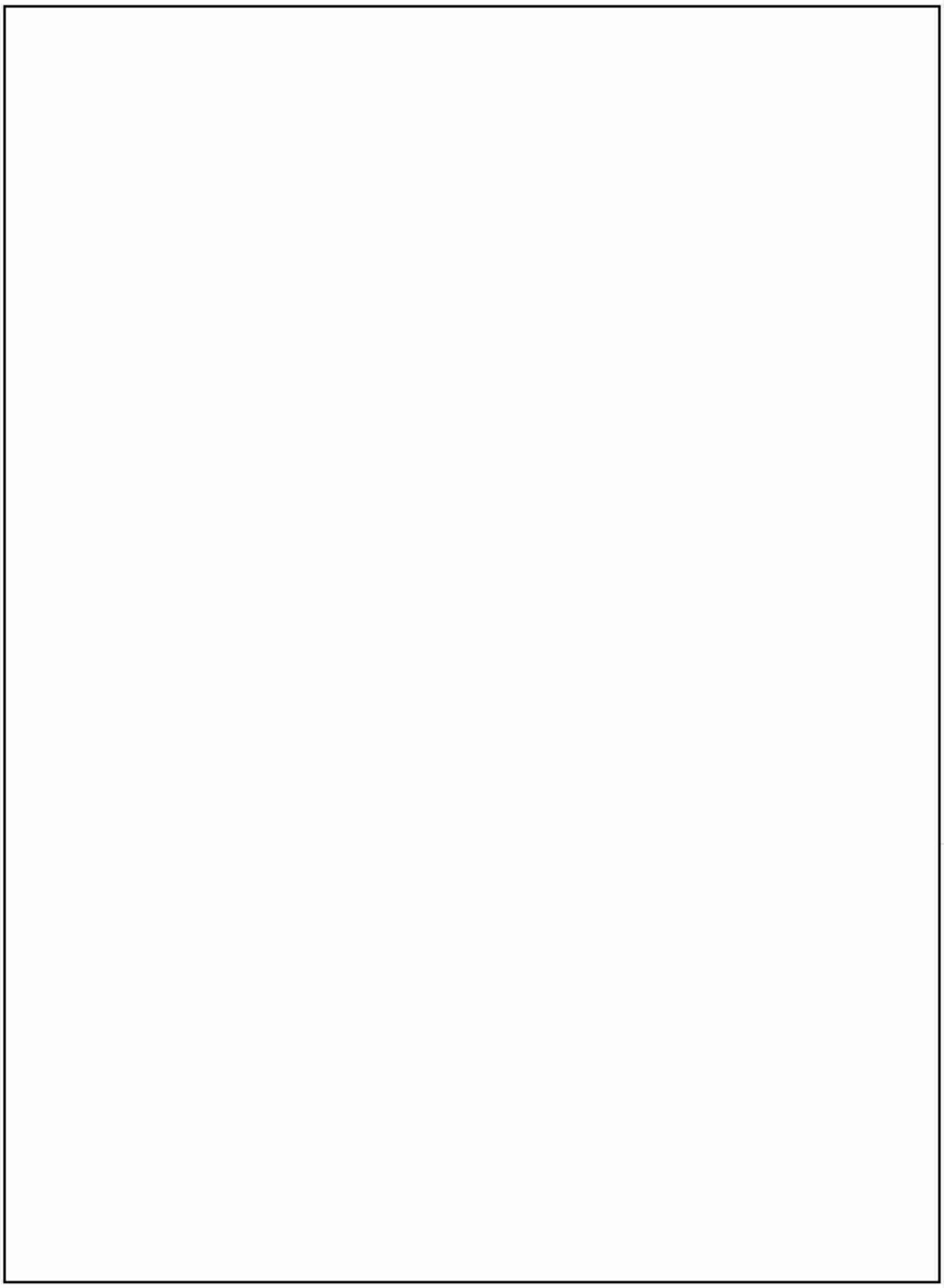
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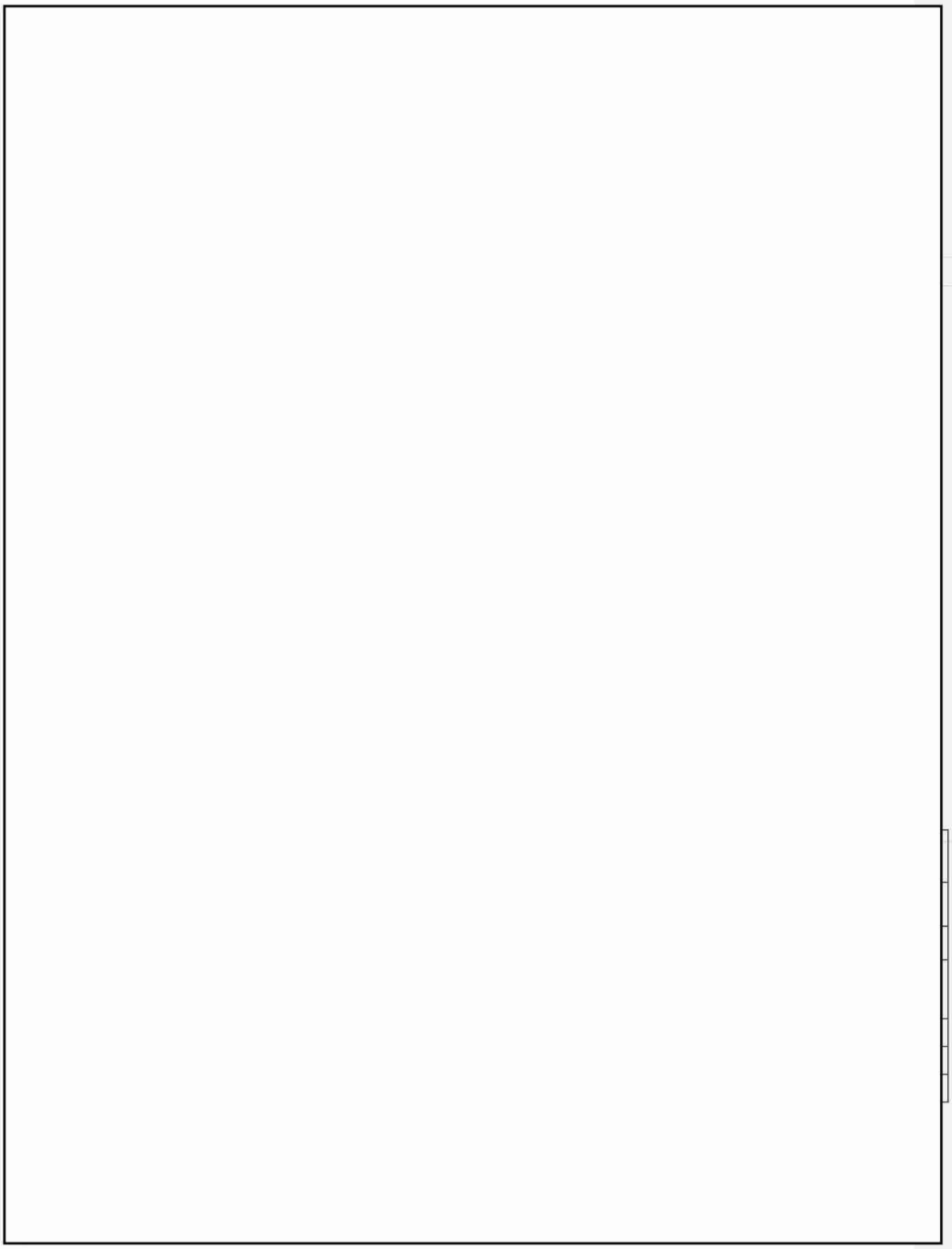
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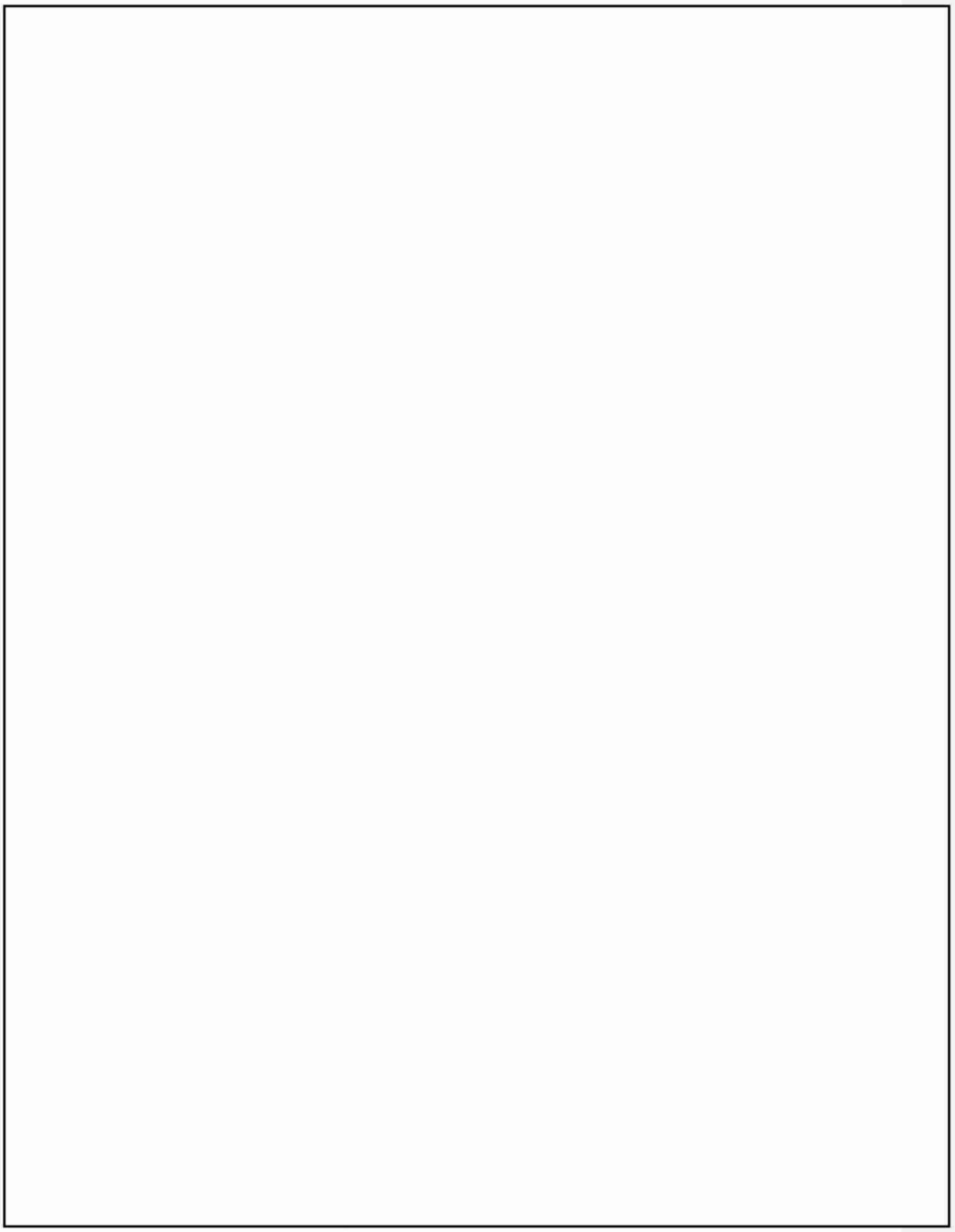
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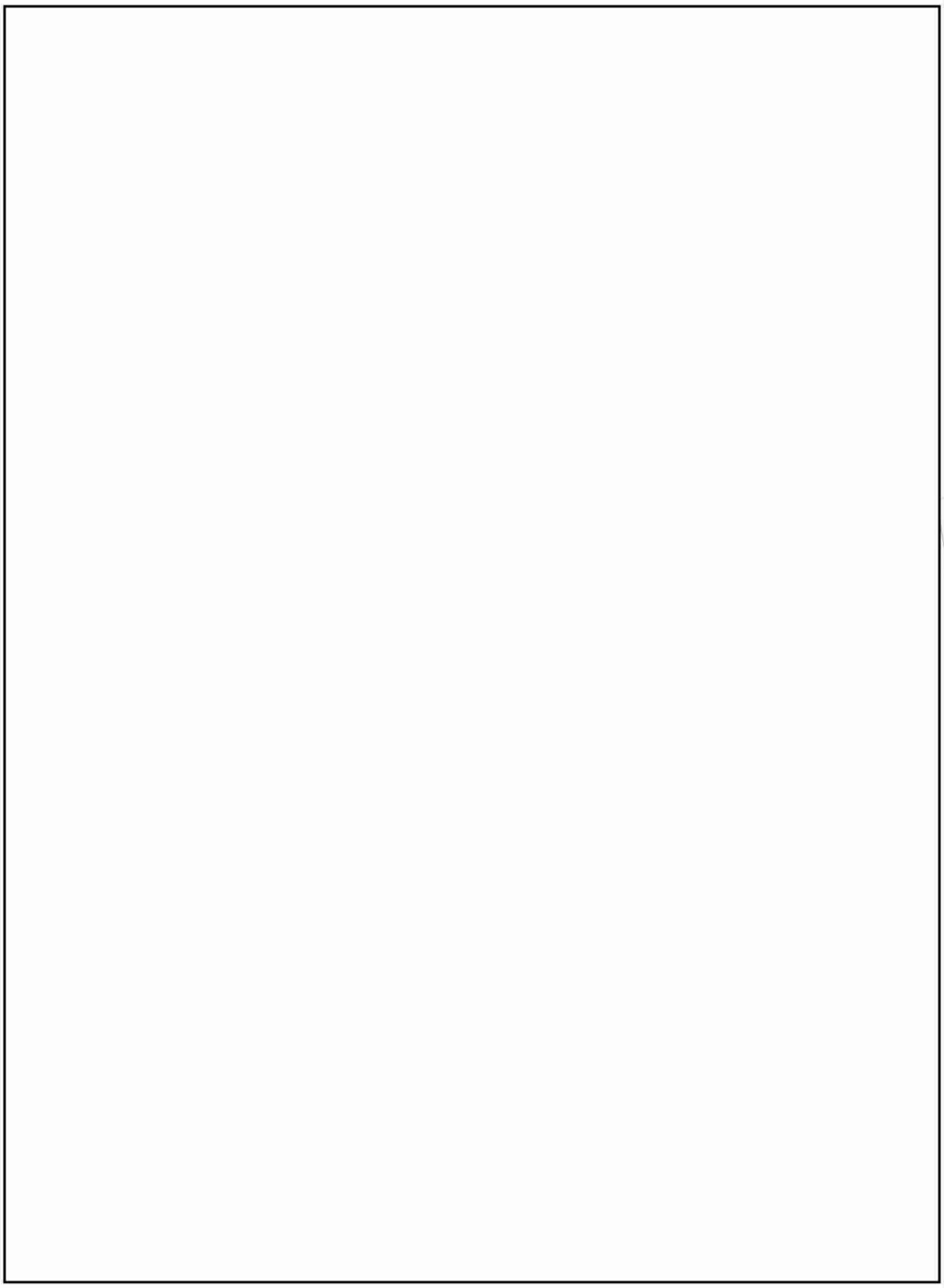
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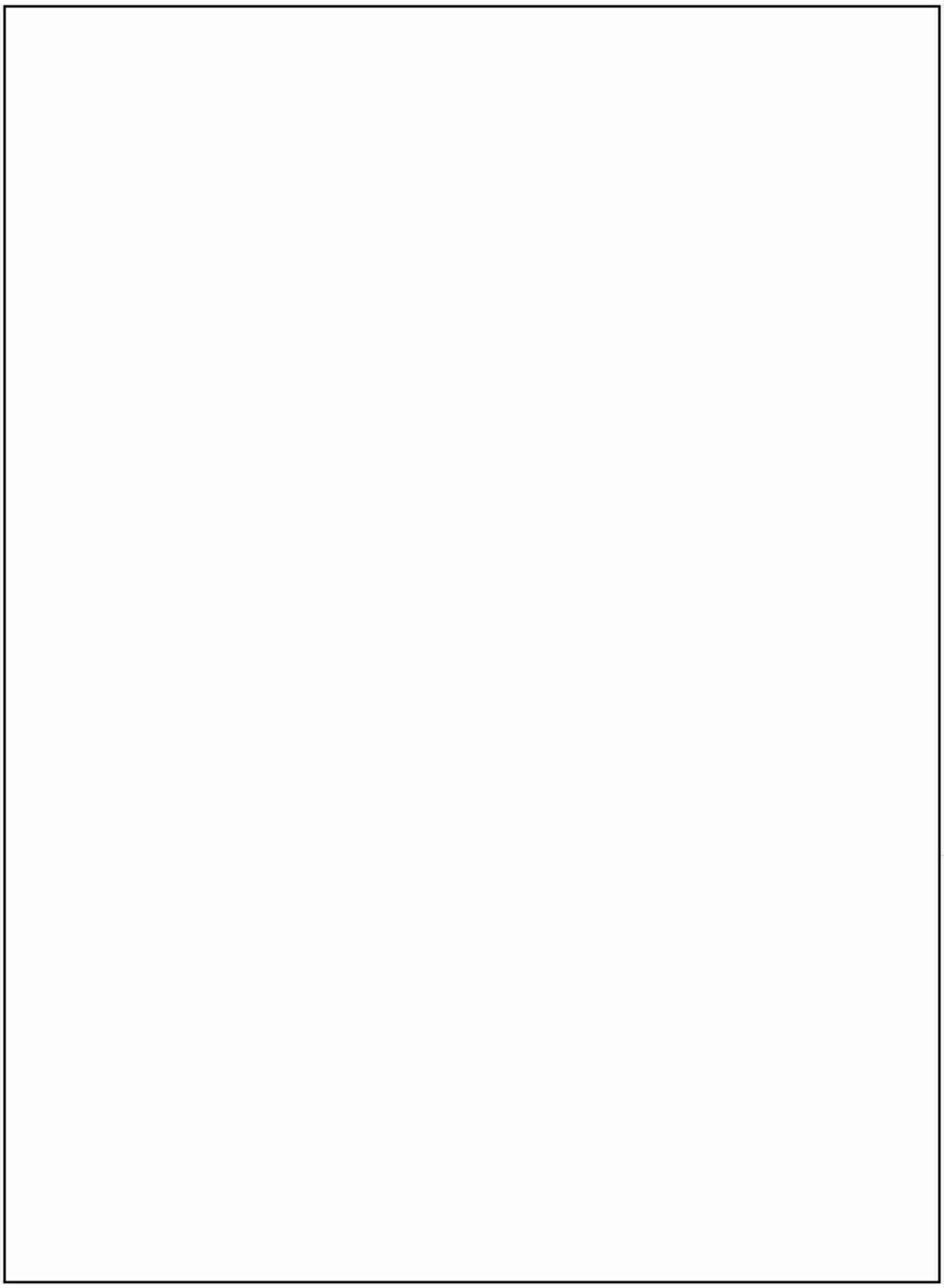
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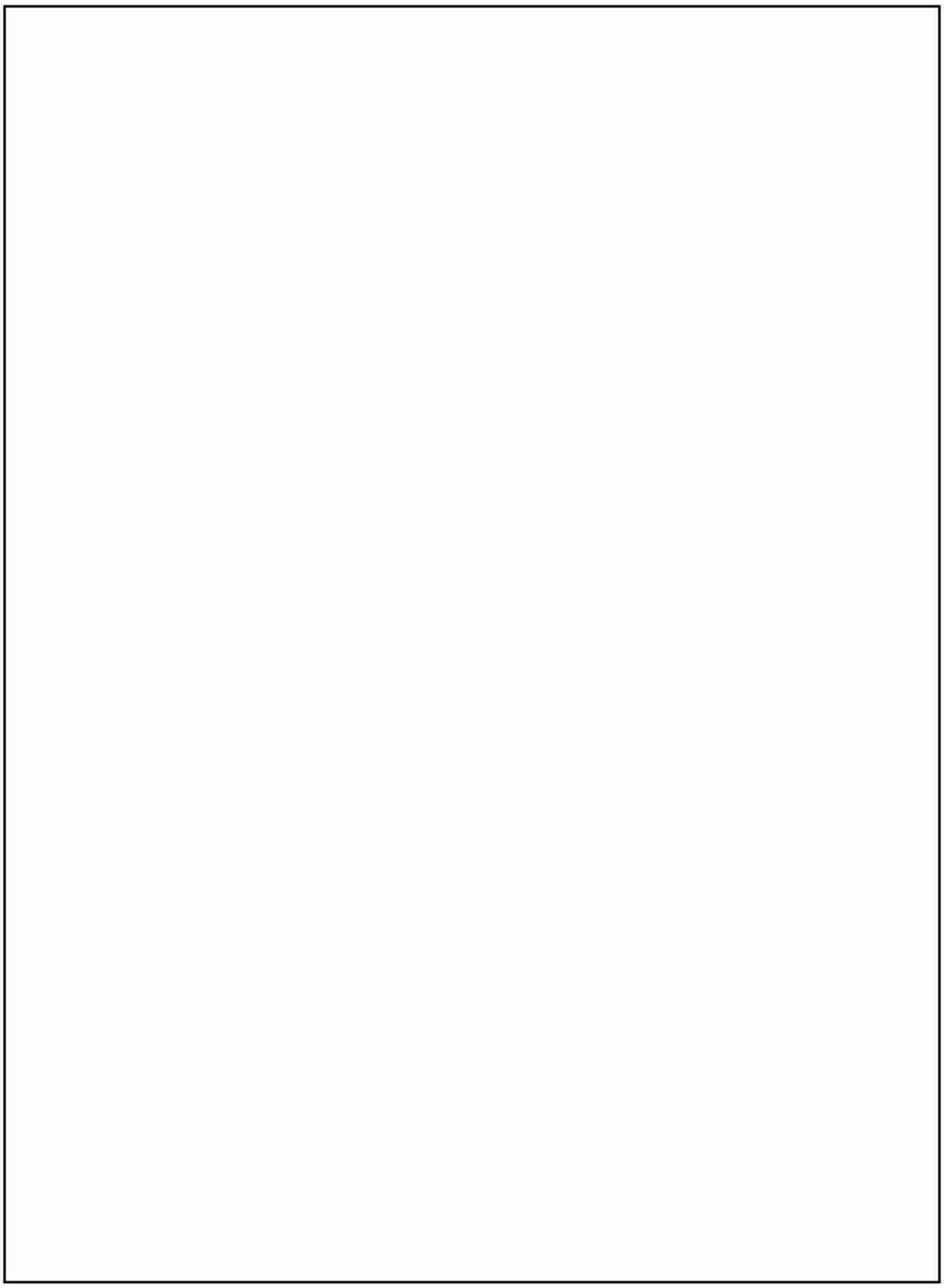


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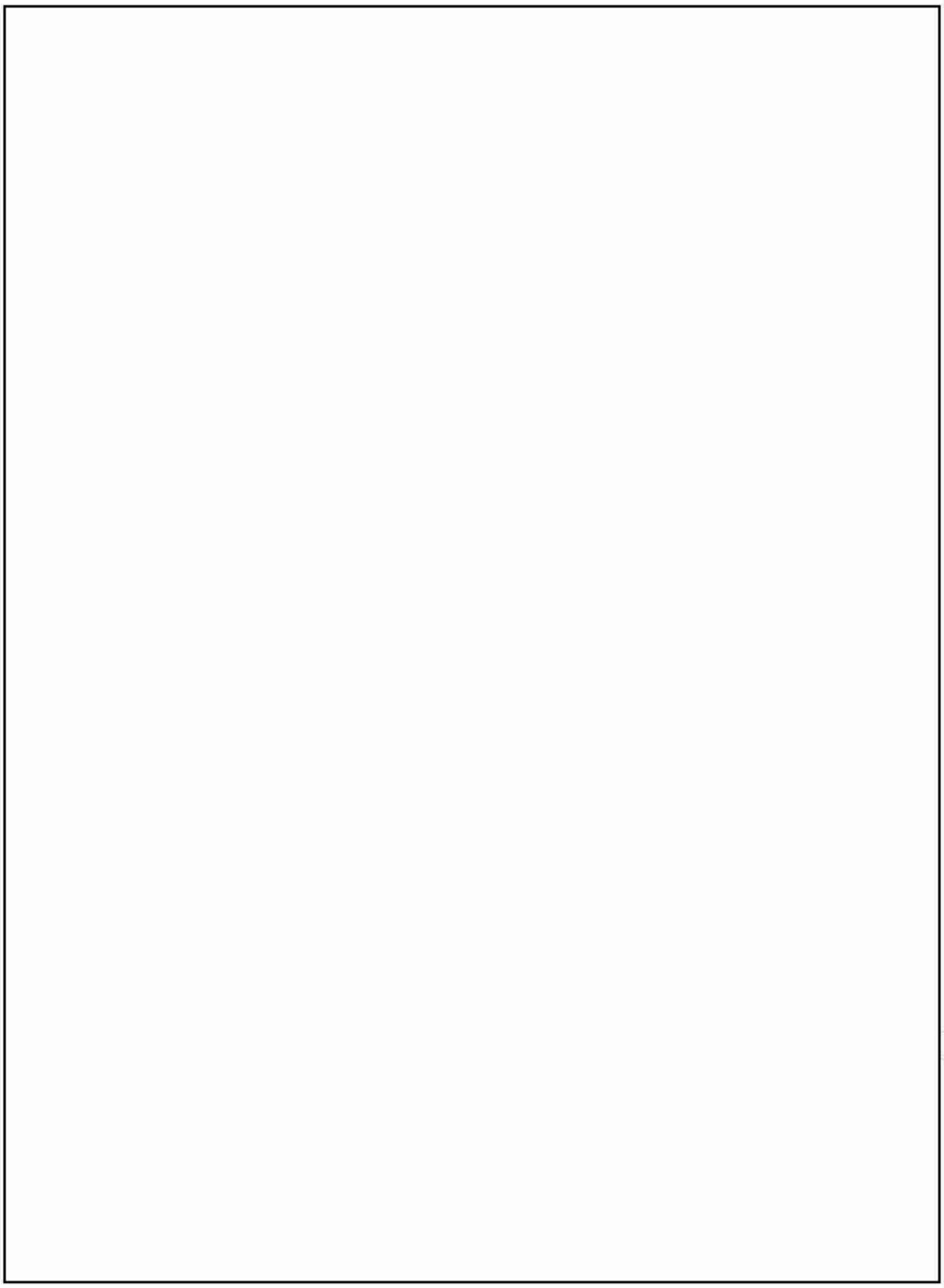
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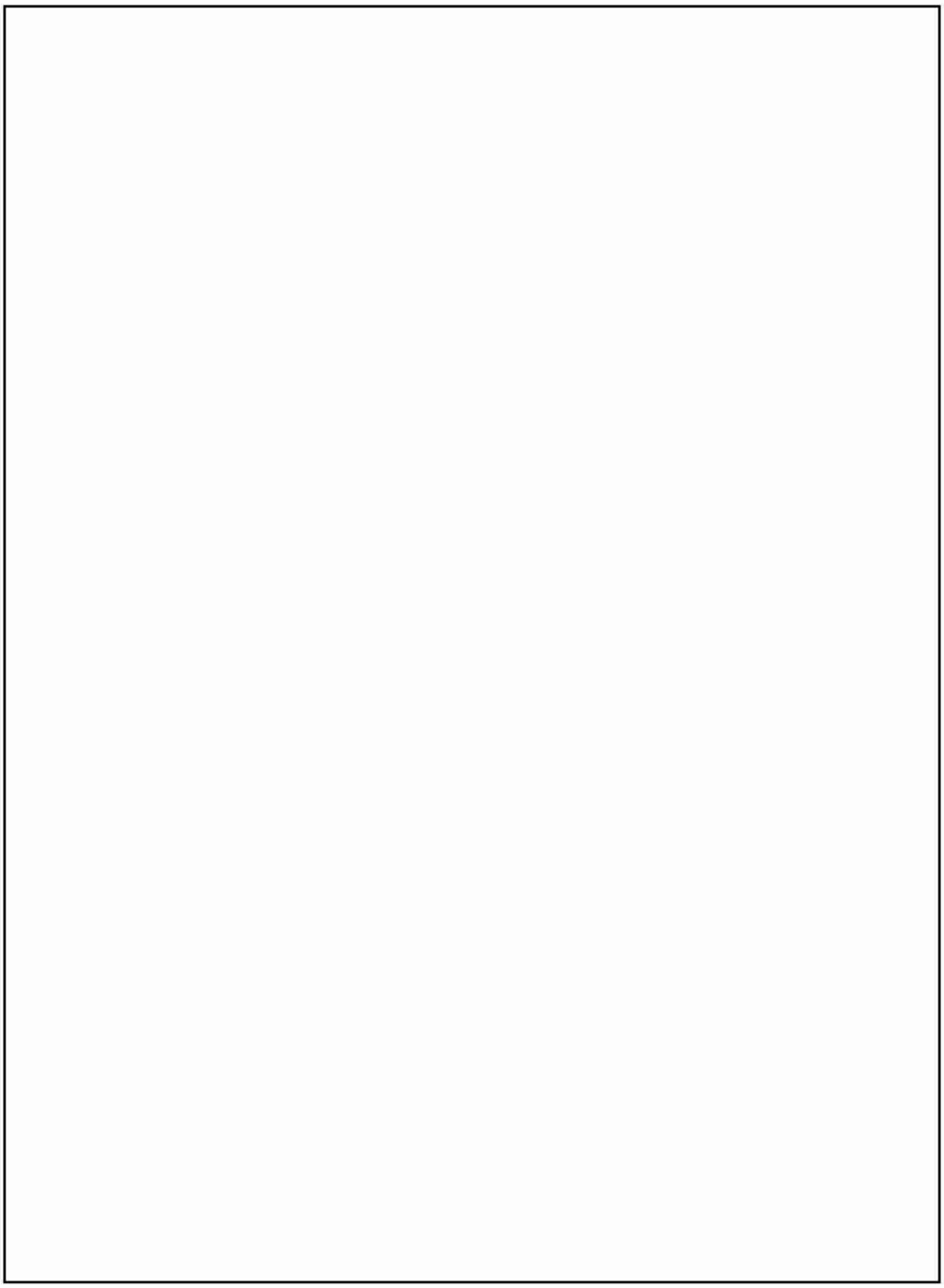
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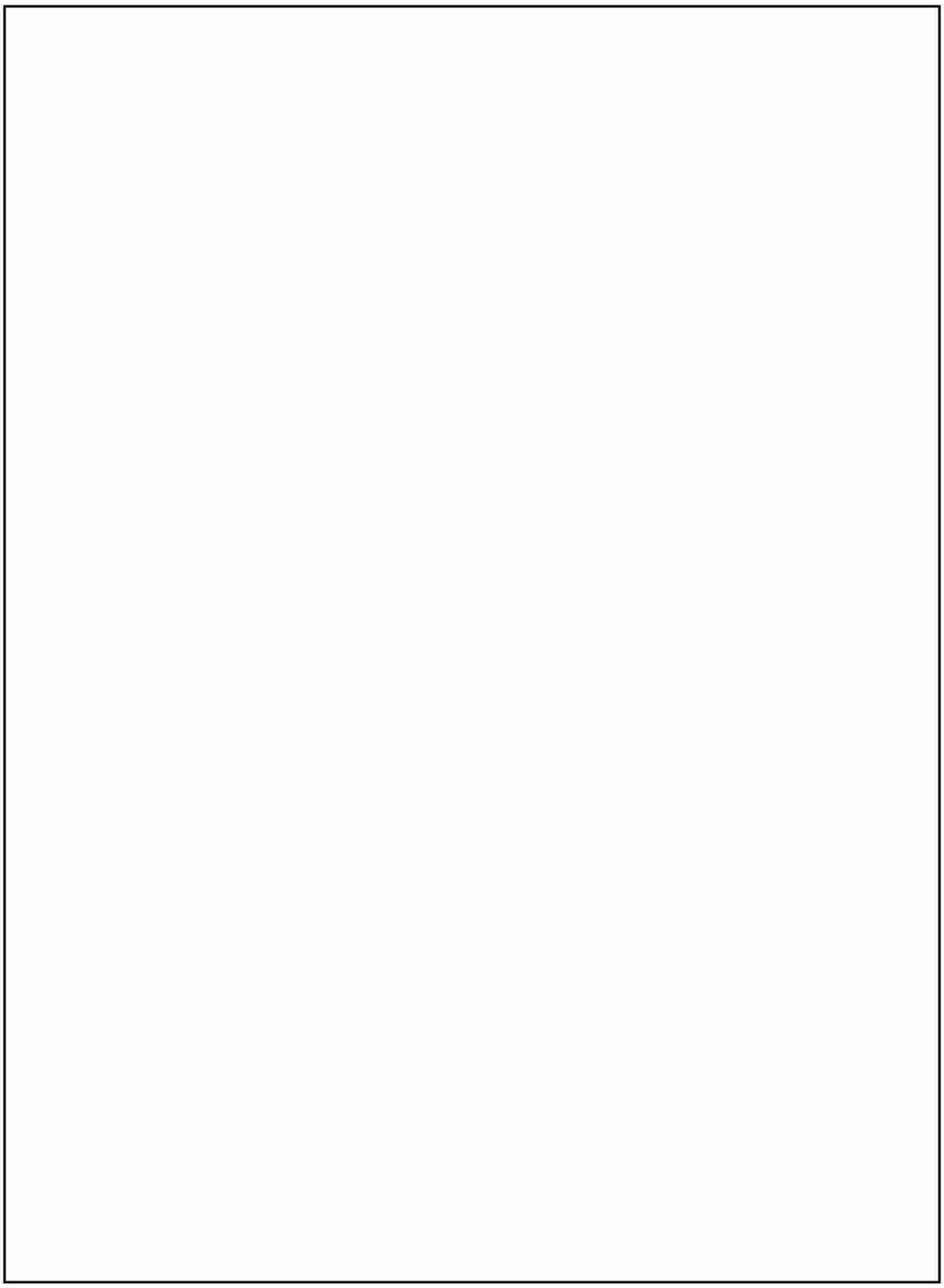
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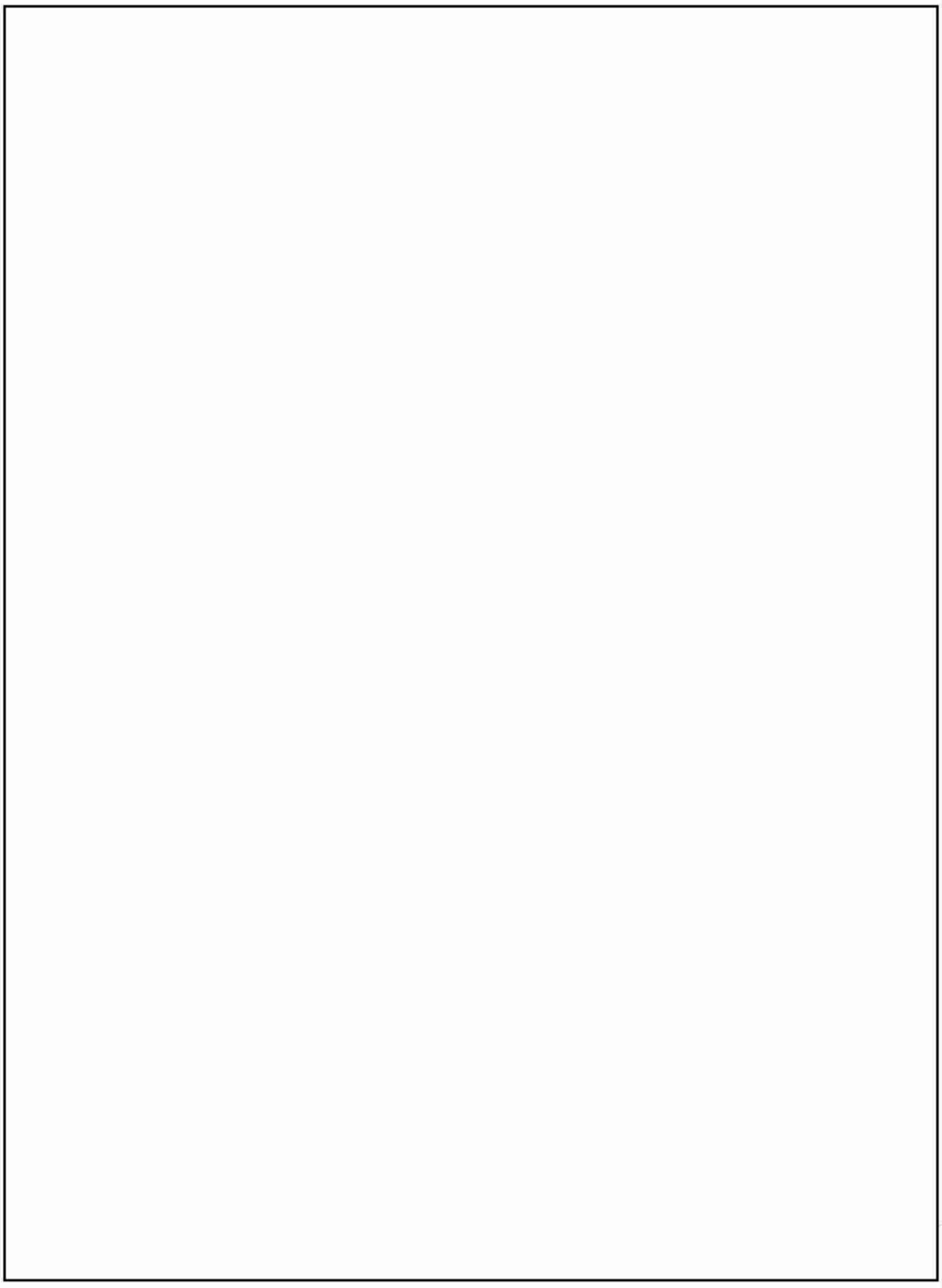
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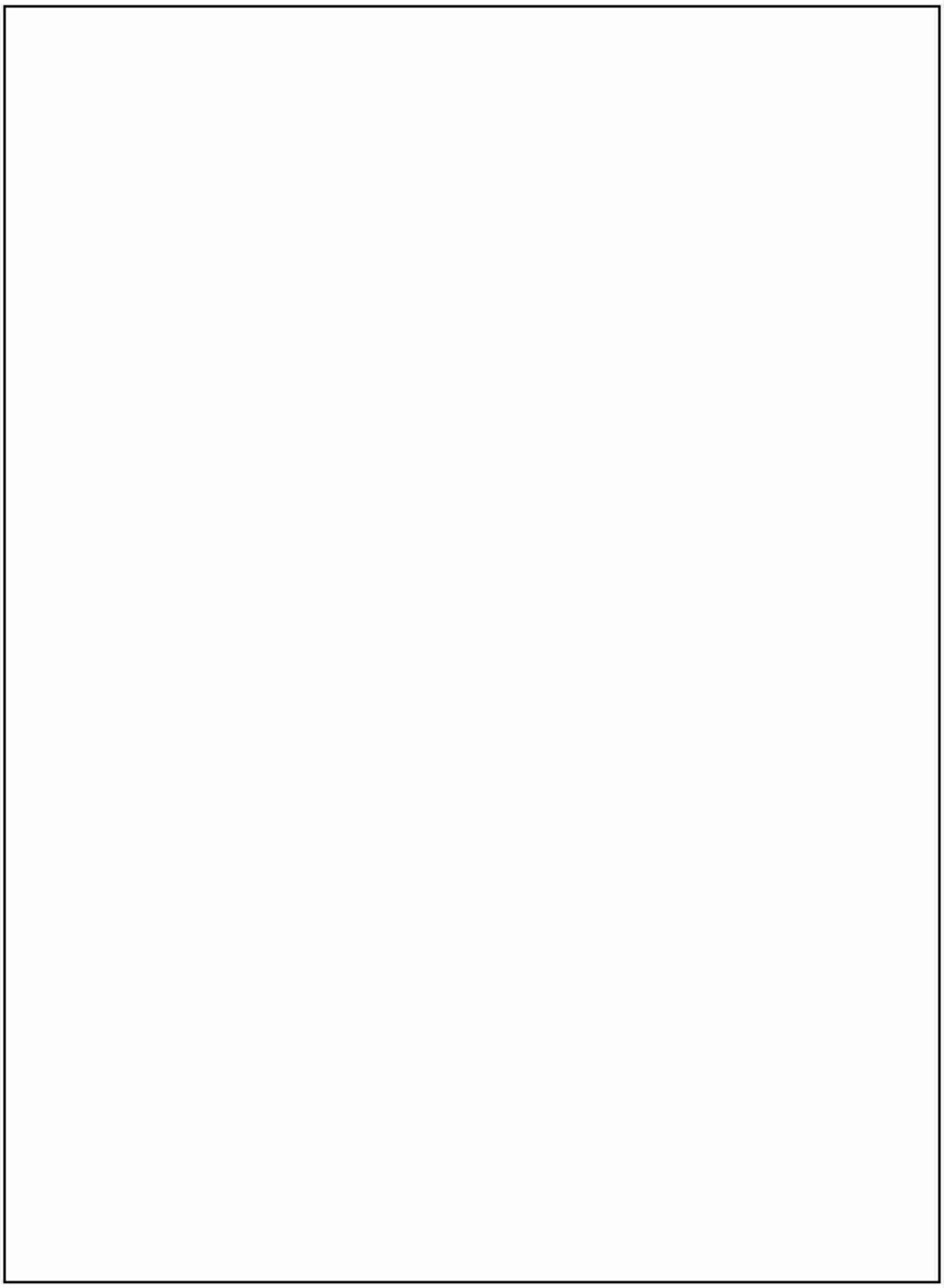


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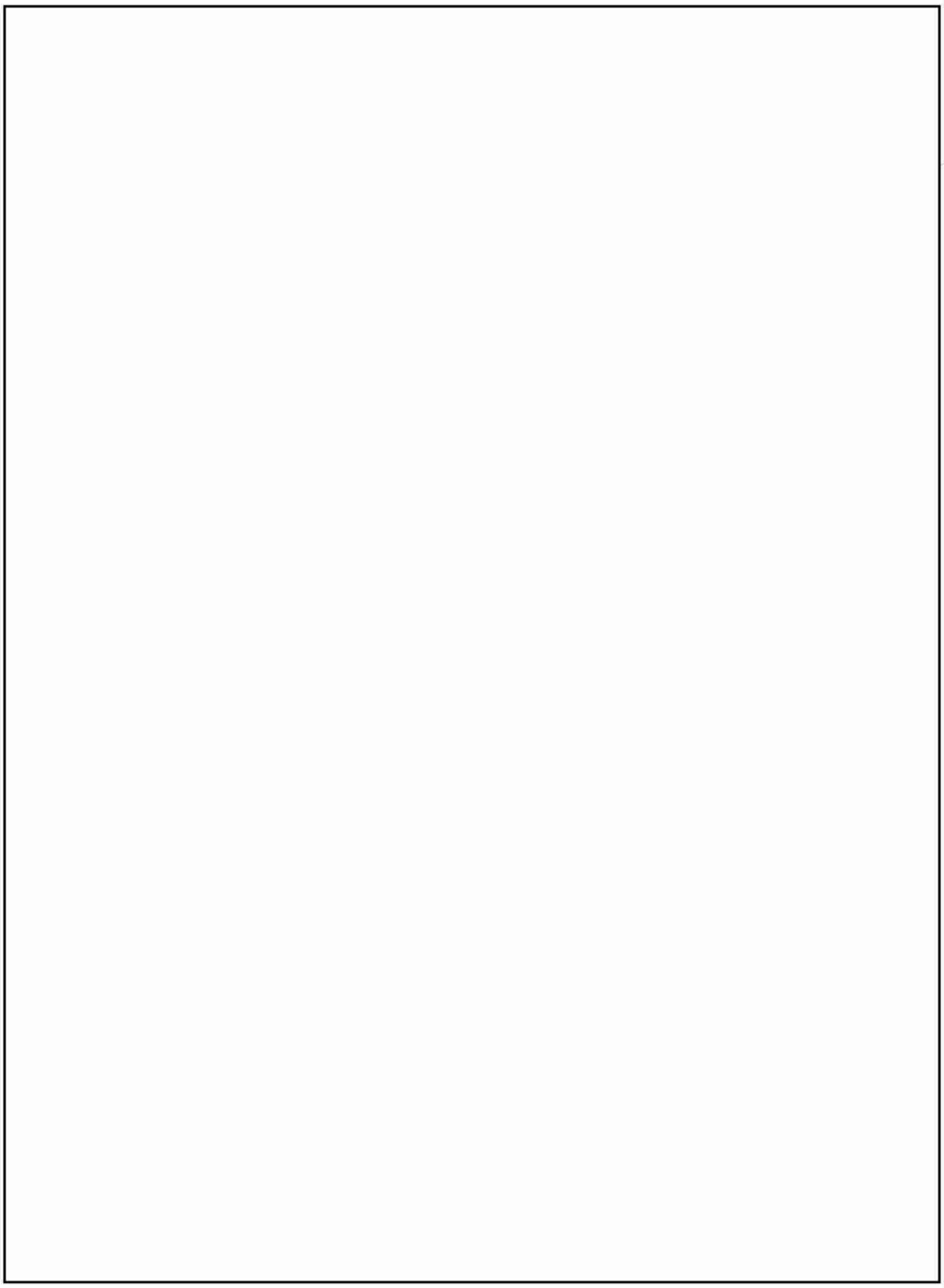
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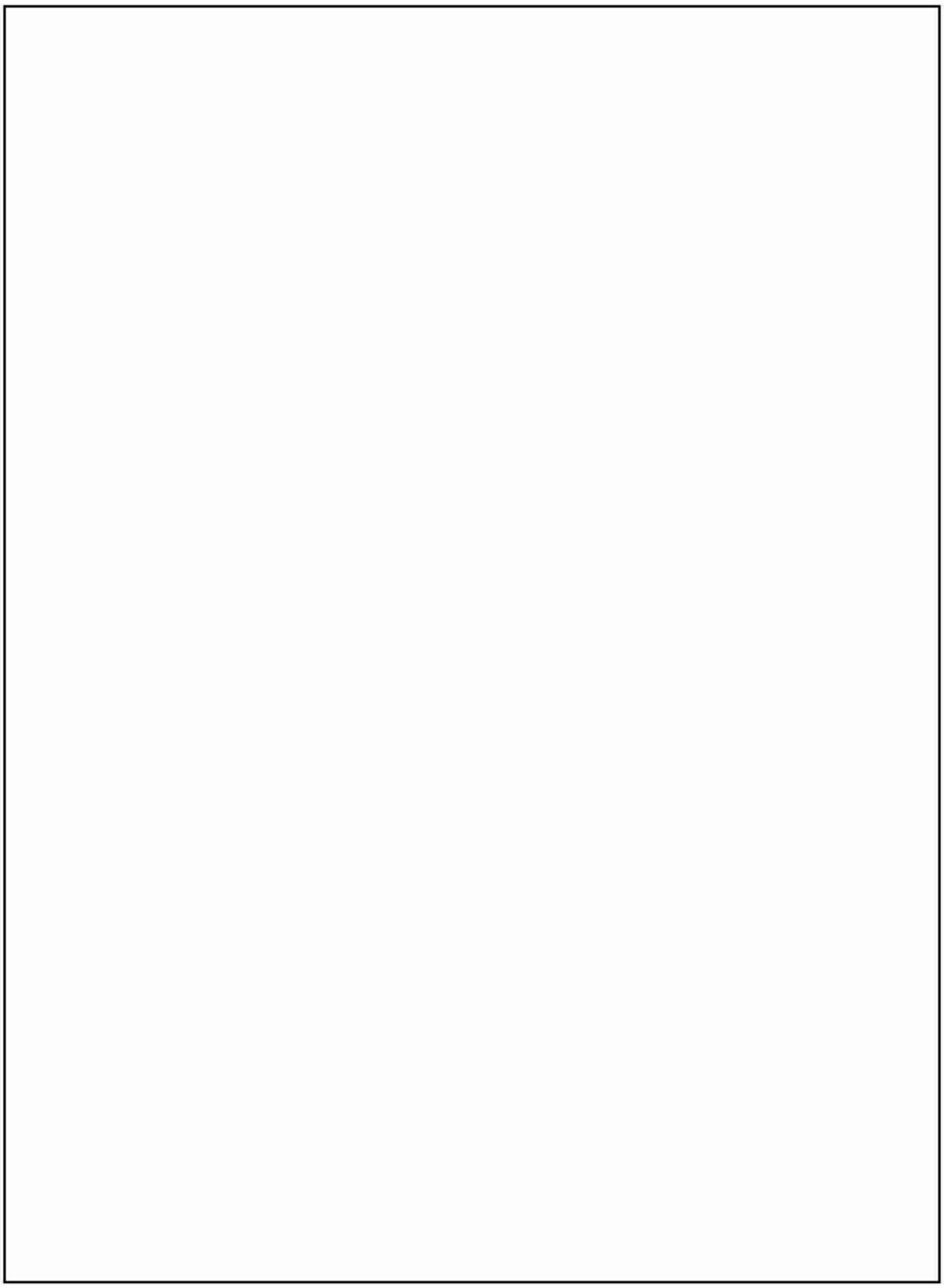


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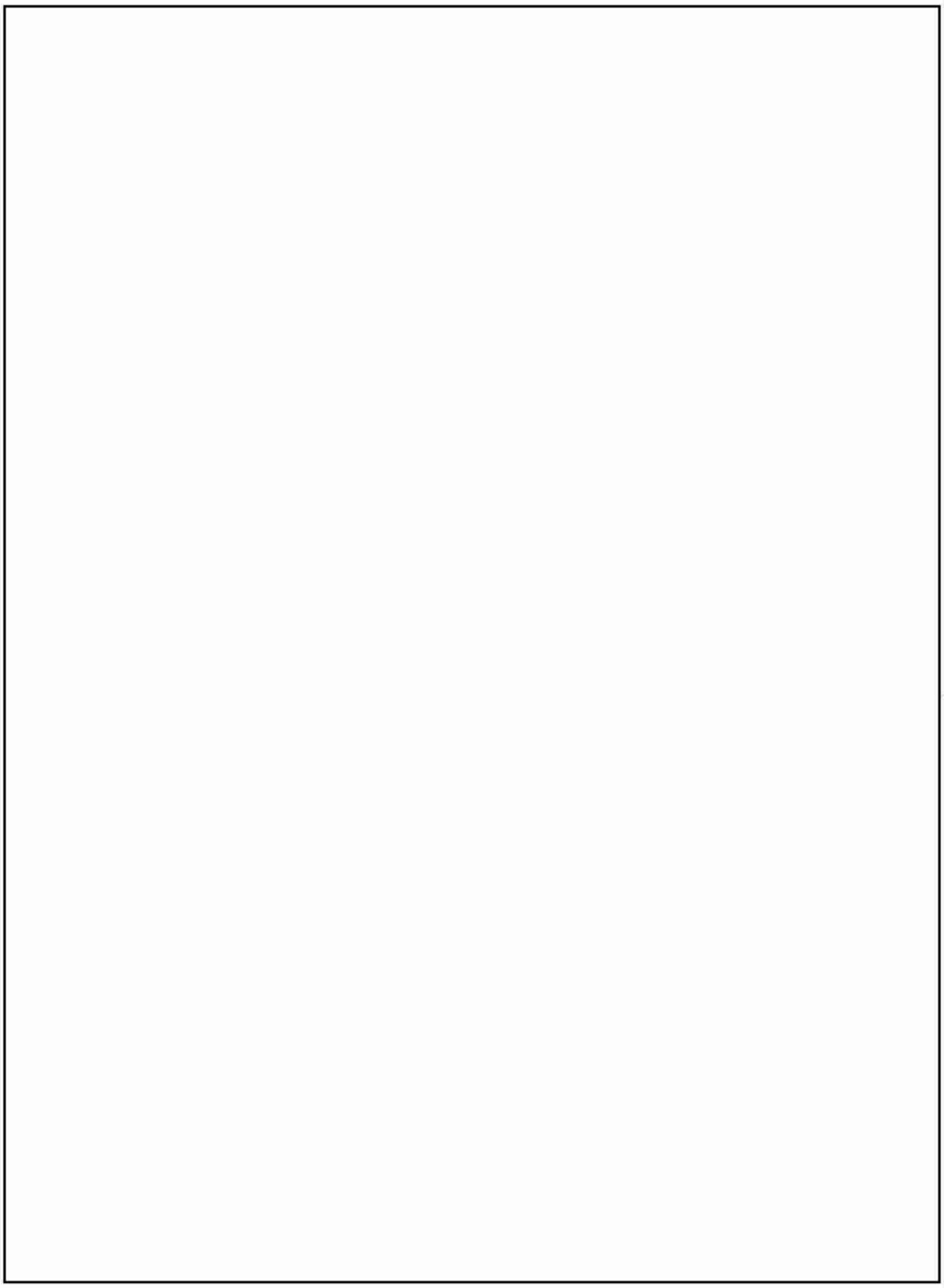
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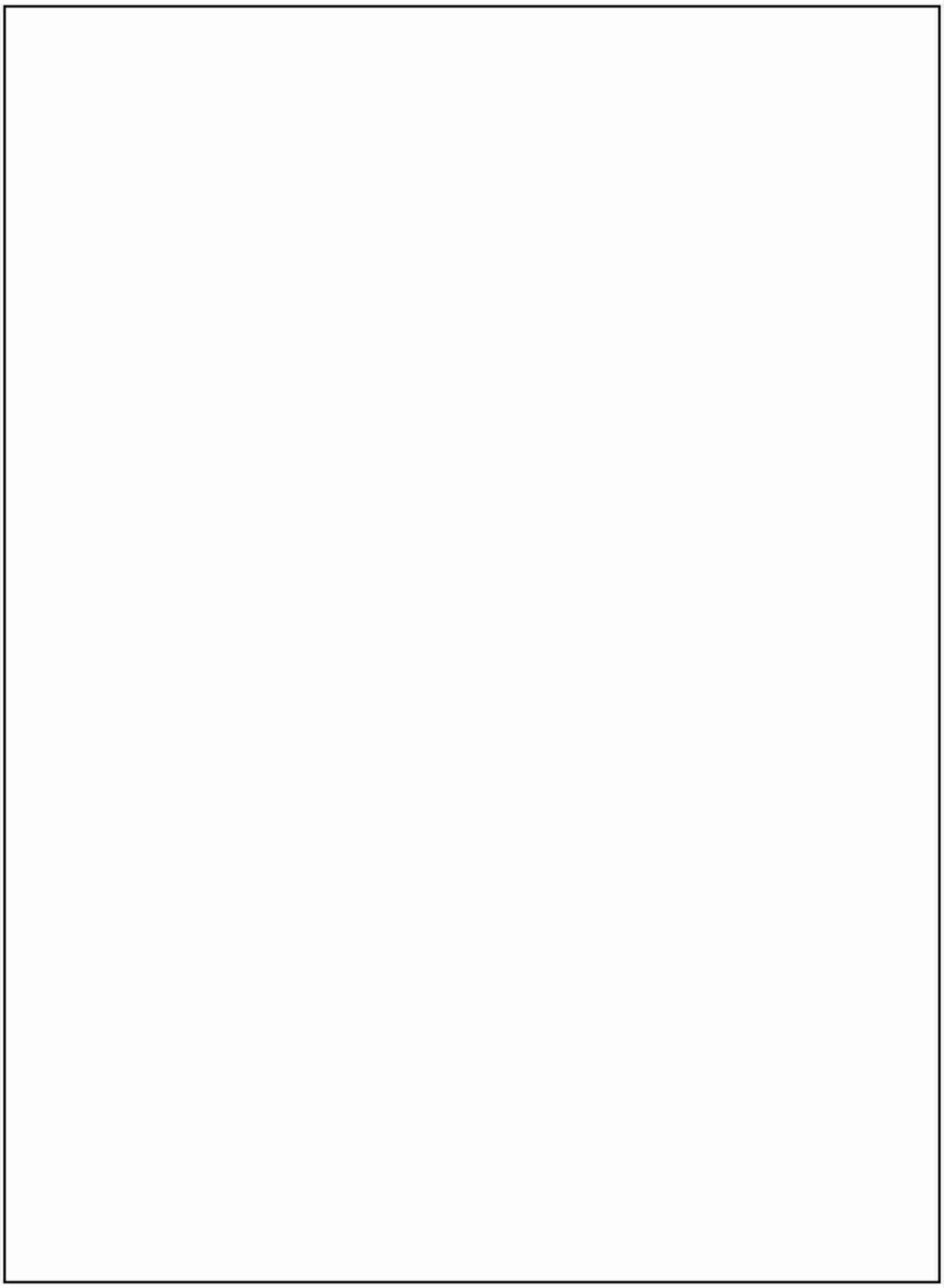
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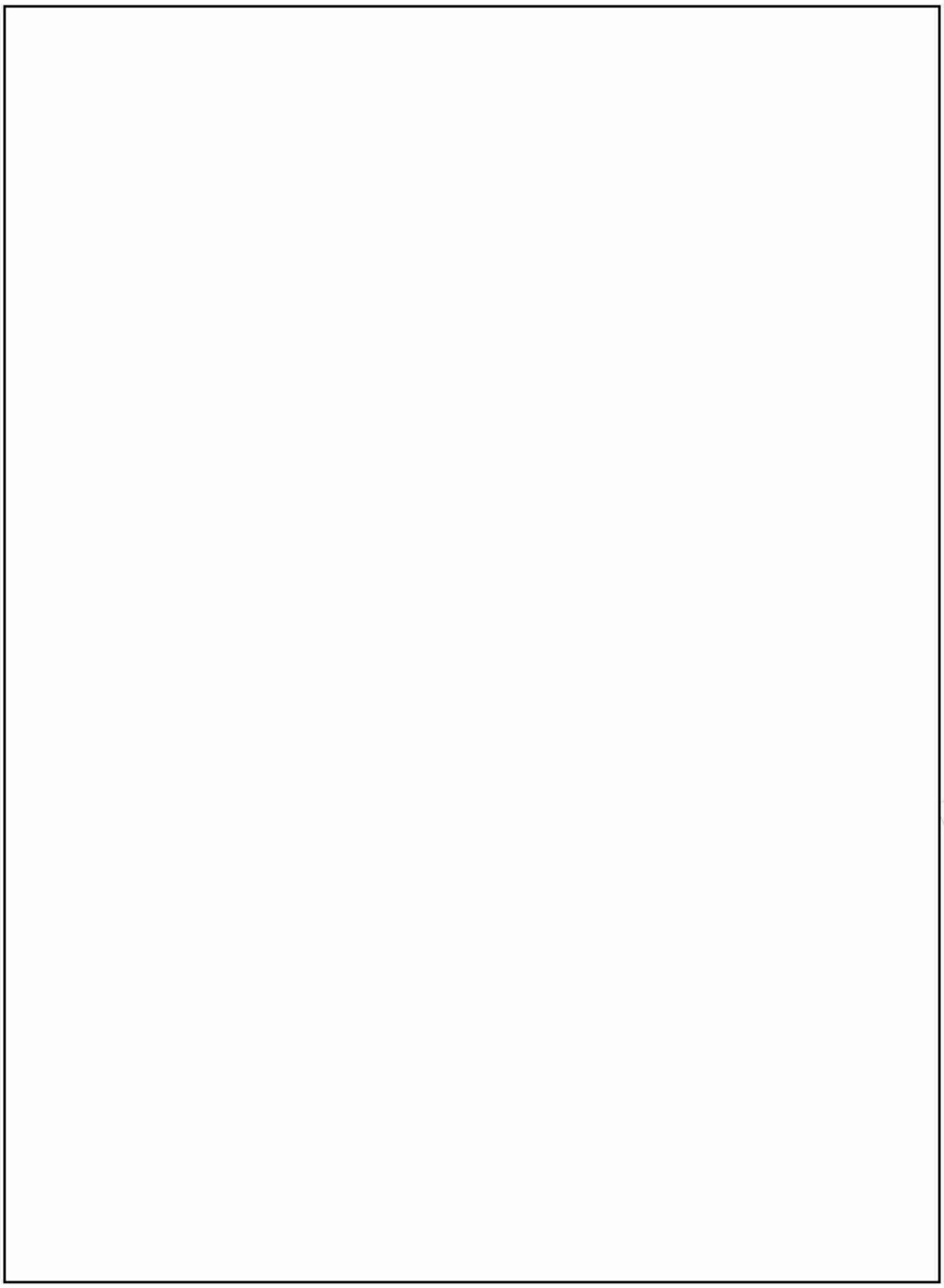
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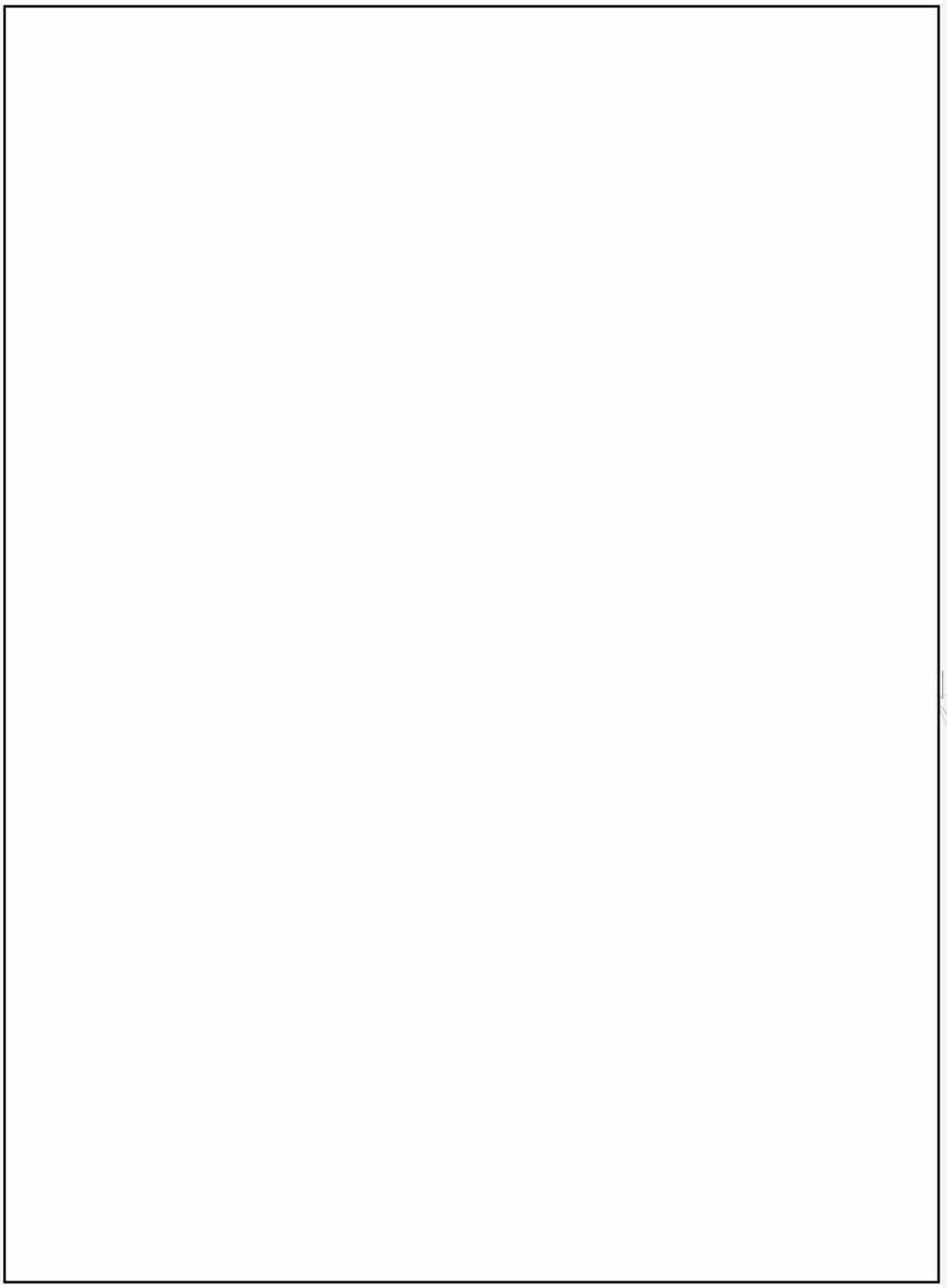


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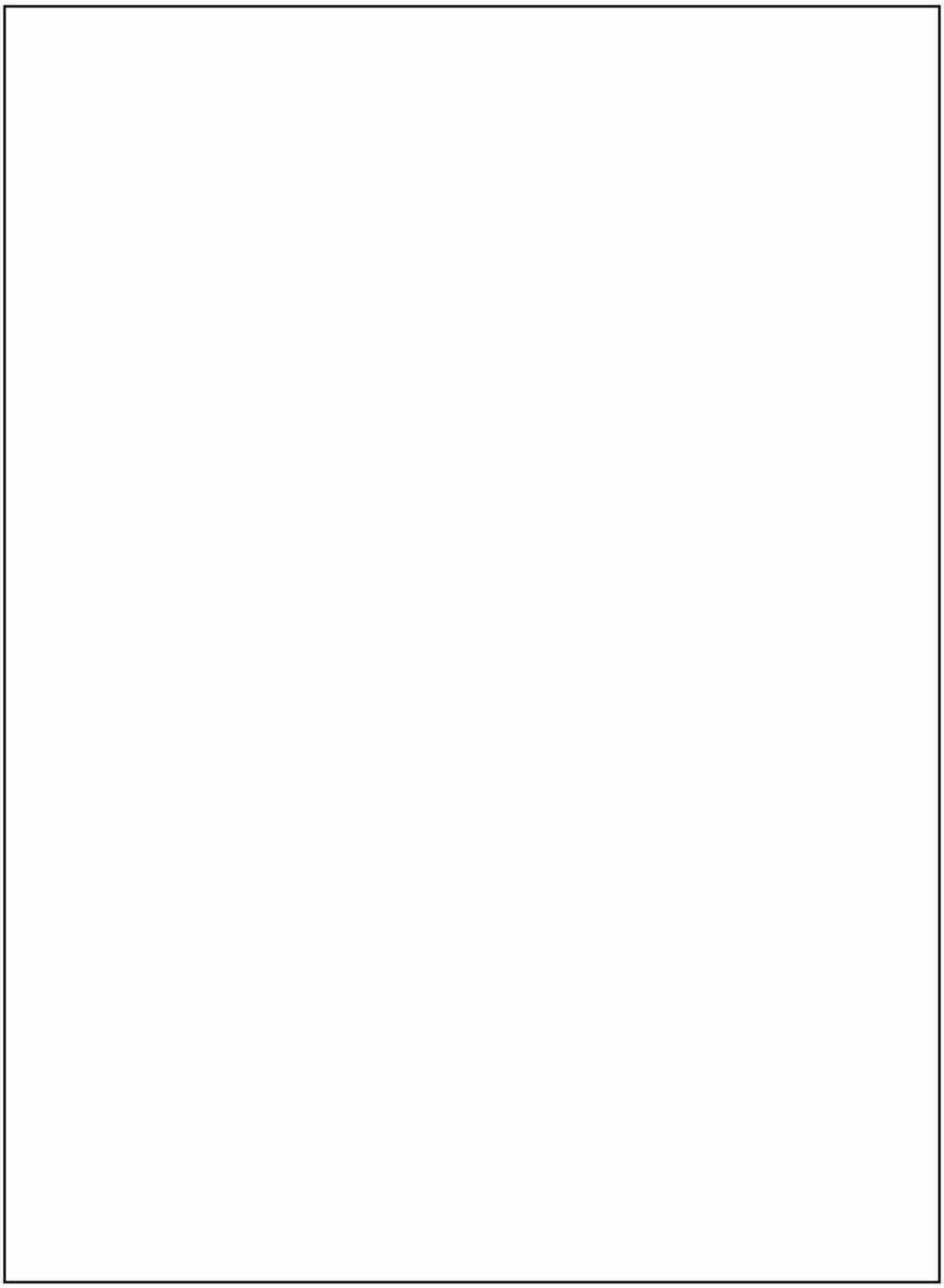
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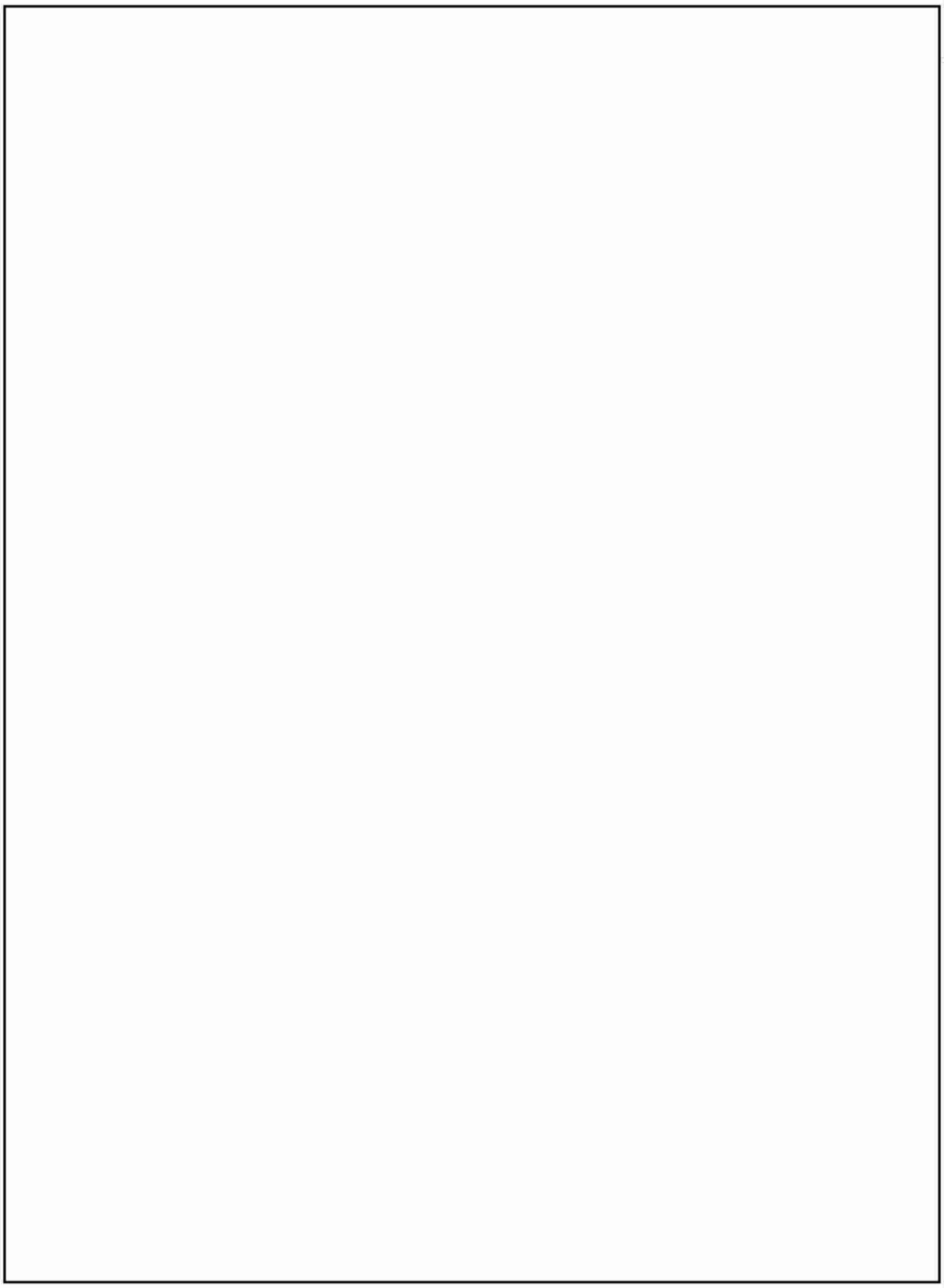


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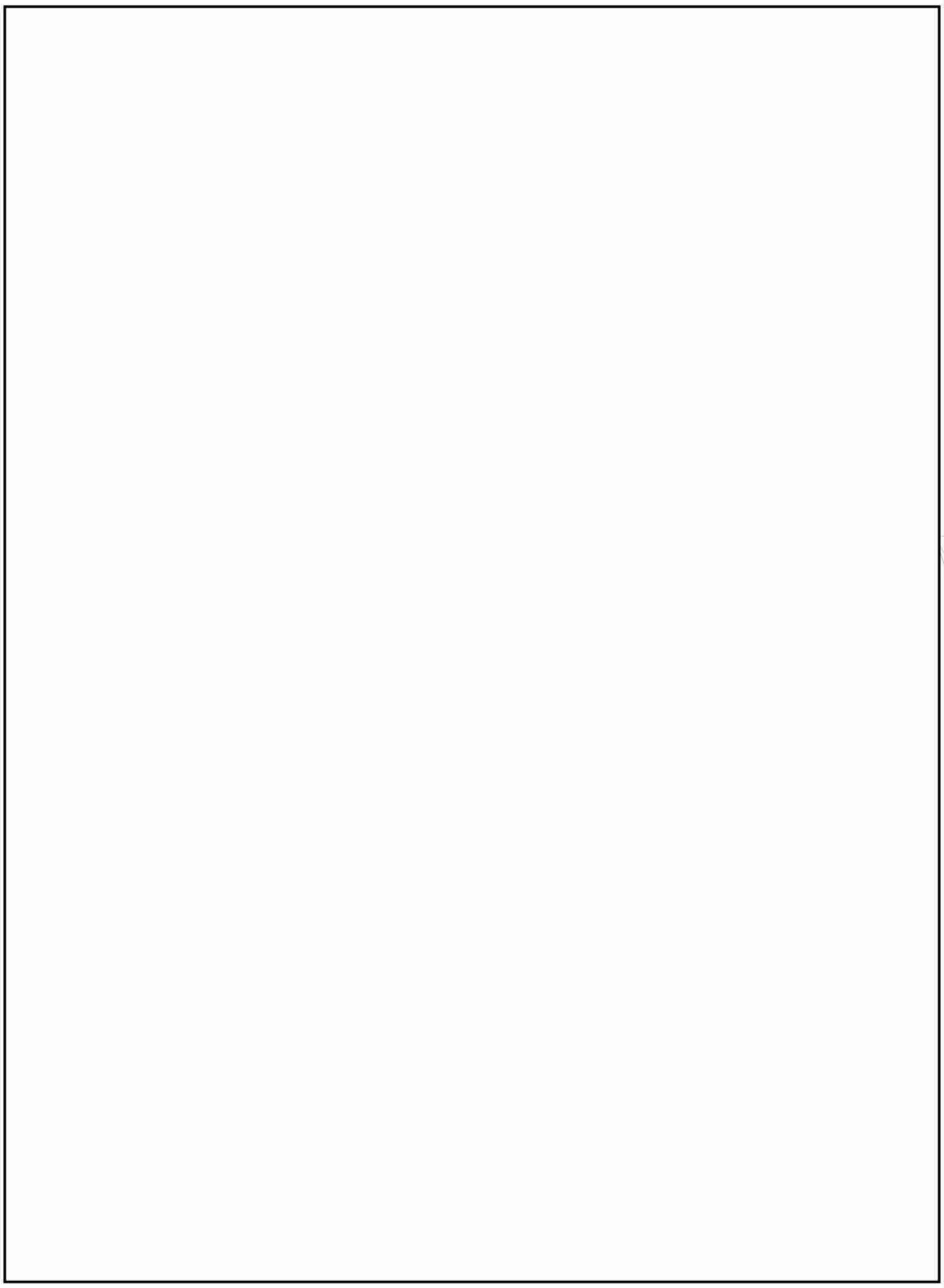
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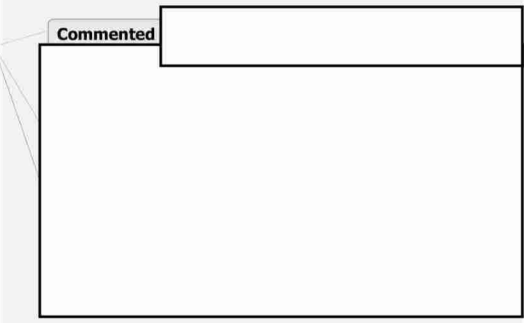
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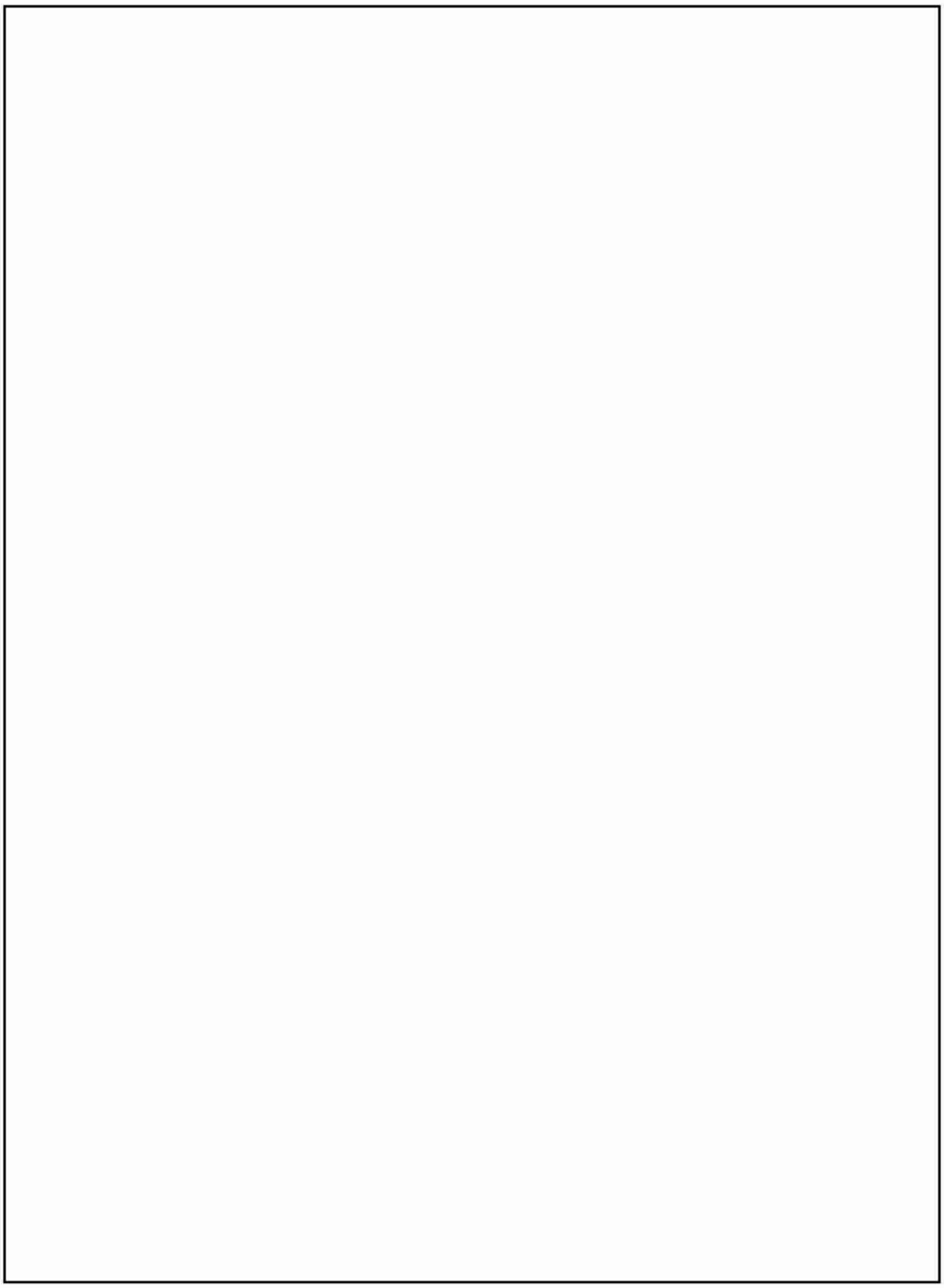


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Chad F. Wolf,
Acting Secretary of Homeland Security

AMERICAN OVERSIGHT

From:
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114
To:
Sent: July 7, 2020 9:10 AM (UTC-05:00)
Attached: 0-PM06G-EB5FurtherDeployment_CoverPage.docx, 2-PM06G-EB5FurtherDeployment_Update_Redlines.docx, 3-PM06G-EB5FurtherDeployment_Update_Clean.docx, 4-PM06G-EB5FurtherDeployment_TacticalRolloutPlan.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx

will you also ask OP&S if we need an effective date on this?

Adding Rob so he's aware.....and to ask this: We talked with Joe and the FO advisors [redacted]

(b)(5)

From: Kilgore, Garry R [redacted] (b)(6)
Sent: Thursday, May 28, 2020 1:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Drake, Johnetta [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] PM06G | EB-5 Further Deployment STARS #26114

Good afternoon ma'am,

OP&S presents the attached Policy Manual update regarding EB-5 Further Deployment. OP&S requests approval by COB Thursday, June 11, 2020.

Summary:
USCIS is issuing clarifying policy guidance in the USCIS Policy Manual regarding deployment of investment capital, including further deployment after job creation requirements are satisfied.

Attachments:

- EXSO Cover Sheet
- 0-PM06G-EB5FurtherDeployment_CoverPage
- 1-PM06G-EB5FurtherDeployment_PolicyAlert
- 2-PM06G-EB5FurtherDeployment_Update_Redlines
- 3-PM06G-EB5FurtherDeployment_Update_Clean
- 4-PM06G-EB5FurtherDeployment_TacticalRolloutPlan

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

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USCIS Policy Publication Director's Office Packet COVER PAGE	Policy Manual Volume 6 Part G – EB-5 Further Deployment

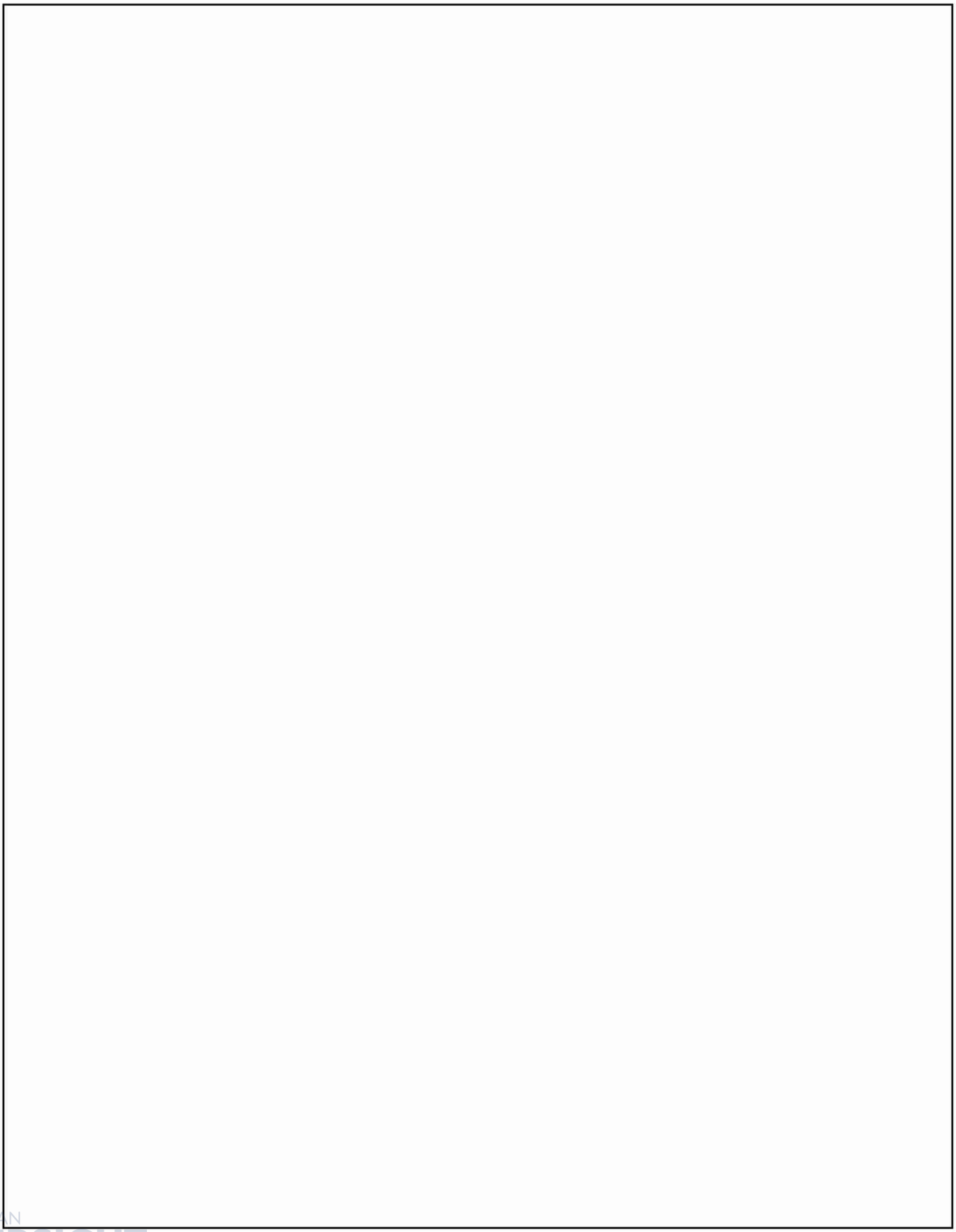
Publication: TBD Upon Director's Office Clearance

Draft Policy Item for Director's Office Review

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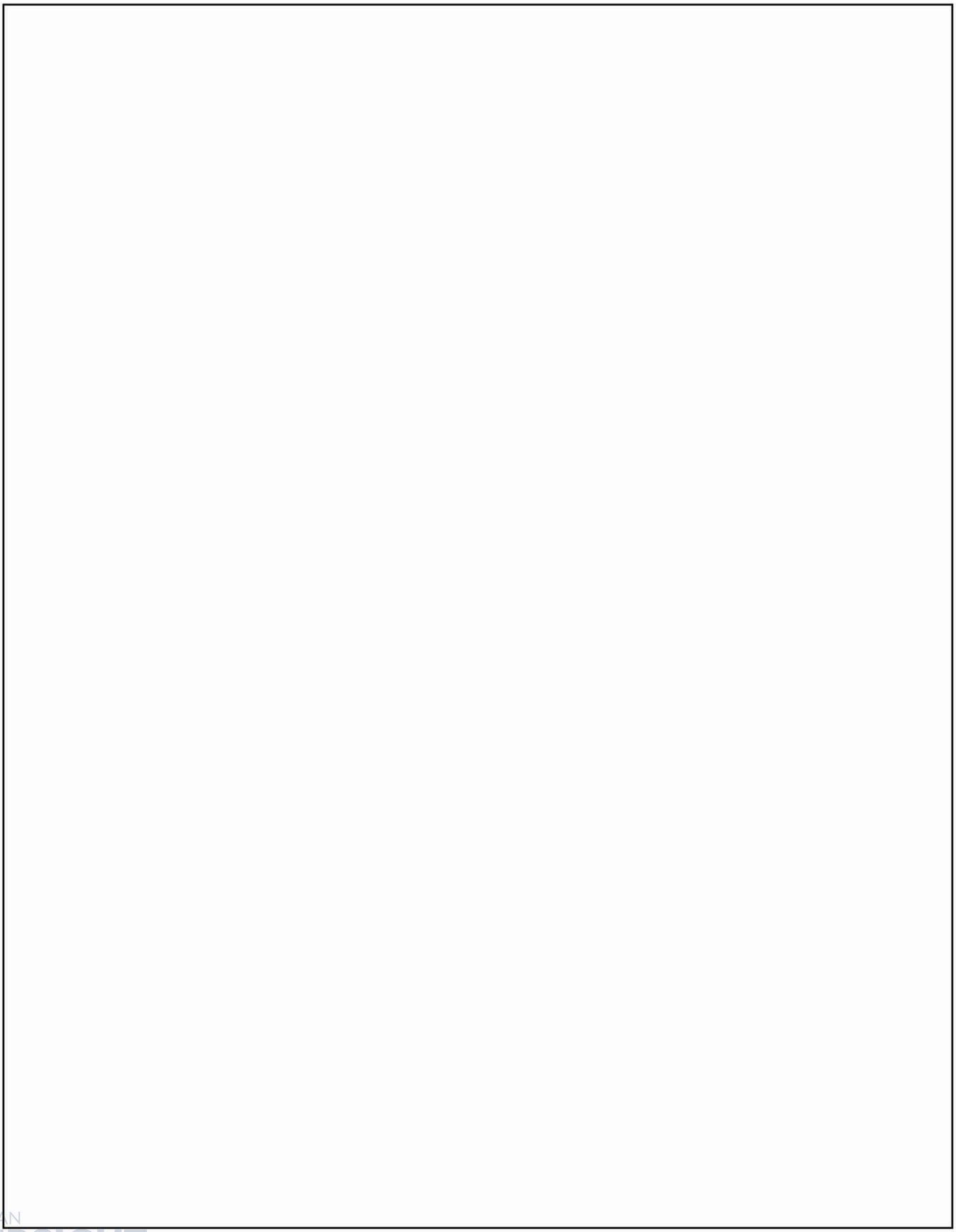


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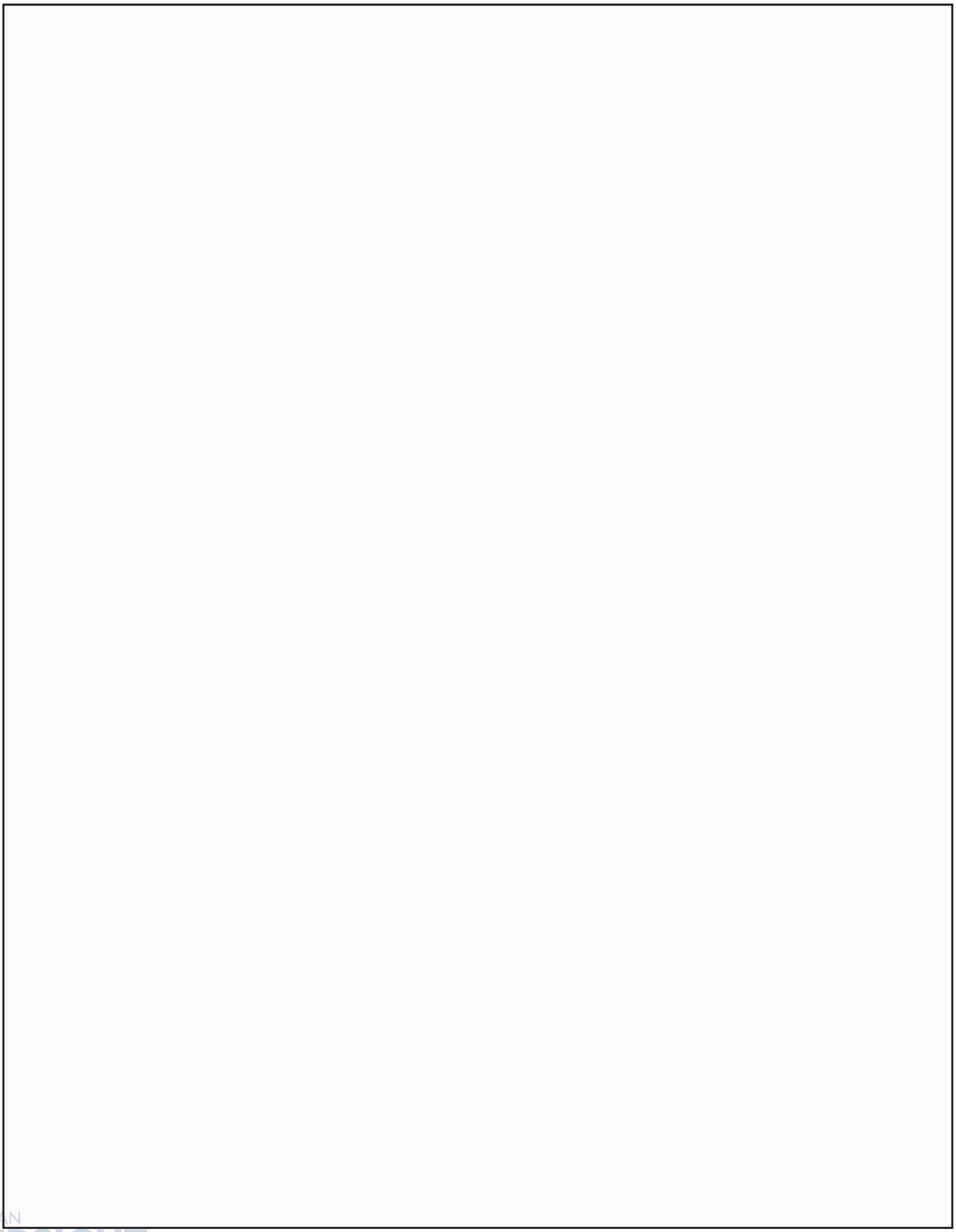
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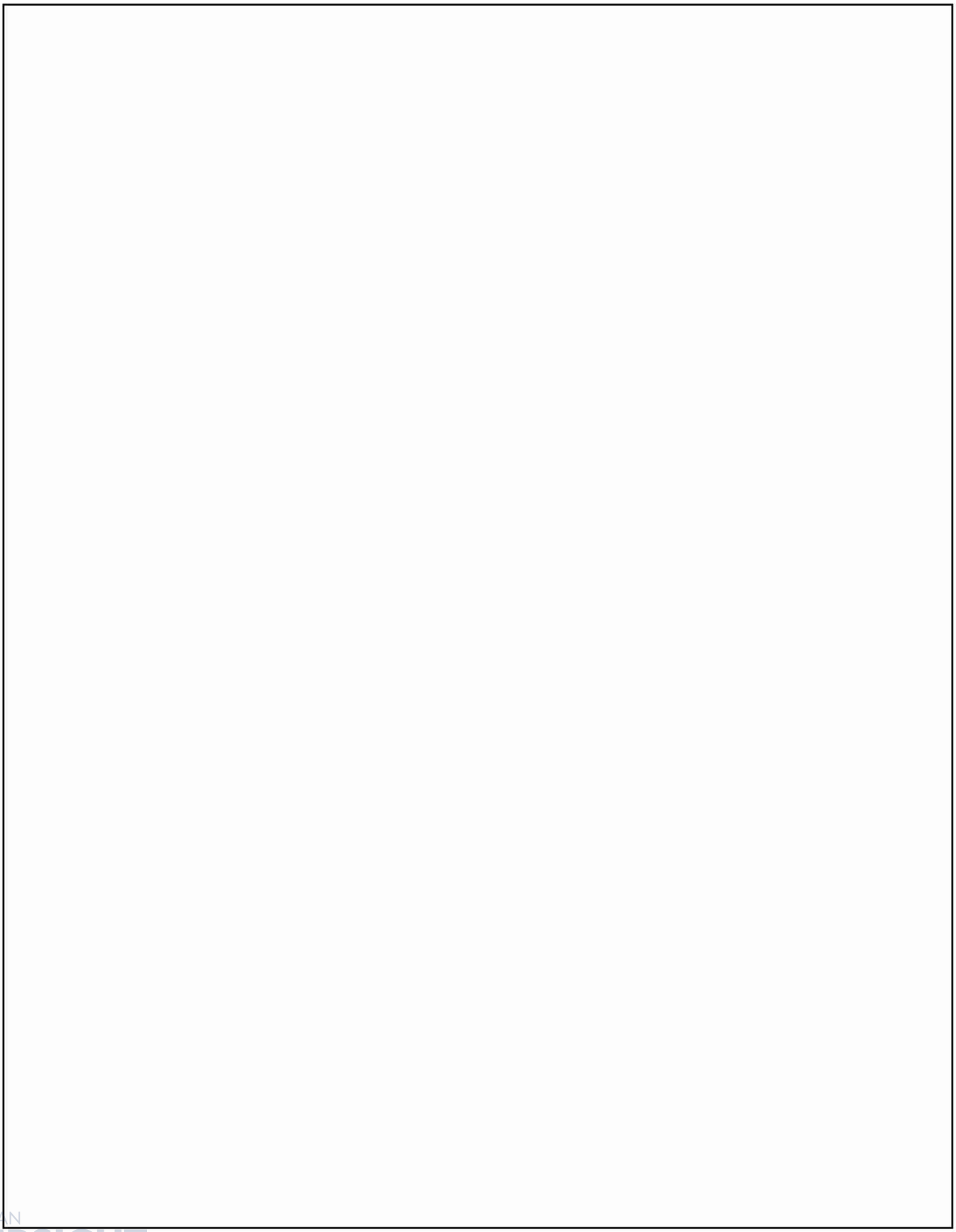
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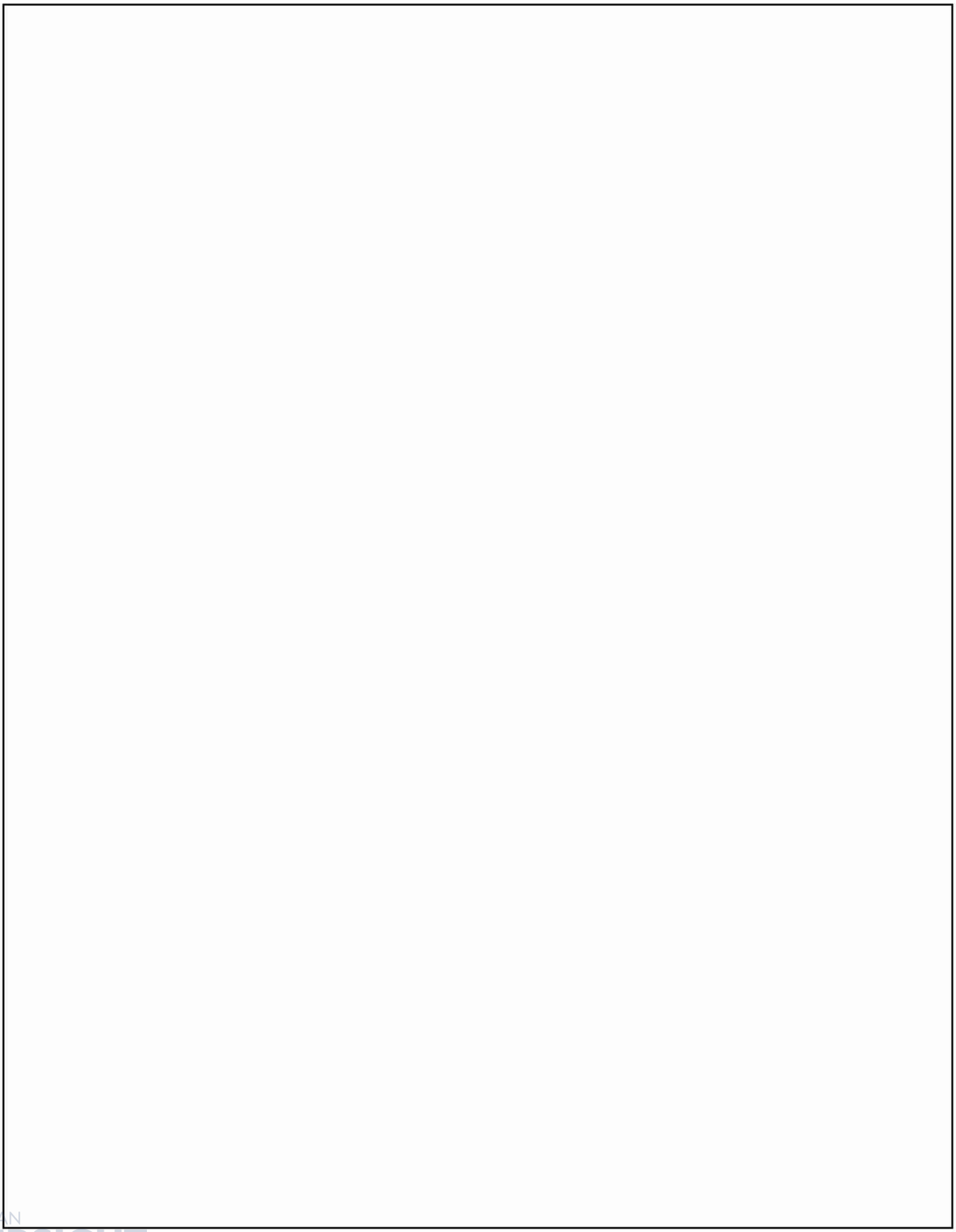
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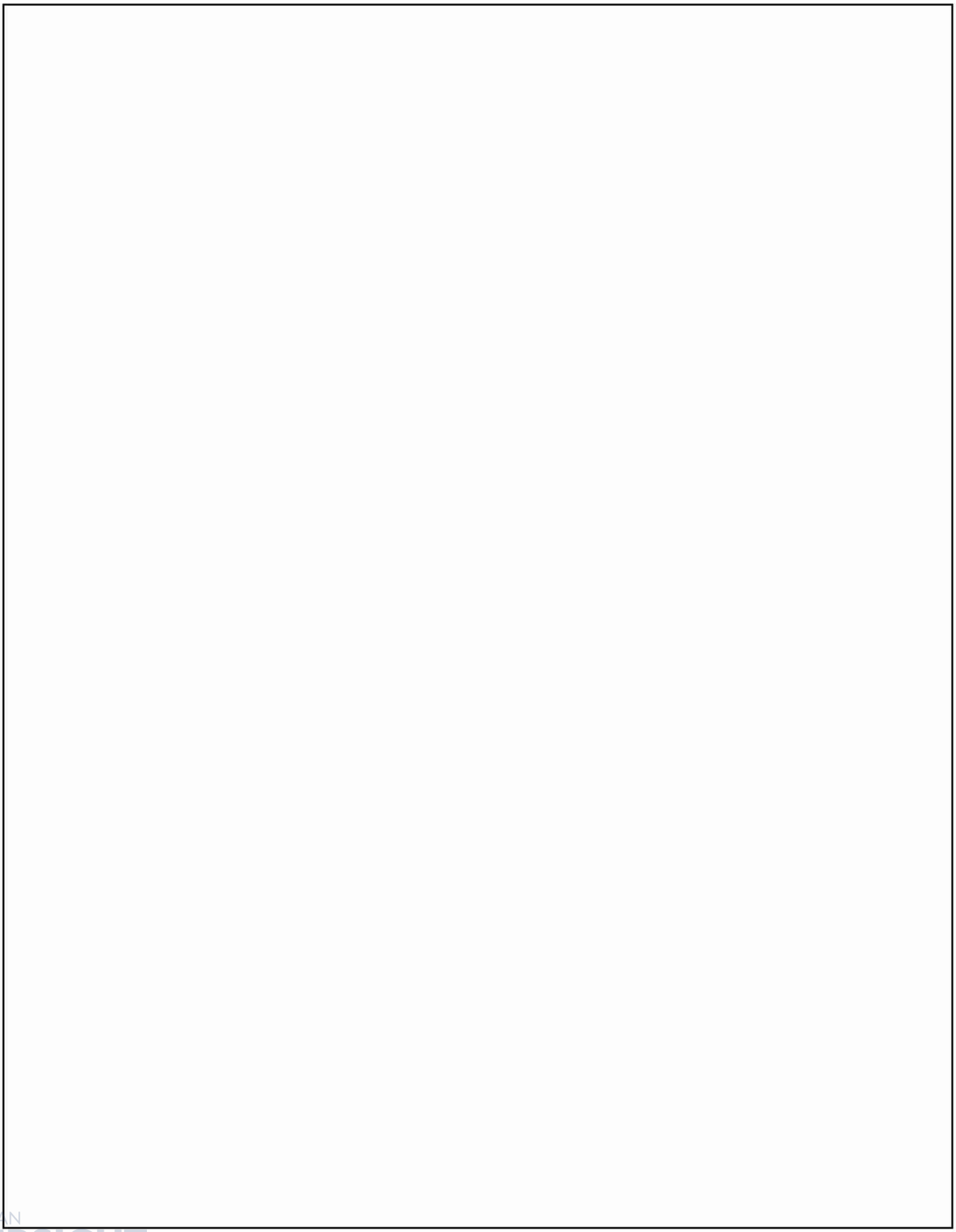
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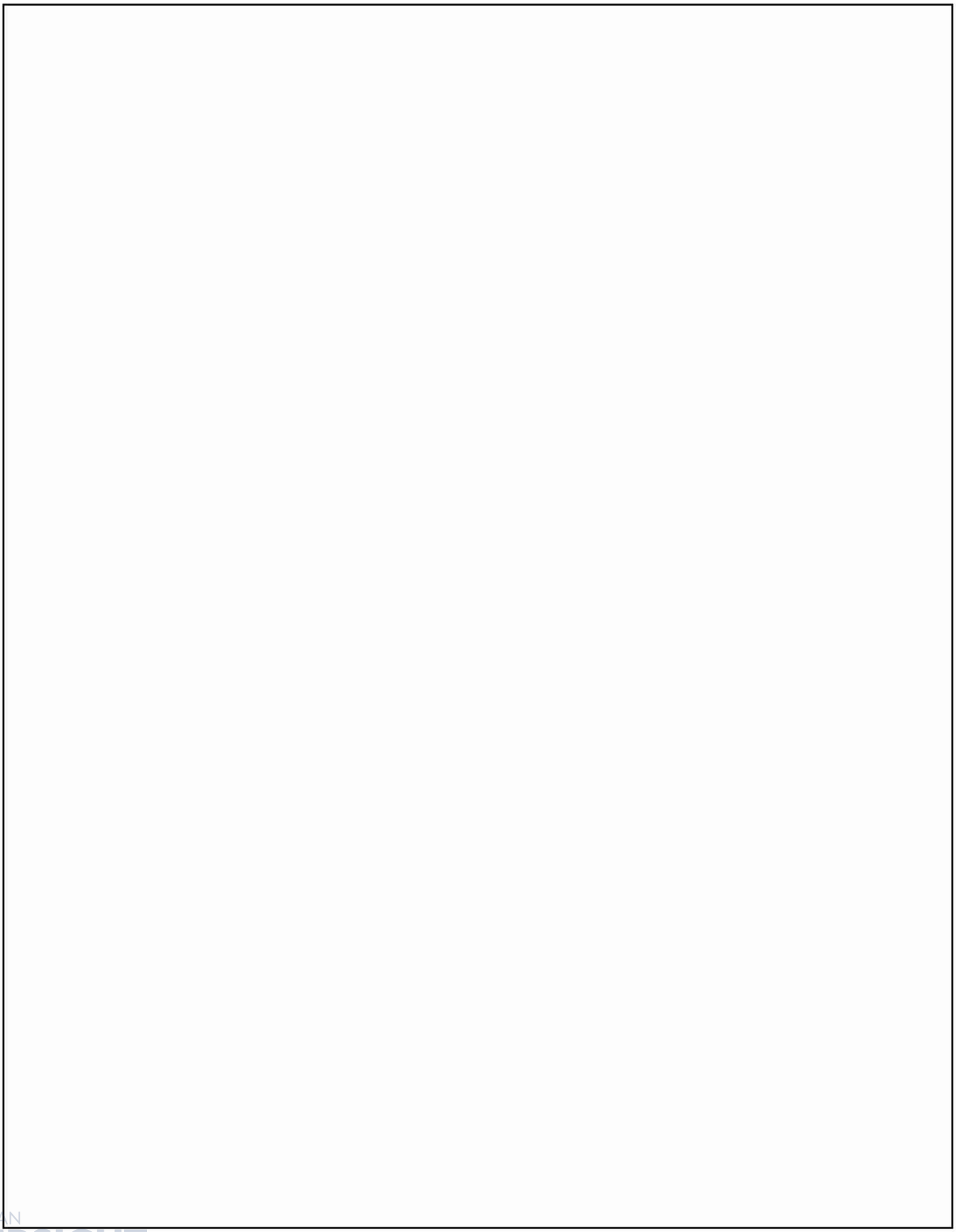
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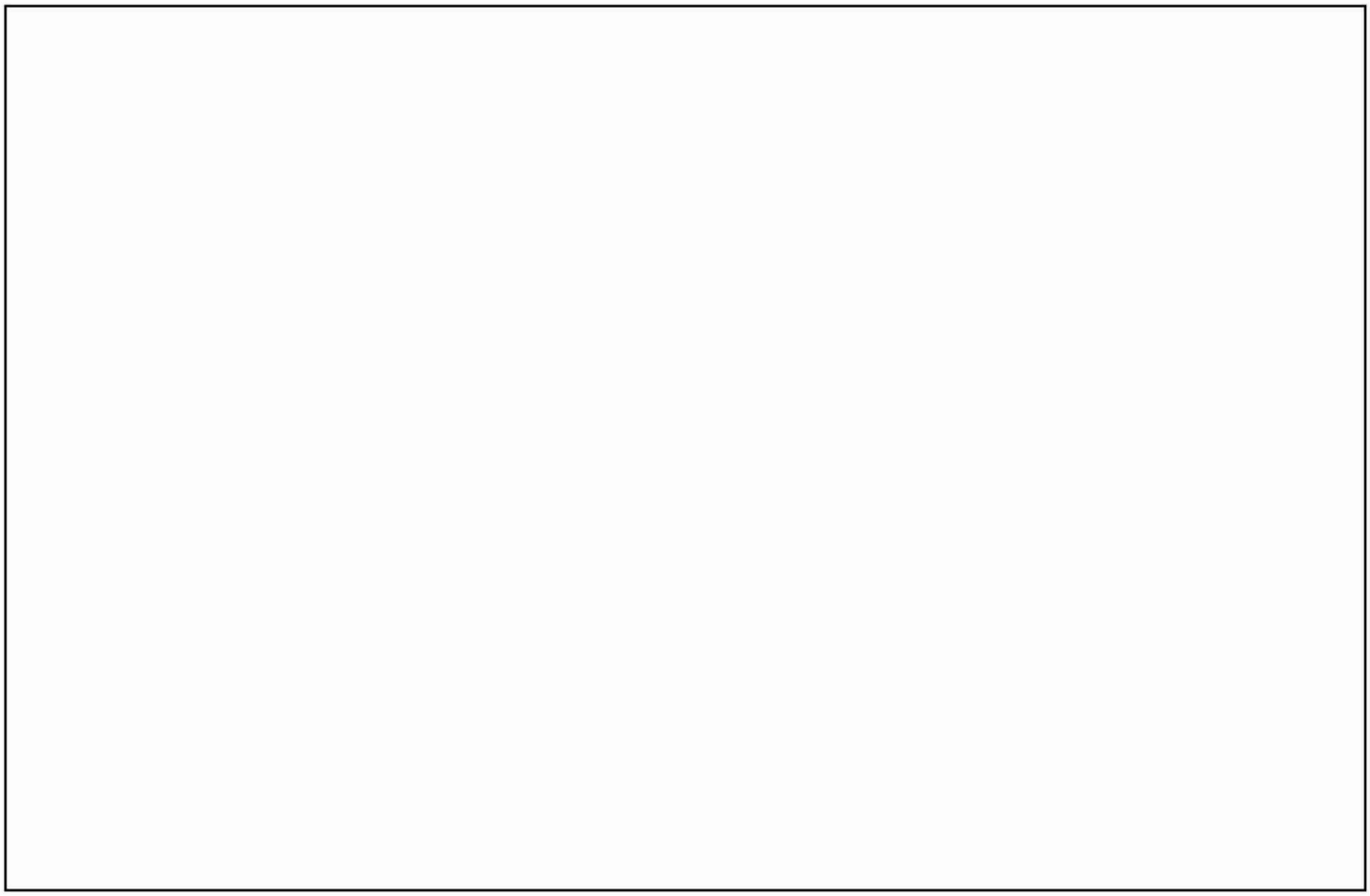
Tactical Rollout Plan | Policy Manual Volume G, Part G (Update)

Publication Date TBD

EB-5 Further Deployment

This plan relates to updates to the Policy Manual and website. For EXA updates related to messaging (e.g. GovDelivery, Leadership Guidance, Tweets), see EXA Tactical Plans.

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

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Background

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Deliberative - Pre-D

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DHS-20-2156-A-002720

From: Piateski, Jennifer E
Subject: H1B Skinny Strengthening Rule - G-1056
To: Edlow, Joseph B
Sent: July 6, 2020 1:28 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx

As requested.

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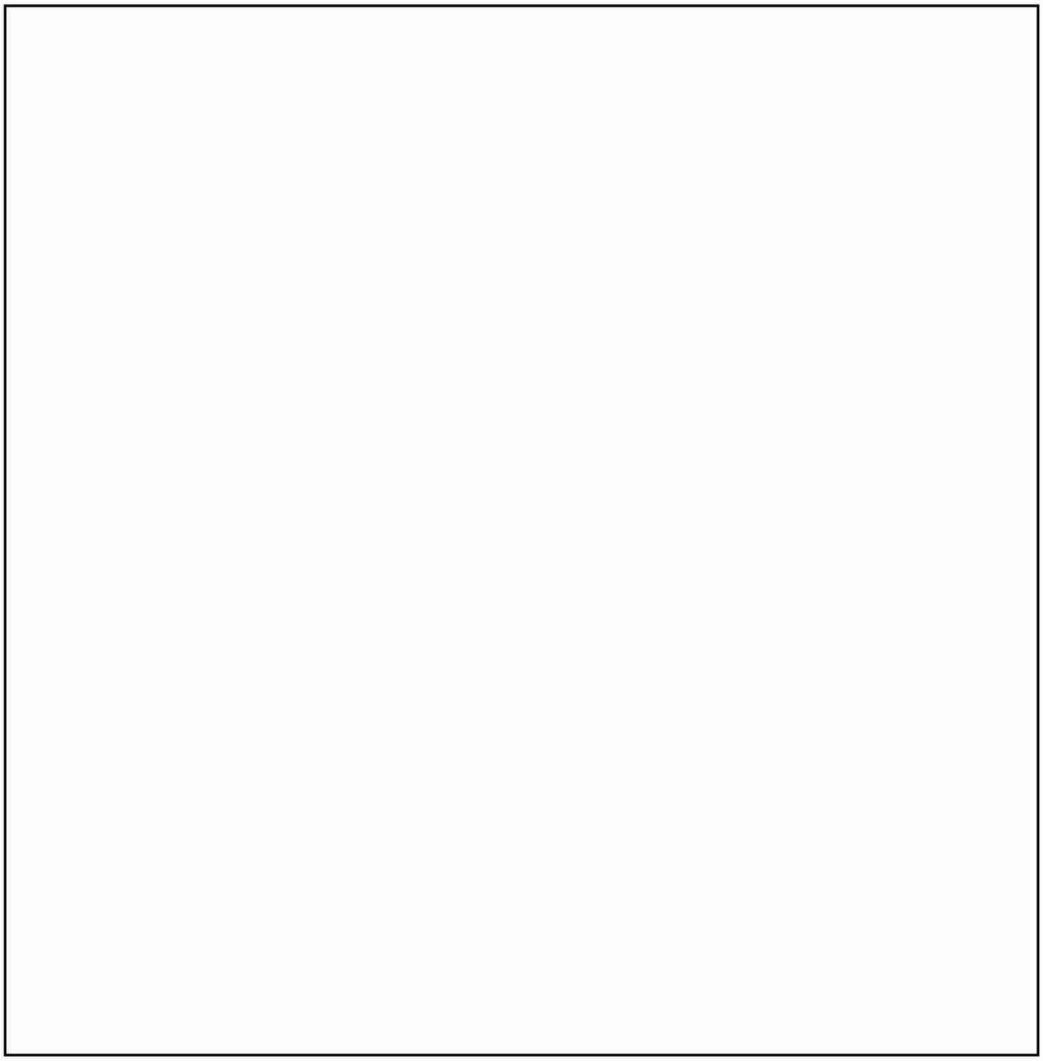
DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

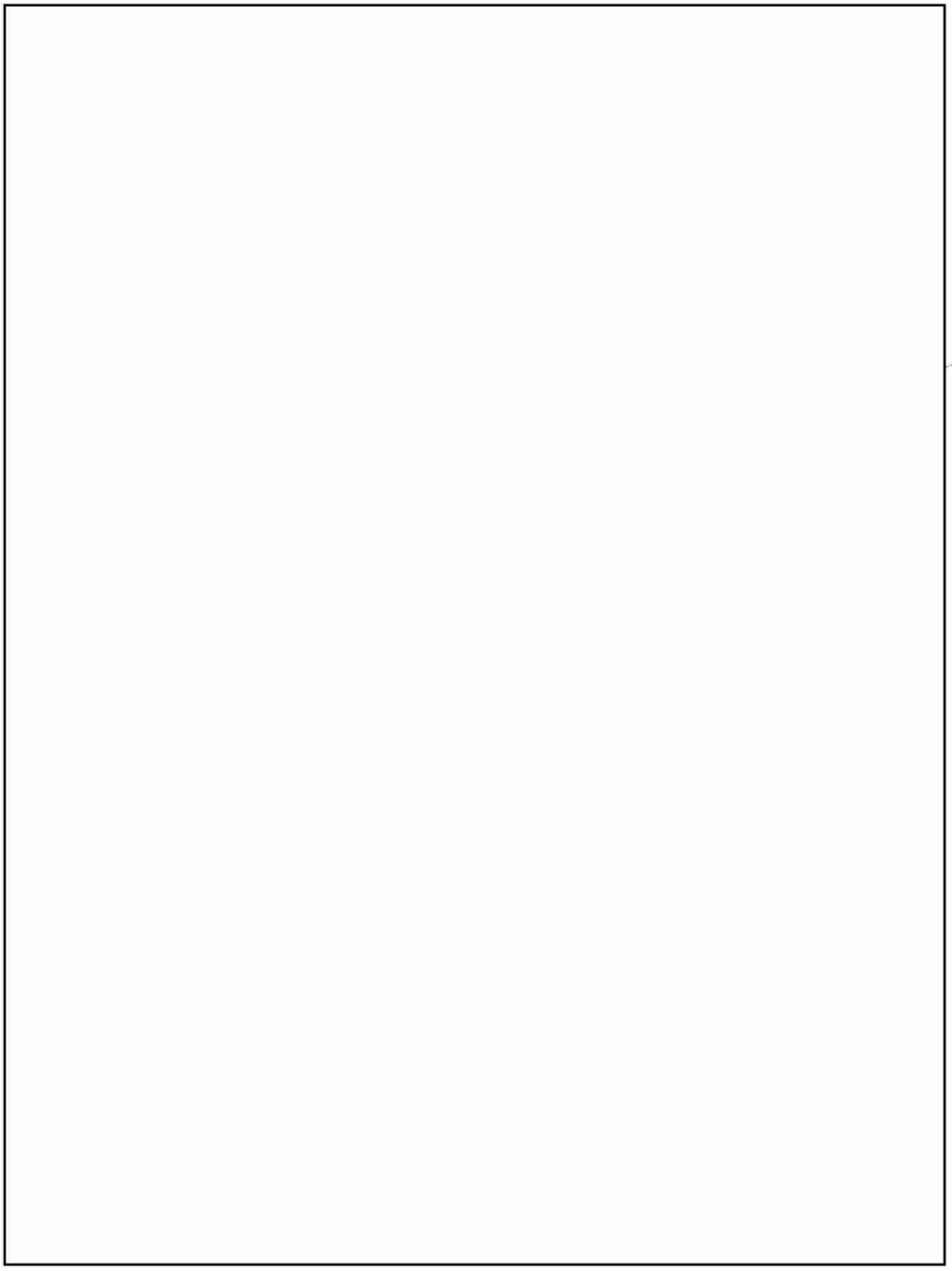
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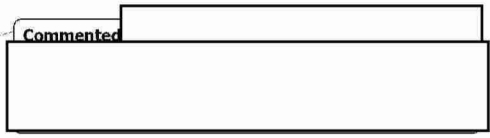
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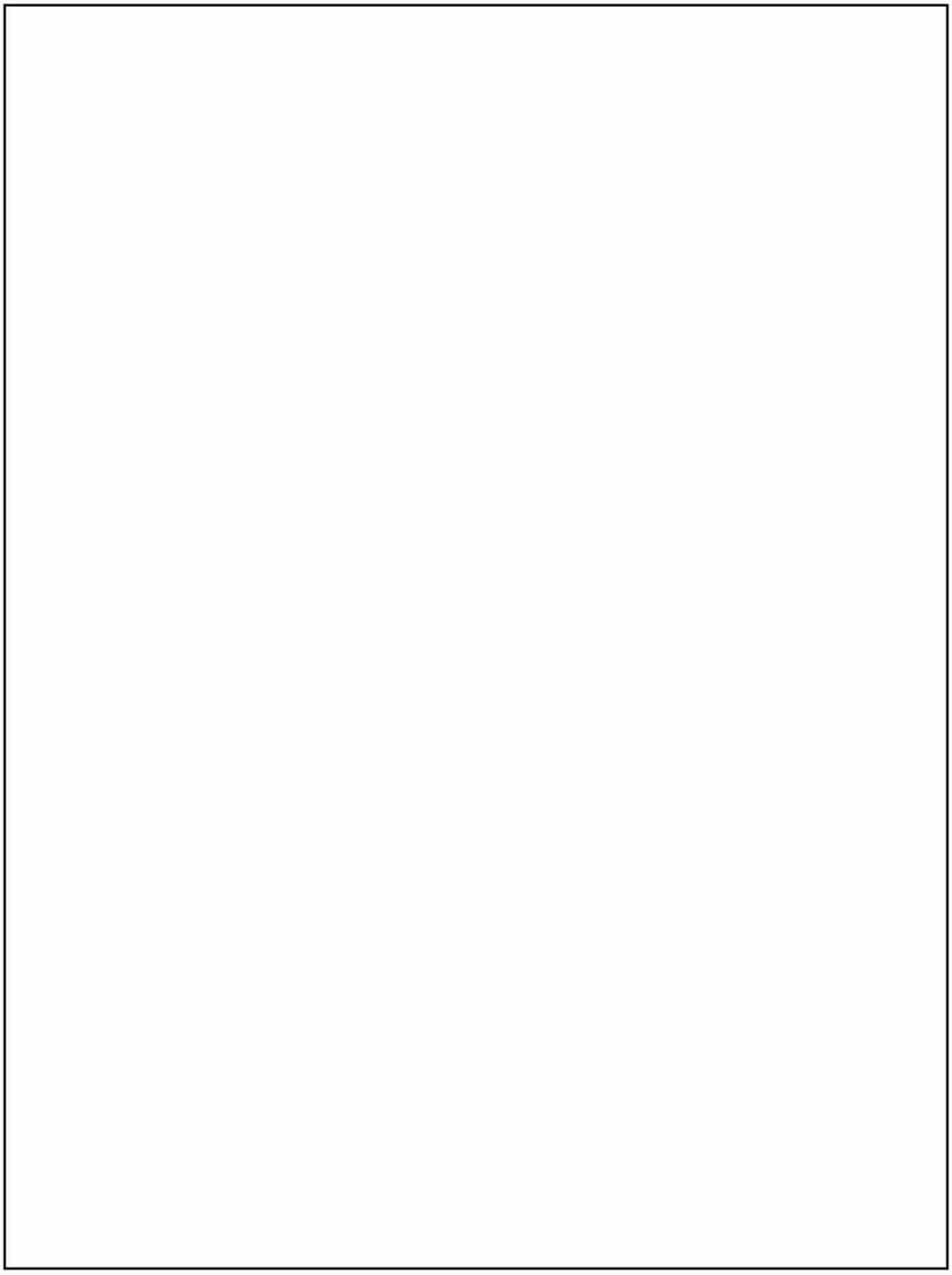




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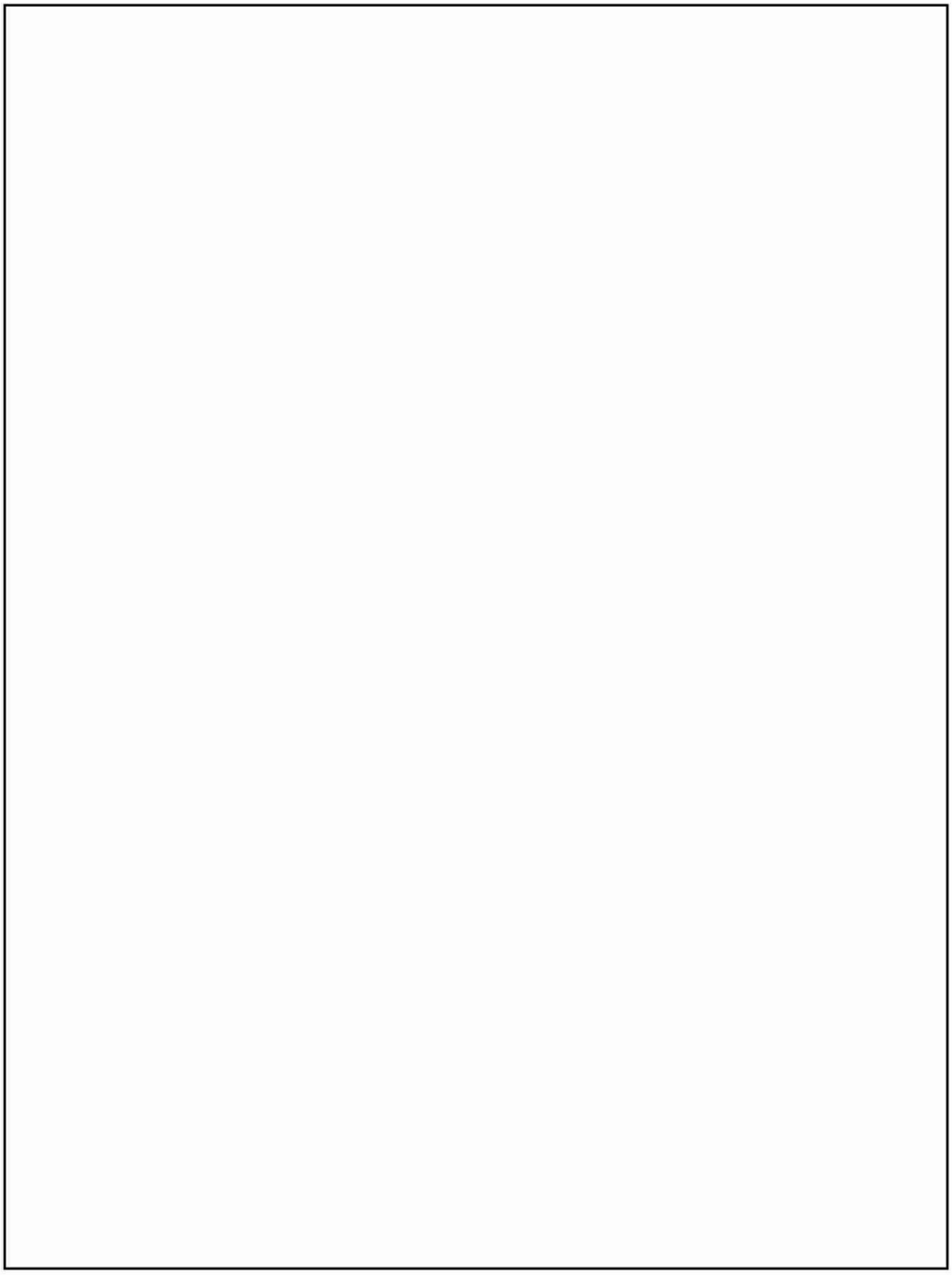
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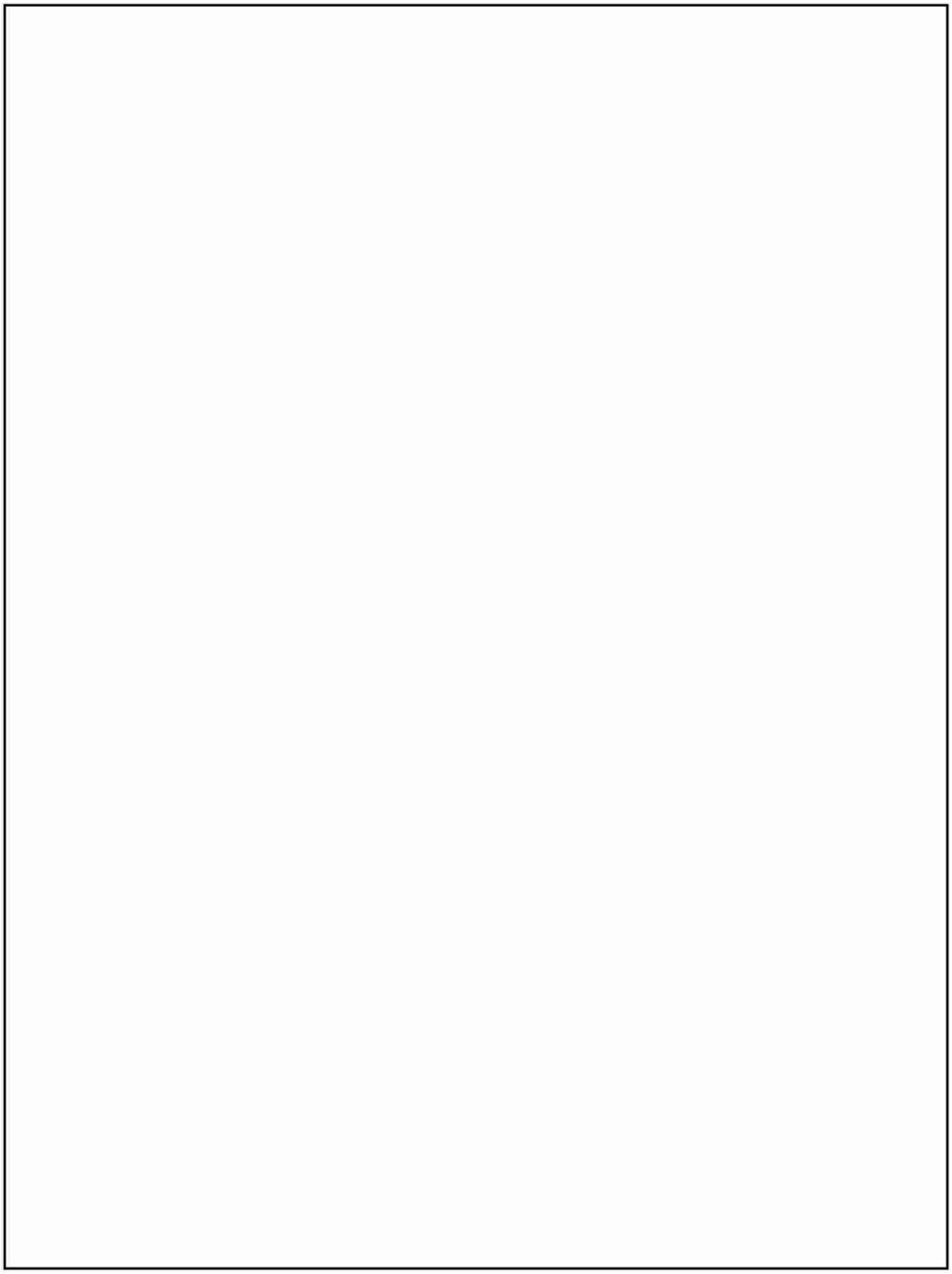
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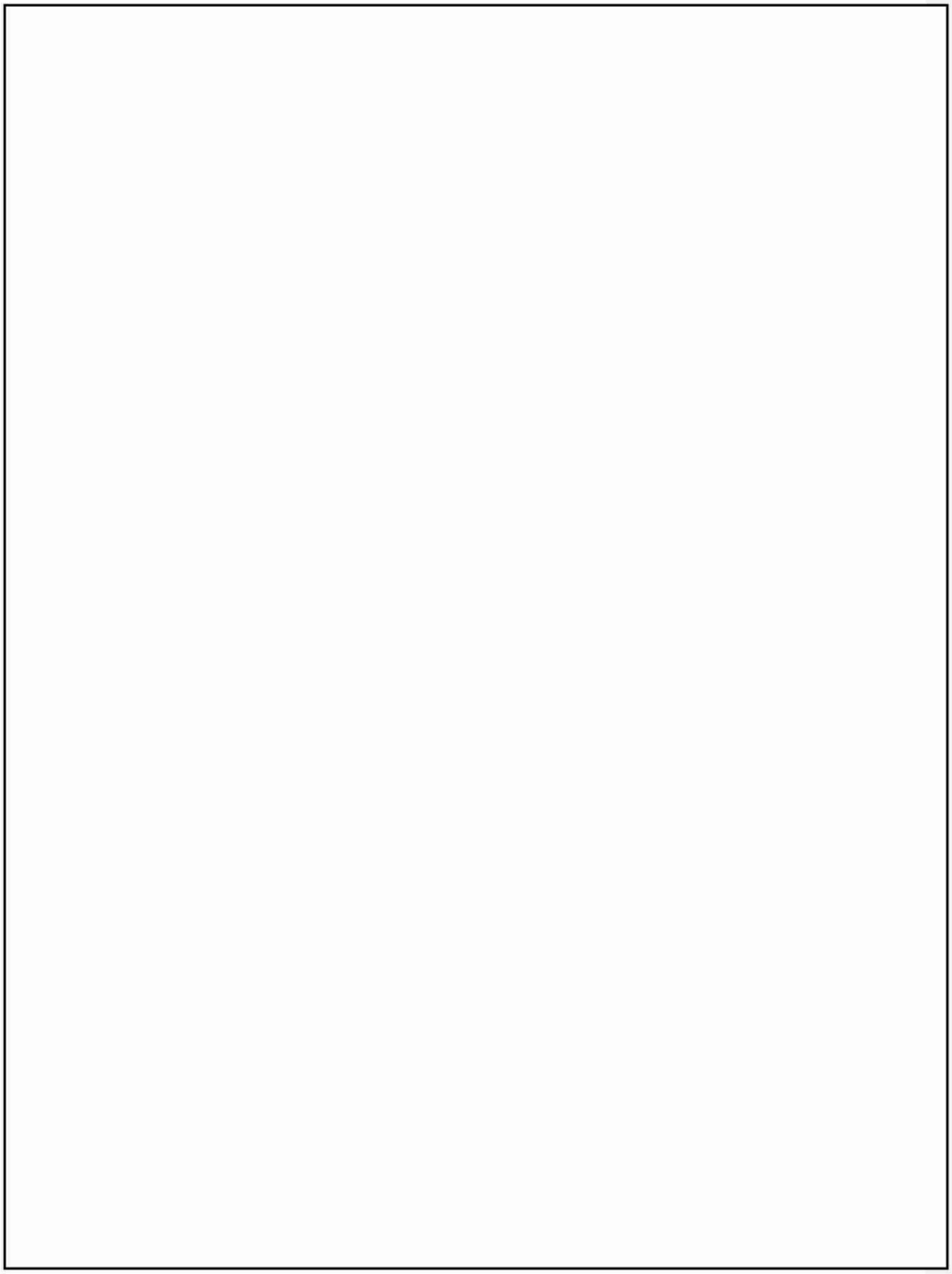
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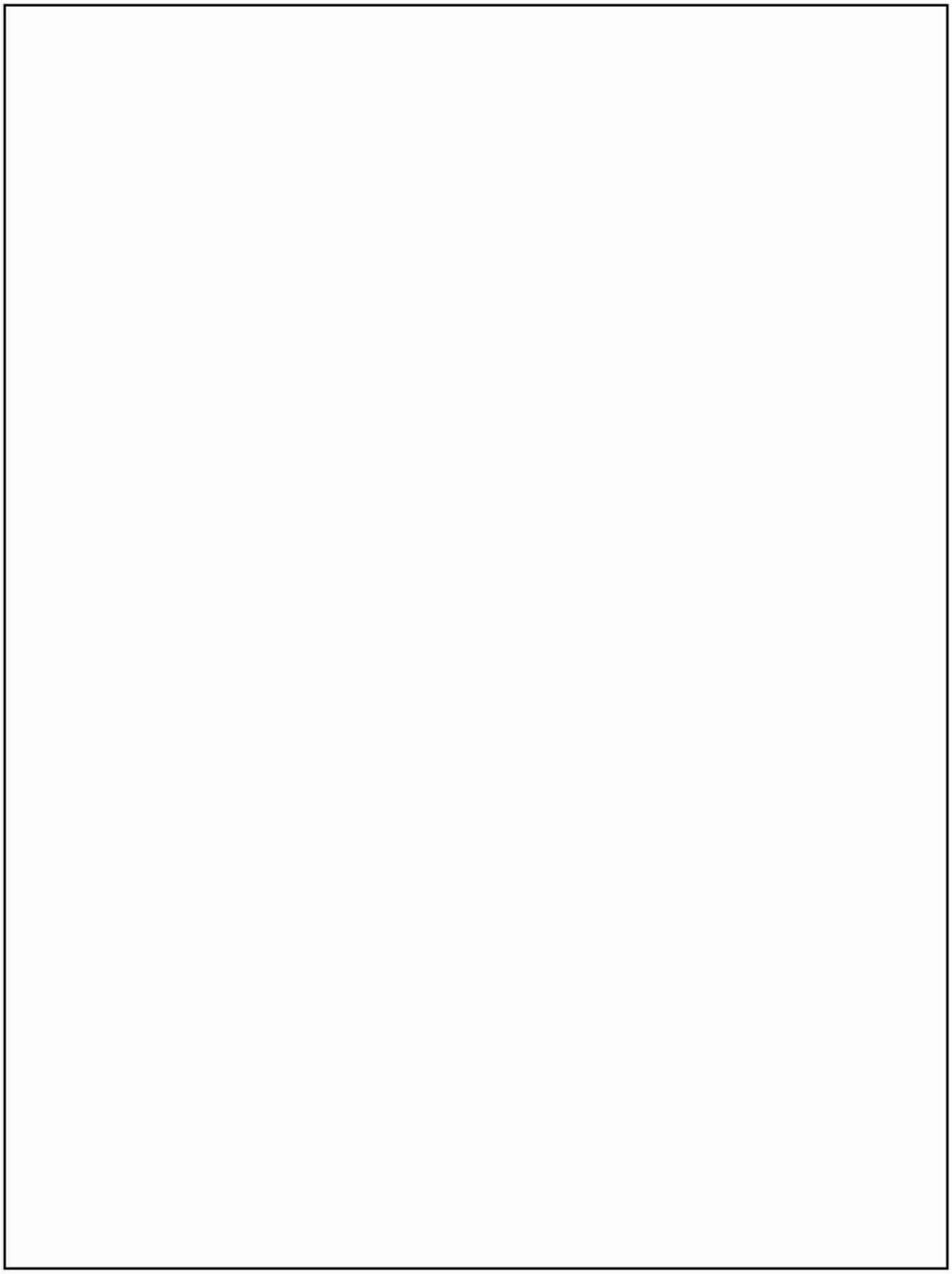
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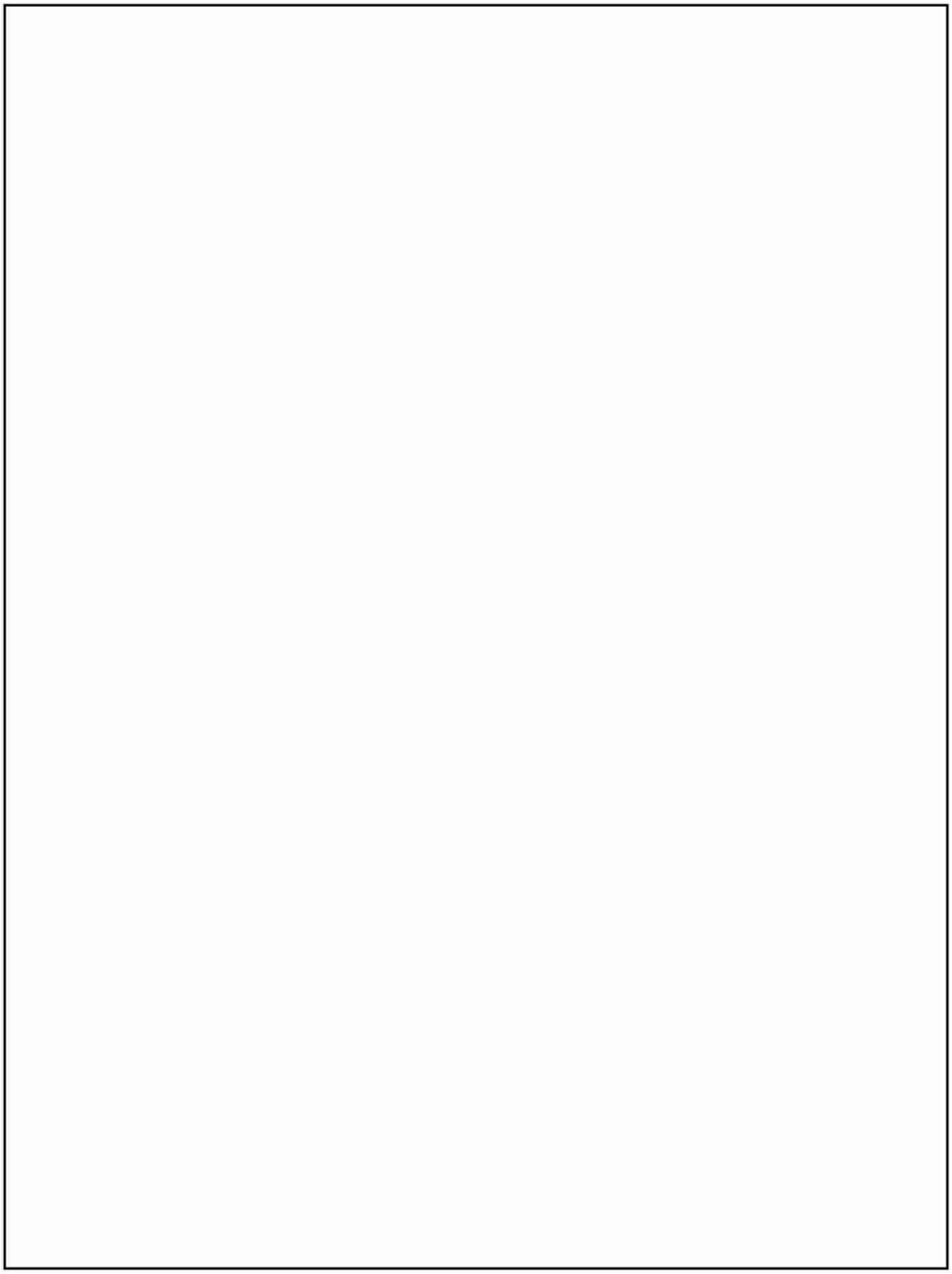
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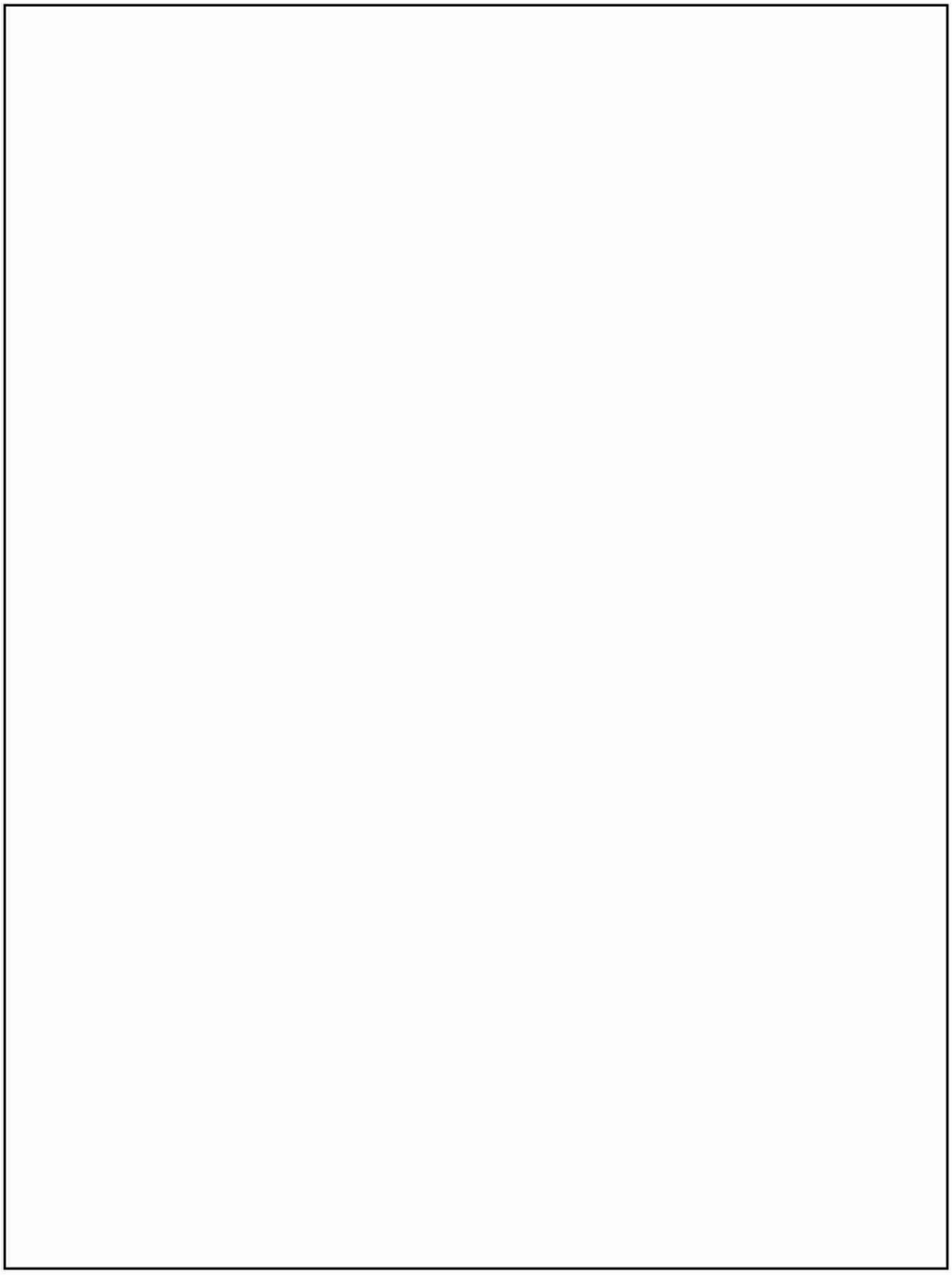
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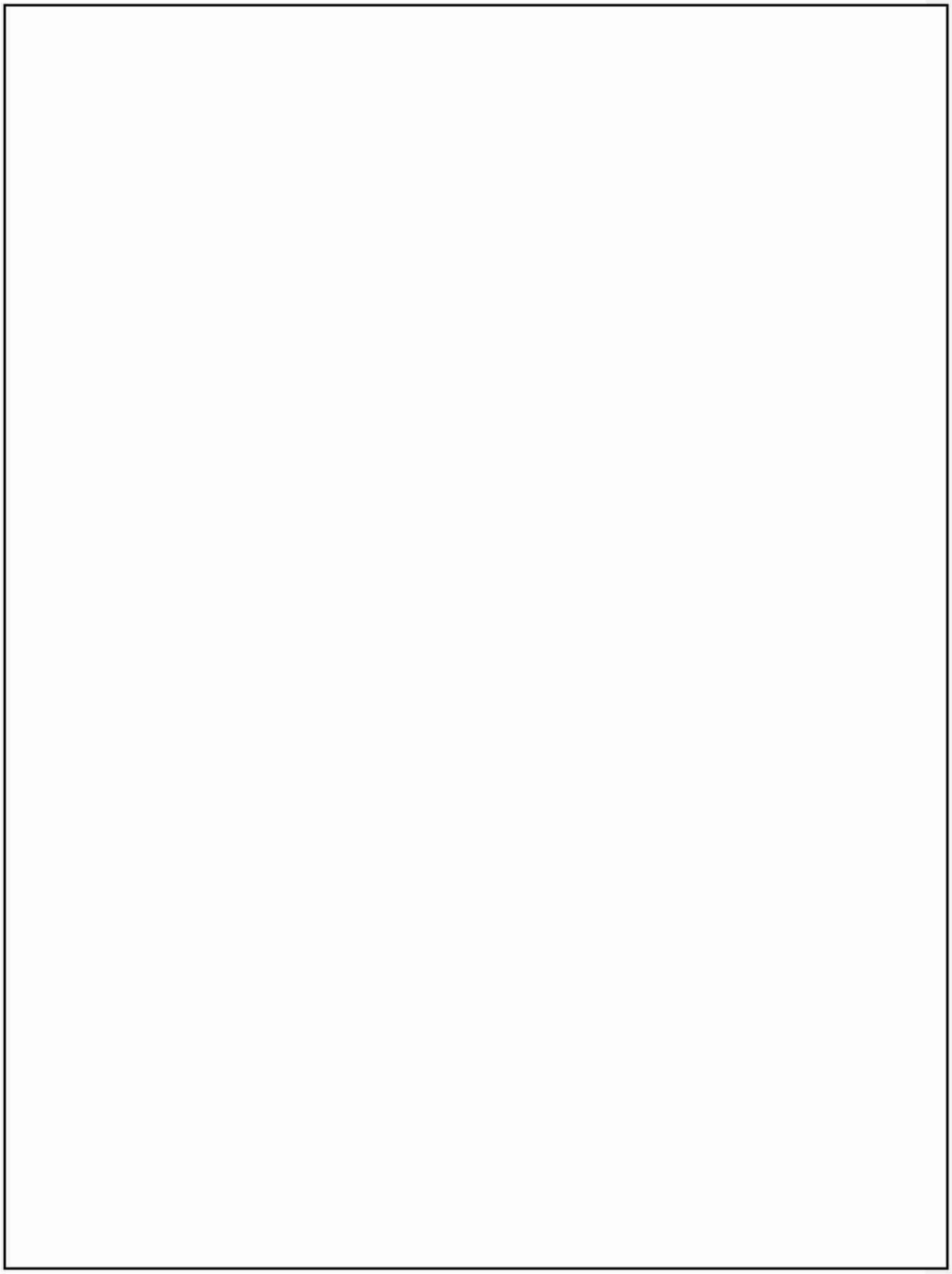
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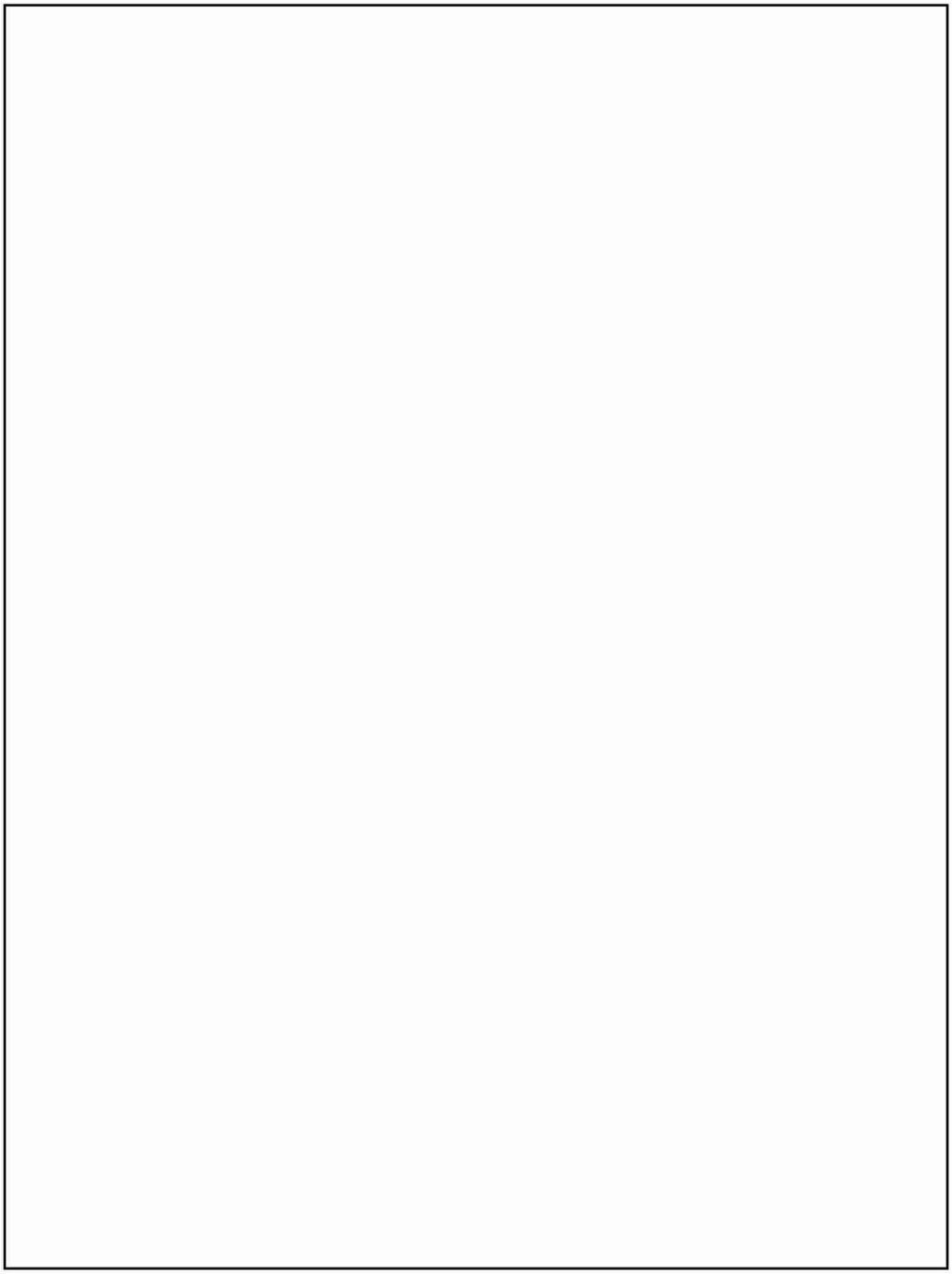
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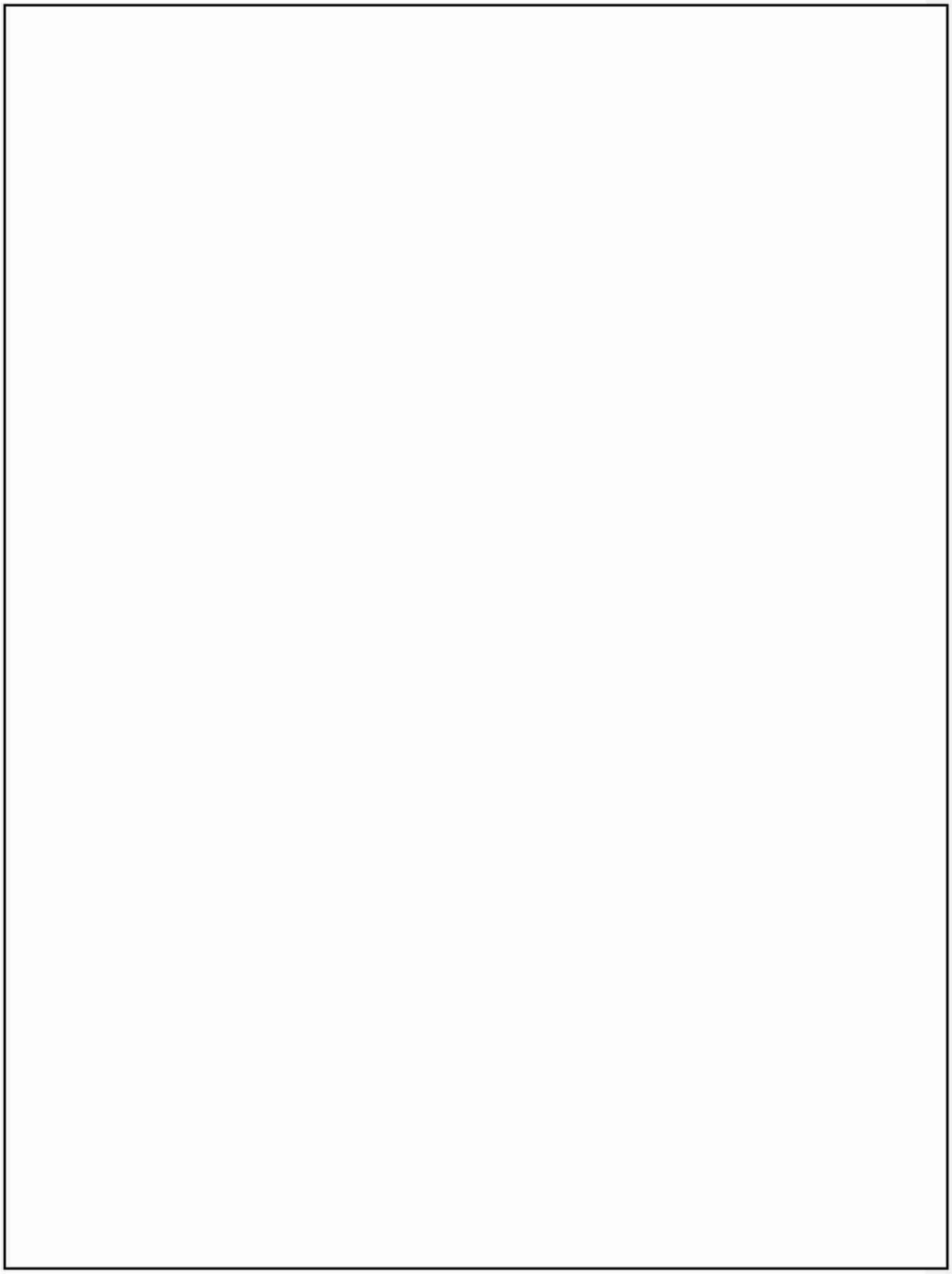
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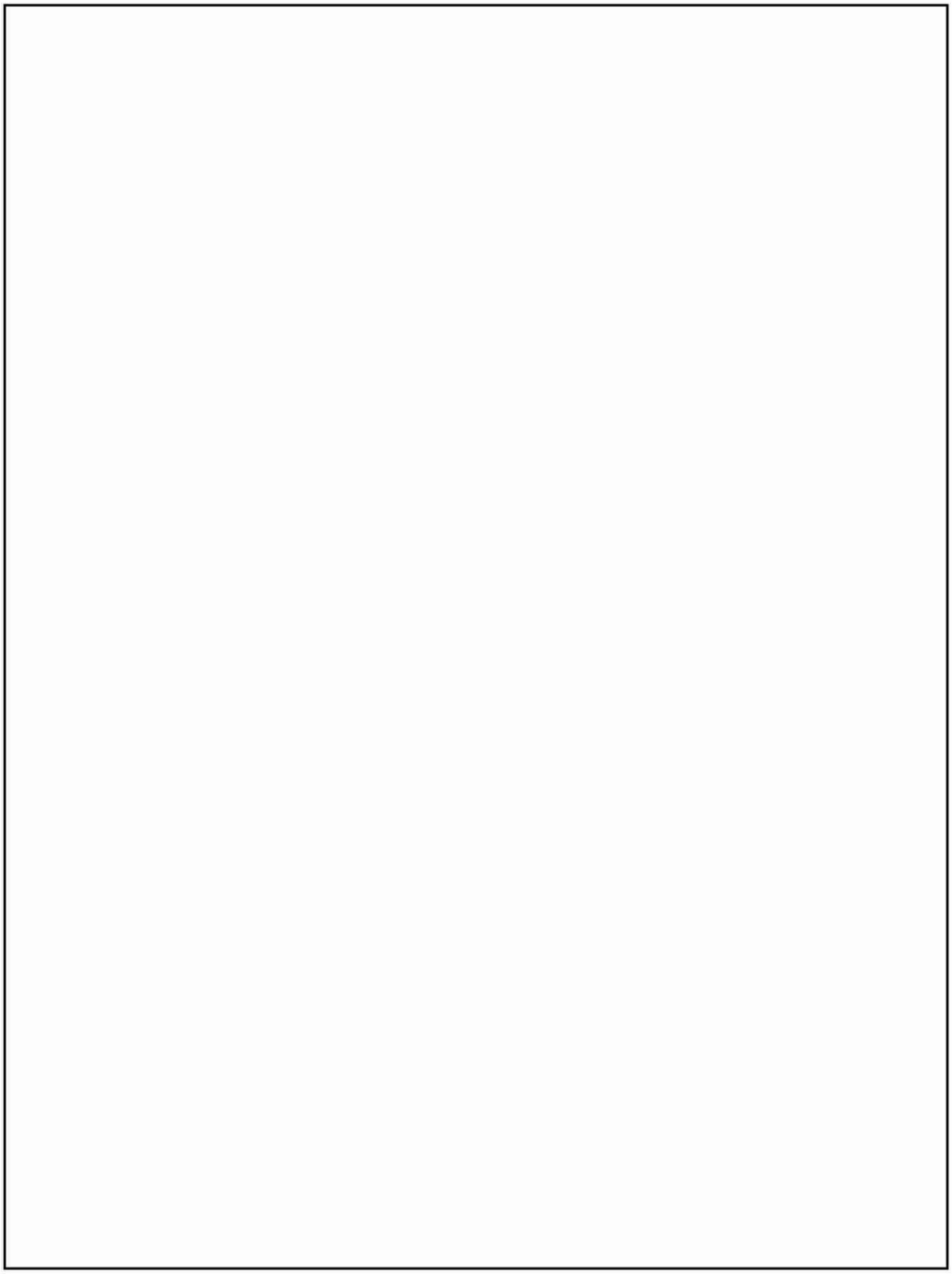
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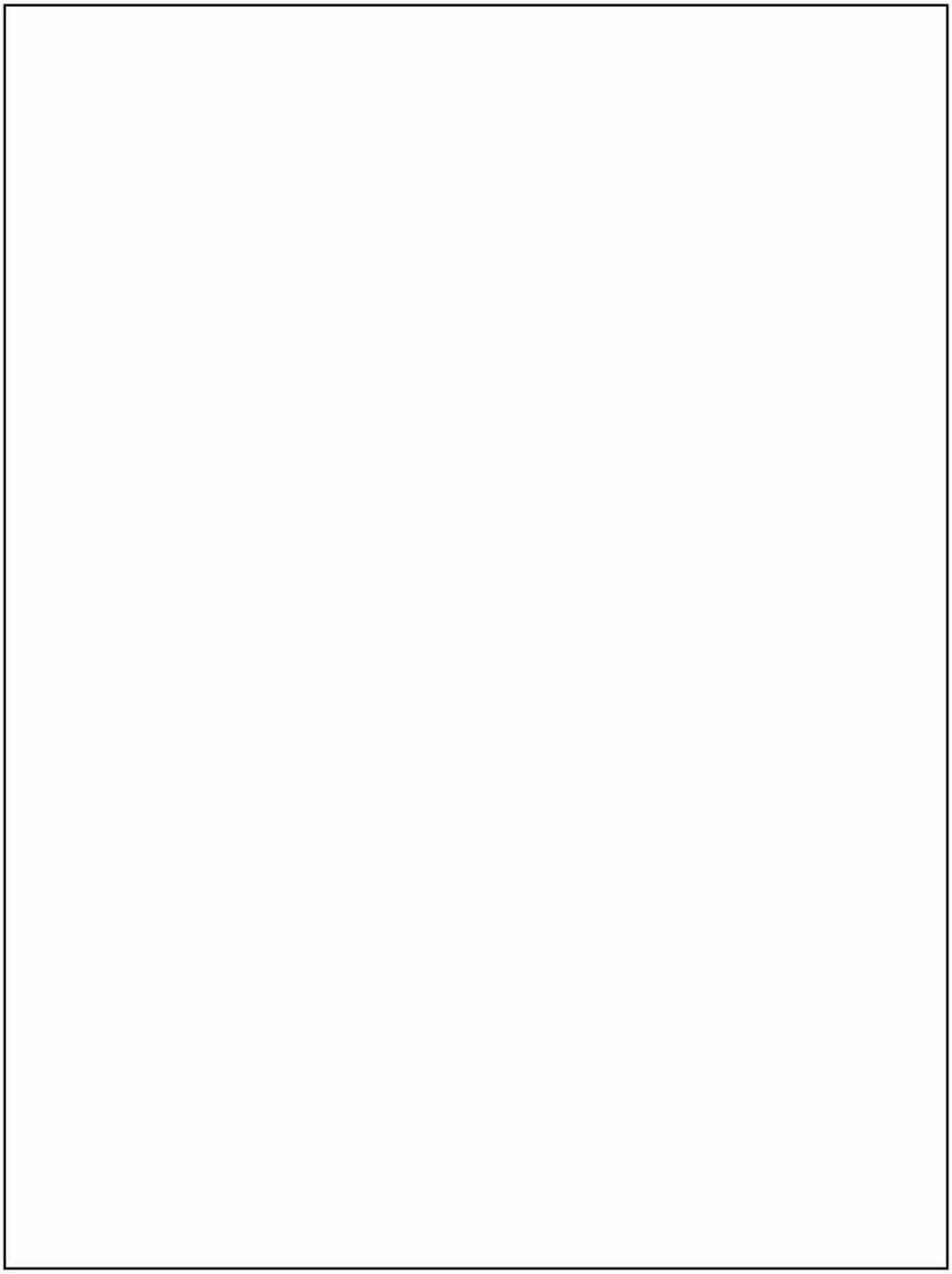
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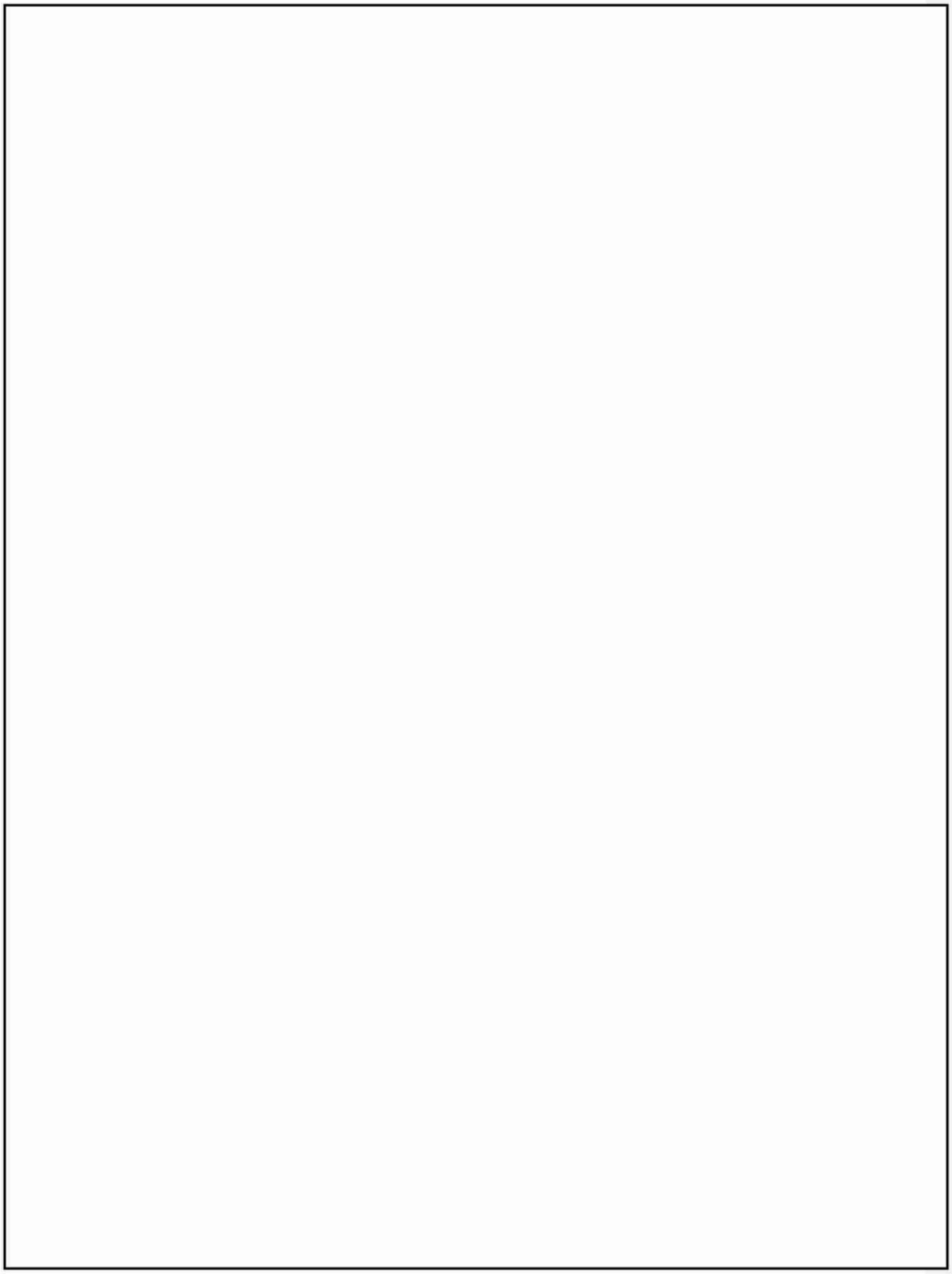
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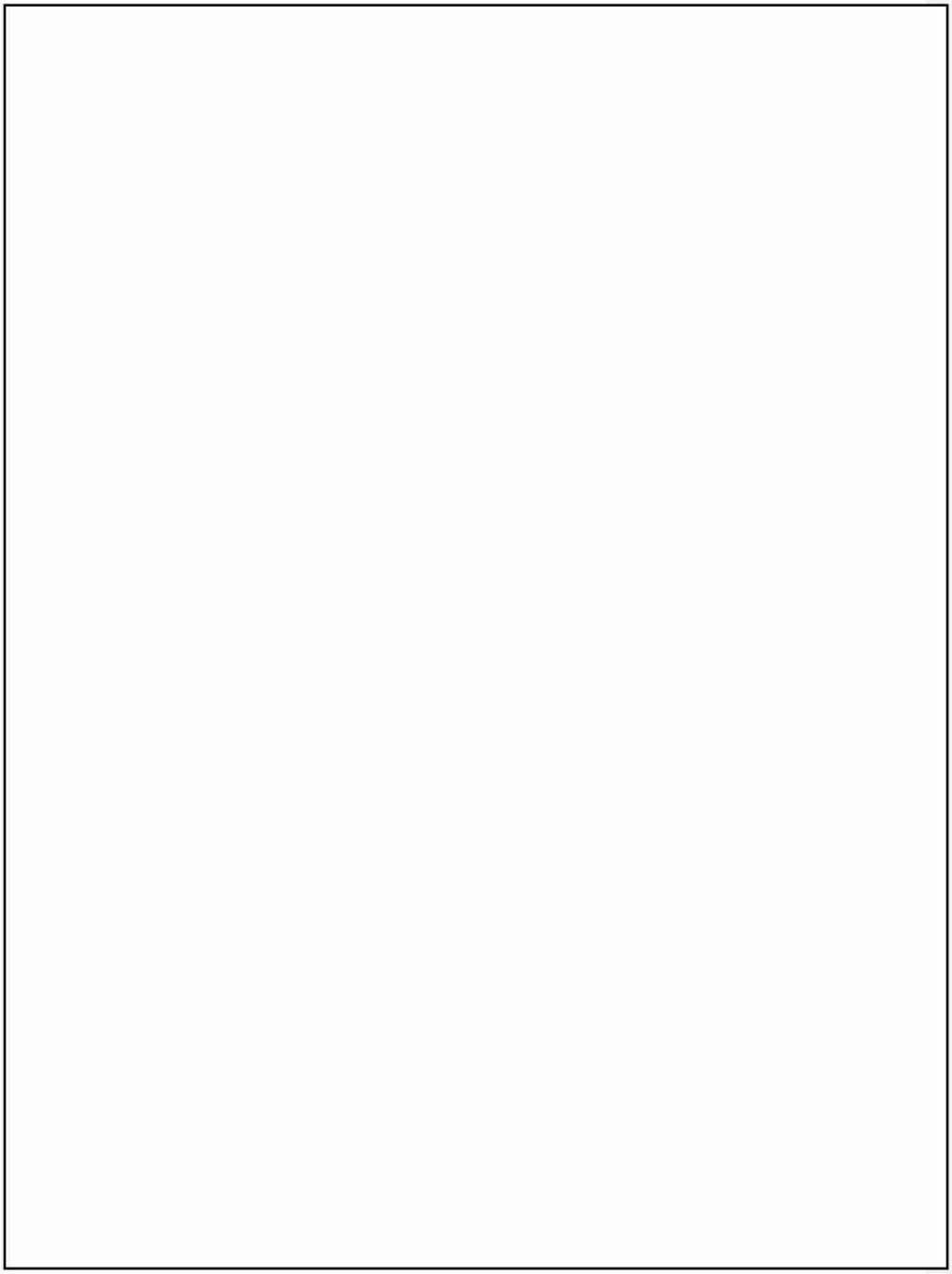
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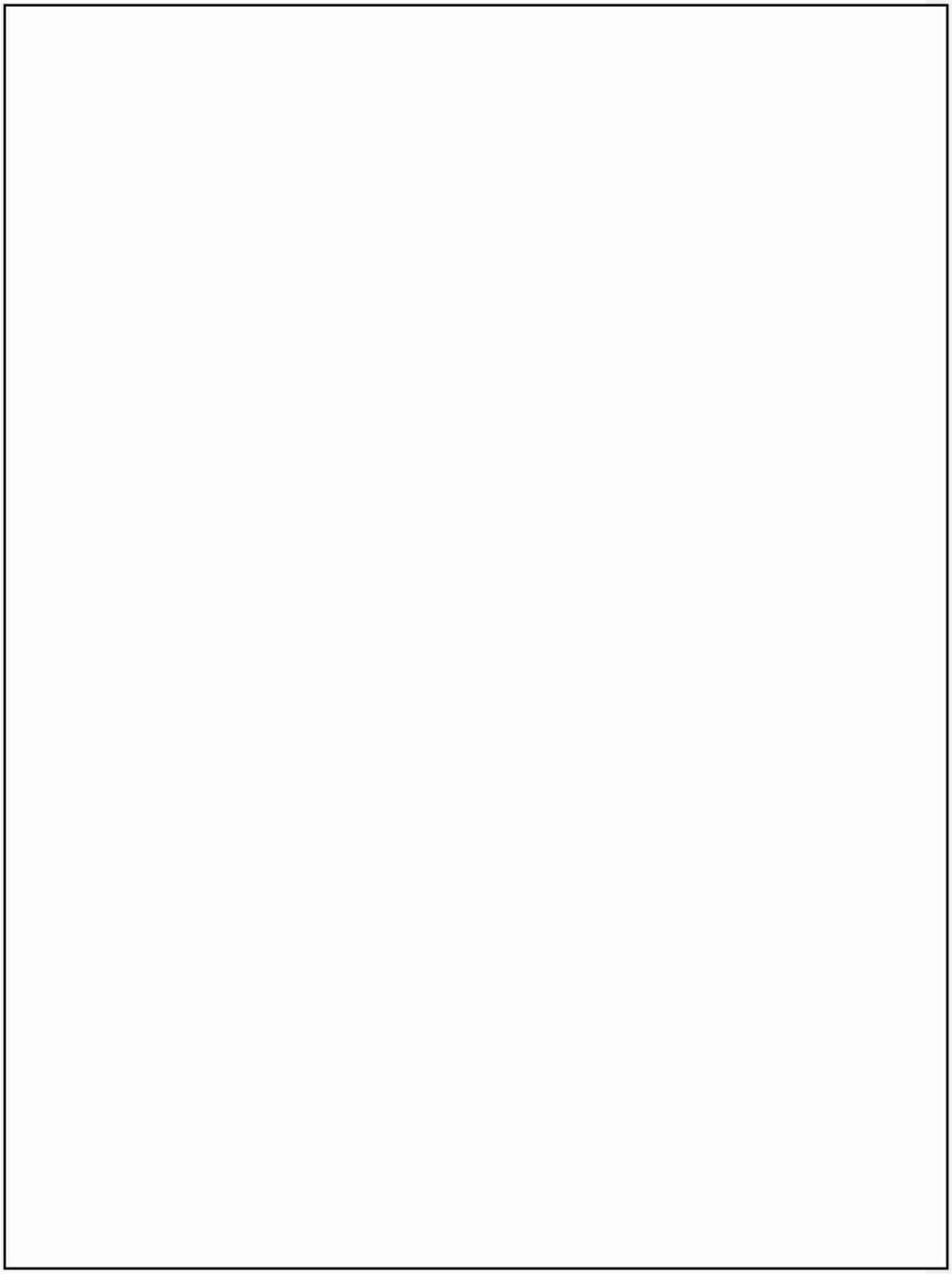
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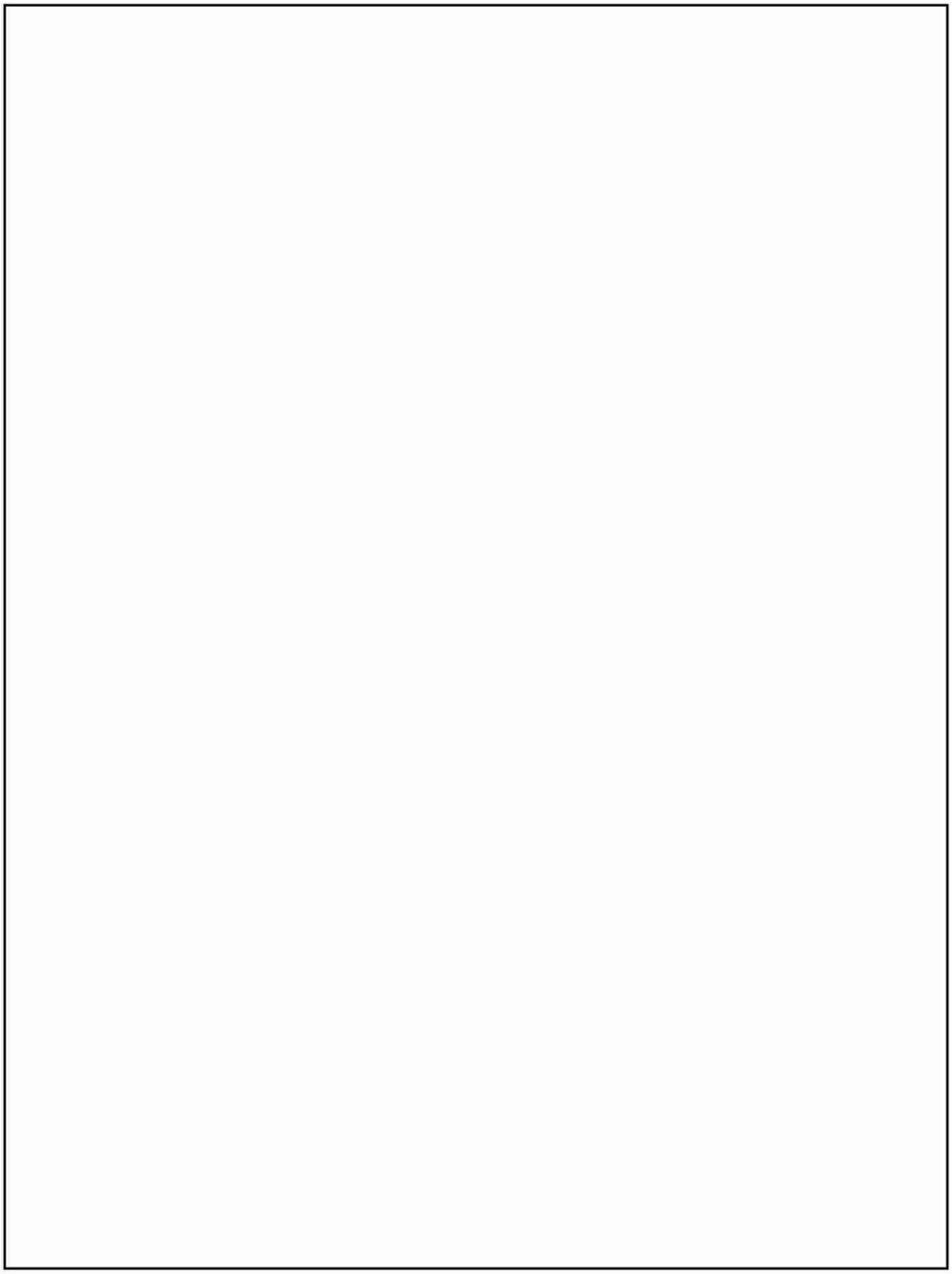
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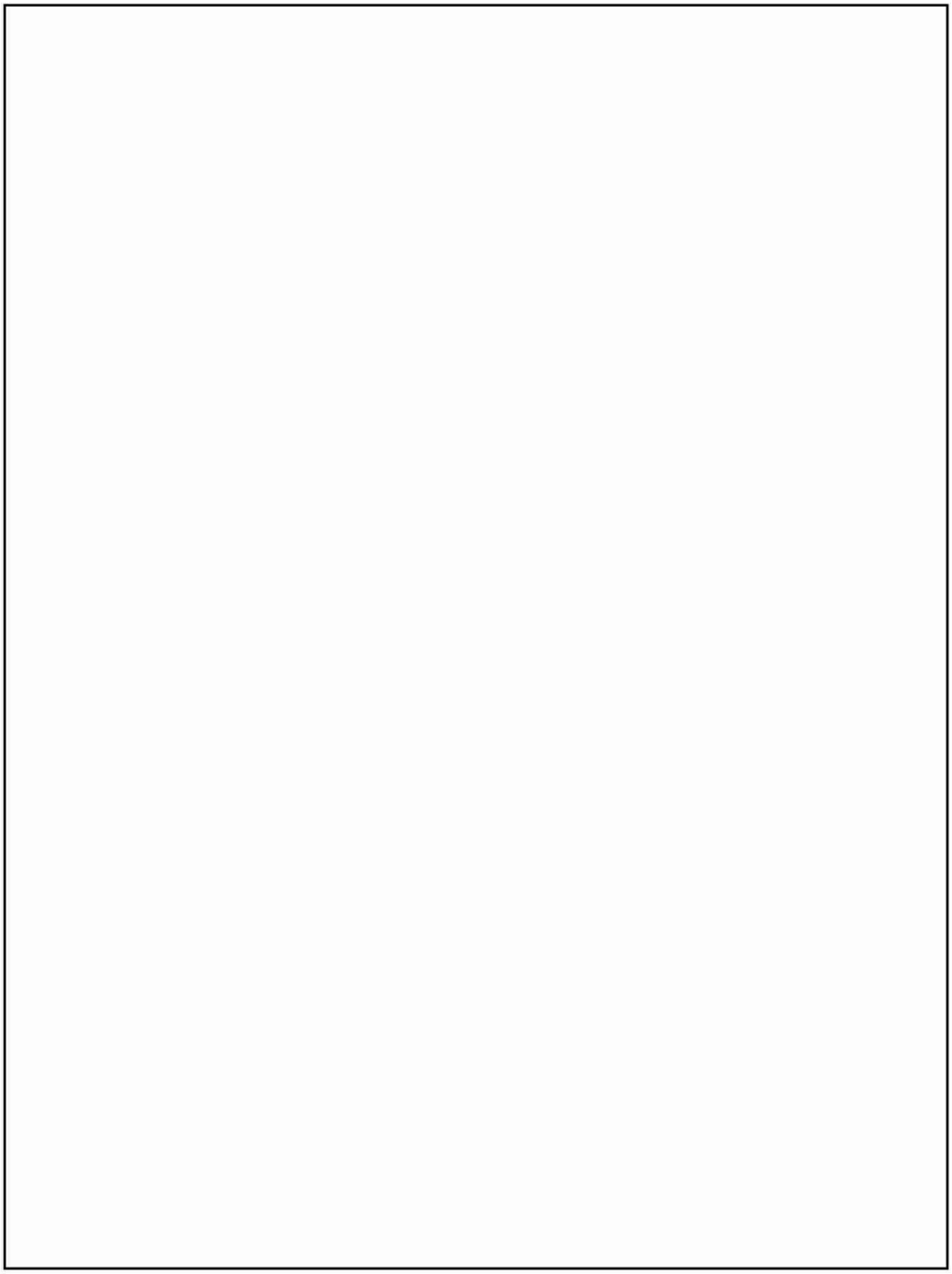
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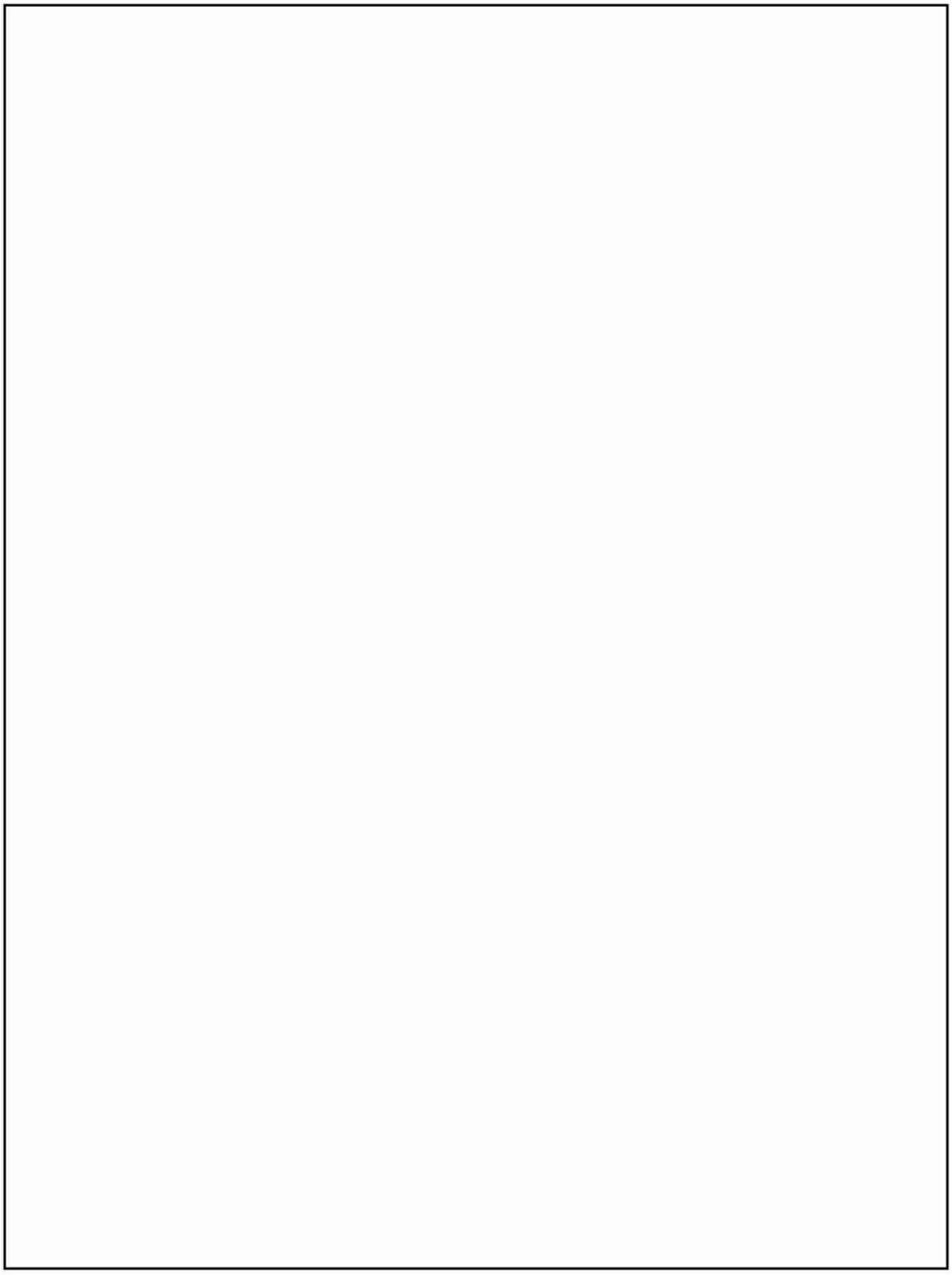
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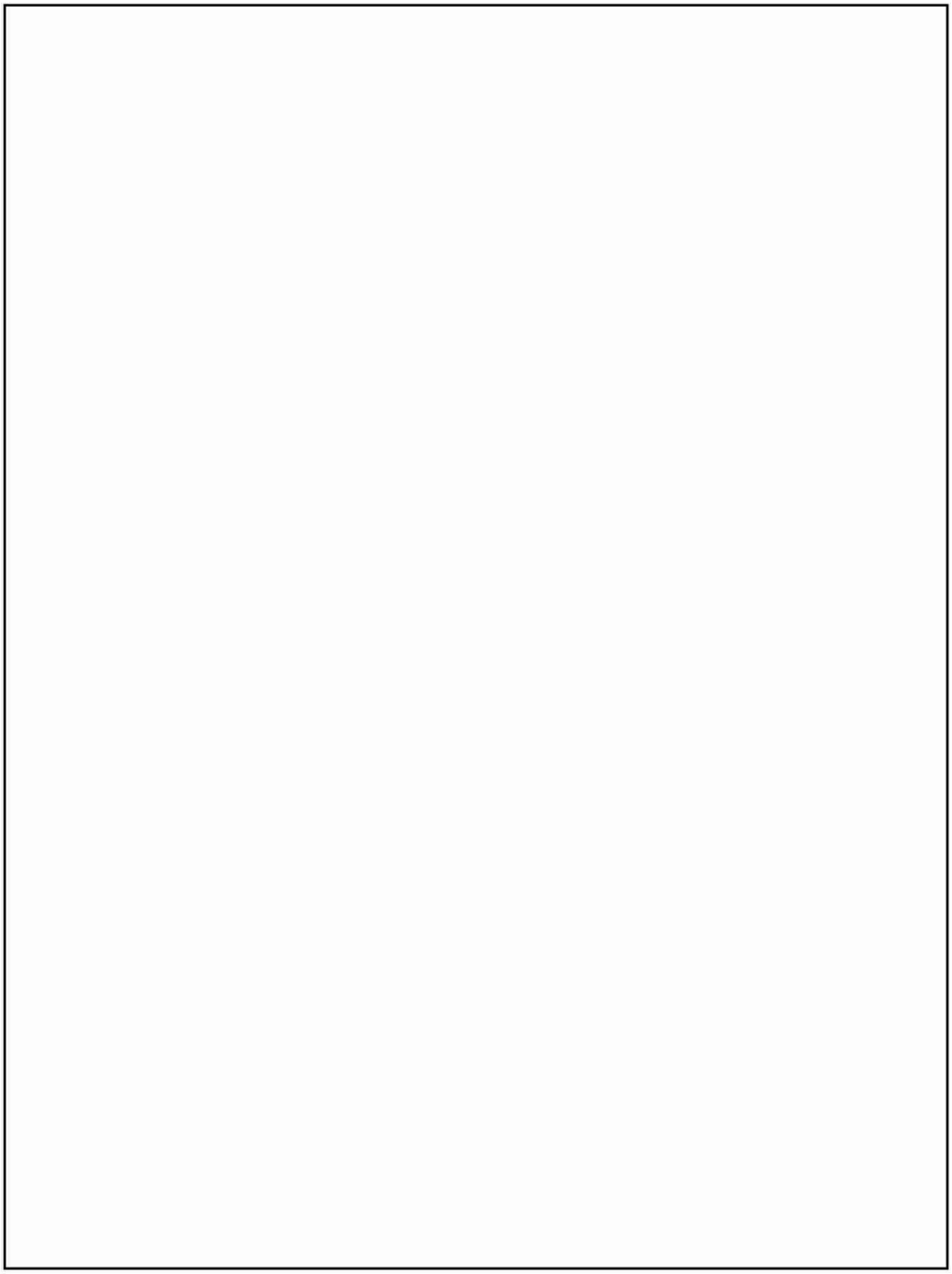
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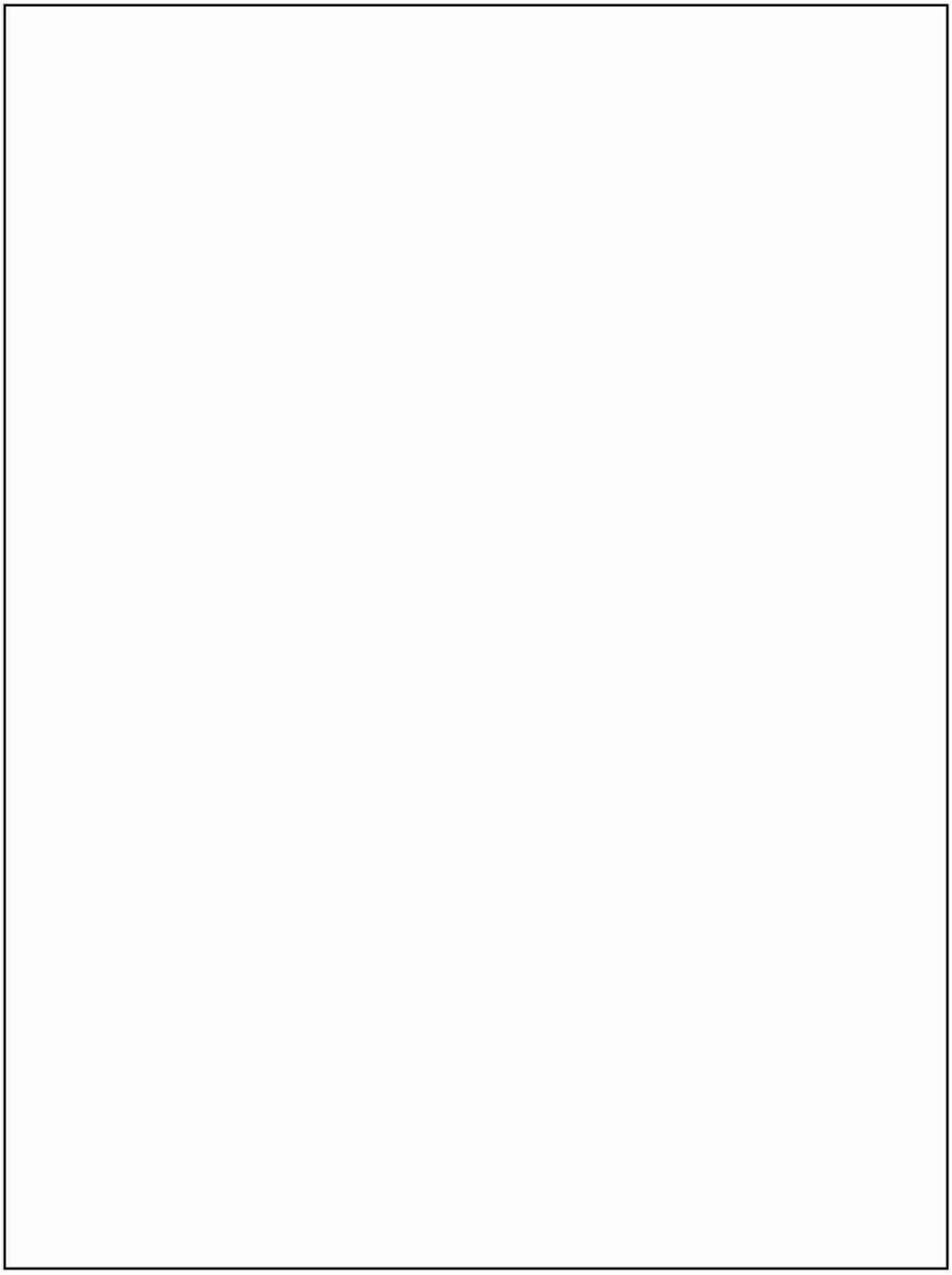
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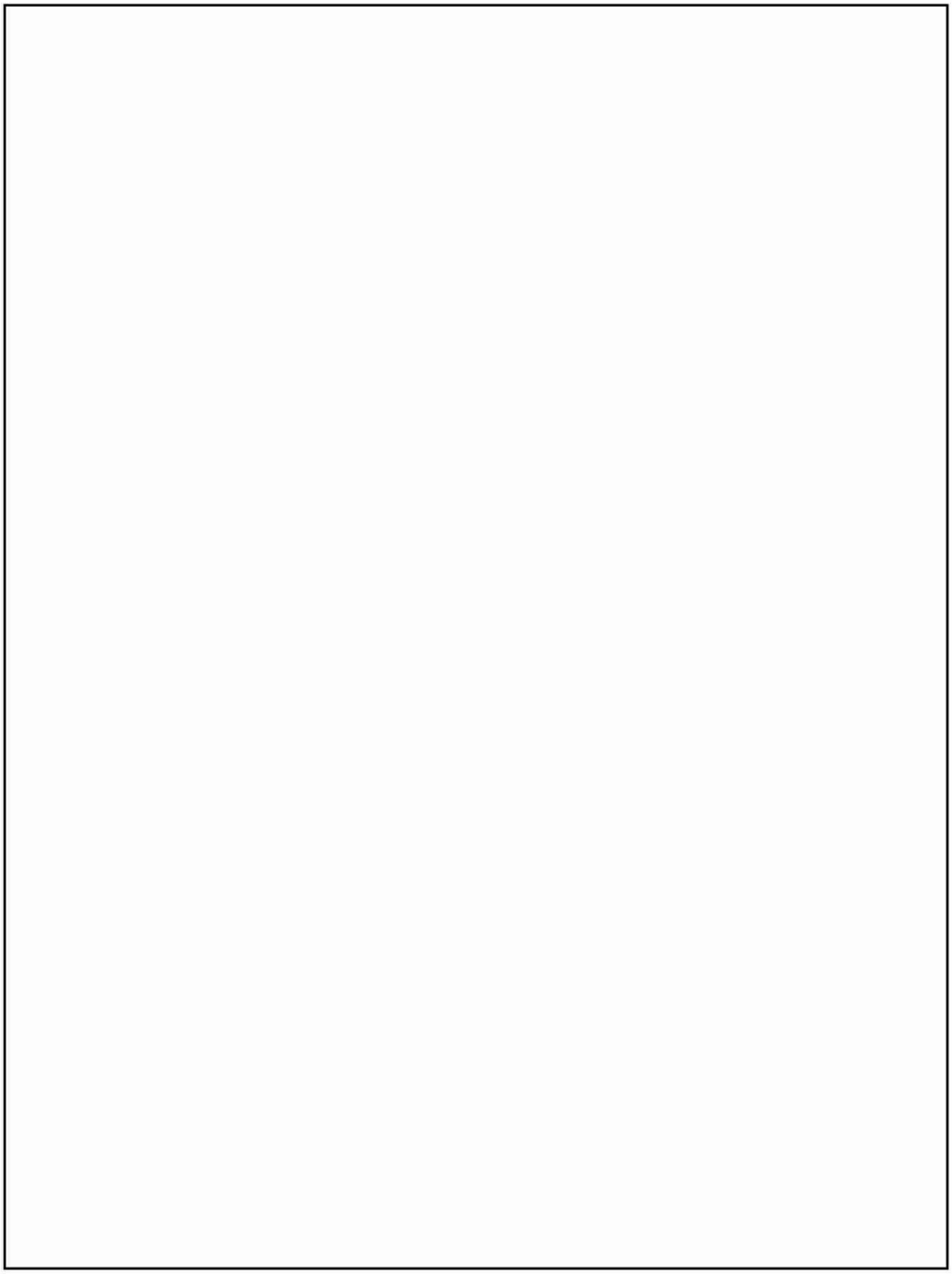
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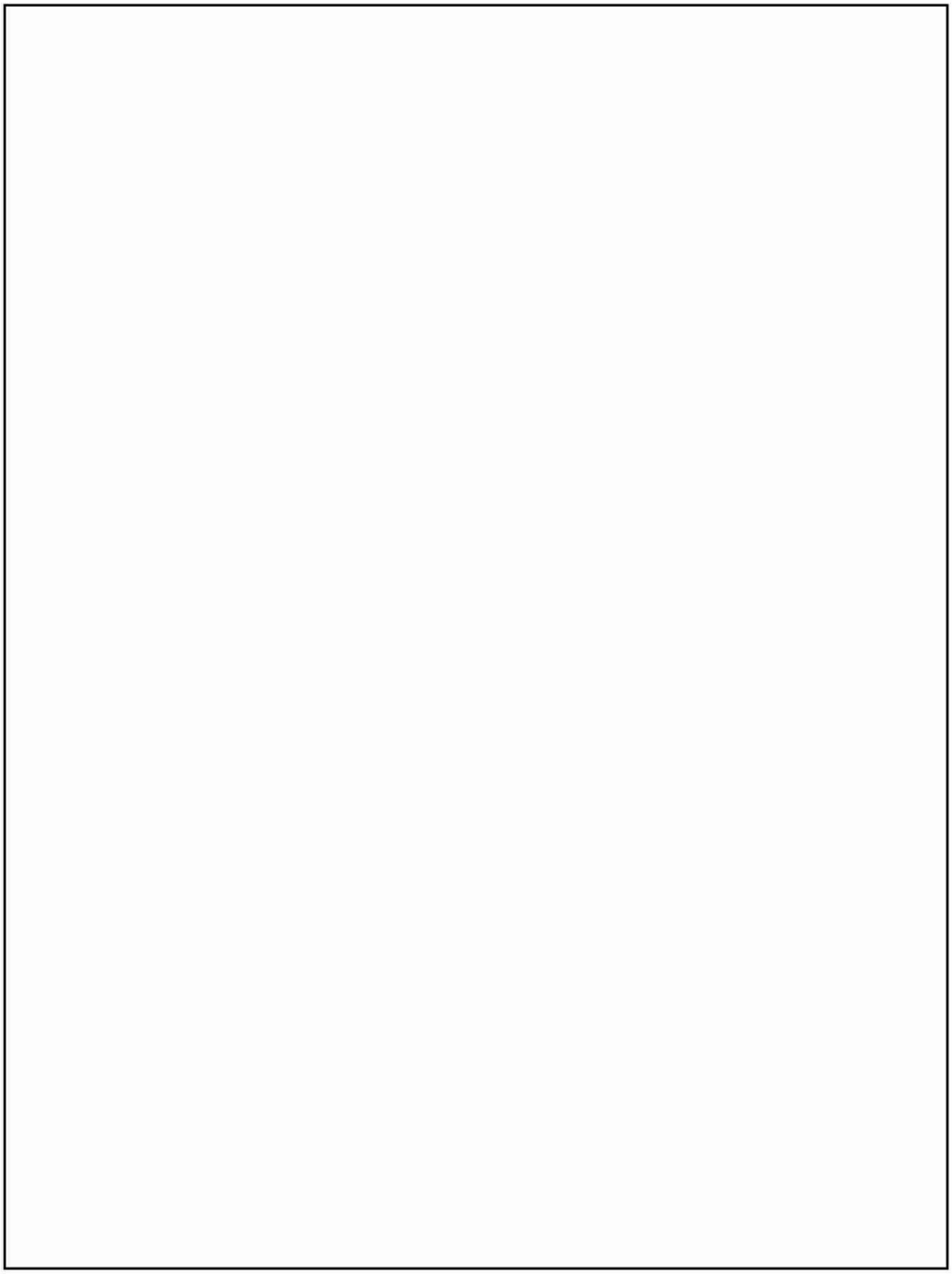
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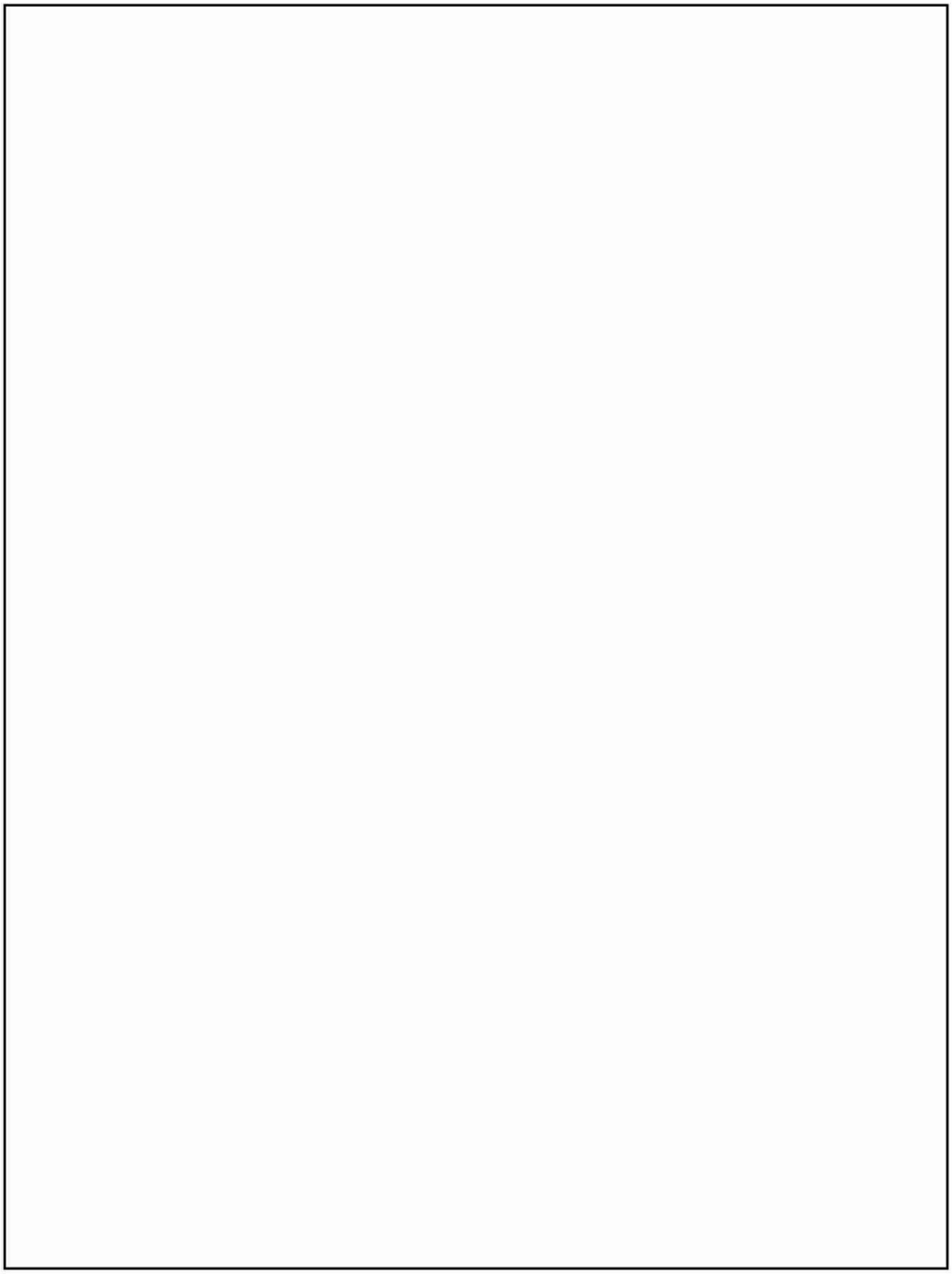
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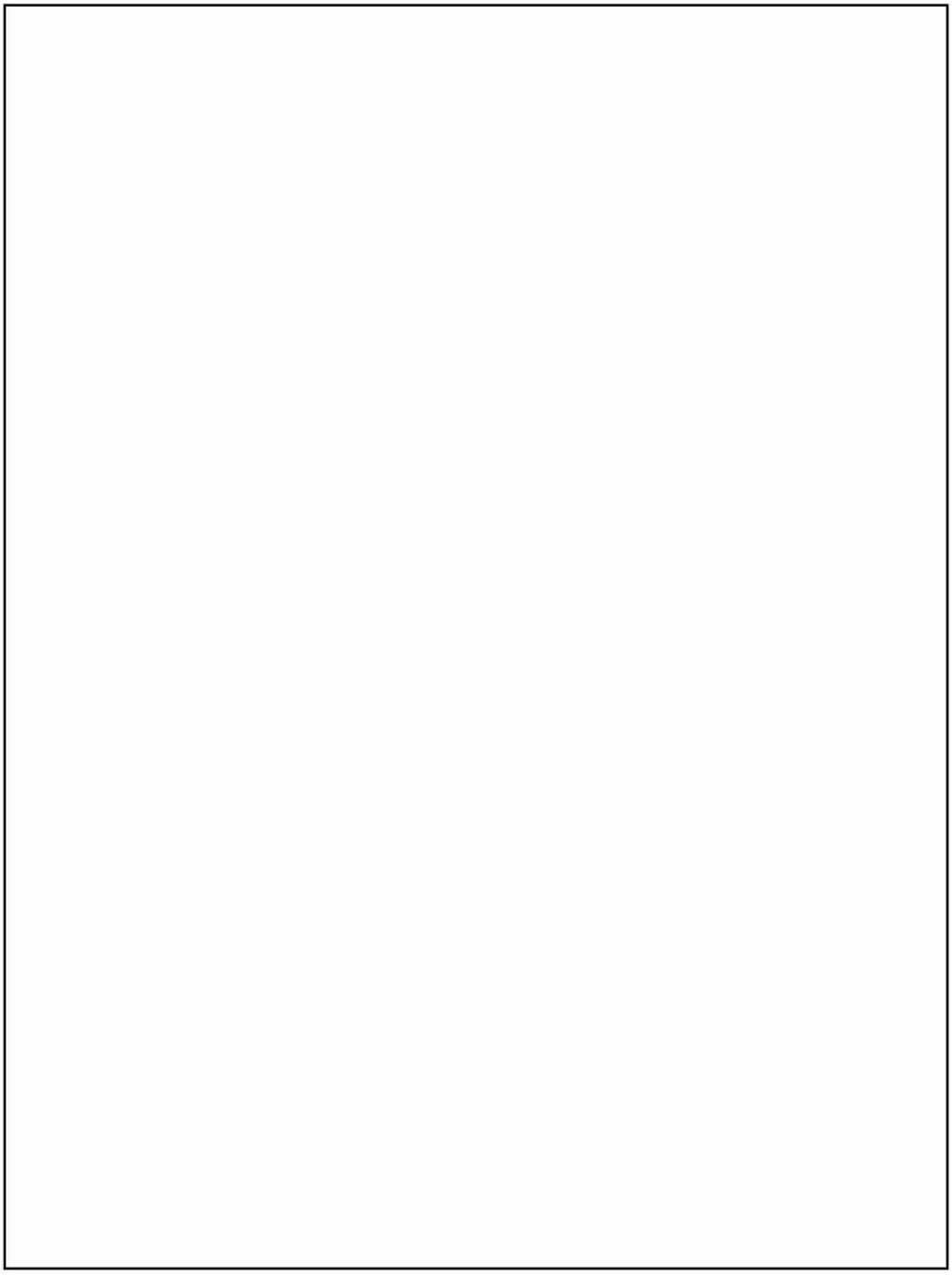
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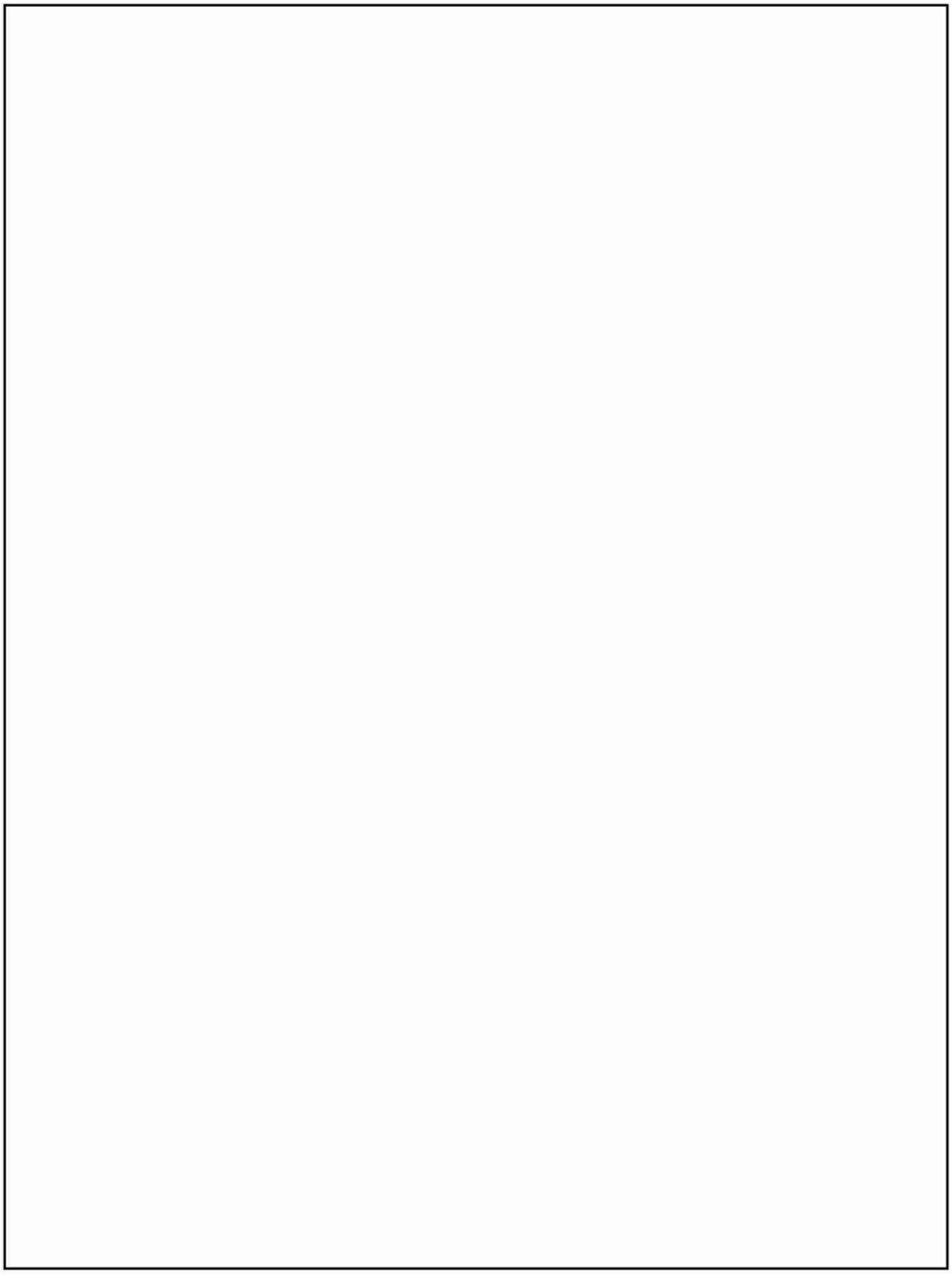
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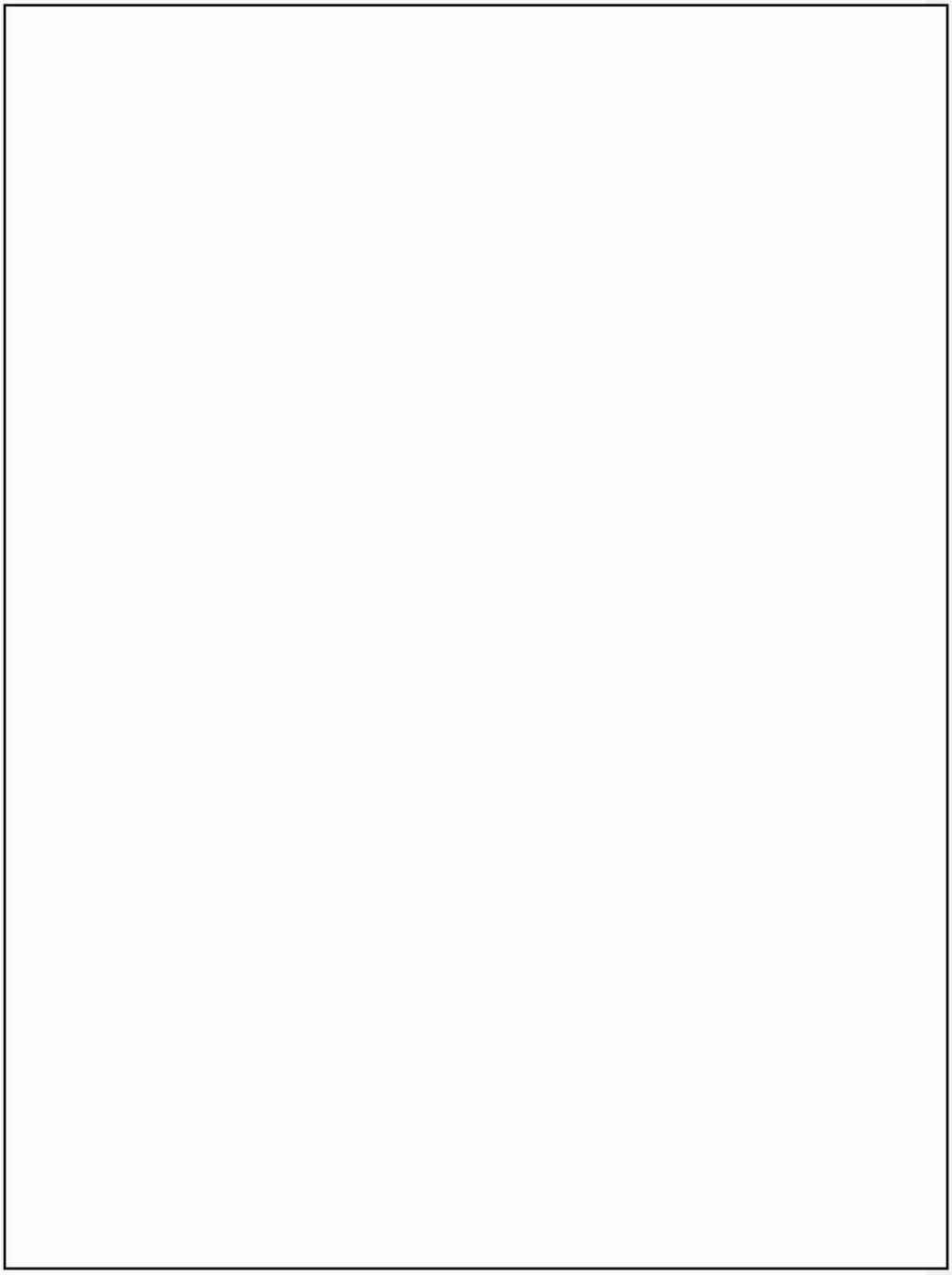
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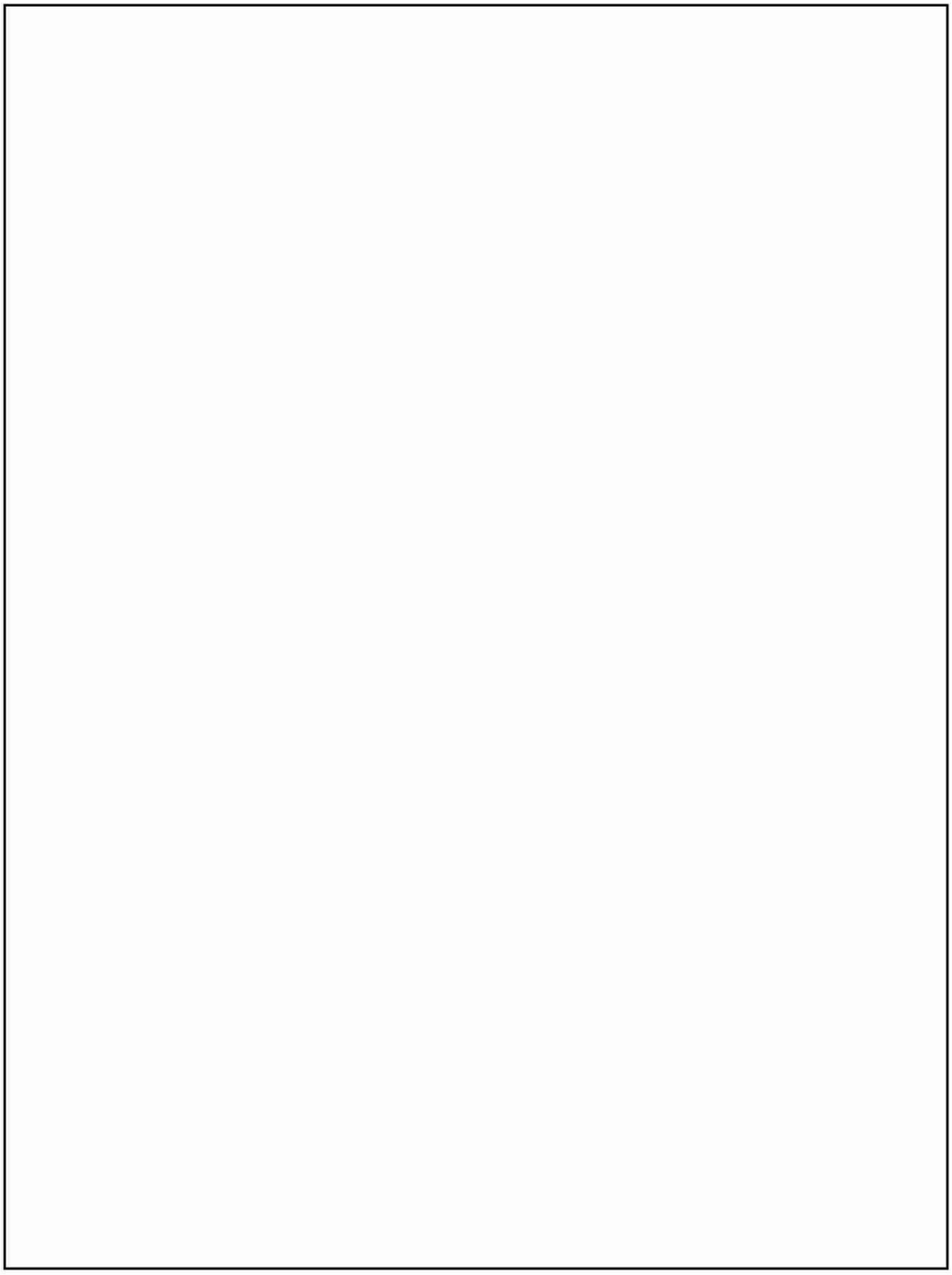
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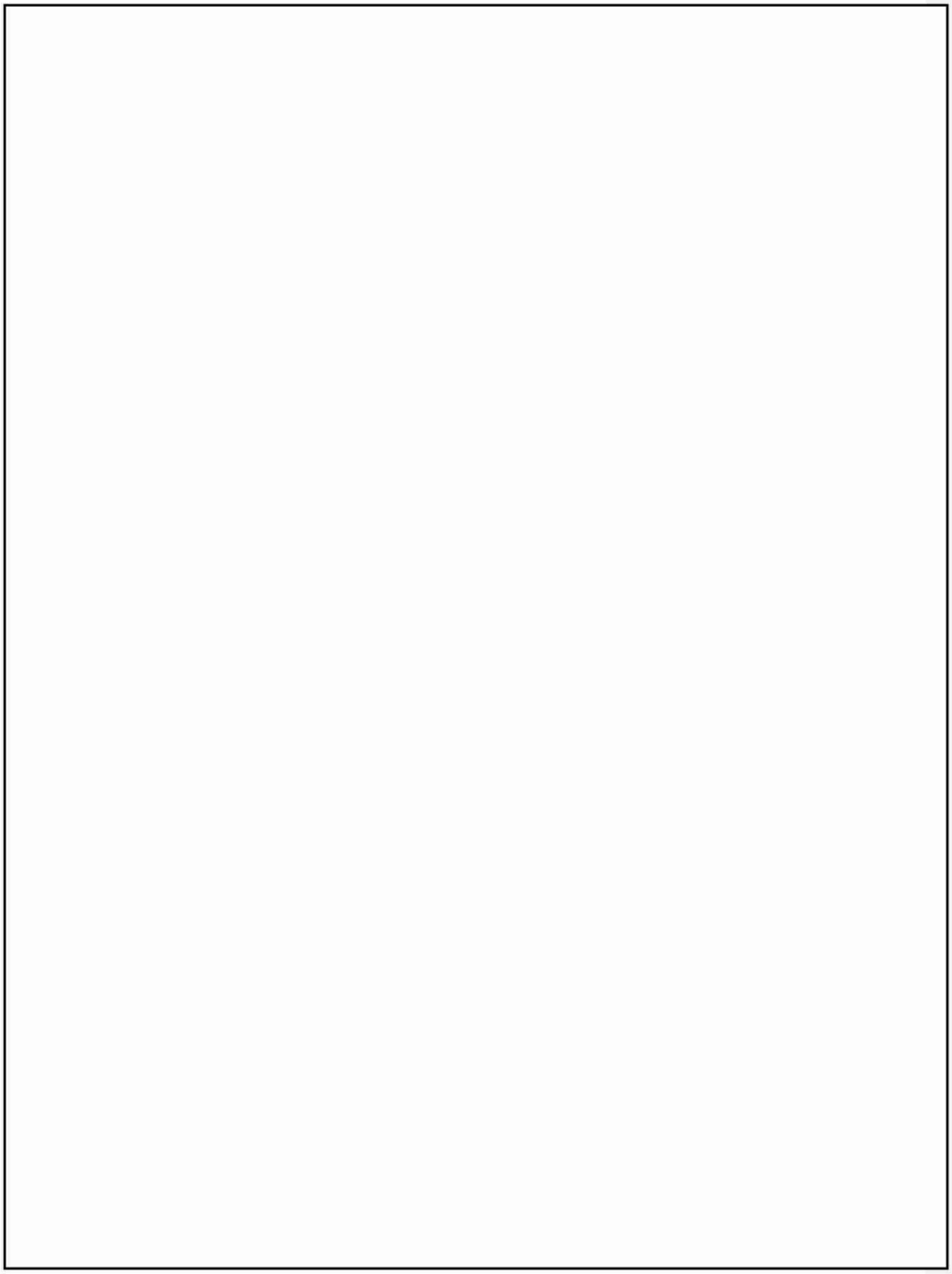
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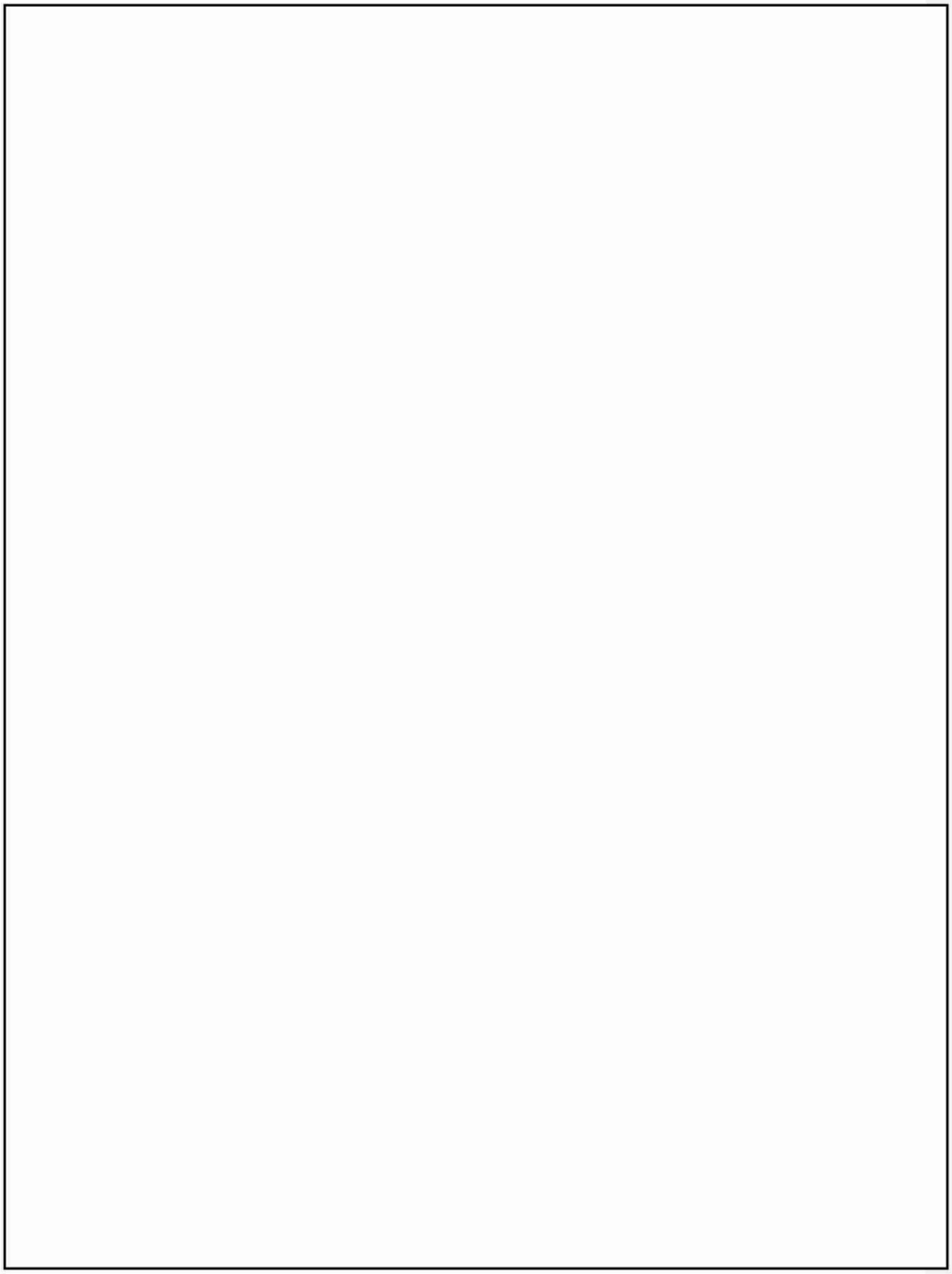
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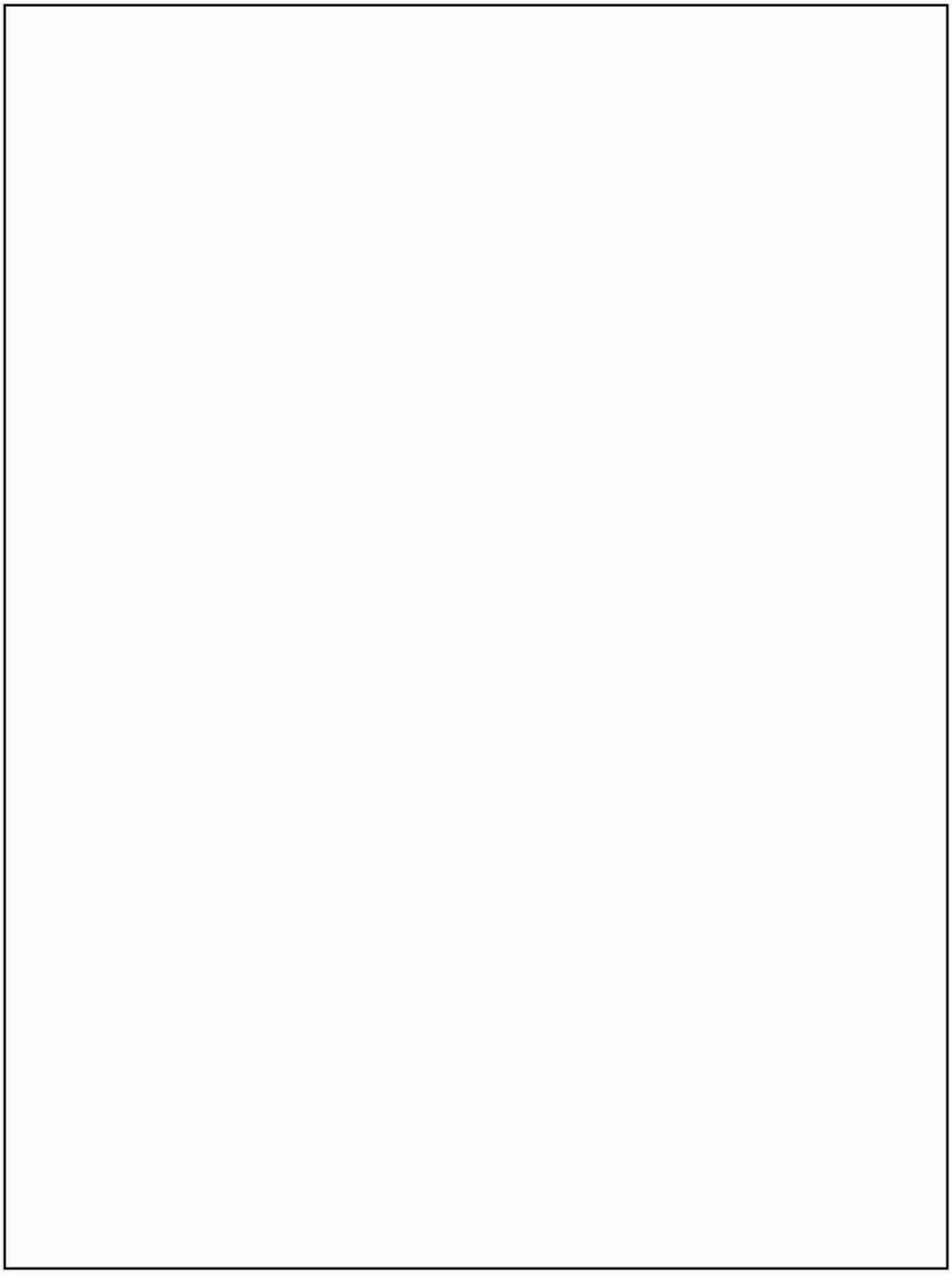
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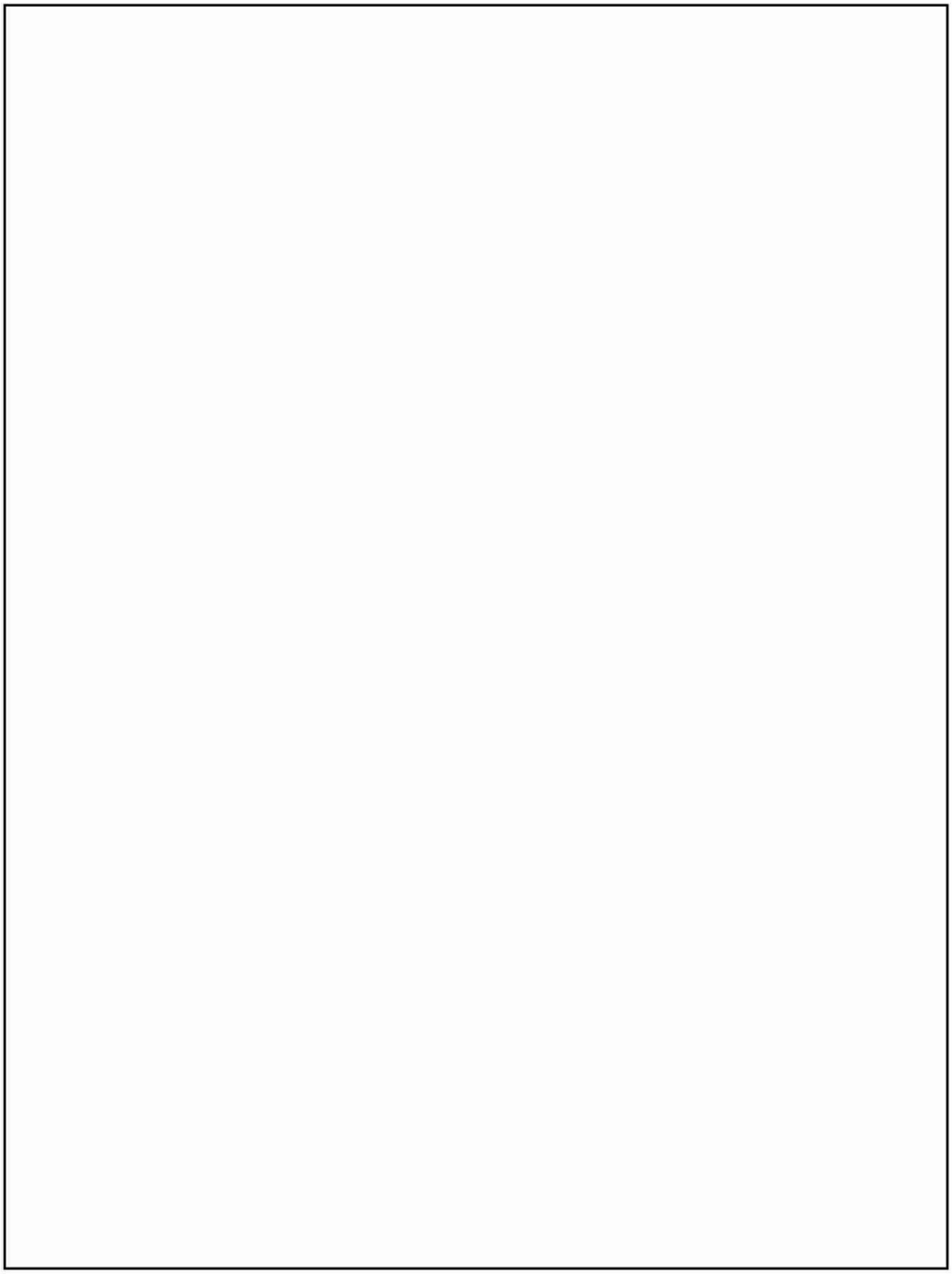
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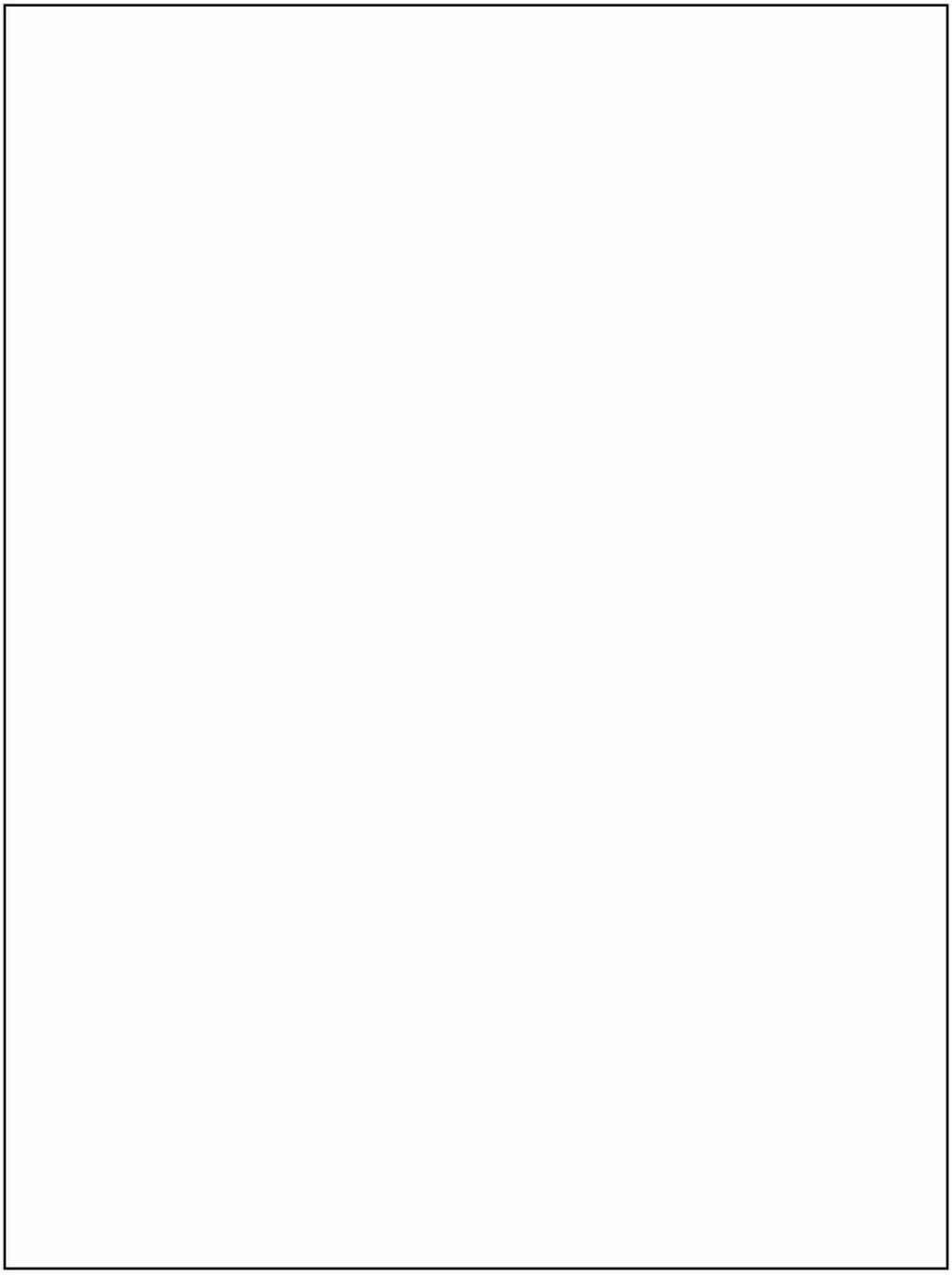
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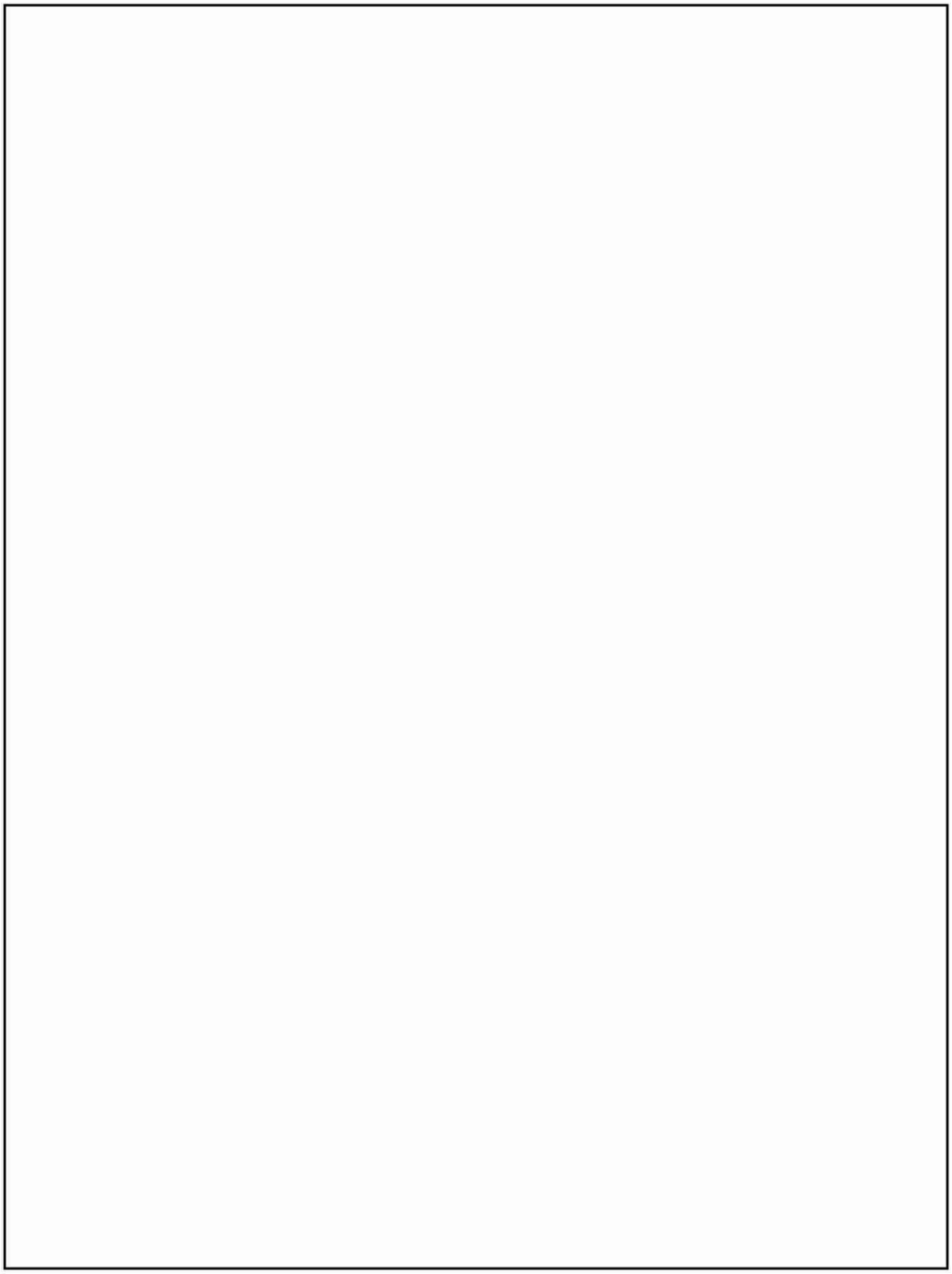
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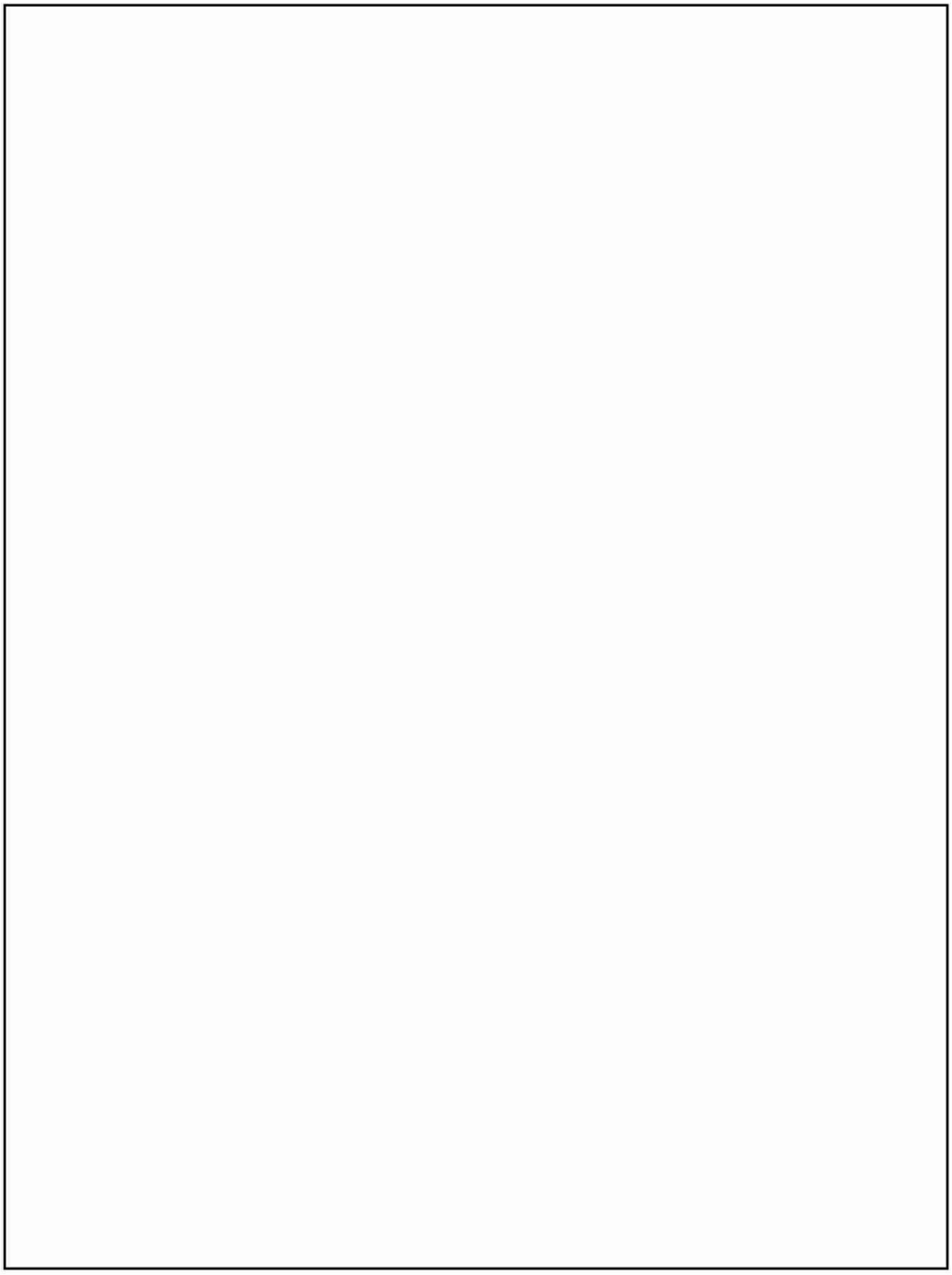
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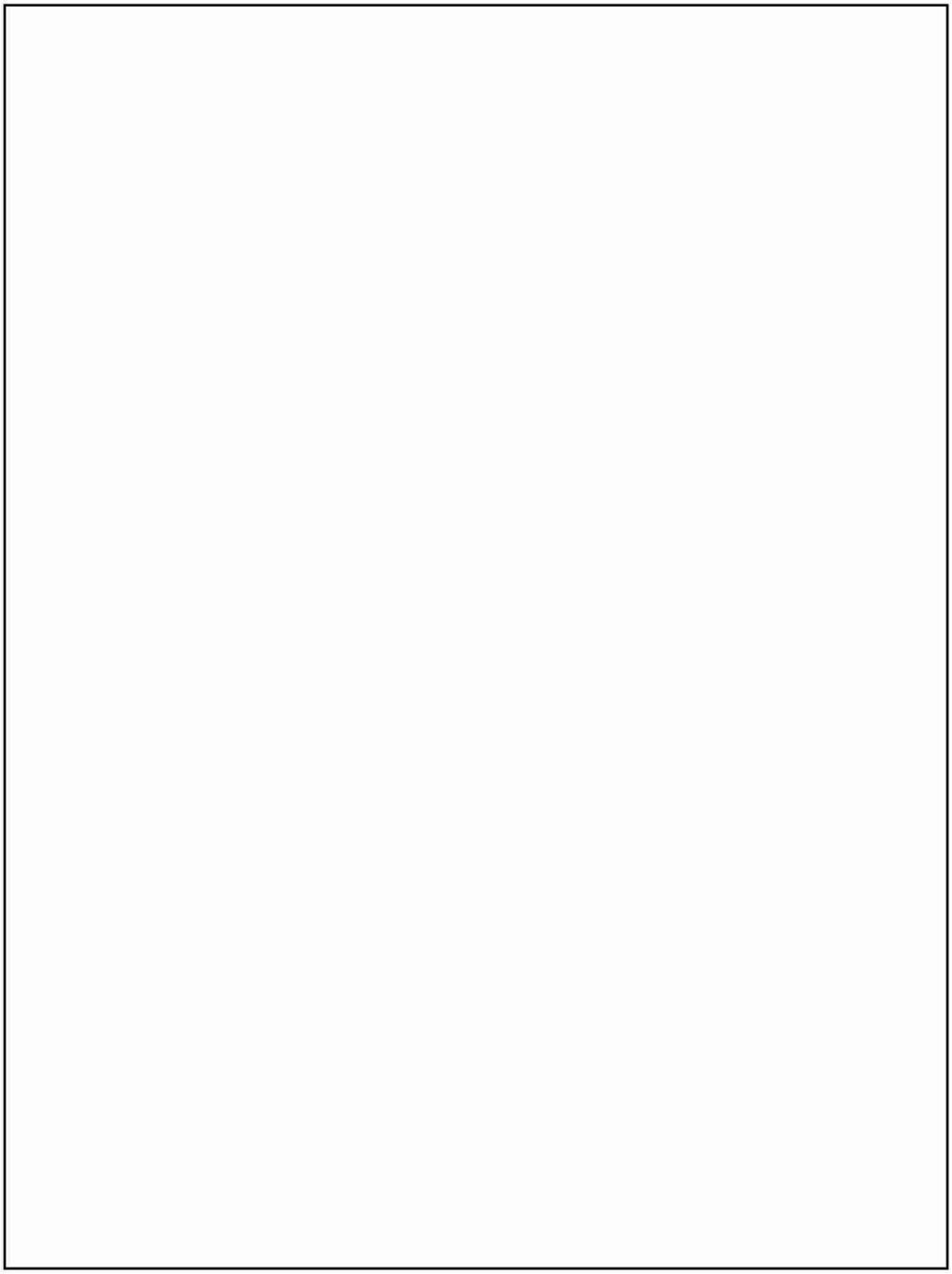
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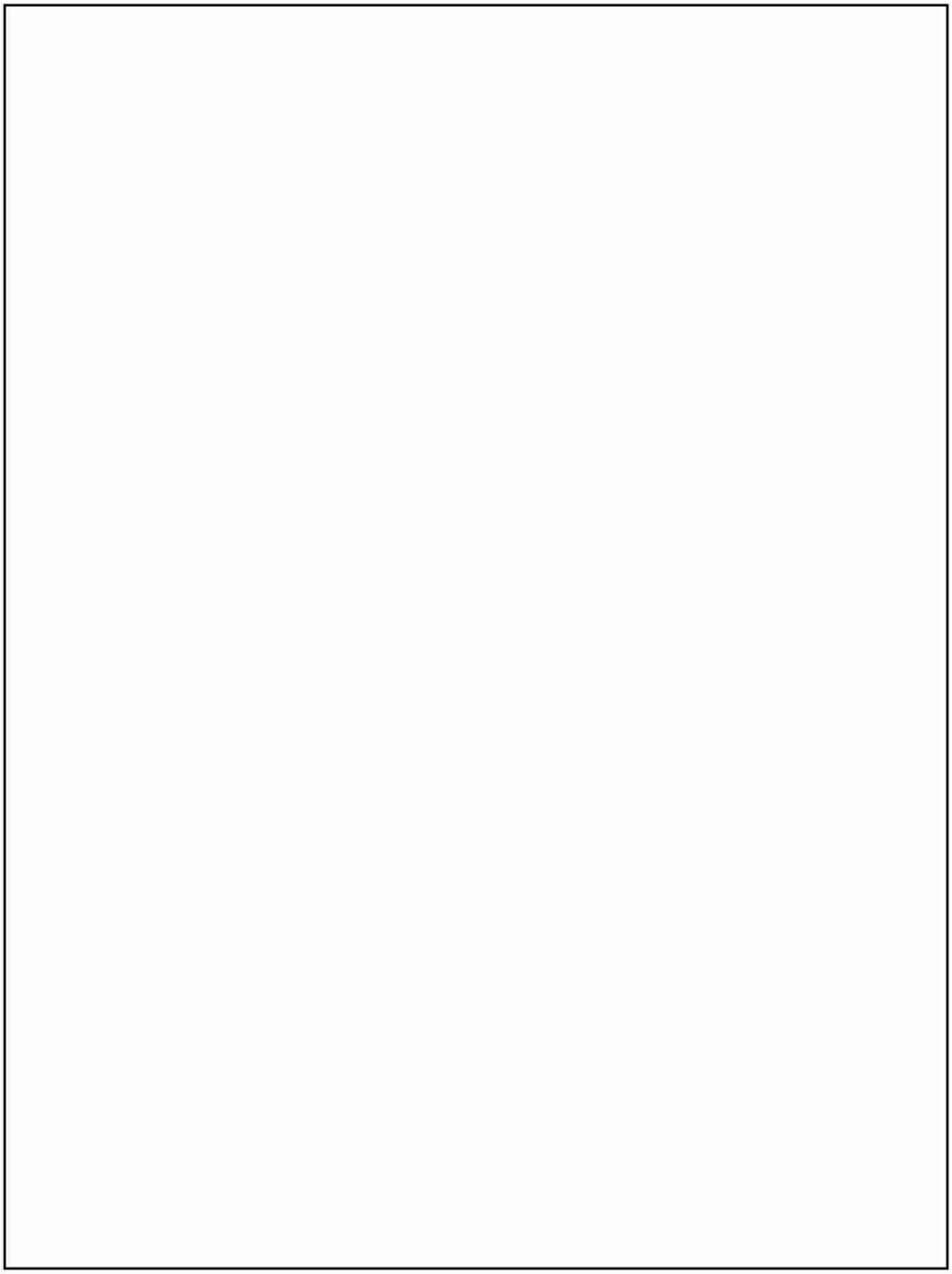
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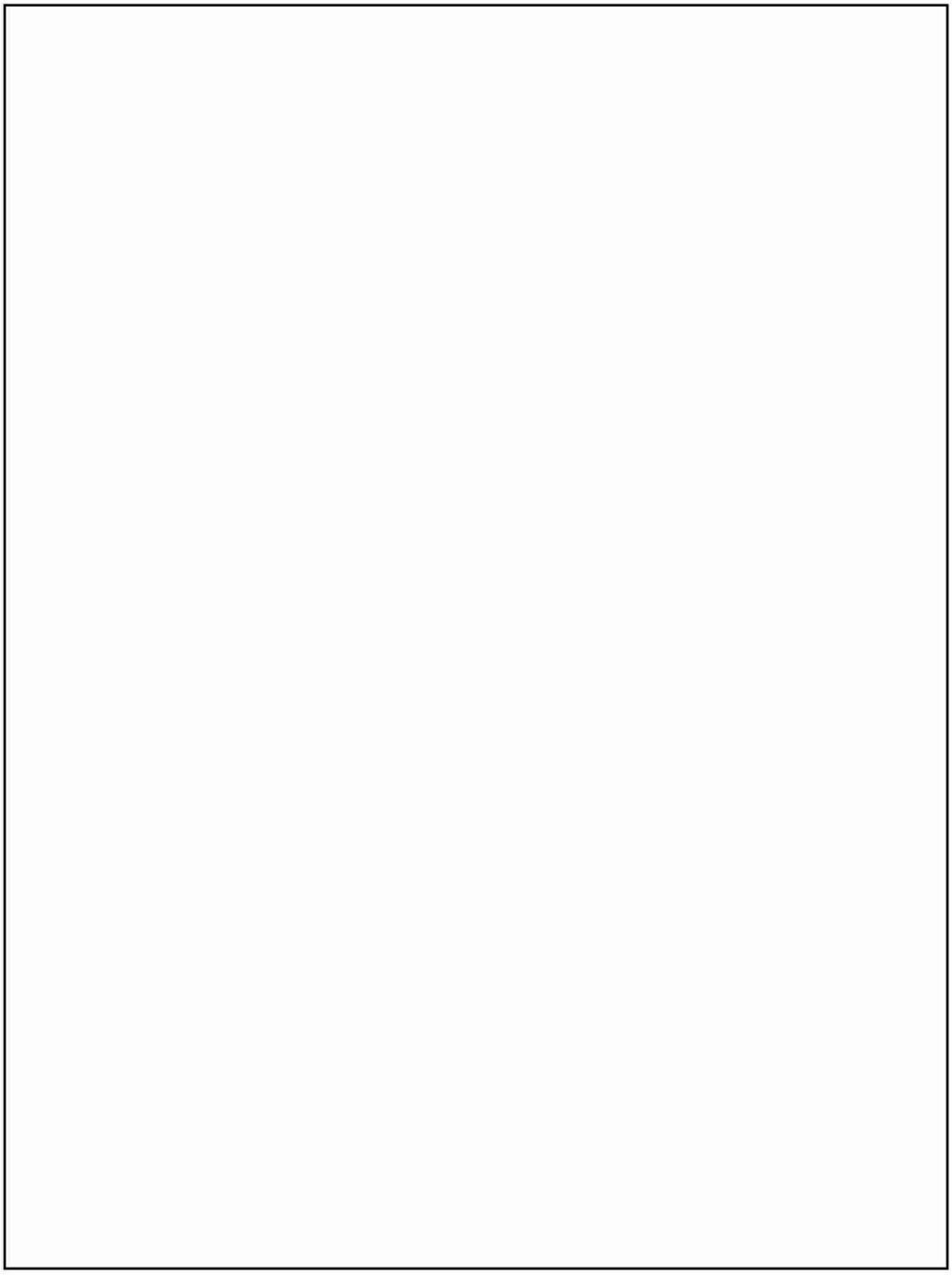
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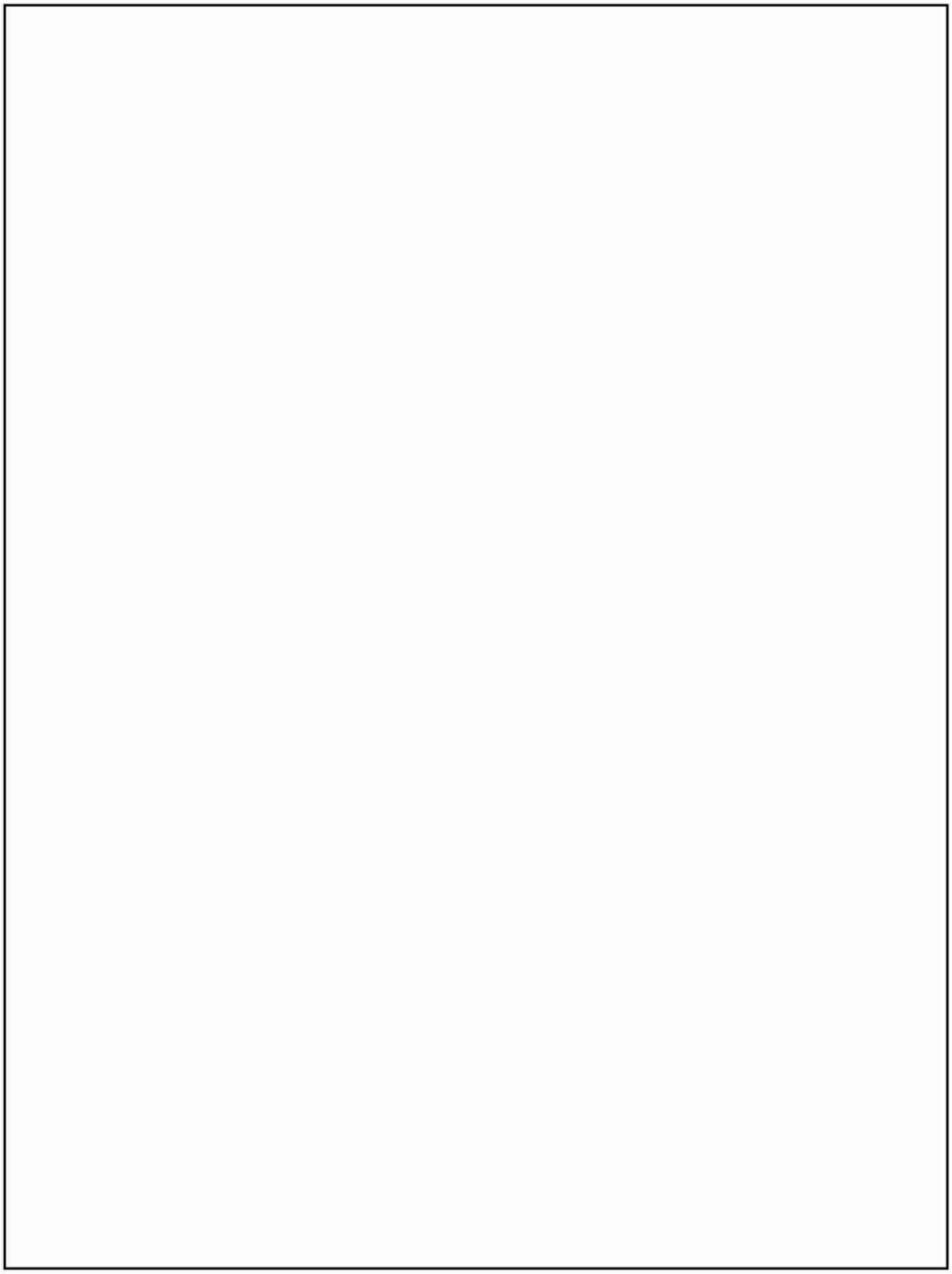
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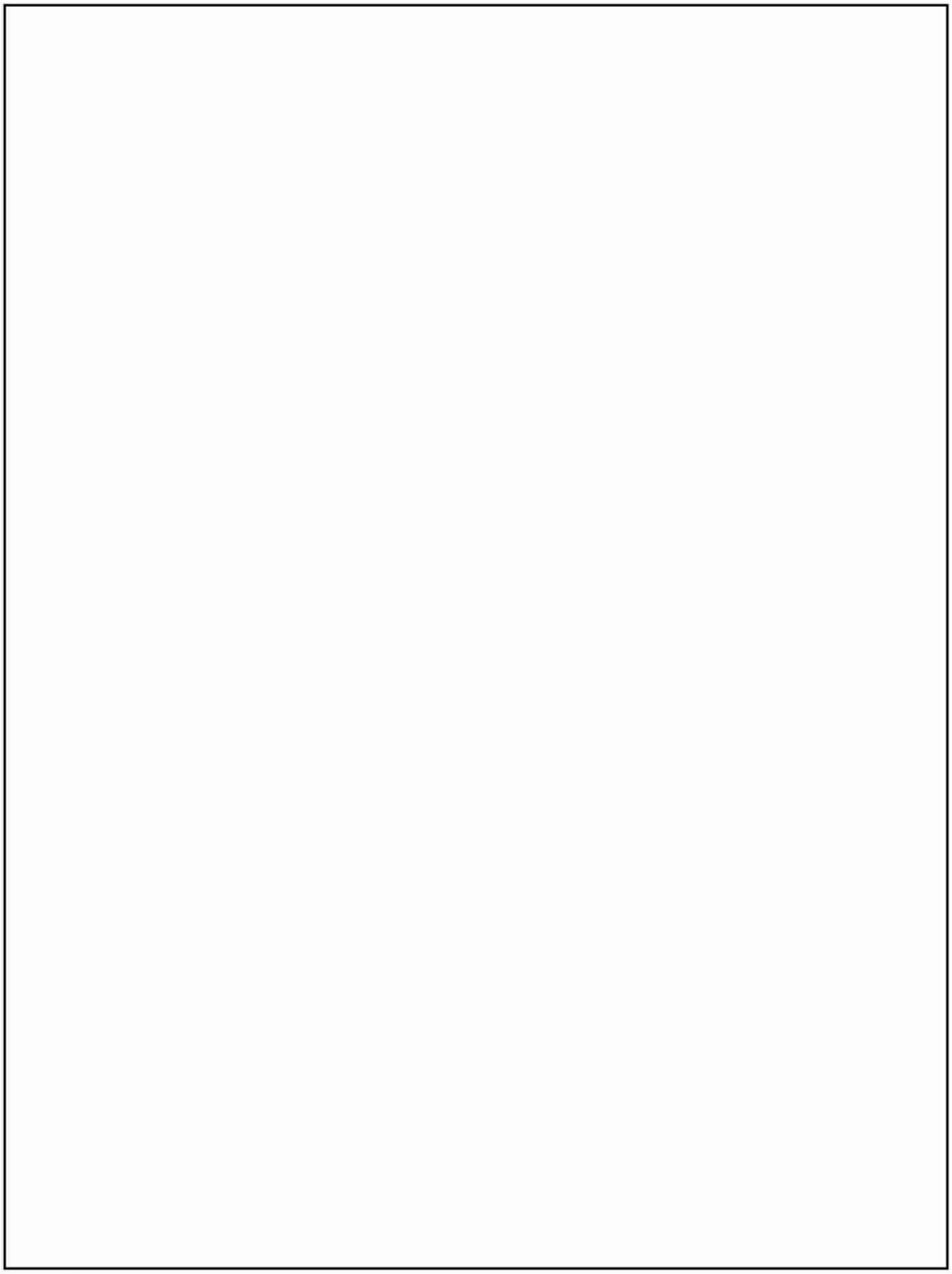
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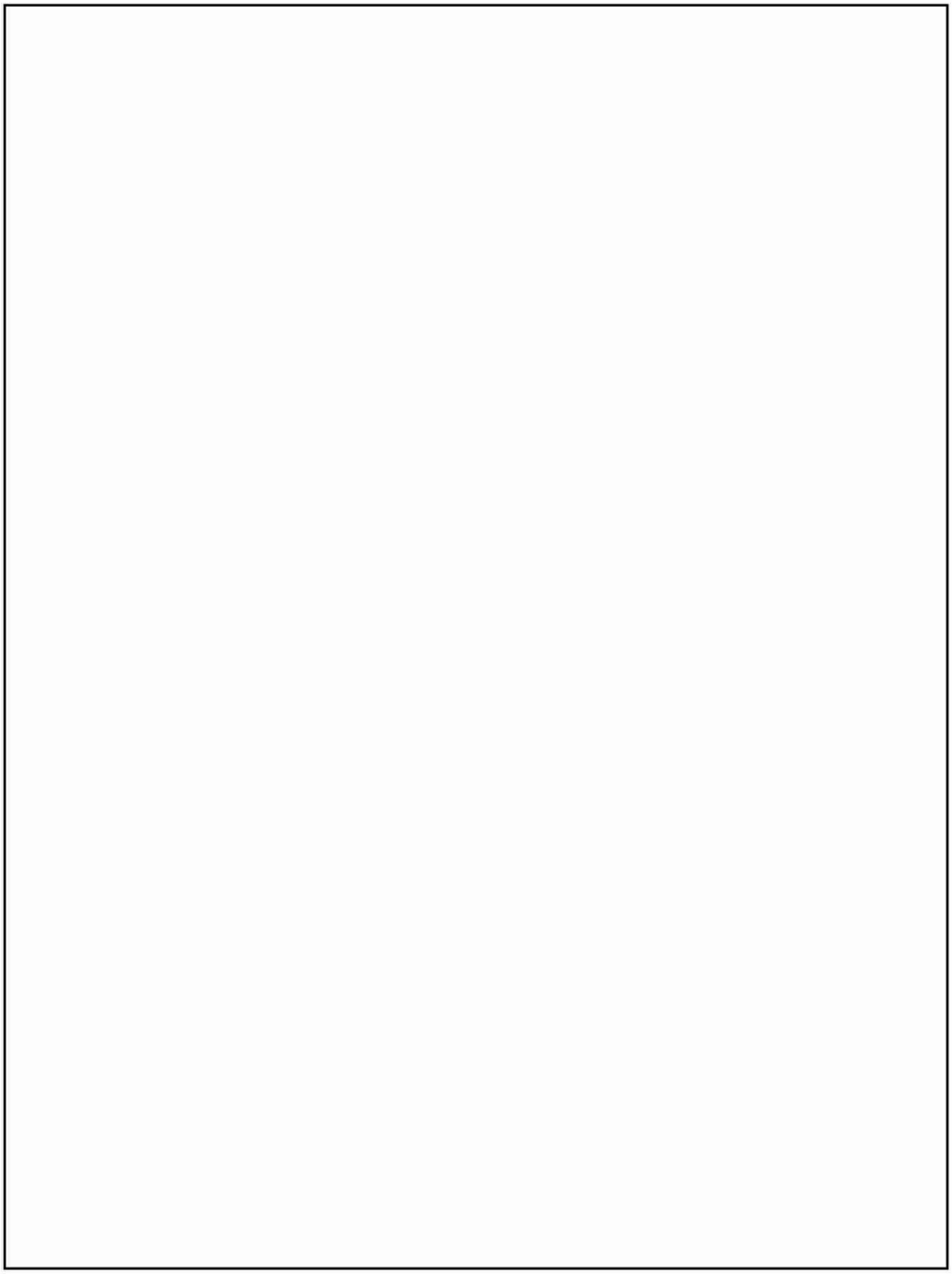
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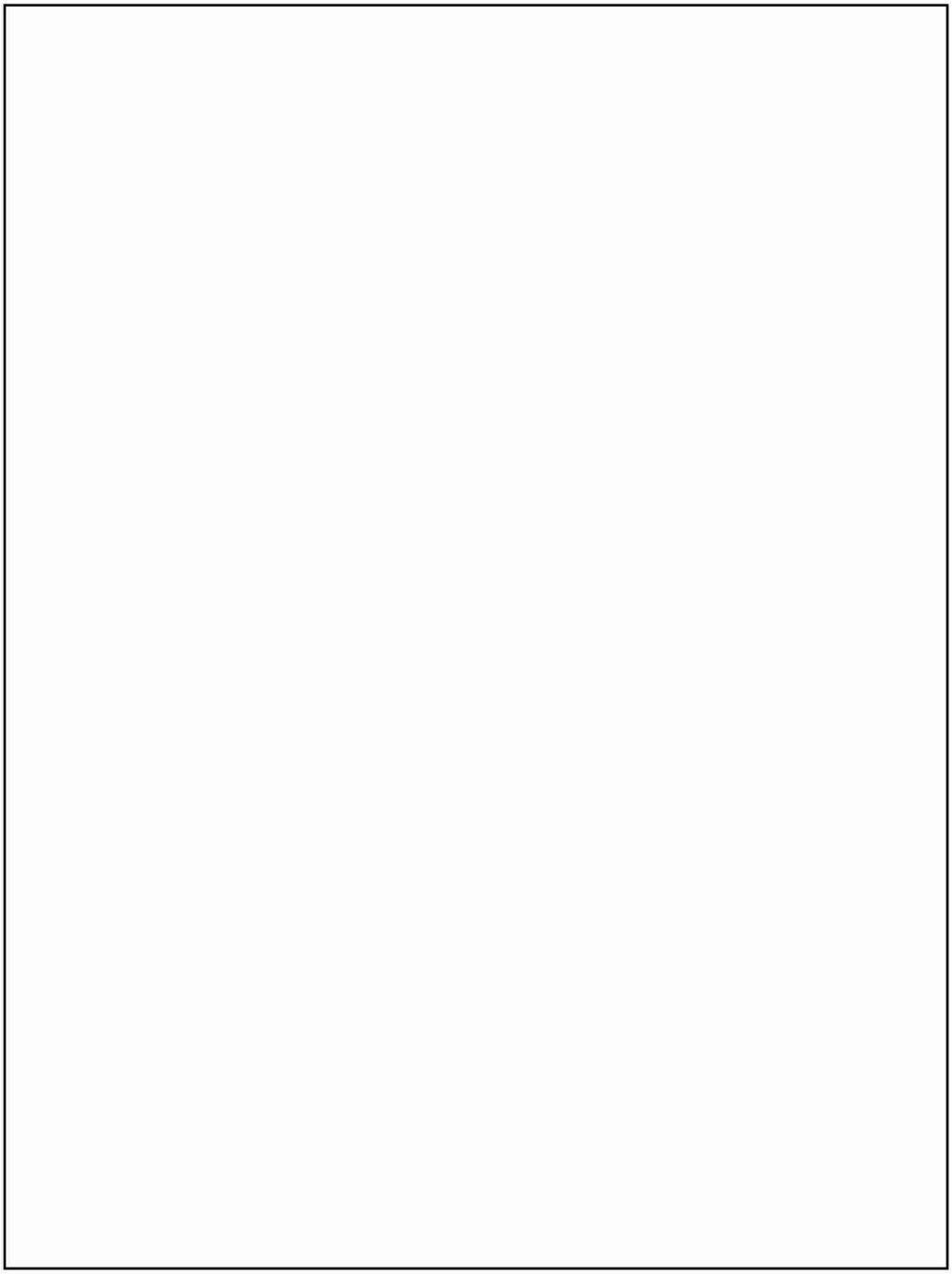
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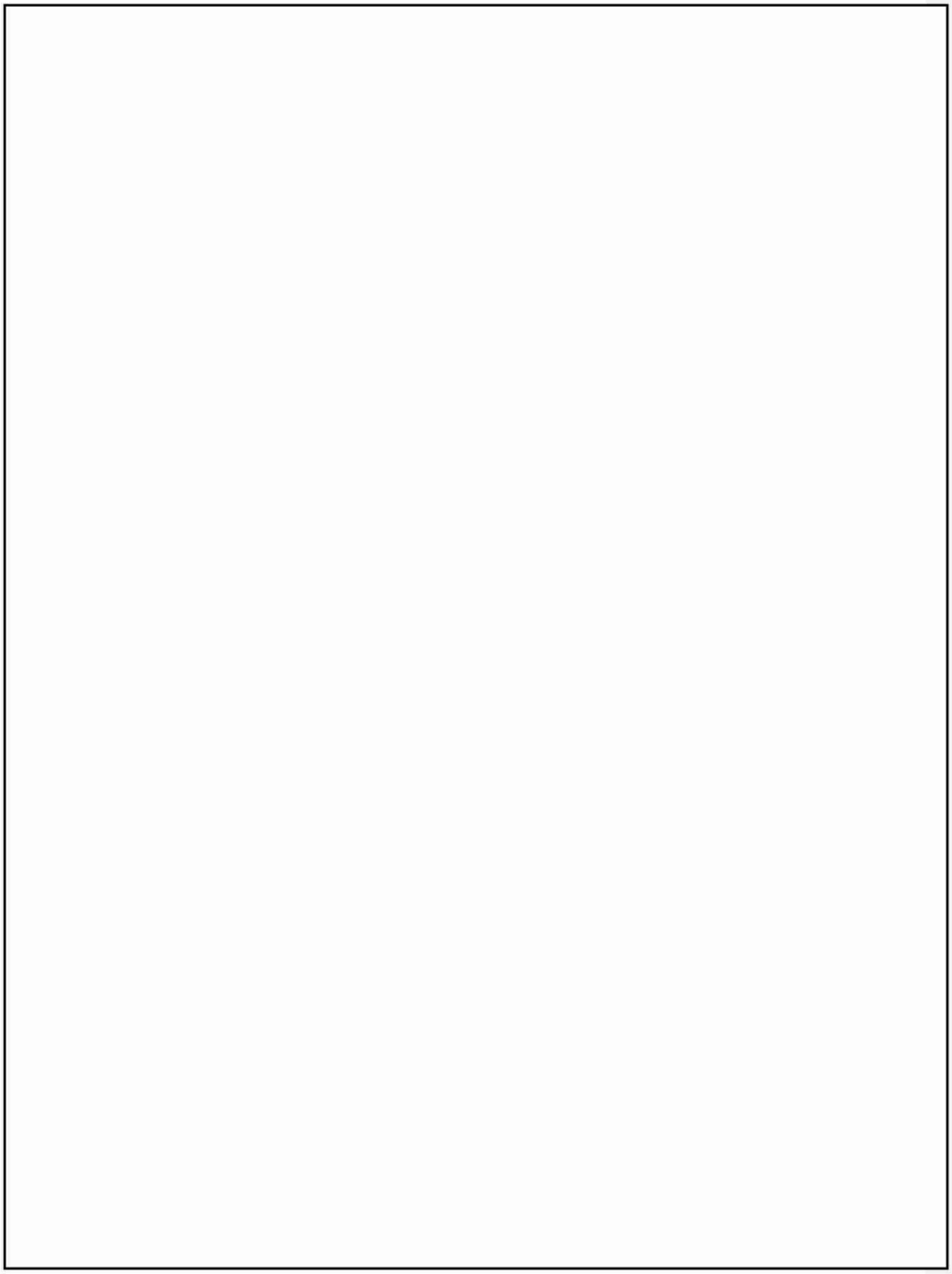
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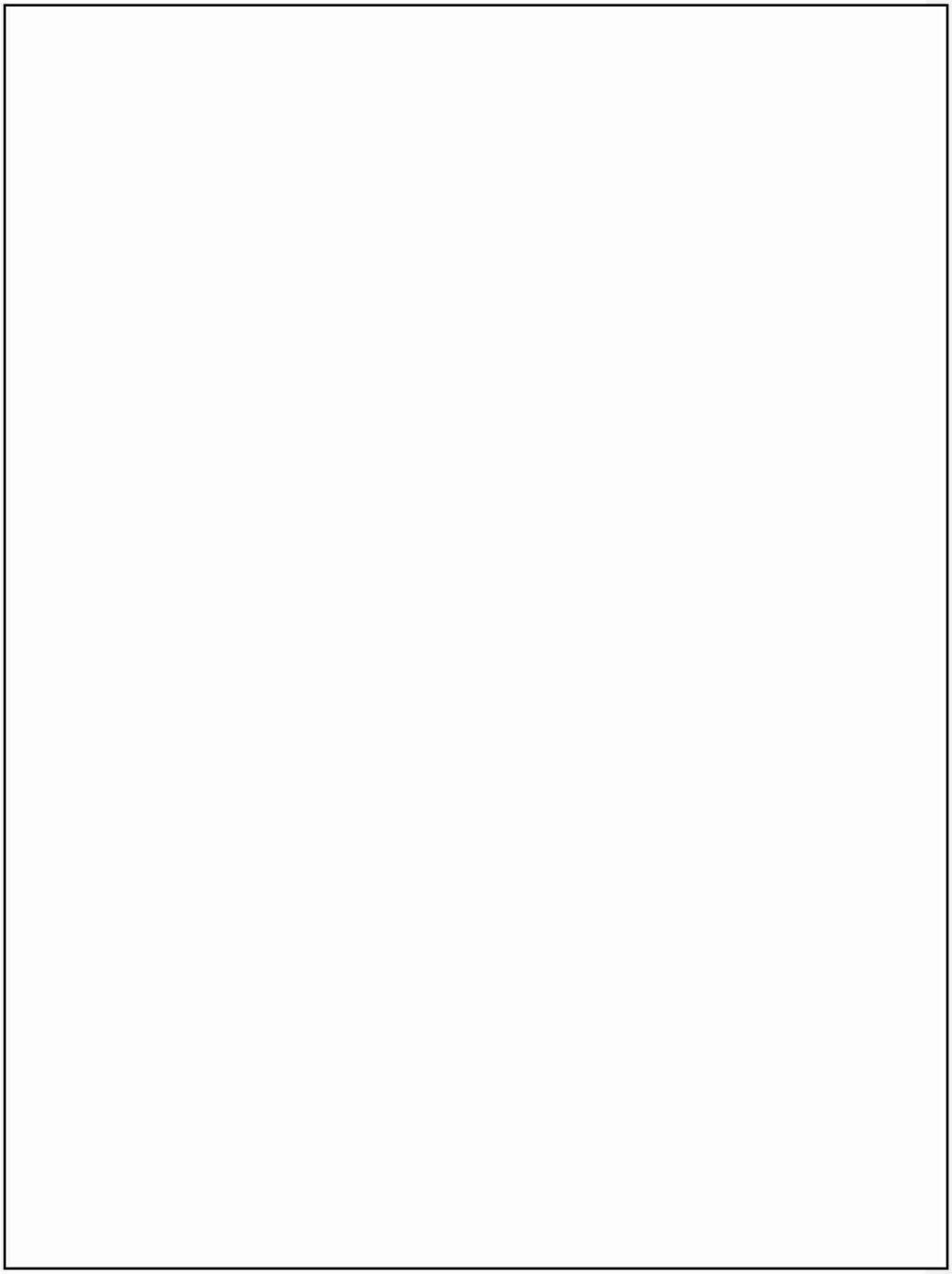
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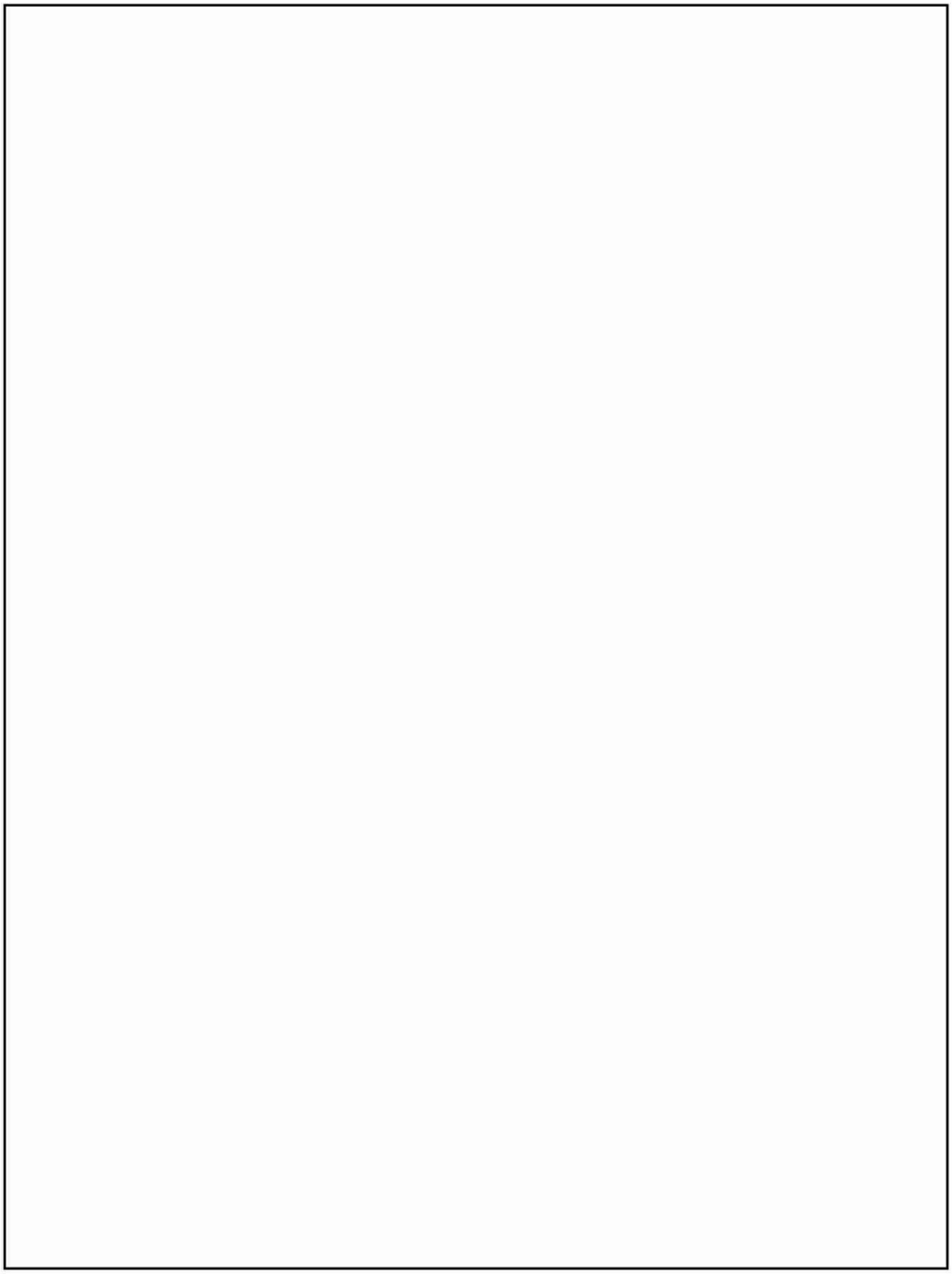
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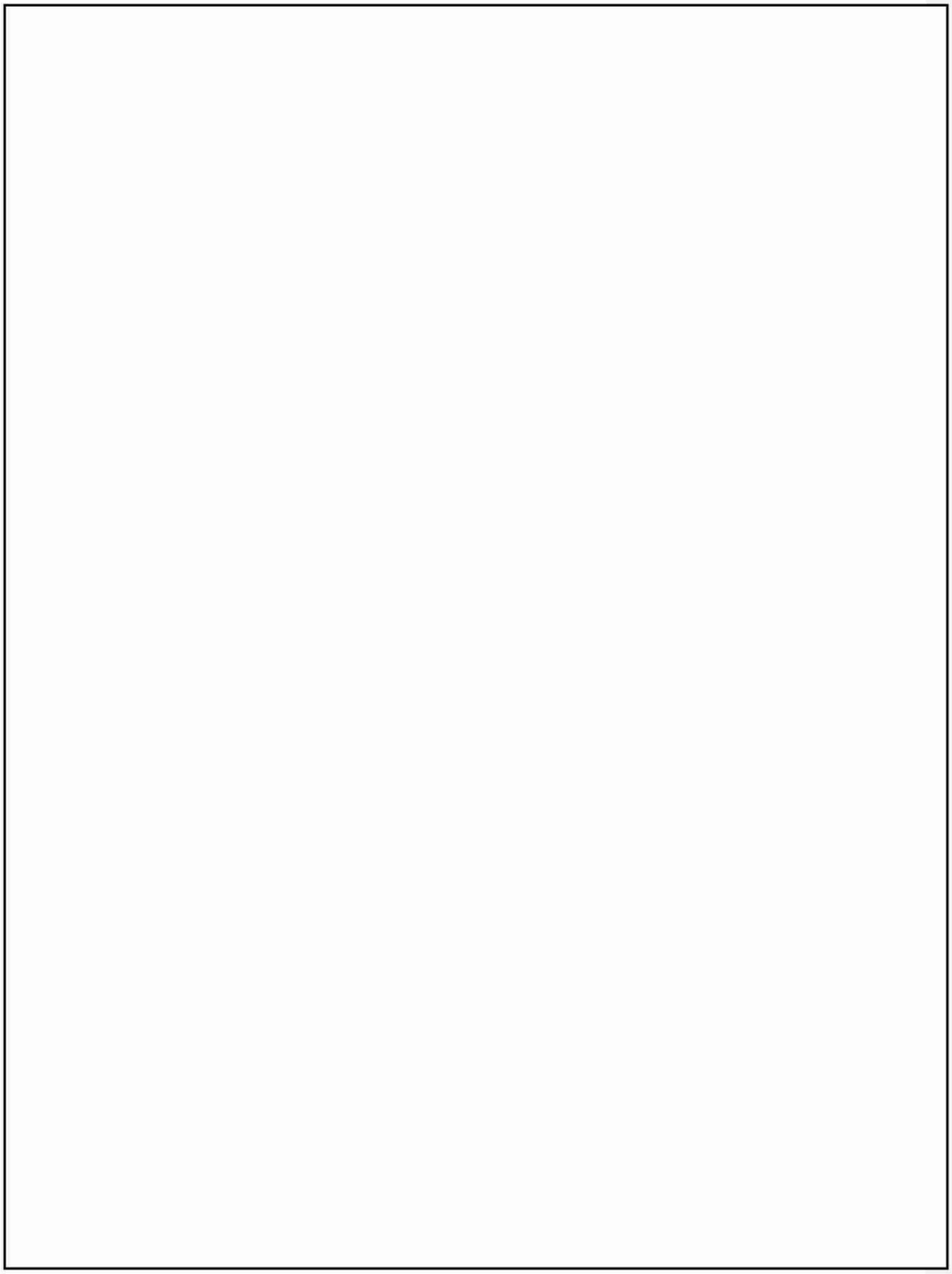
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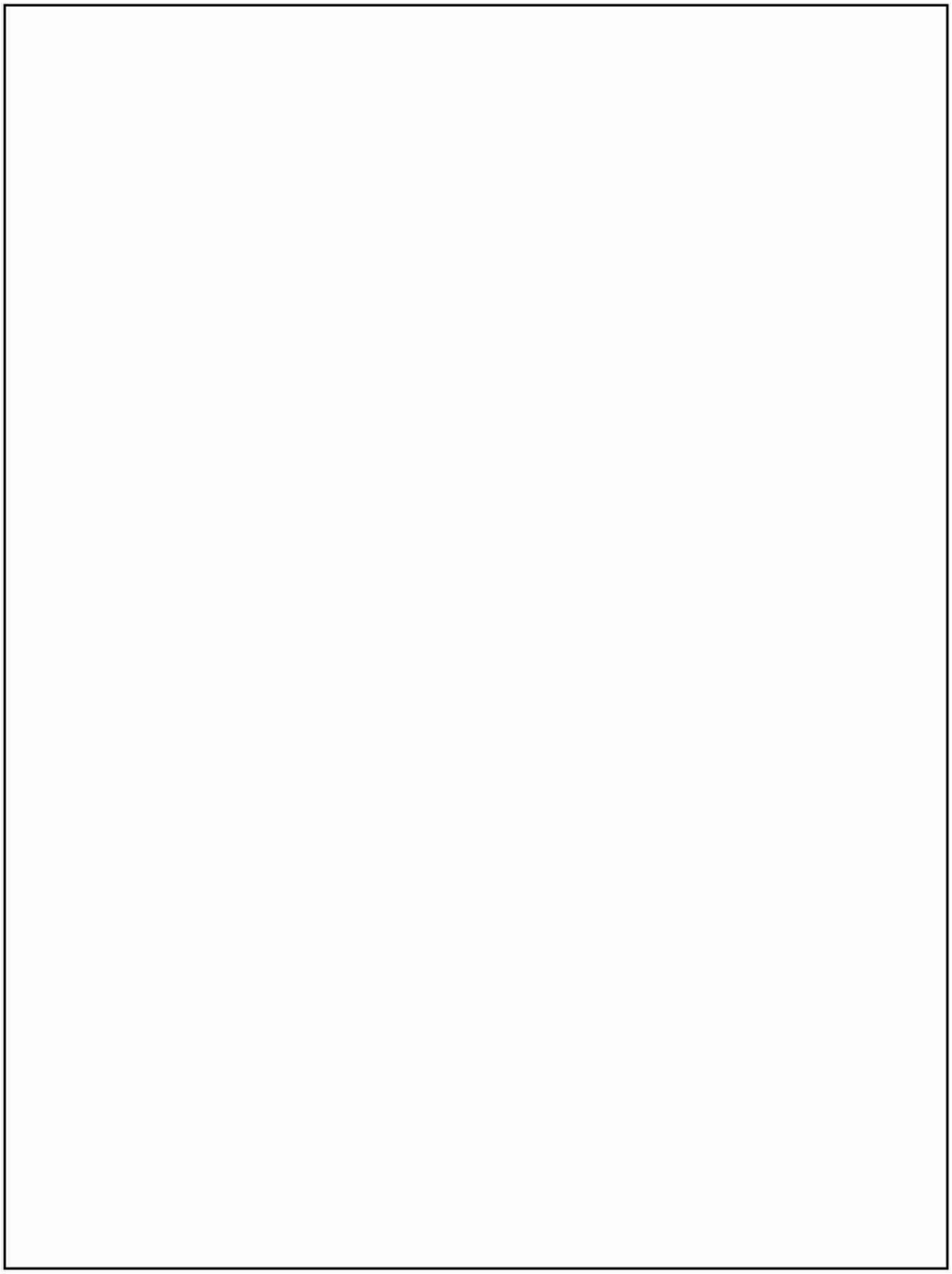
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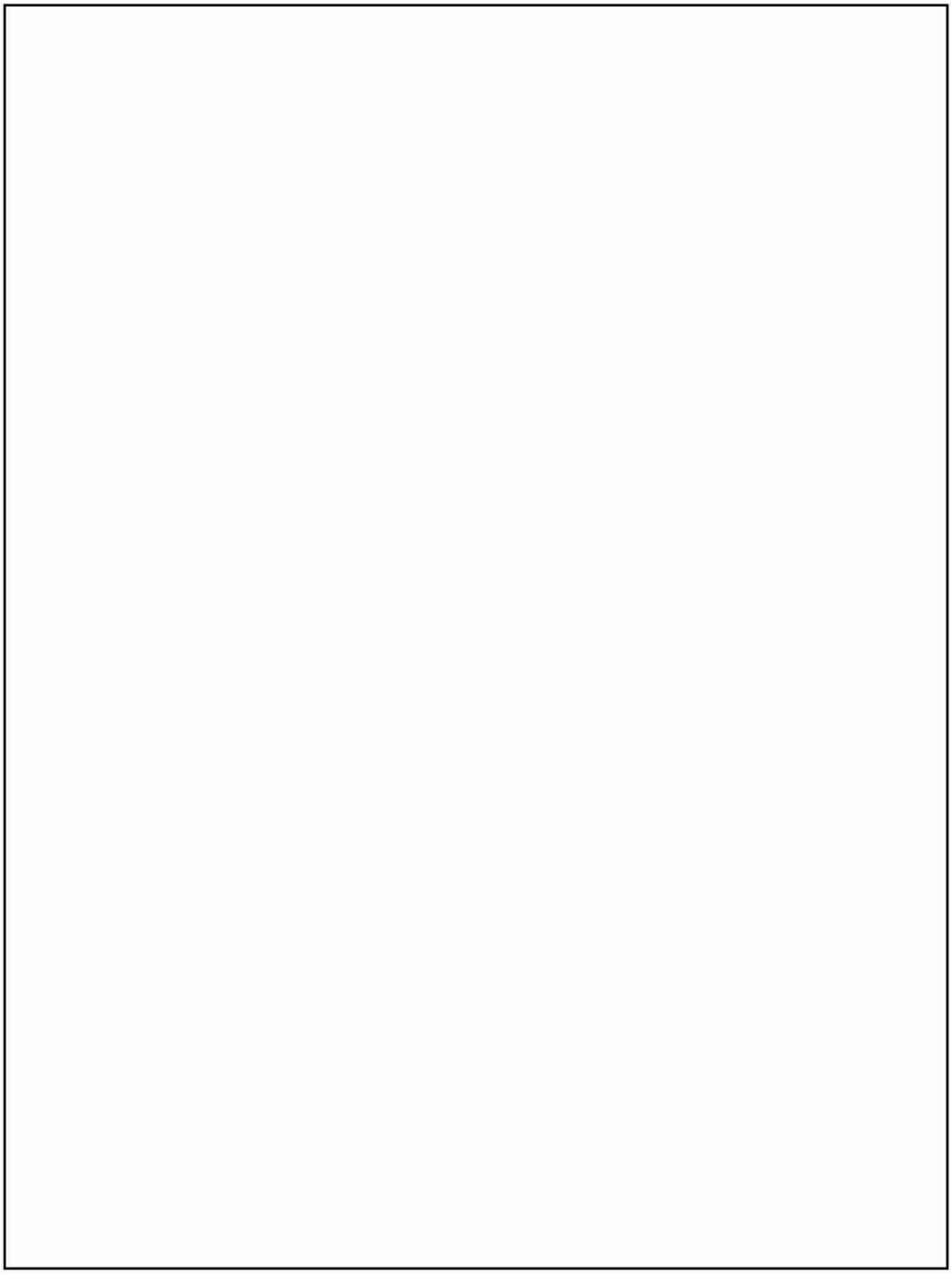
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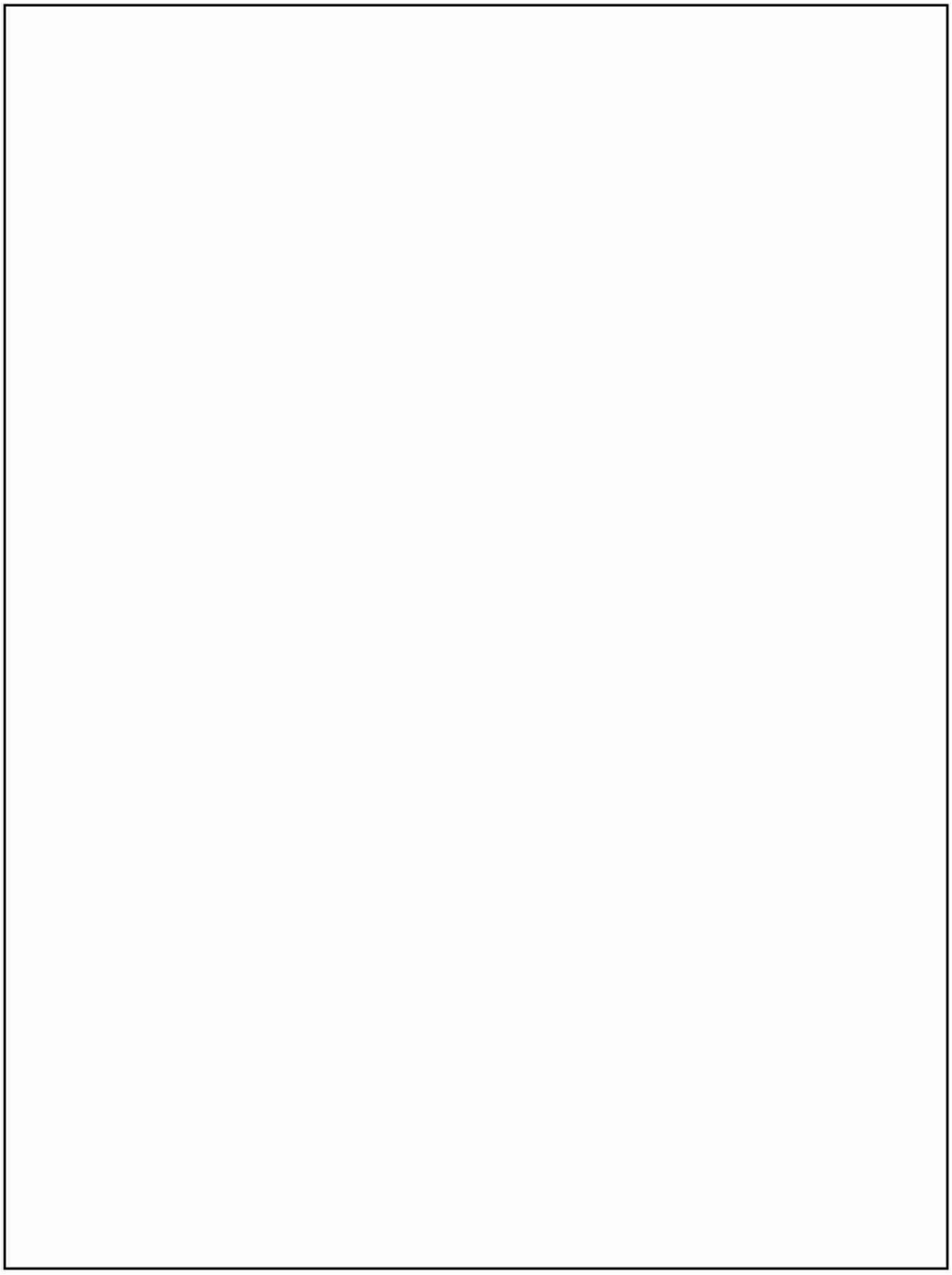
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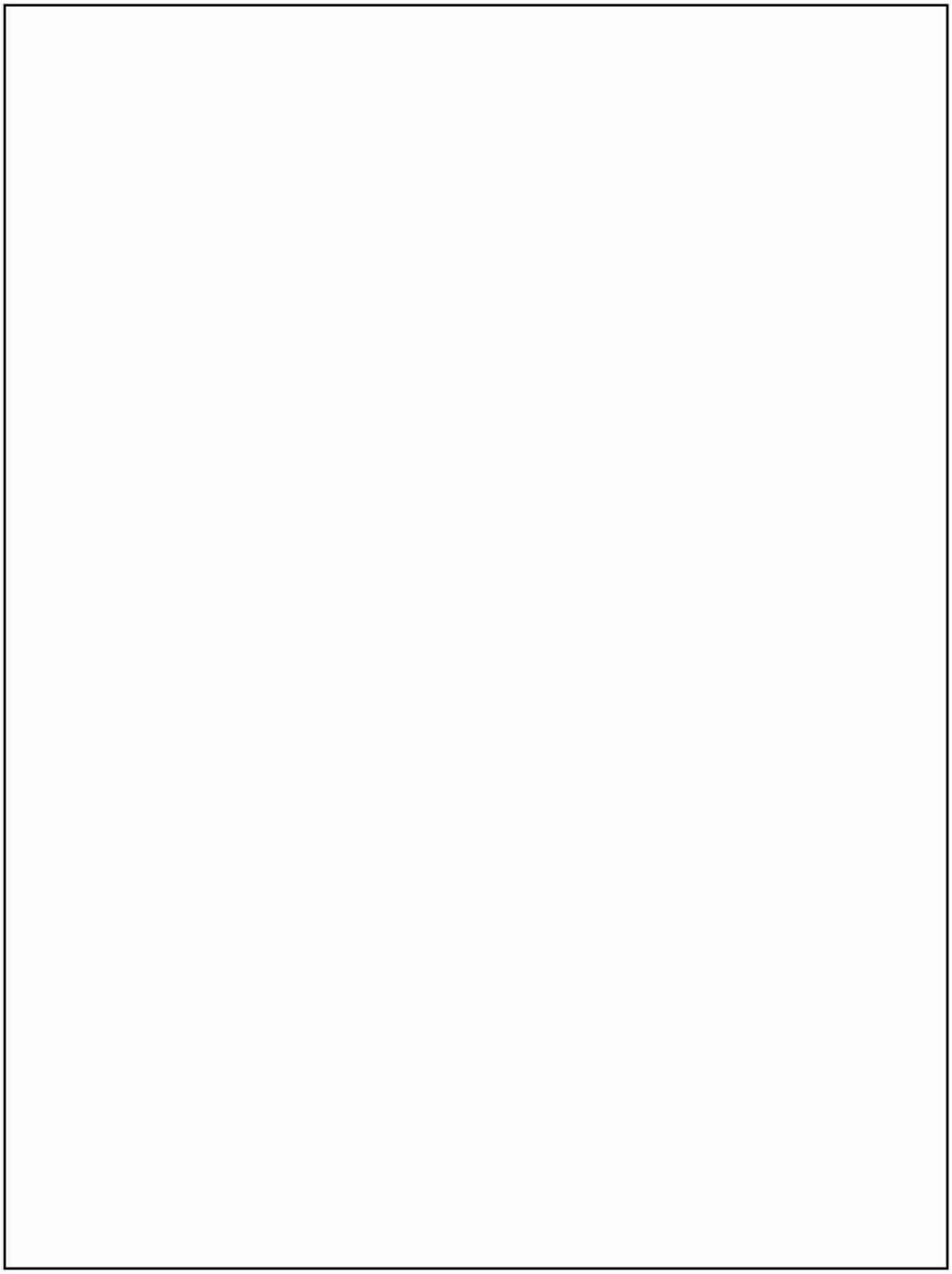
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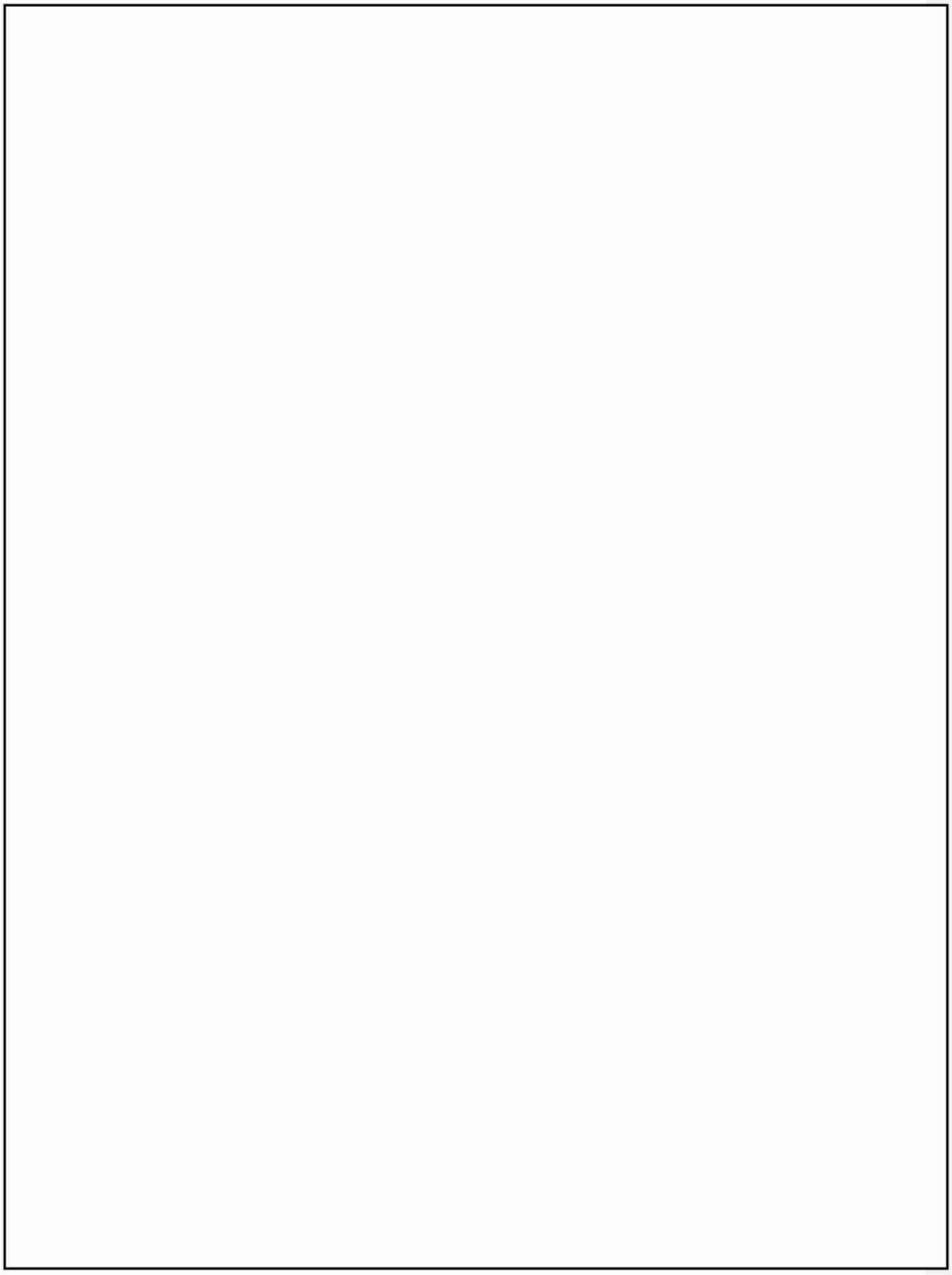
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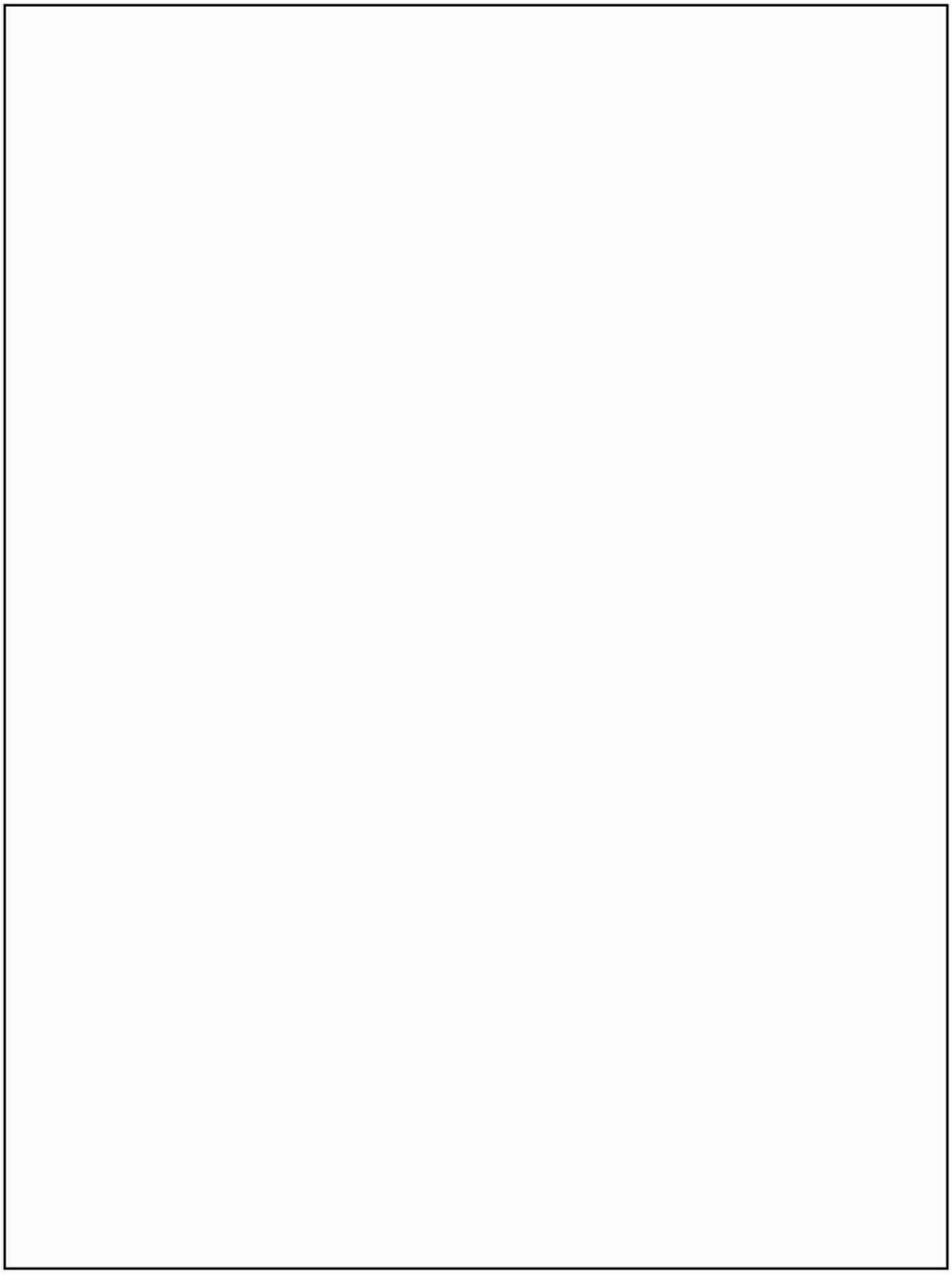
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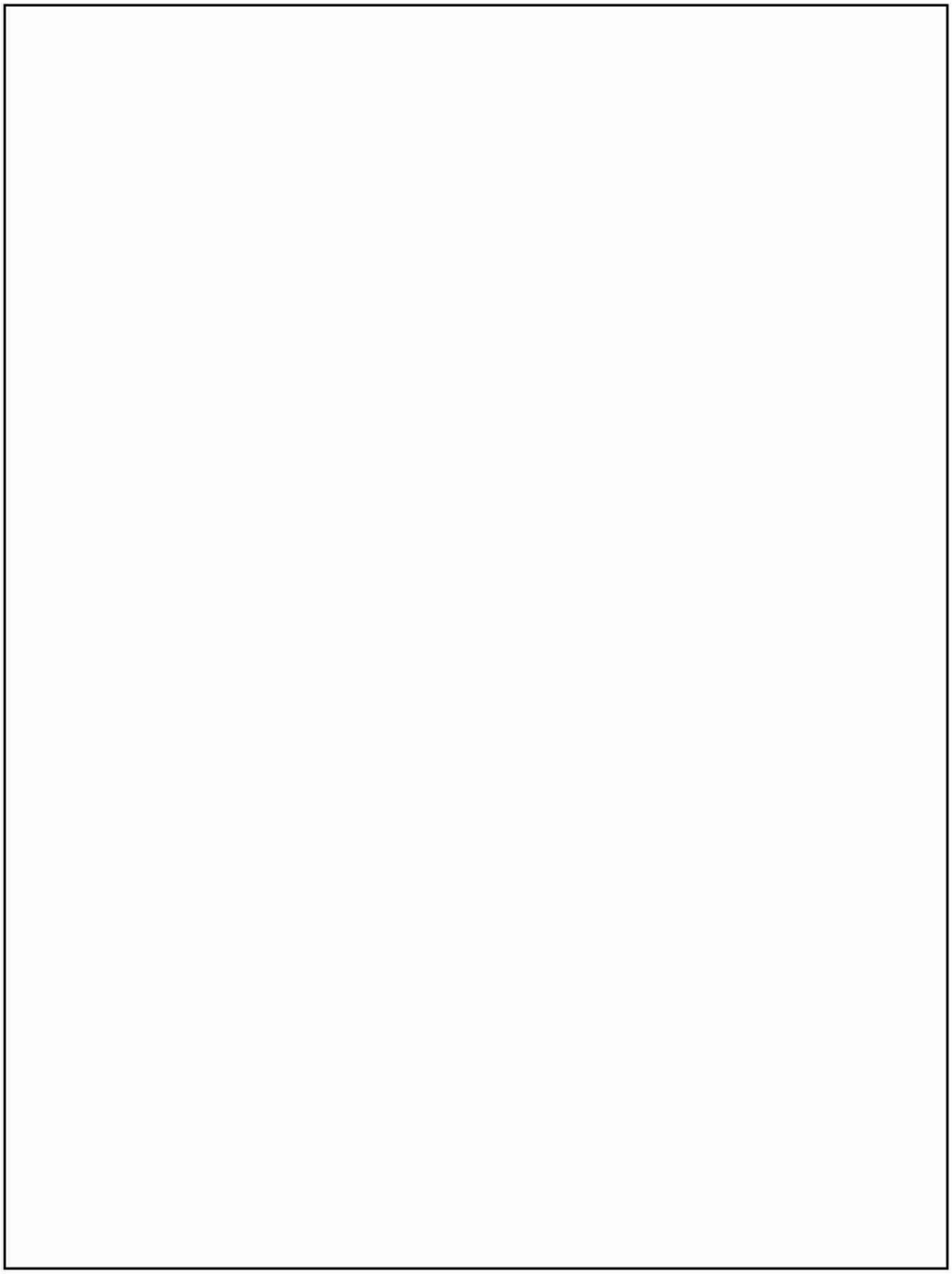
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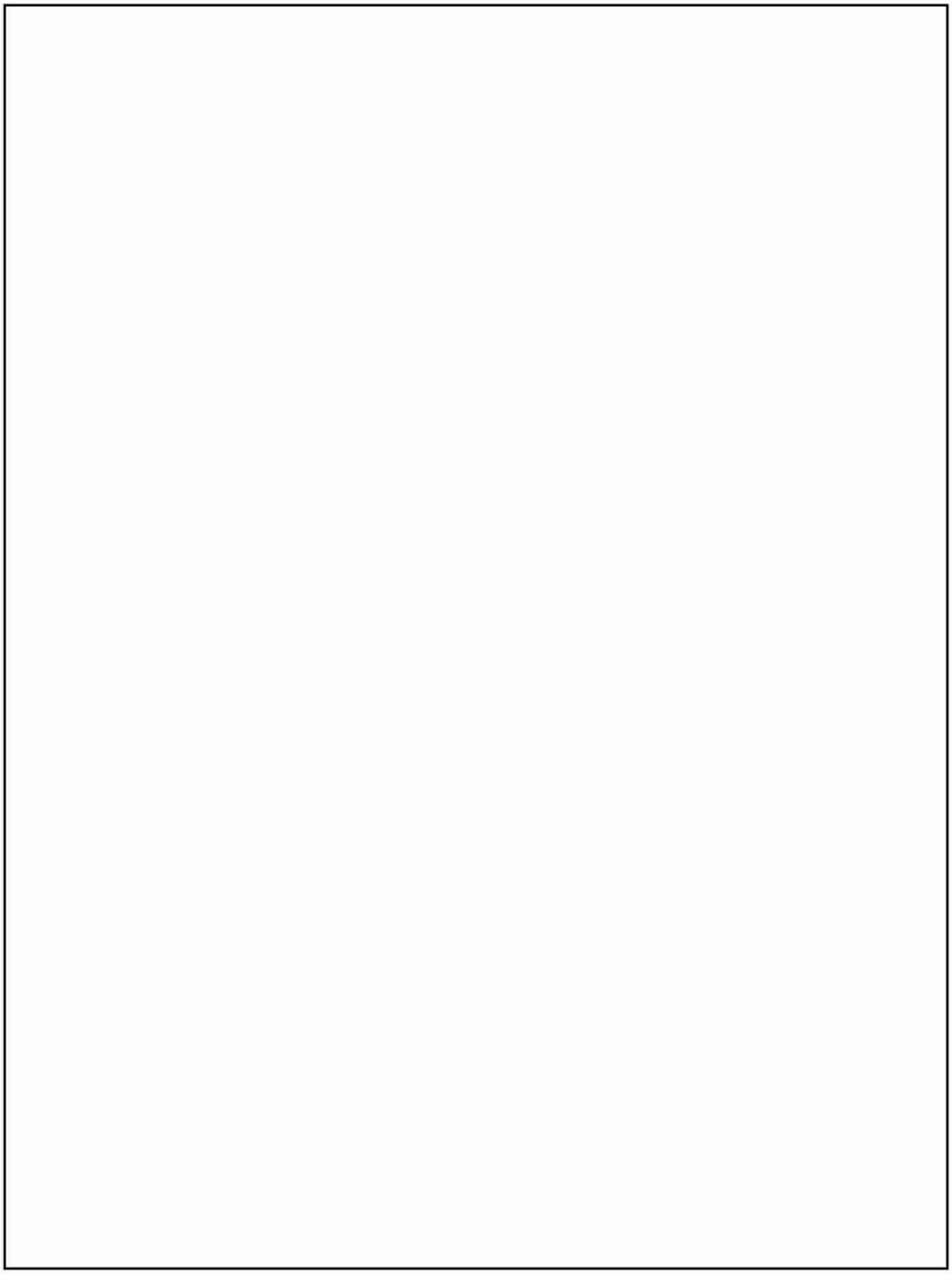
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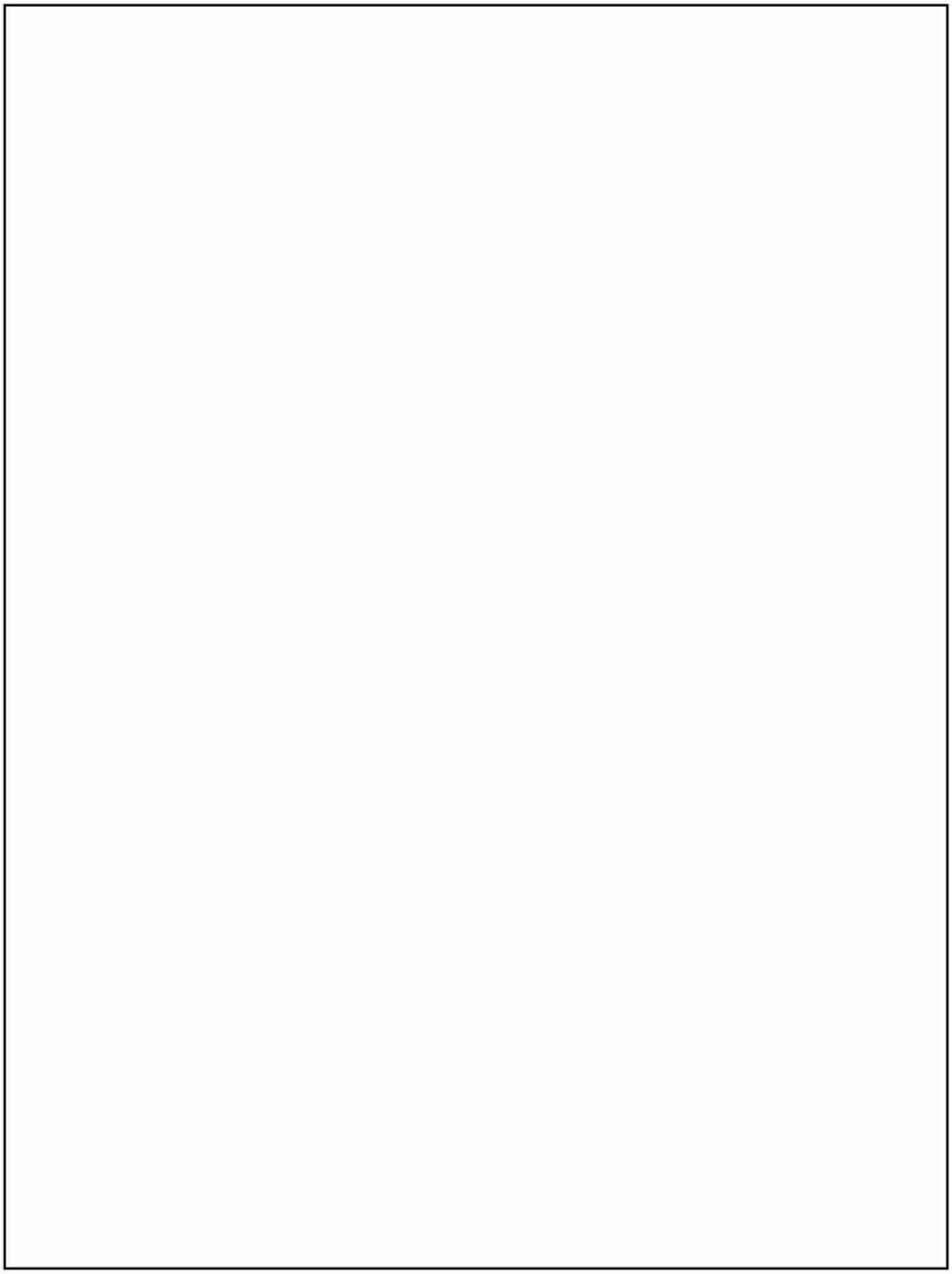
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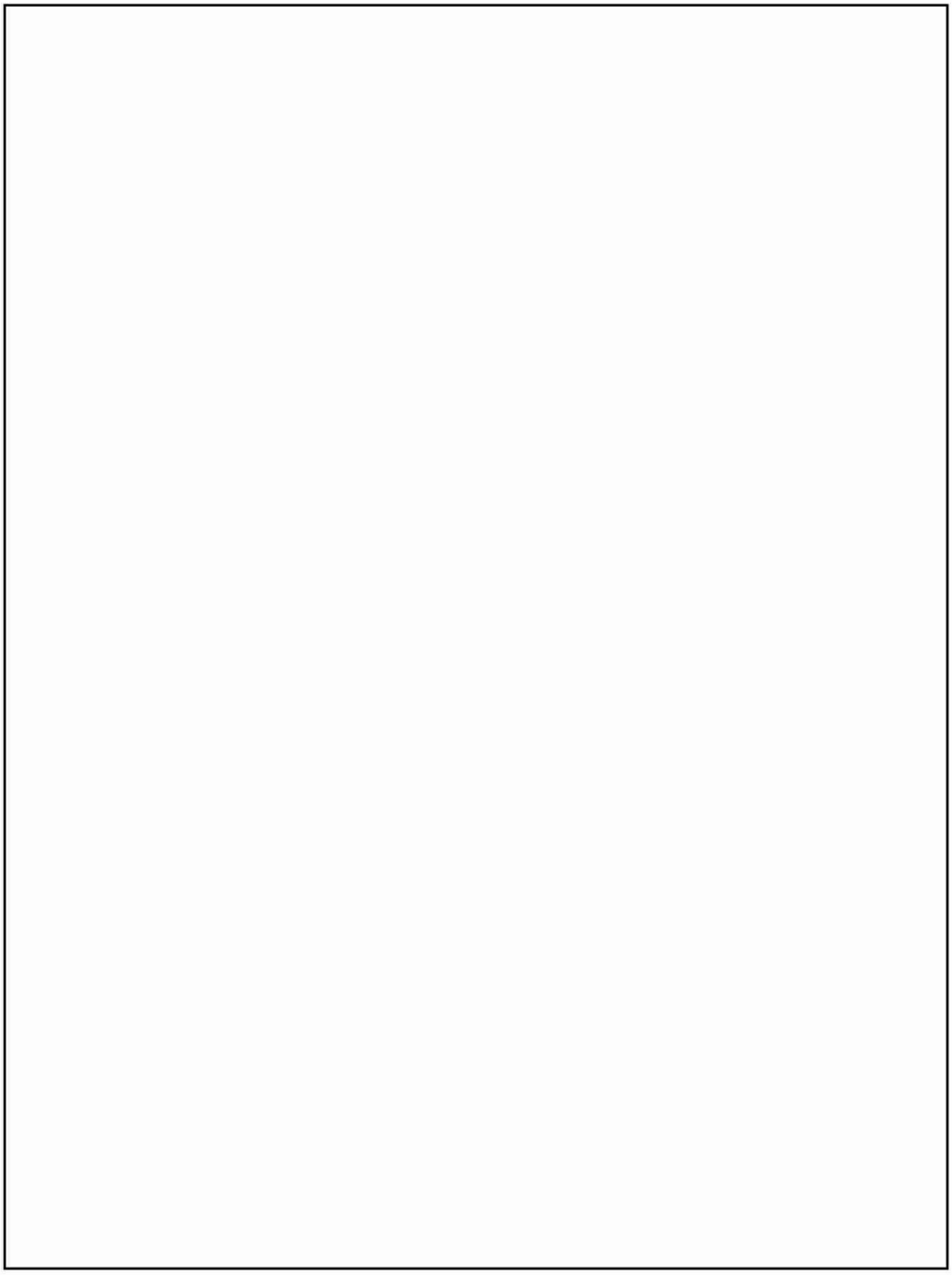
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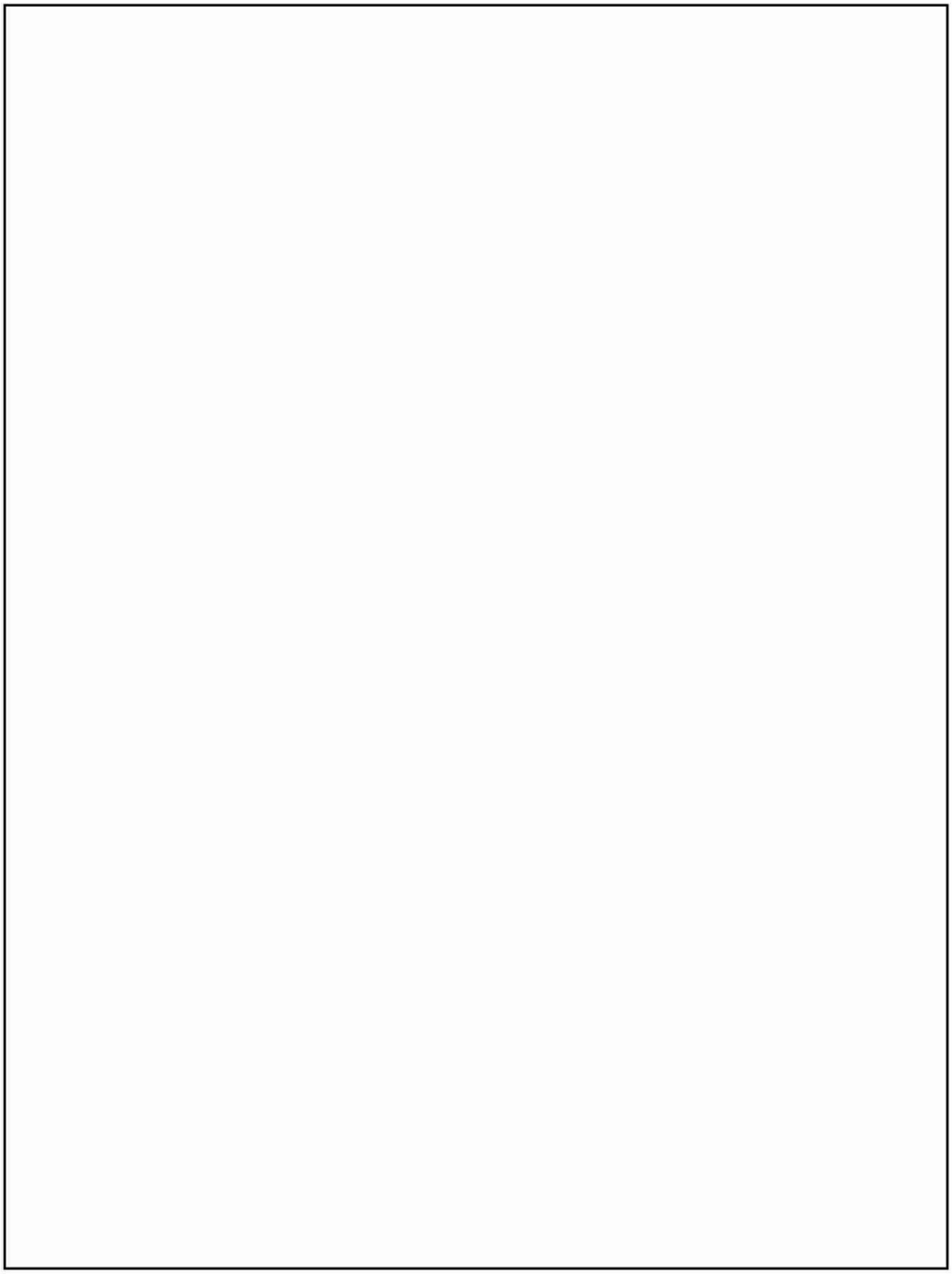
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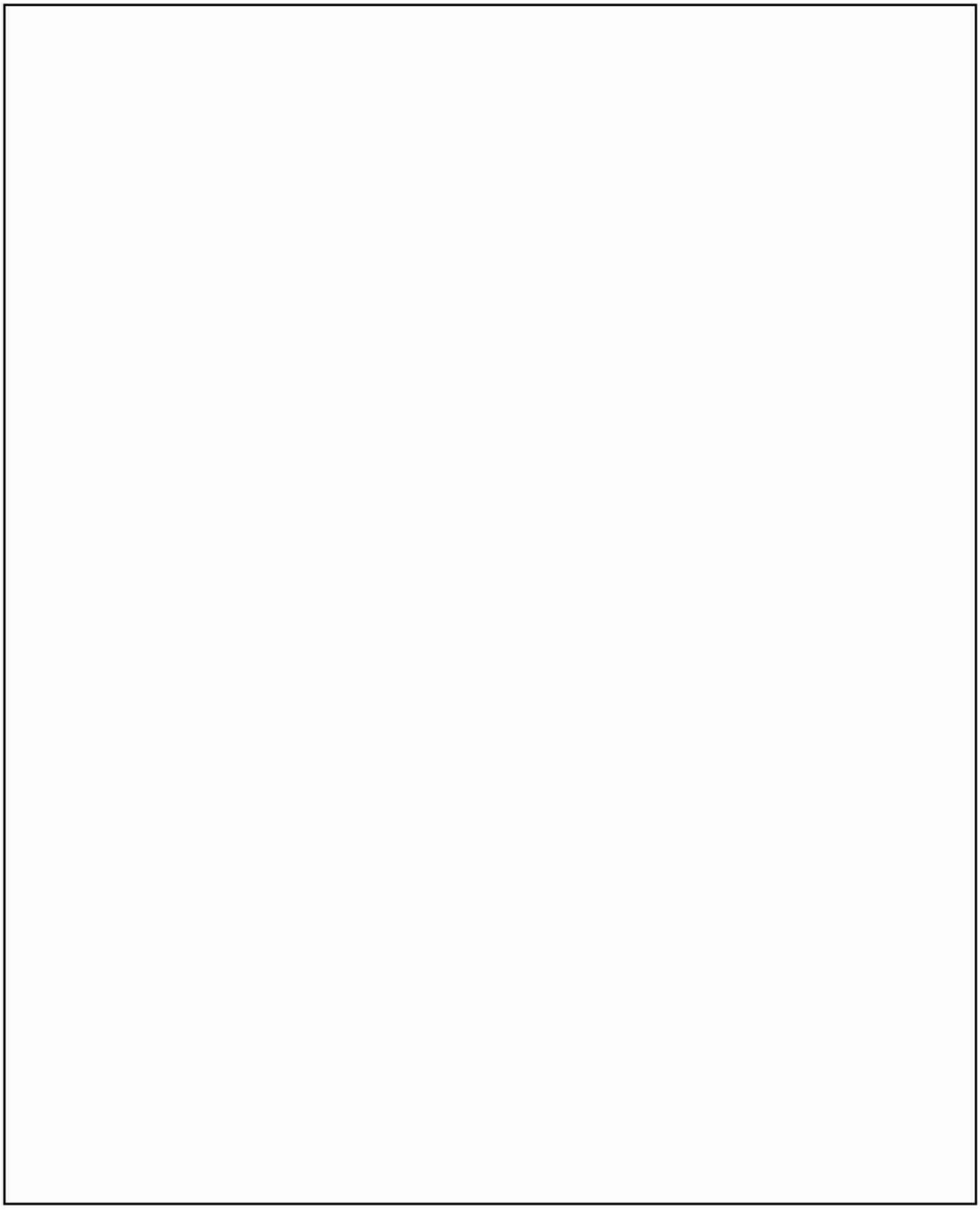
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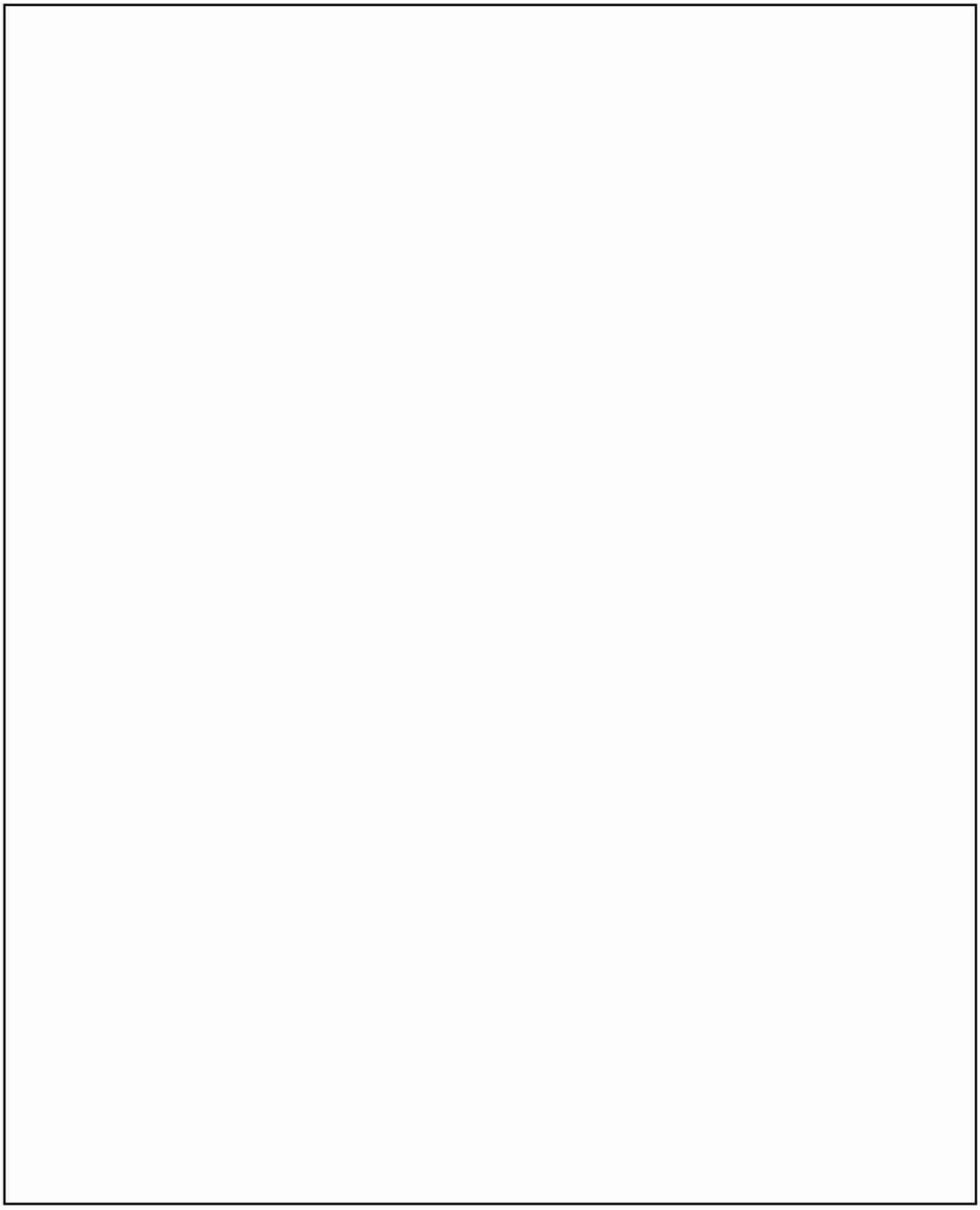
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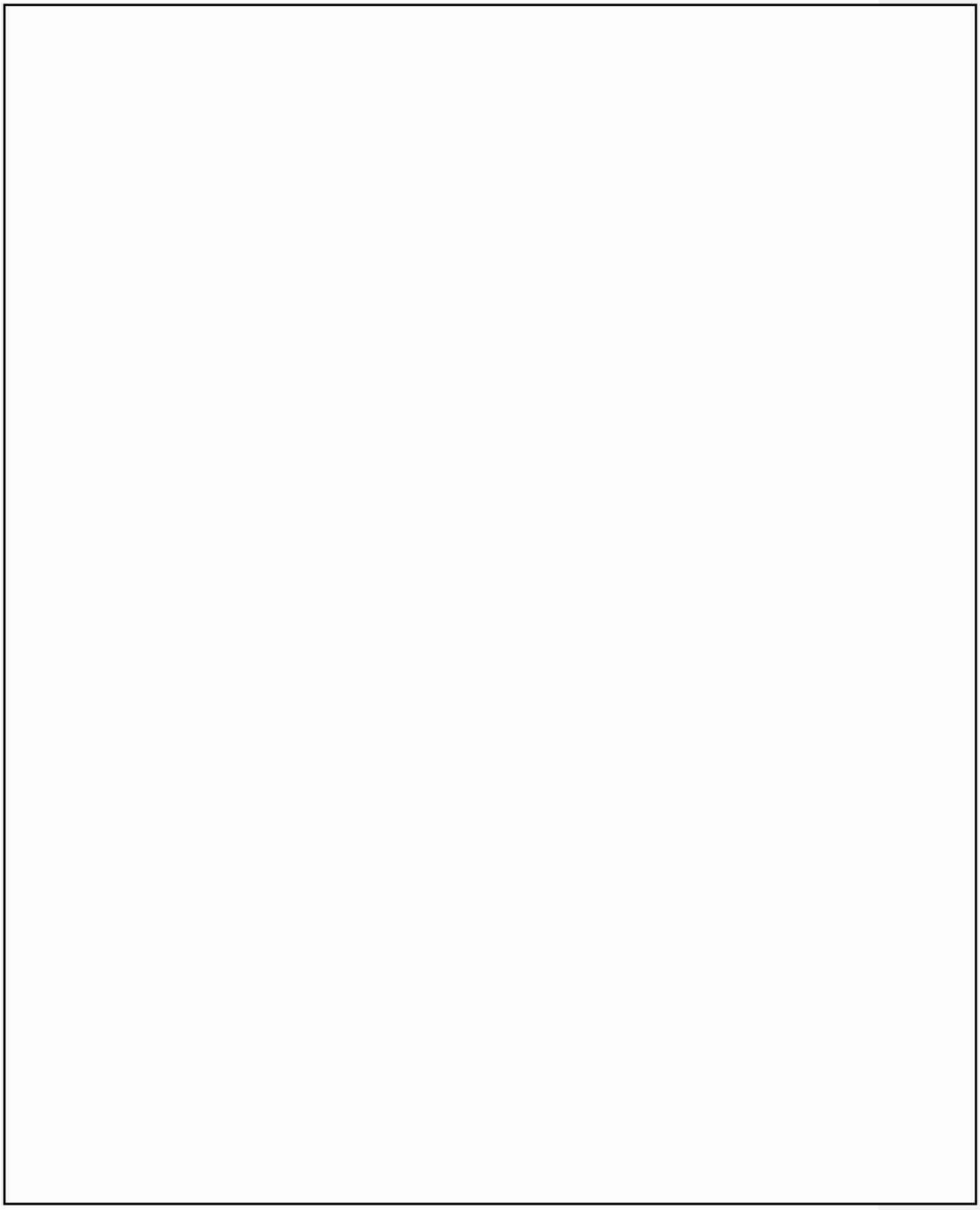
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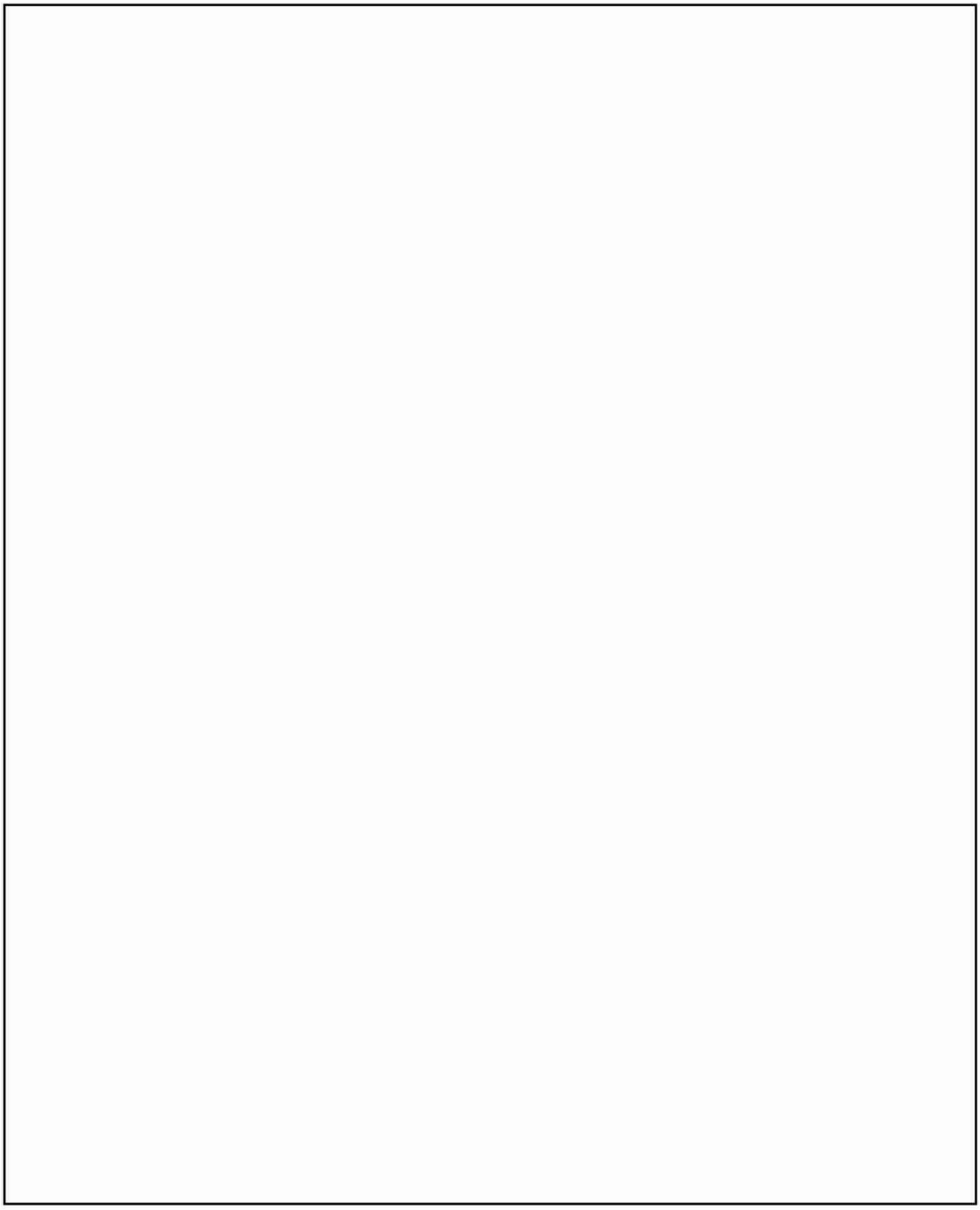
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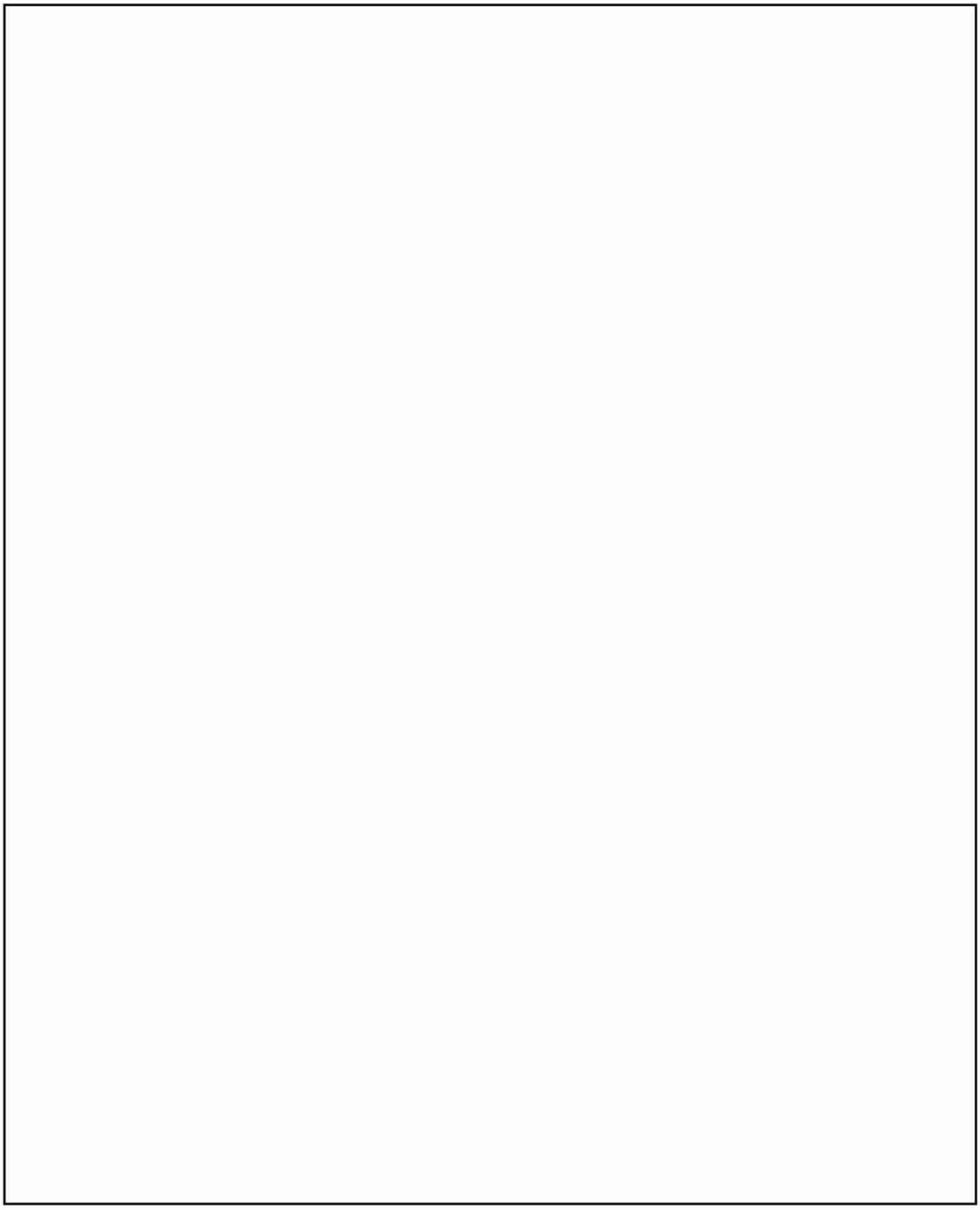
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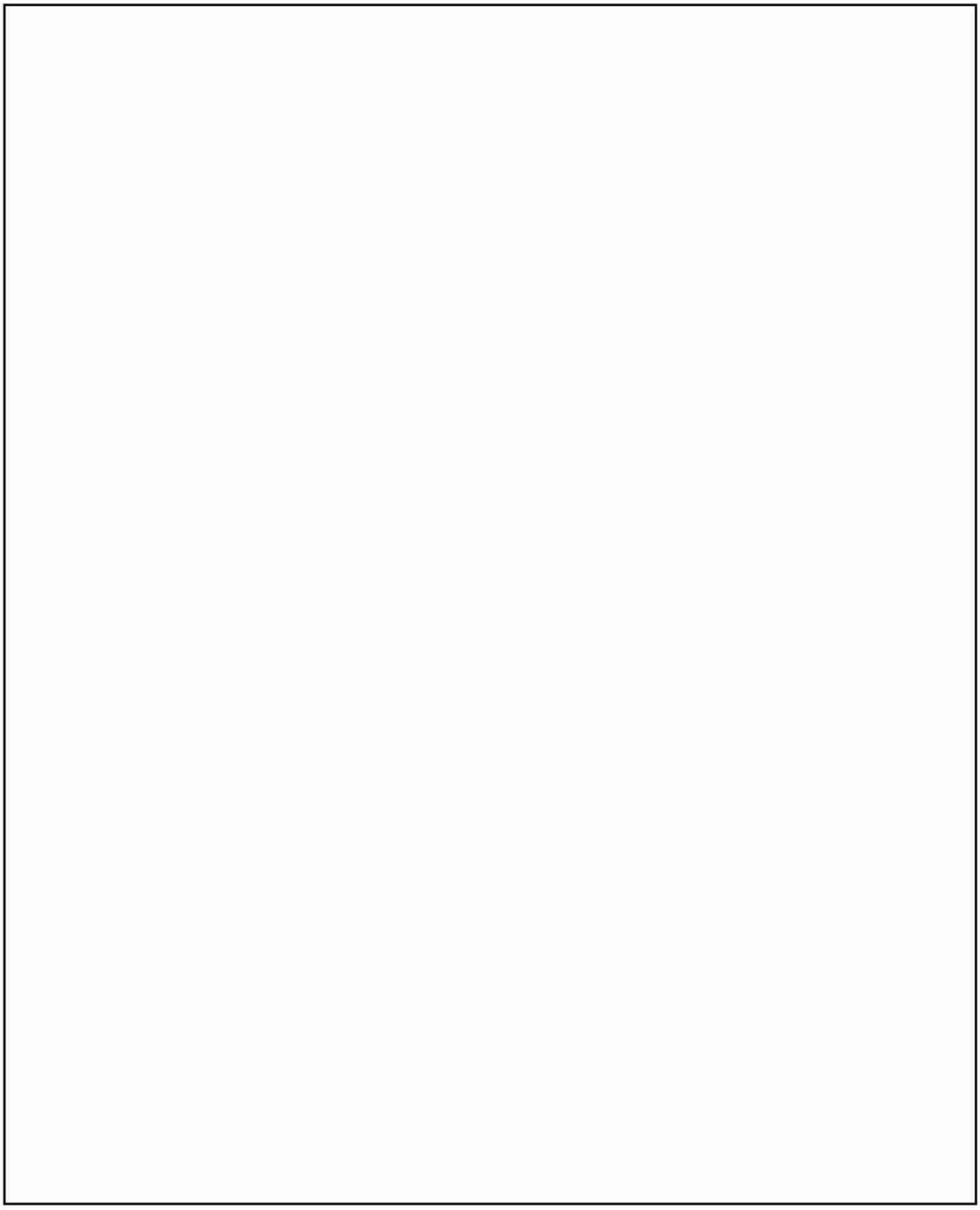
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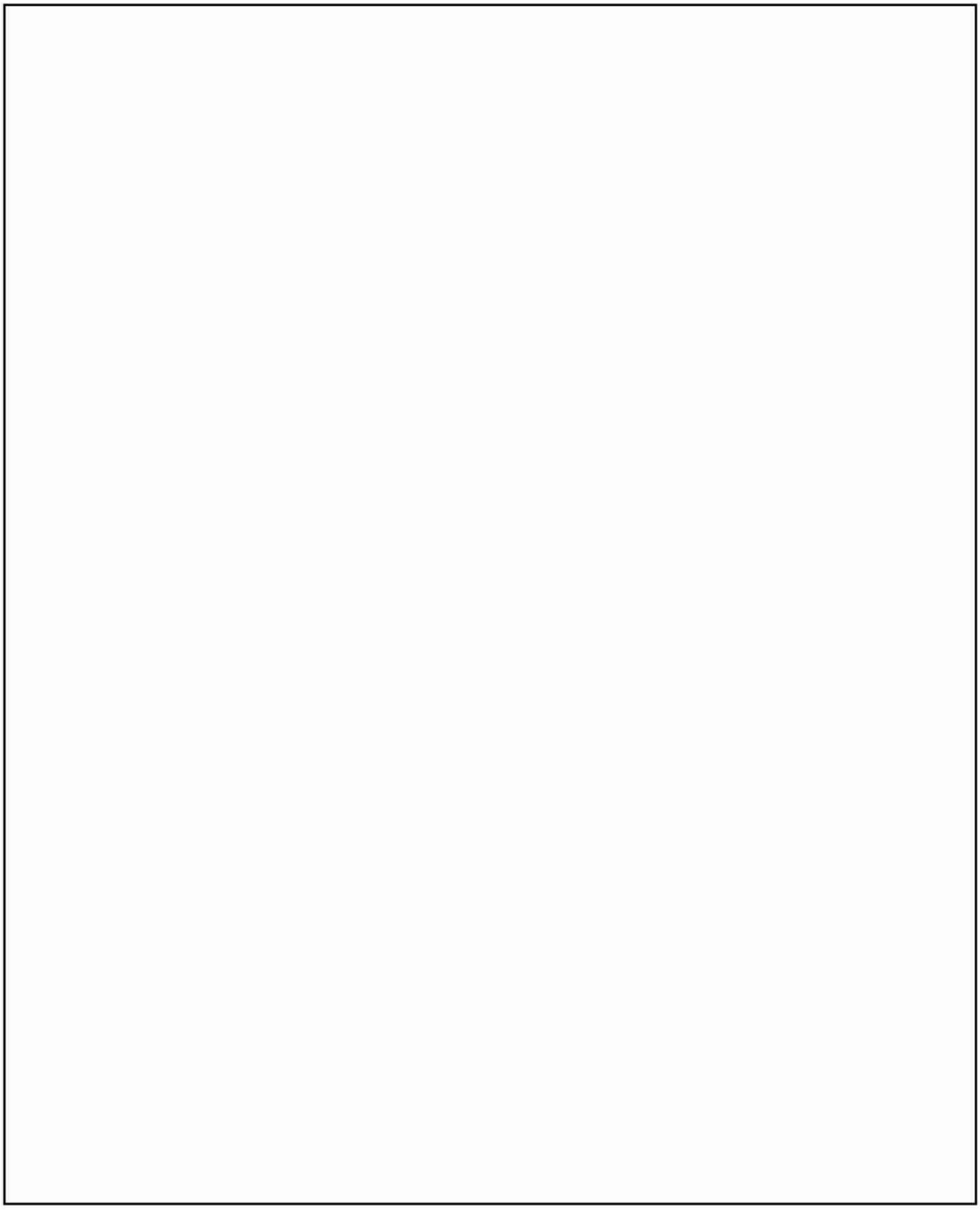
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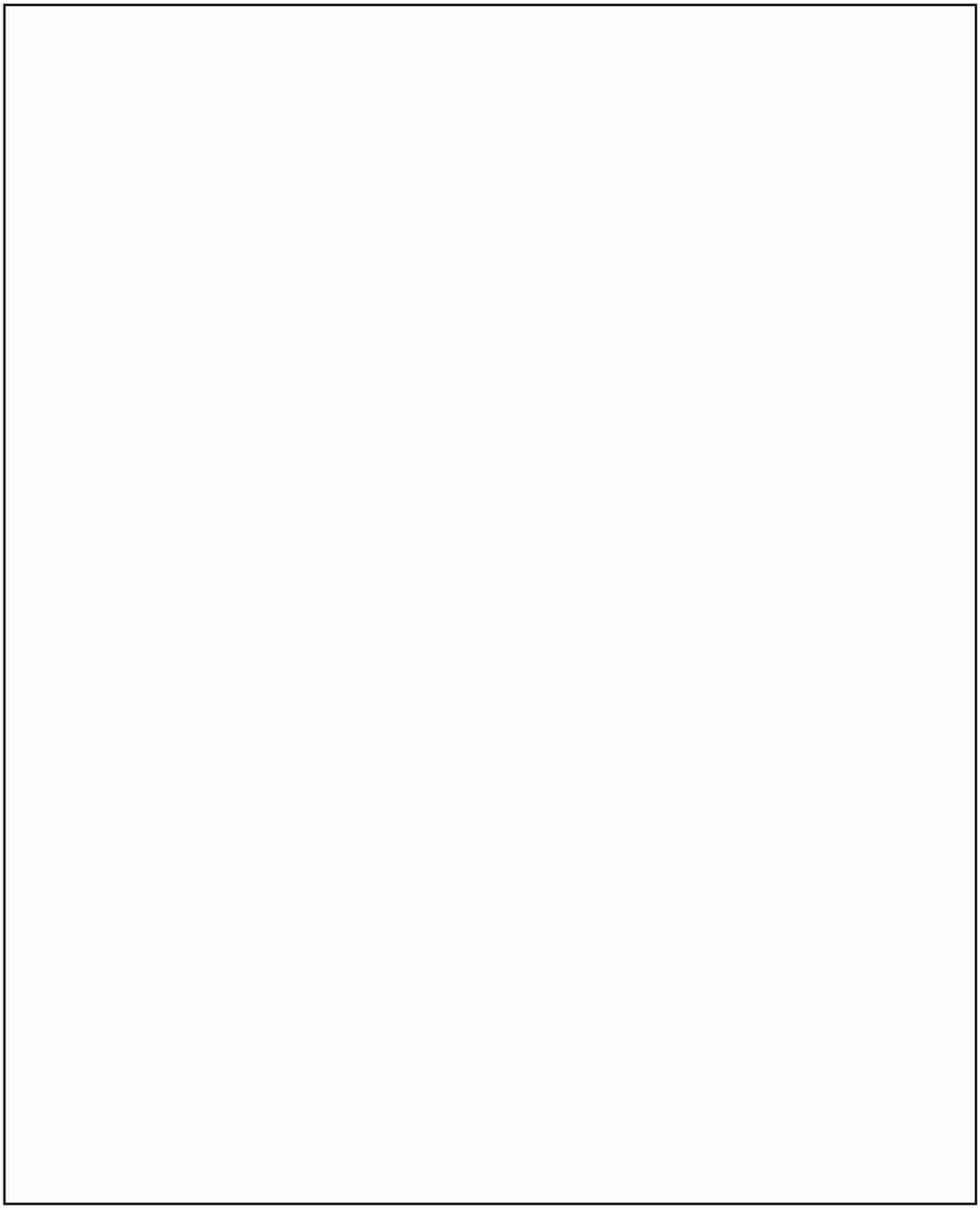
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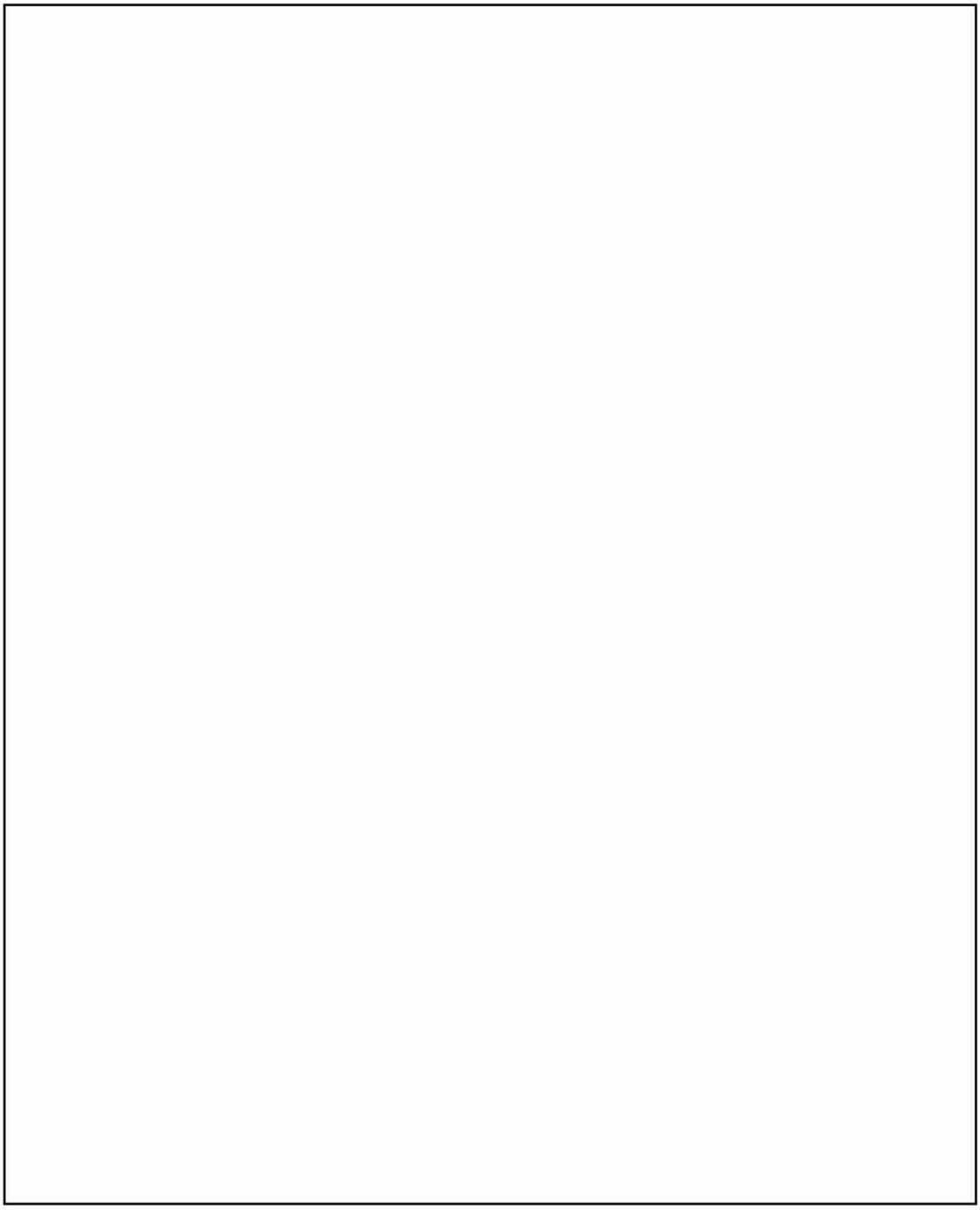
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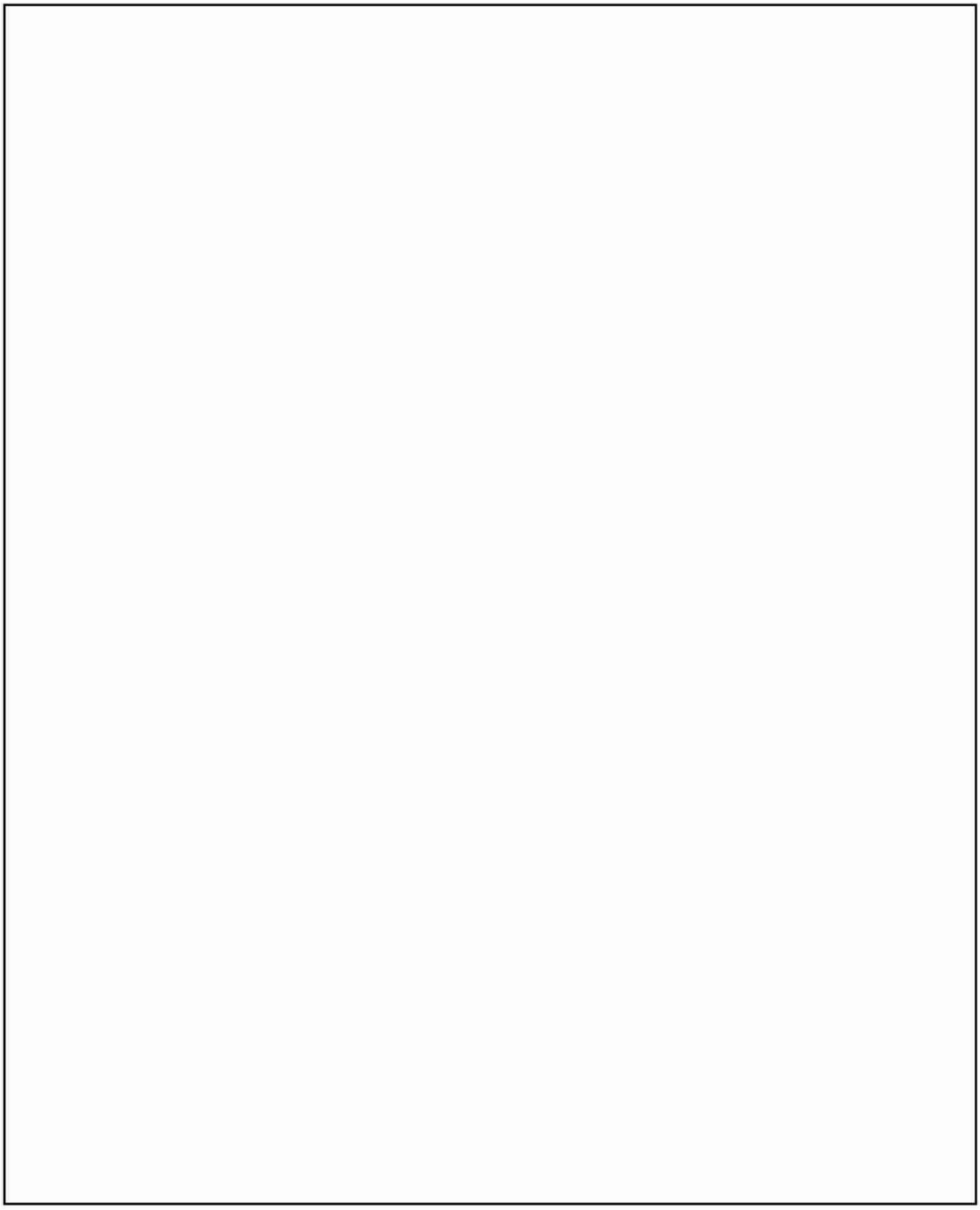
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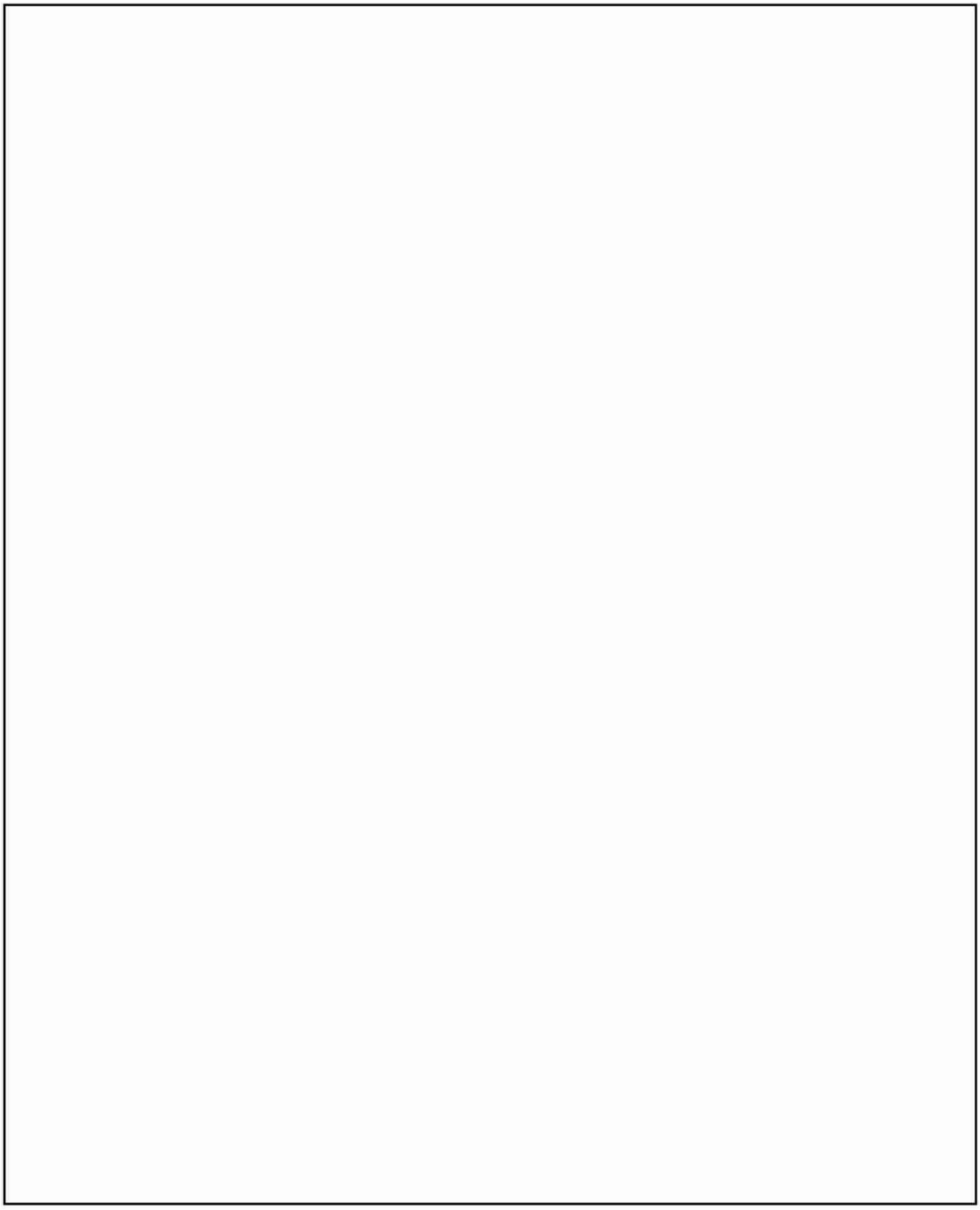
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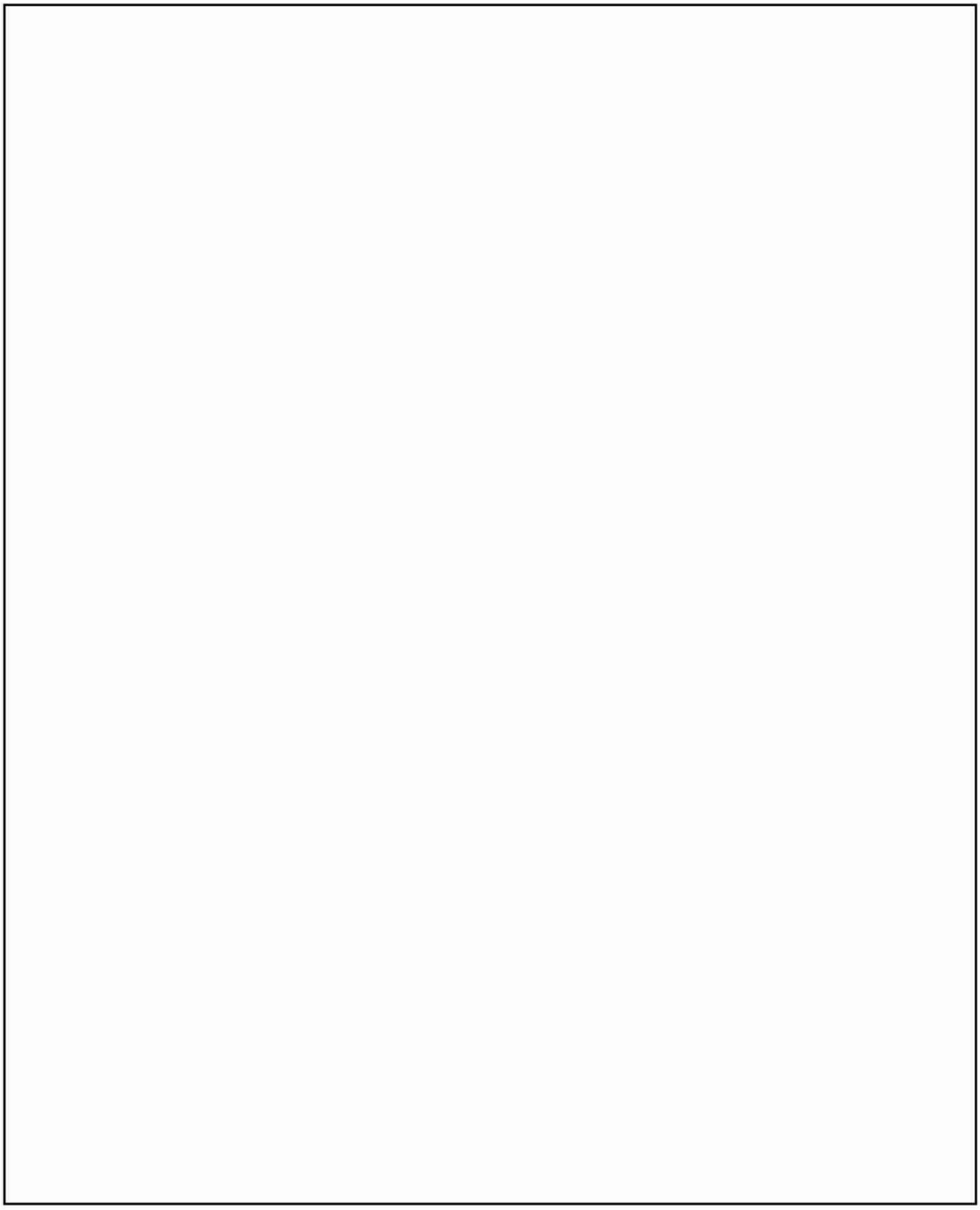
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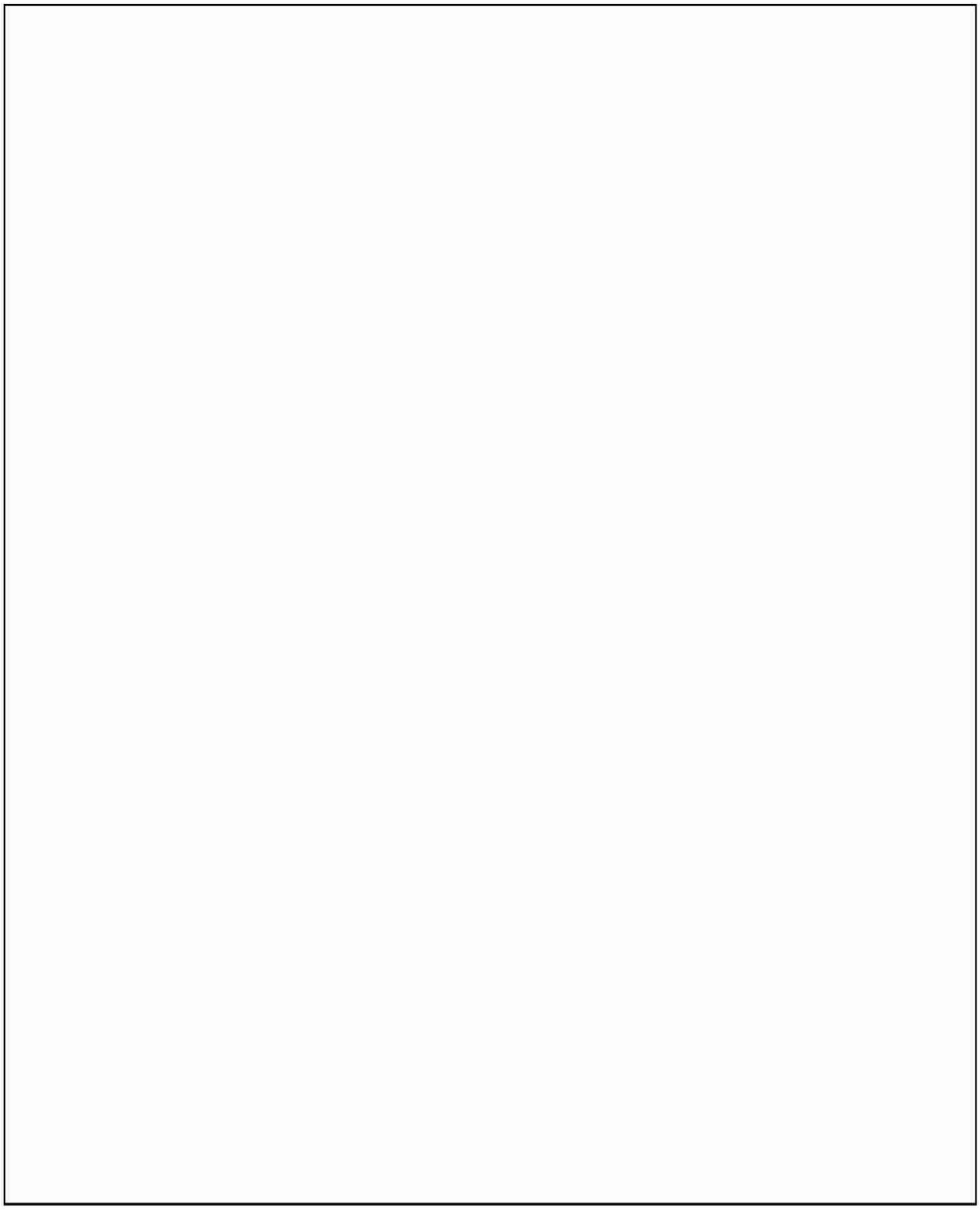
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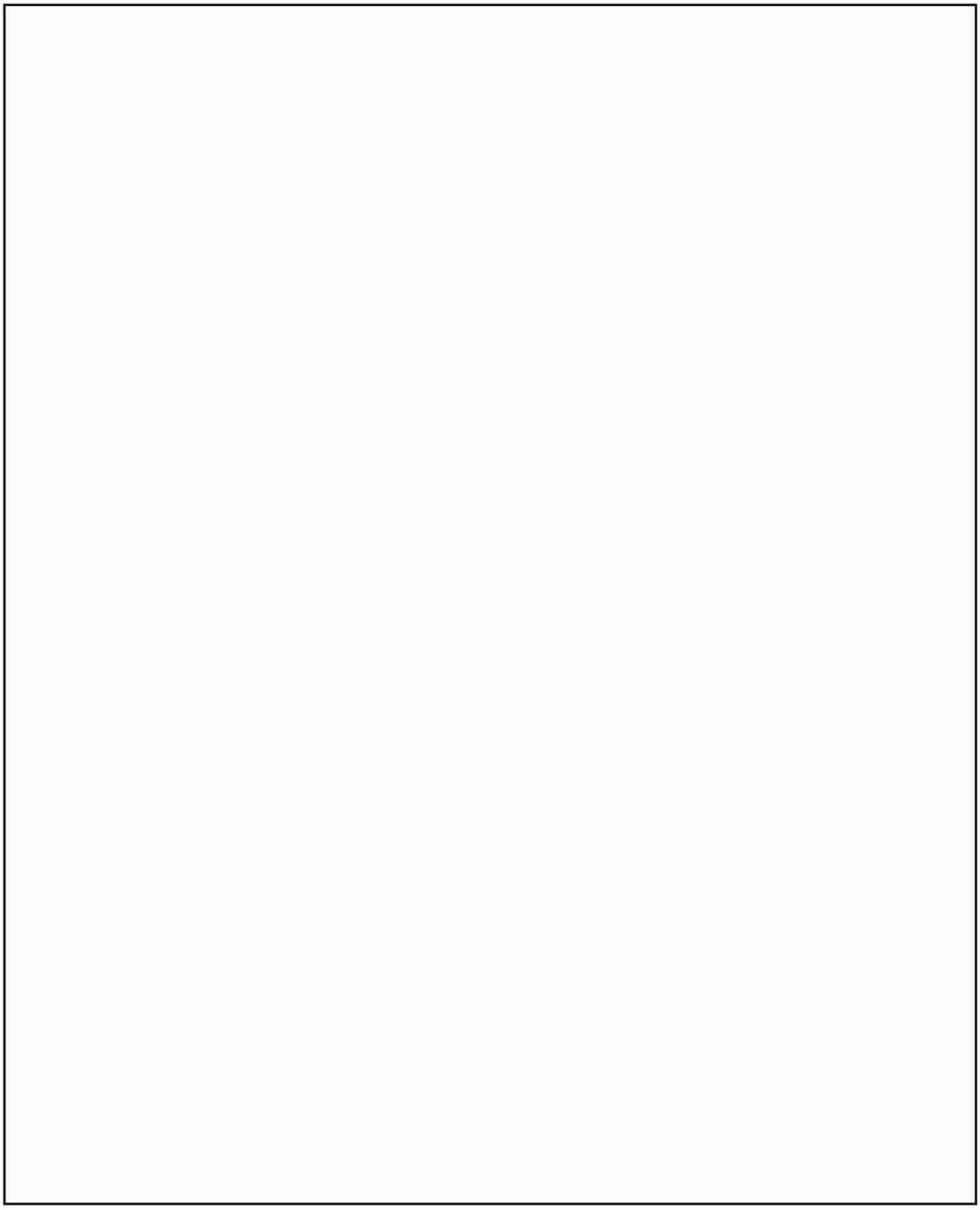
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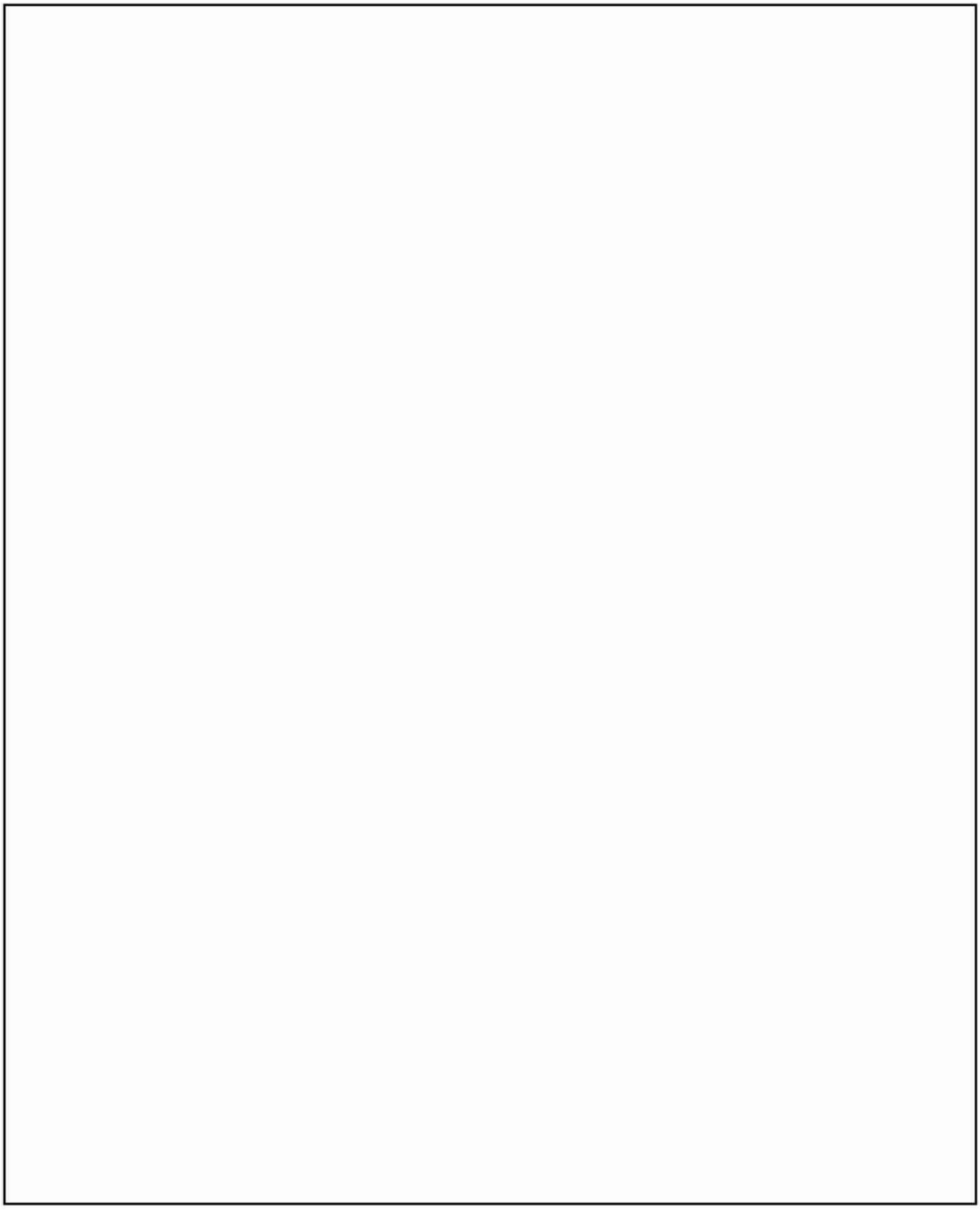
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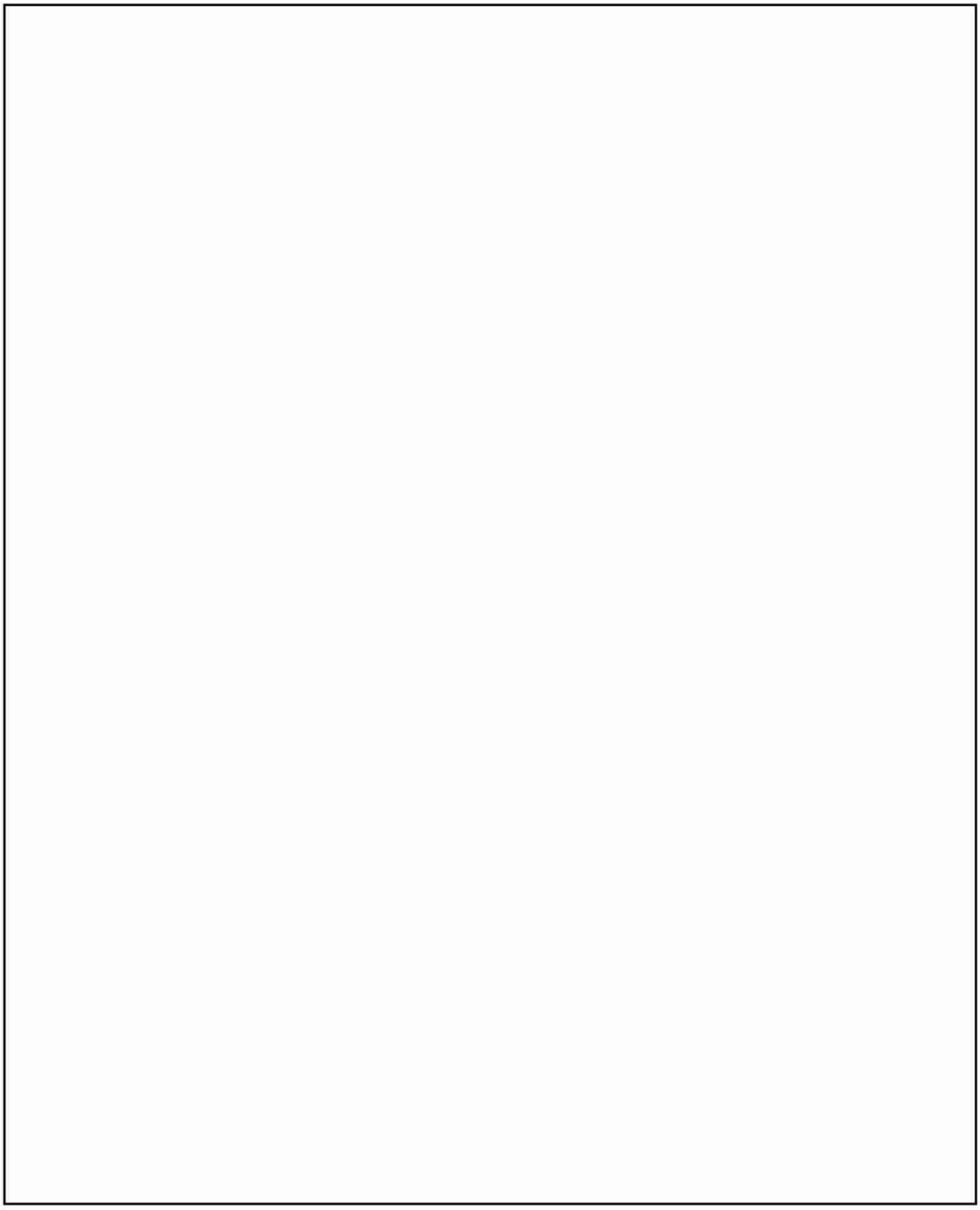
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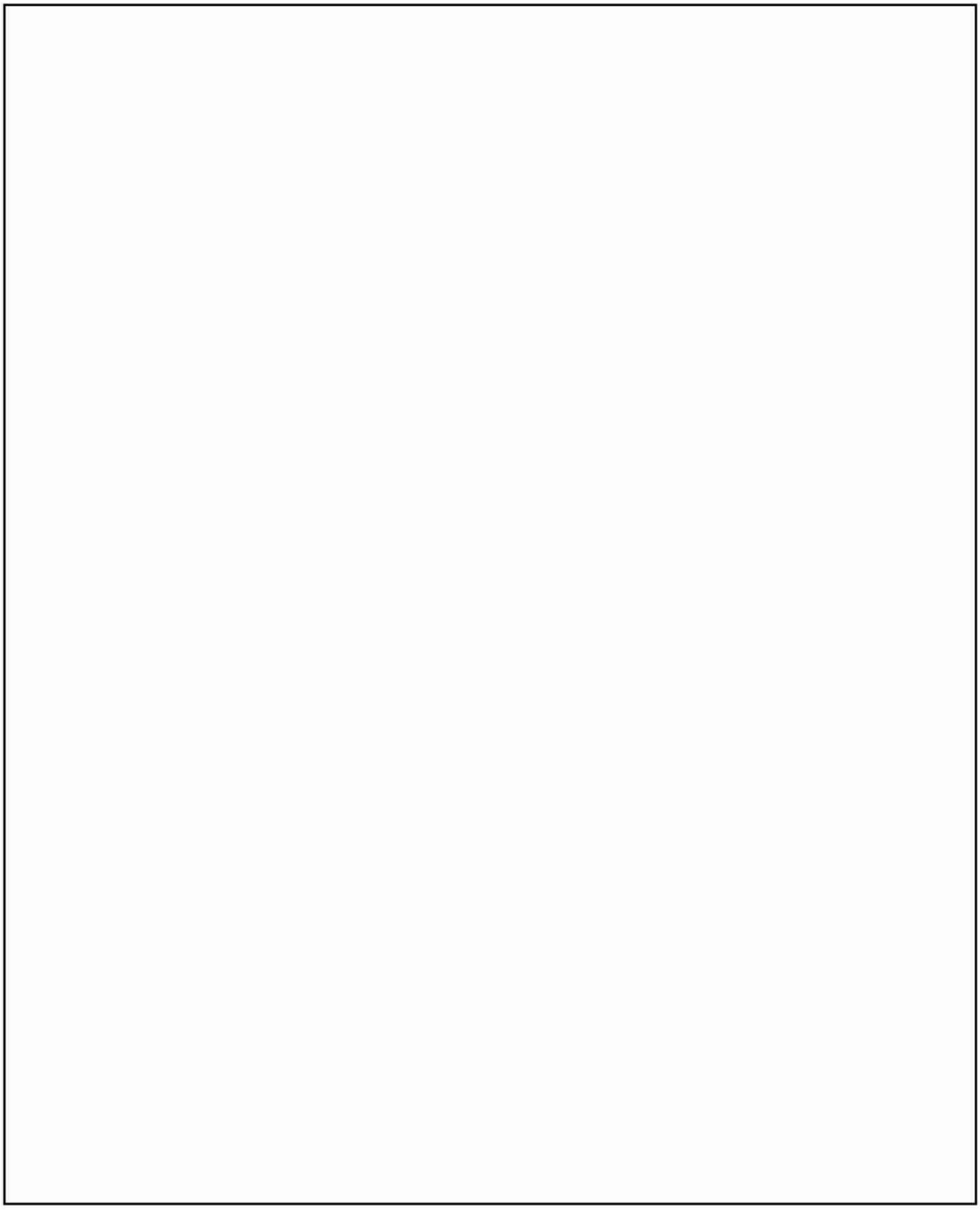
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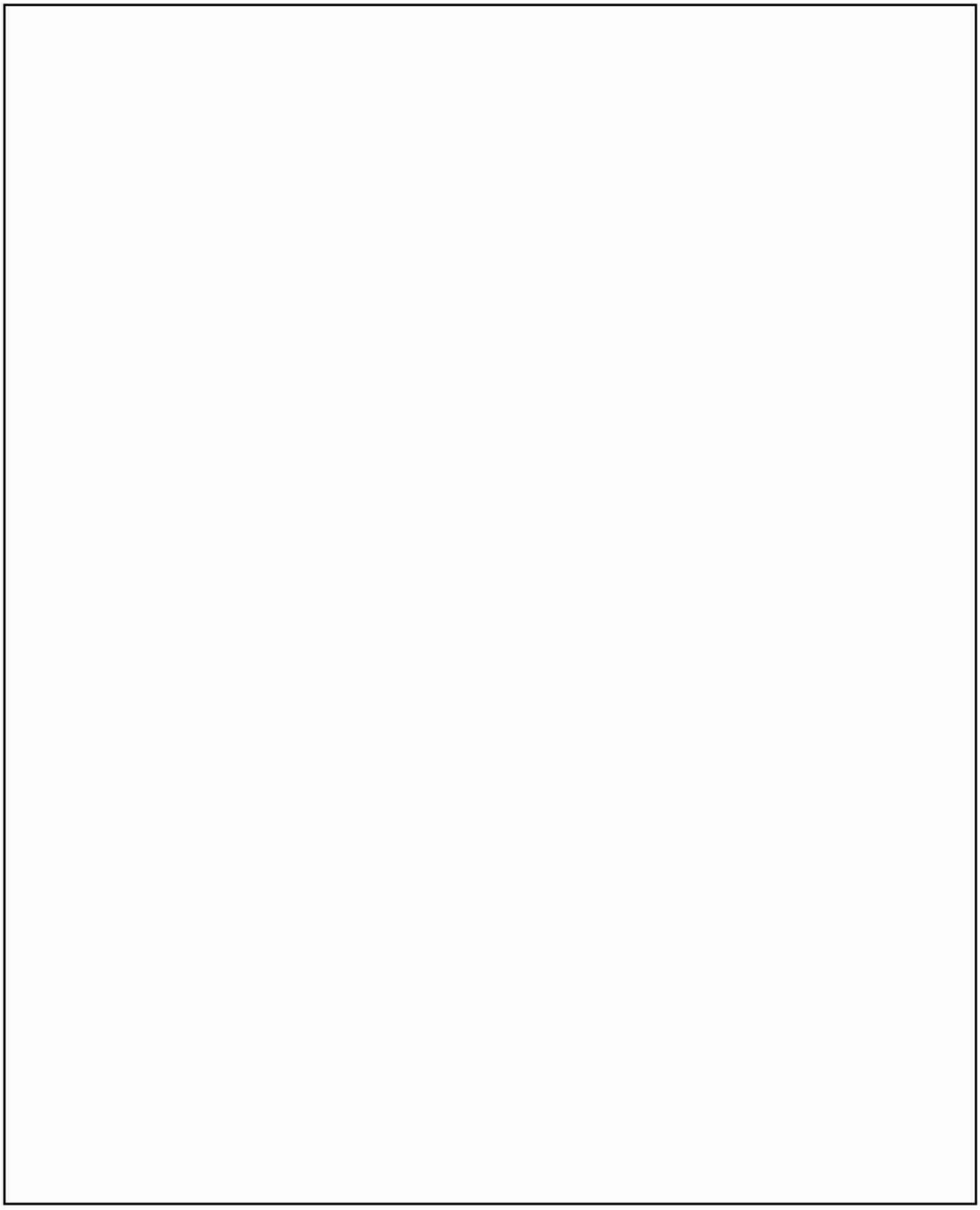
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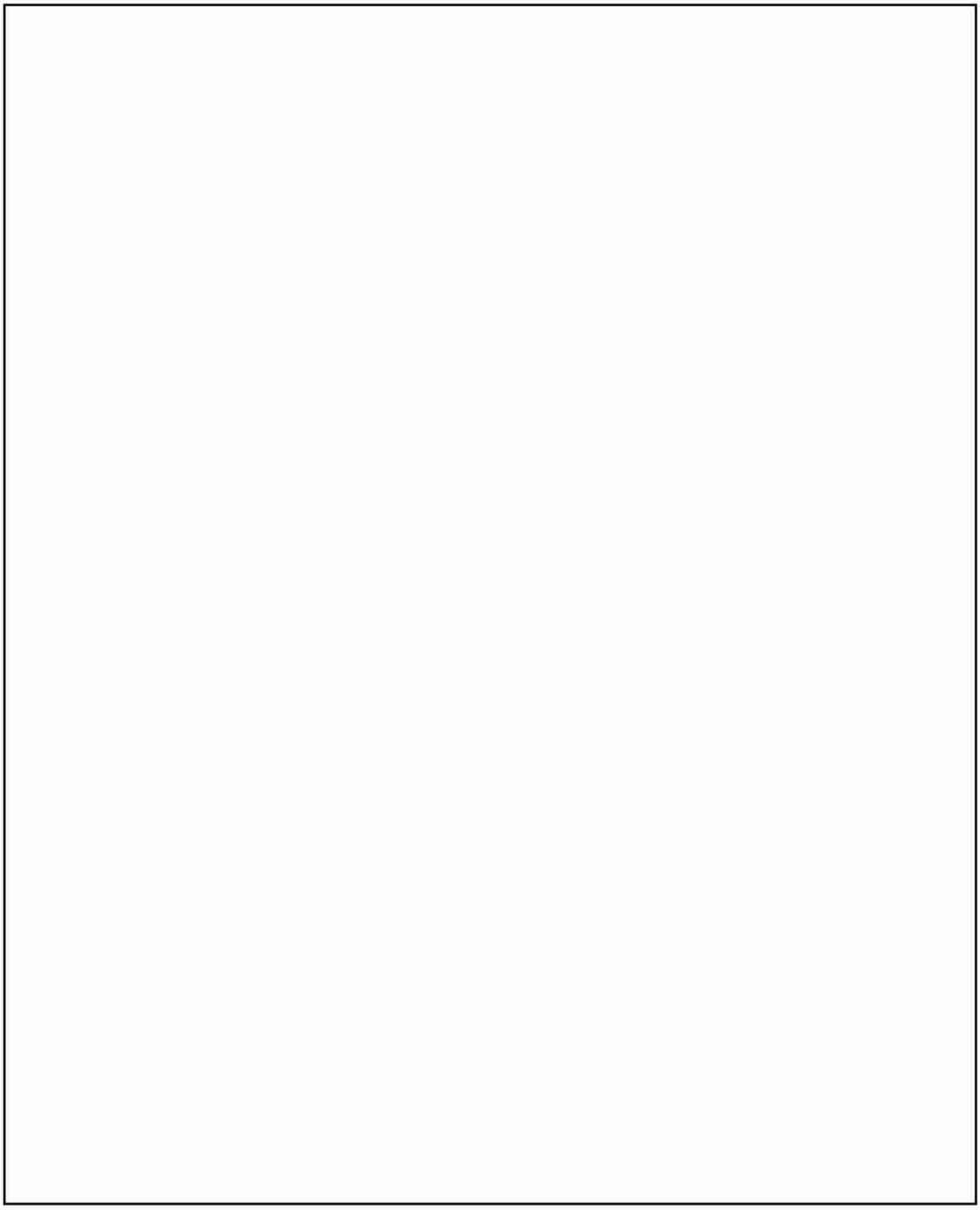
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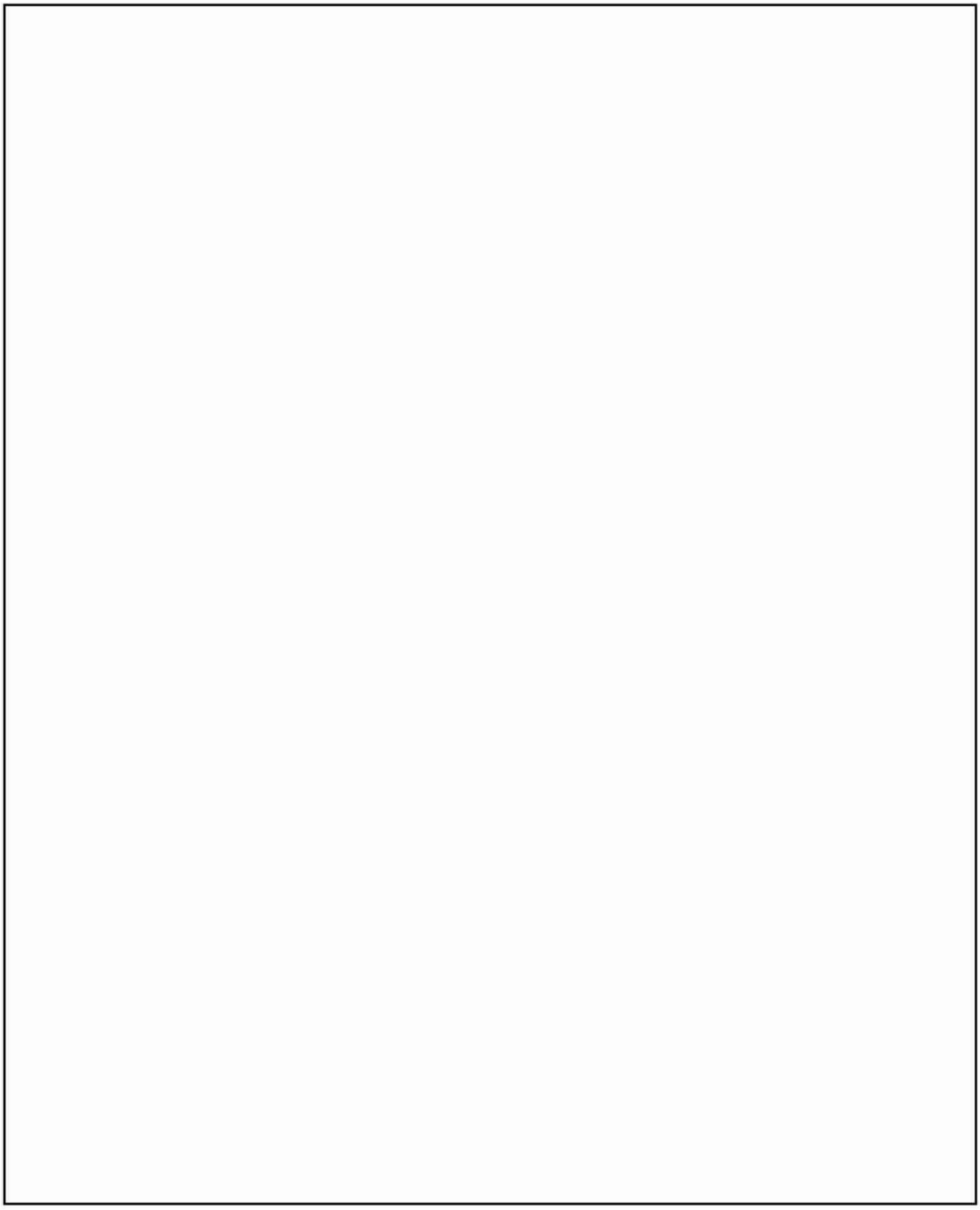
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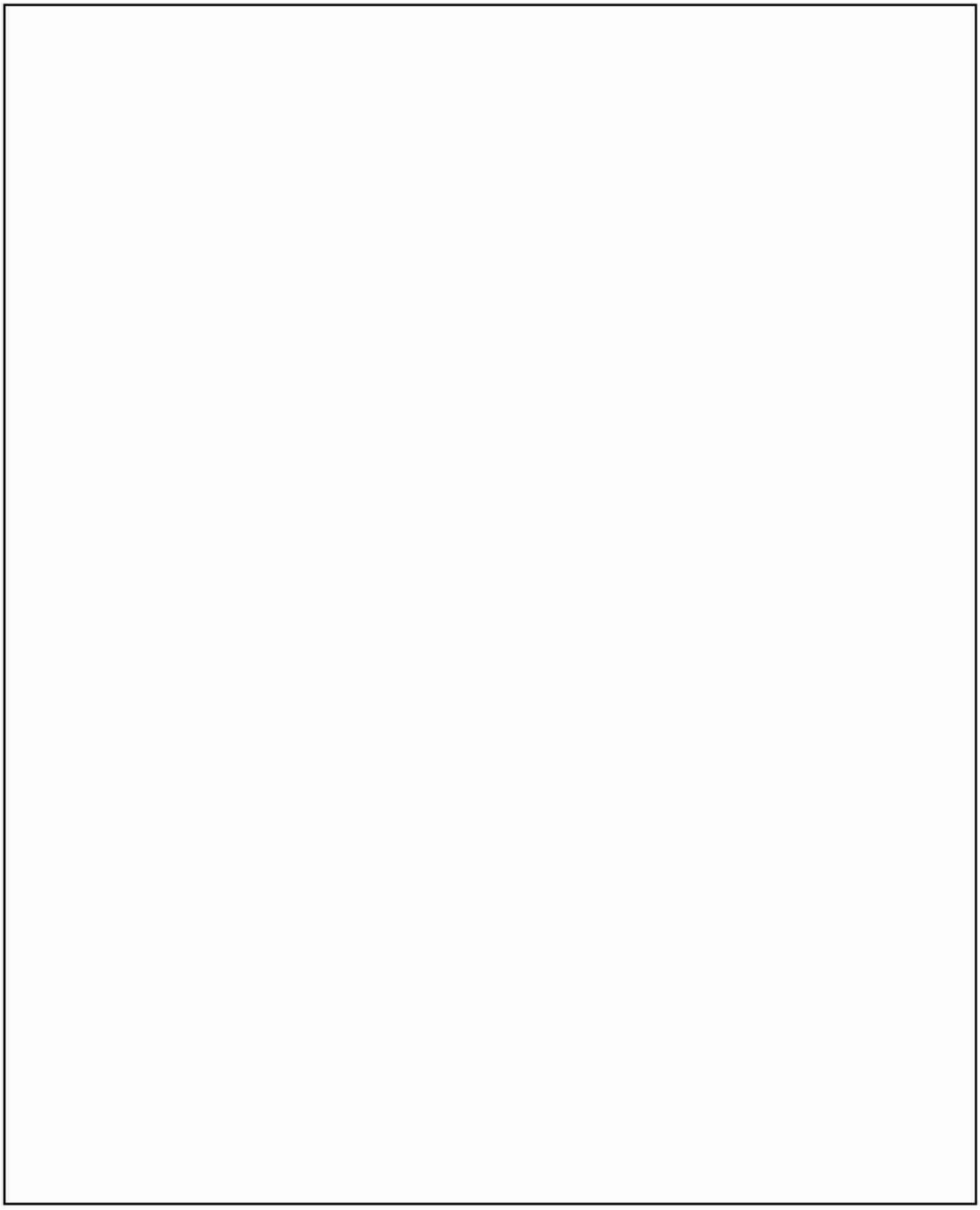
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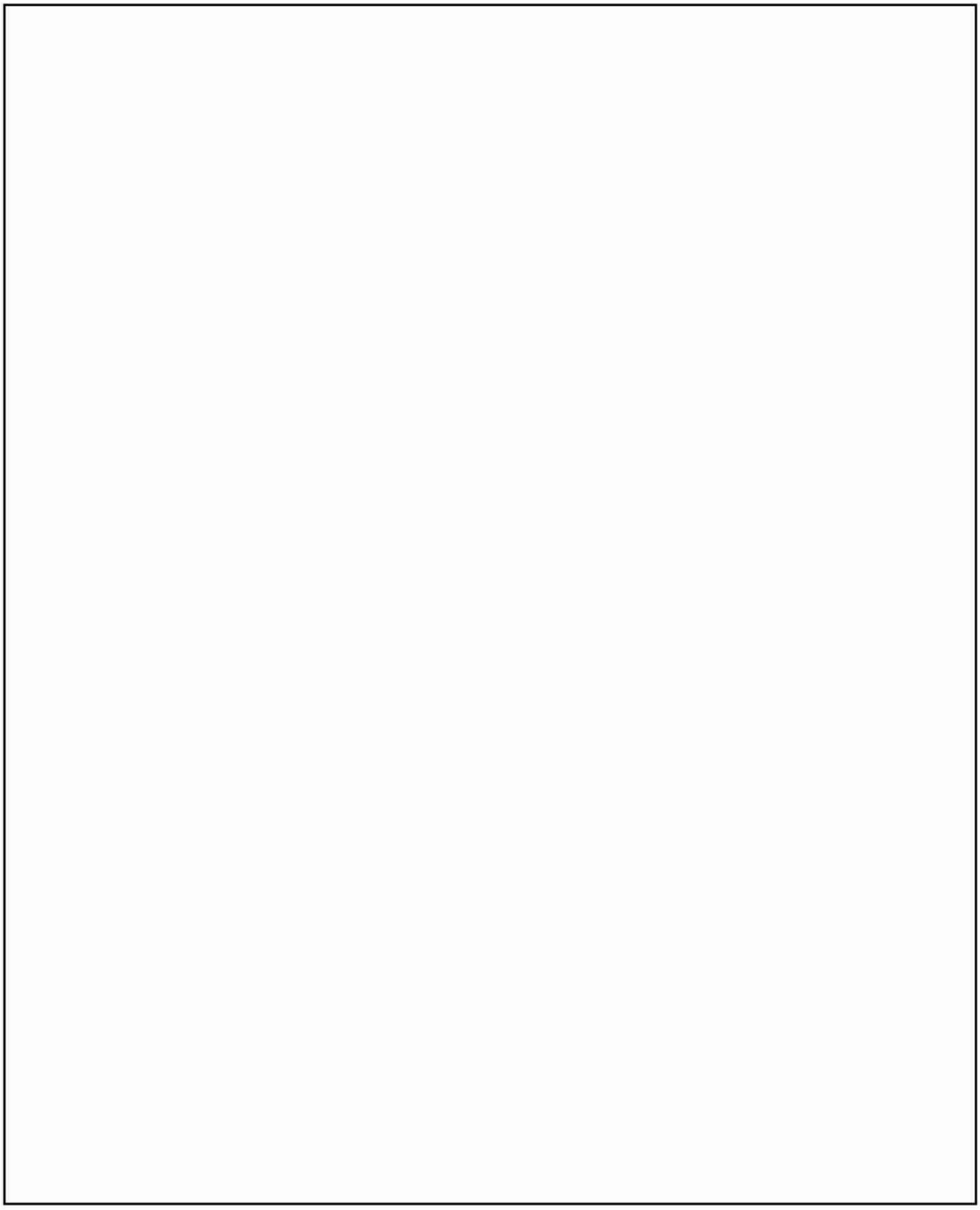
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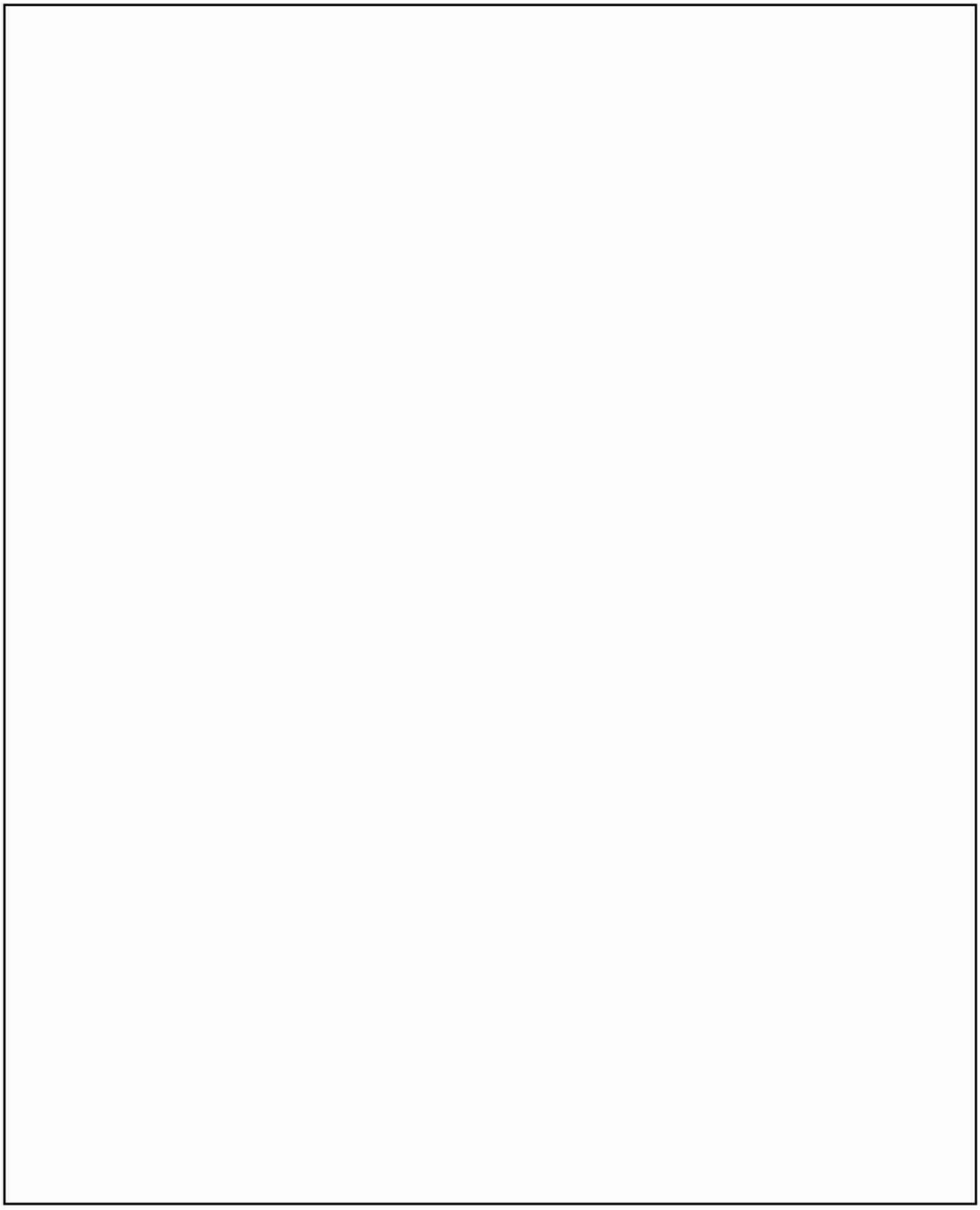
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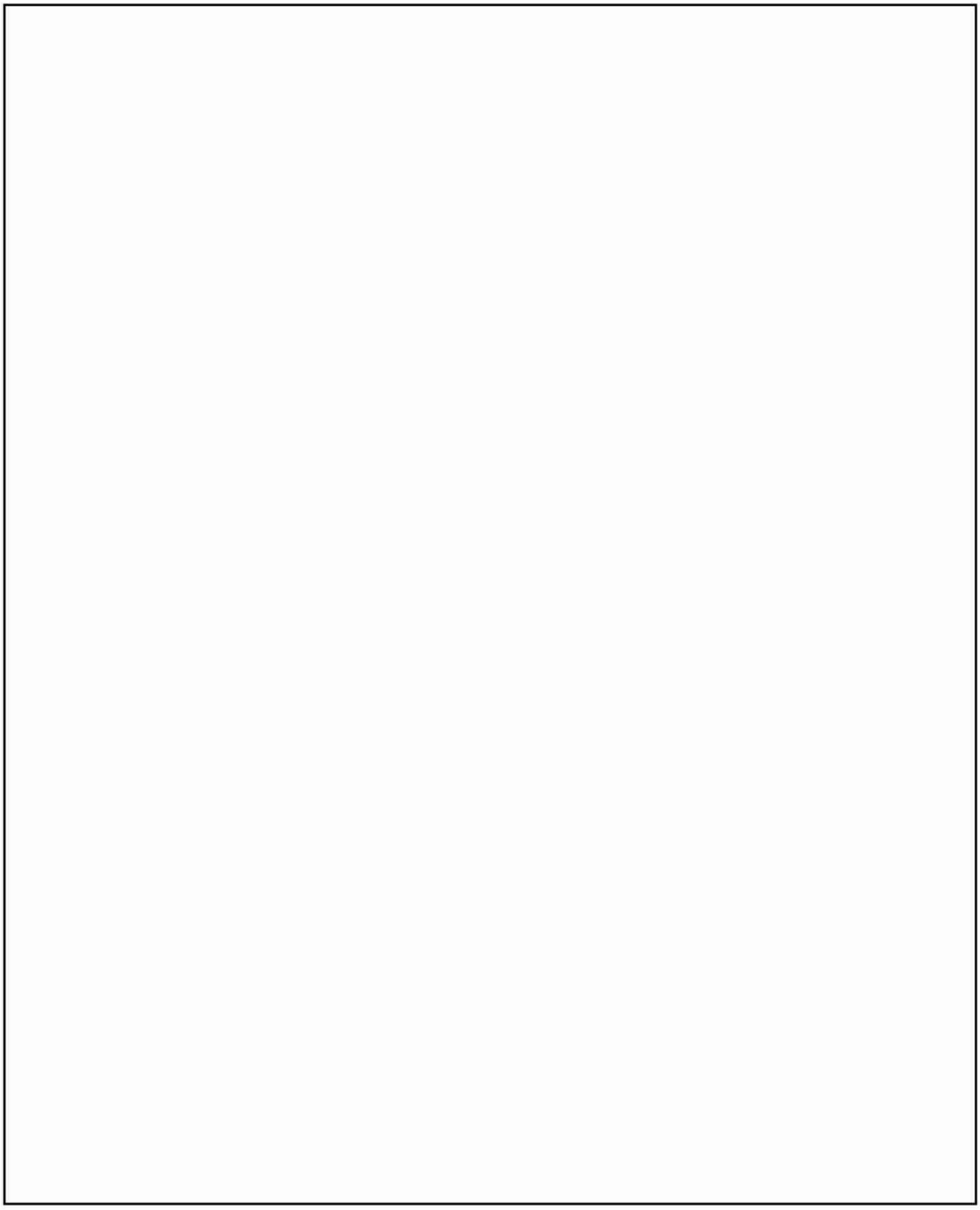
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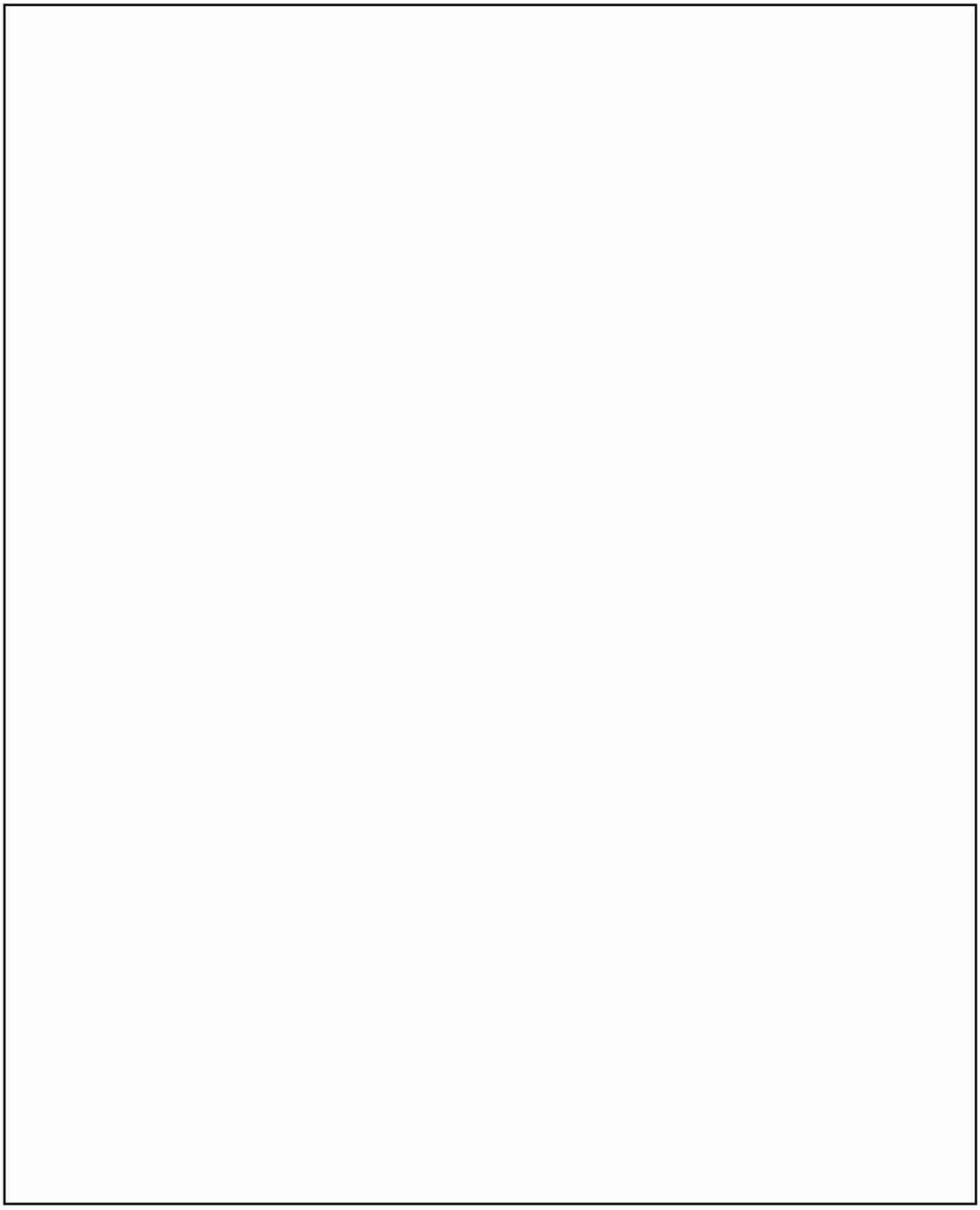
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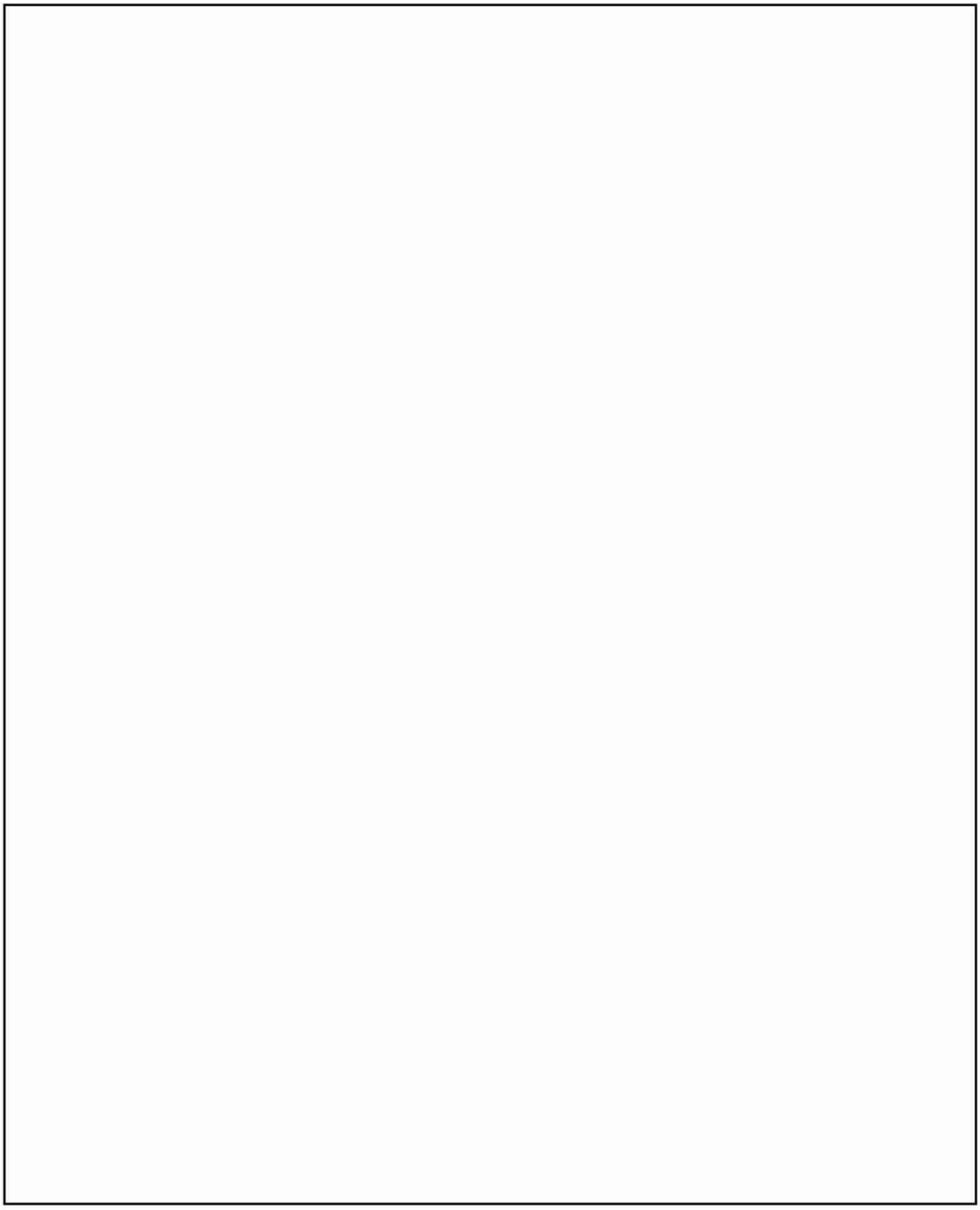
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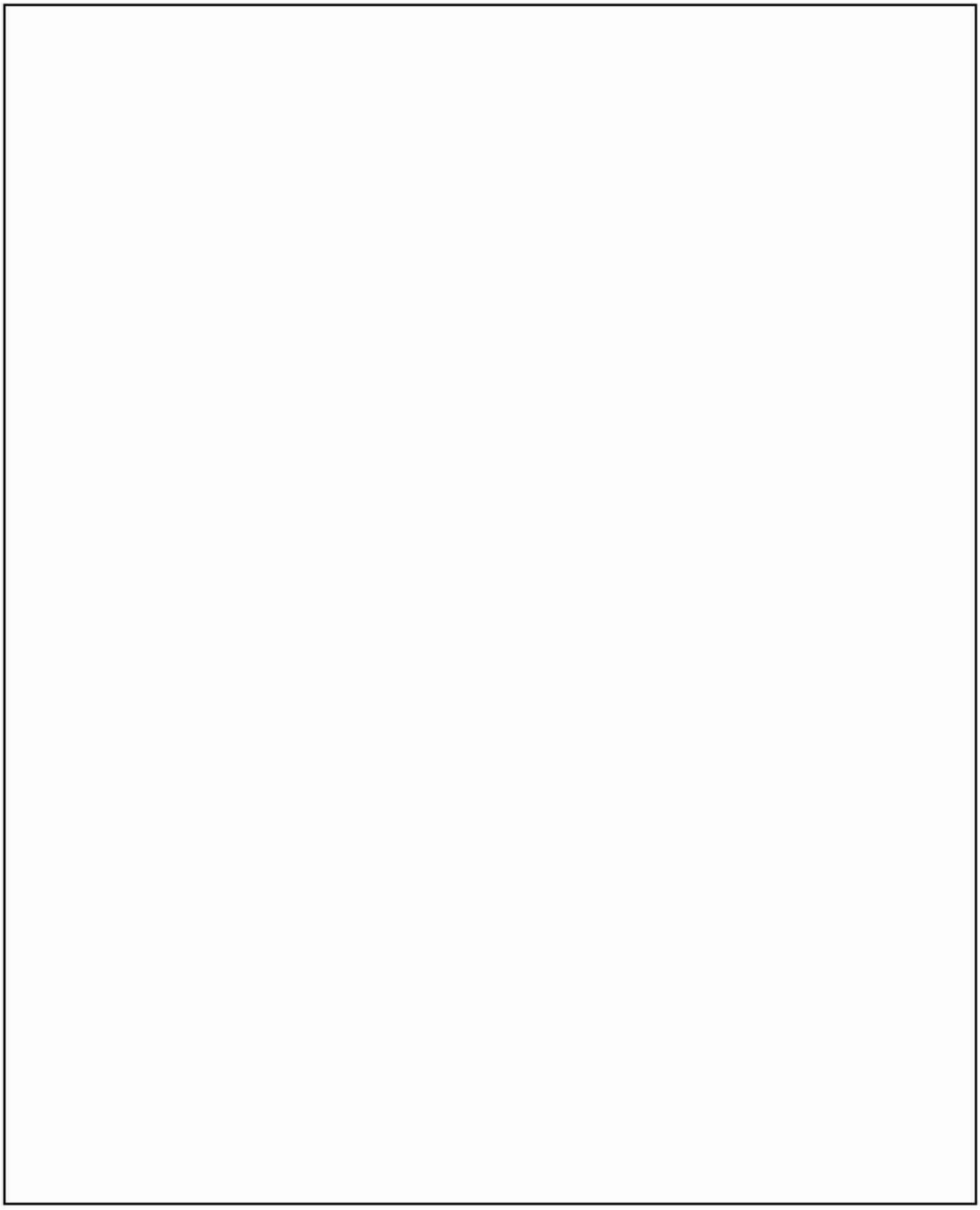
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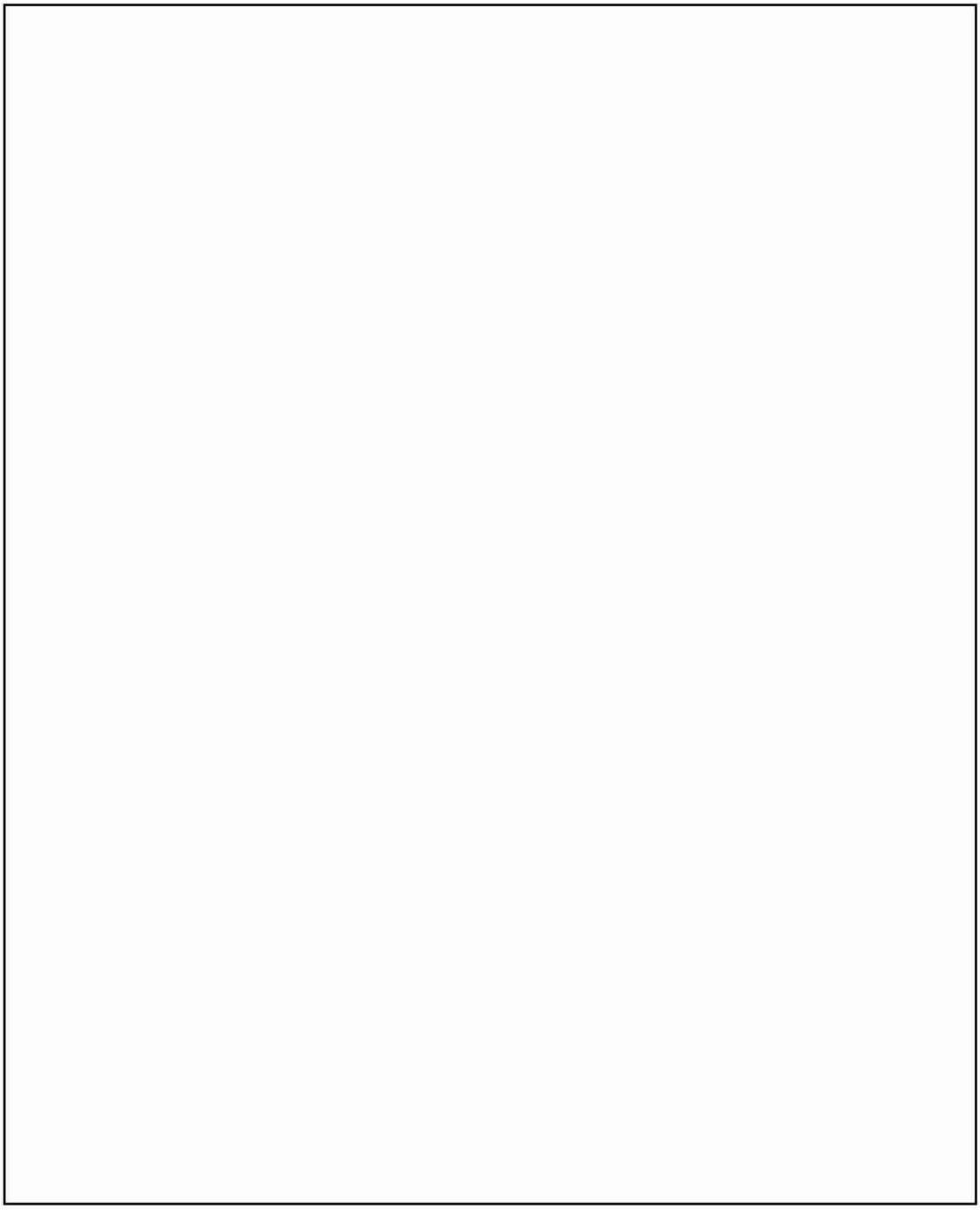
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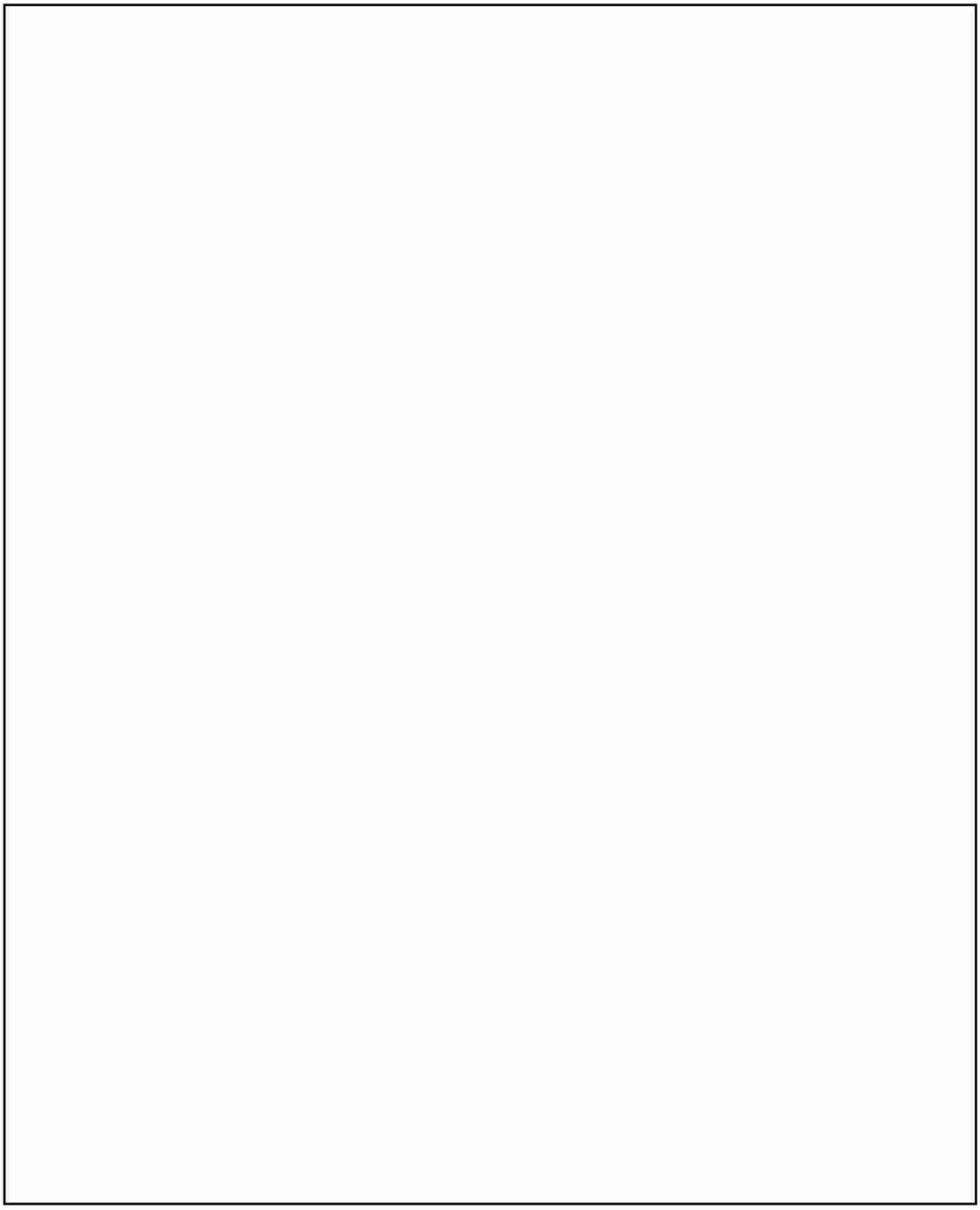
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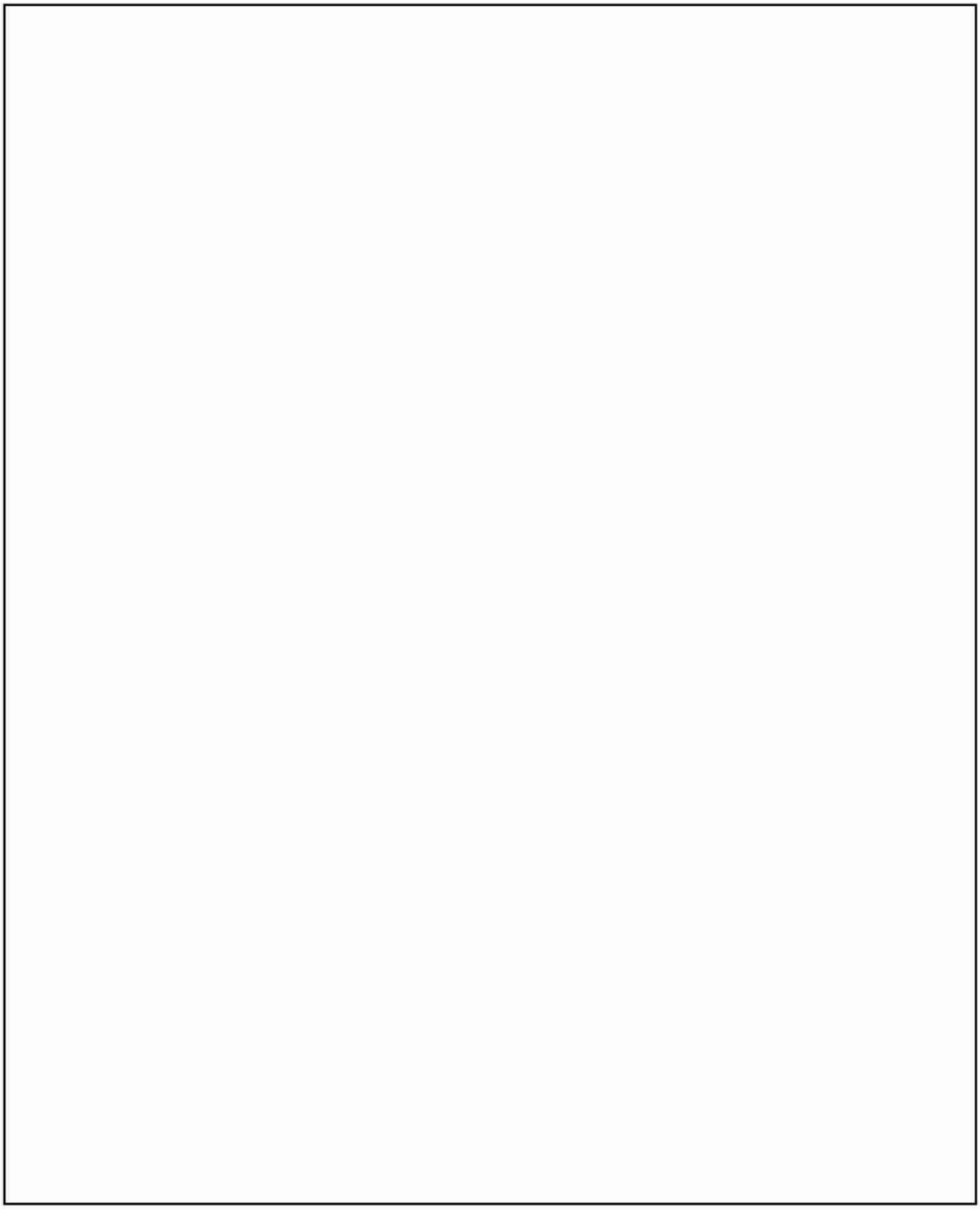
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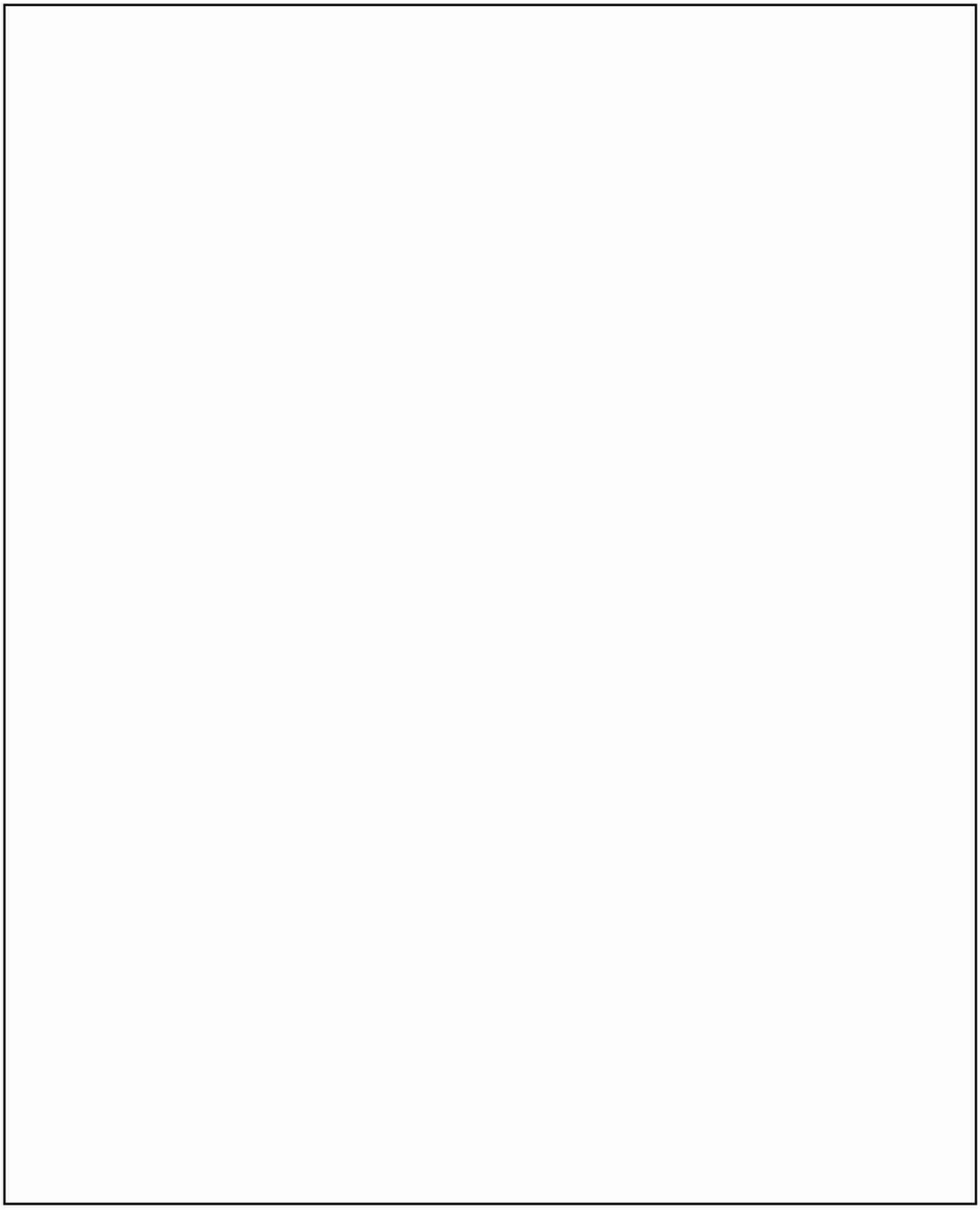
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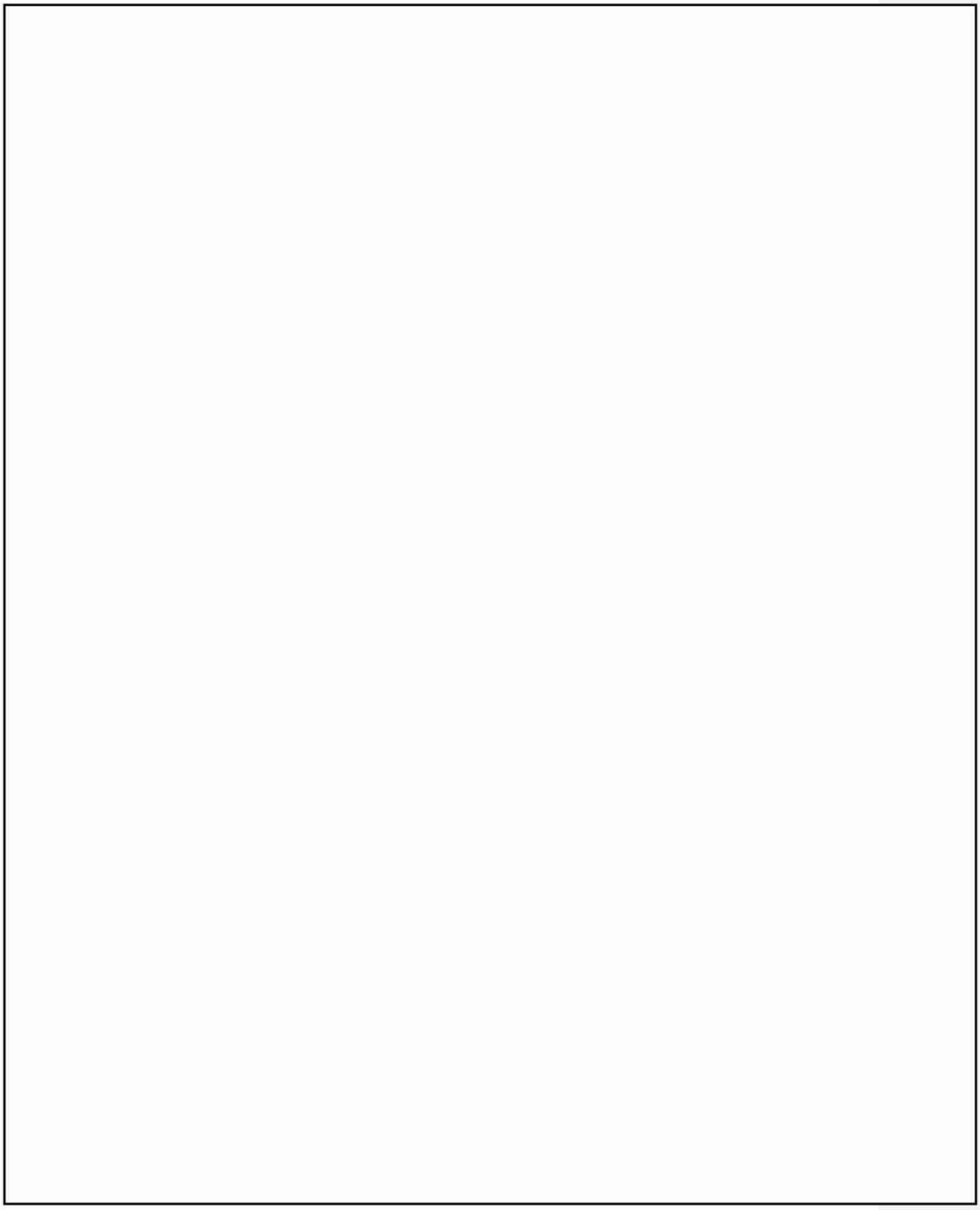
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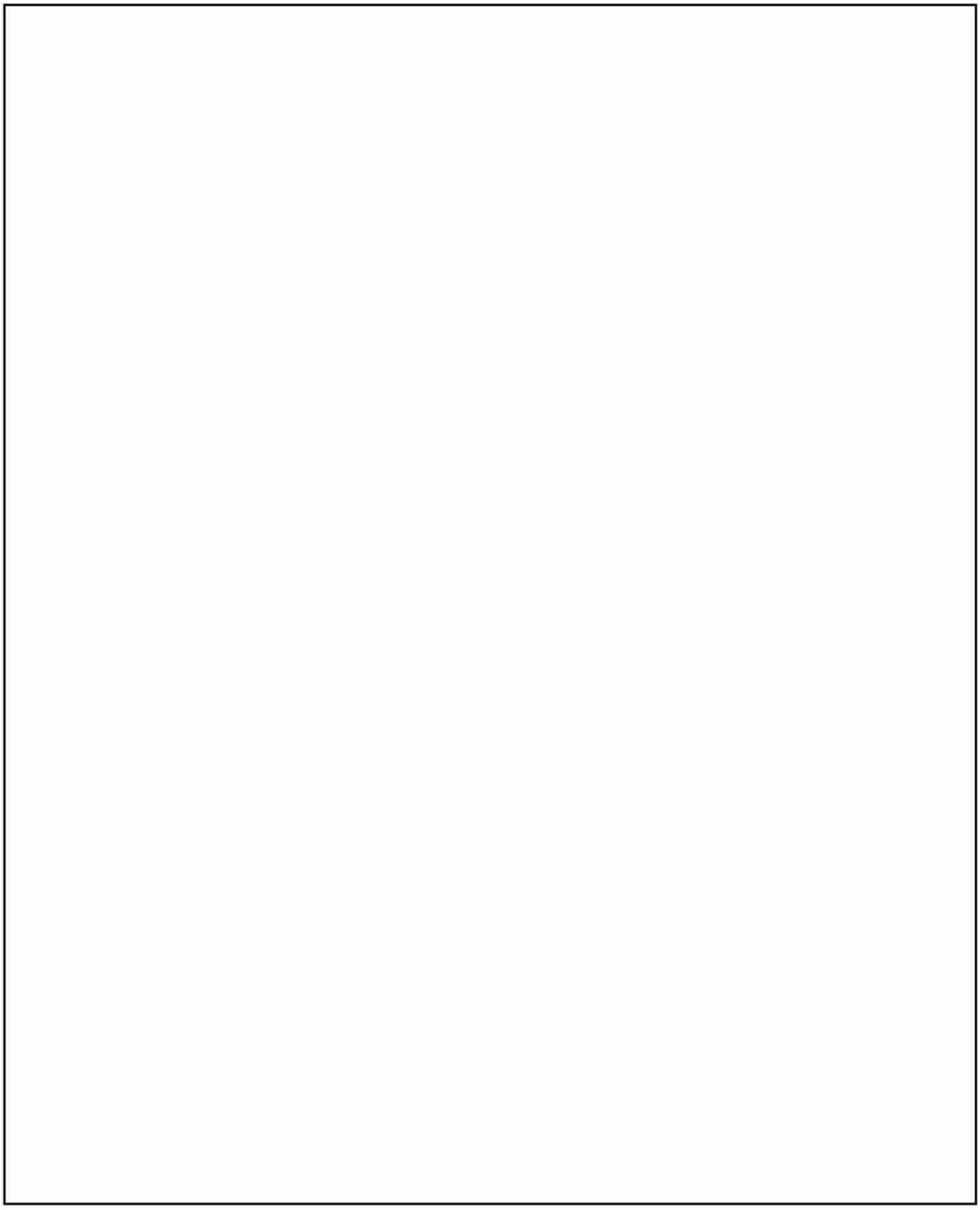
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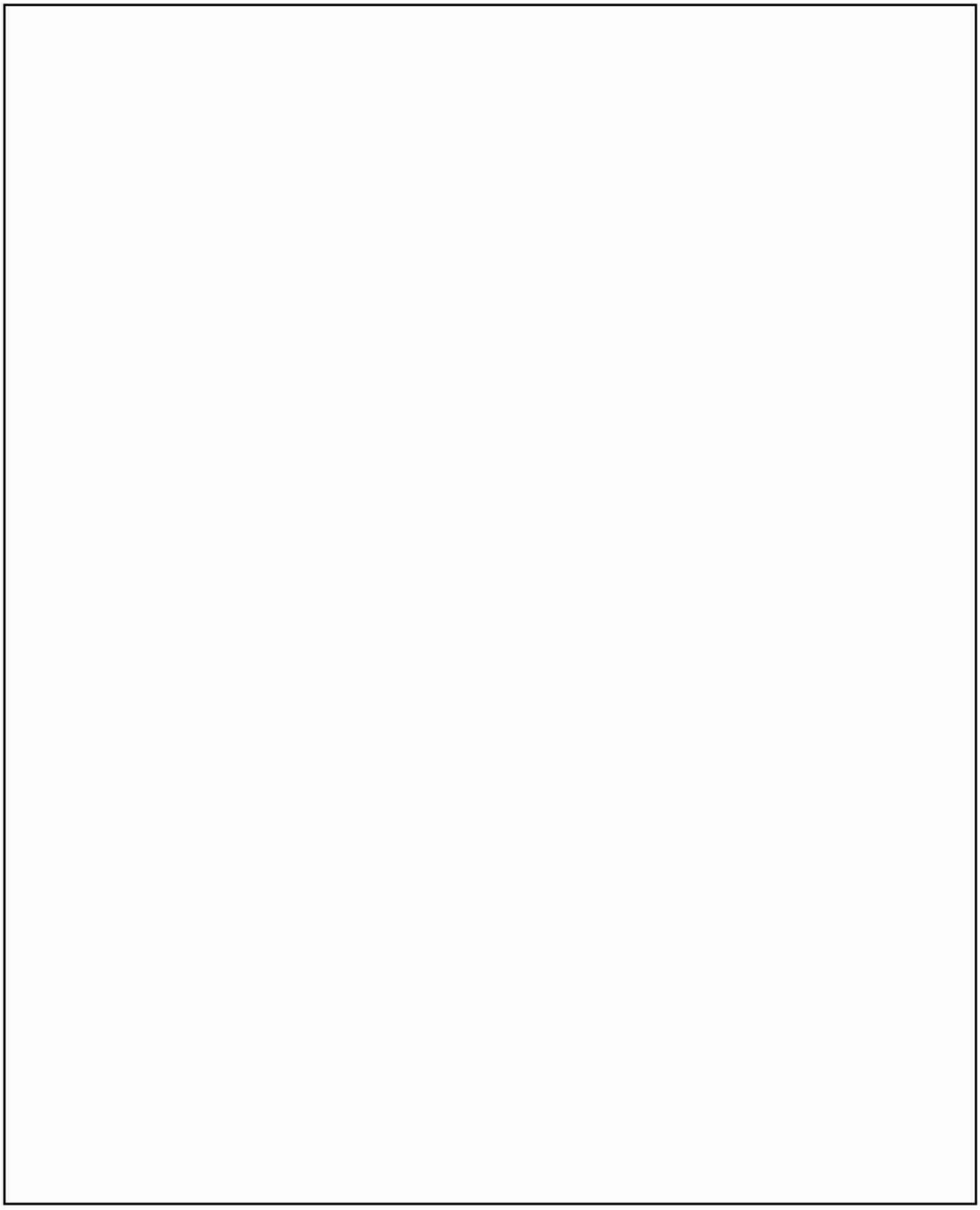
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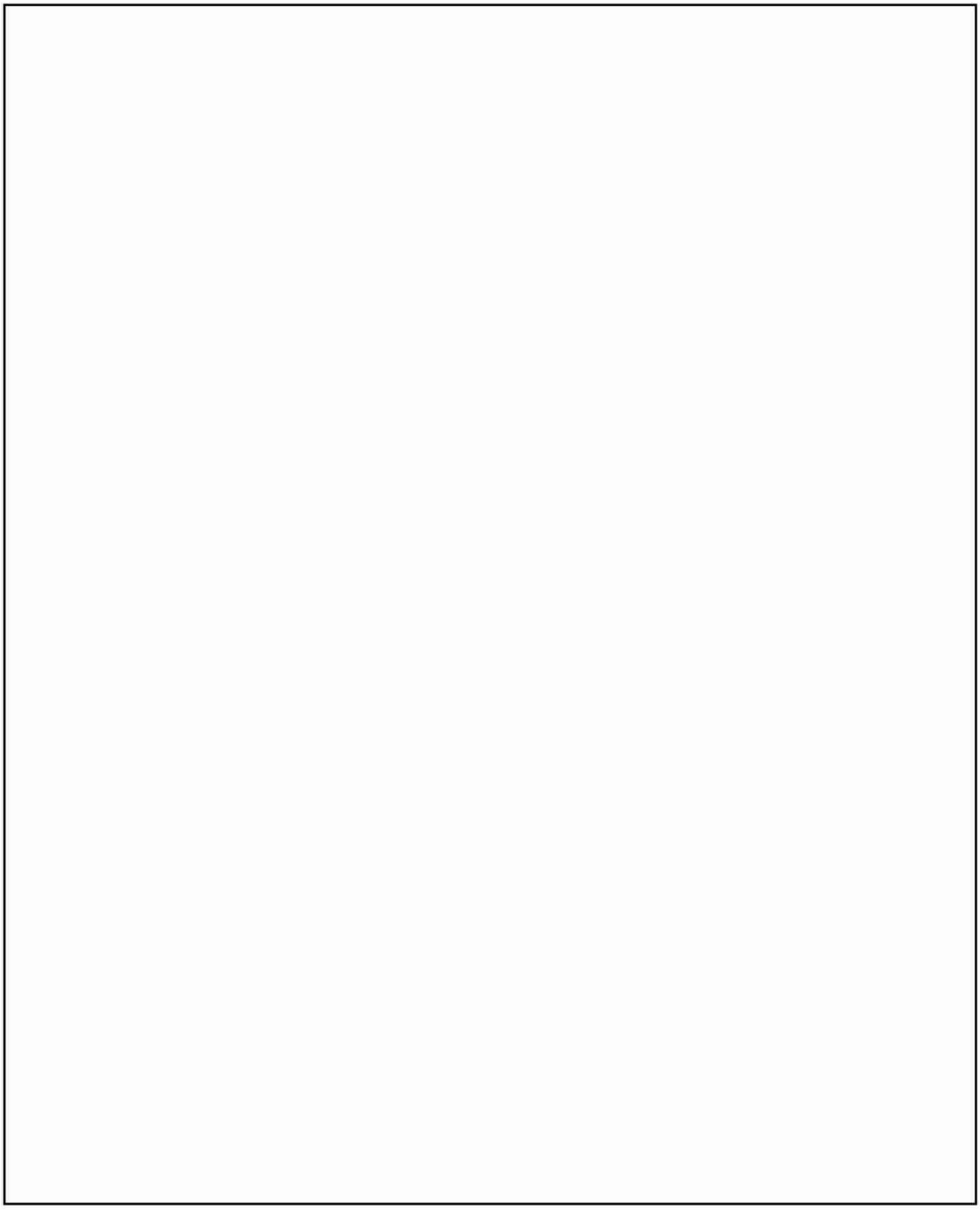
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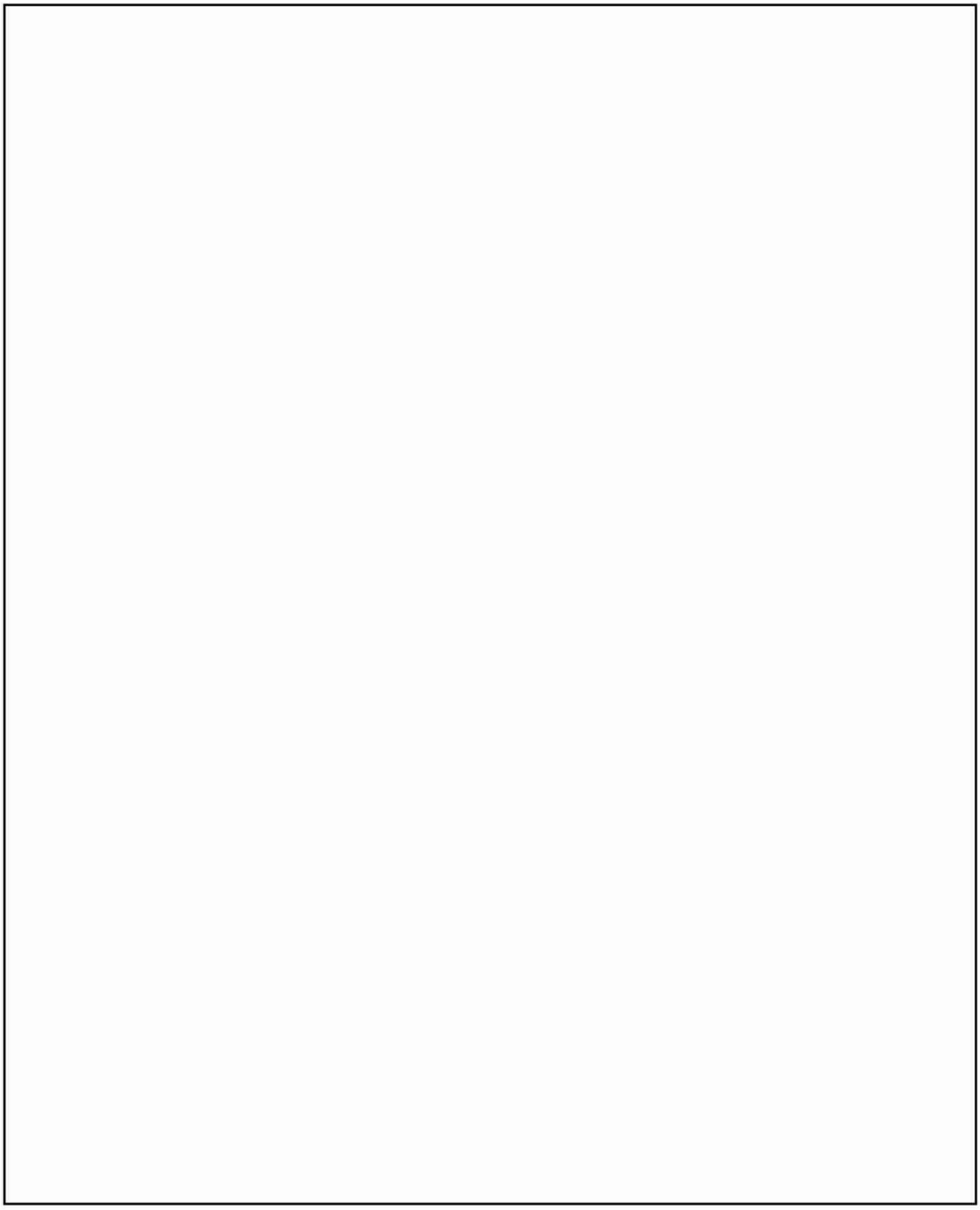
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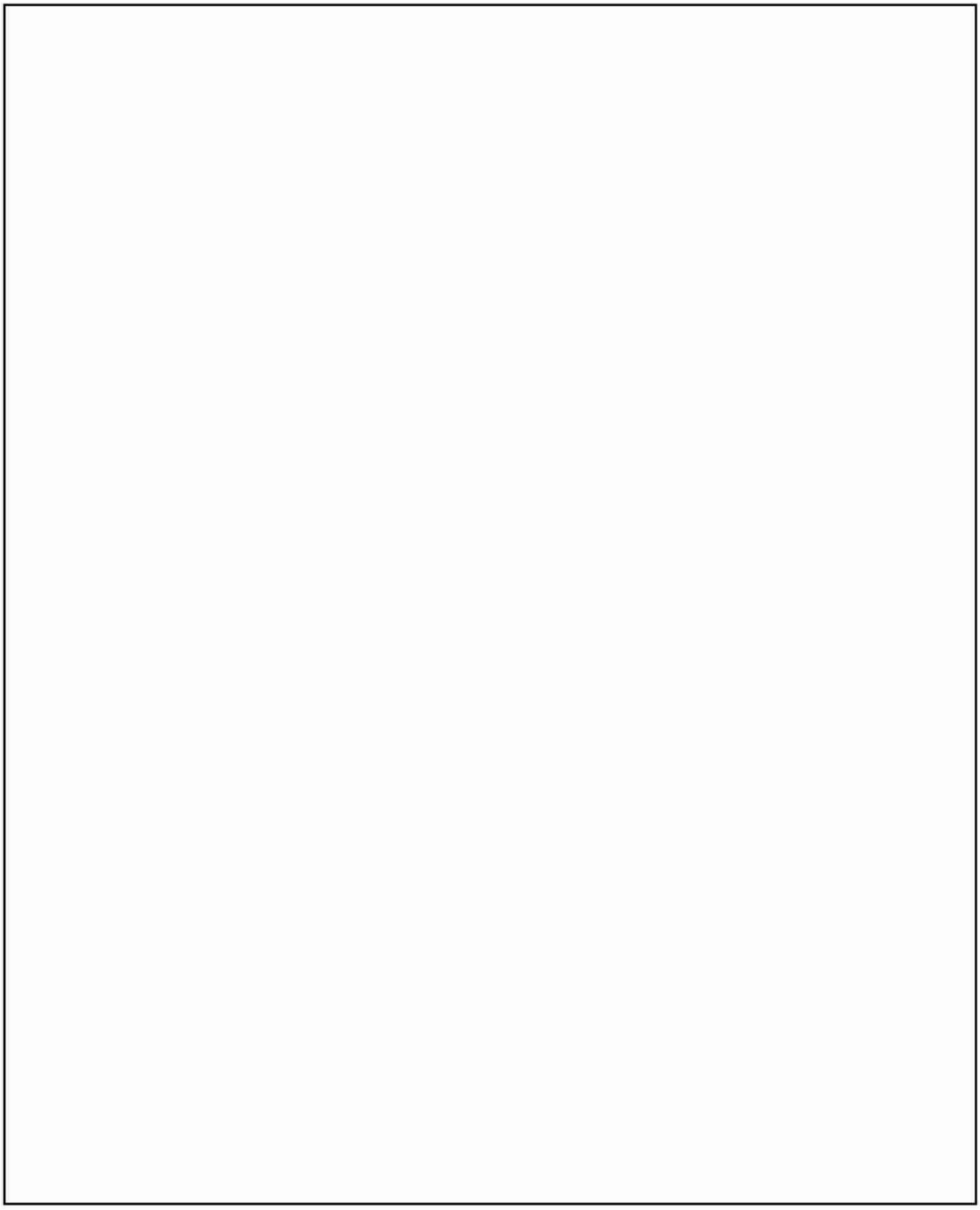
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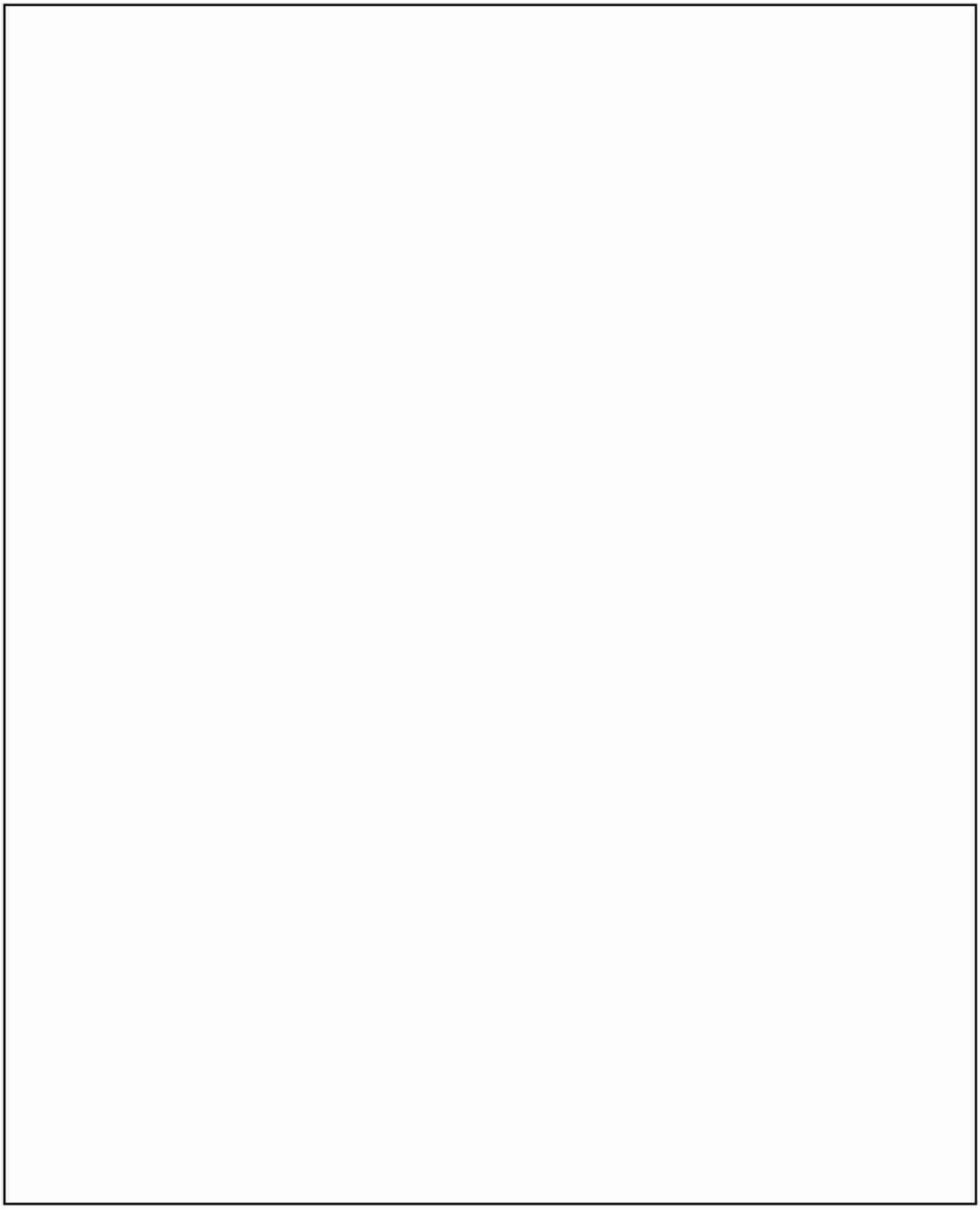
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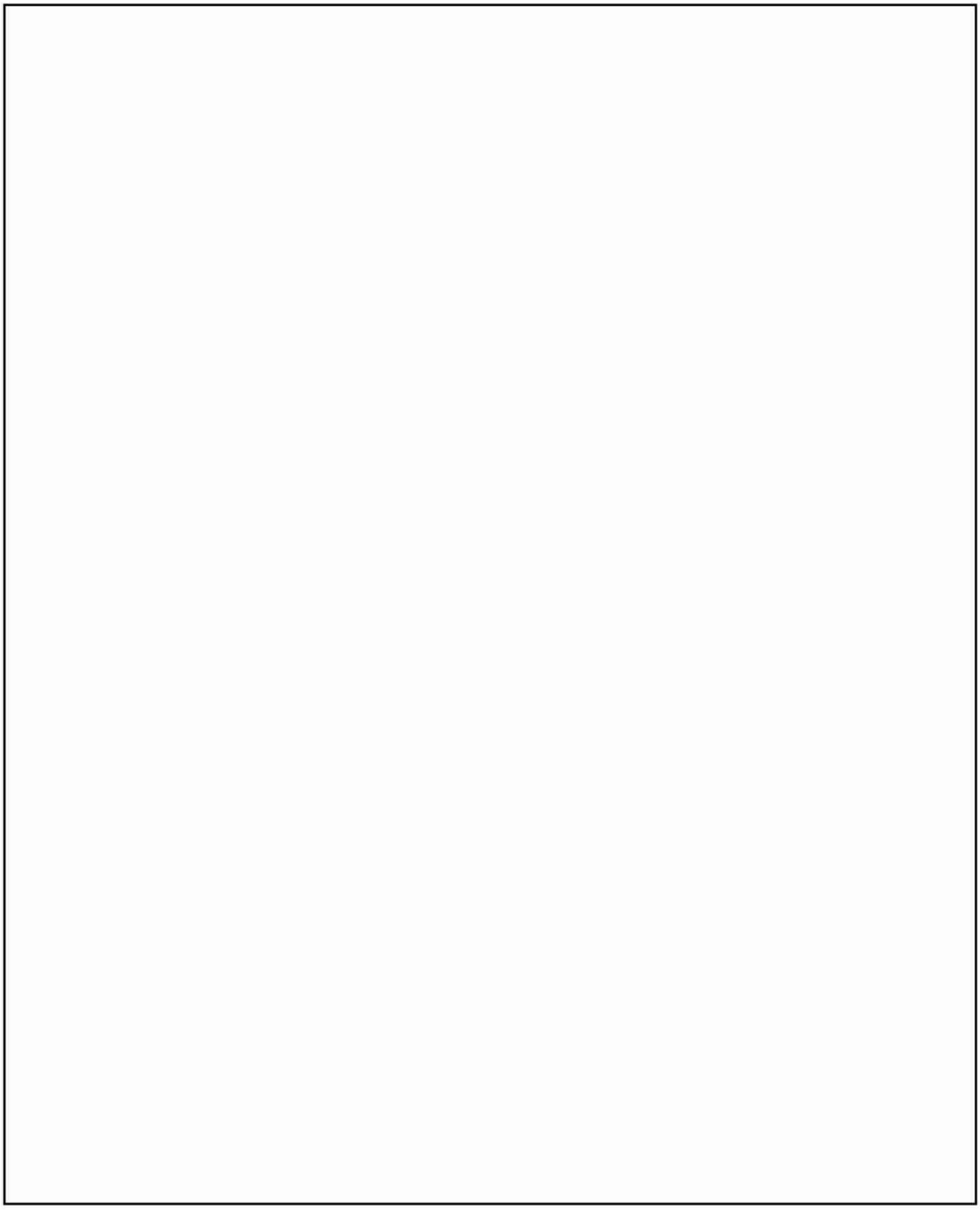
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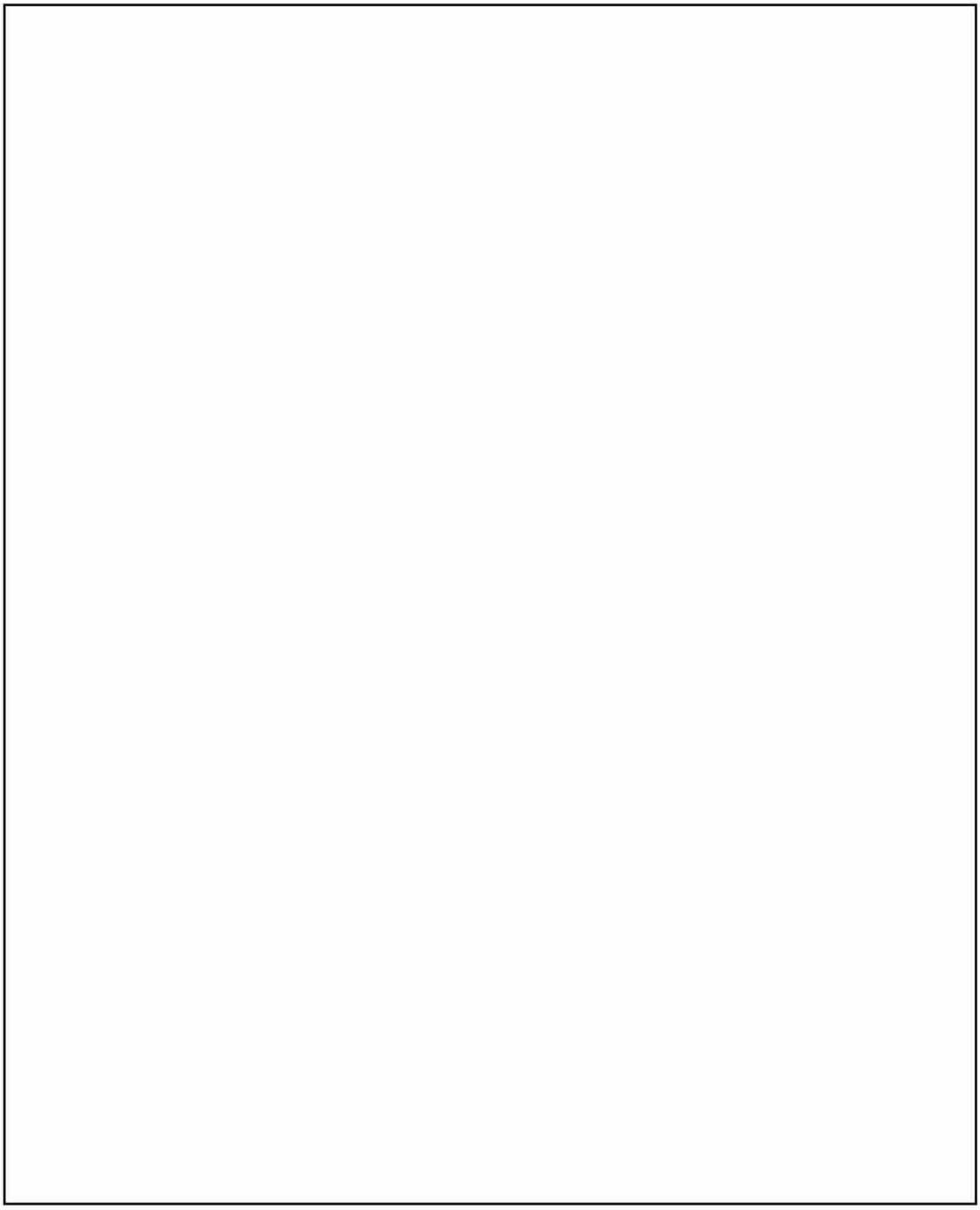
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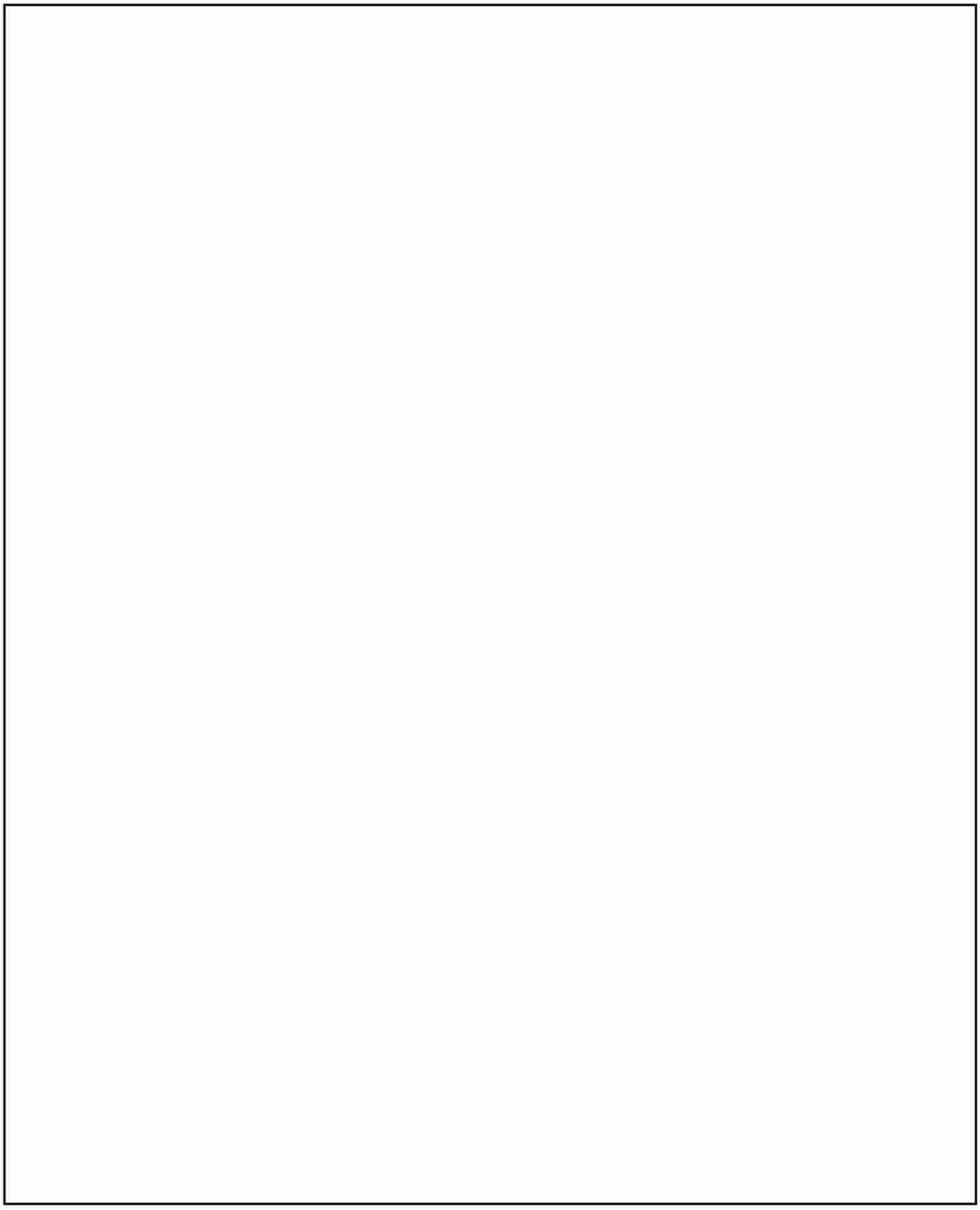
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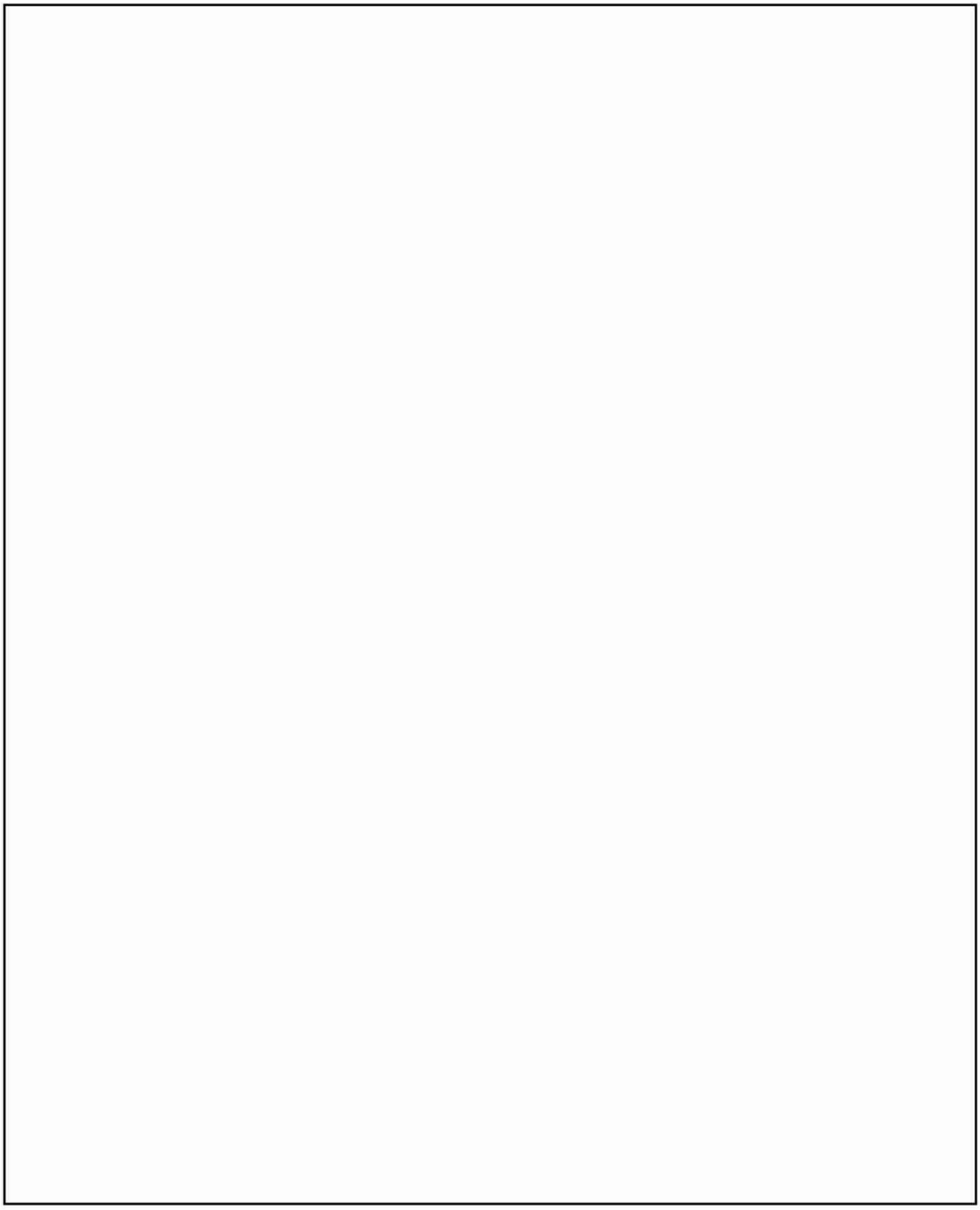
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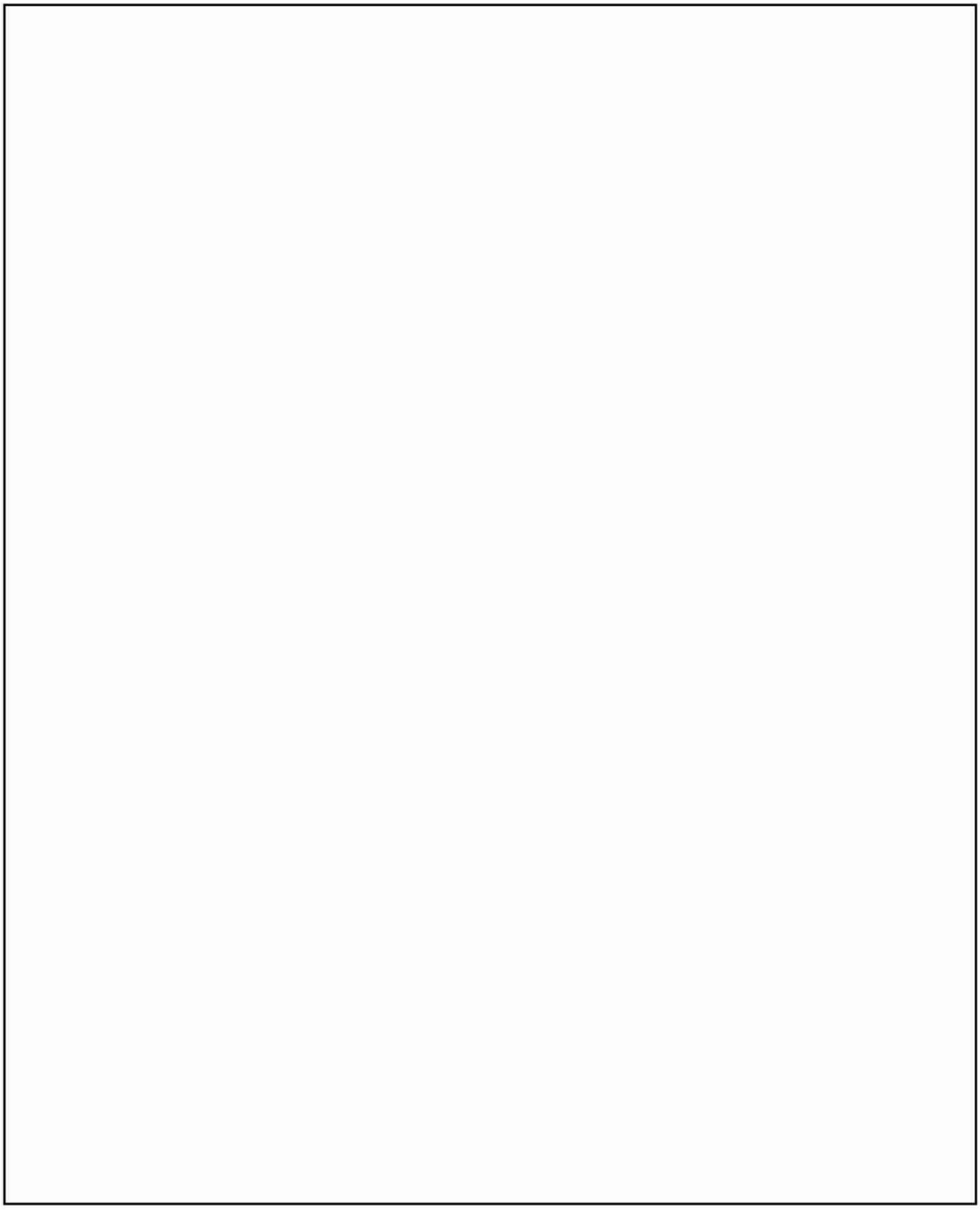
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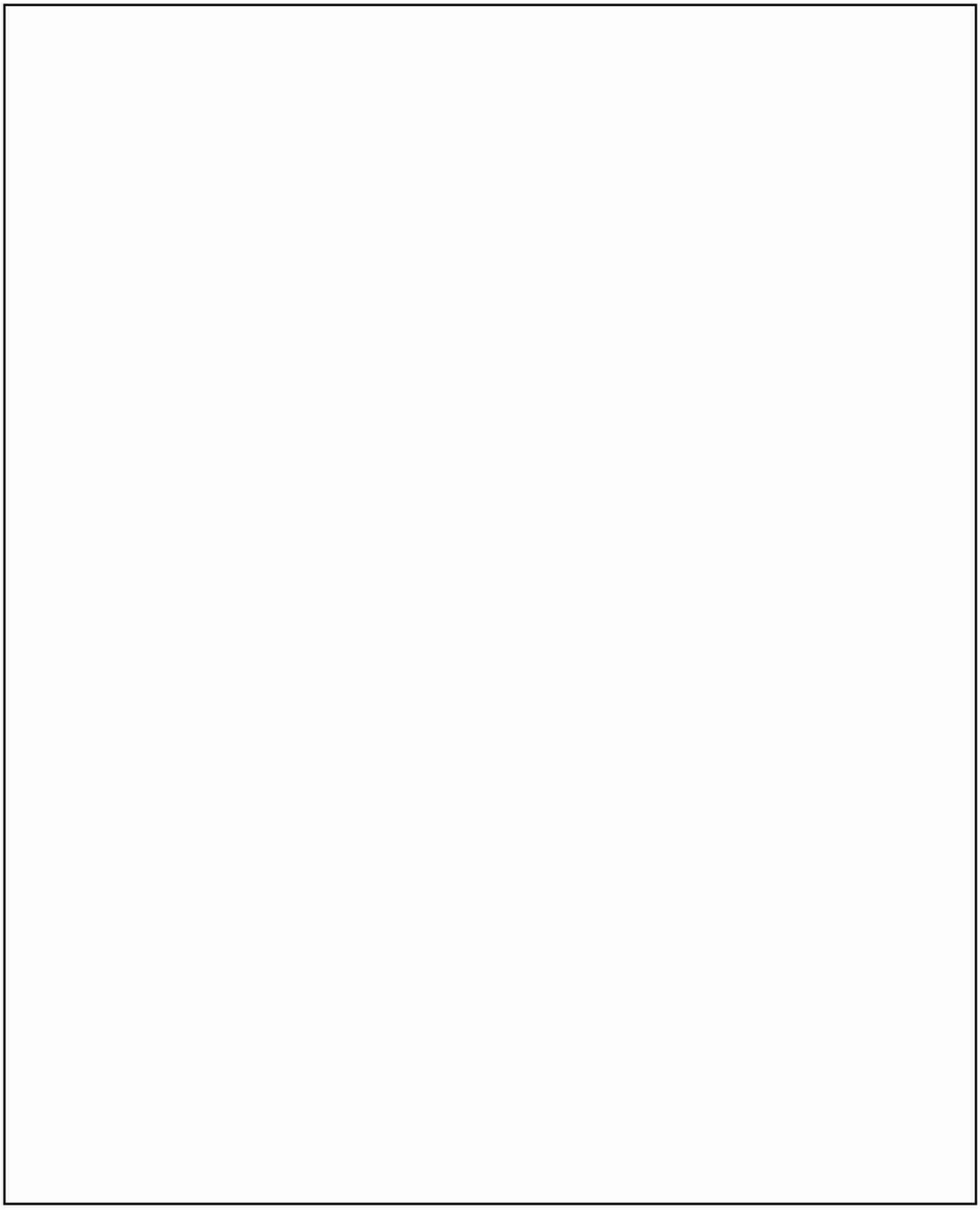
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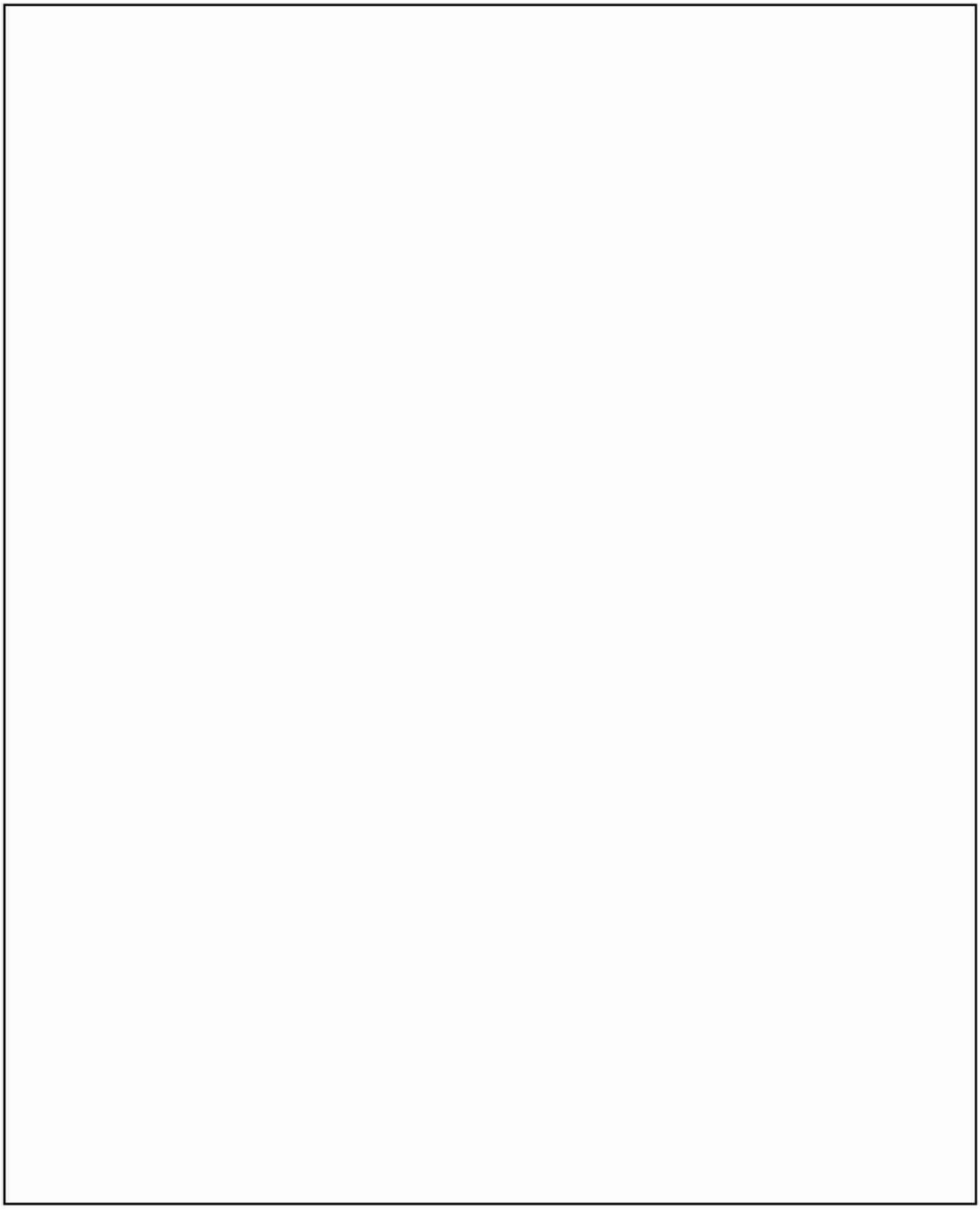
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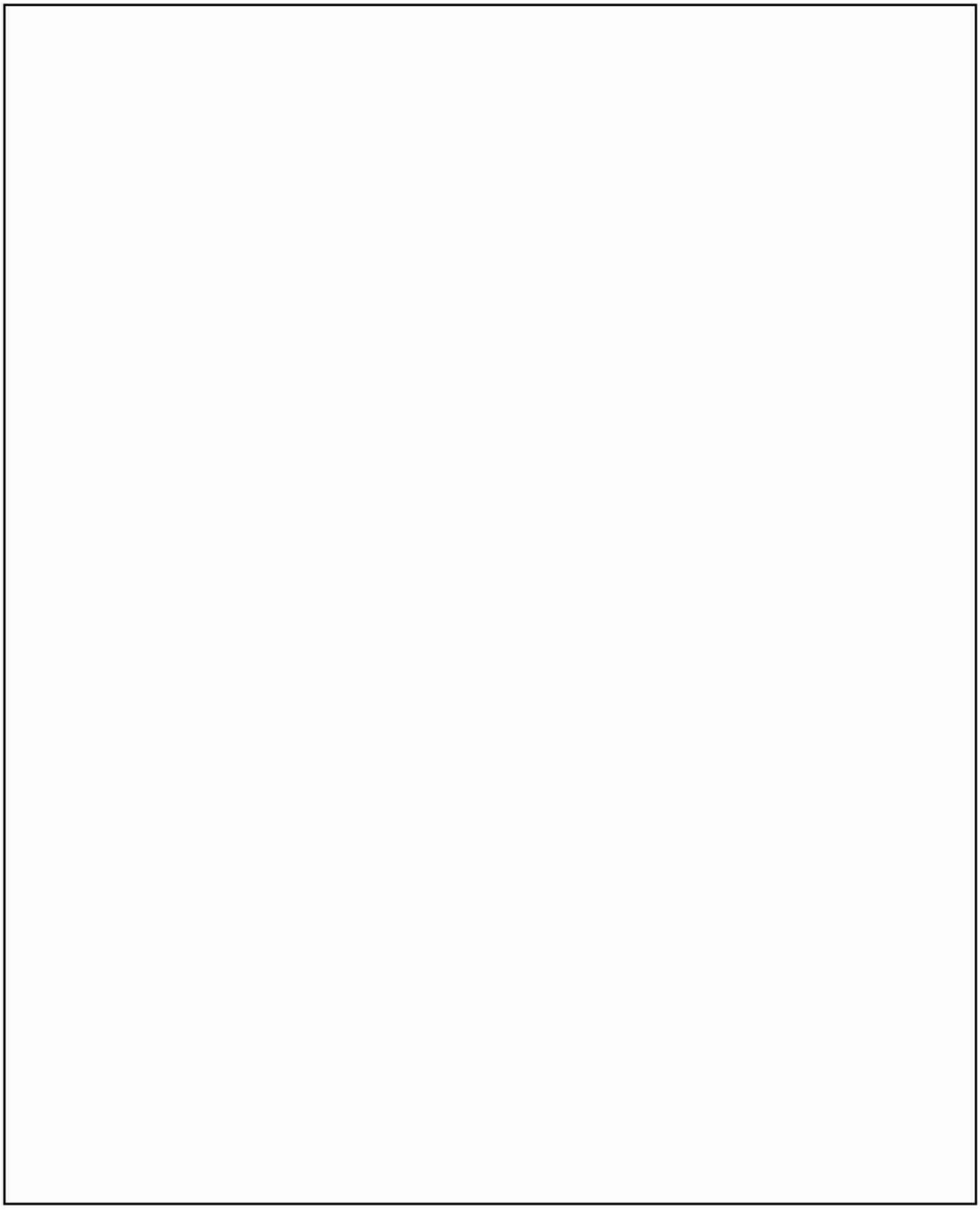
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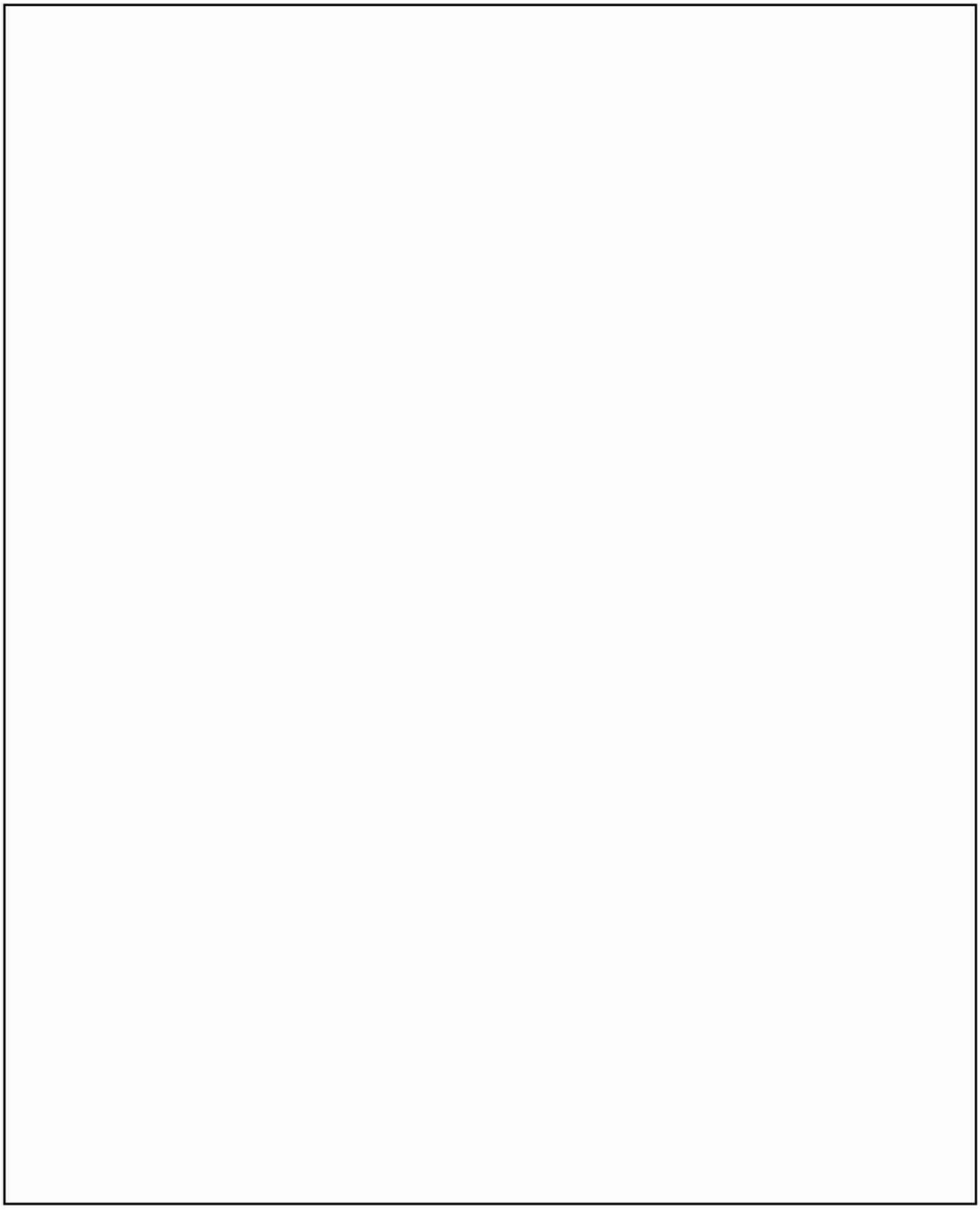
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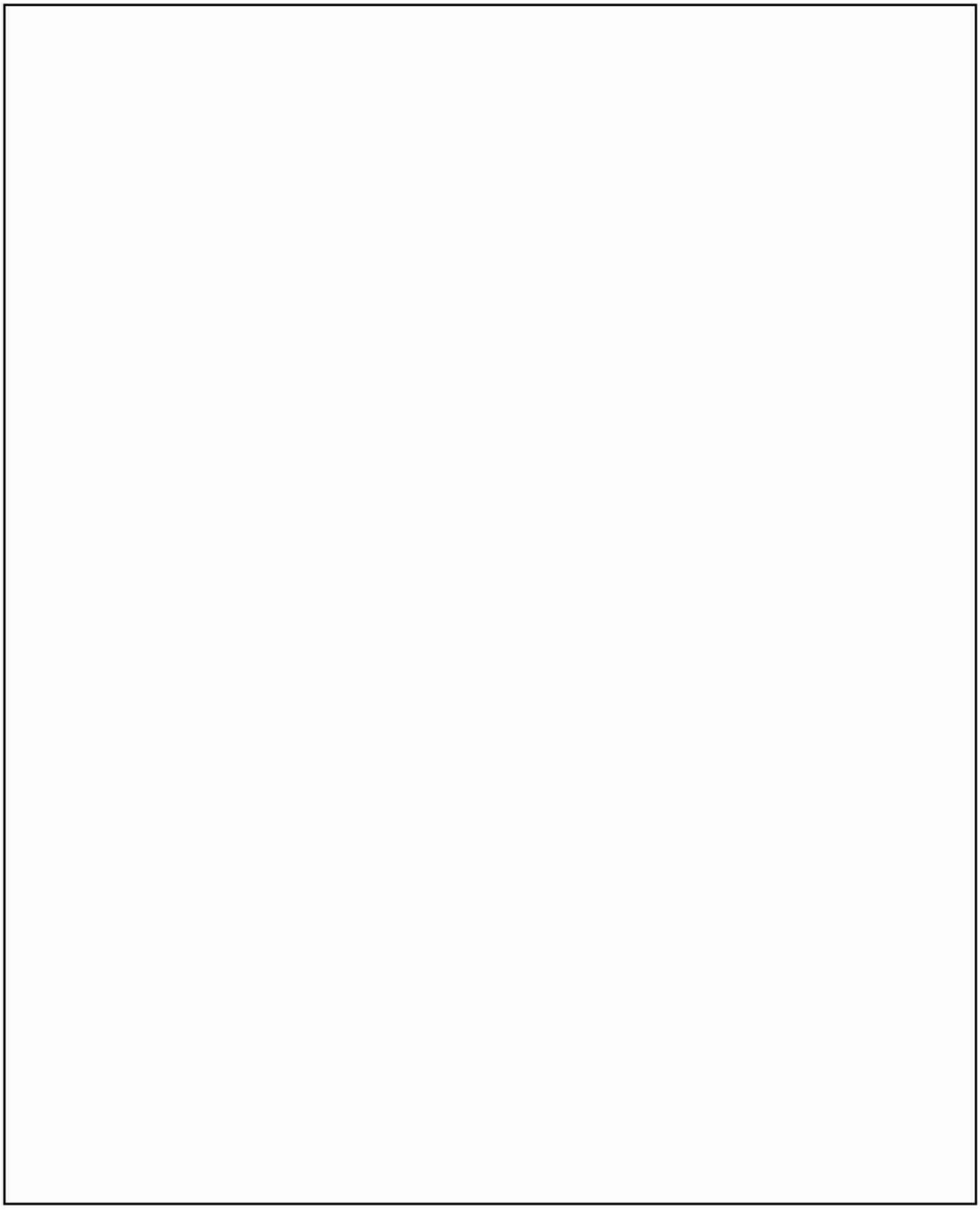
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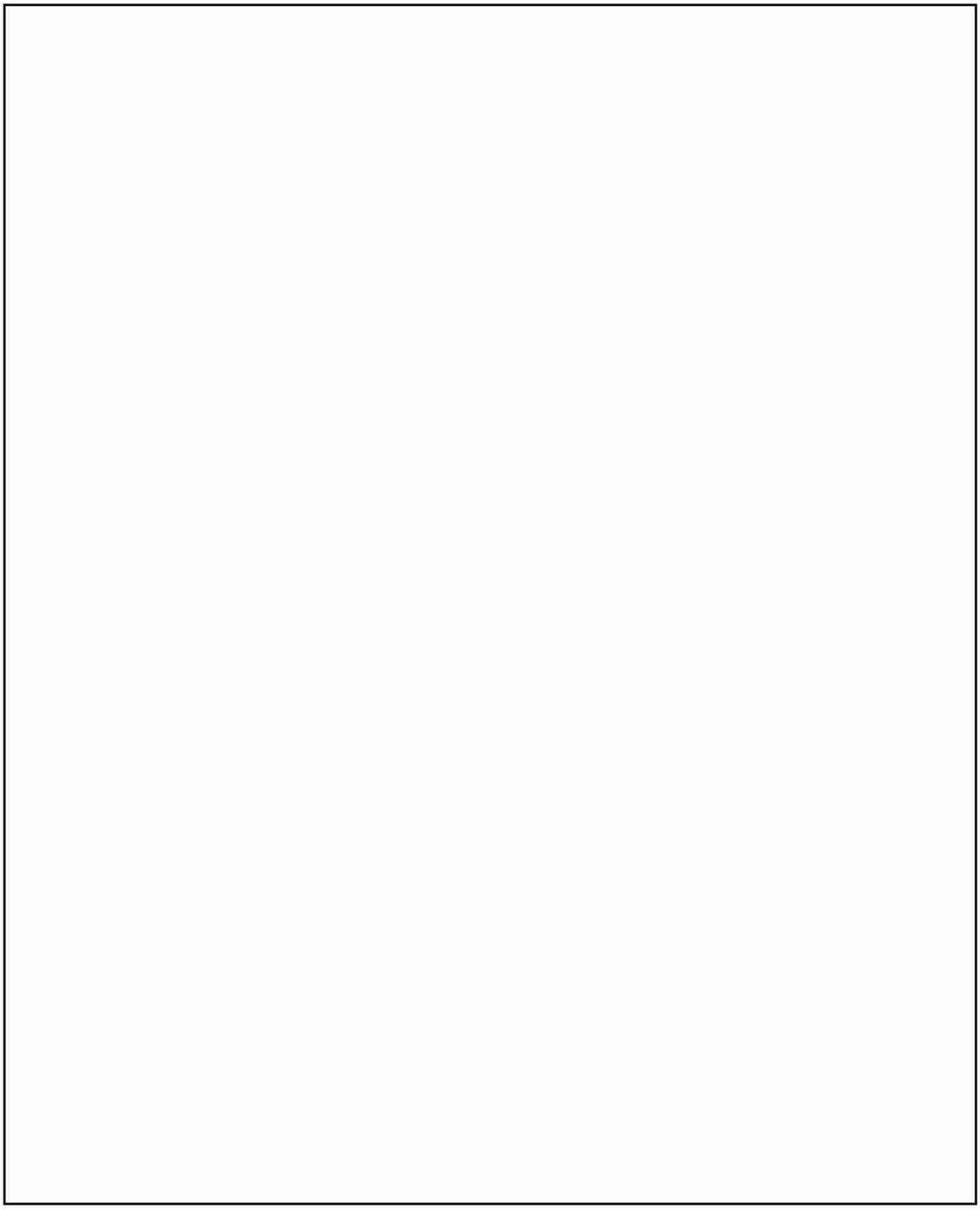
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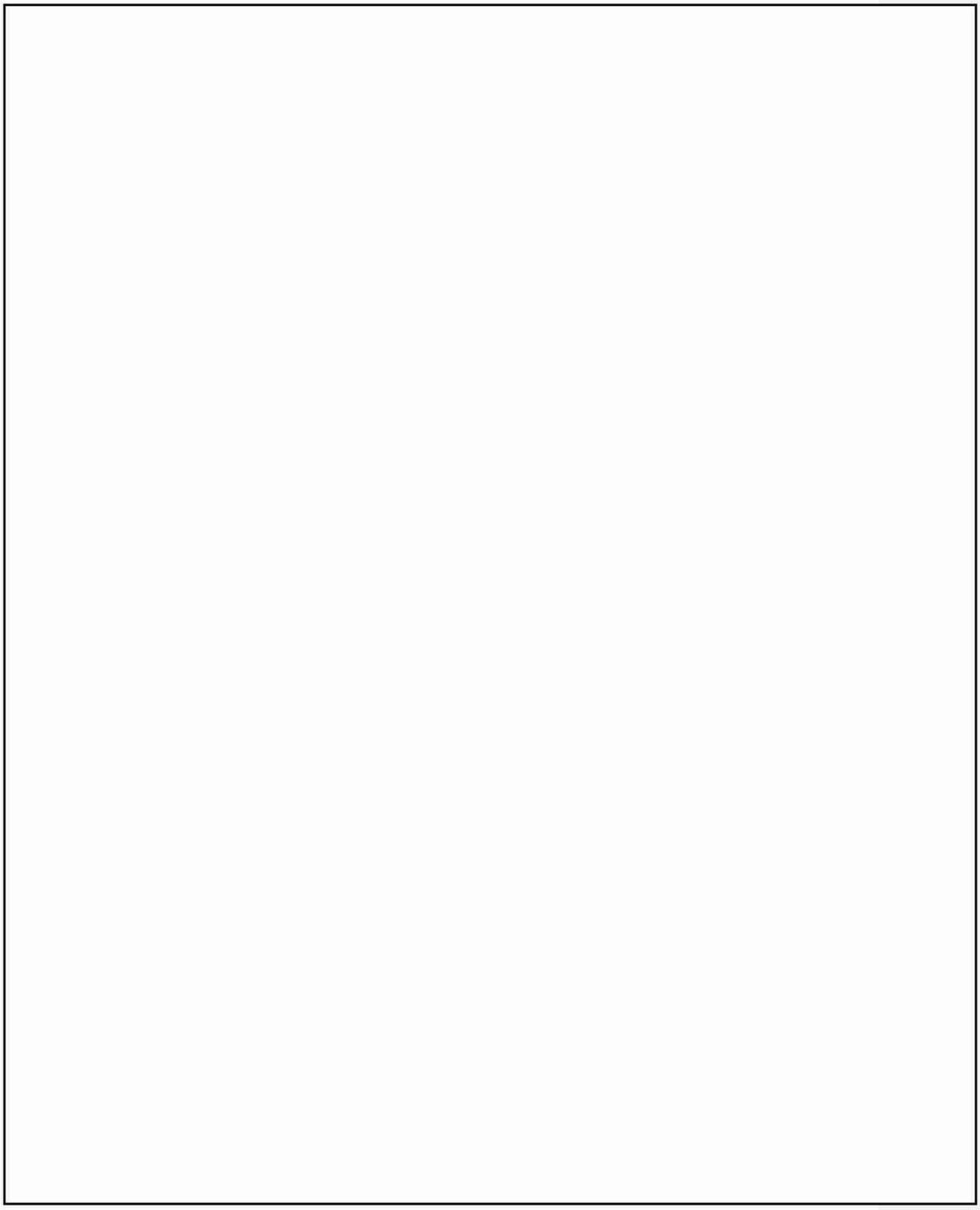
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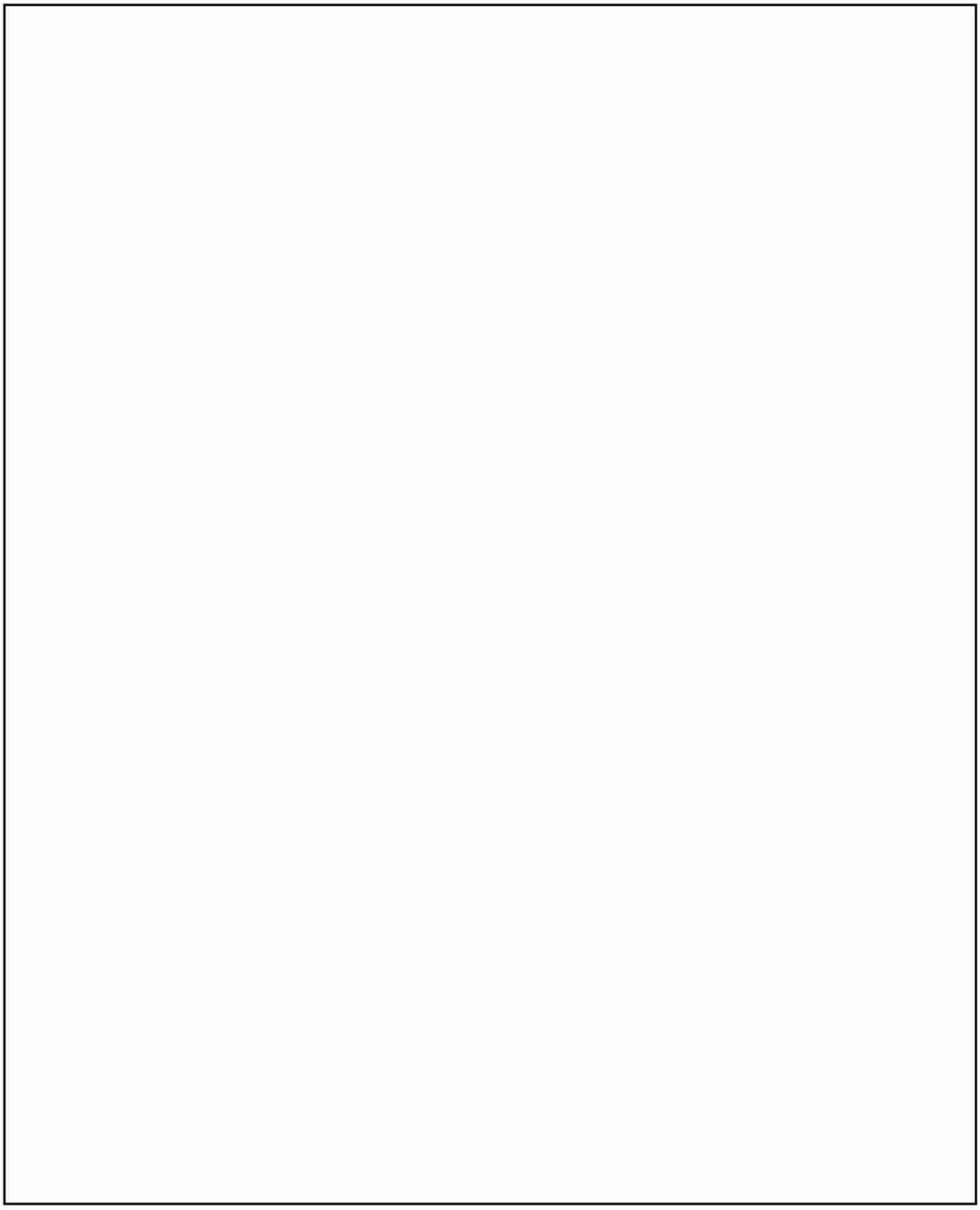
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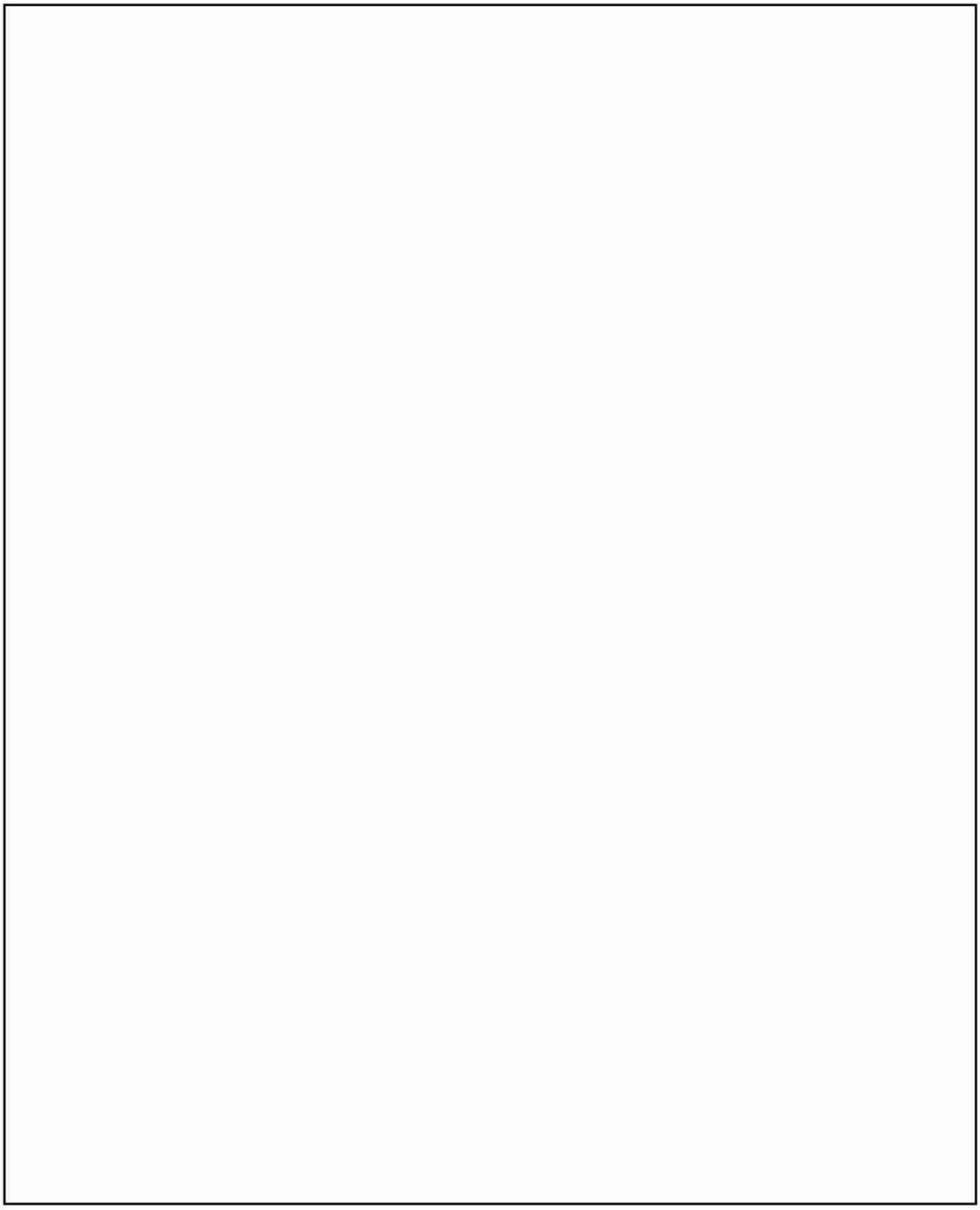
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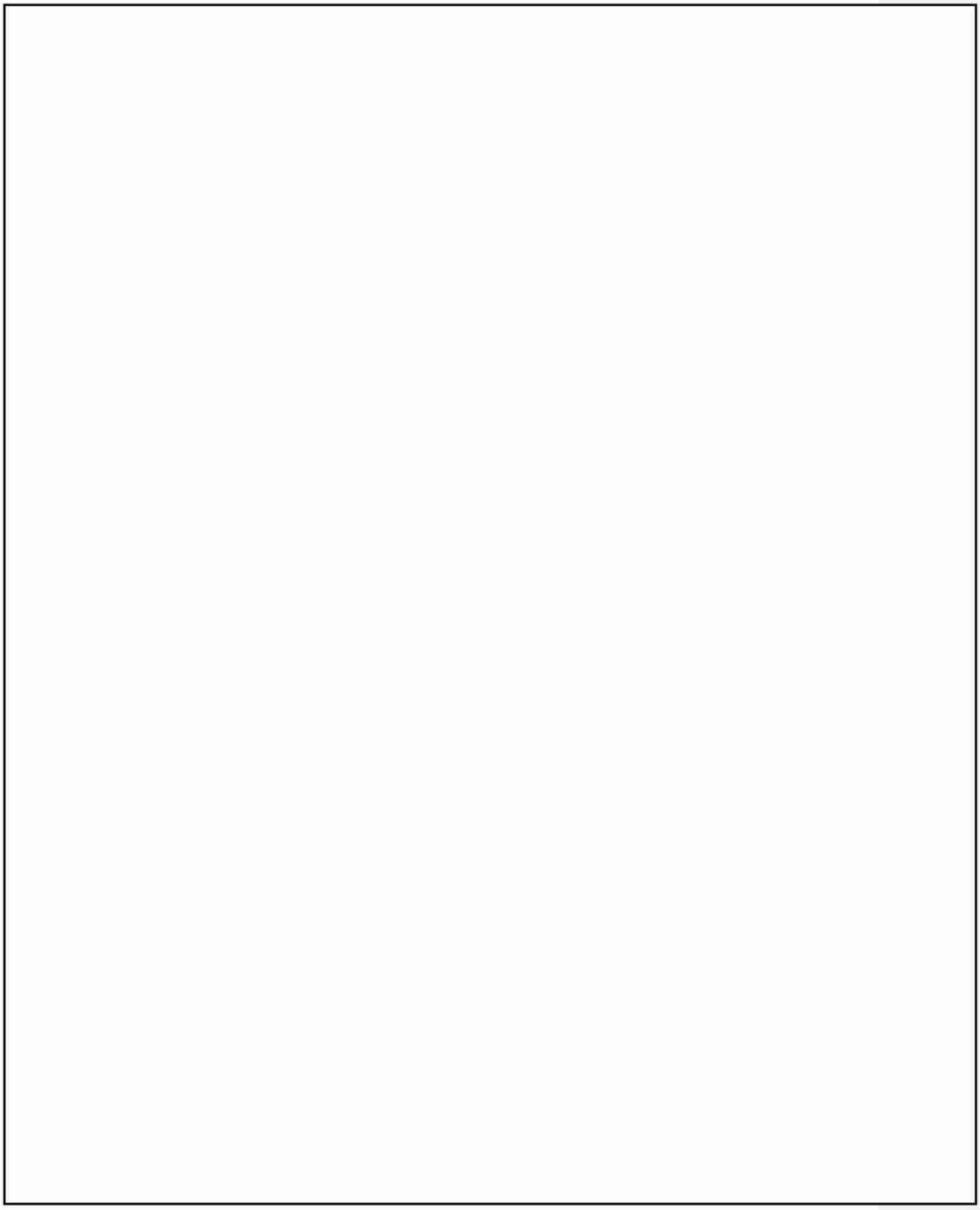
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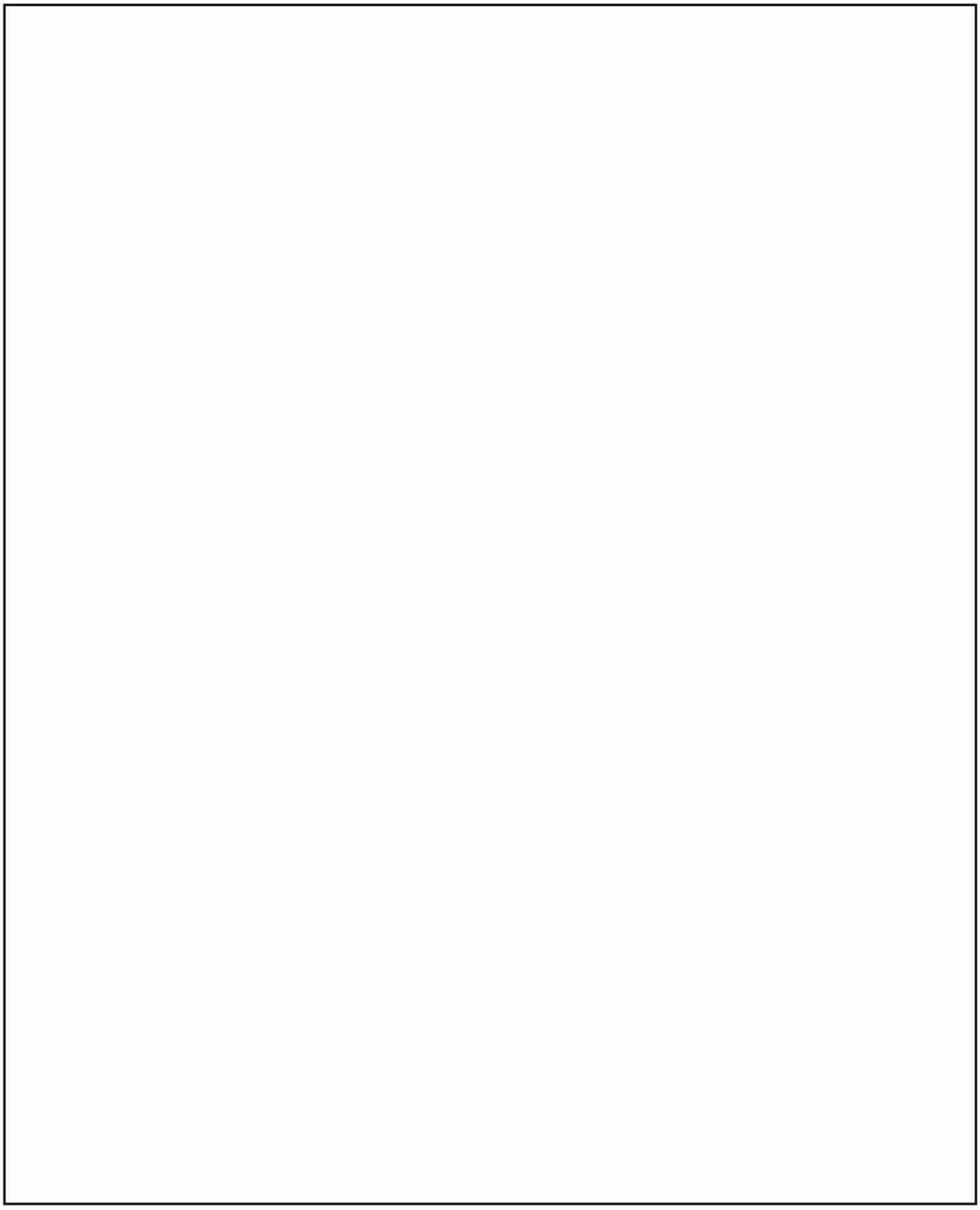
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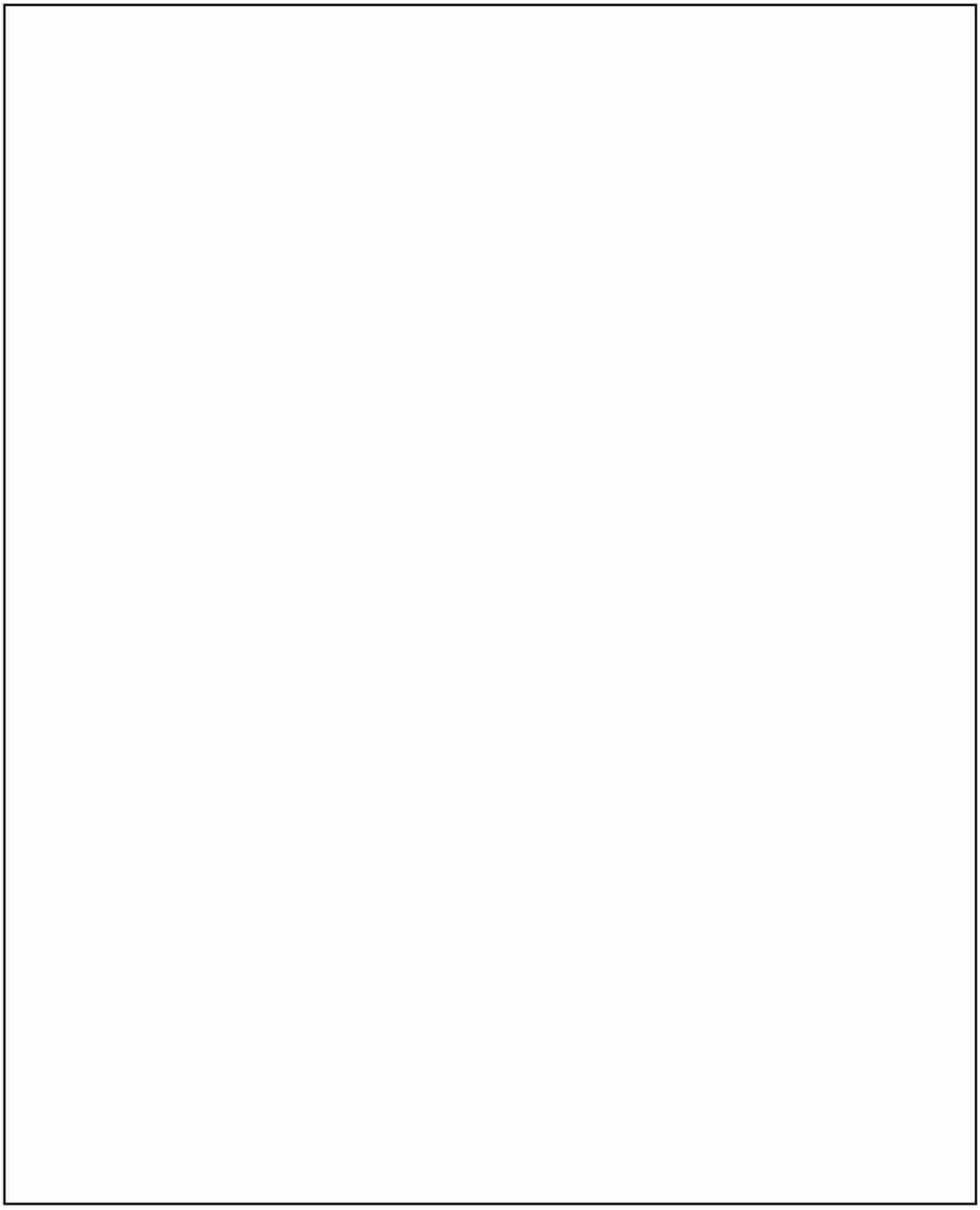
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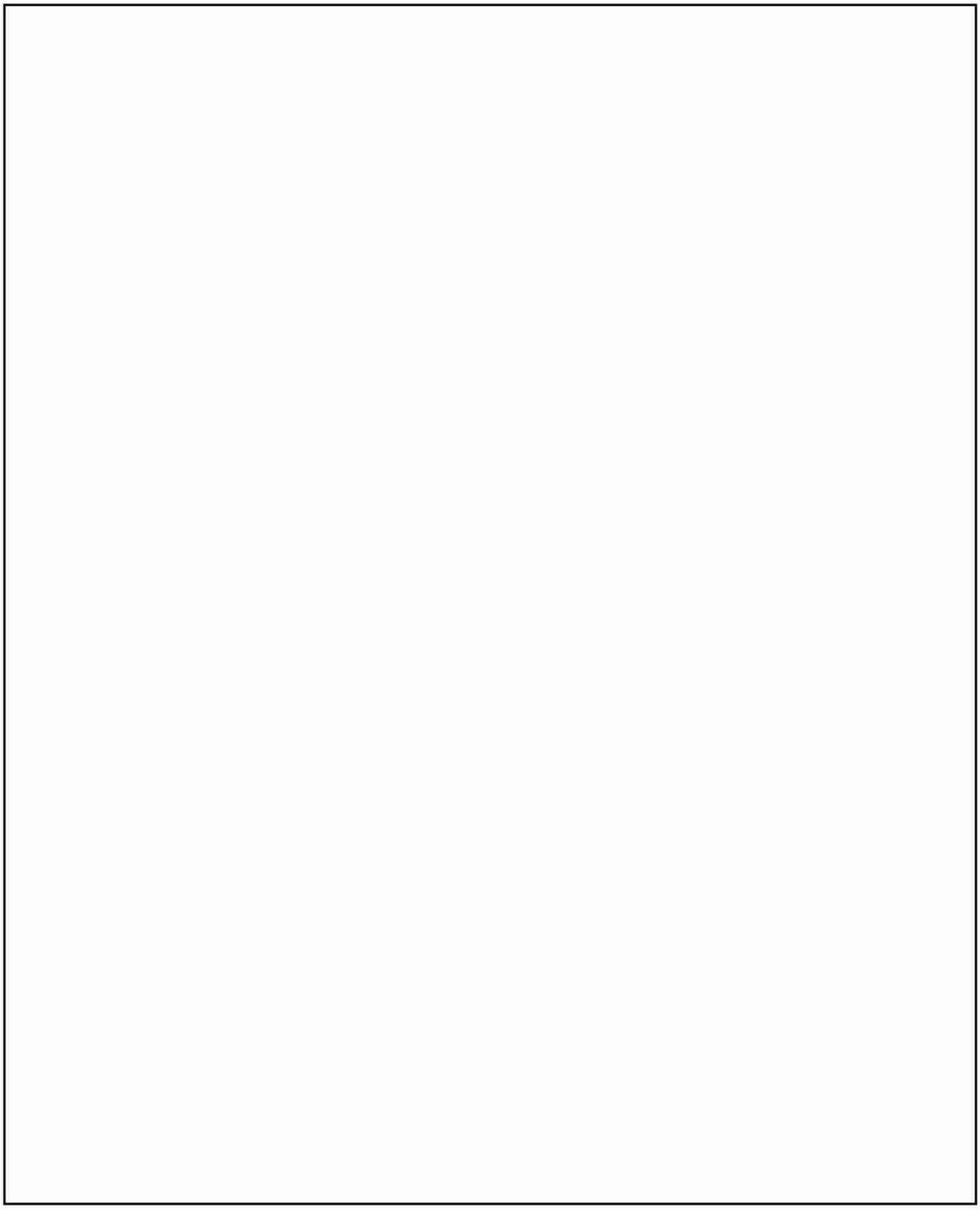
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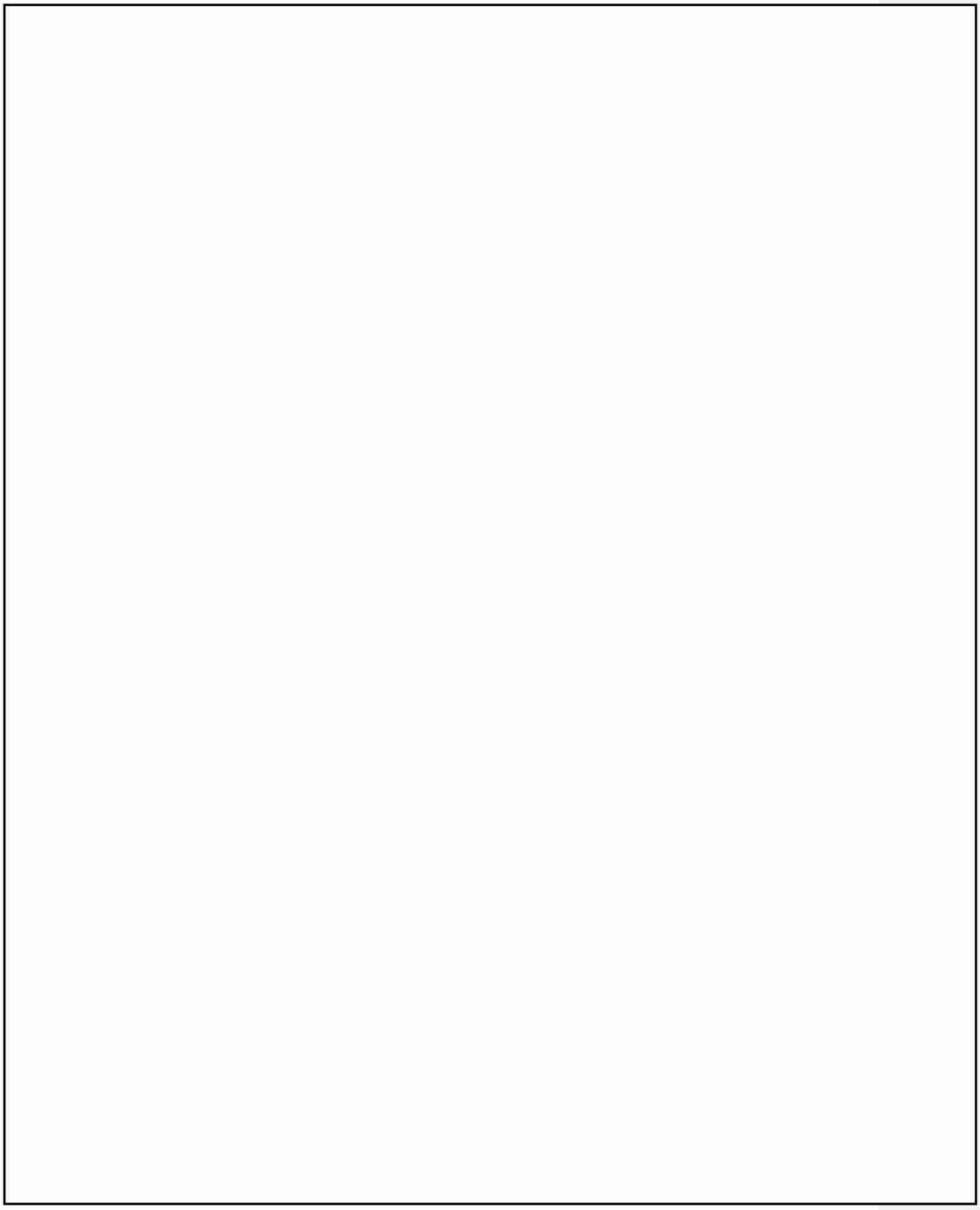
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: USCIS Directors Office Clearance-EXSO; Drake, Johnetta
Sent: July 3, 2020 9:18 AM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf CLEAN.docx

CLEARED
On behalf of the Director's Office, I clear USCIS' response to PM01E & PM10A Discretion Initial Parts STARS#27432 with no additional edits/comments from the Director's Office. When sending the USCIS clearance, please include any edits/comments submitted by the directorates or program offices that reviewed. Thanks!

(b)(6)

From: Kilgore, Garry R
Sent: Thursday, July 2, 2020 4:46 PM
To: Bailey, Morgan; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S

Due date: COB, July 2

Request: OP&S resubmitting updated documents that address DO feedback.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues

From: Bailey, Morgan
Sent: Wednesday, July 01, 2020 7:35 PM
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to M01E & PM10A Discretion Initial Parts STARS#27432 with edits/comments from the Director's Office. Thanks!

AMERICAN OVERSIGHT

(b)(6)

From: Drake, Johnetta [redacted]>
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clearances:
AAO: [redacted]
FDNS
FOD:
OCC:
OP&S
RAIO:
SCOP
EXA: FYI only

Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

Please respond to all on this email

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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[redacted]

DELIBERATIVE DRAFT

AMERICAN OVERSIGHT

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Deliberative - Pre-De

AMERICAN OVERSIGHT

DHS-20-2156-A-002840

FOR OFFICIAL USE ONLY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

(b)(5)

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

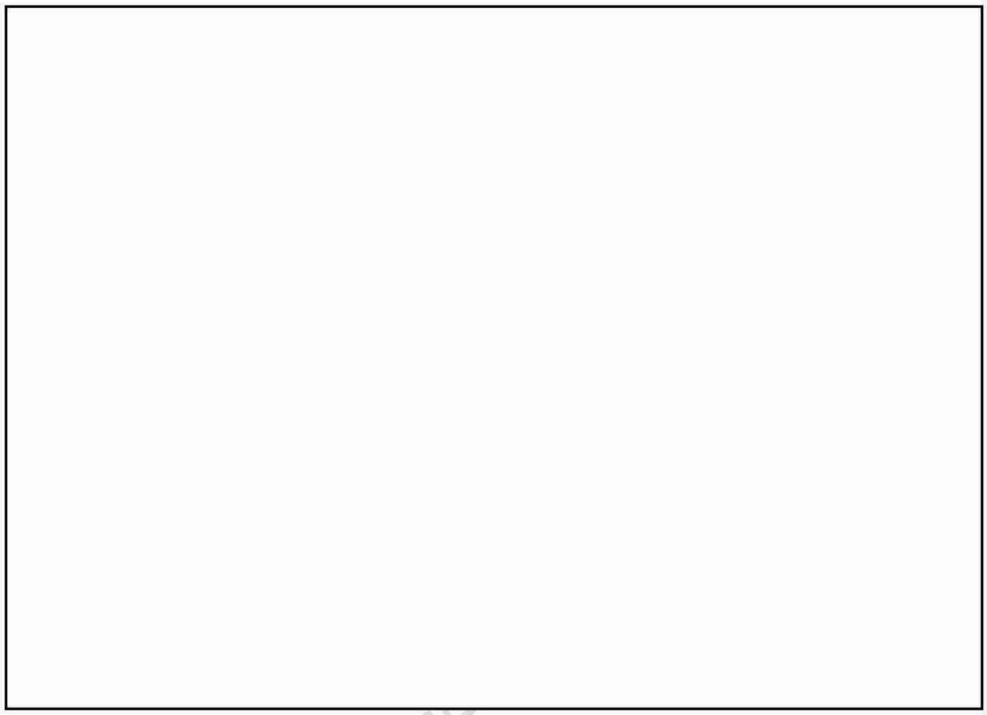
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AMERICAN OVERSIGHT



Deliberative - Pre

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: Nuebel Kovarik, Kathy
Sent: July 2, 2020 4:07 PM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf CLEAN.docx

EXSO prepared a clean version of policy materials package this morning and I sent it to Joe. We just received some feedback from OP&S on your revisions and their edits/comments are attached.

(b)(6)

From: Kilgore, Garry R
Sent: Thursday, July 2, 2020 4:46 PM
To: Bailey, Morgan; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S

Due date: COB, July 2

Request: OP&S resubmitting updated documents that address DO feedback.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
office)
STARS Issues:

From: Bailey, Morgan
Sent: Wednesday, July 01, 2020 7:35 PM
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to M01E & PM10A Discretion Initial Parts STARS#27432 with edits/comments from the Director's Office. Thanks!

AMERICAN OVERSIGHT

(b)(6)

From: Drake, Johnetta
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO
Cc: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clearances:
AAO:
FDNS:
FOD:
OCC:
OP&S:
RAIO:
SCOPS:
EXA: FYI only

Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

Please respond to all on this email

Thanks,

Johnetta Drake
USCIS Exec Sec
(Cell)
(Desk)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-Dec

AMERICAN OVERSIGHT

DHS-20-2156-A-002846

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

(b)(5)

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U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

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Commente

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-

AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 2, 2020 4:05 PM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk OPS alf CLEAN.docx

Hi Morgan,

No edits. Ready for your review. Resubmission.

Thanks,

(b)(6)

Ed

From: Kilgore, Garry R
Sent: Thursday, July 2, 2020 3:46 PM
To: Bailey, Morgan; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S

Due date: COB, July 2

Request: OP&S resubmitting updated documents that address DO feedback.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

From: Bailey, Morgan
Sent: Wednesday, July 01, 2020 7:35 PM
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

(b)(6)

AMERICAN OVERSIGHT

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On behalf of the Director's Office, I clear USCIS' response to M01E & PM10A Discretion Initial Parts

(b)(6)

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3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

Johnetta Drake
USCIS Exec Sec
(Cell)

AMERICAN OVERSIGHT

(b)(6)

[redacted] *(Desk)*

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

(b)(5)

DELIBERATIVE DRAFT

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-D

AMERICAN OVERSIGHT

DHS-20-2156-A-002853

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

(b)(5)

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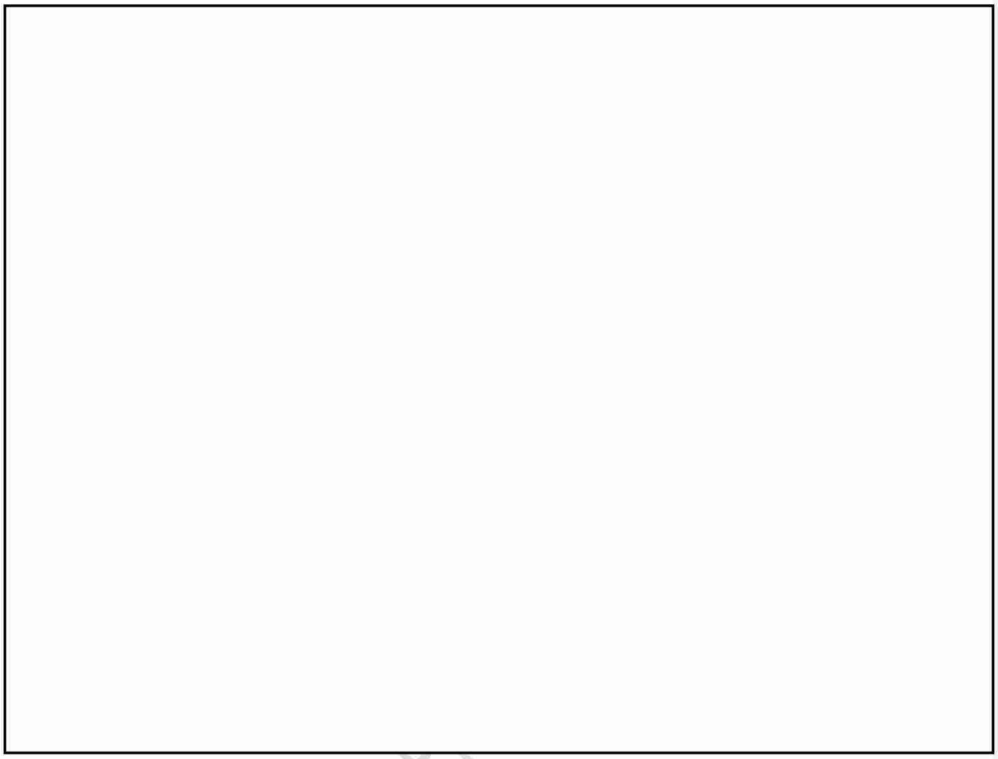
[redacted]

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(b)(5)

AMERICAN OVERSIGHT

(b)(5)



Deliberative - P

AMERICAN OVERSIGHT

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To: Bailey, Morgan; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Sent: July 2, 2020 3:46 PM (UTC-05:00)
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Requestor: OP&S [redacted] (b)(6)

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Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues [redacted]

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To: Drake, Johnetta [redacted]; USCIS Directors Office Clearance-EXSO [redacted]
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Cc: Kilgore, Garry R [redacted]
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AMERICAN OVERSIGHT

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(b)(6)

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3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

Johnetta Drake
USCIS Exec Sec
(Cell)
(Desk)

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

(b)(5)

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

AMERICAN OVERSIGHT

(b)(5)

Deliberative - Pre-De

AMERICAN OVERSIGHT

DHS-20-2156-A-002859

FOR OFFICIAL USE ONLY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

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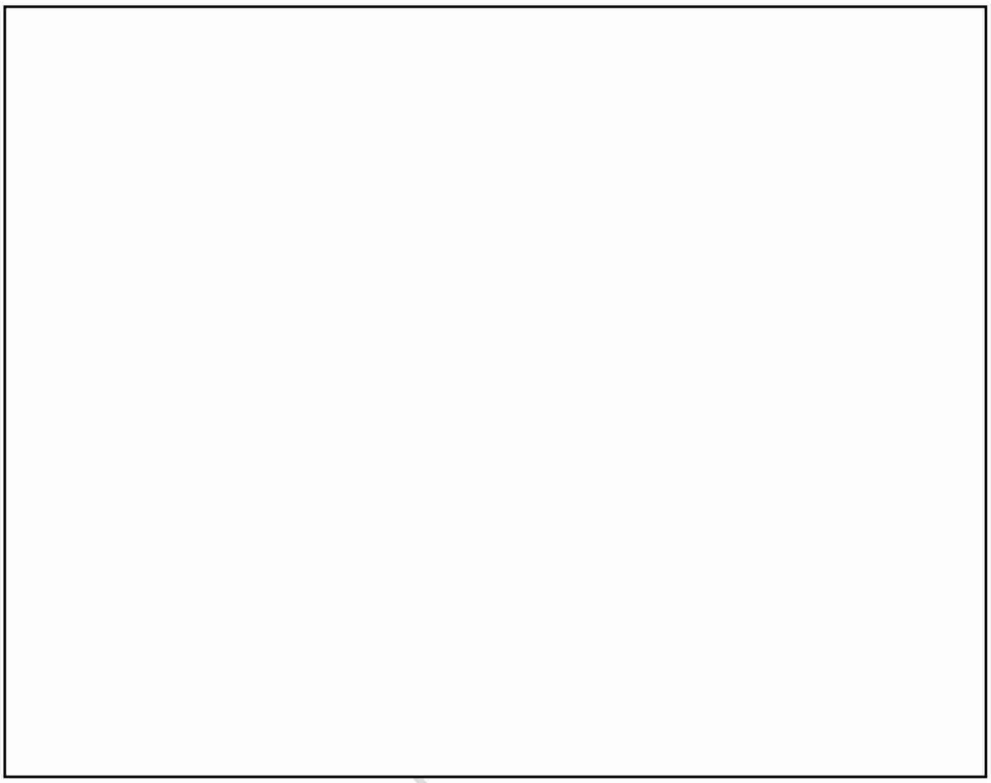
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AMERICAN OVERSIGHT

(b)(5)



Deliberative - F

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/9/2020 - DHS VIP Correspondence Amy Gutmann - Regarding challenges COVID-19 has on higher education - STARS 28121
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 2, 2020 11:56 AM (UTC-05:00)
Attached: Incoming - Gutmann 6.22.20.pdf, Draft Response Gutmann - Redline 7.2.20.docx, Draft Response Gutmann - Clean LH 7.2.20.doc

Hi Morgan,

(b)(6)

No edits. Ready for your review.

Thanks,

Ed

From: Miller, James P Jr (Paul) [redacted]
Sent: Thursday, July 2, 2020 11:30 AM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Clearance-EXSO [redacted]/>; USCIS Exec Congr Corresp [redacted]>; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/9/2020 - DHS VIP Correspondence Amy Gutmann - Regarding challenges COVID-19 has on higher education - STARS 28121

Requestor Directorate/Office: DHS ESEC

Due Date: **Thursday, July 9, 2020.**

Request: Director's Office clearance for the draft response to Ms. Amy Gutmann. If cleared with no edits/comments, please forward for D2P signature.

Background: Ms. Amy Gutmann wrote to the Acting Secretary Wolf and the Secretary of State regarding the challenges that COVID-19 has presented to higher education. DHS ESEC recommended using the previously used language from the Rep. Stiver response (STARS 27368).

Clearance:

OP&S:	[redacted]
OCC:	
EXA:	

Attachments:

1. Incoming - Gutmann 6.22.20
2. Draft Response – Gutmann - Redline 7.2.20
3. Draft Response – Gutmann – Clean LH 7.2.20

*******Please reply to all on this email ******

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July XX, 2020

Ms. Amy Gutmann
1 College Hall Room 100
University of Pennsylvania
Philadelphia, PA 19104-6380

Dear President Gutmann:

(b)(5)

Thank you for your June 22, 2020 letter regarding recent executive actions, potential changes to nonimmigrant programs, and your institution. Acting Secretary Wolf asked that I respond on his behalf.

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

(b)(5)

Ms. Amy Gutmann
1 College Hall Room 100
University of Pennsylvania
Philadelphia, PA~~Pennsylvania~~ 19104-6380

Dear President~~Representative Stivers~~President Gutmann:

Thank you for your June 22, 2020, letter regarding recent~~the challenges that COVID-19~~

[redacted]

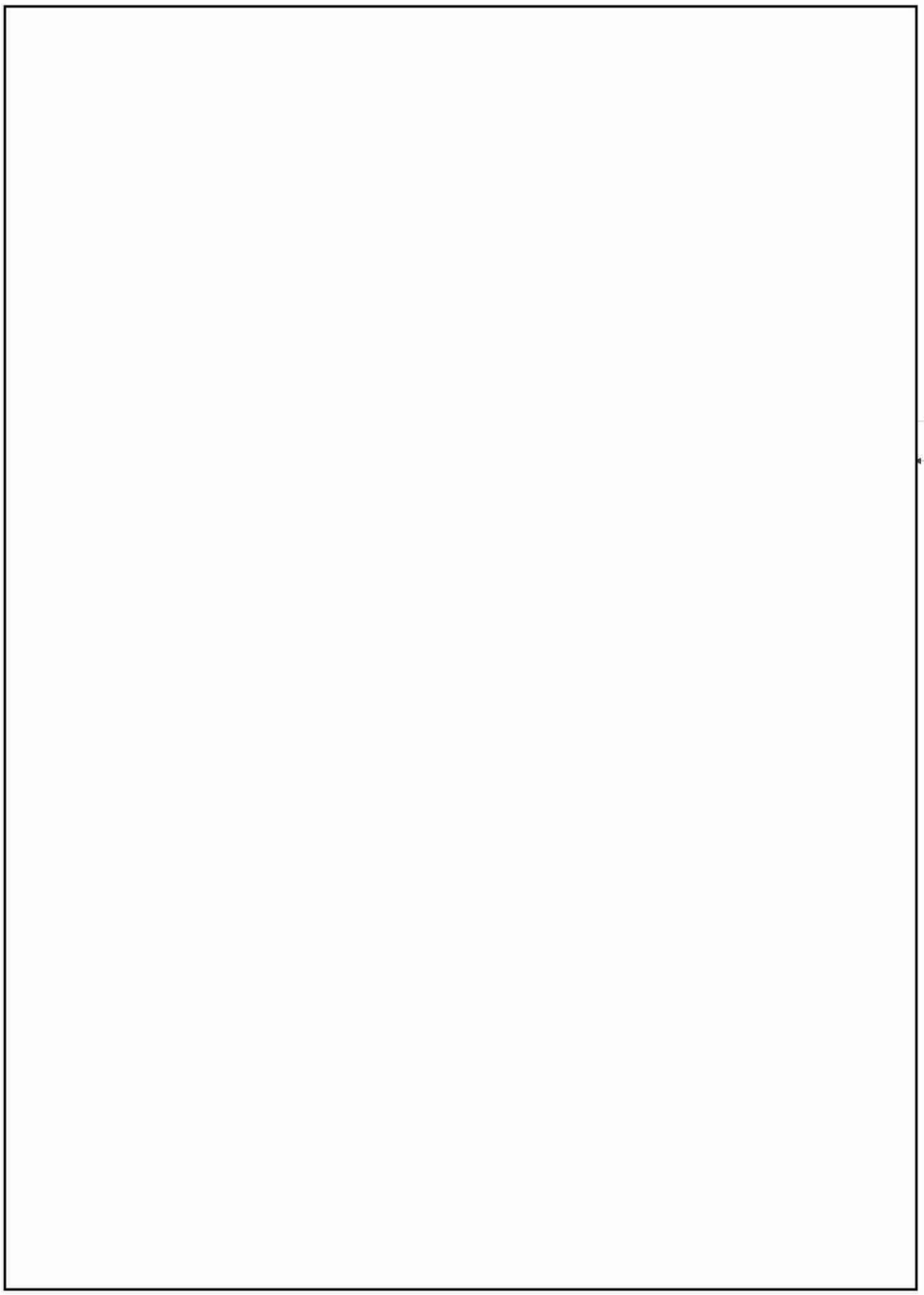
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[redacted]

(b)(5)

AMERICAN OVERSIGHT

(b)(5)



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AMERICAN OVERSIGHT

(b)(5)

(b)(5)

Thank you again for your interest in this issue. ~~We will consider your recommendations. The cosigners of your letter will receive a separate, identical response.~~ Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

(b)(5)

Penn
University of Pennsylvania
The President

RECEIVED
By ESEC at 10:36 am, Jun 25, 2020

June 22, 2020

The Honorable Michael R. Pompeo
Secretary, U.S. Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary, U.S. Department of Homeland Security
300 7th Street, SW
Washington, DC 20520

Dear Secretary Pompeo and Acting Secretary Wolf:

The COVID-19 pandemic has brought unprecedented challenges to higher education, as it has to so many other sectors of American society. Among the steps that universities took this spring to flatten the curve and reduce the risk of the disease overwhelming our health care systems was to depopulate our campuses, sending thousands of US and international students home to complete their semesters remotely. We greatly appreciated the Administration's swift decision to waive regulations to enable our international students to study online and retain their immigration status. Similarly, the Administration's decision to suspend the "5-month rule" alleviated great concern for international students who otherwise would have to return to the United States this summer to maintain active international student status.

I write today because I am deeply worried about proposed changes to regulations regarding the temporary suspension of non-immigrant visas and renewals, in particular in the H1B and J1 visa programs, and the proposed curtailment of the Optional Practical

AMERICAN OVERSIGHT

1 College Hall Room 100 Philadelphia, PA 19104-6380
Tel 215.898.7221 Fax 215.898.9659 president@upenn.edu

Training (OPT) Program. Changes to these programs will do deep and long-lasting harm to our mission to attract the best talent from around the world to the United States.

The University of Pennsylvania each year sponsors close to 1,500 students to participate in the OPT program. The best students from around the world choose the United States in part because of the OPT program, which allows them to put their knowledge into action through employment. The United Kingdom, which suspended its post-graduation employment scheme for international students in 2012, reinstated it in 2019 after determining that it was not remaining competitive in bringing top talent to the UK. Changes to this program will discourage young people from studying in the United States, harm our institutions of higher education and, ultimately, weaken our nation's competitive posture.

Similarly, the H1B and J1 non-immigrant visa programs are critical to our ability to attract top talent to the United States. Last year, Penn sponsored nearly 500 H1B visas and more than 1,340 J1 international scholars. These visas enabled experts in heart and lung transplants, animal behavior, pediatric genealogy, energy conversion and storage, sustainable agriculture and herd management, archeology, COVID-19 patient treatment, testing development, and research and many other fields to work in the United States at great benefit to our city, state, and country. Even a temporary, short-term suspension of this program has a negative effect on the community of scientists and scholars who cannot help but wonder if they are welcome in America.

These steps, coming on the heels of the May 29 Proclamation suspending immigration for certain students and scholars from the People's Republic of China, are taking a deep, psychological toll on our global community at Penn. They suggest that America does not value its international students and scholars for the great benefits they bring to communities around the country. I urge you to reconsider any actions to curtail or limit the OPT program and to maintain current policies for H1B, J1 and other non-immigrant visa categories.

This spring, as Penn students were logging on to remote classrooms by the thousands, tens of millions of US K-12 students were using Google Classroom to continue their education and ensure that America's talent pipeline remains intact. I am proud that Google is led by Sundar Pichai, who came to study at Penn in 2000 as an international student and who subsequently remained in the United States to work after graduation and eventually become a US citizen. There are thousands of stories like Sundar's,

AMERICAN OVERSIGHT

thousands of international students who dedicate their talents to serve and benefit the United States by pursuing careers in the United States. **Please do not take actions that would prevent these talented young people—future inventors, entrepreneurs, and scholars—from coming to Philadelphia, Pennsylvania and America.**

Sincerely,

Amy Gutmann

c: Senator Patrick Toomey
Senator Robert Casey
Representative Brendon Boyle
Representative Matt Cartwright
Representative Madeleine Dean
Representative Michael Doyle
Representative Dwight Evans
Representative Brian Fitzpatrick
Representative Chrissy Houlahan
Representative John Joyce
Representative Fred Keller
Representative Mike Kelly
Representative Conor Lamb
Representative Daniel Meuser
Representative Scott Perry
Representative Guy Reschenthaler
Representative Mary Gay Scanlon
Representative Lloyd Smucker
Representative Glenn Thompson
Representative Susan Wild

AMERICAN OVERSIGHT

From: Miller, James P Jr (Paul)
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 7/9/2020 - DHS VIP Correspondence Amy Gutmann - Regarding challenges COVID-19 has on higher education - STARS 28121
To: DDCLEAR
Cc: USCIS Directors Office Clearance-EXSO; USCIS Exec Congr Corresp; USCIS EXSO External
Sent: July 2, 2020 11:30 AM (UTC-05:00)
Attached: Incoming - Gutmann 6.22.20.pdf, Draft Response Gutmann - Redline 7.2.20.docx, Draft Response Gutmann - Clean LH 7.2.20.doc

Requestor Directorate/Office: DHS ESEC

Due Date: **Thursday, July 9, 2020.**

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Background: Ms. Amy Gutmann wrote to the Acting Secretary Wolf and the Secretary of State regarding the challenges that COVID-19 has presented to higher education. DHS ESEC recommended using the previously used language from the Rep. Stiver response (STARS 27368).

Clearance:

OP&S:
OCC:
EXA:

(b)(6)

Attachments:

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*******Please reply to all on this email ******

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

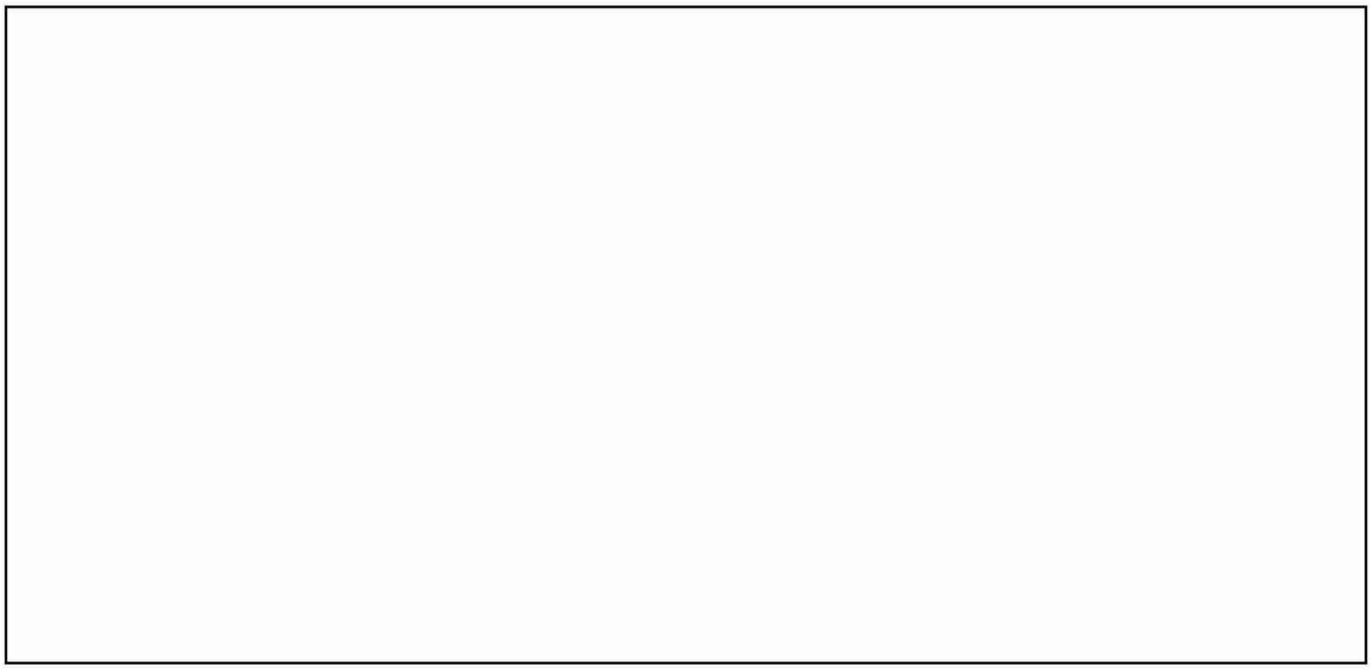
U.S. Citizenship and Immigration Services

July XX, 2020

Ms. Amy Gutmann
1 College Hall Room 100
University of Pennsylvania
Philadelphia, PA 19104-6380

Dear President Gutmann:

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Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

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Philadelphia, PA~~Pennsylvania~~ 19104-6380

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Commented

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

[redacted]

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(b)(5)

AMERICAN OVERSIGHT

(b)(5)

[redacted]

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Respectfully,

Joseph Edlow
Deputy Director for Policy

[redacted]

(b)(5)

AMERICAN OVERSIGHT

Penn
University of Pennsylvania
The President

RECEIVED
By ESEC at 10:36 am, Jun 25, 2020

June 22, 2020

The Honorable Michael R. Pompeo
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2201 C Street, NW
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I write today because I am deeply worried about proposed changes to regulations regarding the temporary suspension of non-immigrant visas and renewals, in particular in the H1B and J1 visa programs, and the proposed curtailment of the Optional Practical

AMERICAN OVERSIGHT

1 College Hall Room 100 Philadelphia, PA 19104-6380
Tel 215.898.7221 Fax 215.898.9659 president@upenn.edu

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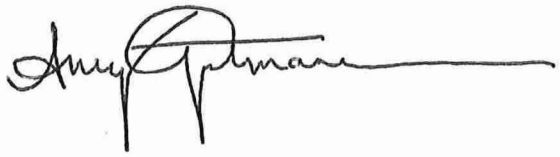
These steps, coming on the heels of the May 29 Proclamation suspending immigration for certain students and scholars from the People's Republic of China, are taking a deep, psychological toll on our global community at Penn. They suggest that America does not value its international students and scholars for the great benefits they bring to communities around the country. I urge you to reconsider any actions to curtail or limit the OPT program and to maintain current policies for H1B, J1 and other non-immigrant visa categories.

This spring, as Penn students were logging on to remote classrooms by the thousands, tens of millions of US K-12 students were using Google Classroom to continue their education and ensure that America's talent pipeline remains intact. I am proud that Google is led by Sundar Pichai, who came to study at Penn in 2000 as an international student and who subsequently remained in the United States to work after graduation and eventually become a US citizen. There are thousands of stories like Sundar's,

AMERICAN OVERSIGHT

thousands of international students who dedicate their talents to serve and benefit the United States by pursuing careers in the United States. **Please do not take actions that would prevent these talented young people—future inventors, entrepreneurs, and scholars—from coming to Philadelphia, Pennsylvania and America.**

Sincerely,



Amy Gutmann

c: Senator Patrick Toomey
Senator Robert Casey
Representative Brendon Boyle
Representative Matt Cartwright
Representative Madeleine Dean
Representative Michael Doyle
Representative Dwight Evans
Representative Brian Fitzpatrick
Representative Chrissy Houlahan
Representative John Joyce
Representative Fred Keller
Representative Mike Kelly
Representative Conor Lamb
Representative Daniel Meuser
Representative Scott Perry
Representative Guy Reschenthaler
Representative Mary Gay Scanlon
Representative Lloyd Smucker
Representative Glenn Thompson
Representative Susan Wild

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From: Bailey, Morgan
Subject: Policy - Discretion in Adjudications - No Action Needed (Just FYI)
To: Edlow, Joseph B
Sent: July 2, 2020 10:36 AM (UTC-05:00)
Attached: PM01E & PM10A Discretion Initial Parts (Consolidated) CLEAN.pdf, PM01E & PM10A Discretion Initial Parts (Consolidated) CLEAN.docx

Hi Joe,
Attached is a condensed, clean version (PDF and Word) of the policy materials regarding the use of discretion in adjudications. You do not need to sign anything (I talked to Kathy about this too).
If you need anything else, please let me know. (b)(6)
Morgan

From: Nuebel Kovarik, Kathy
Sent: Wednesday, July 1, 2020 6:37 PM
To: Bailey, Morgan; Piateski, Jennifer E; Edlow, Joseph B
Cc: Rexrode, Kathryn S
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

I clear this PM on EAD discretion, with only edits to the policy alert page. Morgan, please have EXSO prepare for Joe's signature. Copying him as FYI and so he has a heads up to expect it.

Kathryn – hoping EXA received this and has started the comms.

From: Bailey, Morgan
Sent: Wednesday, July 01, 2020 4:45 PM
To: Nuebel Kovarik, Kath
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

I just sent you my edits for this clearance but we have received an update from EXSO for the PMO1E-Discretion_PolicyAlert_0701 2020 (Clean and Redlines). They said this is in response to Alex's comments to OP&S.

I've added the documents with my edits to this email to make it easier for you to review everything at once.

From: Kilgore, Garry R
Sent: Wednesday, July 1, 2020 4:53 PM
To: Weinhold, Kasey D; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Hi Kasey,

We received this from OP&S they noted this addressed feedback from the DO. OP&S noted they've been working with Alex but EXSO has not been included in that communication.

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Respectfully,
Garry R. Kilgore (b)(6)

(b)(6)

Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

From: Weinhold, Kasey D
Sent: Wednesday, July 01, 2020 4:49 PM
To: Kilgore, Garry R; Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Hi Garry,

Why did you send us something new for this clearance?

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office:

From: Kilgore, Garry R
Sent: Wednesday, July 01, 2020 2:51 PM
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S

Due date: COB, July 2

Request: OP&S is resubmitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval. The attached address DO feedback that was provided directly to OP&S.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Respectfully,
Garry R. Kilgore

Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

AMERICAN OVERSIGHT

(b)(6)

From: Drake, Johnetta [redacted]
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clear[redacted]
AAO: [redacted]
FDNS
FOD:
OCC:
OP&S
RAIO:
SCOP
EXA: FYI only

Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

Please respond to all on this email

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

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(b)(5)

Draft Policy Item for Director's Office Review

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

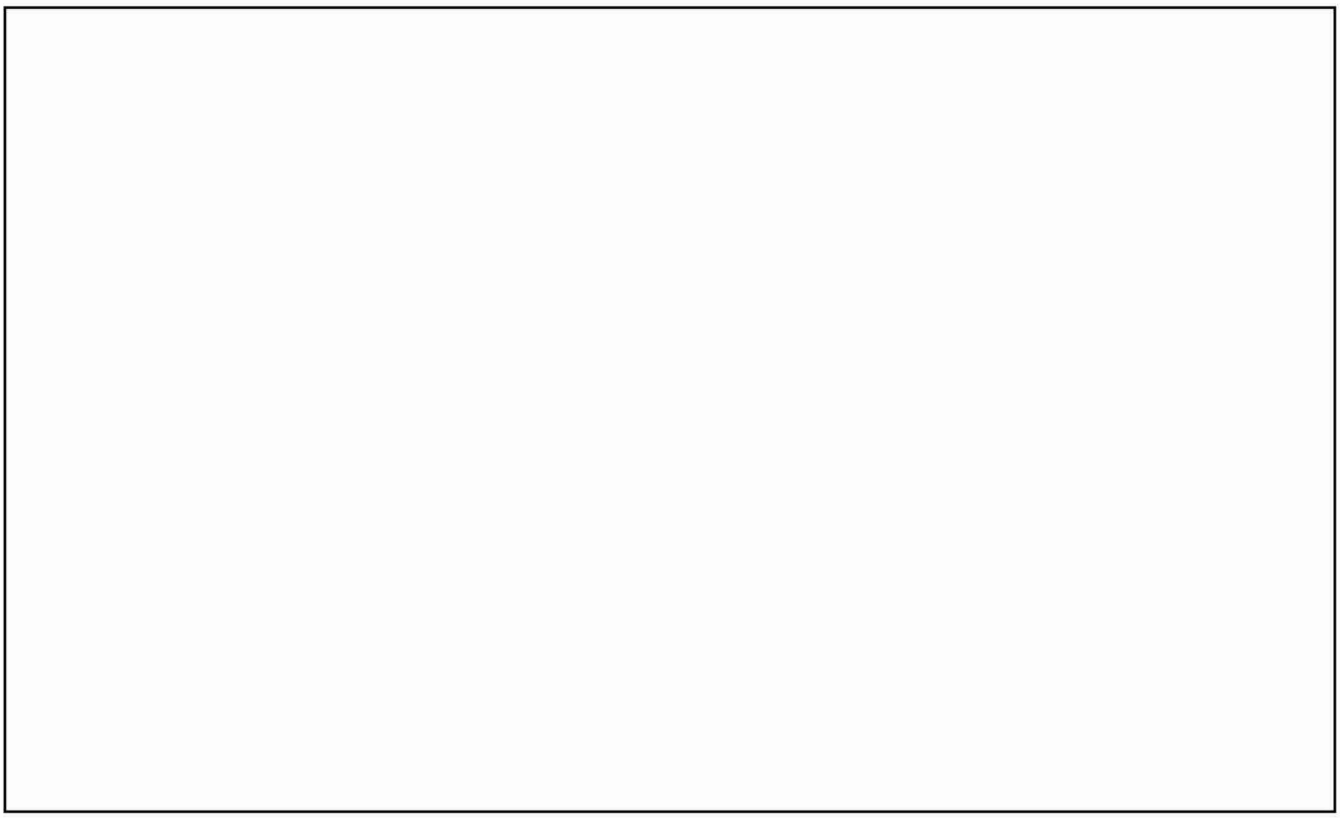
Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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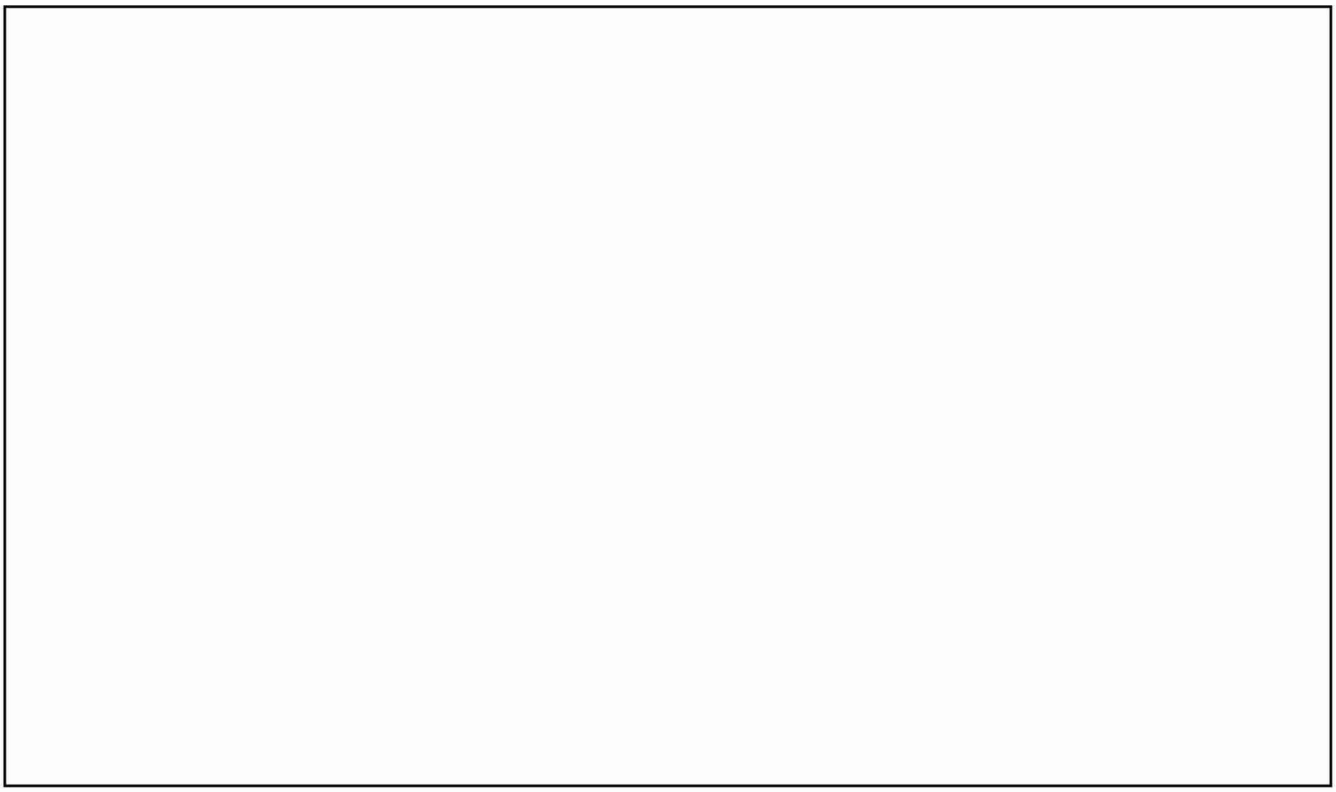
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(b)(5)

Part E – Adjudications



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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

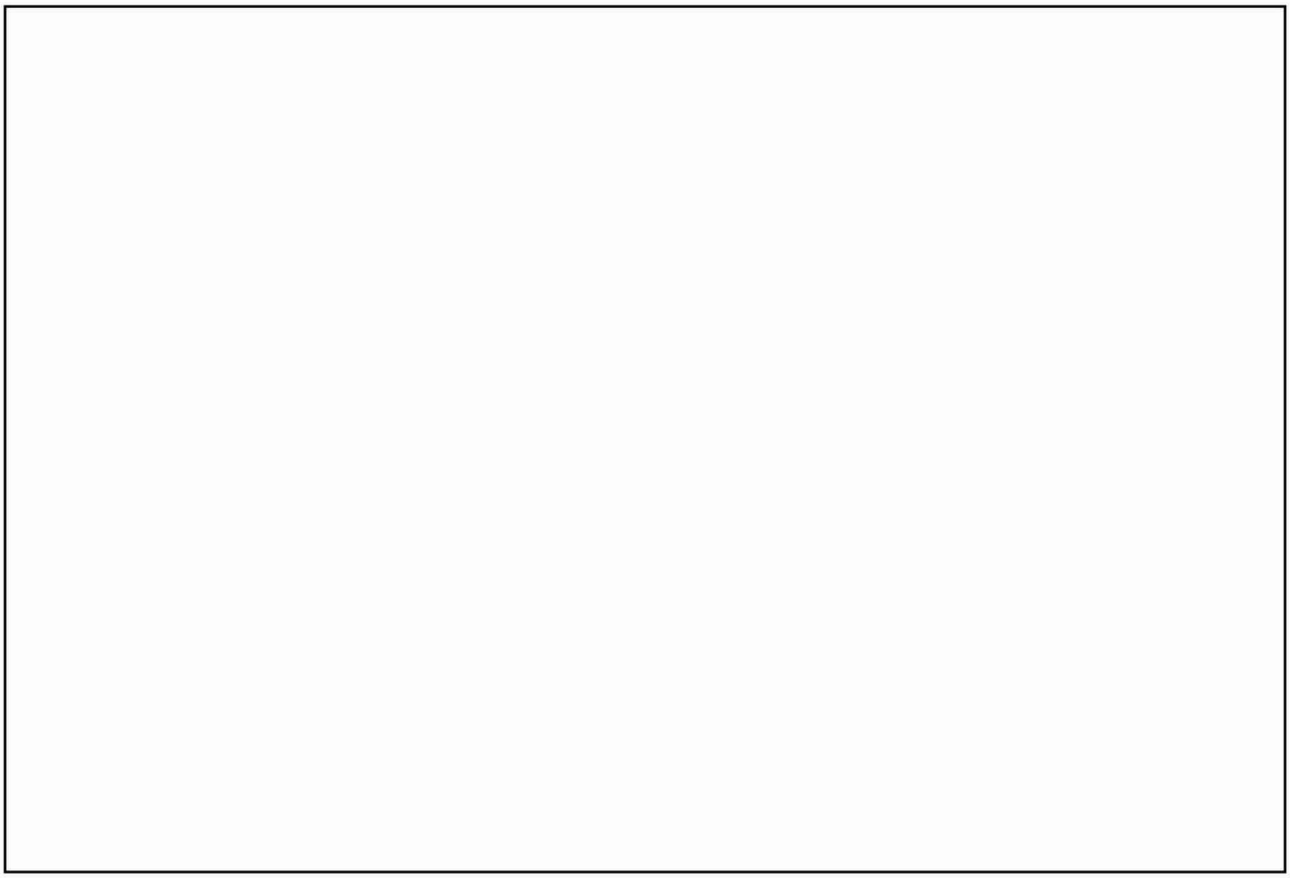
Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

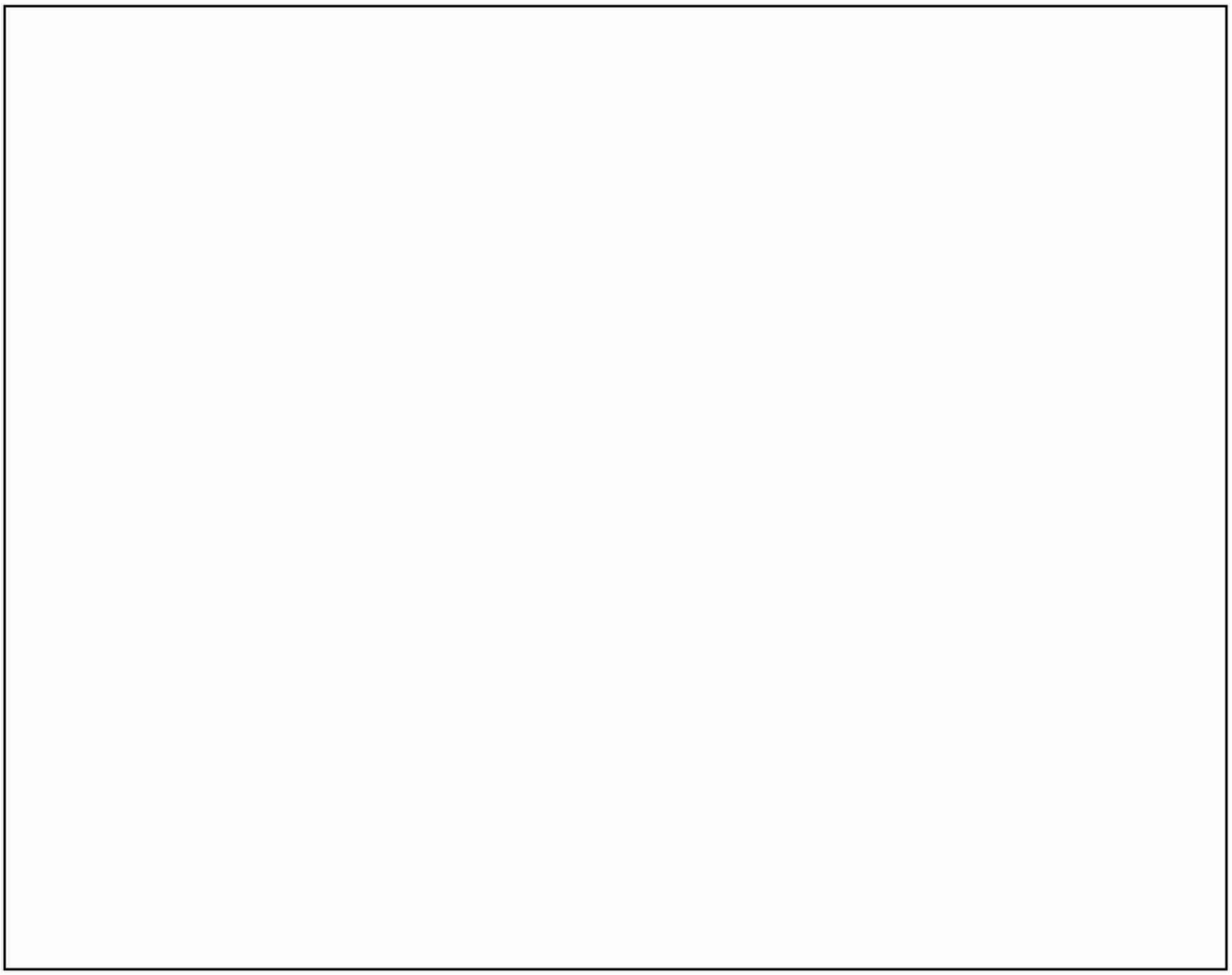
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Background

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AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 2, 2020 9:52 AM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx, I129-012-FRM-TOC-H1BStrengtheningIFR-FOReview-06302020.docx, I129-012-INS-TOC-H1BStrengtheningIFR-FOReview-06302020.docx

Hi Morgan,

No edits. Ready for your review. (b)(6)

Thanks,

Ed

From: Drake, Johnetta [redacted]
Sent: Tuesday, June 30, 2020 4:24 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good afternoon,

Requestor Directorate/Office: OP&S [redacted]

Due Date: 6:00PM Tuesday, July 7, 2020

Request: OP&S requests the Front Office review and clear the attached H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes.

Background: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Important note: The PODs review is occurring in parallel and will conclude on 7/6. Per OP&S, [redacted] **discussed and agreed to this process.**

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Attachments:
H-1B Rule (b)(6)

1129-012-FRM-TOC
1129-012-INS-TOC

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

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DEPARTMENT OF HOMELAND SECURITY

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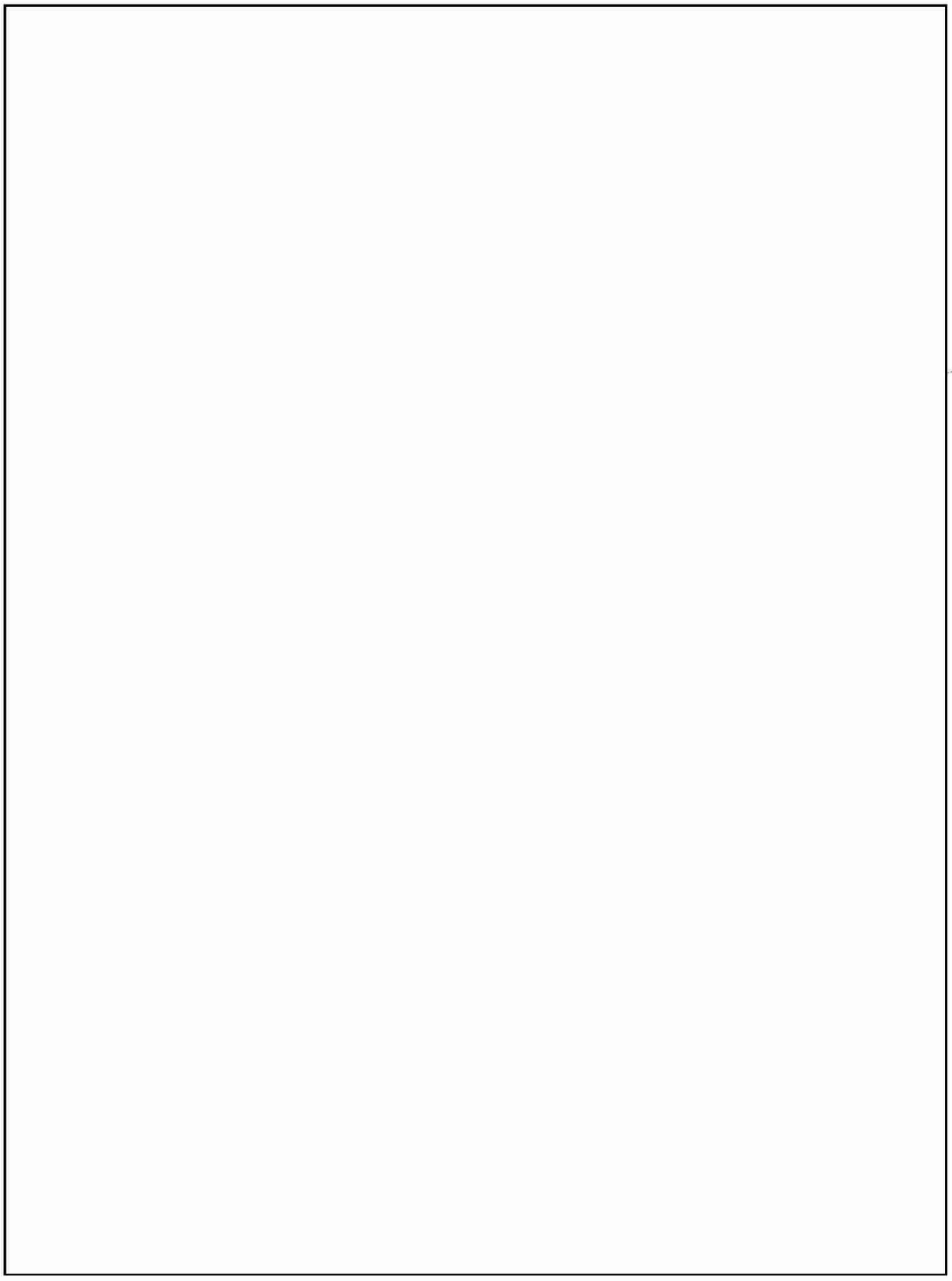
8 CFR Part 214

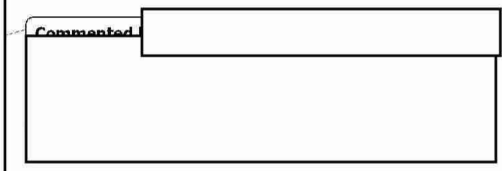
[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

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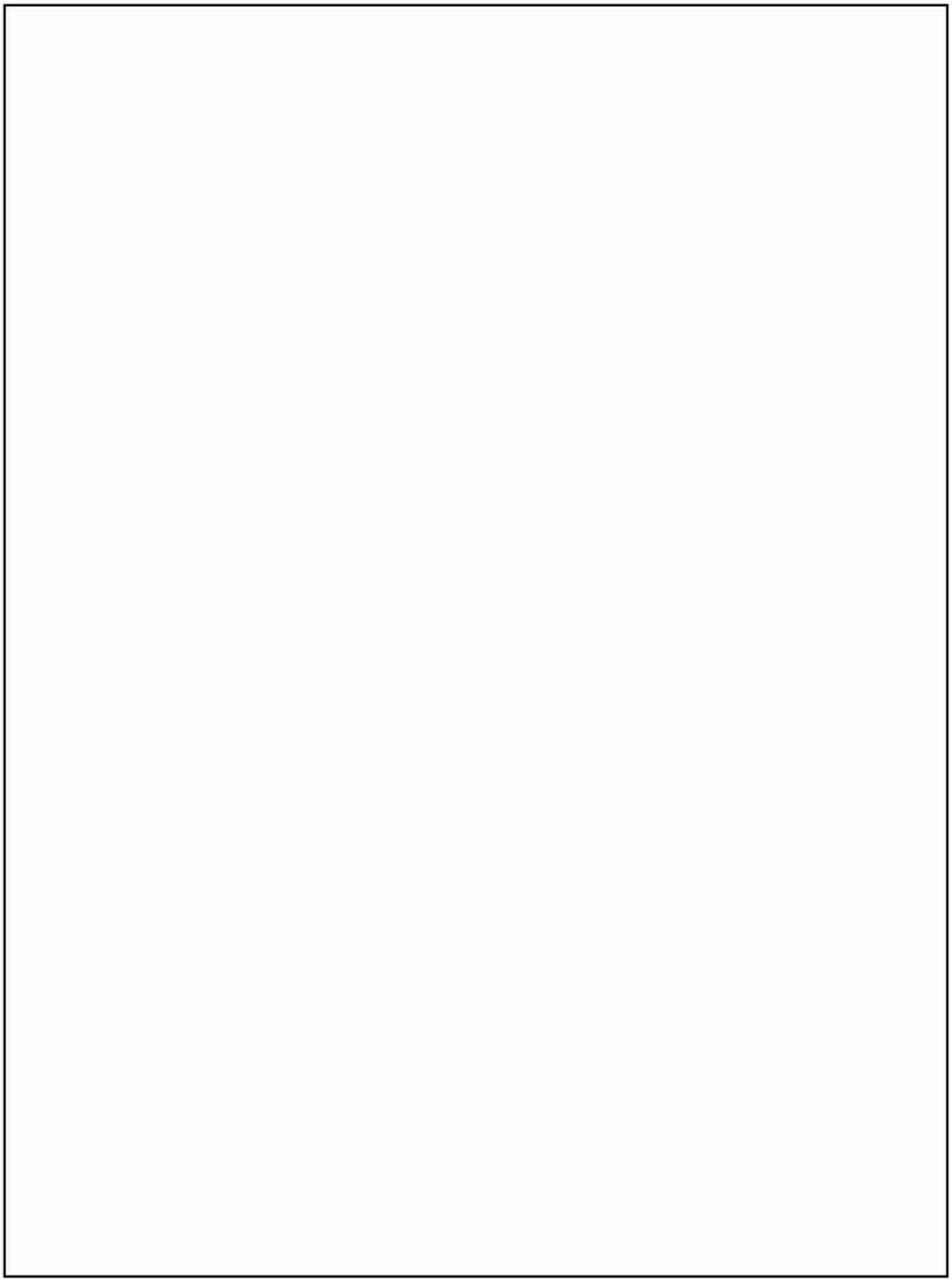


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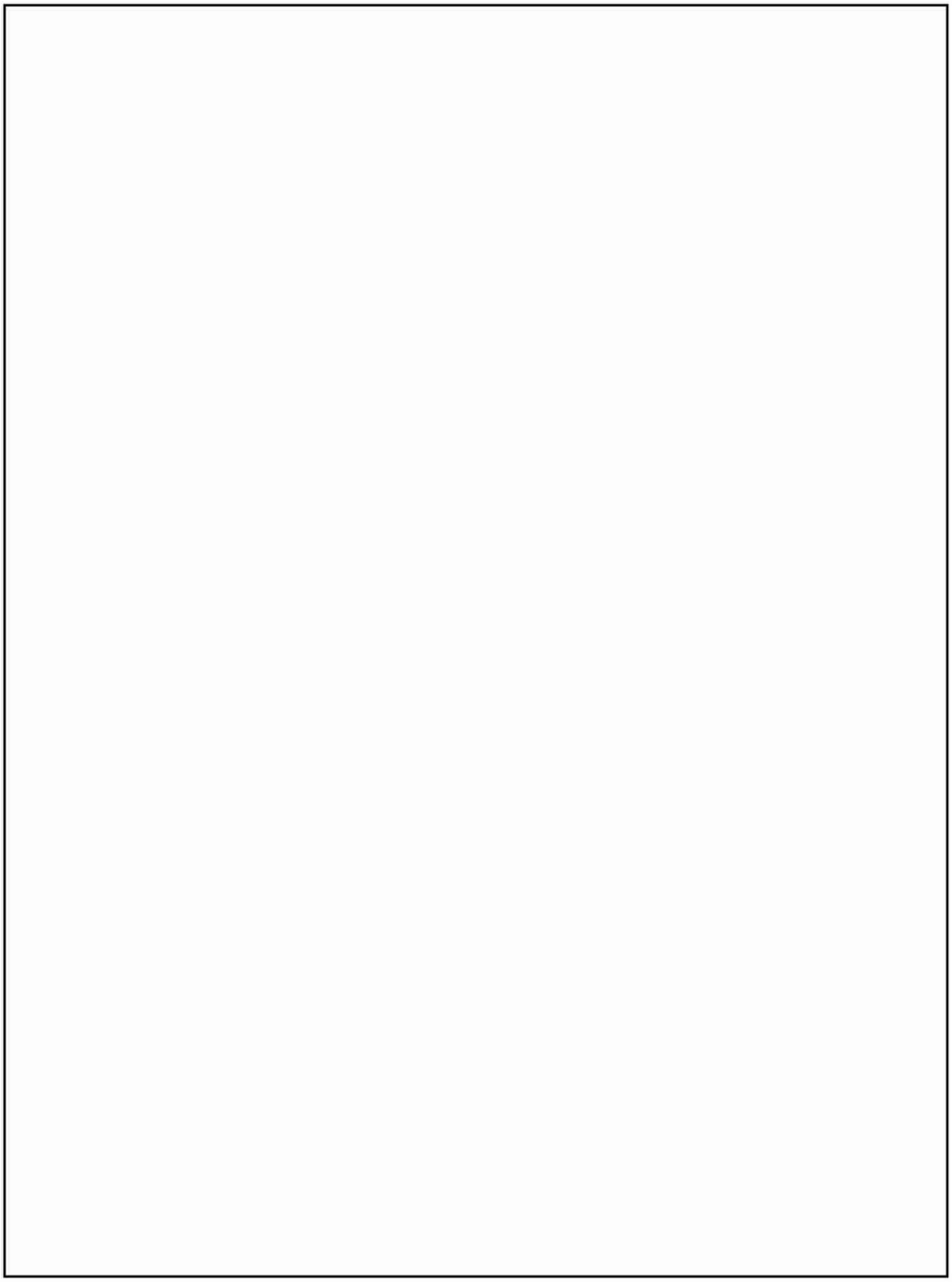
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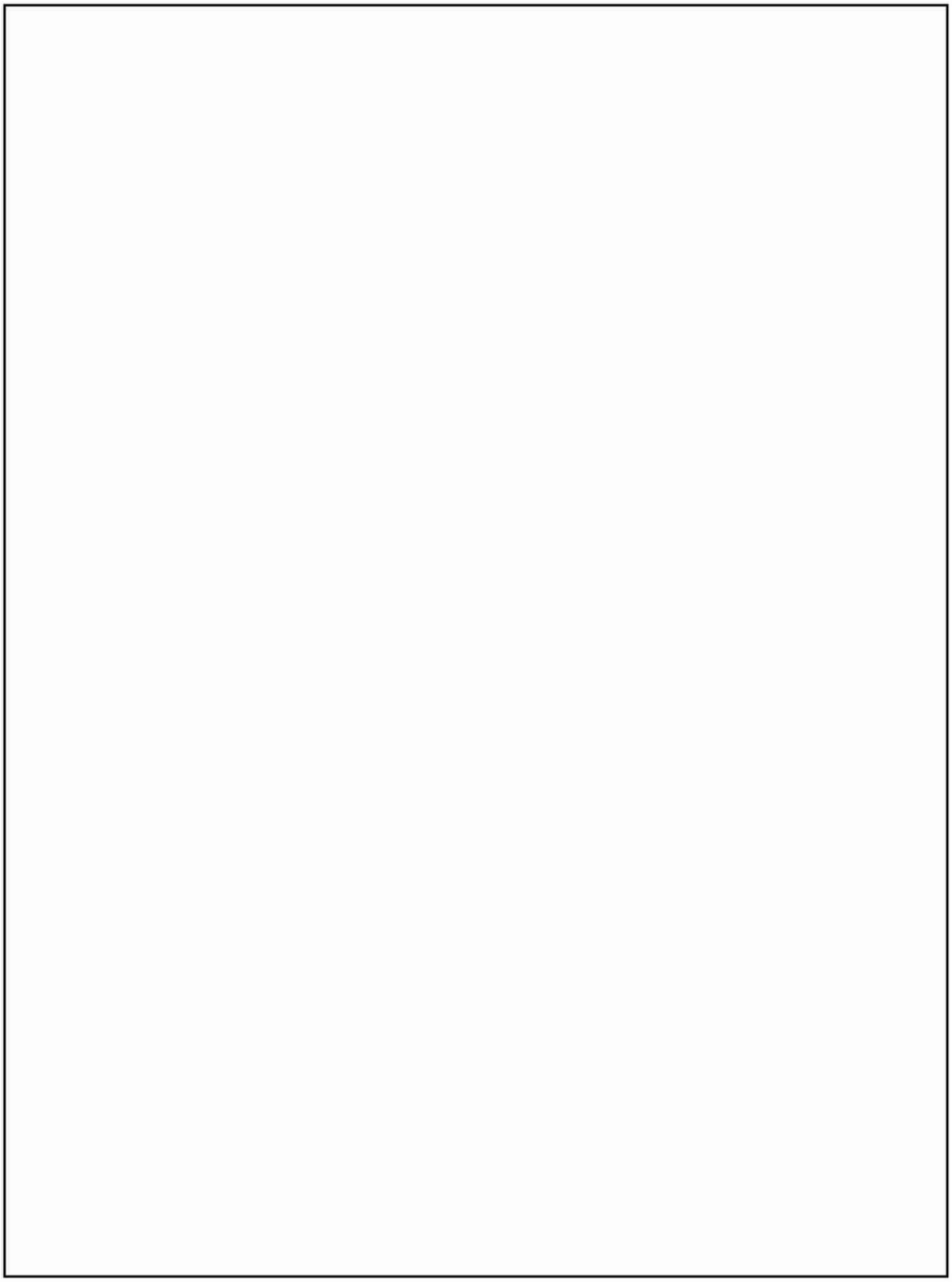
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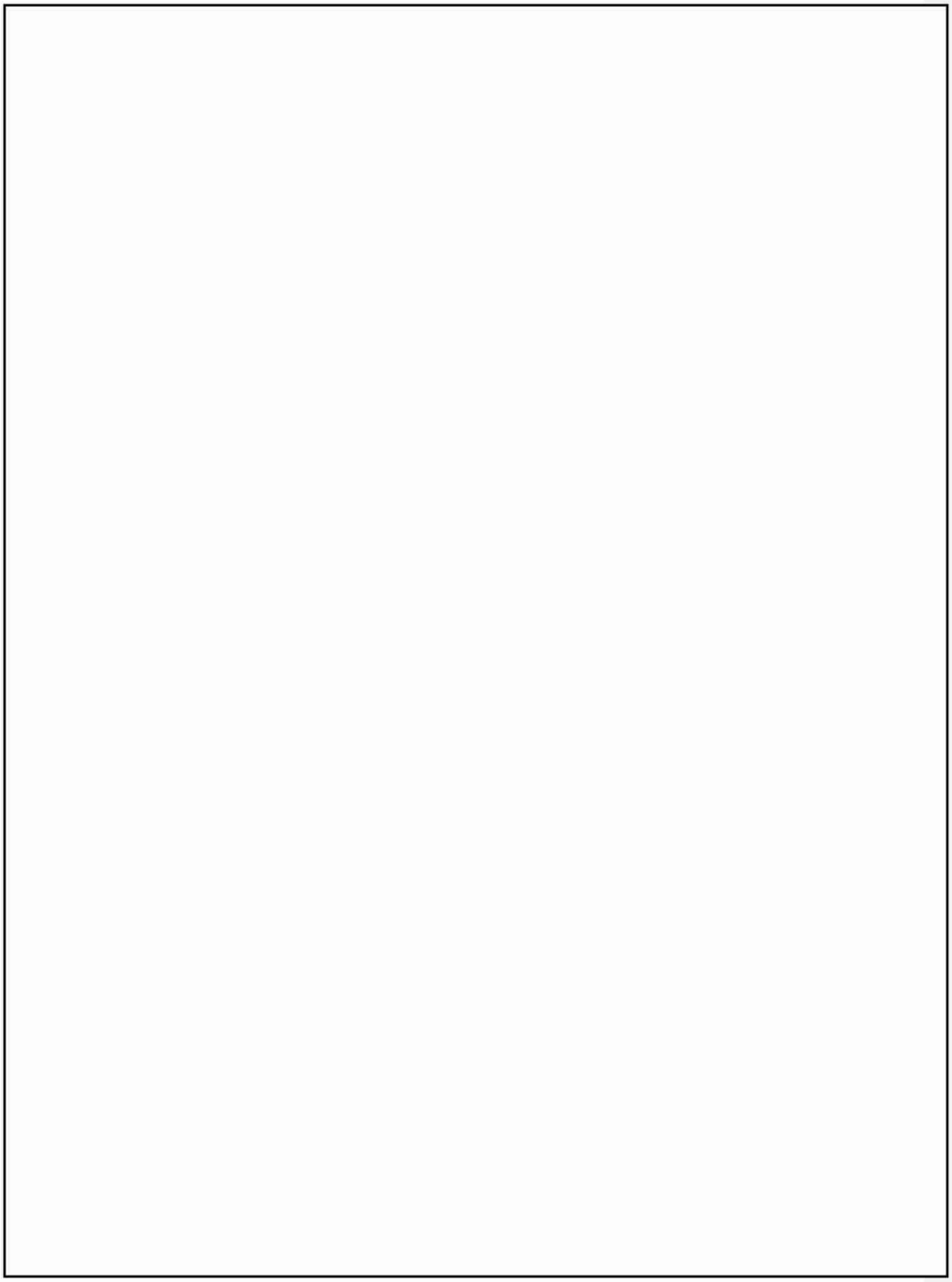
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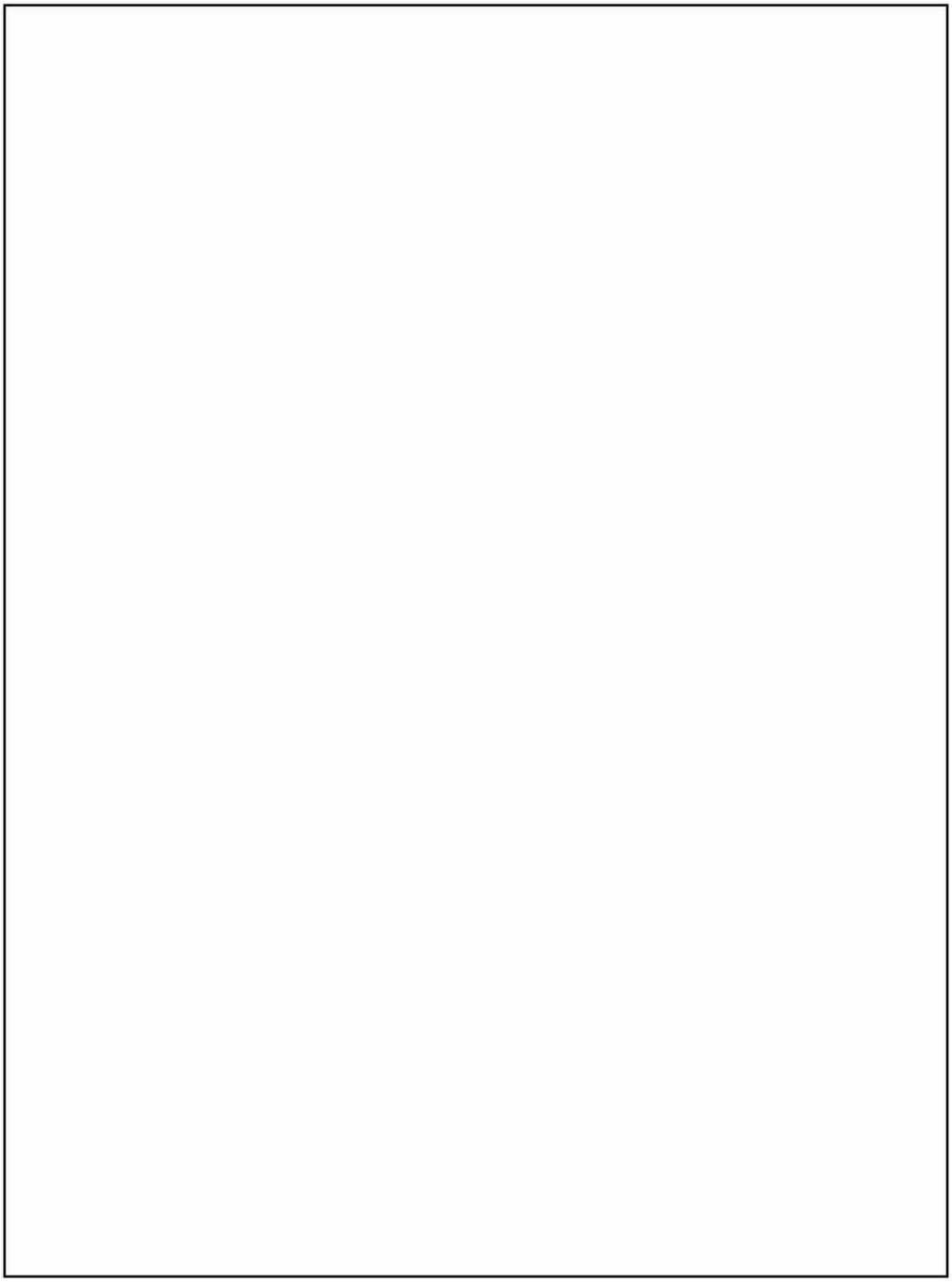
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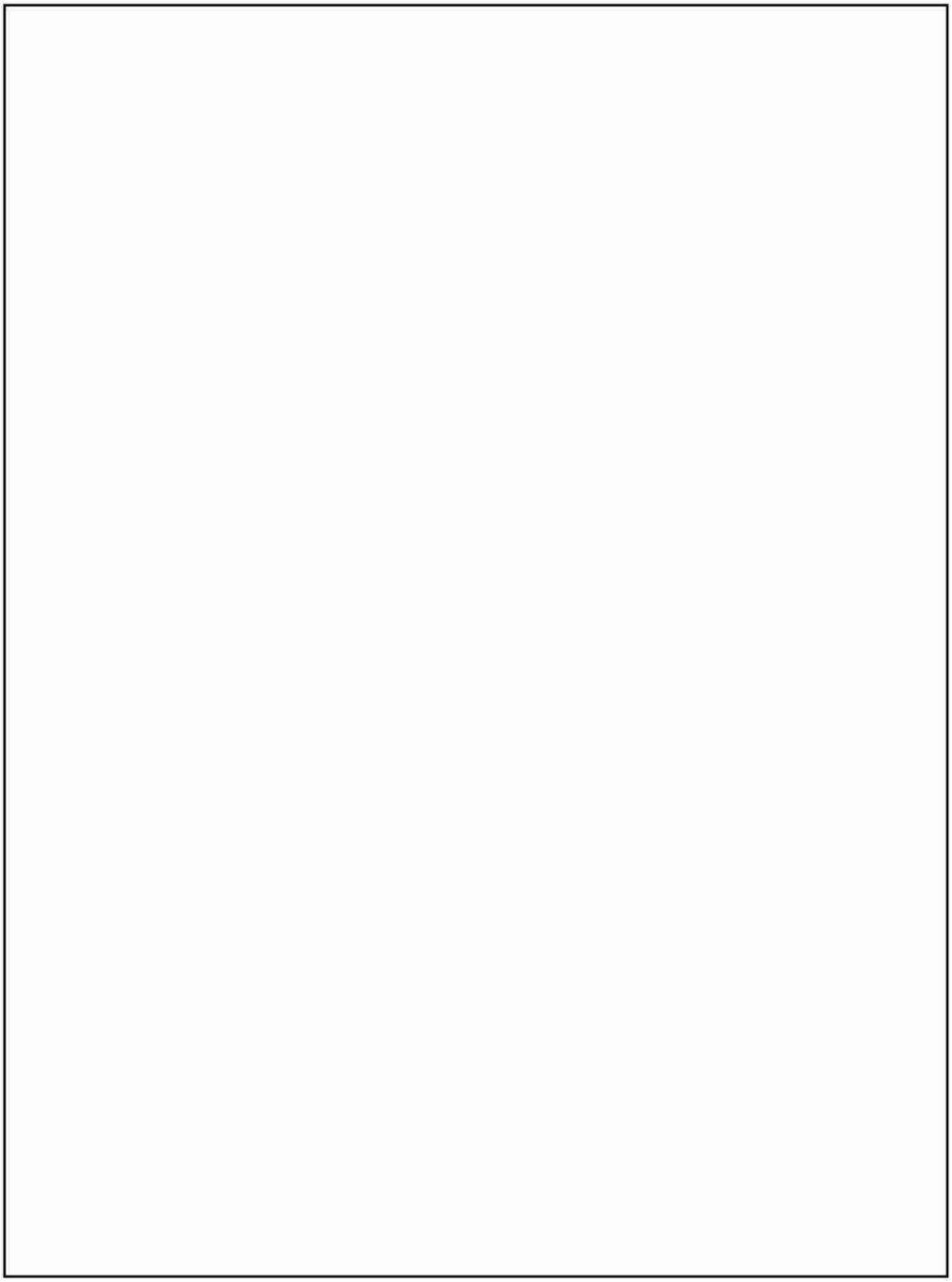
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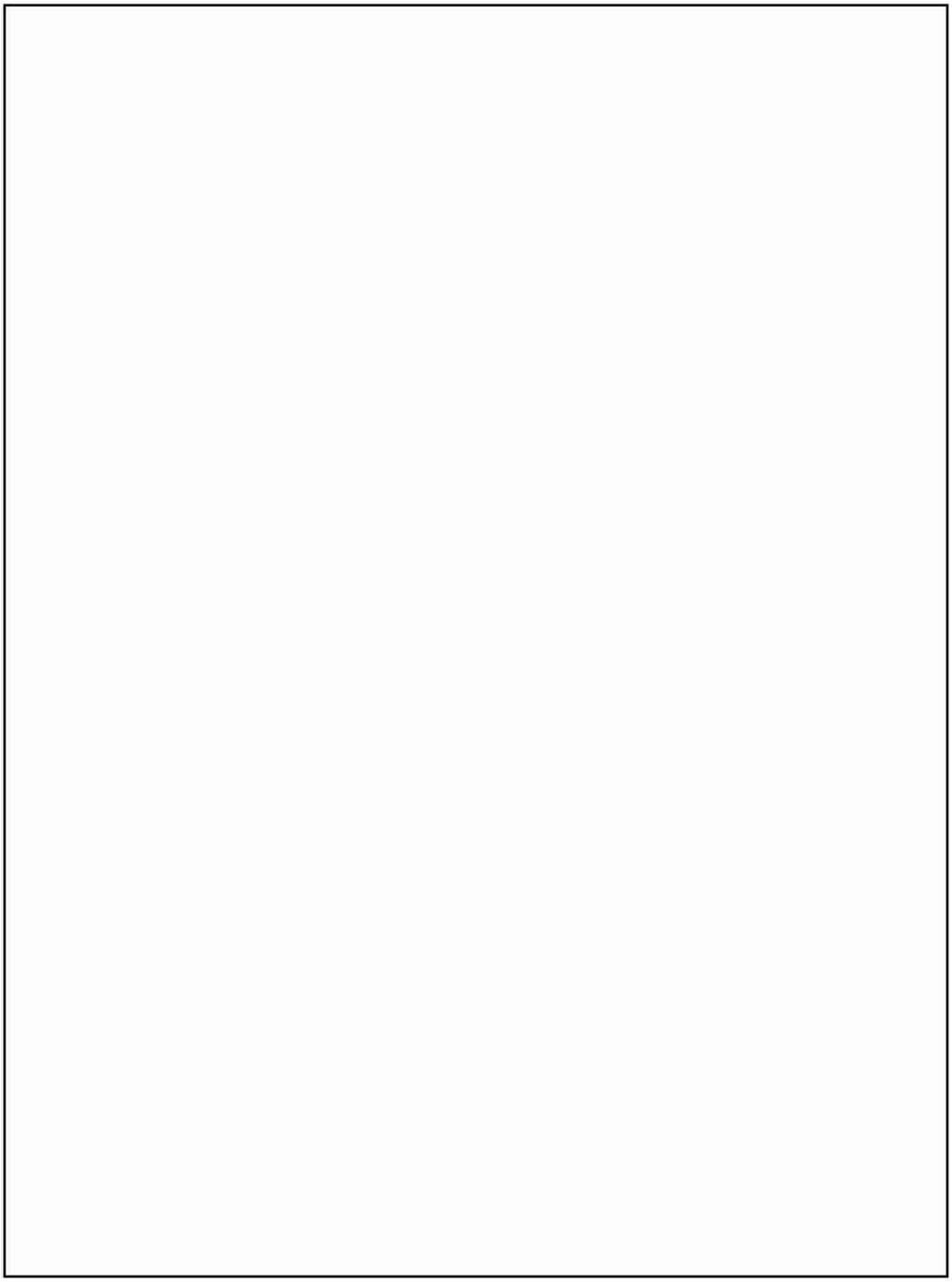
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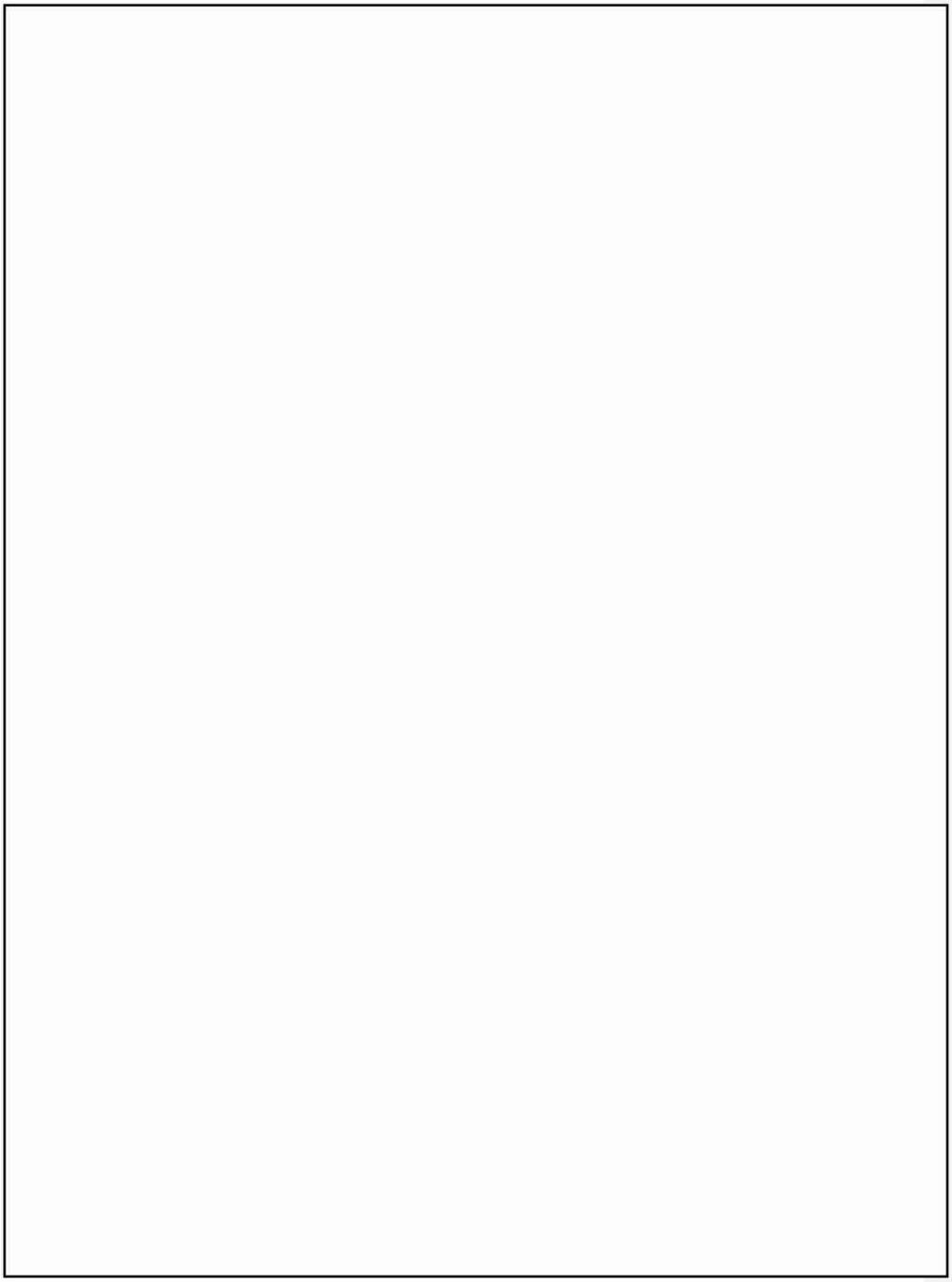
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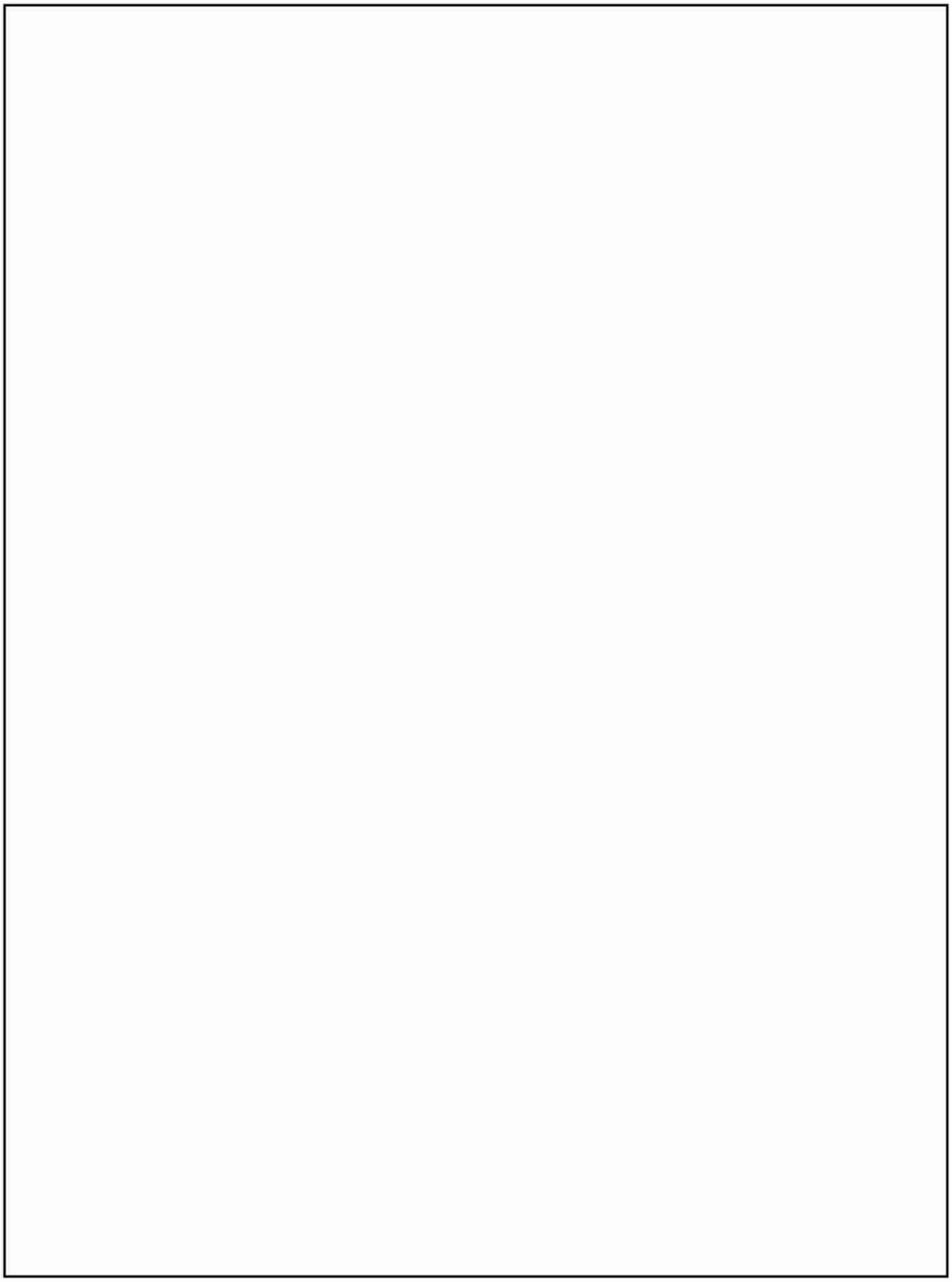
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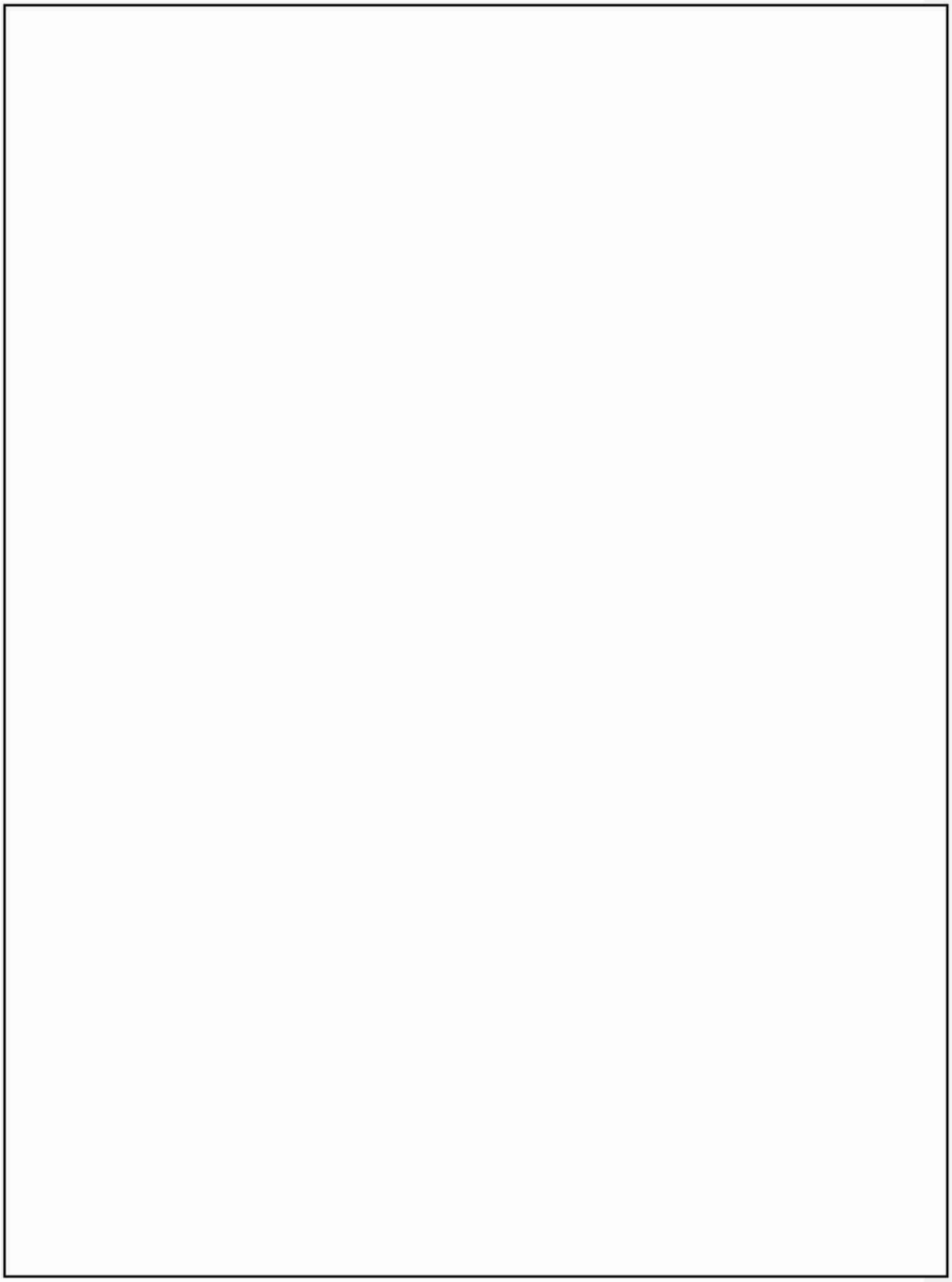
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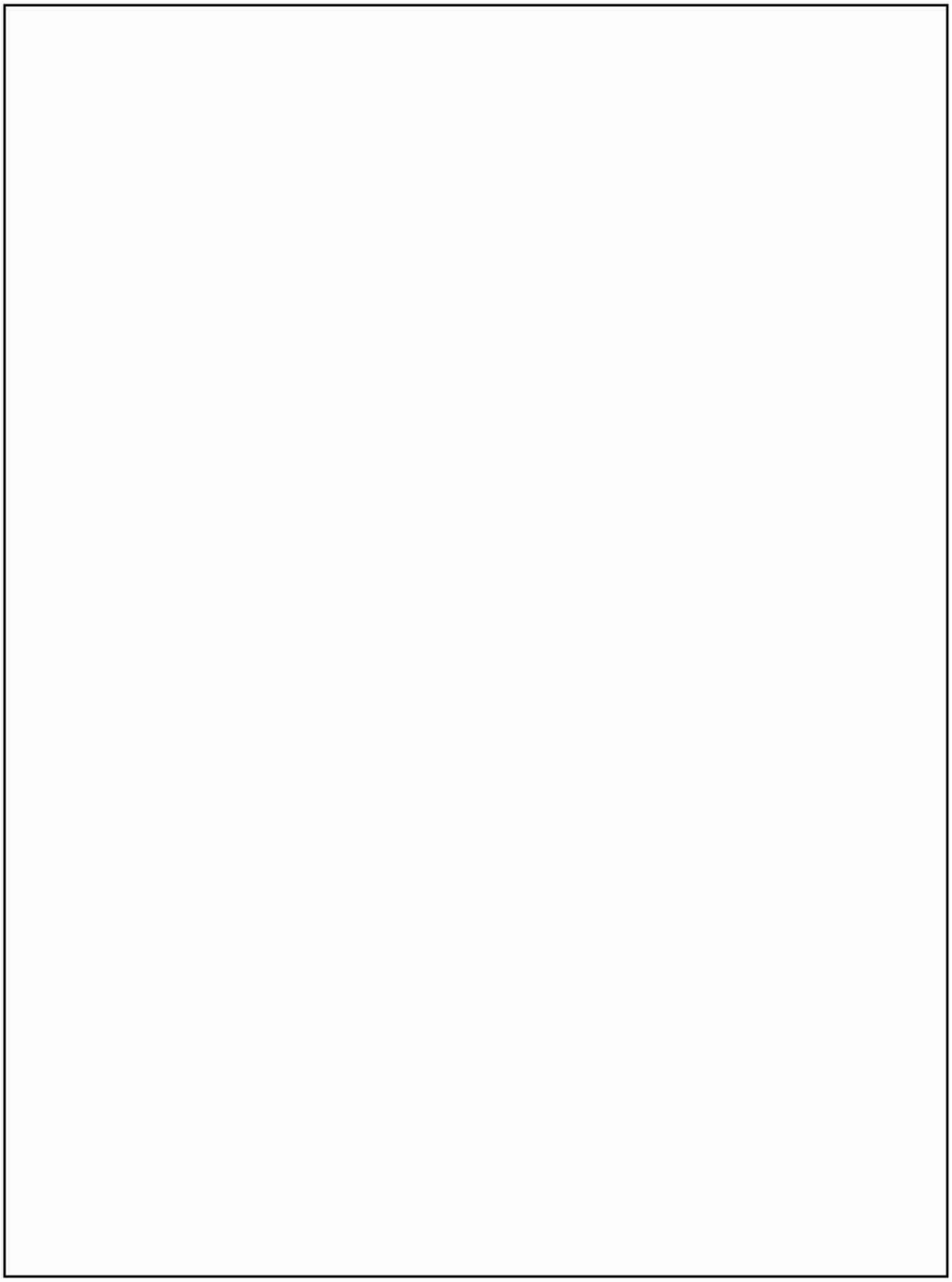
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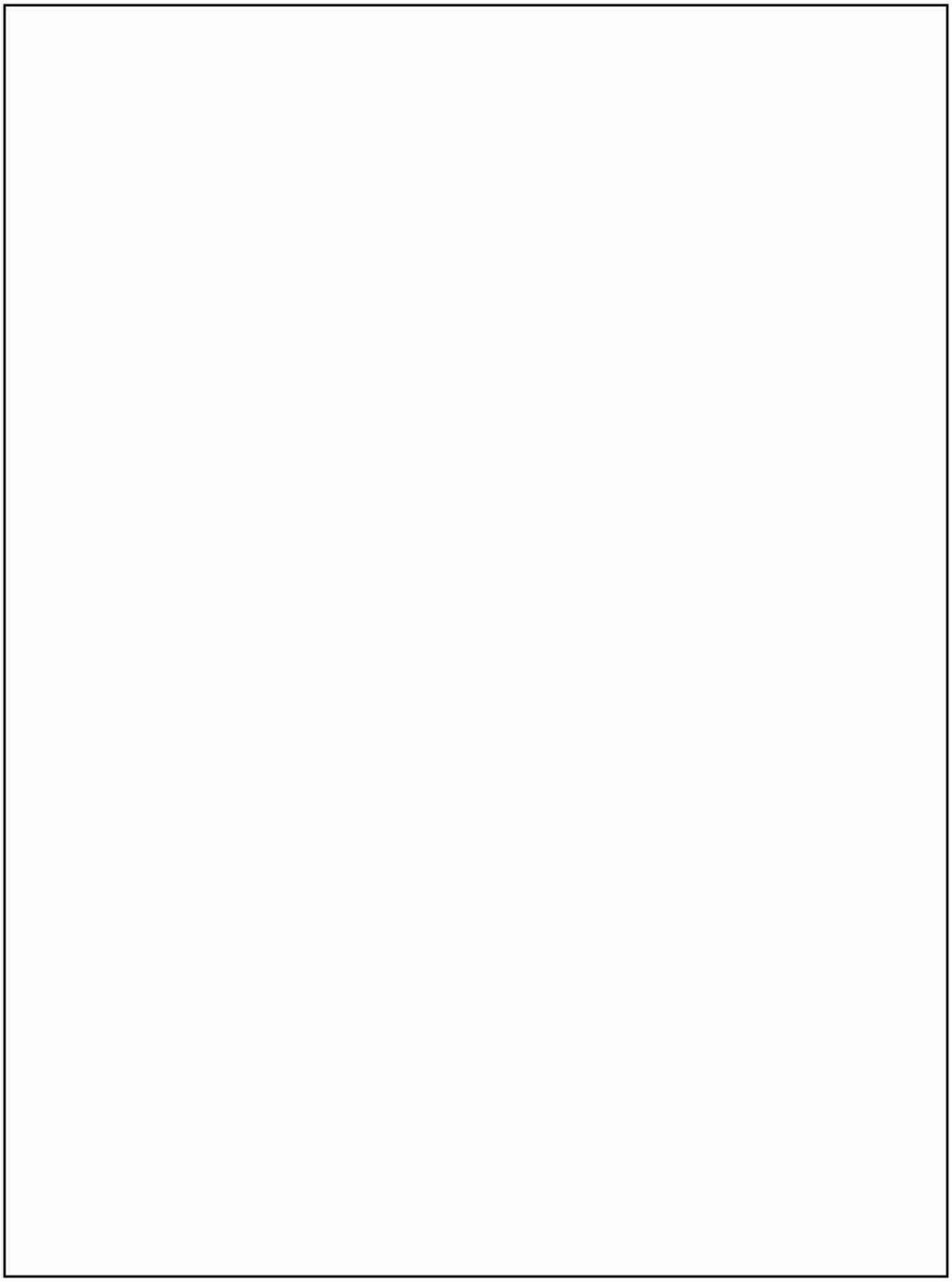
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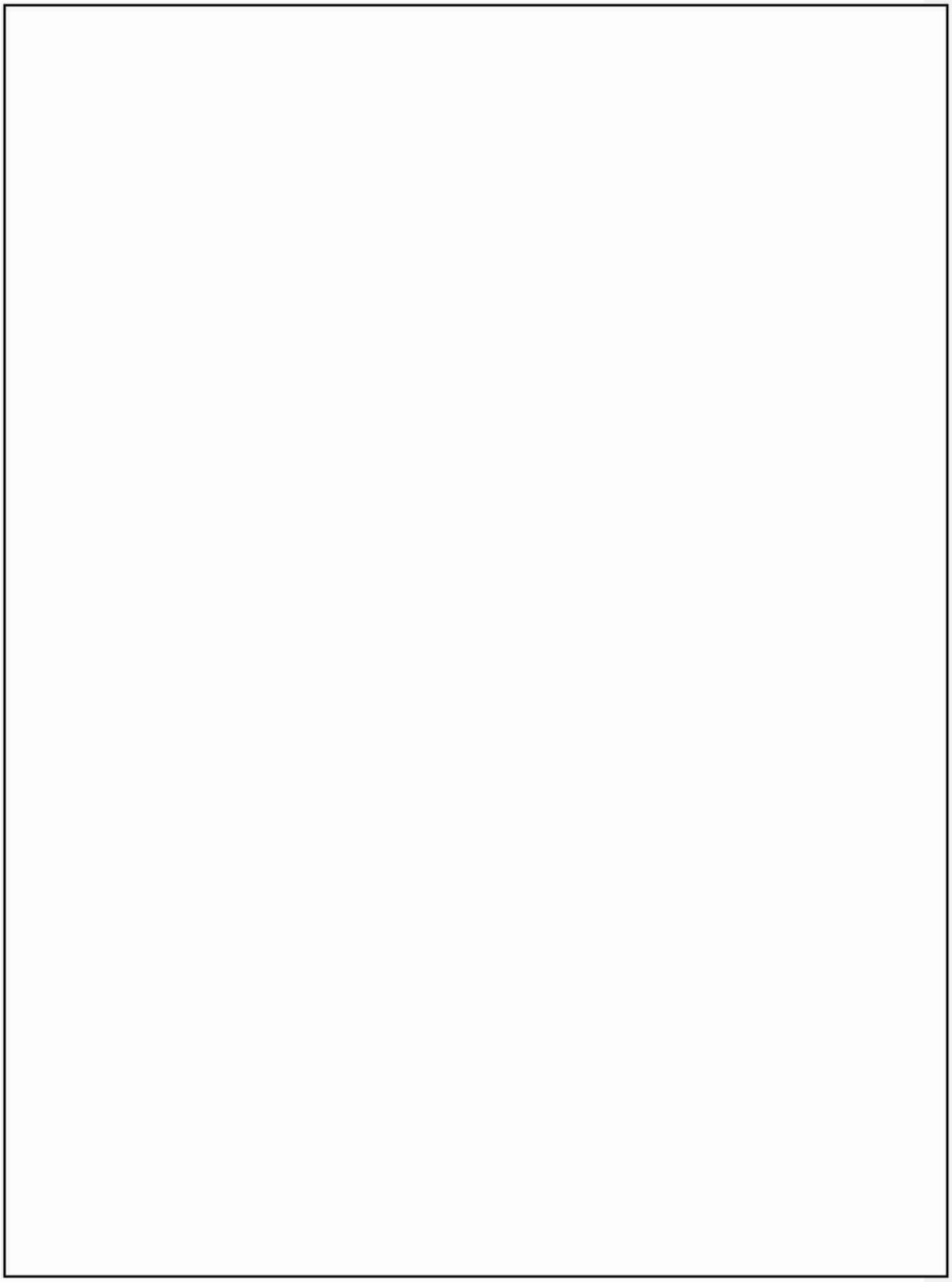
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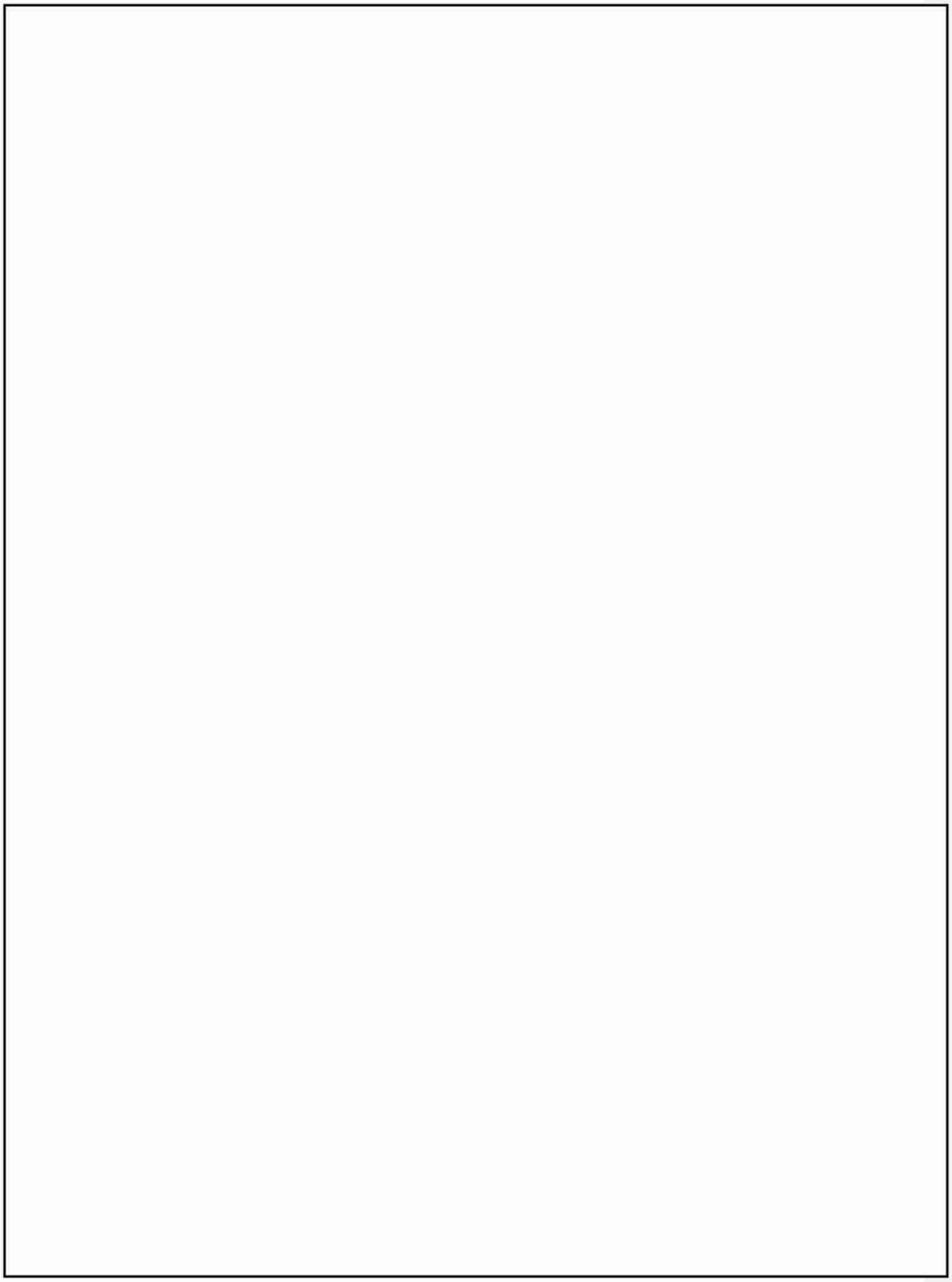
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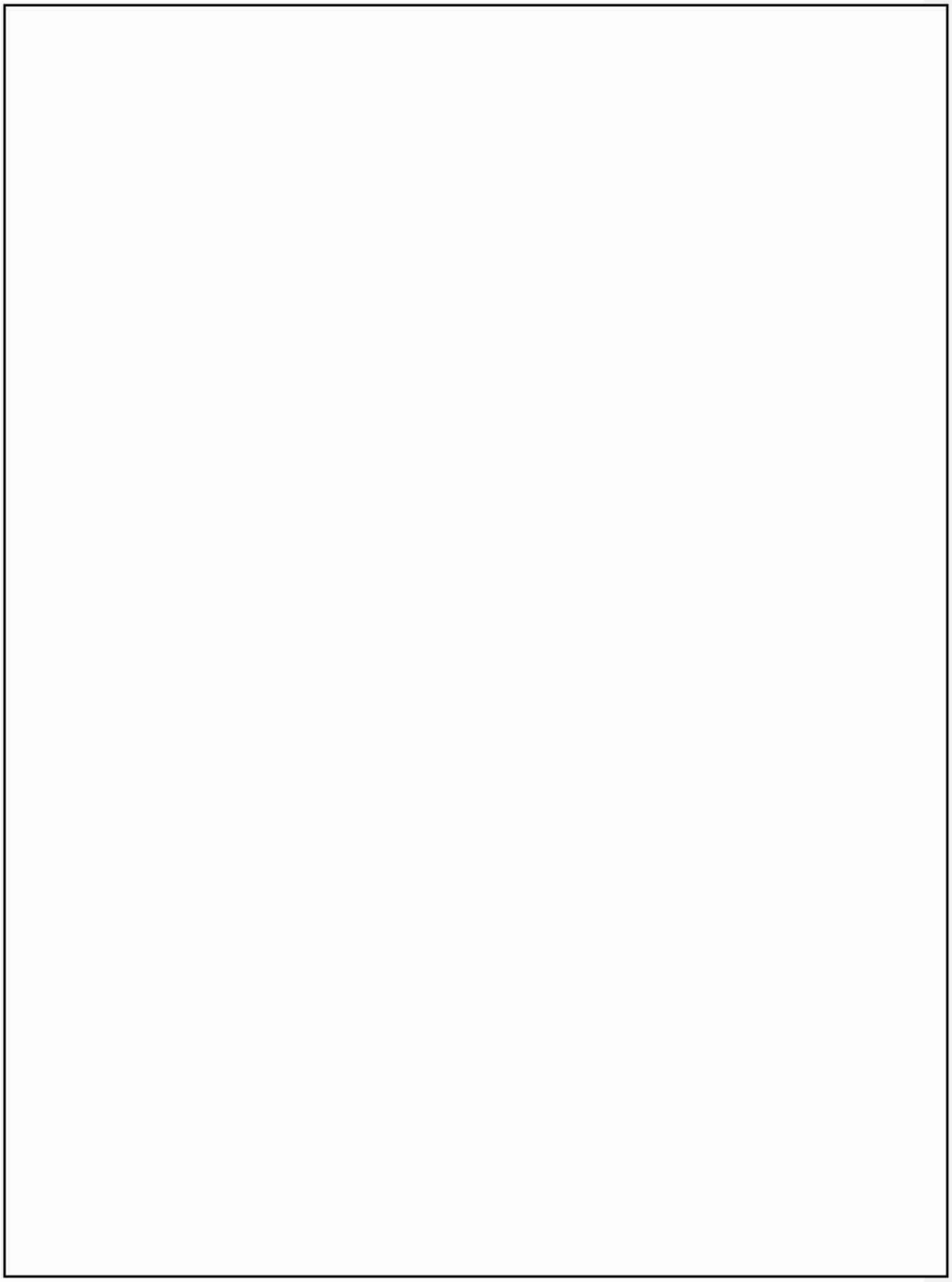
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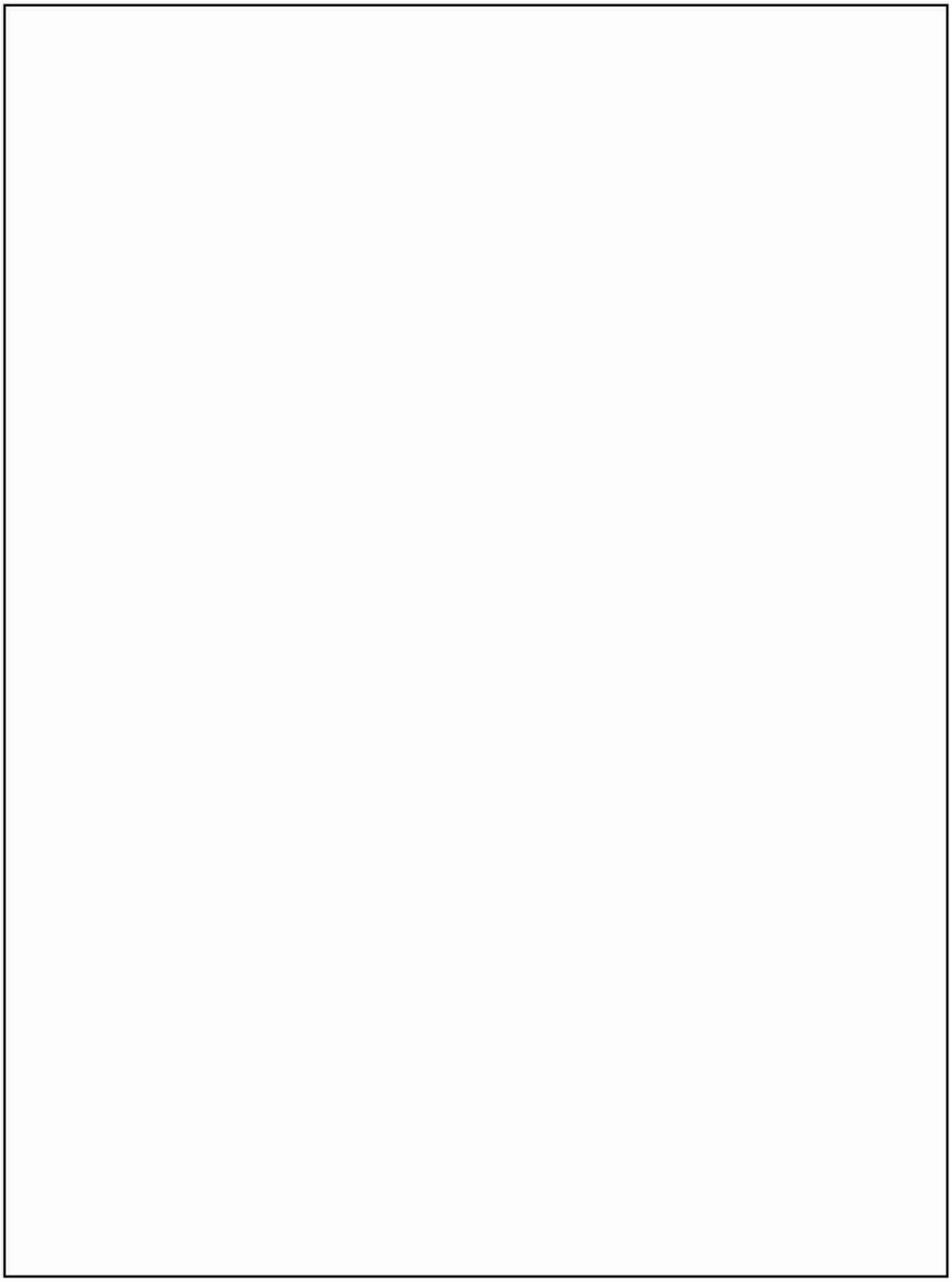
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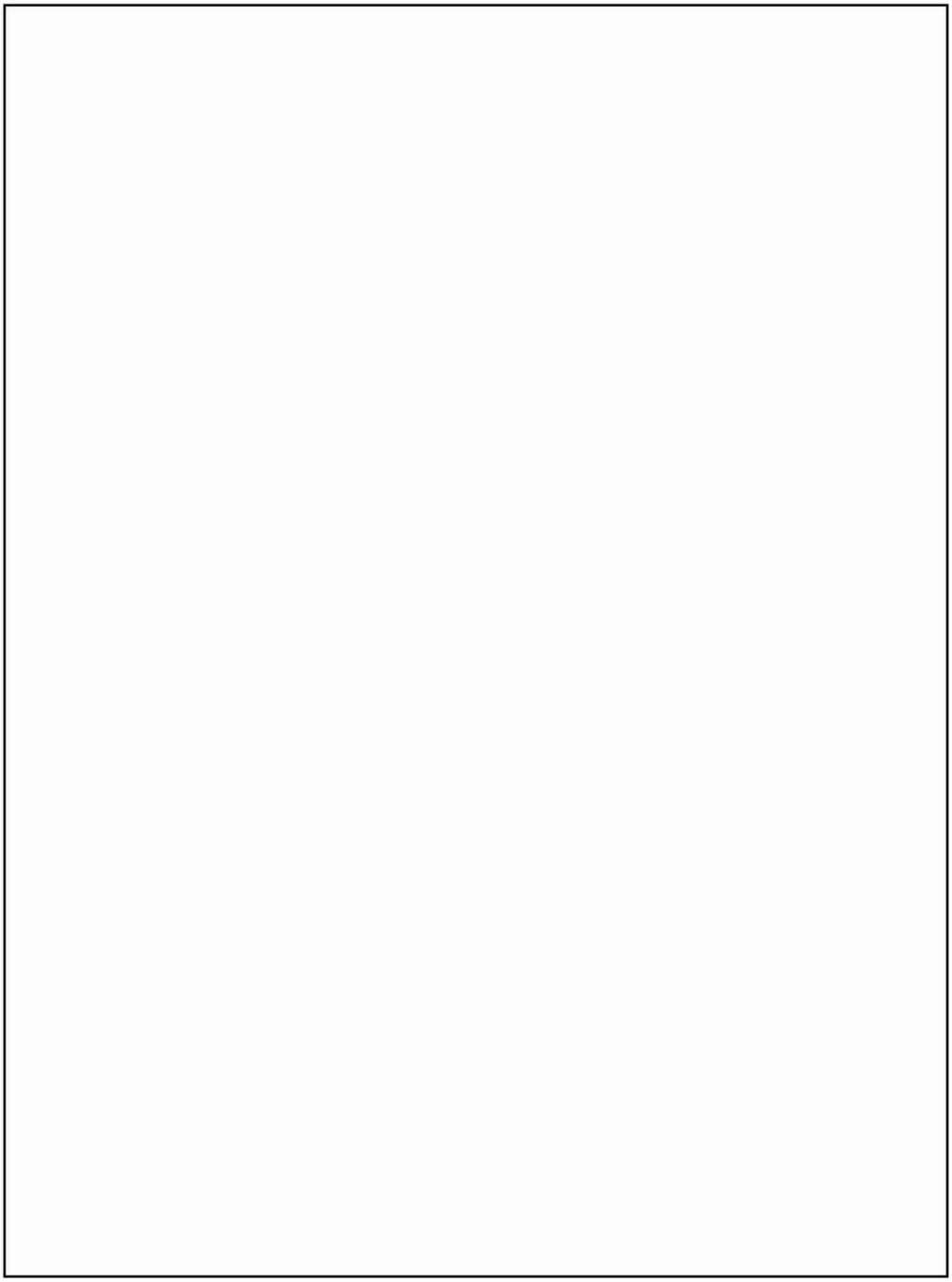
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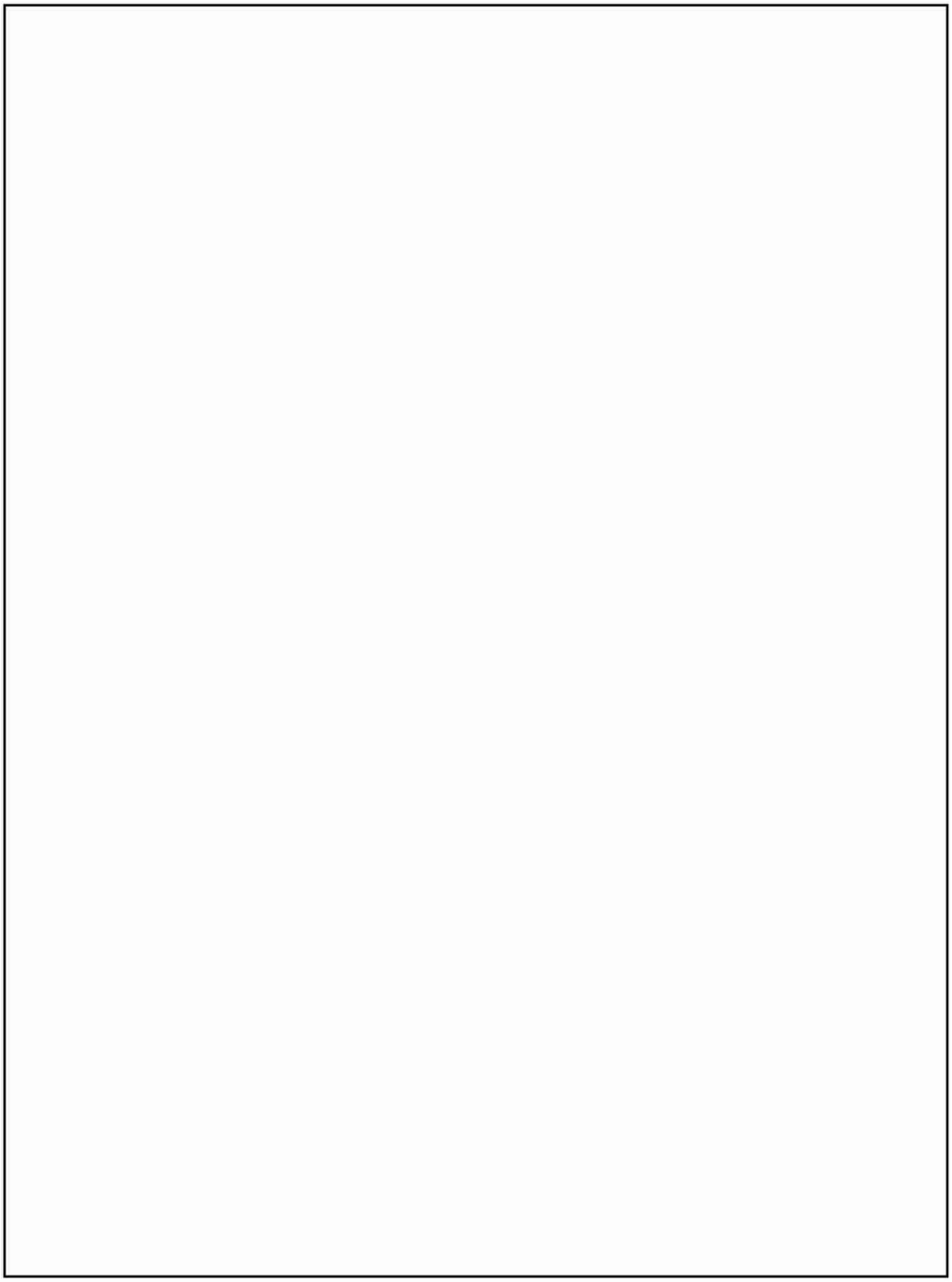
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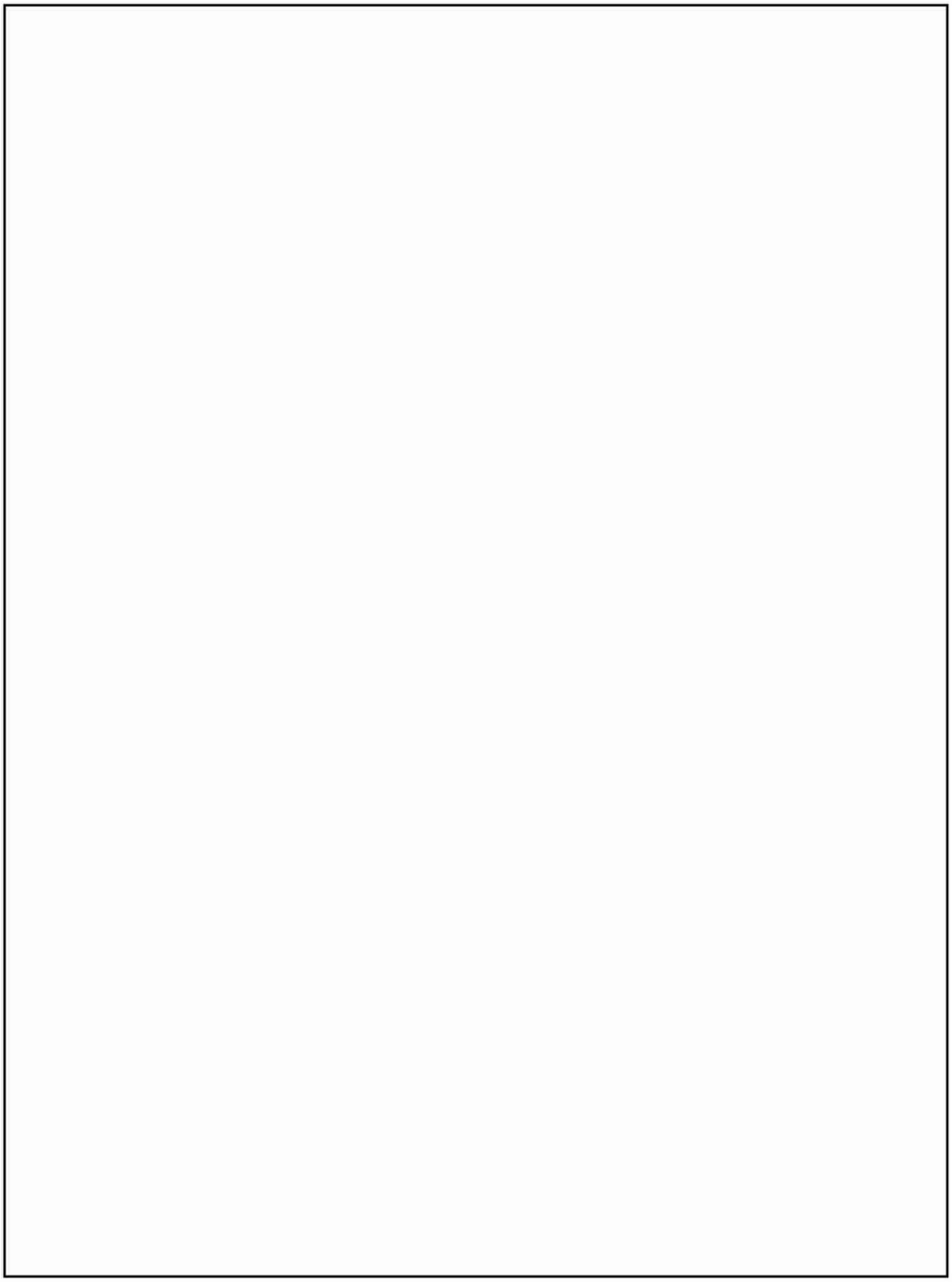
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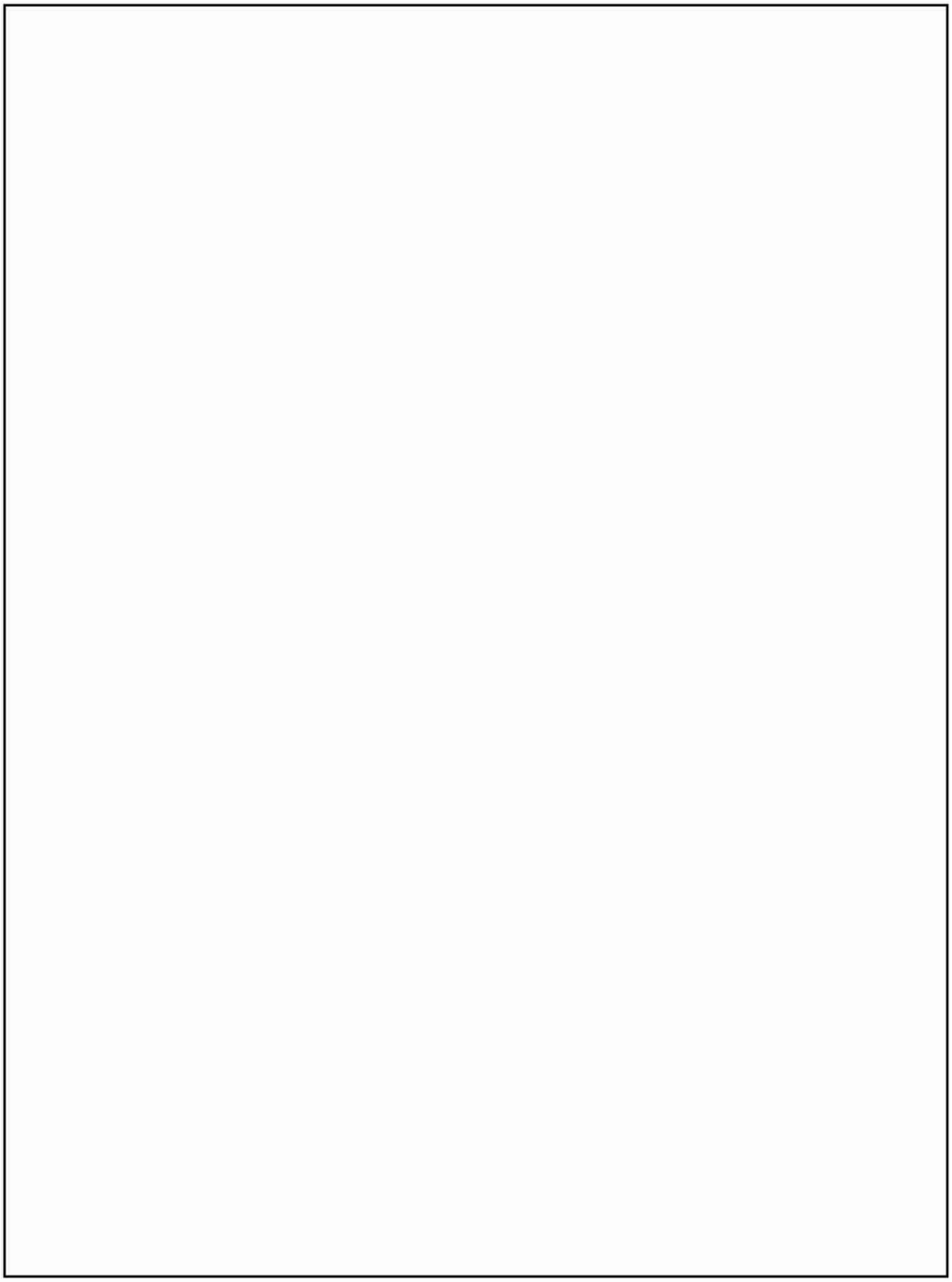
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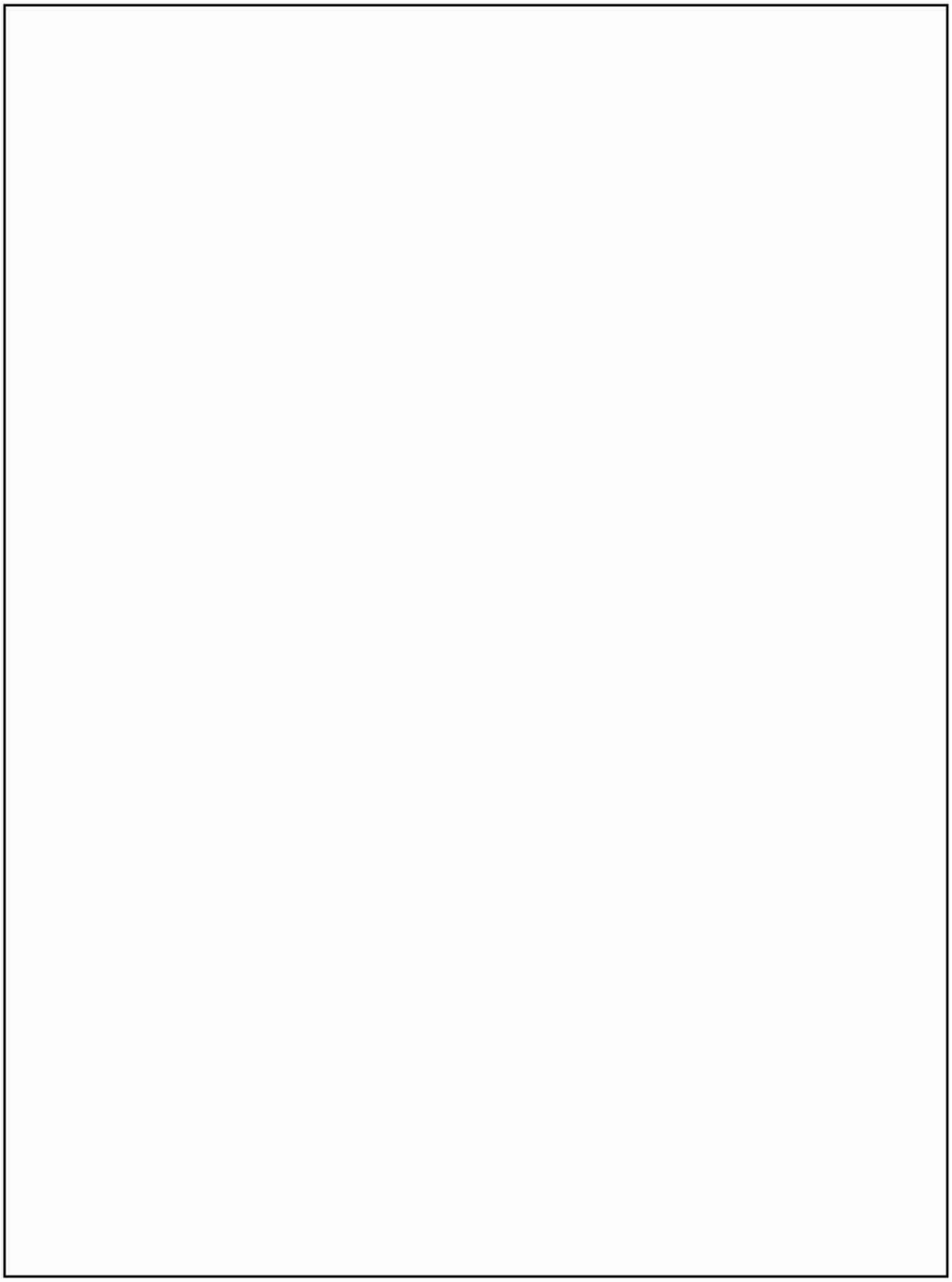
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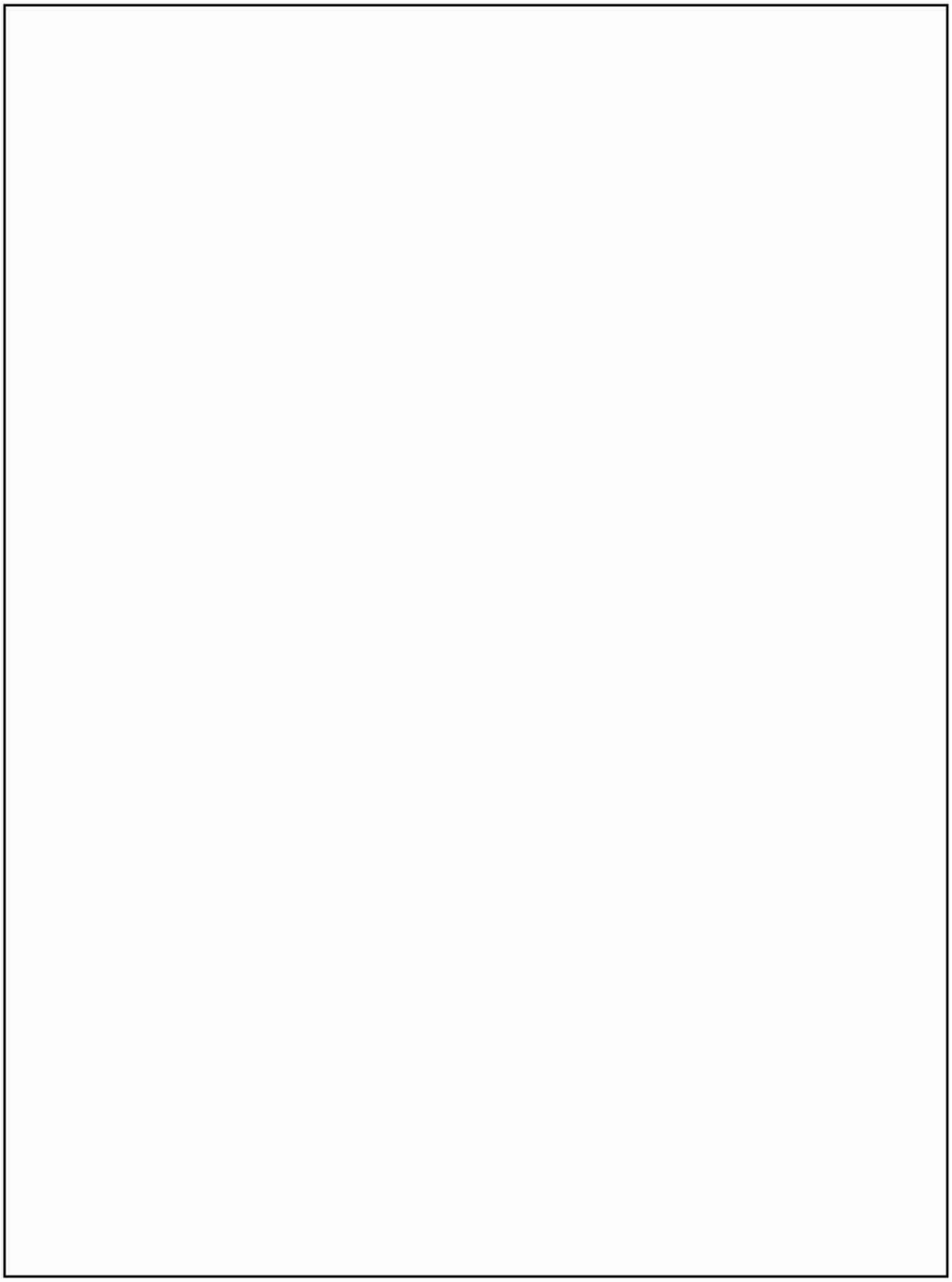
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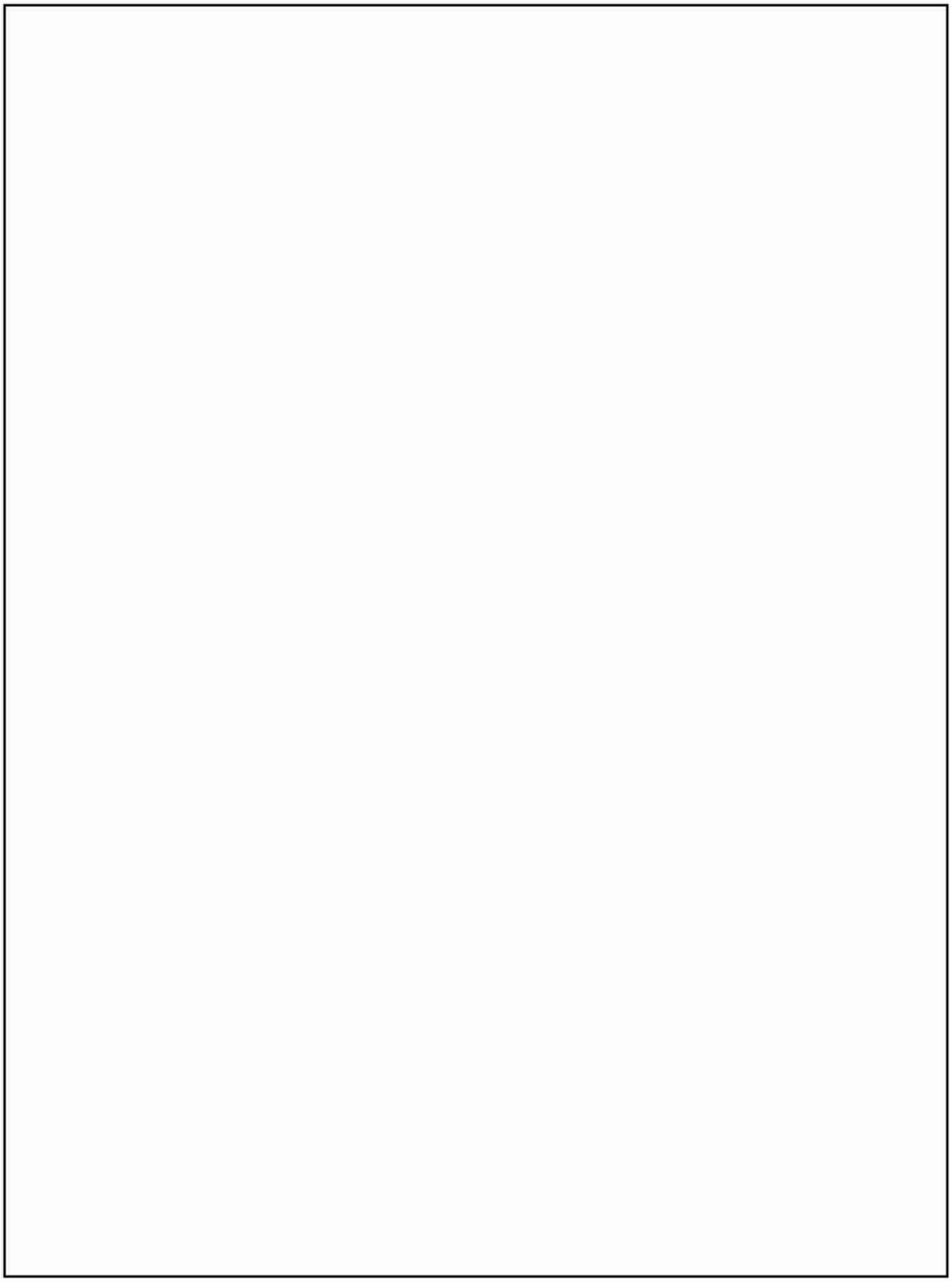
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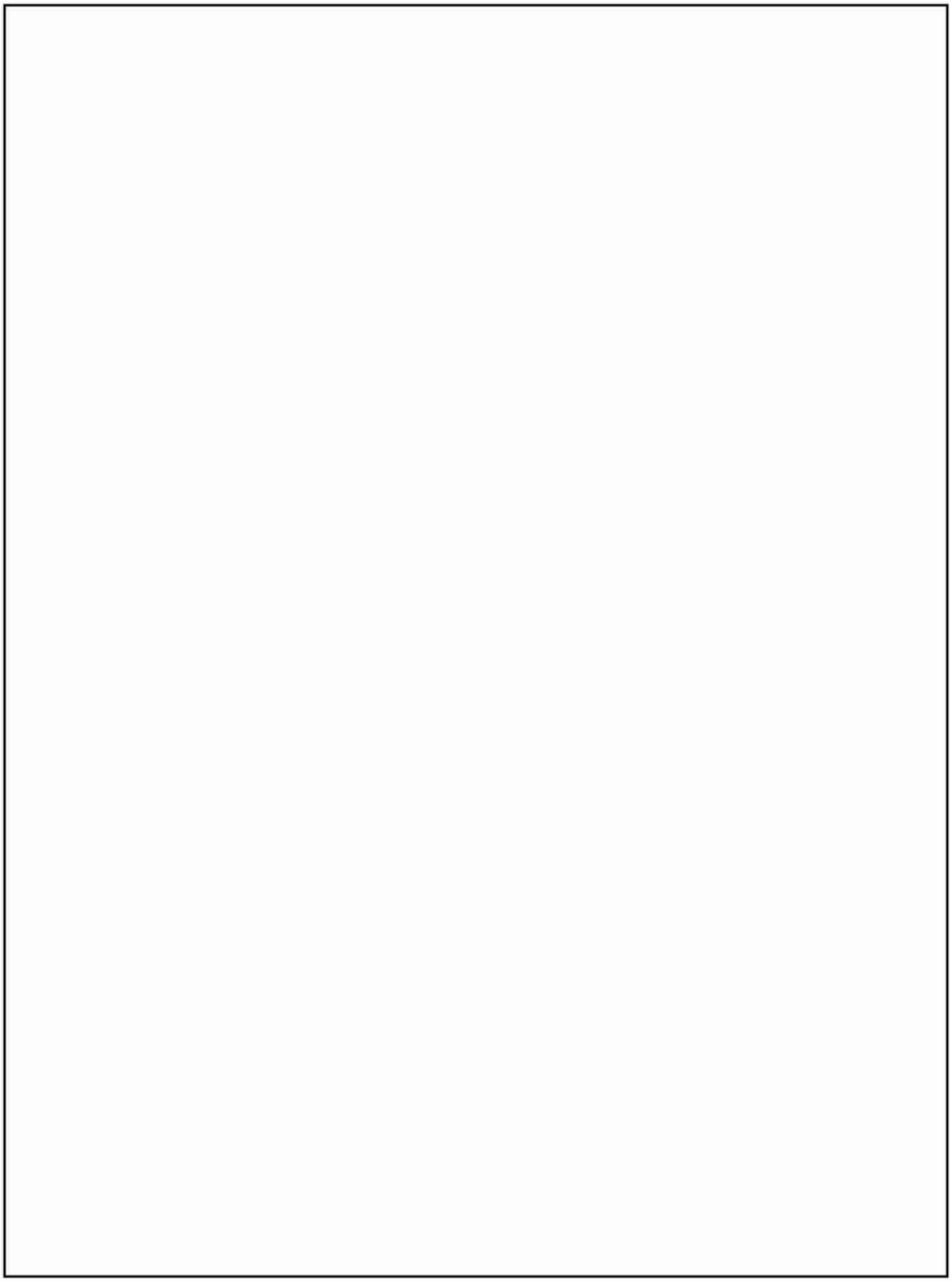
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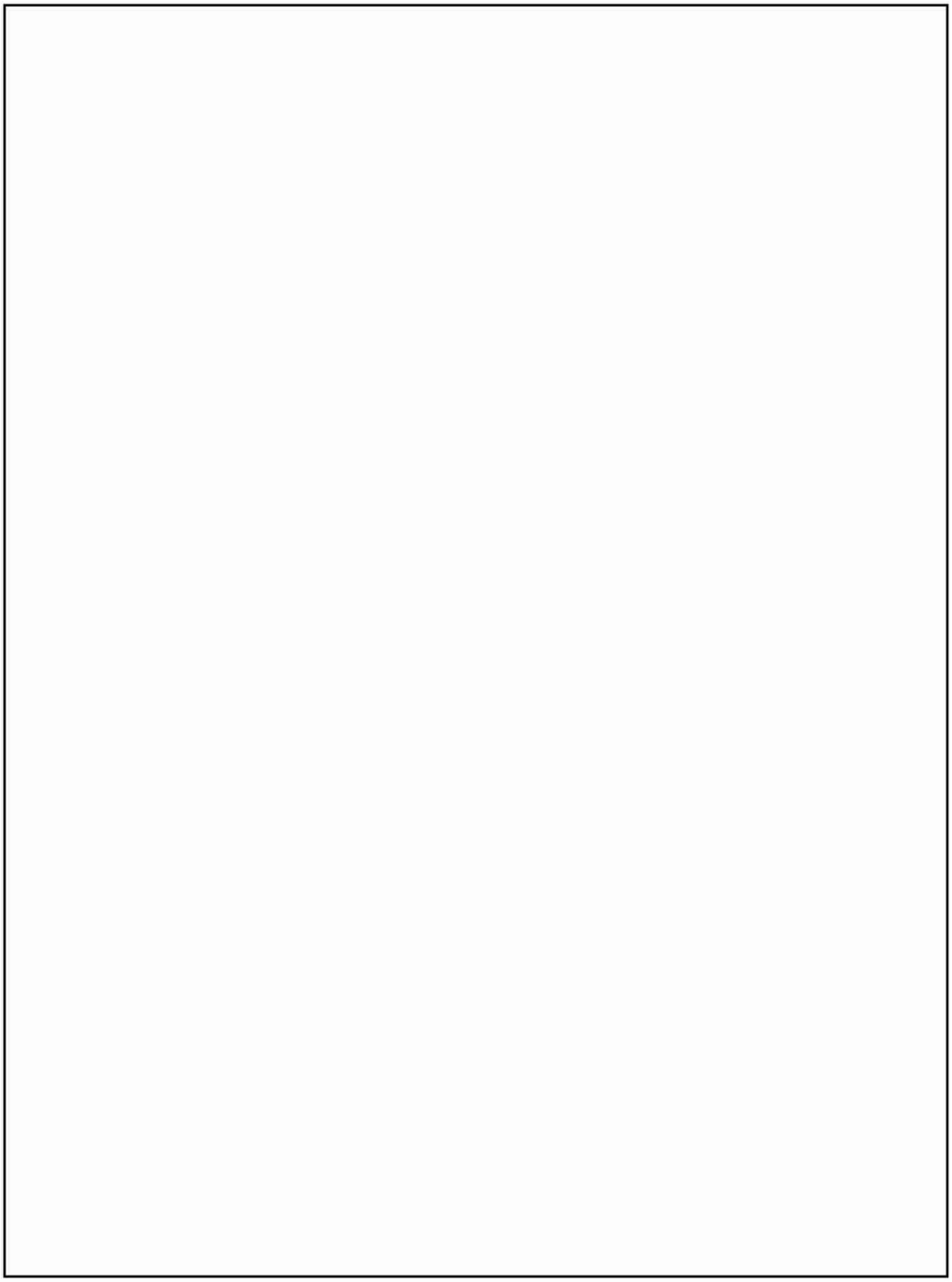
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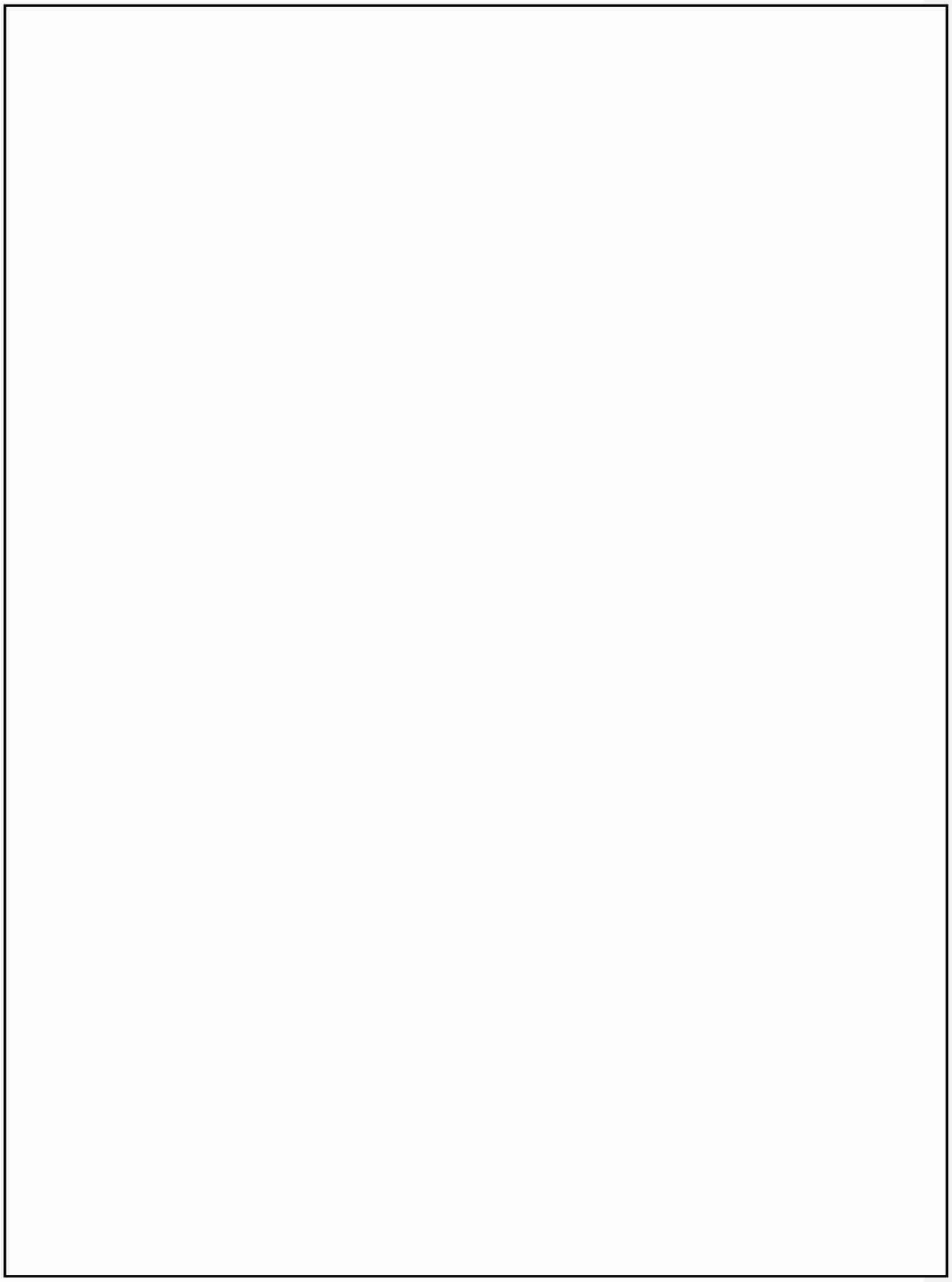
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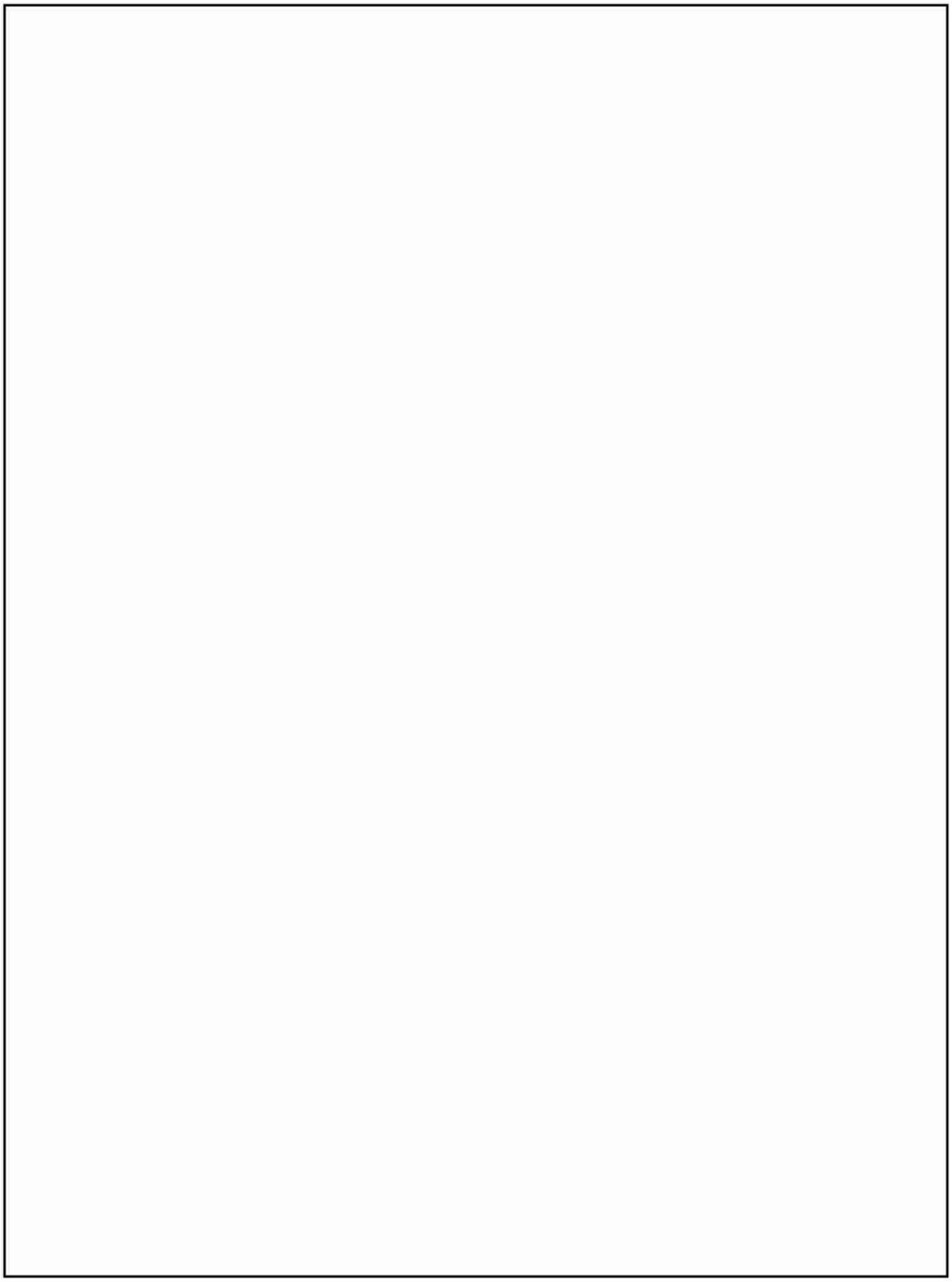
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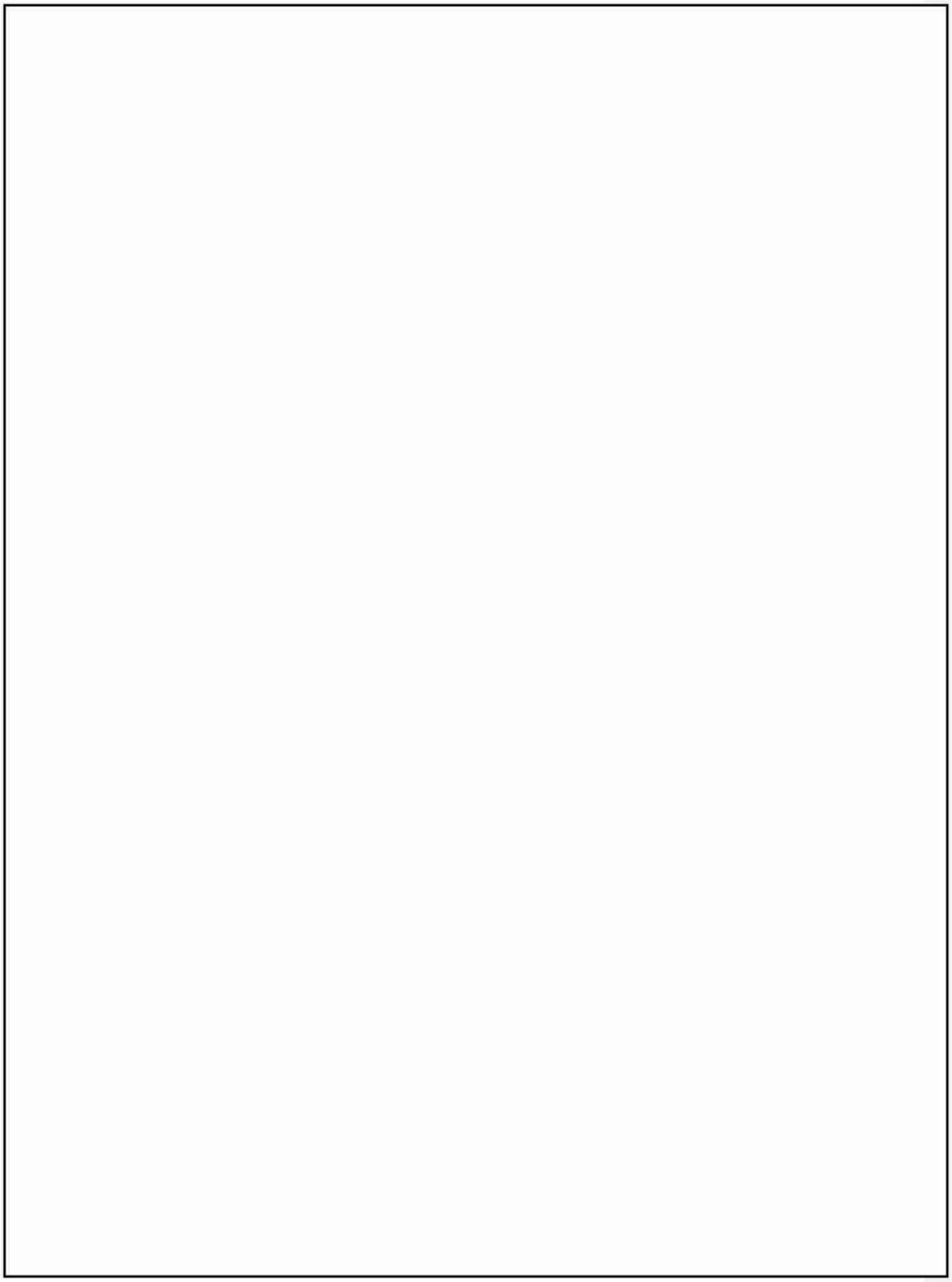
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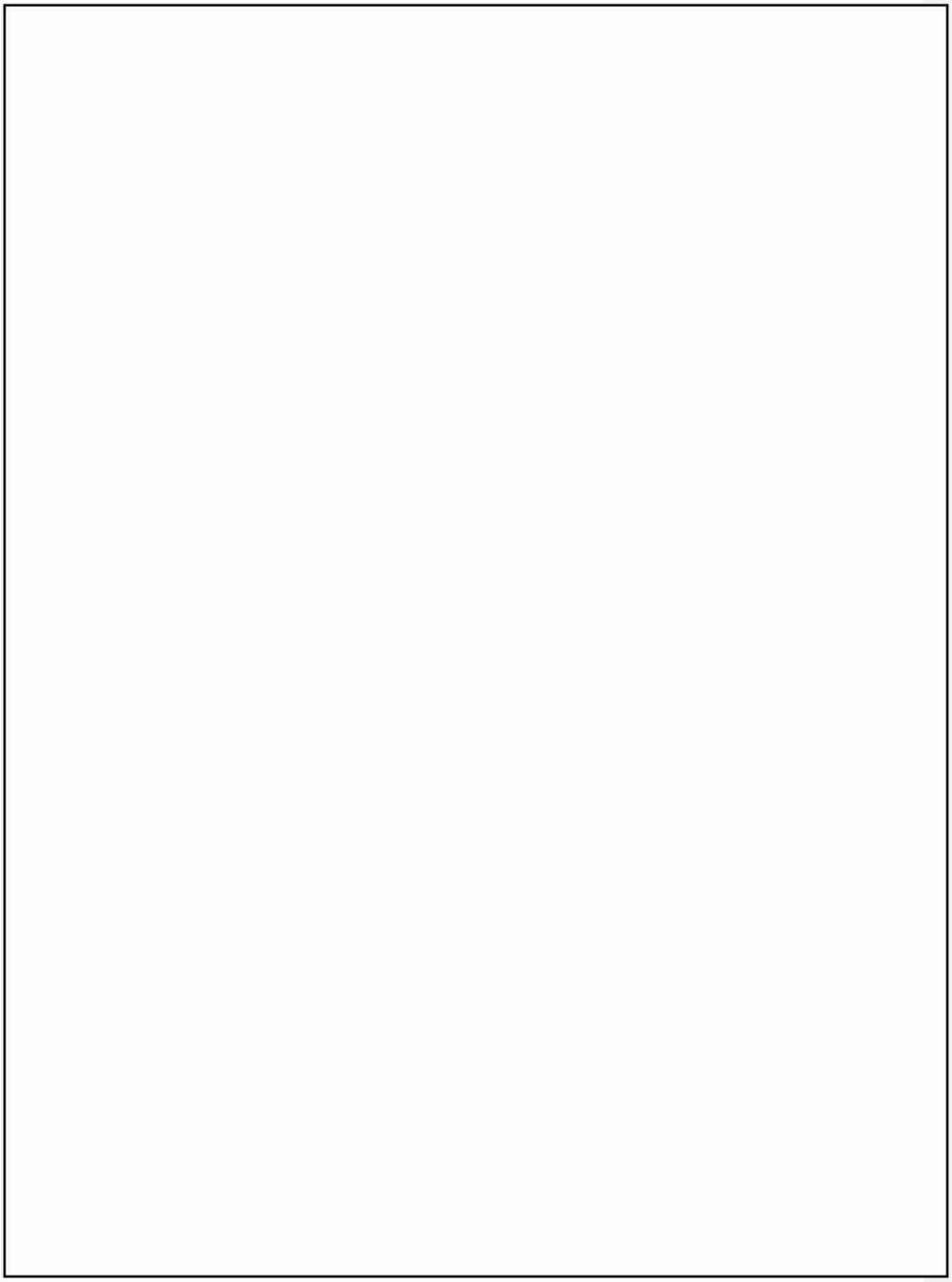
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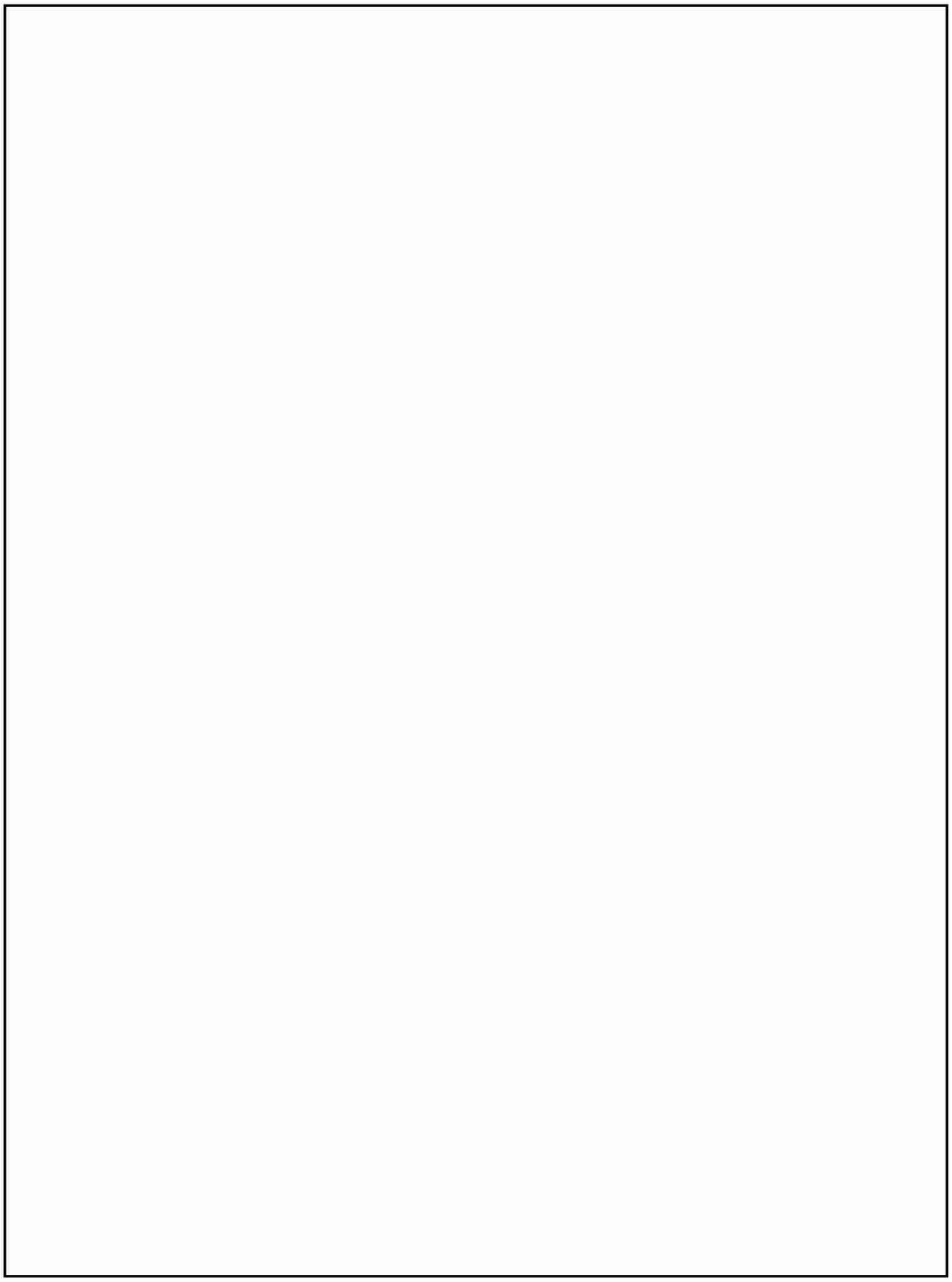
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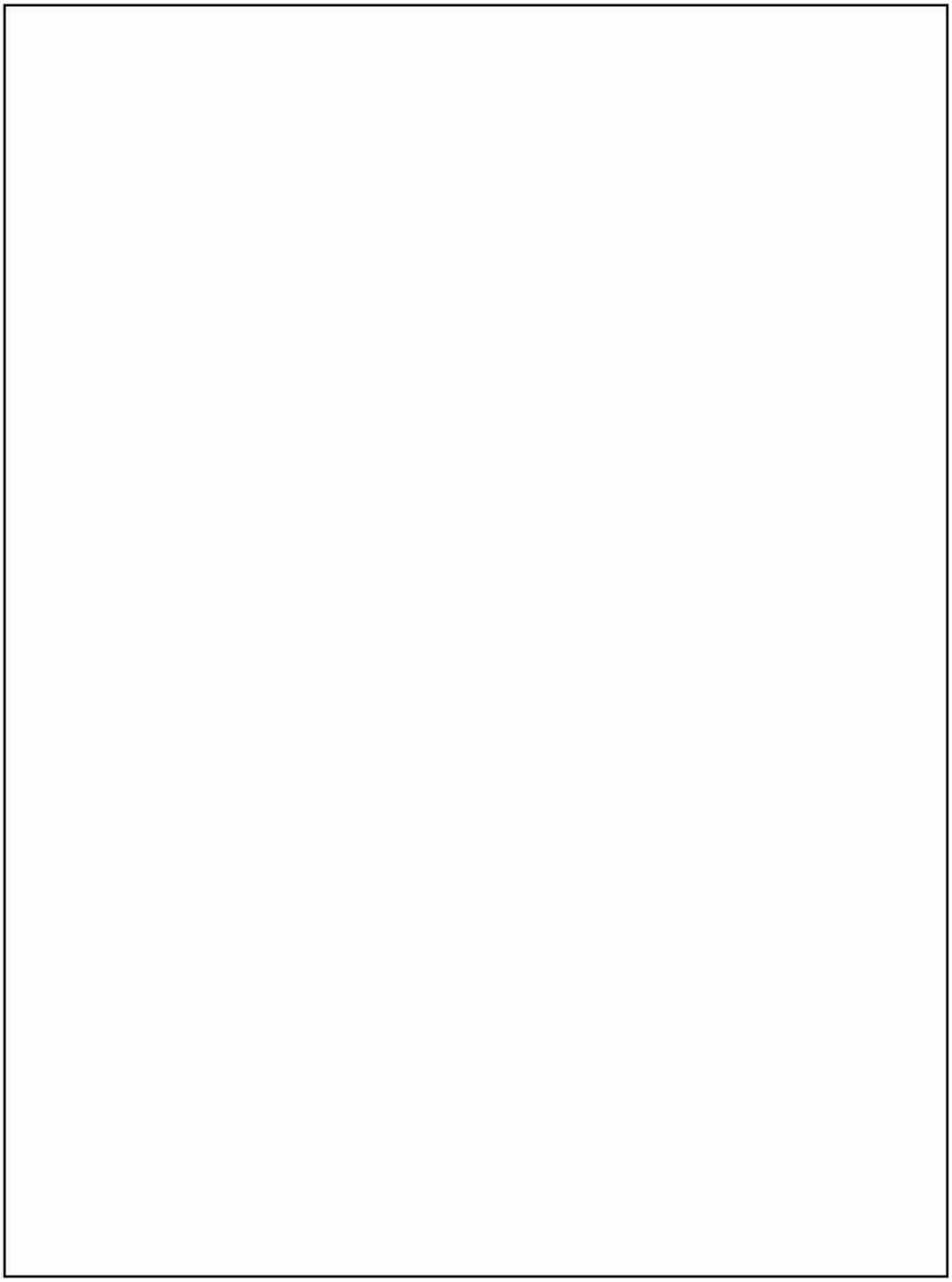
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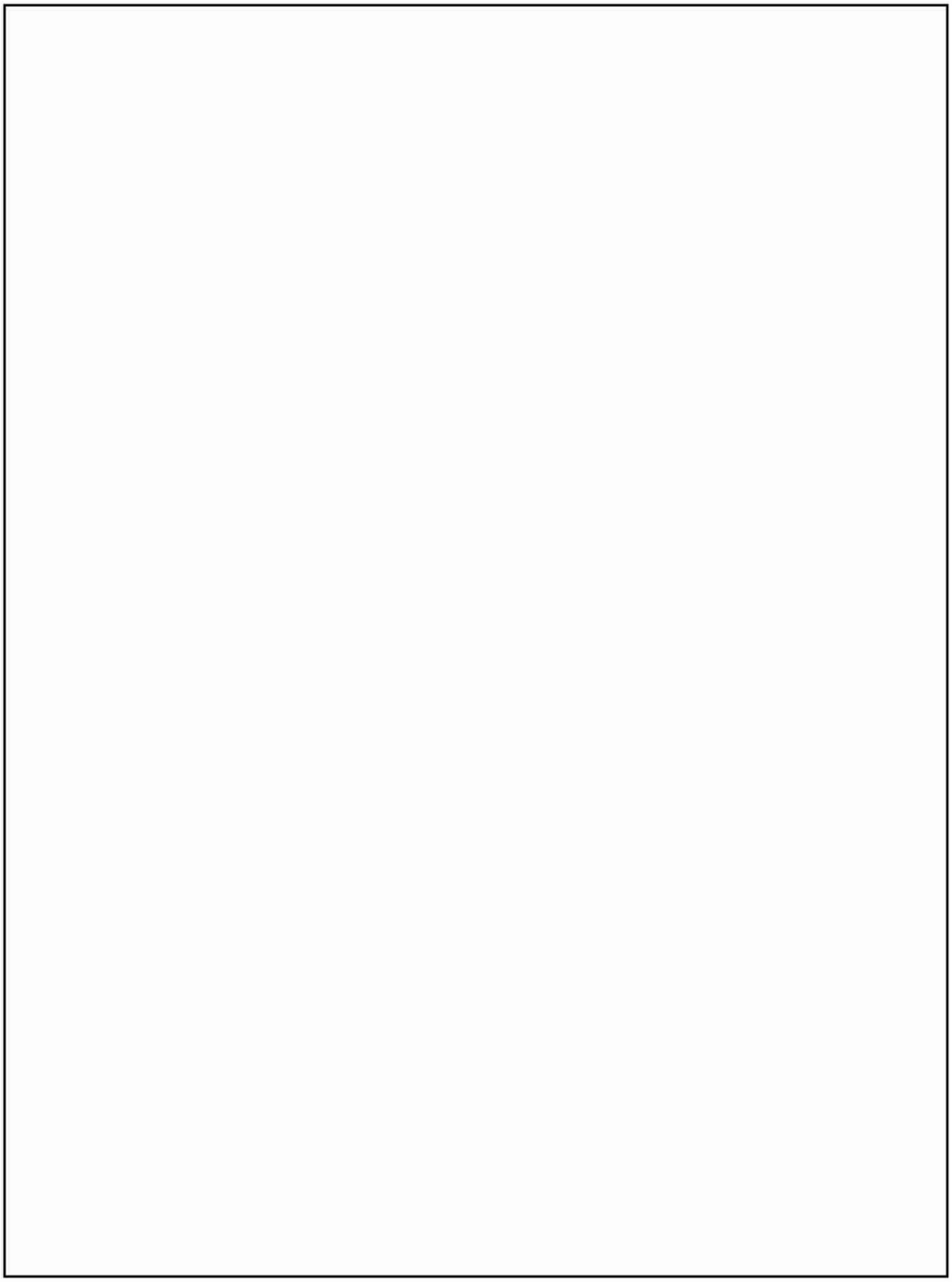
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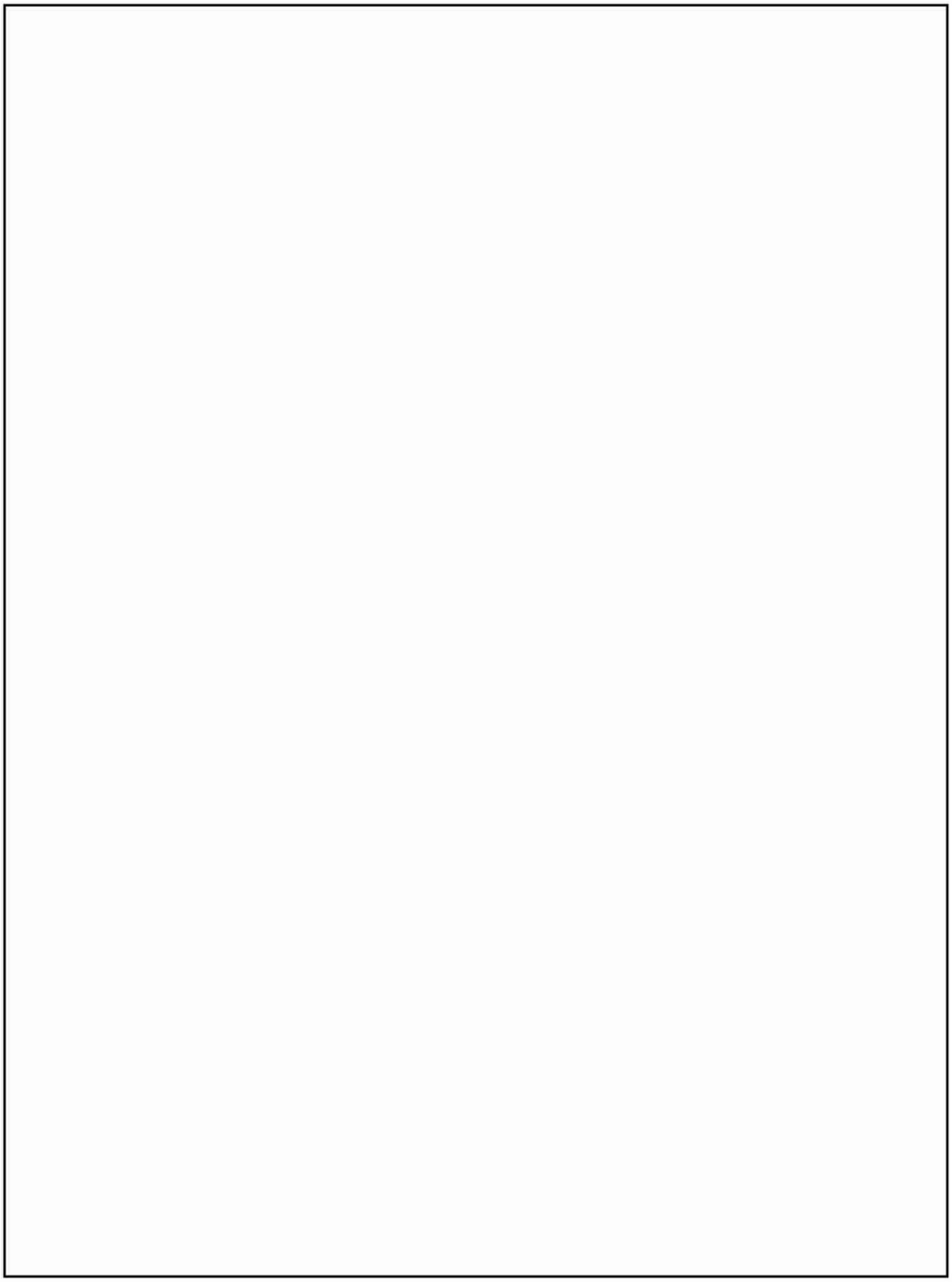
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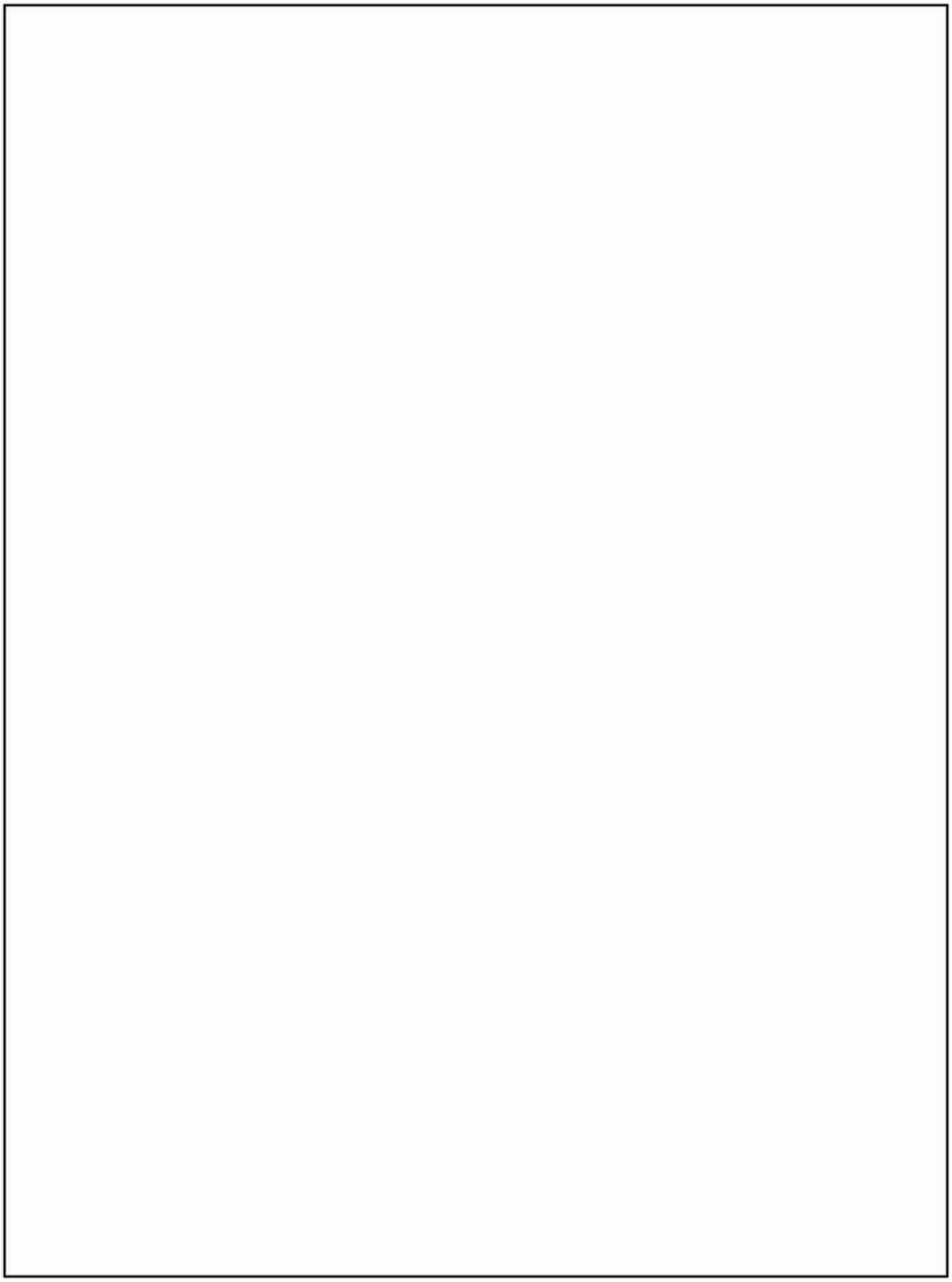
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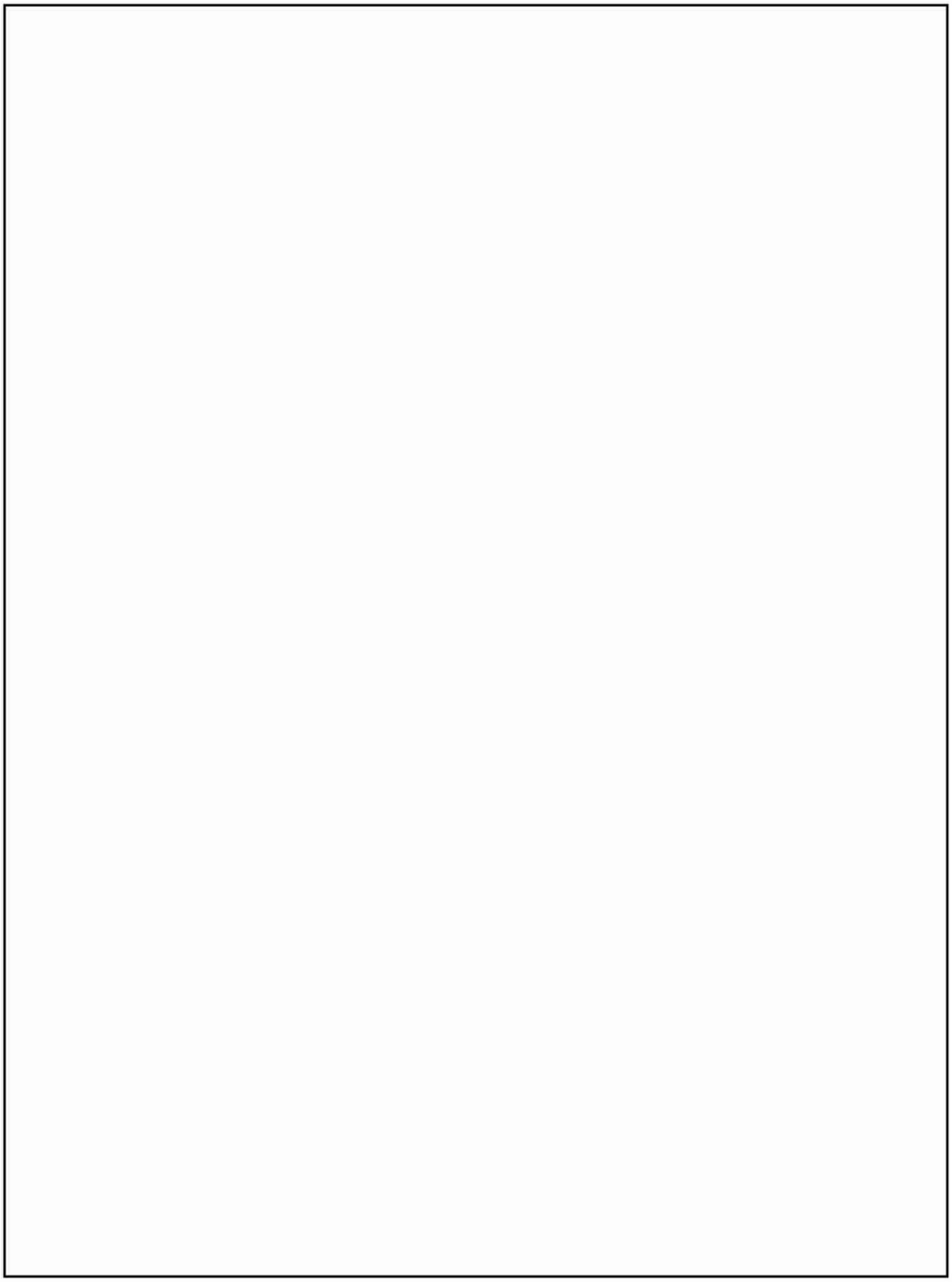
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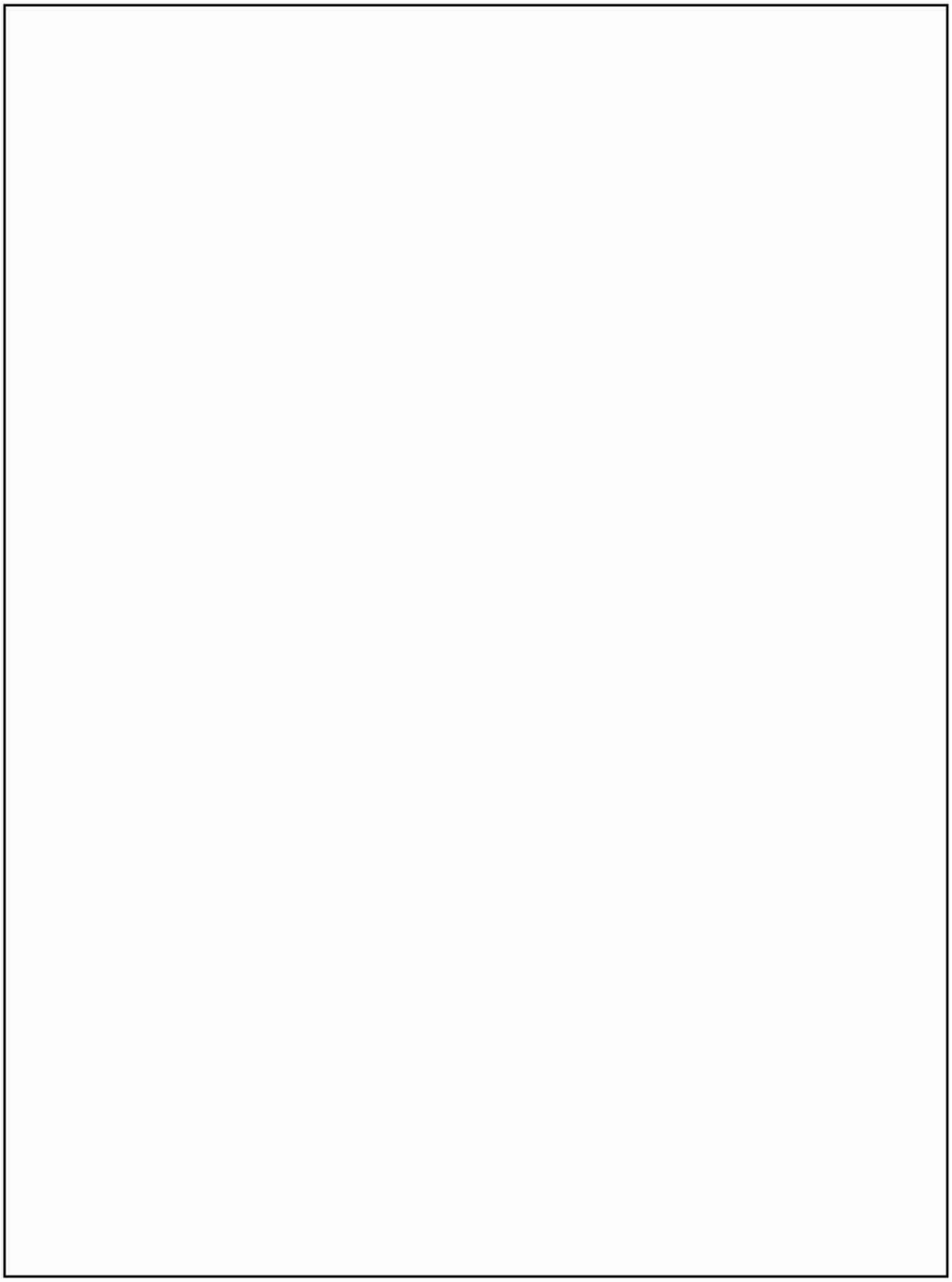
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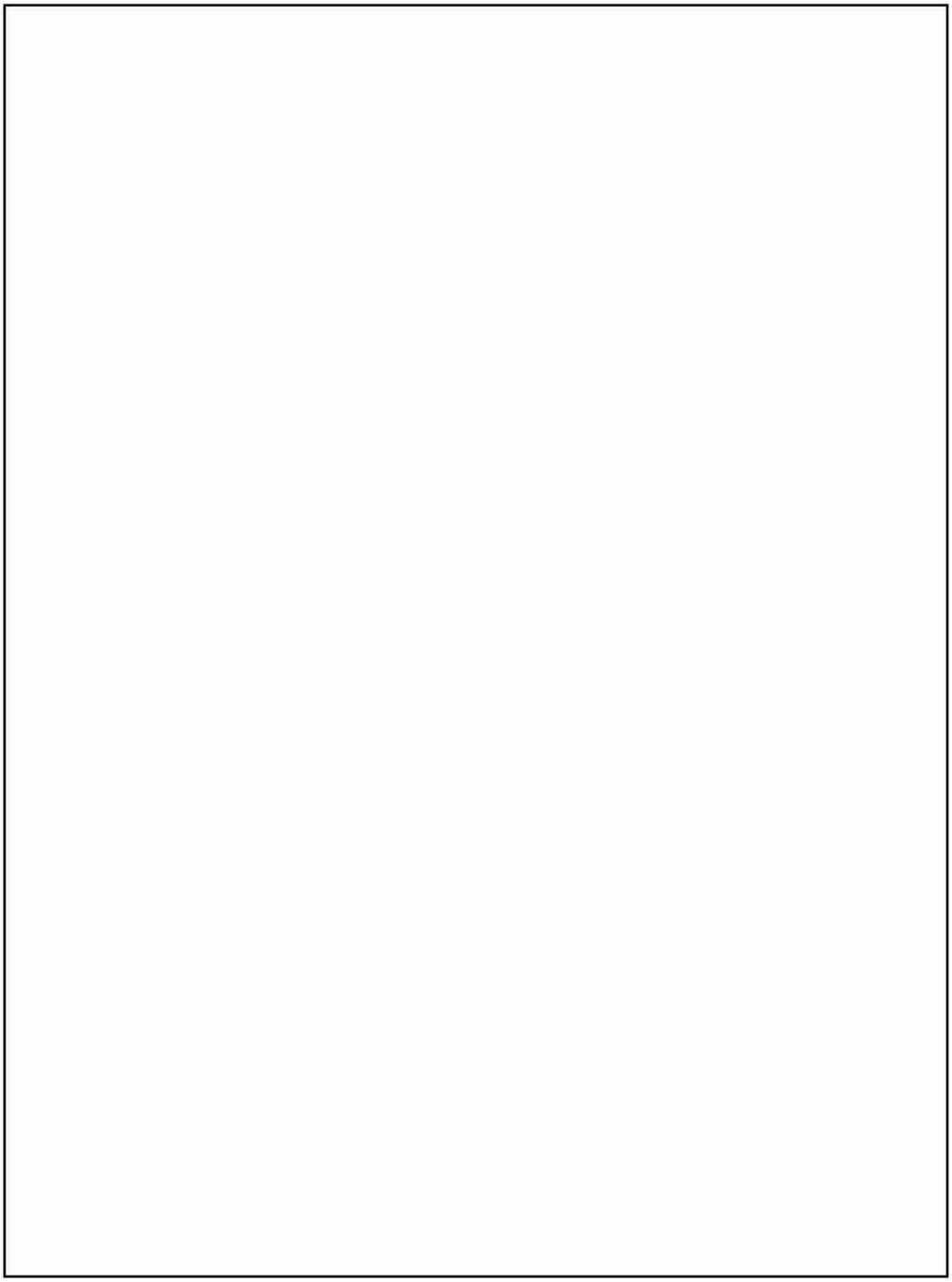
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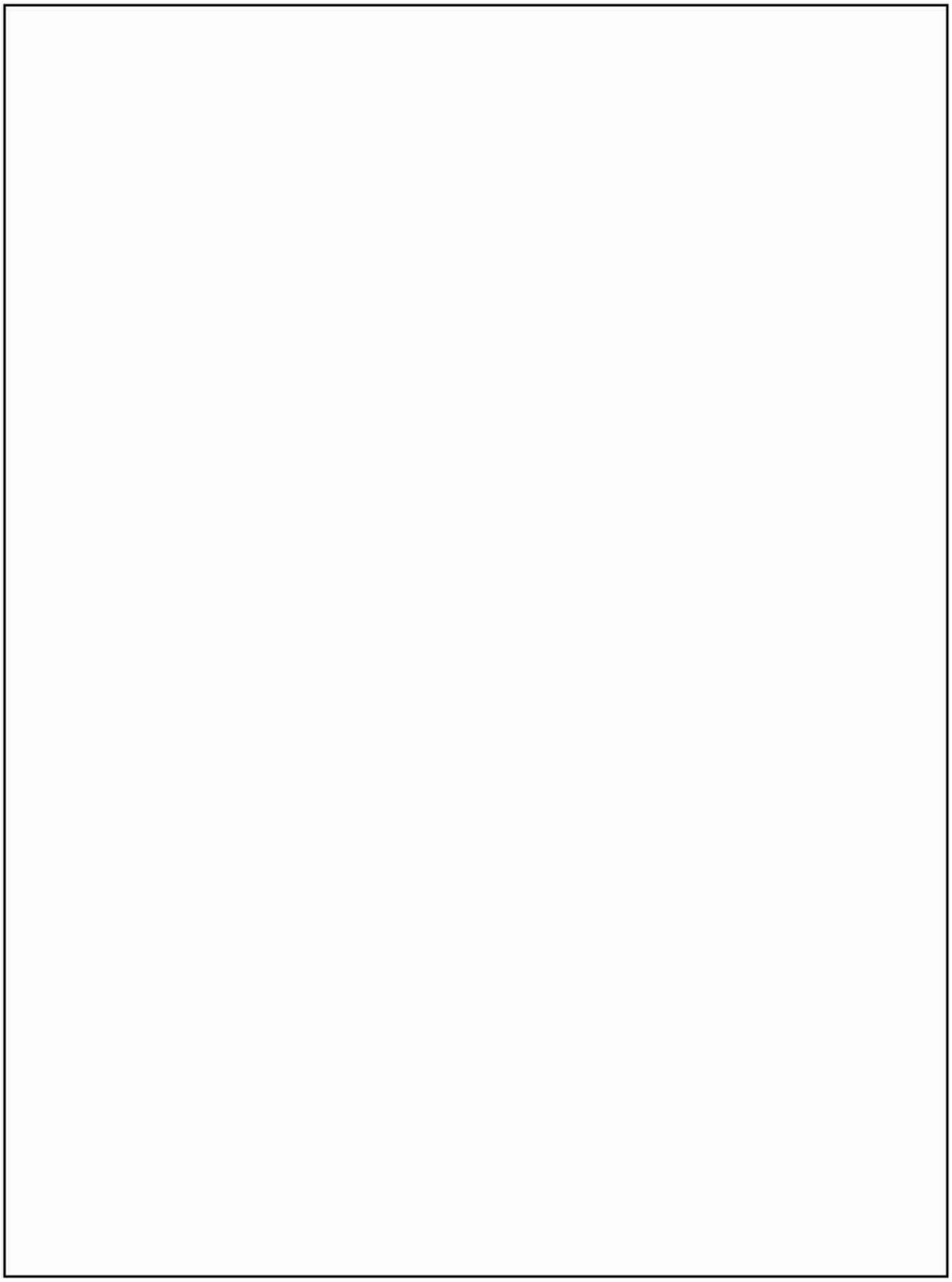
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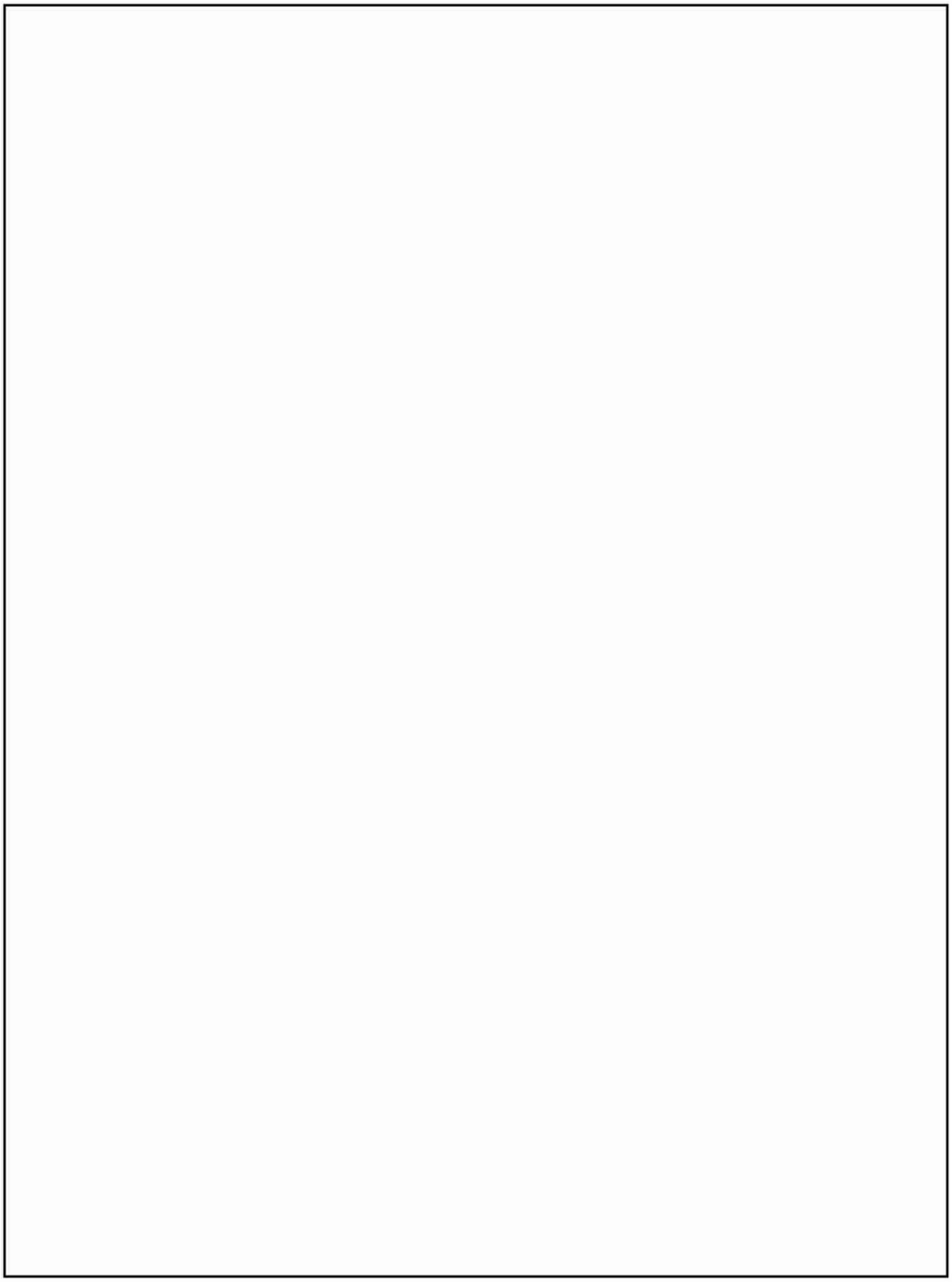
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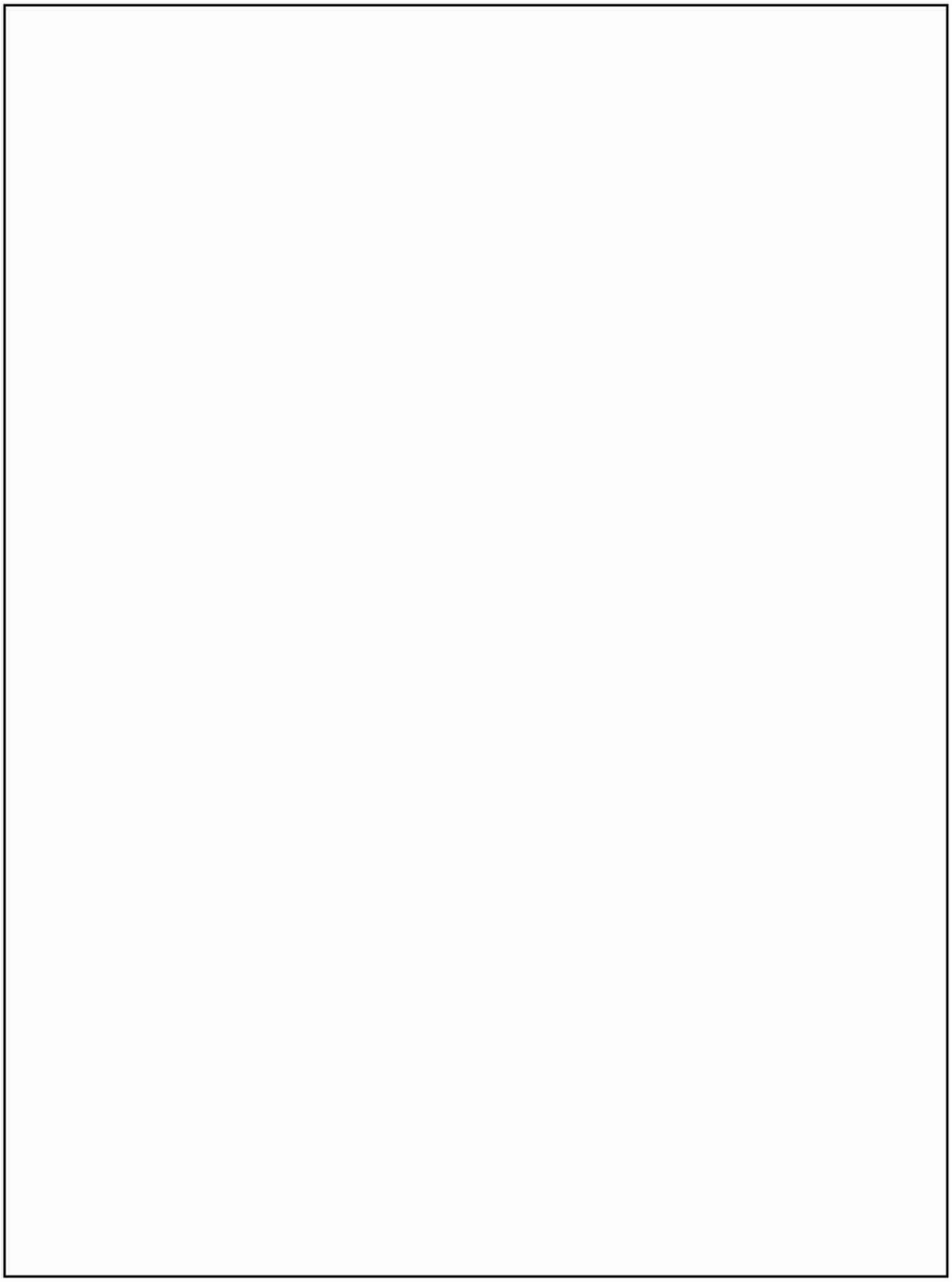
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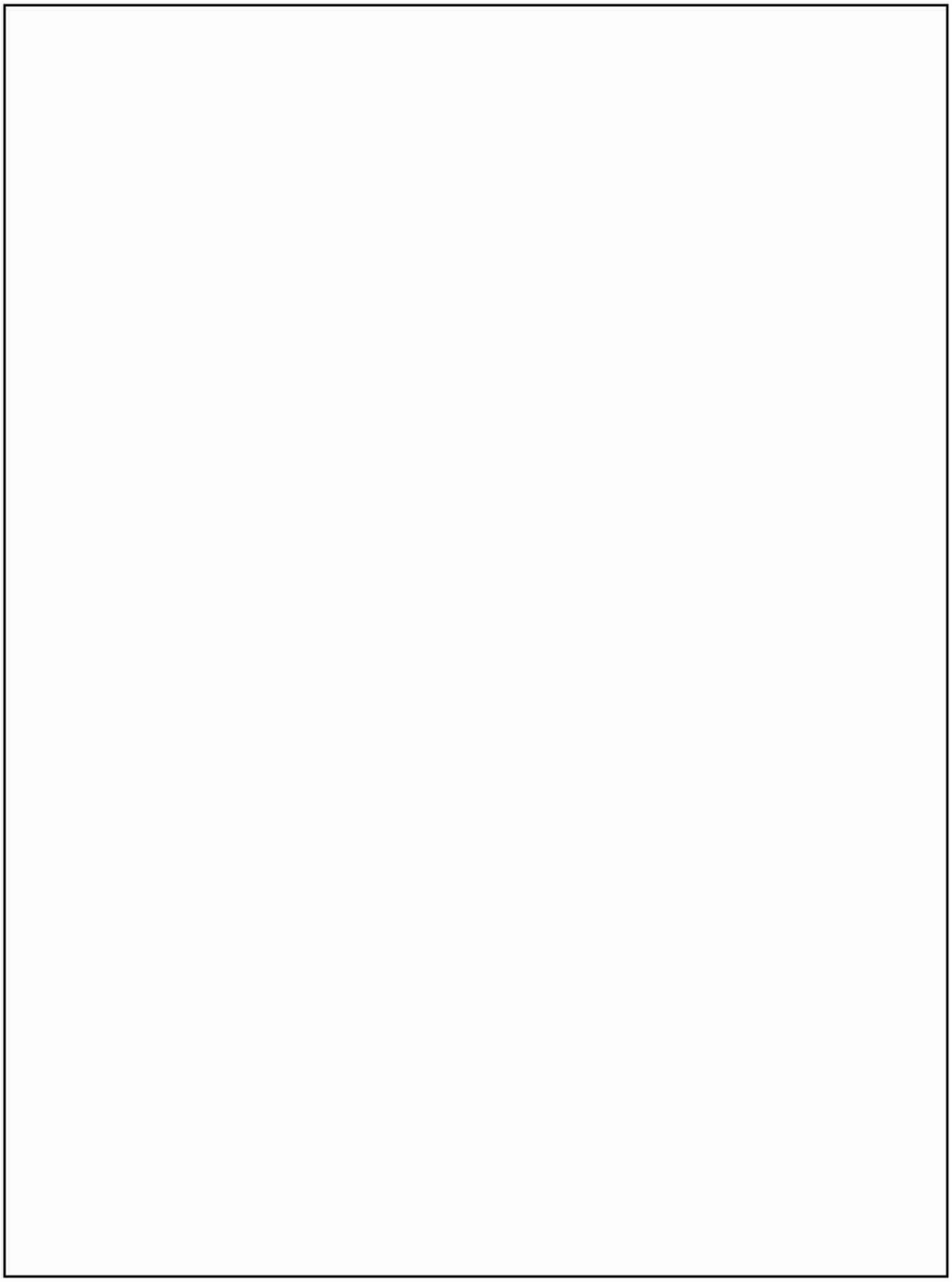
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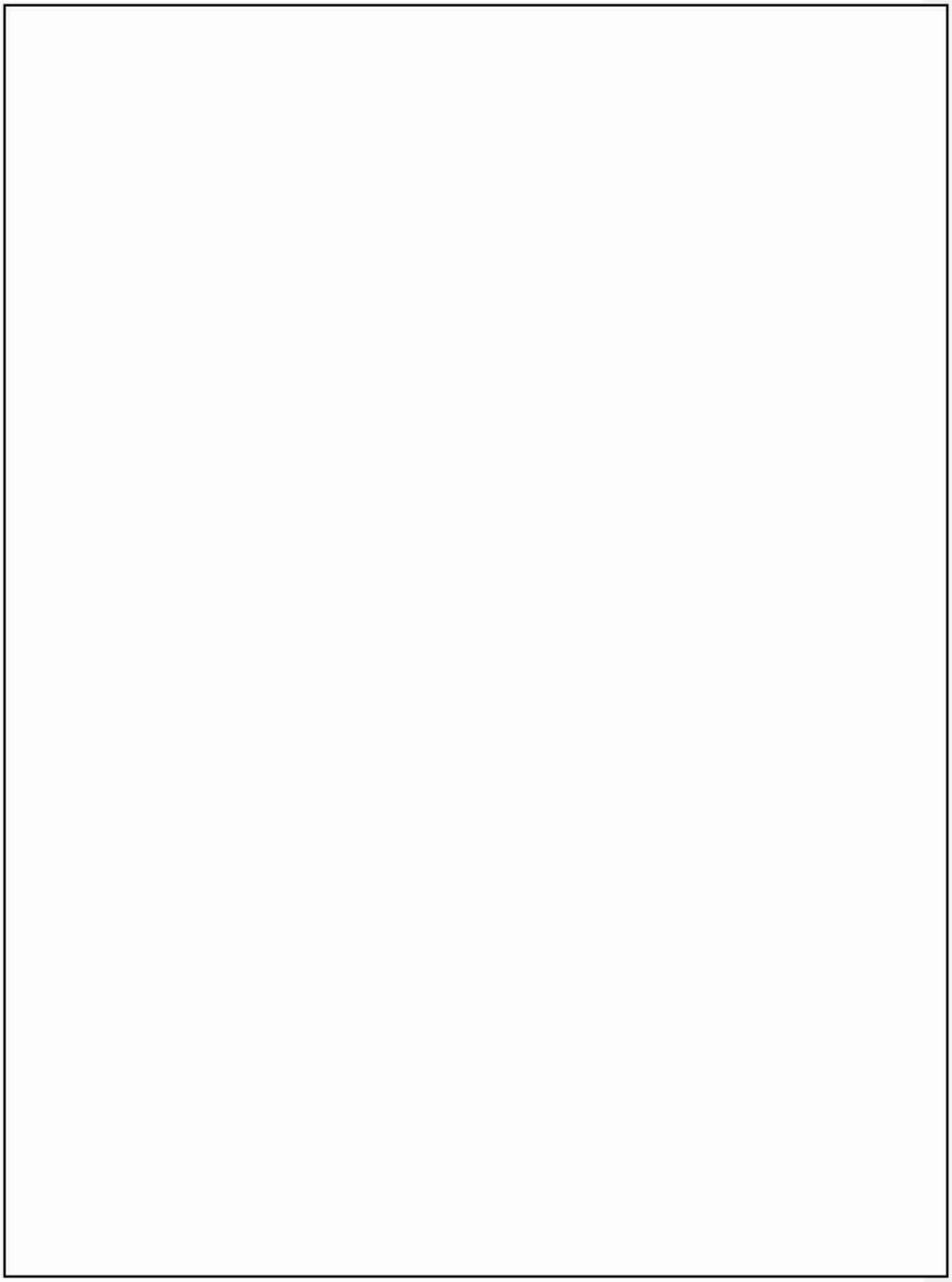
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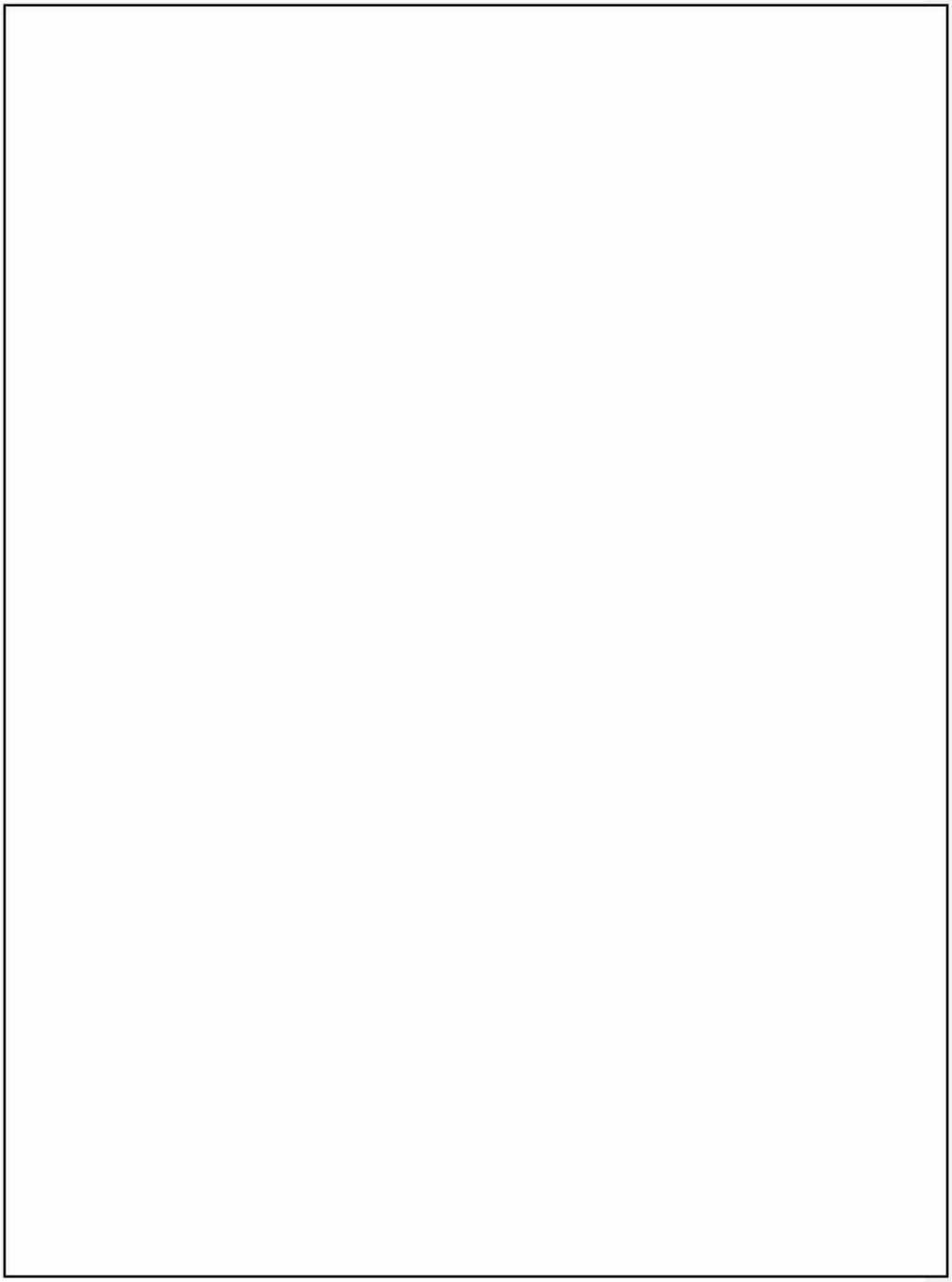
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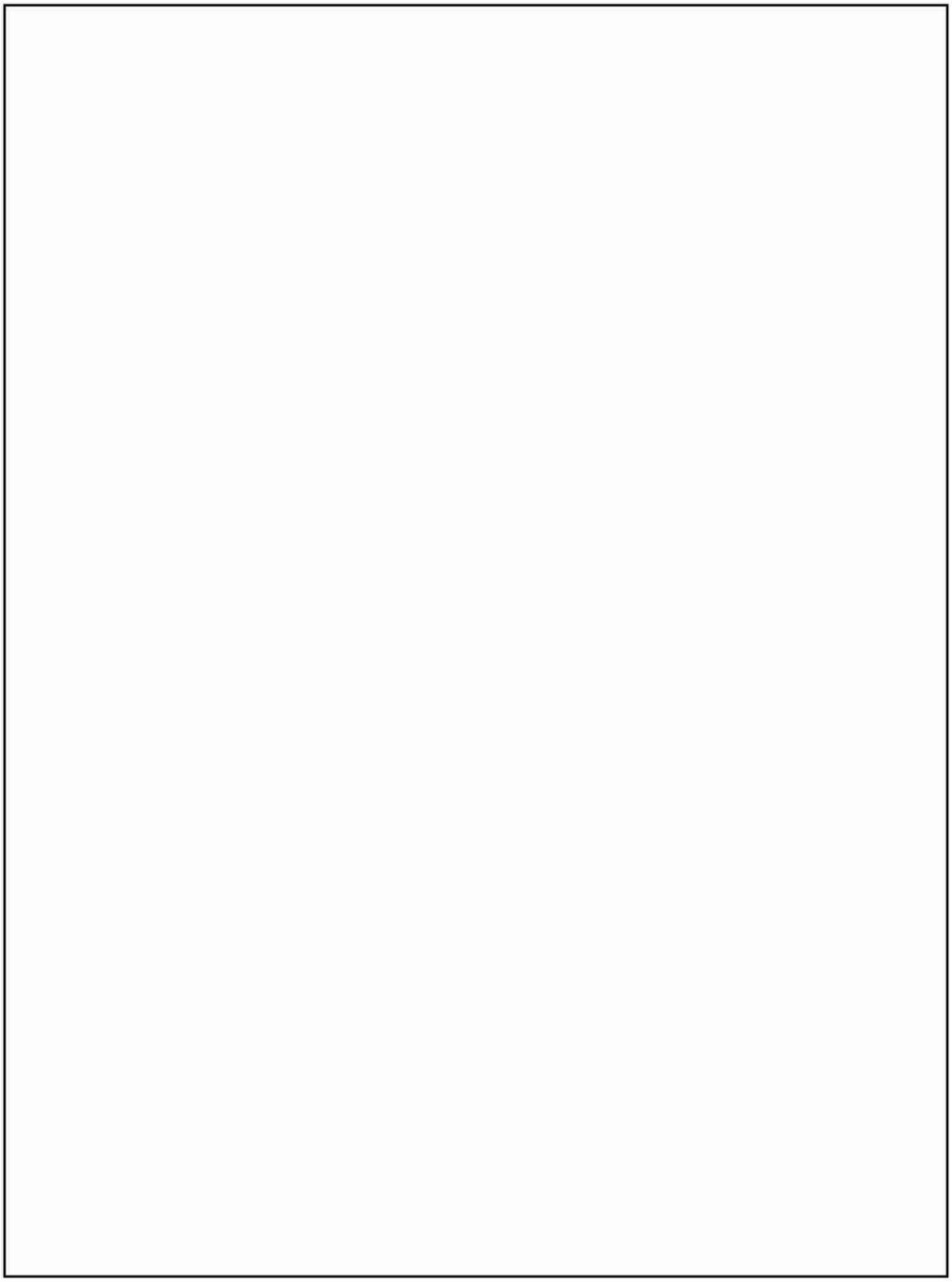
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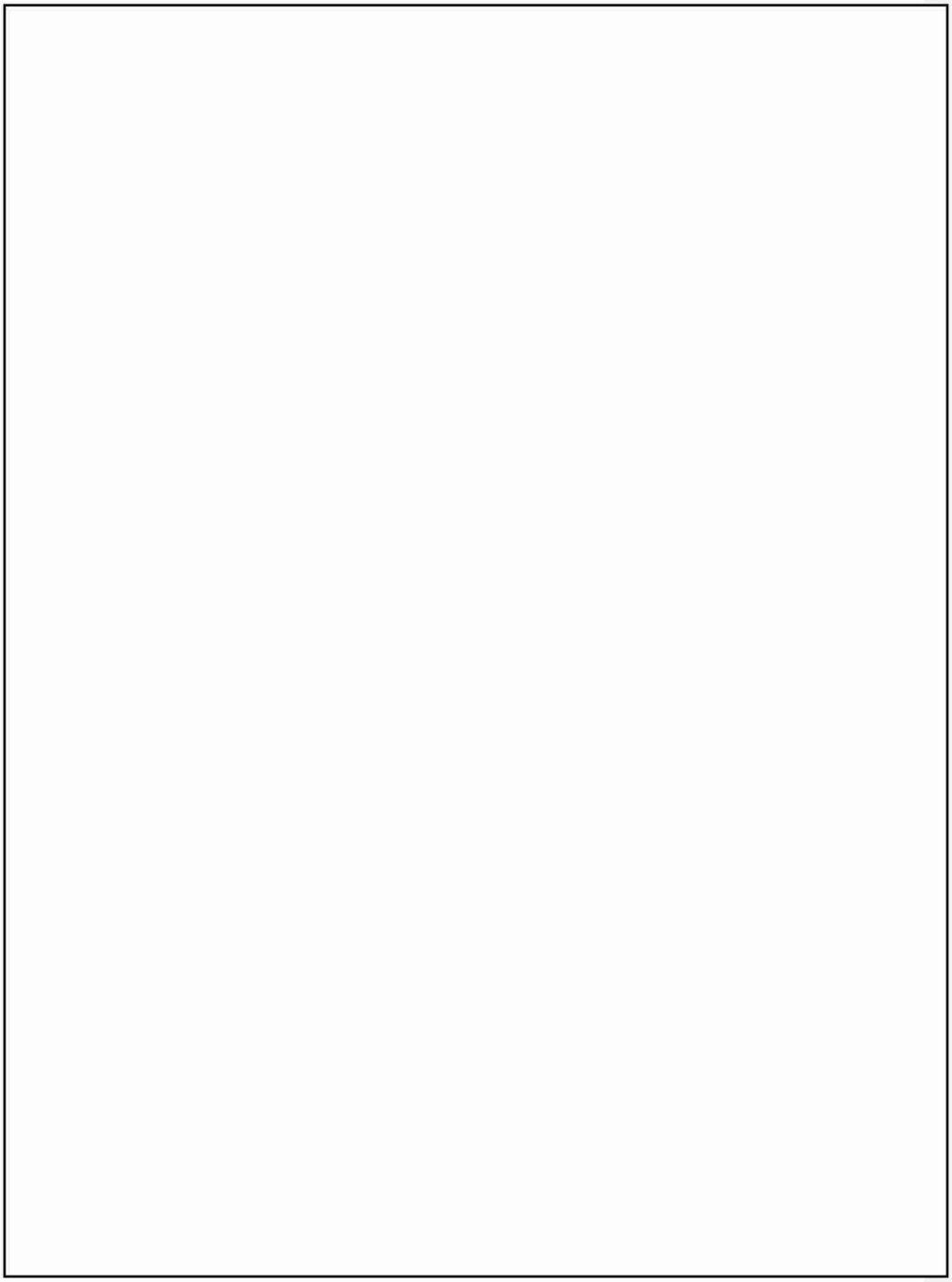
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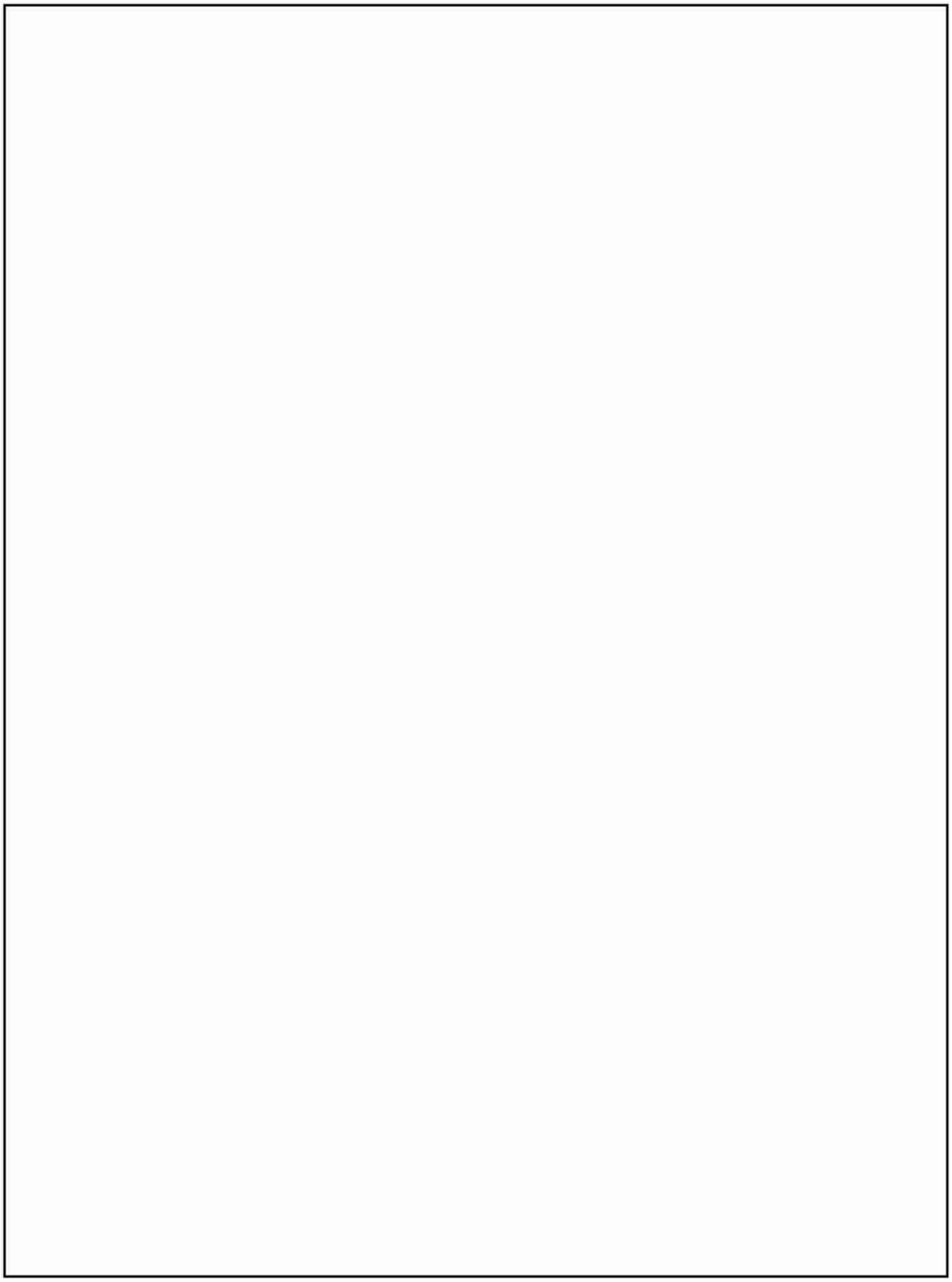
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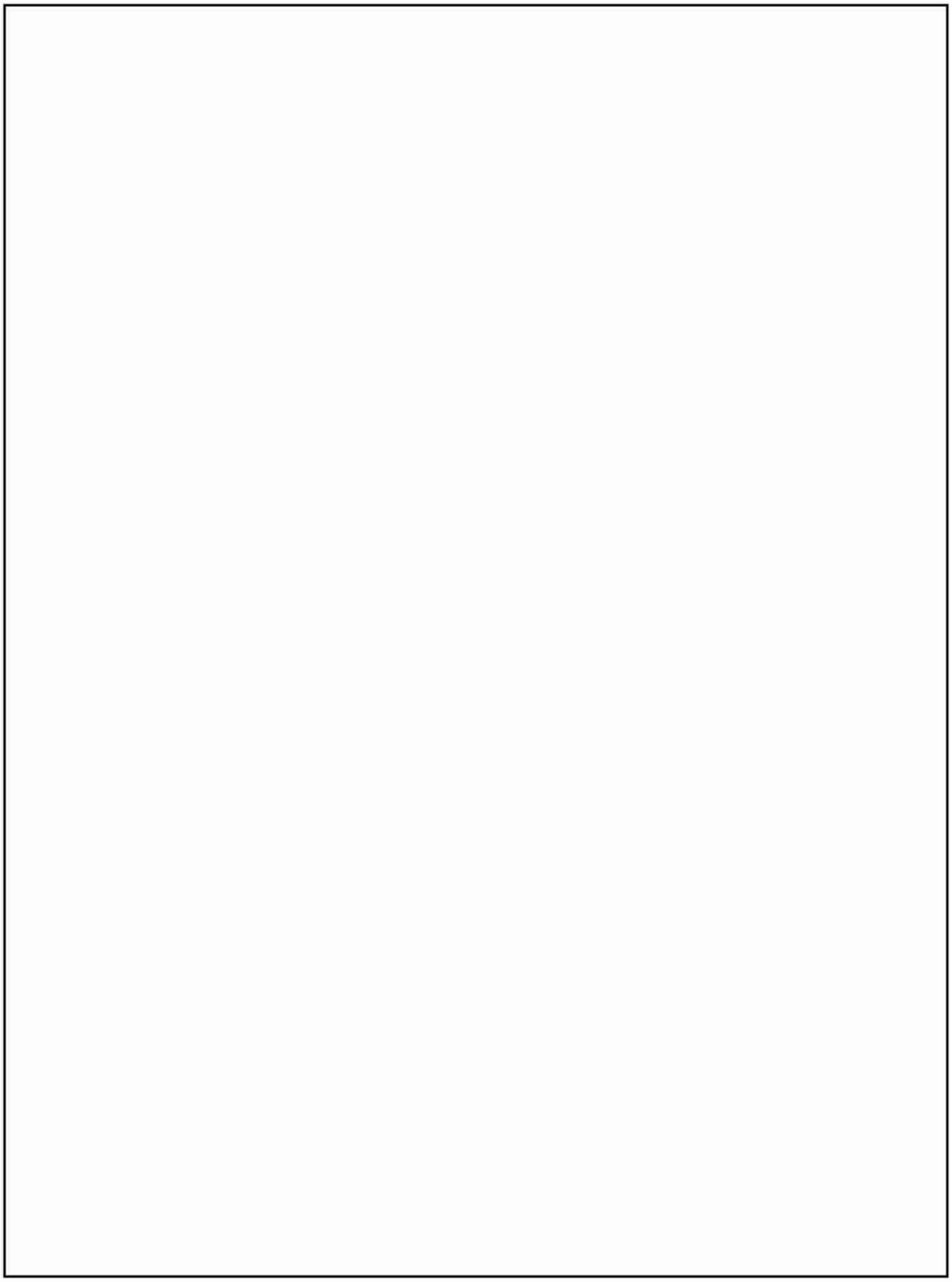
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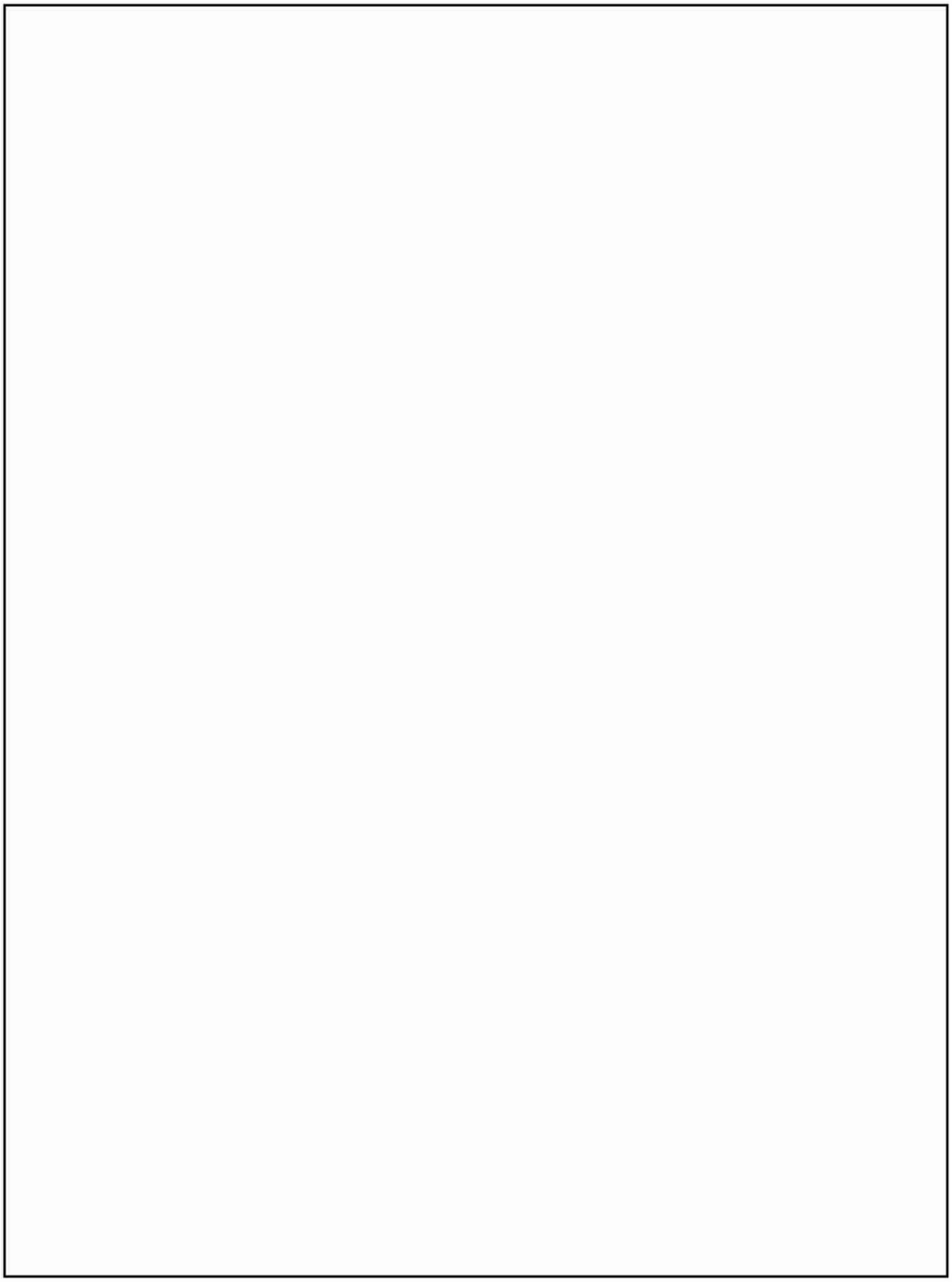
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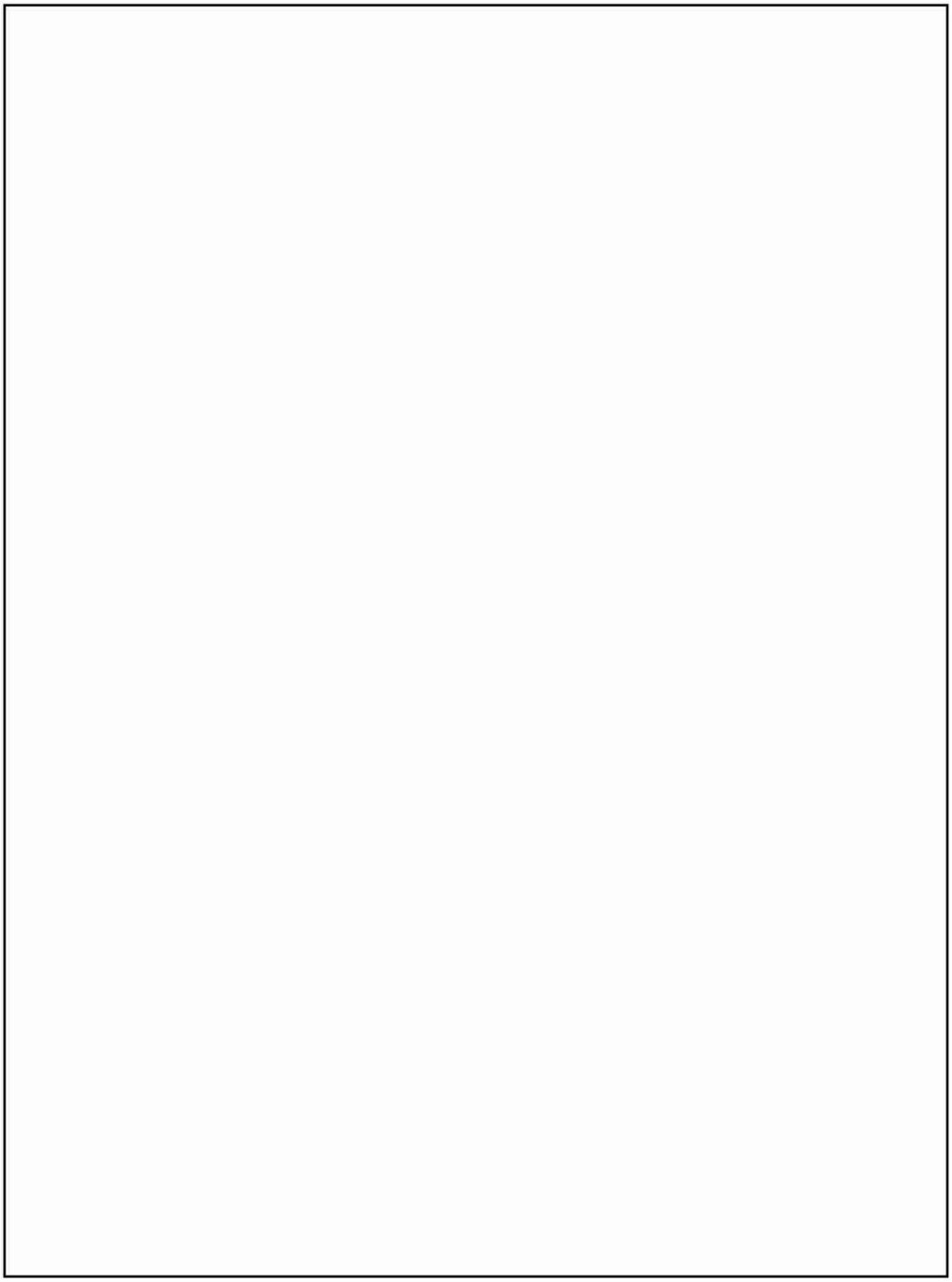
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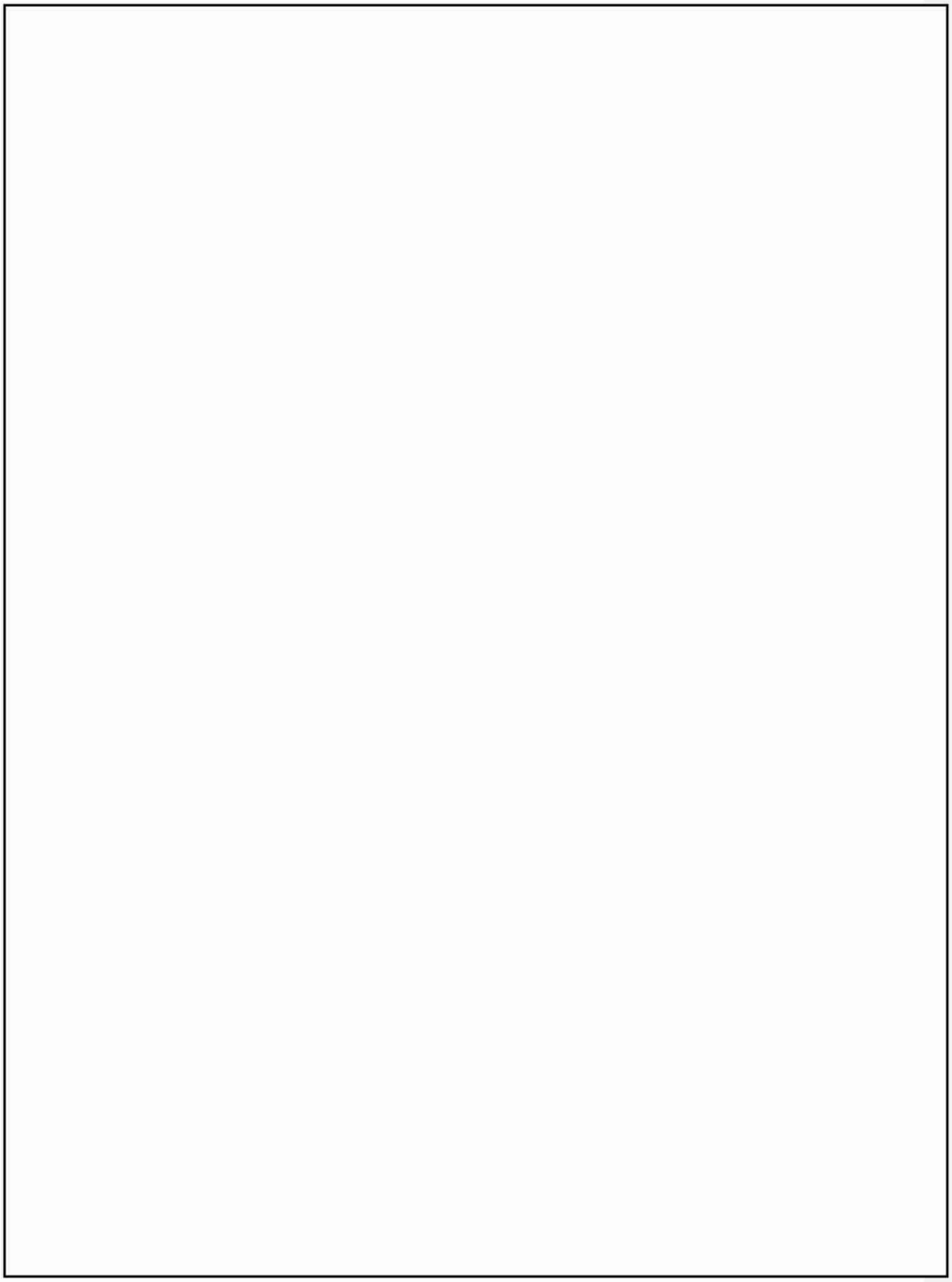
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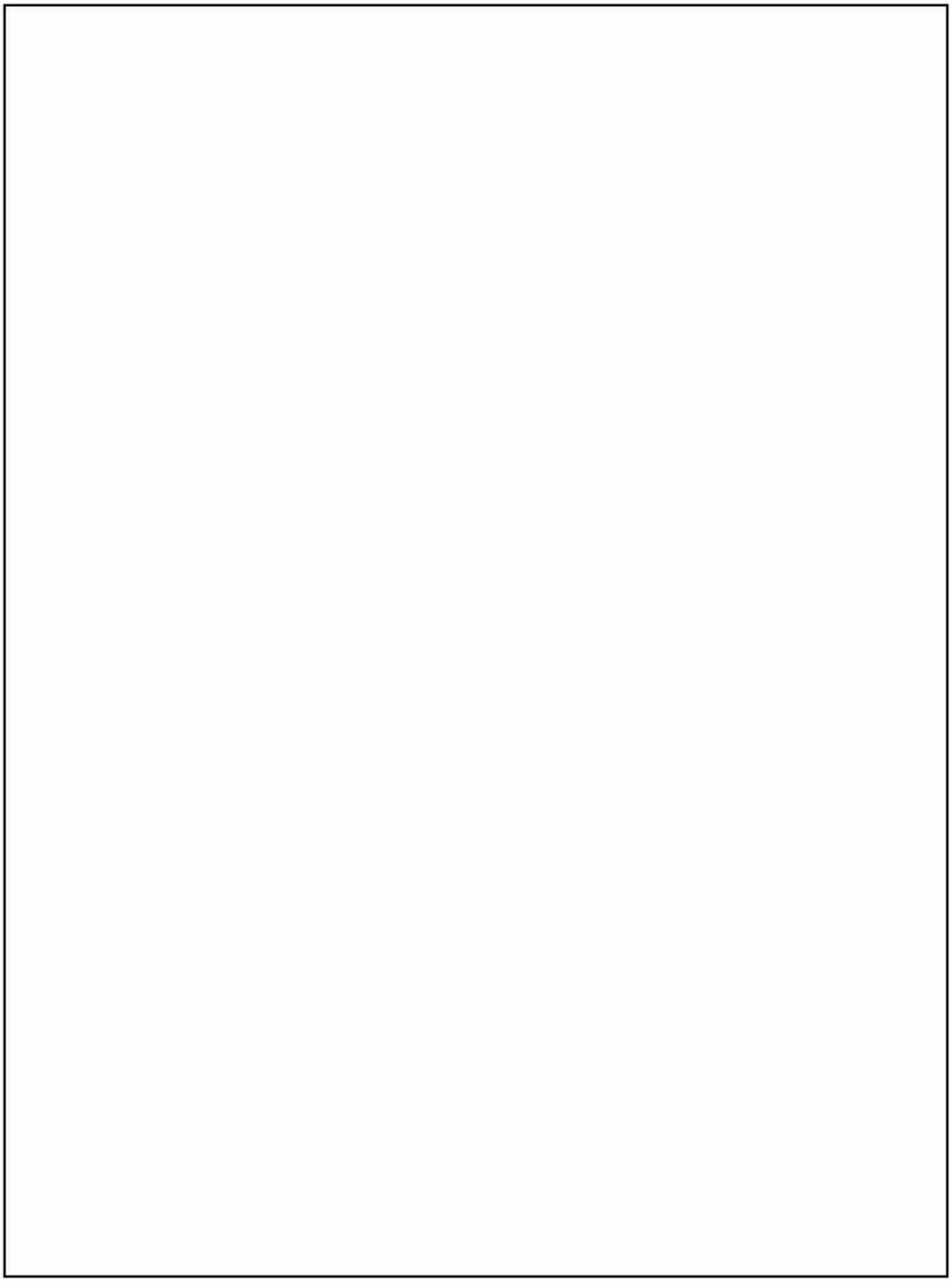
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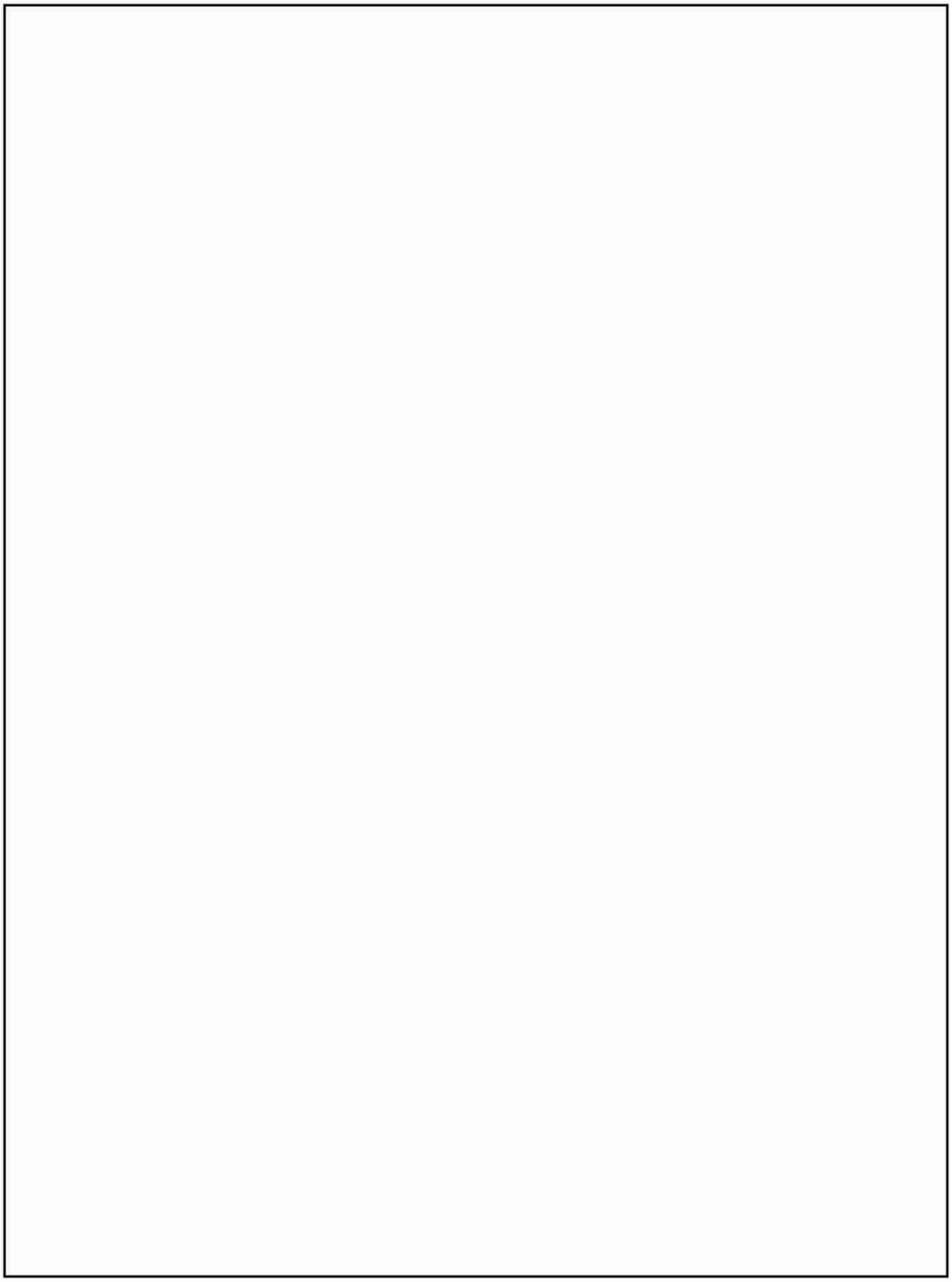
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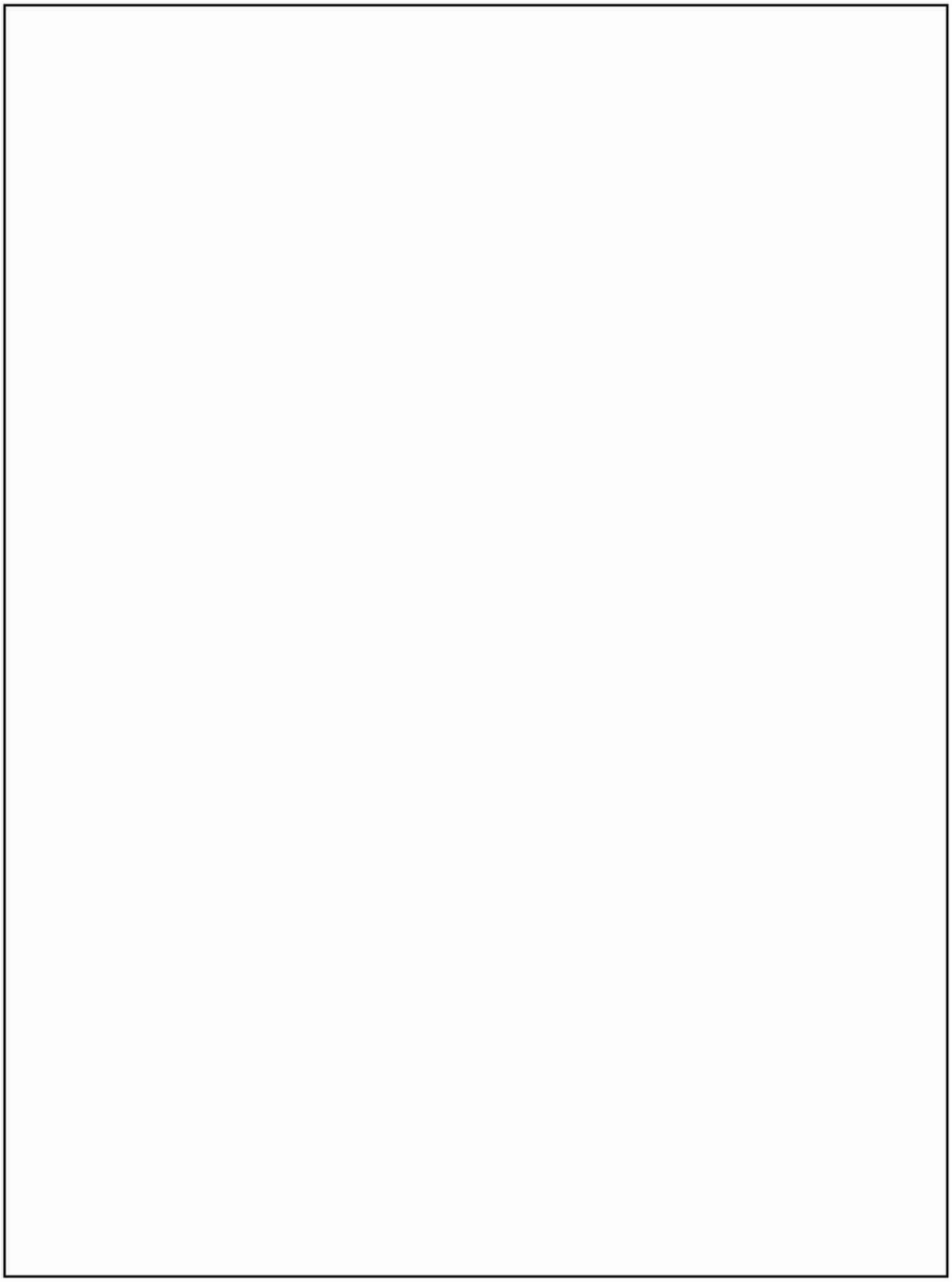
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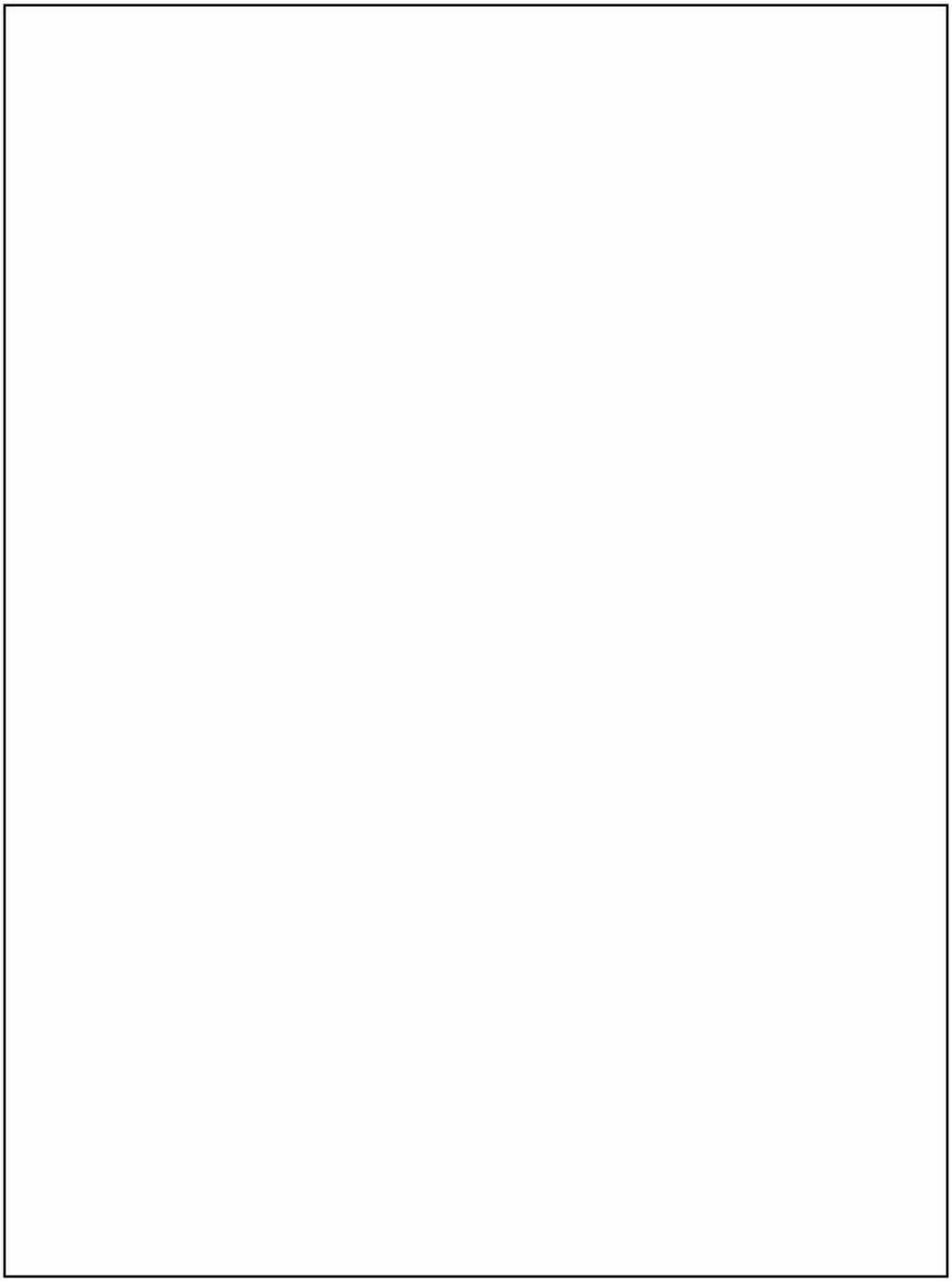
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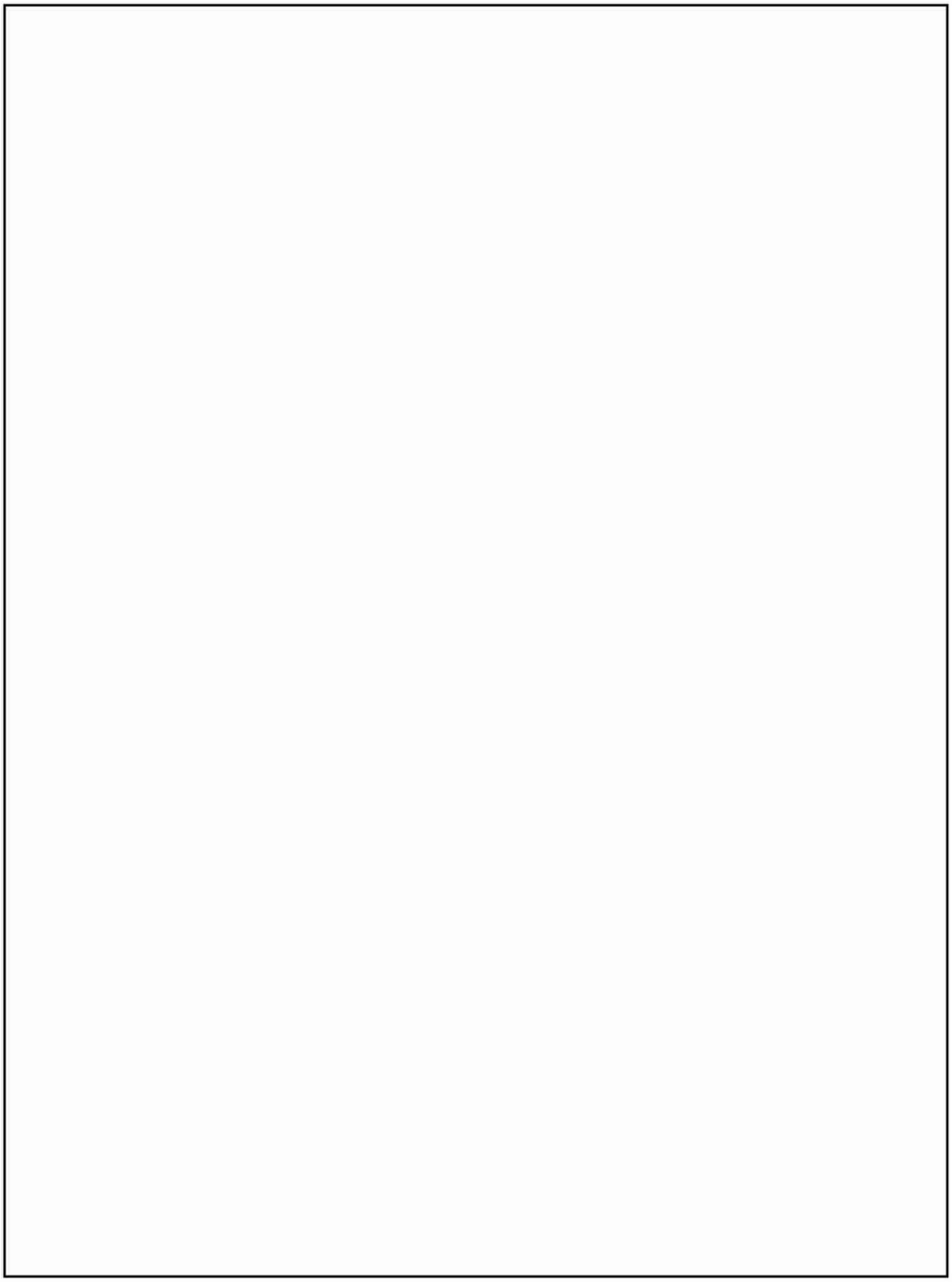
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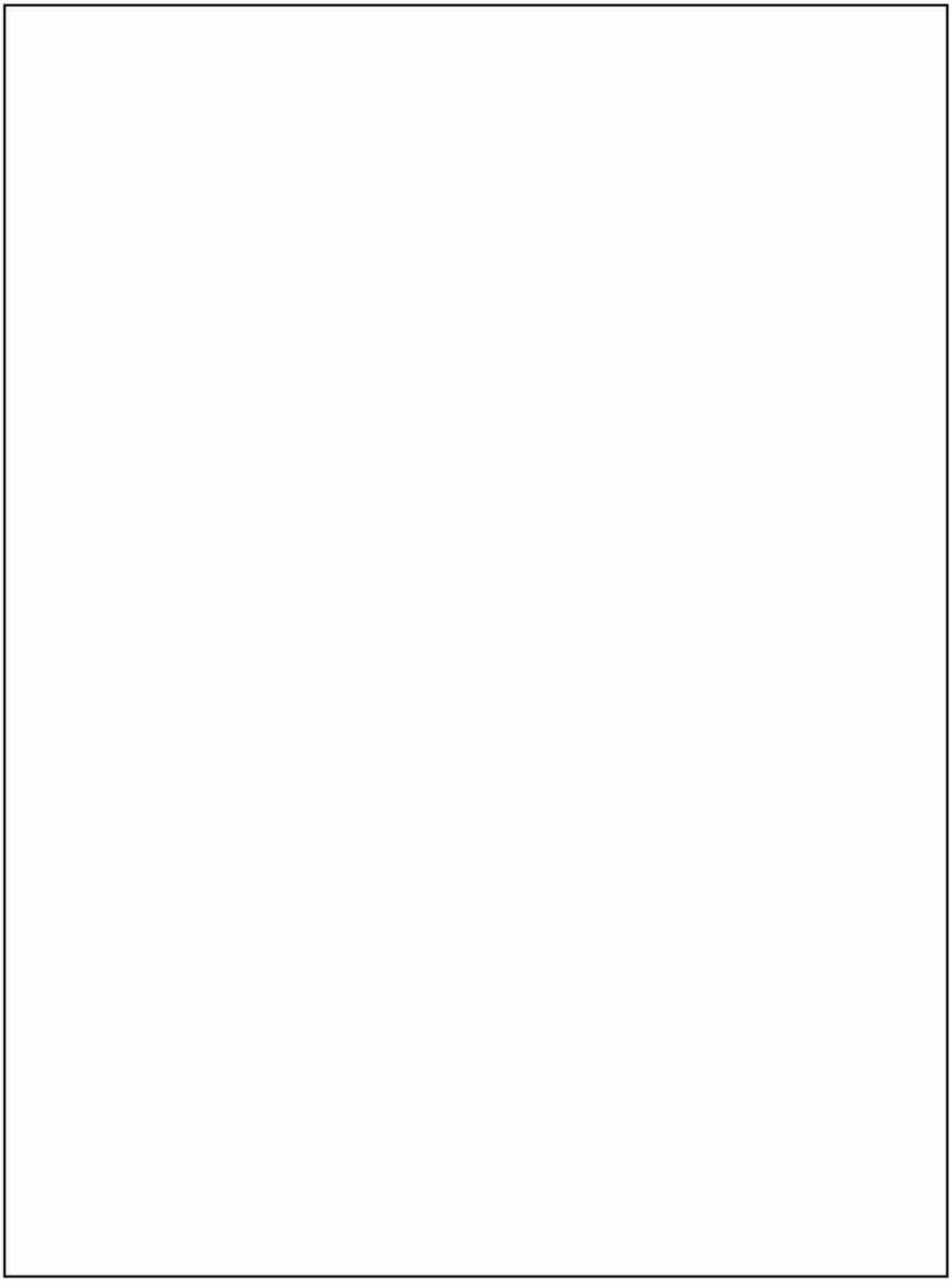
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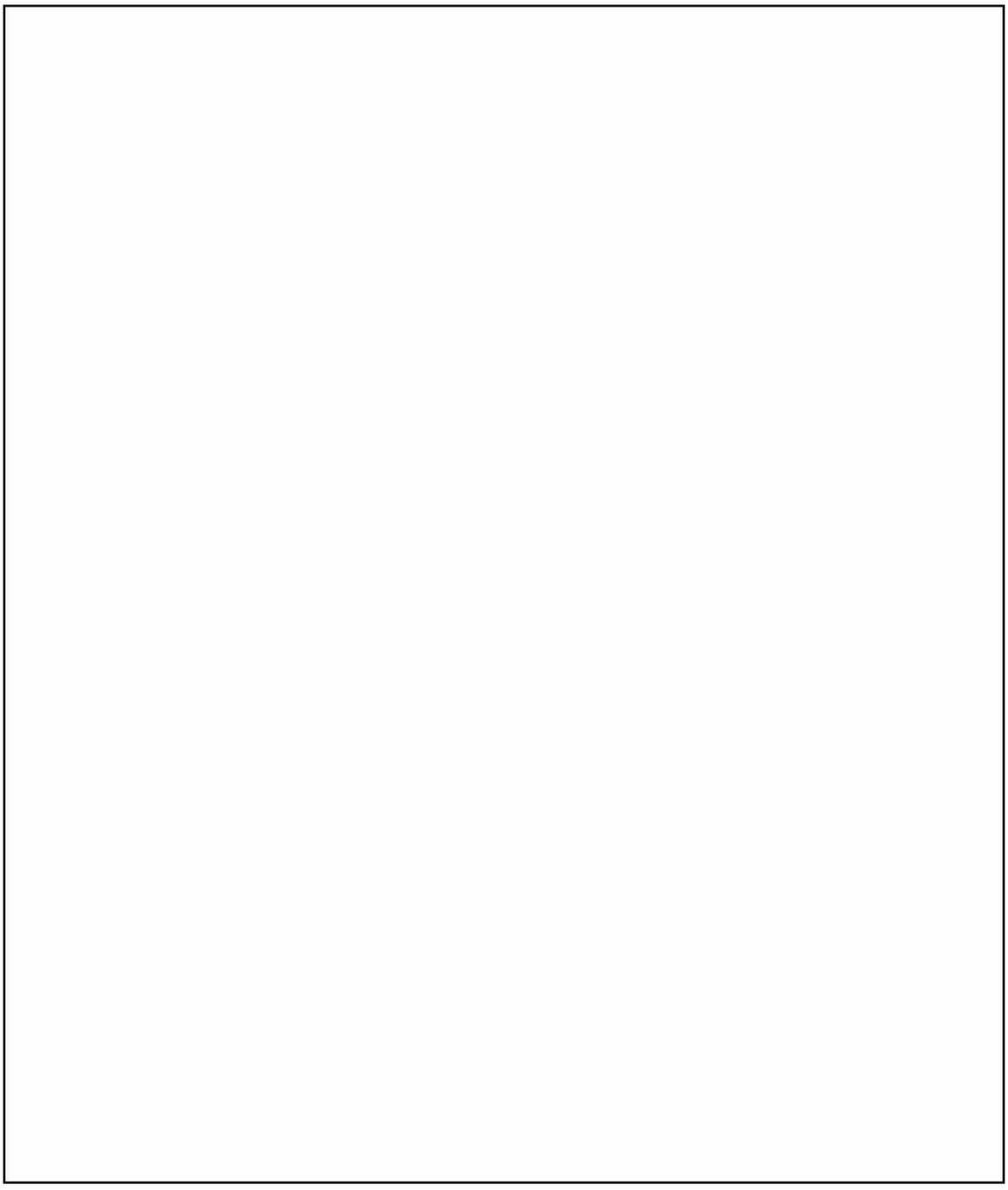
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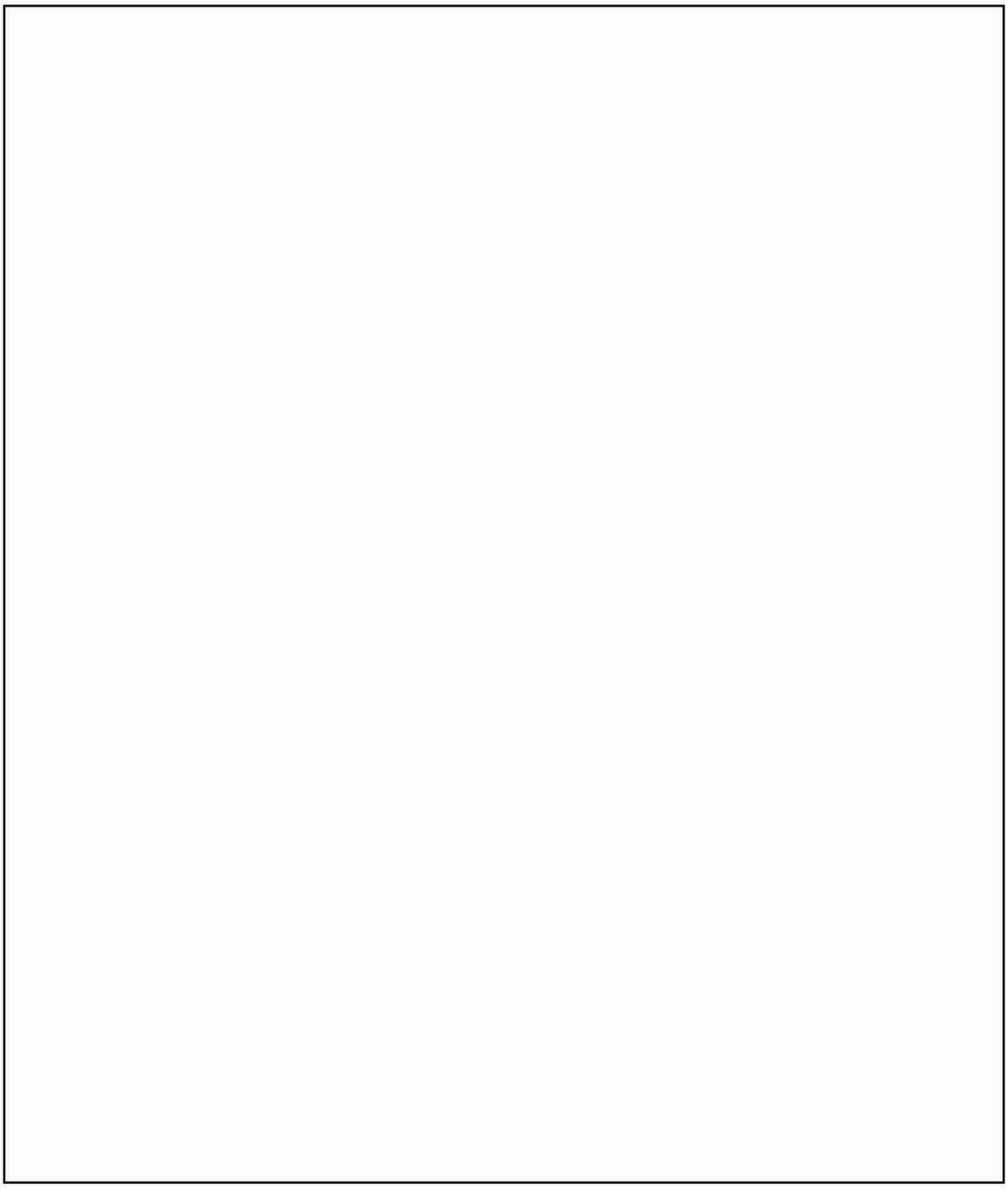
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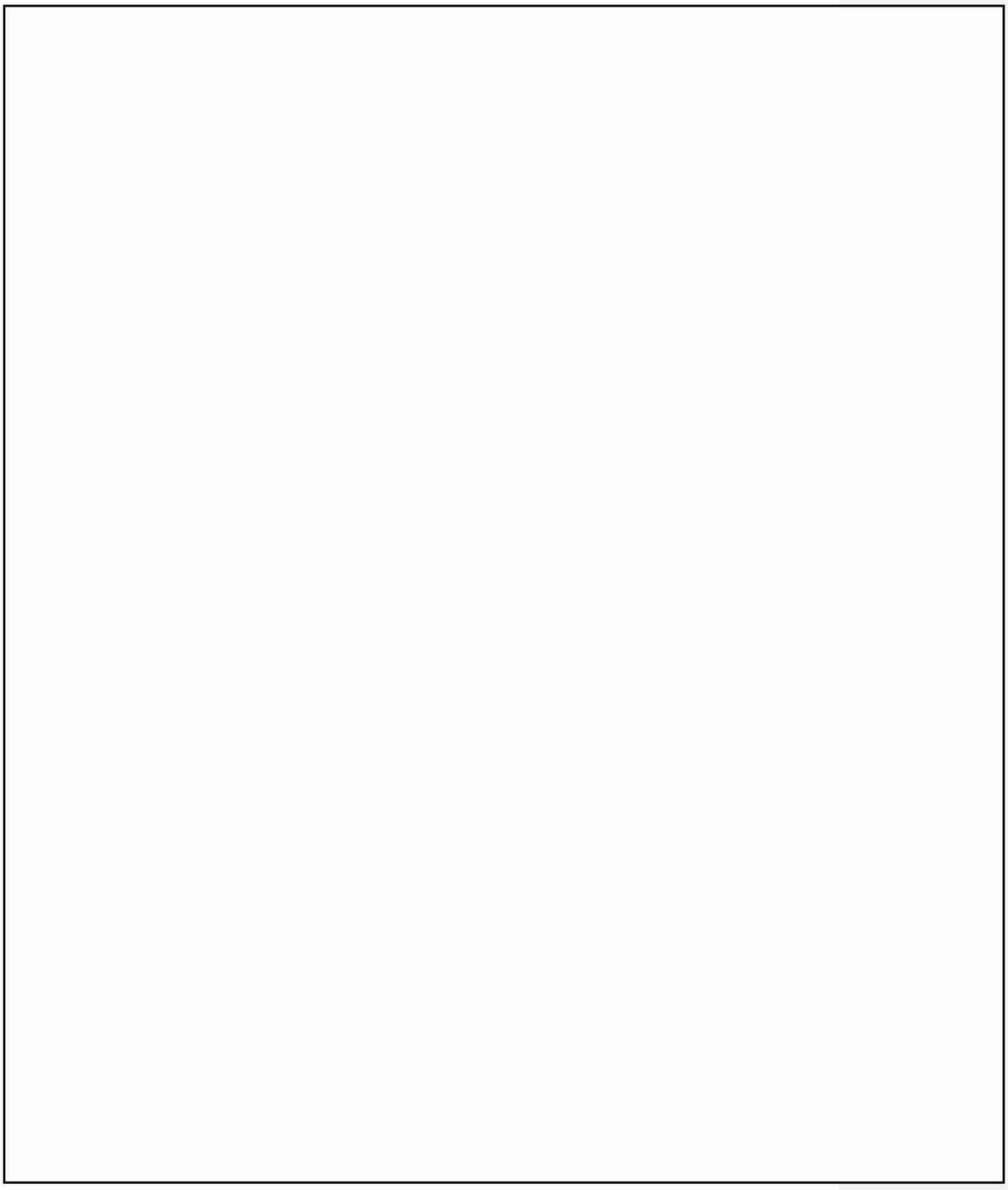
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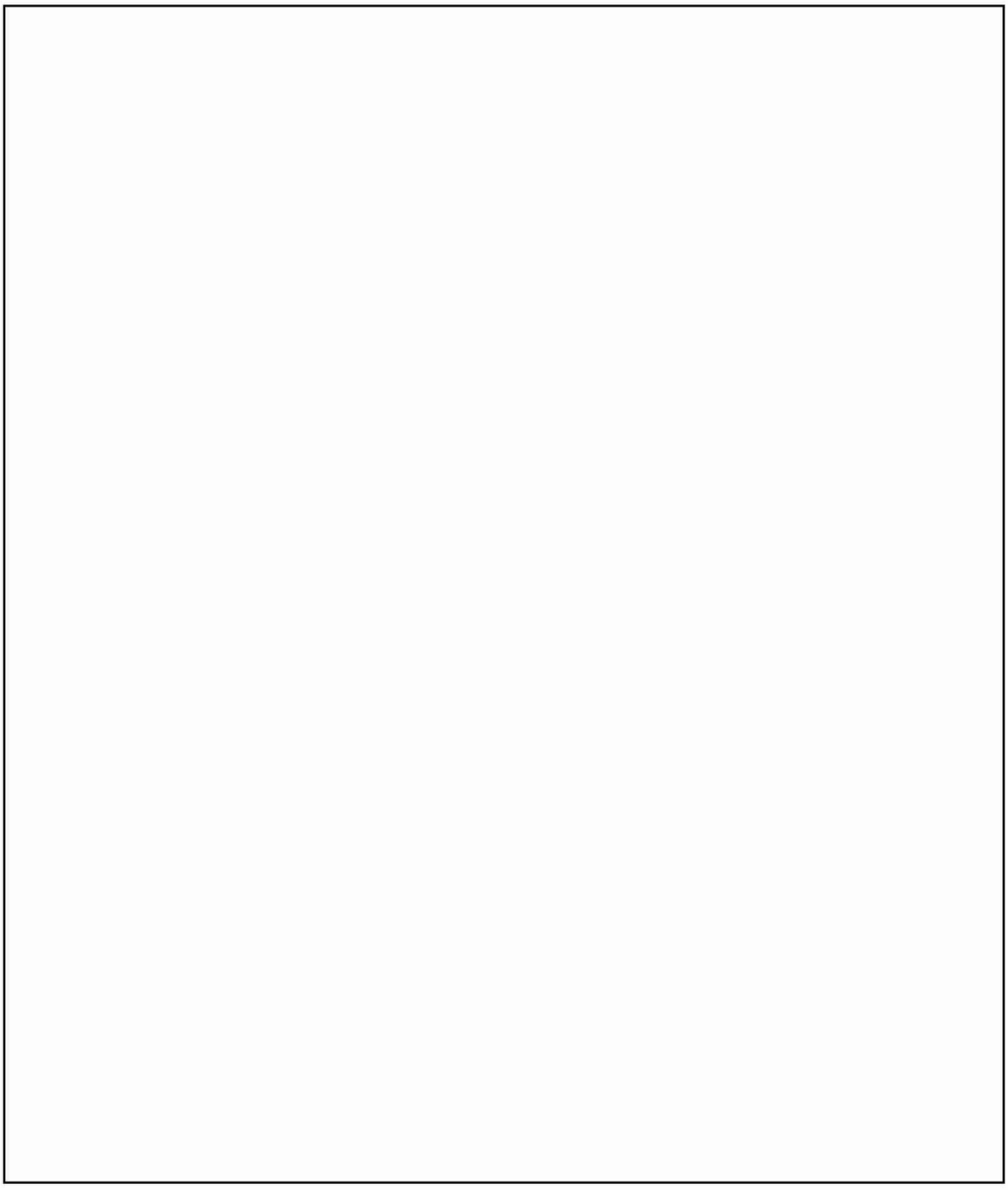
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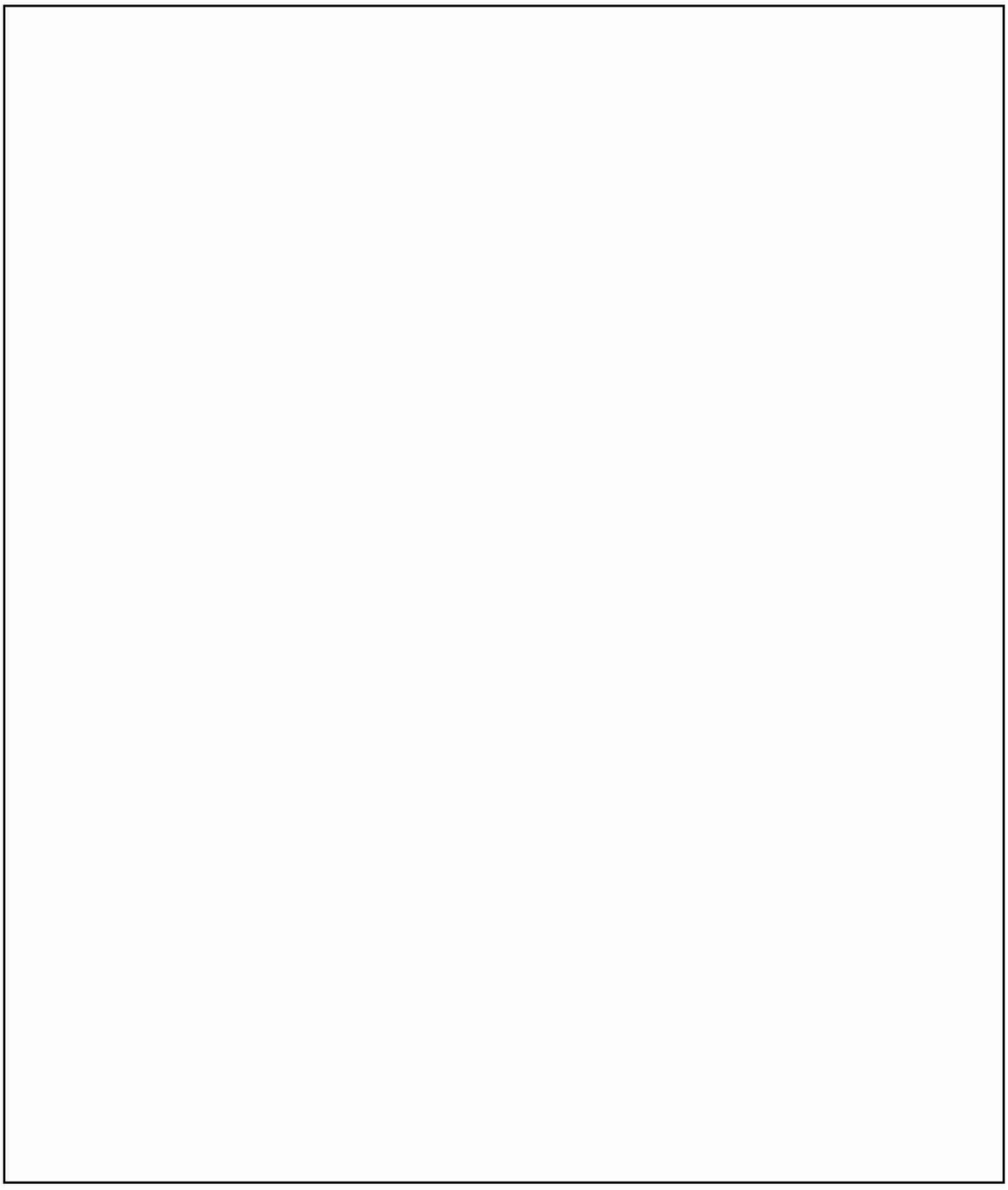
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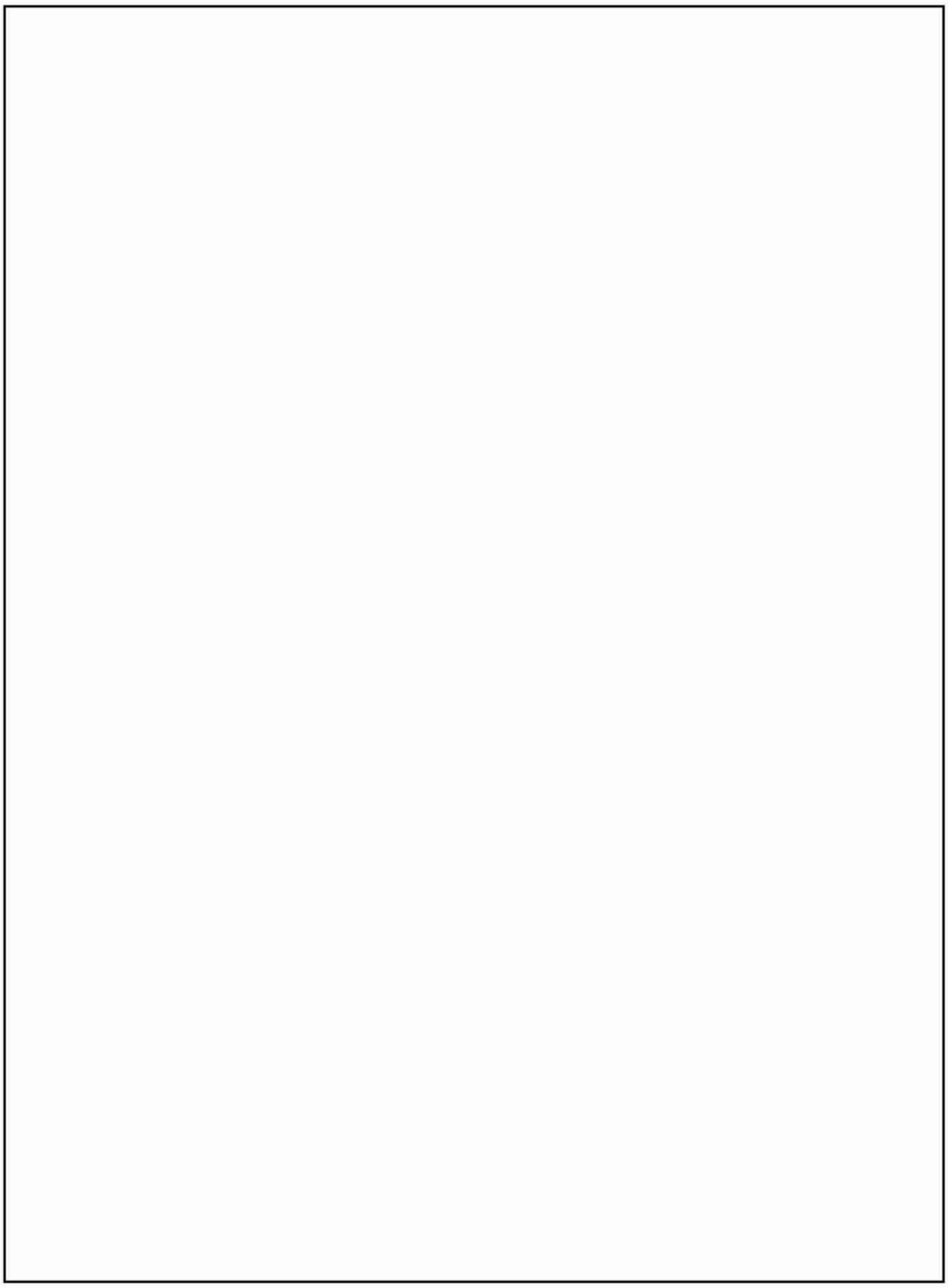
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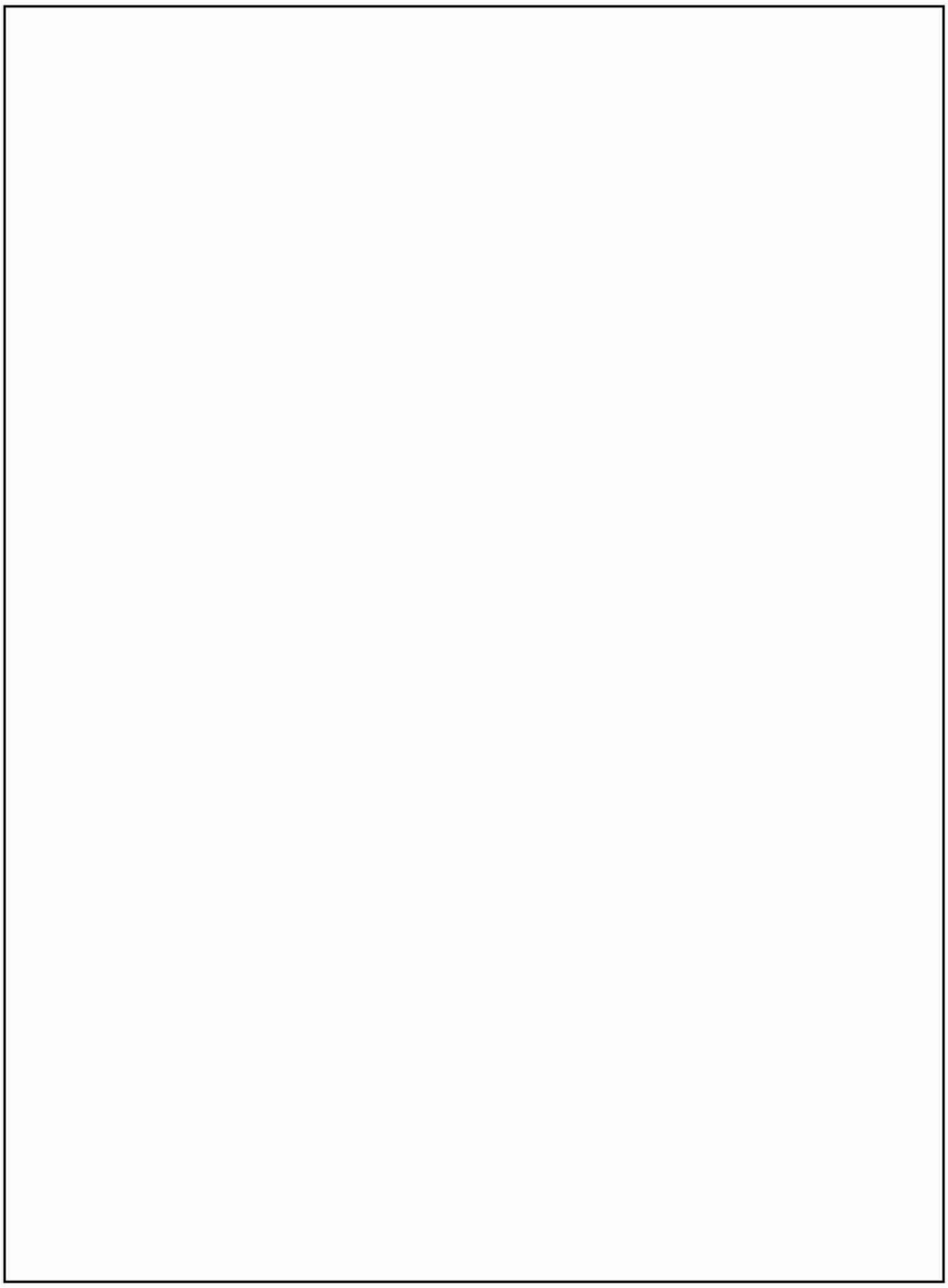
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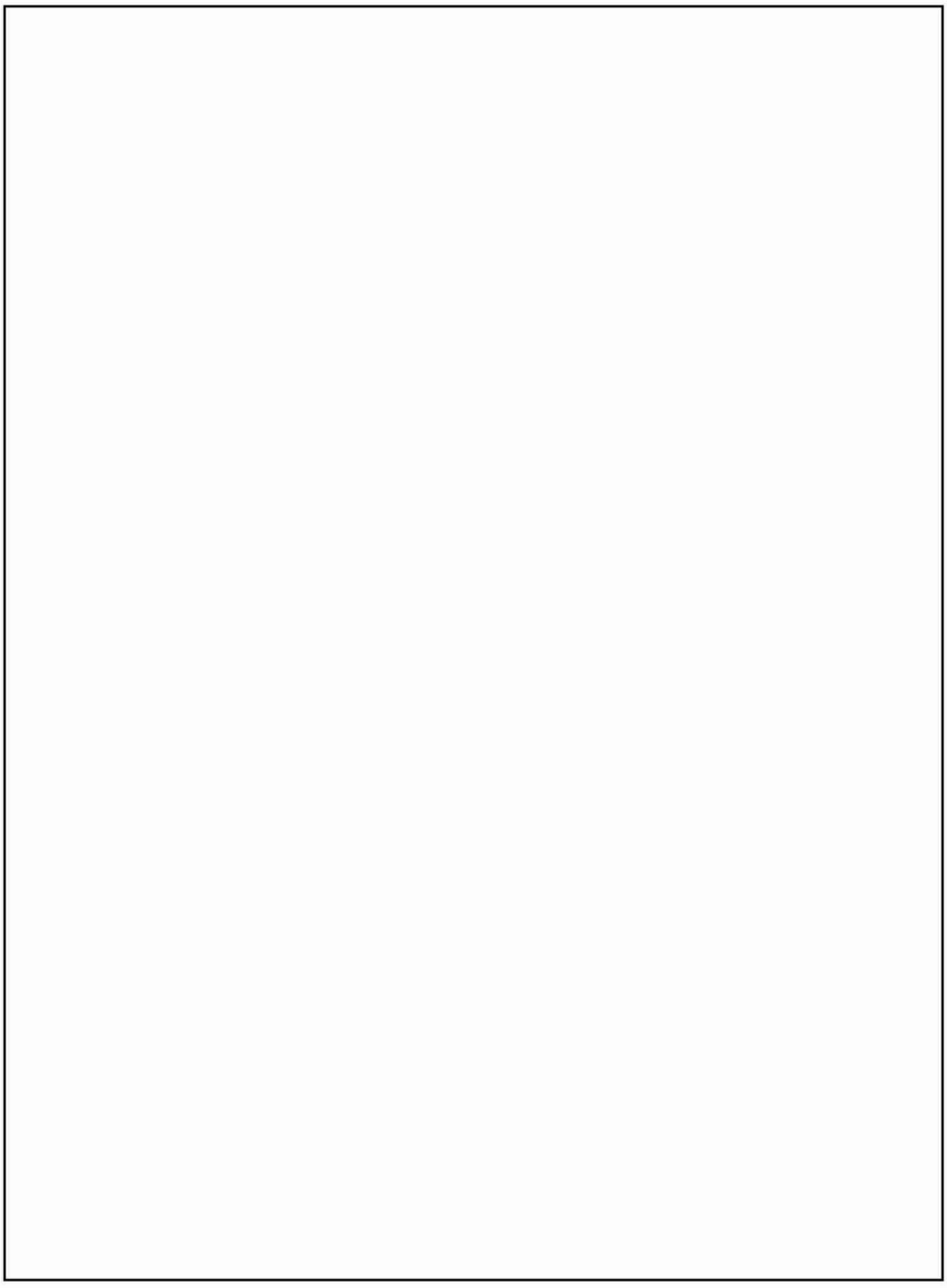
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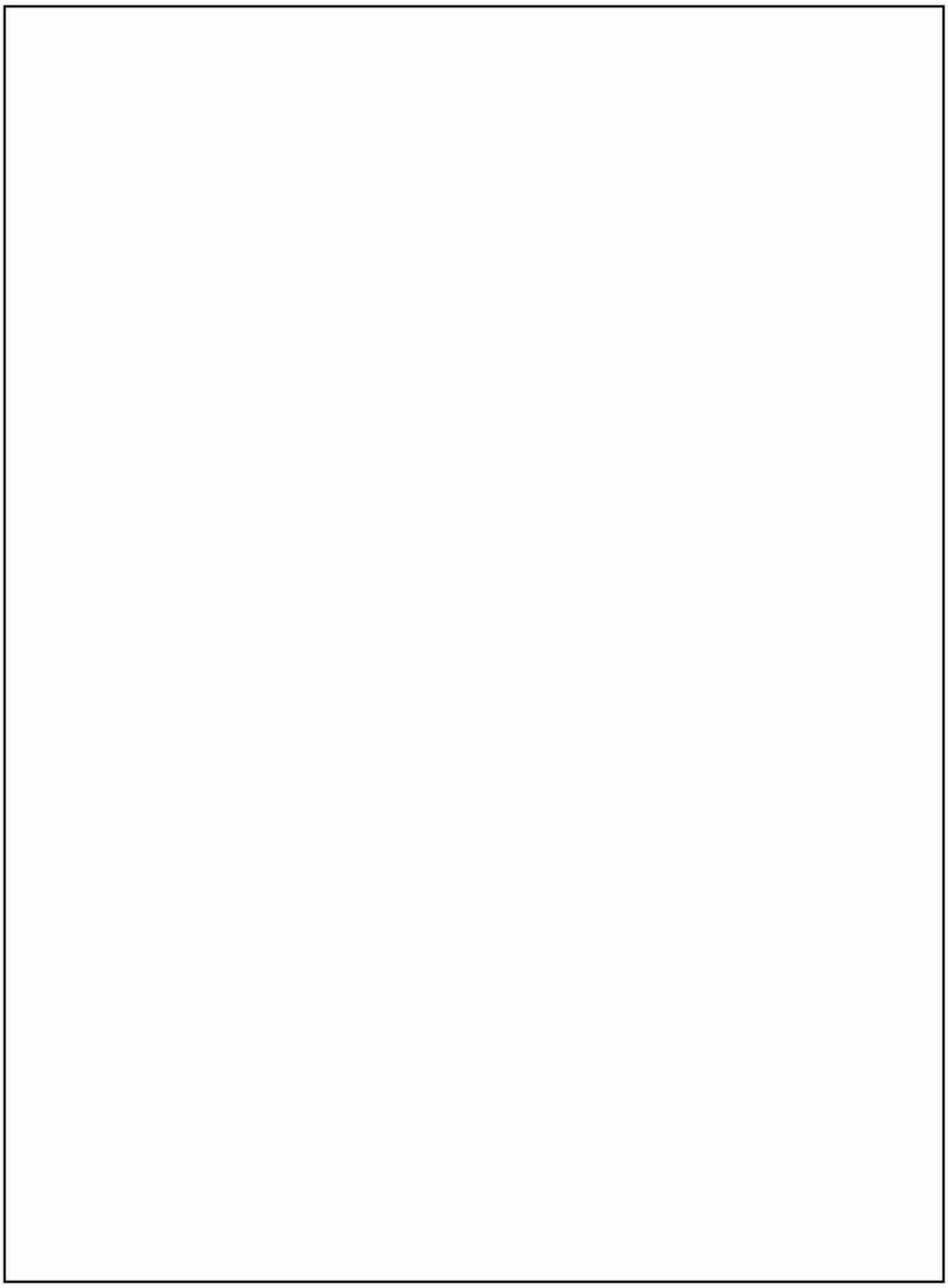
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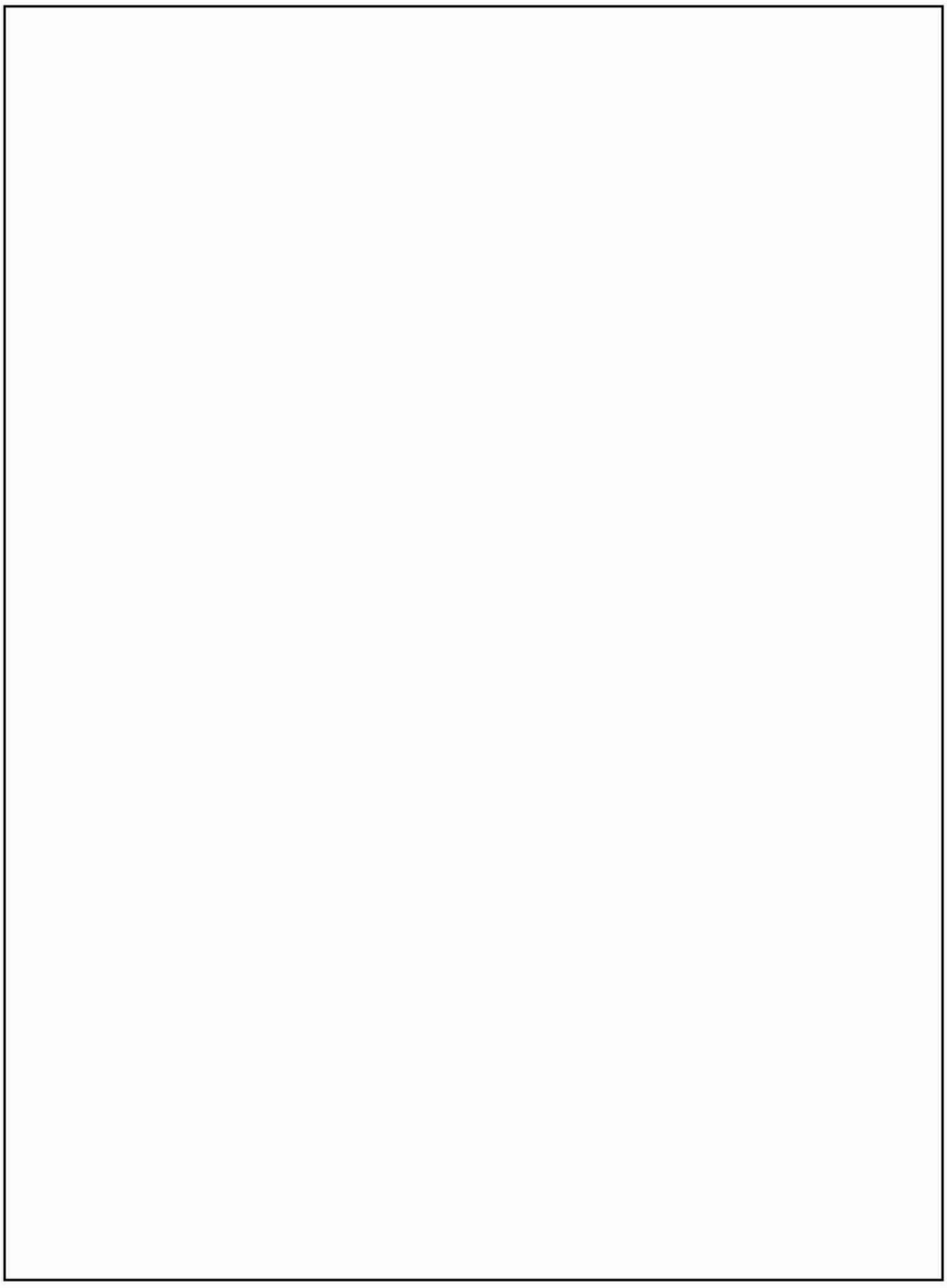
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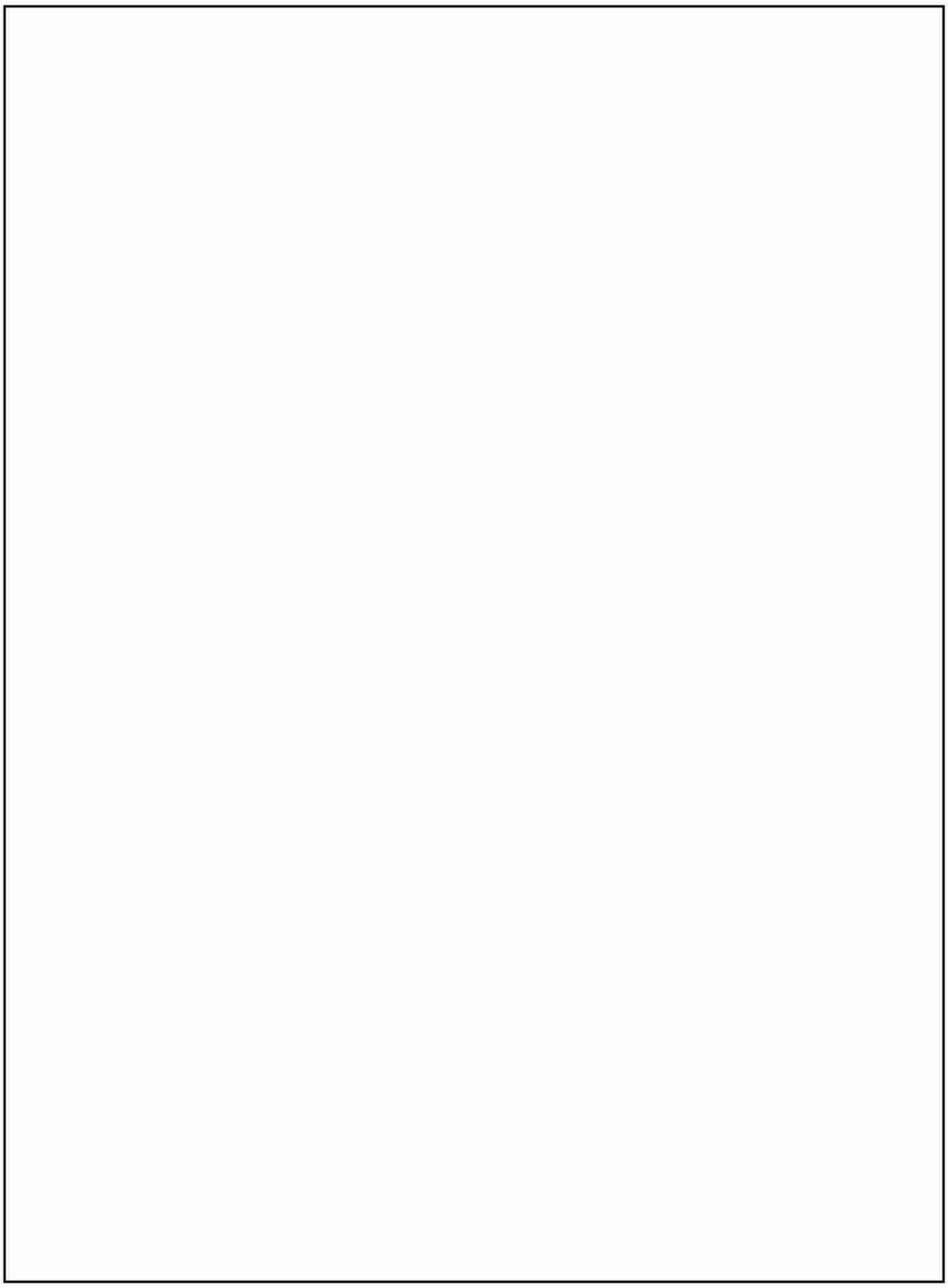
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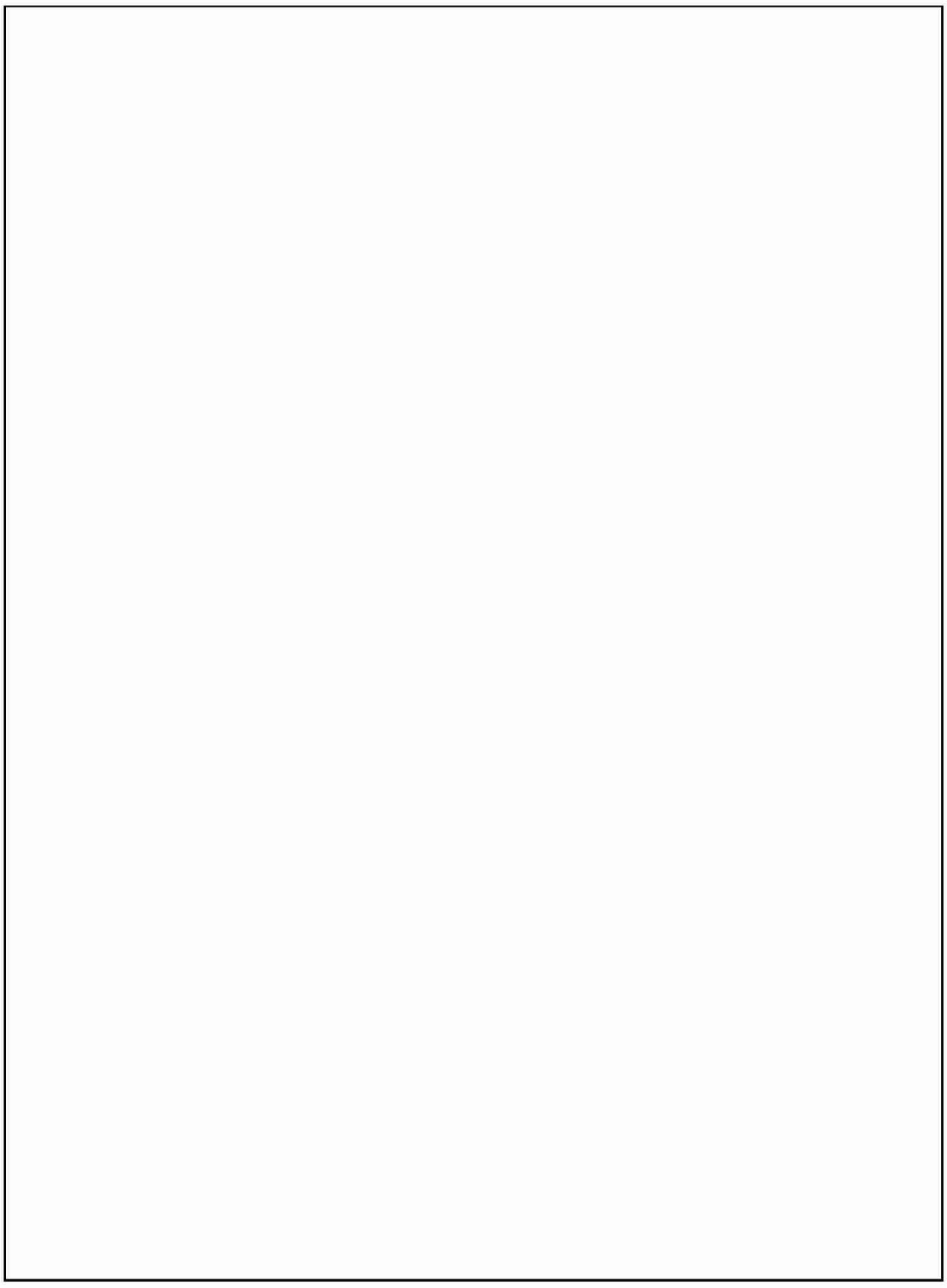
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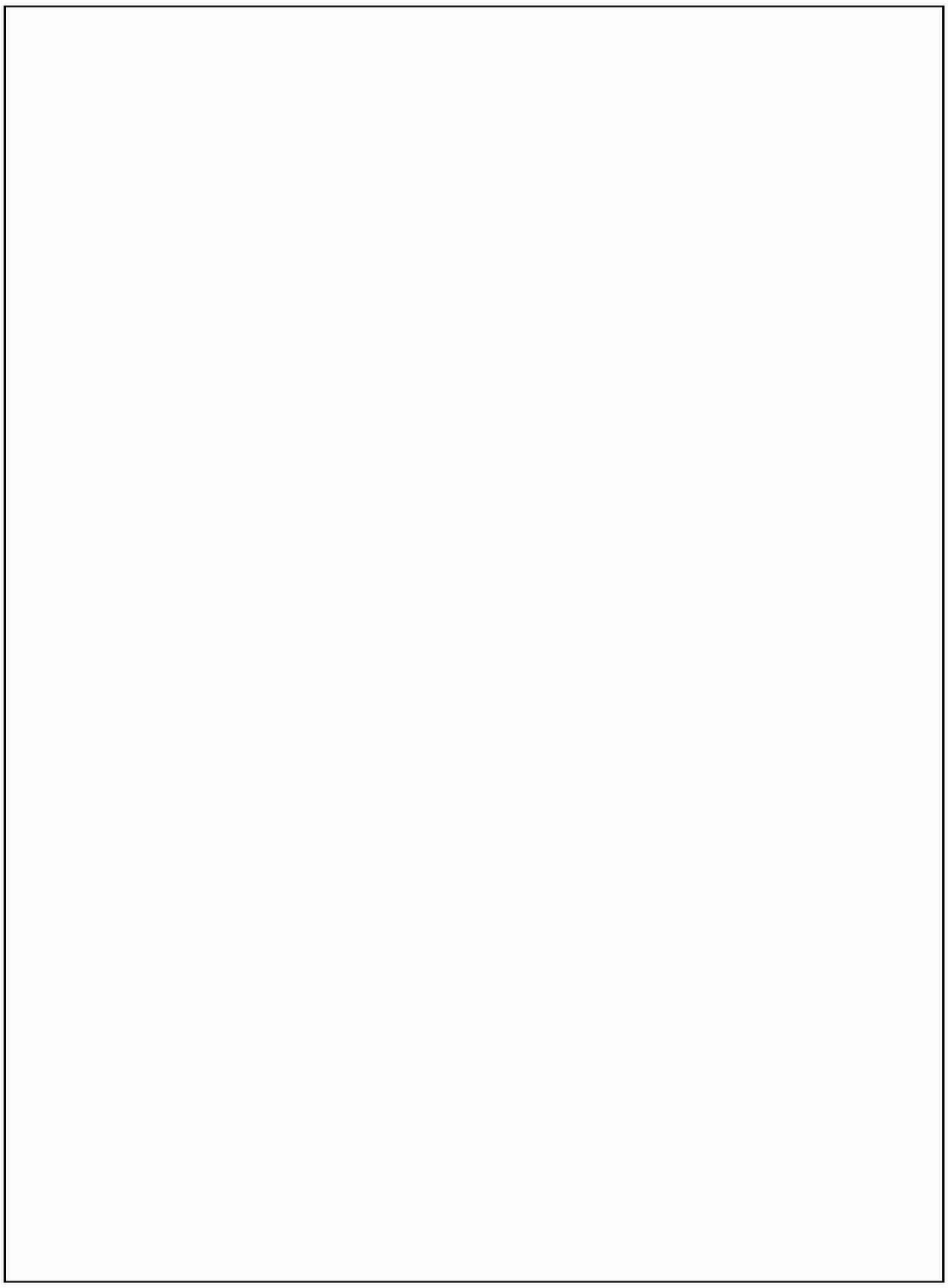
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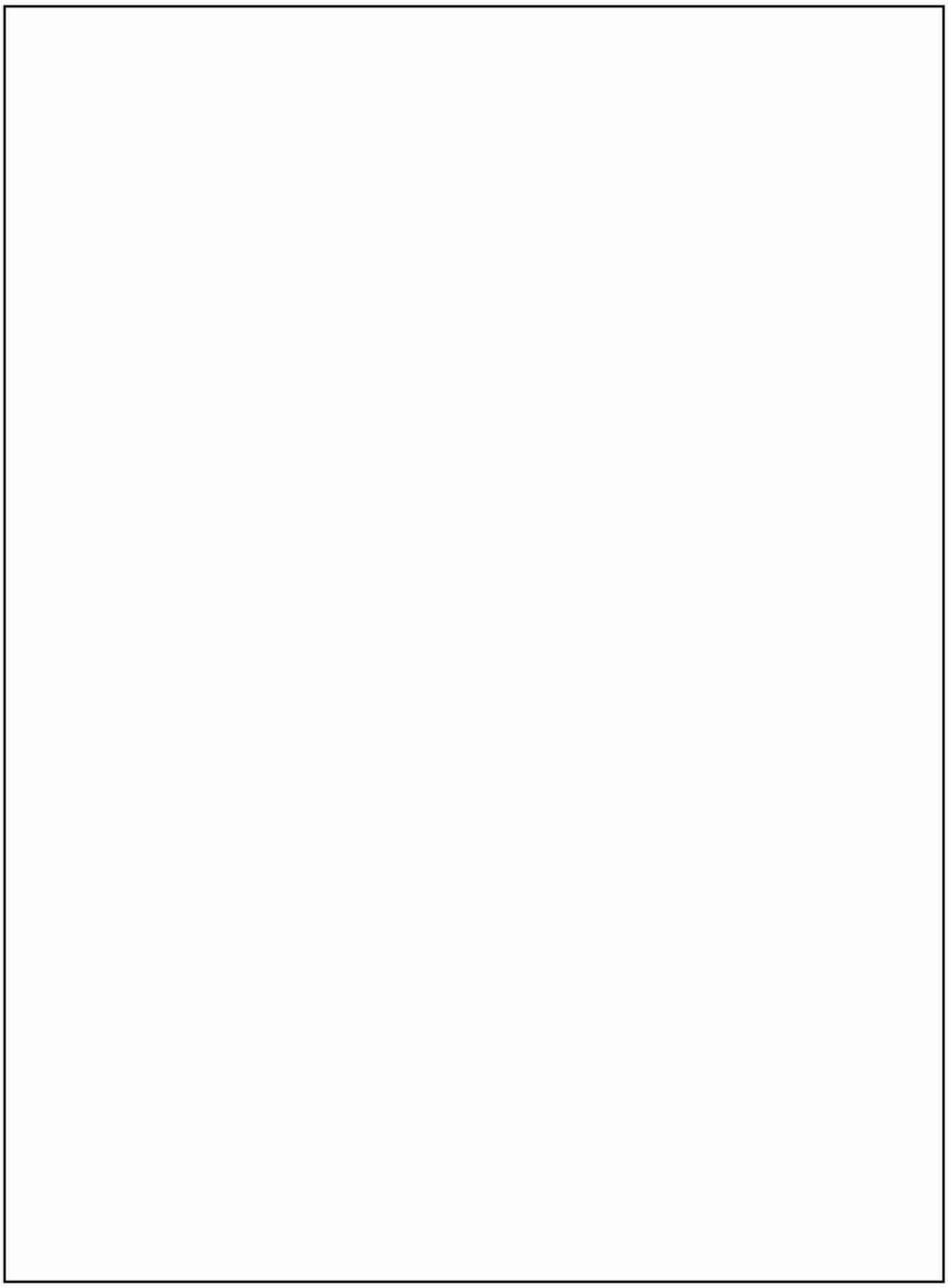
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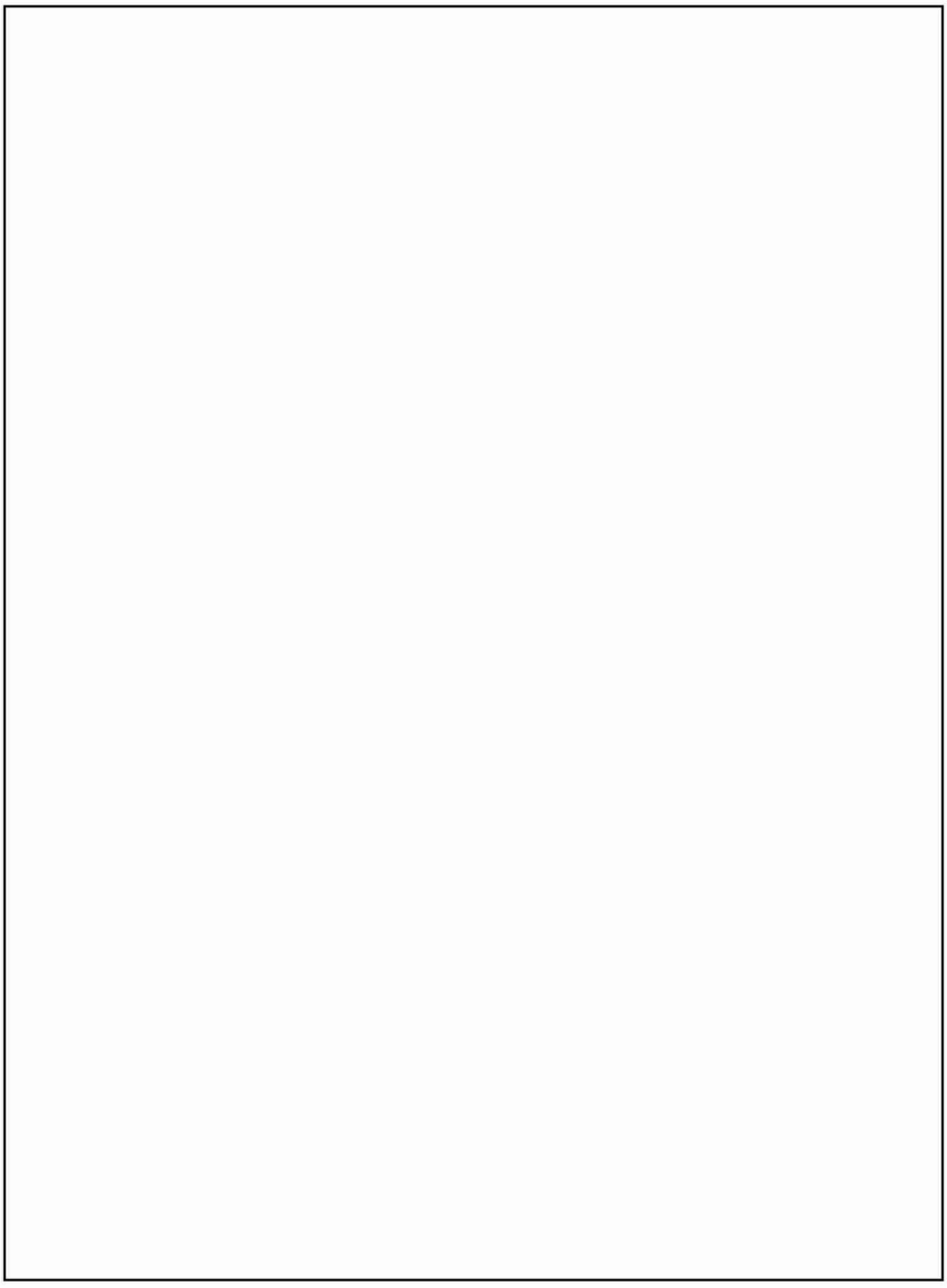
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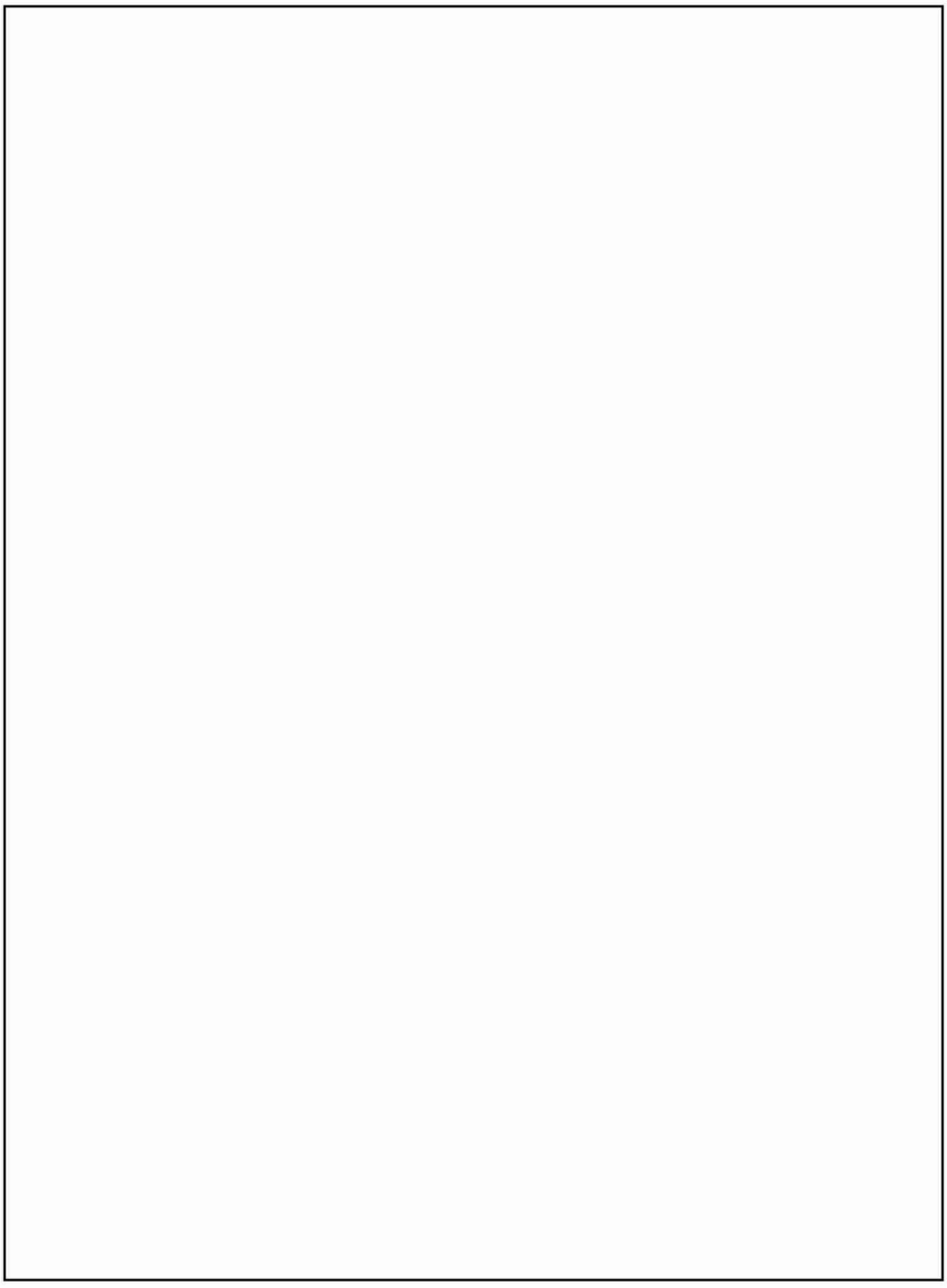
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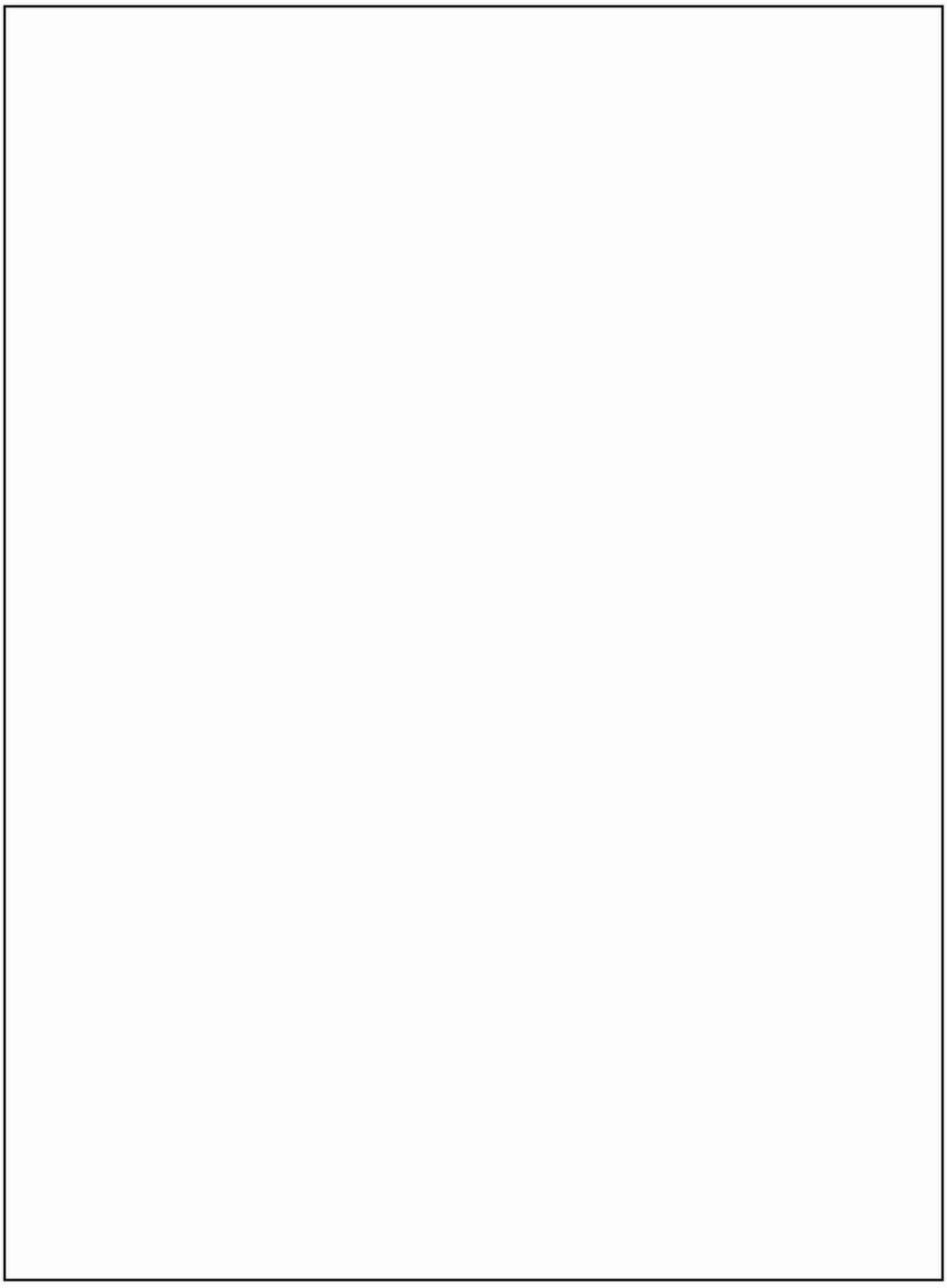
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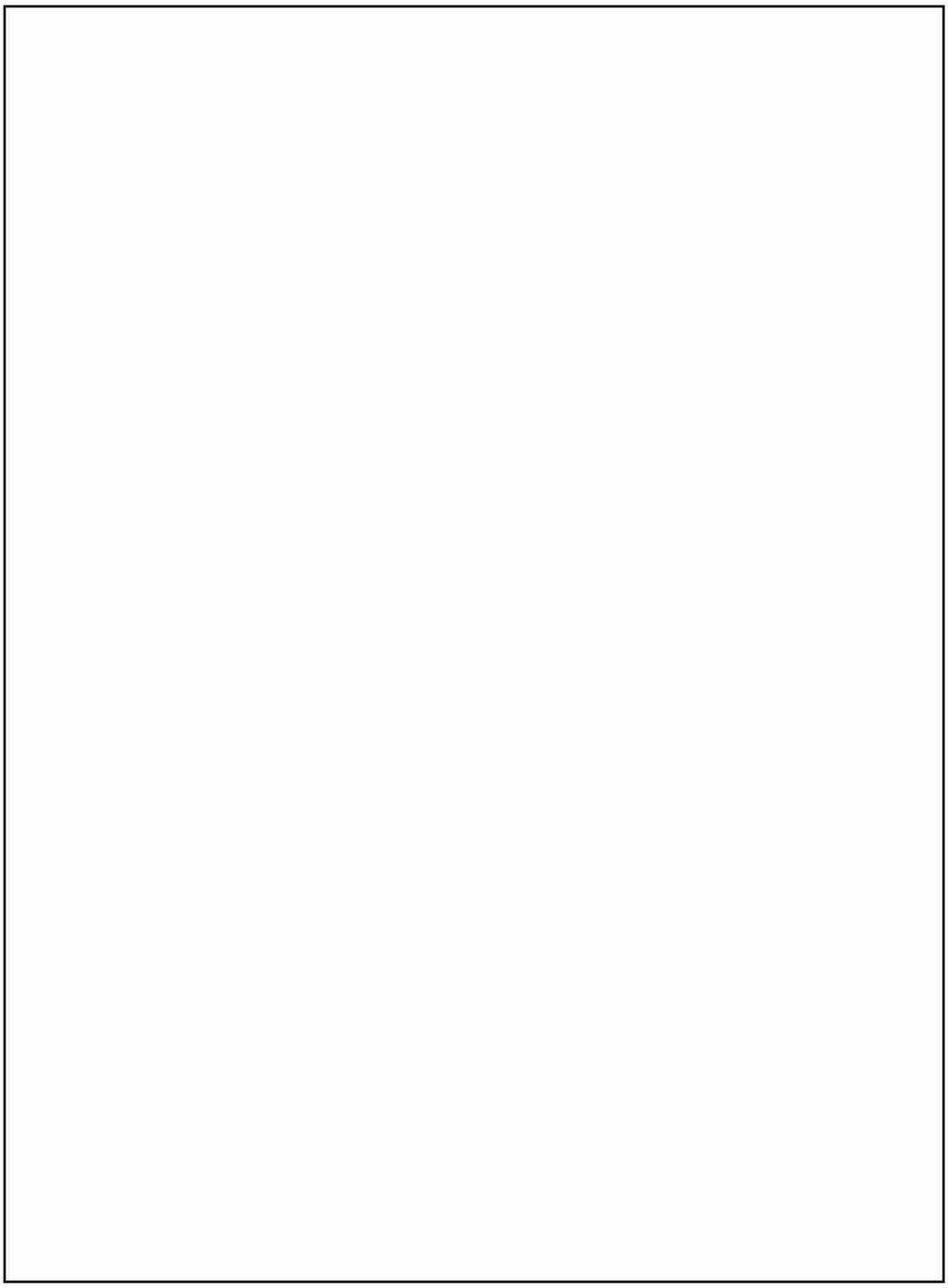
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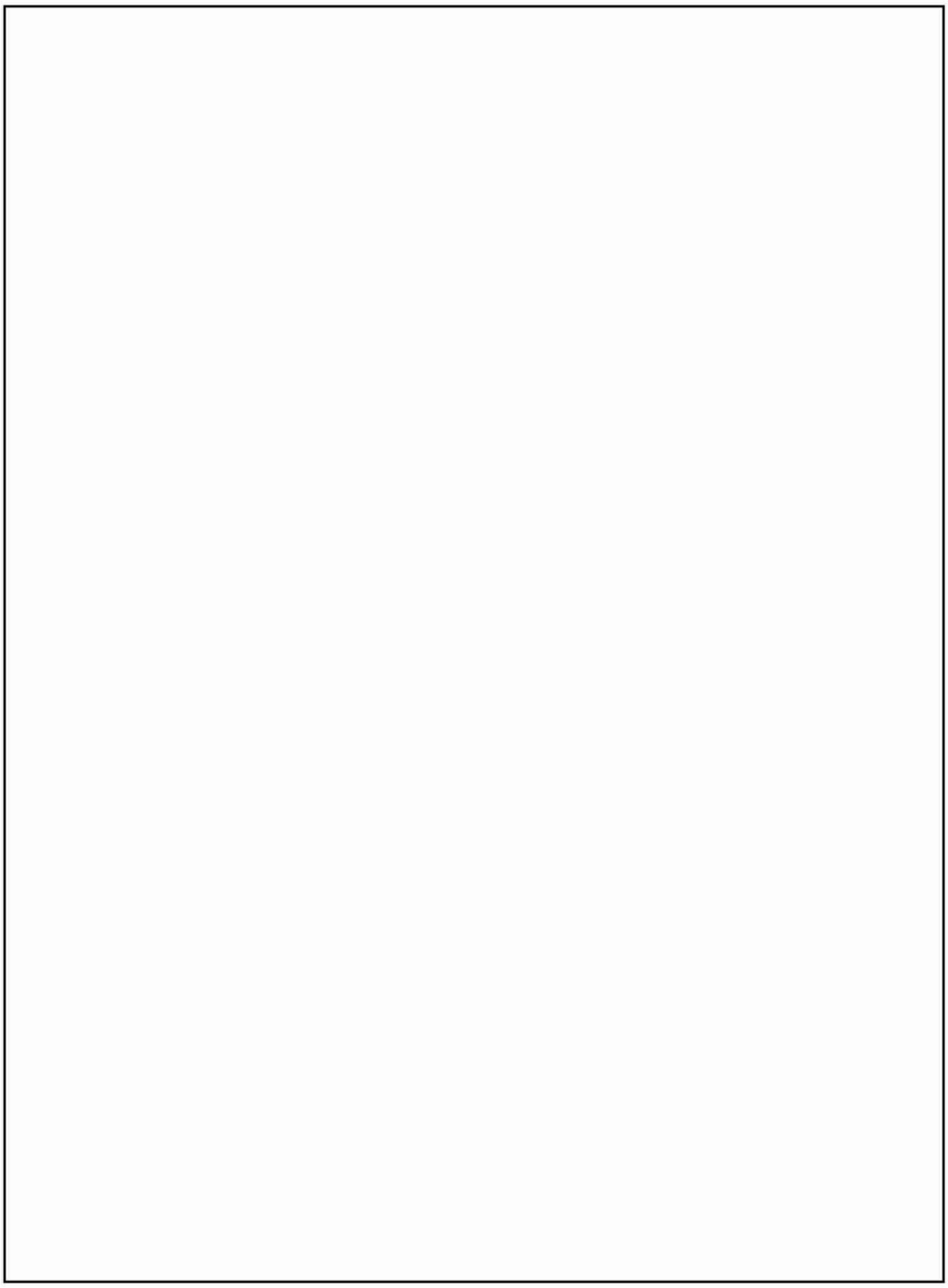
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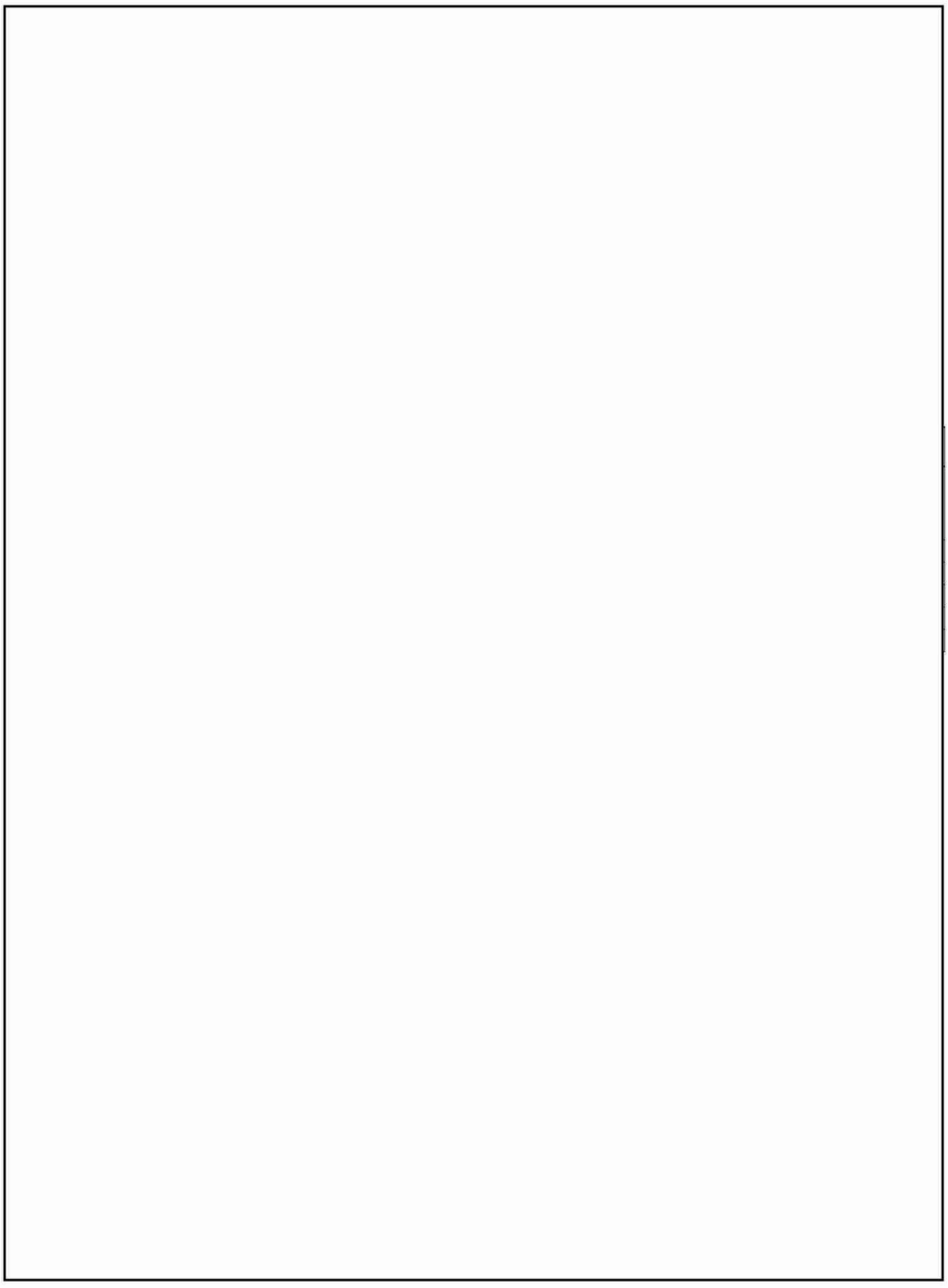
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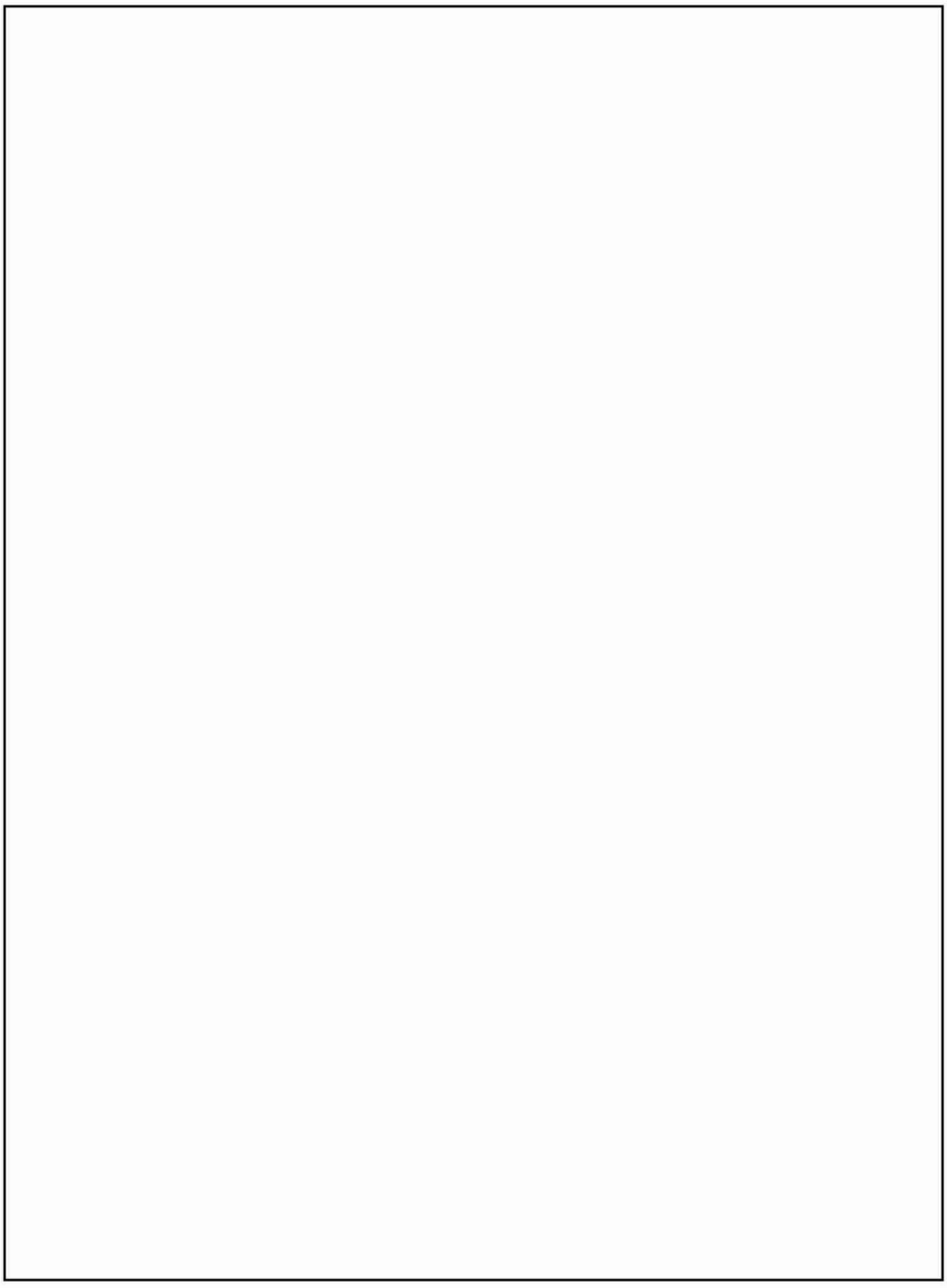
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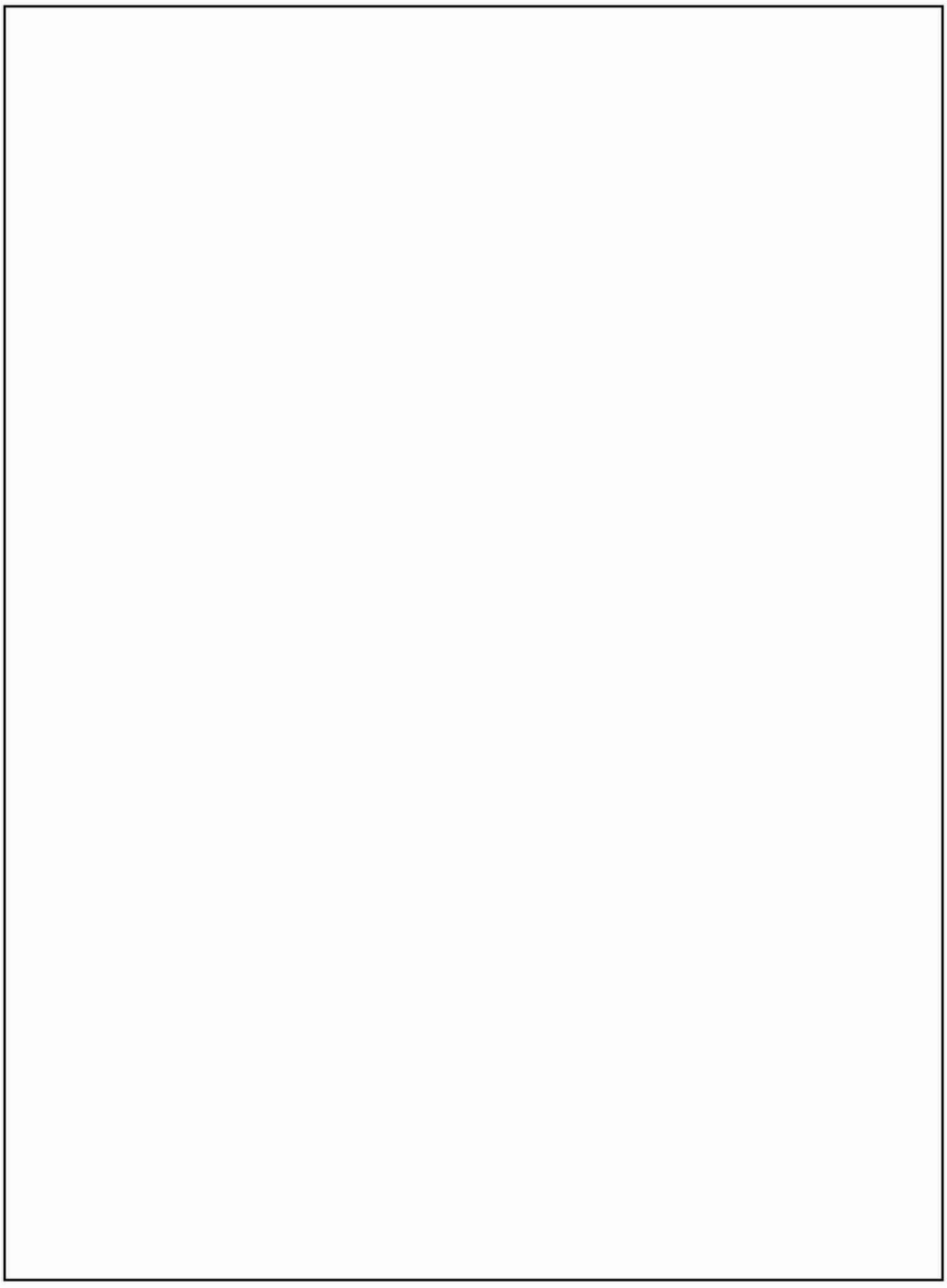
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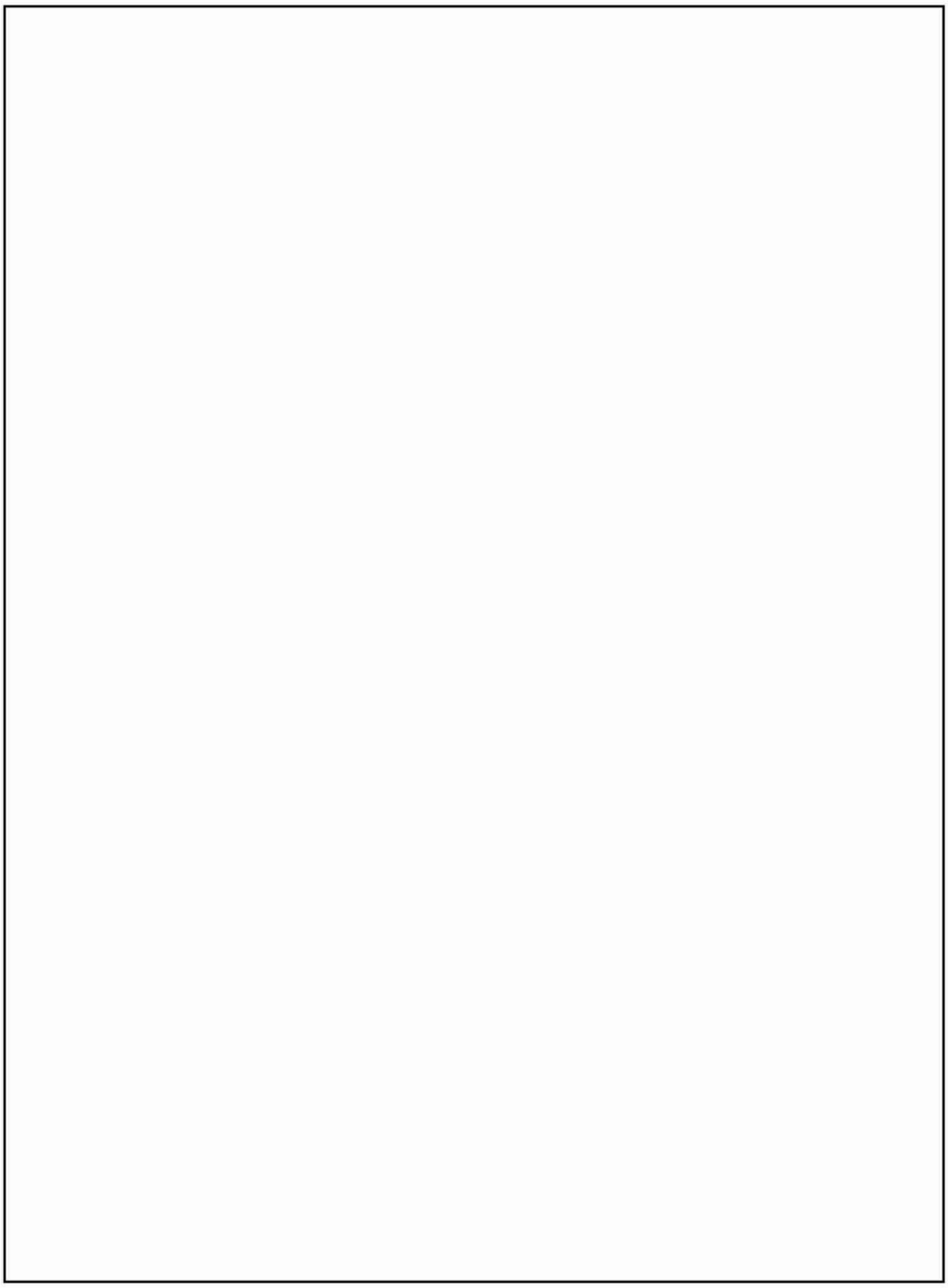
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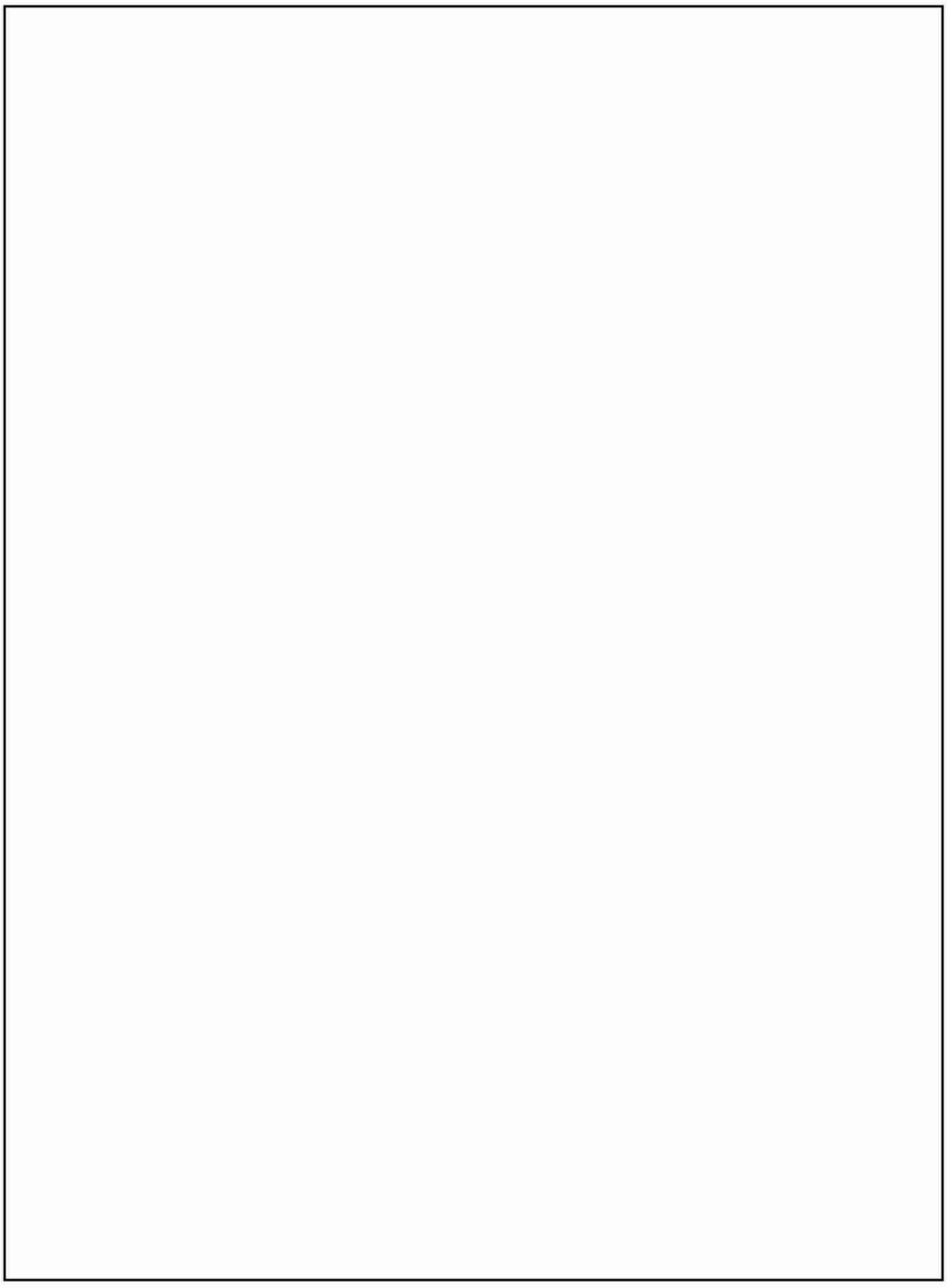
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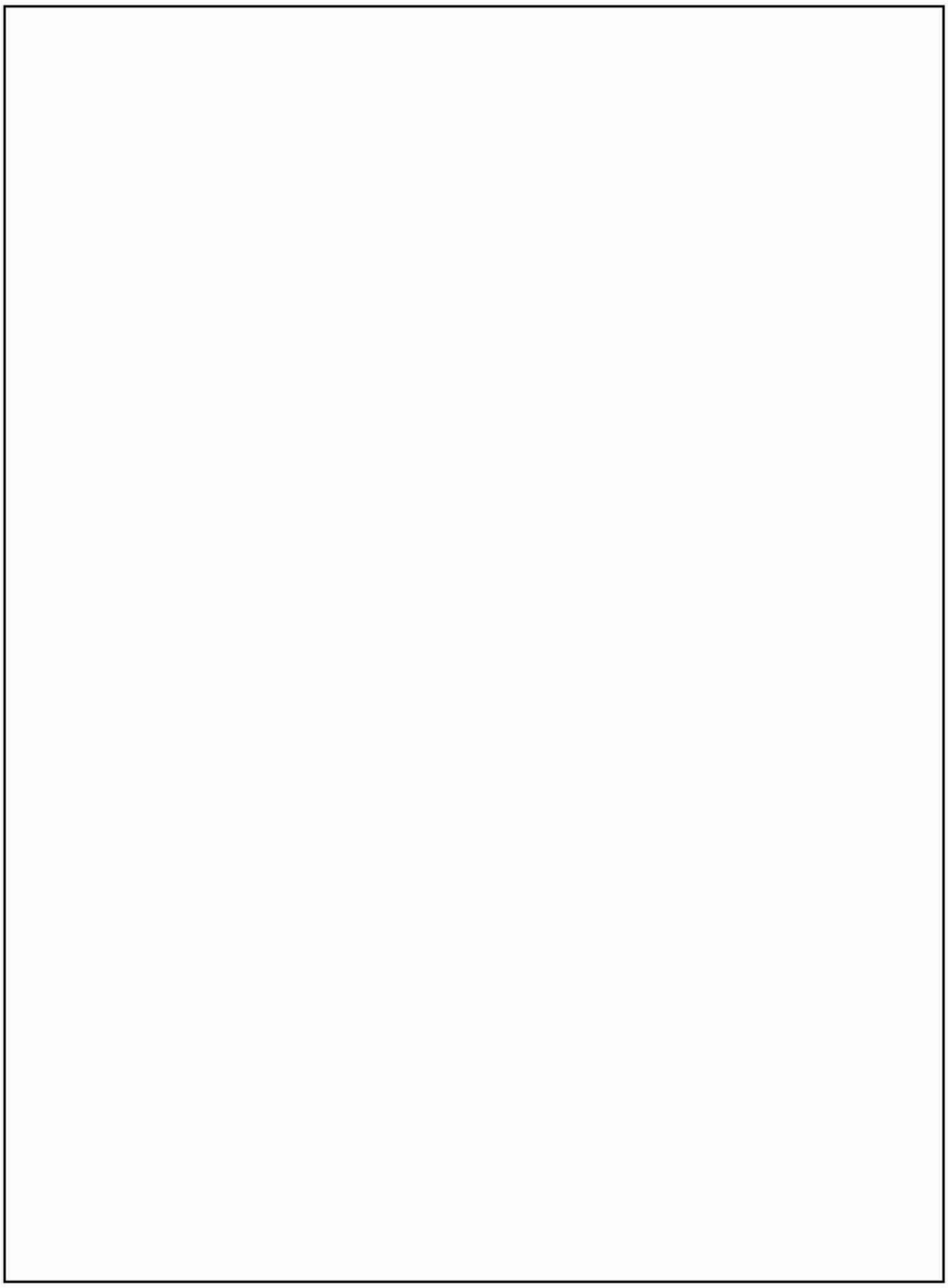
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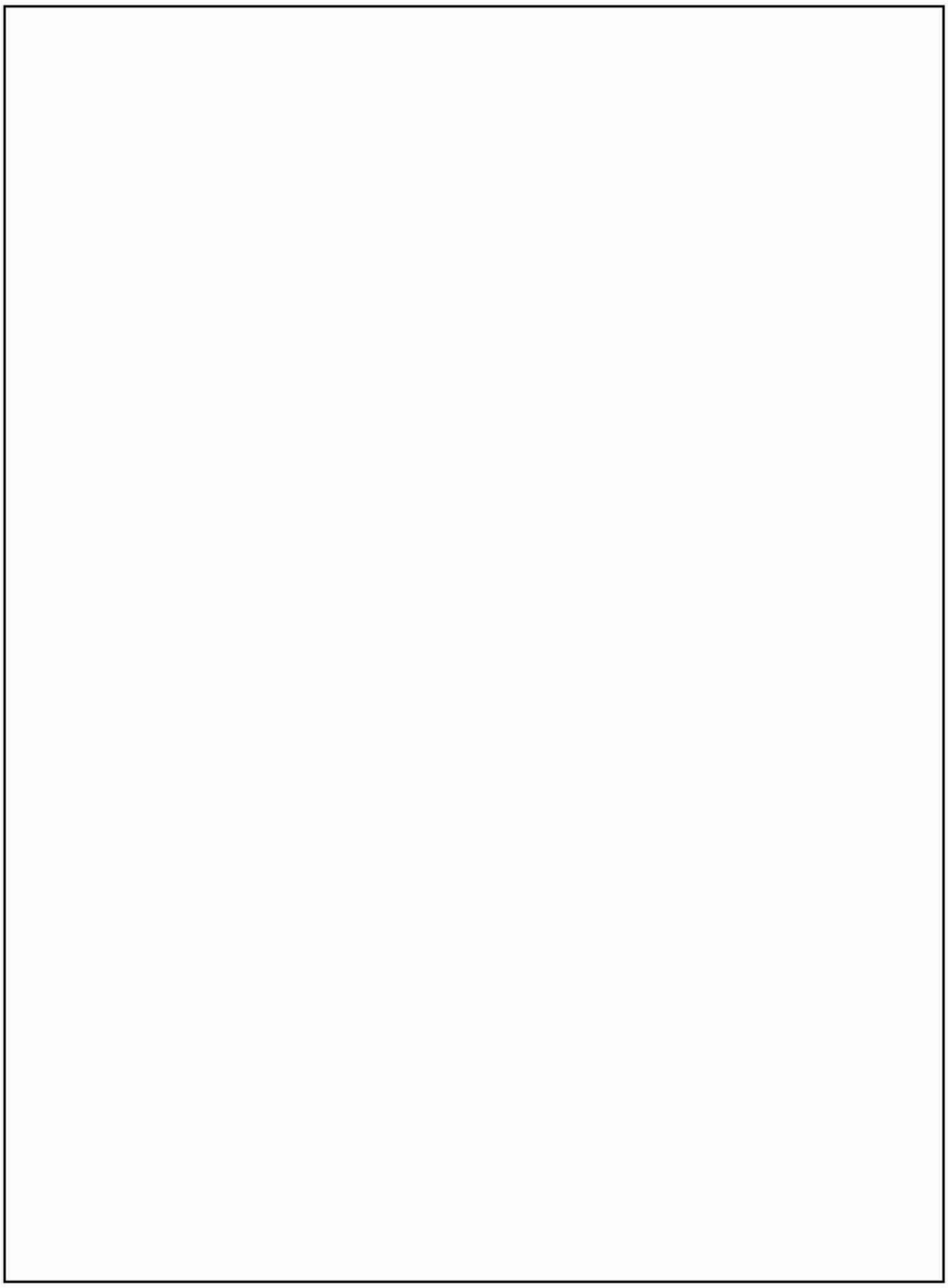
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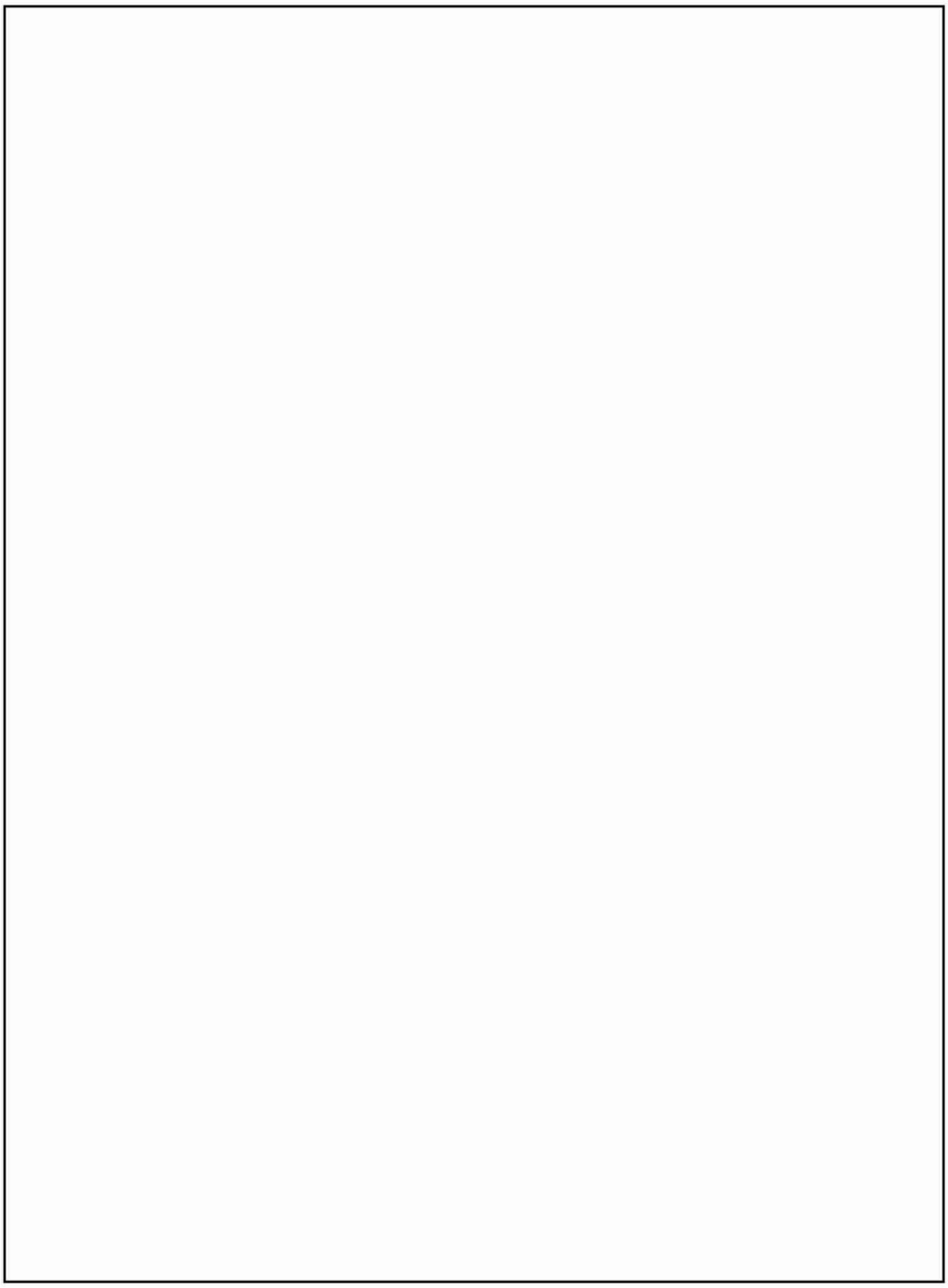
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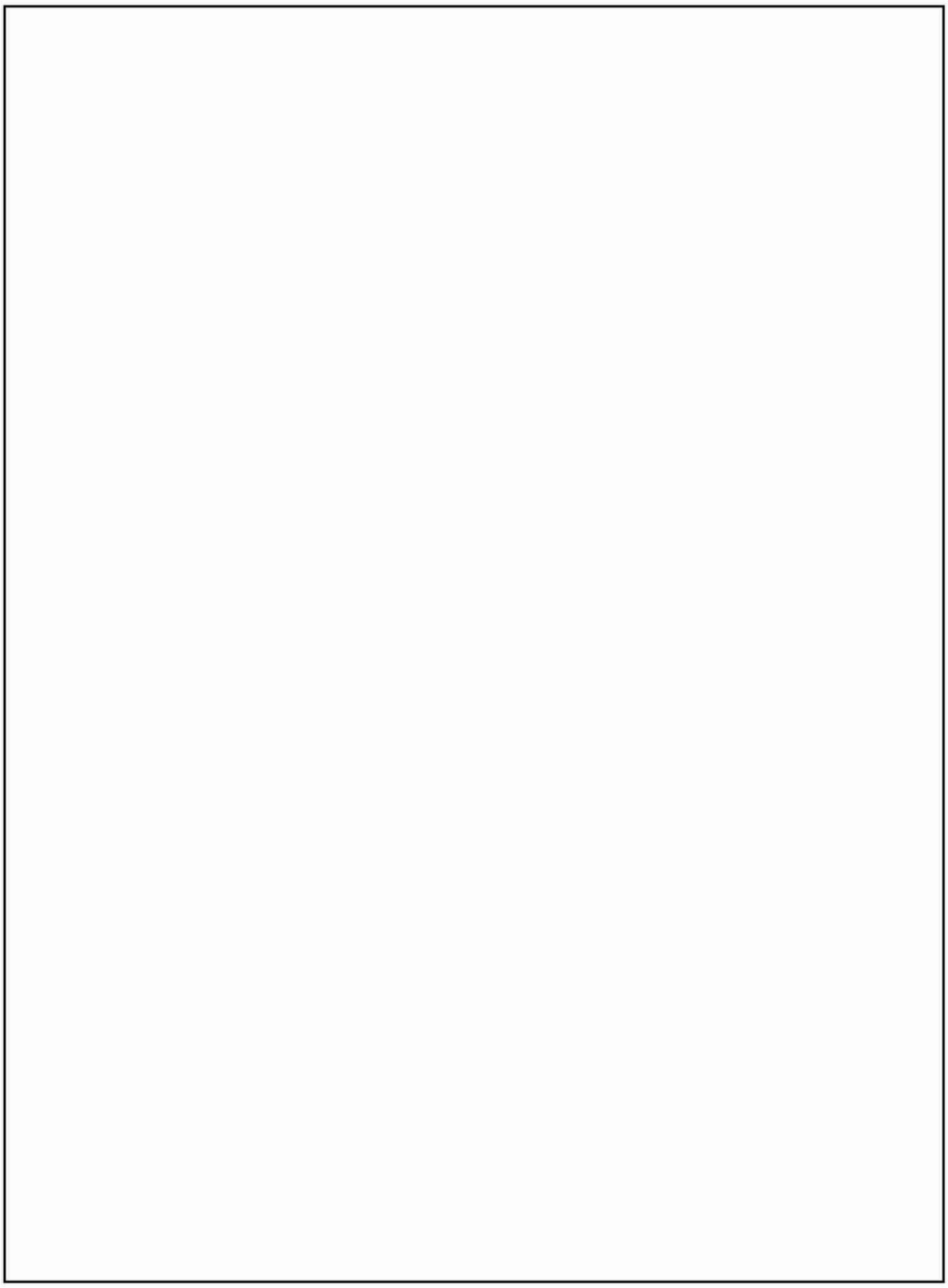
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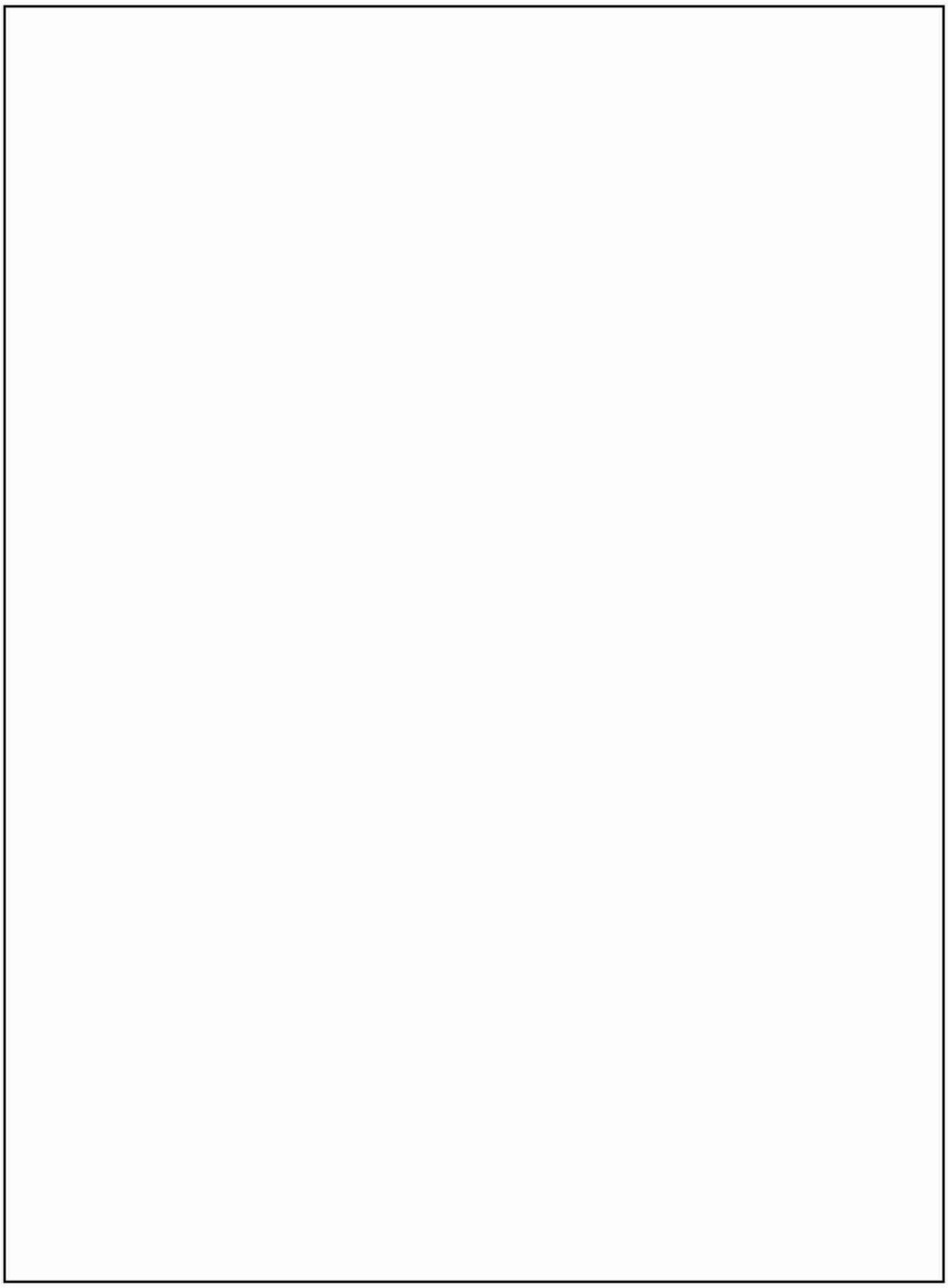
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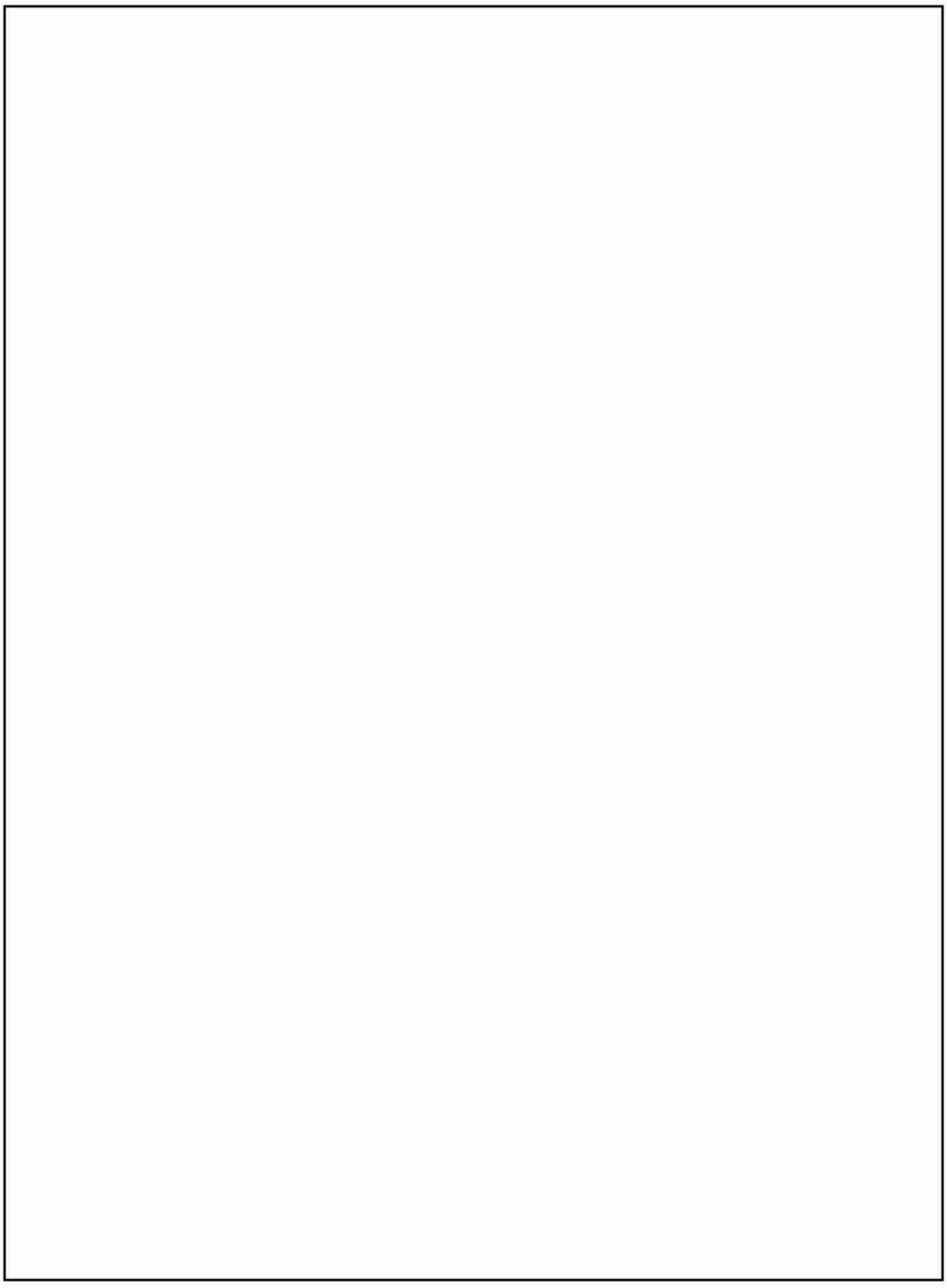
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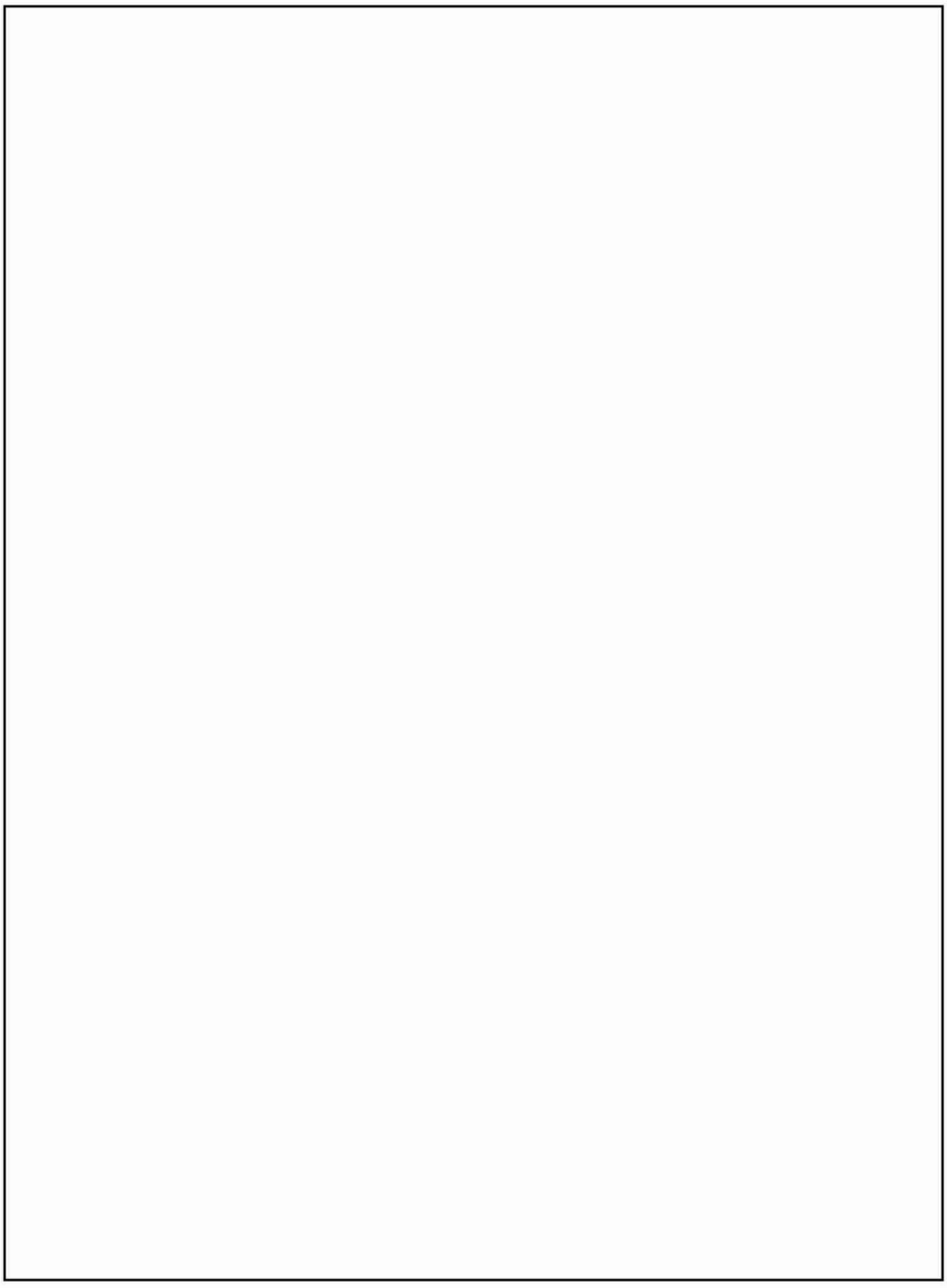
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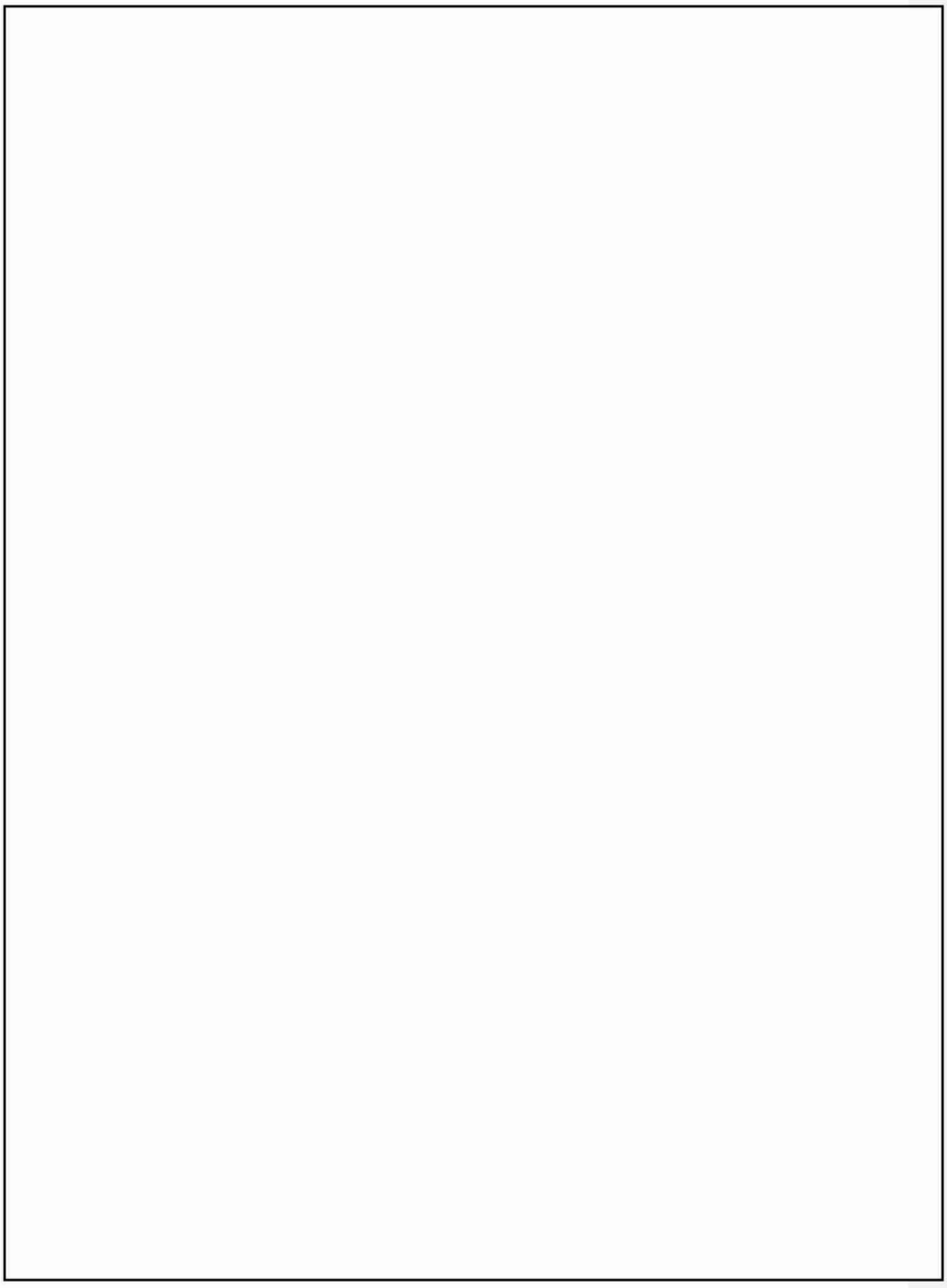
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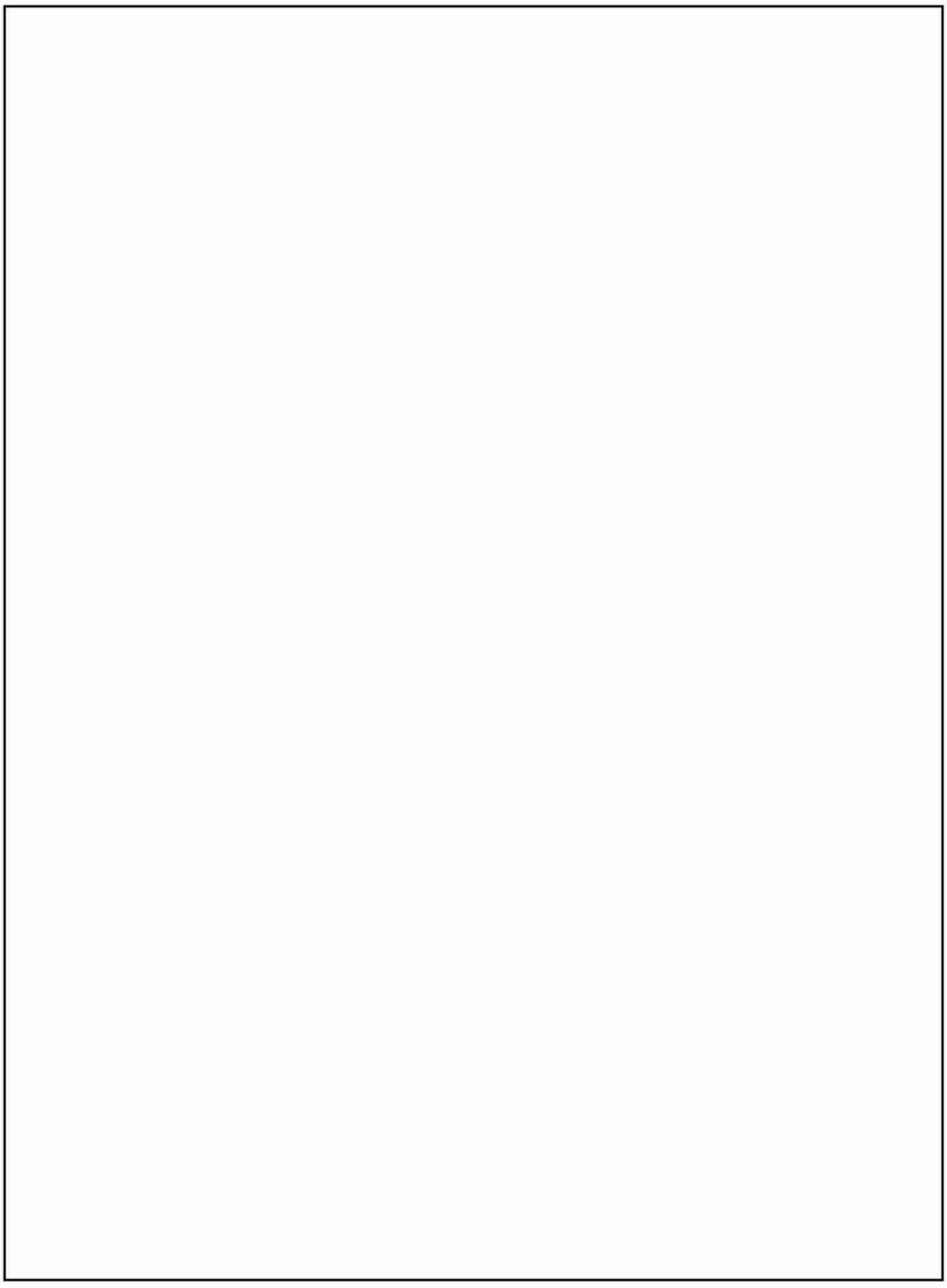
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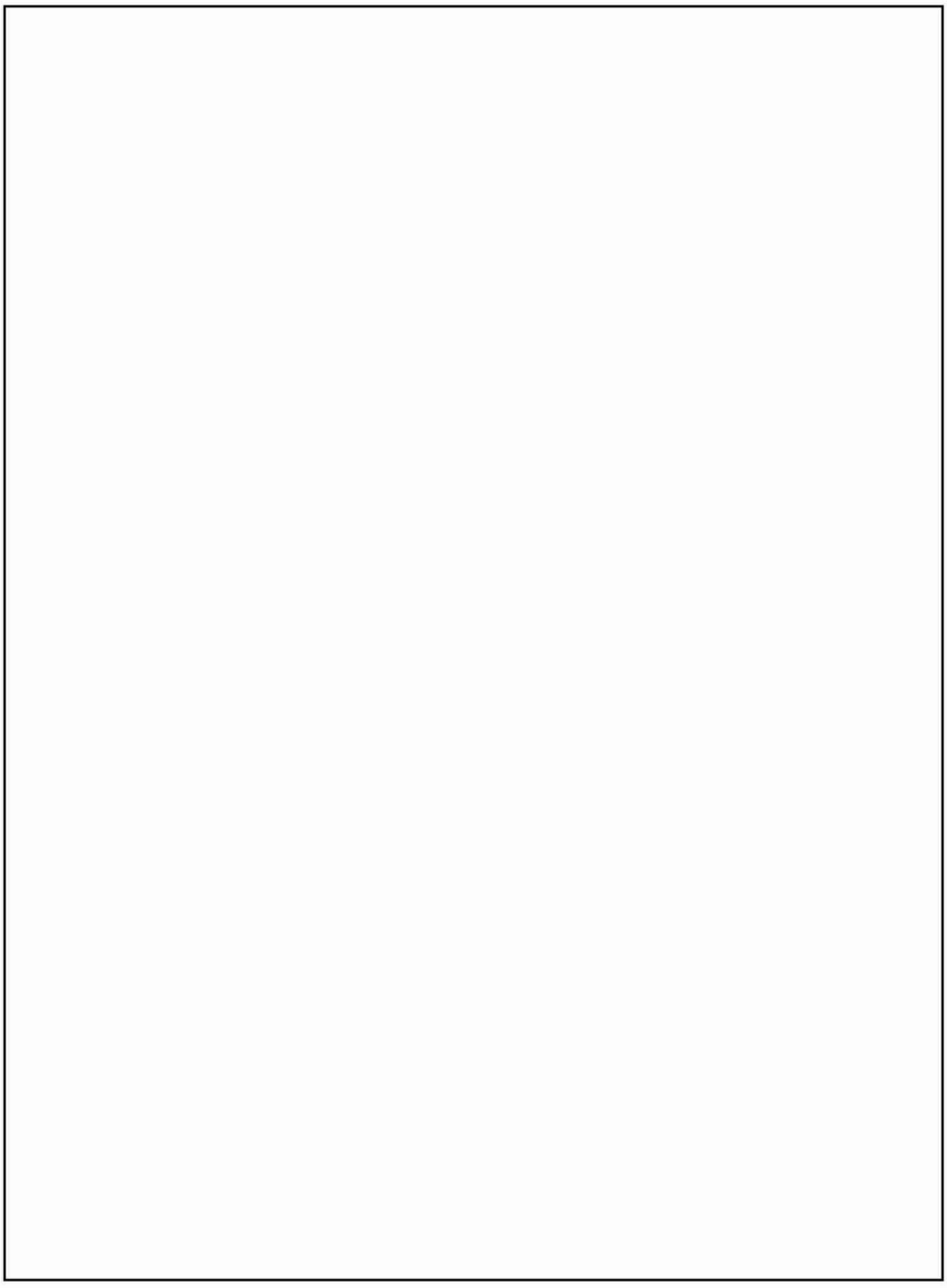
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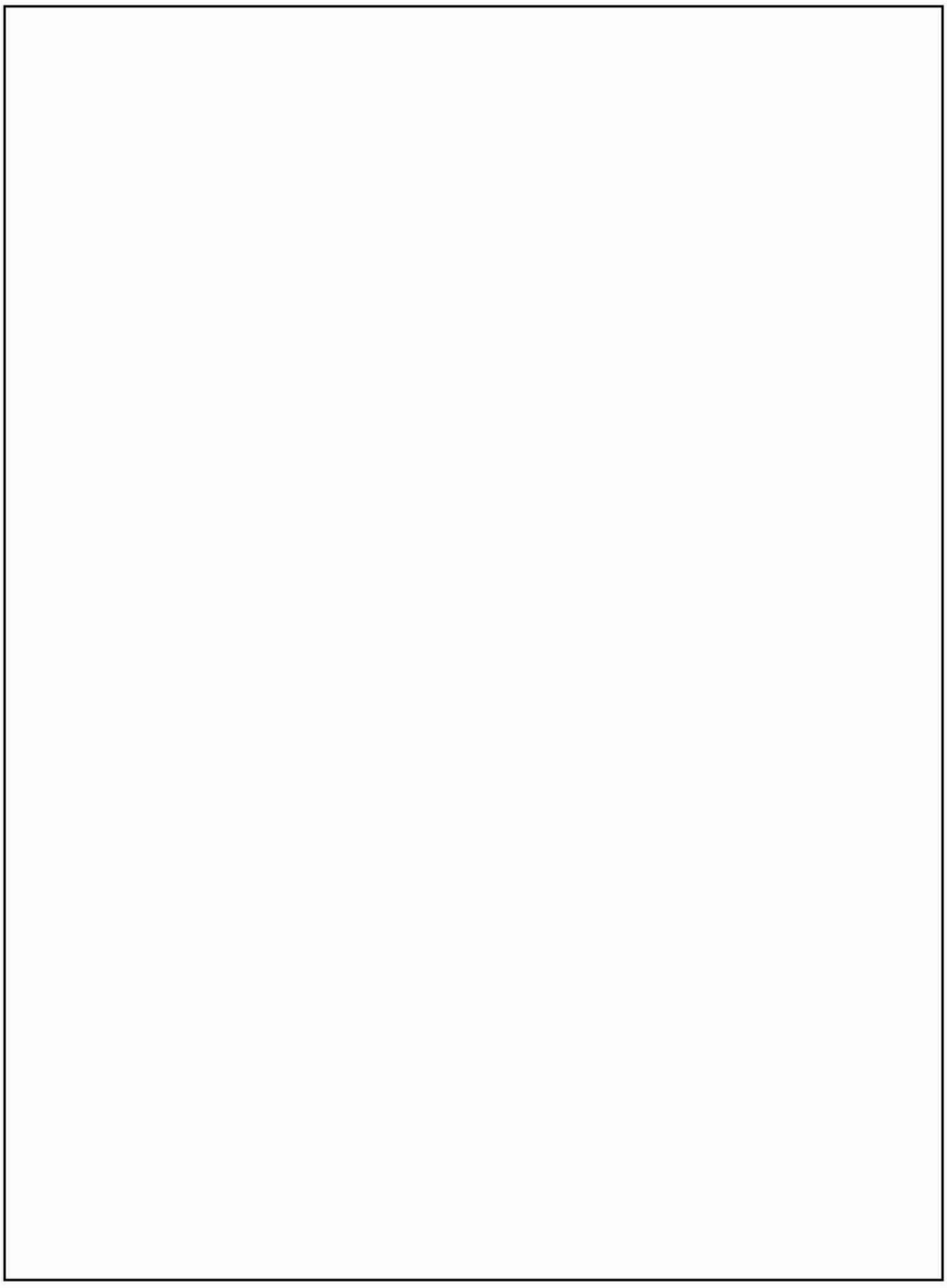
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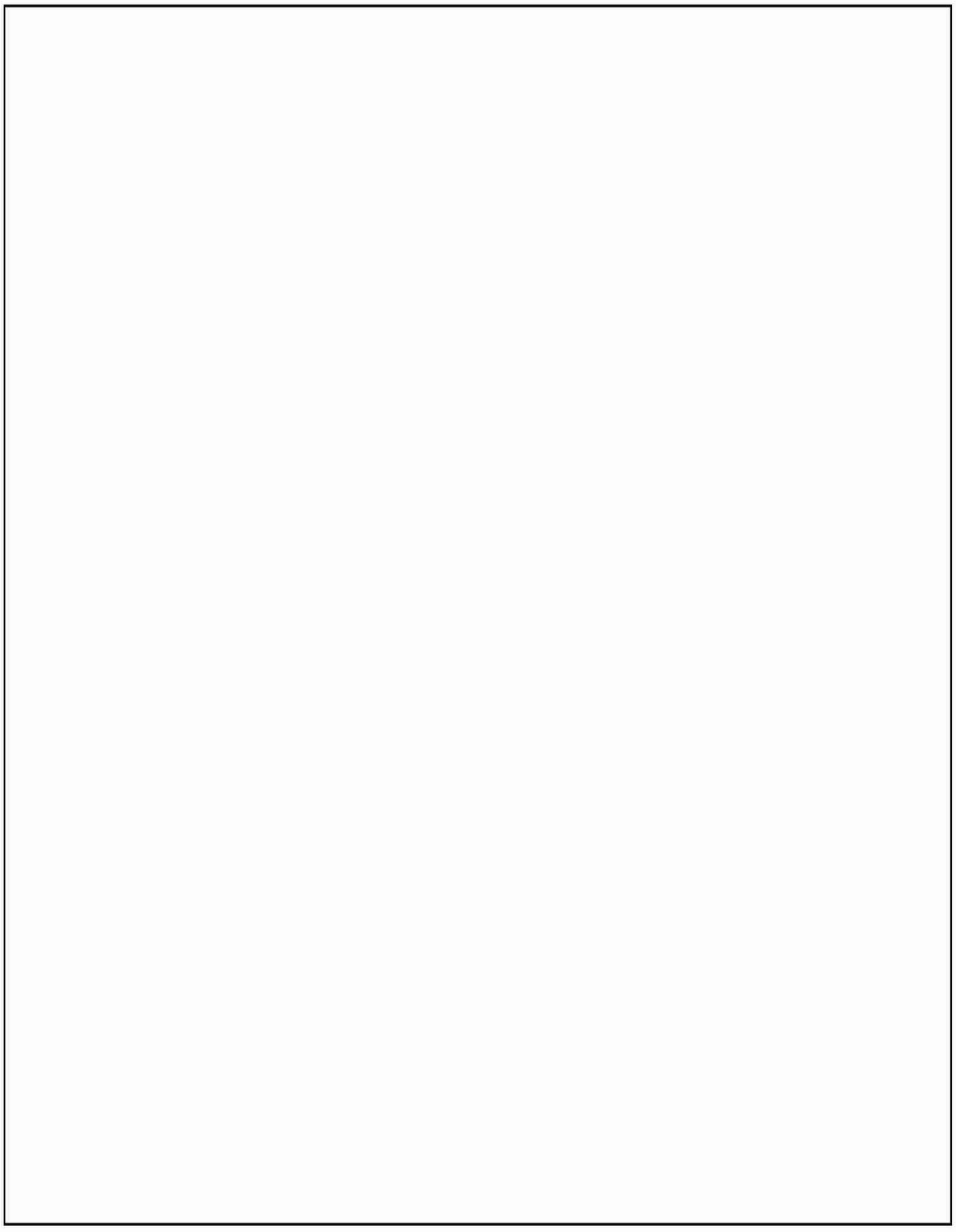
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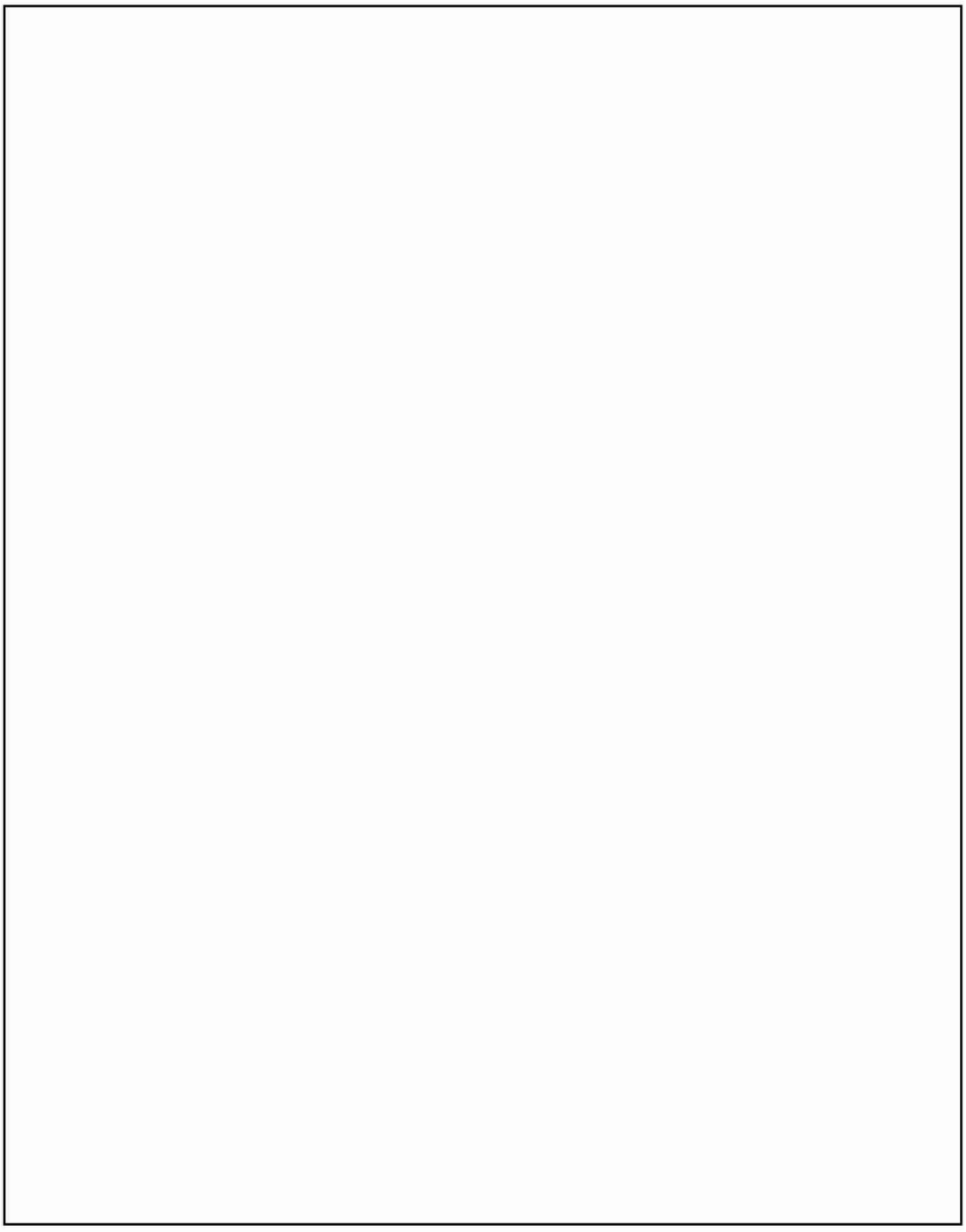
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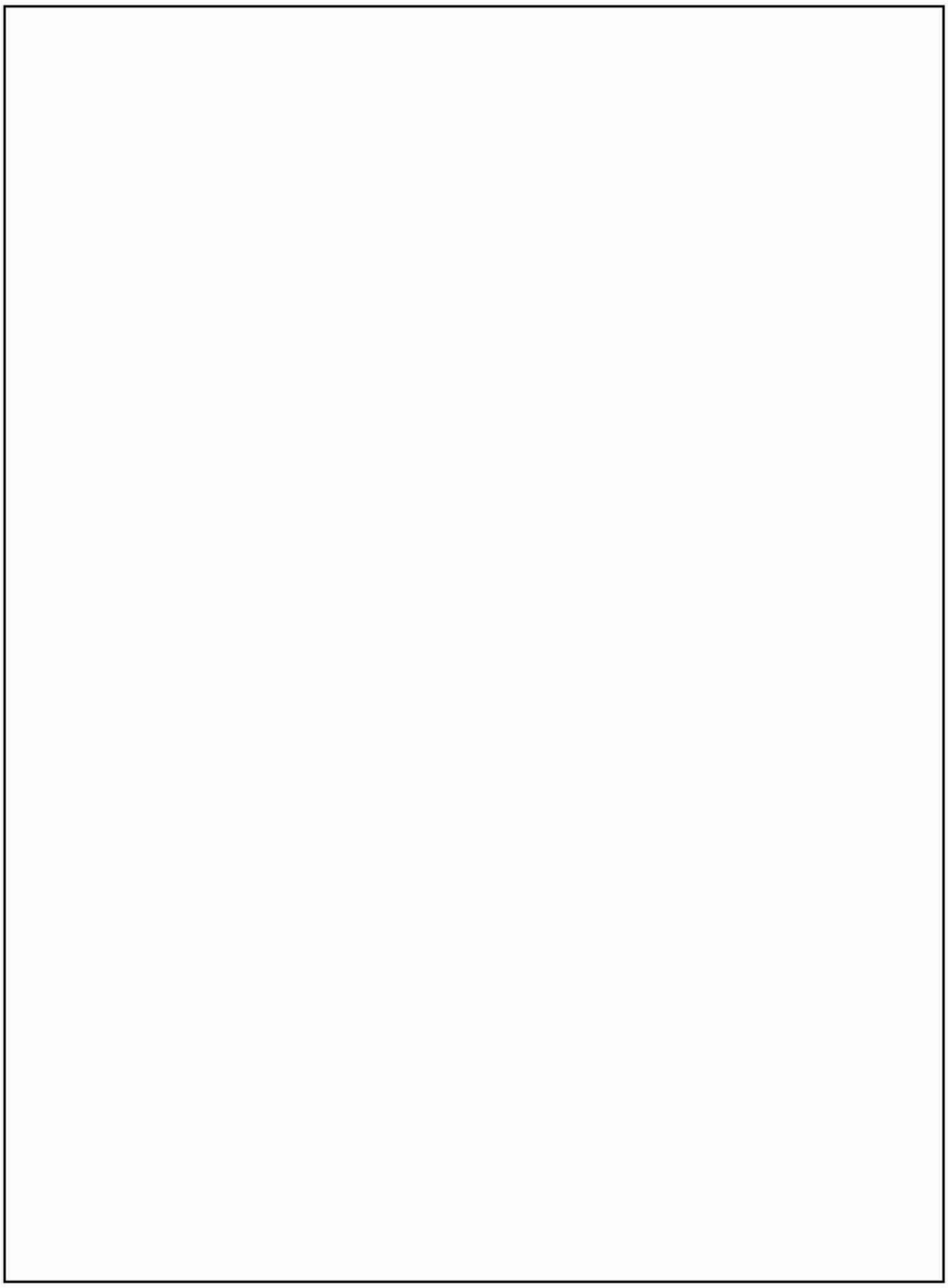
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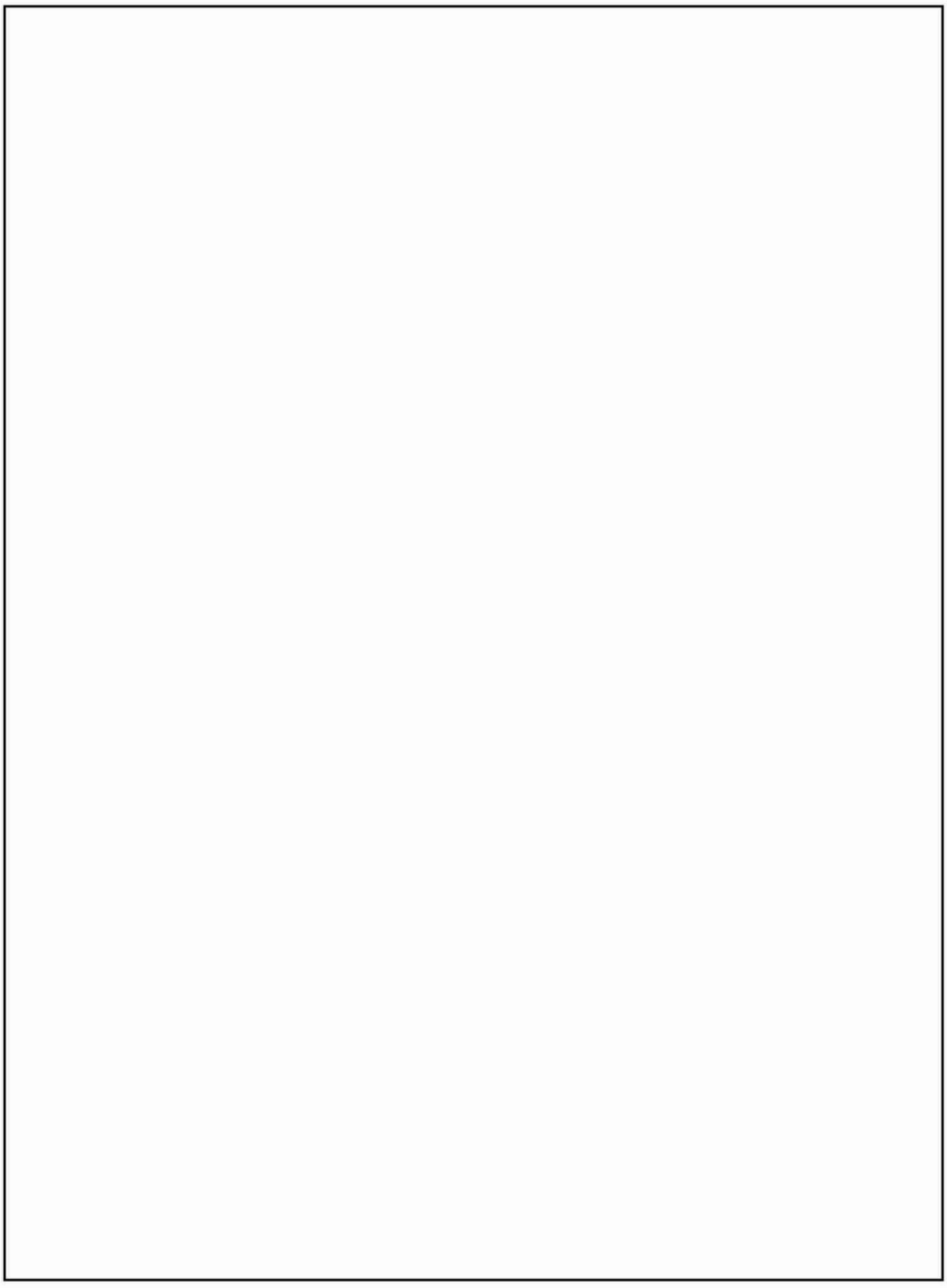
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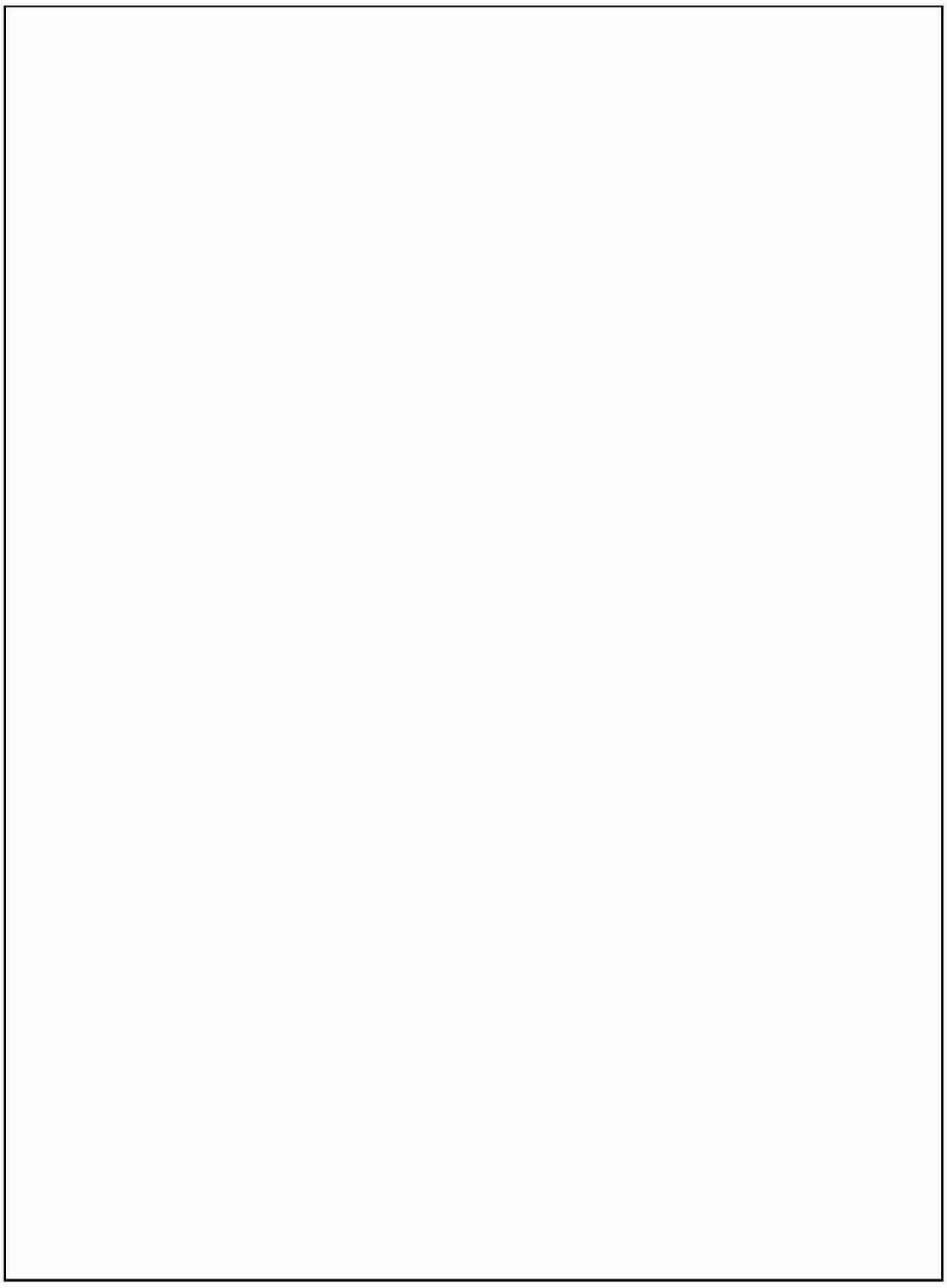
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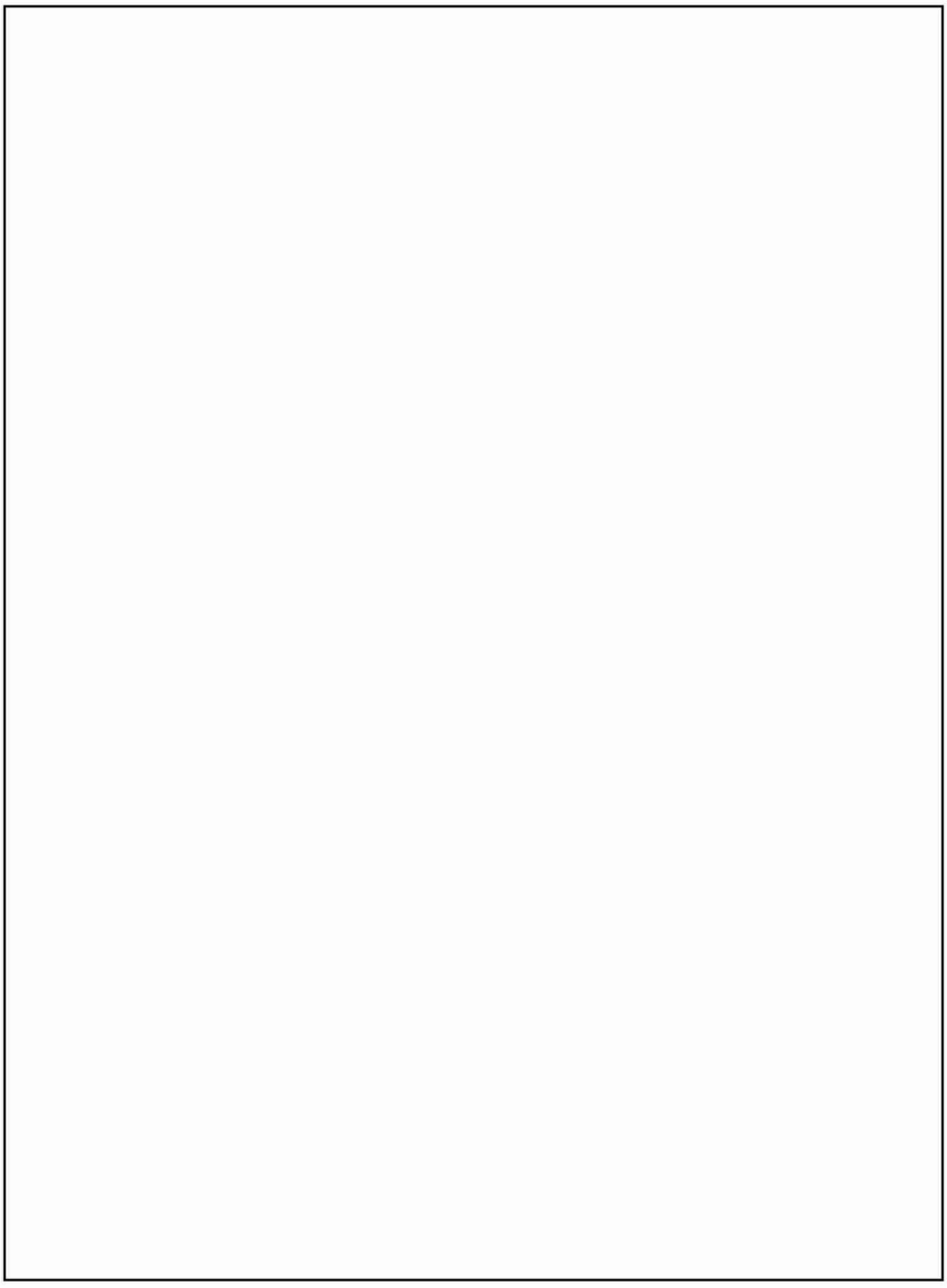
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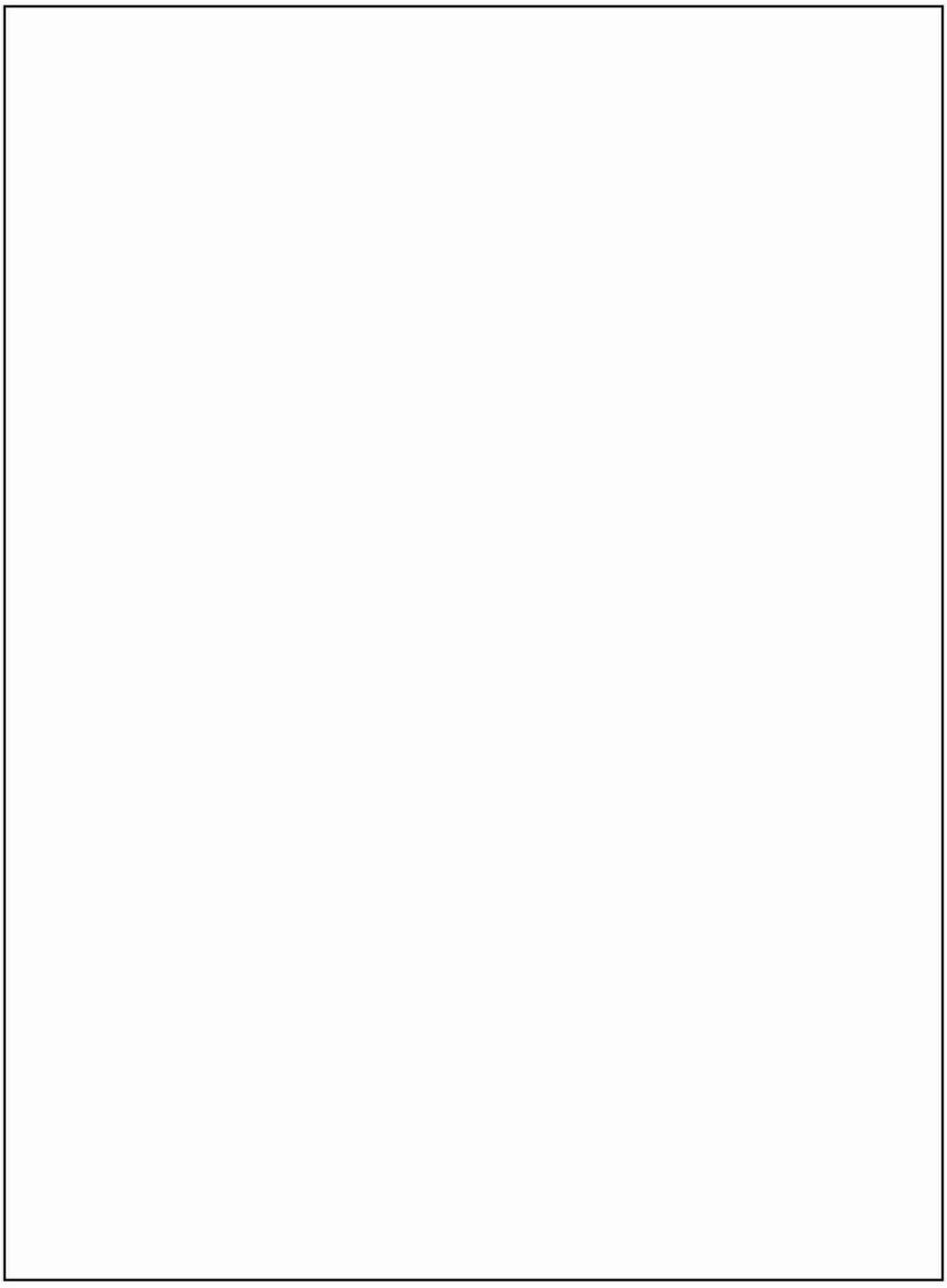
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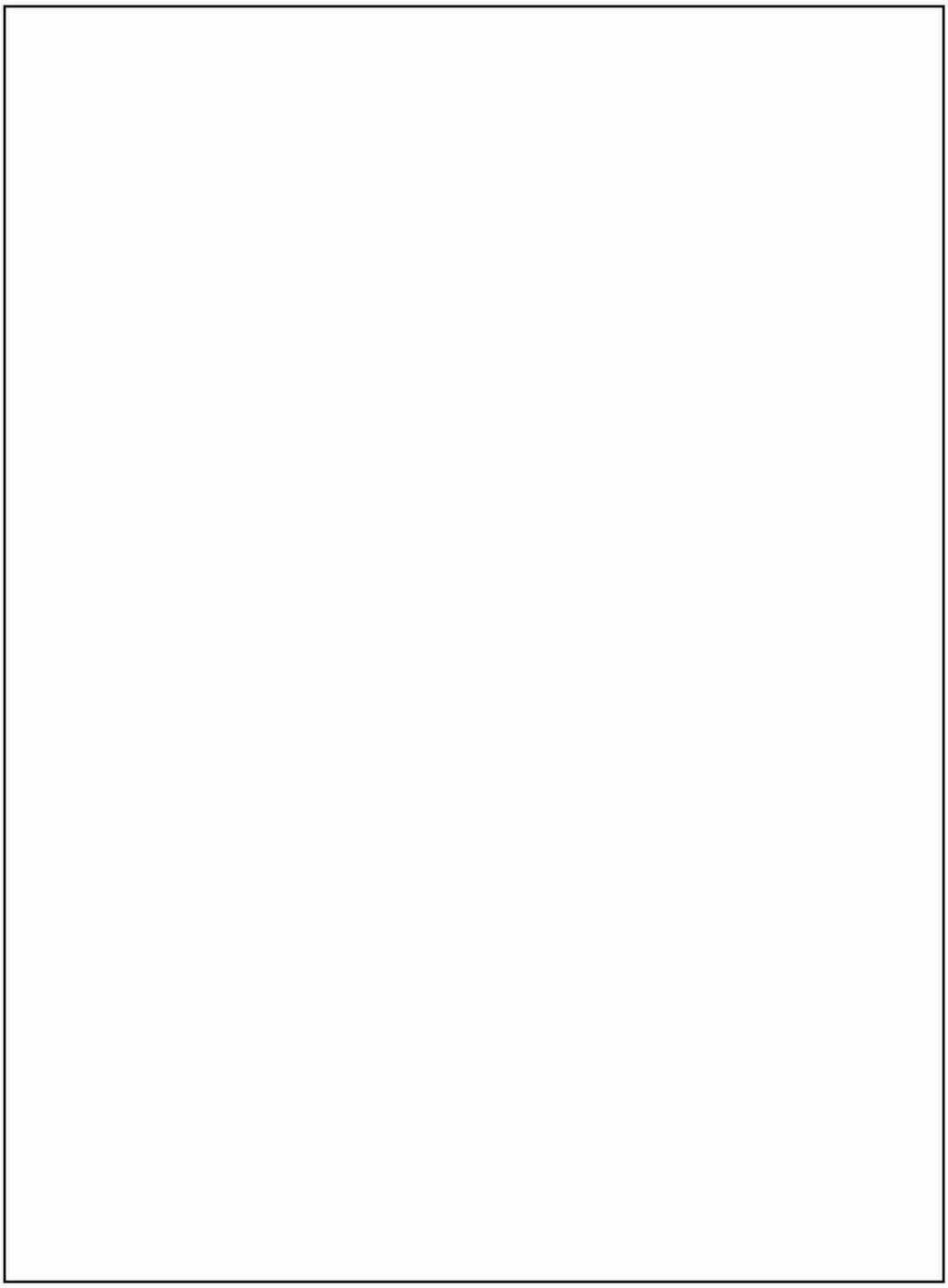
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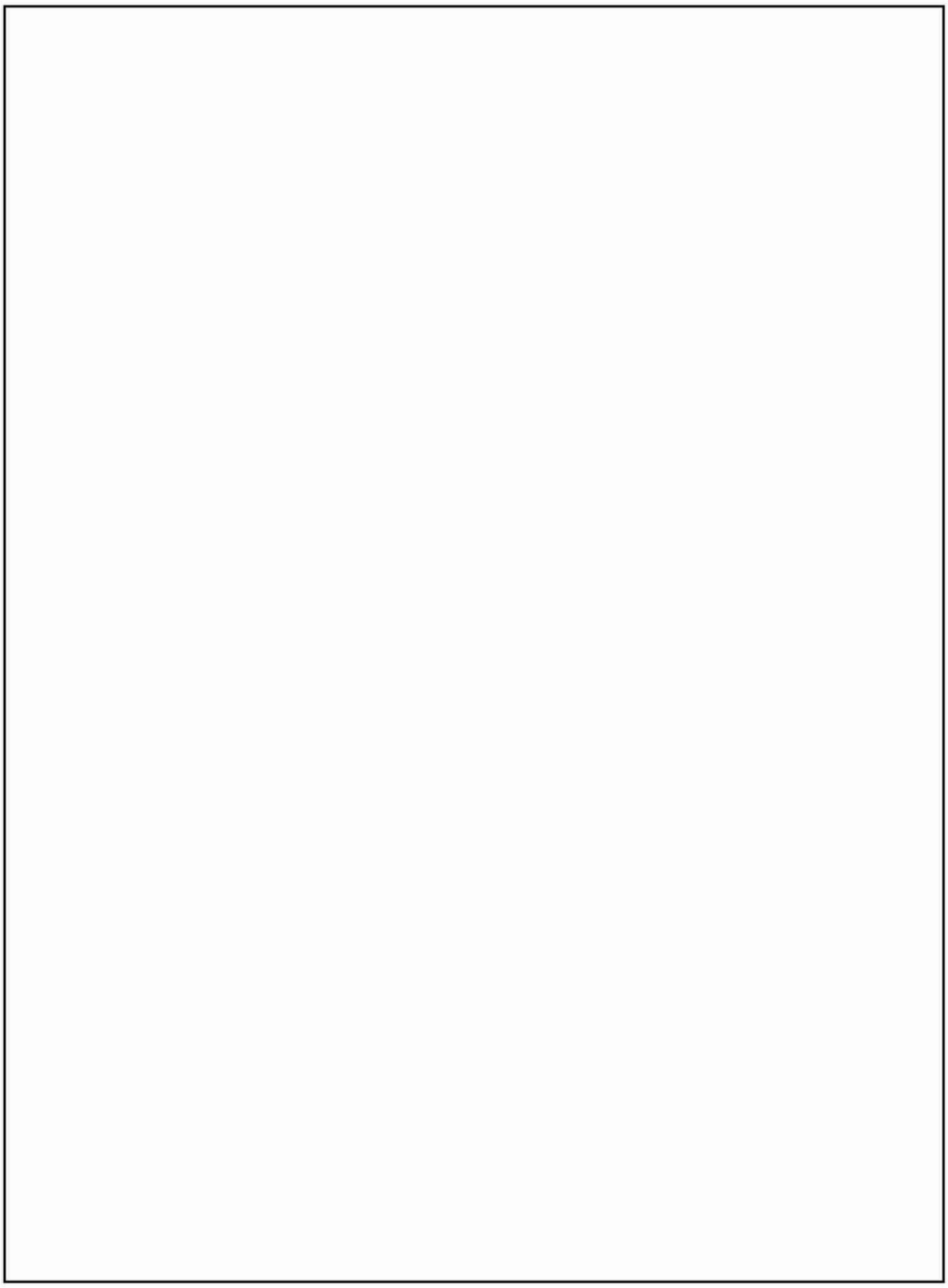
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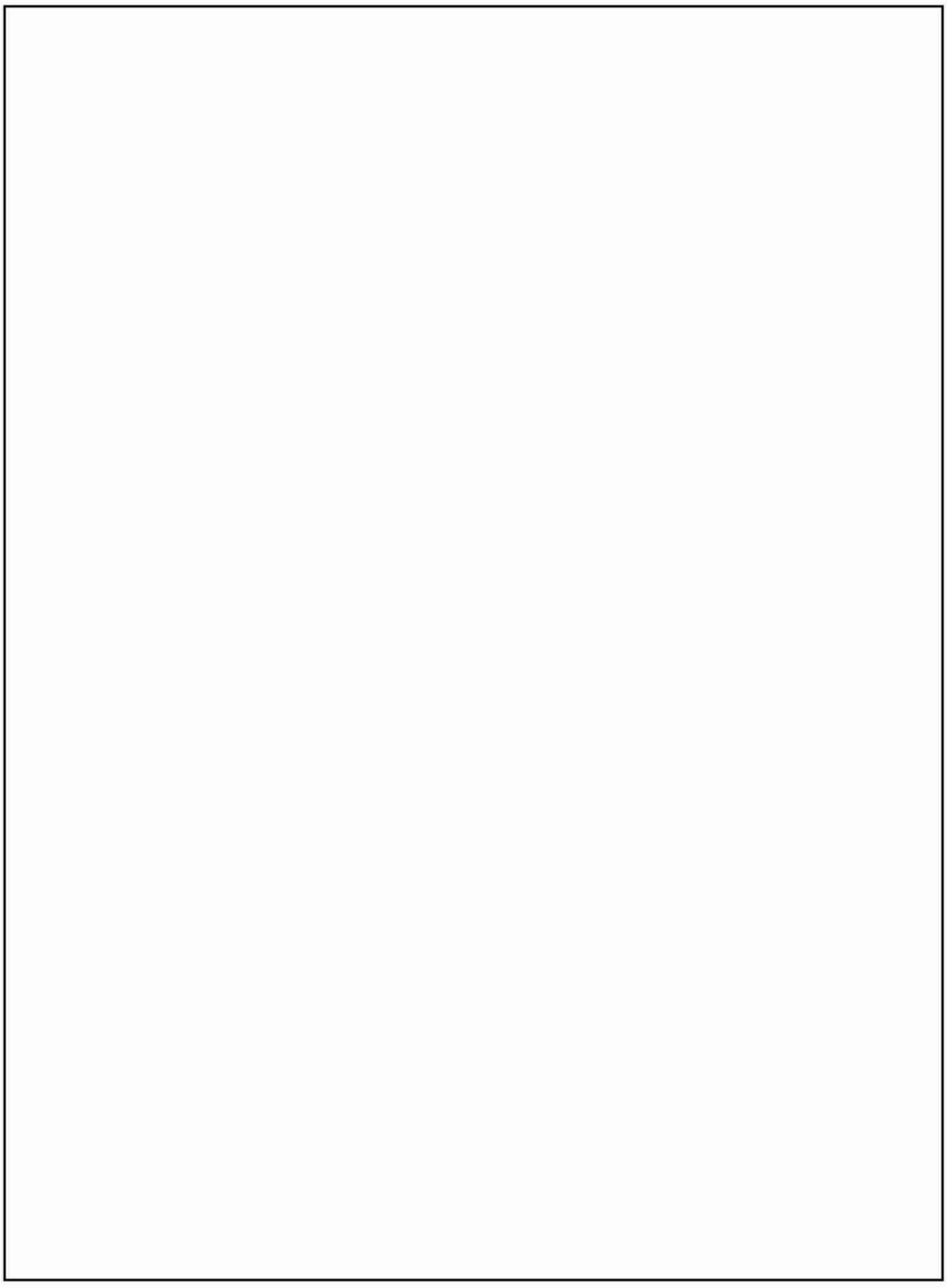
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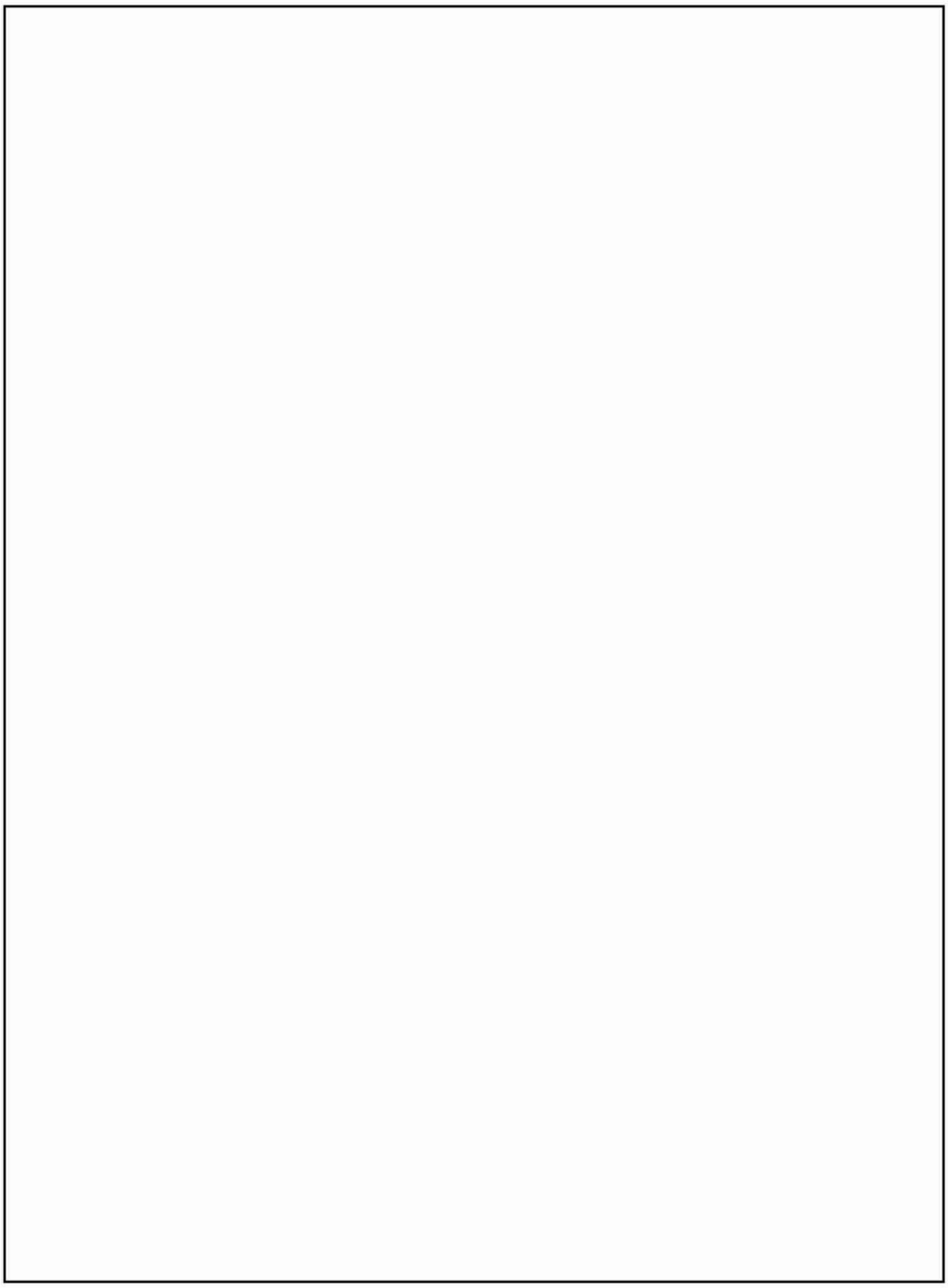
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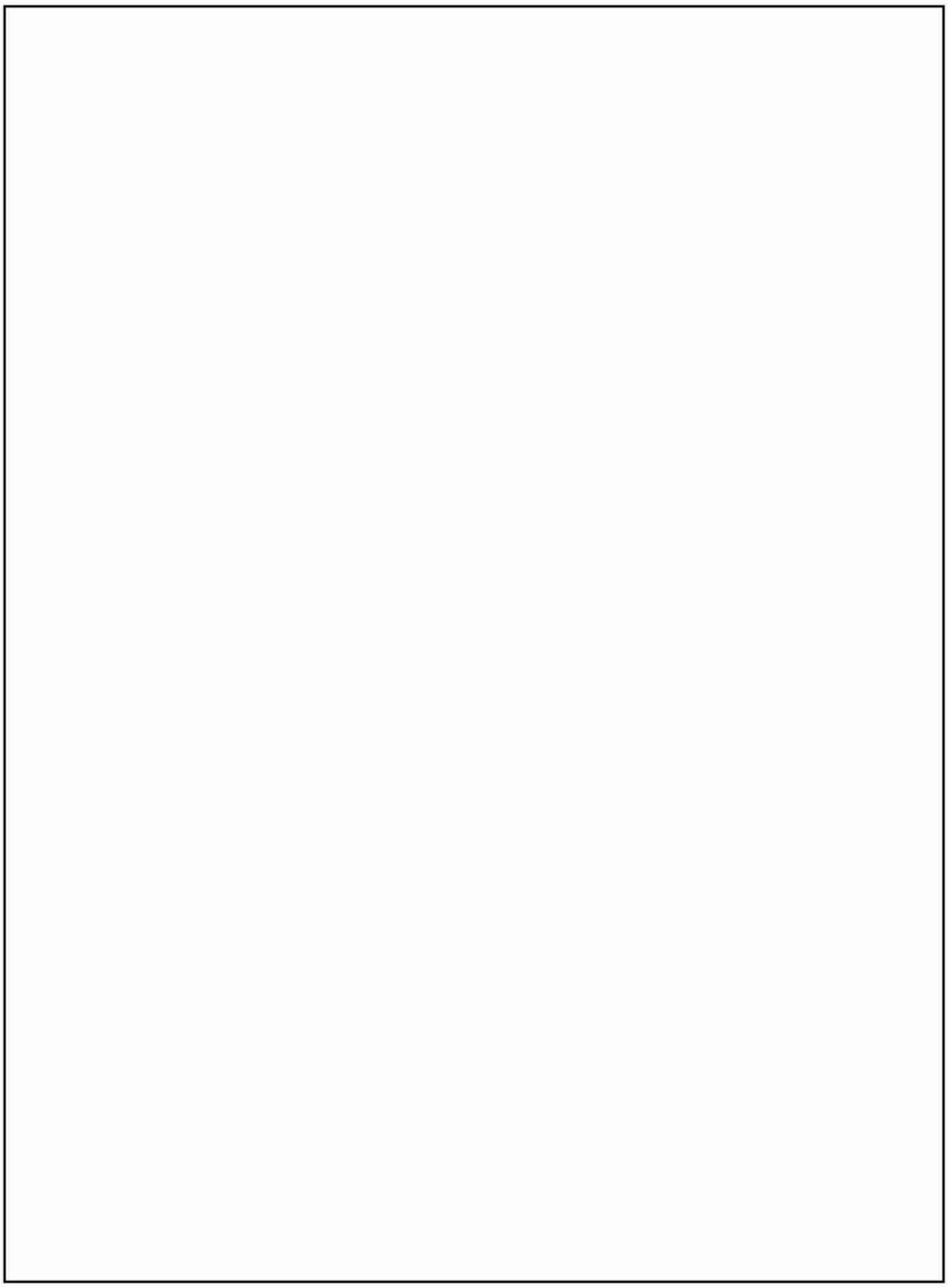
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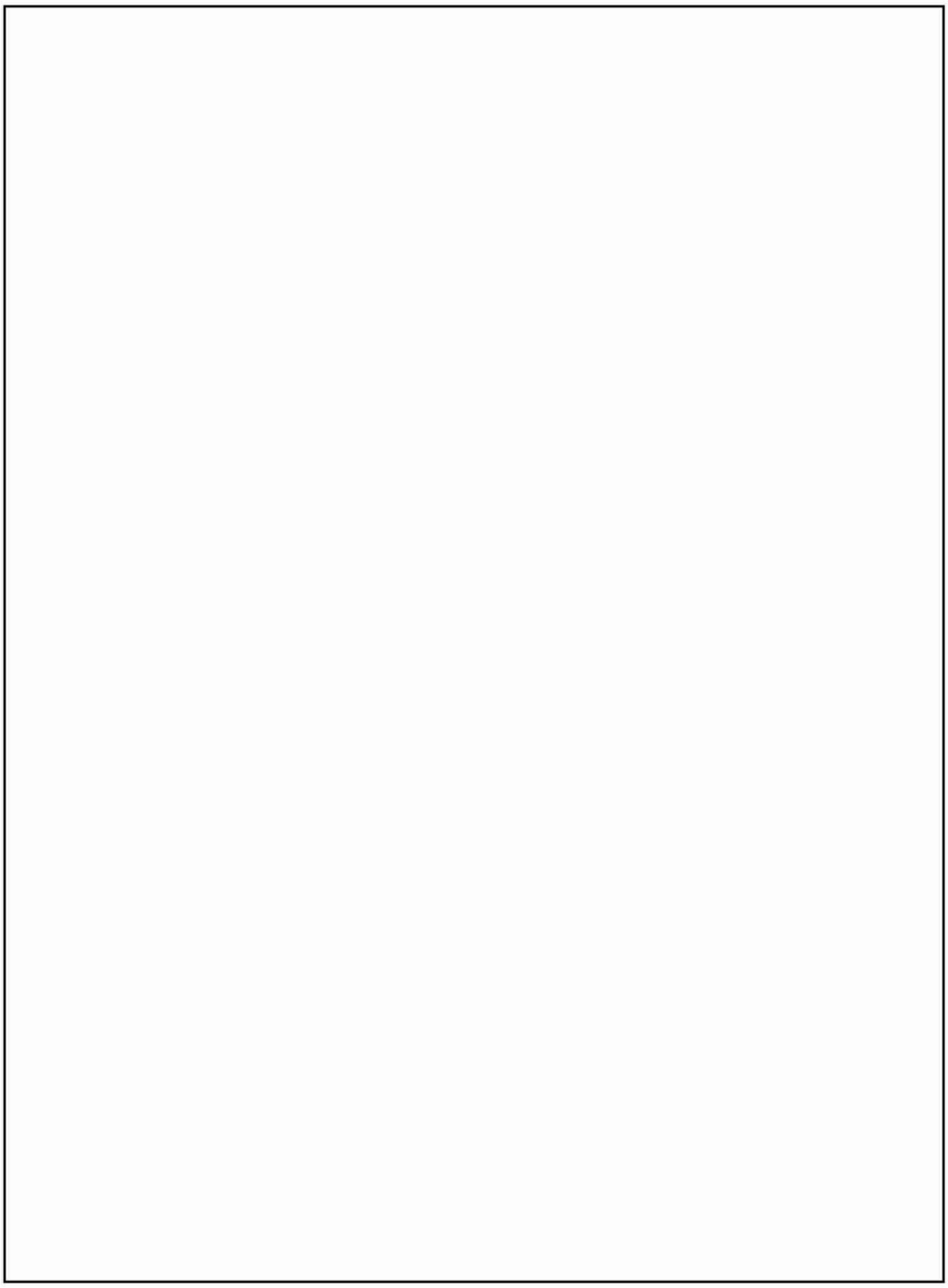
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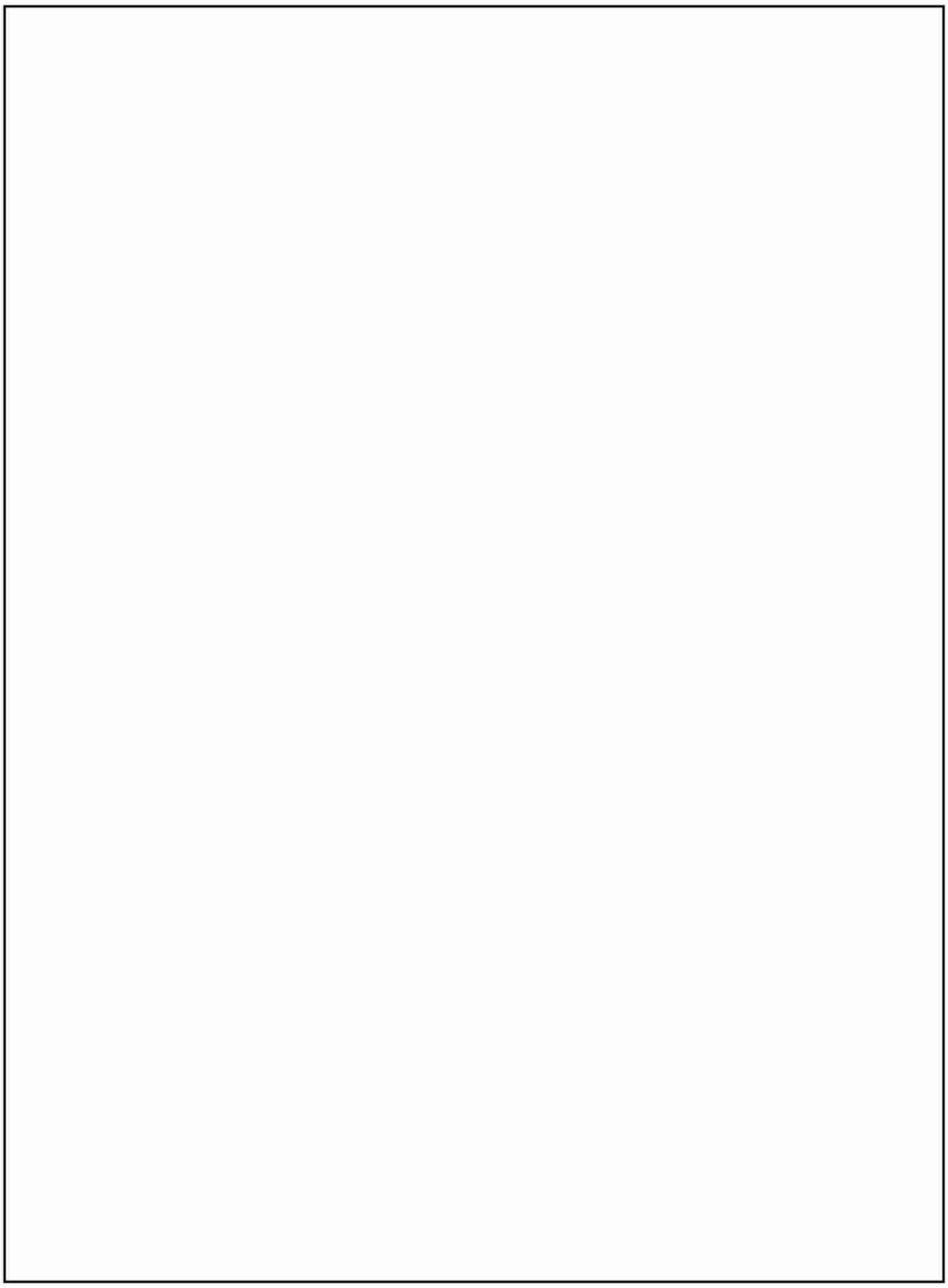
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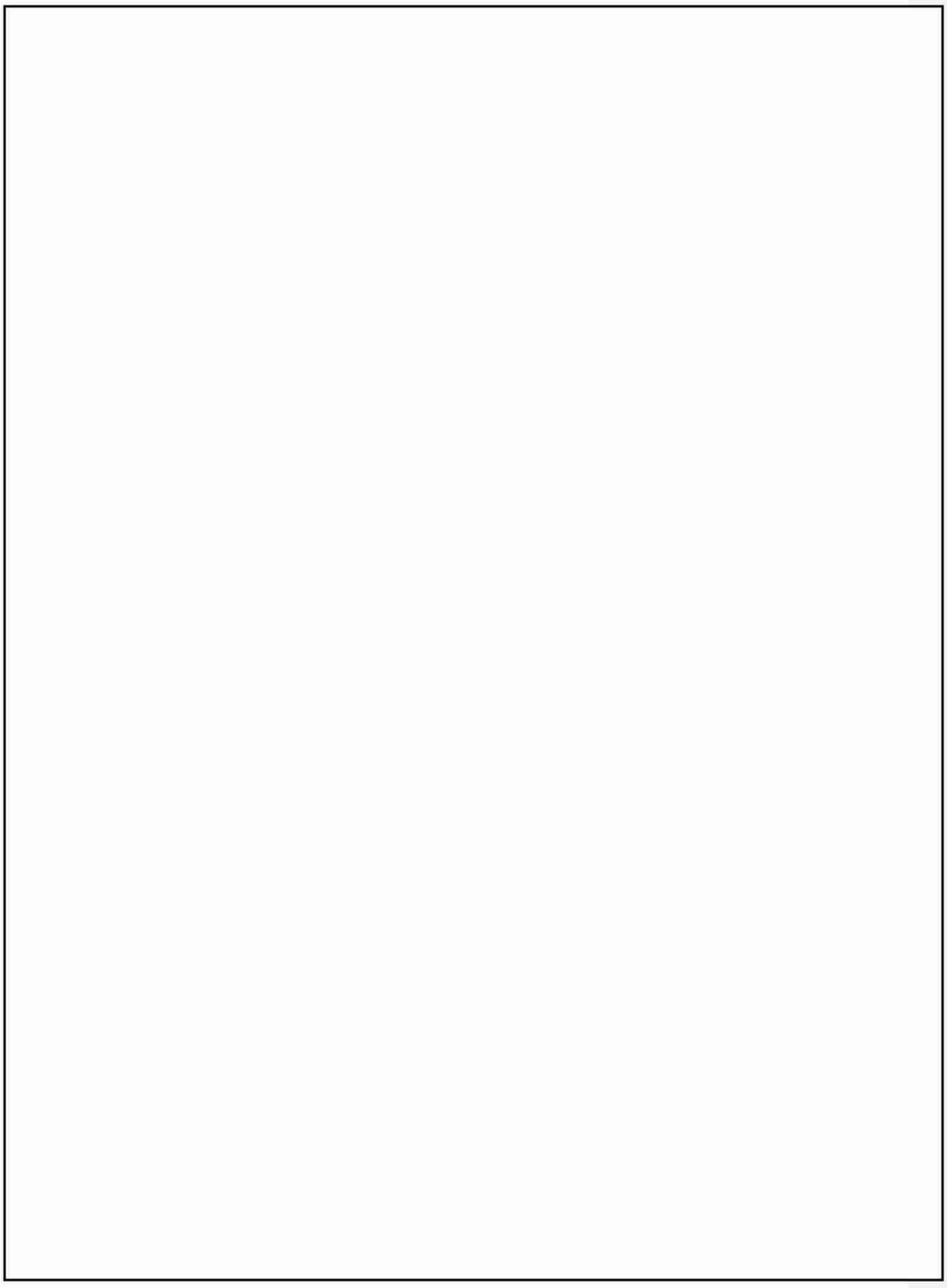
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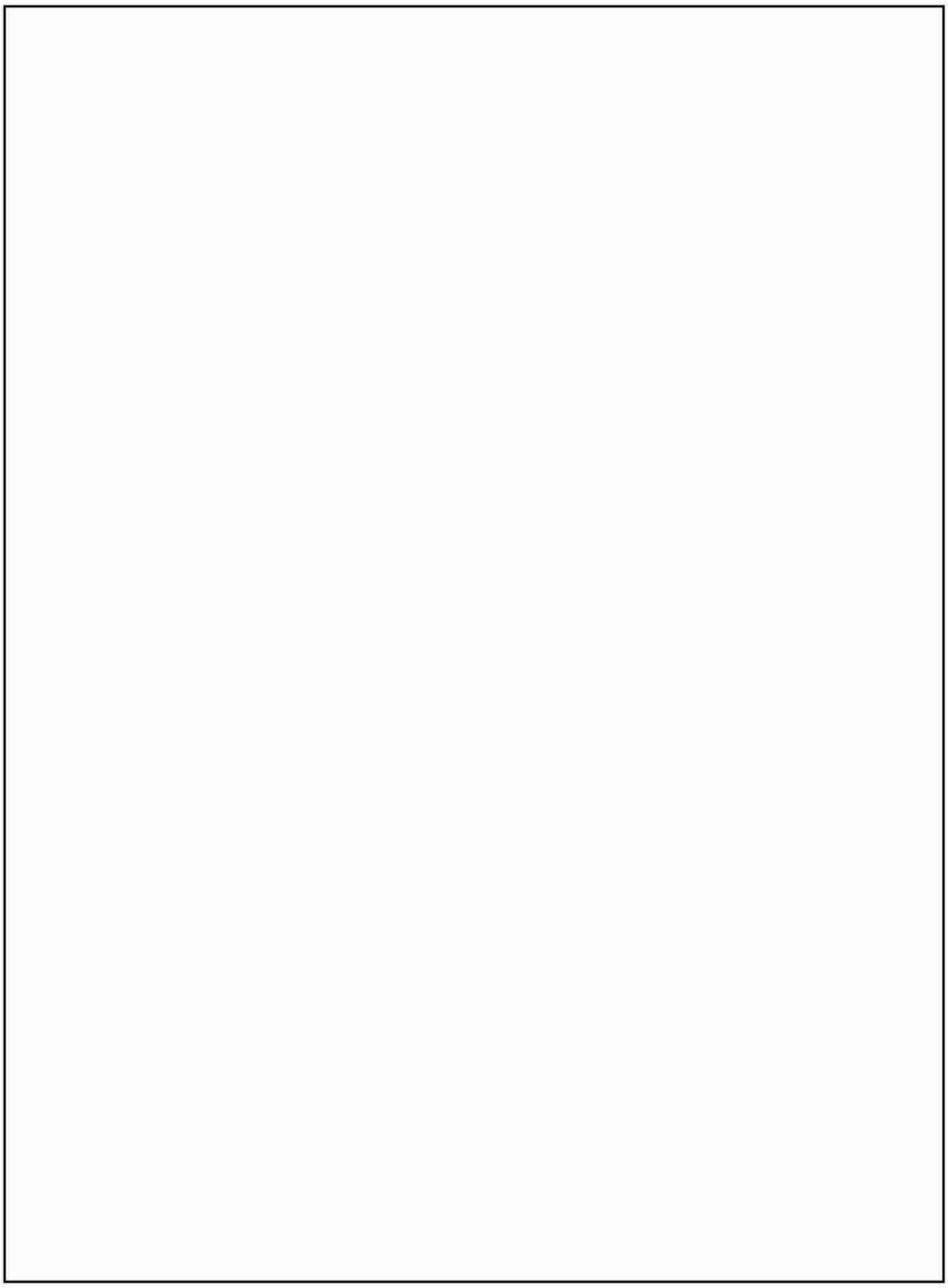
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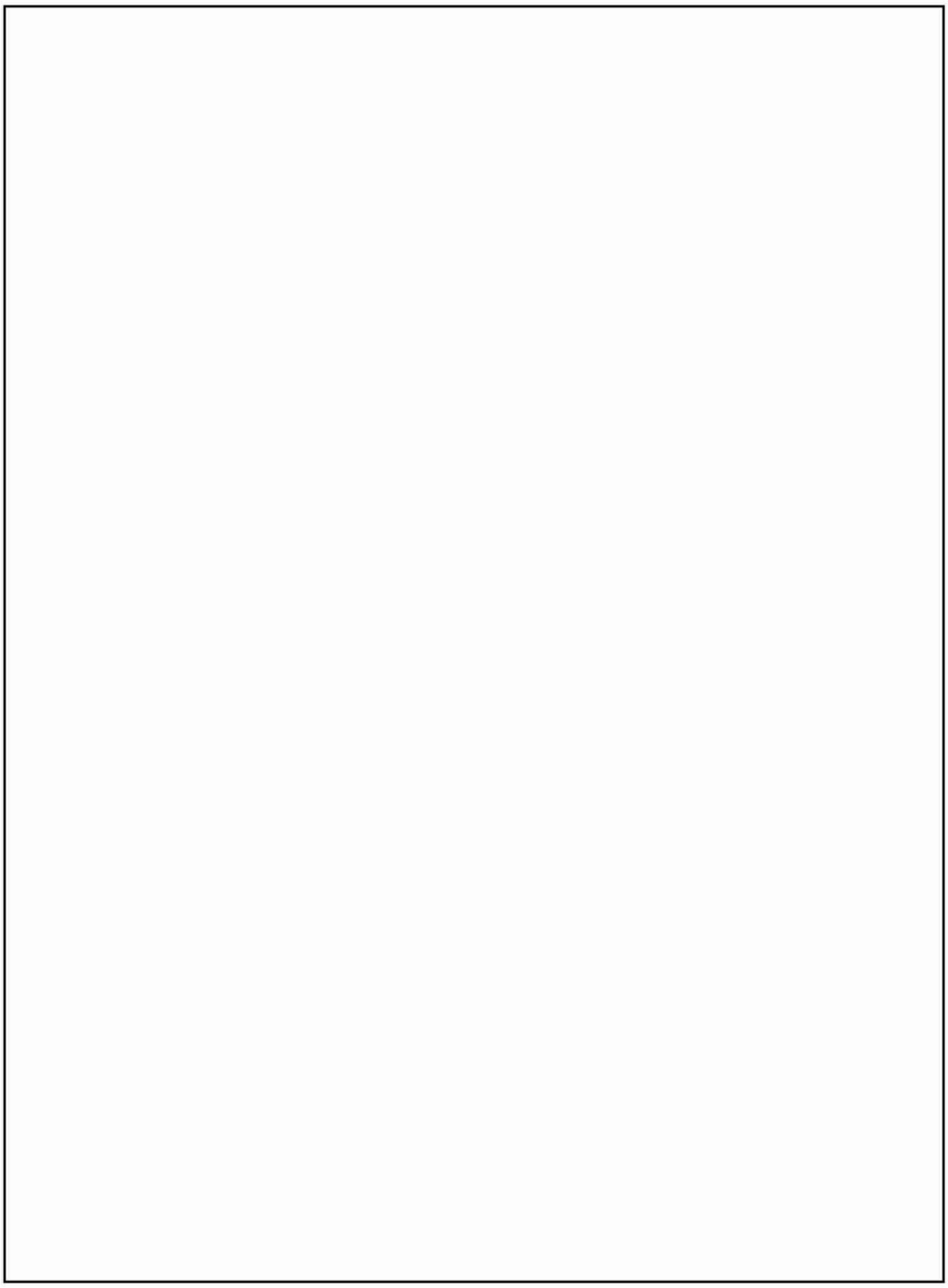
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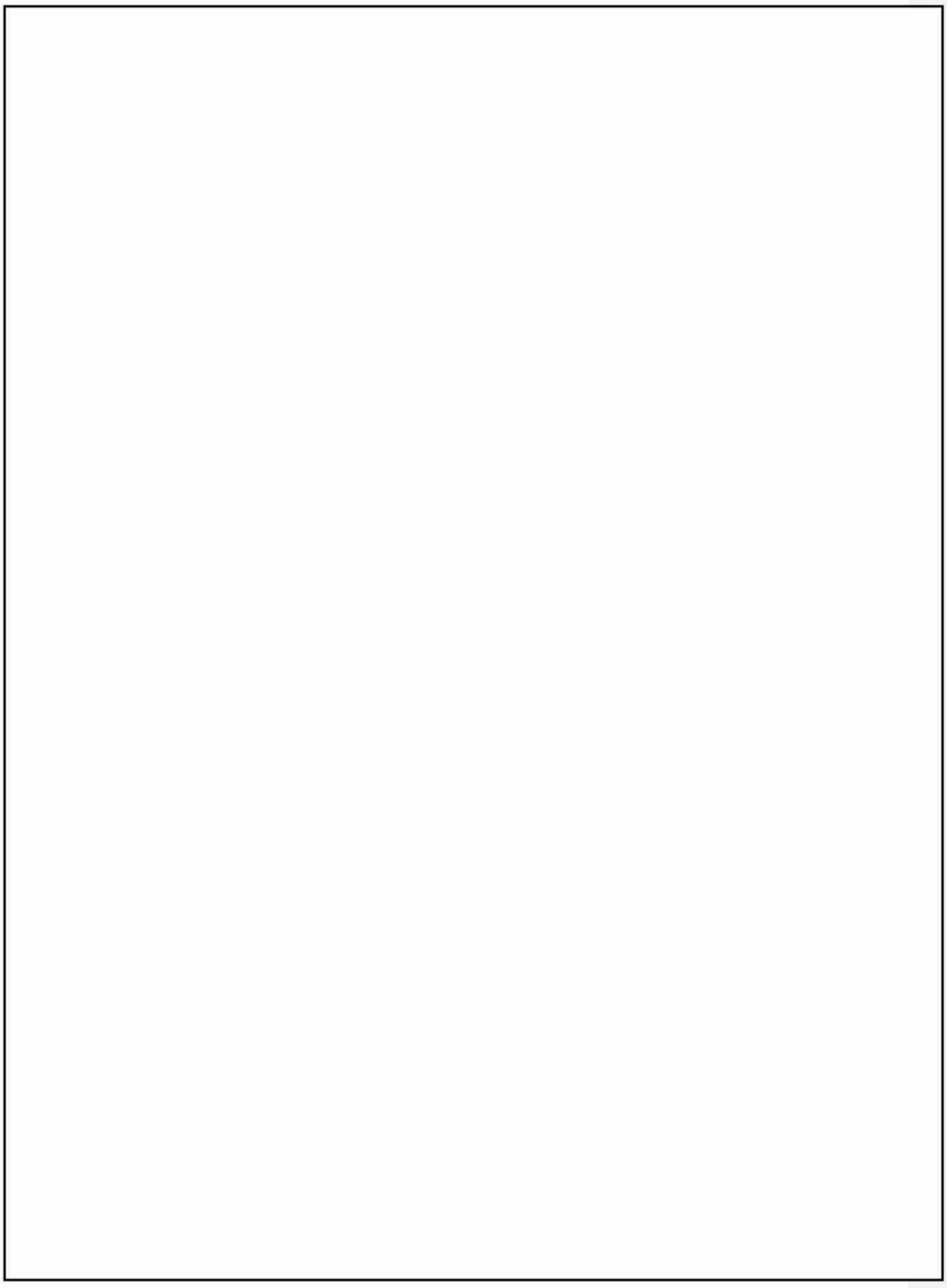
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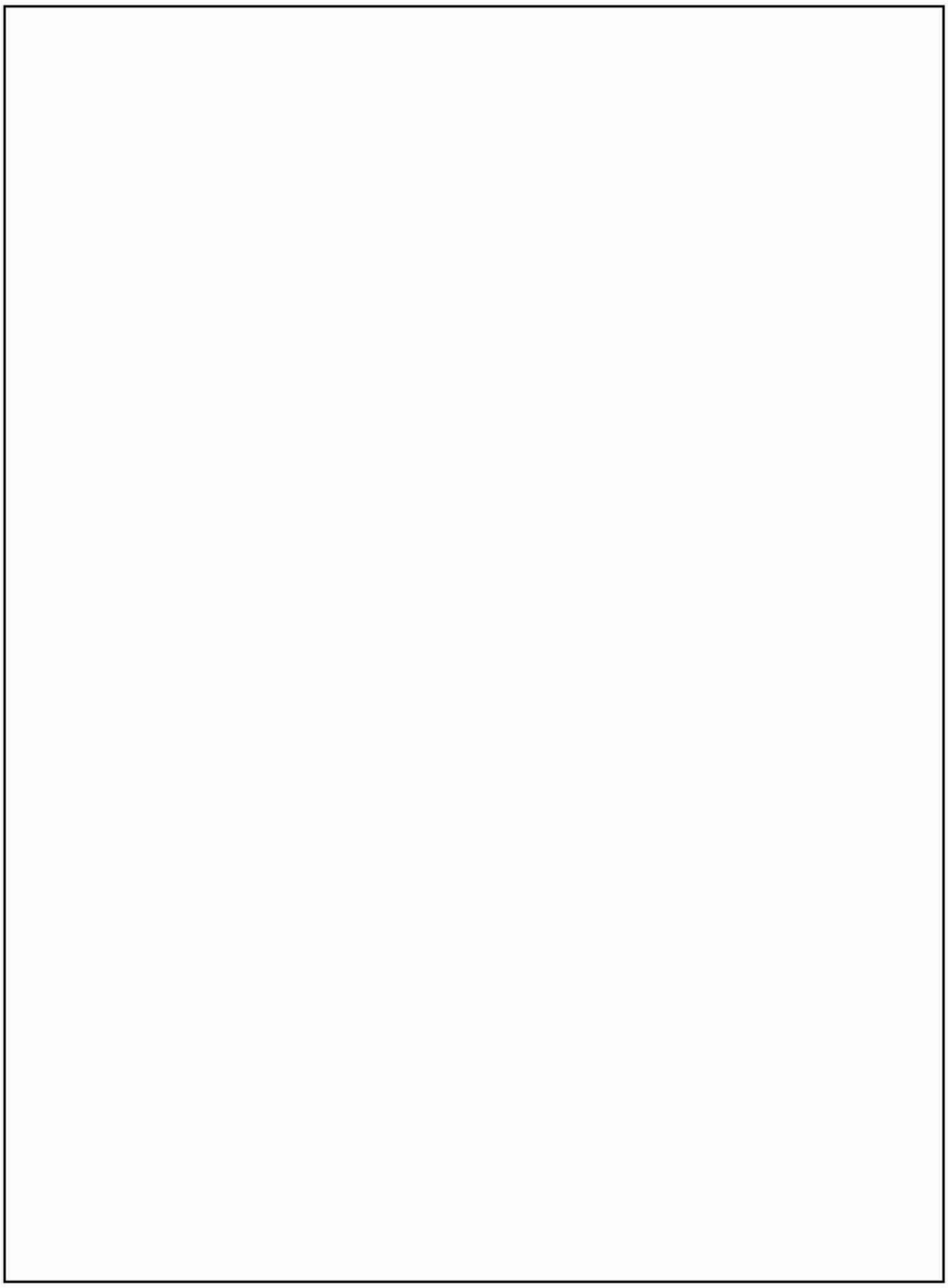
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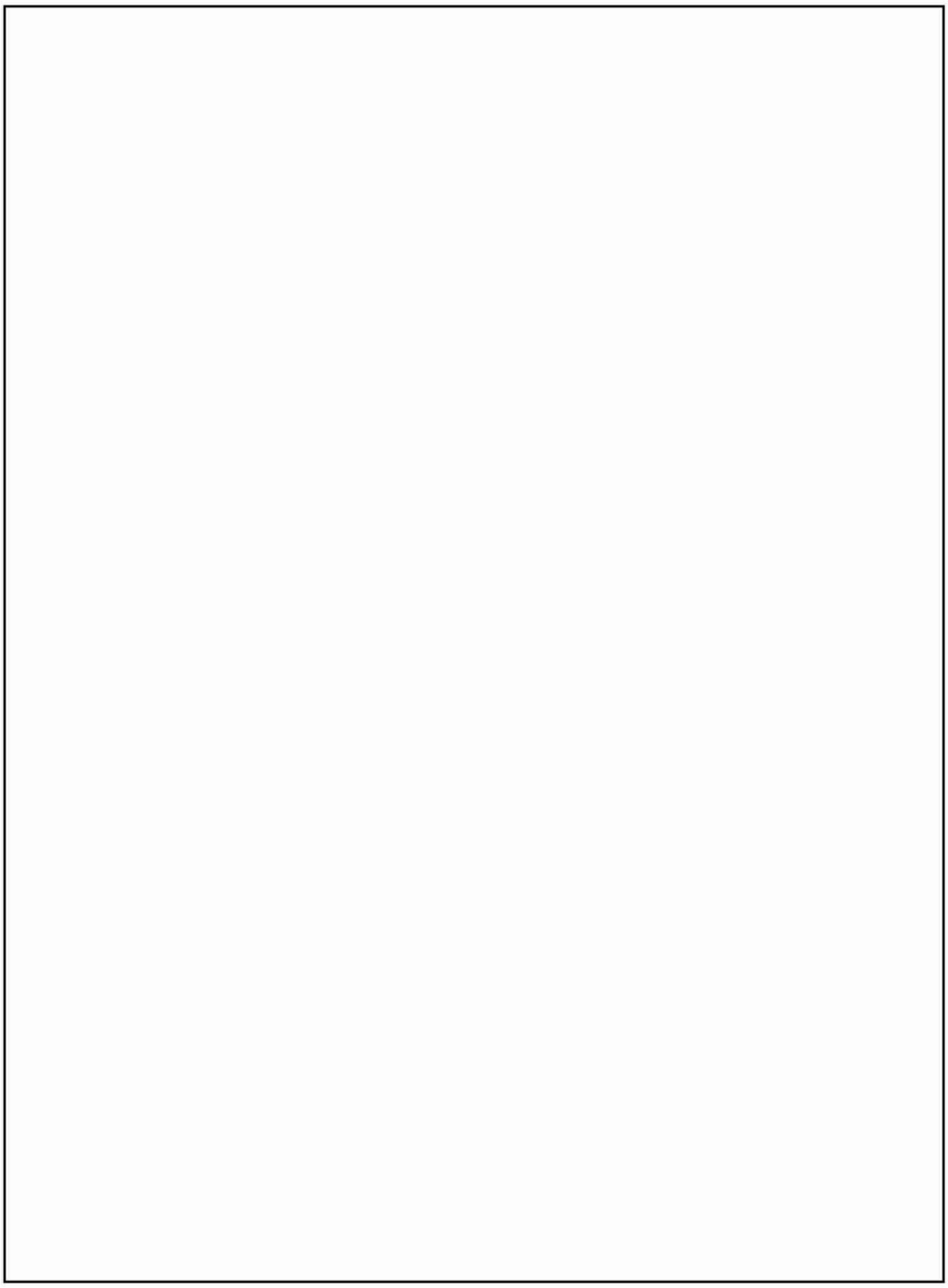
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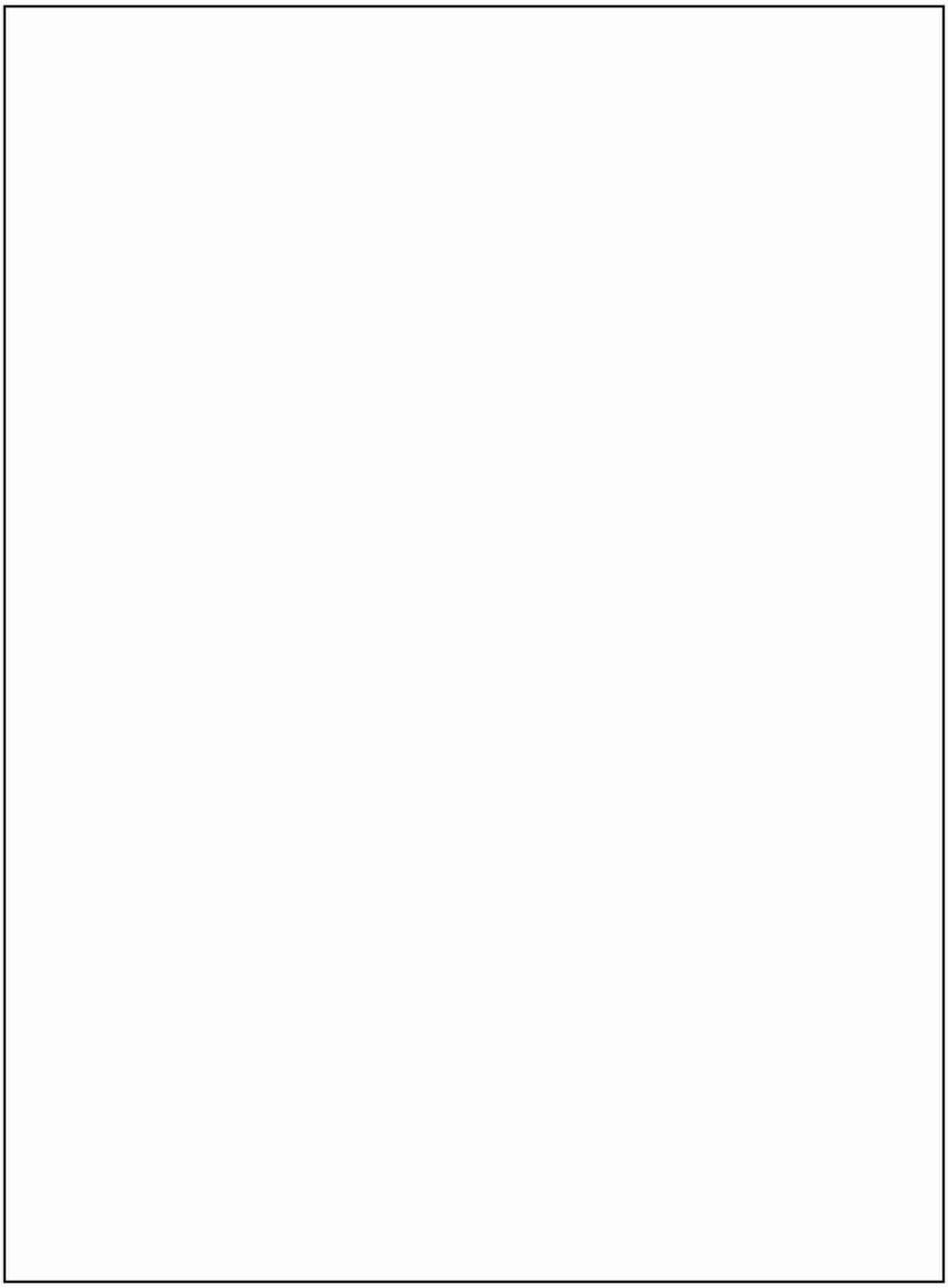
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AMERICAN OVERSIGHT

_____
Chad F. Wolf,
Acting Secretary of Homeland Security

AMERICAN OVERSIGHT

DHS-20-2156-A-003061

TABLE OF CHANGES – FORM
Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
- Red font = Changes

Expires 10/31/2021
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text (b)(5)

AMERICAN OVERSIGHT

DHS-20-2156-A-003062

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

TABLE OF CHANGES –INSTRUCTIONS
Instructions for Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
- Red font = Changes

Expires 10/31/2021 (b)(5)
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text

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DHS-20-2156-A-003066

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: July 2, 2020 5:55 AM (UTC-05:00)
Attached: Cover Memo - Warner - 7.1.20.pdf, Draft Response Warner - USCIS Clean 7.1.20.docx, Incoming - Warner 5.13.20.pdf

CLEARED WITH EDITS

On behalf of the Director's Office, I clear USCIS' response to Sen. Mark Warner - Regarding H-2B visas - STARS 27324 with edits/comments. The signed document is attached. Thanks!

(b)(6)

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉ [redacted]
☎

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 1, 2020 3:05 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, May 29, 2020**

Request: COS signature on Cover Memo and to review the draft response to Sen. Mark Warner prior to going to the DHS ESEC for OGC/WHCO clearance.

Background: Sen. Mark Warner +4 wrote to Acting Secretary Wolf with concerns regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020, as the issue creates disruptions in our Nation's food supply chain. OGC has determined that this draft response will require WHCO clearances. DHS ESEC will coordinate with OGC to obtain their clearance prior to WHCO clearance. DHS ESEC has assigned Assistant Secretary OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming – Warner 5.13.20
2. Draft Response – Warner – DHS Component Redline 6.29.20
3. Draft Response – Warner – USCIS Clean 7.1.20
4. Cover Memo – Warner – 7.1.20

(b)(6)

AMERICAN OVERSIGHT

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues: [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Kathy Nuebel Kovarik
Chief of Staff

KATHY NUEBEL KOVARIK
Digitally signed by KATHY NUEBEL KOVARIK
Date: 2020.07.01 20:55:59 -05'00'

SUBJECT: **Request for Approval: Response to Sen. Mark Warner's May 13, 2020 Letter Regarding The Lack of H-2B Visas Allocated to the U.S. Seafood Industry in 2020 (WF-1196076).**

Context: Sen. Mark Warner +4 wrote to Acting Secretary Wolf regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted], Associate Counsel, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since this review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT: [redacted]
OLA:
PLCY:

(b)(6)

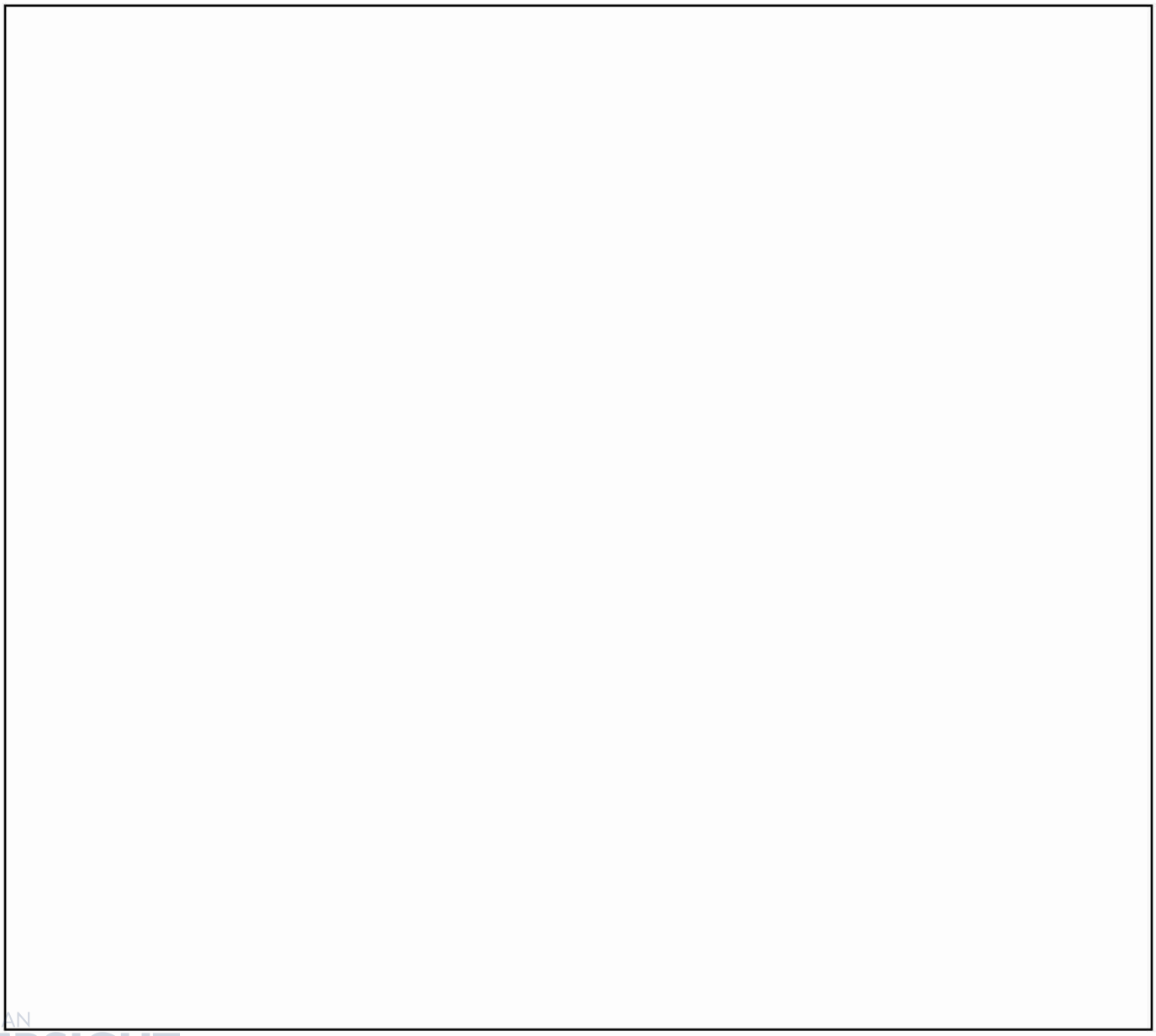
Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

AMERICAN OVERSIGHT

The Honorable Mark R. Warner
United States Senate
Washington, DC 20510

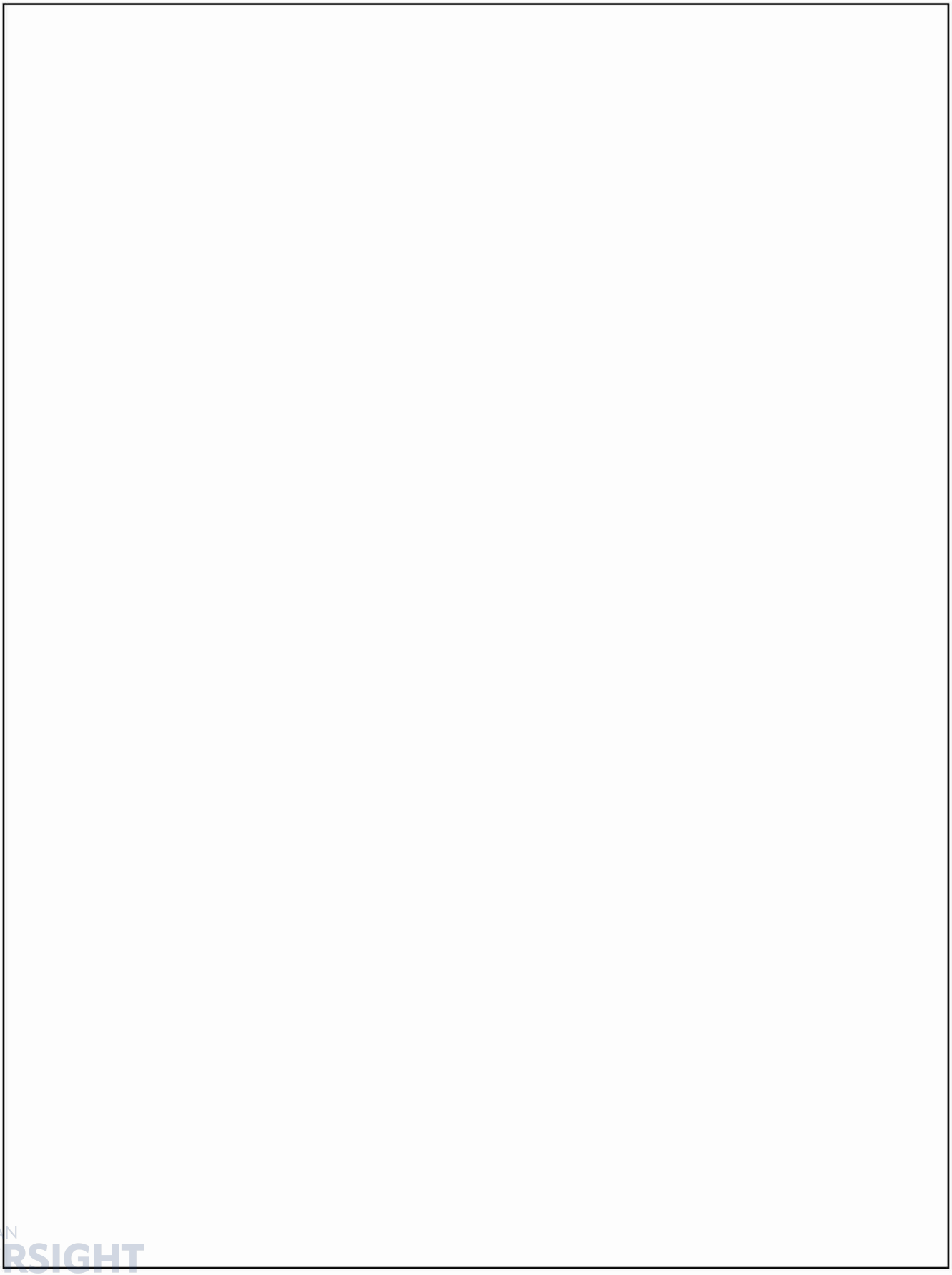
Dear Senator Warner:

Thank you for your May 13, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



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(b)(5)



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Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Please do not hesitate to contact us at (202) 447-5890.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20510

May 13, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RECEIVED
By ESEC at 7:37 am, May 14, 2020

Dear Acting Secretary Wolf:

We write on behalf of the Virginia and Maryland seafood industry, which continues to struggle with seasonal labor shortages due to a lack of H-2B visas. In these unprecedented times, we write to ask that you consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply. These solutions could include, but are not limited to, redistributing any unused statutorily authorized H-2B visas to the seafood industry.

As with other small American businesses, the seafood processors and producers in our states face new economic uncertainties due to COVID-19. Despite declining demand brought on by the pandemic, we are encouraged to hear early reports from our states that the demand for seafood could begin to increase in the near future.

On March 5, 2020, after much urging from Congress, the Department of Homeland Security (DHS) announced its decision to release an additional 35,000 H-2B temporary nonagricultural worker visas. We anticipated that this move would benefit Virginia's and Maryland's seafood industry, communities largely made up of rural, family-owned operations.

However, on April 2, 2020, the Department announced via Twitter that the rule on the H-2B cap is "on hold pending review due to present economic circumstances. No additional H2B visas will be released until further notice." Due to the delayed rule and subsequent lack of visas, our states' seafood operations, which create numerous year-round American jobs, are in jeopardy yet again. Without the necessary H-2B workers, these seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely.

Like H-2A workers who support agriculture in the United States, the Department has deemed seafood processors "essential, critical infrastructure." Any disruption to the food supply chain will harm American consumers, the seafood industry, and the U.S. economy. Precautionary measures are crucial to ensure we have a stable food supply flow. Withholding H-2B visas for seasonal seafood processors will only exacerbate this matter.

We urge you to expeditiously reallocate any unused H-2B visas to the seafood industry, deemed essential to the country's critical infrastructure. We further urge you to work with the Departments of Labor, State, and Health and Human Services to ensure the necessary

AMERICAN OVERSIGHT

precautions to protect the health and safety of both H-2B workers and the communities in which they work and live. It is vital that the agencies with responsibility for administering the H-2B program work in concert with the Centers for Disease Control and Prevention (CDC), as well as state and local officials to ensure that the necessary safeguards, including the ability to effectively social distance, are in place and clearly communicated with workers in their native language. Both employers and workers should be given the tools they need to reduce community spread. It is also important that workers are made aware of the health care systems available and given access to care.

We thank you in advance for your prompt attention to this matter, as the viability of many businesses in our states depends on the H-2B program. We look forward to an ongoing dialogue with you and the Department about possible regulatory improvements to the H-2B program that can increase processing efficiency and predictability and maintain worker safety during this pandemic.

Sincerely,

/s/ Mark R. Warner

Mark R. Warner
United States Senator

/s/ Robert J. Wittman

Robert J. Wittman
Member of Congress

/s/ Tim Kaine

Tim Kaine
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator

/s/ Benjamin L. Cardin

Benjamin L. Cardin
United States Senator

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324
To: Nuebel Kovarik, Kathy
Sent: July 1, 2020 7:16 PM (UTC-05:00)
Attached: Draft Response Warner - USCIS Clean 7.1.20.docx, Cover Memo - Warner - 7.1.20.pdf, Incoming - Warner 5.13.20.pdf

A paragraph about the Presidential proclamation was added towards the end since the last time we reviewed this letter.

The cover memo is ready for you to sign.

(b)(6)

From: Kilgore, Garry R <[redacted]
Sent: Wednesday, July 01, 2020 2:05 PM
To: USCIS Directors Office Clearance-EXSO [redacted]>; Brown, James R [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, May 29, 2020**

Request: COS signature on Cover Memo and to review the draft response to Sen. Mark Warner prior to going to the DHS ESEC for OGC/WHCO clearance.

Background: Sen. Mark Warner +4 wrote to Acting Secretary Wolf with concerns regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020, as the issue creates disruptions in our Nation's food supply chain. OGC has determined that this draft response will require WHCO clearances. DHS ESEC will coordinate with OGC to obtain their clearance prior to WHCO clearance. DHS ESEC has assigned Assistant Secretary OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming – Warner 5.13.20
2. Draft Response – Warner – DHS Component Redline 6.29.20
3. Draft Response – Warner – USCIS Clean 7.1.20
4. Cover Memo – Warner – 7.1.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)

(b)(6)

AMERICAN OVERSIGHT

STARS Issues: (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Kathy Nuebel Kovarik
Chief of Staff

SUBJECT: **Request for Approval: Response to Sen. Mark Warner's May 13, 2020 Letter Regarding The Lack of H-2B Visas Allocated to the U.S. Seafood Industry in 2020 (WF-1196076).**

Context: Sen. Mark Warner +4 wrote to Acting Secretary Wolf regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Associate Counsel, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since this review. (b)(6)

Clearance: The following Components have cleared the proposed response:

MGMT: [redacted]
OLA:
PLCY:

(b)(6)

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

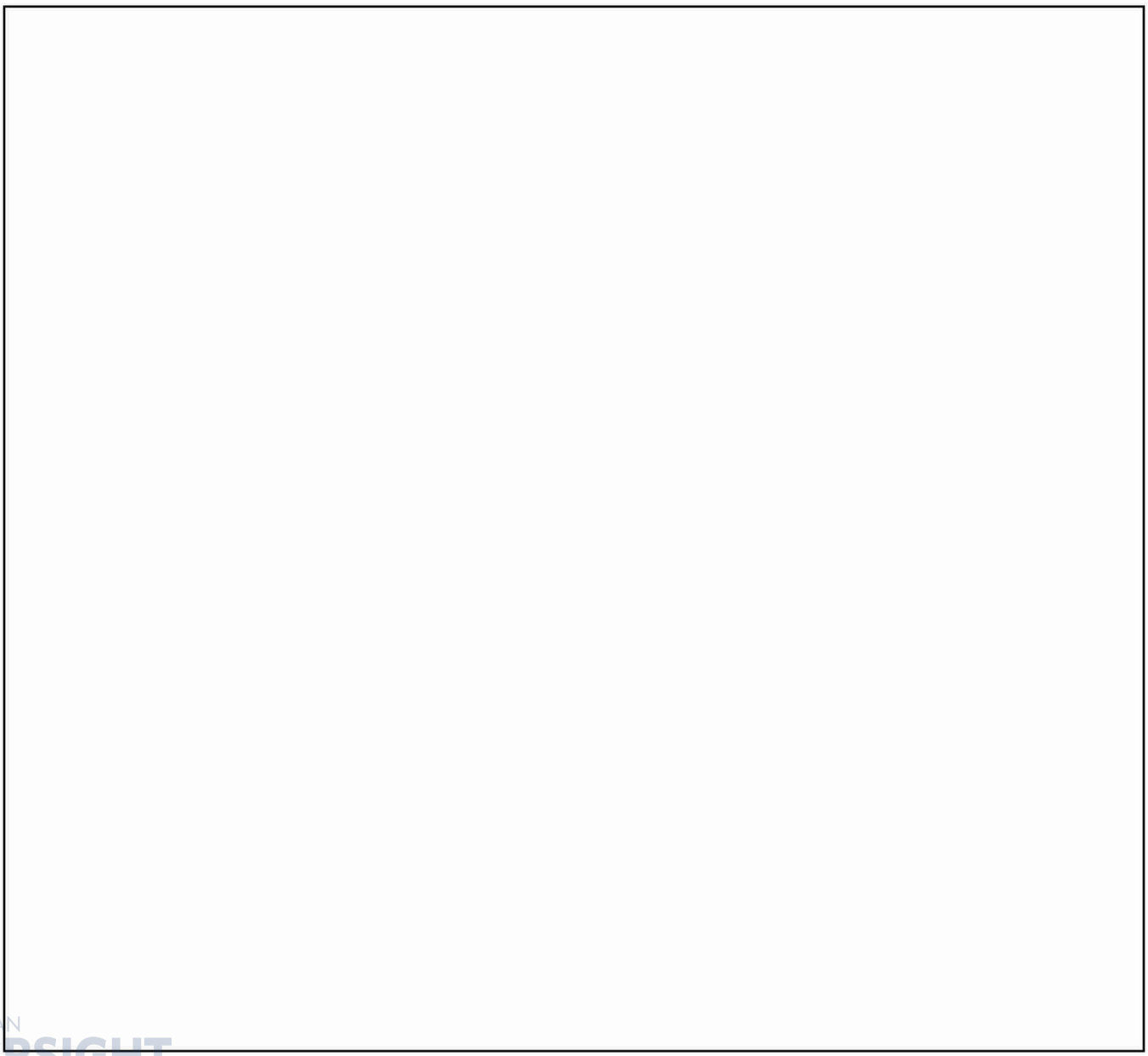
AMERICAN OVERSIGHT

The Honorable Mark R. Warner
United States Senate
Washington, DC 20510

Dear Senator Warner:

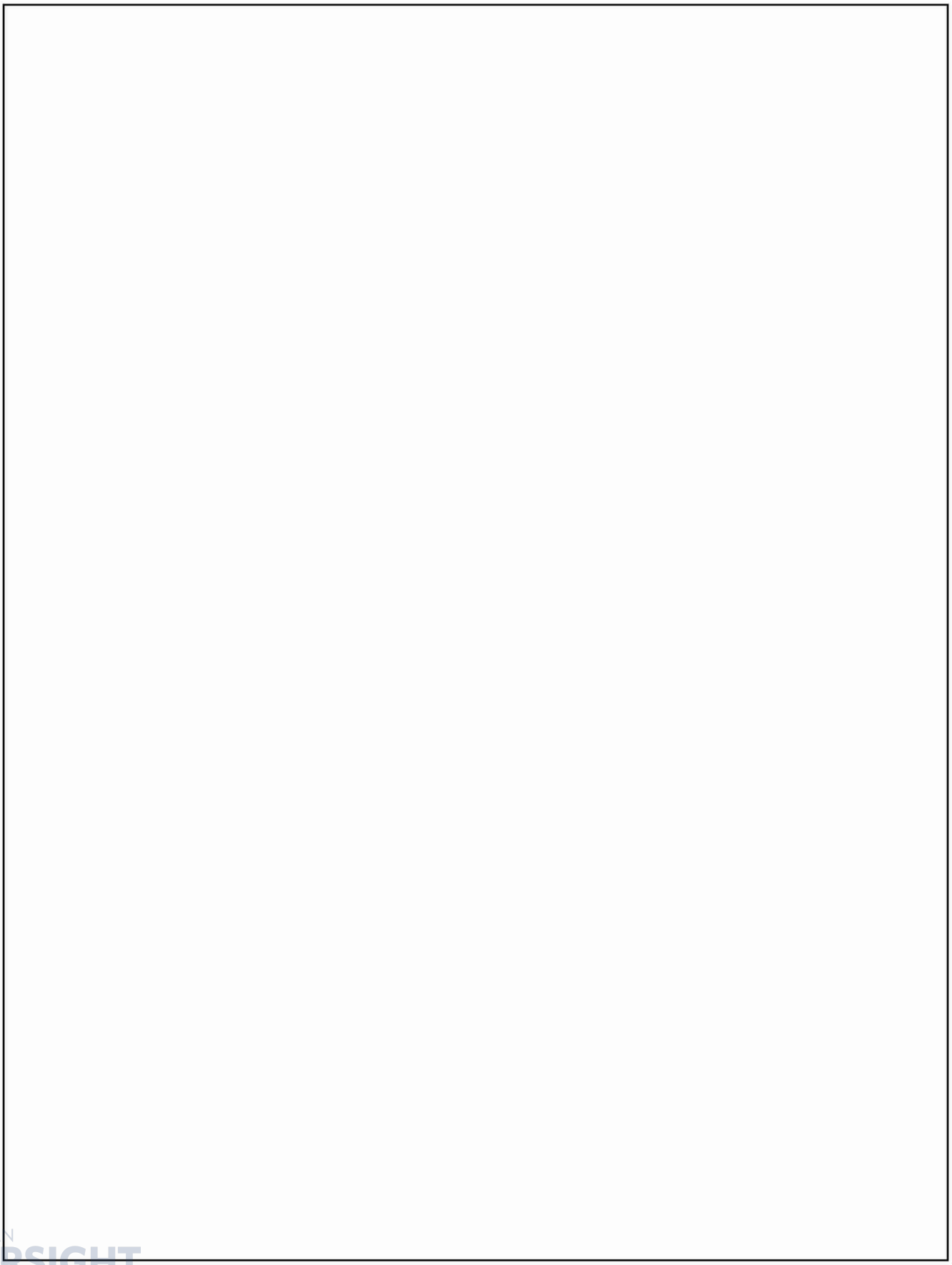
Thank you for your May 13, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

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AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Please do not hesitate to contact us at (202) 447-5890.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20510

May 13, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RECEIVED
By ESEC at 7:37 am, May 14, 2020

Dear Acting Secretary Wolf:

We write on behalf of the Virginia and Maryland seafood industry, which continues to struggle with seasonal labor shortages due to a lack of H-2B visas. In these unprecedented times, we write to ask that you consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply. These solutions could include, but are not limited to, redistributing any unused statutorily authorized H-2B visas to the seafood industry.

As with other small American businesses, the seafood processors and producers in our states face new economic uncertainties due to COVID-19. Despite declining demand brought on by the pandemic, we are encouraged to hear early reports from our states that the demand for seafood could begin to increase in the near future.

On March 5, 2020, after much urging from Congress, the Department of Homeland Security (DHS) announced its decision to release an additional 35,000 H-2B temporary nonagricultural worker visas. We anticipated that this move would benefit Virginia's and Maryland's seafood industry, communities largely made up of rural, family-owned operations.

However, on April 2, 2020, the Department announced via Twitter that the rule on the H-2B cap is "on hold pending review due to present economic circumstances. No additional H2B visas will be released until further notice." Due to the delayed rule and subsequent lack of visas, our states' seafood operations, which create numerous year-round American jobs, are in jeopardy yet again. Without the necessary H-2B workers, these seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely.

Like H-2A workers who support agriculture in the United States, the Department has deemed seafood processors "essential, critical infrastructure." Any disruption to the food supply chain will harm American consumers, the seafood industry, and the U.S. economy. Precautionary measures are crucial to ensure we have a stable food supply flow. Withholding H-2B visas for seasonal seafood processors will only exacerbate this matter.

We urge you to expeditiously reallocate any unused H-2B visas to the seafood industry, deemed essential to the country's critical infrastructure. We further urge you to work with the Departments of Labor, State, and Health and Human Services to ensure the necessary

AMERICAN OVERSIGHT

precautions to protect the health and safety of both H-2B workers and the communities in which they work and live. It is vital that the agencies with responsibility for administering the H-2B program work in concert with the Centers for Disease Control and Prevention (CDC), as well as state and local officials to ensure that the necessary safeguards, including the ability to effectively social distance, are in place and clearly communicated with workers in their native language. Both employers and workers should be given the tools they need to reduce community spread. It is also important that workers are made aware of the health care systems available and given access to care.

We thank you in advance for your prompt attention to this matter, as the viability of many businesses in our states depends on the H-2B program. We look forward to an ongoing dialogue with you and the Department about possible regulatory improvements to the H-2B program that can increase processing efficiency and predictability and maintain worker safety during this pandemic.

Sincerely,

/s/ Mark R. Warner

Mark R. Warner
United States Senator

/s/ Robert J. Wittman

Robert J. Wittman
Member of Congress

/s/ Tim Kaine

Tim Kaine
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator

/s/ Benjamin L. Cardin

Benjamin L. Cardin
United States Senator

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: Kilgore, Garry R; Stephen W Dove (Steve) [redacted]; Carter, Constance L
Sent: July 1, 2020 6:56 PM (UTC-05:00)
Attached: 0-PM01E-PM10A-Discretion_CoverPage.docx, 2-PM01E-Discretion_CorrespondingEdits - Copy.docx, 2-PM01E-Discretion_UPDATE - Copy.docx, 2-PM10A_Employment Authorization_Discretionary Policy_PART - Copy.docx, 3-PM01E-PM10A-Discretion_TacticalRolloutPlan - Copy.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx

Hi Garry,

On Thursday morning, can EXSO prepare a clean version (Word and PDF) for D2P as one long document?

(Steve this is the document he mentioned during out meeting. He wants to review as soon as possible.)

Thank you!

From: Bailey, Morgan <[redacted]
Sent: Wednesday, July 1, 2020 7:35 PM
To: Drake, Johnetta <[redacted]; USCIS Directors Office Clearance-EXSO [redacted]>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to M01E & PM10A Discretion Initial Parts STARS#27432 with edits/comments from the Director's Office. Thanks!

From: Drake, Johnetta [redacted]
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO <[redacted]
Cc: Kilgore, Garry R <[redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

AMERICAN OVERSIGHT

Clearances:
AAO:
FDNS:
FOD:
OCC:
OP&S:
RAIO:
SCOPS:
EXA: FYI only

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Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

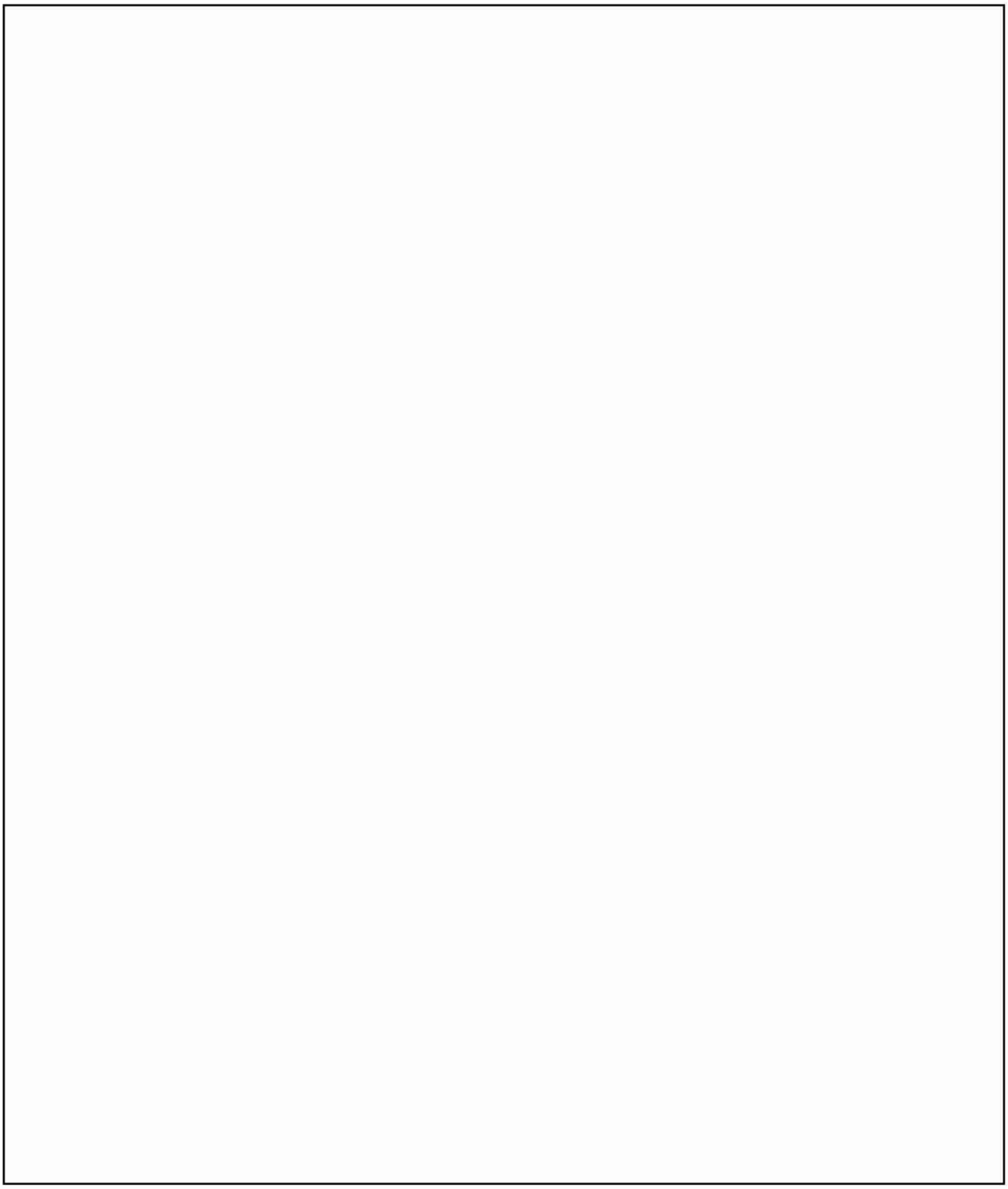
Johnetta Drake
USCIS Exec Sec
(Cell)
(Desk)

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AMERICAN OVERSIGHT

USCIS Policy Publication Director's Office Packet COVER PAGE	Policy Manual Volume 1 Part E & Volume 10 Part A – General and EAD Discretion

(b)(5) (b)(6) *Publication: TBD Upon Director's Office Clearance*



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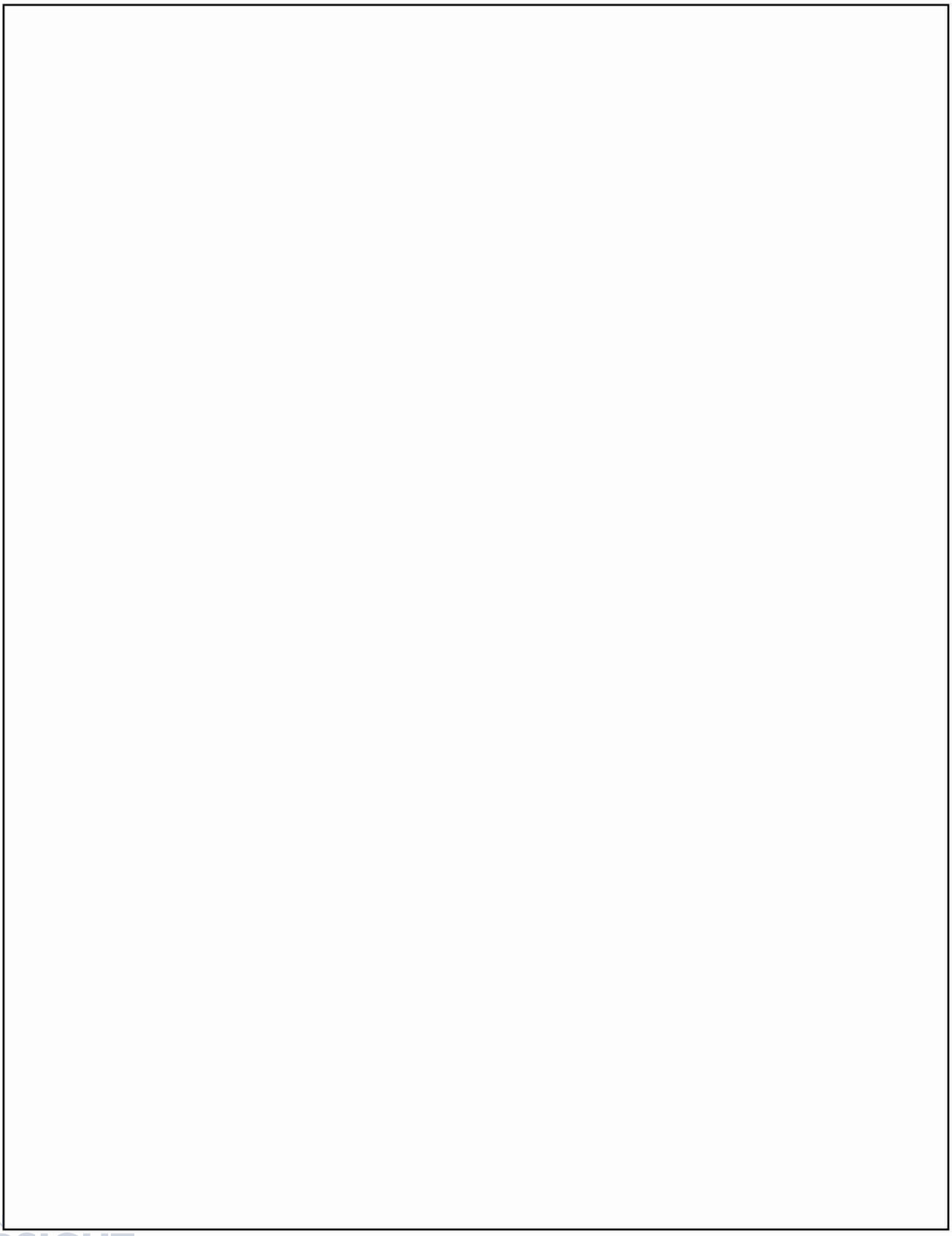
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Part E – Adjudications

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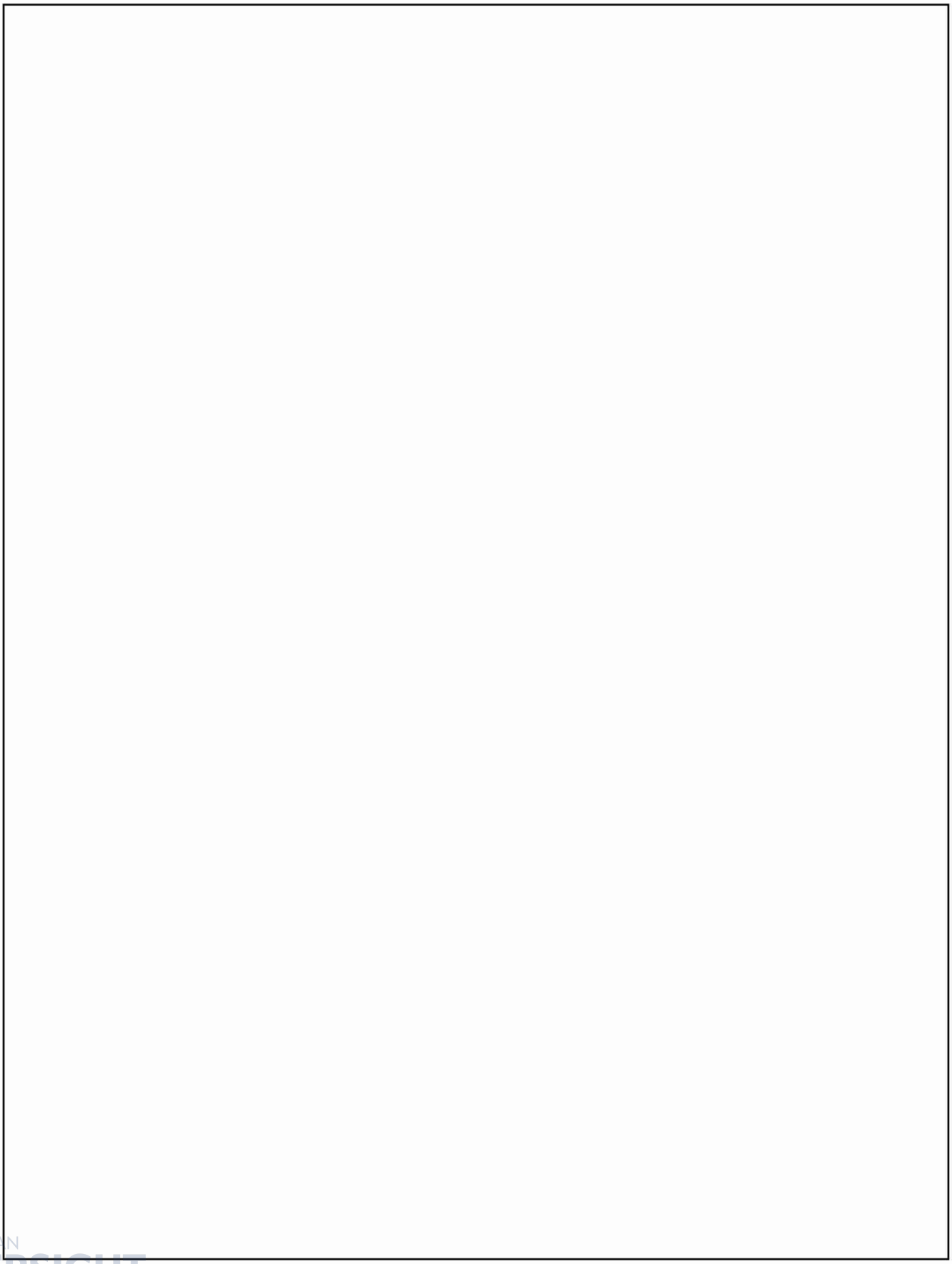
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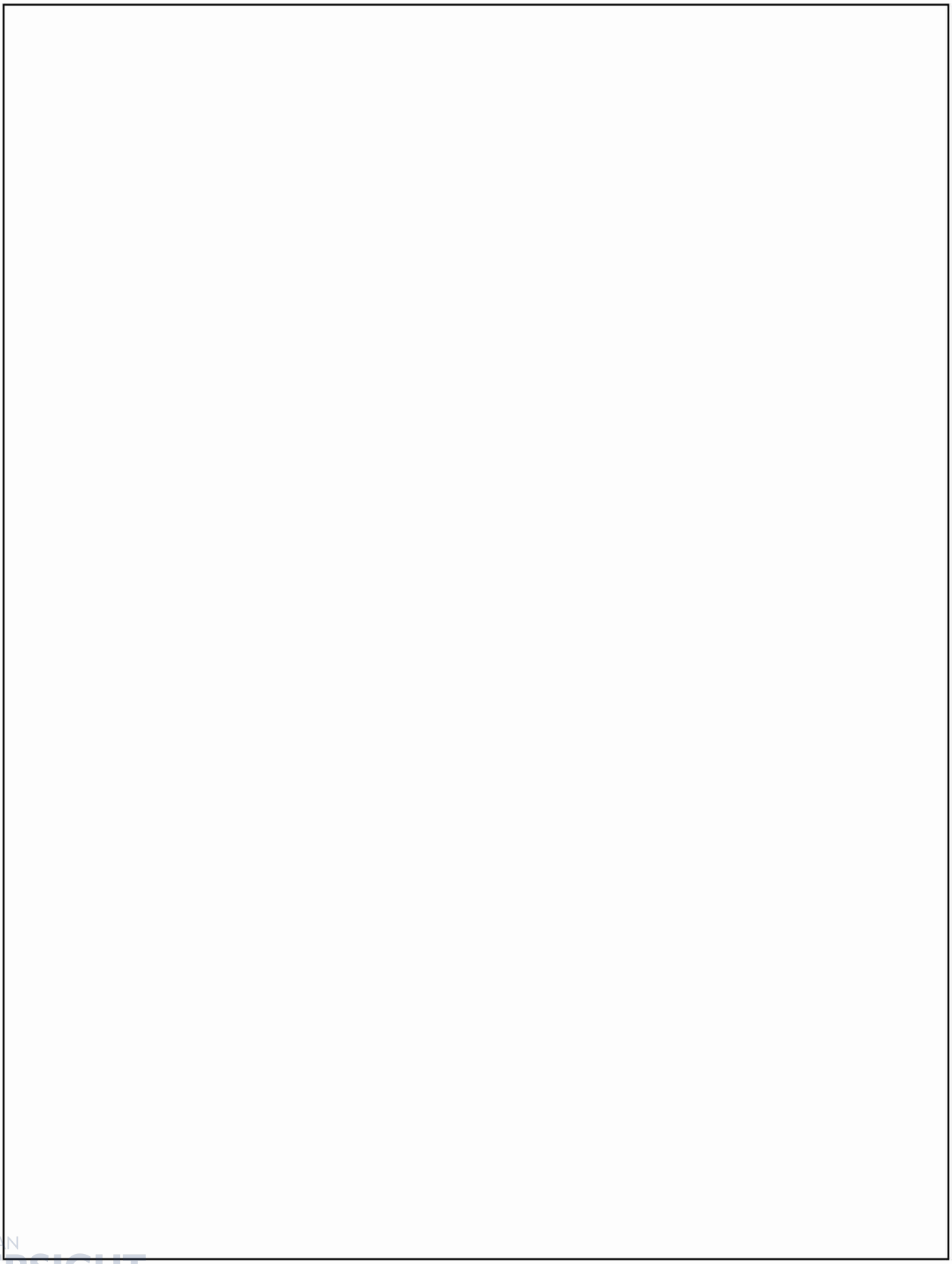
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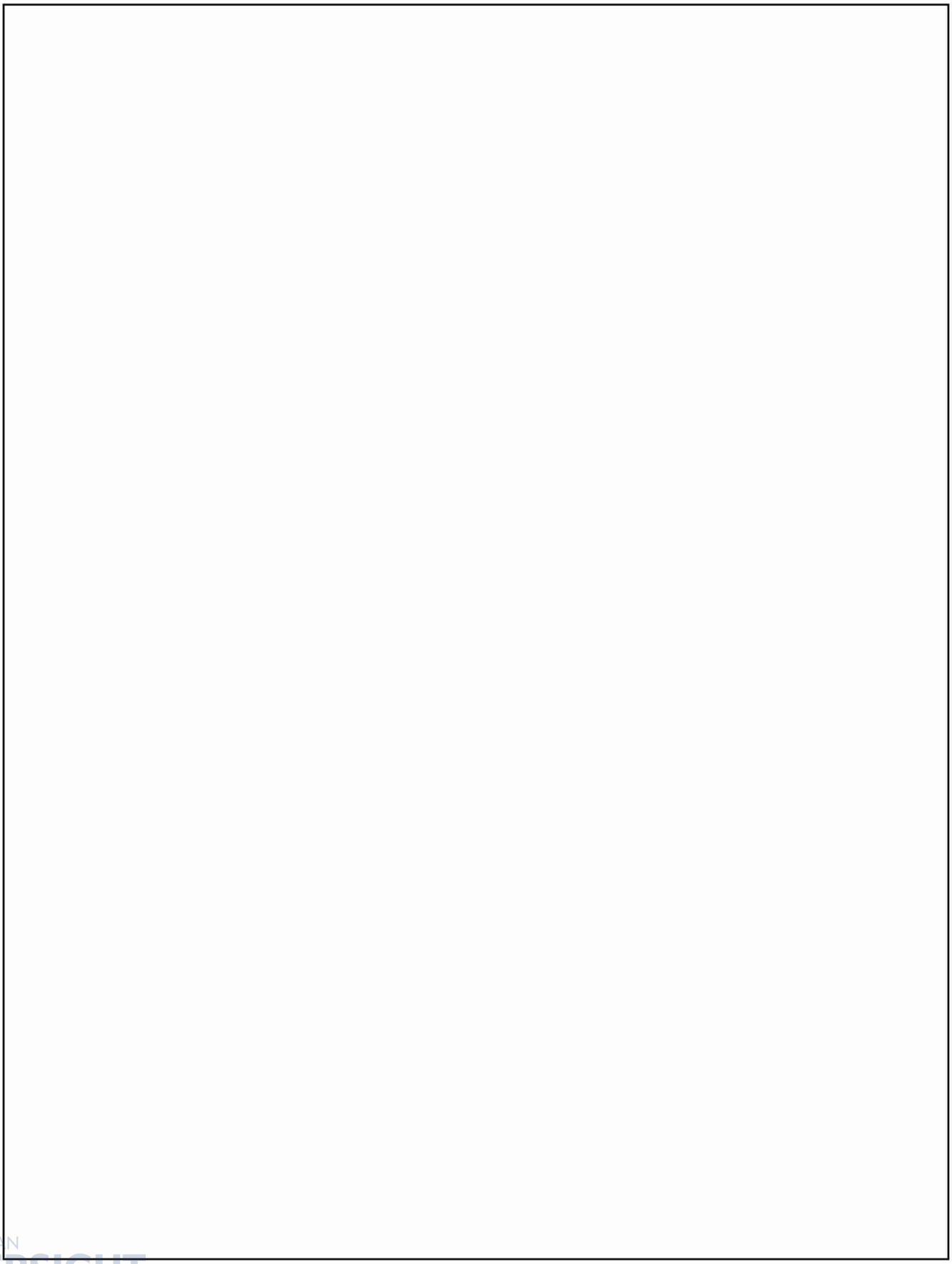
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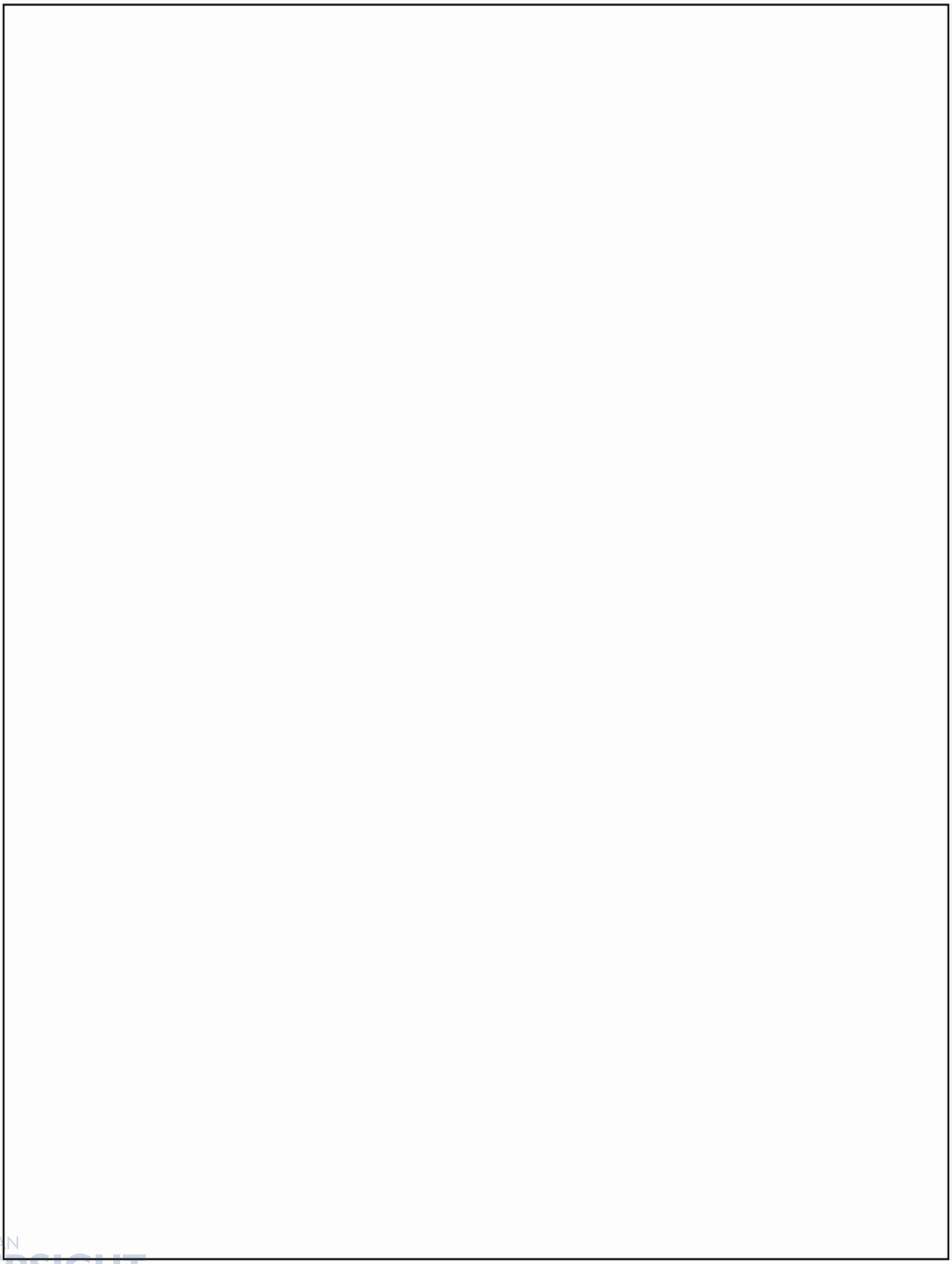


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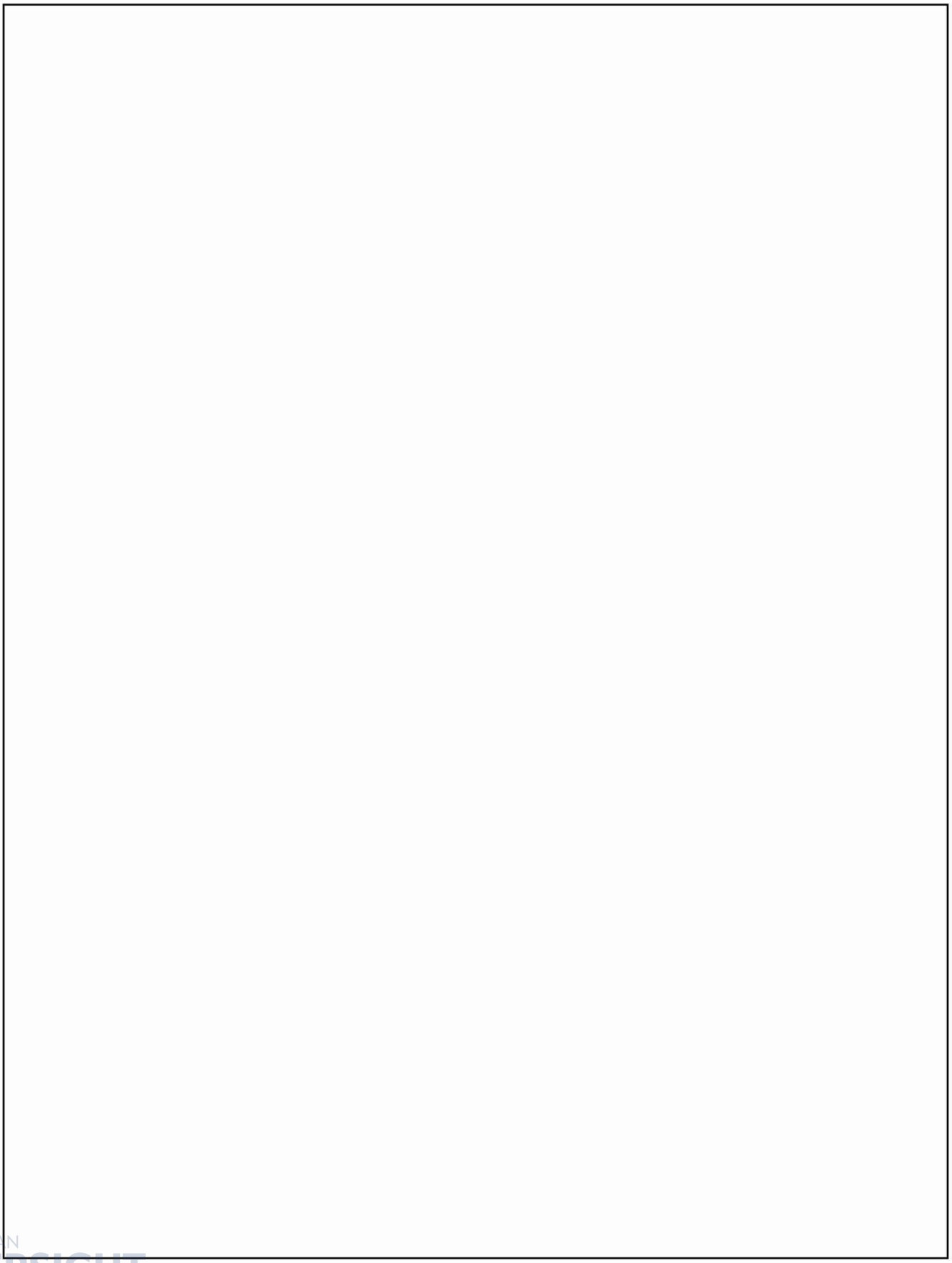
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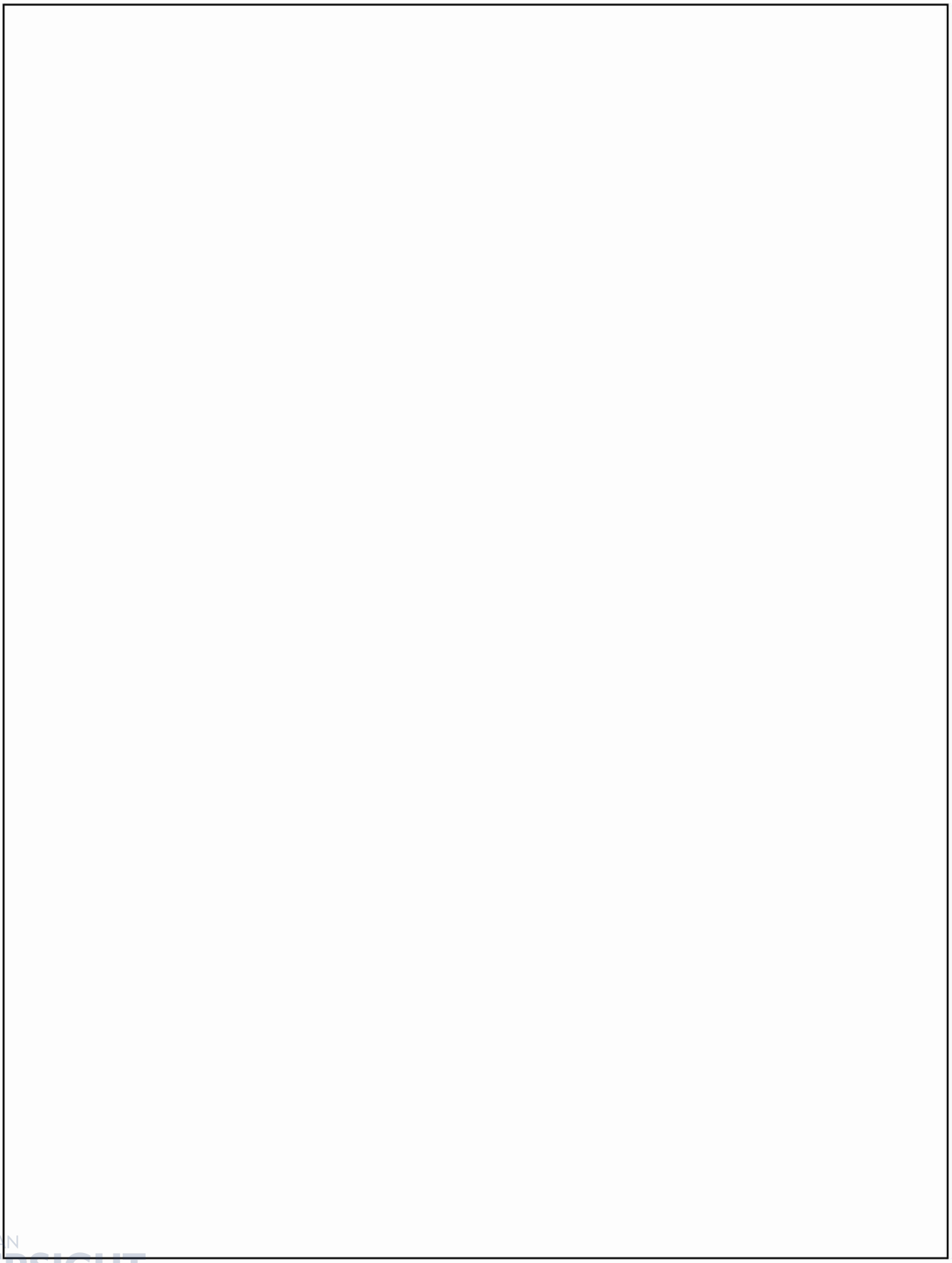
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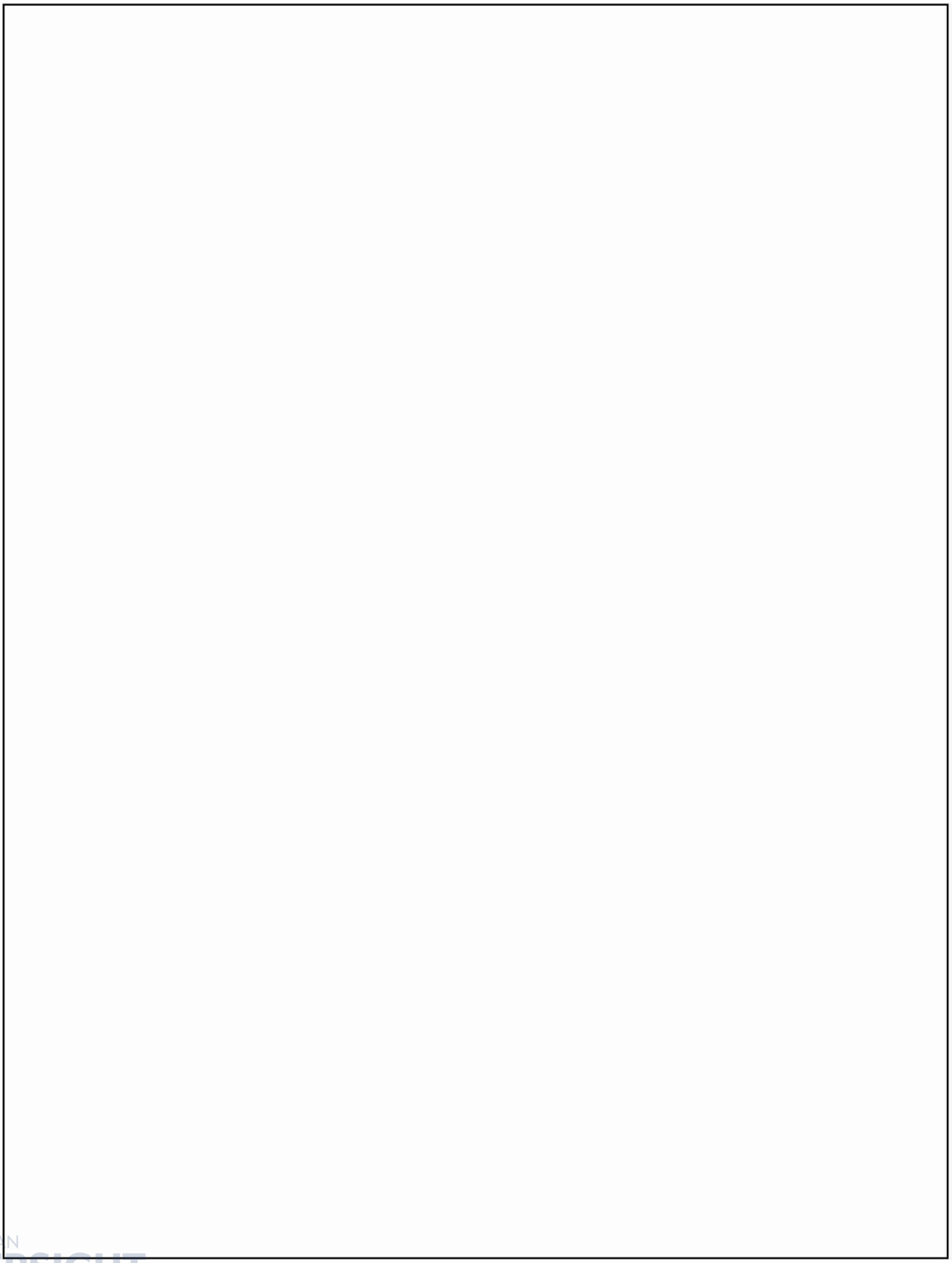
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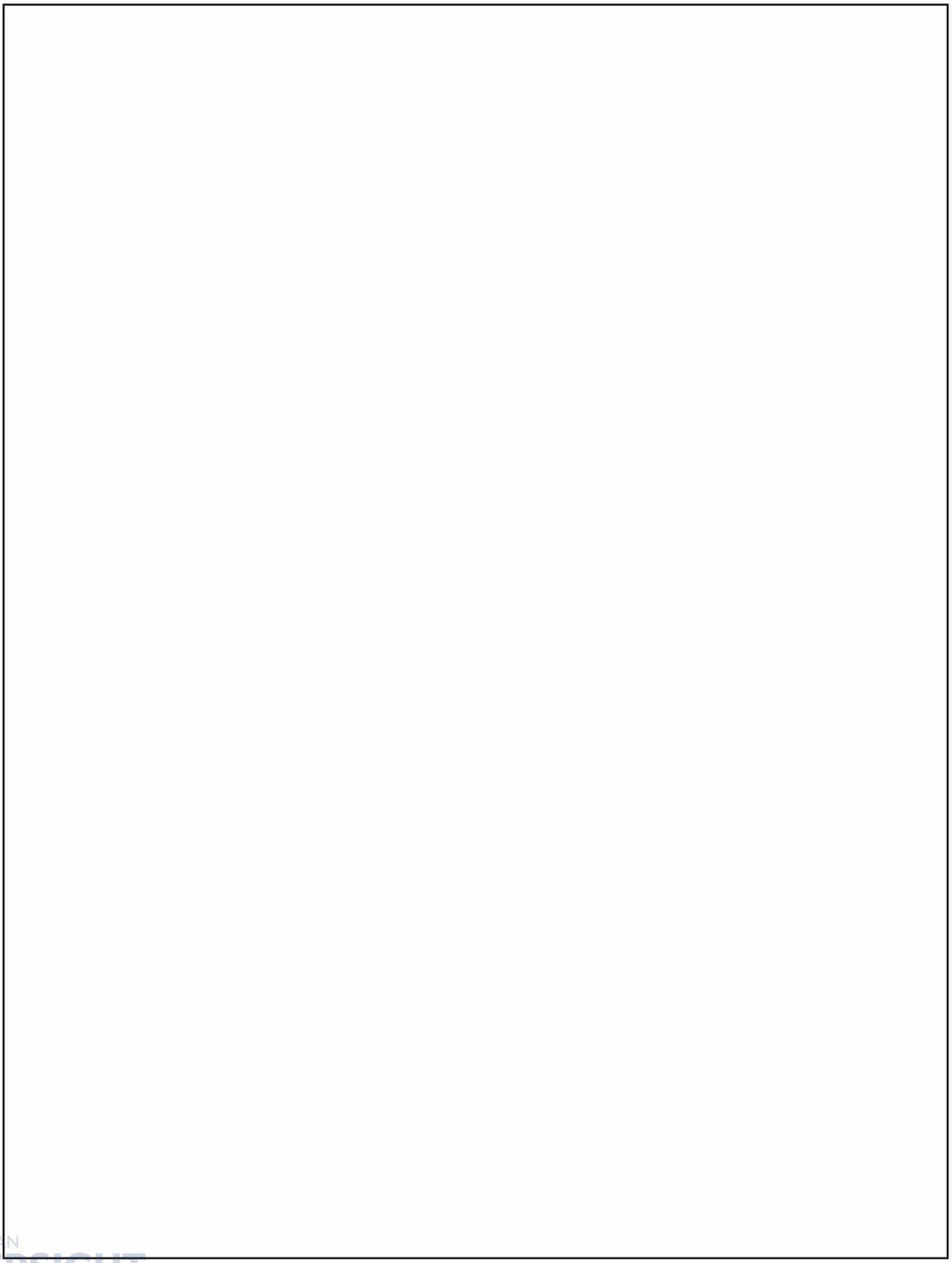
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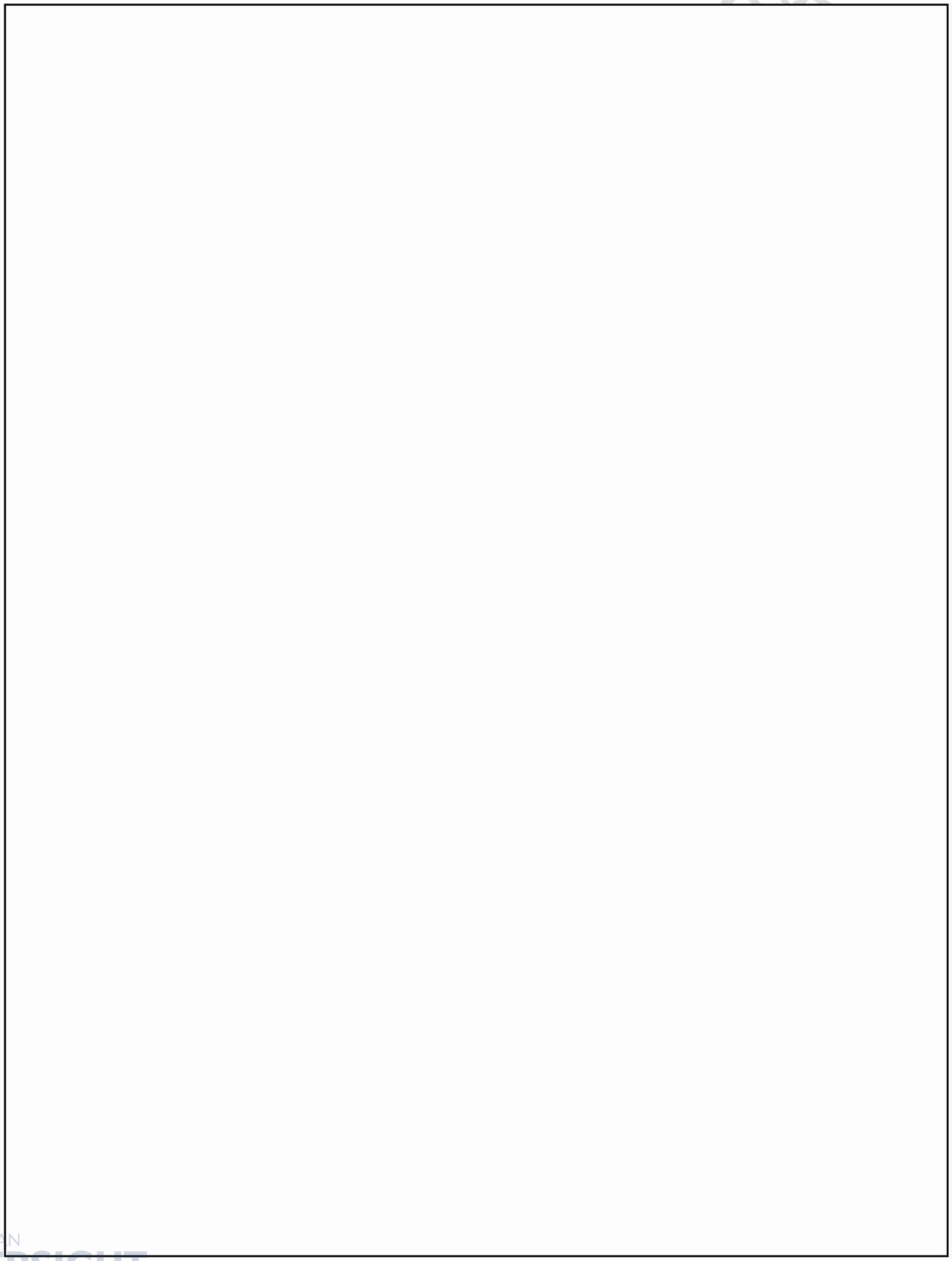
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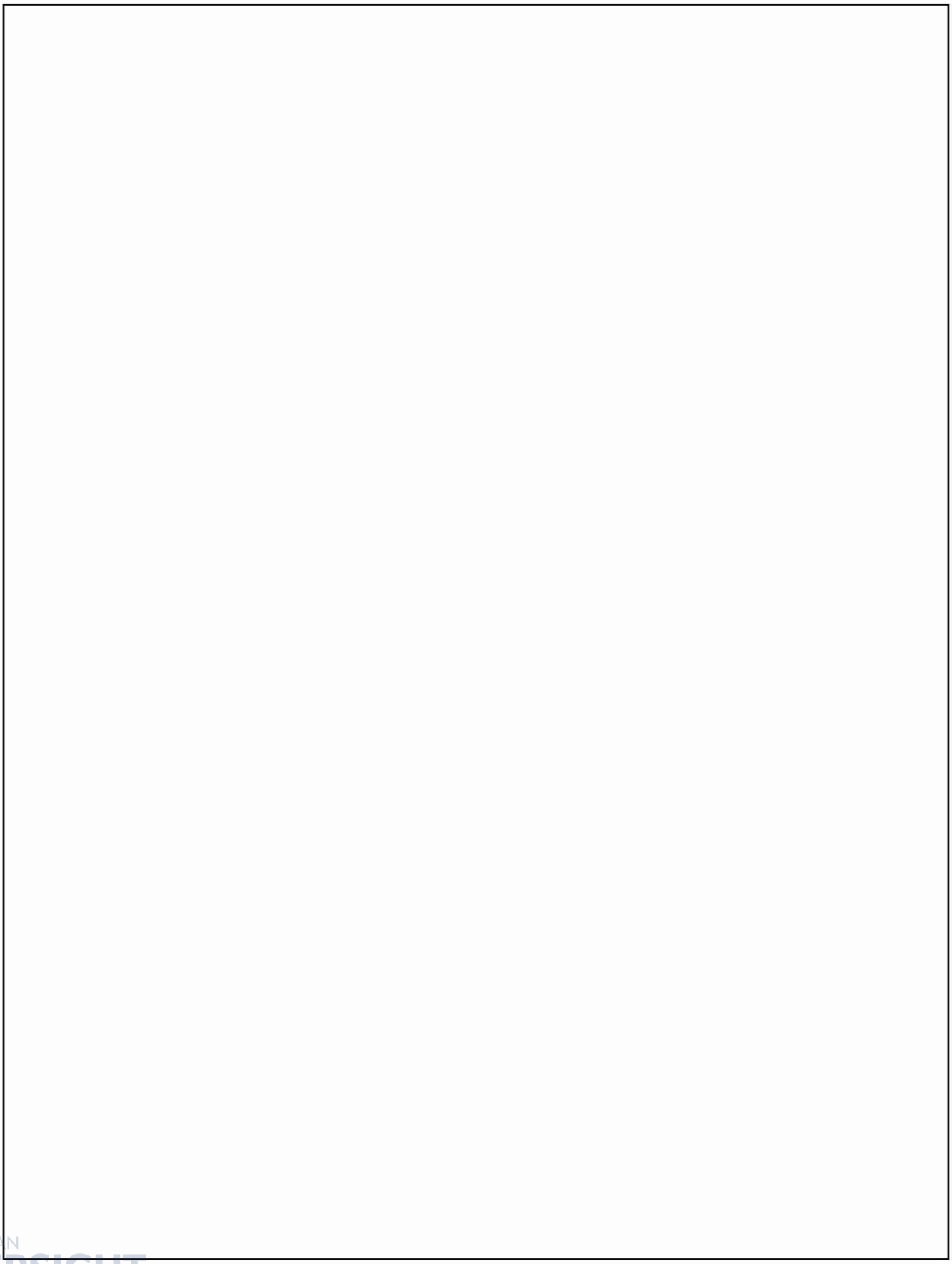
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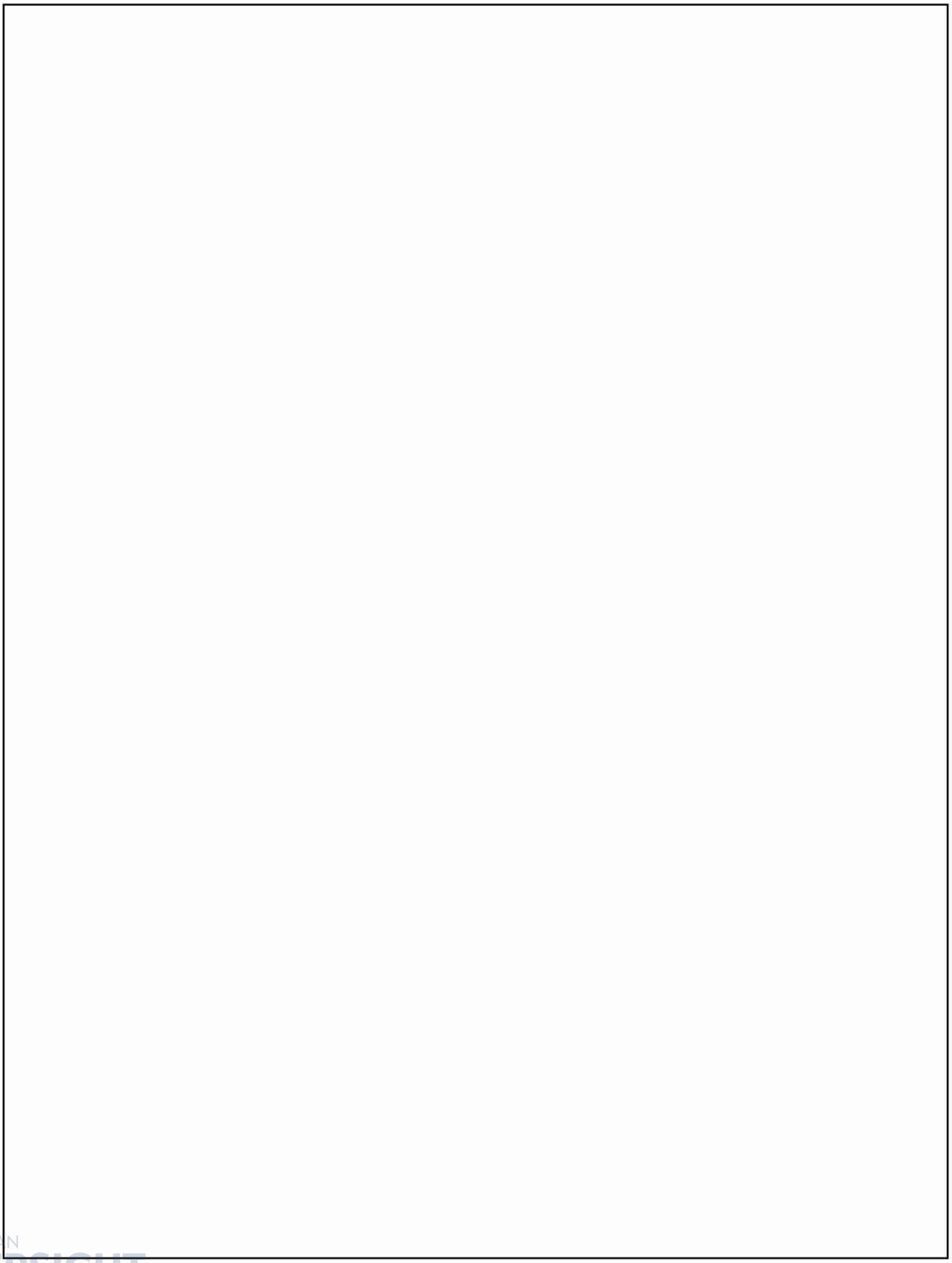
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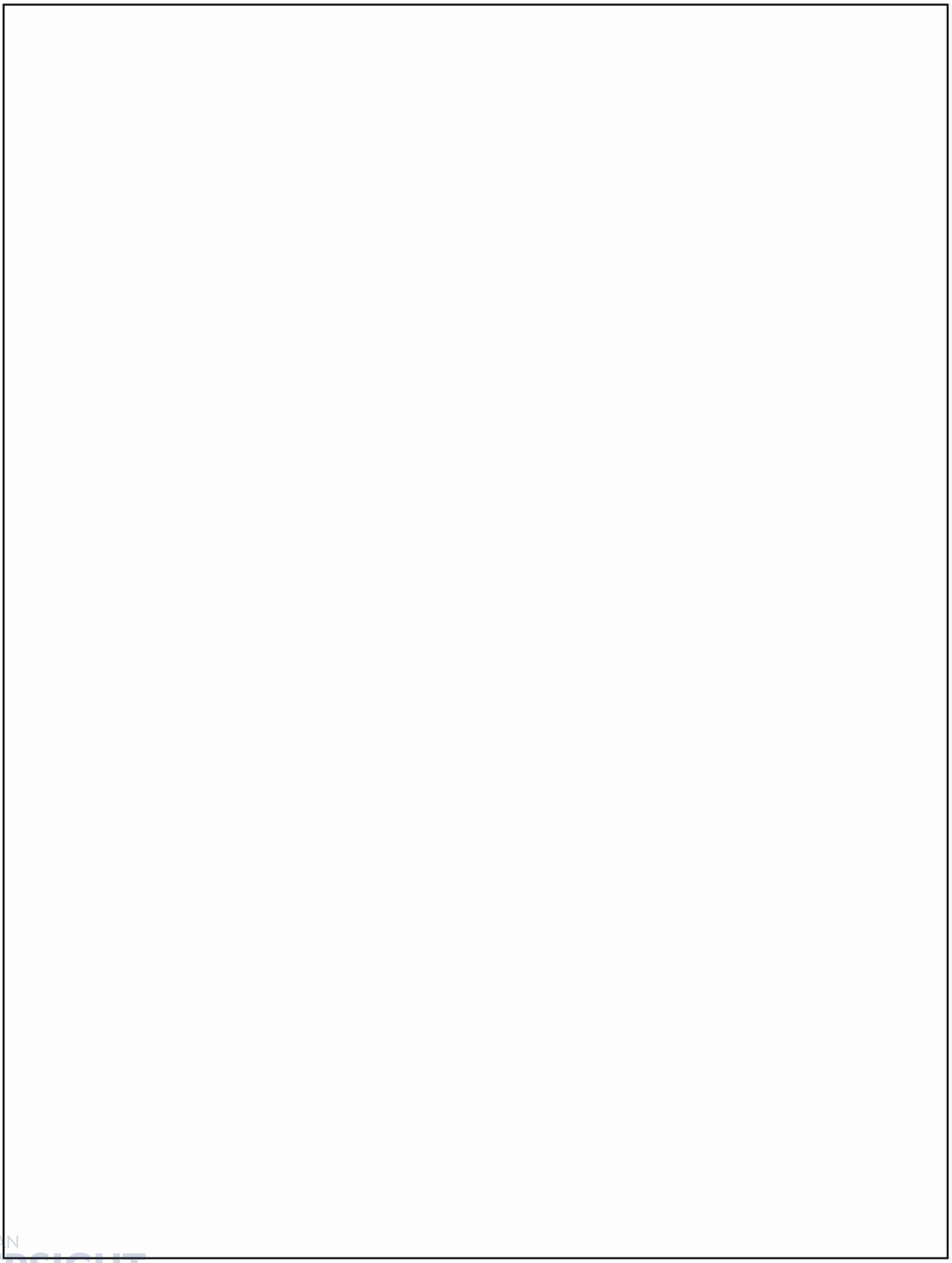


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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003114

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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003115

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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003116

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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003118

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AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

DHS-20-2156-A-003123

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Sent: July 1, 2020 6:35 PM (UTC-05:00)
Attached: 0-PM01E-PM10A-Discretion_CoverPage.docx, 2-PM01E-Discretion_CorrespondingEdits - Copy.docx, 2-PM01E-Discretion_UPDATE - Copy.docx, 2-PM10A_Employment Authorization_Discretionary Policy_PART - Copy.docx, 3-PM01E-PM10A-Discretion_TacticalRolloutPlan - Copy.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to M01E & PM10A Discretion Initial Parts STARS#27432 with edits/comments from the Director's Office. Thanks!

(b)(6)

From: Drake, Johnetta [redacted]
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clearances:
AAO: [redacted]
FDNS
FOD:
OCC:
OP&S
RAIO:
SCOP
EXA: FYI only

Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART

(b)(6)

AMERICAN OVERSIGHT

3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)*** (b)(6)
(Desk)

AMERICAN OVERSIGHT

USCIS Policy Publication Director's Office Packet COVER PAGE	Policy Manual Volume 1 Part E & Volume 10 Part A – General and EAD Discretion

Publication: TBD Upon Director's Office Clearance

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Note for Reviewers

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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003149

AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003150

AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003151

AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003152

AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003153

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

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Background

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

DHS-20-2156-A-003158

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324
To: Weinhold, Kasey D
Sent: July 1, 2020 5:37 PM (UTC-05:00)
Attached: Draft Response Warner - USCIS Clean 7.1.20.docx, Cover Memo - Warner - 7.1.20.pdf, Incoming - Warner 5.13.20.pdf

A paragraph about the Presidential proclamation was added towards the end since the last time we reviewed this letter.

The cover memo is ready for you to sign.

(b)(6)

From: Kilgore, Garry R <[redacted]
Sent: Wednesday, July 01, 2020 2:05 PM
To: USCIS Directors Office Clearance-EXSO <[redacted]; Brown, James R [redacted]>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, May 29, 2020**

Request: COS signature on Cover Memo and to review the draft response to Sen. Mark Warner prior to going to the DHS ESEC for OGC/WHCO clearance.

Background: Sen. Mark Warner +4 wrote to Acting Secretary Wolf with concerns regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020, as the issue creates disruptions in our Nation's food supply chain. OGC has determined that this draft response will require WHCO clearances. DHS ESEC will coordinate with OGC to obtain their clearance prior to WHCO clearance. DHS ESEC has assigned Assistant Secretary OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming – Warner 5.13.20
2. Draft Response – Warner – DHS Component Redline 6.29.20
3. Draft Response – Warner – USCIS Clean 7.1.20
4. Cover Memo – Warner – 7.1.20

******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted](office)

AMERICAN OVERSIGHT

(b)(6)

STARS Issues:

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Kathy Nuebel Kovarik
Chief of Staff

(b)(6)

SUBJECT: **Request for Approval: Response to Sen. Mark Warner's May 13, 2020 Letter Regarding The Lack of H-2B Visas Allocated to the U.S. Seafood Industry in 2020 (WF-1196076).**

Context: Sen. Mark Warner +4 wrote to Acting Secretary Wolf regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Associate Counsel, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since this review.

Clearance: The following Components have cleared the proposed response:

MGMT:
OLA:
PLCY:

(b)(6)

AMERICAN OVERSIGHT

The Honorable Mark R. Warner
United States Senate
Washington, DC 20510

Dear Senator Warner:

Thank you for your May 13, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



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(b)(5)

AMERICAN OVERSIGHT

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Please do not hesitate to contact us at (202) 447-5890.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20510

May 13, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RECEIVED
By ESEC at 7:37 am, May 14, 2020

Dear Acting Secretary Wolf:

We write on behalf of the Virginia and Maryland seafood industry, which continues to struggle with seasonal labor shortages due to a lack of H-2B visas. In these unprecedented times, we write to ask that you consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply. These solutions could include, but are not limited to, redistributing any unused statutorily authorized H-2B visas to the seafood industry.

As with other small American businesses, the seafood processors and producers in our states face new economic uncertainties due to COVID-19. Despite declining demand brought on by the pandemic, we are encouraged to hear early reports from our states that the demand for seafood could begin to increase in the near future.

On March 5, 2020, after much urging from Congress, the Department of Homeland Security (DHS) announced its decision to release an additional 35,000 H-2B temporary nonagricultural worker visas. We anticipated that this move would benefit Virginia's and Maryland's seafood industry, communities largely made up of rural, family-owned operations.

However, on April 2, 2020, the Department announced via Twitter that the rule on the H-2B cap is "on hold pending review due to present economic circumstances. No additional H2B visas will be released until further notice." Due to the delayed rule and subsequent lack of visas, our states' seafood operations, which create numerous year-round American jobs, are in jeopardy yet again. Without the necessary H-2B workers, these seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely.

Like H-2A workers who support agriculture in the United States, the Department has deemed seafood processors "essential, critical infrastructure." Any disruption to the food supply chain will harm American consumers, the seafood industry, and the U.S. economy. Precautionary measures are crucial to ensure we have a stable food supply flow. Withholding H-2B visas for seasonal seafood processors will only exacerbate this matter.

We urge you to expeditiously reallocate any unused H-2B visas to the seafood industry, deemed essential to the country's critical infrastructure. We further urge you to work with the Departments of Labor, State, and Health and Human Services to ensure the necessary

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precautions to protect the health and safety of both H-2B workers and the communities in which they work and live. It is vital that the agencies with responsibility for administering the H-2B program work in concert with the Centers for Disease Control and Prevention (CDC), as well as state and local officials to ensure that the necessary safeguards, including the ability to effectively social distance, are in place and clearly communicated with workers in their native language. Both employers and workers should be given the tools they need to reduce community spread. It is also important that workers are made aware of the health care systems available and given access to care.

We thank you in advance for your prompt attention to this matter, as the viability of many businesses in our states depends on the H-2B program. We look forward to an ongoing dialogue with you and the Department about possible regulatory improvements to the H-2B program that can increase processing efficiency and predictability and maintain worker safety during this pandemic.

Sincerely,

/s/ Mark R. Warner

Mark R. Warner
United States Senator

/s/ Robert J. Wittman

Robert J. Wittman
Member of Congress

/s/ Tim Kaine

Tim Kaine
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator

/s/ Benjamin L. Cardin

Benjamin L. Cardin
United States Senator

AMERICAN OVERSIGHT

From: Nuebel Kovarik, Kathy
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432 (b)(6)
To: Bailey, Morgan; Piateski, Jennifer E; 'Edlow, Joseph B'
Cc: Kathryn S Rexrode [redacted]
Sent: July 1, 2020 5:37 PM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_ConsolidatedEdits_OCC_OPS Redlines.docx, 0-PM01E-PM10A-Discretion_CoverPage.docx, 2-PM01E-Discretion_CorrespondingEdits - Copy.docx, 3-PM01E-PM10A-Discretion_TacticalRolloutPlan - Copy.docx, 2-PM01E-Discretion_UPDATE - Copy.docx, 2-PM10A_Employment Authorization_Discretionary Policy_PART - Copy.docx, PM01E-Discretion_PolicyAlert_0701 2020 CLEAN - knk.docx

I clear this PM on EAD discretion, with only edits to the policy alert page. Morgan, please have EXSO prepare for Joe's signature. Copying him as FYI and so he has a heads up to expect it.

Kathryn – hoping EXA received this and has started the comms.

From: Bailey, Morgan [redacted]
Sent: Wednesday, July 01, 2020 4:45 PM
To: Nuebel Kovarik, Kathy [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

I just sent you my edits for this clearance but we have received an update from EXSO for the PMO1E-Discretion_PolicyAlert_0701 2020 (Clean and Redlines). They said this is in response to Alex's comments to OP&S.

I've added the documents with my edits to this email to make it easier for you to review everything at once.

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 1, 2020 4:53 PM
To: Weinhold, Kasey D [redacted]; Drake, Johnetta [redacted]; USCIS Directors Office Clearance-EXSO [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Hi Kasey,

We received this from OP&S they noted this addressed feedback from the DO. OP&S noted they've been working with Alex but EXSO has not been included in that communication.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

From: Weinhold, Kasey D [redacted]
Sent: Wednesday, July 01, 2020 4:49 PM
To: Kilgore, Garry R [redacted]; Drake, Johnetta [redacted]; USCIS Directors Office Clearance-EXSO [redacted]

(b)(6)

AMERICAN OVERSIGHT

Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

(b)(6)

Hi Garry,

Why did you send us something new for this clearance?

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted]

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 01, 2020 2:51 PM
To: Drake, Johnetta [redacted]; USCIS Directors Office Clearance-EXSO [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is resubmitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval. The attached address DO feedback that was provided directly to OP&S.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

From: Drake, Johnetta [redacted]
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

AMERICAN OVERSIGHT

Good afternoon,

(b)(6)

(b)(6)

Requestor: OP&S [redacted]

Due date: COB, July 2

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clearances:
AAO: [redacted]
FDNS:
FOD:
OCC:
OP&S:
RAIO:
SCOPS
EXA: FYI only

Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] ***(Cell)***
(Desk)

(b)(6)

AMERICAN OVERSIGHT

USCIS Policy Publication Director's Office Packet COVER PAGE	Policy Manual Volume 1 Part E & Volume 10 Part A – General and EAD Discretion

Publication: TBD Upon Director's Office Clearance

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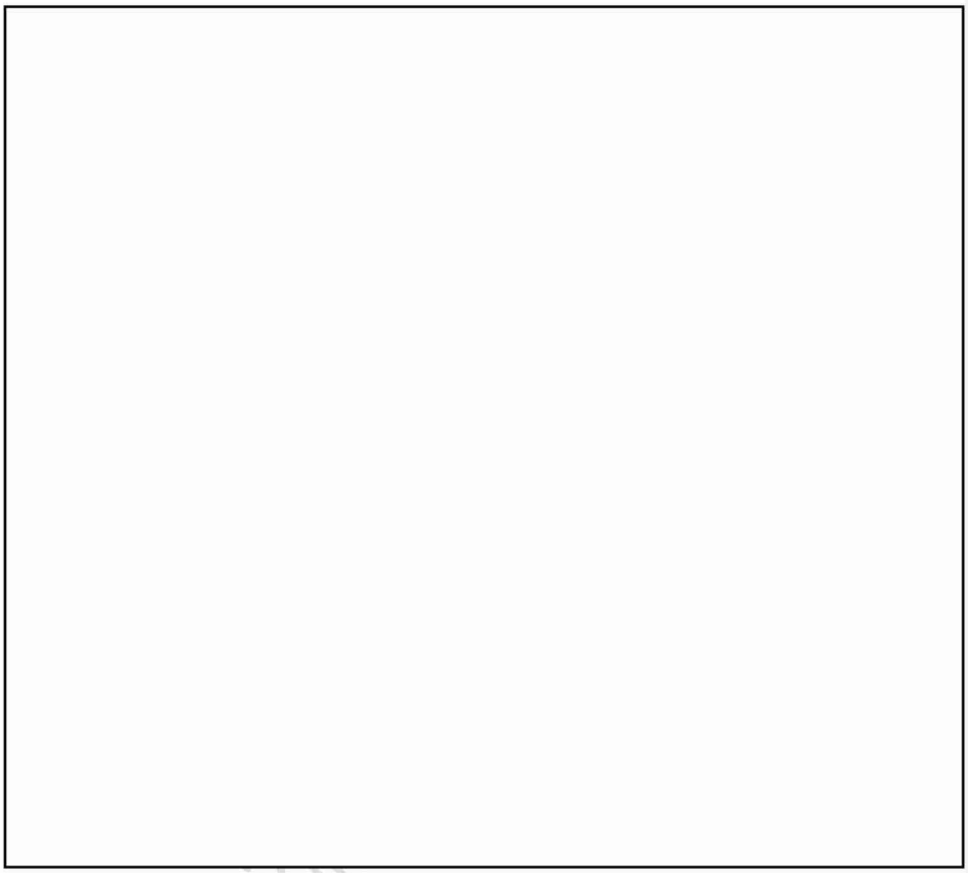
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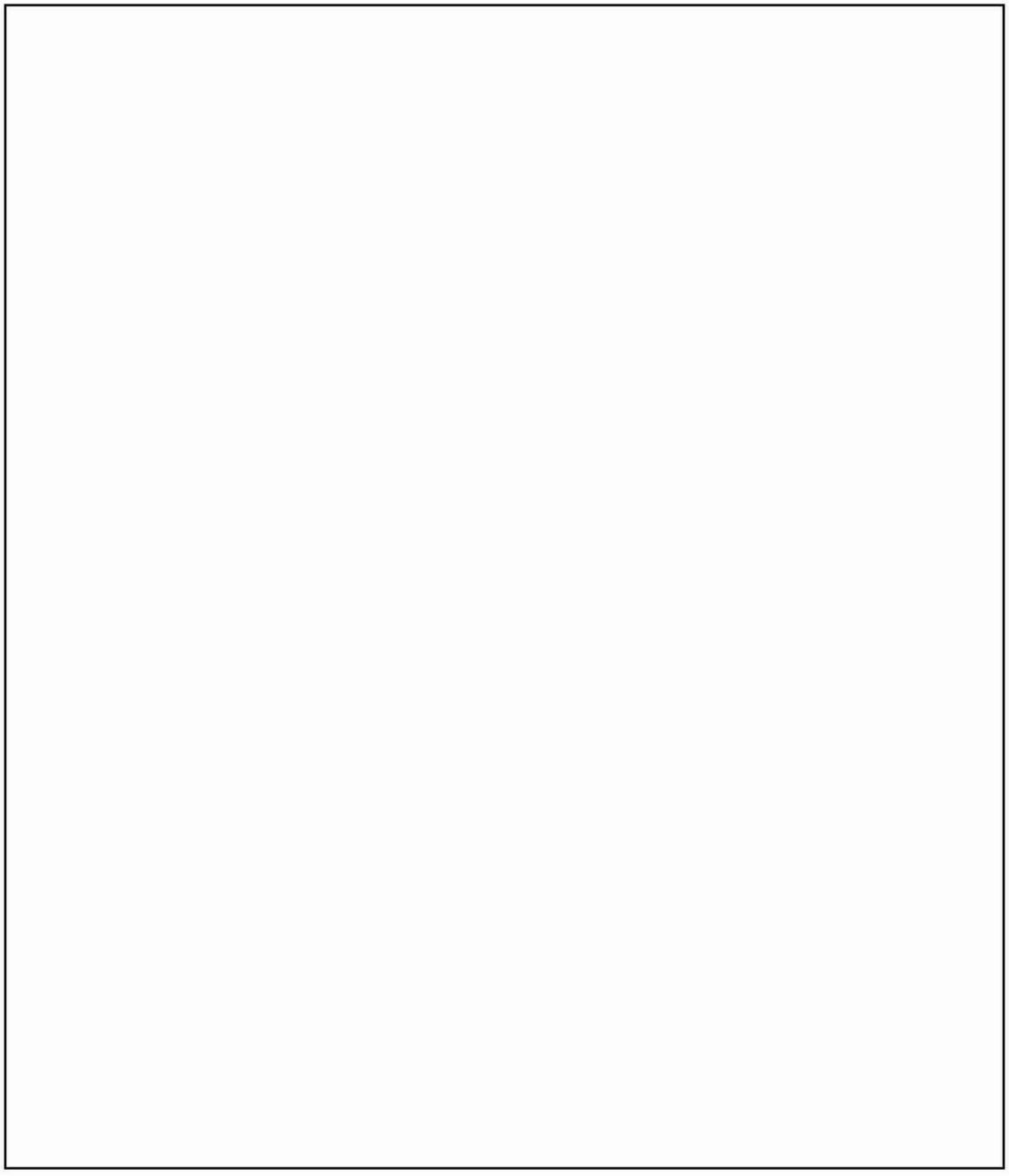
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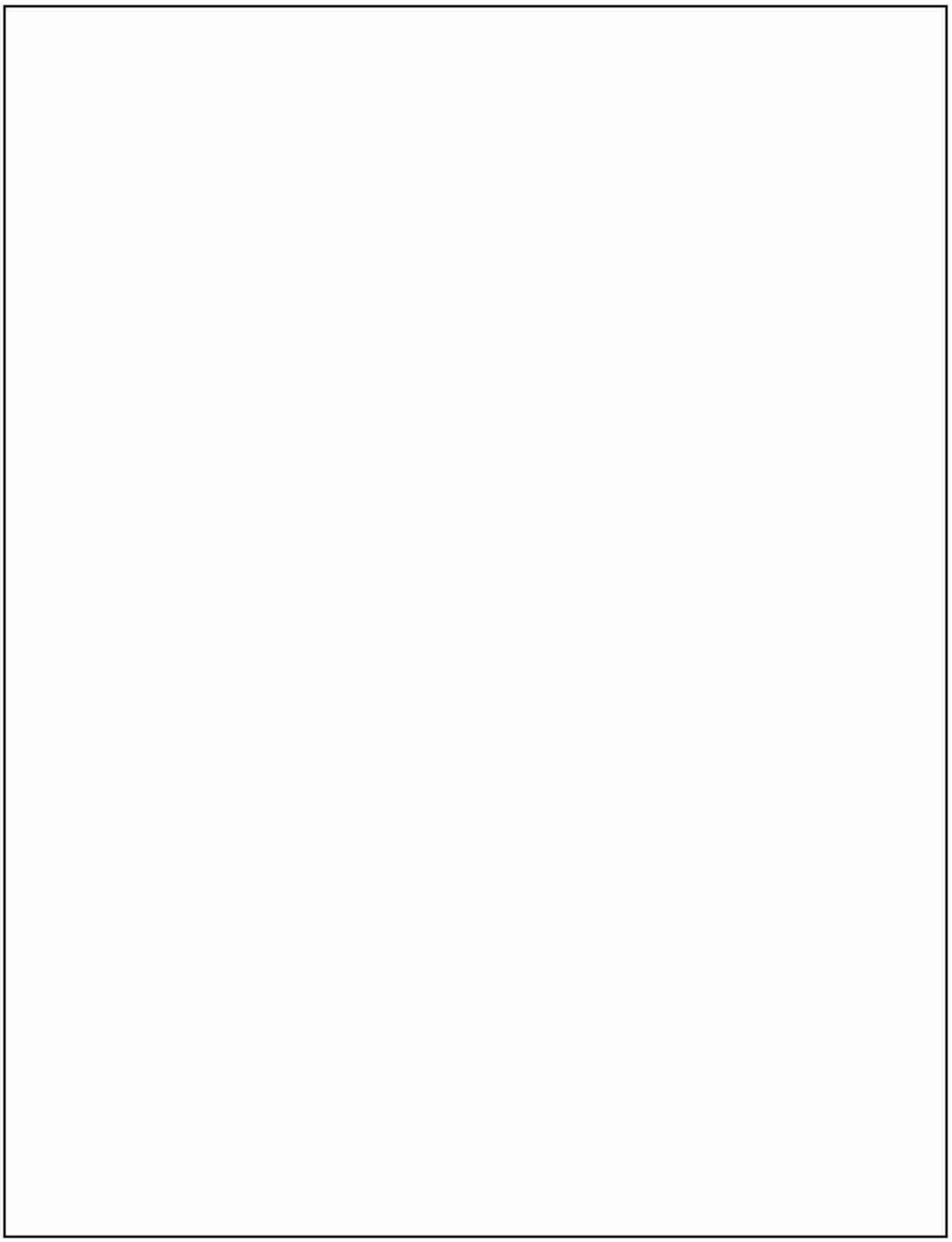
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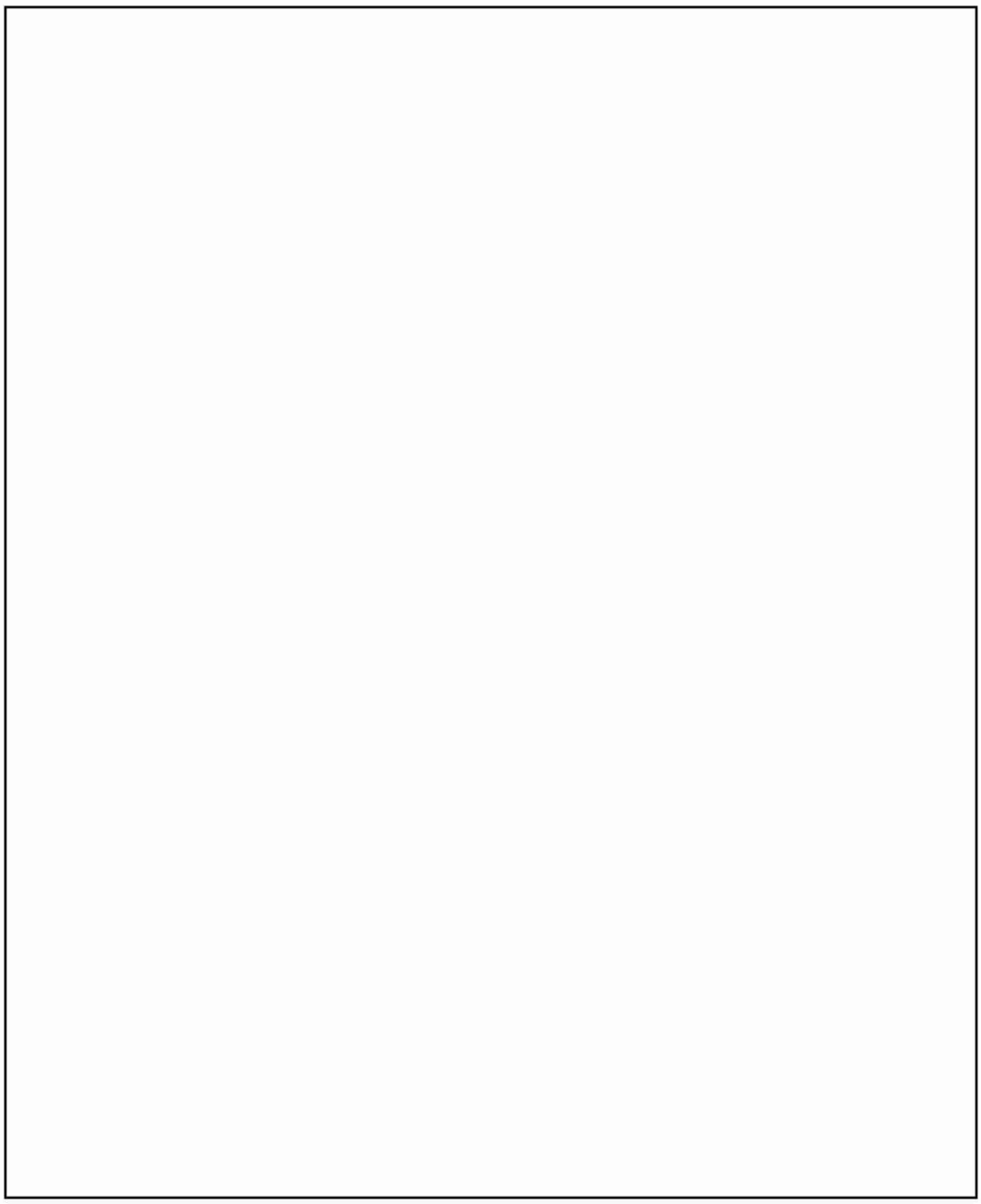
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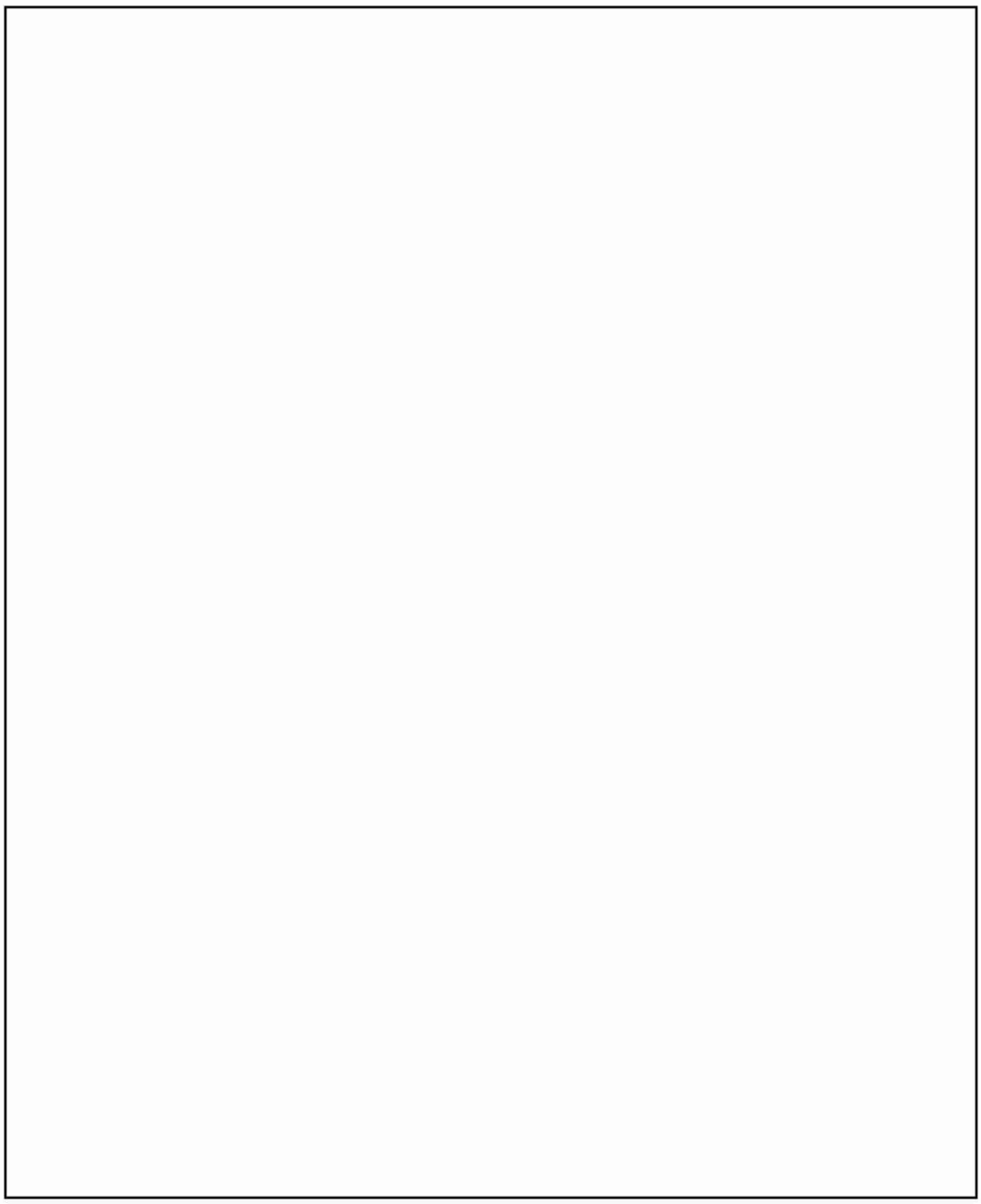
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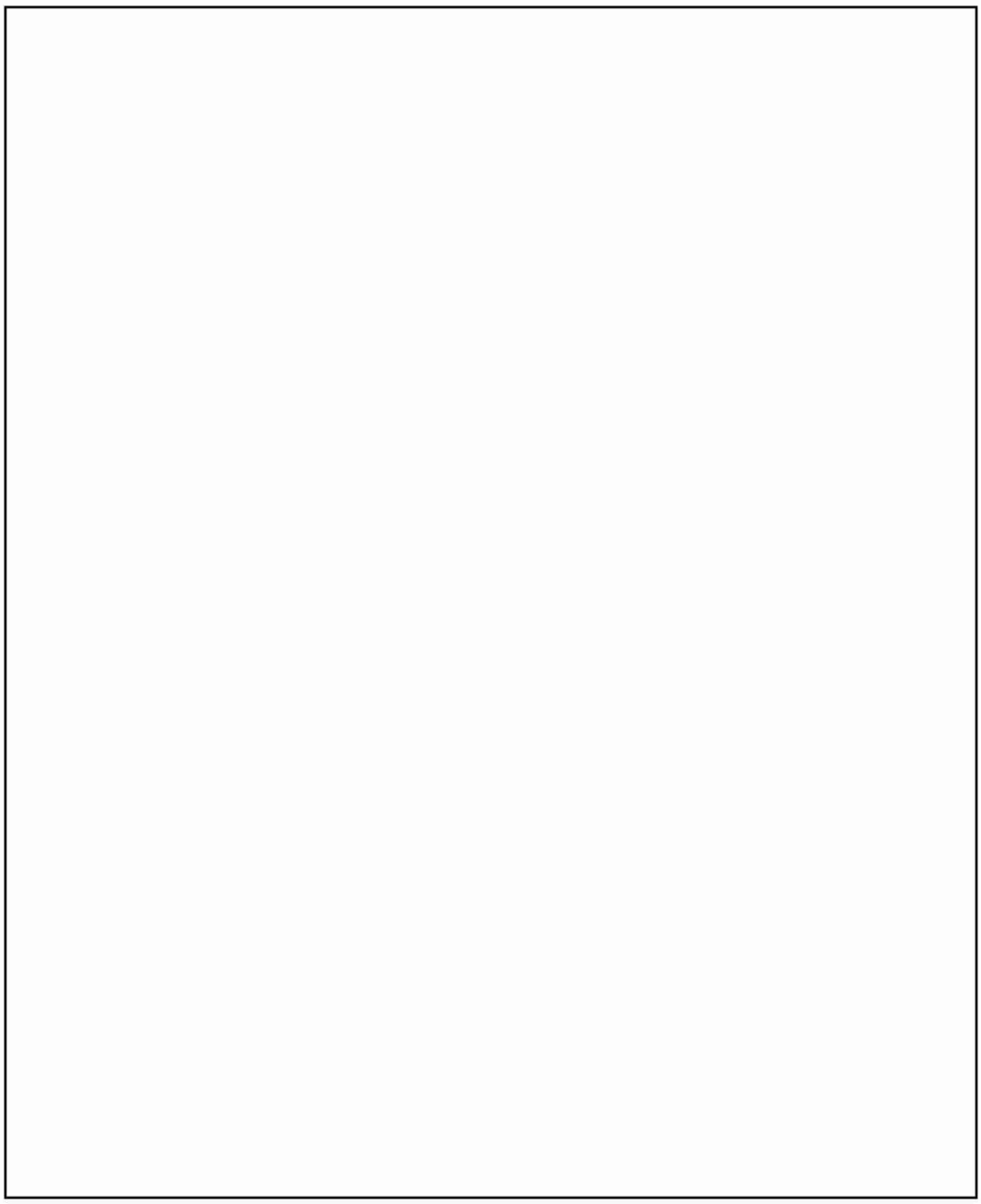
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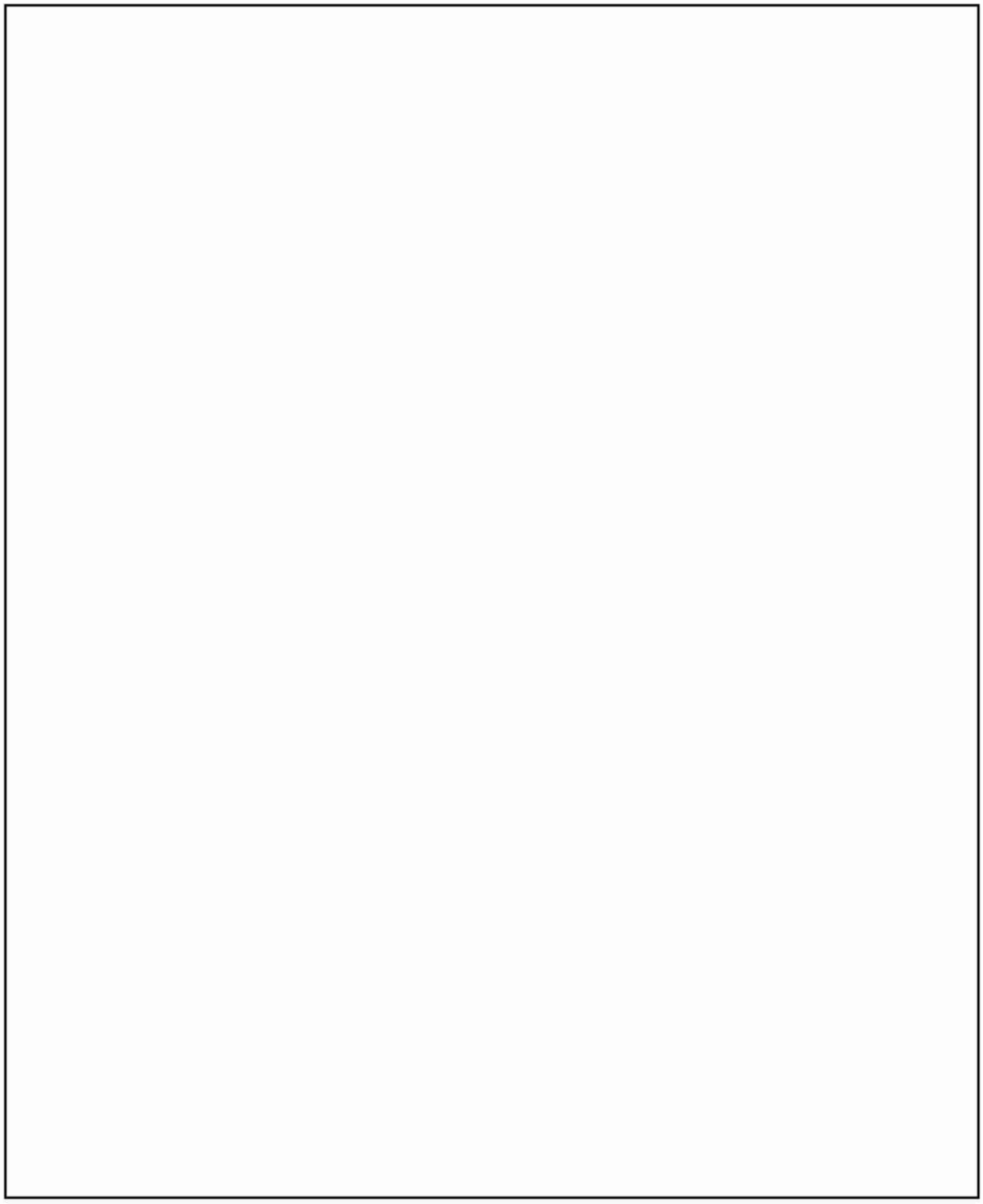
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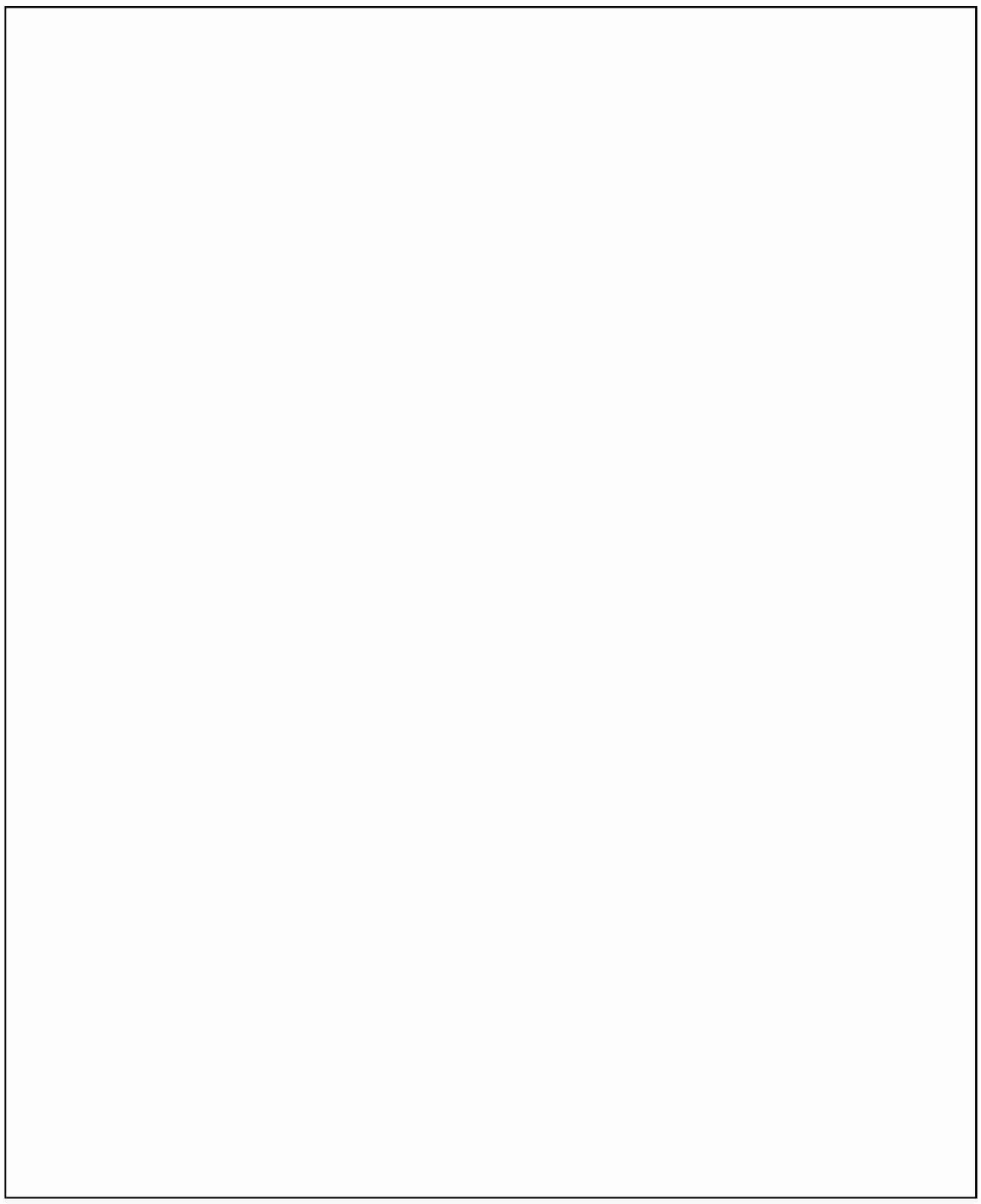
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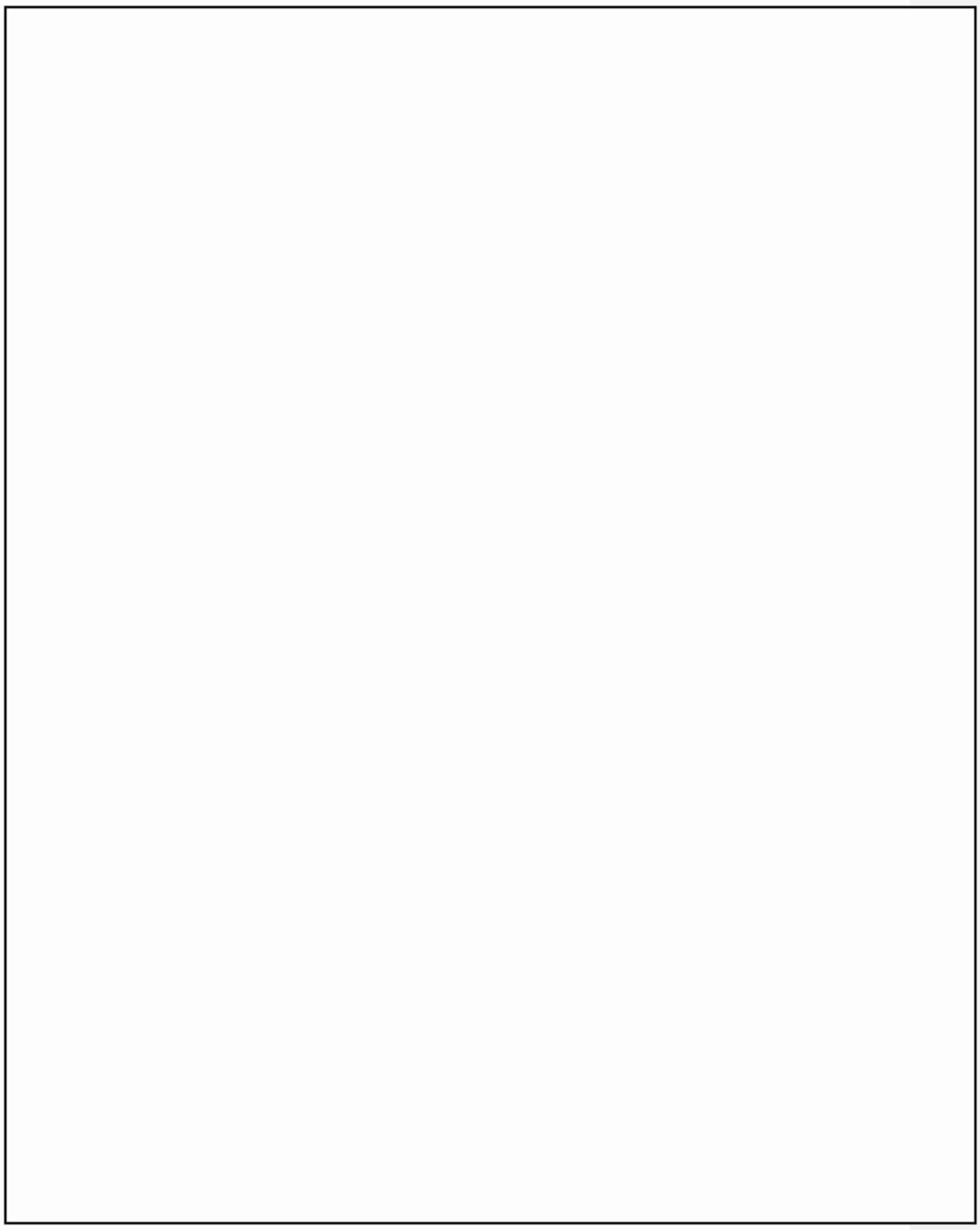
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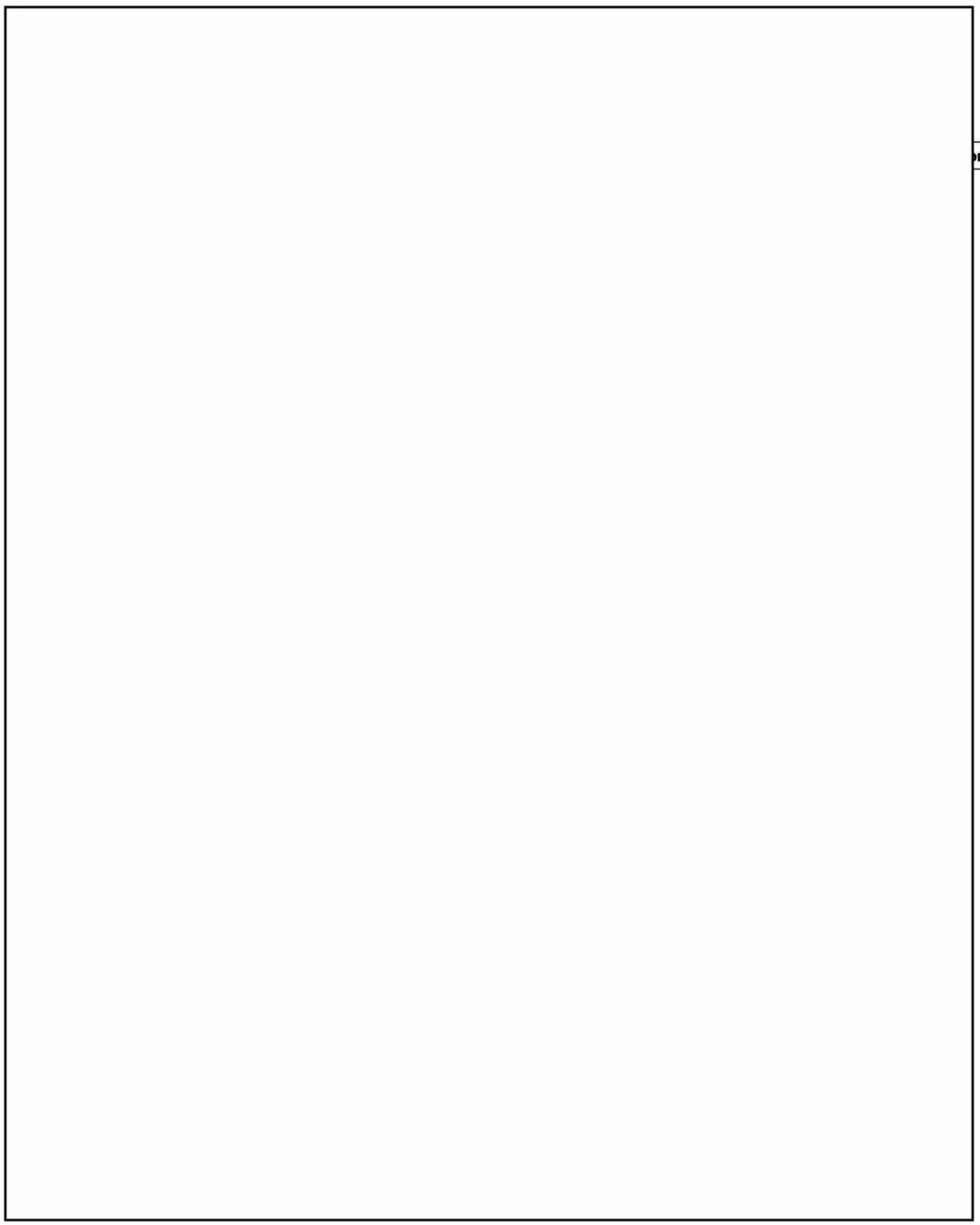
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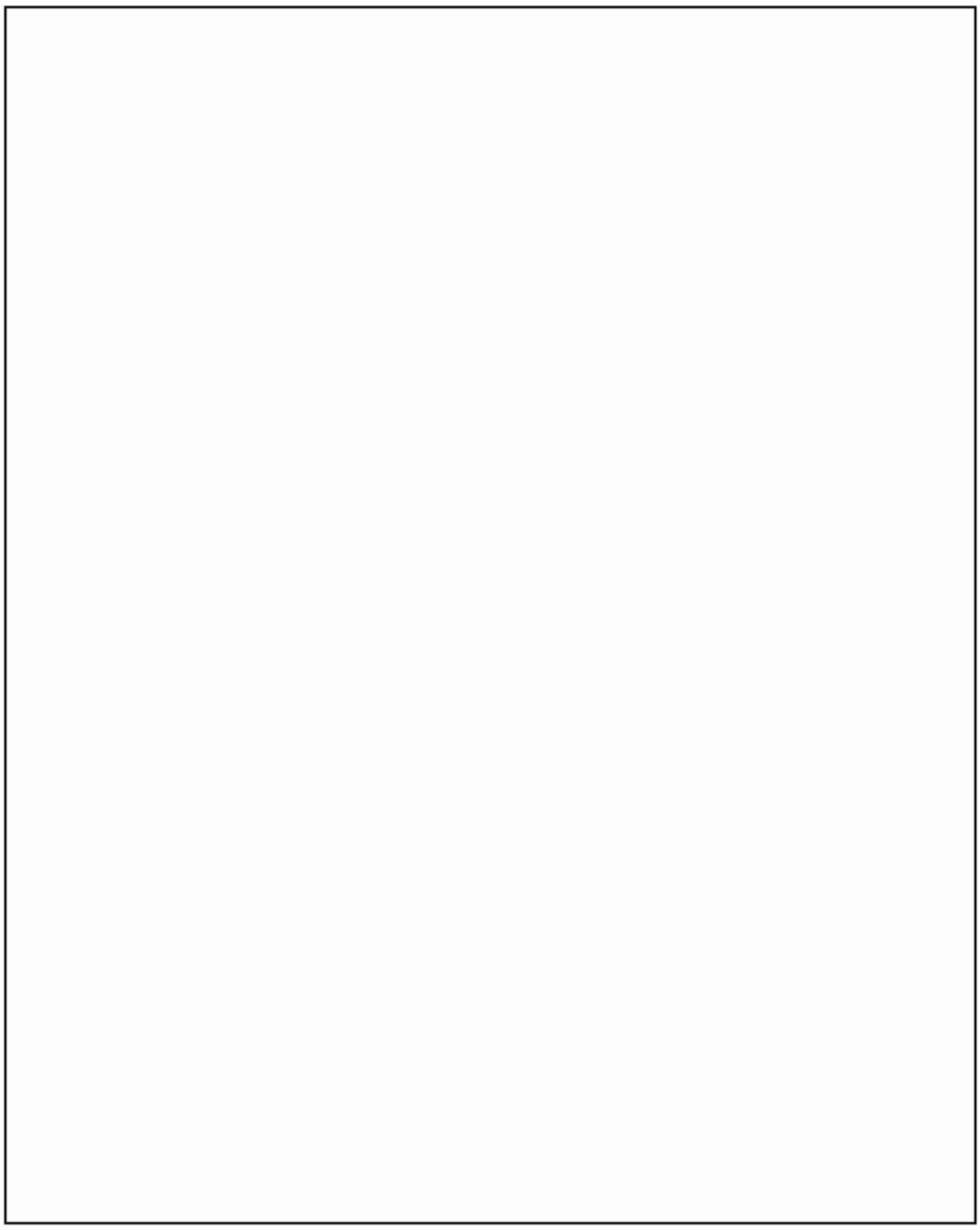


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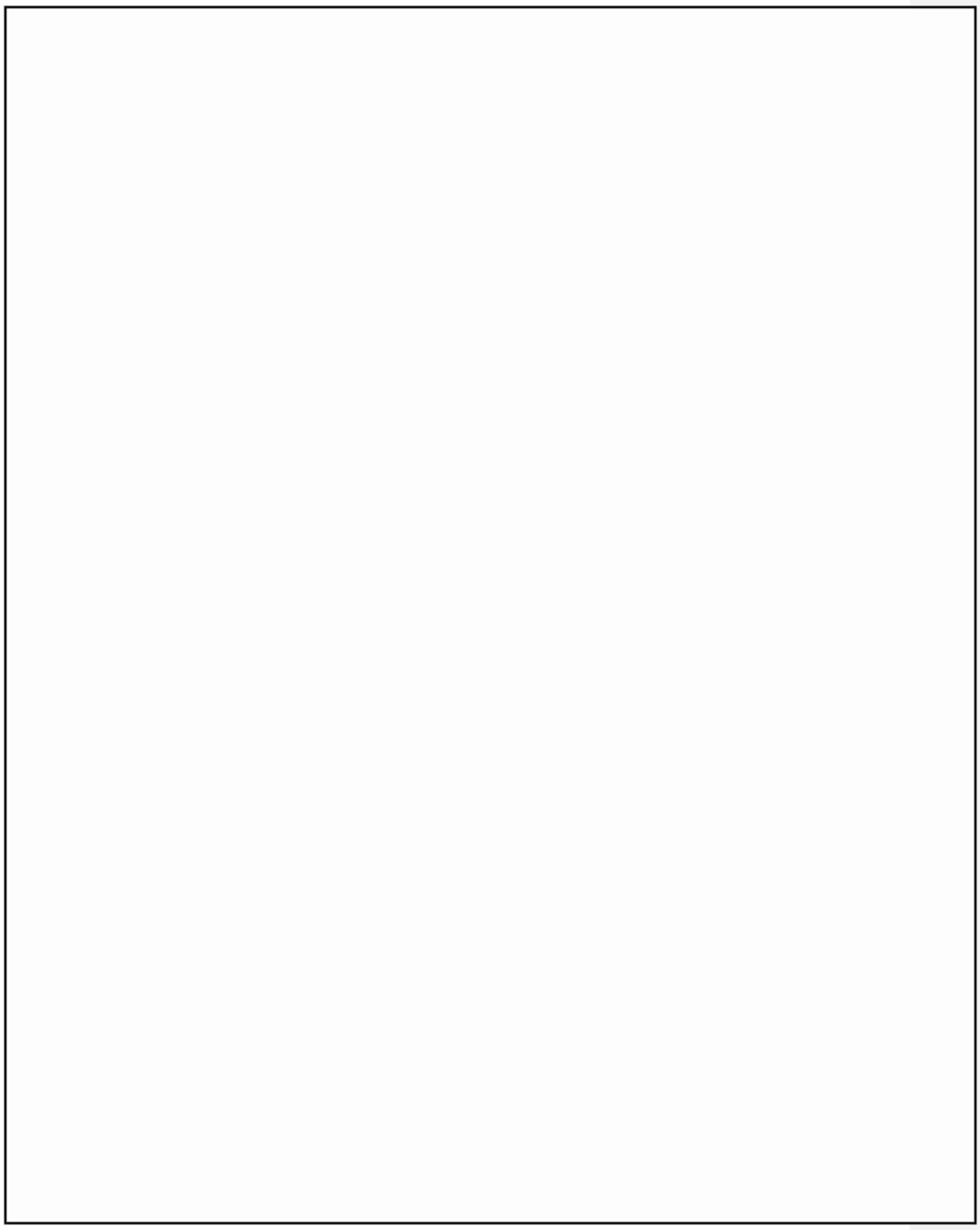


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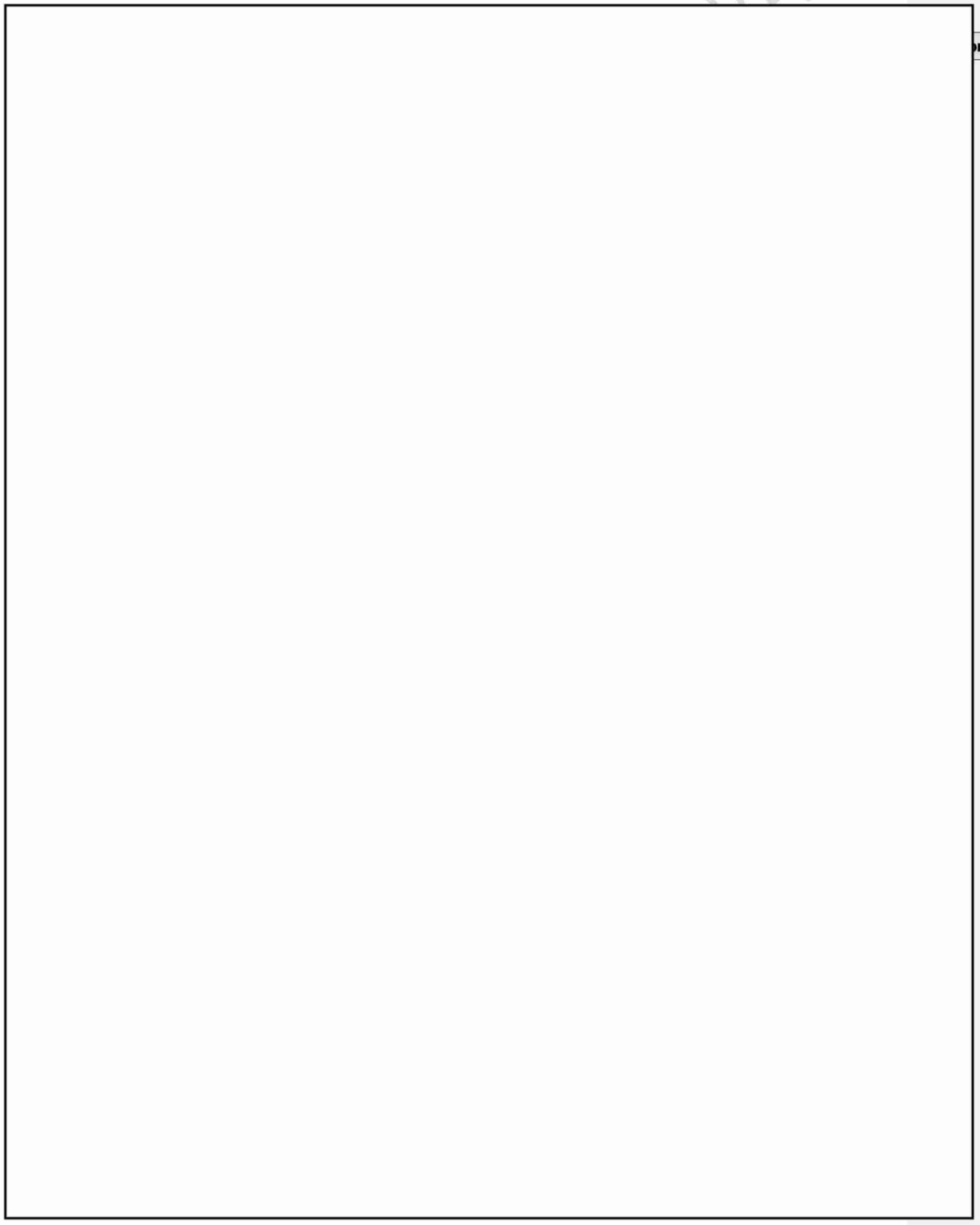
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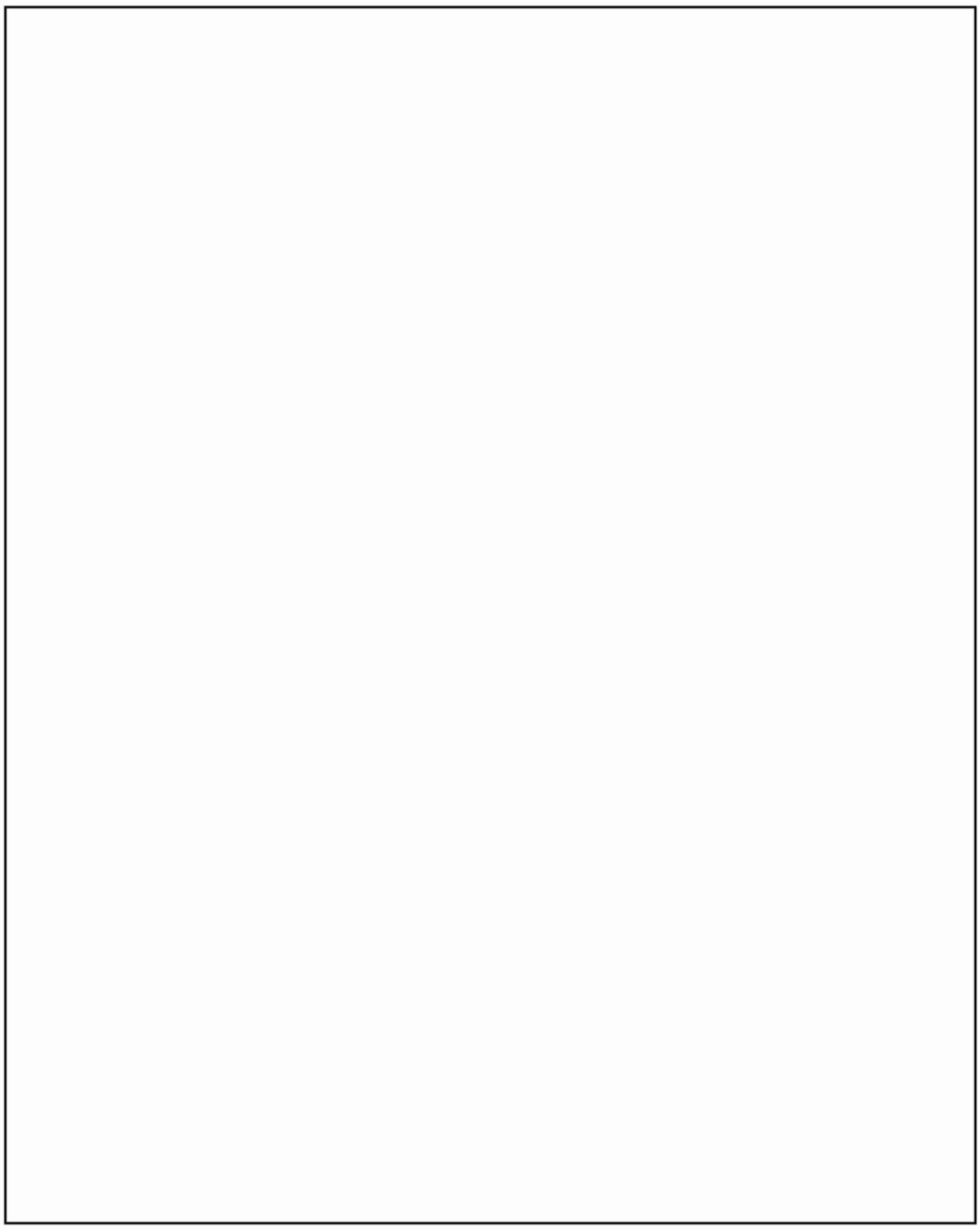


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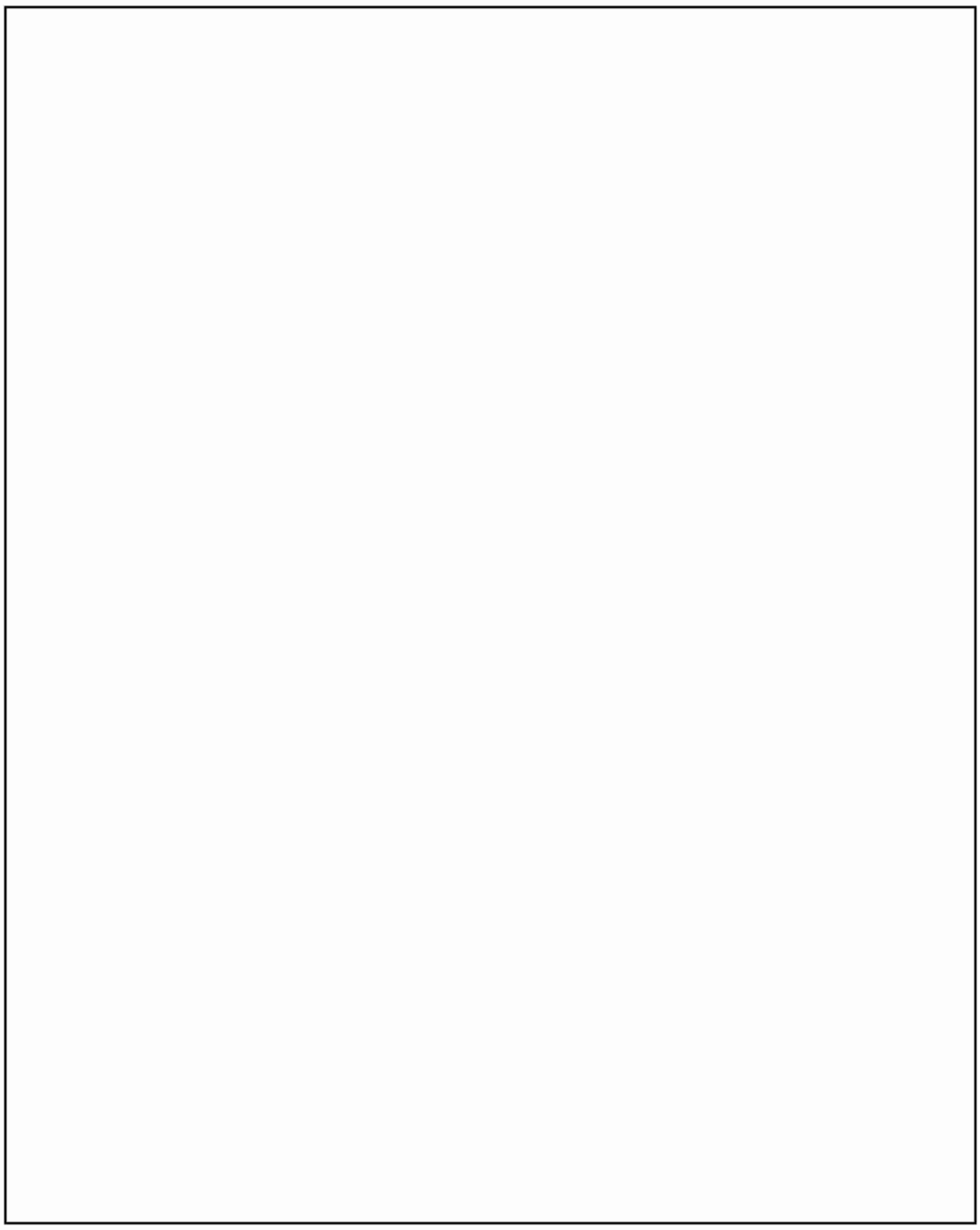


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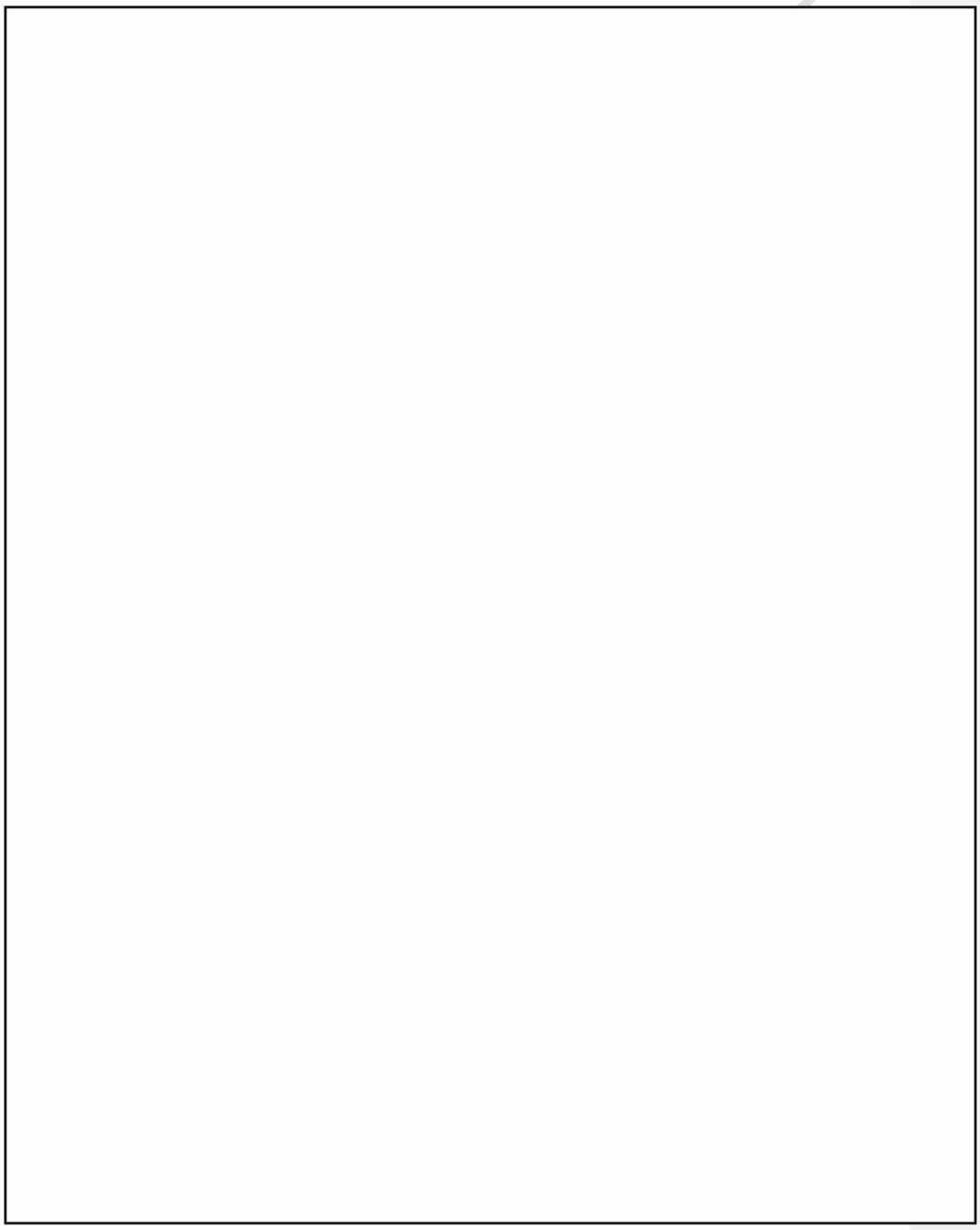
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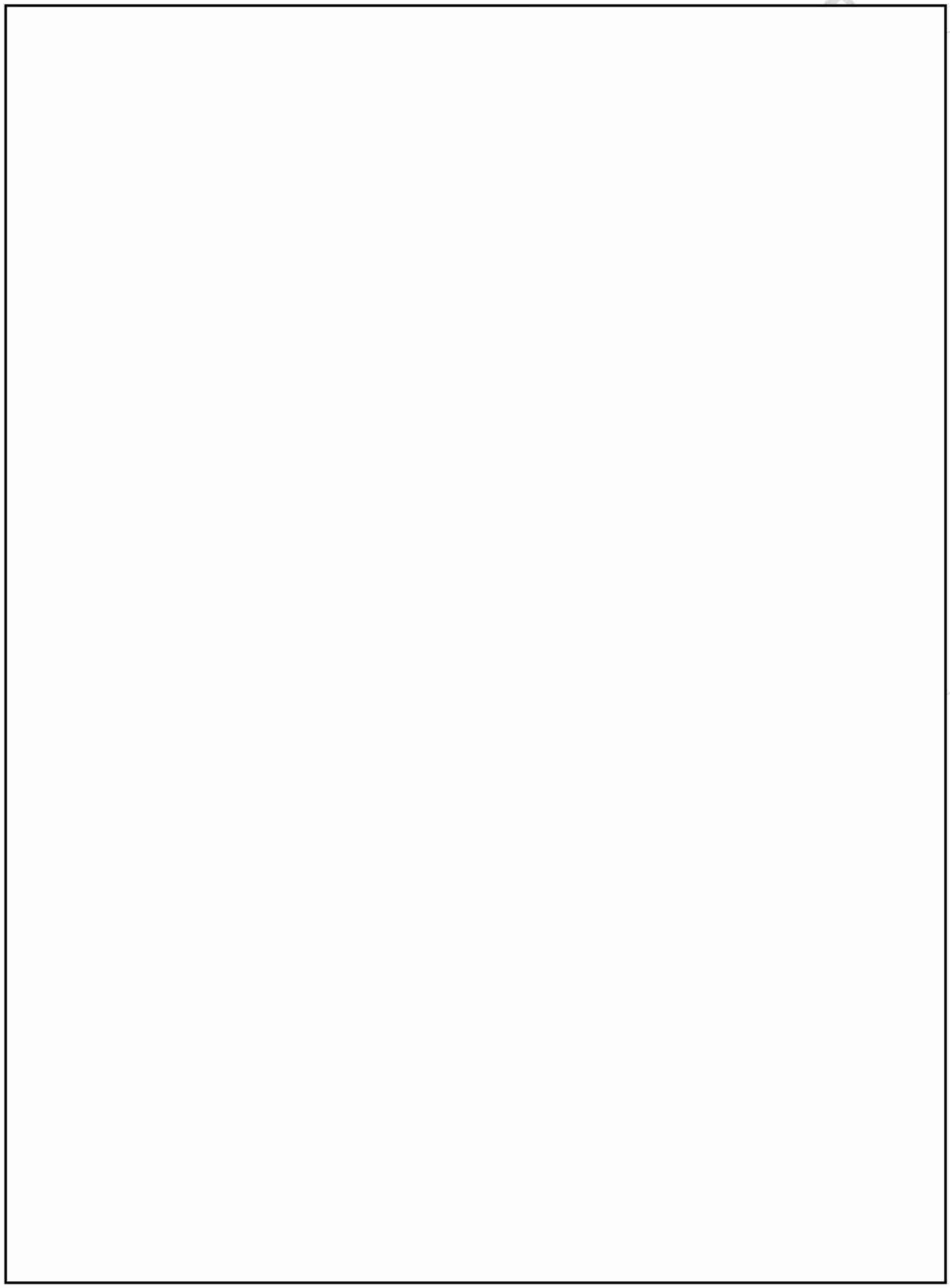


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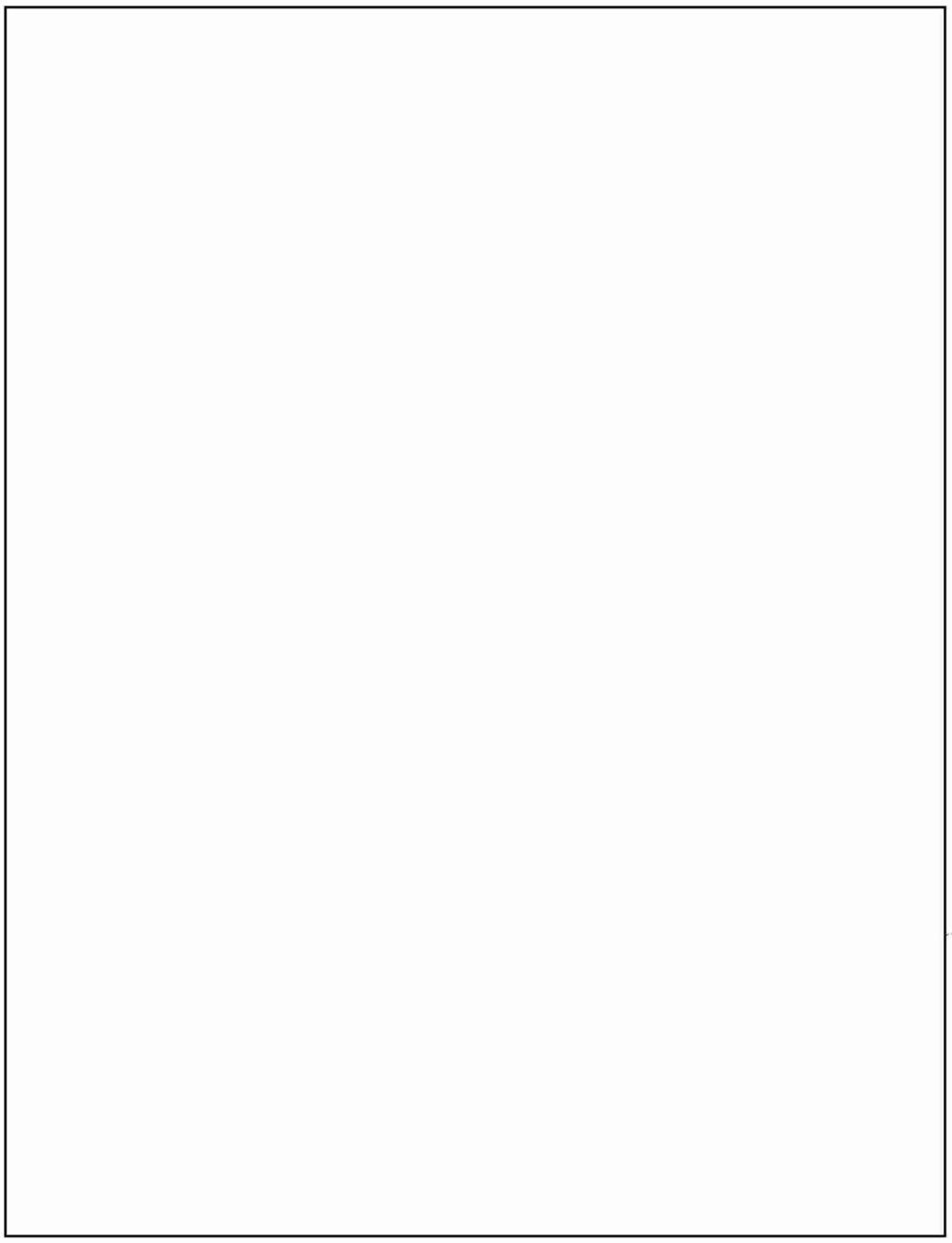
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Comments

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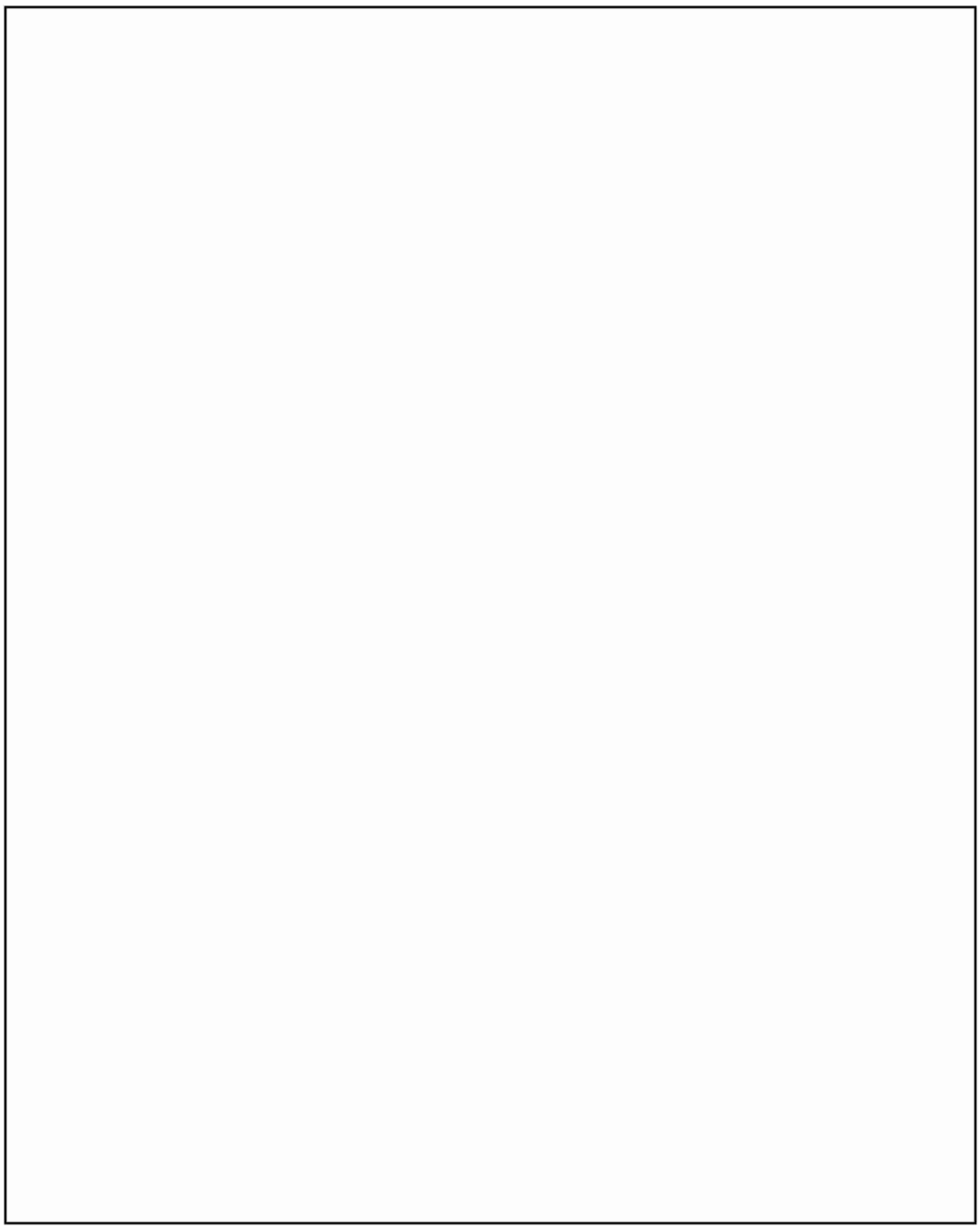
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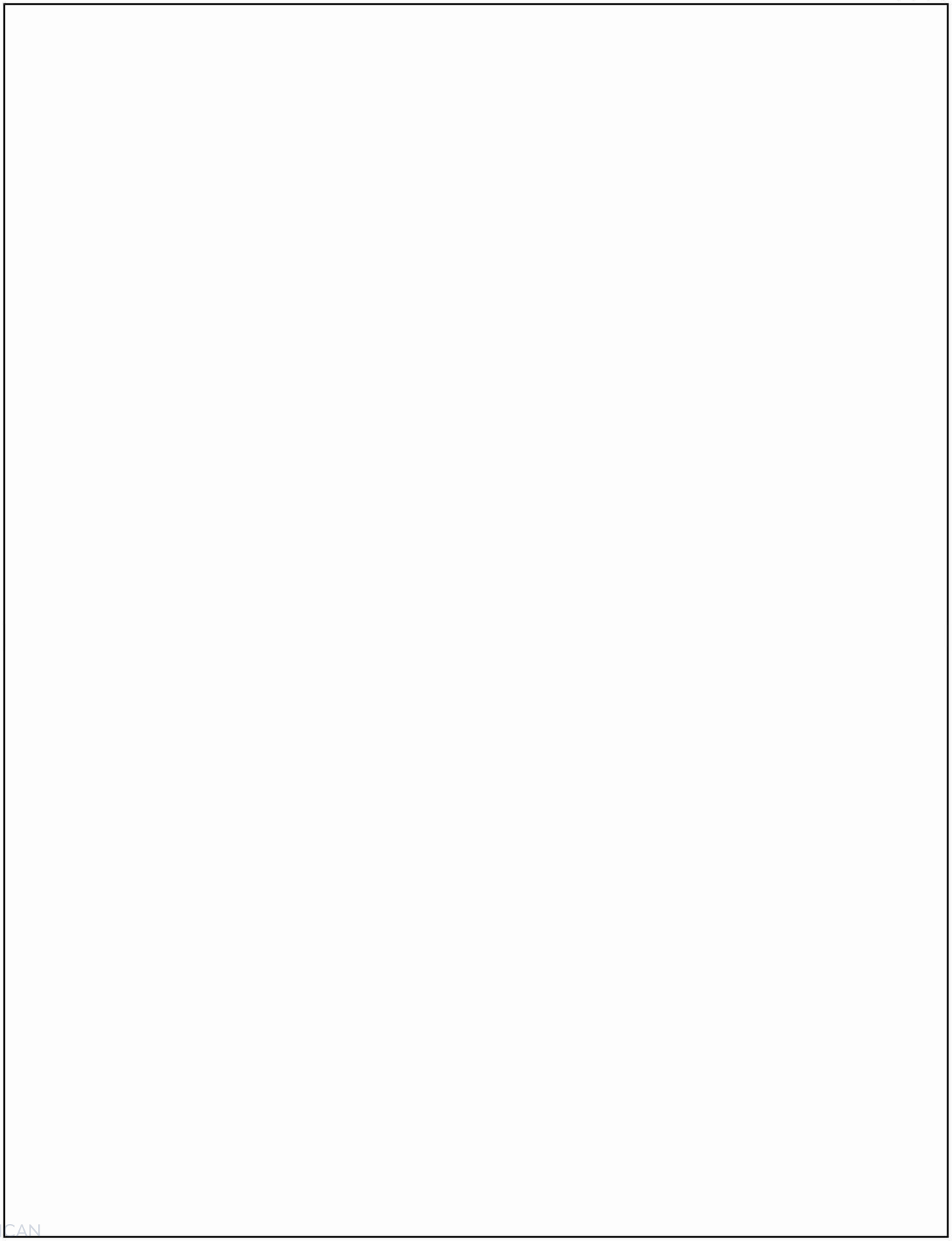
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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003193

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FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

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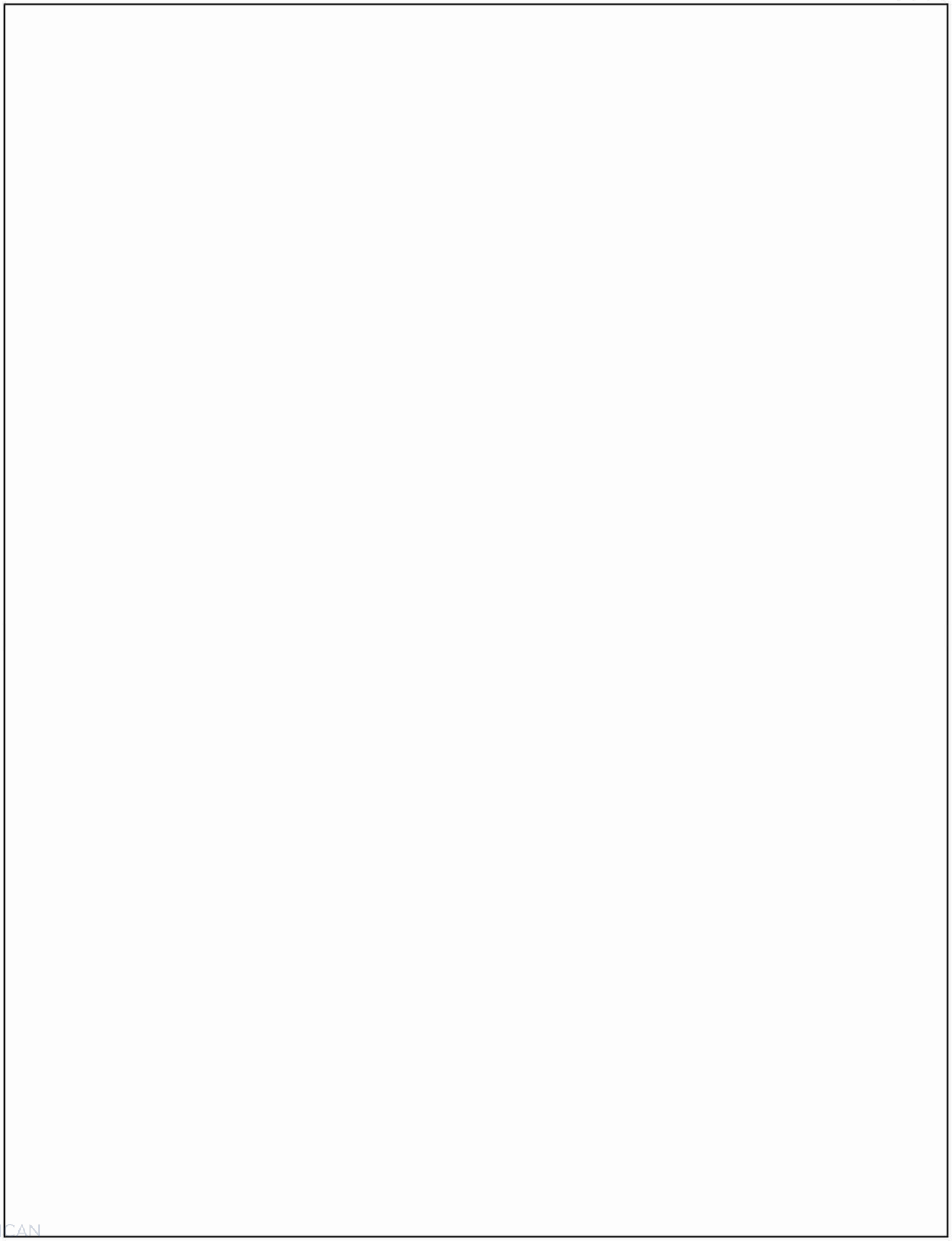
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AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

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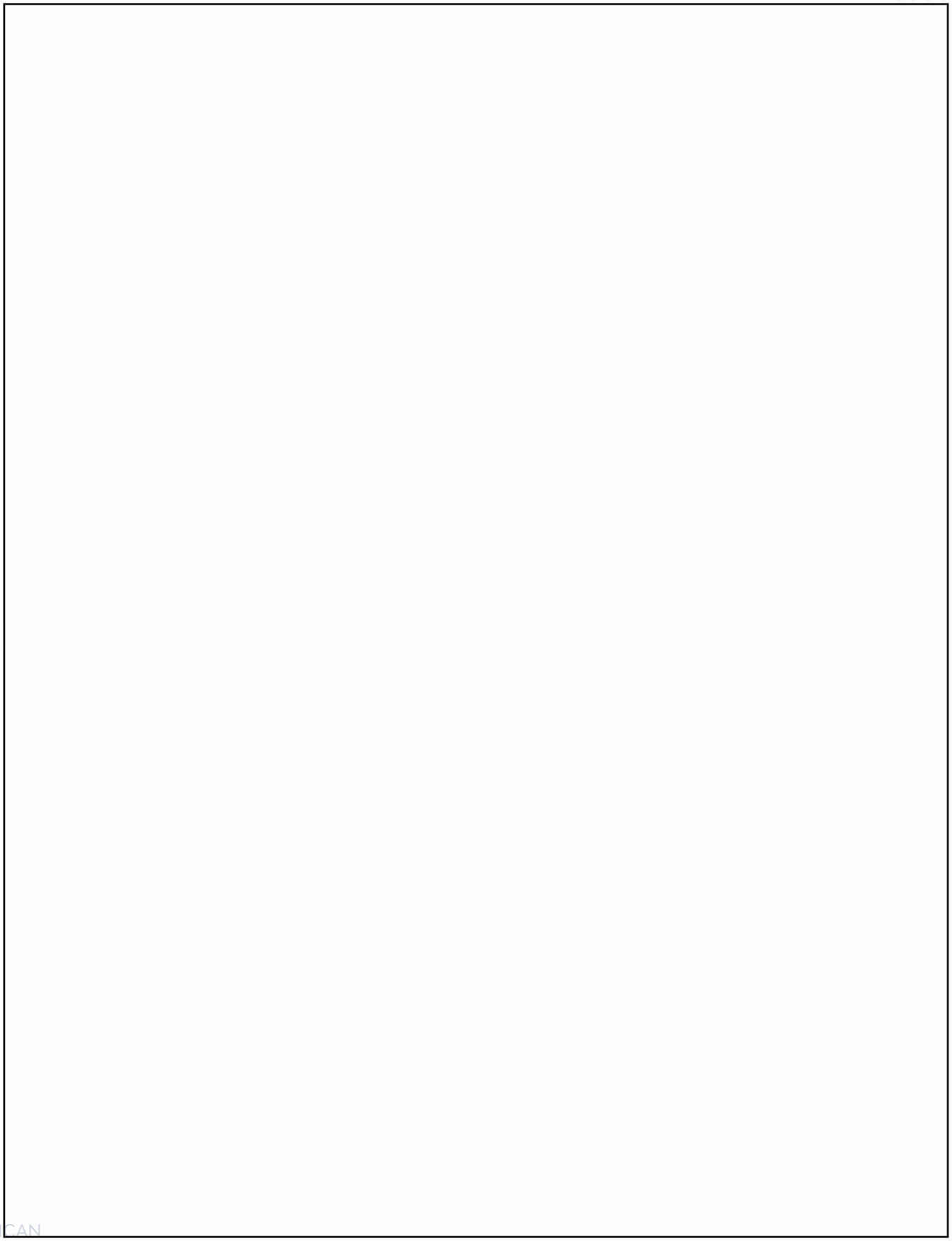


AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003196

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AMERICAN OVERSIGHT

FOR OFFICIAL USE ONLY – PRE-DECISIONAL – DELIBERATIVE DRAFT

DHS-20-2156-A-003197

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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DELIBERATIVE DRAFT

AMERICAN OVERSIGHT

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Deliberative - Pre

AMERICAN OVERSIGHT

DHS-20-2156-A-003202

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

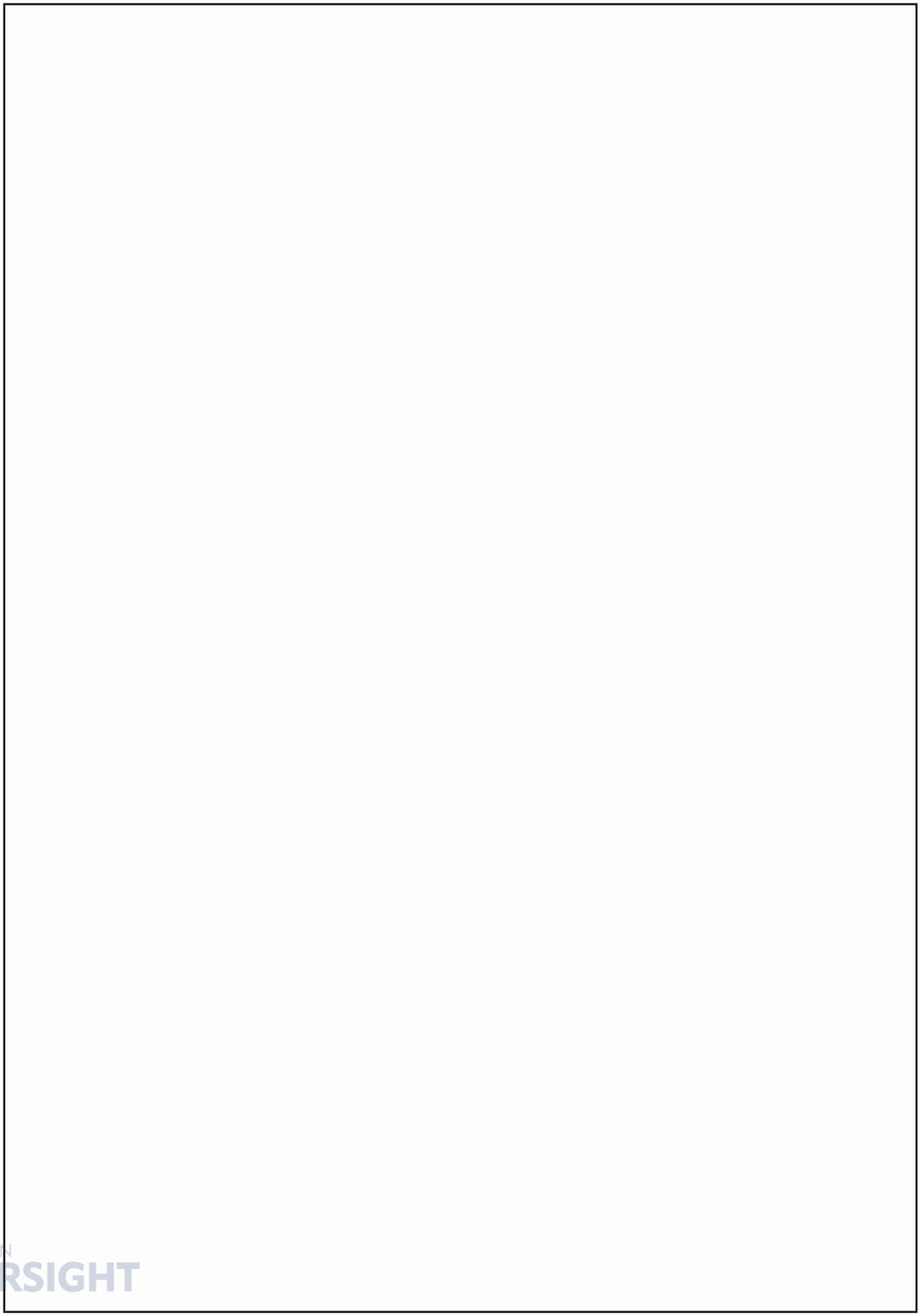
Purpose

U.S. Citizenship and Immigration Services (USCIS) is ~~issuing~~ consolidating existing policy guidance in the USCIS Policy Manual ~~to address how~~regarding officers~~' should apply~~application of discretion in adjudications.

Background

(b)(5)

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AMERICAN OVERSIGHT

From: Weinhold, Kasey D
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: July 1, 2020 4:42 PM (UTC-05:00)
Attached: Draft Response Warner - DHS Component Redline 6.29.20.docx, Draft Response Warner - USCIS Clean 7.1.20.docx, Cover Memo - Warner - 7.1.20.doc, Incoming - Warner 5.13.20.pdf

Hi Morgan,

(b)(6)

I have no edits. I have attached the incoming letter. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] **Mobile** [redacted] | **E-mail** [redacted]

From: Kilgore, Garry R [redacted]
Sent: Wednesday, July 01, 2020 2:05 PM
To: USCIS Directors Office Clearance-EXSO [redacted]; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 05/29/2020 - Sen. Mark Warner - Regarding H-2B visas - STARS 27324

Requestor Directorate/Office: DHS ESEC

Due Date: **Friday, May 29, 2020**

Request: COS signature on Cover Memo and to review the draft response to Sen. Mark Warner prior to going to the DHS ESEC for OGC/WHCO clearance.

Background: Sen. Mark Warner +4 wrote to Acting Secretary Wolf with concerns regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020, as the issue creates disruptions in our Nation's food supply chain. OGC has determined that this draft response will require WHCO clearances. DHS ESEC will coordinate with OGC to obtain their clearance prior to WHCO clearance. DHS ESEC has assigned Assistant Secretary OLA to sign the final response.

Clearance:

OP&S:
OCC:
EXA: [redacted]

Attachments:

1. Incoming – Warner 5.13.20
2. Draft Response – Warner – DHS Component Redline 6.29.20
3. Draft Response – Warner – USCIS Clean 7.1.20
4. Cover Memo – Warner – 7.1.20

AMERICAN OVERSIGHT

******Please reply to all on this email ******

(b)(6)

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

(b)(6)

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Kathy Nuebel Kovarik
Chief of Staff

SUBJECT: Request for Approval: Response to Sen. Mark Warner's May 13, 2020 Letter Regarding The Lack of H-2B Visas Allocated to The U.S. Seafood Industry in 2020 (WF-1196076).

Context: Sen. Mark Warner +4 wrote to Acting Secretary Wolf regarding the lack of H-2B visas allocated to the U.S. seafood industry in 2020, as the issue creates disruptions in our Nation's food supply chain.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by [redacted] Associate Counsel, Adjudication Law Division, USCIS Office of the Chief Counsel, and it has not been substantially changed since his review.

Clearance: The following Components have cleared the proposed response:

MGMT:
OLA:
PLCY:

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

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AMERICAN OVERSIGHT

The Honorable Mark R. Warner
United States Senate
Washington, DC 20510

(b)(5)

Dear Senator Warner:

Thank you for your May 13, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

In your letter, you express concern for businesses in Virginia's and Maryland's seafood industry, which are experiencing seasonal labor shortages due to a lack of H-2B visas. You ask that the Department of Homeland Security (DHS) "consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply," to include redistributing any unused statutory H-2B visas to businesses in the seafood industry. You also urge DHS to "work with the Departments of Labor, State, and Health and Human Services to ensure the necessary precautions to protect the health and safety of both H-2B workers and the communities in which they work and live."

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Thank you again for your letter and interest in this issue. The cosigners of your letter will ~~each~~ receive a separate, identical response. Please do not hesitate to contact us at (202) 447-5890.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

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AMERICAN OVERSIGHT

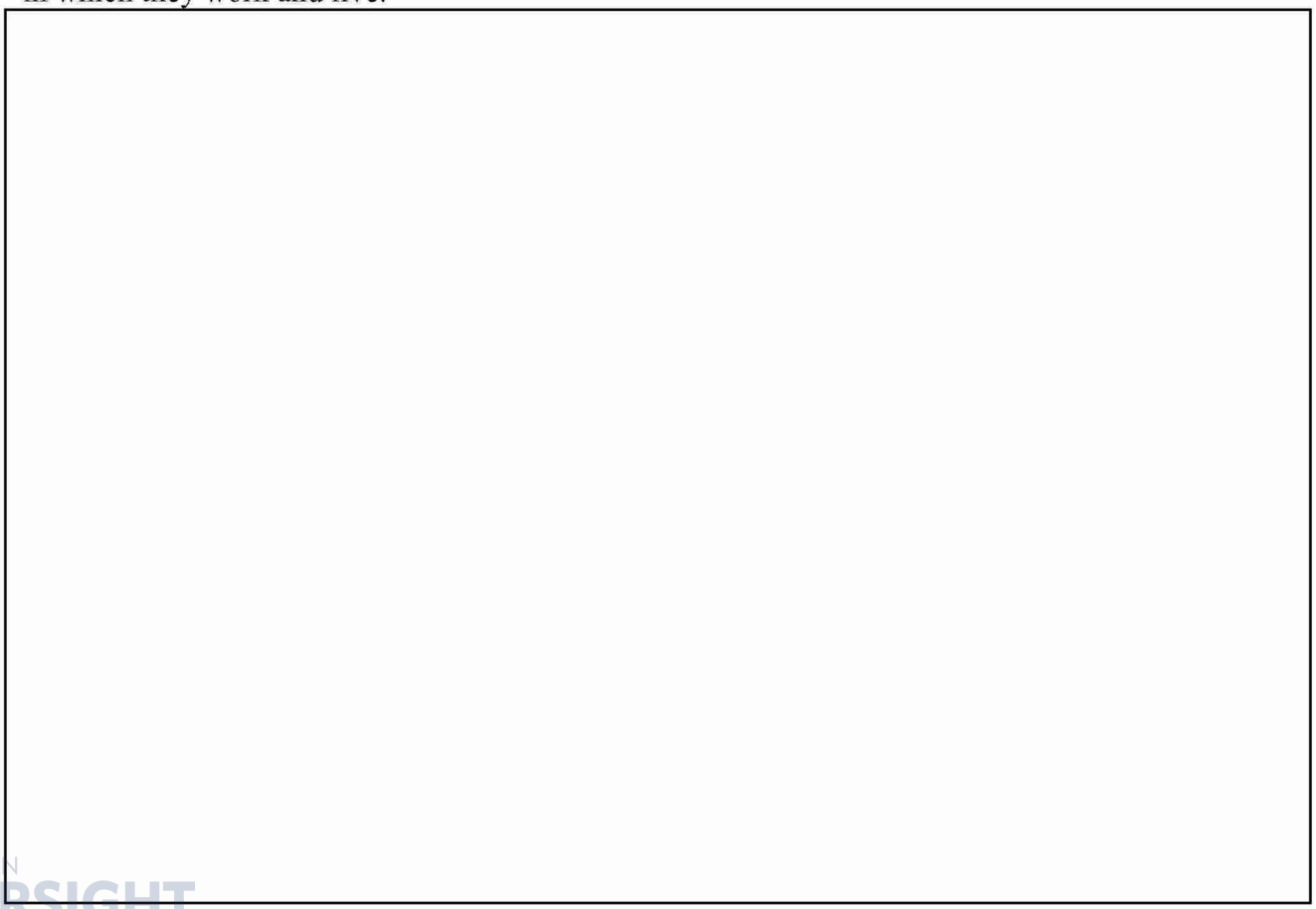
The Honorable Mark R. Warner
United States Senate
Washington, DC 20510

(b)(5)

Dear Senator Warner:

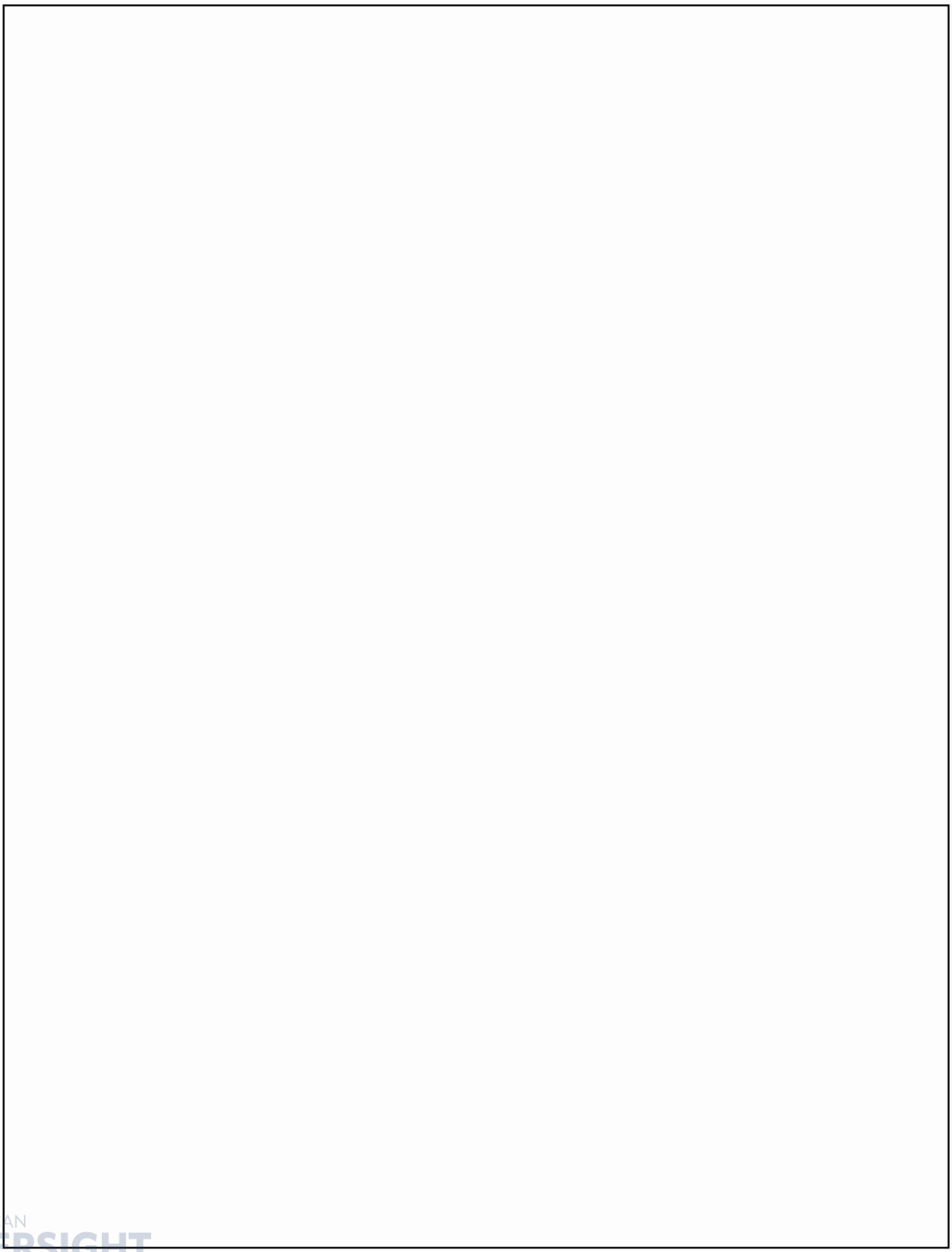
Thank you for your May 13, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

In your letter, you express concern for businesses in Virginia's and Maryland's seafood industry, which are experiencing seasonal labor shortages due to a lack of H-2B visas. You asked that the Department of Homeland Security (DHS) "consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply," to include redistributing any unused statutory H-2B visas to businesses in the seafood industry. You also urged DHS to "work with the Departments of Labor, State, and Health and Human Services to ensure the necessary precautions to protect the health and safety of both H-2B workers and the communities in which they work and live."



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AMERICAN OVERSIGHT

Thank you again for your letter and interest in this issue. The cosigners of your letter will receive a separate, identical response. Please do not hesitate to contact us at (202) 447-5890.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20510

May 13, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RECEIVED
By ESEC at 7:37 am, May 14, 2020

Dear Acting Secretary Wolf:

We write on behalf of the Virginia and Maryland seafood industry, which continues to struggle with seasonal labor shortages due to a lack of H-2B visas. In these unprecedented times, we write to ask that you consider all possible options to ensure seasonal seafood producers and processors have the necessary H-2B workers to carry out their operations while helping to maintain our country's food supply. These solutions could include, but are not limited to, redistributing any unused statutorily authorized H-2B visas to the seafood industry.

As with other small American businesses, the seafood processors and producers in our states face new economic uncertainties due to COVID-19. Despite declining demand brought on by the pandemic, we are encouraged to hear early reports from our states that the demand for seafood could begin to increase in the near future.

On March 5, 2020, after much urging from Congress, the Department of Homeland Security (DHS) announced its decision to release an additional 35,000 H-2B temporary nonagricultural worker visas. We anticipated that this move would benefit Virginia's and Maryland's seafood industry, communities largely made up of rural, family-owned operations.

However, on April 2, 2020, the Department announced via Twitter that the rule on the H-2B cap is "on hold pending review due to present economic circumstances. No additional H2B visas will be released until further notice." Due to the delayed rule and subsequent lack of visas, our states' seafood operations, which create numerous year-round American jobs, are in jeopardy yet again. Without the necessary H-2B workers, these seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely.

Like H-2A workers who support agriculture in the United States, the Department has deemed seafood processors "essential, critical infrastructure." Any disruption to the food supply chain will harm American consumers, the seafood industry, and the U.S. economy. Precautionary measures are crucial to ensure we have a stable food supply flow. Withholding H-2B visas for seasonal seafood processors will only exacerbate this matter.

We urge you to expeditiously reallocate any unused H-2B visas to the seafood industry, deemed essential to the country's critical infrastructure. We further urge you to work with the Departments of Labor, State, and Health and Human Services to ensure the necessary

AMERICAN OVERSIGHT

precautions to protect the health and safety of both H-2B workers and the communities in which they work and live. It is vital that the agencies with responsibility for administering the H-2B program work in concert with the Centers for Disease Control and Prevention (CDC), as well as state and local officials to ensure that the necessary safeguards, including the ability to effectively social distance, are in place and clearly communicated with workers in their native language. Both employers and workers should be given the tools they need to reduce community spread. It is also important that workers are made aware of the health care systems available and given access to care.

We thank you in advance for your prompt attention to this matter, as the viability of many businesses in our states depends on the H-2B program. We look forward to an ongoing dialogue with you and the Department about possible regulatory improvements to the H-2B program that can increase processing efficiency and predictability and maintain worker safety during this pandemic.

Sincerely,

/s/ Mark R. Warner
Mark R. Warner
United States Senator

/s/ Robert J. Wittman
Robert J. Wittman
Member of Congress

/s/ Tim Kaine
Tim Kaine
United States Senator

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Benjamin L. Cardin
Benjamin L. Cardin
United States Senator

AMERICAN OVERSIGHT

From: Piateski, Jennifer E
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
To: Edlow, Joseph B
Sent: July 1, 2020 2:52 PM (UTC-05:00)
Attached: PM01E-Discretion_PolicyAlert_0701 2020 CLEAN.docx, PM01E-Discretion_PolicyAlert_ConsolidatedEdits_OCC_OPS Redlines.docx

(b)(6)

I guess this is the latest version.

From: Kilgore, Garry R
Sent: Wednesday, July 1, 2020 3:51 PM
To: Drake, Johnetta; USCIS Directors Office Clearance-EXSO
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432

Requestor: OP&S

Due date: COB, July 2

Request: OP&S is resubmitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office approval. The attached address DO feedback that was provided directly to OP&S.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(Office)
STARS Issues

From: Drake, Johnetta
Sent: Monday, June 29, 2020 12:42 PM
To: USCIS Directors Office Clearance-EXSO
Cc: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 7/2/20 PM01E & PM10A Discretion Initial Parts STARS#27432
Importance: High

Good afternoon,

Requestor: OP&S

Due date: COB, July 2

AMERICAN OVERSIGHT

Request: OP&S is submitting the ***PM01E & PM10A Discretion Initial Parts*** package for Director's office

(b)(6)

approval.

Background: For many immigration benefits, including certain applications for green cards and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. For these benefits, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all applicable eligibility requirements.

Clearances:
AAO:
FDNS
FOD:
OCC:
OP&S
RAIO
SCOPS
EXA: FYI only

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Attachments:
0-PM01E-PM10A-Discretion_CoverPage
1-PM01E-PM10A-Discretion_PolicyAlert
2-PM01E-Discretion_UPDATE
2-PM01E-Discretion_CorrespondingEdits
2-PM10A_Employment Authorization Discretionary Policy PART
3-PM01E-PM10A-Discretion_TacticalRolloutPlan

*****Please respond to all on this email*****

Thanks,

Johnetta Drake
USCIS Exec Sec
(Cell)
(Desk)

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding officers' application of discretion in adjudications.

Background

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Deliberative - Pre-Decis

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

Date

PA-20XX-XX

Policy Alert DRAFT

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SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is ~~issuing~~ consolidating existing policy guidance in the USCIS Policy Manual ~~to address how~~regarding officers~~' should apply~~application of discretion in adjudications.

Background

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: King, Alexander R
Subject: FW: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
To: Piateski, Jennifer E
Sent: July 1, 2020 10:46 AM (UTC-05:00)
Attached: 6.22.2020 Proclamation Questions.OCCresponses-OPS edit.docx

FYI on OCC's responses to SCOPS questions on the proclamation.

From: Fortes, Michael J [redacted] (b)(6)
Sent: Wednesday, July 1, 2020 11:38 AM
To: King, Alexander R [redacted]
Cc: Doumani, Stephanie M [redacted]>
Subject: FW: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Alex,

Responses from OCC and OPS are attached. We are reviewing.

Thank you,

-Mike

Mike Fortes
USCIS Service Center Operations
EPIC Branch Chief
Cell: [redacted]

From: Nimick, Charles L (Locky) [redacted]
Sent: Wednesday, July 1, 2020 11:19 AM
To: Choi, Heesun S (Sunny) [redacted]; Fortes, Michael J [redacted]
Cc: Collins, Gregory A [redacted]; Nicklaw, Nicole C [redacted]; Kane, Daniel J [redacted]; Doumani, Stephanie M [redacted]; Salem, Claudia S [redacted]; Cox, Robert H [redacted]; Bump, Micah N [redacted] (b)(6)
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

On leave, so apologies for the delayed reply. We had one [redacted] (b)(5)

Thanks, Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)
[redacted]
Office:
Telewo [redacted] (b)(6)

AMERICAN OVERSIGHT

From: Choi, Heesun S (Sunny) <[redacted]>
Sent: Thursday, June 25, 2020 4:38 PM
To: Fortes, Michael J [redacted]; Nimick, Charles L (Locky) [redacted]
Cc: Collins, Gregory A [redacted]; Nicklaw, Nicole C [redacted]; Kane, Daniel J [redacted]; Doumani, Stephanie M [redacted]; Salem, Claudia S [redacted]; Cox, Robert H [redacted]; Bump, Micah N [redacted]
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market" (b)(6)

Hi Mike and Locky – attached please find OCC's suggested responses. Let us know if and when a meeting will be scheduled to discuss these responses.

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS|USCIS|Office of the Chief Counsel
[redacted] *(Direct)*
(Cell)
(Fax)
[redacted]

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From: Fortes, Michael J [redacted]
Sent: Wednesday, June 24, 2020 10:20 AM
To: Choi, Heesun S (Sunny) <[redacted]>; Nimick, Charles L (Locky) [redacted]
Cc: Collins, Gregory A <[redacted]>; Nicklaw, Nicole C [redacted]; Kane, Daniel J [redacted]; Doumani, Stephanie M <[redacted]>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market" (b)(6)

Hello OPS and OCC,

Attached is a list of questions for OPS and OCC consideration, which are related to the recent presidential proclamation. Many of these are key issues for determining how this should be implemented across all the centers. If you can please consult with your teams, we'd appreciate it. We'll stay tuned for written response, or perhaps a meeting might be required for additional consultation.

Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief

AMERICAN OVERSIGHT

Cell: [redacted] (b)(6)

From: Choi, Heesun S (Sunny) <[redacted]
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J [redacted]; Nimick, Charles L (Locky) [redacted]
Cc: Collins, Gregory A [redacted]; Nicklaw, Nicole C [redacted]
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Sounds good – we'll take a look.

Sunny

From: Fortes, Michael J [redacted]
Sent: Tuesday, June 23, 2020 11:26 AM
To: Nimick, Charles L (Locky) [redacted]; Choi, Heesun S (Sunny) [redacted]
Cc: Collins, Gregory A [redacted]; Nicklaw, Nicole C [redacted]
Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello Locky and Sunny,

The SCOPS employment branches are collecting both policy and legal questions for your consideration, from both HQ SCOPS and the Service Centers, related to the June 22, 2020 executive order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market." We will forward these questions to you once they are consolidated.

Thank you for your help with this.

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [redacted]

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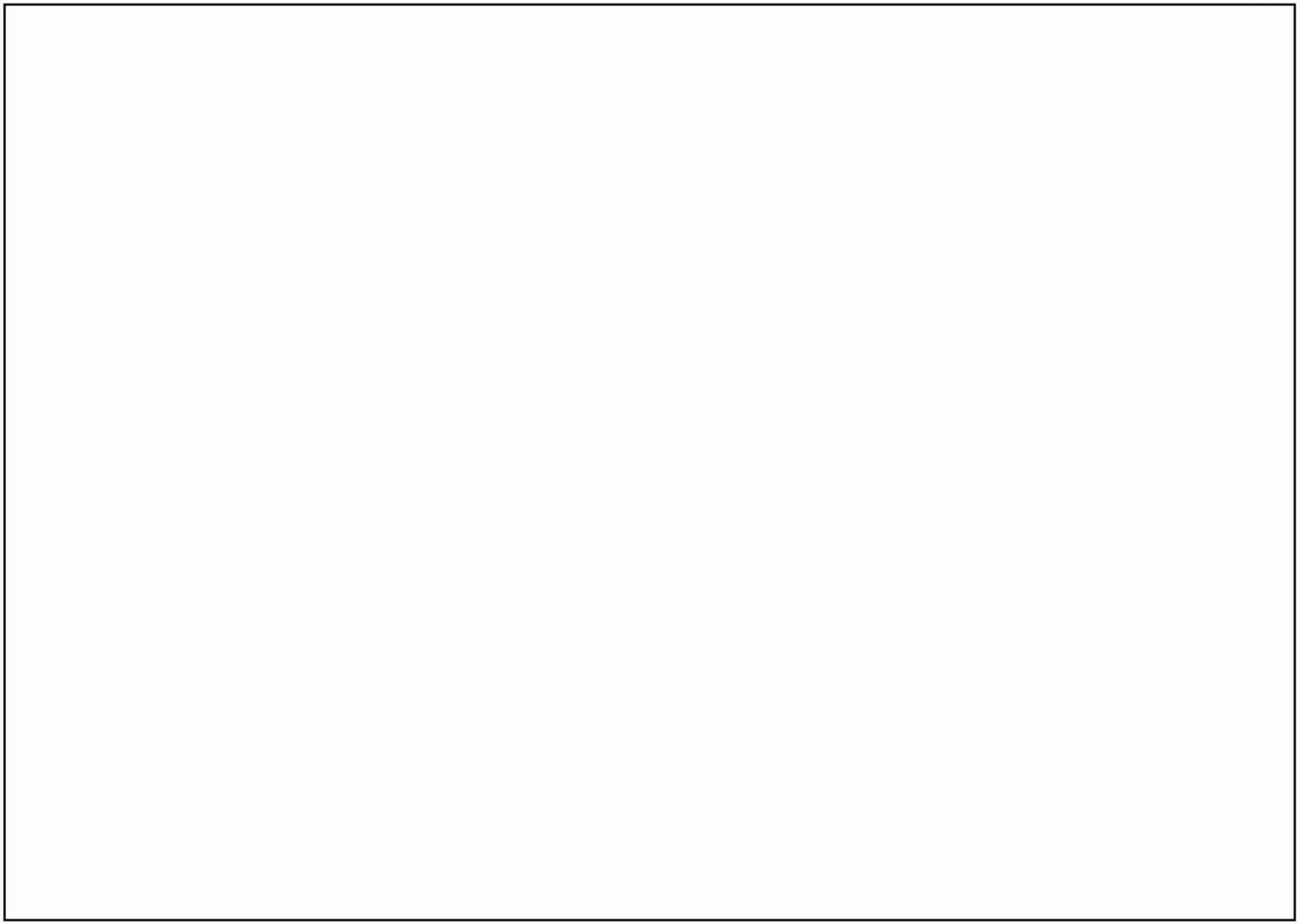
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Consolidated Questions re: June 22, 2020 Presidential Proclamation

Questions:	Classification(s):	SCOPS thoughts:	OCC/Policy Response:

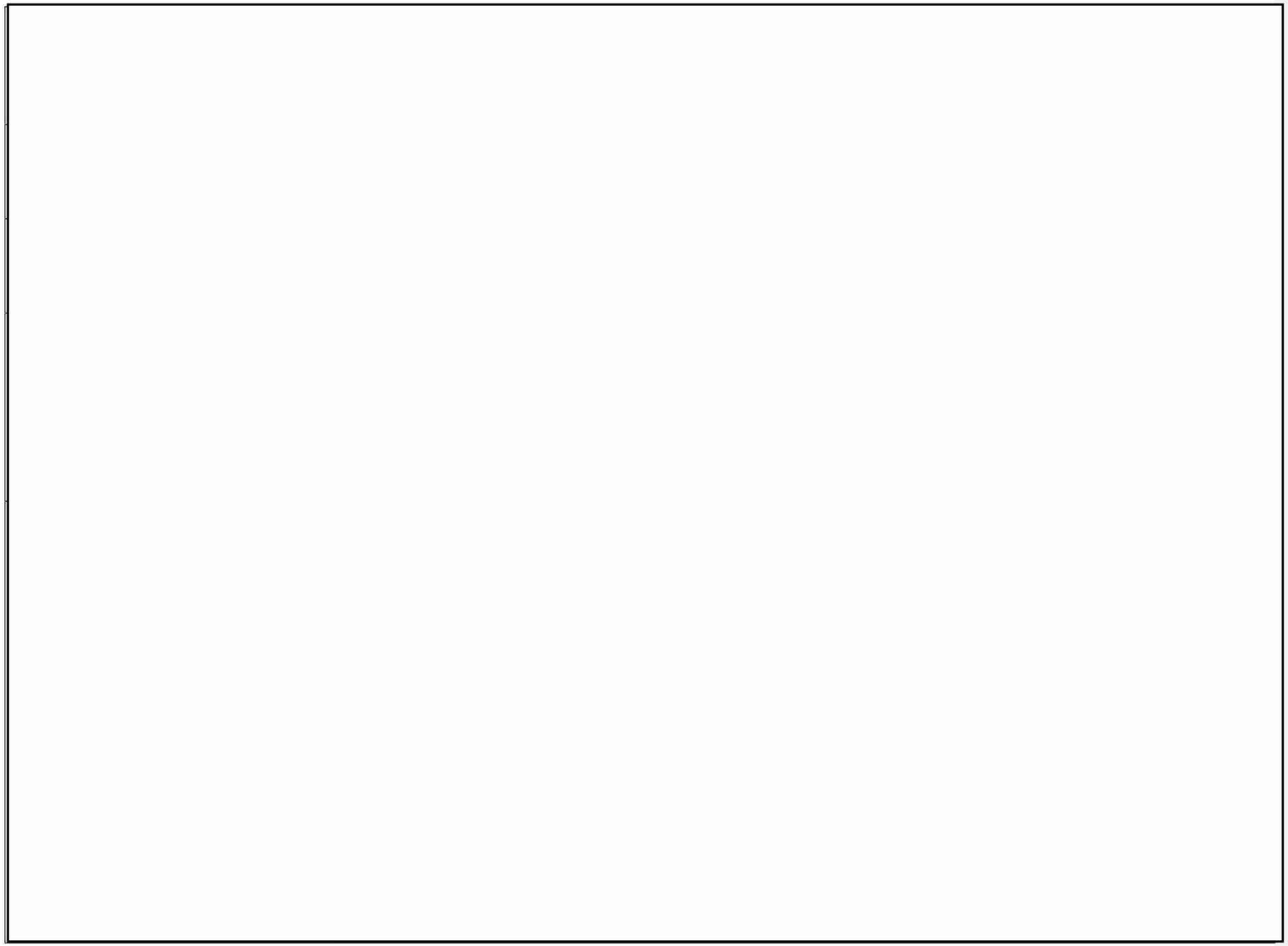
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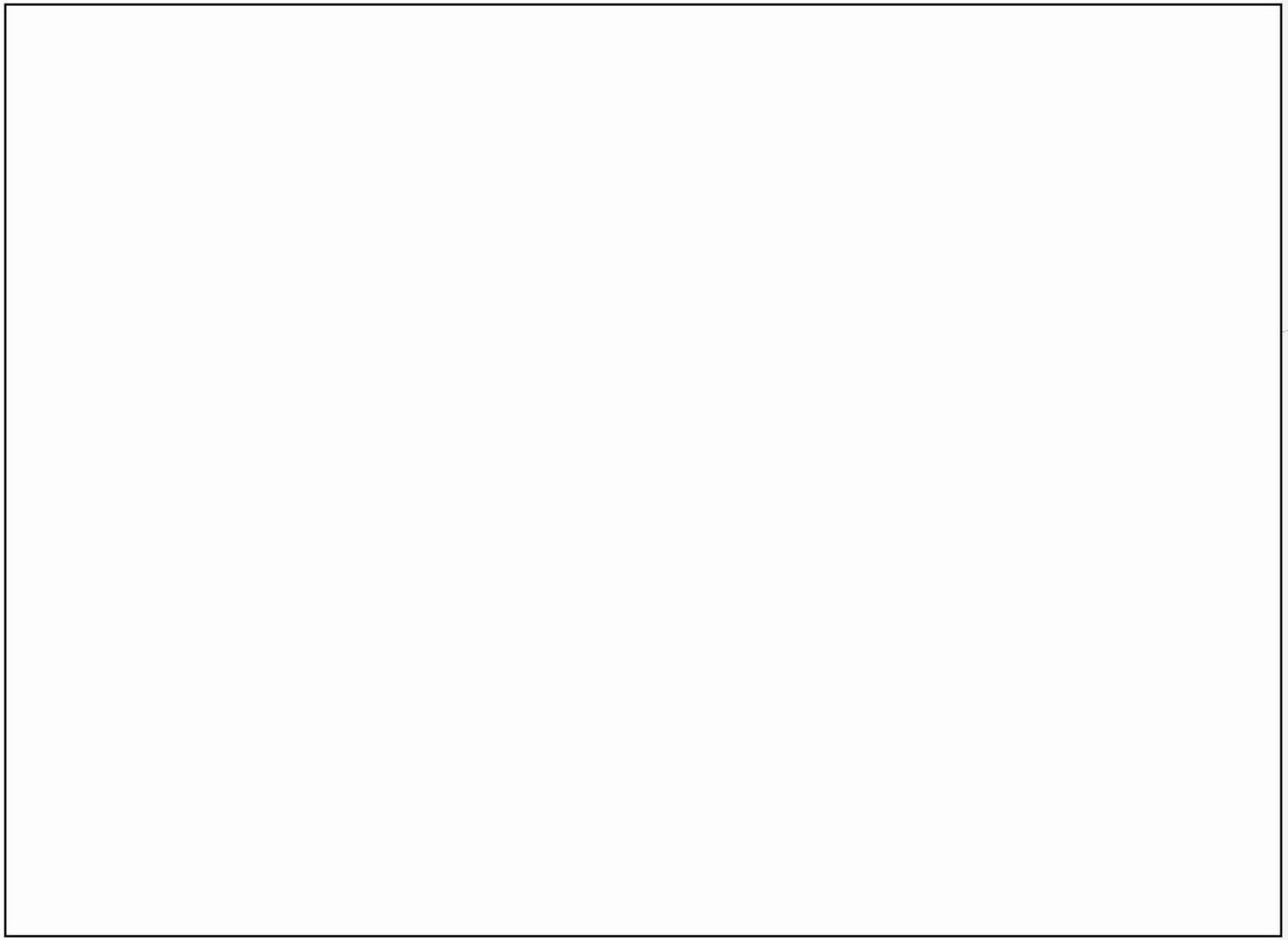
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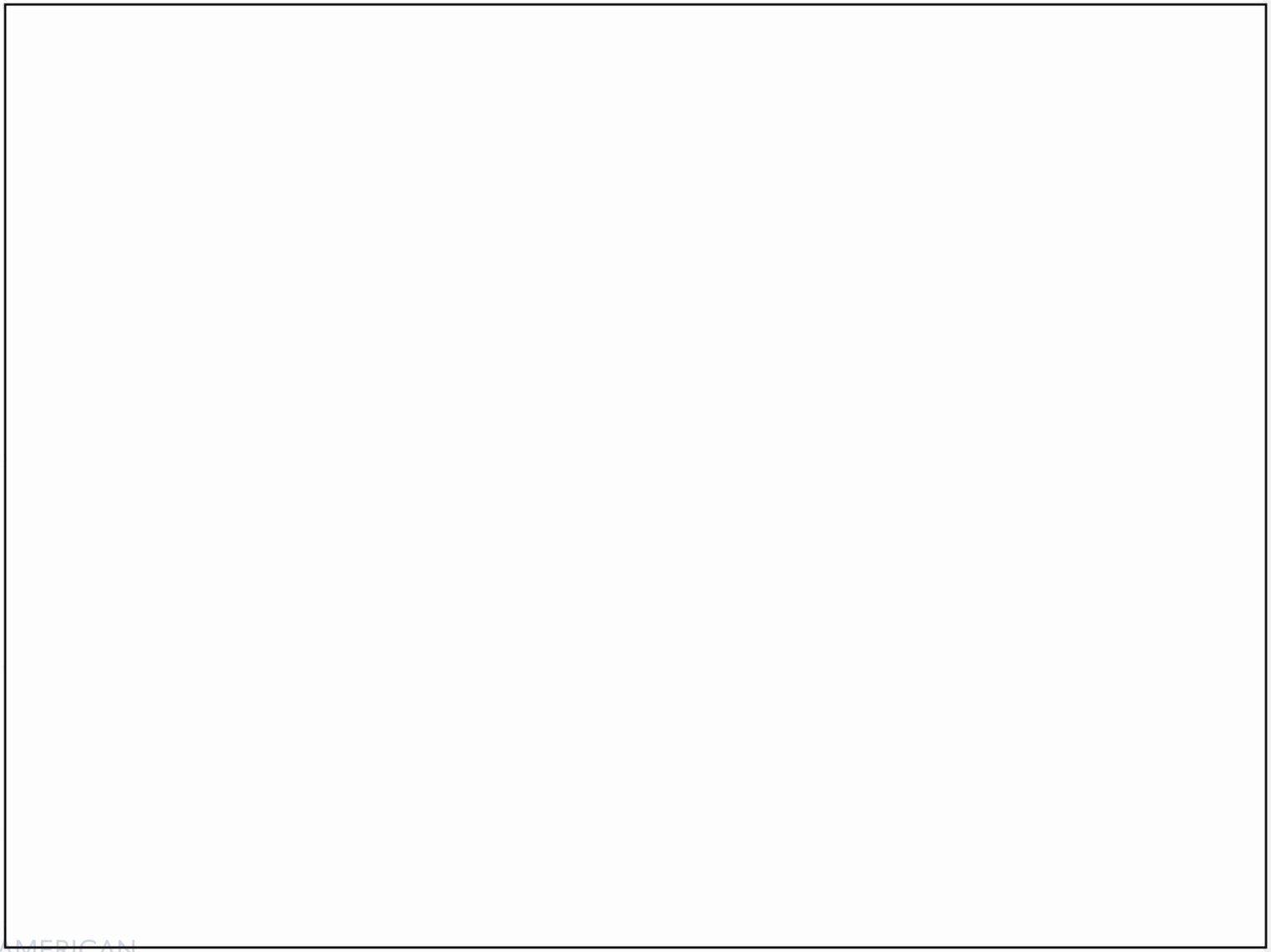
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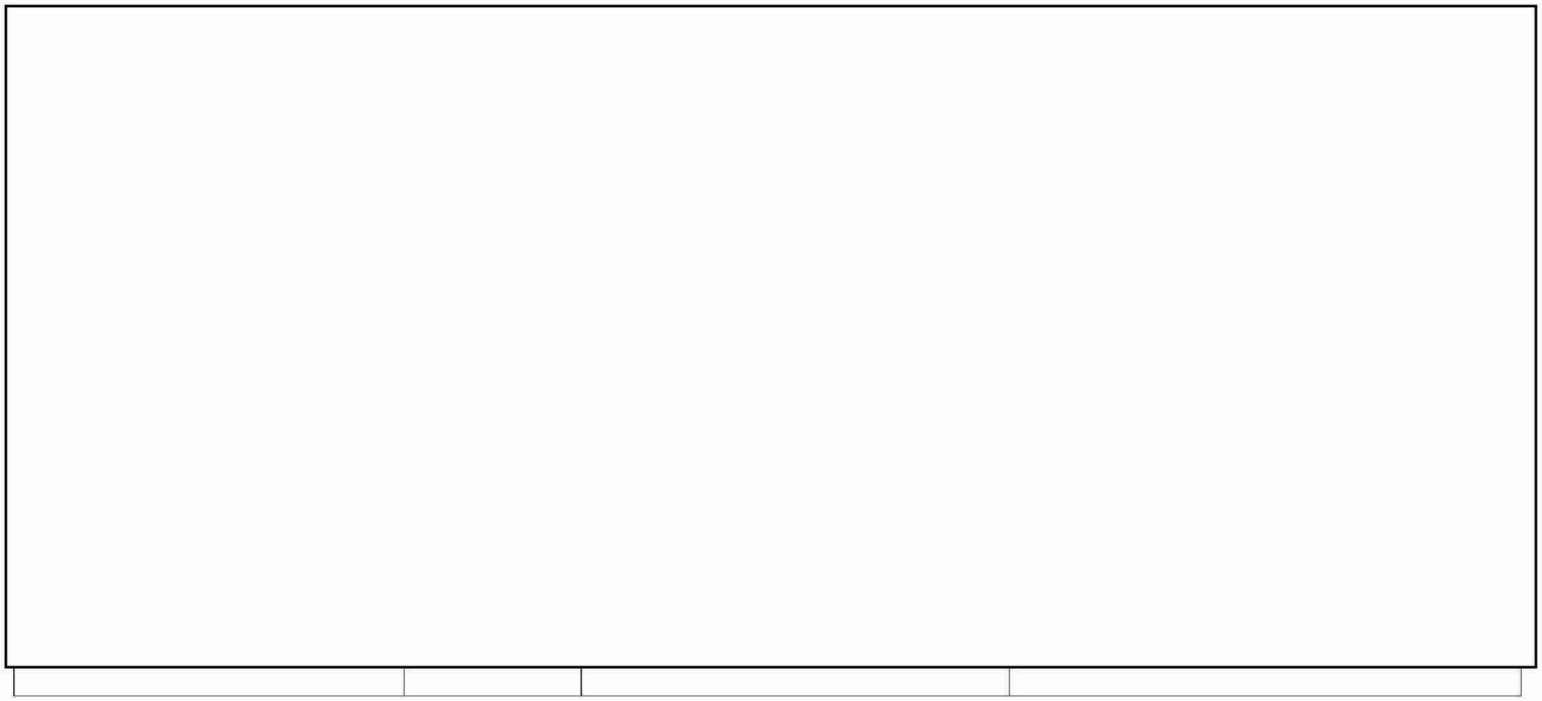
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331
To: Nuebel Kovarik, Kathy
Sent: June 30, 2020 7:03 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx, I129-012-FRM-TOC-H1BStrengtheningIFR-FOReview-06302020.docx, I129-012-INS-TOC-H1BStrengtheningIFR-FOReview-06302020.docx

Can we review concurrently? (I invited Jenny to review too.)

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From: Drake, Johnetta [redacted]>
Sent: Tuesday, June 30, 2020 5:24 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good afternoon,

Requestor Directorate/Office: OP&S [redacted]

Due Date: 6:00PM Tuesday, July 7, 2020

Request: OP&S requests the Front Office review and clear the attached H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes.

Background: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Important note: The PODs review is occurring in parallel and will conclude on 7/6. Per OP&S, [redacted] **discussed and agreed to this process.**

Attachments:
H-1B Rule
1129-012-FRM-TOC
1129-012-INS-TOC

*******Please reply to all on this email ******

AMERICAN OVERSIGHT

Thanks, (b)(6)

Johnetta Drake
USCIS Exec Sec
[redacted] *(Cell)*
(Desk)

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AMERICAN OVERSIGHT

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DEPARTMENT OF HOMELAND SECURITY

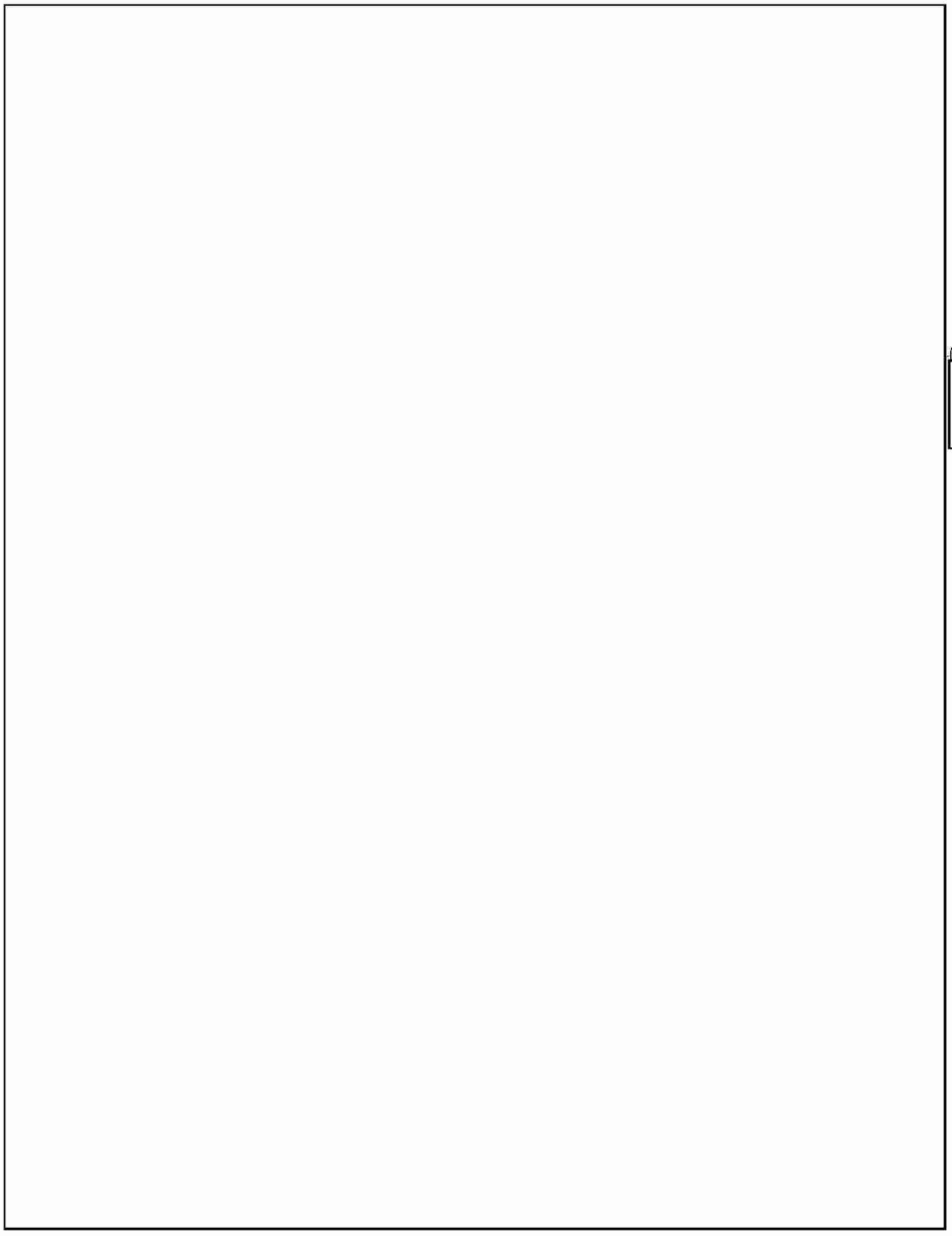
8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

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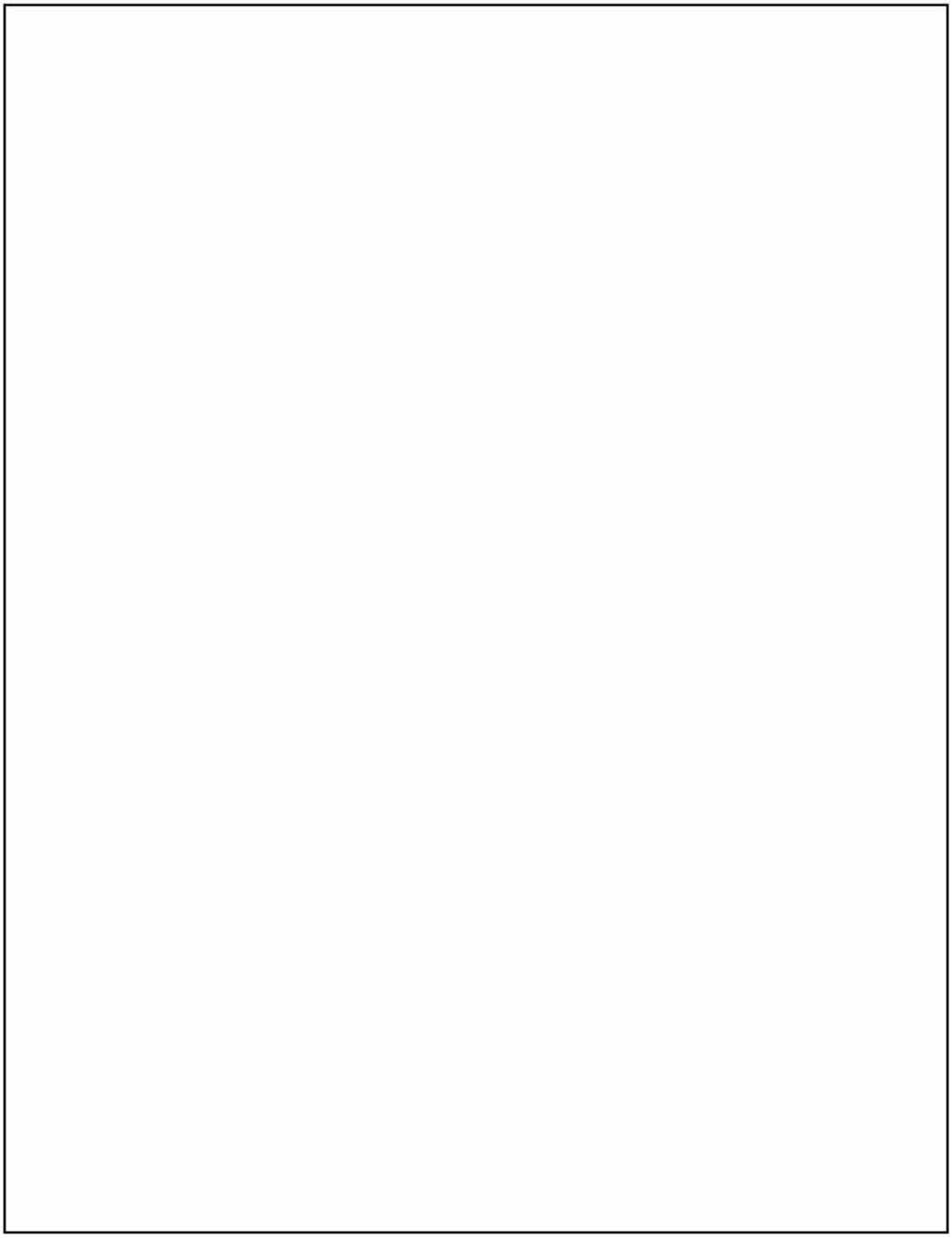


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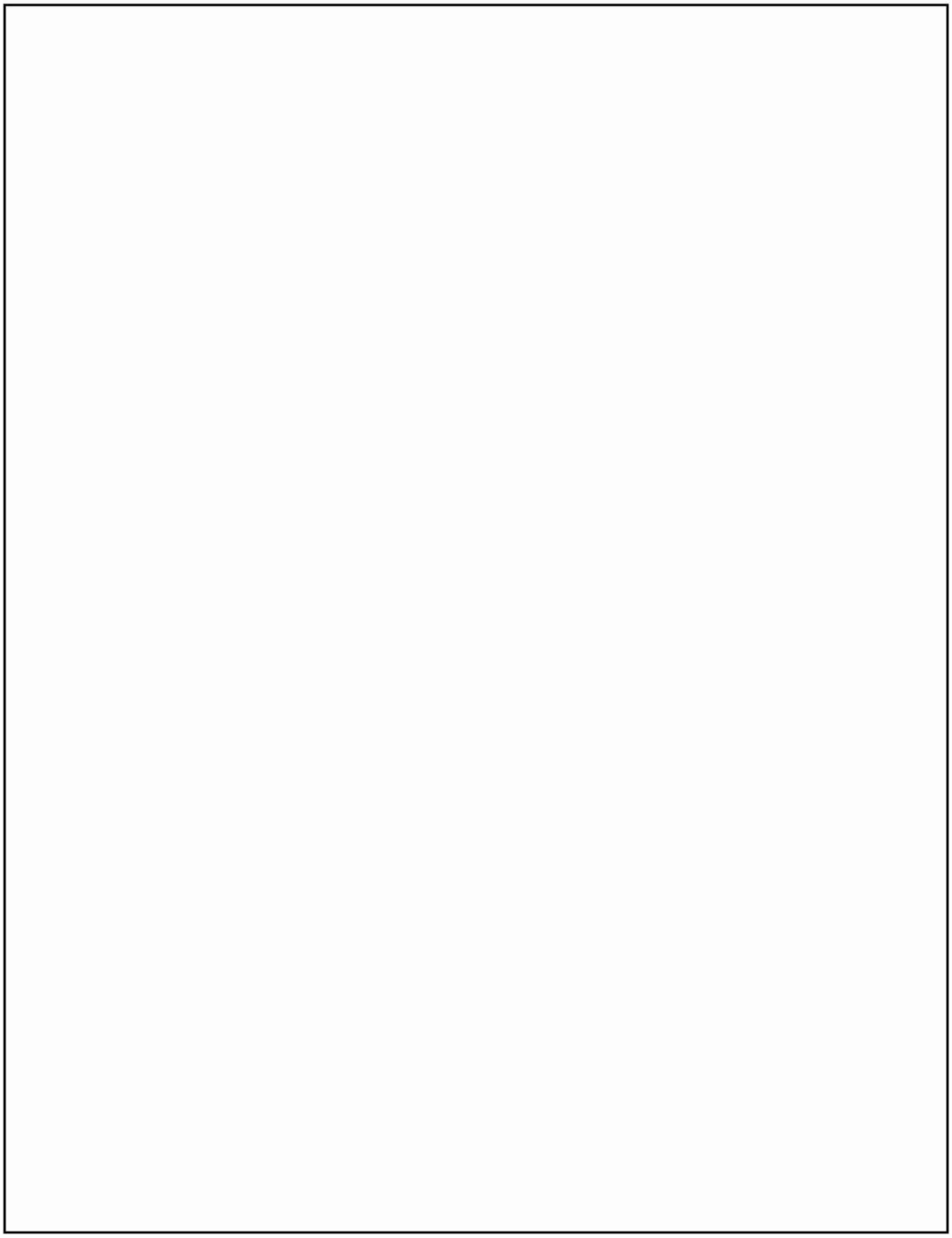
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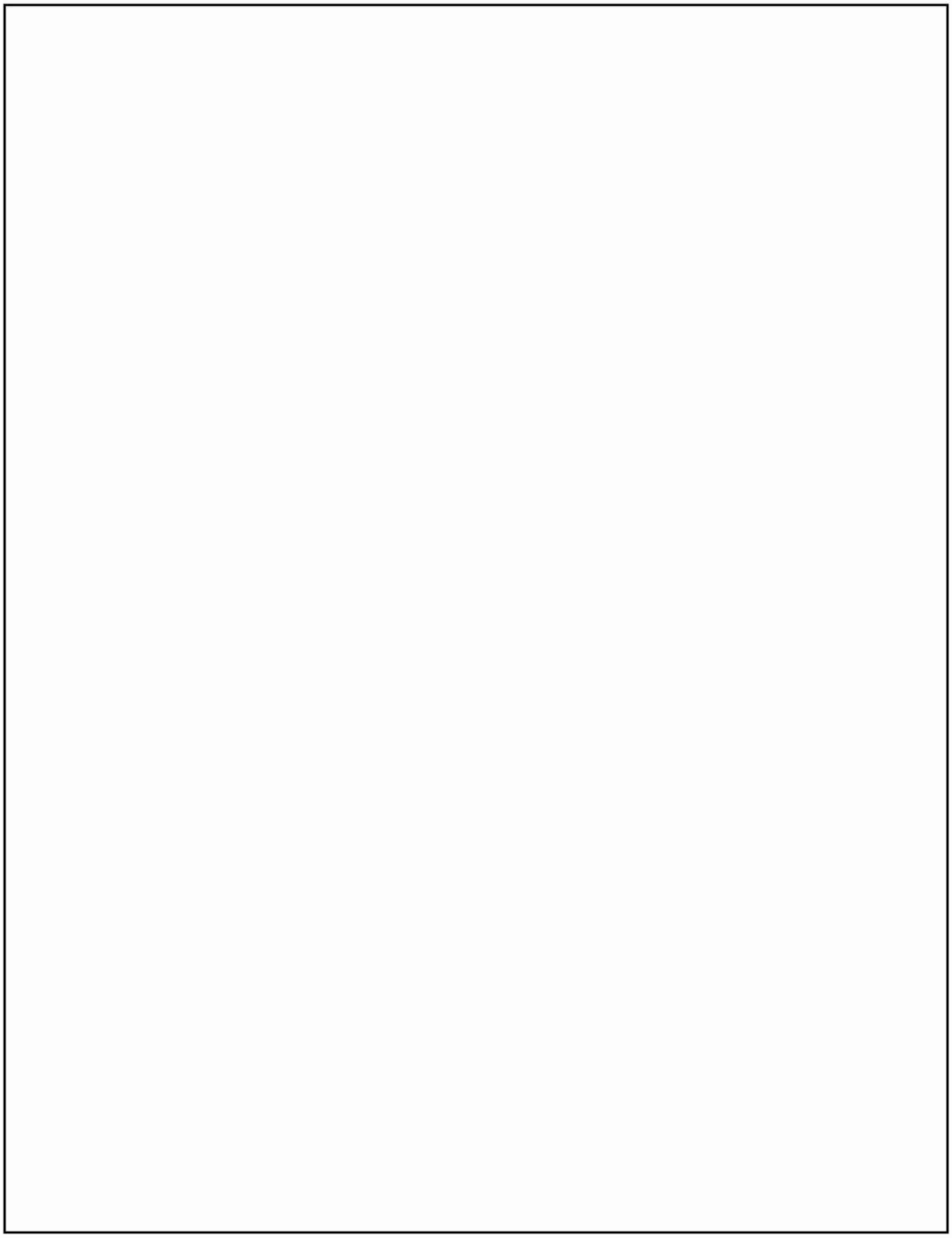
AMERICAN OVERSIGHT

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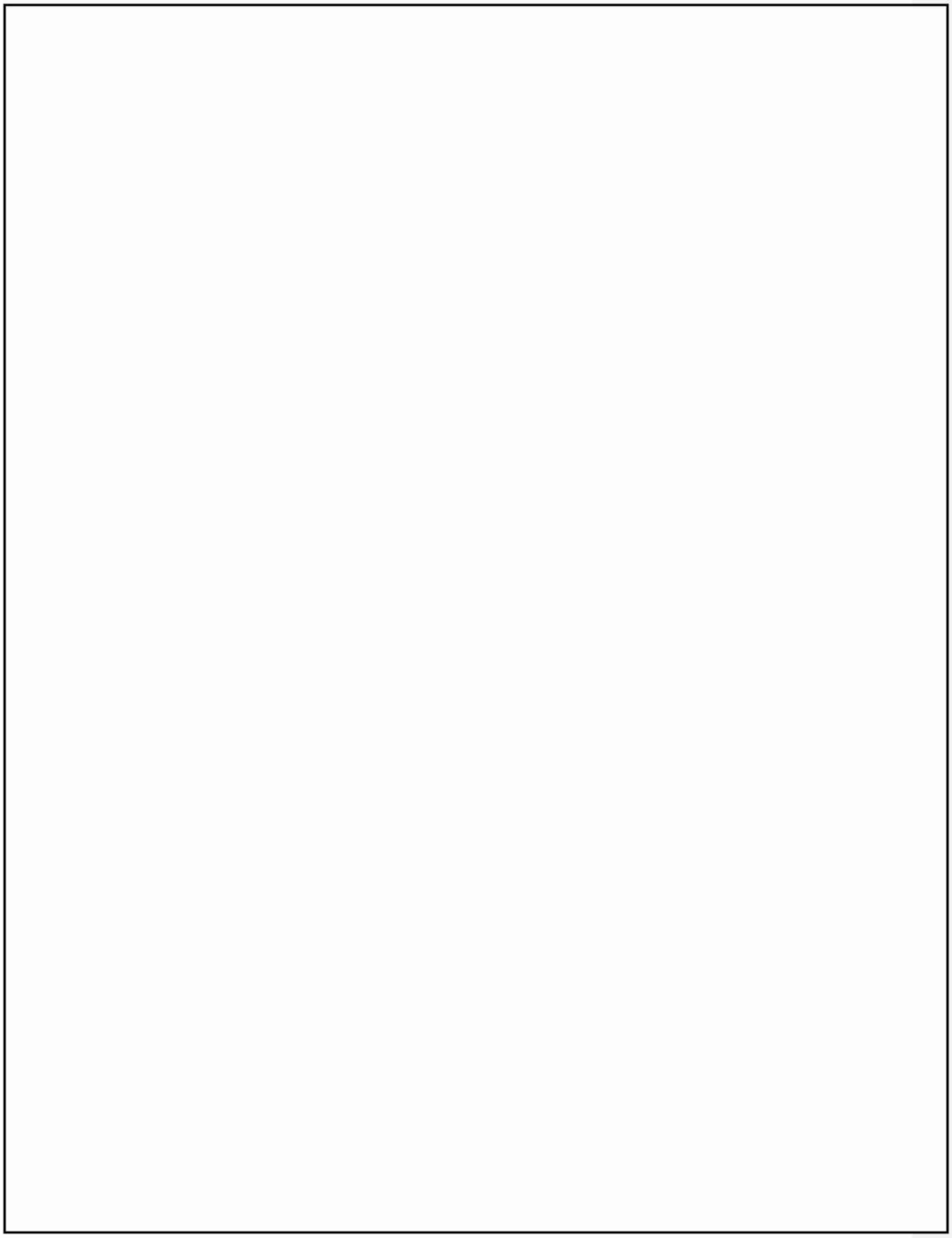
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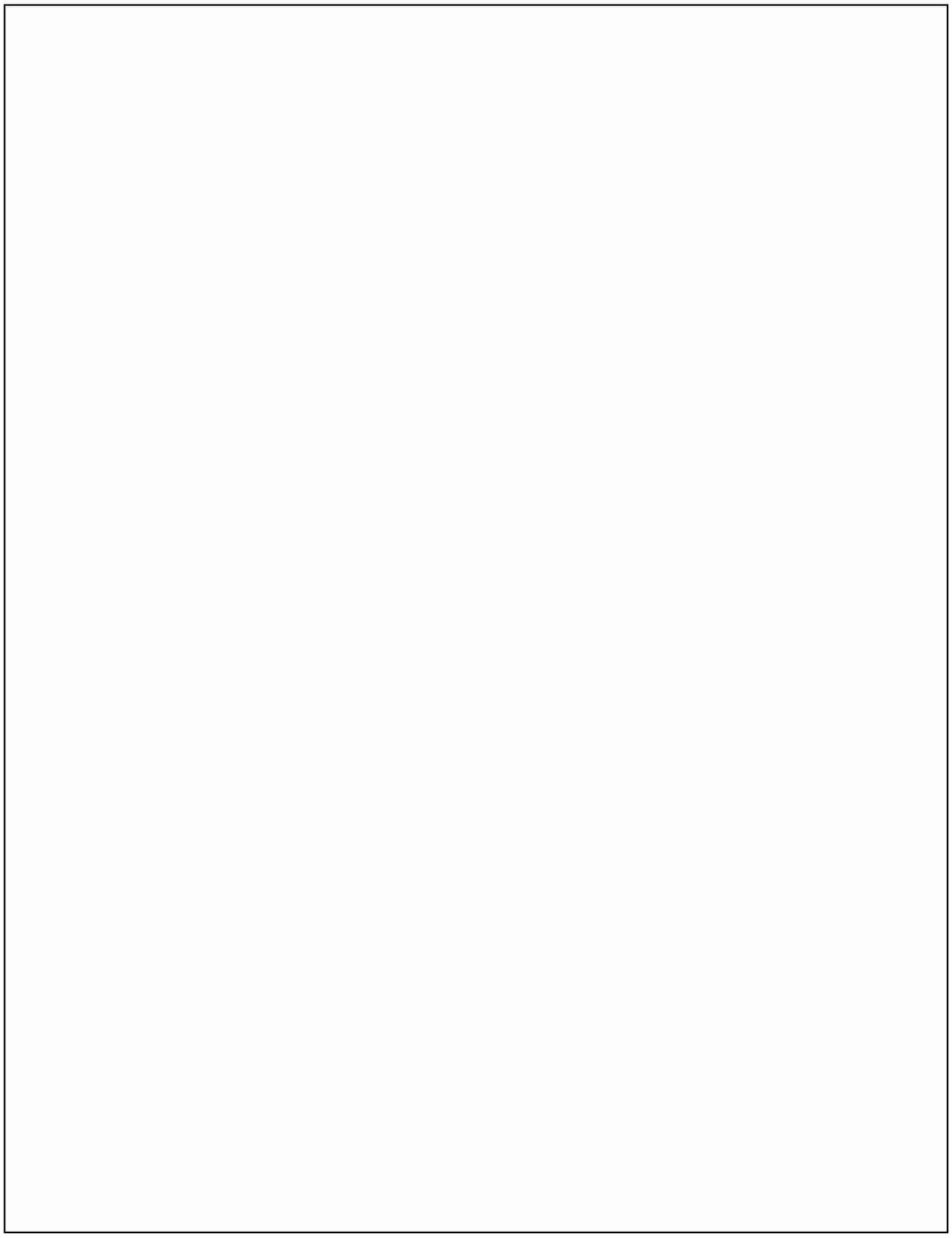
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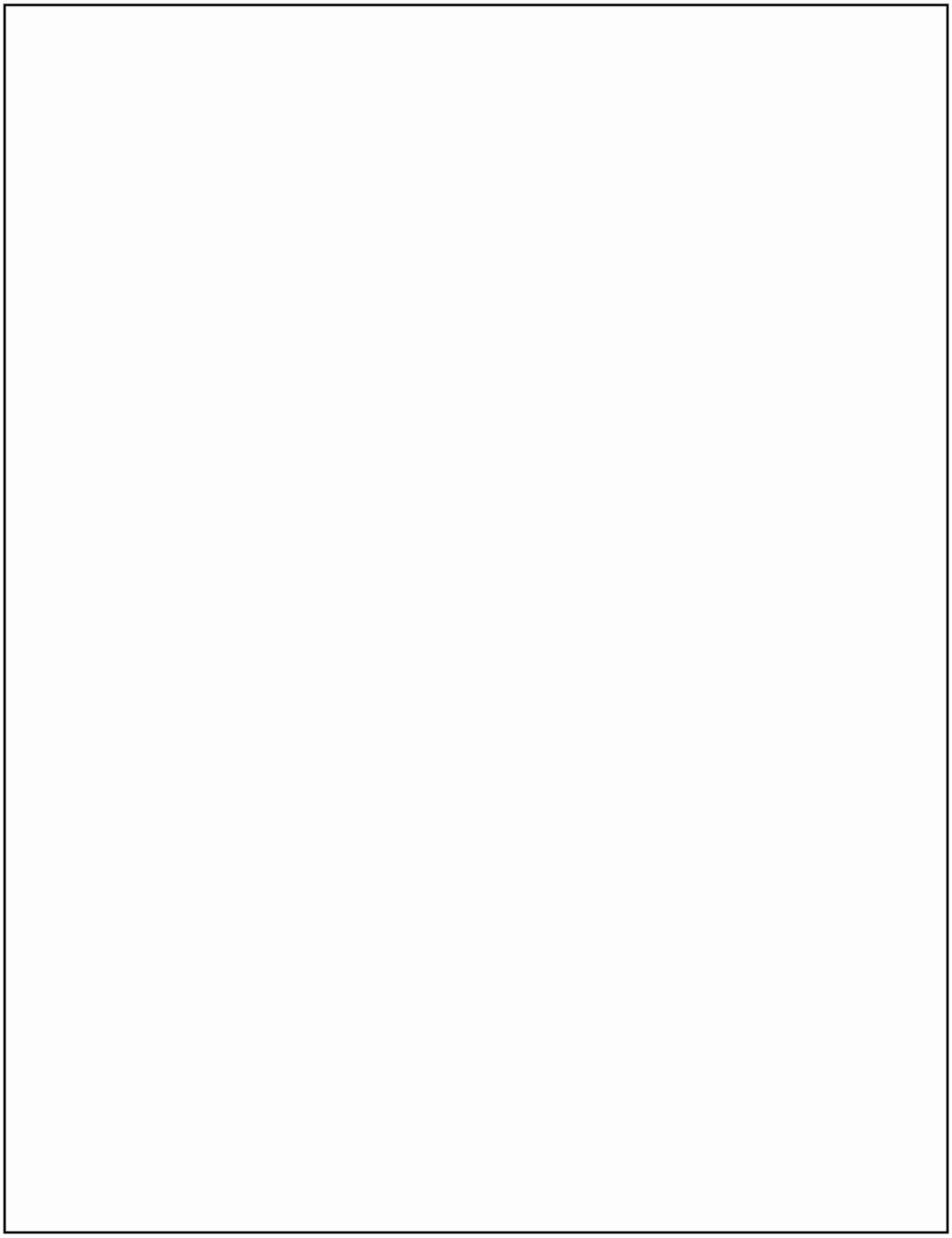
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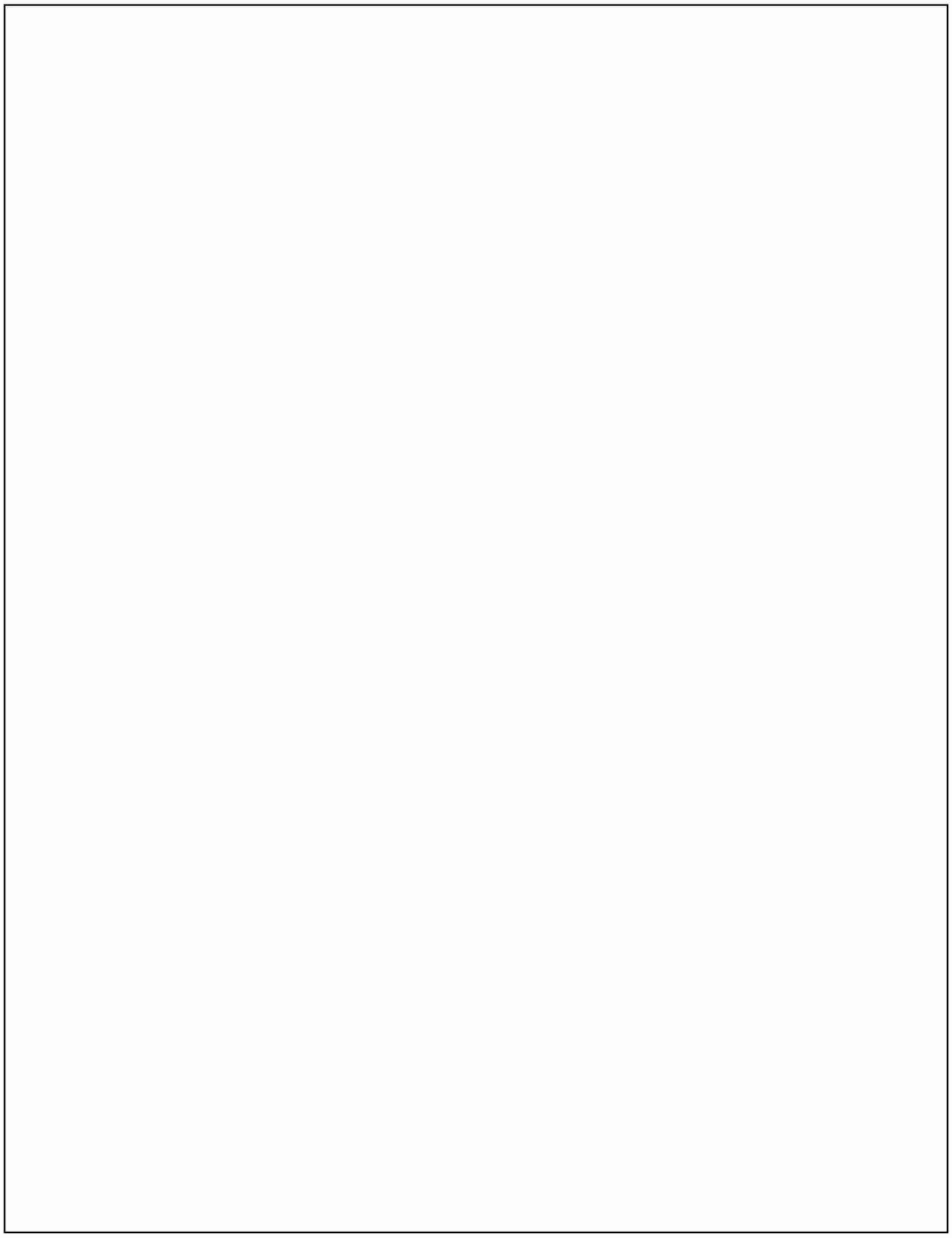
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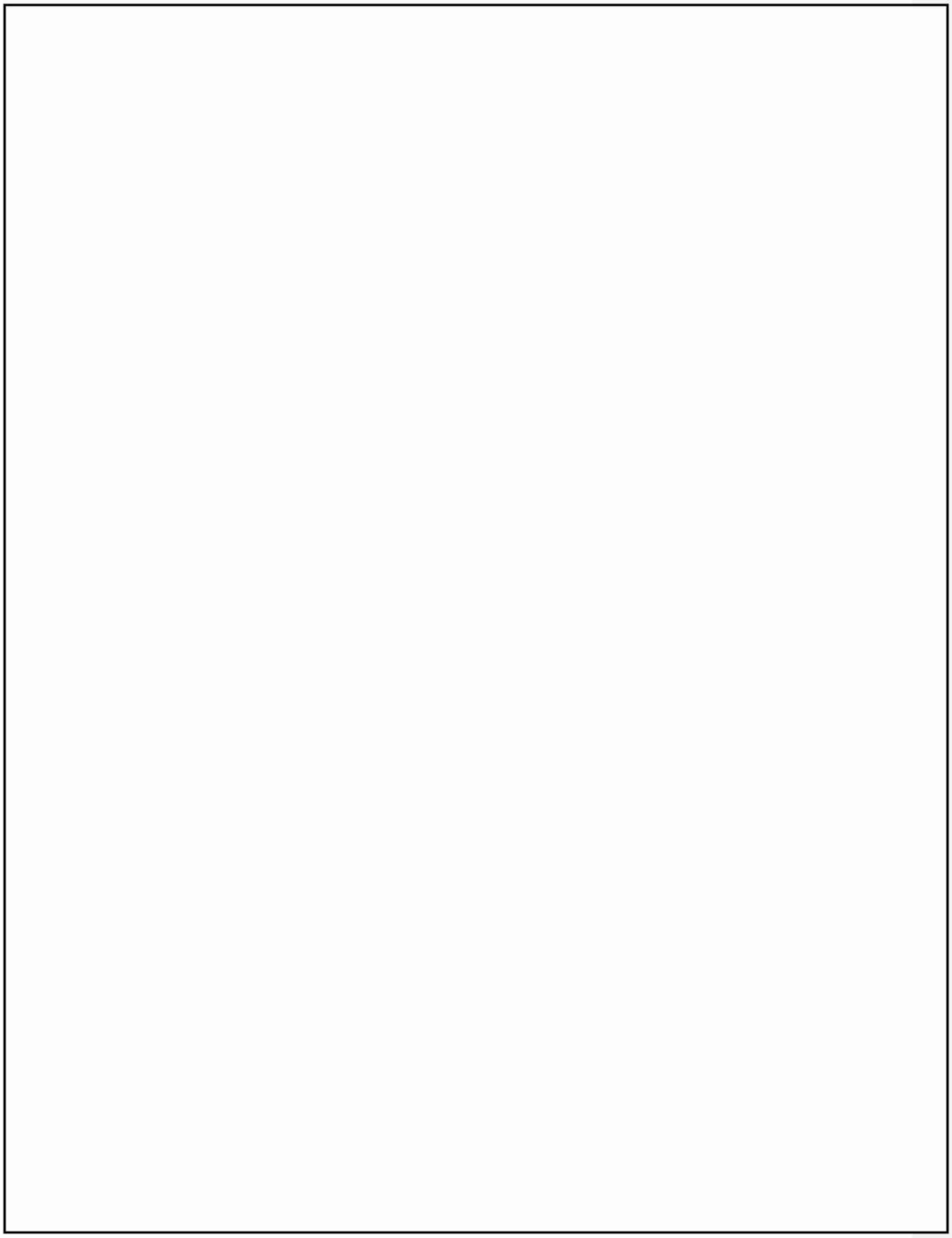
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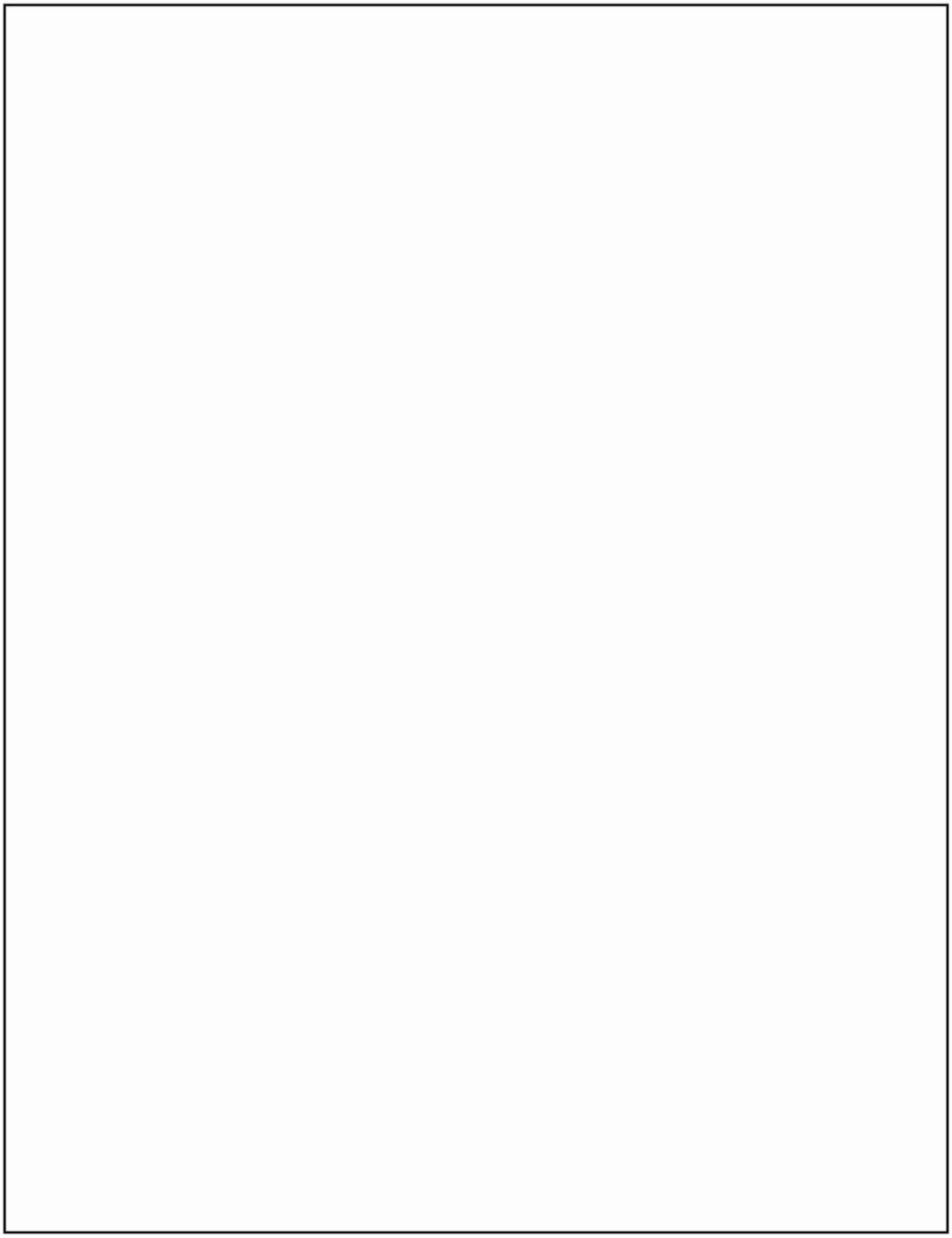
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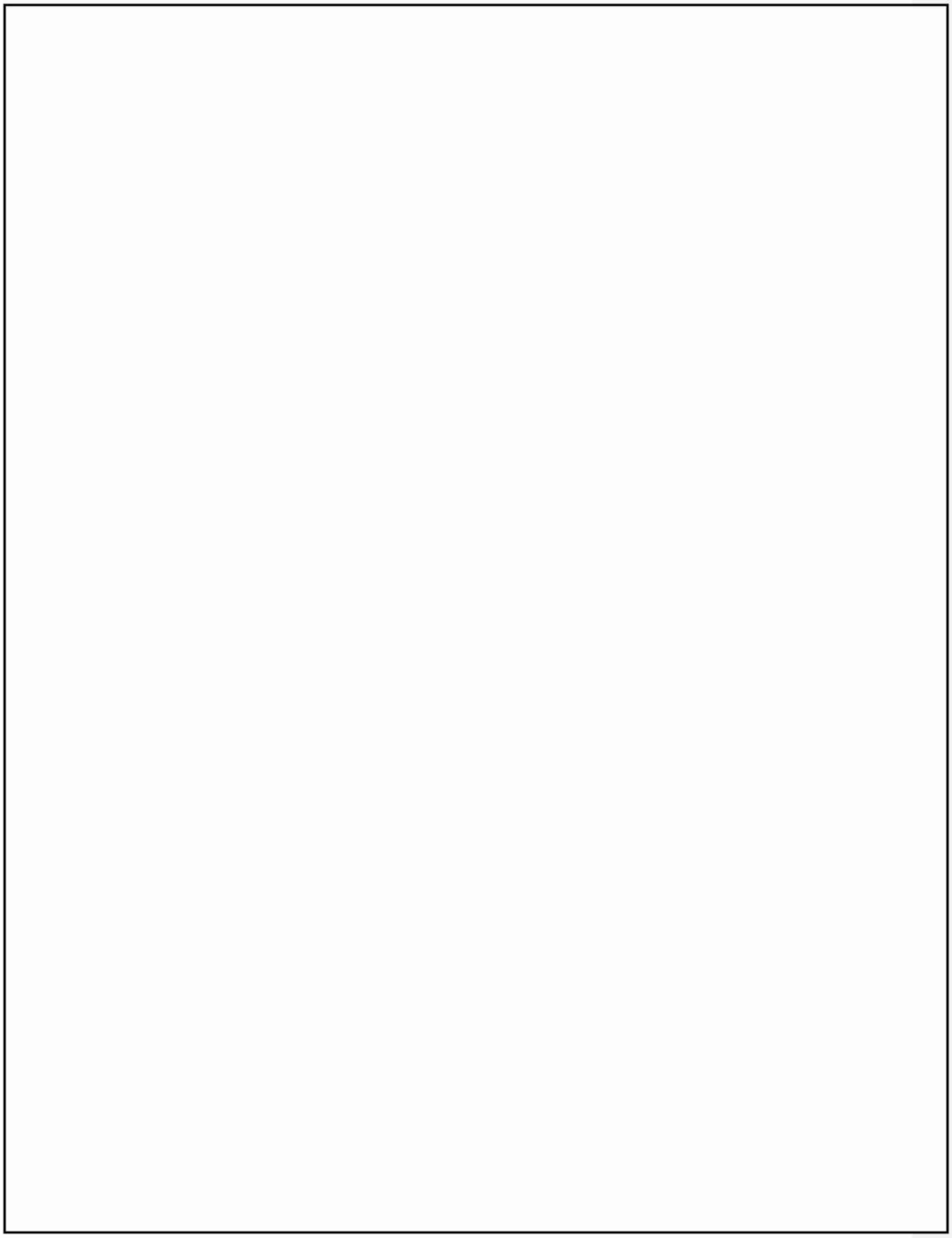
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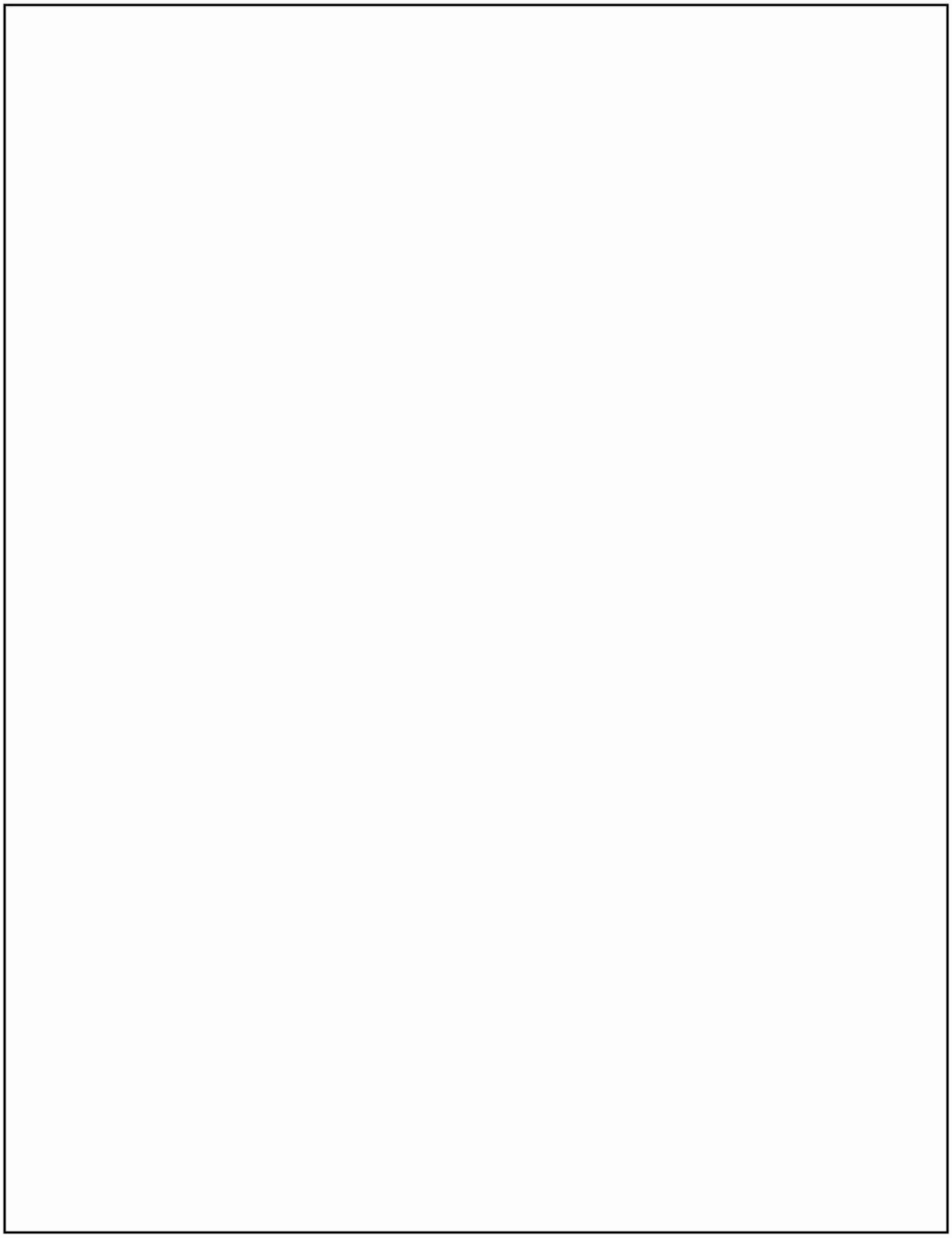
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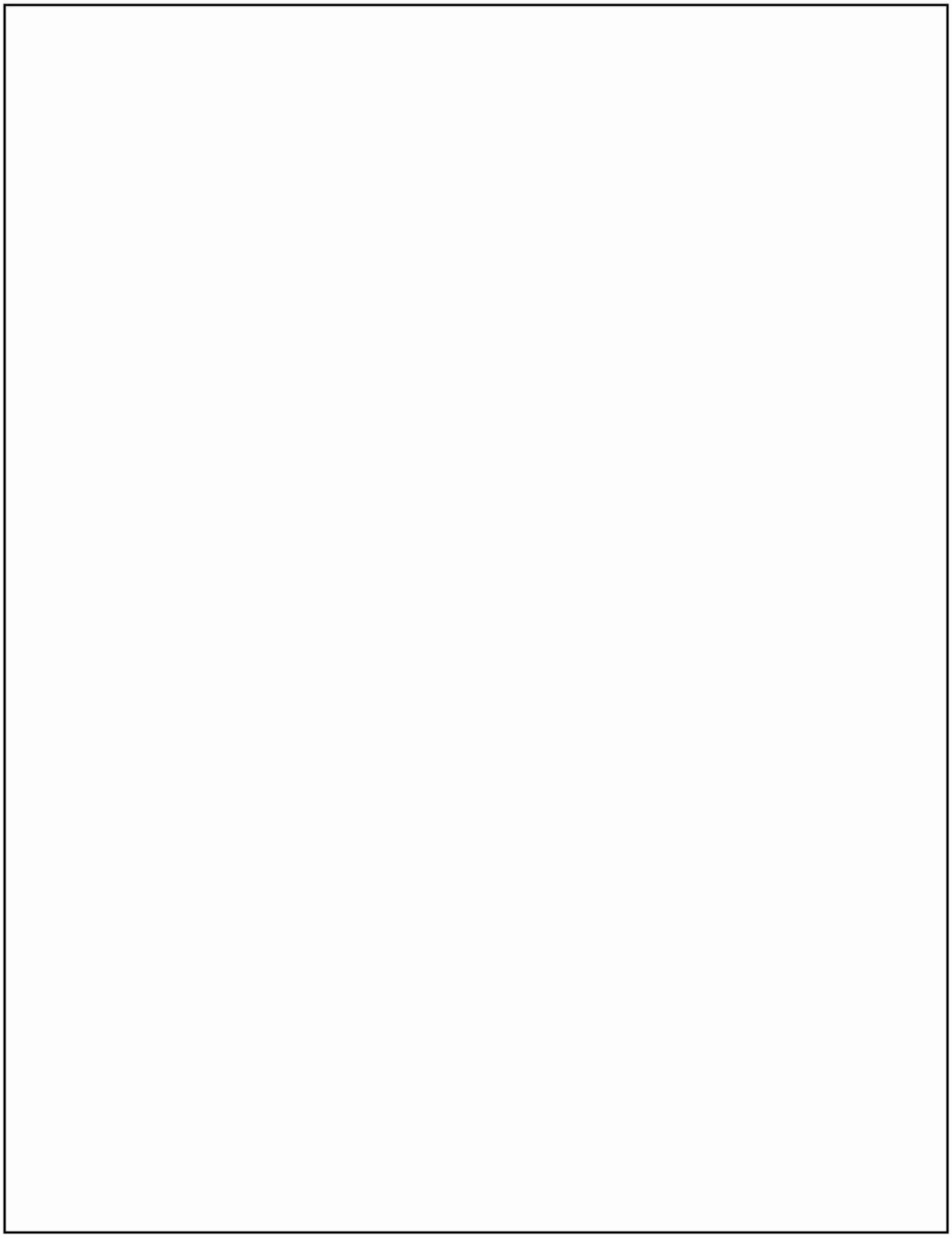
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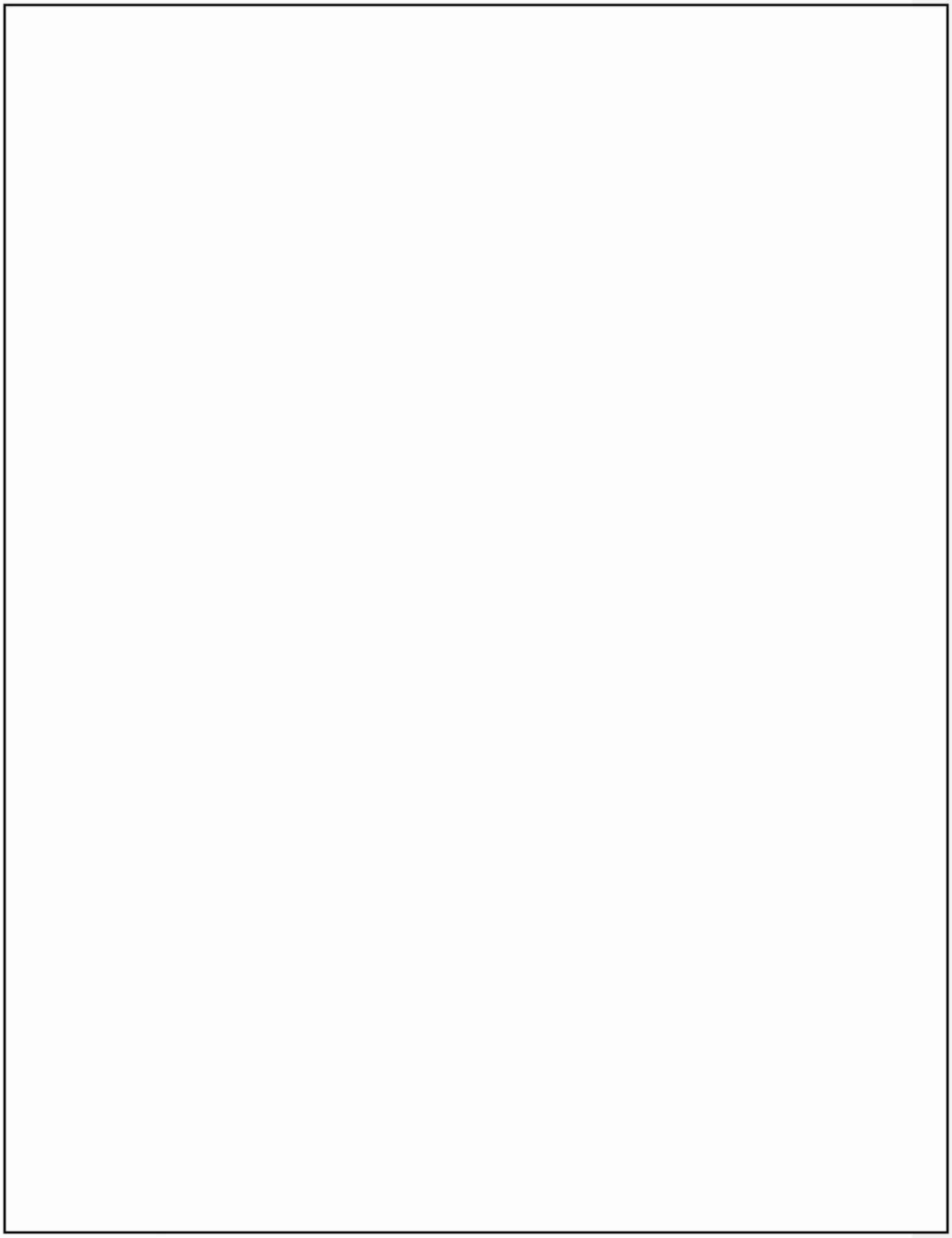
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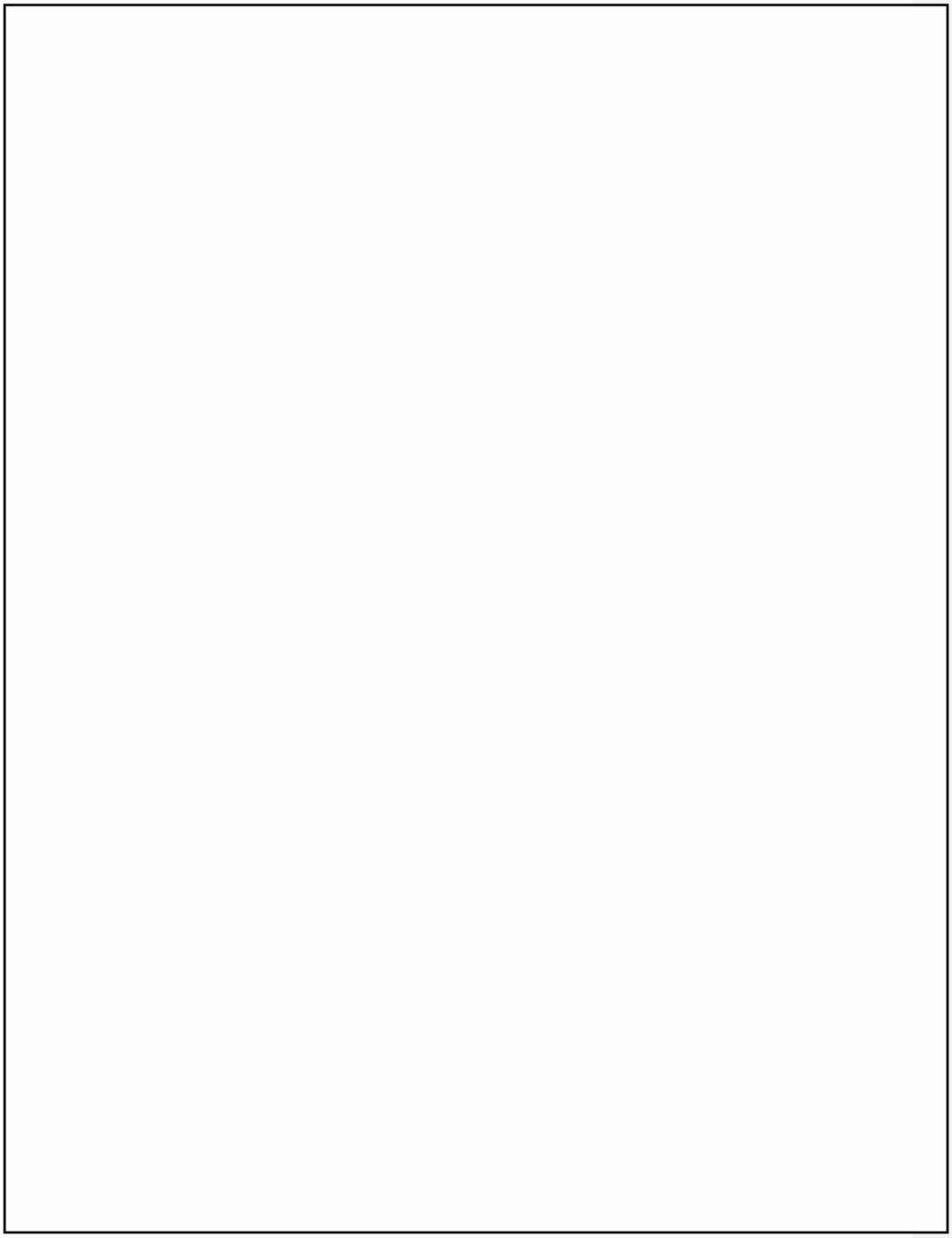
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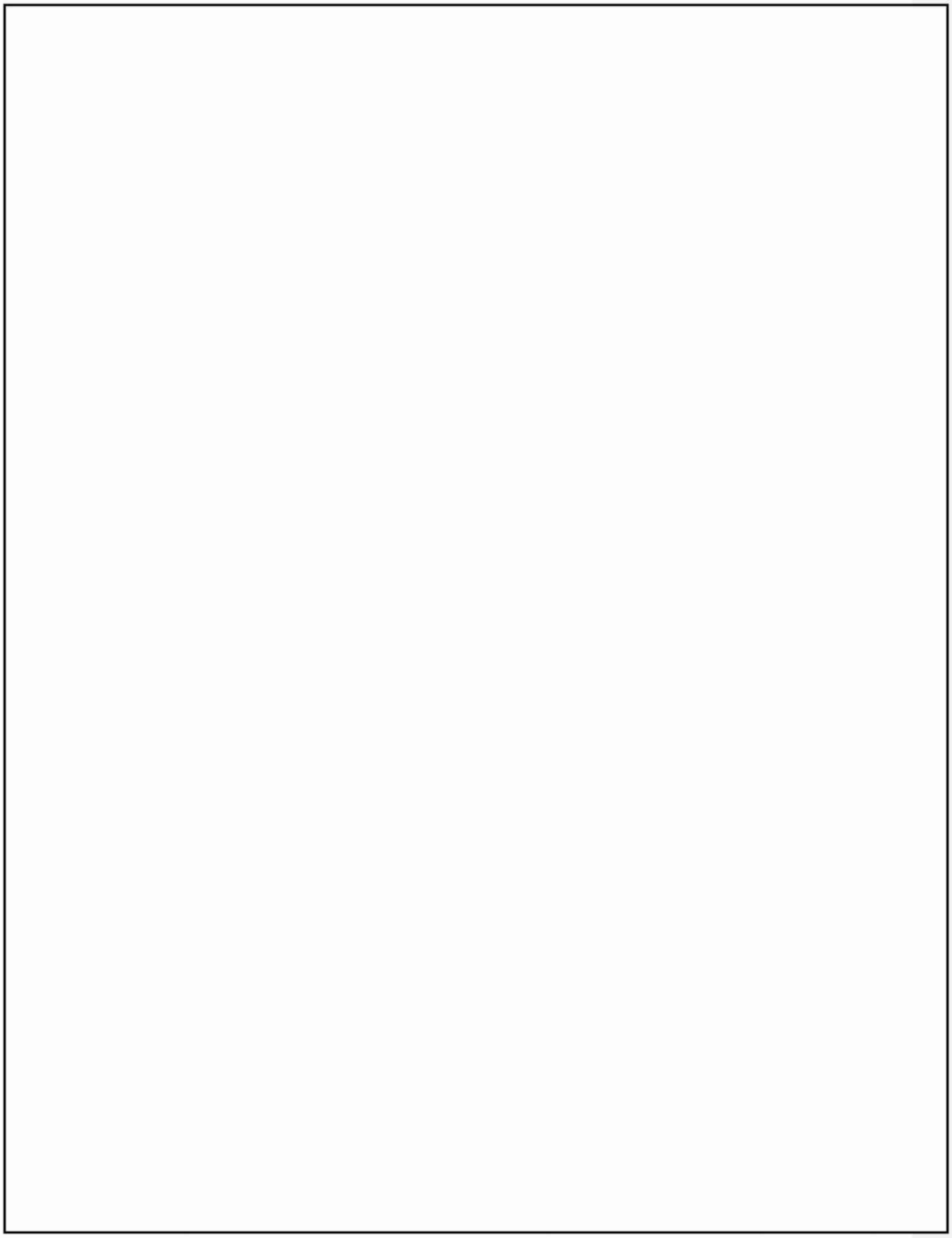
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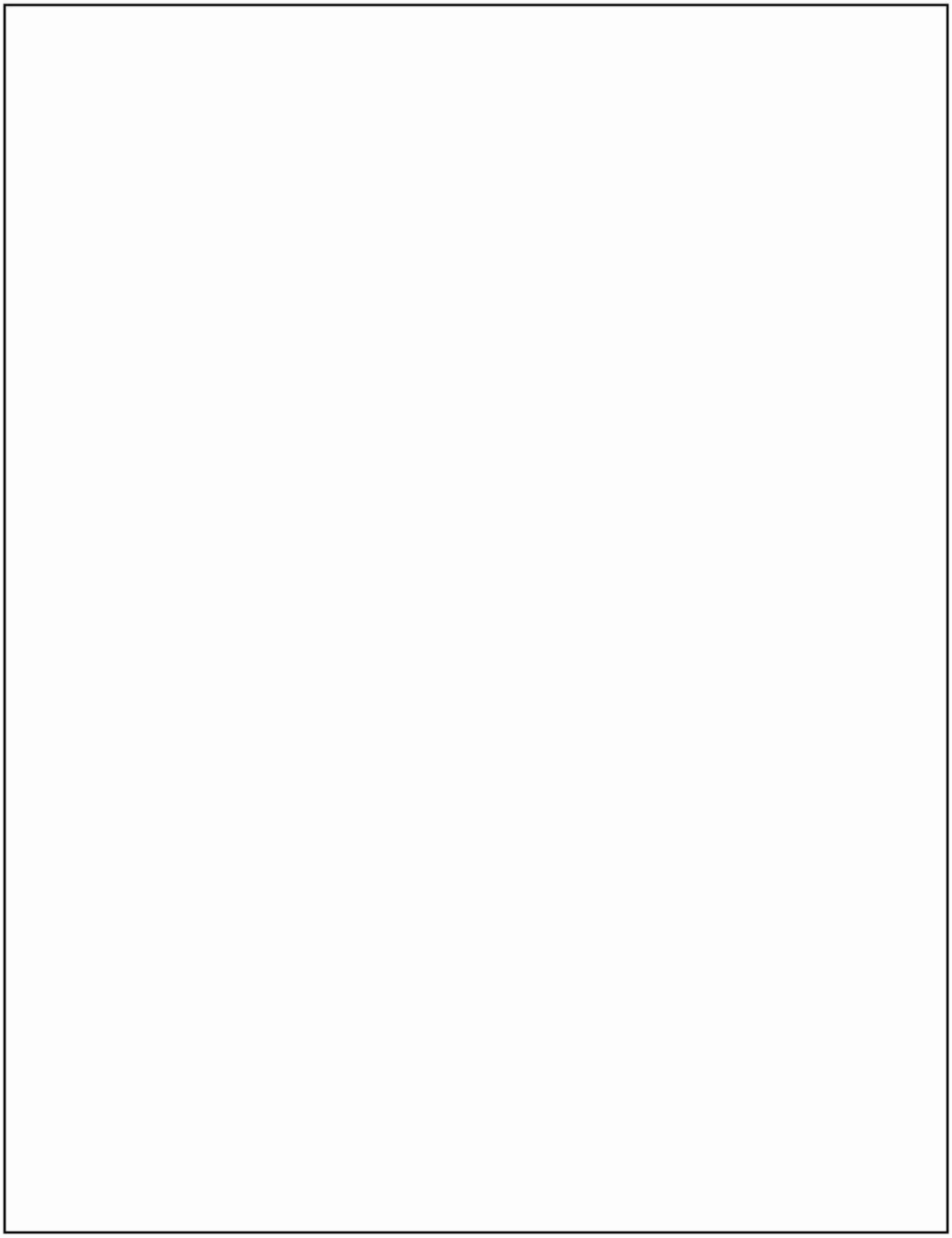
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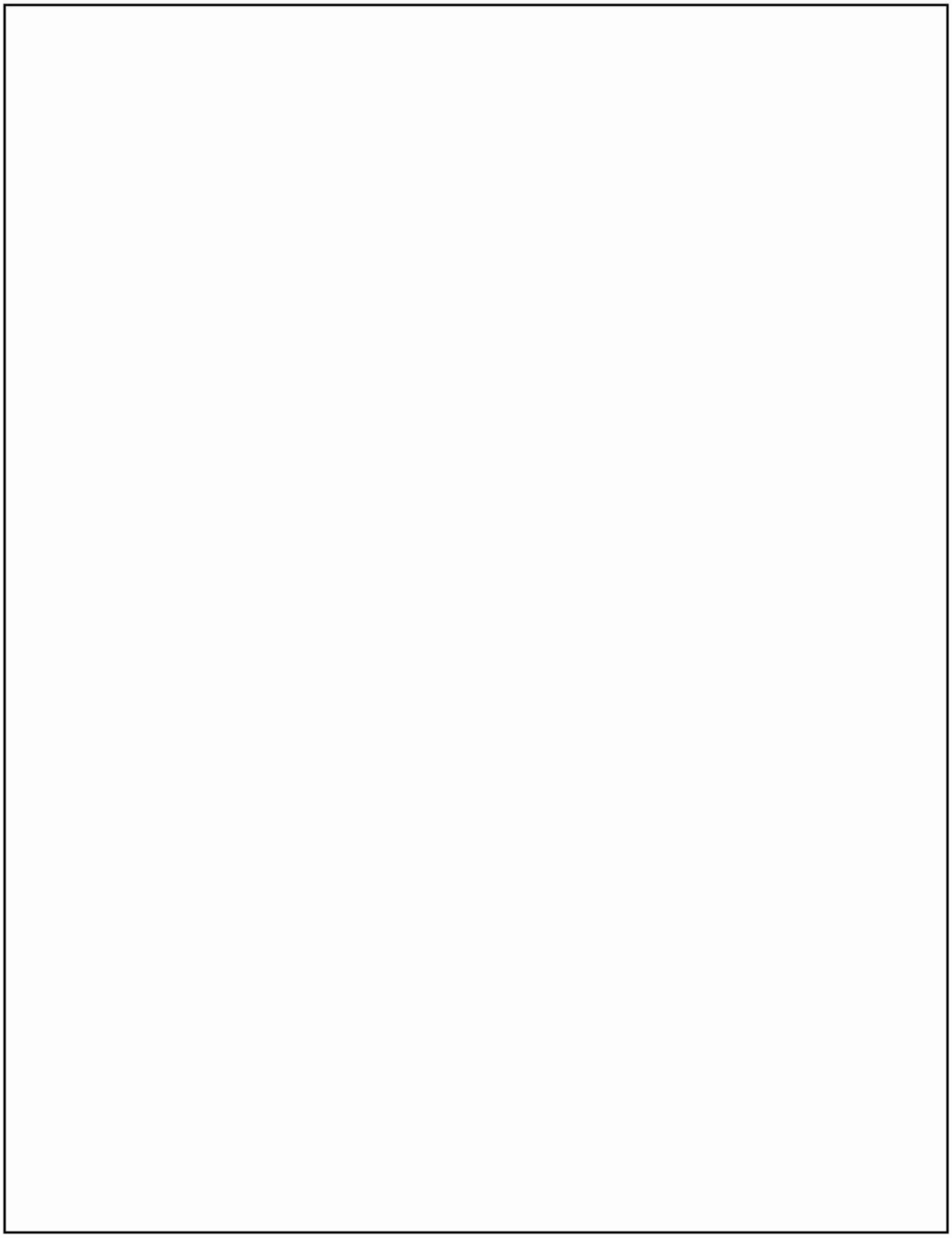
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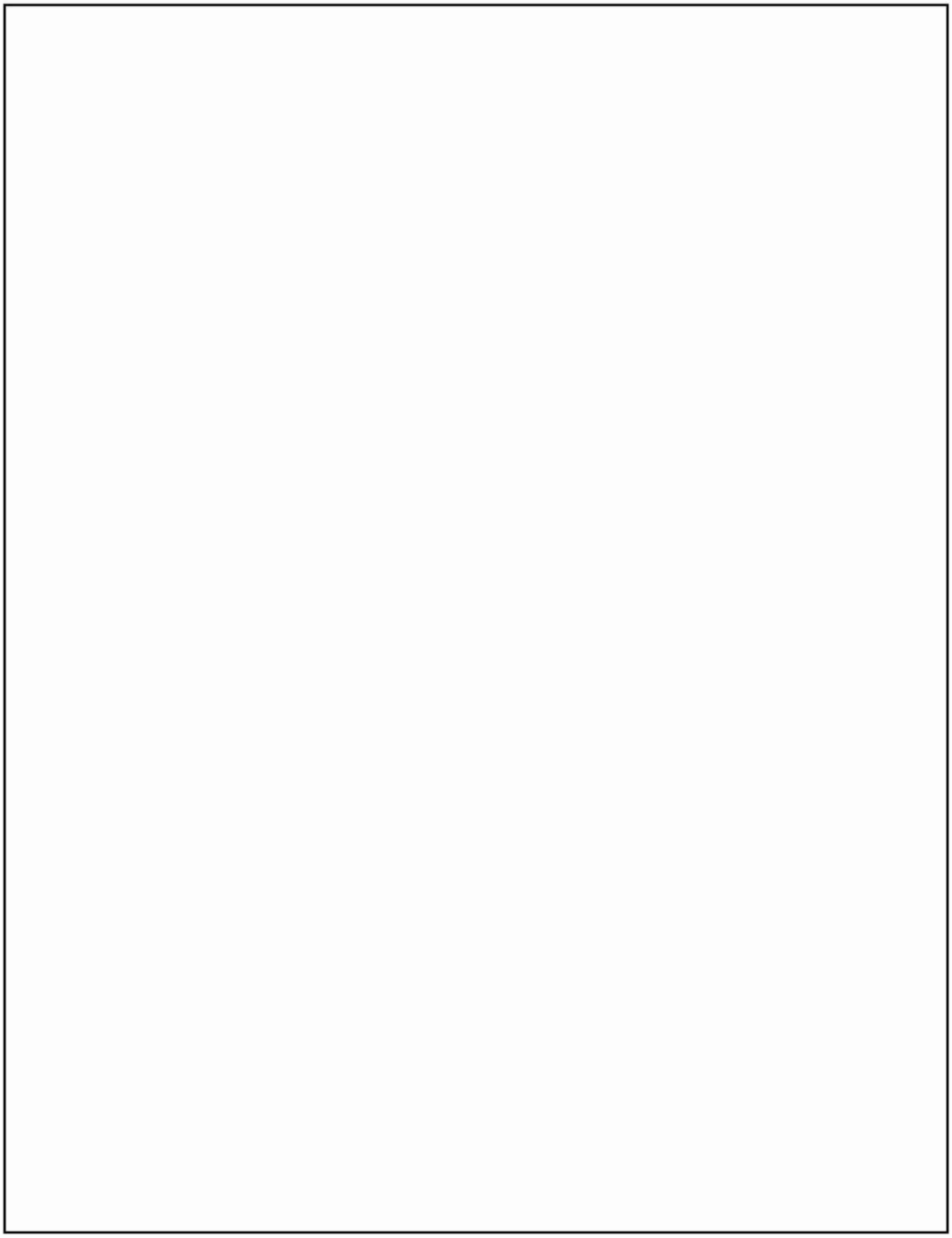
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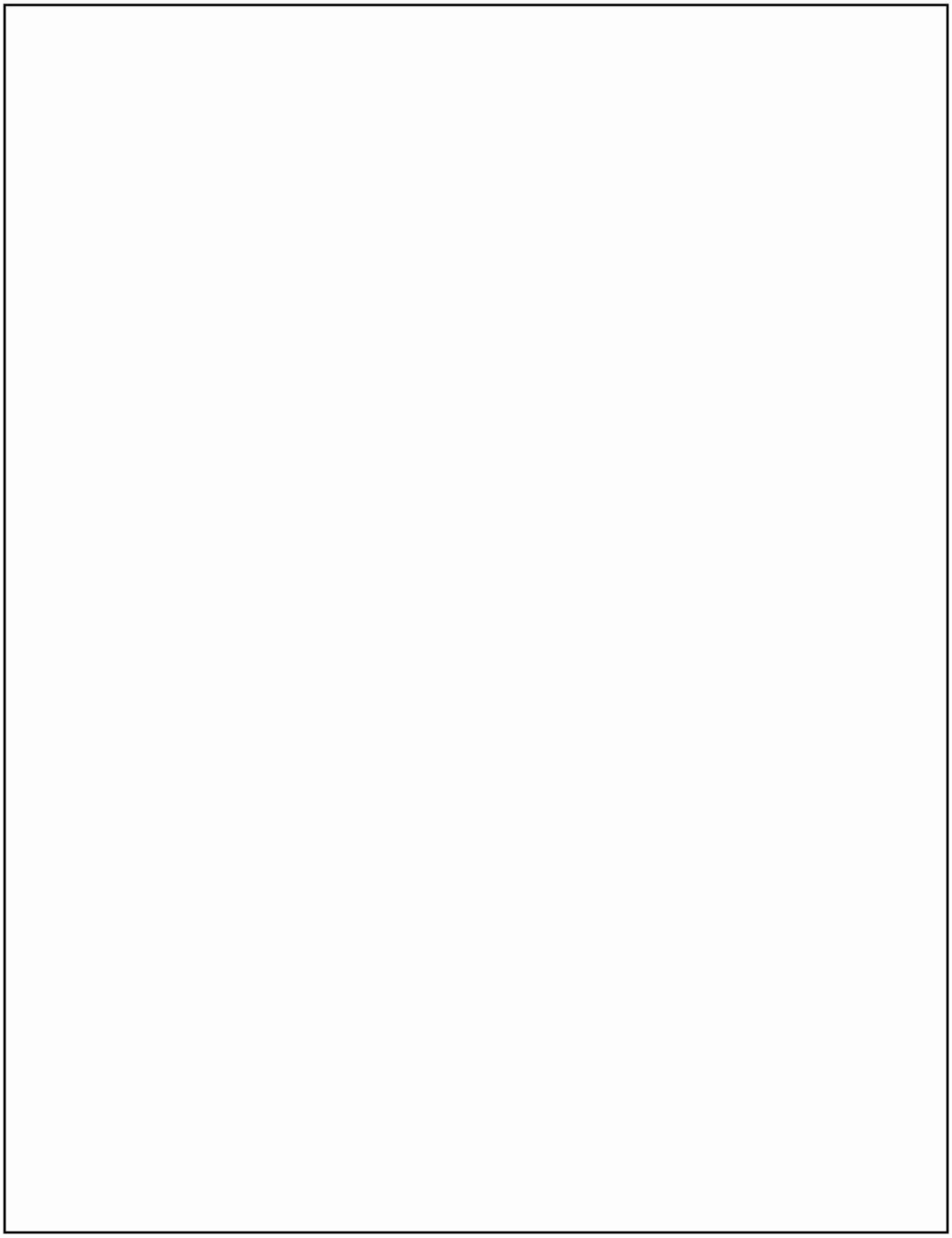
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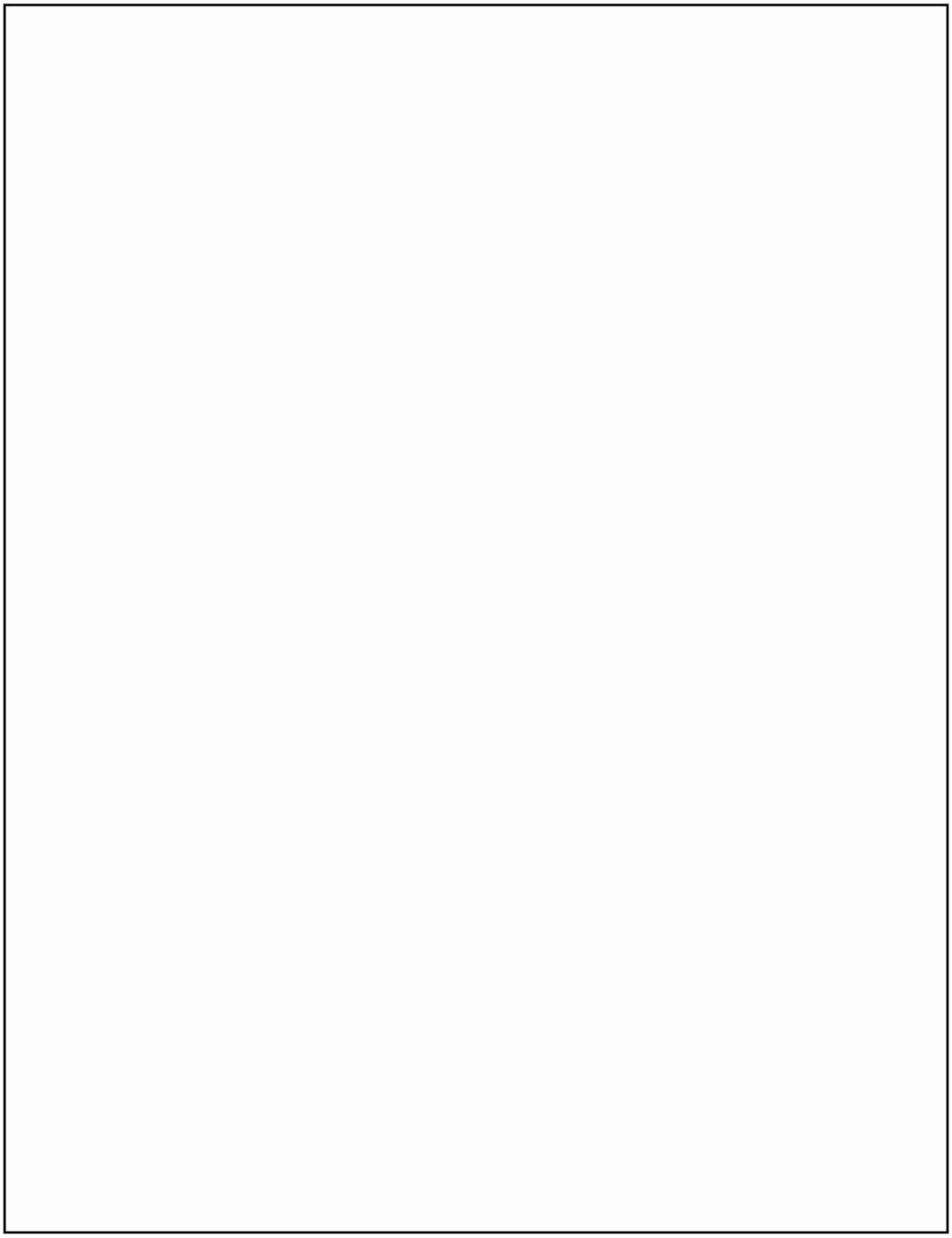
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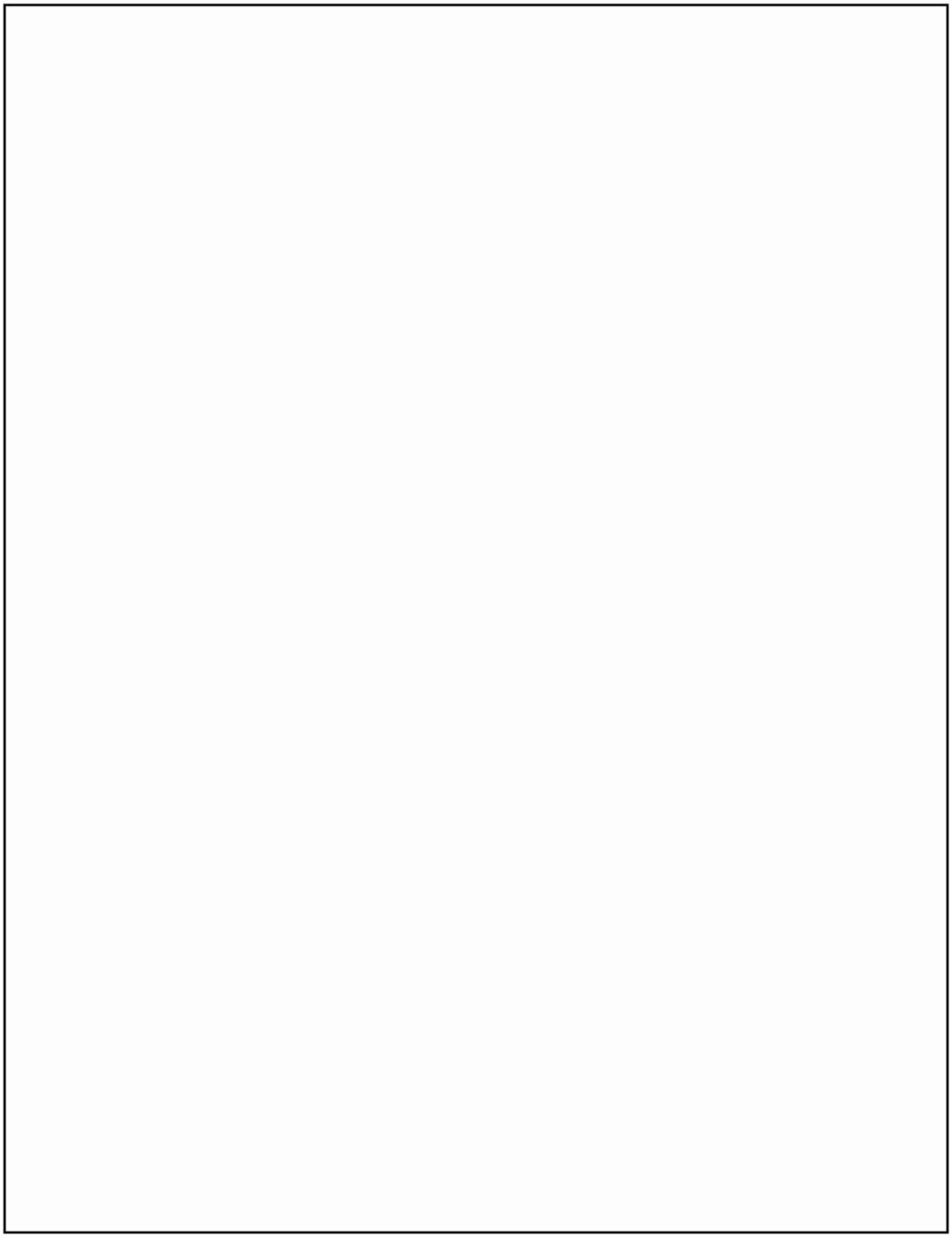
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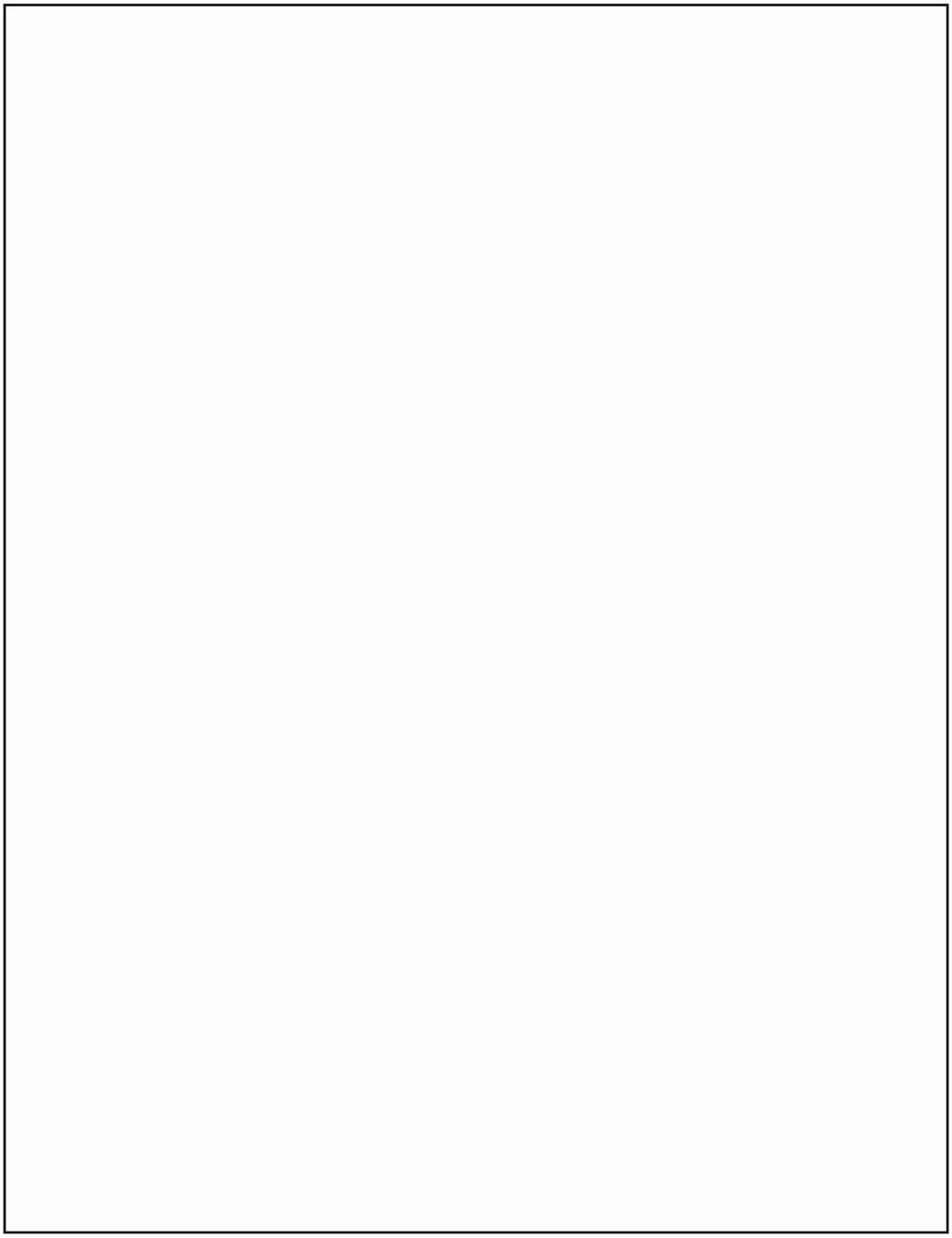
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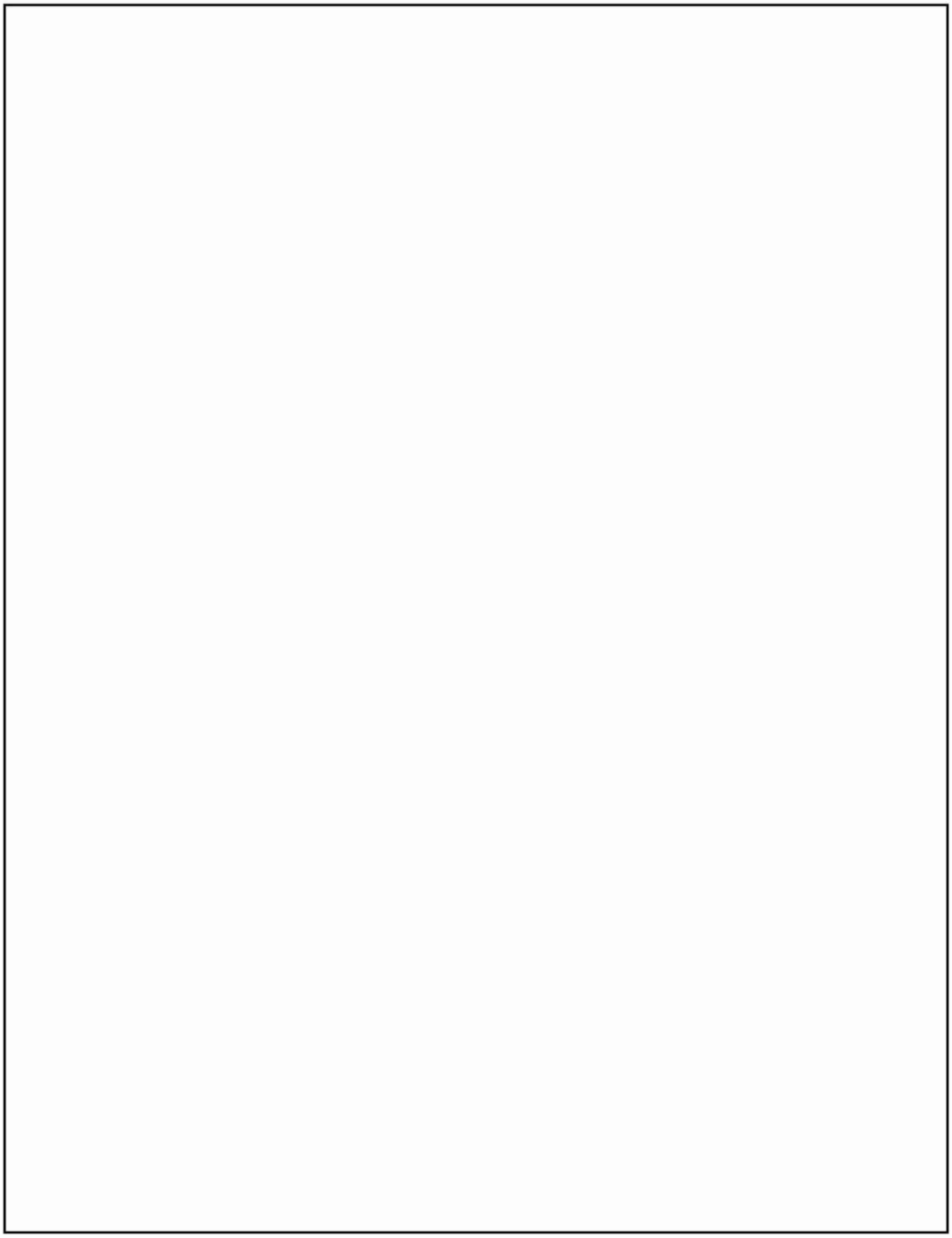
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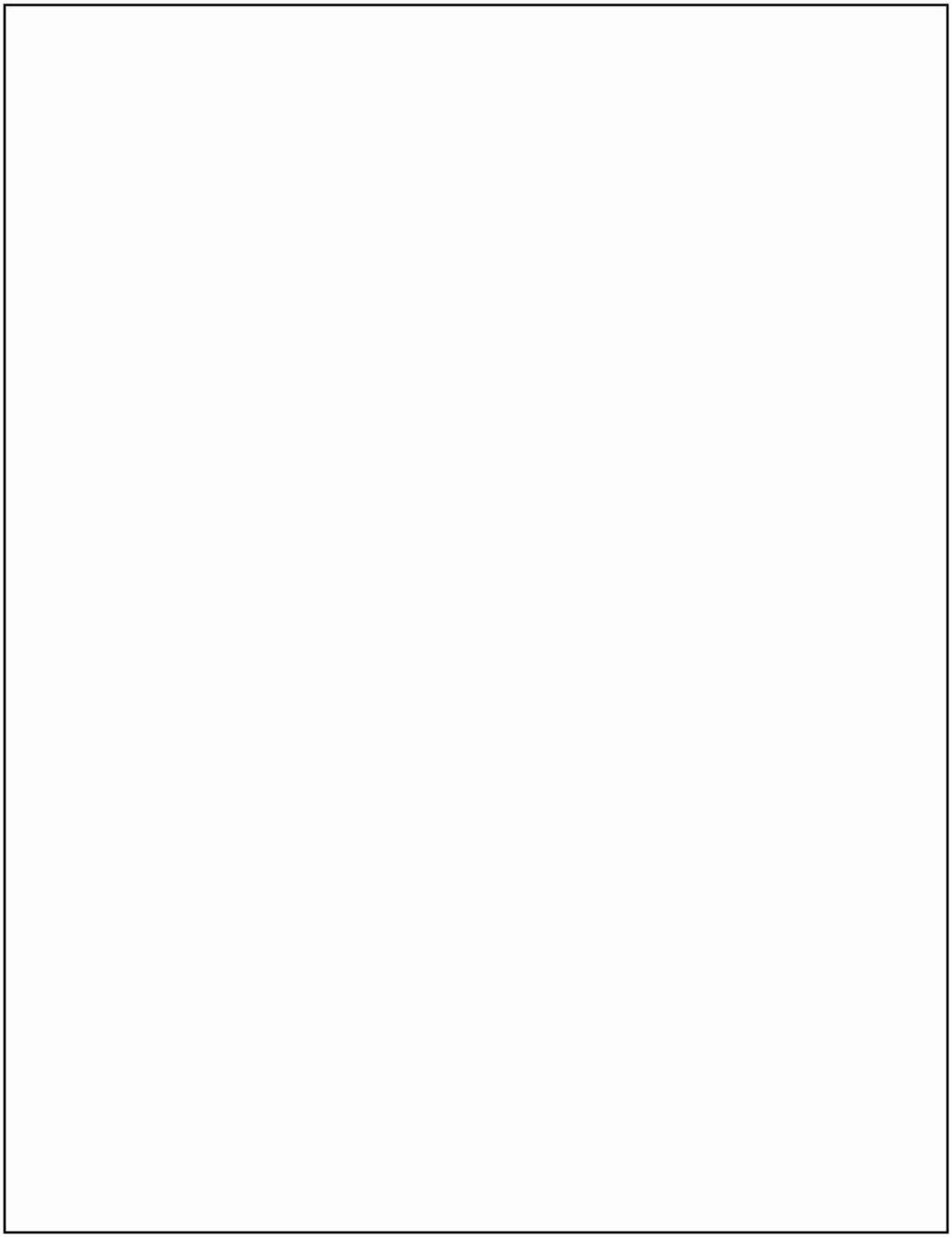
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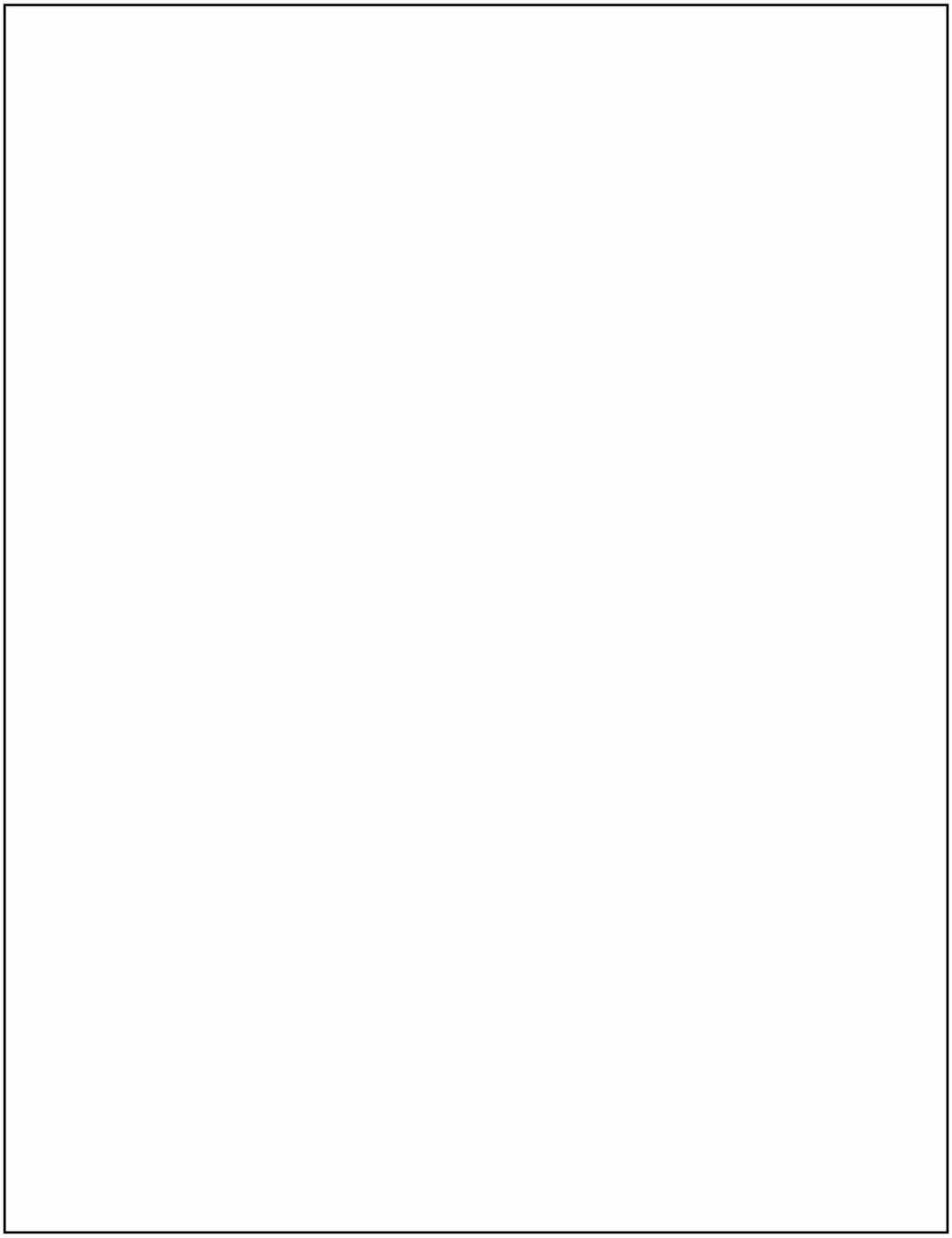
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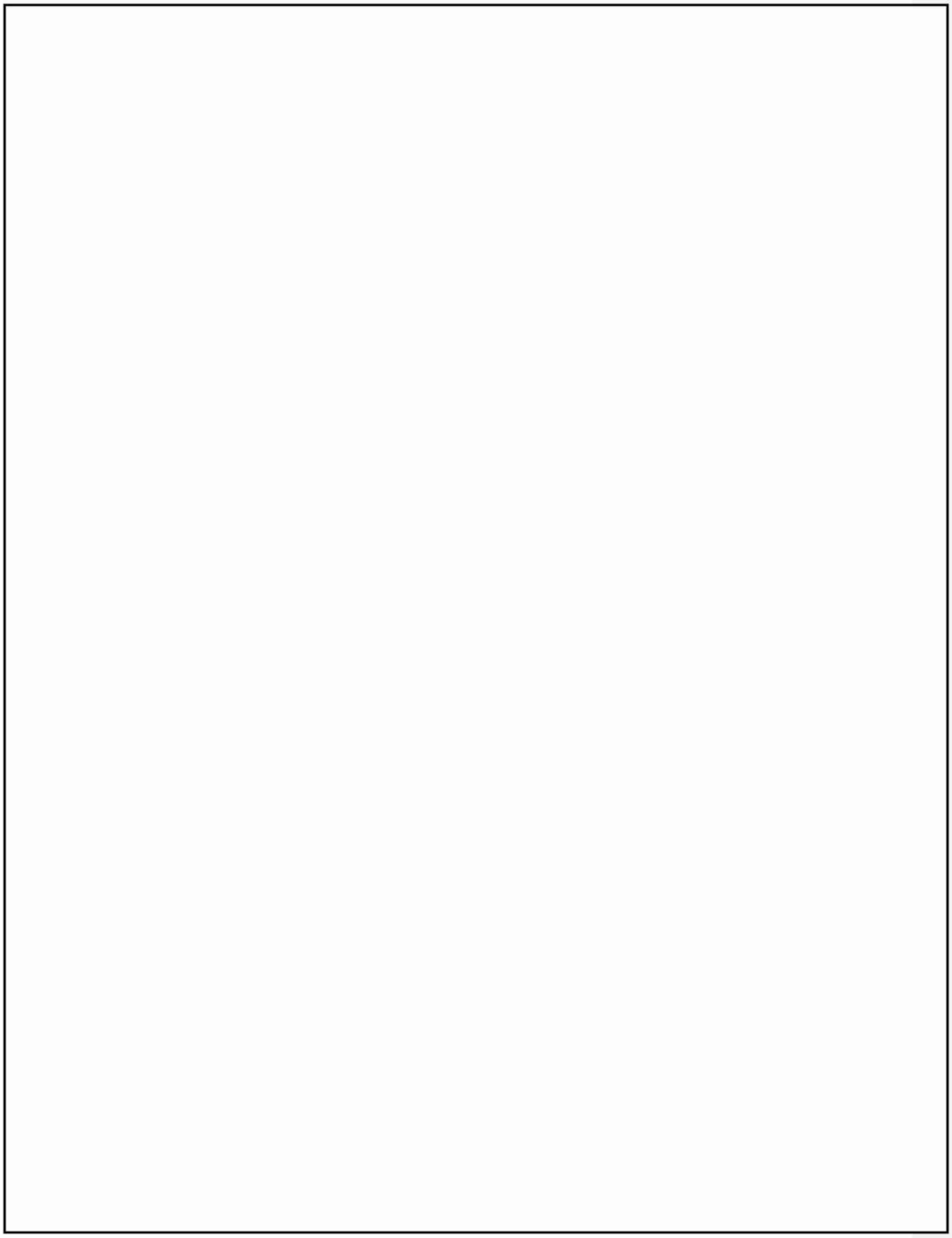
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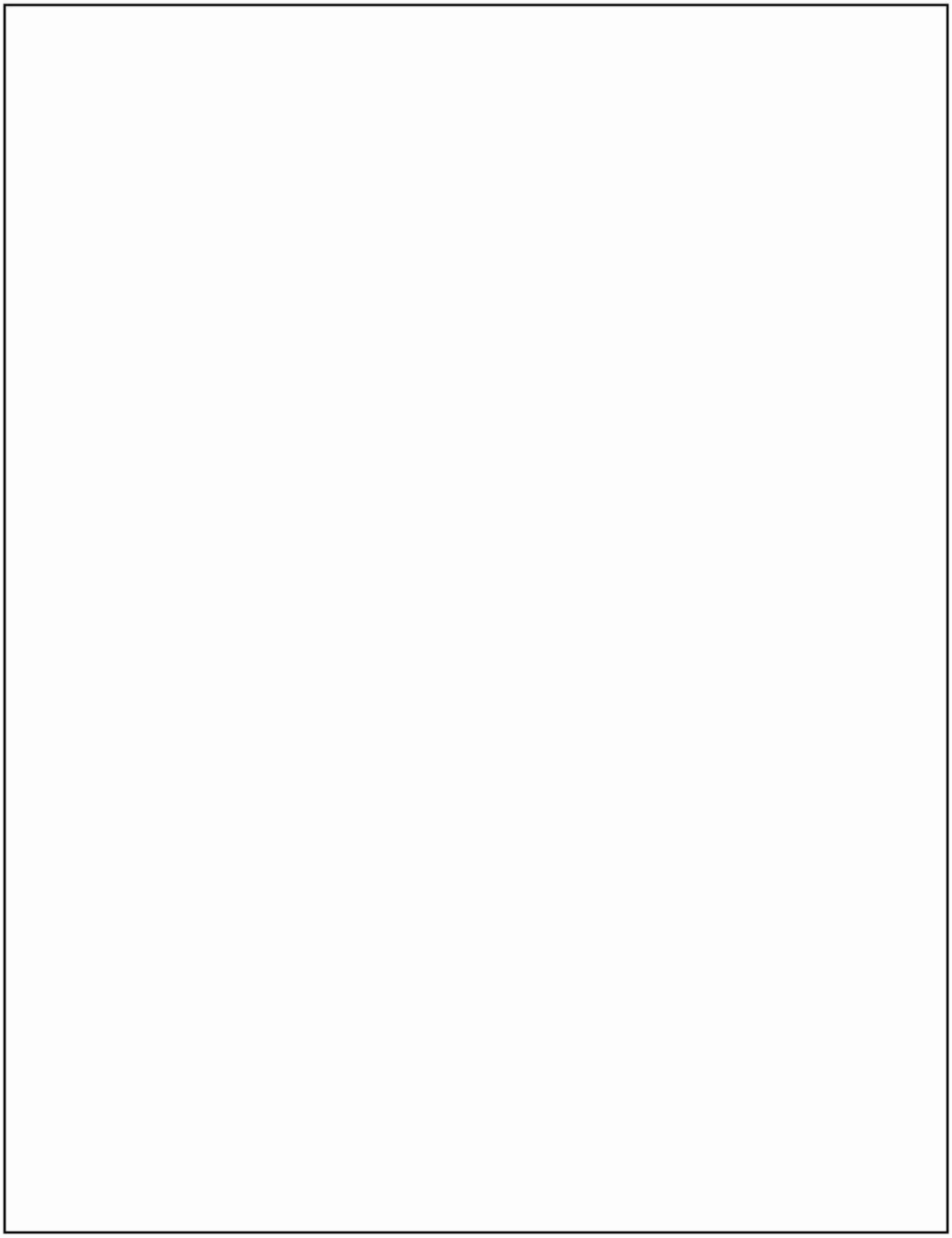
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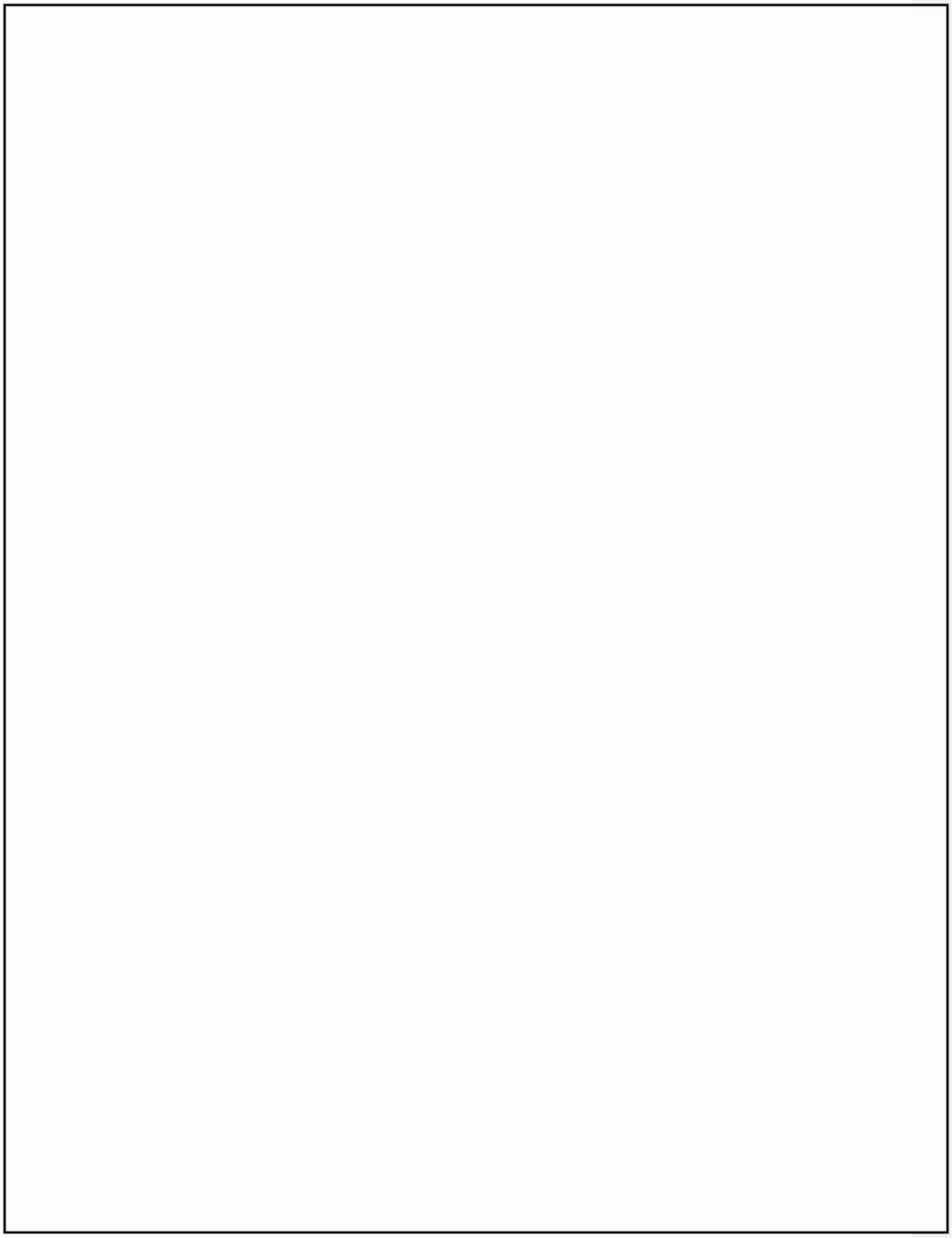
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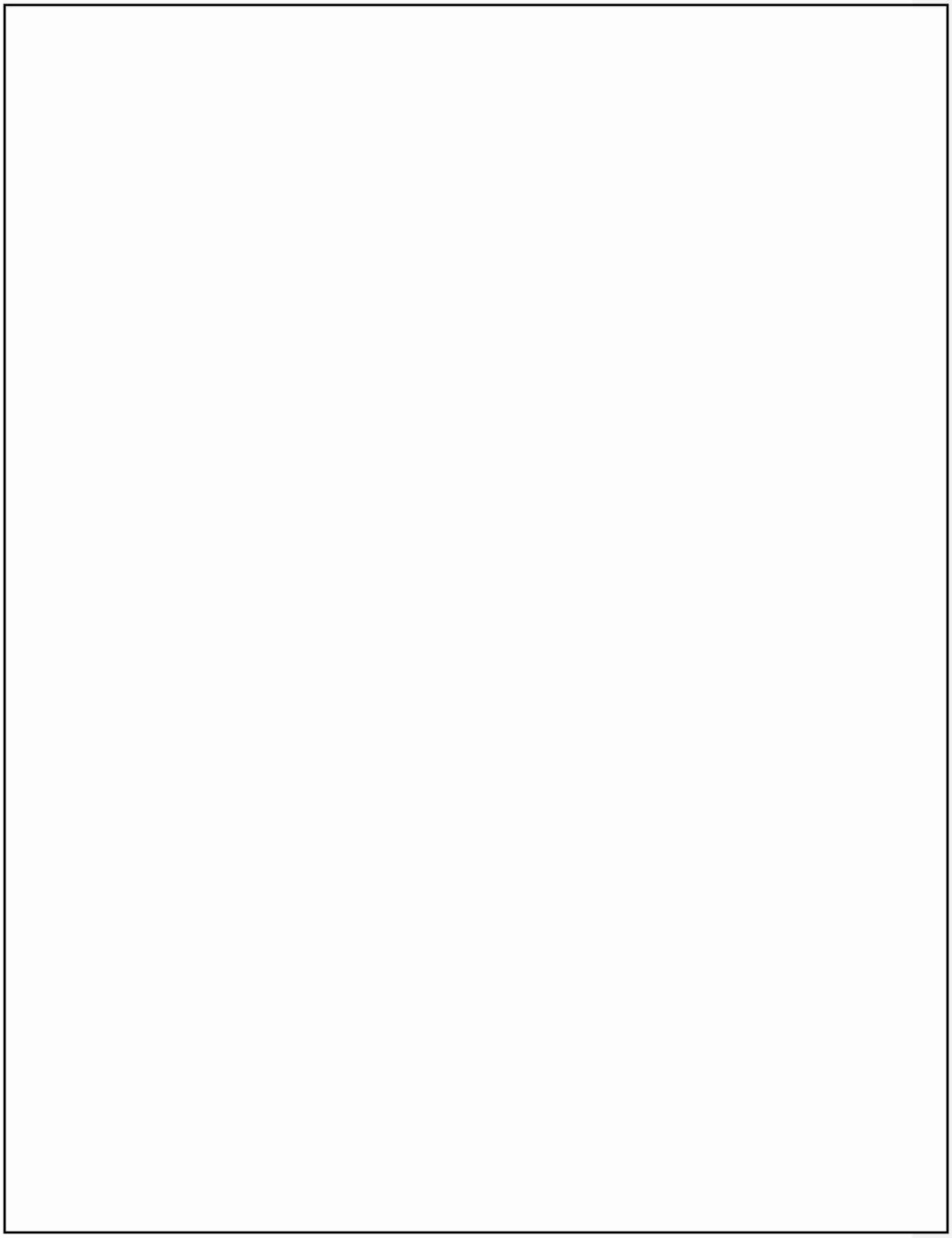
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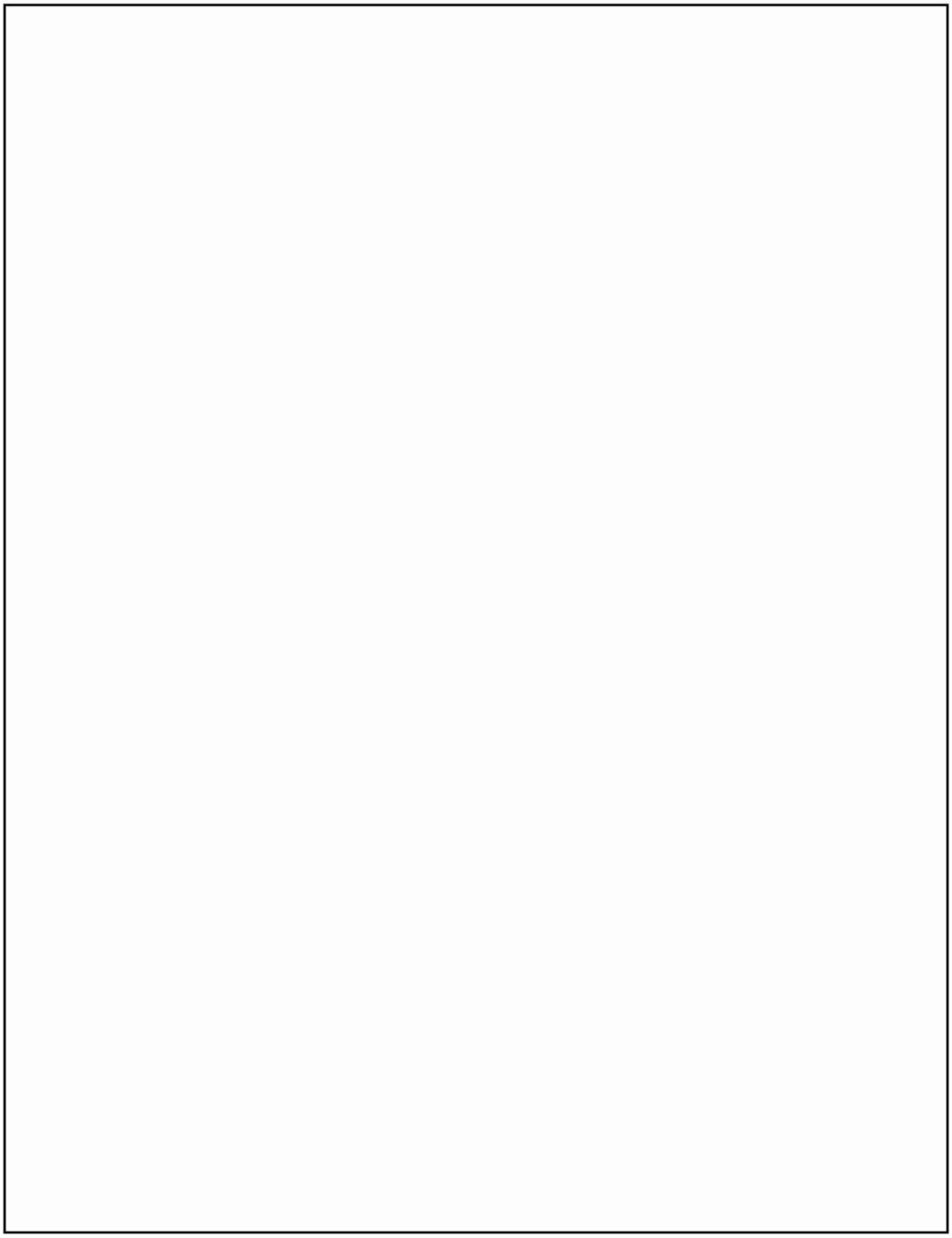
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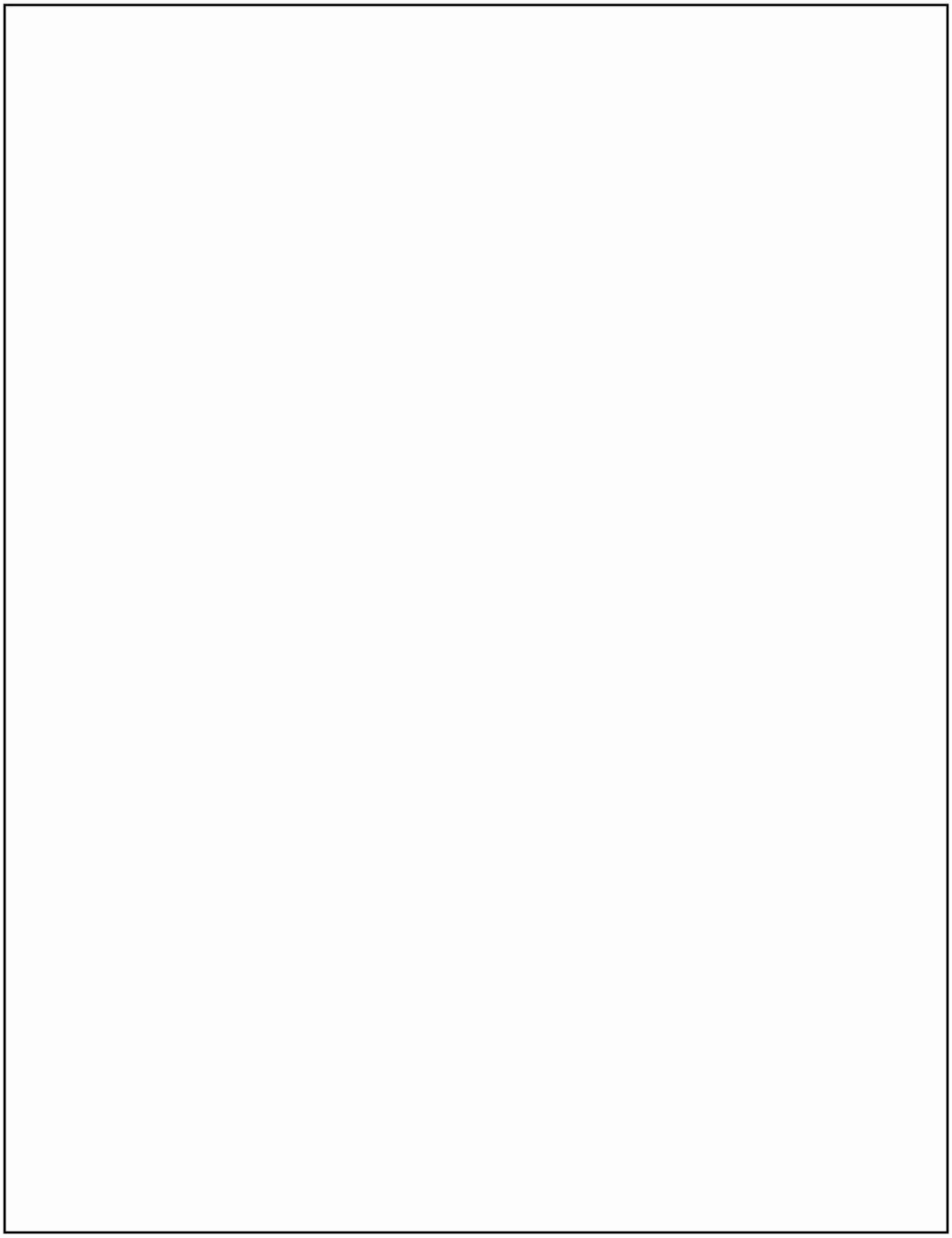
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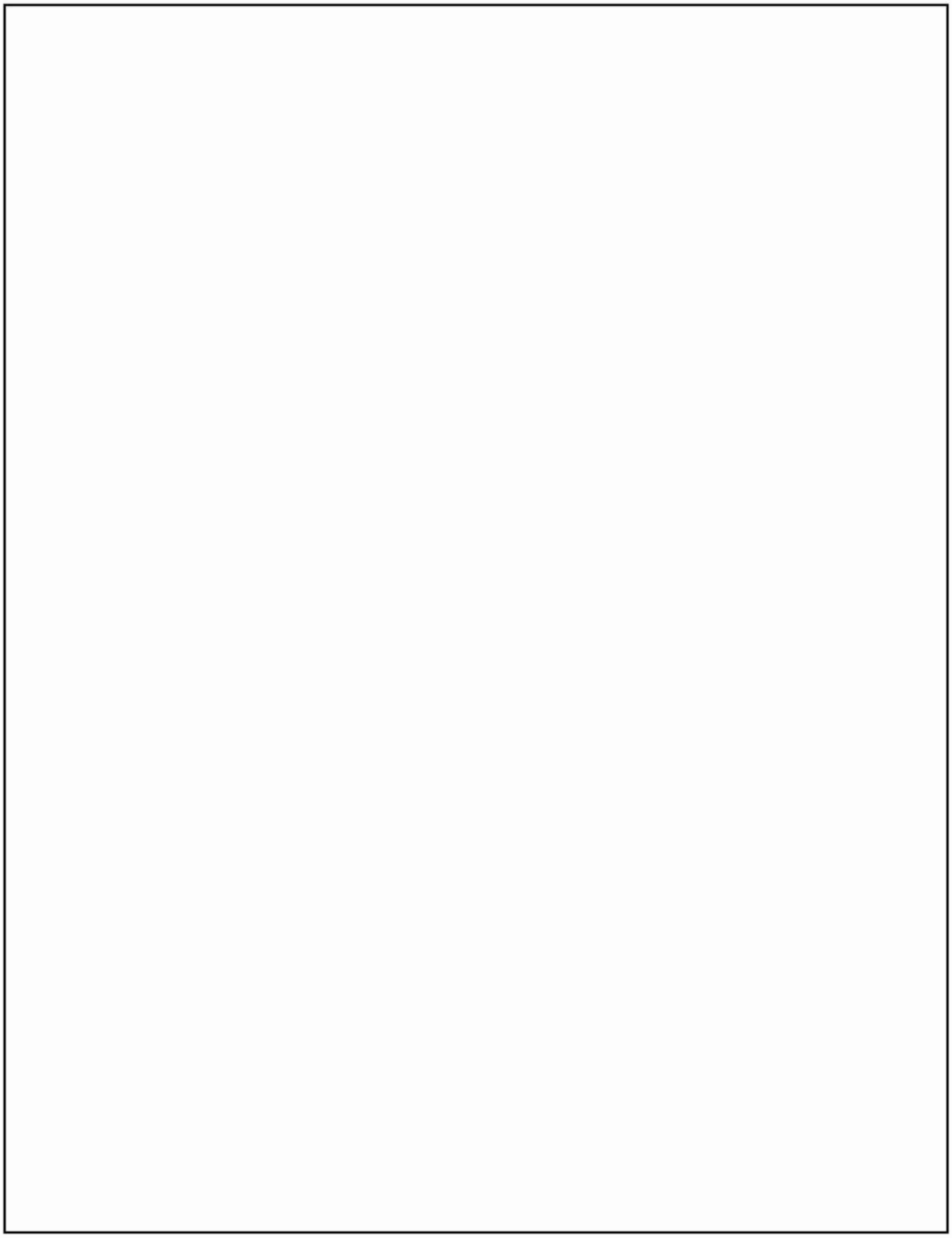
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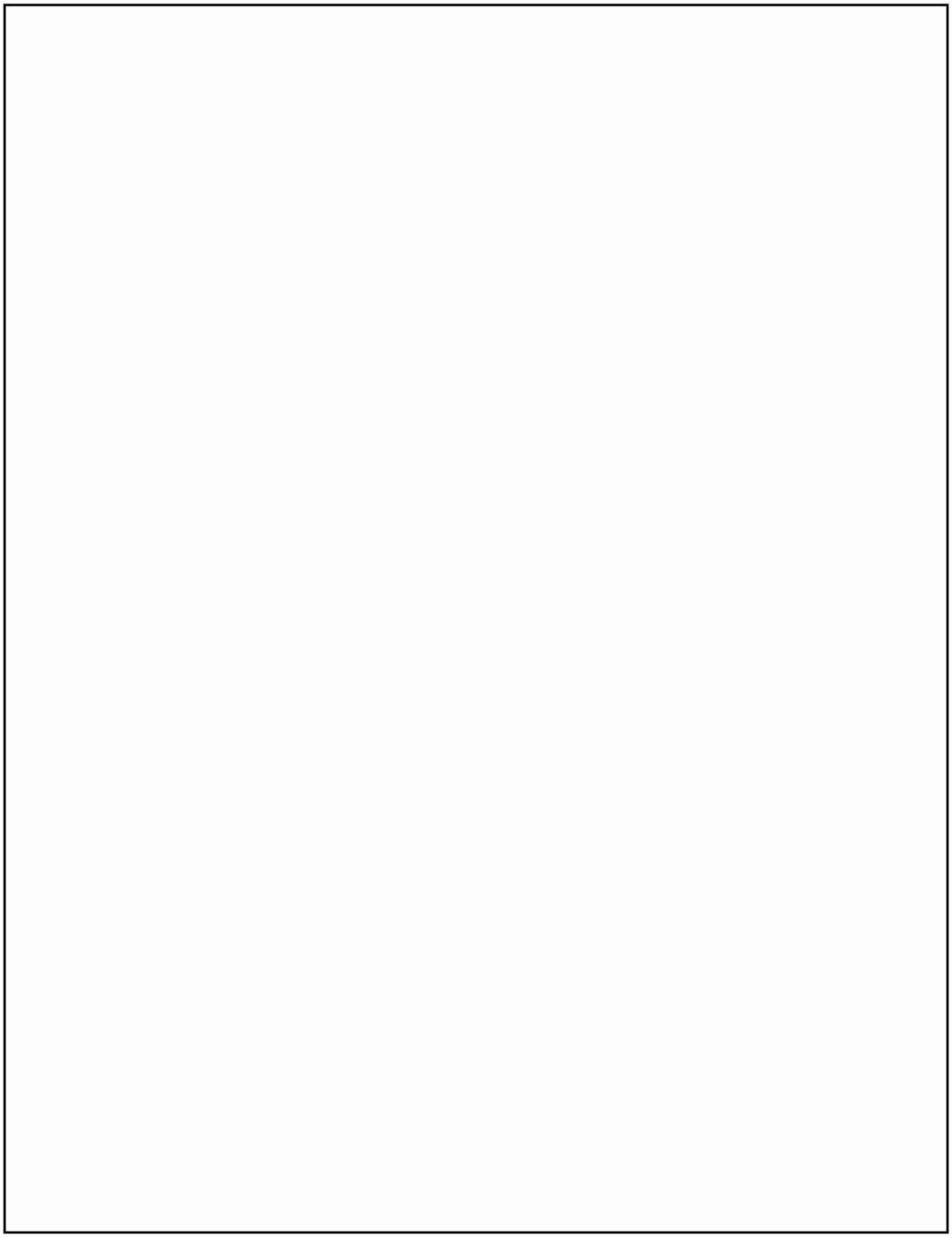
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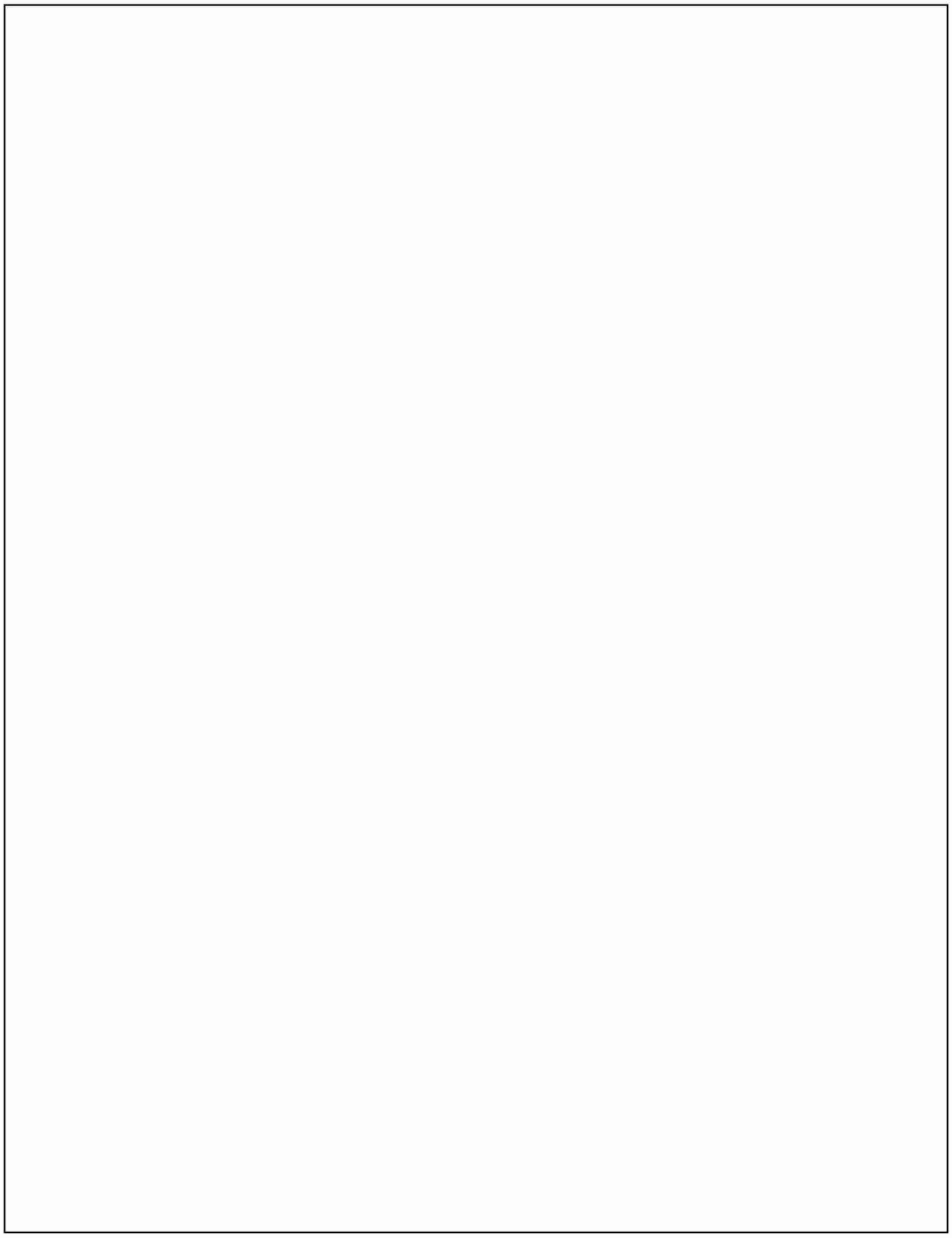
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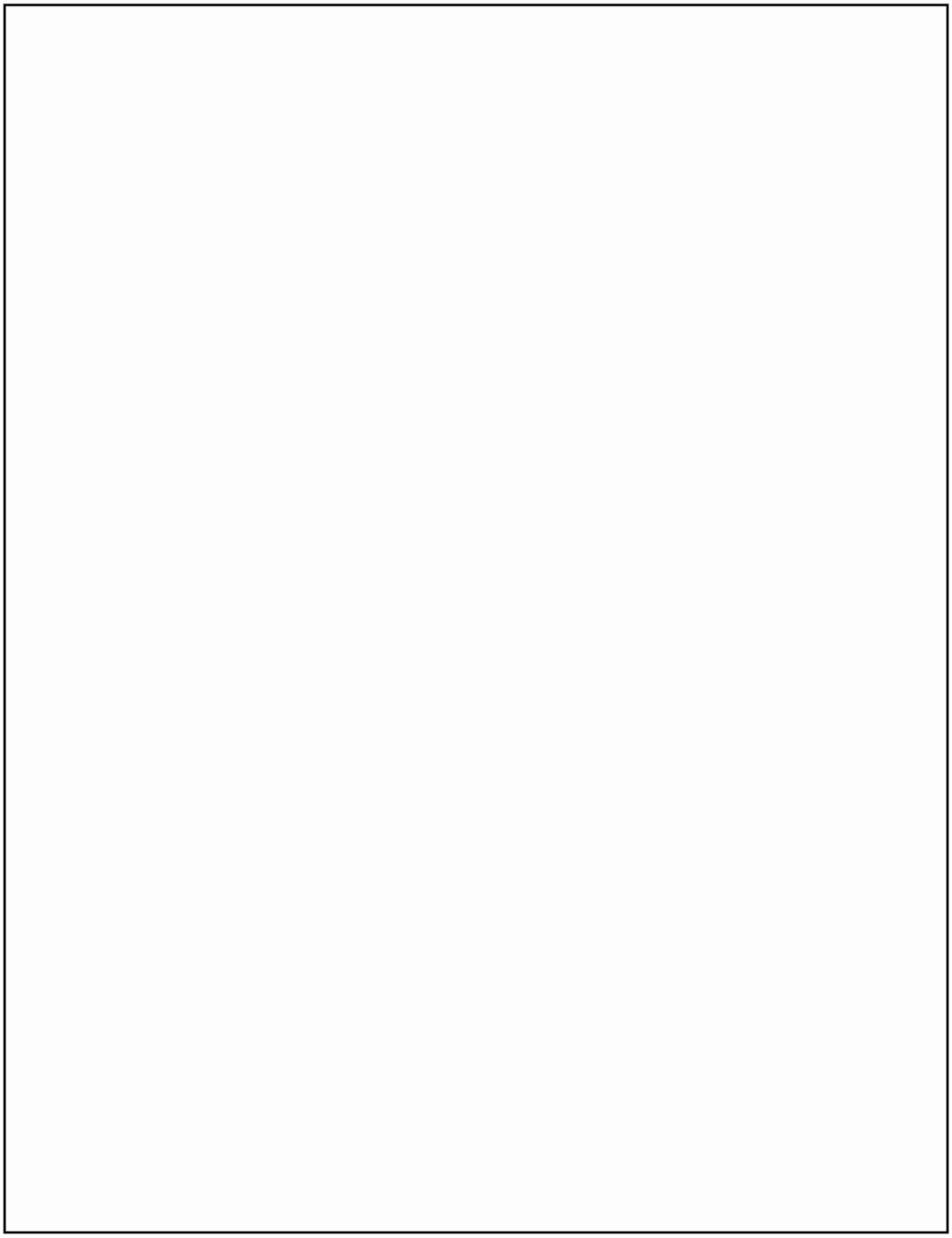
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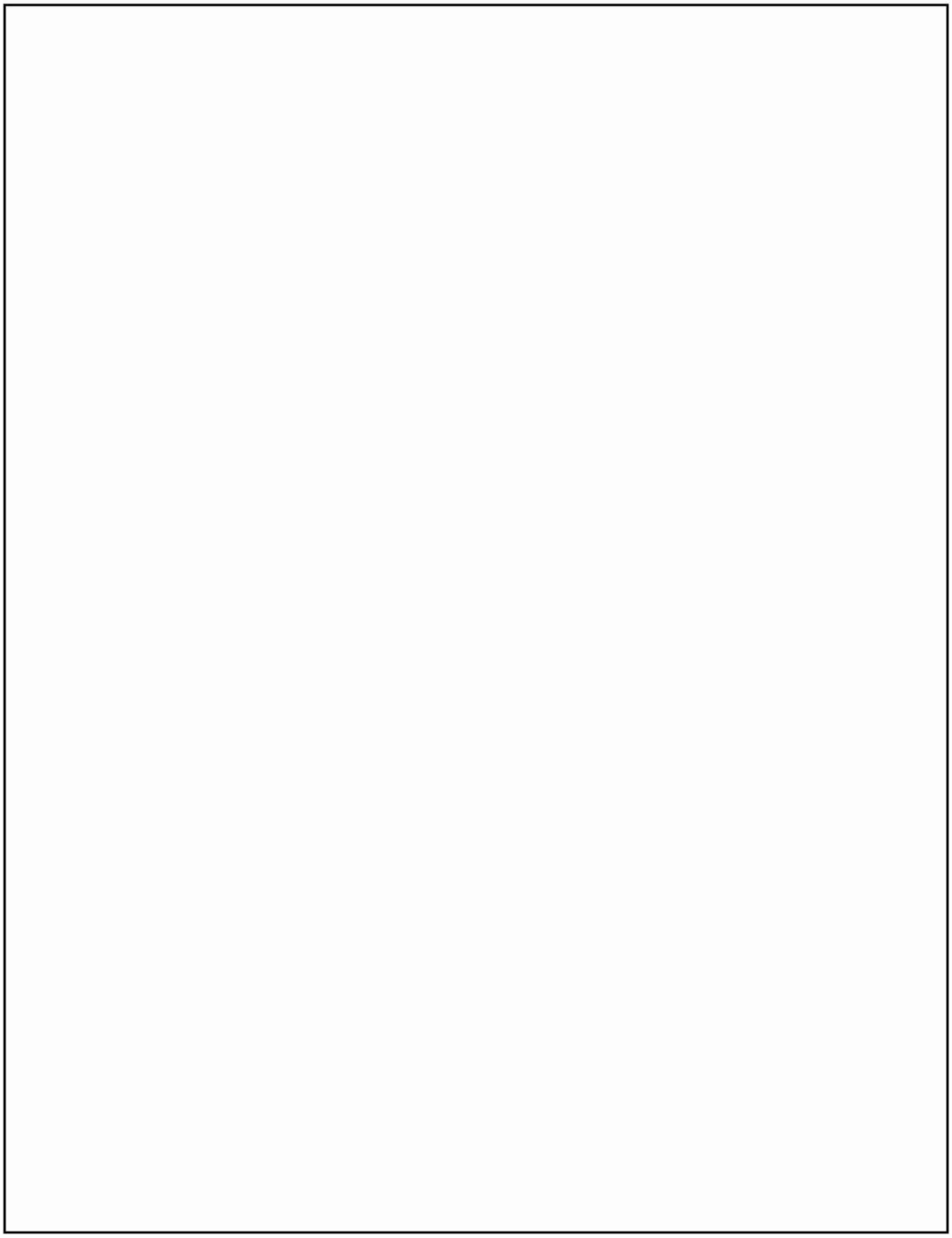
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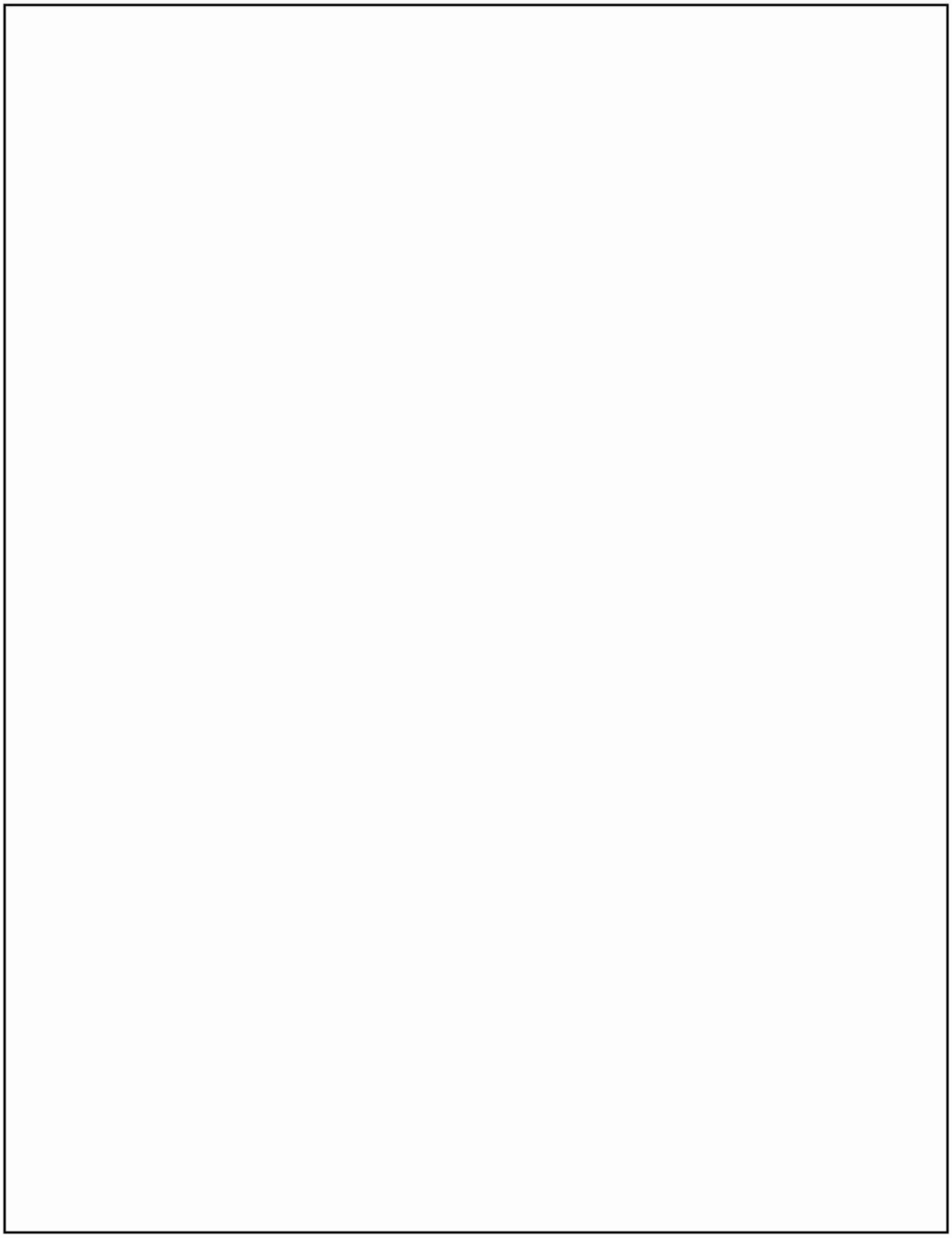
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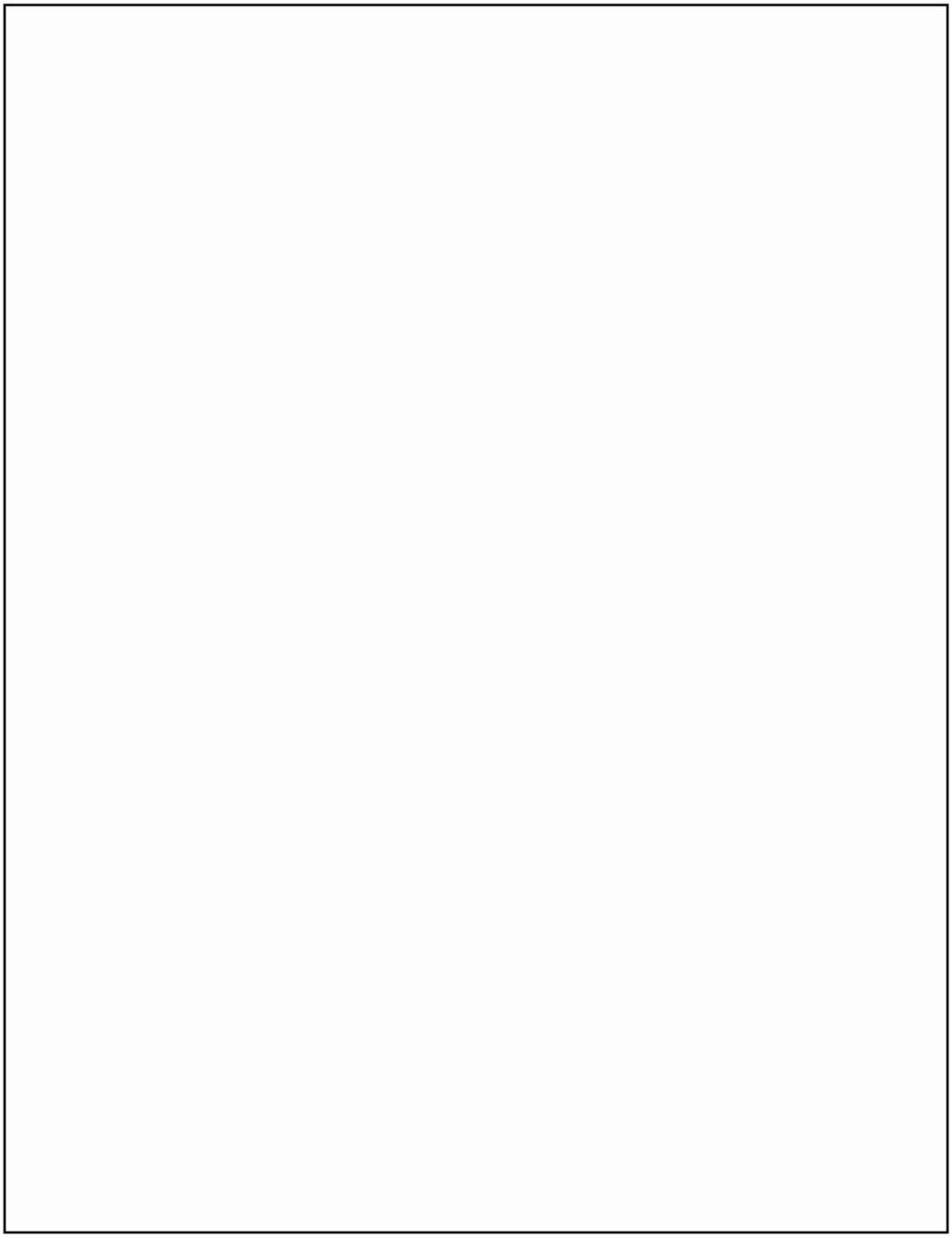
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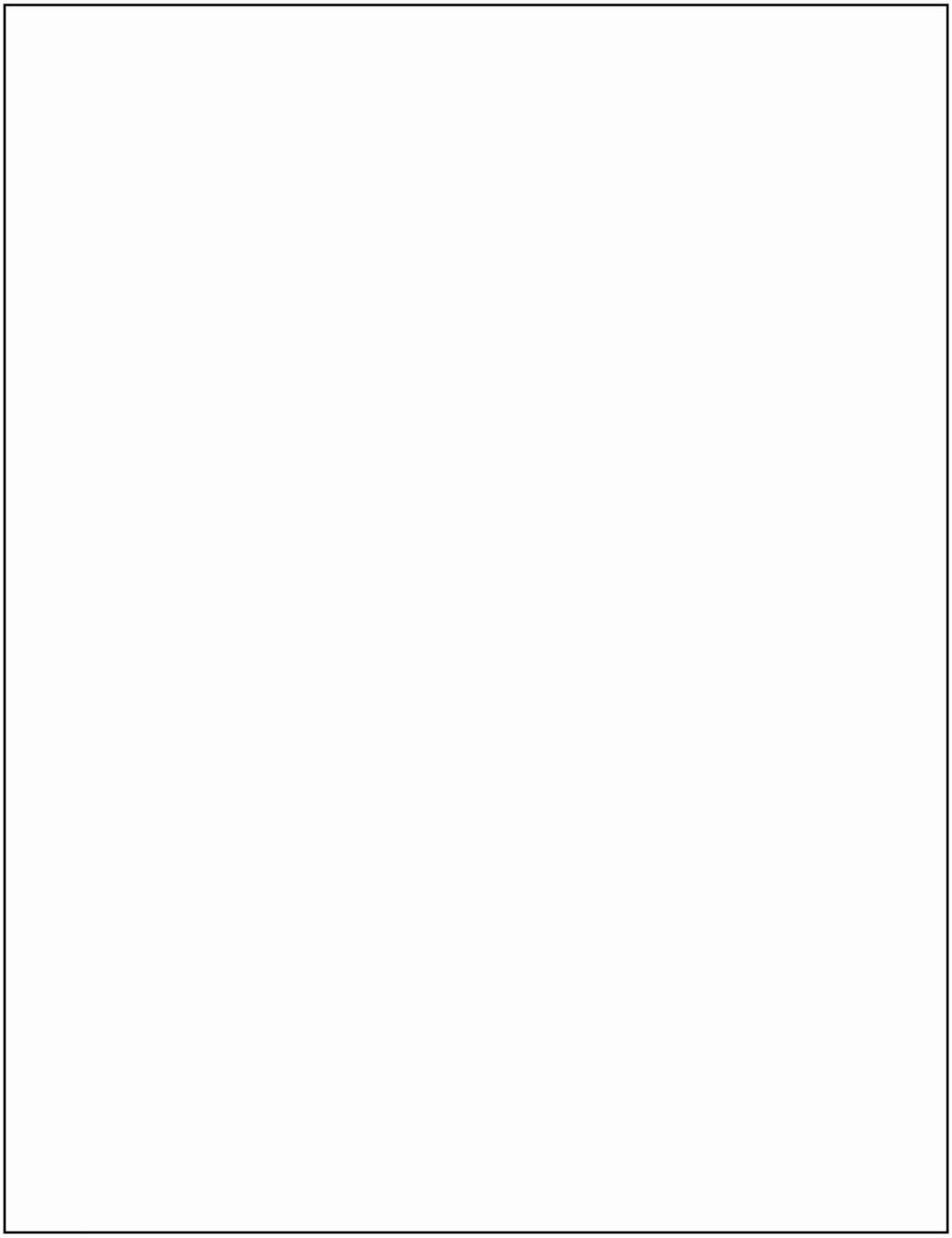
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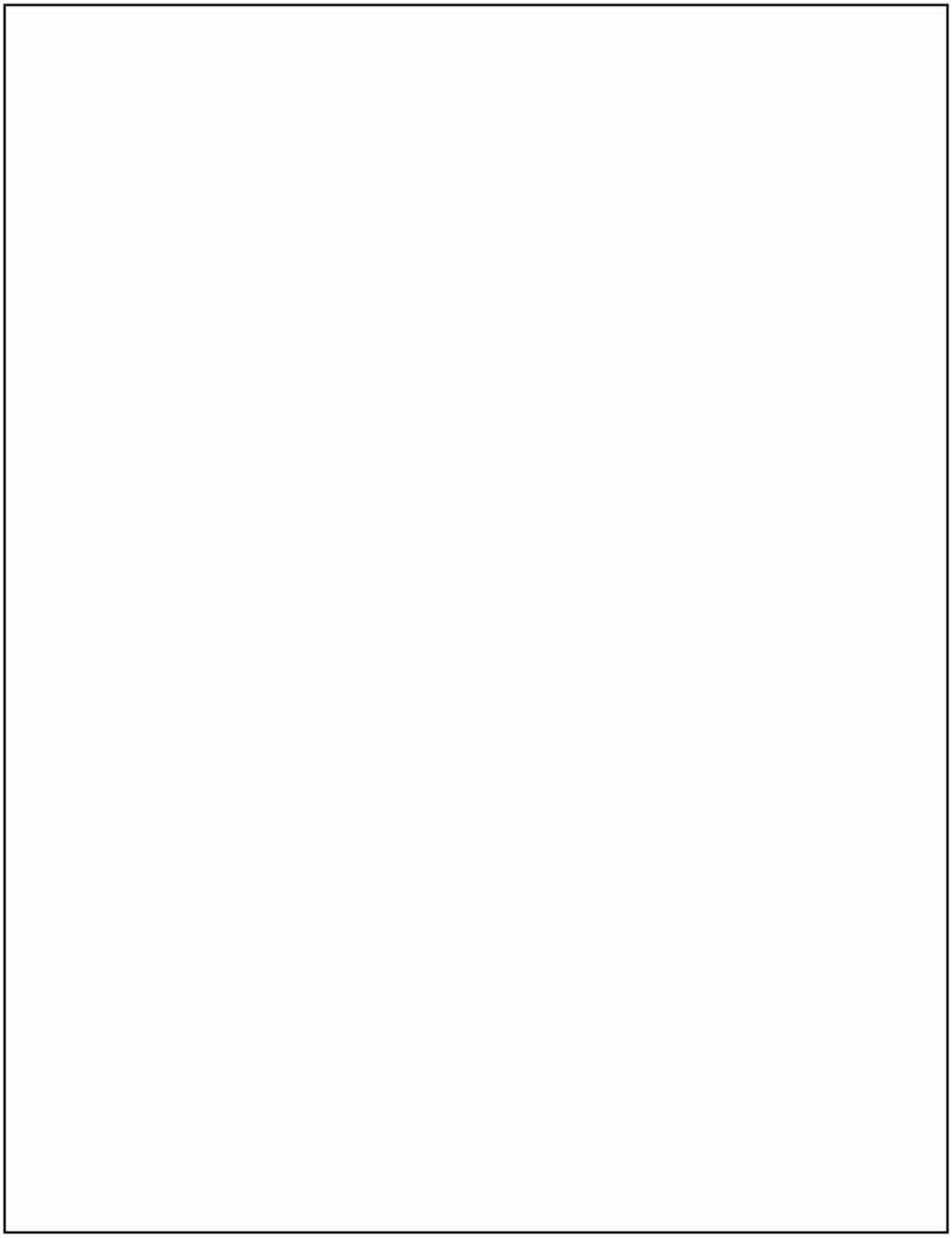
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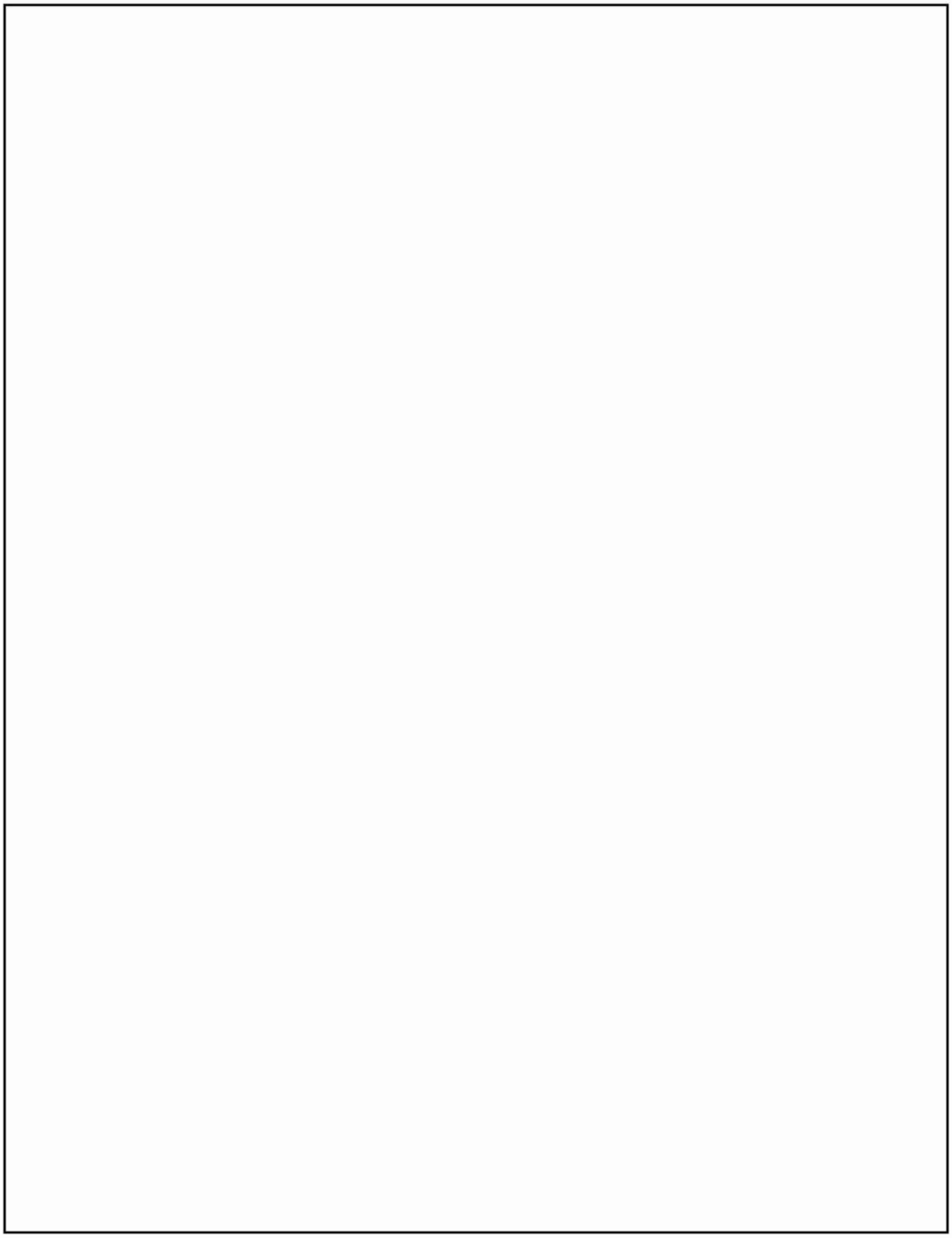
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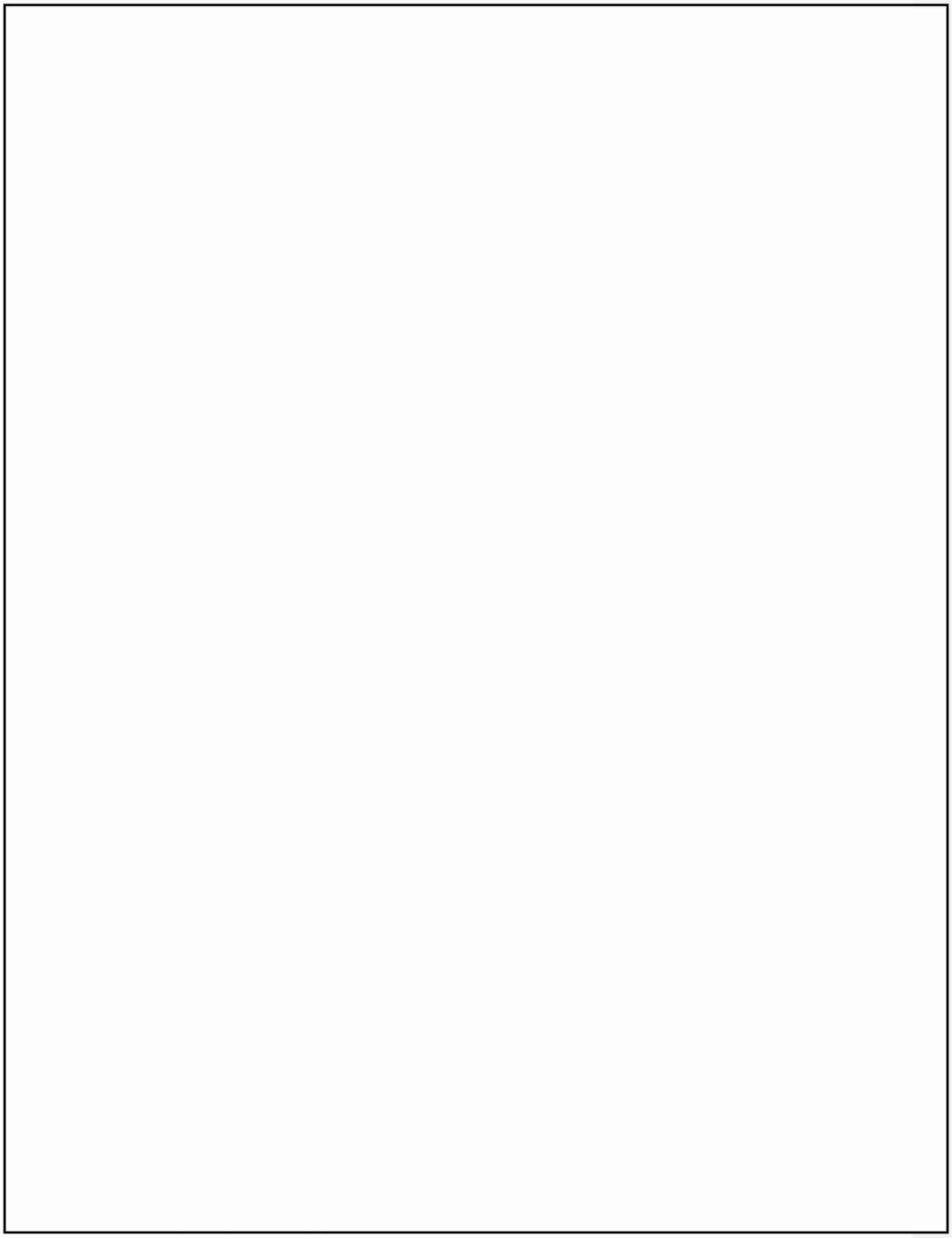
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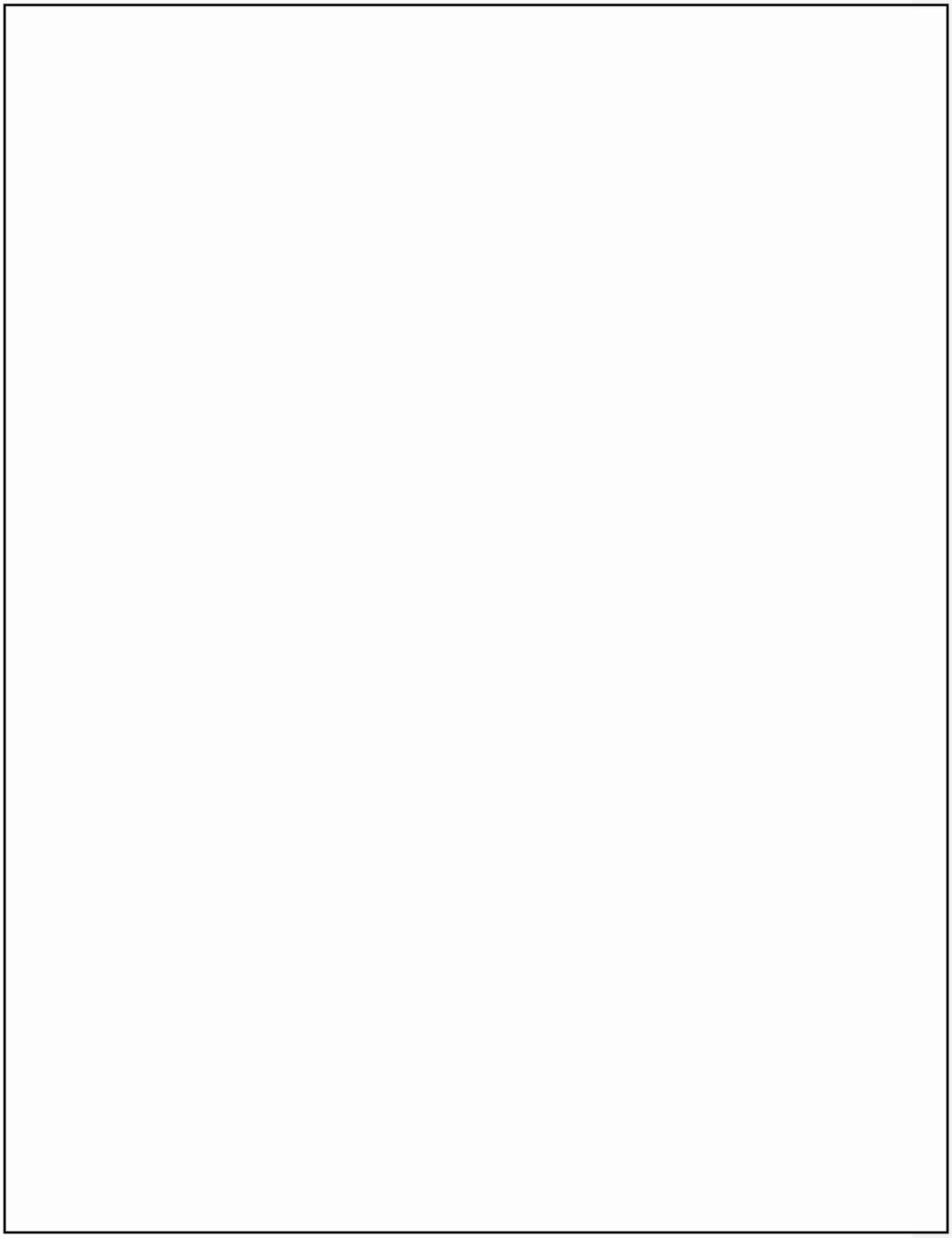
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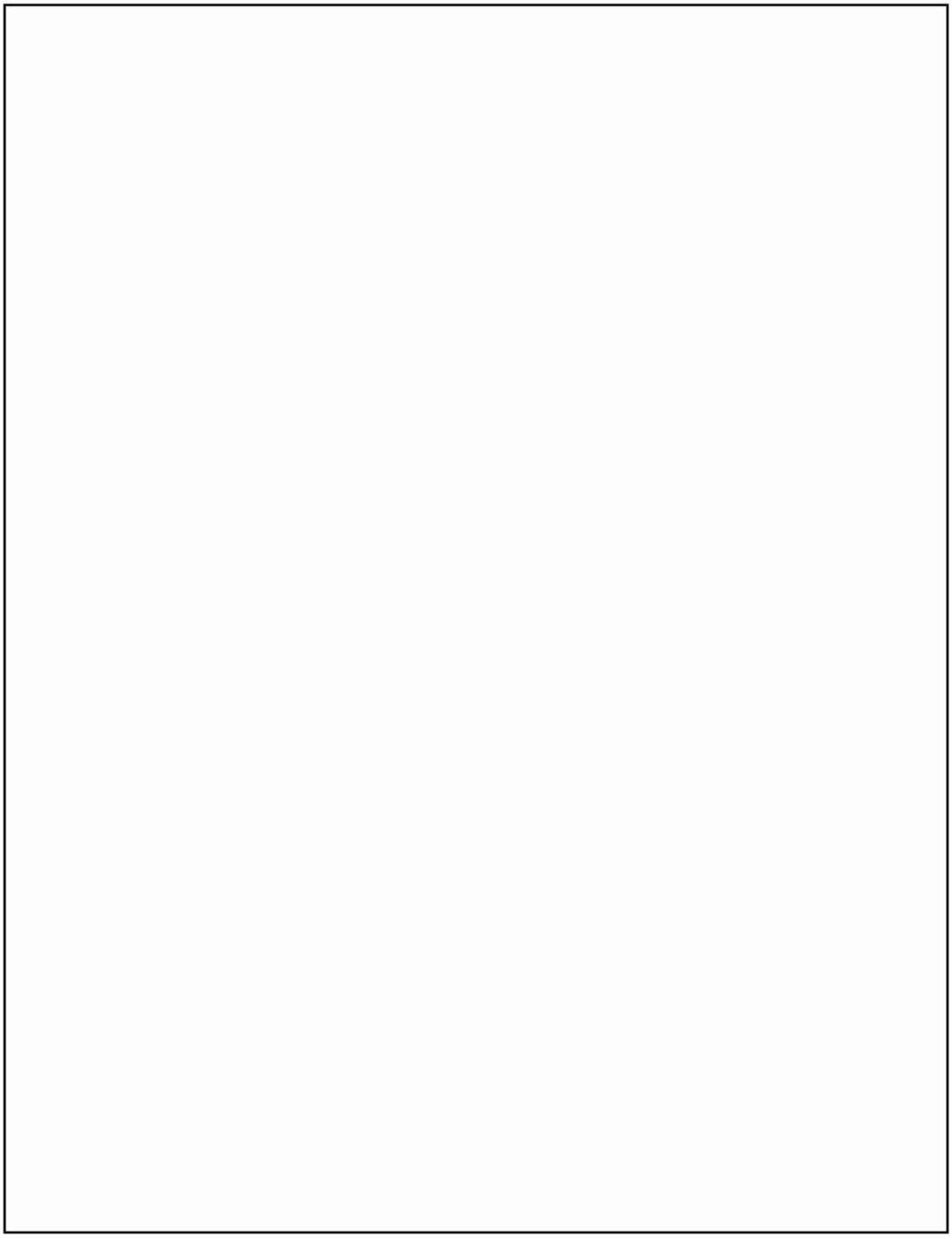
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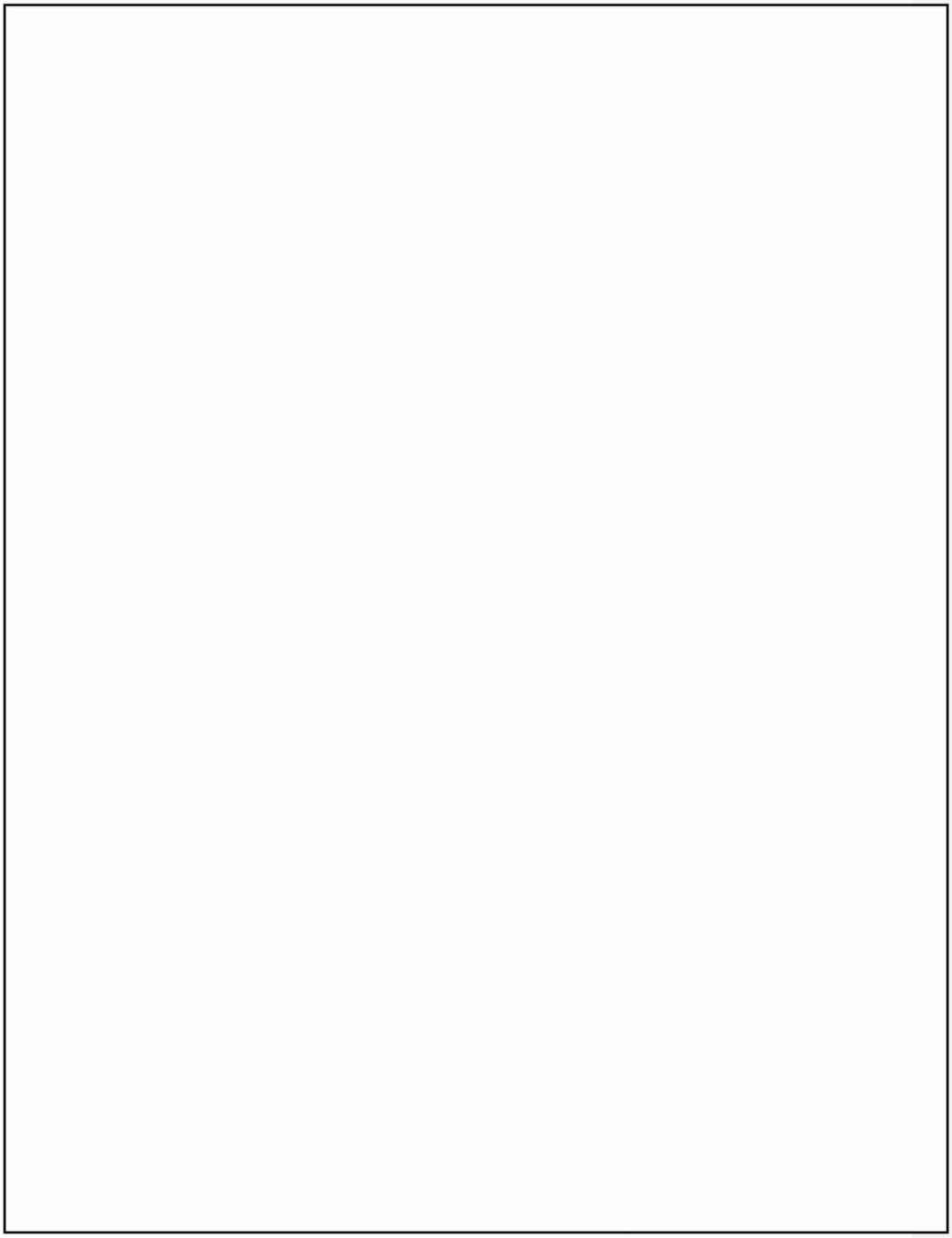
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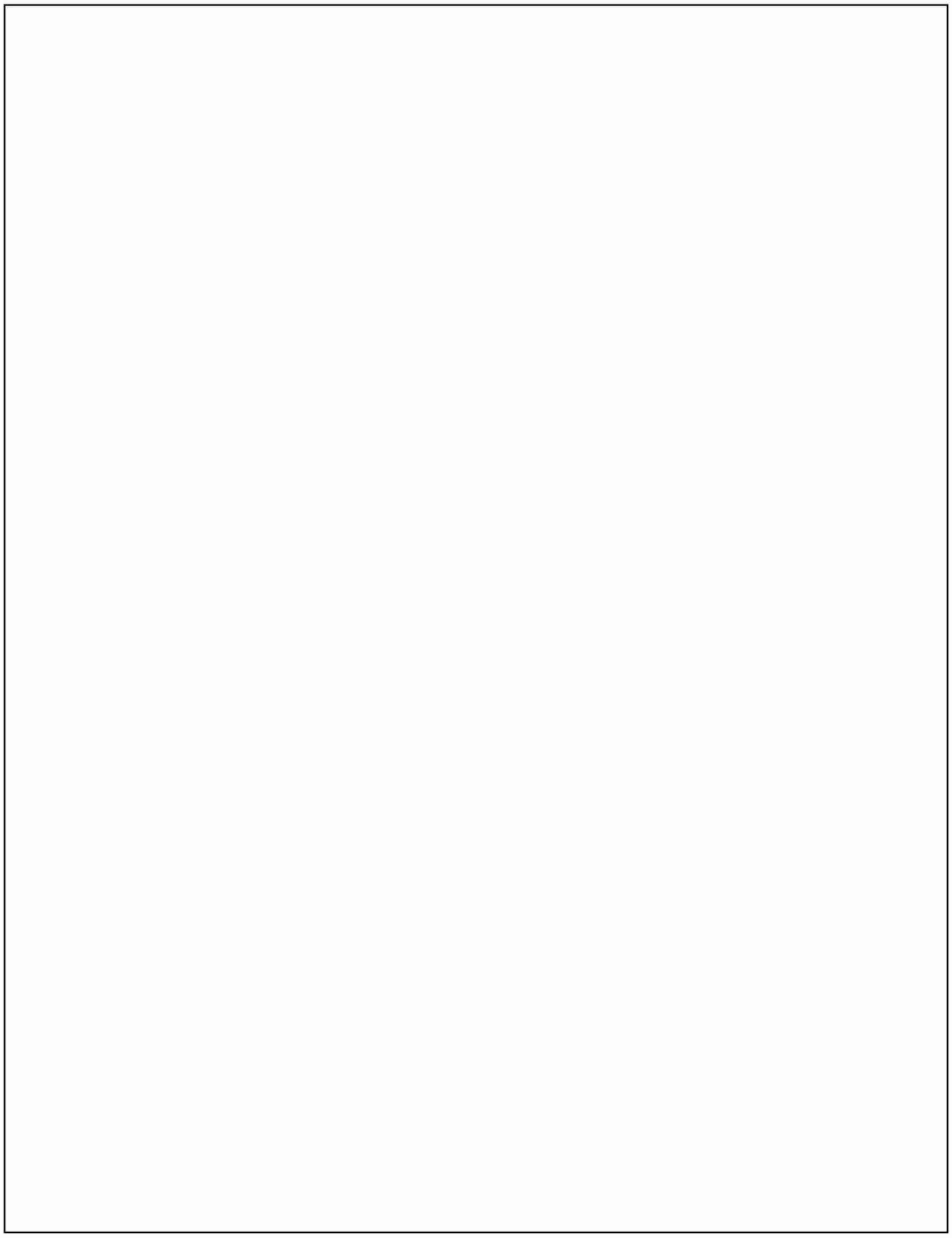
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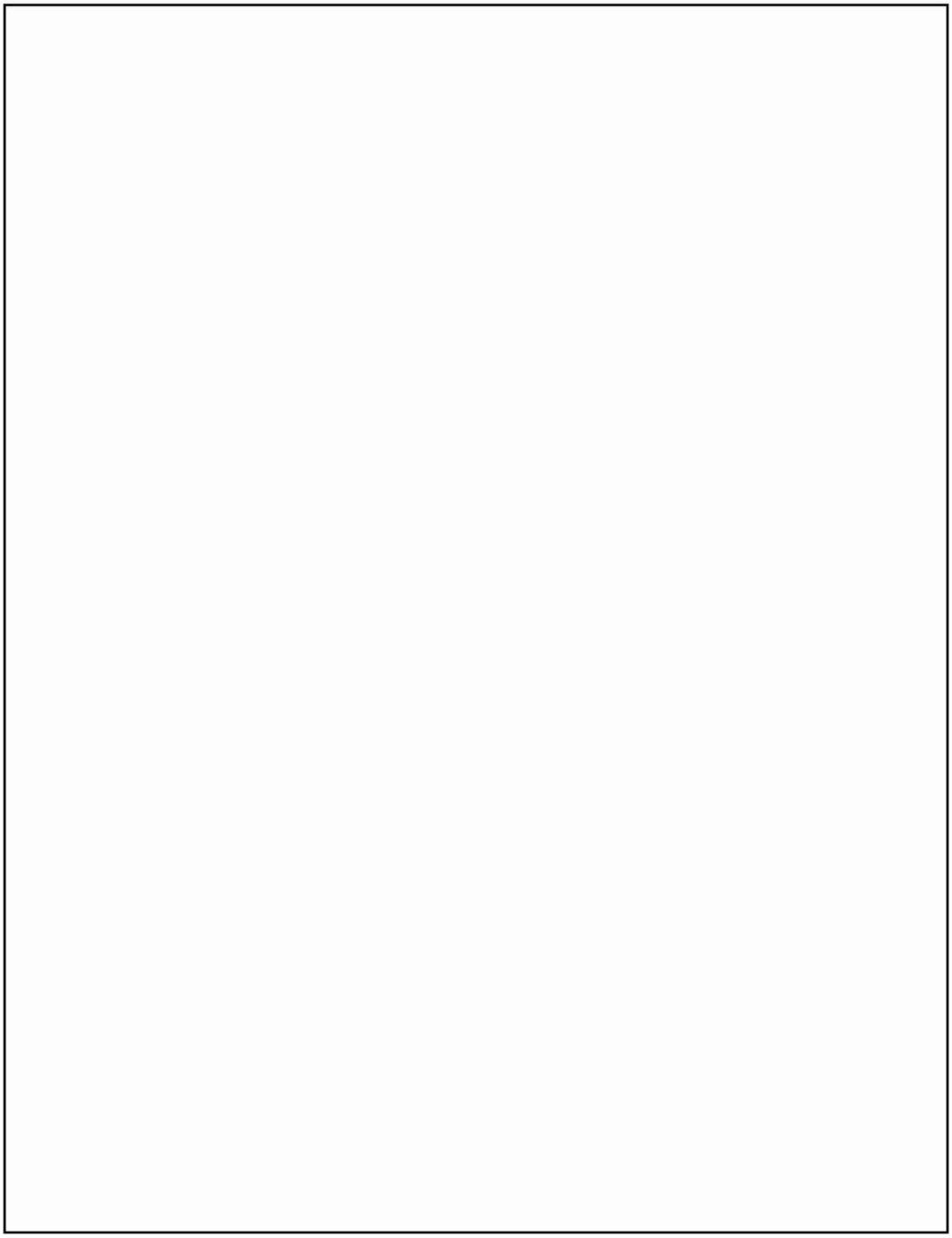
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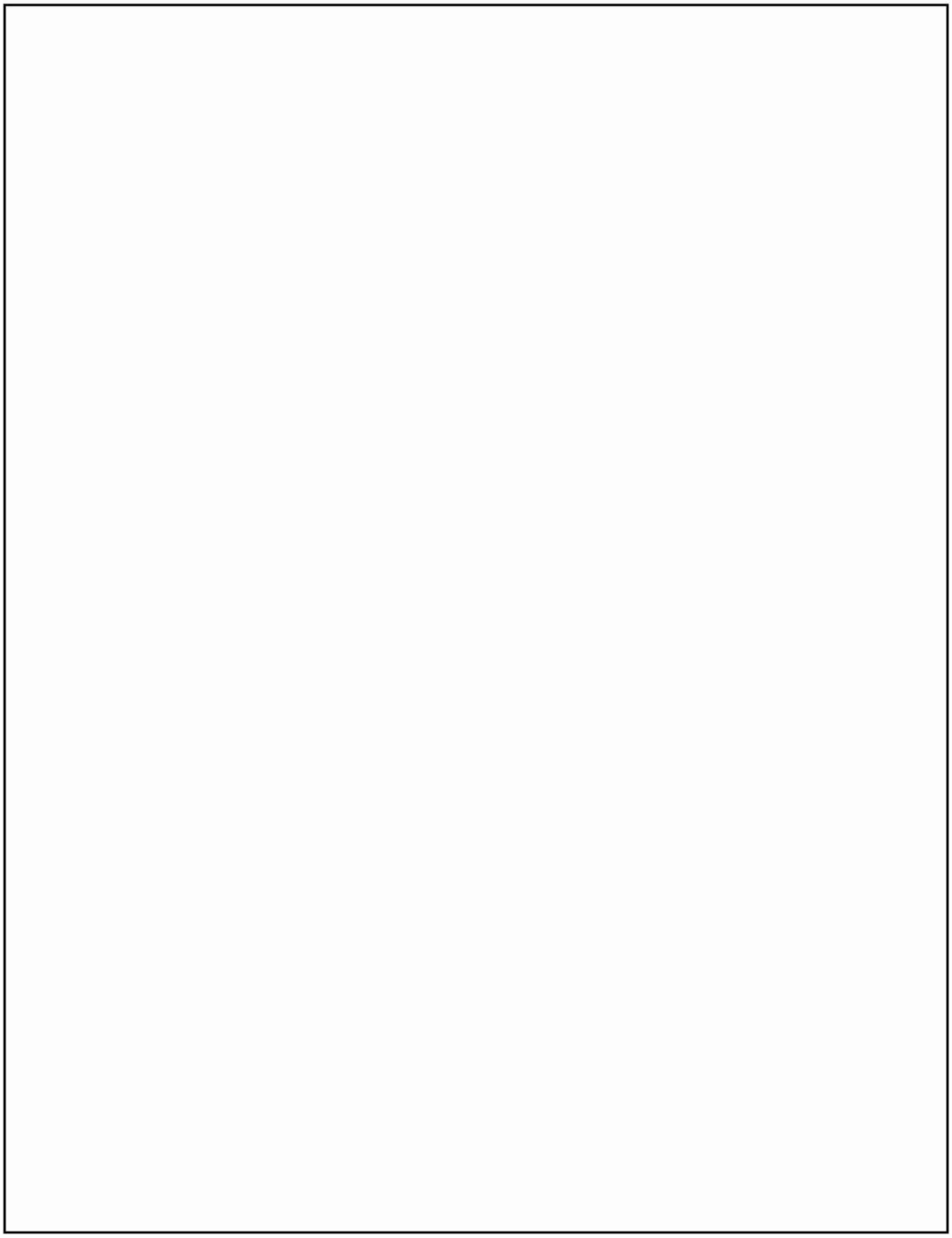
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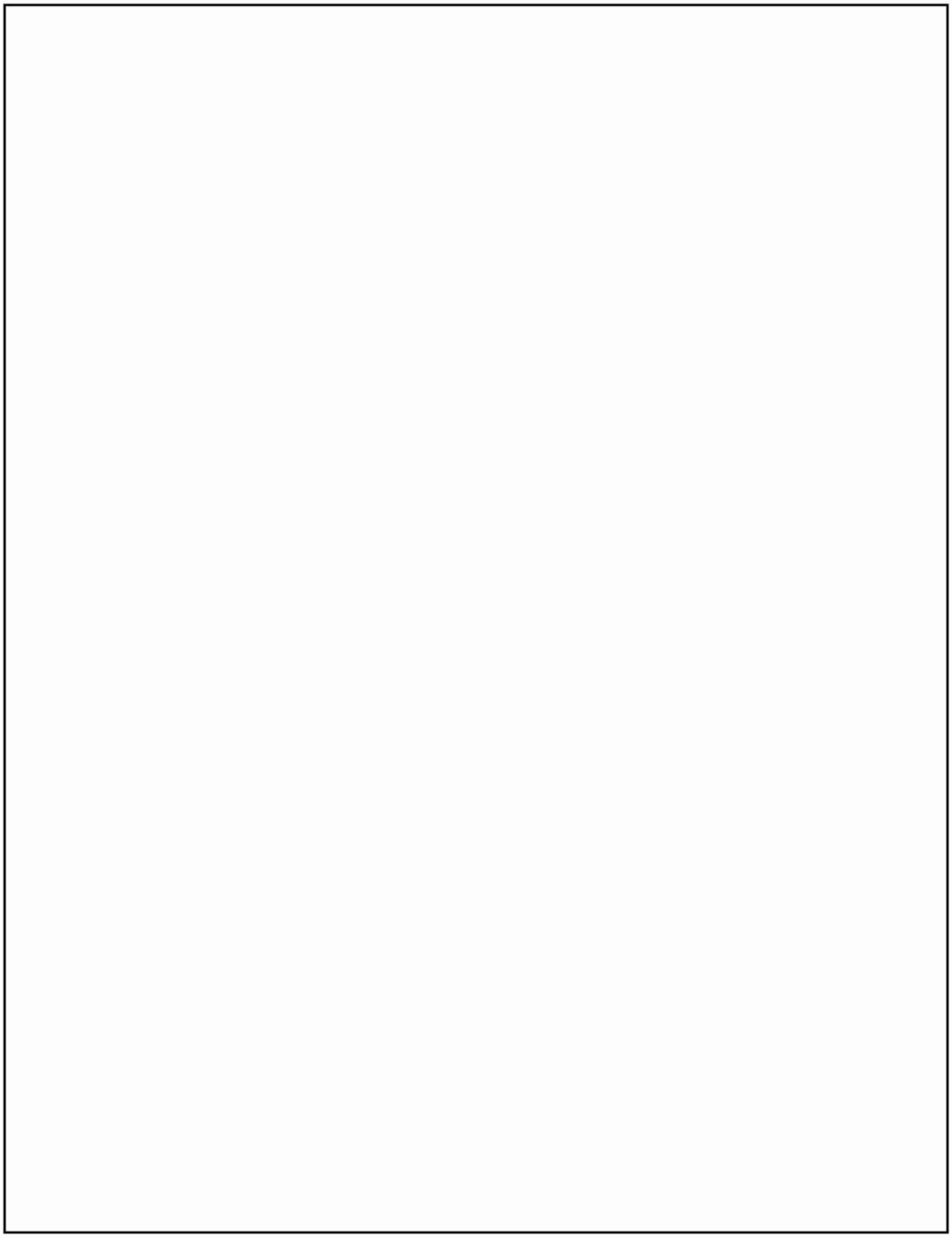
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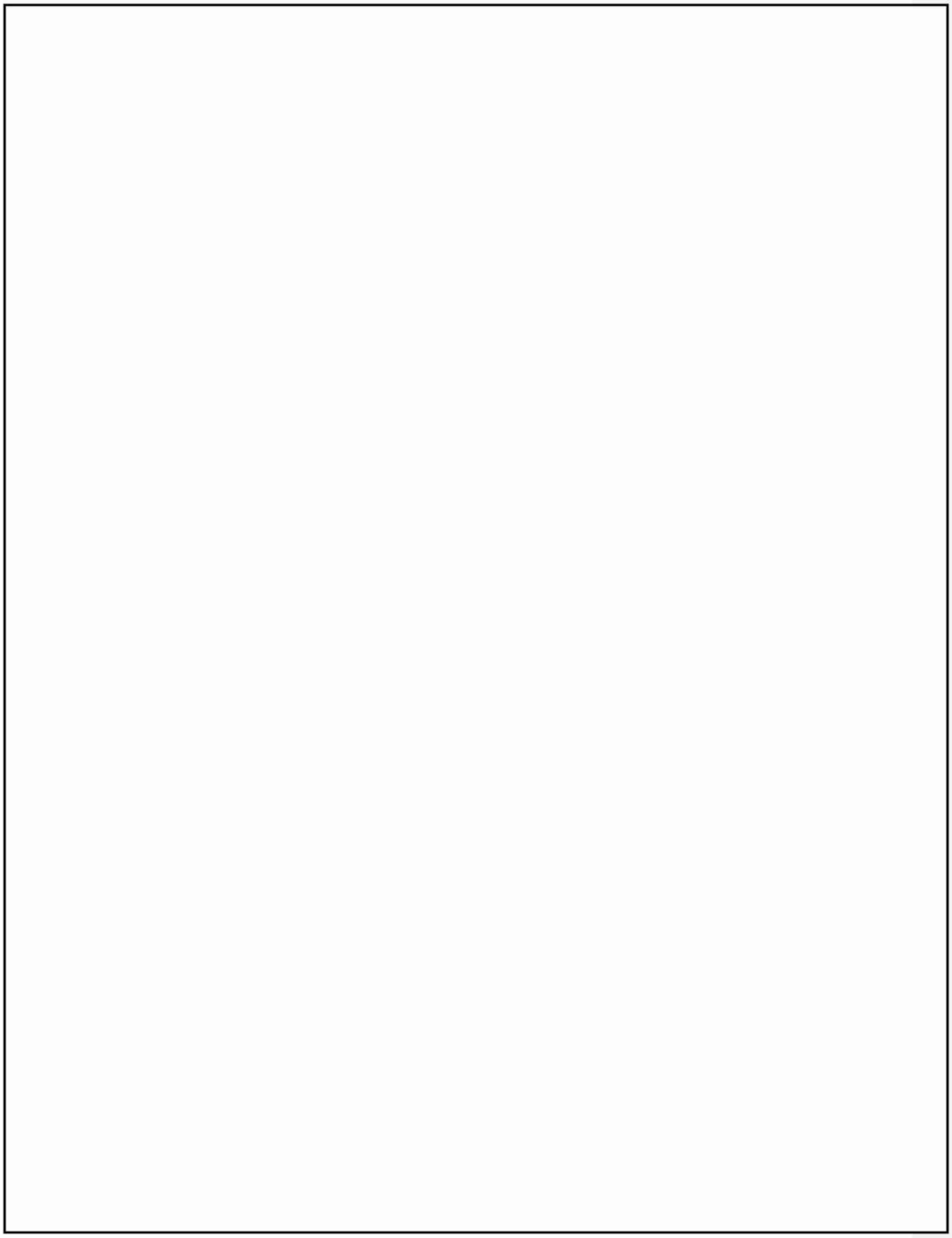
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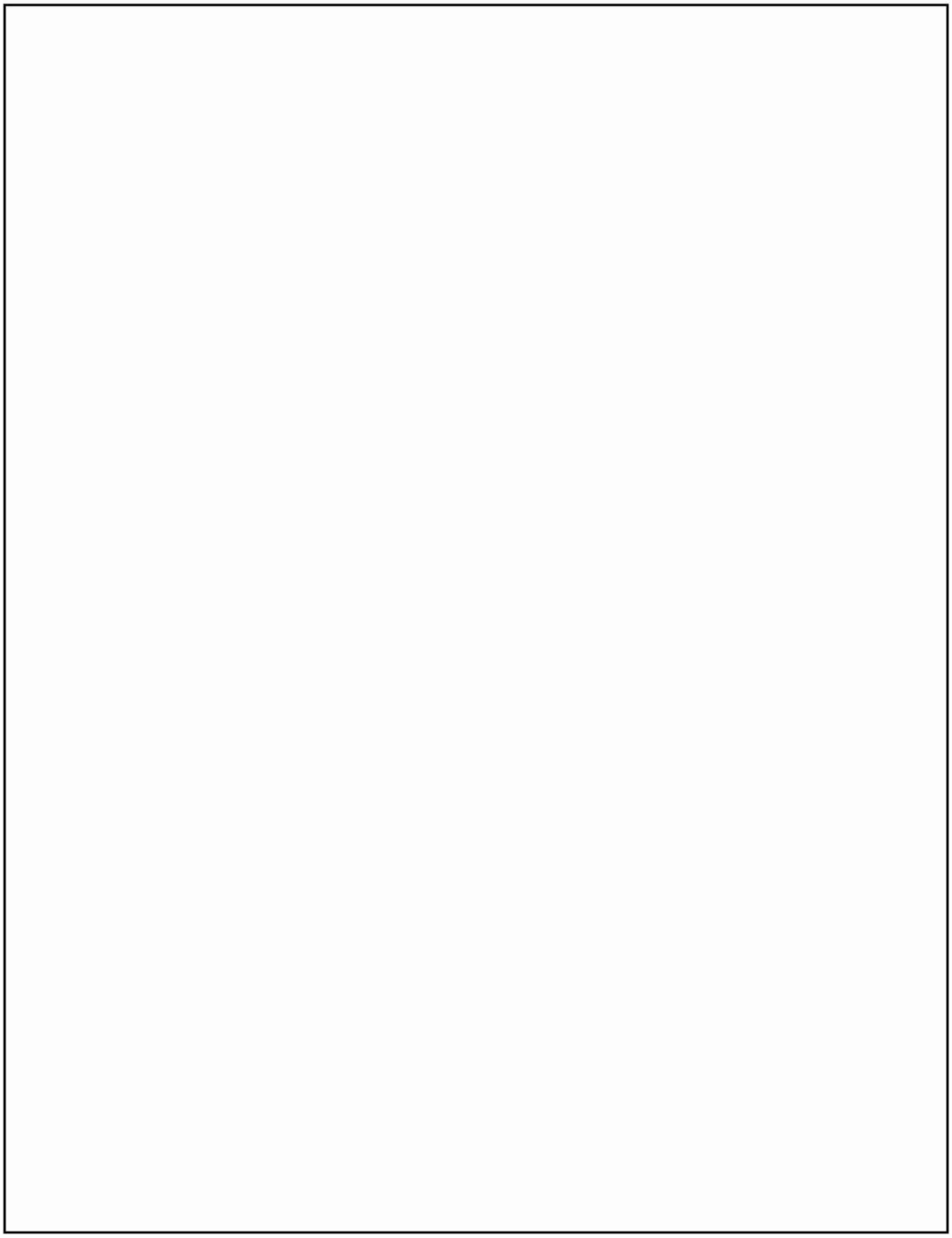
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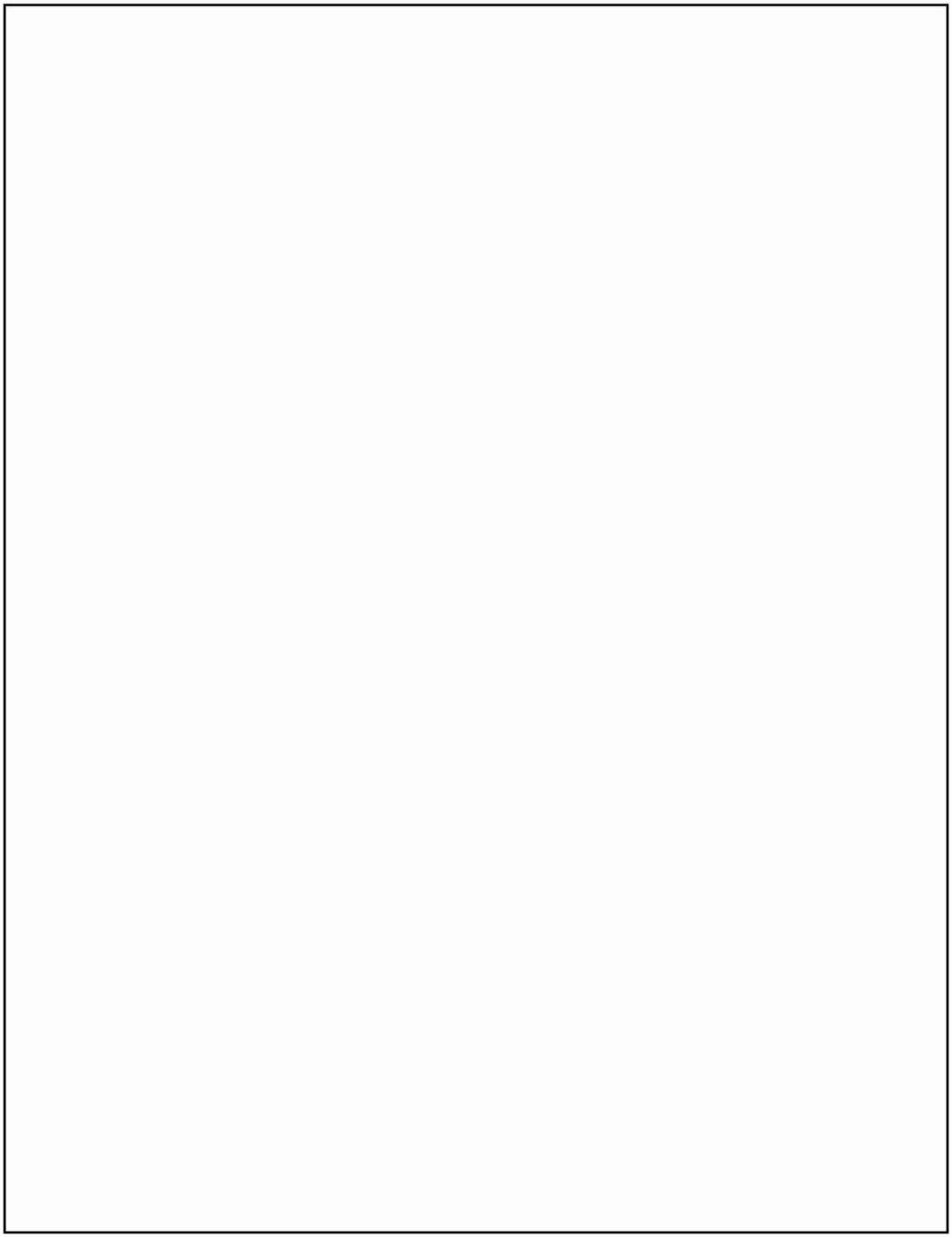
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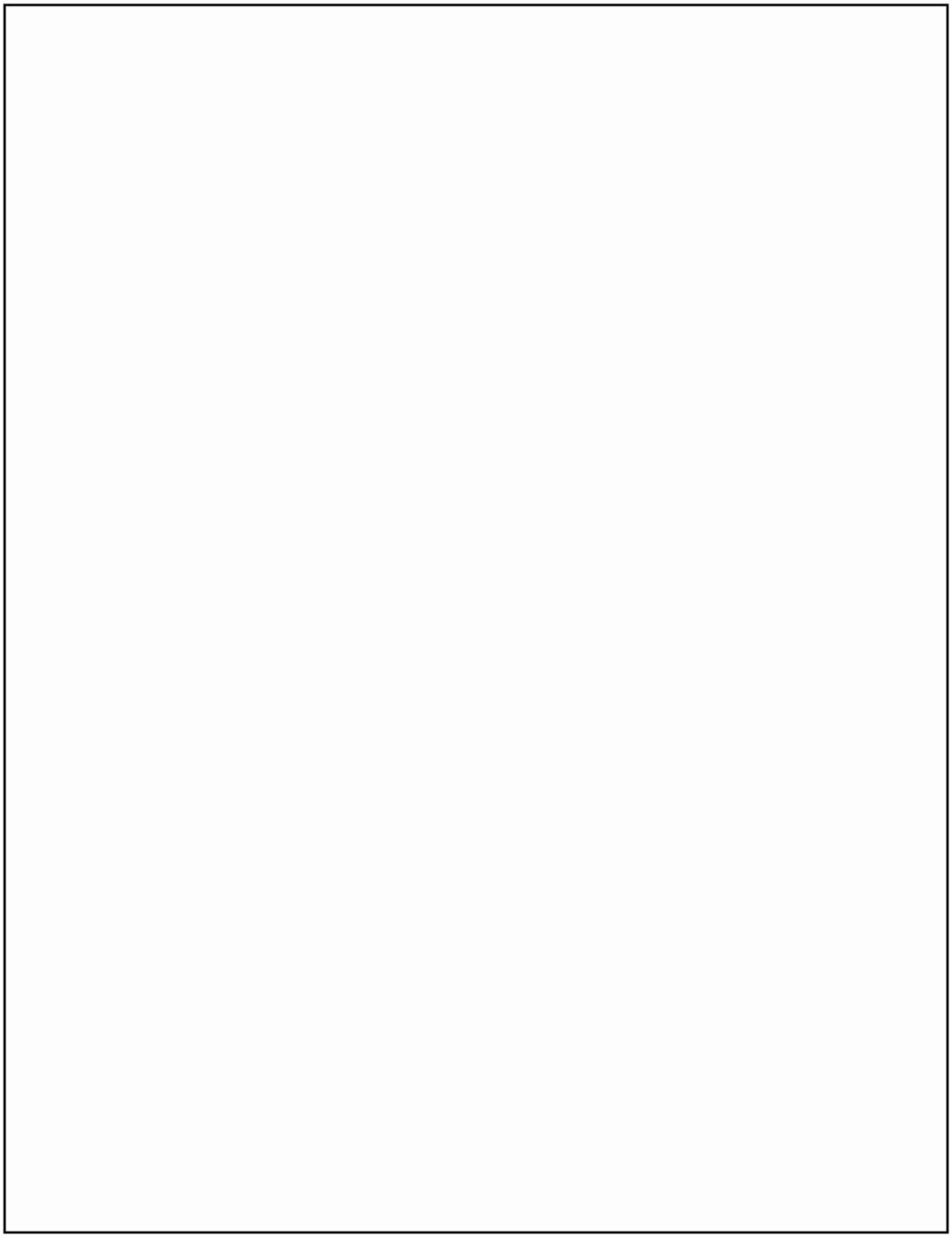
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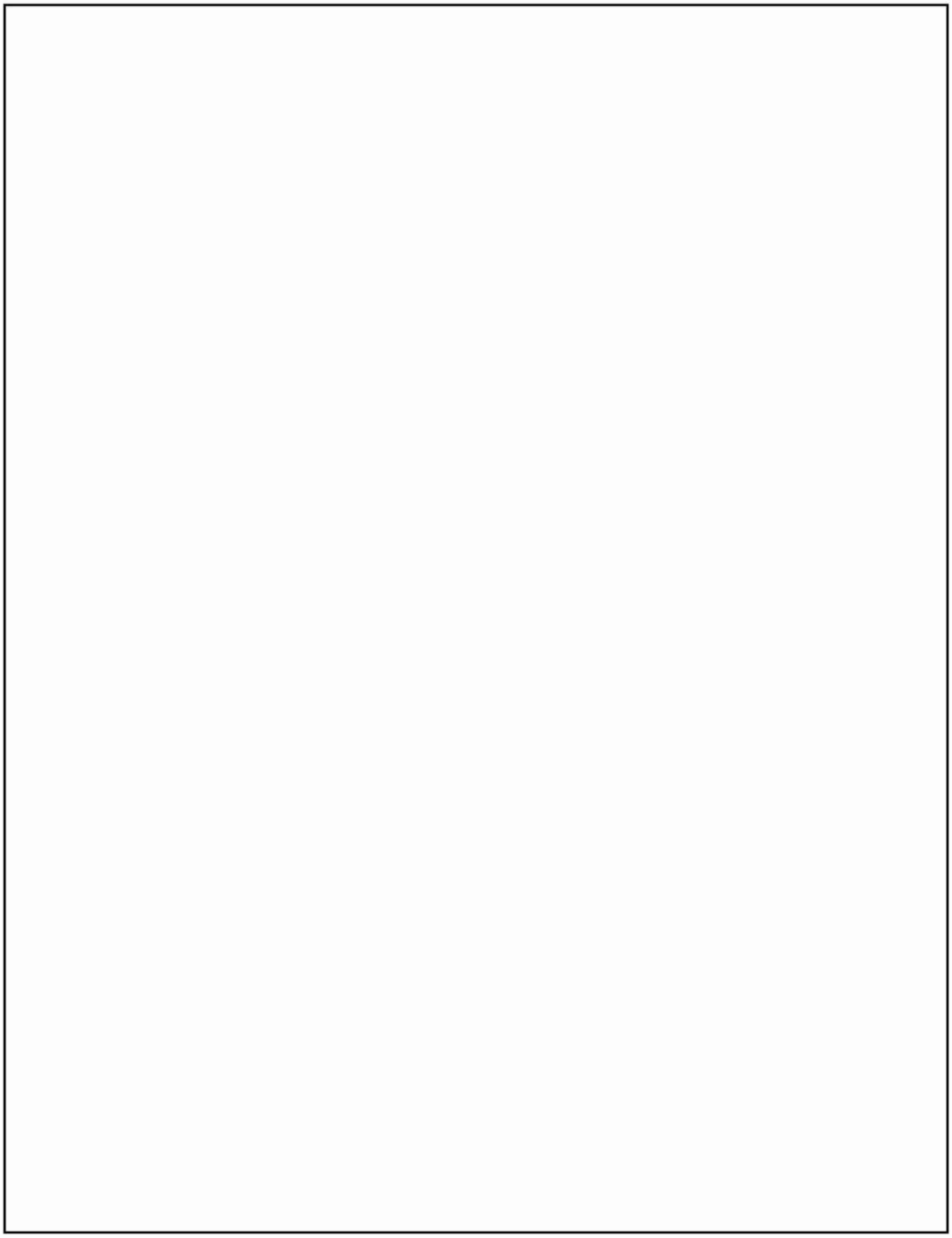
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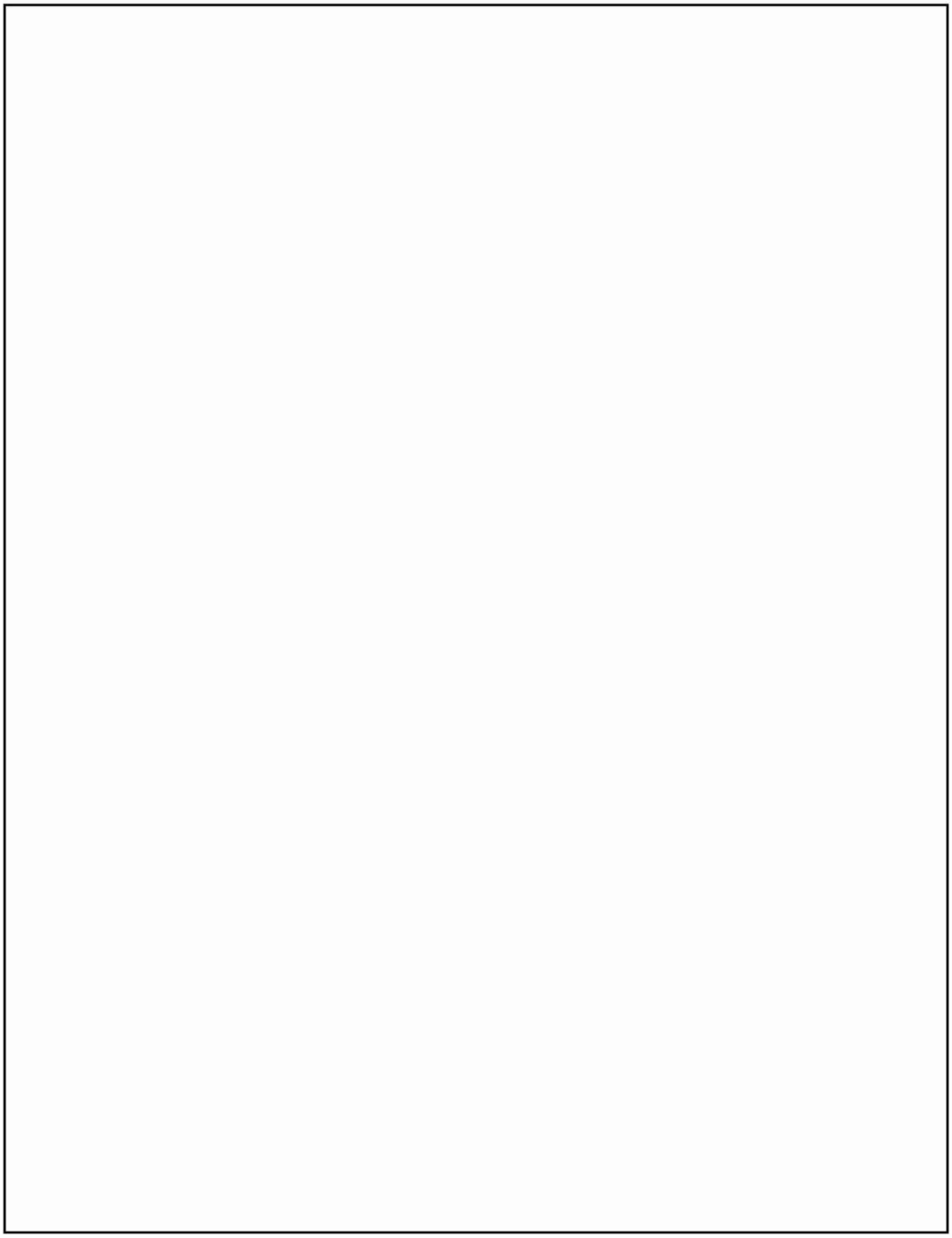
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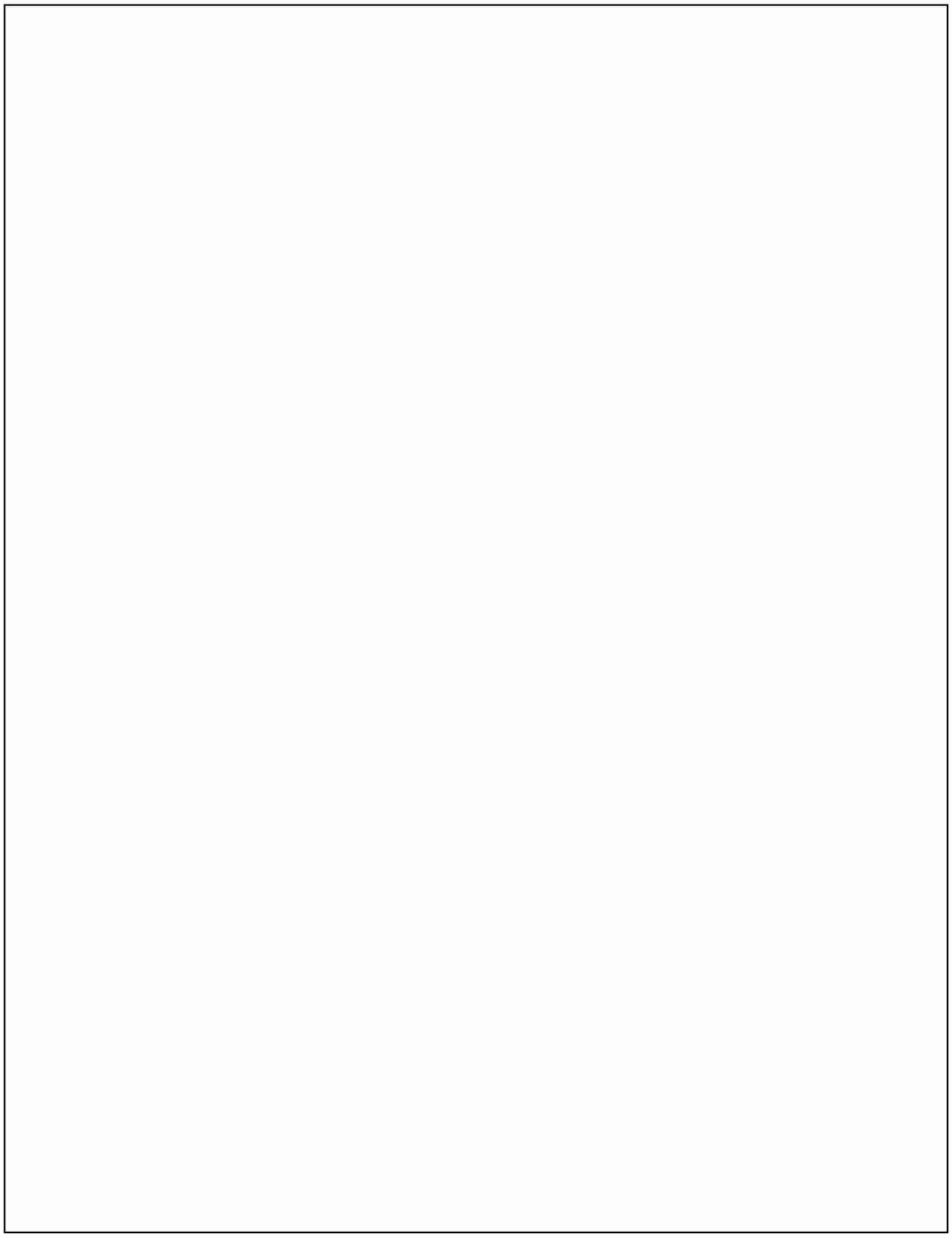
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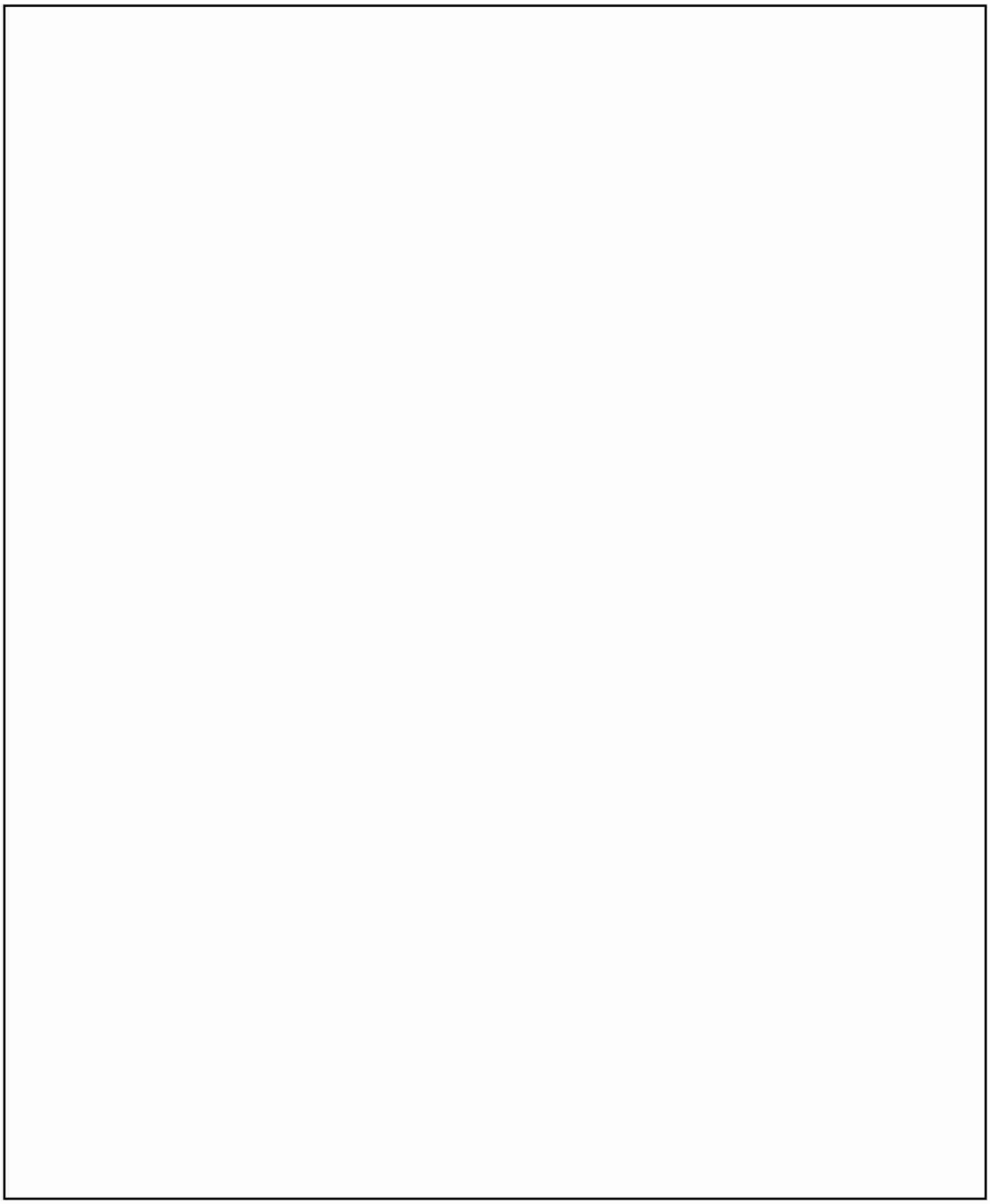
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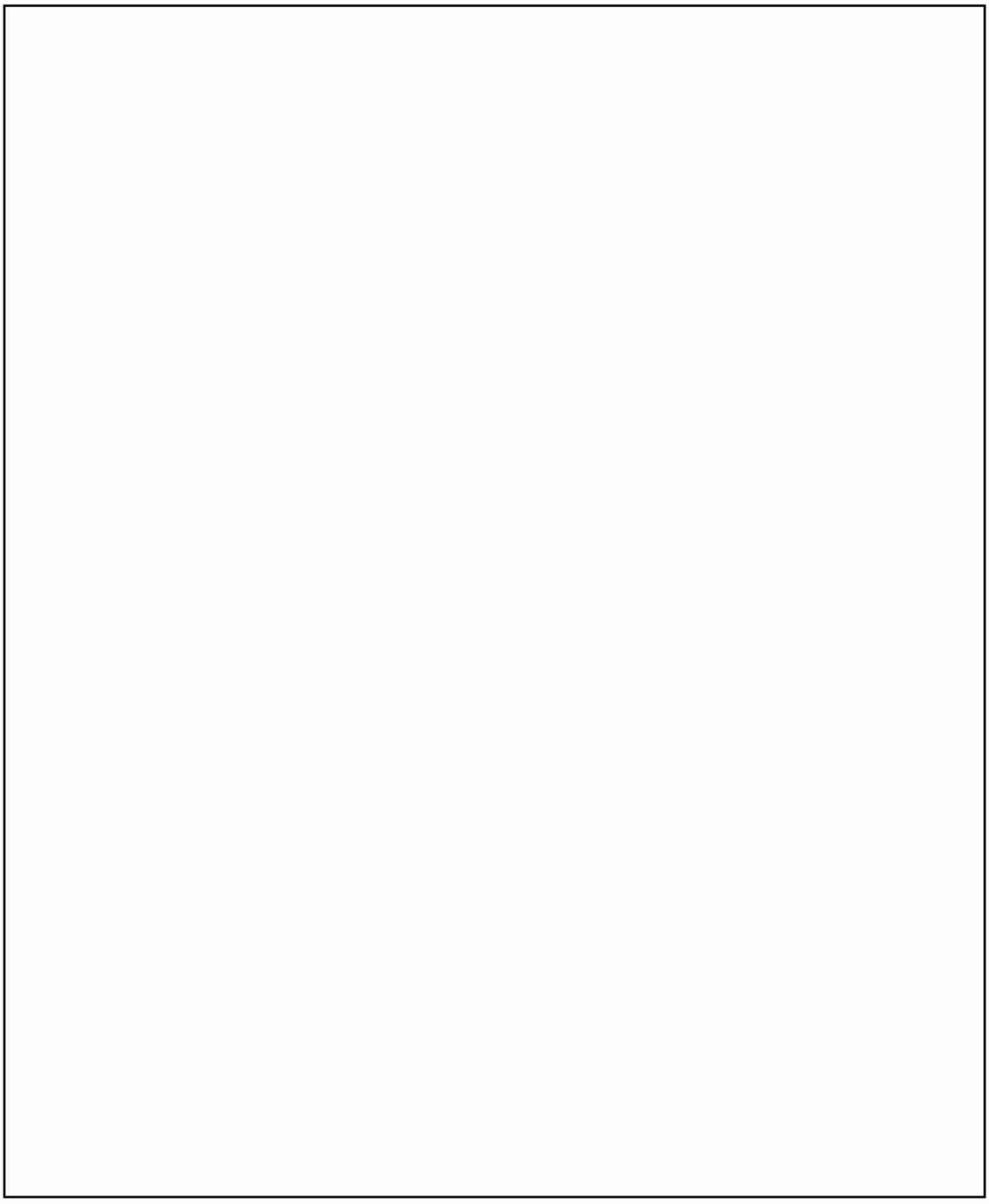
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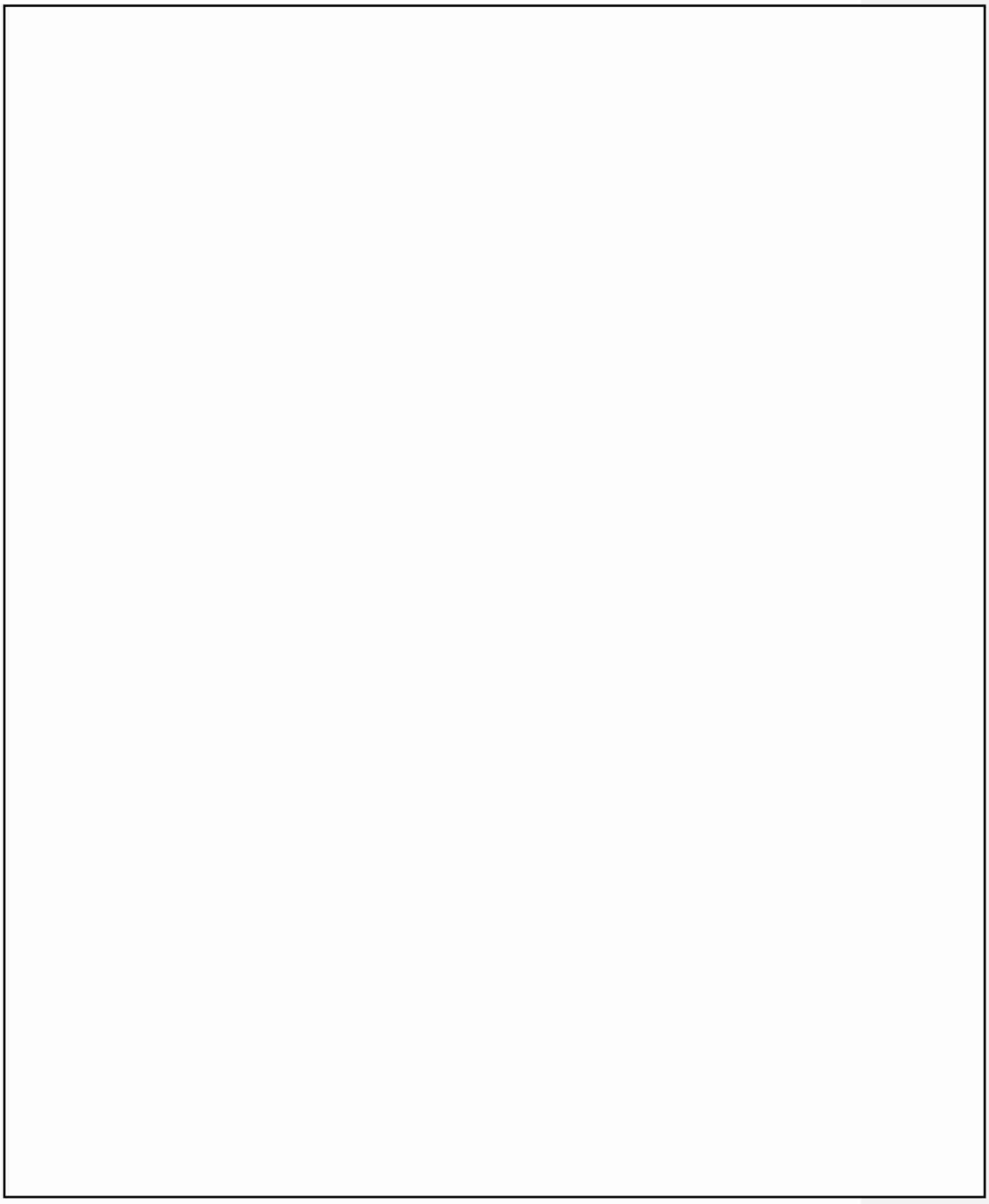
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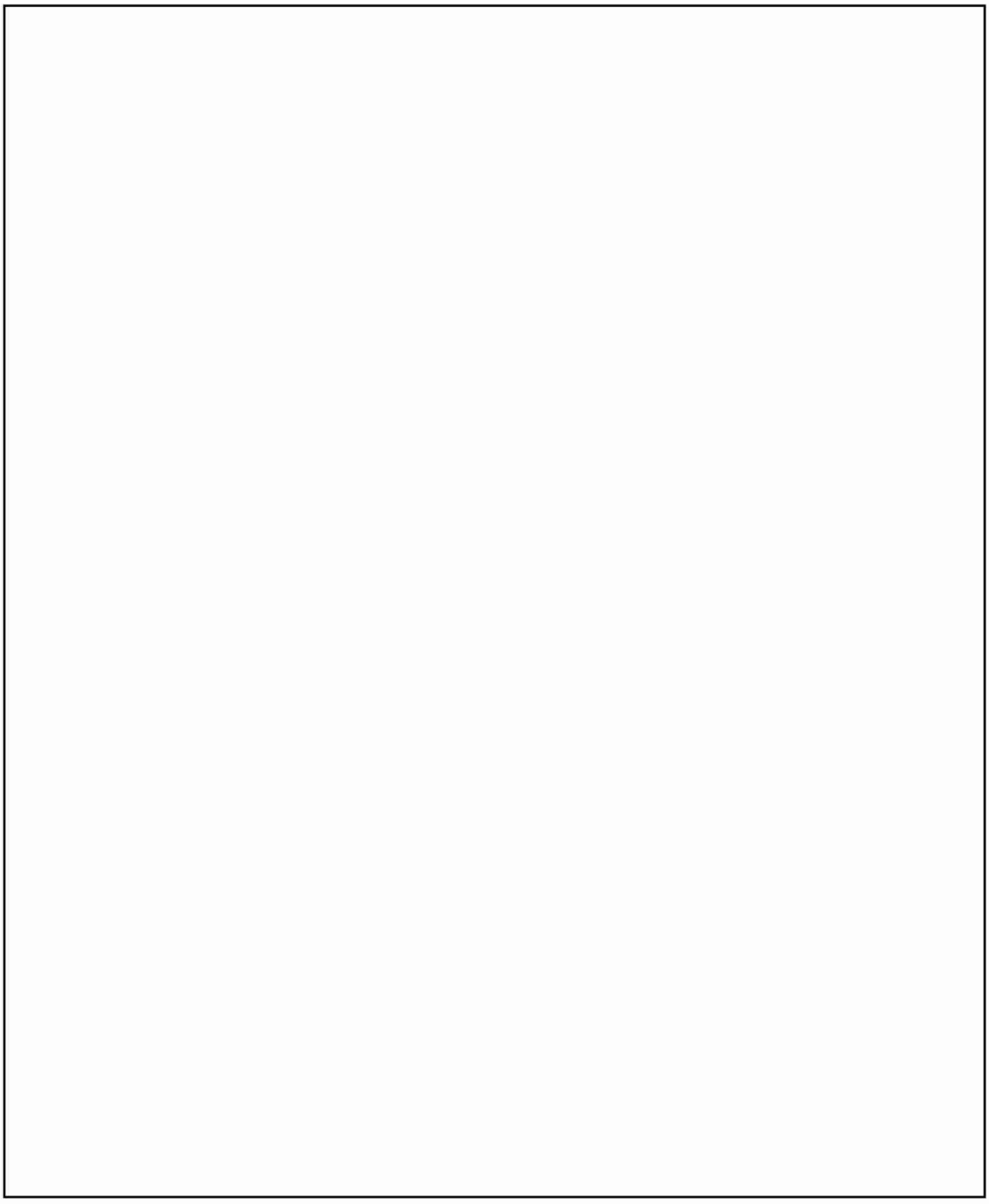
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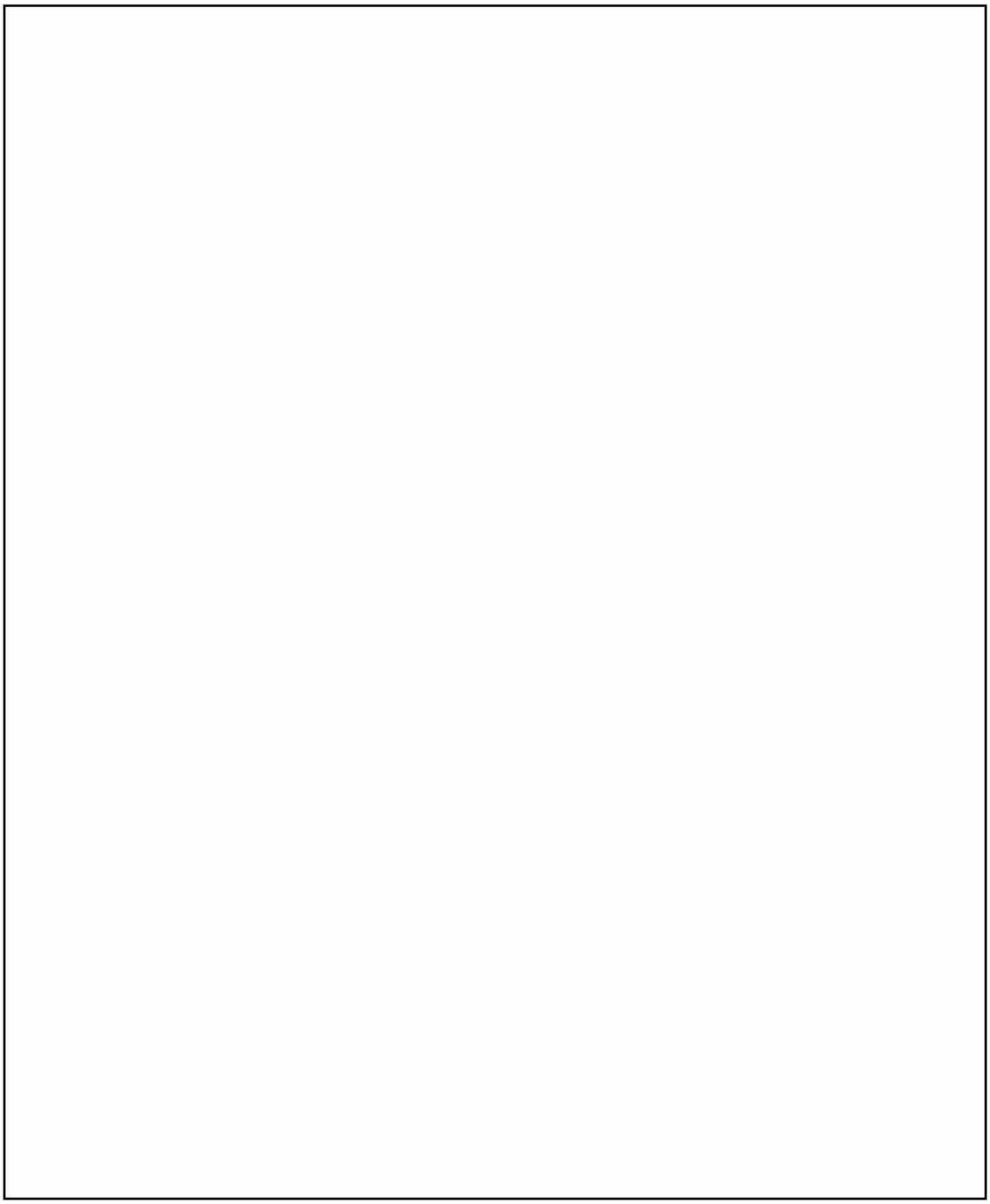
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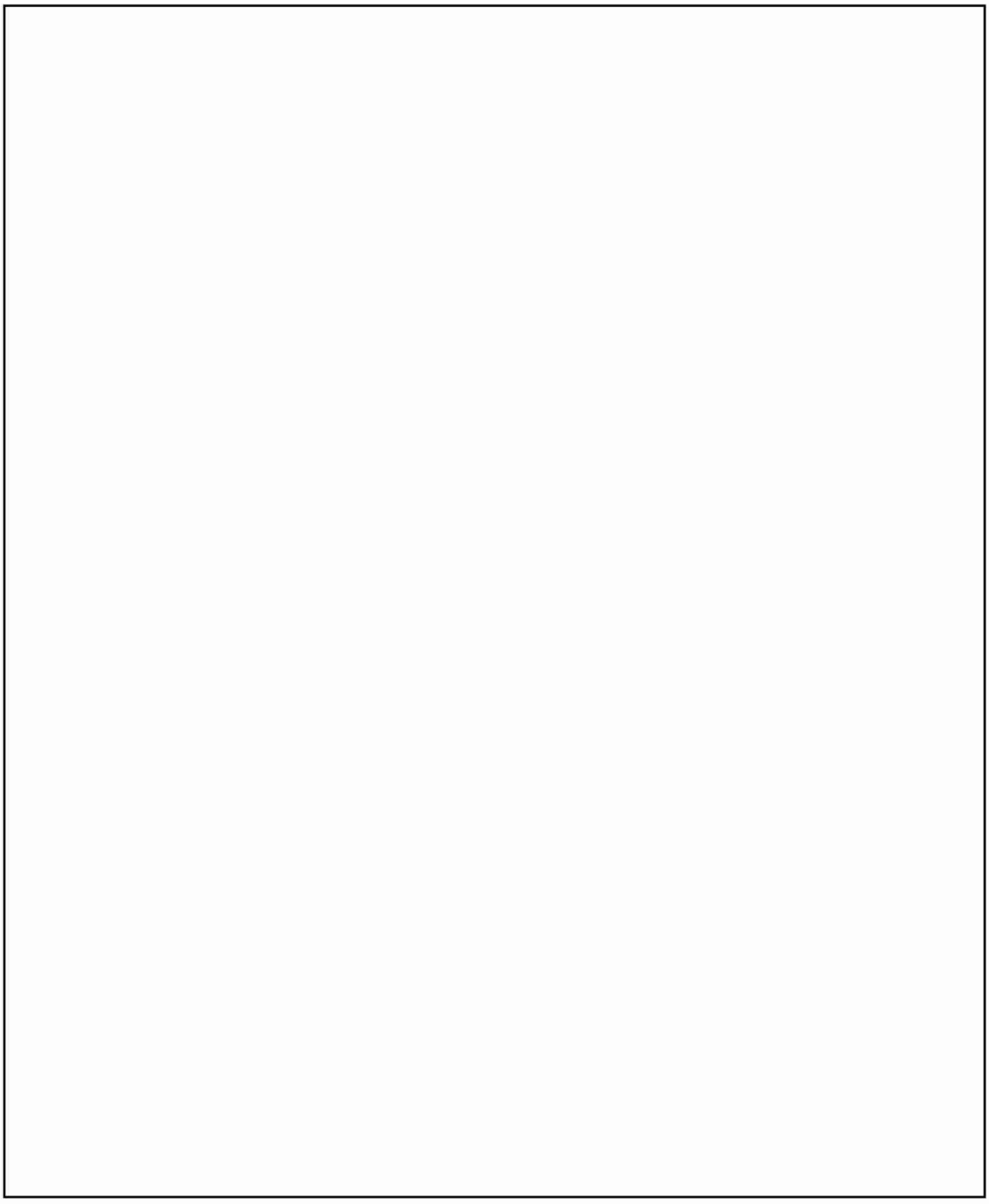
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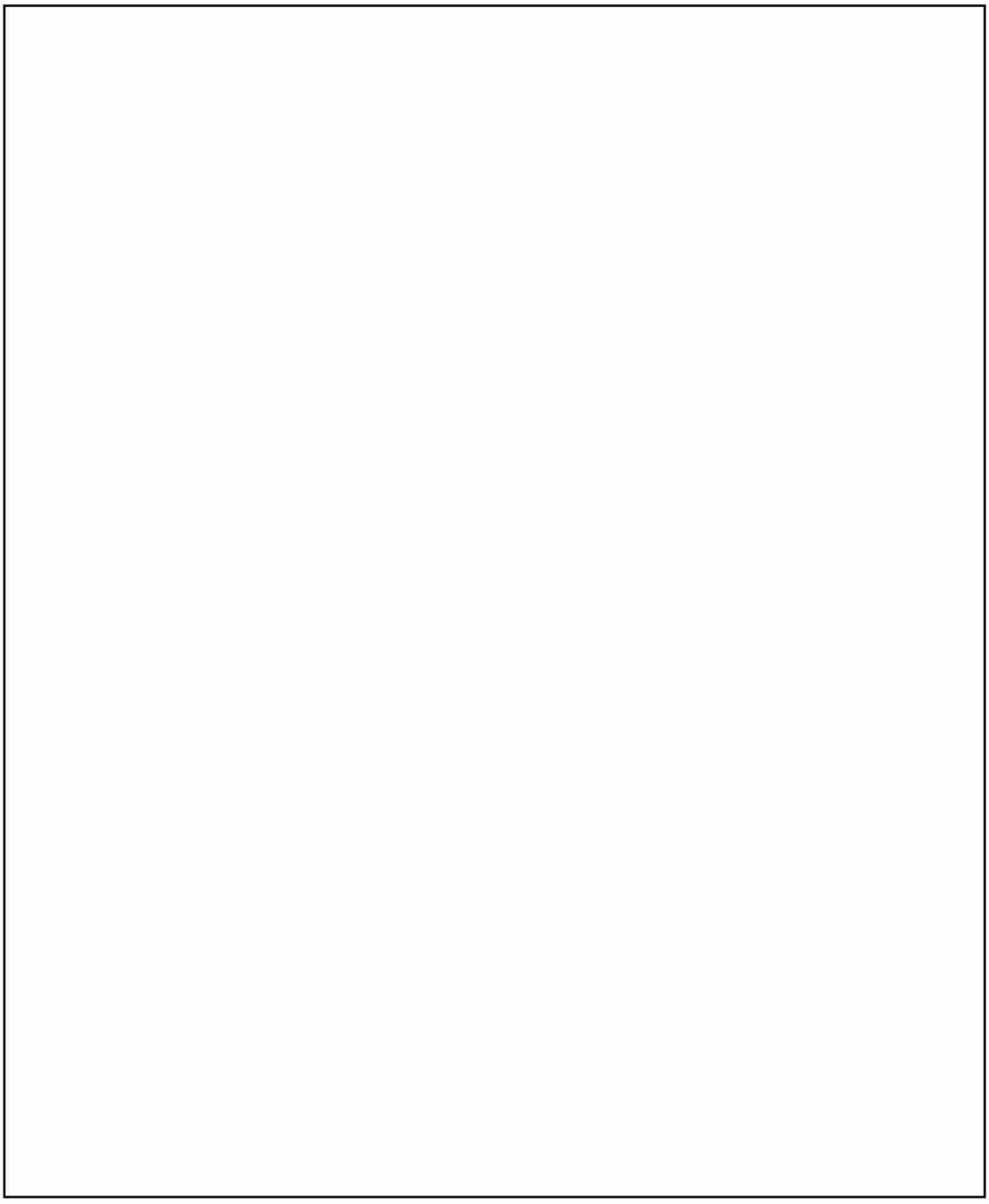
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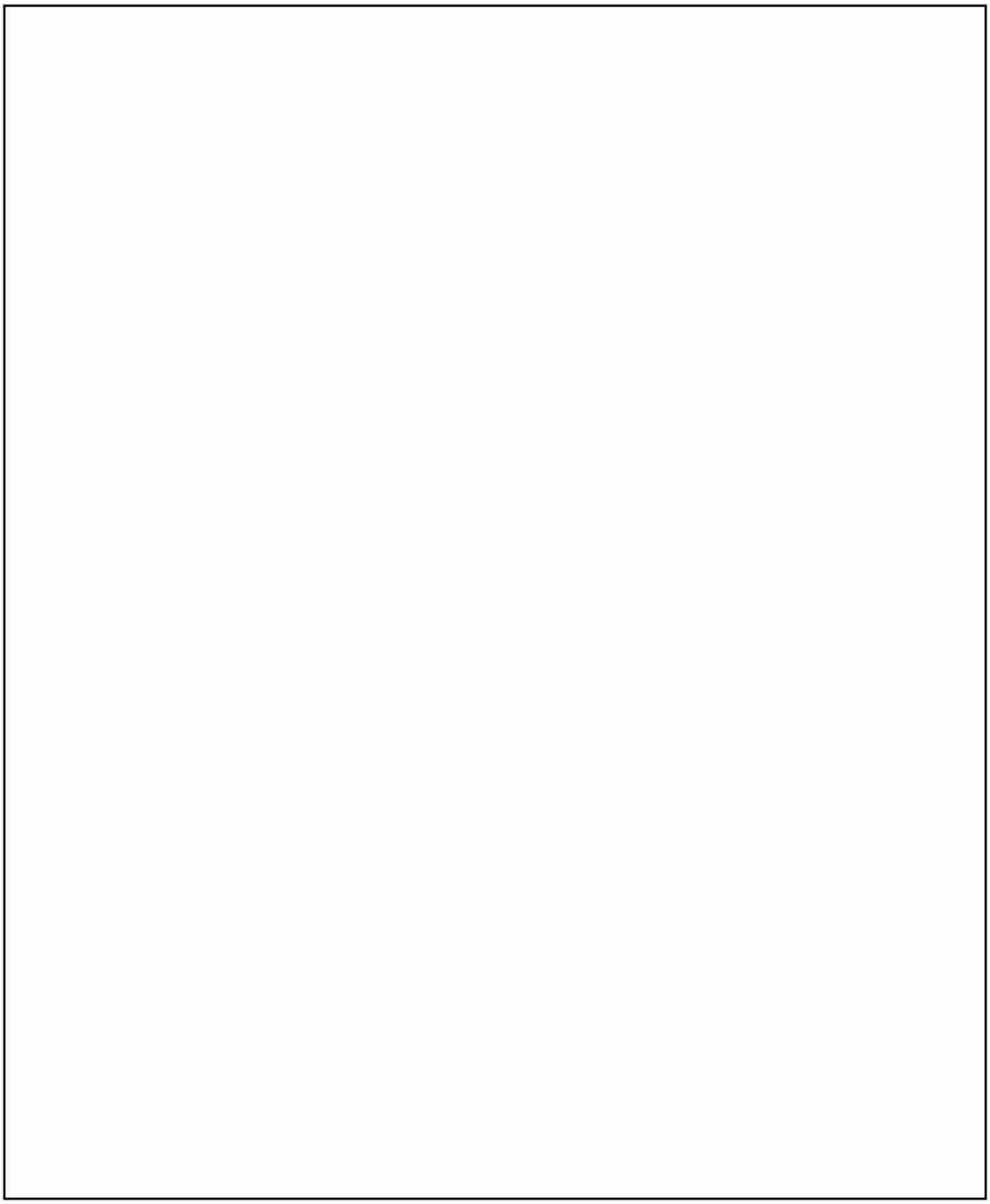
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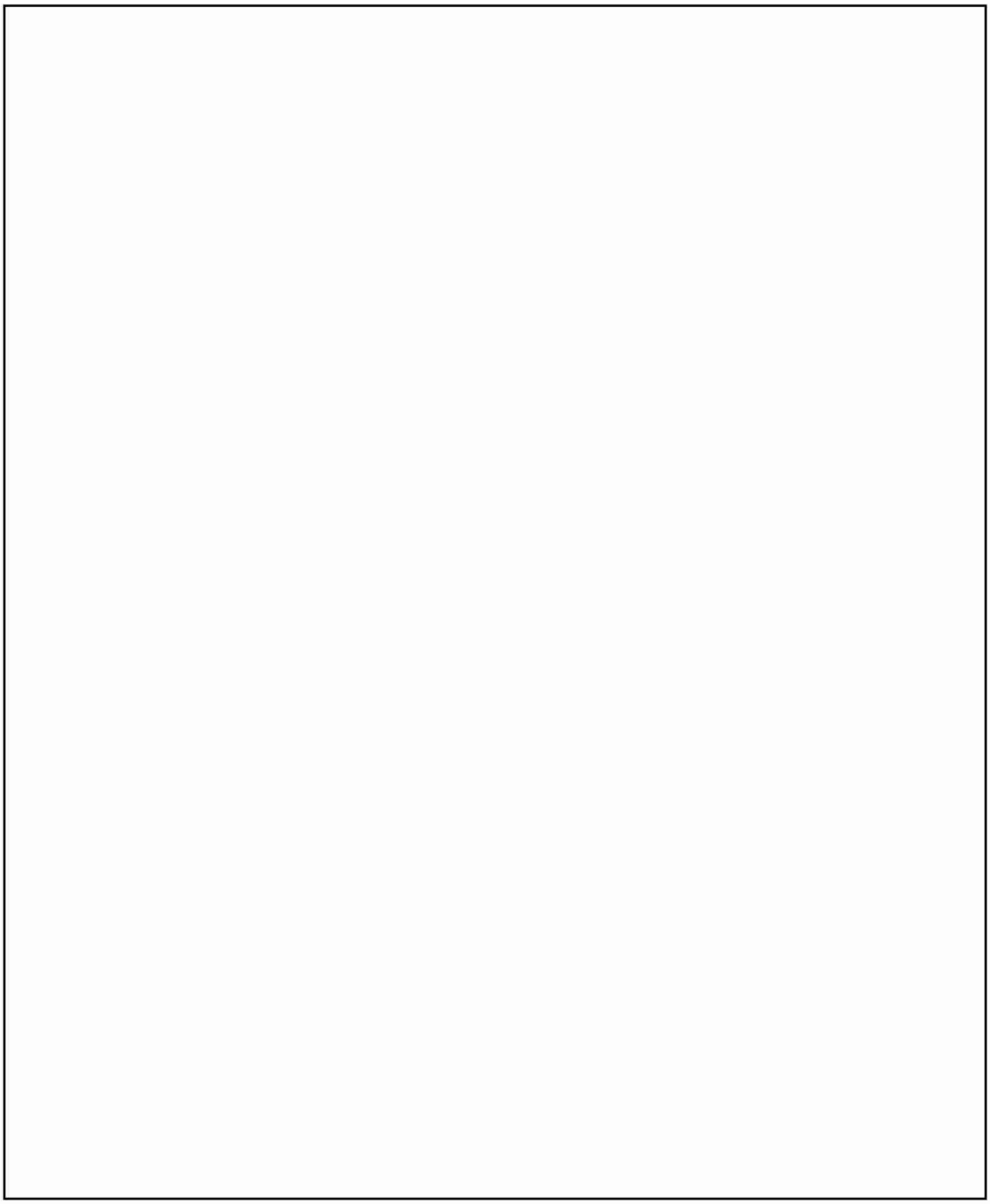
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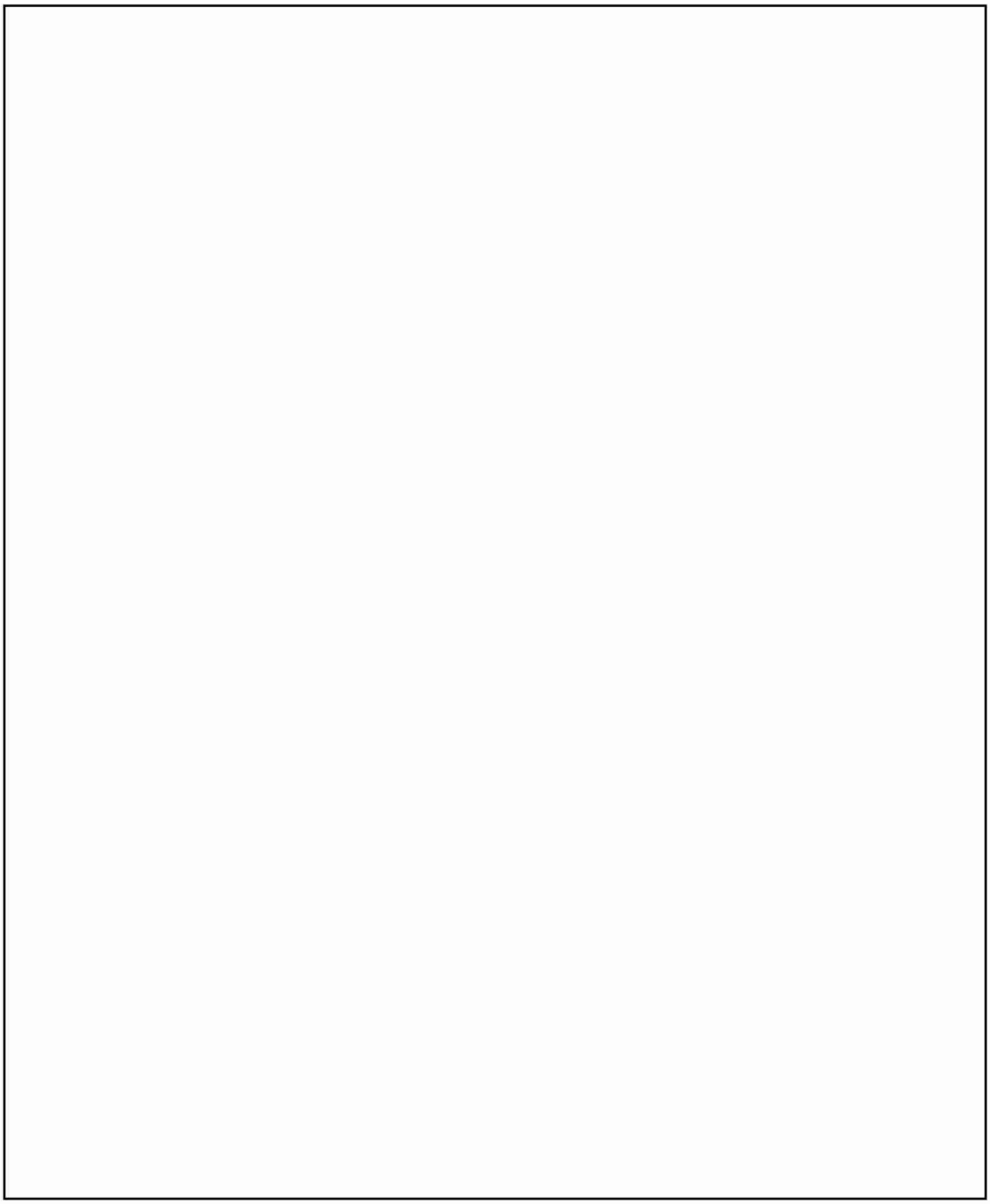
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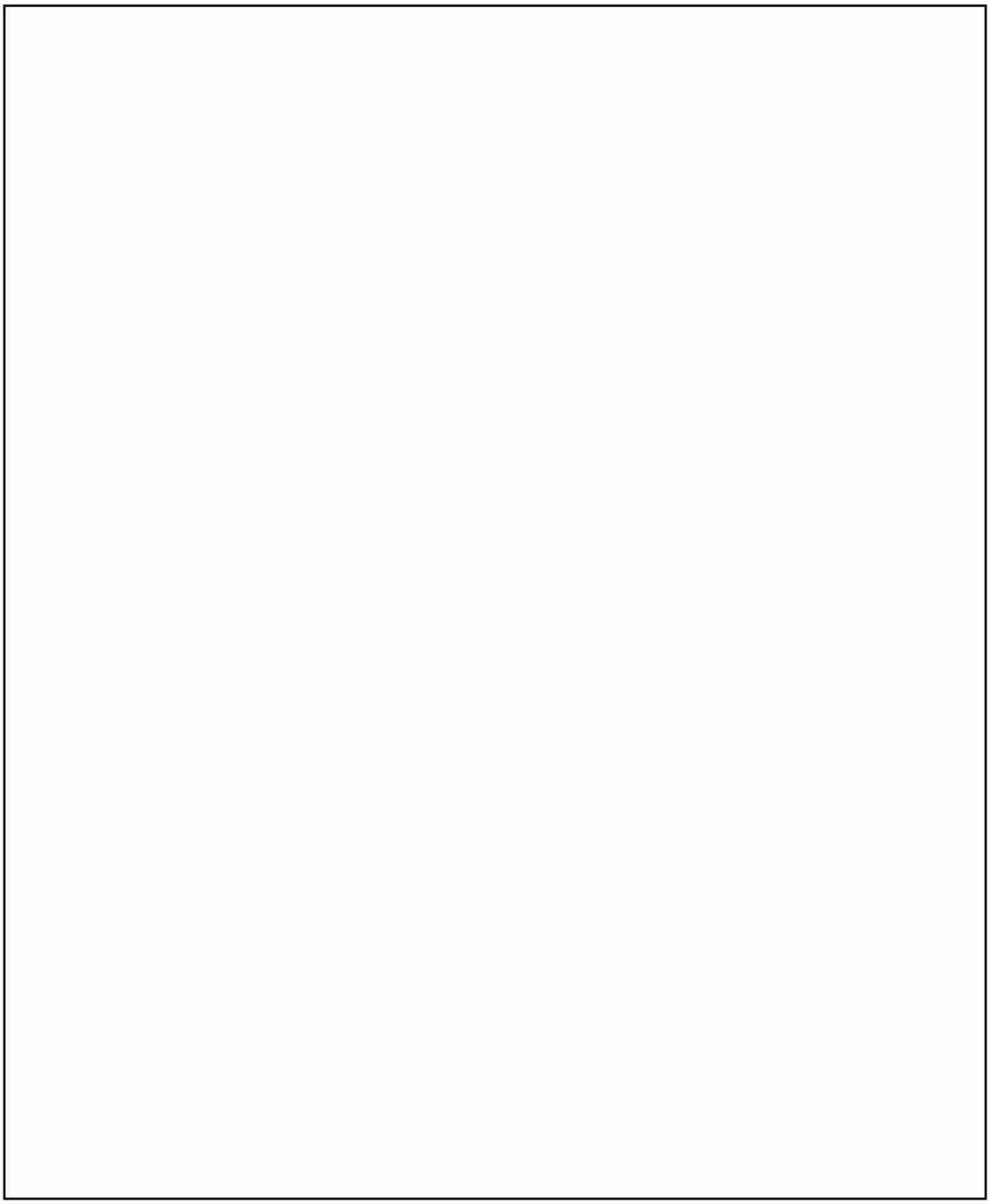
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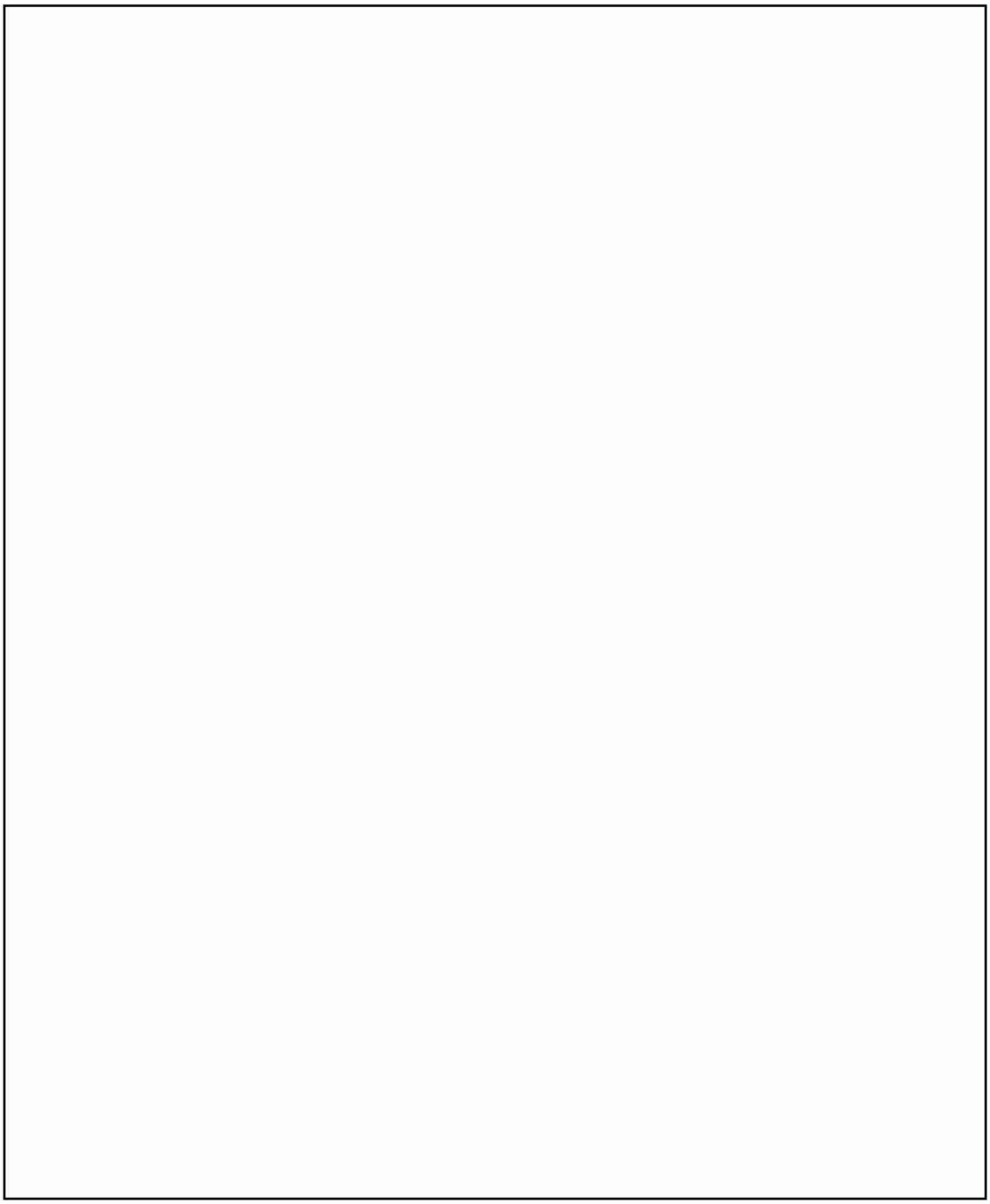
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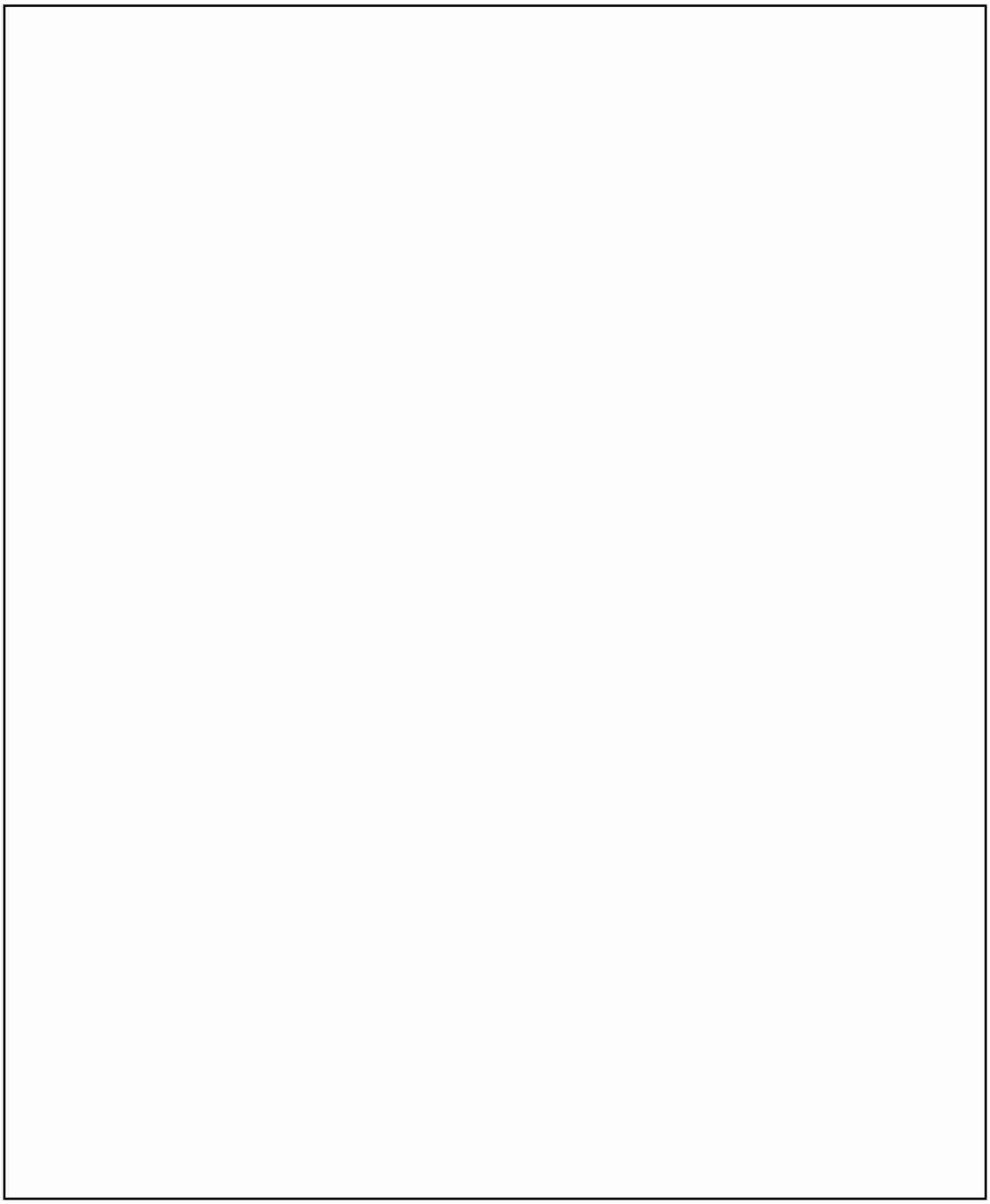
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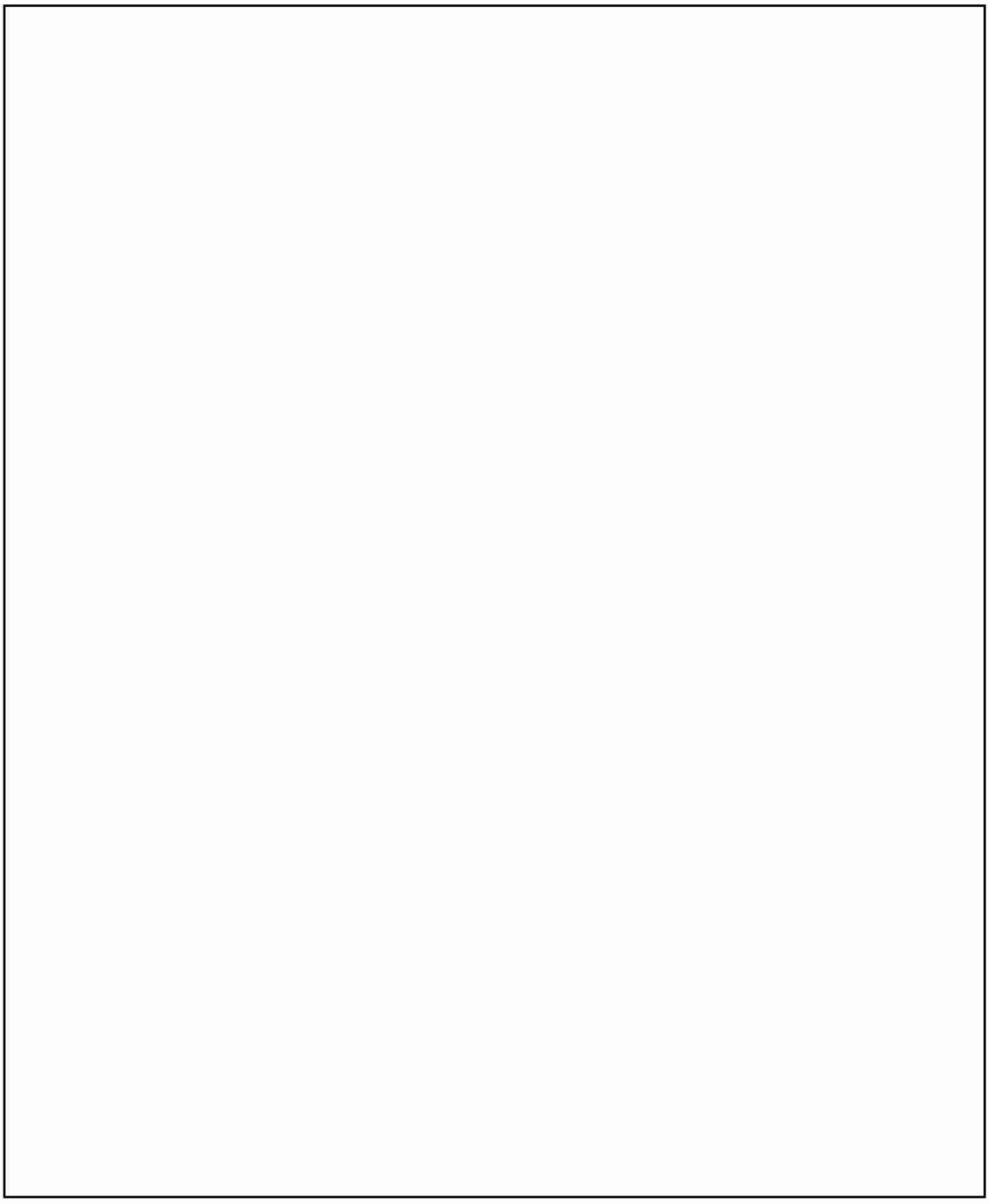
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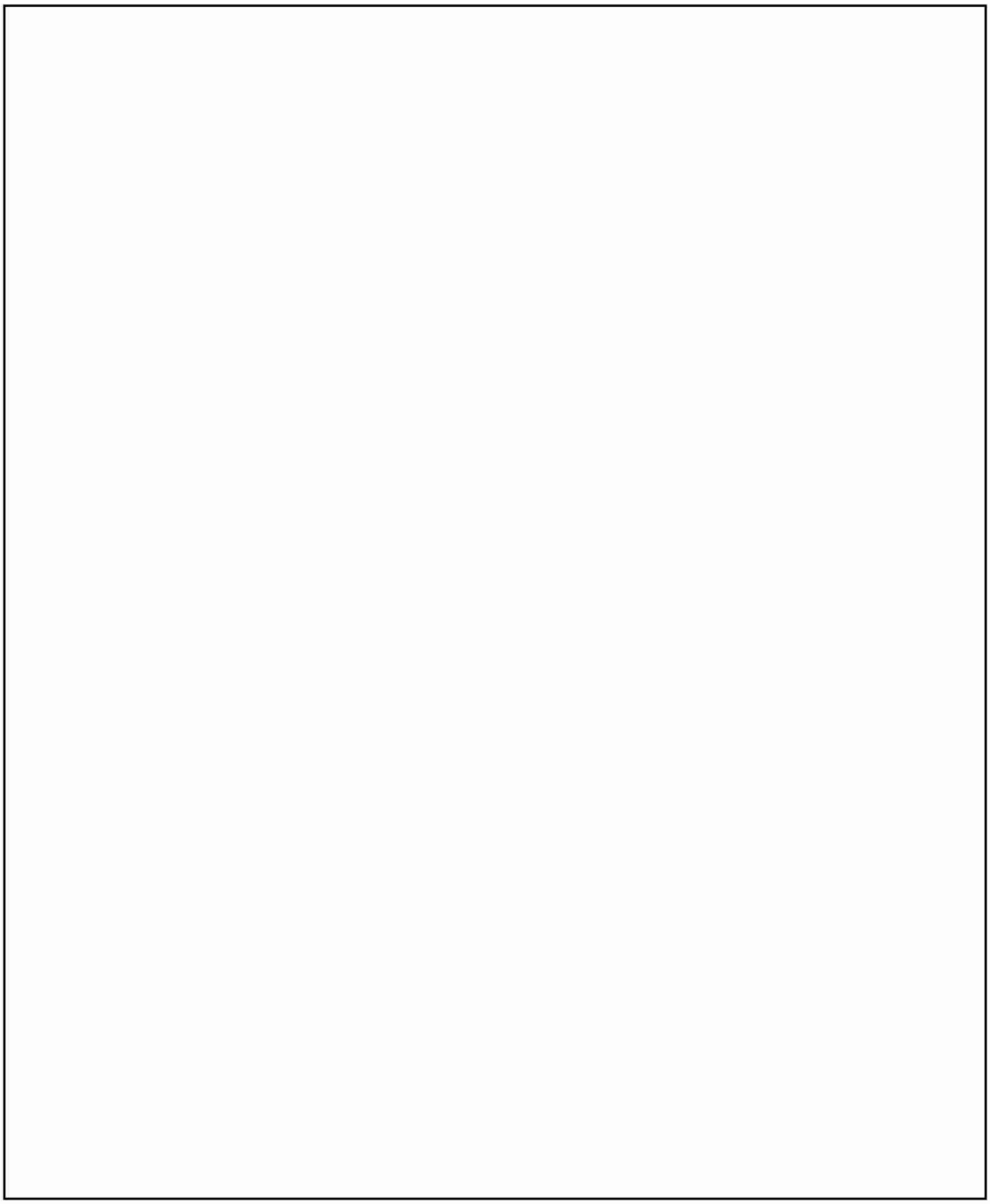
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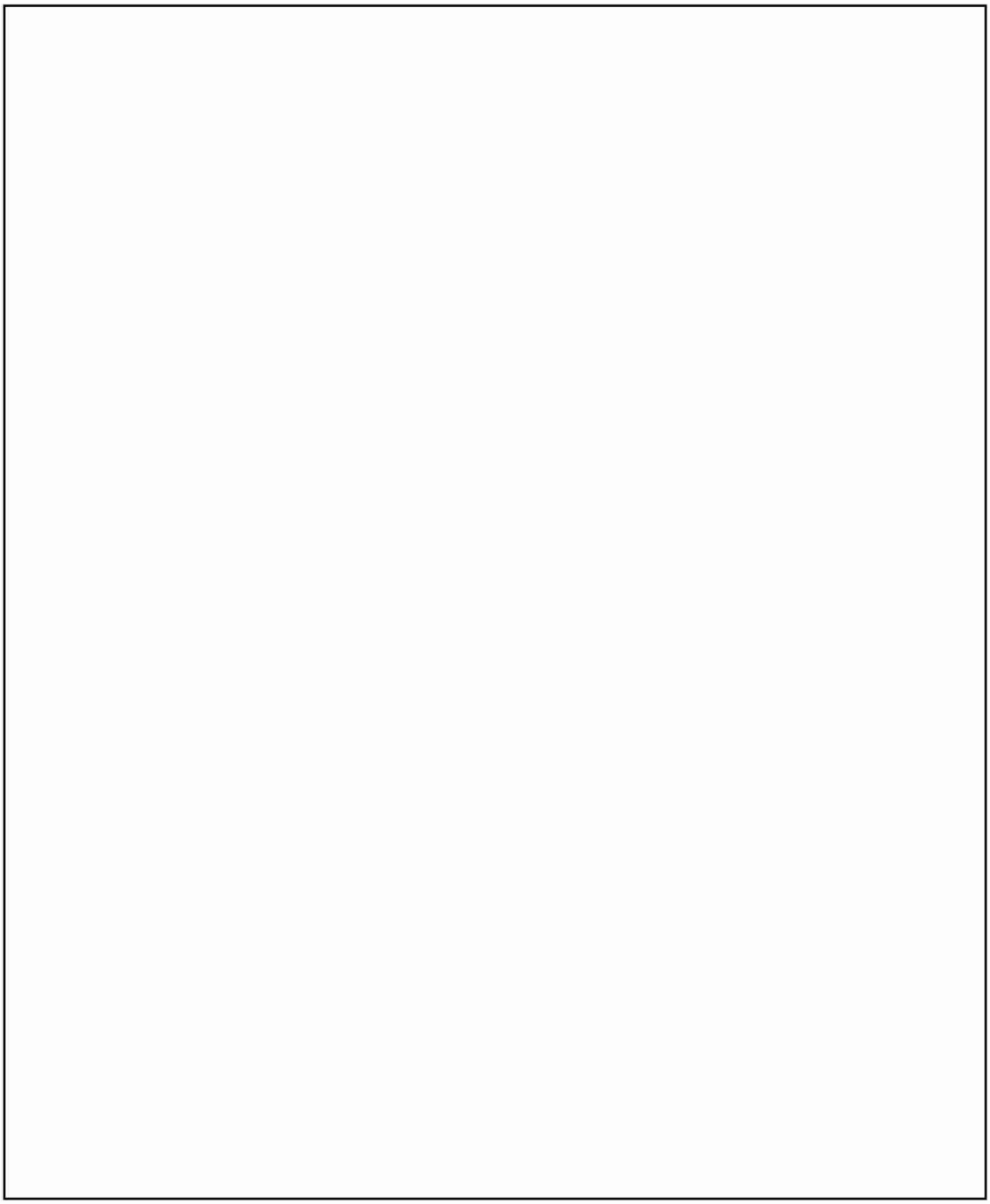
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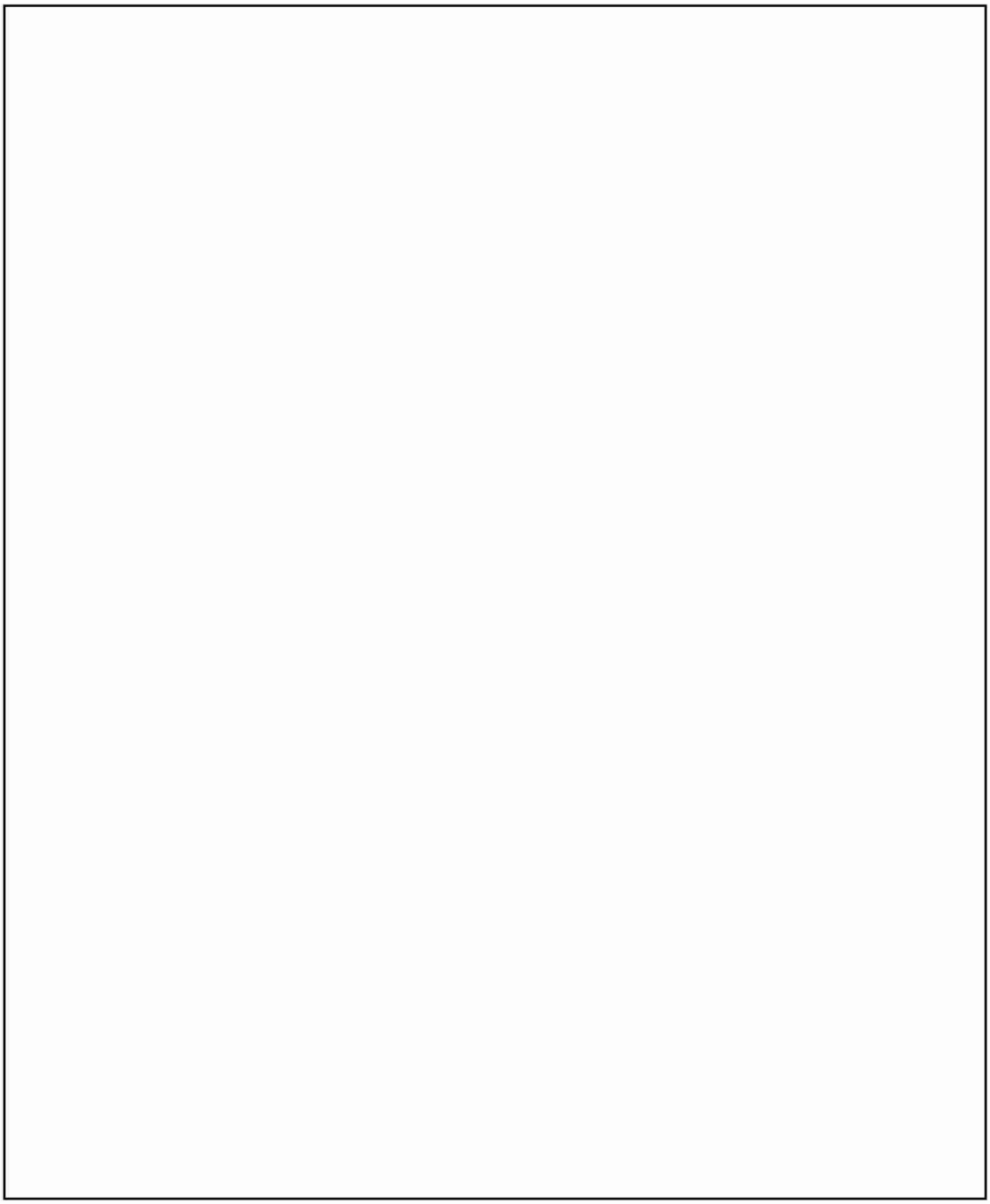
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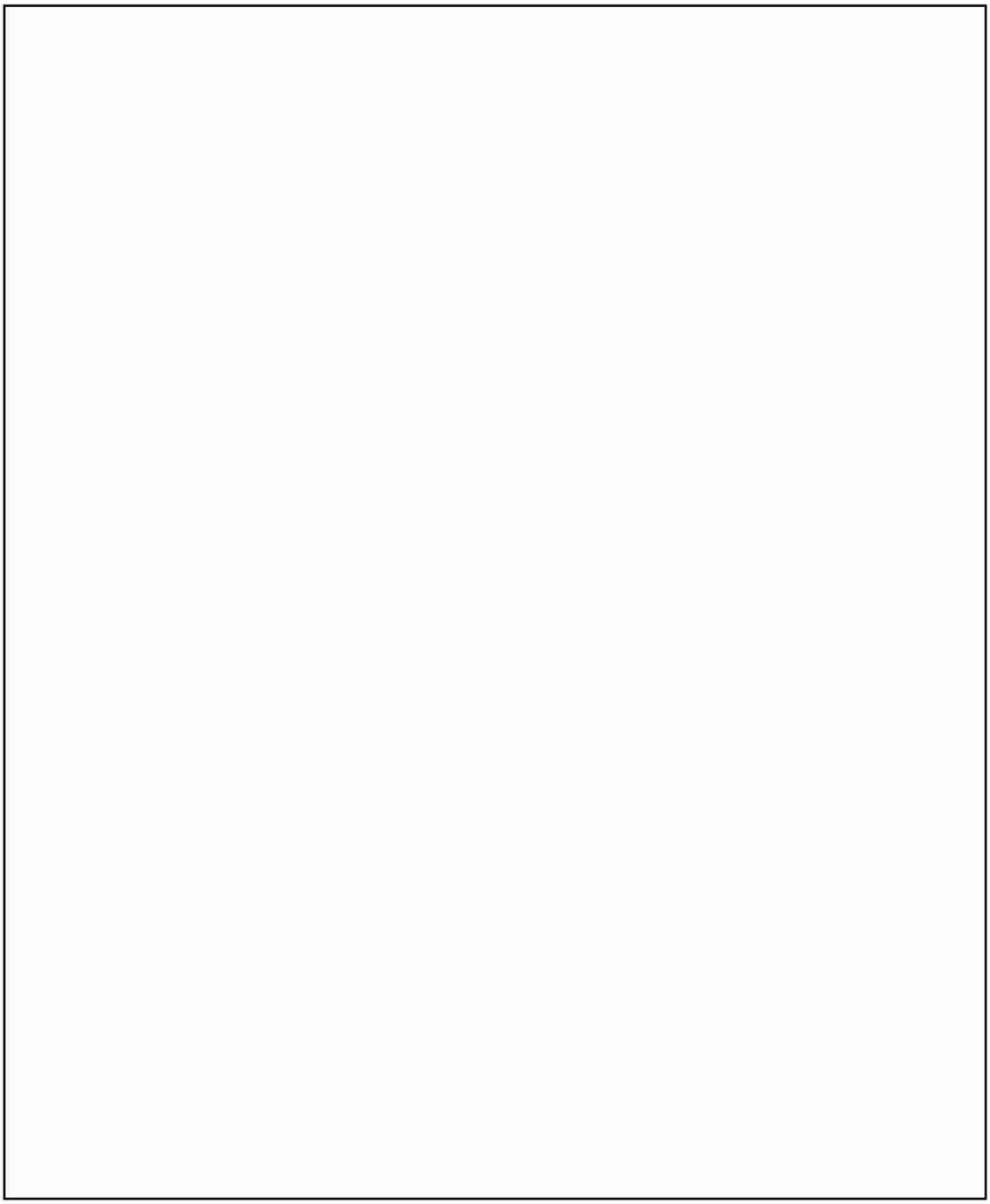
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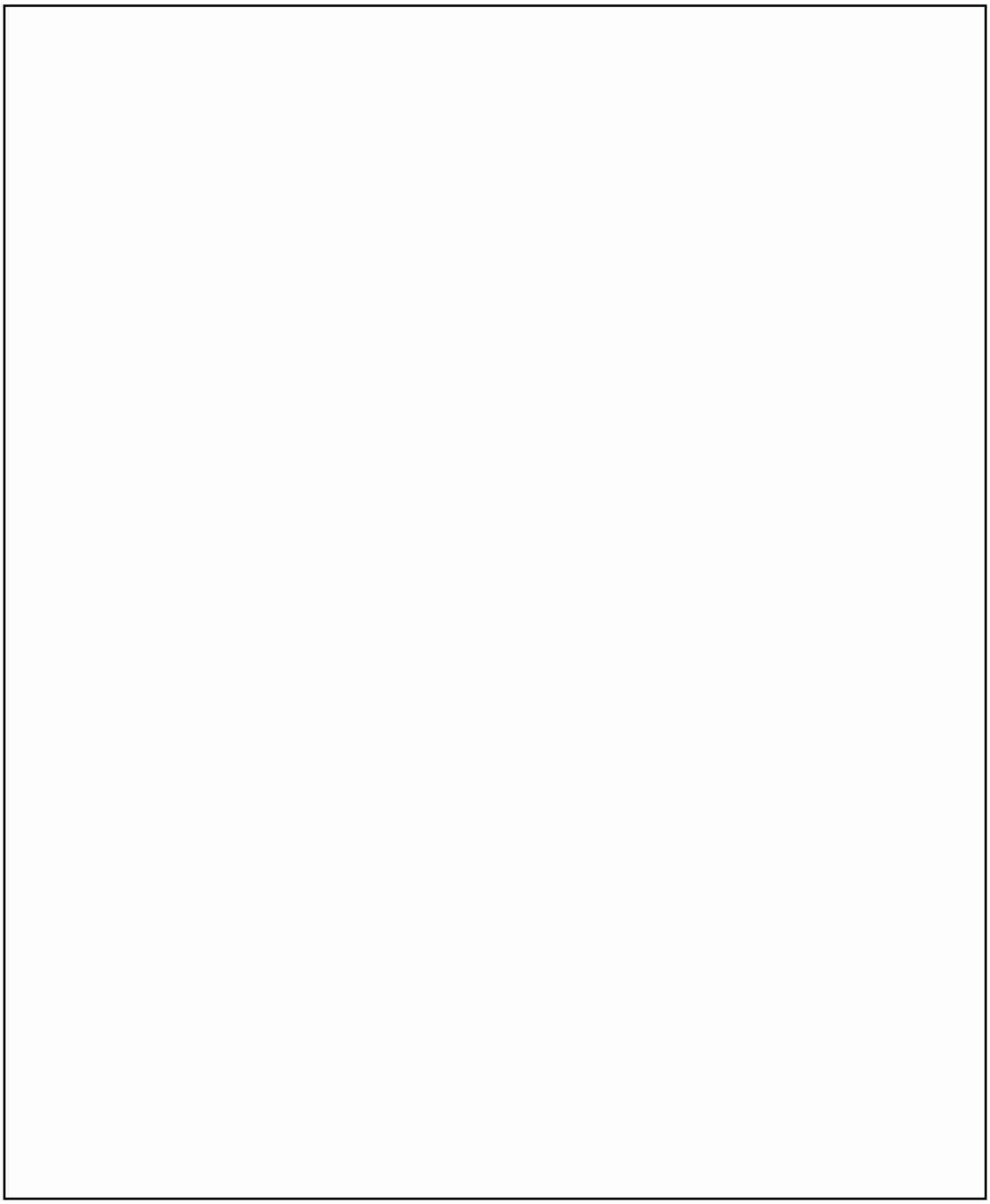
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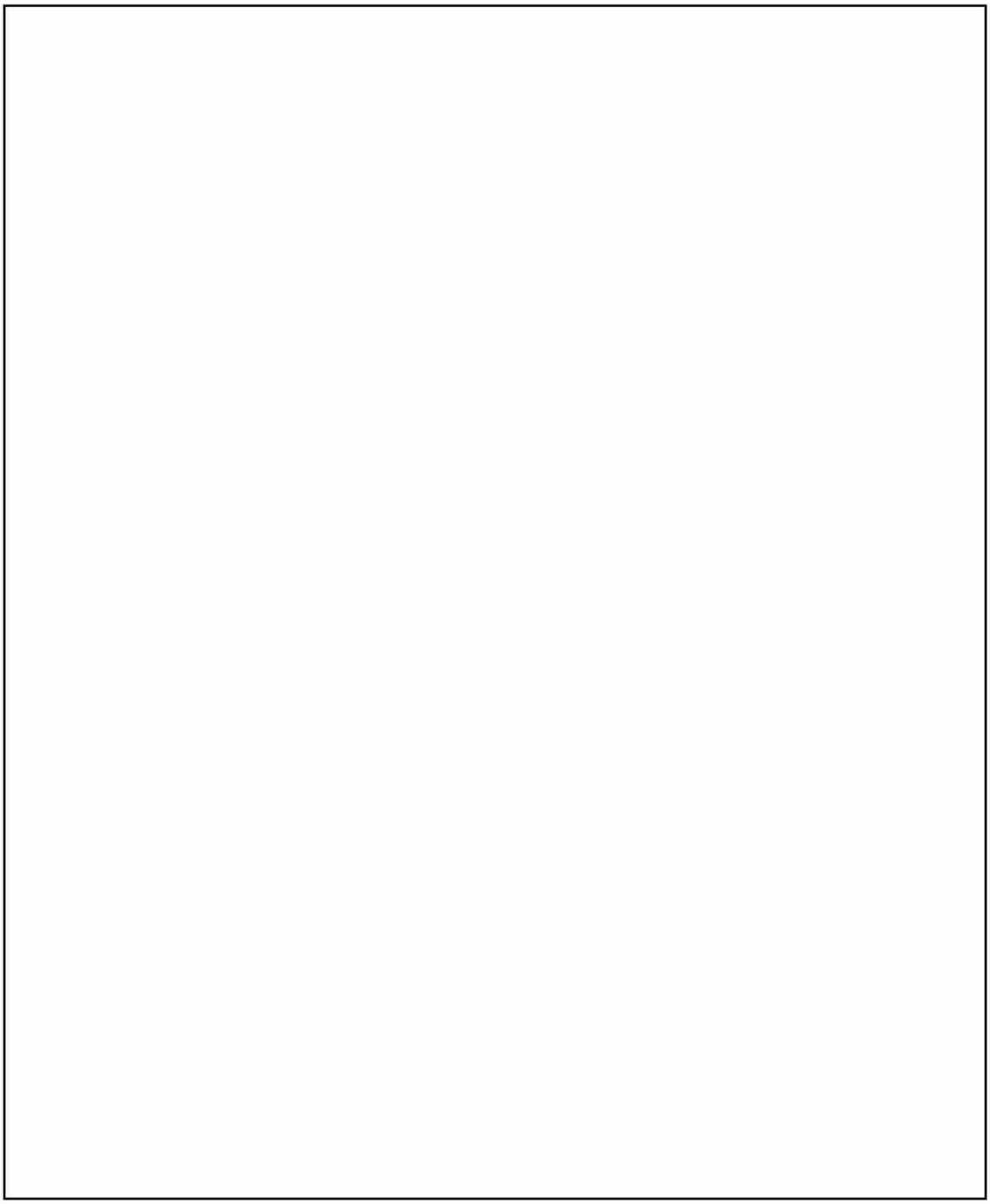
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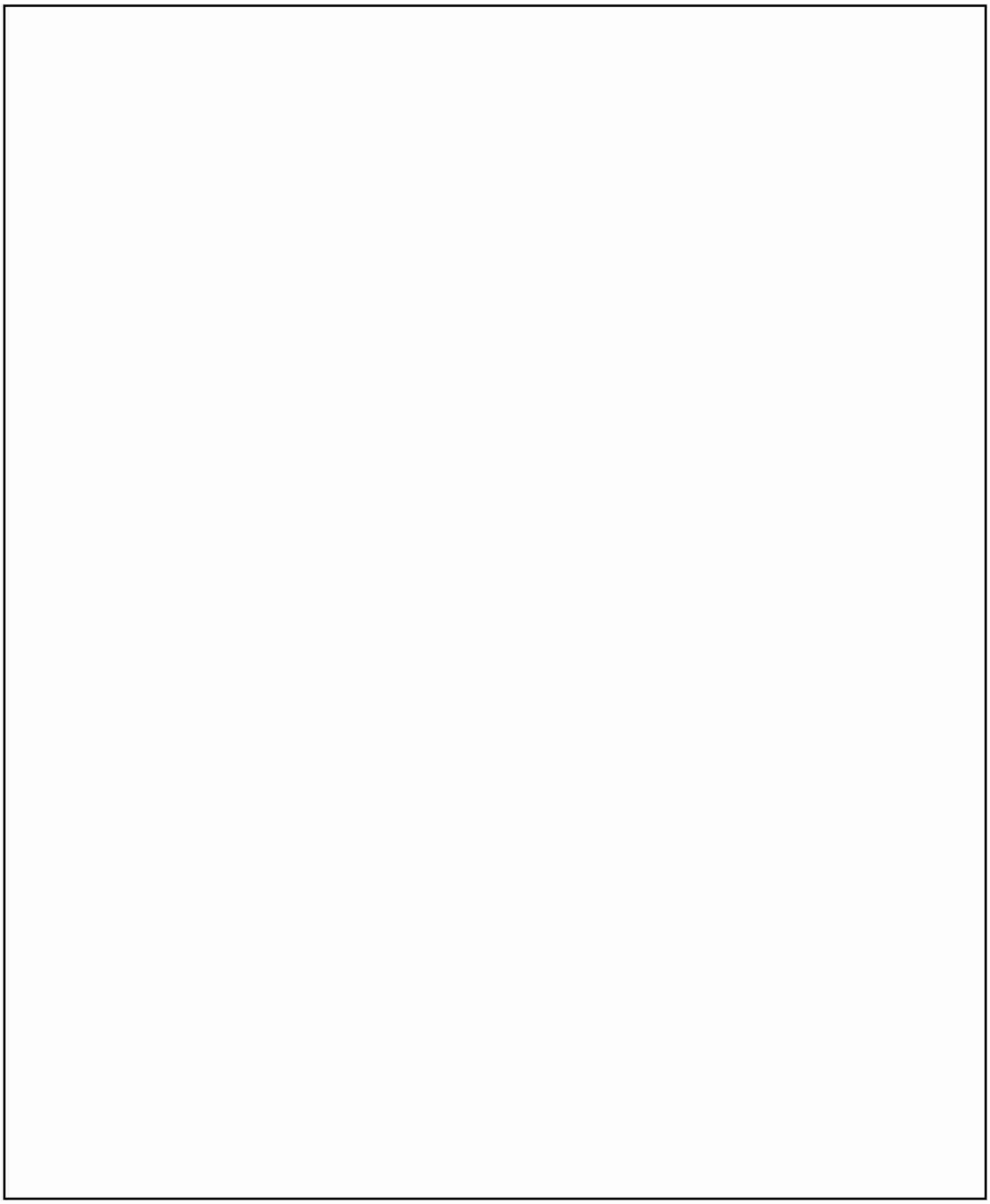
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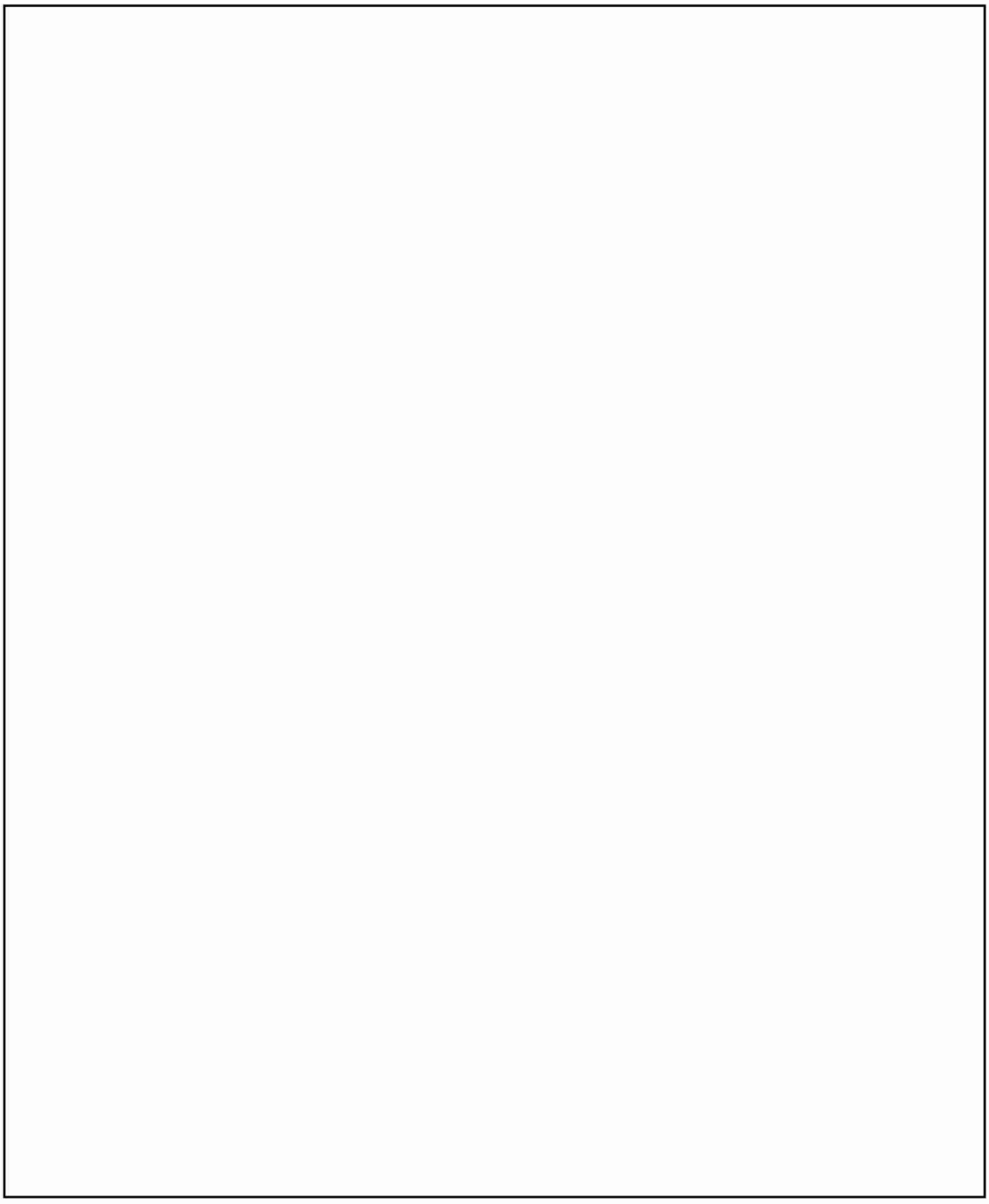
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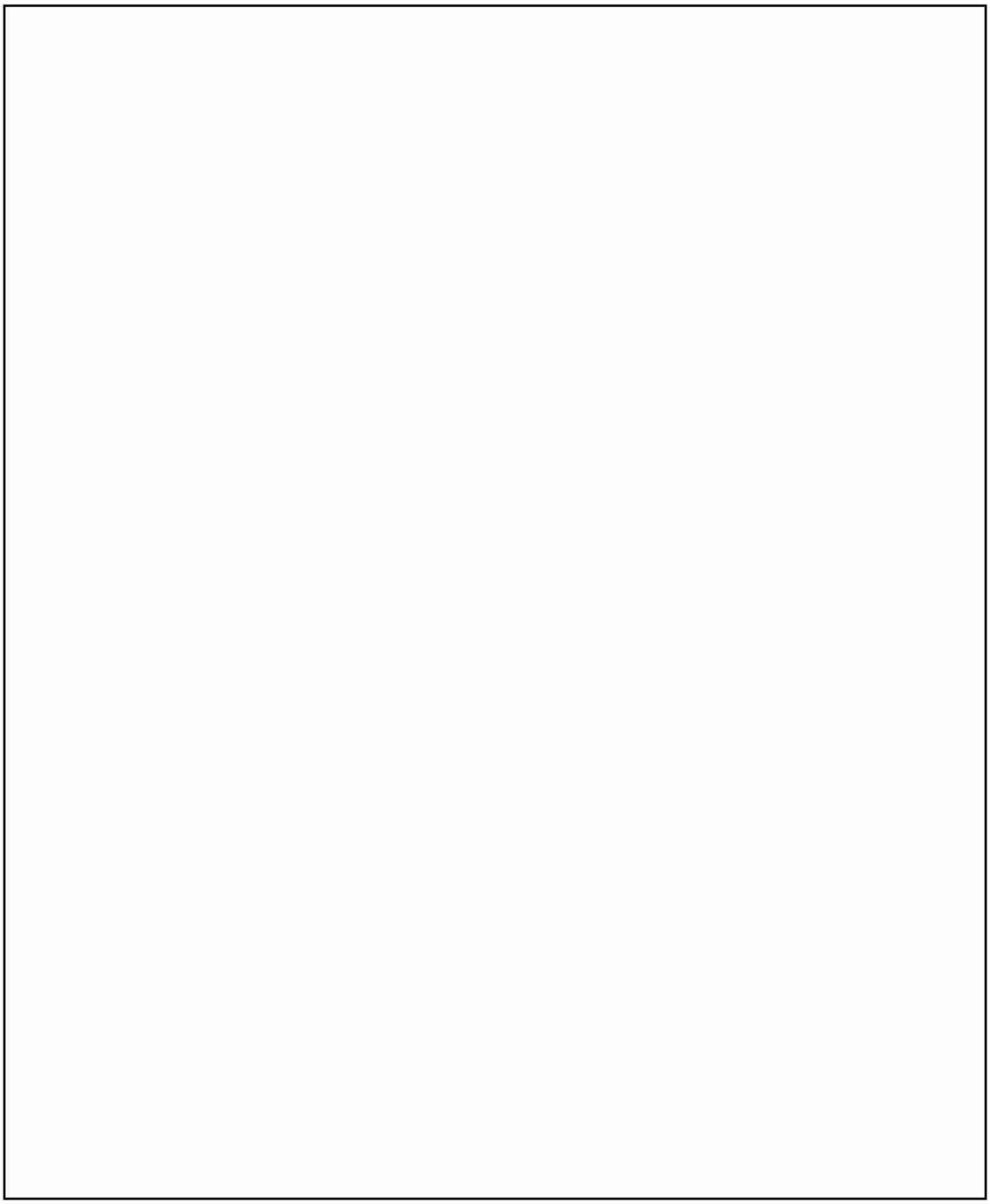
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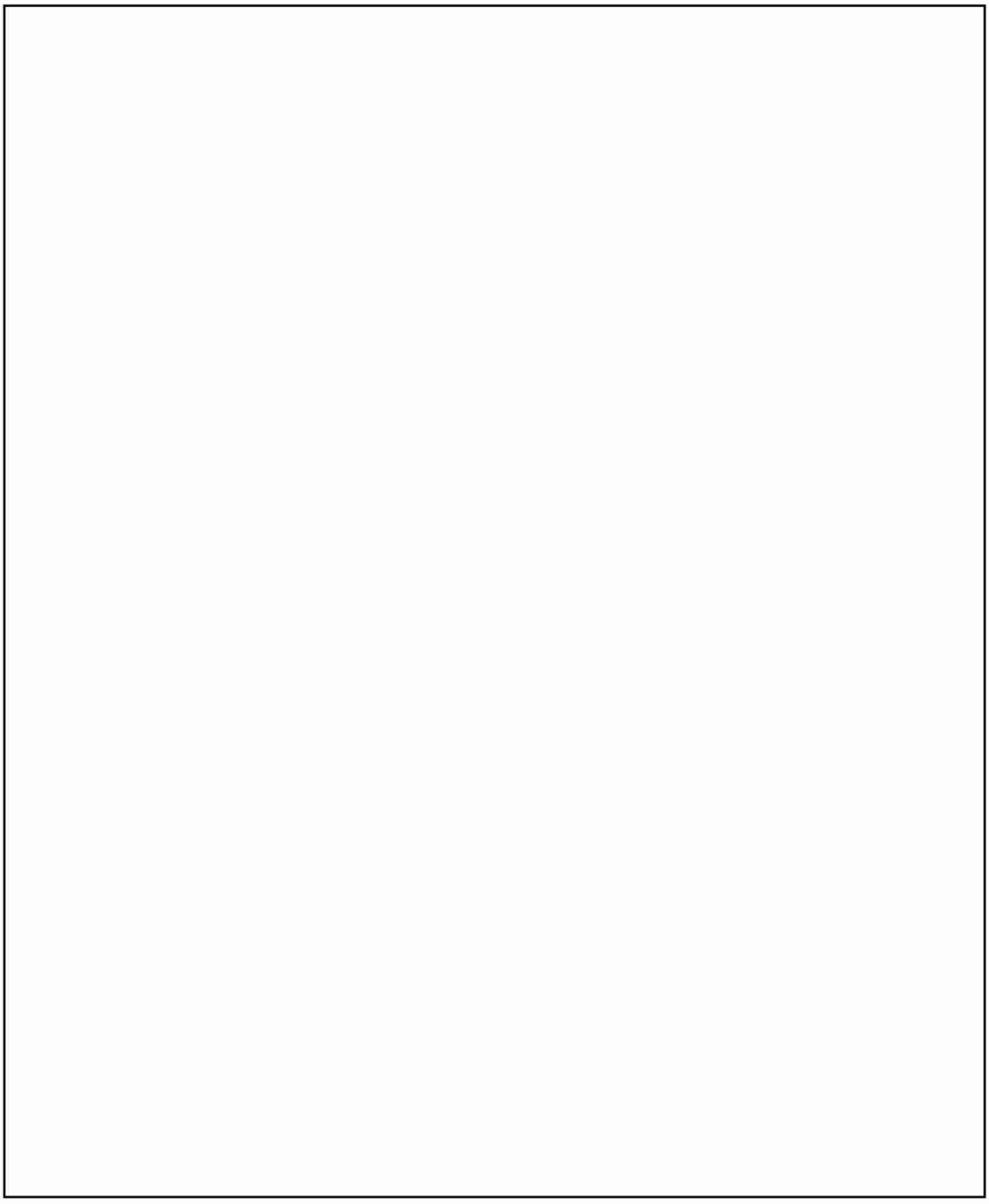
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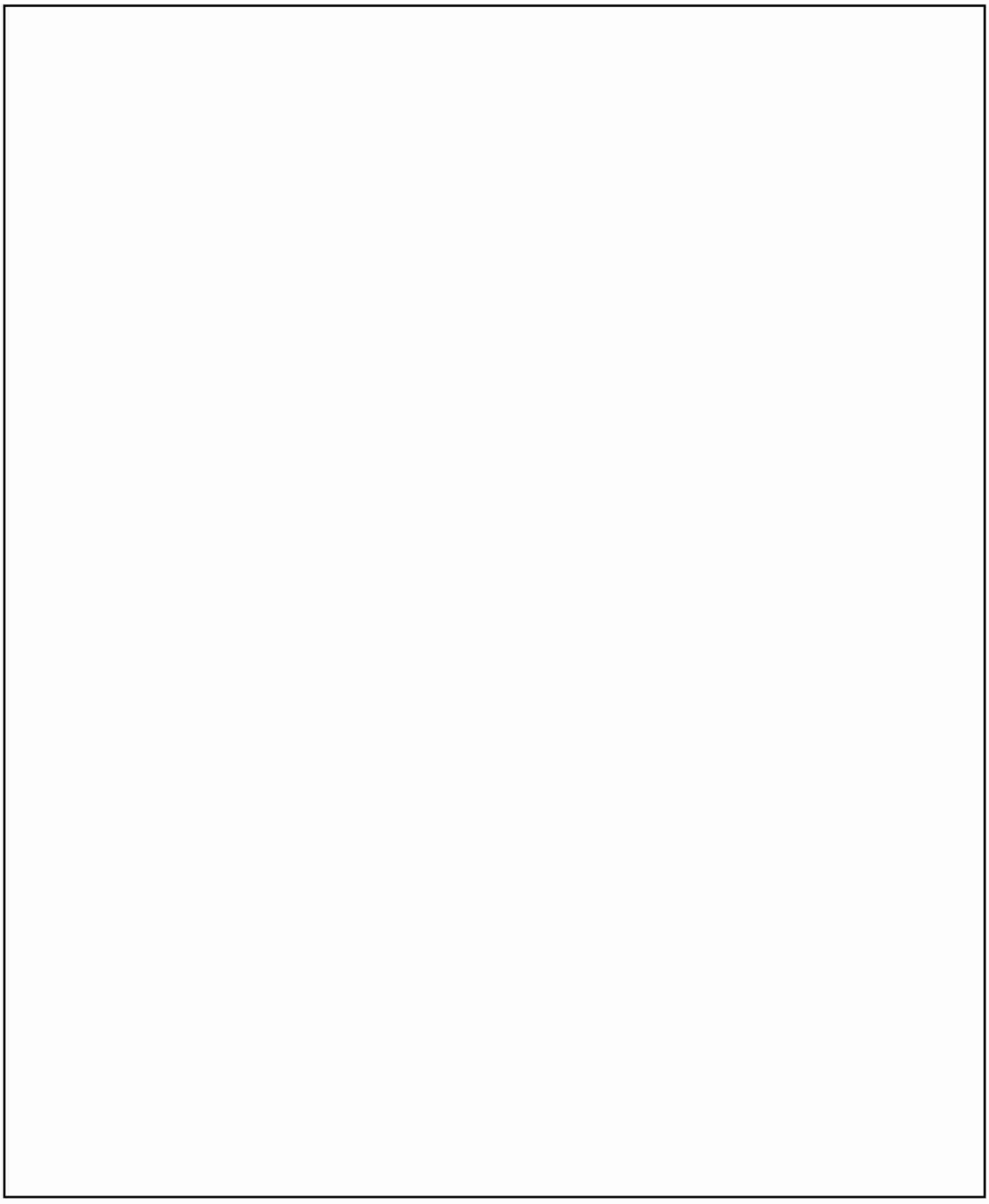
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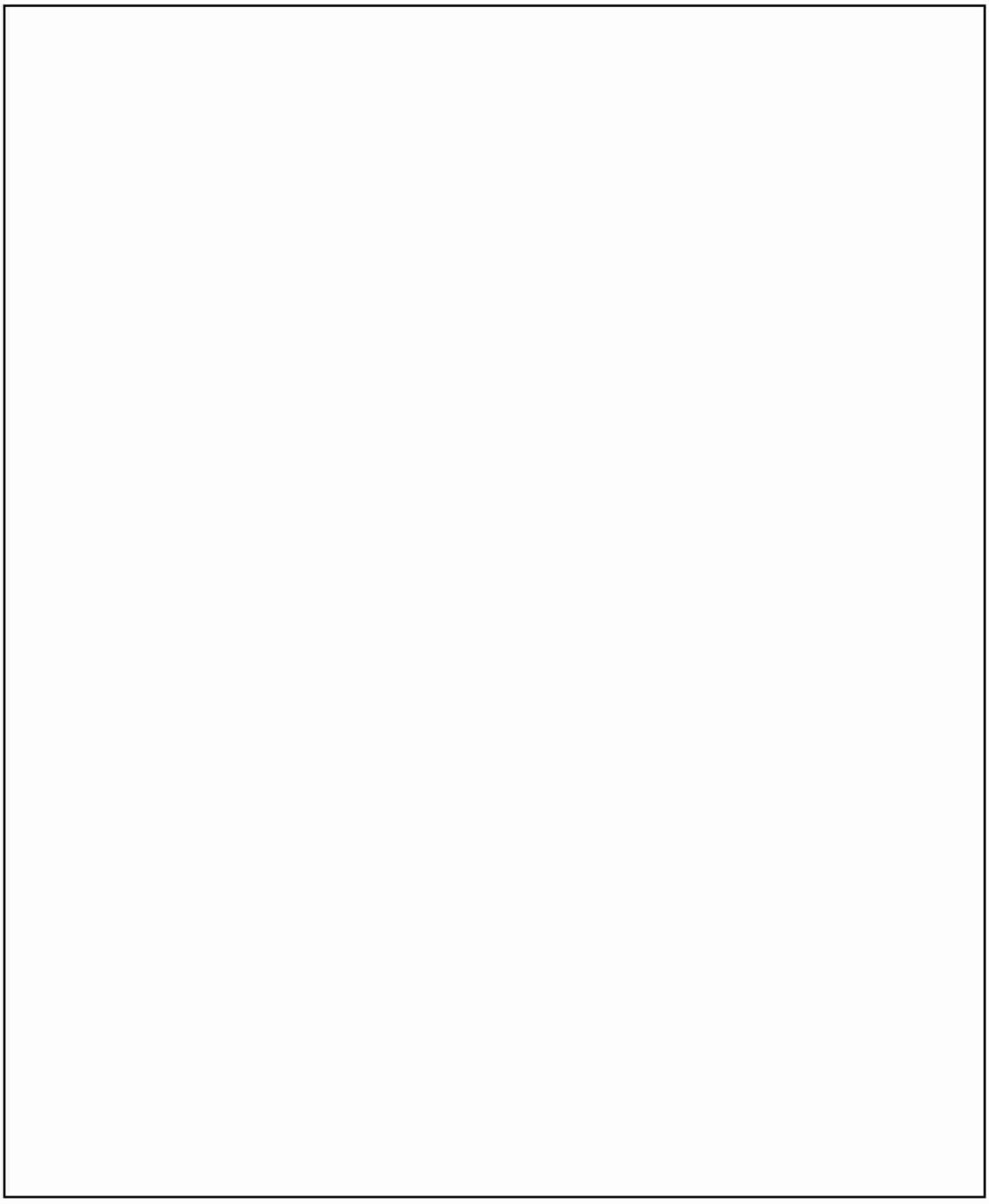
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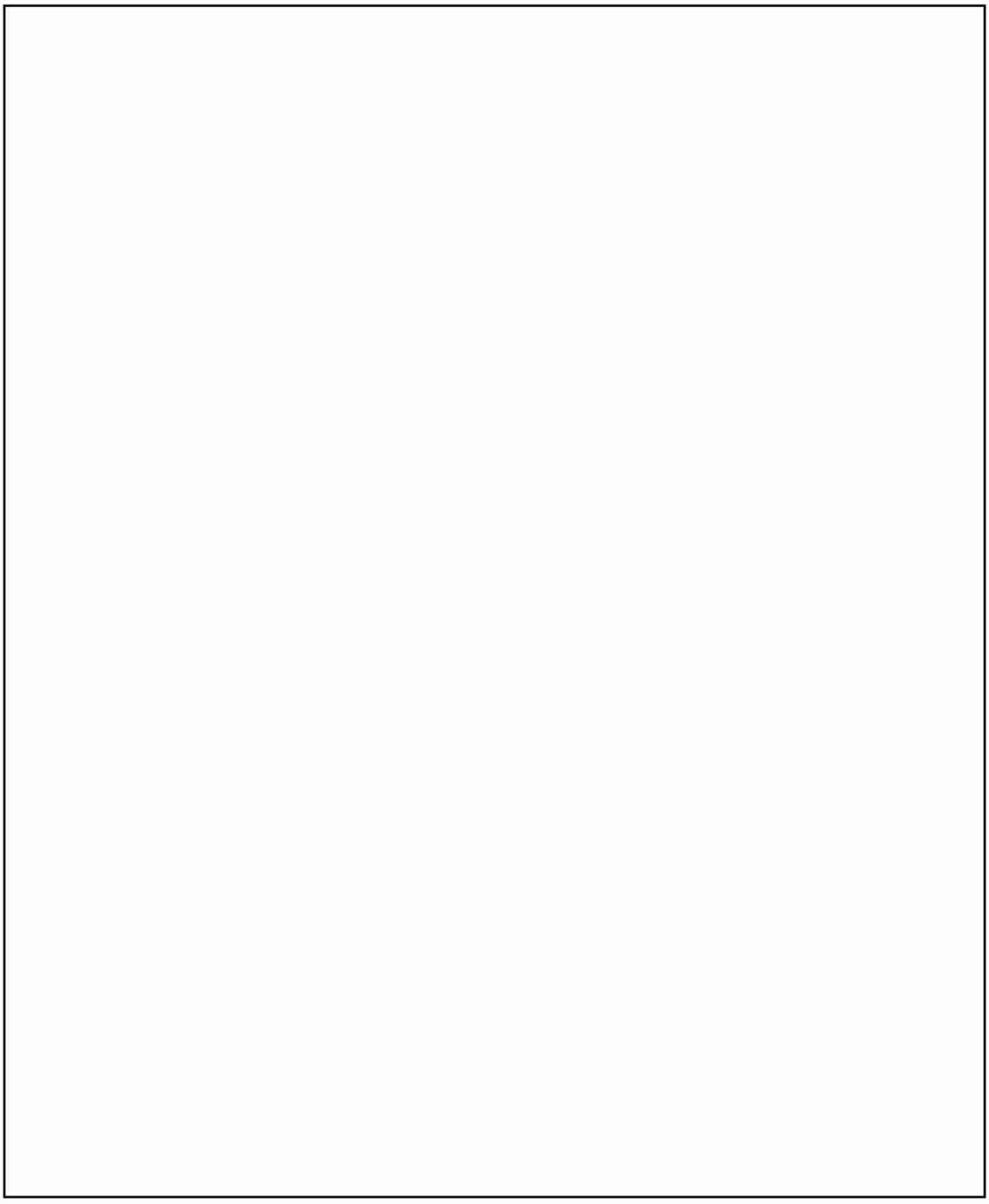
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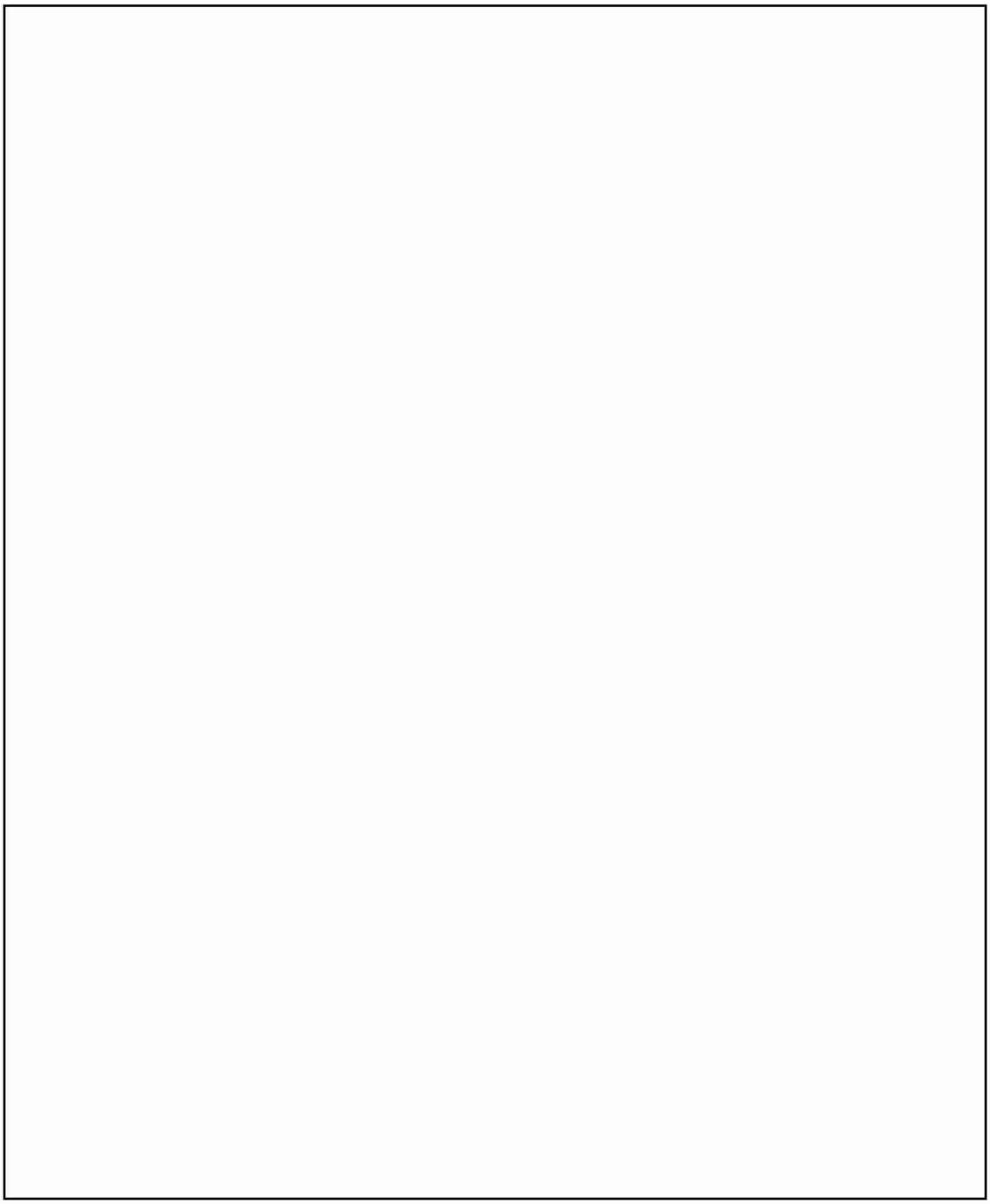
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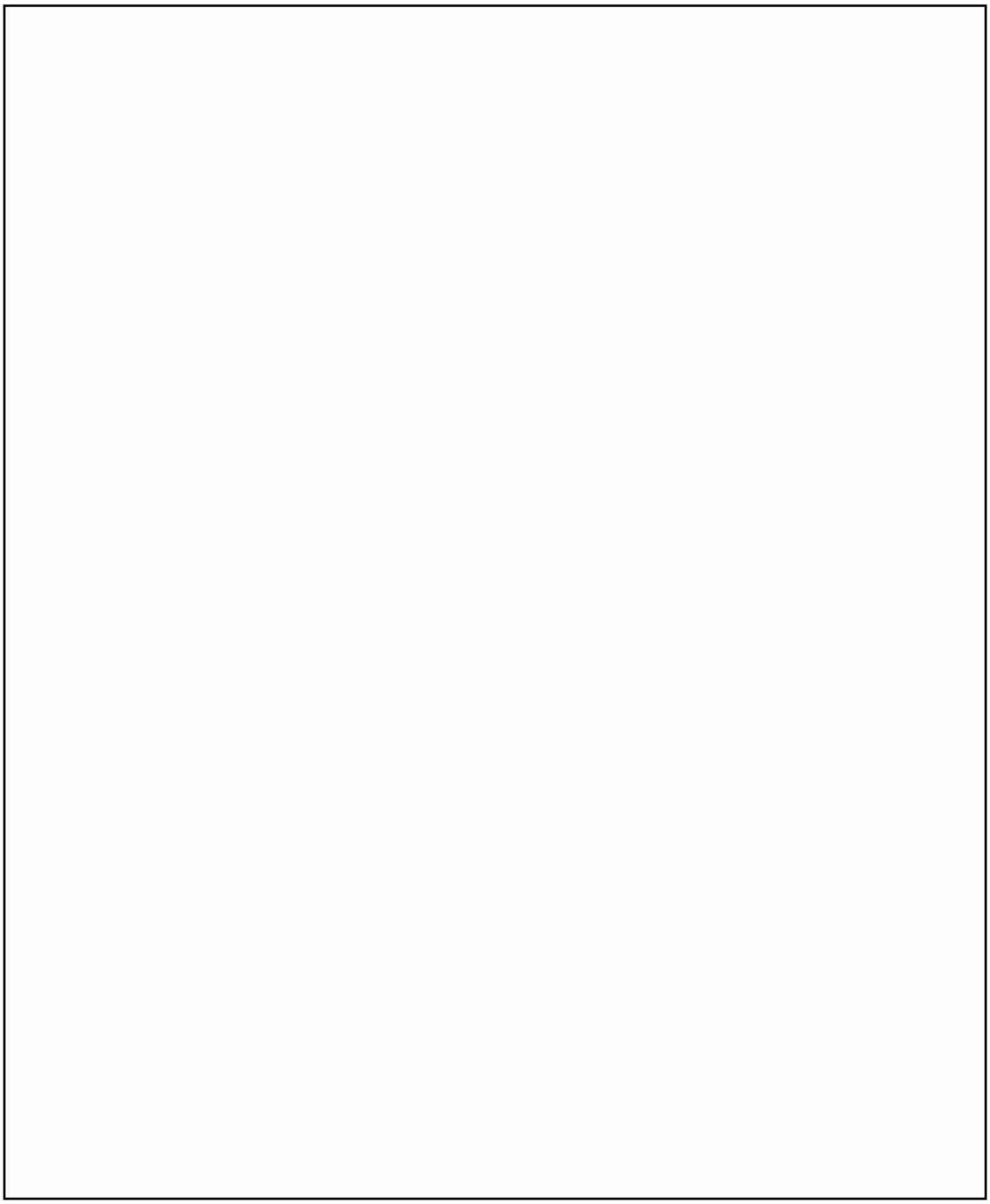
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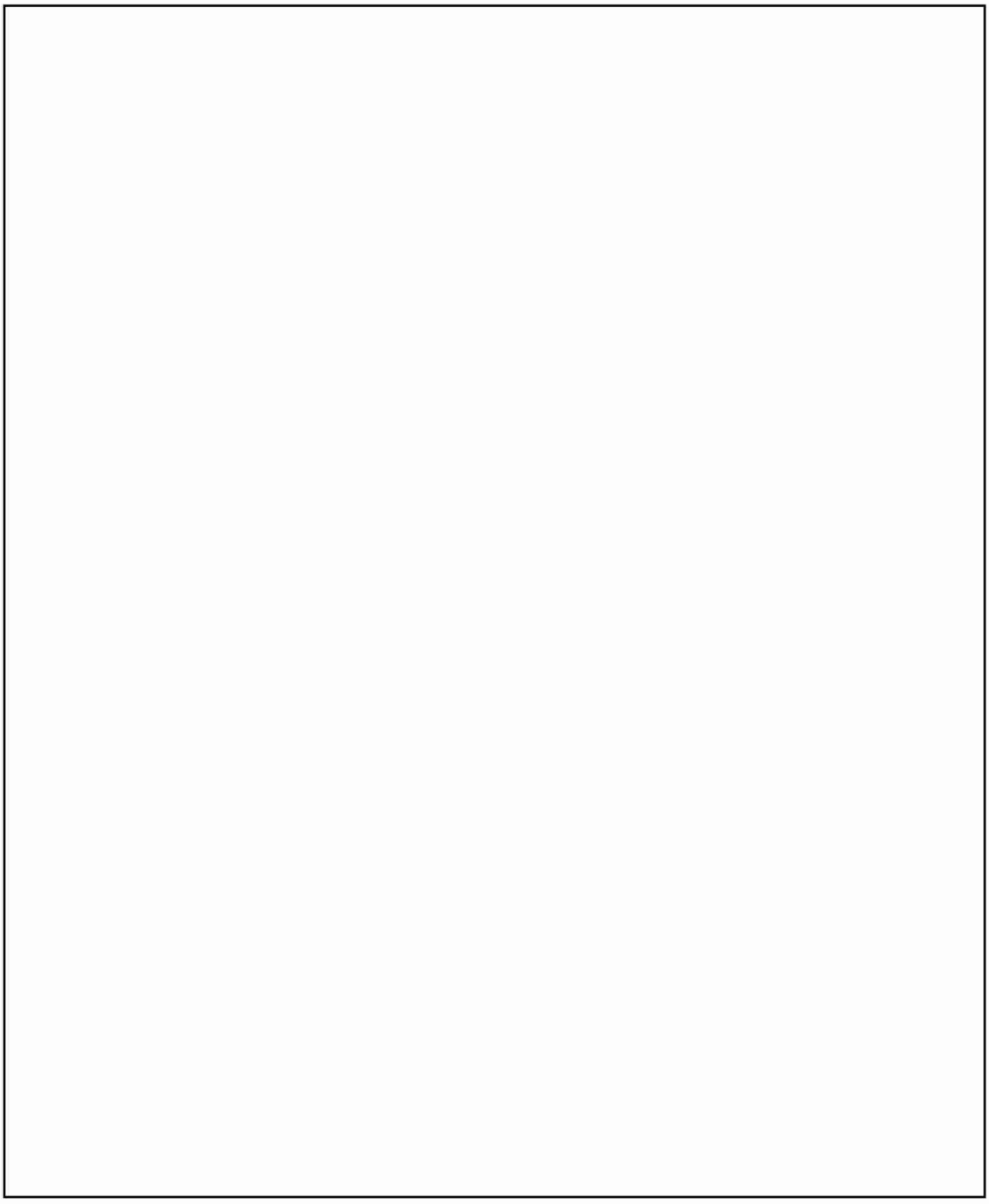
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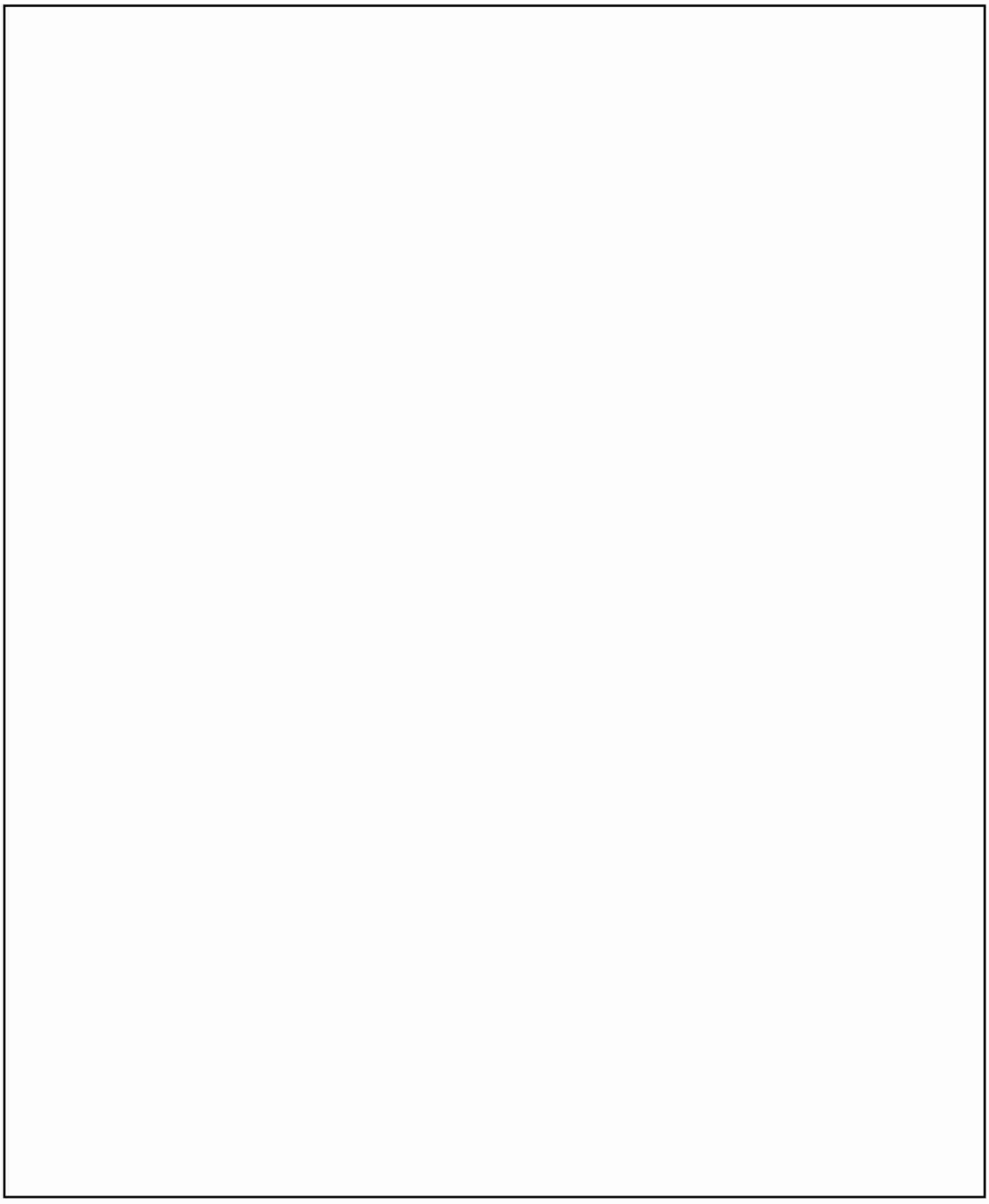
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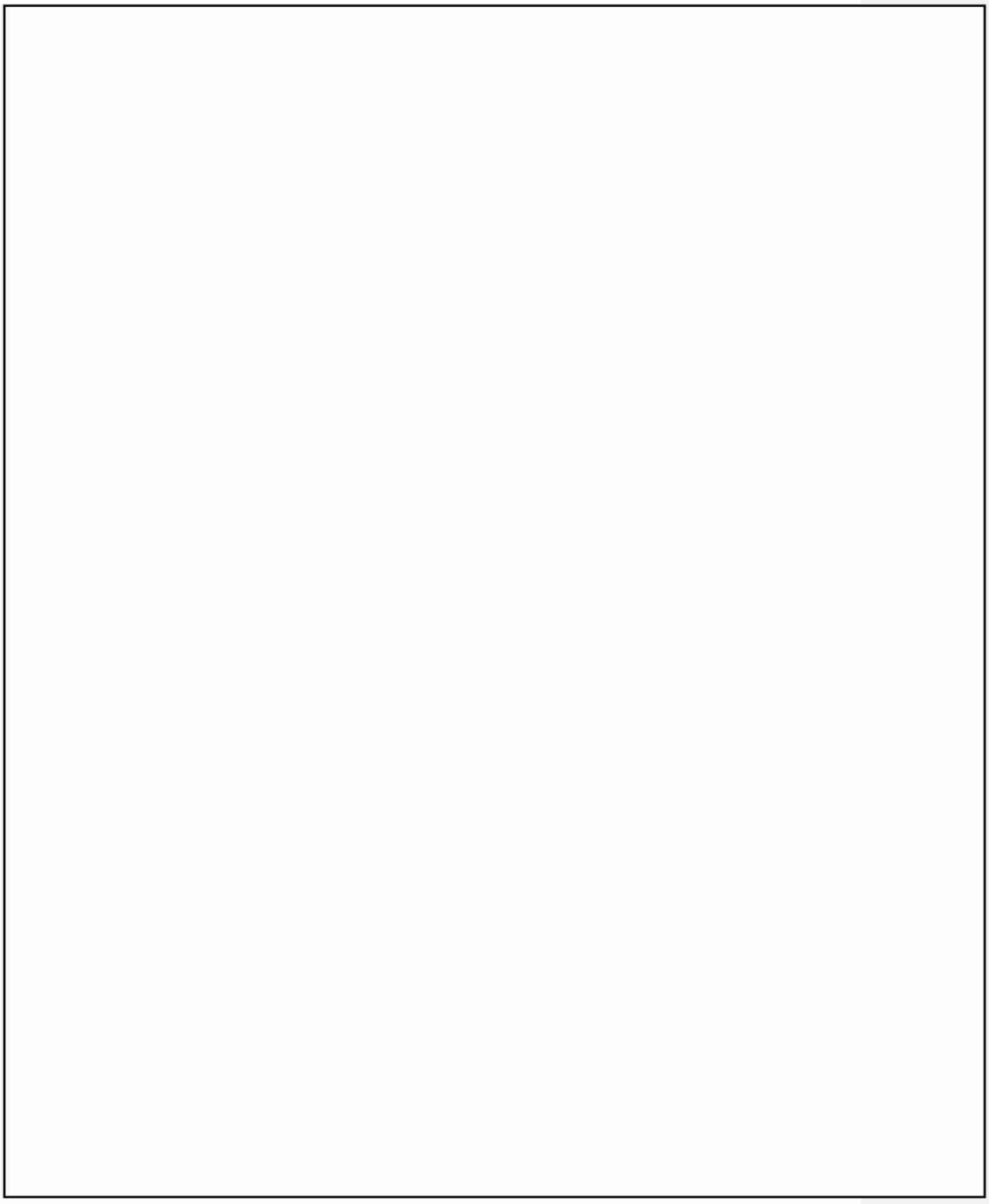
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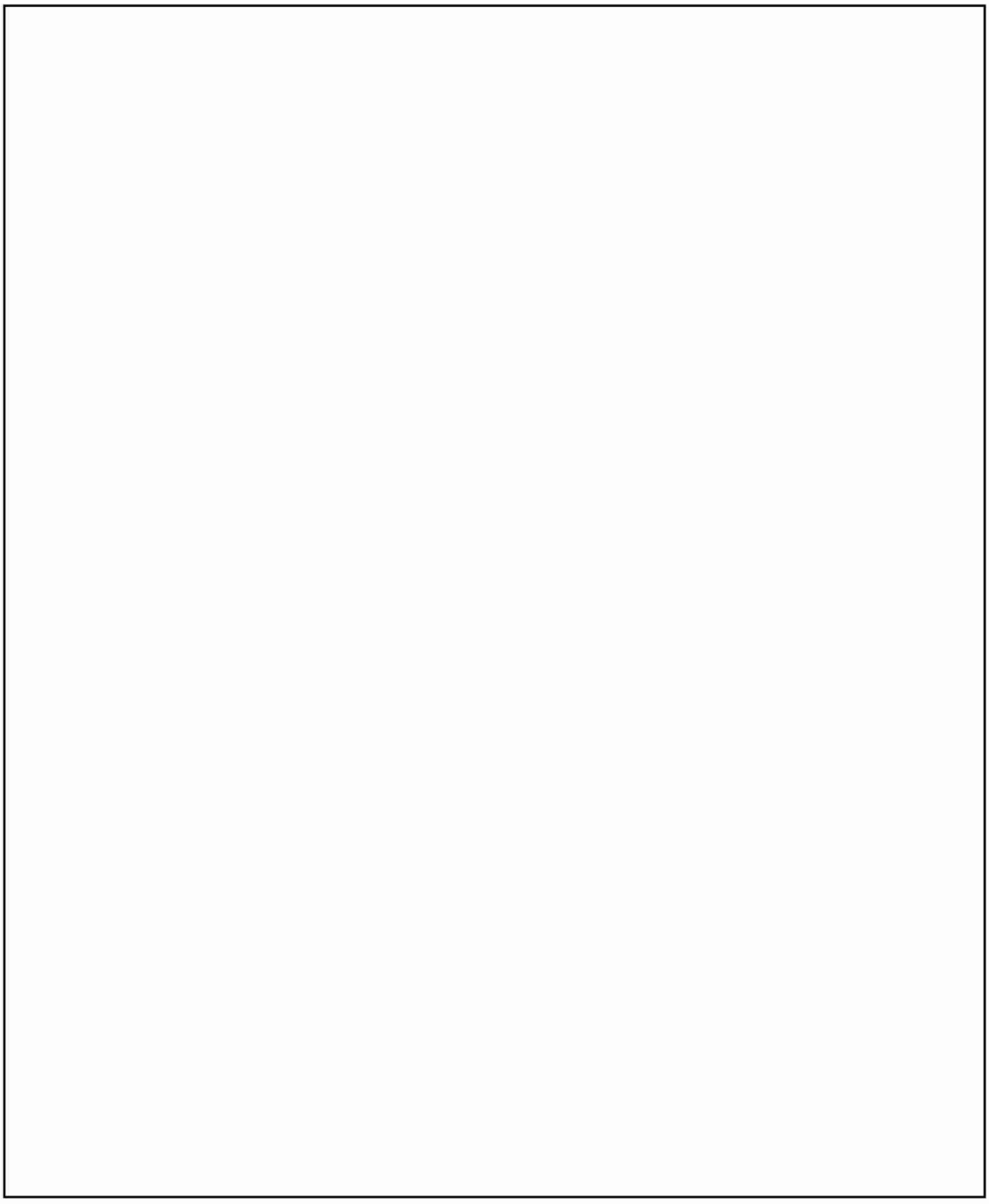
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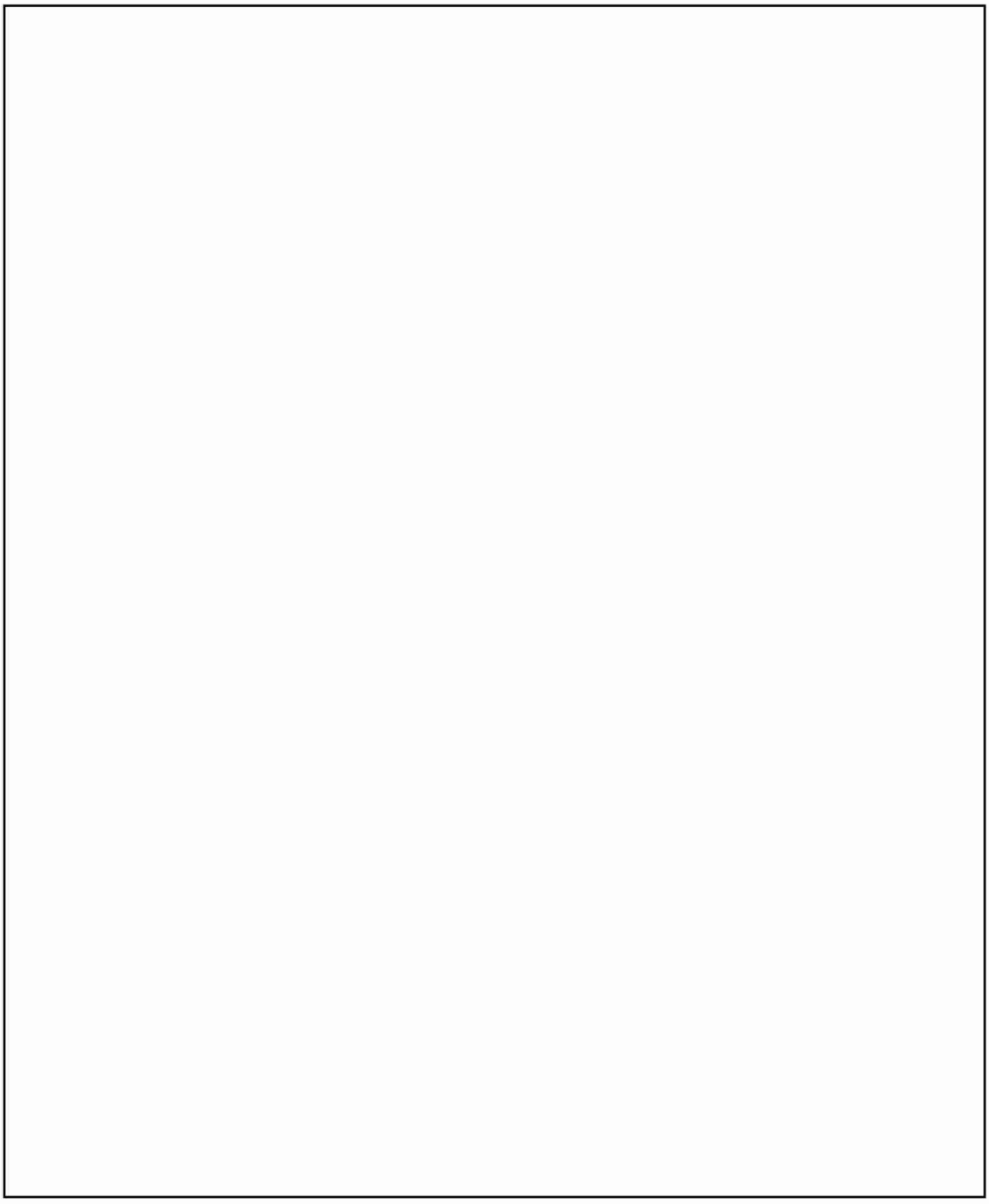
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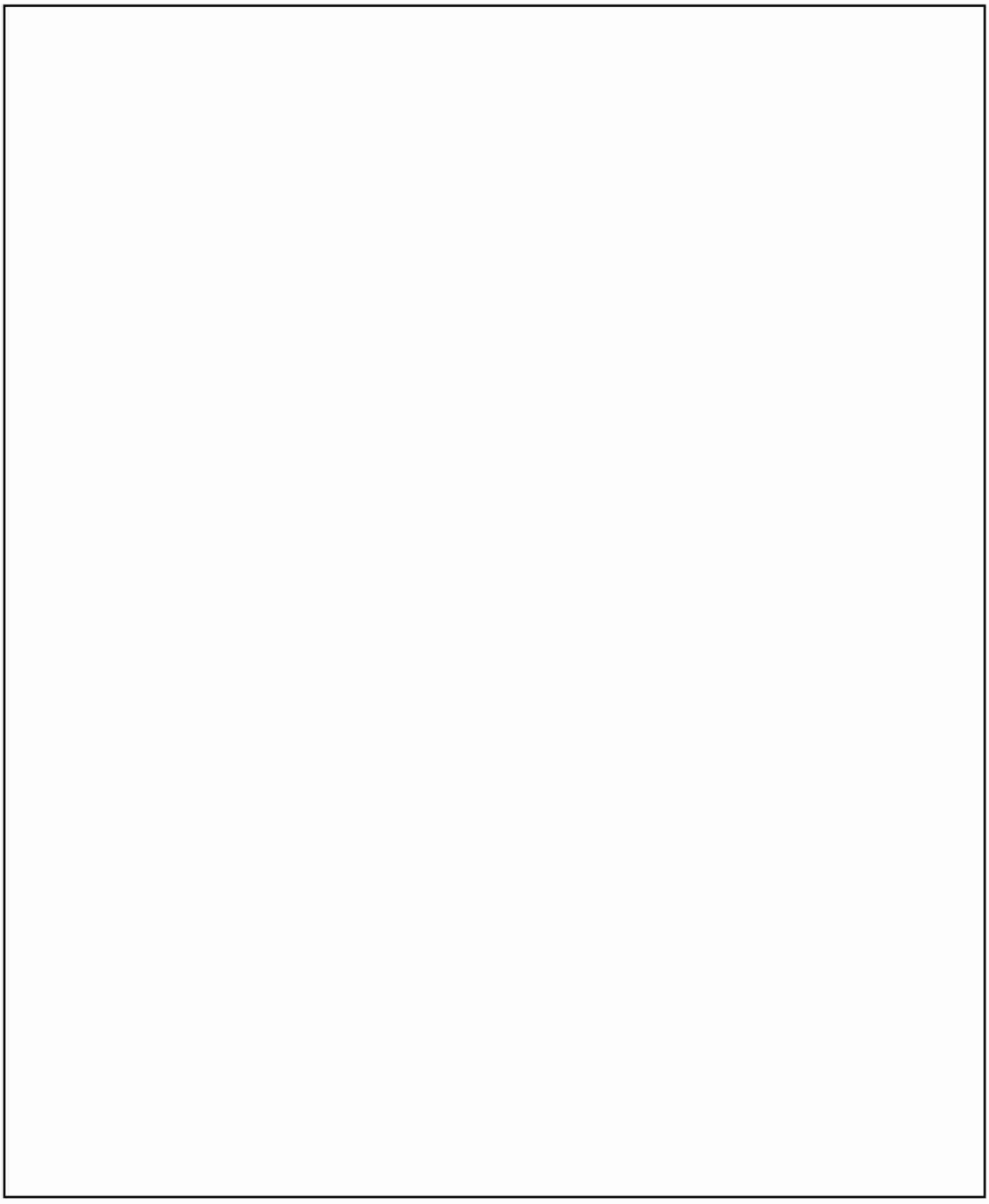
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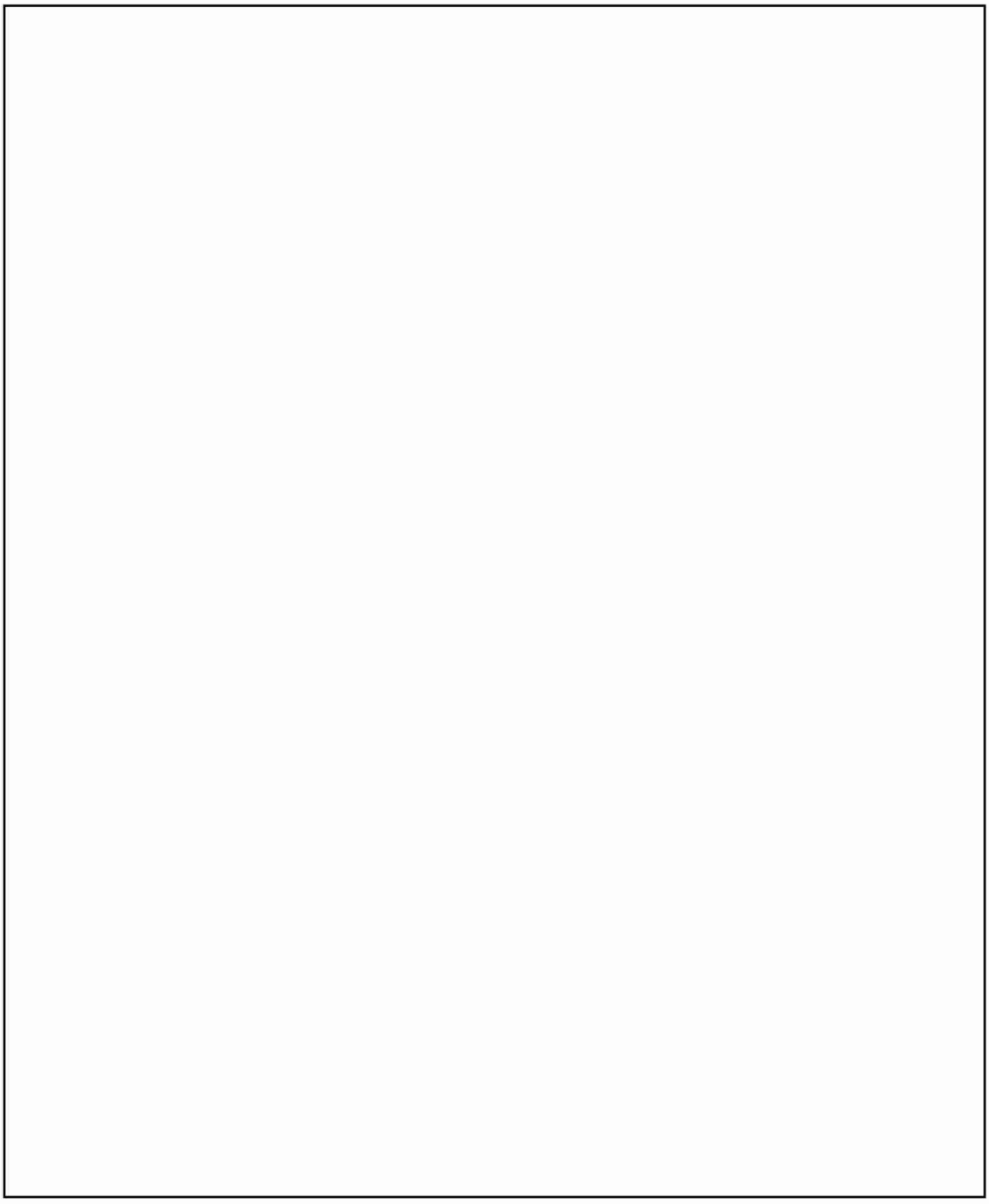
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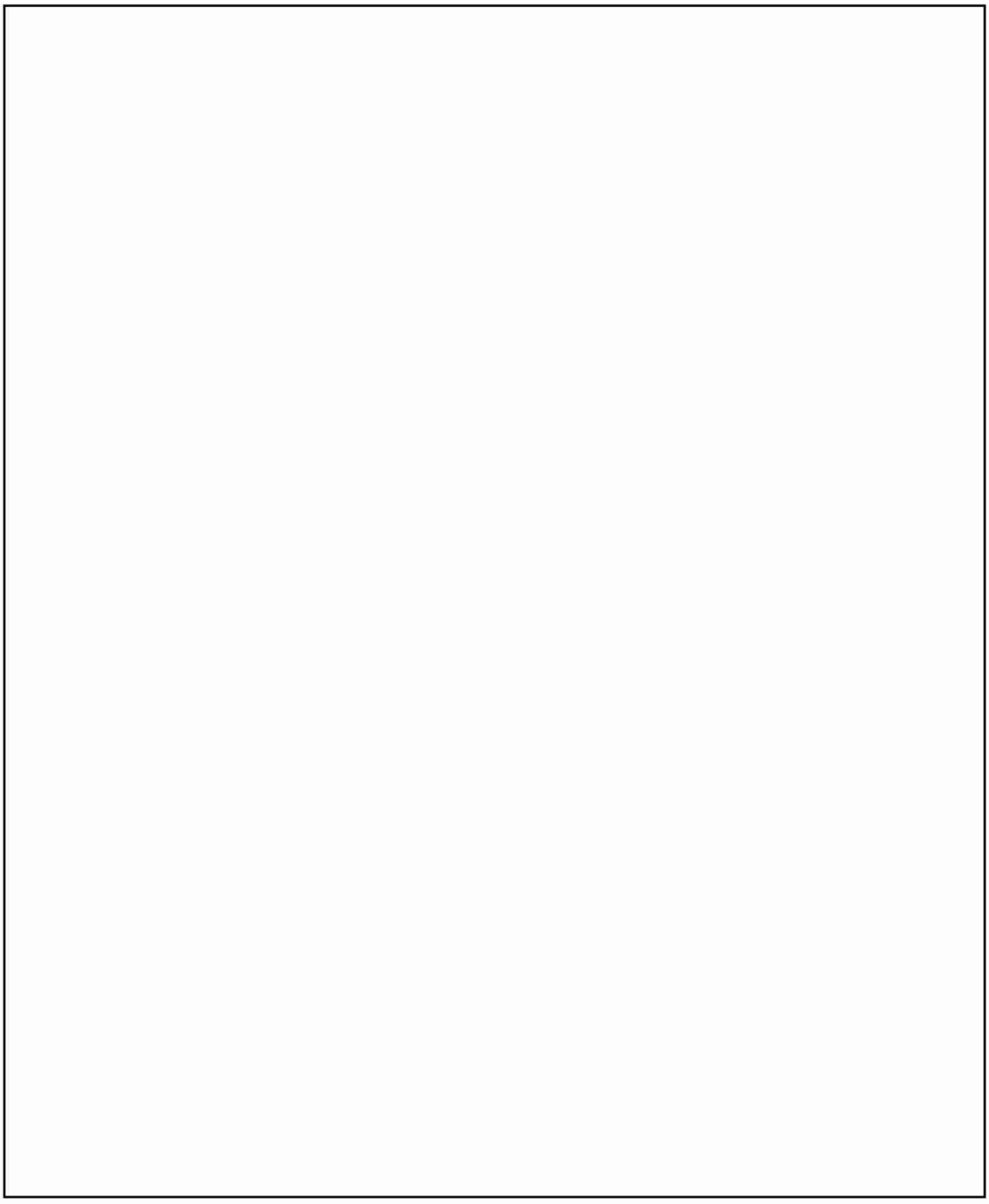
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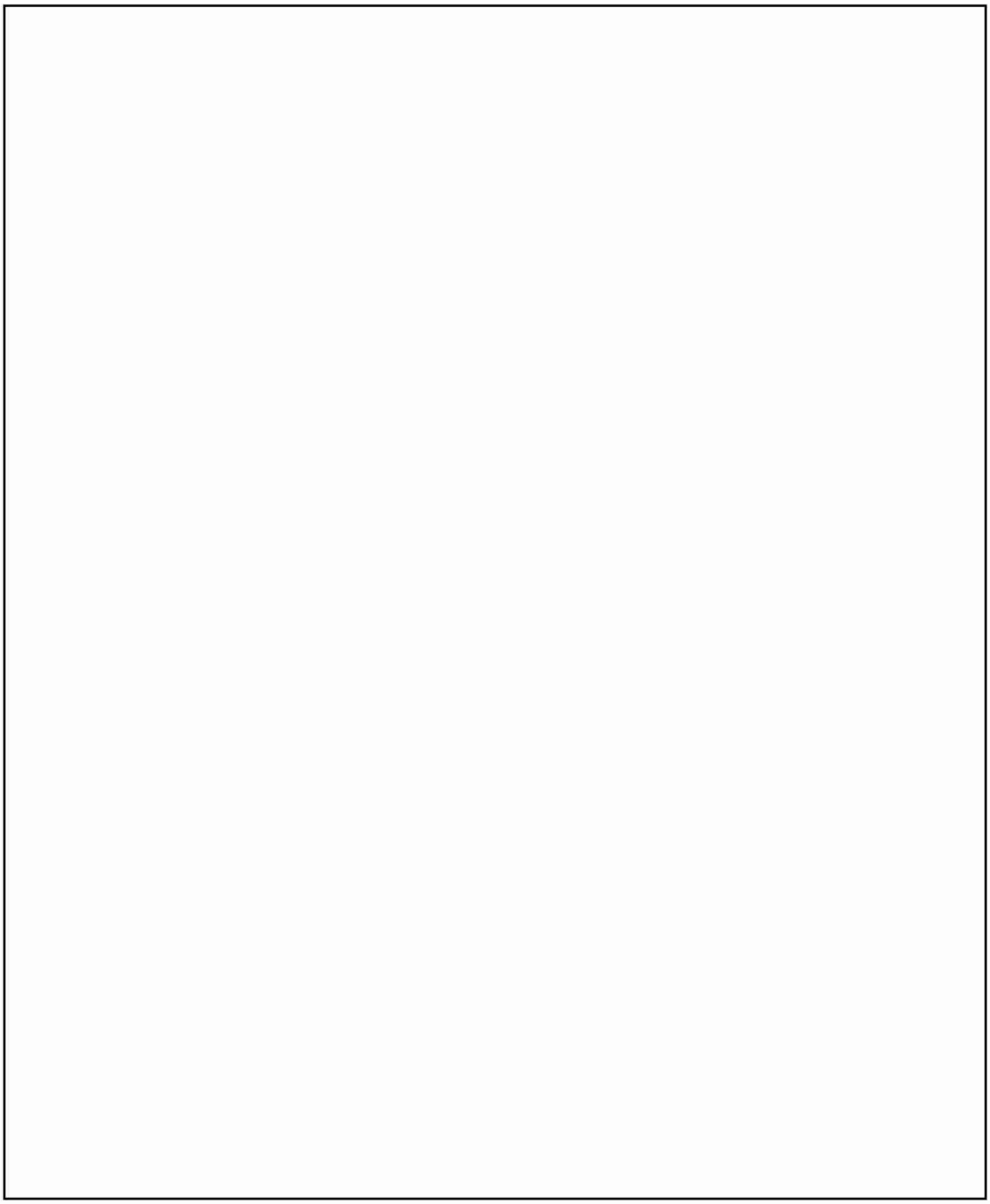
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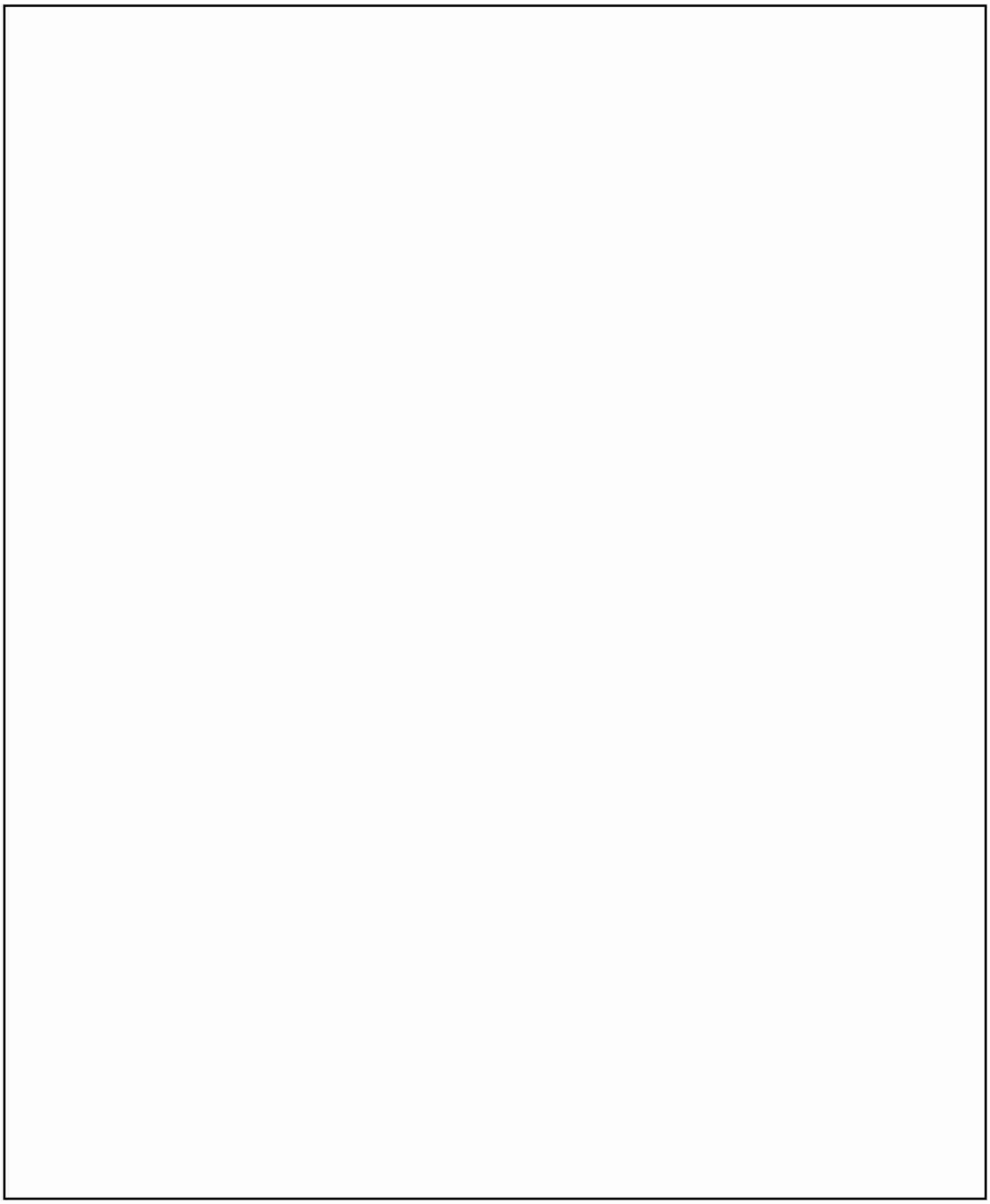
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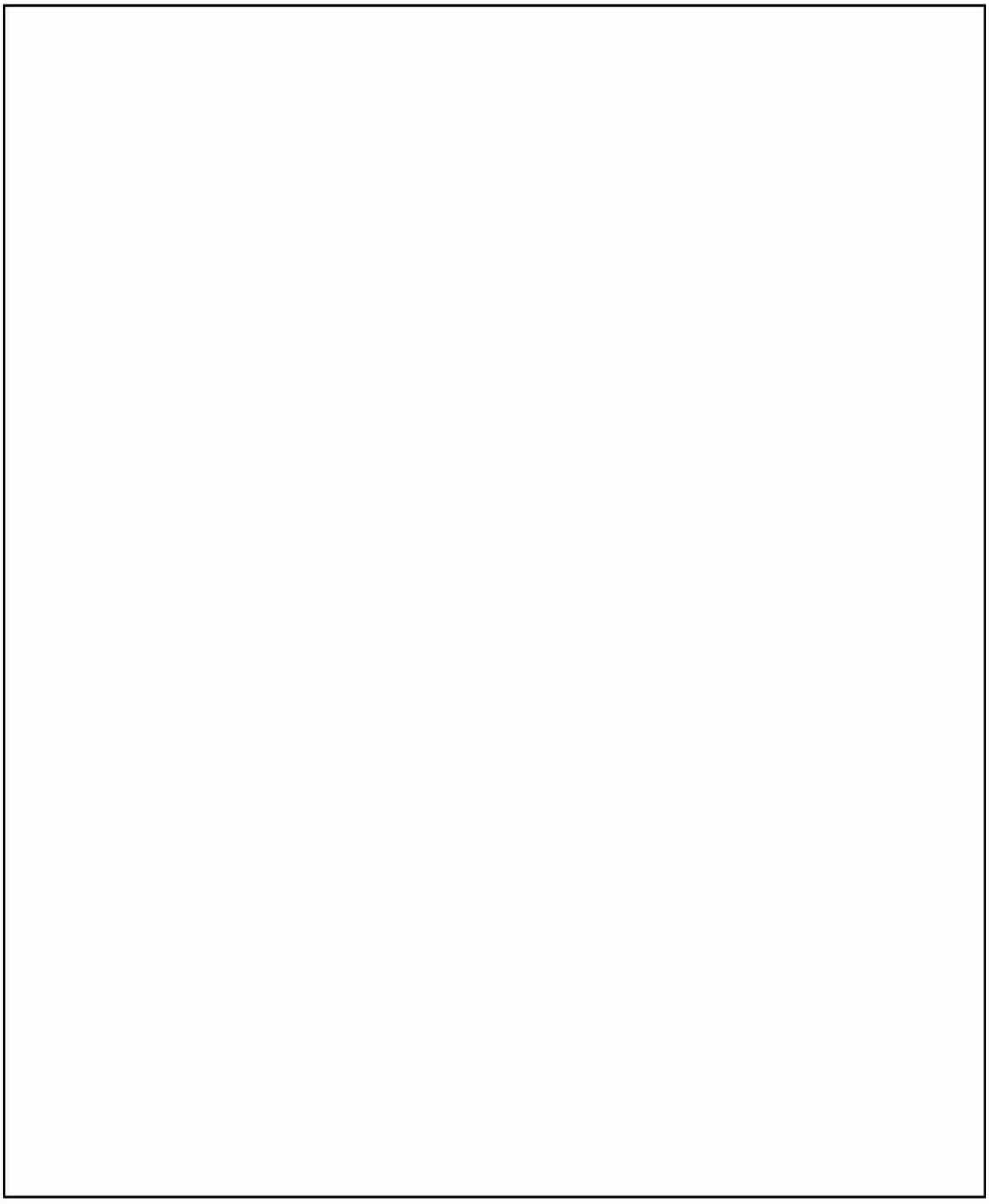
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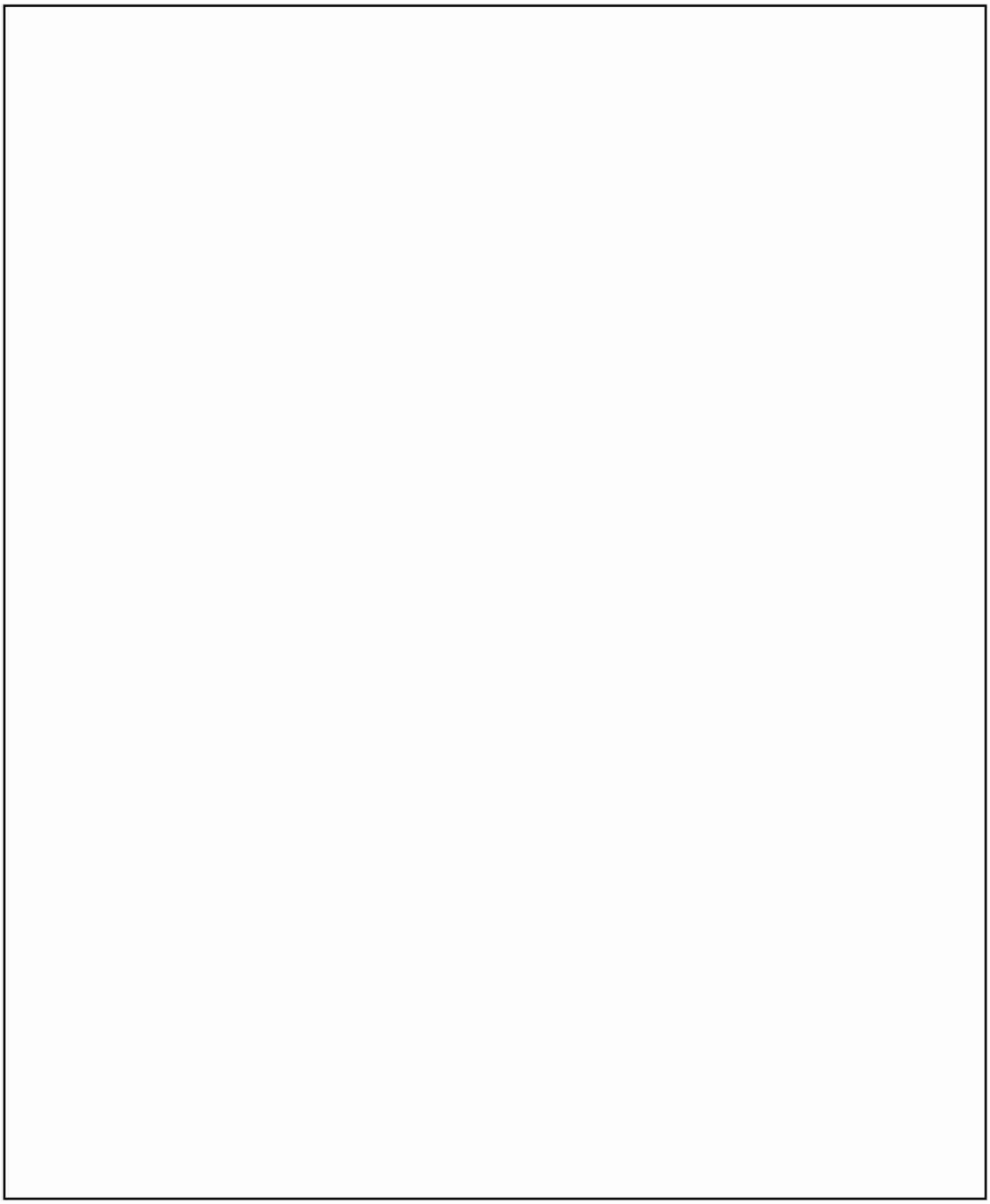
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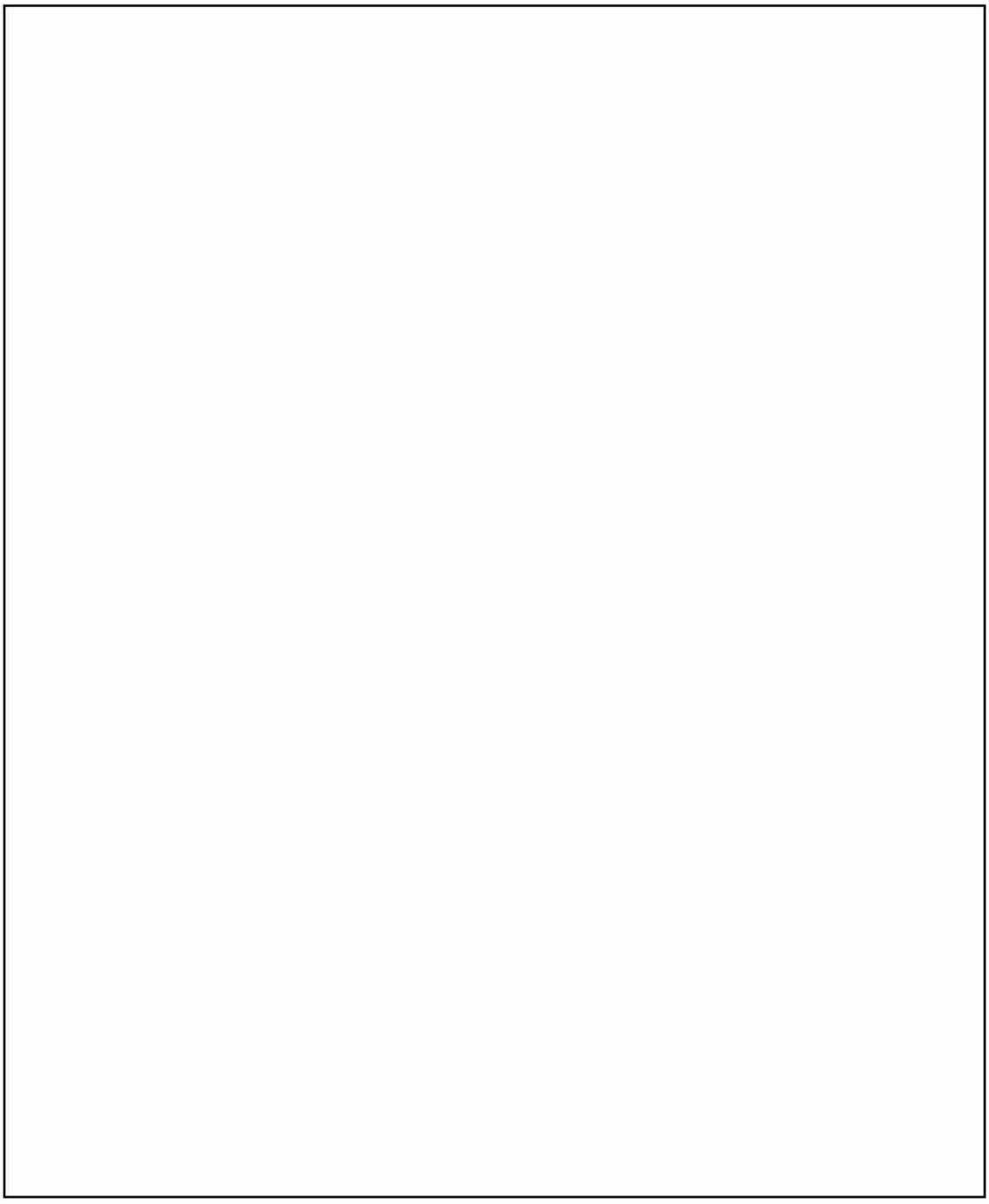
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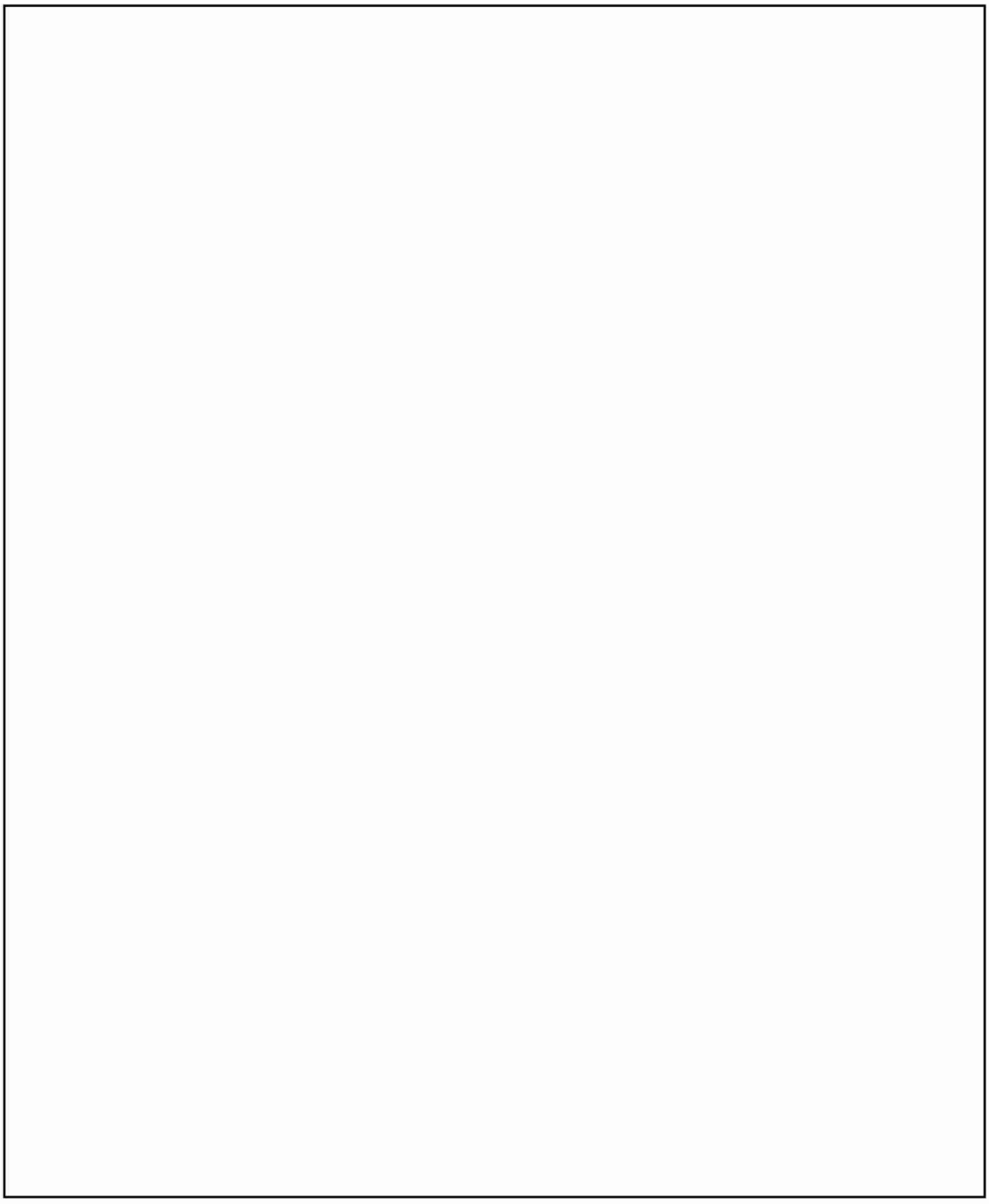
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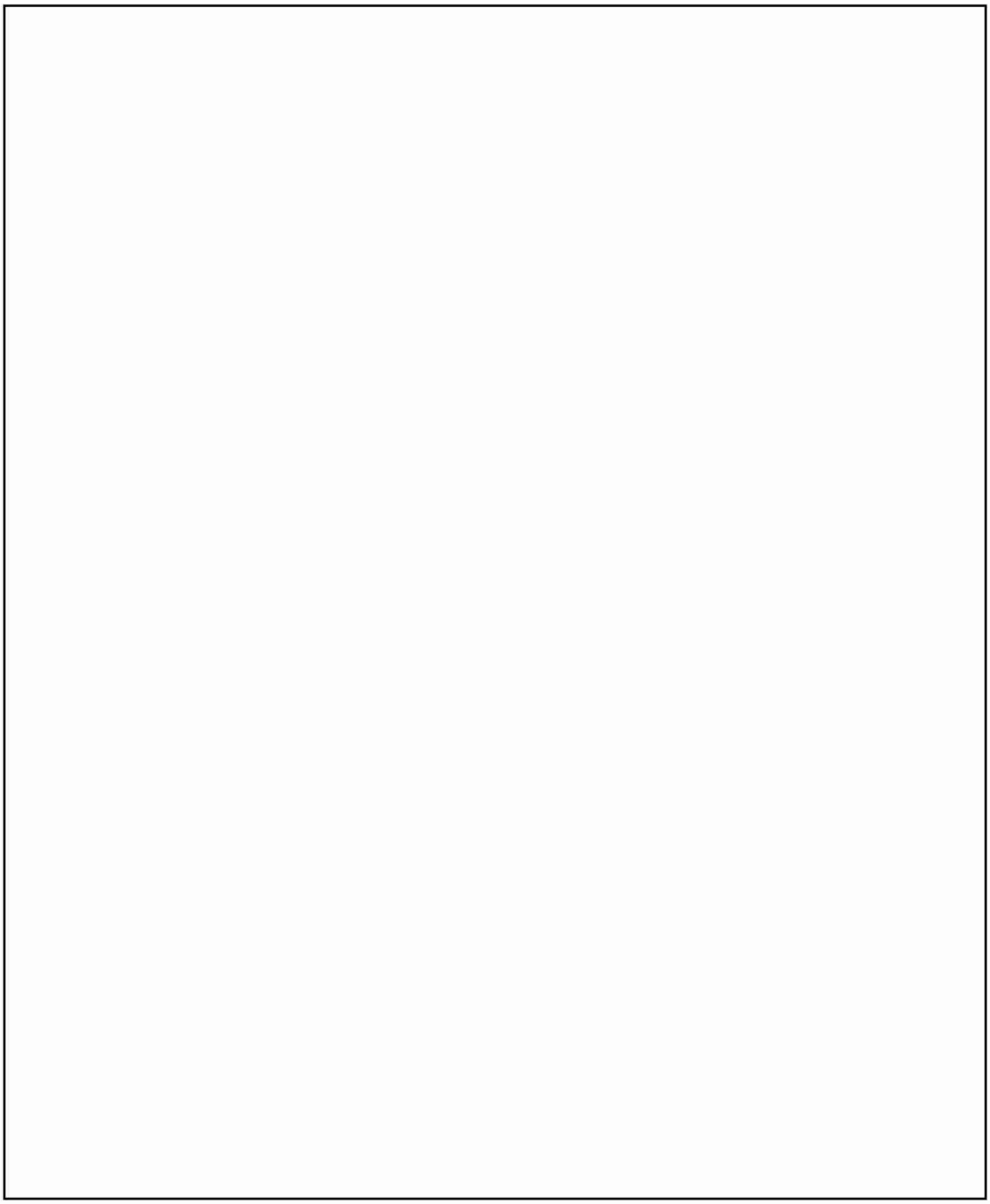
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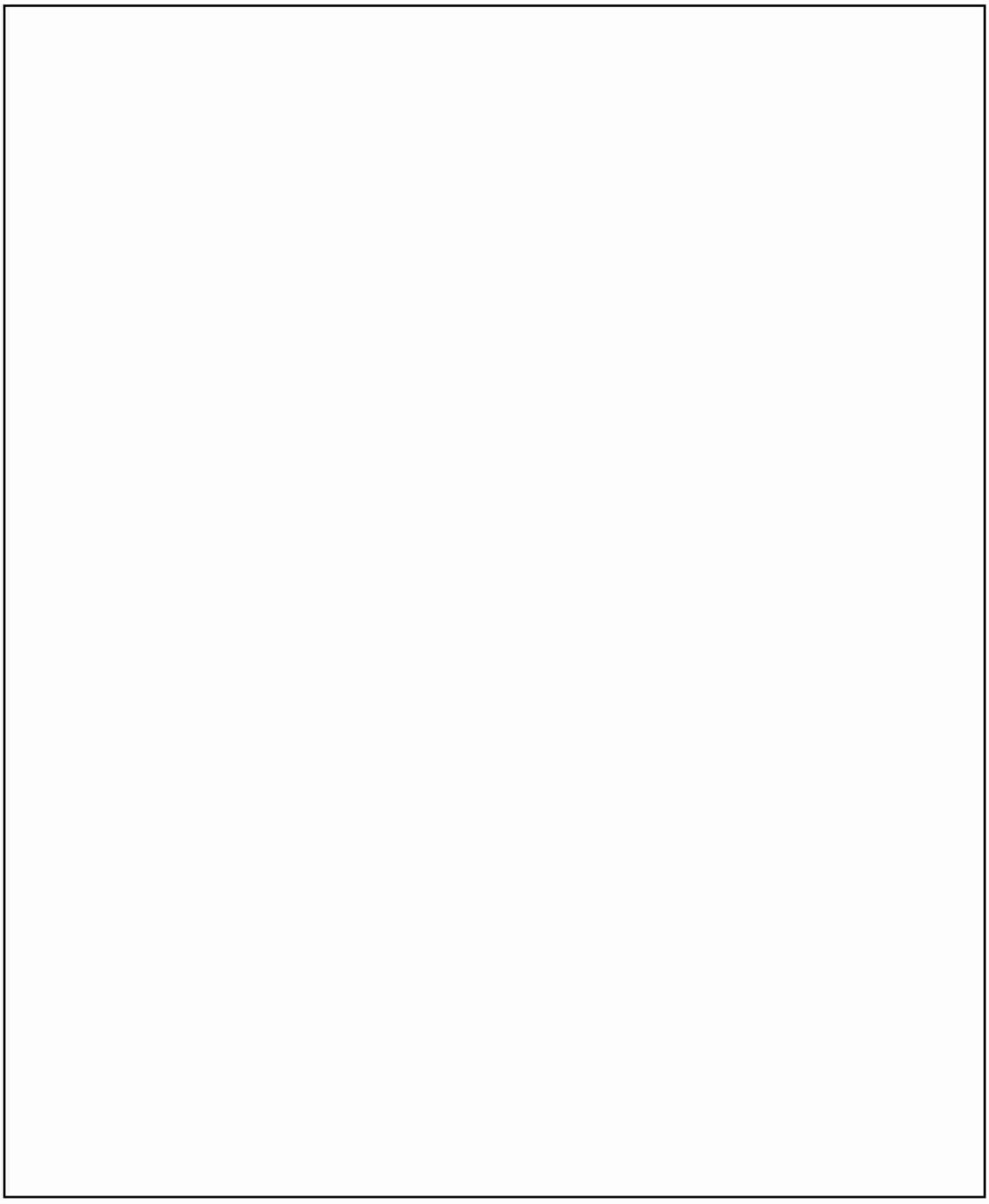
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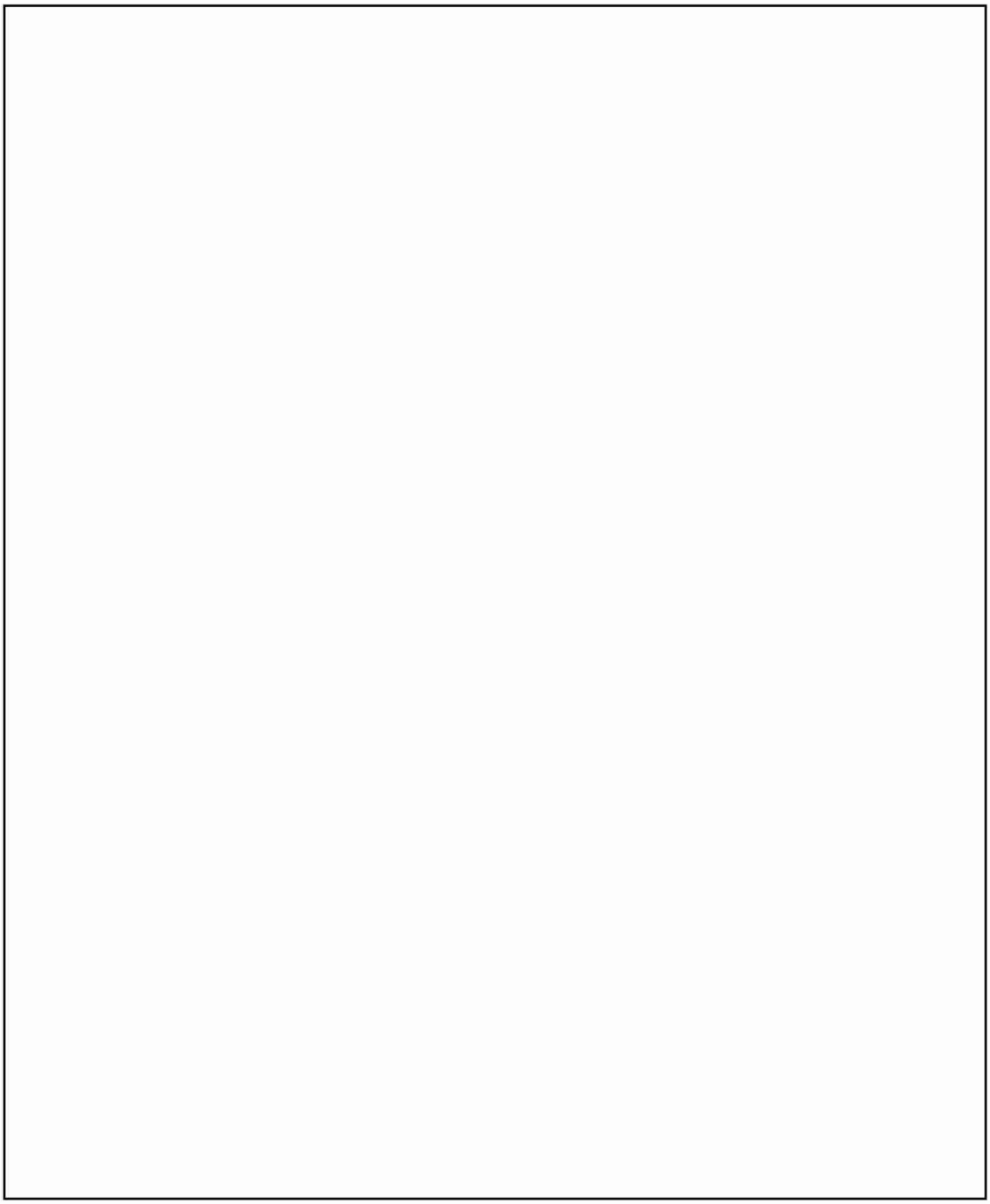
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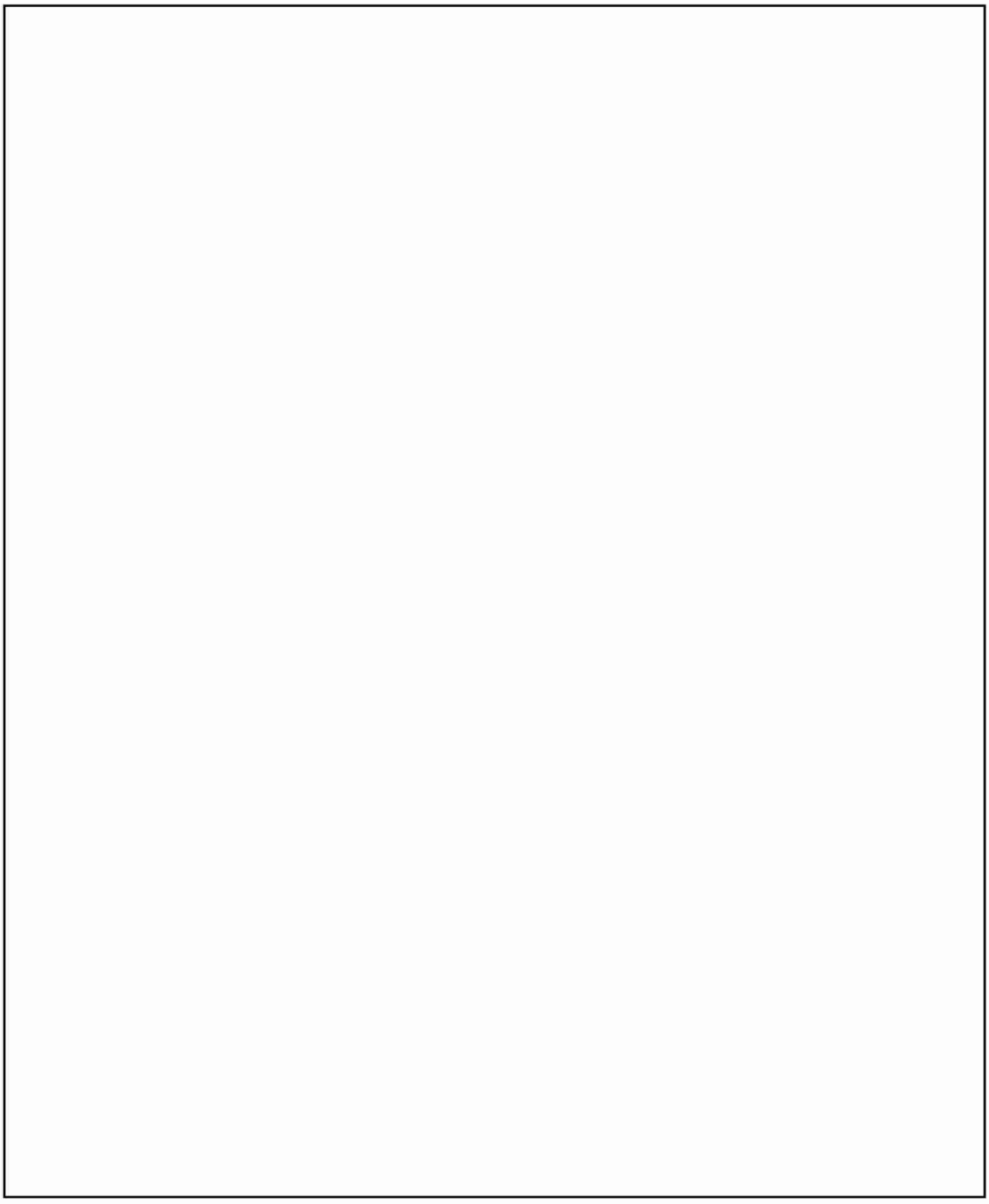
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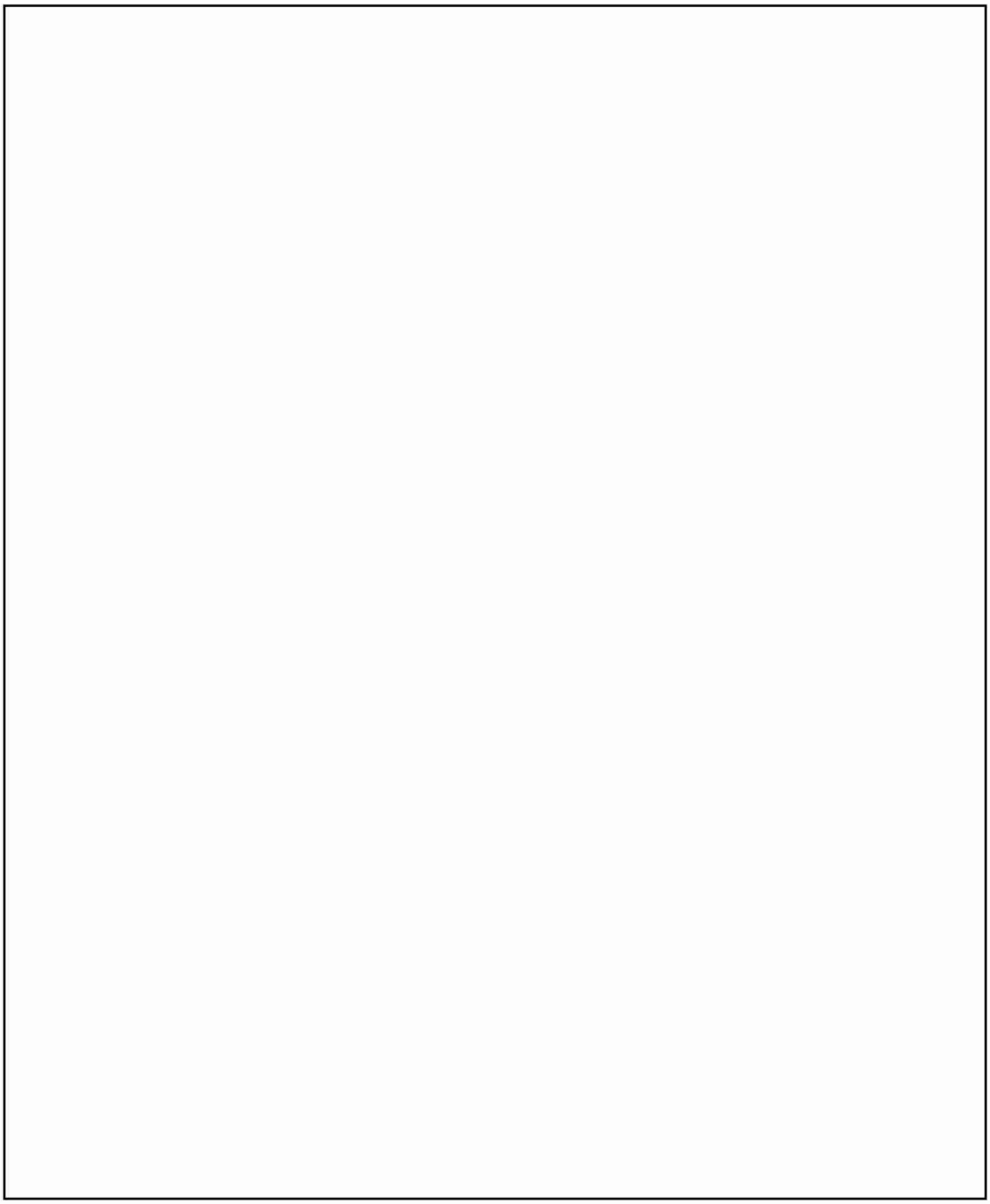
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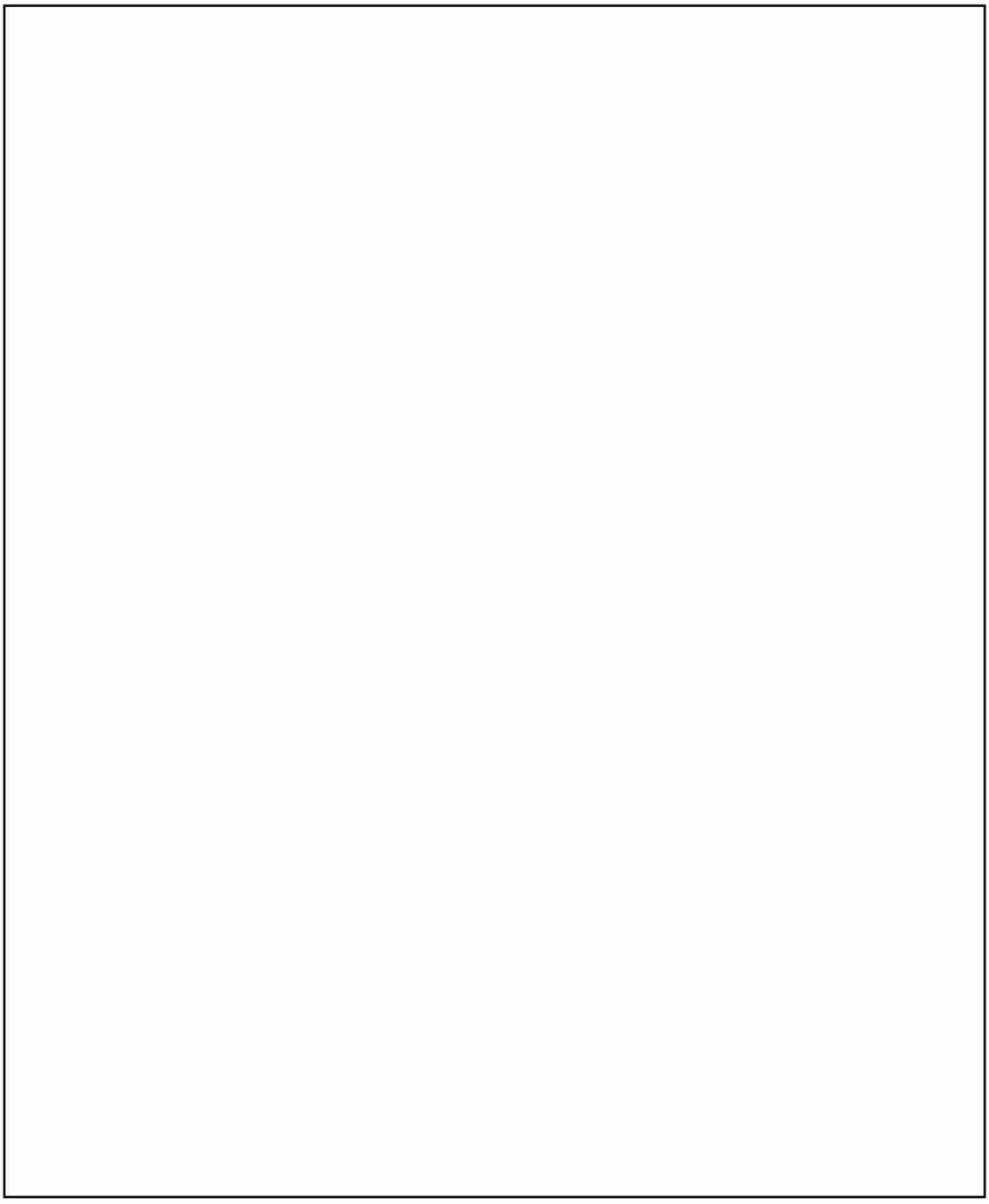
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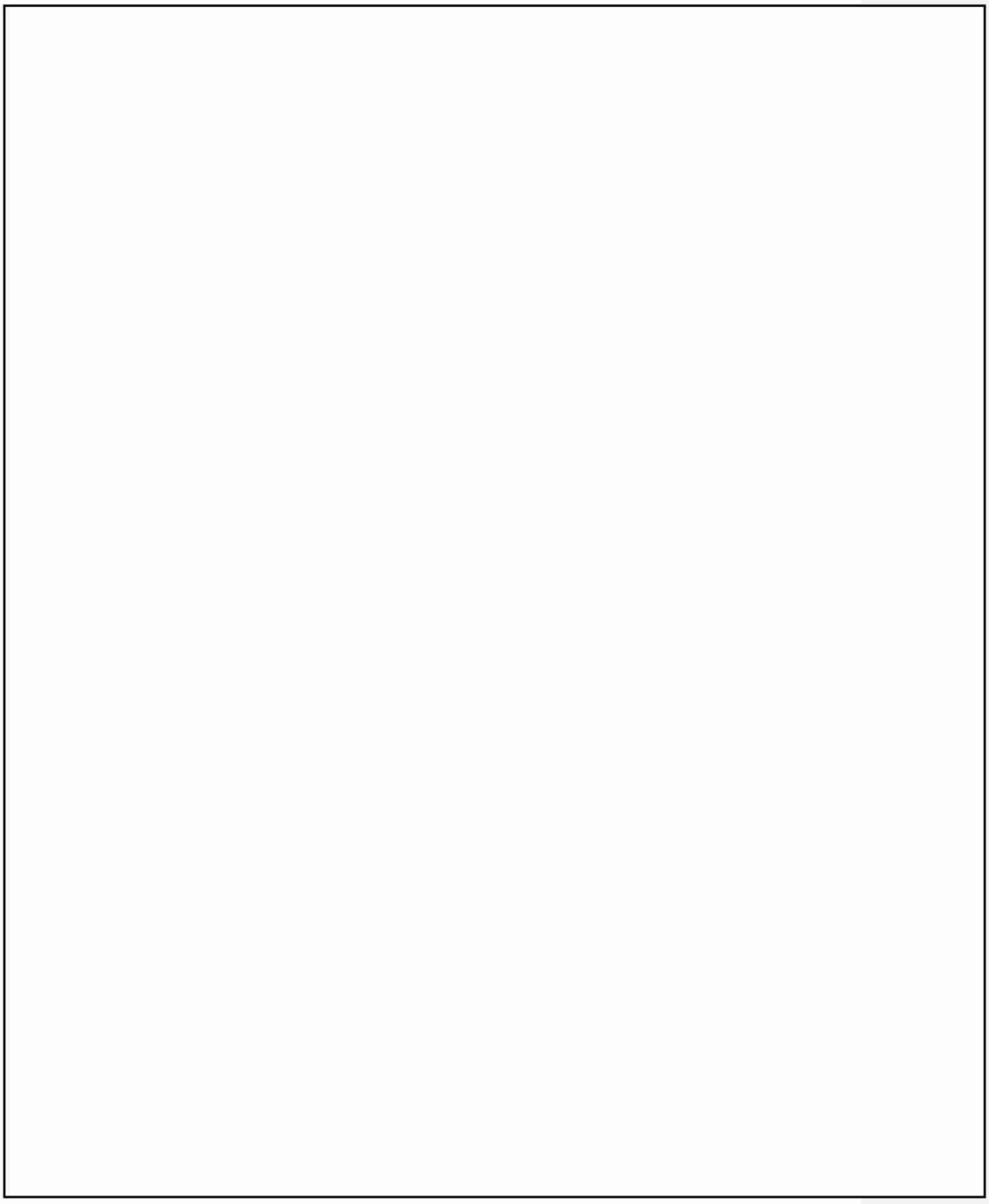
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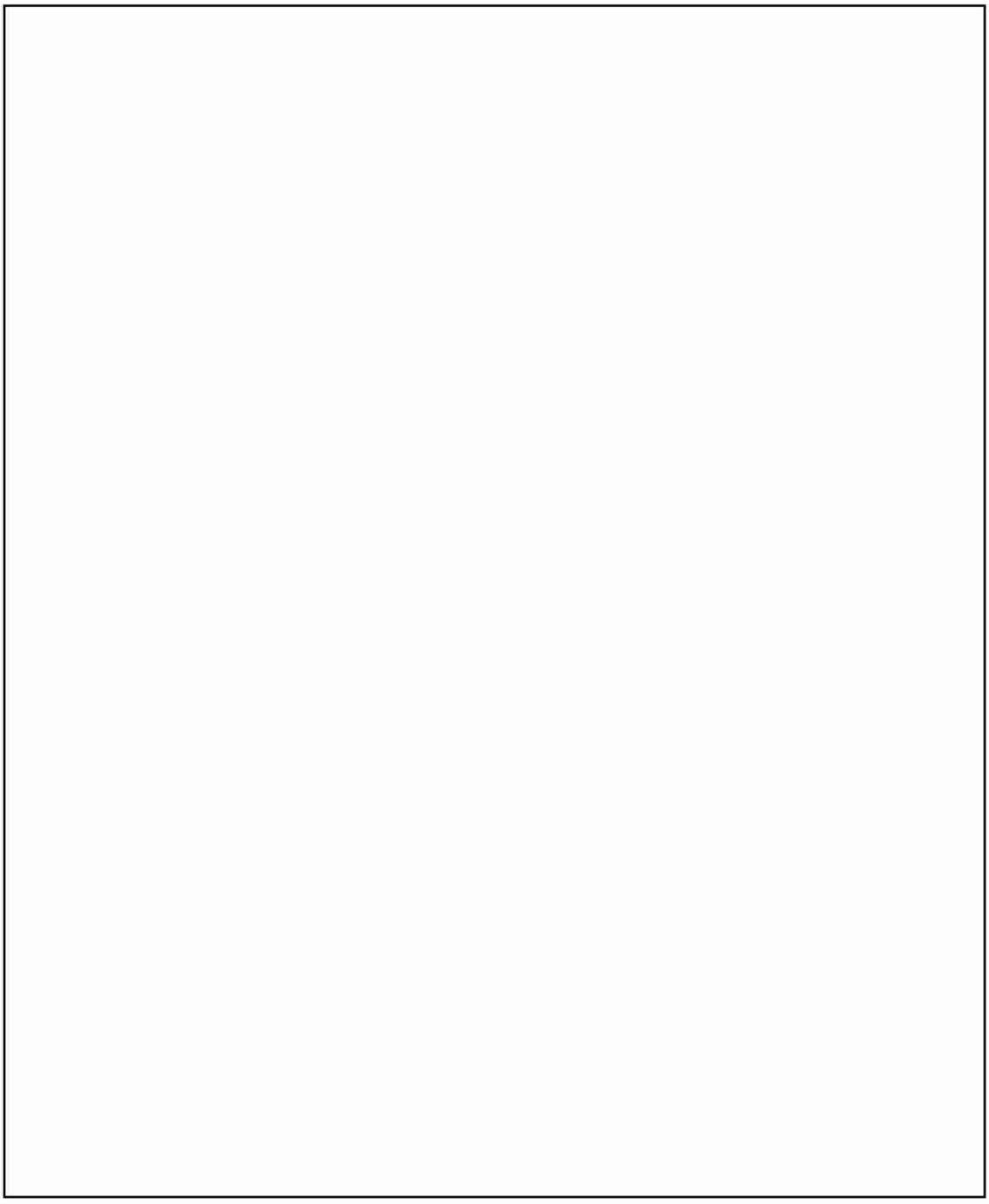
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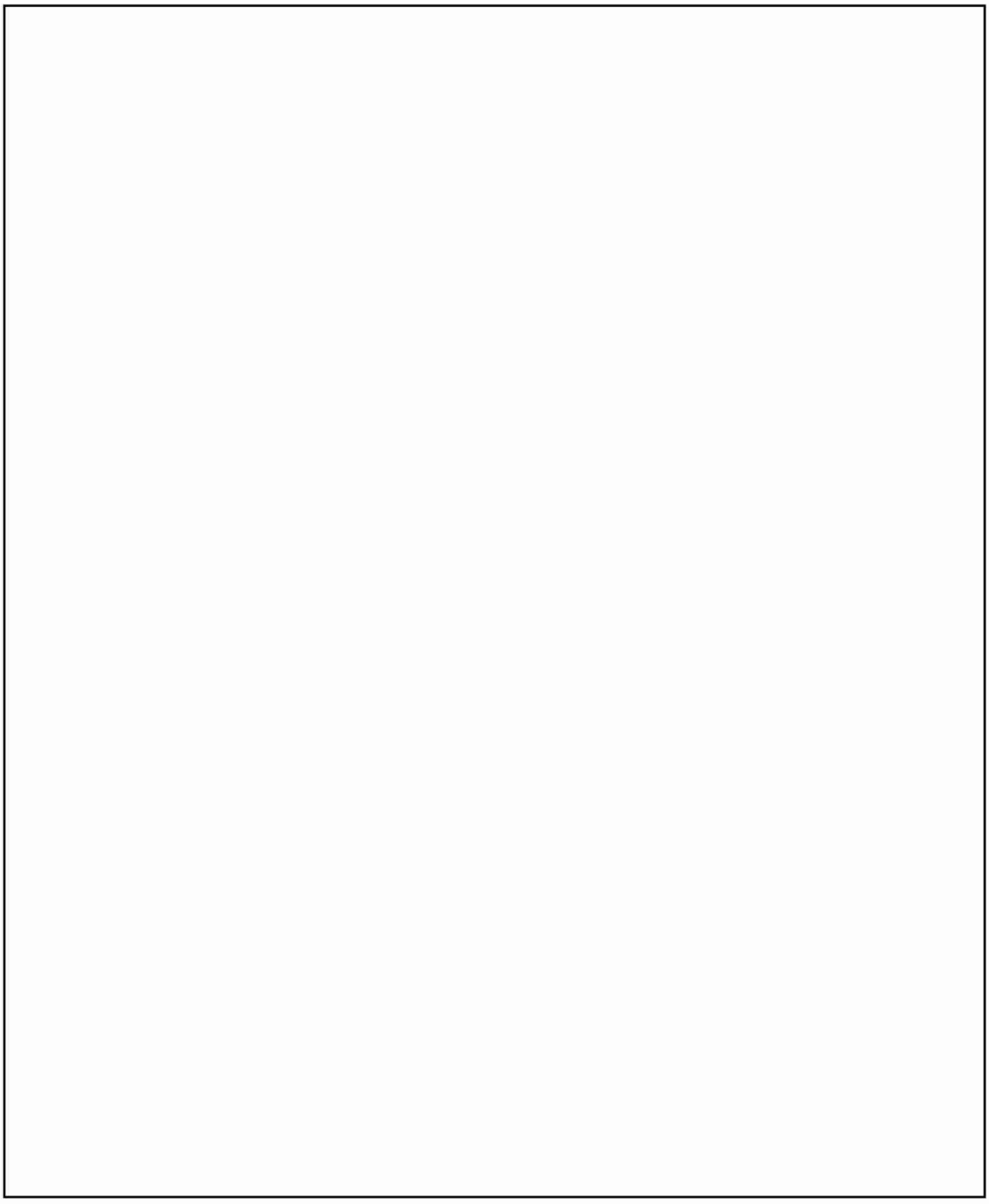
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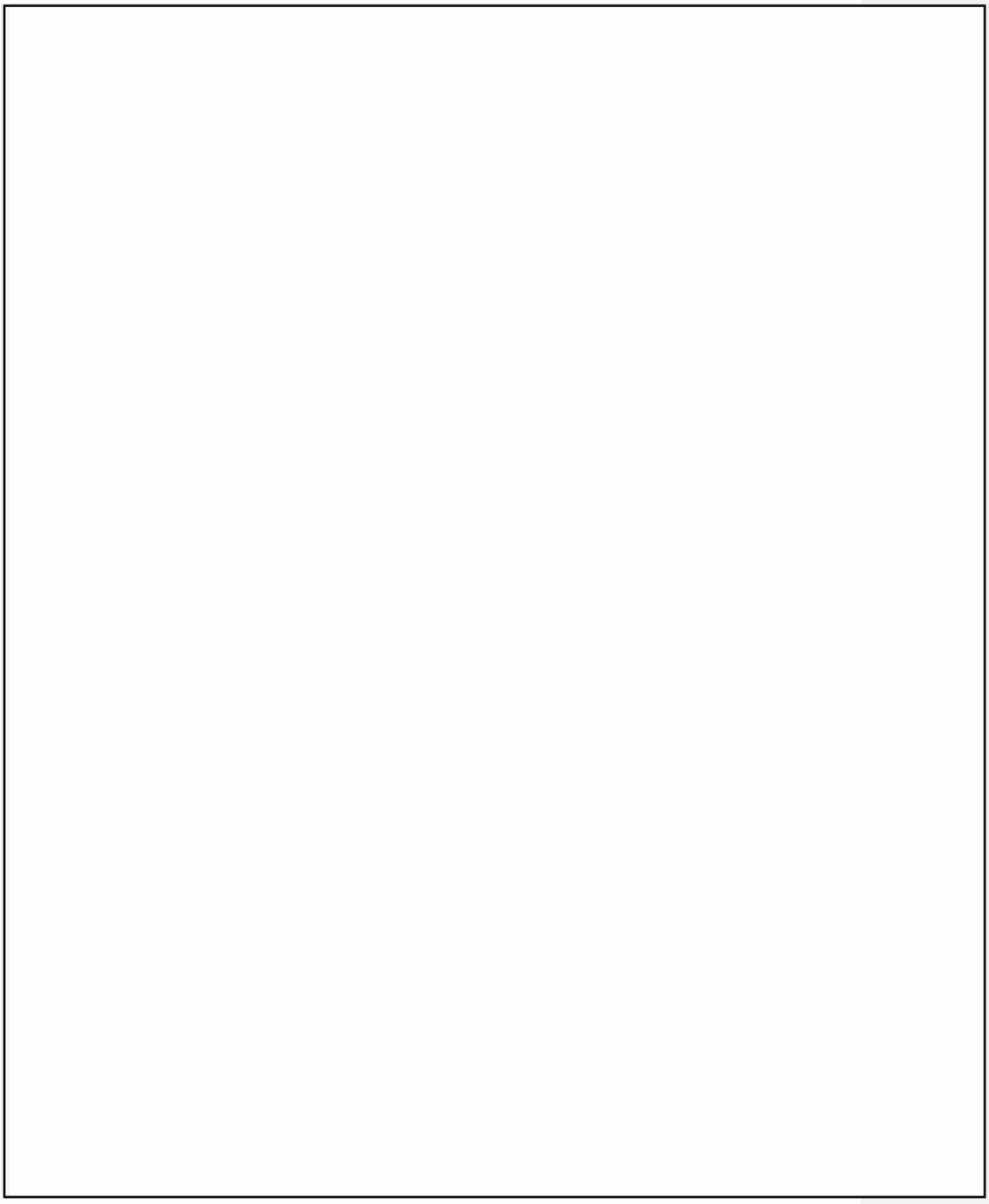
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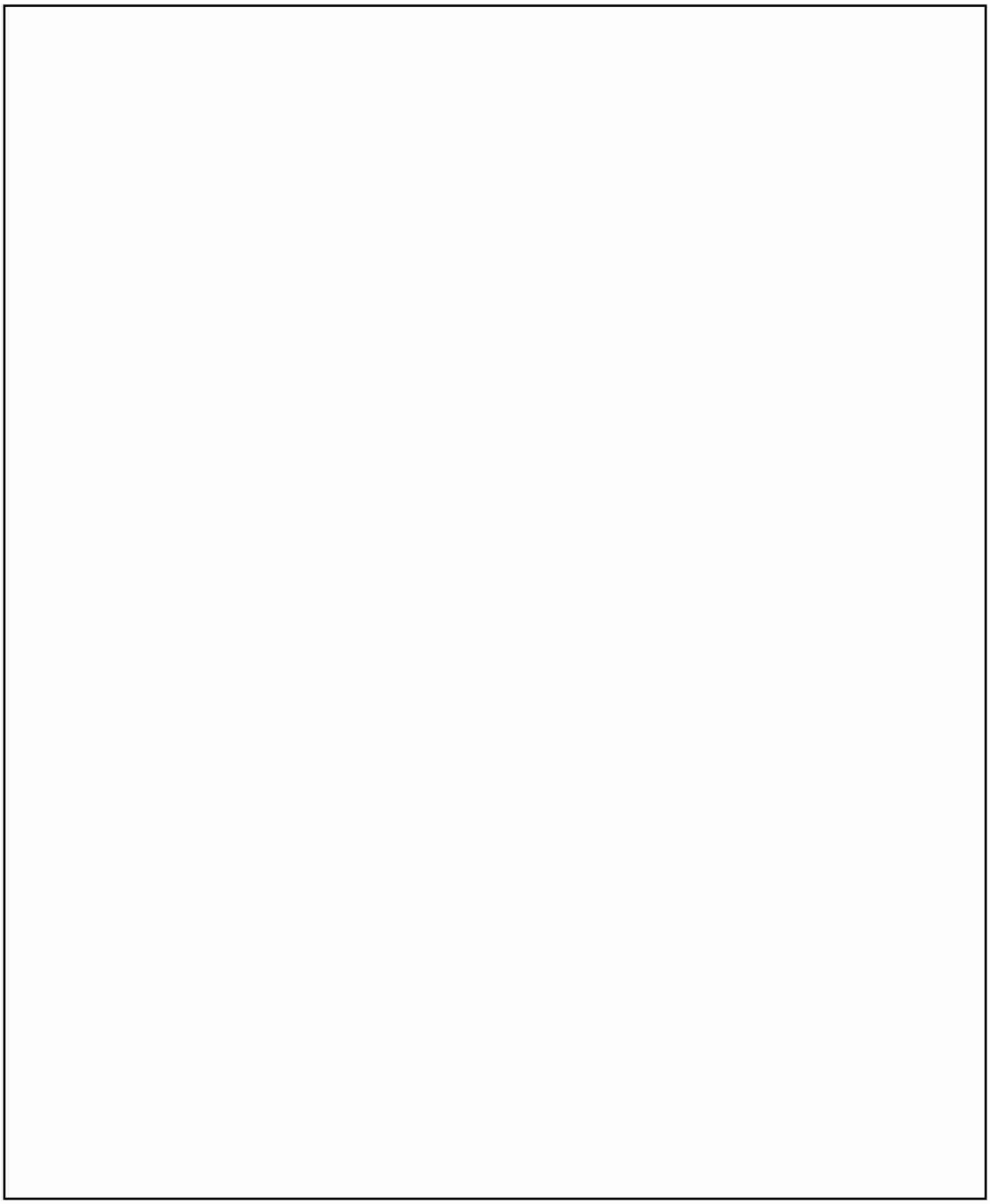
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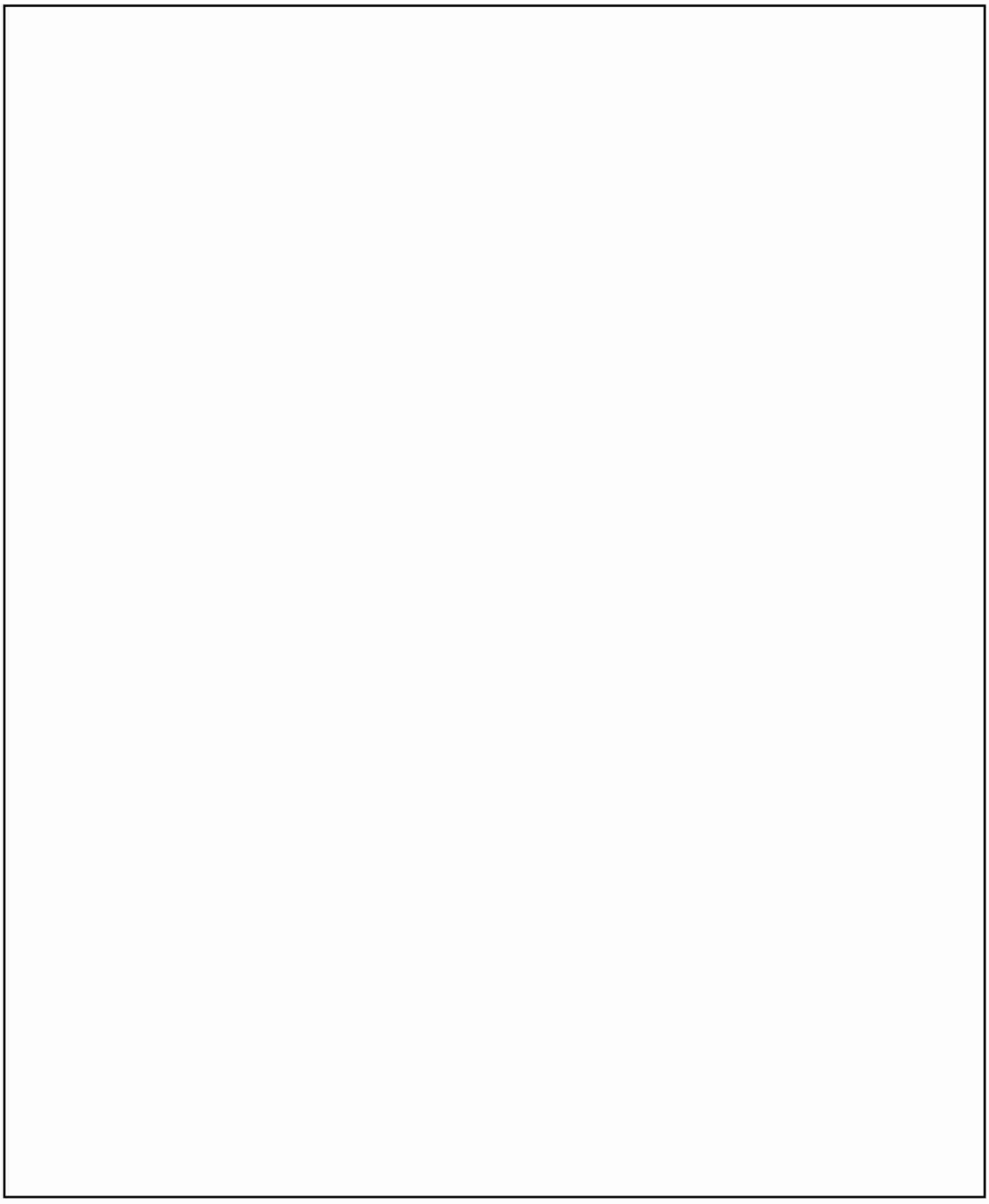
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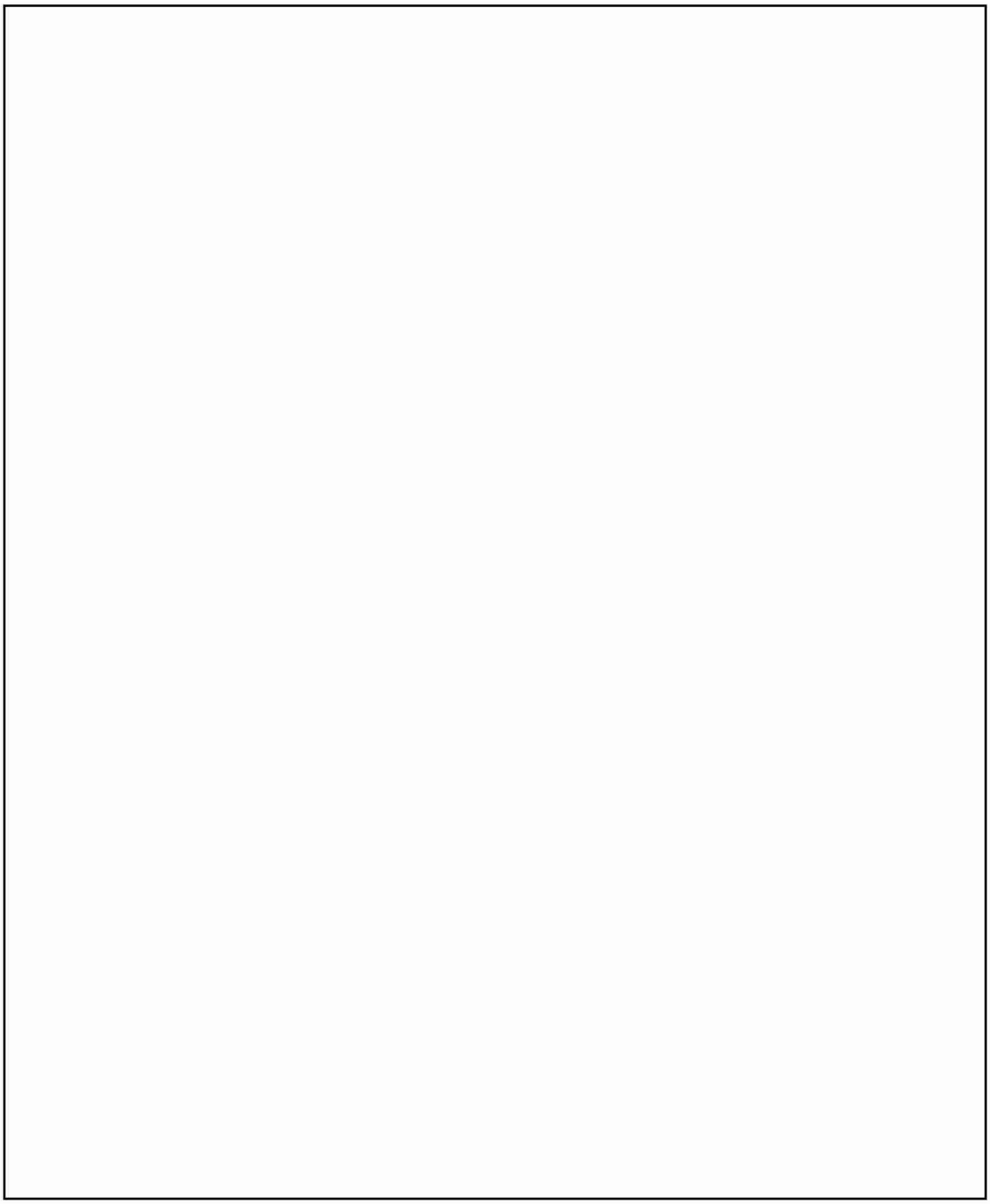
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Chad F. Wolf,
Acting Secretary of Homeland Security

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DHS-20-2156-A-003348

TABLE OF CHANGES – FORM
Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
- Red font = Changes

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Expires 10/31/2021
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text

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DHS-20-2156-A-003349



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TABLE OF CHANGES –INSTRUCTIONS
Instructions for Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
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Expires 10/31/2021
Edition Date 01/27/2020

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From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331
To: Piateski, Jennifer E
Sent: June 30, 2020 6:58 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx, I129-012-FRM-TOC-H1BStrengtheningIFR-FOReview-06302020.docx, I129-012-INS-TOC-H1BStrengtheningIFR-FOReview-06302020.docx

Would you like to review? If so, we can review concurrently on an MS Teams page.

From: Drake, Johnetta [redacted]
Sent: Tuesday, June 30, 2020 5:24 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good afternoon,

Requestor Directorate/Office: OP&S [redacted]

Due Date: 6:00PM Tuesday, July 7, 2020

Request: OP&S requests the Front Office review and clear the attached H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes.

Background: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Important note: The PODs review is occurring in parallel and will conclude on 7/6. Per OP&S, [redacted] **discussed and agreed to this process.**

Attachments:
H-1B Rule
1129-012-FRM-TOC
1129-012-INS-TOC

*******Please reply to all on this email ******

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Thanks,

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Johnetta Drake
USCIS Exec Sec
[redacted] *(Cell)*
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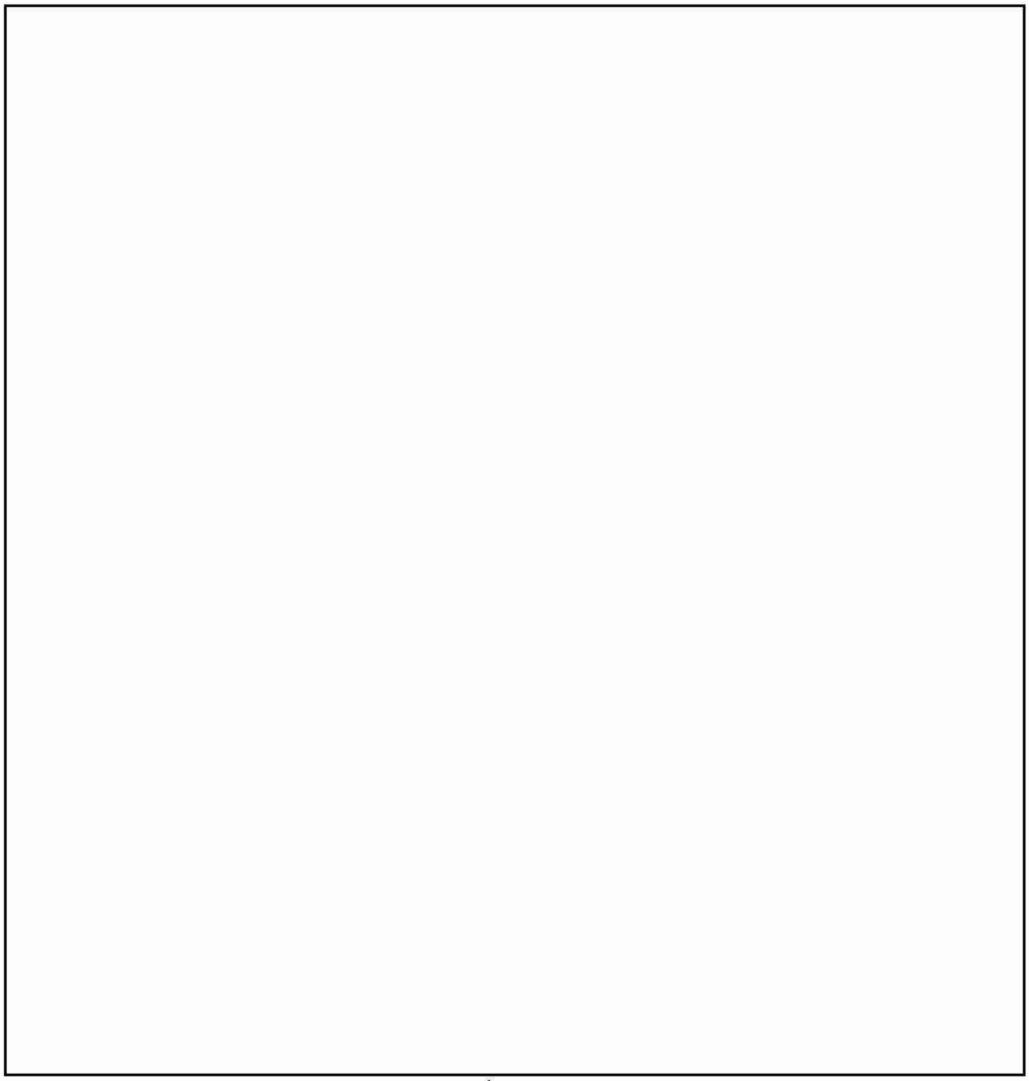
DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

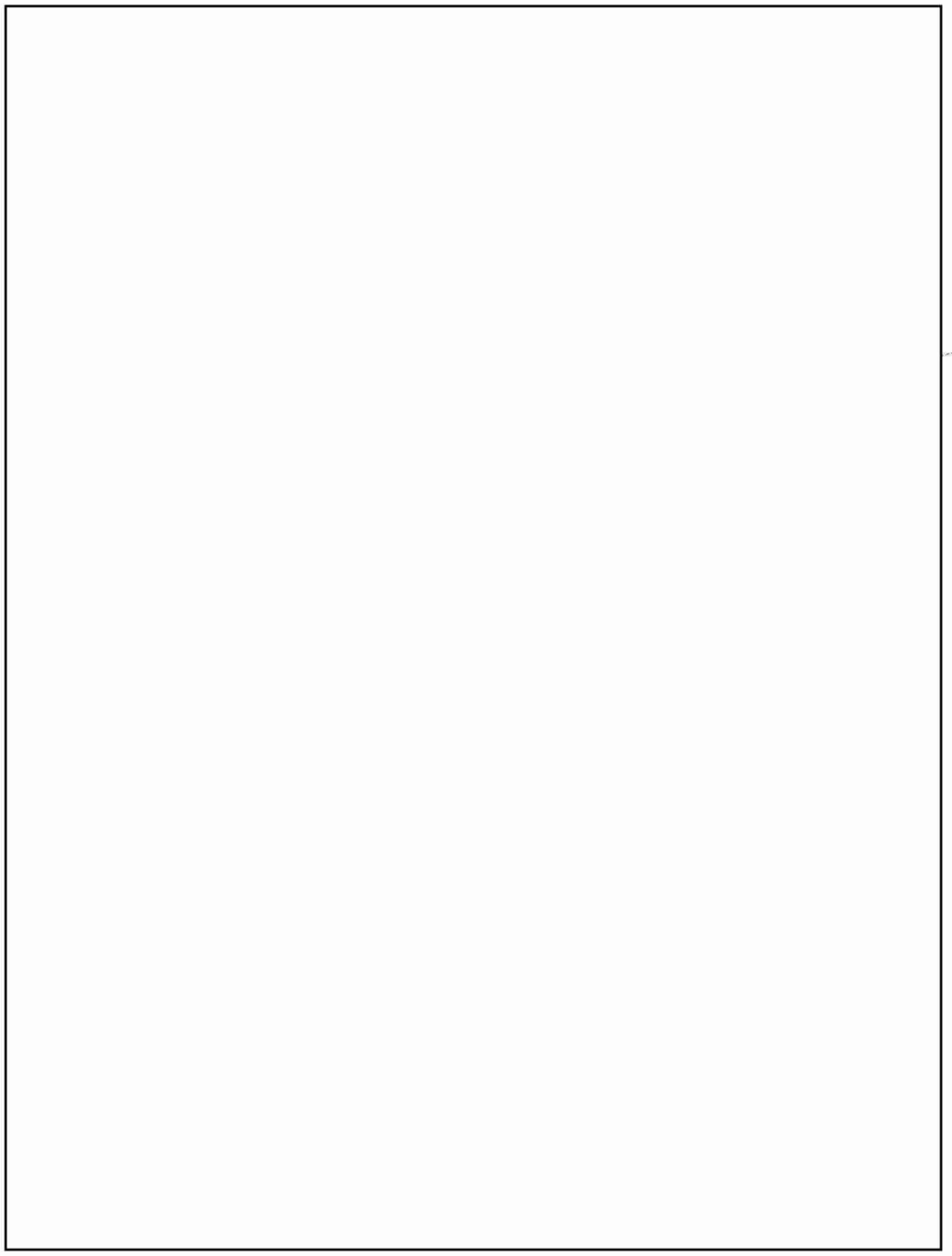
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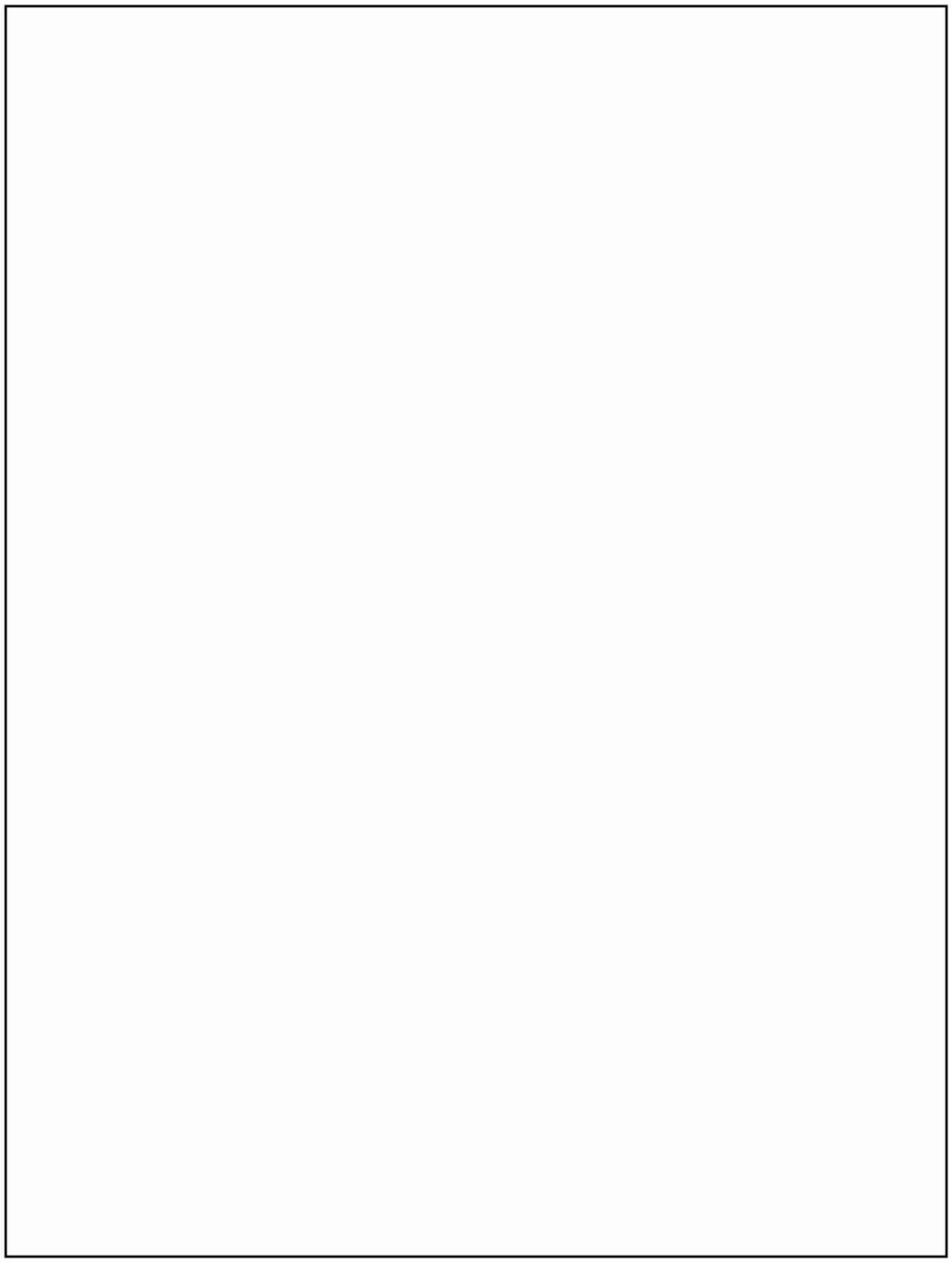
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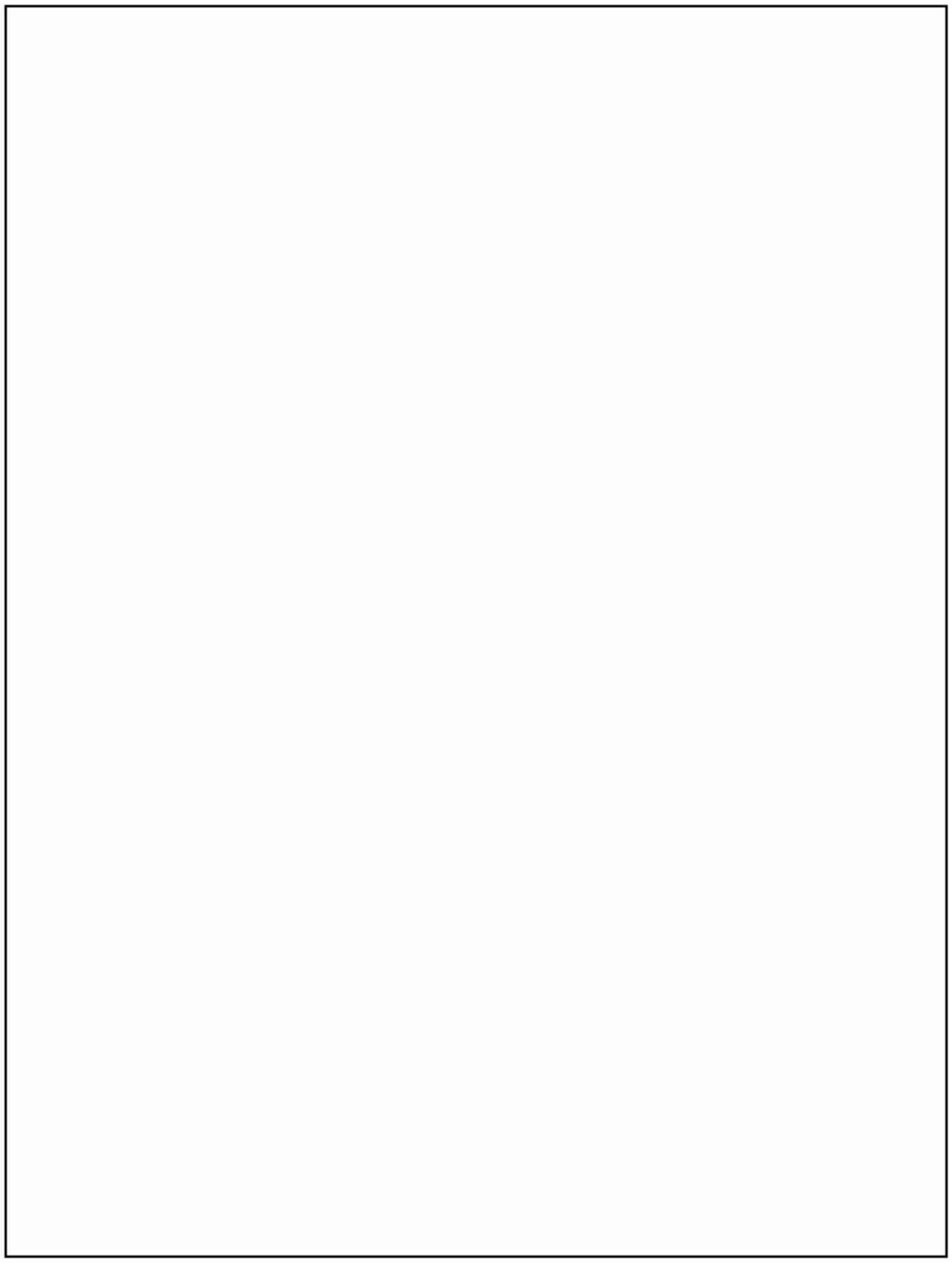
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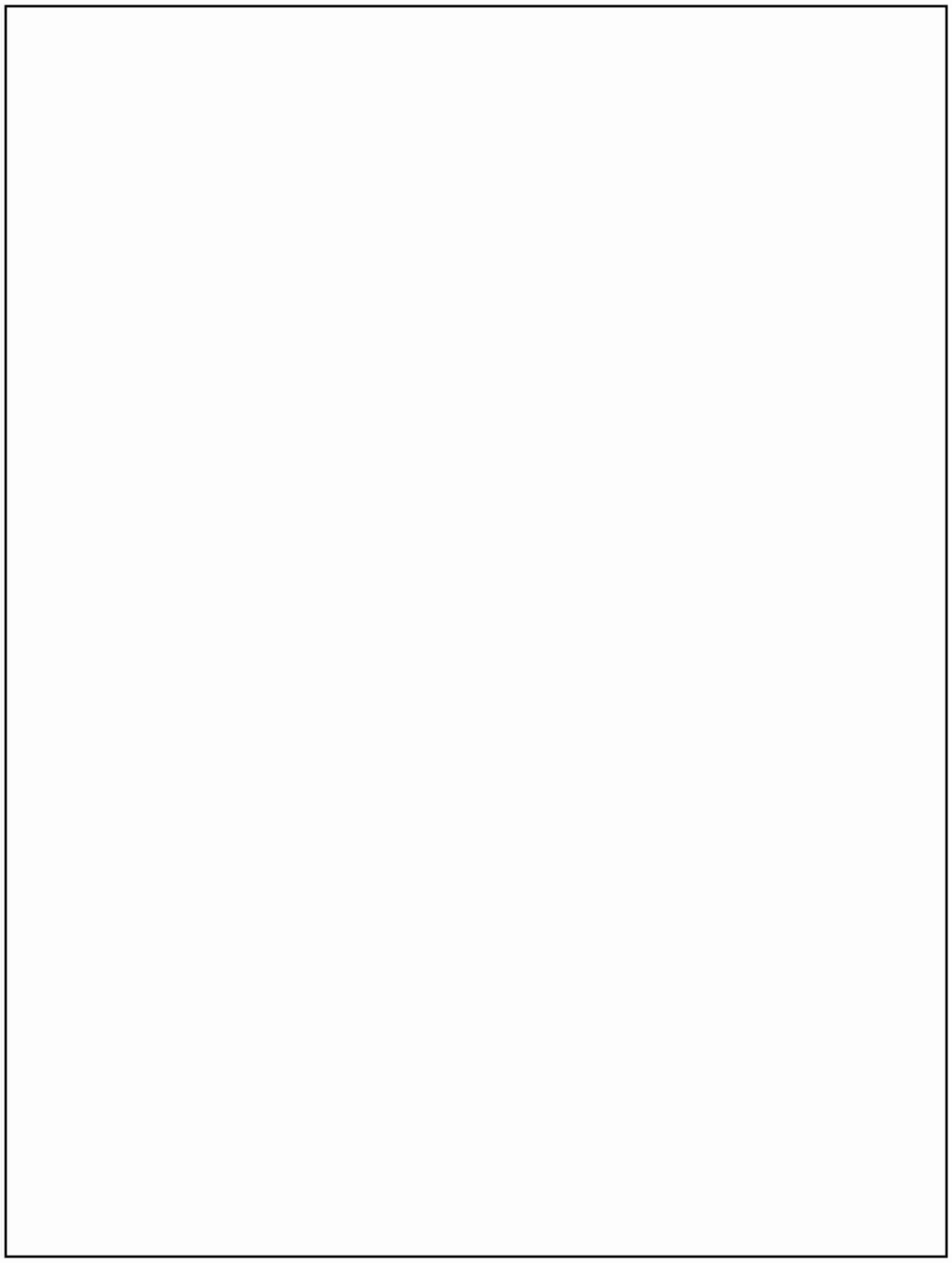
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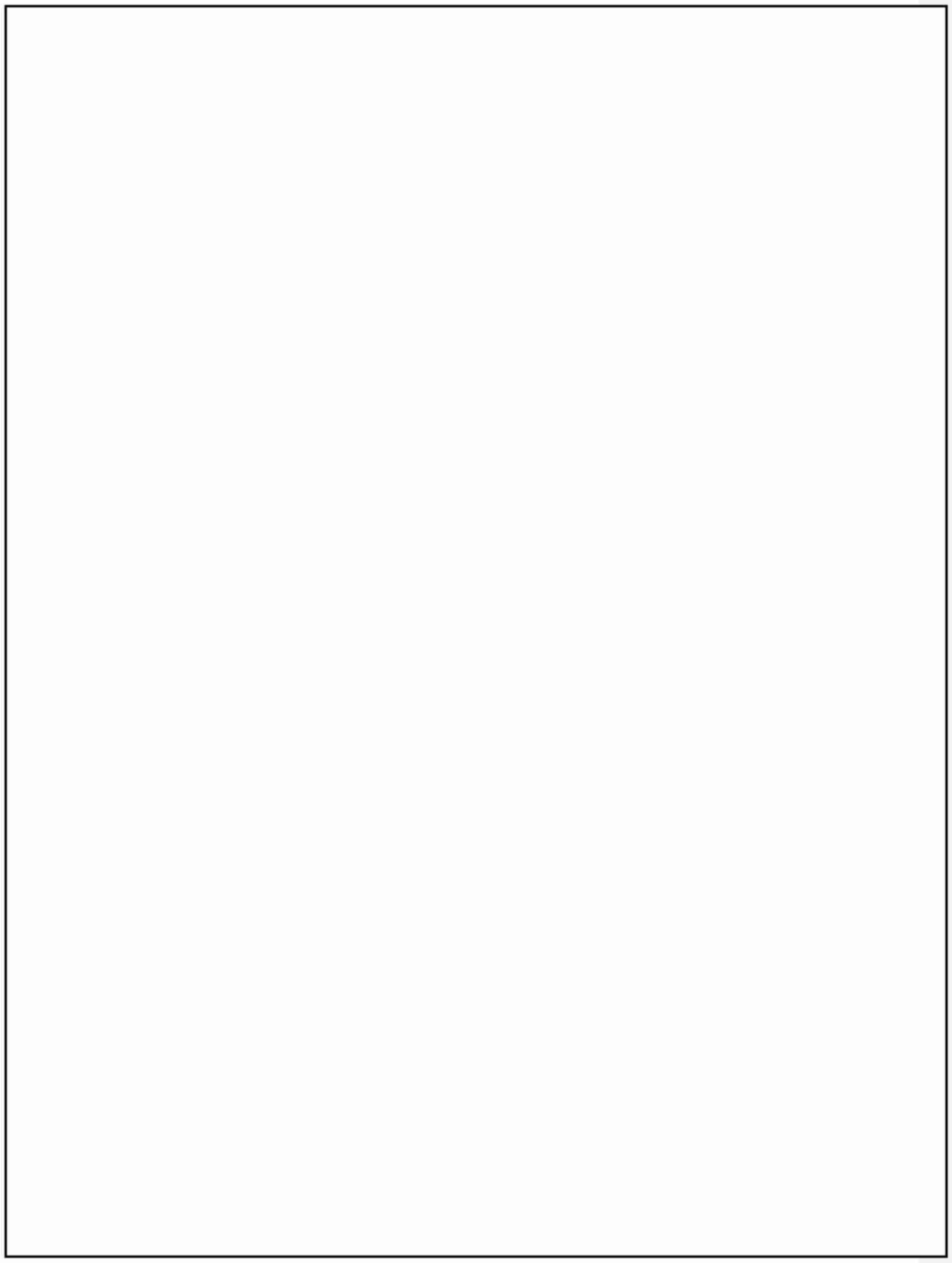
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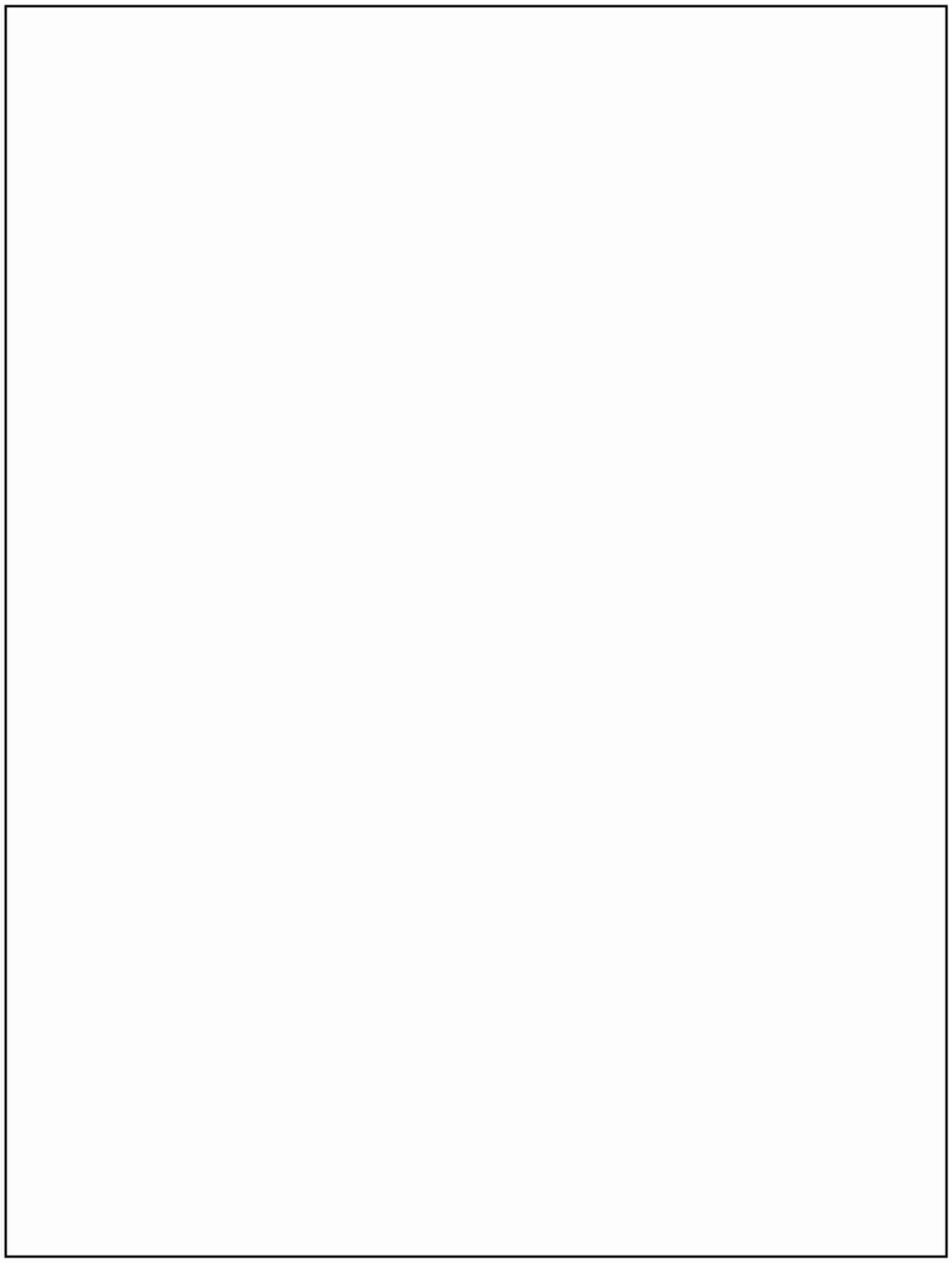
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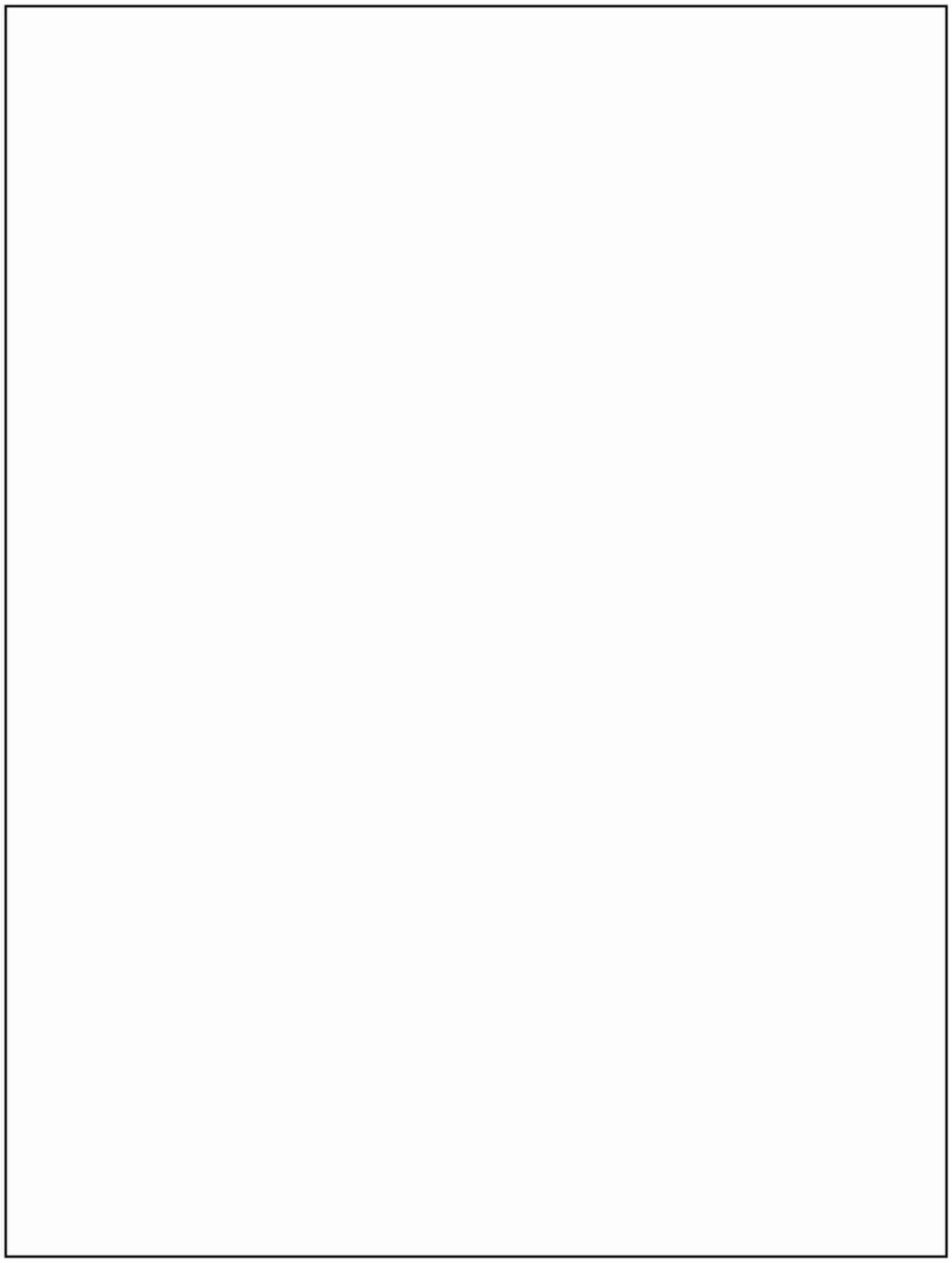
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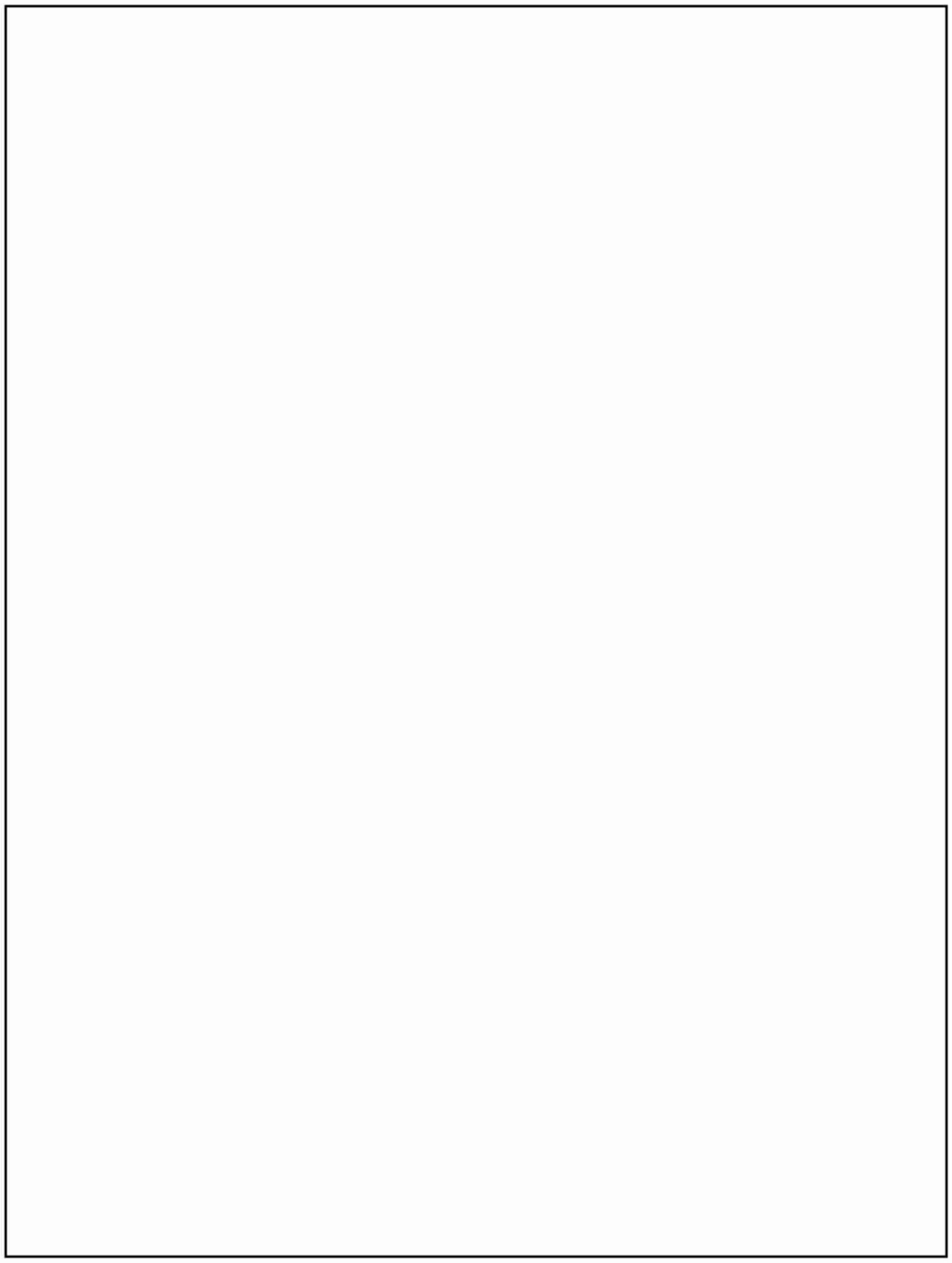
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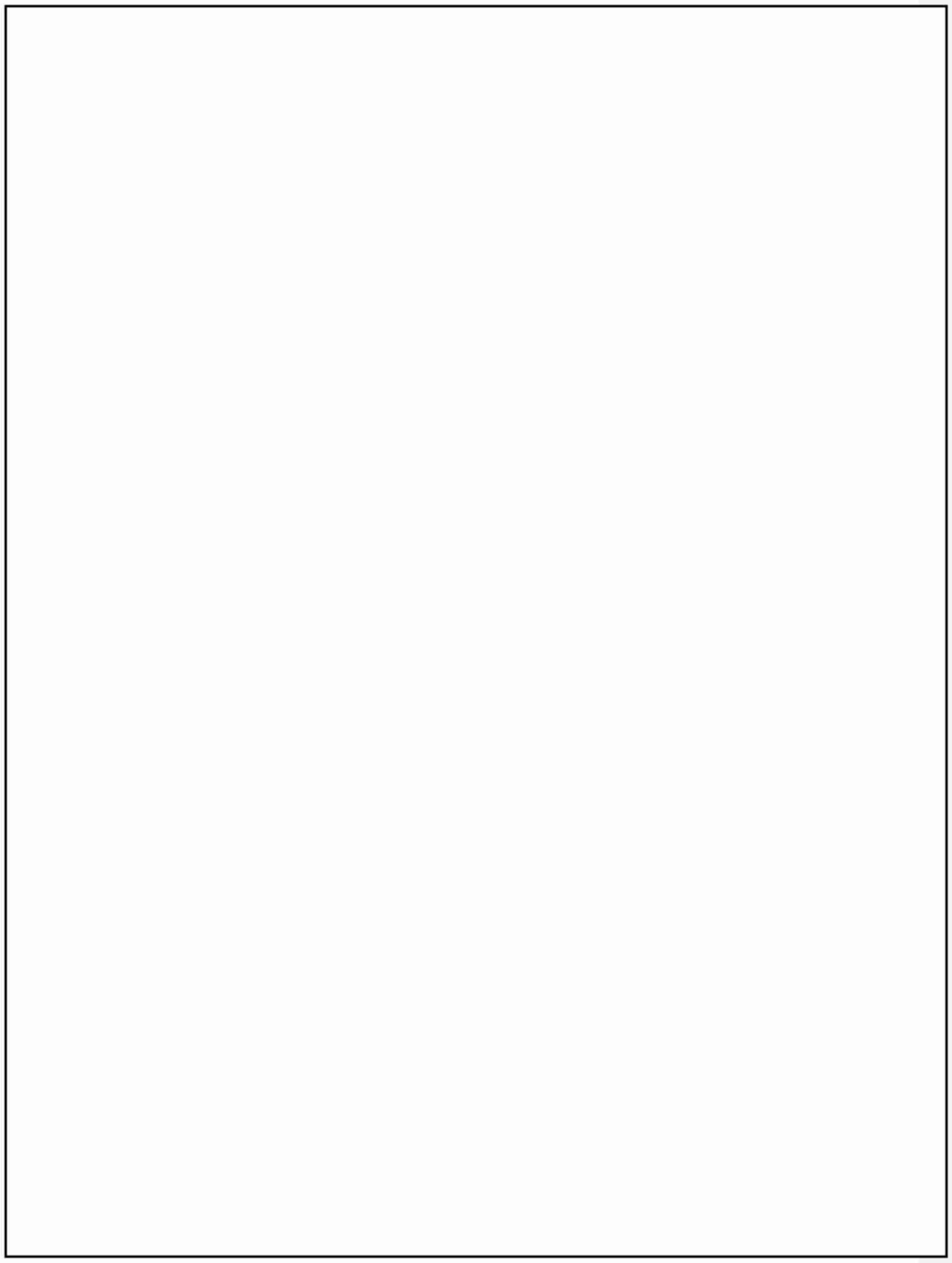
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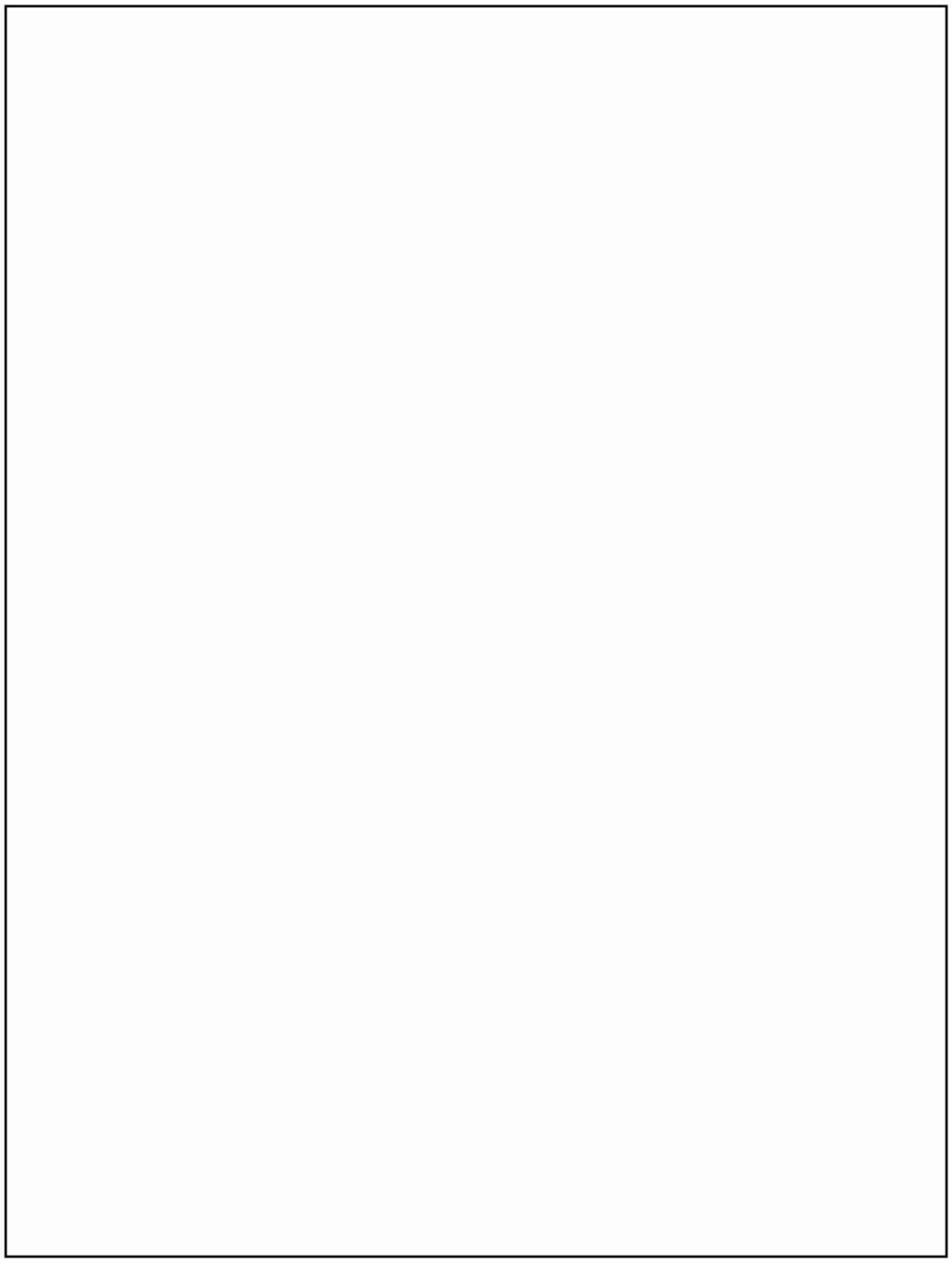
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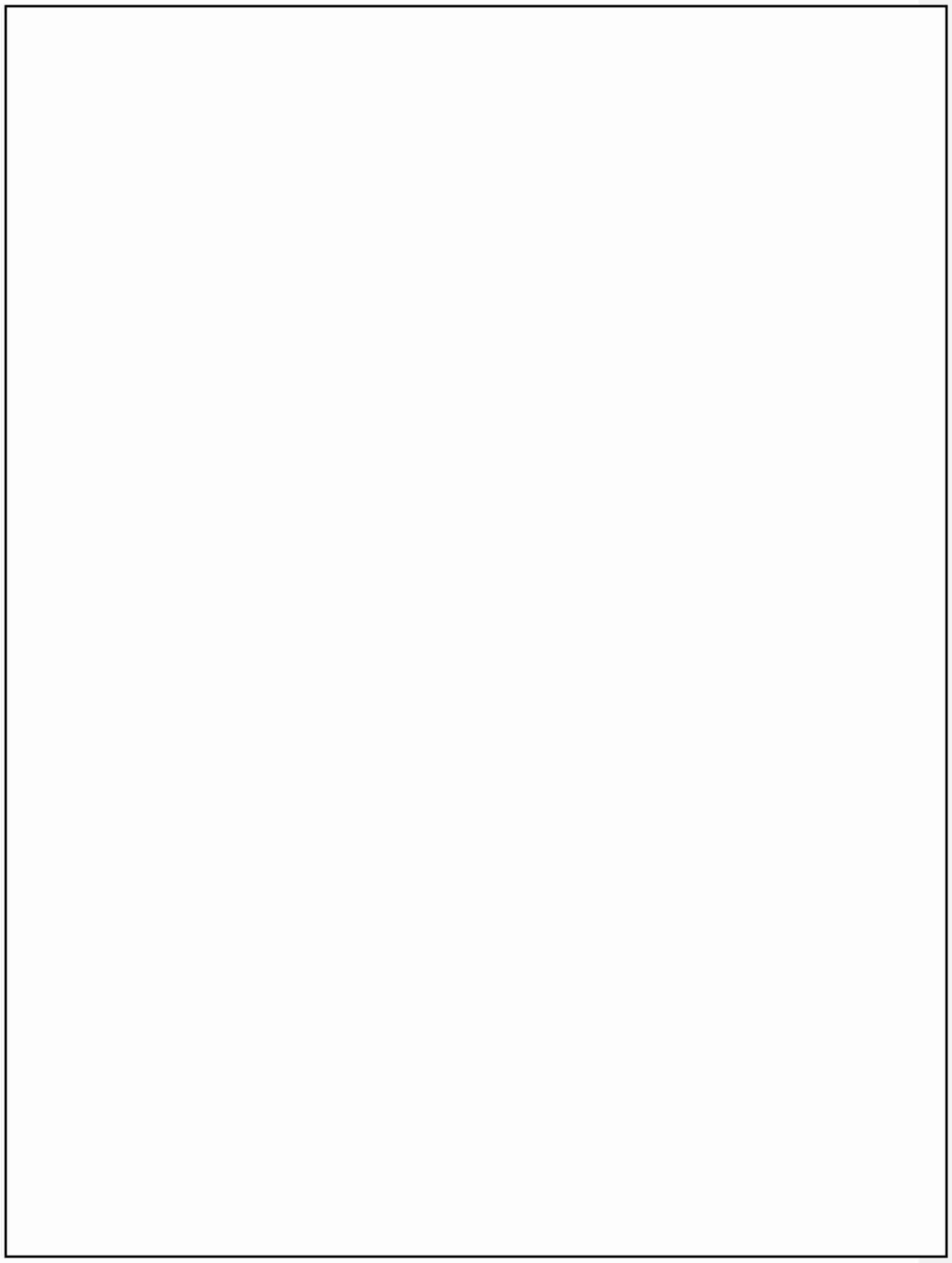
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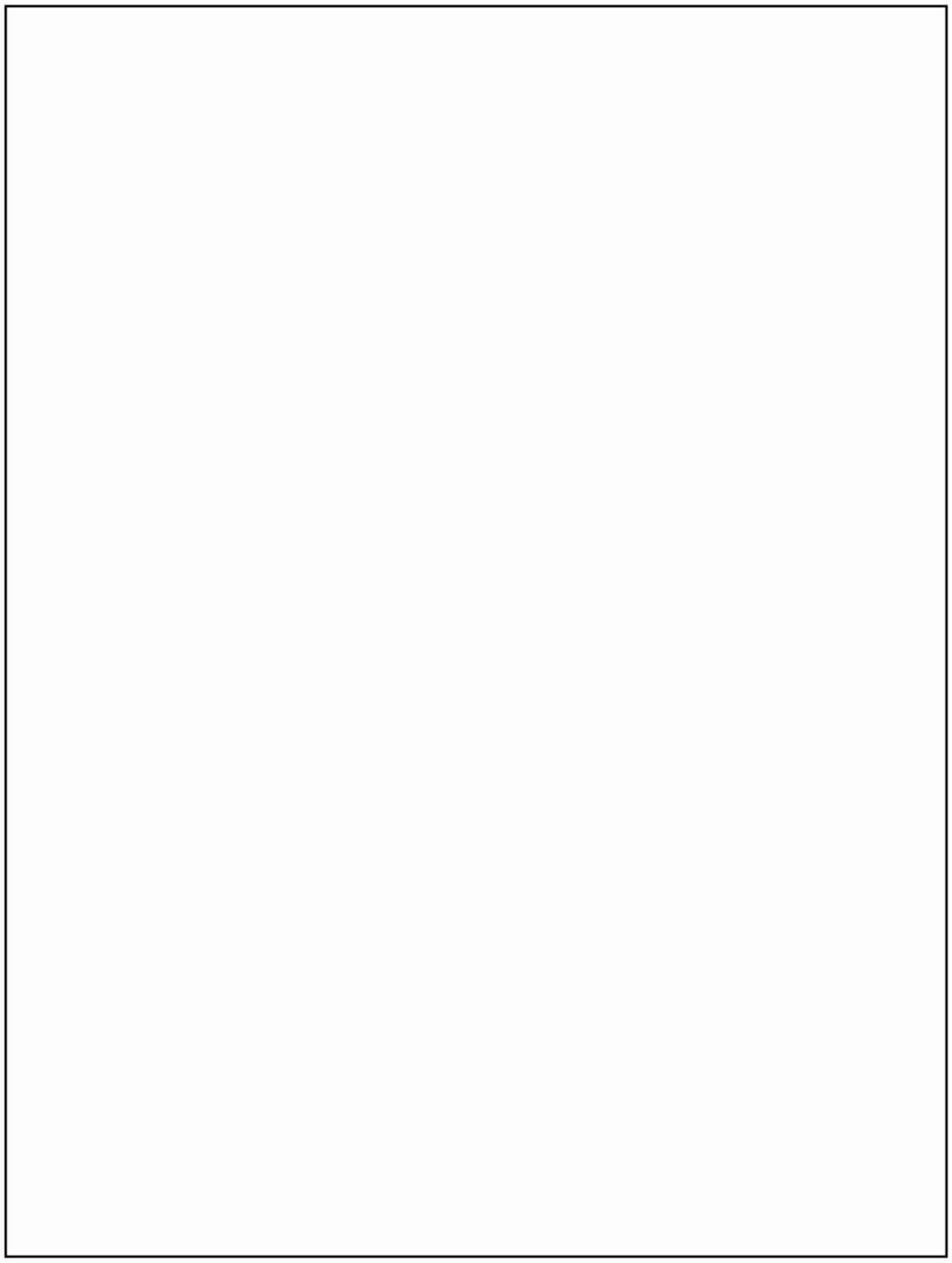
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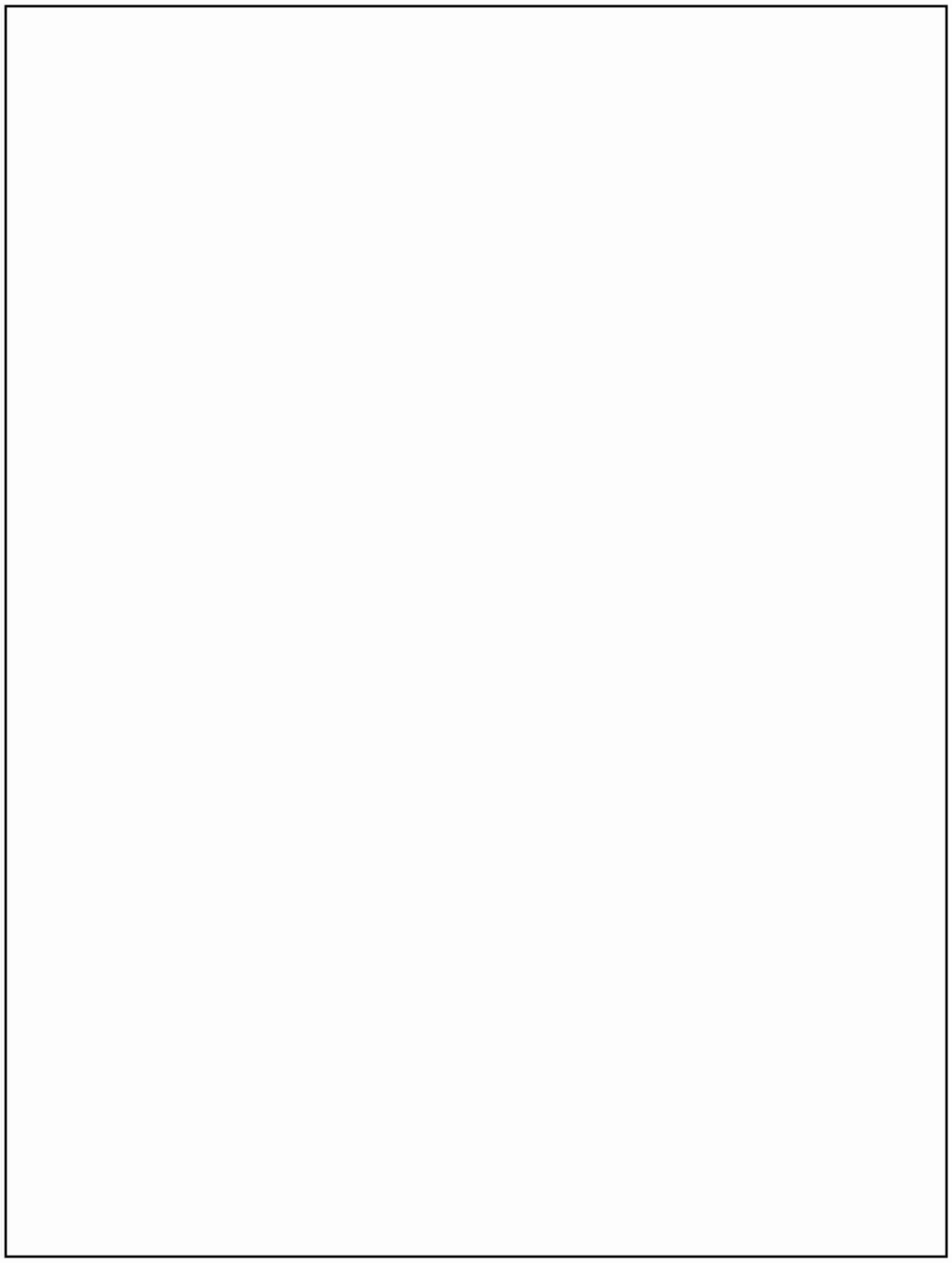
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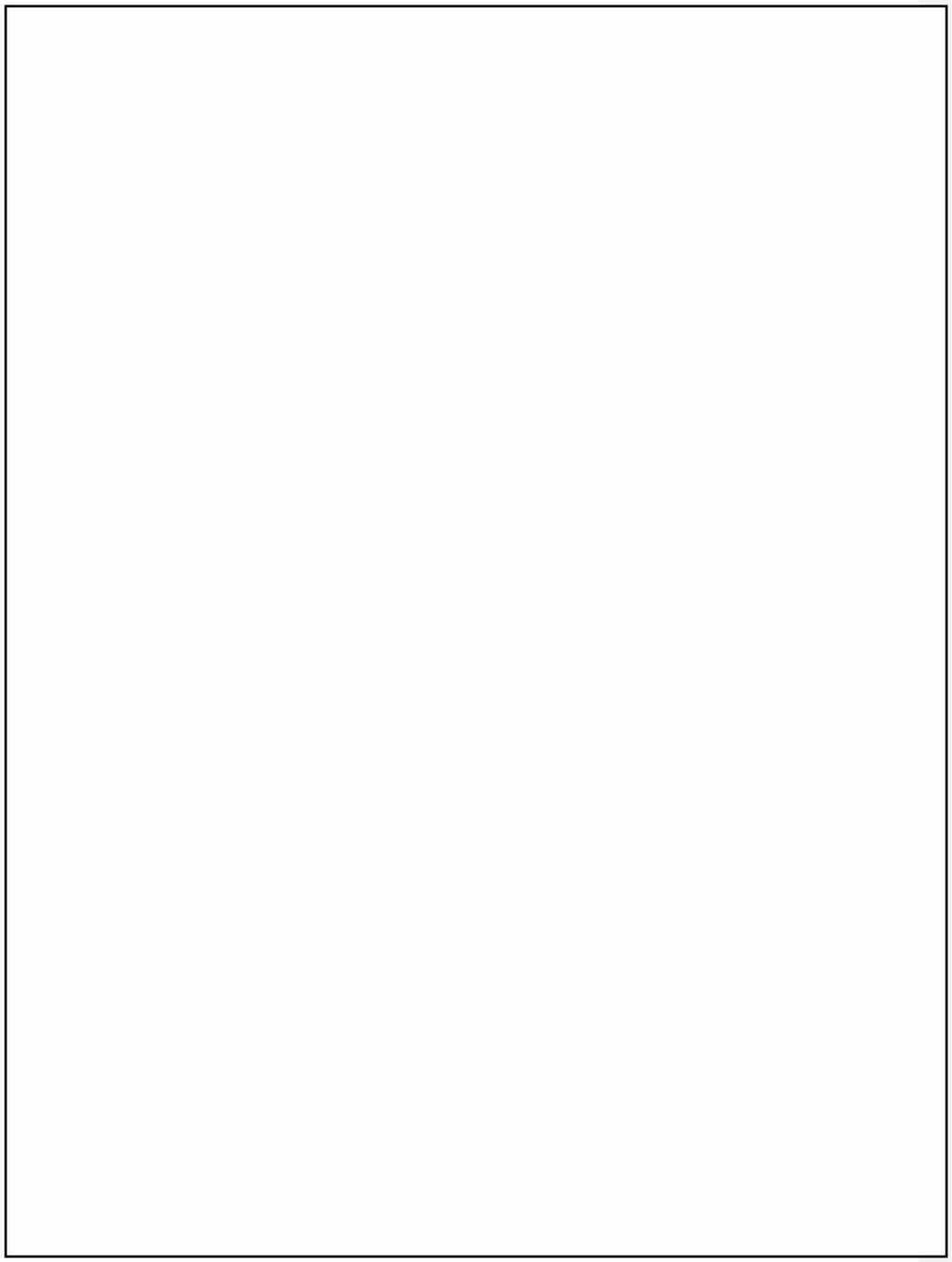
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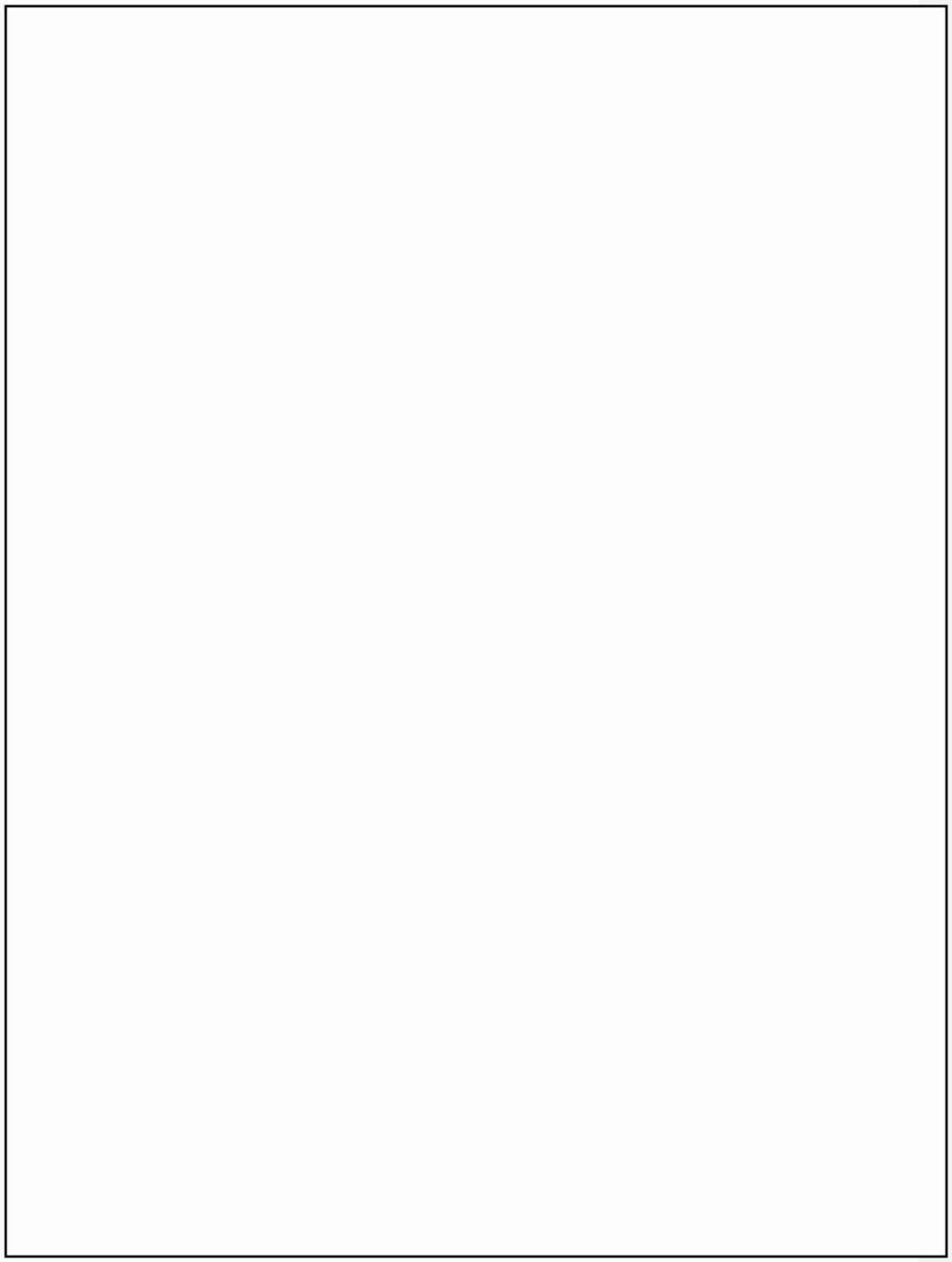
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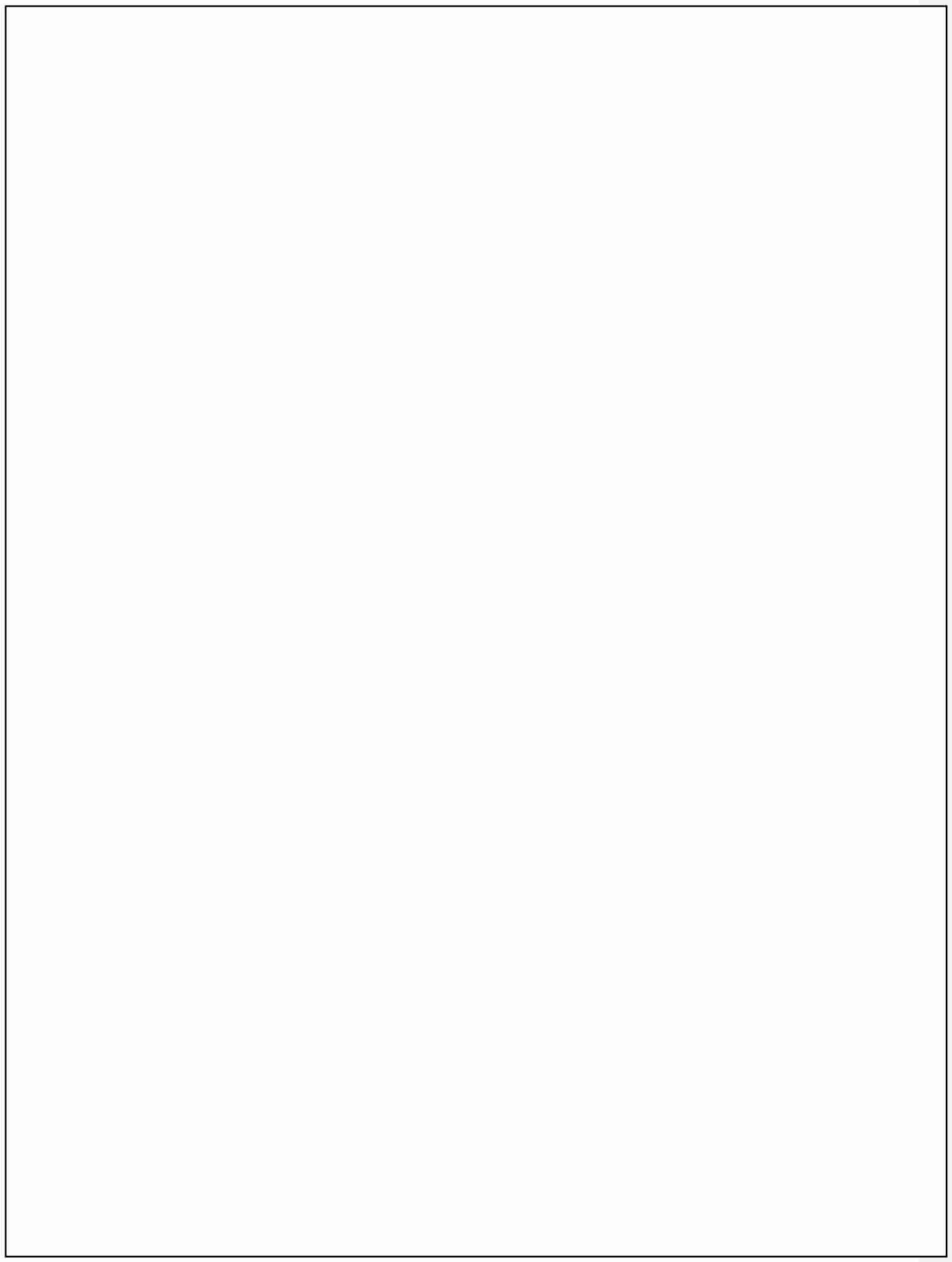
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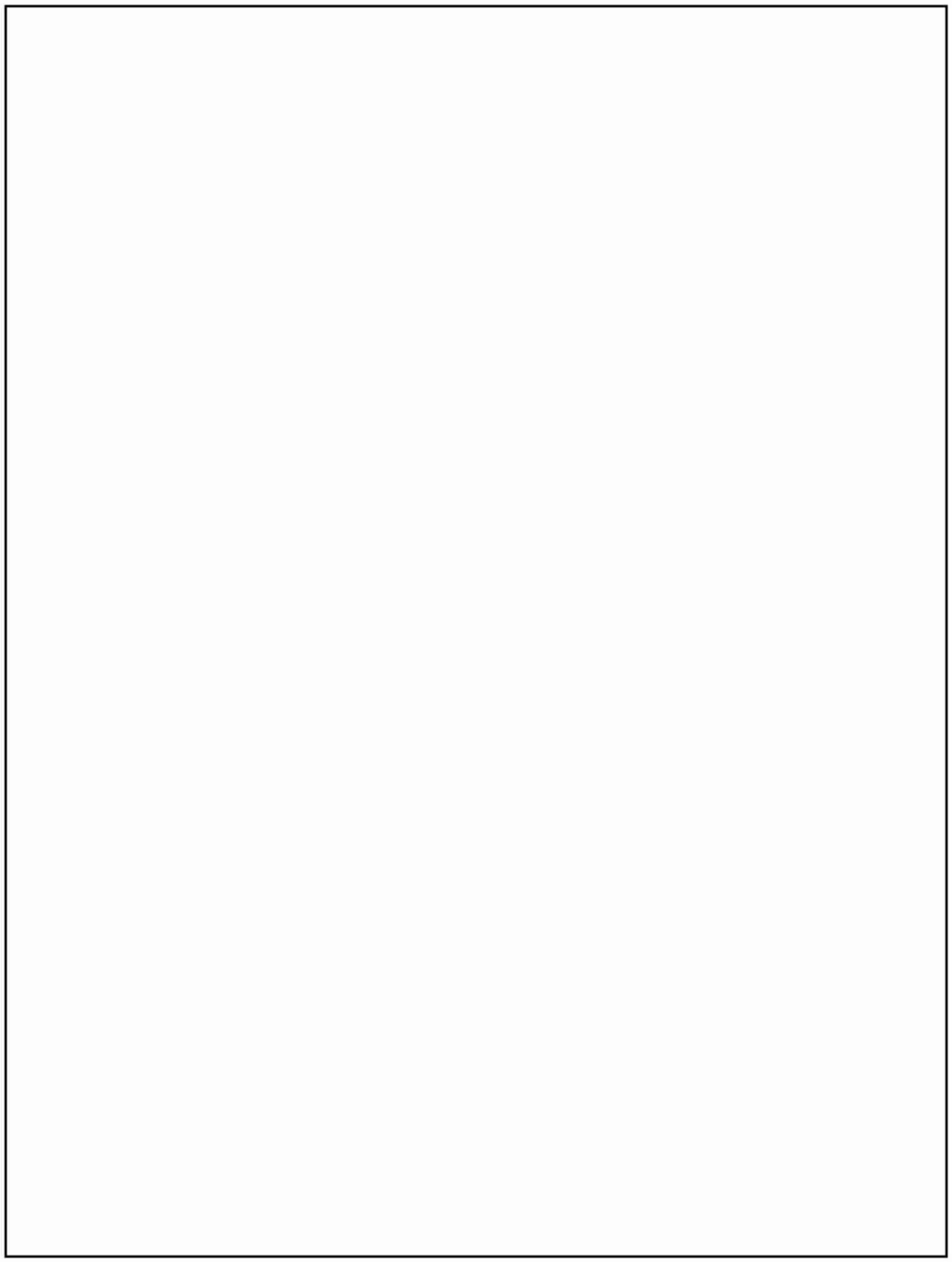
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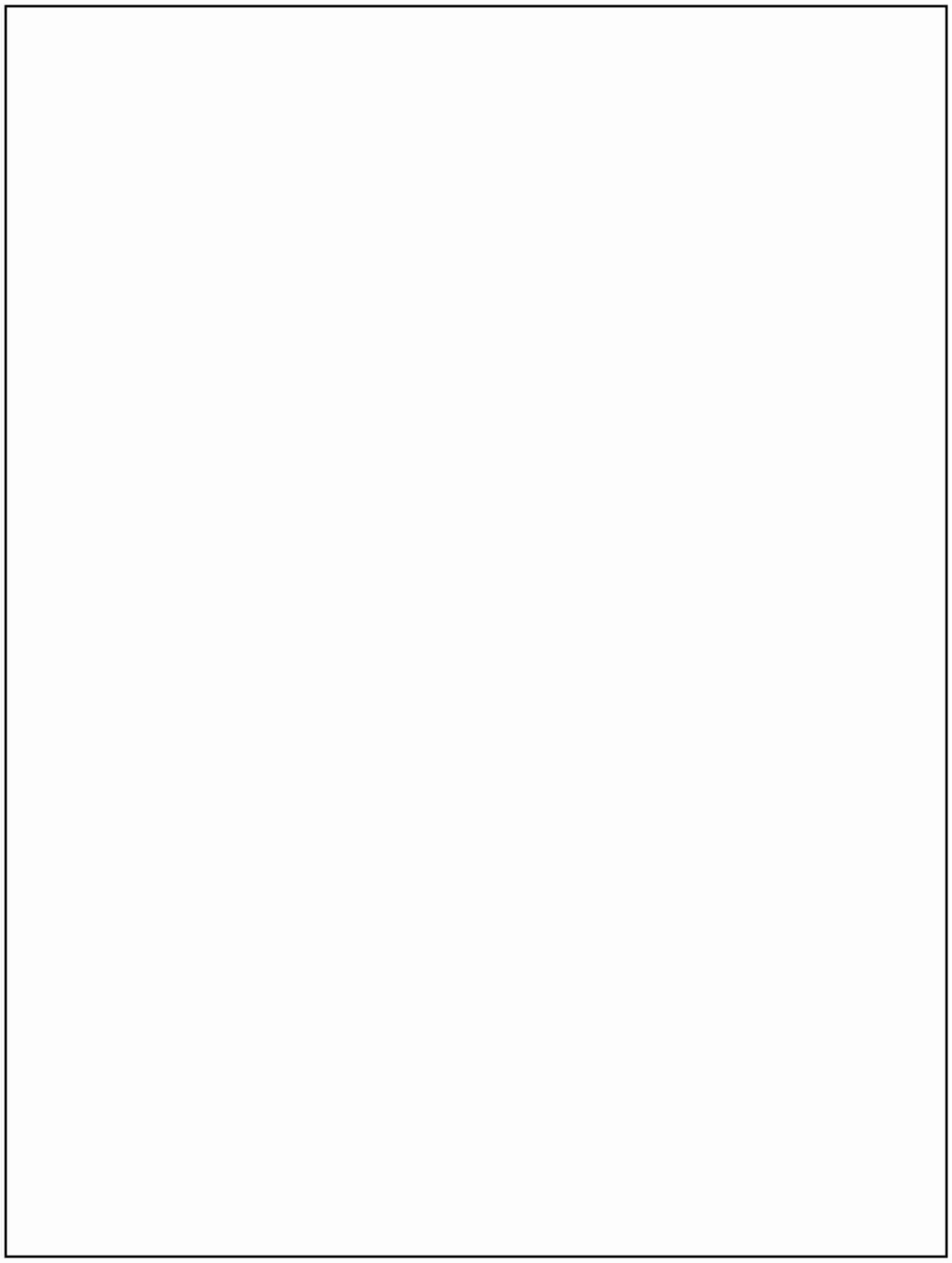
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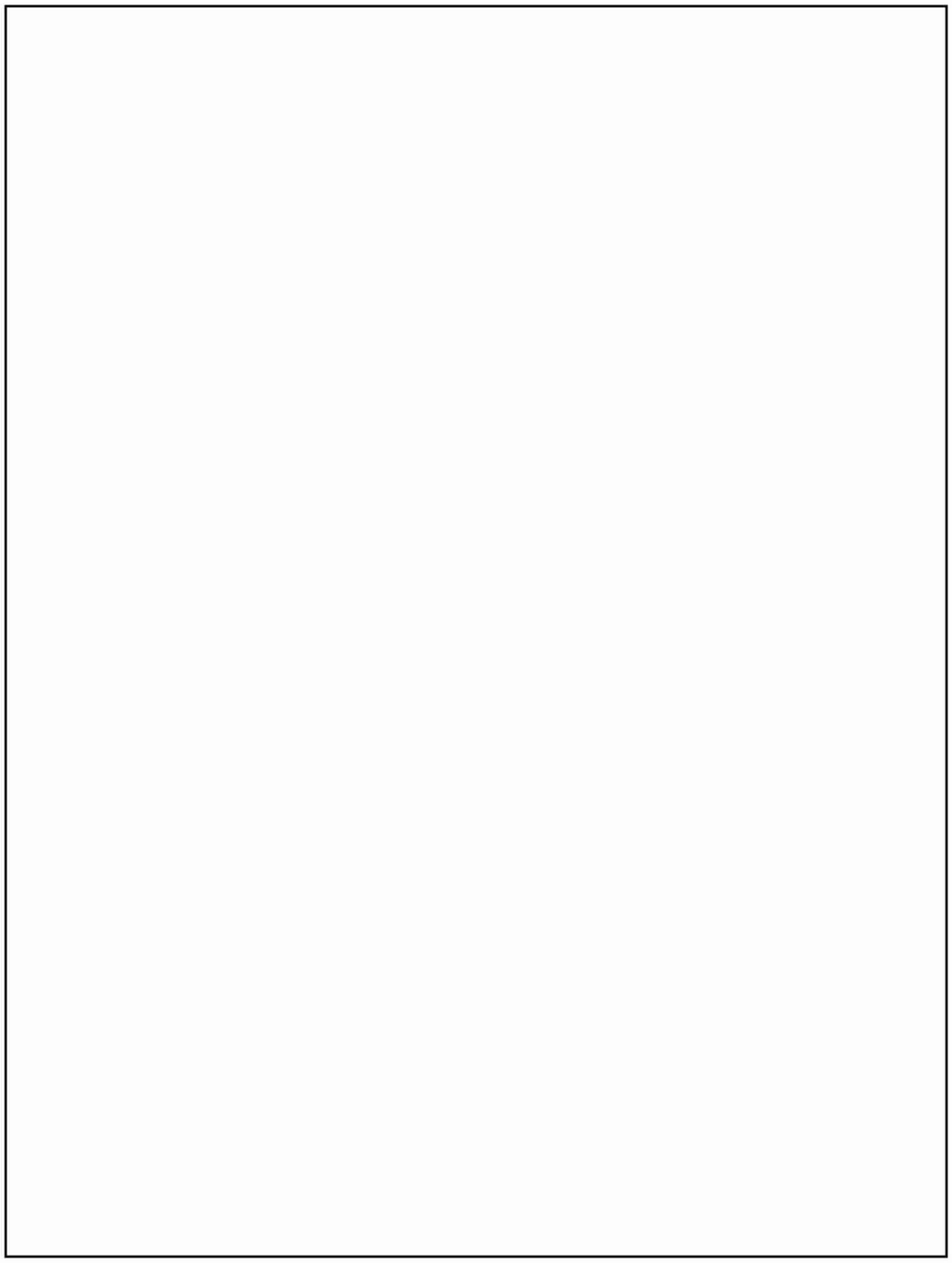
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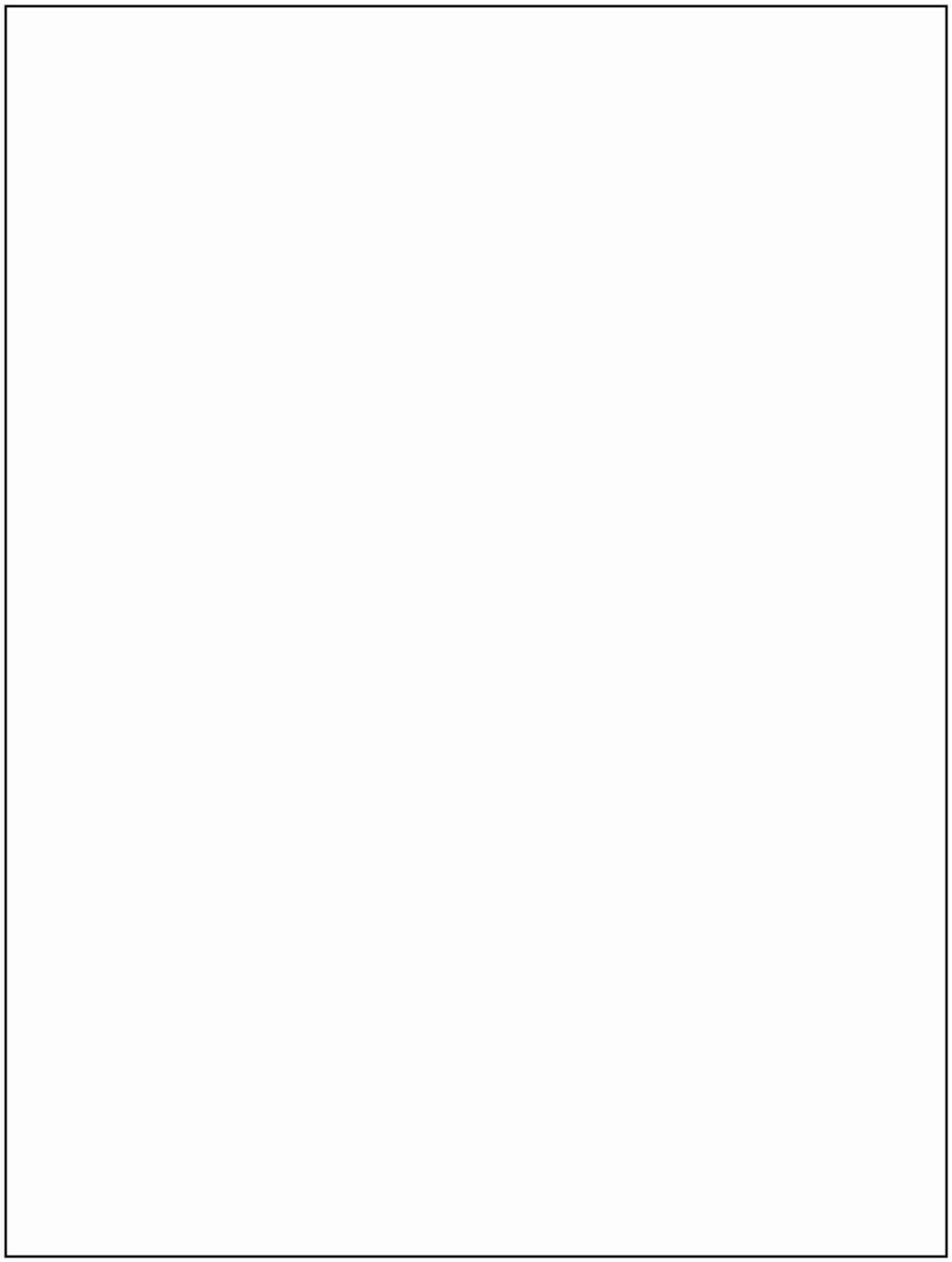
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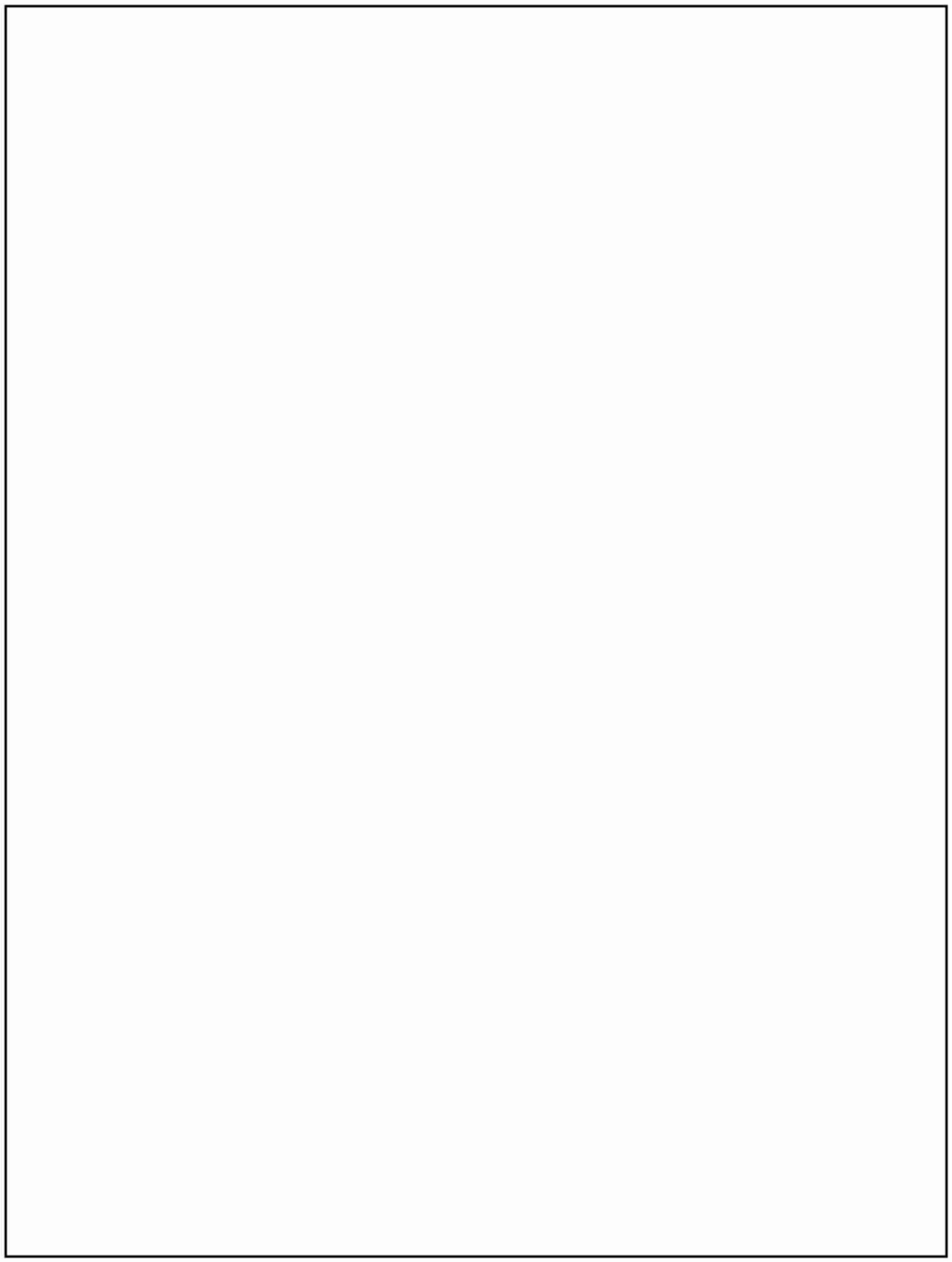
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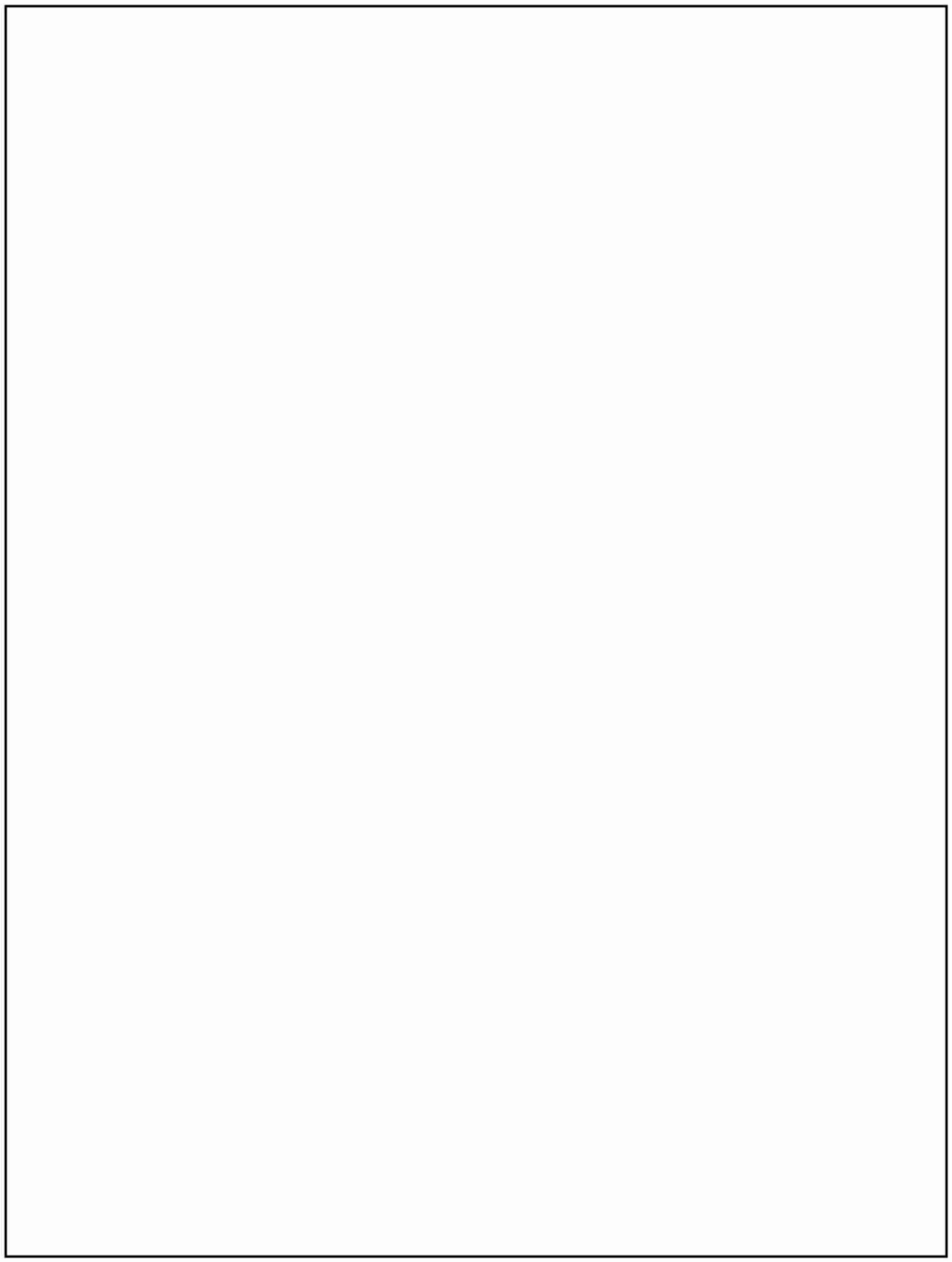
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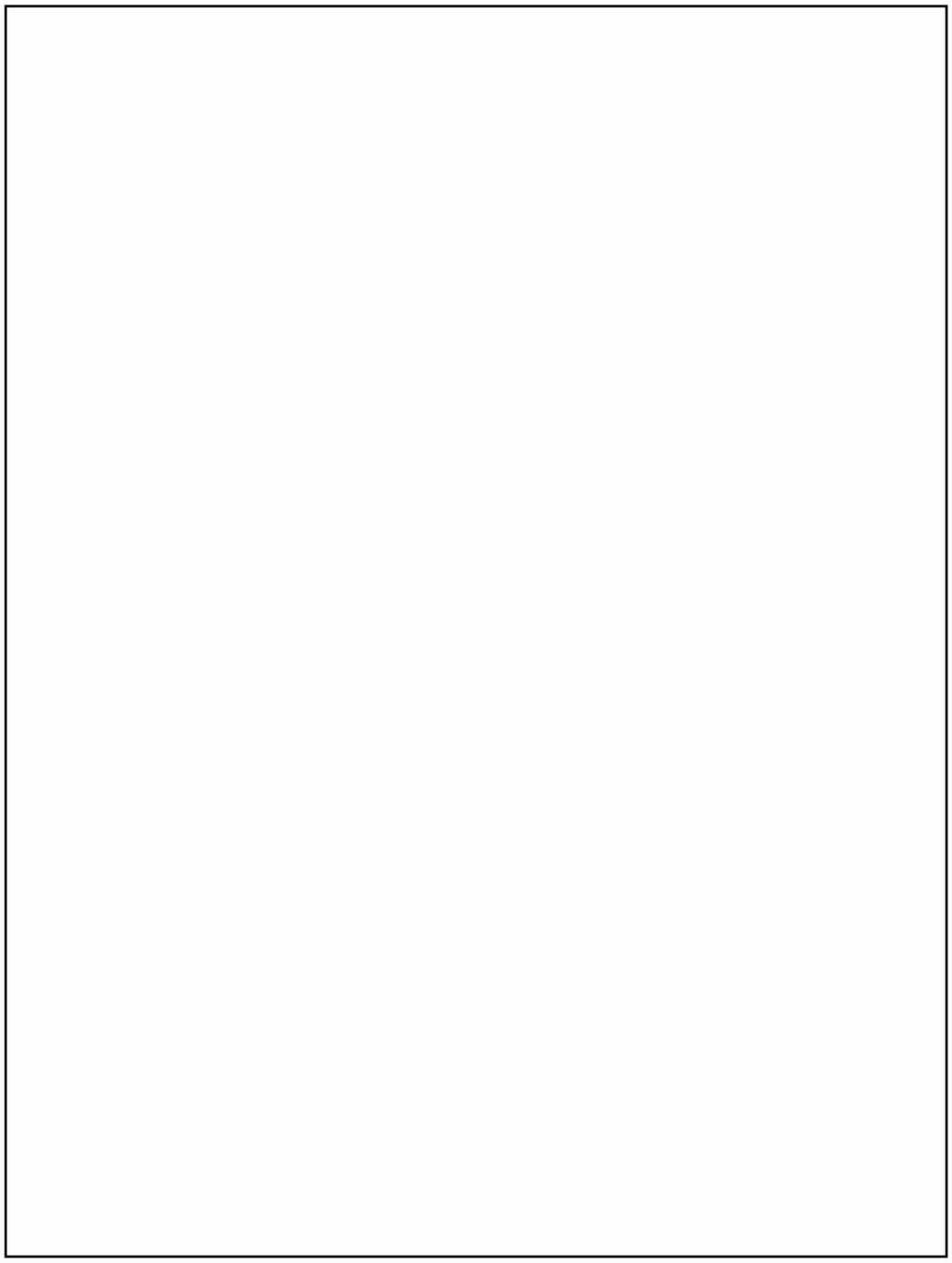
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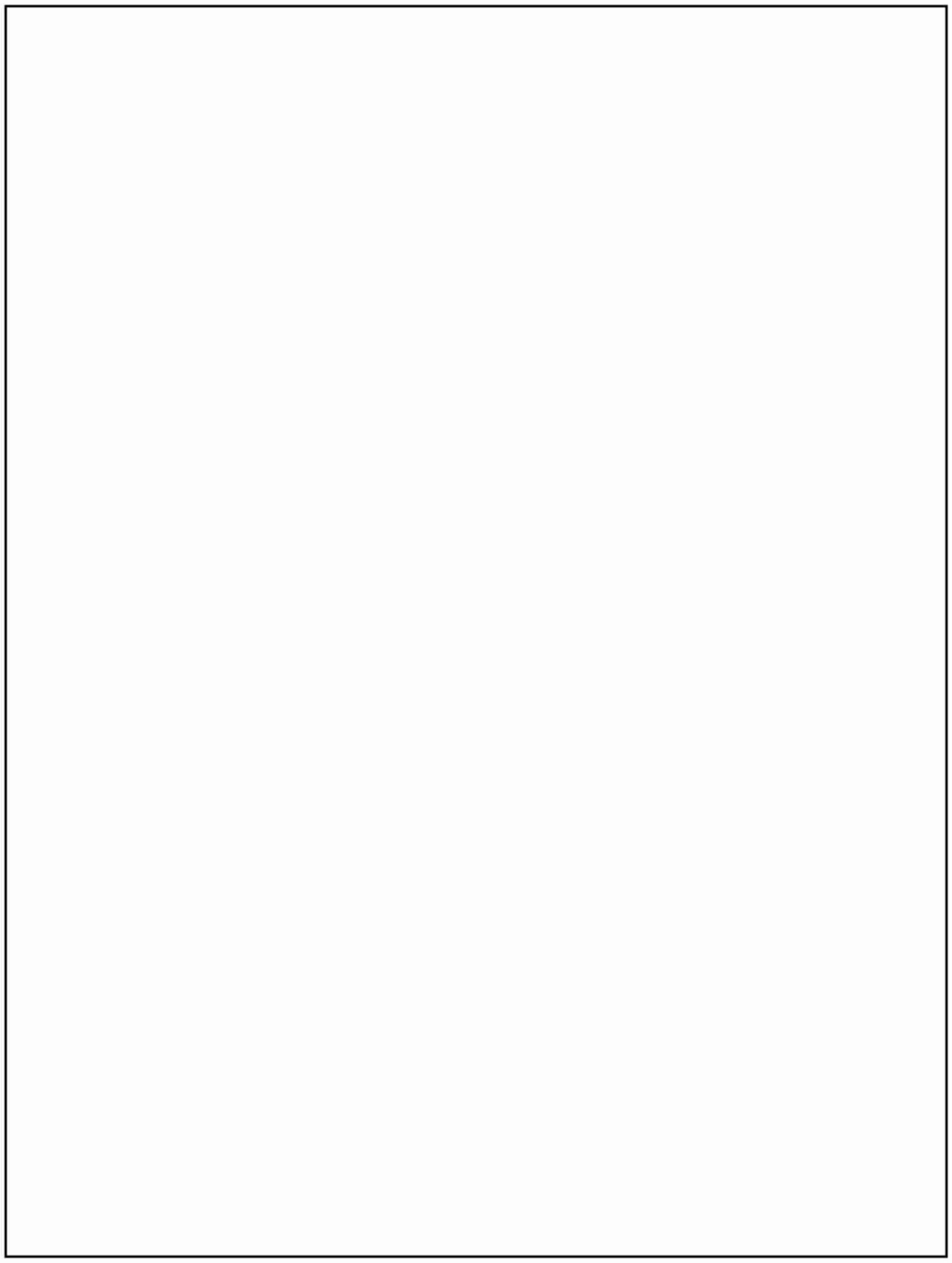
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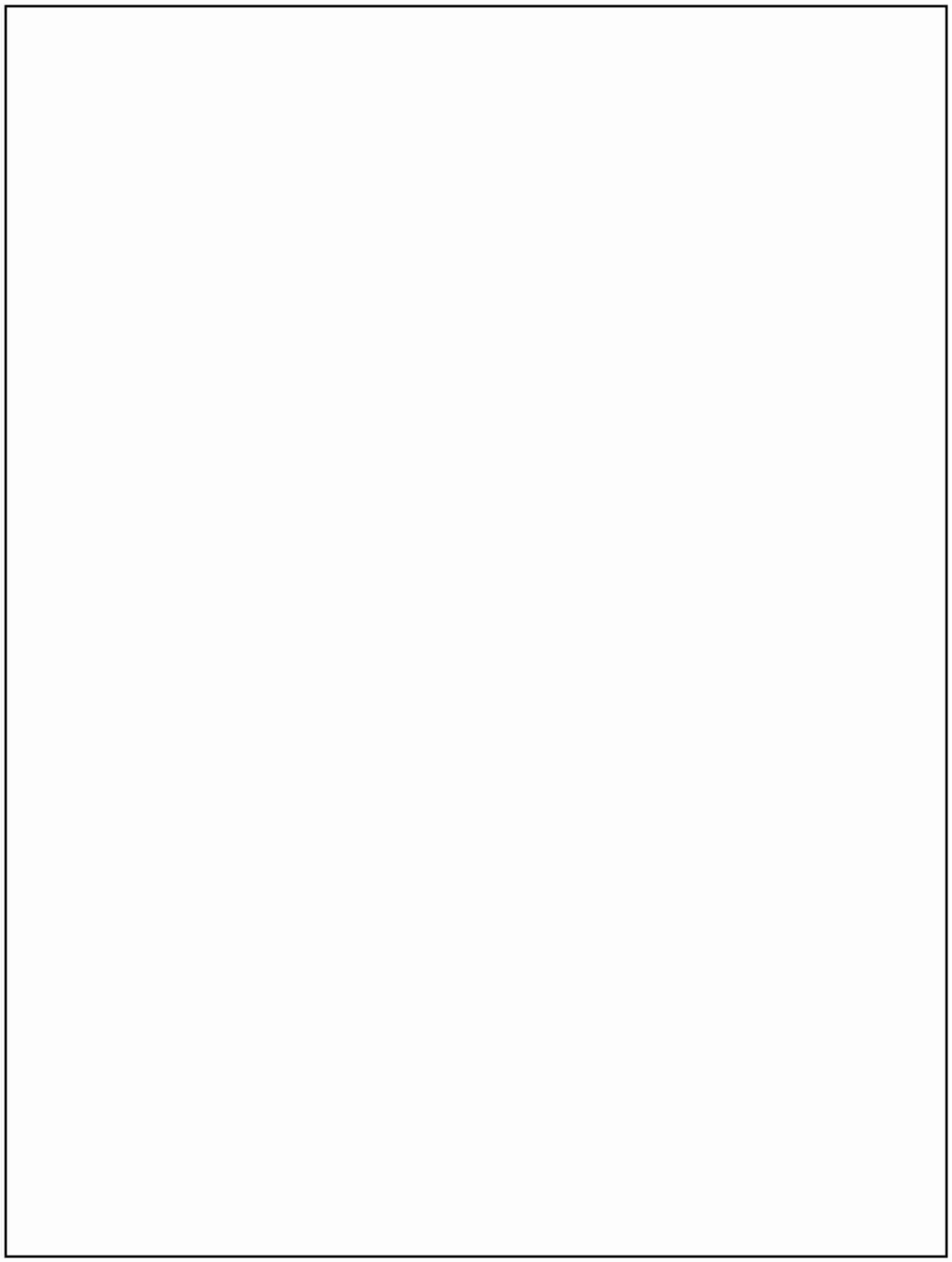
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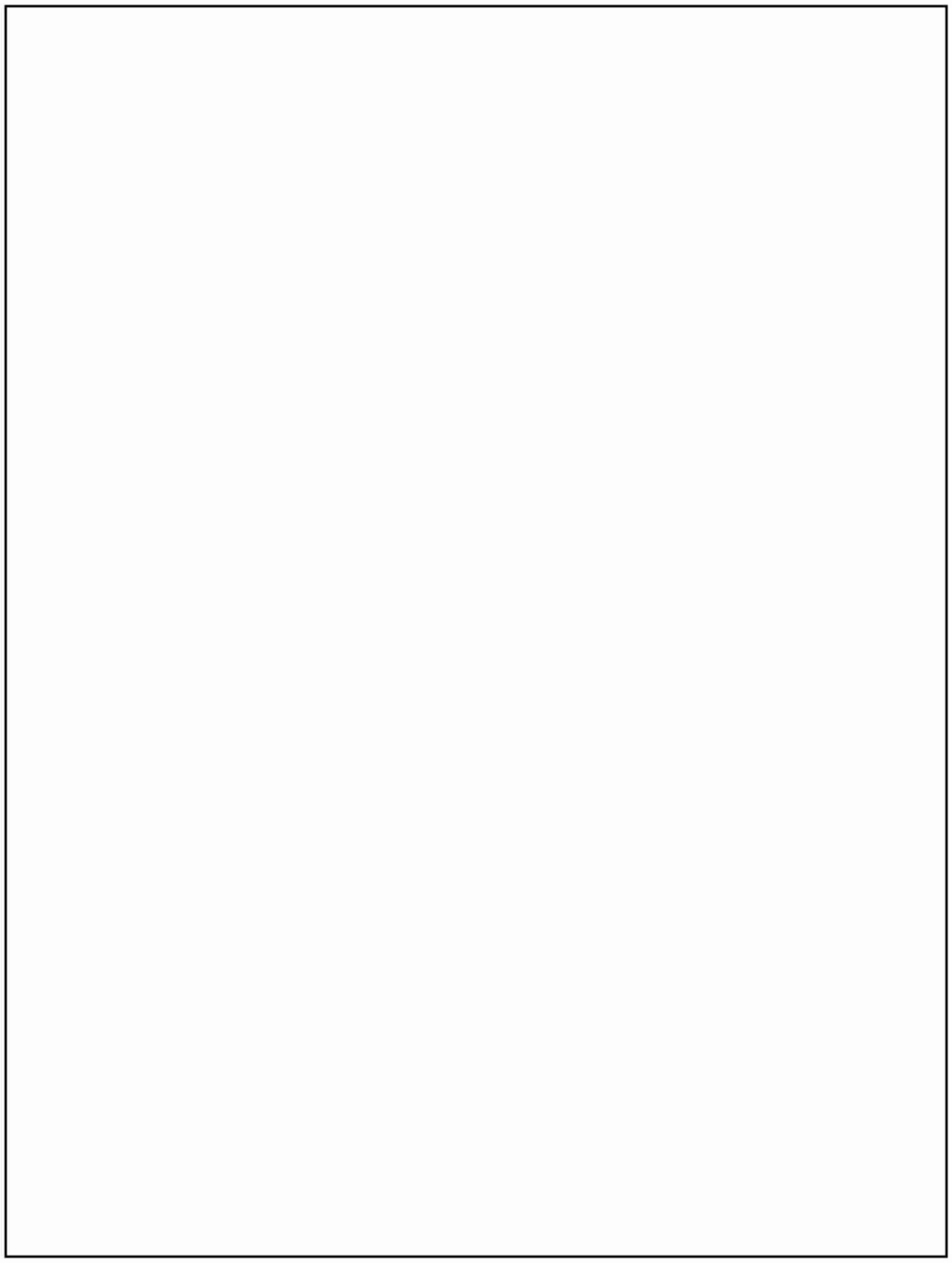
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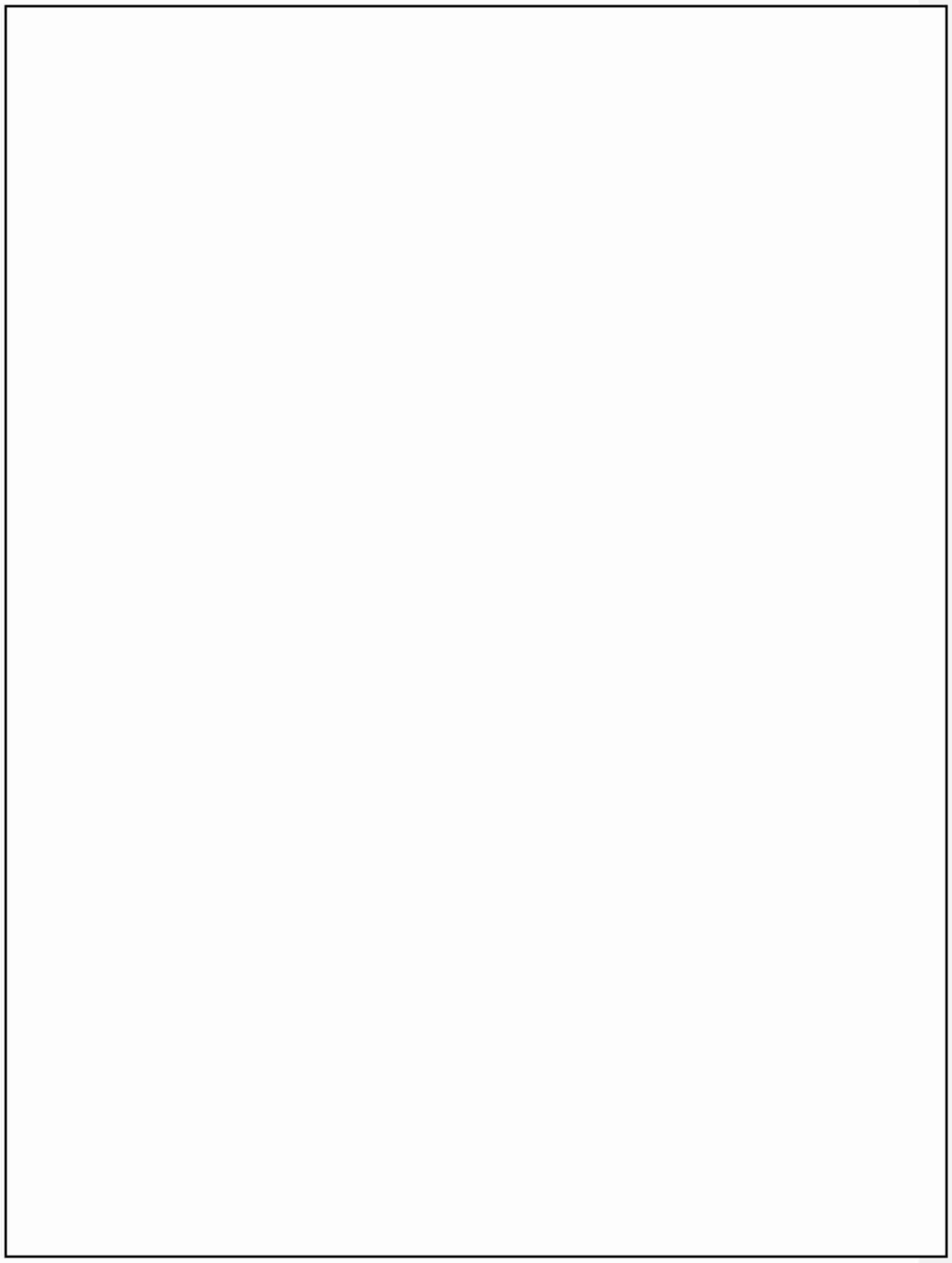
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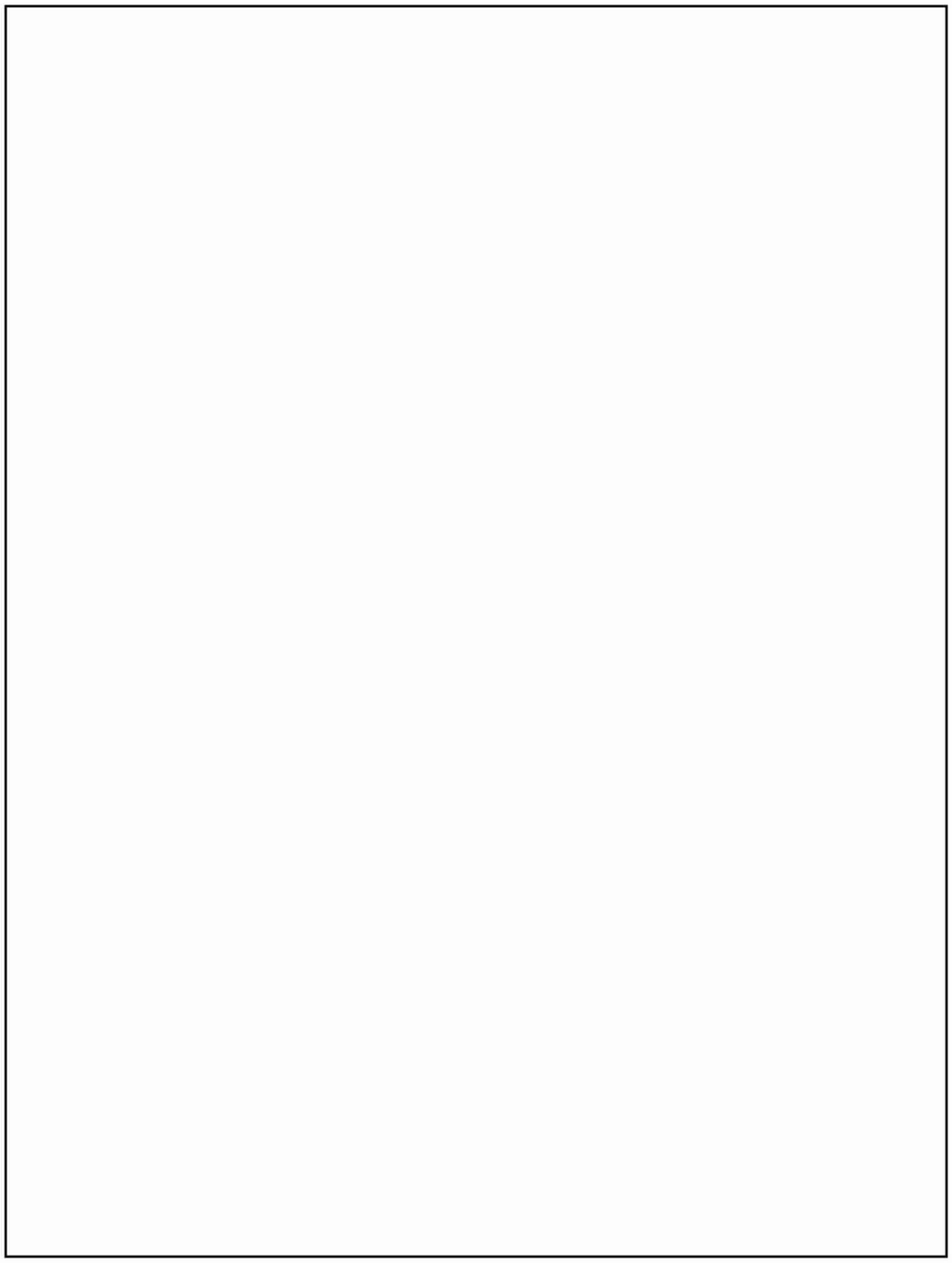
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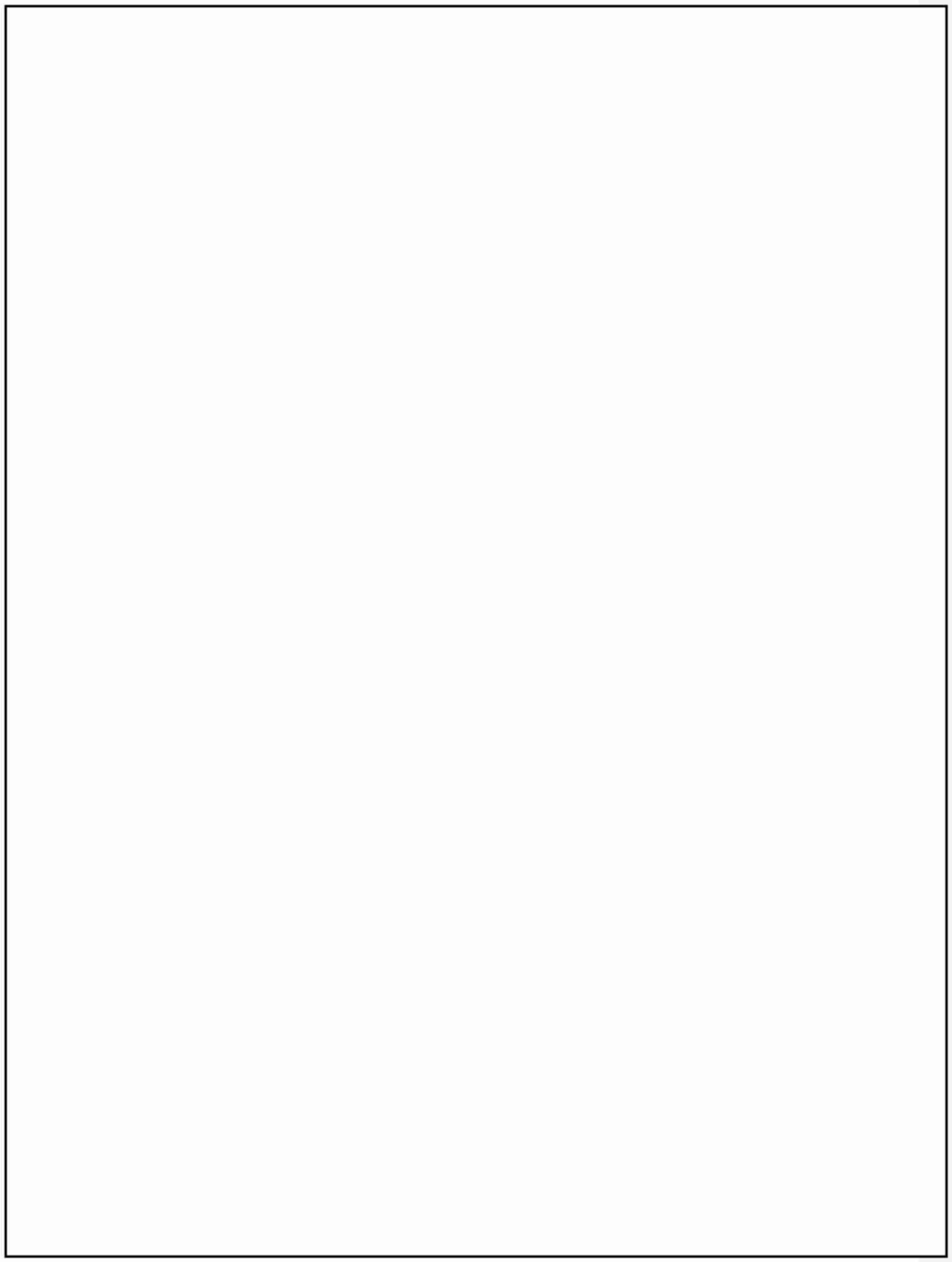
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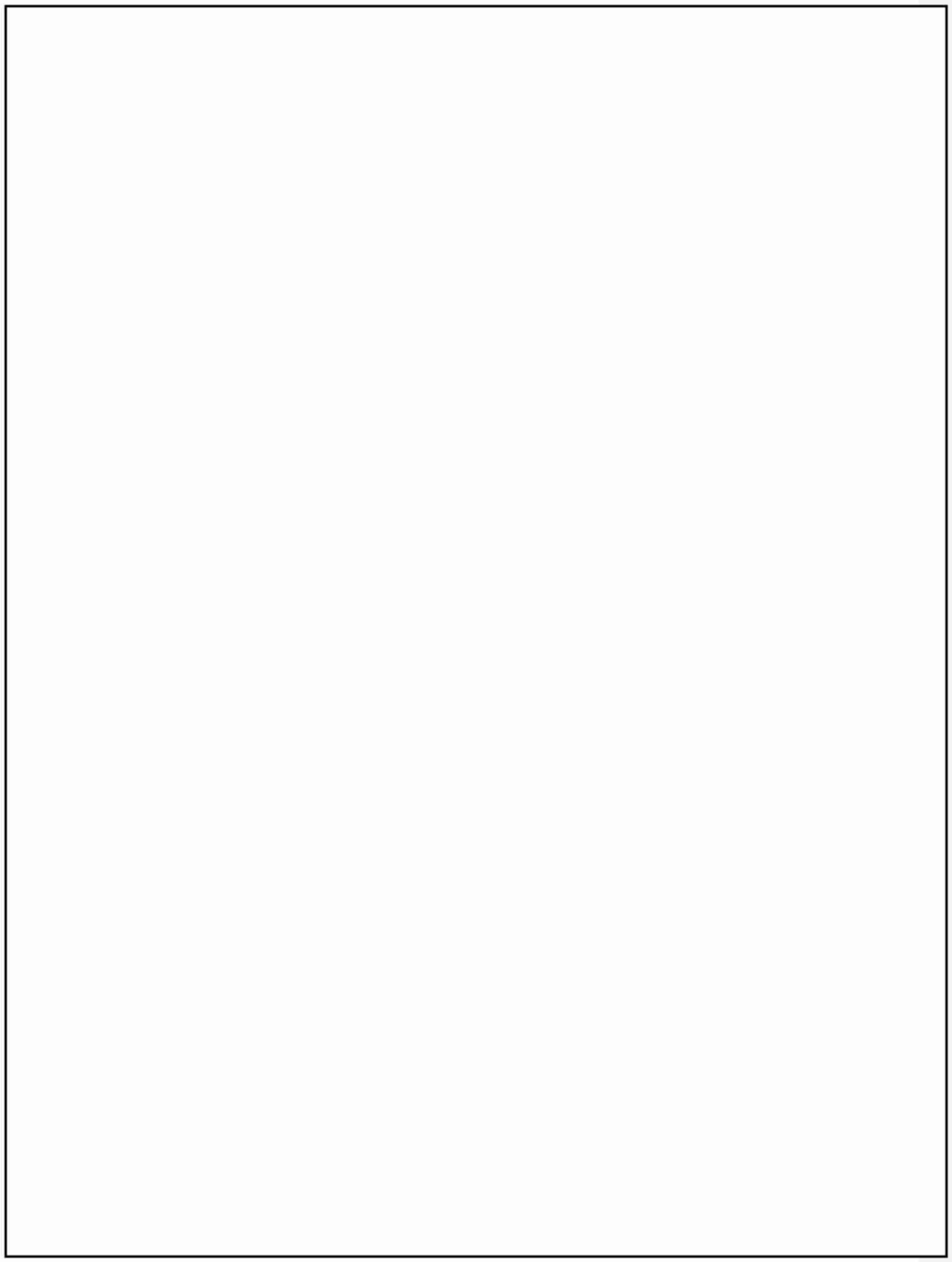
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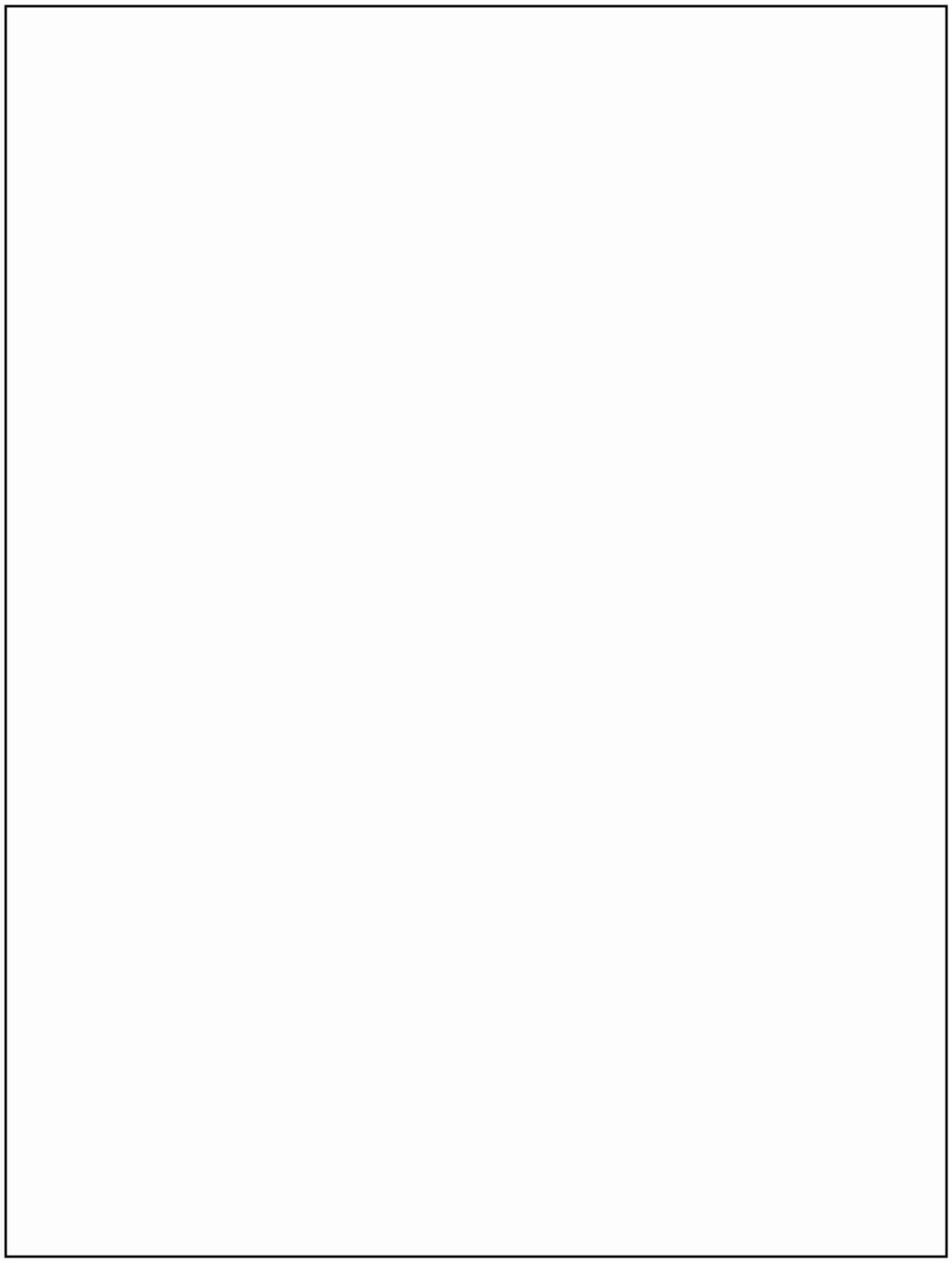
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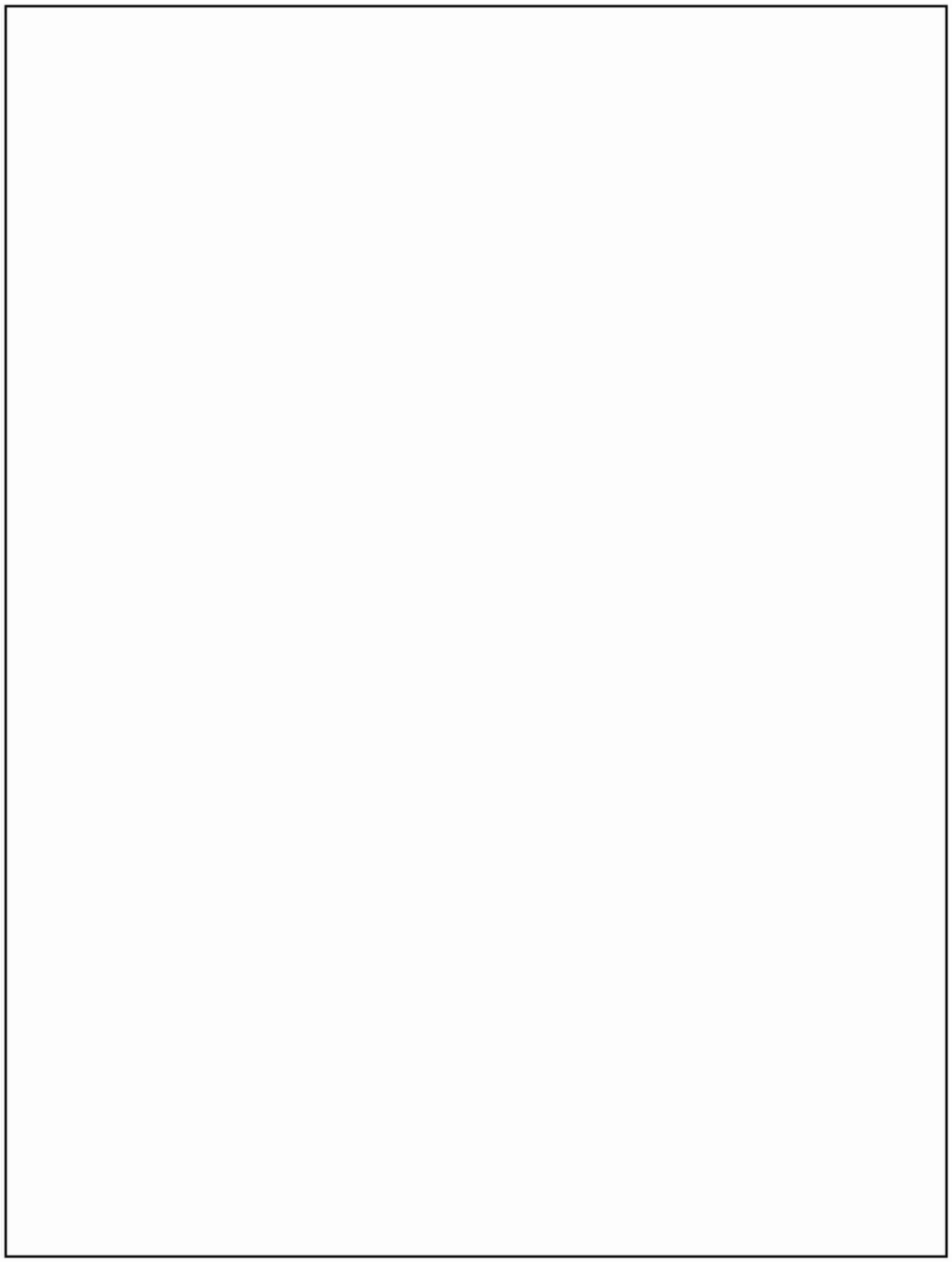
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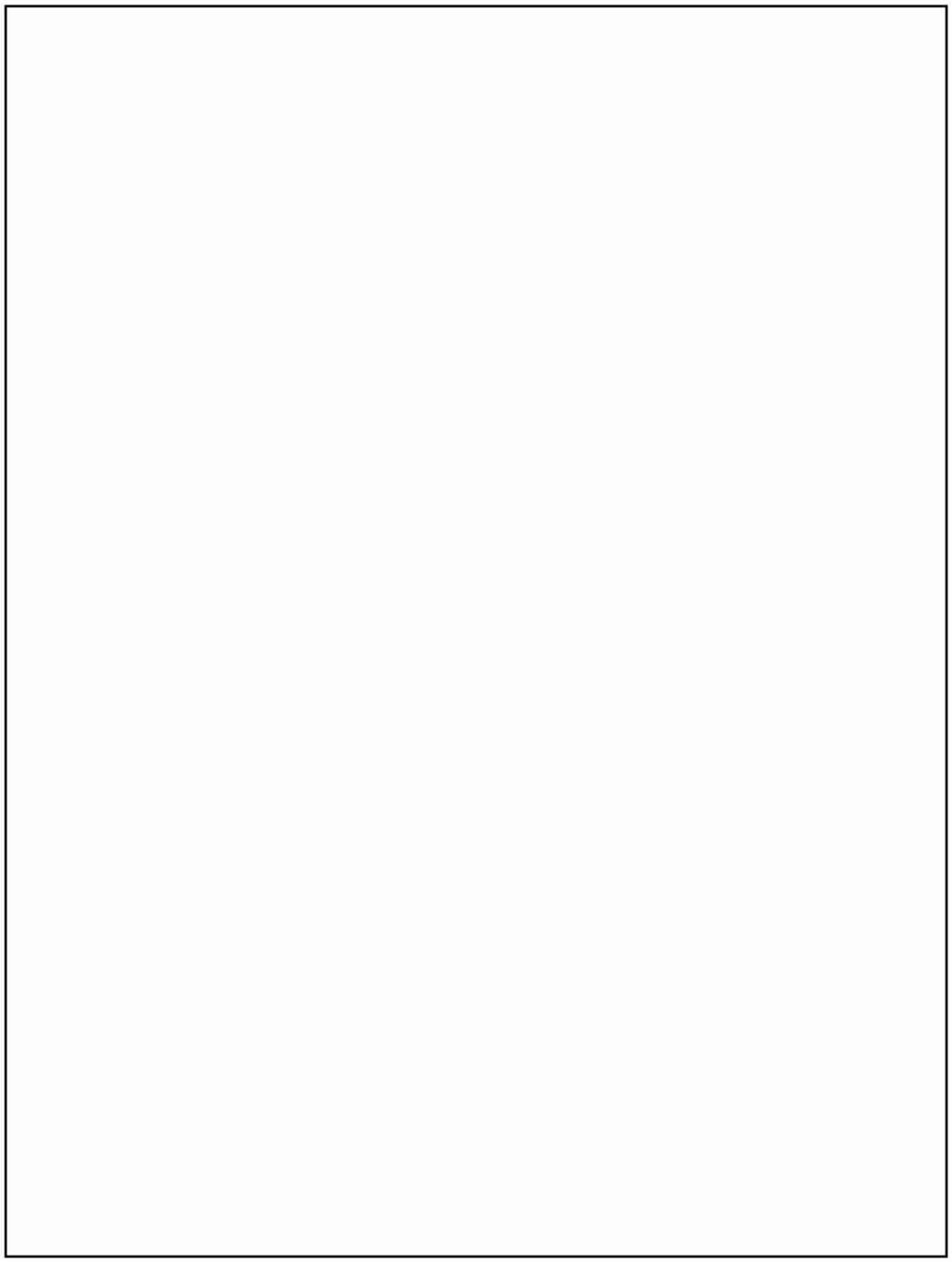
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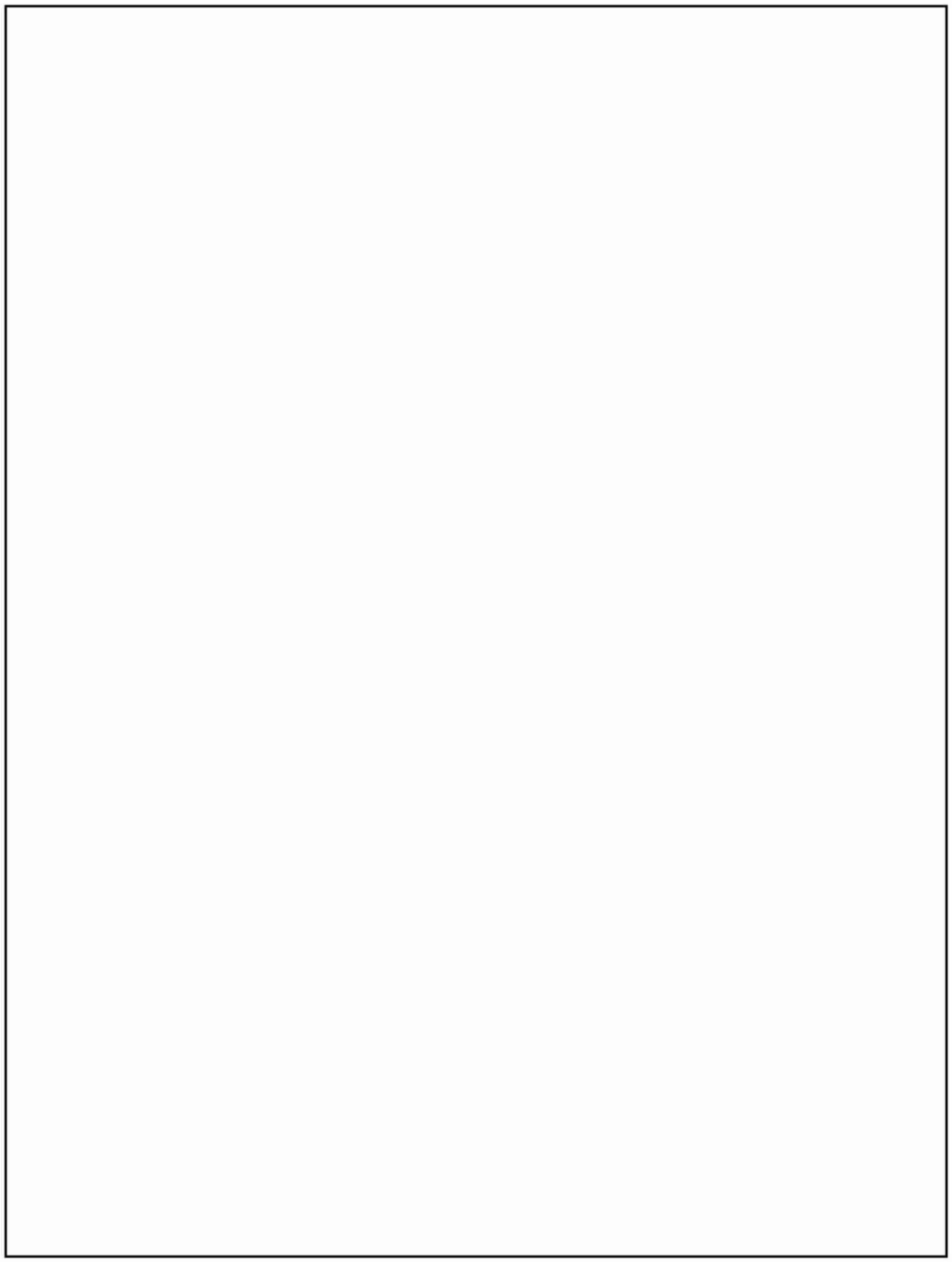
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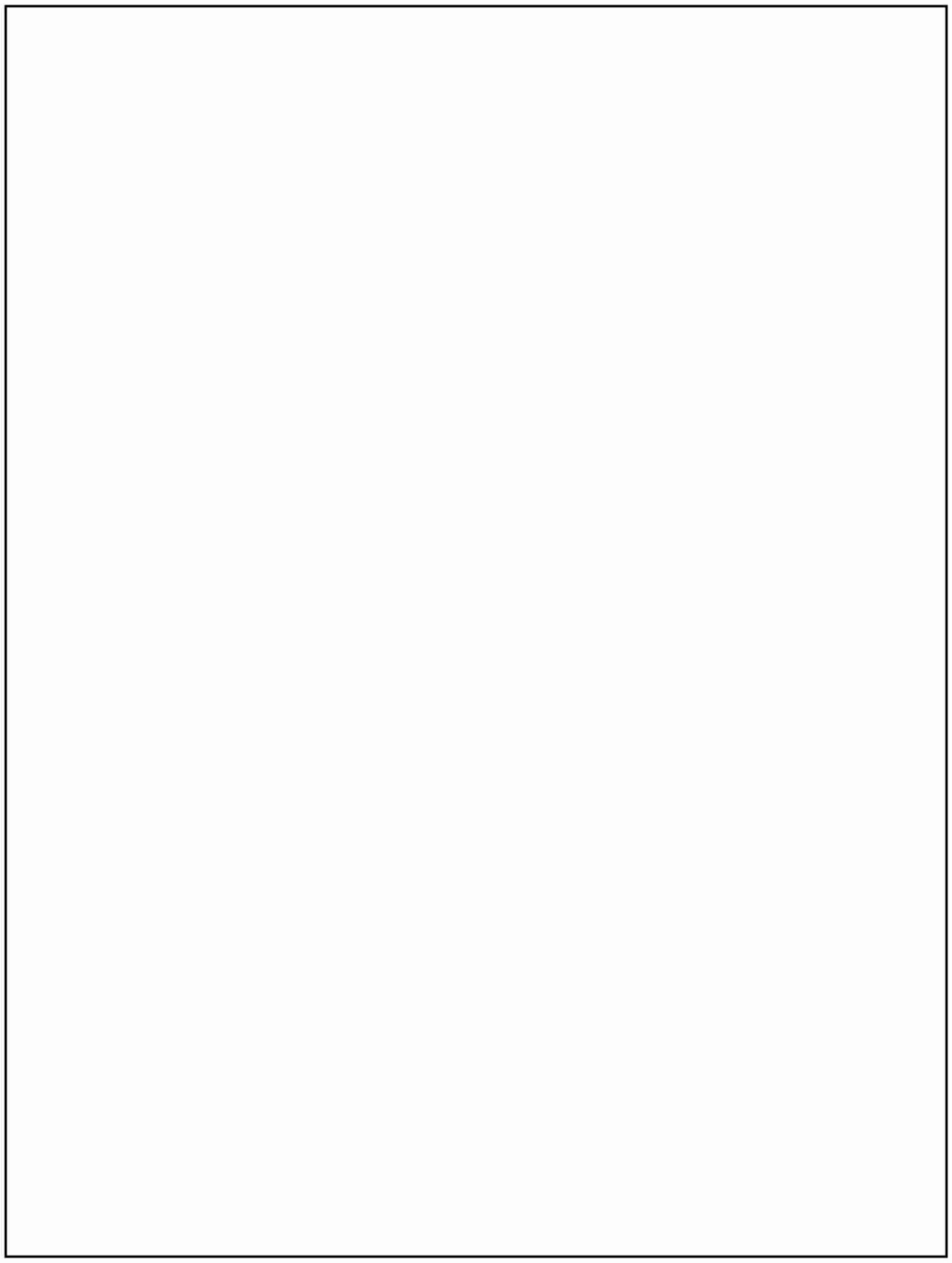
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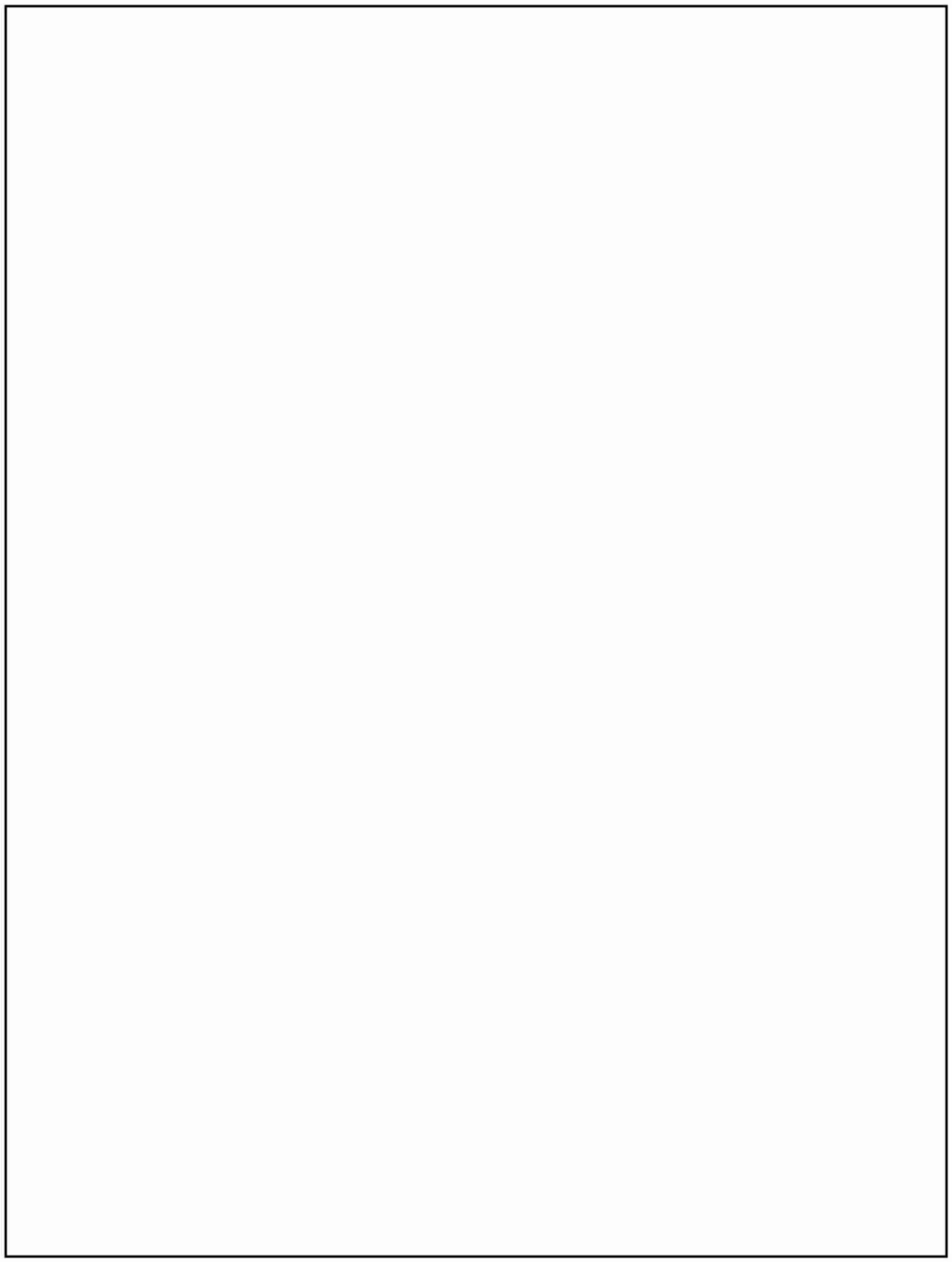
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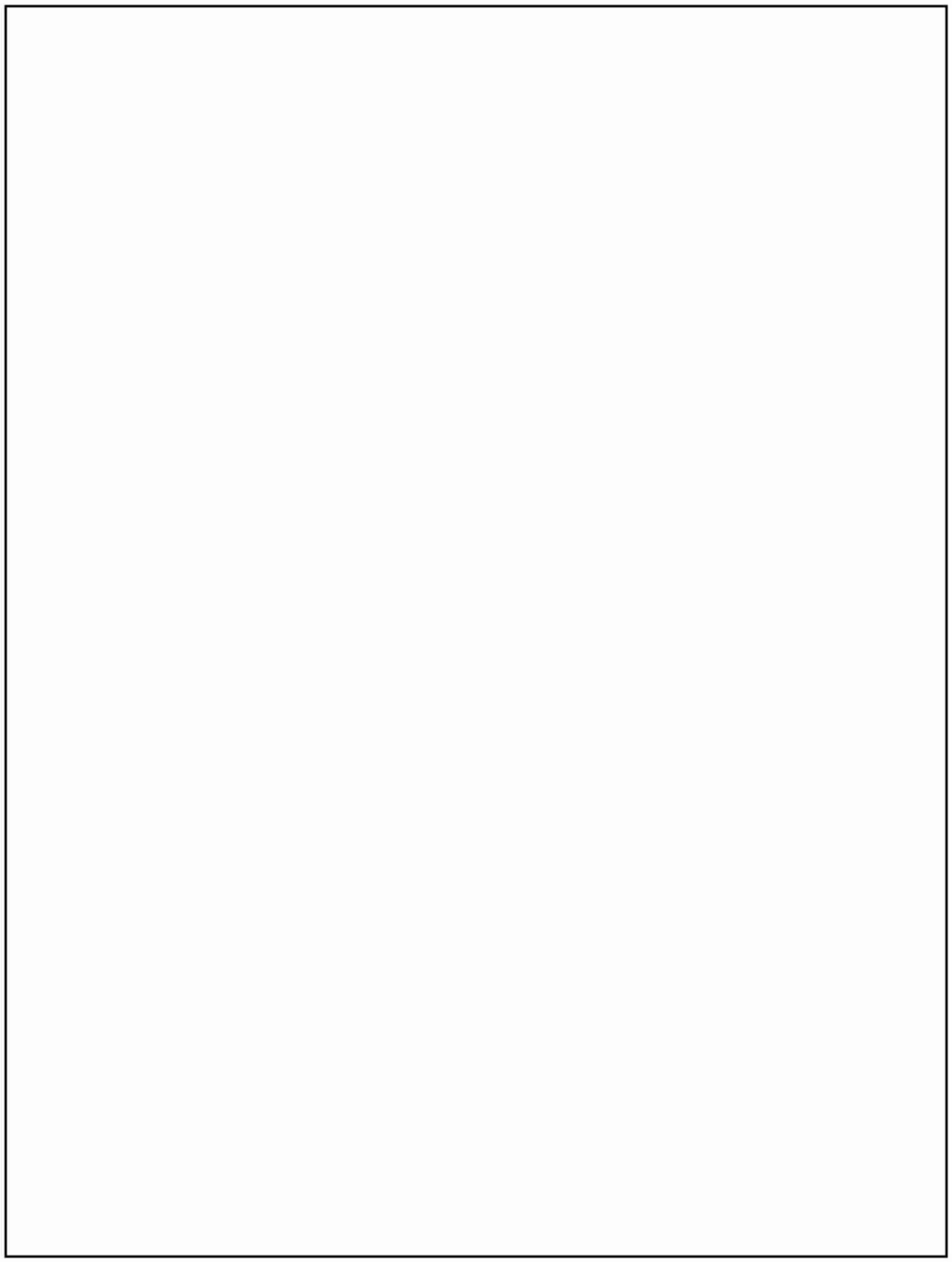
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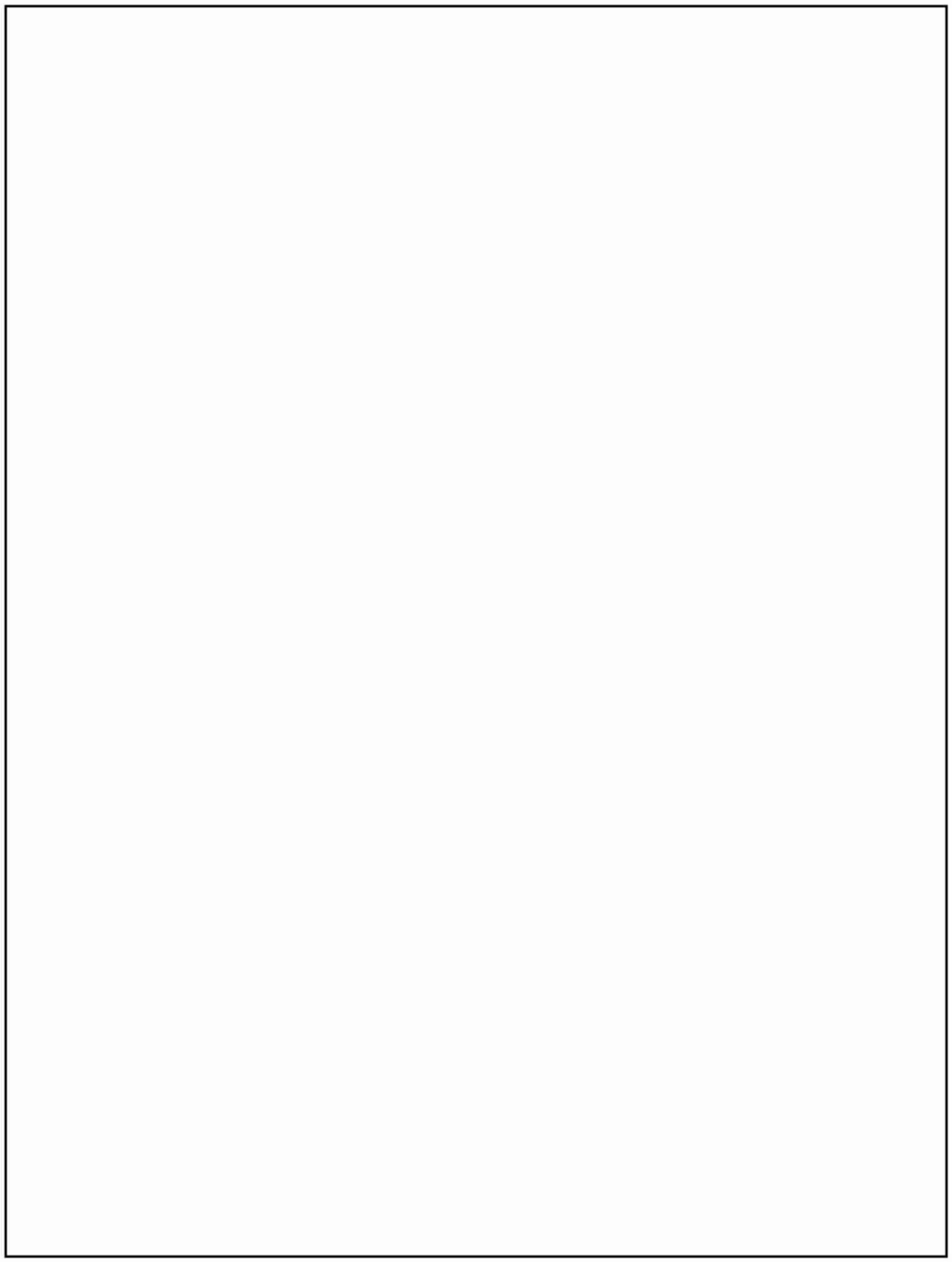
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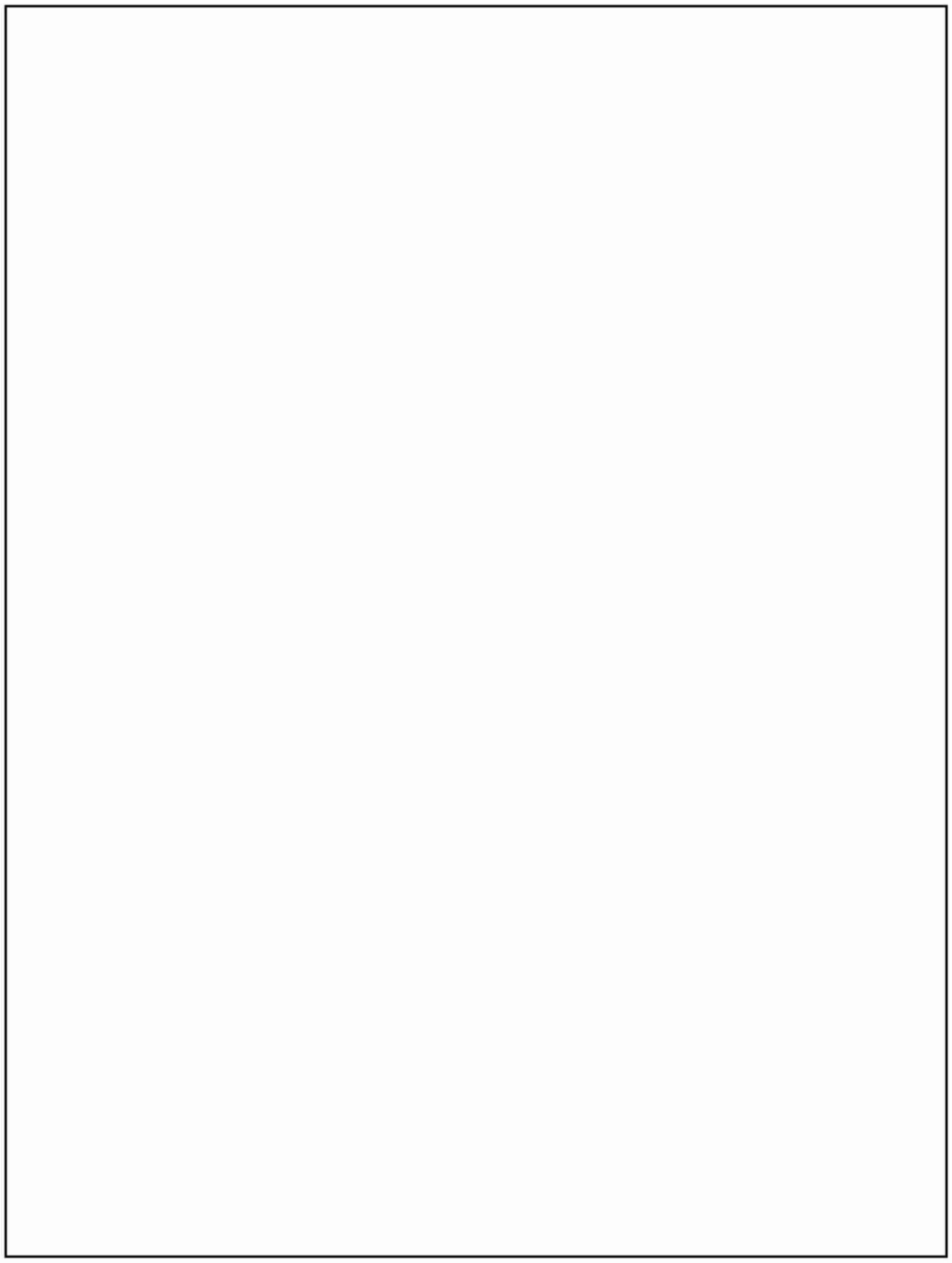
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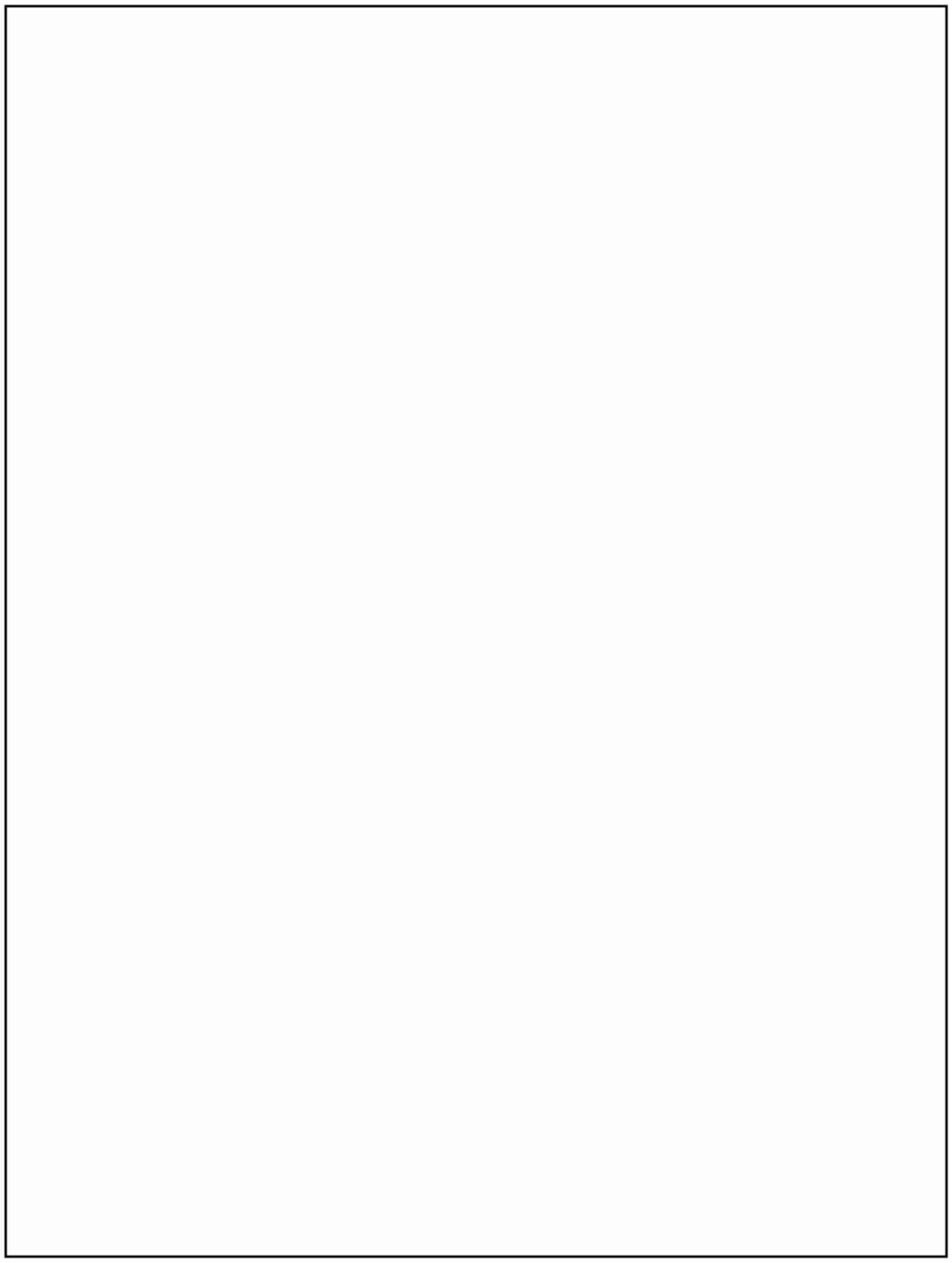
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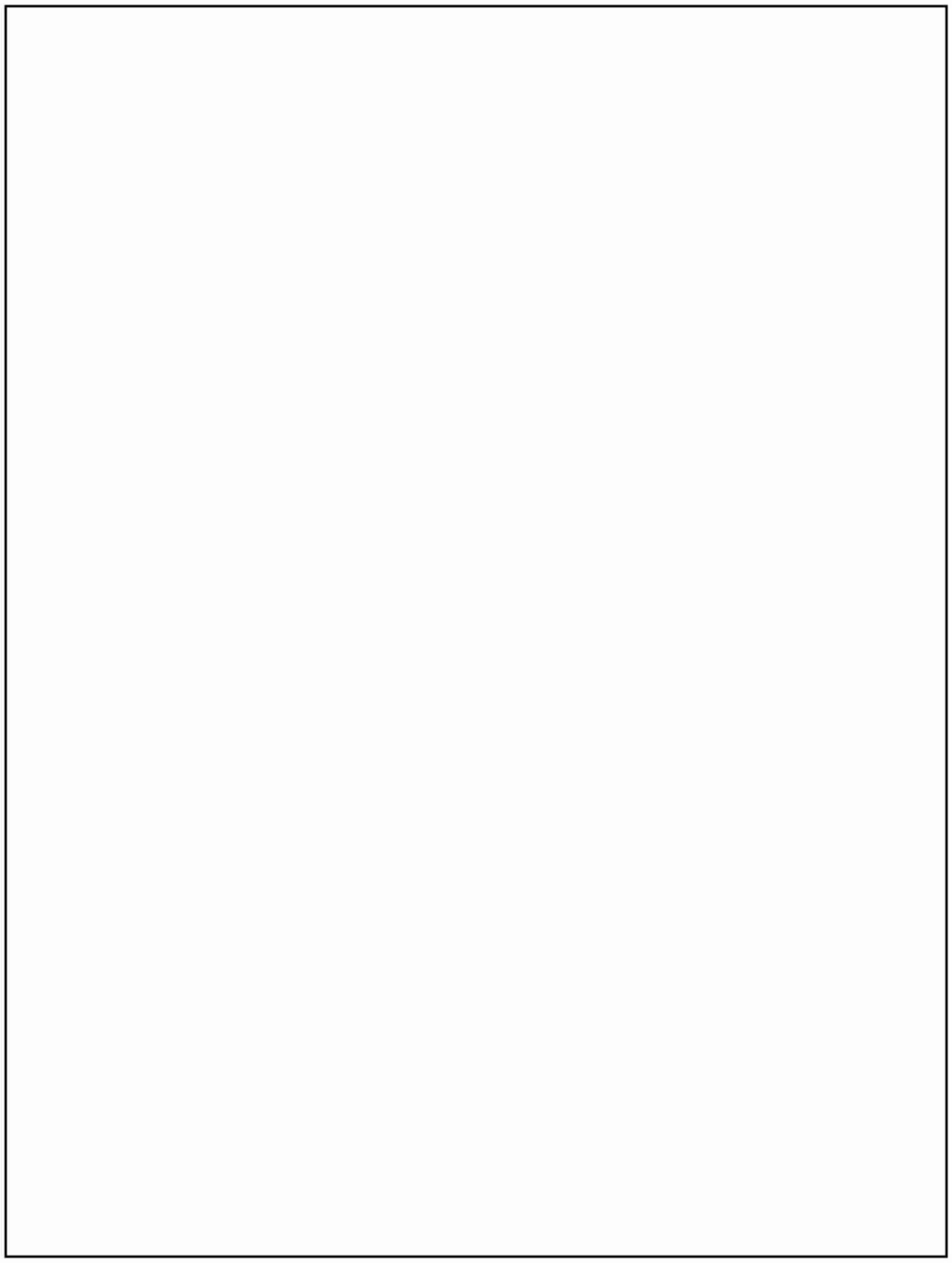
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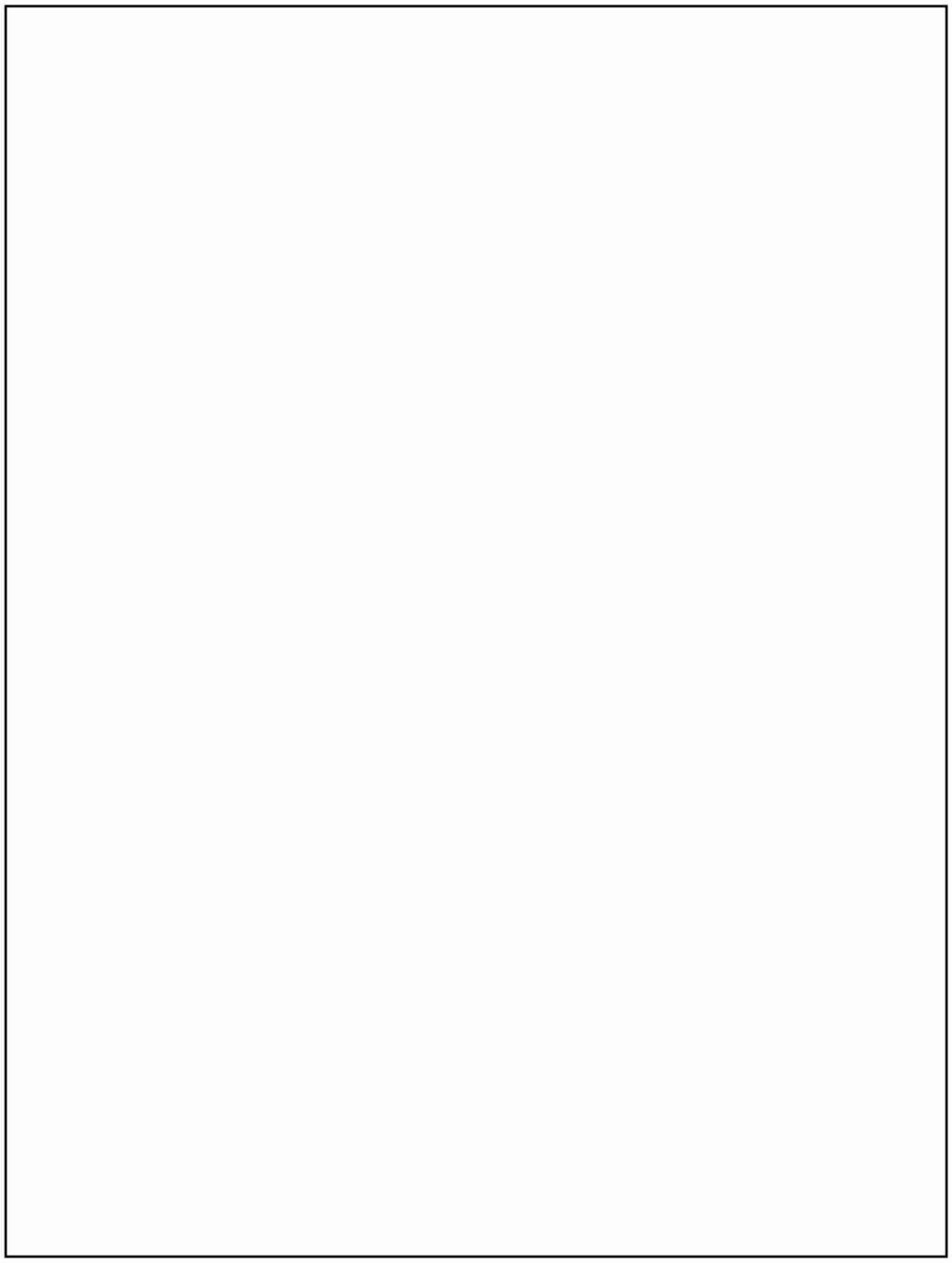
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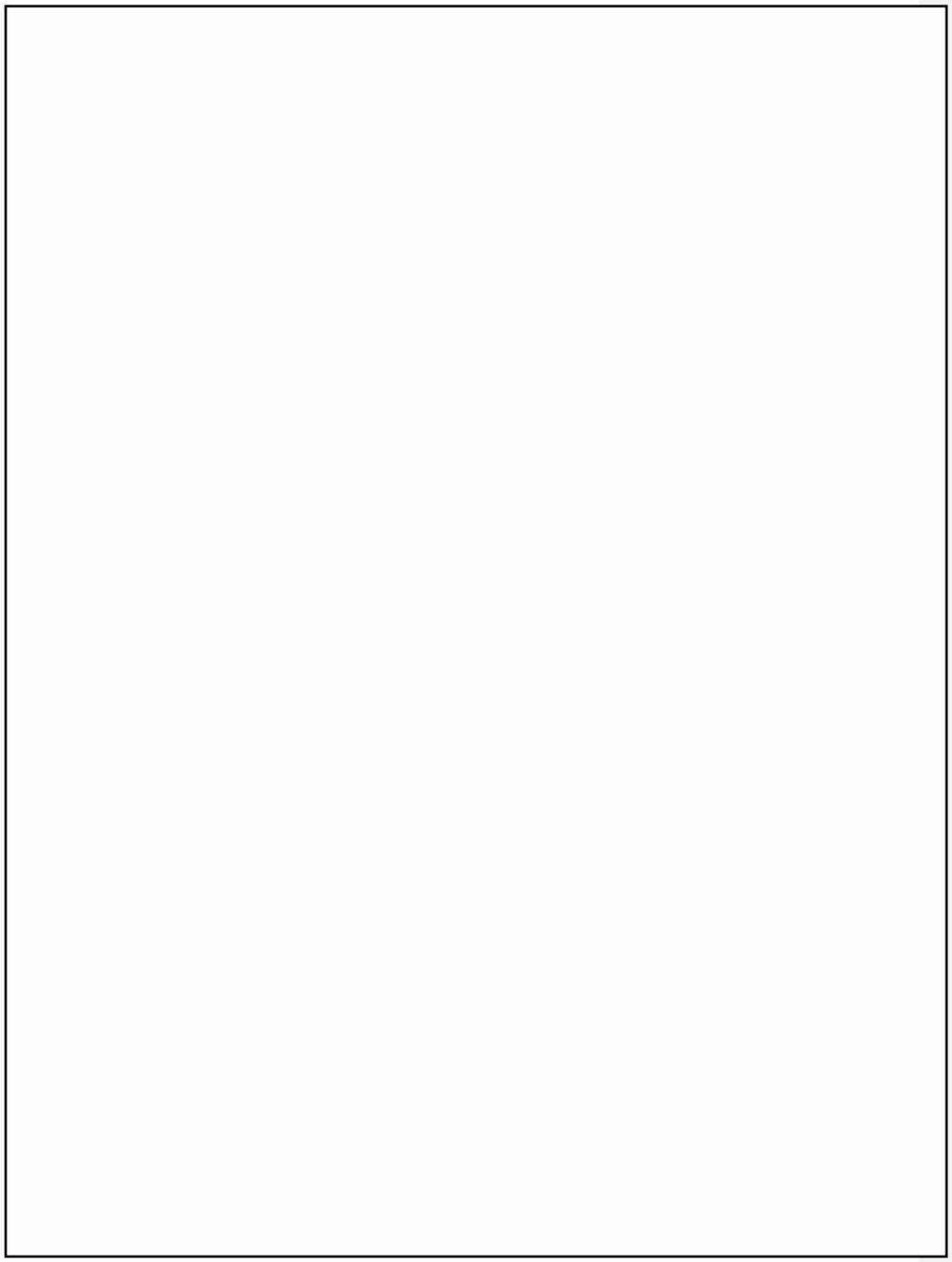
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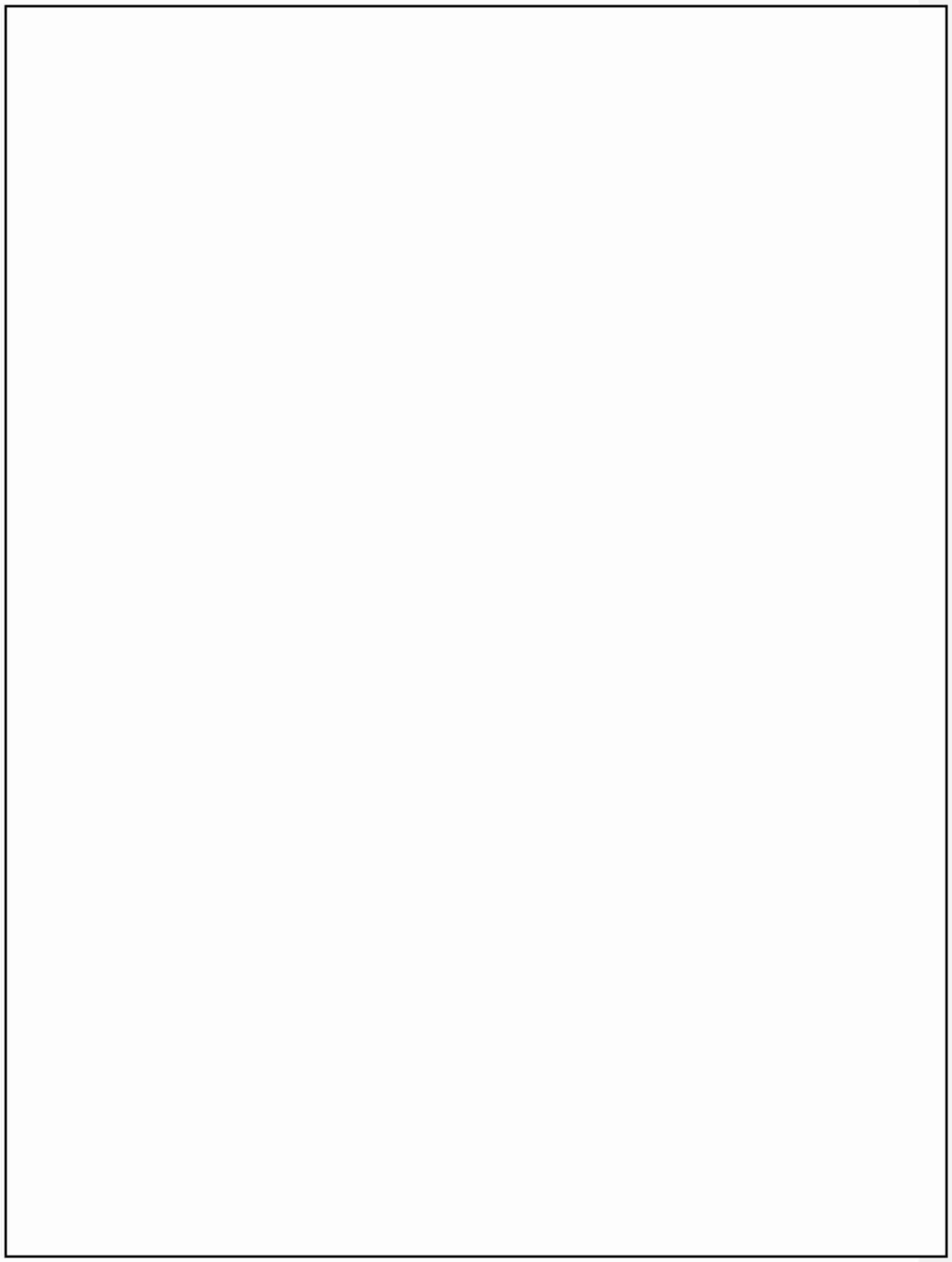
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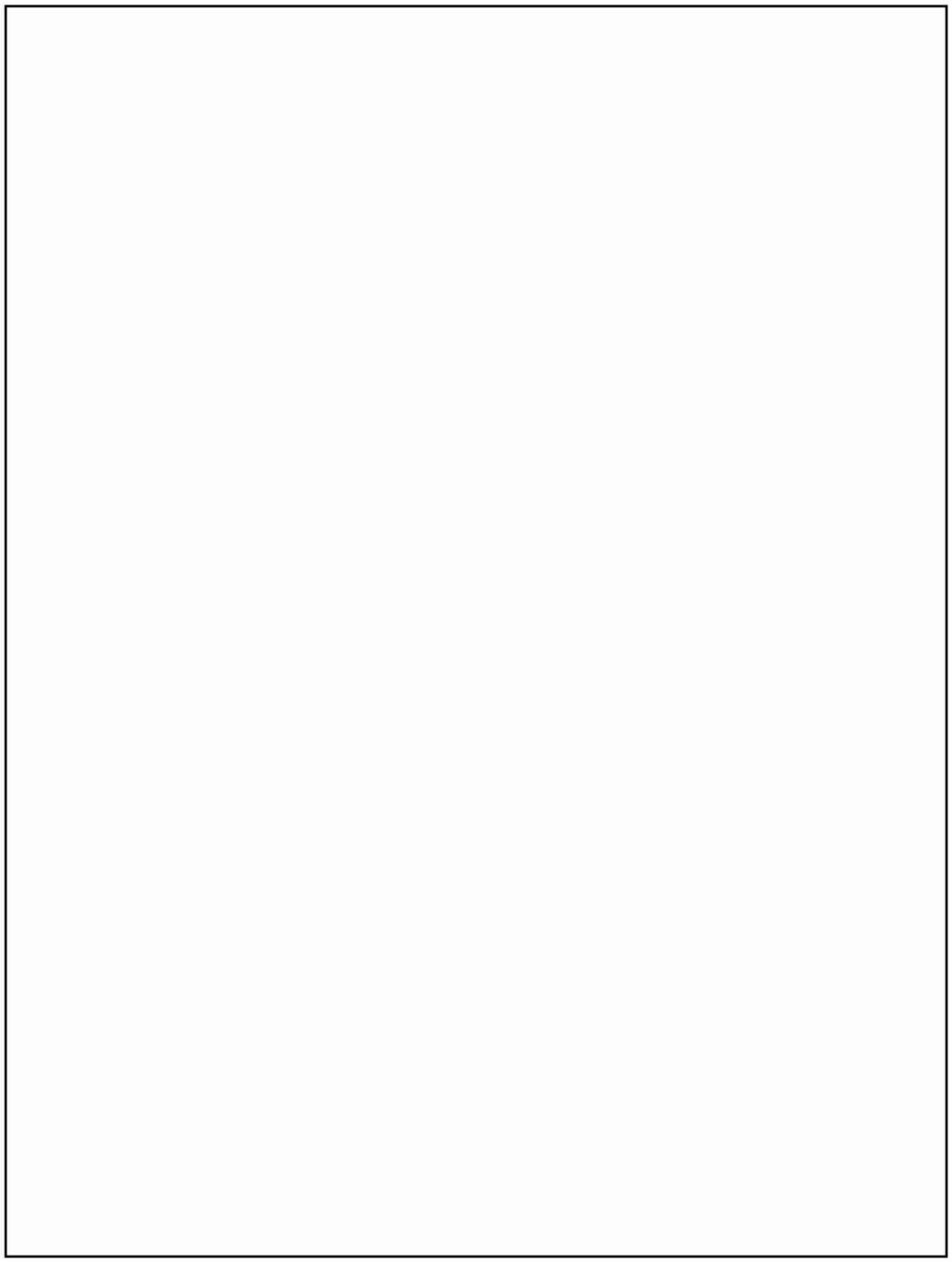
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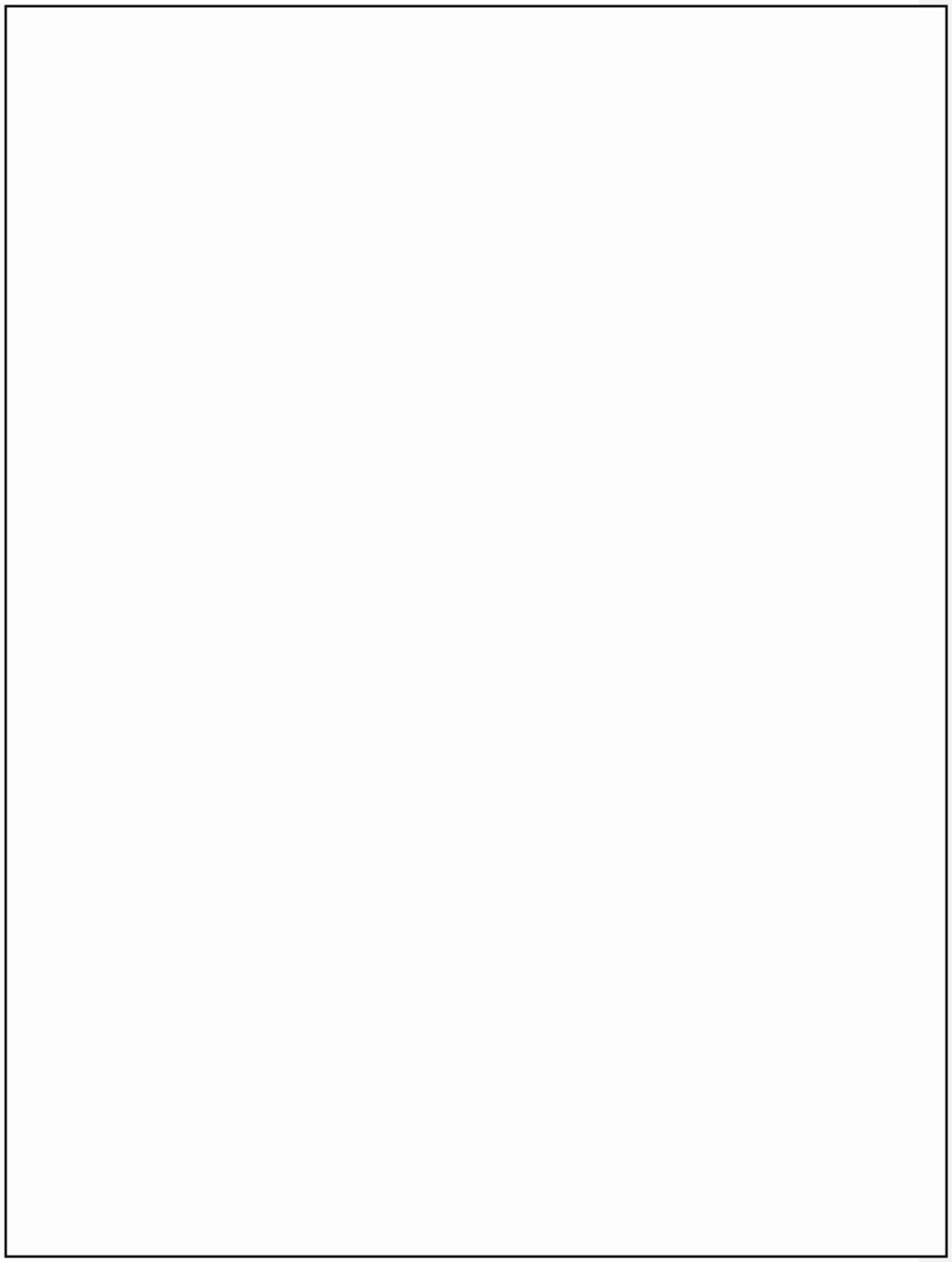
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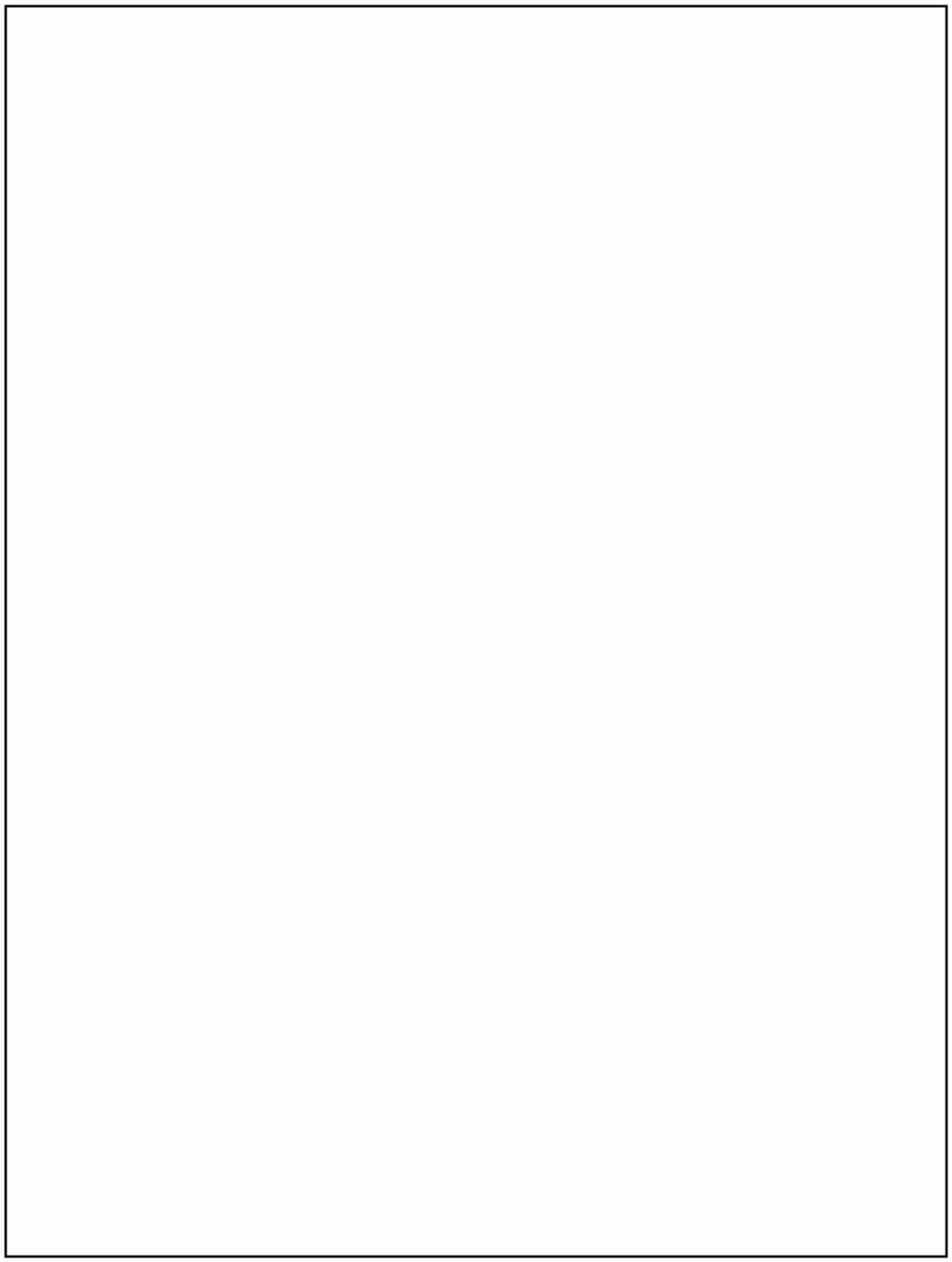
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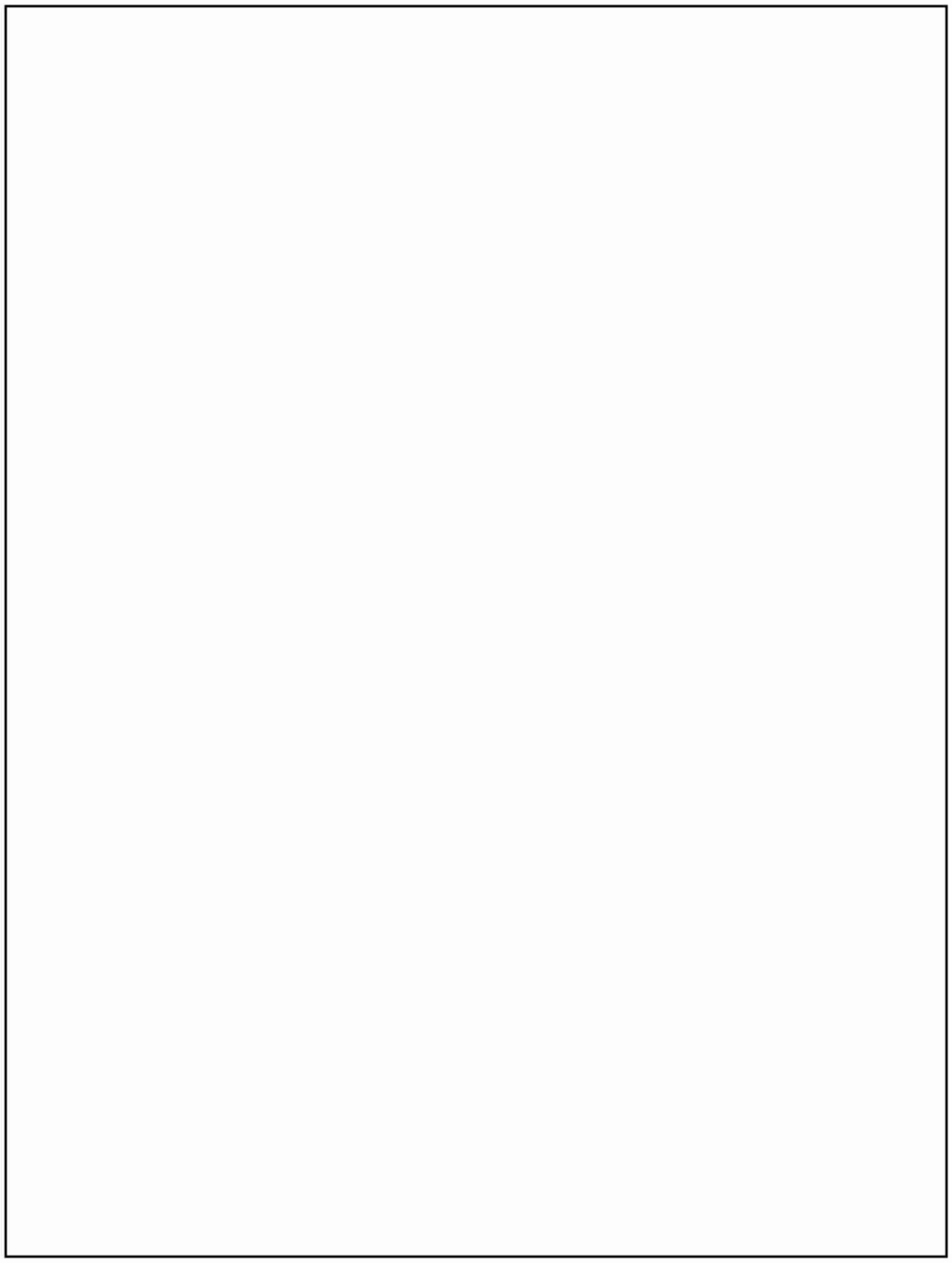
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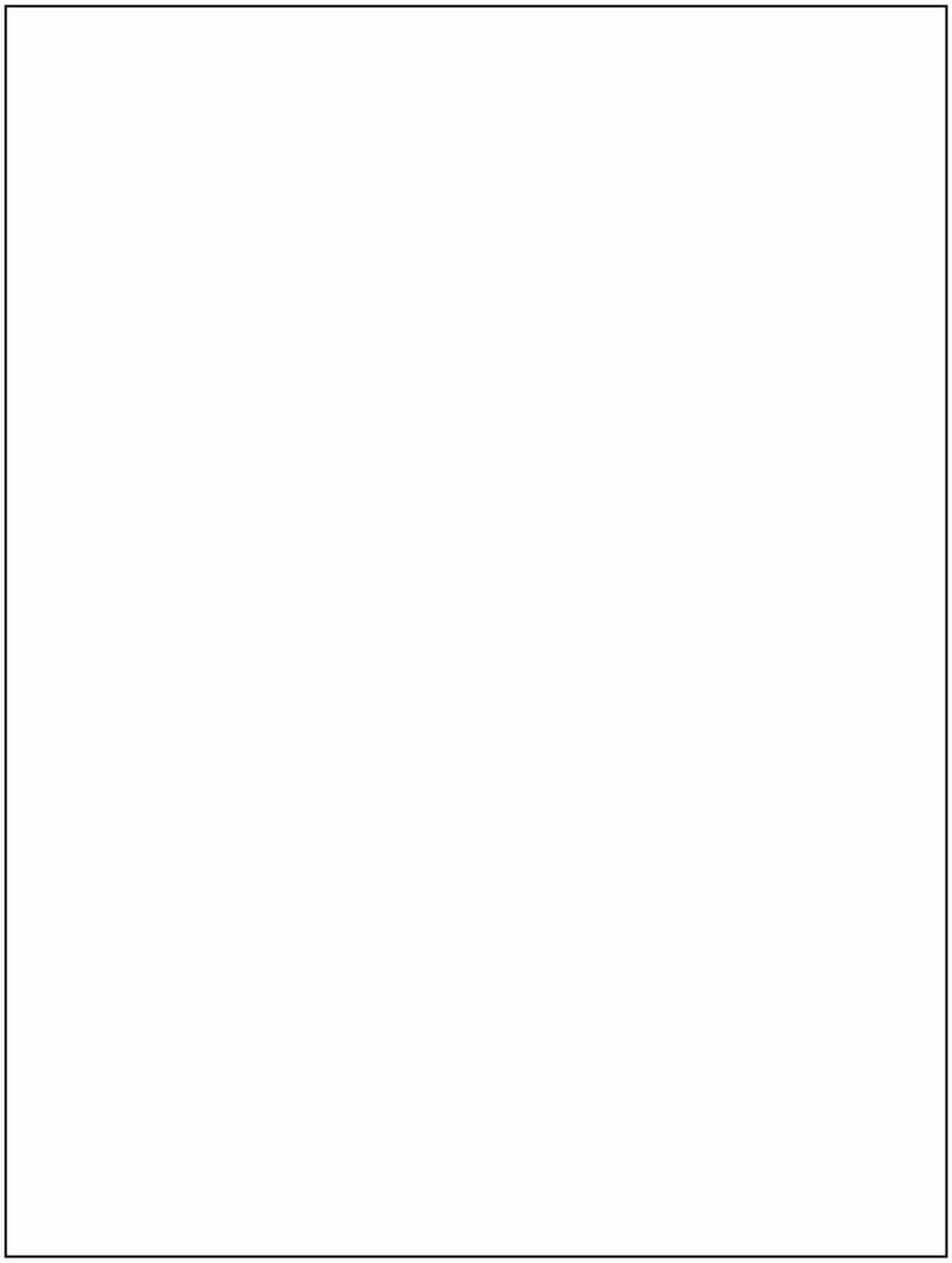
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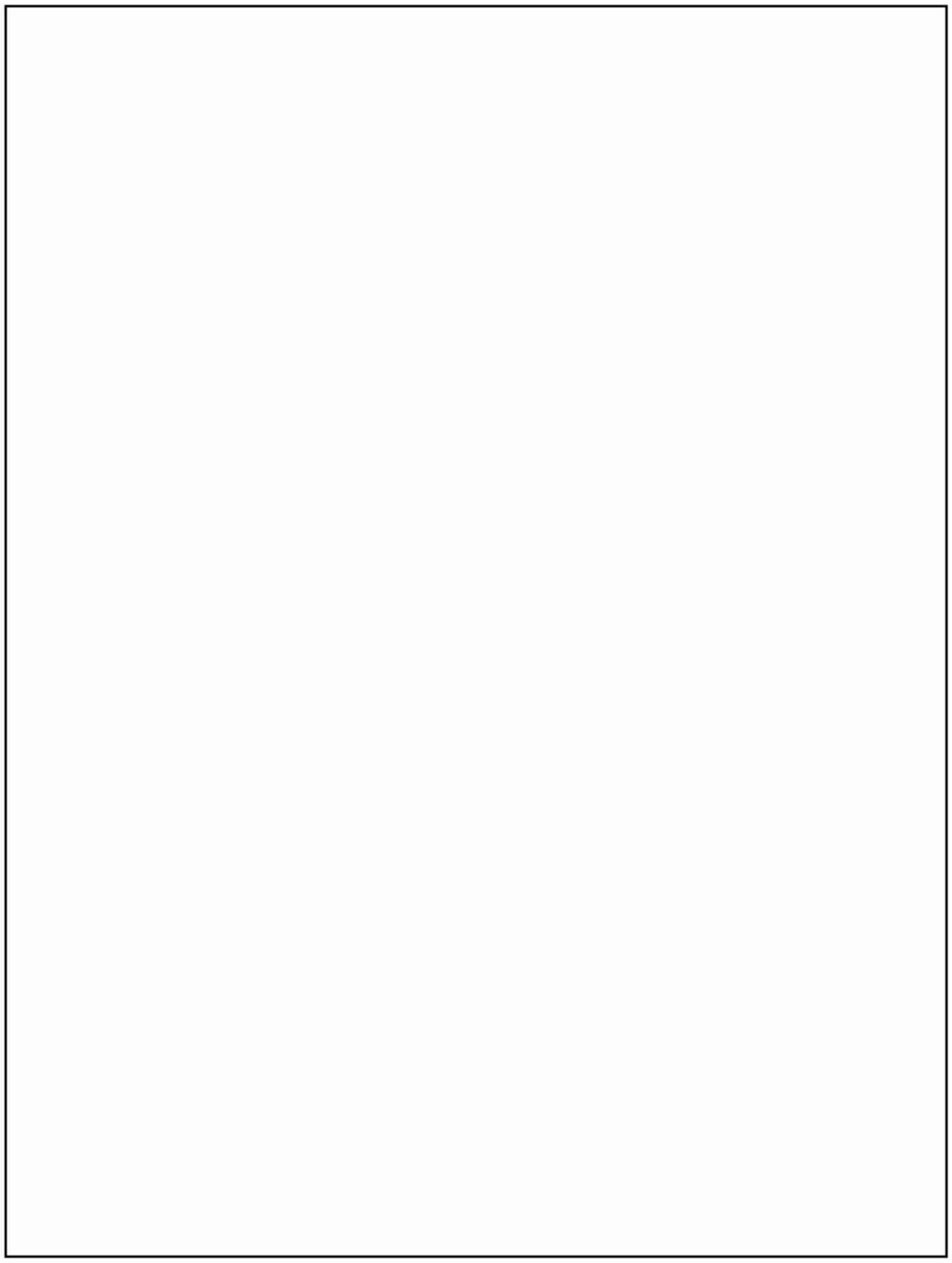
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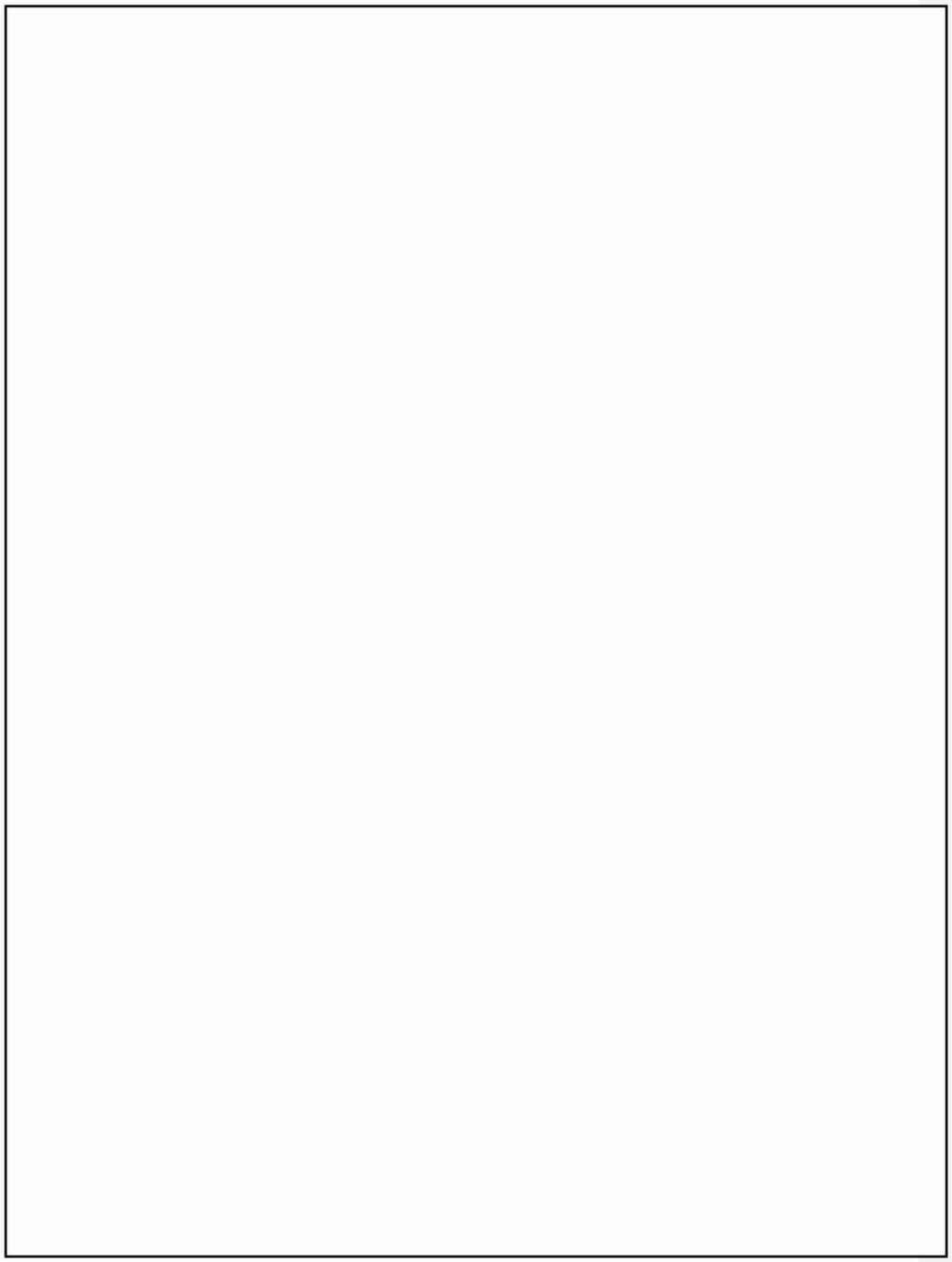
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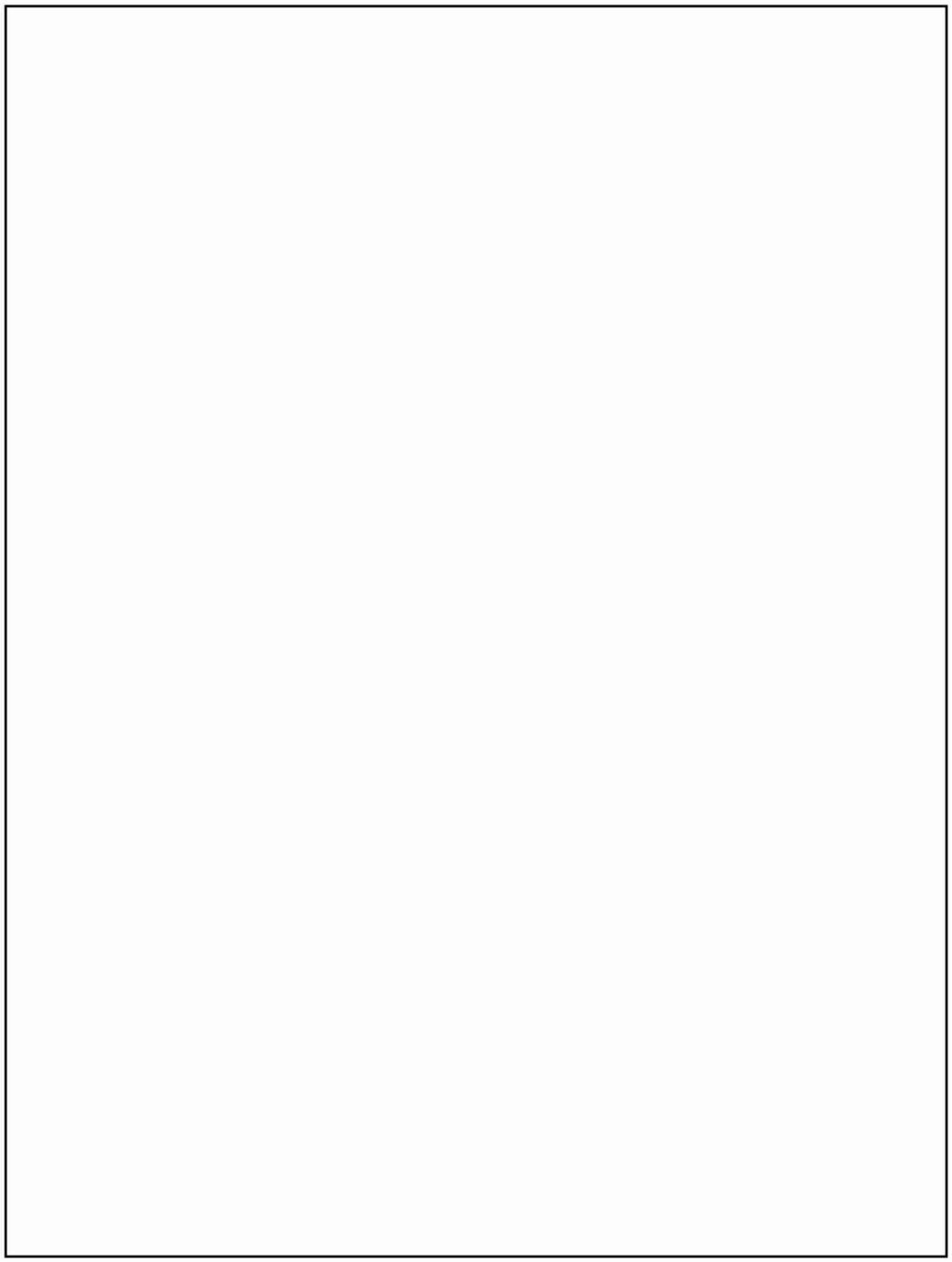
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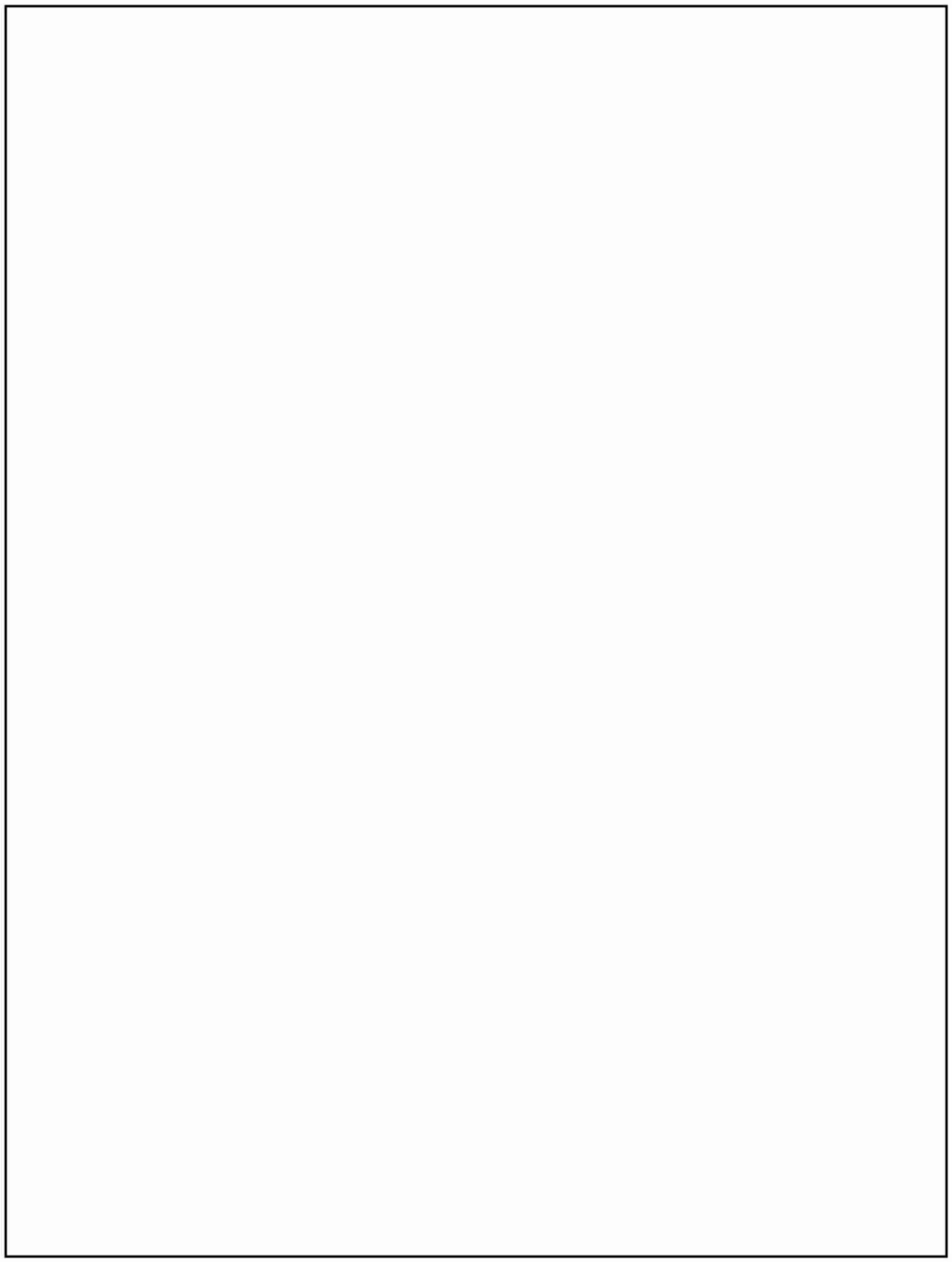
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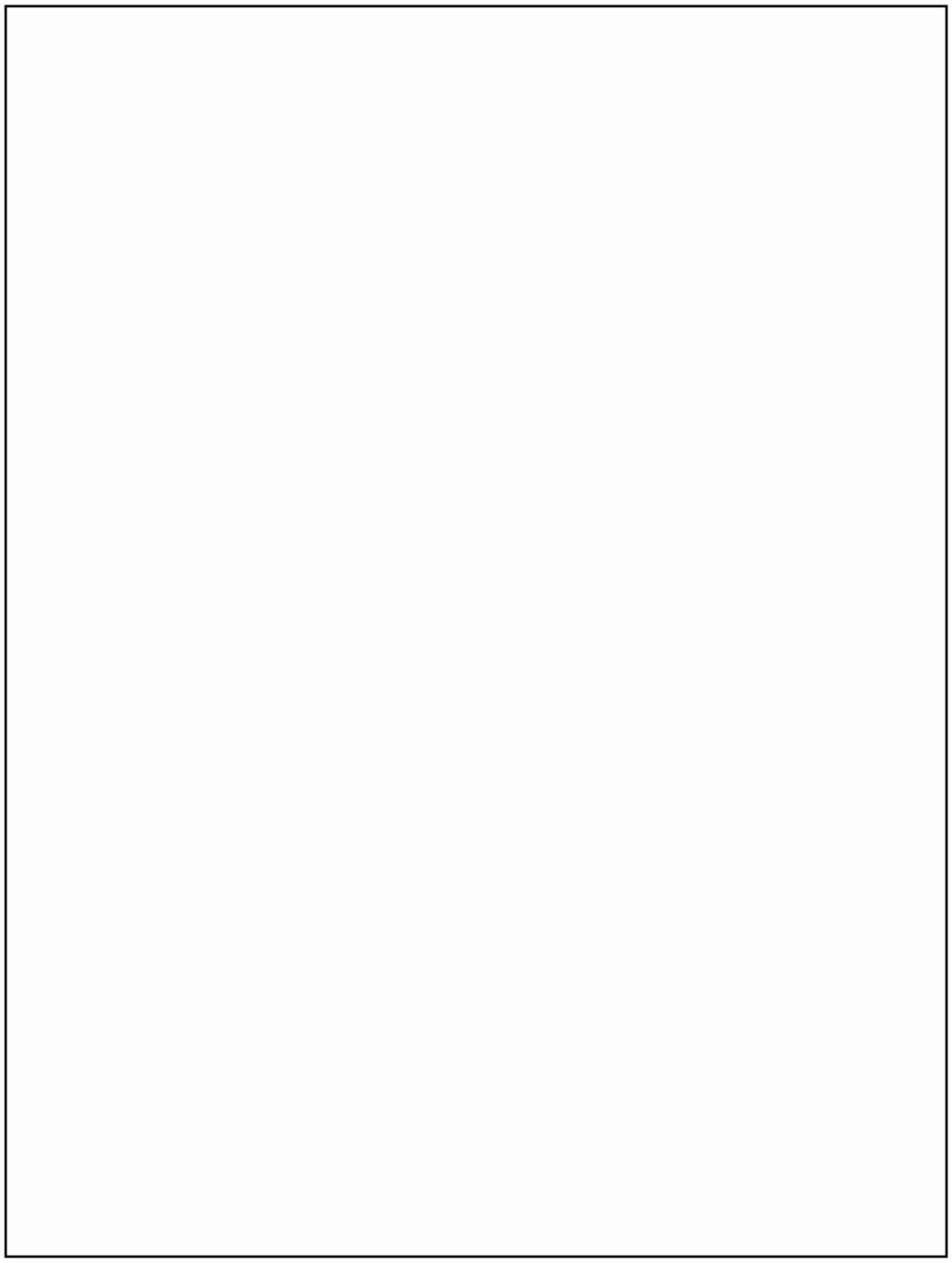
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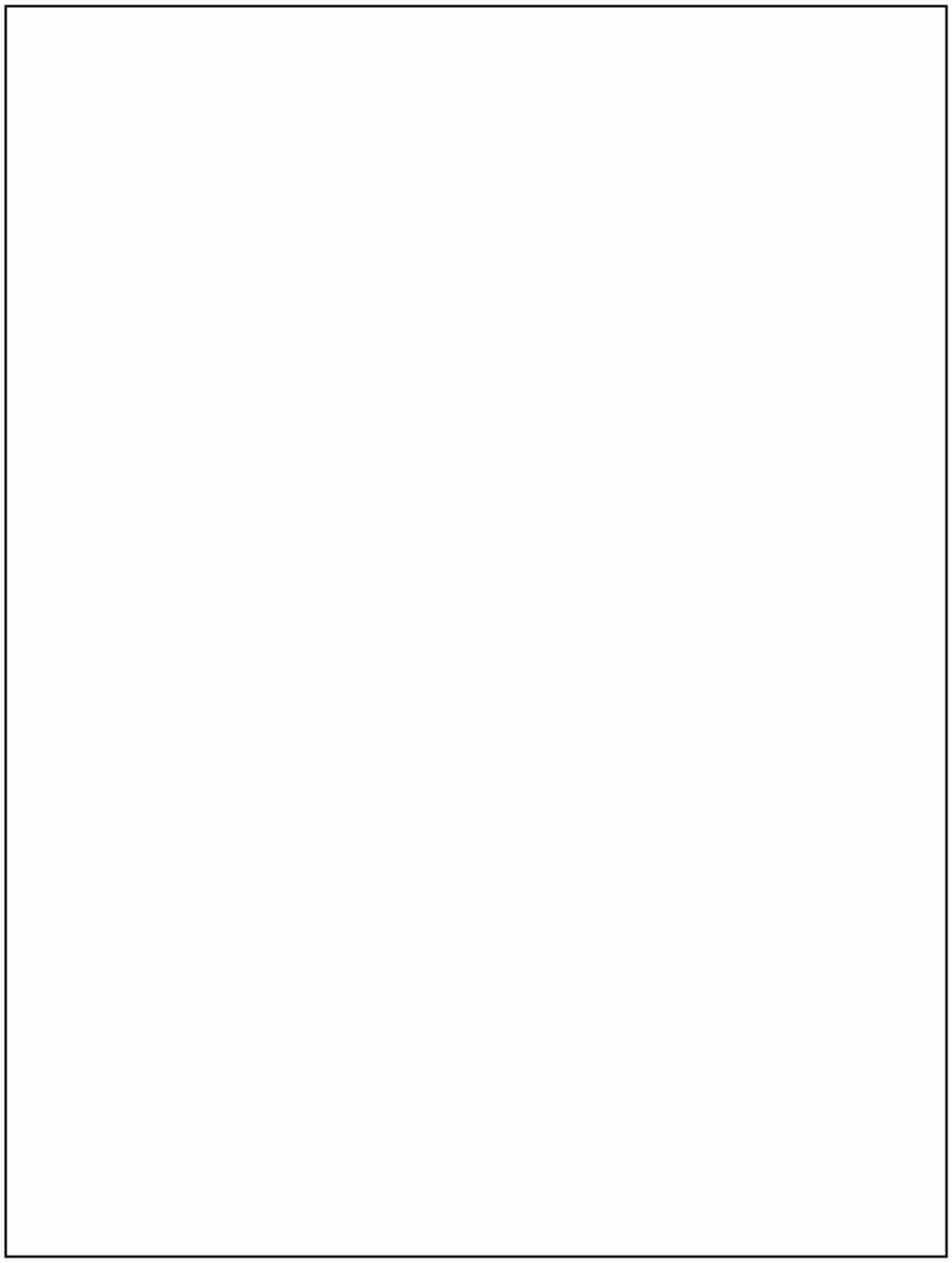
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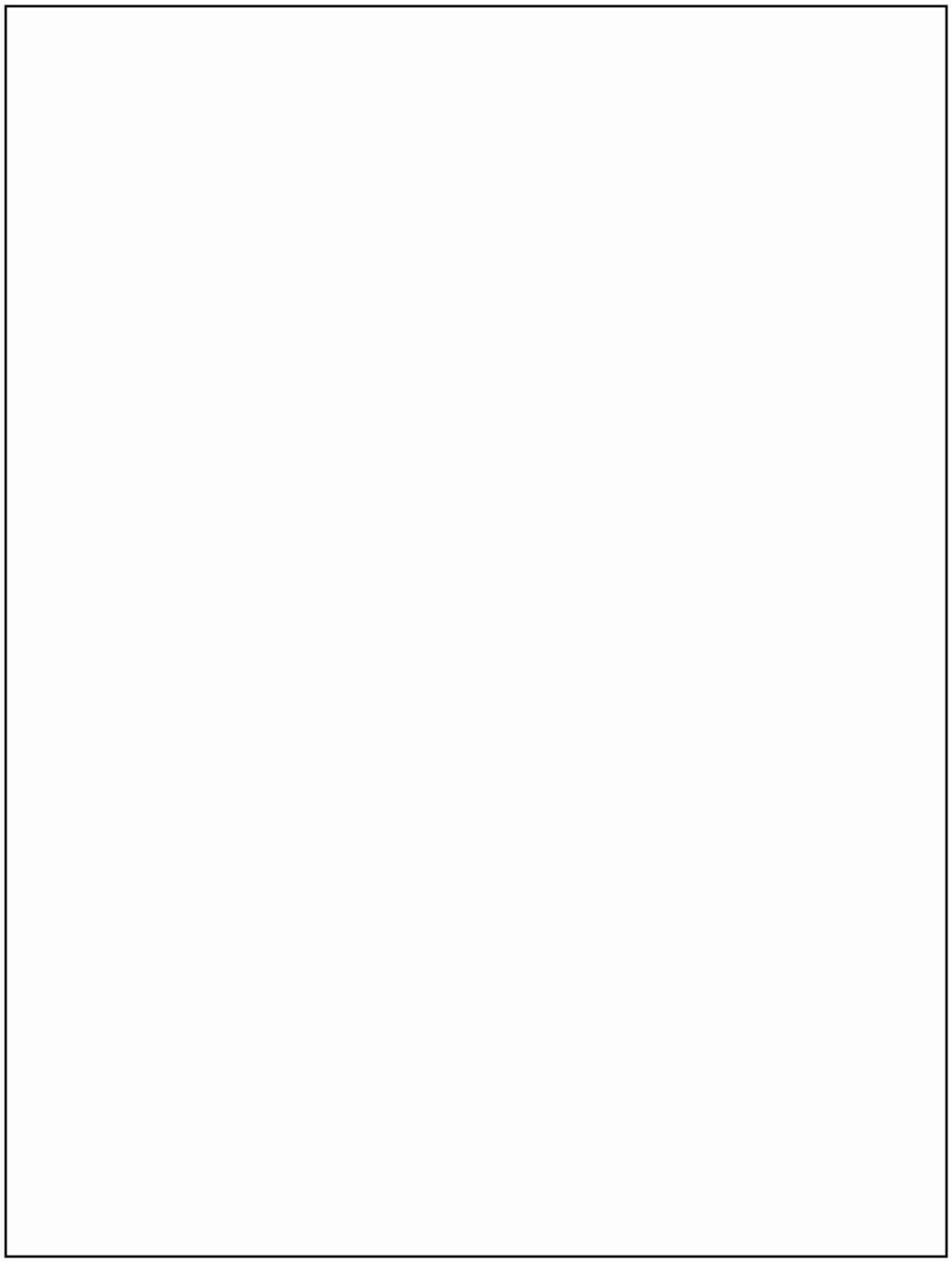
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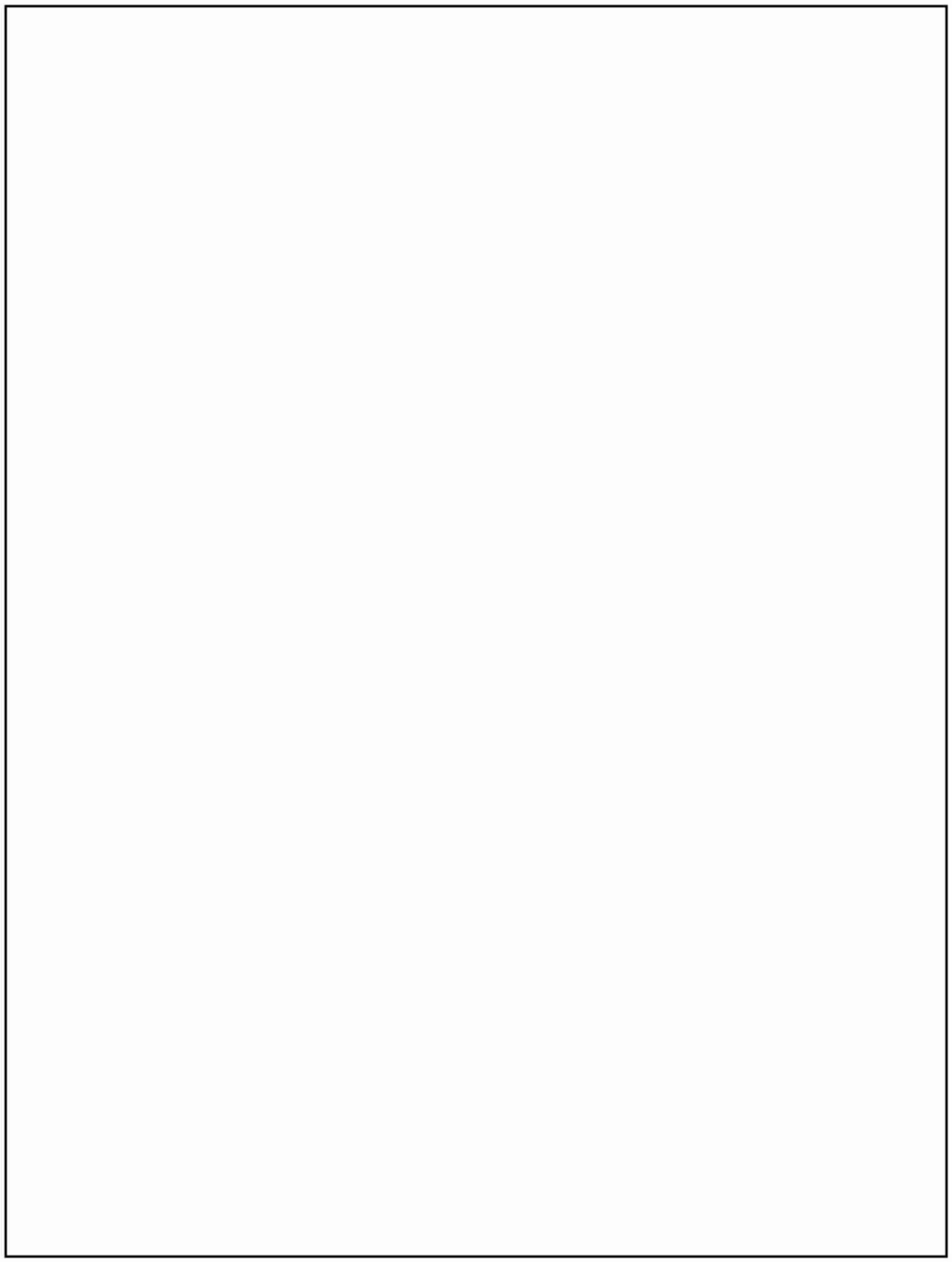
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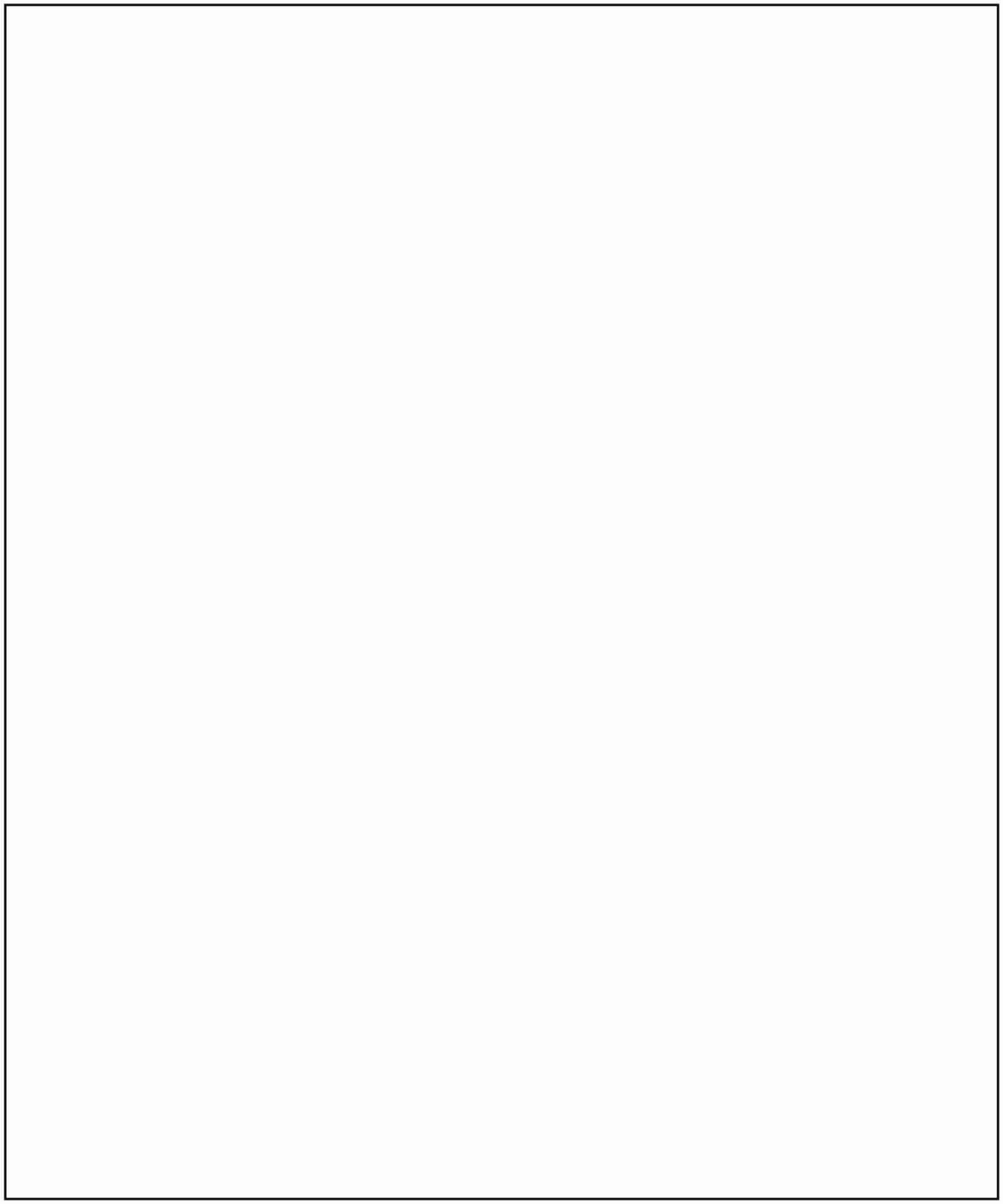
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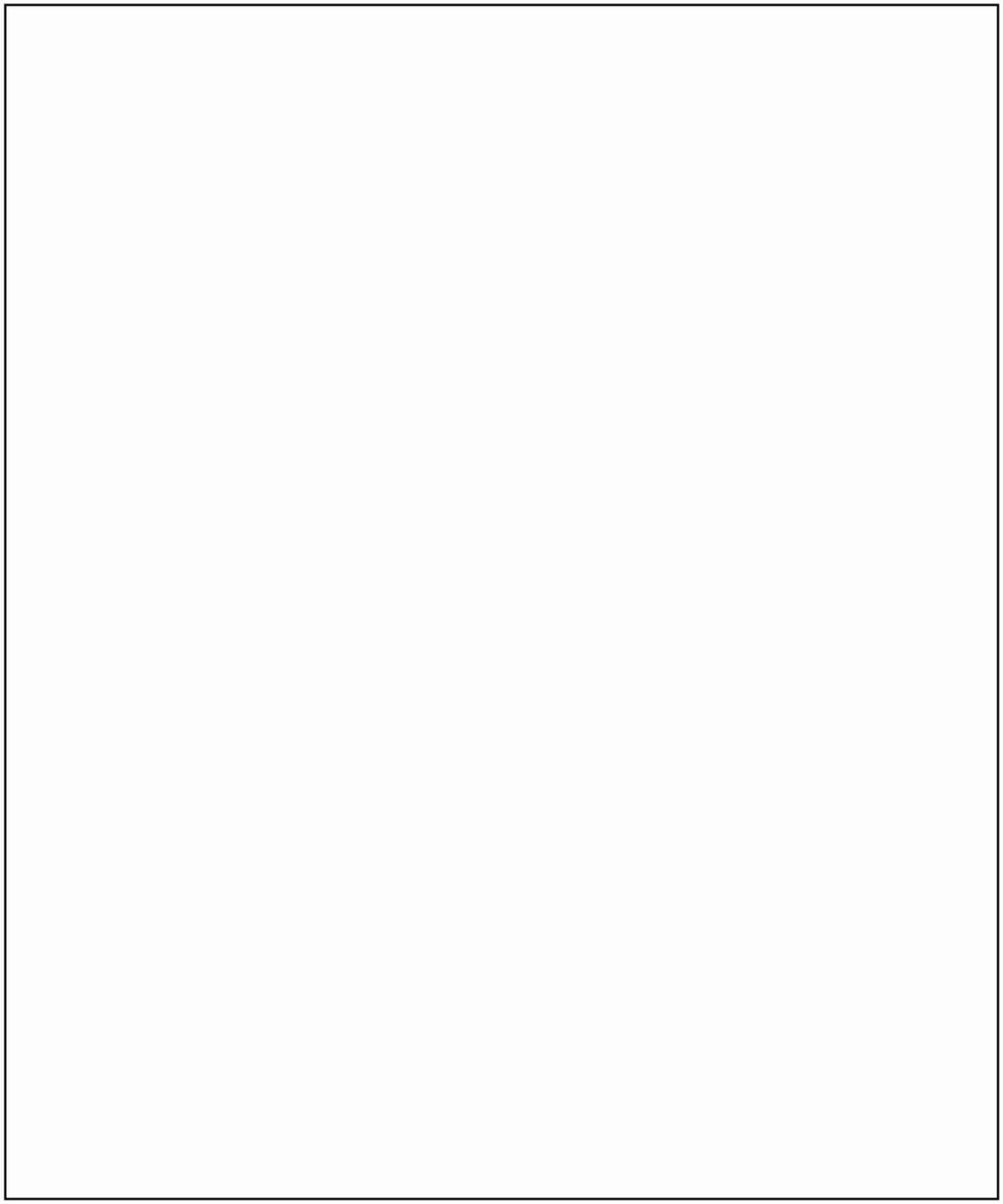
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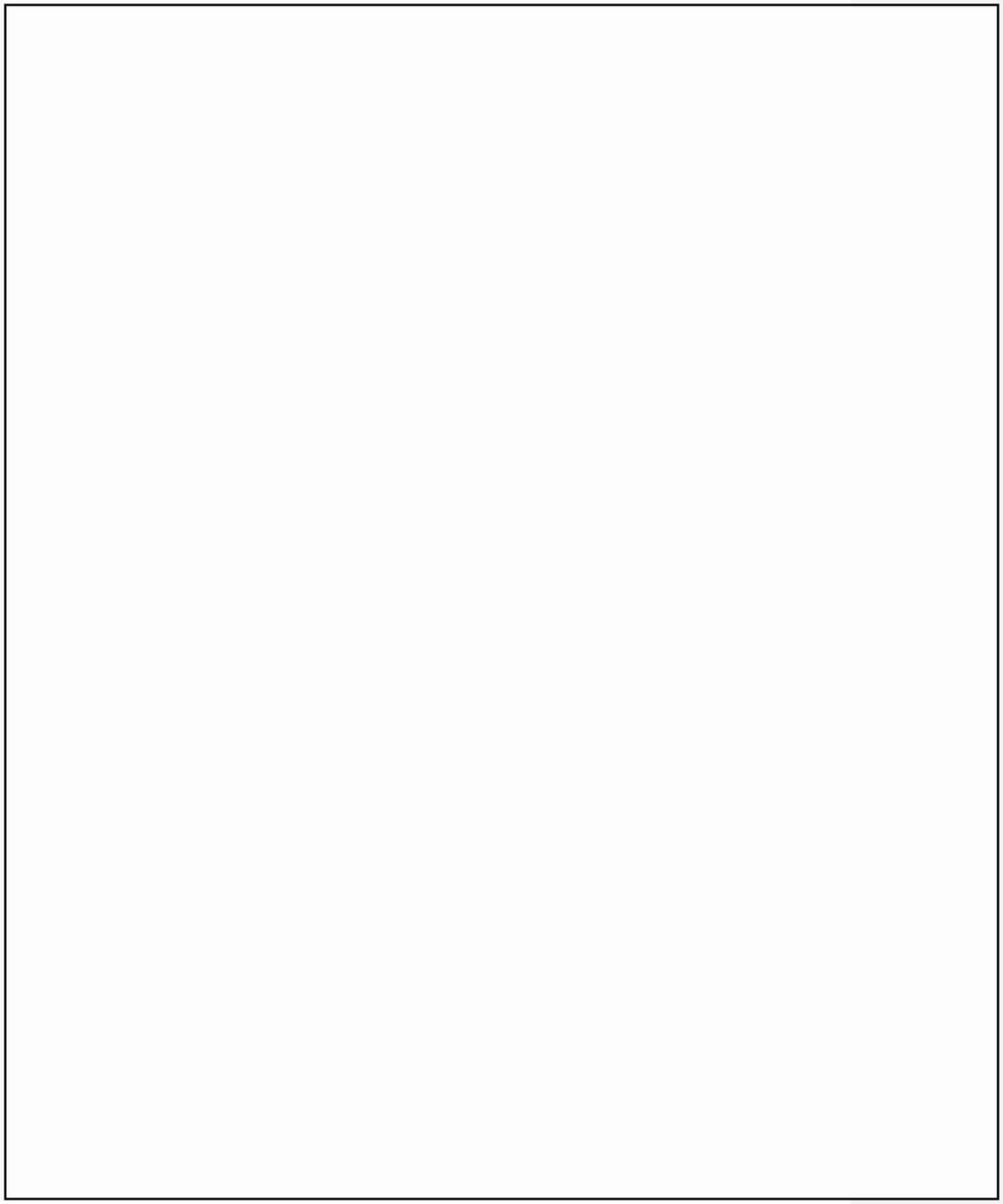
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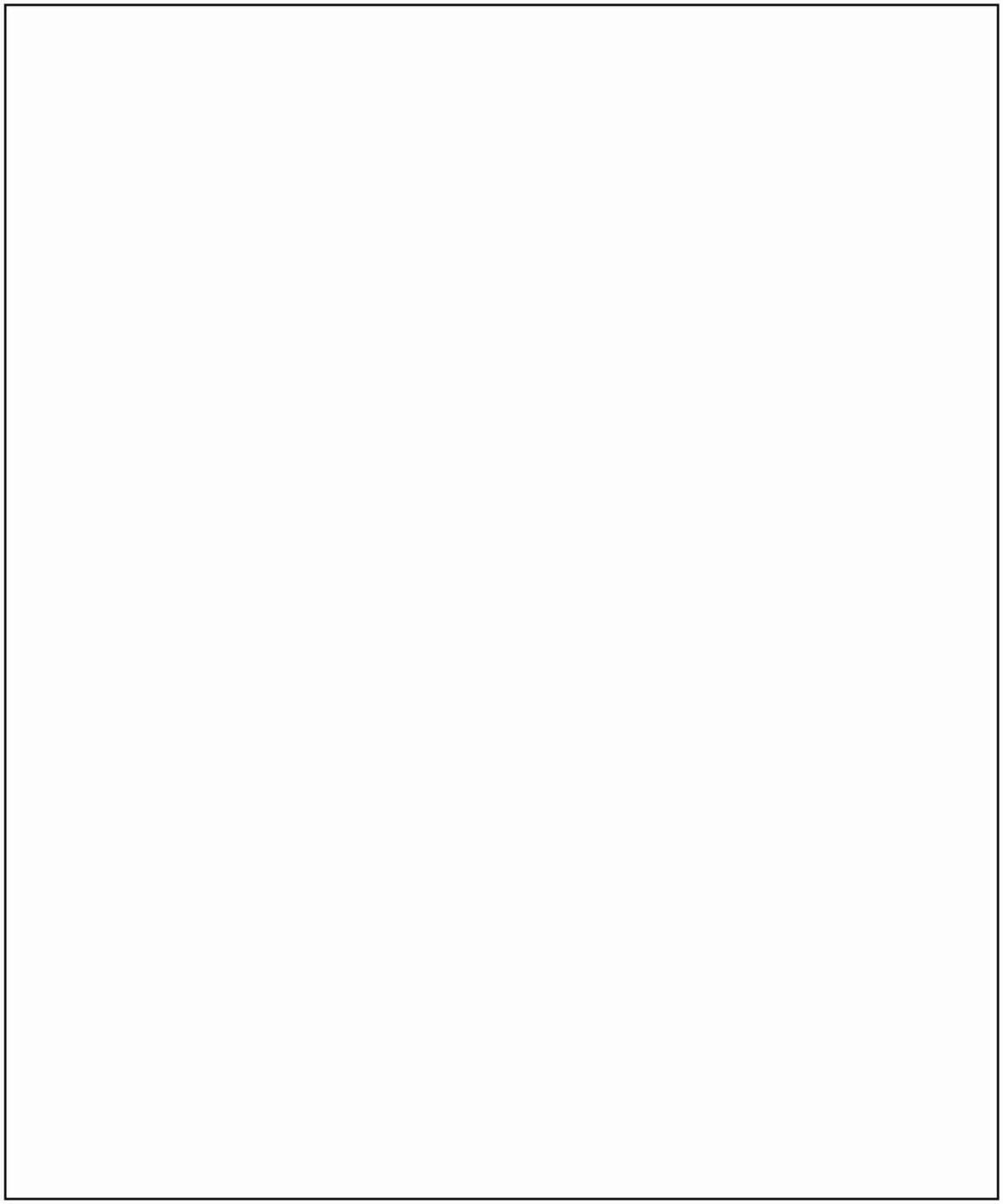
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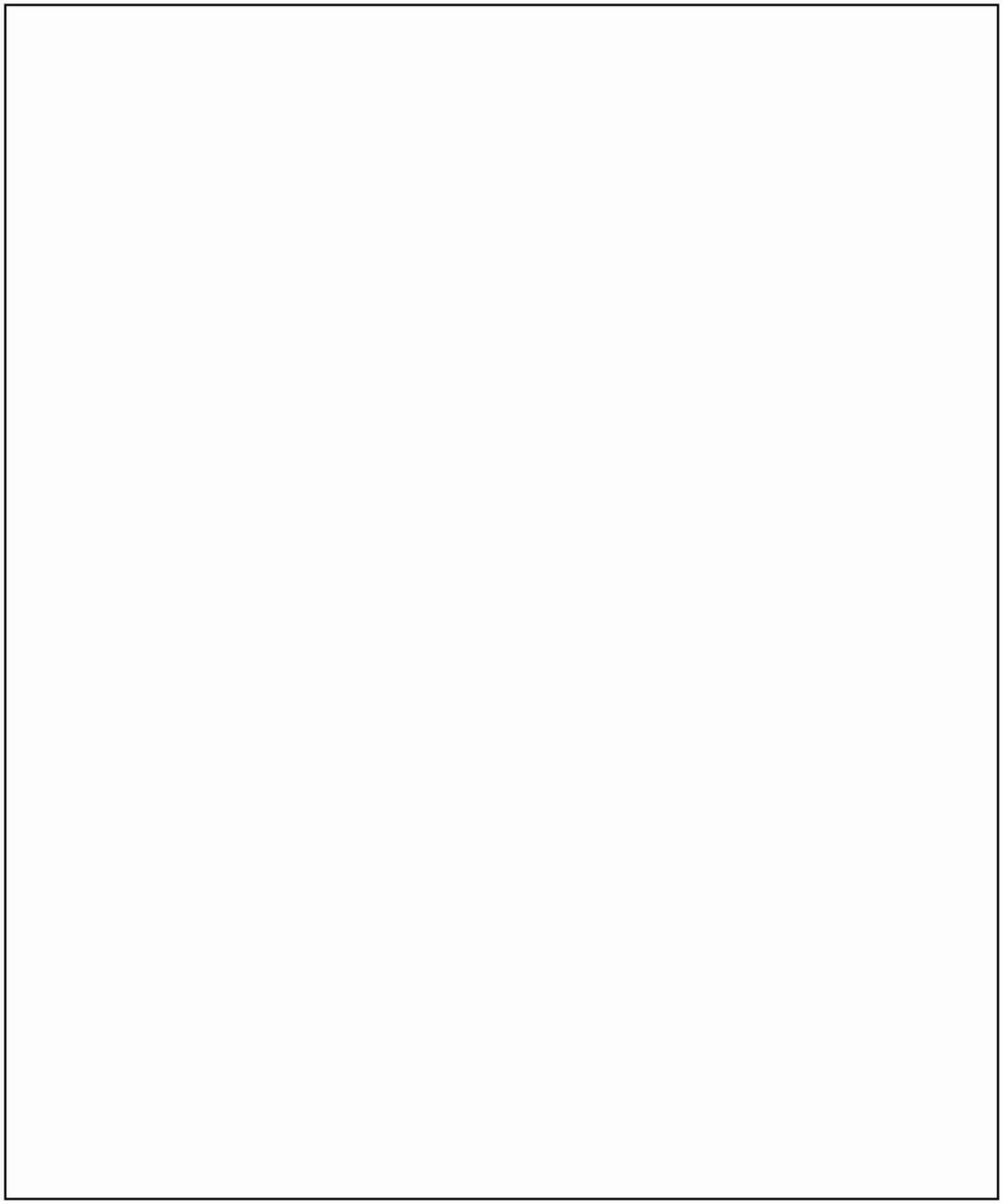
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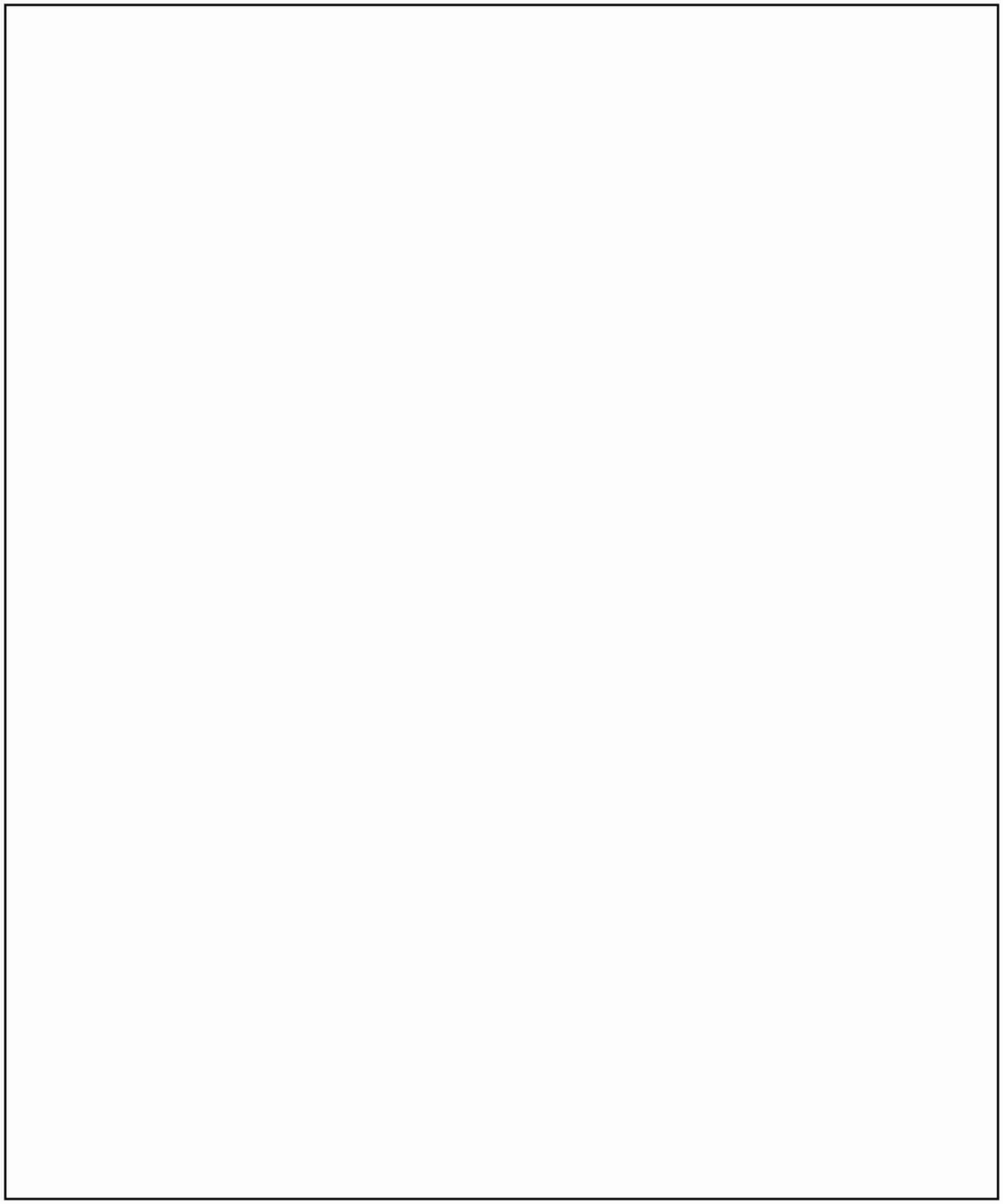
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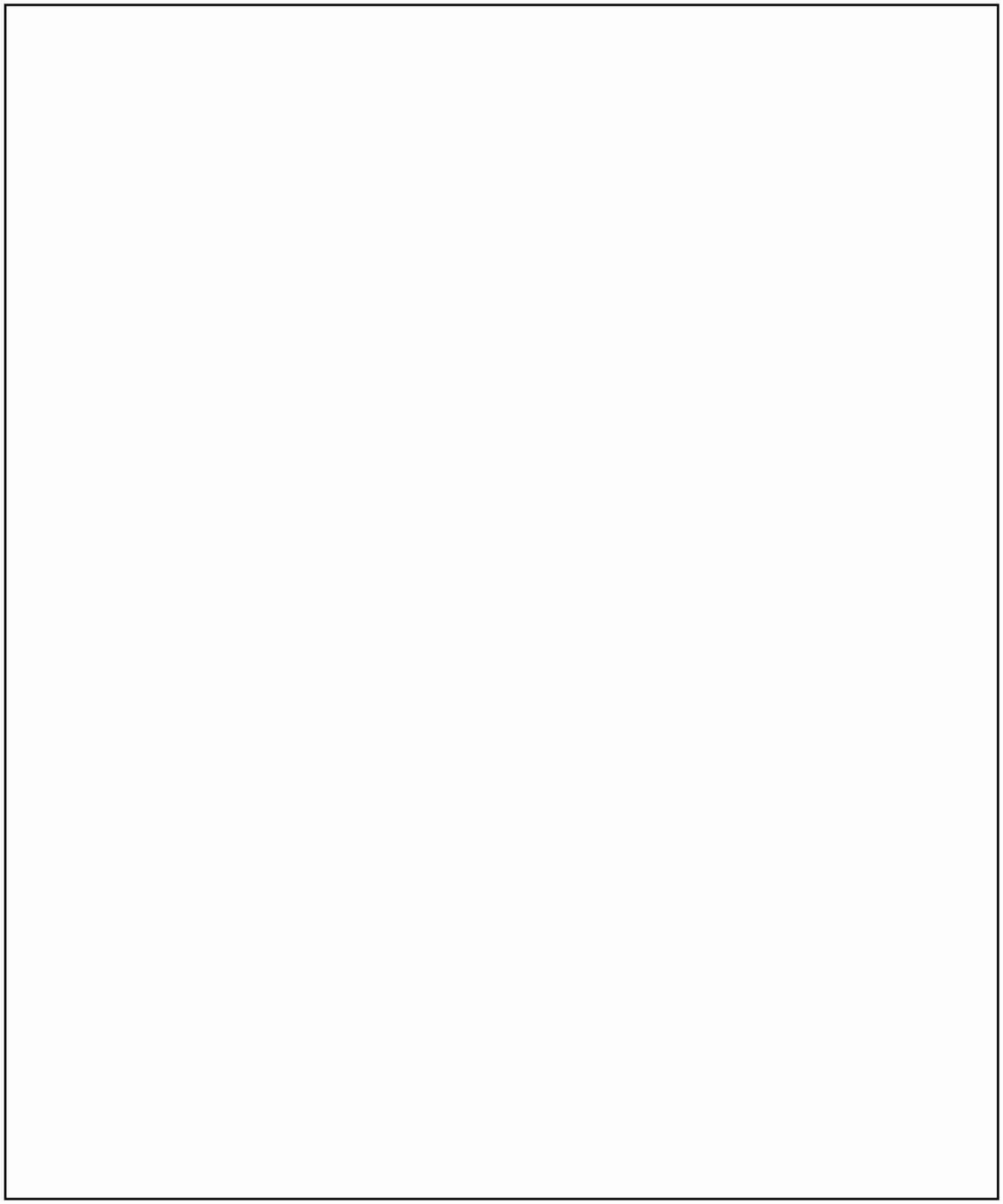
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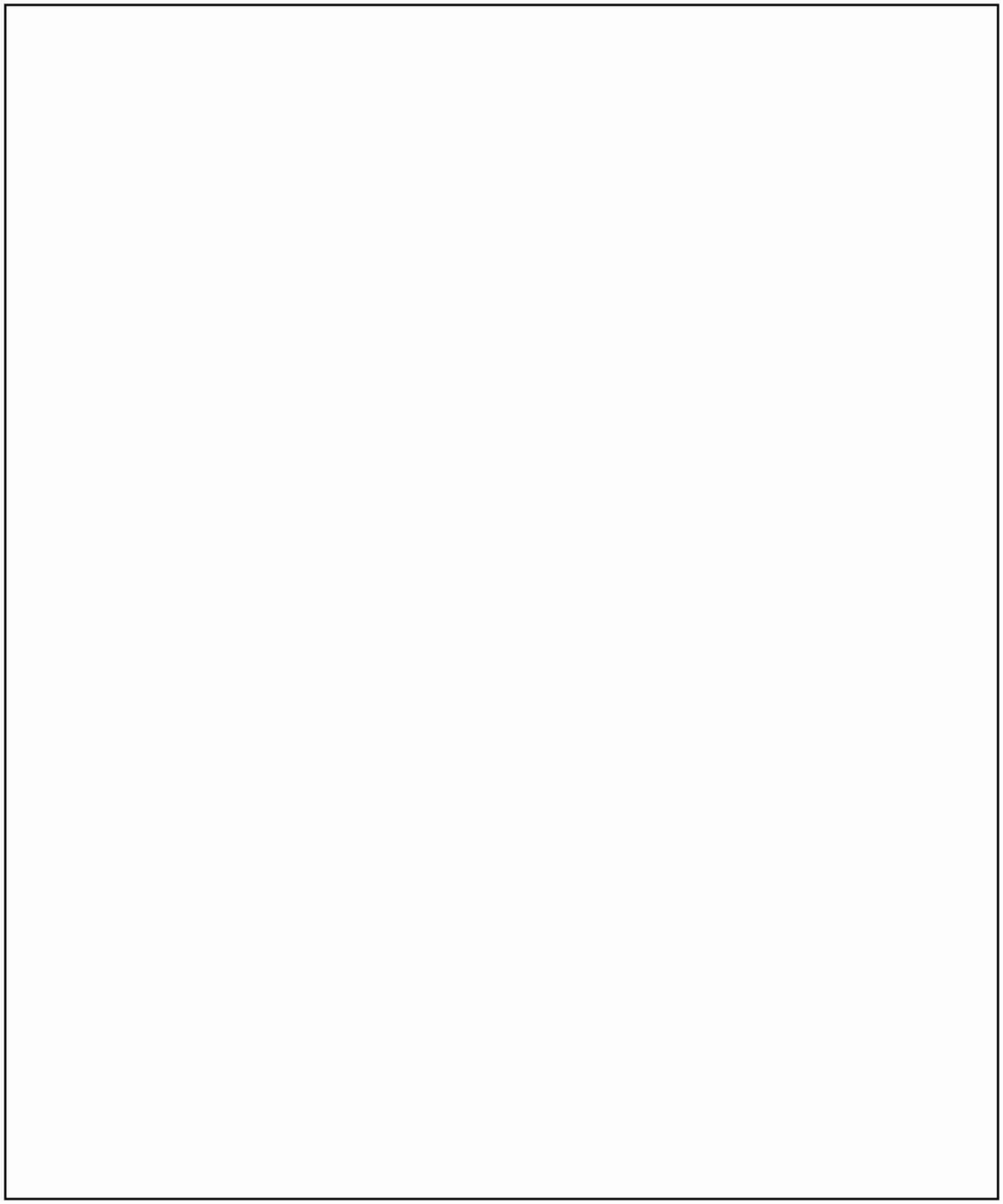
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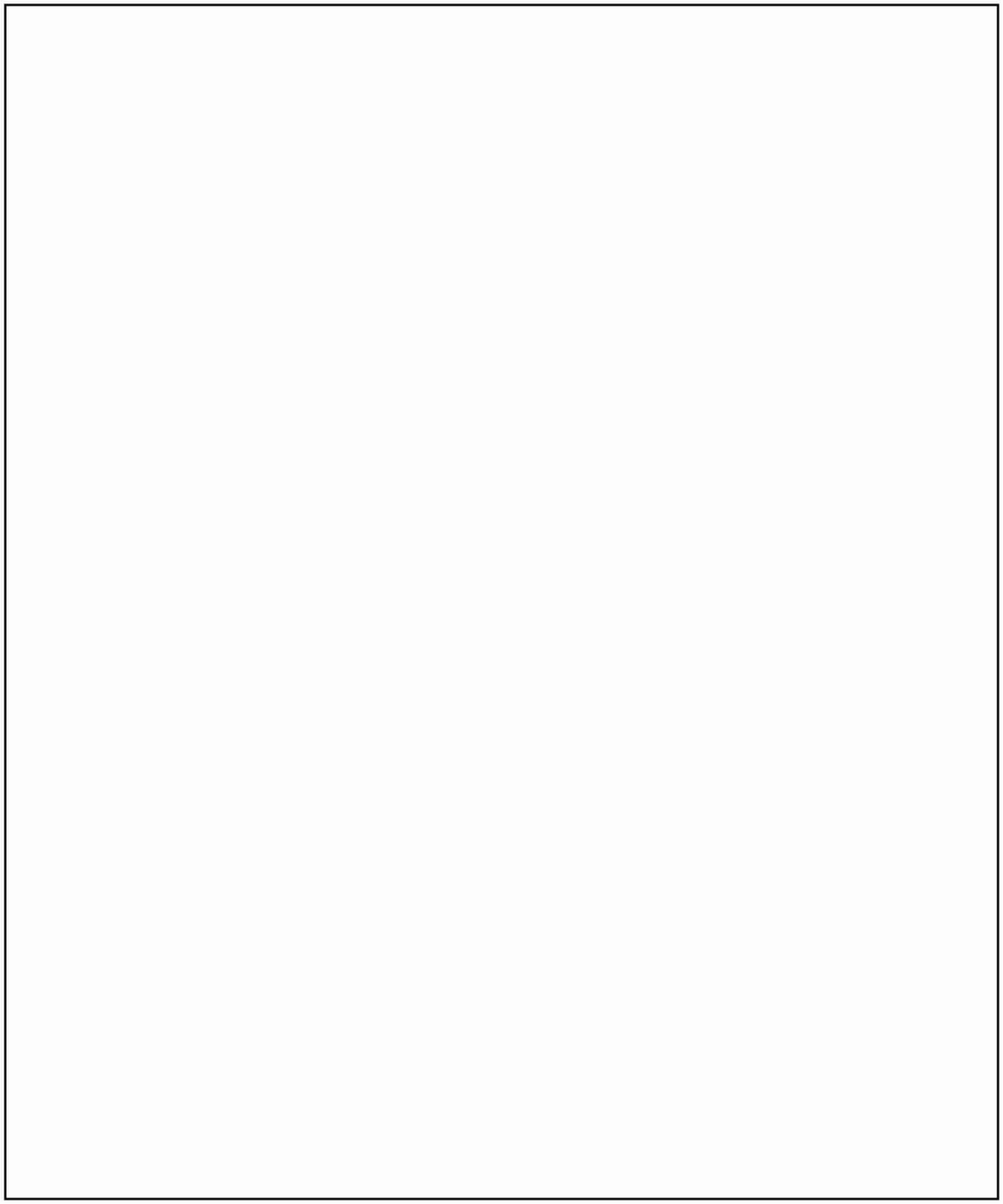
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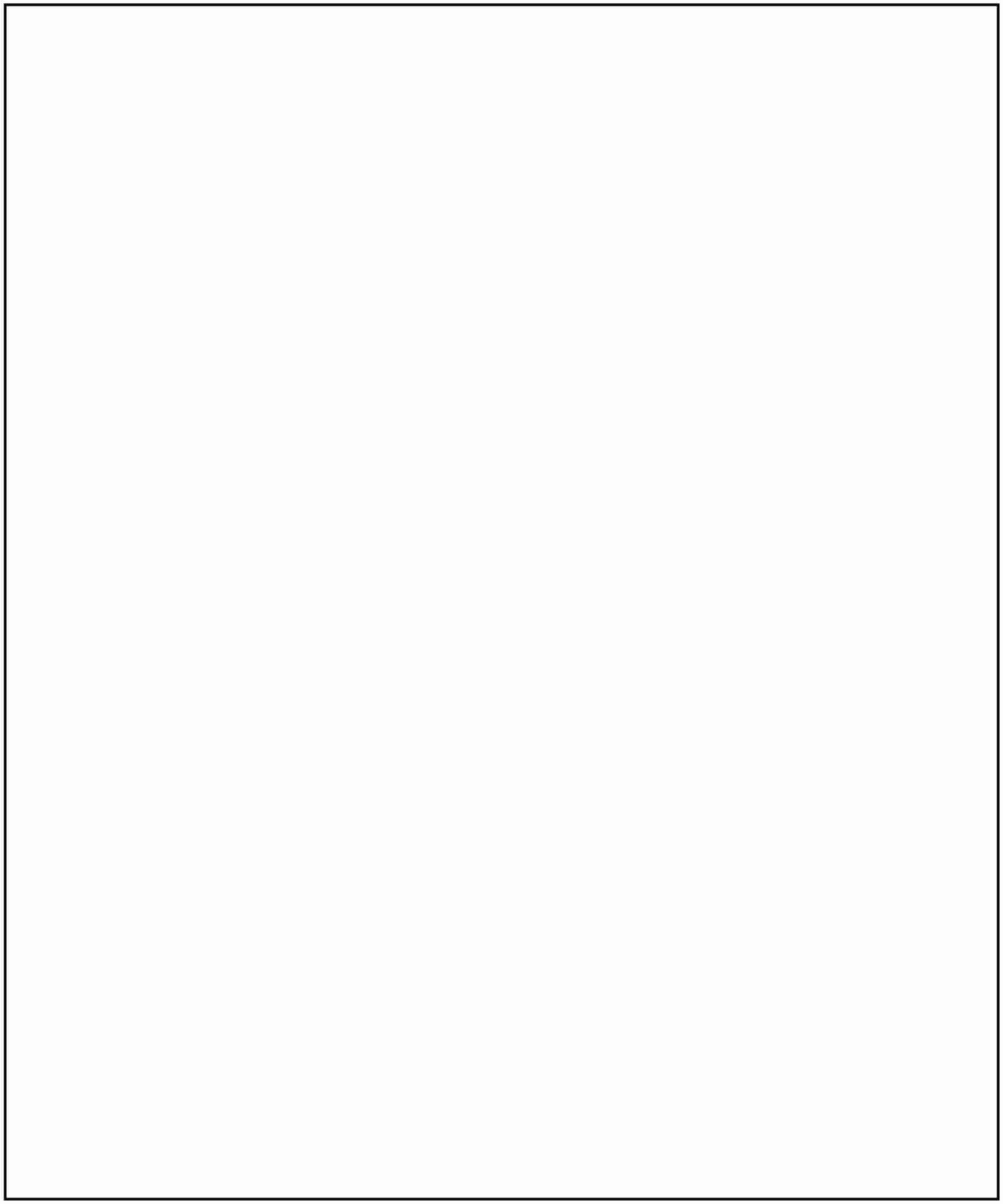
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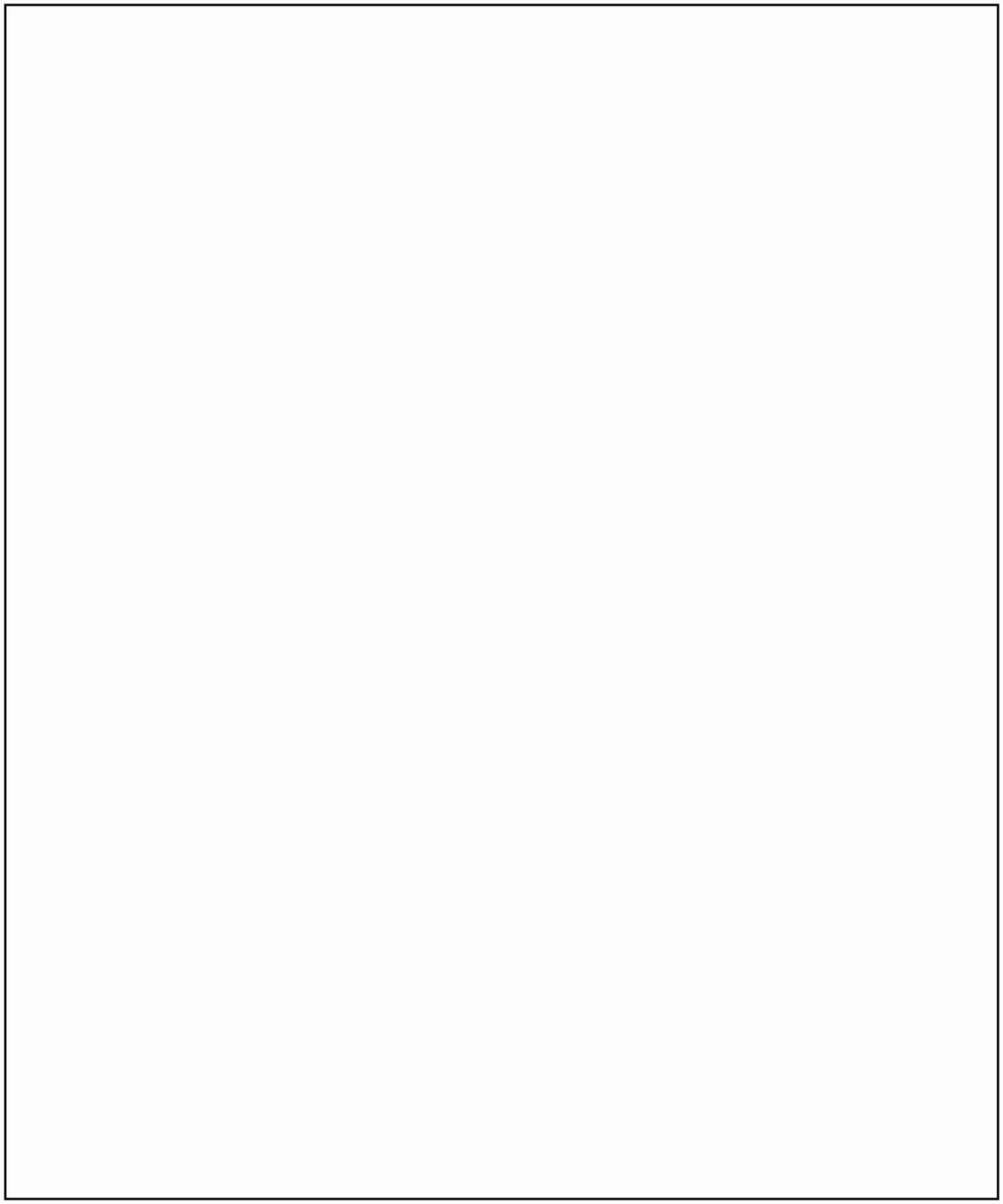
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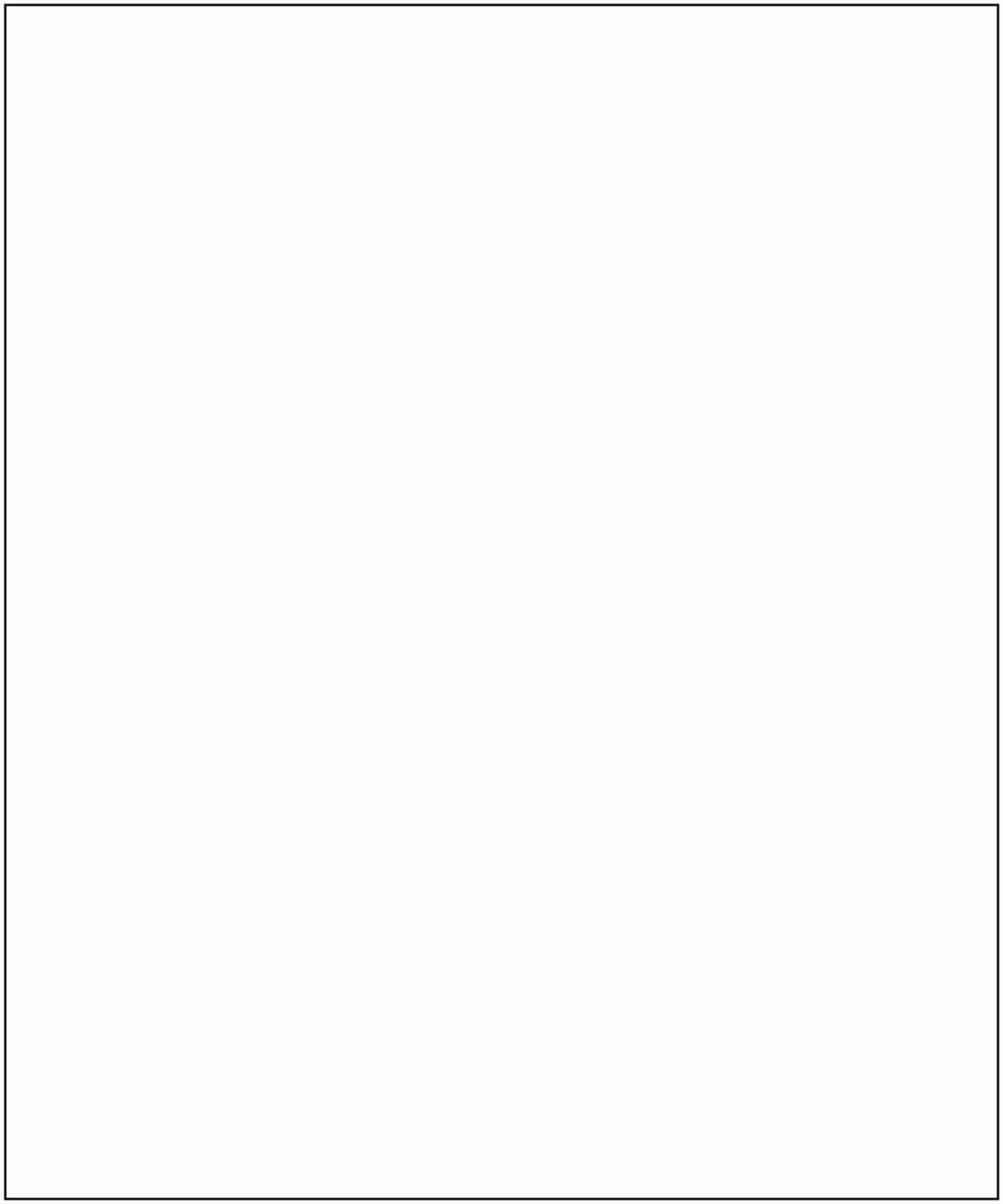
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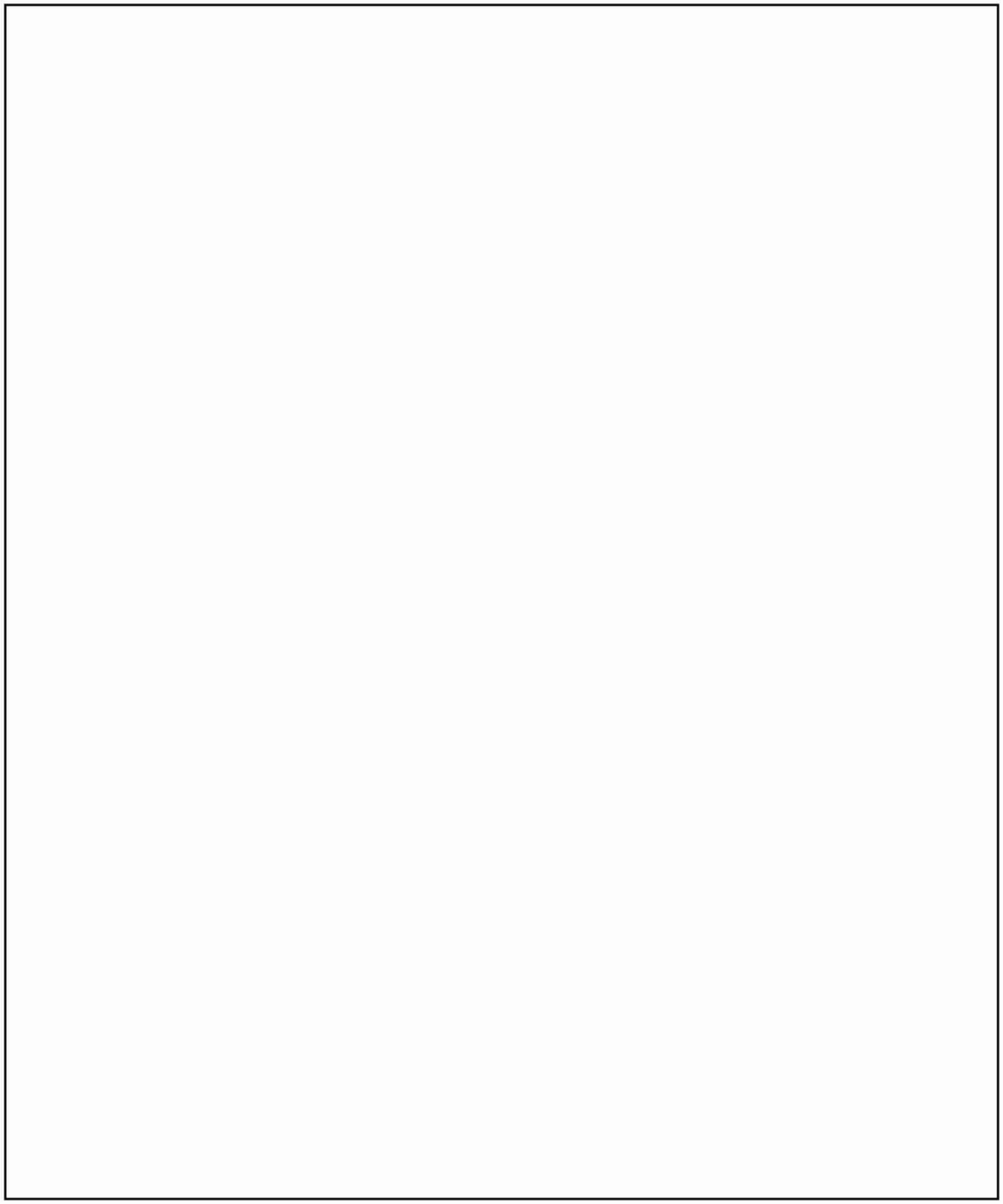
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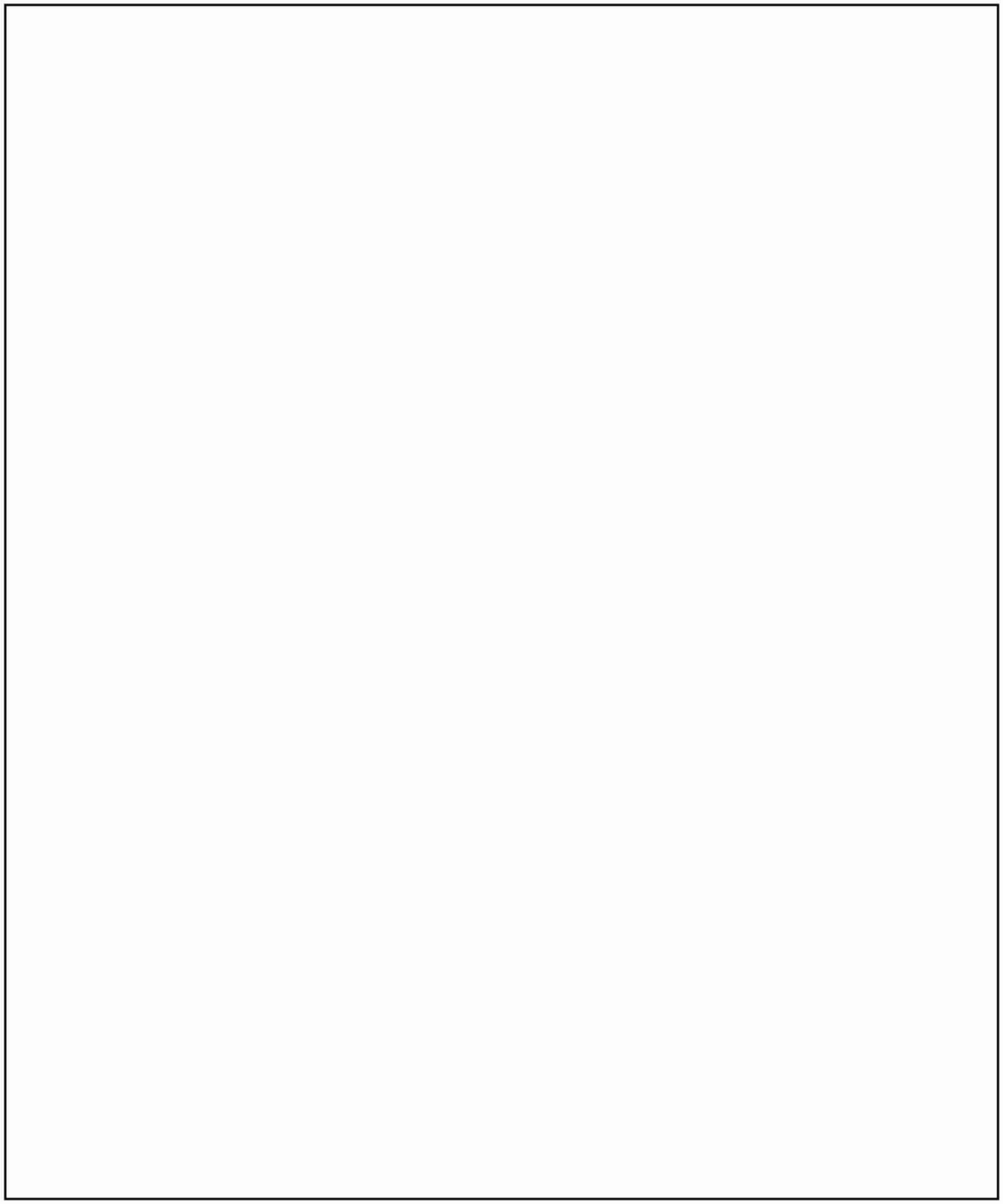
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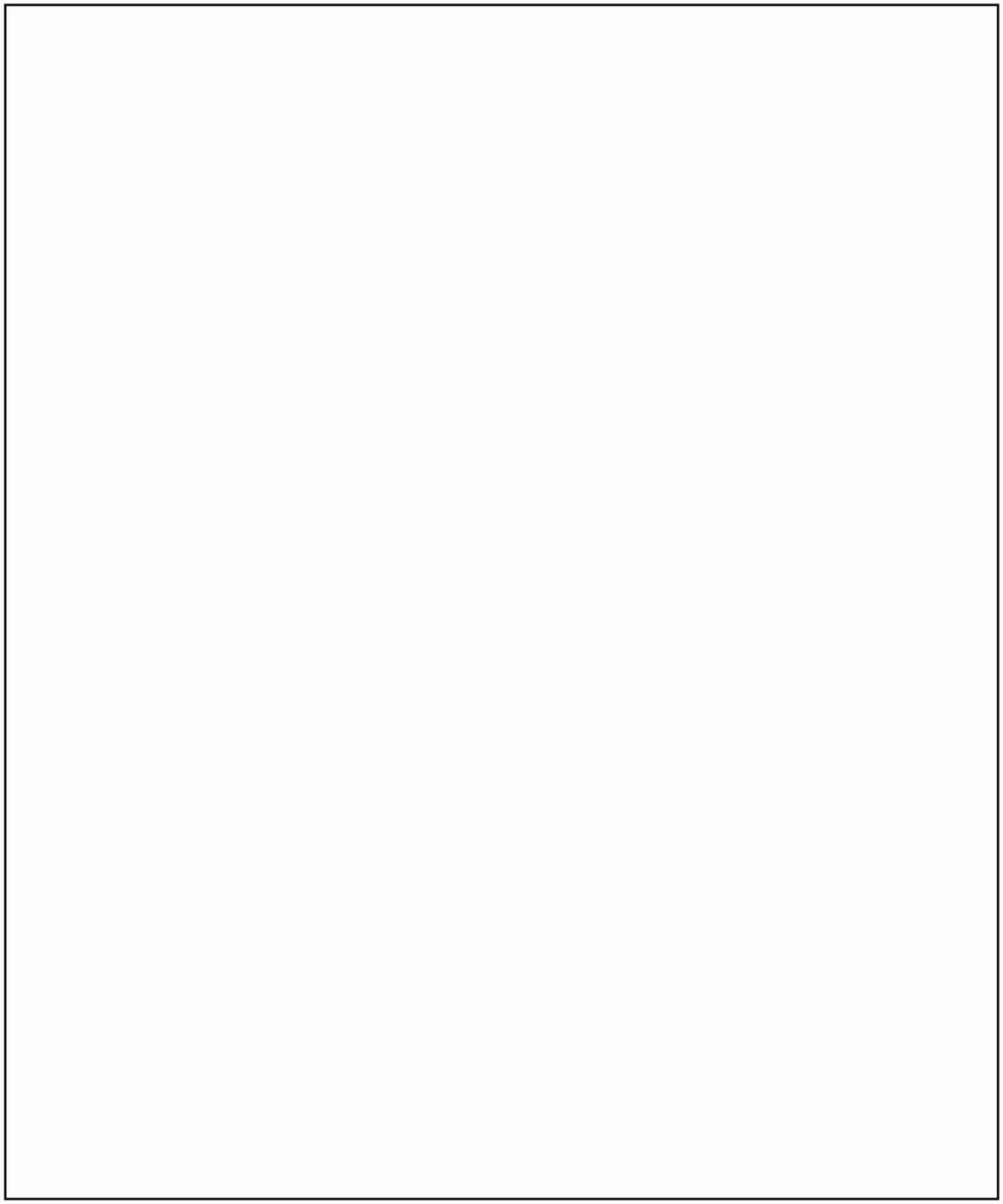
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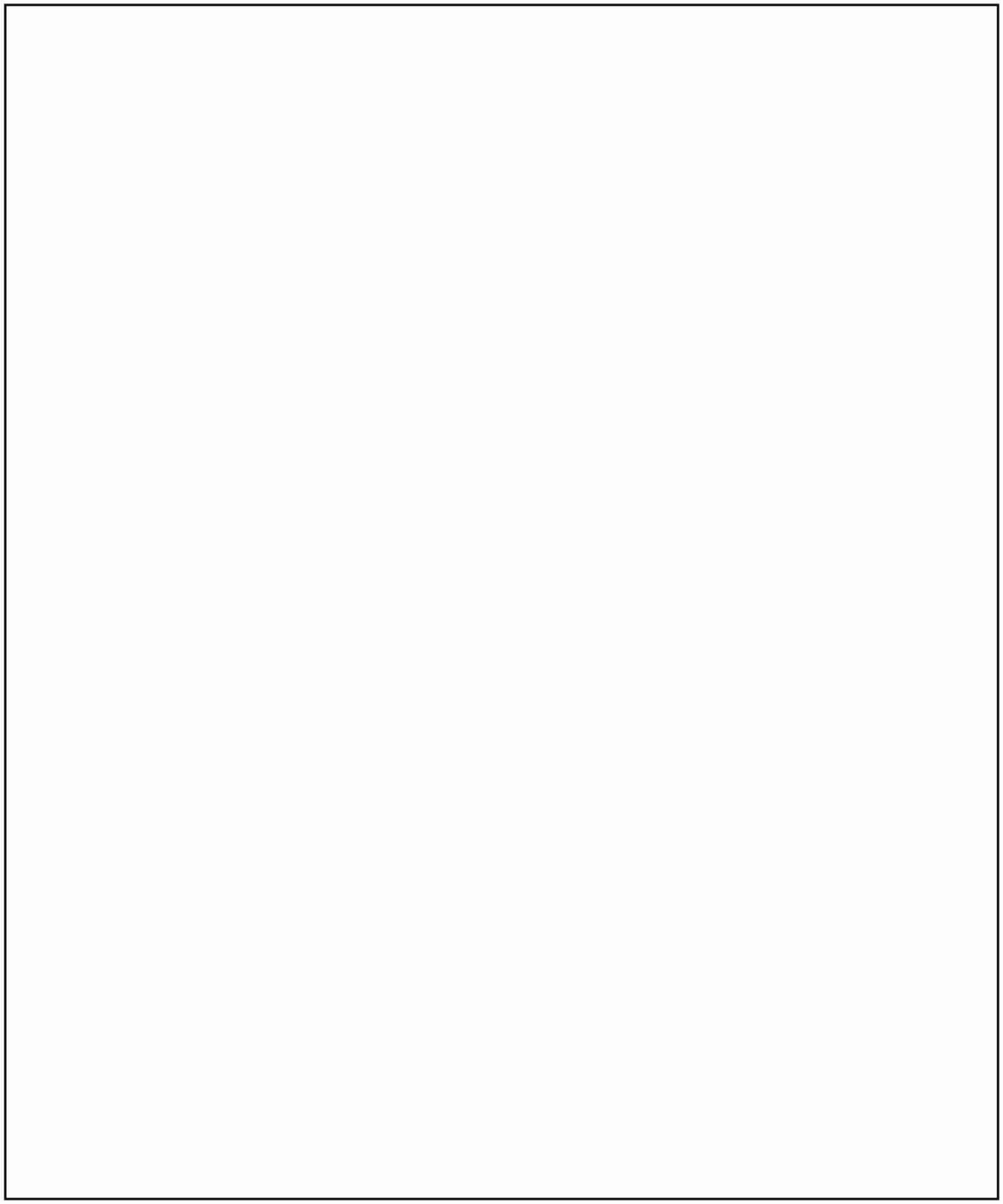
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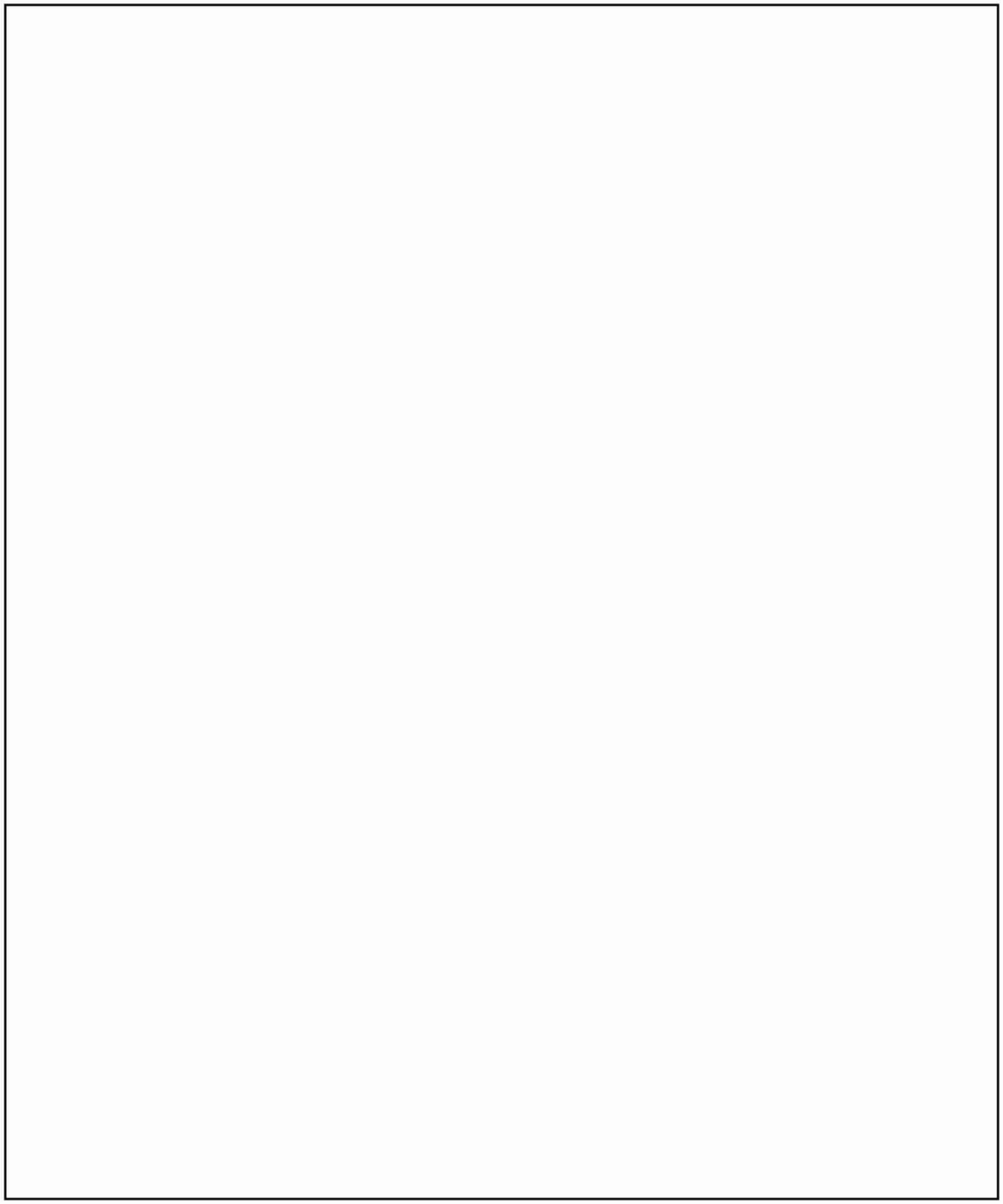
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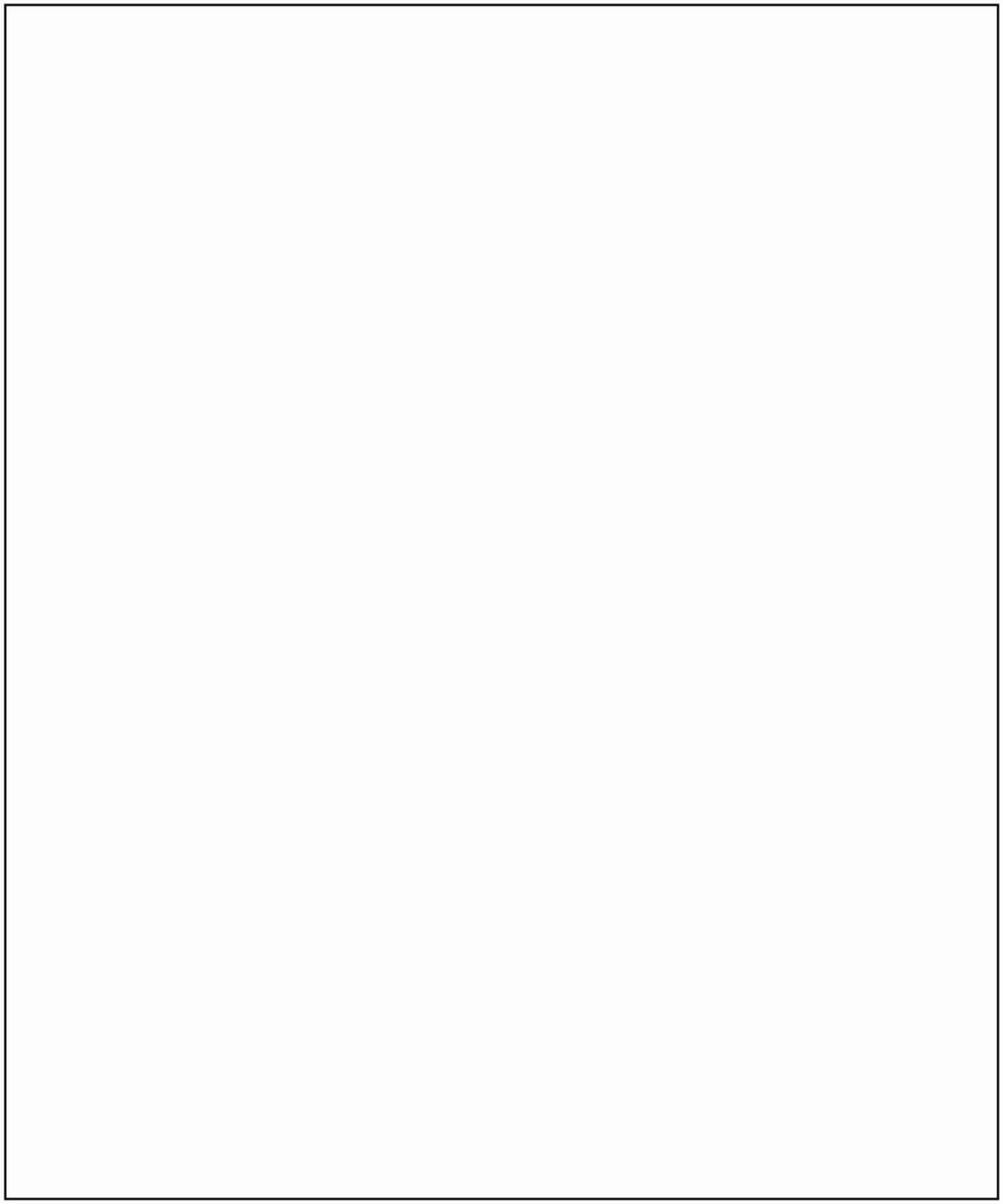
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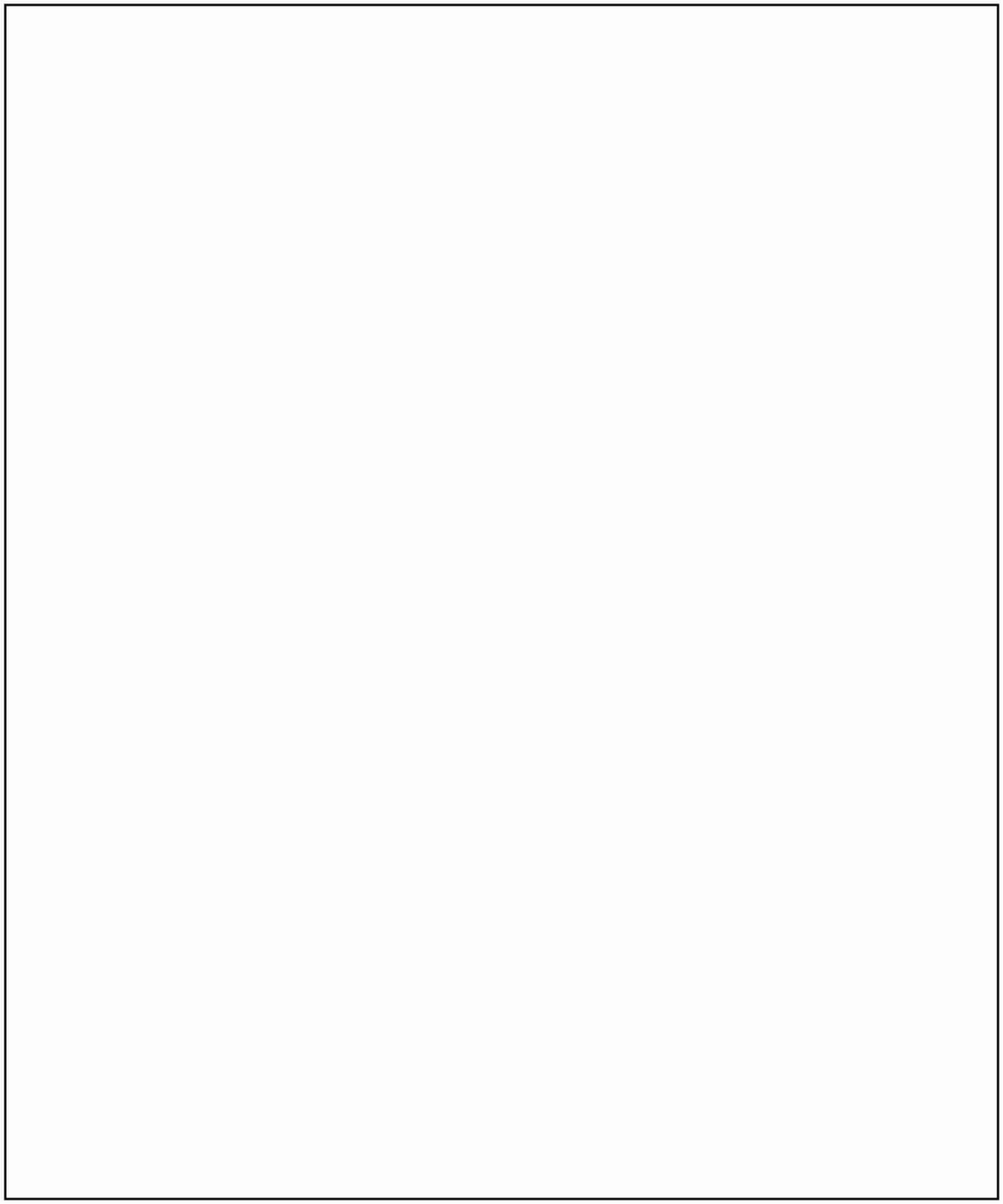
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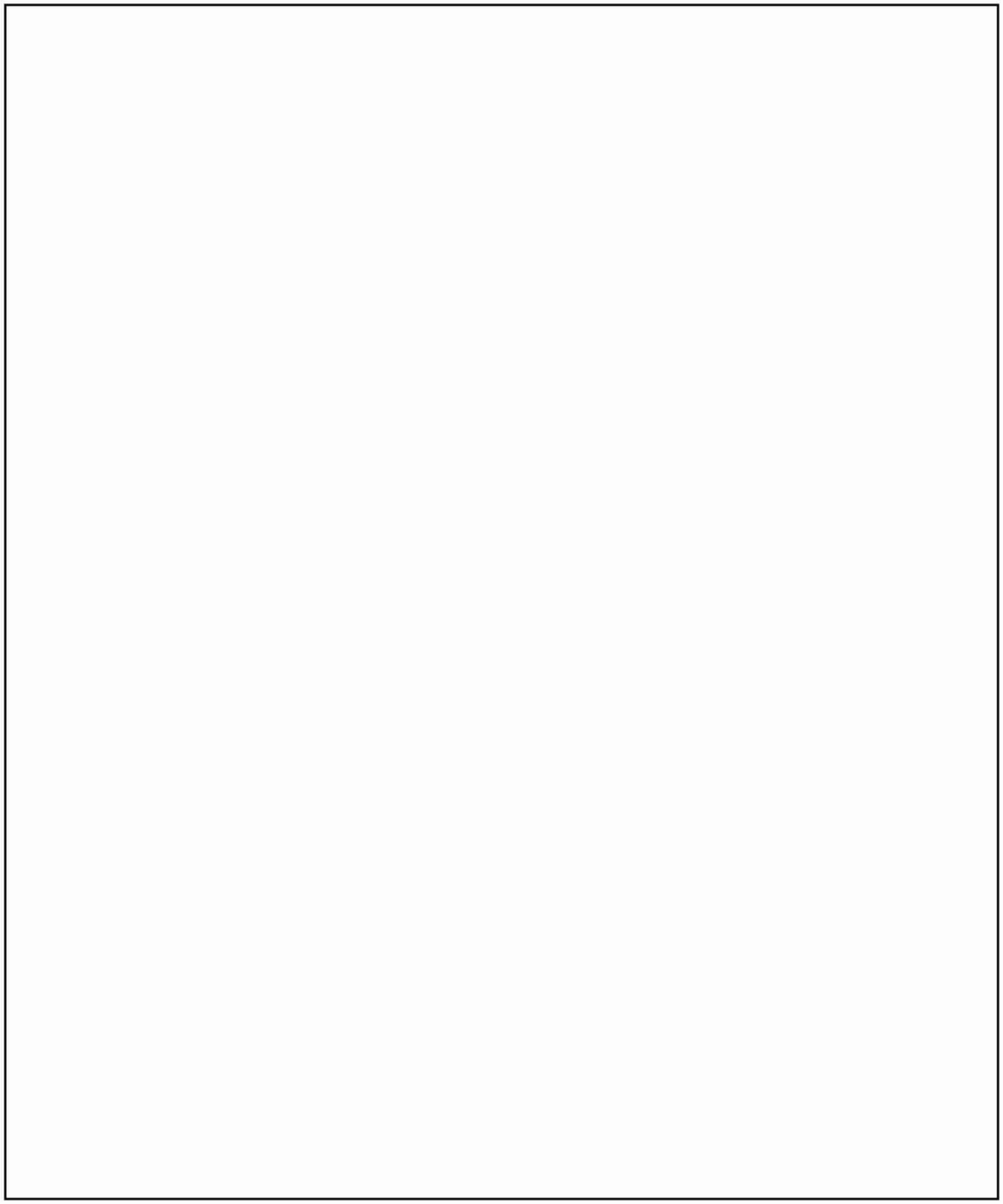
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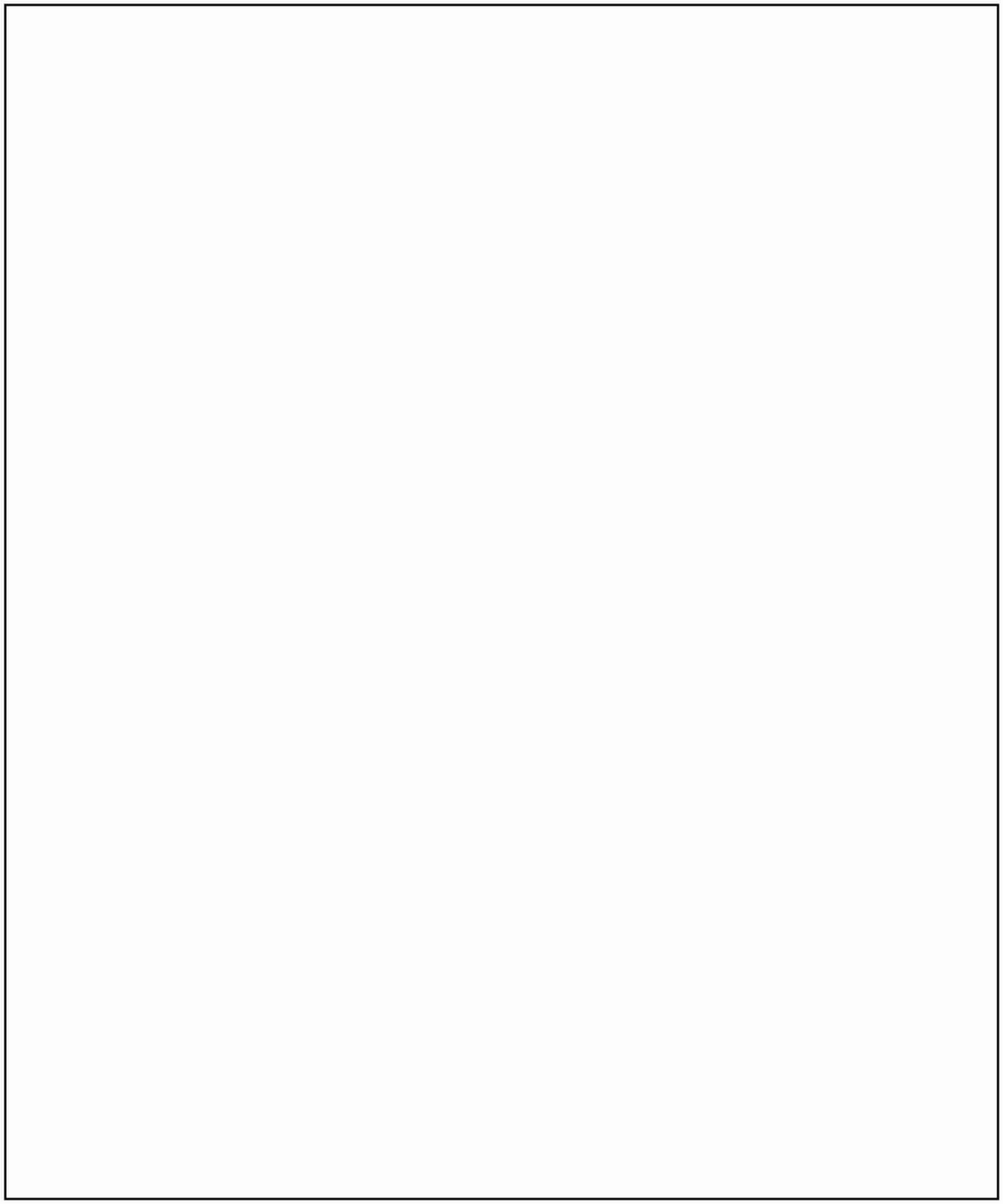
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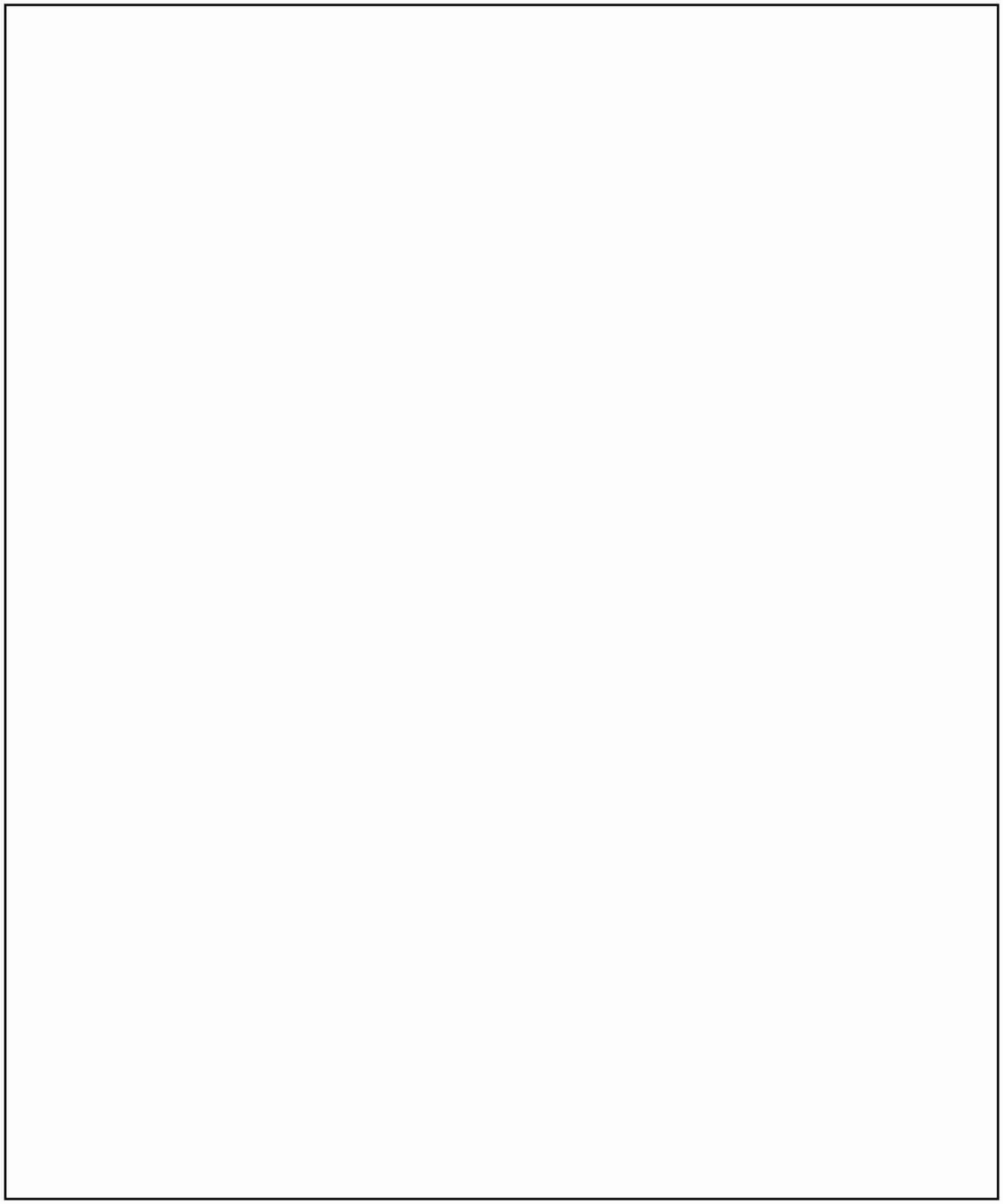
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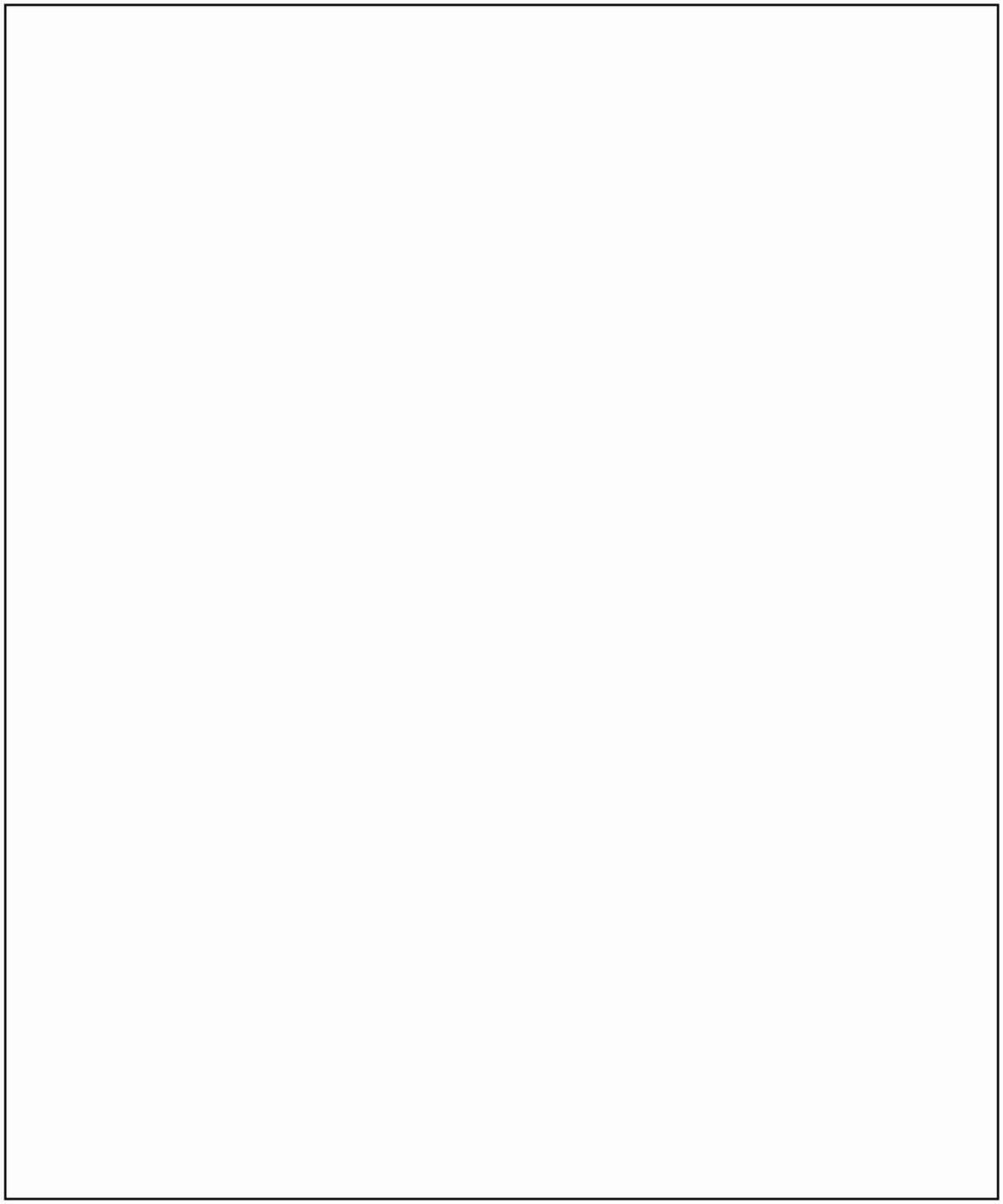
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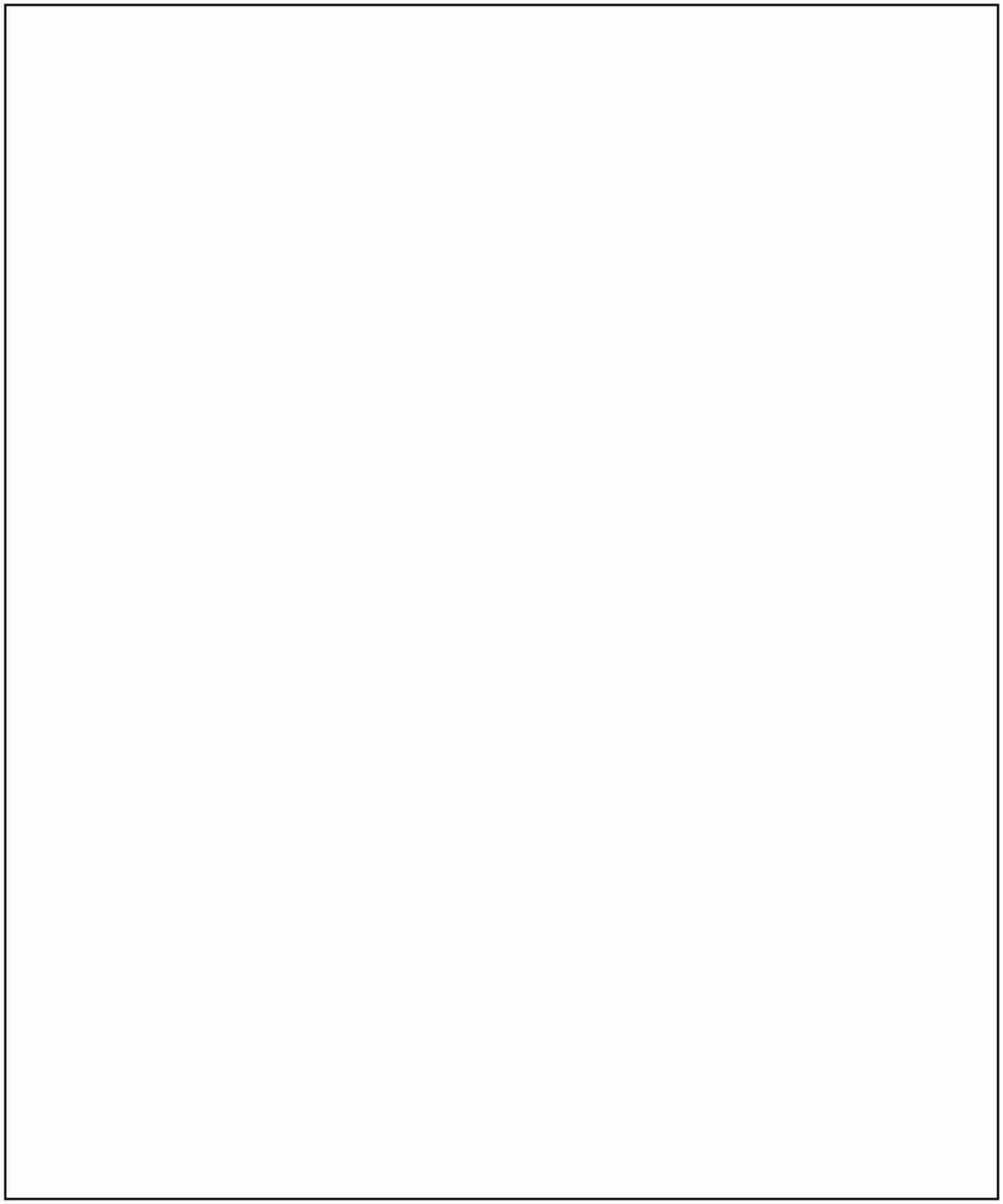
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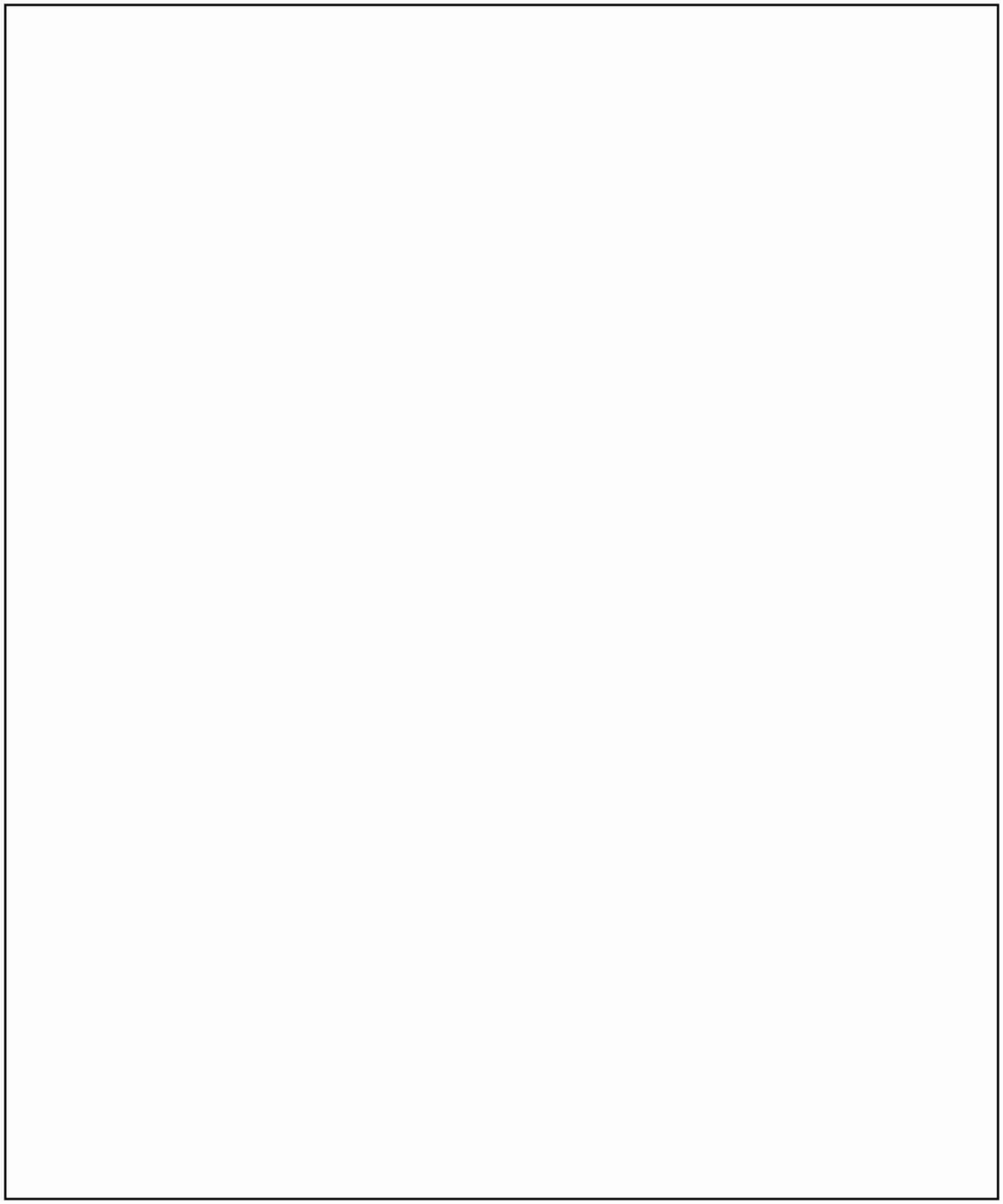
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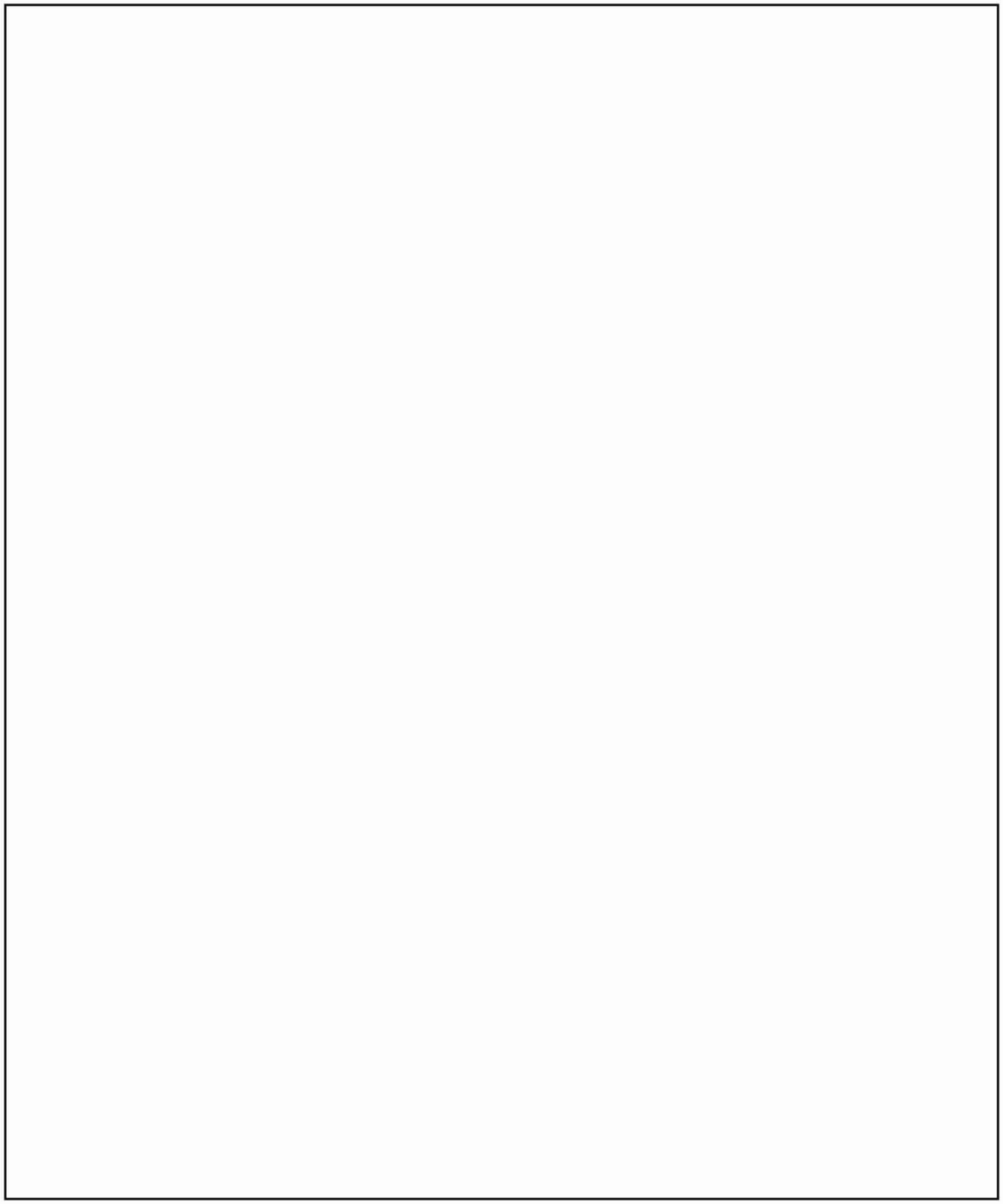
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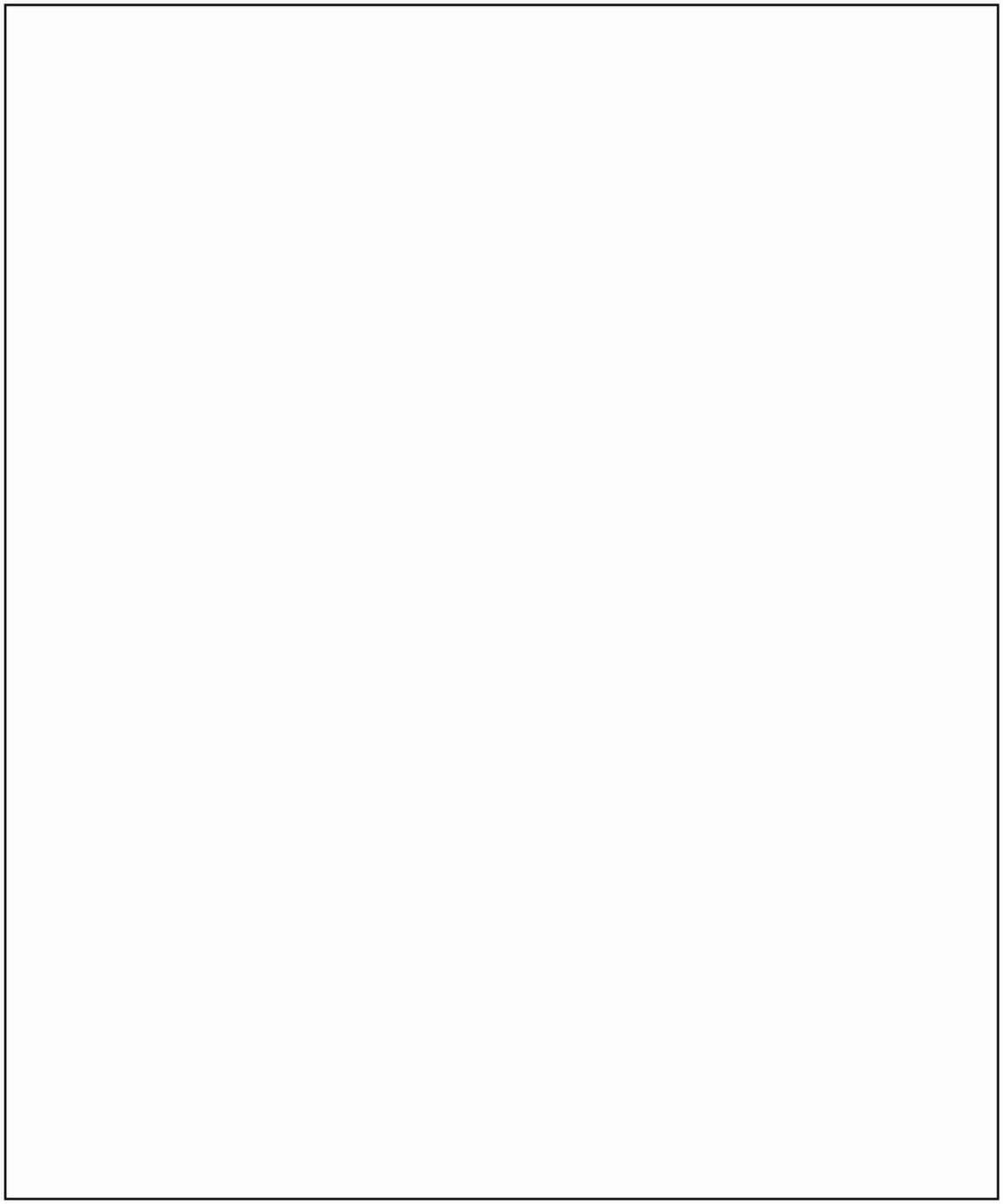
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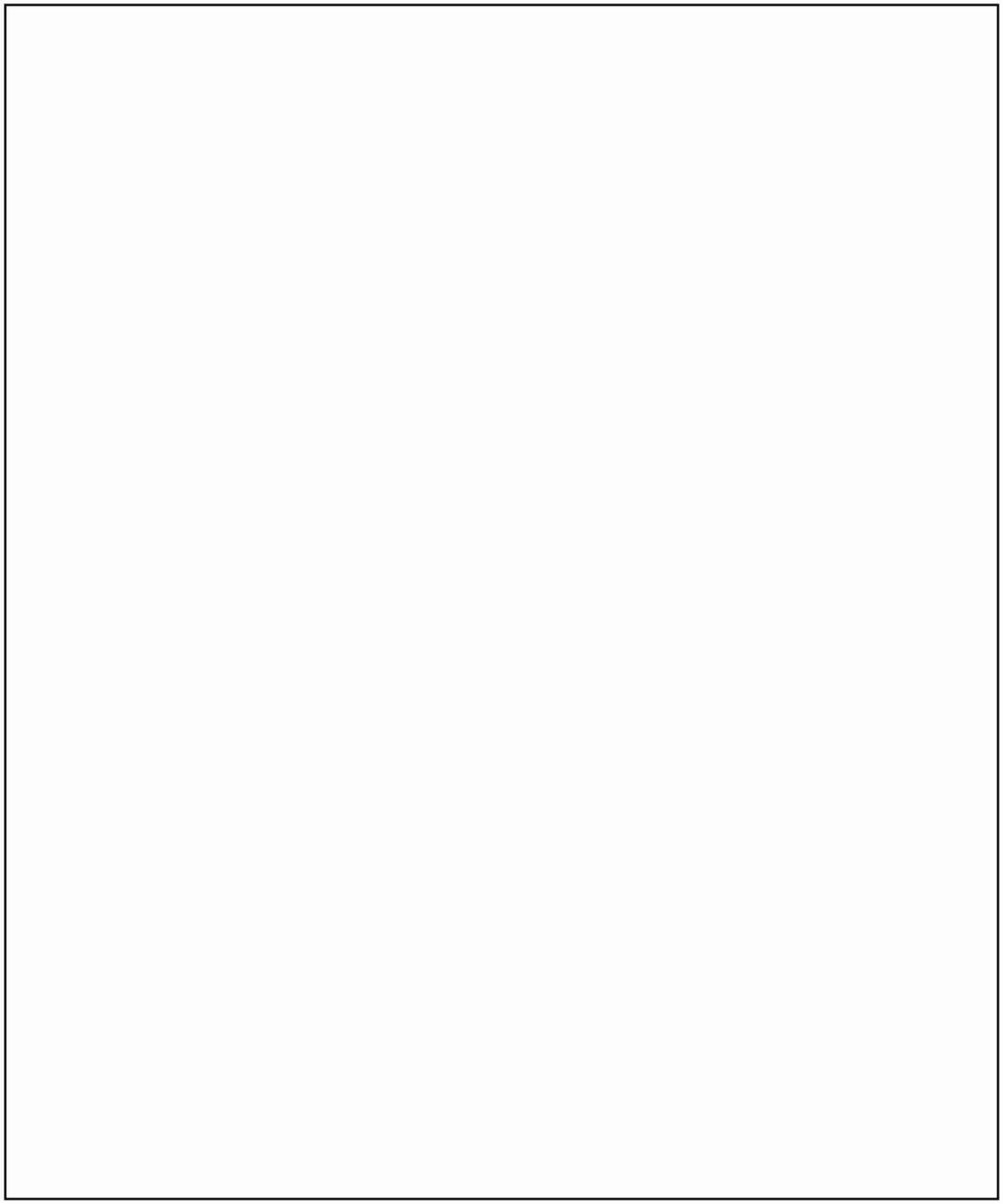
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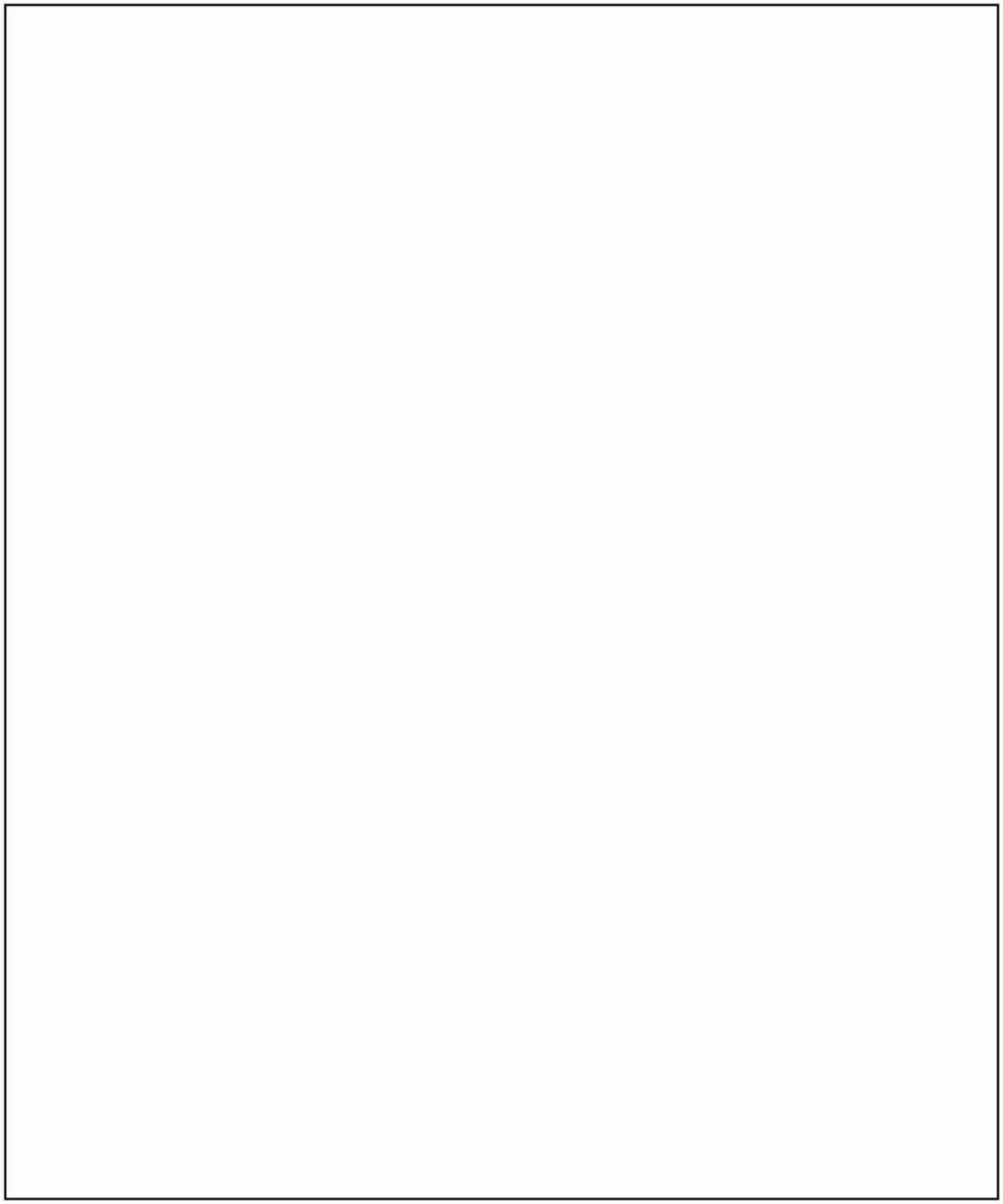
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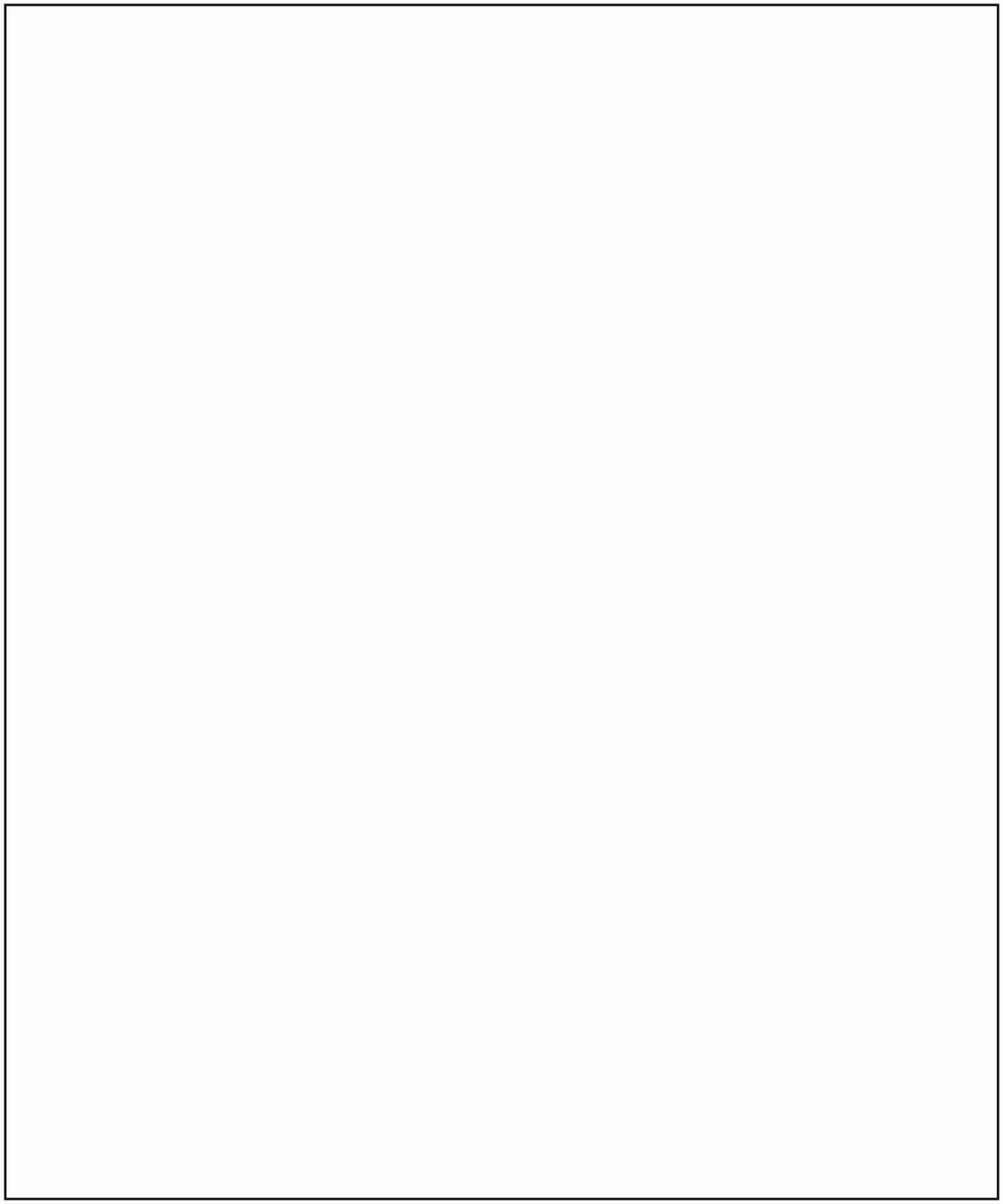
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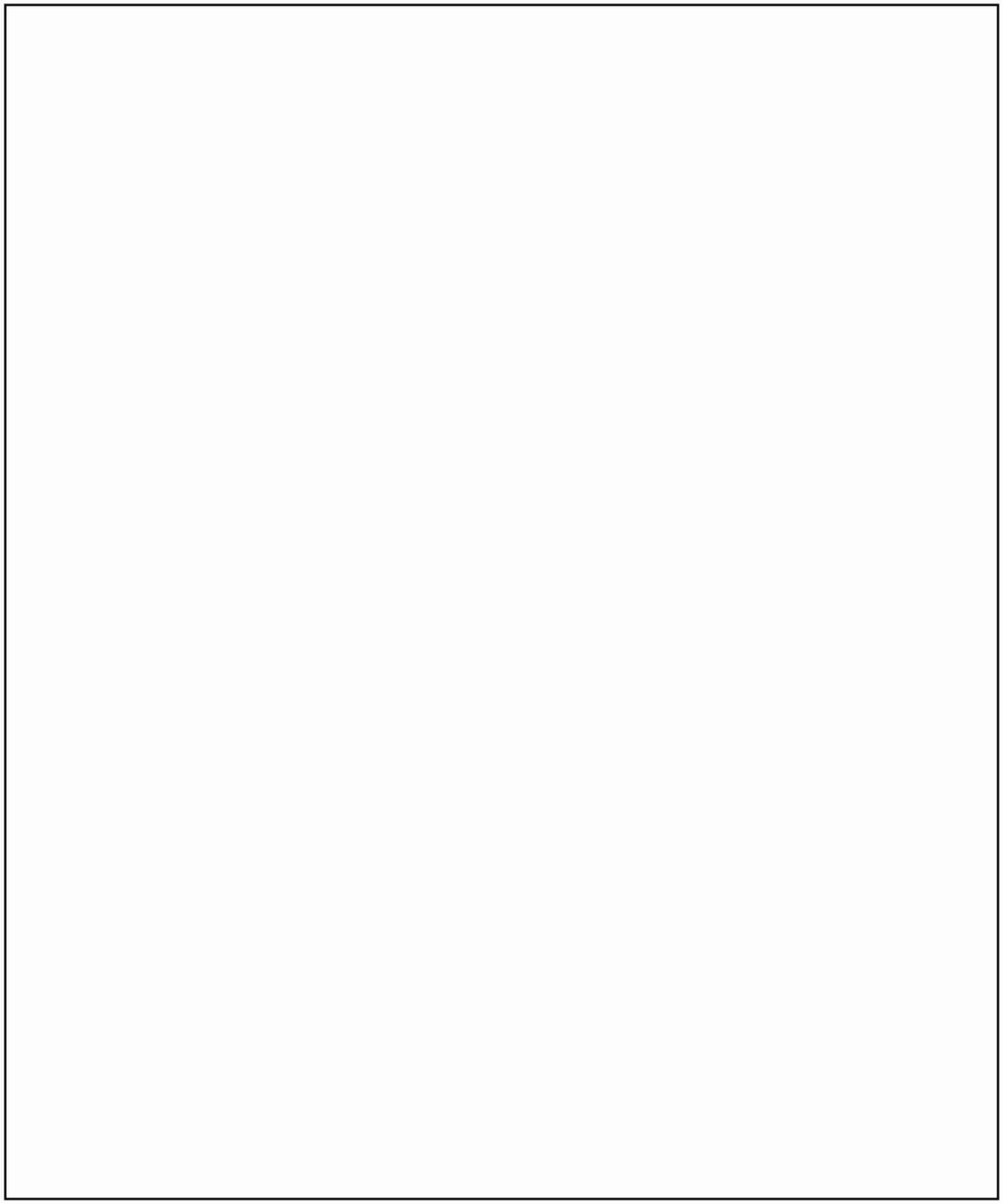
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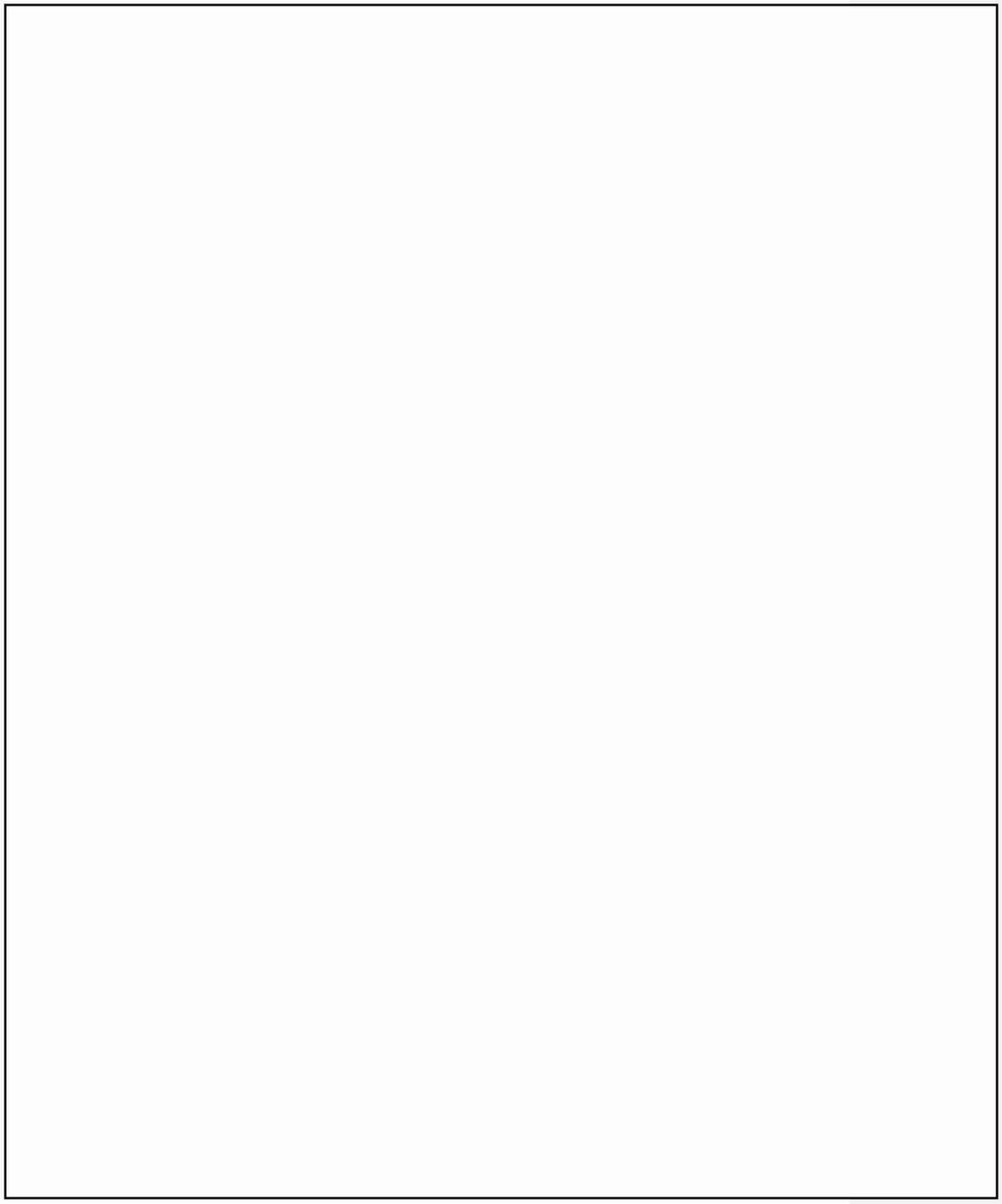
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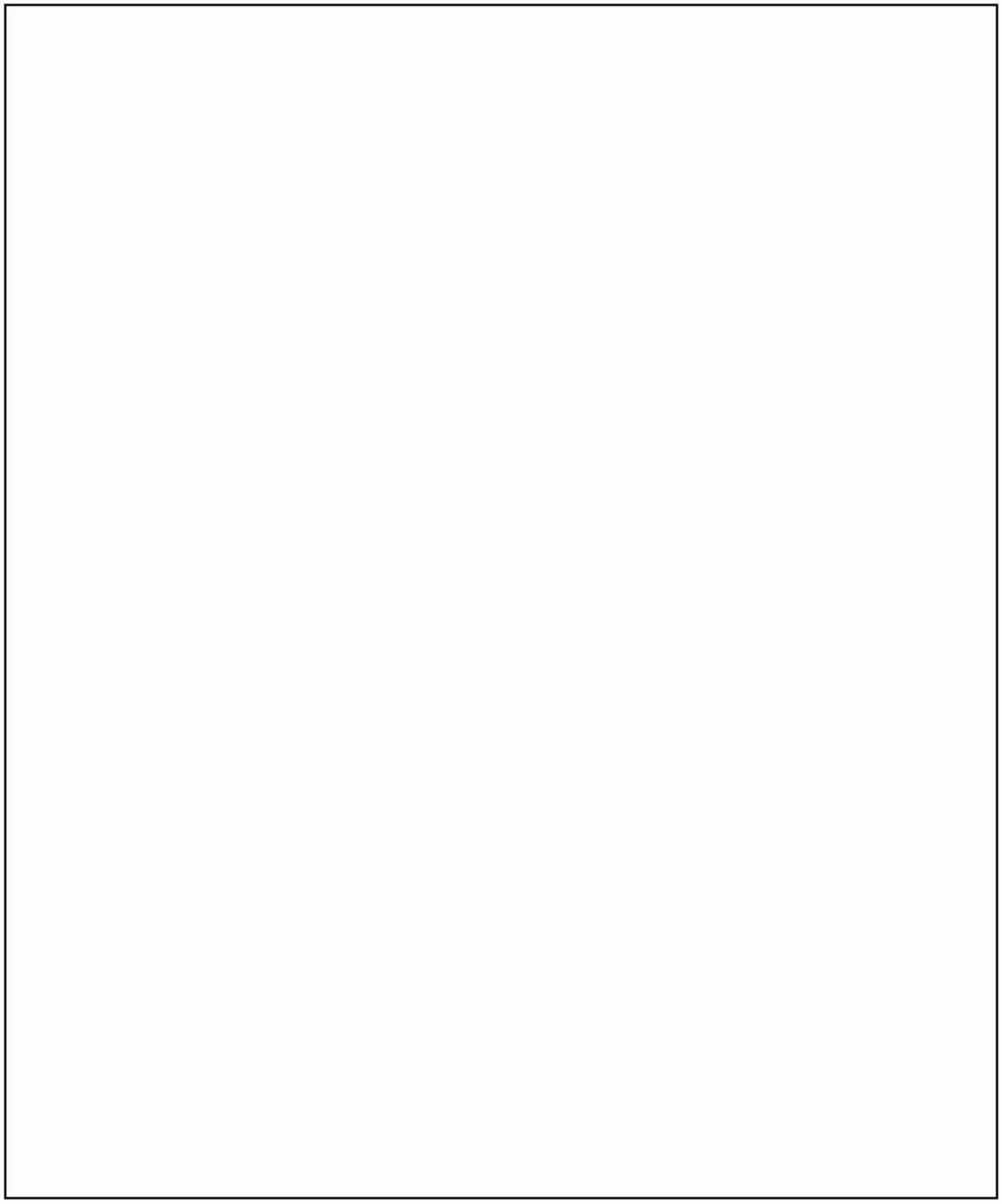
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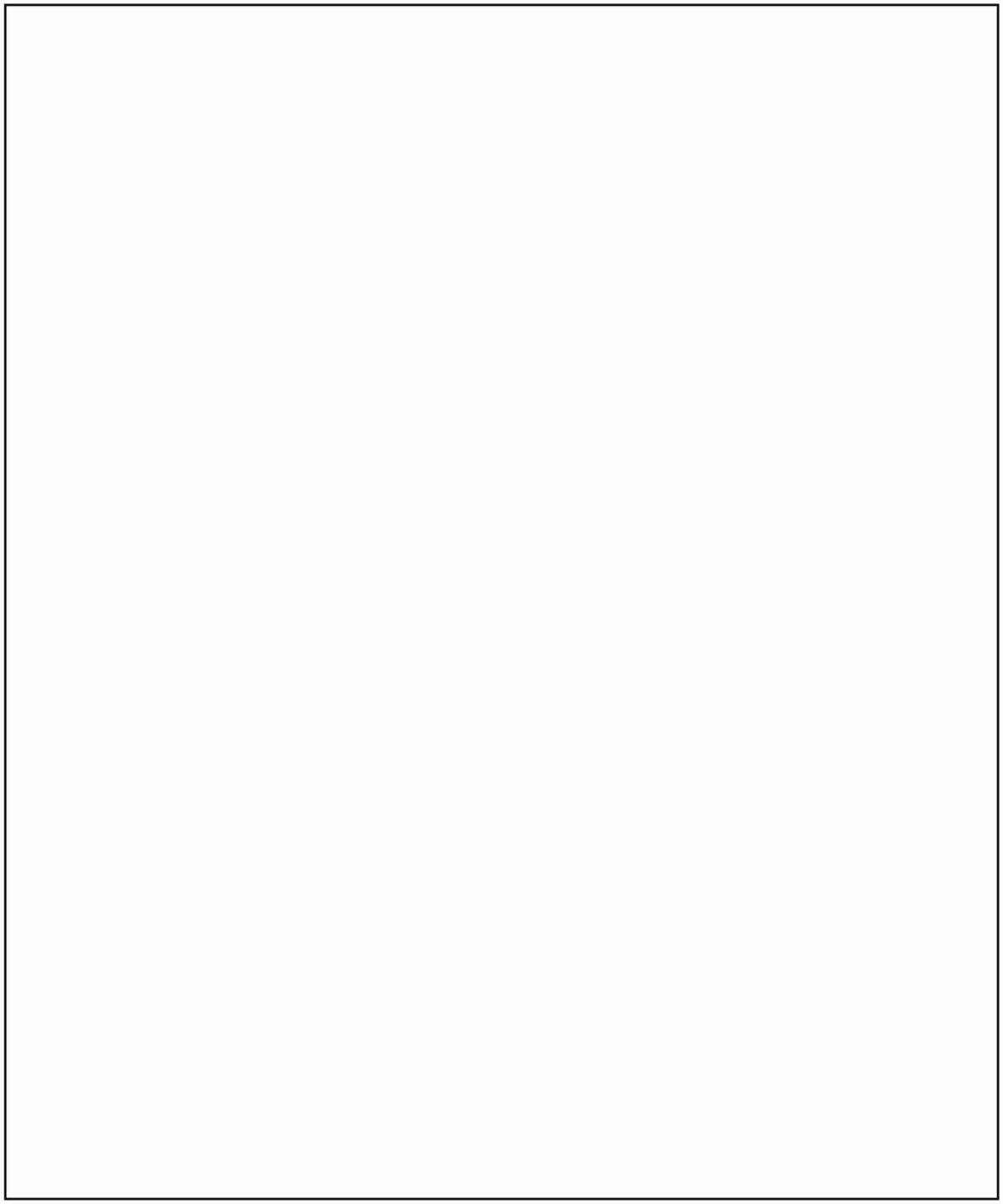
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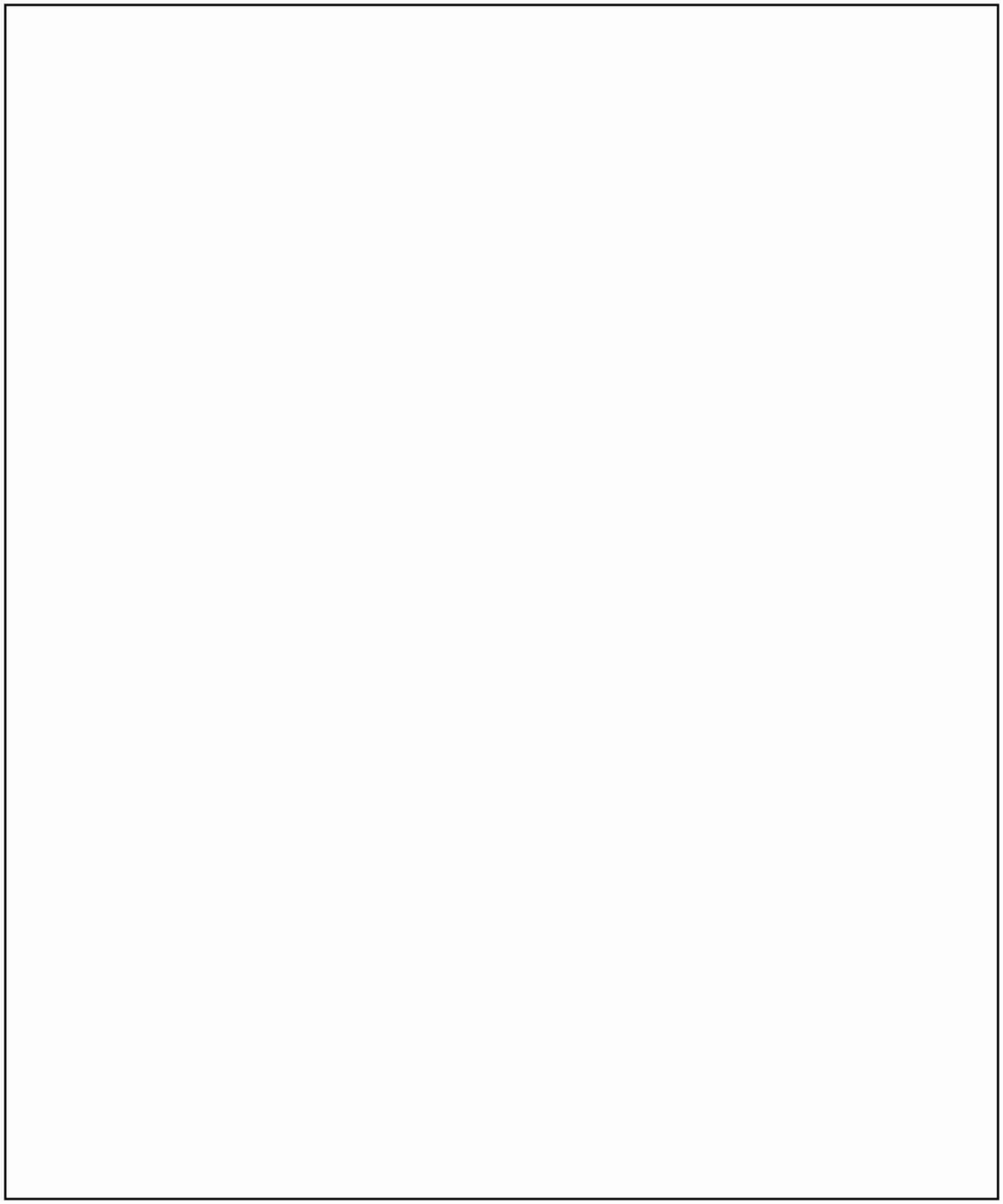
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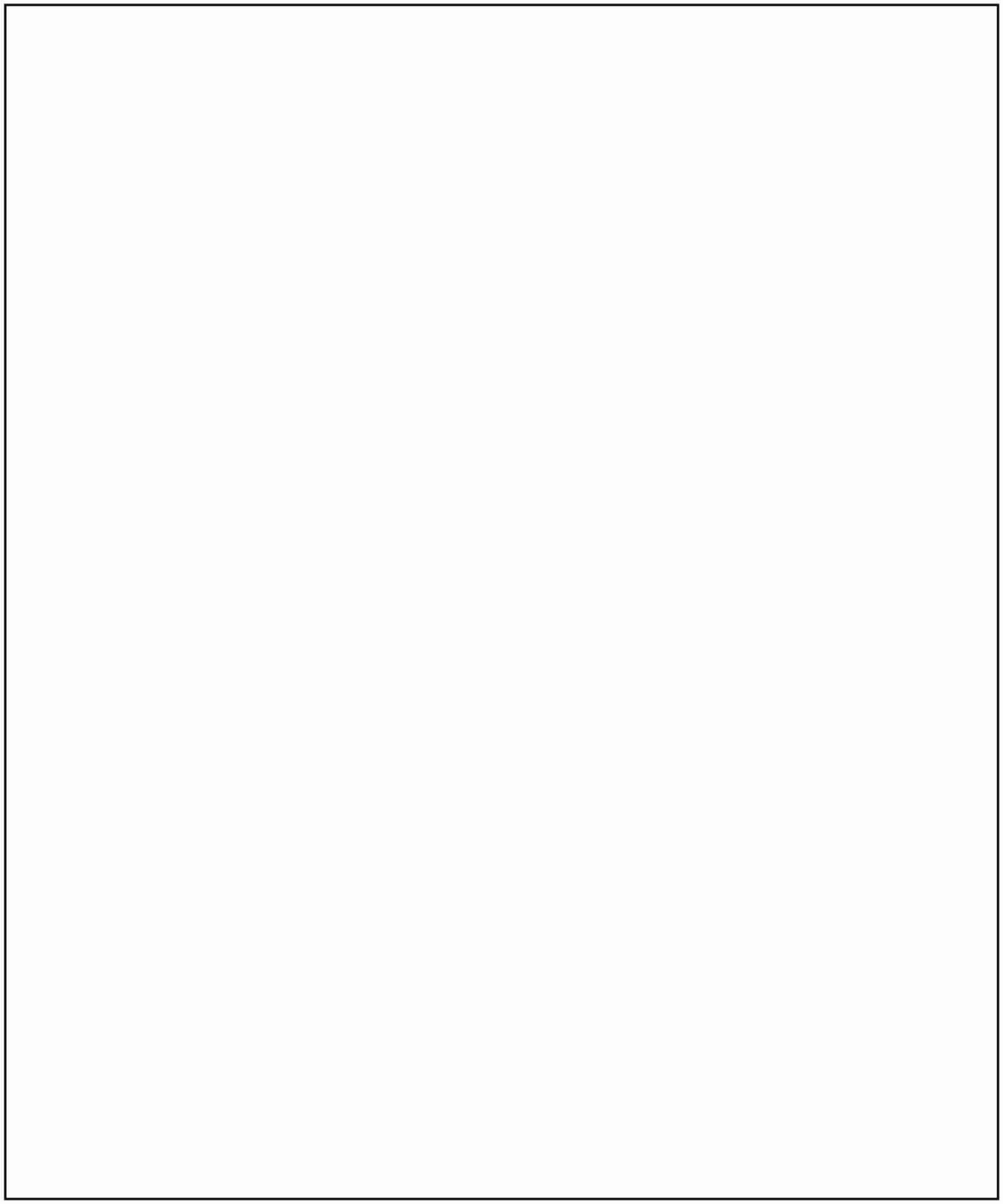
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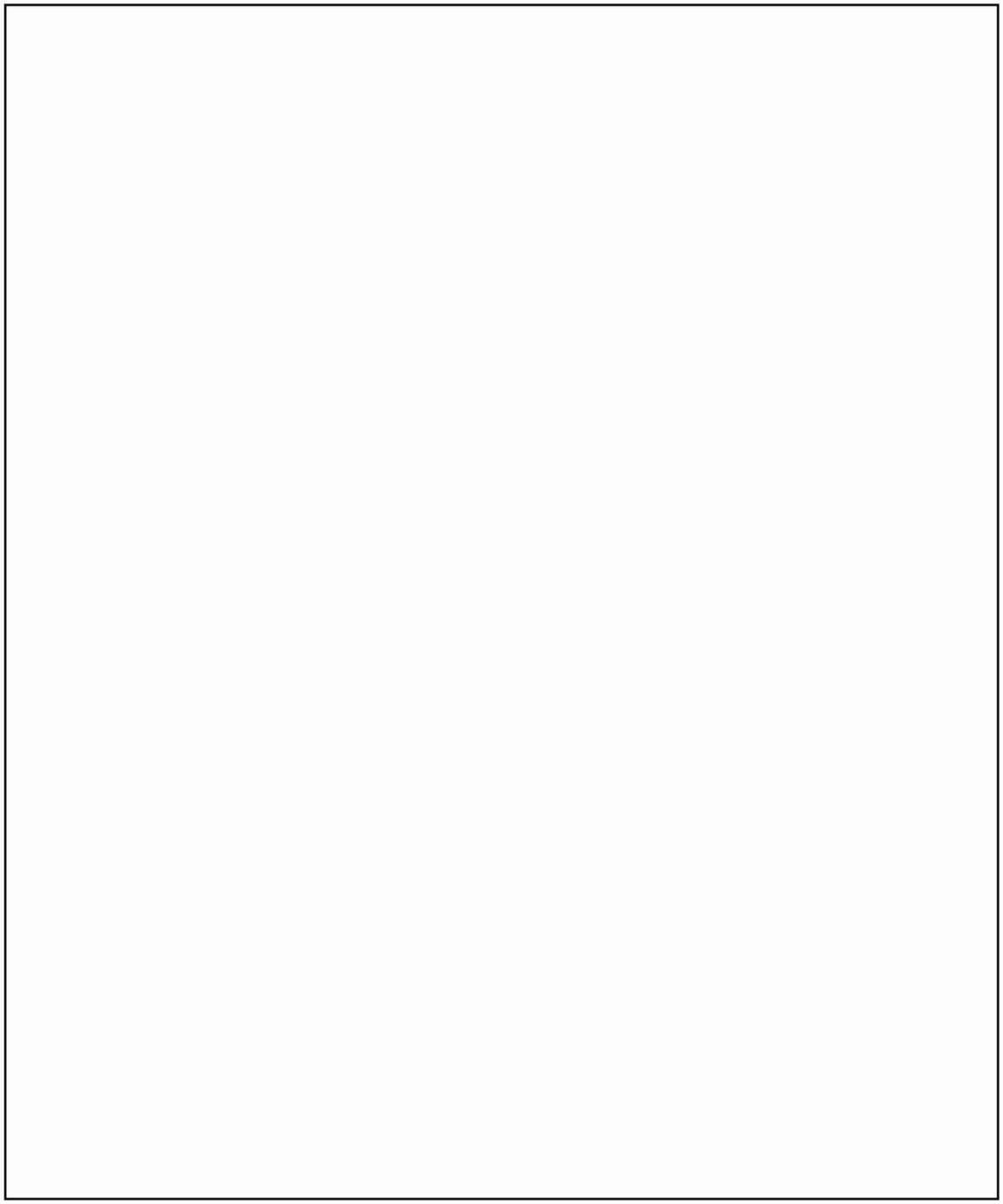
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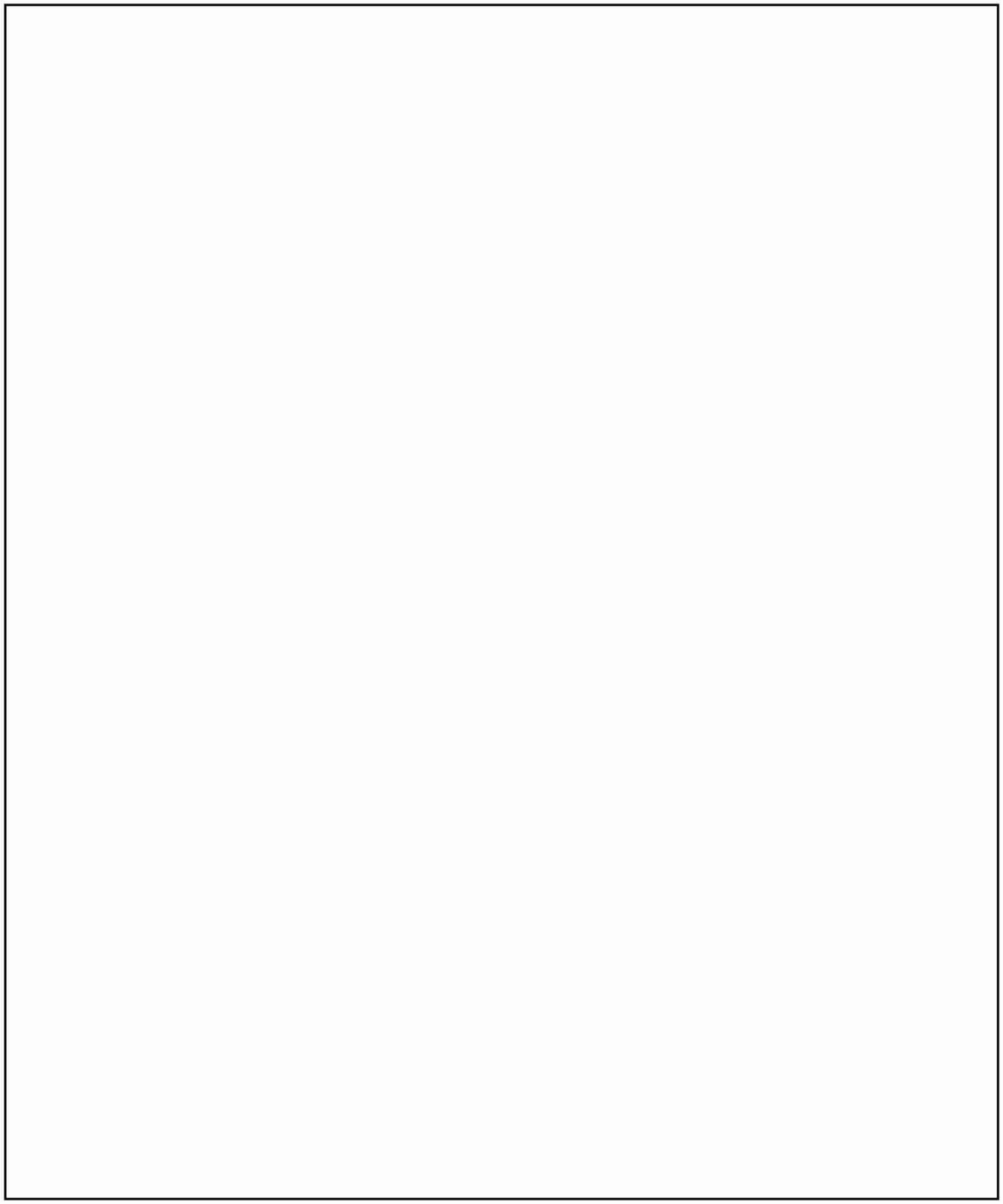
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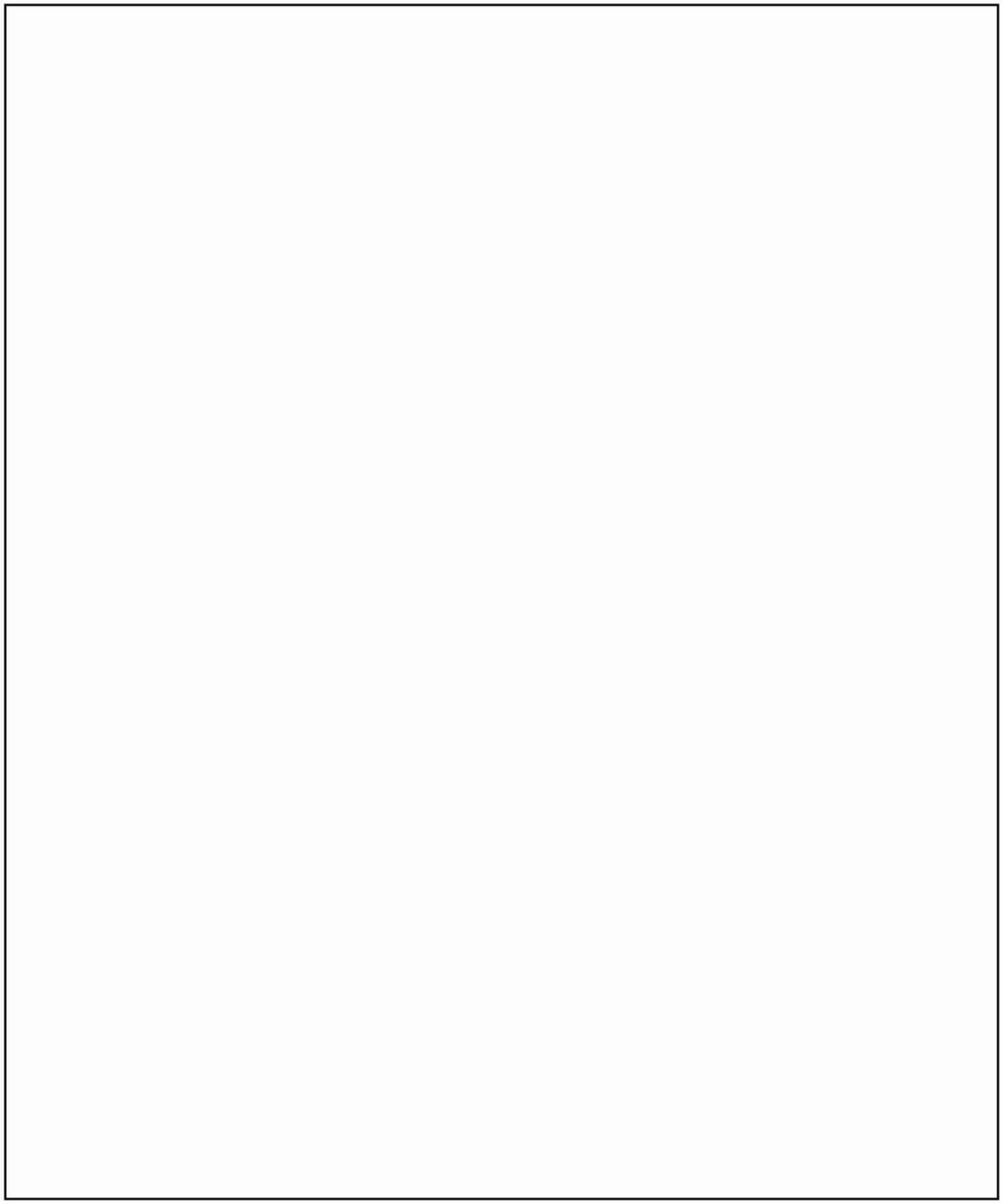
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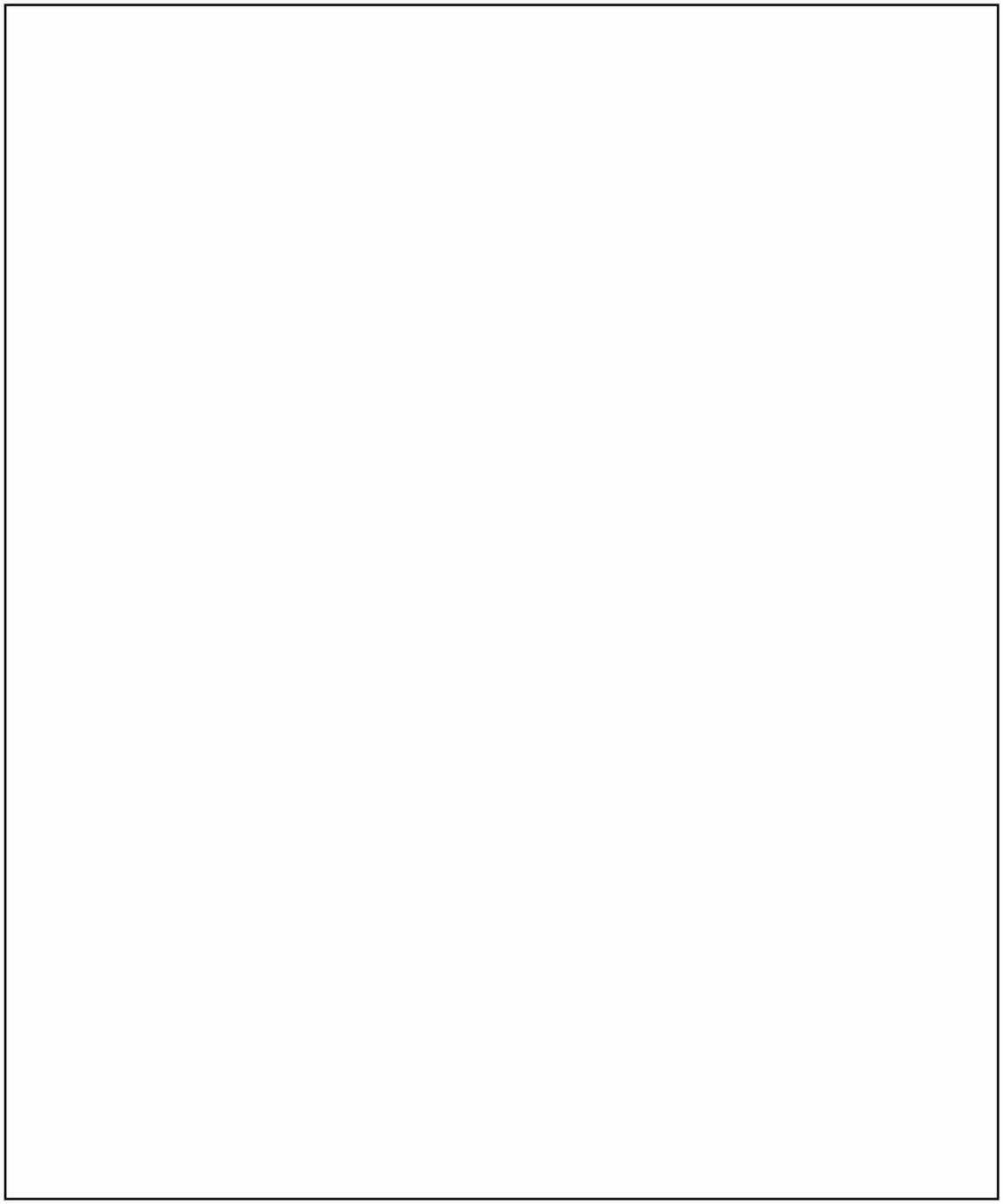
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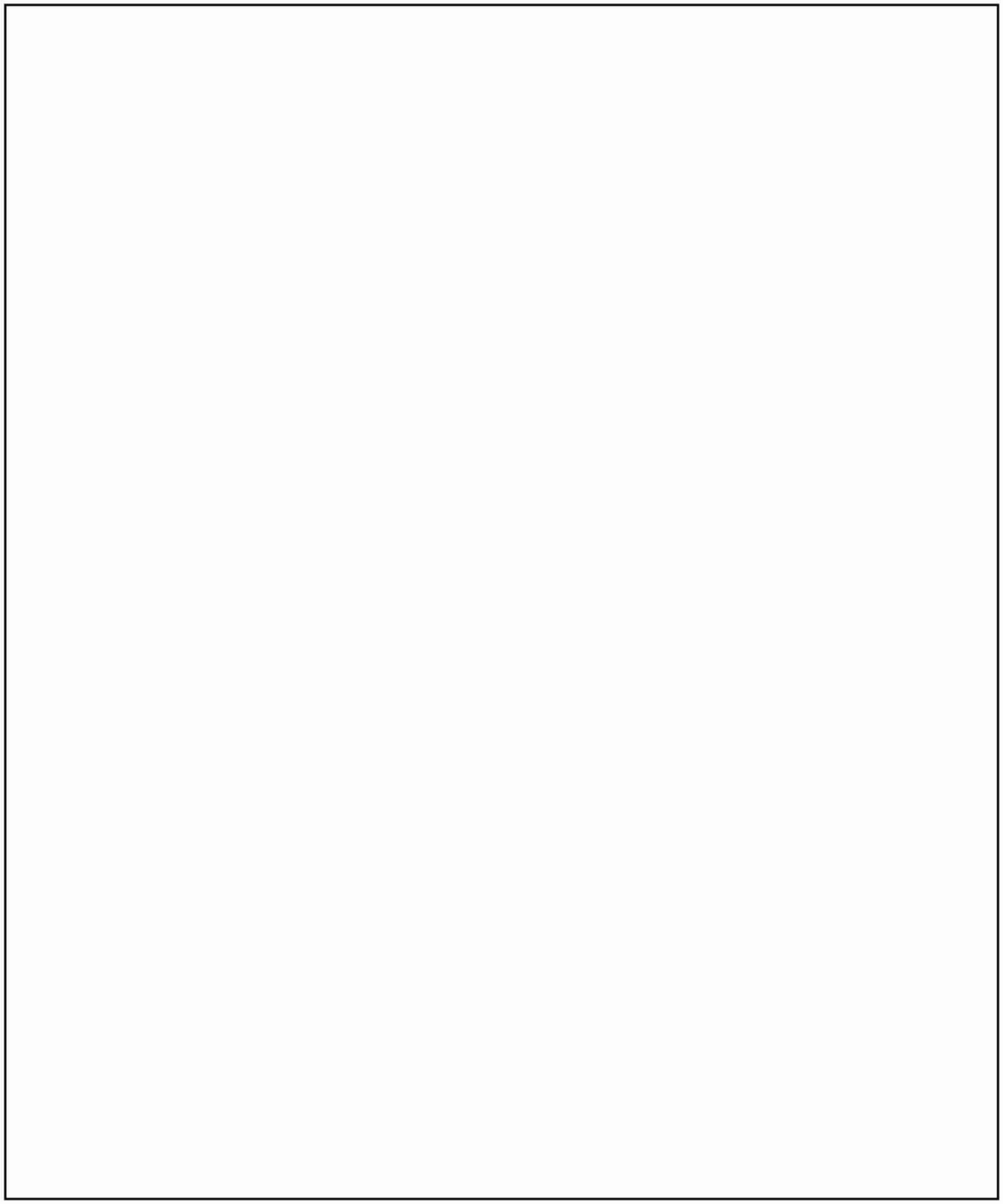
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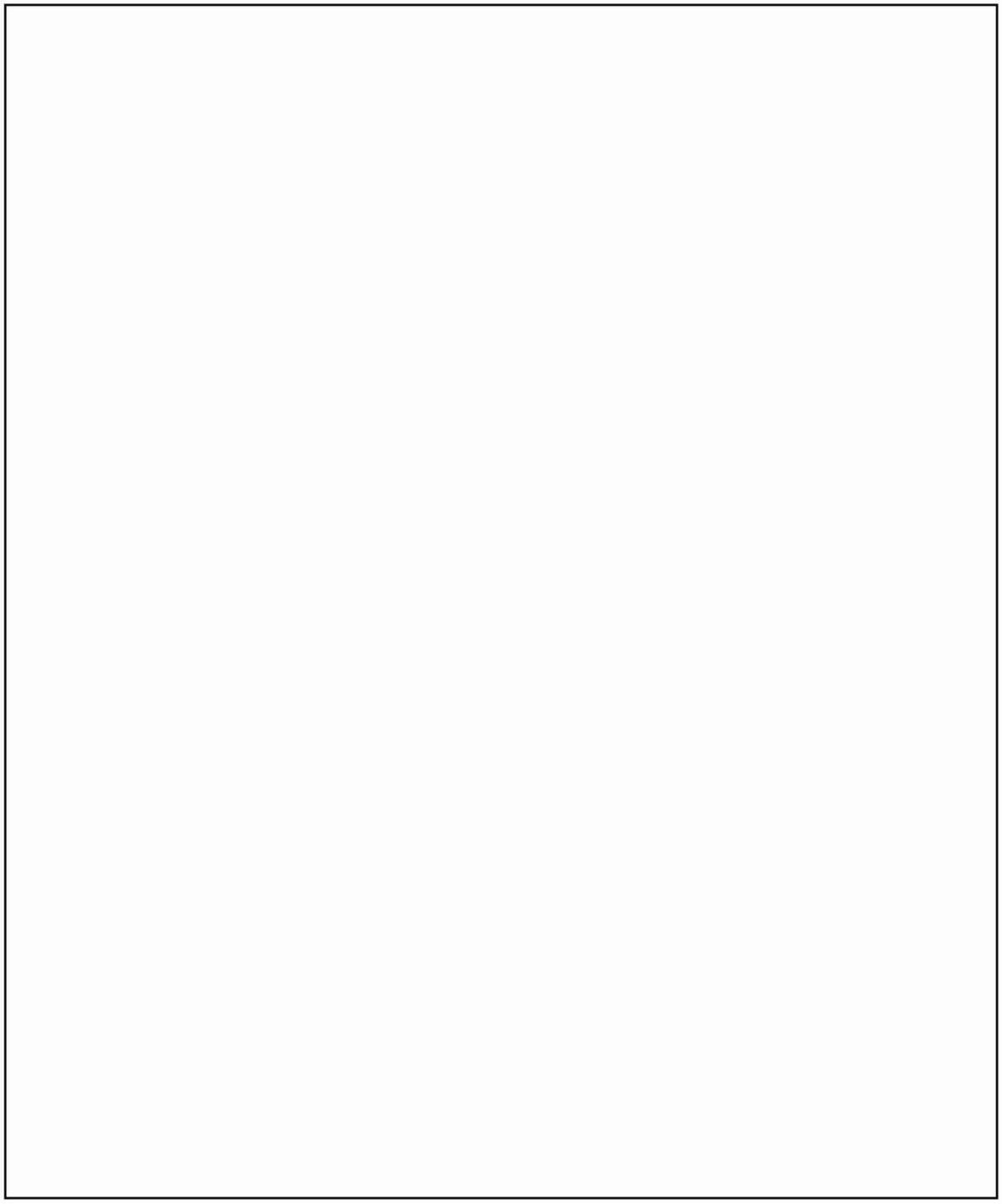
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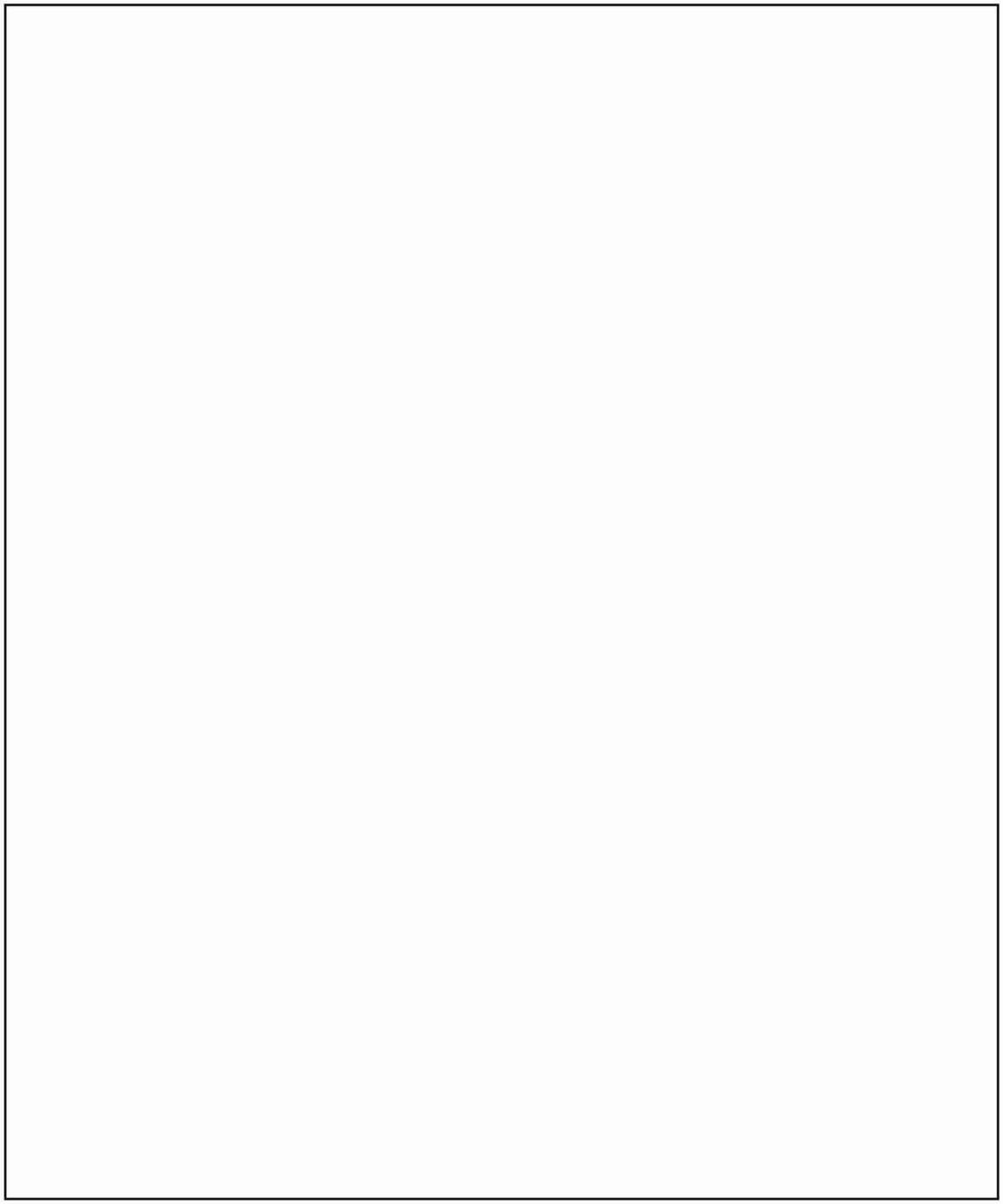
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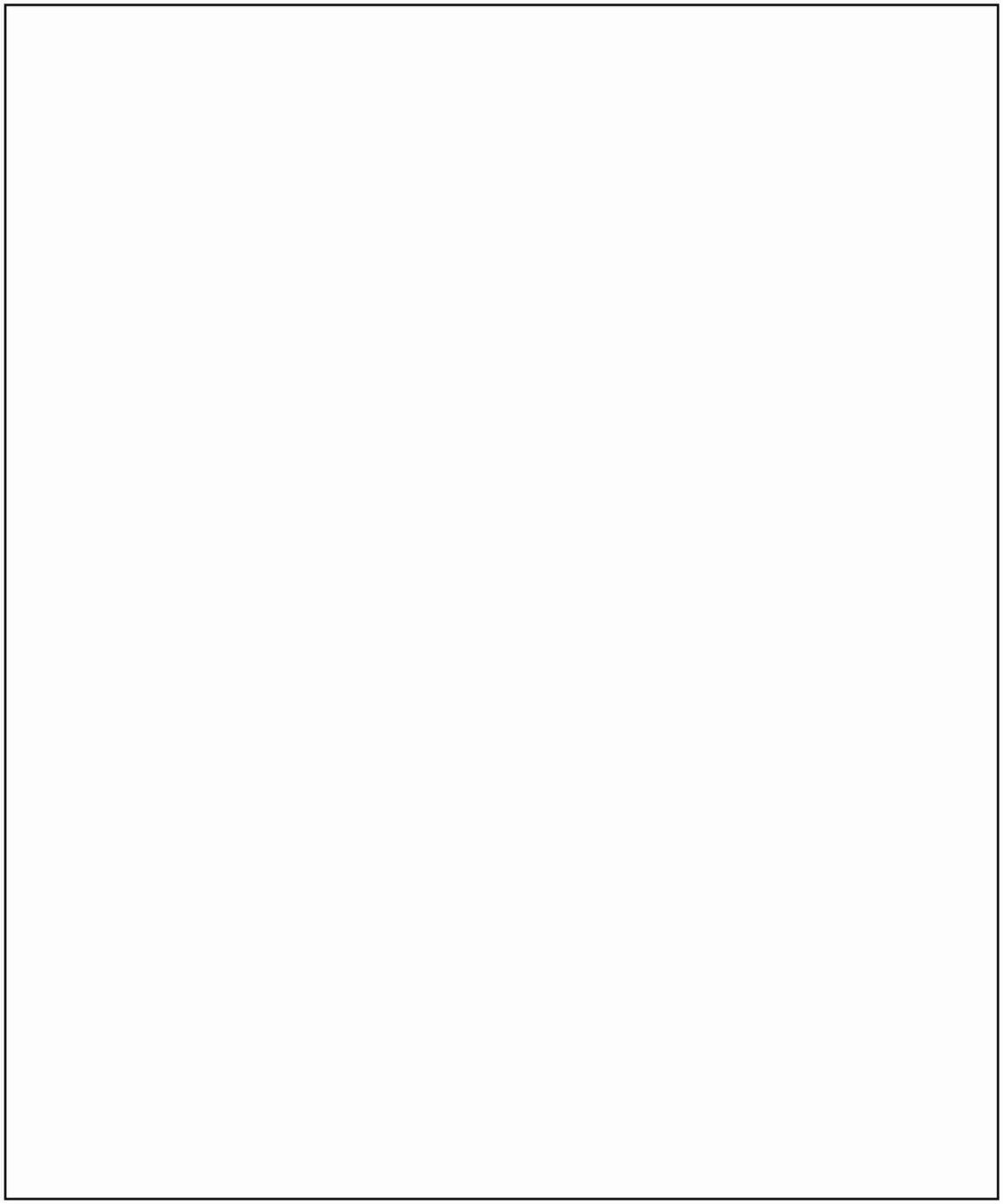
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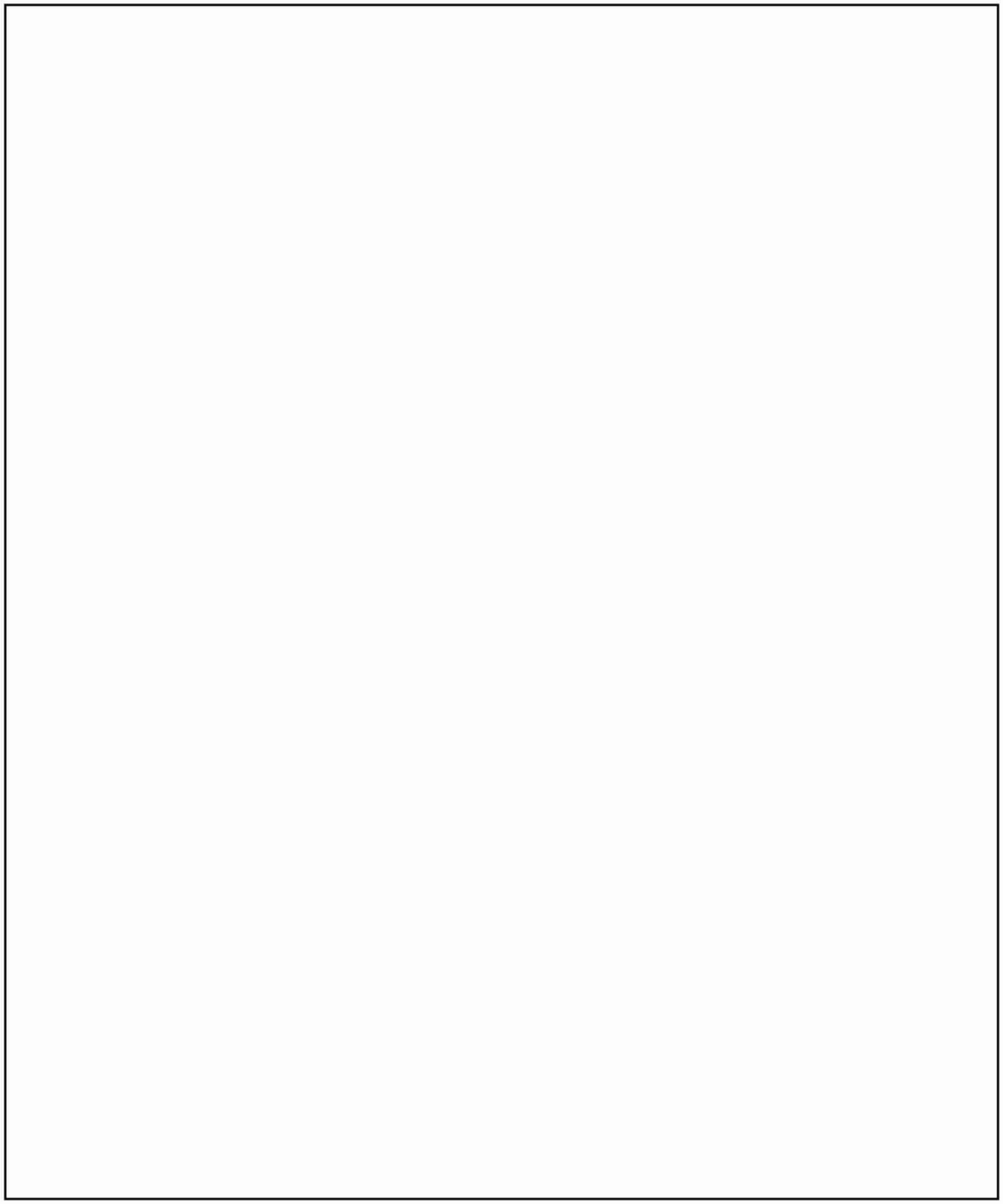
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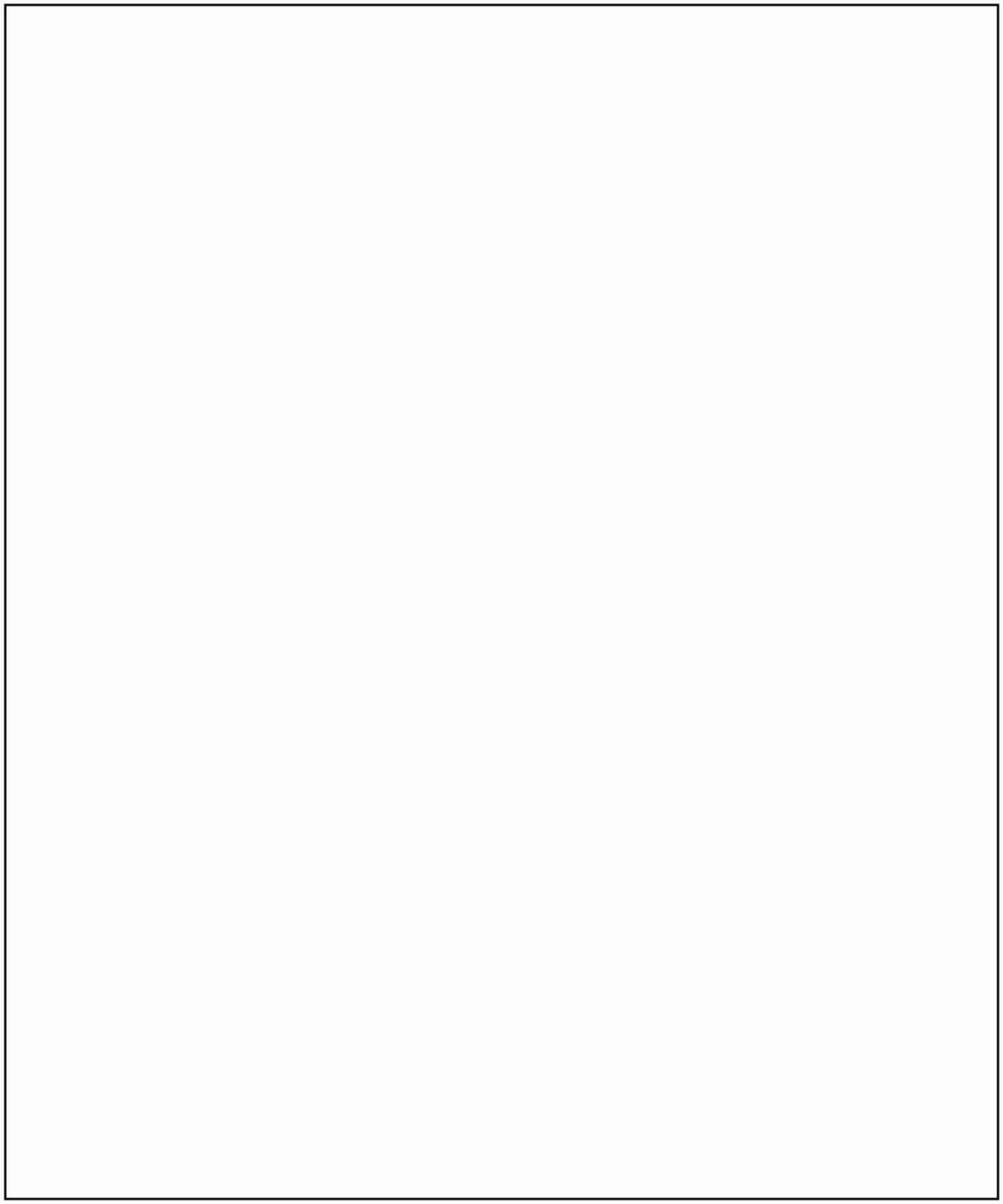
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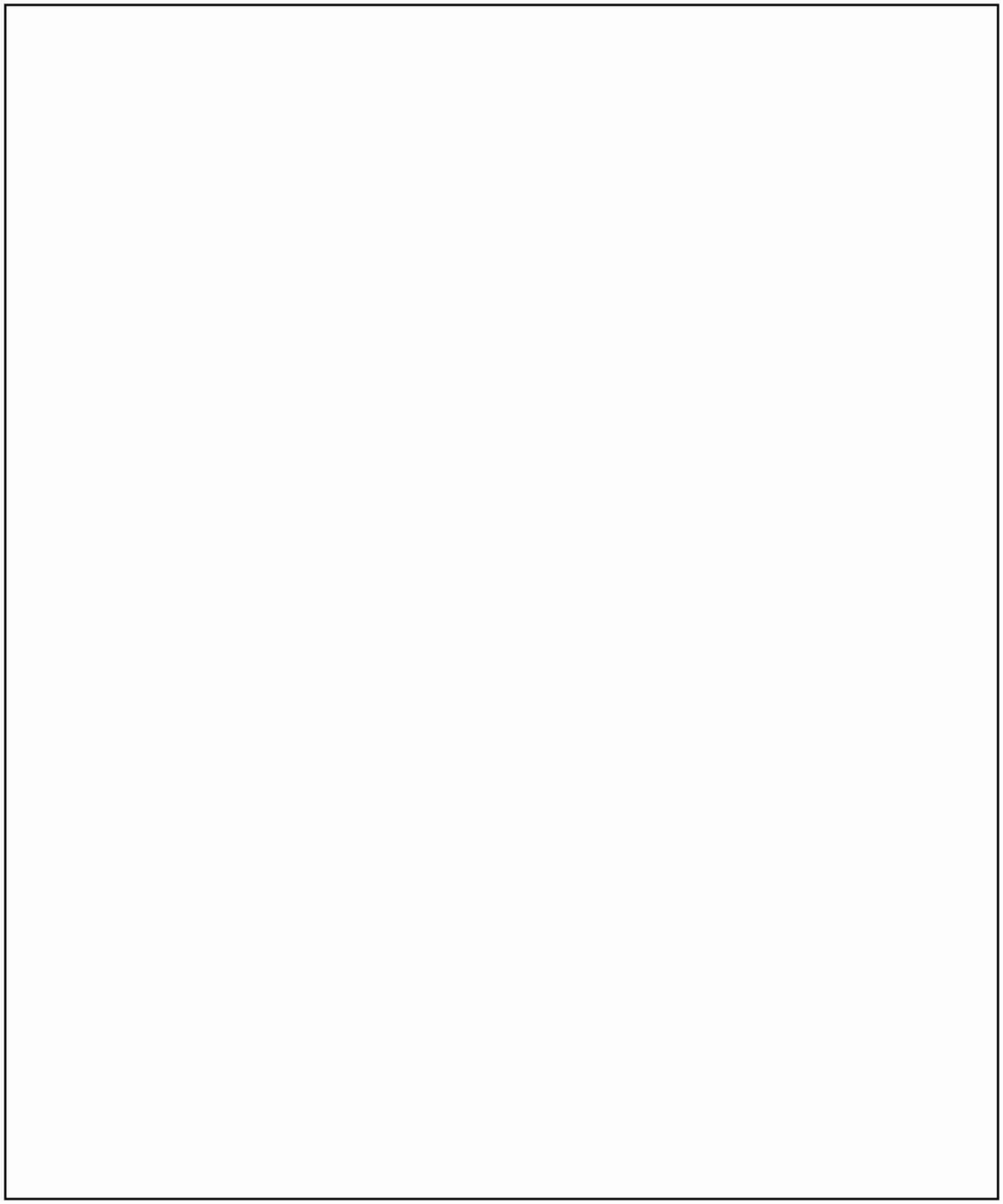
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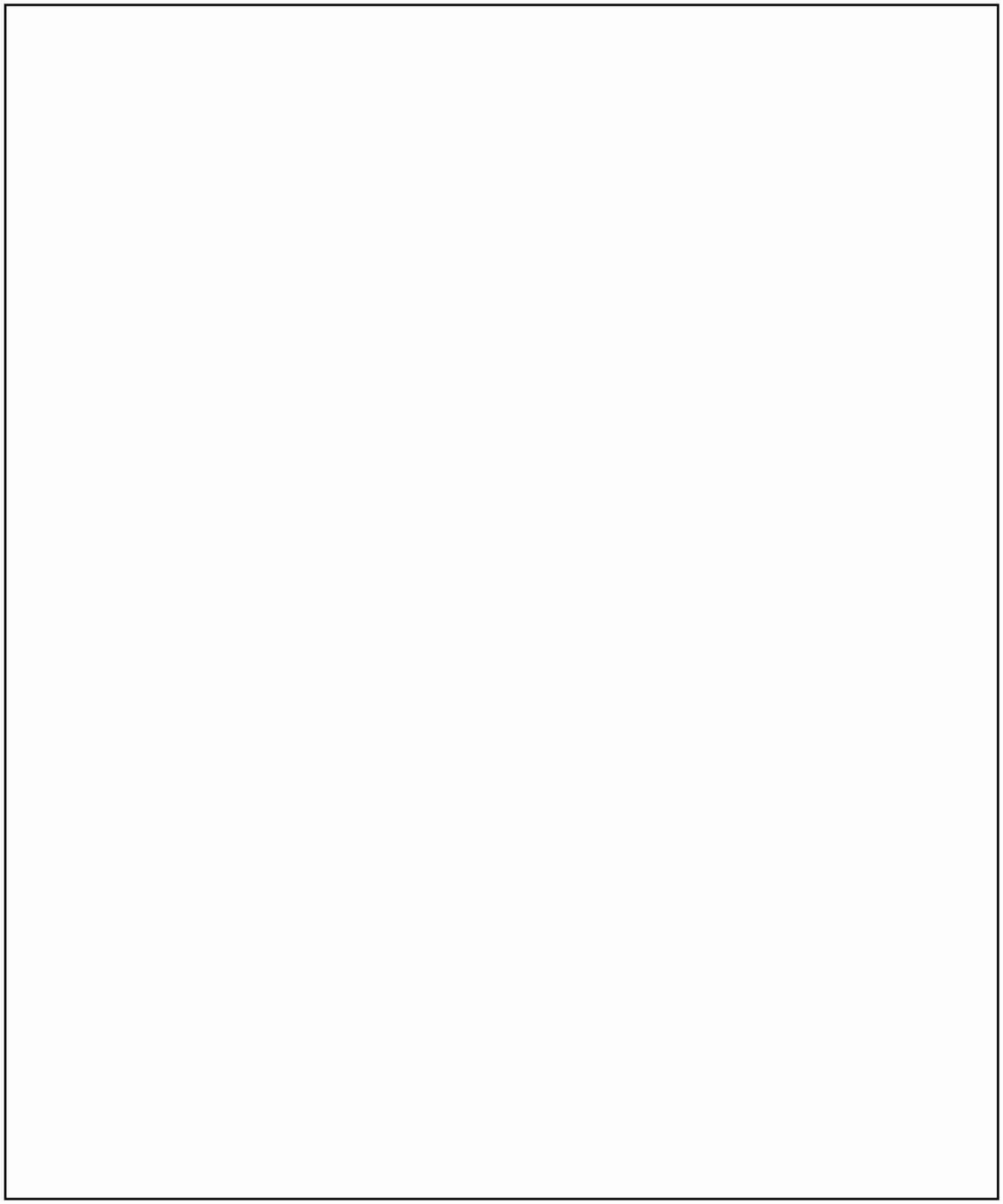
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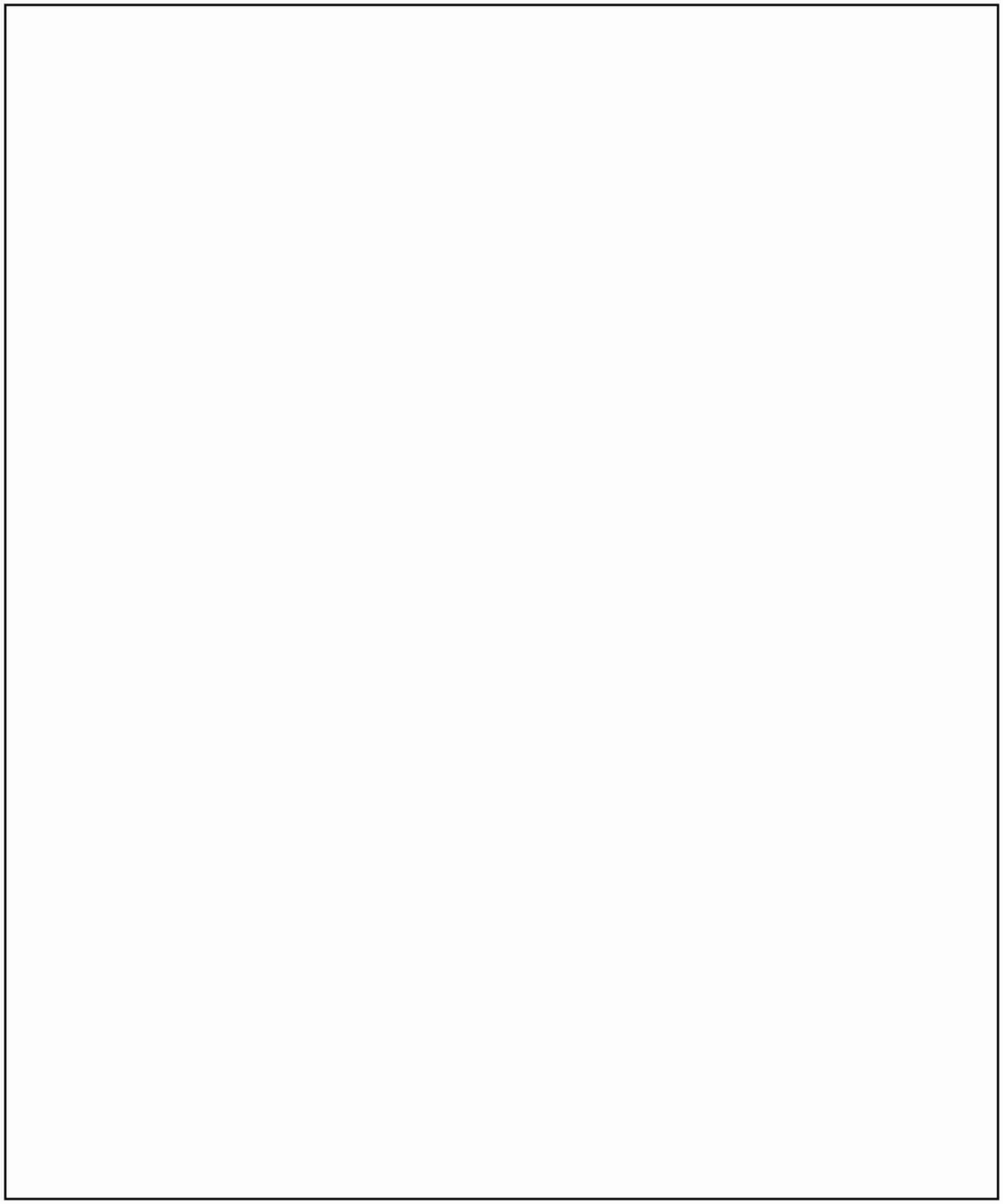
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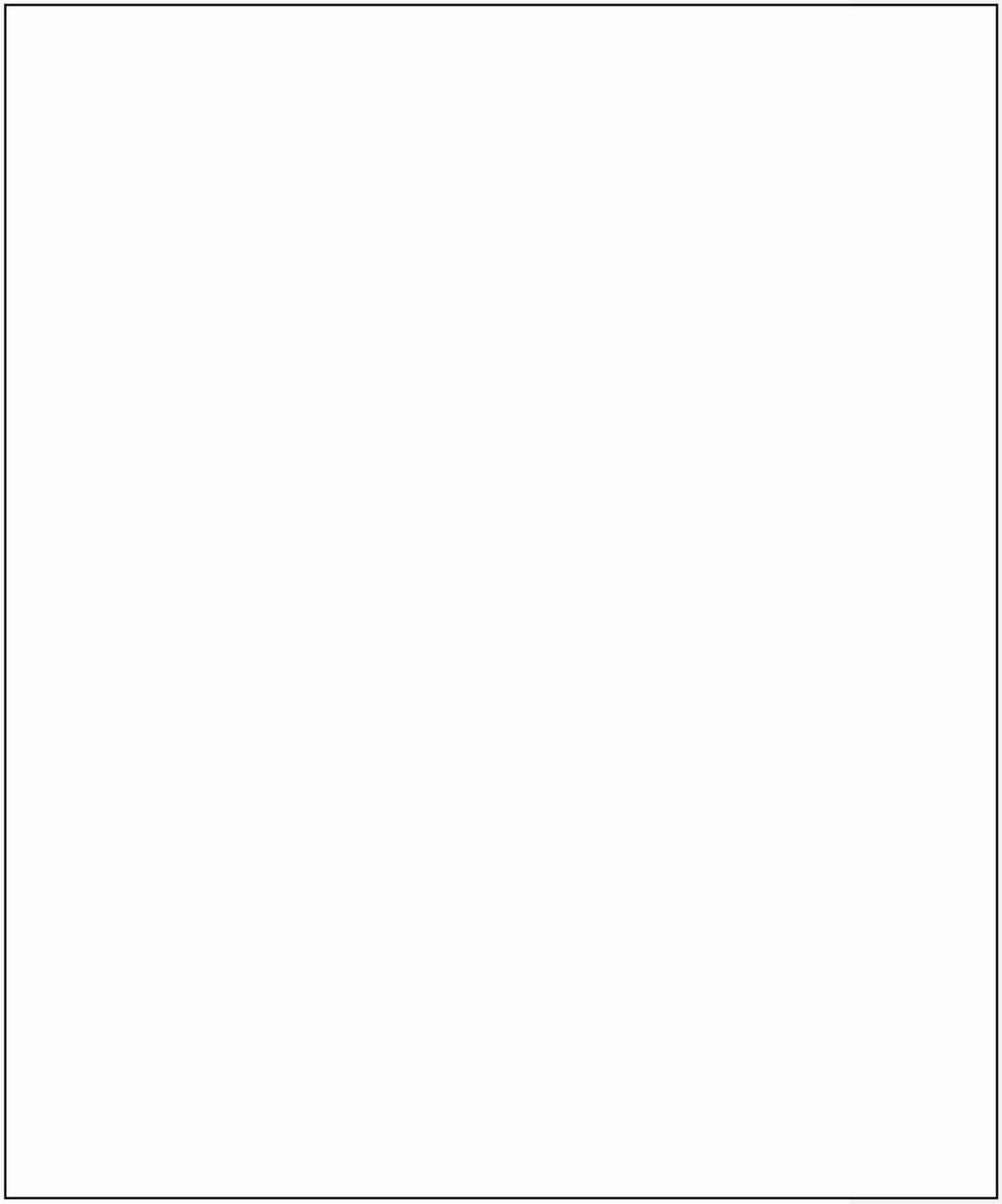
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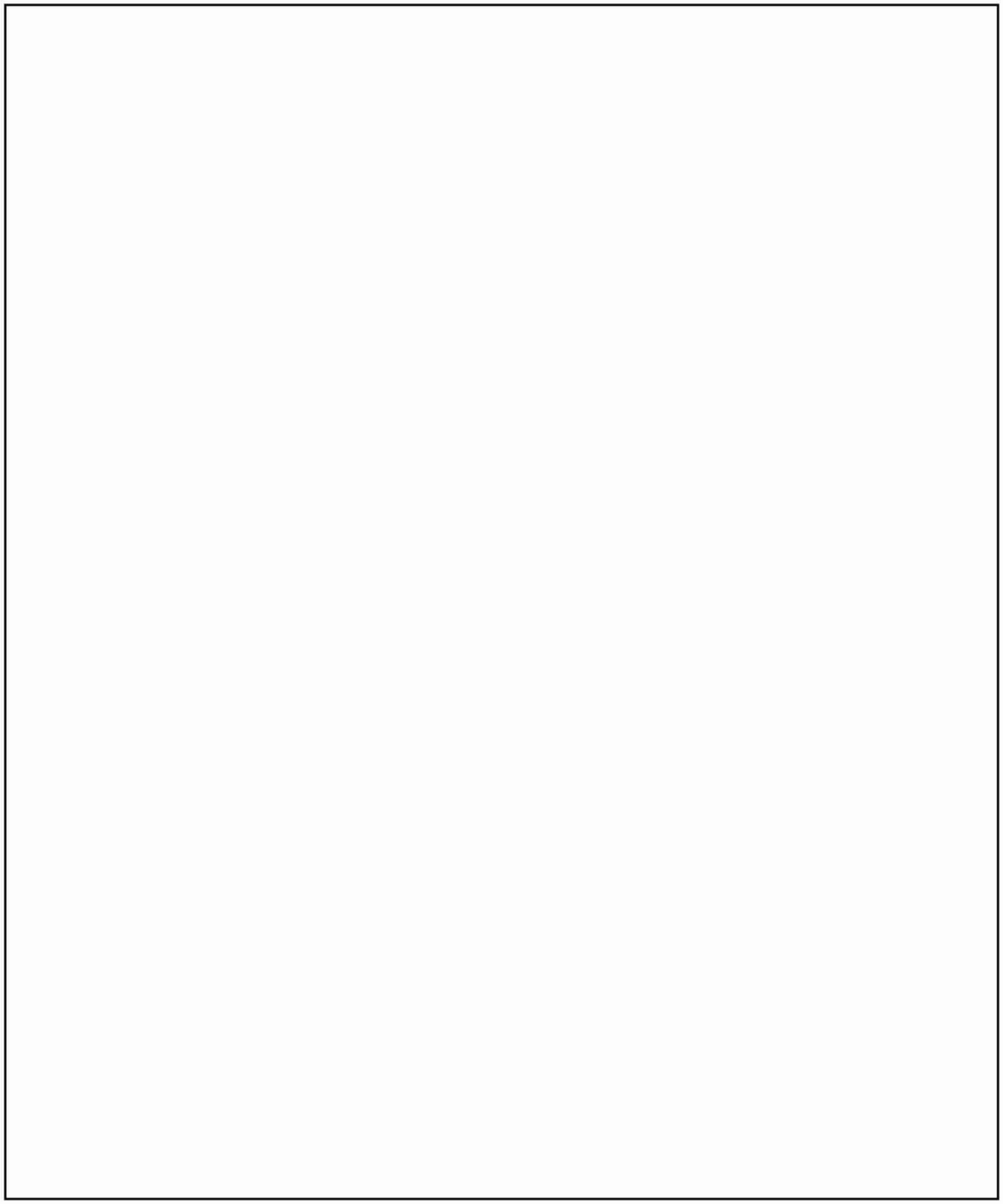
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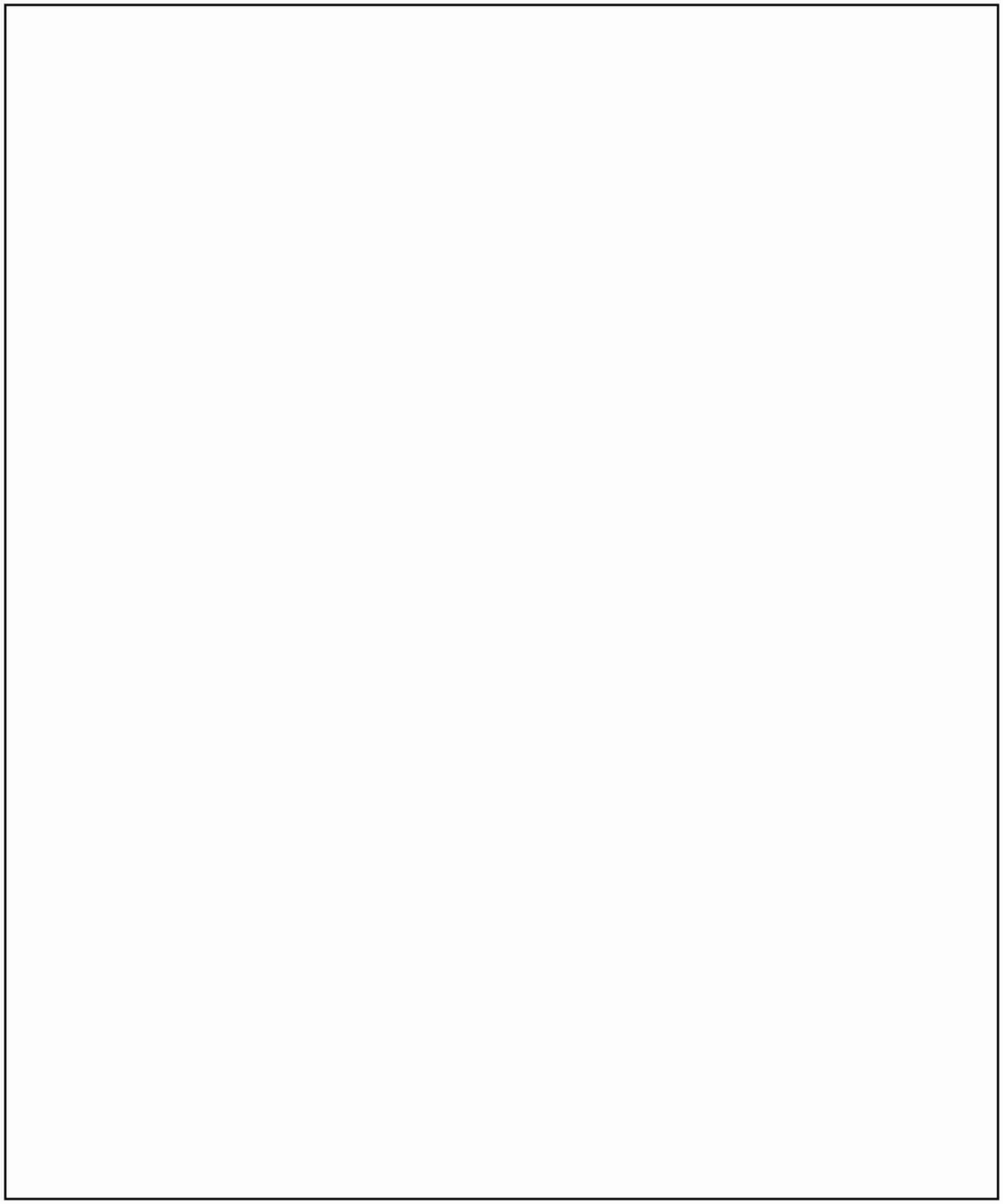
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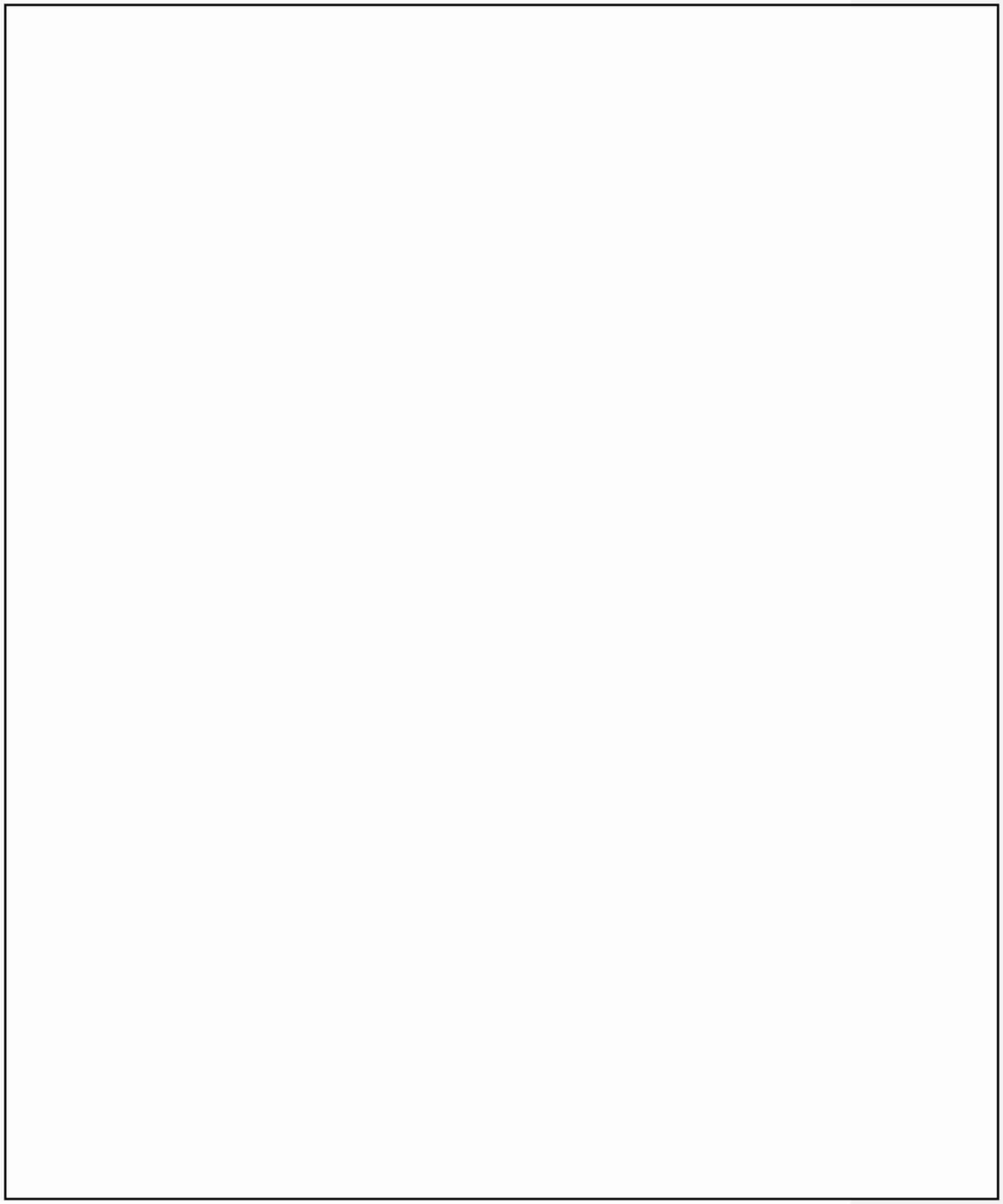
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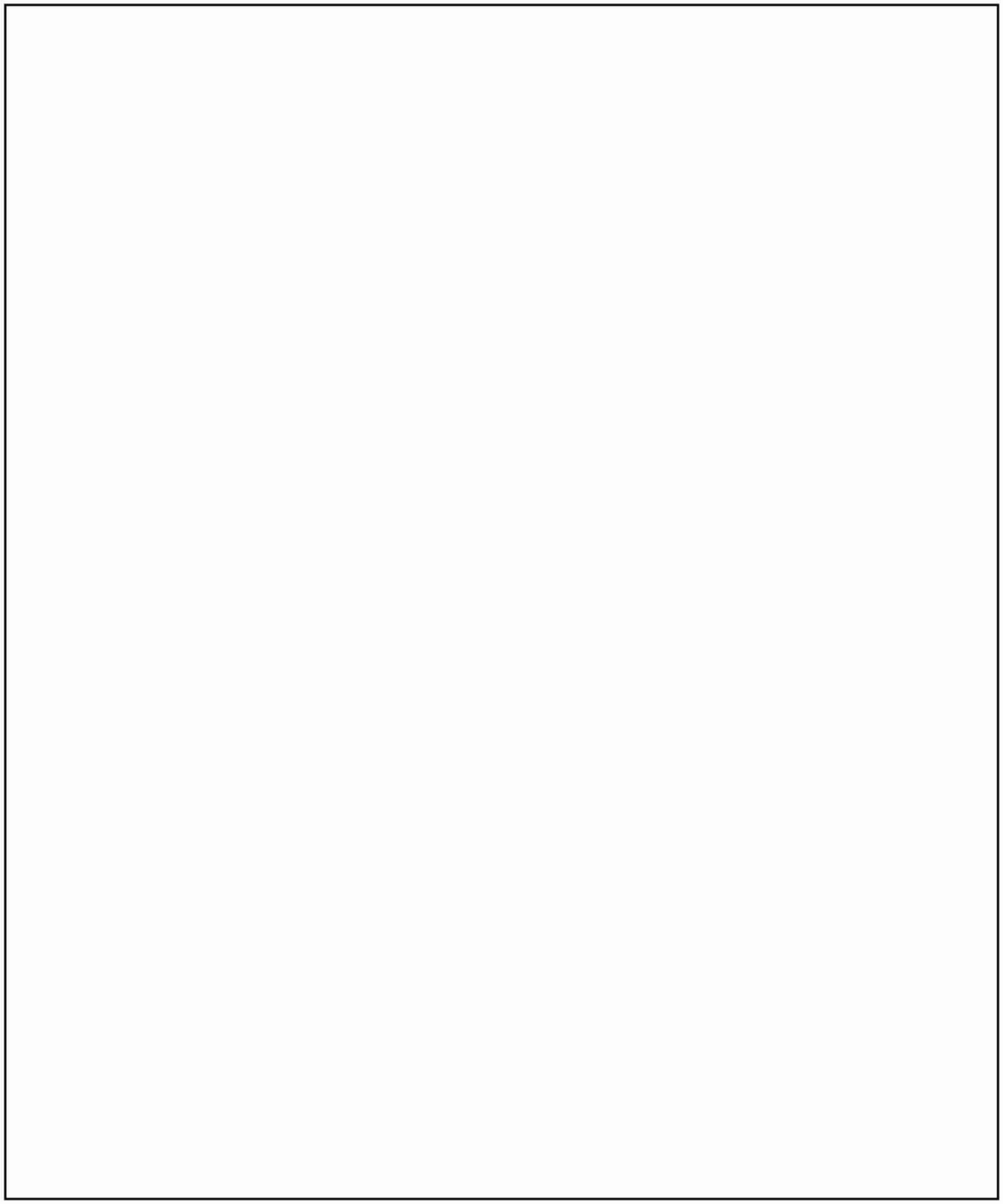
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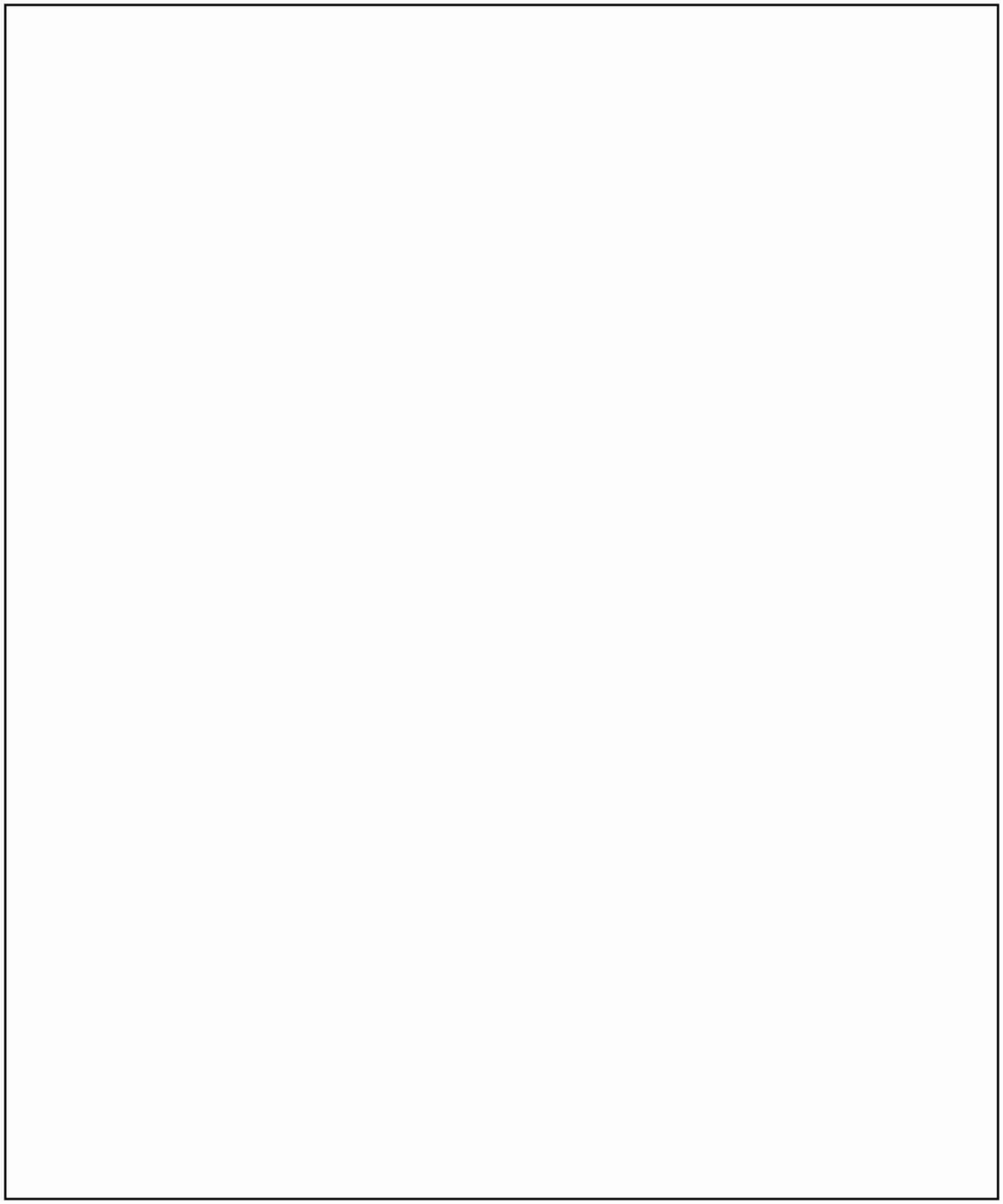
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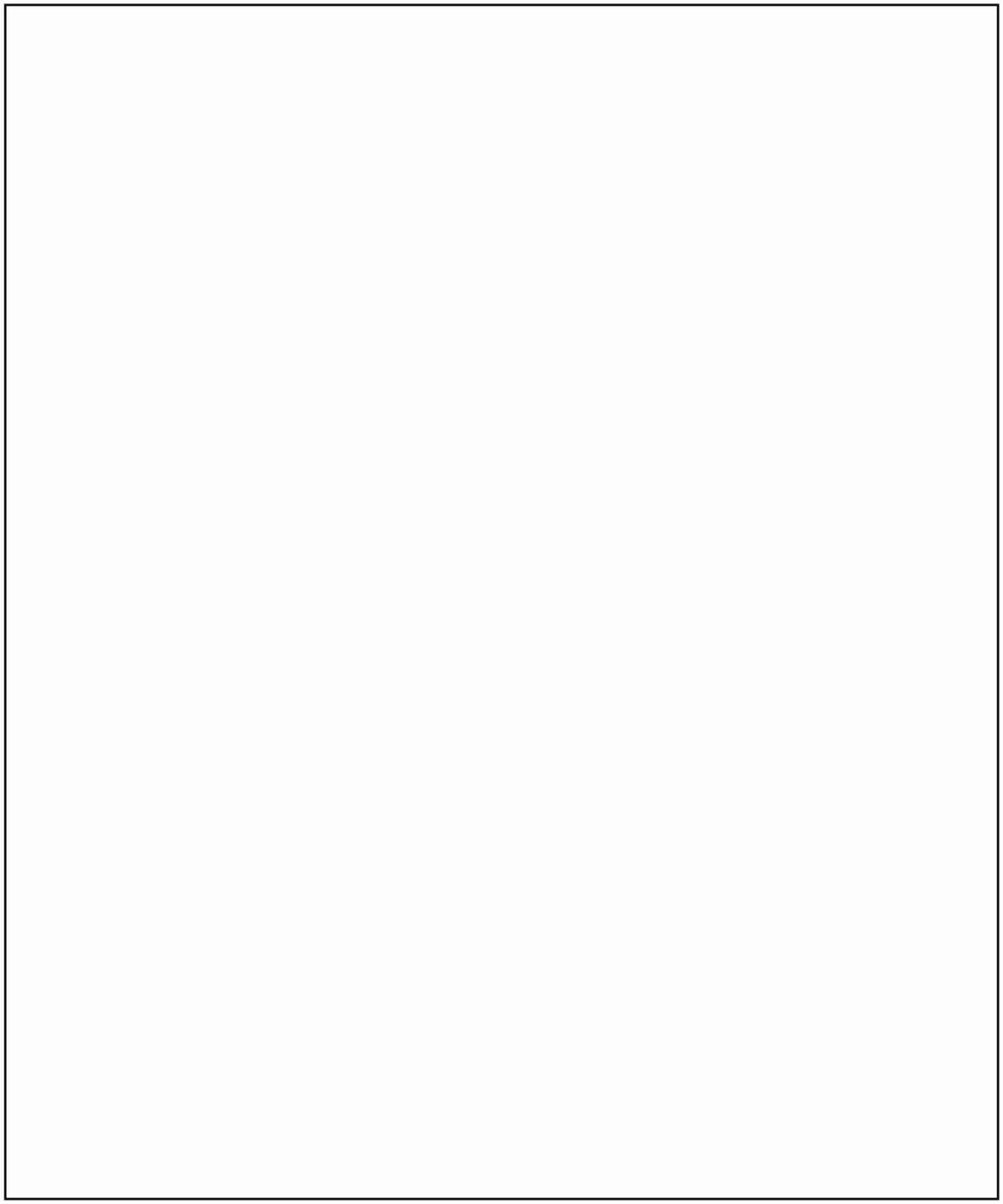
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_____
Chad F. Wolf,
Acting Secretary of Homeland Security

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DHS-20-2156-A-003476

TABLE OF CHANGES – FORM
Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
- Red font = Changes

Expires 10/31/2021
Edition Date 01/27/2020

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Current Page Number and Section	Current Text	Proposed Text

AMERICAN OVERSIGHT

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TABLE OF CHANGES –INSTRUCTIONS
Instructions for Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
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Expires 10/31/2021
Edition Date 01/27/2020

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From:
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331
To: Weinhold, Kasey D
Sent: June 30, 2020 6:11 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx, I129-012-FRM-TOC-H1BStrengtheningIFR-FOReview-06302020.docx, I129-012-INS-TOC-H1BStrengtheningIFR-FOReview-06302020.docx

Do you mind putting this on a MS Teams p

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉
☎ [redacted]

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Drake, Johnetta [redacted]
Sent: Tuesday, June 30, 2020 5:24 PM
To: USCIS Directors Office Clearance-EXSO [redacted]
Cc: Kilgore, Garry R <Garry.R.Kilgore@uscis.dhs.gov>
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 7/07/2020 H-1B Strengthening IFR - STARS# 28331

Good afternoon,

Requestor Directorate/Office: OP&S [redacted]

Due Date: 6:00PM Tuesday, July 7, 2020

Request: OP&S requests the Front Office review and clear the attached H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes.

Background: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Important note: The PODs review is occurring in parallel and will conclude on 7/6. Per OP&S, [redacted] **discussed and agreed to this process.**

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Attachments:
H-1B Rule

1129-012-FRM-TOC
1129-012-INS-TOC

*******Please reply to all on this email ******

Thanks,

Johnetta Drake
USCIS Exec Sec
[redacted] *Cell)*
Desk) (b)(6)

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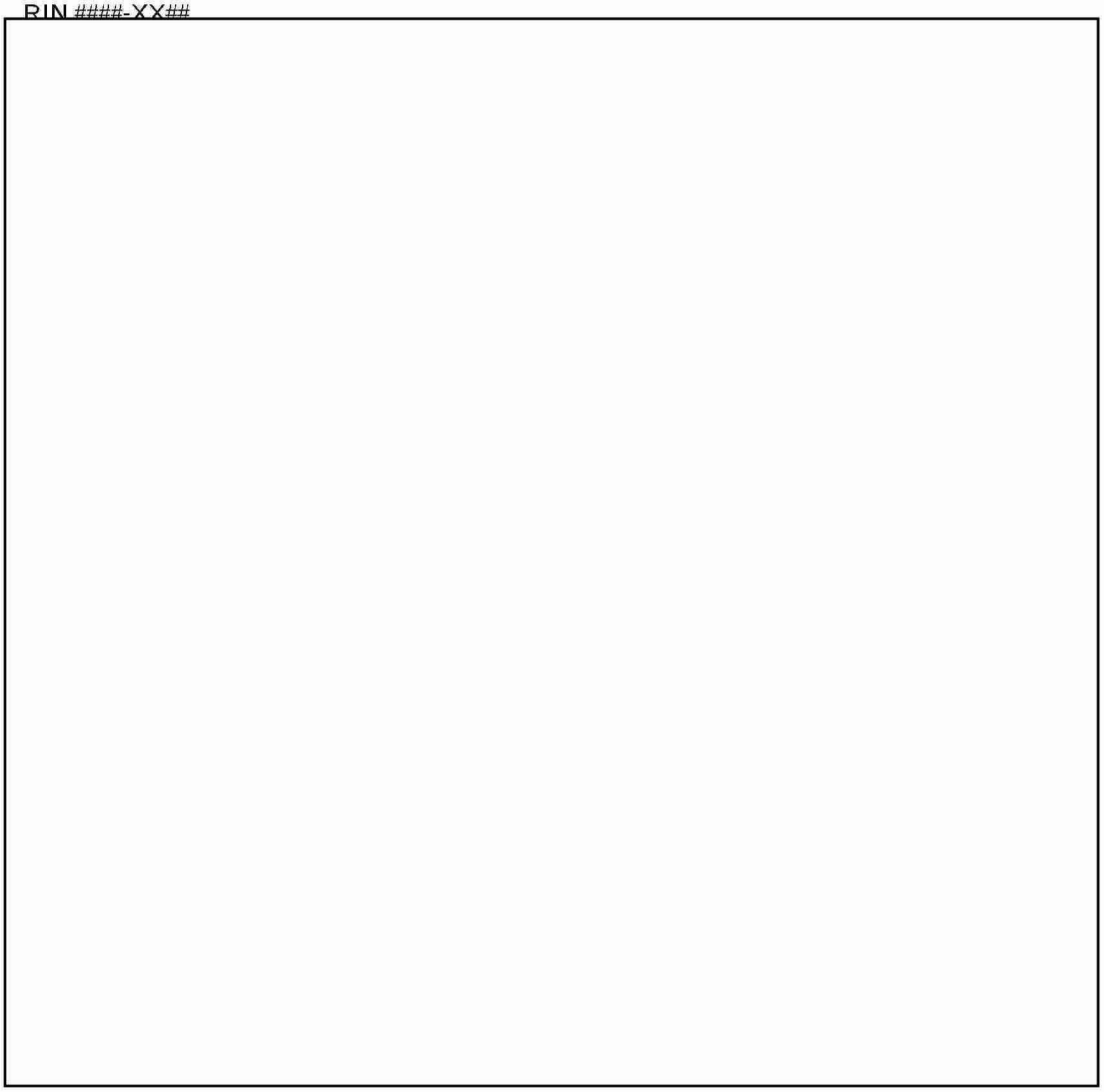
DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

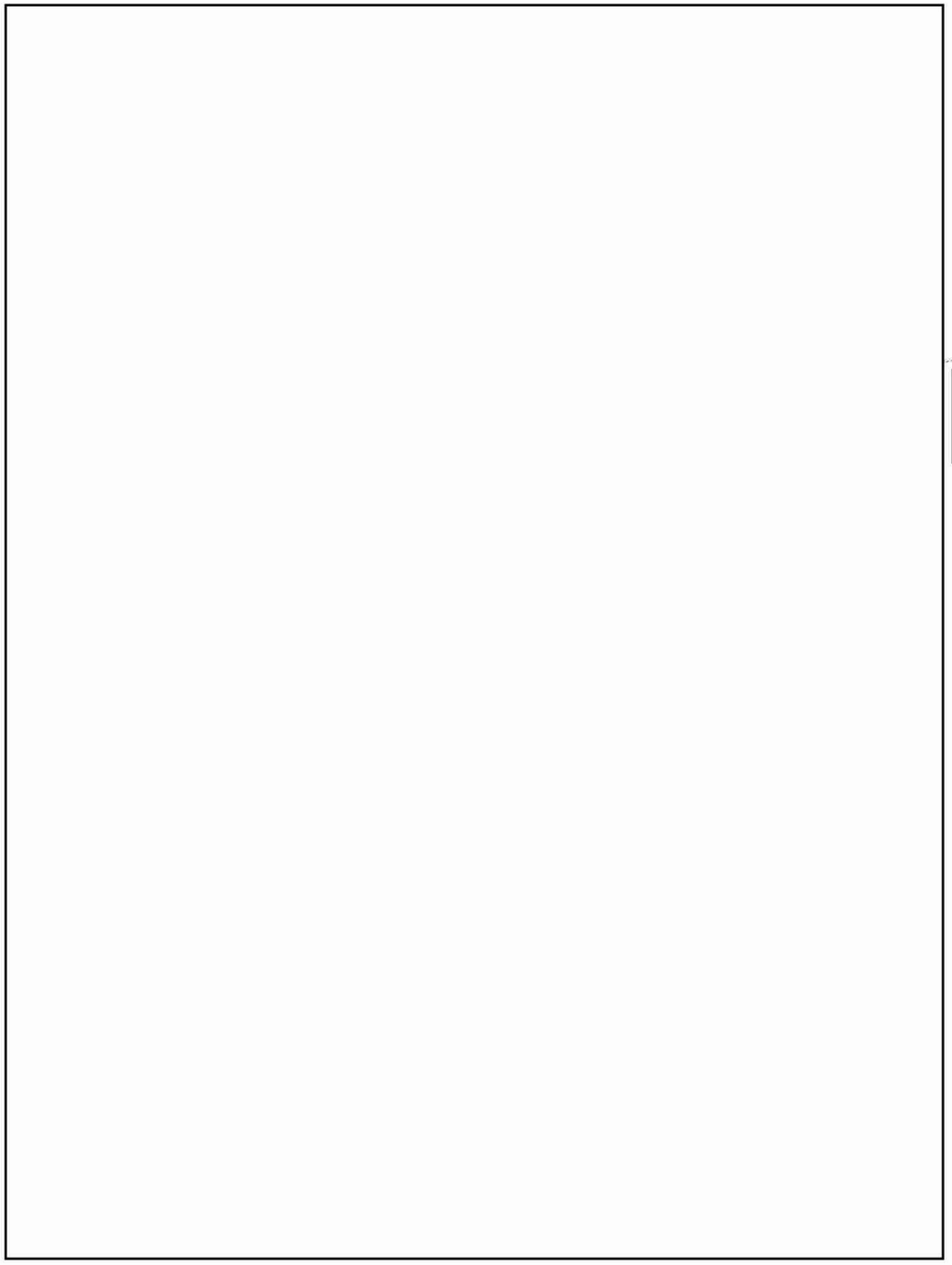
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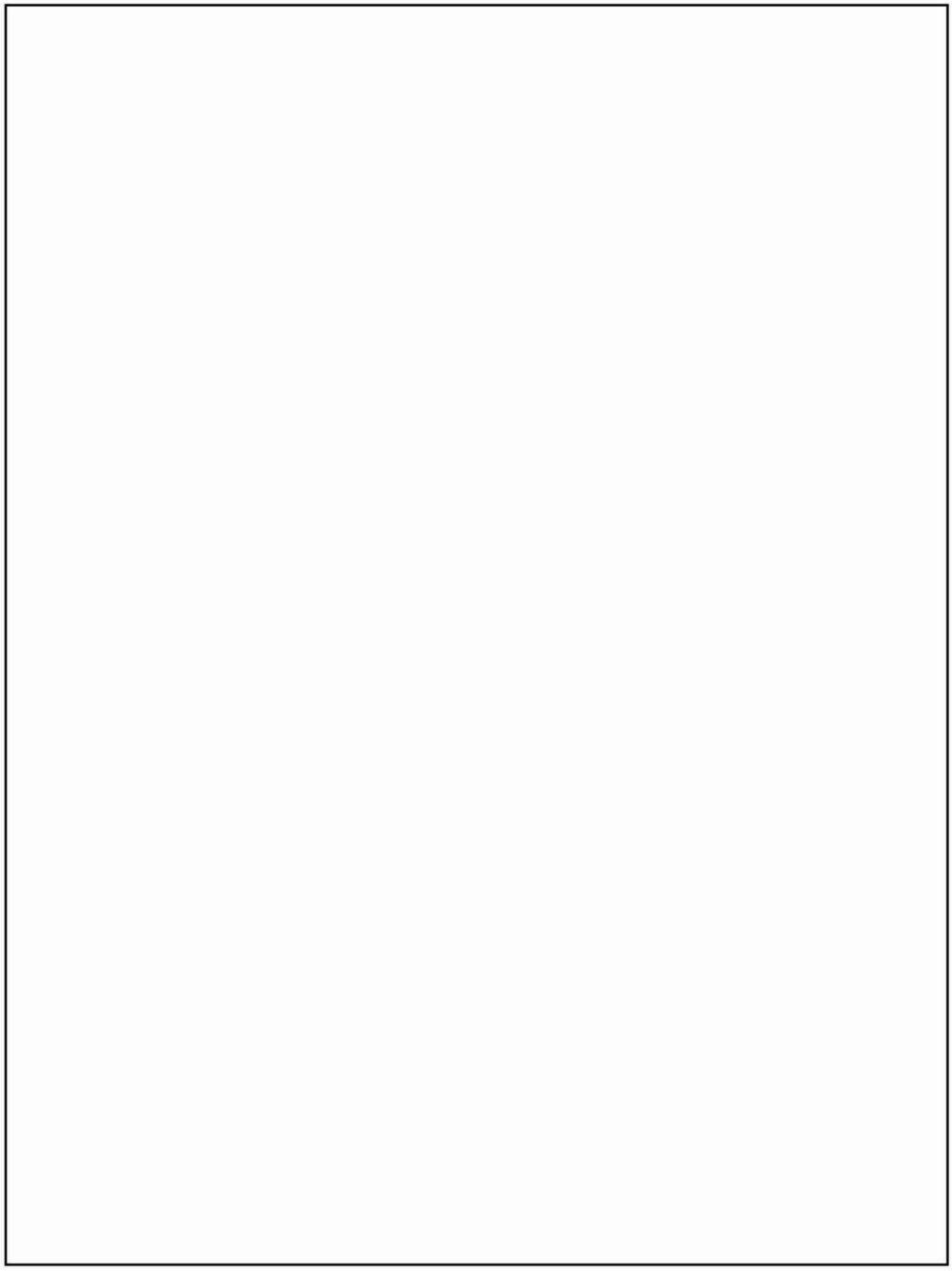
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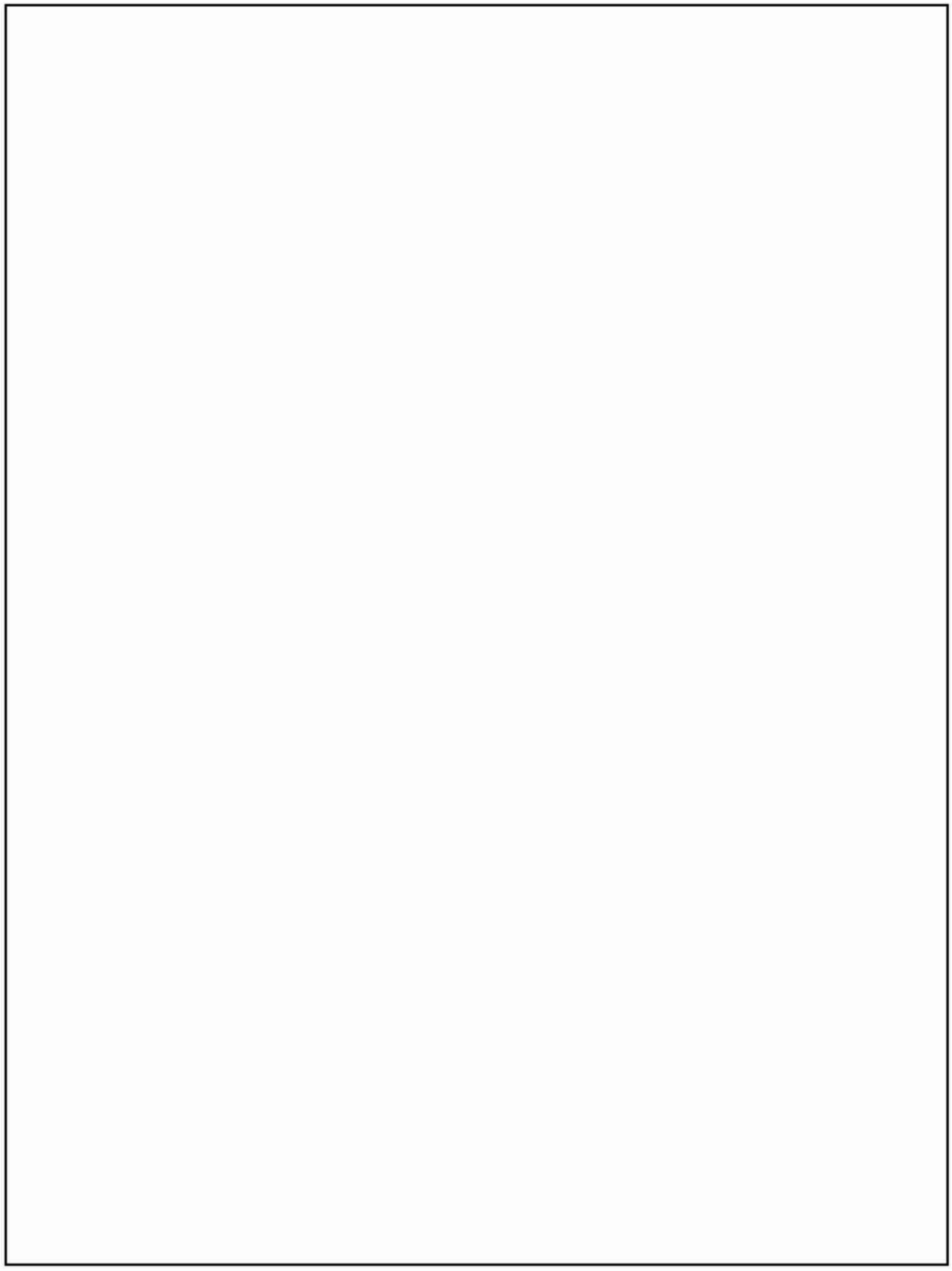
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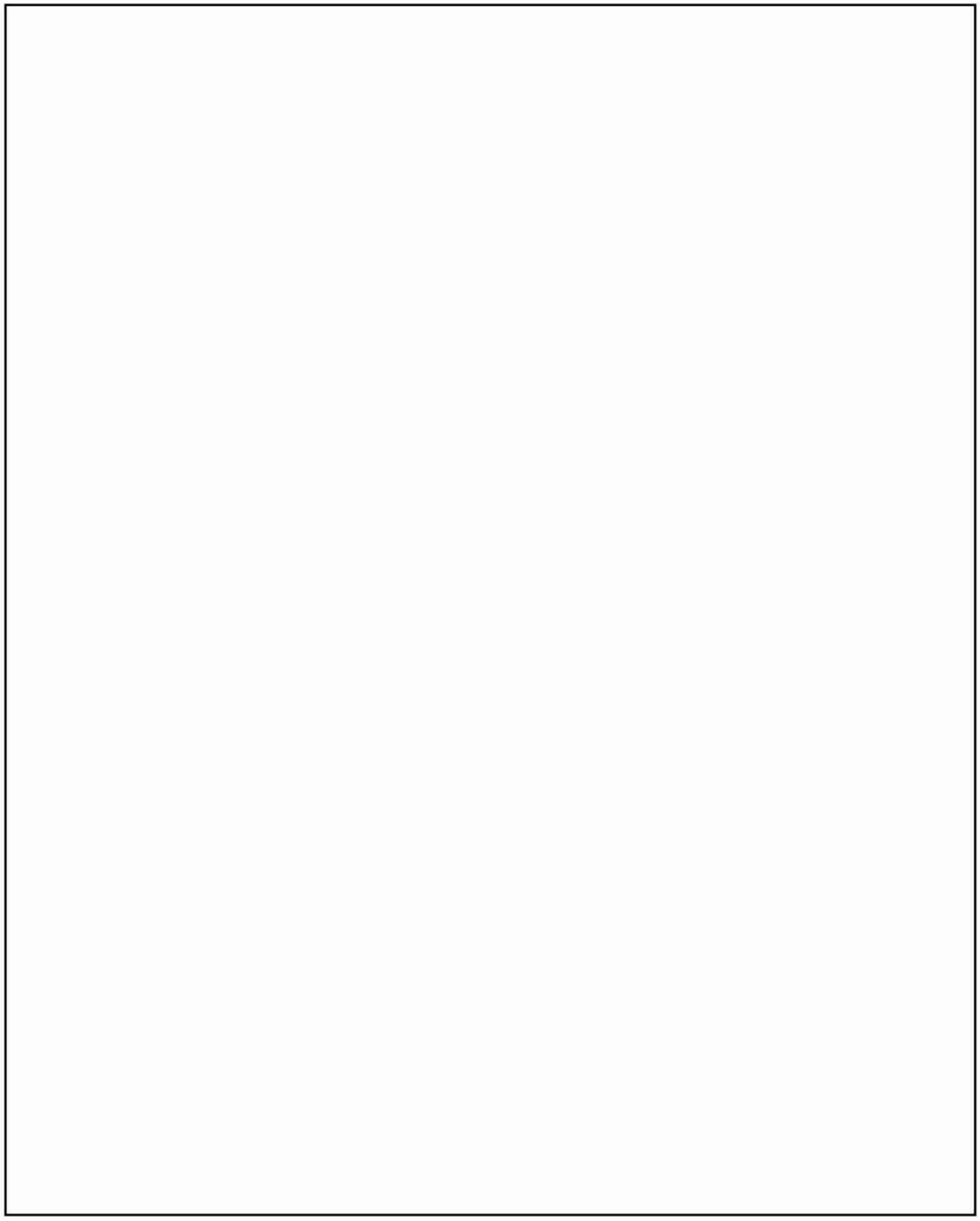
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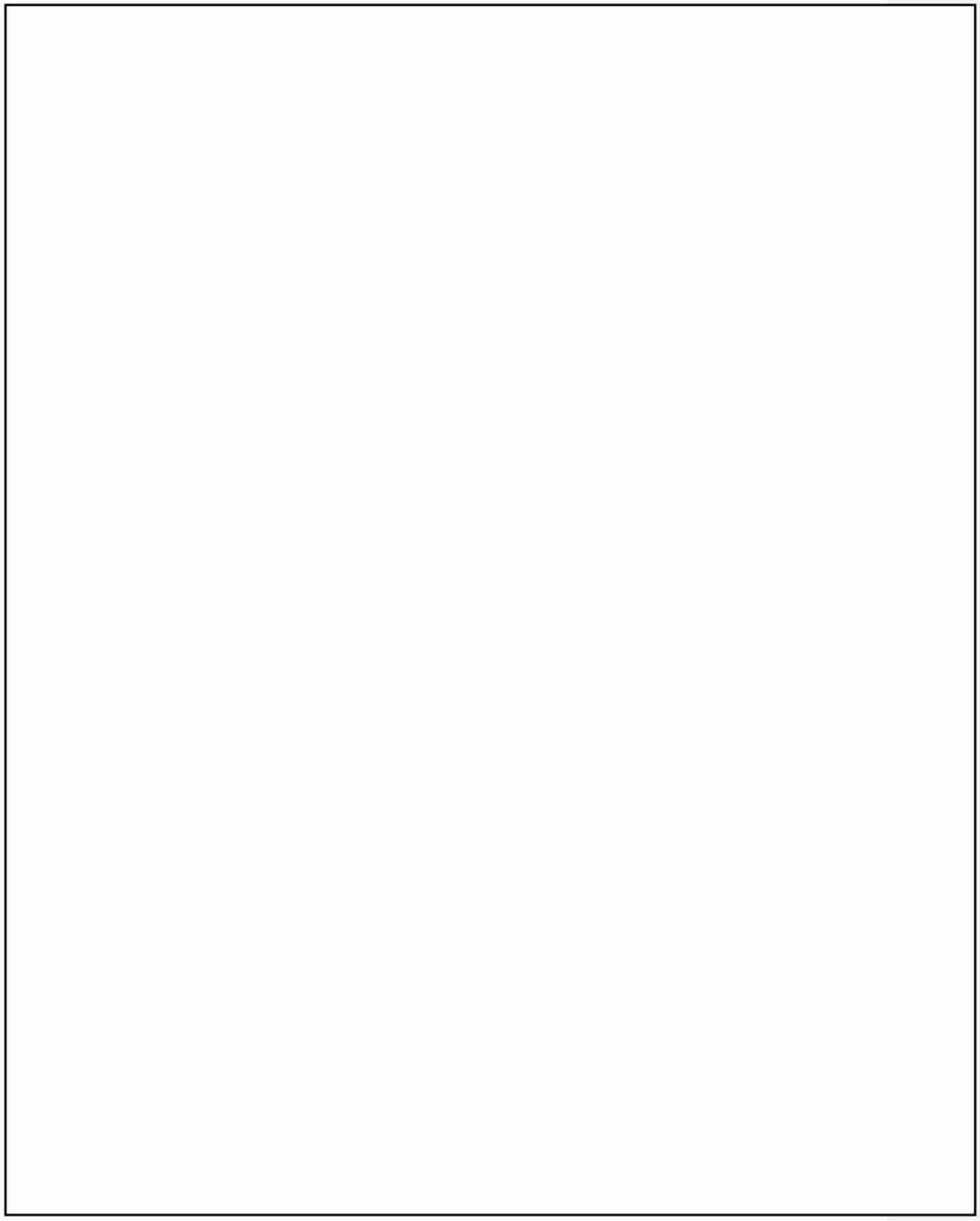
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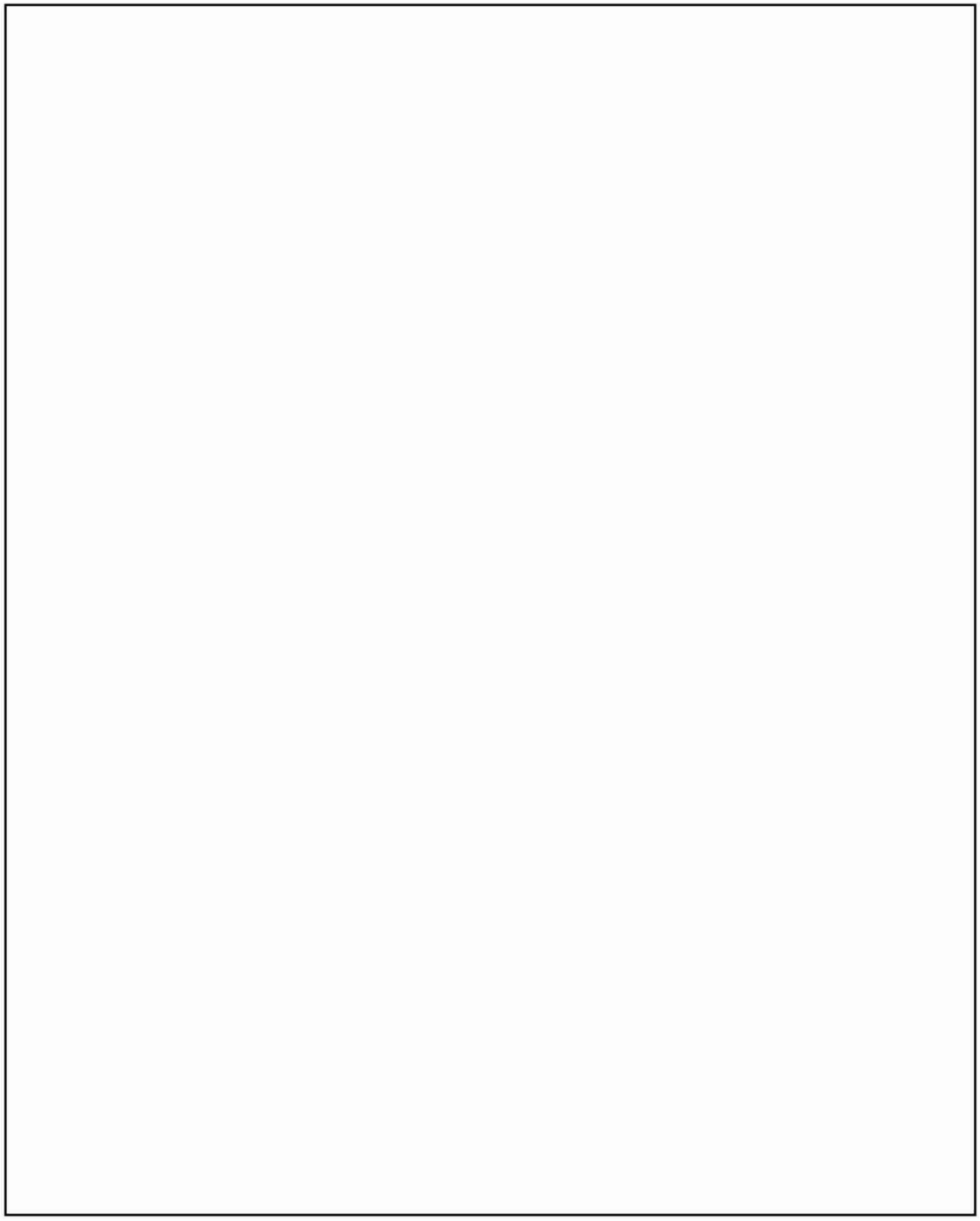
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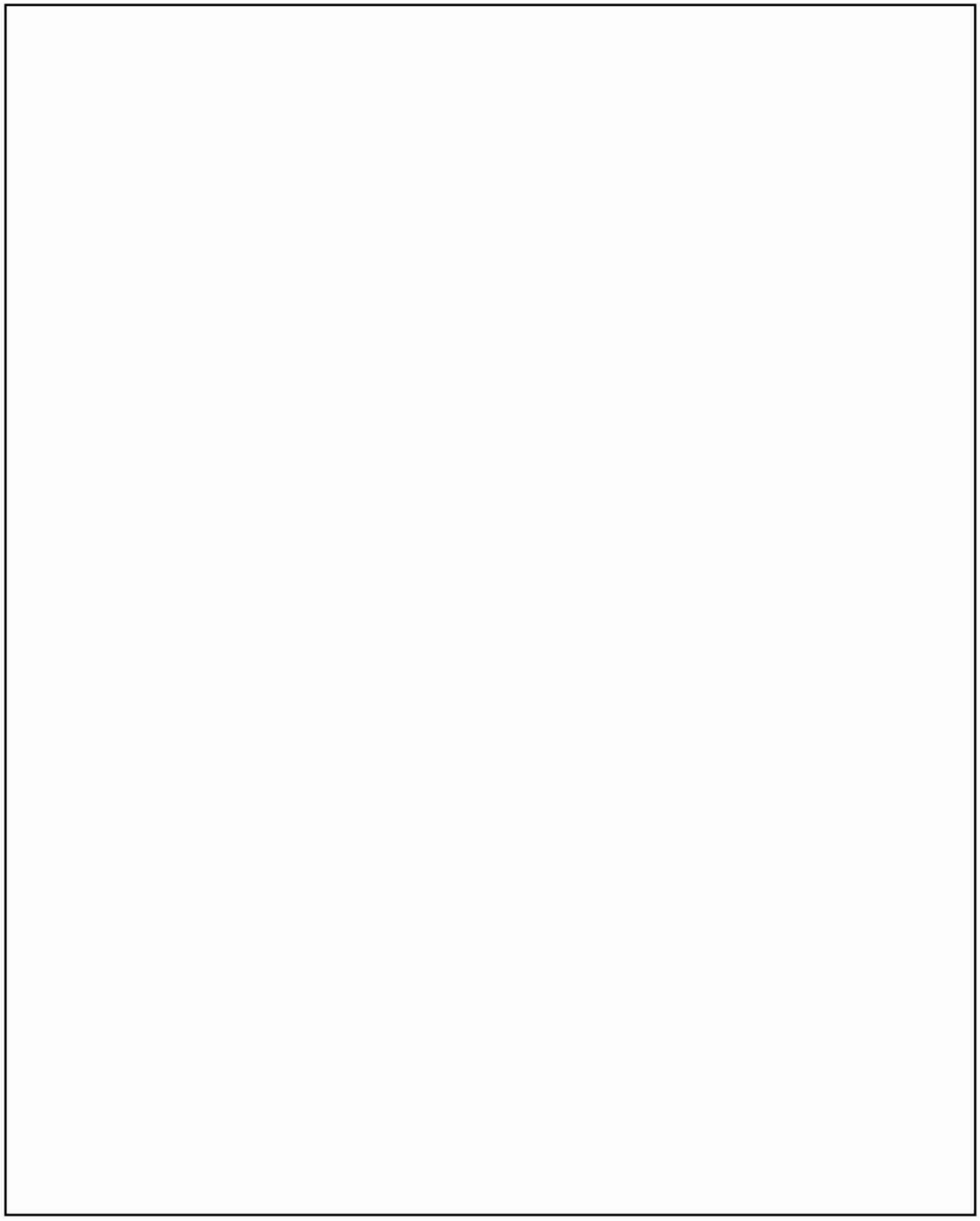
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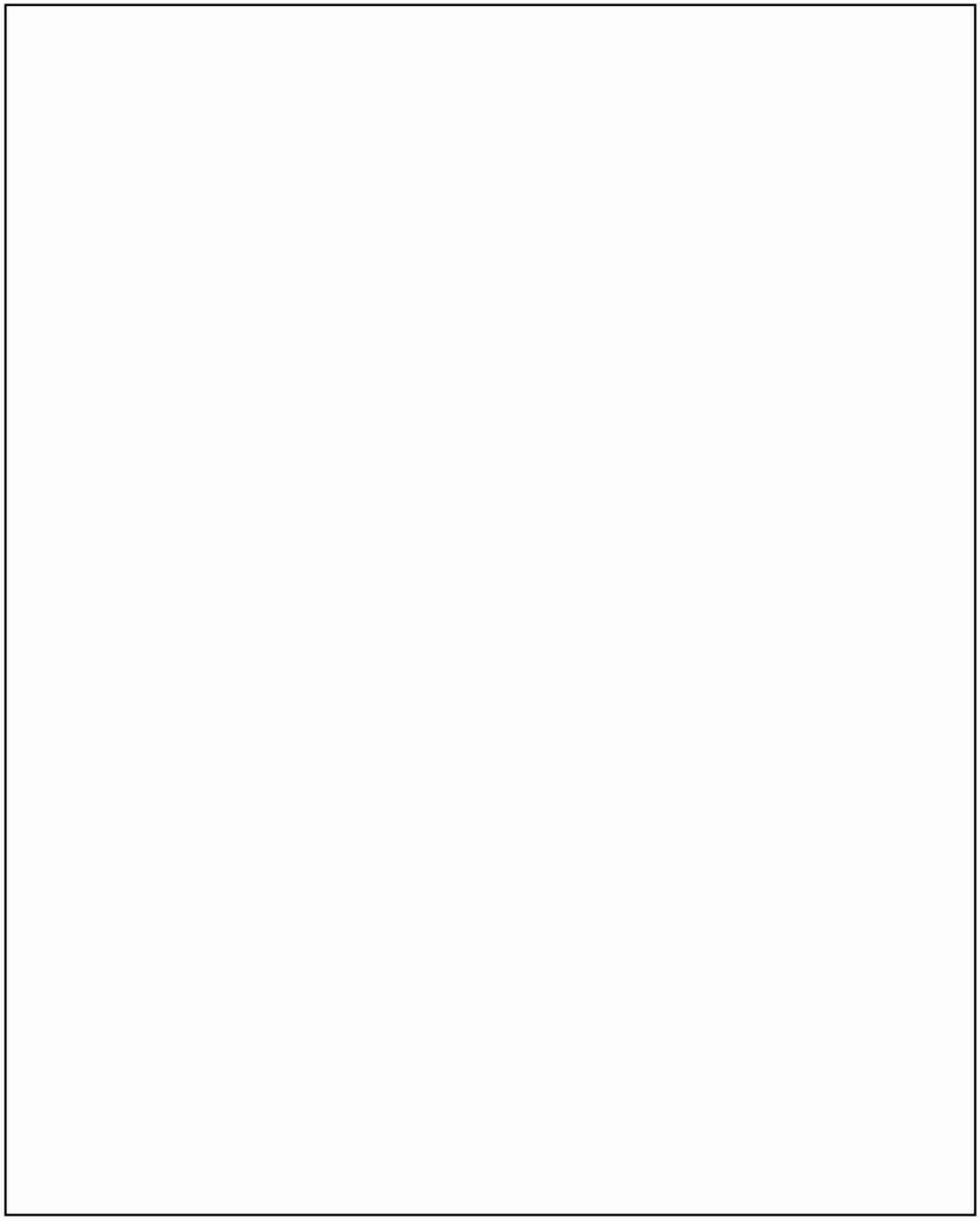
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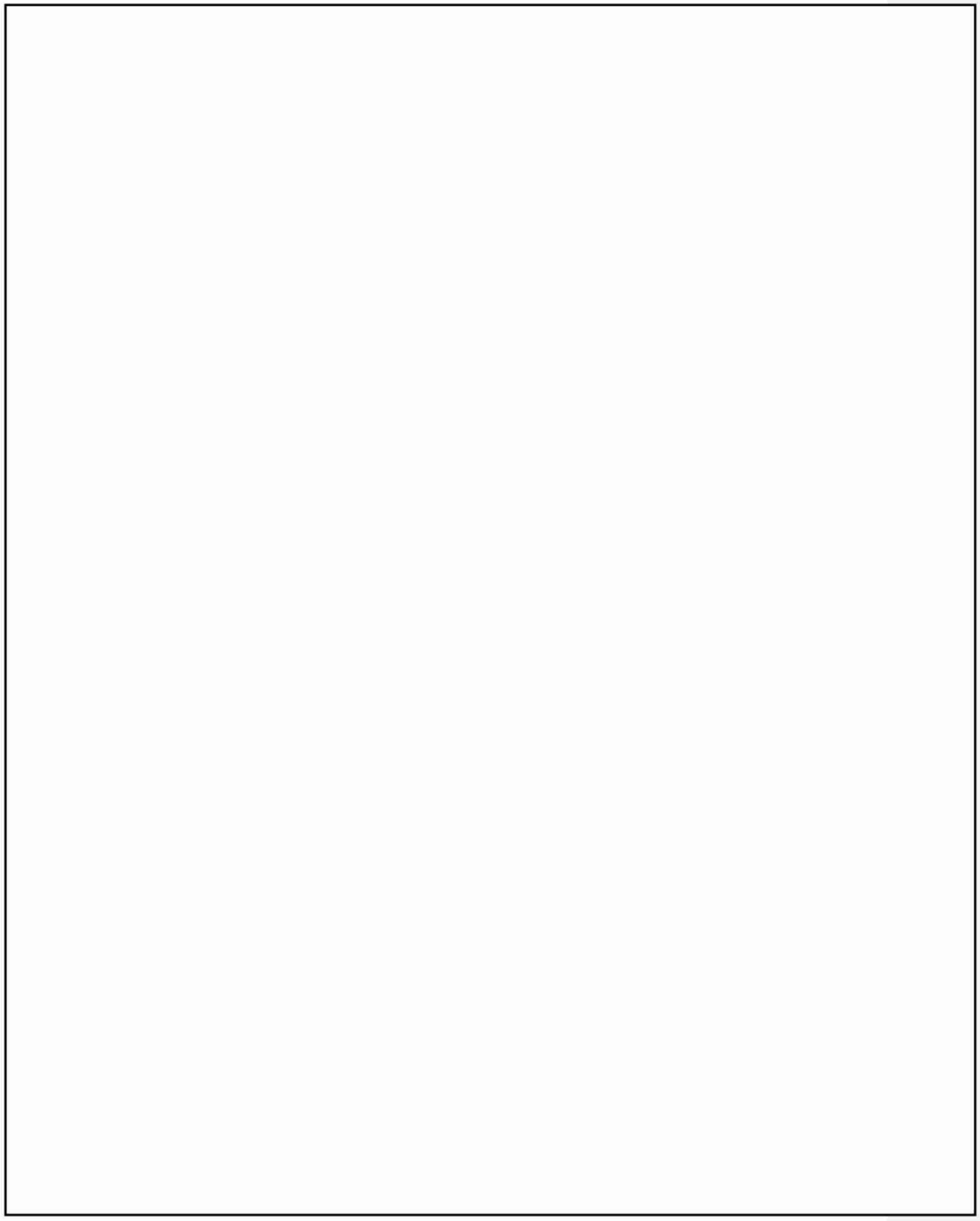
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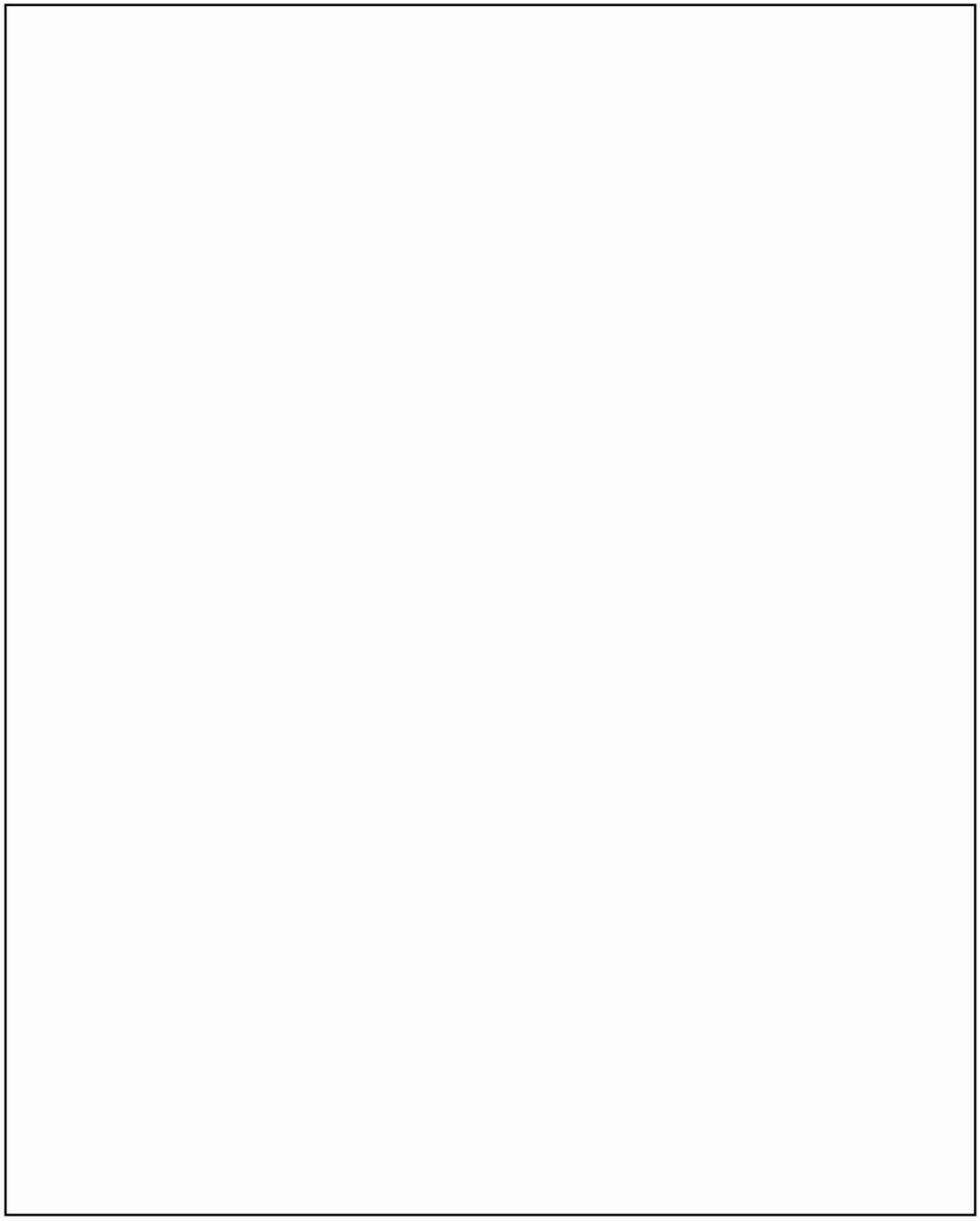
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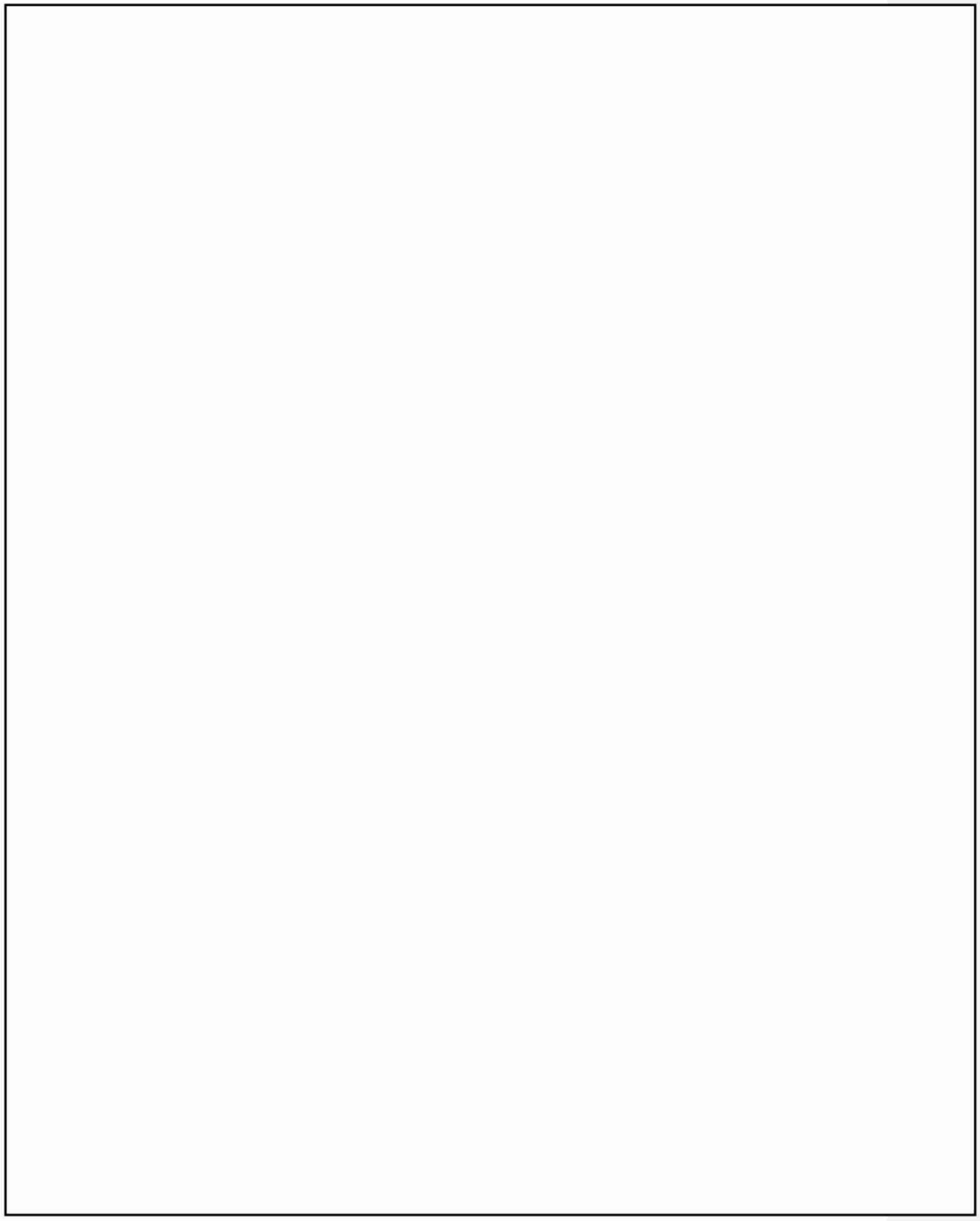
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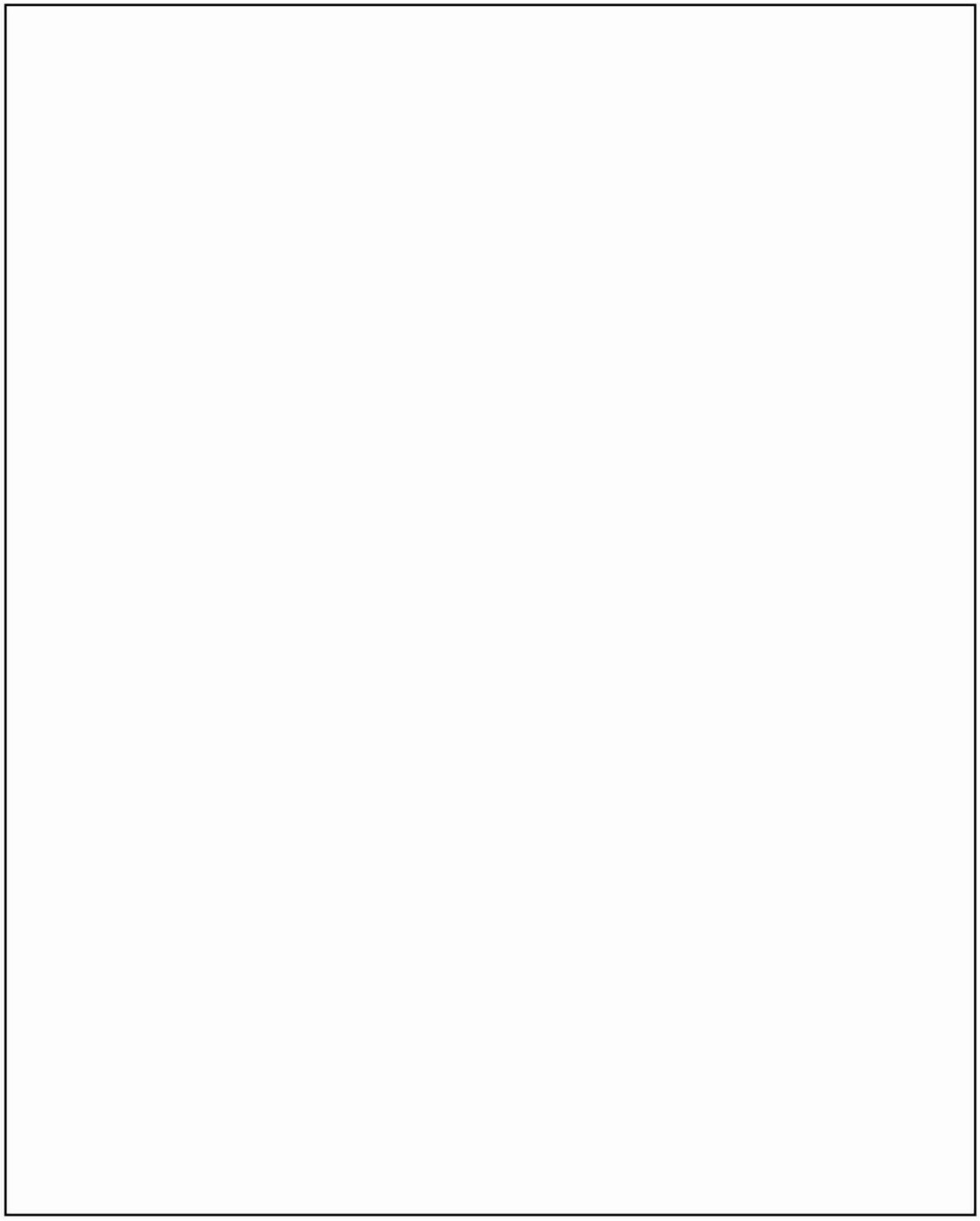
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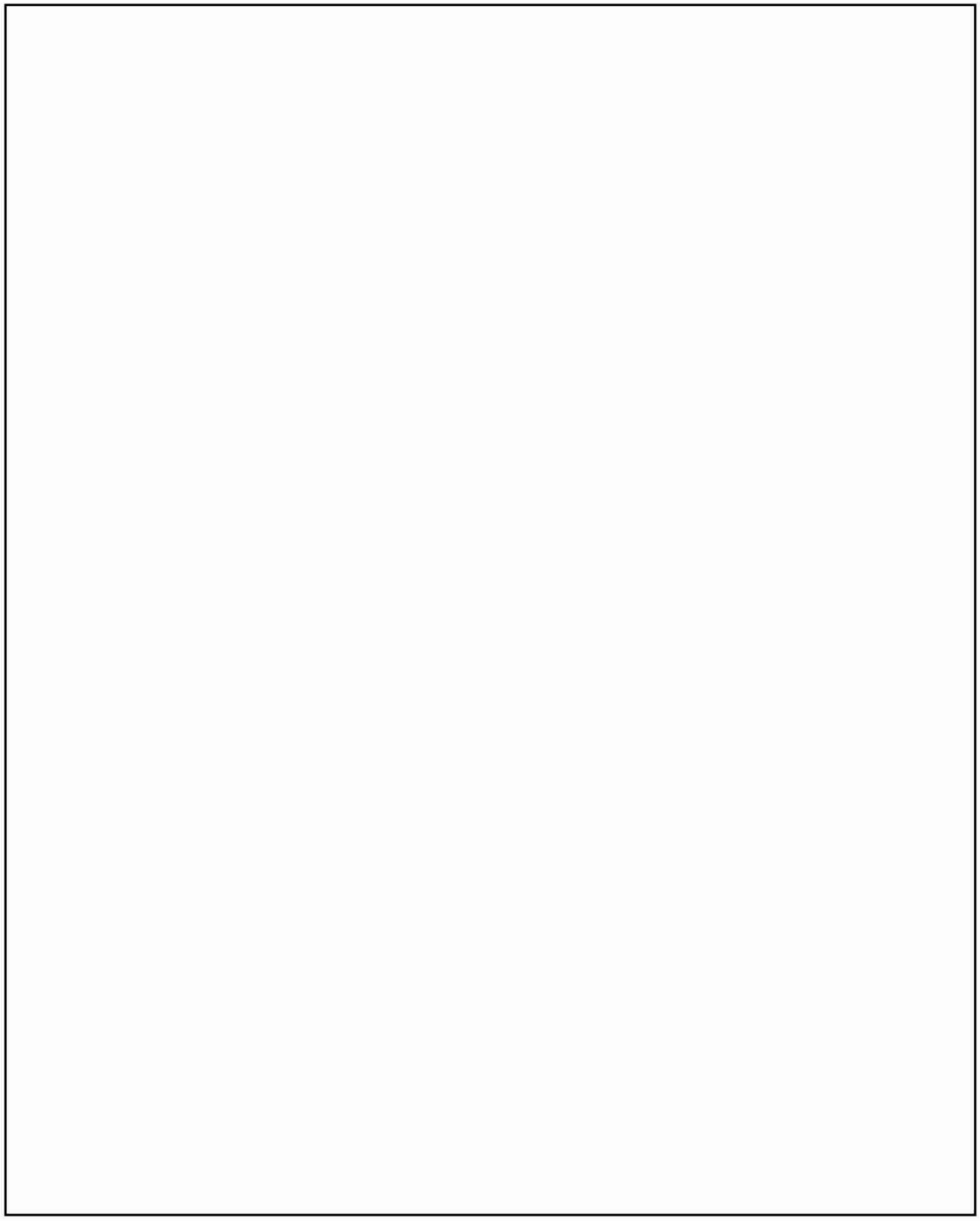
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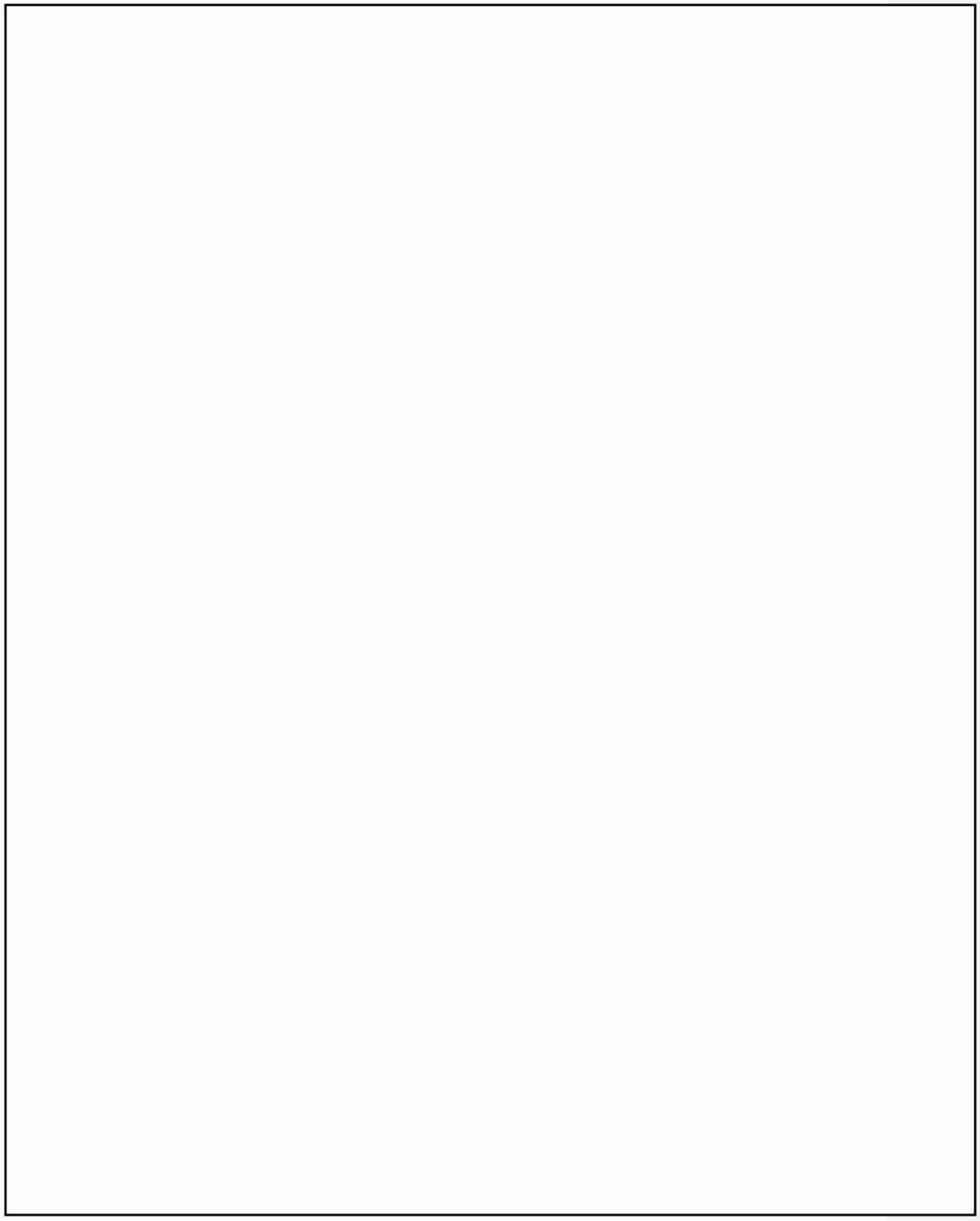
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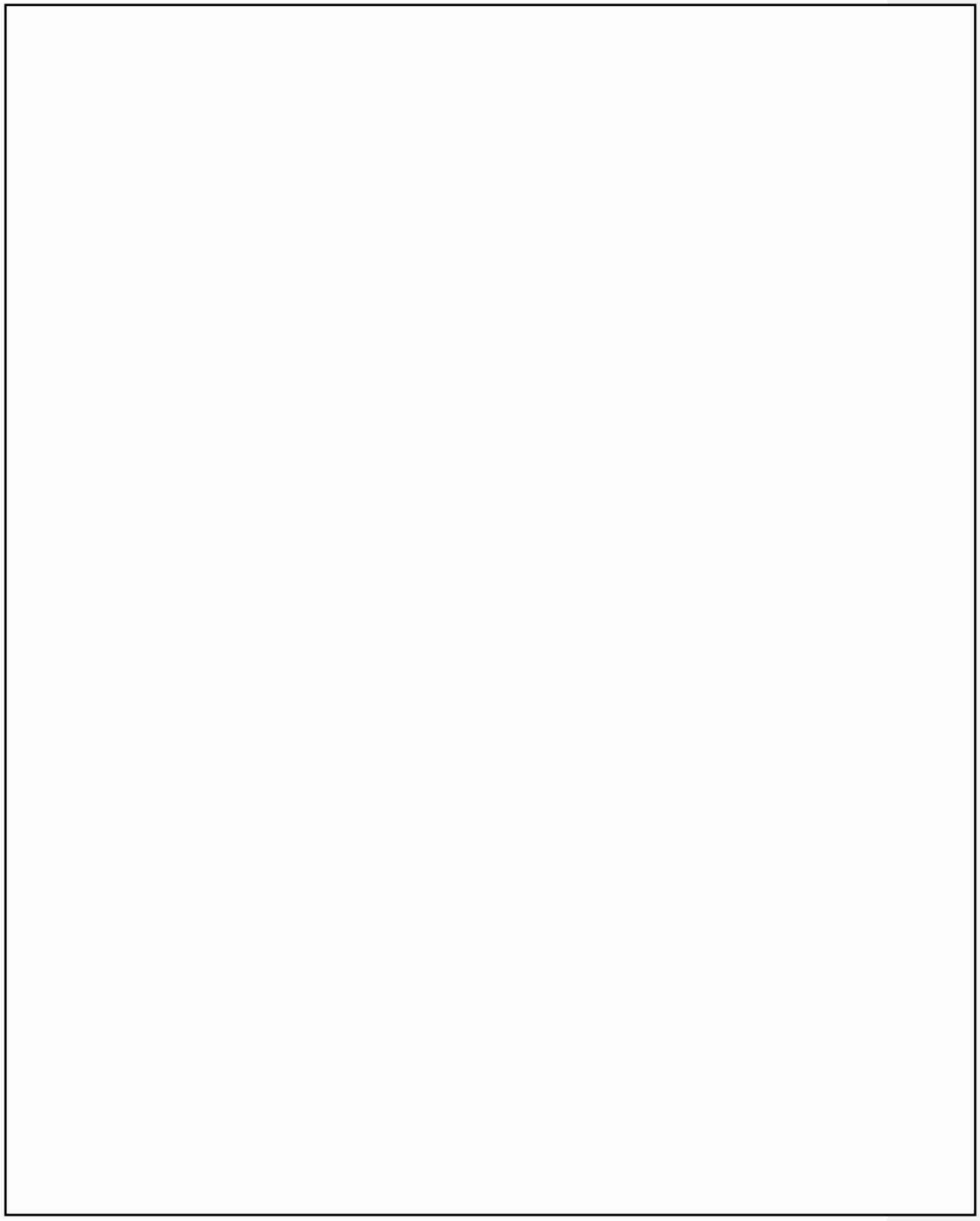
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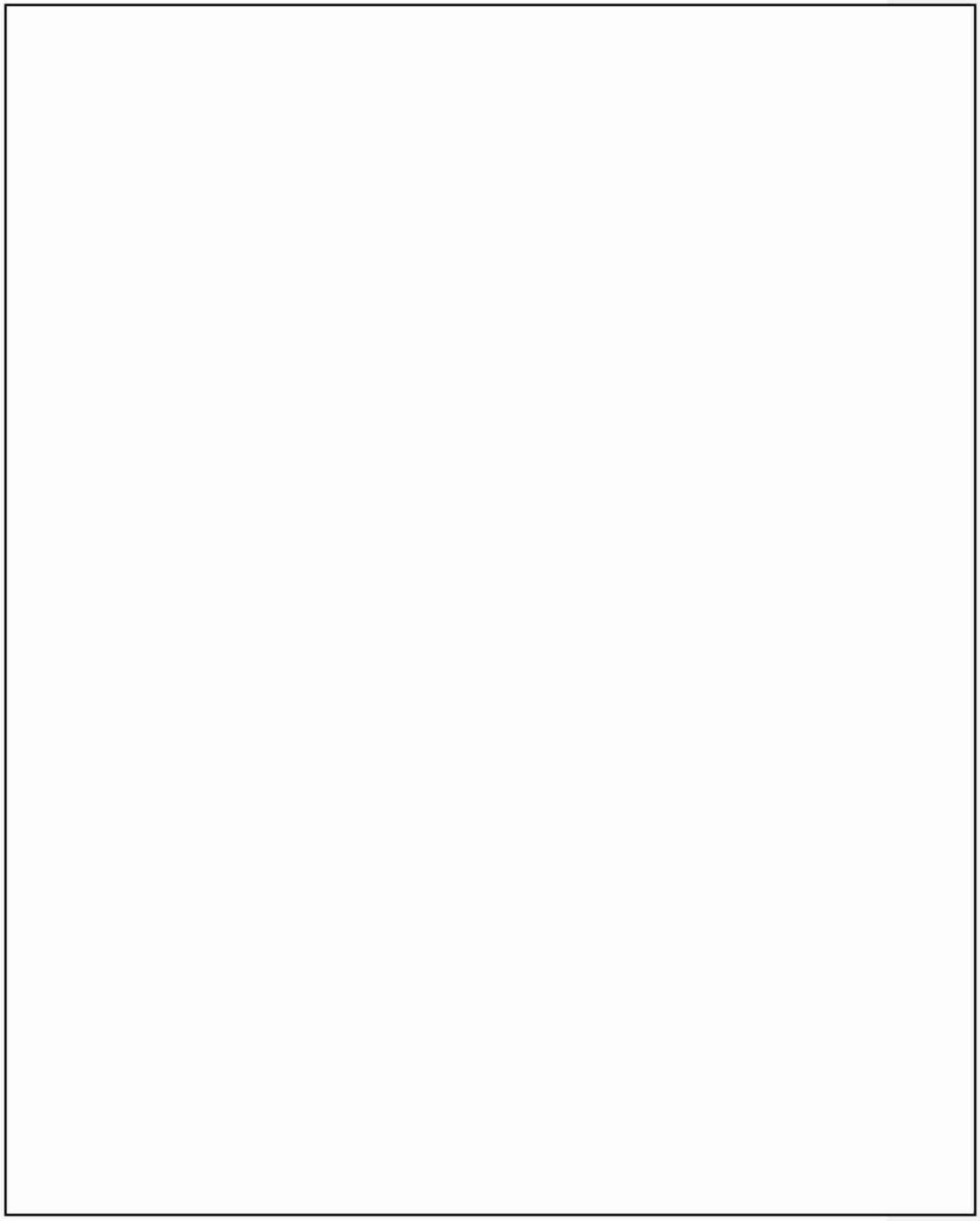
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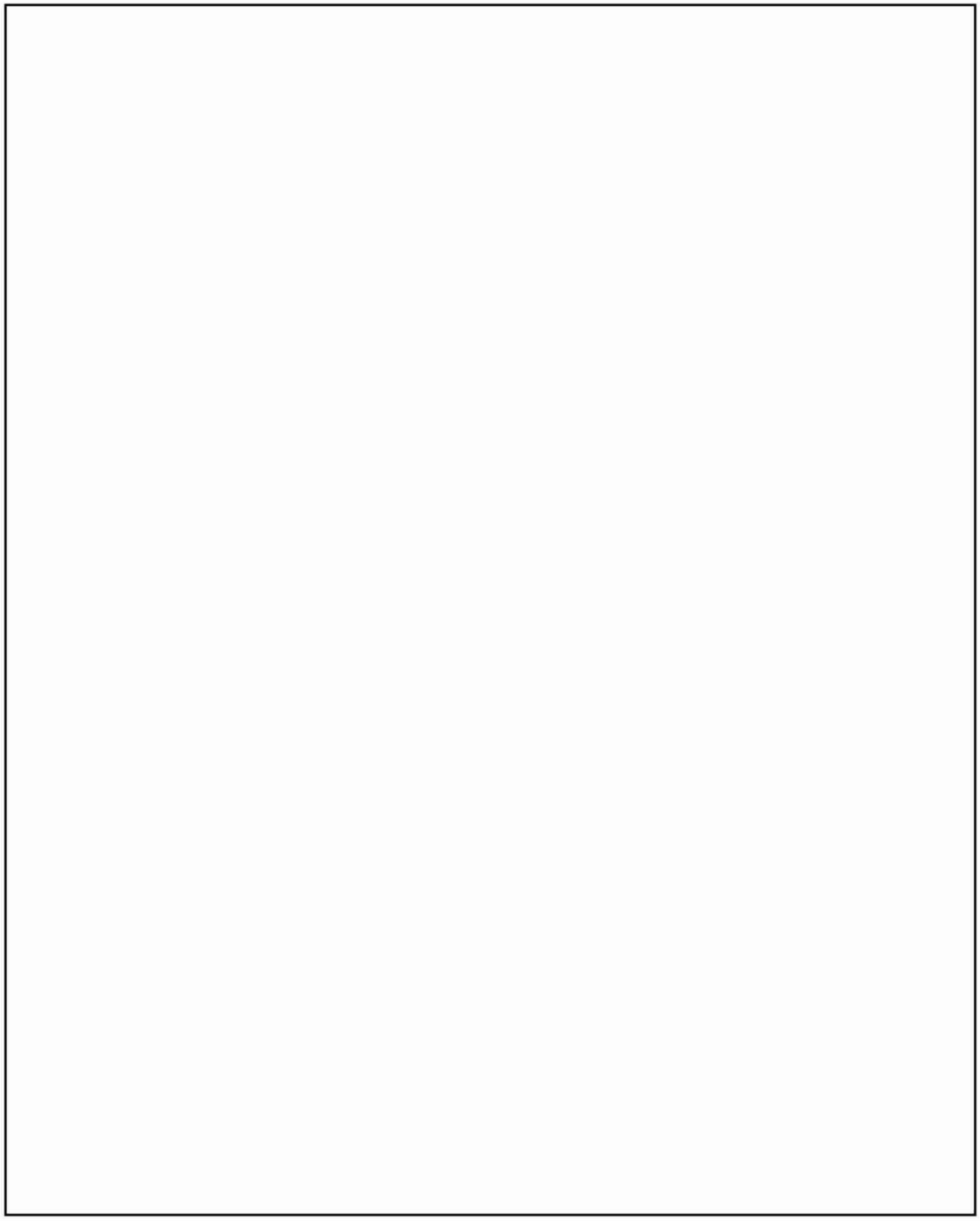
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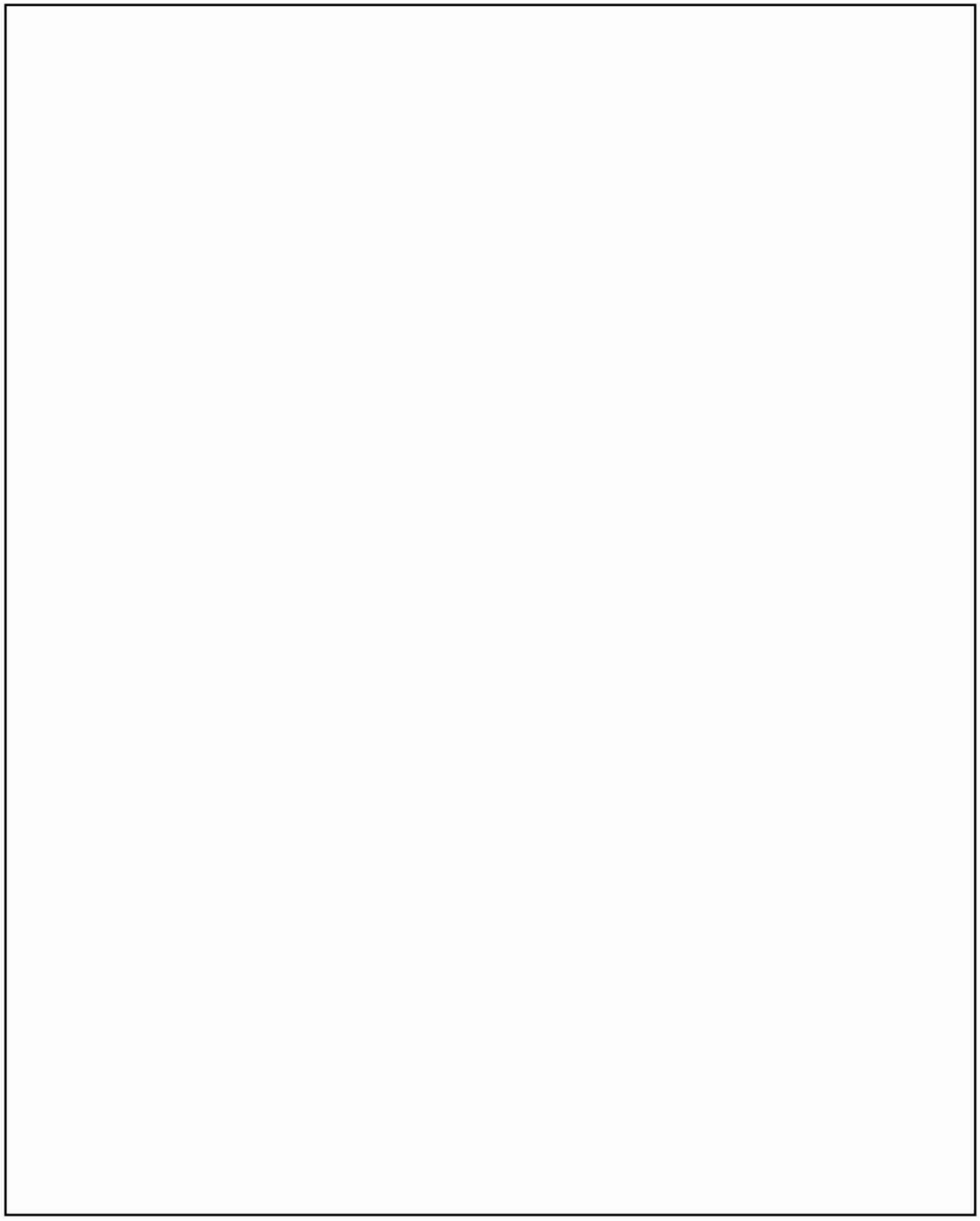
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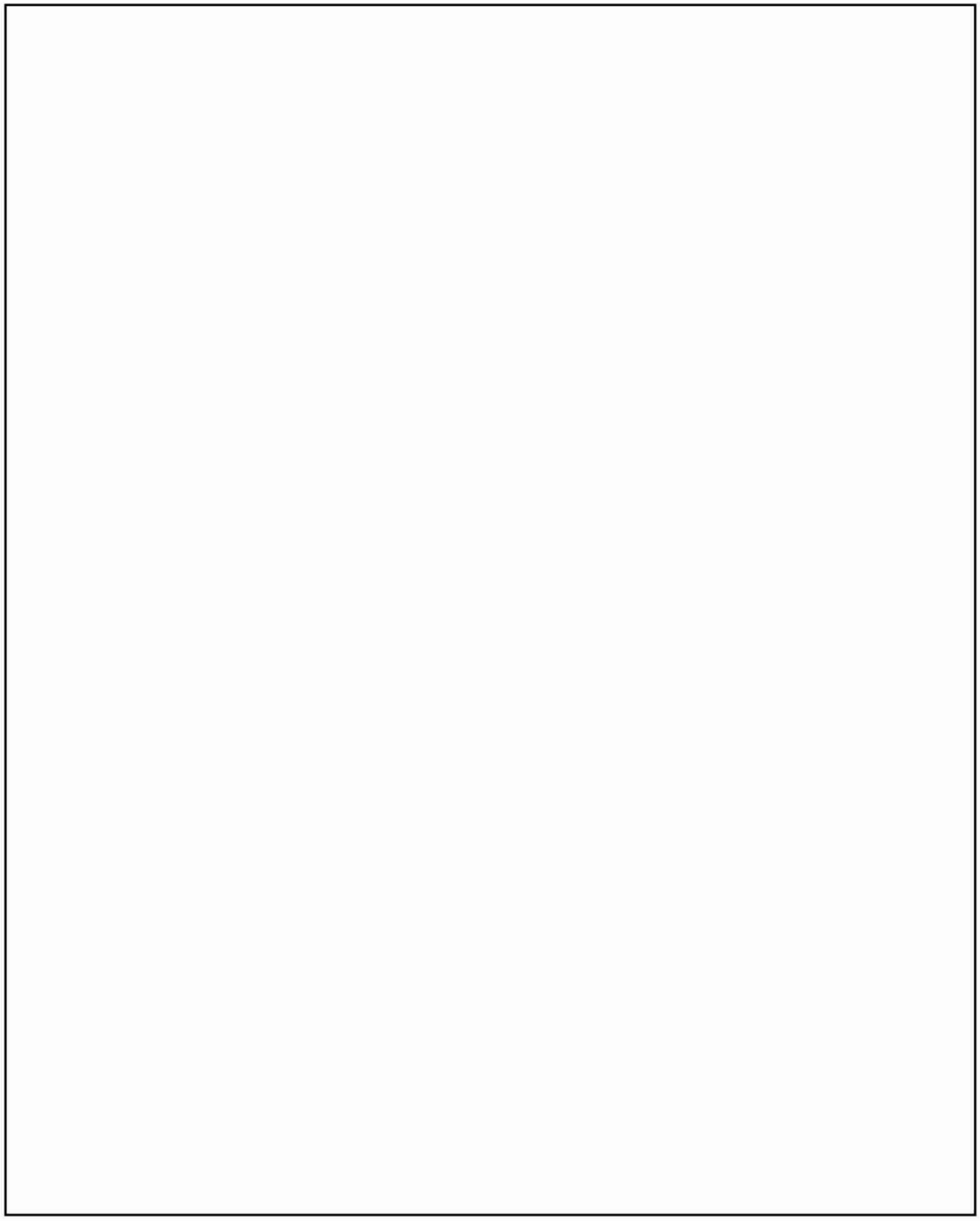
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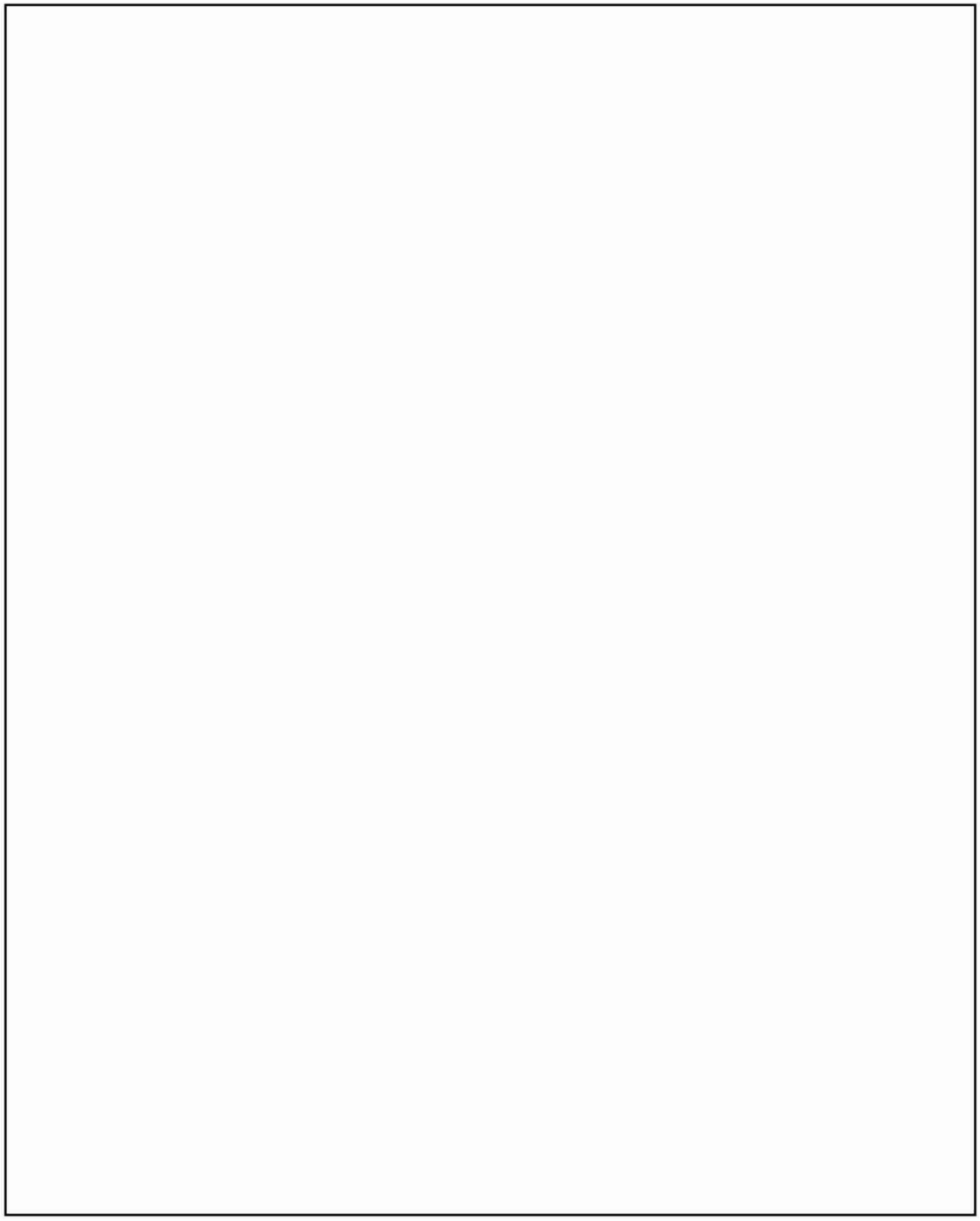
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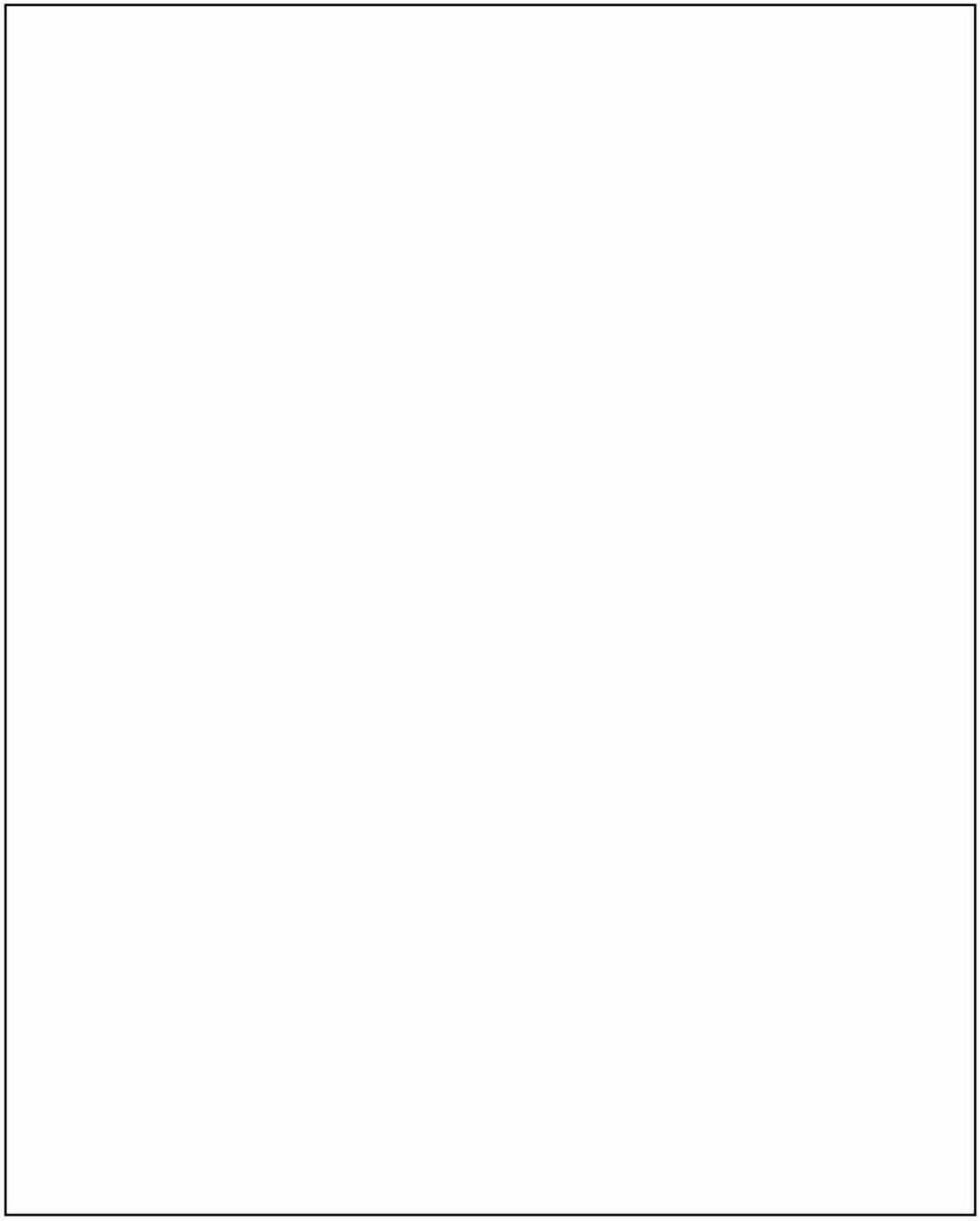
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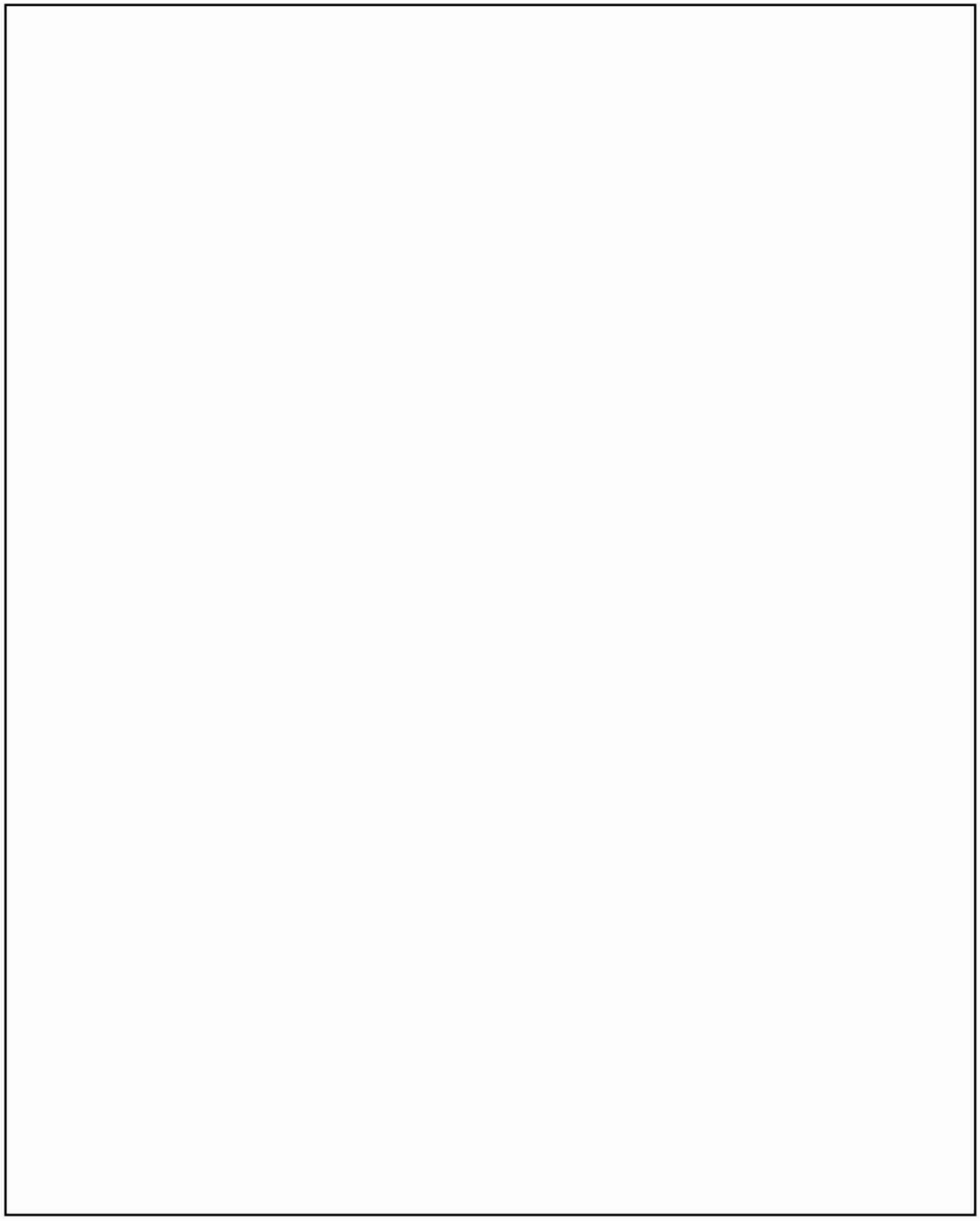
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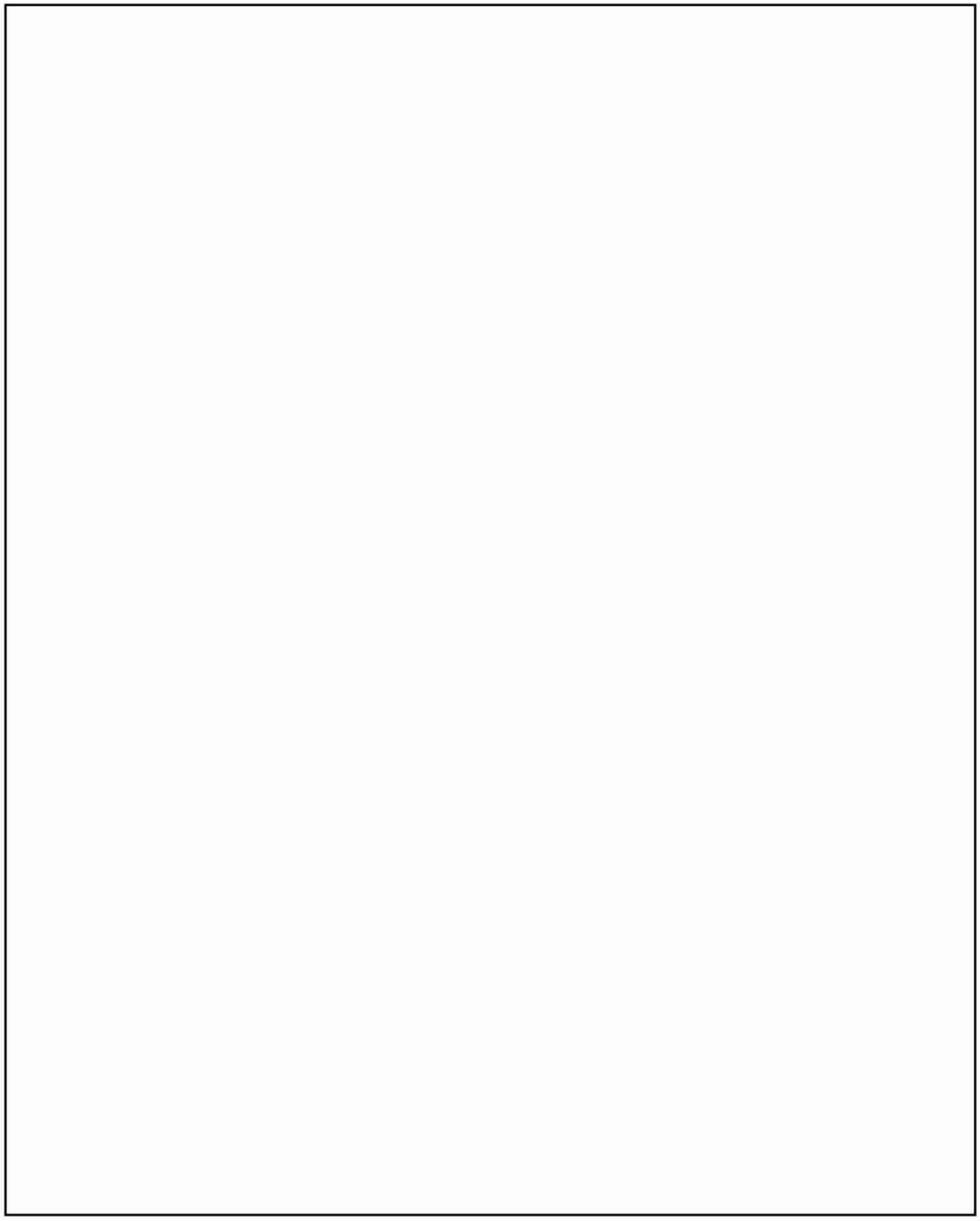
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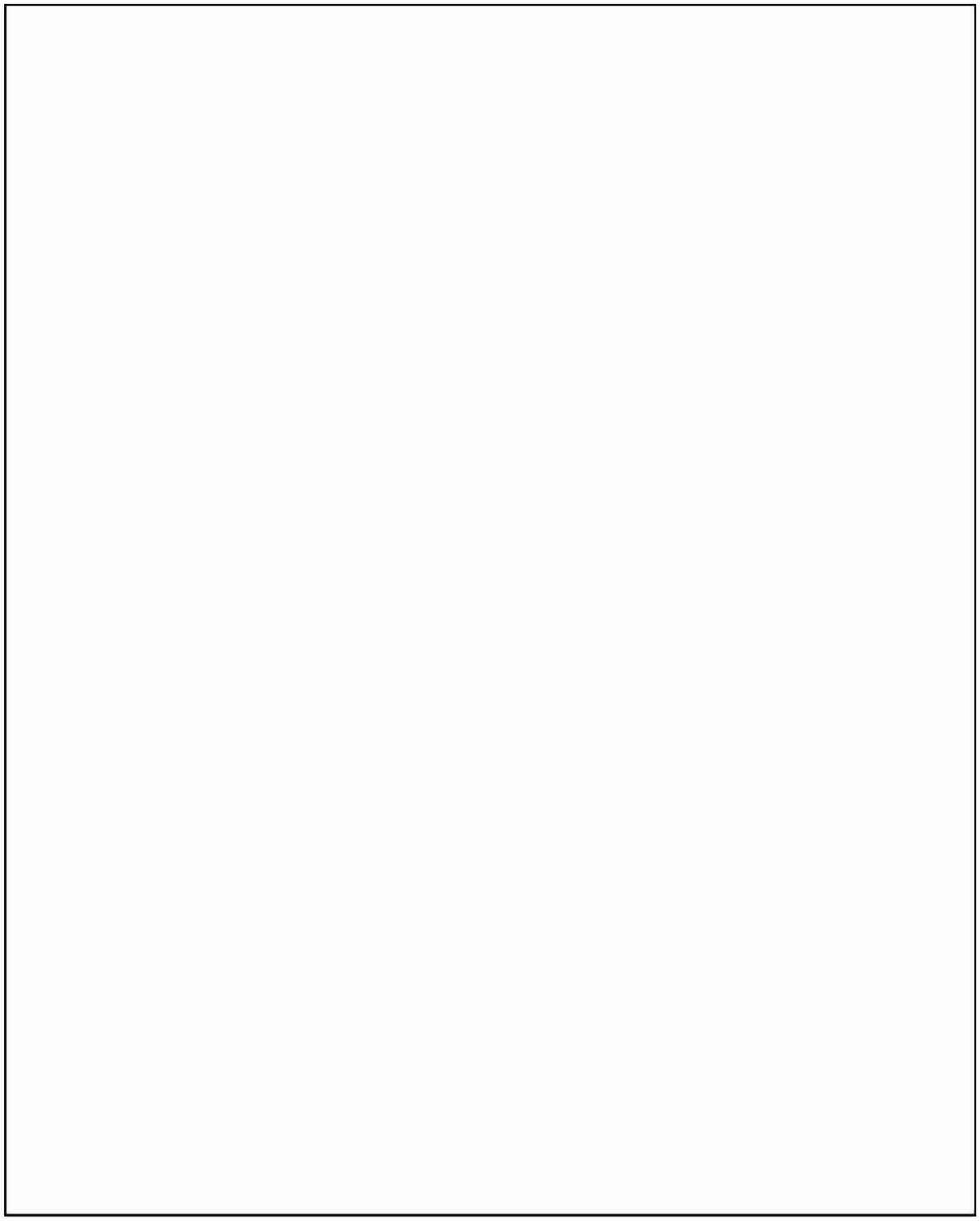
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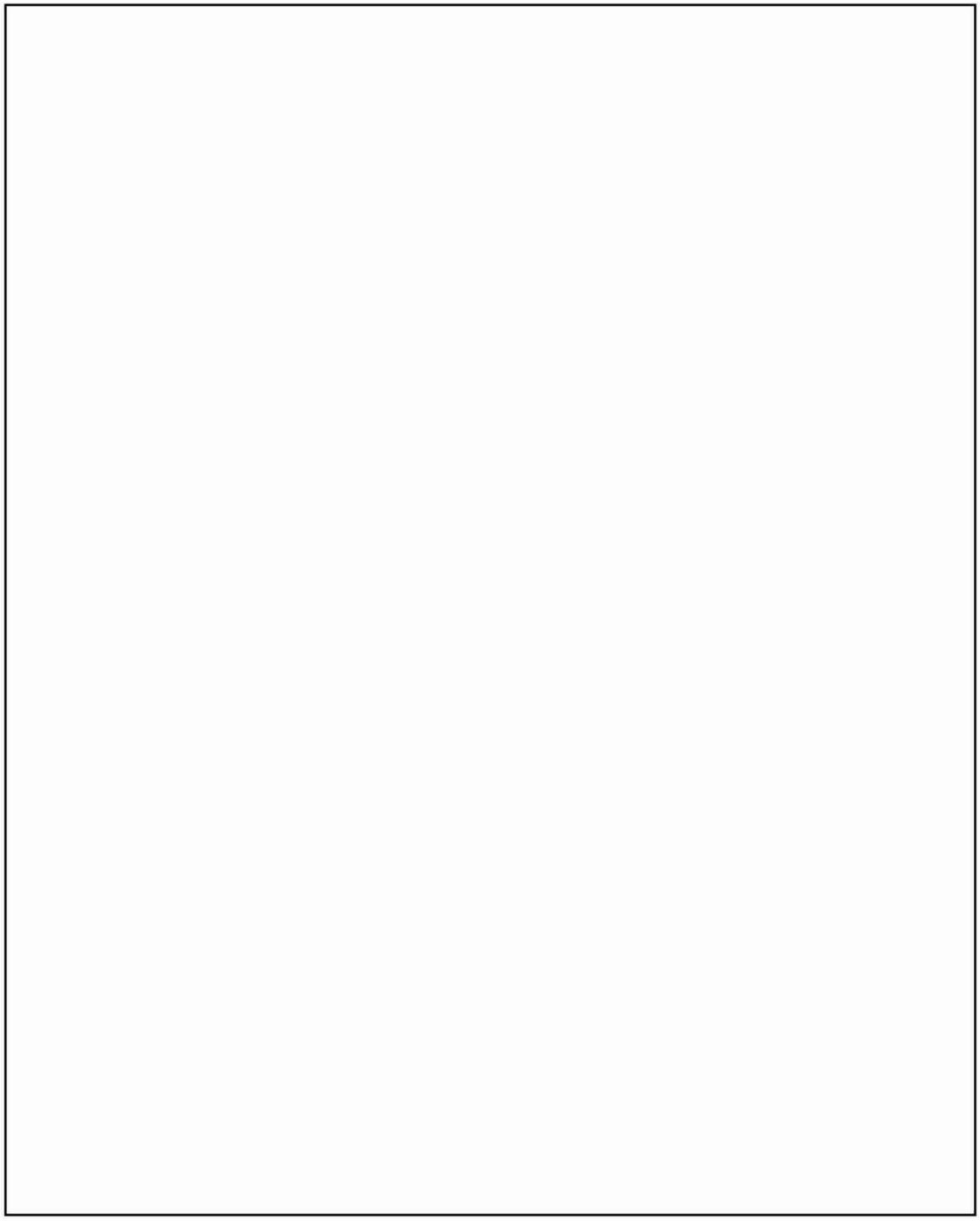
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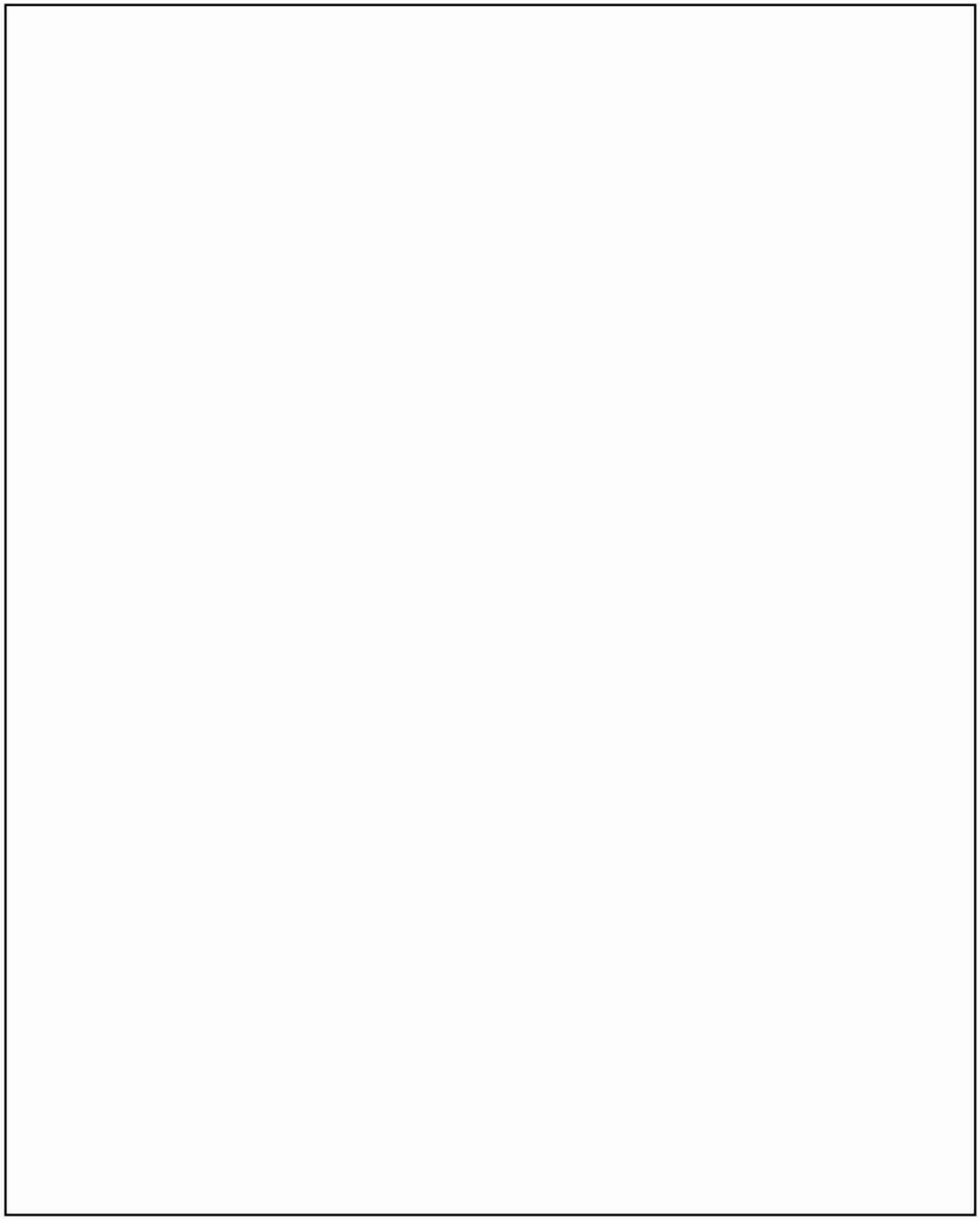
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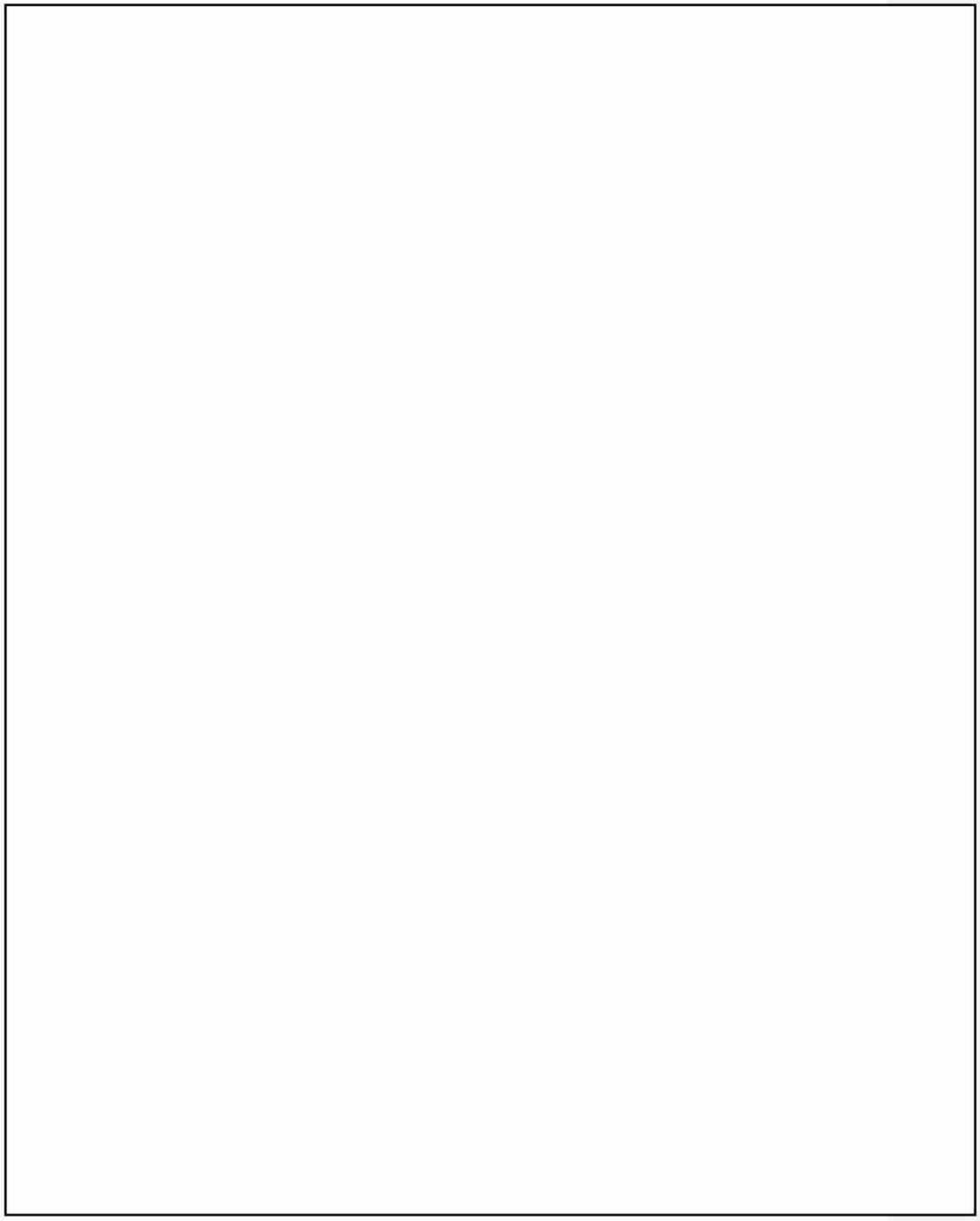
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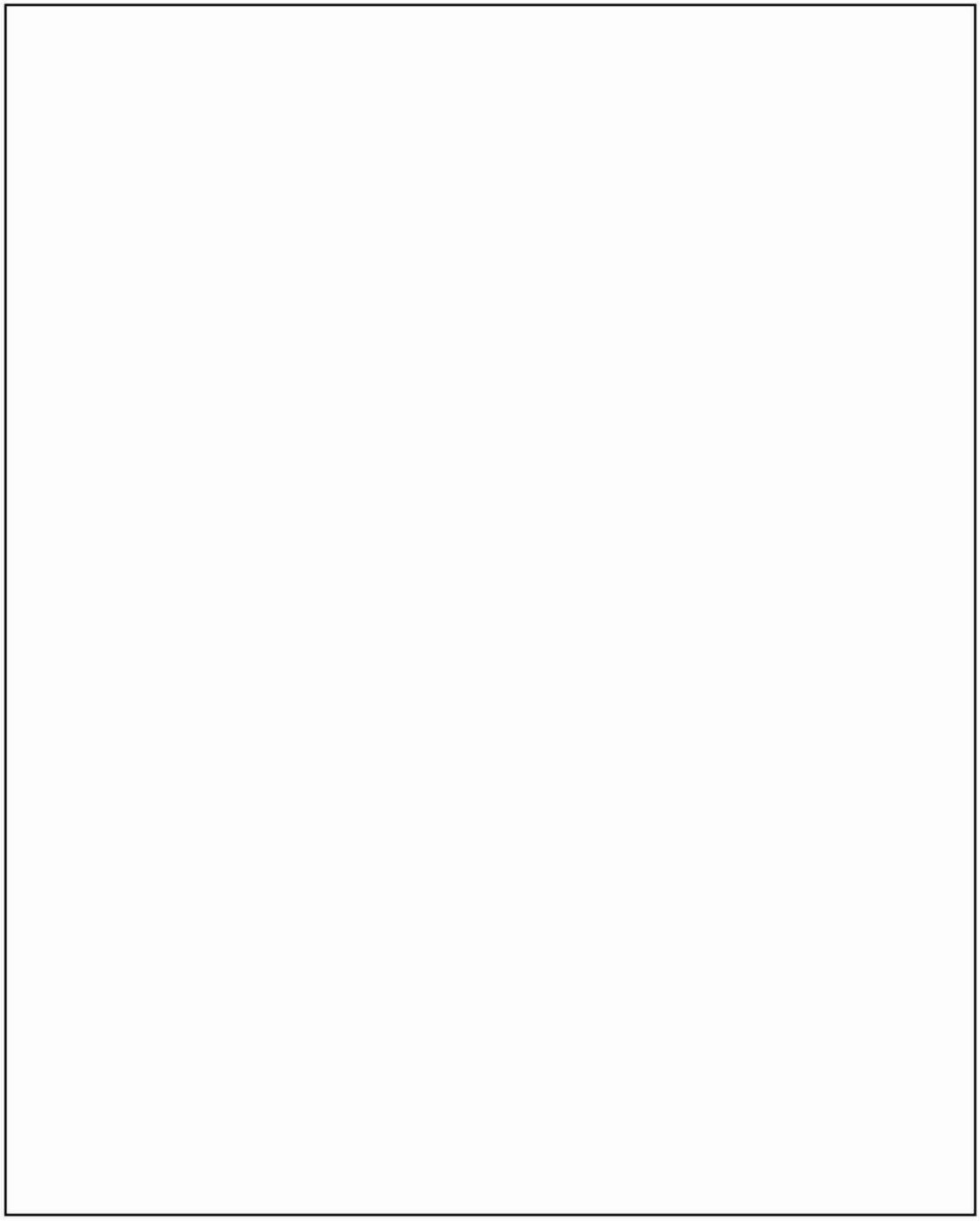
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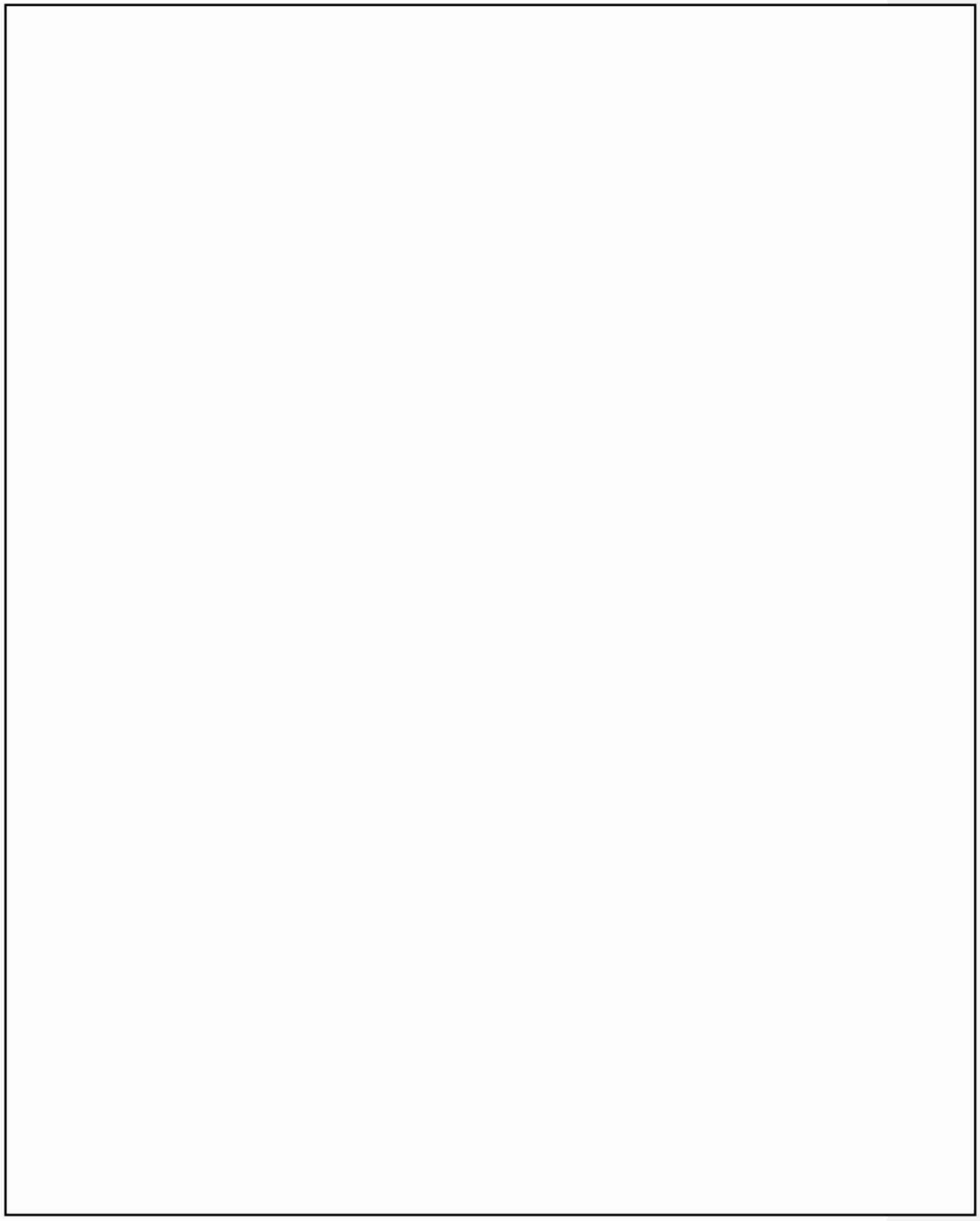
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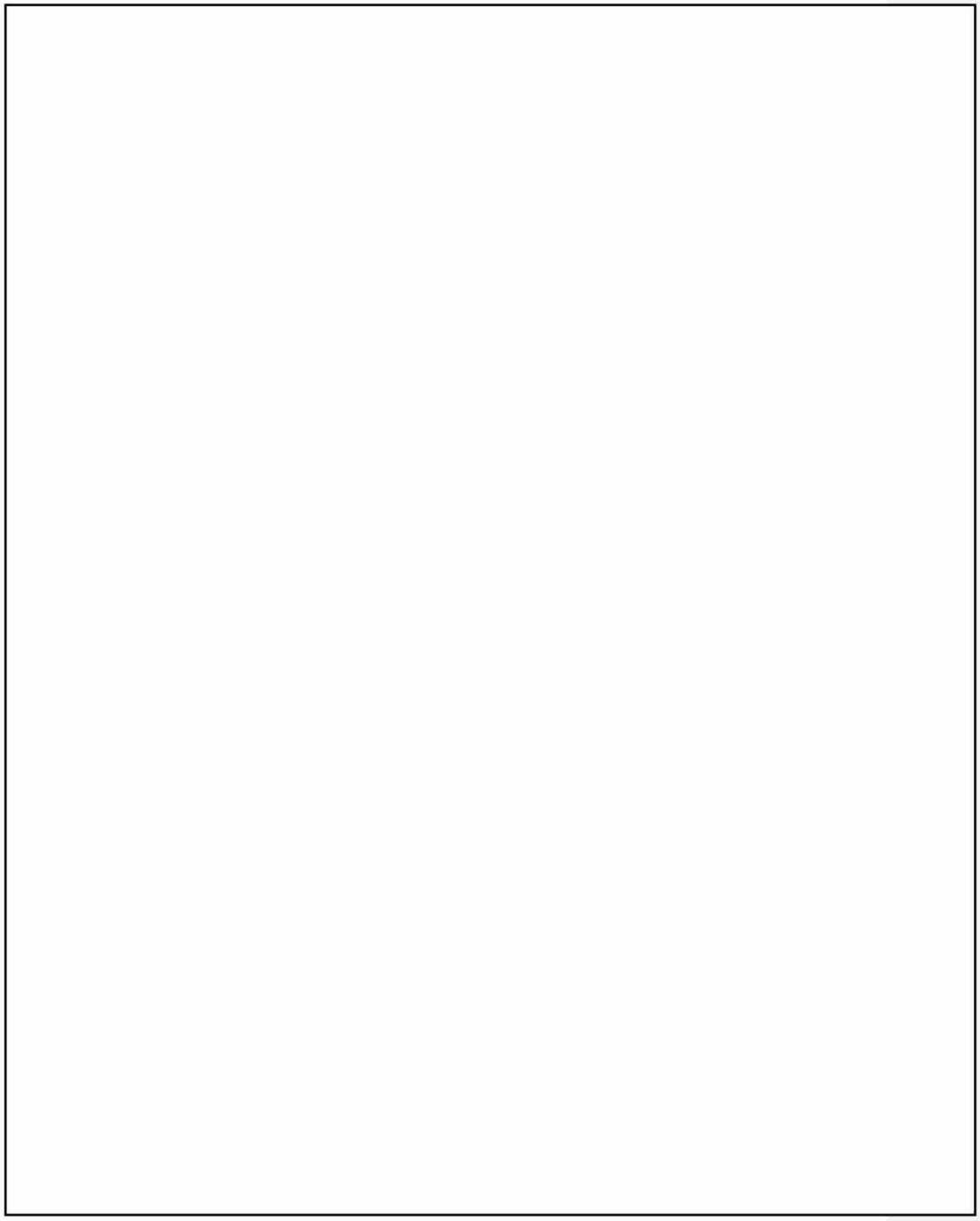
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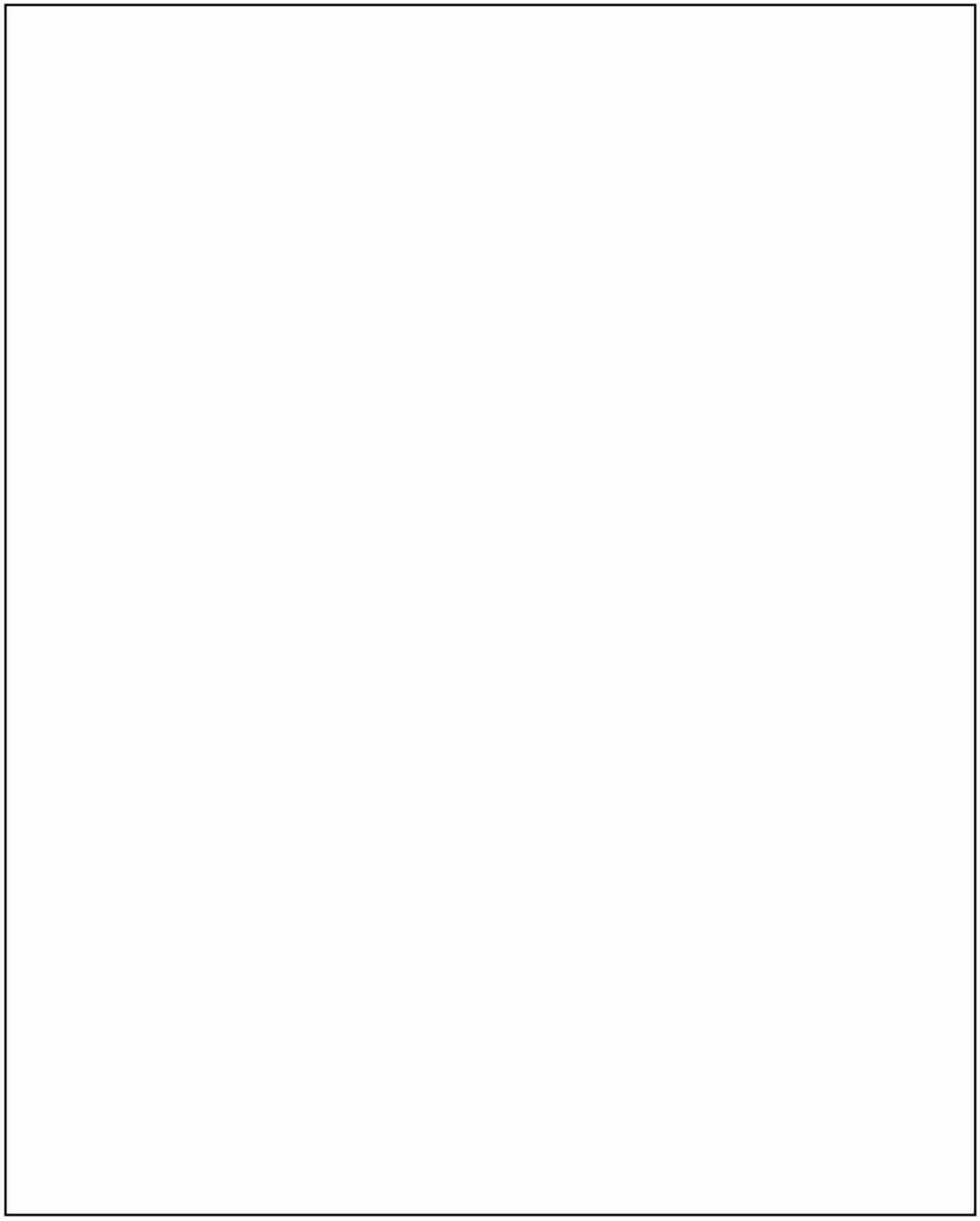
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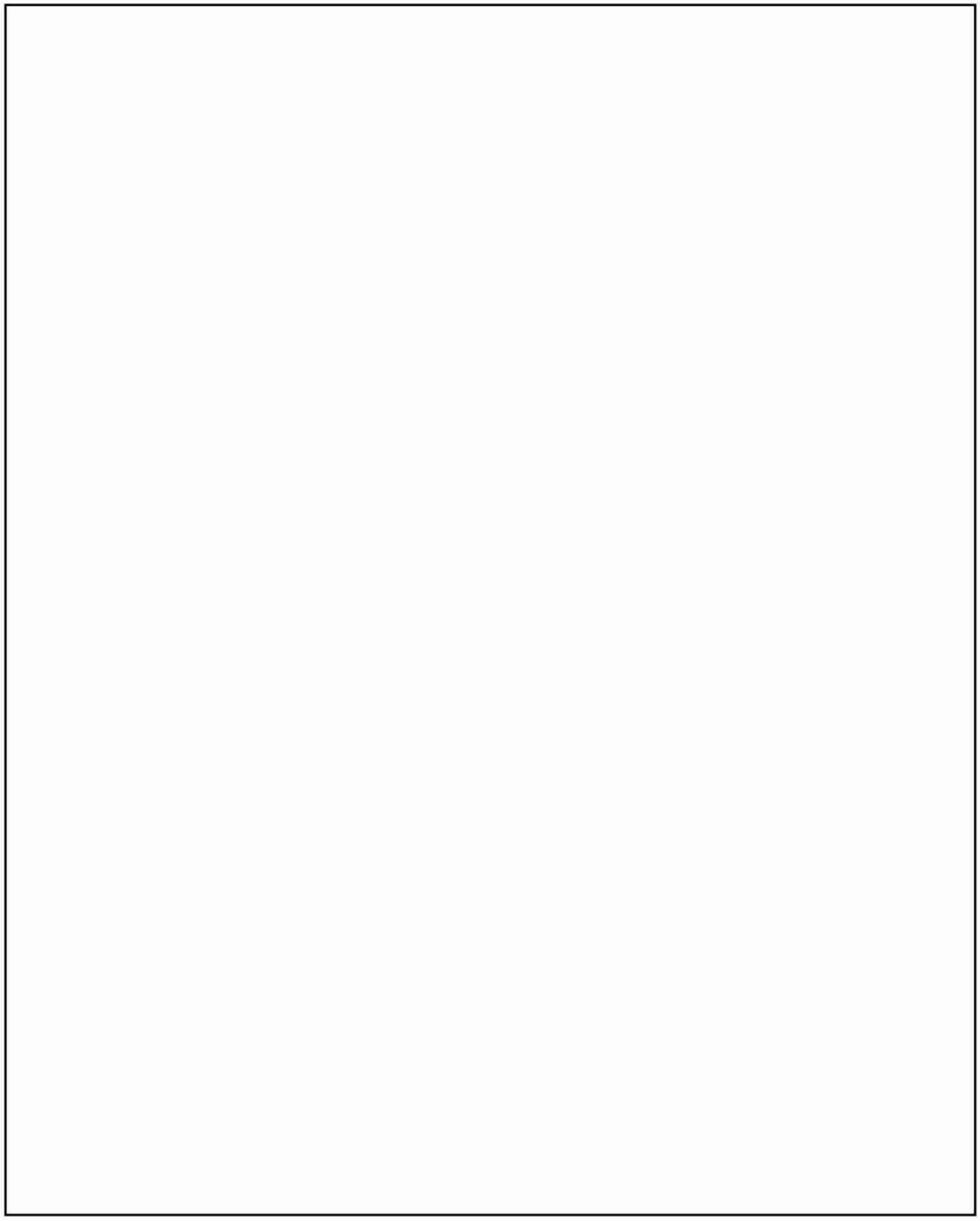
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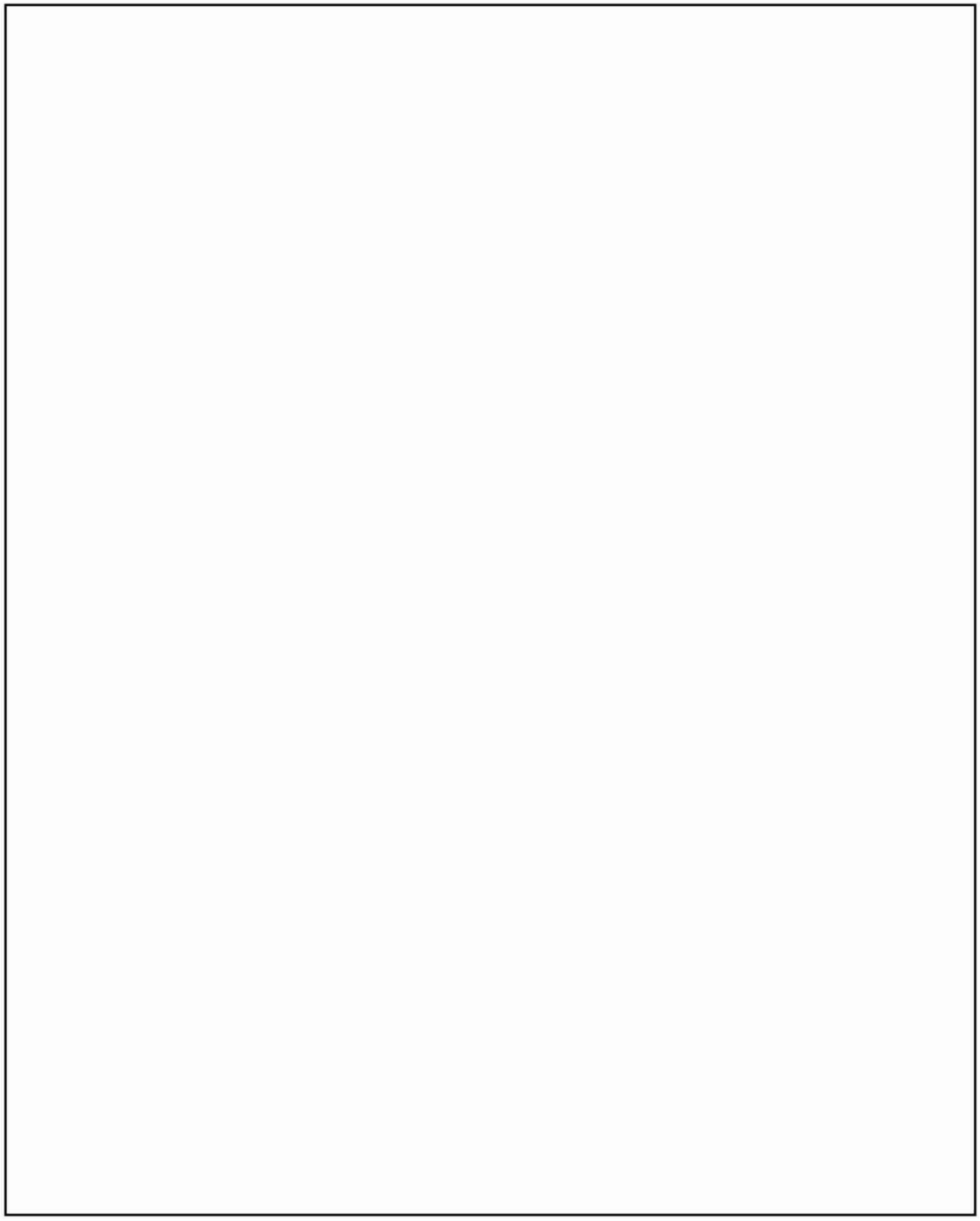
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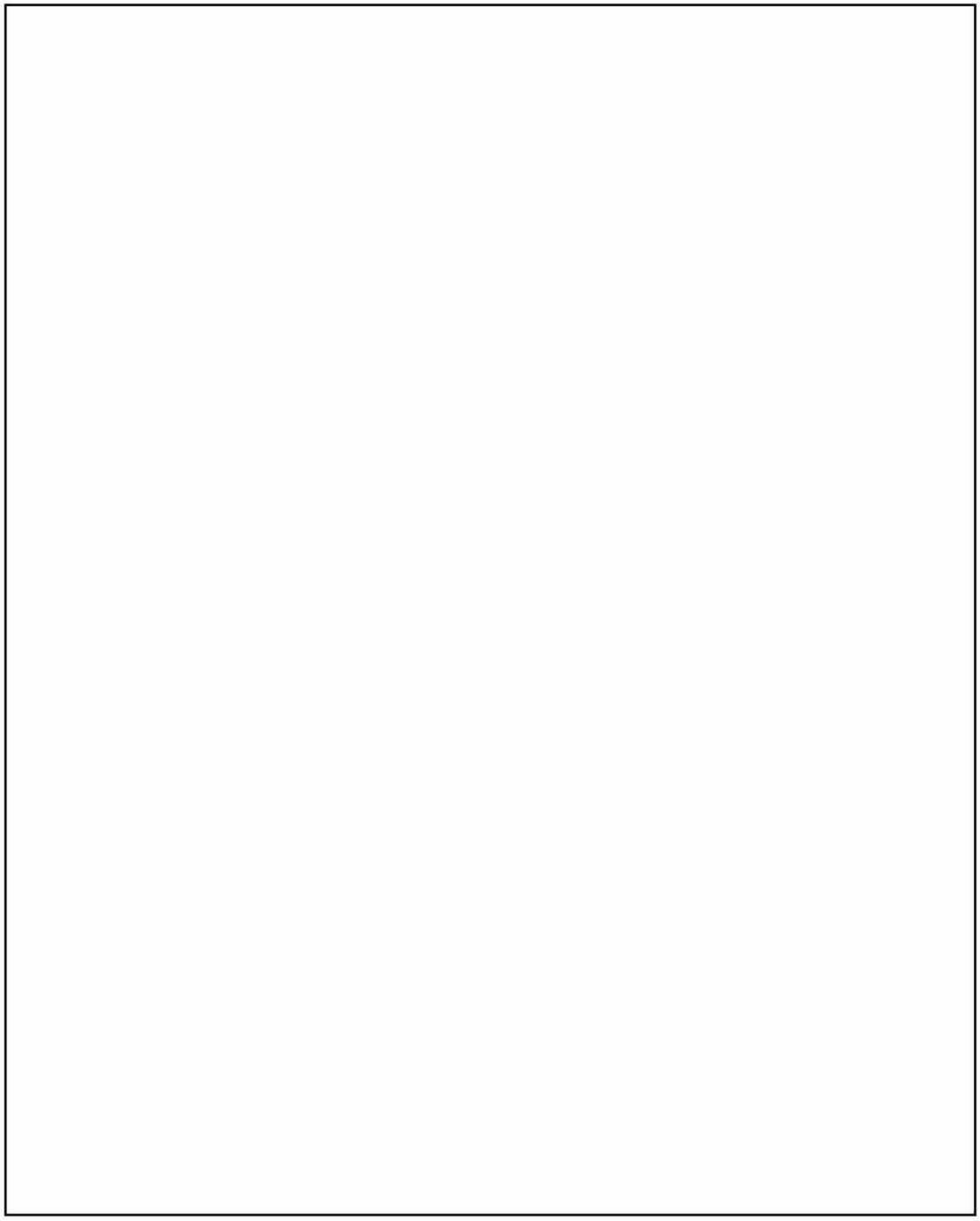
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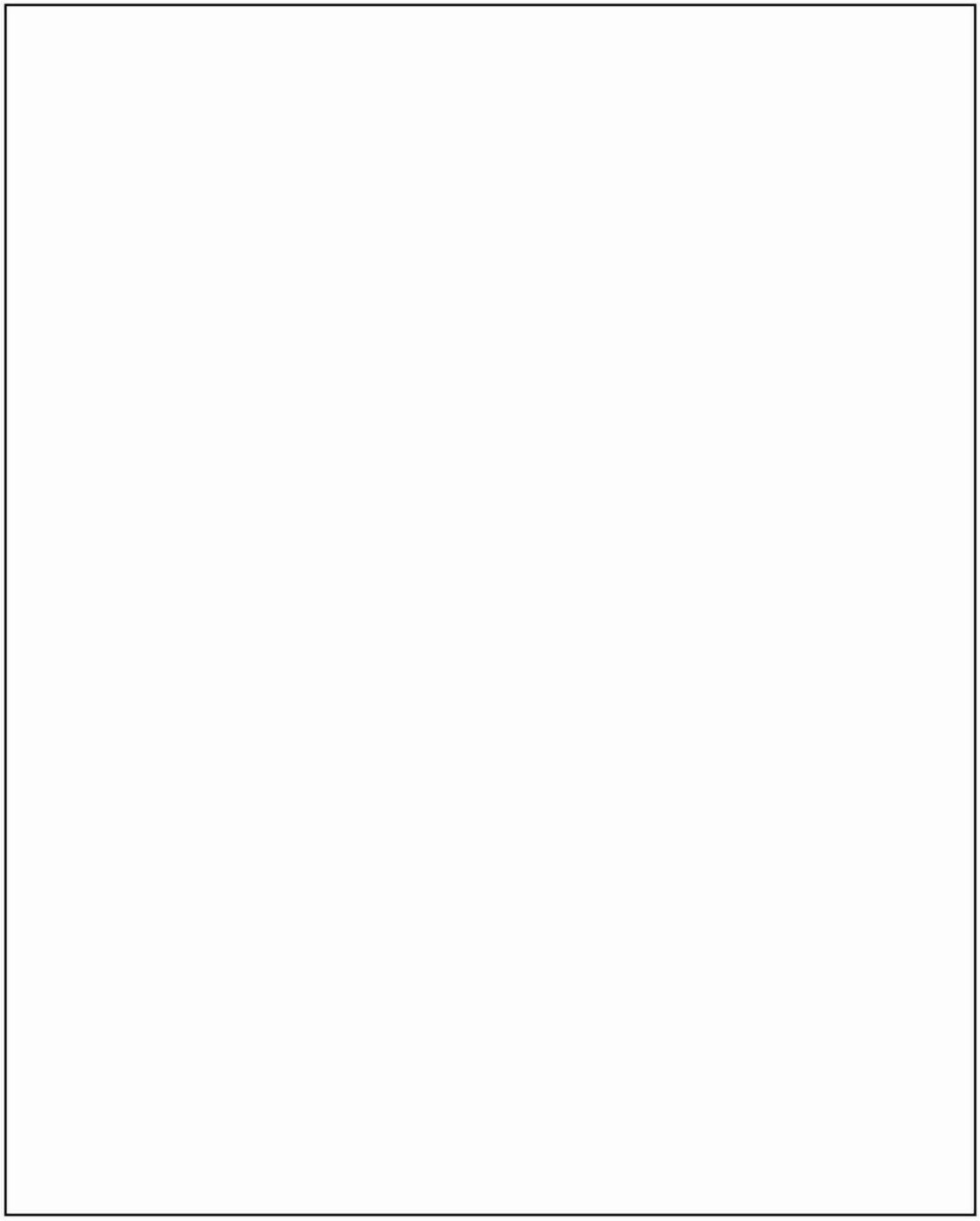
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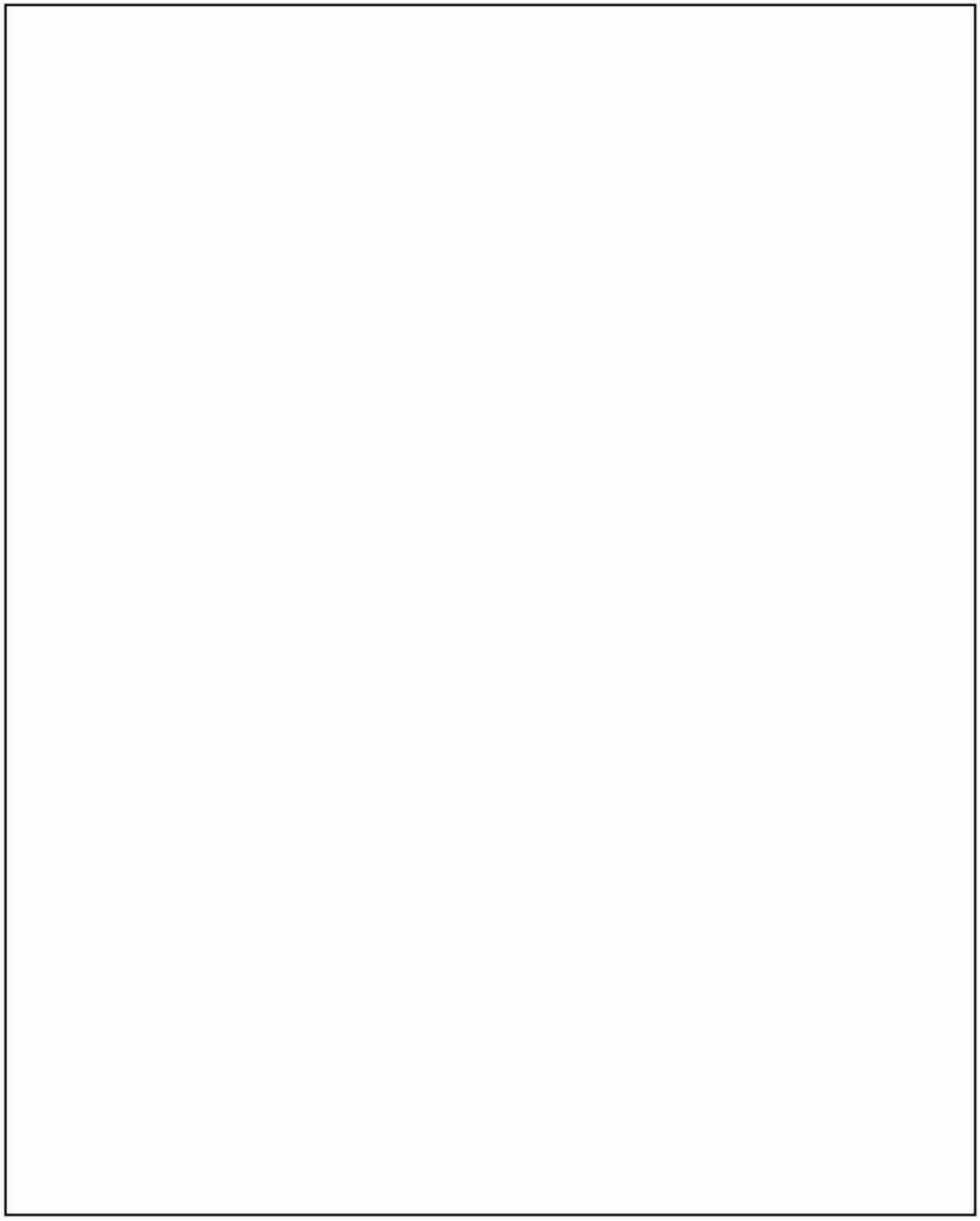
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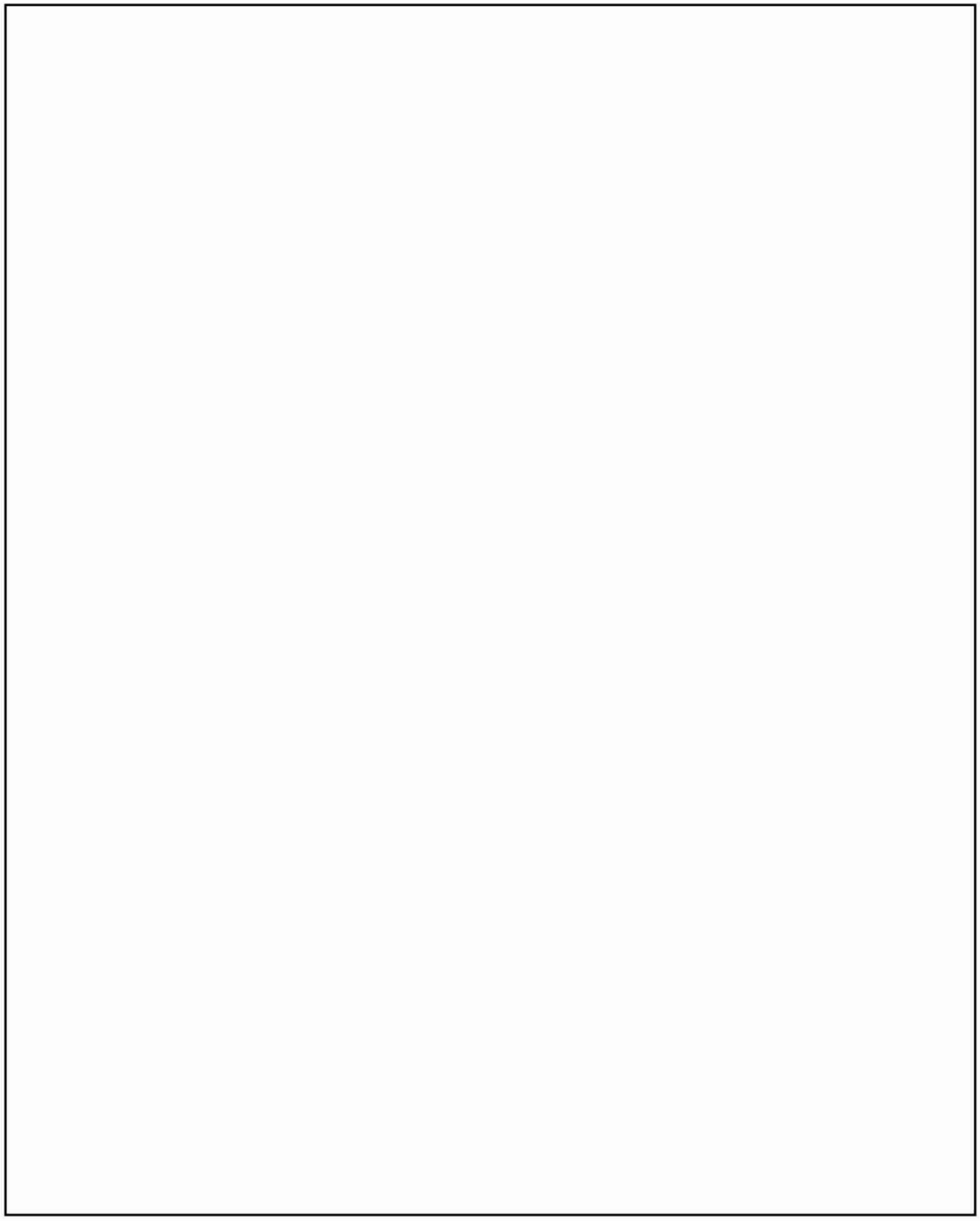
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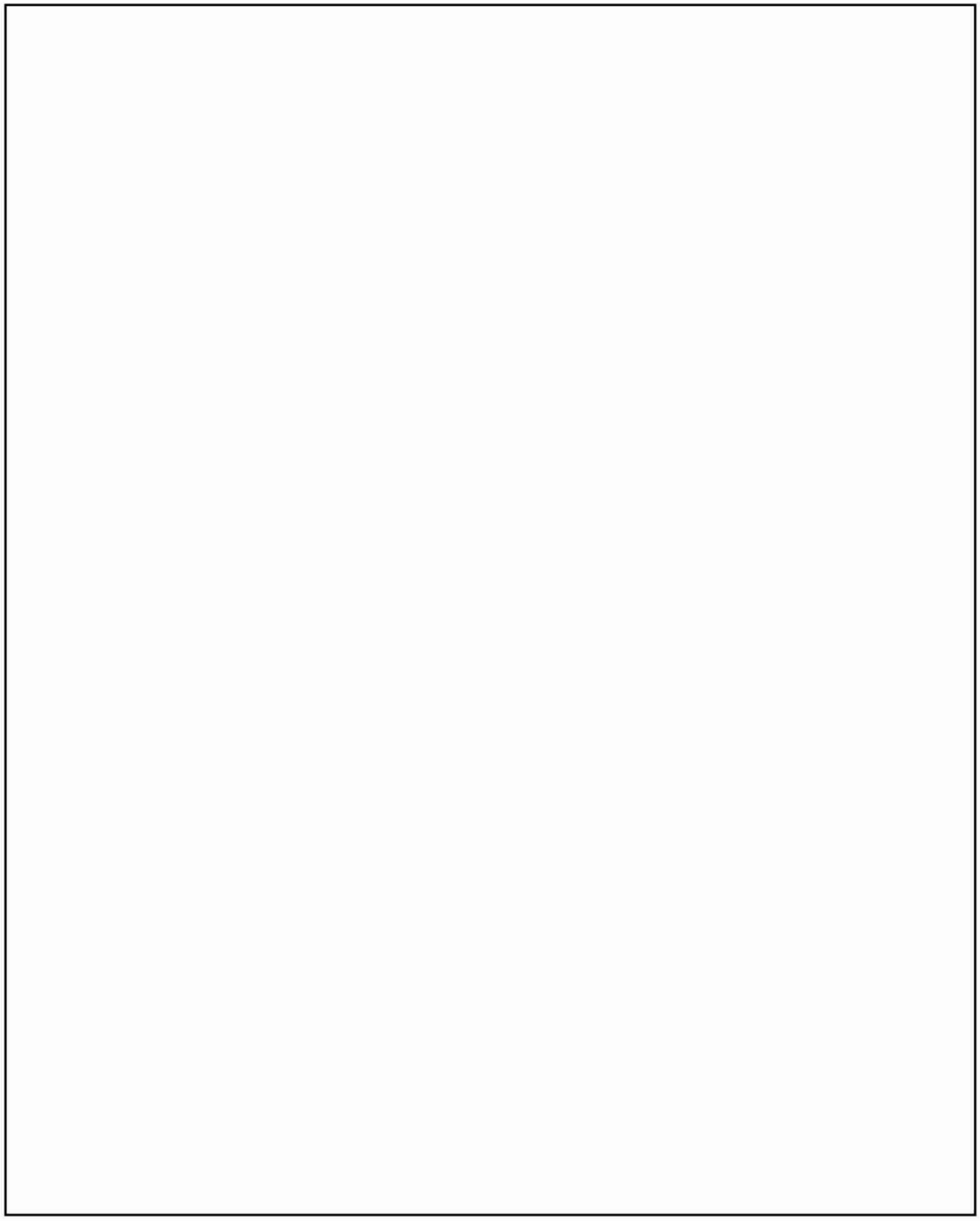
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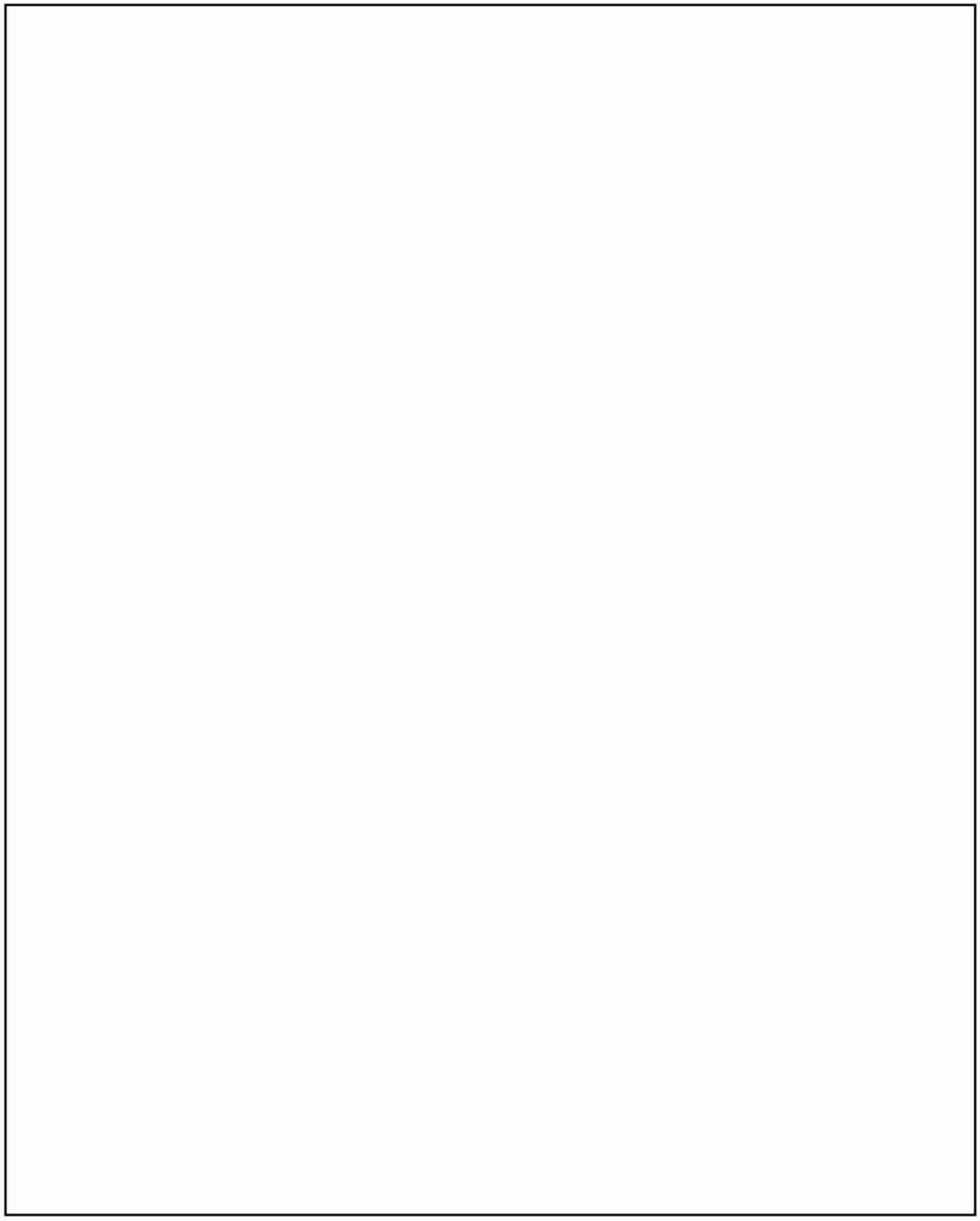
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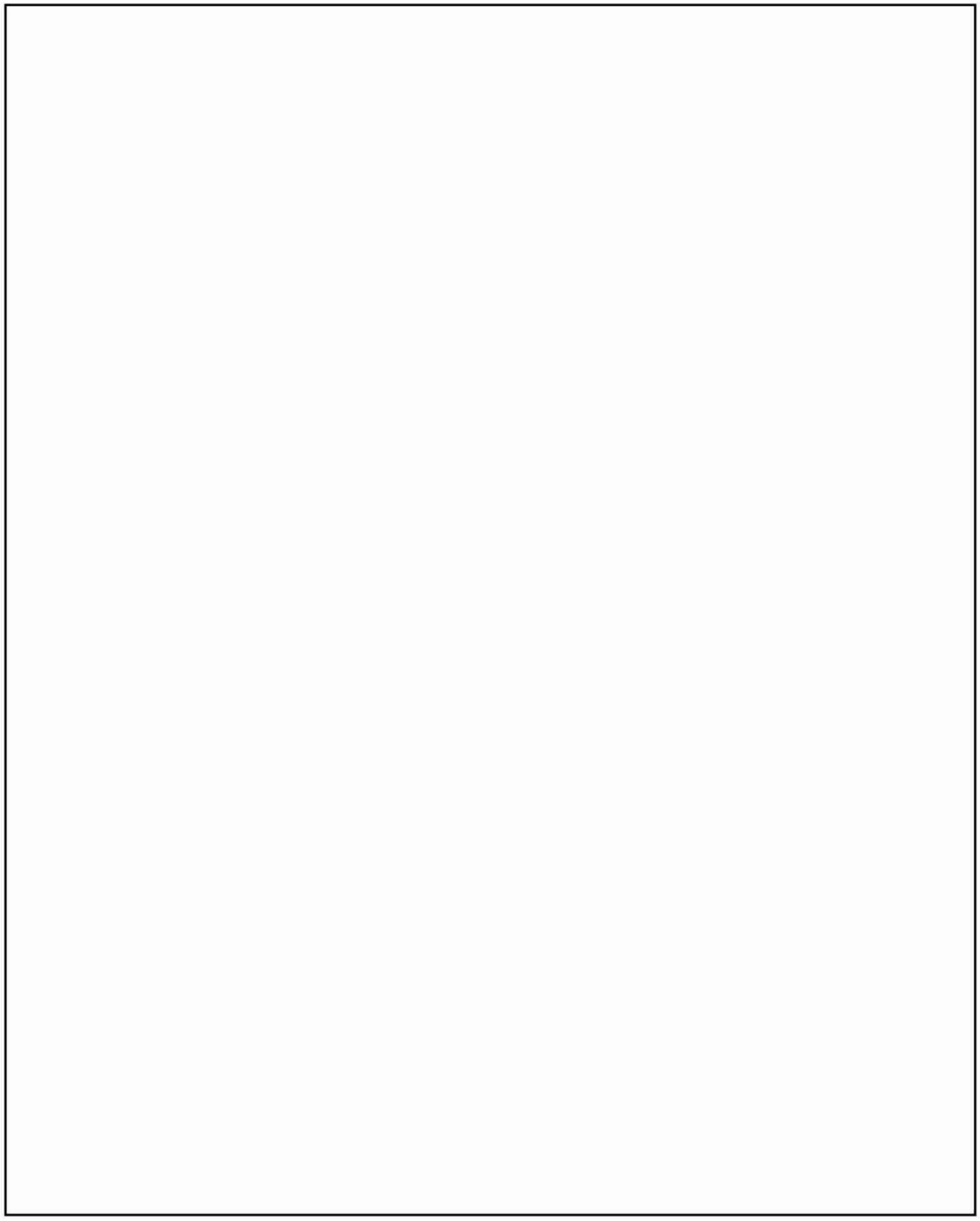
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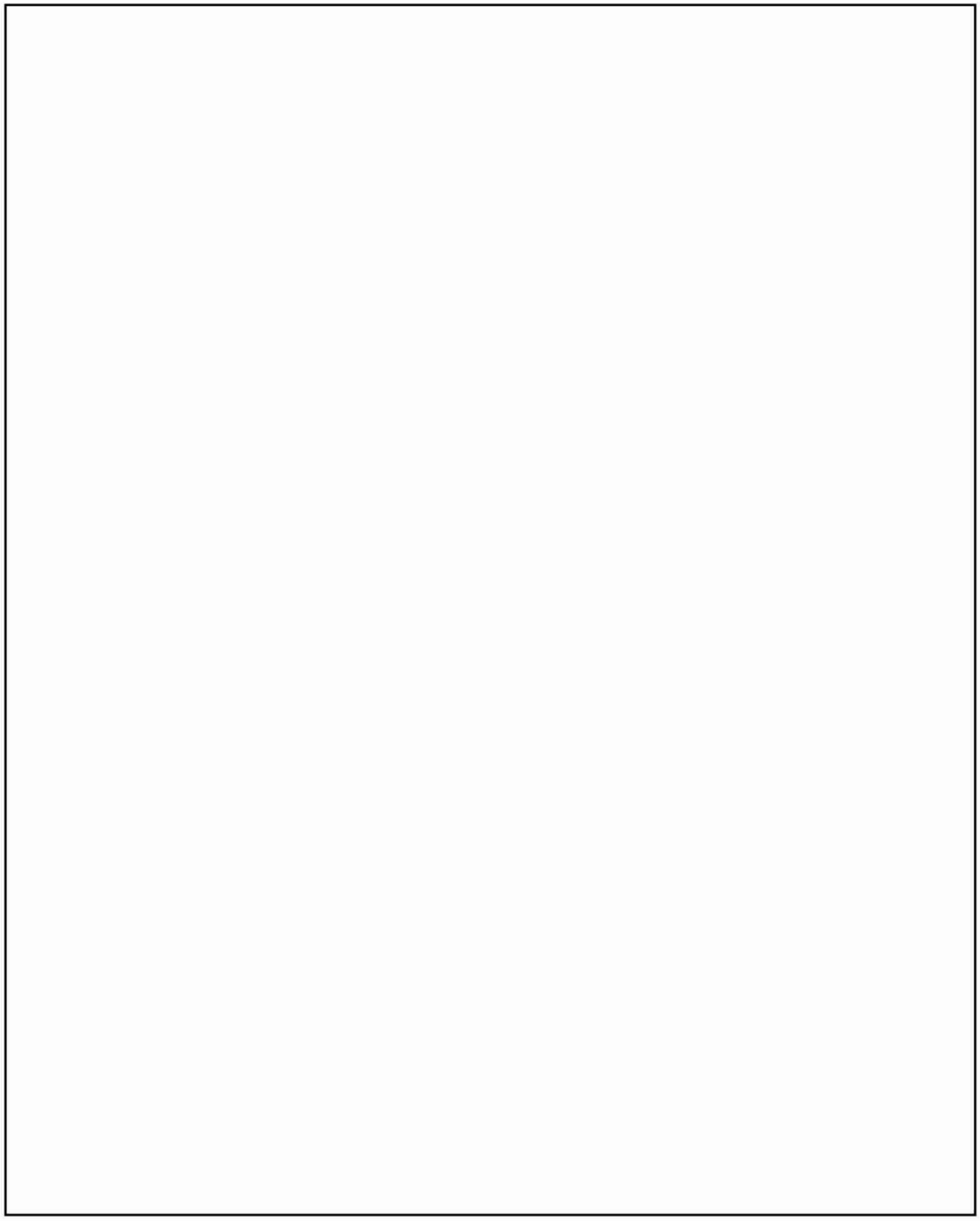
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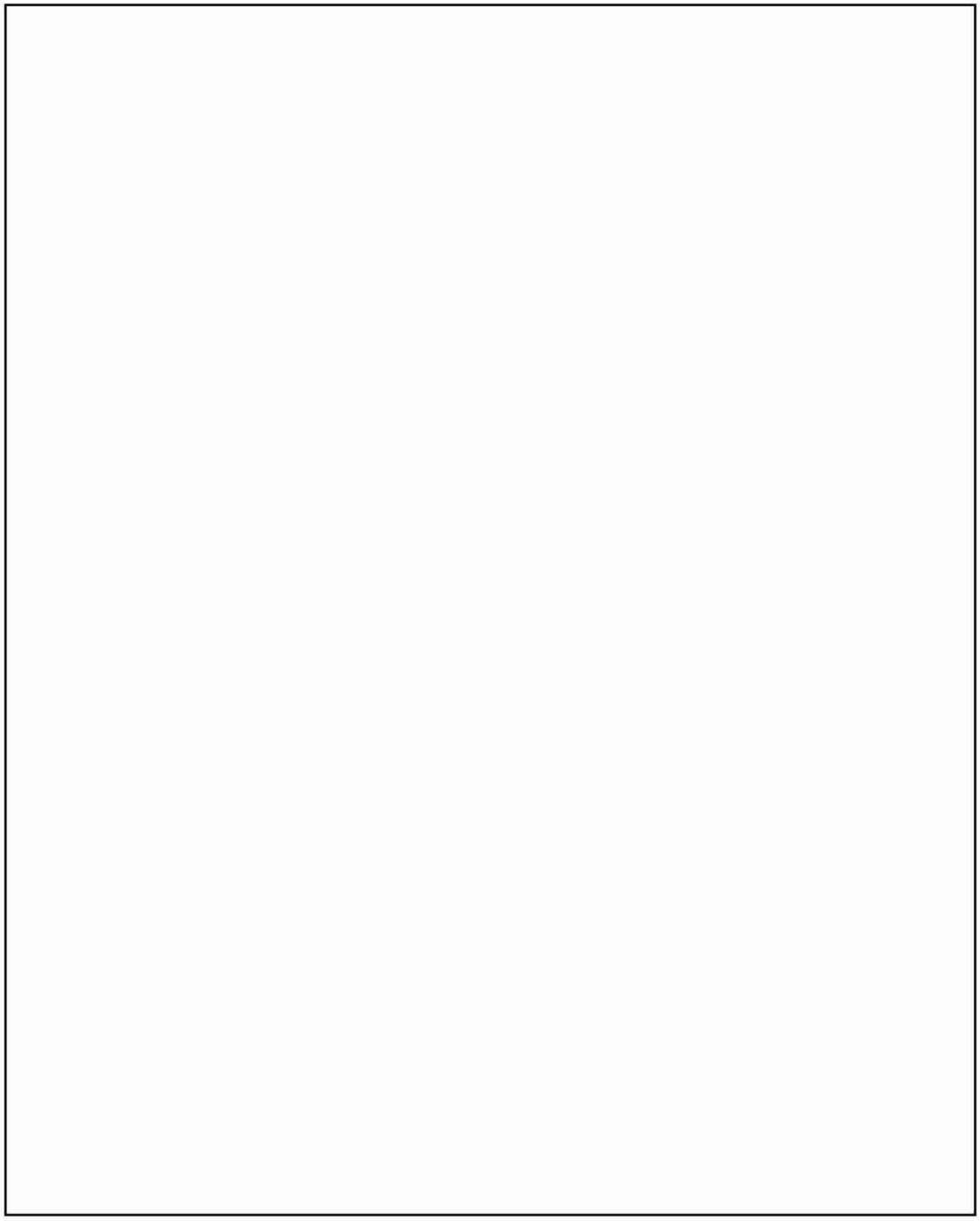
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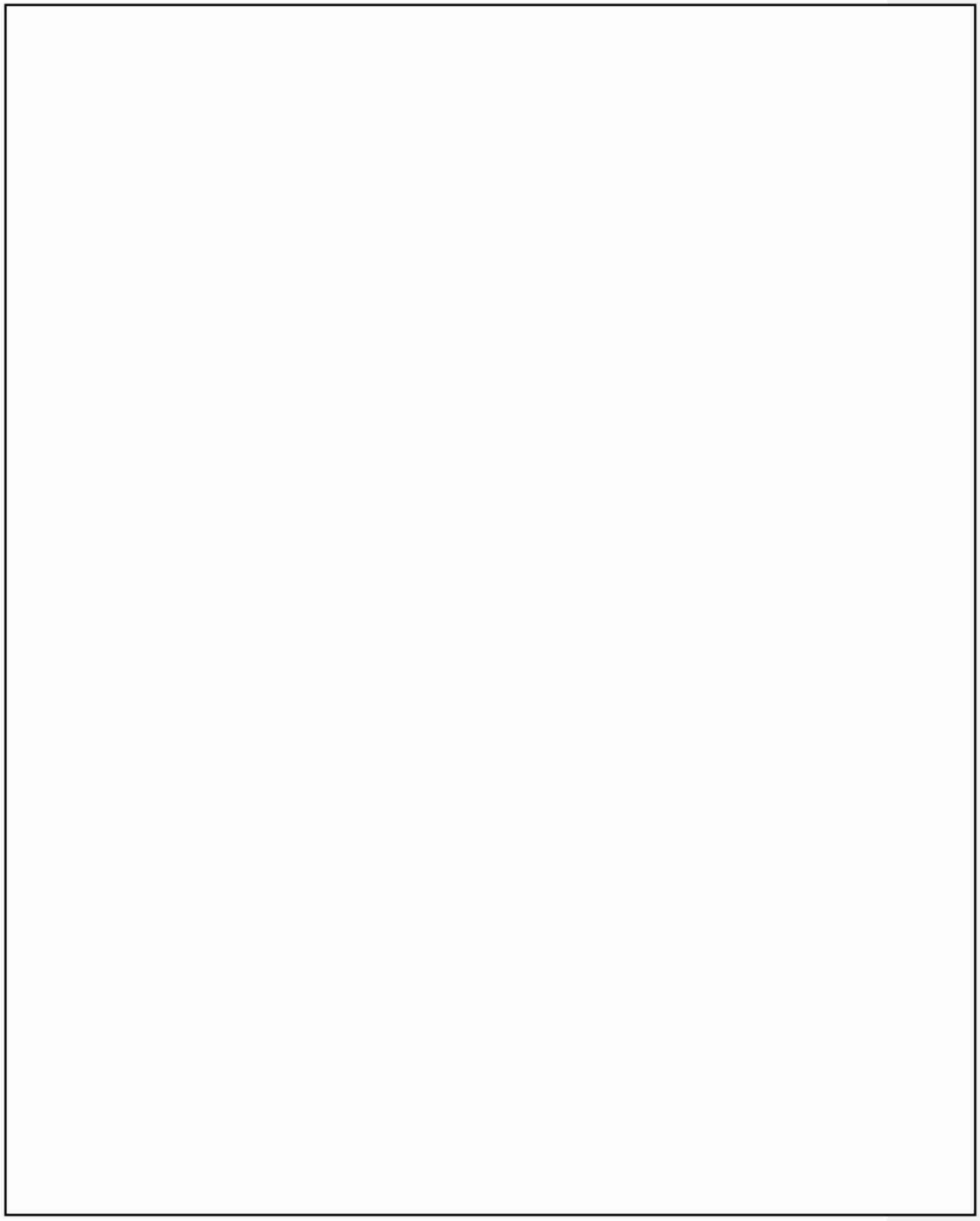
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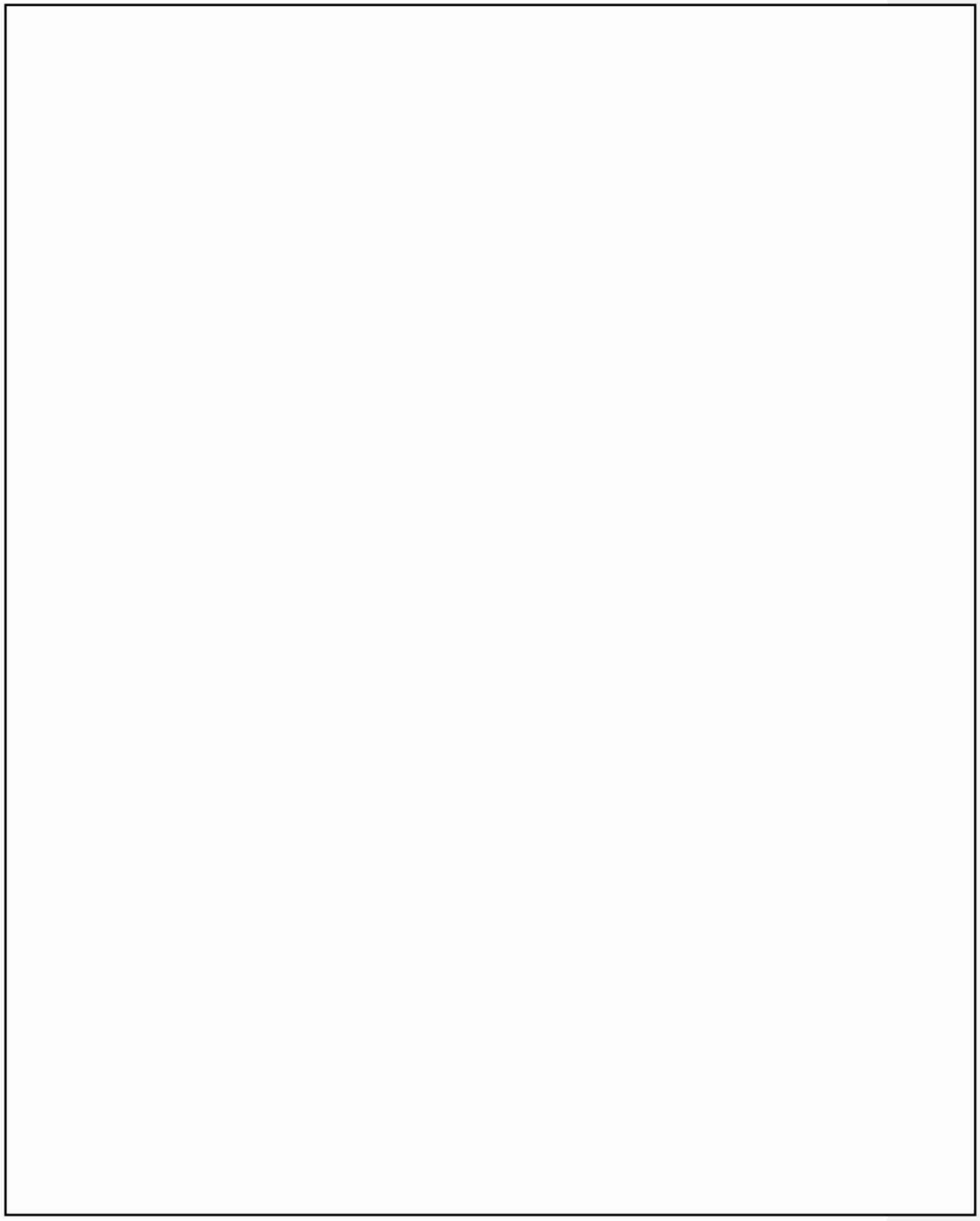
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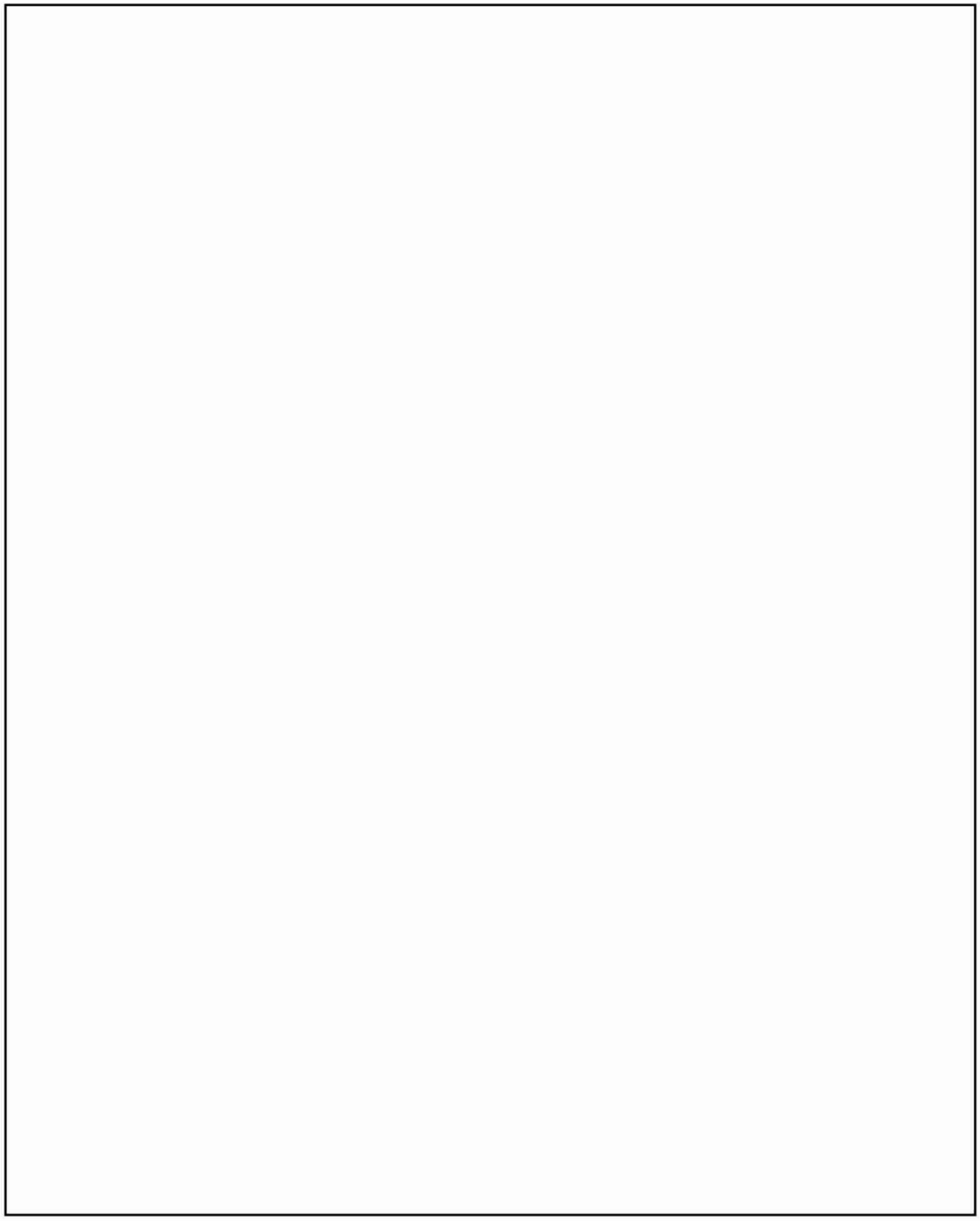
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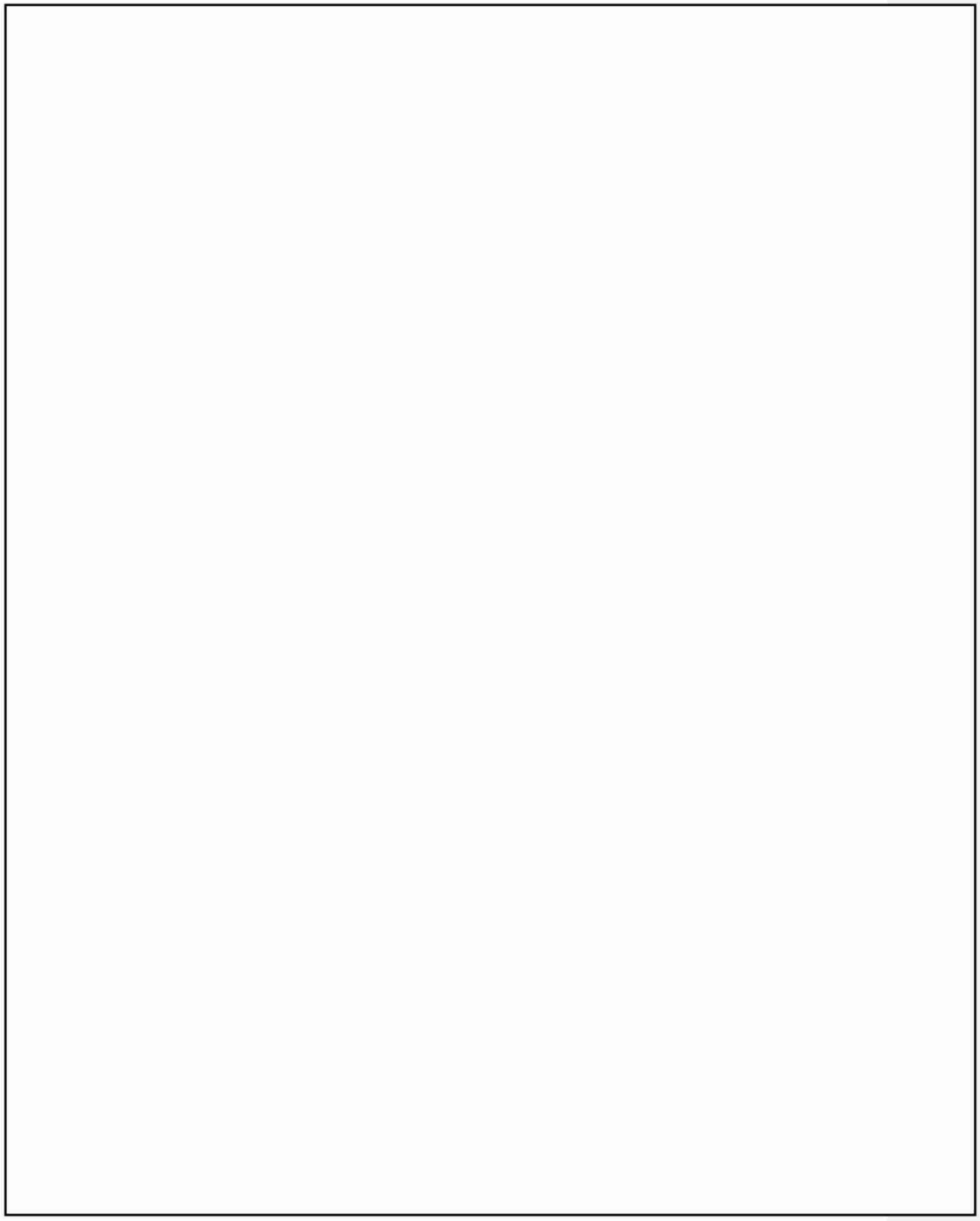
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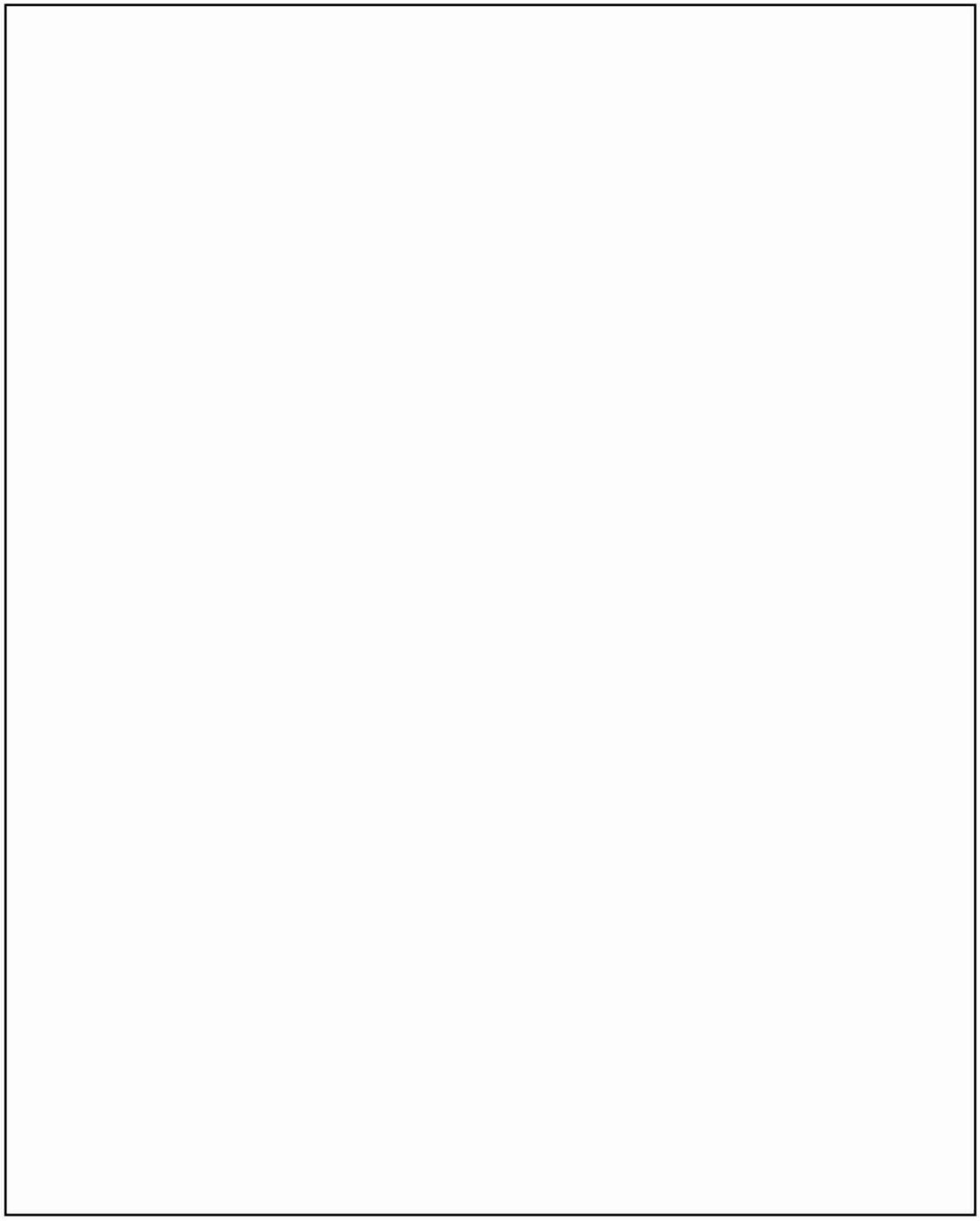
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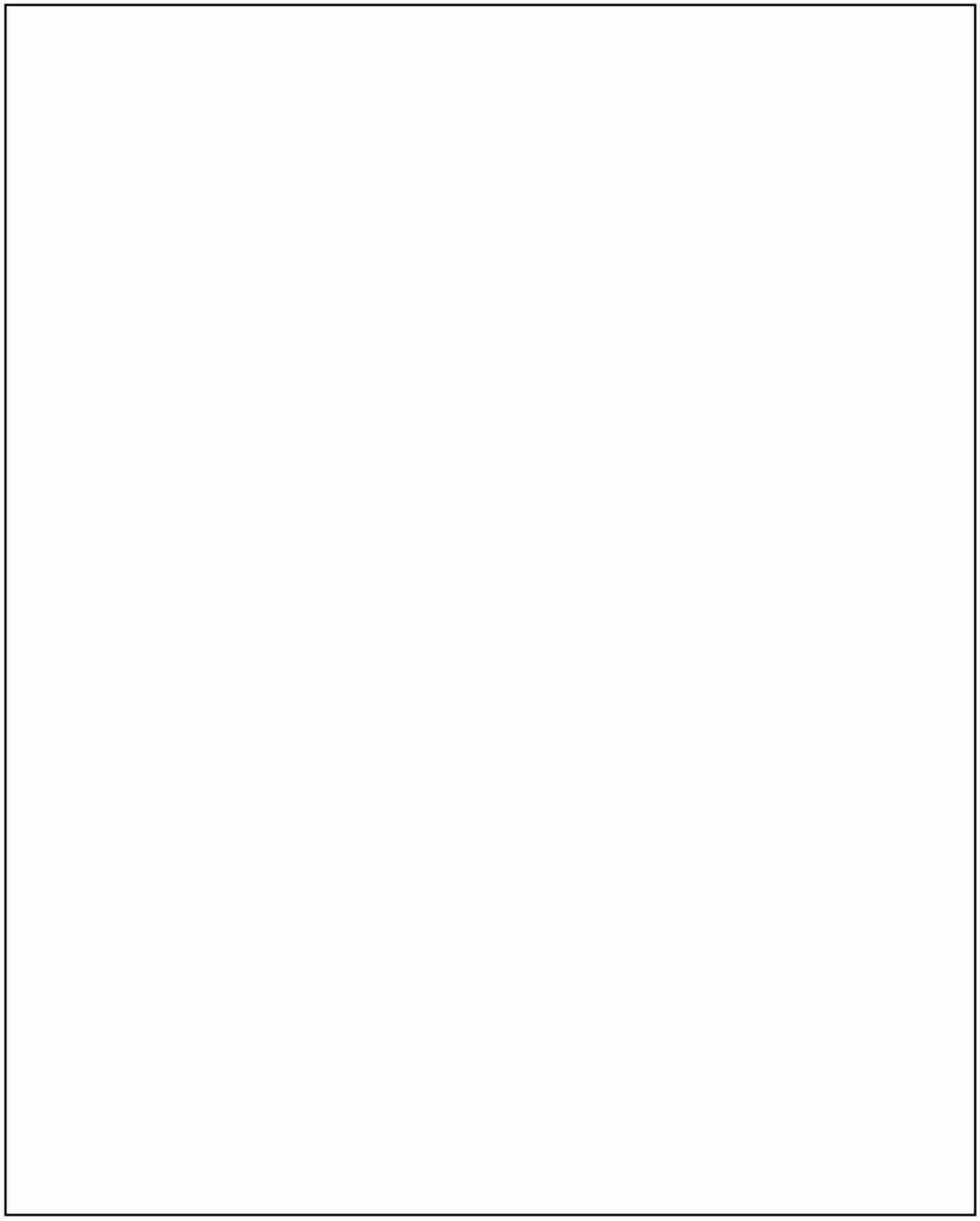
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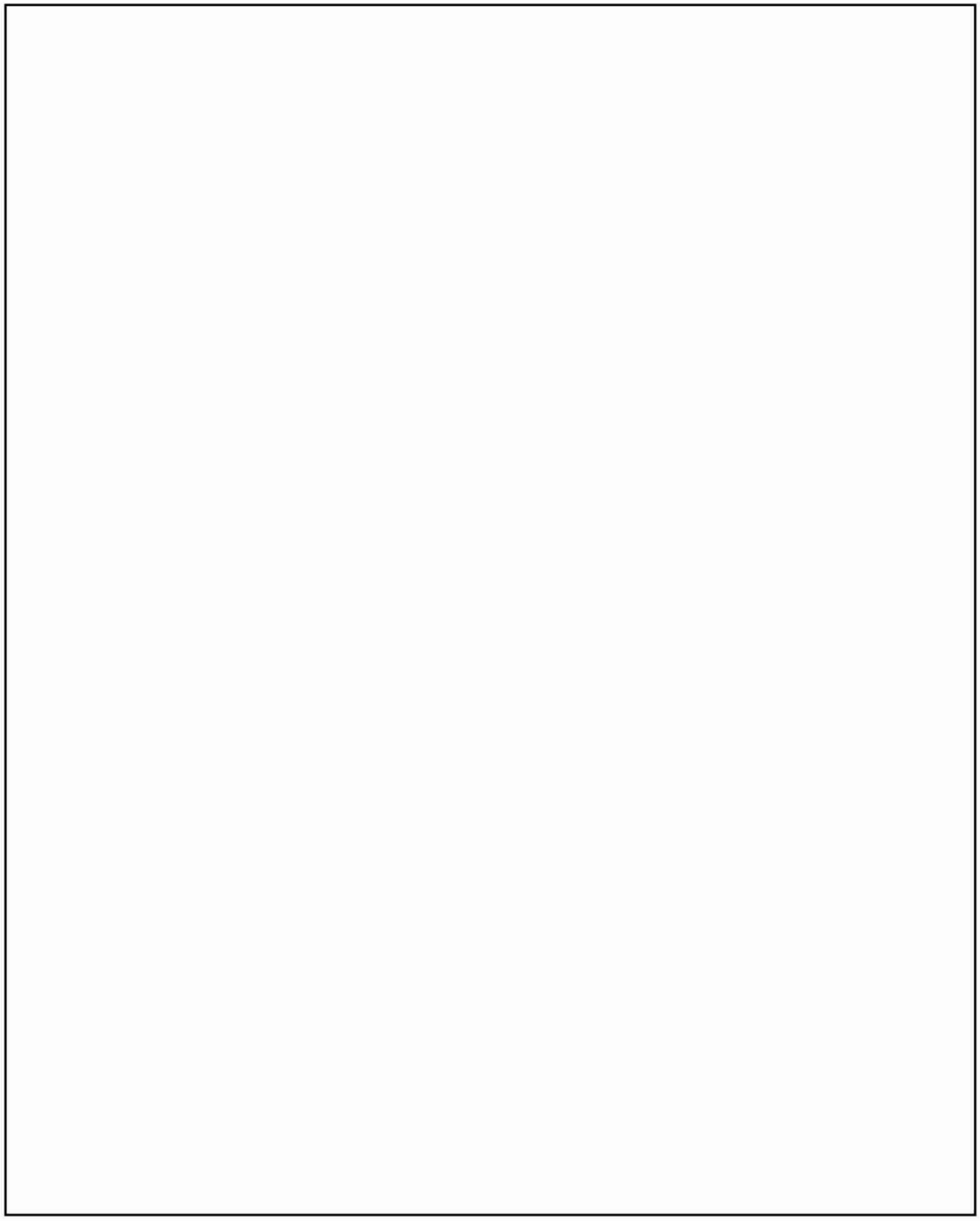
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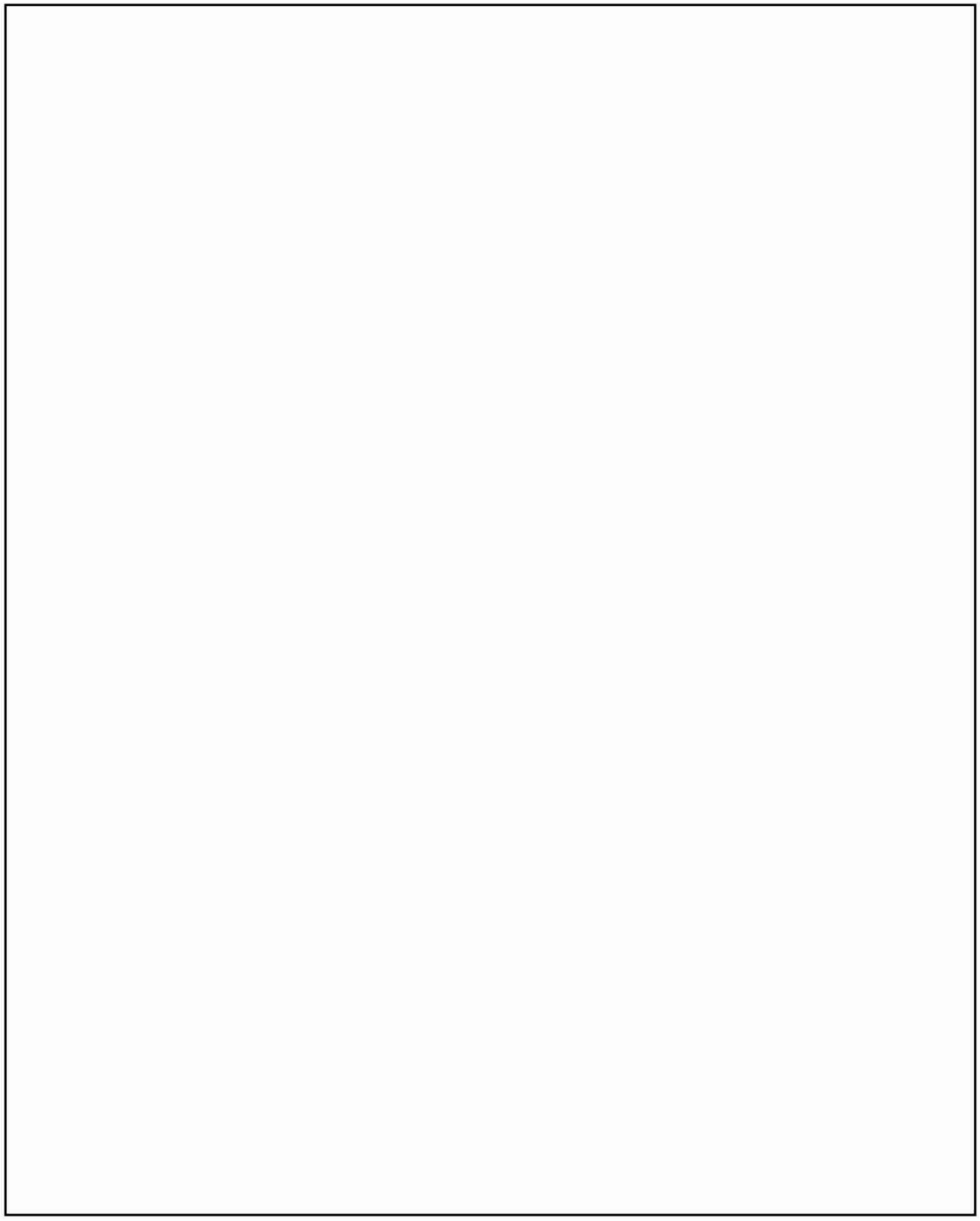
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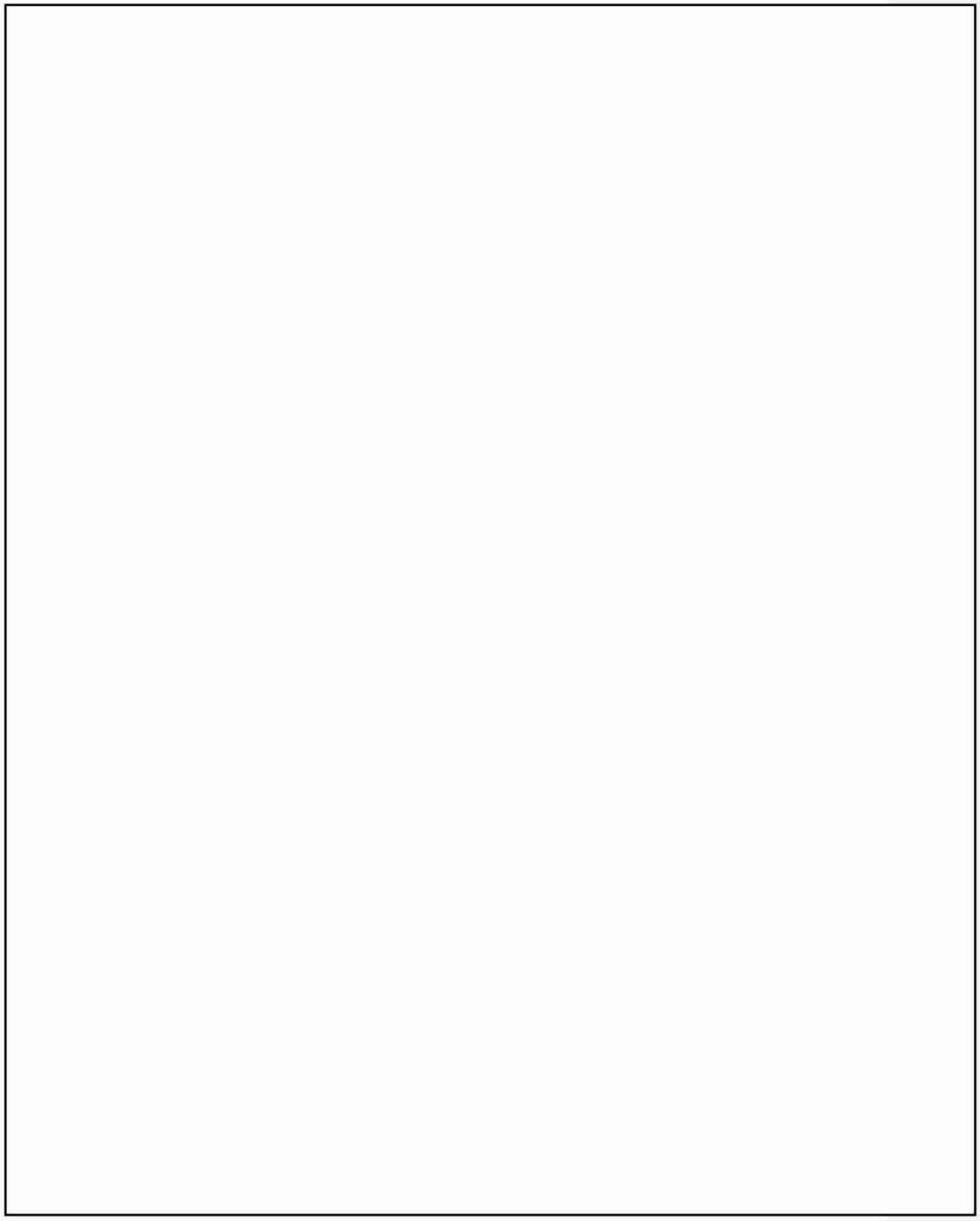
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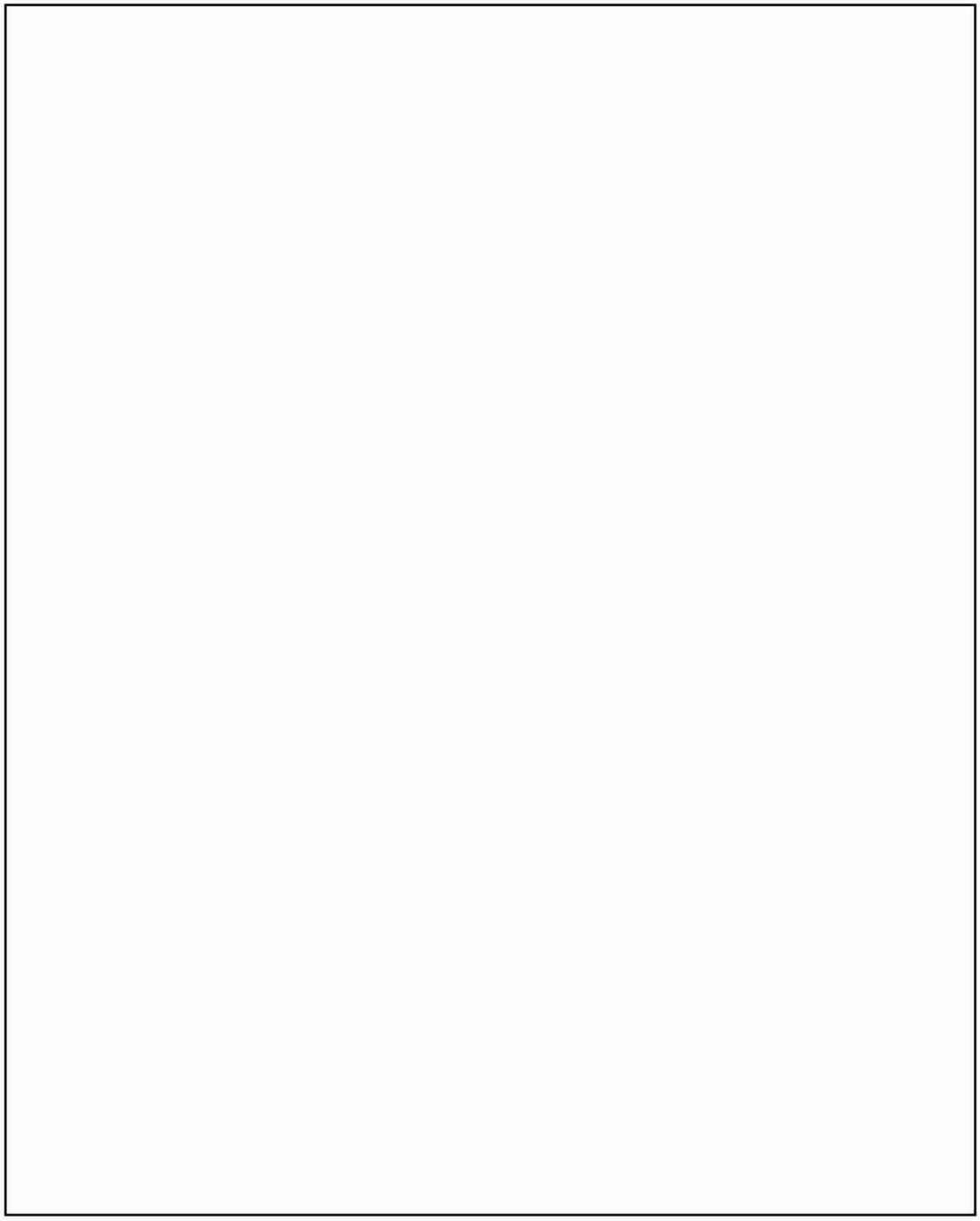
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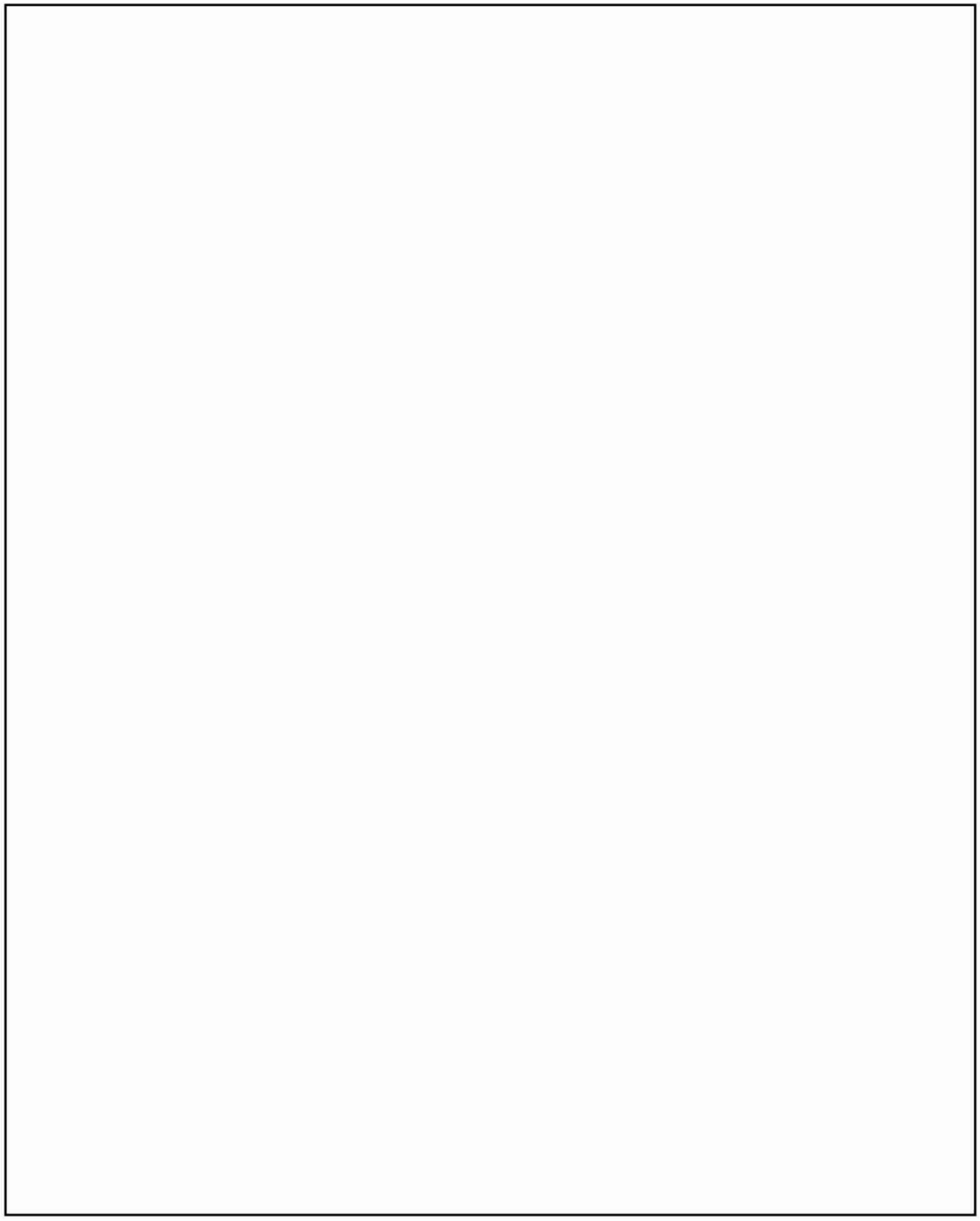
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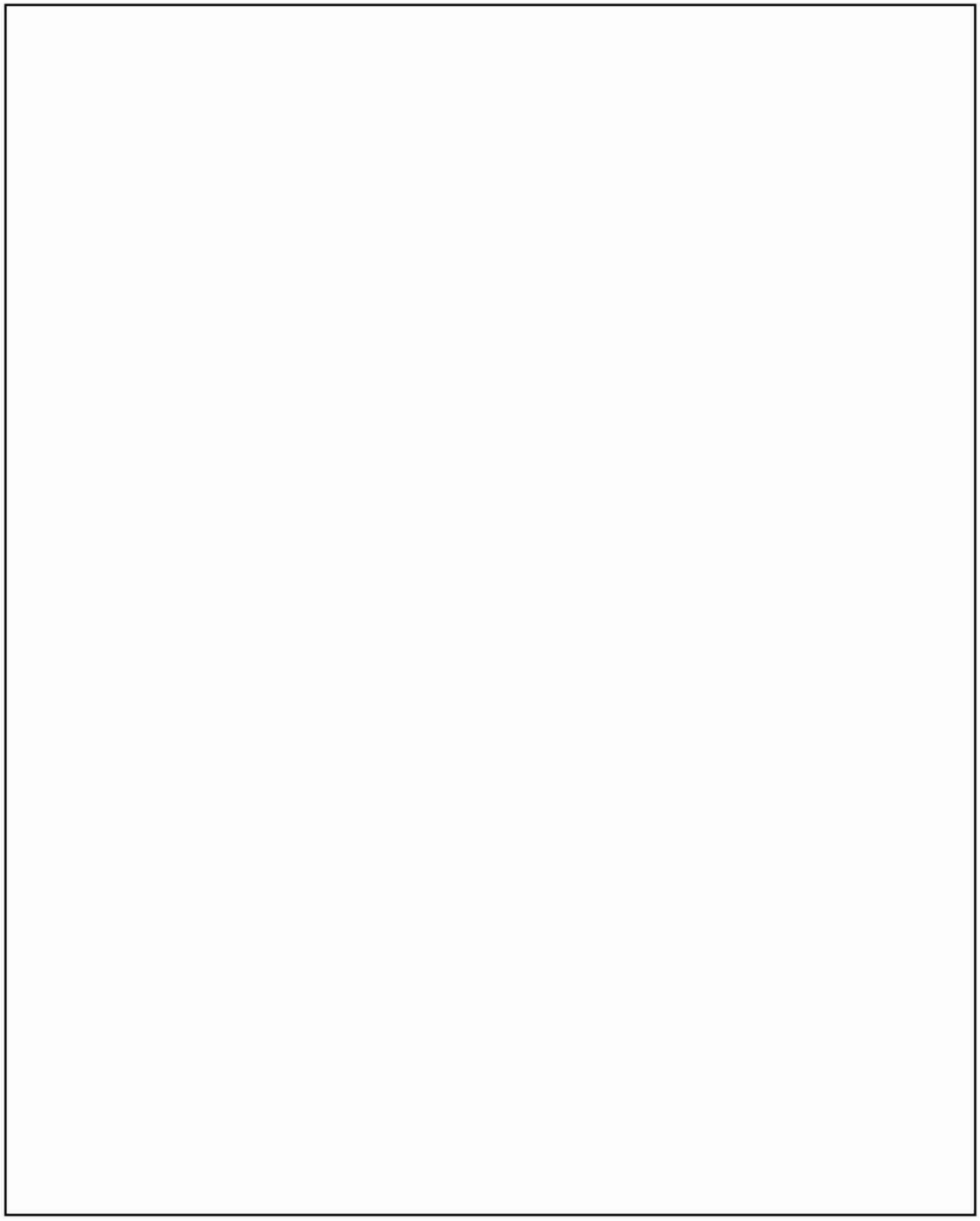
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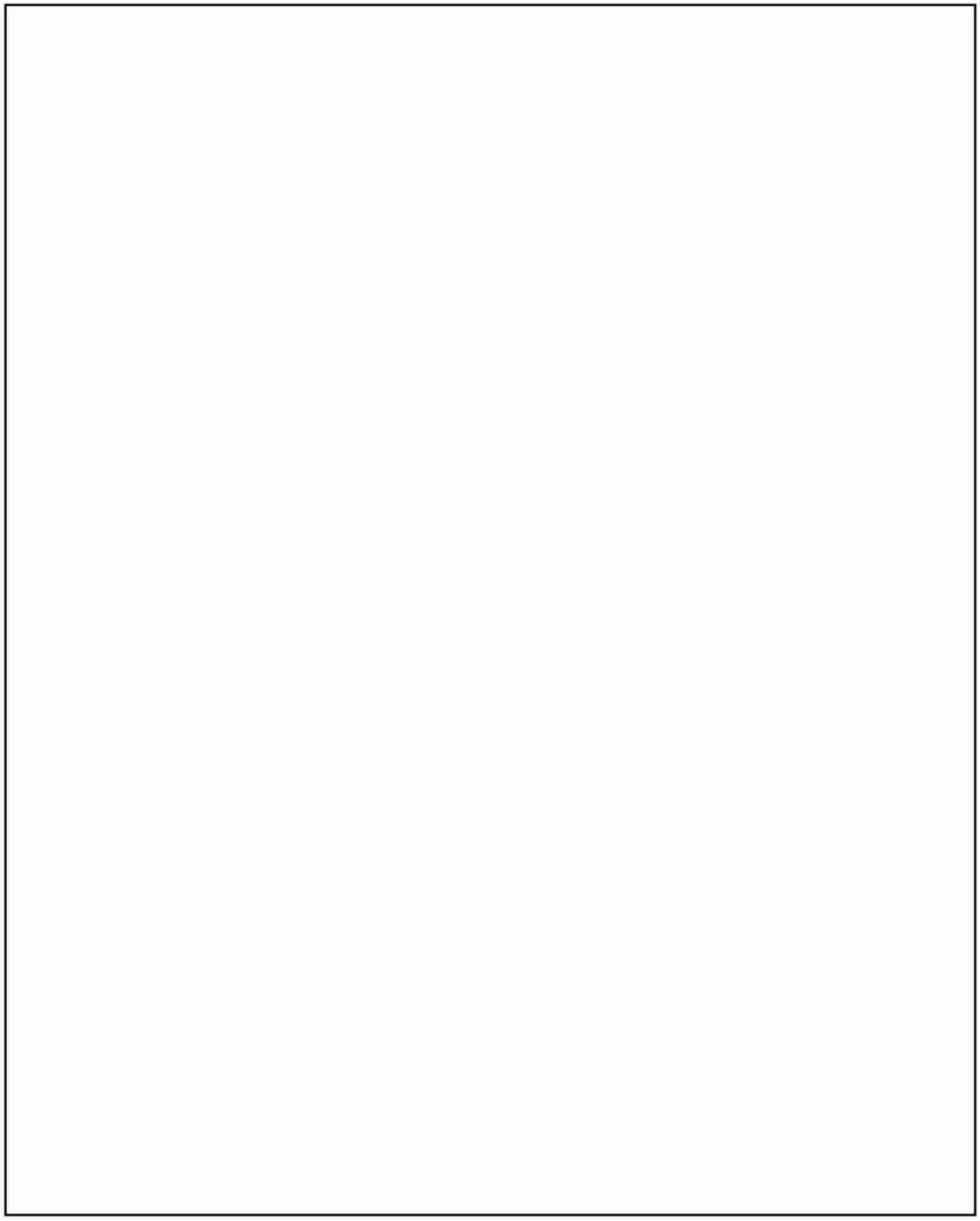
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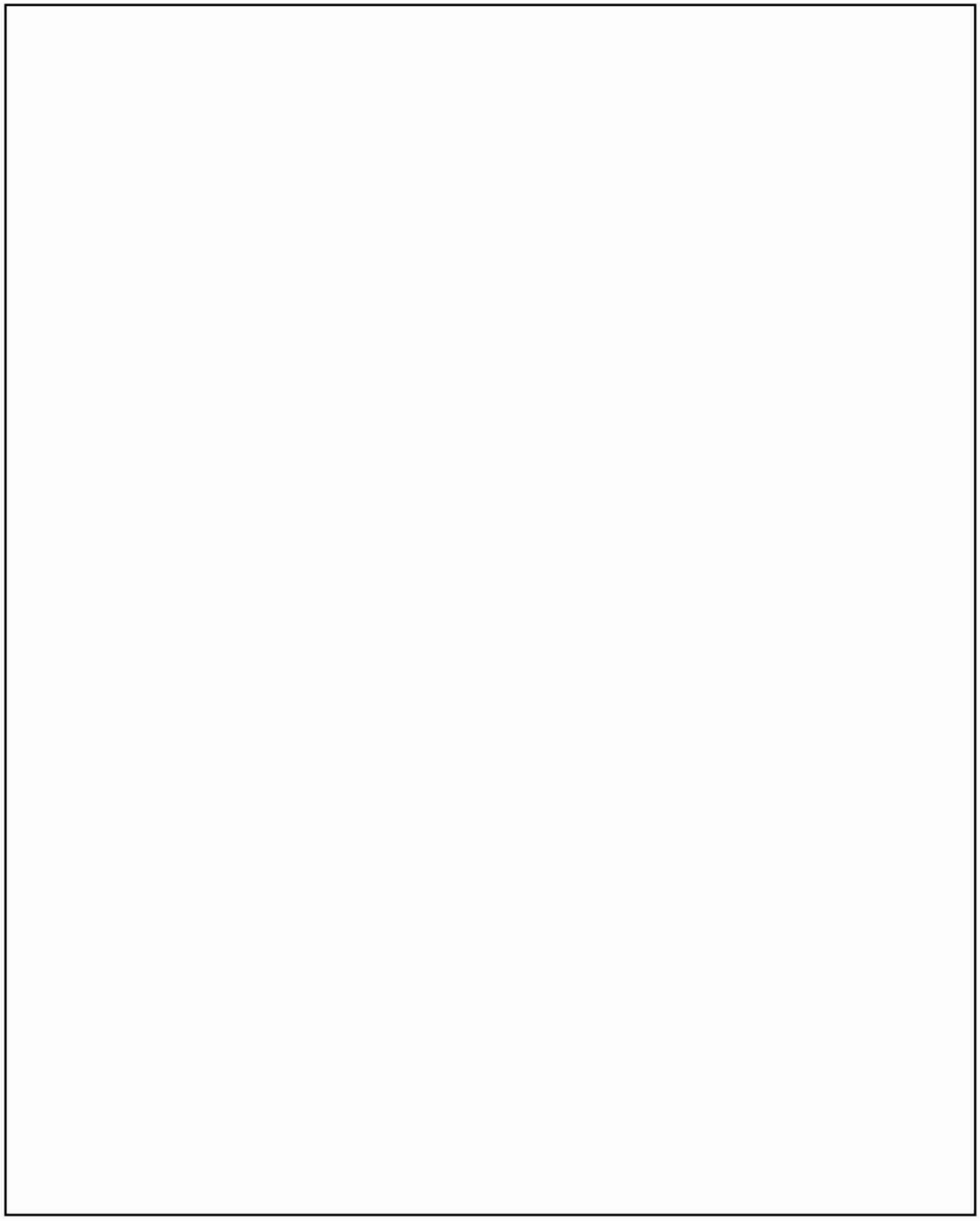
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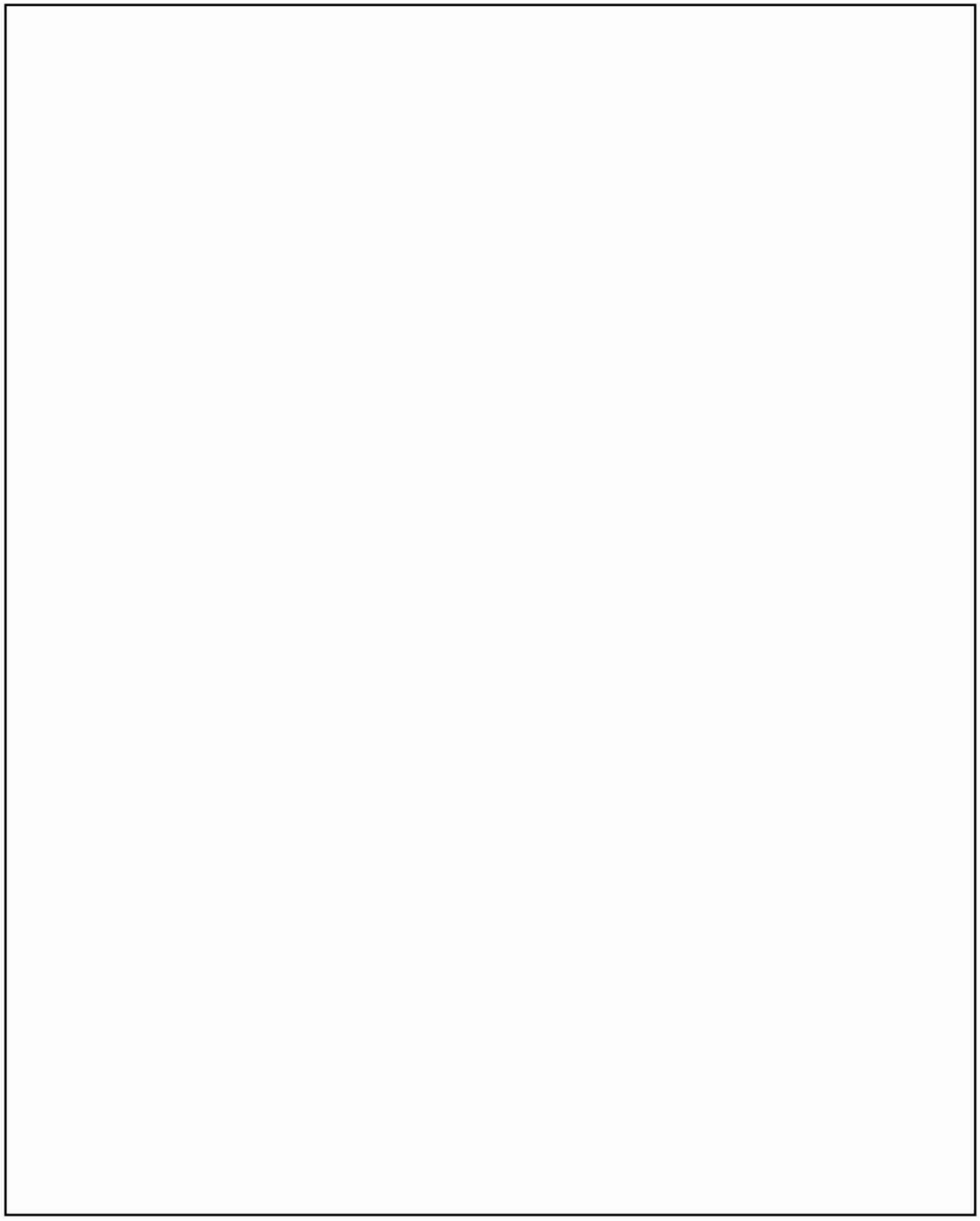
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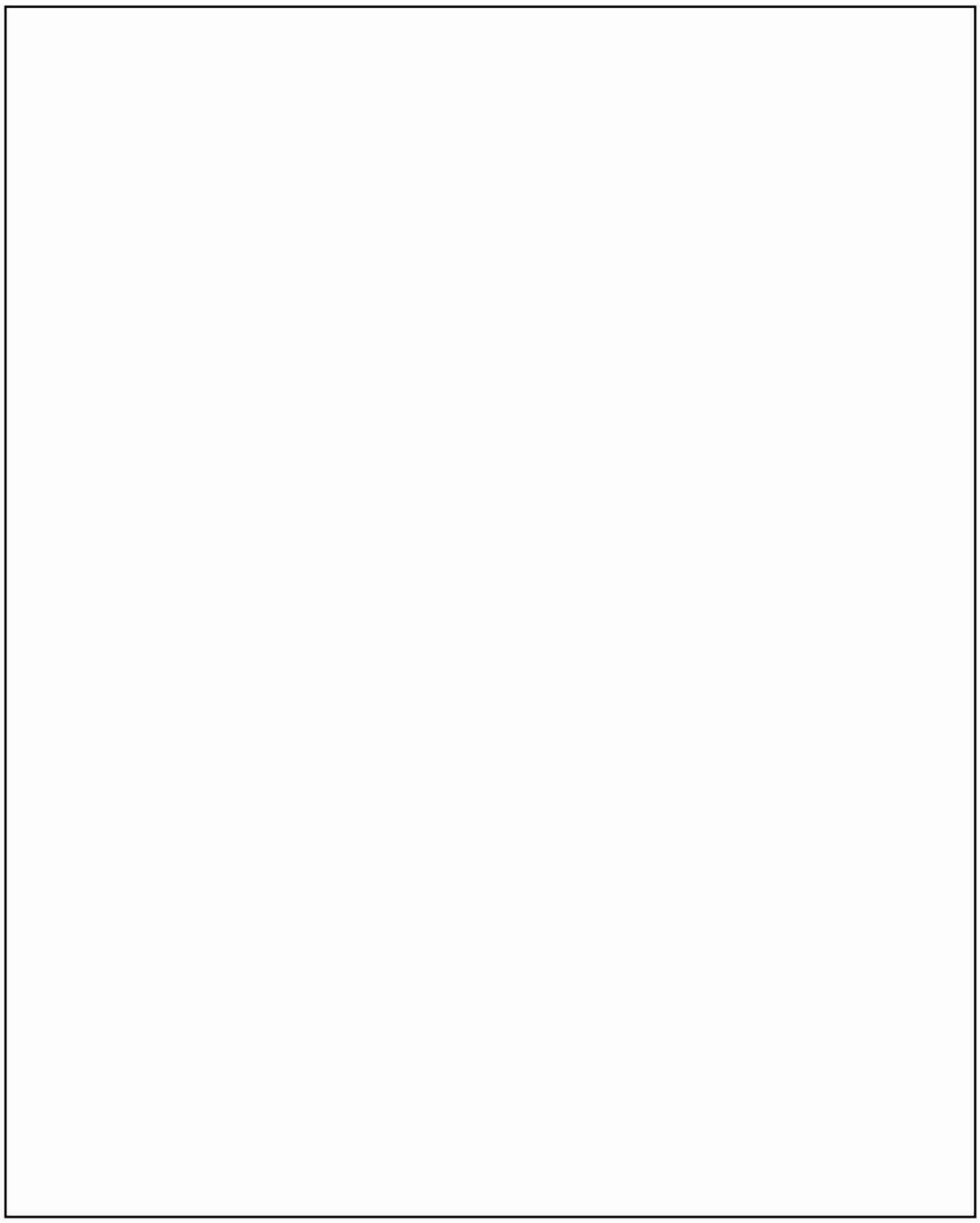
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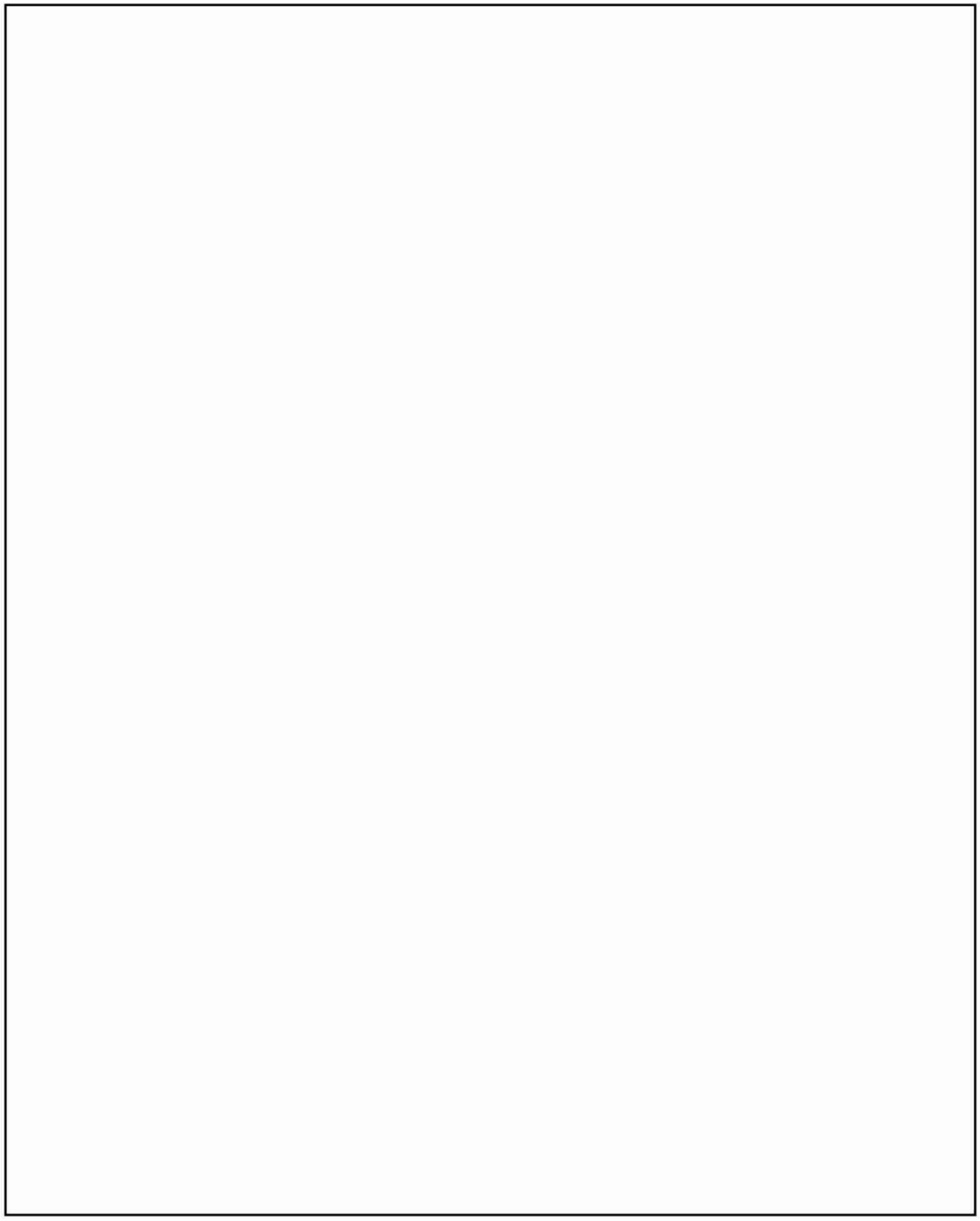
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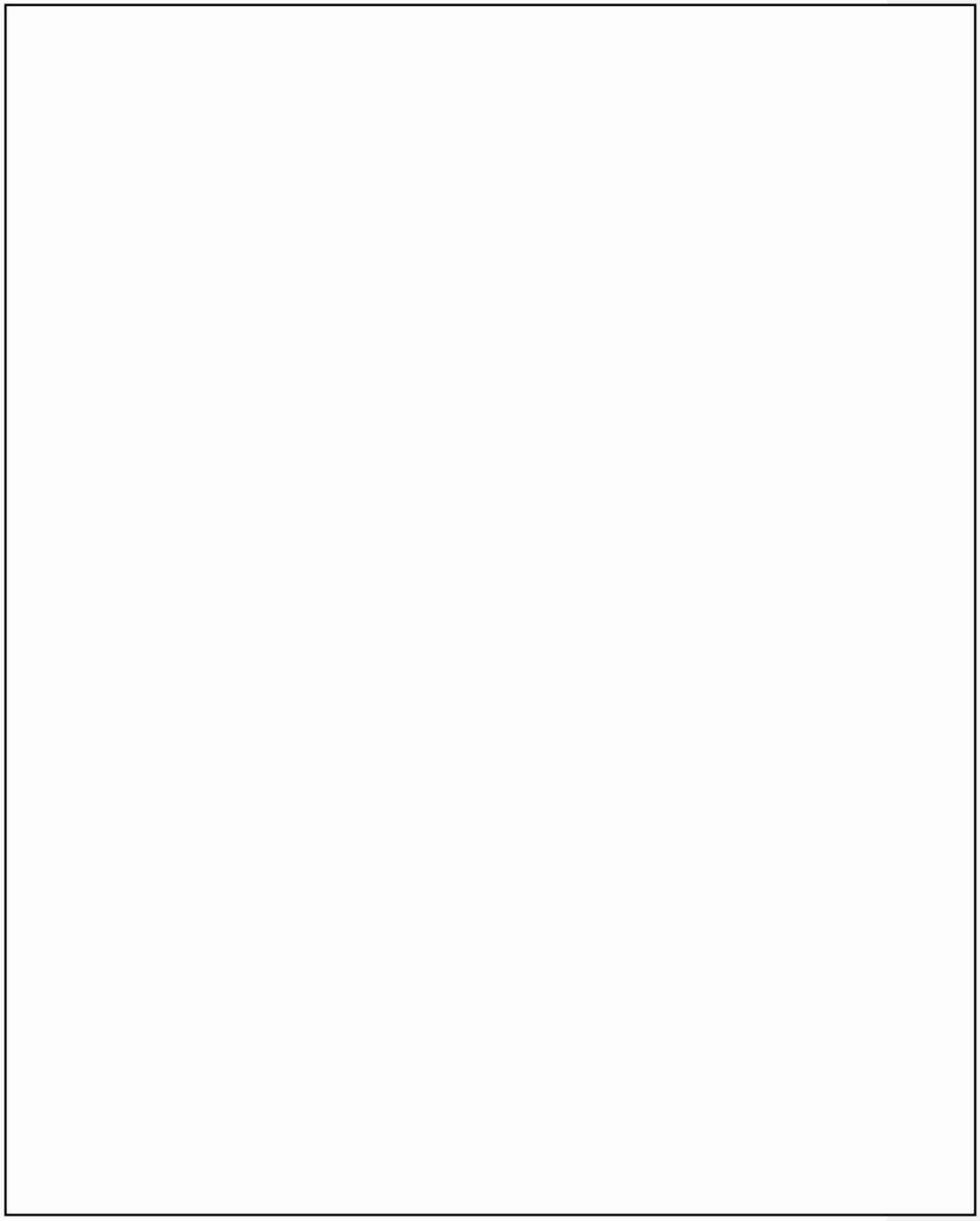
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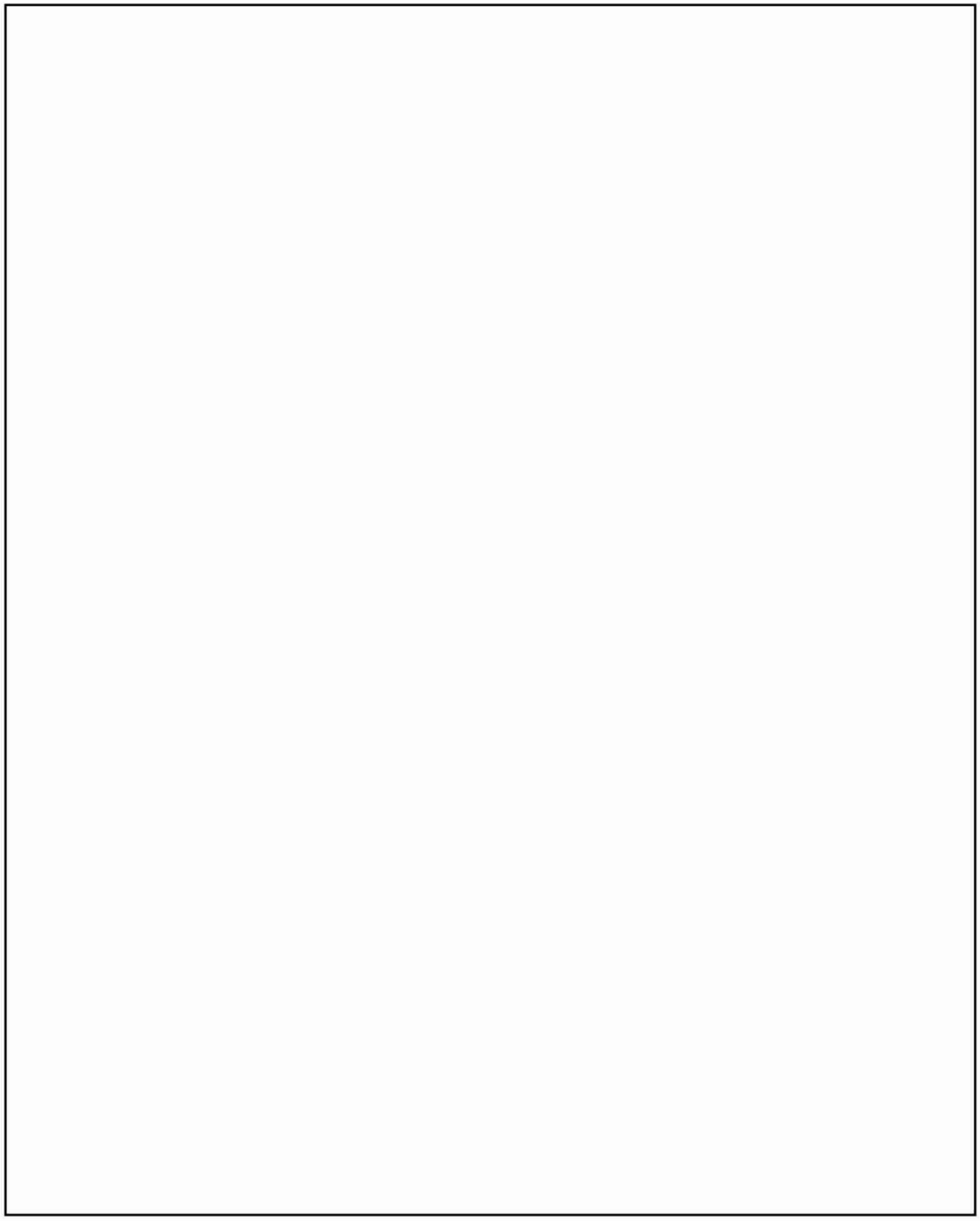
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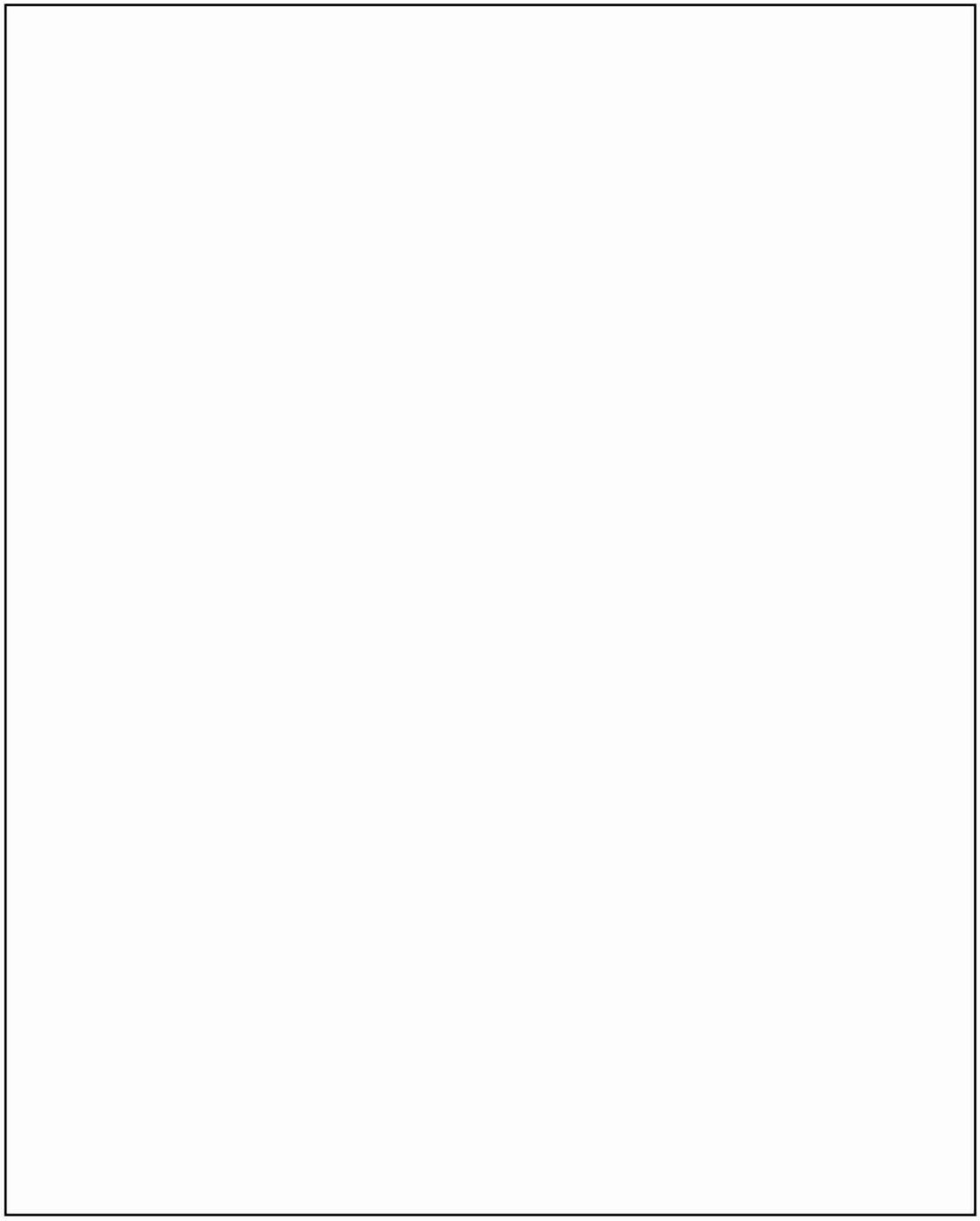
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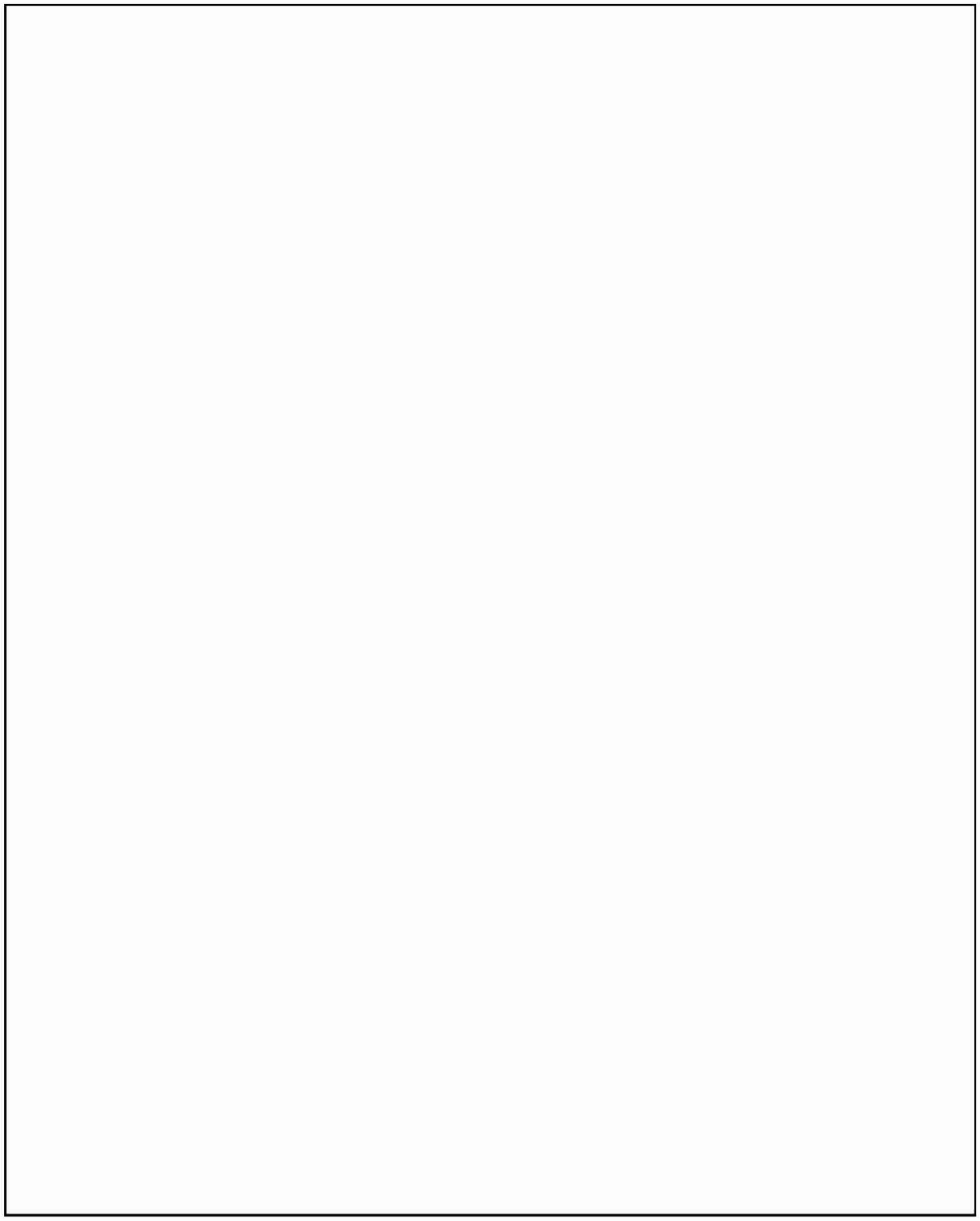
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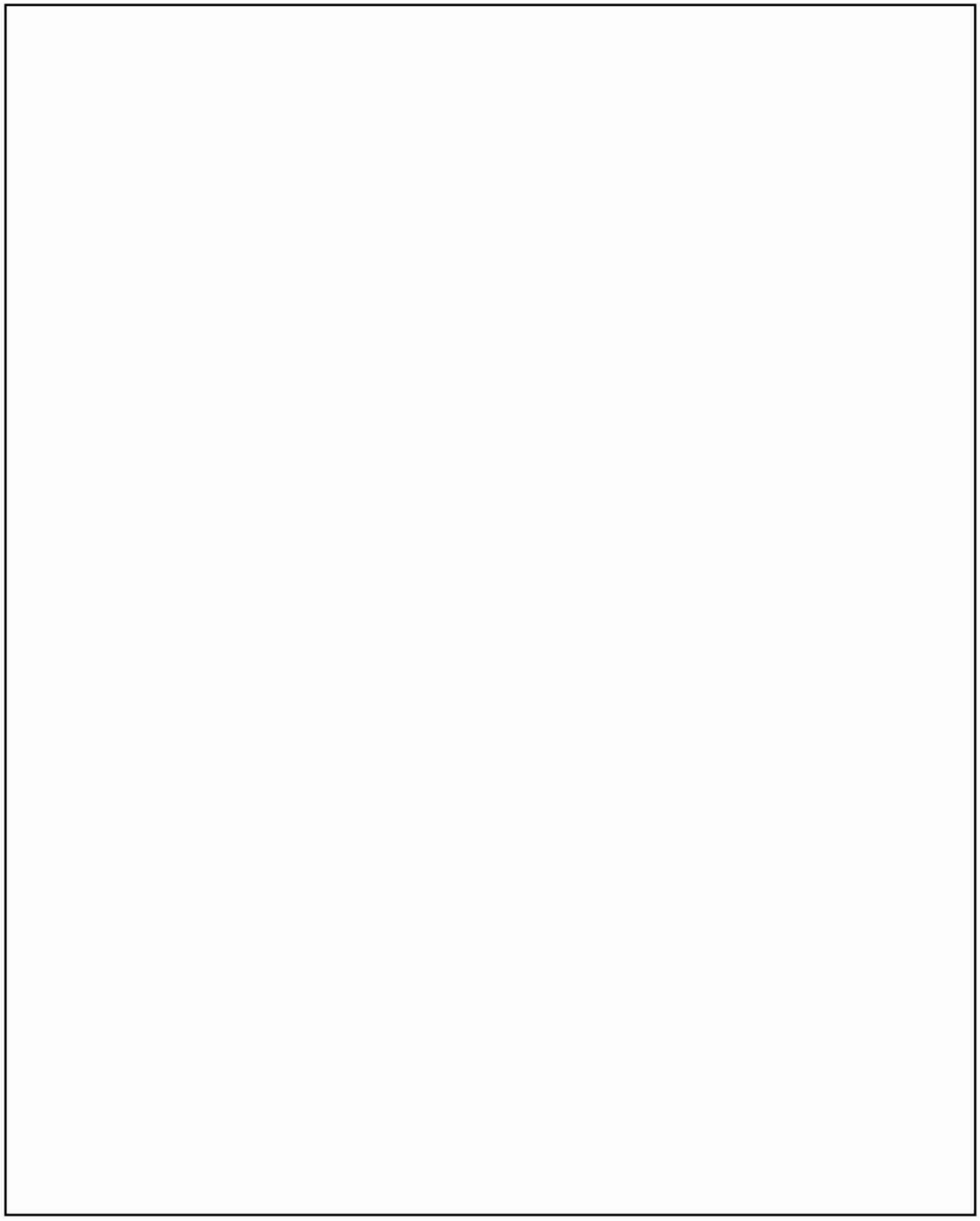
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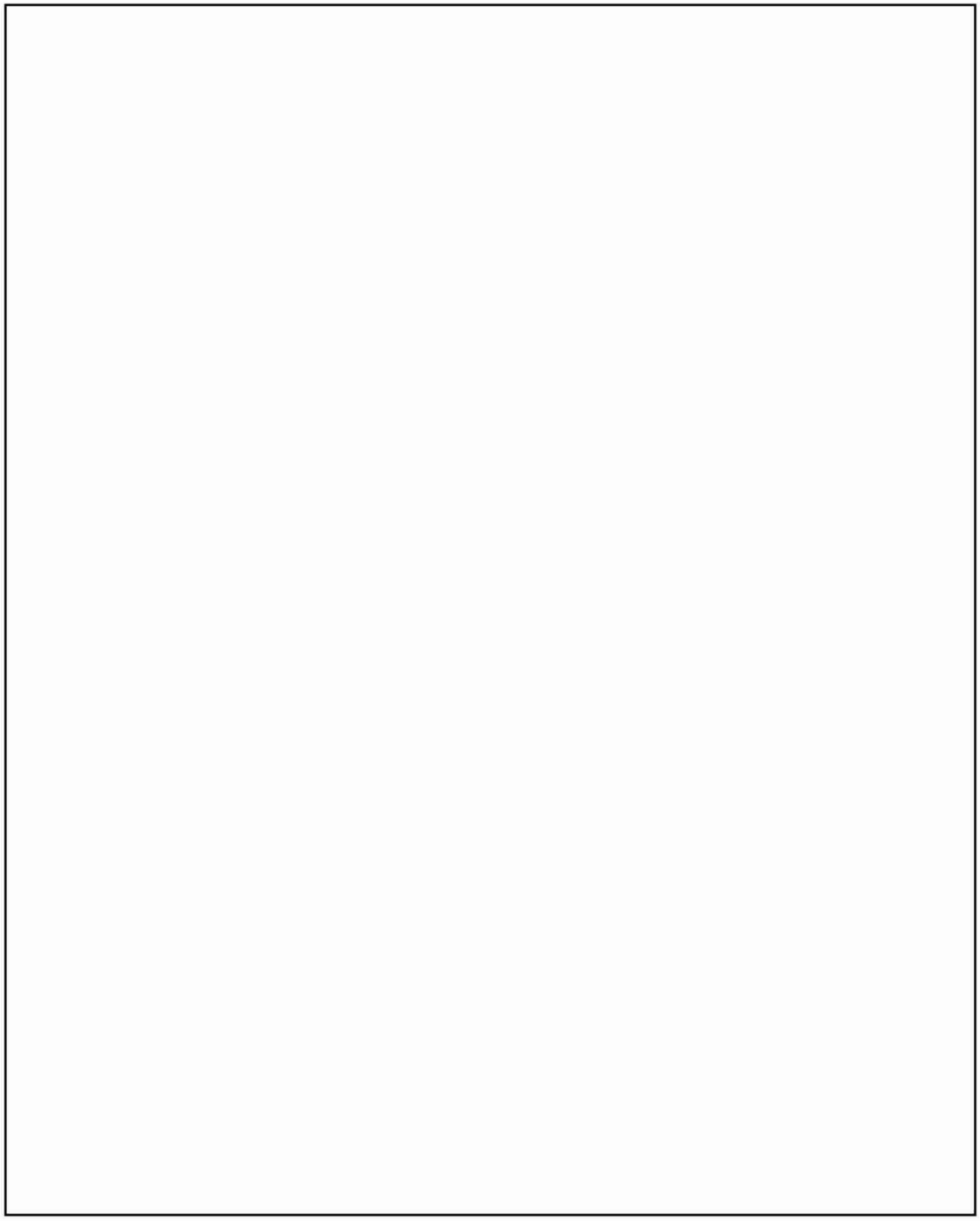
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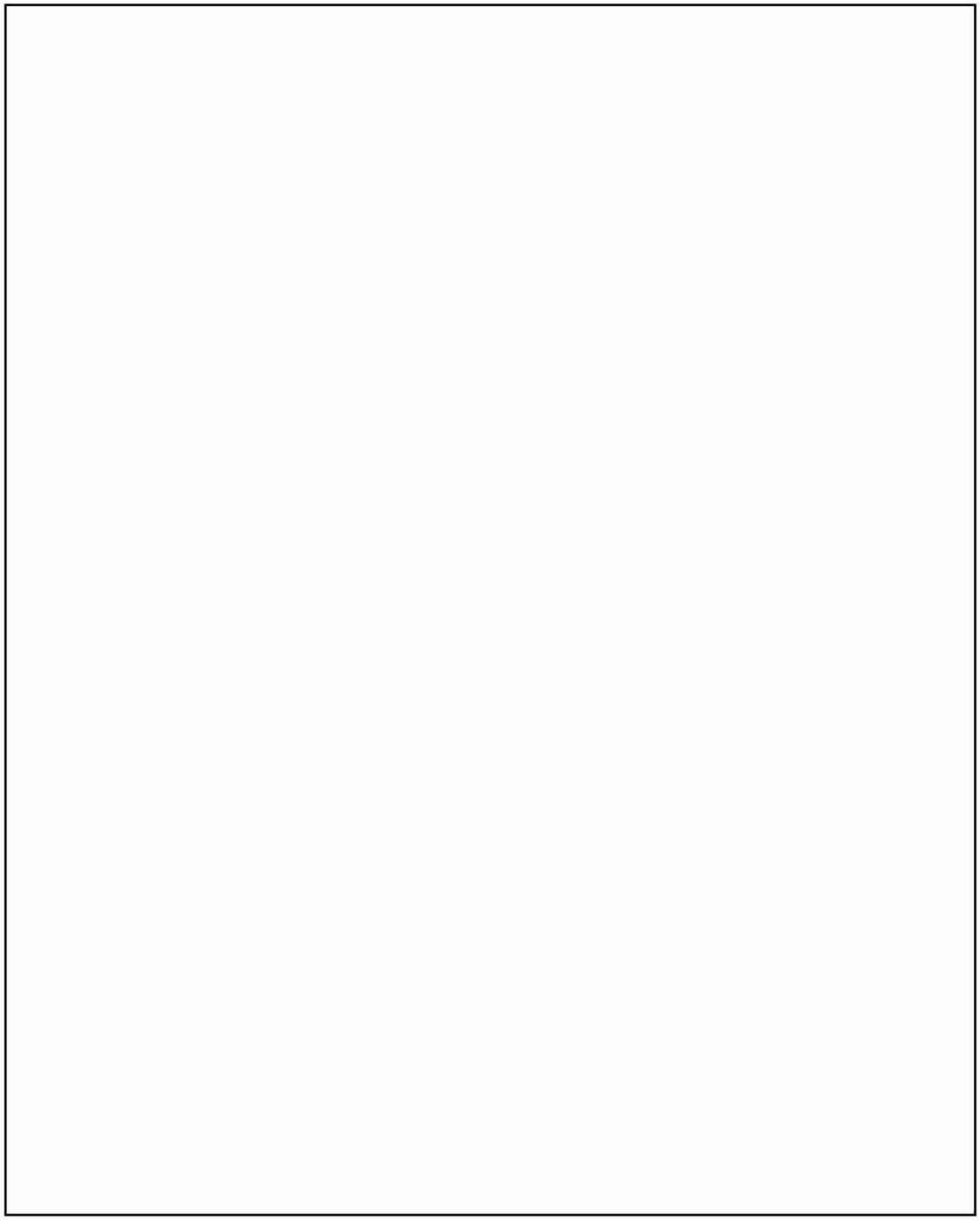
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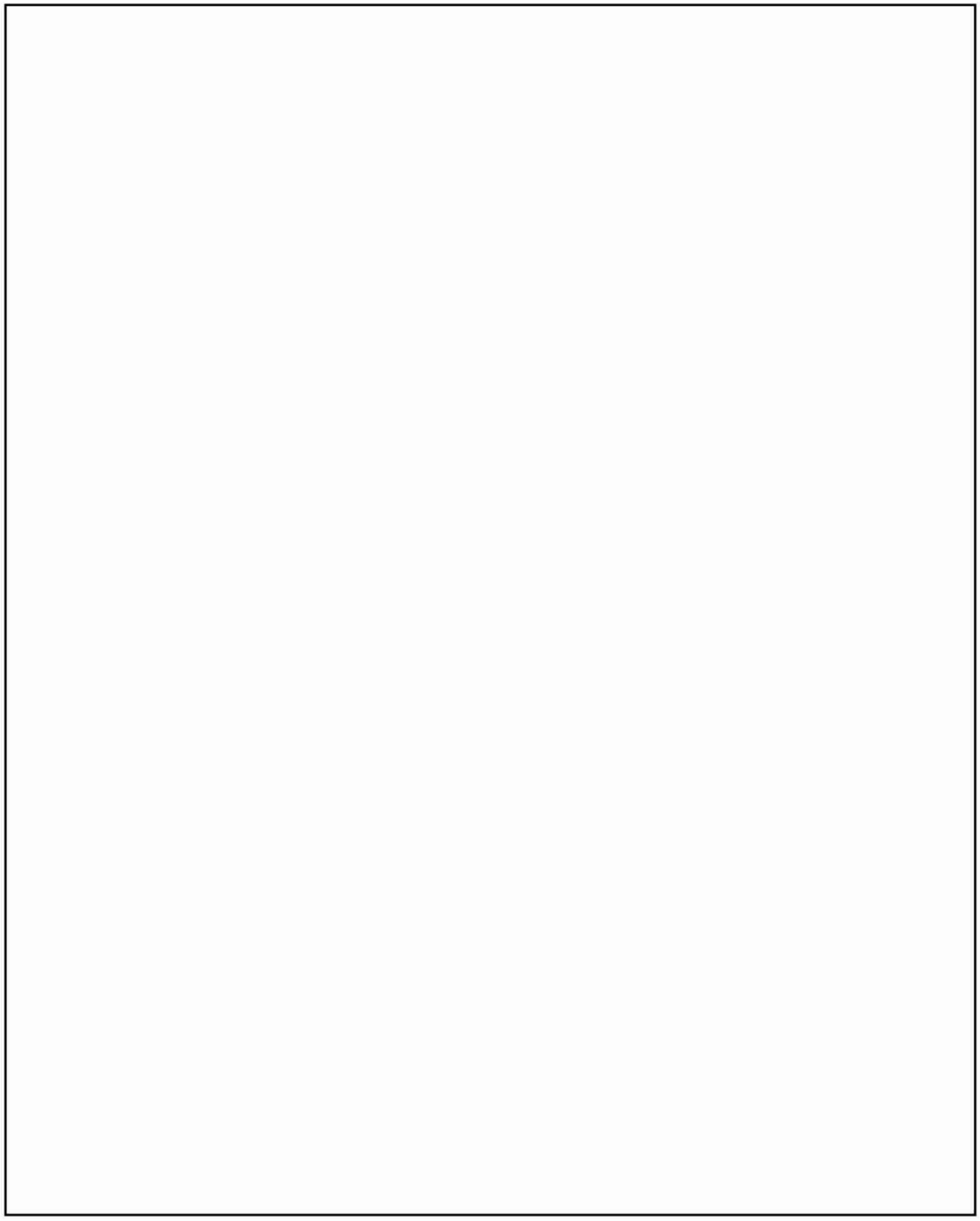
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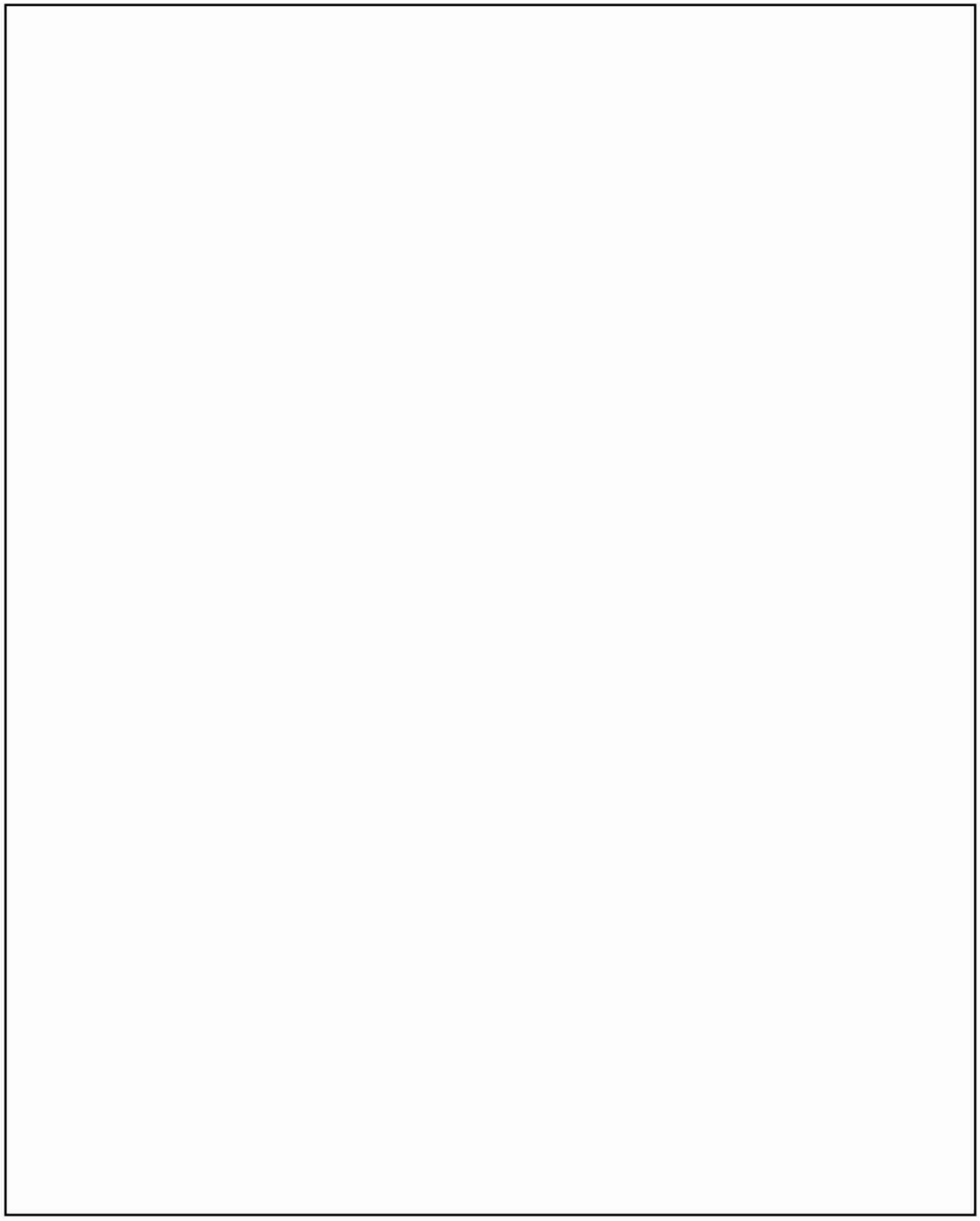
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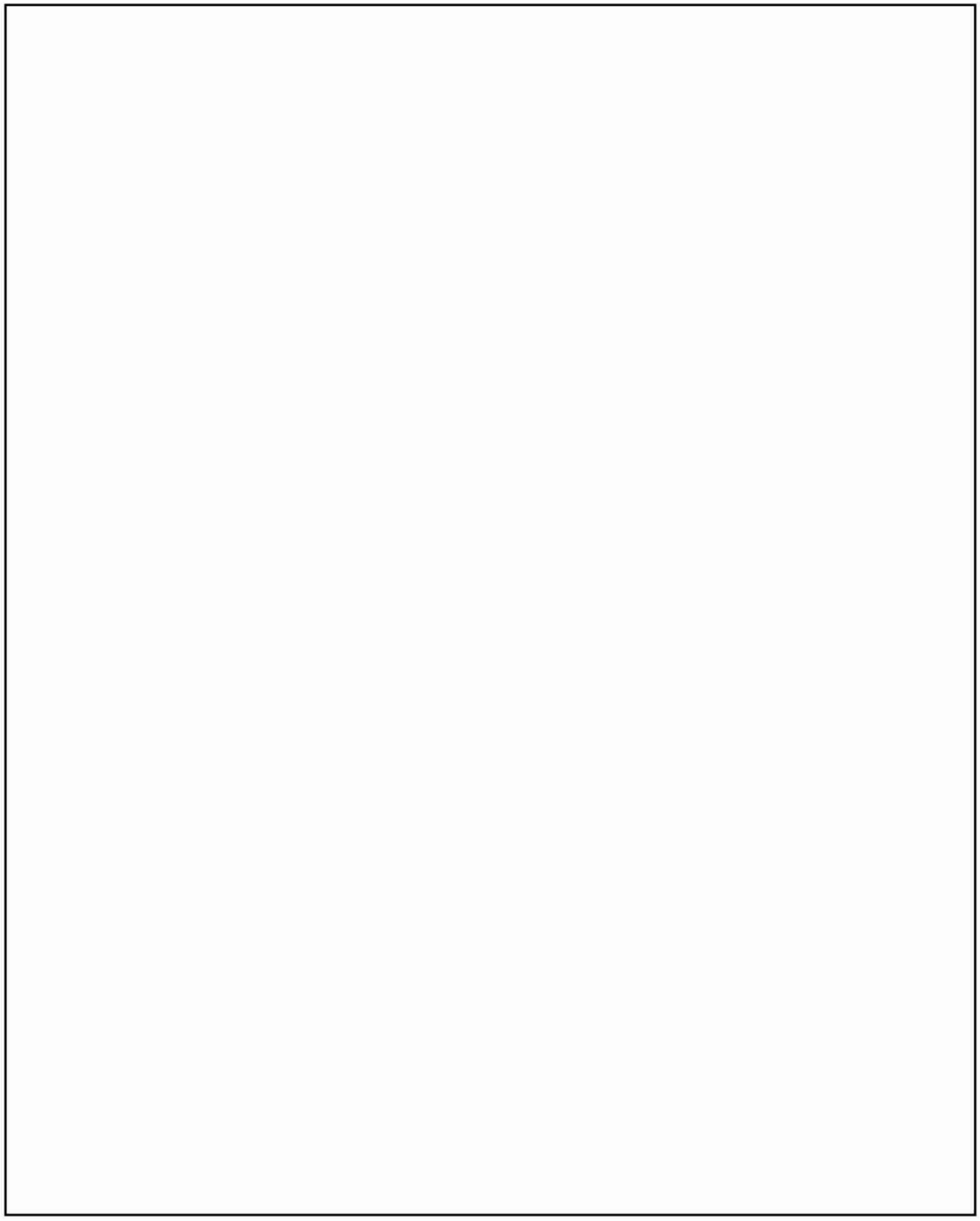
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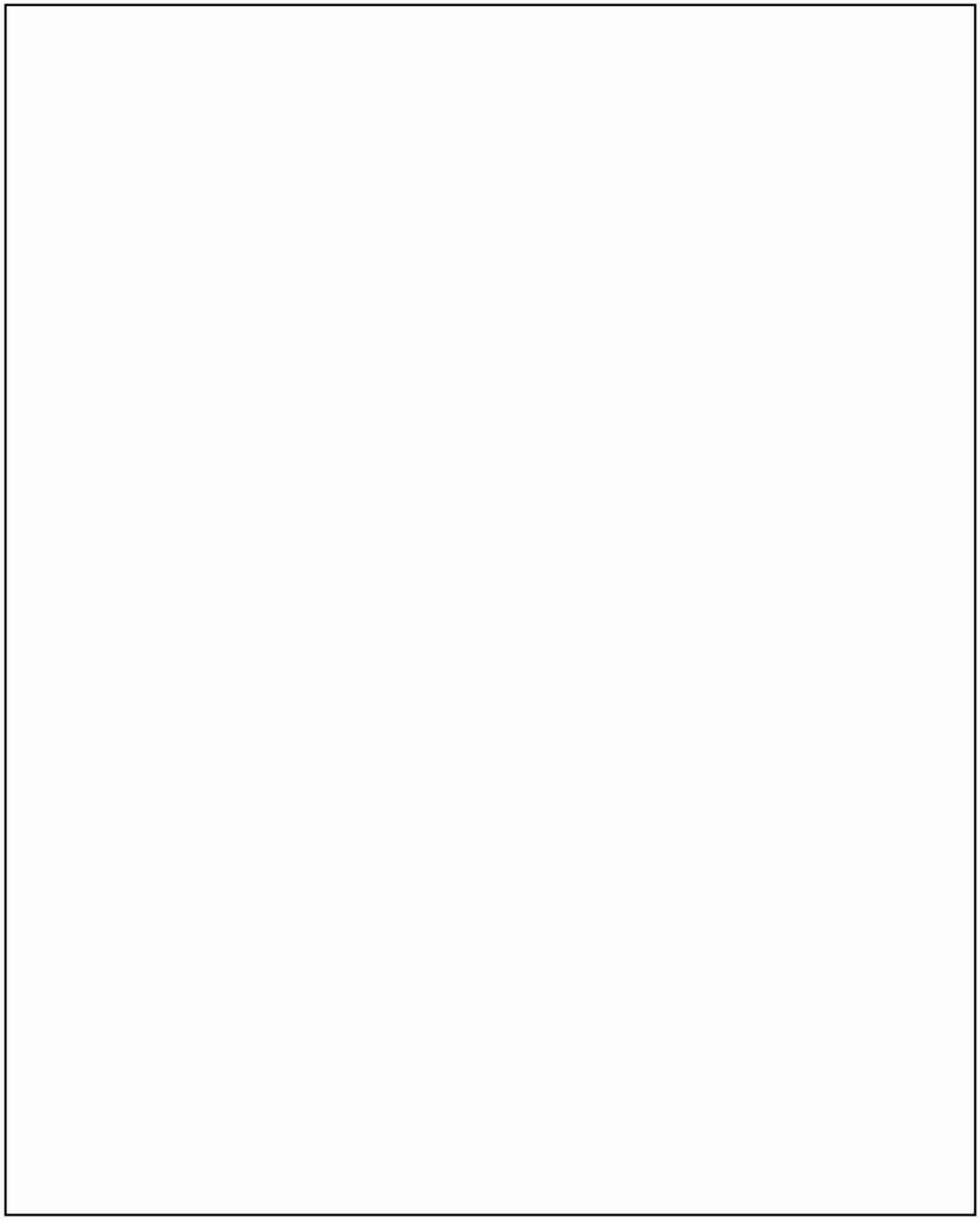
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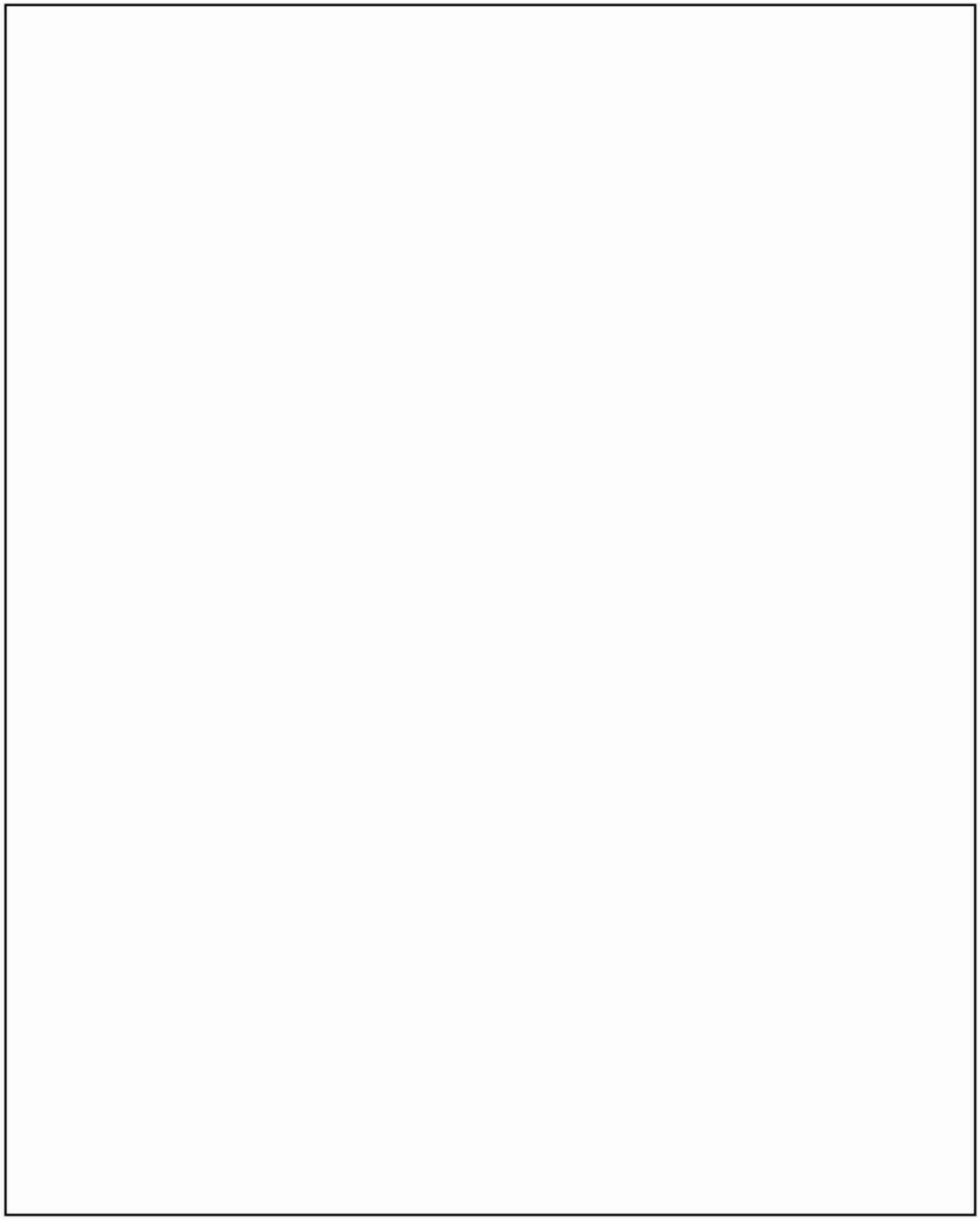
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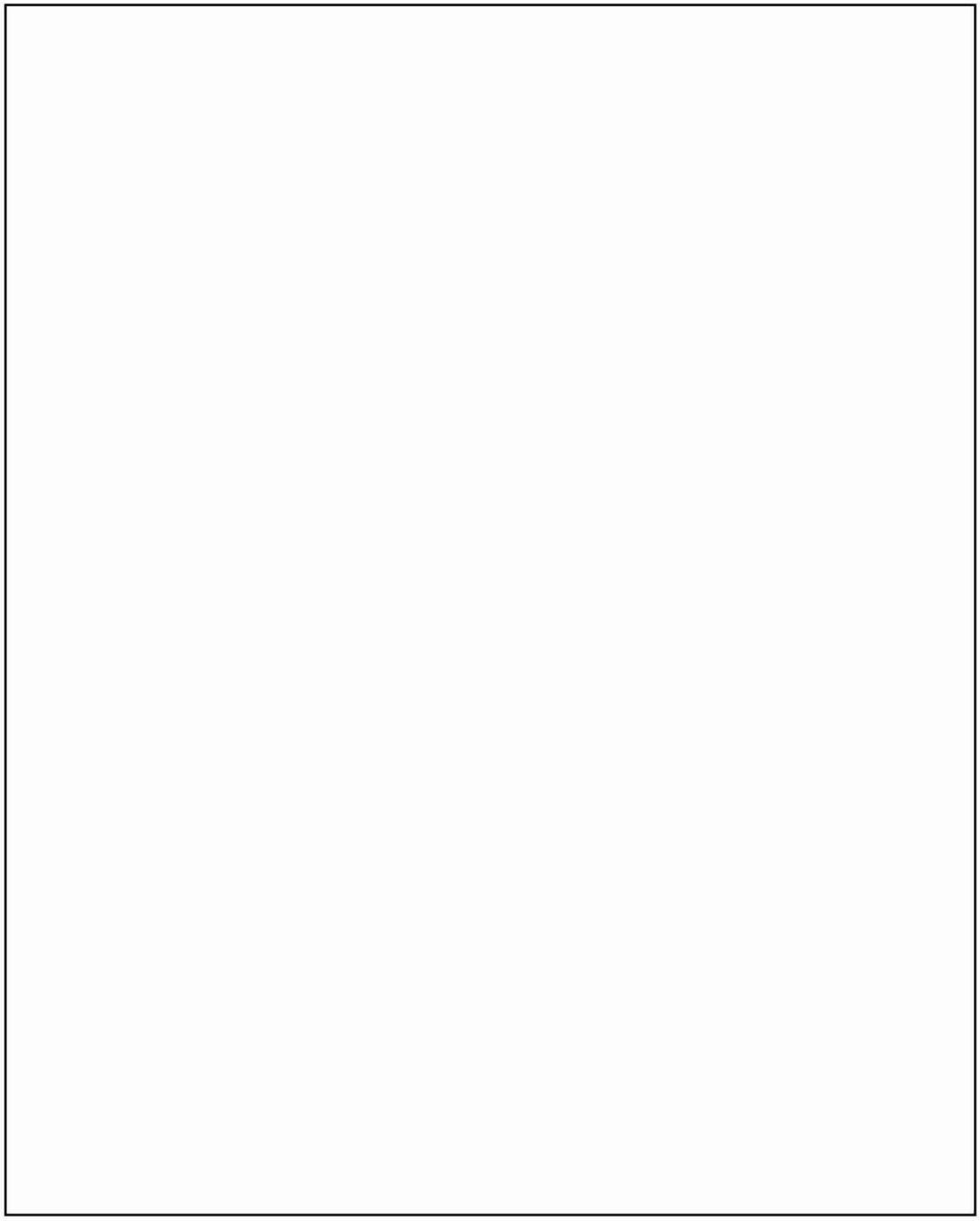
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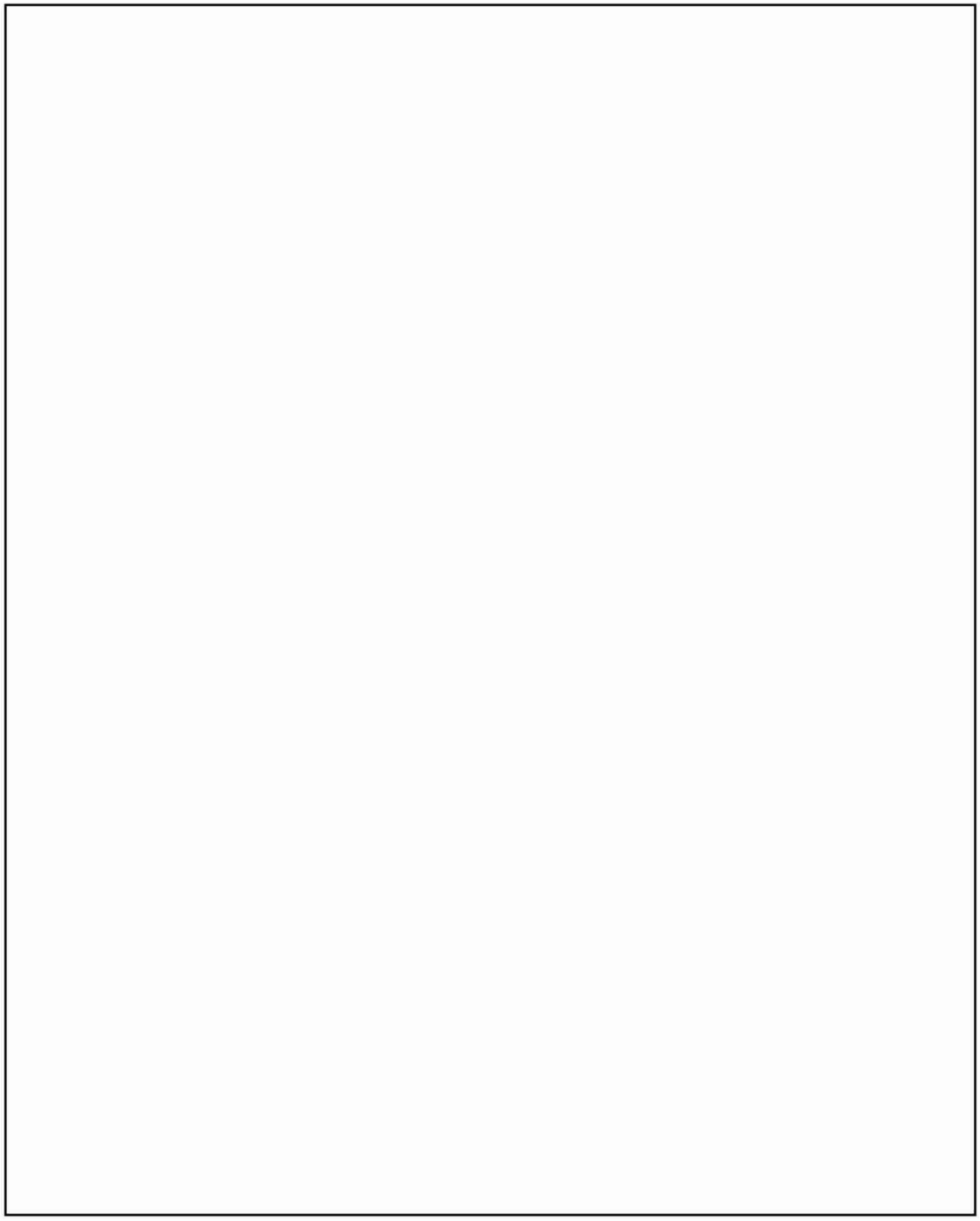
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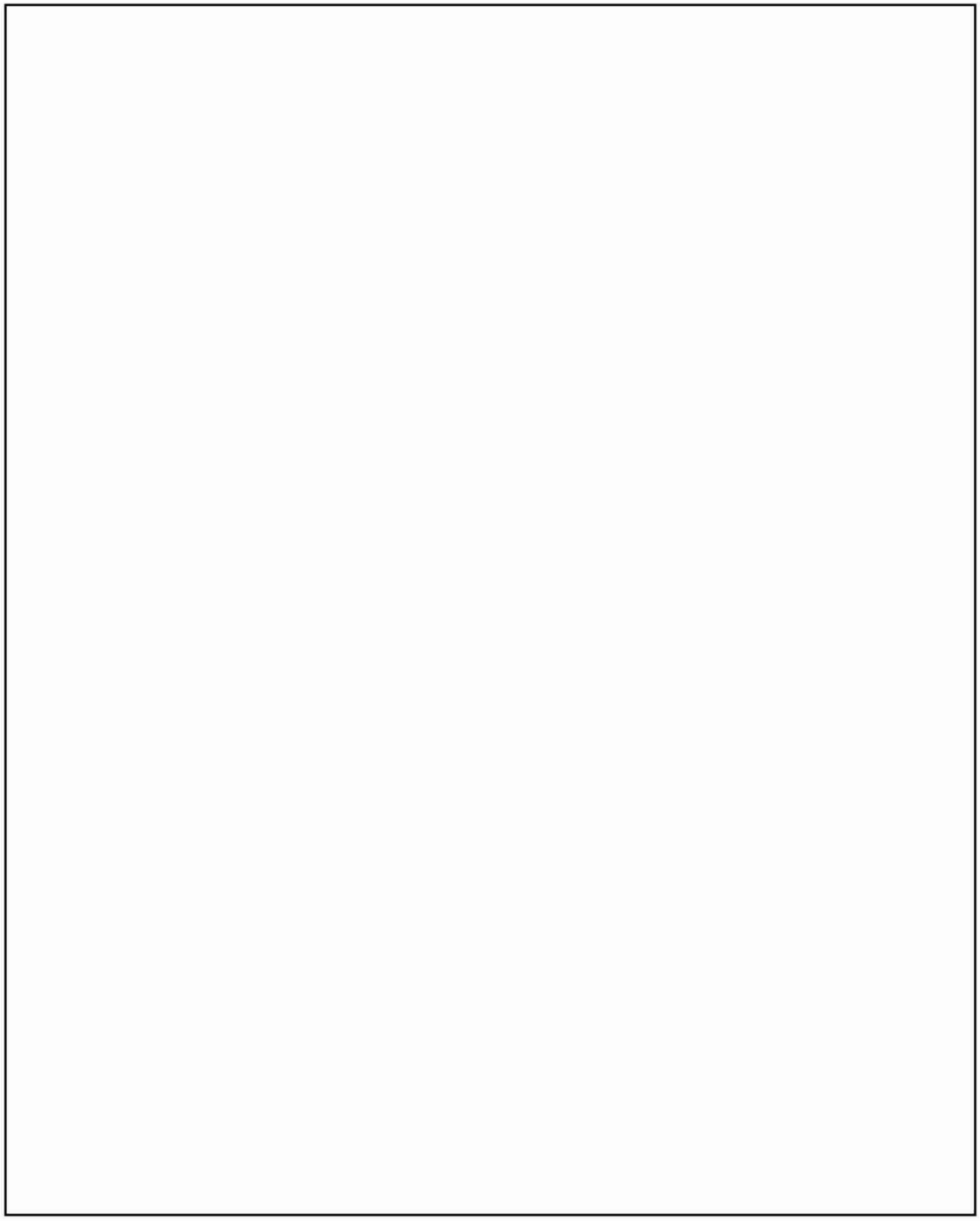
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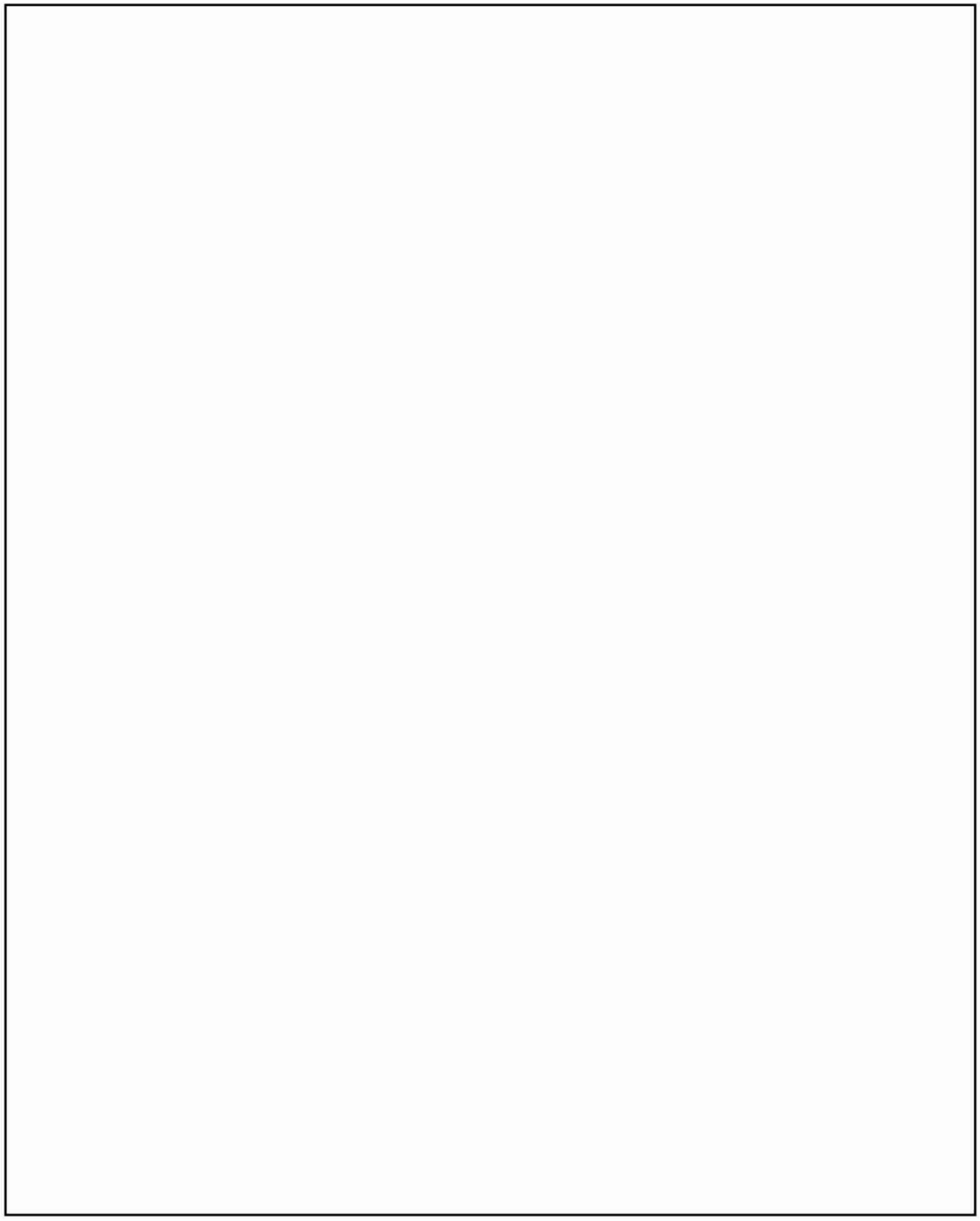
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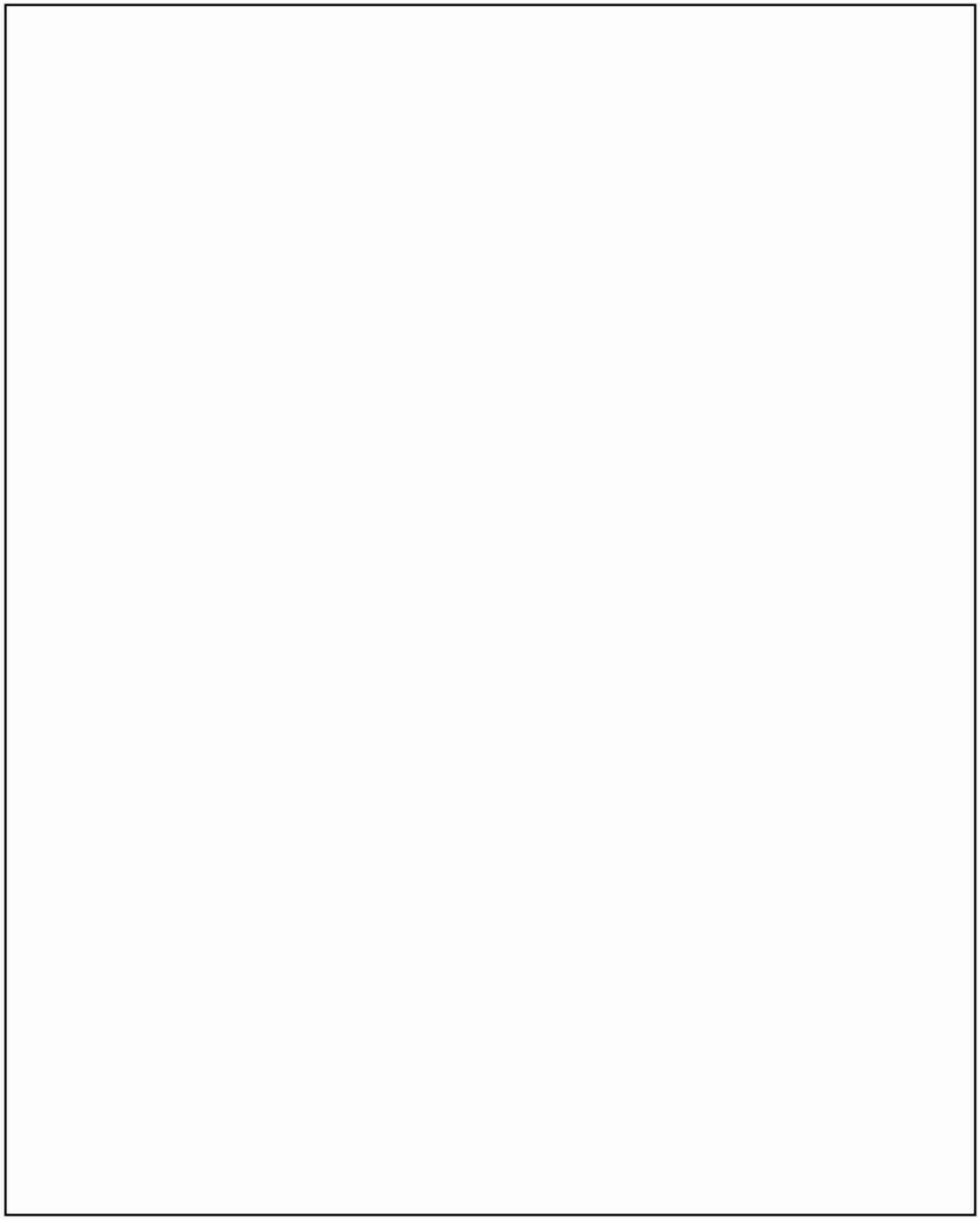
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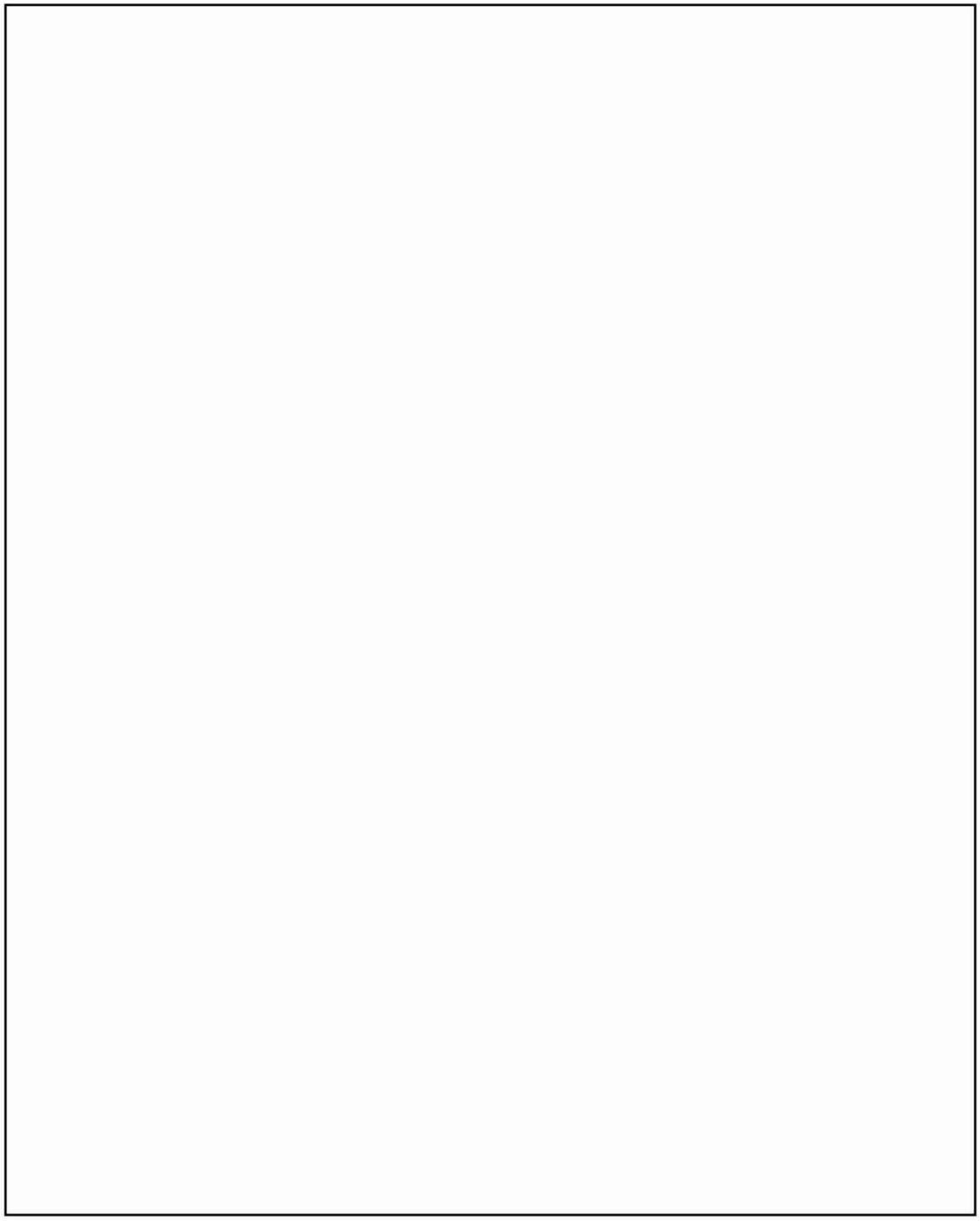
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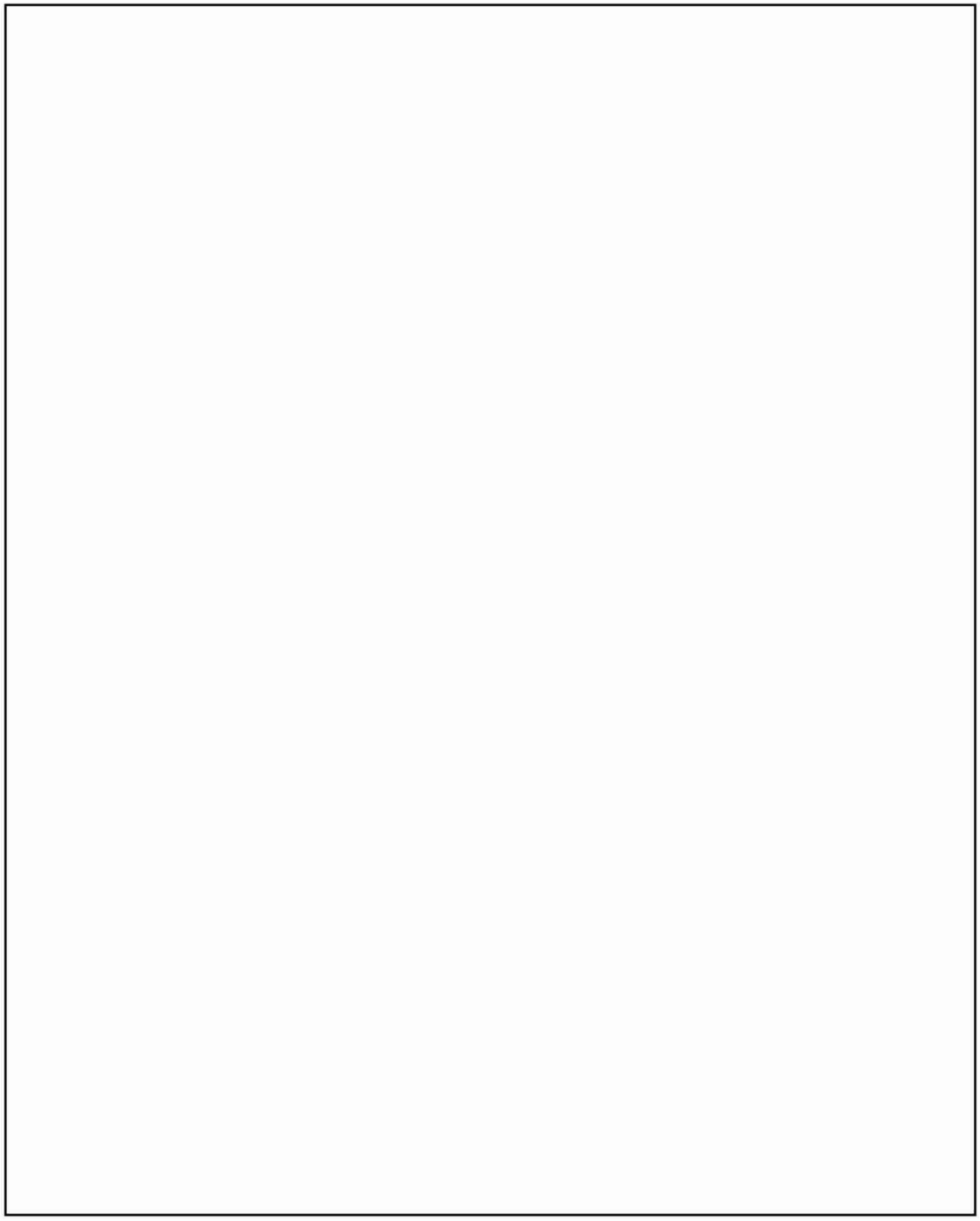
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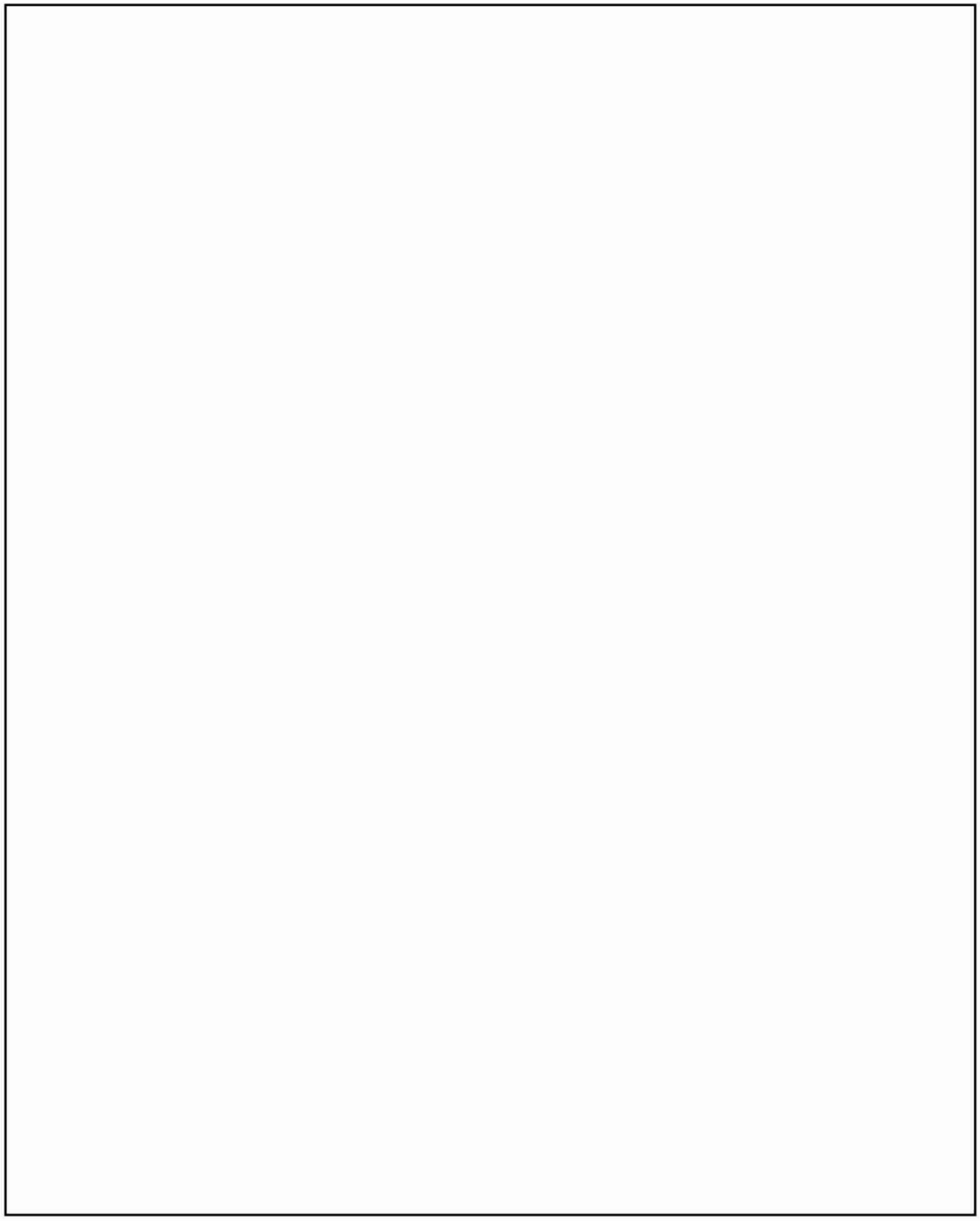
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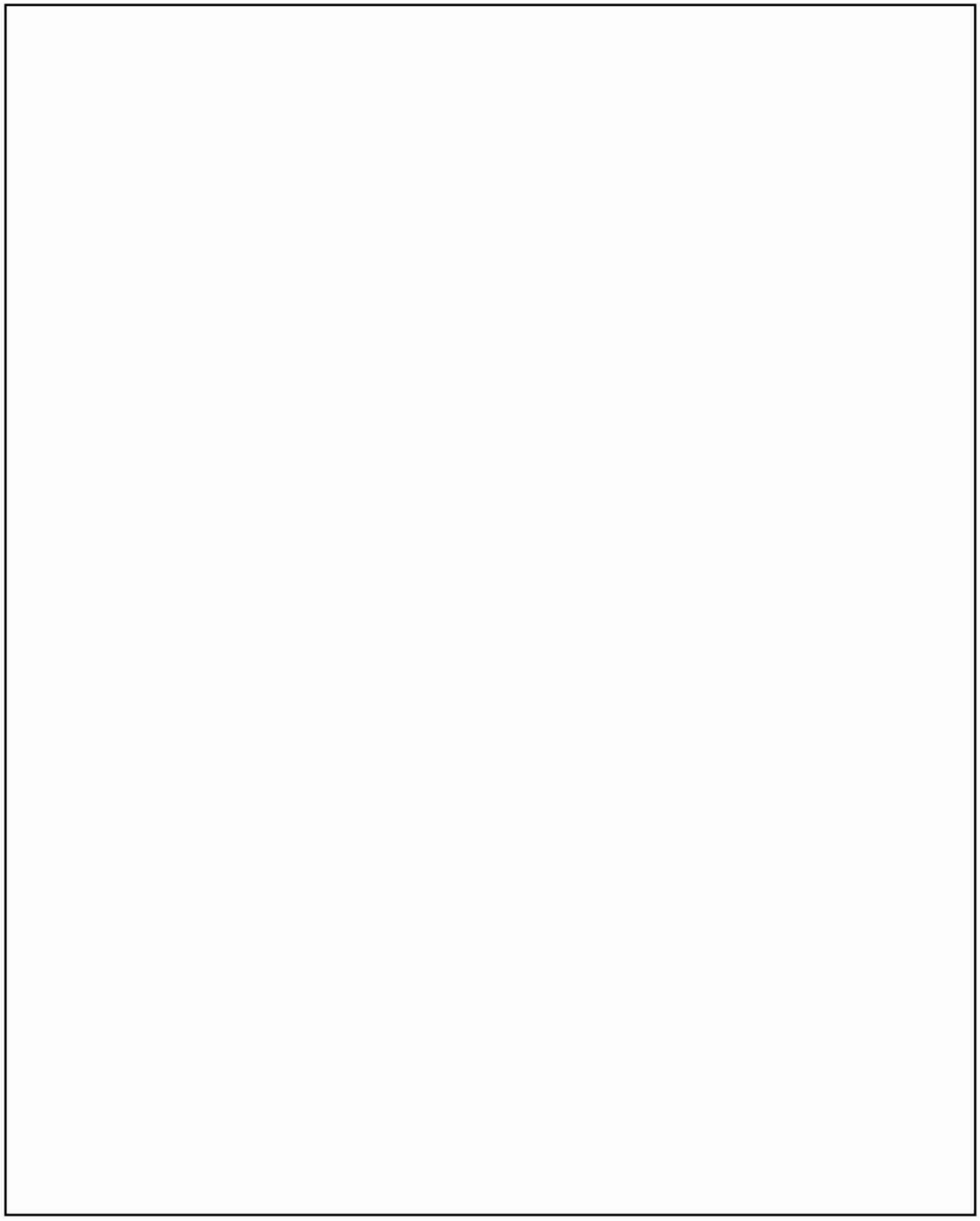
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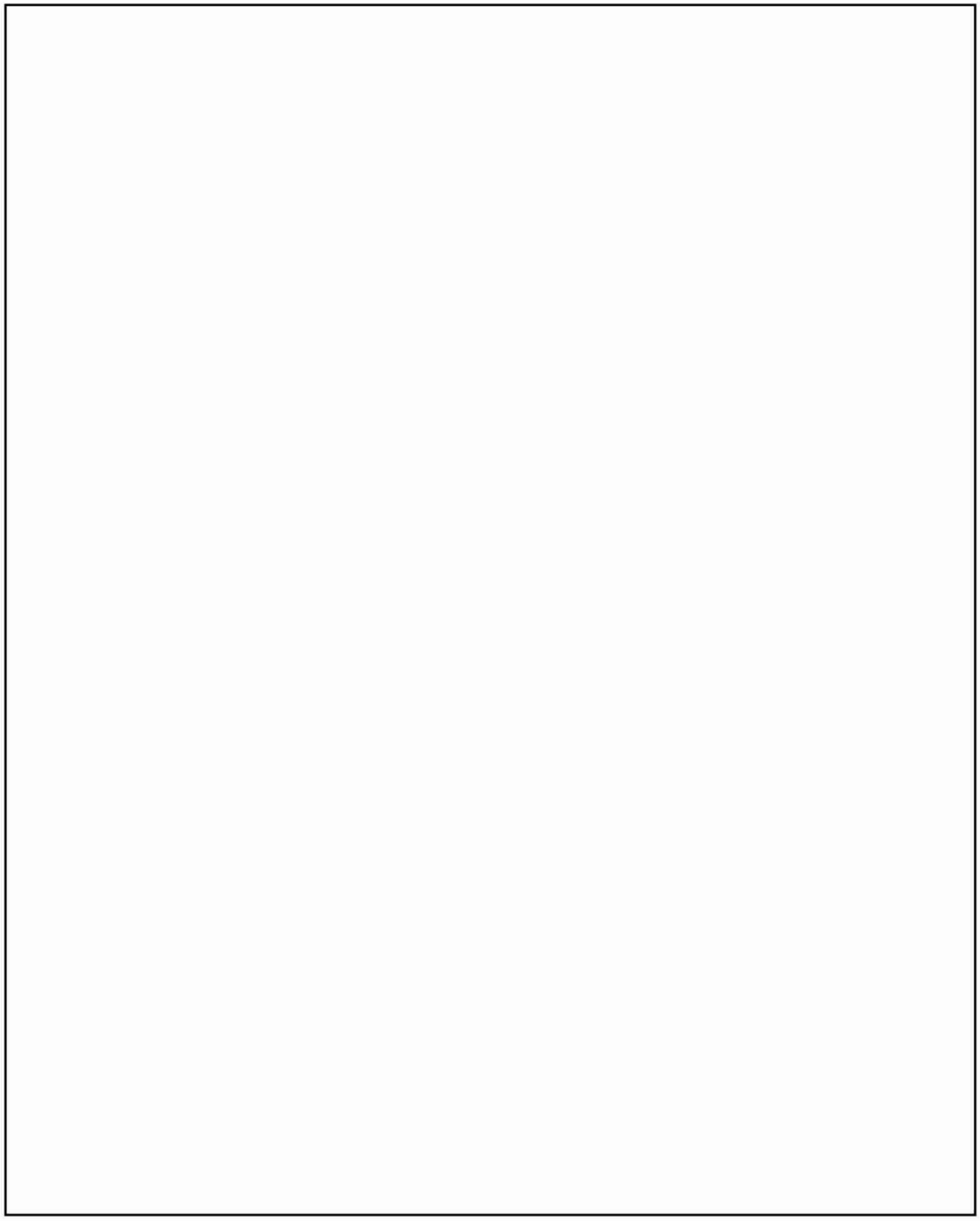
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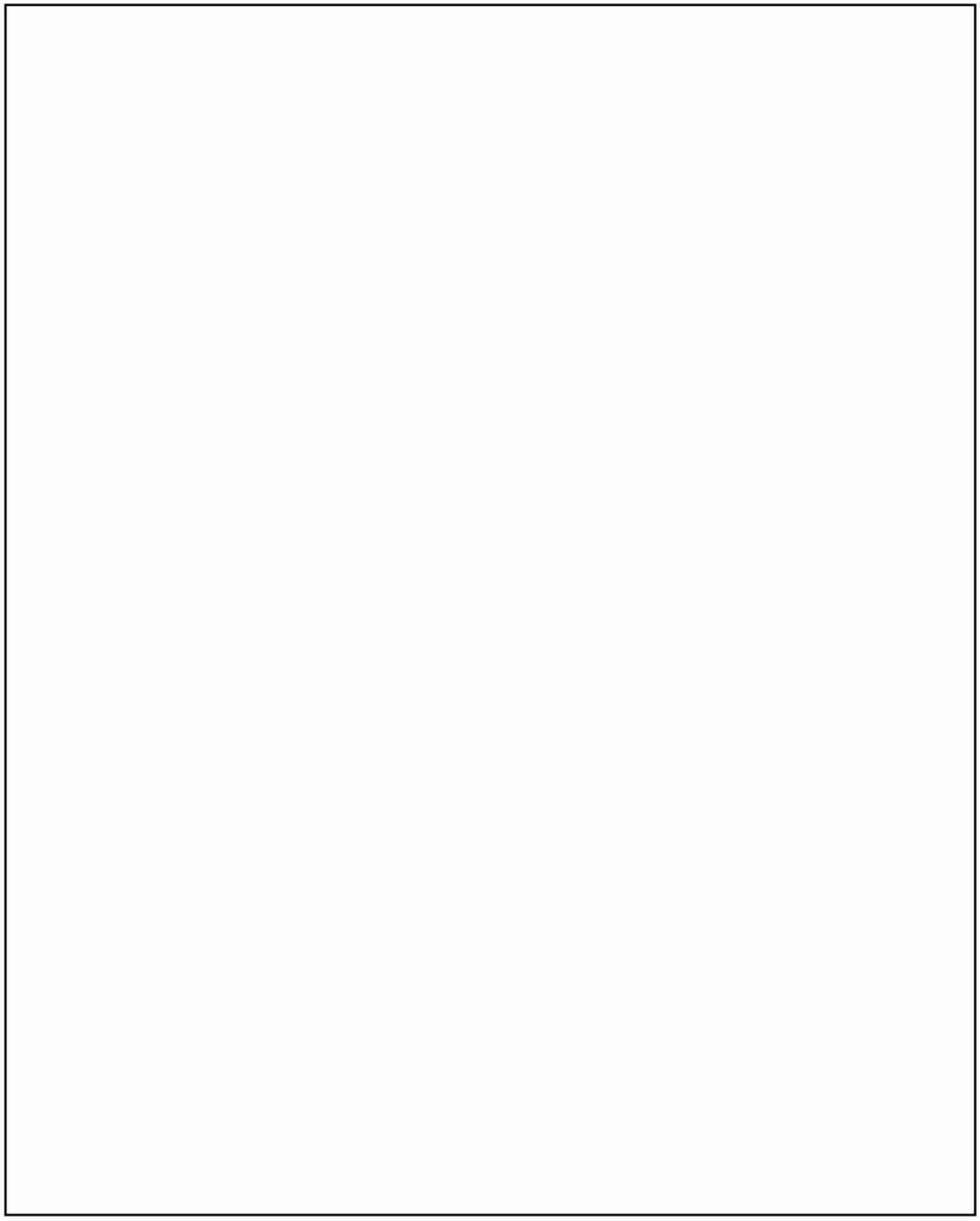
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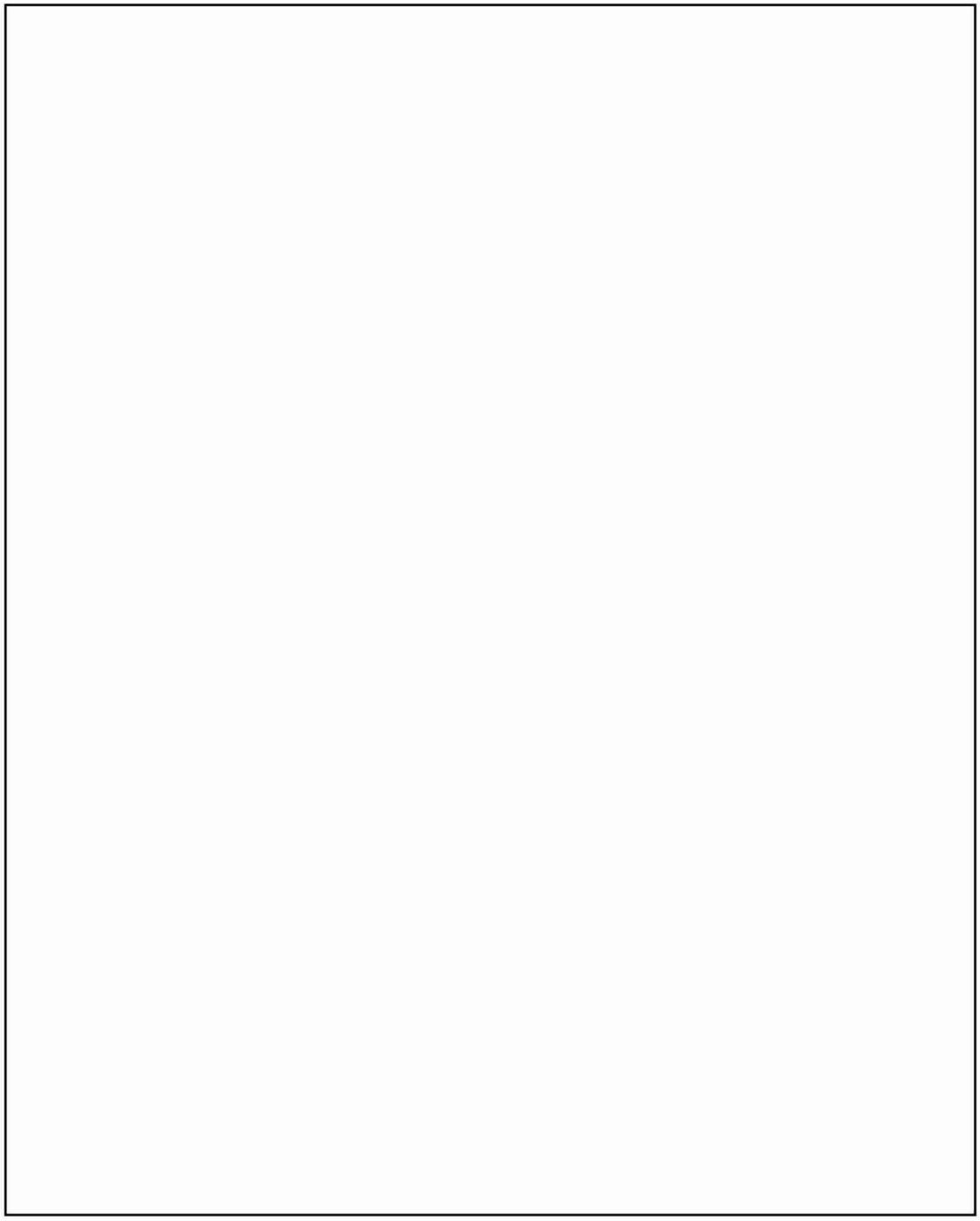
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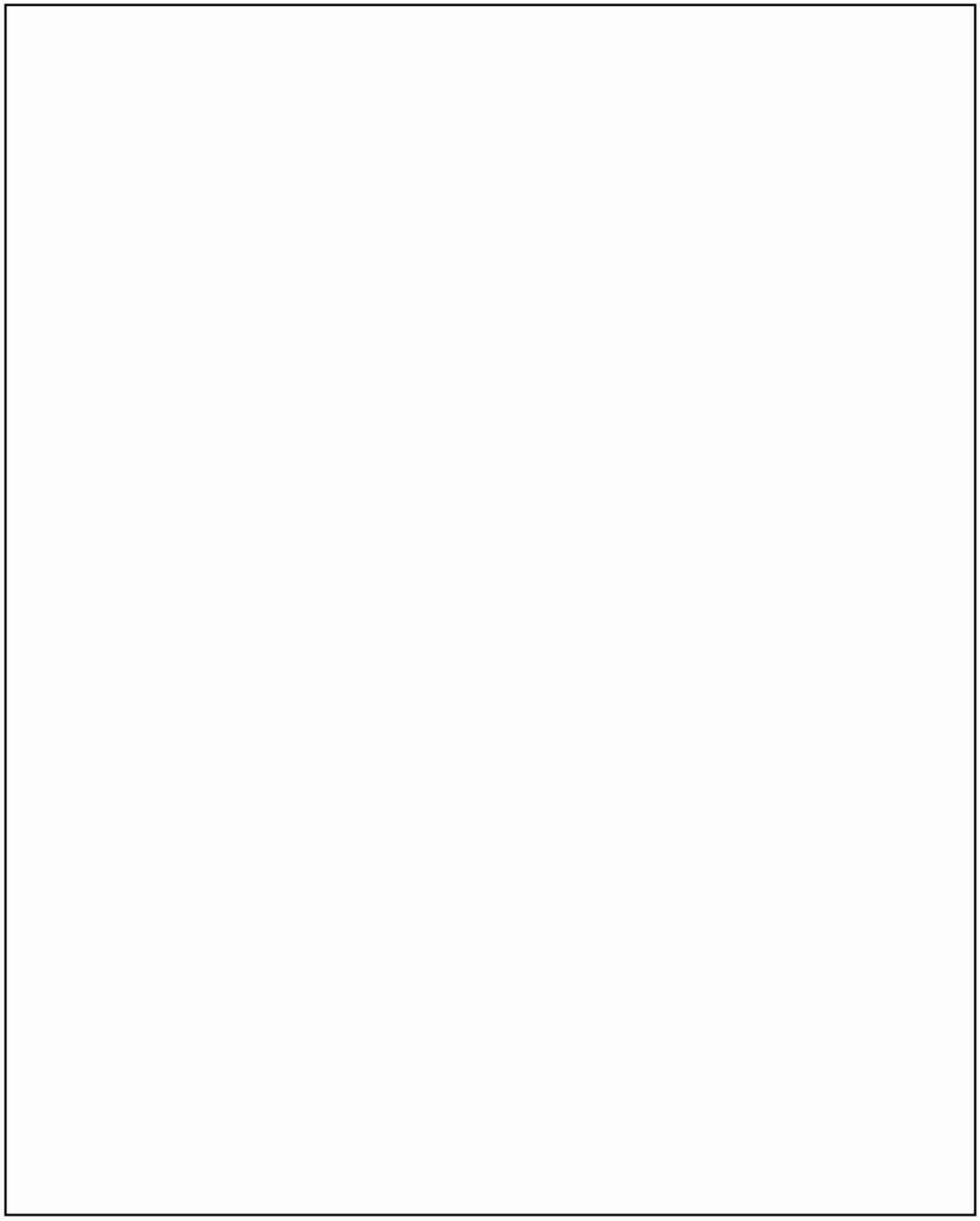
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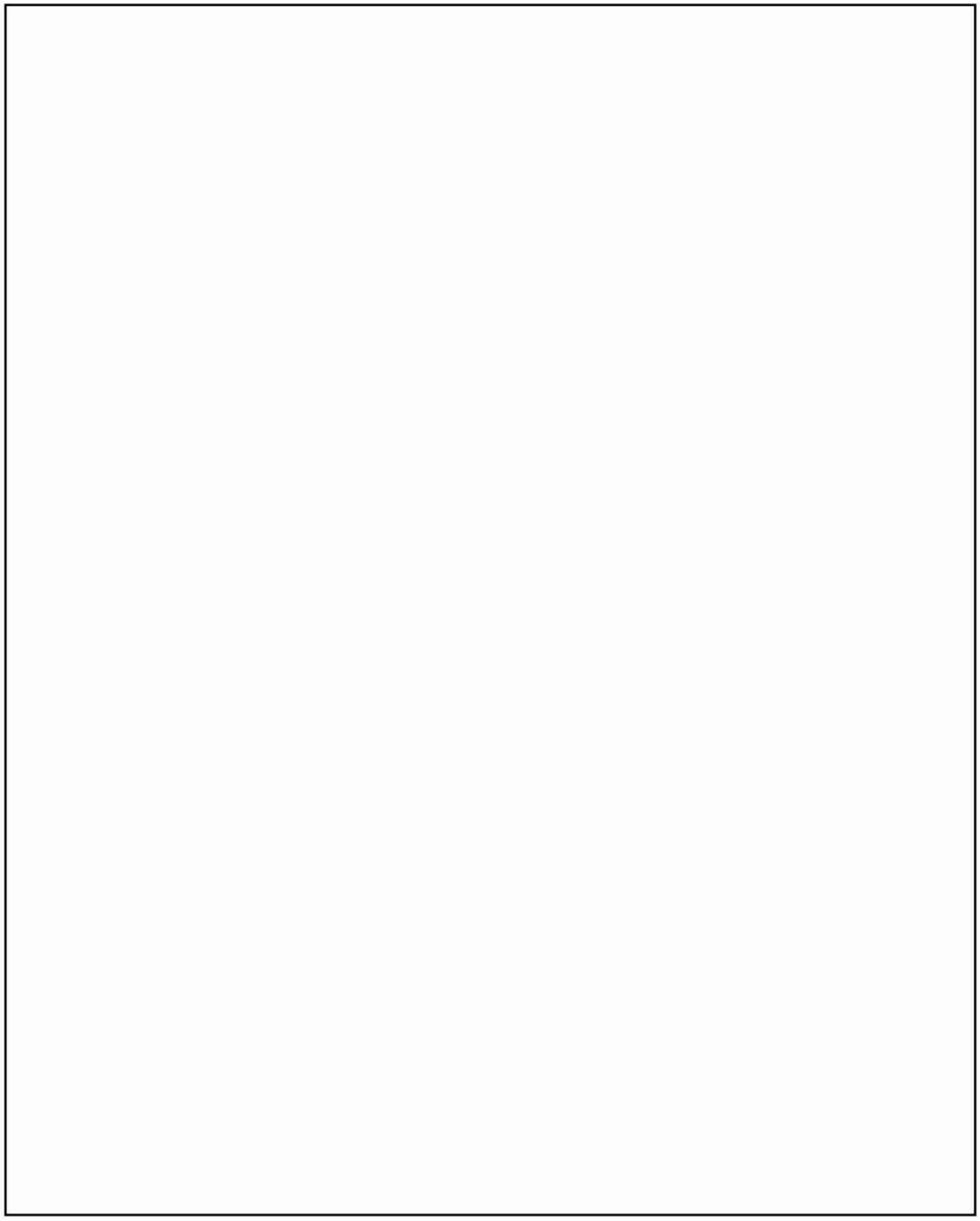
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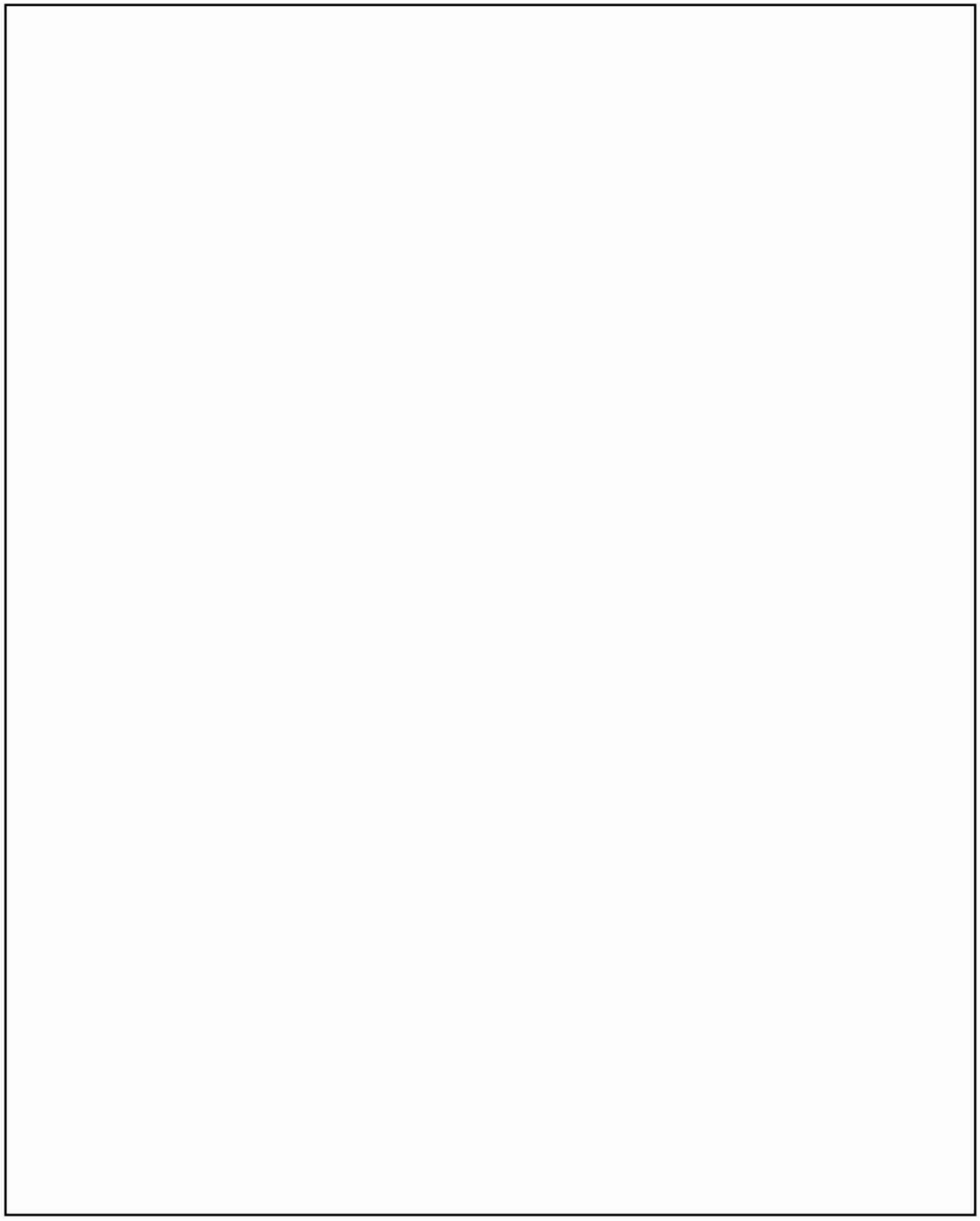
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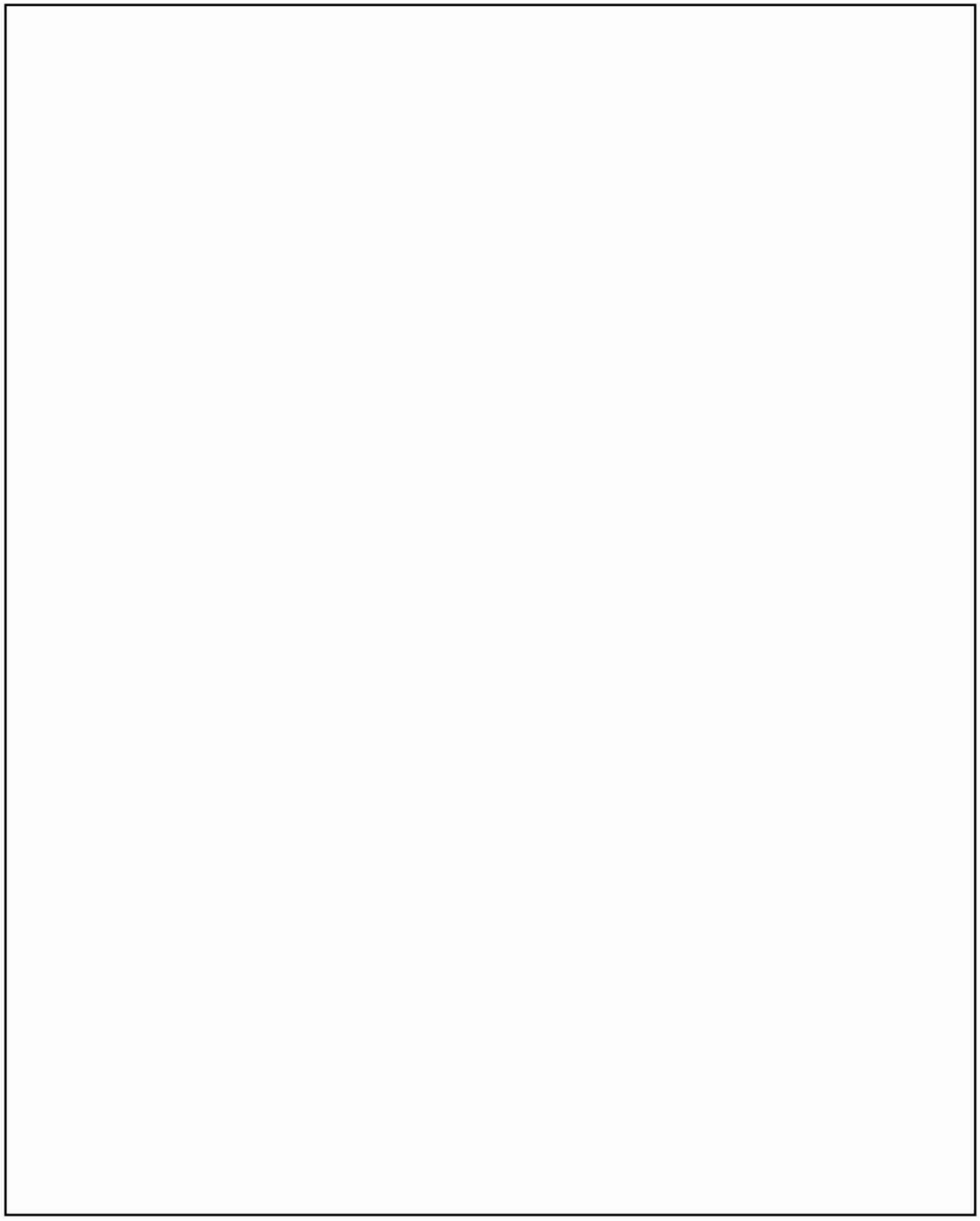
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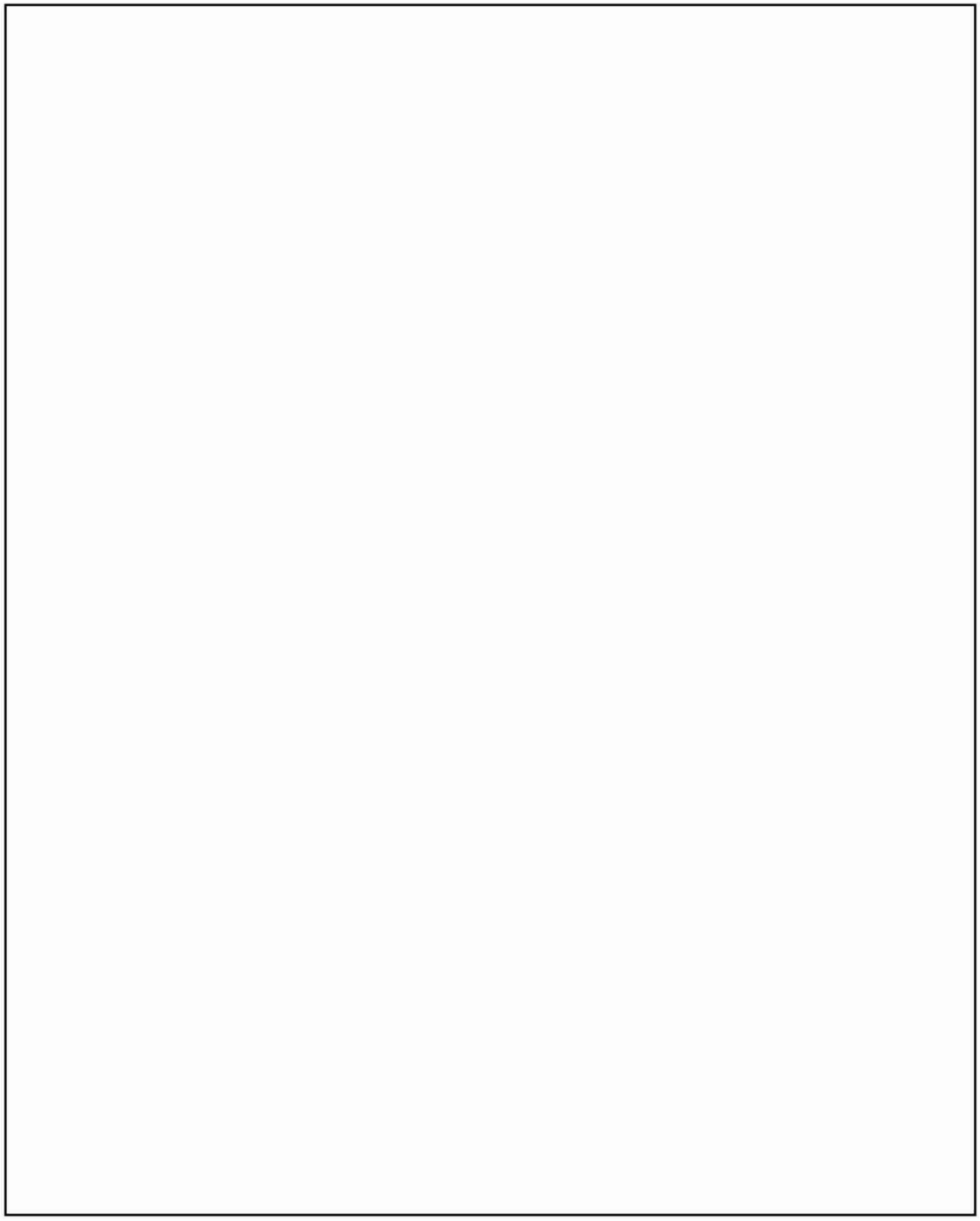
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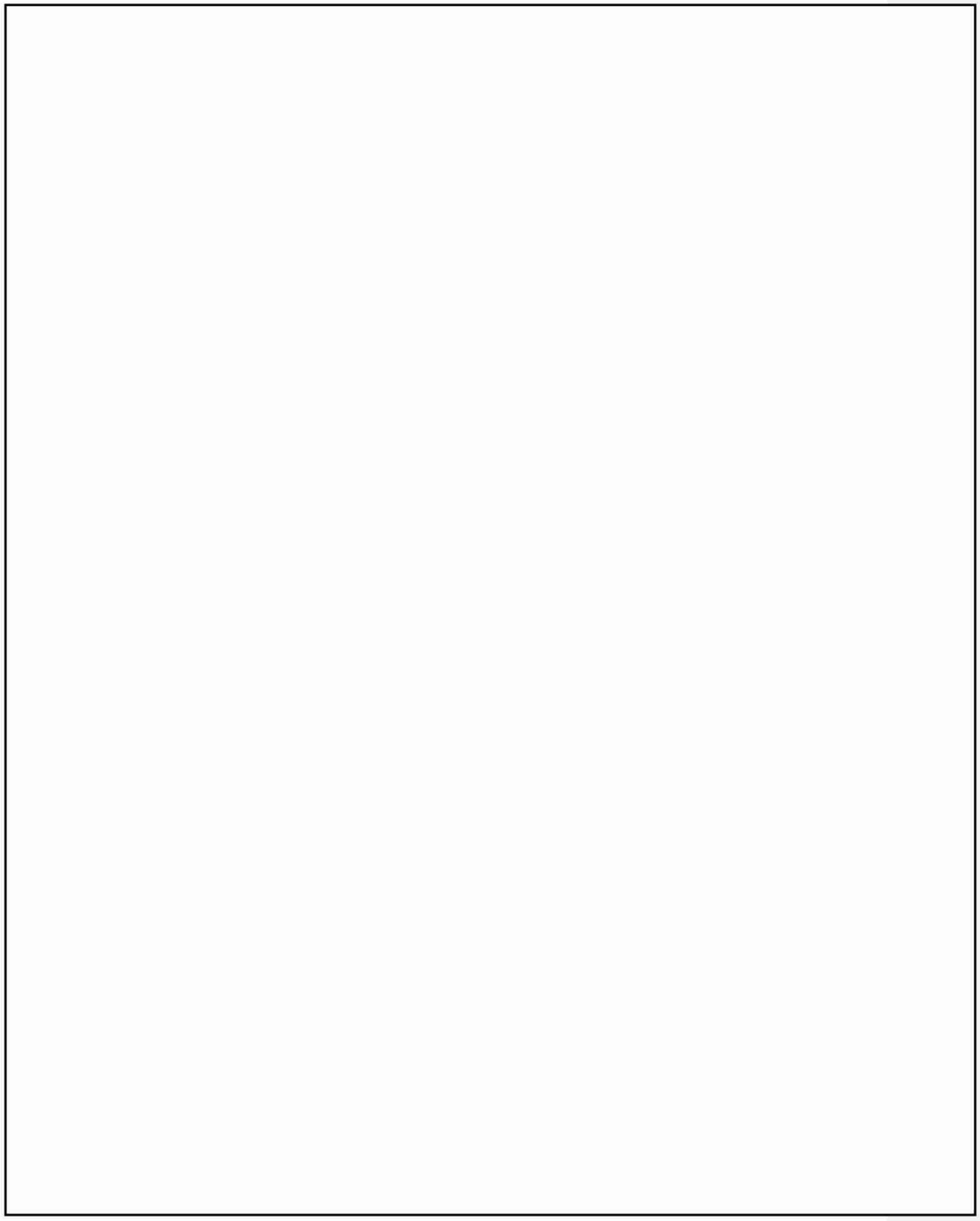
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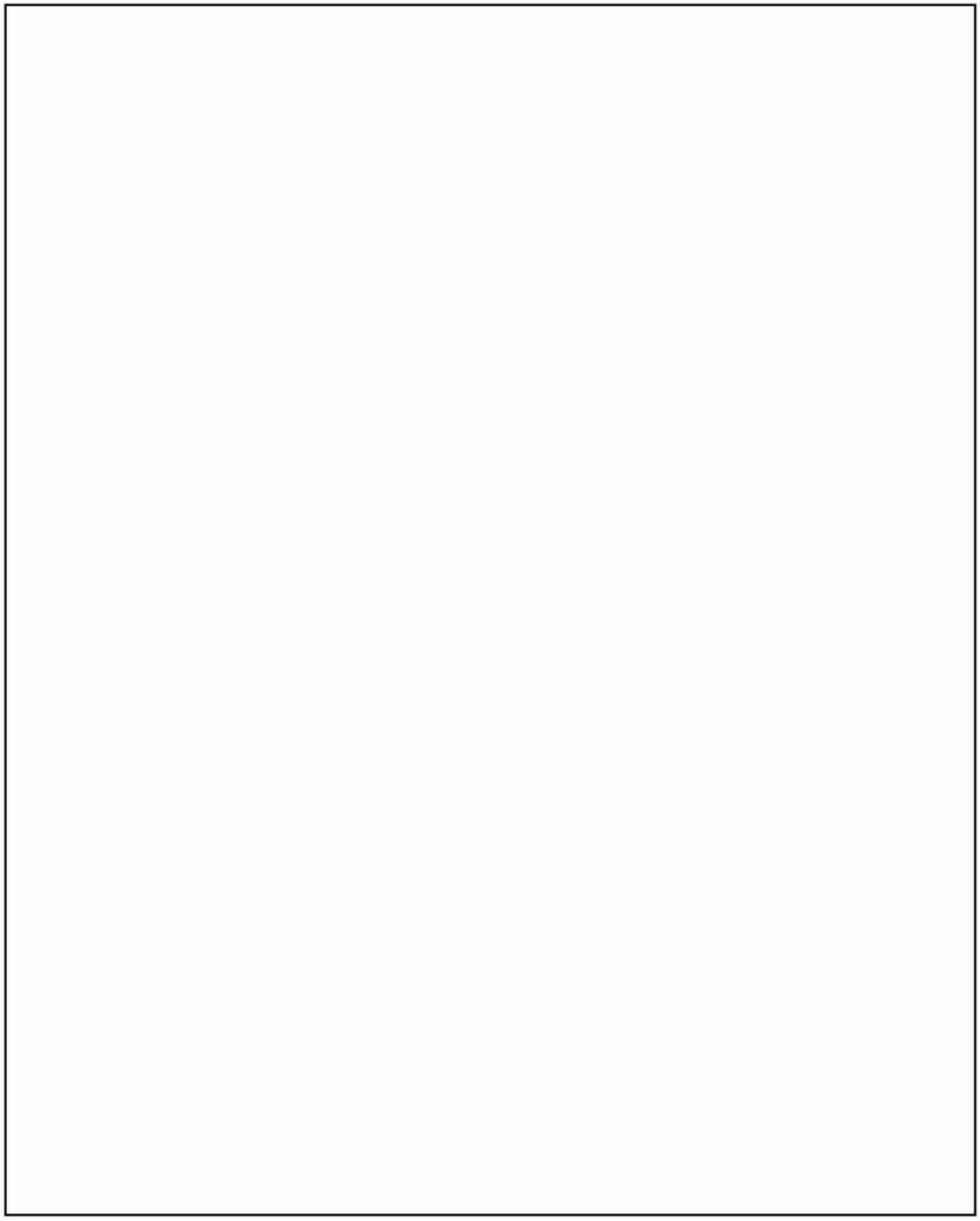
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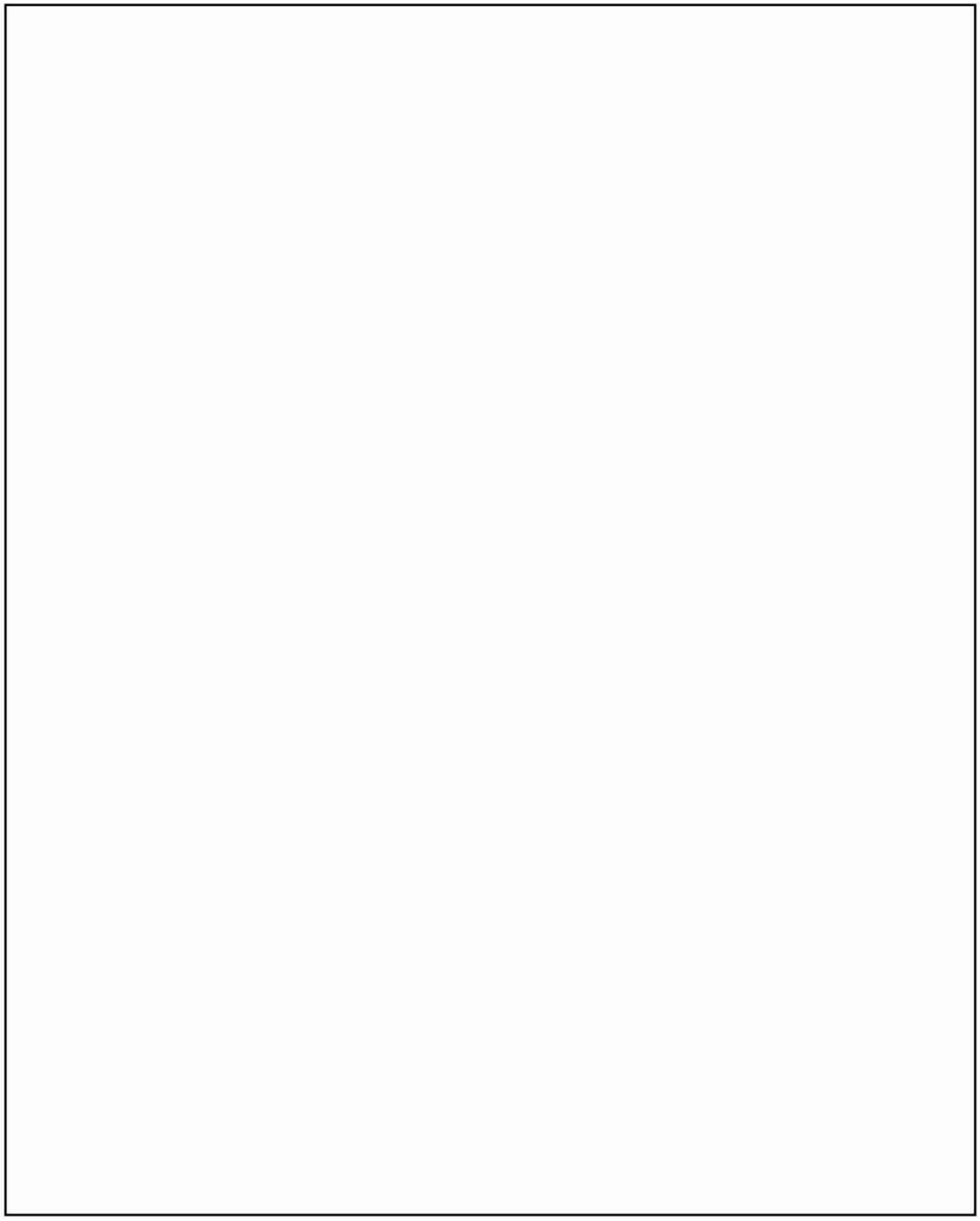
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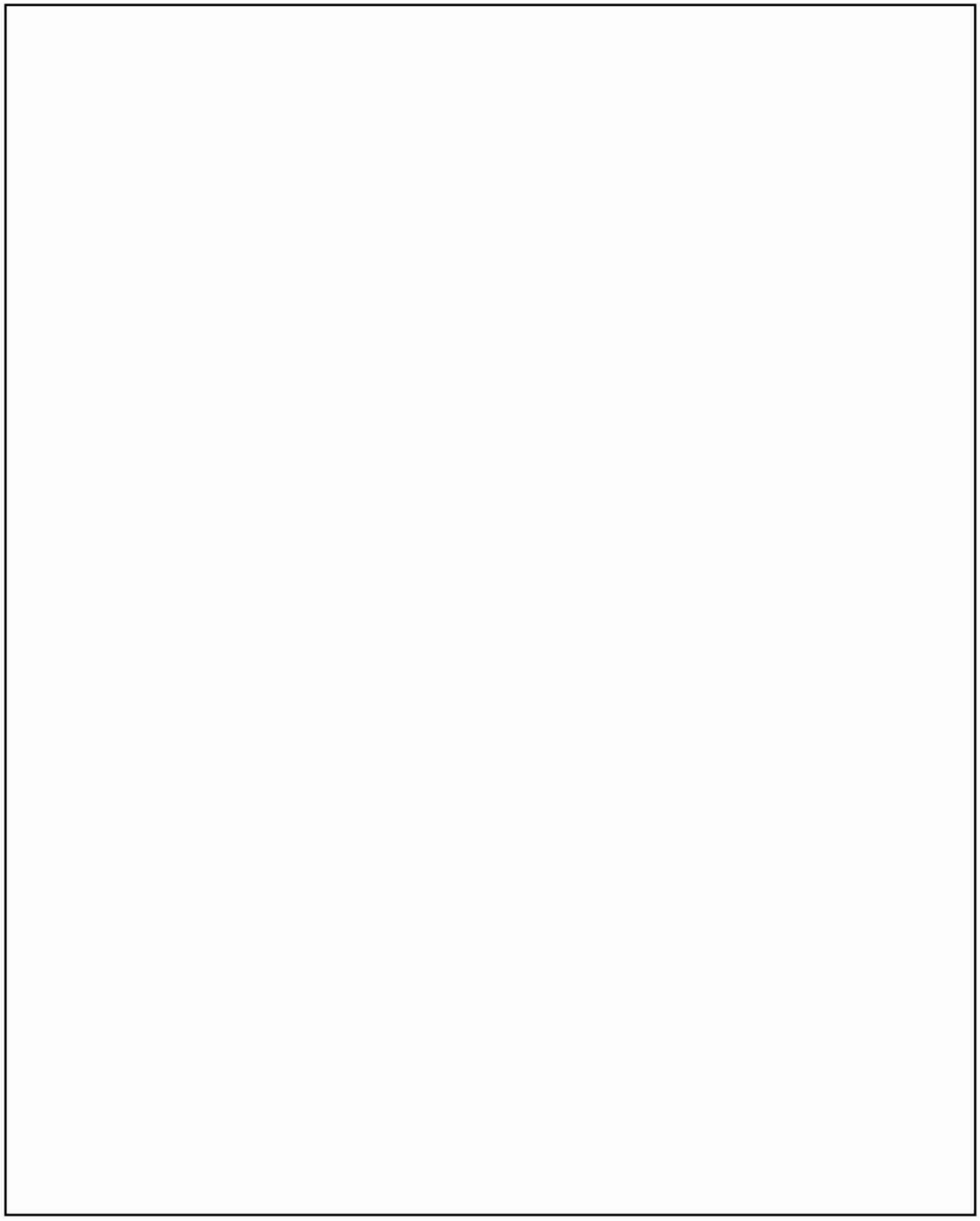
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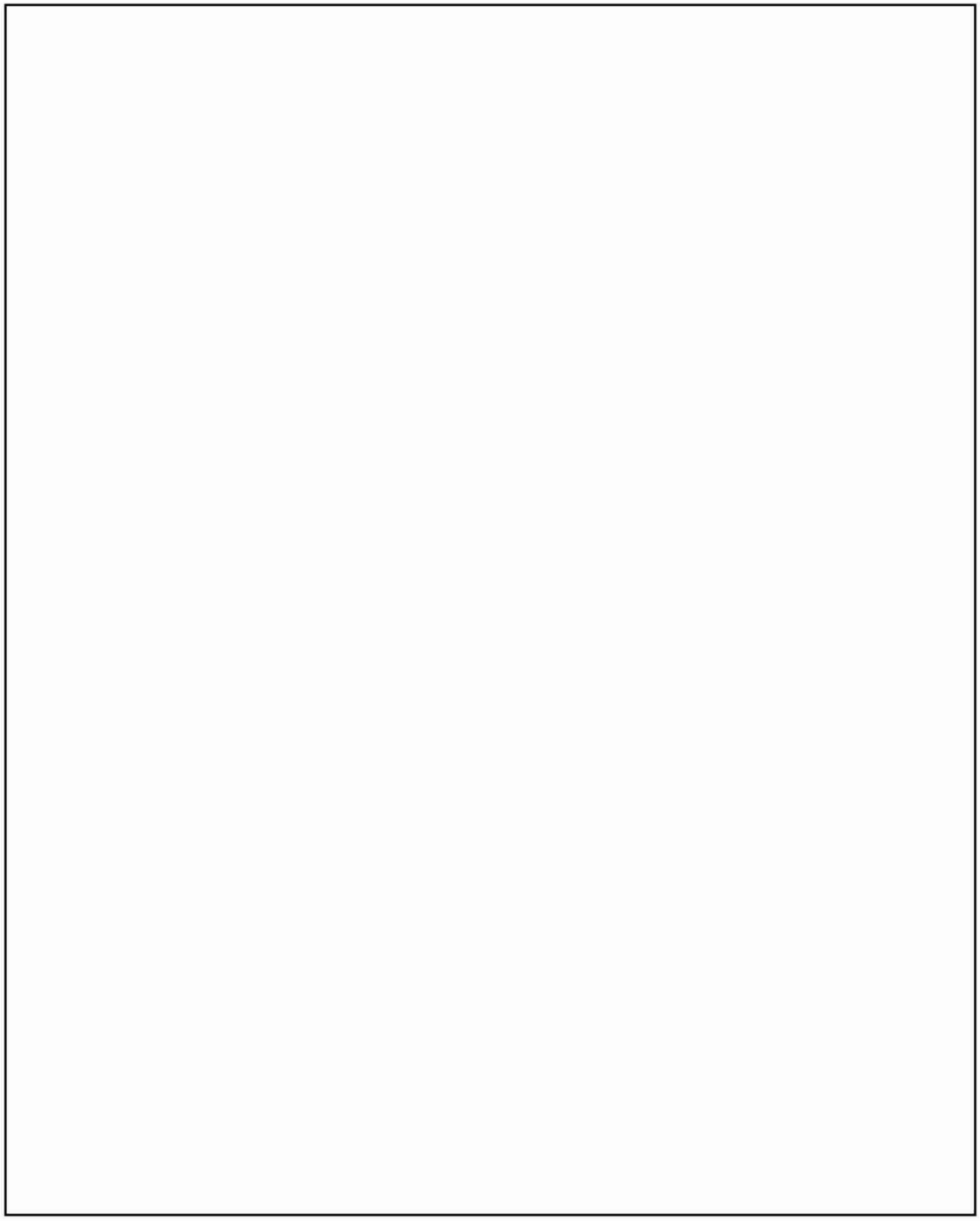
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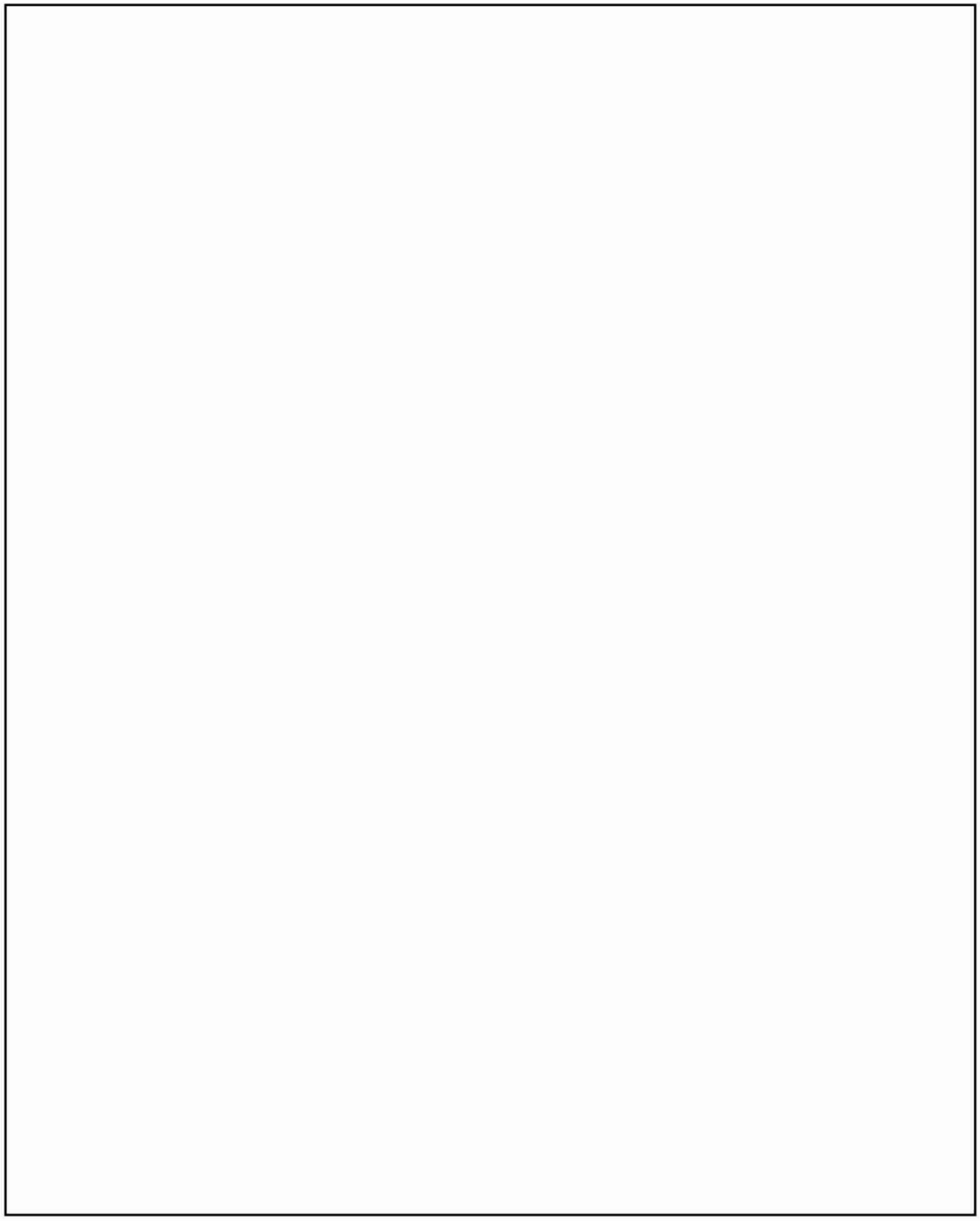
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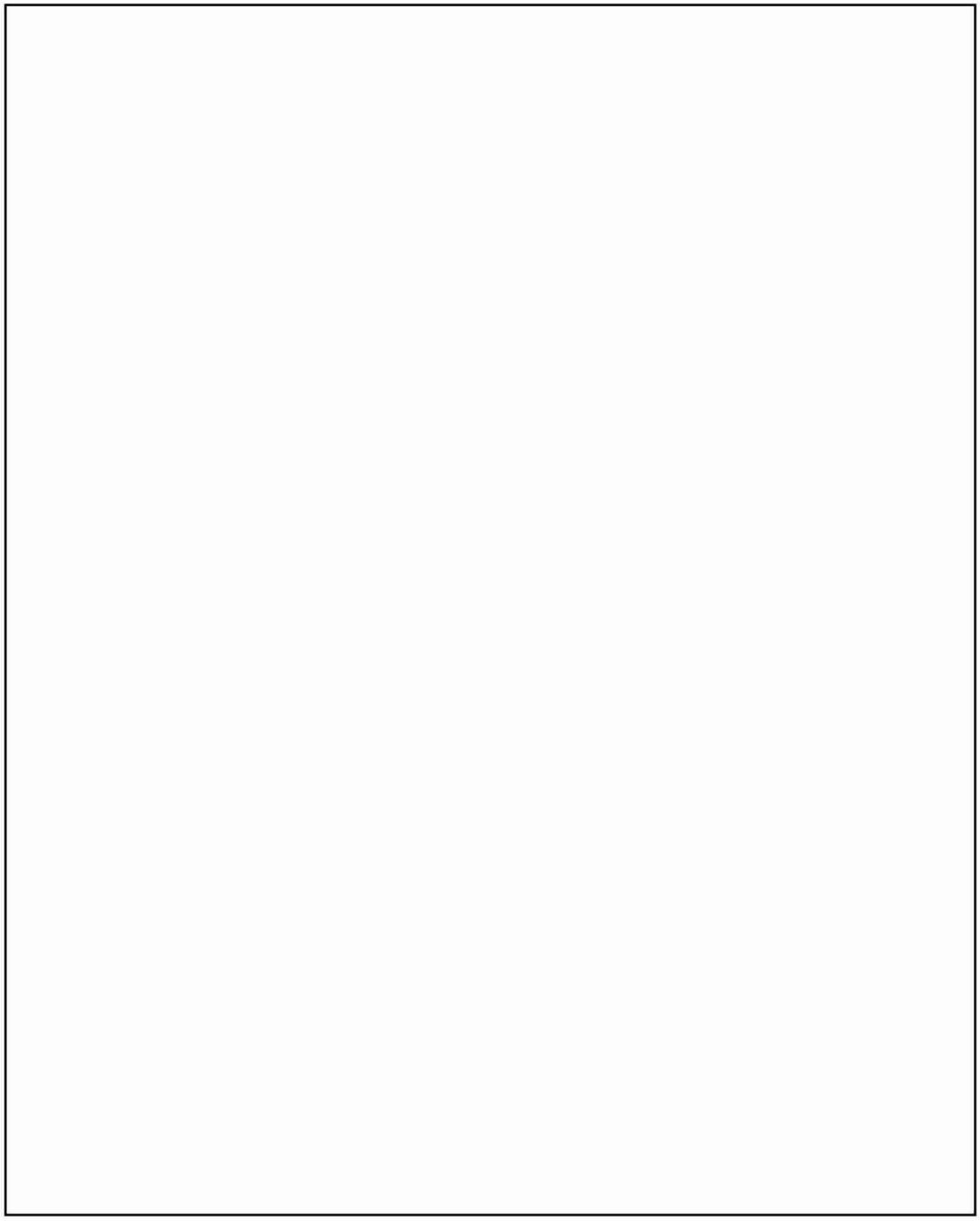
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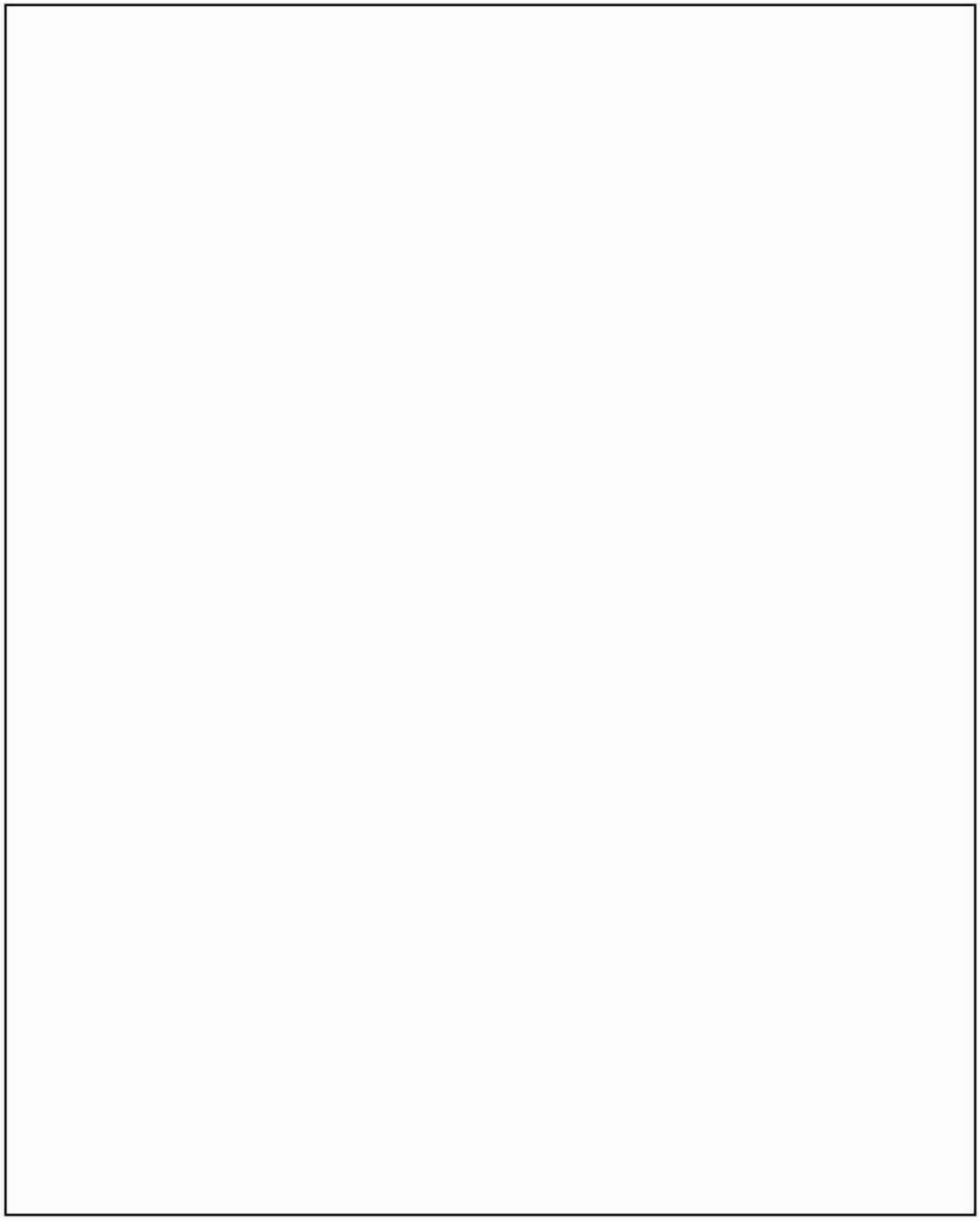
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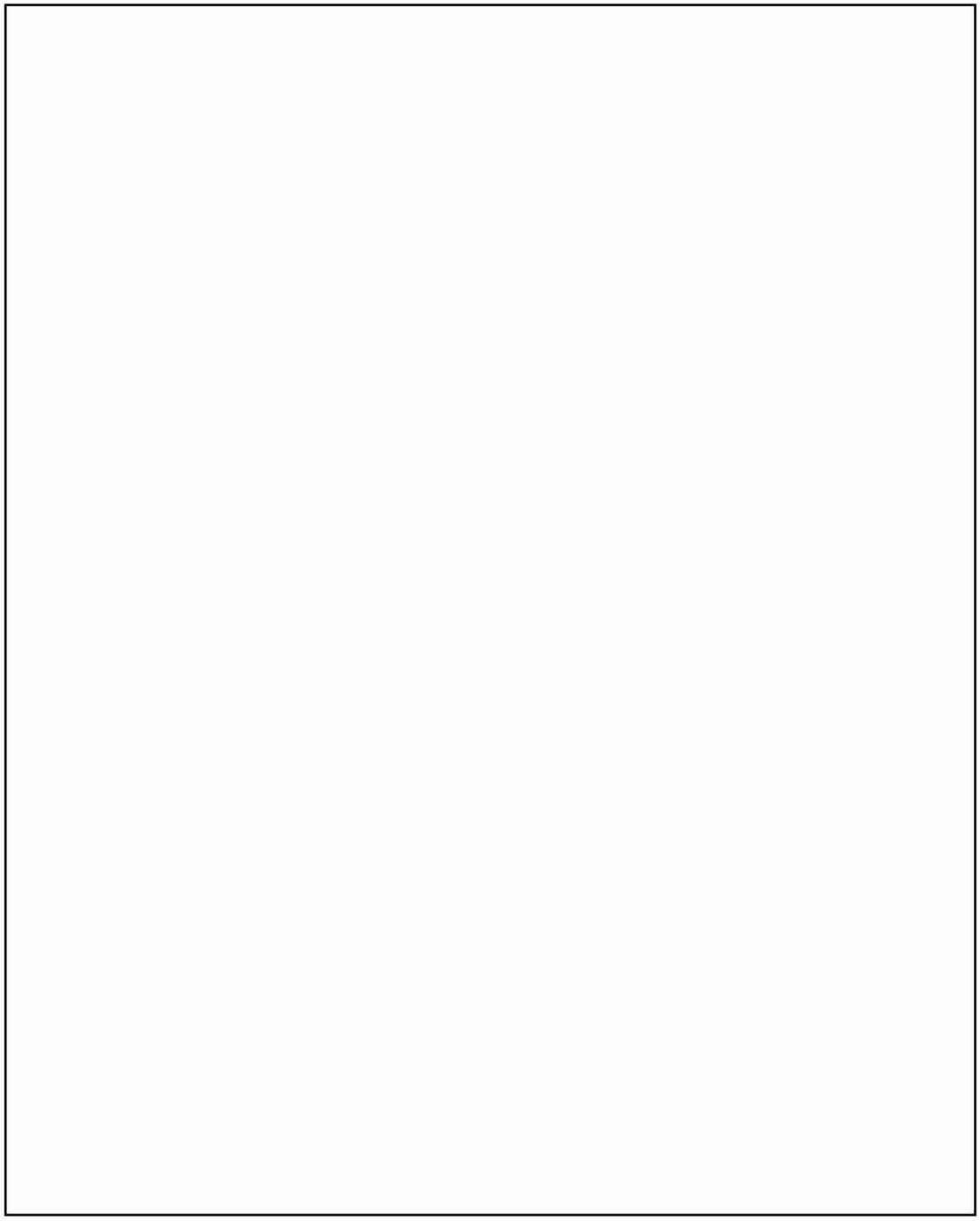
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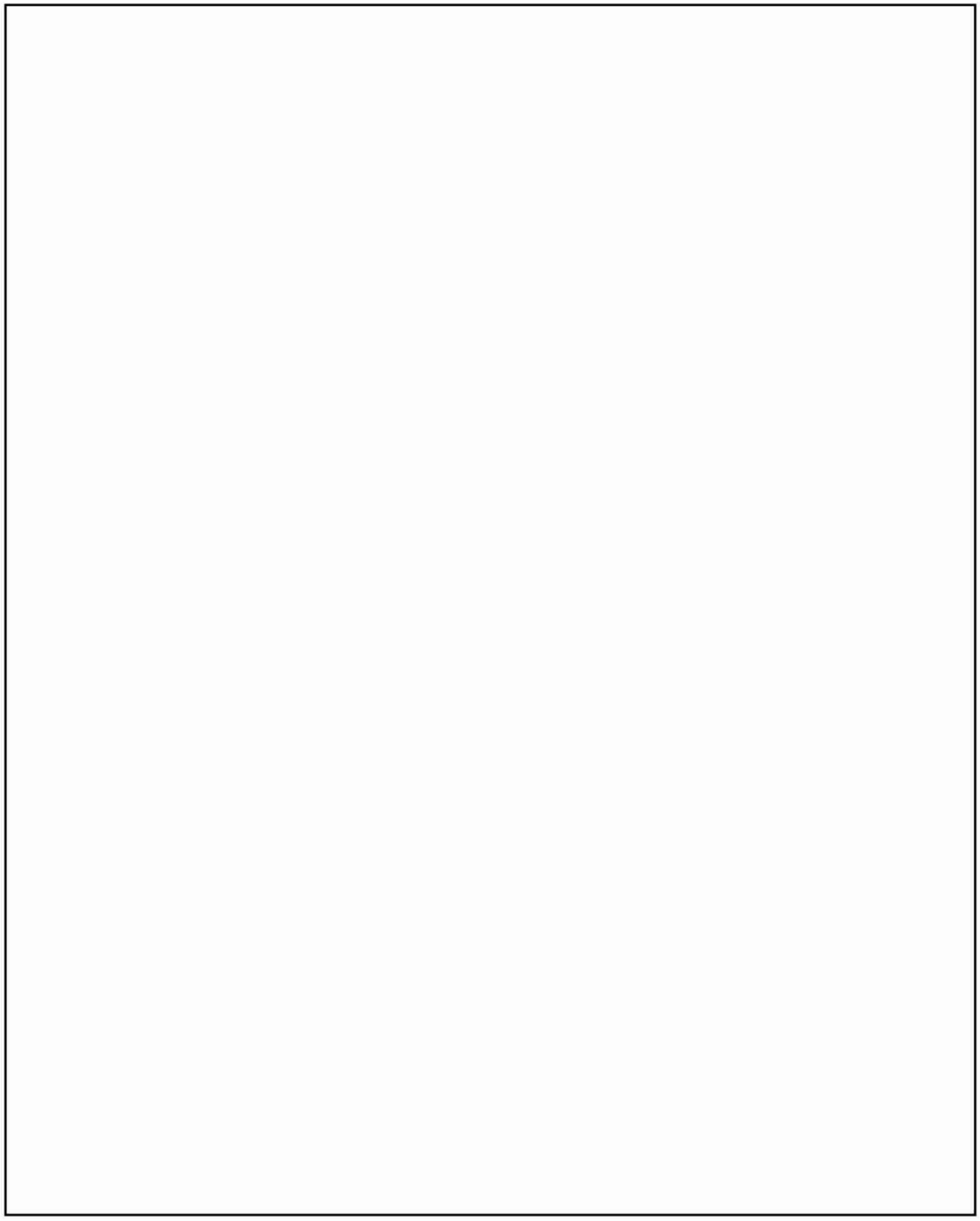
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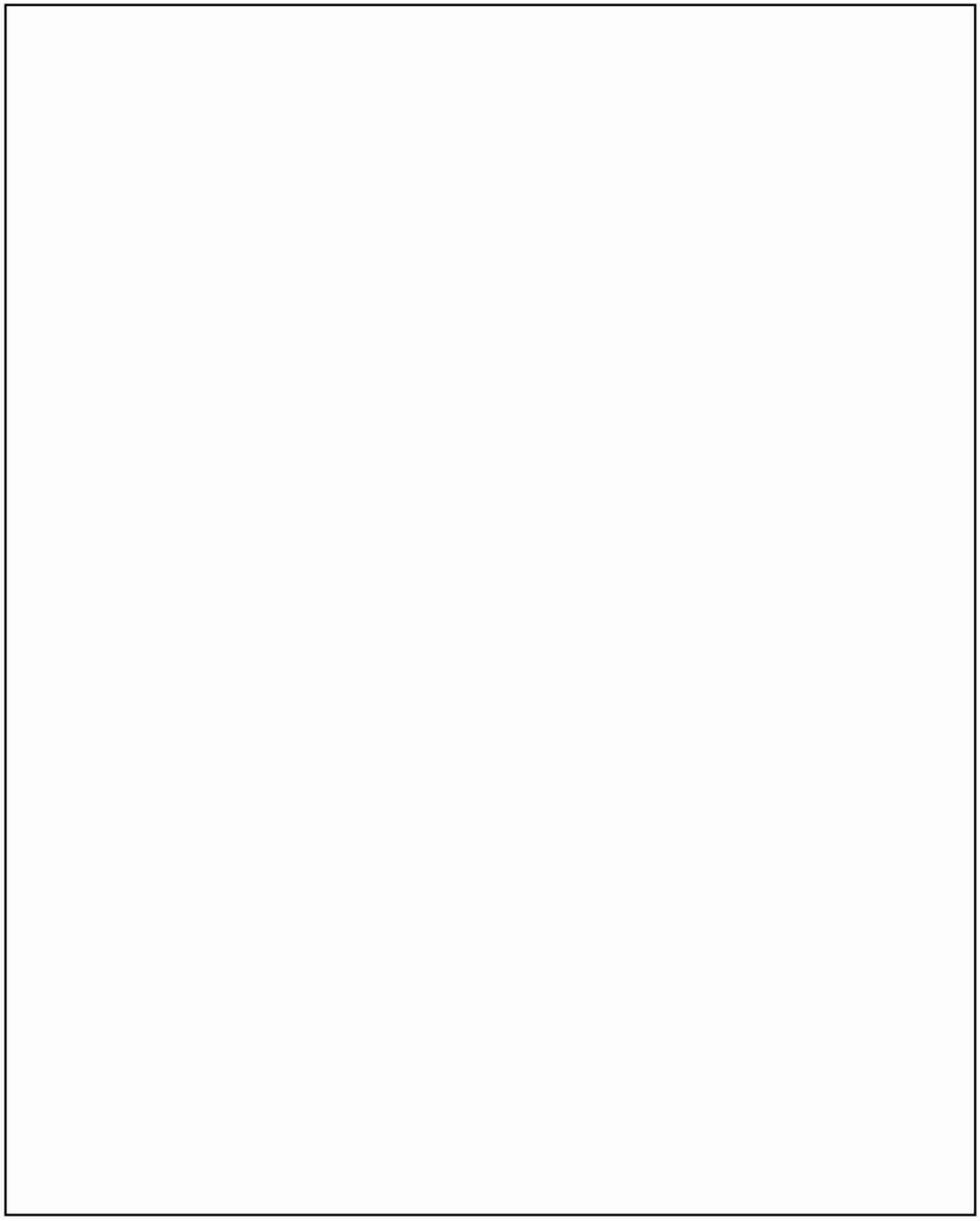
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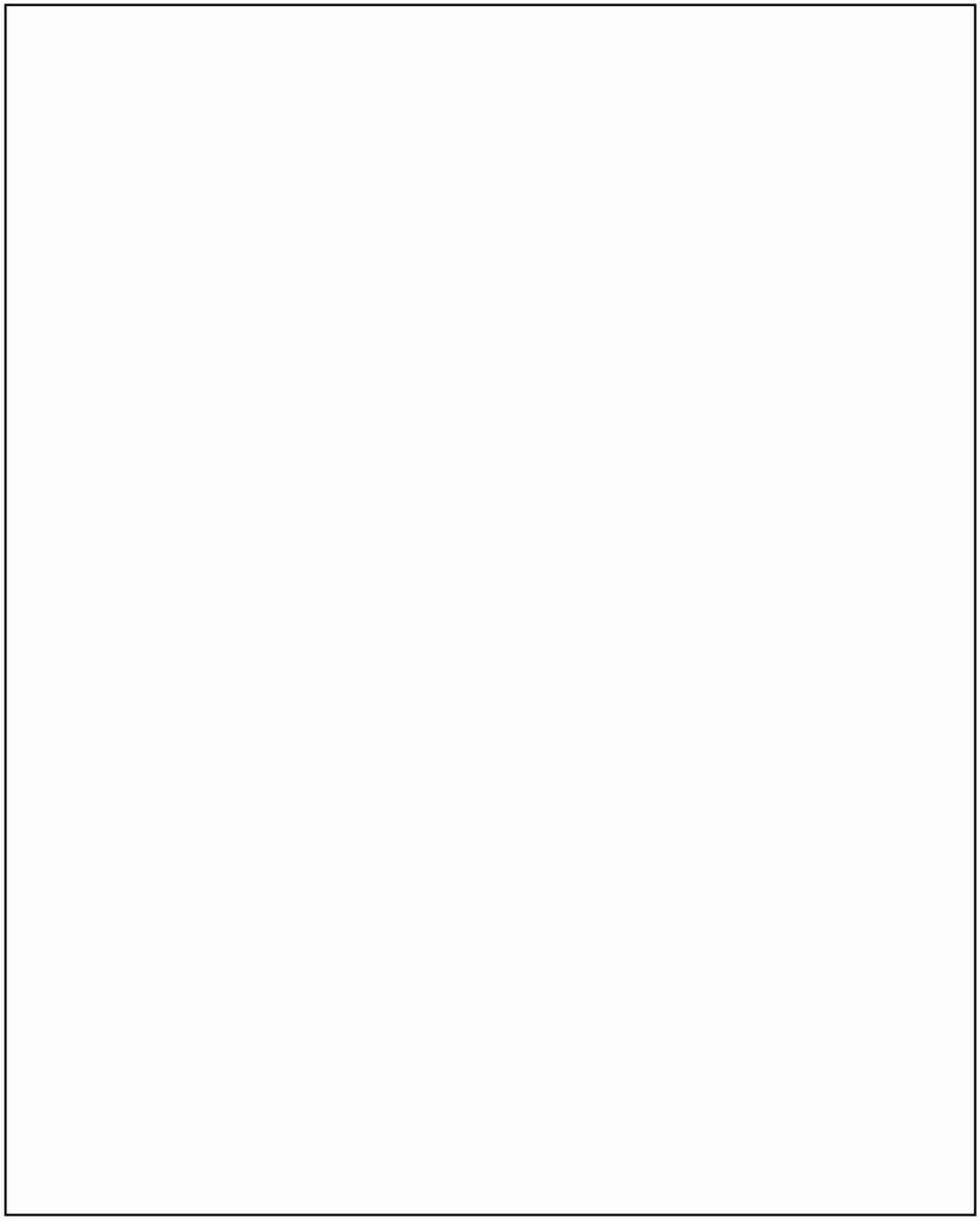
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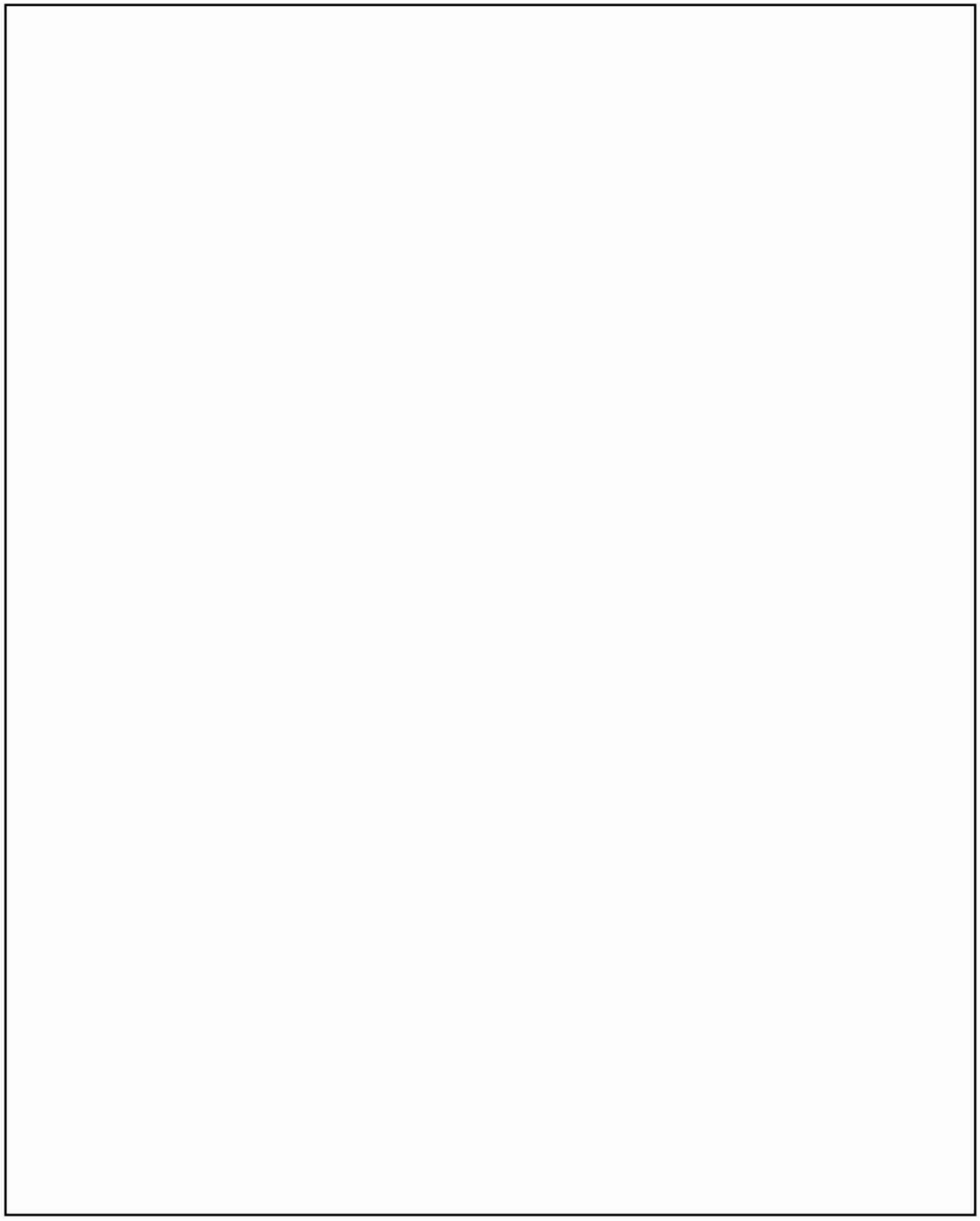
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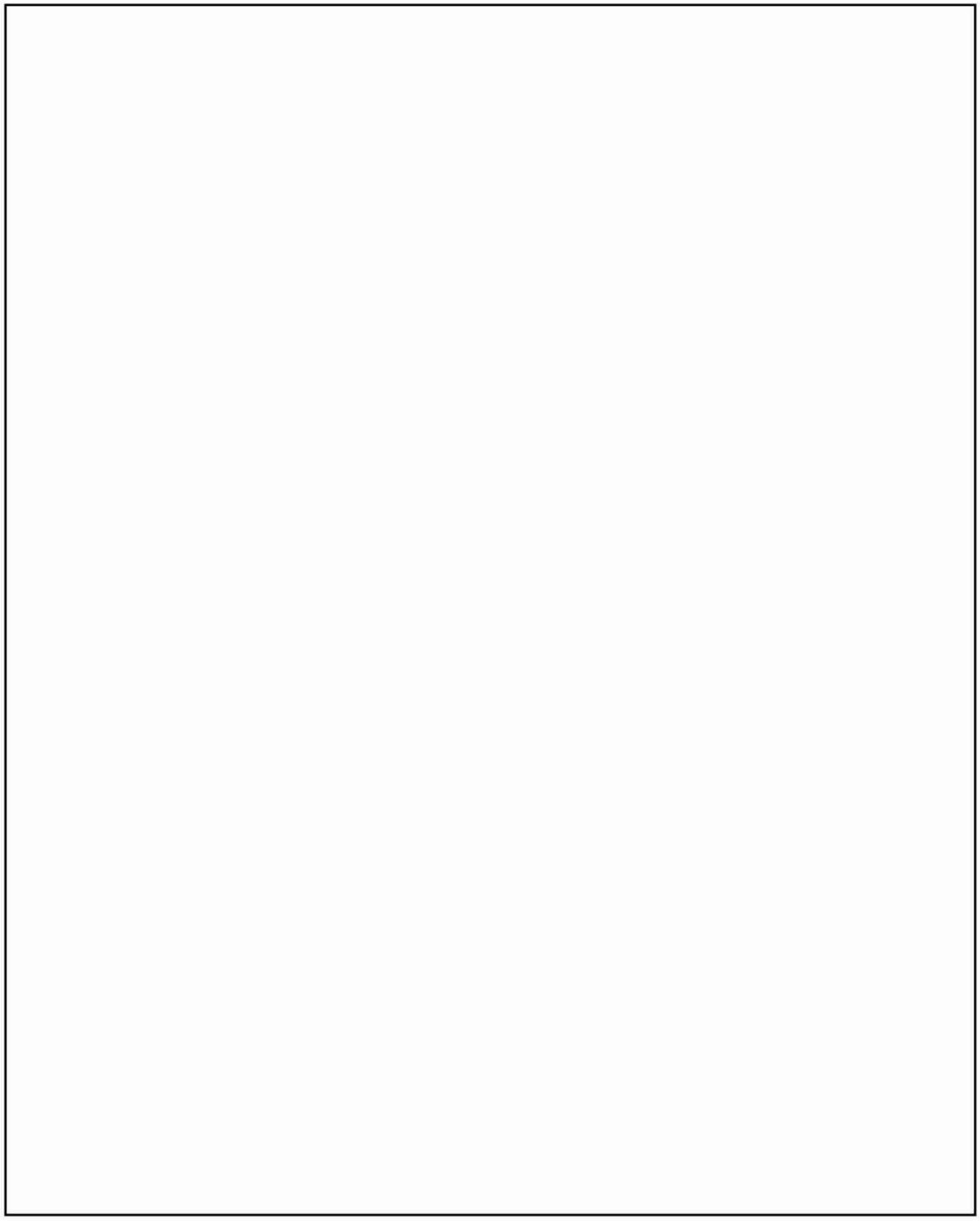
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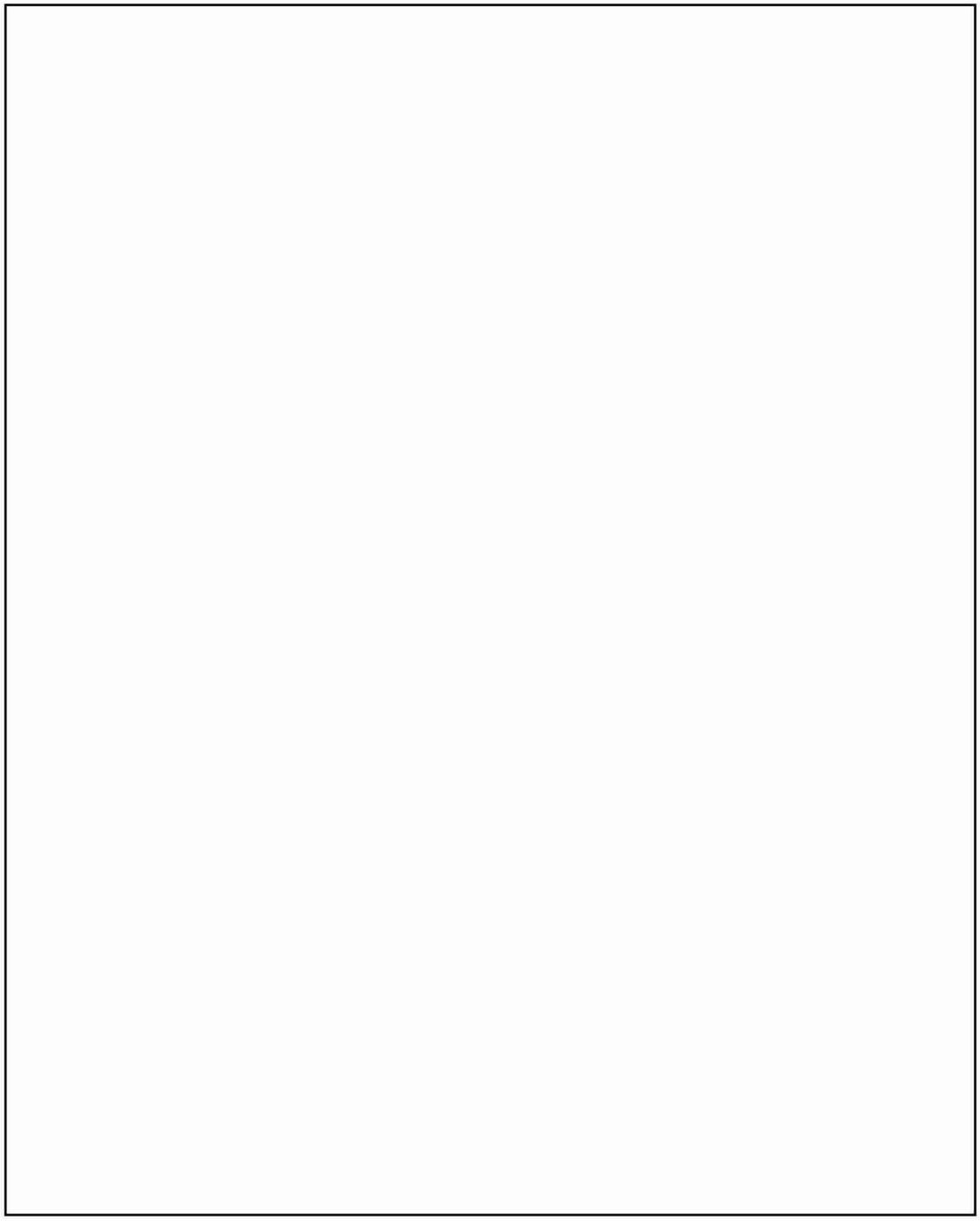
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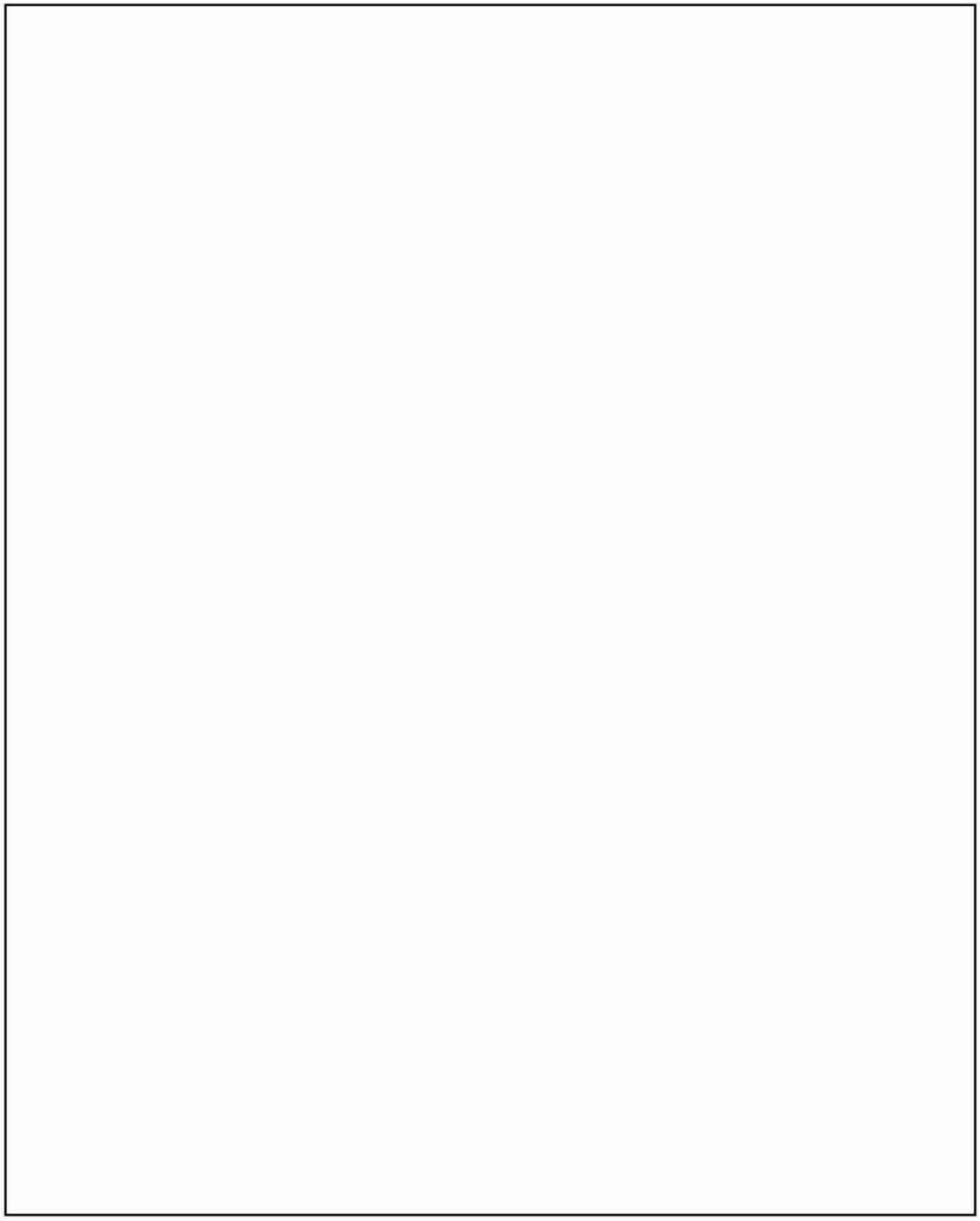
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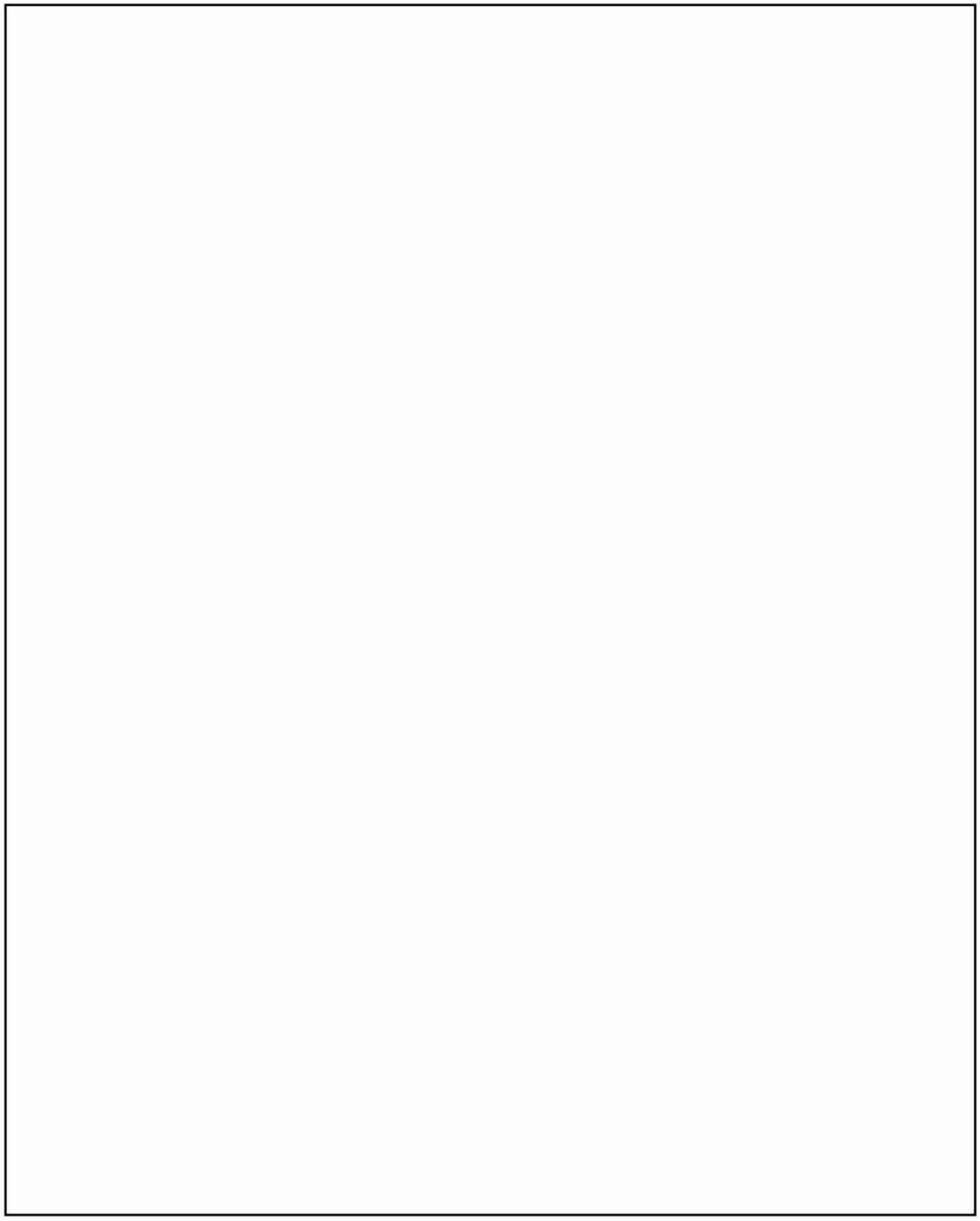
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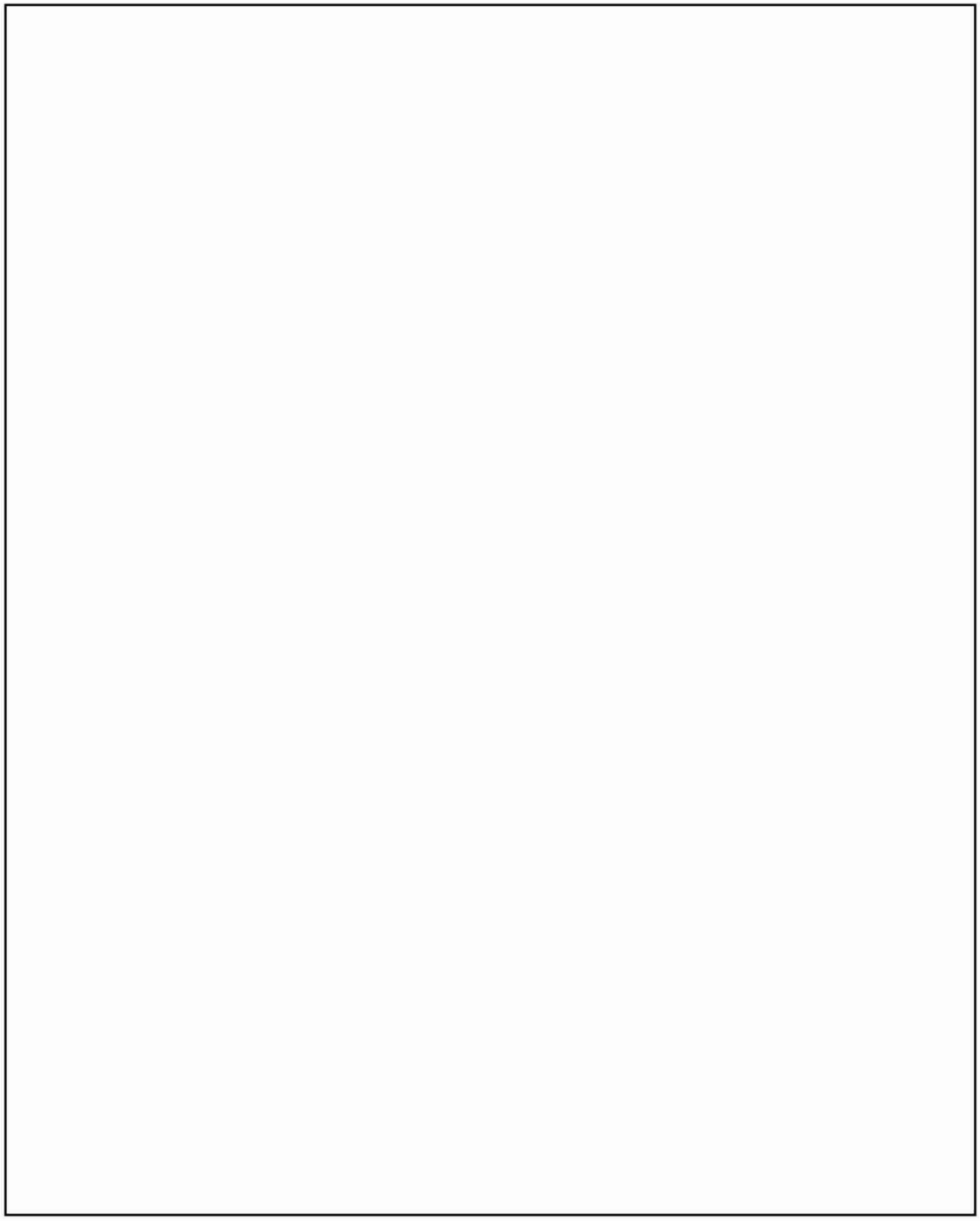
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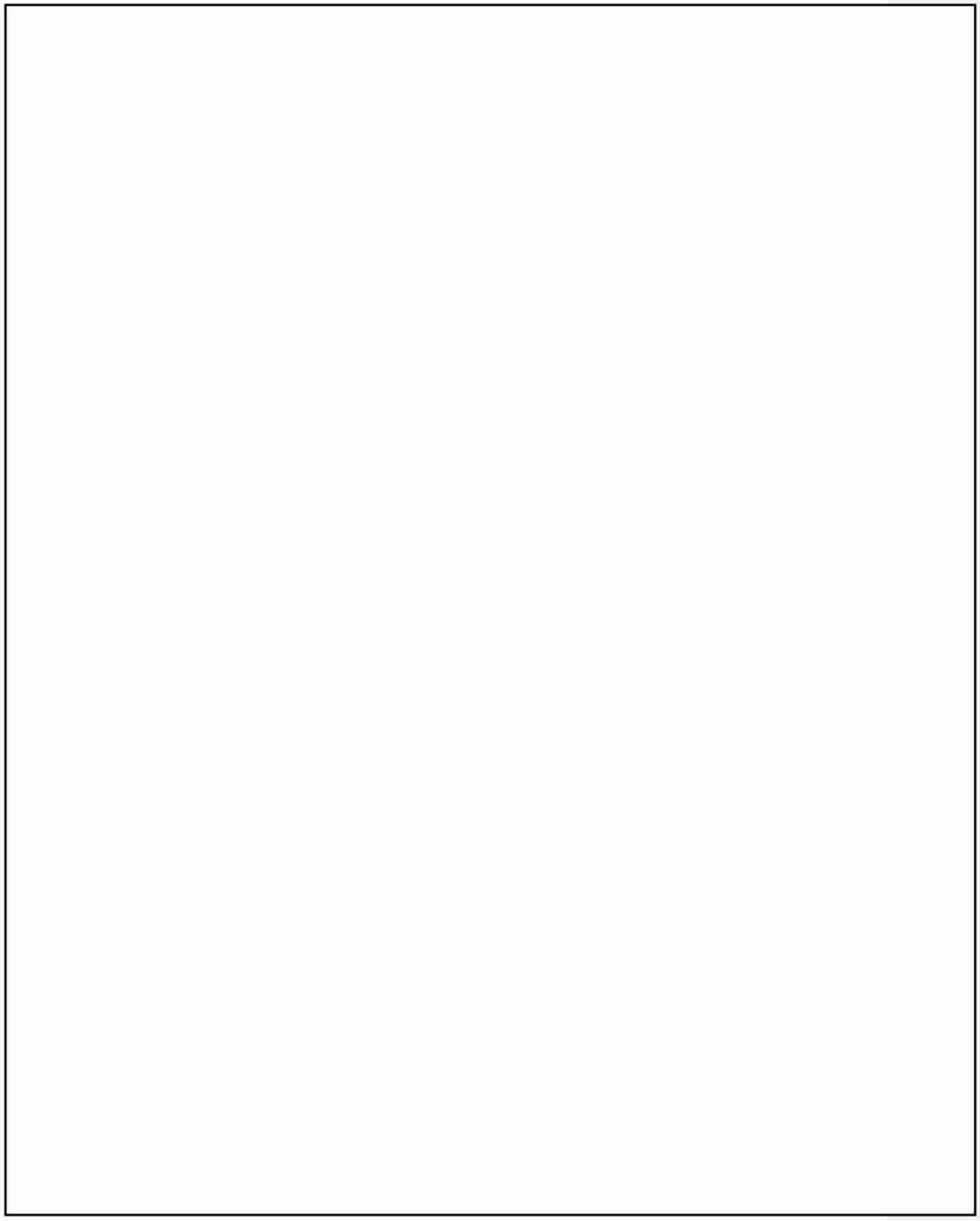
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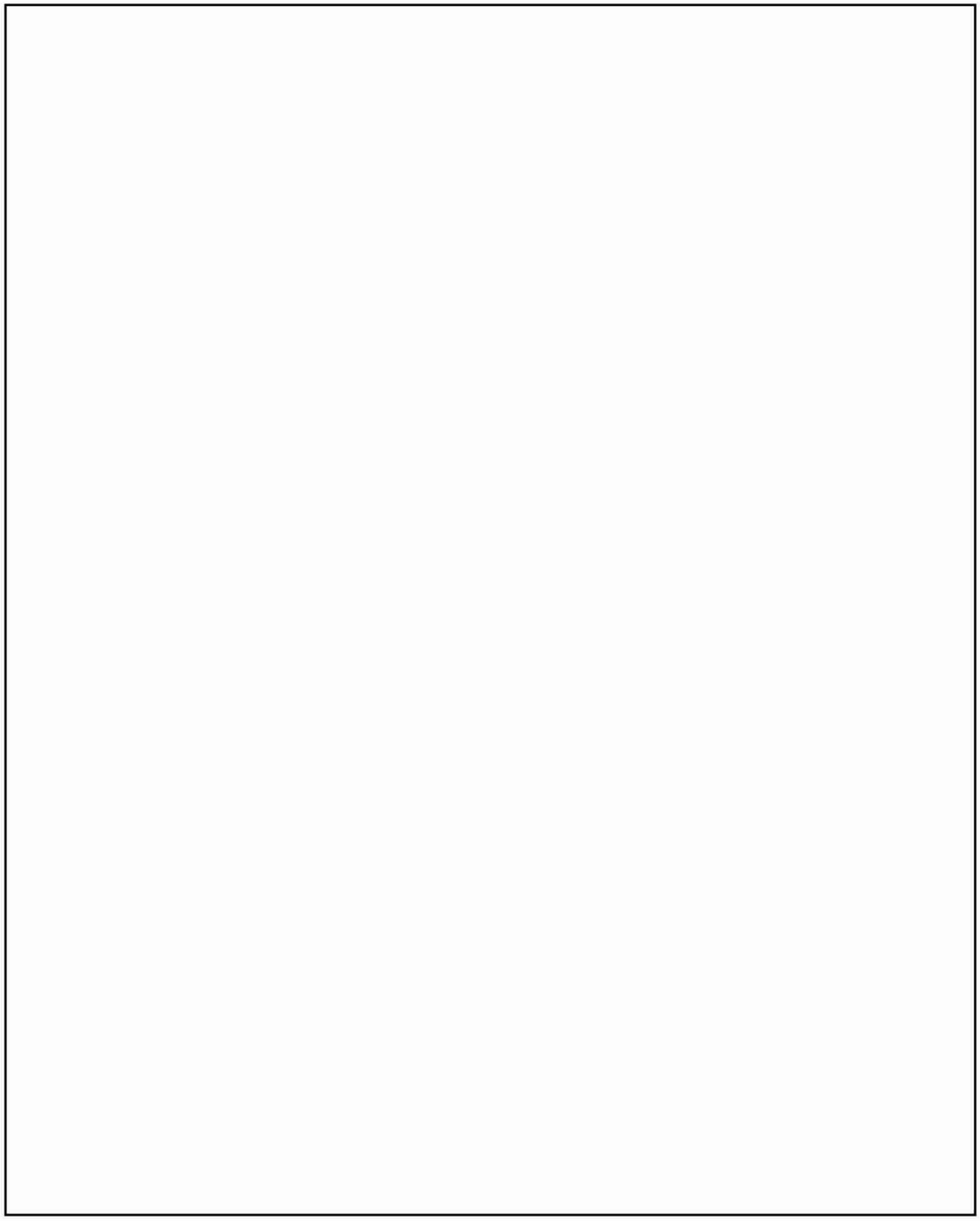
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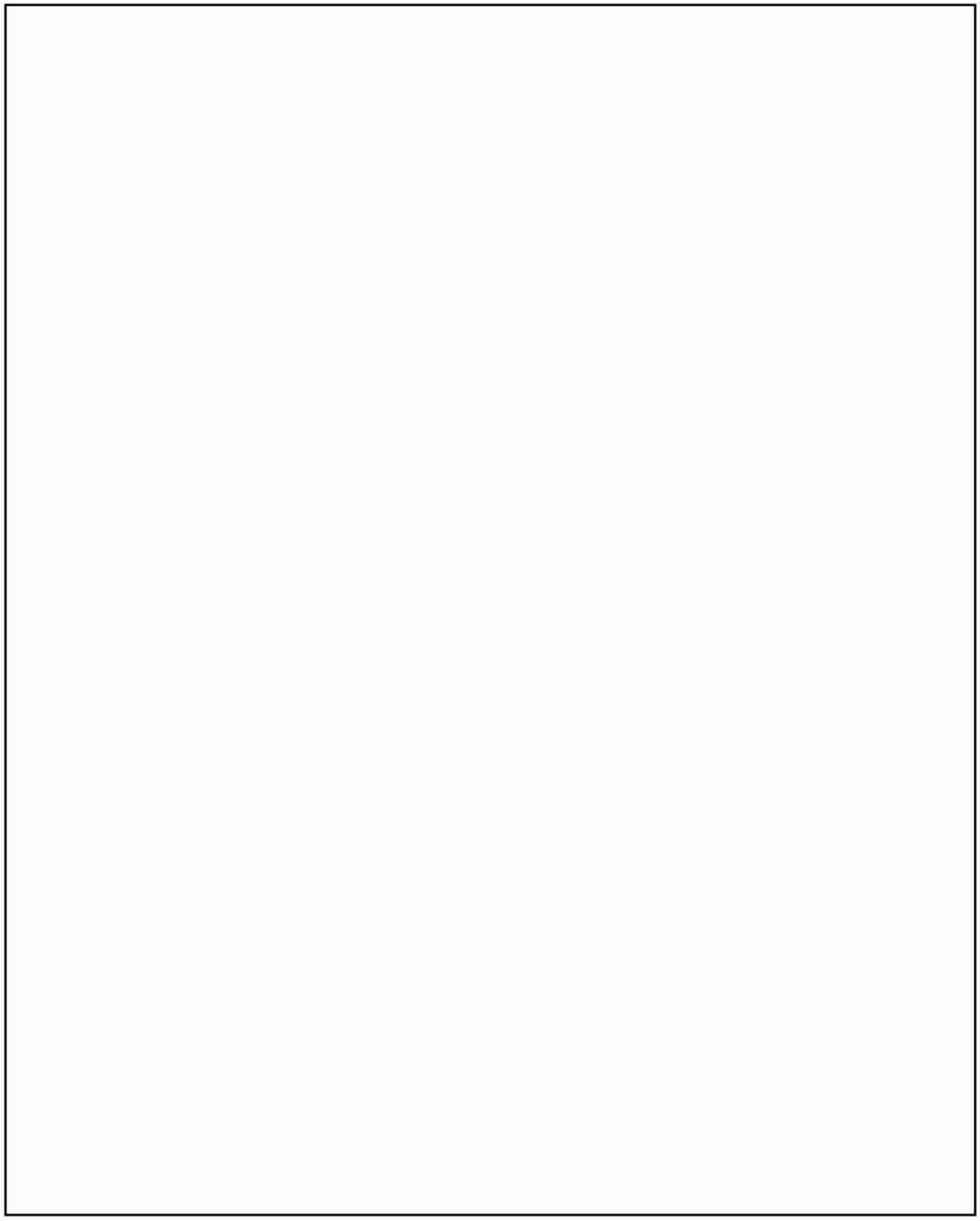
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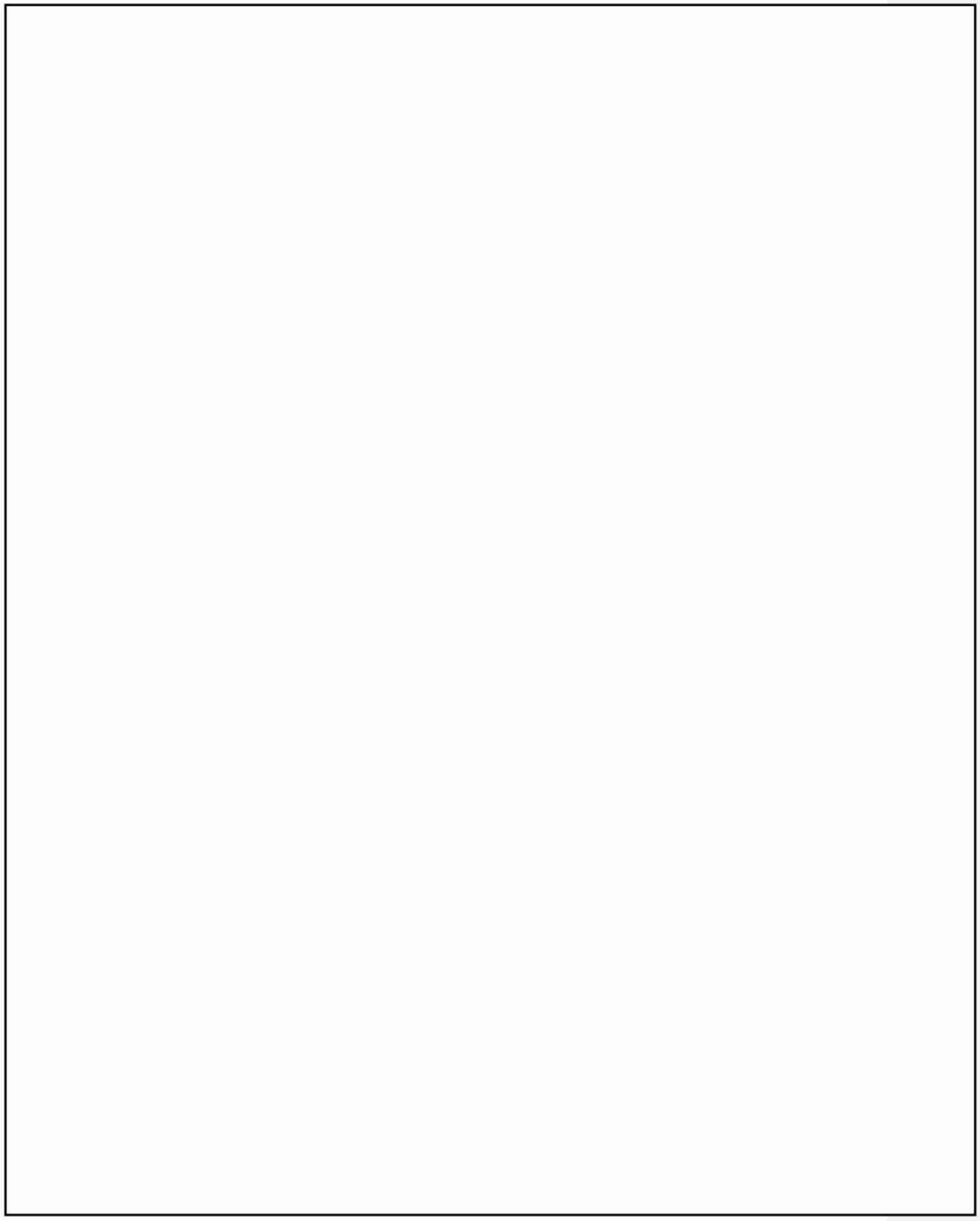
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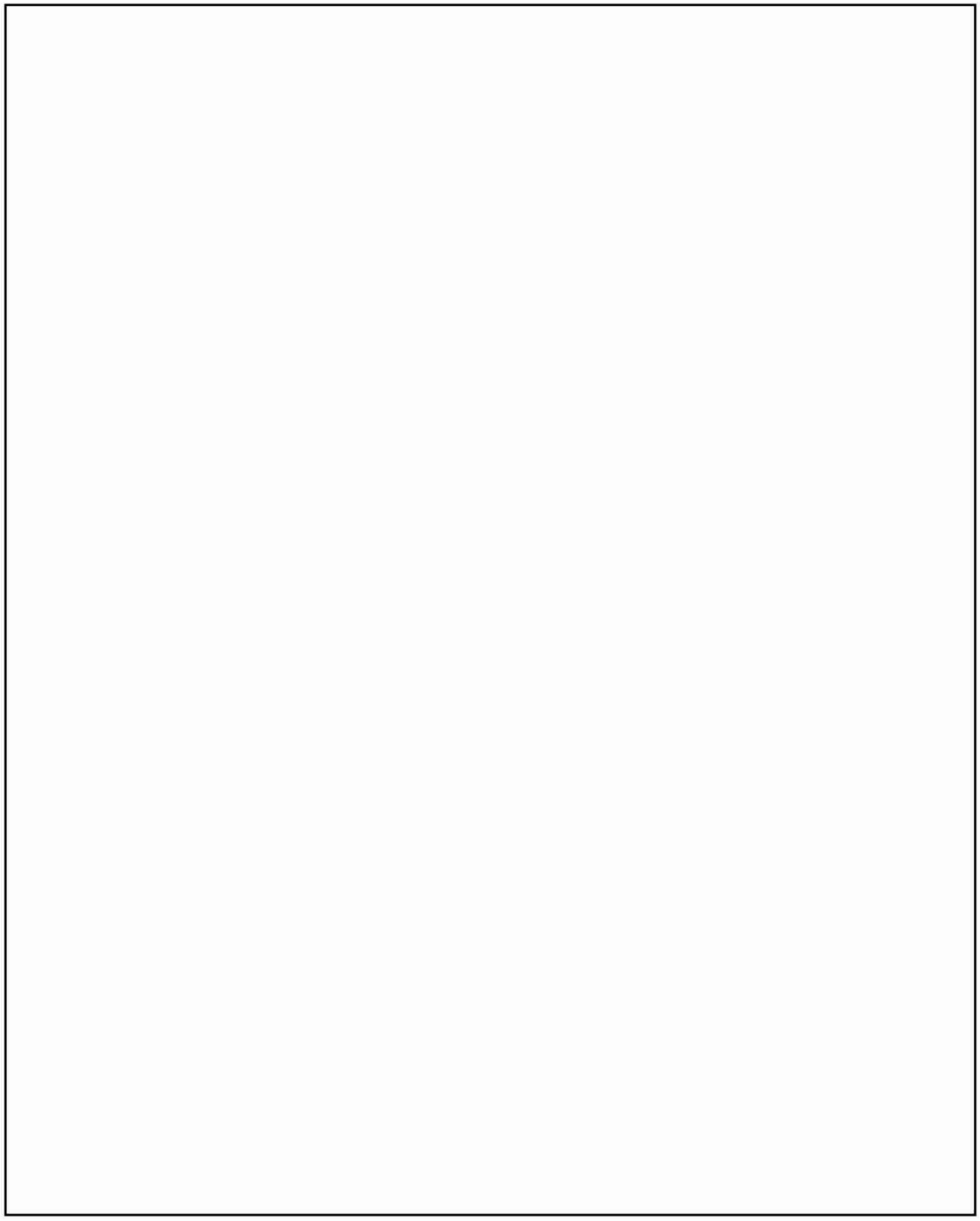
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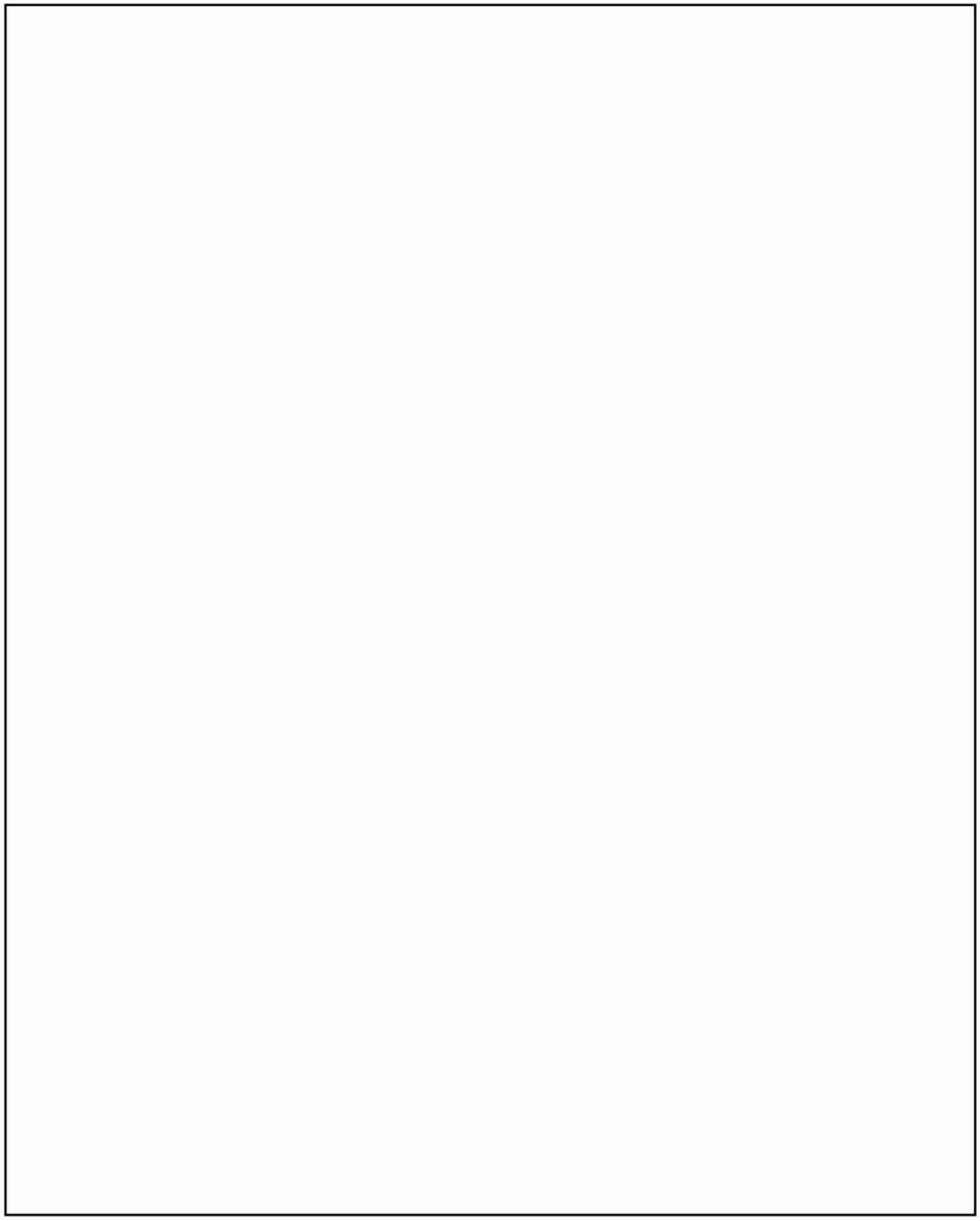
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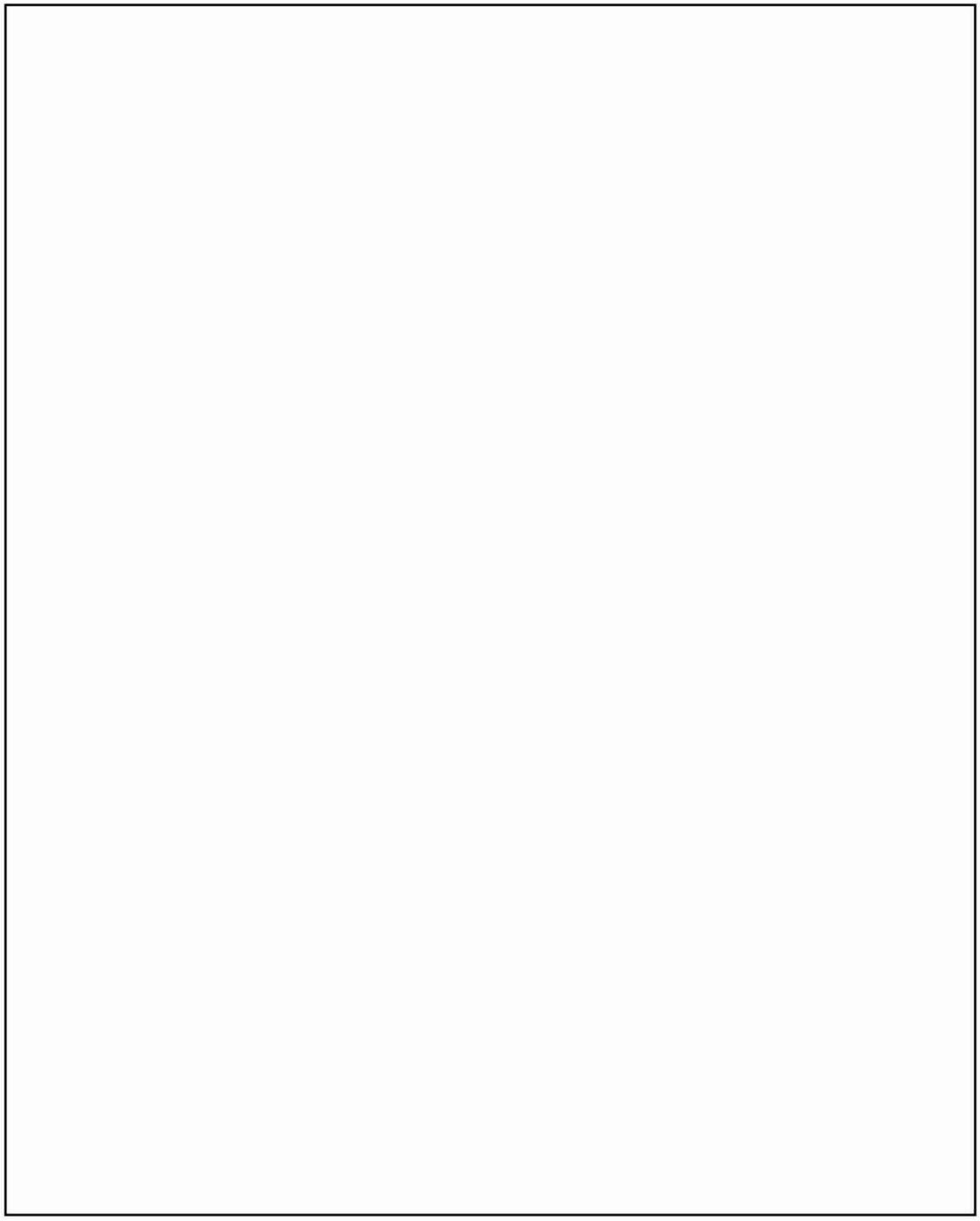
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_____
Chad F. Wolf,
Acting Secretary of Homeland Security

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TABLE OF CHANGES – FORM
Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:

- Black font = Current text
- Red font = Changes

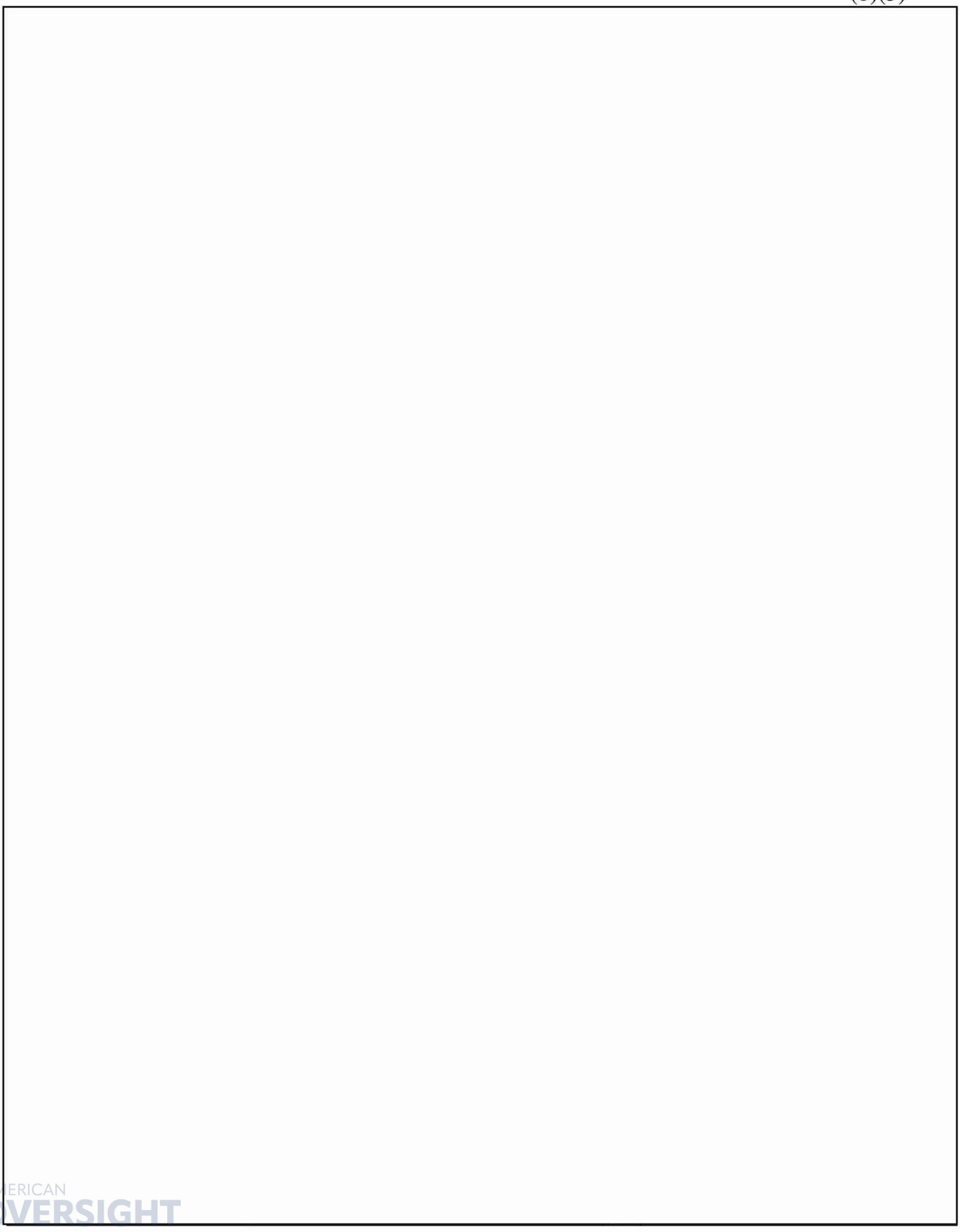
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Expires 10/31/2021
Edition Date 01/27/2020

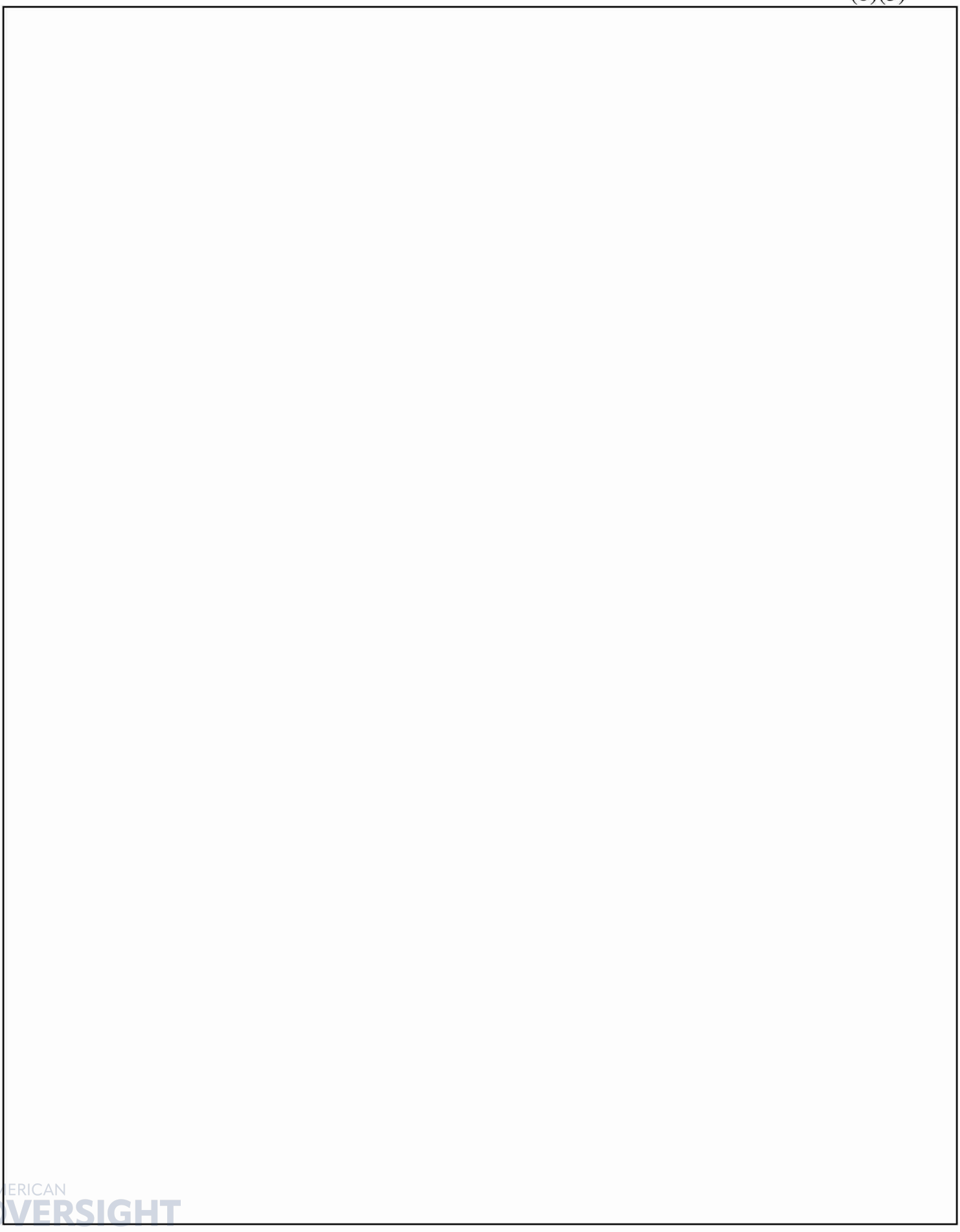
Current Page Number and Section	Current Text	Proposed Text

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TABLE OF CHANGES –INSTRUCTIONS
Instructions for Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
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- Red font = Changes

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Expires 10/31/2021
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text

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From: USCIS Regs
Subject: EXSO/FO Review and Clearance: H-1B Strengthening IFR - Due 6 PM on Tuesday, 7/7
To: USCIS Exec Sec
Cc: USCIS Regs; Smith, Mirna; Boivin, Mark R; Deshommes, Samantha L; Rigdon, Jerry L; Dove, Stephen W (Steve); Carter, Constance L; Law, Robert T; Culver, Anthony J (Jared); Lapp, Meredith M; Stiefel, Nathaniel I; Gramiccioni, Jennifer L; Freiberger, Andrea L (Ande); Parascandola, Ciro A; Nuebel Kovarik, Kathy; Bailey, Morgan; Lin, Peggy P; Buono, Paul M; Nimick, Charles L (Locky); Smith, Mirna
Sent: June 30, 2020 3:22 PM (UTC-05:00)
Attached: H1B Skinny Strengthening Rule - G-1056.docx, I129-012-FRM-TOC-H1BStrengtheningIFR-FOReview-06302020.docx, I129-012-INS-TOC-H1BStrengtheningIFR-FOReview-06302020.docx

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Good Afternoon EXSO/FO:

The attached **H-1B Strengthening IFR, I-129 Form Table of Changes and I-120 Instructions Table of Changes** have been submitted **in STARS (service item 00028331)**. Please provide feedback via track changes to [redacted] and [redacted] by 6 PM on Tuesday, 7/7.

Important note: G-1056 review is occurring in parallel and will conclude on 7/6. I will send a consolidated list of all G-1056 comments by COB on 7/6.

Summary: The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS), is amending certain regulations governing the H-1B program. Specifically, DHS is: revising the regulatory definition and standards for a "specialty occupation" to align with the statutory definition of the term; adding definitions for "worksite" and "third-party worksite"; revising the definition of "United States employer"; clarifying how USCIS will determine whether there is an "employer-employee relationship" between the petitioner and the beneficiary; requiring contracts or other similar evidence for third-party placement petitions; limiting the validity period for third-party placement petitions to a maximum of one year; providing for a written explanation for certain approved petitions; amending the itinerary provision applicable to petitioners of temporary nonimmigrant workers to clarify it does not apply to H-1B petitioners; and codifying USCIS' H-1B site visit authority, including addressing the potential consequences of refusing a site visit. The primary purpose of these changes is to ensure that each H-1B nonimmigrant worker (H-1B worker) will be working for a qualified employer and in a job that meets the statutory definition of a "specialty occupation." These changes are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the working conditions of similarly employed U.S. workers.

Thank you,

[redacted]

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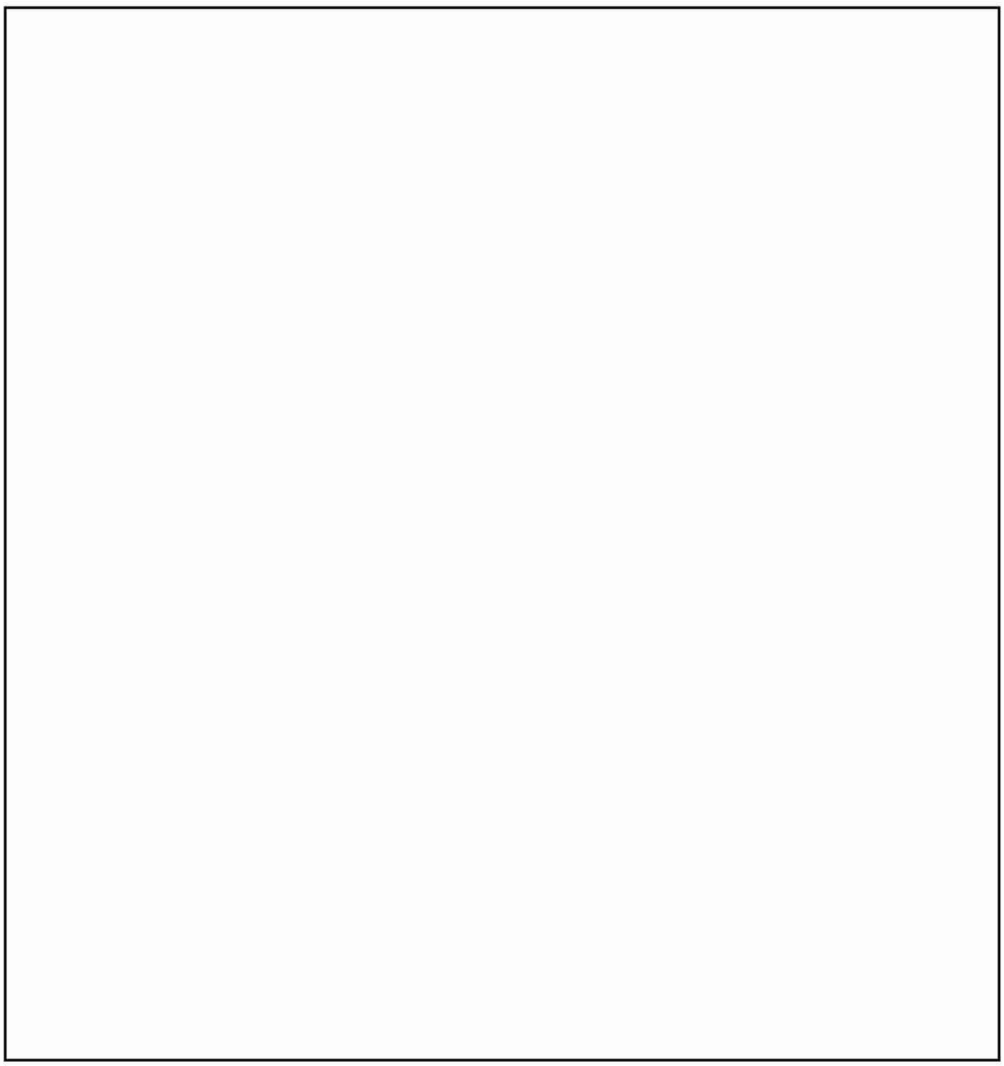
DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2658-20 DHS Docket No. USCIS-2020-####]

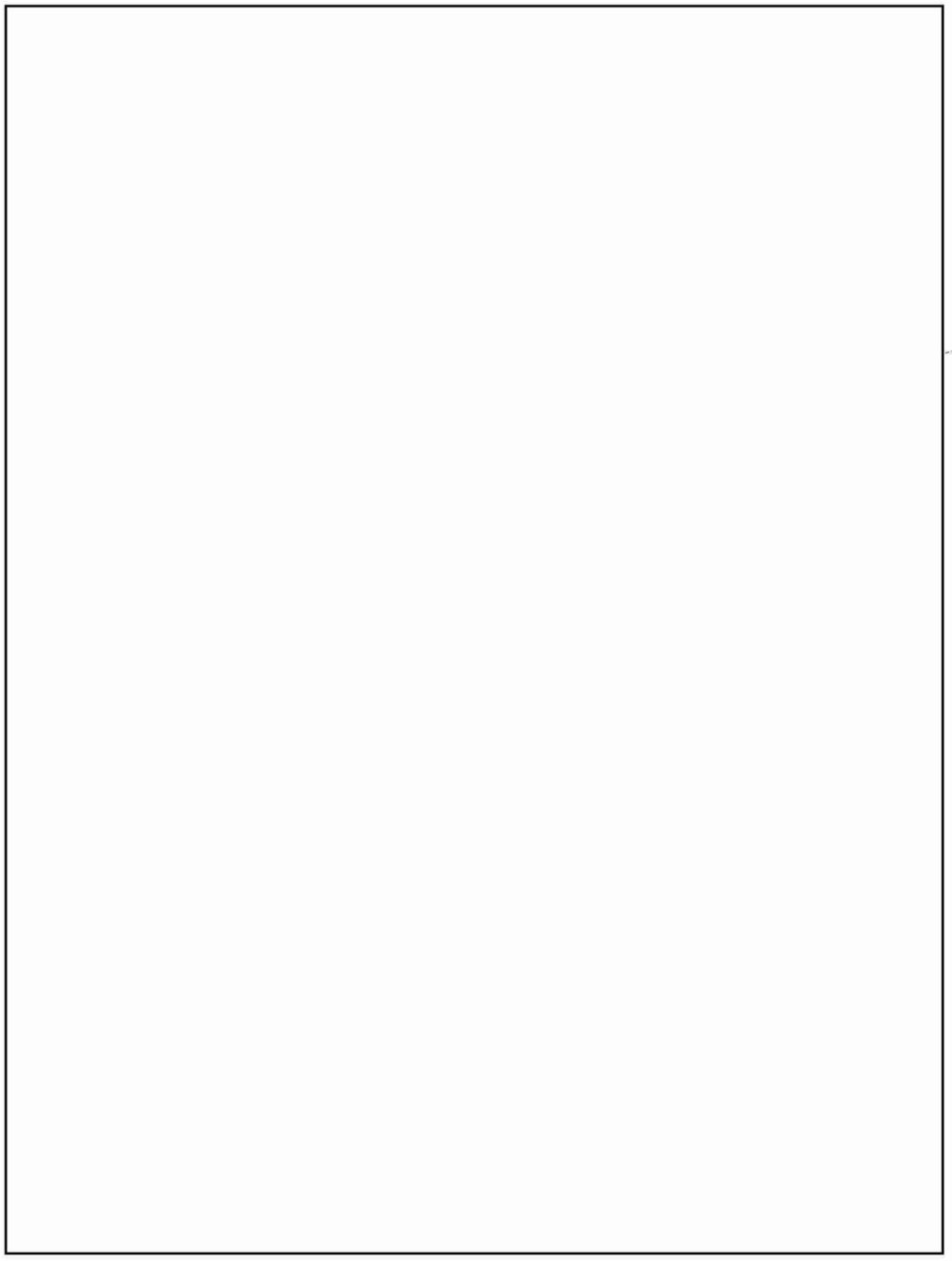
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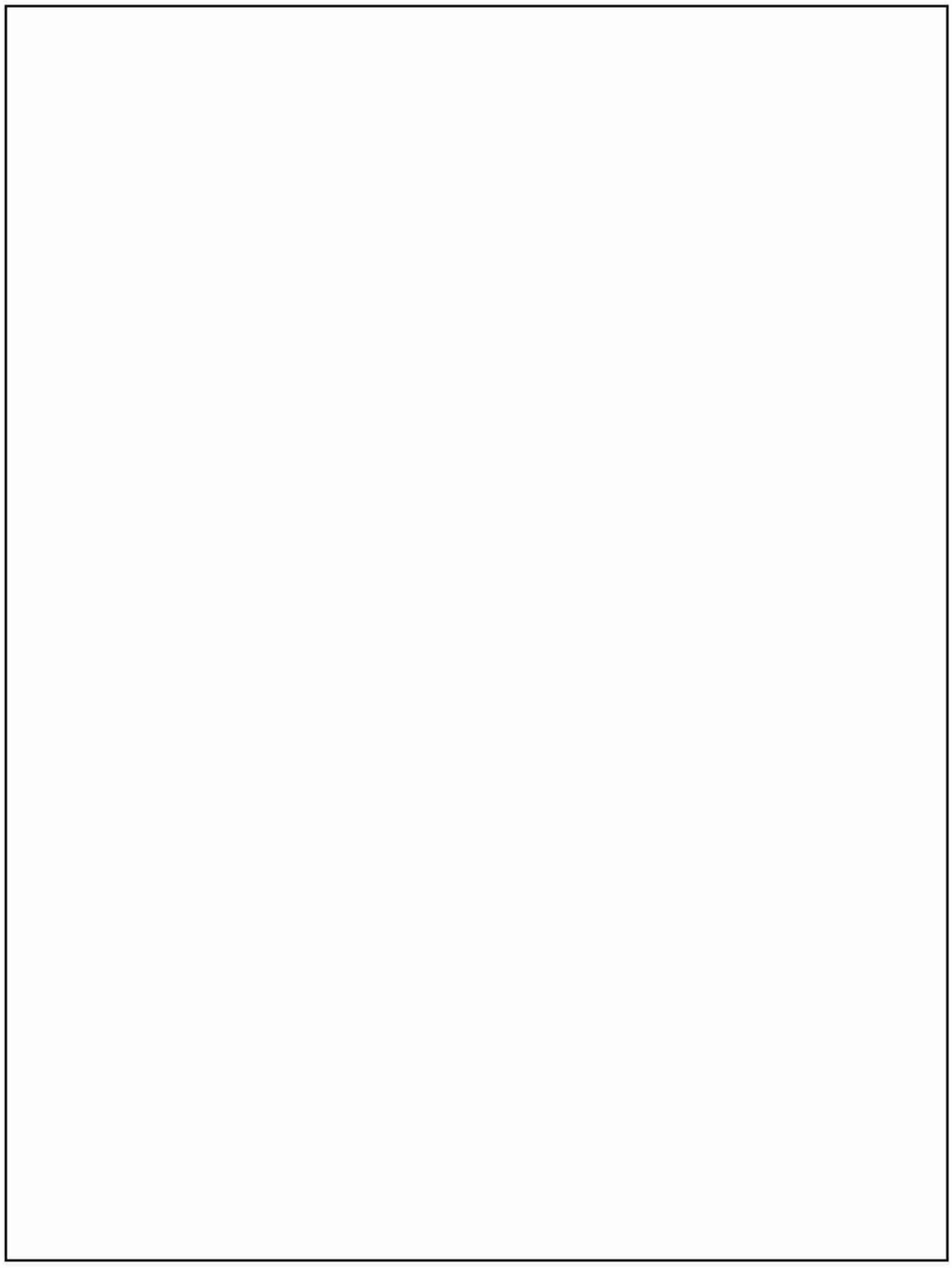


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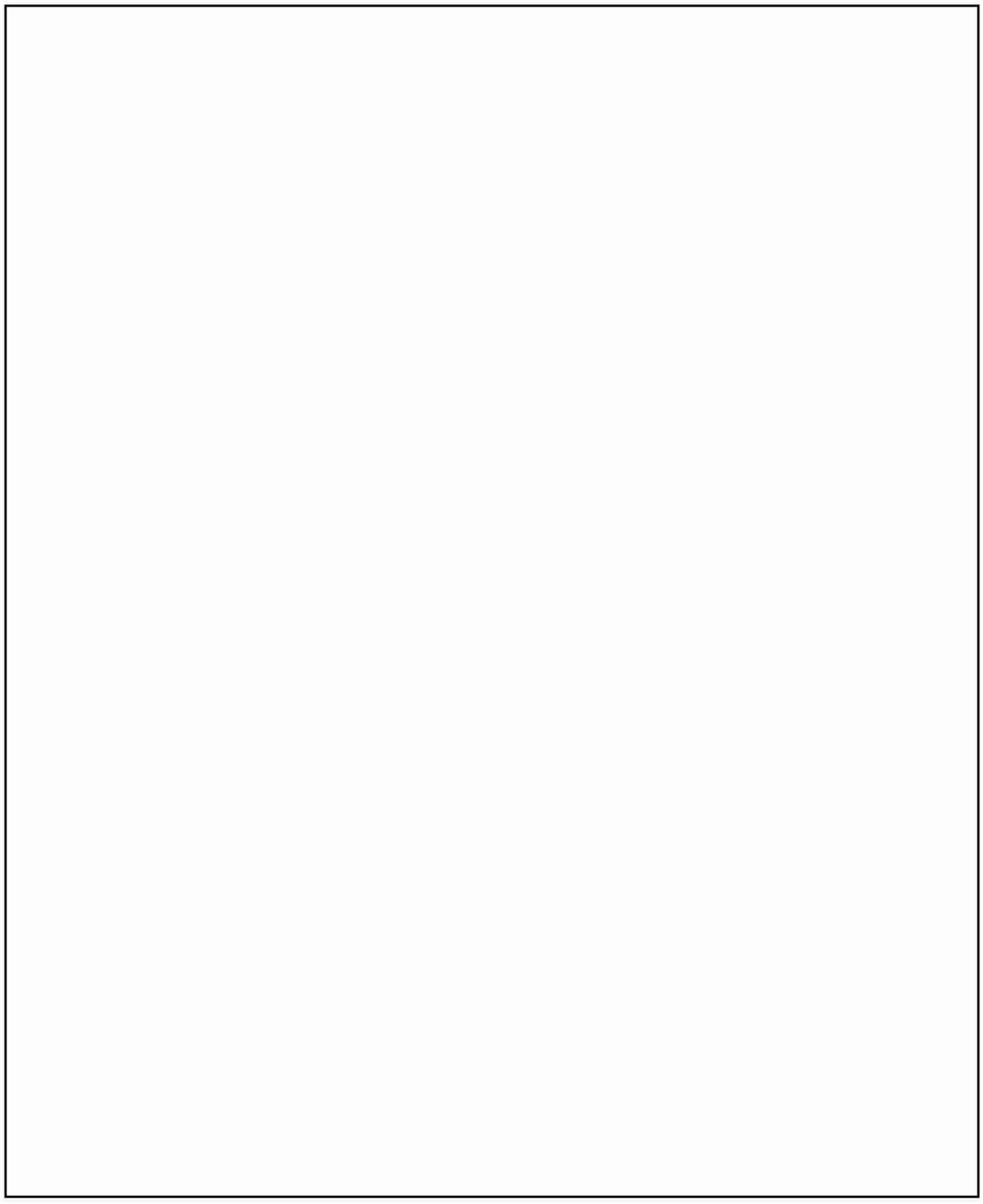
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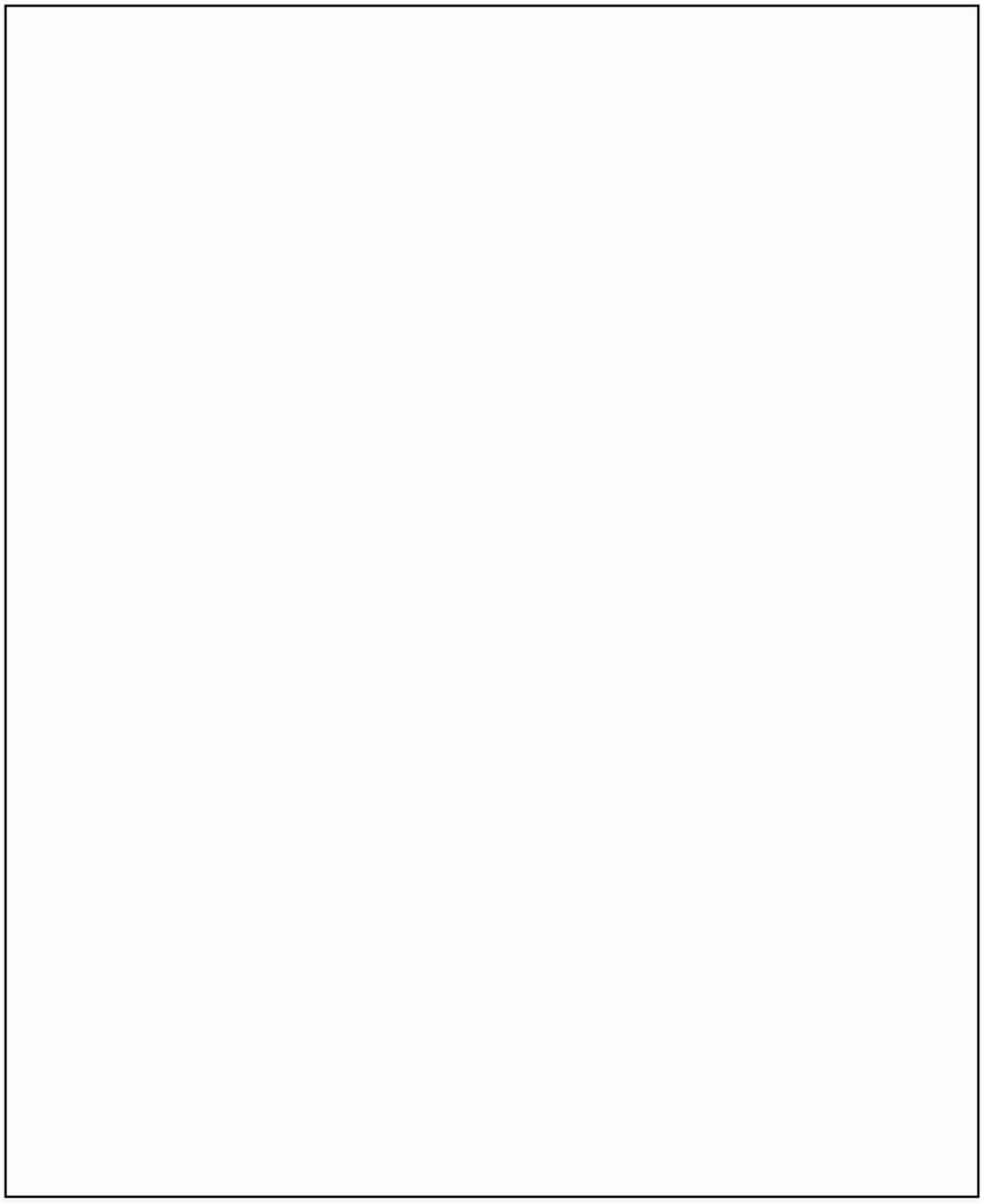
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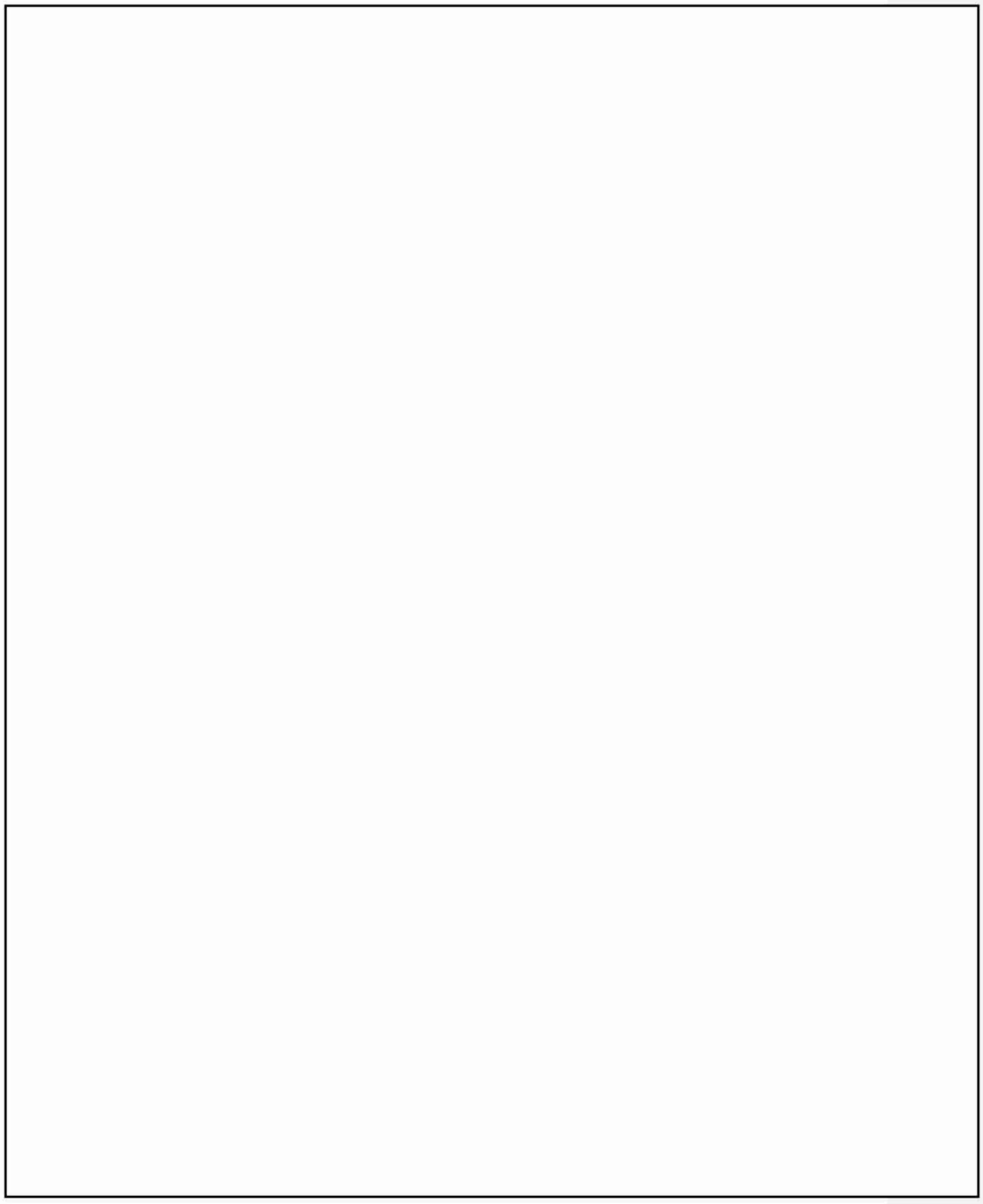
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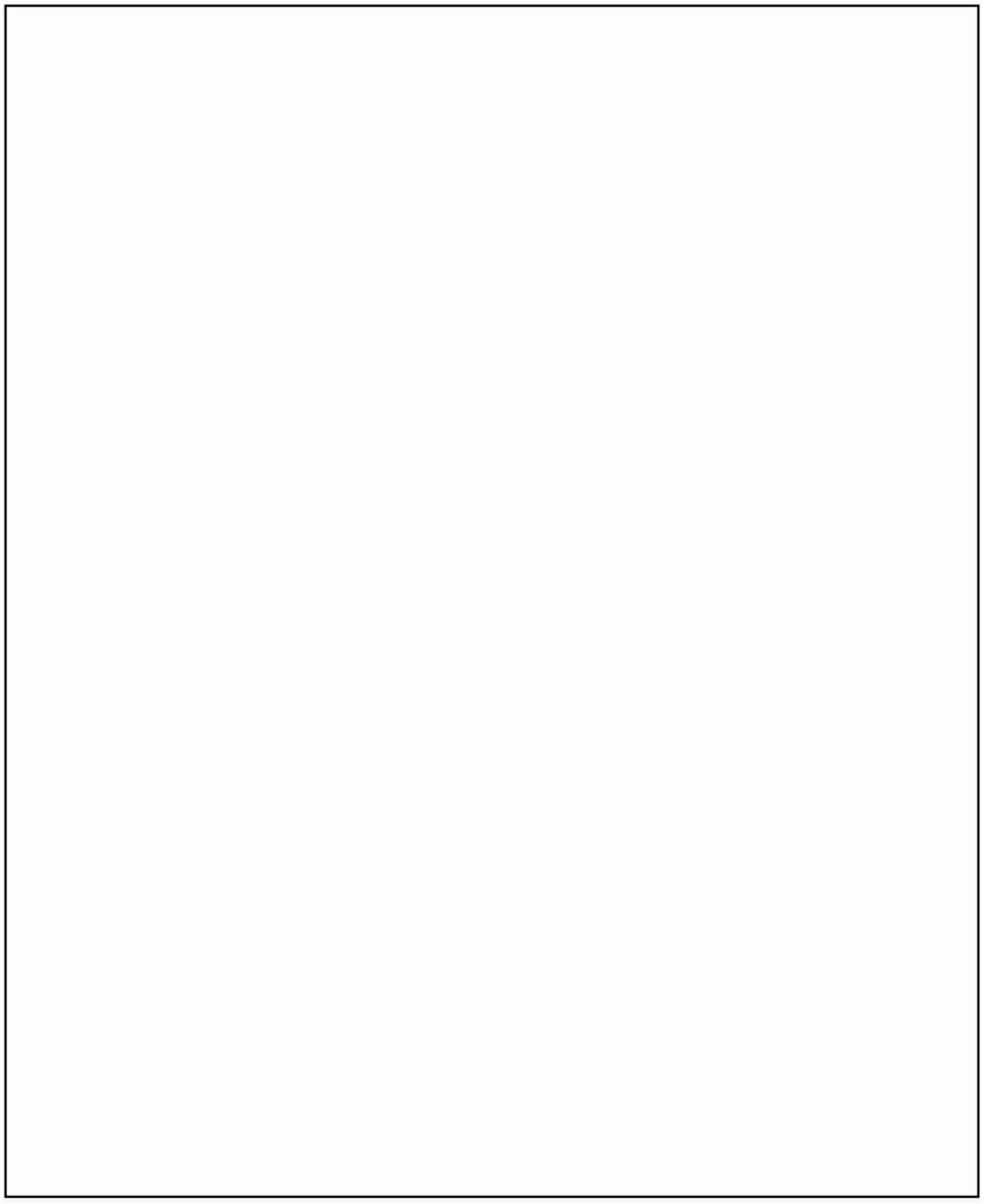
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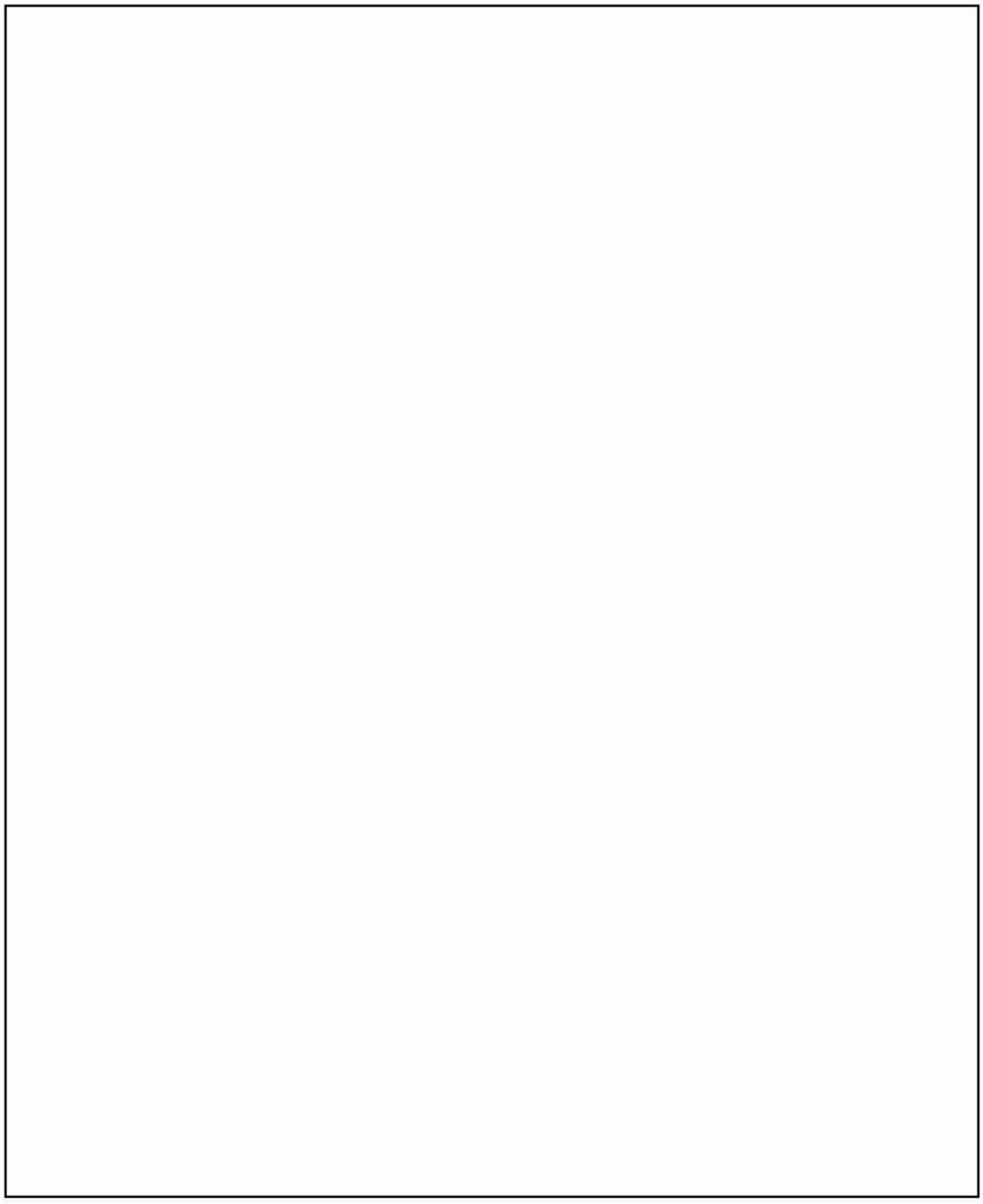
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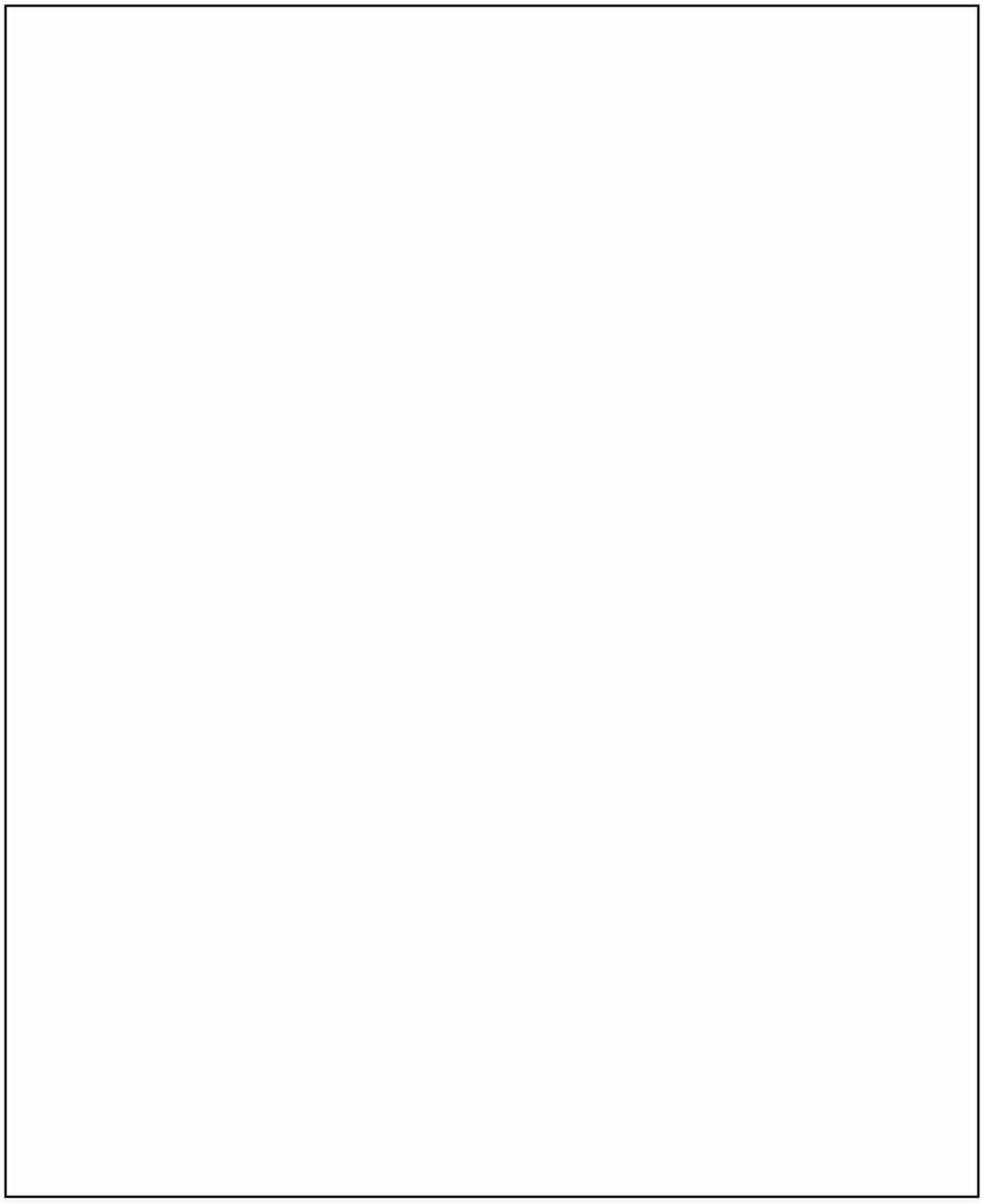
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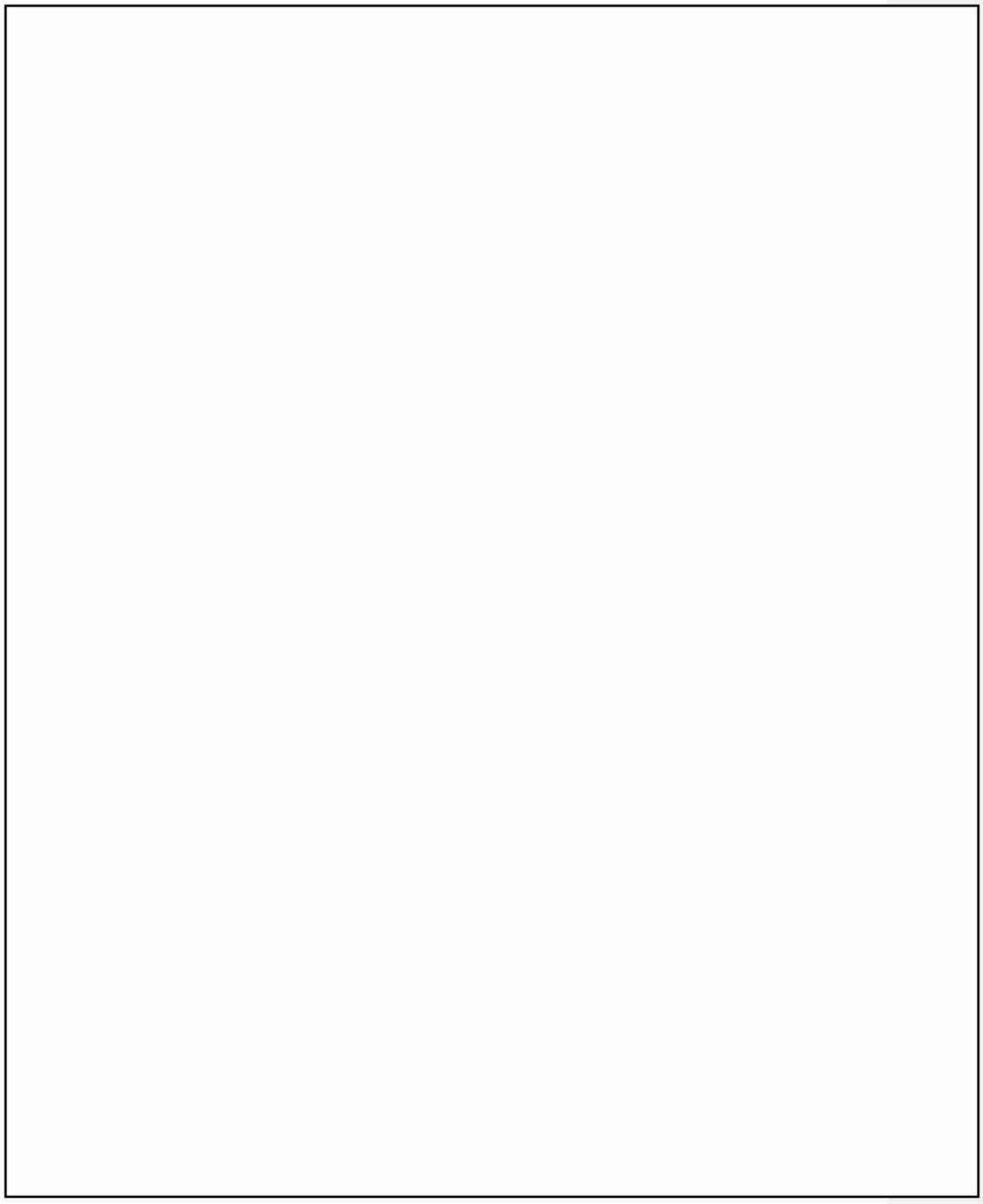
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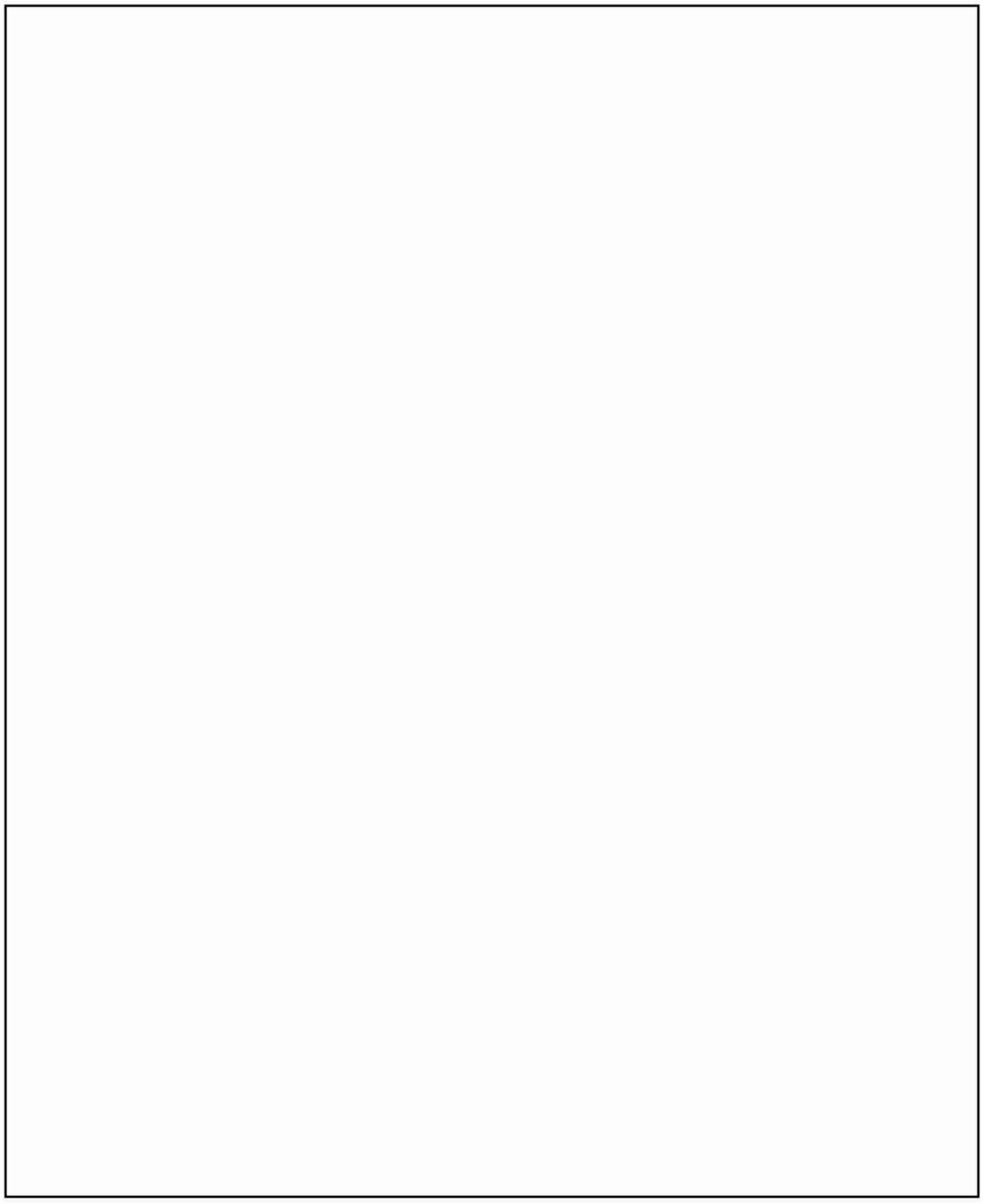
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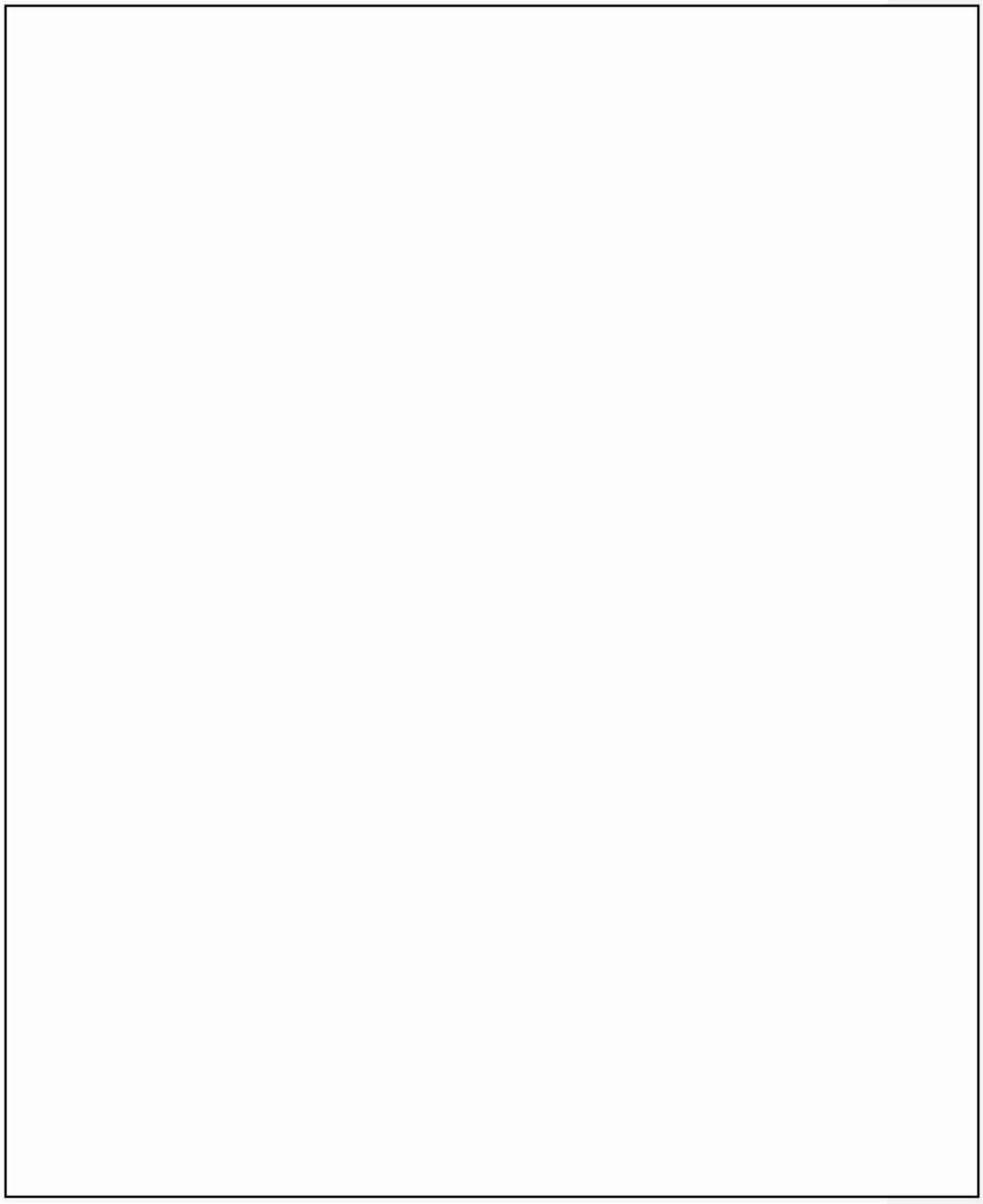
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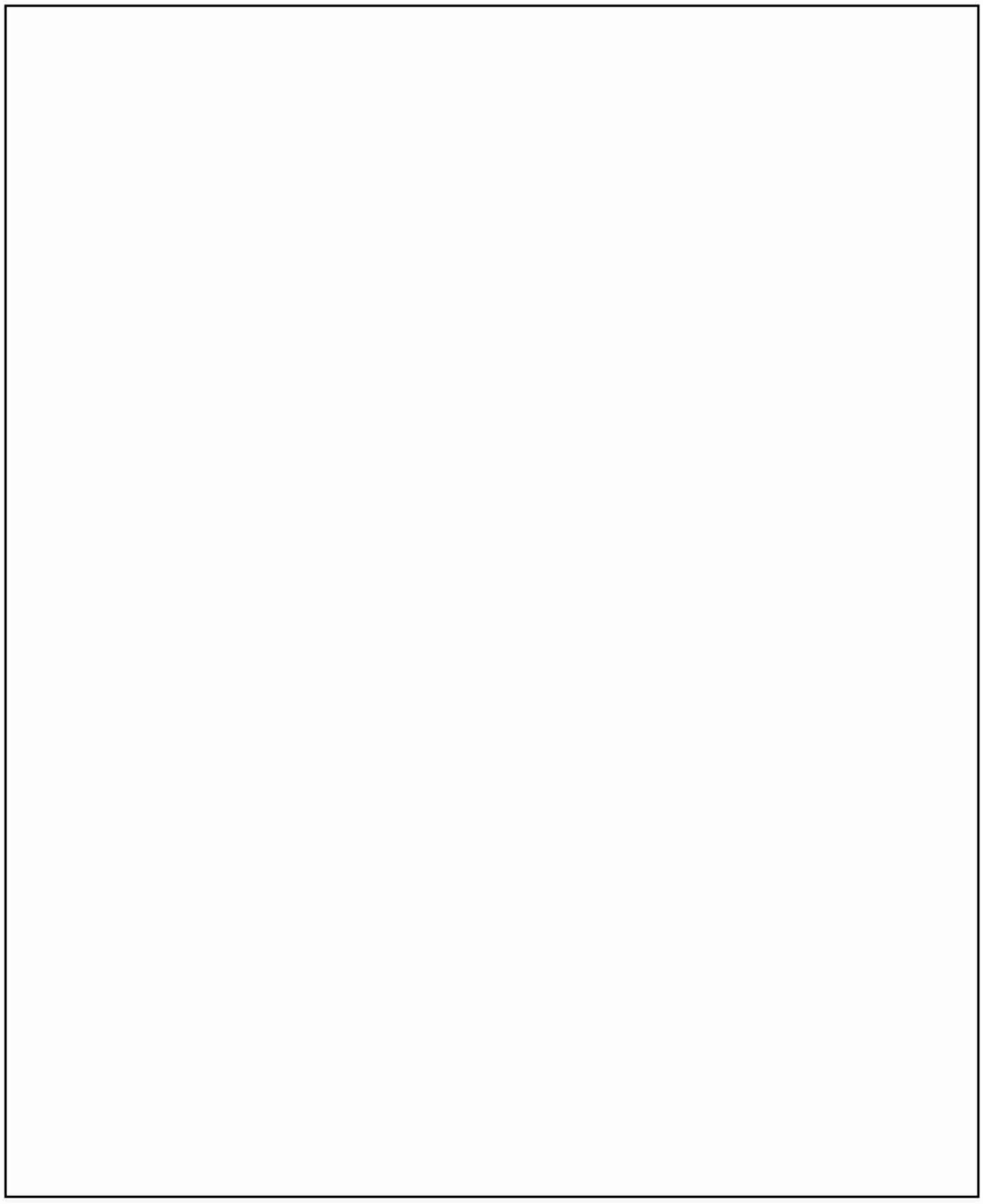
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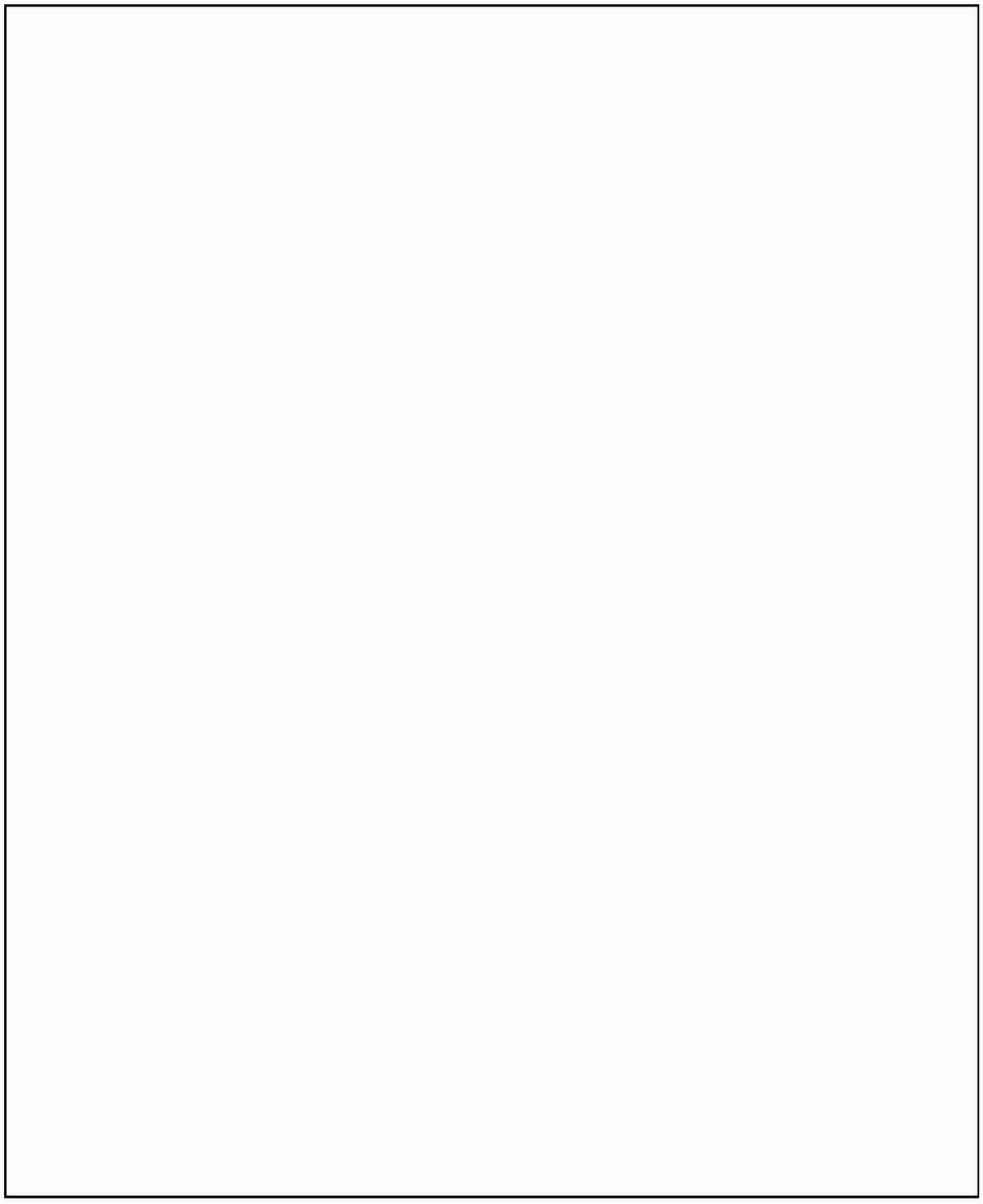
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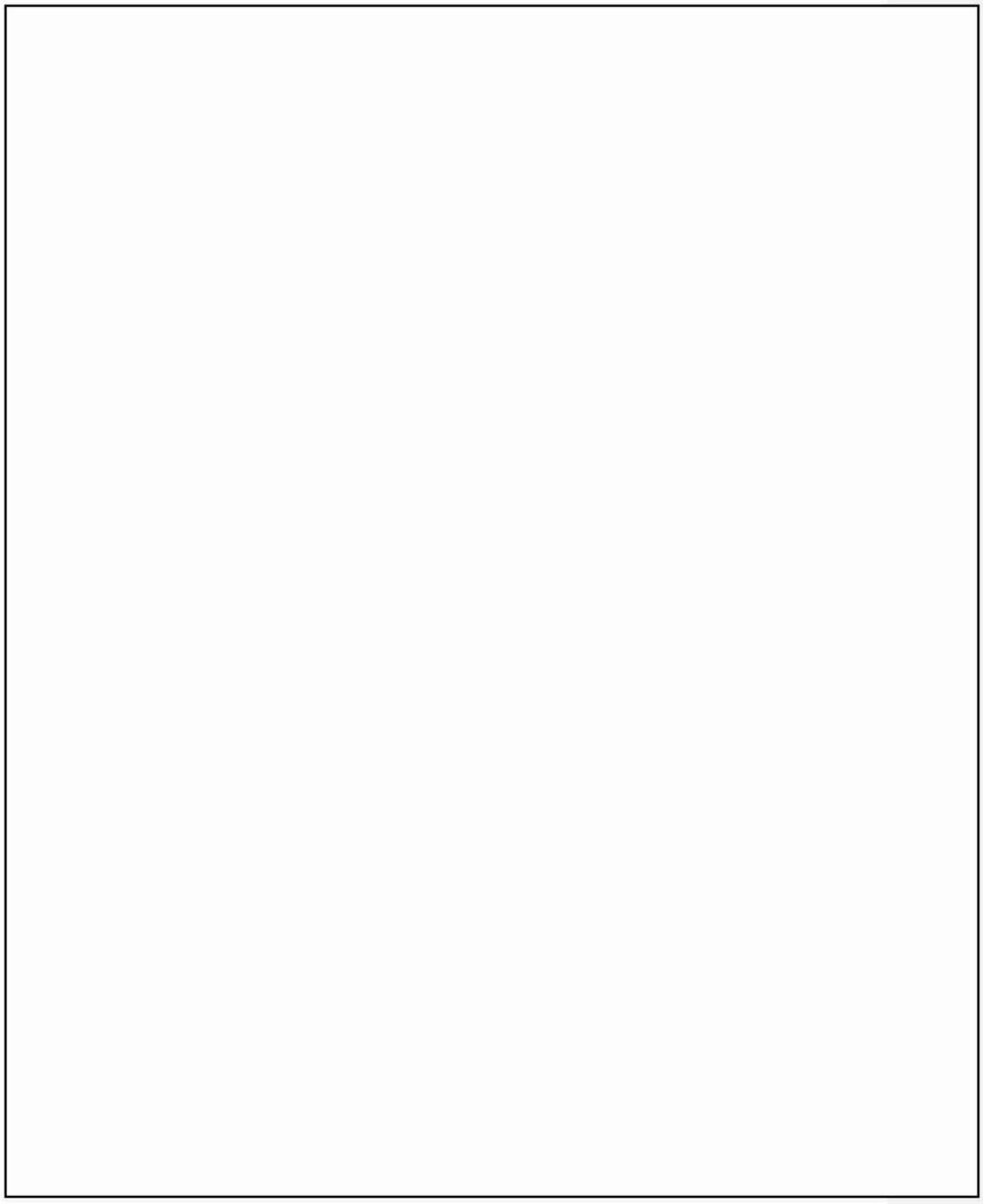
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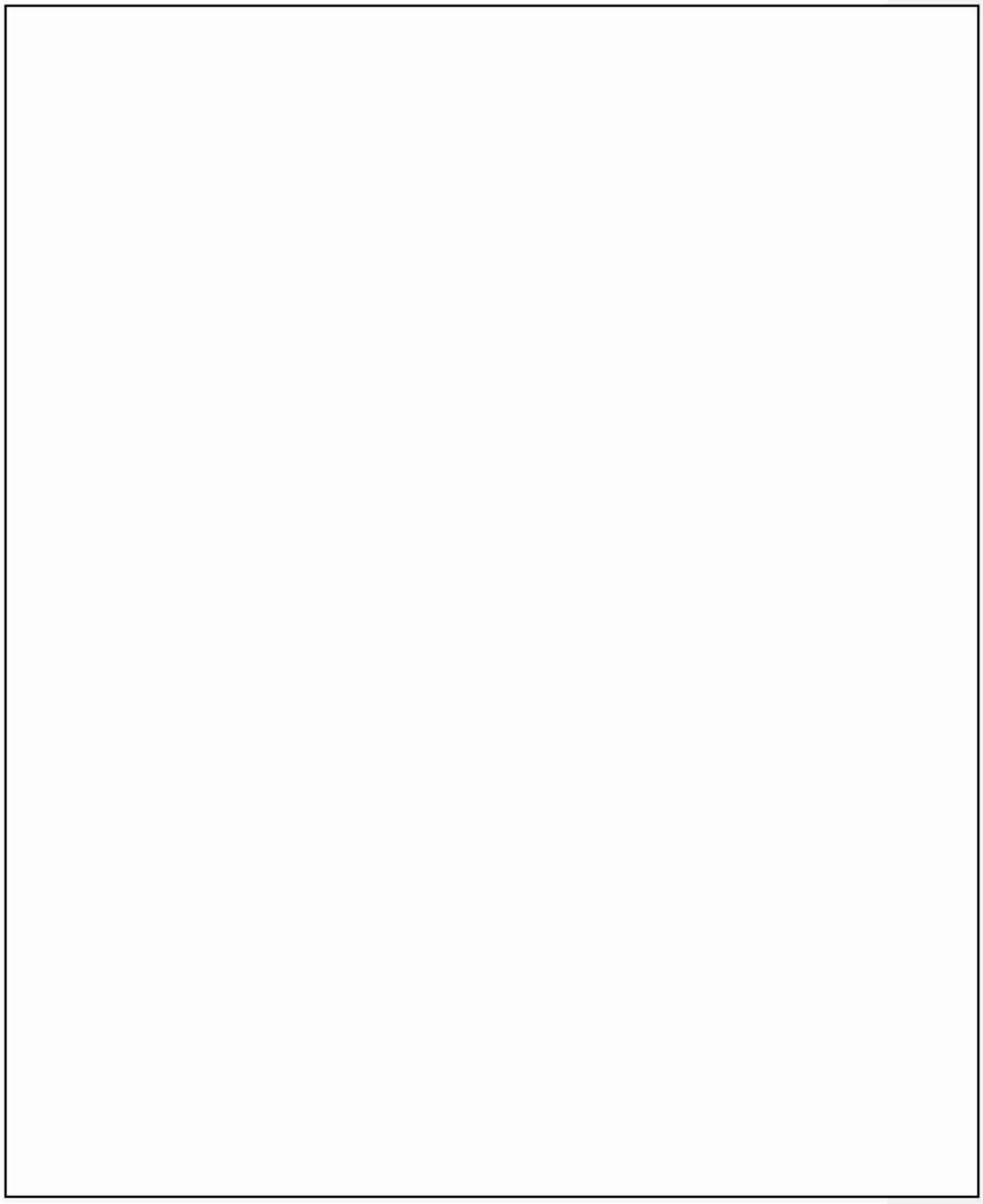
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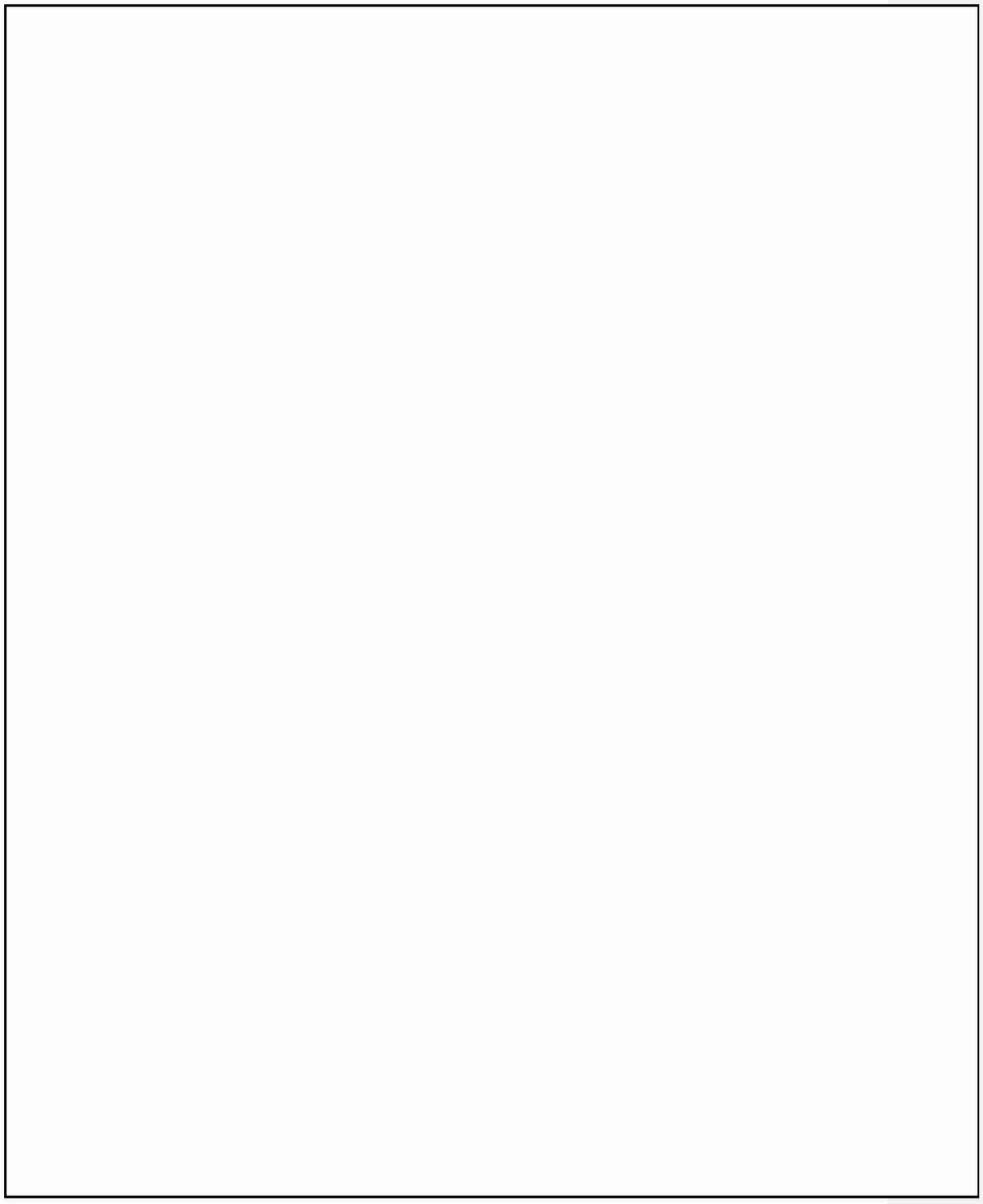
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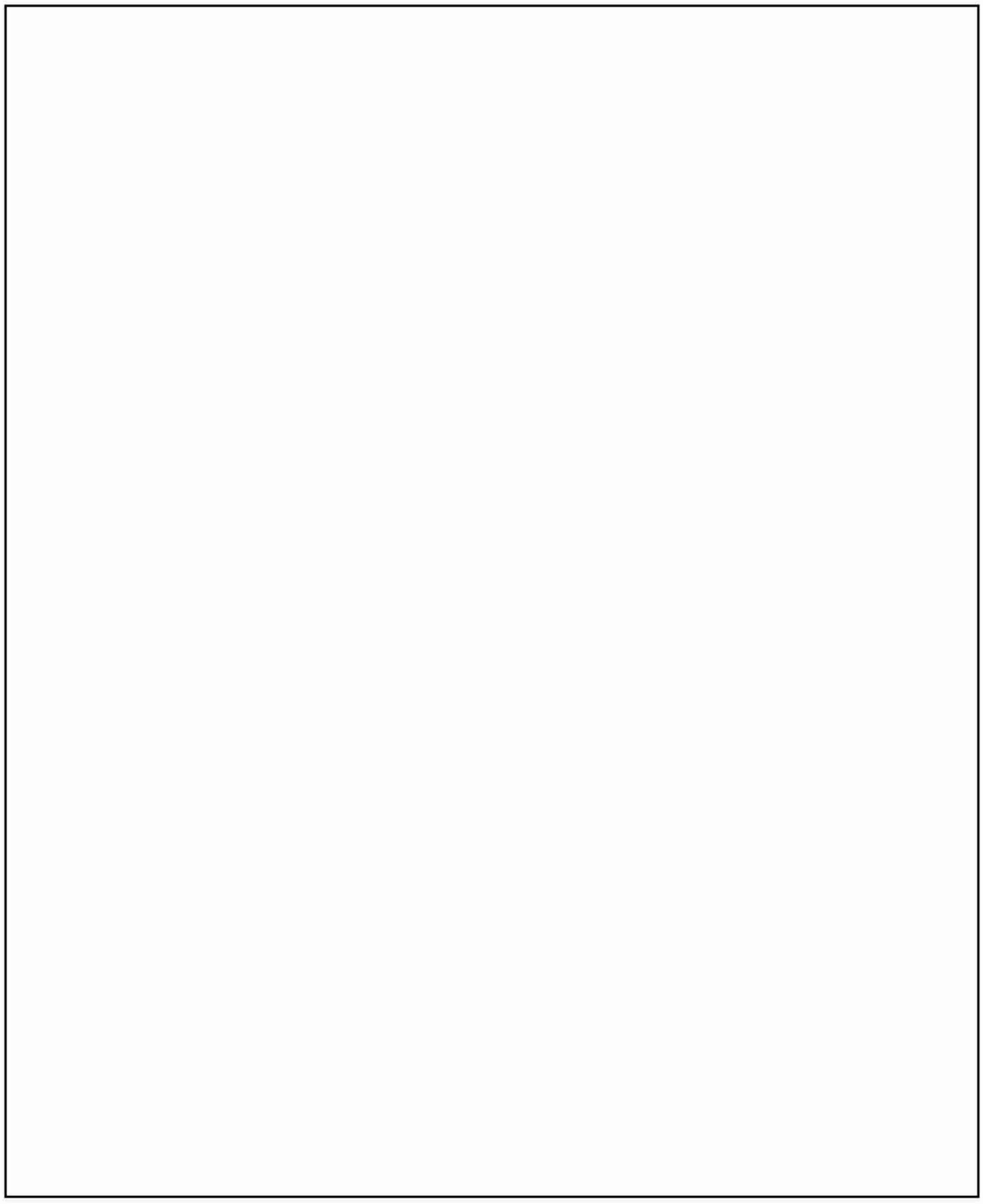
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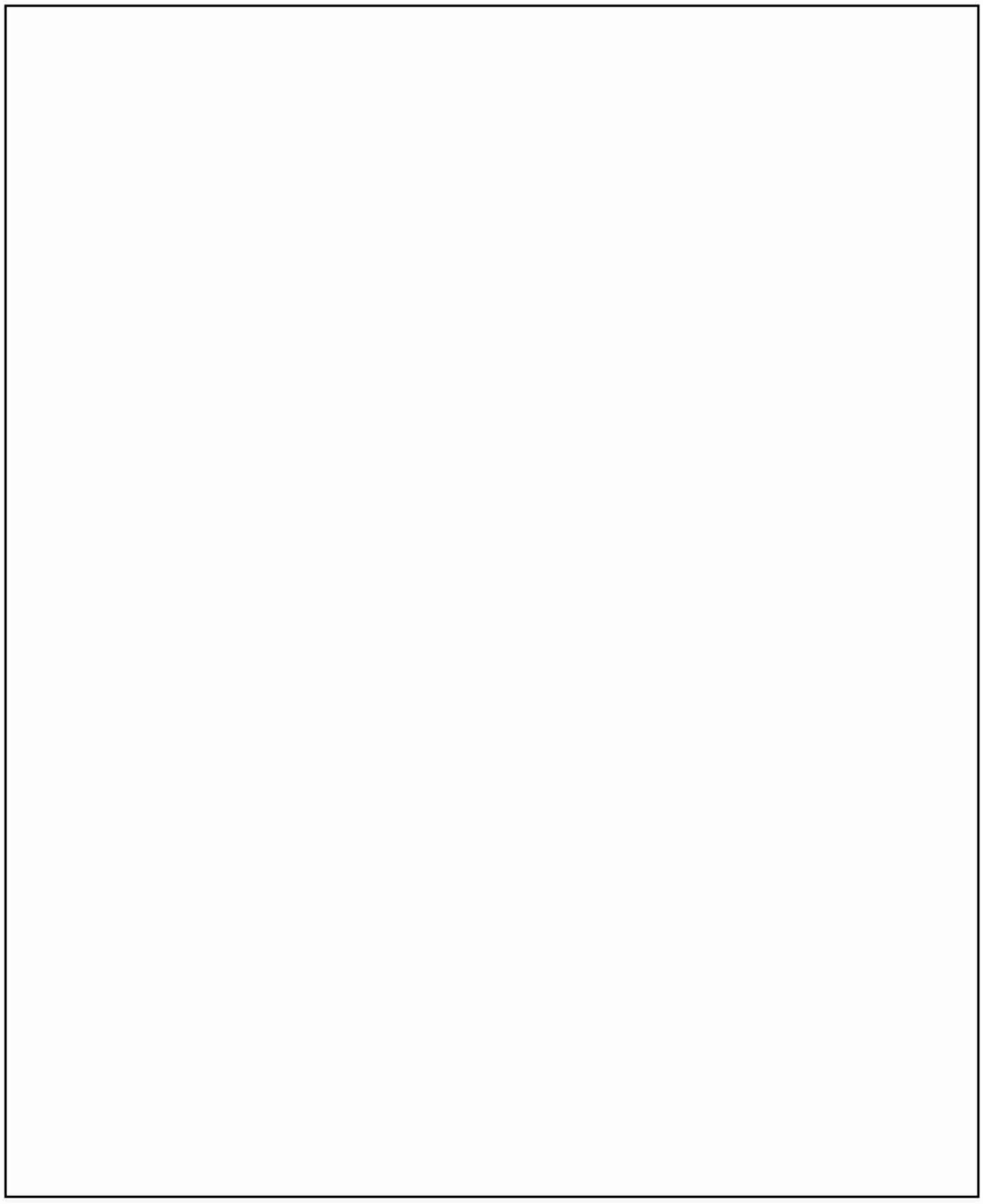
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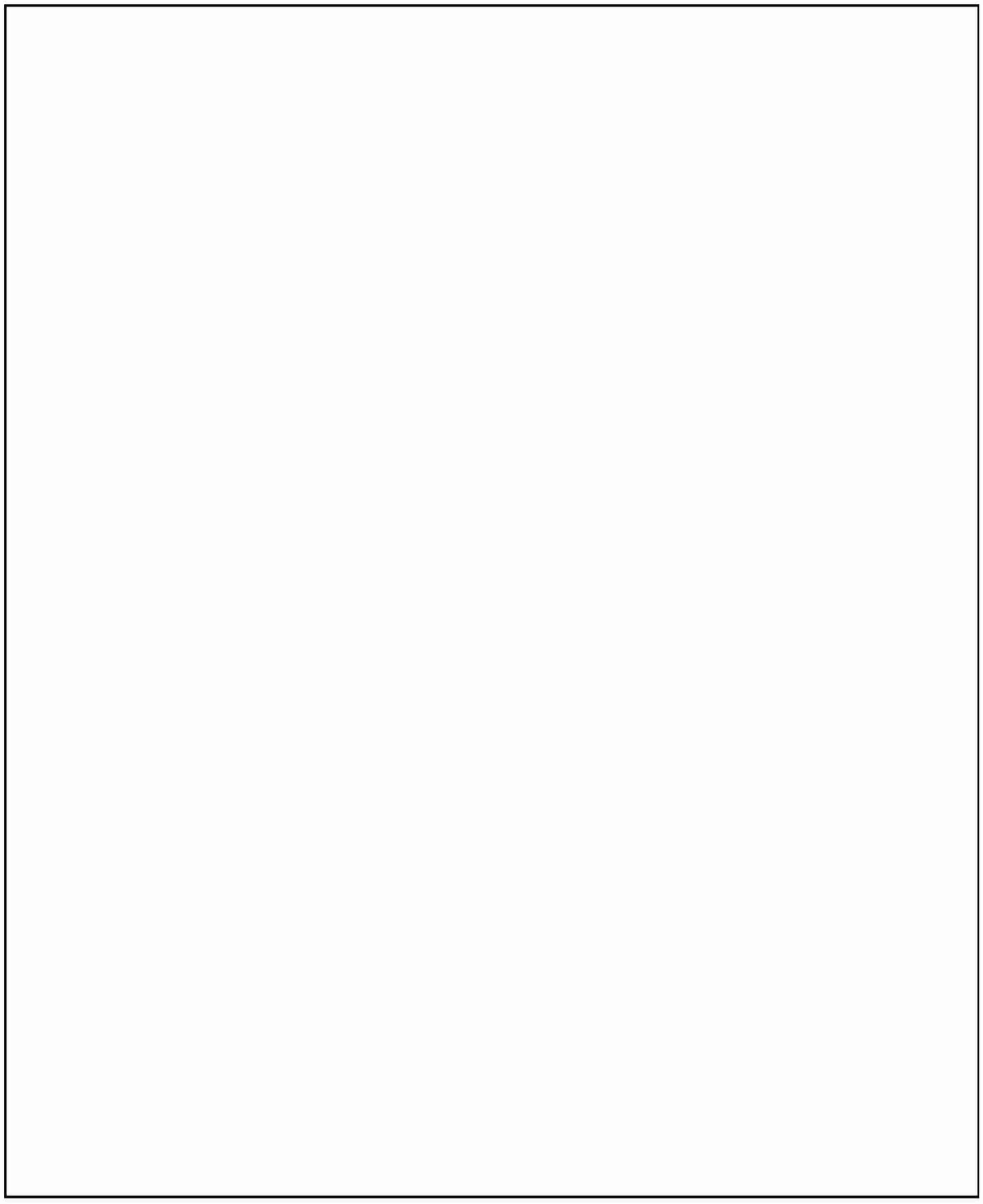
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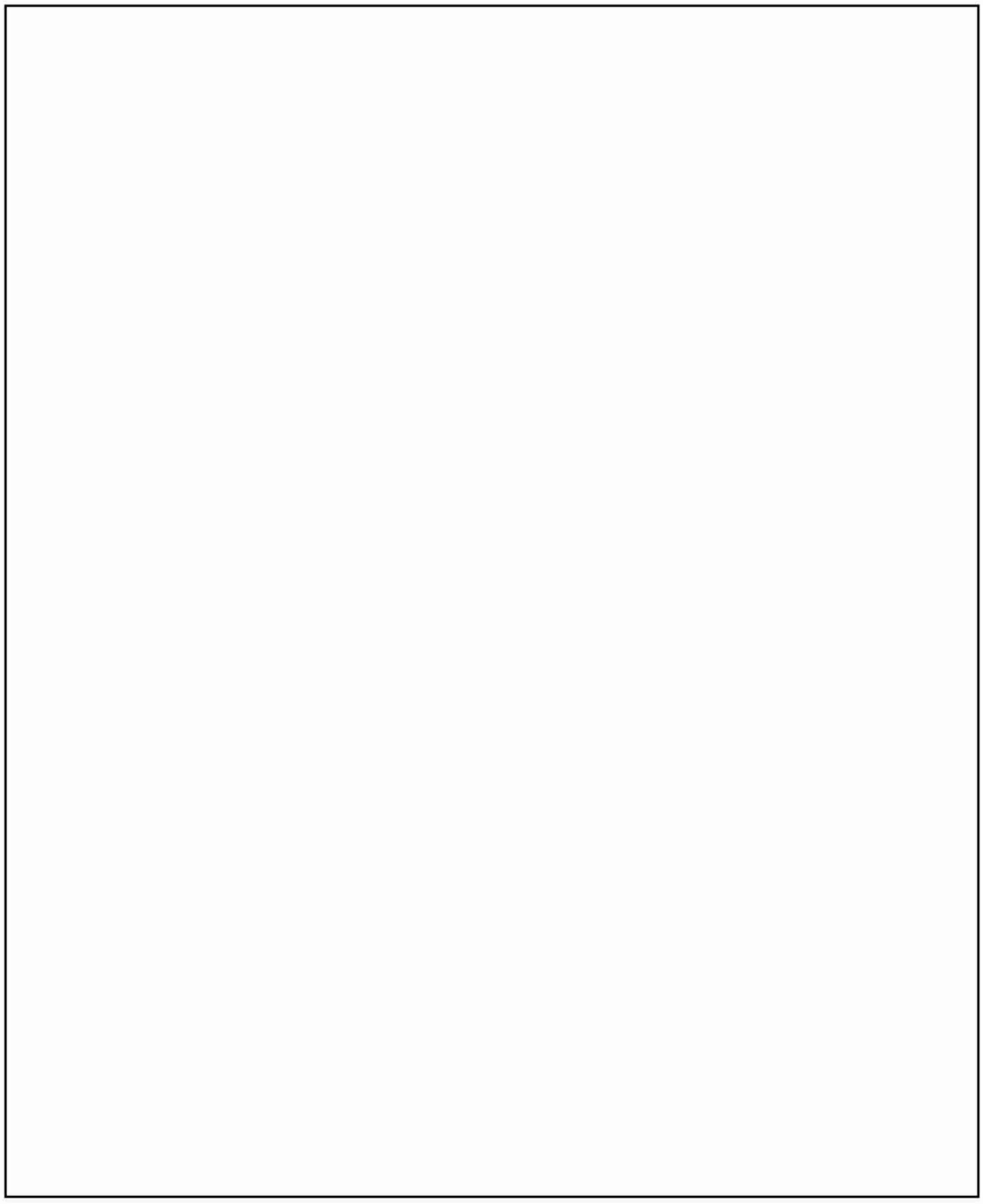
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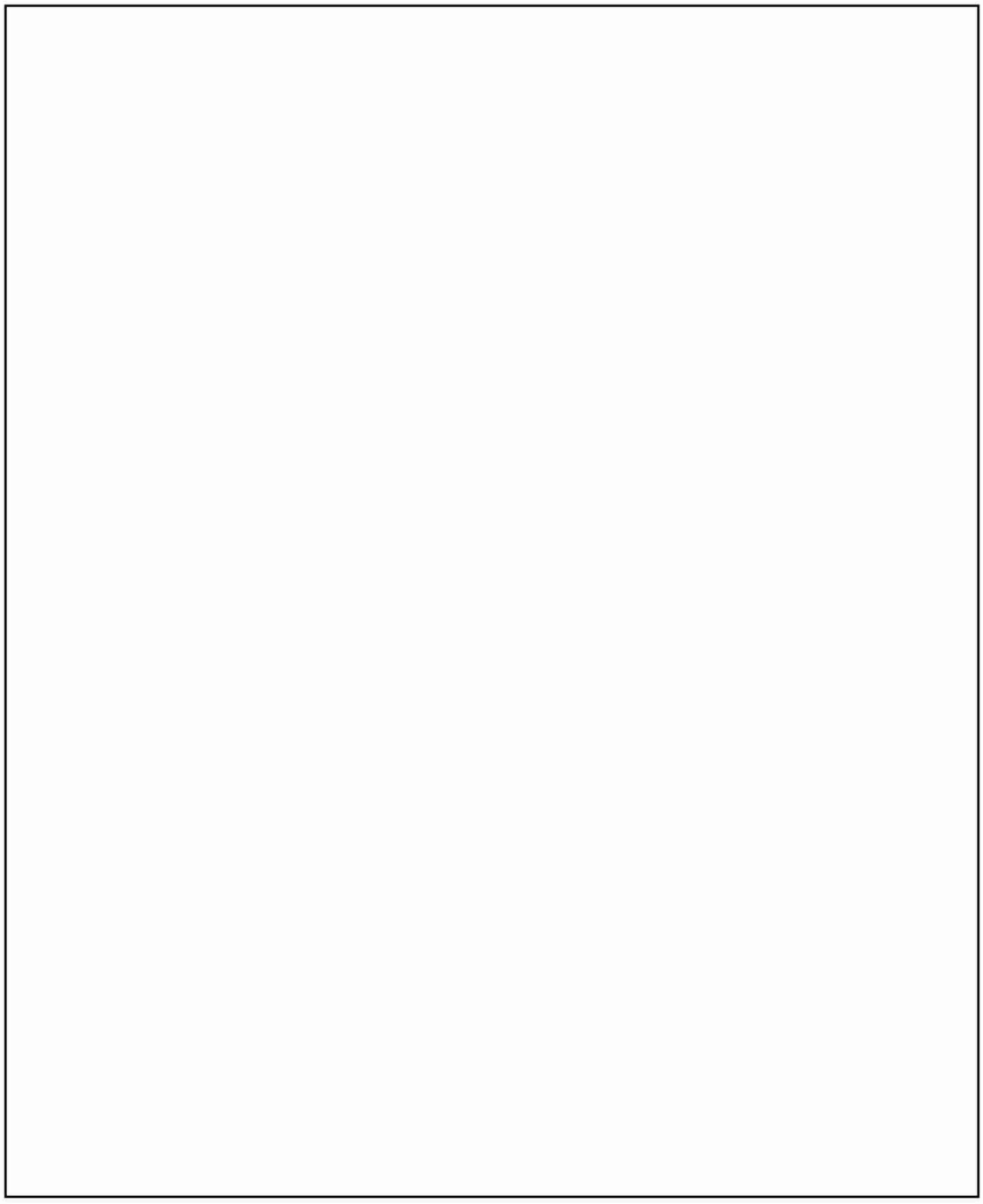
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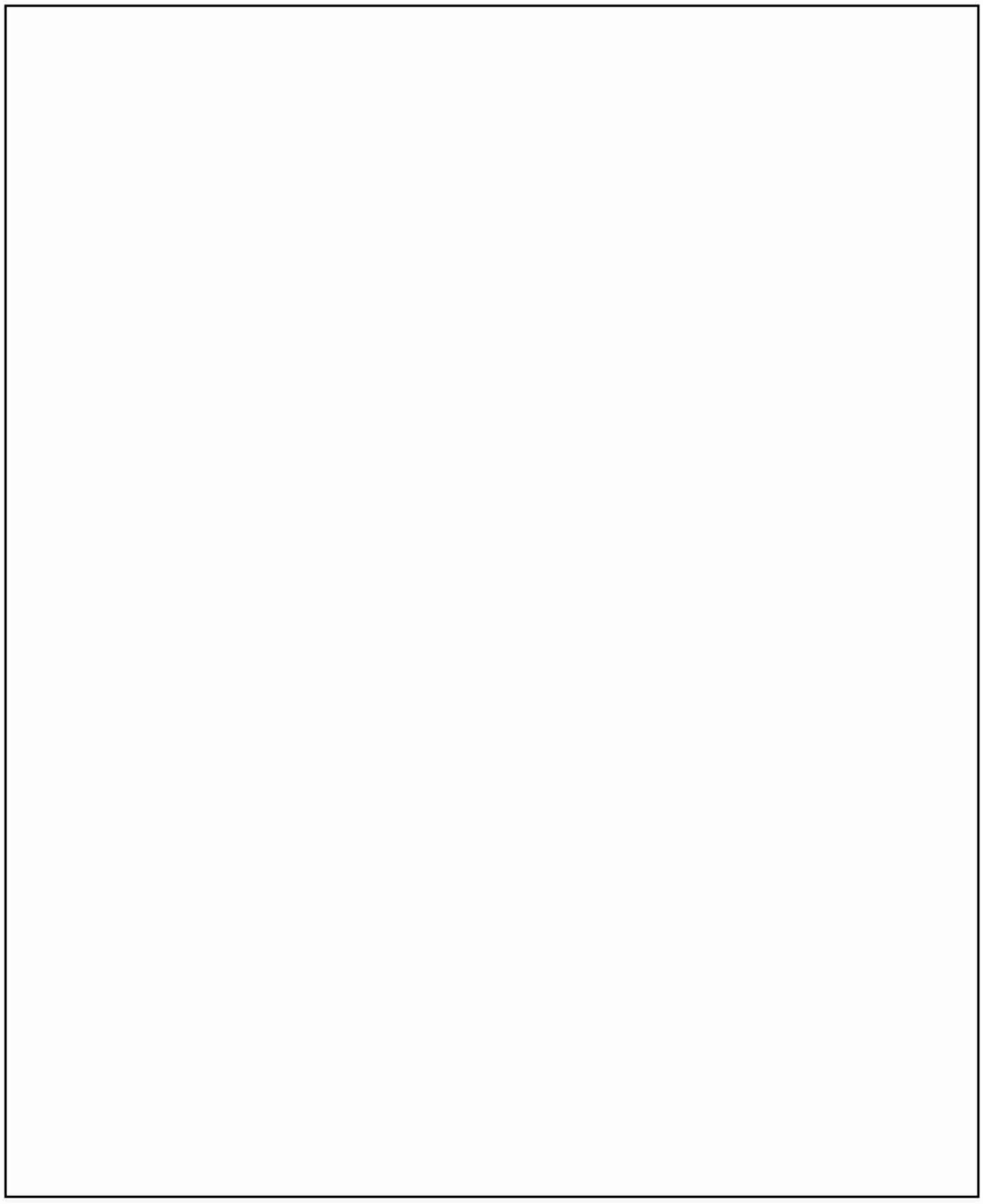
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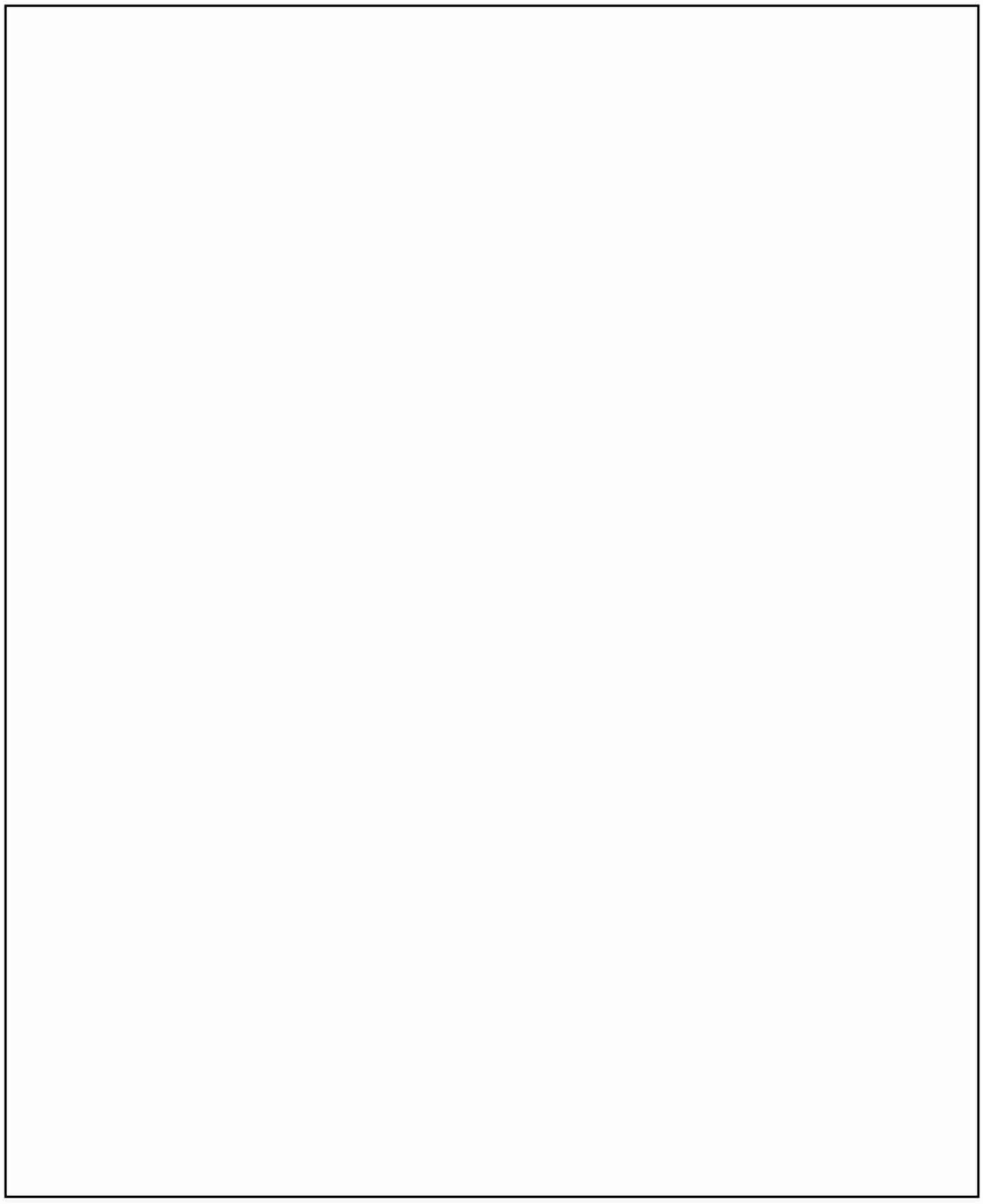
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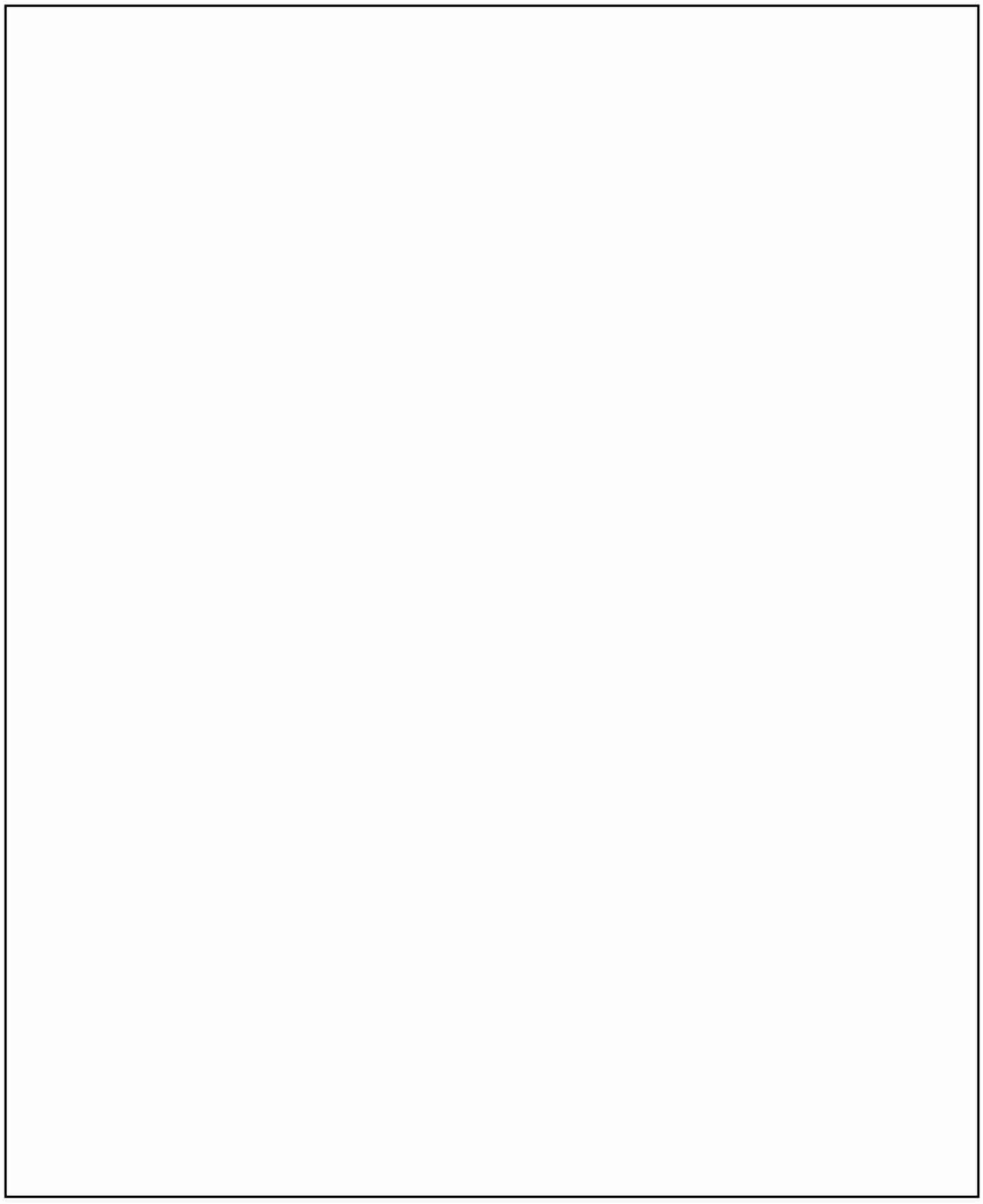
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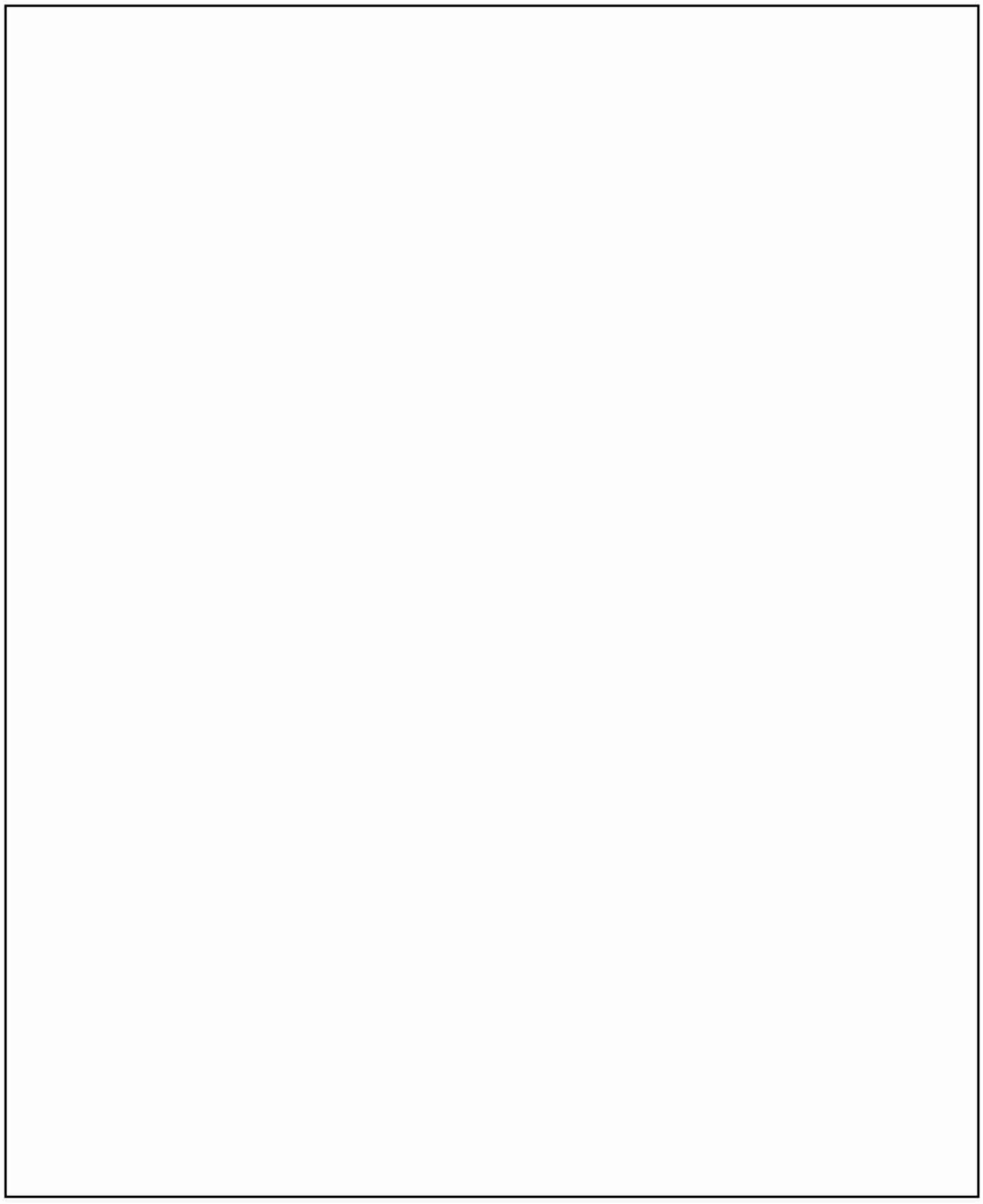
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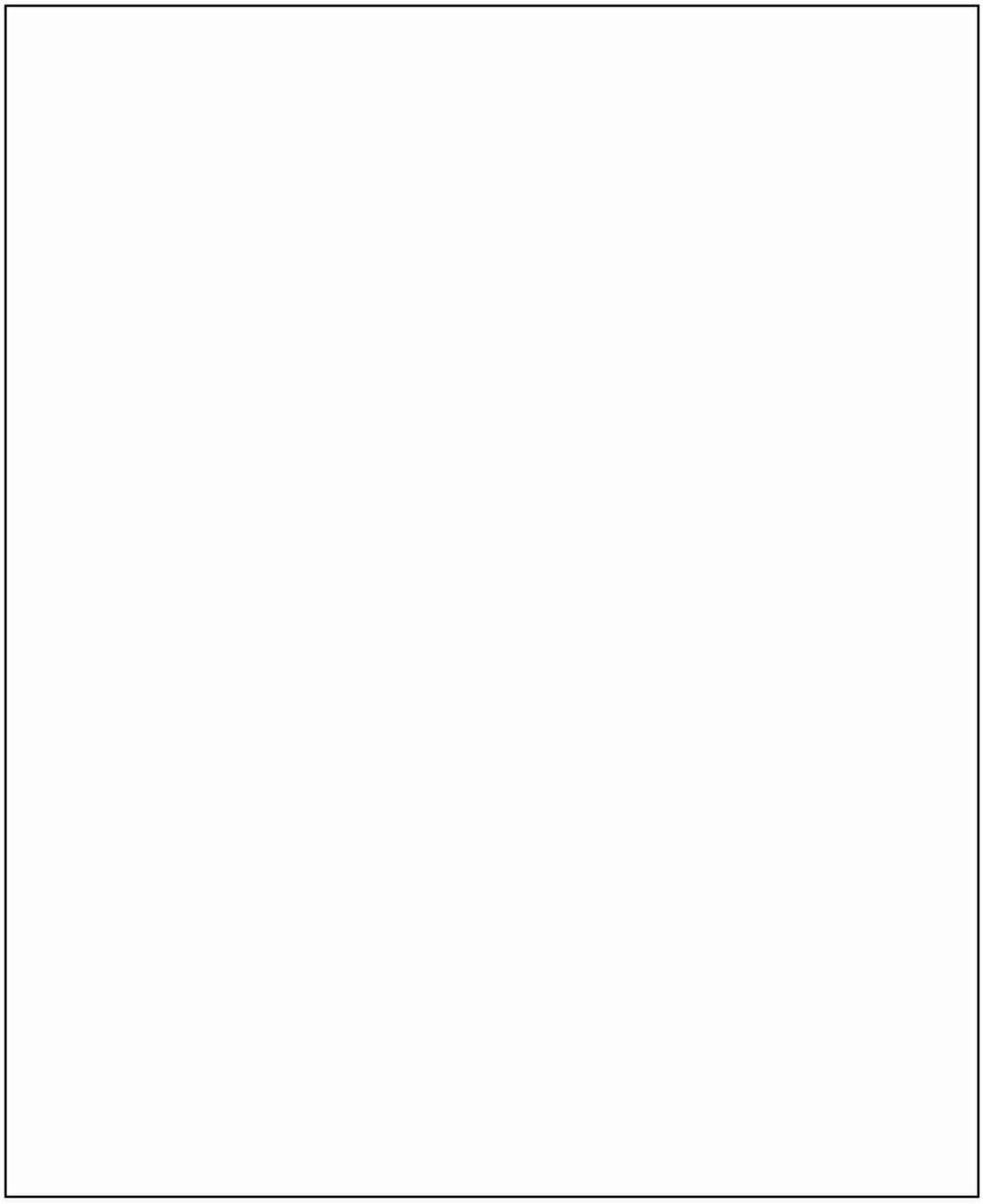
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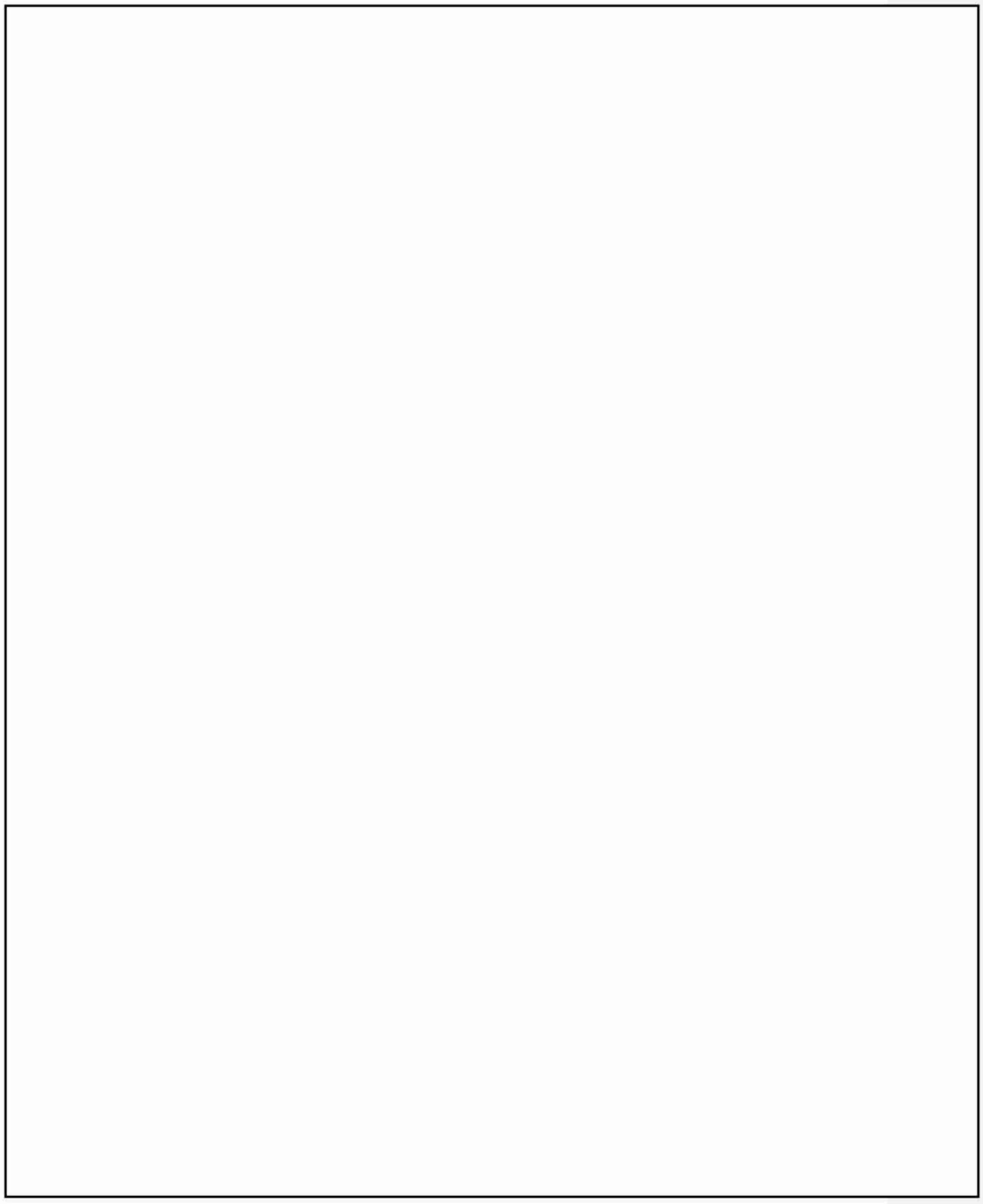
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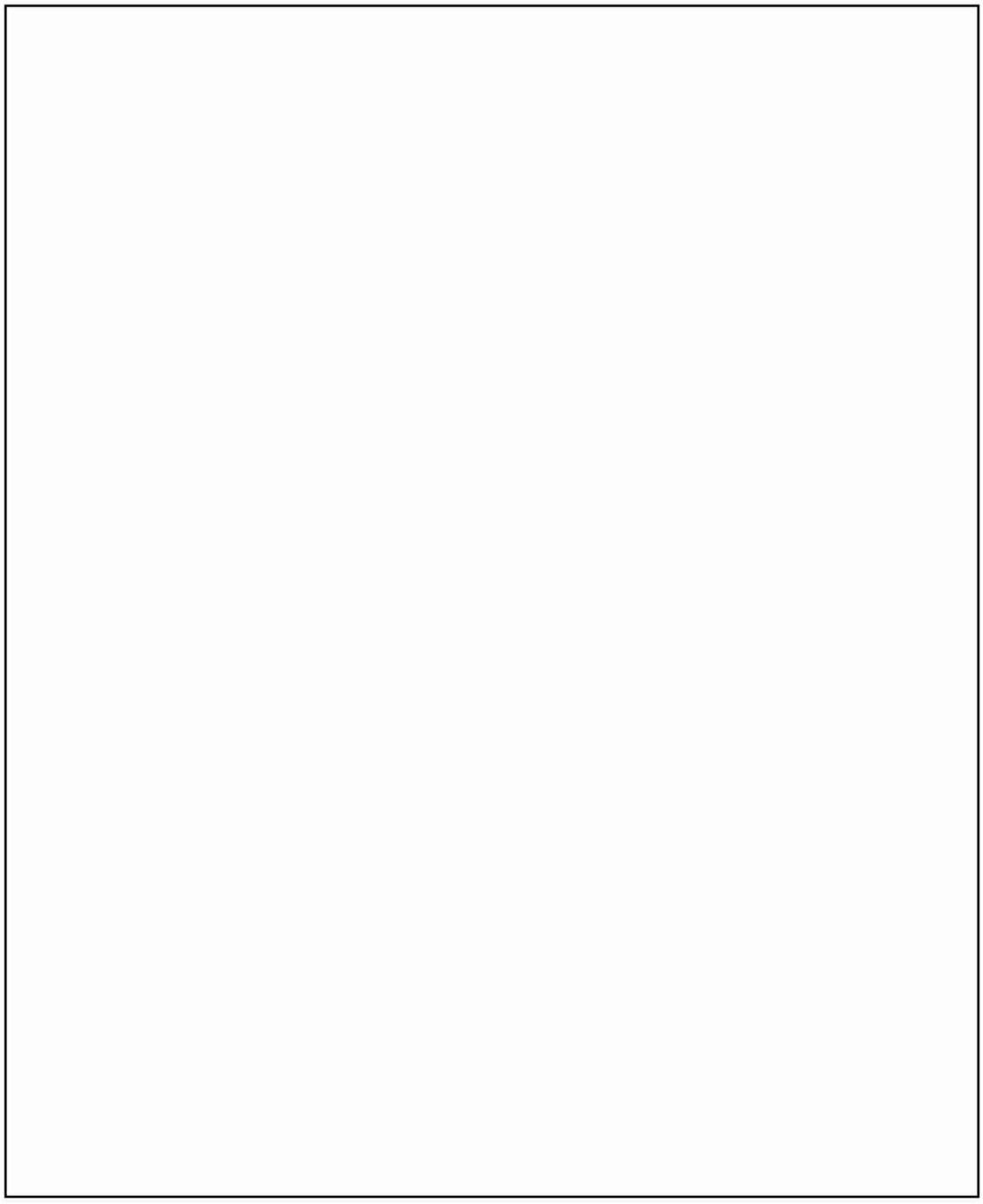
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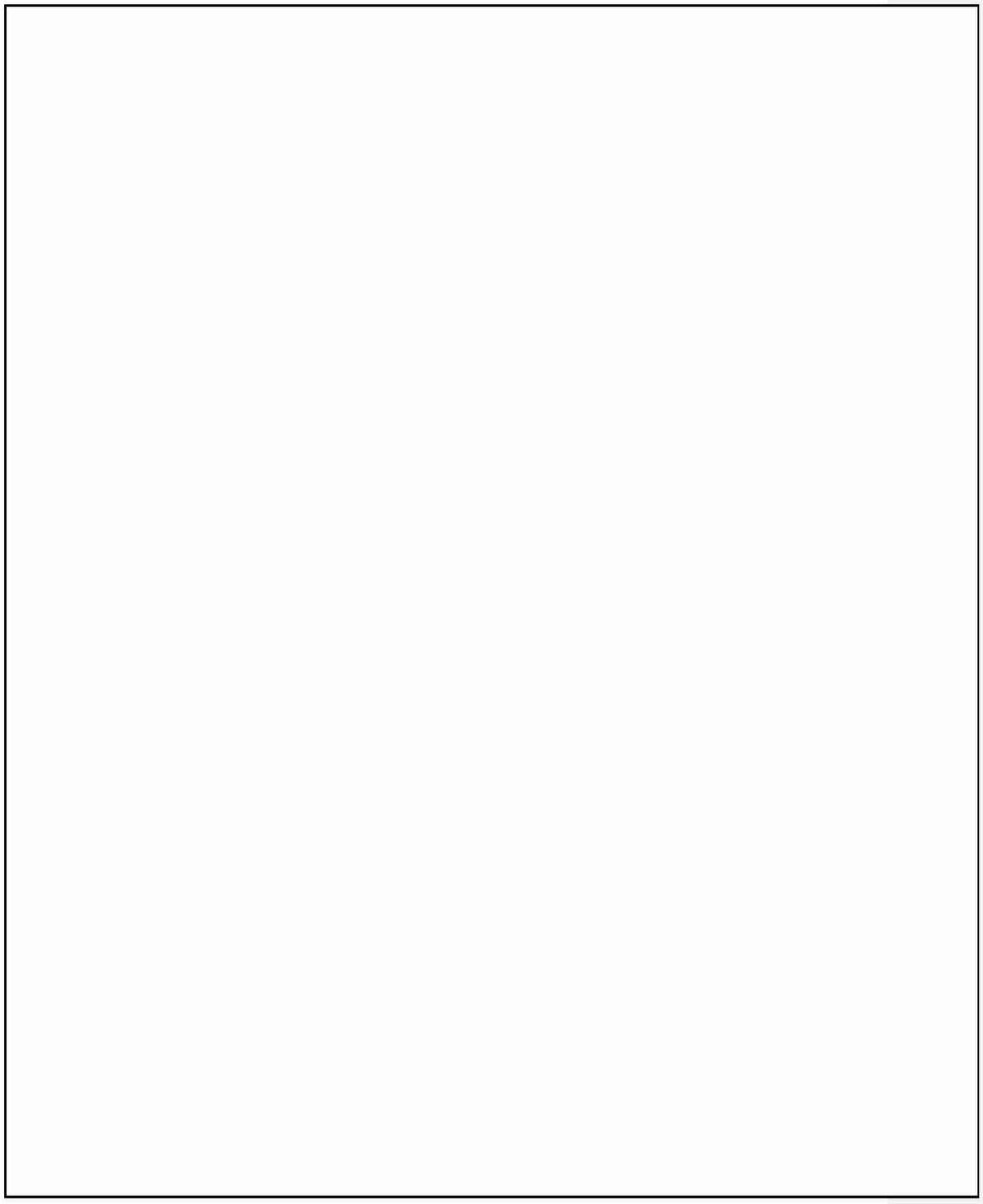
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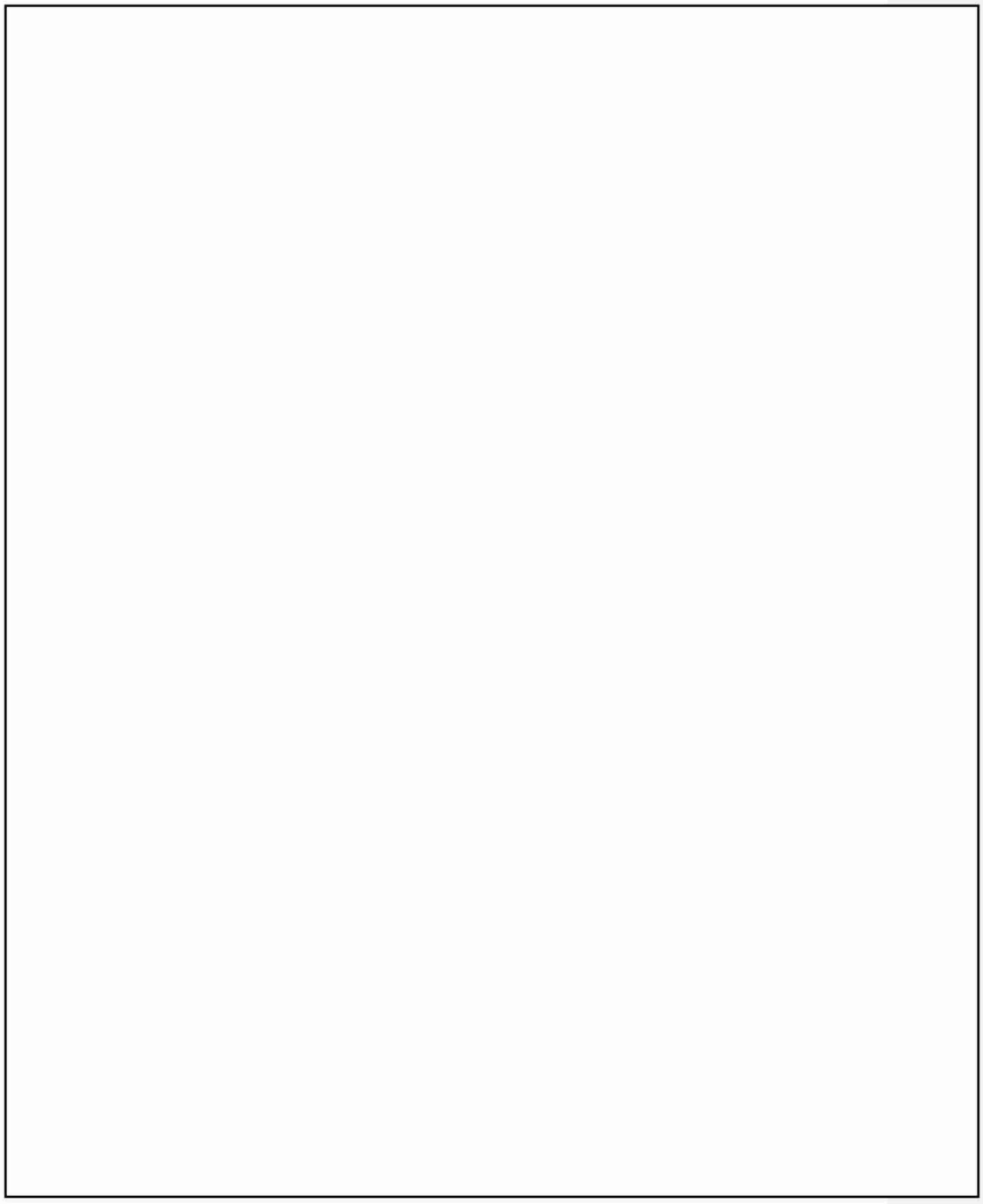
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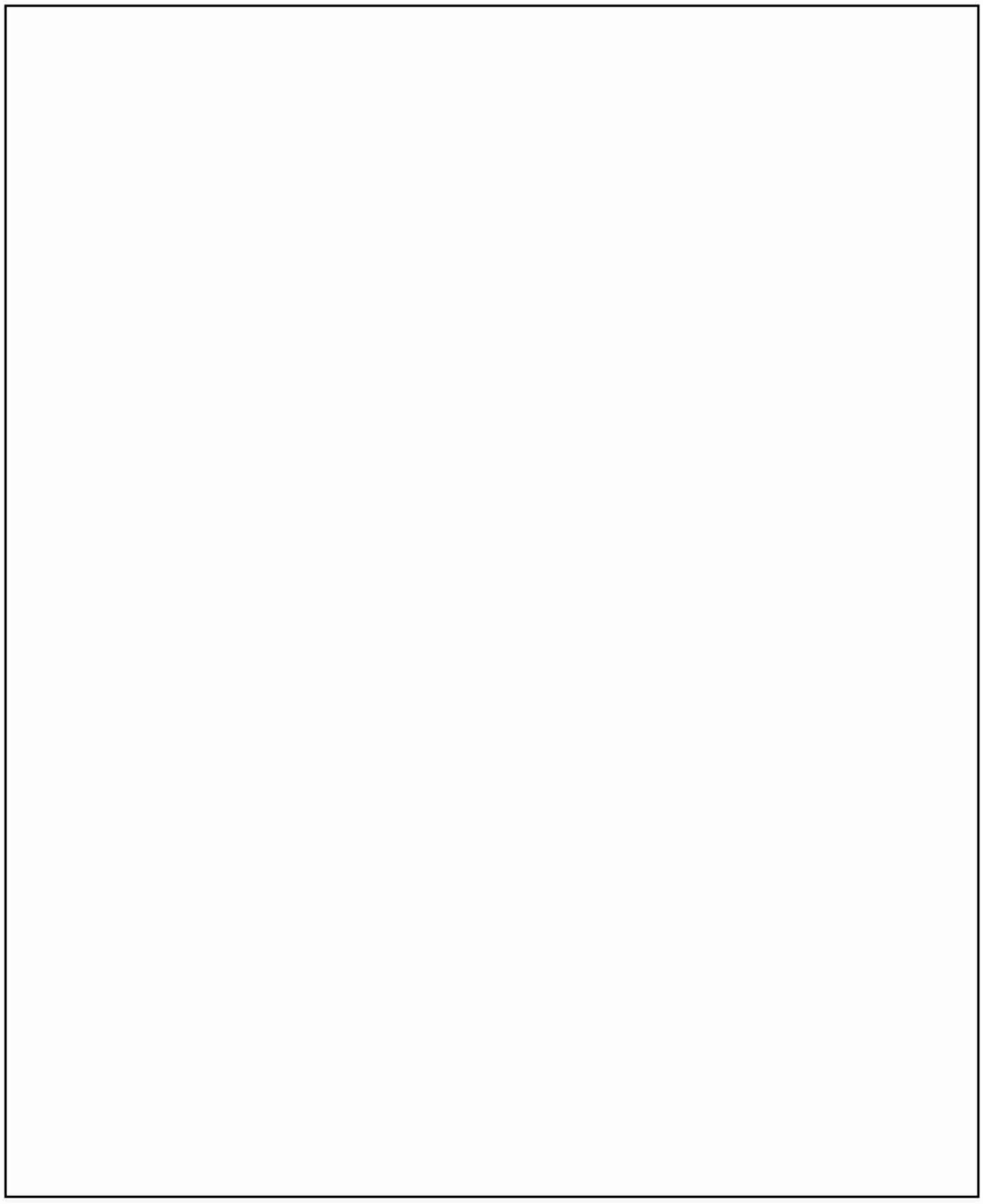
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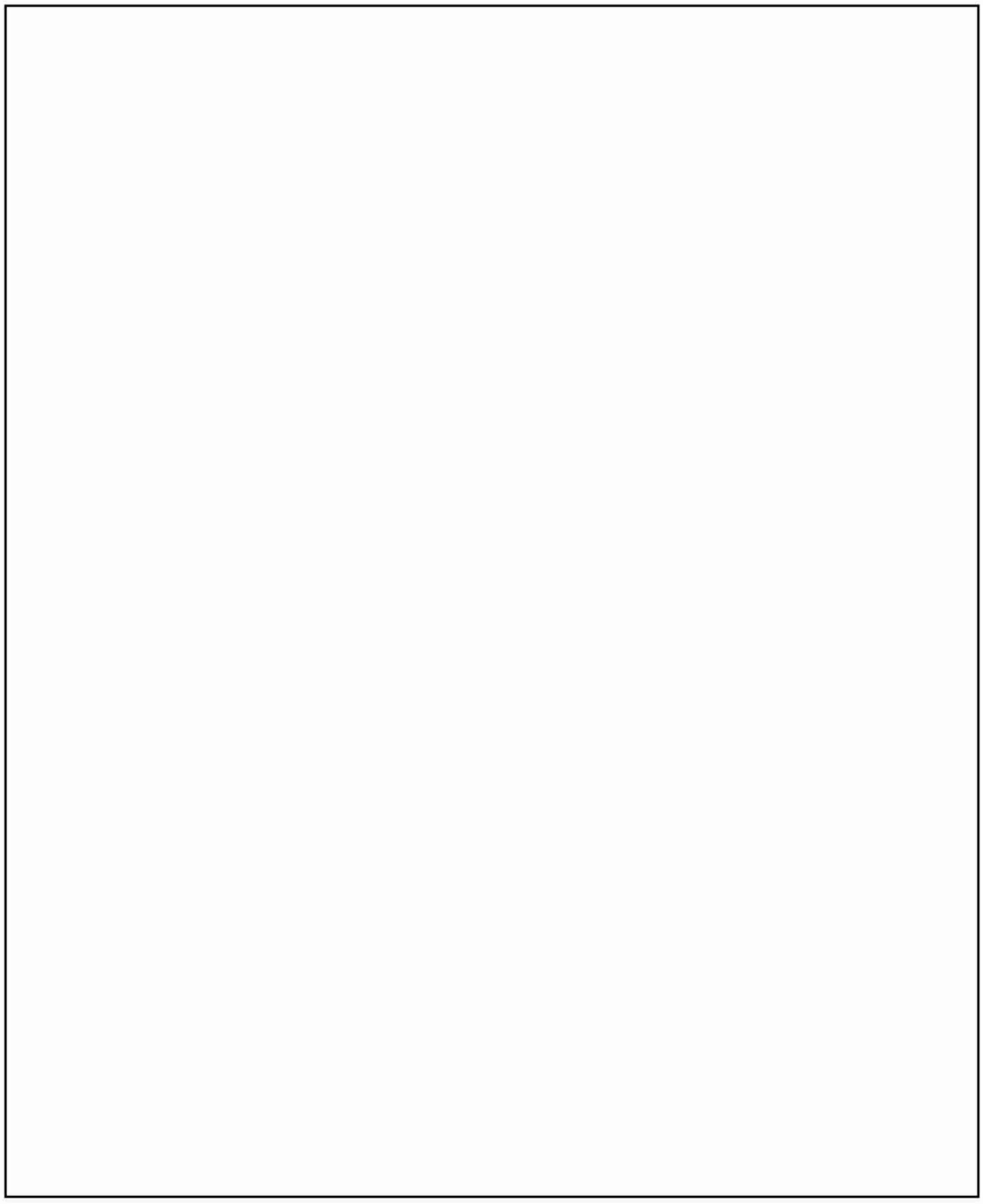
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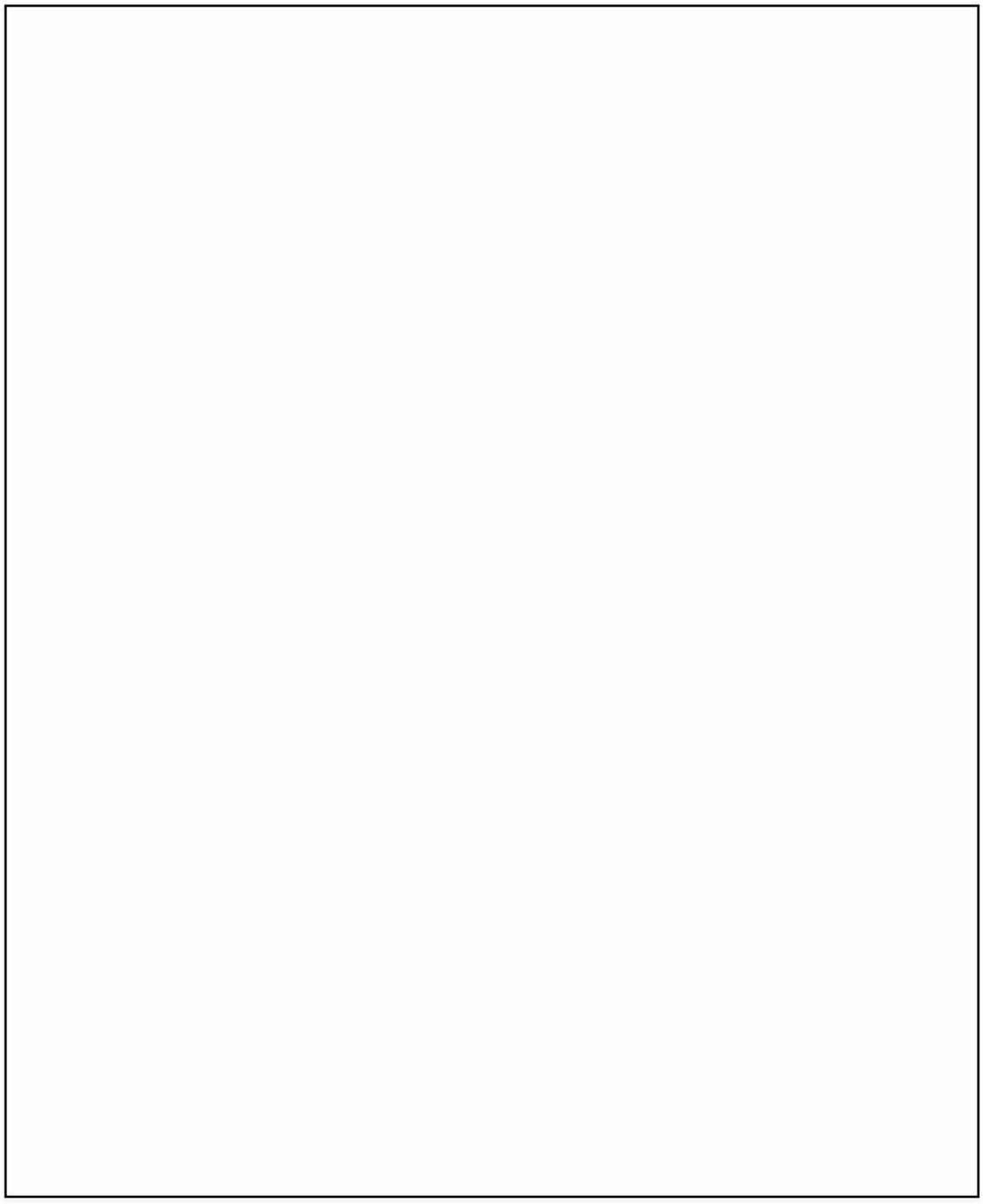
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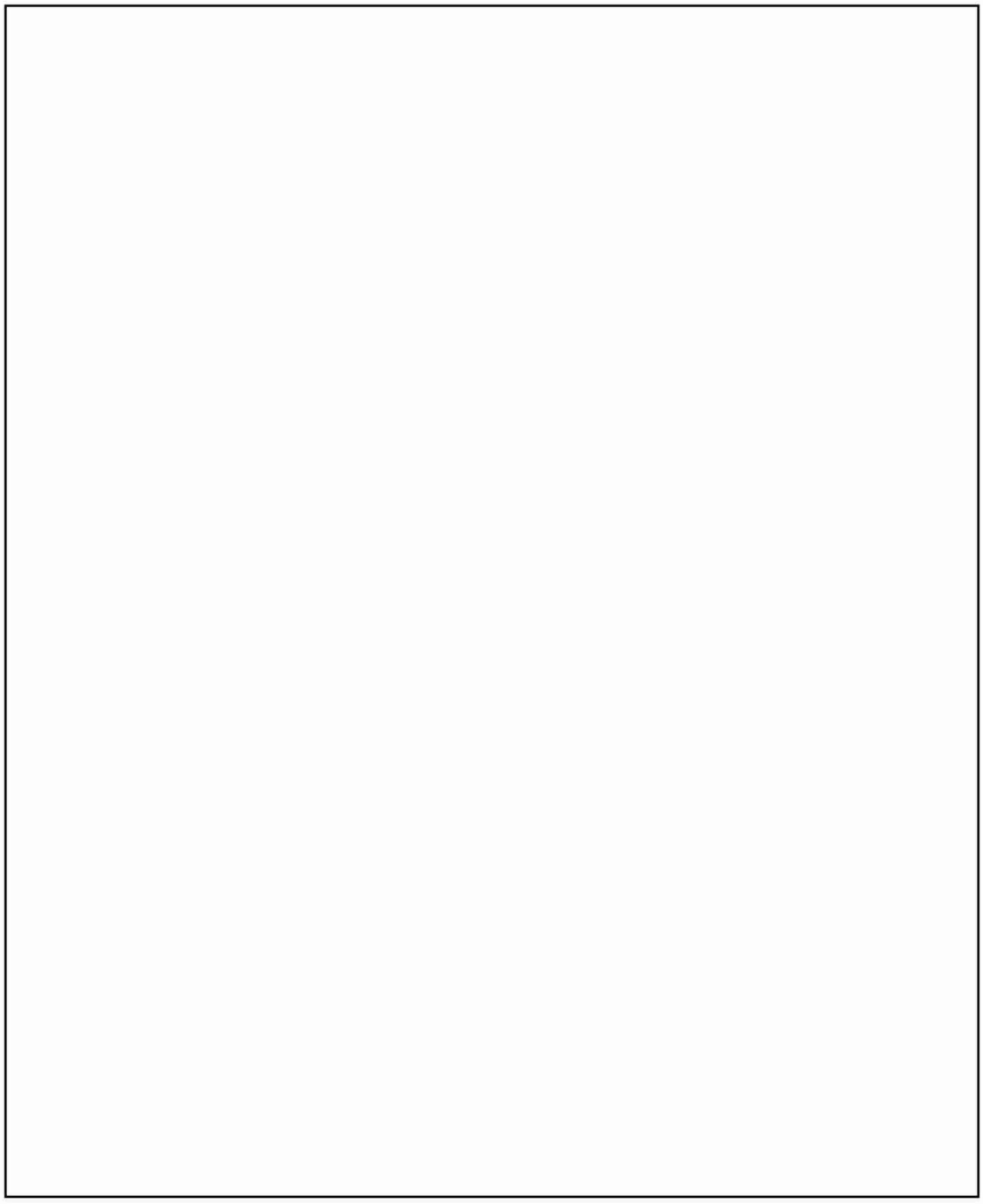
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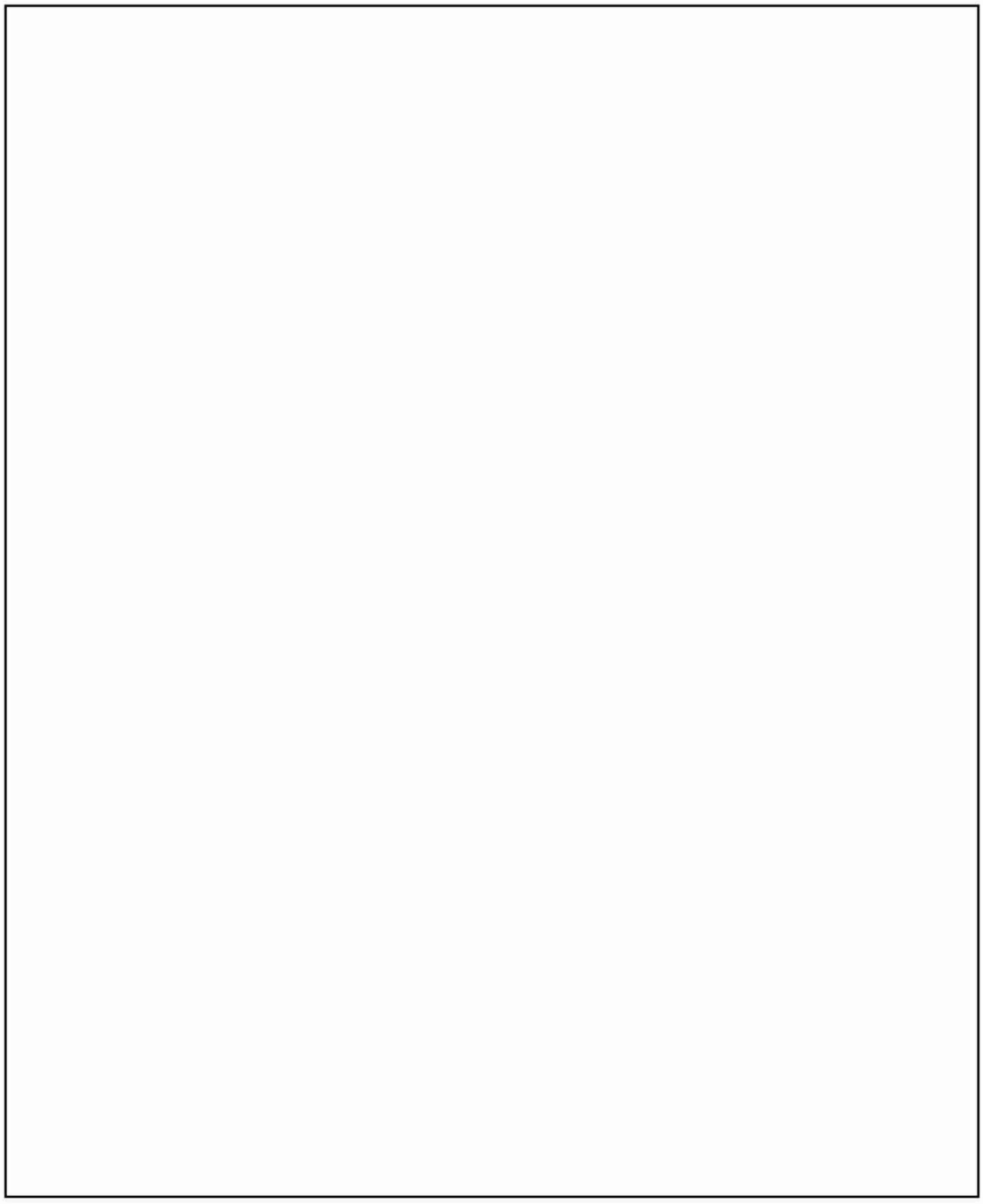
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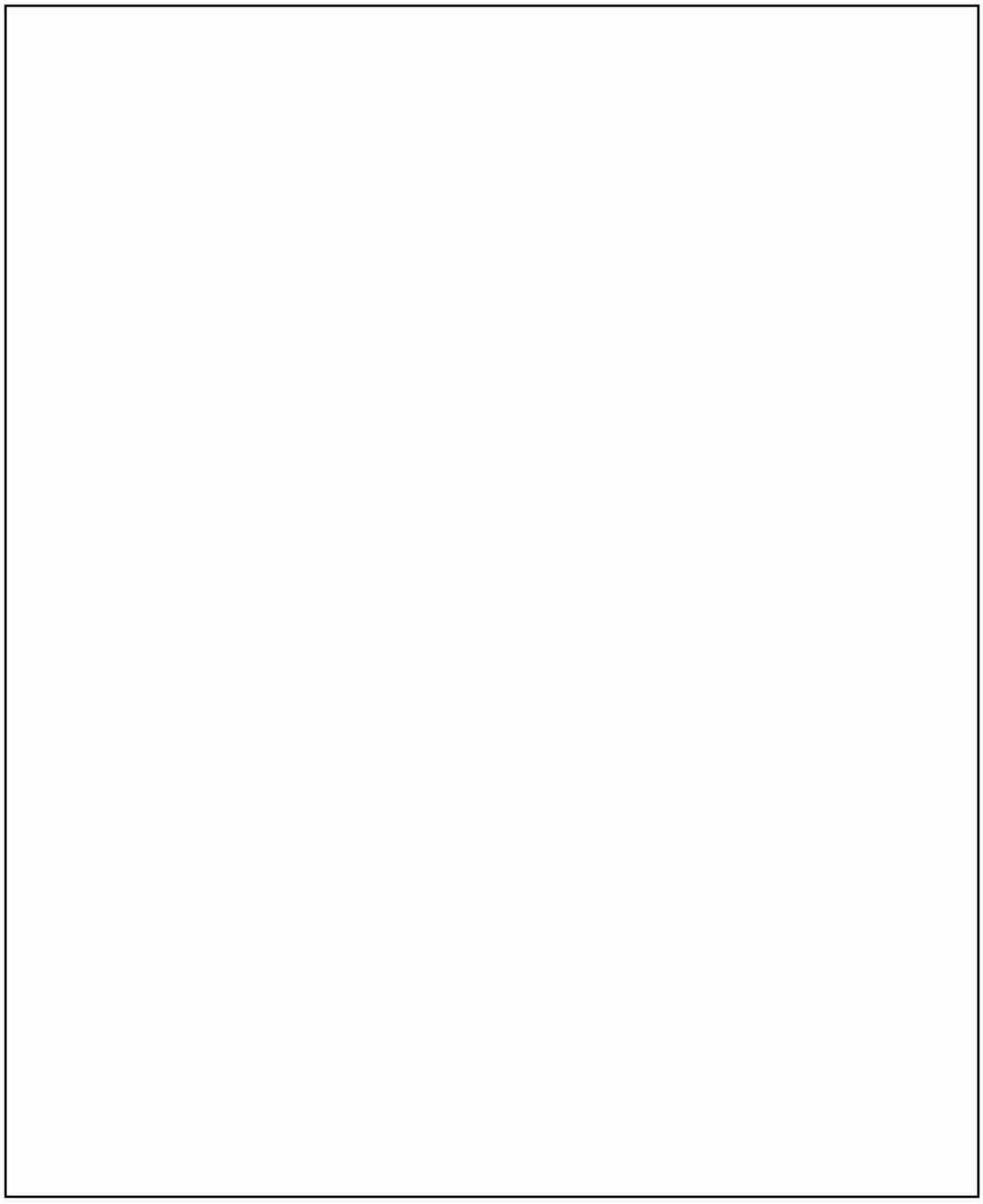
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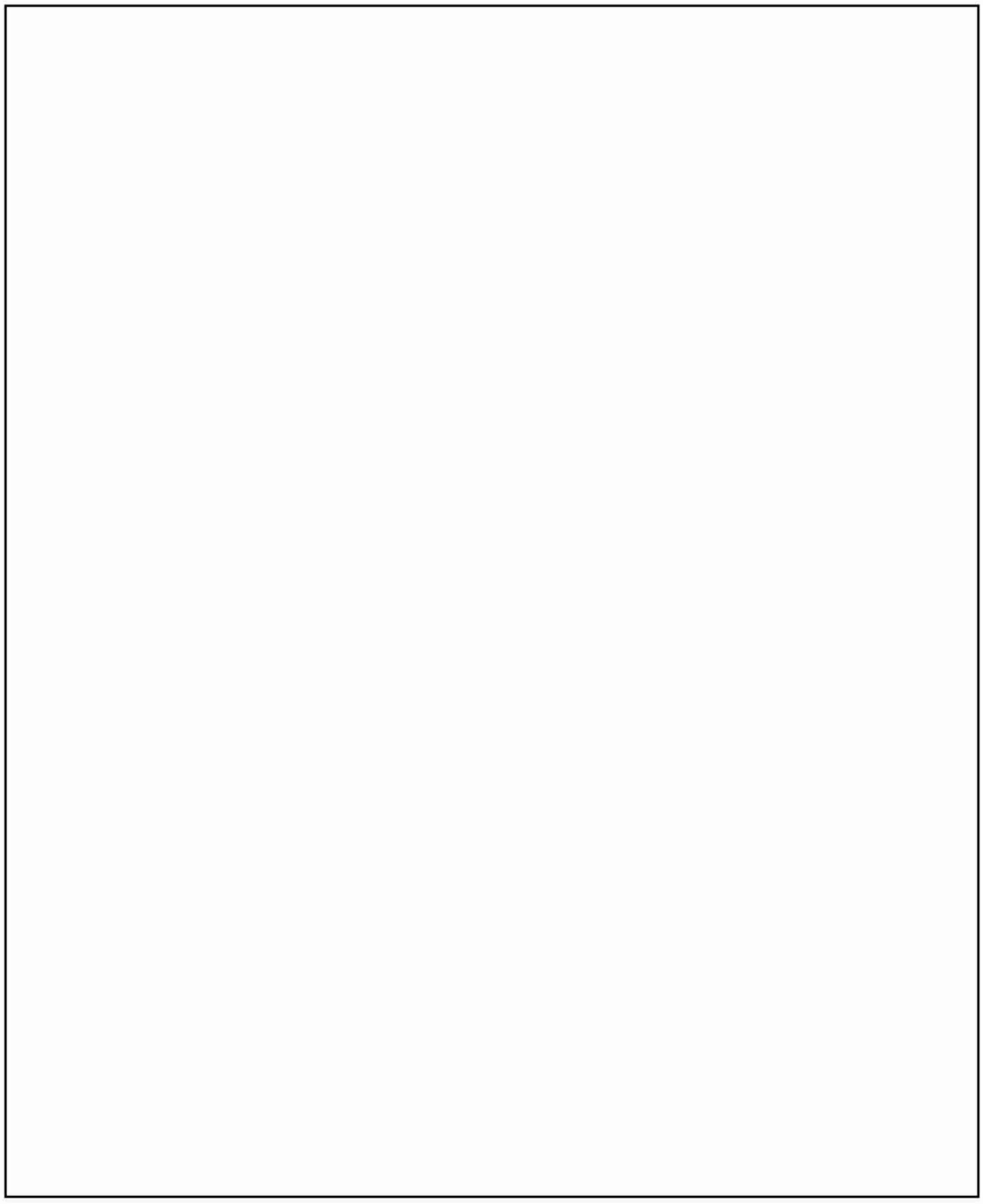
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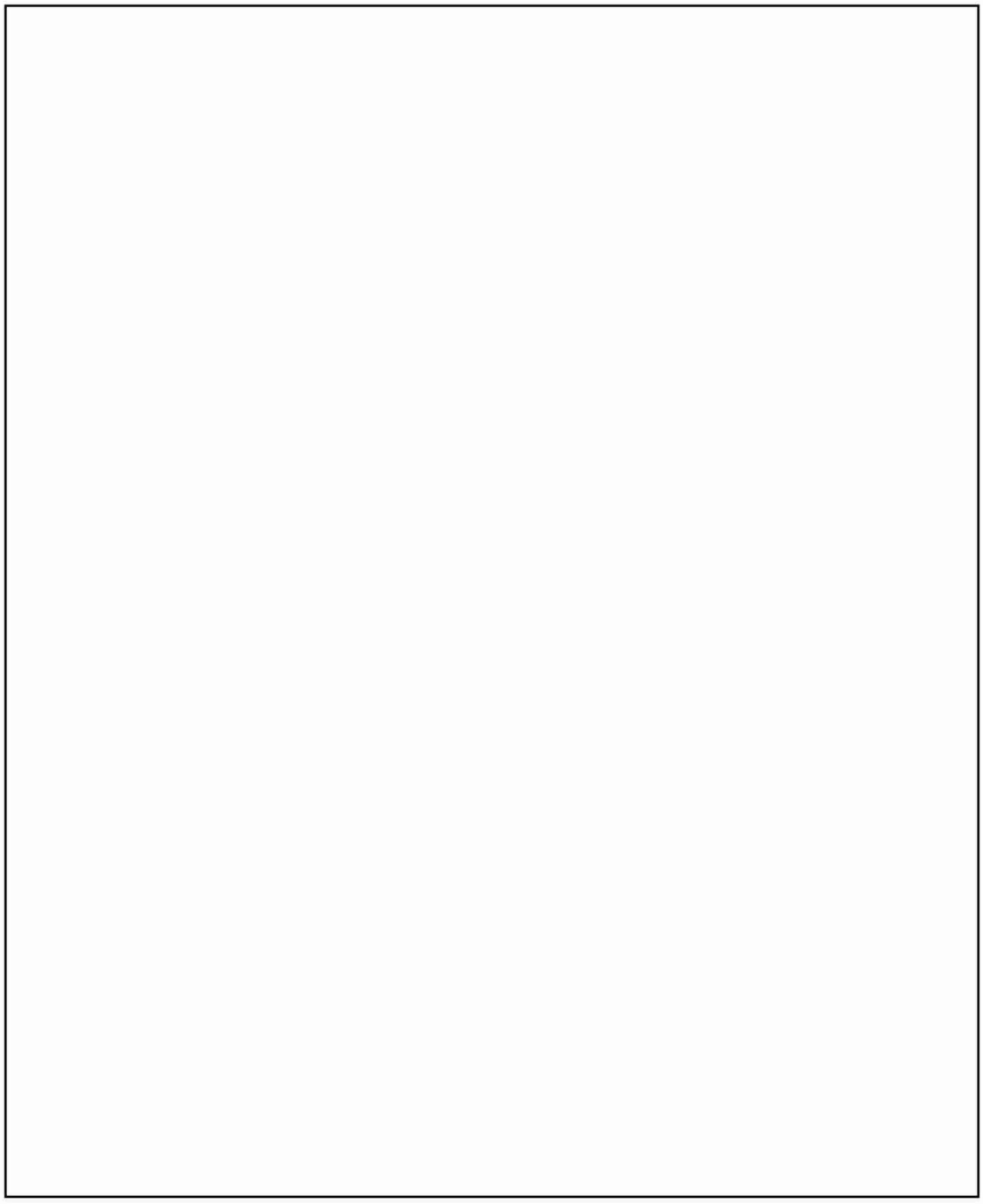
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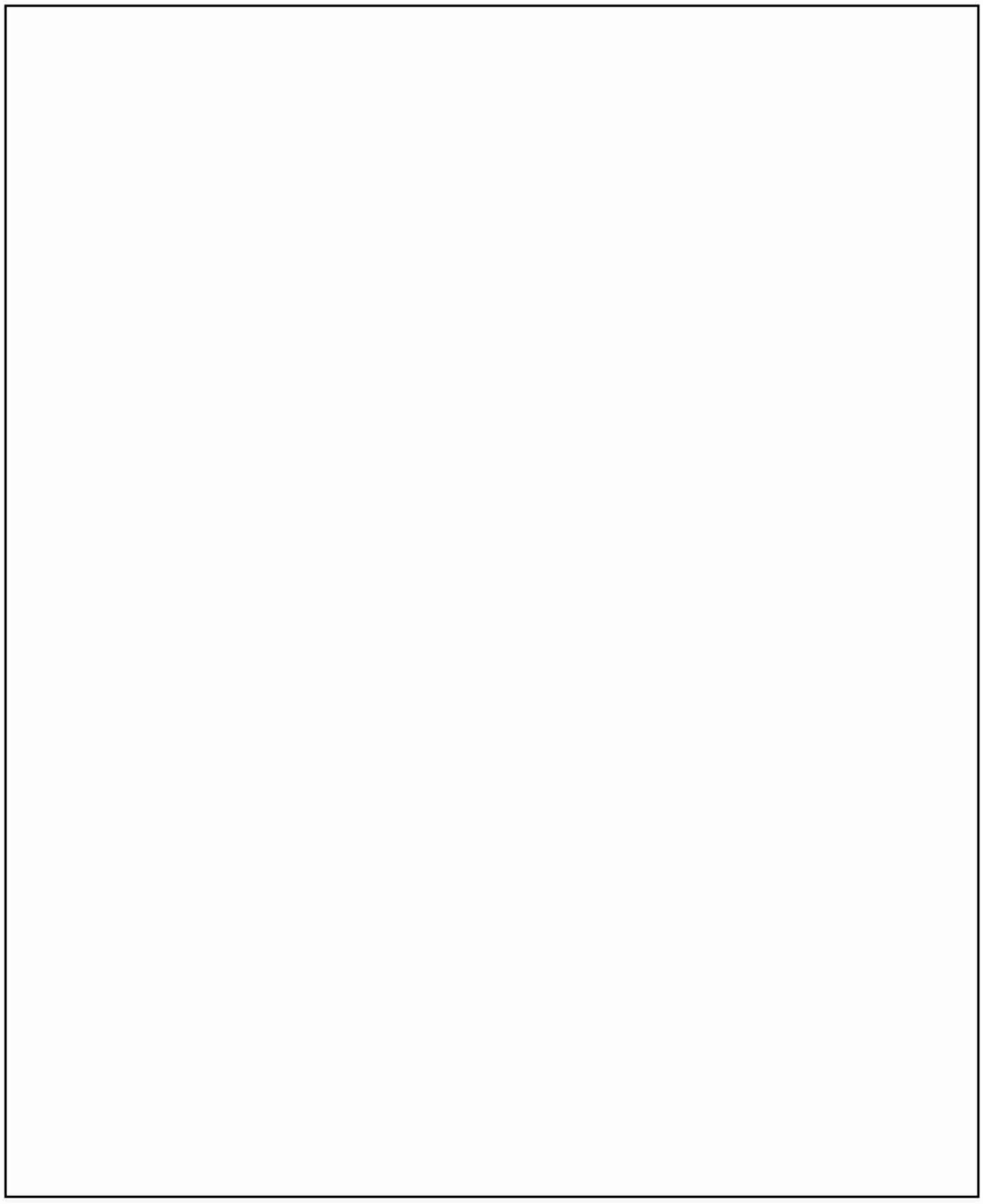
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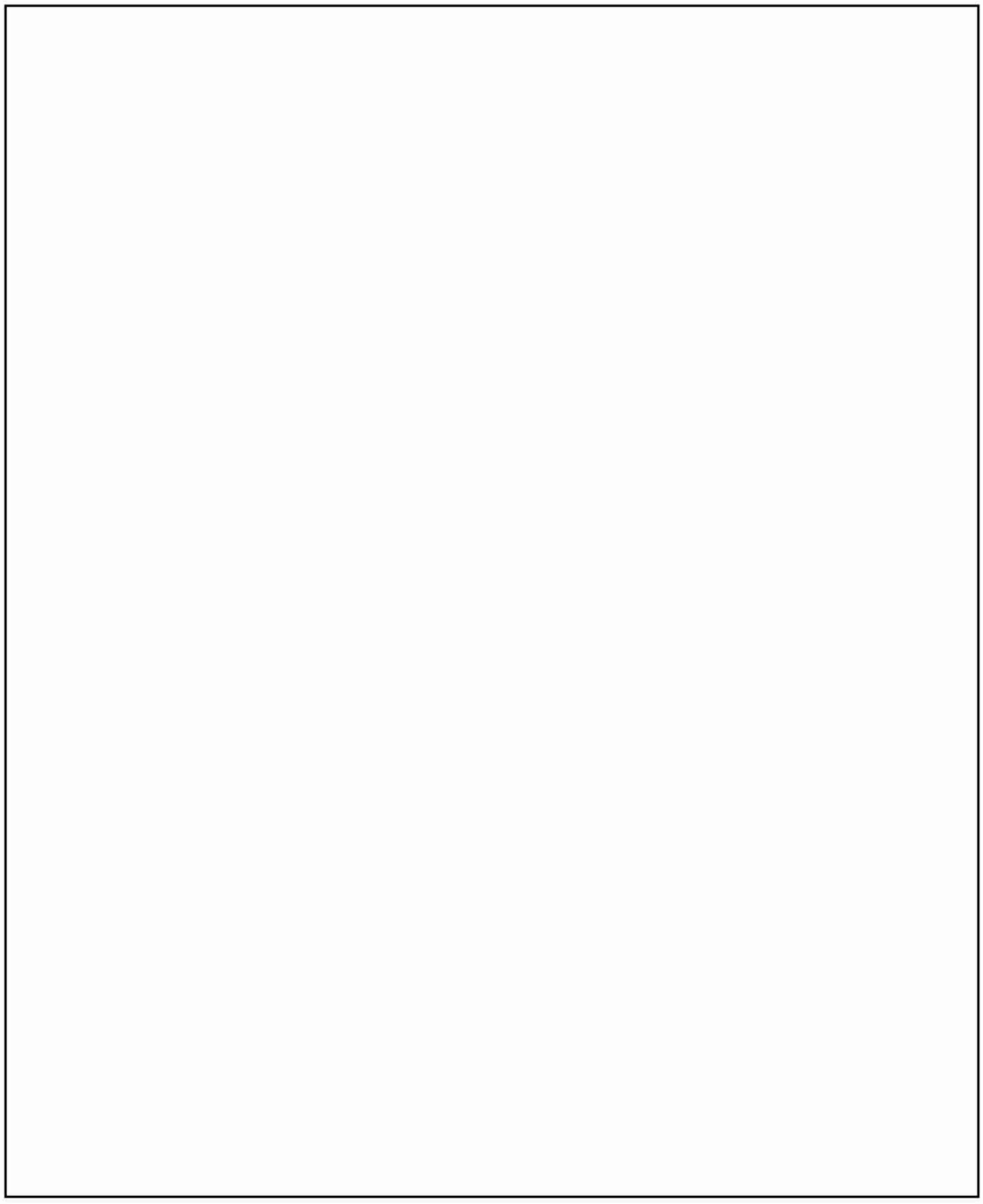
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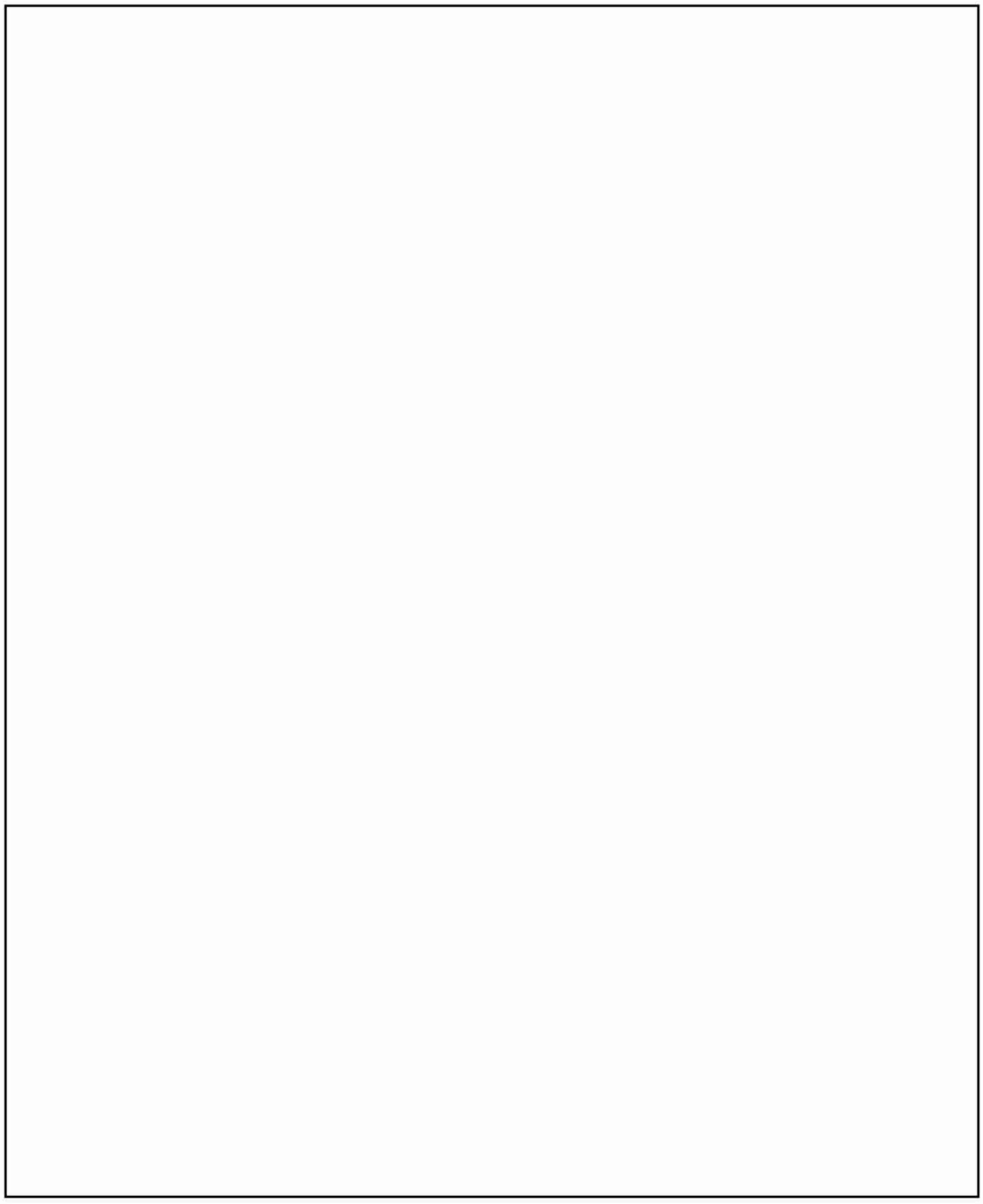
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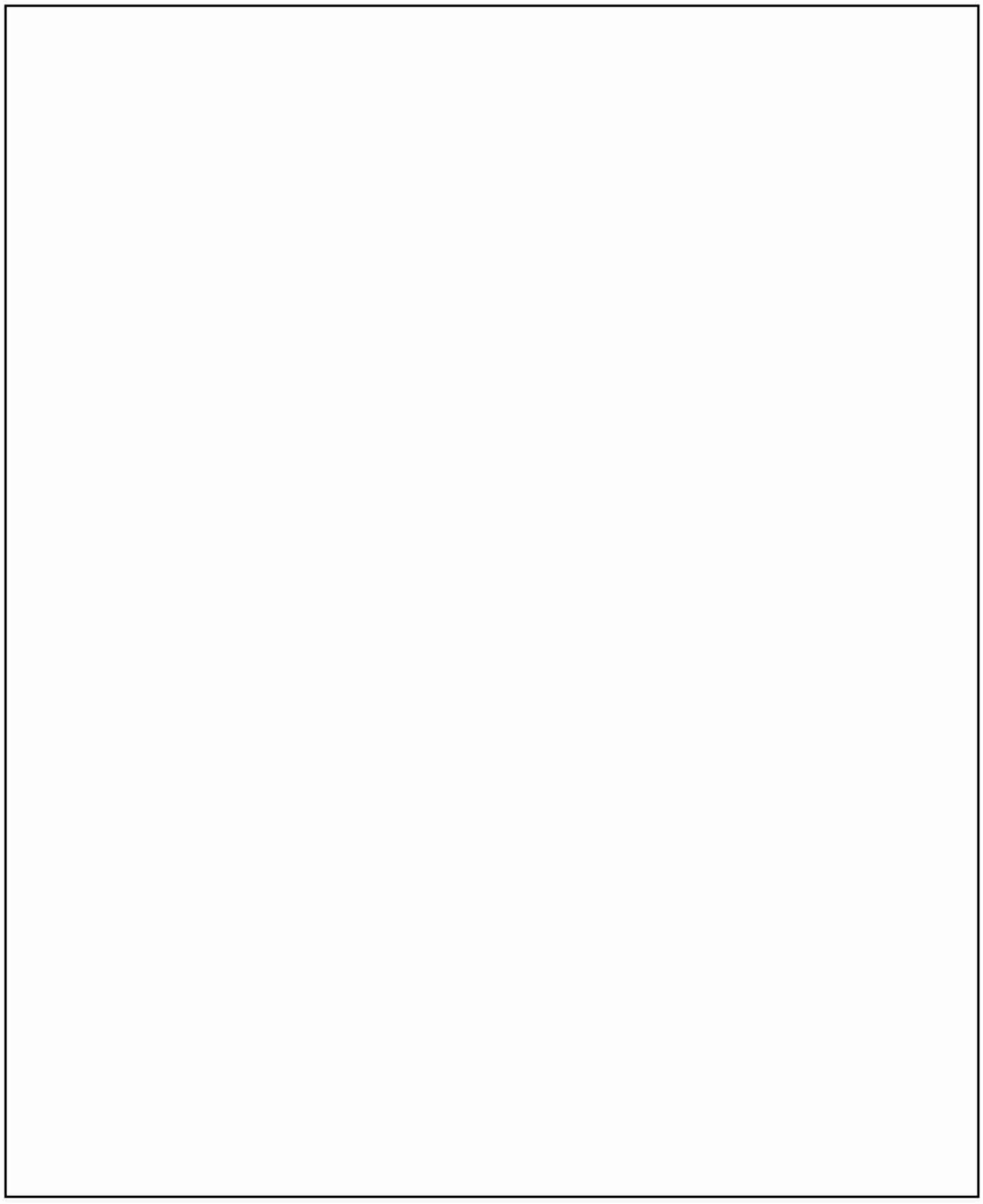
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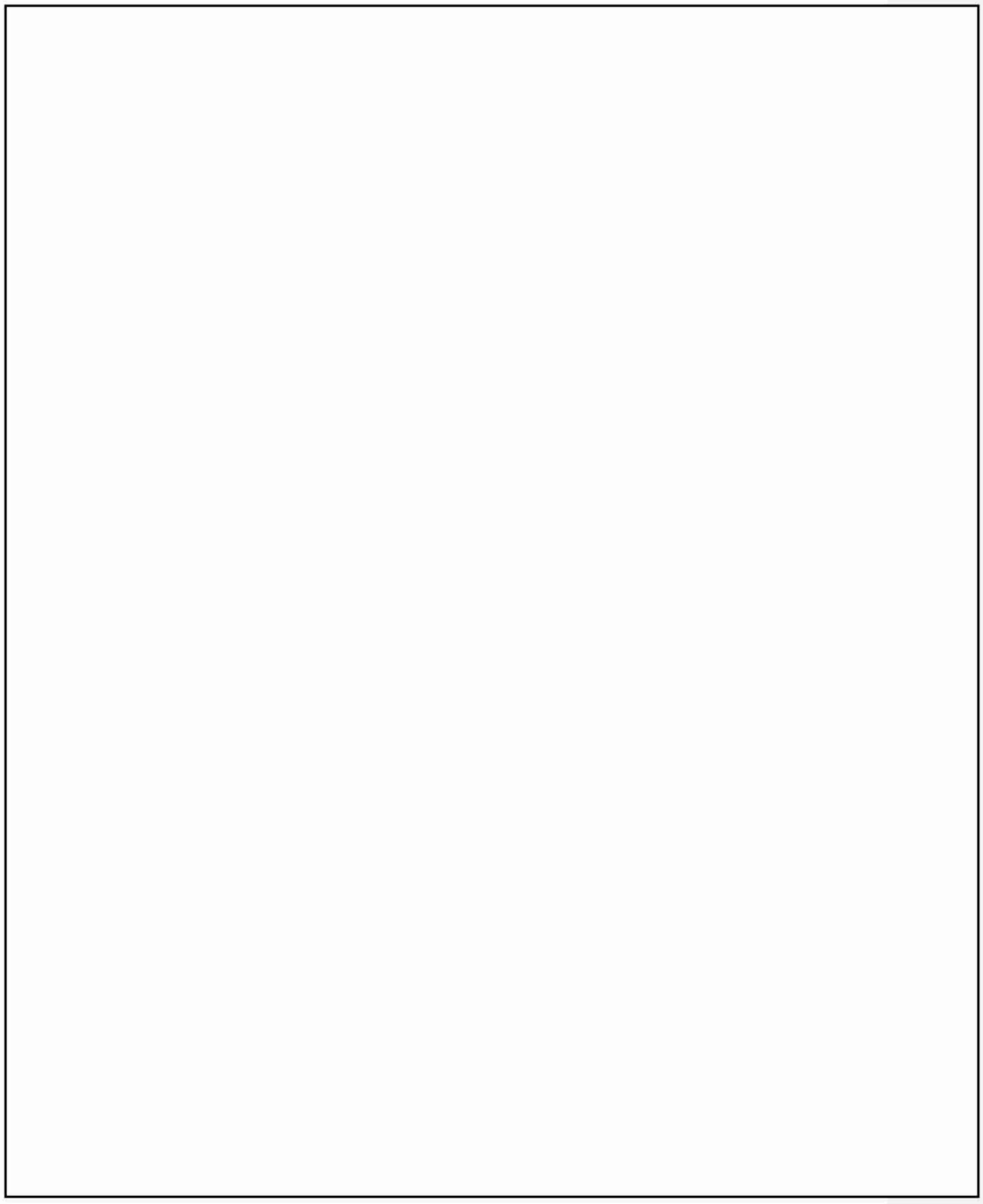
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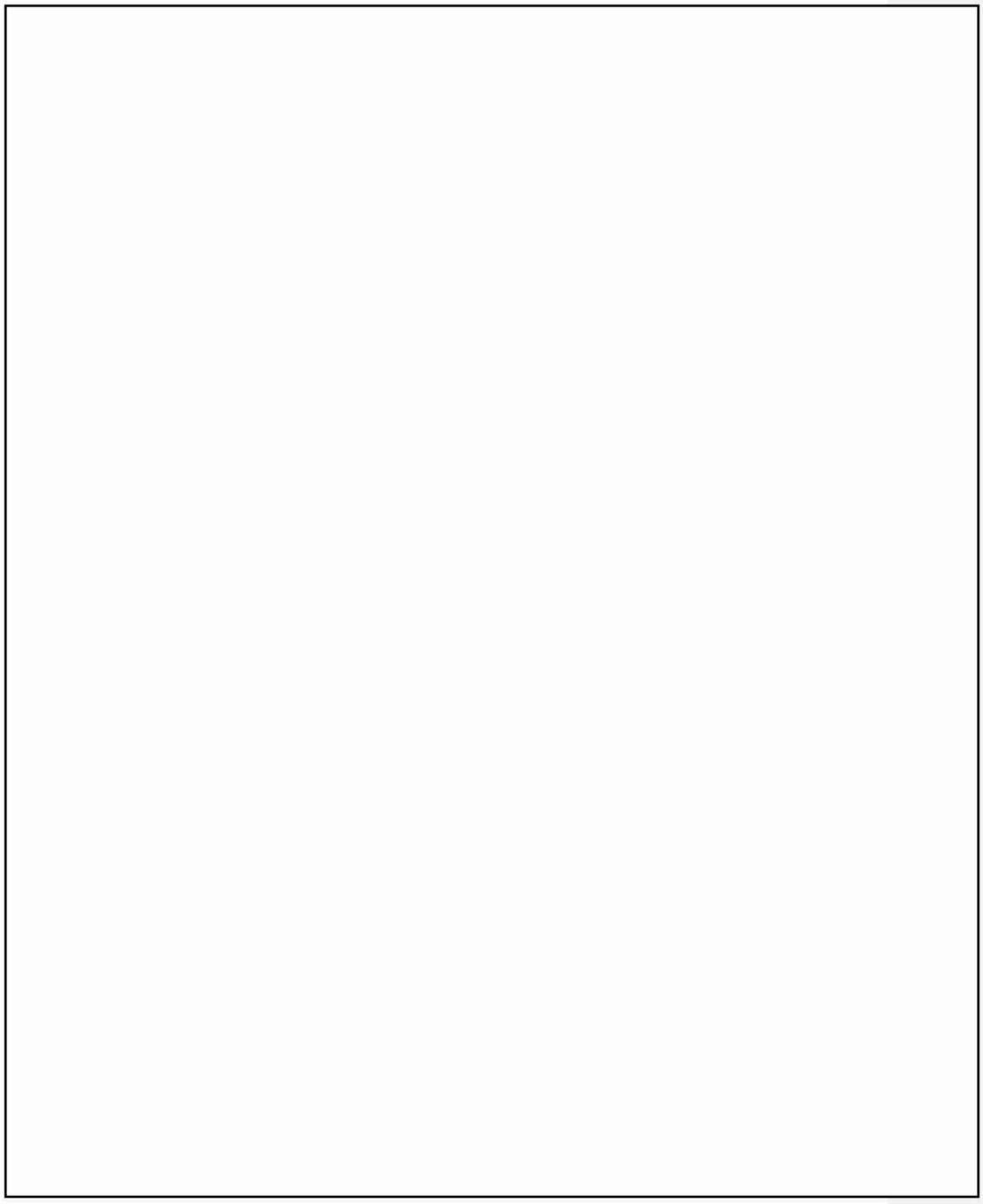
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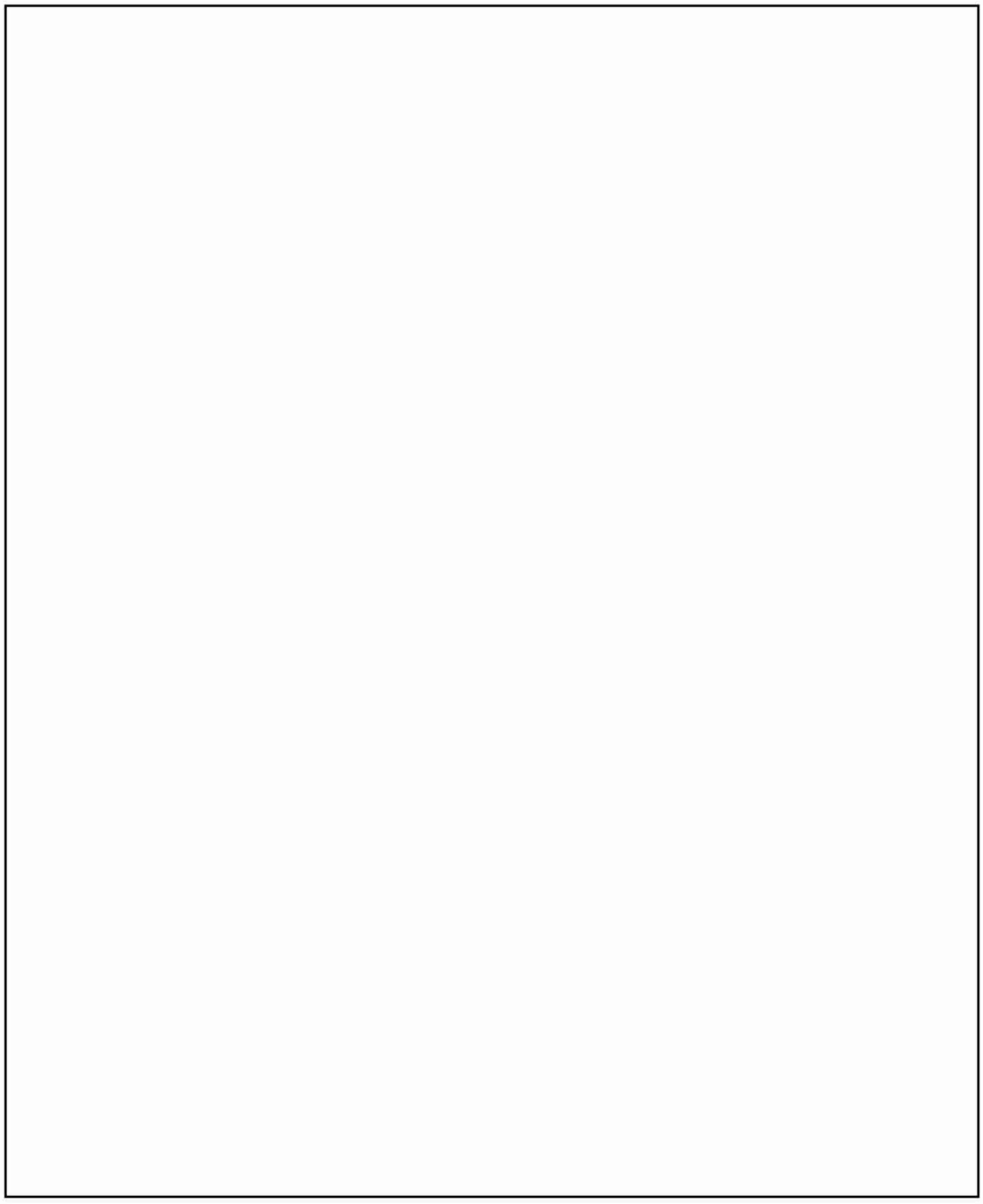
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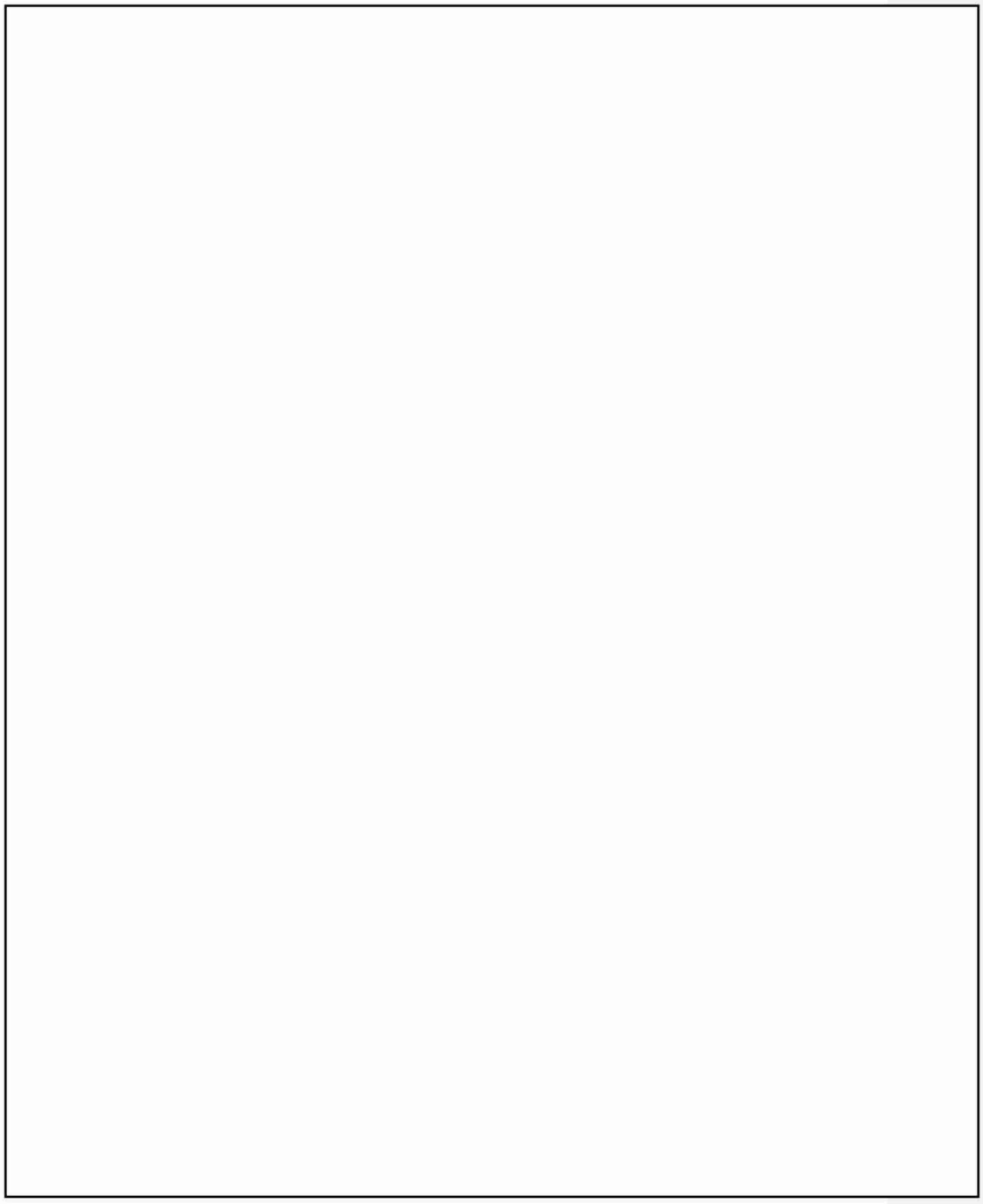
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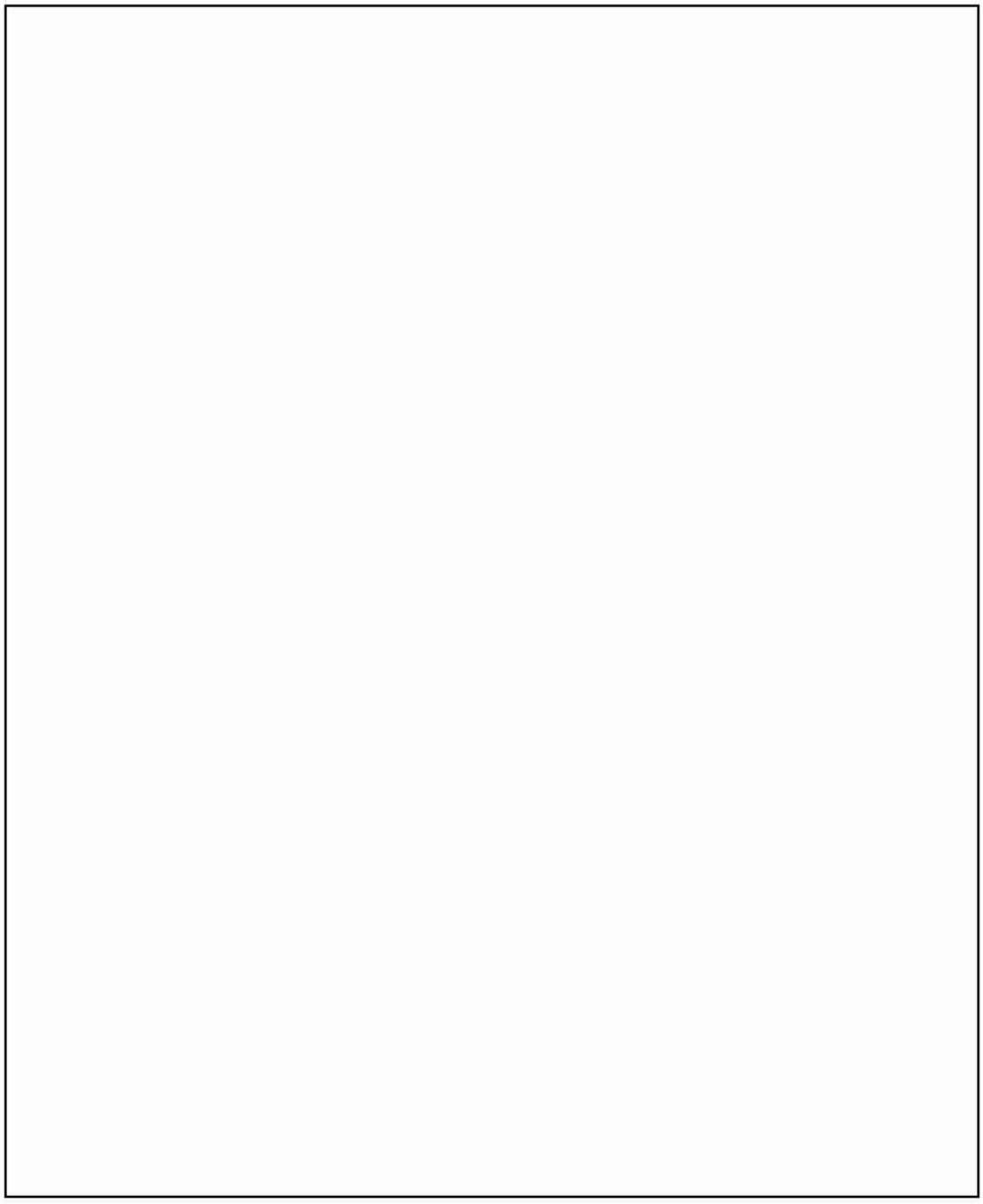
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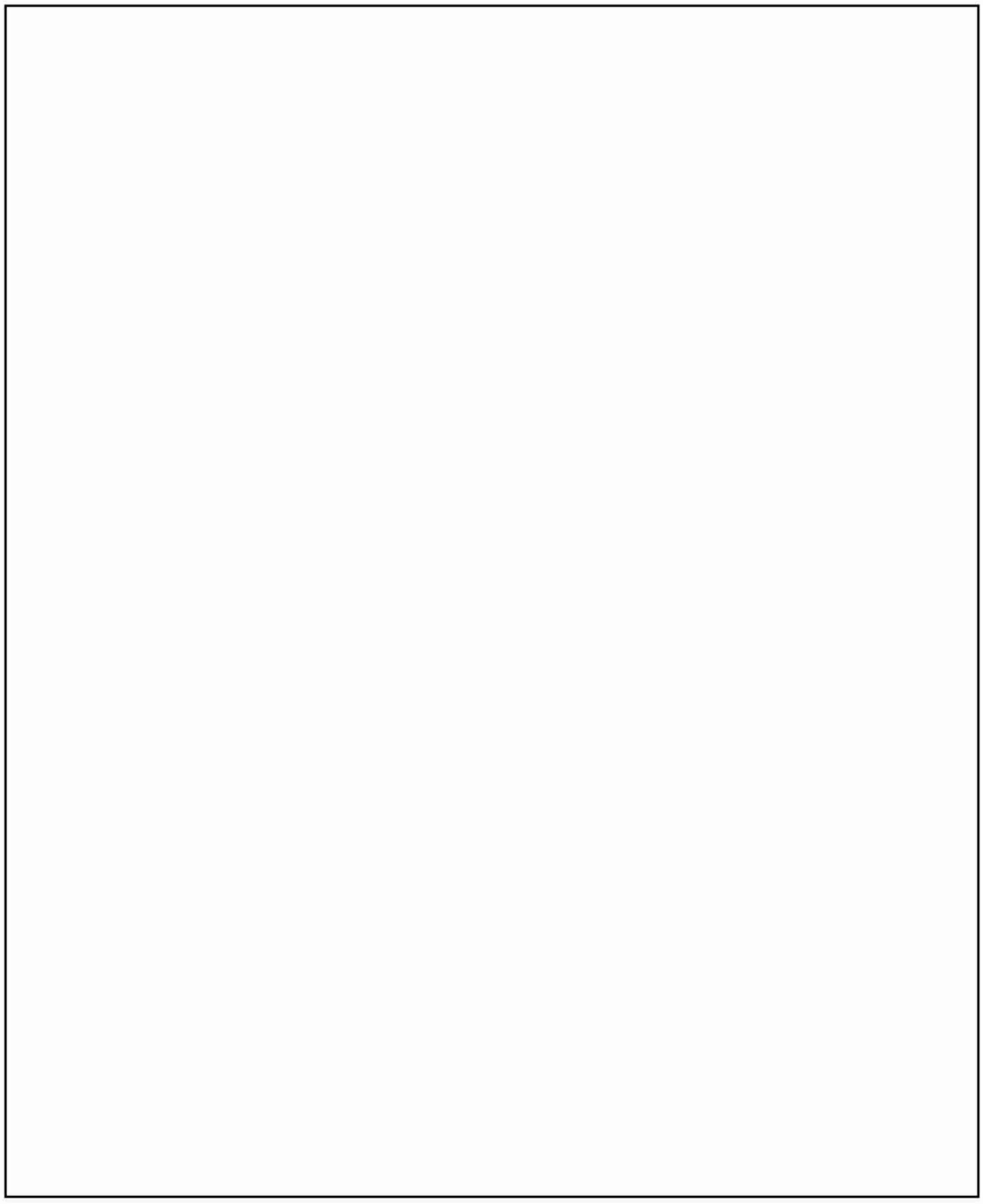
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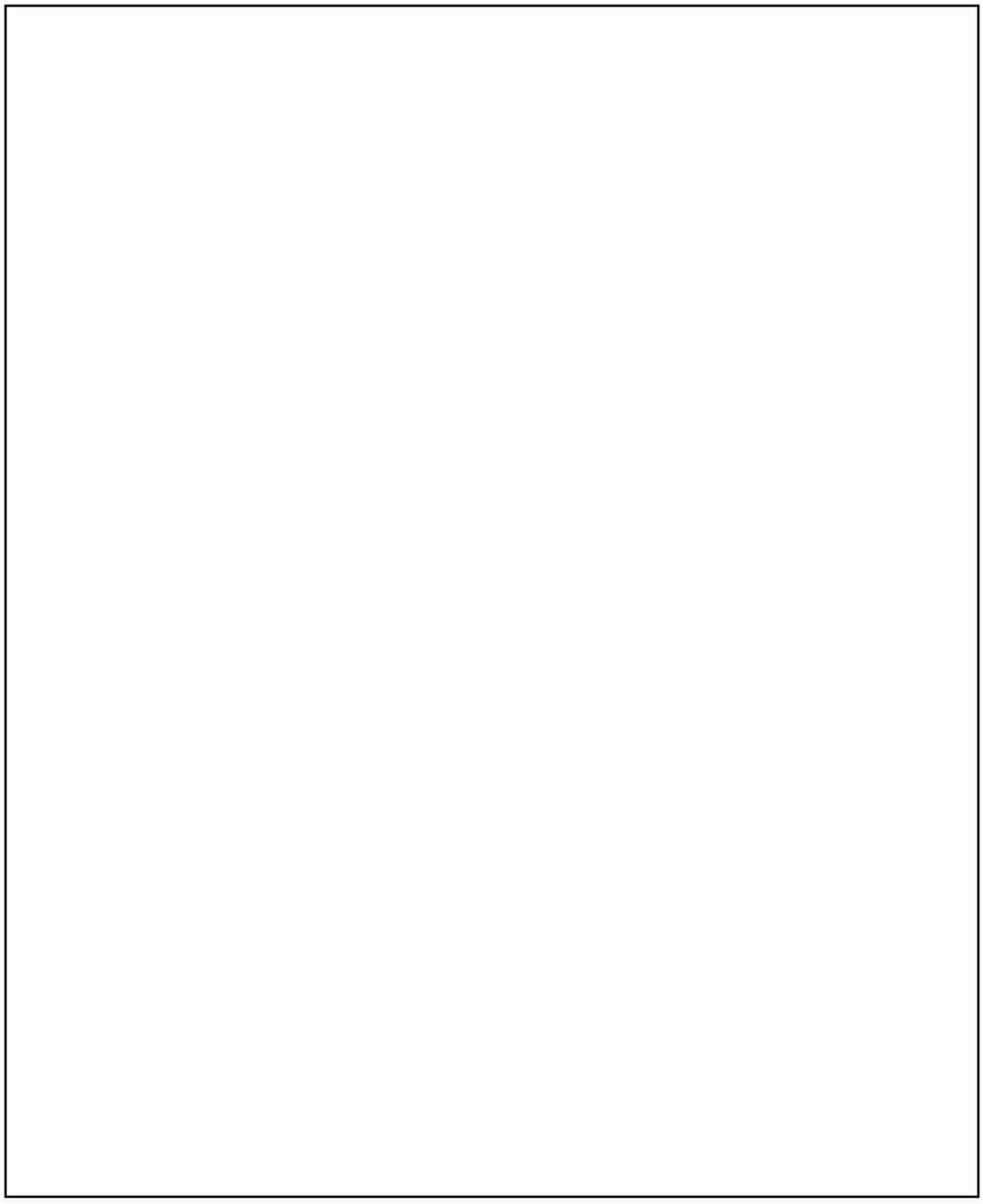
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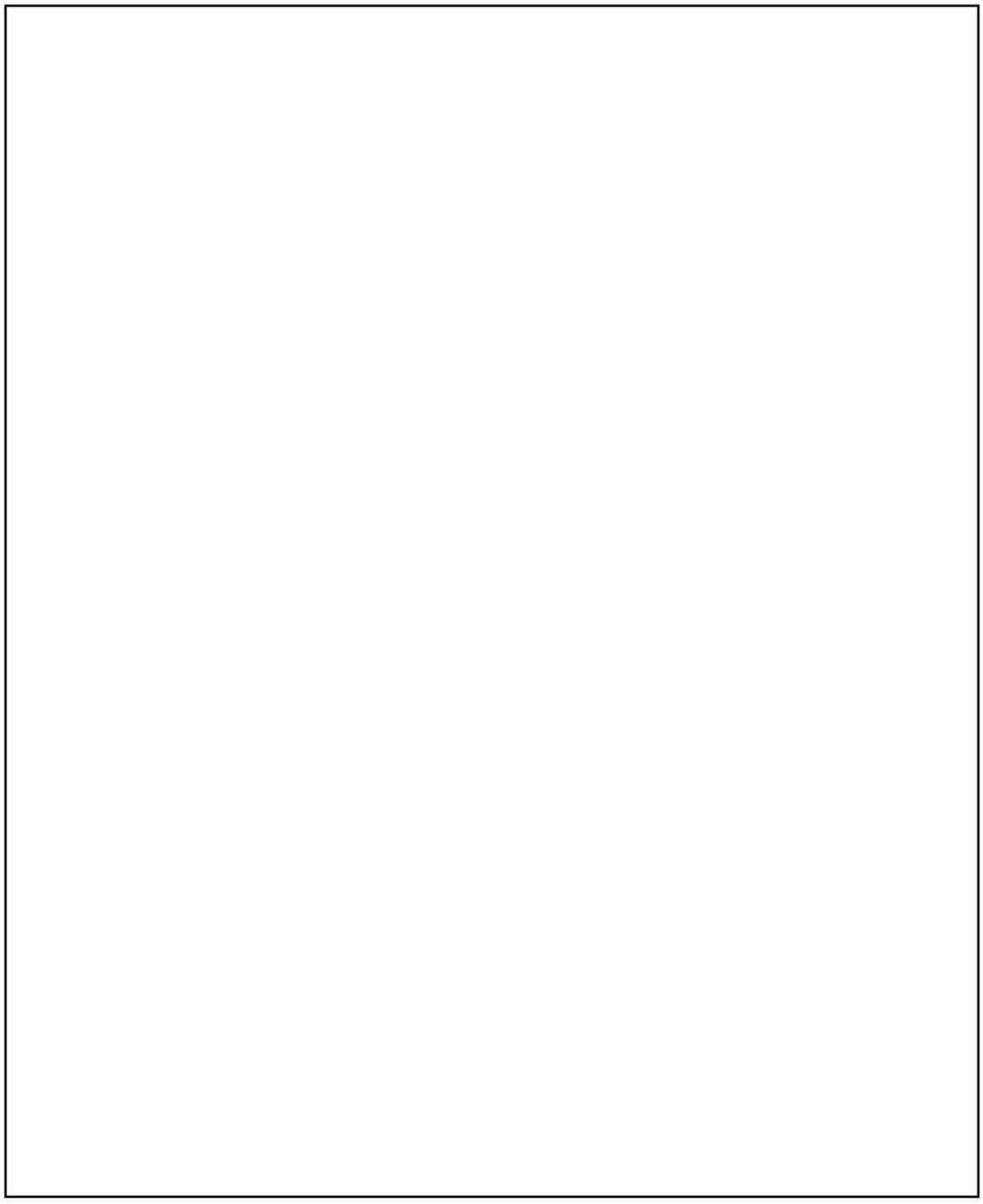
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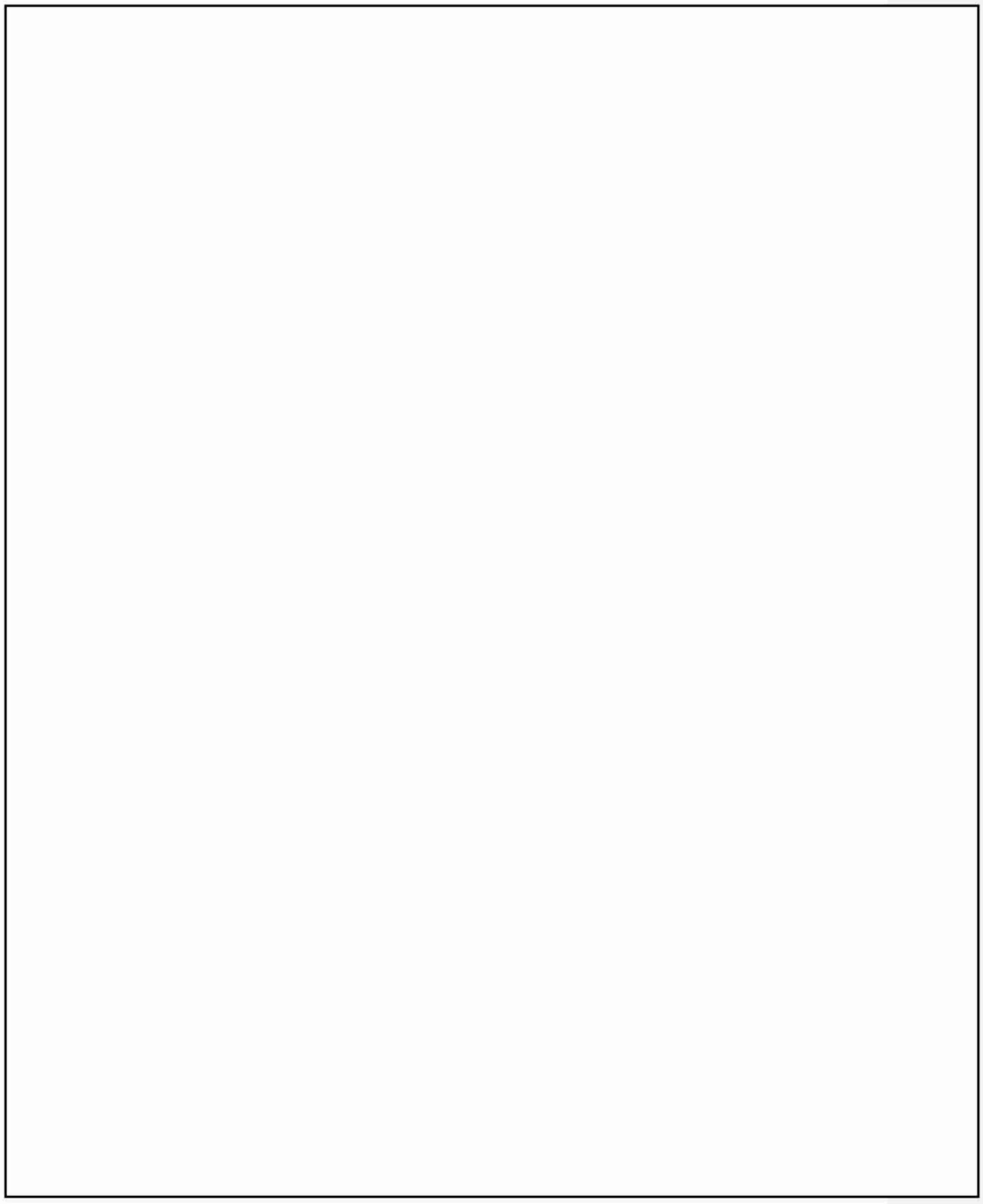
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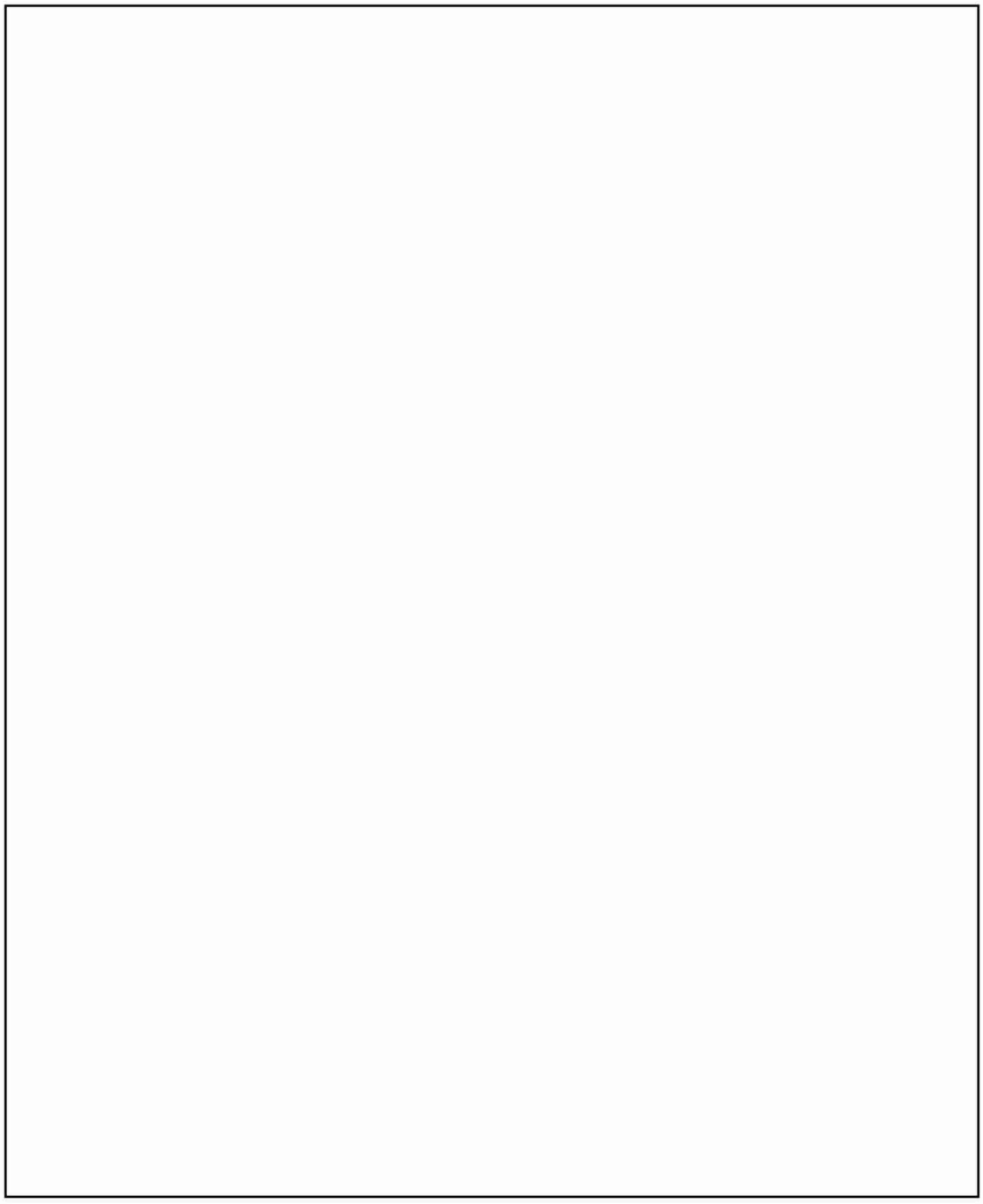
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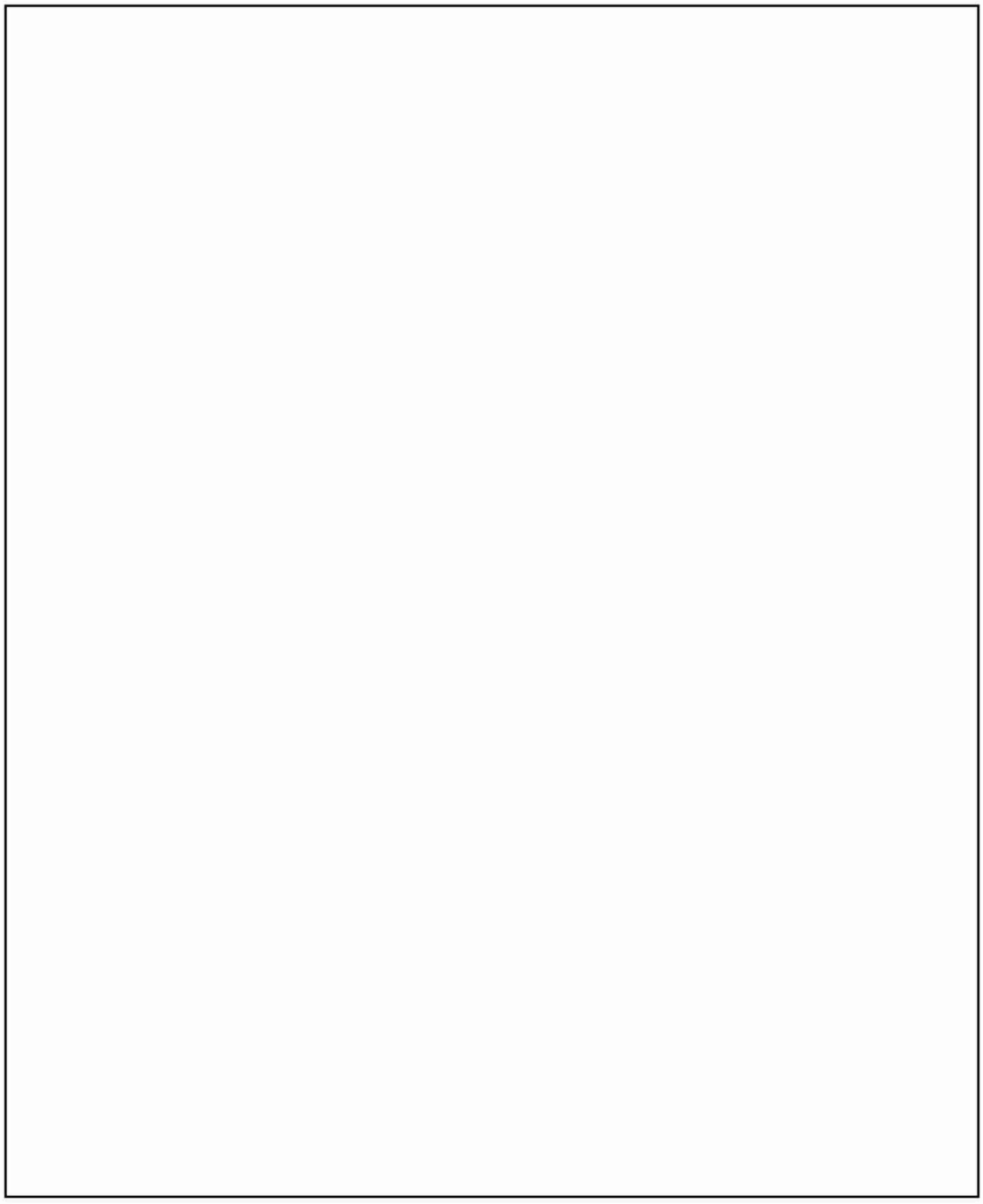
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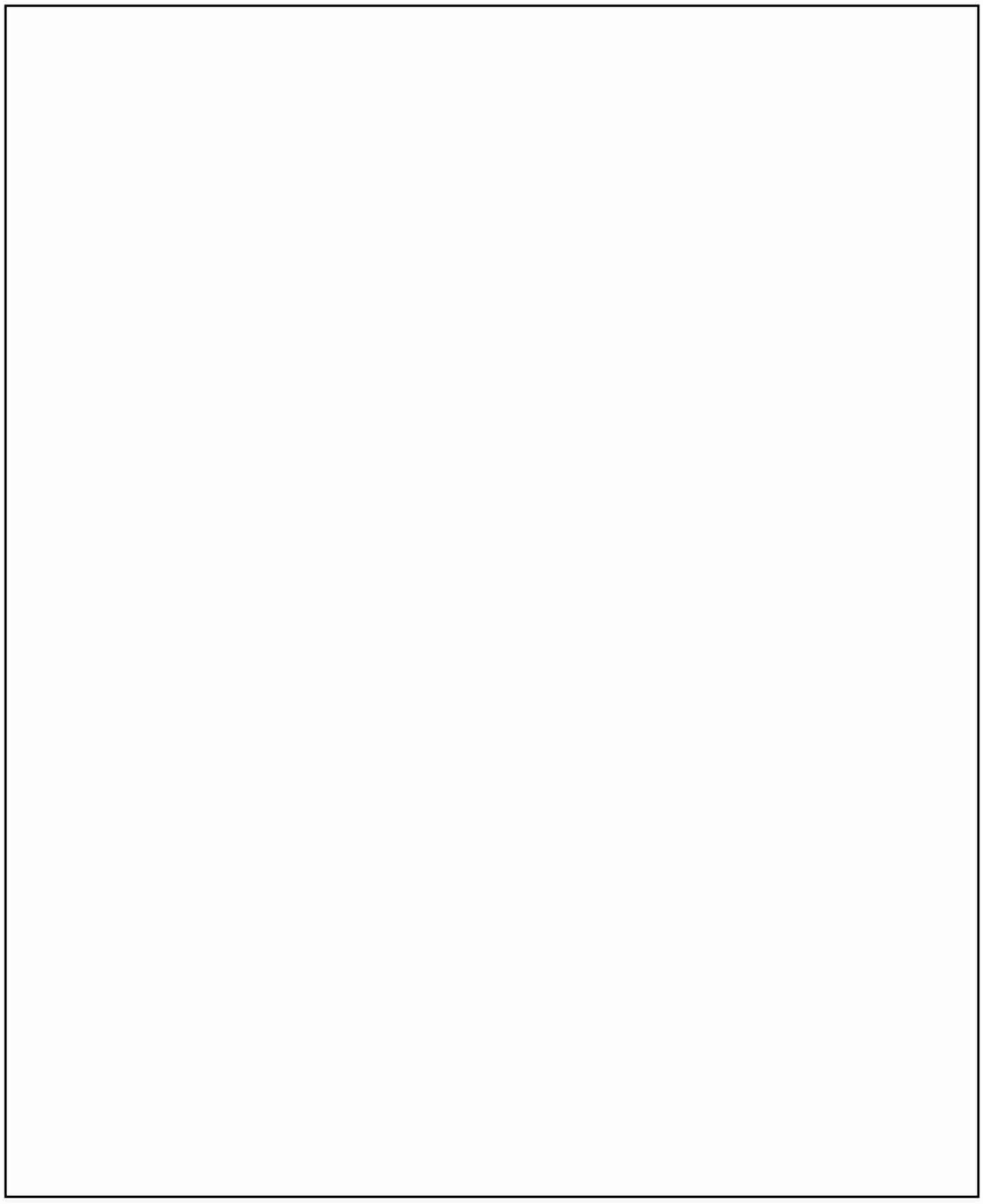
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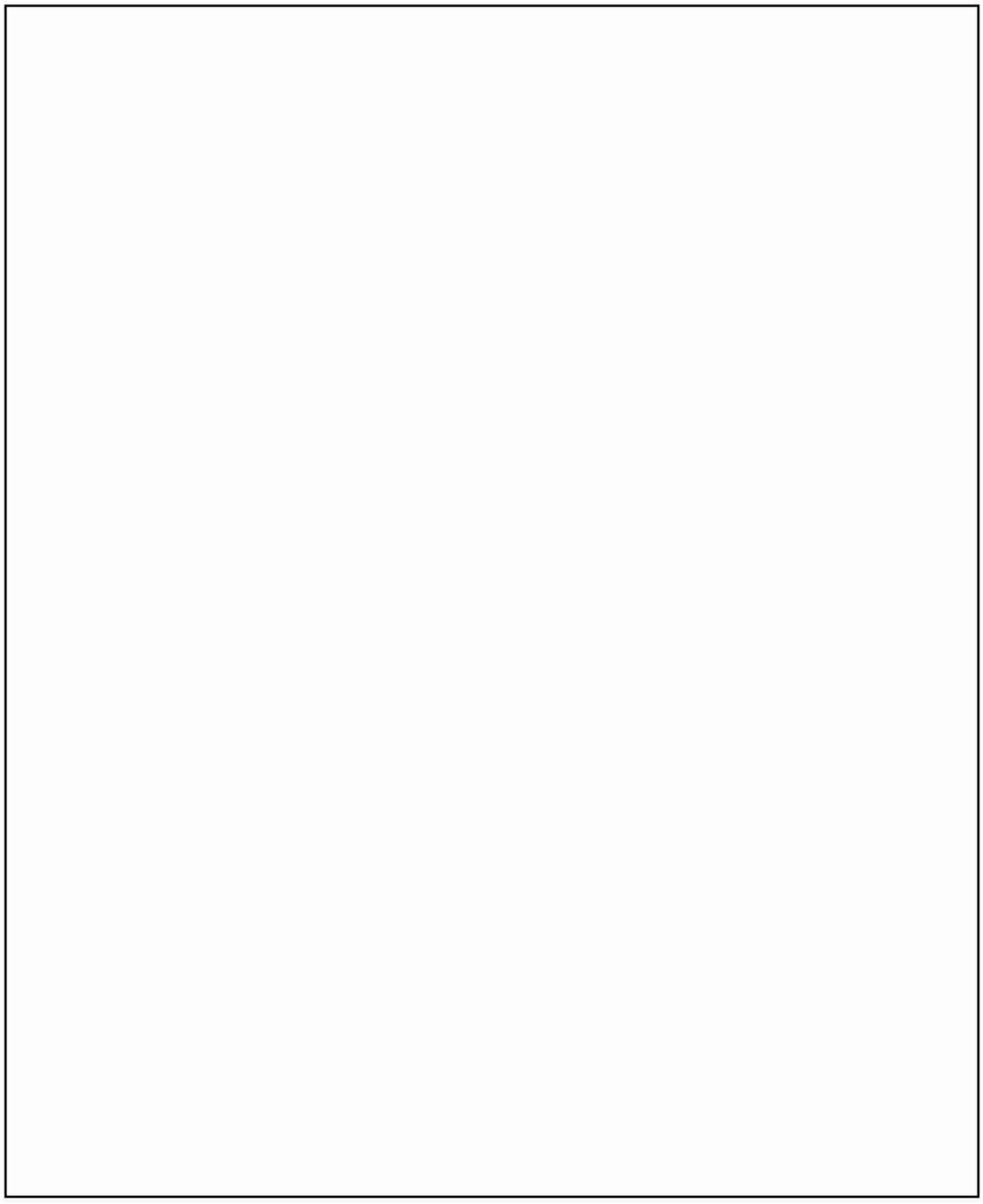
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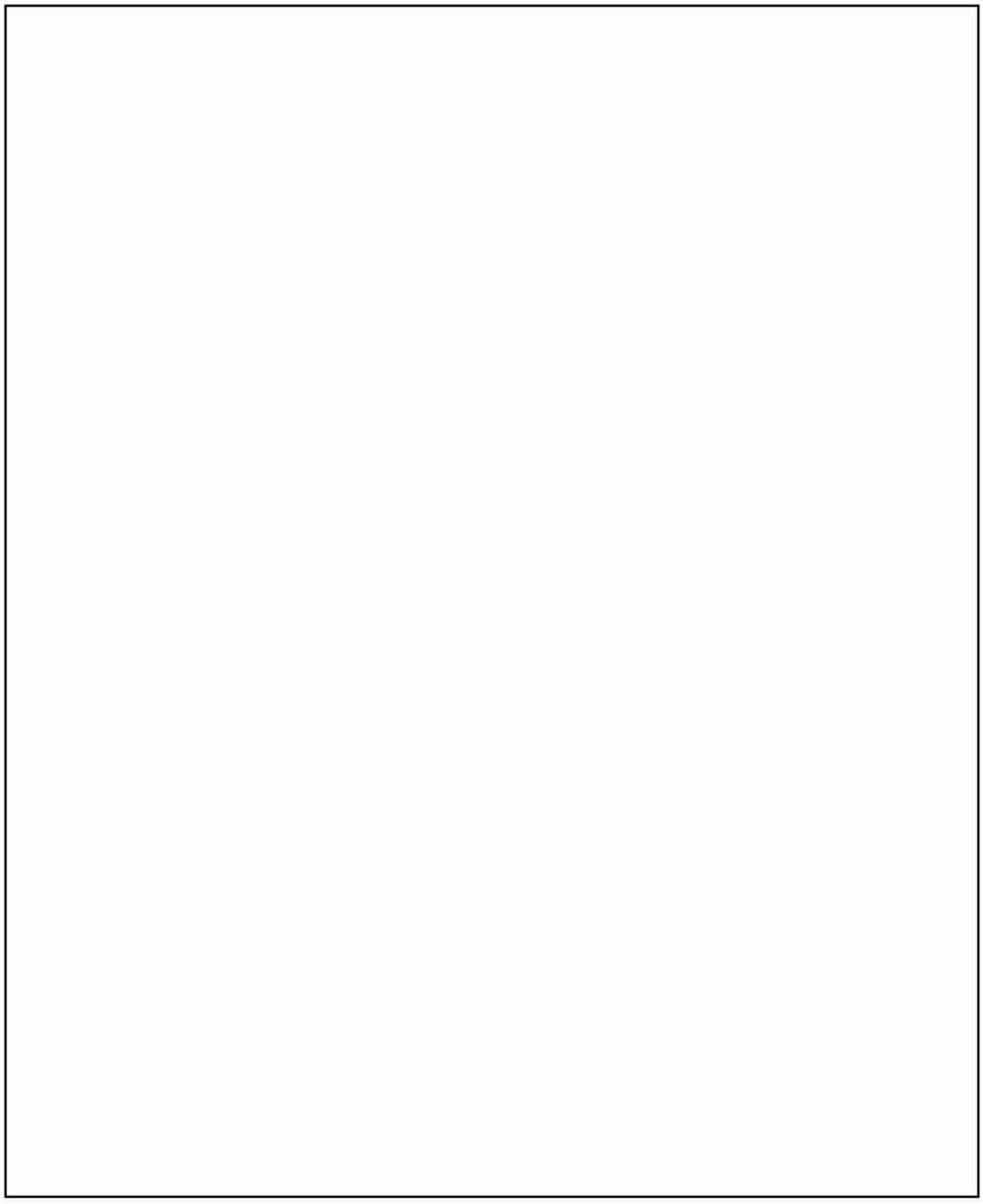
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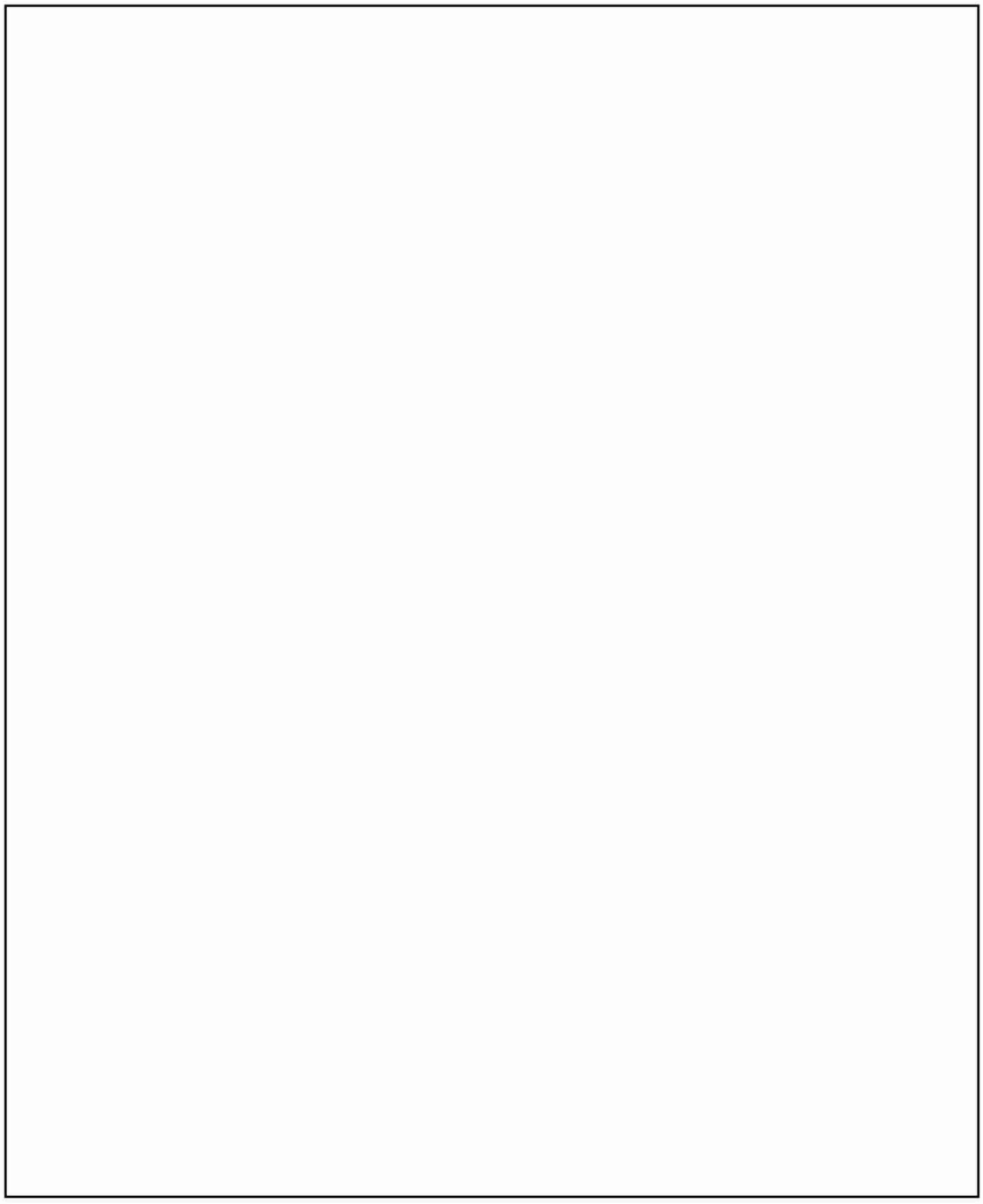
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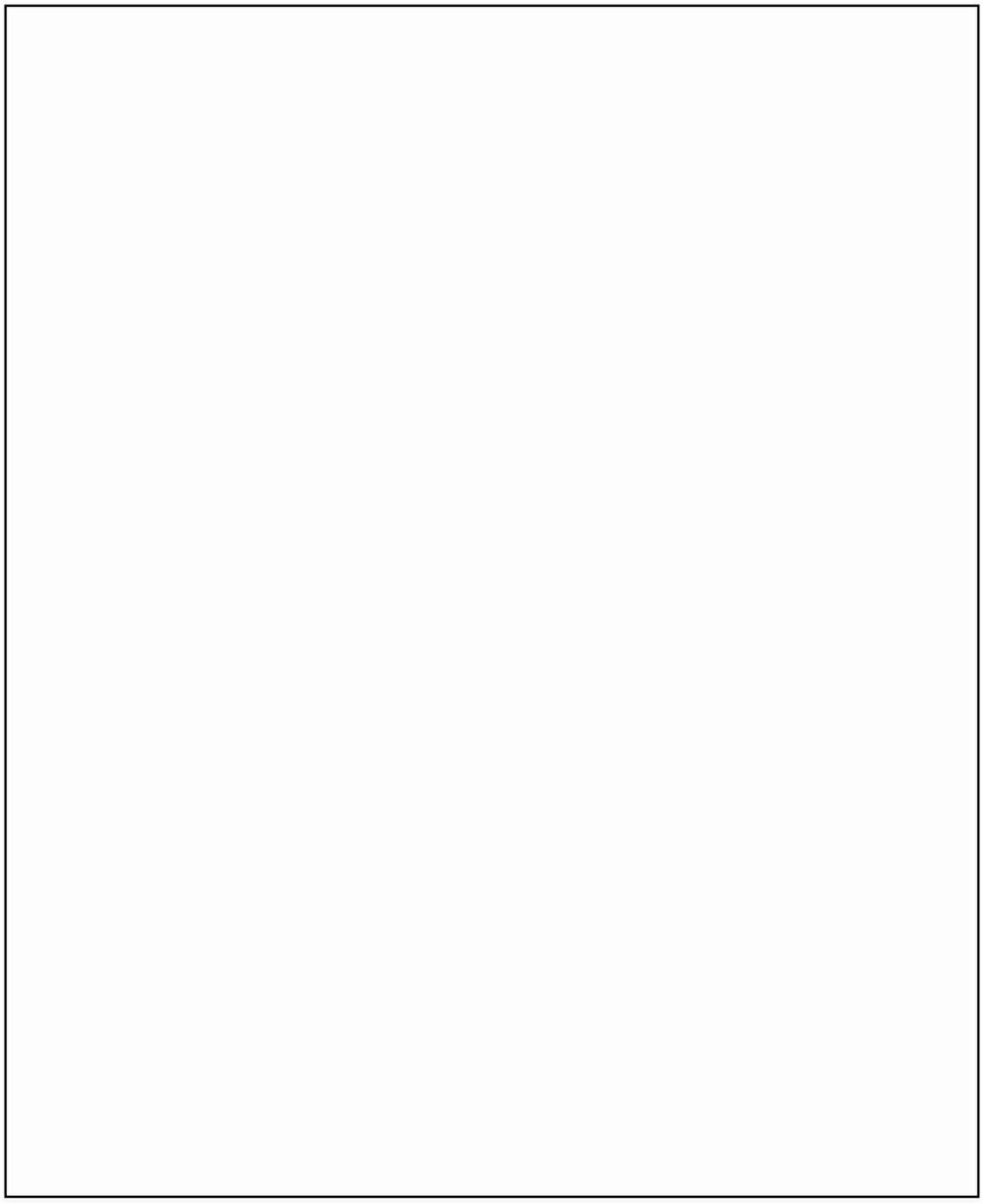
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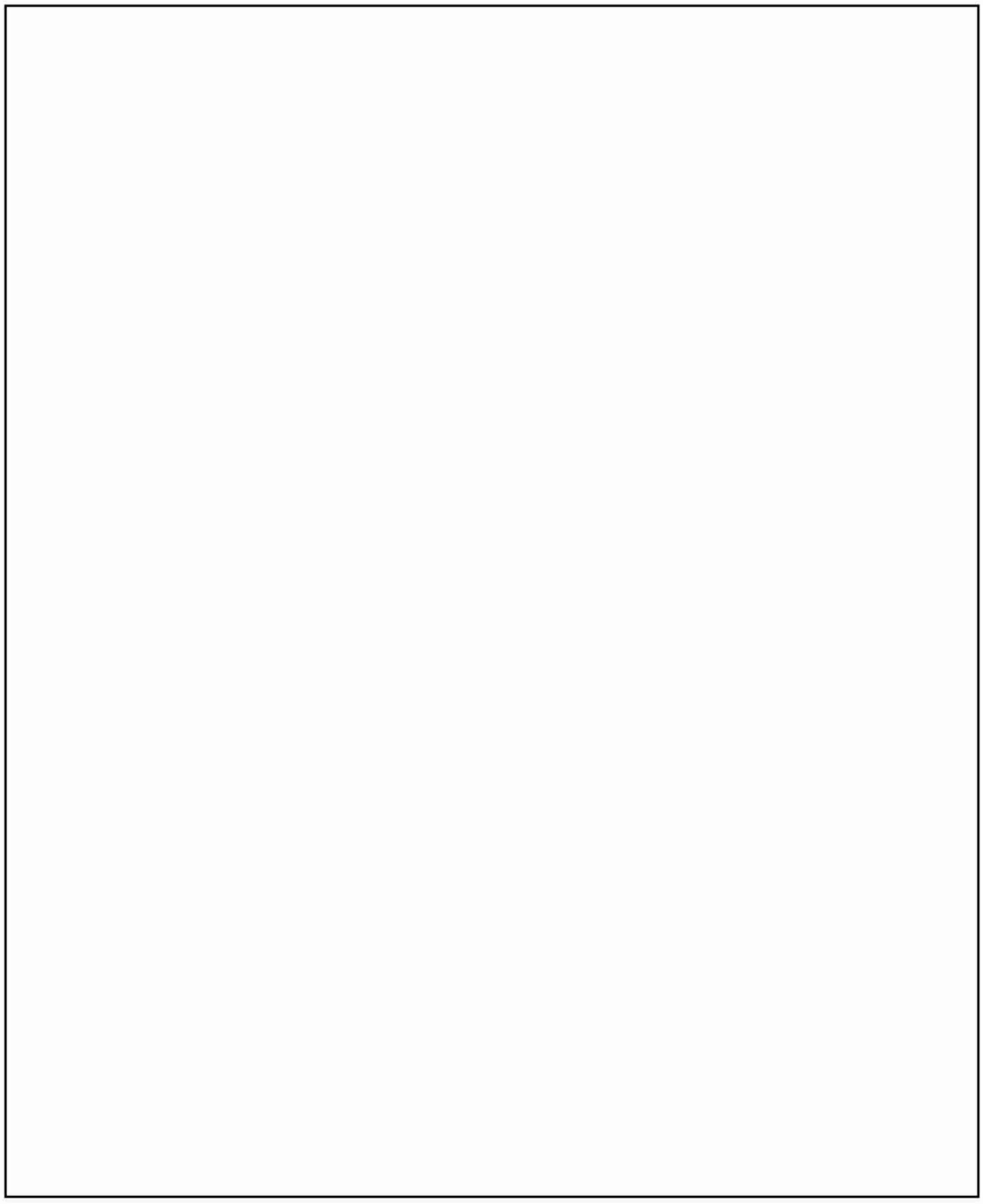
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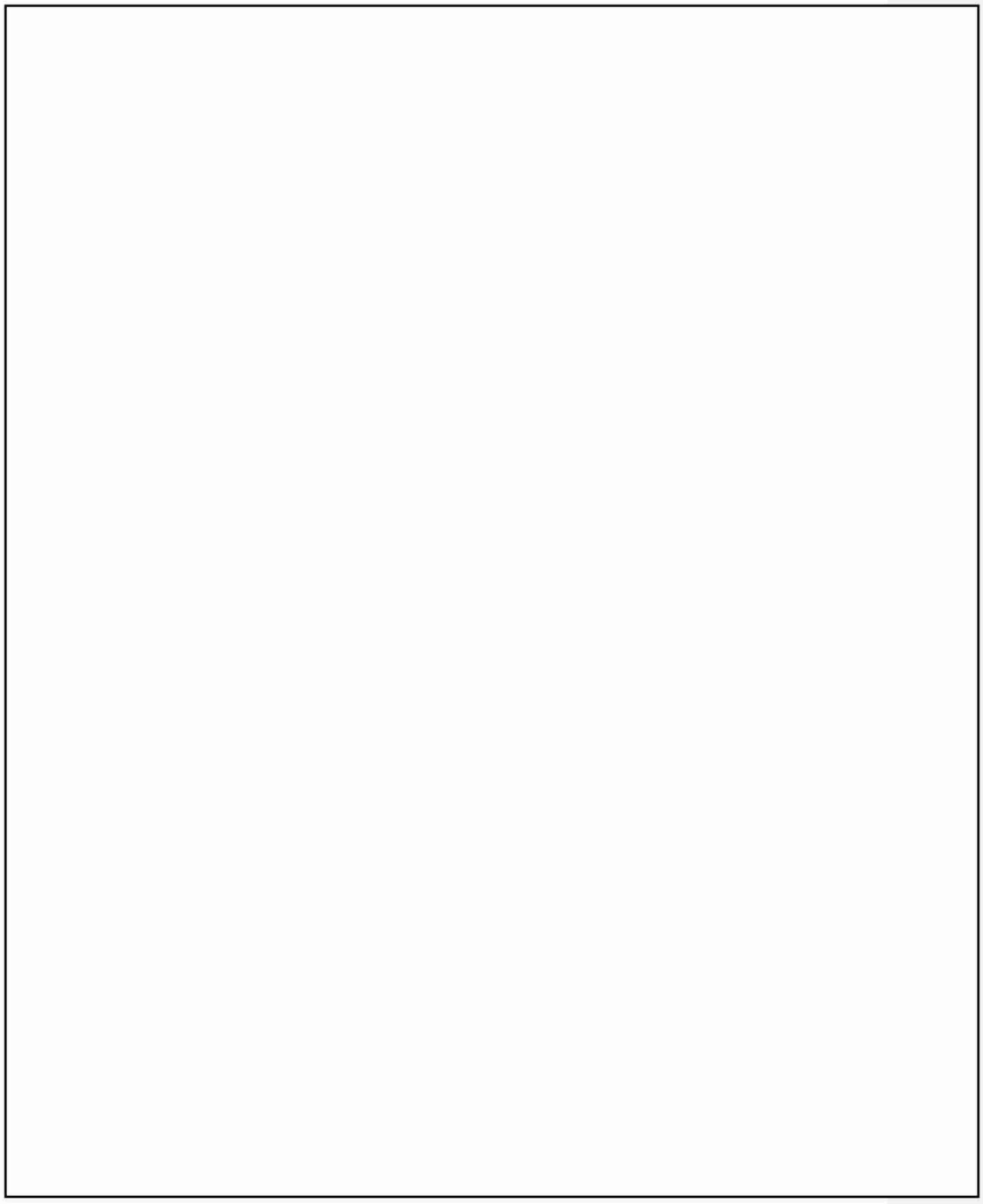
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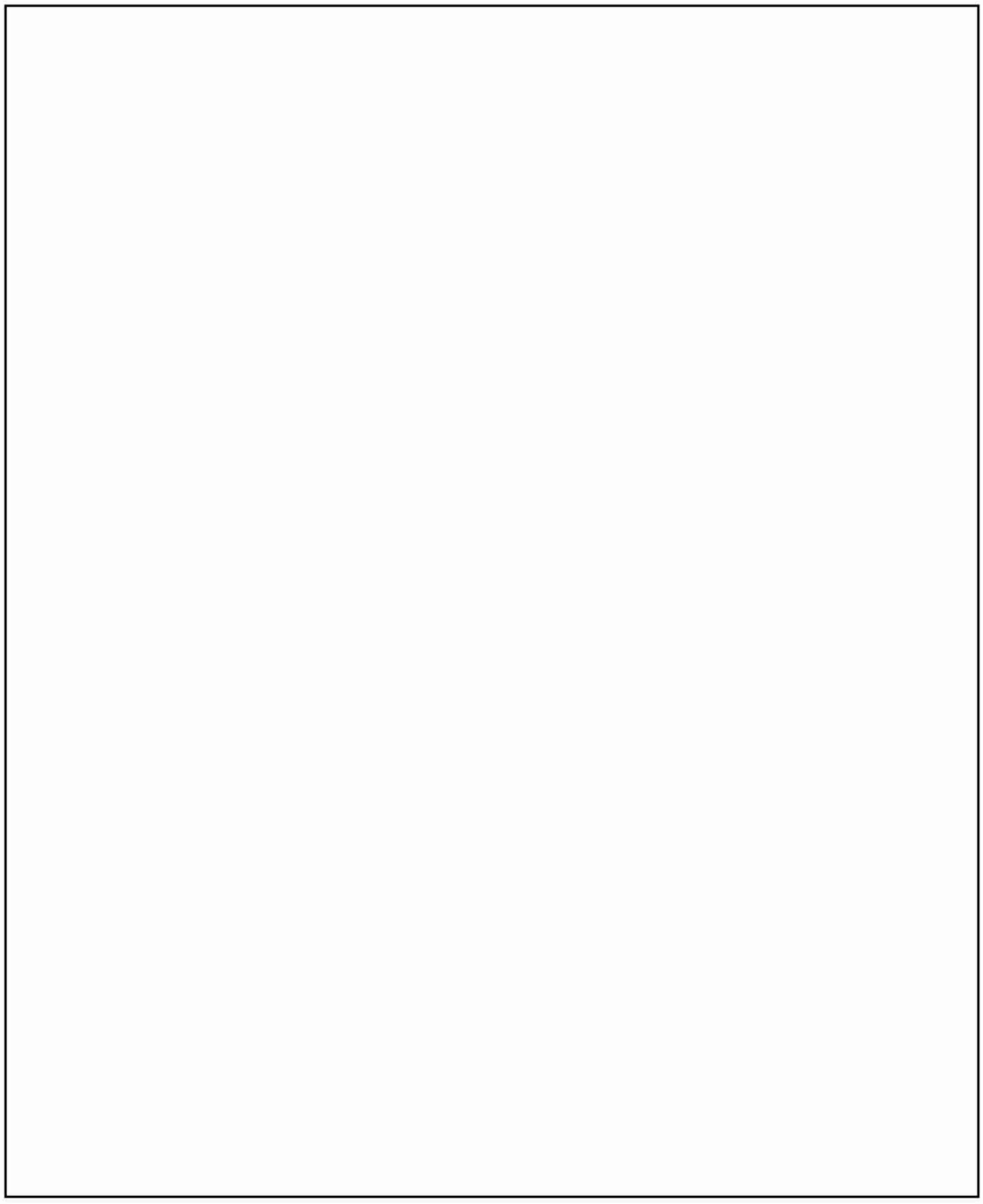
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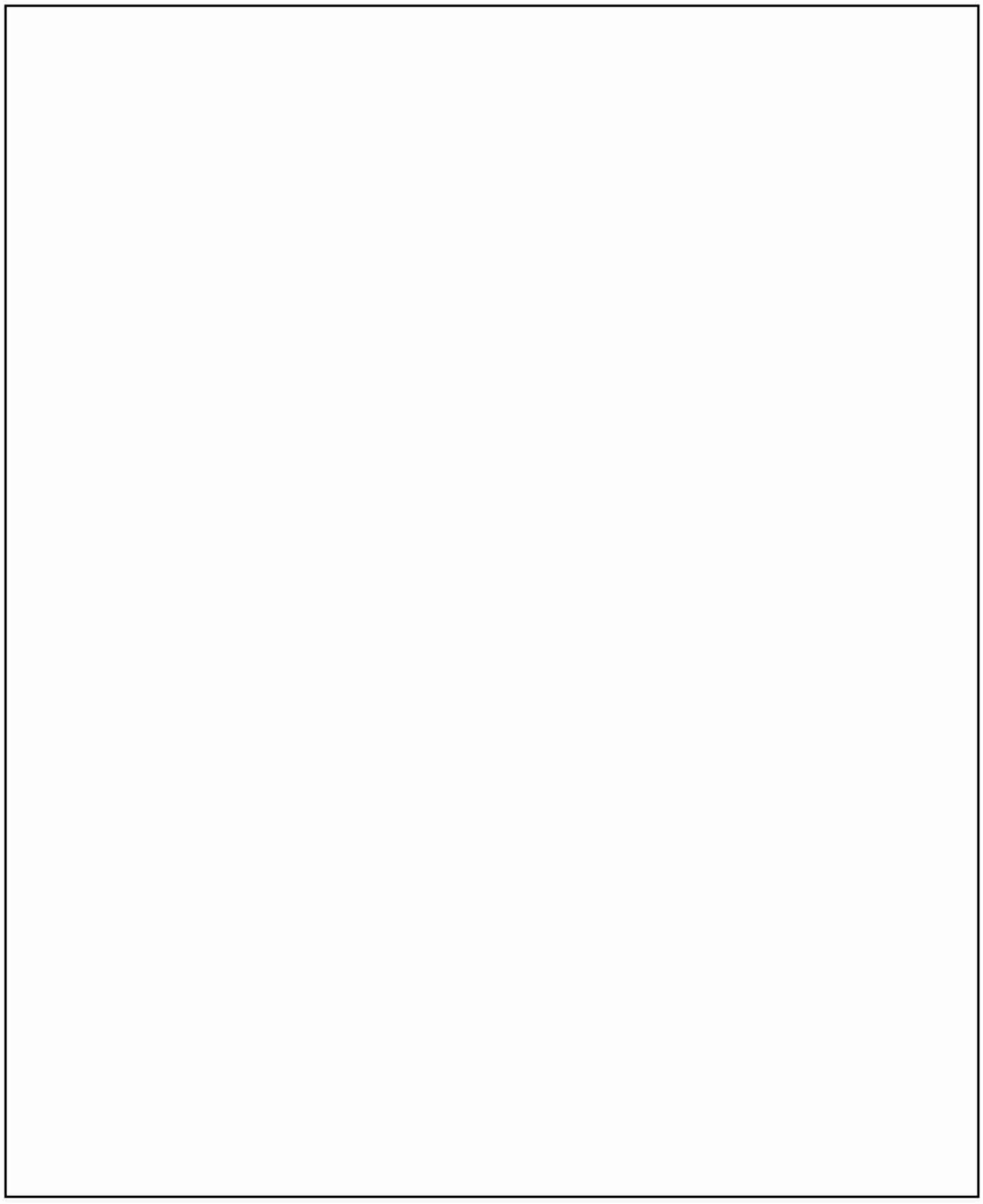
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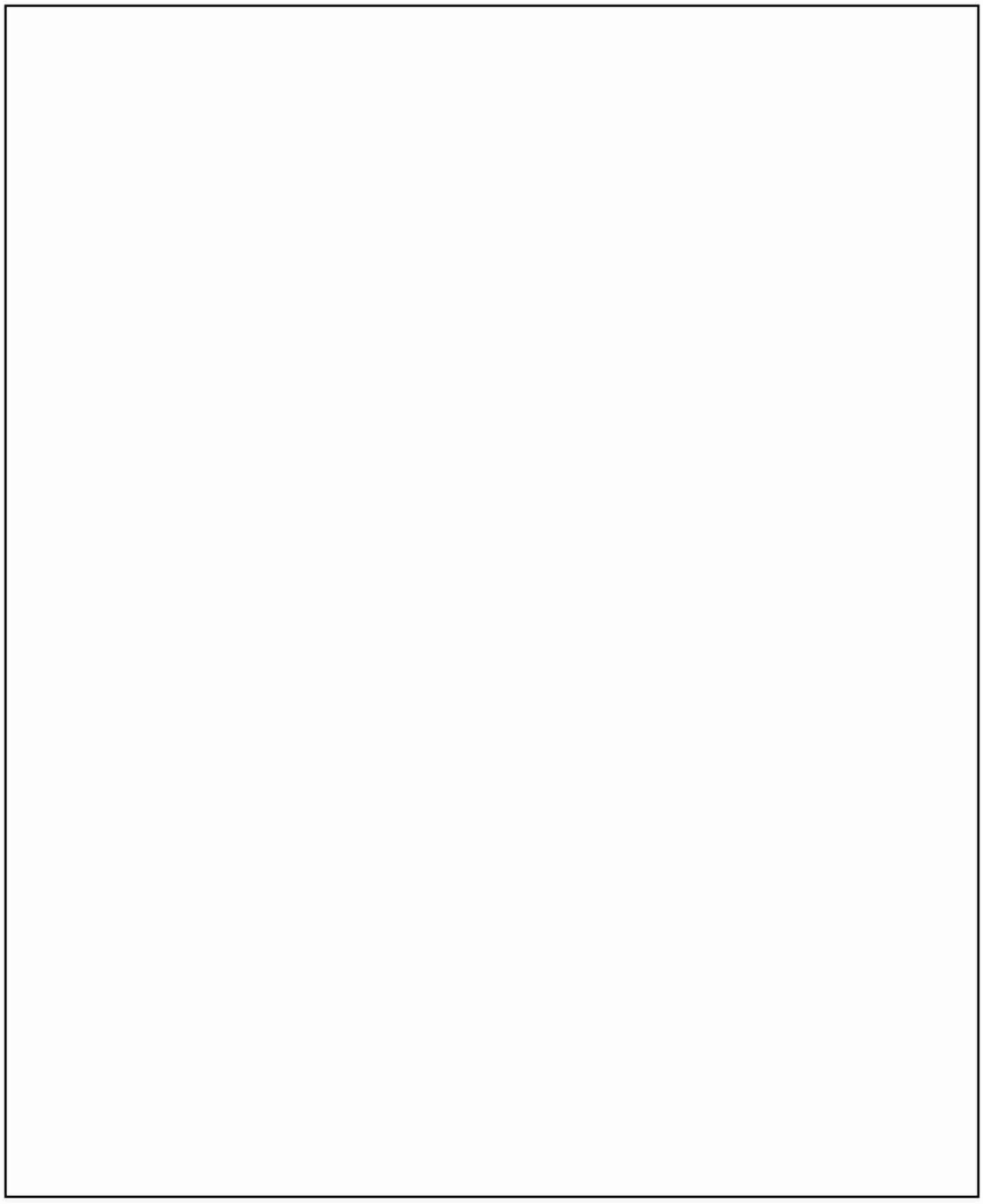
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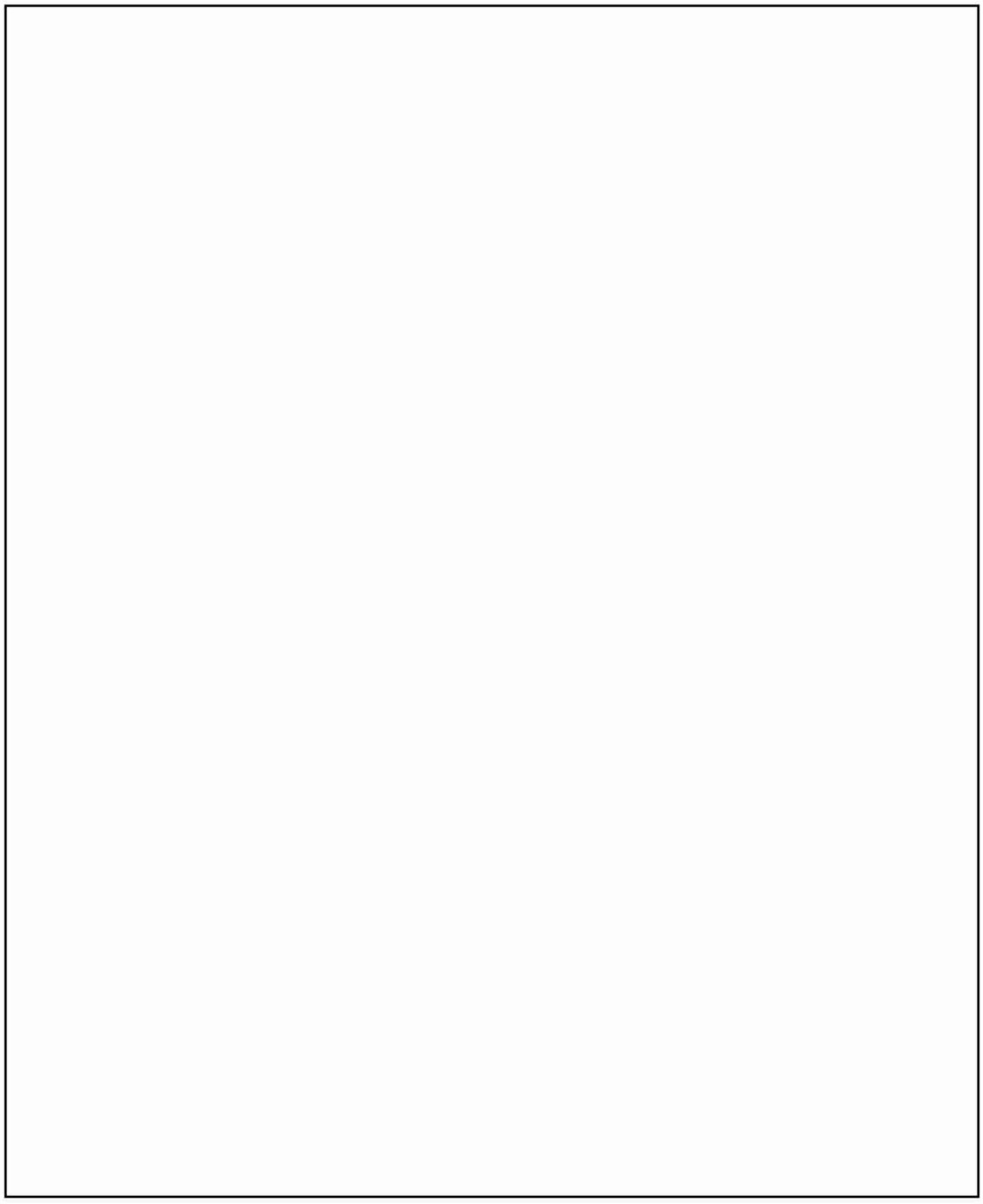
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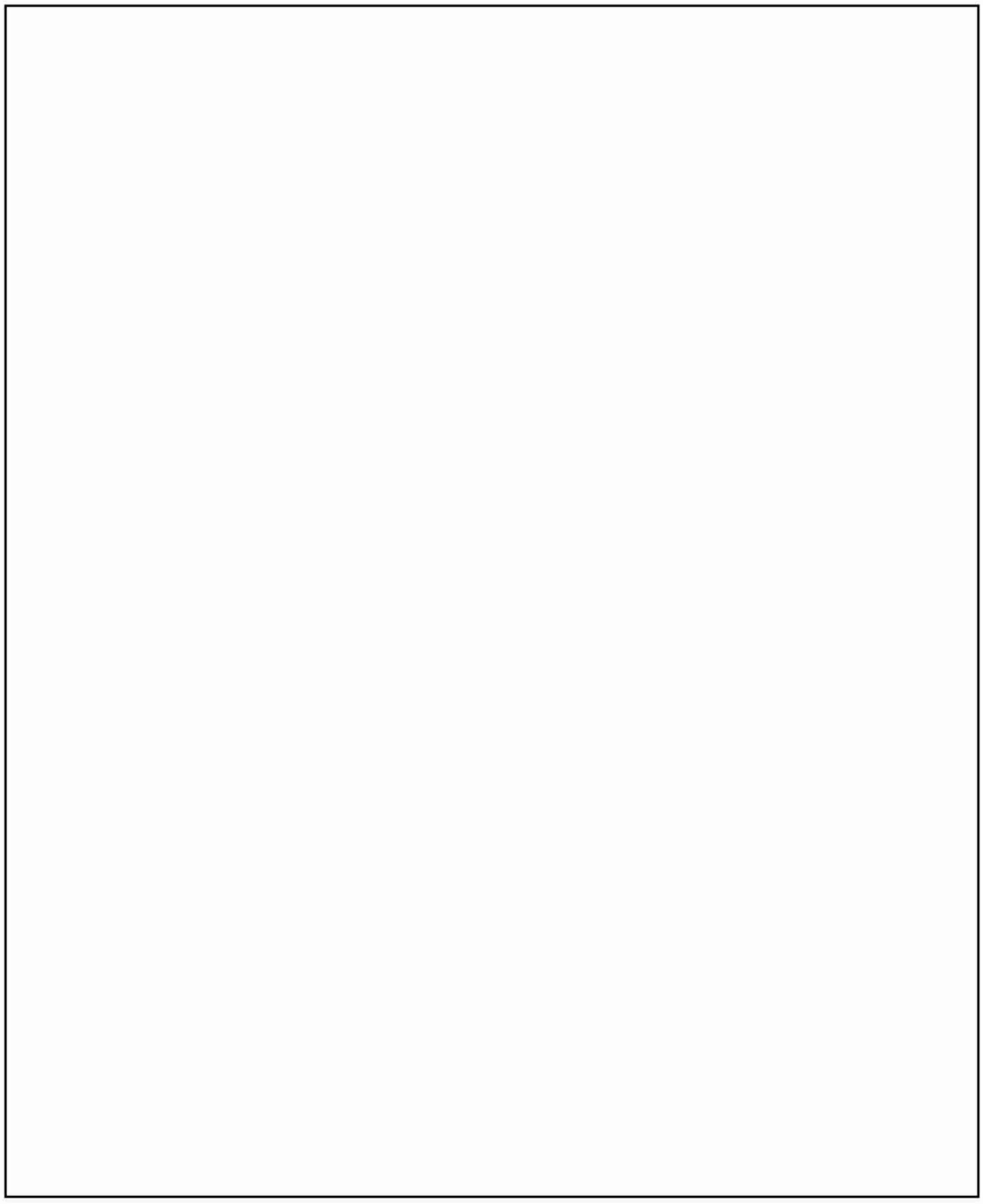
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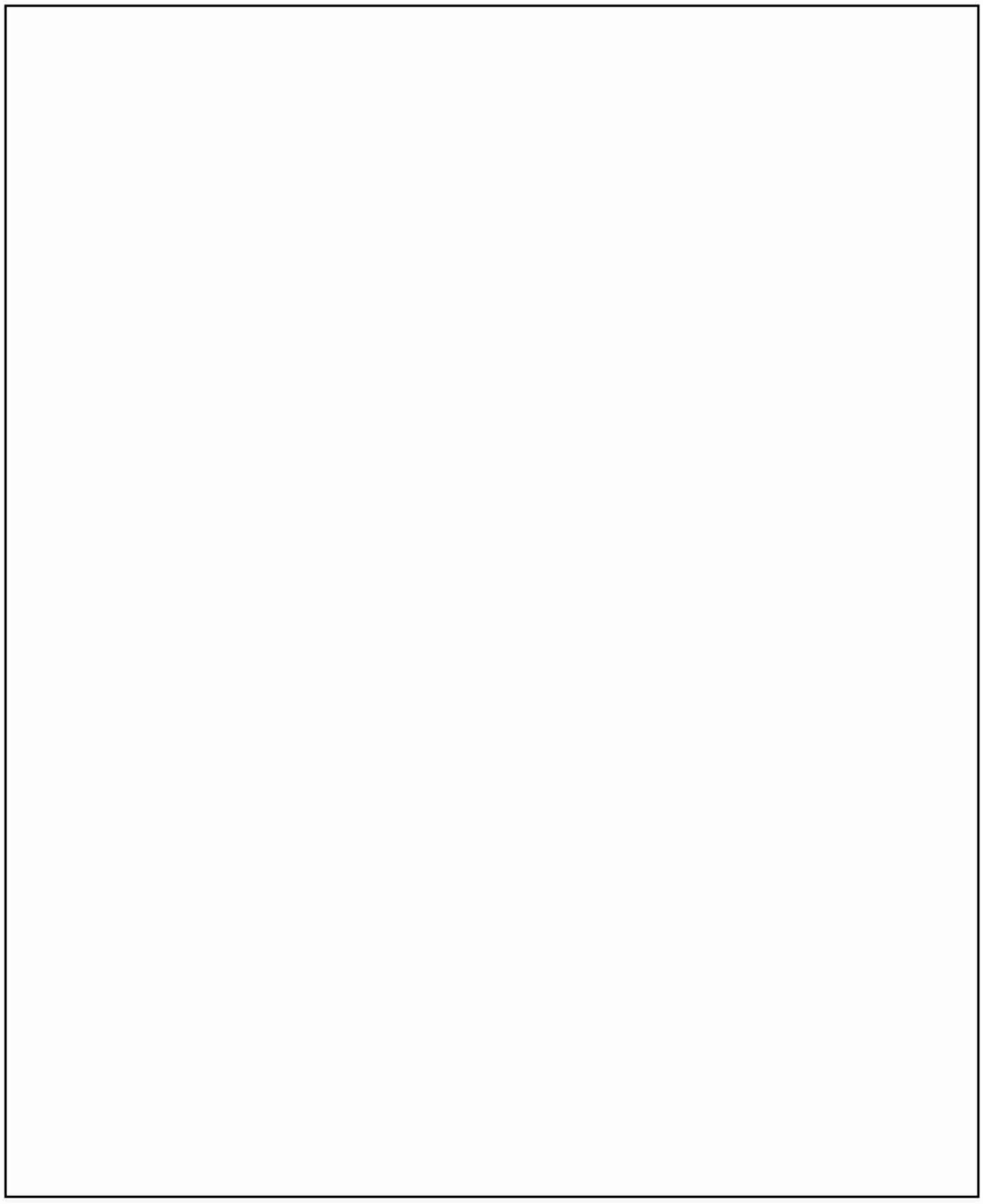
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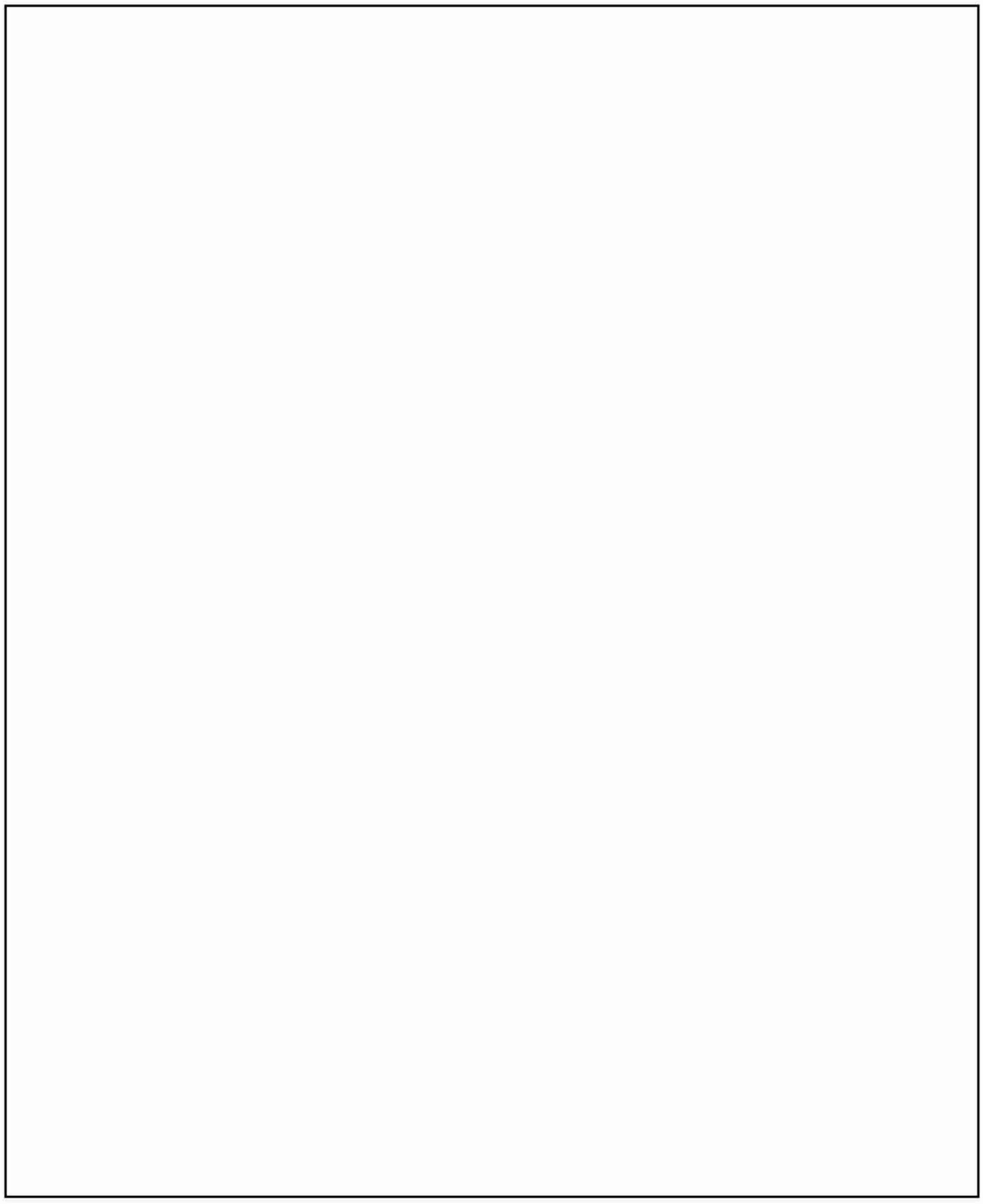
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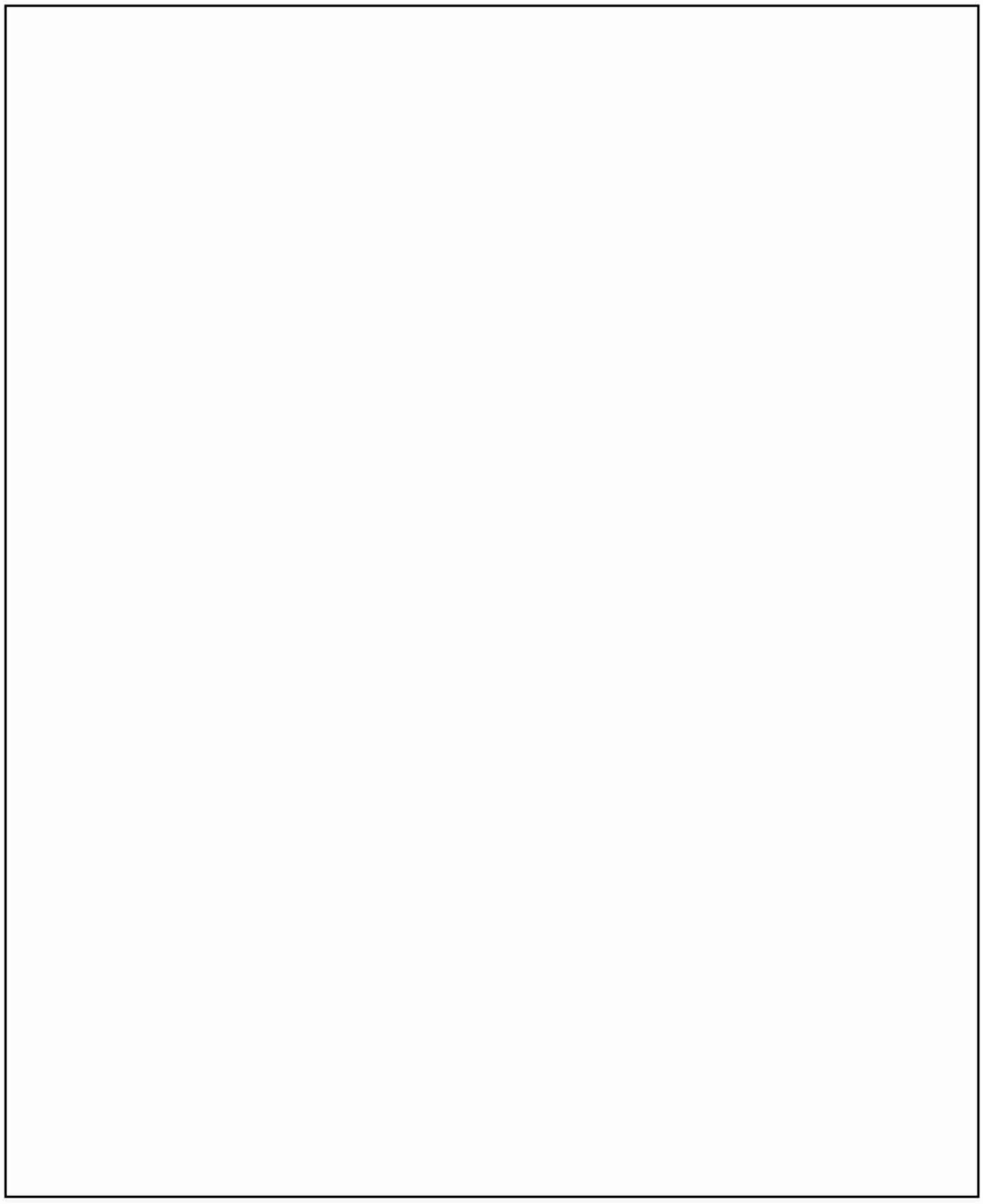
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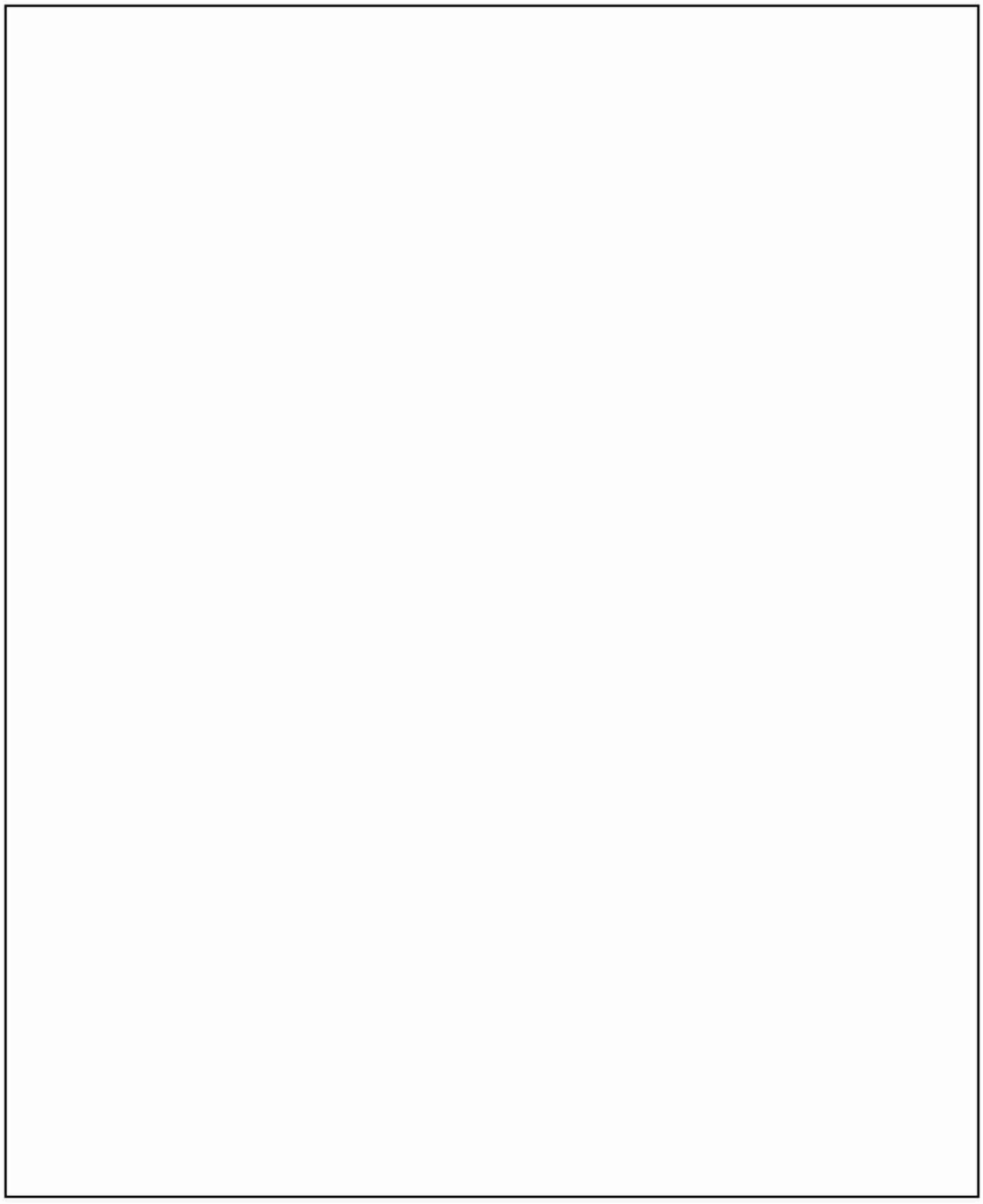
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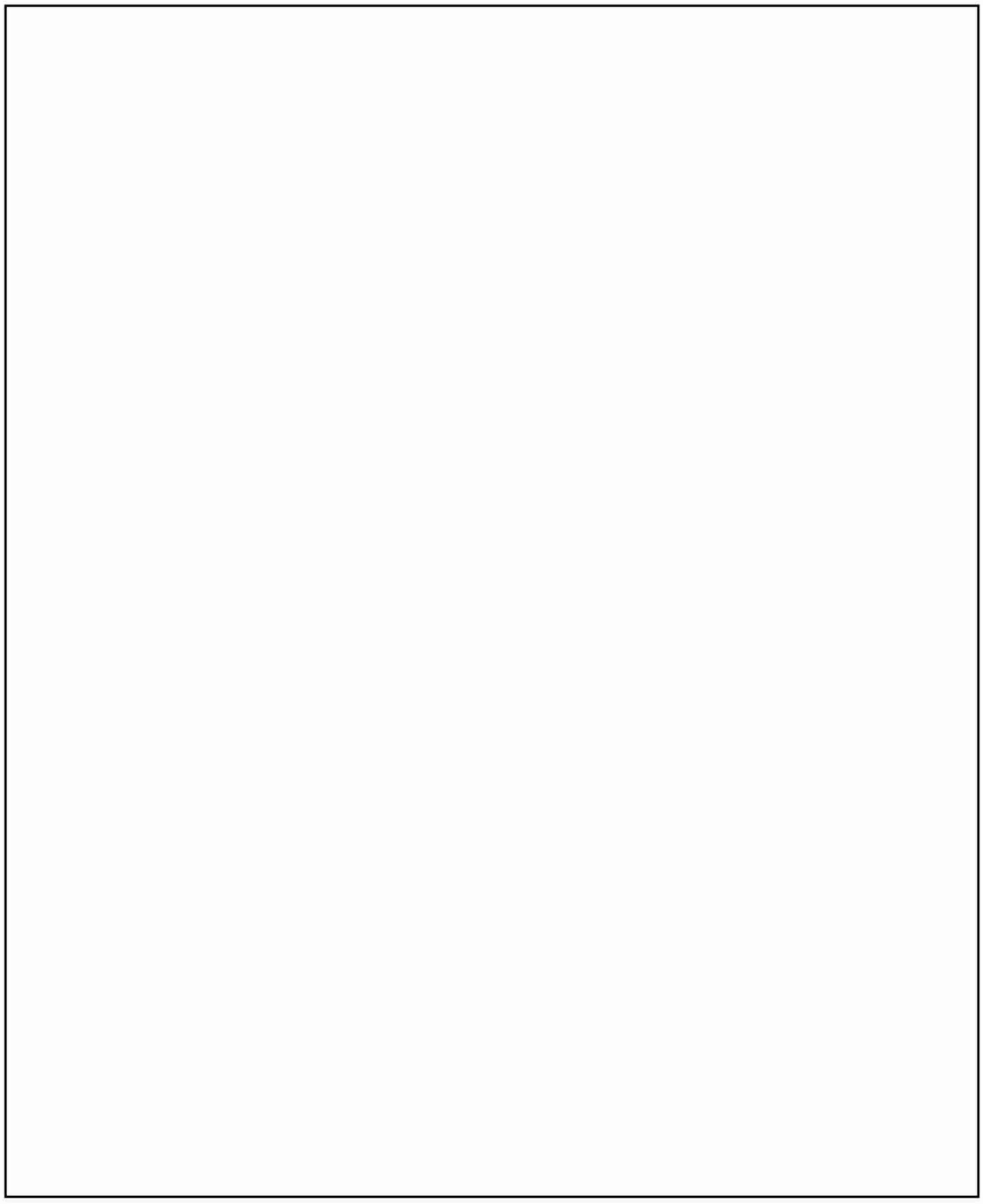
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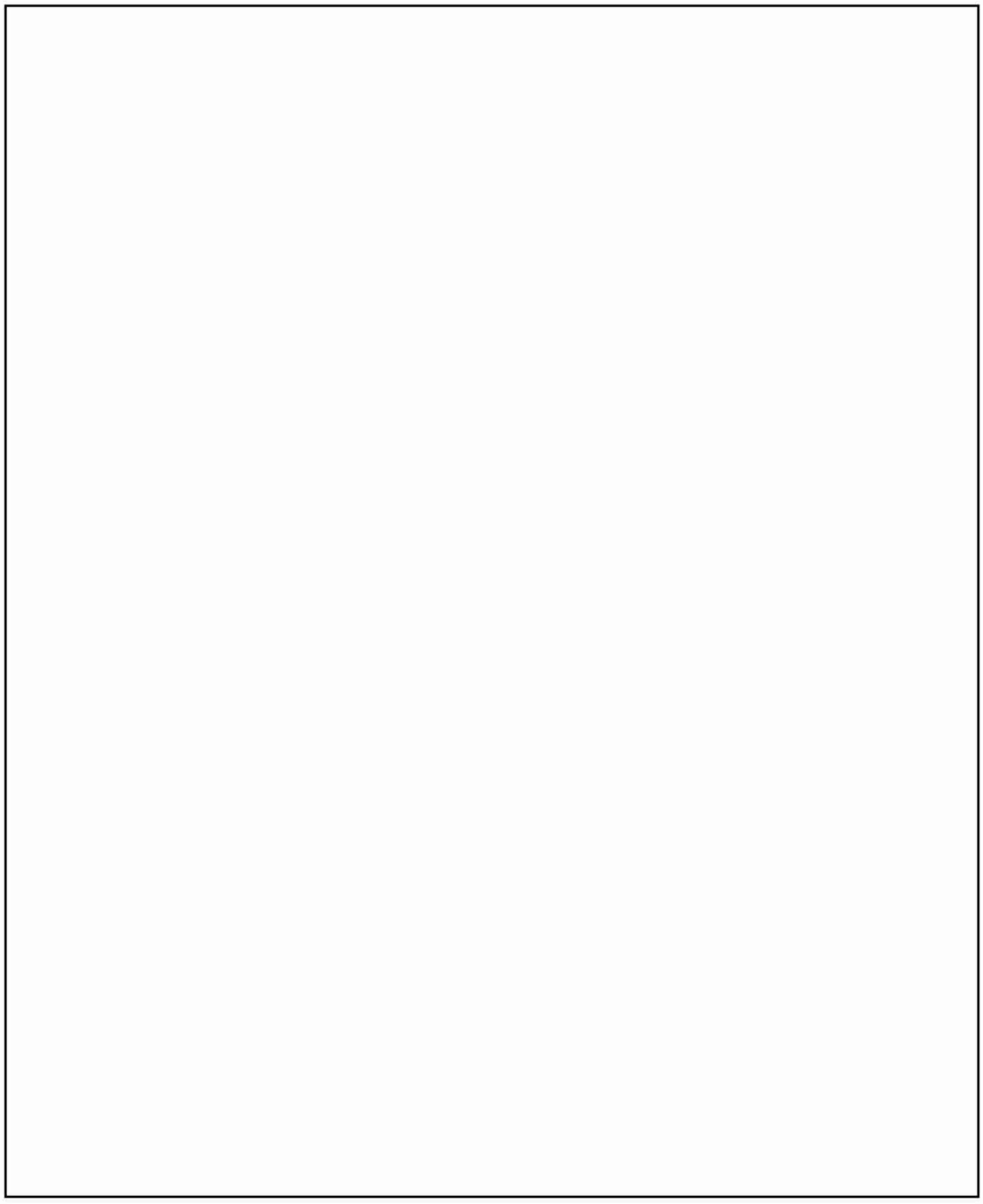
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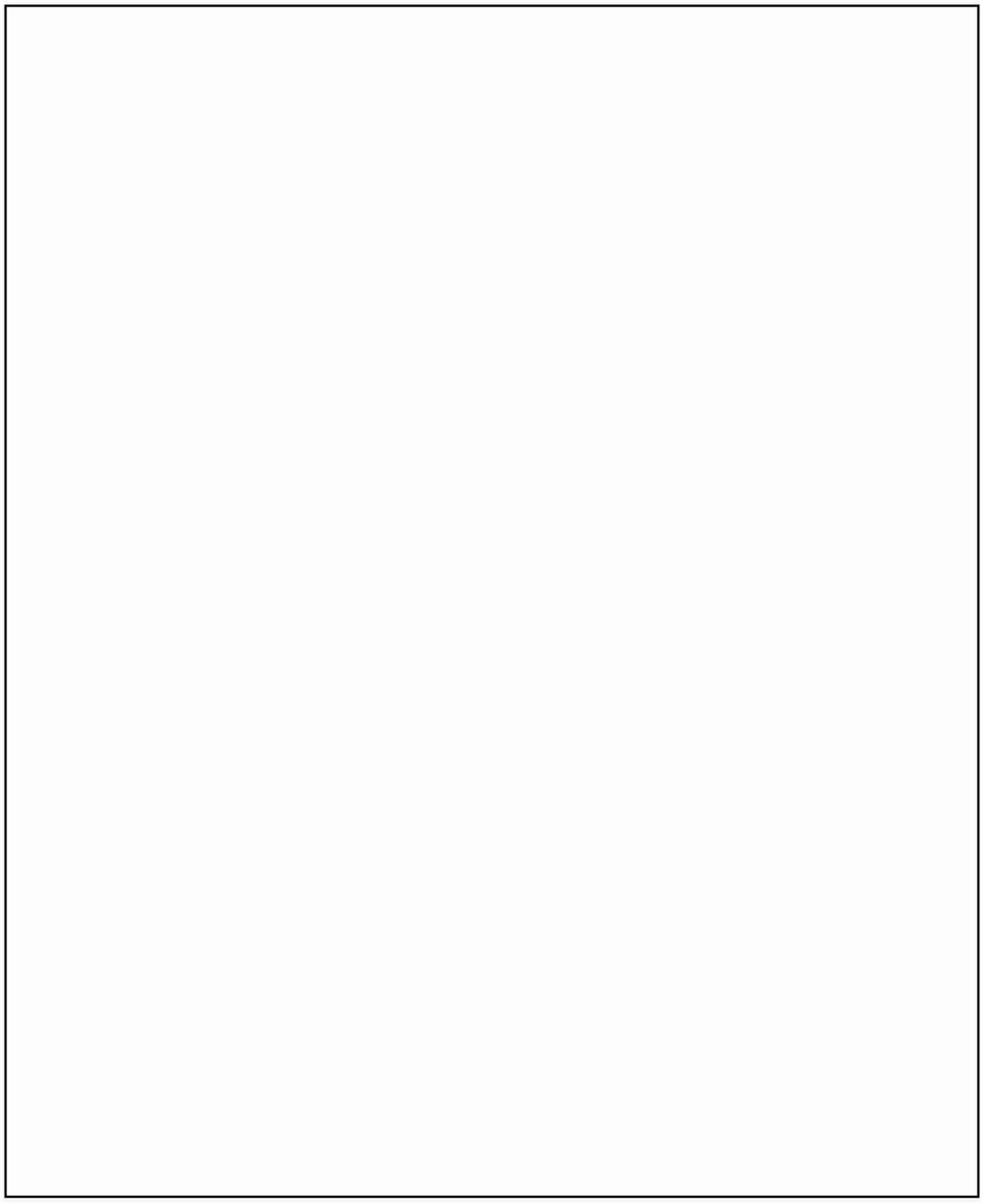
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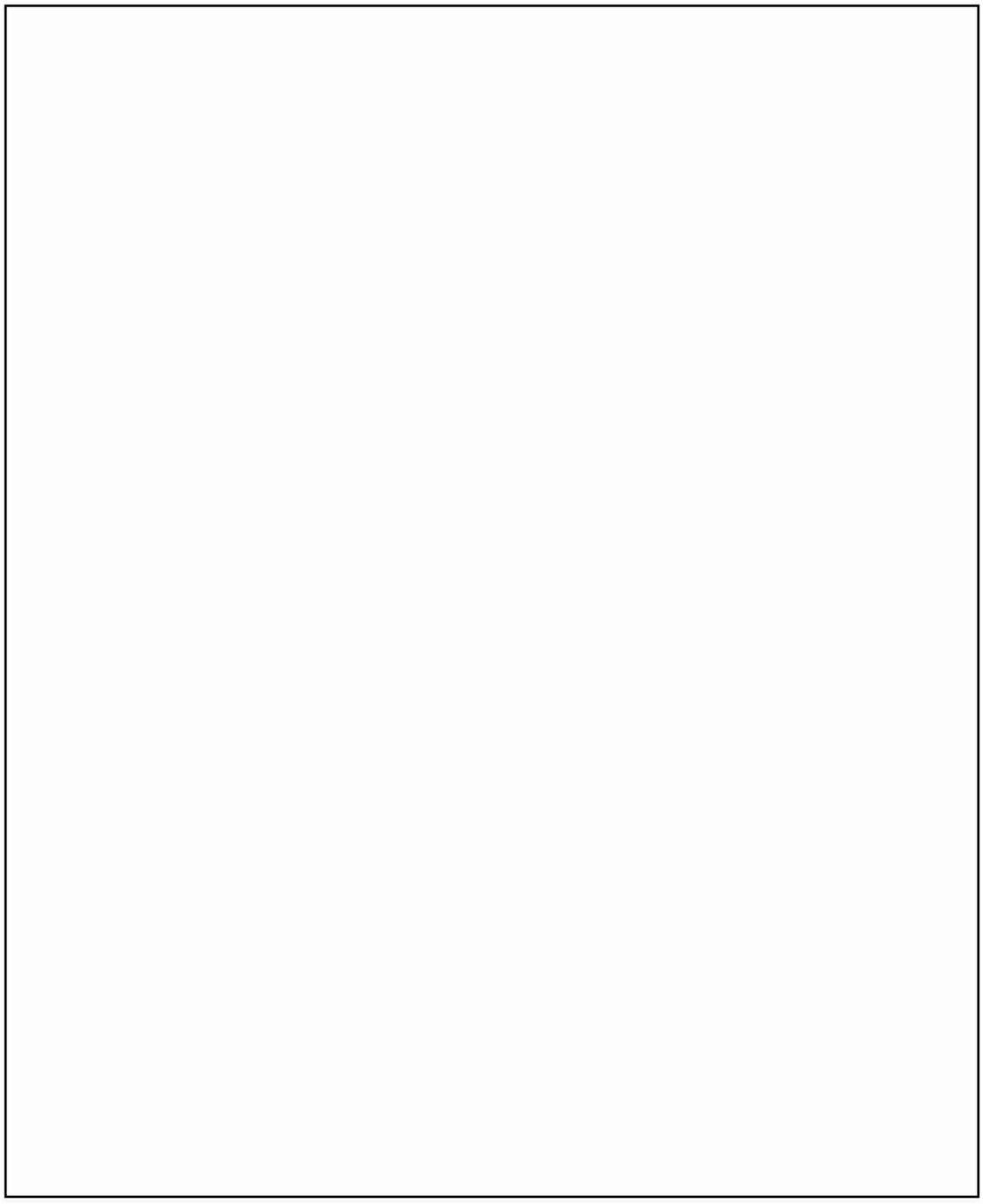
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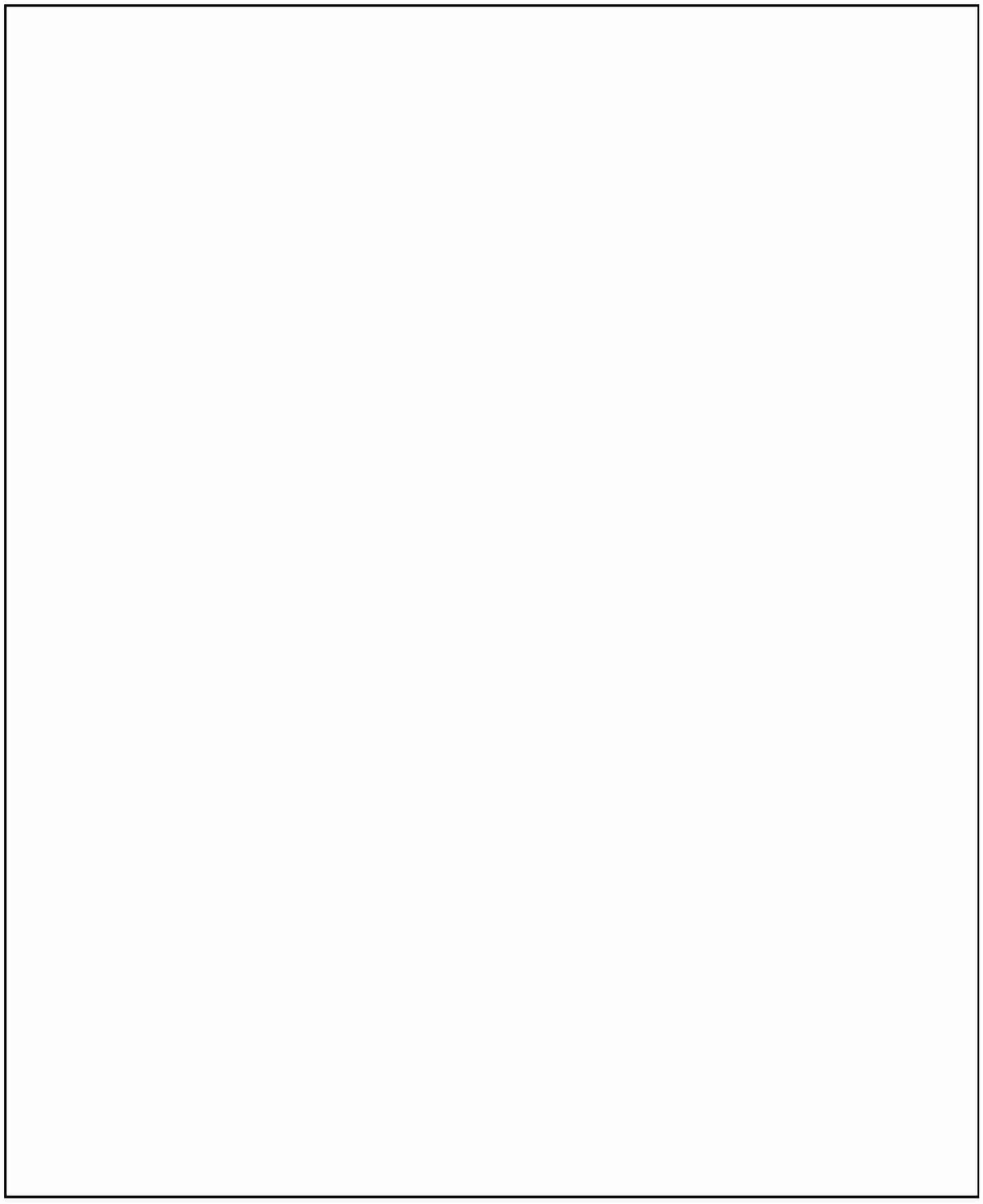
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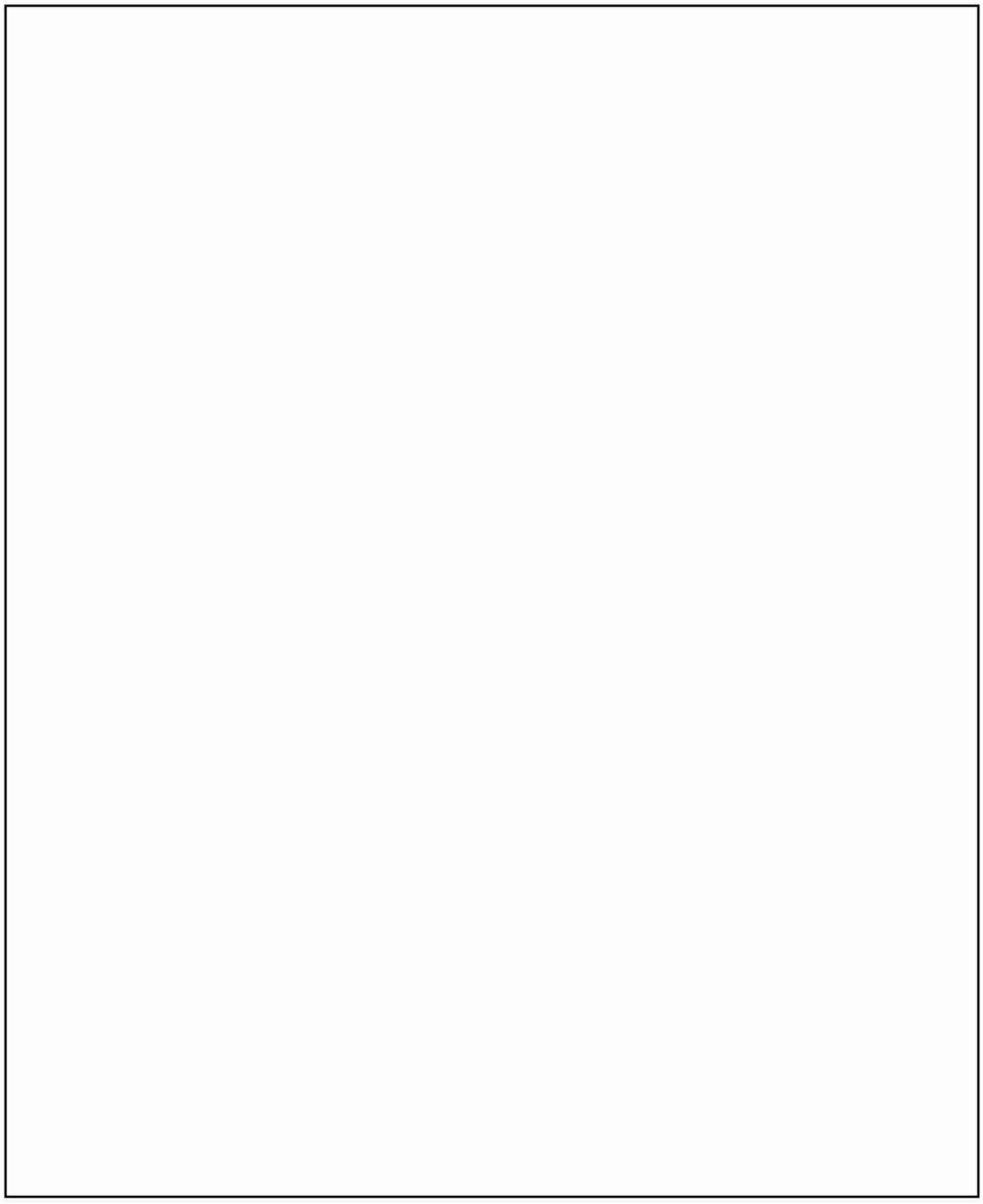
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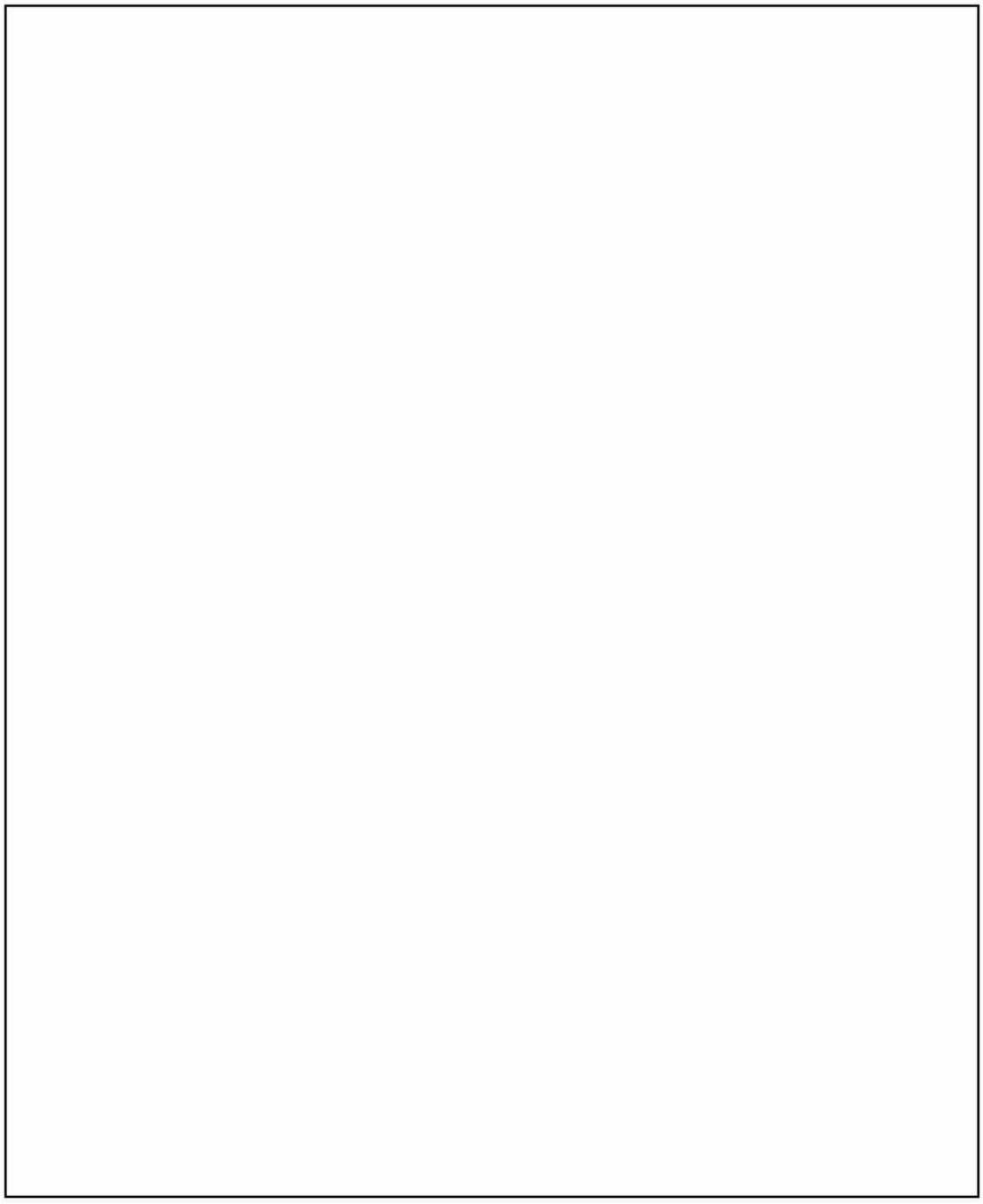
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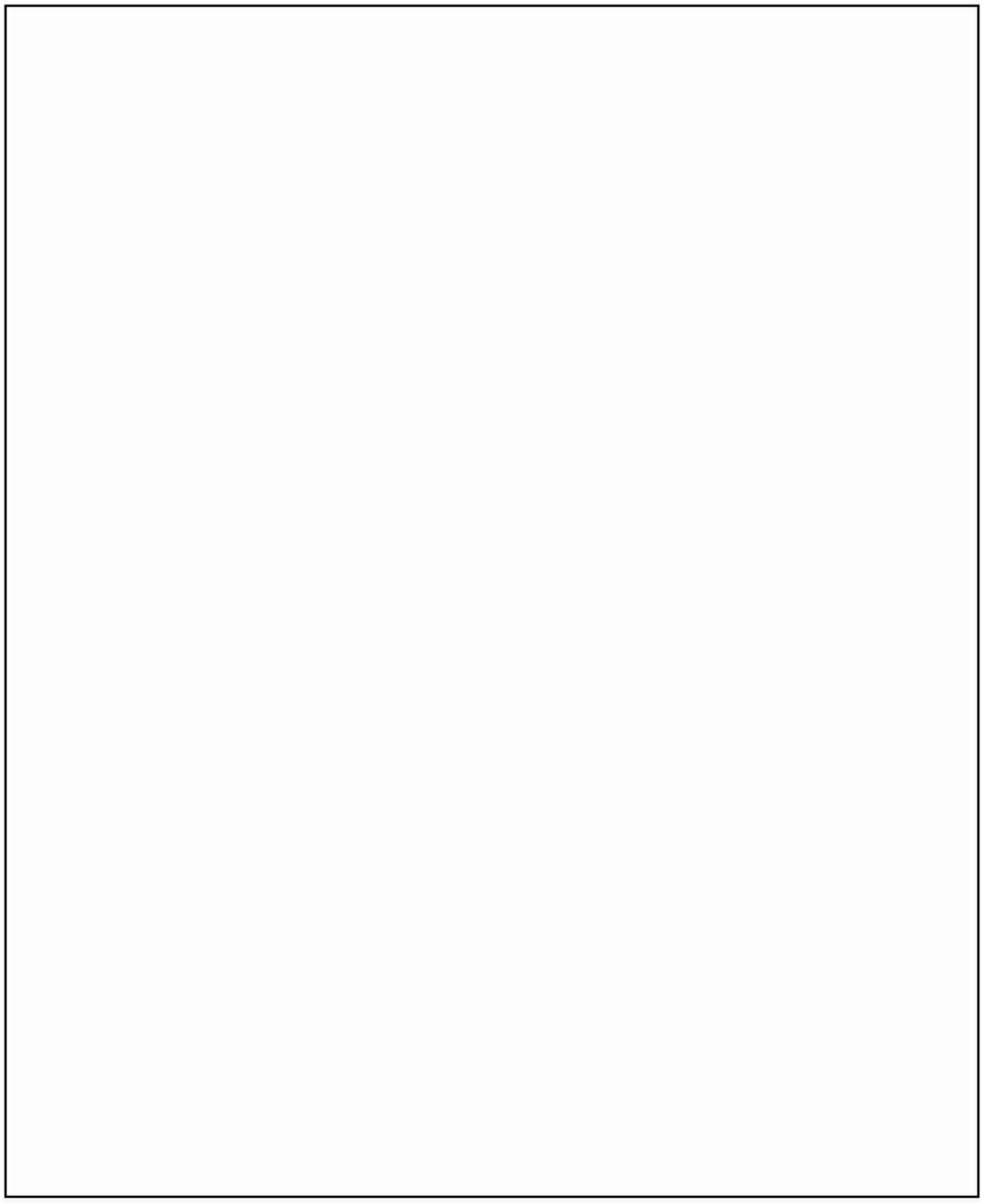
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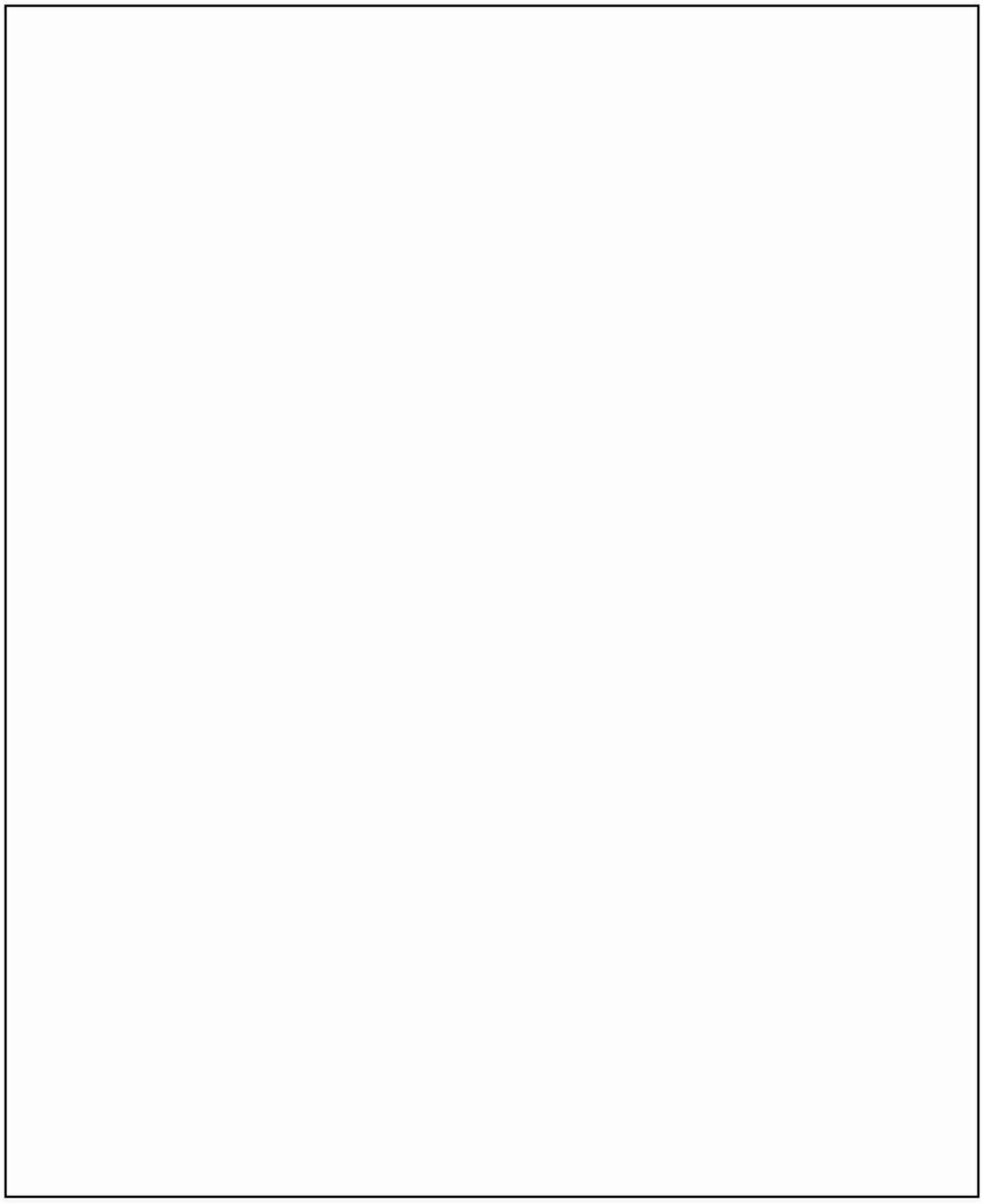
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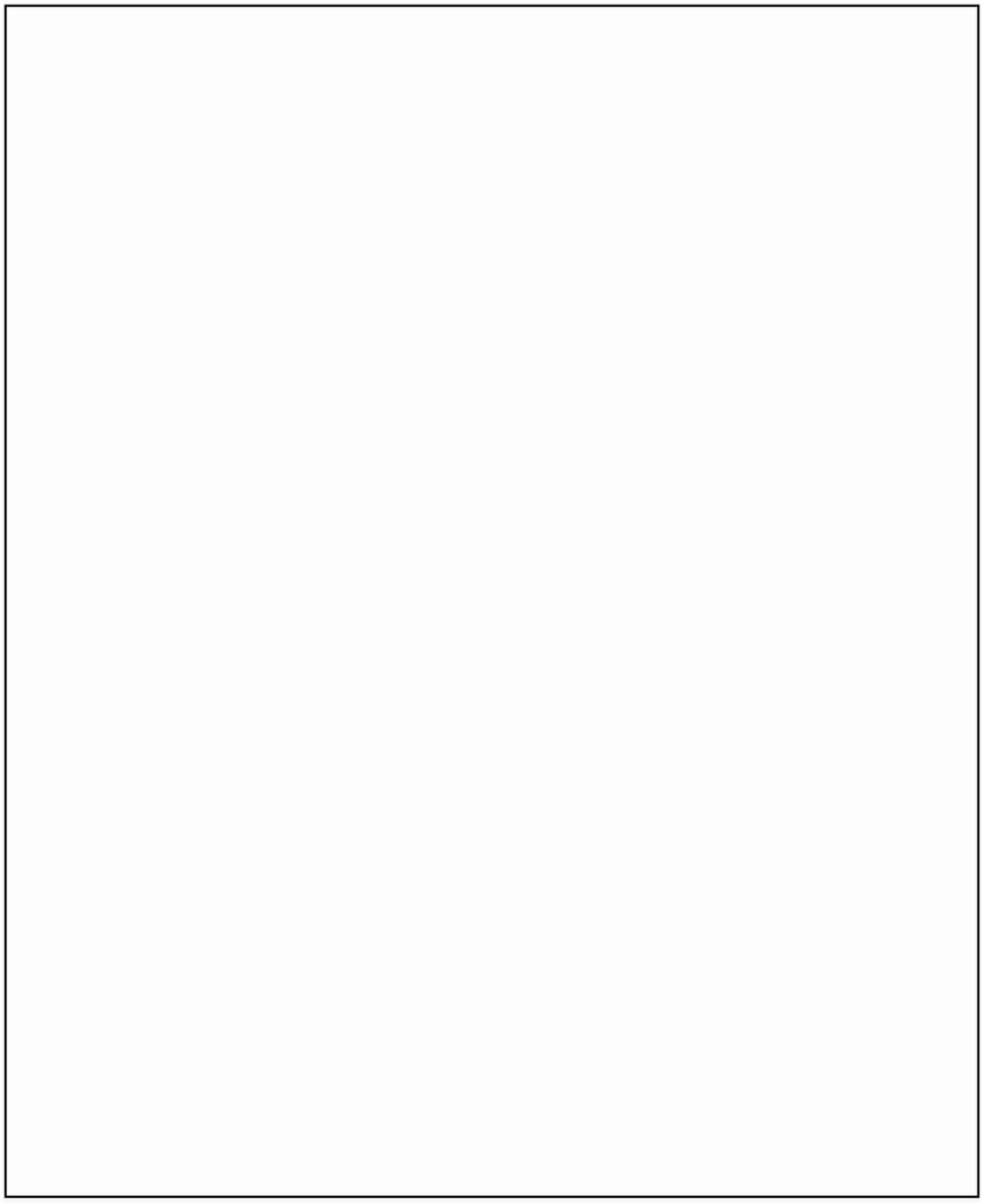
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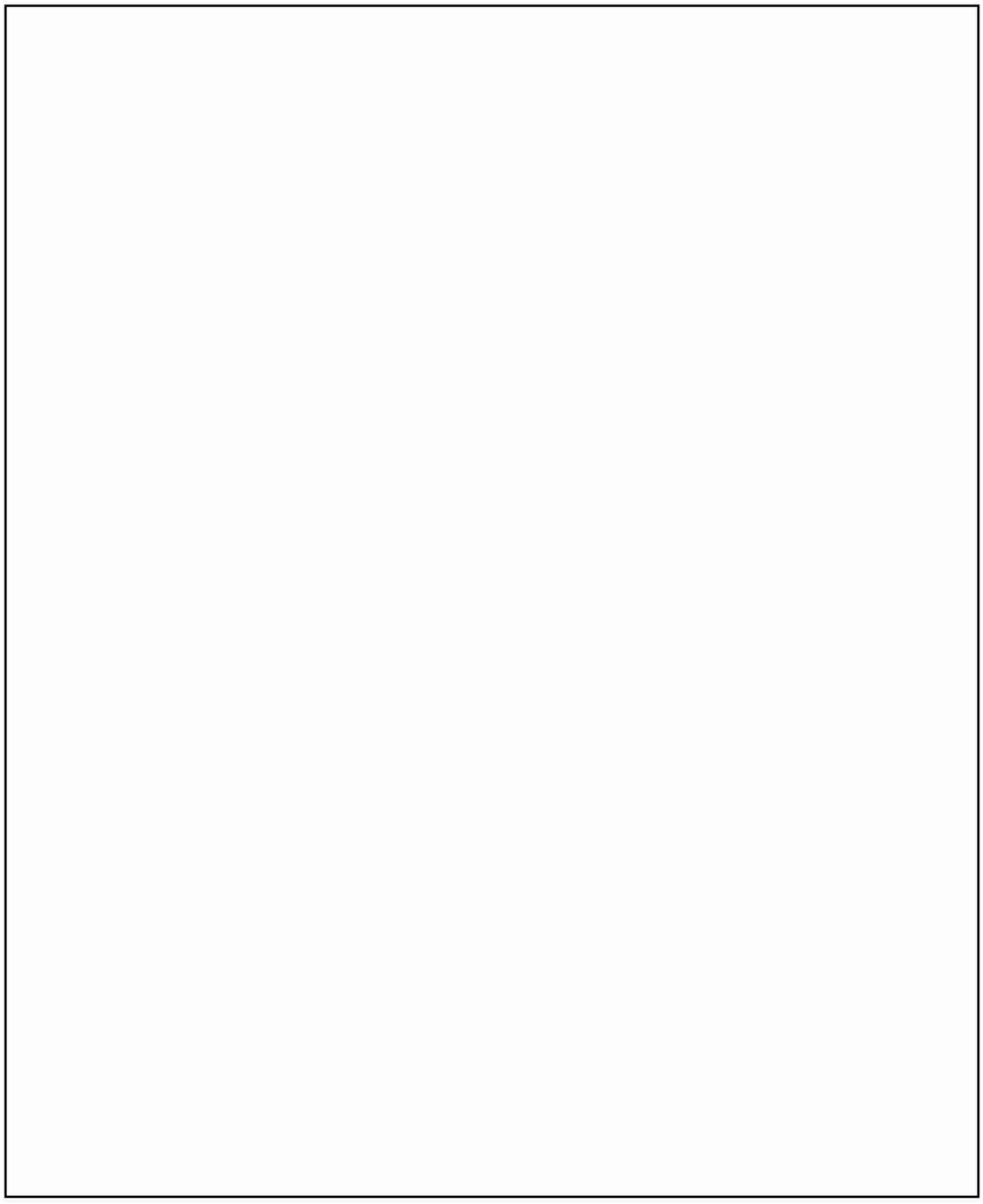
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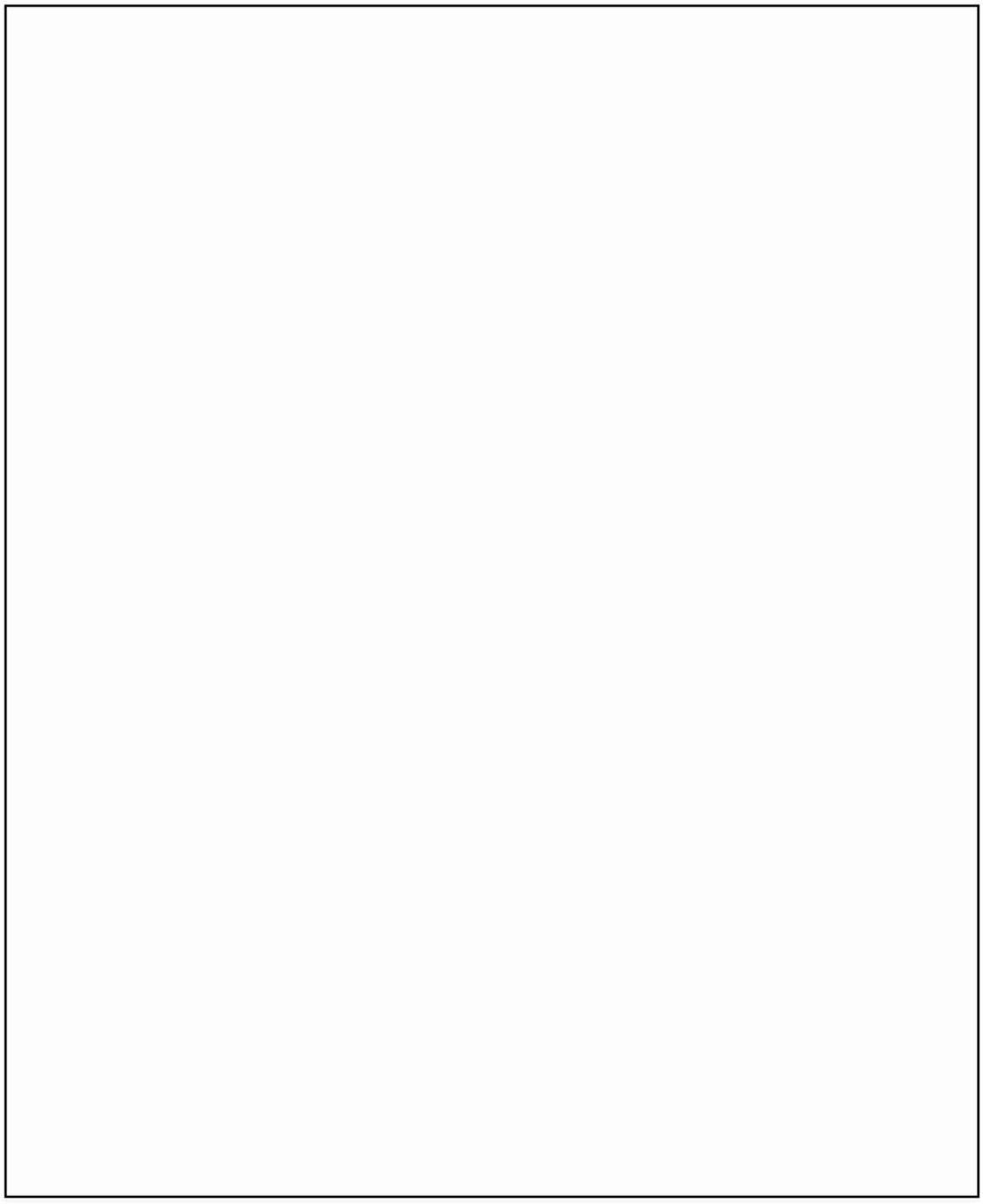
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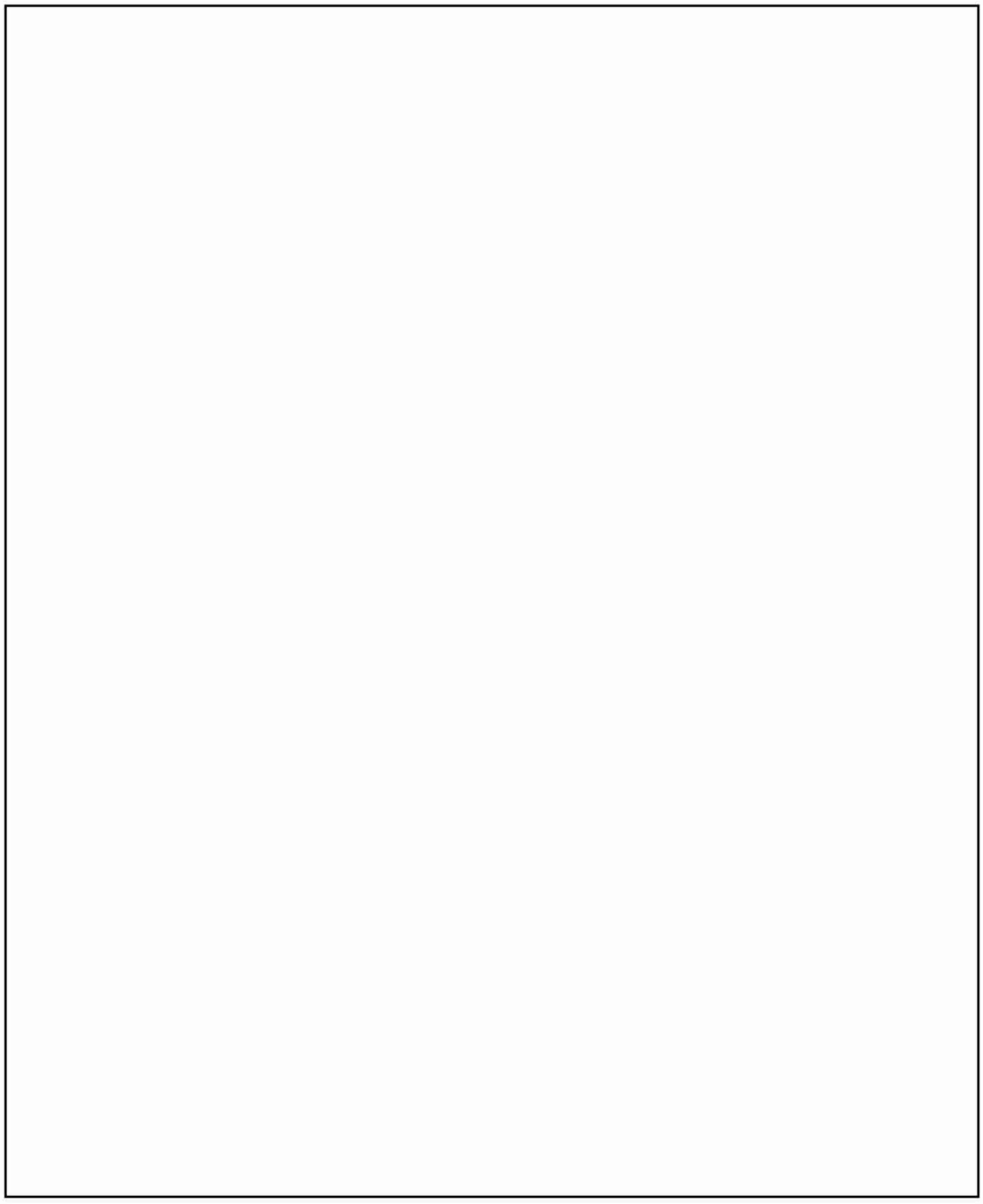
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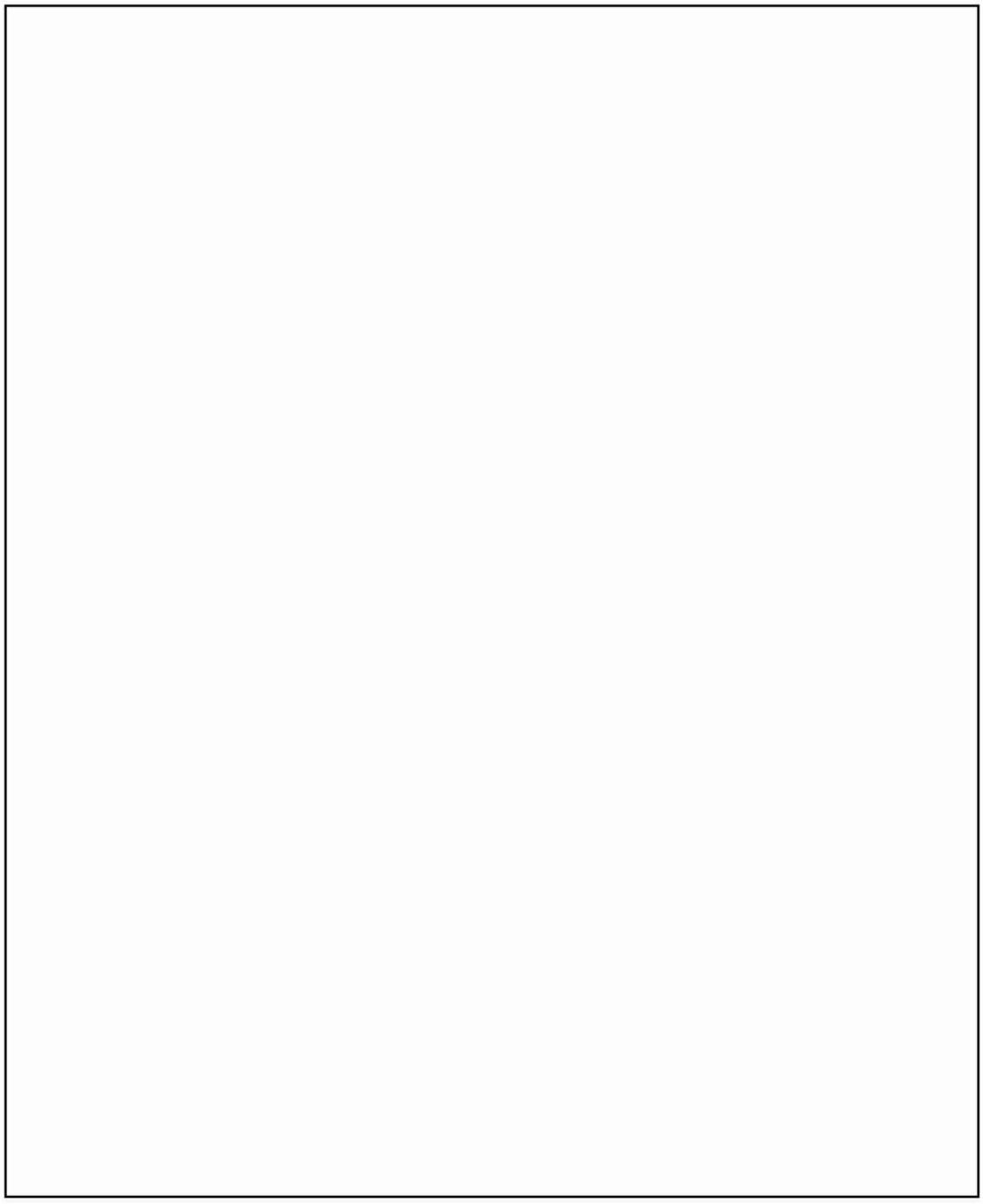
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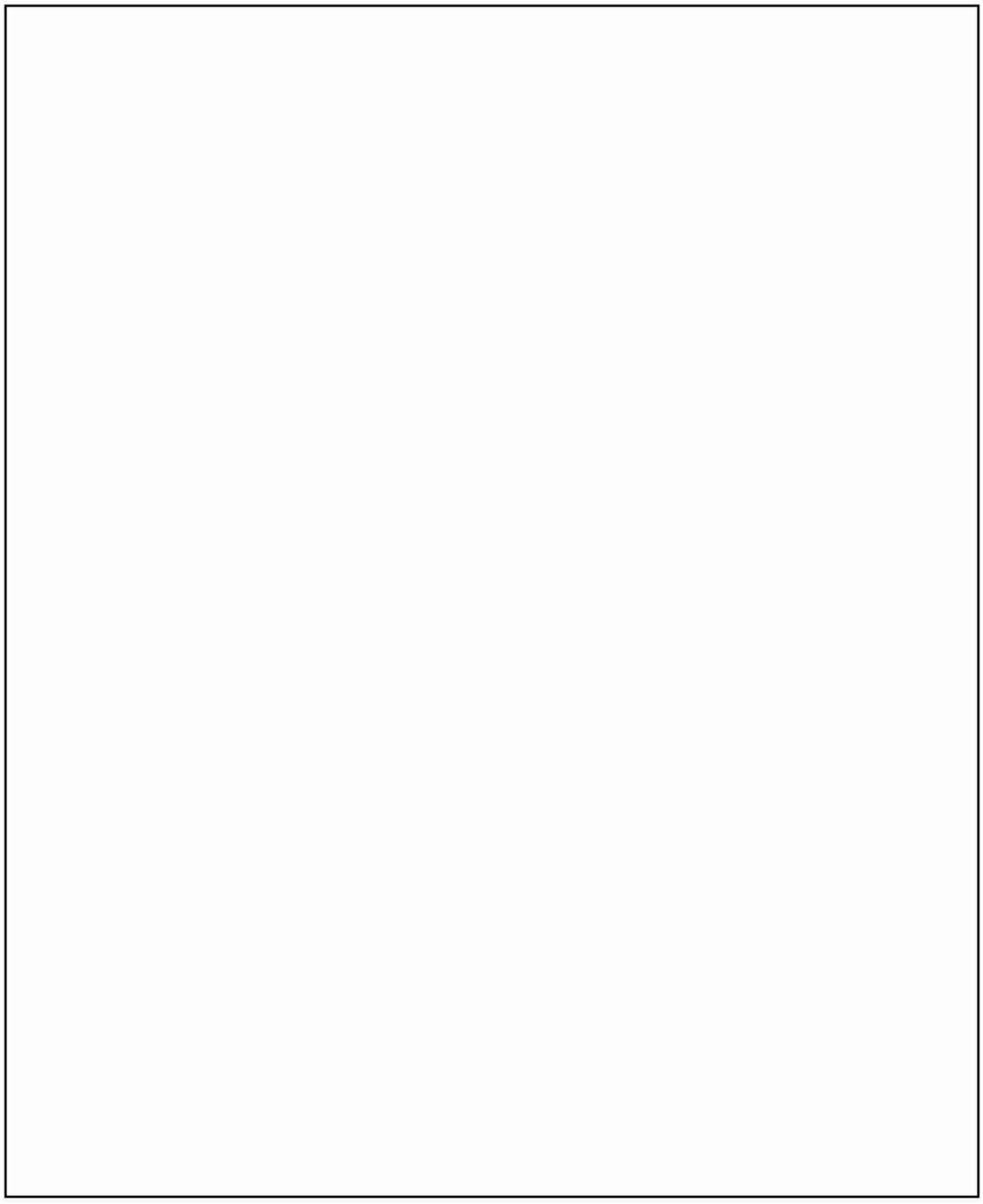
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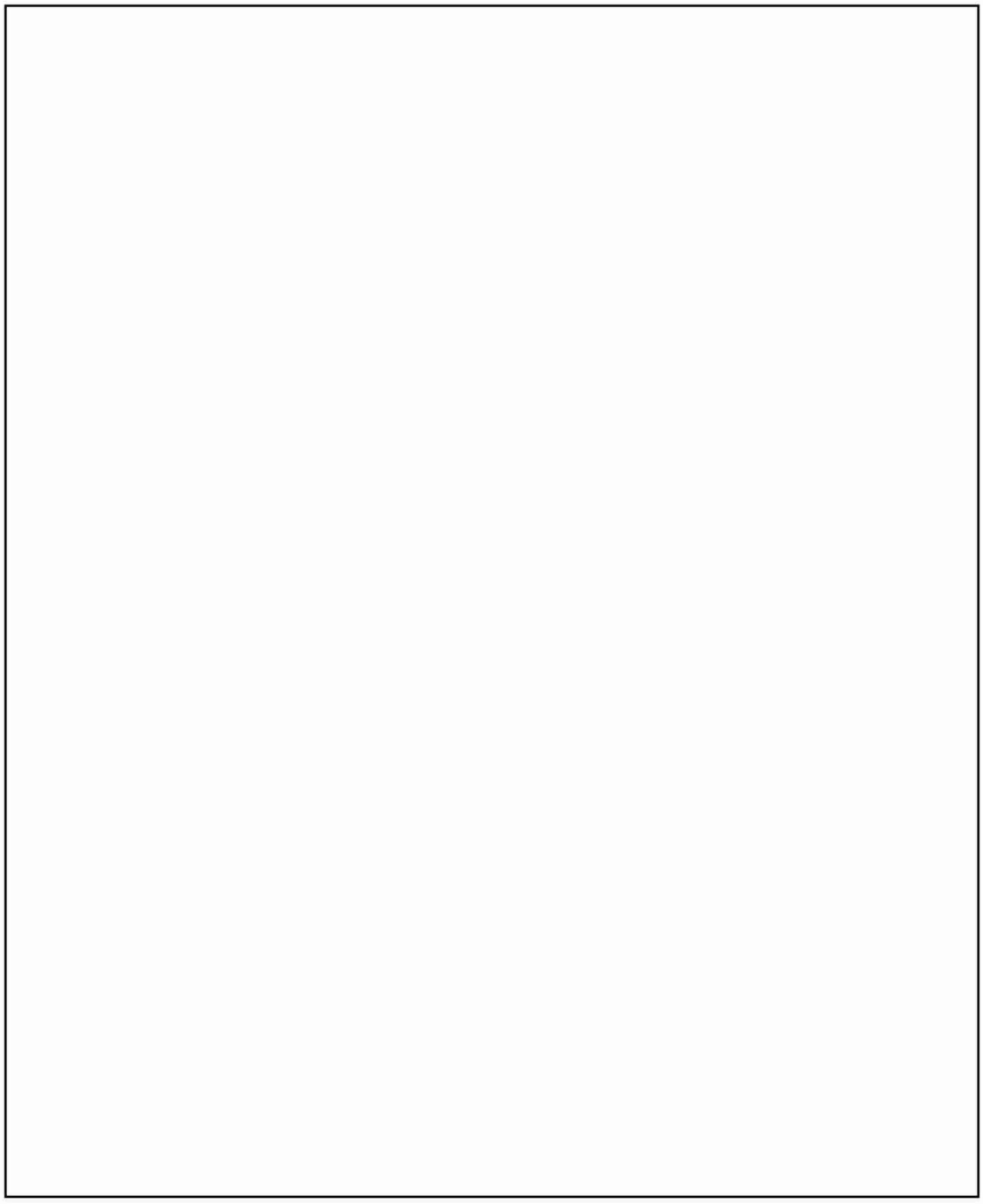
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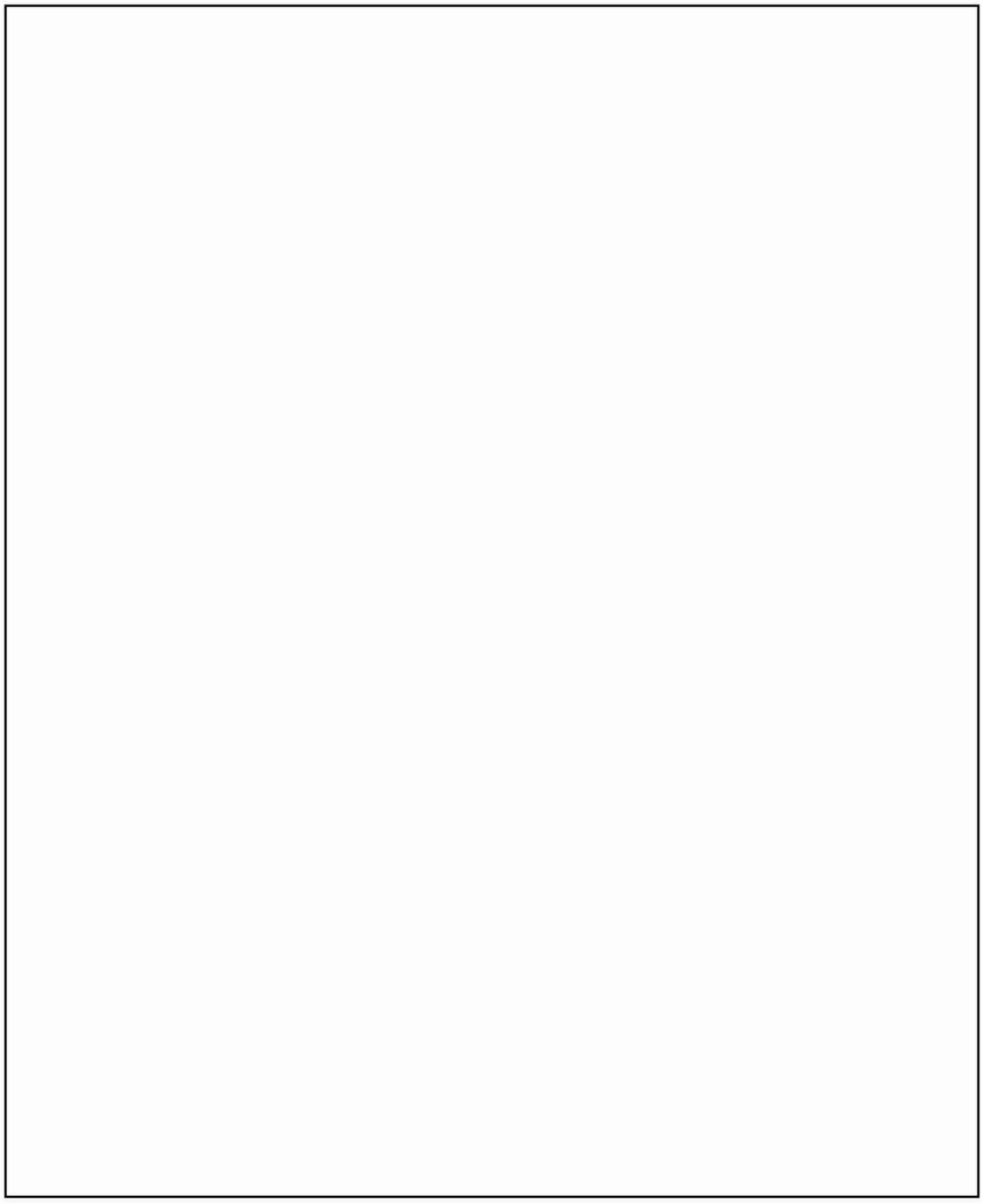
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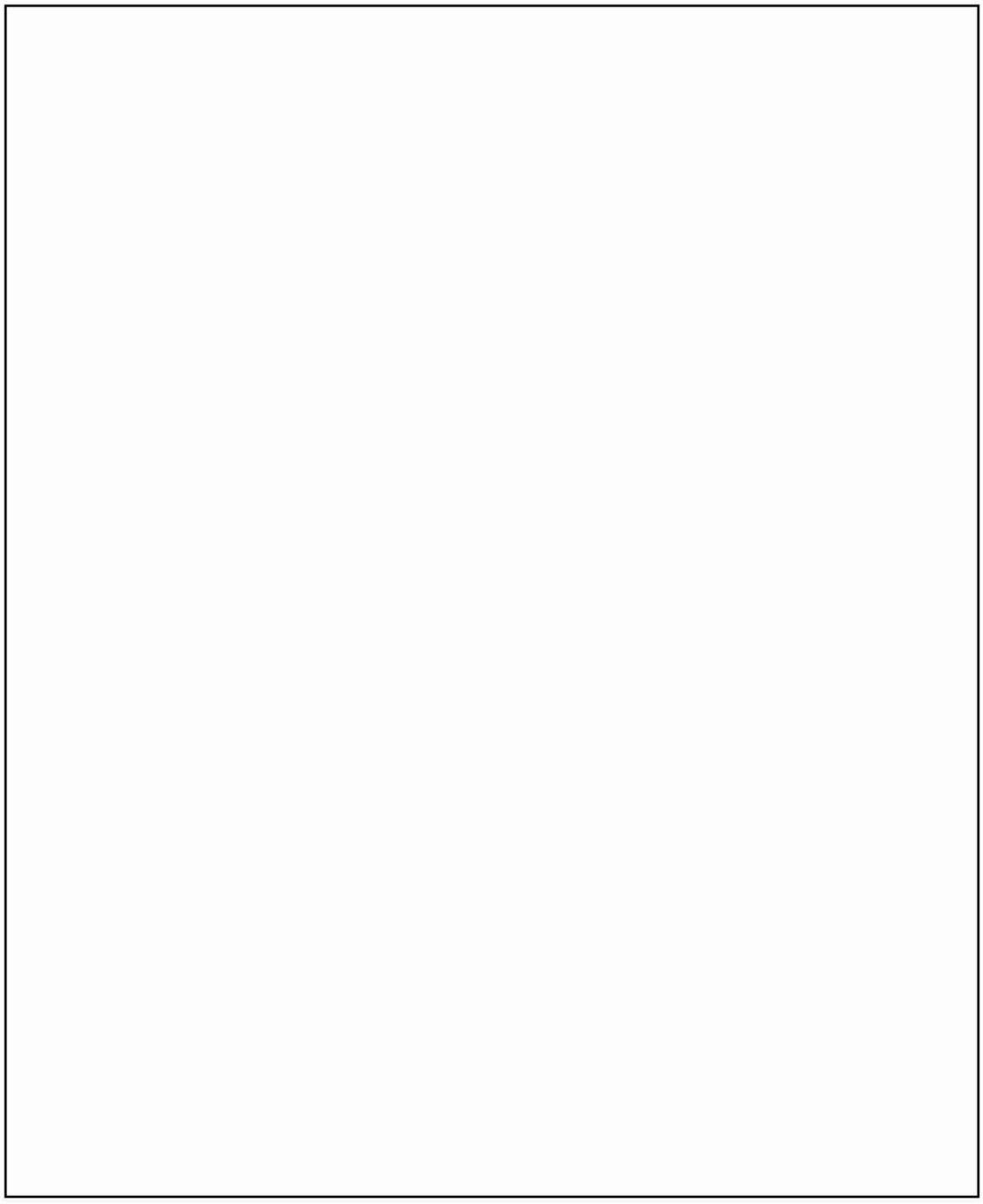
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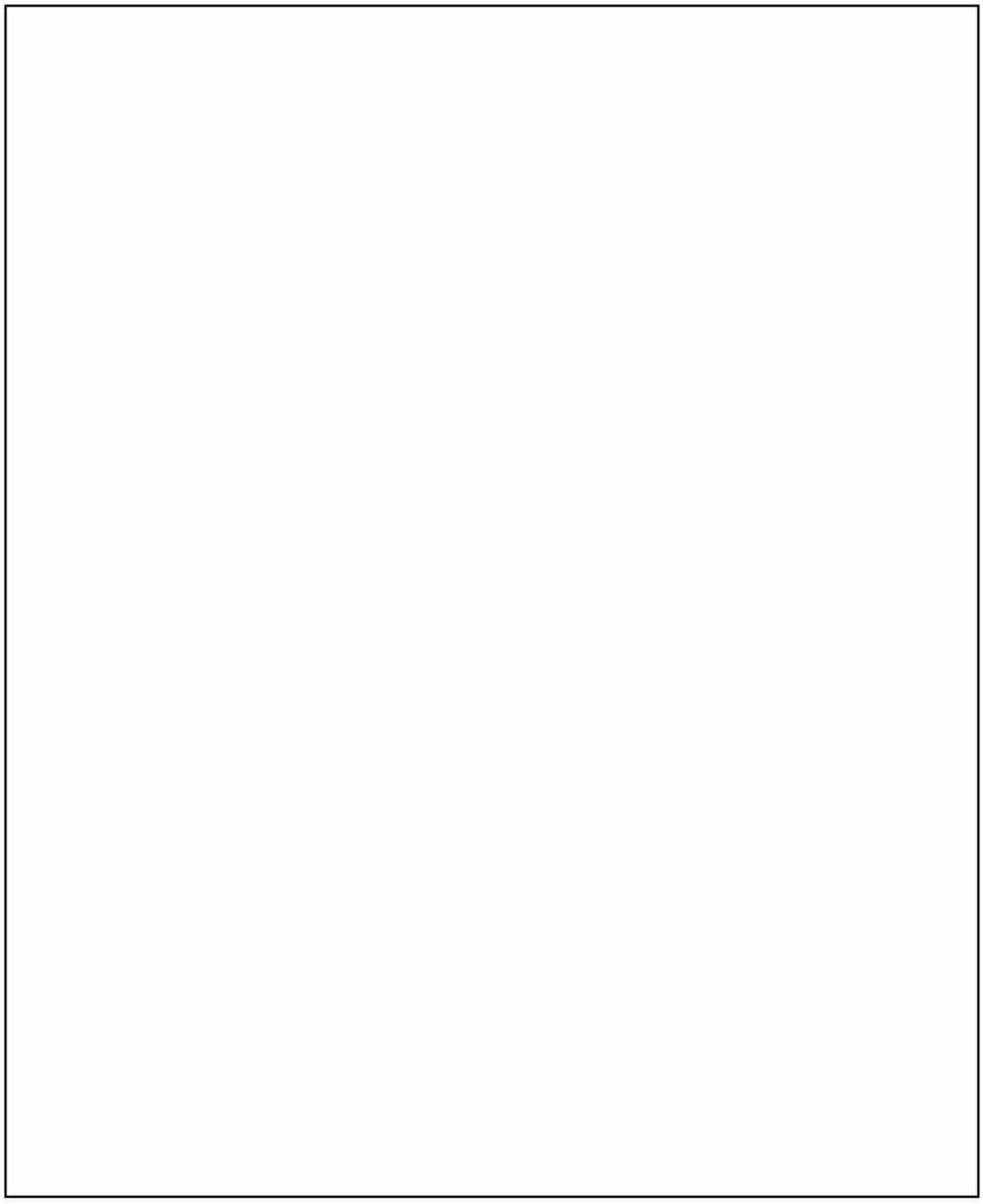
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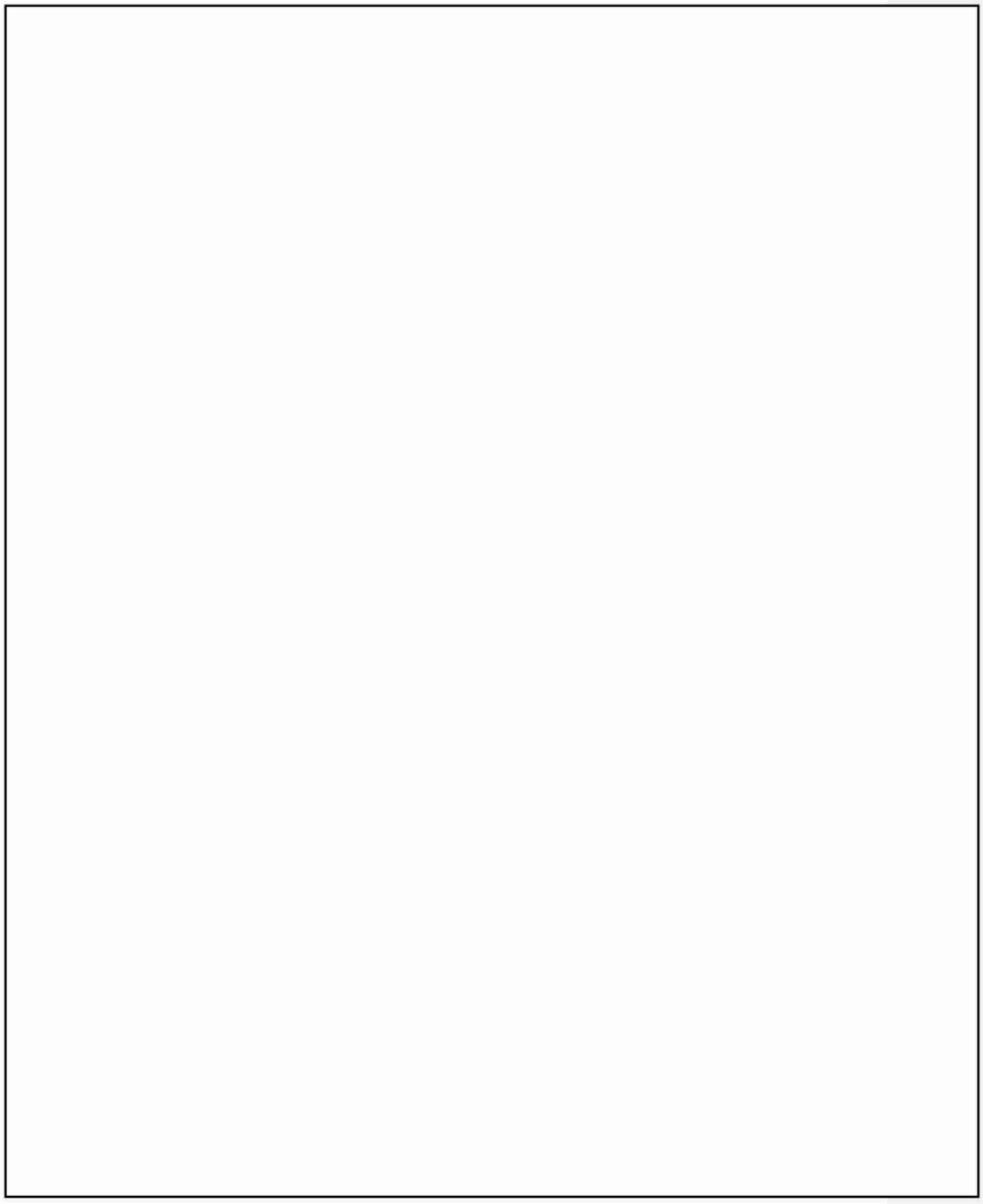
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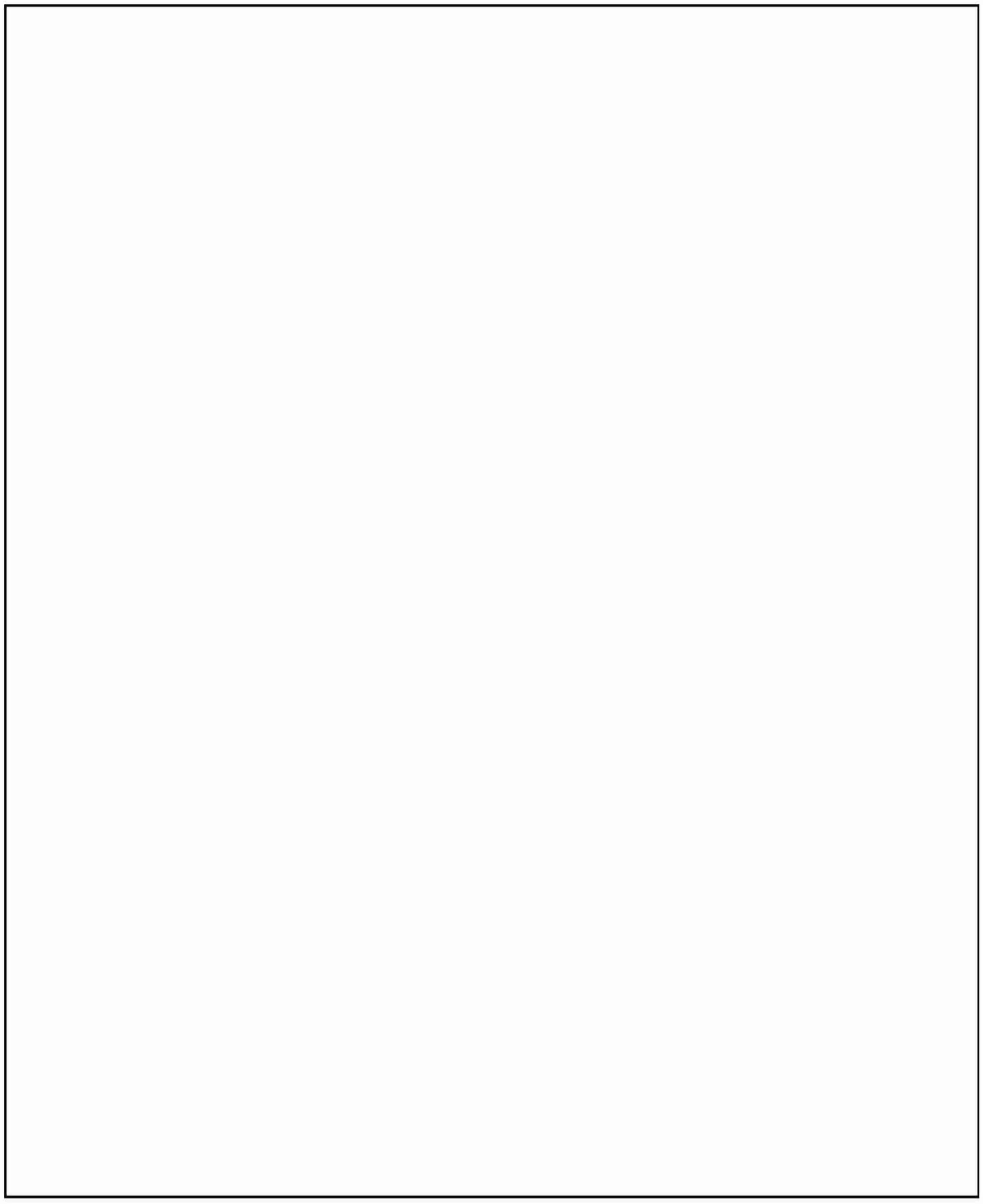
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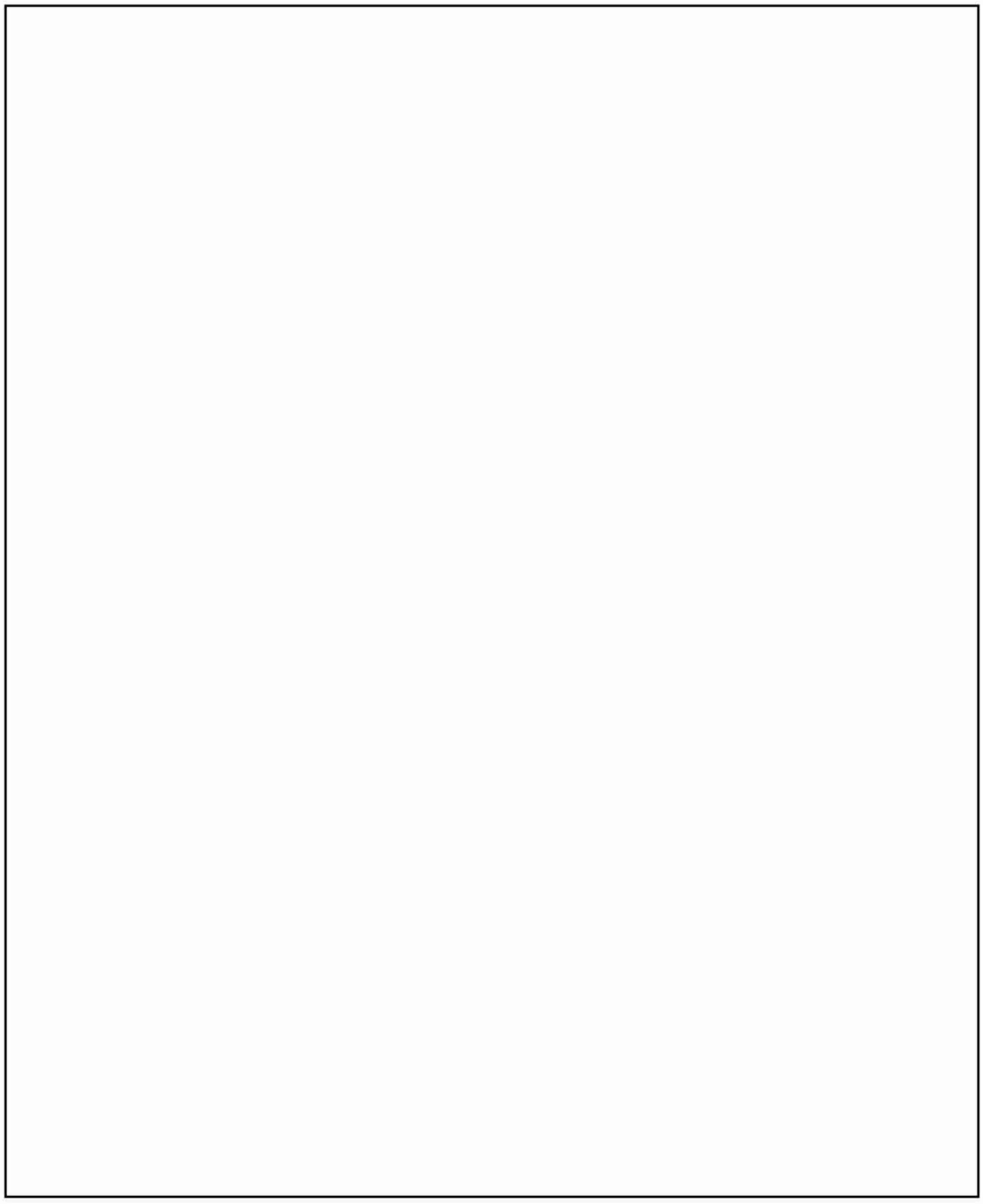
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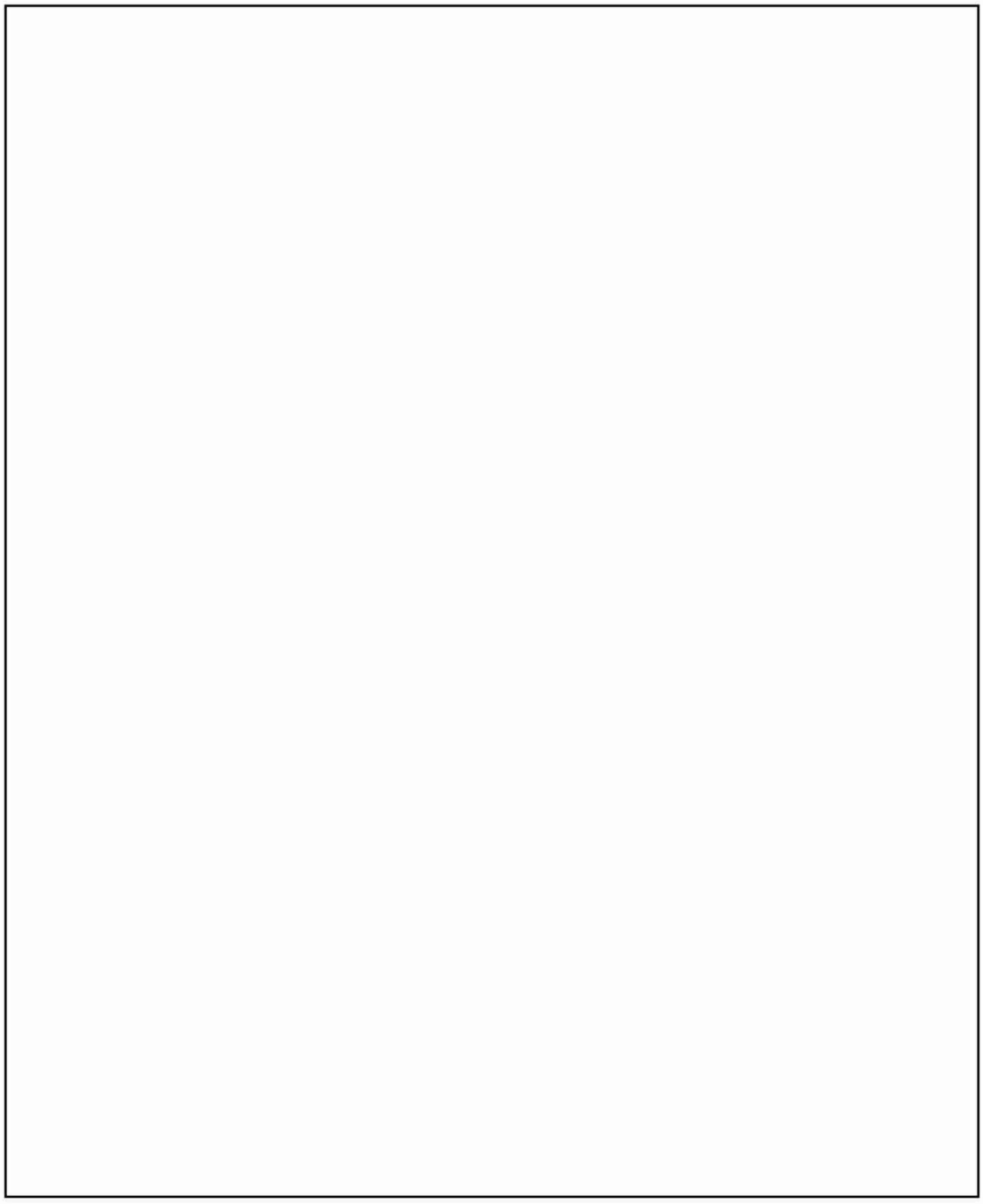
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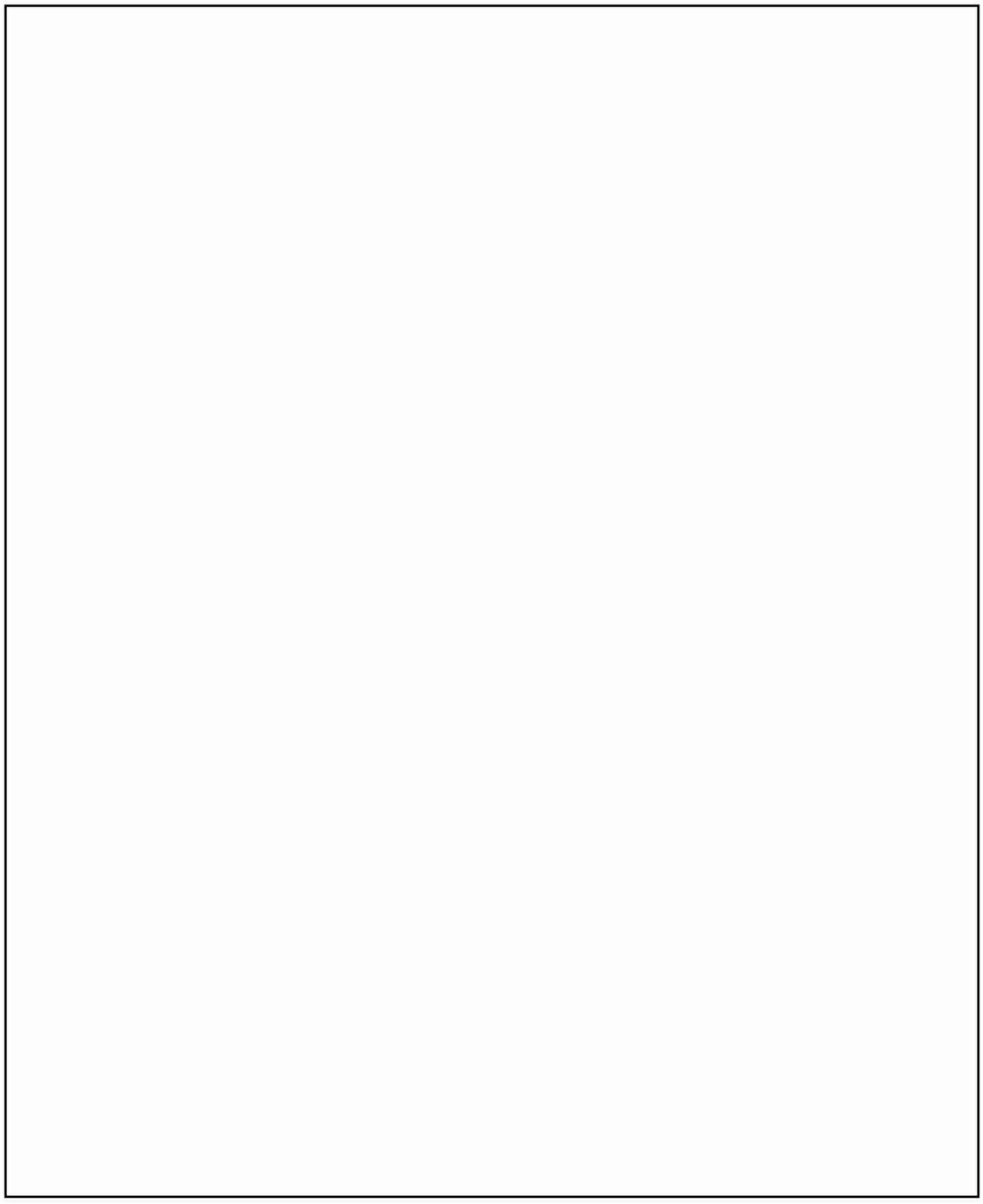
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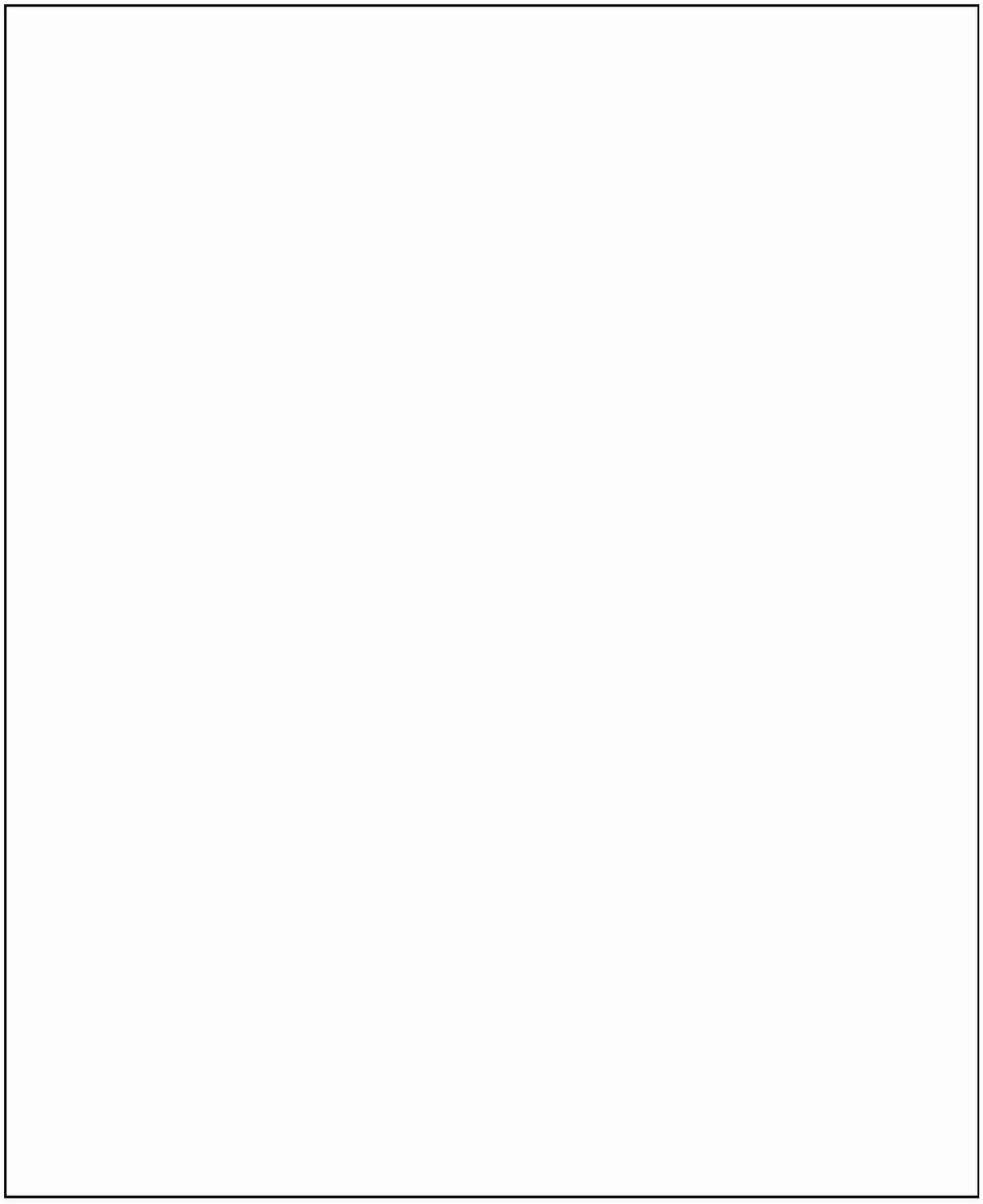
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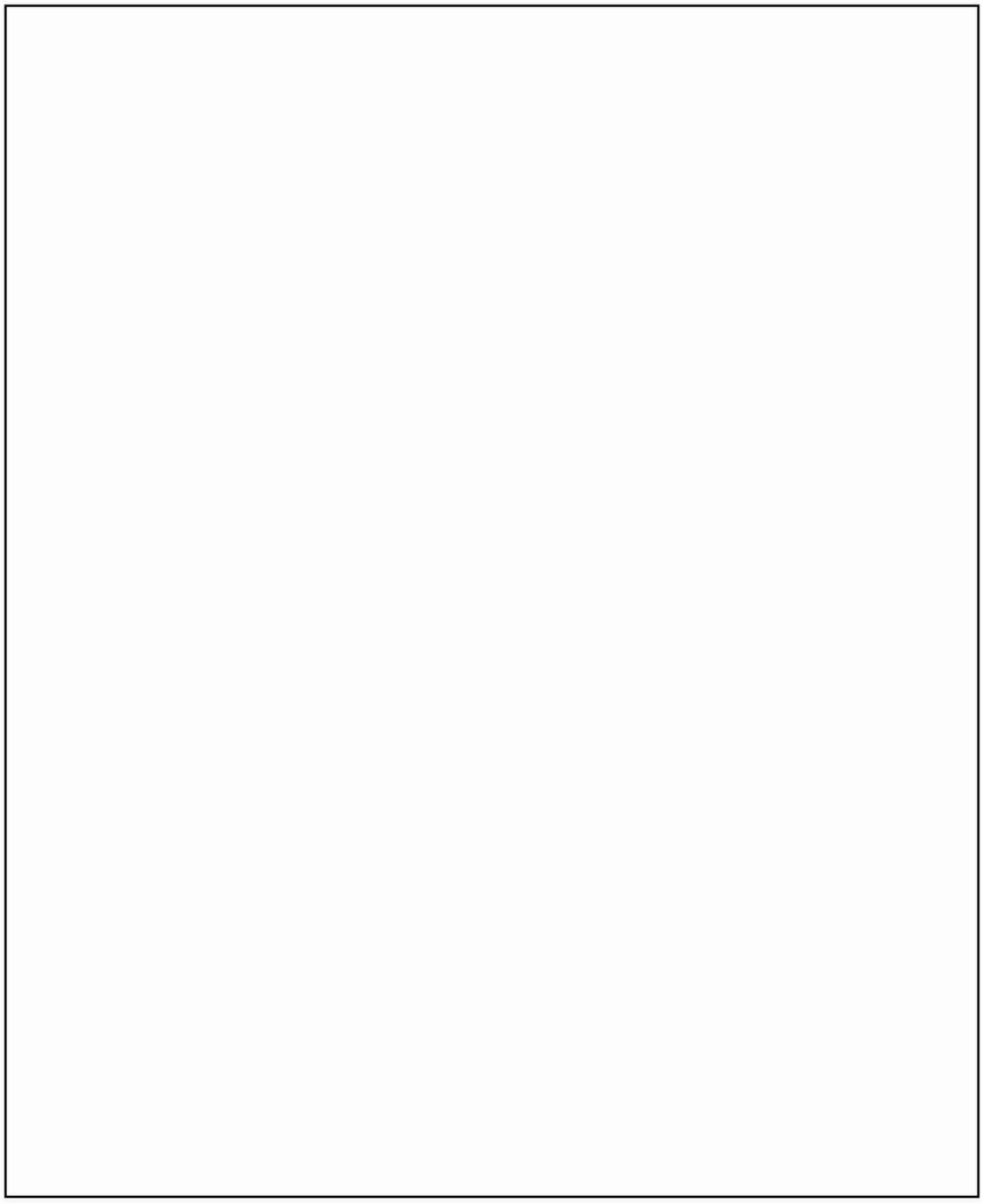
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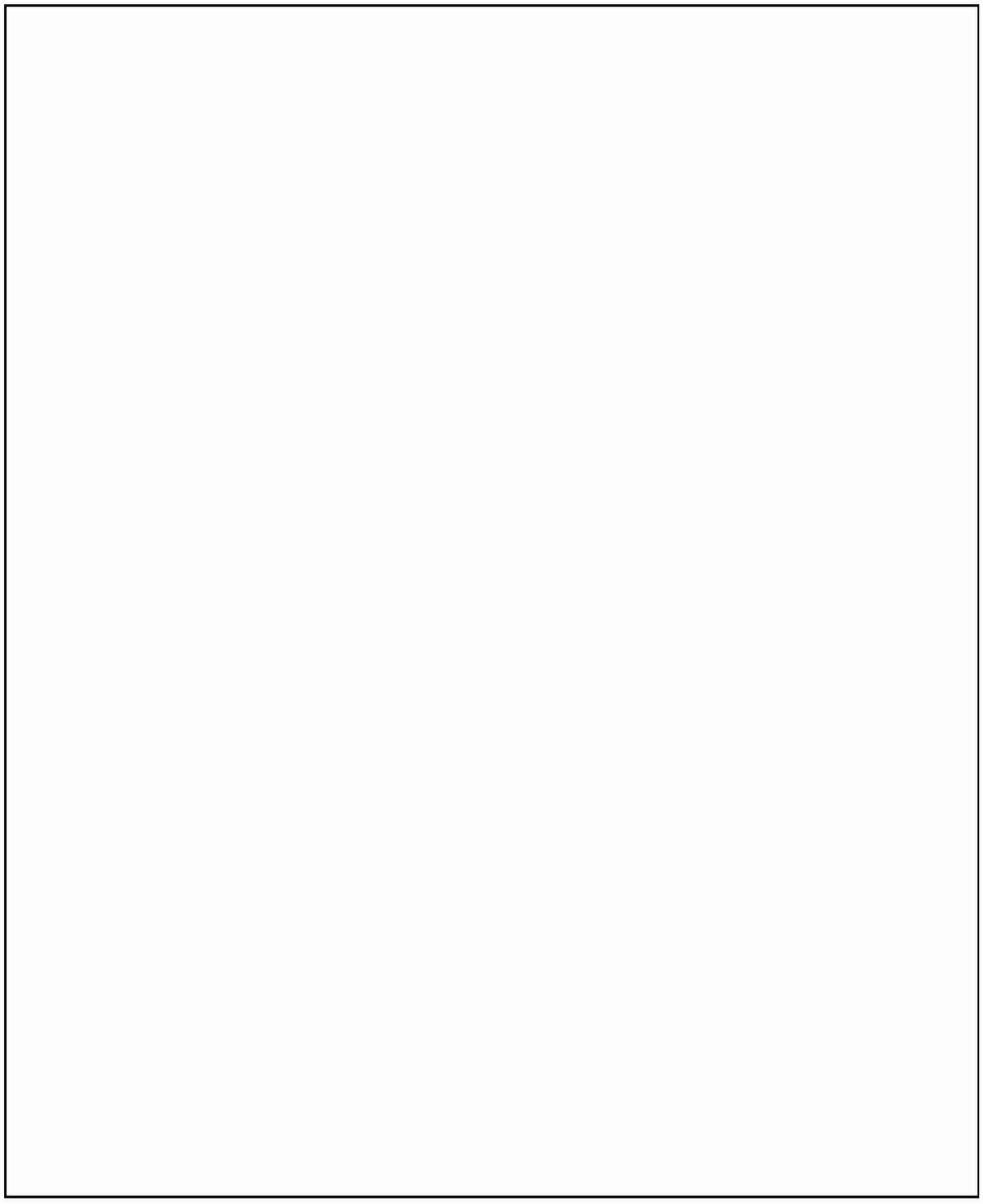
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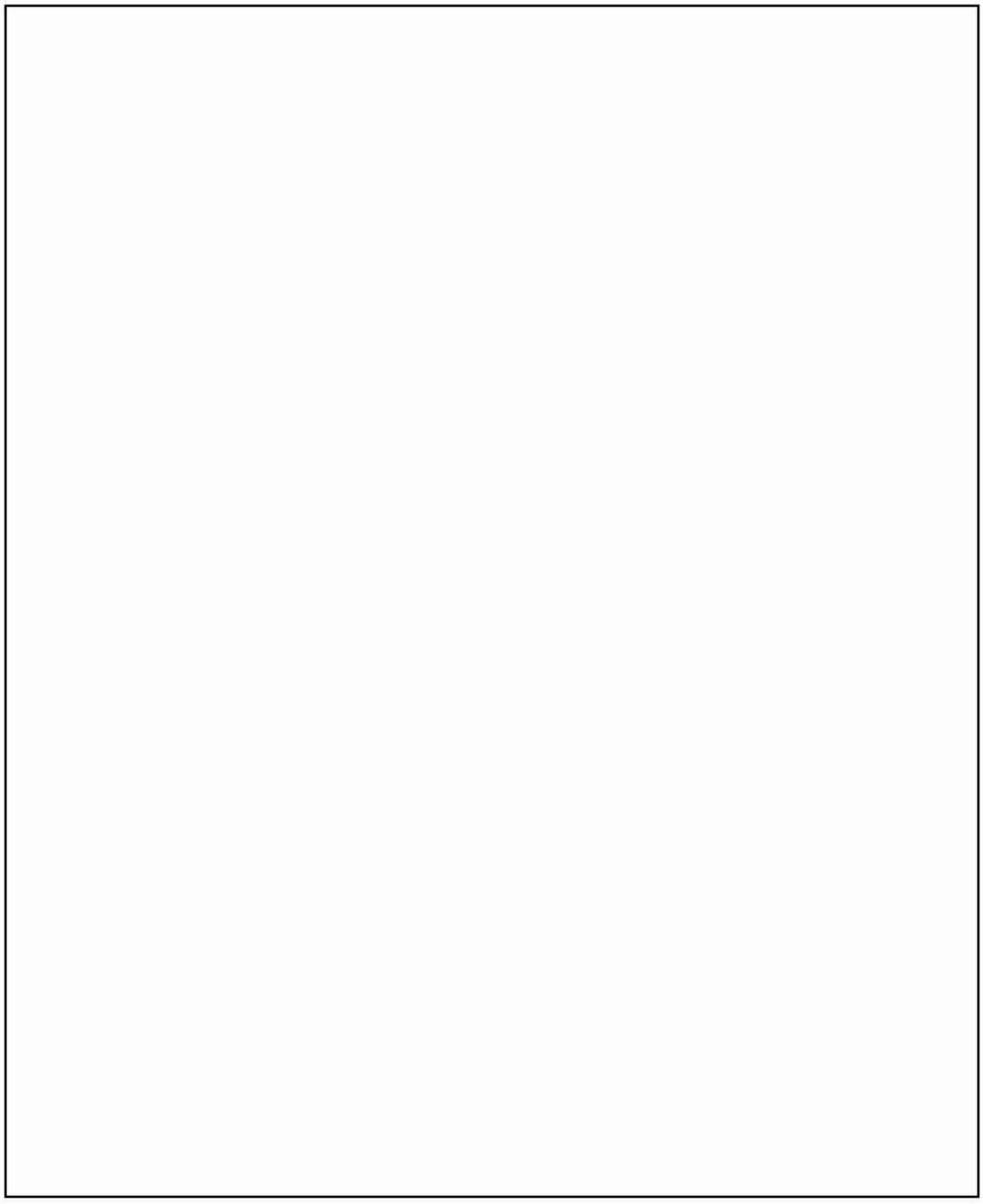
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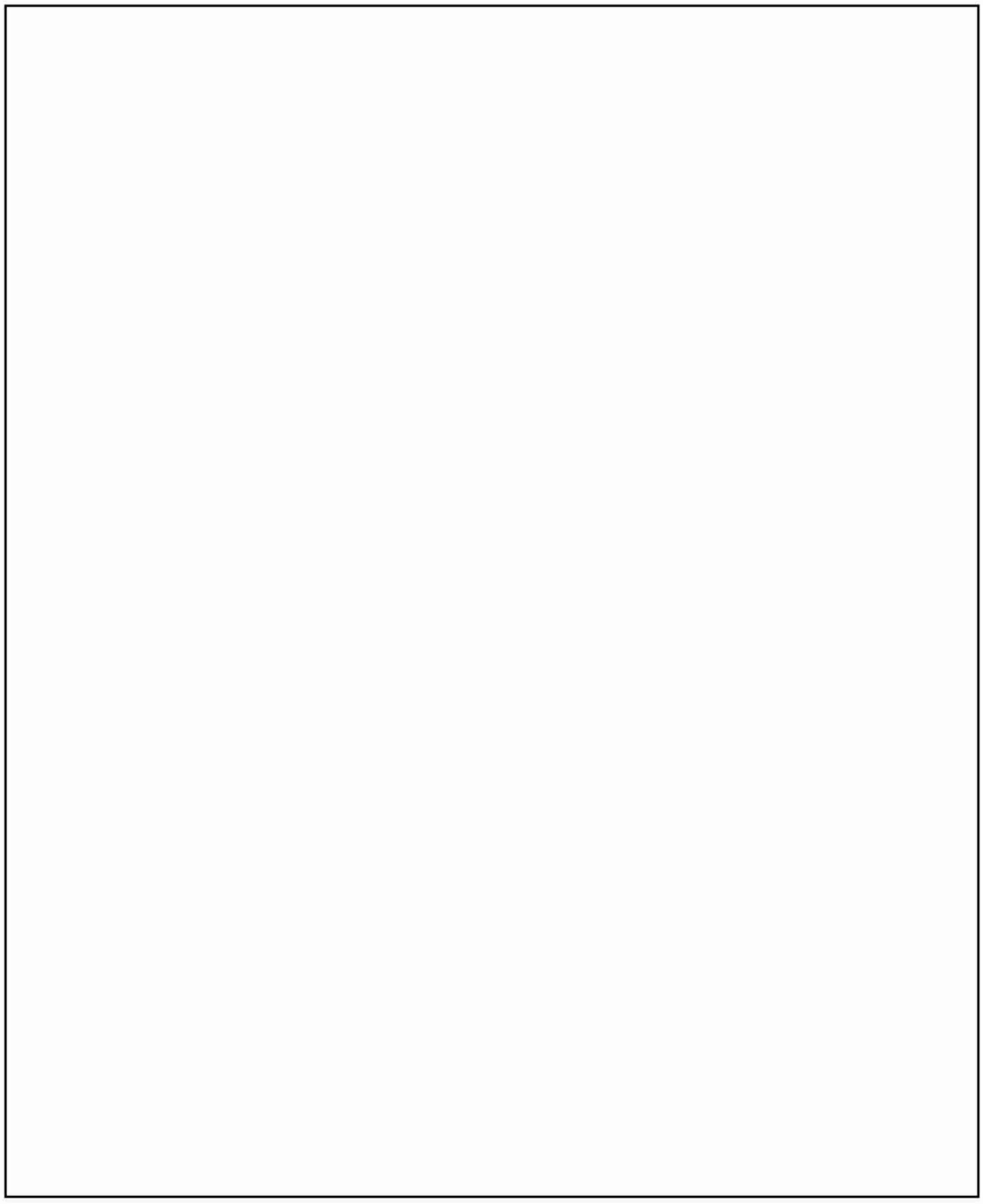
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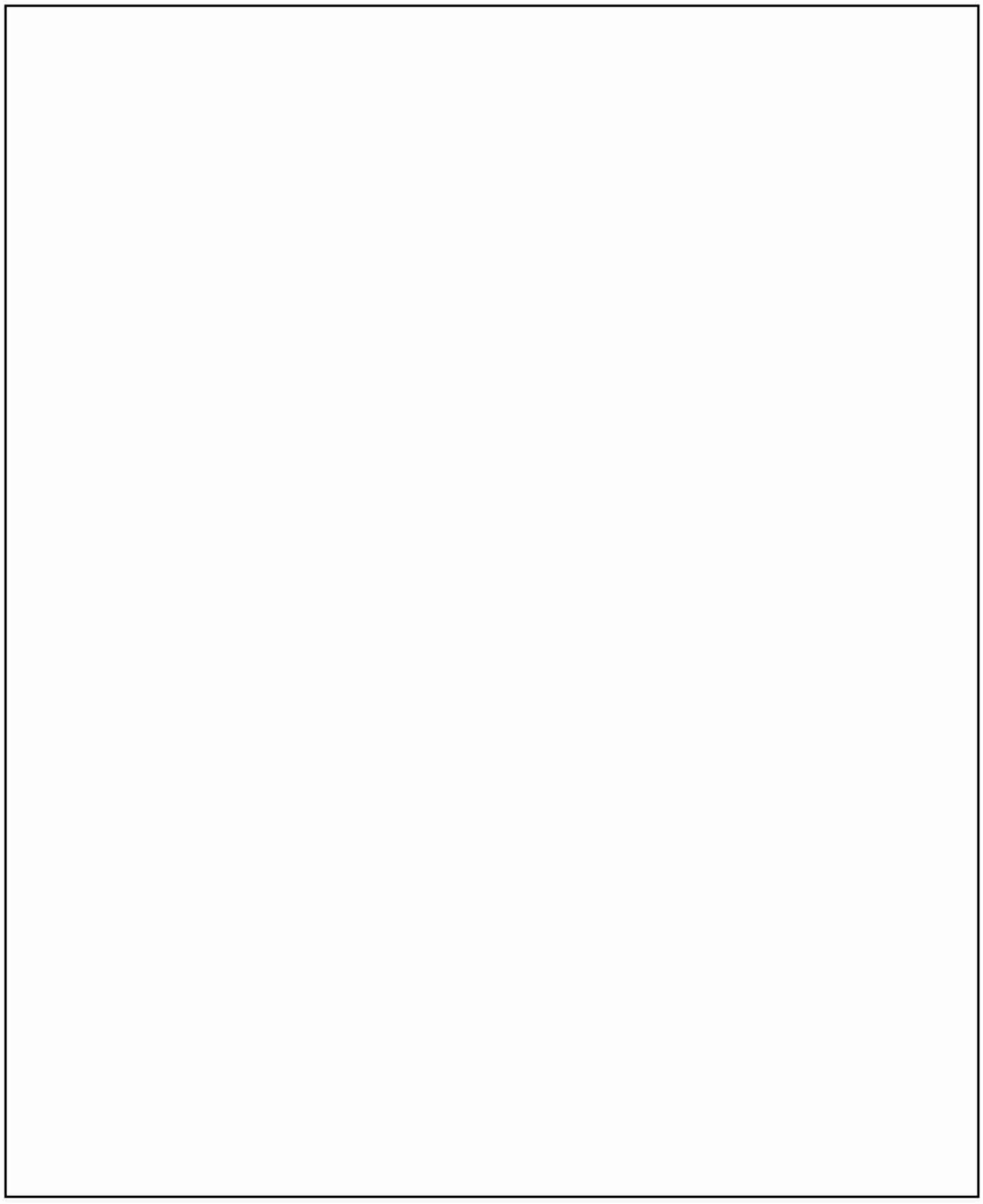
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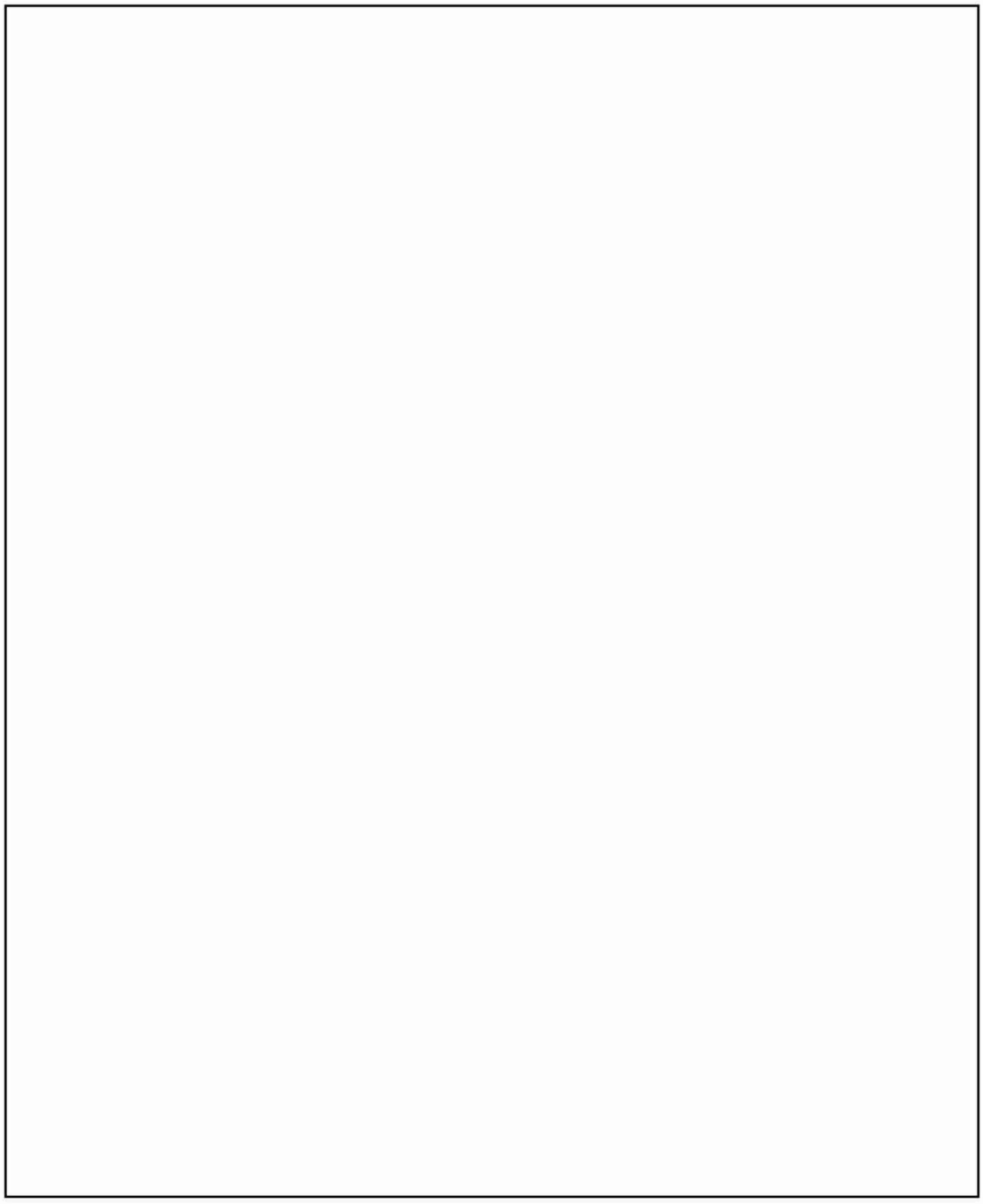
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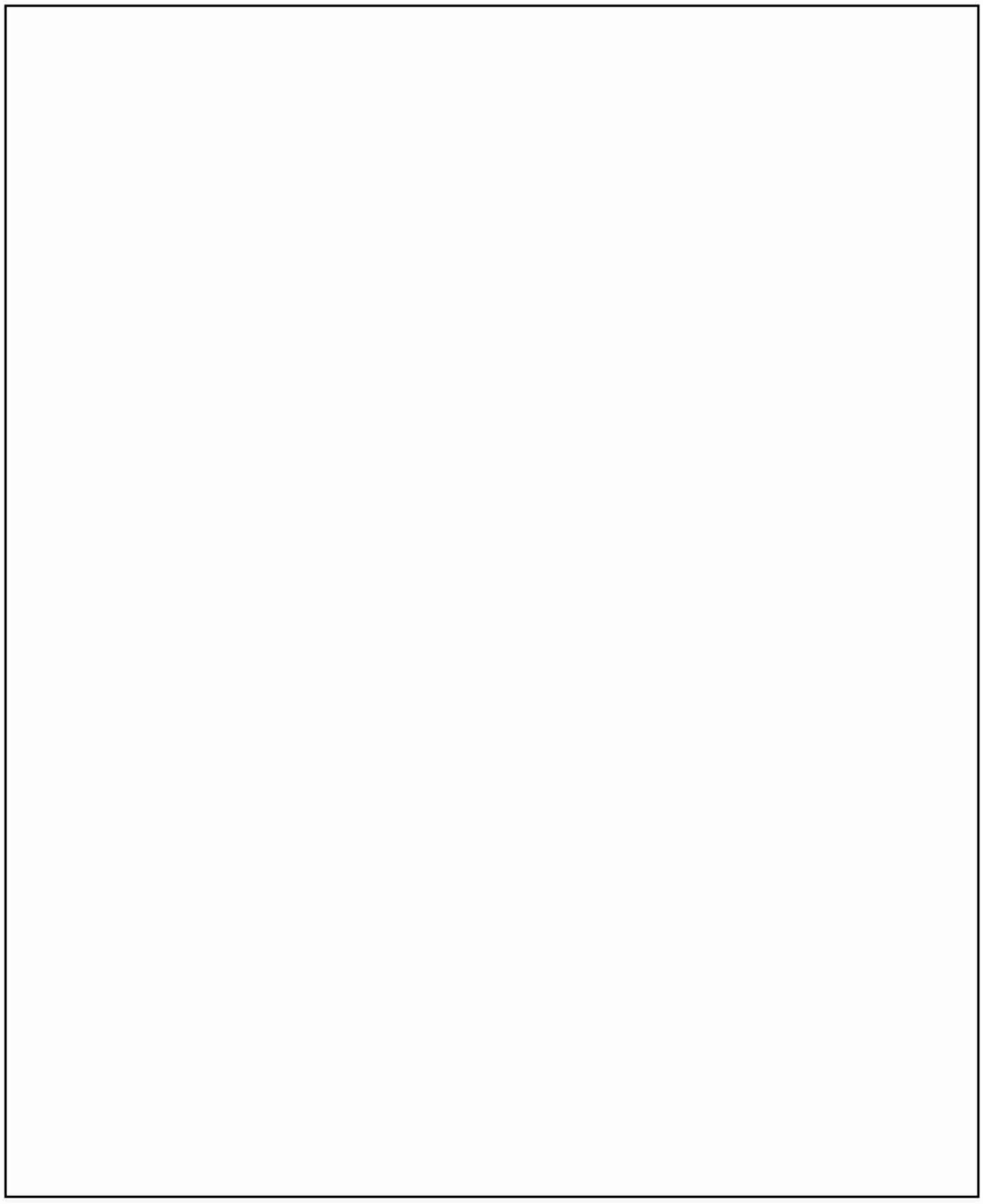
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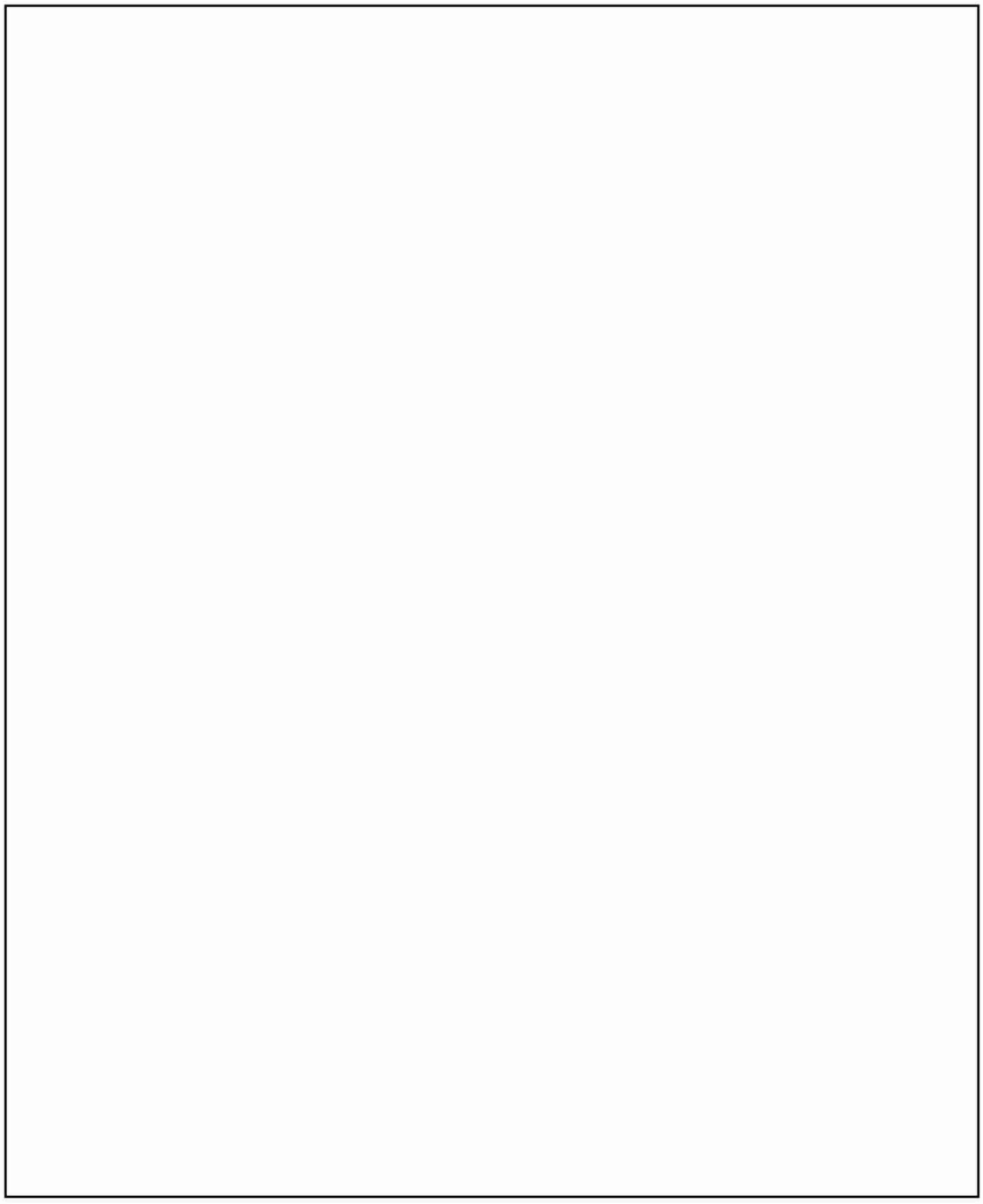
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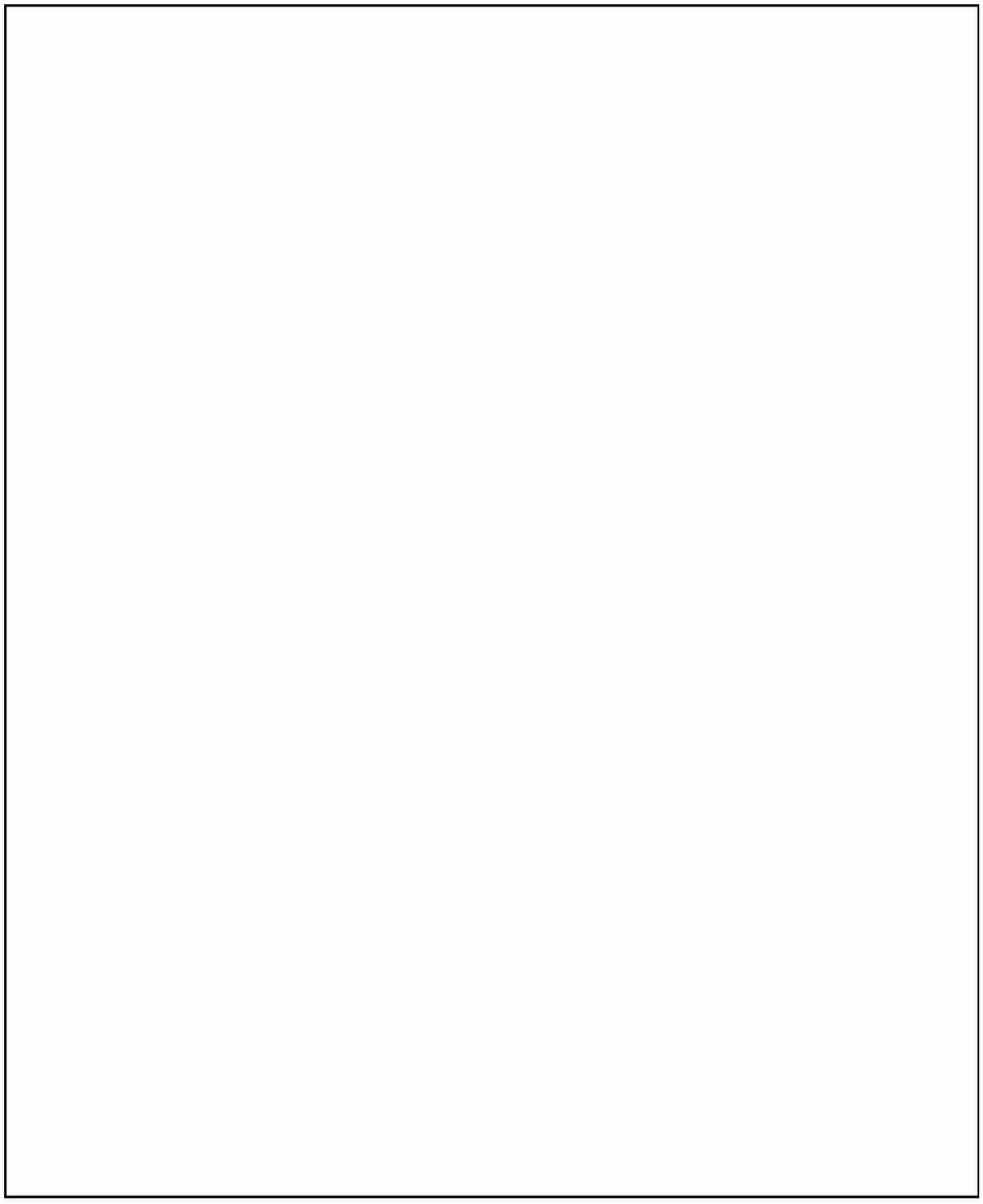
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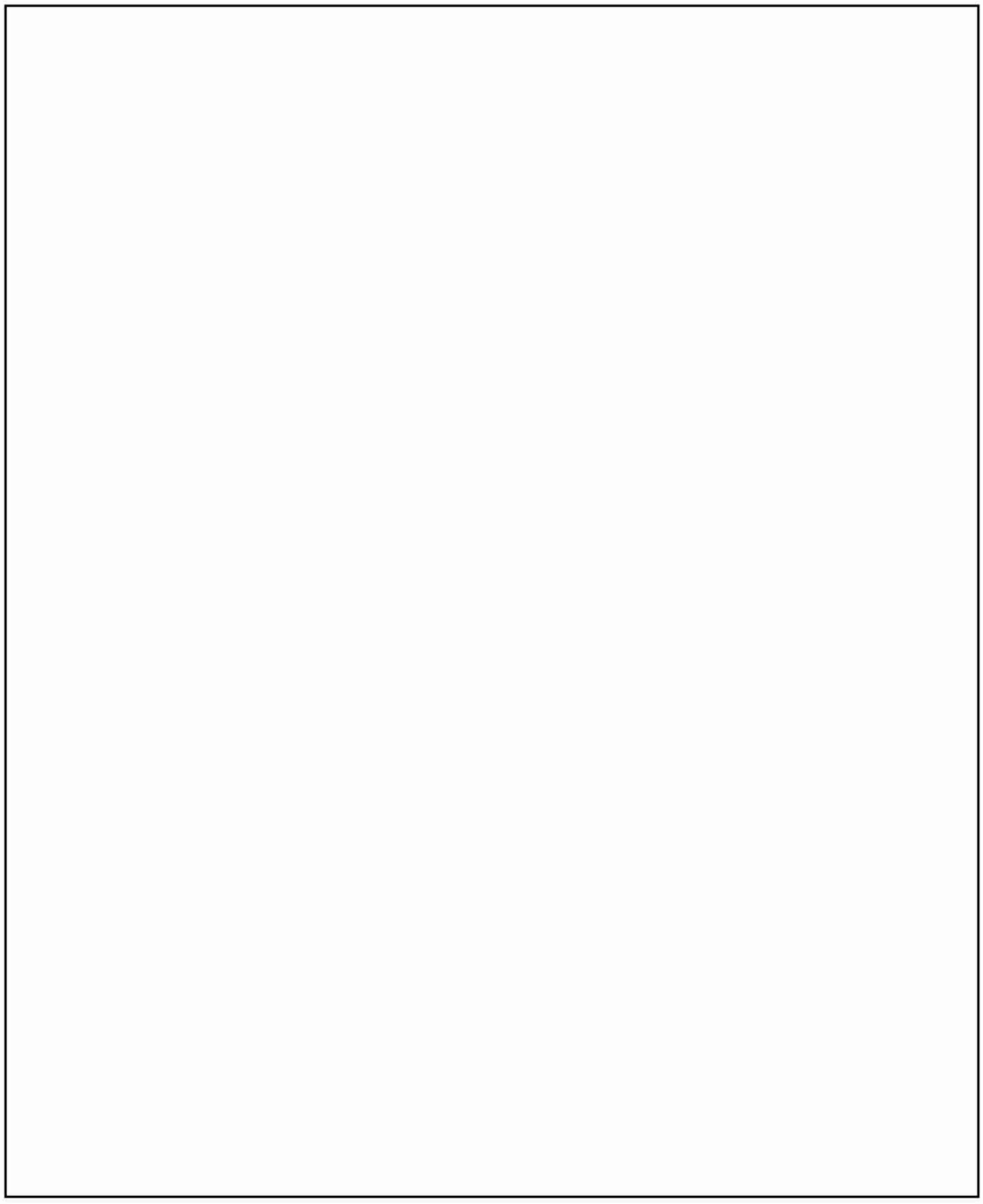
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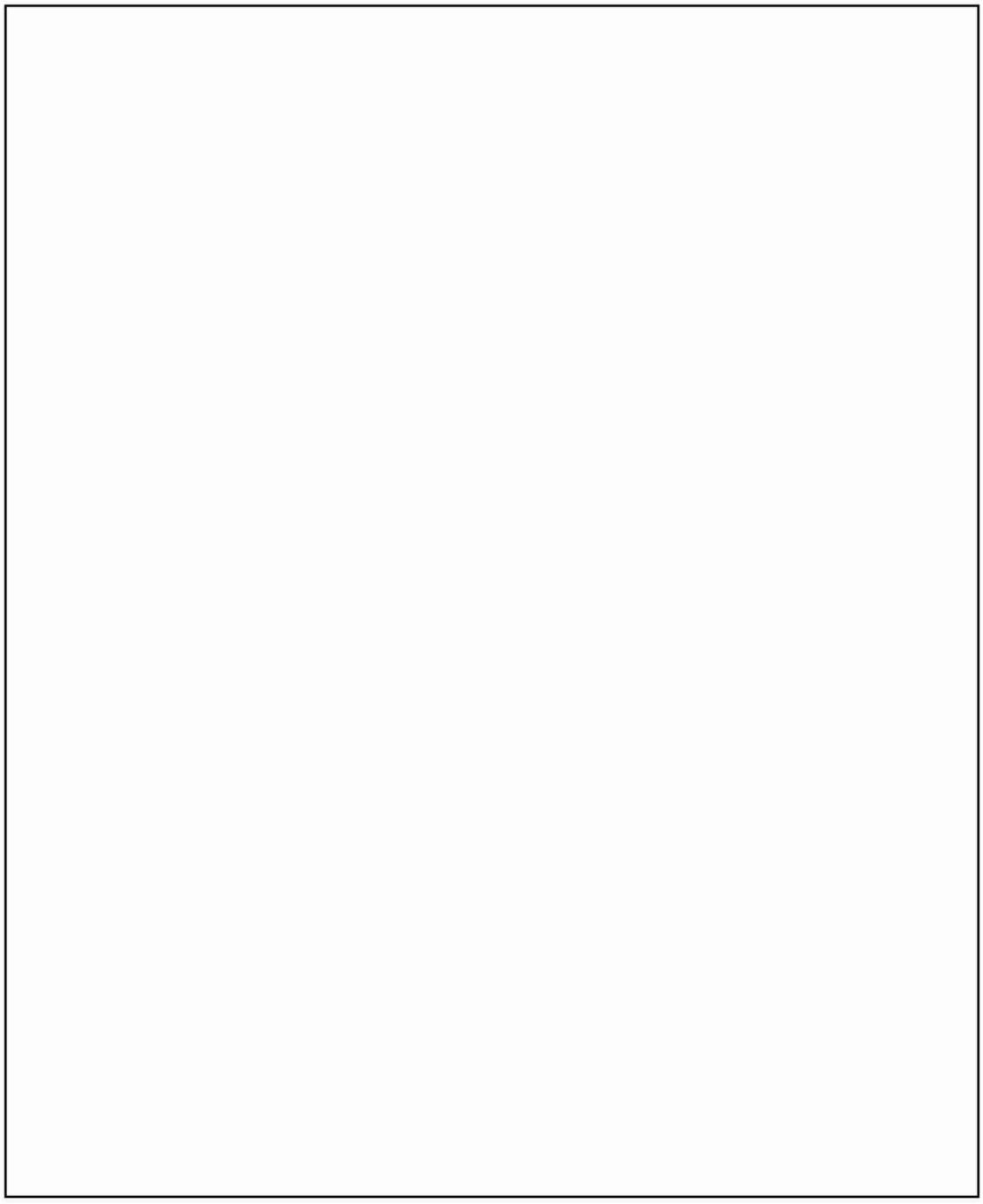
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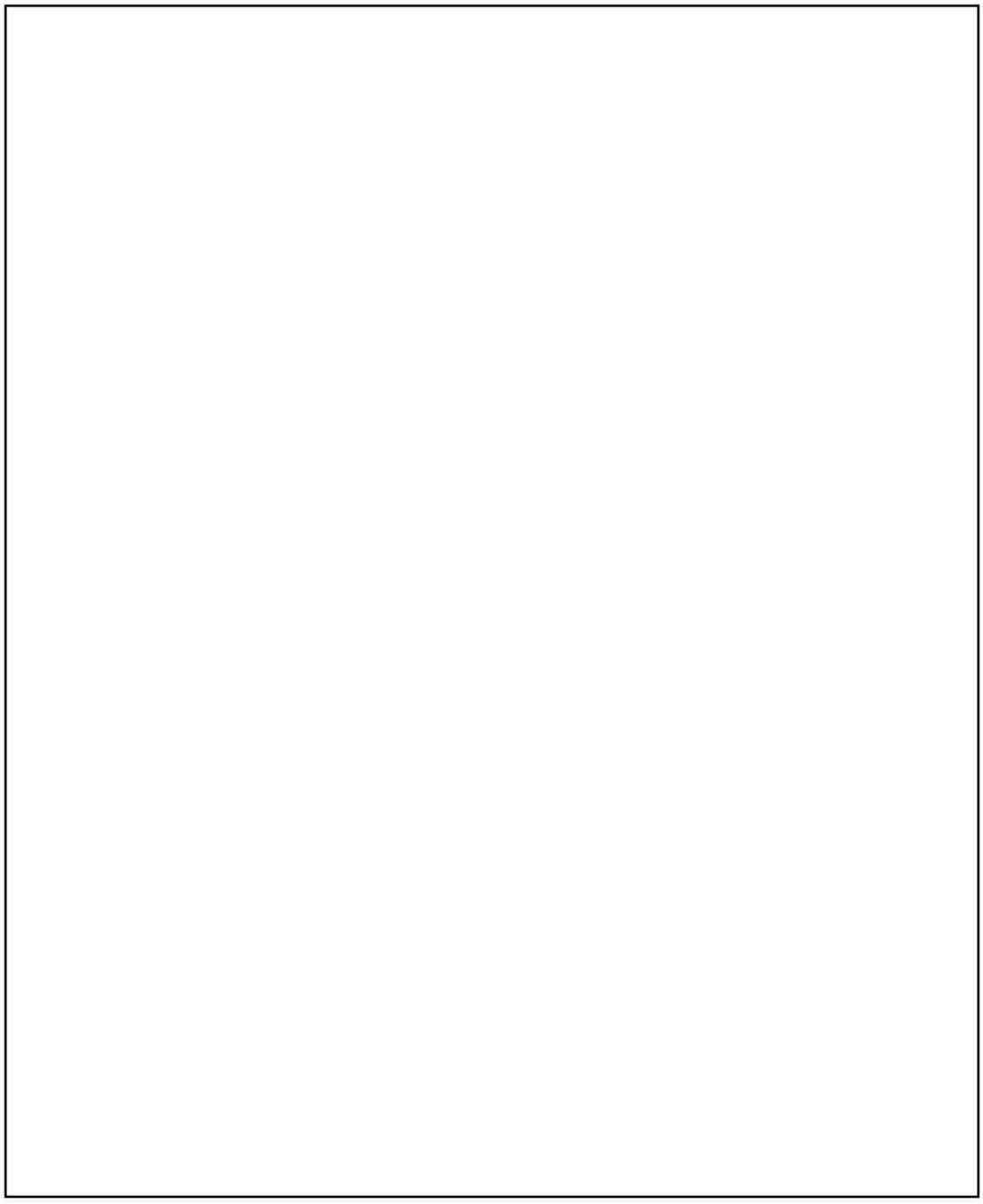
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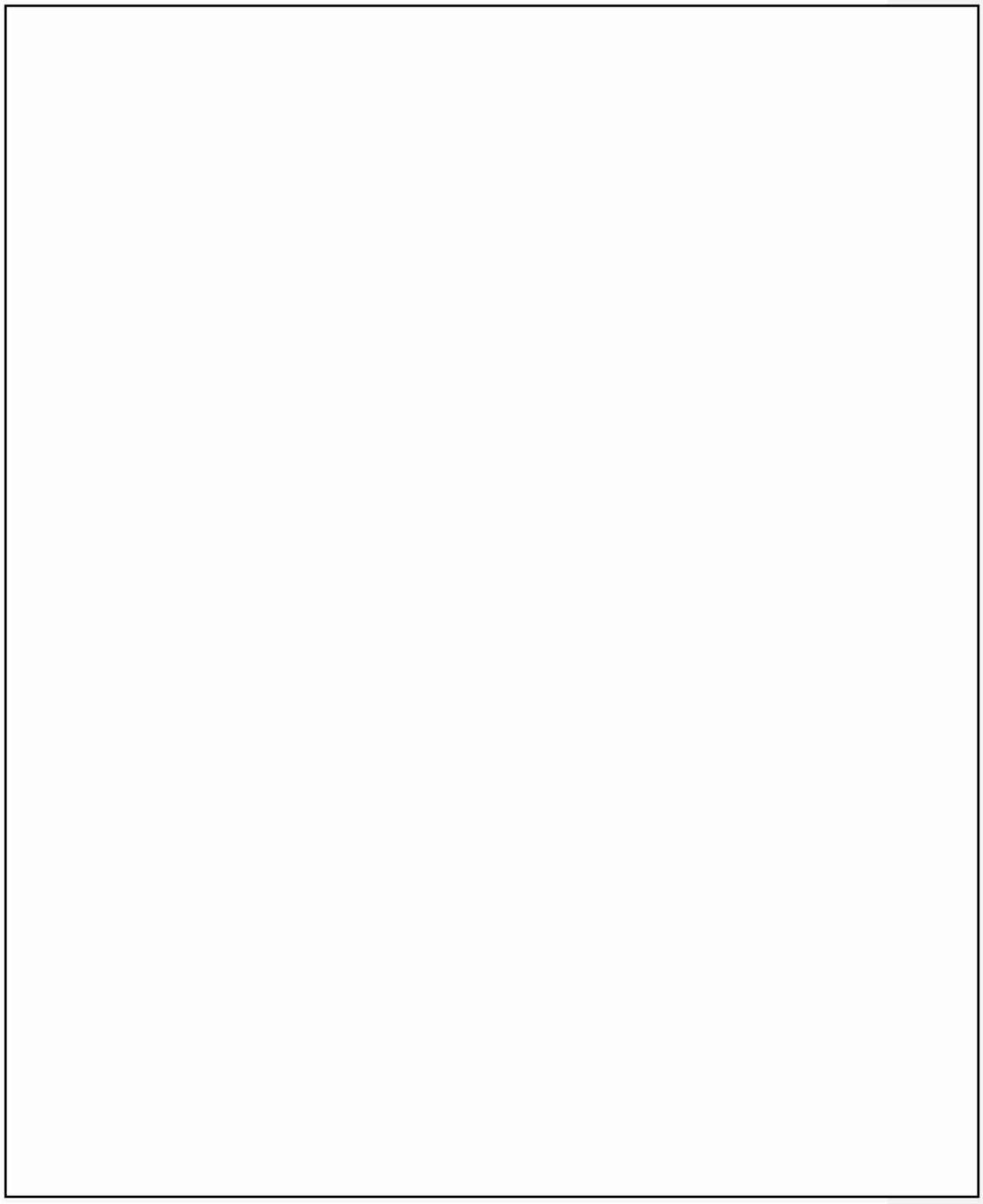
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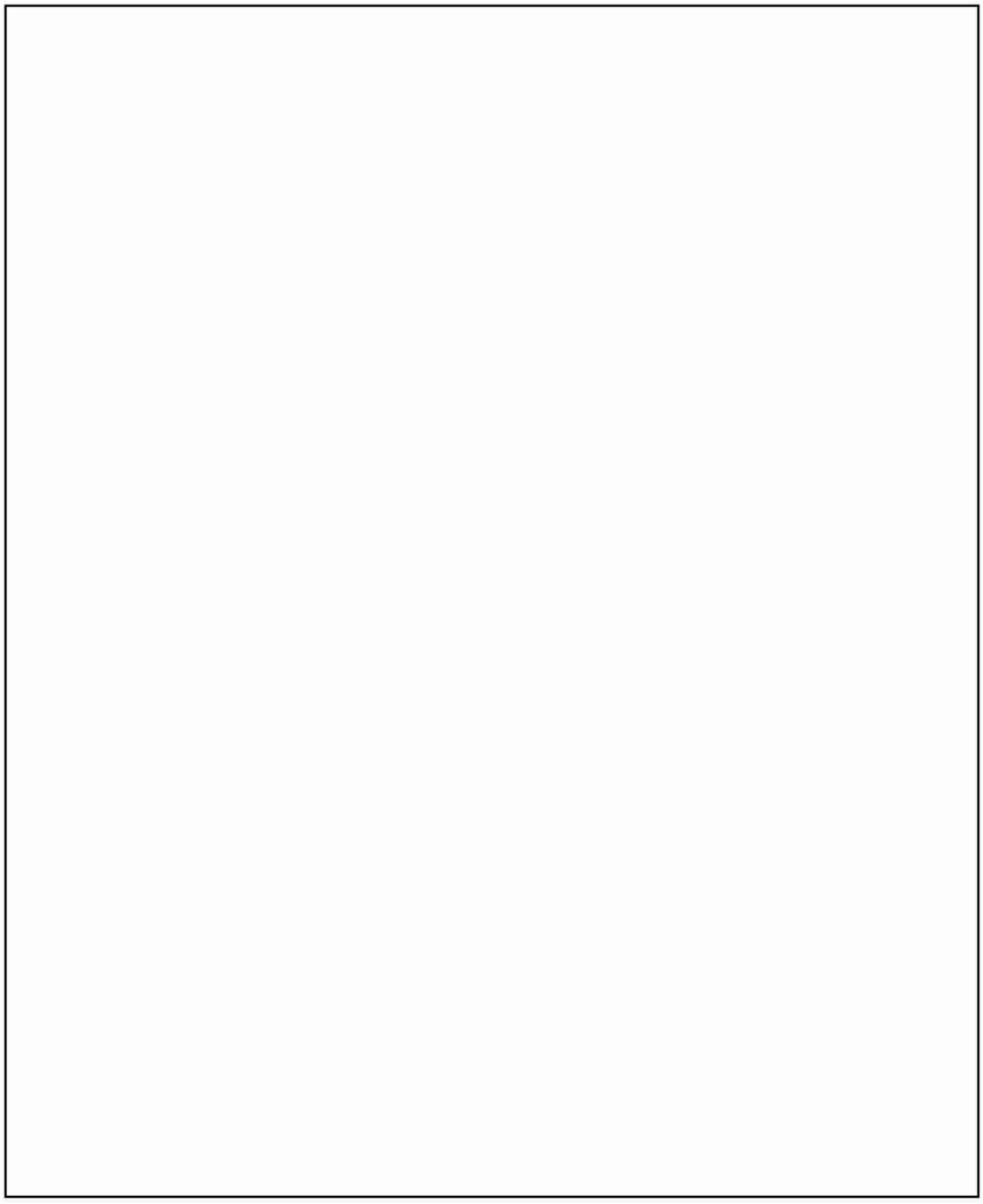
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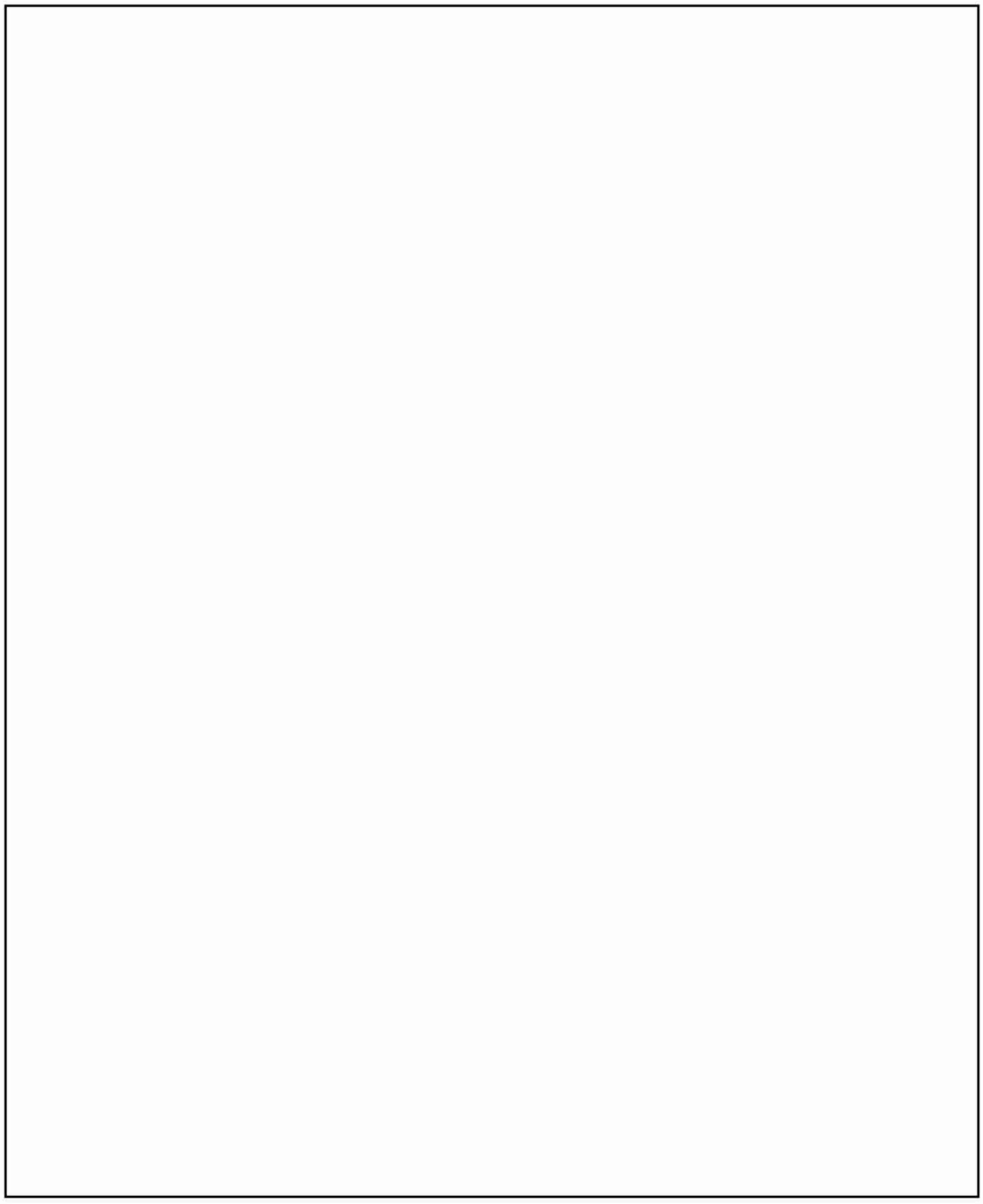
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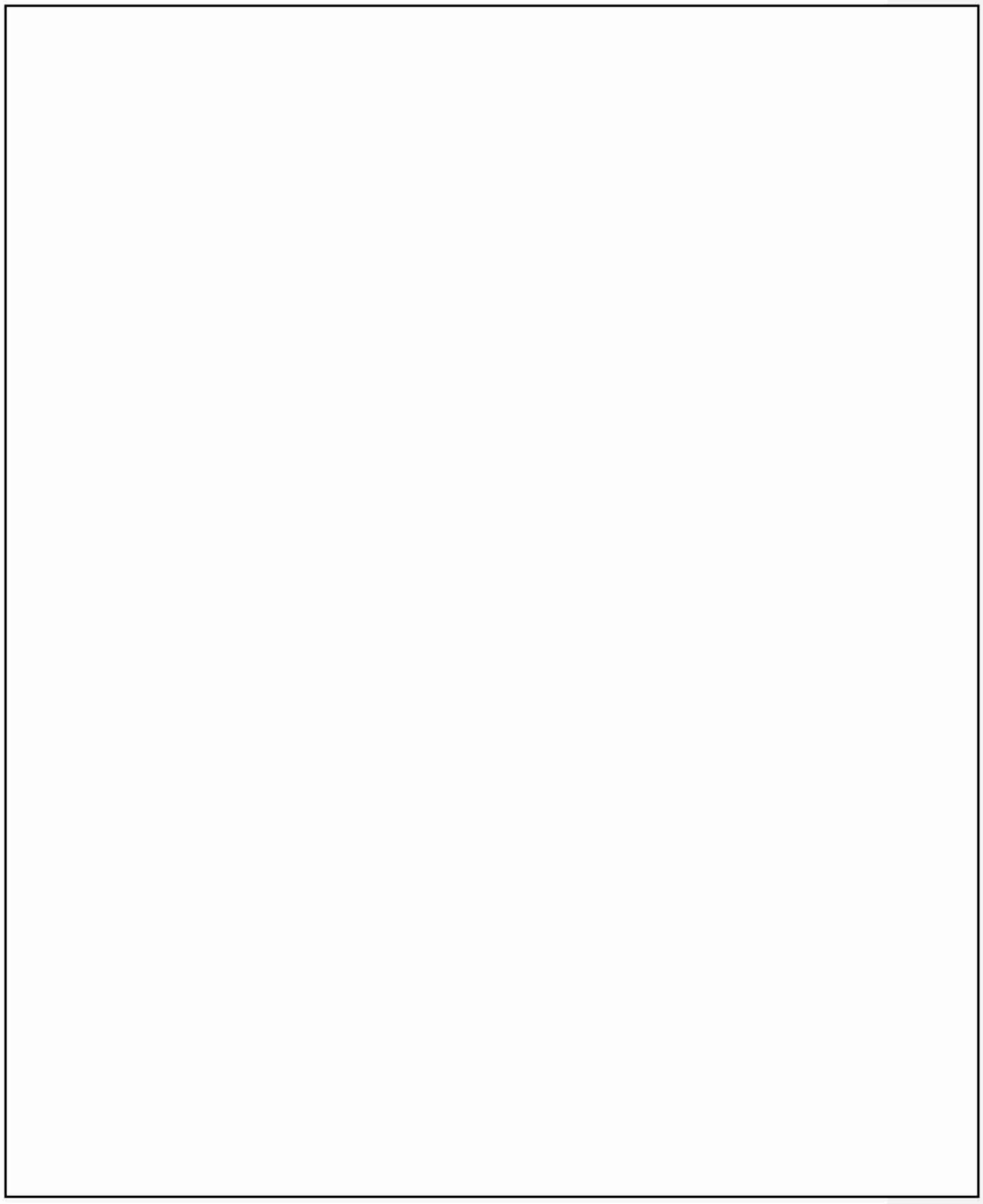
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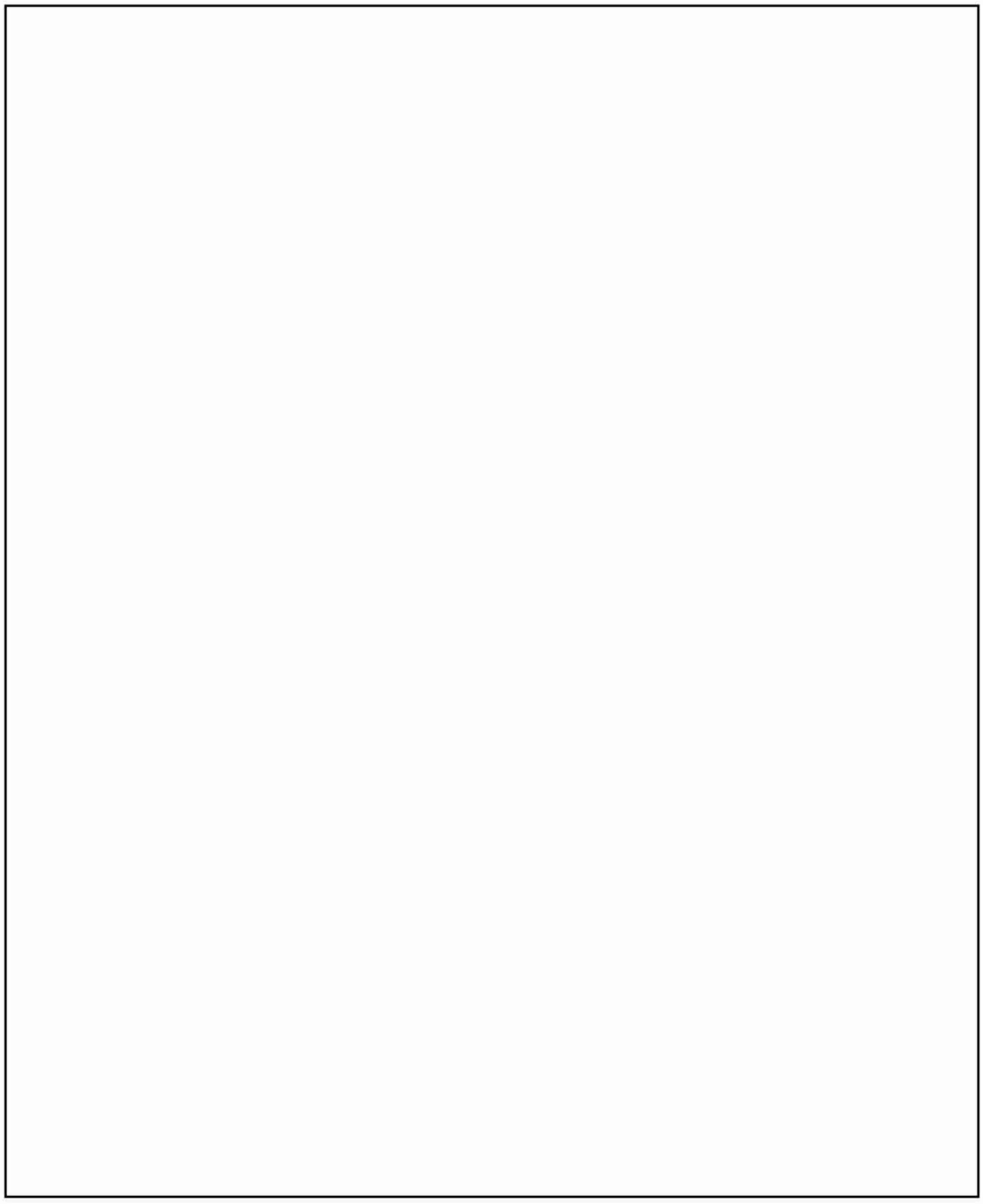
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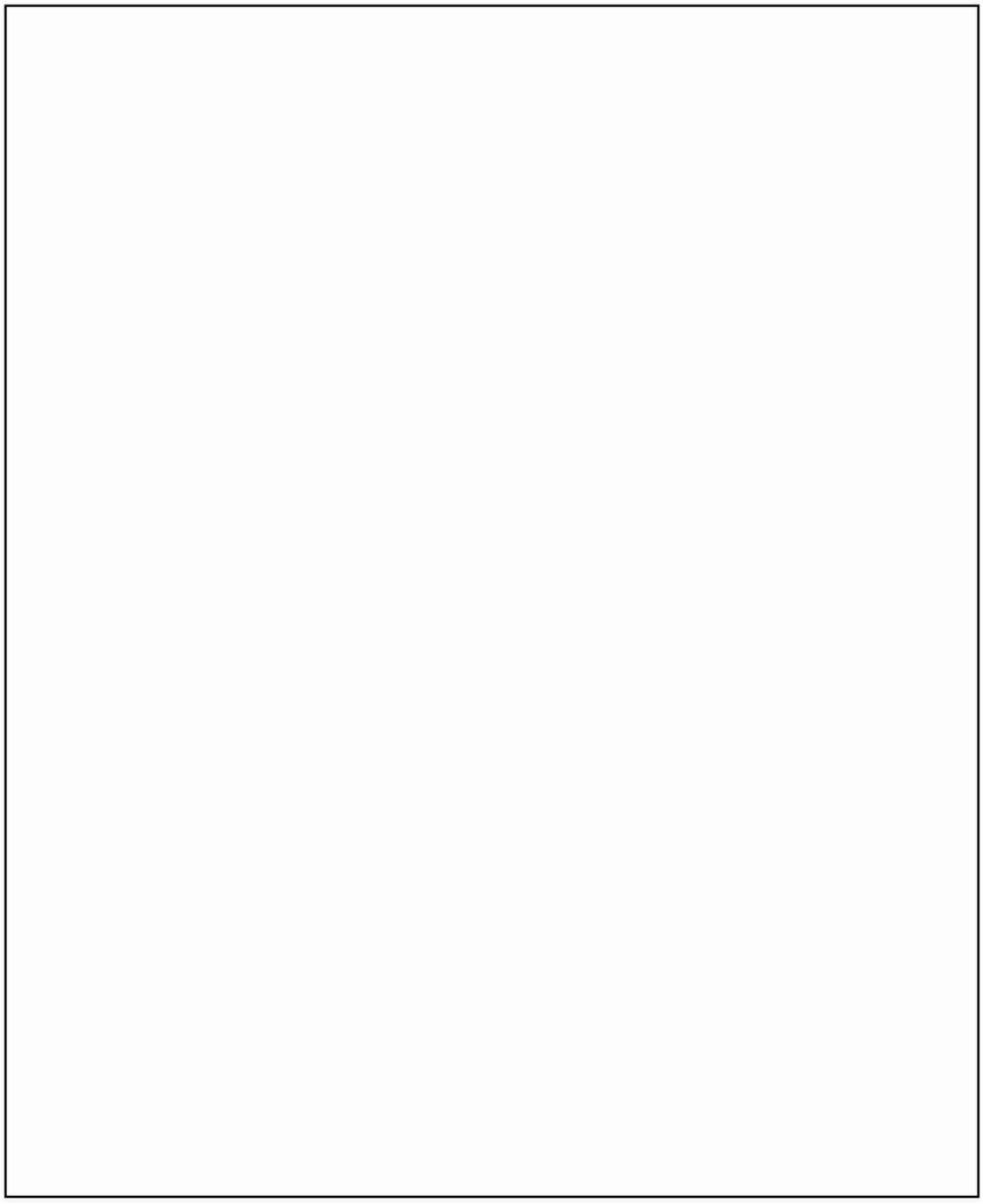
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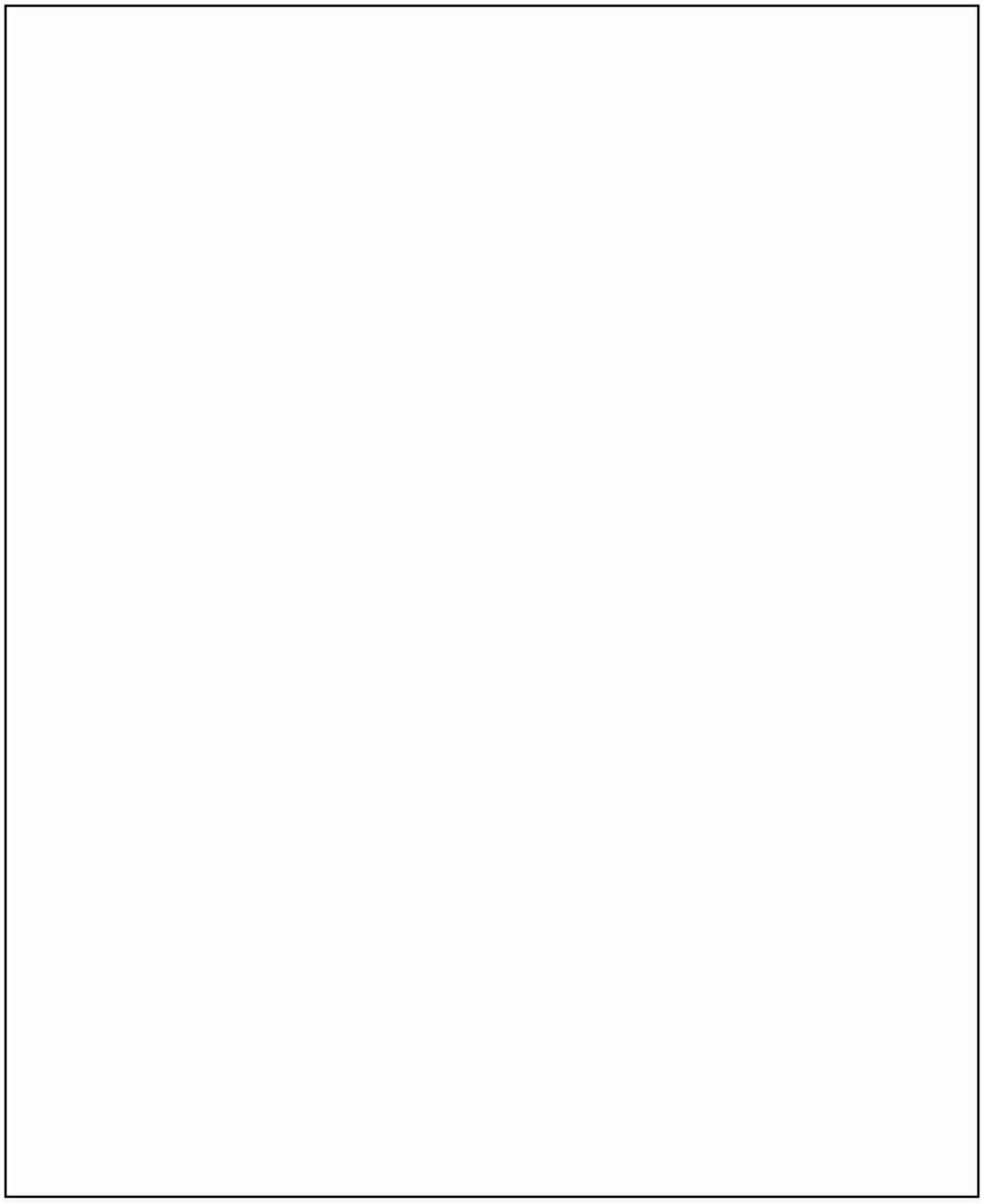
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

_____
Chad F. Wolf,
Acting Secretary of Homeland Security

AMERICAN OVERSIGHT

DHS-20-2156-A-003731

TABLE OF CHANGES – FORM
Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:

- Black font = Current text
- Red font = Changes

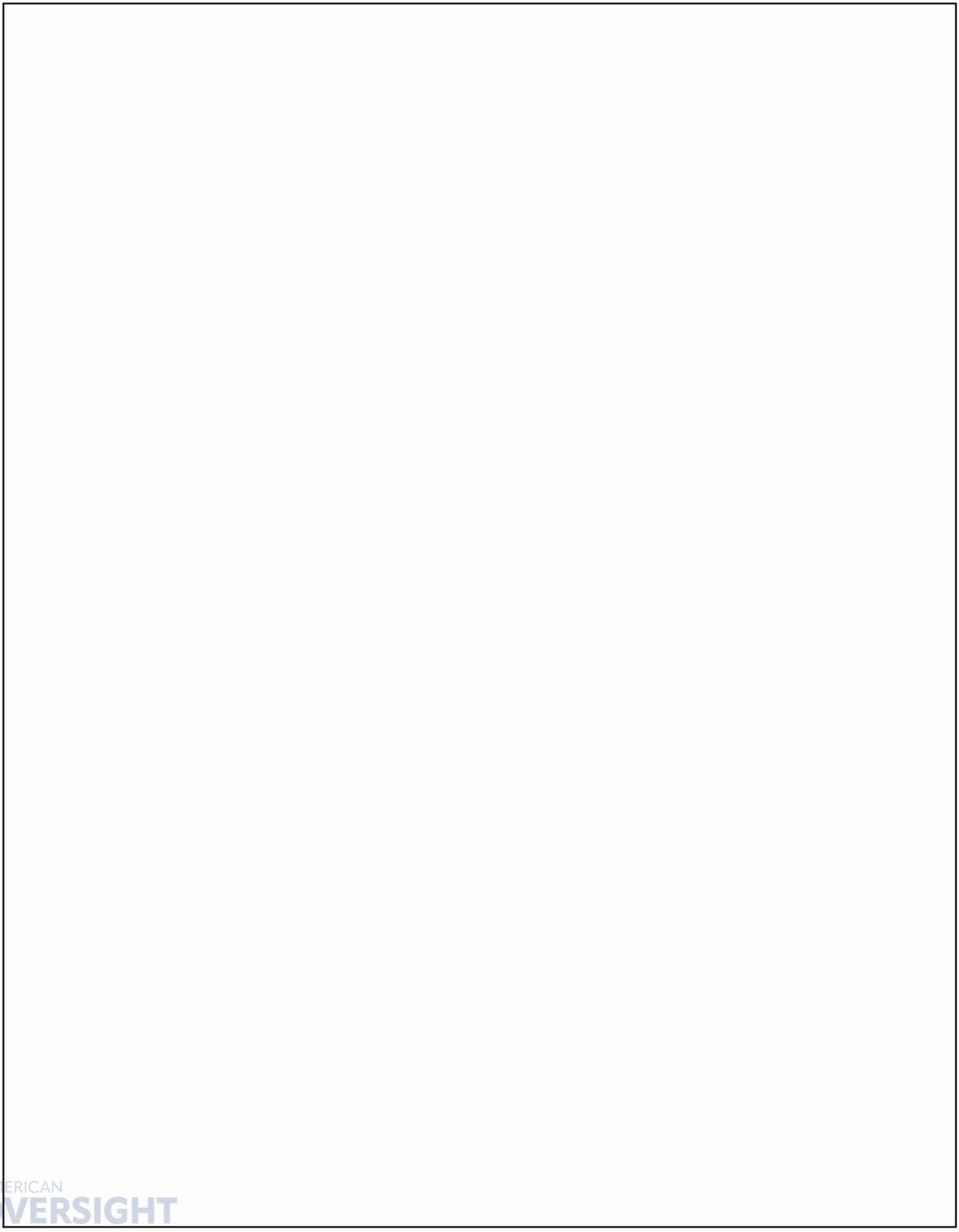
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Expires 10/31/2021
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text

AMERICAN OVERSIGHT

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TABLE OF CHANGES –INSTRUCTIONS
Instructions for Form I-129, Petition for a Nonimmigrant Worker
OMB Number: 1615-0009
06/30/2020

Reason for Revision: Strengthening H-1B IFR
Project Phase: FO Review

Legend for Proposed Text:
- Black font = Current text
- Red font = Changes

(b)(5)

Expires 10/31/2021
Edition Date 01/27/2020

Current Page Number and Section	Current Text	Proposed Text

AMERICAN OVERSIGHT

DHS-20-2156-A-003736

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 5/14/2020 - DHS VIP Correspondence - Mary R. Grealy - Regarding visas for medical staff battling COVID-19 - STARS 26231
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: June 30, 2020 2:08 PM (UTC-05:00)
Attached: Incoming Grealy 4.29.20.pdf, Draft Response - Grealy - Redline 6.30.20.docx, Draft Response - Grealy - Clean LH 6.30.20.docx

Requestor Directorate/Office: DHS ESEC (b)(6)

Due Date: **Thursday, May 14, 2020**

Request: Director's Office clearance for the draft response to Mary R. Grealy. If cleared with no edits/comments, please forward for D2P signature.

Background: Mary R. Grealy wrote to Acting Secretary Wolf, Secretary of Labor and Secretary of State, with suggestions and concerns regarding visas for medical staff battling COVID-19. The USCIS Director's Office made edits to the original draft and this has been reviewed/cleared by OP&S/OCC/EXA. DHS ESEC tasked USCIS to reply direct and Cc.

Clearance:

OP&S:
OCC:
EXA:

Attachments:

1. Incoming – Grealy 4.29.20
2. Draft Response – Grealy - Redline 6.30.20
3. Draft Response – Grealy – Clean LH 6.30.20

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

From: Brown, James R <
Sent: Tuesday, June 30, 2020 2:44 PM
To: Dove, Stephen W (Steve); Carter, Constance L
Kilgore, Garry R <
Cc: Brown, James R
Subject: [FOR REVIEW] [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 5/14/2020 - DHS VIP Correspondence - Mary R. Grealy - Regarding visas for medical staff battling COVID-19 - STARS 26231

Good Afternoon,

Please review and clear the attached revised draft response from the PODs for Grealy prior to D2P's signature.

The Director's Office requested their revised draft response be cleared by the PODS.

AMERICAN OVERSIGHT

DHS ESEC has requested a reply direct cc for this response.

(b)(6)

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[redacted] Office
Cell (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

Mary R. Grealy
President
Healthcare Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

Dear Ms. Grealy:

Thank you for your April 29, 2020 letter requesting additional flexibilities for foreign medical workers during the public health emergency. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities. (b)(5)

AMERICAN OVERSIGHT

(b)(5)

[redacted]

We recognize that occupations in healthcare and public health are essential to responding to COVID-19. We appreciate your recommendations with regard to these issues. We will continue to explore available options within our statutory and regulatory authority. As we do so, your concerns will be taken into consideration.

Thank you again for you letter and interest in this matter.

Sincerely,

Joseph Edlow
Deputy Director for Policy

[redacted]

AMERICAN OVERSIGHT

(b)(5)

U.S. Department of Homeland Security

May U.S.

Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

Mary R. Grealy
President
Healthcare leadership Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

(b)(5)

Dear Mrs.PresidentMs. Grealy:

Thank you for your April 29, 2020 letter regarding your suggestions and concerns regarding visasrequesting additional flexibilities for foreign medical staff battling COVID-19.workers during the public health emergency. The Acting Secretary has asked that I respond on his behalf.

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www.uscis.gov

AMERICAN OVERSIGHT

(b)(5)

[redacted]

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AMERICAN OVERSIGHT

(b)(5)

[redacted]

Sincerely,

Joseph Edlow
Deputy Director for Policy

[redacted]

AMERICAN OVERSIGHT

(b)(5)

HEALTHCARE LEADERSHIP COUNCIL

April 29, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, D.C. 20528

The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Scalia, Acting Secretary Wolf, and Secretary Pompeo:

The Healthcare Leadership Council (HLC) appreciates the administration's continued efforts to address the stresses placed upon our healthcare system, our workforce, and our economy during the COVID-19 public health emergency. HLC commends the April 22 Presidential Proclamation's exception of doctors, nurses, and other healthcare professionals from the temporary suspension of immigrant admissions. As you consider the next administrative steps to recommend with regard to nonimmigrant visa programs to address the economic impact of the COVID-19 pandemic on American workers, HLC suggests several nonimmigrant visa measures for consideration to include among your recommendations.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable, high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, postacute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach. Among HLC's issues of concern are those relating to our country's healthcare workforce.

AMERICAN OVERSIGHT

The 2019 Novel Coronavirus (COVID-19) outbreak continues to spread across the globe and, while showing signs that its curve may be flattening in hard-hit parts of the United States, this contagion appears it will remain a significant public health challenge in our nation for some time to come. That means our healthcare resources, including front-line human resources, will continue to be stretched. This comes in addition to preexisting challenges concerning primary care providers and certain underserved areas.

HLC members share the administration's concerns over this significant threat to public health and economic security, and we remain vigilant during this public health emergency. Our members recognize the importance of public-private cooperation, especially during sustained emergency response, and of appropriately addressing the COVID-19 crisis. HLC believes the following actions regarding nonimmigrant visas should be included among actions you recommend to the White House to address the dramatic impact of the COVID-19 pandemic on the U.S. medical workforce.

- Temporarily extend the status and work authorization of any H-1B physician or H-1B or H-1C nurse beyond the normal 6-year limit for the duration of the COVID-19 crisis or at least 1 year.

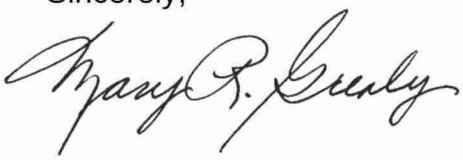
- Require U.S. Citizenship and Immigration Services to reinstate premium processing for any H-1B filed for a physician, physician assistant, registered nurse, nurse practitioner, and any other critical healthcare professional for the purpose of fighting COVID-19.

- Immediately grant Employment Authorization Document (EAD) approval to any physician or healthcare worker whose EAD card is about to expire, or whose application for renewal is pending, or grant work authorization based on a Receipt Notice of an I-765 application.

- Temporarily grant current J-1 medical residents and fellows and nonimmigrant nurses the ability to engage in COVID patient care, even if that is not a part of their formal training program.

As a diverse, multisectoral organization with representation from all disciplines within American healthcare, we stand ready to be a resource for you as you develop recommendations over the next 30 days for subsequent administrative action. Thank you for considering these suggestions for inclusion among your recommendations with regard to nonimmigrant visas, and we look forward to working with you on this important issue. Should you have any questions, please do not hesitate to contact Debbie Witchey at (202) 449-3435 or dwitchey@hlc.org.

Sincerely,



Mary R. Grealy
President

AMERICAN OVERSIGHT

DHS-20-2156-A-003751

Referred to Department of Homeland Security

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AMERICAN OVERSIGHT

From: Allsteadt, Edward
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 5/14/2020 - DHS VIP Correspondence - Mary Grealy - Regarding concerns with visas for medical staff battling COVID-19 - STARS 26231
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: June 26, 2020 10:37 AM (UTC-05:00)
Attached: Incoming Grealy 4.29.30.pdf, Draft Response - Grealy - Redline 6.25.20.docx, Draft Response - Grealy - Clean LH 6.25.20.doc

Hi Morgan,

(b)(6)

No edits. Ready for your review.

Thanks,

Ed

From: Kilgore, Garry R [redacted]
Sent: Friday, June 26, 2020 10:29 AM
To: USCIS Directors Office Clearance-EXSO <[redacted]>; Brown, James R [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 5/14/2020 - DHS VIP Correspondence - Mary Grealy - Regarding concerns with visas for medical staff battling COVID-19 - STARS 26231

Requestor Directorate/Office: DHS ESEC

Due Date: **3:00pm on Thursday, May 14, 2020.**

Request: D2P signature.

Background: Mary Grealy, of the Healthcare Leadership Council, wrote to Acting Secretary Wolf, Secretary of State, and Secretary of Labor with suggestions and concerns regarding visas for medical staff battling COVID-19. DHS ESEC requested D2P sign the final response.

Clearance:

OP&S: [redacted]
OCC:
EXA:

Attachments:

1. Incoming Grealy 4.29.20
2. Draft Response – Grealy - Redline 6.25.20
3. Draft Response – Grealy – Clean LH 6.25.20

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

AMERICAN OVERSIGHT

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

Mary R. Grealy
President
Healthcare Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

Dear Ms. Grealy:

Thank you for your April 29, 2020 letter regarding your suggestions and concerns regarding visas for medical staff battling COVID-19. The Acting Secretary has asked that I respond on his behalf.

(b)(5)



AMERICAN OVERSIGHT

DHS-20-2156-A-003846

(b)(5)

Thank you again for you letter and interest in this matter, which we appreciate and will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

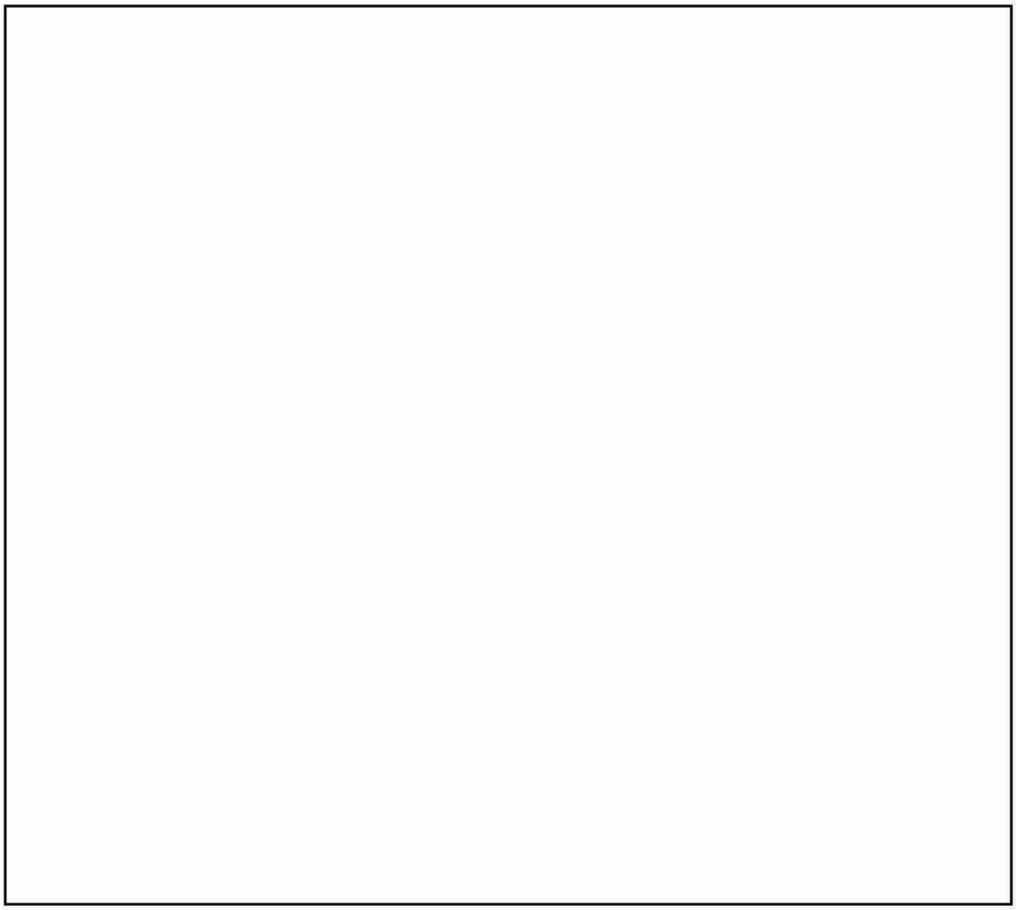
~~May~~ June XX, 2020

Mary R. Grealy
President
Healthcare ~~leadership~~ Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

(b)(5)

Dear Mrs.~~President~~ Grealy:

Thank you for your April 29, 2020 letter regarding your suggestions and concerns regarding visas for medical staff battling COVID-19. The Acting Secretary has asked that I respond on his behalf.



AMERICAN OVERSIGHT

(b)(5)

[redacted]

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Thank you again for you letter and interest in this ~~important~~ matter, which we appreciate and will consider the recommendations you have put forward. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

Joseph Edlow
Deputy Director for Policy

[redacted]

(b)(5)

AMERICAN OVERSIGHT

HEALTHCARE LEADERSHIP COUNCIL

April 29, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, D.C. 20528

The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Scalia, Acting Secretary Wolf, and Secretary Pompeo:

The Healthcare Leadership Council (HLC) appreciates the administration's continued efforts to address the stresses placed upon our healthcare system, our workforce, and our economy during the COVID-19 public health emergency. HLC commends the April 22 Presidential Proclamation's exception of doctors, nurses, and other healthcare professionals from the temporary suspension of immigrant admissions. As you consider the next administrative steps to recommend with regard to nonimmigrant visa programs to address the economic impact of the COVID-19 pandemic on American workers, HLC suggests several nonimmigrant visa measures for consideration to include among your recommendations.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable, high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, postacute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach. Among HLC's issues of concern are those relating to our country's healthcare workforce.

AMERICAN OVERSIGHT

The 2019 Novel Coronavirus (COVID-19) outbreak continues to spread across the globe and, while showing signs that its curve may be flattening in hard-hit parts of the United States, this contagion appears it will remain a significant public health challenge in our nation for some time to come. That means our healthcare resources, including front-line human resources, will continue to be stretched. This comes in addition to preexisting challenges concerning primary care providers and certain underserved areas.

HLC members share the administration's concerns over this significant threat to public health and economic security, and we remain vigilant during this public health emergency. Our members recognize the importance of public-private cooperation, especially during sustained emergency response, and of appropriately addressing the COVID-19 crisis. HLC believes the following actions regarding nonimmigrant visas should be included among actions you recommend to the White House to address the dramatic impact of the COVID-19 pandemic on the U.S. medical workforce.

- Temporarily extend the status and work authorization of any H-1B physician or H-1B or H-1C nurse beyond the normal 6-year limit for the duration of the COVID-19 crisis or at least 1 year.

- Require U.S. Citizenship and Immigration Services to reinstate premium processing for any H-1B filed for a physician, physician assistant, registered nurse, nurse practitioner, and any other critical healthcare professional for the purpose of fighting COVID-19.

- Immediately grant Employment Authorization Document (EAD) approval to any physician or healthcare worker whose EAD card is about to expire, or whose application for renewal is pending, or grant work authorization based on a Receipt Notice of an I-765 application.

- Temporarily grant current J-1 medical residents and fellows and nonimmigrant nurses the ability to engage in COVID patient care, even if that is not a part of their formal training program.

As a diverse, multisectoral organization with representation from all disciplines within American healthcare, we stand ready to be a resource for you as you develop recommendations over the next 30 days for subsequent administrative action. Thank you for considering these suggestions for inclusion among your recommendations with regard to nonimmigrant visas, and we look forward to working with you on this important issue. Should you have any questions, please do not hesitate to contact Debbie Witchey at (202) 449-3435 or dwitchey@hlc.org.

Sincerely,

Mary R. Grealy

Mary R. Grealy
President

AMERICAN OVERSIGHT

DHS-20-2156-A-003851

From: Kilgore, Garry R
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 5/14/2020 - DHS VIP Correspondence - Mary Grealy - Regarding concerns with visas for medical staff battling COVID-19 - STARS 26231
To: USCIS Directors Office Clearance-EXSO; Brown, James R
Sent: June 26, 2020 10:29 AM (UTC-05:00)
Attached: Incoming Grealy 4.29.30.pdf, Draft Response - Grealy - Redline 6.25.20.docx, Draft Response - Grealy - Clean LH 6.25.20.doc

Requestor Directorate/Office: DHS ESEC

Due Date: **3:00pm on Thursday, May 14, 2020.** (b)(6)

Request: D2P signature.

Background: Mary Grealy, of the Healthcare Leadership Council, wrote to Acting Secretary Wolf, Secretary of State, and Secretary of Labor with suggestions and concerns regarding visas for medical staff battling COVID-19. DHS ESEC requested D2P sign the final response.

Clearance:

OP&S:
OCC:
EXA:

Attachments:

1. Incoming Grealy 4.29.20
2. Draft Response – Grealy - Redline 6.25.20
3. Draft Response – Grealy – Clean LH 6.25.20

*******Please reply to all on this email ******

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues:

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

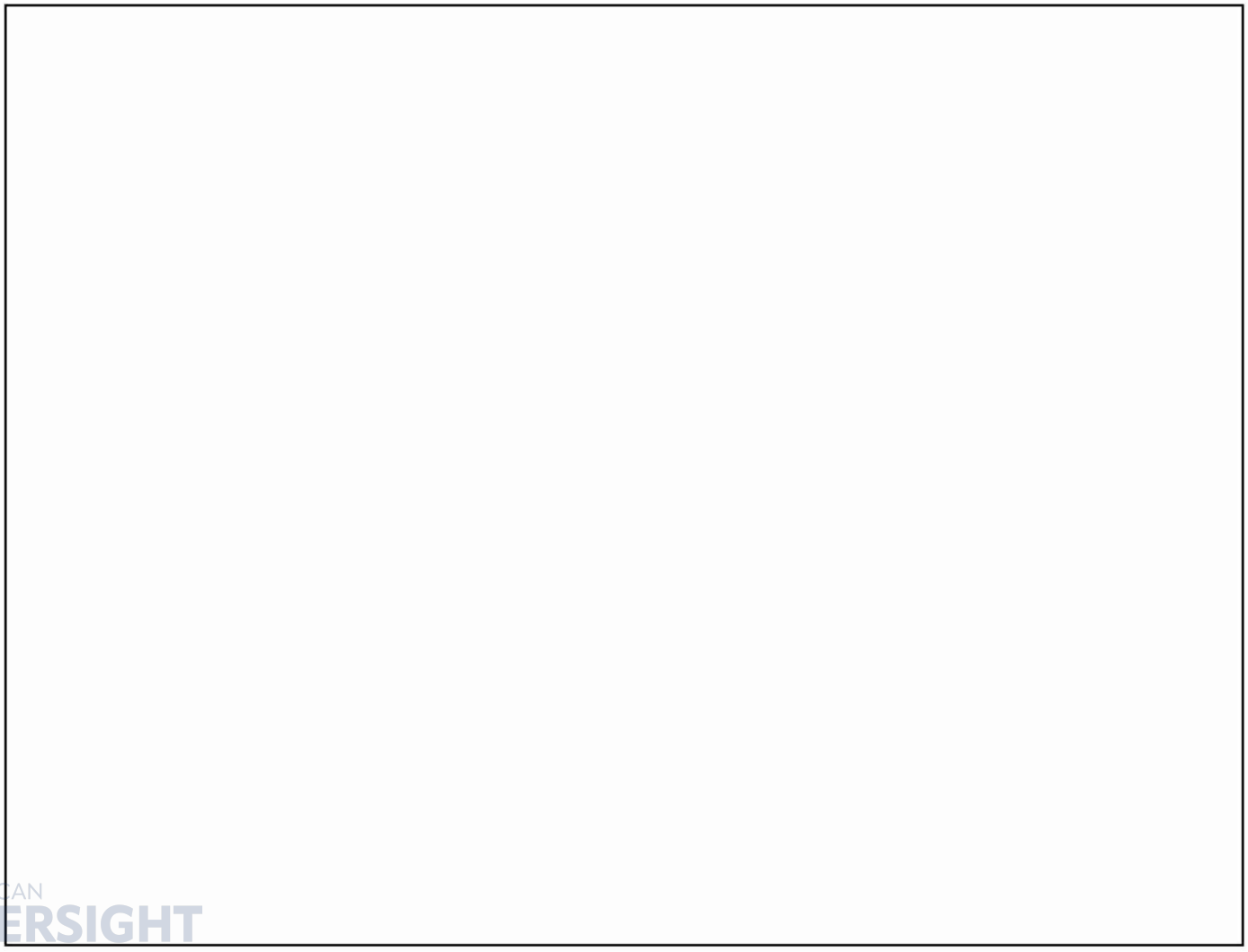
U.S. Citizenship and Immigration Services

June XX, 2020

Mary R. Grealy
President
Healthcare Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

Dear Ms. Grealy:

Thank you for your April 29, 2020 letter regarding your suggestions and concerns regarding visas for medical staff battling COVID-19. The Acting Secretary has asked that I respond on his behalf. (b)(5)



AMERICAN OVERSIGHT

(b)(5)

[redacted]

Thank you again for you letter and interest in this matter, which we appreciate and will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

[redacted]

AMERICAN OVERSIGHT

(b)(5)

~~May~~ June XX, 2020

Mary R. Grealy
President
Healthcare ~~leadership~~ Leadership Council
750 9th Street, NW Suite 500
Washington, DC 20001

(b)(5)

Dear Mrs.~~President~~ Grealy:

Thank you for your April 29, 2020 letter regarding your suggestions and concerns regarding visas for medical staff battling COVID-19. The Acting Secretary has asked that I respond on his behalf.

AMERICAN OVERSIGHT

(b)(5)

[redacted]

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Thank you again for you letter and interest in this ~~important~~ matter, which we appreciate and will consider the recommendations you have put forward. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

Joseph Edlow
Deputy Director for Policy

[redacted]

(b)(5)

AMERICAN OVERSIGHT

HEALTHCARE LEADERSHIP COUNCIL

April 29, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, D.C. 20528

The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Scalia, Acting Secretary Wolf, and Secretary Pompeo:

The Healthcare Leadership Council (HLC) appreciates the administration's continued efforts to address the stresses placed upon our healthcare system, our workforce, and our economy during the COVID-19 public health emergency. HLC commends the April 22 Presidential Proclamation's exception of doctors, nurses, and other healthcare professionals from the temporary suspension of immigrant admissions. As you consider the next administrative steps to recommend with regard to nonimmigrant visa programs to address the economic impact of the COVID-19 pandemic on American workers, HLC suggests several nonimmigrant visa measures for consideration to include among your recommendations.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable, high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, postacute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach. Among HLC's issues of concern are those relating to our country's healthcare workforce.

AMERICAN OVERSIGHT

The 2019 Novel Coronavirus (COVID-19) outbreak continues to spread across the globe and, while showing signs that its curve may be flattening in hard-hit parts of the United States, this contagion appears it will remain a significant public health challenge in our nation for some time to come. That means our healthcare resources, including front-line human resources, will continue to be stretched. This comes in addition to preexisting challenges concerning primary care providers and certain underserved areas.

HLC members share the administration's concerns over this significant threat to public health and economic security, and we remain vigilant during this public health emergency. Our members recognize the importance of public-private cooperation, especially during sustained emergency response, and of appropriately addressing the COVID-19 crisis. HLC believes the following actions regarding nonimmigrant visas should be included among actions you recommend to the White House to address the dramatic impact of the COVID-19 pandemic on the U.S. medical workforce.

- Temporarily extend the status and work authorization of any H-1B physician or H-1B or H-1C nurse beyond the normal 6-year limit for the duration of the COVID-19 crisis or at least 1 year.

- Require U.S. Citizenship and Immigration Services to reinstate premium processing for any H-1B filed for a physician, physician assistant, registered nurse, nurse practitioner, and any other critical healthcare professional for the purpose of fighting COVID-19.

- Immediately grant Employment Authorization Document (EAD) approval to any physician or healthcare worker whose EAD card is about to expire, or whose application for renewal is pending, or grant work authorization based on a Receipt Notice of an I-765 application.

- Temporarily grant current J-1 medical residents and fellows and nonimmigrant nurses the ability to engage in COVID patient care, even if that is not a part of their formal training program.

As a diverse, multisectoral organization with representation from all disciplines within American healthcare, we stand ready to be a resource for you as you develop recommendations over the next 30 days for subsequent administrative action. Thank you for considering these suggestions for inclusion among your recommendations with regard to nonimmigrant visas, and we look forward to working with you on this important issue. Should you have any questions, please do not hesitate to contact Debbie Witchey at (202) 449-3435 or dwitchey@hlc.org.

Sincerely,

Mary R. Grealy

Mary R. Grealy
President

AMERICAN OVERSIGHT

DHS-20-2156-A-003858

(b)(6)

From: Kustra, Bonnie C
Subject: RE: LNSCD DAILY UPDATE 06/23/2020
To: Franke, Evan R; Blair, Danielle J; Blair, Randolph N Jr (Randy); Charette, Kaitlyn E; Cho, Jeannette S; Howard, Frank E; Malashock, Moshe Y (Yoel); Marshall, Michelle R; Martin, James H; Miller, Caitlin E; O'Connell, Catherine M; Piateski, Jennifer E; Roll, Annemarie E; Santos-Dejesus, Kellie J; Saylor, Amanda B; Schau Nelson, Jessica R; Scott, Phillip B; Zill, Katherine F; Angustia, Kathleen M (Kate); Belgrade, Michael J; Blumeyer-Martinez, Kristy L; Flores, Nicole S (Nikki); Hicks, Celia F; Hill, Kasey I; Kim, Carolyn H; Metzgar, Michael M; Roman, Jacqueline (Jackie); Schwartz, Claudia R; Siders, Melanie J; Tao, Betsy P; Tellawi, Heba K; Viger, Steven W; Woodward, Amber R
Sent: June 23, 2020 10:06 AM (UTC-05:00)

Thank you!

Sincerely,

Bonnie Choi Kustra, Associate Counsel
Litigation and National Security Coordination Division
USCIS-DHS, Office of the Chief Counsel
W: [redacted] C: [redacted]
E-mail: [redacted]
C-LAN: [redacted]
HSDN: [redacted]
E-mail: [redacted]

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Thank you.

From: Franke, Evan R [redacted]
Sent: Tuesday, June 23, 2020 11:03 AM
To: Kustra, Bonnie C [redacted] Blair, Danielle J [redacted]; Blair, Randolph N Jr (Randy) [redacted]; Charette, Kaitlyn E [redacted]; Cho, Jeannette S [redacted]; Howard, Frank E [redacted]; Malashock, Moshe Y (Yoel) [redacted]; Marshall, Michelle R [redacted]; Martin, James H [redacted]; Miller, Caitlin E [redacted] O'Connell, Catherine M [redacted]; Piateski, Jennifer E [redacted]; Roll, Annemarie E [redacted]; Santos-Dejesus, Kellie J [redacted]; Saylor, Amanda B [redacted]; Schau Nelson, Jessica R [redacted]; Scott, Phillip B [redacted]; Zill, Katherine F [redacted]; Angustia, Kathleen M (Kate) [redacted]; Belgrade, Michael J [redacted]; Blumeyer-Martinez, Kristy L [redacted]; Flores, Nicole S (Nikki) [redacted] Hicks, Celia F [redacted]; Hill, Kasey I [redacted]; Kim, Carolyn H [redacted]; Metzgar, Michael M [redacted] Roman, Jacqueline (Jackie) [redacted]; Schwartz, Claudia R [redacted]; Siders, Melanie J [redacted]; Tao, Betsy P [redacted]; Tellawi, Heba K [redacted]; Viger, Steven W [redacted]; Woodward, Amber R [redacted]
Subject: RE: LNSCD DAILY UPDATE 06/23/2020

AMERICAN OVERSIGHT

(b)(6)

I will pass that along and see what we can find out.

(b)(6)

Regards,

Evan

Evan R Franke
Chief, Litigation and National Security Coordination Division
Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Suite 4210
Washington, D.C. 20529-2120
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Litigation Issues Emailbox:
National Security Issues Emailbox:

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From: Kustra, Bonnie C
Sent: Tuesday, June 23, 2020 10:54 AM
To: Franke, Evan R; Blair, Danielle J; Blair, Randolph N Jr (Randy); Charette, Kaitlyn E; Cho, Jeannette S; Howard, Frank E; Malashock, Moshe Y (Yoel); Marshall, Michelle R; Martin, James H; Miller, Caitlin E; O'Connell, Catherine M; Piateski, Jennifer E; Roll, Annemarie E; Santos-Dejesus, Kellie J; Saylor, Amanda B; Schau Nelson, Jessica R; Scott, Phillip B; Zill, Katherine F; Angustia, Kathleen M (Kate); Belgrade, Michael J; Blumeyer-Martinez, Kristy L; Flores, Nicole S (Nikki); Hicks, Celia E; Hill, Kasey I; Kim, Carolyn H; Metzgar, Michael M; Roman, Jacqueline (Jackie); Schwartz, Claudia R; Siders, Melanie J; Tao, Betsy P; Tellawi, Heba K; Viger, Steven W; Woodward, Amber R
Subject: RE: LNSCD DAILY UPDATE 06/23/2020

Hi Evan –

AMERICAN OVERSIGHT

Can you please ask our leadership to clarify how our retention standing is computed for competitive area. Based on the OPM furlough guidance (https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-administrative-furloughs.pdf) that was in the USCIS website, there is a sample furlough letter that states that

(b)(6)

retention is computed as follows: (b)(6)

Competitive area: Service [i.e., competitive or excepted]: Position title, series, and grade
Competitive level: Tenure and subgroup: Service computation date (SCD): Three most recent performance rating with years credited: Adjusted SCD (SCD-RIF)

Just wanted to know if this is what is actually being used to compute our competitive level for retention purposes.

Thank you!

Sincerely,

Bonnie Choi Kustra, Associate Counsel
Litigation and National Security Coordination Division
USCIS-DHS, Office of the Chief Counsel
W: C:
E-mail:
C-LAN
HSDN:
E-mail:

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Thank you.

From: Franke, Evan R
Sent: Tuesday, June 23, 2020 9:37 AM
To: Blair, Danielle J; Blair, Randolph N Jr (Randy); Charette, Kaitlyn F; Cho, Jeannette S; Franke, Evan R; Howard, Frank E; Kustra, Bonnie C; Malashock, Moshe Y (Yoel); Marshall, Michelle R; Martin, James H; Miller, Caitlin E; O'Connell, Catherine M; Piateski, Jennifer E; Roll, Annemarie E; Santos-Dejesus, Kellie J; Saylor, Amanda B; Schau Nelson, Jessica R; Scott, Phillip B; Zill, Katherine F; Angustia, Kathleen M (Kate); Belgrade, Michael J; Blumever-Martinez, Kristy L; Flores, Nicole S (Nikki); Hicks, Celia F; Hill, Kasey I; Kim, Carolyn H; Metzgar, Michael M; Roman, Jacqueline (Jackie); Schwartz, Claudia R; Siders, Melanie J; Tao, Betsy P; Tellawi, Heba K; Viger, Steven W; Woodward, Amber R
Subject: LNSCD DAILY UPDATE 06/23/2020

AMERICAN OVERSIGHT

Dear Team,

(b)(6)

After a mad scramble of self-help tech support (and sadly, my tech and not the government's) I am online and operating. I had to just eat breakfast and tech at the same time.

SUPERVISOR AVAILABILITY

I am teleworking today.

Annemarie is teleworking today.

Katherine has to go into the office today for part of the time and will telework the balance of the time. (b)(5)

LATEST DEVELOPMENTS

We have a new Presidential Proclamation (here: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak). [redacted]

We'll have our regular meeting today, and we will try using MS Teams again. Looking forward to seeing you all!

FINAL THOUGHTS

[redacted]

AMERICAN OVERSIGHT

(b)(5)

I cannot really thank you all enough for what you do, and for the difficulties that you are facing and nonetheless delivering on your responsibilities and duties. But I am grateful and I thank you as best I can.

Have a safe, healthy, peaceful and wonderful day!

Sincerely,

Evan

Evan R Franke
Chief, Litigation and National Security Coordination Division
Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Suite 4210
Washington, D.C. 20529-2120
Office
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AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: Confirmed | Call w/Congressman Andy Biggs
To: Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 17, 2020 11:03 AM (UTC-05:00)
Attached: Rep. Biggs, Andy R-AZ-5 June 15.docx

Conference Call [redacted] Passcode: [redacted] (b)(6)

Participants:
D2P
D2O
Kathryn Rexrode
Kika Scott
Steven Koncar
Andrew Bonic

AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: Confirmed | Call w/Congressman Andy Biggs
To: Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 16, 2020 3:08 PM (UTC-05:00)
Attached: Rep. Biggs, Andy R-AZ-5 June 15.docx

Conference Call [redacted] Passcode [redacted] (b)(6)

Participants:
D2P
D2O
Kathryn Rexrode
Kika Scott
Steven Koncar
Andrew Bonic

AMERICAN OVERSIGHT



Rep. Andy Biggs (R-AZ-5)

biggs.house.gov | @RepAndyBiggsAZ

- First Elected: November 2016
- Latest Election: November 2018 (59.42%)
- Political Highlights: Arizona House, 2003-11; Arizona Senate, 2011-16 (president, 2013-16)
- Career: Attorney, state legislator
- Residence: Gilbert
- Born: November 7, 1958; Tucson
- Religion: Mormon
- Family: Cindy [Biggs], six children, four grandchildren
- Education: Brigham Young U., B.A., 1982 (Asian studies); U. of Arizona, J.D., 1984; Arizona State U., M.A., 1999 (political science)
- Committees:
  - Judiciary
    - Immigration and Citizenship
    - Courts, Intellectual Property, and the Internet
  - Science, Space and Technology
    - Energy
    - Investigations and Oversight

Source: CQ

Official Biography

Congressman Andy Biggs is an Arizona native and currently serving his second term in the U.S. House of Representatives, representing Arizona's Fifth District. He lives in Gilbert with his wife of 38 years, Cindy. They have six children and six grandchildren.

Congressman Biggs received his bachelor's degree in Asian Studies from Brigham Young University; his M.A. in Political Science from Arizona State University; and his J.D. degree from the University of Arizona. He is a retired attorney, who has been licensed to practice law in Arizona, Washington, and New Mexico.

AMERICAN OVERSIGHT

Before being elected to Congress, Congressman Biggs served in the Arizona Legislature for 14 years – the last four as the Arizona Senate President.

Congressman Biggs is a member of the House Judiciary and Science, Space, and Technology committees. He is chairman of the House Freedom Caucus, co-chair of the Border Security Caucus, co-chair of the War Powers Caucus, and Chief Regulatory Reform Officer of the Western Caucus.

Congressman Biggs has a lifetime rating of 100% with the Club for Growth, 98% lifetime score with FreedomWorks, 95% lifetime score with Heritage Action, 100% rating in the 116th Congress for National Right to Life, and a 99% career grade from NumbersUSA.

The Arizona Republic named Congressman Biggs as one of its "10 Arizona people you'll want to watch in 2019," arguing that "Biggs makes the public case for the conservative position and often in defense of the Trump administration. He's very good at it. His advocacy tends to be well-reasoned and persuasive, not inflammatory...To keep an eye on what congressional conservatives are thinking and advocating, Biggs is increasingly one to watch."

Press Releases

- Co-Press Release: Rep. Ken Buck Introduces "No Bailouts for Illegal Aliens Act" in the House - May 28, 2020

  Congressman Ken Buck (R-Colo.) introduced legislation to ensure taxpayers aren't bailing out states and localities that are setting up programs to send COVID-19 cash payments to illegal immigrants. The No Bailouts for Illegal Aliens Act serves as companion legislation for Sen. Tom Cotton's original bill.

  Congressman Ken Buck (R-Colo.):

  "With more than 40 million Americans out of work, it is unfair to send hard-earned taxpayer dollars to non-citizens who entered this country illegally. We need to prioritize the American people by making sure taxpayers are not subsidizing blue states' plans to give cash payments to illegal immigrants."

  Senator Tom Cotton (R-Ark.):

  "Congress passed the CARES Act to help workers impacted by the China virus pandemic, not to give a handout to those who broke our immigration laws. The federal government shouldn't be subsidizing states' efforts to send cash to illegal aliens."

  Jessica Anderson, Executive Director of Heritage Action for America:

AMERICAN OVERSIGHT

"Representative Buck continues to prove his willingness to fight for American workers during this time of economic turmoil. The No Bailouts for Illegal Aliens Act defends Americans who have been harmed by our governments' response to COVID-19 from irresponsible politicians using every opportunity to advance a radical agenda. States like California have redirected vital assistance from Americans to illegal immigrants, and this bill would put an end to that."

Chris Chmielenski, Deputy Director, NumbersUSA:

"It is absurd that, in the middle of an unprecedented pandemic and the resulting unemployment crisis, certain states would want to divert taxpayer money to illegal aliens. We applaud Congressman Buck for leading the effort in the House to stop it."

Original cosponsors:

Rep. Ted Budd
Rep. Matt Gaetz
Rep. Chip Roy
Rep. Scott DesJarlais
Rep. Jeff Duncan
Rep. Greg Murphy
Rep. Debbie Lesko
Rep. Thomas Massie
Rep. Bill Posey
Rep. Steve King
Rep. Rick Crawford
Rep. Denver Riggleman
Rep. Brian Babin, D.D.S.
Rep. Mo Brooks
Rep. Andy Biggs
Rep. Bob Gibbs
Rep. Ben Cline

Outside group support:

Heritage Action for America
NumbersUSA
Federation for American Immigration Reform
Center for Immigration Studies

- Congressman Biggs Urges President Trump to Suspend Grants of Guestworker Visas
May 20, 2020

AMERICAN OVERSIGHT

This week, Congressman Andy Biggs and five colleagues sent a letter to President Donald Trump, urging him to suspend granting new guestworker visas for at least one year so that Americans are not forced to compete with foreign labor as the nation recovers from the coronavirus outbreak. Congressman Biggs issued the following statement:

"President Trump has continuously prioritized Americans when determining our nation's immigration policies. As we respond to the COVID-19 outbreak, it is important that we continue to look out for their economic welfare. More than 36 million Americans have filed for unemployment and, even as states and counties begin to reopen, jobs are scarce. My colleagues and I urge President Trump to suspend granting new guestworker visas for at least one year so that Americans are not forced to compete with foreign labor as our nation recovers. American workers appreciate the value President Trump has placed on them during his time in office and will appreciate this action."

Read the letter below:

Dear President Trump,

Thank you for the steps you have taken to limit the number of immigrants who are permitted to enter the United States during the COVID-19 outbreak. As we move into our tenth week of economic shutdowns we support extending and expanding your policies regarding immigration. Our government's response to this outbreak should continue to prioritize the health and wellbeing of Americans.

Your April 22, 2020, proclamation "Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak" rightly restricts some categories of immigration. The proclamation leaves untouched hundreds of thousands of guestworkers who impact the labor market. More than 36 million Americans have filed for unemployment and the overall unemployment rate hit 14.7 percent. That doesn't account for the Americans who, even with expanded eligibility, do not qualify for unemployment benefits, who may not have applied for the government benefit, or are waiting in line due to inadequate state resources to receive and process claims.

We should not force Americans to compete with foreign nationals while jobs are scarce, and Americans should get priority consideration for employment when businesses are able to reopen. We urge you to suspend granting any new guestworker visas for at least one year, and potentially longer depending on the strength of the economy.

AMERICAN OVERSIGHT

Our nation's guestworker policies are ostensibly designed to fill gaps in our labor market. While we have varying opinions on the necessity of our existing guestworker programs and the number of guestworkers that should be permitted each year, there is very little, if any, need for new foreign labor right now.

From high-skilled to low-skilled workers, from new college graduates to late-career Americans, you have restored value in American employees and any additional actions you take to protect them will be well appreciated.

We look forward to working with you to reopen the American economy and doing all we can to bring back every job lost during this outbreak.

Sincerely,

Andy Biggs
Member of Congress

Louie Gohmert
Member of Congress

Brian Babin, D.D.S.
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress

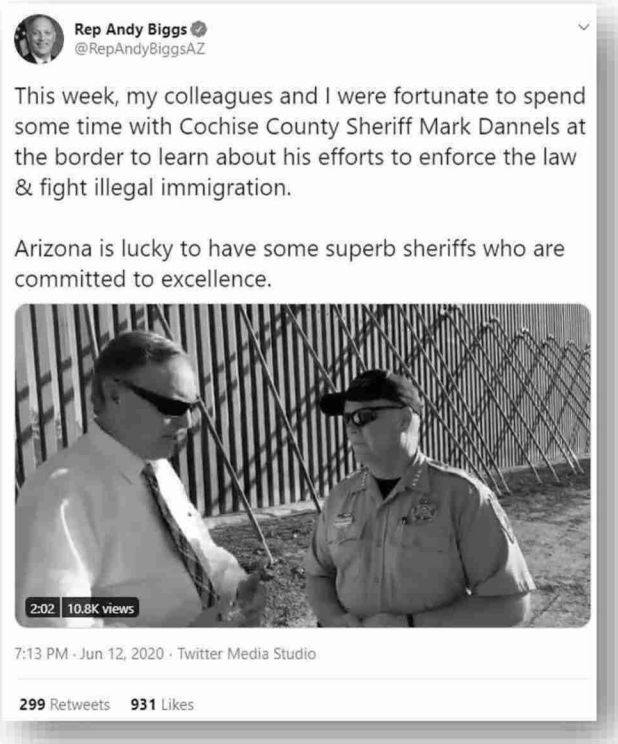
Mo Brooks
Member of Congress

Steve King
Member of Congress

Social Media

AMERICAN OVERSIGHT





AMERICAN OVERSIGHT



AMERICAN OVERSIGHT





AMERICAN OVERSIGHT





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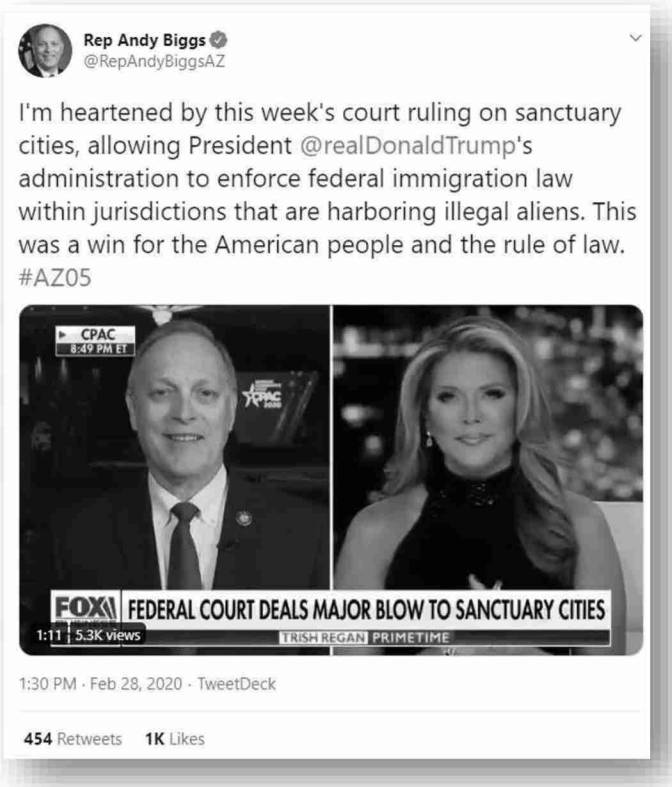




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AMERICAN OVERSIGHT





AMERICAN OVERSIGHT



AMERICAN OVERSIGHT





AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: Confirmed | Call w/Congressman Andy Biggs
To: Scheduler, Edlow; Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 16, 2020 3:08 PM (UTC-05:00)
Attached: Rep. Biggs, Andy R-AZ-5 June 15.docx

Conference Call: [redacted] Passcode: [redacted] (b)(6)

Participants:
D2P
D2O
Kathryn Rexrode
Kika Scott
Steven Koncar
Andrew Bonic

AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: *Need to Reschedule* | Call w/Congressman Andy Biggs
To: Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 16, 2020 2:48 PM (UTC-05:00)
Attached: Rep. Biggs, Andy R-AZ-5 June 15.docx

Conference Call: [ ] Passcode: [ ] (b)(6)

Participants:
D2P
D2O
Kathryn Rexrode
Kika Scott
Steven Koncar
Andrew Bonic

AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: Confirmed | Call w/Congressman Andy Biggs
To: Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 15, 2020 3:03 PM (UTC-05:00)
Attached: Rep. Biggs, Andy R-AZ-5 June 15.docx

Conference Call: [redacted] Passcode [redacted] (b)(6)

Participants:
D2P
D2O
Kathryn Rexrode
Kika Scott
Steven Koncar
Andrew Bonic

AMERICAN OVERSIGHT

From: Scheduler, Edlow
Subject: *Need to Reschedule* | Call w/Congressman Andy Biggs
To: Scheduler, Edlow; Edlow, Joseph B; Denayer, Larry C; Rexrode, Kathryn S; Scott, Kika M; Koncar, Steven A; Bonic, Andrew V
Cc: Arditti, Avi
Sent: June 15, 2020 10:29 AM (UTC-05:00)
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Participants:
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Andrew Bonic

AMERICAN OVERSIGHT

From: Collins, Jessica B
Subject: RE: Follow up from Buzzfeed
To: Renaud, Daniel M; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Cc: Valverde, Michael
Sent: June 11, 2020 2:56 PM (UTC-05:00)

Thank you, Dan.

From: Renaud, Daniel M [redacted] (b)(6)
Sent: Thursday, June 11, 2020 3:54 PM
To: Collins, Jessica B [redacted]; Nuebel Kovarik, Kathy [redacted]
Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Cc: Valverde, Michael [redacted]
Subject: RE: Follow up from Buzzfeed

STATEMENT:

[redacted] (b)(5)

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

From: Collins, Jessica B [redacted]
Sent: Thursday, June 11, 2020 3:45 PM
To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted] (b)(6)
Cc: Valverde, Michael [redacted]
Subject: RE: Follow up from Buzzfeed

Is the following statement accurate? We need to know the date the policy was rescinded.

STATEMENT:

[redacted] (b)(5)

AMERICAN OVERSIGHT

(b)(5)

From: Renaud, Daniel M
Sent: Thursday, June 11, 2020 3:40 PM
To: Collins, Jessica B >; Nuebel Kovarik, Kathy (b)(6)
Law, Robert T ; Rexrode, Kathryn S
Cc: Valverde, Michael
Subject: RE: Follow up from Buzzfeed

The instruction was passed to me and I passed it to the field on April 15. I do not know of any specific relationship to the EO.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

From: Collins, Jessica B
Sent: Thursday, June 11, 2020 3:29 PM
To: Renaud, Daniel M ; Nuebel Kovarik, Kathy
; Law, Robert T ; Rexrode, Kathryn S
(b)(6)
Cc: Valverde, Michael
Subject: RE: Follow up from Buzzfeed

Thank you, Dan. A couple of follow ups:

- Why was guidance issued on April 15 for an EO that was issued on April 22?
- To clarify, are you saying that on April 15, when you issued this guidance, it was NOT linked to the EO?

Does the following statement work for you?

STATEMENT:

(b)(5)

AMERICAN OVERSIGHT

resume naturalization ceremonies for those whose ceremony was postponed. We will also continue to resume other routine in-person services, including adjustment of status interviews for those inside the United States.

(b)(6)

From: Renaud, Daniel M
Sent: Thursday, June 11, 2020 2:48 PM
To: Collins, Jessica B; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Cc: Valverde, Michael
Subject: RE: Follow up from Buzzfeed

1. The resources page is a connect site for staff officers in HQ (although access is broader than that) for historical reference of guidance issued. The body of the text was issued without the first paragraph via email in the past week to regional staff to document a directive given orally on April 15. The preamble referencing the EO was added before posting online to document the date that directive was issued.
2. It was posted by FOD HQ. I am responsible for the posting, or for not stopping it, since it was imcorrect.
3. Any staff officer in FOD HQ Division 1 may post on the site
4. Yes. It was an oral directive issued by me to the Regional Directors on April 15.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

From: Collins, Jessica B
Sent: Thursday, June 11, 2020 2:37 PM
To: Renaud, Daniel M; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Cc: Valverde, Michael
Subject: RE: Follow up from Buzzfeed

Thank you. A few follow up questions for you:

- What is the resources page for?
- Who posted this?
- What is the process for posting on the resources page?
- Was there a communication as the post alleges that *"FOD leadership communicated on April 24, 2020 that USCIS was to hold I-485s for those cases requiring an interview and new Interview Waiver cases that had not previously been distributed for adjudication?"*

From: Renaud, Daniel M
Sent: Thursday, June 11, 2020 2:31 PM
To: Collins, Jessica B; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Cc: Valverde, Michael
Subject: RE: Follow up from Buzzfeed

(b)(6)

Here is the post that went up yesterday and came down today.

AMERICAN OVERSIGHT

On April 22, 2020, the President issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor march During the Economic Recover Following the COVID-19 Outbreak. In response to the

Proclamation, FOD leadership communicated on April 24, 2020 that USCIS was to hold I-485s for those cases requiring an interview and new Interview Waiver cases that had not previously been distributed for adjudication. Since April 24, 2020, USCIS has determined that numerous categories may move forward with adjudication. Those categories are:

- Requests for military spouses/family members as a result of the military member's upcoming deployment
- Litigation cases (mandamus, settlement, etc.)
- I-485s that are already distributed to officers
- Continued I-485s
- Already identified food supply, health care, or medical provider based I-485s (lists were distributed on April 13, 2020)
- NBC work on adjustment (includes pre-processing, prima facie review and adjudication of associated ancillaries, adjudication of SIJ and adoption-based I-485s as well as cases where a regressed visa becomes current)
- I-485s with identified NS concerns (includes Wagafe cases)
- I-485s that are very, very old (even if not CARRP)*
- LRIF I-485s (upon completion of training)
- FDNS work on I-485s can continue, regardless of age of case
    - Second interviews for fraud
- ELIS beta test cases needing interview
- Age-outs
- Diversity Visa adjustment
- Detained aliens where USCIS has jurisdiction on the I-485 (such as certain 209(a) refugee adjustment)

Any high profile requests for adjudication and which does not fit into one of the above criteria, should be forwarded via the chain of command for Dan Renaud and Michael Valverde review. Any questions can be sent to Rose Kendrick.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

(b)(6)

From: Collins, Jessica B [redacted]
Sent: Thursday, June 11, 2020 2:16 PM
To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: Follow up from Buzzfeed

Could you please share what was on the internal resources site for our awareness? I will work on crafting a response. Thank you.

From: Renaud, Daniel M [redacted]
Sent: Thursday, June 11, 2020 2:12 PM
To: Collins, Jessica B [redacted]; Nuebel Kovarik, Kathy [redacted] Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: Follow up from Buzzfeed

(b)(6)

AMERICAN OVERSIGHT

Thanks for the follow-up question. It is neither policy nor guidance. It was placed on our resources page. The resources page is part of an internal collaboration site. It is not the mechanism that we have ever issued or posted

policy or guidance.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

(b)(6)

From: Collins, Jessica B
Sent: Thursday, June 11, 2020 1:57 PM
To: Renaud, Daniel M; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Subject: RE: Follow up from Buzzfeed

What is the document? Was it guidance or a memo, and was it in a draft or final stage?

From: Renaud, Daniel M
Sent: Thursday, June 11, 2020 1:55 PM
To: Collins, Jessica B; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Subject: Re: Follow up from Buzzfeed

There is a posting on the ECN, I believe that incorrectly ties the two. We will remove it.

Get Outlook for iOS

From: Collins, Jessica B
Sent: Thursday, June 11, 2020 1:52:56 PM
To: Renaud, Daniel M; Nuebel Kovarik, Kathy; Law, Robert T; Rexrode, Kathryn S
Subject: Follow up from Buzzfeed

All, please see response below. What guidance is he referring to?

From: @buzzfeed.com>
Sent: Thursday, June 11, 2020 1:49 PM
To: CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov>
Cc: USCIS Media <media@uscis.dhs.gov>
Subject: Re: Greeen cards

(b)(6)

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There is guidance for immigration officers that ties a recent hold on green cards adjudication/interviews of cases within the US to the EO -- I want a statement from the agency on this, if possible.

On Thu, Jun 11, 2020 at 10:03 AM CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov> wrote:

> We stand by our statement and reiterate: The prioritization of our workload as we resume in-person services is to protect our workforce and applicants. It is not tied to the April Executive Order, which applies to those outside, not inside, the United States.

AMERICAN OVERSIGHT

From: [redacted]@buzzfeed.com> (b)(6)
Sent: Thursday, June 11, 2020 12:55 PM
To: CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov>
Cc: USCIS Media <media@uscis.dhs.gov>
Subject: Re: Greeen cards

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Are you positive there was no recent guidance saying green card adjudications/interviews were limited due to the EO?

On Wed, Jun 10, 2020 at 2:21 PM CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov> wrote:

[redacted],

USCIS Spokesperson: "Due to the COVID-19 public health emergency, USCIS temporarily paused in-person services, including interviews and naturalizations, on March 18 to protect our workforce, USCIS visitors and the public. While face-to-face services were paused, USCIS continued to accept applications and petitions and worked on mission-critical needs. On June 4, USCIS began to resume in-person services with health and safety precautions in place. Our top priority is to resume naturalization ceremonies for those whose ceremony was postponed and we will continue to resume other routine in-person services, including adjustment of status interviews for those inside the United States."

On Background: Oath ceremonies present the lowest health risk to our employees and applicants. They tend to be shorter in duration than adjustment of status interviews and can be conducted in a larger space. We continue to interview a number of adjustment of status applicants in emergent cases and cases related to fighting COVID-19. The prioritization of our workload as we resume in-person services is to protect our workforce and applicants. It is not tied to the April Executive Order, which applies to those outside, not inside, the United States.

From: [redacted]buzzfeed.com>
Sent: Wednesday, June 10, 2020 3:41 PM
To: Sowers, Joseph R (Joe) [redacted]
Cc: USCIS Media <media@uscis.dhs.gov>
Subject: Re: Greeen cards

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Sorry, tied up at the moment --- but yes this is about operations WITHIN the US. I assume those at headquarters can fill you in on this EO and its impact on adjudications/interviews within the US?

On Wed, Jun 10, 2020 at 12:23 PM Sowers, Joseph R (Joe) [redacted] wrote:

[redacted], just gave you a call about your query. (b)(6)

I assume by Presidential EO in April, you mean the Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.

Curious about your line of questioning and what your story will be about since the proclamation restricts entry to the U.S. for those without a valid visa or travel document yet your question is about USCIS

AMERICAN OVERSIGHT

operations within the U.S.

Respectfully, Joe
Joseph (Joe) R. Sowers
Public Affairs Specialist, Media Affairs Division
Office of Public Affairs, U.S. Citizenship and Immigration Services
Office [redacted]
Cell ([redacted])

(b)(6)

From: [redacted]@buzzfeed.com>
Sent: Wednesday, June 10, 2020 2:58 PM
To: USCIS Media <media@uscis.dhs.gov>
Subject: Greeen cards

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Hello. My understanding is that aside from a few exceptions USCIS has put green card interviews & adjudications of those within the US on hold because of the President's EO in April. I would like a comment and an explanation on this issue ASAP for a story.

--
[redacted] Immigration Reporter, BuzzFeed News

--
[redacted] Immigration Reporter, BuzzFeed News

--
[redacted] Immigration Reporter, BuzzFeed News

--
[redacted] Immigration Reporter, BuzzFeed News

(b)(6)

AMERICAN OVERSIGHT

From: Collins, Jessica B
Subject: RE: Follow up from Buzzfeed
To: Law, Robert T; Rexrode, Kathryn S
Cc: Nuebel Kovarik, Kathy
Sent: June 11, 2020 2:48 PM (UTC-05:00)

Will do.

(b)(6)

From: Law, Robert T
Sent: Thursday, June 11, 2020 3:47 PM
To: Collins, Jessica B ; Rexrode, Kathryn S
Cc: Nuebel Kovarik, Kathy >
Subject: RE: Follow up from Buzzfeed

Joe wants to review before you send this to

Robert Law
office)
cell)

From: Collins, Jessica B >
Sent: Thursday, June 11, 2020 3:45 PM
To: Renaud, Daniel M ; Nuebel Kovarik, Kathy
>; Law, Robert T Rexrode, Kathryn S
Cc: Valverde, Michael <
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(b)(6)

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(b)(5)

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To: Collins, Jessica B ; Nuebel Kovarik, Kathy
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AMERICAN OVERSIGHT

The instruction was passed to me and I passed it to the field on April 15. I do not know of any specific relationship to

the EO.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

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Sent: Thursday, June 11, 2020 3:29 PM
To: Renaud, Daniel M <[redacted]>; Nuebel Kovarik, Kathy [redacted]>; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Cc: Valverde, Michael <[redacted]>
Subject: RE: Follow up from Buzzfeed

(b)(6)

(b)(6)

Thank you, Dan. A couple of follow ups:

- Why was guidance issued on April 15 for an EO that was issued on April 22?
- To clarify, are you saying that on April 15, when you issued this guidance, it was NOT linked to the EO?

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AMERICAN OVERSIGHT

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Associate Director, Field Operations Directorate
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U.S. Citizenship and Immigration Services
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AMERICAN OVERSIGHT

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(b)(6)

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Get Outlook for iOS

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> **Subject:** Re: Greeen cards
>
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AMERICAN OVERSIGHT

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(b)(6)

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Respectfully, Joe
Joseph (Joe) R. Sowers
Public Affairs Specialist, Media Affairs Division
Office of Public Affairs, U.S. Citizenship and Immigration Services
Offi [redacted]
Cell

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(b)(6)

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Hello. My understanding is that aside from a few exceptions USCIS has put green card interviews & adjudications of those within the US on hold because of the President's EO in April. I would like a comment and an explanation on this issue ASAP for a story.

(b)(6)

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[redacted] mmigration Reporter, BuzzFeed News

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[redacted] Immigration Reporter, BuzzFeed News

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[redacted] Immigration Reporter, BuzzFeed News

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[redacted] Immigration Reporter, BuzzFeed News

(b)(6)

AMERICAN OVERSIGHT

From: Edlow, Joseph B
Subject: Re: Follow up from Buzzfeed
To: Law, Robert T; Nuebel Kovarik, Kathy
Sent: June 11, 2020 2:19 PM (UTC-05:00)

Uncleared and incorrect.

Get Outlook for iOS

From: Law, Robert T [redacted]
Sent: Thursday, June 11, 2020 3:15:20 PM
To: Edlow, Joseph B [redacted]; Nuebel Kovarik, Kathy [redacted]
Subject: FW: Follow up from Buzzfeed

(b)(6)

Uncleared message from FOD/Dan about pausing I-485 interviews leaked to Buzzfeed.

Robert Law
[redacted] (office)
[redacted] (cell)

From: Renaud, Daniel M [redacted]
Sent: Thursday, June 11, 2020 2:48 PM
To: Collins, Jessica B [redacted]; Nuebel Kovarik, Kathy [redacted]
Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Cc: Valverde, Michael [redacted]
Subject: RE: Follow up from Buzzfeed

1. The resources page is a connect site for staff officers in HQ (although access is broader than that) for historical reference of guidance issued. The body of the text was issued without the first paragraph via email in the past week to regional staff to document a directive given orally on April 15. The preamble referencing the EO was added before posting online to document the date that directive was issued.
2. It was posted by FOD HQ. I am responsible for the posting, or for not stopping it, since it was imcorrect.
3. Any staff officer in FOD HQ Division 1 may post on the site
4. Yes. It was an oral directive issued by me to the Regional Directors on April 15.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

From: Collins, Jessica B [redacted]
Sent: Thursday, June 11, 2020 2:37 PM
To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy
[redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S
Cc: Valverde, Michael [redacted]
Subject: RE: Follow up from Buzzfeed

(b)(6)

Thank you. A few follow up questions for you:

- What is the resources page for?
- Who posted this?
- What is the process for posting on the resources page?

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- Was there a communication as the post alleges that *"FOD leadership communicated on April 24, 2020 that USCIS was to hold I-485s for those cases requiring an interview and new Interview Waiver cases that had not previously been distributed for adjudication?"*

(b)(6)

From: Renaud, Daniel M <[redacted]
Sent: Thursday, June 11, 2020 2:31 PM
To: Collins, Jessica B [redacted]>; Nuebel Kovarik, Kathy <[redacted]>; Law, Robert T <[redacted]>; Rexrode, Kathryn S <[redacted]>
Cc: Valverde, Michael [redacted]>
Subject: RE: Follow up from Buzzfeed

Here is the post that went up yesterday and came down today.

On April 22, 2020, the President issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor march During the Economic Recover Following the COVID-19 Outbreak. In response to the Proclamation, FOD leadership communicated on April 24, 2020 that USCIS was to hold I-485s for those cases requiring an interview and new Interview Waiver cases that had not previously been distributed for adjudication. Since April 24, 2020, USCIS has determined that numerous categories may move forward with adjudication. Those categories are:

- Requests for military spouses/family members as a result of the military member's upcoming deployment
- Litigation cases (mandamus, settlement, etc.)
- I-485s that are already distributed to officers
- Continued I-485s
- Already identified food supply, health care, or medical provider based I-485s (lists were distributed on April 13, 2020)
- NBC work on adjustment (includes pre-processing, prima facie review and adjudication of associated ancillaries, adjudication of SIJ and adoption-based I-485s as well as cases where a regressed visa becomes current)
- I-485s with identified NS concerns (includes Wagafe cases)
- I-485s that are very, very old (even if not CARRP)*
- LRIF I-485s (upon completion of training)
- FDNS work on I-485s can continue, regardless of age of case
    - Second interviews for fraud
- ELIS beta test cases needing interview
- Age-outs
- Diversity Visa adjustment
- Detained aliens where USCIS has jurisdiction on the I-485 (such as certain 209(a) refugee adjustment)

Any high profile requests for adjudication and which does not fit into one of the above criteria, should be forwarded via the chain of command for Dan Renaud and Michael Valverde review. Any questions can be sent to Rose Kendrick.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

AMERICAN OVERSIGHT

From: Collins, Jessica B [redacted]>
Sent: Thursday, June 11, 2020 2:16 PM

(b)(6)

To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: Follow up from Buzzfeed

Could you please share what was on the internal resources site for our awareness? I will work on crafting a response. Thank you.

From: Renaud, Daniel M [redacted]
Sent: Thursday, June 11, 2020 2:12 PM
To: Collins, Jessica B [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: Follow up from Buzzfeed

Thanks for the follow-up question. It is neither policy nor guidance. It was placed on our resources page. The resources page is part of an internal collaboration site. It is not the mechanism that we have ever issued or posted policy or guidance.

Daniel M. Renaud
Associate Director, Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

From: Collins, Jessica B [redacted]
Sent: Thursday, June 11, 2020 1:57 PM
To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: RE: Follow up from Buzzfeed

What is the document? Was it guidance or a memo, and was it in a draft or final stage?

From: Renaud, Daniel M [redacted]
Sent: Thursday, June 11, 2020 1:55 PM
To: Collins, Jessica B [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: Re: Follow up from Buzzfeed

There is a posting on the ECN, I believe that incorrectly ties the two. We will remove it.

Get Outlook for iOS

From: Collins, Jessica B [redacted]
Sent: Thursday, June 11, 2020 1:52:56 PM
To: Renaud, Daniel M [redacted]; Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Rexrode, Kathryn S [redacted]
Subject: Follow up from Buzzfeed

All, please see [redacted] response below. What guidance is he referring to?

From: [redacted]@buzzfeed.com>
Sent: Thursday, June 11, 2020 1:49 PM

AMERICAN OVERSIGHT

To: CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov> (b)(6)
Cc: USCIS Media <media@uscis.dhs.gov>
Subject: Re: Greeen cards

CAUTION: This email originated from outside of the Federal Government. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the USCIS Security Operations Center with questions or click the "Report Suspicious Email" button to report it as a phishing attempt.

There is guidance for immigration officers that ties a recent hold on green cards adjudication/interviews of cases within the US to the EO -- I want a statement from the agency on this, if possible.

On Thu, Jun 11, 2020 at 10:03 AM CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov> wrote:

> We stand by our statement and reiterate: The prioritization of our workload as we resume in-person services is to protect our workforce and applicants. It is not tied to the April Executive Order, which applies to those outside, not inside, the United States.
>
> **From:** [redacted]@buzzfeed.com>
> **Sent:** Thursday, June 11, 2020 12:55 PM
> **To:** CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov>
> **Cc:** USCIS Media <media@uscis.dhs.gov>
> **Subject:** Re: Greeen cards
>
> **CAUTION:** This email originated from outside of the Federal Government. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the USCIS Security Operations Center with questions or click the "Report Suspicious Email" button to report it as a phishing attempt.
>
> Are you positive there was no recent guidance saying green card adjudications/interviews were limited due to the EO?
>
> On Wed, Jun 10, 2020 at 2:21 PM CIS_HQ_COM_MRD <CIS_HQ_COM_MRD@uscis.dhs.gov> wrote:
>
> [redacted]
>
> **USCIS Spokesperson:** "Due to the COVID-19 public health emergency, USCIS temporarily paused in-person services, including interviews and naturalizations, on March 18 to protect our workforce, USCIS visitors and the public. While face-to-face services were paused, USCIS continued to accept applications and petitions and worked on mission-critical needs. On June 4, USCIS began to resume in-person services with health and safety precautions in place. Our top priority is to resume naturalization ceremonies for those whose ceremony was postponed and we will continue to resume other routine in-person services, including adjustment of status interviews for those inside the United States."
>
> **On Background:** Oath ceremonies present the lowest health risk to our employees and applicants. They tend to be shorter in duration than adjustment of status interviews and can be conducted in a larger space. We continue to interview a number of adjustment of status applicants in emergent cases and cases related to fighting COVID-19. The prioritization of our workload as we resume in-person services is to protect our workforce and applicants. It is not tied to the April Executive Order, which applies to those outside, not inside, the United States.
>
> **From:** [redacted]@buzzfeed.com>
> **Sent:** Wednesday, June 10, 2020 3:41 PM
> **To:** Sowers, Joseph R (Joe) [redacted]
> **Cc:** USCIS Media <media@uscis.dhs.gov>
> **Subject:** Re: Greeen cards (b)(6)

AMERICAN OVERSIGHT

CAUTION: This email originated from outside of the Federal Government. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the USCIS Security Operations Center with questions or click the "Report Suspicious Email" button to report it as a phishing attempt.

Sorry, tied up at the moment --- but yes this is about operations WITHIN the US. I assume those at headquarters can fill you in on this EO and its impact on adjudications/interviews within the US?

On Wed, Jun 10, 2020 at 12:23 PM Sowers, Joseph R (Joe) [redacted] wrote:

[redacted] just gave you a call about your query.

I assume by Presidential EO in April, you mean the Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak.

Curious about your line of questioning and what your story will be about since the proclamation restricts entry to the U.S. for those without a valid visa or travel document yet your question is about USCIS operations within the U.S.

Respectfully, Joe
Joseph (Joe) R. Sowers
Public Affairs Specialist, Media Affairs Division
Office of Public Affairs, U.S. Citizenship and Immigration Services
Offic[redacted]
Cell[redacted]

From [redacted]@buzzfeed.com>
Sent: Wednesday, June 10, 2020 2:58 PM
To: USCIS Media <media@uscis.dhs.gov>
Subject: Greeen cards

CAUTION: This email originated from outside of the Federal Government. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the USCIS Security Operations Center with questions or click the "Report Suspicious Email" button to report it as a phishing attempt.

Hello. My understanding is that aside from a few exceptions USCIS has put green card interviews & adjudications of those within the US on hold because of the President's EO in April. I would like a comment and an explanation on this issue ASAP for a story.

--
[redacted] Immigration Reporter, BuzzFeed News

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[redacted] mmigration Reporter, BuzzFeed News

--
[redacted] Immigration Reporter, BuzzFeed News

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[redacted] Immigration Reporter, BuzzFeed News

(b)(6)

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587
To: Kilgore, Garry R
Cc: Dove, Stephen W (Steve); Carter, Constance L; Brown, James R; Weinhold, Kasey D
Sent: June 9, 2020 12:59 PM (UTC-05:00)
Attached: Incoming 4.3.20.pdf, Signed David Perdue Final 6.9.20.pdf, Draft response (Final) Clean 6.8.20.doc

CLEARED
On behalf of the Director's Office, I clear USCIS' response to Sen. Perdue- EB-3/COVID-19 - STARS# 25587. This signed document is attached. Thanks!

(b)(6)

From: Kilgore, Garry R
Sent: Wednesday, June 3, 2020 3:47 PM
To: Bailey, Morgan
Cc: Dove, Stephen W (Steve); Carter, Constance L; Brown, James R; Weinhold, Kasey D
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587

Good afternoon ma'am,

The office of Sen. Perdue reached out to USCIS OLIA noting they did not believe the original USCIS response to their 4/3/20 inquiry was sufficient, EXSO worked with OP&S, OCC and EXA to craft attached updated response.

Summary:
Sen. Perdue's office reached out directly to USCIS so we are treating this as a reply direct, we will not need to clear this through DHS HQ.

Attachments:
- Updated draft response
- Original USCIS Response to 4/3/20 letter
- Incoming Perdue letter 4/3/20

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(office)
STARS Issues

From: Weinhold, Kasey D
Sent: Thursday, May 14, 2020 5:46 PM
To: Blanco, Patricia J; DDCLEAR
Cc: USCIS Directors Office Advisors; Dove, Stephen W (Steve); Carter, Constance L; Bailey, Morgan; Nuebel Kovarik, Kathy; USCIS Exec Congr Corresp; USCIS EXSO External
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 04/21/20 – Sen. Perdue- EB-3/COVID-19 - STARS# 25587

(b)(6)

AMERICAN OVERSIGHT

CLEARED
On behalf of the Director's Office, I clear USCIS' response to Sen. Perdue- EB-3/COVID-19, with no additional edits/comments from the Director's Office. When sending the USCIS clearance, please include any edits/comments submitted by the directorates or program offices that reviewed. Thank you.

(b)(6)

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] | **Mobile** [redacted] | **E-mail:** [redacted]

From: Blanco, Patricia J [redacted]
Sent: Wednesday, May 13, 2020 8:47 AM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Advisors [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Bailey, Morgan [redacted]; Nuebel Kovarik, Kathy [redacted]; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 04/21/20 – Sen. Perdue- EB-3/COVID-19 - STARS# 25587

Requestor Directorate/Office: DHS ESEC

Due Date: **Tuesday, April 21, 2020**

Request: Director's Office clearance for the draft response to Sen. Perdue +2 regarding EB-3 visas for Schedule A nurses during COVID-19 crisis.
If cleared with no edits/comments, please forward for D2P signature.

Background: Sen. Perdue +2 wrote to the Acting Secretary Wolf requesting prioritization of EB-3 visas for Schedule A nurses during COVID-19 crisis.
Please note this response is a product of the Sen. Schumer previously approved language for COVID-19 response.

OP&S:	
OCC:	
EXA:	

Attachments:
1. Incoming 4.3.20
2. Draft response – Perdue (FINAL) LH 5.11.20
3. Draft response – Loeffler (FINAL) LH 5.11.20
4. Draft response – Cassidy (FINAL) LH 5.11.20

*********Please reply to all on this email ********

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Thank you,

(b)(6)

Patty

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat
(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 3, 2020 letter. You asked for the Department of State (DOS), the Department of Labor (DOL), and the Department of Homeland Security (DHS) to prioritize the processing of employment-based third preference (EB-3) immigrant visa petitions for Schedule A nurses during the coronavirus (COVID-19) pandemic. The Acting Secretary has asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) recognizes the urgent need for certain health care workers in the United States and has taken steps to offer additional flexibilities during the COVID-19 pandemic, including approving expedited processing when warranted.[1] An employer seeking an immigrant petition for a Schedule A nurse to work in the United States begins the process by filing a Form I-140, Immigrant Petition for Alien Workers, with USCIS. An employer may submit an expedite request for the Form I-140 petition through the USCIS Contact Center.[2] We carefully review each request.

While Congress has granted DHS extensive statutory authority over processing immigrant visa benefits requests, it has also prescribed specific statutory limitations. Specifically, the Immigration and Nationality Act (INA) sets the number of immigrant visas that may be issued to aliens seeking to become lawful permanent residents each year. Thus, while USCIS may adjudicate the immigrant visa request on Form I-140, DOS is the agency that actually allocates immigrant visas that permit a Schedule A nurse to move forward with admission into the United States to work as a nurse. When the demand is higher than the supply for a given year in any given category or country, a visa queue (waiting list or backlog) forms. To distribute the numbers among all preference categories, DOS allocates the visas according to a prospective immigrant's preference category, country of chargeability, and priority date. The priority date is used to determine an immigrant's place in the visa queue.[3] When the priority date becomes available, or is "current," an alien may apply for an immigrant visa (if outside the

[1] USCIS recently announced that beginning in June, we will resume premium processing for certain Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers, in phases.
[2] For additional information for special situations and expedite requests, please see the USCIS website at https://www.uscis.gov/forms/forms-information/how-make-expedite-request.
[3] For EB-3 Schedule A nurse petitions, the priority date is when the Form I-140 is properly filed and accepted by USCIS.

AMERICAN OVERSIGHT

DHS-20-2156-A-004014

United States) or adjustment of status (if within the United States) to obtain lawful permanent resident status.[4]

For the EB-3 preference category, visas are authorized in June 2020[5] as follows:

Employment-Based	All Chargeability Areas Except Those Listed	China-mainland born	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
3rd	08 NOV 17	15 JUN 16	08 NOV 17	01 APR 09	08 NOV 17	08 NOV 17	08 NOV 17

Thus, for oversubscribed categories, there is a waiting period of several years before certain priority dates will be reached. By statute, USCIS and DOS are not able to process these cases and permit the Schedule A nurse to work in the United States as a lawful permanent resident until the priority date is current.

We defer to DOS regarding the visa process for aliens outside the United States, but we note that nurses (whose priority dates are current) may continue the visa process under President Trump's recent proclamation[6] if they are seeking to enter the United States with an immigrant visa and would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak (and assuming they are eligible and admissible).

DHS is closely monitoring the evolving COVID-19 situation in order to protect our nation, our workforce and communities, and to minimize the impact of COVID-19 on American citizens and workers. As we begin moving toward reopening the country, DHS remains steadfast in our commitment to protect the safety of the American people.

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

Kelly Loeffler
United States Senator

---

[4] The majority of EB-3 Schedule A nurses obtain permanent residence through the immigrant visa consular process. For fiscal year 2019, for example, there were 1,604 Schedule A nurses who entered the United States with an immigrant visa from abroad, and 275 Schedule A nurses who adjusted status in the United States.

[5] An alien in the United States must wait until there are immigrant visas available to file a Form I-485, Application to Register Permanent Residence or Adjust Status. For additional information, please see the Department of State, Visa Bulletin at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-june-2020.html.

[6] President Trump's Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak issued on April 22, 2020.

AMERICAN OVERSIGHT

Bill Cassidy
United States Senator

AMERICAN OVERSIGHT

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

April 3, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave, S.E.
Washington, D.C. 20032

RECEIVED
By ESEC at 12:59 pm, Apr 06, 2020

Dear Secretary Pompeo, Secretary Scalia, and Acting Secretary Wolf:

We are writing to request that you prioritize the processing of EB-3 visas for Schedule A nurses during the COVID-19 crisis. Our nation has long faced a significant shortage of nurses and health care workers, and this shortage now poses a risk to our medical system's ability to respond to this crisis. We ask that you prioritize the processing of these visas to ensure that our hospitals will have the critical care workers they need to lead our nation through this crisis.

The U.S. Department of Labor (DOL) has recognized that there "are not sufficient United States workers who are able, willing, and qualified" to serve as nurses. DOL has determined that any nurse brought to the United States will not affect "the working conditions of United States workers similarly employed" and will not "adversely affect" the wages of United States workers (20 C.F.R. §656.5).

DOL's Bureau of Labor Statistics forecasts that our country's need for nurses will grow by 12 percent from 2018 to 2028. The average growth rate for all occupations over that same window is projected to be 5 percent.[1] The American Association of Colleges of Nursing found that low enrollment in U.S. nursing schools, a faculty shortage at U.S. nursing schools, an aging workforce, and our aging population will continue to exacerbate these nursing shortages.[2] Our rural hospitals, which are essential to the health and well-being of those who do not live in a major metropolitan area, have acutely felt the impacts of these nurse shortages. We simply do not have the workforce here to fulfill our country's nursing needs.

---

[1] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Registered Nurses, https://www.bls.gov/ooh/healthcare/registered-nurses.htm. Accessed: March 30, 2020.

[2] American Association of Colleges of Nursing, "Nursing Shortage" Fact Sheets, News & Information, https://www.aacnnursing.org/news-information/fact-sheets/nursing-shortage. Last Updated: April 1, 2019; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

Our nursing shortages will only further accelerate the damage the coronavirus will cause to our country. Cynthia Cox, Vice President of the Kaiser Family Foundation, recently noted that "There is a very real risk of provider shortages in the areas hit hard by the coronavirus, both because of increased patient numbers and doctors and nurses falling ill from or being exposed to the virus."[3]

The federal government has already taken action to address provider shortages in our nation's healthcare system. For instance, the Bureau of Consular Affairs at the U.S. Department of State recently encouraged medical professionals with approved U.S. immigrant or nonimmigrant visas to schedule visa interviews, so that they can to help our country assist with COVID-19 treatment efforts.[4] The U.S. Department of Veterans Affairs (VA) received waiver authority to re-hire retired VA healthcare workers to address this crisis.[5] These actions show our federal government is aware of the compounding effects of our country's provider shortage and the COVID-19 crisis on our healthcare system.

While these actions will provide relief to our nation's doctors, they do not provide relief for our nation's nursing staff who are working around the clock to fight this crisis. We ask that you use every authority provided to you under the law to expedite your processing of EB-3 visas for immigrant nurses, so that our hospitals can have the support they need as they combat this virus.

Nurses provide critical care to patients and their families. They help doctors extend the reach of their care. They are on the frontlines of our medical system's work to combat the coronavirus. Our nation's hospitals will be overwhelmed if they are not able to hire more nursing staff. We urge you to help our hospitals address this crisis by expediting your processing of visas for immigrant nurses.

Thank you for your consideration of this request.

Sincerely,

David A. Perdue
United States Senator

Kelly Loeffler
United States Senator

Bill Cassidy, M.D.
Bill Cassidy
United States Senator

[3] Nicole Narea, "The US needs foreign doctors and nurses to fight coronavirus. Immigration policy isn't helping." Vox, https://www.vox.com/2020/3/30/21190971/foreign-immigrant-doctor-nurse-coronavirus. Last Updated: March 30, 2020; Accessed: March 30, 2020.

[4] U.S. Department of State, Bureau of Consular Affairs, "Update on Visas for Medical Professionals," https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html. Last Updated: March 26, 2020; Accessed: March 30, 2020.

[5] U.S. Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, "After OPM action, VA invites retired medical personnel back to work," https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5404. Last Updated: March 26, 2020; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June 9, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 3, 2020 letter. You asked for the Department of State (DOS), the Department of Labor (DOL), and the Department of Homeland Security (DHS) to prioritize the processing of employment-based third preference (EB-3) immigrant visa petitions for Schedule A nurses during the coronavirus (COVID-19) pandemic. The Acting Secretary has asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) recognizes the urgent need for certain health care workers in the United States and has taken steps to offer additional flexibilities during the COVID-19 pandemic, including approving expedited processing when warranted.[1] An employer seeking an immigrant petition for a Schedule A nurse to work in the United States begins the process by filing a Form I-140, Immigrant Petition for Alien Workers, with USCIS. An employer may submit an expedite request for the Form I-140 petition through the USCIS Contact Center.[2] We carefully review each request.

While Congress has granted DHS extensive statutory authority over processing immigrant visa benefits requests, it has also prescribed specific statutory limitations. Specifically, the Immigration and Nationality Act (INA) sets the number of immigrant visas that may be issued to aliens seeking to become lawful permanent residents each year. Thus, while USCIS may adjudicate the immigrant visa request on Form I-140, DOS is the agency that actually allocates immigrant visas that permit a Schedule A nurse to move forward with admission into the United States to work as a nurse. When the demand is higher than the supply for a given year in any given category or country, a visa queue (waiting list or backlog) forms. To distribute the numbers among all preference categories, DOS allocates the visas according to a prospective immigrant's preference category, country of chargeability, and priority date. The priority date is used to determine an immigrant's place in the visa queue.[3] When the priority date becomes available, or is "current," an alien may apply for an immigrant visa (if outside the United States) or adjustment of status (if within the United States) to obtain lawful permanent resident status.[4]

---

[1] USCIS recently announced that beginning in June, we will resume premium processing for certain Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers, in phases.
[2] For additional information for special situations and expedite requests, please see the USCIS website at https://www.uscis.gov/forms/forms-information/how-make-expedite-request.
[3] For EB-3 Schedule A nurse petitions, the priority date is when the Form I-140 is properly filed and accepted by USCIS.
[4] The majority of EB-3 Schedule A nurses obtain permanent residence through the immigrant visa consular process. For fiscal year 2019, for example, there were 1,604 Schedule A nurses who entered the United States with an immigrant visa from abroad, and 275 Schedule A nurses who adjusted status in the United States.

AMERICAN OVERSIGHT

DHS-20-2156-A-004019

For the EB-3 preference category, visas are authorized in June 2020[5] as follows:

Employment-Based	All Chargeability Areas Except Those Listed	China-mainland born	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
3rd	08 NOV 17	15 JUN 16	08 NOV 17	01 APR 09	08 NOV 17	08 NOV 17	08 NOV 17

Thus, for oversubscribed categories, there is a waiting period of several years before certain priority dates will be reached. By statute, USCIS and DOS are not able to process these cases and permit the Schedule A nurse to work in the United States as a lawful permanent resident until the priority date is current.

We defer to DOS regarding the visa process for aliens outside the United States, but we note that nurses (whose priority dates are current) may continue the visa process under President Trump's recent proclamation[6] if they are seeking to enter the United States with an immigrant visa and would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak (and assuming they are eligible and admissible).

DHS is closely monitoring the evolving COVID-19 situation in order to protect our nation, our workforce and communities, and to minimize the impact of COVID-19 on American citizens and workers. As we begin moving toward reopening the country, DHS remains steadfast in our commitment to protect the safety of the American people.

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

Kelly Loeffler
United States Senator

Bill Cassidy
United States Senator

[5] An alien in the United States must wait until there are immigrant visas available to file a Form I-485, Application to Register Permanent Residence or Adjust Status. For additional information, please see the Department of State, Visa Bulletin at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-june-2020.html.

[6] President Trump's *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak* issued on April 22, 2020.

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587
To: Patrick, Shirley A
Sent: June 9, 2020 12:45 PM (UTC-05:00)
Attached: Draft response (Final) Clean 6.8.20.doc

Hi Shirley,

This is a Congressional response. Can you auto pen sign?

Thank you!

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 3, 2020 letter. You asked for the Department of State (DOS), the Department of Labor (DOL), and the Department of Homeland Security (DHS) to prioritize the processing of employment-based third preference (EB-3) immigrant visa petitions for Schedule A nurses during the coronavirus (COVID-19) pandemic. The Acting Secretary has asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) recognizes the urgent need for certain health care workers in the United States and has taken steps to offer additional flexibilities during the COVID-19 pandemic, including approving expedited processing when warranted.[1] An employer seeking an immigrant petition for a Schedule A nurse to work in the United States begins the process by filing a Form I-140, Immigrant Petition for Alien Workers, with USCIS. An employer may submit an expedite request for the Form I-140 petition through the USCIS Contact Center.[2] We carefully review each request.

While Congress has granted DHS extensive statutory authority over processing immigrant visa benefits requests, it has also prescribed specific statutory limitations. Specifically, the Immigration and Nationality Act (INA) sets the number of immigrant visas that may be issued to aliens seeking to become lawful permanent residents each year. Thus, while USCIS may adjudicate the immigrant visa request on Form I-140, DOS is the agency that actually allocates immigrant visas that permit a Schedule A nurse to move forward with admission into the United States to work as a nurse. When the demand is higher than the supply for a given year in any given category or country, a visa queue (waiting list or backlog) forms. To distribute the numbers among all preference categories, DOS allocates the visas according to a prospective immigrant's preference category, country of chargeability, and priority date. The priority date is used to determine an immigrant's place in the visa queue.[3] When the priority date becomes available, or is "current," an alien may apply for an immigrant visa (if outside the

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[2] For additional information for special situations and expedite requests, please see the USCIS website at https://www.uscis.gov/forms/forms-information/how-make-expedite-request.
[3] For EB-3 Schedule A nurse petitions, the priority date is when the Form I-140 is properly filed and accepted by USCIS.

AMERICAN OVERSIGHT

DHS-20-2156-A-004022

United States) or adjustment of status (if within the United States) to obtain lawful permanent resident status.[4]

For the EB-3 preference category, visas are authorized in June 2020[5] as follows:

Employment-Based	All Chargeability Areas Except Those Listed	China-mainland born	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
3rd	08 NOV 17	15 JUN 16	08 NOV 17	01 APR 09	08 NOV 17	08 NOV 17	08 NOV 17

Thus, for oversubscribed categories, there is a waiting period of several years before certain priority dates will be reached. By statute, USCIS and DOS are not able to process these cases and permit the Schedule A nurse to work in the United States as a lawful permanent resident until the priority date is current.

We defer to DOS regarding the visa process for aliens outside the United States, but we note that nurses (whose priority dates are current) may continue the visa process under President Trump's recent proclamation[6] if they are seeking to enter the United States with an immigrant visa and would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak (and assuming they are eligible and admissible).

DHS is closely monitoring the evolving COVID-19 situation in order to protect our nation, our workforce and communities, and to minimize the impact of COVID-19 on American citizens and workers. As we begin moving toward reopening the country, DHS remains steadfast in our commitment to protect the safety of the American people.

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

Kelly Loeffler
United States Senator

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[4] The majority of EB-3 Schedule A nurses obtain permanent residence through the immigrant visa consular process. For fiscal year 2019, for example, there were 1,604 Schedule A nurses who entered the United States with an immigrant visa from abroad, and 275 Schedule A nurses who adjusted status in the United States.

[5] An alien in the United States must wait until there are immigrant visas available to file a Form I-485, Application to Register Permanent Residence or Adjust Status. For additional information, please see the Department of State, Visa Bulletin at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-june-2020.html.

[6] President Trump's Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak issued on April 22, 2020.

AMERICAN OVERSIGHT

Bill Cassidy
United States Senator

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587
To: Nuebel Kovarik, Kathy
Sent: June 8, 2020 12:40 PM (UTC-05:00)
Attached: Incoming 4.3.20.pdf, Draft response (Final) Clean 6.8.20.doc

Hi – This is a Congressional response for Sen. Purdue regarding EB-3 nurses during COVID. There has been a lot of back and forth on this but we now have a final draft. Any chance you can review today?

(b)(6)

From: Blanco, Patricia J
Sent: Wednesday, May 13, 2020 8:47 AM
To: DDCLEAR
Cc: USCIS Directors Office Advisors; Dove, Stephen W (Steve); Carter, Constance L; Bailey, Morgan; Nuebel Kovarik, Kathy; USCIS Exec Congr Corresp; USCIS EXSO External

Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 04/21/20 – Sen. Perdue- EB-3/COVID-19 - STARS# 25587

Requestor Directorate/Office: DHS ESEC

Due Date: **Tuesday, April 21, 2020**

Request: Director's Office clearance for the draft response to Sen. Perdue +2 regarding EB-3 visas for Schedule A nurses during COVID-19 crisis.
If cleared with no edits/comments, please forward for D2P signature.

Background: Sen. Perdue +2 wrote to the Acting Secretary Wolf requesting prioritization of EB-3 visas for Schedule A nurses during COVID-19 crisis.
Please note this response is a product of the Sen. Schumer previously approved language for COVID-19 response.

OP&S:	
OCC:	
EXA:	

Attachments:
1. Incoming 4.3.20
2. Draft response – Perdue (FINAL) LH 5.11.20
3. Draft response – Loeffler (FINAL) LH 5.11.20
4. Draft response – Cassidy (FINAL) LH 5.11.20

*********Please reply to all on this email ********

(b)(6)

Thank you,

AMERICAN OVERSIGHT

Patty

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat
[redacted] (b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June XX, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 3, 2020 letter. You asked for the Department of State (DOS), the Department of Labor (DOL), and the Department of Homeland Security (DHS) to prioritize the processing of employment-based third preference (EB-3) immigrant visa petitions for Schedule A nurses during the coronavirus (COVID-19) pandemic. The Acting Secretary has asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) recognizes the urgent need for certain health care workers in the United States and has taken steps to offer additional flexibilities during the COVID-19 pandemic, including approving expedited processing when warranted.[1] An employer seeking an immigrant petition for a Schedule A nurse to work in the United States begins the process by filing a Form I-140, Immigrant Petition for Alien Workers, with USCIS. An employer may submit an expedite request for the Form I-140 petition through the USCIS Contact Center.[2] We carefully review each request.

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[2] For additional information for special situations and expedite requests, please see the USCIS website at https://www.uscis.gov/forms/forms-information/how-make-expedite-request.
[3] For EB-3 Schedule A nurse petitions, the priority date is when the Form I-140 is properly filed and accepted by USCIS.

AMERICAN OVERSIGHT

DHS-20-2156-A-004027

United States) or adjustment of status (if within the United States) to obtain lawful permanent resident status.[4]

For the EB-3 preference category, visas are authorized in June 2020[5] as follows:

Employment-Based	All Chargeability Areas Except Those Listed	China-mainland born	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
3rd	08 NOV 17	15 JUN 16	08 NOV 17	01 APR 09	08 NOV 17	08 NOV 17	08 NOV 17

Thus, for oversubscribed categories, there is a waiting period of several years before certain priority dates will be reached. USCIS and DOS are not able to process these cases and permit the Schedule A nurse to work in the United States as a lawful permanent resident until the priority date is current.

We defer to DOS regarding the visa process for aliens outside the United States, but we note that nurses (whose priority dates are current) may continue the visa process under President Trump's recent proclamation[6] if they are seeking to enter the United States with an immigrant visa and would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak (and assuming they are eligible and admissible).

DHS is closely monitoring the evolving COVID-19 situation in order to protect our nation, our workforce and communities, and to minimize the impact of COVID-19 on American citizens and workers. As we begin moving toward reopening the country, DHS remains steadfast in our commitment to protect the safety of the American people.

Thank you again for your letter and interest in this matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

Kelly Loeffler
United States Senator

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[4] The majority of EB-3 Schedule A nurses obtain permanent residence through the immigrant visa consular process. For fiscal year 2019, for example, there were 1,604 Schedule A nurses who entered the United States with an immigrant visa from abroad, and 275 Schedule A nurses who adjusted status in the United States.

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[6] President Trump's Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak issued on April 22, 2020.

AMERICAN OVERSIGHT

Bill Cassidy
United States Senator

AMERICAN OVERSIGHT

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

April 3, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave, S.E.
Washington, D.C. 20032

RECEIVED
By ESEC at 12:59 pm, Apr 06, 2020

Dear Secretary Pompeo, Secretary Scalia, and Acting Secretary Wolf:

We are writing to request that you prioritize the processing of EB-3 visas for Schedule A nurses during the COVID-19 crisis. Our nation has long faced a significant shortage of nurses and health care workers, and this shortage now poses a risk to our medical system's ability to respond to this crisis. We ask that you prioritize the processing of these visas to ensure that our hospitals will have the critical care workers they need to lead our nation through this crisis.

The U.S. Department of Labor (DOL) has recognized that there "are not sufficient United States workers who are able, willing, and qualified" to serve as nurses. DOL has determined that any nurse brought to the United States will not affect "the working conditions of United States workers similarly employed" and will not "adversely affect" the wages of United States workers (20 C.F.R. §656.5).

DOL's Bureau of Labor Statistics forecasts that our country's need for nurses will grow by 12 percent from 2018 to 2028. The average growth rate for all occupations over that same window is projected to be 5 percent.[1] The American Association of Colleges of Nursing found that low enrollment in U.S. nursing schools, a faculty shortage at U.S. nursing schools, an aging workforce, and our aging population will continue to exacerbate these nursing shortages.[2] Our rural hospitals, which are essential to the health and well-being of those who do not live in a major metropolitan area, have acutely felt the impacts of these nurse shortages. We simply do not have the workforce here to fulfill our country's nursing needs.

---

[1] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Registered Nurses, https://www.bls.gov/ooh/healthcare/registered-nurses.htm. Accessed: March 30, 2020.

[2] American Association of Colleges of Nursing, "Nursing Shortage" Fact Sheets, News & Information, https://www.aacnnursing.org/news-information/fact-sheets/nursing-shortage. Last Updated: April 1, 2019; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

Our nursing shortages will only further accelerate the damage the coronavirus will cause to our country. Cynthia Cox, Vice President of the Kaiser Family Foundation, recently noted that "There is a very real risk of provider shortages in the areas hit hard by the coronavirus, both because of increased patient numbers and doctors and nurses falling ill from or being exposed to the virus."[3]

The federal government has already taken action to address provider shortages in our nation's healthcare system. For instance, the Bureau of Consular Affairs at the U.S. Department of State recently encouraged medical professionals with approved U.S. immigrant or nonimmigrant visas to schedule visa interviews, so that they can to help our country assist with COVID-19 treatment efforts.[4] The U.S. Department of Veterans Affairs (VA) received waiver authority to re-hire retired VA healthcare workers to address this crisis.[5] These actions show our federal government is aware of the compounding effects of our country's provider shortage and the COVID-19 crisis on our healthcare system.

While these actions will provide relief to our nation's doctors, they do not provide relief for our nation's nursing staff who are working around the clock to fight this crisis. We ask that you use every authority provided to you under the law to expedite your processing of EB-3 visas for immigrant nurses, so that our hospitals can have the support they need as they combat this virus.

Nurses provide critical care to patients and their families. They help doctors extend the reach of their care. They are on the frontlines of our medical system's work to combat the coronavirus. Our nation's hospitals will be overwhelmed if they are not able to hire more nursing staff. We urge you to help our hospitals address this crisis by expediting your processing of visas for immigrant nurses.

Thank you for your consideration of this request.

Sincerely,

David A. Perdue
United States Senator

Kelly Loeffler
United States Senator

Bill Cassidy, M.D.
Bill Cassidy
United States Senator

[3] Nicole Narea, "The US needs foreign doctors and nurses to fight coronavirus. Immigration policy isn't helping." Vox, https://www.vox.com/2020/3/30/21190971/foreign-immigrant-doctor-nurse-coronavirus. Last Updated: March 30, 2020; Accessed: March 30, 2020.

[4] U.S. Department of State, Bureau of Consular Affairs, "Update on Visas for Medical Professionals," https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html. Last Updated: March 26, 2020; Accessed: March 30, 2020.

[5] U.S. Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, "After OPM action, VA invites retired medical personnel back to work," https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5404. Last Updated: March 26, 2020; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587
To: Weinhold, Kasey D; Allsteadt, Edward
Sent: June 4, 2020 1:11 PM (UTC-05:00)
Attached: Incoming 4.3.20.pdf, Draft response - Perdue Revised by FO 6-4-2020.doc

Hi Kasey and Ed,

Please let EXSO know that we had significant revisions to the response and we'd like for the PODs to review the changes by 2:00 PM tomorrow.

Thanks,
Morgan

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉ [redacted]
☎

(b)(6)

WARNING: This message is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552) This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

From: Weinhold, Kasey D [redacted]
Sent: Wednesday, June 3, 2020 9:37 PM
To: Bailey, Morgan [redacted]
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587

Hi Morgan,

Sen Perdue reached out the USCIS OLIA noting they didn't think the original response was sufficient….I don't think this one is any better than the last? Am I missing something?

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] | **Mobile:** [redacted] | **E-mail** [redacted]

From: Kilgore, Garry R [redacted]
Sent: Wednesday, June 03, 2020 2:47 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Brown, James R [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Sen. Perdue- EB-3/COVID-19 - STARS# 25587

(b)(6)

Good afternoon ma'am,

The office of Sen. Perdue reached out to USCIS OLIA noting they did not believe the original USCIS response to their 4/3/20 inquiry was sufficient, EXSO worked with OP&S, OCC and EXA to craft attached updated response.

Summary:

AMERICAN OVERSIGHT

Sen. Perdue's office reached out directly to USCIS so we are treating this as a reply direct, we will not need to clear this through DHS HQ.

Attachments:

- Updated draft response
- Original USCIS Response to 4/3/20 letter
- Incoming Perdue letter 4/3/20

(b)(6)

Respectfully,

Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] office)
STARS Issues: [redacted]

From: Weinhold, Kasey D [redacted]
Sent: Thursday, May 14, 2020 5:46 PM
To: Blanco, Patricia J [redacted]; DDCLEAR [redacted]
Cc: USCIS Directors Office Advisors [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Bailey, Morgan [redacted]; Nuebel Kovarik, Kathy [redacted]; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 04/21/20 – Sen. Perdue- EB-3/COVID-19 - STARS# 25587

CLEARED
On behalf of the Director's Office, I clear USCIS' response to Sen. Perdue- EB-3/COVID-19, with no additional edits/comments from the Director's Office. When sending the USCIS clearance, please include any edits/comments submitted by the directorates or program offices that reviewed. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile:** [redacted] **E-mail** [redacted]

From: Blanco, Patricia J [redacted]
Sent: Wednesday, May 13, 2020 8:47 AM
To: DDCLEAR [redacted]
Cc: USCIS Directors Office Advisors [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Bailey, Morgan [redacted]; Nuebel Kovarik, Kathy [redacted]; USCIS Exec Congr Corresp [redacted]; USCIS EXSO External [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Due Date: 04/21/20 – Sen. Perdue- EB-3/COVID-19 - STARS# 25587

AMERICAN OVERSIGHT

Requestor Directorate/Office: DHS ESEC

(b)(6)

Due Date: Tuesday, April 21, 2020

Request: Director's Office clearance for the draft response to Sen. Perdue +2 regarding EB-3 visas for Schedule A nurses during COVID-19 crisis.
If cleared with no edits/comments, please forward for D2P signature.

Background: Sen. Perdue +2 wrote to the Acting Secretary Wolf requesting prioritization of EB-3 visas for Schedule A nurses during COVID-19 crisis.
Please note this response is a product of the Sen. Schumer previously approved language for COVID-19 response.

OP&S:
OCC:
EXA:

(b)(6)

Attachments:

1. Incoming 4.3.20
2. Draft response – Perdue (FINAL) LH 5.11.20
3. Draft response – Loeffler (FINAL) LH 5.11.20
4. Draft response – Cassidy (FINAL) LH 5.11.20

*******Please reply to all on this email ******

Thank you,

Patty

Patricia Blanco
U.S. Citizenship and Immigration Services
Executive Secretariat

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June X, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 3, 2020 letter. You asked for the Department of State (DOS), the Department of Labor (DOL), and the Department of Homeland Security (DHS) to prioritize the processing of ~~about~~ employment-based immigrant third preference (EB-3) visa petitions for ~~third preference category (EB-3)~~ Schedule A nurses during the coronavirus (COVID-19) pandemic ~~crisis~~. The Acting Secretary has asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) recognizes the urgent need for certain health care workers in the United States and has taken steps to offer additional flexibilities during the COVID-19 pandemic, including approving expedite processing when warranted.[1] An employer may submit an expedite request through the USCIS Contact Center.[2] We carefully review each request.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations. The Immigration and Nationality Act (INA) sets the number of immigrant visas that may be issued to aliens seeking to become lawful permanent residents each year. DOS is the agency that allocates immigrant visas. When the demand is higher than the supply for a given year in any given category or country, a visa queue (waiting list or backlog) forms. To distribute the numbers among all preference categories, DOS allocates the visas according to a prospective immigrant's preference category, country of chargeability, and priority date. The priority date is used to determine an immigrant's place in the visa queue. When the priority date becomes available, or is "current," an alien may apply for an immigrant visa (if outside the United States) or adjustment of status (if within the United States) to obtain lawful permanent resident status.

[1] USCIS recently announced that beginning in June, we will resume premium processing for certain Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers, in phases.
[2] For additional information for special situations and expedite requests, please see the USCIS website at www.uscis.gov.

AMERICAN OVERSIGHT

For the EB-3 preference category, visas are authorized in June 2020[3] as follows:

Employment-Based	All Chargeability Areas Except Those Listed	China-mainland born	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
3rd	08 NOV 17	15 JUN 16	08 NOV 17	01 APR 09	08 NOV 17	08 NOV 17	08 NOV 17

Thus, for oversubscribed categories, there is a waiting period of several years before certain priority dates will be reached. USCIS and DOS are not able to process these cases until the priority date is current.

We defer to DOS regarding the visa process for aliens outside the United States, but we note that nurses (whose priority dates are current) may continue the visa process under President Trump's recently proclamation[4] if they are seeking to enter the United States with an immigrant visa and would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak (and assuming they are eligible and admissible).

DHS is closely monitoring the evolving COVID-19 situation in order to protect our nation, our workforce, and communities and to minimize the impact of COVID-19 on American citizens and workers. As we begin moving toward reopening the country, DHS remain steadfast in our commitment to protect the safety of the American people.

~~The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.~~

~~We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.~~

~~President Trump's April 22, 2020, Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak expressly excluded from suspension any "nurse" seeking to enter the United States on an immigrant visa who would be working to combat, recover from, or otherwise alleviate the effects of the COVID-19 outbreak. The suspension and limitation on entry does not apply to the spouse and unmarried children who accompany or follow to join the alien nurse.~~

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[3] An alien in the United States must wait until there are immigrant visas available to file a Form I-485, Application to Register Permanent Residence or Adjust Status. For additional information, please see the Department of State, Visa Bulletin.
[4] President Trump's Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the Covid-19 Outbreak issued on April 22, 2020.

AMERICAN OVERSIGHT

~~It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits, including petitions for nurses and their adjustment applications.~~

~~Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.~~

Thank you again for your letter and interest in this matter. ~~We will consider the recommendations you have put forward.~~ Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

cc:

Kelly Loeffler
United States Senator

Bill Cassidy
United States Senator

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AMERICAN OVERSIGHT

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

April 3, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave, S.E.
Washington, D.C. 20032

RECEIVED
By ESEC at 12:59 pm, Apr 06, 2020

Dear Secretary Pompeo, Secretary Scalia, and Acting Secretary Wolf:

We are writing to request that you prioritize the processing of EB-3 visas for Schedule A nurses during the COVID-19 crisis. Our nation has long faced a significant shortage of nurses and health care workers, and this shortage now poses a risk to our medical system's ability to respond to this crisis. We ask that you prioritize the processing of these visas to ensure that our hospitals will have the critical care workers they need to lead our nation through this crisis.

The U.S. Department of Labor (DOL) has recognized that there "are not sufficient United States workers who are able, willing, and qualified" to serve as nurses. DOL has determined that any nurse brought to the United States will not affect "the working conditions of United States workers similarly employed" and will not "adversely affect" the wages of United States workers (20 C.F.R. §656.5).

DOL's Bureau of Labor Statistics forecasts that our country's need for nurses will grow by 12 percent from 2018 to 2028. The average growth rate for all occupations over that same window is projected to be 5 percent.[1] The American Association of Colleges of Nursing found that low enrollment in U.S. nursing schools, a faculty shortage at U.S. nursing schools, an aging workforce, and our aging population will continue to exacerbate these nursing shortages.[2] Our rural hospitals, which are essential to the health and well-being of those who do not live in a major metropolitan area, have acutely felt the impacts of these nurse shortages. We simply do not have the workforce here to fulfill our country's nursing needs.

---

[1] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Registered Nurses, https://www.bls.gov/ooh/healthcare/registered-nurses.htm. Accessed: March 30, 2020.

[2] American Association of Colleges of Nursing, "Nursing Shortage" Fact Sheets, News & Information, https://www.aacnnursing.org/news-information/fact-sheets/nursing-shortage. Last Updated: April 1, 2019; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

DAVID PERDUE
GEORGIA

United States Senate

WASHINGTON, DC 20510-1009

Our nursing shortages will only further accelerate the damage the coronavirus will cause to our country. Cynthia Cox, Vice President of the Kaiser Family Foundation, recently noted that "There is a very real risk of provider shortages in the areas hit hard by the coronavirus, both because of increased patient numbers and doctors and nurses falling ill from or being exposed to the virus."[3]

The federal government has already taken action to address provider shortages in our nation's healthcare system. For instance, the Bureau of Consular Affairs at the U.S. Department of State recently encouraged medical professionals with approved U.S. immigrant or nonimmigrant visas to schedule visa interviews, so that they can to help our country assist with COVID-19 treatment efforts.[4] The U.S. Department of Veterans Affairs (VA) received waiver authority to re-hire retired VA healthcare workers to address this crisis.[5] These actions show our federal government is aware of the compounding effects of our country's provider shortage and the COVID-19 crisis on our healthcare system.

While these actions will provide relief to our nation's doctors, they do not provide relief for our nation's nursing staff who are working around the clock to fight this crisis. We ask that you use every authority provided to you under the law to expedite your processing of EB-3 visas for immigrant nurses, so that our hospitals can have the support they need as they combat this virus.

Nurses provide critical care to patients and their families. They help doctors extend the reach of their care. They are on the frontlines of our medical system's work to combat the coronavirus. Our nation's hospitals will be overwhelmed if they are not able to hire more nursing staff. We urge you to help our hospitals address this crisis by expediting your processing of visas for immigrant nurses.

Thank you for your consideration of this request.

Sincerely,

David A. Perdue
United States Senator

Kelly Loeffler
United States Senator

Bill Cassidy, M.D.
Bill Cassidy
United States Senator

[3] Nicole Narea, "The US needs foreign doctors and nurses to fight coronavirus. Immigration policy isn't helping." Vox, https://www.vox.com/2020/3/30/21190971/foreign-immigrant-doctor-nurse-coronavirus. Last Updated: March 30, 2020; Accessed: March 30, 2020.

[4] U.S. Department of State, Bureau of Consular Affairs, "Update on Visas for Medical Professionals," https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html. Last Updated: March 26, 2020; Accessed: March 30, 2020.

[5] U.S. Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, "After OPM action, VA invites retired medical personnel back to work," https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5404. Last Updated: March 26, 2020; Accessed: March 30, 2020.

AMERICAN OVERSIGHT

455 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510

3280 PEACHTREE ROAD, NE, STE 2640
ATLANTA, GA 30305

(b)(6)

From: Weinhold, Kasey D
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834
To: Kilgore, Garry R; Bailey, Morgan
Cc: Dove, Stephen W (Steve); Carter, Constance L; Brown, James R
Sent: May 29, 2020 11:39 AM (UTC-05:00)
Attached: Incoming - Lang 5.14.20.pdf, Response - Lang - 5.28.2020.doc, Signed Dr. Joachim Lang Final 5.29.20.pdf, Draft Response - Lang - 05.19.20.doc

Garry –

You will find the signed letter attached.

On the draft response you sent over for Mr. Lang, the second page header indicated the letter was for Mr. Schumer. Could you add this as an area to review on the QA sheet?

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] | **Mobile:** [redacted] **E-mail** [redacted]

From: Kilgore, Garry R [redacted]
Sent: Thursday, May 28, 2020 12:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Brown, James R [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834

Good afternoon ma'am,

EXSO presents the attached draft response to Dr. Joachim Lang who wrote to Acting Secretary Wolf, regarding non-immigrant visas during COVID-19. EXSO requests a signature by COB June 8, 2020.

Summary:
Please note the draft uses previously cleared language from the Sen. Schumer response signed on 5/13/20.

Attachments:

- EXSO Coversheet
- Draft Response
- Incoming
- Signed Charles Schumer Final 5.13.20

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

AMERICAN OVERSIGHT

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

Thank you for your May 14, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation

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to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. See H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

BDI
The Voice of German Industry

DIHK
Deutscher Industrie- und Handelskammertag
Association of German Chambers of Commerce and Industry

The Honorable Chad Wolf
Acting U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Ave NW
WASHINGTON, D.C. 20016
UNITED STATES OF AMERICA

RECEIVED
By ESEC at 12:58 pm, May 18, 2020

Berlin, May 14, 2020

Dear Mr. Secretary Wolf,

With compassion and concern, we observe the severity of the Covid-19 pandemic in the United States. Our commiseration is with the families who are caring for a sick family member or have lost a loved one. We understand the immediate crisis measures taken by the U.S. Federal Government and States to contain the crisis. At the same time, as business leaders our responsibility also lies with ensuring the functioning of the economy and enabling a restart of business activity to ensure the livelihood of millions of workers. We are deeply worried that some government measures threaten to deepen and prolong the economic crisis, foremost medium-term restrictions in the area of temporary work visas.

The Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak of April 22nd primarily imposes restrictions on the issuing of new green cards. We respect that immigration policy falls under the primacy of politics. Nonetheless, we regret this decision as the outstanding economic dynamism of the United States is also based on attracting the best and most ambitious talents internationally.

We are particularly worried about the review of all "non-immigrant programs" within 30 days, ordered by section 6 of said proclamation. Our concern is that this might result in a further restriction of U.S. temporary work visas, which are essential for the transatlantic economy (as well as for scientific and cultural exchange fueling our transatlantic partnership). The number of companies reporting problems with workflows and service provision due to restrictions in the issuing of U.S. visas has already increased in recent years. According to the German American Business Outlook 2020, one-fourth of German companies in the US see the availability of workforce visas as a key challenge for their business.

Non-immigrant visa applicants from Germany are helping create jobs in the US. These are roles that are strongly linked to generating new investment in the US. If companies cannot bring key staff to the US to build their new production sites and expand their existing investments, such new investments will go elsewhere. As

Federation of German Industries (BDI)

German Chambers of Industry and Commerce (DIHK)

Berlin Office
Breite Straße 29
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AMERICAN OVERSIGHT

companies look to bring new production close to the US market, places like Mexico or Canada stand to profit if the U.S. adds restrictions to non-immigrant visas.

A practical example of this would be the maintenance or installation of industrial machinery, both in U.S. production facilities of German companies and for U.S. customers of German machine manufacturers. Generally, maintenance or installation in a production site is carried out by joint teams consisting of local staff, experts from headquarters, and experts from the machine manufacturer. If this cannot be executed or is delayed due to the restricted issuing of temporary work visas, entire production processes in the United States are threatened to repeatedly come to a standstill. For example, restricted issuance of B1 visas for service technicians already cause production shutdowns in the United States. Experiencing the economic damage of non-operative production sites as never before, we should prevent such unnecessary damage.

With direct investments in approximately 5,400 companies, German businesses provide more than 900,000 jobs in the United States. German businesses take pride in being strongly engaged with their local U.S. business partners and communities. It is in our vital interest to contribute to the U.S. manufacturing base and to participate in the outstanding U.S. economy. Through their skills and dual education programs, German companies also play an important role in the education, training, and lifelong learning of the U.S. workforce. Together, U.S. and German companies in the US have created apprenticeship clusters like the Industry Consortium for Advanced Technical Training in Illinois (ICATT) or the Georgia Consortium for Advanced Technical Training (GA CATT).

Representing German industry and commerce, the Federation of German Industries (BDI) and the Association of German Chambers of Industry and Commerce (DIHK) therefore ask you to take into account the adverse effects that restrictions of temporary work visas have on the U.S. manufacturing sector and economy as a whole. We are optimistic that a careful evaluation of these effects will result in the conclusion that easing the issuance of temporary work visas, rather than restricting them, will result in more and better jobs for U.S. citizens.

We thank you for your commitment to the transatlantic relationship and remain with best regards

Dr. Joachim Lang
Director General
BDI

Dr. Martin Wansleben
CEO
DIHK

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

Thank you for your May 14, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

In your letter, you mentioned the Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak. You also inquired about the review of nonimmigrant programs as stated in the proclamation. The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

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DHS-20-2156-A-004045

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 29, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

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AMERICAN OVERSIGHT

DHS-20-2156-A-004047

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From:
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834
To: Kilgore, Garry R; Bailey, Morgan
Cc: Dove, Stephen W (Steve); Carter, Constance L; Brown, James R
Sent: May 29, 2020 11:35 AM (UTC-05:00)
Attached: Incoming - Lang 5.14.20.pdf, Response - Lang - 5.28.2020.doc, Signed Dr. Joachim Lang Final 5.29.20.pdf, Draft Response - Lang - 05.19.20.doc

Garry – (b)(6)

You will find the signed letter attached.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile** [redacted] **E-mail** [redacted]

From: Kilgore, Garry R [redacted]
Sent: Thursday, May 28, 2020 12:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Brown, James R [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834

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Attachments:
- EXSO Coversheet
- Draft Response
- Incoming
- Signed Charles Schumer Final 5.13.20

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office) (b)(6)
STARS Issues: [redacted]

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

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AMERICAN OVERSIGHT

to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. See H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

BDI
The Voice of German Industry

DIHK
Deutscher Industrie- und Handelskammertag
Association of German Chambers of Commerce and Industry

The Honorable Chad Wolf
Acting U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Ave NW
WASHINGTON, D.C. 20016
UNITED STATES OF AMERICA

RECEIVED
By ESEC at 12:58 pm, May 18, 2020

Berlin, May 14, 2020

Dear Mr. Secretary Wolf,

With compassion and concern, we observe the severity of the Covid-19 pandemic in the United States. Our commiseration is with the families who are caring for a sick family member or have lost a loved one. We understand the immediate crisis measures taken by the U.S. Federal Government and States to contain the crisis. At the same time, as business leaders our responsibility also lies with ensuring the functioning of the economy and enabling a restart of business activity to ensure the livelihood of millions of workers. We are deeply worried that some government measures threaten to deepen and prolong the economic crisis, foremost medium-term restrictions in the area of temporary work visas.

The Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak of April 22nd primarily imposes restrictions on the issuing of new green cards. We respect that immigration policy falls under the primacy of politics. Nonetheless, we regret this decision as the outstanding economic dynamism of the United States is also based on attracting the best and most ambitious talents internationally.

We are particularly worried about the review of all "non-immigrant programs" within 30 days, ordered by section 6 of said proclamation. Our concern is that this might result in a further restriction of U.S. temporary work visas, which are essential for the transatlantic economy (as well as for scientific and cultural exchange fueling our transatlantic partnership). The number of companies reporting problems with workflows and service provision due to restrictions in the issuing of U.S. visas has already increased in recent years. According to the German American Business Outlook 2020, one-fourth of German companies in the US see the availability of workforce visas as a key challenge for their business.

Non-immigrant visa applicants from Germany are helping create jobs in the US. These are roles that are strongly linked to generating new investment in the US. If companies cannot bring key staff to the US to build their new production sites and expand their existing investments, such new investments will go elsewhere. As

Federation of German Industries (BDI)

German Chambers of Industry and Commerce (DIHK)

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Germany

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companies look to bring new production close to the US market, places like Mexico or Canada stand to profit if the U.S. adds restrictions to non-immigrant visas.

A practical example of this would be the maintenance or installation of industrial machinery, both in U.S. production facilities of German companies and for U.S. customers of German machine manufacturers. Generally, maintenance or installation in a production site is carried out by joint teams consisting of local staff, experts from headquarters, and experts from the machine manufacturer. If this cannot be executed or is delayed due to the restricted issuing of temporary work visas, entire production processes in the United States are threatened to repeatedly come to a standstill. For example, restricted issuance of B1 visas for service technicians already cause production shutdowns in the United States. Experiencing the economic damage of non-operative production sites as never before, we should prevent such unnecessary damage.

With direct investments in approximately 5,400 companies, German businesses provide more than 900,000 jobs in the United States. German businesses take pride in being strongly engaged with their local U.S. business partners and communities. It is in our vital interest to contribute to the U.S. manufacturing base and to participate in the outstanding U.S. economy. Through their skills and dual education programs, German companies also play an important role in the education, training, and lifelong learning of the U.S. workforce. Together, U.S. and German companies in the US have created apprenticeship clusters like the Industry Consortium for Advanced Technical Training in Illinois (ICATT) or the Georgia Consortium for Advanced Technical Training (GA CATT).

Representing German industry and commerce, the Federation of German Industries (BDI) and the Association of German Chambers of Industry and Commerce (DIHK) therefore ask you to take into account the adverse effects that restrictions of temporary work visas have on the U.S. manufacturing sector and economy as a whole. We are optimistic that a careful evaluation of these effects will result in the conclusion that easing the issuance of temporary work visas, rather than restricting them, will result in more and better jobs for U.S. citizens.

We thank you for your commitment to the transatlantic relationship and remain with best regards

Dr. Joachim Lang
Director General
BDI

Dr. Martin Wansleben
CEO
DIHK

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

Thank you for your May 14, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

In your letter, you mentioned the Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak. You also inquired about the review of nonimmigrant programs as stated in the proclamation. The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

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DHS-20-2156-A-004054

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 29, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

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In your letter, you mentioned the *Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*. You also inquired about the review of nonimmigrant programs as stated in the proclamation. The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

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It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

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AMERICAN OVERSIGHT

DHS-20-2156-A-004056

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834
To: Weinhold, Kasey D
Sent: May 29, 2020 11:25 AM (UTC-05:00)
Attached: Incoming - Lang 5.14.20.pdf, Signed Dr. Joachim Lang Final 5.29.20.pdf, Draft Response - Lang - 05.19.20.doc, Response - Lang - 5.28.2020.doc

Hi Kasey,

The signed letter is attached. The draft that was sent to the Front Office for Mr. Lang mistakenly indicated that it was for Mr. Schumer in the header of the second page. Please ask EXSO to add this section as an area for review to the QA sheet.

Thanks,
Morgan

(b)(6)

From: Kilgore, Garry R <[redacted]
Sent: Thursday, May 28, 2020 1:50 PM
To: Bailey, Morgan <[redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Brown, James R [redacted]>; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834

Good afternoon ma'am,

EXSO presents the attached draft response to Dr. Joachim Lang who wrote to Acting Secretary Wolf, regarding non-immigrant visas during COVID-19. EXSO requests a signature by COB June 8, 2020.

Summary:
Please note the draft uses previously cleared language from the Sen. Schumer response signed on 5/13/20.

Attachments:

- EXSO Coversheet
- Draft Response
- Incoming
- Signed Charles Schumer Final 5.13.20

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues: [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

Thank you for your May 14, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation

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DHS-20-2156-A-004059

to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. See H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

BDI
The Voice of German Industry

DIHK
Deutscher Industrie- und Handelskammertag
Association of German Chambers of Commerce and Industry

The Honorable Chad Wolf
Acting U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Ave NW
WASHINGTON, D.C. 20016
UNITED STATES OF AMERICA

RECEIVED
By ESEC at 12:58 pm, May 18, 2020

Berlin, May 14, 2020

Dear Mr. Secretary Wolf,

With compassion and concern, we observe the severity of the Covid-19 pandemic in the United States. Our commiseration is with the families who are caring for a sick family member or have lost a loved one. We understand the immediate crisis measures taken by the U.S. Federal Government and States to contain the crisis. At the same time, as business leaders our responsibility also lies with ensuring the functioning of the economy and enabling a restart of business activity to ensure the livelihood of millions of workers. We are deeply worried that some government measures threaten to deepen and prolong the economic crisis, foremost medium-term restrictions in the area of temporary work visas.

The Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak of April 22nd primarily imposes restrictions on the issuing of new green cards. We respect that immigration policy falls under the primacy of politics. Nonetheless, we regret this decision as the outstanding economic dynamism of the United States is also based on attracting the best and most ambitious talents internationally.

We are particularly worried about the review of all "non-immigrant programs" within 30 days, ordered by section 6 of said proclamation. Our concern is that this might result in a further restriction of U.S. temporary work visas, which are essential for the transatlantic economy (as well as for scientific and cultural exchange fueling our transatlantic partnership). The number of companies reporting problems with workflows and service provision due to restrictions in the issuing of U.S. visas has already increased in recent years. According to the German American Business Outlook 2020, one-fourth of German companies in the US see the availability of workforce visas as a key challenge for their business.

Non-immigrant visa applicants from Germany are helping create jobs in the US. These are roles that are strongly linked to generating new investment in the US. If companies cannot bring key staff to the US to build their new production sites and expand their existing investments, such new investments will go elsewhere. As

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companies look to bring new production close to the US market, places like Mexico or Canada stand to profit if the U.S. adds restrictions to non-immigrant visas.

A practical example of this would be the maintenance or installation of industrial machinery, both in U.S. production facilities of German companies and for U.S. customers of German machine manufacturers. Generally, maintenance or installation in a production site is carried out by joint teams consisting of local staff, experts from headquarters, and experts from the machine manufacturer. If this cannot be executed or is delayed due to the restricted issuing of temporary work visas, entire production processes in the United States are threatened to repeatedly come to a standstill. For example, restricted issuance of B1 visas for service technicians already cause production shutdowns in the United States. Experiencing the economic damage of non-operative production sites as never before, we should prevent such unnecessary damage.

With direct investments in approximately 5,400 companies, German businesses provide more than 900,000 jobs in the United States. German businesses take pride in being strongly engaged with their local U.S. business partners and communities. It is in our vital interest to contribute to the U.S. manufacturing base and to participate in the outstanding U.S. economy. Through their skills and dual education programs, German companies also play an important role in the education, training, and lifelong learning of the U.S. workforce. Together, U.S. and German companies in the US have created apprenticeship clusters like the Industry Consortium for Advanced Technical Training in Illinois (ICATT) or the Georgia Consortium for Advanced Technical Training (GA CATT).

Representing German industry and commerce, the Federation of German Industries (BDI) and the Association of German Chambers of Industry and Commerce (DIHK) therefore ask you to take into account the adverse effects that restrictions of temporary work visas have on the U.S. manufacturing sector and economy as a whole. We are optimistic that a careful evaluation of these effects will result in the conclusion that easing the issuance of temporary work visas, rather than restricting them, will result in more and better jobs for U.S. citizens.

We thank you for your commitment to the transatlantic relationship and remain with best regards

Dr. Joachim Lang
Director General
BDI

Dr. Martin Wansleben
CEO
DIHK

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

Thank you for your May 14, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

In your letter, you mentioned the Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak. You also inquired about the review of nonimmigrant programs as stated in the proclamation. The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

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AMERICAN OVERSIGHT

DHS-20-2156-A-004063

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 29, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

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In your letter, you mentioned the *Presidential Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*. You also inquired about the review of nonimmigrant programs as stated in the proclamation. The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

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AMERICAN OVERSIGHT

DHS-20-2156-A-004065

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834
To: Patrick, Shirley A
Sent: May 28, 2020 6:54 PM (UTC-05:00)
Attached: Draft Response - Lang - 05.19.20.doc

Hi Shirley,

(b)(6)

Please auto sign.

Thanks!

From: Kilgore, Garry R [redacted]
Sent: Thursday, May 28, 2020 1:50 PM
To: Bailey, Morgan [redacted]
Cc: Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Brown, James R [redacted]; Weinhold, Kasey D [redacted]
Subject: [DIRECTOR'S OFFICE CLEARANCE REQUEST] Joachim Lang - Regarding non-immigrant visas during COVID-19 - STARS# 26834

Good afternoon ma'am,

EXSO presents the attached draft response to Dr. Joachim Lang who wrote to Acting Secretary Wolf, regarding non-immigrant visas during COVID-19. EXSO requests a signature by COB June 8, 2020.

Summary:
Please note the draft uses previously cleared language from the Sen. Schumer response signed on 5/13/20.

Attachments:

- EXSO Coversheet
- Draft Response
- Incoming
- Signed Charles Schumer Final 5.13.20

Respectfully,
Garry R. Kilgore
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted] (office)
STARS Issues [redacted]

(b)(6)

AMERICAN OVERSIGHT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May XX, 2020

Dr. Joachim Lang
Director General
BDI – The Voice of German Industry
Breite Strasse 29
10178 Berlin
Germany

Dear Dr. Joachim Lang:

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AMERICAN OVERSIGHT

DHS-20-2156-A-004068

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy

AMERICAN OVERSIGHT

From: Nasir, Syed A
Subject: Advance Appropriations - Briefing Book Package
To: Law, Robert T; Groom, Molly M; Busch, Philip B; Rexrode, Kathryn S
Cc: Scott, Kika M; Cribbs, Carol S; Reilly, Richard M; Wearmouth, James C II; Tozzolo, Anthony T (Tony); Bonic, Andrew V; Nuebel Kovarik, Kathy
Sent: May 13, 2020 3:50 PM (UTC-05:00)
Attached: Supplemental Briefing Prep-OCFO Materials_CLEAN.docx, Appendix 1 Supp. Briefing OCFO Backup Materials.zip, Appendix 2 Supp. Briefing Book- COVID 19 Related TPs.zip, Appendix 3 Supp. Briefing Book-Policy TPs.zip

Rob, Molly, Phil, and Kathryn – *(this was intentionally not sent to the Clearance mailboxes due to the sensitive content, which has not been shared with staff level yet)*

Attached for your immediate review and clearance are the briefing book components that OCFO and OLIA has prepared for any upcoming D2P supplemental appropriations hearing or meeting with House or Senate committees or staff. Although this appears to be an overwhelming amount of material, much has been previously cleared and provided to the Hill or others, we have provided a simple matrix below to aid with the review:

Document 1: USCIS Supplemental and associated Talking Points/Hot Sheet style background (REQUIRES CLEARANCE- Primary supporting material for this supplemental request)

Appendix 1: OCFO Backup Materials (zip file) (DOES NOT REQUIRE CLEARANCE-All information has been previously cleared, and serves only as backup)

Appendix 2: OLIA Generated COVID Talking Points Documents (zip) (DOES NOT REQUIRE CLEARANCE – Extremely recent material that reflects current policy)

Appendix 3: OLIA Generated USCIS Policy Issue Talking Points Documents (zip) (REQUIRES CLEARANCE- Previous material that has been updated to reflect most current policy)

OCFO will move quickly to incorporate any inline edits made. Open ended comments that are not addressed via your own inline edits will be considered perfunctory, and will not receive an OCFO response or adjudication at this time, due to the need to quickly prepare paper materials. Any critically sensitive comment should be addressed directly in the email clearance response.

Due to the critically time sensitive nature of this task, OCFO must have all materials cleared by 8am Thursday, 5/14 (OCFO will aim to have binders ready by 10am tomorrow).

Thanks for your support and in advance sincere apologies for the short turnaround request.

Regards,
~Azmat

Azmat Nasir
Chief, Planning & Formulation
Office of the Chief Financial Officer
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] Cell: [redacted]
[redacted]

(b)(6)

AMERICAN OVERSIGHT

COVID-19 Impact: April - September 2020 Revenue Forecast				
Form Name	Initial Revenue Forecast	Revised Revenue Forecast	$ Change	% Change
N-400 Application for Naturalization - Full Fee	$ 317,918,720	$ 84,410,240	$ (233,508,480)	-73%
I-129 Petition for a Nonimmigrant Worker - Premium	$ 212,474,880	$ -	$ (212,474,880)	-100%
I-485 Application to Register Permanent Residence or Adjust Status	$ 293,070,720	$ 98,738,130	$ (194,332,590)	-66%
I-130 Petition for Alien Relative	$ 218,063,860	$ 118,220,555	$ (99,843,305)	-46%
I-765 Application for Employment Authorization	$ 151,379,380	$ 62,636,520	$ (88,742,860)	-59%
I-90 Application to Replace Permanent Resident Card	$ 142,423,190	$ 58,610,370	$ (83,812,820)	-59%
Biometric Volume and Revenue (Including TPS Volumes)	$ 103,127,864	$ 34,640,457	$ (68,487,407)	-66%
I-140 Immigrant Petition for Alien Worker - Premium	$ 60,606,720	$ -	$ (60,606,720)	-100%
Immigrant Visa	$ 59,507,580	$ 4,817,780	$ (54,689,800)	-92%
I-129 Petition for a Nonimmigrant Worker	$ 165,156,560	$ 124,602,040	$ (40,554,520)	-25%
I-765 DACA (including Biometrics)	$ 85,262,760	$ 49,716,810	$ (35,545,950)	-42%
I-140 Immigrant Petition for Alien Worker	$ 51,517,900	$ 20,634,600	$ (30,883,300)	-60%
I-131 Application for Travel Document	$ 36,083,125	$ 6,515,995	$ (29,567,130)	-82%
I-751 Petition to Remove the Conditions of Residence	$ 48,276,515	$ 22,010,835	$ (26,265,680)	-54%
I-539 Application to Extend/Change Nonimmigrant Status	$ 40,515,370	$ 20,599,010	$ (19,916,360)	-49%
N-600 Application for Certification of Citizenship	$ 23,493,600	$ 4,465,890	$ (19,027,710)	-81%
I-192 Application for Advance Permission to Enter as Nonimmigrant	$ 9,605,970	$ 714,240	$ (8,891,730)	-93%
I-601A, Provisional Unlawful Presence Waiver	$ 18,489,240	$ 10,502,100	$ (7,987,140)	-43%
I-129F Petition for Alien Fiance(e)	$ 11,439,370	$ 6,506,670	$ (4,932,700)	-43%
N-565 Application for Replacement Naturalization/Citizenship Document	$ 6,133,860	$ 1,623,375	$ (4,510,485)	-74%
I-526 Immigrant Petition by Alien Entrepreneur	$ 4,494,525	$ 426,300	$ (4,068,225)	-91%
I-829 Petition by Entrepreneur to Remove Conditions	$ 5,535,000	$ 1,747,500	$ (3,787,500)	-68%
I-601 Application for Waiver of Grounds of Inadmissibility	$ 8,553,210	$ 5,373,540	$ (3,179,670)	-37%
I-212 Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal	$ 3,012,270	$ 1,297,350	$ (1,714,920)	-57%
N-600K Application for Citizenship and Issuance of Certificate	$ 2,157,480	$ 535,860	$ (1,621,620)	-75%
I-824 Application for Action on an Approved Application or Petition	$ 2,491,470	$ 1,312,695	$ (1,178,775)	-47%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$ 960,930	$ 71,180	$ (889,750)	-93%
N-400 Application for Naturalization - Reduced Fee	$ 1,200,960	$ 328,320	$ (872,640)	-73%

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N-336 Request for Hearing on a Decision in Naturalization Proceedings	$ 1,803,200	$ 1,041,600	$ (761,600)	-42%
I-102 Replacement/Initial Nonimmigrant Arrival/Departure Record	$ 1,000,805	$ 440,995	$ (559,810)	-56%
I-131A (Boarding Letters) RAIO	$ 1,108,025	$ 583,050	$ (524,975)	-47%
I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country	$ 716,100	$ 334,800	$ (381,300)	-53%
I-612 Application for Waiver of the Foreign Residence Requirement	$ 324,570	$ 29,760	$ (294,810)	-91%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$ 757,770	$ 522,870	$ (234,900)	-31%
I-290B Notice of Appeal or Motion	$ 10,331,550	$ 10,165,500	$ (166,050)	-2%
I-910 Civil Surgeon Request	$ 198,605	$ 96,555	$ (102,050)	-51%
I-924A Annual Certification of Regional Center	$ 103,190	$ 6,070	$ (97,120)	-94%
I-800A Supplement 3 Request for Action on Approved Form I-800A	$ 132,440	$ 54,670	$ (77,770)	-59%
G-1041 Genealogy Records Request	$ 146,770	$ 70,720	$ (76,050)	-52%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	$ 73,245	$ -	$ (73,245)	-100%
I-600A Application for Advance Processing of Orphan Petition	$ 206,150	$ 150,350	$ (55,800)	-27%
I-600 Petition to Classify Orphan as an Immediate Relative	$ 113,925	$ 66,650	$ (47,275)	-41%
G-1041A Genealogy Records Request	$ 91,195	$ 44,005	$ (47,190)	-52%
I-191 Application for Advance Permission to Return to Unrelinquished Domicile	$ 52,080	$ 26,970	$ (25,110)	-48%
I-929 Petition for a Qualifying Family Member of a U-1 Nonimmigrant	$ 109,940	$ 90,390	$ (19,550)	-18%
I-193 Application for Waiver of Passport and/or Visa	$ 15,795	$ -	$ (15,795)	-100%
N-470 Application to Preserve Residence for Naturalization Purposes	$ 26,980	$ 13,490	$ (13,490)	-50%
I-690 Application for Waiver of Grounds of Inadmissibility	$ 7,865	$ -	$ (7,865)	-100%
I-800 Petition to Classify Convention Adoptee as an Immediate Relative	$ 17,825	$ 10,850	$ (6,975)	-39%
I-698 Application to Adjust Status from Temporary to Permanent Resident	$ 6,680	$ -	$ (6,680)	-100%
N-300 Application to File Declaration of Intention	$ 4,050	$ -	$ (4,050)	-100%
I-694 Notice of Appeal of Decision	$ 3,560	$ -	$ (3,560)	-100%
I-687 Application for Status as a Temporary Resident	$ -	$ -	$ -	N/A
I-821 Application for Temporary Protected Status	$ -	$ -	$ -	N/A
I-941 International Parole	$ -	$ -	$ -	N/A
N-644 Application for Posthumous Citizenship	$ -	$ -	$ -	N/A
I-817 Application for Family Unity Benefits	$ 73,800	$ 123,000	$ 49,200	67%
Grand Total	$ 2,100,379,144	$ 754,930,657	$ (1,345,448,487)	-64%

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Status of Congressionally Requested Reports for FY 2020 As of May 4, 2020

Title of Congressional Request	Requestor	Status
FY2020 Appropriations Reporting Requirements-Private Donation Authority	Joint Explanatory Statement (JES)	Submitted to Congress January 21, 2020
Sec. 403 Website Data	JES	Posted to USCIS public facing website, April 30, 2020
H-2A and H-2B Visa Program Processes	JES	Pending
Application Processing	JES	Pending
Fee Waivers and Petition Fees	JES	Pending
Non-Military Deferred Action Requests Reporting Requirement	Senate Appropriations Committee	Submitted to Congress April 13, 2020
H-2B Visa Distribution Report	SAC	Pending
Processing Backlogs Briefing Requirement	SAC	Pending (Combined with Application Processing and Adjudication Backlogs with Congressional Approval)
Refugee Data Request & Website Posting Requirement	SAC	Pending
Naturalization Campaign	House Appropriations Committee (HAC)	Submitted to Congress April 9, 2020
Adjudication Backlogs	HAC	Pending (Combined with Application Processing and Adjudication Backlogs with Congressional Approval)
Website Data	HAC	Pending
International Operations Division	HAC	Pending
Protections for Foreign Workers	HAC	Pending

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U.S. Citizenship and Immigration Services

Department of Homeland Security

U.S. Citizenship and Immigration Services
FY 2021 President's Budget

February 2020

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U.S. Citizenship and Immigration Services

Budget Overview

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FY 2021 Budget Summary

U.S. Citizenship and Immigration Services

Department of Homeland Security
U.S. Citizenship & Immigration Services
FY 2021 Budget Estimates by Appropriation
Total Appropriations (Dollars in Thousands)

USCIS Budget Submission (Dollars in Thousands)	FY 2019 Enacted			FY 2020 Enacted			FY 2021 President's Budget			FY 2020 to FY 2021 Total Changes		
	Pos	FTE	Amount	Pos	FTE	Amount	Pos	FTE	Amount	Pos.	FTE	Amount
Operations and Support	419	398	$ 109,688	419	398	$ 122,395	419	398	$ 118,676	-	-	$ (3,719)
Procurement, Construction, and Improvements	-	-	$ 22,838	-	-	$ -	-	-	$ -	-	-	$ -
Federal Assistance	-	-	$ 10,000	-	-	$ 10,000	-	-	$ -	-	-	$ (10,000)
Immigration Examinations Fee Account	18,866	17,924	$ 4,524,854	19,794	18,806	$ 4,655,366	20,451	19,429	$ 4,861,984	657	623	$ 206,618
H-1B Nonimmigrant Petitioner Account	-	-	$ 15,000	-	-	$ 15,000	-	-	$ 20,000	-	-	$ 5,000
Fraud Prevention and Detection Account	185	176	$ 47,797	185	176	$ 48,458	185	176	$ 49,889	-	-	$ 1,431
Total	**19,470**	**18,498**	**$ 4,730,177**	**20,398**	**19,380**	**$ 4,851,219**	**21,055**	**20,003**	**$ 5,050,549**	**657**	**623**	**$ 199,330**
Subtotal Discretionary - Appropriation	419	398	$ 142,526	419	398	$ 132,395	419	398	$ 118,676	-	-	$ (13,719)
Subtotal Mandatory - Fee	19,051	18,100	$ 4,587,651	19,979	18,982	$ 4,718,824	20,636	19,605	$ 4,931,873	657	623	$ 213,049

- The FY 2021 mandatory fee budget submission focuses on backlog mitigation and includes an increase of positions in the following Program, Project, and Activities (PPA) to address the need:
  - 326 for District Operations.
  - 140 for Service Center Operations.
  - 137 for Asylum, Refugee, and International Operations.
- Discretionary funding budget submission focuses on the sustainment/ maintenance of the E-Verify system
  - No request for Procurement, Construction, or Improvements funding .
  - No request for recurrence of Federal Assistance in support of the Citizenship and Assimilation Grant Program.

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DHS-20-2156-A-004076

FY 2021 Budget Estimate – Fee Funding by Account (Mandatory)

U.S. Citizenship and Immigration Services

Fee Funding by Account Total: $4.932 billion (19,605 FTE)

Immigration Examinations Fee Account - $4.862 billion (19,429 FTE)

- In addition to backlog mitigation positions, $144 million is included to annualize the FY 2020 pay raise, and $19 million is included for the FY 2021 pay raise.
- It also includes mandatory increases in FERS agency contributions.

Fraud Prevention and Detection Account - $49.889 million (176 FTE)

- The budget includes adjustments to the FY 2020 base to support the annualization of agency FERS contribution increases as well as GSA rent.
- $1 million is included to annualize the FY 2020 pay raise, and $0.2 million is included for the FY 2021 pay raise.

H-1B Account - $20 million (0 FTE)

- A $5 million increase in spending authority is requested to meet operational requirements, which is consistent with anticipated receipts in FY 2021.

Immigration Examinations Fee Account
Budget Authority and Obligations

Budget Authority *(Dollars in Thousands)*	FY 2019	FY 2020	FY 2021
Fee Receipts (Actual/Estimates/Projections)	$3,895,612	$3,885,000	$3,888,300
Projected Fee Collections – FY 2019 / FY2020 IEFA Fee Rule[1]	-	-	$486,700
Carryover and/or Recoveries[2] (Actual/Actual/Projections)	$1,265,465	$855,968	$340,447
Net Sequestered Resources	$10,036	$12,313	$229,215
Reprogrammings/Transfers	($4,000)	($4,000)	-
Collections – Reimbursable Resources	$41,194	$46,000	$45,180
Total Budget Resources	**$5,208,307**	**$4,795,281**	**$4,989,842**
Obligations (Actual/Estimates[3]/Projections)	$4,352,339	$4,454,834	$4,861,984
Budget Authority[4]	**$4,524,854**	**$4,655,366**	**$4,861,984**
Personnel: Positions and FTE			
Enacted/Request Positions	18,866	19,794	20,451
Enacted/Request FTE	17,924	18,806	19,429
Onboard and Actual FTE; Includes Collections - Reimbursable Resources			
Onboard (Actual/Estimates/Projections)	18,855	19,794	20,451
FTE (Actual/Estimates/Projections)	17,771	18,806	19,429

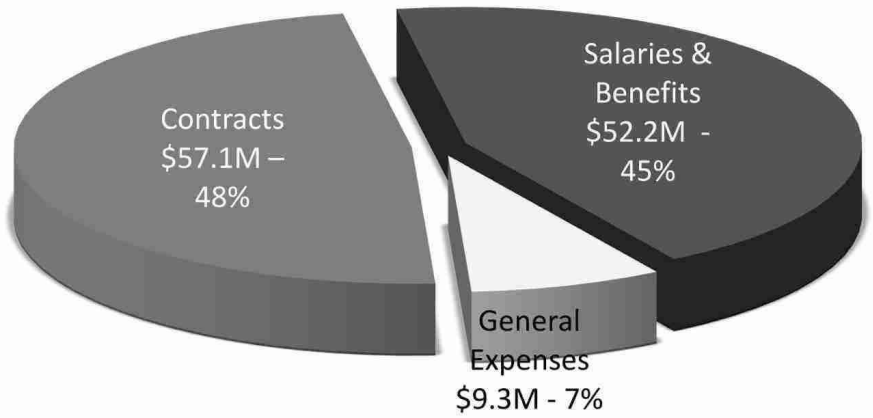
[1]Anticipated receipts based on the collection of increased fees, which will become effective in FY 2021 based on the FY 2019/FY 2020 Fee Rule. The FY 2021 Projected Fee Collections from the FY 2019/FY 2020 Fee Rule is a segmented portion of the full estimates USCIS anticipates to collect once the Fee Rule is in place for a full fiscal year.
[2]Projected carryover is calculated by taking the difference of Total Budget Resources and Estimated Obligations of the prior year.
[3]Estimated obligations align with USCIS' revised FY 2020 Annual Operating Plan.
[4]Represents the total operating budget of Immigration Examination Fee Account for a given fiscal year.

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DHS-20-2156-A-004077

FY 2021 Budget Request – Operations & Support (E-Verify)

U.S. Citizenship and Immigration Services



Description of Funding ($K)	FY 2020 Enacted	FY 2021 Budget
Pay and Benefits	**$49,295**	**$52,229**
General Operating Expenditures	**$10,947**	**$9,287**
Total Contracts	**$62,153**	**$57,160**
Secondary Reimbursement to Social Security (SSA)	*$7,547*	*$8,000*
VISDEVOPS (Formerly VIS O&M)	*$32,762*	*$30,038*
Telephony – Contact Center	*$3,041*	*$3,041*
Outreach and Education	*$9,330*	*$0*
Other Contracts/Technical Contract Support	*$9,473*	*$16,081*
Total	**$122,395**	**$118,676**

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E-Verify and SAVE: FY 2019 Enrollment and Usage

U.S. Citizenship and Immigration Services

E-Verify

- Approximate number of employers enrolled: **~909,000**
- Number of hiring sites: **More than 2.9 million**
- Number of cases run : **More than 40 million**

Systematic Alien Verification for Entitlements (SAVE)

- Number of agencies enrolled in the SAVE Program: **1,182**
- Approximate number of agencies who used SAVE : **~575**
- Approximate number of verifications processed **~18 million**

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DHS-20-2156-A-004079

U.S. Citizenship and Immigration Services

Performance Overview

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Field Operations Directorate

U.S. Citizenship and Immigration Services

FY 2019 Accomplishments

- Hit a near 11-year high in completions of applications for naturalization 928,975.
- Piloted the use of centrally conducted eligibility, risk and complexity assessments to optimize scheduled interview times.
- Piloted Notice to Appear (NTA) processing at a centralized location to optimize efficiency and decrease workload for overburdened field offices.
- Implemented a standalone ELIS risk and fraud service user interface.
- Expanded Information Services Modernization FOD-wide.
- Fully transitioned to ELIS processing of new naturalization cases while completing 90 percent of pending Claims 4 naturalization cases.
- Operationalized the Application for Certificate of Citizenship (Form N-600) and Petition for Alien Relative (Form I-130) into ELIS.

FY 2020-2021 Planned

- Design and implement process for public charge determination by developing and providing nationwide training and processing guidelines.
- Pilot electronic processing and automation to streamline applicant identity verification, strengthen background check and national security vetting, automate adjudicative processes to reduce reliance on paper documents, and better align field office resources to increase the efficiency and effectiveness of time allotted for interviews.
- Set workload targets to limit processing time disparity across geographic locations.
- Reduce the footprint of overseas offices through domestic benefit processing, particularly through the continued development and enhancement of the Overseas Military Naturalization program.
- Operationalize family-based adjustment of status in ELIS.
- Complete FOD-wide implementation of re-engineered field office check-in process for naturalization applicants.

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DHS-20-2156-A-004081

Refugee Program

U.S. Citizenship and Immigration Services

Fiscal Year	Refugee Admissions Ceiling	Refugee Applicants Interviewed	Refugee Admissions
FY 2015	70,000	66,652	69,933
FY 2016	85,000	120,919	84,994
FY 2017	50,000	46,097	53,716*
FY 2018	45,000	26,170	22,491**
FY 2019	30,000	44,156	30,000
FY 2020 (through Q1)	18,000	27	3,220

FY 2019 Accomplishments

- USCIS interviewed refugee applicants in 61 different countries and contributed to the admission of 30,000 refugees, reaching the FY2019 refugee admissions ceiling.
- In a joint effort with IRIS, RAD successfully operationalized biometric verification against UNHCR holdings in five countries. UNHCR biometrics were ingested into IDENT and used to validate identity of refugee applicants with the Identity Verification Tool (IVT). RAD conducted a two phase pilot and developed an expansion plan based on pilot findings.
- The Refugee Corps participated in 210 details to assist the Asylum Division and conducted over 12,000 credible fear interviews.

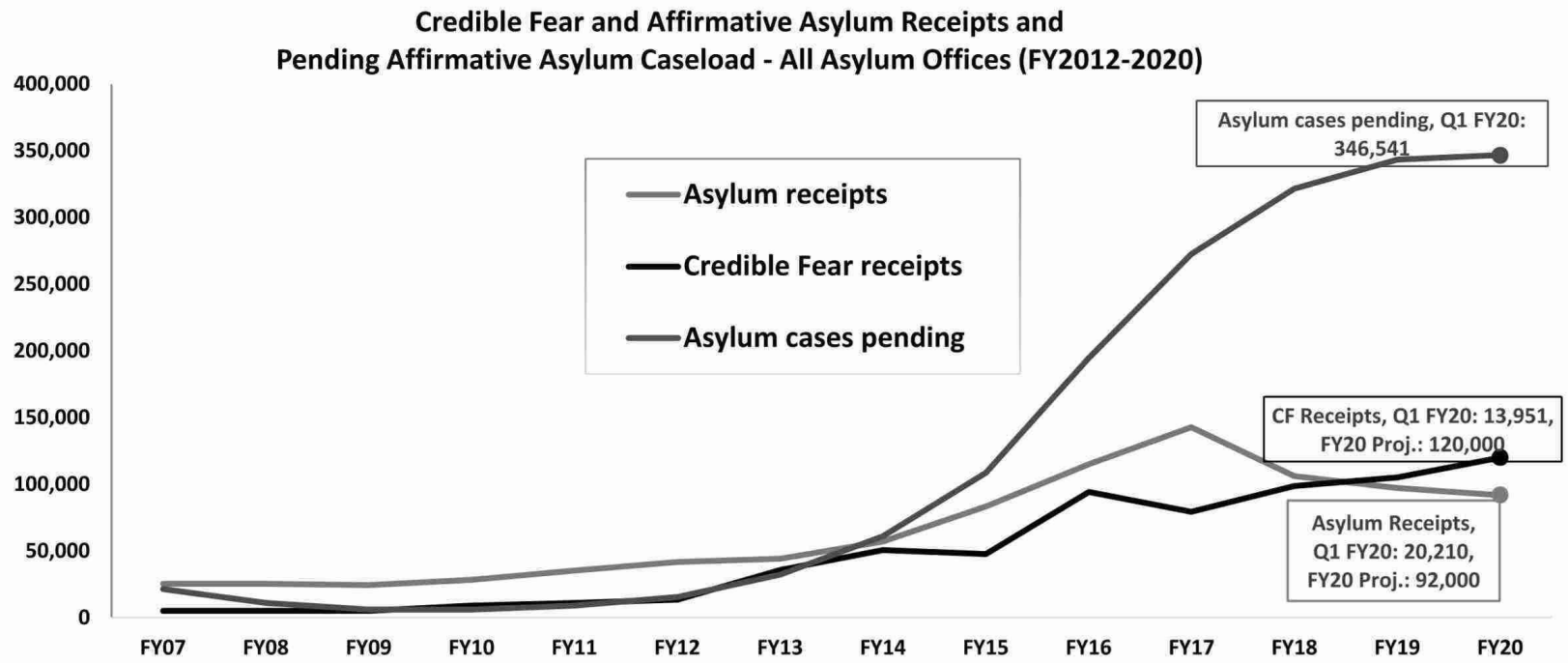
*Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States, decreased the admissions ceiling for FY2017 from 110,000 to 50,000; however, the total number of refugees admitted exceeded 50,000 due to Supreme Court rulings requiring the continued admission of refugees having a credible claim to a bona fide relationship with a person or entity in the United States.

**The lower admissions numbers are largely the result of the implementation of enhanced security and screening measures intended to improve the integrity of the U.S. Refugee Admissions program.

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Asylum Program

U.S. Citizenship and Immigration Services



Overview

- USCIS has experienced a significant increase in affirmative asylum program and the credible fear (CF) caseloads. The Asylum Division is also handling new southwest border-related caseloads including the Migrant Protection Protocol and Asylum Cooperative Agreements as of FY2019 and FY 2020.
- The CF workload has seen the most profound increase. From FY 2012 to FY 2019, the CF workload increased by 660 percent. Through FY 2020 Q1, USCIS received 13,951 cases.
- The Affirmative Asylum workload also increased significantly. From FY 2012 to FY 2019, the Affirmative Asylum workload increased by 127 percent. In FY 2020, USCIS received 20,210 new filings through Q1.

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DHS-20-2156-A-004083

Asylum Program

U.S. Citizenship and Immigration Services

Program Impact

The USCIS response to the increases in the CF and the southwest border-related caseloads has been to divert staff from the affirmative asylum caseload, resulting in continued growth of the affirmative asylum caseload, which totaled 346,541 cases through December 2019.

To address the high volume of credible fear and affirmative asylum workloads, USCIS has

- Engaged in an aggressive hiring surge beginning in June 2019 that has resulted in the onboarding of over 900 employees and an anticipated full staffing level by February 2020;
- Expanded its workforce for a total of 769 authorized asylum officers;
- Deployed other qualified personnel from other parts of USCIS for temporary duty assignments;
- Trained and deployed personnel from other parts of DHS for temporary duty assignments; and
- Invested in new technology to create processing efficiencies in the long-term.

Current Staffing

- The current number of authorized positions for the Asylum Division is 1,709 (769 AOs, 148 Supervisory Asylum Officers (SAOs), and 792 other).
- The Asylum Division has achieved 100% staffing and will continue to select and hire to maintain over 90% onboard staffing levels for the future.

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Asylum Program

U.S. Citizenship and Immigration Services

Migration Protection Protocol (MPP)

Migrants who are placed into MPP are placed into INA Section 240 removal proceedings, where they have a full immigration court process. When they are placed into MPP, migrants are given a notice to appear with the time and location of their initial court hearing, in addition to a "tear sheet" instructing them what time to appear at the designated POE to be transported/escorted to court. They wait for their hearing in Mexico.

If at any time during the MPP process a migrant claims fear of return to Mexico, he or she is referred to USCIS to determine if the migrant is more likely than not to suffer persecution on account of a protected ground or torture while waiting in Mexico. The migrants who establish a fear of return to Mexico are removed from MPP but remain in section 240 proceedings; migrants who do not establish a fear of Mexico are returned to Mexico under MPP.

Asylum Cooperative Agreements (ACA)

Migrants who are placed into ACA are in expedited removal proceedings. CBP identifies whether the migrant who has expressed a fear of return to their home country is amenable for ACA processing. If so, CBP will refer the individual to USCIS, and USCIS reviews the information gathered by CBP to confirm whether the ACA applies, and if so, whether the individual qualifies for an exception to the ACA. USCIS also conducts a screening to determine whether it is more likely than not that the individual will be persecuted or tortured in the ACA country.

If no exception or fear of removal to the ACA country is established, the applicant is removed to the ACA country by ICE-ERO. If the individual establishes an exception or fear of removal to the ACA country, he or she will be processed under the standard expedited removal/credible fear process.

Individuals can affirmatively make a statement indicating that they wish to withdraw their application for asylum during numerous points of the ACA process.

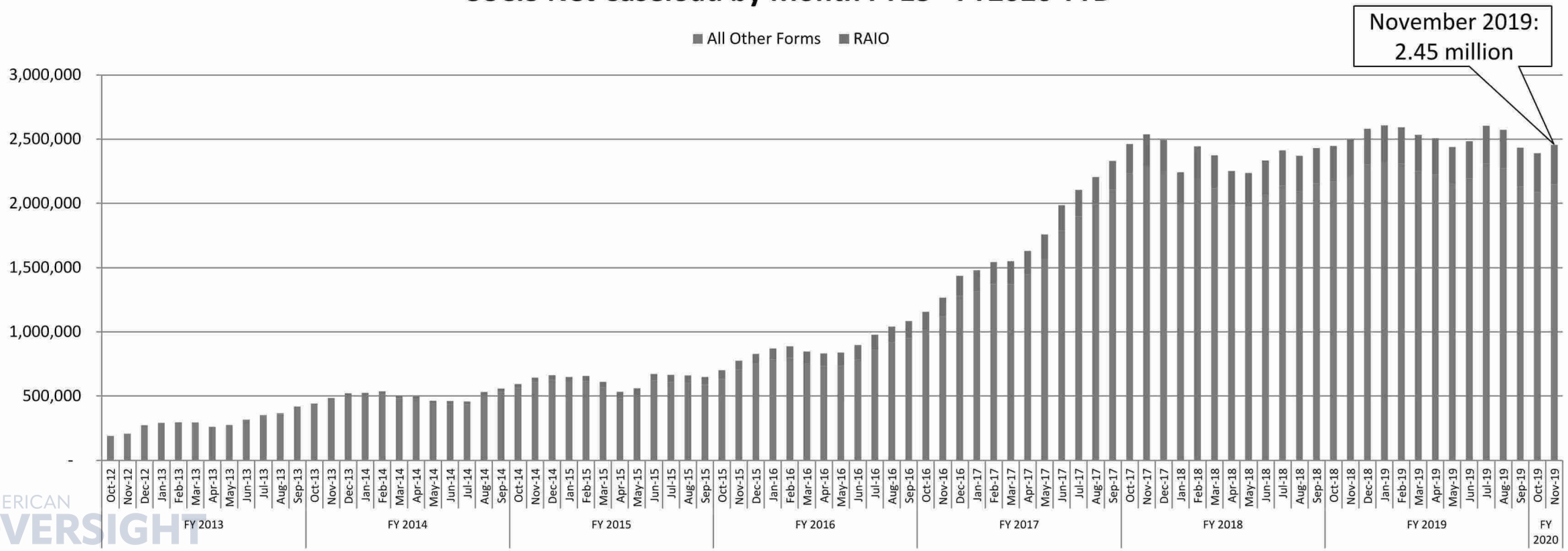
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Caseload

U.S. Citizenship and Immigration Services

As of the end of November 2019, USCIS had a net caseload of more than **2.4 million** forms, accounting for nearly 43 percent of its total pending inventory.

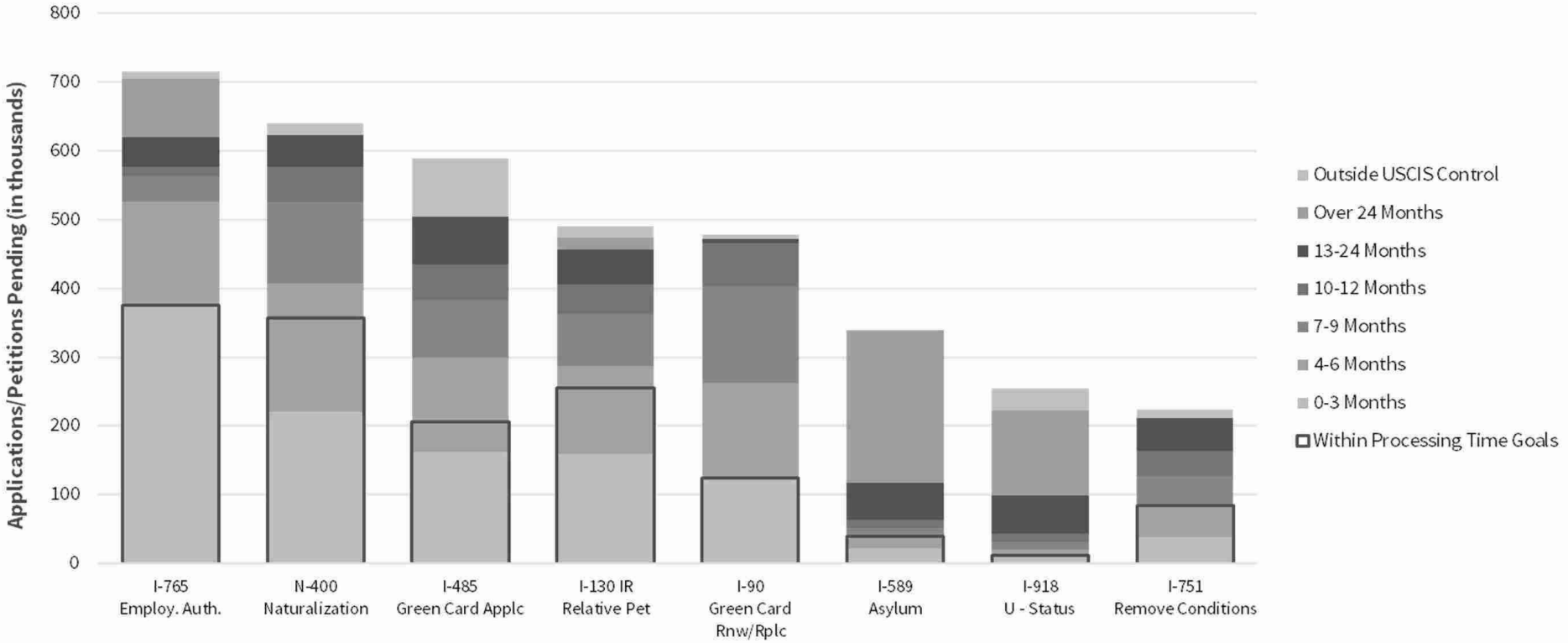
USCIS Net Caseload by Month FY13 - FY2020 YTD



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November 2019 USCIS Pending Snapshot

U.S. Citizenship and Immigration Services



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DHS-20-2156-A-004087

Caseload – Progress and Root Causes

U.S. Citizenship and Immigration Services

- The net caseload was 2.4 million receipts at the end of FY 2019 and approximately 3.8 million equivalent units (EUs). EU net caseload provides a standardized measure in terms of hours to complete a petition/application/request accounting for the different amount of time associated with processing each form type.

- The growth rate of the caseload slowed to less than one percent between FY 2018 and FY 2019. This leveling off is attributed to a decline in receipts and an increase in staffing and completions.

- In FY 2019, USCIS adjudicated more than 8.2 million applications and petitions. Previously, in FY 2018, USCIS adjudicated more than 8 million applications and petitions, up by 9 percent since FY 2017, and 30 percent over the past five fiscal years.
    - USCIS naturalized 833K new citizens, an 11 year high in new oaths of citizenship (this reduced pending naturalization cases by 12 percent) in FY 2019.
    - USCIS granted lawful permanent residence (LPR) to nearly 577,000 people (this reduced pending LPR cases by 14 percent) in FY 2019.
- The growth of the current caseload, which began in FY 2012, is attributed to many factors, such as:
    - Unanticipated increases in receipts in FY 2016 and FY 2017 surpassing the resources available to meet the demand.
    - Growing complexity: Increases in form length, new statutory and policy decisions, and increased security checks.
    - Logistical limitations responding to the increase in workload due to staffing difficulties in hiring at certain locations, hiring lags, BASIC training delays, and facility constraints.

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DHS-20-2156-A-004088

Caseload Reduction Efforts

U.S. Citizenship and Immigration Services

USCIS is working to eliminate the caseload and improve processing by focusing on efficiency. Initiatives include:

- Transitioning more pre-, post-, and non-adjudicative work to non-adjudicators, allowing adjudicators to focus solely on functions requiring their expertise;
- Centralizing the delivery of information services through the USCIS Contact Center to allow applicants to receive case status updates more quickly, without having to visit a USCIS office;
- Leveraging electronic processing and automation to modernize the agency and increase efficiency;
- Gradually increased its staffing to keep pace with the number of immigration benefit requests received.

Additionally, in FY 2021 USCIS plans to increase staff by approximately 600 (inclusive of asylum increases) to mitigate the caseload.

The FY 2019/2020 Fee rule, once implemented, will resource additional staff in future years to keep up with the projected workloads.

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DHS-20-2156-A-004089

Fraud Detection and National Security Directorate

U.S. Citizenship and Immigration Services

FDNS Workload Statistics

FDNS uses the Fraud Detection and National Security Data System (FDNS-DS[1]) to identify and track fraud, national security, and public safety concerns. The FDNS summary below is based on FDNS-DS data:

Type	Completed FY2018	Completed FY2019	Percent Change from FY2018 to FY2019
Requests for Assistance (RFA)	57,083	58,005	1.6%
Fraud Leads	19,938	53,570	168.7%
Fraud Cases	31,743	30,979	-2.4%
Public Safety Cases	10,661	13,300	24.8%
National Security Concerns	7,172	8,856	23.5%
Overseas Verifications (OVs)	1,389	1,746	25.7%
Administrative Site Visit and Verification Program (ASVVP)	9,720	4,031	-58.5%
Targeted Site Visit and Verification Program (TSVVP)	1,127[1]	8,512	655.3%
Social Media Subjects Screened[2]	13,792	11,420	-17.2%
Total	152,625	190,419	24.8%

- In support of Fraud Cases, FDNS completed 12,189 "for-cause" site visits in FY 2019.

[1]FDNS-DS is a case management system that tracks Case Management Entity (CME) workload, based on the operational procedures required for each type of CME. For example, fraud related CMEs typically start as a Request for Assistance (RFA) or as a referral that requires FDNS to generate a lead in FDNS-DS. If actionable and articulable information is discovered during the initial administrative investigative process, FDNS will then promote the CME to a case and further investigate the subject(s) and or organization(s) in question. FDNS will then produce a Statement of Findings (SOF) once all means of investigations are exhausted.
[2]Data previously reported for FY2018 were social media cases screened. New reporting includes all social media subjects screened.

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Fraud Detection and National Security Directorate

U.S. Citizenship and Immigration Services

FY 2020-2021 Goals

- Implement affirmative asylum applicants into National Vetting Center (NVC) processes.
- Create an initial framework to facilitate the Asylum Vetting Center support of large-scale fraud investigations and conduct a pilot to assess efficacy.
- Increase the FDNS asylum workforce to support the integrity of USCIS adjudications and to timely share information within USCIS and with external partners related to fraud, national security, and public safety concerns.

(b)(7)(E)

- [redacted]

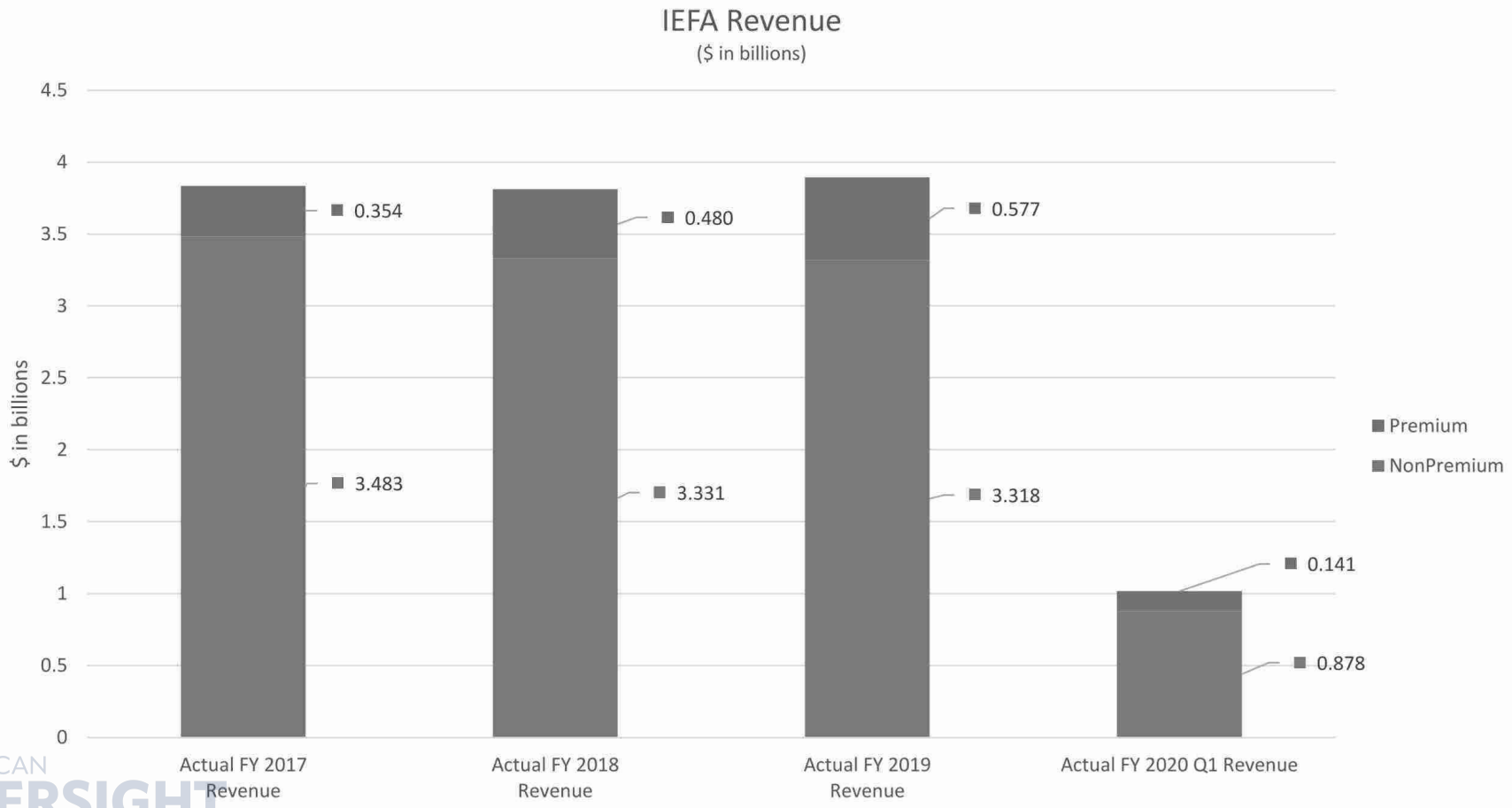
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U.S. Citizenship and Immigration Services

Fiscal Health Update

AMERICAN OVERSIGHT

IEFA Revenue



The chart provides a status of revenue for FY 2017 through FY 2020 Q1 (December) for the Immigration Examinations Fee Account (IEFA) non premium and premium processing revenue.

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FY 2020 Staffing Update

U.S. Citizenship and Immigration Services

End of FY 2020 Quarter 1				
Account (Appropriation)	**Authorized**	**On-Board (FTP and OTP)**	**Net Vacancies**	**% of Auth Level**
Total USCIS	**20,452**	**19,924**	**528**	**97%**
Immigrations Examinations Fee	19,852	19,477	375	98%
Operations and Support	419	273	146	65%
Fraud Prevention and Detection	185	174	11	94%

- USCIS continues to hire against net vacancies to ensure a low vacancy rate in the mandatory fee accounts.
- Operations and Support hiring remains in a pause, as USCIS conducts a workforce assessment following the transition of the Verification Modernization program to the sustainment phase.
    - The outcome of the assessment will inform future authorized position needs in the Operations and Support account.

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DHS-20-2156-A-004094

House Appropriations Committee

USCIS FY2021 Budget Briefing Get Backs

1) Please share an electronic copy of the briefing slide deck.

   USCIS Response:

   Briefing deck attached.

   FY20 Congressional Budget Briefing_FINAl

2) On slide 5 of the briefing deck, slide titled Operations and Support (E-Verify), Outreach and Education is zeroed out.
   a. How effective is the program and how does USCIS ensure the $9-$10mil decrease will not affect operations?

   USCIS Response:

   Each year, thousands of employers enroll in the E-Verify program. Recently, the growth of the E-Verify program has been constant, as demonstrated by the number of participating employers over the last five years.

   In FY 2018, the main objective of the marketing and outreach contract was to assist USCIS with its E-Verify education and marketing efforts. The two main goals of the contract were to help refresh the E-Verify brand and drastically increase E-Verify's enrollment. Specifically:

   - Refreshed the brand and logo and completely redesigned the E-Verify and myE-Verify websites;
   - Created new marketing materials, to include videos, print ads and radio ads, and brochures that communicate the value and importance of E-Verify;
   - Conducted market research on how best to target corporate decisions makers and convince them to enroll and use E-Verify. This resulted in the creation of an E-Verify LinkedIn Account;
   - Developed and deployed a nationwide public education and outreach campaign; and
   - Developed a targeted marketing campaign in a few states where E-Verify is mandatory: Alabama, Mississippi, South Carolina, and Arizona. Advertising appeared in a variety of settings including billboards, business journals, radio, Google paid searches and social media.

   In January 2020, USCIS decided not to exercise the last option on the E-Verify marketing contract. After an overall assessment of the contract effort and reviewing the data, USCIS decided that skilled government employees would be able to build upon the contractor efforts and not affect operations. By using marketing channels (i.e., LinkedIn) and materials (i.e., videos, brand refreshing) that the contractor helped establish, USCIS

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can now rely on government personnel stationed across the country to carry out the outreach effort and increase enrollment. This decision will lead to a more efficient use of government resources, and the agency remains committed to growing the program and continuing outreach to communities across the country. Since discontinuing the marketing contract, the USCIS/IRIS Verification Division continues to plan and refine its stakeholder engagement efforts by using the revised outreach materials.

3) Referencing slide 14 of the briefing deck, slide titled November 2019 USCIS Pending Snapshot.
   a. Please provide the amount of time officers spend on cases for the following forms: 1-765, N-400, I-485, I-130IR, I-90, I-589

USCIS Response: The hours per completion (HPC) rates listed below are from FY 2019.

Form	HPC
Form I-765	.31
N-400	1.47
N-400 (military)	2.55
I-485 (employment)	1.24
I-485 (family based)	1.55
I-130 IR (with interview)	1.22
I-90	.16
I-589	5

4) Please share the schedule and list of the international office closures.
   a. Has ICE/HSI shown any interest in the vacated space?

USCIS Response:

ICE has not expressed an interest in the vacated space.

INTERNATIONAL USCIS OFFICE CLOSURE SCHEDULE

I. The following seven (7) international USCIS field offices will remain open:

1.Beijing, China
2.Guangzhou, China
3.Guatemala City, Guatemala
4.Mexico City, Mexico
5.Nairobi, Kenya
6.New Delhi, India
7.San Salvador, El Salvador

II.

Schedule for all other international USCIS offices	
Office	Closure Date
Ciudad Juarez, Mexico	June 30, 2019
Manila, Philippines	July 5, 2019
Monterrey, Mexico	September 30, 2019

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House Appropriations Committee

USCIS FY2021 Budget Briefing Get Backs

Seoul, South Korea	September 30, 2019
Athens, Greece	November 15, 2019
Port-au-Prince, Haiti	December 20, 2019
Bangkok, Thailand (field office)	December 31, 2019
Amman, Jordan	January 17, 2020
Johannesburg, South Africa	January 17, 2020
Frankfurt, Germany	January 31, 2020
Lima, Peru	January 31, 2020
District Offices (Bangkok, Mexico City, Rome)	March 10, 2020
Accra, Ghana	June 30, 2020
Rome, Italy (field office)	June 30, 2020
Santo Domingo, Dominican Republic	June 30, 2020
London, United Kingdom	July 31, 2020

5) How much will USCIS need to reimburse Department of State now that it is closing its international offices?
   a. Please share the MOA/MOU associated with this.
   b. What is the budgetary impact on other areas?

   USCIS Response:

   USCIS and DOS are in the process of finalizing interagency agreement (IAA) discussions. USCIS does not have a final MOA/MOU or budgetary impact assessment to share at this time. However, USCIS will provide both as soon as the IAA is finalized.

6) How many applicants have been returned to Guatemala under the ACA?

   USCIS Response:

   USCIS does not have data on the number of applicants who have been removed to Guatemala, since ICE executes those removals. Thus, USCIS defers to ICE.

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Senate Appropriations Committee

USCIS FY2021 Budget Briefing Get Backs

1) How many states are enrolled in E-Verify? Is there a push for Mandatory E-Verify from the Administration?

   USCIS Response:

   All 50 states have employers who are enrolled and using the E-Verify system. In addition, the District of Columbia and four territories/commonwealths have employers who are enrolled and using the E-Verify system. The Administration continues to support mandatory expansion of E-Verify and is willing to work with Congress to make that happen.

2) Please share the findings from the Special Immigrant Juvenile (SIJ) social media analysis.
   a. Does this include children/teenagers?

   USCIS Response:

   The analysis is still ongoing and is targeted to be completed by the end of Q3.

   Yes, the analysis may include information regarding children and teenagers as one of the statutory requirements for SIJ classification is that the petitioner must be under 21 years of age at the time the petition is filed.

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U.S. Citizenship and Immigration Services

Special Immigrant Juveniles (SIJ) Briefing

Benefit Fraud Assessment

January 2020

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SIJ Congressional Request

U.S. Citizenship and Immigration Services

The FY 2019 Joint Explanatory Statement requests that USCIS:

"…conduct a benefit fraud assessment regarding the SIJ [Special Immigrant Juveniles] program and brief the [House and Senate Appropriations] Committees on the results of such assessment not later than one year after the date of enactment of this Act..."

Source: House and Senate Joint Explanatory Statement (JES) – H.J. Res 31, page 38

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Outline

U.S. Citizenship and Immigration Services

- Legislative History and Eligibility Requirements
- Filing Trends for All SIJ Petitioners
- Acquiring Lawful Permanent Resident (LPR) Status as a SIJ Petitioner
- USCIS SIJ Study
- Potential Fraud Concerns
- Initiatives to Improve SIJ Program Integrity

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U.S. Citizenship and Immigration Services

Legislative History and Eligibility Requirements

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Special Immigrant Juveniles (SIJ) Legislative History

U.S. Citizenship and Immigration Services

- The SIJ program was established in 1990 for alien children declared dependent upon a juvenile court in the United States and deemed eligible for long-term foster care.
- It was designed to provide an immigration benefit to children who required court intervention to protect them from parental abuse, abandonment, and neglect.
- The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) expanded SIJ to include alien children placed in the custody of court-appointed custodians.
- This change reflects a trend in federal and state law away from long-term foster care as a permanent placement in favor of other more permanent living arrangements.
- However, the program remains a benefit for alien children in the U.S. that need the protection of a juvenile court from parental maltreatment.

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Who may be Eligible for SIJ Classification?

U.S. Citizenship and Immigration Services

Alien children in a wide variety of circumstances may be eligible for SIJ classification. They may include:

- Children who live with a court appointed custodian (may include a parent)
- Adopted children
- Children in state foster care
- Children currently or previously in federal custody with the Department of Health and Services (HHS) / Office of Refugee Resettlement (ORR) because they were determined to be unaccompanied alien children (UAC)

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Eligibility Criteria for SIJ Classification

U.S. Citizenship and Immigration Services

- Alien children under 21*
- Unmarried
- Present in the U.S.
- Have a state juvenile court order with the required judicial determinations on:
  - Dependency or custody
  - Parental reunification, and
  - Best interest
- USCIS must consent to the approval, meaning that the request for SIJ is *bona fide* and the court order was not obtained primarily for immigration purposes

* USCIS must have received the I-360 petition for SIJ classification prior to the date of the alien's 21st birthday.

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Required Determinations in the Juvenile Court Order

U.S. Citizenship and Immigration Services

The SIJ order must be issued by a **juvenile court with jurisdiction** to issue the following determinations under state law:

- **Dependency or custody:** The child is either dependent on the court or placed under the custody of an individual or entity;
- **Parental reunification:** The child cannot be returned to the custody of one or both parents because of abuse, abandonment or neglect, or similar basis under state law; and
- **Best interest:** It is not in the best interest of the child to be returned to their or their parent(s)' country of nationality or last habitual residence.

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U.S. Citizenship and Immigration Services

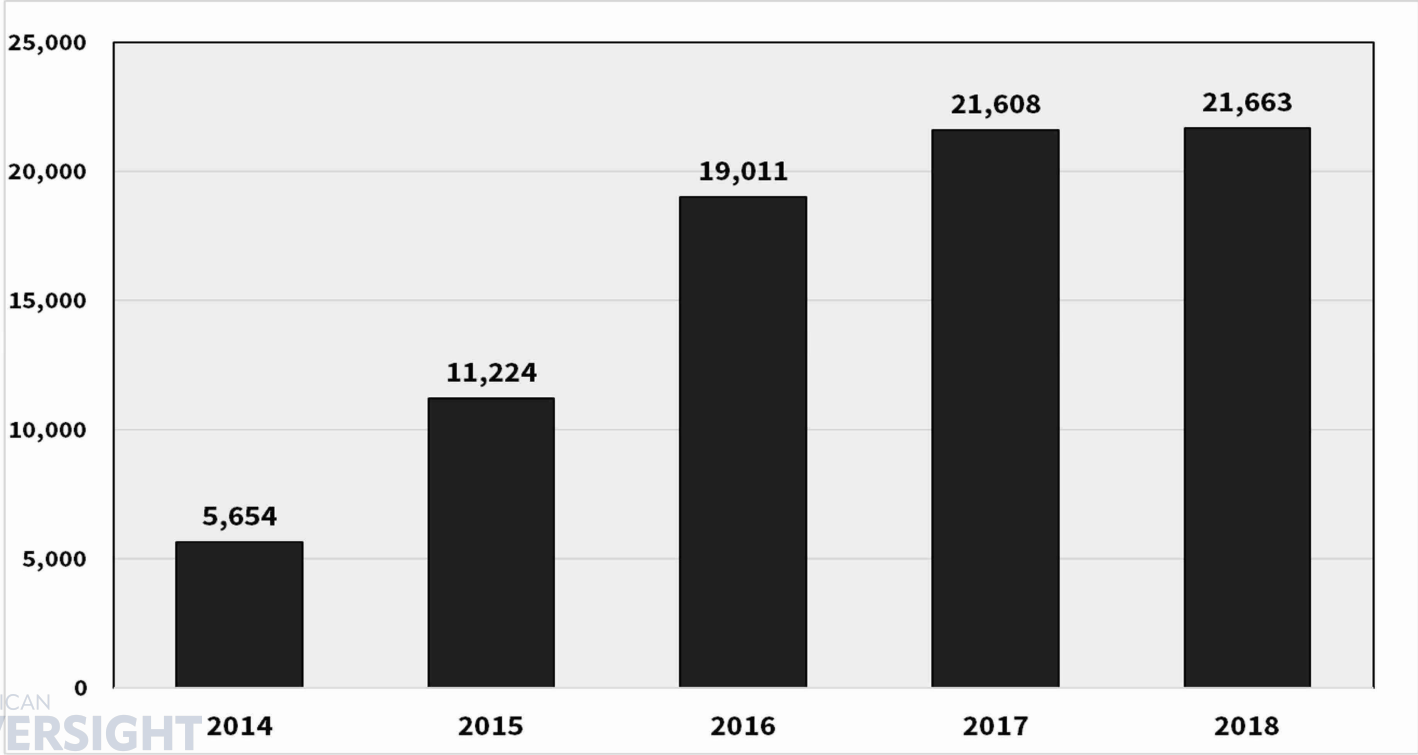
Filing Trends for All SIJ Petitioners

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SIJ I-360 Petitioners by Receipt
(*Total 79,160 for FY 2014-2018)*

U.S. Citizenship and Immigration Services



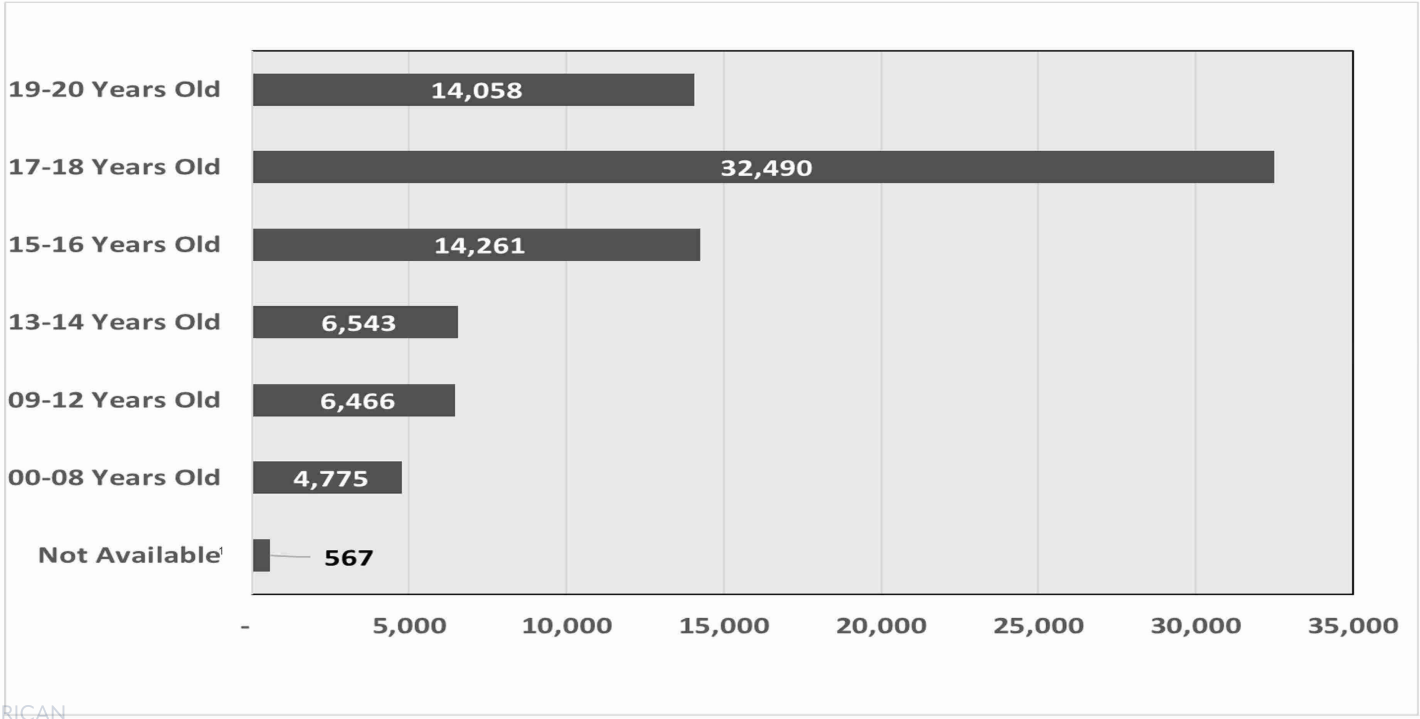
Data Source: USCIS- Current as of Oct 2019 , subject to change.

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SIJ I-360 Petitioners by Age at Time of Filing
(FY 2014-2018)

U.S. Citizenship and Immigration Services



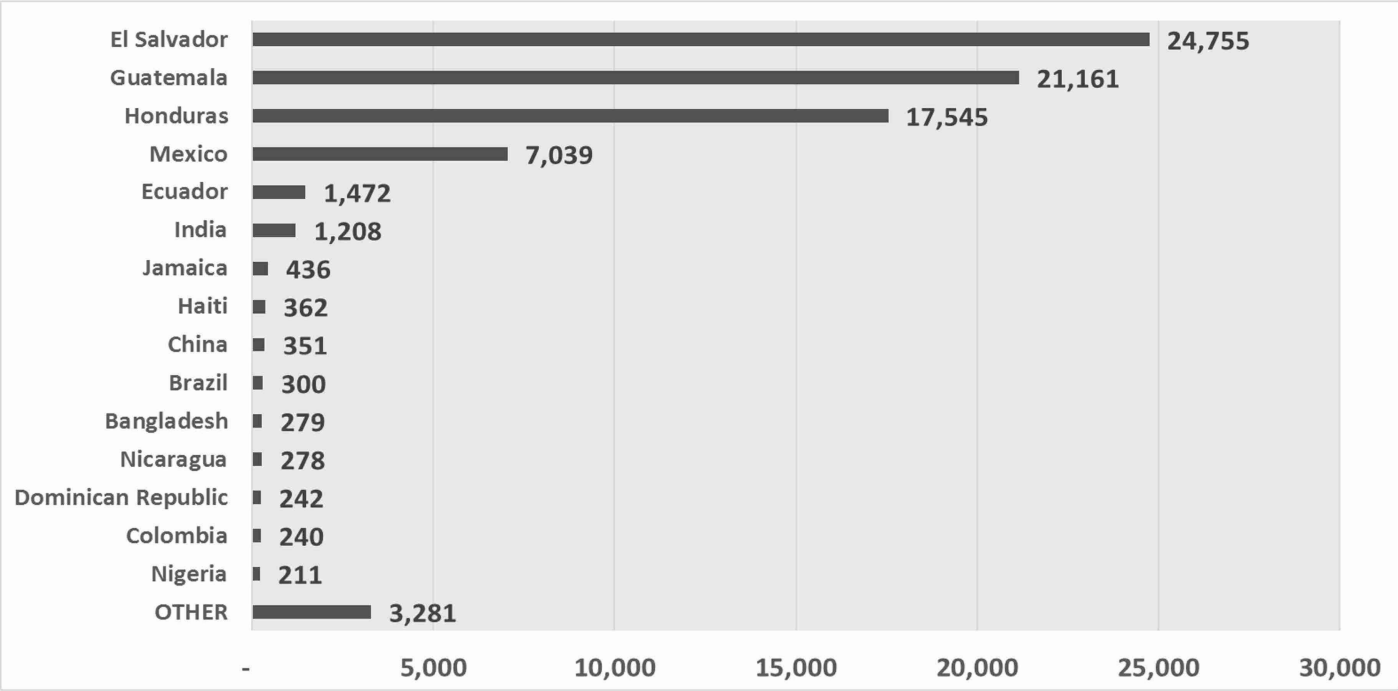
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Age at time of filing was calculated from the SIJ petitioner's date of birth to the petition filing (receipt) date.
Data Source: USCIS- Current as of Oct 2019, subject to change.[1] DOB data for those petitioners was not available in the USCIS electronic database on which the study is based

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SIJ I-360 Petitioners by Country of Birth
(FY 2014-2018)

U.S. Citizenship and Immigration Services



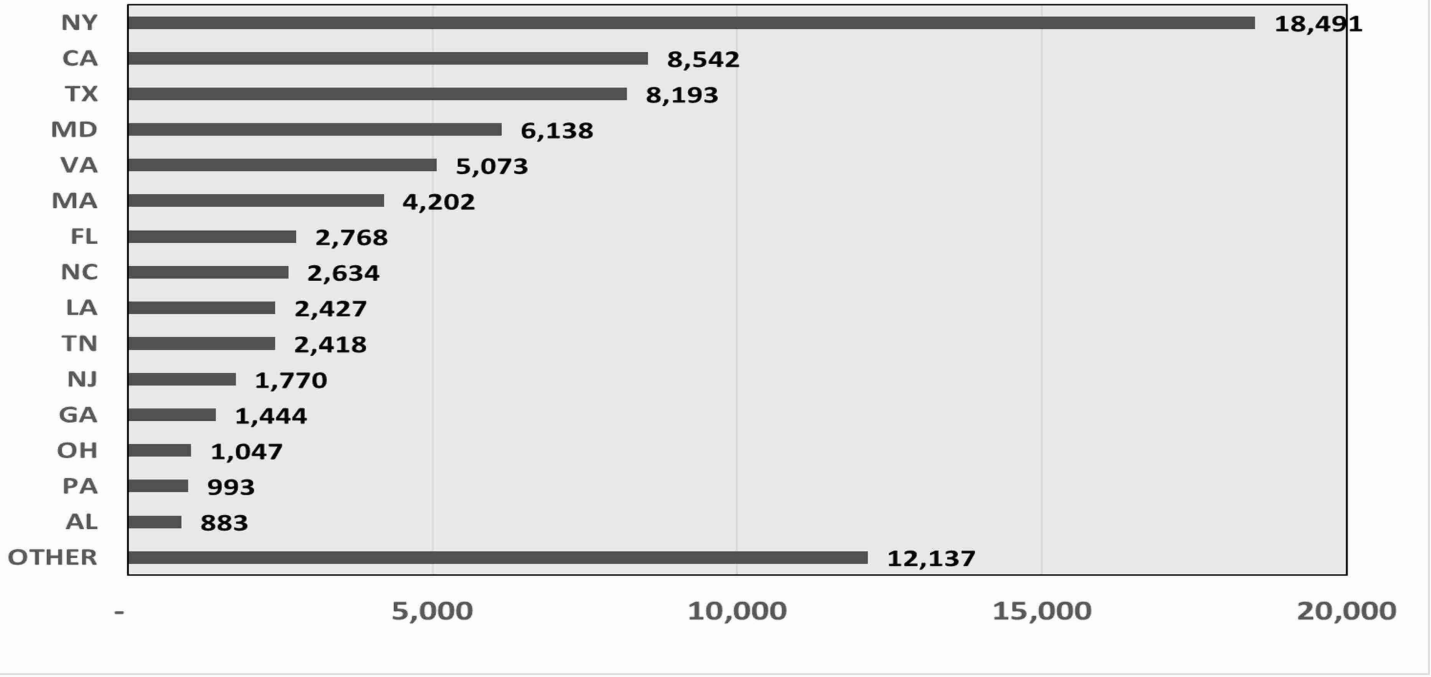
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The top 15 SIJ countries of birth represent 96% of total SIJ I-360 petitions received during FYs 2014-FY2018.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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SIJ I-360 Petitioners by State of Filing
(FY 2014-2018)

U.S. Citizenship and Immigration Services



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The top 15 states of filing represent 85% of total SIJ I-360 petitions received during FYs 2014-FY2018.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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Acquiring Lawful Permanent Residence (LPR) Status as a SIJ Petitioner

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Process for Acquiring LPR Status as a SIJ Petitioner

U.S. Citizenship and Immigration Services

- The approval of an SIJ I-360 petition does NOT confer any immigration status or work authorization on its own.
- The SIJ classification may, however, allow a child to apply for LPR status.
- If a visa is available, the SIJ petitioner may concurrently or subsequently file a related I-485, *Application to Register Permanent Residence or Adjust Status*.
- If the I-485 application is approved, it allows a beneficiary to live and work permanently in the U.S.

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Limited Availability of Immigrant Visas in this Category

U.S. Citizenship and Immigration Services

- A petitioner may only file an I-485 application if an immigrant visa is immediately available.
- Adjustment of status based on SIJ classification is subject to the employment-based fourth preference (EB-4) visa cap, and these visas are shared with other categories of special immigrants.
- The visa cap for EB-4 visas was reached for the first time in April of 2016 for petitioners from El Salvador, Guatemala, and Honduras; the cap was reached later that year for petitioners from Mexico and India.
- This situation has resulted in significant delays for petitioners from those countries who filed SIJ I-360s after the visa cap was reached.

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U.S. Citizenship and Immigration Services

USCIS SIJ Study

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USCIS Study

U.S. Citizenship and Immigration Services

- To assist with the benefit fraud assessment of the SIJ population, USCIS conducted a limited study focusing on a subset of the SIJ filing population. Specifically, USCIS looked at the subset of I-360 petitioners who concurrently or subsequently submitted I-485 applications for LPR status between Fiscal Years (FY) 2014 and 2018.
- The decision to investigate this subset of the SIJ I-360 population was informed by an interest in taking a lifecycle view of the SIJ process from the filing of the I-360 through the adjustment of status.

Note: SIJ I-360 does not confer any immigration status or work authorization on its own. If approved, the I-485 allows a beneficiary to live and work permanently in the U.S.

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USCIS Study *continued*

U.S. Citizenship and Immigration Services

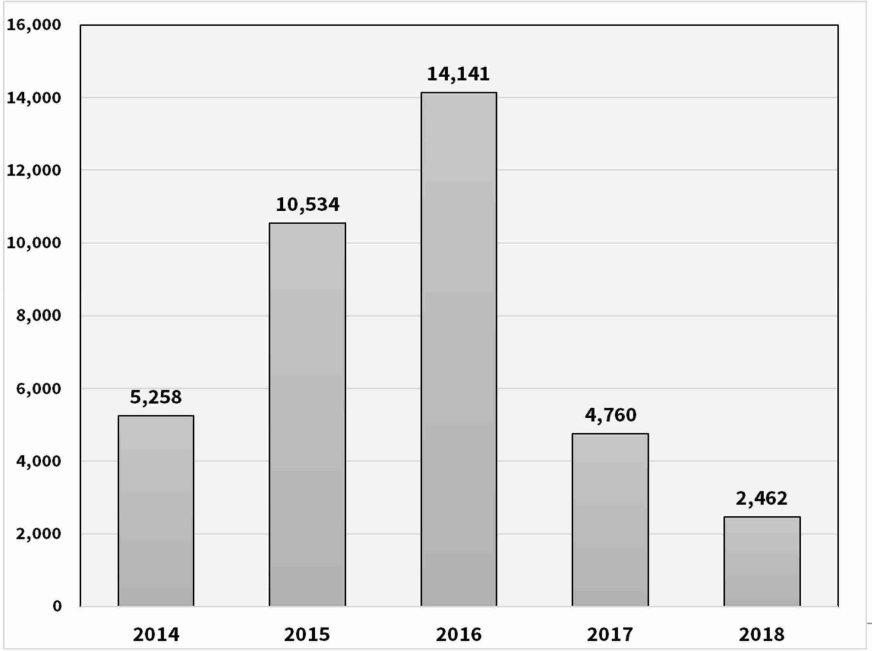
- Because the visa cap was reached for El Salvador, Guatemala, Honduras, India, and Mexico in 2016, a limited number of petitioners from those countries were eligible to file to adjust status in the subsequent FYs, resulting in a much smaller subset of the total population of I-360 petitioners having filed I-485s in that period.
  - Total number of petitioners who filed SIJ I-360 petitions in FYs 2014 - 2018: **79,160**
  - Total number of petitioners who filed SIJ I-360s in FYs 2014 - 2018, and concurrently or subsequently filed a related I-485s application: **37,155***

* Some corresponding I-485 applications were subsequently filed in FY 2019.

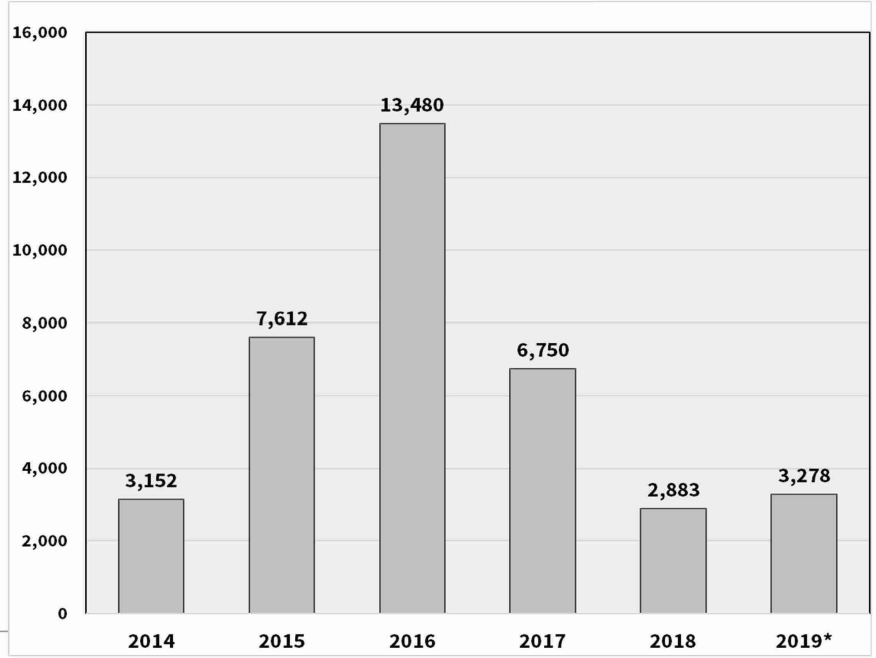
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SIJ I-360 Petitioners
(FY 2014-2018)



Related SIJ I-485 Applicants
(FY 2014-2018)



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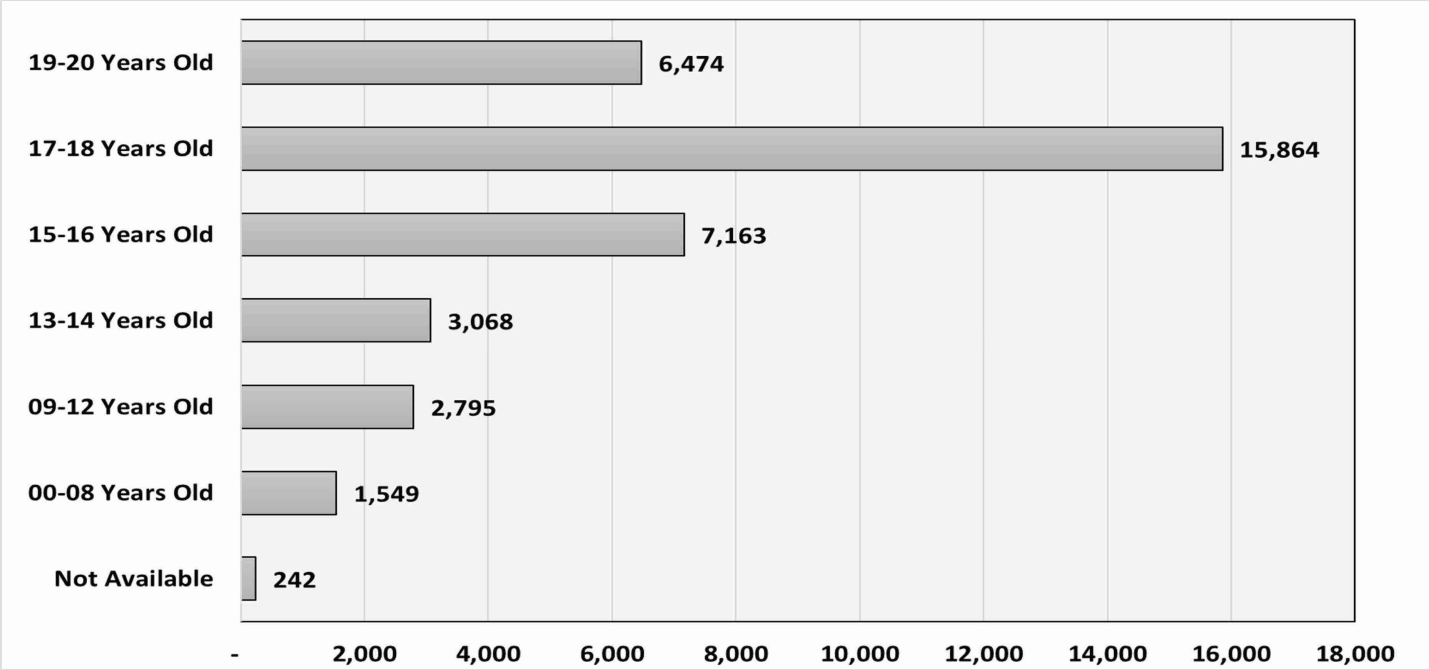
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*I-485s corresponding to an SIJ I-360 may have been subsequently filed.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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SIJ I-360 Petitioners Who Filed a Related I-485 by Age at Time of Filing *(FY 2014-2018)*

U.S. Citizenship and Immigration Services



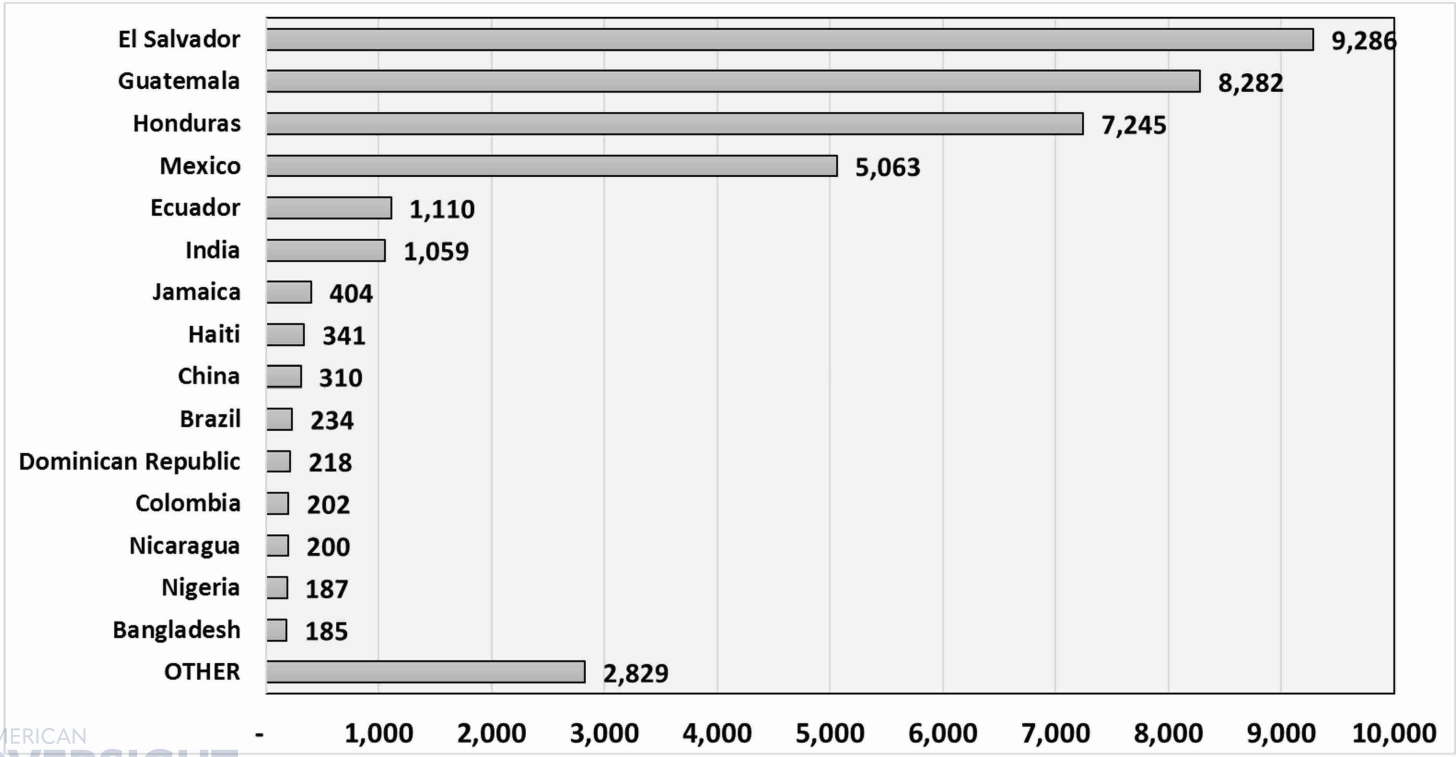
Age at time of filing was calculated from the SIJ petitioner's date of birth to the petition filing (receipt) date.
Based on 37,155 SIJ I-360 petitions in the sample study received during FYs 2014-FY2018.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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SIJ I-360 Petitioners Who Filed a Related I-485 by Country of Birth *(FY 2014-2018)*

U.S. Citizenship and Immigration Services



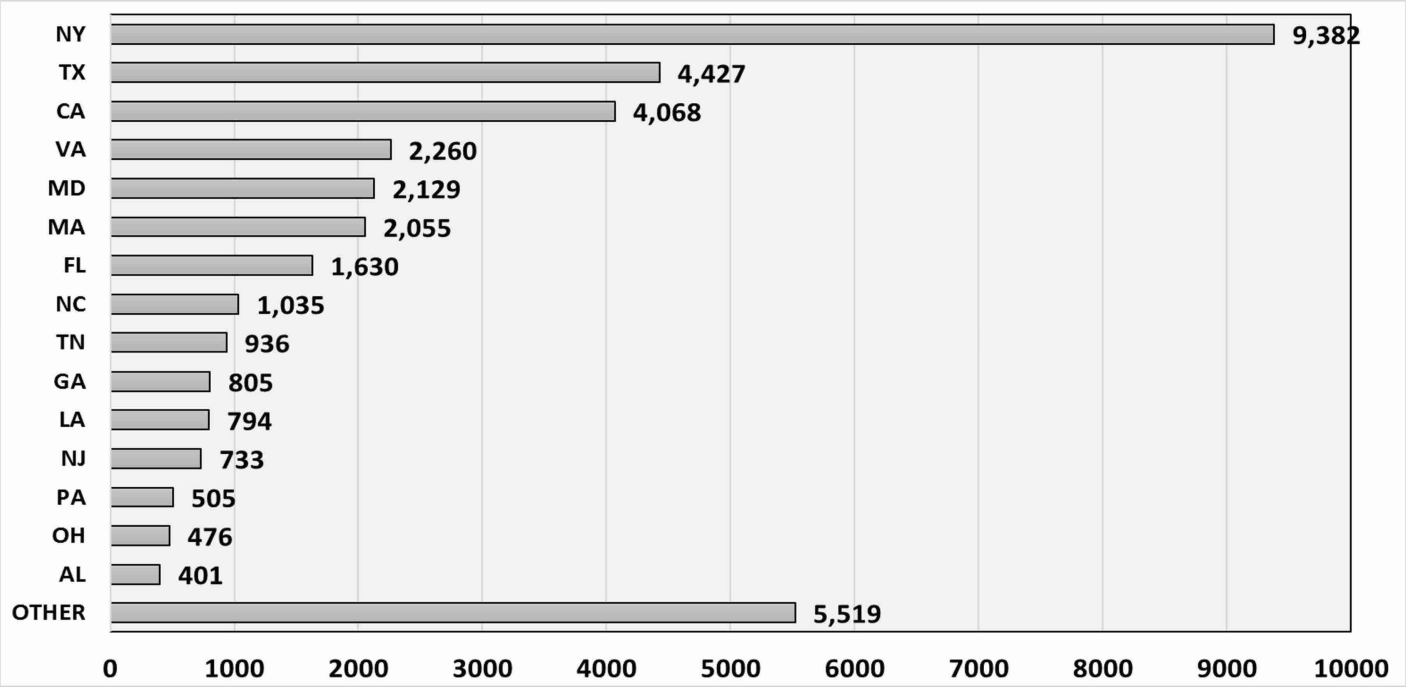
The top 15 SIJ countries of birth represent 92% of SIJ I-360 petitions in the sample study received during FYs 2014-FY2018.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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SIJ I-360 Petitioners with a Related I-485 by State of Filing *(FY 2014-2018)*

U.S. Citizenship and Immigration Services



The top 15 states of filing represent 85% of SIJ I-360 petitions in the sample study received during FYs 2014-FY2018.
Data Source: USCIS- Current as of Oct 2019, subject to change.

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Potential Fraud Concerns

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Types of Potential SIJ Fraud

(b)(7)(E)

U.S. Citizenship and Immigration Services

- [redacted]

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USCIS Processing of I-360 SIJ Petitions and Related I-485s

U.S. Citizenship and Immigration Services

- I-360 petitions filed by a petitioner seeking classification as a SIJ and related I-485 applications for adjustment of status are adjudicated by the Field Office Directorate (FOD) of USCIS.
- In addition to adjudicating a final outcome for each case, USCIS adjudicators are also responsible for detecting potential fraud in each petition and application. This work may be done locally within the fraud division of FOD and/or in conjunction with the USCIS' Fraud Detection and National Security (FDNS) Directorate depending upon the unique facts of each case.

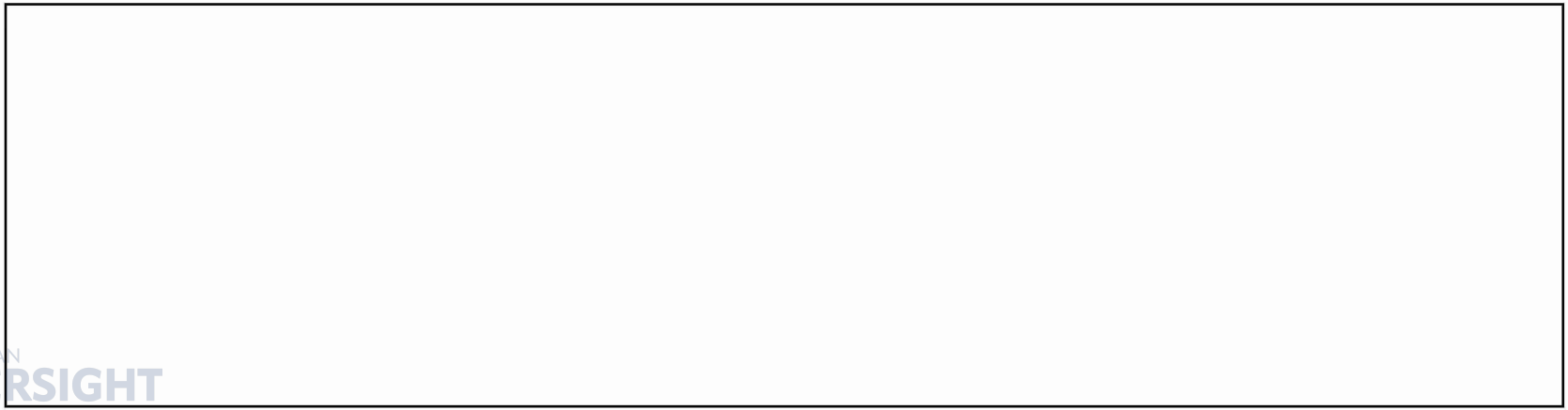
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Identifying and Investigating Fraud in SIJ Petitions

U.S. Citizenship and Immigration Services

- Fraud Referral : If a USCIS adjudicator identifies articulable potential fraud indicators in a SIJ I-360 petition and/or a I-485 application they may refer the case to the appropriate fraud division for FDNS investigation.
- The fraud division then conducts an investigation that may include: (b)(7)(E)



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USCIS Fraud Findings

U.S. Citizenship and Immigration Services

USCIS fraud divisions then issue one of three possible findings:

- *Fraud found**: USCIS affirmatively states there is fraud
- *Fraud not found*: USCIS does not have sufficient evidence to determine there was fraud
- *Inconclusive***: USCIS is not able to make a reliable determination regarding fraud

* A "fraud found" determination is made when there is sufficient evidence of a materially false statement or other material issue.

** USCIS no longer issues inconclusive findings; however, during FY 2014-2018, this type of finding was still issued.

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Review of Fraud Found within the Study Sample

U.S. Citizenship and Immigration Services

- USCIS reviewed aggregate data on “fraud found” within the study sample population (I-360 petitioners with related I-485 adjustment of status applications).
- The study only focuses on aggregate data; petitioner case files, fraud findings, and other documents were NOT reviewed.
- The scope of this study does not allow us to determine if the findings of fraud as indicated by “fraud found” determinations were material to the associated I-360 or I-485 adjudication.

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Incidents of "Fraud Referral" in the Study Sample

U.S. Citizenship and Immigration Services

FDNS Fraud Type	SIJ I-360						
	2014	2015	2016	2017	2018	2019	Total
Referral	6	29	118	104	153	182	**592**

FDNS Fraud Type	Related I-485						
	2014	2015	2016	2017	2018	2019	Total
Referral	7	24	109	99	137	177	**553**

448 fraud referral incidents were for the same petitioner/applicant.
Data Source: USCIS- Current as of July 2019, subject to change.

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Incidents of "Fraud Found" in the Study Sample

FDNS Fraud Type	SIJ I-360						
	2014	2015	2016	2017	2018	2019	Total
Found	2	11	39	47	37	42	**178**

FDNS Fraud Type	Related I-485						
	2014	2015	2016	2017	2018	2019	Total
Found	0	9	33	33	29	34	**140 ***

* Two additional Fraud Found incidents with missing year information.
80 fraud found incidents were for the same petitioner/applicant.
Data Source: FDNS Current as of July 2019, subject to change.

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Summary of "Fraud Found" Determinations in the Study Sample

U.S. Citizenship and Immigration Services

- USCIS systems are not designed to provide reports based on "fraud found" determinations. Therefore, for the purposes of this study, USCIS is unable to present this information.

- Of the 178 SIJ I-360 "fraud found" determinations in the study sample, 32 petitions were approved,* 68 were denied, 2 were revoked, 0 were administratively closed, and 76 are pending.

- Of the 140 related I-485 "fraud found" determinations in the study sample, 12 applications were approved,* 38 were denied, 0 were revoked, 4 were administratively closed, and 86 are pending.

*A "fraud found" determination does not mean that the finding was material to the associated I-360 or I-485 adjudication. In addition, in the case of ongoing or large scale law enforcement operations, USCIS may not be able to utilize the fraud finding as a basis for denial.

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Initiatives to Improve SIJ Program Integrity

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Proposed Regulations

U.S. Citizenship and Immigration Services

- *SIJ Regulations:* The existing SIJ regulation was issued in 1993. Since that time, there have been a number of statutory changes to the SIJ classification, and the regulation is now outdated. In 2011, USCIS issued a proposed rule to implement the statutory amendments to the SIJ classification; however, the proposed rule was never finalized. USCIS reopened the comment period for the 2011 Notice of Proposed Rule Making (NPRM) with the goal of implementing a final rule to realign the classification with congressional intent and incorporate statutory changes.

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Proposed Regulations *continued*

U.S. Citizenship and Immigration Services

- *Biometrics:* Currently, SIJ I-360 petitioners are not required to complete biometrics as part of the petition process. This situation creates challenges for identity verification at the time of I-485 adjustment of status. USCIS is proposing to expand its biometric authorities to include new populations, including SIJ petitioners. However, this update would not take effect until 2020.

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Legislative Recommendations

U.S. Citizenship and Immigration Services

- *Parental Reunification:* Amend the statute to state that SIJ classification is only authorized when the child is unable to reunify with either of his/her parents due to abuse, abandonment, or neglect. This would preserve the benefit for those children truly in need of protection.

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Legislative Recommendations *continued*

U.S. Citizenship and Immigration Services

- *Age Limit:* Institute a clear age limit for the SIJ classification. This change would promote nationwide consistency in the program.

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Legislative Recommendations *continued*

U.S. Citizenship and Immigration Services

- *180 Day Adjudication:* Eliminate the 180 day adjudication requirement added by the 2008 TVPRA. It is neither feasible nor consistent with the integrity of the program given the increase in filings since the 2008 TVPRA was passed when USCIS received about 1,000 SIJ petitions a year compared to the current rate of about 21,000 per year.

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About this Presentation

Author: USCIS Office of Policy and Strategy

Date of last revision: 11/13/2019. This presentation is current only as of the date of last revision.

This presentation contains no sensitive Personally Identifiable Information (PII).

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

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U.S. Citizenship and Immigration Services

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U.S. Citizenship and Immigration Services

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USCIS Congressional Deliverable – FY 2020 Joint
Explanatory Statement Report Sec. 403 Website Data
May 1, 2020

Requirement

This update is provided in response to language included in the Joint Explanatory Statement (JES) Division D, which accompanies the Consolidated Appropriations Act, 2020 (H.R. 1158 | P.L. 116-93).

> JES Statement Division D states:
>
> Not later than 30 days after the date of enactment of this Act and updated semimonthly there-after, the Director of U.S. Citizenship and Immigration Services shall make available, on a publicly accessible website in a downloadable, searchable, and sortable format, a report containing not less than the previous twelve months of semimonthly data on:
>
> - The number of aliens determined to have a credible or reasonable fear of persecution or torture
> - The total number of cases received by USCIS to adjudicate credible or reasonable fear claims
> - The total number of cases closed
>
> The report must also disaggregate the data with the following subsets:
>
> - Claims submitted by aliens detained at an ICE family residential center
> - Claims submitted by aliens organized by each subdivision of legal or administrative authority
> - The job series of the personnel reviewing the claims

Response

- USCIS has made this report publicly accessible online at: https://www.uscis.gov/tools/reports-studies/immigration-forms-data/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions
- USCIS has made the necessary arrangements to update this report semi-monthly.
- As stated in the JES, this deliverable contains FY 2019 data sorted by credible fear or reasonable fear, and whether or not the aliens filing the claims were detained at a U.S. Immigration and Customs Enforcement (ICE) family residential center.
- Supervisory Asylum Officers (job series 0930) and a small number of Supervisory Refugee Officers (job series 1801) at USCIS reviewed all credible fear and reasonable fear screening determinations. The Supervisory Refugee Officers are either former asylum officers or have received training that is consistent with the regulatory and statutory requirements.

AMERICAN OVERSIGHT

USCIS FY 2021 Questions for the Record

Expedited Removal Programs

1) ***USCIS RAIO – Question 9:*** How many migrants in an expedited removal program have had legal counsel present for their credible or reasonable fear interview?

Answer: In fiscal year (FY) 2019, legal counsel was present in 7,433 (or approximately 7.4%) of the 100,364 credible fear interviews conducted. Also in FY 2019, legal counsel was present in 1,873 (or approximately 16.6%) of the 11,259 reasonable fear interviews conducted. From the start of FY 2020 through March 24, 2020, legal counsel has been present in 1,229 (or approximately 4.7%) of the 26,233 credible fear interviews and 645 (or approximately 13.6%) of the 4,736 reasonable fear interviews conducted.

Note that the expedited removal process codified in INA Section 235(b)(1) provides for aliens expressing a fear of persecution or torture. These aliens are placed in the credible fear process. Reasonable fear interviews are conducted for individuals subject to a final administrative removal order or subject to a reinstatement of a prior removal order. Those placed in the reasonable fear process are not subject to expedited removal.

H-2B Seasonal Worker Visas

Background:

Last Friday, the Wall Street Journal reported that the Department of Homeland Security is planning to release an additional 45,000 supplemental H-2B visas for fiscal year 2020. 20,000 of these will have a June 1 start date.

This is too late for many seasonal businesses in my state and others that need workers beginning in April. In fact, the Department of Labor has only received petitions for about 6,000 positions with start dates after April 1 as of last week. My seasonal employers are worried they will not have the workers they need.

2) ***USCIS OP&S– Question 39:*** My question is if the reports that DHS will release another 45,000 visas accurate? When will seasonal businesses be notified about a DHS decision on supplemental H-2B visas?

Answer: On April 2, 2020, DHS announced that additional H-2B visas will not be released until further notice due to present economic circumstances.

3) ***USCIS OP&S– Question 40:*** When will businesses that have been shut out by the H-2B cap be able to begin to apply for these supplemental H-2B workers? And, finally, can you release the bulk of the new visas immediately?

Answer: On April 2, 2020, DHS announced that additional H-2B visas will not be released until further notice due to present economic circumstances.

AMERICAN OVERSIGHT

USCIS FY 2021 Questions for the Record

Refugees

Background: For FY20, the Administration announced a historically low refugee admission ceiling of 18,000. This is the lowest refugee admission ceiling request in the program's history. As of February 18th, 2020, the United States had only admitted 5,394 refugees (less than 30% of the FY20 ceiling). That puts our nation on track to admit a total of about 13,000 refugees in fiscal year 2020. Our historical average admissions goal has been about 95,000, with average actual admissions at around 80,000.

4) ***USCIS – Question 41:*** How can you explain the fact that we are over halfway through the fiscal year and have only admitted about a third of the refugees we pledged to take in during one of the worst refugee crises in world history?

   Answer: USCIS defers to the Department of State on the pace of admissions. USCIS notes that, historically, larger numbers of refugees are admitted during the second half of the FY than the first half. However, refugee travel and, thus, admissions during second quarter and potentially in the remaining quarters of the FY 2020 are likely to be affected by the Coronavirus pandemic.

5) ***USCIS – Question 42:*** Are the various bans, administrative obstacles, and duplicative waiting requirements reflective of some increasing danger that these refugees purportedly represent?

   Answer: The U.S. government agencies that administer the U.S. Refugee Admissions Program (USRAP) share a deep commitment to meeting the dual mission to offer resettlement opportunities to eligible refugees while safeguarding the integrity of the program and our national security. To this end, since the inception of the USRAP, USCIS and other processing partners, working in close partnership with colleagues in the law enforcement, counterterrorism, and intelligence communities, have continuously reviewed the program and implemented enhancements to its security vetting and program integrity. Screening procedures have been enhanced over time to incorporate a broader range of checks based on risk analysis, newly developed capabilities, and new resources and information sources that have become available to the U.S. government.

   USCIS and its USRAP partners implemented a number of enhancements that they identified based on the results of two reviews of the USRAP pursuant to Executive Orders. The enhancements were designed to close gaps and take a more risk-based approach to refugee admissions to strengthen screening and vetting operations.

   As has been its practice, USCIS will continue to engage with law enforcement agencies and the intelligence community to ensure that security vetting for refugee applicants is as robust as possible to protect the security of the American people.

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6) ***USCIS – Question 43:*** If these refugees are dangerous, then why does our country seem unable to determine that danger? Why don't we have an appropriate vetting system to deal with this supposed danger?

Answer: Please see the response to Question 42. The USRAP security screening process employs highly rigorous measures to protect against risks to U.S national security and public safety.

7) ***USCIS – Question 44:*** Refugees were already subject to extensive security vetting throughout the program's history and your Administration has expanded those checks even further, which has caused our admission numbers to plummet. Do you have any benchmarks or goals for case processing times or numbers of cases to clear per month?

Answer: In general, the timeframe for each refugee applicant's case is different. Processing times can be impacted by a number of factors, including security checks, medical checks, operational capacity, and world events.

8) ***USCIS – Question 45:*** I know that refugees are a multi-department problem, but where are the slow-downs and delays happening in your Department?

Answer: USCIS and the Department of State's (DOS) Bureau of Population, Refugees and Migration (PRM) work in close partnership to run the USRAP efficiently while upholding program integrity and U.S. national security. Delays in refugee processing most typically relate to security vetting. No refugee applicant is approved for travel until all required security checks have cleared. USCIS has experienced delays in interviewing certain populations when it has had to curtail refugee processing trips for personnel security reasons.

9) ***USCIS – Question 46:*** How many—and what is the duration of-- circuit rides have been scheduled for FY20 and FY21 thus far, in which locations, and how many refugee corps officers will join each one?

Answer: No circuit rides were scheduled in the first quarter of FY 2020. In the second quarter of FY 2020, USCIS deployed 52 staff members on seven circuit rides to El Salvador/Costa Rica, Guatemala/Honduras, Jordan, Kenya, Nauru/Australia, Papua New Guinea/Australia, and Turkey.

During second quarter of FY 2020, circuit rides have now been curtailed as a consequence of the Coronavirus pandemic. The pandemic may potentially affect third and fourth quarter circuit rides this FY. No circuit rides have been scheduled yet for FY 2021. Each new FY, interviews are scheduled only after the Presidential Determination has been issued, after consultation with Congress, establishing the admission numbers and regional or other allocations.

AMERICAN OVERSIGHT

USCIS FY 2021 Questions for the Record

DACA Advance Parole

Background: When DACA was created in 2012, recipients were able to apply for advanced parole travel authorization ("advance parole") for educational reasons, to explore employment opportunities, and for humanitarian reasons (including to reunite with their families). Advance parole gave DACA recipients the ability to re-enter the United States after temporary approved travel abroad if they filled out a form and paid a fee. After the Administration announced the end of DACA in 2017, several nationwide injunctions have been put in place to prevent current DACA recipients from being terminated from the program. The California injunction clearly indicated that the U.S. government has the discretion to grant advance parole to "deserving cases." Despite this, USCIS has stated that they will "not accept and approve advance parole requests from DACA recipients."

10) ***USCIS OP&S – Question 55:*** Why is USCIS refusing to grant advance parole requests, despite the California court expressly granting them permission to do so?

Answer: As noted in the background, U.S. Citizenship and Immigration Services (USCIS) has discontinued approving applications for an advance parole document from Deferred Action for Childhood Arrivals (DACA) recipients under the standards associated with the DACA policy. The DACA preliminary injunctions currently in place do not require USCIS to accept and consider advance parole requests under the standards associated with the DACA policy. Accordingly, USCIS continues to abide by the policy regarding advance parole set forth in Acting Secretary Duke's September 5, 2017 memorandum.

The DACA rescission memorandum does not preclude a DACA recipient from requesting advance parole under standards not associated with the DACA policy, provided he or she falls within one of the other (non-DACA-related) categories of individuals who may seek an Advance Parole Document while they are in the United States.

USCIS International Immigration Office Closures

Background: Since August 2019, your Department has closed 12 international USCIS offices, ostensibly transferring these duties to USCIS domestic offices and the State Department's embassies and consulates.

11) ***USCIS RAIO – Question 56:*** How will closing these offices help American citizens access services more effectively?

Answer: USCIS is working within its domestic offices and the Department of State to ensure effective access to services for those seeking to access them overseas.

AMERICAN OVERSIGHT

12) ***USCIS – Question 57:*** What is the cost estimate to re-open a USCIS office overseas once it is closed?

Answer: The cost of re-opening a USCIS office overseas varies by location. Costs depend on the number of the U.S. government and locally employed staff designated to serve at that post, their salaries and benefits, educational allowances, travel, rents and utilities, supplies, including all necessary equipment and information technology systems needed to set up and run the office, etc.

- ***USCIS – Question 58:*** Does the State Department have sufficient funds and personnel to take on extra duties?

Answer: The Department of Homeland Security defers to the Department of State to address funding and personnel levels needed by that department.

- ***USCIS – Question 59:*** How will closing these offices help advance our nation's immigration agenda?

Answer: Closing these offices will allow USCIS to redirect any savings and resources to mission areas, including backlog reduction efforts.

Matter of A-B-

Background: Then-Attorney General Sessions, in coordination with DHS, crafted new guidance in 2018 to make it more difficult for victims of gang violence and domestic violence to claim asylum in this country. I understand the legality of this policy change is working its way through the courts, and is currently subject to an injunction.

- ***USCIS – Question 60:*** Is the federal government planning to appeal Judge Sullivan's decision?
- ***USCIS– Question 61:*** Can you please tell me what effect this guidance had on asylum-seekers before its injunction?
- ***USCIS – Question 62:*** How many individuals were denied asylum who could have received it prior to the guidance?
- ***USCIS – Question 63:*** Were those individuals who were denied asylum as a result of the guidance removed from our country?
- ***USCIS – Question 64:*** What internal processes exist within DHS to ensure that credible fears of gang violence and domestic violence aren't discarded as routine practice during the asylum process?

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Answer: The Government filed a notice of appeal of the district court's decision in *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), with the U.S. Court of Appeals for the District of Columbia Circuit on January 30, 2019. *See Grace v. Barr*, No. 19-5013 (D.C. Cir. Jan. 30, 2019).

Although USCIS does maintain data on credible fear determinations, the USCIS case management system did not track the analysis of particular social group claims to the level of granularity needed to provide statistics responsive to these questions during this time period. Therefore, USCIS does not have detailed information about trends in these caseloads during the time period between the publication of *Matter of A-B-* and the *Grace* injunction. Moreover, because of the numerous complex and often interrelated elements involved in asylum eligibility analysis, an individualized review of the facts of each case would be necessary to respond to this inquiry.

The USCIS case management system does not track removals as USCIS is not responsible for addressing removals.

- Claims involving domestic violence and gangs are screened in accordance with current laws and regulations applicable in the credible fear context. On December 19, 2018, guidance was provided to all asylum officers on how the *Grace v. Barr* injunction impacted *Matter of A-B-* and the USCIS policy memorandum in the context of credible fear screenings. Additionally, a redacted version of the policy memorandum reflecting the court's injunction can be found on the USCIS website here: https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B_Redacted_12-19-201.pdf

  The following instructions were issued to all asylum officers:

  - There is no general rule against claims involving domestic violence and gang-related violence as a basis for membership in a particular social group. Each claim must be evaluated on its own merits.

  - Asylum officers must determine whether the government in the country of feared persecution is "unable or unwilling to control a persecutor," and cannot use the "condoned" or "complete helplessness" formulation as suggested in *Matter of A-B-*.

  - There is no general rule that proposed particular social groups whose definitions involve an inability to leave a domestic relationship are circular and therefore not cognizable. While a particular social group cannot be defined exclusively by the claimed persecution, each particular social group should be evaluated on its own merits. See *Matter of M-E-V-G-, 26 I. & N.* Dec. 227, 242 (BIA 2014). If the proposed social group definition contains characteristics independent from the feared persecution, the group may be valid. Analysis as to whether a proposed particular social group is cognizable should take into account the independent characteristics presented in each case.

AMERICAN OVERSIGHT

- In evaluating whether the applicant has established a credible fear of persecution, asylum officers cannot require an applicant to formulate or delineate particular social groups. Asylum officers must consider and evaluate possible formulations of particular social groups.

- Asylum officers may not disregard contrary circuit law, and may not limit their analysis to the law of the circuit where the alien is located during the credible fear process.

This guidance is also provided to all new asylum officers during the officer training program and instructors reiterate the importance of screening on a case-by-case basis. Periodic trainings are provided nationwide as well as at individual asylum offices to discuss relevant trends in procedural and substantive issues and ensure officers are screening cases in line with current guidance.

Temporary Protected Status

13) ***USCIS RAIO – Question 65:*** What steps is the Administration taking to ensure that current TPS holders continue to receive work authorizations under the current TPS extensions provided by the Administration?

Answer: Currently, ten countries are designated for TPS: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria and Yemen. There are approximately 417,000 beneficiaries covered under the TPS designations for these countries. TPS beneficiaries are employment authorized incident to status, so they continue to have to work authorization as long as they retain TPS, and DHS must provide them an appropriate work permit, if requested. (See INA 244(a)(1)(B)). TPS beneficiaries may request and obtain an employment authorization document (EAD) by filing an Application for Employment Authorization (Form I-765).

Plaintiffs are challenging DHS's TPS termination decisions in several lawsuits. DHS is currently enjoined from enforcing the TPS termination decisions for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan per court orders in three of the lawsuits. Beneficiaries under the TPS designations for these six countries will retain their TPS, provided that an individual's TPS is not withdrawn because of individual ineligibility. In compliance with court orders, DHS has published several *Federal Register* notices to continue the validity of certain TPS-related documentation, including EADs, for eligible TPS beneficiaries under the designations for these six countries. The most recent such *Federal Register* notice, published on November 4, 2019, automatically extends through January 4, 2021, TPS-related documentation for affected, eligible beneficiaries under the TPS designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. Although TPS beneficiaries do not need to apply for a new EAD in order to benefit from the automatic extension, they may apply for a new EAD if they choose.

As required by statute, DHS continues to provide EADs to eligible TPS beneficiaries who request such documents under the TPS designations for Somalia, South Sudan, Syria, and

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Yemen. DHS provides information to the public regarding TPS determinations and the validity dates of specific TPS-related documentation, including EADs, through a variety of mechanisms, including press releases, public affairs guidance, the USCIS website, the Verification website I-9 Central, E-Verify.gov, Systematic Alien Verification for Entitlements (SAVE) and outreach to community stakeholders.

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1. (OCDO) How will USCIS be leveraging information from CDO?

USCIS leverages business intelligence and strategies that enable data consumption to inform business decisions. Through the annual AOP performance measure development process, USCIS leverages information from CDO to quantify problems and propose solutions and refine and develop performance measures and key performance indicators aligned with the USCIS Strategic Plan. Specifically, business intelligence supports the development of metrics to accurately project upcoming resource requirements based on case complexity. Operationally-focused metrics that transcend field office or component can be shared throughout the enterprise through the AOP process enabling more precise and comprehensive information to make decisions more quickly, accurately, securely, and transparently

2. (OIDP) OIDP Forms Questions
    a. How often does USCIS review the questions on the immigration forms and is there any assessment/research done to ensure the information requested/captured is needed?

The Paperwork Reduction Act (PRA) (44 U.S.C 3501 et. seq), codified at 5 CFR 1320 directs that the Office of Management and Budget (OMB) to not approve any collection of information for more than 3 years (5 CFR 1320.10(b)). All approved collections of information are reviewed at least on a triennial basis and many are reviewed more frequently as required under other sections of the PRA. USCIS conducts all of the assessments required under the PRA, such as ensuring that there is utility to the questions asked of the public and that agencies seek to minimize duplication and burden on the public as stated in the purpose of the PRA at 5 CFR 1320.1.

    b. What kind of review does USCIS do and how often?

USCIS has set internal policies and practices to ensure adherence to all statutes, regulations and guidance documents which govern the collection of information by agencies, and the policies also ensure the due weight to the same types of guidance materials that establish the mission of the agency. See USCIS Information Collection Management Directive 142-001 (https://connect.uscis.dhs.gov/org/EXSO/Management Directives/MD 142-001.pdf).

3. (OCFO) Fee Waivers Question: How have they changed over the course of past five years? Provide a five-year trend on all the fee waivers and by forms.

Please see attached document: 20429_CongressionalRequest_Response_OCFO Review.

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U.S. Citizenship and Immigration Services

USCIS BUDGET: FEE ACCOUNTS OPERATIONS

USCIS/OCFO

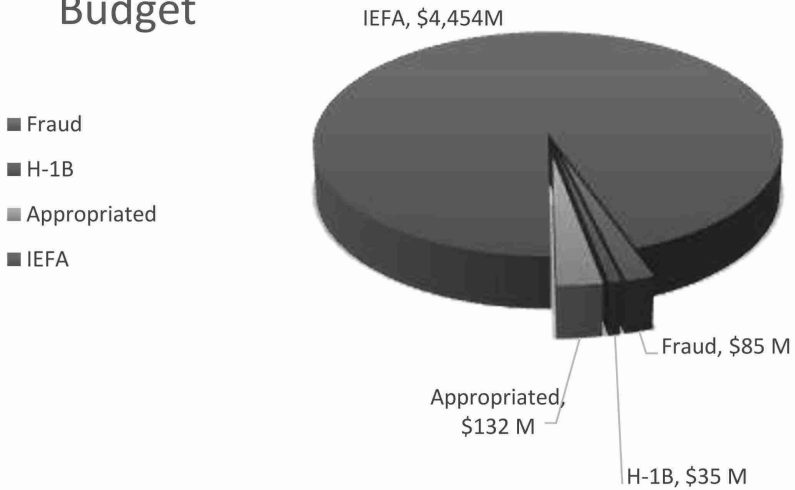
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AMERICAN OVERSIGHT

FY 2020 ($ in millions)

U.S. Citizenship and Immigration Services

FY 2020 USCIS Budget



- 96% of the total USCIS Budget is from the Immigration Examinations Fee Account (IEFA).
- IEFA comprised of premium and non-premium funding. Premium funds can only be used to cover the cost of providing premium processing services as well as infrastructure and customer service improvements in the adjudicative process.
- USCIS relies on a combination of current year revenue collections and carryover balances to meet anticipated obligations.
- IEFA funds are used for a variety of general operating purposes; including, staffing, contracts, IT, etc.

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FY 2020 Detailed Budget Look

U.S. Citizenship and Immigration Services

FY 2020 Annual Operating Plan (AOP) - IEFA

in thousands

Directorate/Office ($ in thousands)	AOP	Reductions	Realigned Pay HP/HB	Revised AOP
Directorates				
External Affairs Directorate	$148,543	-$4,903		$143,640
Field Operations	$893,928	-$27,647		$866,281
Fraud Detection & National Security	$214,954	-$6,172	-$37,565	$171,217
Immigration Records & Identity Services	$321,794	-$9,263		$312,531
Management (Total)	**$1,415,469**	**-$63,753**		**$1,351,716**
Administration	$112,114	$0		$112,114
Chief Financial Officer	$24,214	-$240		$23,974
Chief Information Officer	$863,934	-$52,957		$810,977
Contracting	$13,145	$0		$13,145
Human Capital & Training	$78,485	-$1,556		$76,929
Intake & Document Production	$155,927	-$4,643		$151,284
Management Directorate - Front Office	$11,612	-$120		$11,492
Performance & Quality	$43,634	-$873		$42,761
Security & Integrity	$112,404	-$3,364		$109,040
Refugee, Asylum & International Operations	$345,760	-$5,150		$340,610
Service Center Operations	$651,650	-$129	-$20,000	$631,521
Directorates Total	**$3,992,097**	**-$117,017**	**-$57,565**	**$3,817,515**
Program Offices				
Administrative Appeals	$19,567	-$566		$19,001
Chief Counsel	$65,174	-$961		$64,213
Director	$4,157	$0		$4,157
Equal Opportunity & Inclusion	$8,966	-$59		$8,907
Executive Secretariat	$3,763	-$115		$3,648
Investigations	$12,710	-$390		$12,320
Policy & Strategy	$24,829	-$768		$24,061
Privacy	$4,588	-$141		$4,447
Program Offices Total	**$143,754**	**-$3,000**	**$0**	**$140,754**
Agency Wide Costs				
Additional Operating Costs	$62,182	$0		$62,182
Overhead & Service Wide Charges	$434,384	$0		$434,384
Agency Wide Costs Total	**$496,566**	**$0**	**$0**	**$496,566**
Grand Total	**$4,632,416**	**-$120,017**	**-$57,565**	**$4,454,834**

- The table to the left reflects Directorate and Program Office approved IEFA spending levels for FY 2020.
- While the USCIS budget submissions are aligned to Program, Project, and Activity, internally we budget based on needs by Directorates and Program Offices.
- Due to the anticipated funding constraints in FY20, Directorates and Program Offices were tasked to take a 3.1% reduction.
- Delays in the implementation of the FY 2019/2020 Fee Rule have had a minimal impact on USCIS operations.
- In a forth coming reprogramming there is a one-time realignment of $58 million of costs from the IEFA account to the Fraud and H1-B accounts, to stay within anticipated resources for FY 2020.

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Pay vs. Non-Pay ($s in Thousands)

U.S. Citizenship and Immigration Services

FY2020 AOP Summary by Directorate/Program Office												
in thousands	FY 2020 Payroll				FY 2020 General Expense				FY 2020 Overall AOP			
Directorate/Program Office	**IEFA**	**HP**	**H-1B**	**Total Payroll**	**IEFA**	**HP**	**H-1B**	**Total GE**	**IEFA**	**HP**	**H-1B**	**Total**
External Affairs Directorate	$ 76,705	---	---	$ 76,705	$ 66,935	---	---	$ 66,935	$ 143,640	---	---	$ 143,640
Field Operation Directorate	$ 733,445	---	---	$ 733,445	$ 132,835	---	---	$ 132,835	$ 866,281	---	---	$ 866,281
Fraud Detection and National Security Directorate	$ 158,303	$ 53,639	---	$ 211,943	$ 12,913	$ 9,625	---	$ 22,538	$ 171,217	$ 63,264	---	$ 234,481
Immigration Records and Identity Services Directorate	$ 81,333	---	---	$ 81,333	$ 231,198	---	---	$ 231,198	$ 312,531	---	---	$ 312,531
Management	$ 281,751	---	---	$ 281,751	$ 1,069,965	$ 293	---	$ 1,070,258	$ 1,351,716	$ 293	---	$ 1,352,009
Refugee, Asylum & International Operations	$ 251,823	---	---	$ 251,823	$ 88,787	---	---	$ 88,787	$ 340,610	---	---	$ 340,610
Service Center Operations Directorate	$ 521,158	$ 8,115	$ 20,000	$ 549,273	$ 110,363	$ 11,328	$ 13,000	$ 134,691	$ 631,521	$ 19,443	$ 33,000	$ 683,963
Directorates Total	**$ 2,104,519**	**$ 61,754**	**$ 20,000**	**$ 2,186,273**	**$ 1,712,996**	**$ 21,245**	**$ 13,000**	**$ 1,747,241**	**$ 3,817,515**	**$ 83,000**	**$ 33,000**	**$ 3,933,514**
Administrative Appeals	$ 17,944	---	---	$ 17,944	$ 1,057	---	---	$ 1,057	$ 19,001	---	---	$ 19,001
Chief Counsel	$ 63,271	---	---	$ 63,271	$ 942	---	---	$ 942	$ 64,213	---	---	$ 64,213
Director	$ 3,398	---	---	$ 3,398	$ 759	---	---	$ 759	$ 4,157	---	---	$ 4,157
Equal Opportunity & Inclusion	$ 4,736	---	---	$ 4,736	$ 4,172	---	---	$ 4,172	$ 8,907	---	---	$ 8,907
Executive Secretariat	$ 3,418	---	---	$ 3,418	$ 230	---	---	$ 230	$ 3,648	---	---	$ 3,648
Investigation	$ 11,780	---	---	$ 11,780	$ 540	---	---	$ 540	$ 12,320	---	---	$ 12,320
Policy & Strategy	$ 21,180	---	---	$ 21,180	$ 2,881	---	---	$ 2,881	$ 24,061	---	---	$ 24,061
Privacy	$ 4,224	---	---	$ 4,224	$ 223	---	---	$ 223	$ 4,447	---	---	$ 4,447
Program Offices Total	**$ 129,950**	**---**	**---**	**$ 129,950**	**$ 10,804**	**---**	**---**	**$ 10,804**	**$ 140,754**	**---**	**---**	**$ 140,754**
Additional Operating Costs	$ 25,718	---	---	$ 25,718	$ 36,464	---	---	$ 36,464	$ 62,182	---	---	$ 62,182
USCIS Overheads & Shared Services	---	$ 259	---	$ 259	$ 434,384	$ 1,950	$ 2,000	$ 438,333	$ 434,384	$ 2,209	$ 2,000	$ 438,593
Agency Wide Costs Total	**$ 25,718**	**$ 259**	**---**	**$ 25,977**	**$ 470,848**	**$ 1,950**	**$ 2,000**	**$ 474,797**	**$ 496,566**	**$ 2,209**	**$ 2,000**	**$ 500,775**
Grand Total	**$ 2,260,186**	**$ 62,014**	**$ 20,000**	**$ 2,342,200**	**$ 2,194,648**	**$ 23,195**	**$ 15,000**	**$ 2,232,842**	**$ 4,454,834**	**$ 85,208**	**$ 35,000**	**$ 4,575,043**

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FY 2020 Budget Look (PPA)

U.S. Citizenship and Immigration Services

Fund / Program *dollars in thousands*	FY 2020 Annual Operating Plan
Immigration Examinations Fee	
District Operations	1,854,028
Service Center Operations	715,350
Asylum, Refugee, and Int' Ops.	356,096
Records Operations	141,793
Premium Processing (Including Transformatio	654,159
Information and Customer Services	116,558
Administration	573,874
SAVE	42,941
USCIS Parking Fees	34
	4,454,834
Fraud Prevention and Detection	
District Operations	64,417
Service Center Operations	20,309
Asylum, Refugee, and Int' Ops.	308
CNMI Fraud Prevention and Detection Acct.	174
	85,208
H1-B Nonimmigrant Petitioner	
Service Center Operations	35,000
Fee Spending Annual Operating Plan FY 2020	4,575,043

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Staffing

U.S. Citizenship and Immigration Services

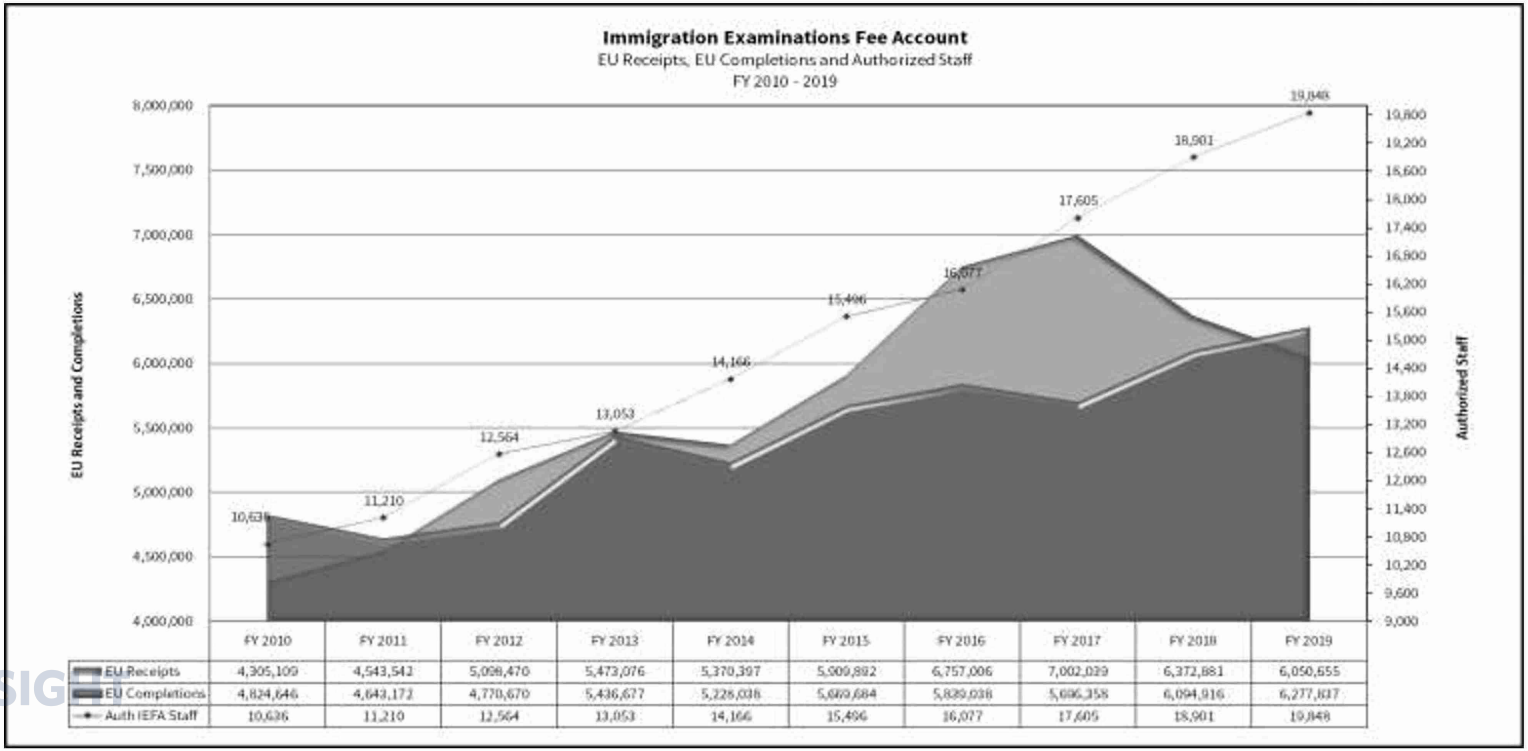
FY 2020 as of PP02 - 2/24/2020				
Directorate/Program Office	Authorized	On-Board Total (FTP and OTP)	Net Vacancies	% of Auth Level
Total USCIS	**20,462**	**20,062**	**400**	**98%**
EXA	637	637	0	100%
FDNS	1,562	1,534	28	98%
FOD	6,999	7,320	(321)	105%
IRIS	1,157	924	233	80%
MGT	1,999	1,924	75	96%
RAIO	2,174	1,997	177	92%
SCOPS	5,197	5,037	160	97%
Administrative Appeals	105	92	13	88%
Chief Counsel	323	314	9	97%
Director	21	13	8	62%
Equal Opportunity & Inclusion	32	30	2	94%
Executive Secretariat	24	18	6	75%
Investigations	76	79	(3)	104%
Policy & Strategy	127	119	8	94%
Privacy	29	24	5	83%

- USCIS continues to hire against net vacancies to ensure a low vacancy rate in the mandatory fee accounts.
- Operations and Support hiring remains in a pause, as USCIS conducts a workforce assessment following the transition of the Verification Modernization program to the sustainment phase.
  - The outcome of the assessment will inform future authorized position needs in the Operations and Support account.

AMERICAN OVERSIGHT

USCIS Workloads and Staffing

FY 2010 – 2019

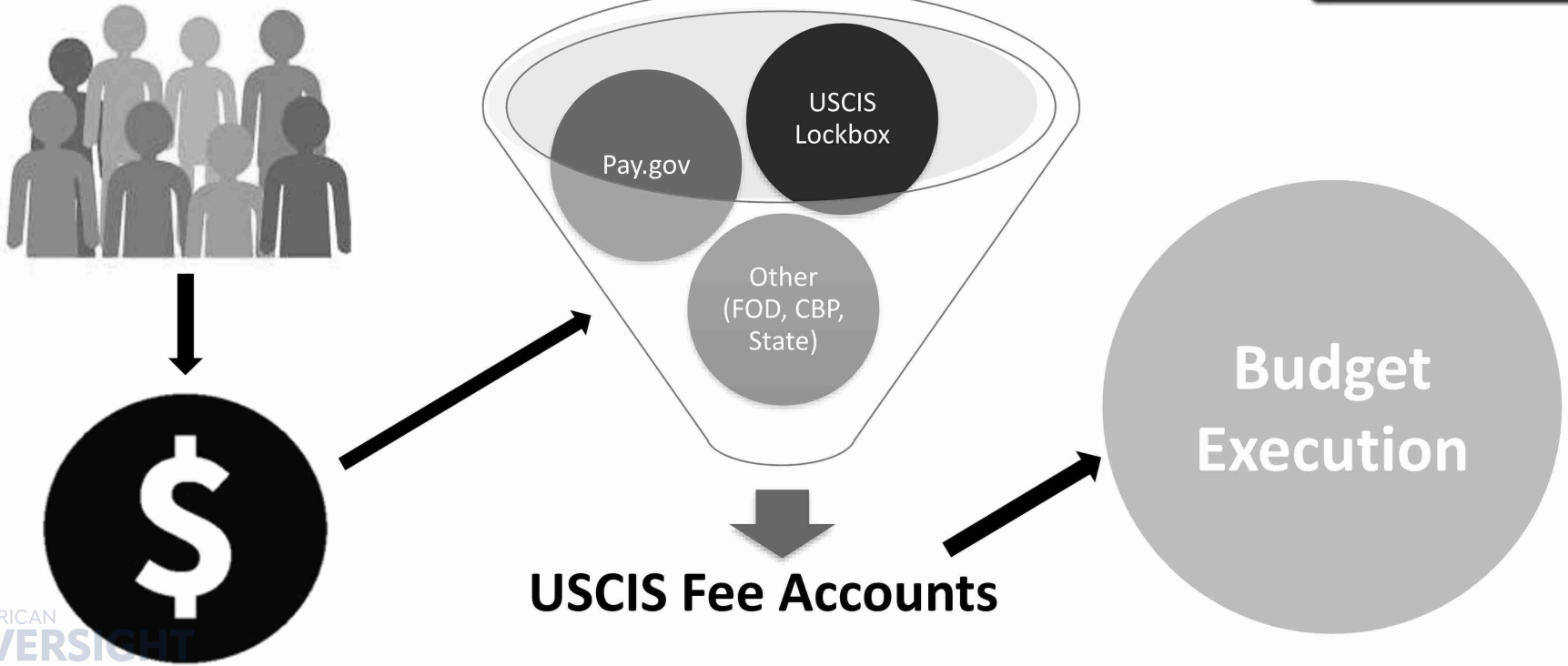


	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
EU Receipts	4,305,109	4,543,542	5,098,470	5,473,076	5,370,397	5,909,892	6,757,006	7,002,039	6,372,881	6,050,655
EU Completions	4,824,646	4,643,172	4,770,670	5,436,677	5,226,036	5,669,684	5,829,038	5,696,358	6,094,916	6,277,837
Auth IEFA Staff	10,636	11,210	12,564	13,053	14,166	15,496	16,077	17,605	18,901	19,848

AMERICAN OVERSIGHT

IMMIGRATION BENEFIT FEES

U.S. Citizenship and Immigration Services



AMERICAN OVERSIGHT

USCIS FEE ACCOUNTS

U.S. Citizenship and Immigration Services

Immigration Examinations Fee Account (IEFA)

- General application/ petition filing fees – submitted with requests for immigration benefits ("forms") as set in regulation (INA 286 (m)).
- Premium processing fee (INA 286 (u)) – initially set in statute at $1,000, but with authority to adjust by inflation. Currently $1,440.

Fraud Prevention & Detection Account (Fraud)

- Statutory fees
- USCIS retains 1/3 of fraud fee collections & 100% of CNMI fraud fee ($50).

H-1B Nonimmigrant Petitioner Account (H-1B)

- Statutory fees
- USCIS retains 5% of H-1B collections.

AMERICAN OVERSIGHT

ANNUAL REVENUE FORECAST

The Volume Projection Committee (VPC) forecasts USCIS workload receipts (immigration benefit requests and petitions).

- The VPC meets 3X per year: January (preliminary forecast), June (final forecast), and December (lookback on prior year actuals compared to forecast). Final forecasts from the June meeting inform the following:
  - Staffing requirements and cost estimates factored into the annual operating plan (AOP).
  - Annual revenue forecast.

The fee-paying receipt volume and revenue forecast is calculated for each form.

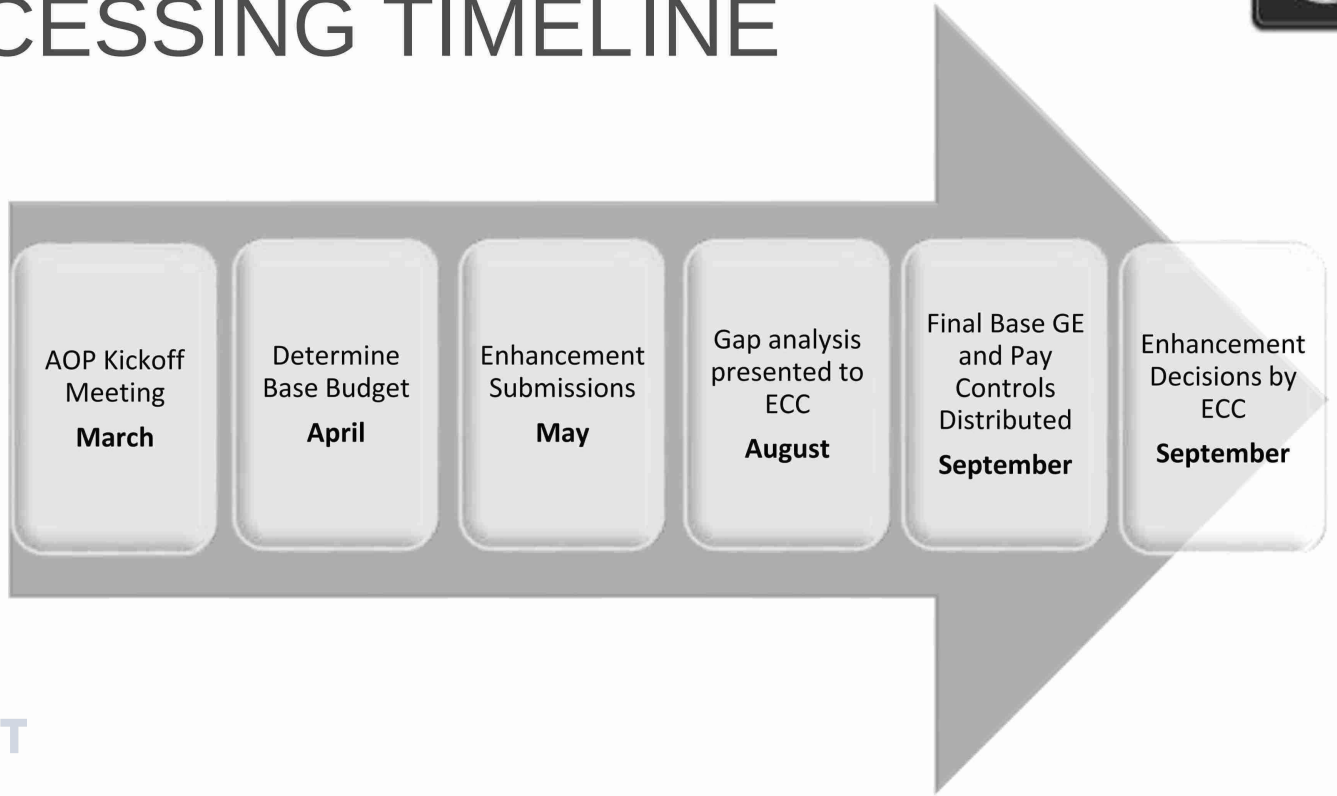
- Revenue Collections / Fee = Fee-Paying Volume
- Fee-Paying Volume / Total Receipts = Fee-Paying Percentage
- Fee-Paying Percentage * VPC Workload Receipt Forecast = Fee-Paying Receipt Forecast
- Fee-Paying Receipt Forecast * Fee = Revenue Forecast

The FY 2019 revenue estimate was within 0.2% of the actual collections through the end of FY 2019.

AMERICAN OVERSIGHT

ANNUAL OPERATING PLAN PROCESSING TIMELINE

U.S. Citizenship and Immigration Services



AMERICAN OVERSIGHT

AOP DECISION-MAKING PROCESS

U.S. Citizenship and Immigration Services



CFO along with Directorates and Program Offices assess base GE funding from the prior year. Examine whether new funding recurs.

CFO also conducts an independent detailed base review.

CFO computes upcoming fiscal year payroll cost based on the onboard staffing level at a point-in-time and adding funding for authorized vacancies.



Directorates and Program Office submit enhancement requests.

The Office of Performance and Quality submits the Staffing Allocation Models.

CFO finalizes the upcoming fiscal year revenue and carryover funding forecast.



CFO conducts analyzes affordability of the base, enhancements, and staffing allocation model based on the revenue forecast.

CFO presents to ECC decision making framework and/or recommendations.



Director, Deputy Director and ECC make determination of funding.

Execute approved AOP.

AMERICAN OVERSIGHT

USCIS AOP SPENDING

- 51% of FY 2019 spending was on payroll; 20,000+ positions
- 49% of FY 2019 spending was on non-pay/general expenses:
  - 95% - contracts and services, including rent
  - 2% - supplies and materials
  - 2% - travel
  - 1% - training

AMERICAN OVERSIGHT

FY 2021 Resources

U.S. Citizenship and Immigration Services

Immigration Examinations Fee Account
Budget Authority and Obligations

Budget Authority (Dollars in Thousands)	FY 2019	FY 2020	FY 2021
Fee Receipts (Actual/Estimates/Projections)	$3,895,612	$3,885,000	$3,888,300
Projected Fee Collections – FY 2019 / FY2020 IEFA Fee Rule[1]	-	-	$486,700
Carryover and/or Recoveries[2] (Actual/Actual/Projections)	$1,265,465	$855,968	$340,447
Net Sequestered Resources	$10,036	$12,313	$229,215
Reprogrammings/Transfers	($4,000)	($4,000)	-
Collections – Reimbursable Resources	$41,194	$46,000	$45,180
Total Budget Resources	$5,208,307	$4,795,281	$4,989,842
Obligations (Actual/Estimates[3]/Projections)	$4,352,339	$4,454,834	$4,861,984
Budget Authority[4]	$4,524,854	$4,655,366	$4,861,984
Personnel: Positions and FTE			
Enacted/Request Positions	18,866	19,794	20,451
Enacted/Request FTE	17,924	18,806	19,429
Onboard and Actual FTE; Includes Collections - Reimbursable Resources			
Onboard (Actual/Estimates/Projections)	18,855	19,794	20,451
FTE (Actual/Estimates/Projections)	17,771	18,806	19,429

[1]Anticipated receipts based on the collection of increased fees, which will become effective in FY 2021 based on the FY 2019/FY 2020 Fee Rule. The FY 2021 Projected Fee Collections from the FY 2019/FY 2020 Fee Rule is a segmented portion of the full estimates USCIS anticipates to collect once the Fee Rule is in place for a full fiscal year.
[2]Projected carryover is calculated by taking the difference of Total Budget Resources and Estimated Obligations of the prior year.
[3]Estimated obligations align with USCIS' revised FY 2020 Annual Operating Plan.
[4]Represents the total operating budget of Immigration Examination Fee Account for a given fiscal year.

- The FY 2021 USCIS BIB reflects $3.9 billion for IEFA, due to an inadvertent error in entering anticipated collections in OMB Max.
- IEFA anticipated collections in FY 2021 are $4.4 billion, which includes both non-premium and premium resources.
- Using a combination of anticipated collections, estimated carryover, net sequestered resources and other collections there are sufficient anticipated resources to cover requested spending authority.

AMERICAN OVERSIGHT

Biometrics Reuse for EAD Processing

BACKGROUND:

- USCIS suspended routine in-person services to help slow the spread of COVID-19. USCIS plans to re-open offices on June 4, unless the public closures are extended further. This includes Application Support Centers (ASCs).
- USCIS staff are continuing to perform duties that do not involve contact with the public.
- USCIS will reuse biometrics in order to process valid Form I-765, Application for Employment Authorization, extension requests while the ASCs are temporarily closed. This is consistent with existing authorities regarding the agency's ability to reuse previously submitted biometrics.

TALKING POINTS:

(b)(5)

AMERICAN OVERSIGHT

Temporary Policy Changes for Certain Foreign Medical Graduates

BACKGROUND

- In response to the COVID-19 pandemic, USCIS has announced new flexibilities for certain foreign doctors working in the United States under the H-1B nonimmigrant program. The new flexibilities are provided to physicians in H-1B nonimmigrant status working in medically underserved areas for an agency of the federal government (Interested Government Agency, or IGA) or through the sponsorship of a state agency (Conrad State 30 program).
- These H-1B physicians employed in medically underserved areas will be able to provide telehealth services with the same employer without filing new paperwork with USCIS. Providing telehealth flexibility at this time will allow these physicians to safely continue to serve patients in the medically underserved areas. If an employer offers these physicians the flexibility to telework from their home, it must offer those same flexibilities to its U.S. workers similarly employed.
- Additionally, USCIS will not consider these foreign medical professionals to have violated their contracts with their employers if they practice telehealth in the same medically underserved area or are unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic during the declared Public Health Emergency period. This avoids certain immigration consequences for the H-1B physicians normally associated with a contract violation on these bases. This is a limited flexibility and only relates to the foreign medical graduate's eligibility for future immigration benefits that would be affected by the re-imposition of the two-year home residence requirement as the result of a contract violation.

TALKING POINTS

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AMERICAN OVERSIGHT

Presidential Proclamation

BACKGROUND:

- On April 22, 2020, President Trump issued a Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak
- The suspension and limitation on entry applies only to aliens who:
    - are outside the United States on the effective date of this proclamation (4/23);
    - do not have an immigrant visa that is valid on the effective date of this proclamation; and
    - do not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.
- The suspension and limitation do not apply to:
    - any lawful permanent resident of the United States;
    - any alien seeking to enter the U.S. on an immigrant visa as a physician, nurse, or other healthcare professional; to perform medical research or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees; and any spouse and unmarried children under 21 years old of any such alien who are accompanying or following to join the alien;
    - any alien applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program;
    - any alien who is the spouse of a United States citizen;
    - any alien who is under 21 years old and is the child of a United States citizen, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
    - any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee;
    - any member of the United States Armed Forces and any spouse and children of a member of the United States Armed Forces;
    - any alien seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual; or
    - any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

AMERICAN OVERSIGHT

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TALKING POINTS:

AMERICAN OVERSIGHT

Public Closures

BACKGROUND

- On March 18, U.S. Citizenship and Immigration Services suspended routine in-person services to help slow the spread of COVID-19. USCIS plans to re-open our offices on June 4, unless the public closures are extended further. USCIS staff are continuing to perform duties that do not involve contact with the public. However, USCIS will provide emergency services for limited situations.
- Field offices will send de-scheduling notices to applicants and petitioners with scheduled appointments impacted by the public closure. We will also send de-scheduling notices to naturalization applicants scheduled for naturalization ceremonies. We will reschedule all applicants when USCIS resumes normal operations.
- USCIS asylum offices will send interview cancellation notices and automatically reschedule asylum interviews. When the interview is rescheduled, asylum applicants will receive a new interview notice with the new time, date and location of the interview.

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

RFE/NOID Flexibility

BACKGROUND

- USCIS is adopting several measures to protect our workforce and community and to minimize the immigration consequences for those seeking immigration benefits during this time.
- In response to COVID-19, USCIS has extended flexibilities to assist applicants and petitioners who are responding to certain agency requests:
    - Requests for Evidence
    - Continuations to Request Evidence (N-14)
    - Notices of Intent to Deny
    - Notices of Intent to Revoke
    - Notices of Intent to Rescind and Notices of Intent to Terminate regional investment centers; and
    - Filing date requirements for Form I-290B, Notice of Appeal or Motion.
- This flexibility applies to the above documents if the issuance date listed on the request, notice or decision is between March 1 and July 1, 2020, inclusive.

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

S.3599, The Healthcare Workforce Resilience Act

BACKGROUND:

- The Healthcare Workforce Resilience Act is a bipartisan bill sponsored by Senators Perdue (R-GA), Young (R-IN), Durbin (D-IL), and Coons (D-DE) introduced on May 5, 2020.
- The sponsors claim the bill will strengthen the healthcare workforce and improve healthcare access for Americans during the COVID-19 crisis by having USCIS "recapture" up to 25,000 immigrant visas for nurses and 15,000 immigrant visas for physicians.
- USCIS would also "recapture" immigrant visas for the medical professionals' families, drawing from the pool of unused employment-based visas that Congress has previously authorized. These visas would be issued in order of priority date and would not be subject to the country caps.
- The bill mandates premium processing without allowing USCIS to charge a fee for such service.

TALKING POINTS:

AMERICAN OVERSIGHT

(b)(5)

Virtual Naturalizations

BACKGKROUND

- In addition to the statutory requirements that the oath ceremony be public and maintain the dignity of the occasion, there are other legal and practical obstacles to holding remote or video oath ceremonies. For example, the law requires naturalization certificates to be issued at time of the administration of the Oath of Allegiance. See INA §§ 310(b)(4), 338. USCIS does not currently have the capability to deliver the certificate via a virtual ceremony, and delivery of the certificates after the virtual ceremony would not constitute issuance at the time of administration of the Oath.
- Additionally, the law requires applicants to establish that they remain eligible for naturalization between the interview and the oath of allegiance. See, e.g., INA § 316(a) (requiring an applicant to show that he or she continues to be a person of good moral character up to the time of the Oath of Allegiance); 8 C.F.R. § 316.2(a)(6) (requiring an applicant to show continuous residence in the United States up to the time of admission to citizenship).
- USCIS uses the Form N-445, Notice of Naturalization Oath Ceremony, to determine whether the applicant has become ineligible between the interview and the oath ceremony. Officers review the answers to the questions during the check in process and ask applicants to orally confirm that nothing has changed. The N-445 instructions, which have the force of a regulation pursuant to 8 C.F.R. § 103.2(a)(1), indicate that the date the applicant completes the questions should be the same as the date of the Oath ceremony. USCIS does not currently have the capability to virtually collect and review an N-445 from each applicant on the day of the ceremony.
- The regulations also require that at the time of the oath ceremony, each applicant shall surrender his or her permanent resident card. See 8. C.F.R. § 338.3. USCIS cannot request applicants surrender their cards prior to the virtual ceremony, thereby leaving the applicant with no immigration status documentation, and there is no enforcement mechanism to require applicants to return their cards after the ceremony.
- Finally, remote or video ceremonies would create practical challenges, including confirming that an individual participating is in fact the individual whom USCIS has approved for naturalization and confirming that the individual is within the United States and within the area over which the field office has jurisdiction.

TALKING POINTS

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AMERICAN OVERSIGHT

Flexibilities on Reproduced Signatures

BACKGKROUND

- On March 20, USCIS announced that, due to the ongoing COVID-19 National Emergency announced by President Trump on March 13, 2020, we will accept all benefit forms and documents with reproduced original signatures, including the Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020 and beyond.
- USCIS already accepts various petitions, applications and other documents bearing an electronically reproduced original signature. This means that a document may be scanned, faxed, photocopied, or similarly reproduced provided that the copy must be of an original document containing an original handwritten signature, unless otherwise specified. See Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 2, Signatures [1 USCIS-PM B.2].
- For forms that require an original "wet" signature, per form instructions, USCIS will accept electronically reproduced original signatures for the duration of the National Emergency. This temporary change only applies to signatures. All other form instructions should be followed when completing a form.
- Individuals or entities that submit documents bearing an electronically reproduced original signature must also retain copies of the original documents containing the "wet" signature. USCIS may, at any time, request the original documents, which if not produced, could negatively impact the adjudication of the immigration benefit.

TALKING POINTS

(b)(5)

AMERICAN OVERSIGHT

Data Sharing with Census Bureau

BACKGROUND

- USCIS has provided anonymized data on lawful permanent residents (LPR) and naturalized citizens to the Census Bureau annually since at least 2007.
- At the end of 2017, the Census Bureau requested that USCIS provide personally identifiable information (PII) including names, aliases, addresses, birth dates, A-numbers, and Social Security numbers related to naturalized citizens and LPRs.
- USCIS was nearing finalization of a Memorandum of Understanding (MOU) to provide this information to the Census Bureau in the summer of 2019, pursuant to authorities provided for in Title 13 of the U.S.C.
- On June 27, 2019, the Supreme Court held, in Department of Commerce v. New York, that the Commerce Department's alleged reason to include a citizenship question on the 2020 Census – to provide DOJ with information requested by DOJ to enforce the Voting Rights Act – was a contrived pretext. Following this decision, the White House on July 11, 2019 issued Executive Order on Collecting Information about Citizenship Status in Connection with the Decennial Census. The Executive Order provided more detailed direction to DHS and other agencies on the basis for, and scope of, information to be provided to the Census Bureau.
- In response to the Executive Order, USCIS worked with DHS Policy and other DHS components, including CBP, ICE and the DHS Office of Immigration Statistics, to finalize a Department-level MOU with the Census Bureau consistent with the Executive Order.
- In addition to information regarding naturalized citizens and LPRs, the Executive Order mandated both DHS and the Department of State to provide information pertaining to refugee and asylum applicants. A Secretarial waiver of asylum confidentiality pursuant to 8 C.F.R. § 208.6(a), was prepared (the confidentiality provisions of 8 C.F.R. § 208.6 are applied to refugees as a matter of DHS policy).
- The MOU was finalized in December 2019. USCIS transferred 48.9 million records to the U.S. Census Bureau pursuant to the Executive Order on December 31, 2019. The records pertain to U.S. citizens, Lawful Permanent Residents, asylees, and refugees, and include data such as addresses, class of admission, etc. On April 1, 2020 (the day of the decennial Census) USCIS pulled another snapshot of the data for delivery to the U.S. Census Bureau in July in accordance with the MOU.

TALKING POINTS

AMERICAN OVERSIGHT



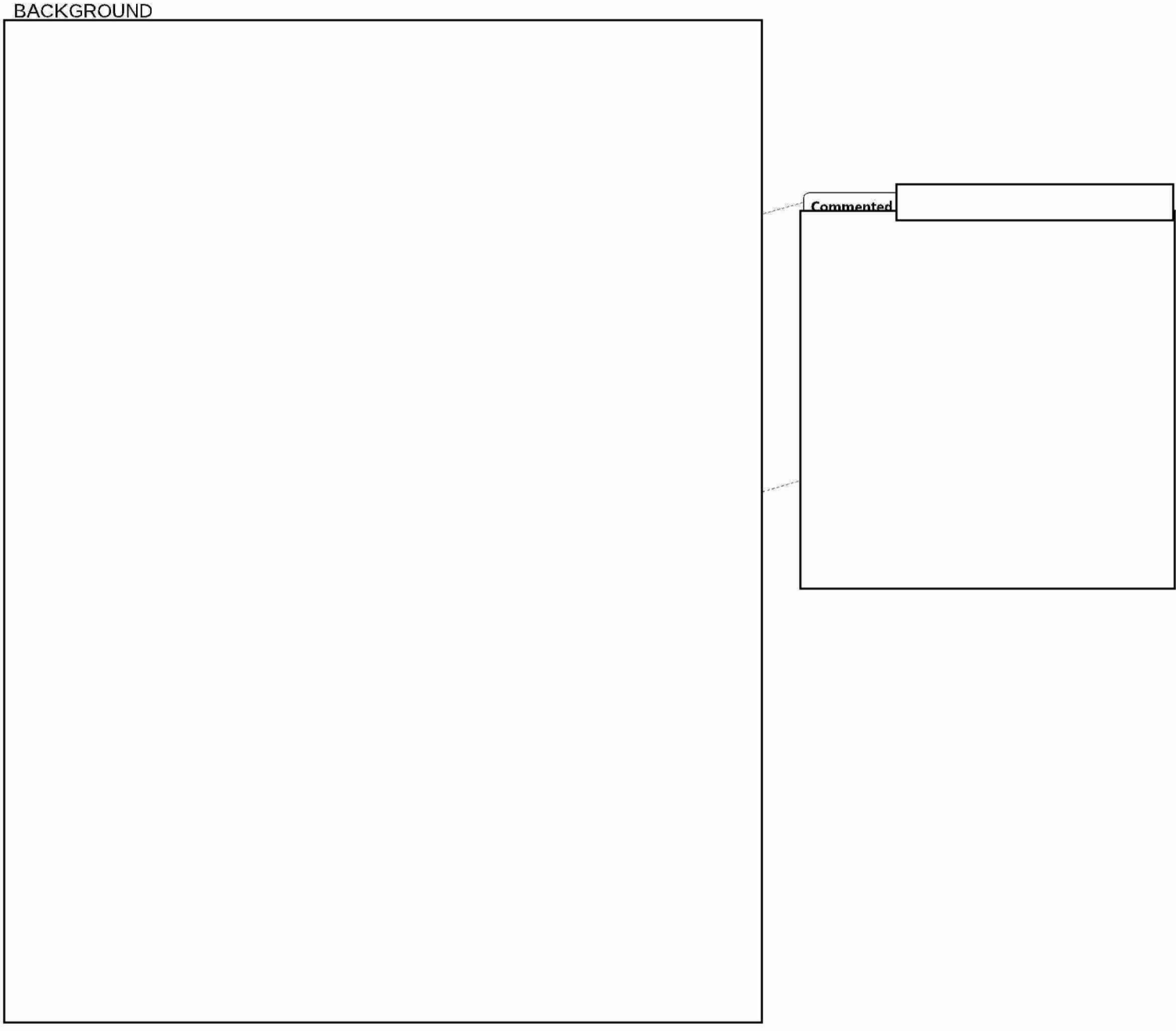
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AMERICAN OVERSIGHT

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BENEFITS INTEGRITY OFFICE (BIO f.k.a. HFE) / DENATURALIZATION

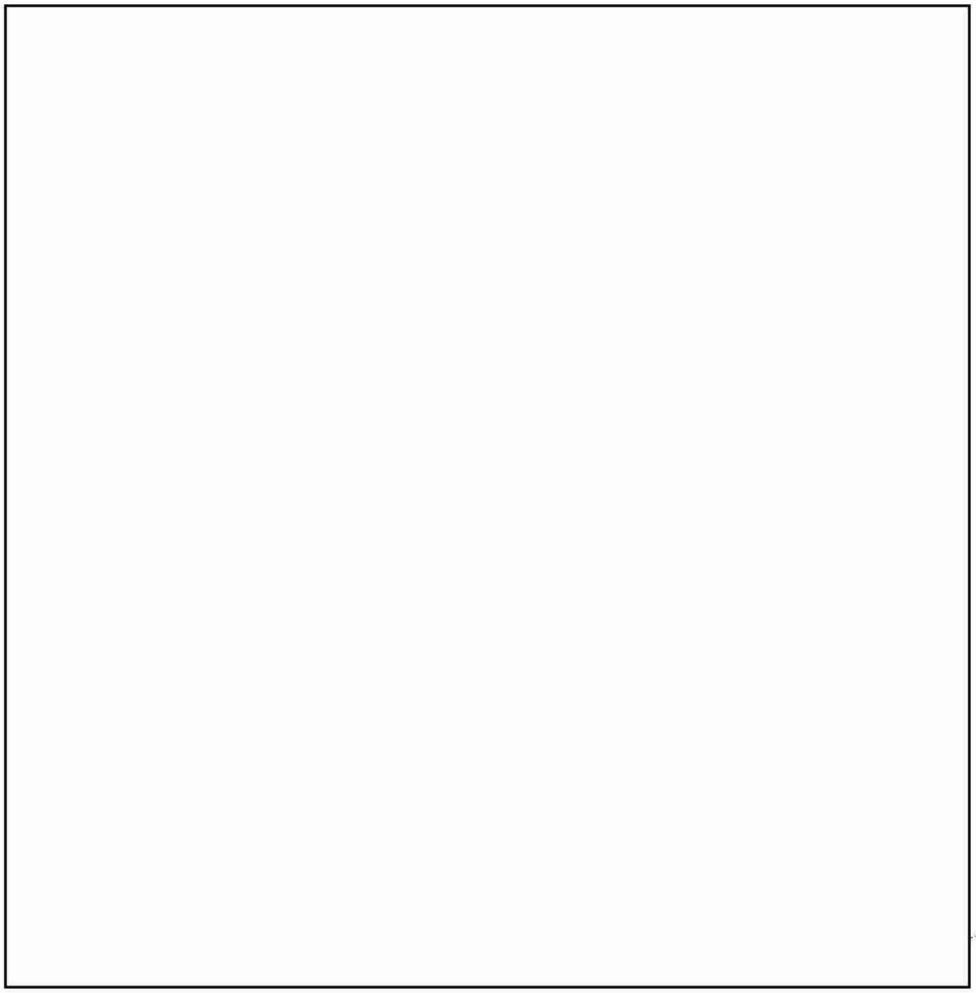
BACKGROUND



AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Affidavits of Support

BACKGROUND

- On May 23, 2019, the President issued a Presidential Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens. The memorandum directs relevant federal agencies to update or issue procedures, guidance, and regulations, as needed, to comply with current law and ensure that ineligible immigrants do not receive federal means-tested benefits.
- The memorandum highlights the commitment of the Administration to enforcing existing immigration laws and protecting the American taxpayer.
- As part of USCIS' implementation of this memorandum, USCIS officers will now be required to remind individuals at their adjustment of status interviews of their sponsors' responsibilities under existing law and regulations. Our officers will remind applicants and sponsors that the Affidavit of Support Under Section 213A of the INA is a legal and enforceable contract between the sponsor and the Federal government.
- The sponsor must be willing and able to financially support the intending immigrant as outlined by law and regulations (see INA 213A and 8 CFR Part 213a). If the sponsored immigrant receives any federal means-tested public benefits, the sponsor is required to reimburse the benefits-granting agency for every dollar of benefits received by the immigrant.

TALKING POINTS

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AMERICAN OVERSIGHT

Asylum

BACKGROUND

- As of April 30, 2020, USCIS had approximately 354,800 affirmative asylum cases pending. While asylum applicants await a decision, they live in the United States and may be allowed to work.
- The massive asylum backlogs have allowed many immigrants who entered unlawfully to stay in the United States virtually indefinitely. Those who file frivolous claims circumvent the legal immigration system, harming meritorious applicants, and the resulting lengthy delays in adjudication can pose a threat to national security.
- To further the integrity of the asylum system, the Administration has implemented the following actions:
    - In January 2018, USCIS announced a shift away from "first in, first out" processing of affirmative asylum cases and a return to "last in, first out" (LIFO) processing. This priority approach has allowed USCIS to identify non-meritorious asylum claims earlier and place those individuals into removal proceedings sooner.
    - In July 2019, DHS published an Interim Final Rule (IFR) barring aliens entering through the southern land border from asylum eligibility if they did not apply for protection in at least one other country through which they transited on the way to the United States. The IFR also raised the screening standard for considering withholding of removal and protection under the Convention Against Torture for aliens barred by the IFR from receiving asylum.
    - On November 14, 2019, DHS published a notice of proposed rulemaking ("Asylum Application, Interview, and Employment Authorization for Applicants") that seeks to reduce incentives to file non-meritorious asylum applications in order to obtain employment authorization or other forms of relief and to discourage illegal entry into the United States.
    - On July 26, 2019, the U.S. government signed an Asylum Cooperative Agreement (ACA) with Guatemala, which went into effect and was operationalized on November 19, 2019. Similar ACAs have been signed with El Salvador (September 20, 2019) and Honduras (September 25, 2019), but these have not yet been operationalized.
- Because USCIS has suspended routine in-person services at least through June 3, 2020, to help slow the spread of COVID-19, affirmative asylum interviews are currently not occurring. However, the decline in credible fear, Migrant Protection Protocols (MPP), and Asylum Cooperation Agreement (ACA) screening caseloads due to the COVID-19 pandemic has increased USCIS' capacity to focus on completing cases in the affirmative asylum backlog that have already been interviewed or do not require interviews. Once asylum offices reopen to the public, the offices will automatically reschedule asylum interviews and send out new interview notices to applicants.

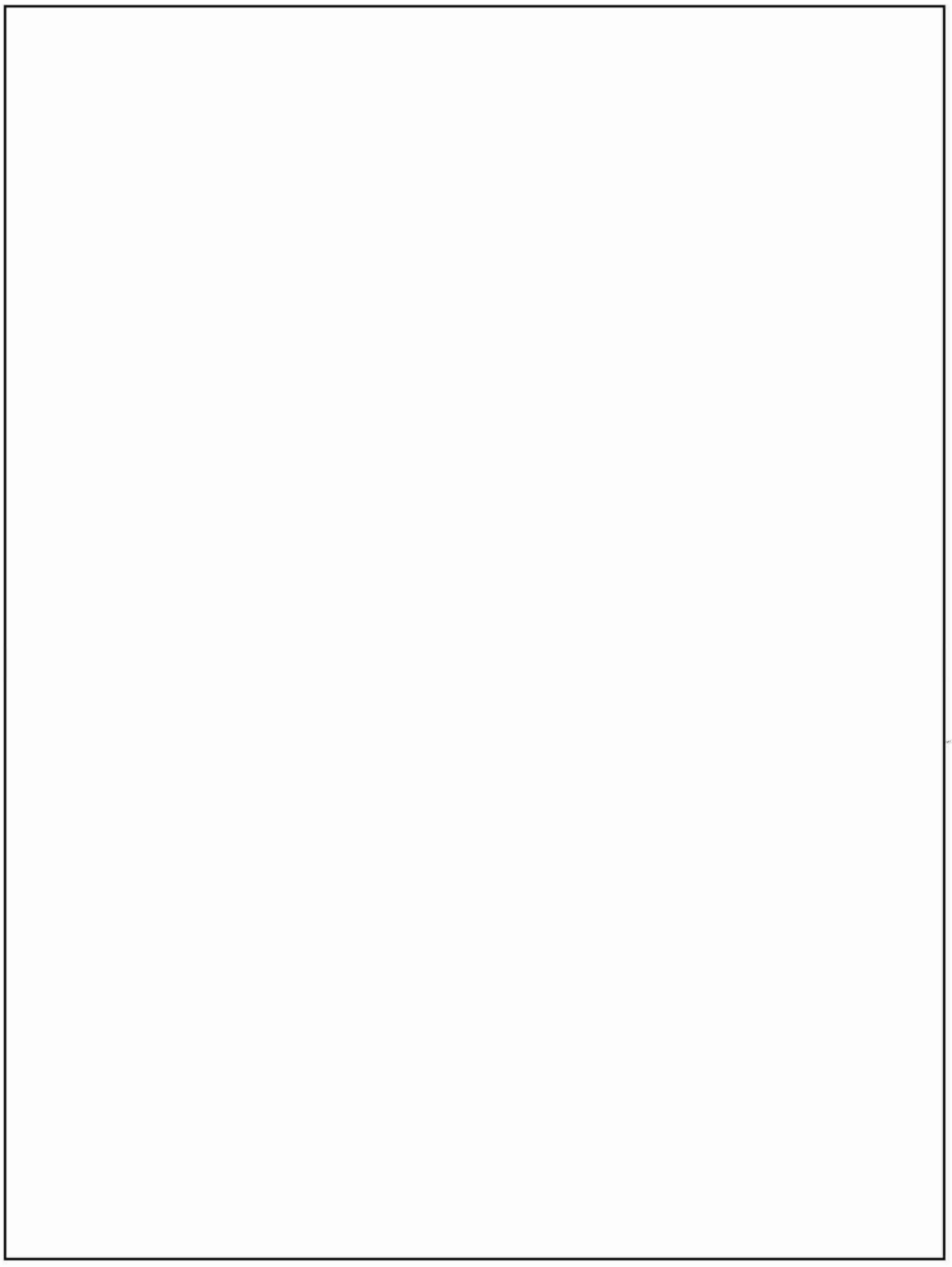
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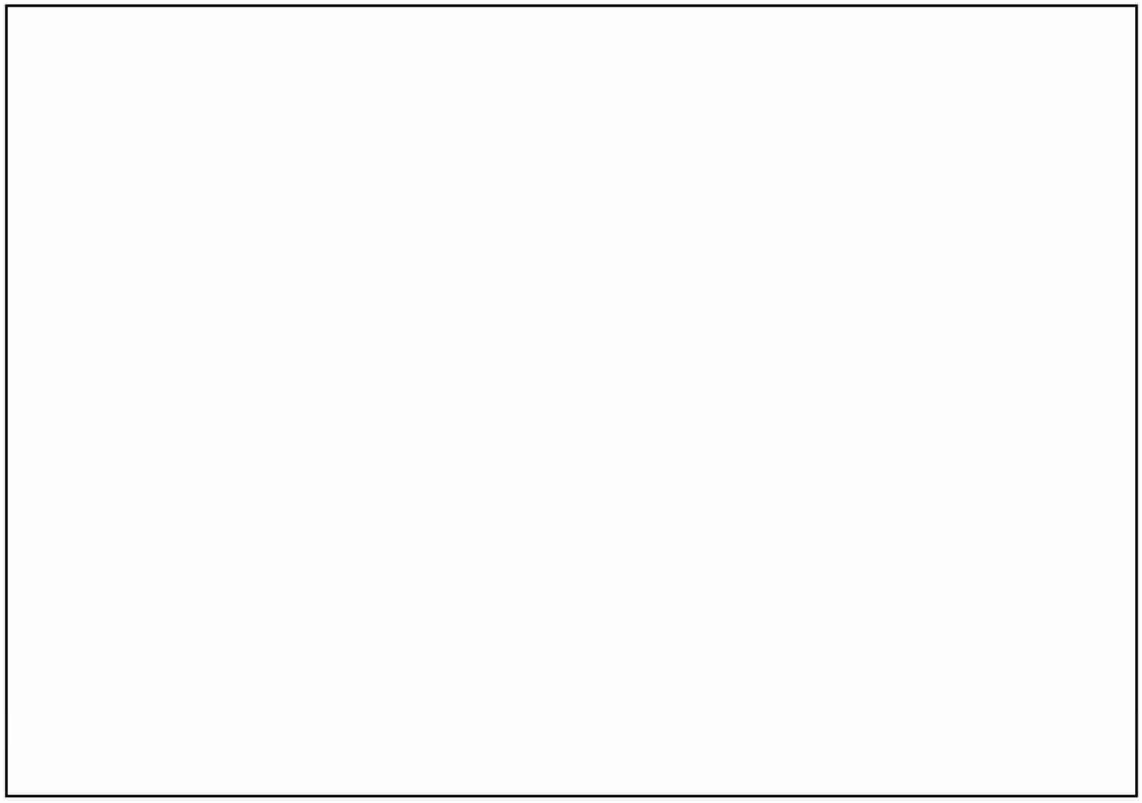
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AMERICAN OVERSIGHT

Backlogs

BACKGROUND

- The backlog is the number of pending cases that have been in process longer than the processing goals set by USCIS. Applications and petitions that are not ready for adjudication (due to visa number unavailability) or are outside of USCIS control (pending Requests for Evidence or re- exam for naturalization) are not counted as part of the net backlog.
- Backlogs of immigration benefits are not a new phenomenon. We have faced and addressed large backlogs in the past. We had a backlog of 3.6 million receipts in 2003 after introducing new security measures following 9/11. Another contributing factor was growth in petitions for family members following the filing deadlines for the LIFE Act 245(i) adjustment in 2001. That law allowed certain individuals who had entered without inspection to apply for adjustment of status if they paid a $1,000 penalty. Congress appropriated funds to help combat the backlog, and we used the funds for term hires and overtime.
- The number of adjudications is generally increasing over time.

TALKING POINTS

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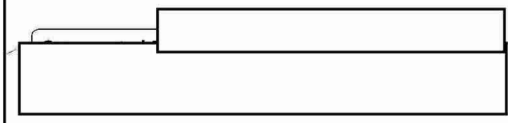
AMERICAN OVERSIGHT

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Deferred Action for Childhood Arrivals (DACA)

BACKGROUND

TALKING POINTS



AMERICAN OVERSIGHT

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DEFERRED ACTION

BACKGROUND:

- Deferred action is a form of prosecutorial discretion exercised by the U.S. Department of Homeland Security (DHS) to defer removal of an alien for a designated period.
- It is not a programmatic benefit, does not confer lawful immigration status, and does not excuse any past or future periods of unlawful presence. DHS also retains discretion to terminate deferred action unilaterally, and an alien granted deferred action remains removable at any time.

TALKING POINTS:

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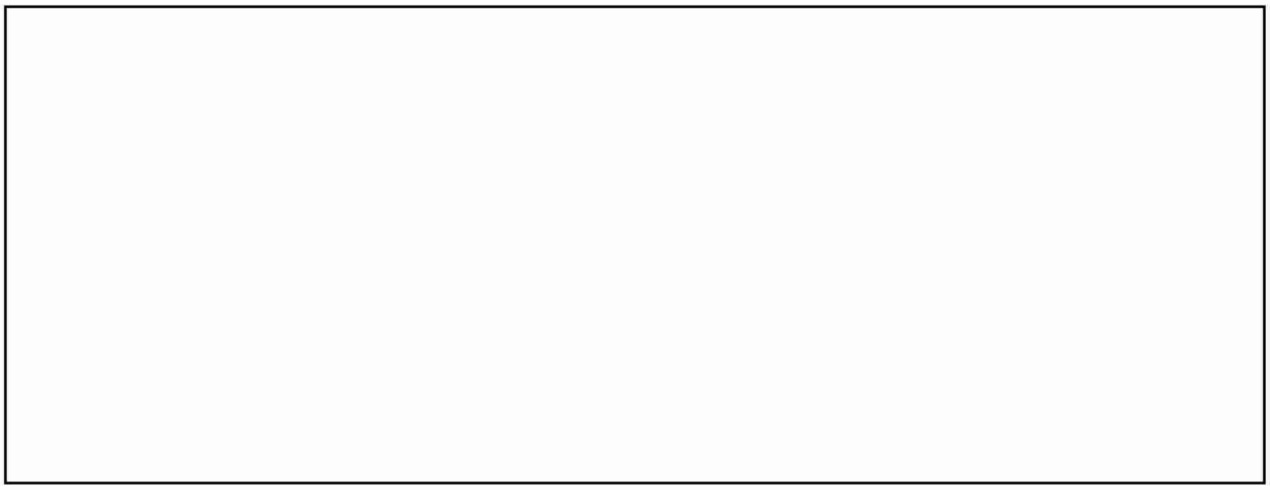
AMERICAN OVERSIGHT

Policy Guidance Regarding False Claim to U.S. Citizenship Ground of Inadmissibility

BACKGROUND:

- On April 24, 2020, USCIS incorporated guidance into the USCIS Policy Manual regarding the false claim to U.S. citizenship ground of inadmissibility.
- Prior to the Zhang decision, aliens applying for immigration benefits who were found to have falsely claimed U.S. citizenship could overcome the false claim to U.S. citizenship ground of inadmissibility by presenting proof that the false claim was based on a mistaken belief that they were a U.S. citizen. The only exception Congress provided for this ground of inadmissibility requires that each parent of the alien is or was a U.S. citizen, that the alien permanently resided in the United States prior to age 16, and that the alien reasonably believed at the time of making such a claim that he or she was a citizen. This ground of inadmissibility applies to false claims of U.S. citizenship made on or after Sept. 30, 1996.

TALKING POINTS:



AMERICAN OVERSIGHT

USCIS FY 2019 Accomplishments and Efforts to Implement President Trump's Goals

Major Asylum Policy Reforms

- Migrant Protection Protocols (MPP): MPP was established by the Trump Administration in January 2019 to restore a safe and orderly immigration process along the U.S. southern border and decrease the number of aliens attempting to game the immigration system. Under MPP, aliens attempting to enter the U.S. from Mexico without proper documentation may be returned to Mexico to wait outside of the U.S. during their immigration proceedings.
- Third Country Transit Asylum Rule: In July, DHS and DOJ published a joint interim final rule to enhance the integrity of the asylum process by placing further restrictions or limitations on eligibility for aliens who seek asylum in the United States. Specifically, with limited exceptions, the rule bars aliens, who entered along the southern border, from receiving asylum in the U.S. if they did not apply for asylum in at least one other country they transited through. This rule aims to mitigate the crisis at the border by better identifying and serving legitimate asylum seekers.

Asylum Workforce

- In FY 2019, USCIS executed an ambitious plan to hire 500 staff for the Asylum Division by the end of December 2019 to reach authorized staffing levels. New strategies are in development to more specifically target individuals with relevant experience and skill sets, including those with prior military and law enforcement expertise.
- During any given week in FY 2019, 60-90 USCIS employees were assigned to detention facilities or Border Patrol stations along the southwest border, including about 40-60 asylum officers.
- The Asylum Division trained and deployed U.S. Border Patrol agents and USCIS officers from outside the Asylum Division to supplement staffing on the southern border and assist with the Asylum Division's workload.

Refugee Processing

- USCIS processed tens of thousands of refugees overseas, work that contributed to meeting the 30,000 refugee admissions ceiling for FY 2019.
- USCIS conducted a successful pilot program to validate the identity of refugee applicants using UNHCR biometric records.

Crisis Deployments

- In FY 2019, USCIS sent 400 employee volunteers to assist with the federal government's overall efforts responding to critical DHS needs.
- 233 of these volunteers were deployed directly to the nation's southern border through the DHS Volunteer Force in support of U.S. Customs and Border Protection. Others were deployed to offices across the country providing critical legal services and mission support to U.S. Immigration and Customs Enforcement.

Securing the Homeland: Vetting and Screening

- Consistent with President Trump's call for enhanced vetting, USCIS plays a key role in safeguarding our nation's immigration system and making sure that only those who are eligible for a benefit receive it. USCIS is vigorous in its efforts to detect and deter immigration fraud, using a variety of vetting and screening processes to confirm an applicant's identity and

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eligibility. The agency also conducts site visits, interviews applicants, and requests evidence for benefits that offer individuals status in the United States.

- In FY 2019, USCIS expanded certain screening procedures to address President Trump's Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States." This includes additional vetting for naturalization and permanent residence applicants.
- USCIS personnel completed more than 8,000 site visits as part of the Targeted Site Visit and Verification Program.
- Referrals to the Fraud Detection and National Security Directorate from field offices surpassed FY 2018 levels by more than 22%.
- The primary background screening system for USCIS (known as ATLAS) processed more than 16.5 million screenings, through law enforcement and other federal databases, generating approximately 124,000 automated potential fraud, public safety and national security detections requiring further analysis and manual review by USCIS officers.
- FDNS continued leveraging open source and publicly available social media information to investigate potential fraud, national security and public safety concerns with approximately 11,420 checks completed in FY 2019.

EB-5 Reform

In July, USCIS published a final rule that made a number of significant changes to the agency's EB-5 Immigrant Investor Program. Under the EB-5 program, individuals are eligible to apply for conditional lawful permanent residence in the United States if they make the necessary investment in a new commercial enterprise in the United States and create 10 full-time jobs for qualified U.S. workers. The reforms made to the program this year increase the minimum investment level to account for inflation over the past three decades and substantially restrict the possibility of gerrymandering targeted employment areas that qualify for a reduced investment amount, ensuring that the incentive is reserved for rural and high-unemployment areas most in need.

Large Workload

- USCIS naturalized 833,000 new citizens in FY 2019 – an 11-year high in new oaths of citizenship.
- USCIS granted lawful permanent residence to 582,000 individuals
- USCIS processed more than 2.1 million employment authorization applications.
- USCIS verified more than 40 million new hires through E-Verify.

Modernization

- Online Filing
    - The agency's transition from paper applications to a fully digital experience continues to be an important priority for USCIS. Consequently, USCIS continues to expand our online filing capabilities.
    - In FY 2019, 1,214,300 applications were filed online, a 10.4% increase from the 1,100,242 filed in FY 2018.
    - USCIS added three forms (N-600, N-600K, and I-539) during FY 2019 for a total of eight forms (I-90, I-131A, N-336, N-400, N-565, N-600, N-600K and I-551) available now for online filing.
    - USCIS plans to add several more forms for electronic filing during FY 2020, including the I-485, I-765, I-131, I-129 and I-589.

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- USCIS stood up FIRST, the federal government's first fully electronic FOIA/Privacy Act request and delivery system that allows users to submit and track FOIA requests and receive documents digitally. In FY 2019, more than 26,000 electronic responses have been delivered to individuals with online accounts.
- Expansion of Information Services Modernization Program (InfoMod). InfoMod saves both applicants and the agency time by enabling hundreds of thousands applicants who would have otherwise required an in-person appointment at a USCIS office to have their inquiries answered through the agency's suite of self-help tools online and over the phone. Under InfoMod, applicants still in need of in-person appointment services for certain issues, such as emergency travel documentation, are now able to schedule appointments without being turned away due to lack of availability.
- Self-Help Tools
    - USCIS has continued to expand and enhance the self-help tools available to applicants online and through the agency's Contact Center with the goal of providing more efficient, timely service. Due to these improvements, USCIS has seen an 13% increase in the number of individuals using USCIS' digital tools since FY 2018. The number of myUSCIS sessions reached 35,138,900 in FY 2019 compared, with 31,079,323 in FY 2018.

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ICE Arrests at USCIS Facilities

BACKGROUND

- An average of about 30-50 arrests occur each month at USCIS field offices.
- Approximately a third of these arrests are by local law enforcement agencies for non-immigration offenses and include both aliens and U.S. citizens.

TALKING POINTS

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Leadership at USCIS

BACKGROUND

- Ken Cuccinelli is Principal Deputy Director of USCIS. As such, he is the Senior Official Performing the Duties of the Director of USCIS.
- He also is the Senior Official Performing the Duties of the Deputy Secretary of Homeland Security
- In order to focus on his duties in the Deputy Secretary position, Mr. Cuccinelli has delegated the day-to-day management of USCIS to Deputy Director for Policy Joseph Edlow.
- Mr. Edlow most recently served as the Chief Counsel at USCIS where he managed the agency's legal program. He previously served as a deputy assistant attorney general with the Office of Legal Policy at the Department of Justice and in a variety of senior level positions on Capitol Hill, including as a counsel on the House Judiciary Committee. Prior to his time on Capitol Hill, Mr. Edlow spent six years with the Office of the Principal Legal Advisor (OPLA), Immigration and Customs Enforcement (ICE). During this time, he served as assistant chief counsel in the Baltimore Field Office where he ably represented the US government in removal proceedings and advised ICE agents and officers.
- Mark Koumans was the deputy director for operations. He is currently detailed to the Department of Homeland Security's Office of the Under Secretary for Management to serve as the Presidential Transition Officer. Larry DeNayer is the acting deputy director for operations.

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Migrant Protection Protocols (MPP)

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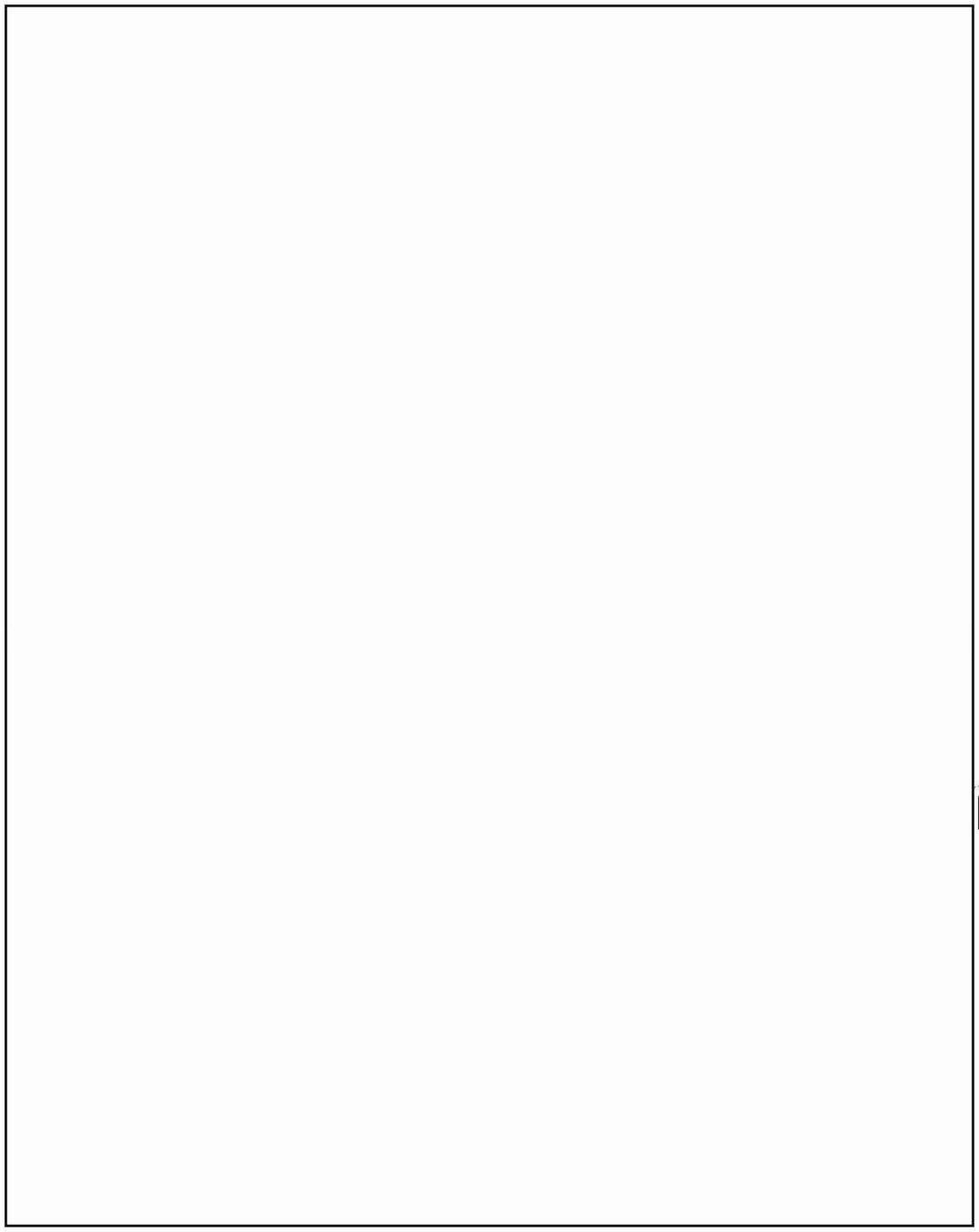
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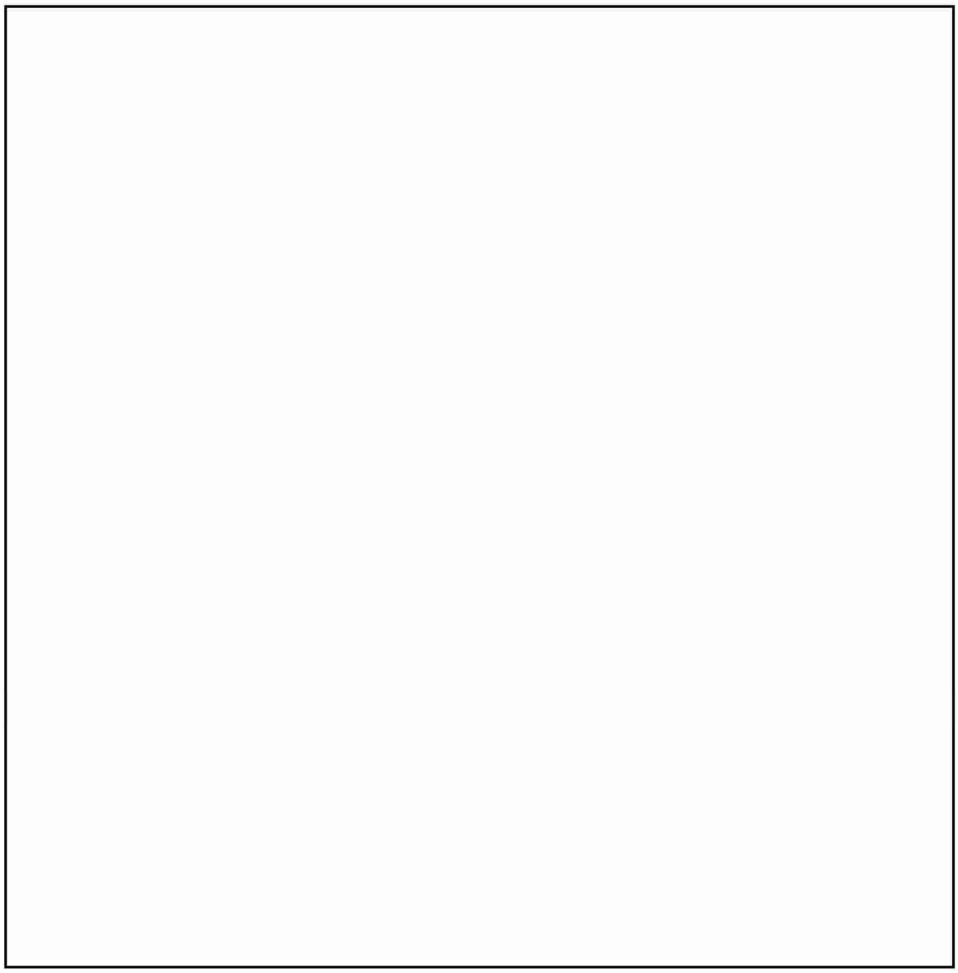
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Naturalization Test Revision

BACKGROUND

- Section 312 of the Immigration and Nationality Act (INA) outlines the English and civics requirements for naturalization. By law, candidates for naturalization must have "an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language" and "knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States."[1]
- Congress afforded some discretion in defining what it means to assess an applicant's "knowledge and understanding" of U.S. history and government (civics), and the regulations in 8 CFR § 312 speak very generally about how USCIS should establish that an applicant can demonstrate "knowledge and understanding" of U.S. civics. For this reason, USCIS has exercised this discretion by developing, administering, and occasionally revising the civics test.
- The former Immigration and Naturalization Service (INS) began a revision process in 1997 and published an updated naturalization test in 2000 that standardized test questions; however, the INS did not standardize the manner in which the test was administered. In 2009, USCIS launched its most recent test revision, which implemented standardized test forms for reading and writing, as well as civics test requirements. These were driven by a commitment to meeting the statutory and regulatory requirements of INA § 312 and 8 CFR part 312 by creating a standardized and meaningful test for all applicants.

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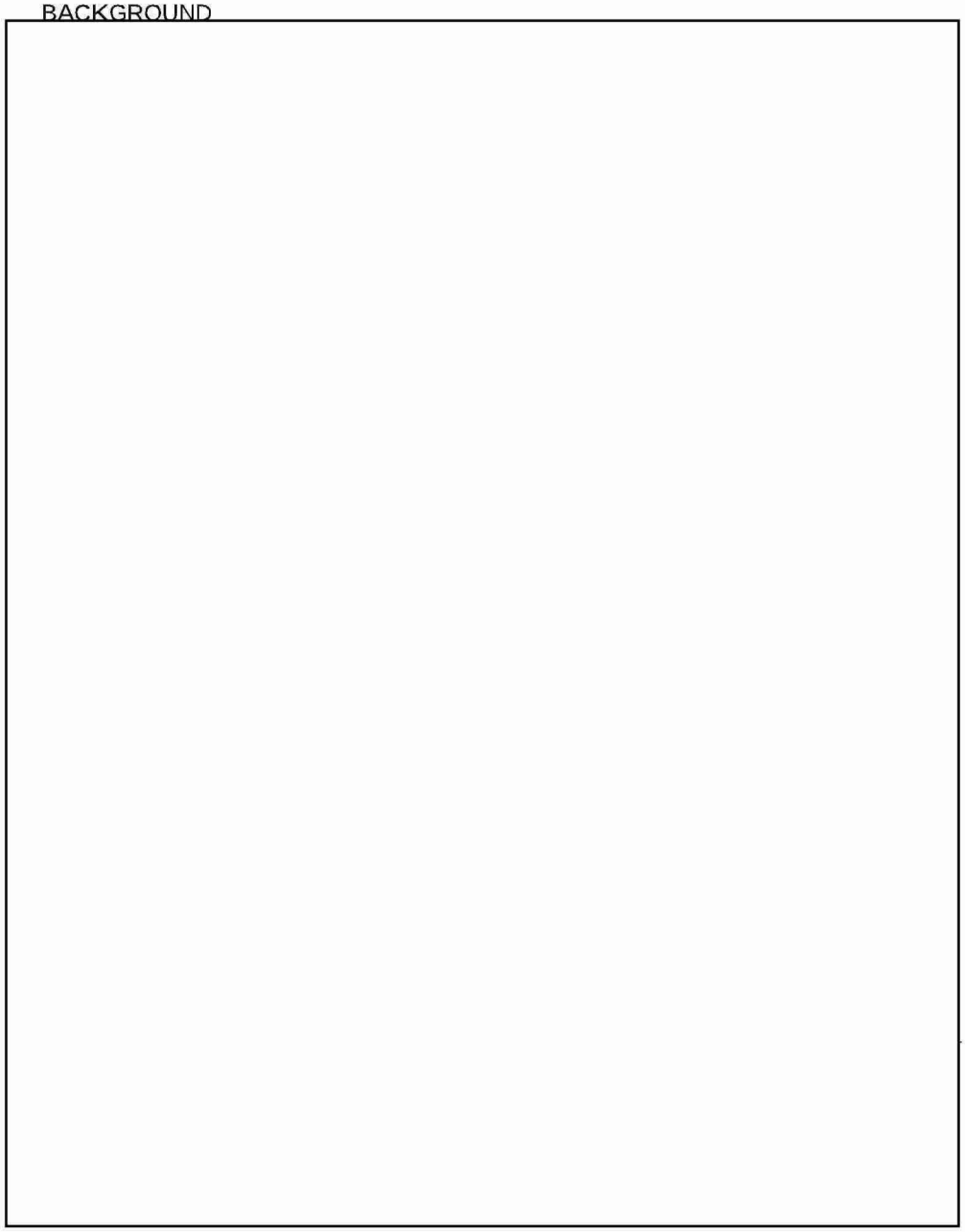
[1] The English language requirement does not apply to individuals who, on the date of filing their application for naturalization, are (1) over 50 years old and have lived in the United States as a Lawful Permanent Resident (LPR) for at least 20 years; or (2) over 55 years old and have lived in the United States as an LPR for at least 15 years. INA § 312(b)(2). The English language and civics requirements do not apply to individuals who, because of a physical or developmental disability or mental impairment, are unable to comply.

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NOTICES TO APPEAR

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Public Charge

BACKGROUND

- Section 212(a)(4) of the Immigration and Nationality Act (INA) makes inadmissible any alien (that is, any individual who is not a citizen or national of the United States) "who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the [Secretary of Homeland Security or Attorney General] at the time of application for admission or adjustment of status, is likely at any time to become a public charge."
- The Inadmissibility on Public Charge Grounds final rule was published August 14, 2019 and was scheduled to take effect October 15, 2019. On February 24, 2020, USCIS implemented the final rule nationwide, after the U.S. Supreme Court lifted the last remaining injunction.
- The final rule defines "public charge" as an alien who receives one or more public benefits, as defined in the final rule, for more than 12 months, in the aggregate, within any 36-month period. However, an alien is not inadmissible under section 212(a)(4) of the INA unless he or she is likely at any time in the future to receive one or more public benefits for more than 12 months, in the aggregate, within any 36-month period.
- The final rule defines "public benefit" as any Federal, State, local, or tribal cash assistance for income maintenance including, but not limited to, SSI, TANF and General Assistance, and a finite list of non-cash benefits: SNAP, most forms of Medicaid, and public housing. The final rule also clarifies that DHS will not consider the receipt of public benefits, as defined in the final rule, by certain members of the U.S. Armed Forces and their spouses and children and certain children of U.S. citizens acquiring citizenship.
- The final rule also excludes from consideration the receipt of Medicaid by children and pregnant women (including the 60 days after the last day of pregnancy), and excludes from consideration the receipt of Medicaid for the treatment of an emergency medical condition, Medicaid services provided under the Individuals with Disabilities Education Act, and Medicaid for certain school-based services or benefits.
- The final rule applies only to applications and petitions postmarked (or submitted electronically, if applicable) on or after February 24, 2020.
- Under the final rule, DHS will not consider an alien's application for, certification or approval to receive, or receipt of non-cash public benefits before October 15, 2019, when deciding whether the alien is likely at any time in the future to become a public charge. DHS will now treat this prohibition as applying to such public benefits received before February 24, 2020.
- The final rule establishes a totality of the circumstances standard for determining whether an applicant for admission or adjustment of status is likely at any time in the future to become a public charge. USCIS will weigh positive and negative factors related to the mandatory factors set forth in the statute and additional regulatory factors established in the final rule: the applicant's age, health, family status, assets, resources, financial status, education and skills, prospective immigration status and expected period of admission, and a sufficient Affidavit of Support Under Section 213A of the INA, when required to be submitted.
- The rule also establishes several "heavily weighted" positive and negative factors, such as whether the alien has income above 250 percent of the federal poverty guidelines (heavily weighted positive factor), and receipt of more than 12 months of public benefits within the 36 months immediately preceding the filing of the alien's application for admission or adjustment of status on or after February 24, 2020 (heavily weighted negative factor).
- Under this totality of the circumstances framework, the presence or absence of a single factor cannot be the sole criteria for determining inadmissibility as likely at any time to become a public charge, (unless that factor is the absence of a sufficient Affidavit of Support Under Section 213A of the INA when required by the laws and regulations governing a specific immigration benefit, such as certain family-based adjustment of status applications).

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- The final rule also explains how USCIS will exercise its discretionary authority, under section 213 of the INA, to offer an alien seeking adjustment of status, who is inadmissible only on the public charge ground, the opportunity to post a public charge bond. The minimum public charge bond amount is set at $8,100, adjusted annually for inflation. For 2020, the minimum bond amount is $8,240 based on the Consumer Price Index for All Urban Consumers (CPI-U) update as of December 2019.
- The final rule will not apply to aliens whom Congress has exempted from the public charge ground of inadmissibility including, but not limited to, asylees, refugees, special immigrant juveniles, and Afghans and Iraqis with special immigrant visas, or to those who DHS has granted a waiver of public charge inadmissibility.
- The final rule also clarifies that DHS will only consider public benefits received directly by the applicant for the applicant's own benefit, or where the applicant is a listed beneficiary of the public benefit. DHS will not consider public benefits received on behalf of another, such as if the alien received the benefits on behalf of a child.
- In addition to addressing inadmissibility under section 212(a)(4) of the INA and public charge bonds under section 213 of the INA, the final rule also establishes that an alien who is seeking an extension of nonimmigrant stay under section 214 of the INA or a change of nonimmigrant status under section 248 of the INA is ineligible if the alien received public benefits for more than 12 months in the aggregate within any 36 month period since obtaining the nonimmigrant status the alien seeks to extend or change, beginning on February 24, 2020. This condition does not apply to classifications that are exempted from public charge inadmissibility by Congress and aliens who obtained waivers of public charge inadmissibility.

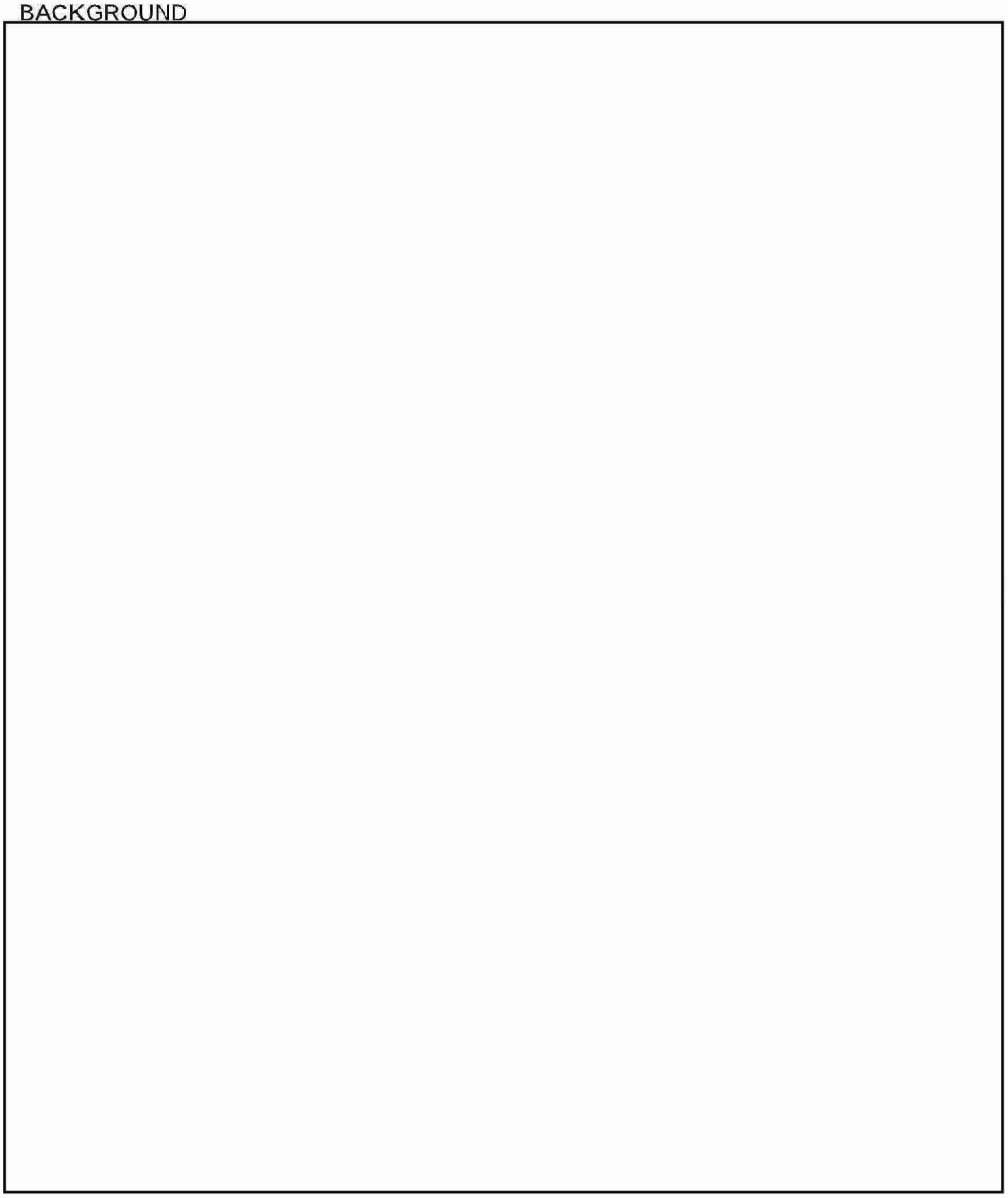
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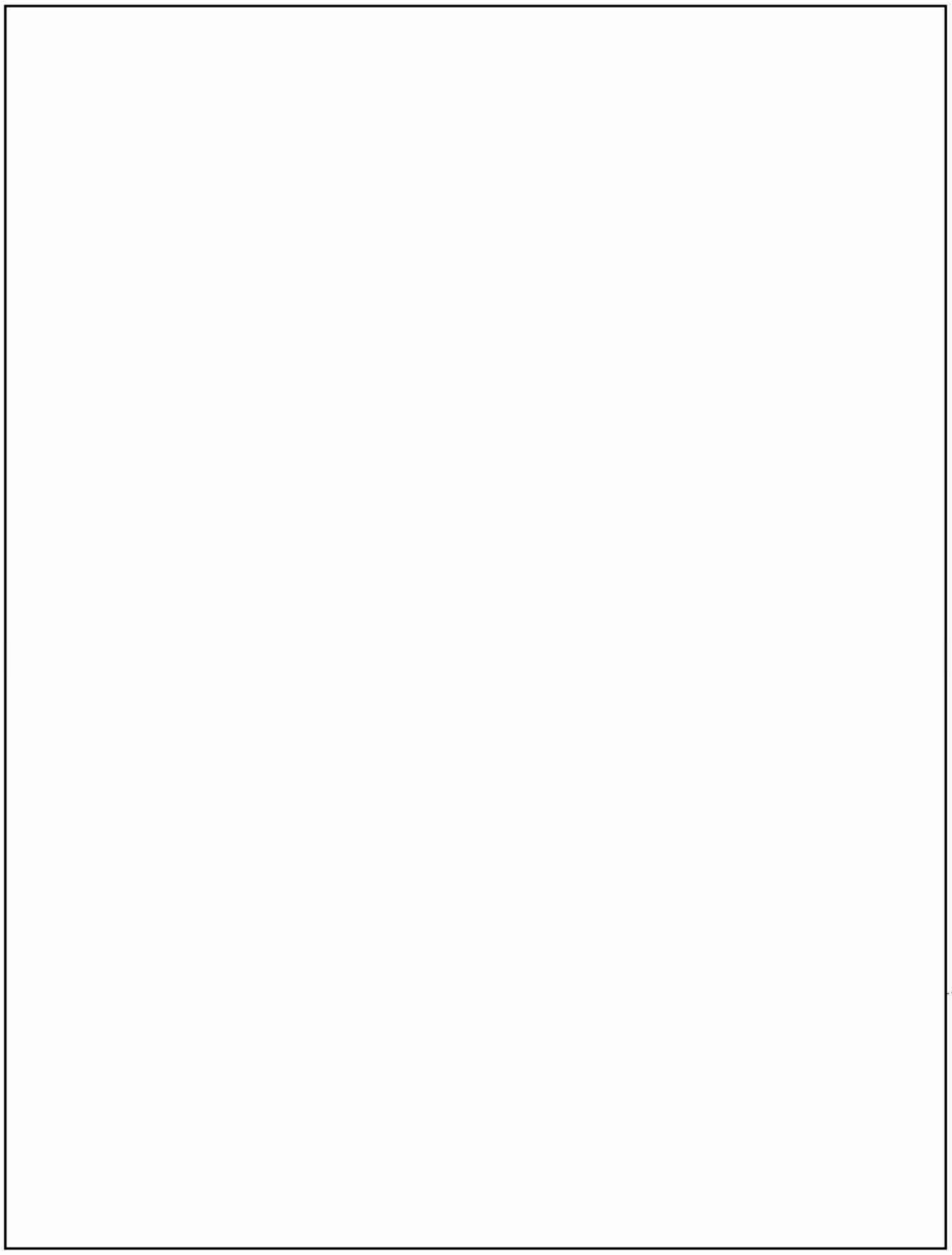
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Deference to Previous Adjudication – Rescission Memo

Background:

- Previously, USCIS officers deferred to the prior approval of certain nonimmigrant petitions when they adjudicated petition extensions involving the same petitioner, beneficiary, and underlying facts in accordance with the April 23, 2004, memorandum "The Significance of a Prior USCIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity" and section VII of the Aug. 17, 2015, policy memorandum titled "L-1B Adjudications Policy."
- USCIS published a new policy memorandum on October, 23, 2017, rescinding the previous guidance. Now, USCIS officers will no longer defer to prior USCIS approvals as proof of eligibility when adjudicating nonimmigrant visa petition extension requests. They must apply the same scrutiny, even in cases where the key elements of the request – the petitioner, beneficiary and underlying facts – are unchanged from a prior petition approval. Prior decisions are not binding.
- The burden of proof in establishing eligibility for the petition extension is on the petitioner, regardless of whether USCIS previously approved their request. The adjudicator's determination should be based on the merits of each case, and officers may request additional evidence if the petitioner has not submitted sufficient evidence to establish eligibility.
- This updated guidance is consistent with the agency's current priorities, and advances policies that protect the interests of U.S. workers pursuant to the Buy American and Hire American Executive Order.

Talking Points:



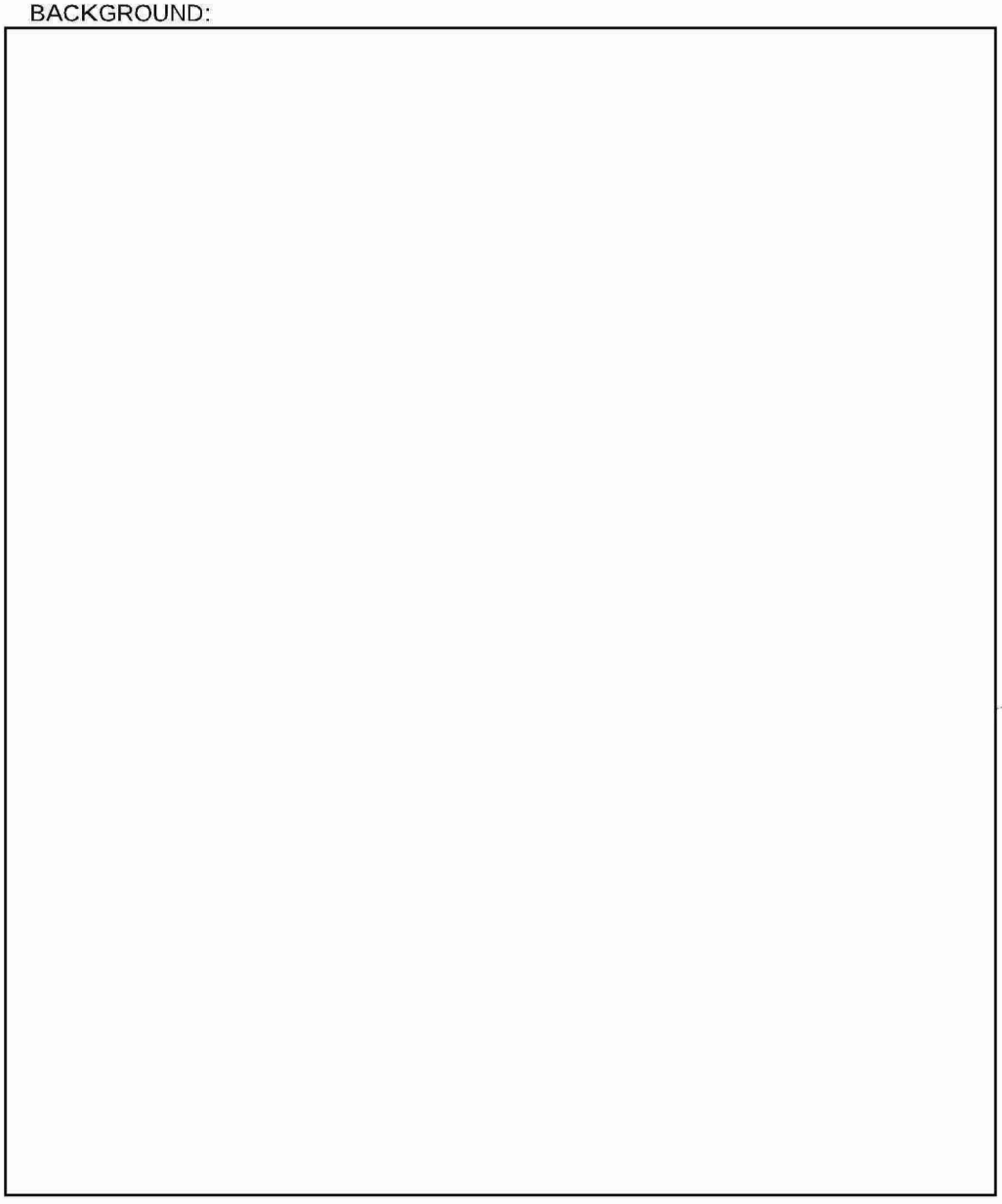
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E-Verify

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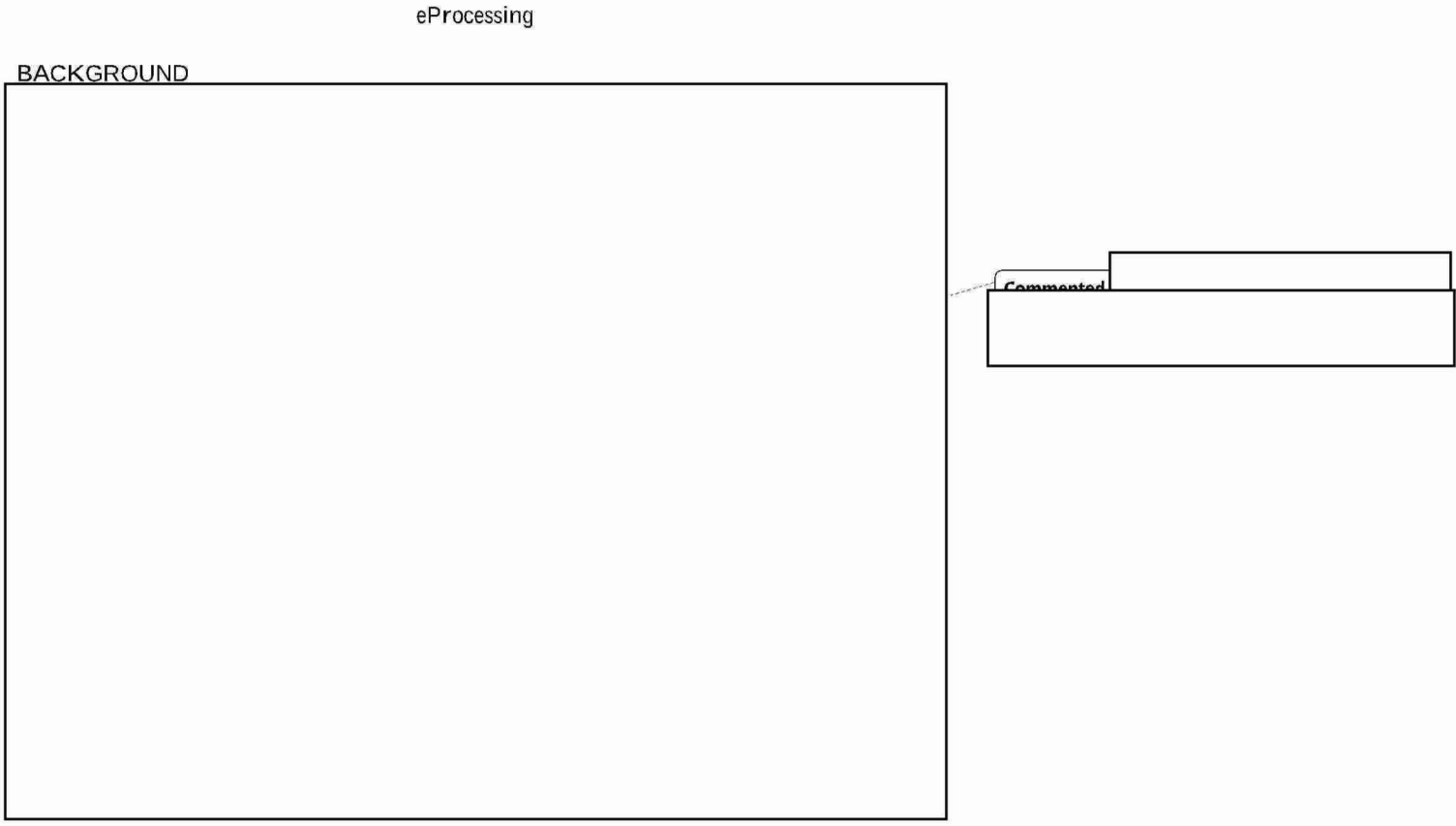


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H-1B Wage Level Issues

Background:

- Ensuring the integrity of the immigration benefits system is one of this administration's guiding principles in the effort to strengthen employment-based visa programs and protect U.S. workers.
- As part of our efforts to fulfill the Buy American and Hire American Executive Order, USCIS has instituted a series of reforms designed to protect U.S. workers, cut down on frivolous petitions, and improve the integrity and efficiency of the immigration petition process.
- In addition to increased site visits, the agency is ensuring to the extent possible under existing law, that the petitioners seeking H-1B visas as well as their beneficiaries are eligible and that we're doing all we can to enhance integrity in the program.
- It is incumbent upon the petitioner, not the government, to demonstrate that a benefit requester meets the eligibility requirements under the law for a desired immigration benefit.

Talking Points: (b)(5)

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Realignment of USCIS International Field Offices

BACKGROUND

- In March 2019, USCIS internally announced the decision to enter into preliminary discussions with DHS and DOS to shift much of its international workload to U.S. operations for domestic processing, as well as to U.S. embassies abroad, in an effort to maximize agency resources and reduce backlogs, in accordance with President Trump's Executive Order 13781 and the then-OMB Director Mulvaney's April 12, 2017 memorandum.
- The USCIS international offices provide immigration services and facilitate inter- and intra-government communication and cooperation with foreign partners.
- DOS has a much larger international footprint compared to USCIS, and in locations where USCIS does not have a presence, the State Department provides certain limited immigration services under an existing inter-agency agreement.

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TALKING POINTS

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TOPICS IN LITIGATION

The following list was developed by LNSCD (OCC) on May 7, 2020. The topics are under active litigation and answers beyond the most general information could raise complicated issues.

- Public Charge rule
- Deferred Action for Childhood Arrivals (DACA) rescission (awaiting Supreme Court decision)
- Non-military deferred action
    - case in Massachusetts is ongoing
    - USCIS continues to process requests as testified to by SOPDD Cuccinelli
- Challenge to the validity of the appointment of Ken Cuccinelli as Principal Deputy Director/Acting Director USCIS
- Policy memo "Accrual of Unlawful Presence and F J and M Nonimmigrants"
- U-visa waiting list backlog
- CARRP (Controlled Application Review and Resolution Program)
- EB–5 Immigrant Investor Program Modernization Rule
- SIJ program and what state court decisions qualify as a predicate for the status
- Processing delays for Special Immigrant Visas (SIV) (Afghan and Iraqi applicants)
- USCIS and ICE coordination in cases where individuals have outstanding removal orders but are the subject of a family based visa petition and have potential eligibility to apply for an I-601A waiver (provisional unlawful presence waiver process)
- Fee waivers (litigation stayed pending issuance of new Fee Rule)
- Military Accessions Vital to the National Interest (MAVNI)
- Temporary Protected Status (TPS) termination for Haiti, El Salvador, Sudan, Nicaragua, Honduras, Nepal

Asylum/Refugee Related Issues:

- Migrant Protection Protocols (MPP)/Stay in Mexico
- Pilot program: MOA and delegation to Border Patrol Officers to conduct CF interviews
- Challenge to Matter of A-B-, 27 I & N Dec. 247 (A.G. 2018) and USCIS guidance for CF
- Ability to challenge negative credible fear determinations by habeas corpus (Thuraissigiam issue pending before the Supreme Court)
- Asylum Cooperative Agreement (ACA) Interim Final Rule (84 FR 63994)
- Asylum Eligibility and Procedural Modifications Interim Final Rule (84 Fed. Reg. 33829) (asylum transit rule)
- UAC memo "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children"
- Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, Interim Final Rule (83 Fed. Reg. 55934) & Presidential Proclamation #9822
- USCIS application of Matter of L-E-A-, 27 I. & N. Dec. 581 (A.G. 2019) (family membership social group claims)

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- Prompt Asylum Claim Review program ("PACR") & Humanitarian Asylum Review Process ("HARP")
- Refugee Processing of Iranian religious minorities in Vienna, Austria

Employment Based Non-Immigrants

- H-1B Border Admission Fees
- ITServe Alliance, Inc. v. USCIS settlement discussions (H-1B issues including ""Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites" memo)
- H-2B Denials on Guam

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NCIC III System

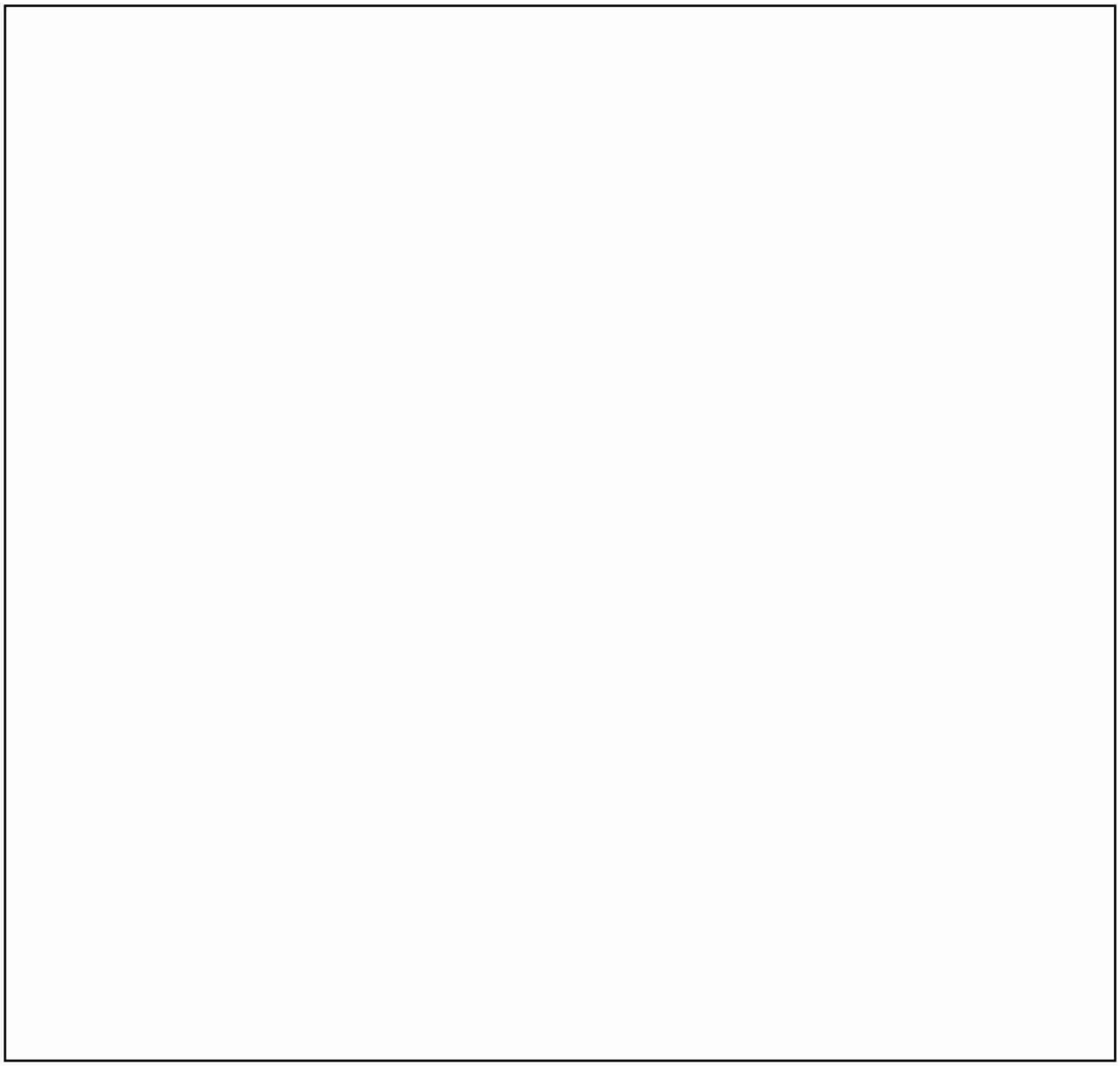
Background:

- The Interstate Identification Index System (III System) is a database of criminal history information operated by the Federal Bureau of Information (FBI). The National Crime Prevention and Privacy Compact Act of 1998 (Compact Act) generally requires member states to maintain detailed databases of criminal history records and to make these records available in the III System. The III System is accessible either through fingerprint-based checks or through the National Crime Information Center (NCIC) portal, which is a name-based check.
- USCIS requires access to the full and complete criminal history information of applicants, petitioners, beneficiaries, and requestors for immigration benefits requiring background checks.
- Such benefits include lawful permanent residence (green cards) and naturalization. USCIS conducts background checks in order to determine whether an individual is eligible for the benefit requested and whether he or she poses a public safety or national security risk. In addition to benefit denial, certain information may establish grounds for administrative investigation, criminal referral, and initiation of removal proceedings.
- The scope of Federal agency access to the III System varies depending on whether the access is for a "criminal justice purpose" or for a "noncriminal justice purpose."
- The relevant statute lists background checks for "employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances" as instances in which uses of criminal history records are for noncriminal justice purposes. 42 U.S.C. § 14616, Art. I(18).

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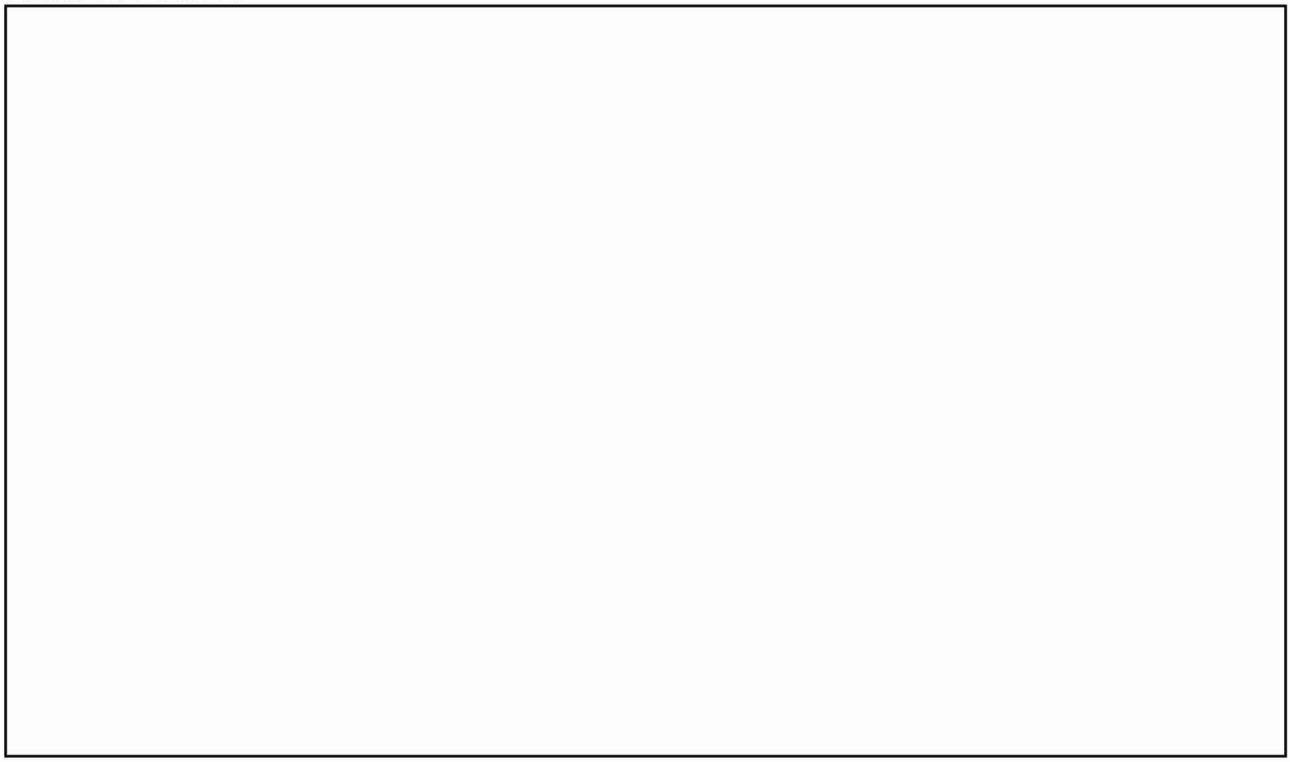
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New H-1B Selection Order

BACKGROUND

- Congress created the cap of 65,000 new H-1B visas per fiscal year with the Immigration Act of 1990, beginning with FY 1992. Since enactment, Congress has modified the cap and created certain exemptions from the cap. While the annual numerical cap remains 65,000 (including visas for H-1B1 nonimmigrants from Chile and Singapore), the H-1B Visa Reform Act of 2004 added a cap exemption for 20,000 petitions filed on behalf of beneficiaries with a master's degree or higher from a nonprofit or public U.S. institution of higher education (commonly referred to as the advanced degree exemption or master's cap).
- On April 18, 2017, President Trump signed the Buy American and Hire American executive order, which seeks to create higher wages and employment rates for U.S. workers and to protect their economic interests by rigorously enforcing and administering our immigration laws. It also directs DHS, in coordination with other agencies, to advance policies to help ensure H-1B visas are awarded to the most-skilled or highest-paid beneficiaries.
- As part of our efforts to fulfill the Buy American and Hire American executive order, USCIS finalized a rule amending regulations governing H-1B cap-subject petitions. It was published in the Federal Register on January 31, 2019 and went into effect on April 1, 2019.
- The final rule reversed the order by which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption. Changing the order in which USCIS selects petitions (or registrations, when required) toward the projected number to reach the H-1B numerical allocations will likely increase the number of petitions for beneficiaries with a master's or higher degree from a U.S. institution of higher education to be selected.
- The final rule also introduced an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. The electronic registration requirement went into effect for FY2021; filing for FY2021 petitions opened on April 1.

TALKING POINTS



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Supplemental Request

The Request:
The Administration is seeking an emergency supplemental appropriation of $1.221 billion to address COVID-19's impact on the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS). This includes:

- $571.2 million to fund payroll for over 18,000 personnel and mission critical general expenses in FY 2020. This includes rent, application support center contracts, FBI name checks and fingerprints, as well as essential IT contracts to maintain operations and secure USCIS networks and case management systems. The payroll and general expenses split are estimated as follows, payroll: $373.4 million and general expenses: $197.8 million.

- $650 million is required for carryover funding to ensure sufficient resources are available at the start of FY 2021 to maintain operations and mitigate the impact of decreased receipts due to COVID-19.

- If receipts materialize higher than expected and non-premium carryover exceeds $650 million at the end of FY 2020 4th quarter, then the three legislative proposals presented in this paper present various methods to credit funding back to the Treasury and minimize the burden on the U.S. taxpayer.

The Situation:
COVID-19 has significantly reduced USCIS revenue collections. Below are noteworthy items:

- USCIS is primarily funded by immigration and naturalization benefit fees charged to applicants and petitioners. These fees account for approximately 96 percent of USCIS' total FY 2020 spending authority.
- USCIS adjudicates many immigration requests and benefits for which it does not collect a fee, and in some cases, the statute prohibits the collection of a fee. This includes benefits for asylees and refugees, humanitarian visas, those seeking deferred action, satisfactory departure, various document replacements, and FOIA requests. Thus, revenue from all other fees must cover these expenses.
- USCIS estimates that application and petition receipts will decrease by approximately 61% and the associated revenue collections will decrease by over $1.3 billion through the end of FY 2020.
    - On March 20, 2020, USCIS announced the temporary suspension of premium processing service for Forms I-129 (Petition for a Nonimmigrant Worker) and I-140 (Immigrant Petition for Alien Worker) petitions because it would not meet the 15-day statutory adjudication timeframe under current operations. Missing the deadline would require the agency to refund the fees.
- USCIS is dramatically limiting spending and has instituted a hiring freeze through the end of FY 2020; and is also identifying unliquidated obligations from prior years to generate recoveries for immediate use.

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- These estimates are based on the most recent information available. However, this is an unprecedented event and there is no historical data that can be used to project the scope and duration of COVID-19's impact on USCIS' revenue.
- USCIS assessed multiple options to maintain fiscal solvency, including expediting implementation of the FY 2019/2020 fee rule and large-scale staff furloughs.

The Urgency:

- DHS estimates that USCIS will exhaust its IEFA non-premium funding by approximately July 5, even with the drastic spending cuts already implemented effective in the 3rd quarter.
- With funding projected to be depleted by July 5, large-scale furloughs will be necessary to bring spending levels in line with anticipated receipts.
    - To comply with U.S. Office of Personnel Management (OPM) guidelines, notices must be delivered to affected employees 30 days in advance of furlough…with OPM approval to waive the 60-day notification period.
    - Furloughs will be messaged as a last resort measure to sustain minimal affordable operations until supplemental funding is received.
    - Furlough notices will be provided to employees on June 5 with an effective date of July 6. Should an appropriation occur before July 6, furlough notices will be withdrawn.
- The fee rule becomes effective 60 days after publication. If it publishes by July 1, collections may increase by up to $52 million, which would help, but not be enough to resolve the situation.
    - Additional revenue from higher fees or a pre-implementation surge will not materialize until after July 5 when resources are projected to be depleted.
    - Even with higher fees, USCIS will still face resource challenges if application and petition receipts continue at current levels.

Additional Details:
USCIS is limiting FY 2020 3rd and 4th quarter spending to payroll and mission critical needs. Even with these drastic spending cuts, USCIS still needs approximately $1.221 billion of supplemental funding to maintain limited operations in FY 2020 and start FY 2021 with a $650 million (3 months) non-premium carryover balance. The table below reflects a supplemental request level that maintain 3 months of carryover into FY 2021. The carryover funding is necessary to ensure that USCIS has a sufficient cash balance available to avoid the risk of Anti-deficiency Act (ADA) violations and support ongoing operations during the FY 2021 1st quarter until application and petition receipts materialize at a level sufficient to cover obligations.

Legislative Language Options:
Following are three appropriation language options which would provide USCIS additional funding but allow for any unneeded/unused funding to be returned to the Treasury if revenue comes back up above current estimates.

Option 1: Appropriates an additional amount to the IEFA account in no-year funding. To the extent that amount is more than is needed, because fee collections unexpectedly increase, there is

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a proposal for rescission in future fiscal years. This is the simplest and cleanest option and is the option DHS OGC would recommend.

Straight IEFA Appropriation with Future Year Rescission

U.S. Citizenship and Immigration Service

Immigration Examinations Fee Account

For an additional amount for "Immigration Examinations Fee Account" authorized by section 1356(m) of Title 8, United States Code, $X,XXX,XXX,XXX, to remain available until expended, for the necessary expenses of providing immigration adjudication and naturalization services, and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the "Immigration Examinations Fee Account:" Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Rescission Provision for FY 2021 or 2022

Sec. 5XX. (a) Of the unobligated balances of funds made available under the heading "U.S. Citizenship and Immigration Service – Immigration Examinations Fee Account" in Title XX of [Insert Name of Public Law] (Public Law XXX-XXX), $X,XXX,XXX,XXX are hereby rescinded.

(b) The amounts rescinded pursuant to subsection (a) that were previously designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 are designated by the Congress as an emergency requirement pursuant to that section of that Act.

Option 2: A two-year appropriation with offsetting collections. The first number in this provision is the amount to be appropriated, with the second number being the fees USCIS currently projects they will collect through the end of the fiscal year. Amounts collected in excess of that projected amount during the stated time period would offset the appropriated amount. Amounts collected that were less than the stated amount, or outside the stated time period, would be credited to IEFA. This is the option DHS OGC would recommend, if an offset is required by OMB or the Hill.

O&S Appropriation – Two Year Funding with Offsetting Collections

United States Citizenship and Immigration Service

Operations and Support

For an additional amount for necessary expenses of U.S. Citizenship and Immigration Services for operations and support for the necessary expenses of providing immigration adjudication and naturalization services, $X,XXX,XXX,XXX, to remain available until September 30, 2021: Provided, That any fees collected in excess of $X,XXX,XXX,XXX that are authorized under section 1356(m) of title 8, United States Code, collected after the date of the enactment of this

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provision and prior to September 30, 2020 shall be credited to this appropriation as offsetting collections, and shall be available only for the purposes authorized by section 1356(n) of Title 8, United States Code: Provided further, That the sum appropriated under this heading from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are recovered in accordance with the previous proviso: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Option 3: Appropriates no-year funding, and then cancels some of that budget authority in FY2021 based on the carryover balance in the IEFA. The focus is on protecting the carryover, which it highlights. This is a new construction, and not sure how it would be received on the Hill. It potentially runs the risk of inadvertently cancelling more budget authority than intended, depending on how the Hill or GAO reads it. This is the option USCIS would recommend.

O&S Appropriation No-Year Funding with Cancelation of Budget Authority

United States Citizenship and Immigration Service

Operations and Support

"For an additional amount for "Operations and Support Services" for the necessary expenses for U.S. Citizenship and Immigration Services of providing immigration adjudication and naturalization services, $1,222,000,000, to remain available until expended: Provided, That any unobligated balances of funds made available under this section that exceed $650,000,000 when combined with any unobligated balance in the "Immigration Examinations Fee Account" on September 30, 2020 shall be cancelled and returned to the General Fund of the Treasury: Provided further, That the Committees on Appropriations of the Senate and the House of Representatives are notified no later than November 30, 2020, that any such cancellation has been completed: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985."

Option 4: Appropriates two-year funding. An additional general provision authorizes an additional surcharge that returns funding to the general fund of the Treasury in the same amount as the appropriation. This is the recommended option, if a surcharge is desired.

O&S Appropriation with Surcharge Directing Funds to Treasury

United States Citizenship and Immigration Services

Operations and Support

For an additional amount for necessary expenses of U.S. Citizenship and Immigration Services for operations and support for the necessary expenses of providing immigration adjudication and naturalization services, $X,XXX,XXX,XXX, to remain available until September 30, 2021: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

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Sec. XX. Citizenship and Immigration Services Surcharge.

For this fiscal year, and for each fiscal year hereafter until the amount of surcharge collected under this section equals $XX [the amount of the appropriation], any person paying any fee collected by or on behalf of U.S. Citizenship and Immigration Services and authorized by the Secretary of Homeland Security under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), shall pay a surcharge in addition to each such fee. The surcharge shall be 10 percent of such fee rounded up to the nearest dollar. Notwithstanding any other provision of law, including the Administrative Procedure Act (5 U.S.C. 553) and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), beginning 60 days after the enactment of this Act, the Secretary of Homeland Security shall begin collecting the surcharge prescribed by this section and shall reject any benefit request submitted without payment for such surcharge, if applicable. Notwithstanding any other law, including the provisions of section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) regarding payment of certain fees to the treasury of Guam or the Virgin Islands, the Secretary shall transfer all surcharges collected under this section into the general fund of the Treasury.

Option 5: Achieves the same objective as Option 4. Rather than present the text as a general provision, this option provides two-year funding which is then offset by an additional authorized surcharge. The surcharge will be collected until the full amount of the appropriation is returned to the Treasury through the collection of the additional fees.

O&S Appropriation with Offsetting Collections

United States Citizenship and Immigration Services

Operations and Support

For an additional amount for necessary expenses of U.S. Citizenship and Immigration Services for operations and support for the necessary expenses of providing immigration adjudication and naturalization services, $X,XXX,XXX,XXX, to remain available until September 30, 2021: Provided, That, notwithstanding any other provision of law, including the Administrative Procedure Act (5 U.S.C. 553) and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.,) beginning on the date that is 60 days after the enactment of this provision, the Secretary shall charge and collect an additional 10 percent rounded up to the nearest dollar from each entity or individual who pays a fee to or on behalf of U.S. Citizenship and Immigration Services under section 1356(m) of Title 8, United States Code: Provided further, That additional amounts collected under the preceding proviso shall be credited to this appropriation as offsetting collections: Provided further, That the sum appropriated under this heading from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are recovered during the fiscal year 2020 and each fiscal year hereafter until the amount appropriated from the general fund under this provision is fully reimbursed, at which point the Secretary shall discontinue charging and collecting the additional fee authorized in the previous first proviso: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

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First: USCIS has a long history of excellent fiscal stewardship and has always lived within its means.

- Our archival research indicates that in the history of USCIS, we have never before requested emergency supplemental funding.

Second: USCIS is requesting emergency funding only as a result of the unprecedented impacts of the COVID-19 pandemic.

- Our annual revenue projections are always prudent, and do account for fluctuations in benefits requests anticipated, which are then reflected in our annual budget. However, USCIS could not have predicted a falloff in revenue like we have seen thus far with respect to COVID-19 impacts.

Third: USCIS has already taken significant action to reduce spending and conserve resources, but the impact from COVID-19 is too large for these measures alone to counteract.

- We have reduced our minimum carryover reserve requirement to historically low levels, while halting new programmatic activities as an initial response.
- Additional cost saving measures include a hiring pause effective May 1 through Sept 30, halting non-essential travel and suspending the Professional Development Program for the remainder of the fiscal year.

Fourth: USCIS anticipates that without supplemental assistance from this Committee, our ability to continue to fully meet our mission requirements and tackle challenges often highlighted by this committee, such as the pending caseload, will be degraded as the agency would be forced to constrain our activities toward essential functions until revenues rebound back toward normal.

- For example, the ability to hire additional staff in as described in FY 2021 Congressional Justification to reduce caseload would be severely impacted.

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First: USCIS takes the safety and health of its staff, contractors, and applicants very seriously, and moved quickly to implement safeguards

- All 88 Field Offices are closed to the public until June 4, with 93% of employees teleworking. However, field offices continue to provide limited in-person emergency services scheduled through the USCIS Contact Center.

- 241,873 N-400 and I-485 interviews were descheduled through June 4, 2020.

- Service Centers continue to operate but are exercising maximum telework. The available contracting resources have been focusing on file preparation for teleworking employees. USCIS has suspended premium processing until it can ensure it has the operational ability to maintain the expedited service.

- All 9 asylum offices and 1 sub-office are currently closed to the public. The Asylum Vetting Center (Atlanta), Tampa Asylum Office and Arlington Pre-Screening Center are not open to the public.

- Internationally, USCIS adheres to the Department of State's Chief of Mission guidelines at each post. The USCIS international field offices in Beijing, China; Guangzhou, China; Nairobi, Kenya; and Rome, Italy are temporarily closed to the public and are not providing any in-person services. The other 7 international field offices are providing in-person services only on an emergency basis, as needed.

- The Asylum Division has cancelled approximately 8,300 affirmative asylum interviews through June 4.

Second: USCIS is experiencing a sharp reduction in applications (through March 2020) for major forms, and subsequently the fee revenue that is generated from those forms.

- 48 percent (blended average) reduction in applications across the major forms (N-400, I-90, I-485, I-130, I-765)
- Revenue projections have been updated based on current data to assume lost revenue totaling $700.2M across these 5 top forms alone through the end of FY 2020.

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- Additionally, completions have declined by 10 percent when comparing similar time periods in 2019 to 2020 (late March/early April).

Third: USCIS offices are closed for in person services, but USCIS continues to work and serve the public and our applicants.

- USCIS offices are closed for all but limited emergency in-person services; we are focusing on cases that are not interview-dependent.
- A positive result is a slight reduction in the overall pending caseload due to fewer incoming applications. The pending caseload moderately declined (one percent) from February to March and decreased by 3 percent (from 2.45 million to 2.39 million) when compared to the end of fiscal year 2019.
- USCIS will play a critical role in supporting district- and state-level economic recovery by 1) maintaining the orderly administration of the lawful immigration system – a source of economic lifeblood and capital for an aging nation; and 2) just as important – by helping ensure that the millions of newly unemployed Americans do not face unfair or even unlawful competition from imported foreign labor.

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Recent Section 503 Notification of Reprogramming

Republicans
Some could express concern about the recent Section 503 Notification of Reprogramming.

Democrats
Some could express concern about the recent Section 503 Notification of Reprogramming.

(b)(5)

Potential Questions:

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Fee Rule

Republicans

Some could express concern about proposed fee increases.

Democrats

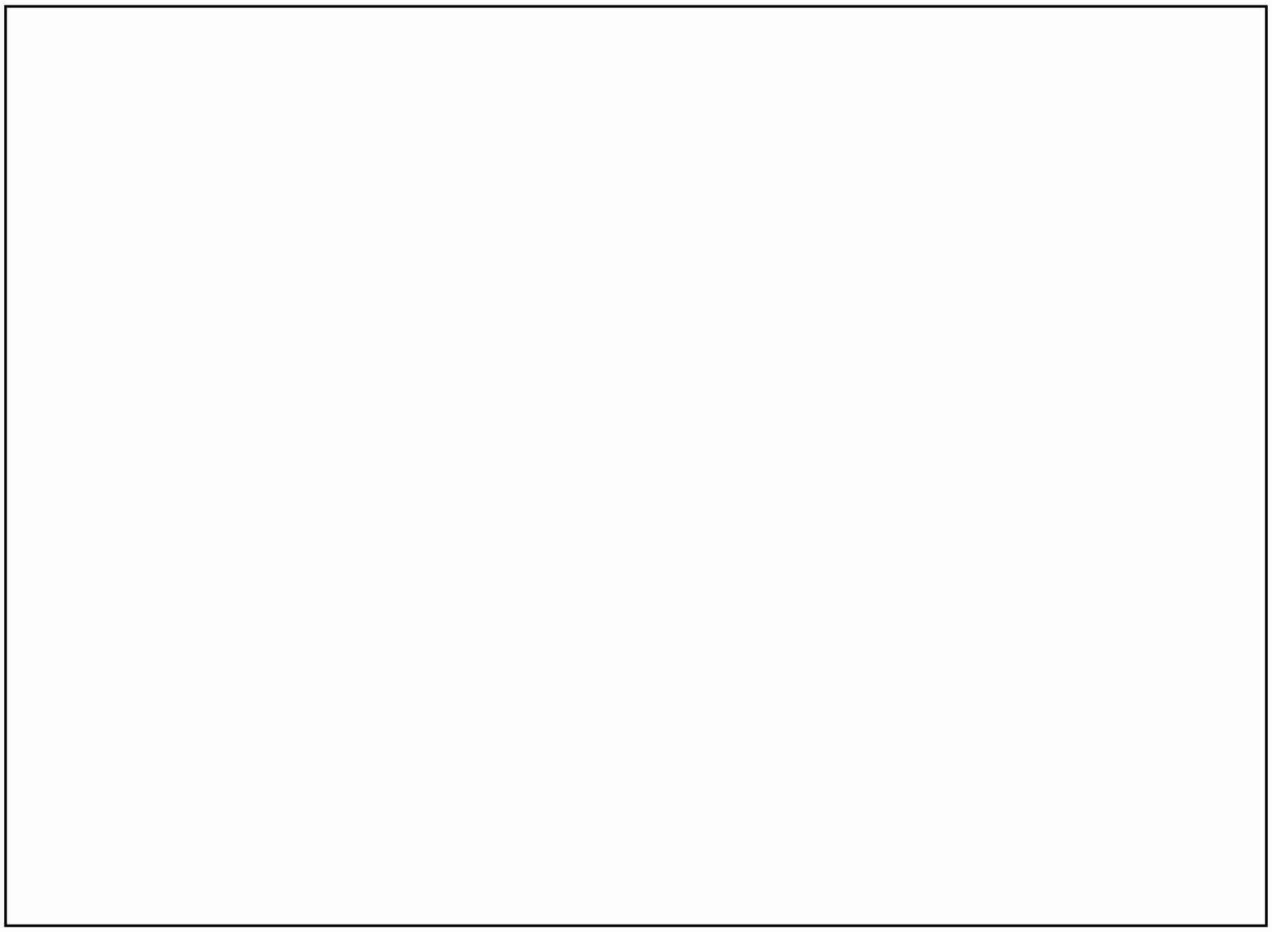
Some could express concern about proposed fee increases.

(b)(5)

Potential Questions:

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(b)(5)



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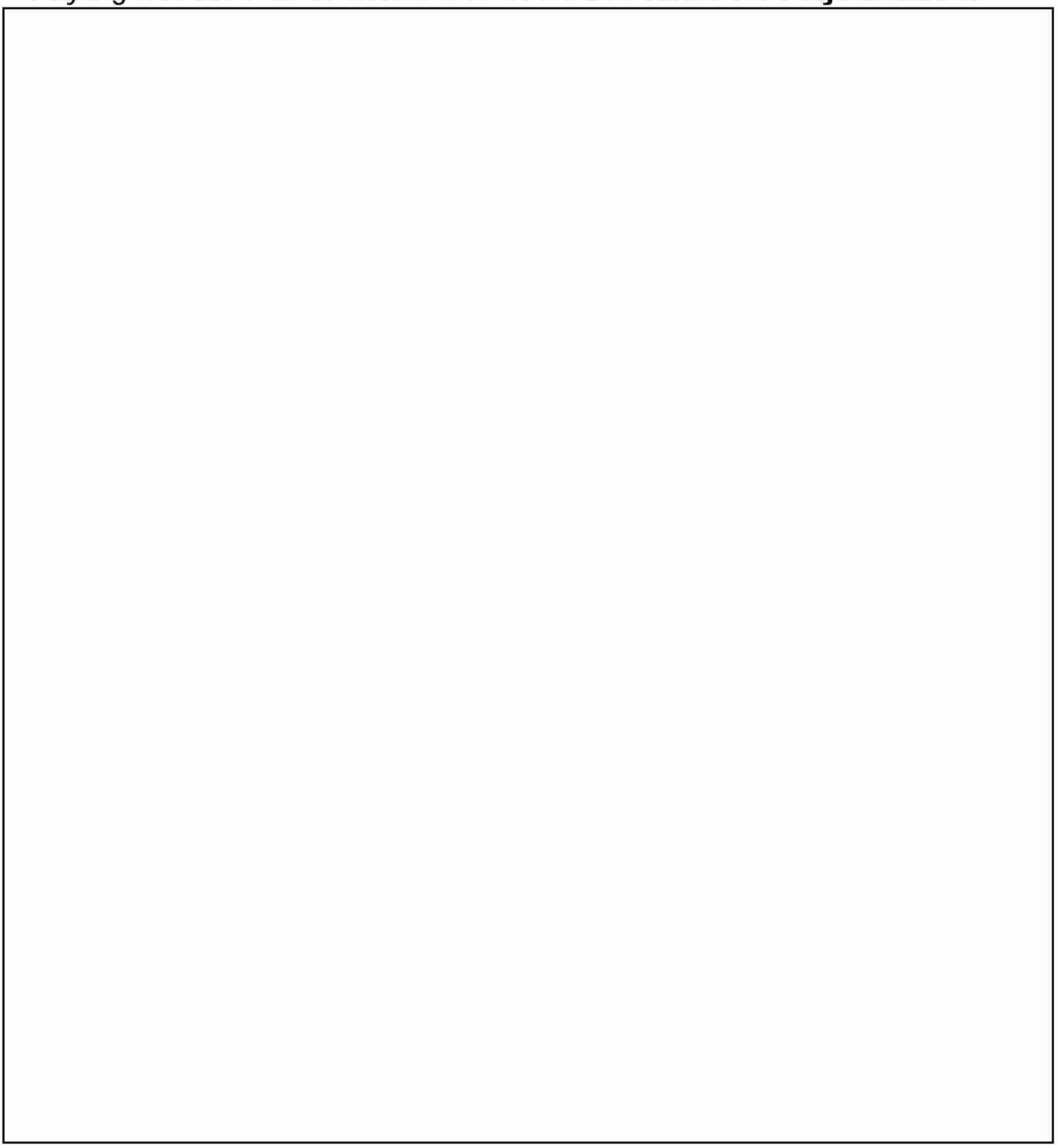
ICE Transfer

(b)(5)



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Paying Border Patrol Officers with USCIS funds for Adjudications



(b)(5)

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USCIS Responses to Congressional Technical Assistance Requests

(b)(5)

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BACK UP MATERIALS

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DHS-20-2156-A-004224

HAC/SAC Questions re: COVID 19 (Budget Perspective)

Backlog Impact:

- USCIS defines backlog as the number of pending cases that have been in process longer than the processing time goals.
- Since COVID-19:
  - Sharp reduction (48 percent) in application receipts for major forms types
  - Completions declined by 10 percent comparing in 2019 to 2020 (late March/early April)
  - Backlog moderately declined (one percent) from February to March and decreased by 3 percent (from 2.45 million to 2.39 million) when compared to the end of fiscal year 2019.
  - For comparison: In 2019 during the last two weeks of March and first two week of April, we completed 82K naturalizations. In 2020 during the same time period we only did 12K (which are only finishing up continuing cases that were already interviewed).

Application Changes Impact (SAC and HAC Chairwoman Lowey):

- We carefully analyze COVID 19 related application issues and leverage our resources to effectively address these challenges within our existing authorities.
- Effective May 6, USCIS will reuse biometrics that were previously captured at the initial USCIS in-person appointment under certain circumstances and only when specific requirements are met. If the requirements are met, a biometrics appointment is not required.
- A response received within 60 calendar days after the response due date set forth in a Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate will still be considered for processing if dated by USCIS between March 1 and July 1, 2020.

USCIS Continues to Serve the American Public (HAC Chairwoman Lowey):

- USCIS Service Centers have not closed. Service Centers continue to process all work, including extension of status and employment authorization requests.
- Services to the public are only temporarily suspended at field offices, asylum offices, and application support centers. Though, employees continue to perform mission-critical work.

Coronavirus Supplemental Request:

- PPE for USCIS ($3.3M will support all USCIS PPE requirements for a six-month timeframe based on the DHS Integrated Logistics Support Plan (ILSP) for pandemic response.
- PPE costs include items such as: garments, goggles, hand sanitizer, respirators, and surgical masks.

To stay updated on all COVID 19 related impacts and changes, visit www.uscis.gov/coronavirus.

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U.S. Citizenship and Immigration Services

Table of Appropriations

Fiscal Year	2020
Public Law	P.L. 116-93
Date of Enactment	12/20/2019

Account	Programs, Projects, and Activities (PPA)	Final Bill Funding
Operations & Support (O&S)	*Employment Status Verification*	$ 122,395,000.00
Procurement, Construction, and Improvements (PC&I)	~	$ -
Federal Assistance (FA)	~	$ 10,000,000.00
Discretionary Total		**$ 132,395,000.00**
Immigration Examinations Fee Account (IEFA)	*District Operations*	$ 1,934,033,000.00
	Service Center Operations	$ 746,687,000.00
	Asylum, Refugee, and International Operations	$ 349,295,000.00
	Records Operations	$ 155,150,000.00
	Premium Processing (Including Transformation)	$ 658,190,000.00
	Information and Applicant Services	$ 125,335,000.00
	Administration	$ 651,808,000.00
	Systematic Alien Verification for Entitlements (SAVE)	$ 34,868,000.00
IEFA Total		$ 4,655,366,000.00
Fraud Prevention and Detection Account (FPDA)	*District Operations*	$ 27,773,000.00
	Service Center Operations	$ 20,377,000.00
	Asylum, Refugee, and International Operations	$ 308,000.00
FPDA Total		$ 48,458,000.00
H-1B Non-Immigrant Petitioner Account (H-1B)	*Service Center Operations*	$ 15,000,000.00
Fee Funded (Mandatory) Total		**$ 4,718,824,000.00**
USCIS Total (Discretionary + Mandatory)		**$ 4,851,219,000.00**

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Department of Homeland Security
U.S. Citizenship & Immigration Services
FY 2021 Budget Estimates by Appropriation
(Dollars in Thousands)

USCIS Budget Submission (Dollars in Thousands)	FY 2019 Enacted			FY 2020 Enacted			FY 2021 President's Budget			FY 2020 to FY 2021 Total Changes		
	Pos	FTE	Amount	Pos	FTE	Amount	Pos	FTE	Amount	Pos.	FTE	Amount
Operations and Support	419	398	$ 109,688	419	398	$ 122,395	419	398	$ 118,676	-	-	$ (3,719)
Procurement, Construction, and Improvements	-	-	$ 22,838	-	-	$ -	-	-	$ -	-	-	$ -
Federal Assistance	-	-	$ 10,000	-	-	$ 10,000	-	-	$ -	-	-	$ (10,000)
Immigration Examinations Fee Account	18,866	17,924	$ 4,524,854	19,794	18,806	$ 4,655,366	20,451	19,429	$ 4,861,984	657	623	$ 206,618
H-1B Nonimmigrant Petitioner Account	-	-	$ 15,000	-	-	$ 15,000	-	-	$ 20,000	-	-	$ 5,000
Fraud Prevention and Detection Account	185	176	$ 47,797	185	176	$ 48,458	185	176	$ 49,889	-	-	$ 1,431
Total	**19,470**	**18,498**	**$ 4,730,177**	**20,398**	**19,380**	**$ 4,851,219**	**21,055**	**20,003**	**$ 5,050,549**	**657**	**623**	**$ 199,330**
Subtotal Discretionary - Appropriation	419	398	$ 142,526	419	398	$ 132,395	419	398	$ 118,676	-	-	$ (13,719)
Subtotal Mandatory - Fee	19,051	18,100	$ 4,587,651	19,979	18,982	$ 4,718,824	20,636	19,605	$ 4,931,873	657	623	$ 213,049

- Discretionary funding in the Operations and Support budget submission focuses on the sustainment/ maintenance of the E-Verify system
    - No request for Procurement, Construction, or Improvements funding.
    - No request for recurrence of Federal Assistance in support of the Citizenship and Assimilation Grant Program.
- The FY 2021 mandatory fee budget submission focuses on backlog mitigation and includes an increase of positions in the following Program, Project, and Activities (PPA) under IEFA to address the need:
    - 326 new positions for District Operations.
    - 140 new positions for Service Center Operations.
    - 137 new positions for Asylum, Refugee, and International Operations.

Hiring Impact - Recent Statement from Deputy Director for Operations

- The coronavirus (COVID-19) pandemic has had a significant impact on our agency's financial outlook. As most of you know, USCIS is primarily fee funded, which means we receive our revenue by collecting fees for various services we provide to applicants. With the sharp reduction in applications from the public and the suspension of in-person services due to the COVID-19 pandemic, we have had to make difficult financial decisions to ensure USCIS can continue to operate efficiently and uphold our mission. Effective May 1, we are implementing an agency-wide hiring pause, to conserve the agency's budget. This will continue through Sept. 30, unless our financial situation improves.
- We anticipate that the operational impact of this decision on program offices and directorates will be low, as the agency is currently staffed at 97% of authorized levels. However, this temporary measure will help provide the agency with flexibility to manage our budget through the remainder of the fiscal year. It will not affect recruitment actions for which a selection certificate has been issued. Those hiring actions may continue through onboarding. However, all other recruitment actions will be cancelled and returned by the Office of Human Capital and Training.
- This is one of several measures we are implementing to manage and conserve our financial resources during these uncertain times. We have monitored the budget closely and have made cuts where we can, such as halting non-essential travel and suspending the Professional Development Program for the remainder of the fiscal year.

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History of the Budget for U.S. Citizenship and Immigration Services (FY 2004 - FY 2021)[1]

USCIS and its predecessor, the former Immigration and Naturalization Service (INS), have had the legal authority to charge fees for a range of immigration services at least since passage of the Immigration and Nationality Act of 1952 (INA). In 1988, Congress passed the 1989 Department of Justice Appropriations Act, which established the Immigration Examination Fees Account. That legislation made the portion of USCIS's budget collected from user fees a mandatory appropriation.

FY 2021 TOTAL (Request) = $5.05 billion

- $118.7 million in appropriated funds
  - $118.7 million for Employment Status Verification (Operations and Support)
- $4.9 billion in fee funds
  - $4.86 billion (Immigration Examinations Fee Account or "IEFA")
  - $49.9 million (Fraud Prevention and Detection Account or "Fraud")
  - $20.0 million (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2020 TOTAL (Enacted) = $4.8 billion

- $132.4 million in appropriated funds
  - $122.4 million for Employment Status Verification (Operations and Support)
  - $10.0 million for Citizenship and Integration Grants Program (Federal Assistance)
- $4.7 billion in fee funds
  - $4.6 billion (Immigration Examinations Fee Account or "IEFA")
  - $48.5 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million[2] (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2020 TOTAL (Request) = $4.8 billion

- $121.6 million in appropriated funds
  - $121.6 million for Employment Status Verification (Operations and Support)
- $4.7 billion in fee funds
  - $4.6 billion (Immigration Examinations Fee Account or "IEFA")
    - Includes authority to spend up to $10 million on Immigrant Assimilation and Citizenship.
  - $48.5 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million[3] (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2019 TOTAL (Enacted) = $4.7 billion

- $142.5 million in appropriated funds

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[1] The dollar amounts in each year are tied to the initial enacted budget authority and do not reflect reprogramming, transfers, supplemental appropriations, or rescissions. If Congress has yet to enact a budget, the dollar amounts reflect the Congressional Justification request levels.

[2] USCIS anticipates $15M in new receipts, plus expenditure of $5M in carry-over funds from H-1B account balances, but was precluded from showing this in the budget profile per OMB.

[3] USCIS anticipates $15M in new receipts, plus expenditure of $5M in carry-over funds from H-1B account balances, but was precluded from showing this in the budget profile per OMB.

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- $109.7 million for Employment Status Verification (Operations and Support)
- $22.8 million for Employment Status Verification (Procurement, Construction, and Improvements)
- $10 million for Citizenship and Integration Grants (Federal Assistance)

- $4.6 billion in fee funds
  - $4.5 billion (Immigration Examinations Fee Account or "IEFA")
  - $47.8 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2019 TOTAL (Request) = $4.7 billion

- $131.9 million in appropriated funds
  - $109.1 million for Employment Status Verification (Operations and Support)
  - $22.8 million for Employment Status Verification (Procurement, Construction, and Improvements)
- $4.6 billion in fee funds
  - $4.5 billion (Immigration Examinations Fee Account or "IEFA")
    - Includes authority to spend up to $10 million on Immigrant Assimilation and Citizenship.
  - $47.3 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2018 TOTAL = $4.4 billion

- $131.5 million in appropriated funds
  - $108.9 million for Employment Status Verification (Operations and Support)
  - $22.6 million for Employment Status Verification (Procurement, Construction, and Improvements)
- $4.3 billion in fee funds
  - $4.2 billion (Immigration Examinations Fee Account or "IEFA")
    - Includes authority to spend up to $10 million on Immigrant Integration and Citizenship.
  - $67.2 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million (H-1B Nonimmigrant Petitioner Account or "H-1B")

FY 2017 TOTAL = $4.2 billion

- $119.1 million in appropriated funds
  - $103.9 million for Employment Status Verification[4] (Operations and Support[5])
  - $15.2 million for Employment Status Verification[2] (Procurement, Construction, and Improvements[3])
- $4.1 billion in fee funds
  - $4.0 billion (Immigration Examinations Fee Account or "IEFA")
    - $10.0 million for Immigrant Integration and Citizenship
  - $46.7 million (Fraud Prevention and Detection Account or "Fraud")
  - $15.0 million (H-1B Nonimmigrant Petitioner Account or "H-1B")

[4] The E-Verify budget program was renamed "Employment Status Verification" during the FY 2017 Congressional Justification phase of the budget process.
[5] The appropriated Salaries and Expenses account was split up into three accounts as part of the Common Appropriation Structure (CAS) initiative: Operations and Support; Procurement, Construction, and Improvements; and Federal Assistance.

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FY 2016 TOTAL = $3.6 billion

- $119.7 million in appropriated funds
  - $119.7 million for E-Verify
- $3.5 billion in fee funds
  - $3.4 billion (IEFA)
    - Includes authority to spend up to $10 million on Immigrant Integration and Citizenship.
  - $45.0 million (Fraud)
  - $15.0 million (H-1B)

FY 2015 TOTAL = $3.2 billion

- $124.4 million in appropriated funds
  - $124.4 million for E-Verify
- $3.1 billion in fee funds
  - $3.0 billion (IEFA)
    - Includes authority to spend up to $10 million on Immigrant Integration and Citizenship.
  - $41.0 million (Fraud)
  - $13.5 million (H-1B)

FY 2014 TOTAL = $3.2 billion

- $116.4 million in appropriated funds
  - $113.9 million for E-Verify
  - $2.5 million for Immigrant Integration and Citizenship (plus direction to spend an additional $7.5 million from IEFA.)
- $3.1 billion in fee funds
  - $3.0 billion (IEFA)
  - $41.0 million (Fraud)
  - $13.0 million (H-1B)

FY2013 TOTAL = $3.0 billion

- $114.4 million in appropriated funds ($109.2 million after rescission and sequestration)
  - $111.9 million for E-Verify ($106.7 million after rescission and sequestration)
  - $2.5 million for Immigrant Integration ($2.4 million after rescission and sequestration; plus direction to spend an additional $7.5 million from IEFA.)
- $2.9 billion in fee funds
  - $2.8 billion (IEFA)
  - $35.0 million (Fraud)
  - $12.6 million (H-1B)
- An across-the-board rescission and sequestration reduced the actual amount of appropriations available.

FY2012 TOTAL = $3.1 billion

- $ 102.4 million in appropriated funds
  - $102.4 million for E-Verify
- $3.3 billion in fee funds
  - $2.9 billion (IEFA)

AMERICAN OVERSIGHT

- $39.2 million (Fraud)
- $13.0 million (H-1B)

FY2011 TOTAL = $3.0 billion

- $ 146.3 million in appropriated funds
  - $103.2 million for E-Verify
  - $29.95 million for Refugee and Asylum Services/Military Naturalizations (Fee Structure Reform)
  - $11 million for Immigrant Integration
  - $2.15 million for DHS Data Center Development (DHS multi-agency initiative)
- $2.8 billion in fee funds
  - $2.8 billion (IEFA)
  - $39.2 million (Fraud)
  - $13.0 million (H-1B)

FY 2010 TOTAL = $2.8 billion

- $ 224 million in appropriated funds
  - $137 million for E-Verify
  - $55 for Fee Structure Reform ($50 million for asylum and refugee activities and $5 million to support costs of military naturalizations)
  - $11 million for Immigrant Integration
  - $10 million for Real ID Act Implementation
  - $11 million for DHS Data Center development (DHS multi-agency initiative)
- $2.6 billion in fee funds
  - $2.5 billion (IEFA)
  - $38.3 million (Fraud)
  - $13.0 million (H-1B)

FY 2009 TOTAL = $2.7 billion

- $ 151.7 million in appropriated funds
  - $100 million for E-Verify
  - $ 50 million in new funding for REAL ID Act Implementation
  - $ 1.2 million for Immigrant Integration.
  - $ 0.5 million for CHEP & Humanitarian Parole programs
- $2.5 billion in fee funds
  - $2.5 billion (IEFA)
  - $31.0 million (Fraud)
  - $13.0 million (H-1B)

FY 2008 TOTAL = $2.6 billion

- $ 81 million in appropriated funds
  - $ 60 million in emergency funds for E-Verify
  - $ 20 million in emergency funds for FBI name check backlog
  - $ 0.9 million for Cuban-Haitian Entrance Program (CHEP), Humanitarian Parole and Immigration Services programs
- $2.5 billion in fee funds

AMERICAN OVERSIGHT

- $2.5 billion (IEFA)
- $31.0 million (Fraud)
- $13.0 million (H-1B)

FY 2007 TOTAL = $2.0 billion

- $190 million in appropriated funds
  - $114 million for Employment Eligibility Verification (EEV) program
  - $ 21 million for the Systematic Alien Verification Entitlements (SAVE) program
  - $ 47 million for transformation program (modernization)
  - $ 8 million in supplemental funding for FBI name check backlog
- $1.8 billion in fee funds
  - $1.8 billion (IEFA)
  - $31.0 million (Fraud)
  - $13.0 million (H-1B)

FY 2006 TOTAL = $1.9 billion

- $114 million in appropriated funds
  - $79.2 million for backlog reduction
  - $34.7 million for transformation program (modernization)
- $1.8 billion in fee funds
  - $1.7 billion (IEFA)
  - $31.0 million (Fraud)
  - $13.0 million (H-1B)

FY 2005 TOTAL = $1.8 billion

- $160 million in appropriated funds
  - $140 million for backlog reduction
  - $20 million for digitization (modernization)
- $1.6 billion in fee funds
  - $1.6 billion (IEFA)
  - $31.0 million (Fraud)
  - $13.0 million (H-1B)

FY 2004 TOTAL = $1.8 billion

- $235 million in appropriated funds
  - $155 million resulted from reorganization of legacy INS
  - $80 million for backlog reduction
- $1.6 billion in fee funds
  - $1.6 billion (IEFA)
  - No spending in Fraud, account not yet established
  - $10.0 million (H-1B)

(Dollars in Millions)

($M)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010			
O&S	235	160	114	190	81	151.7	224			

AMERICAN OVERSIGHT

PC&I	0	0	0	0	0	0	0			
IEFA	1,600	1,600	1,700	1,800	2,500	2,500	2,500			
FRAUD	0	31	31	31	31	31	38.3			
H-1B	10	13	13	13	13	13	13			
Federal Assistance	0	0	0	0	0	0	0			
TOTAL	**1,845**	**1,804**	**1,858**	**2,034**	**2,625**	**2,695.7**	**2,775.3**			
($M)	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
O&S	146.3	102.4	111.9	113.9	124.4	119.7	103.9	108.9	109.7	122.4
PC&I	0	0	0	0	0	0	15.2	22.6	22.8	0
IEFA	2,800	2,900	2,800	3,000	3,000	3,400	4,000	4,200	4,500	4,600
FRAUD	39.2	39.2	35	41	41	45	46.7	67.2	47.8	48.5
H-1B	13	13	12.6	13	13.5	15	15	15	15	15
Federal Assistance	0	0	2.5	2.5	0	0	0	0	10	10
TOTAL	**2,998.5**	**3,054.6**	**2,962**	**3,170.4**	**3,178.9**	**3,579.7**	**4,180.8**	**4,413.7**	**4,705.3**	**4,795.9**

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House District Impacts

House Judiciary- Immigration and Citizenship Subcommittee

Rep	Party	District	USCIS Office	Employees Onboard
Lofgren	D	CA-19	San Jose FO	123
Jayapal	D	WA-07	Seattle FO	149
Correa	D	CA-46	Santa Ana FO	124
Garcia	D	TX-29	Houston DO and Asylum Office	475
Neguse	D	CO-02	-	
Mucarsel-Powell	D	FL-26	Kendall FO	76
Escobar	D	TX-16	El Paso FO	64
Jackson Lee	D	TX-18	Houston DO Secondary	475
Scanlon	D	PA-05	-	
Buck	R	CO-04	-	
Biggs	R	AZ-05	-	
McClintock	R	CA-04	-	
Lesko	R	AZ-08	-	
Armstrong	R	ND-00	-	
Steube	R	FL-17	-	
				1011

House Appropriations-Homeland Security Subcommittee

Rep	Party	District	USCIS Office	Employees Onboard
Roybal-Allard	D	CA-40	-	
Cuellar	D	TX-28	San Antonio DO	147
Ruppersberger	D	MD-02	-	
Price	D	NC-04	Raleigh-Durham FO/ASC	58
Wasserman Schultz	D	FL-23	-	
Meng	D	NY-06	NYC Metro offices (Queens FO, NYC DO, NYC-ASY)	862
Aguilar	D	CA-31	San Bernadino FO	117
Fleischmann	R	TN-03	-	
Palazzo	R	MS-04	-	
Newhouse	R	WA-04	Yakima FO/ASC	18
Rutherford	R	FL-04	Jacksonville FO	47
				1249

Methodology	1) Identified Congressional Districts with a USCIS presence (NYC is single exception, where geographic proximity was included)
	2) Cross referenced the office location with National Finance Center On-Board Report from Pay Period 8, April 25, 2020
	3) Assumes ALL staff will be impacted
	4) Does not double count Houston District Office Secondary

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Senate State Impacts

OCFO will update the following two tables prior to print

Senate Judiciary Committee

Senator	Party	State	USCIS Employees Onboard within State
Graham	R	NC	
Grassley	R	IA	
Lee	R	UT	
Sasse	R	NE	
Tillis	R	NC	
Crapo	R	ID	
Blackburn	R	TN	
Cornyn	R	TX	
Cruz	R	TX	
Hawley	R	MO	
Ernst	R	IA	
Kennedy	R	LA	
Feinstein	D	CA	
Leahy	D	VT	
Whitehouse	D	RI	
Coons	D	DE	
Hirono	D	HI	
Harris	D	CA	
Durbin	D	IL	
Klobuchar	D	MN	
Blumenthal	D	CT	
Booker	D	NJ	
TOTAL			

Senate Appropriations Committee-Homeland Security Subcommittee

Senator	Party	State	USCIS Employees Onboard within State
Capito	R	WV	
Shelby	R	AL	
Murkowski	R	AK	
Hoeven	R	ND	
Kennedy	R	LA	
Hyde-Smith	R	MS	
Lankford	R	OK	
Shaheen	D	NH	
Leahy	D	VT	
Murray	D	WA	
Baldwin	D	WI	
Manchin	D	WV	
Tester	D	MT	
TOTAL			

Methodology: Identified states with USCIS presence. Does not double count states based on multiple senators. Assumes ALL staff will be impacted.

AMERICAN OVERSIGHT

From: Bonic, Andrew V
Subject: RE: Perdue bill
To: Nuebel Kovarik, Kathy
Cc: Duchek, Elizabeth F (Liz)
Sent: May 11, 2020 9:26 AM (UTC-05:00)
Attached: USCIS summary of views Healthcare Workforce Resilience Act Final 05.08.20.docx, Immigration-Healthcare Workforce Resilience Act USCIS comments 05.07.20.docx

Attached is what was sent to Andrea Loving (HJC minority counsel). The summary was the body of the email with the redline as the attachment.

(b)(6)

Andrew

From: Nuebel Kovarik, Kathy [redacted]
Sent: Monday, May 11, 2020 10:11 AM
To: Bonic, Andrew V [redacted]
Cc: Duchek, Elizabeth F (Liz [redacted]
Subject: Perdue bill

Send me what you're planning to send to the Hill on Perdue bill, please. I should probably call Jacob in advance. Or maybe Liz could?

Kathy Nuebel Kovarik
Chief of Staff
U.S. Citizenship and Immigration Services
Mobile: [redacted]

(b)(6)

AMERICAN OVERSIGHT

(b)(5)

116TH CONGRESS
2D SESSION

S. [redacted]

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

IN THE SENATE OF THE UNITED STATES

[redacted]

Mr. PERDUE (for himself, Mr. DURBIN, Mr. YOUNG, and Mr. COONS) intro- duced the following bill; which was read twice and referred to the Com- mittee on [redacted]

A BILL

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Healthcare Workforce Resilience Act".

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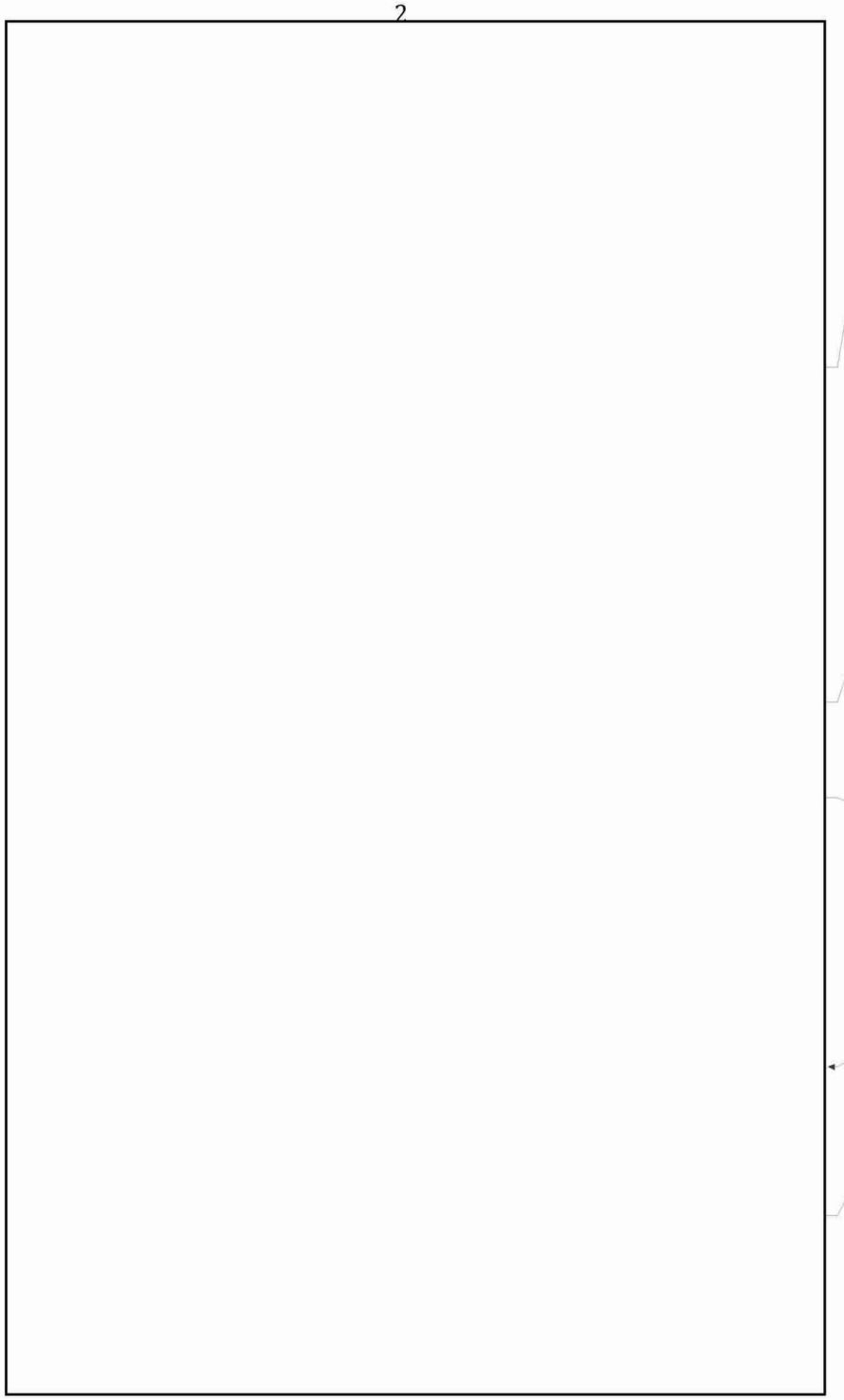
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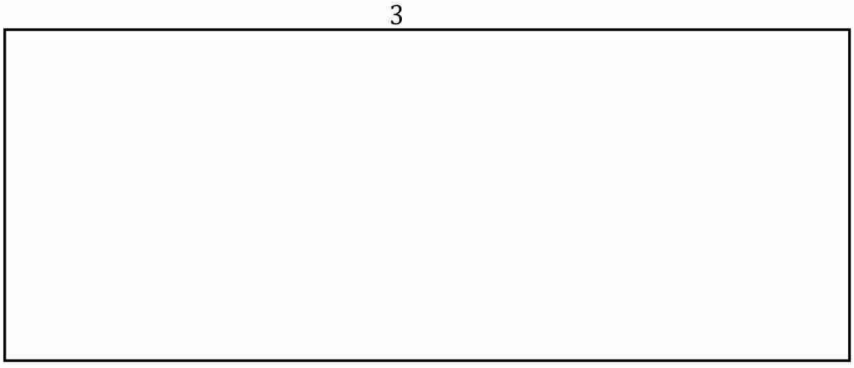
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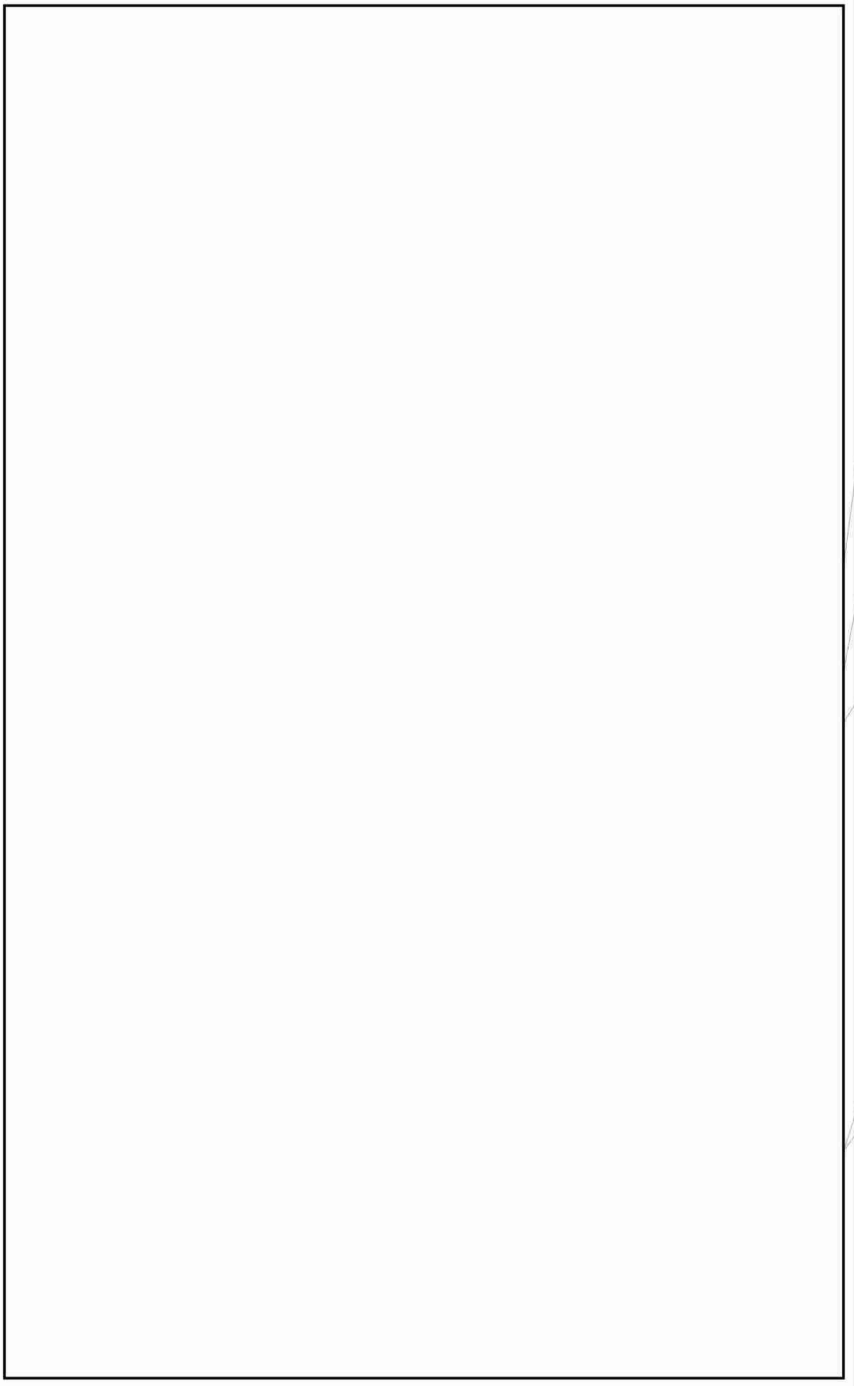
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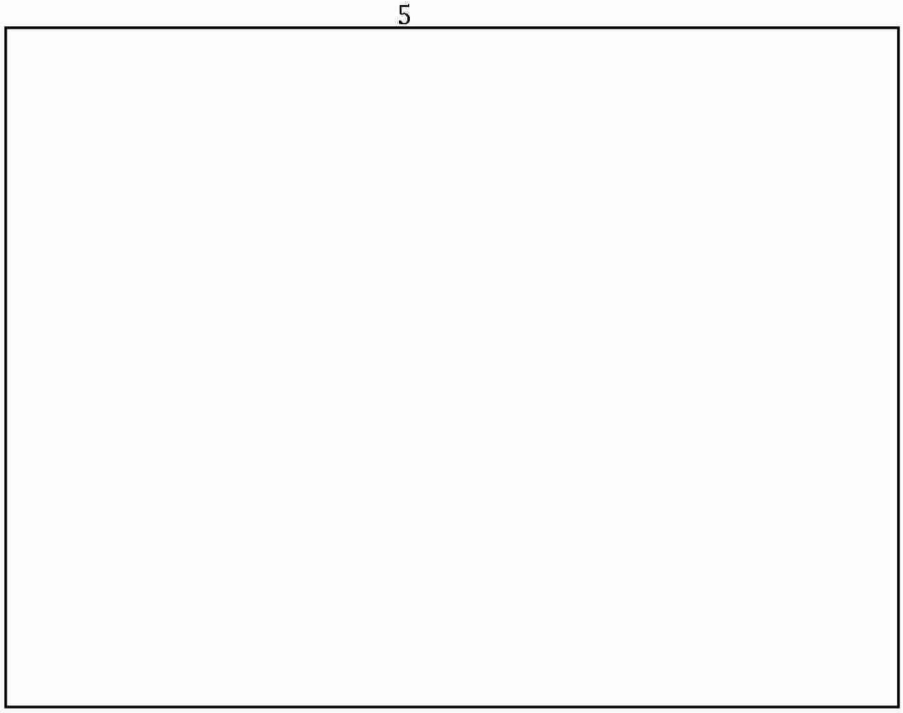
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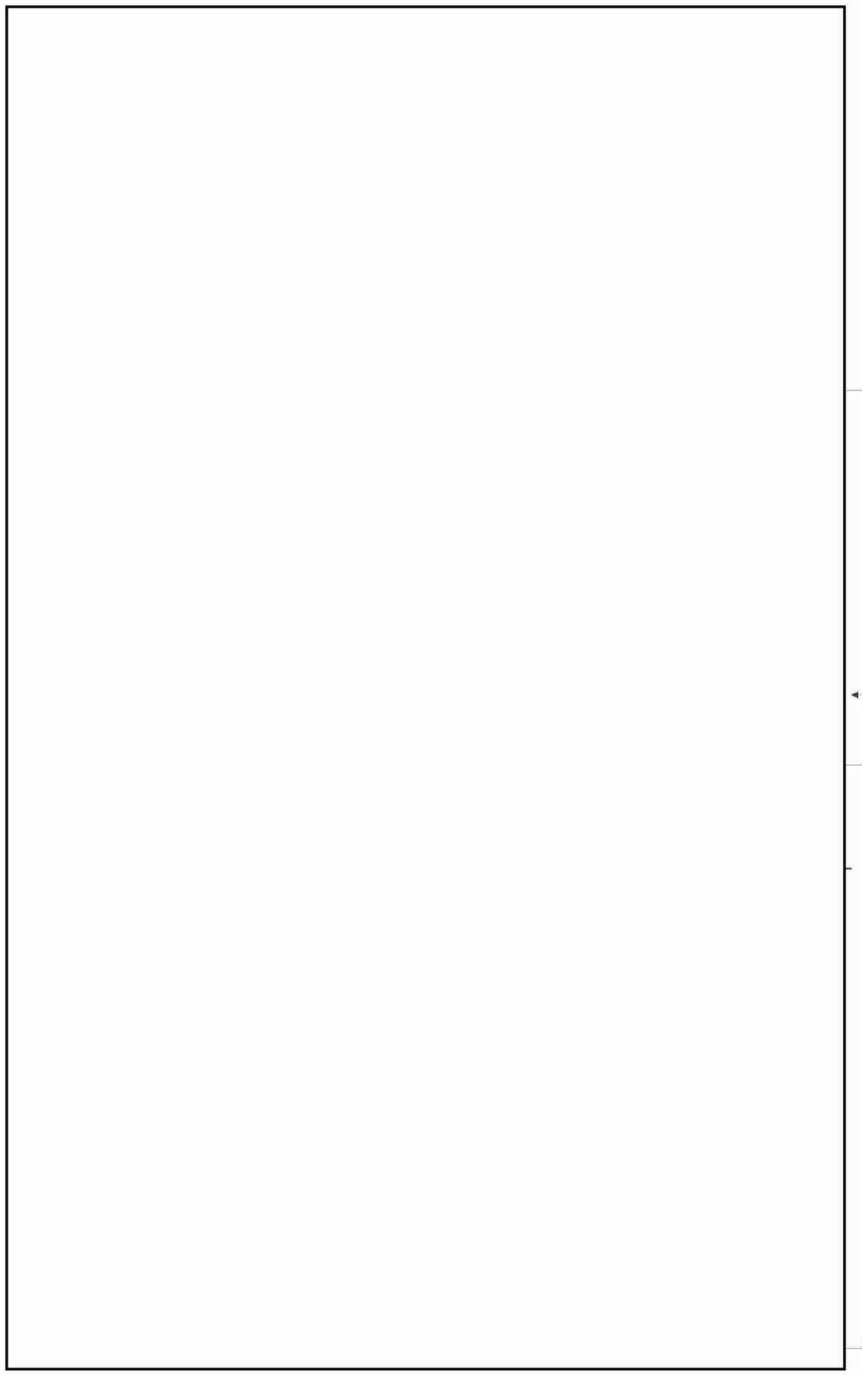
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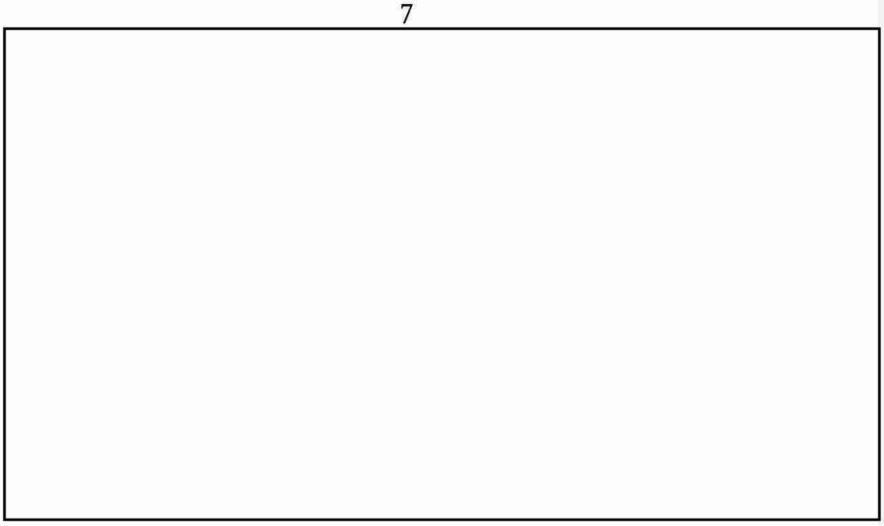
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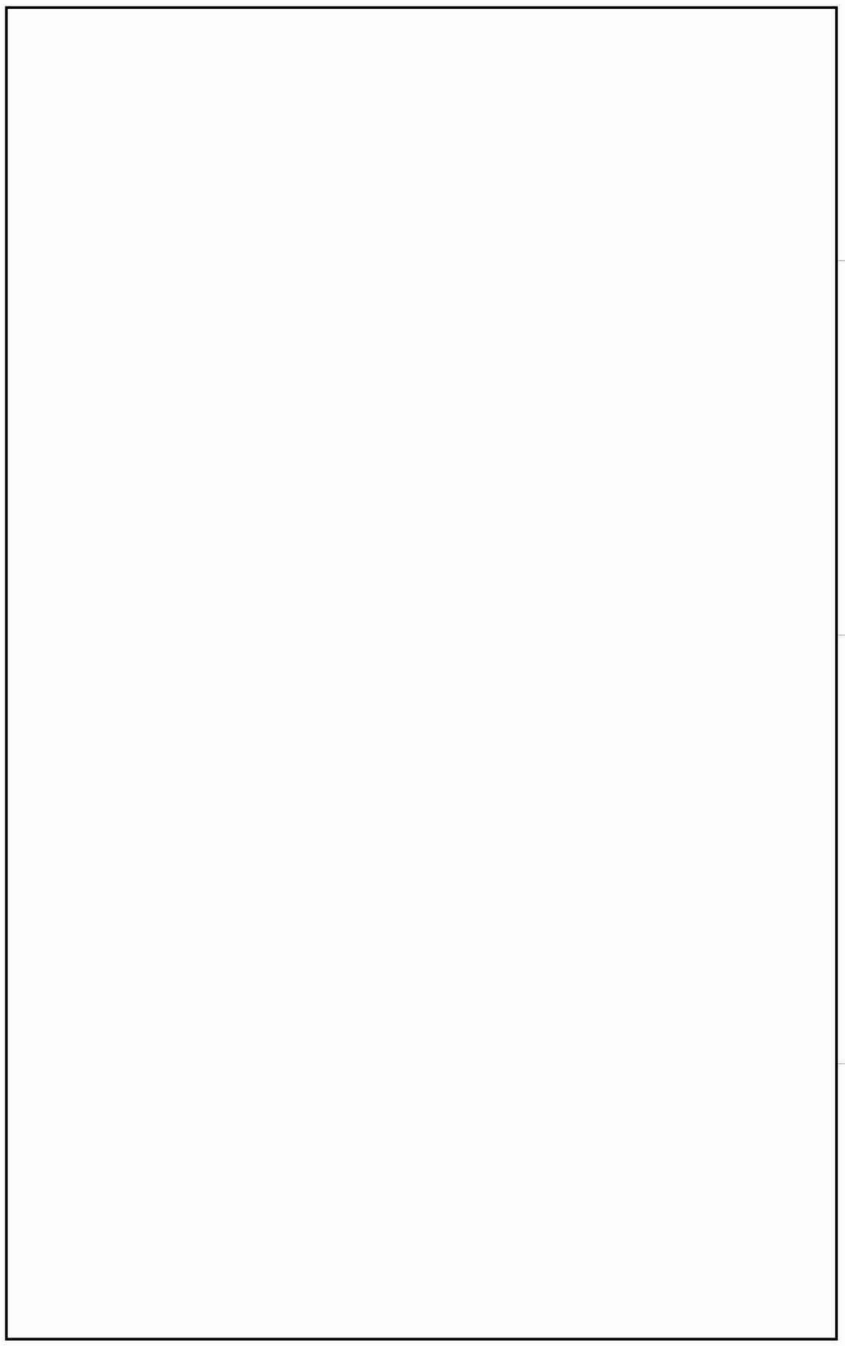
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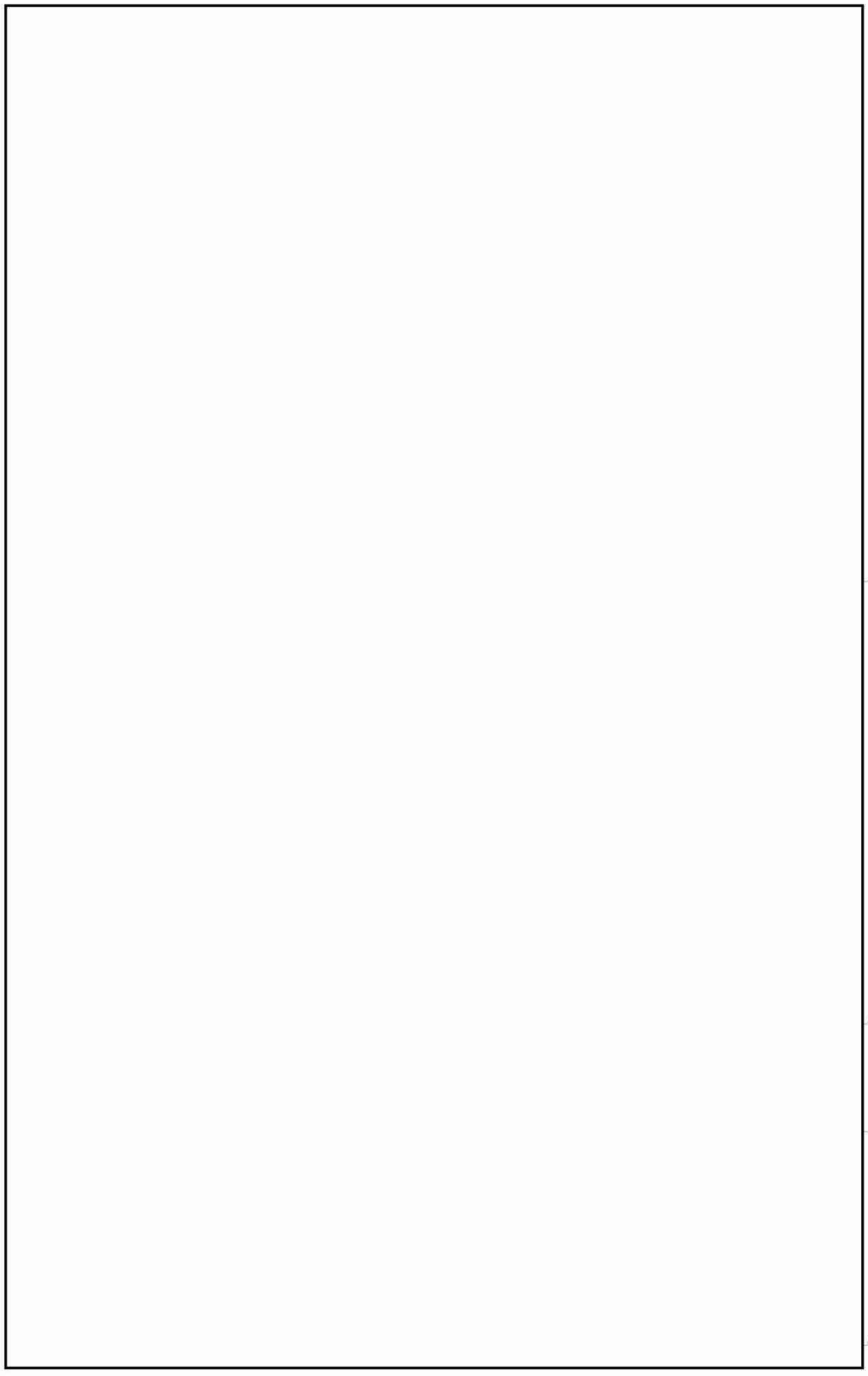
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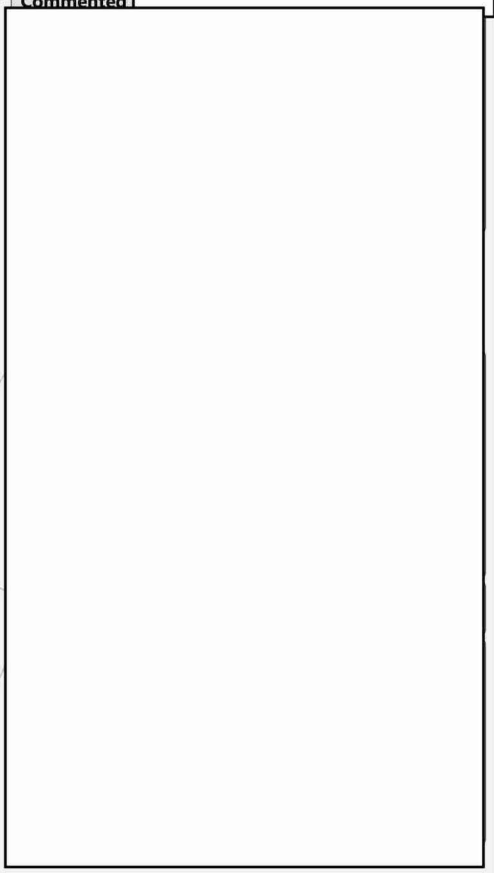
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USCIS has serious concerns with this bill as drafted and questions whether legislation that increases the

[redacted]

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

From: Bonic, Andrew V
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act
To: Busch, Philip B; Nuebel Kovarik, Kathy; Law, Robert T; Bailey, Morgan
Cc: Highsmith, AnnMarie R; Rexrode, Kathryn S; Edlow, Joseph B
Sent: May 7, 2020 1:26 PM (UTC-05:00)
Attached: USCIS summary of views Healthcare Workforce Resilience Act.docx, Immigration-Healthcare Workforce Resilience Act USCIS comments 05.07.20.docx

Kathy,

As requested, see below (and attached for editing purposes) for a summary that would accompany the technical assistance. The TA has also been "cleaned up" and is attached for your review.

USCIS opposes this bill, as it would have no effect on our healthcare workforce during the current pandemic. USCIS

(b)(5)

Please note, the contents of this message are not intended to bind USCIS, DHS, or the Administration. The USCIS edits and comments contained herein are not, and should not be construed as, a Statement of Administration Policy.

Andrew

AMERICAN OVERSIGHT

From: Busch, Philip B [redacted]
Sent: Thursday, May 7, 2020 12:47 PM
To: Nuebel Kovarik, Kathy [redacted]; Law, Robert T [redacted]; Bailey,

(b)(6)

Morgan <[redacted]; Bonic, Andrew V [redacted]> (b)(5)
Cc: Highsmith, AnnMarie R [redacted]; Rexrode, Kathryn S [redacted]; Edlow, Joseph B [redacted]
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

Probably, but depending [redacted]
(b)(5)
Phil

From: Nuebel Kovarik, Kathy <[redacted]> (b)(5)
Sent: Thursday, May 7, 2020 12:40 PM
To: Law, Robert T [redacted]; Bailey, Morgan [redacted]; Bonic, Andrew V [redacted]; Busch, Philip B [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Rexrode, Kathryn S [redacted]; Edlow, Joseph B [redacted]
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act (b)(5)

Ah, I see.

Phil may know the answer to this [redacted]
(b)(5)

From: Law, Robert T [redacted]> (b)(6)
Sent: Thursday, May 07, 2020 12:37 PM
To: Nuebel Kovarik, Kathy [redacted]; Bailey, Morgan [redacted]; Bonic, Andrew V [redacted]; Busch, Philip B [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Rexrode, Kathryn S [redacted]; Edlow, Joseph B [redacted]
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act (b)(6)

Kathy,

OP&S moved the derivative language [redacted]
(b)(5)
-Rob

Robert Law
[redacted] (office)
(cell) (b)(6)

From: Nuebel Kovarik, Kathy [redacted]>
Sent: Thursday, May 7, 2020 12:34 PM
To: Bailey, Morgan [redacted]; Bonic, Andrew V [redacted]; Busch, Philip B [redacted]; Law, Robert T [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Rexrode, Kathryn S [redacted]; Edlow, Joseph B [redacted]
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act (b)(6)

AMERICAN OVERSIGHT

Talked [redacted]

(b)(5)

From: Nuebel Kovarik, Kathy
Sent: Thursday, May 07, 2020 12:14 PM
To: Bailey, Morgan [redacted]; Bonic, Andrew V [redacted]; Busch, Philip B [redacted]; Law, Robert T [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Kathryn S Rexrode [redacted]; Edlow, Joseph B [redacted]
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

(b)(6)

(b)(6)

The comments on the Senate medical worker bill has come to the FO for review. I think the comments are great. I [redacted]

(b)(5)

From: Tait, Karen E [redacted]
Sent: Wednesday, May 06, 2020 10:03 AM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted]; Rexrode, Kathryn S [redacted]
Subject: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

(b)(6)

(b)(6)

Good morning DO,

Attached for your review and clearance are USCIS edits and comments on S. 3599, the Healthcare Workforce Resilience Act, which would "recapture" EB IVs, among other things.

Due Date:
Due to the urgency and prominence of the bill, OLIA is requesting clearance **by COB Thursday, May 7**.

Background:
This bipartisan bill was introduced yesterday (5/5) by Senators Perdue (R-GA), Young (R-IN), Durbin (D-IL), and Coons (D-DE). It is expected that it will be pushed hard in the next COVID stimulus package. The bill is strongly opposed by

AMERICAN OVERSIGHT

USCIS. House Judiciary Committee (minority) asked for our views and comments on the legislation.

Clearances:
OCC [redacted]
OP& [redacted]
OLIA [redacted]

(b)(6)

Thank you,
Karen

Karen Tait

U.S. Citizenship and Immigration Services

Writer/Editor | External Affairs Directorate

Desk [redacted]

Mobi [redacted]

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AMERICAN OVERSIGHT

116TH CONGRESS
2D SESSION

S. [redacted]

(b)(5)

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

IN THE SENATE OF THE UNITED STATES

[redacted]

Mr. PERDUE (for himself, Mr. DURBIN, Mr. YOUNG, and Mr. COONS) intro- duced the following bill; which was read twice and referred to the Com- mittee on [redacted]

A BILL

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Healthcare Workforce Resilience Act".

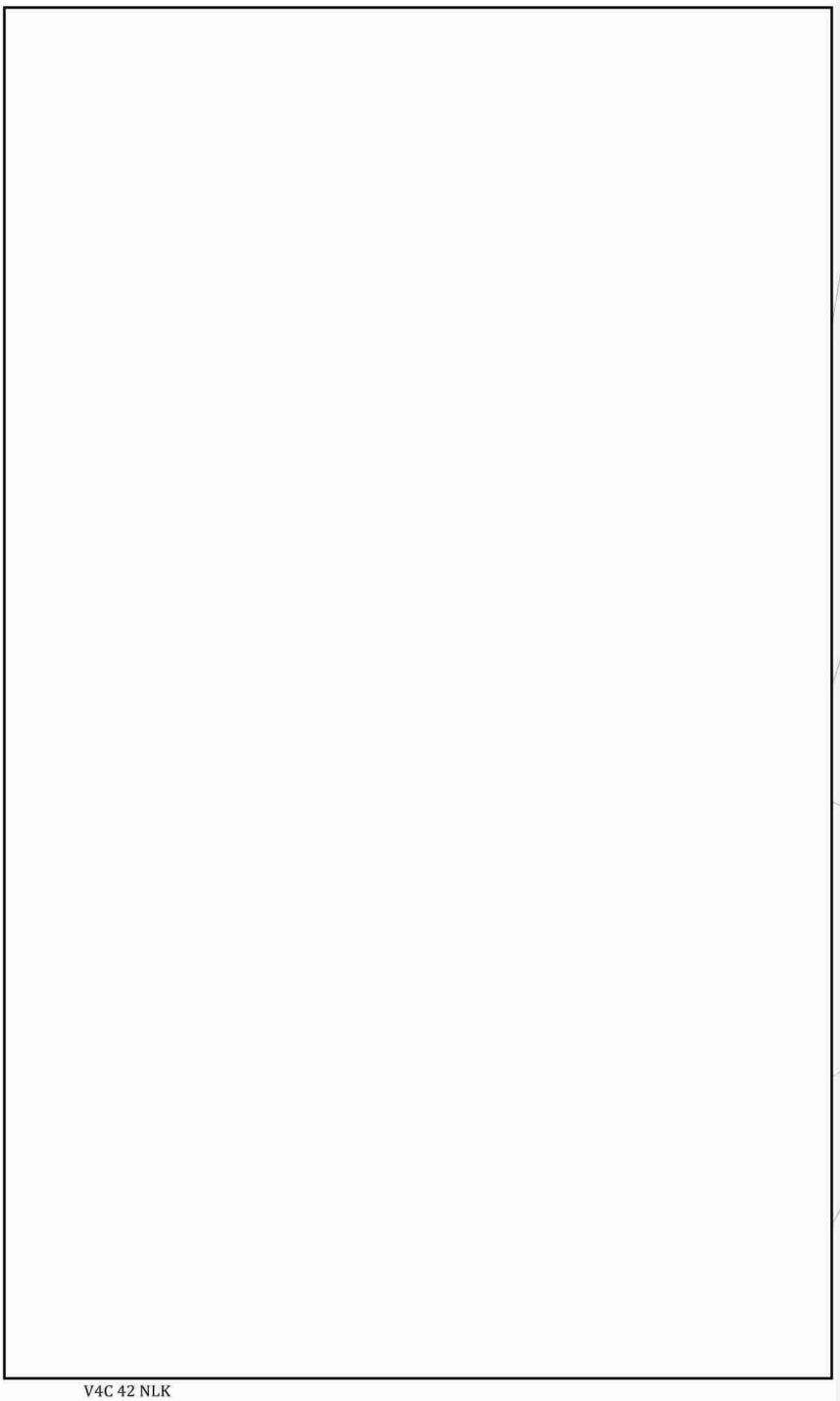
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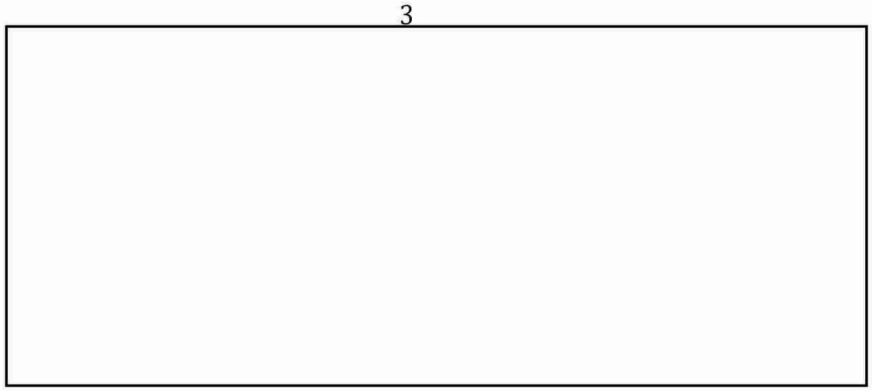
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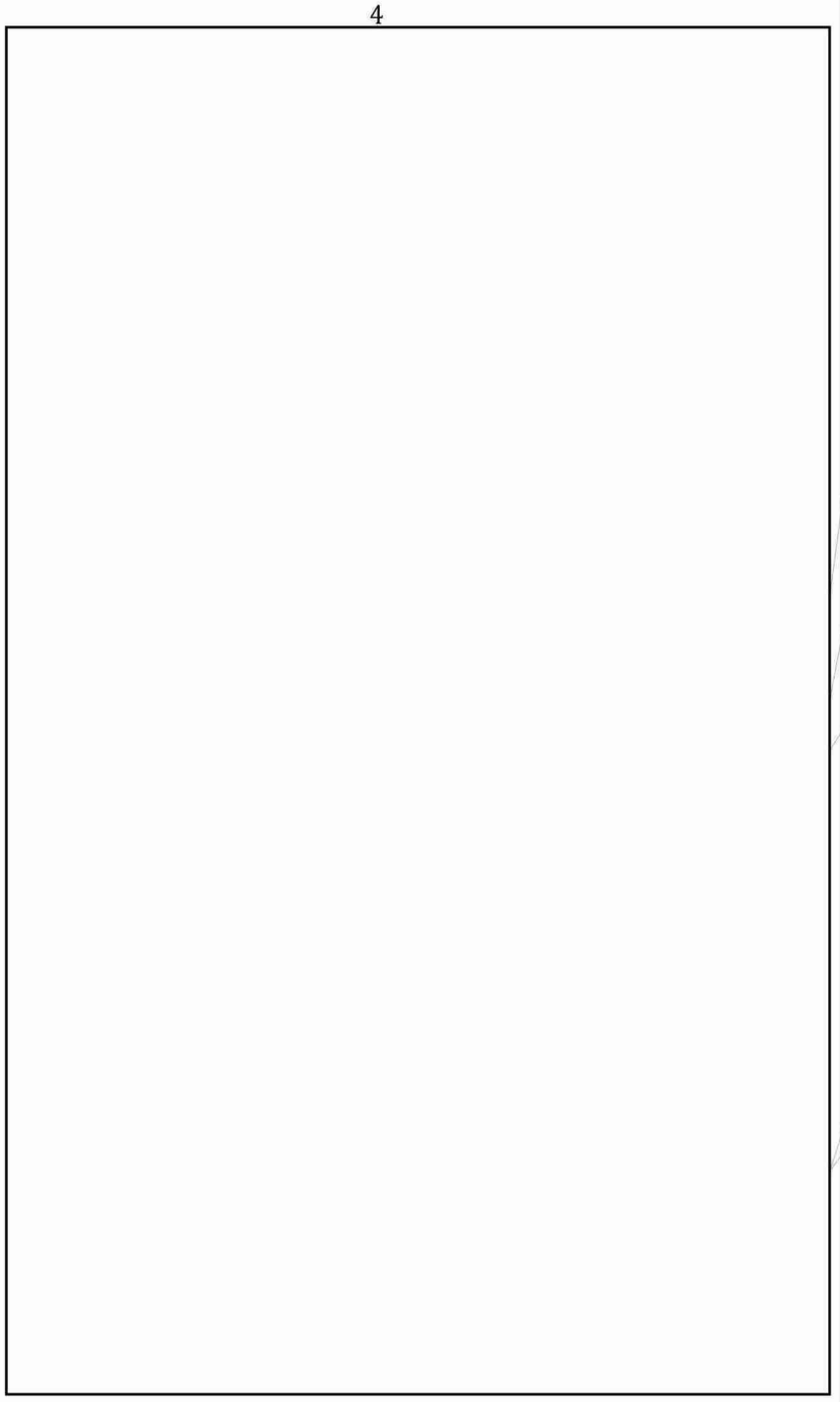
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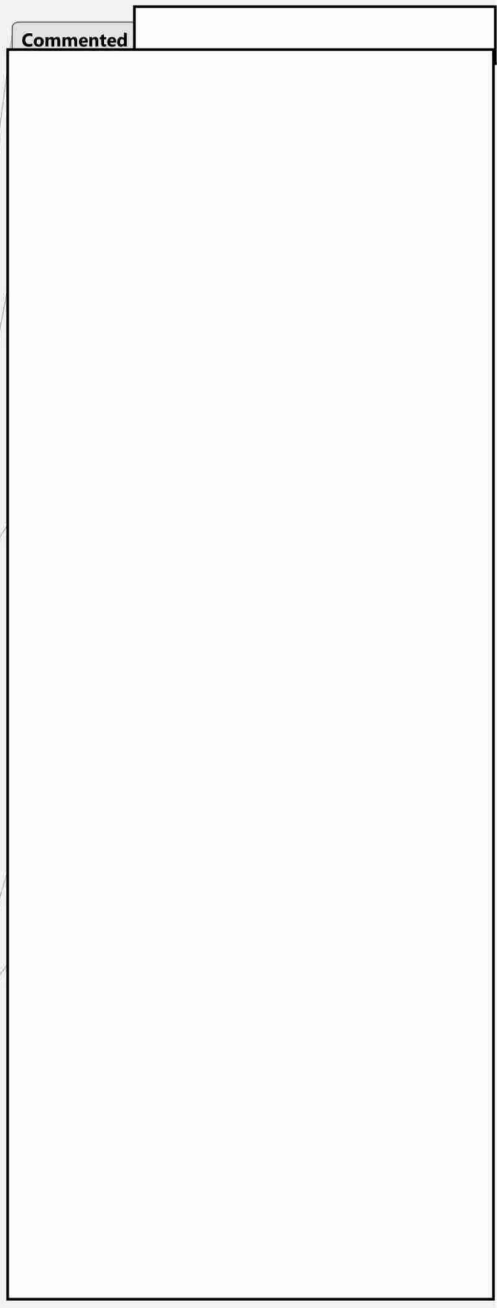
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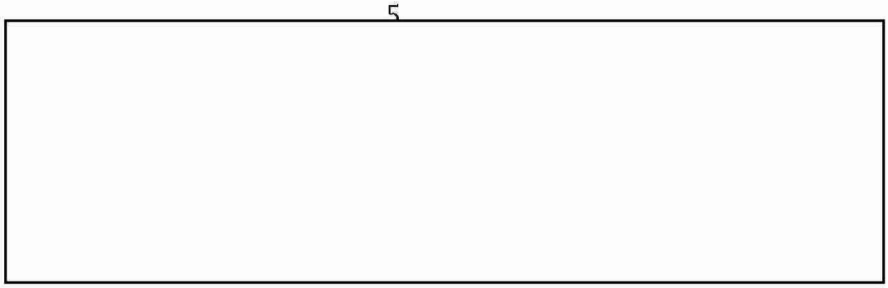
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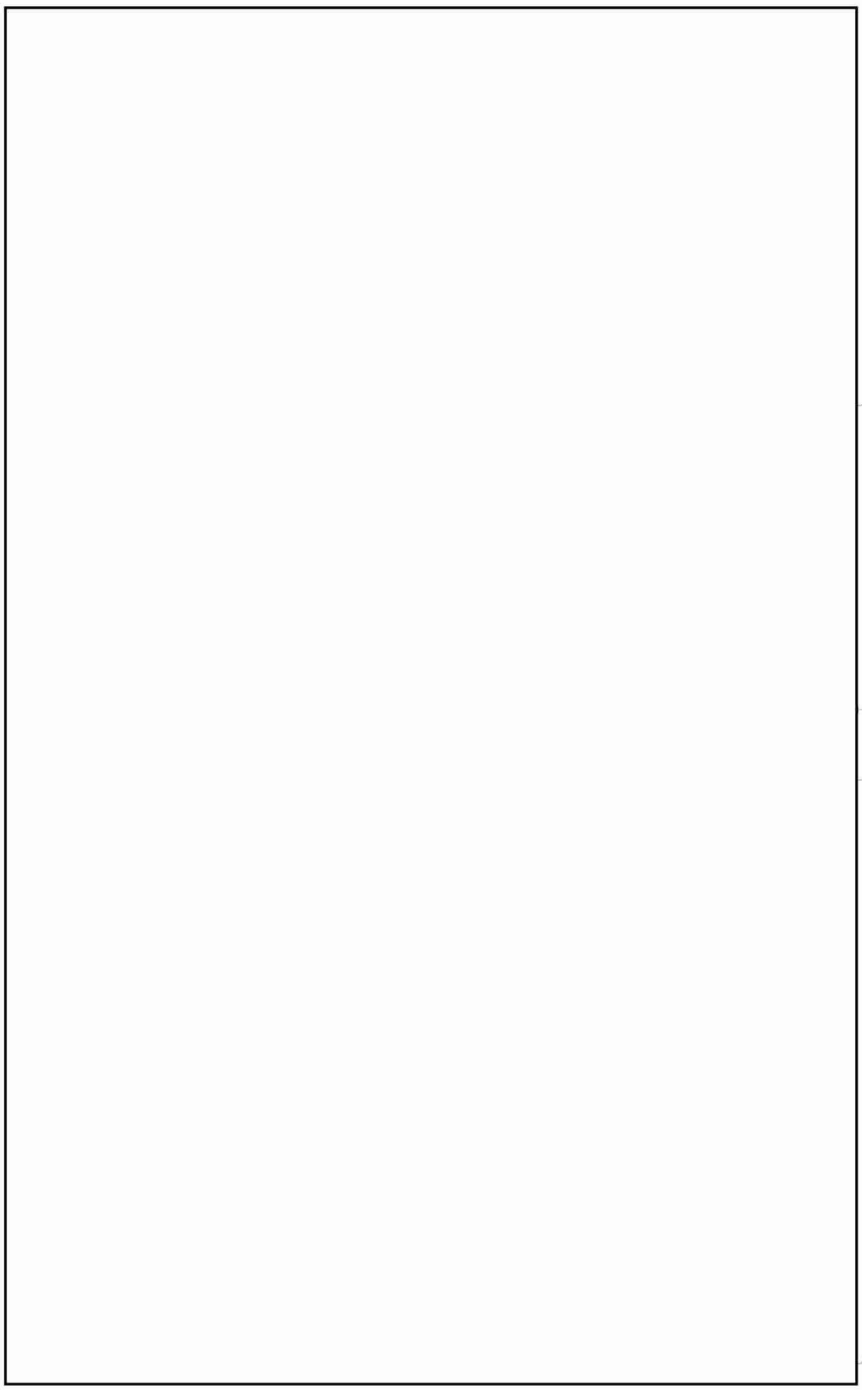
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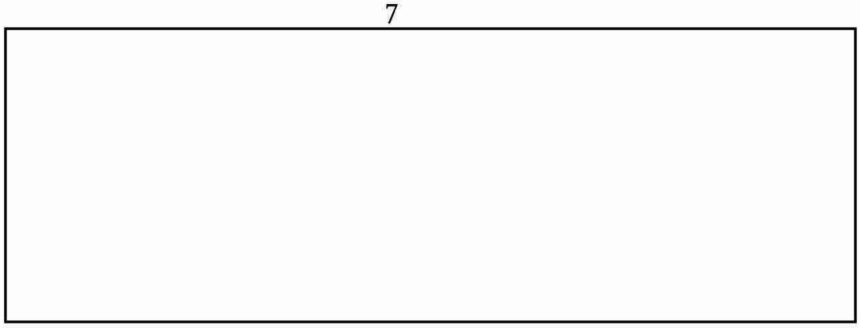
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AMERICAN OVERSIGHT

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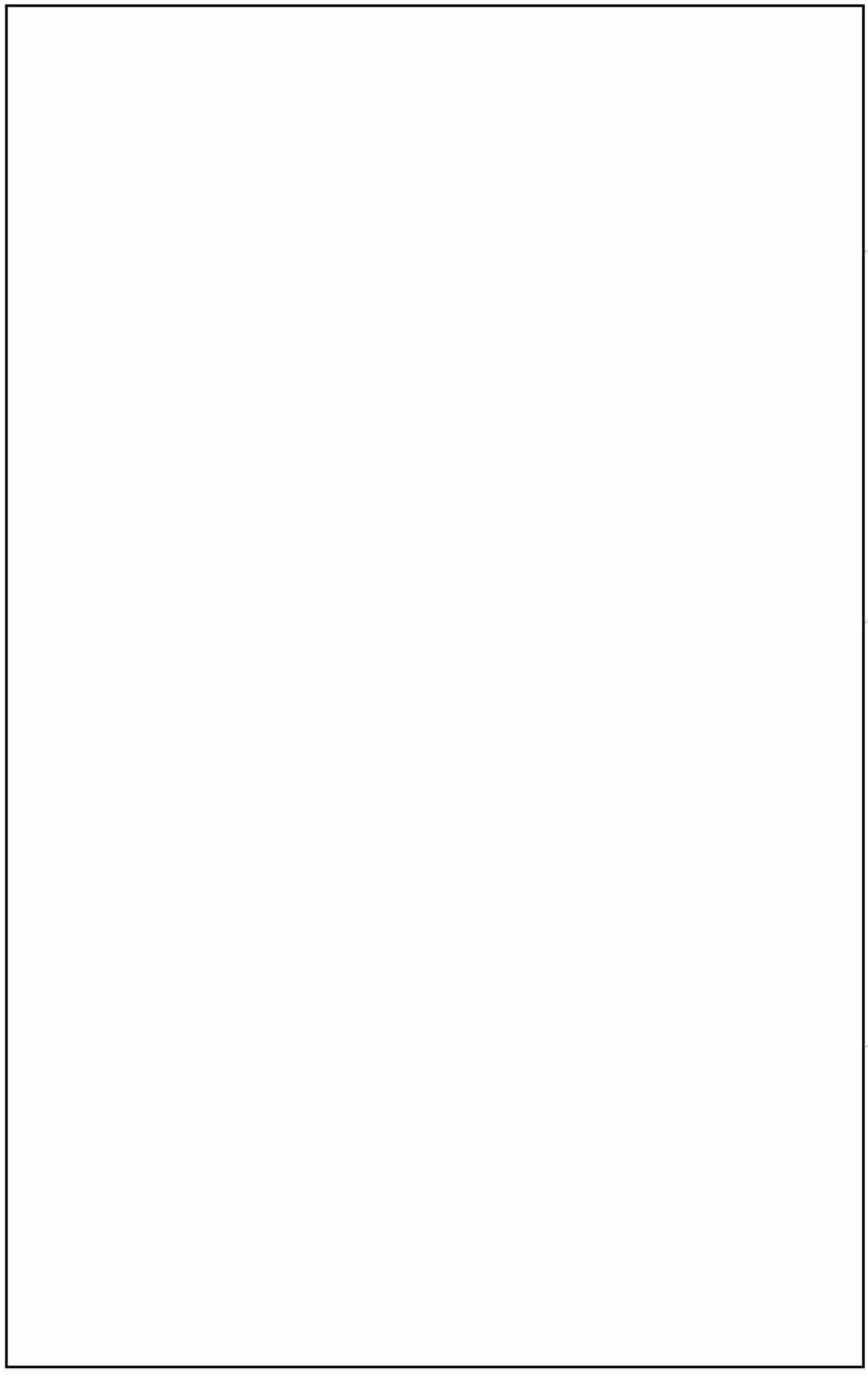
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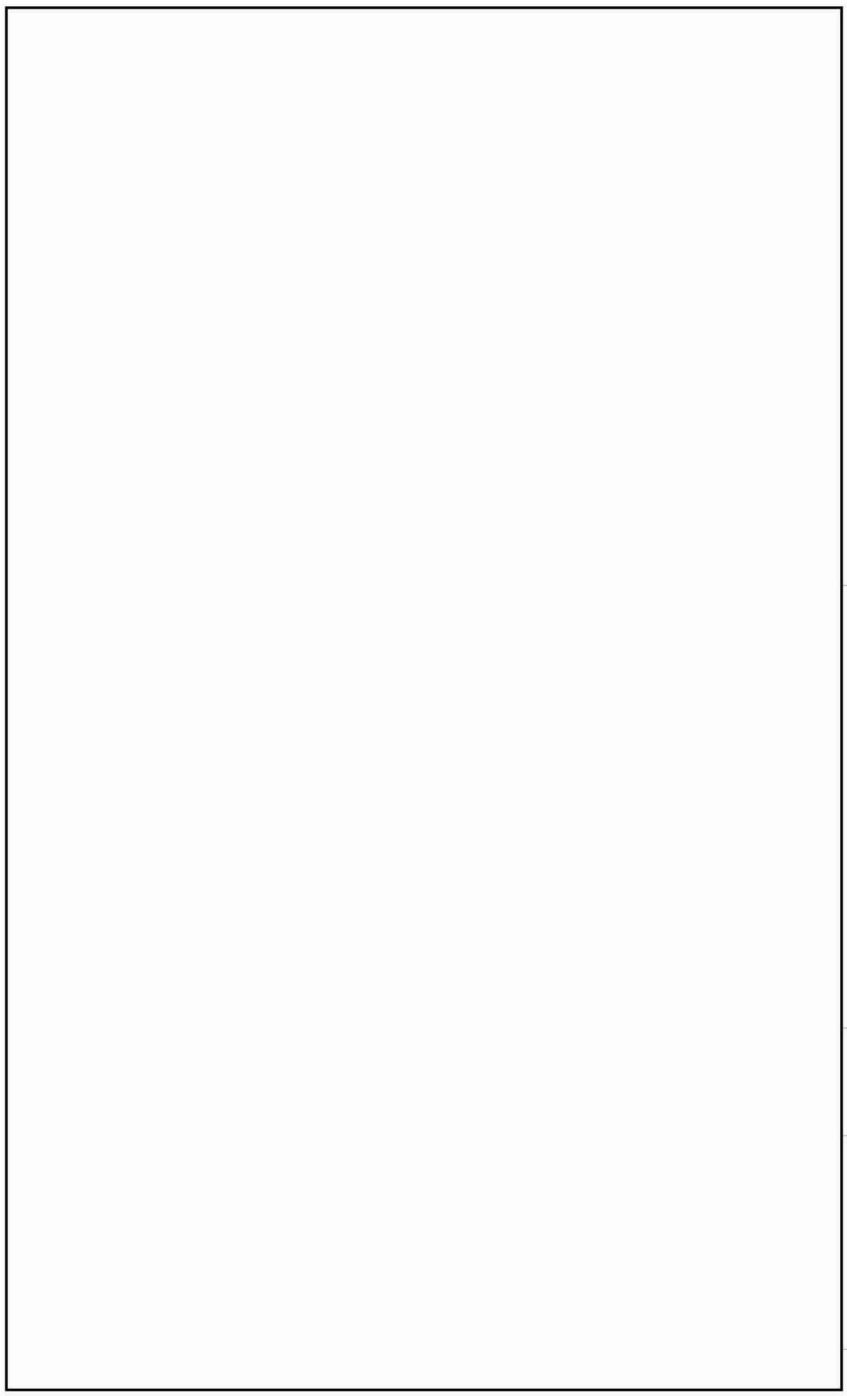
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MDM20427 S.L.C.

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V4C 42 NLK

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AMERICAN OVERSIGHT

USCIS opposes this bill, as it would have no effect on our healthcare workforce during the current

[redacted]

AMERICAN OVERSIGHT

From: Nuebel Kovarik, Kathy
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act
To: Bailey, Morgan; Bonic, Andrew V; Busch, Philip B; Law, Robert T
Cc: Highsmith, AnnMarie R; Kathryn S Rexrode [redacted]); Edlow, Joseph B (b)(6)
Sent: May 7, 2020 11:37 AM (UTC-05:00)
Attached: Immigration Healthcare Workforce Resilience Act 05.06.20 USCIS comments for DO clearance.docx

Oops – my version of the doc attached.

From: Nuebel Kovarik, Kathy
Sent: Thursday, May 07, 2020 12:34 PM
To: Bailey, Morgan [redacted]; Bonic, Andrew V [redacted]; Busch, Philip B [redacted]; Law, Robert T [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Kathryn S Rexrode [redacted]; Edlow, Joseph B [redacted] (b)(6)
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

Talked [redacted]

(b)(5)

From: Nuebel Kovarik, Kathy
Sent: Thursday, May 07, 2020 12:14 PM (b)(6)
To: Bailey, Morgan [redacted] Bonic, Andrew V [redacted]; Busch, Philip B [redacted]; Law, Robert T [redacted]
Cc: Highsmith, AnnMarie R [redacted]; Kathryn S Rexrode [redacted]; Edlow, Joseph B [redacted] (b)(6)
Subject: RE: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

(b)(5)

From: Tait, Karen E [redacted]
Sent: Wednesday, May 06, 2020 10:03 AM (b)(6)
To: USCIS Directors Office Advisors [redacted]

AMERICAN OVERSIGHT

(b)(6)

Cc: EXA Clearance Distribution List [redacted]; Rexrode, Kathryn S [redacted]

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Clearances:
OCC: [redacted]
OP&S
OLIA

Thank you,
Karen

Karen Tait

U.S. Citizenship and Immigration Services

Writer/Editor | External Affairs Directorate

Desk [redacted]

Mobil [redacted]

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AMERICAN OVERSIGHT

116TH CONGRESS
2D SESSION

S. [redacted]

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

(b)(5)

IN THE SENATE OF THE UNITED STATES

[redacted]

Mr. PERDUE (for himself, Mr. DURBIN, Mr. YOUNG, and Mr. COONS) intro- duced the following bill; which was read twice and referred to the Com- mittee on [redacted]

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

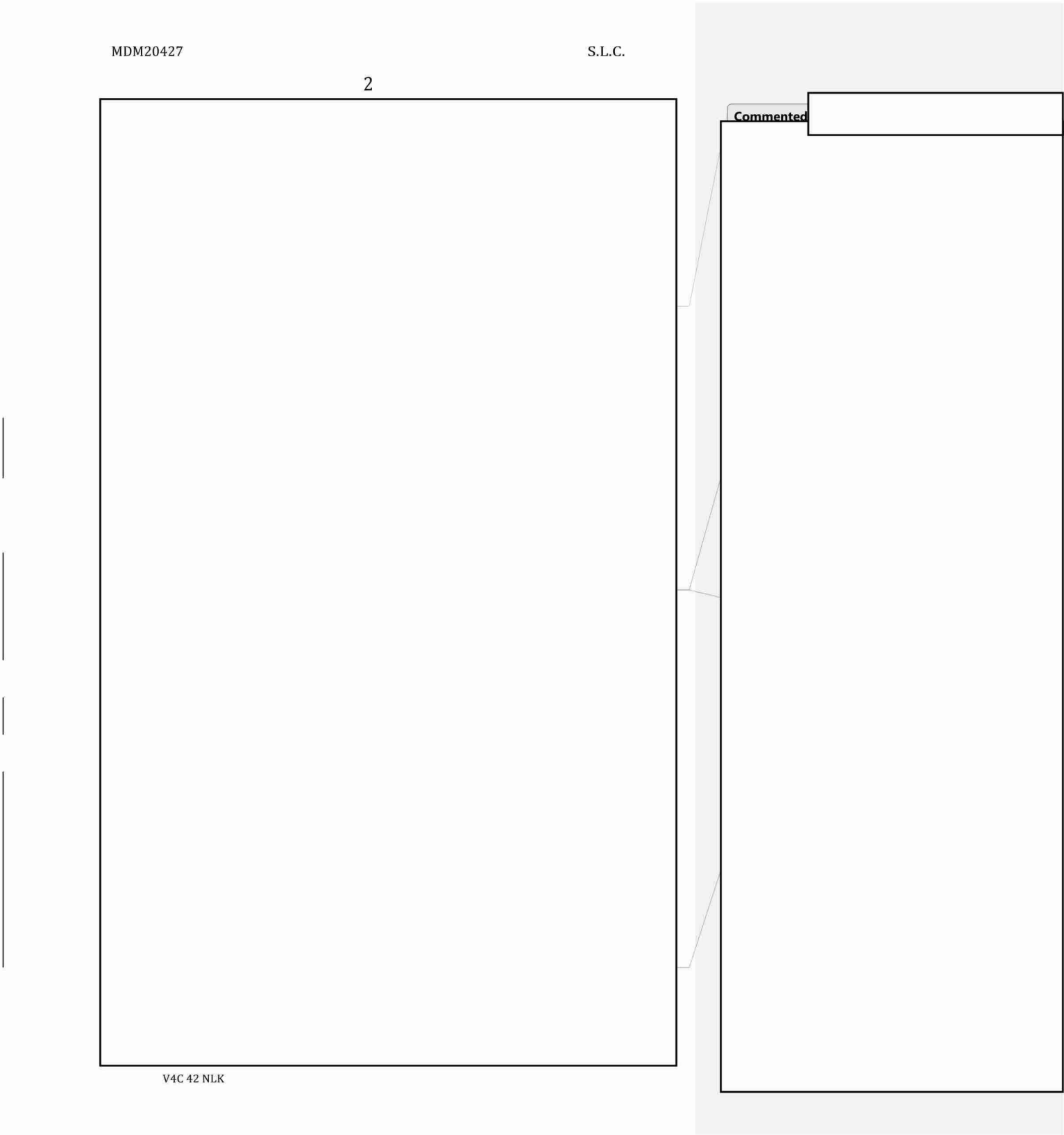
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This Act may be cited as the "Healthcare Workforce Resilience Act".

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AMERICAN OVERSIGHT

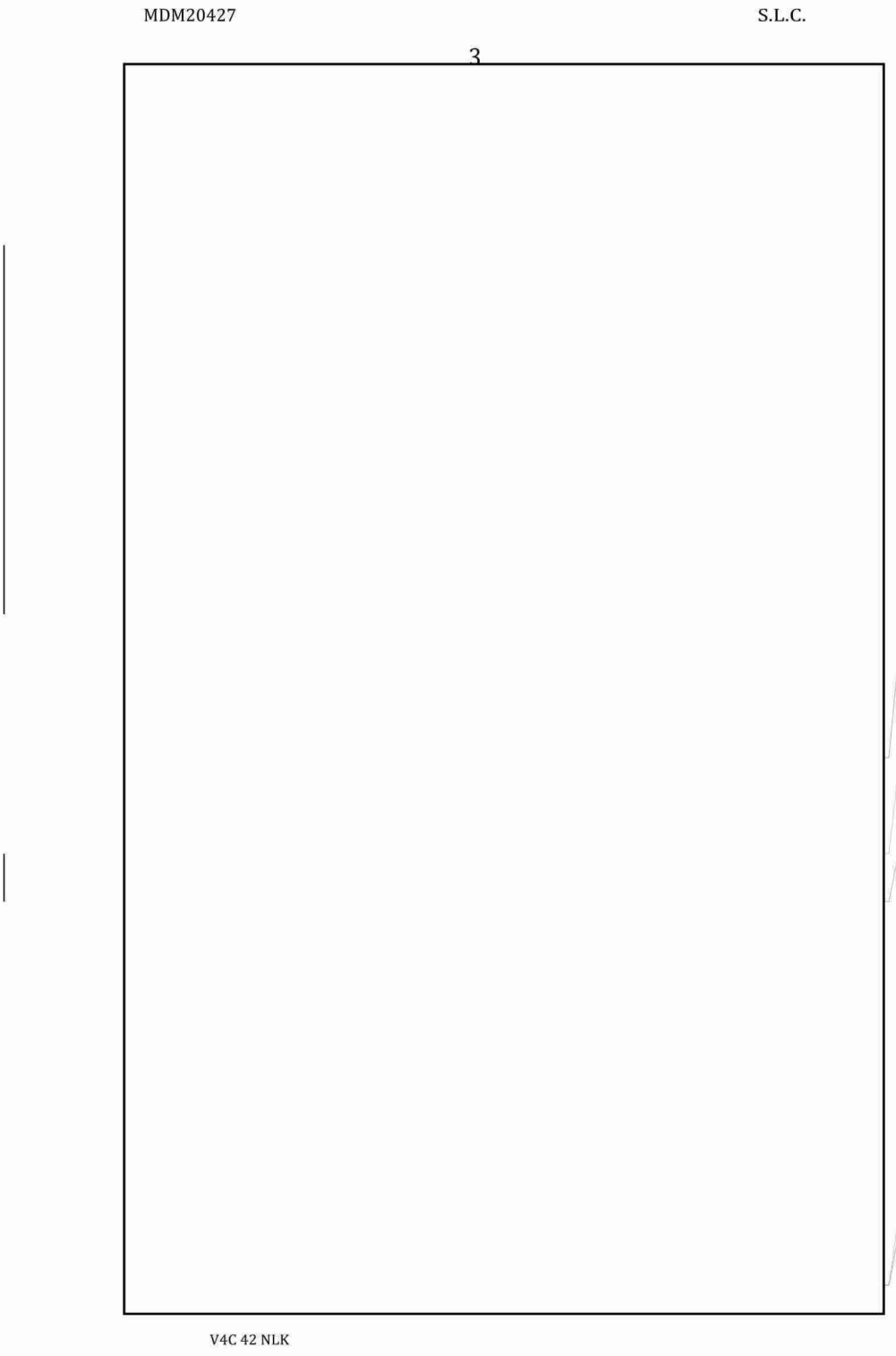
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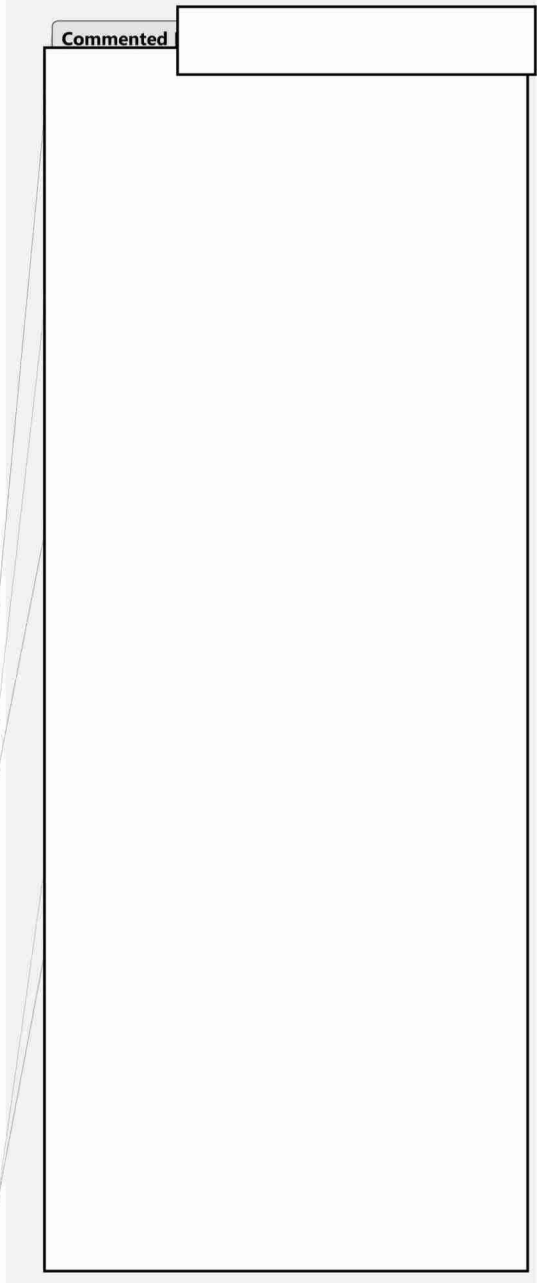


AMERICAN OVERSIGHT

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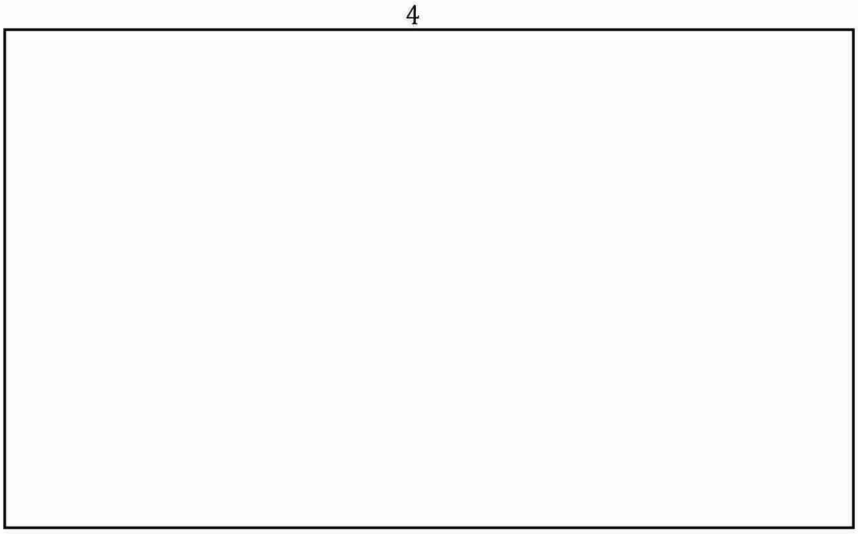
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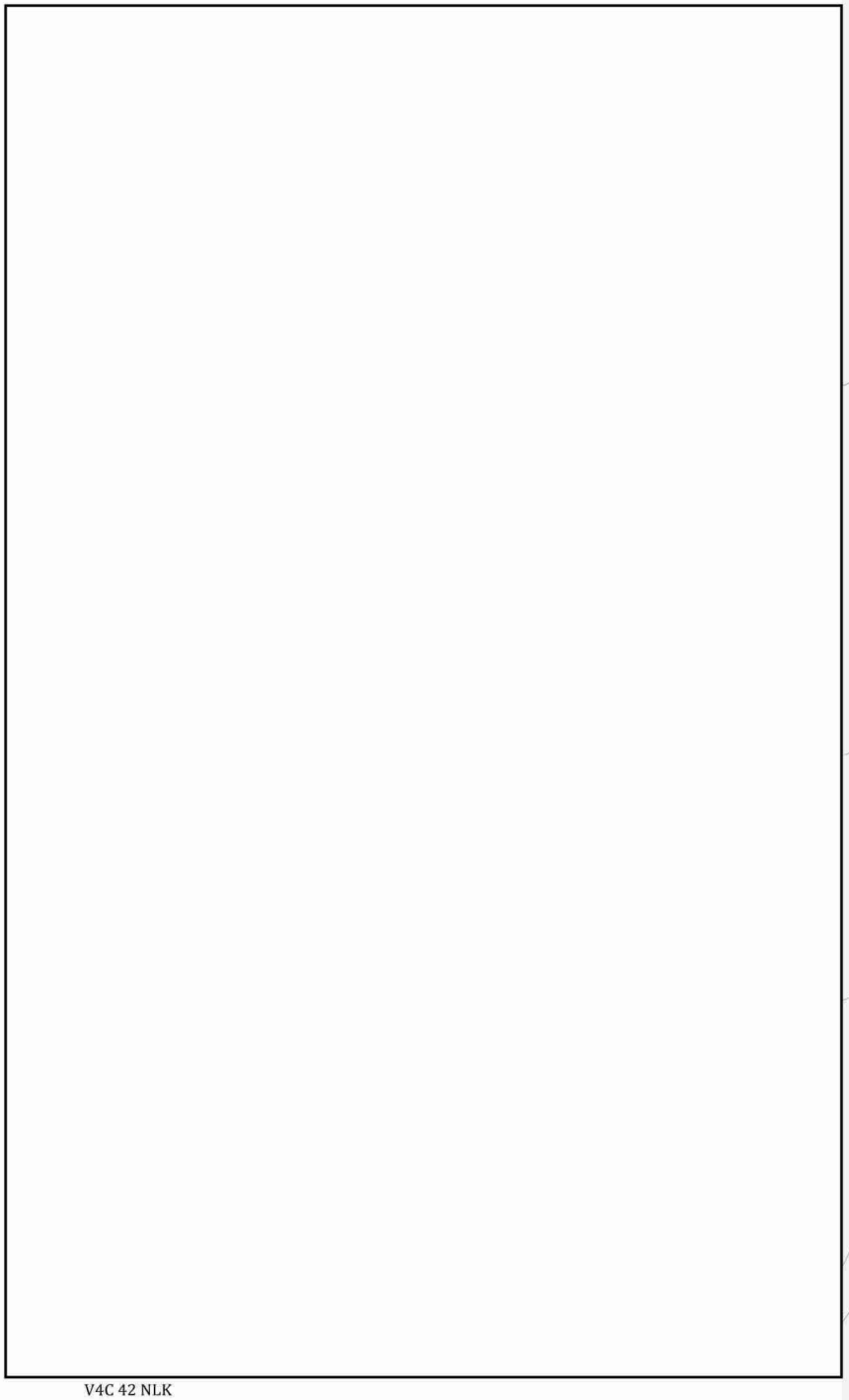
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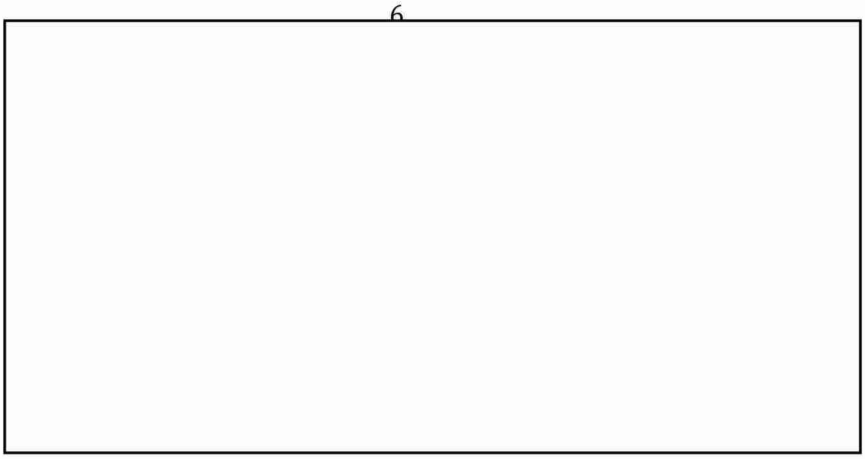
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AMERICAN OVERSIGHT

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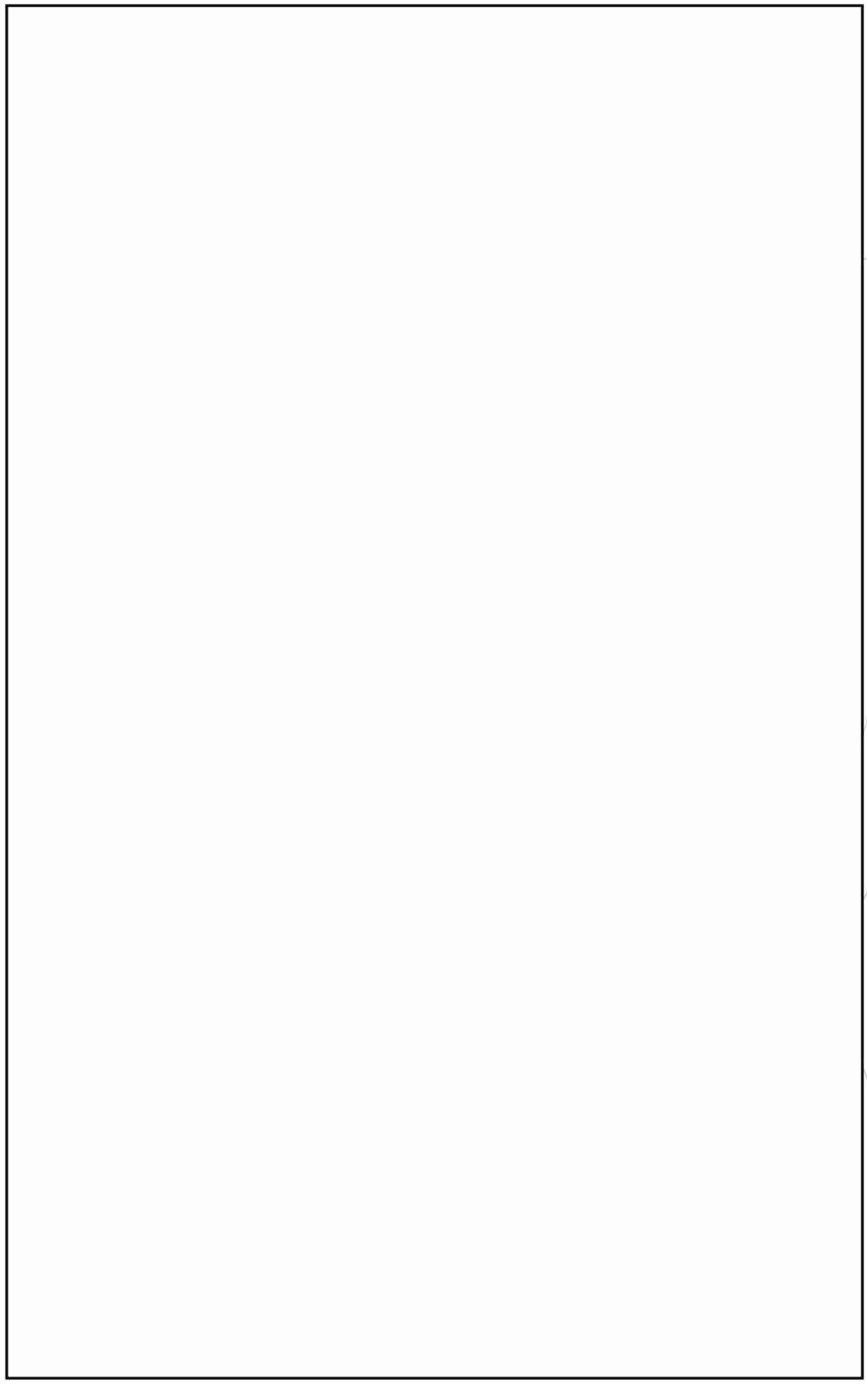


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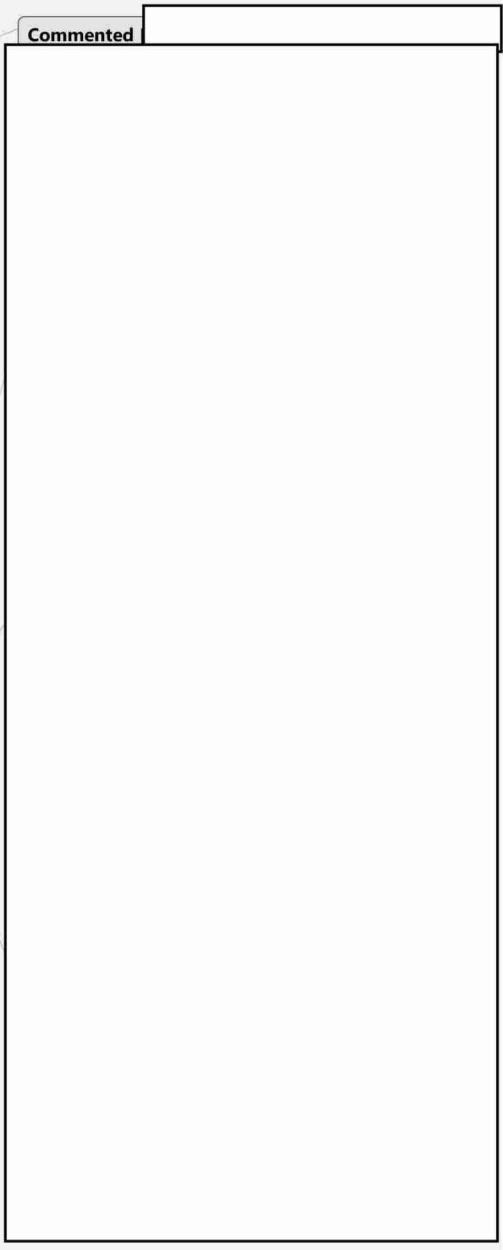
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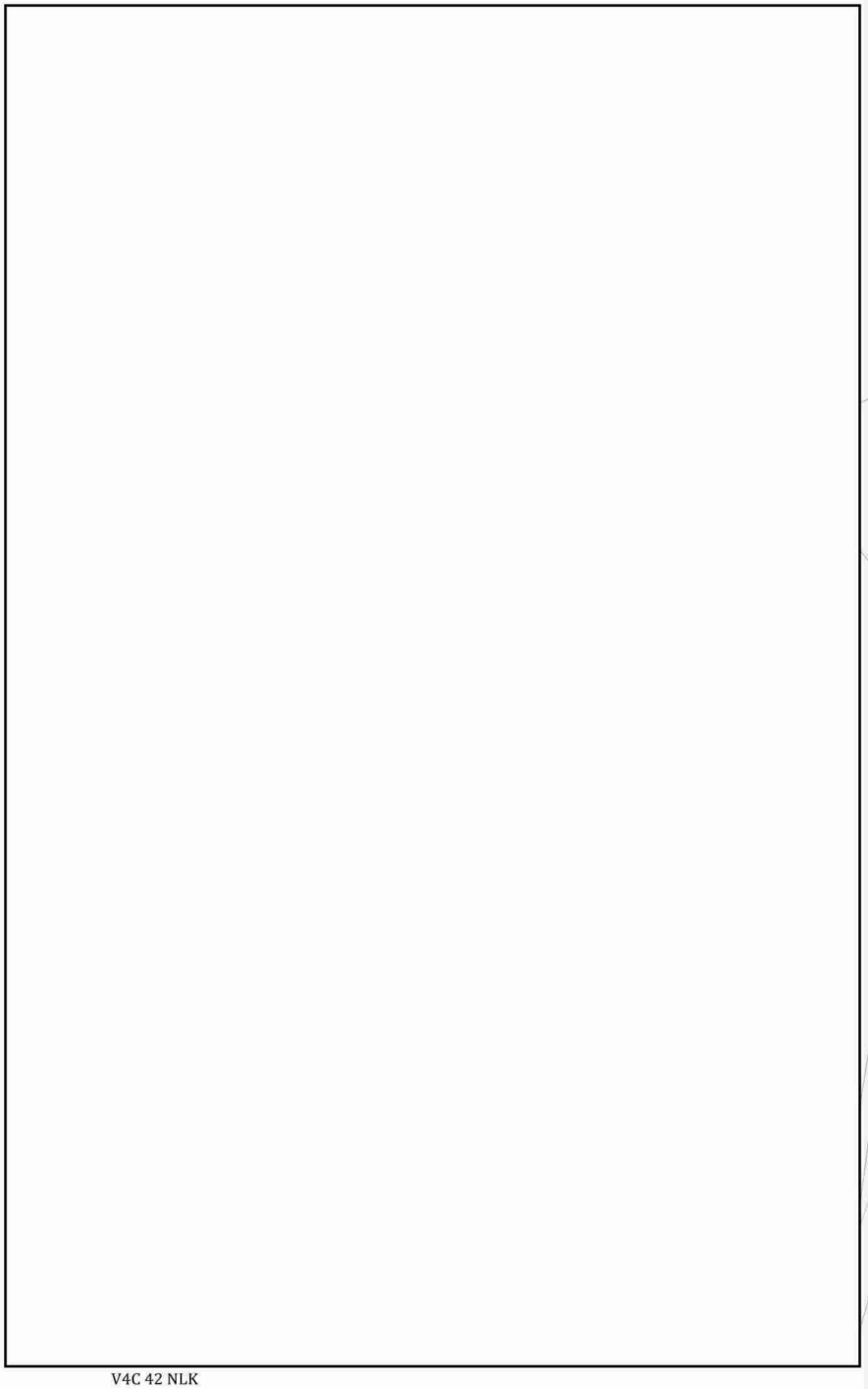
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AMERICAN OVERSIGHT

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MDM20427 S.L.C.

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AMERICAN OVERSIGHT

(b)(5)

From: Bailey, Morgan
Subject: FW: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act
To: Nuebel Kovarik, Kathy
Sent: May 6, 2020 6:26 PM (UTC-05:00)
Attached: Immigration Healthcare Workforce Resilience Act 05.06.20 USCIS comments for DO clearance.docx

This is a bill that was introduced: S. 3599, the Healthcare Workforce Resilience Act, which would "recapture" EB IVs, among other things. OCC and OP&S included several comments regarding USCIS' concerns.

(b)(6)

From: Tait, Karen E [redacted]
Sent: Wednesday, May 06, 2020 10:03 AM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted]>; Rexrode, Kathryn S [redacted]
Subject: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act

Good morning DO,

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Due to the urgency and prominence of the bill, OLIA is requesting clearance **by COB Thursday, May 7**.

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Clearances:
OCC: [redacted]
OP&
OLIA

Thank you,
Karen

Karen Tait

U.S. Citizenship and Immigration Services

Writer/Editor | External Affairs Directorate

Desk [redacted]

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[redacted]

AMERICAN OVERSIGHT

(b)(6)

116TH CONGRESS
2D SESSION

S. ▮▮

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

(b)(5)

IN THE SENATE OF THE UNITED STATES

▮▮▮▮▮▮▮▮▮▮

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A BILL

To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Healthcare Workforce Resilience Act".

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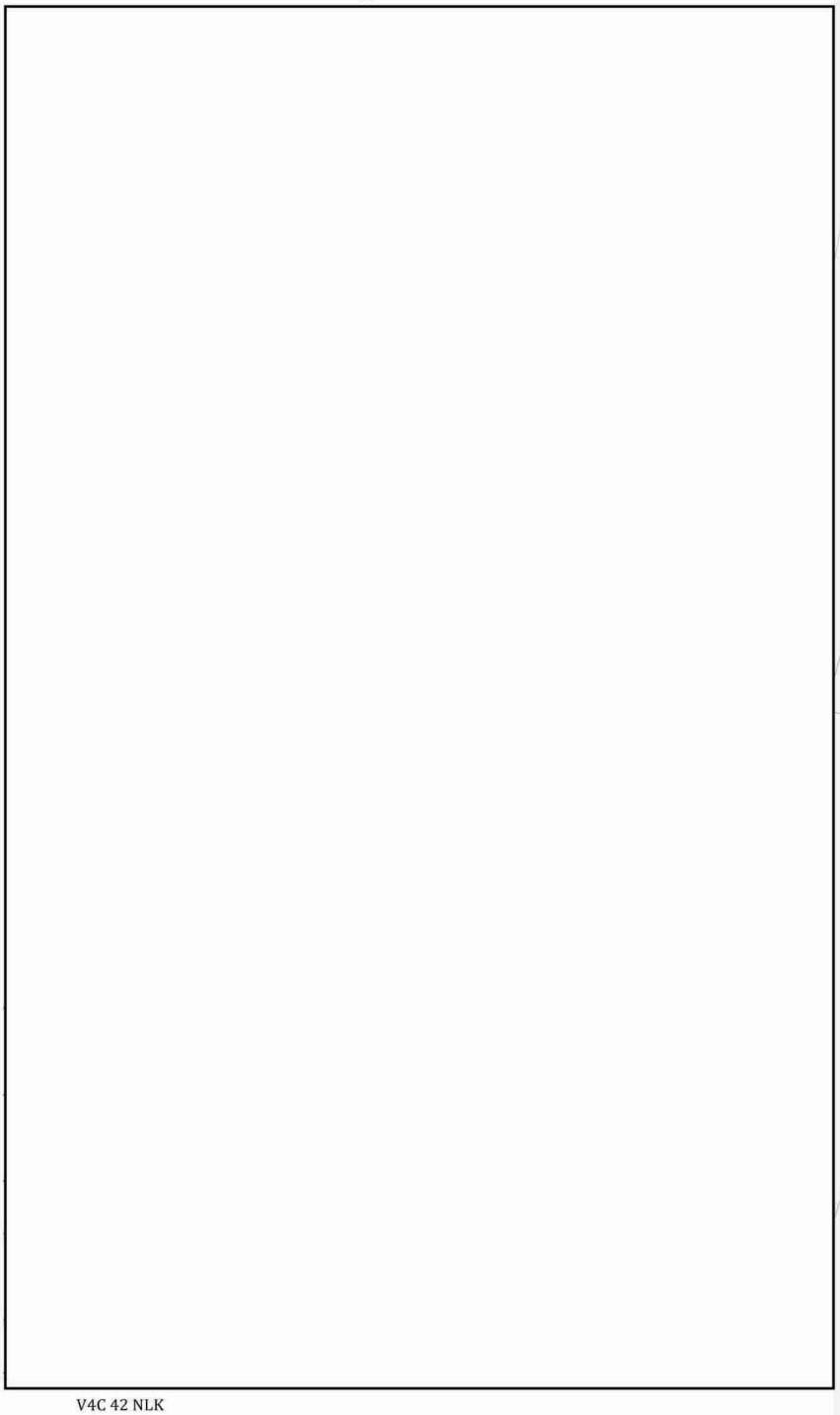
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AMERICAN OVERSIGHT

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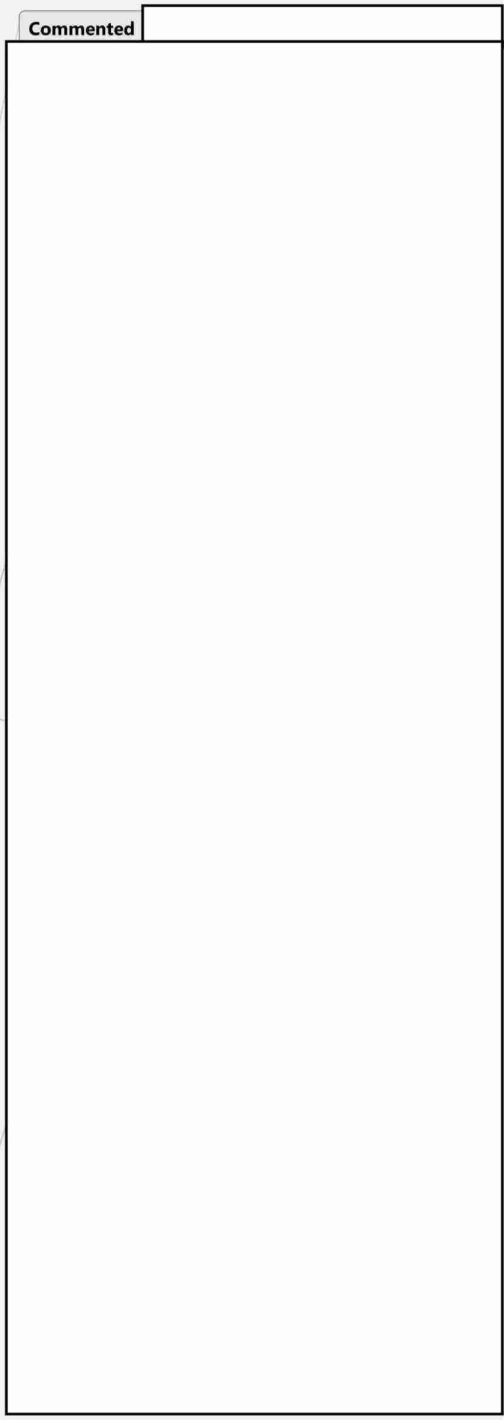
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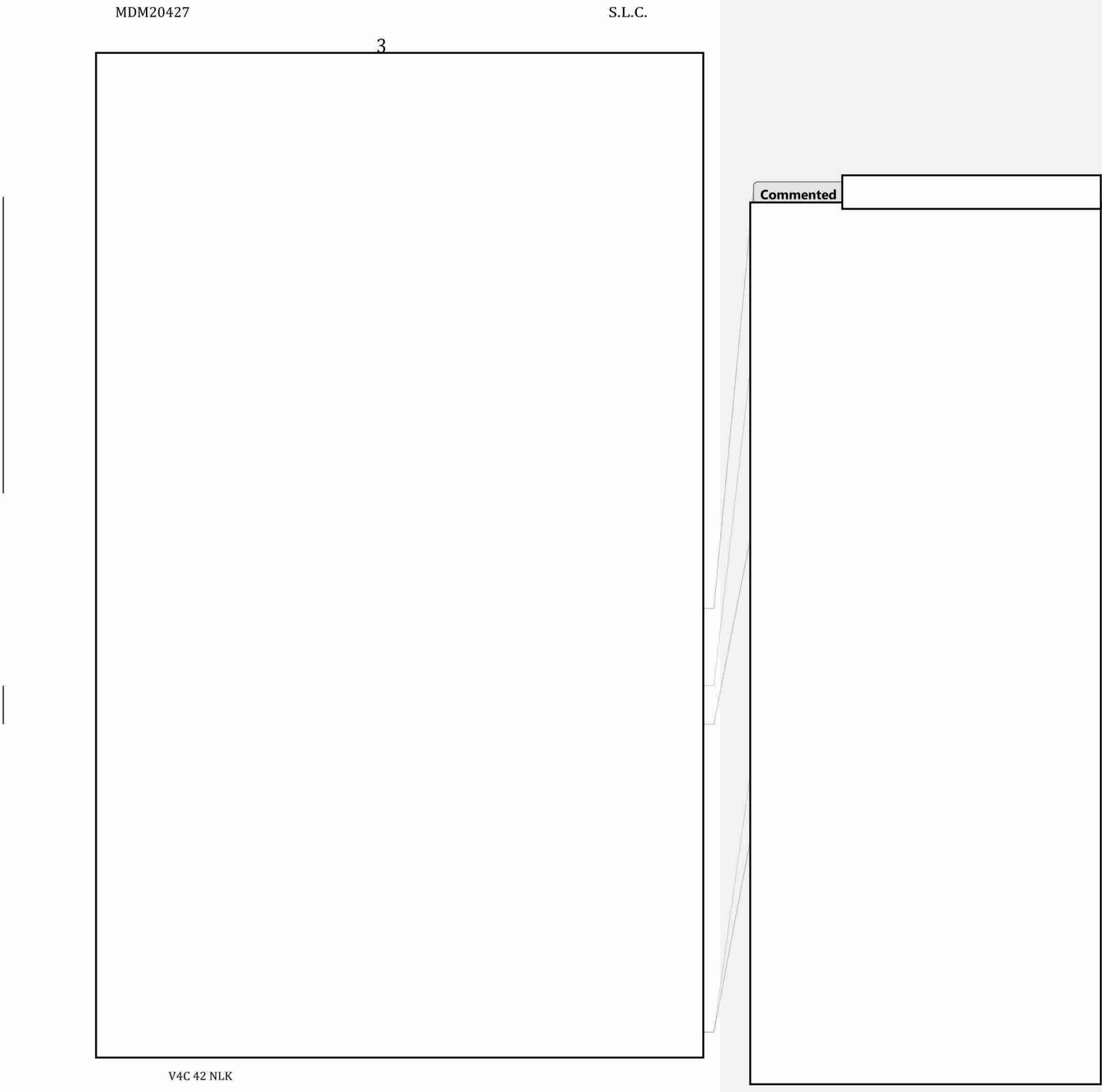
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AMERICAN OVERSIGHT

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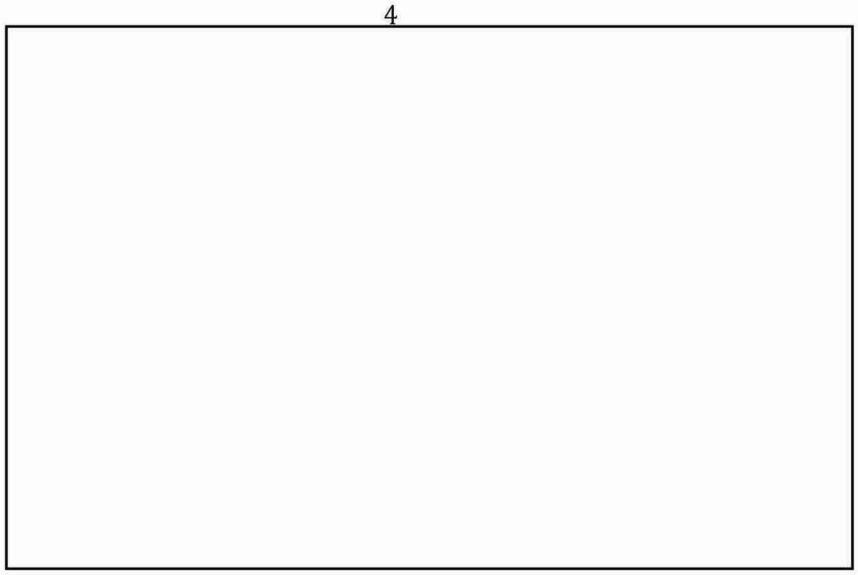
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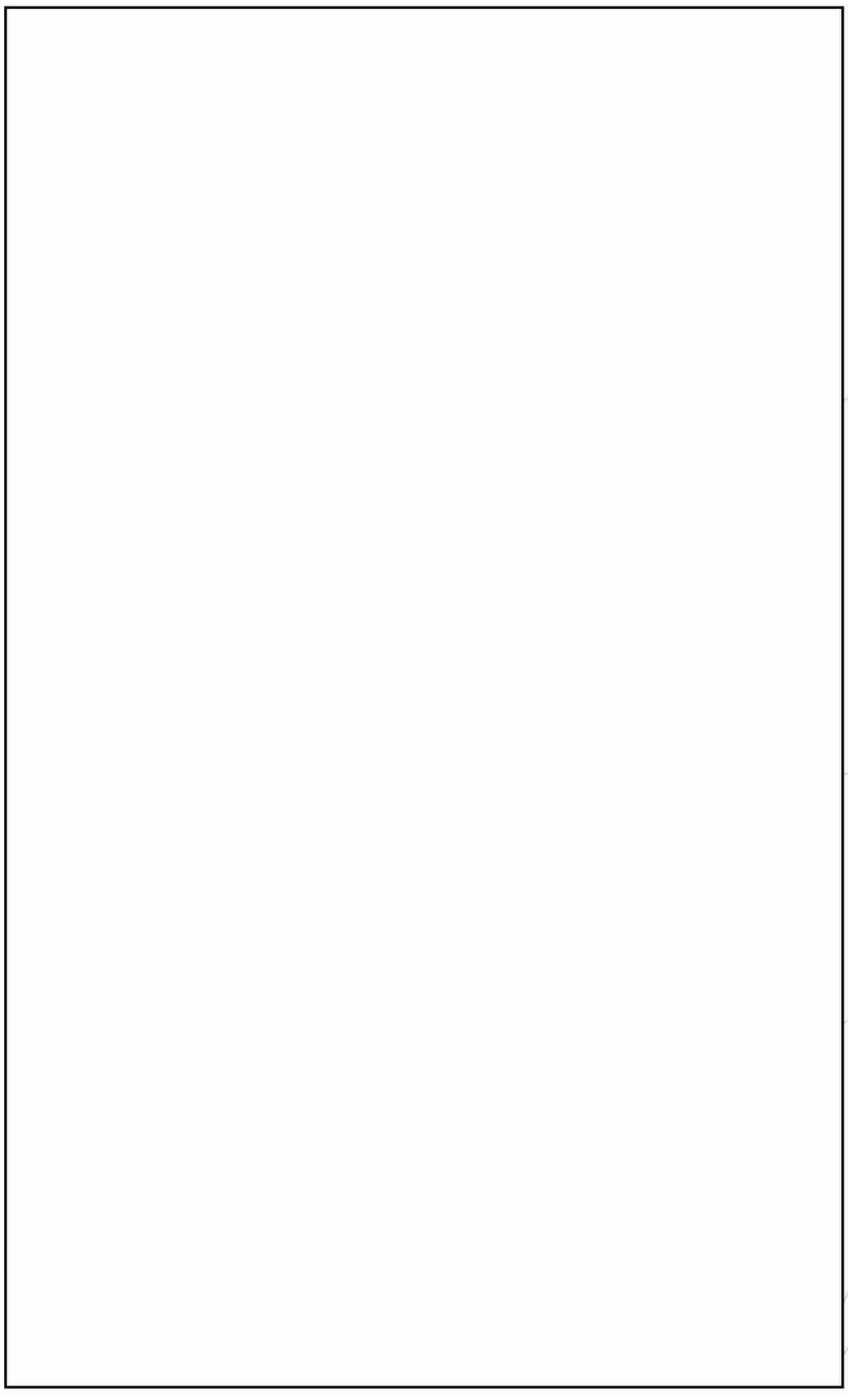
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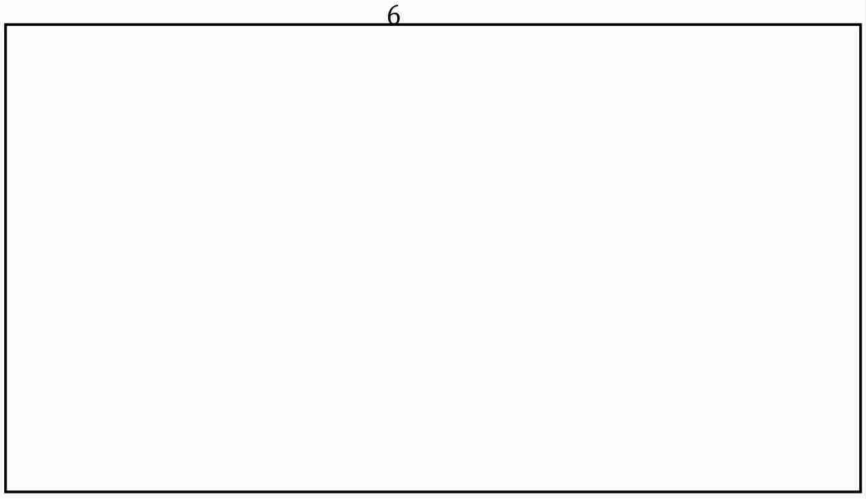
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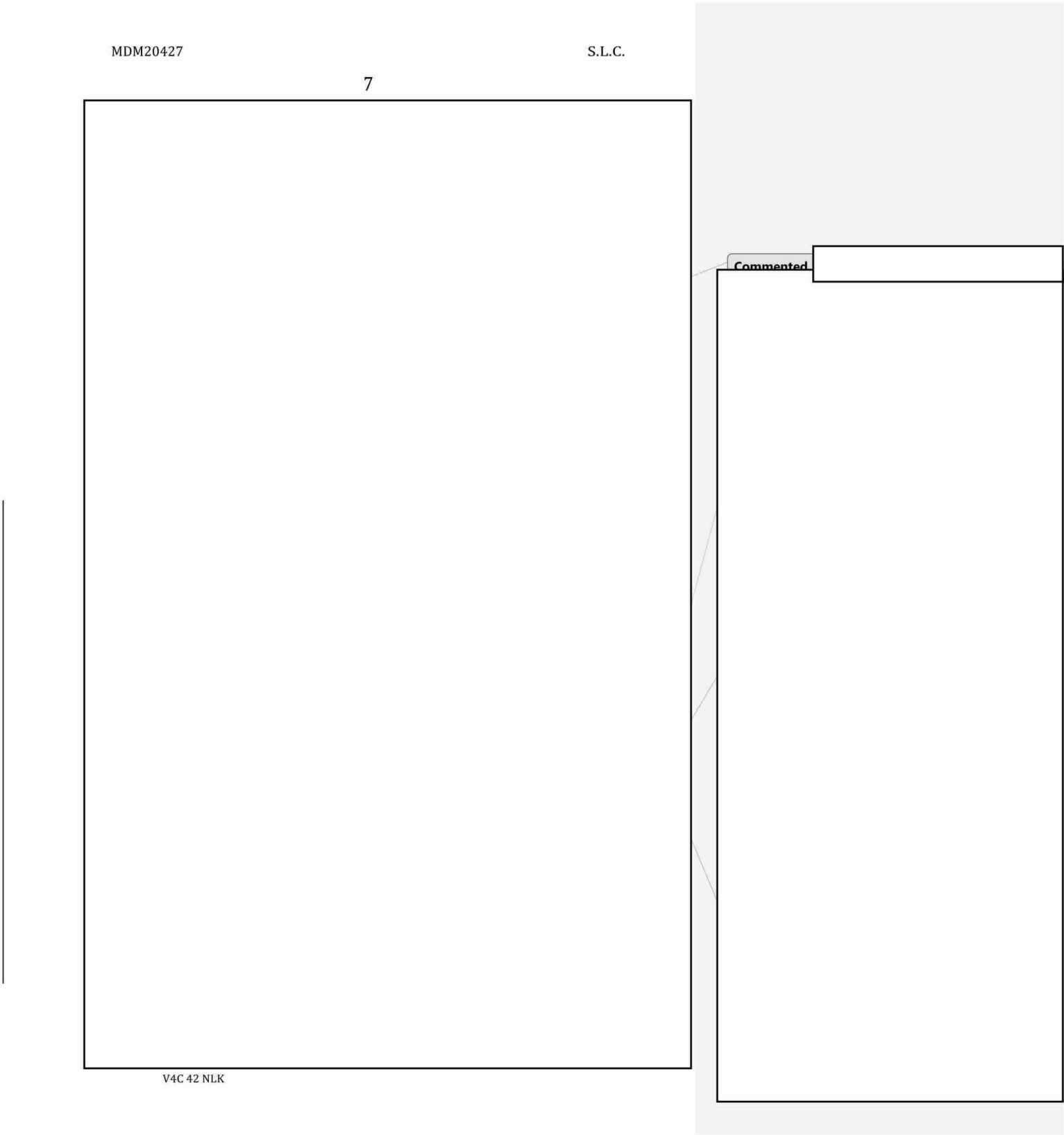
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AMERICAN OVERSIGHT

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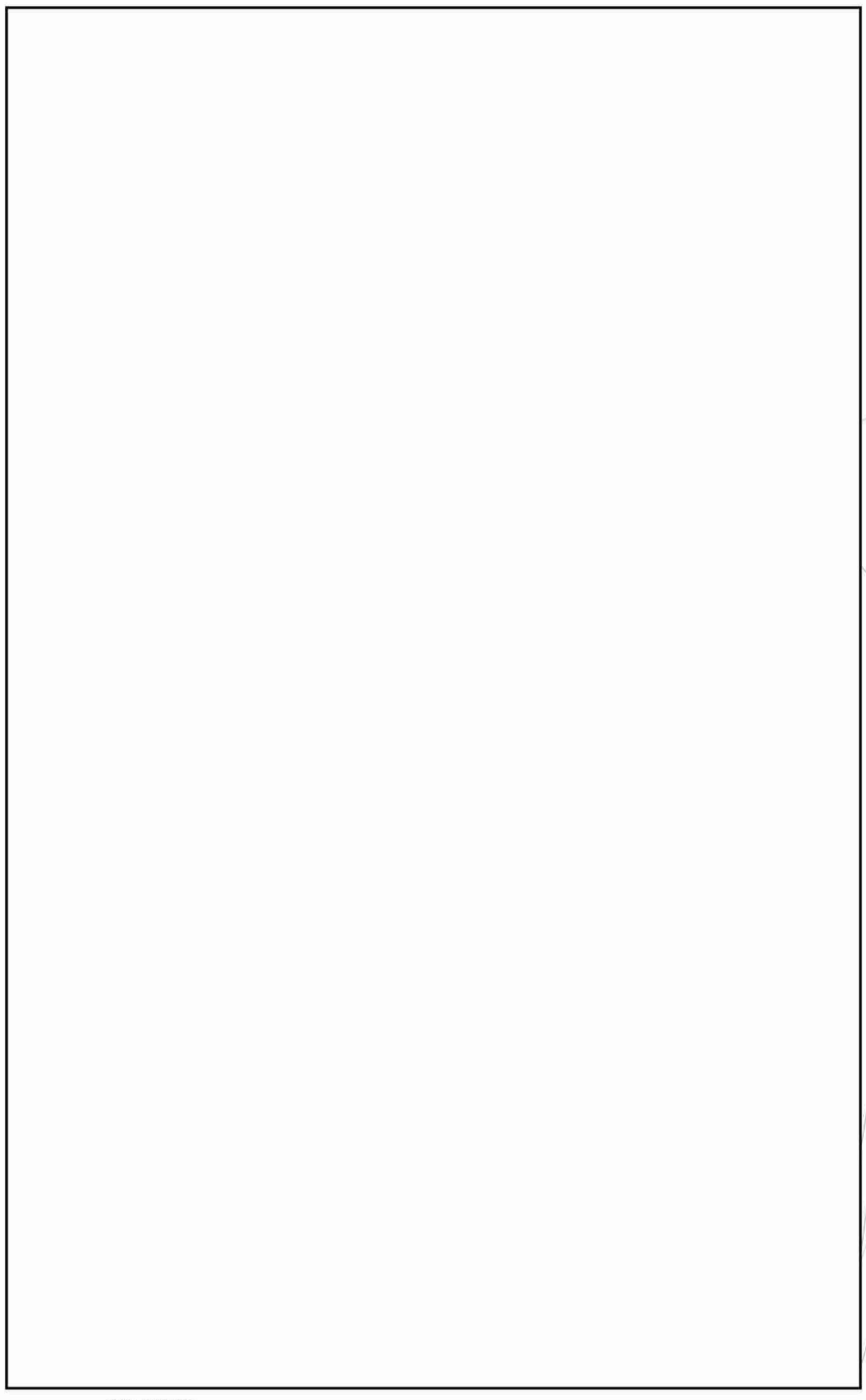
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AMERICAN OVERSIGHT

(b)(5)

From: Weinhold, Kasey D
Subject: FW: [EXA Clearance Request] - USCIS comments on S.3599, the Healthcare Workforce Resilience Act
To: Bailey, Morgan
Cc: USCIS Directors Office Advisors
Sent: May 6, 2020 2:50 PM (UTC-05:00)
Attached: Immigration Healthcare Workforce Resilience Act 05.06.20 USCIS comments for DO clearance.docx

Morgan,

I have no additional comments.

(b)(6)

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] **Mobile** [redacted] **| E-mail:** [redacted]

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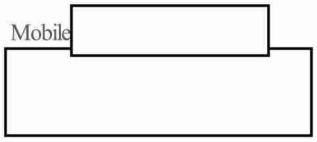
U.S. Citizenship and Immigration Services

Writer/Editor | External Affairs Directorate

Desk [redacted]

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AMERICAN OVERSIGHT



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AMERICAN OVERSIGHT

116TH CONGRESS
2D SESSION

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To enhance our Nation's nurse and physician workforce during the COVID–19 crisis by recapturing unused immigrant visas.

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IN THE SENATE OF THE UNITED STATES

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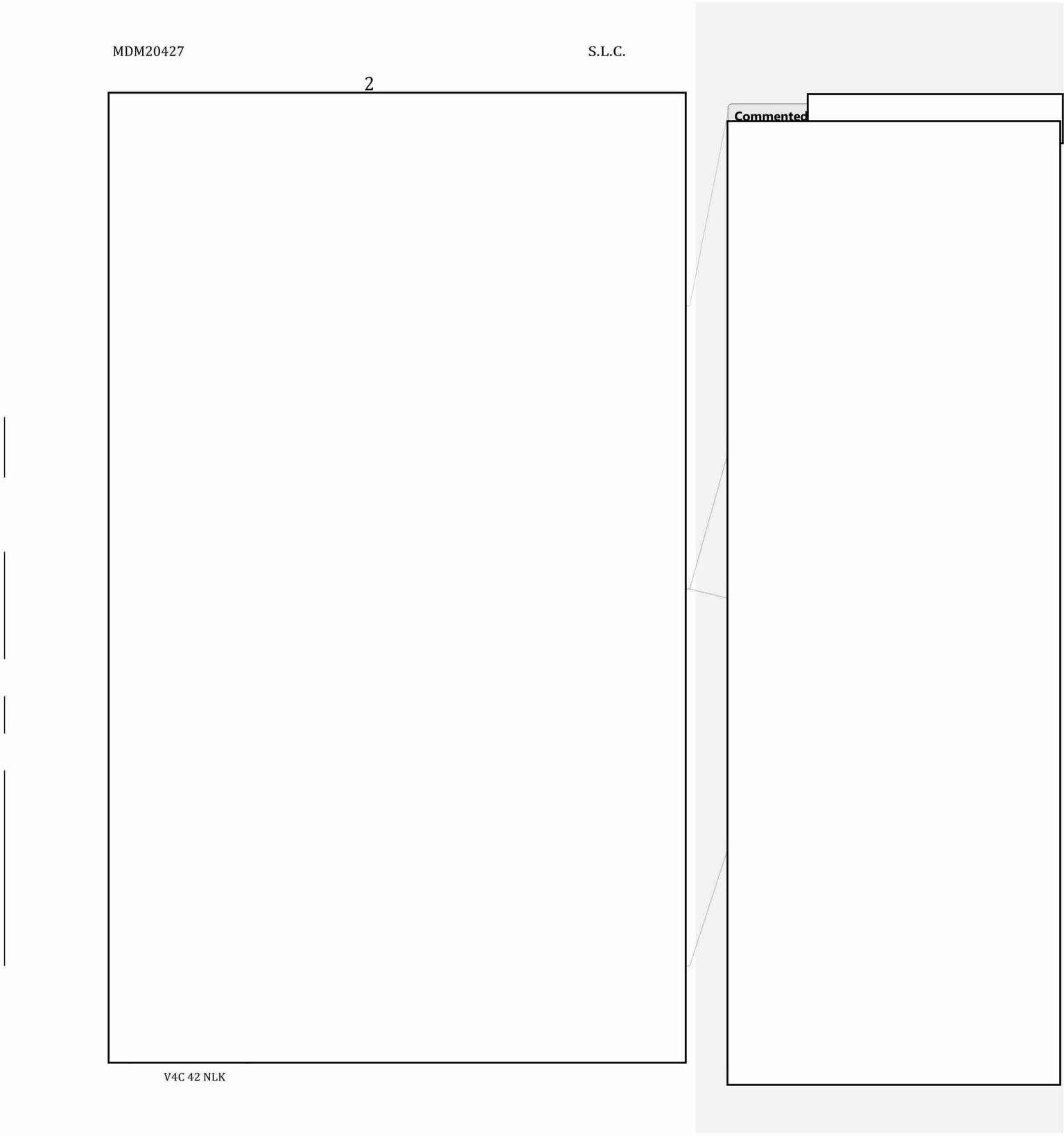
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AMERICAN OVERSIGHT

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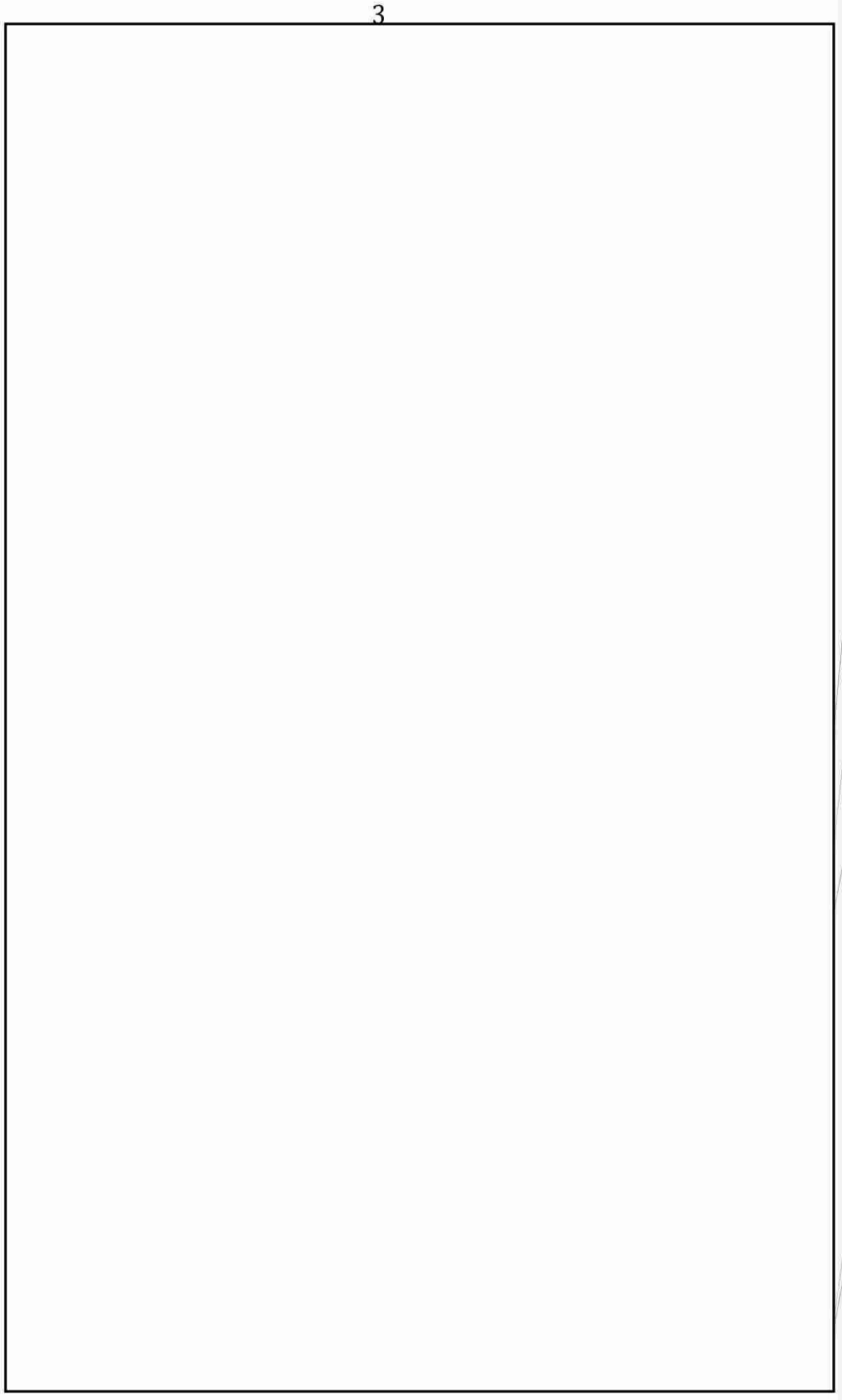
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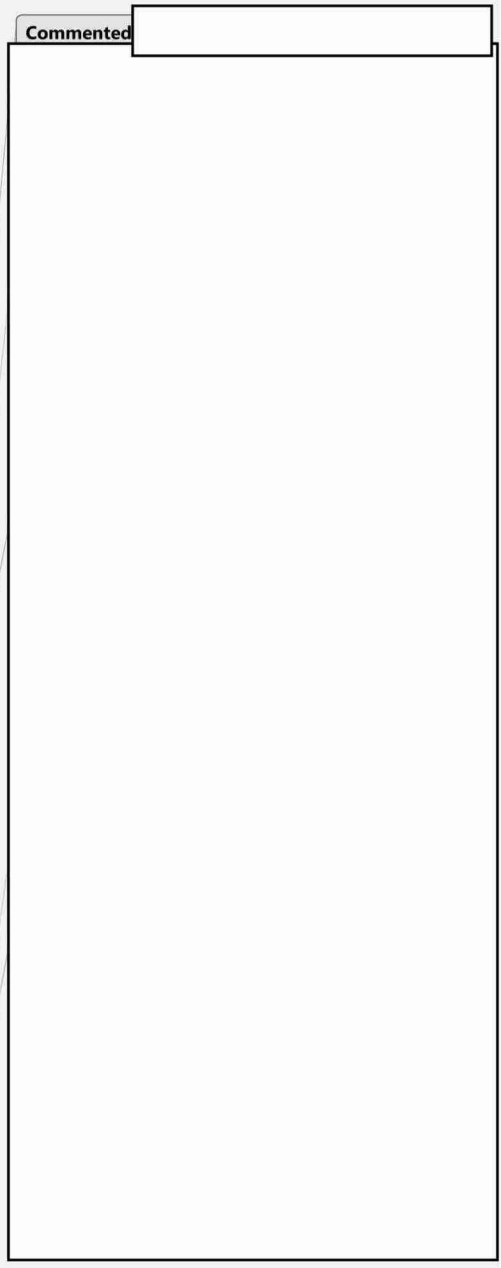
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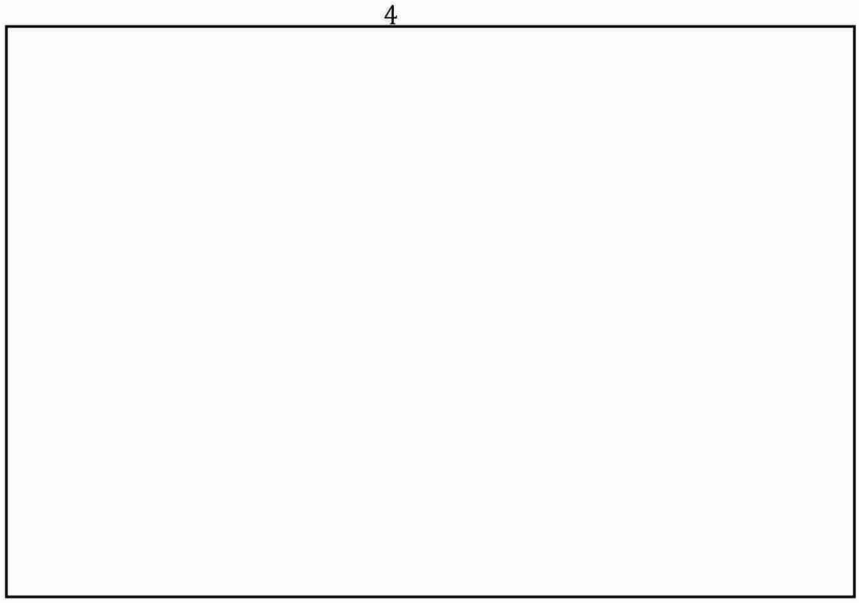
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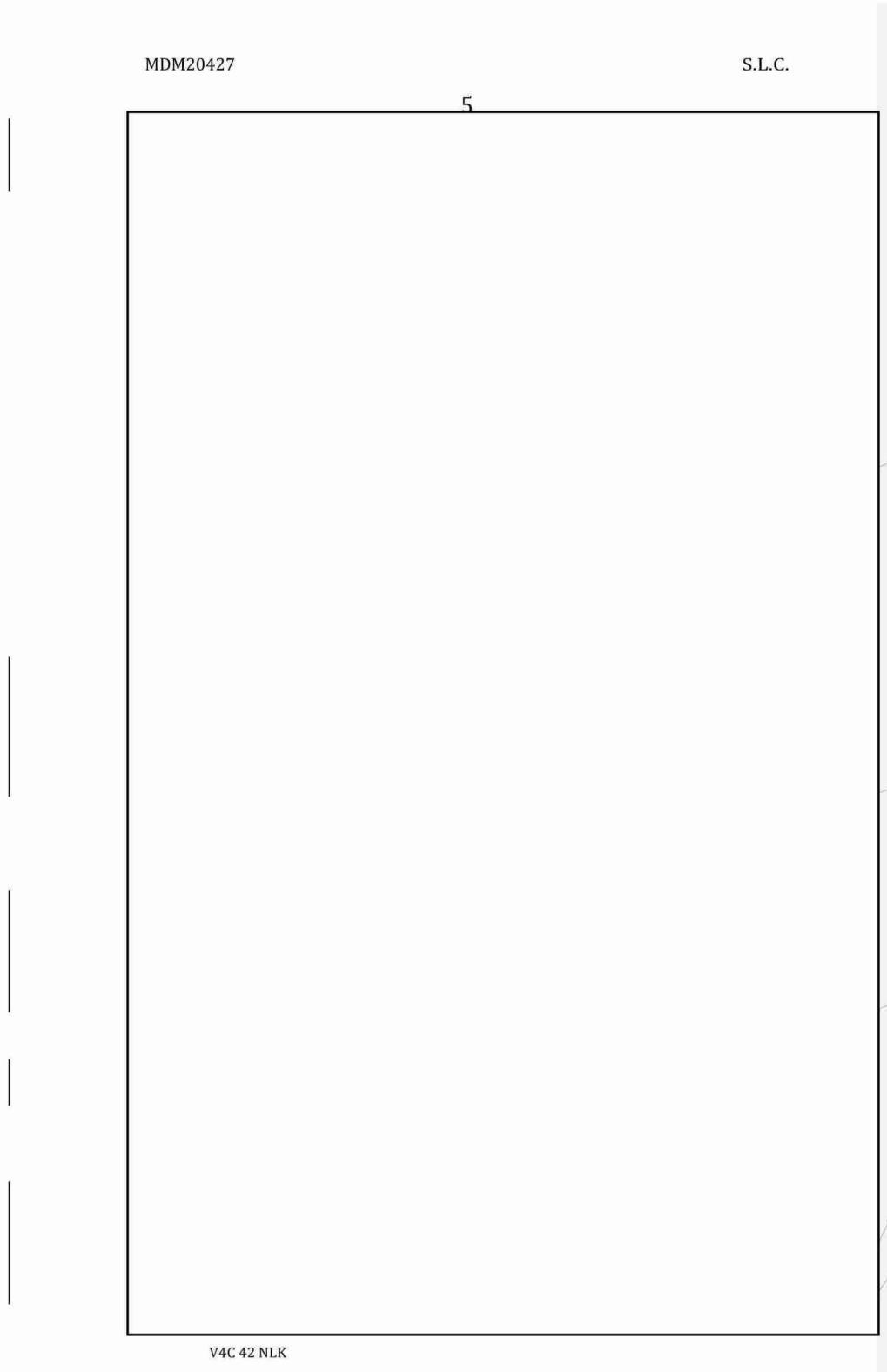
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AMERICAN OVERSIGHT

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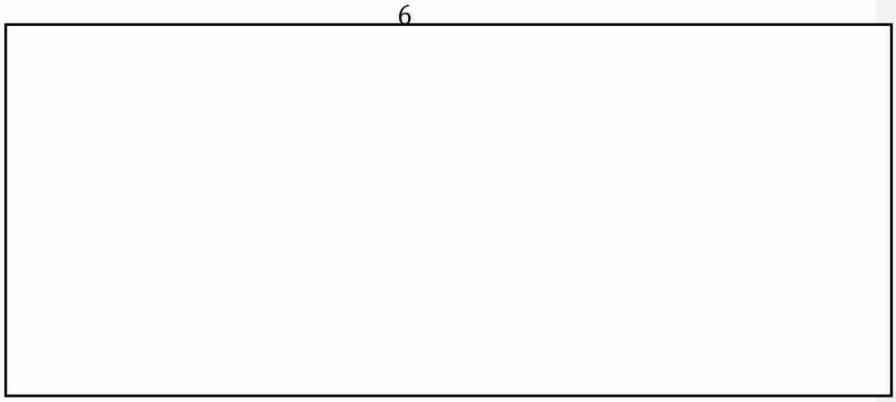
AMERICAN OVERSIGHT

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MDM20427 S.L.C.

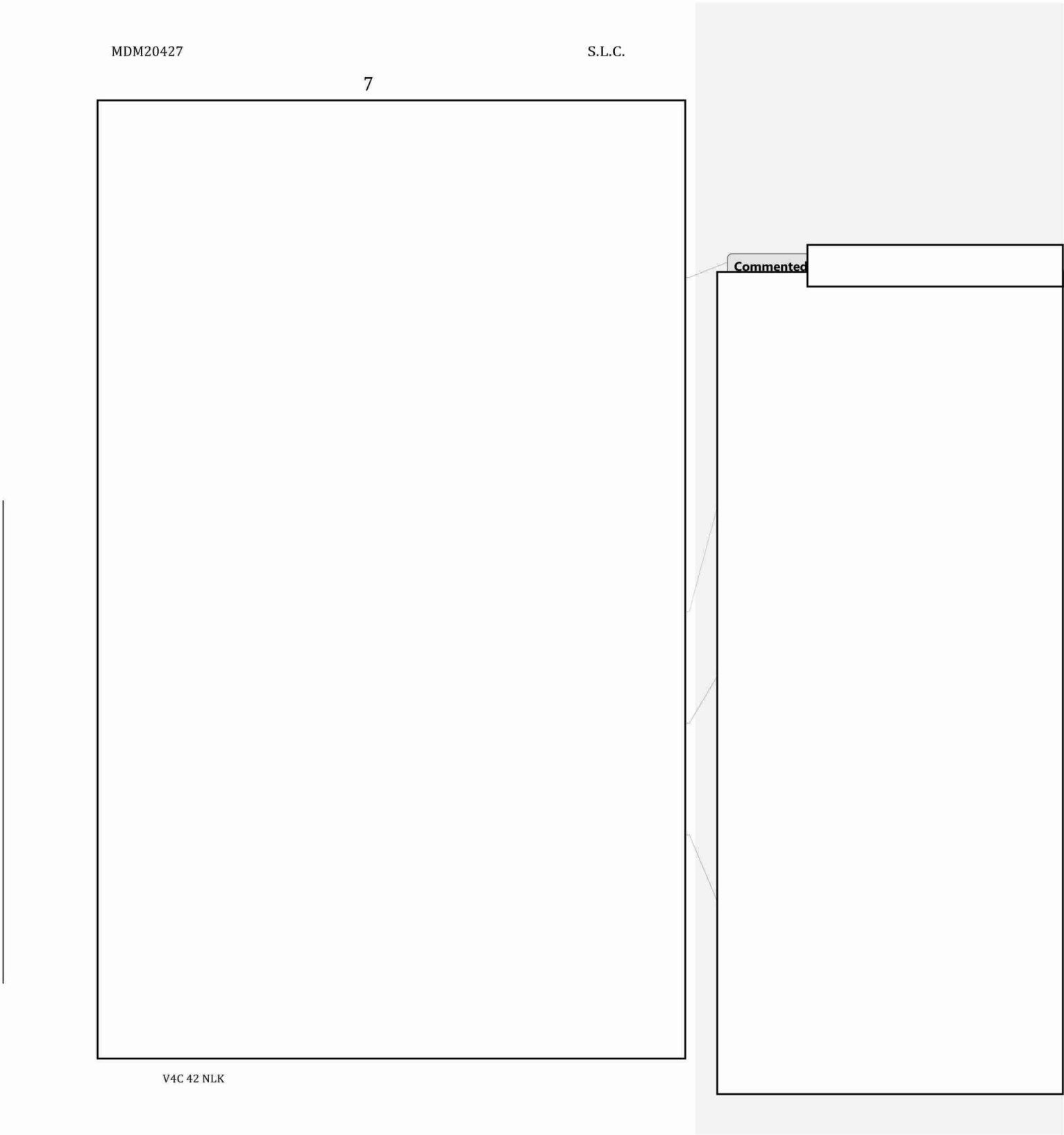
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AMERICAN OVERSIGHT

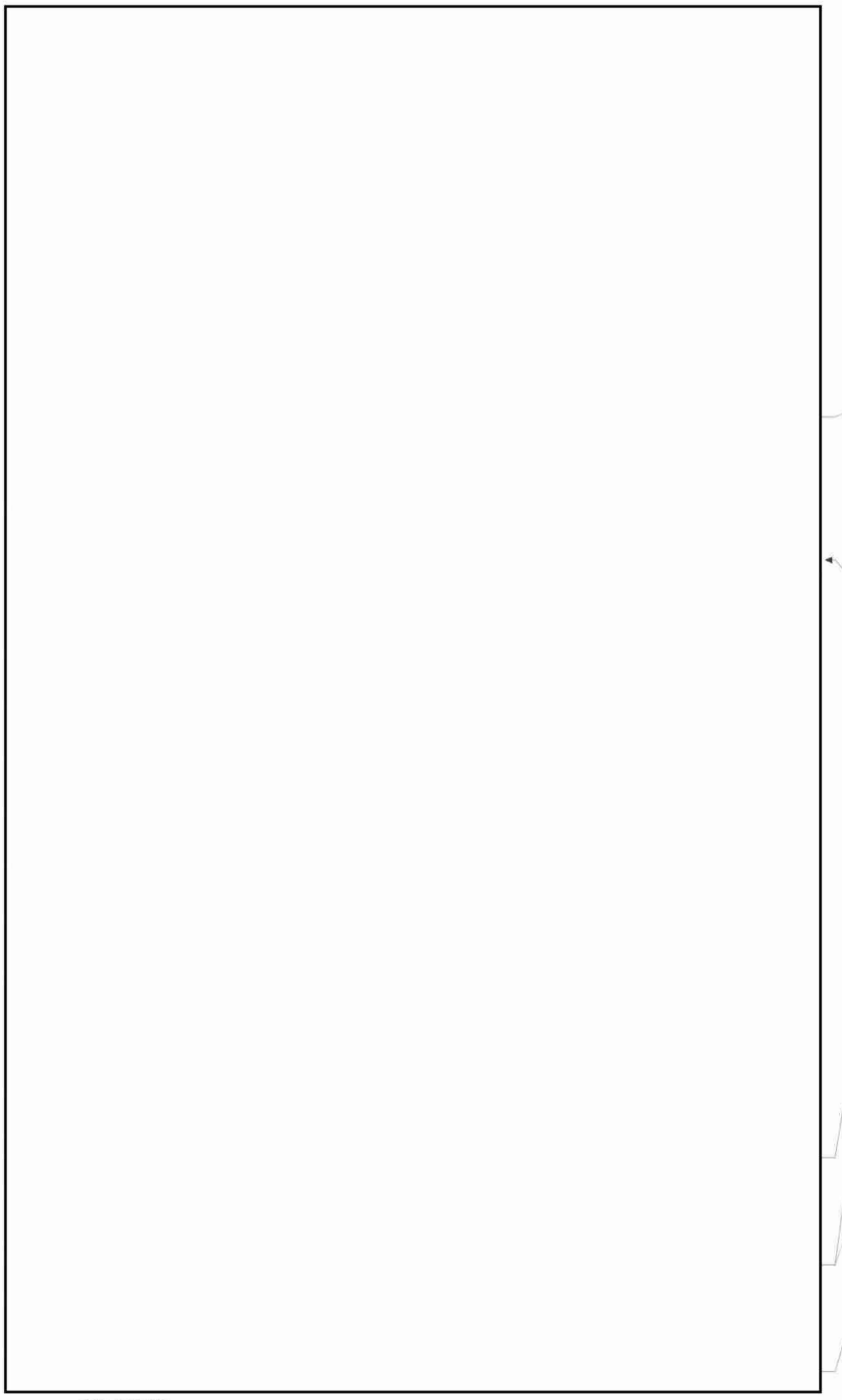
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AMERICAN OVERSIGHT

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Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

(b)(6)

From: USCIS Exec Sec
Subject: RE: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282
To: Bailey, Morgan; DDCLEAR; USCIS Directors Office Advisors
Cc: USCIS Exec Sec; Dove, Stephen W (Steve); Carter, Constance L; Drake, Johnetta; Dennis, Morgan C
Sent: May 5, 2020 8:14 AM (UTC-05:00)
Attached: OMB Question- Proclamation Permanent Immigration cleared.docx

OCC: [redacted]

" One suggestion on the last line to clarify that we do petitions for those outside the US as well as those inside."

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O) [redacted]
Email: [redacted]

From: Bailey, Morgan <[redacted]
Sent: Monday, May 04, 2020 1:10 PM
To: Penn, Melissa M <[redacted]>; DDCLEAR [redacted]; USCIS Exec Sec <[redacted]; Dove, Stephen W (Steve) [redacted]>; Carter, Constance L [redacted]>; Drake, Johnetta [redacted]; Dennis, Morgan C [redacted]>; USCIS Directors Office Advisors [redacted]>
Subject: FW: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear OMB Proclamation on Permanent Immigration - STARS# 26282 with edits/comments from the Director's Office.

Please have OCC review the revisions. Most of the changes come from the proclamation and the USCIS website. Thanks!

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉ [redacted]
☎

(b)(6)

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AMERICAN OVERSIGHT

From: Penn, Melissa M [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Friday, May 1, 2020 3:54 PM
To: DDCLEAR [redacted]
Cc: USCIS Exec Sec [redacted]; Dove, Stephen W (Steve) [redacted]; Carter, Constance L [redacted]; Drake, Johnetta [redacted]; Dennis, Morgan C [redacted]; Bailey, Morgan [redacted]; USCIS Directors Office Advisors [redacted]; Nuebel Kovarik, Kathy [redacted]
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282

Good Afternoon,

Requestor Directorate/Office: MGT/OCFO [redacted]

Due Date: COB Monday, May 4, 2020

Request: OCFO is requesting your review and clearance of the attached response to OMB regarding the President's proclamation on immigration on April 22.

Background: OMB had questions regarding the President's proclamation on immigration on April 22.

Clearance:

EXA/OLIA: concurred with edits/comments on 4/30/20
SCOPS: concurred without edits/comments on 4/30/20
OCC: concurred without edits/comments on 4/29/2020 [redacted]
OP&S: concurred with edits/comments on 4/29/2020 [redacted]

Attachments:
Draft Response

*******Please reply to all on this email ******

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O [redacted]
Email: [redacted]

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: RE: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282
To: Nuebel Kovarik, Kathy
Sent: May 4, 2020 12:00 PM (UTC-05:00)
Attached: OMB Question- Proclamation Permanent Immigration cleared.docx

(b)(5)

(b)(6)

From: Penn, Melissa M **On Behalf Of** USCIS Exec Sec
Sent: Friday, May 1, 2020 3:54 PM
To: DDCLEAR
Cc: USCIS Exec Sec; Dove, Stephen W (Steve); Carter, Constance L; Drake, Johnetta; Dennis, Morgan C; Bailey, Morgan; USCIS Directors Office Advisors; Nuebel Kovarik, Kathy
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282

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Requestor Directorate/Office: MGT/OCFO

Due Date: COB Monday, May 4, 2020

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Background: OMB had questions regarding the President's proclamation on immigration on April 22.

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OCC: concurred without edits/comments on 4/29/2020 (
OP&S: concurred with edits/comments on 4/29/2020 (

(b)(6)

Attachments:
Draft Response

*******Please reply to all on this email ******

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services

AMERICA'S OVERSIGHT

Department of Homeland Security
(O) [redacted]
Email: [redacted] (b)(6)

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

From:
Subject: RE: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282
To: Allsteadt, Edward
Cc: USCIS Directors Office Advisors
Sent: May 4, 2020 11:57 AM (UTC-05:00)
Attached: OMB Question- Proclamation Permanent Immigration cleared.docx

Morgan Bailey, Deputy Chief of Staff
Department of Homeland Security | USCIS | Office of the Director
✉
☎ [redacted]

(b)(6)

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From: Allsteadt, Edward [redacted]
Sent: Friday, May 1, 2020 5:34 PM
To: Bailey, Morgan [redacted]
Cc: USCIS Directors Office Advisors [redacted]
Subject: FW: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282

Morgan,

This is short and ready for your review.

Thanks,

Ed

From: Penn, Melissa M [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Friday, May 1, 2020 3:54 PM
To: DDCLEAR [redacted]
Cc: USCIS Exec Sec [redacted]; Dove, Stephen W (Steve) [redacted] Carter, Constance L [redacted]; Drake, Johnetta [redacted] Dennis, Morgan C [redacted]; Bailey, Morgan [redacted]; USCIS Directors Office Advisors [redacted]; Nuebel Kovarik, Kathy [redacted]
Subject: DIRECTOR'S OFFICE CLEARANCE REQUEST] Due: 5/4/2020 - COB- OMB Proclamation on Permanent Immigration - STARS# 26282

Good Afternoon,

Requestor Directorate/Office: MGT/OCFO [redacted]

Due Date: COB Monday, May 4, 2020

Request: OCFO is requesting your review and clearance of the attached response to OMB regarding the President's proclamation on immigration on April 22.

AMERICAN OVERSIGHT

Background: OMB had questions regarding the President's proclamation on immigration on April 22. (b)(6)

(b)(6)

Clearance:

EXA/OLIA: concurred with edits/comments on 4/30/2
SCOPS: concurred without edits/comments on 4/30/2
OCC: concurred without edits/comments on 4/29/2020
OP&S: concurred with edits/comments on 4/29/2020

Attachments:
Draft Response

*******Please reply to all on this email ******

Thank you,

Melissa M. Penn
Management and Program Analyst
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
(O)
Email

(b)(6)

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

Referred to Office of Management and Budget

AMERICAN OVERSIGHT

(b)(6)

From: Weinhold, Kasey D
Subject: RE: EXA Clearance Request: SAC Immigration Data Inquiry
To: Delgado, Daniel; USCIS Directors Office Advisors
Cc: EXA Clearance Distribution List; Rexrode, Kathryn S
Sent: April 30, 2020 7:33 PM (UTC-05:00)
Attached: SAC question on immigration data 4-28 OPS OCC (002) clean.docx, SAC question on immigration data 4-28 OPS OCC (002) redline.docx

CLEARED WITH EDITS from Front Office
On behalf of the Director's Office, I clear USCIS' response to SAC Immigration Data Inquiry, with edits/comments from the Director's Office. One document is a redline version and the other is a clean document. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile** [redacted] | **E-mail** [redacted]

From: Delgado, Daniel [redacted]
Sent: Tuesday, April 28, 2020 1:57 PM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted] Rexrode, Kathryn S [redacted]
Subject: EXA Clearance Request: SAC Immigration Data Inquiry

Hi DO folks,

Please see the attached response to a SAC minority inquiry on LPR data. A staffer has asked about the differences between DHS and DOS data (the staffer is trying to calculate the number of effected persons by the recent executive proclamation).

Once this clears, we'll pass along to DHS as well.

Due: COB tomorrow (Wednesday, April 29)

Cleared by:
- OCC – [redacted]
- OP&S
- OPQ –

Attachments:
- SAC inquiry and draft response

Please let me know if you have any questions. Thanks!

Daniel Delgado
Advisor | External Affairs Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security
Mobile: [redacted]
Email: [redacted]

AMERICAN OVERSIGHT

(b)(6)

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AMERICAN OVERSIGHT

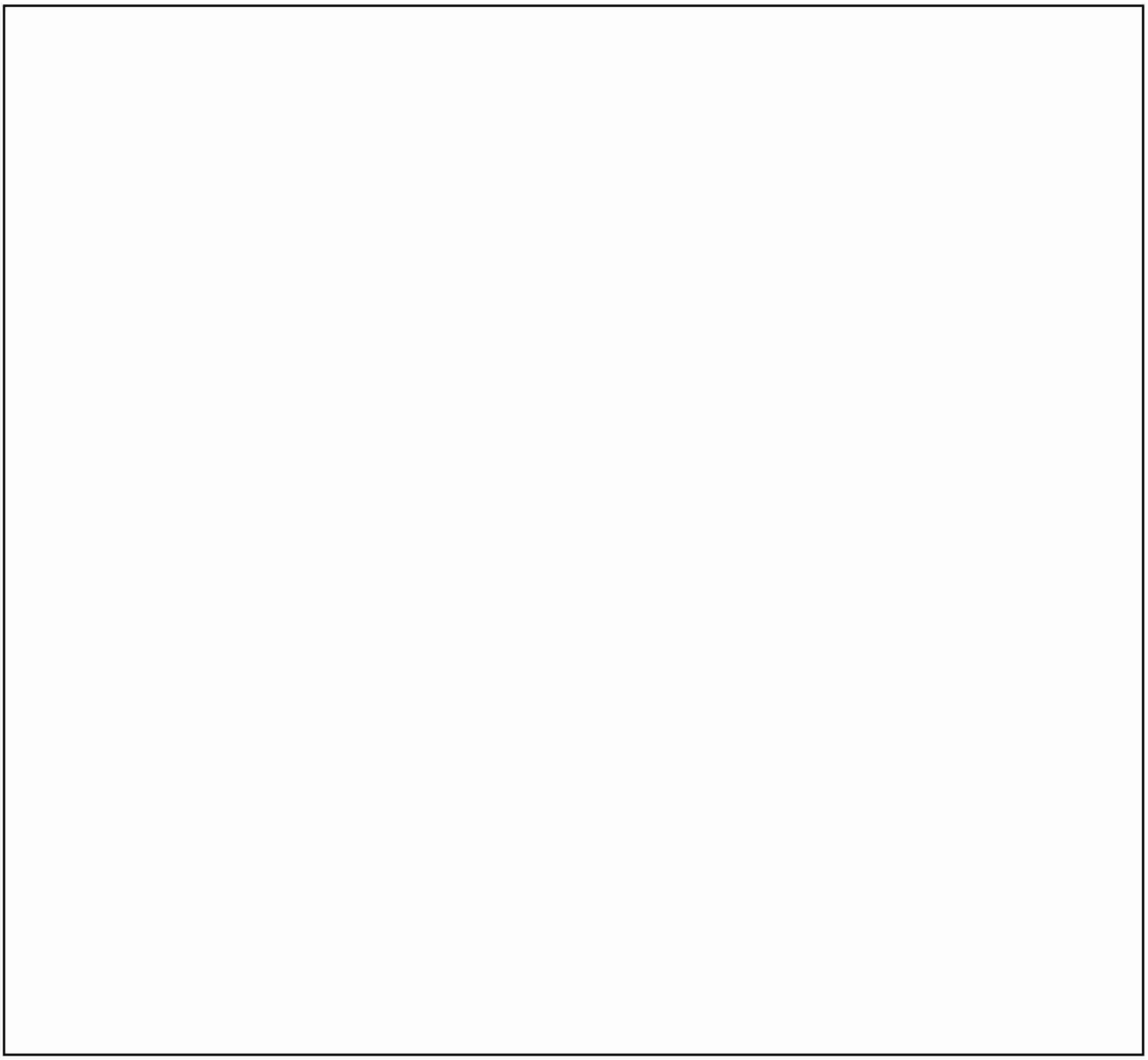
OLIA requests review of the proposed response from OPQ to this time-sensitive question from Senate Appropriations Committee minority staff:

> I'm trying to provide a calculation of the total number of persons who received immigrant visas in FY19 or FY18 (whichever year has the most complete data set) in the specific categories that are now banned under the new EO. As you know, there are two data sources that capture this information. One, is housed by DHS (see table 6 under LPR) and the other DOS – since both issue visas for these categories (LPR/green card).
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> What is unclear to me however, is whether the DHS data includes the DOS data (I see that it does only for refugees)…making it the most comprehensive reflection of total LPRs issued. That seems right to me, but I can't seem to find clarification in the footnotes/data explanation section of the data book that the numbers represented are inclusive of both agencies. Basically, I need to know whether I need to add up DHS and DOS to give an approximation for FY19 or whether DHS already includes that? I hope it is the latter!

Proposed response:

AMERICAN OVERSIGHT

(b)(5)

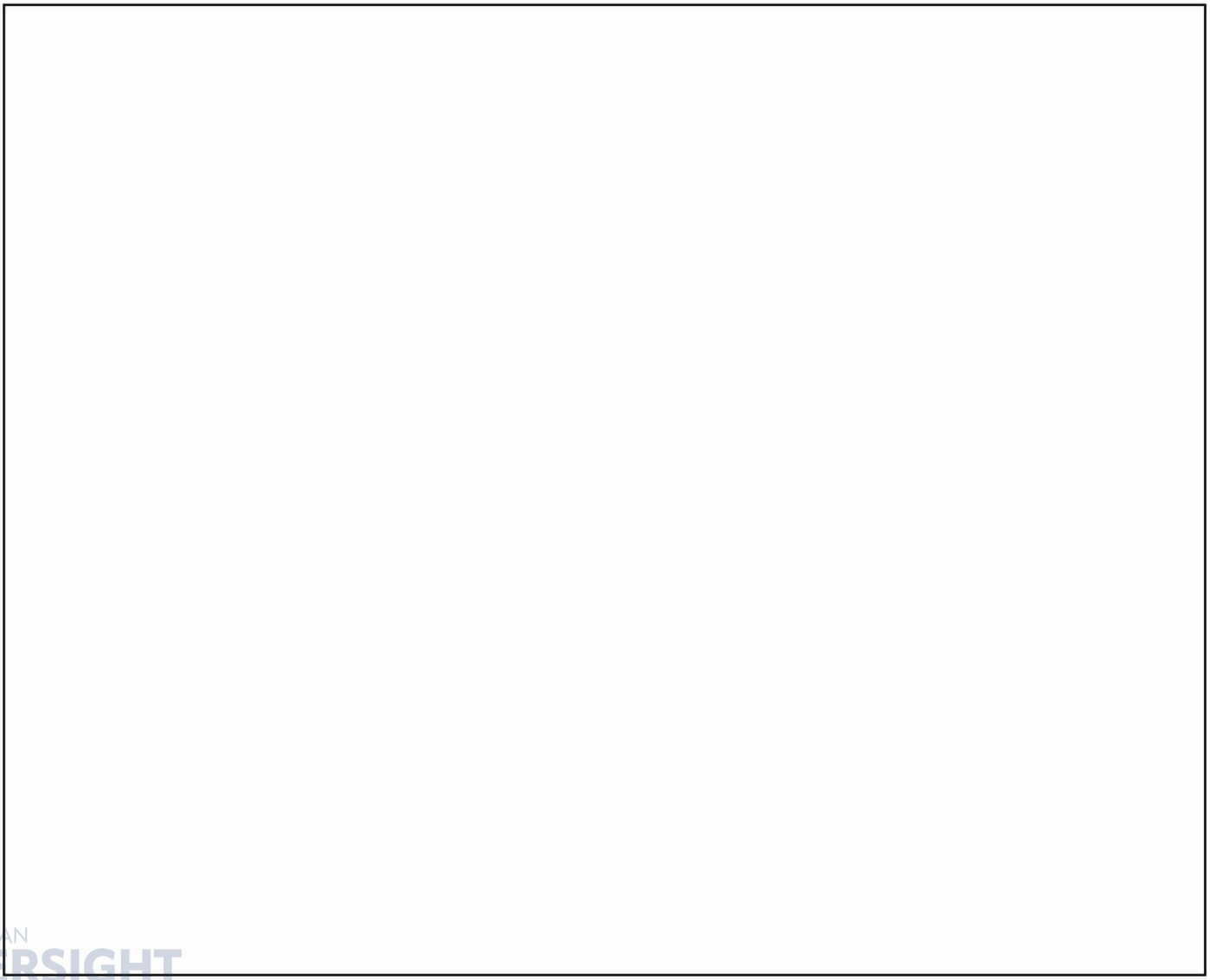


AMERICAN OVERSIGHT

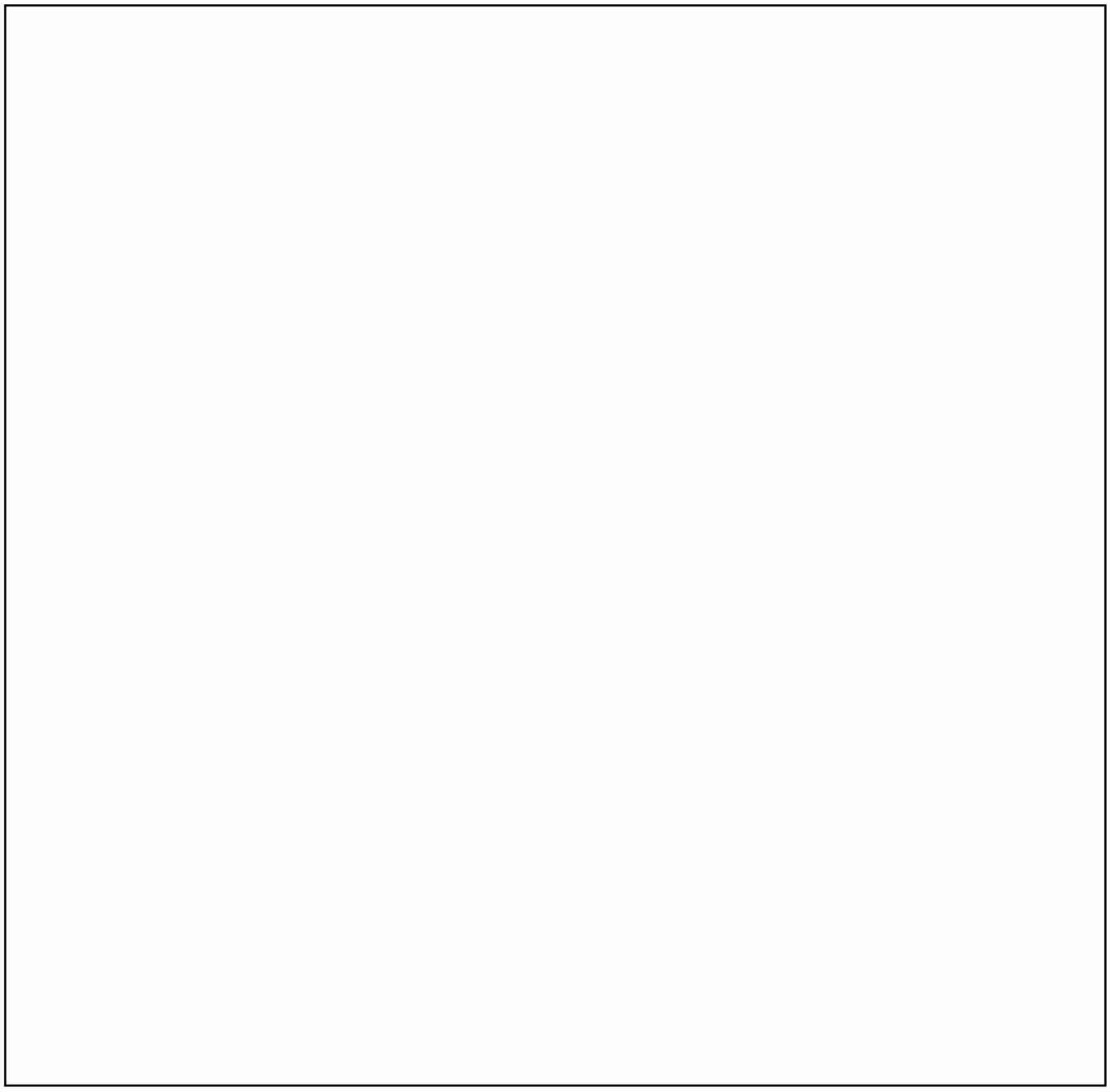
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Proposed response: (b)(5)



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

From: Bailey, Morgan
Subject: FW: EXA Clearance Request: SAC Immigration Data Inquiry
To: Weinhold, Kasey D
Sent: April 30, 2020 7:17 PM (UTC-05:00)
Attached: SAC question on immigration data 4-28 OPS OCC (002) redline.docx, SAC question on immigration data 4-28 OPS OCC (002) clean.docx

This can clear with edits/comments. The first document has redlines and the second document is a clean version. (b)(6)

From: Weinhold, Kasey D [redacted]
Sent: Tuesday, April 28, 2020 4:20 PM
To: Bailey, Morgan [redacted]
Cc: USCIS Directors Office Advisors [redacted]
Subject: FW: EXA Clearance Request: SAC Immigration Data Inquiry

Hi Morgan,

No edits or comments regarding our explanation of data set. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: [redacted] **Mobile:** [redacted] | **E-mail:** [redacted]

From: Delgado, Daniel [redacted]
Sent: Tuesday, April 28, 2020 1:57 PM
To: USCIS Directors Office Advisors [redacted]
Cc: EXA Clearance Distribution List [redacted] Rexrode, Kathryn S [redacted]
Subject: EXA Clearance Request: SAC Immigration Data Inquiry

Hi DO folks,

Please see the attached response to a SAC minority inquiry on LPR data. A staffer has asked about the differences between DHS and DOS data (the staffer is trying to calculate the number of effected persons by the recent executive proclamation).

Once this clears, we'll pass along to DHS as well.

Due: COB tomorrow (Wednesday, April 29)

Cleared by:

- OCC [redacted]
- OP&S
- OPQ

Attachments:

- SAC inquiry and draft response

AMERICAN OVERSIGHT

Please let me know if you have any questions. Thanks!

(b)(6)

Daniel Delgado
Advisor | External Affairs Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security
Mobile
Email:

(b)(6)

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AMERICAN OVERSIGHT

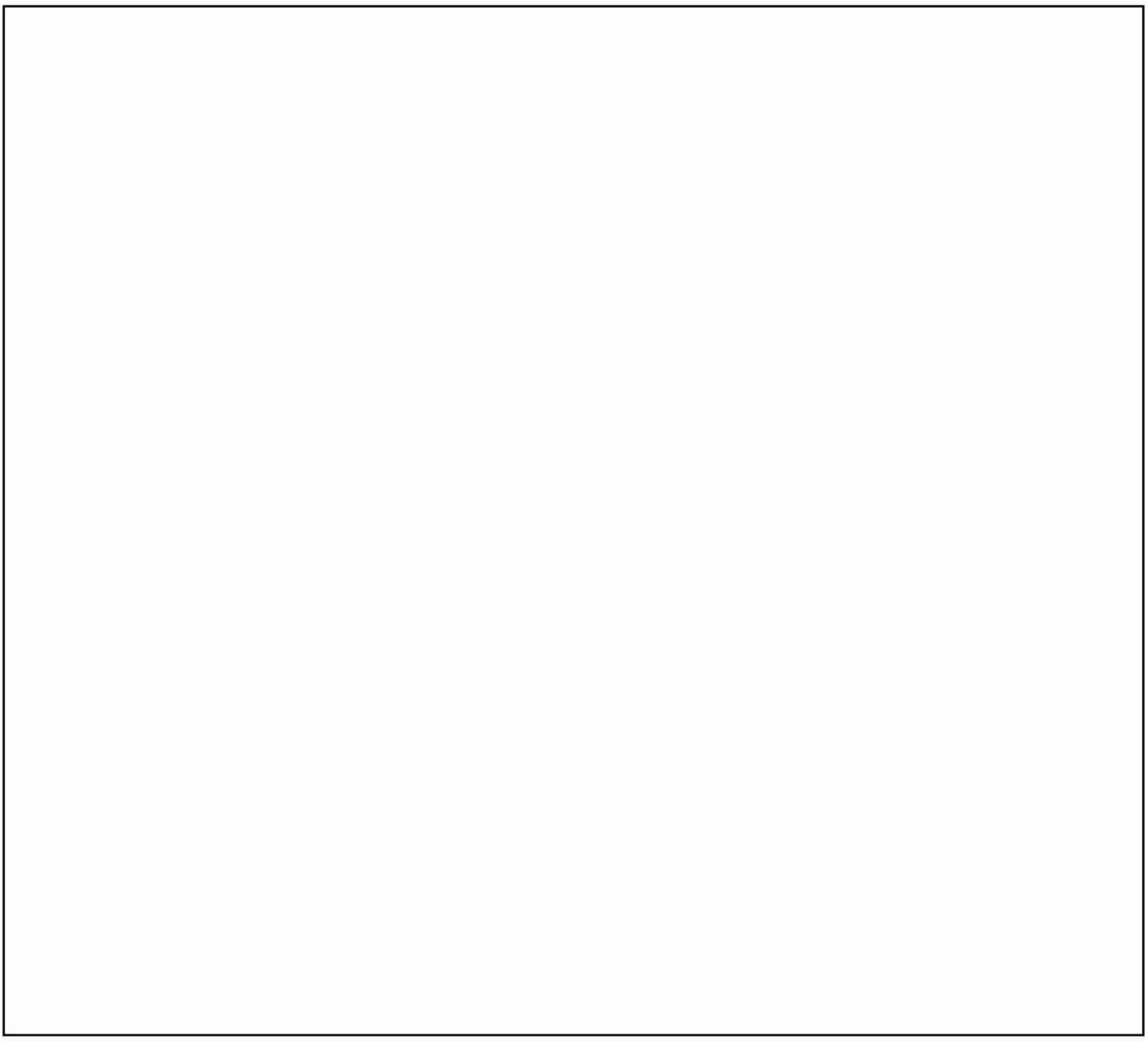
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(b)(5)

Proposed response:

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

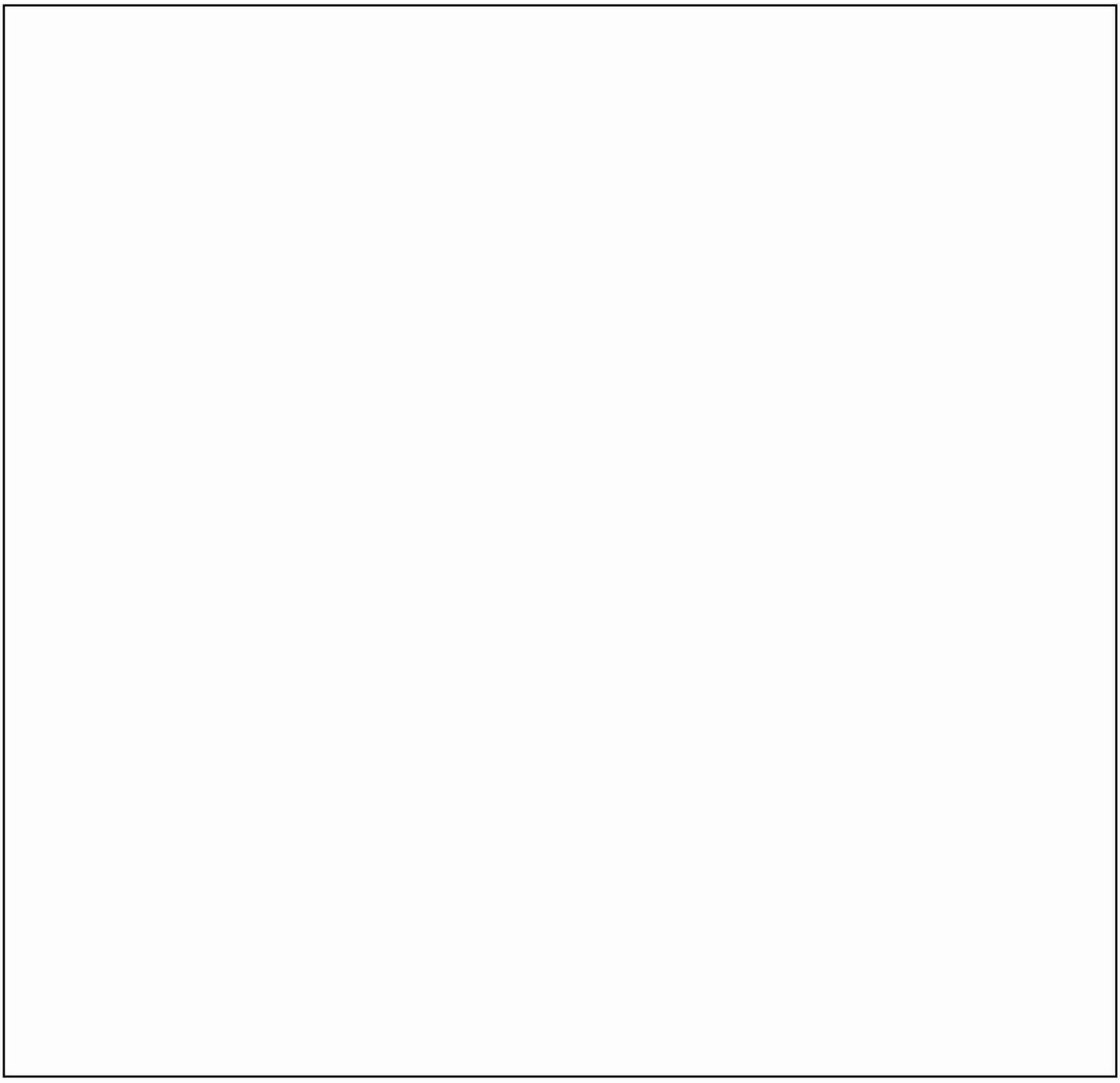
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Proposed response: (b)(5)

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

(b)(6)

From: Bailey, Morgan
Subject: FW: EXA Clearance Request: SAC Immigration Data Inquiry
To: Nuebel Kovarik, Kathy
Sent: April 28, 2020 5:05 PM (UTC-05:00)
Attached: SAC question on immigration data 4-28 OPS OCC (002) redline.docx, SAC question on immigration data 4-28 OPS OCC (002) clean.docx

I had a lot of edits. The first document shows my redlines and the second version is a clean version with my edits.

From: Weinhold, Kasey D [redacted]
Sent: Tuesday, April 28, 2020 4:20 PM
To: Bailey, Morgan [redacted]
Cc: USCIS Directors Office Advisors [redacted]
Subject: FW: EXA Clearance Request: SAC Immigration Data Inquiry

Hi Morgan,

No edits or comments regarding our explanation of data set. Thank you.

Sincerely,

Kasey D. Weinhold
Advisor – Office of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office [redacted] **Mobile:** [redacted] **E-mail:** [redacted]

From: Delgado, Daniel [redacted]>
Sent: Tuesday, April 28, 2020 1:57 PM
To: USCIS Directors Office Advisors [redacted]>
Cc: EXA Clearance Distribution List [redacted], Rexrode, Kathryn S [redacted]
Subject: EXA Clearance Request: SAC Immigration Data Inquiry

Hi DO folks,

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Once this clears, we'll pass along to DHS as well.

Due: COB tomorrow (Wednesday, April 29)

Cleared by:

- OCC [redacted]
- OP&S
- OPQ

Attachments:

- SAC inquiry and draft response

(b)(6)

AMERICAN OVERSIGHT

Please let me know if you have any questions. Thanks!

Daniel Delgado
Advisor | External Affairs Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security
Mobile
Email: [redacted] (b)(6)

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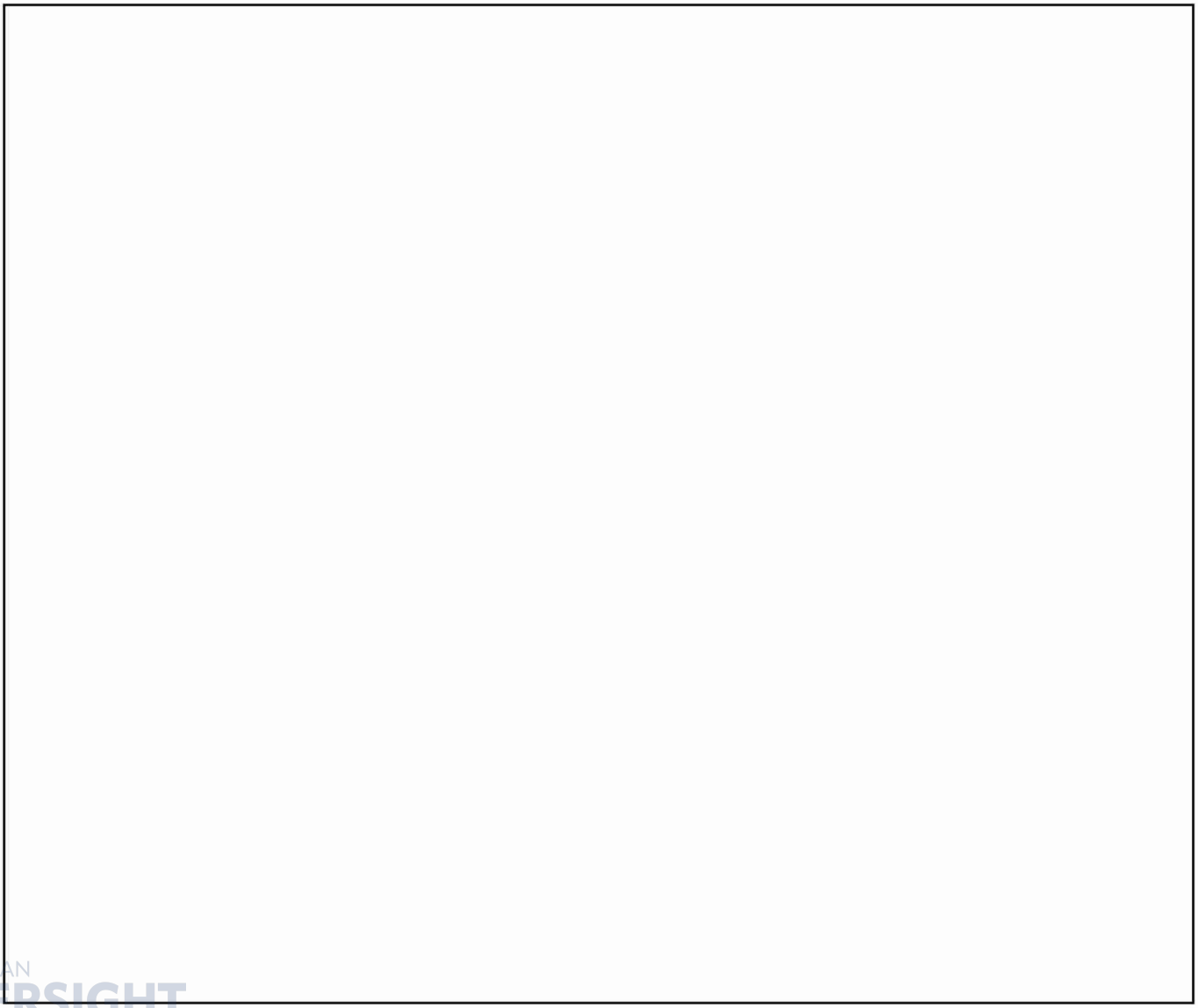
AMERICAN OVERSIGHT

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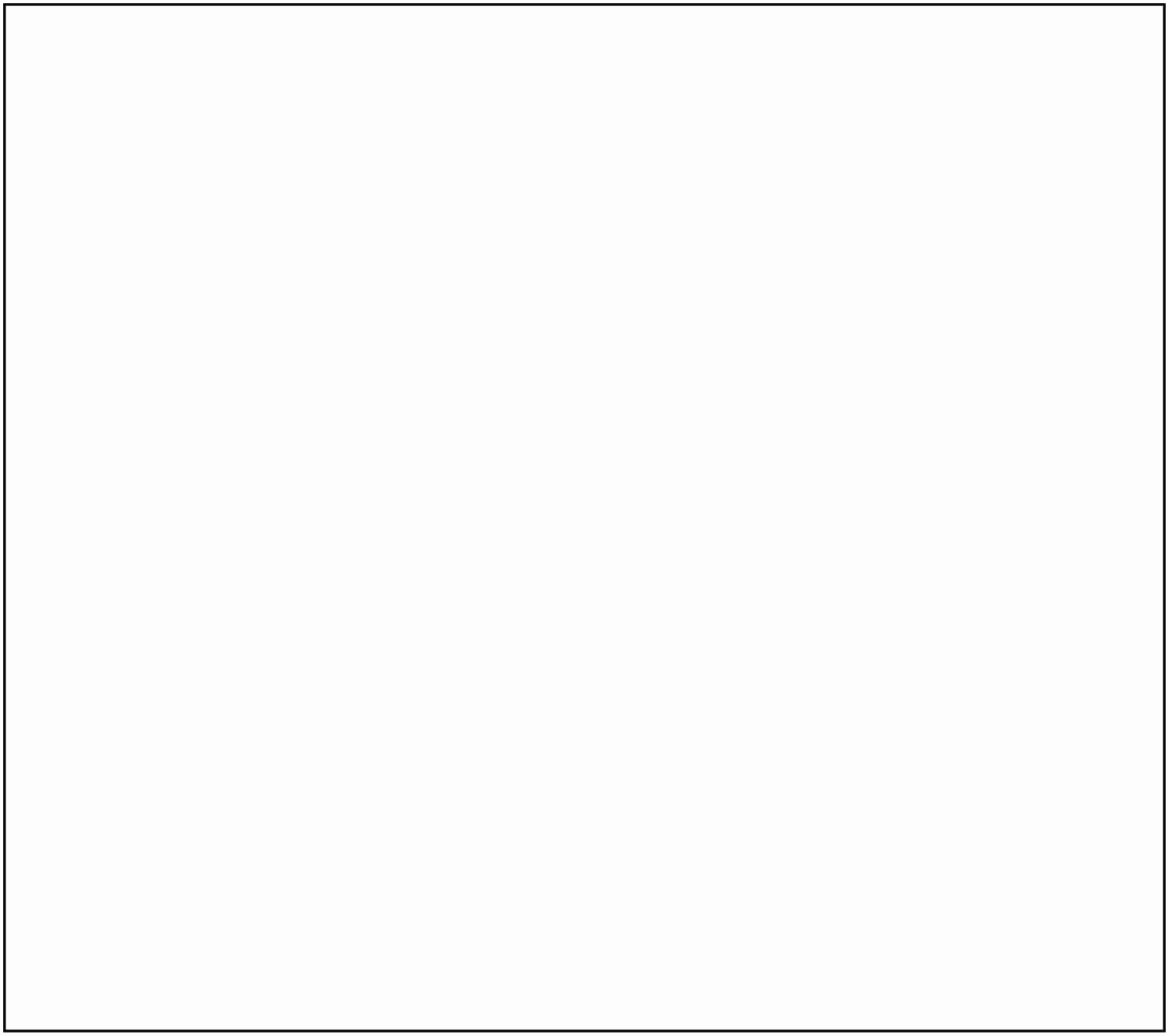
(b)(5)

Proposed response:



AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

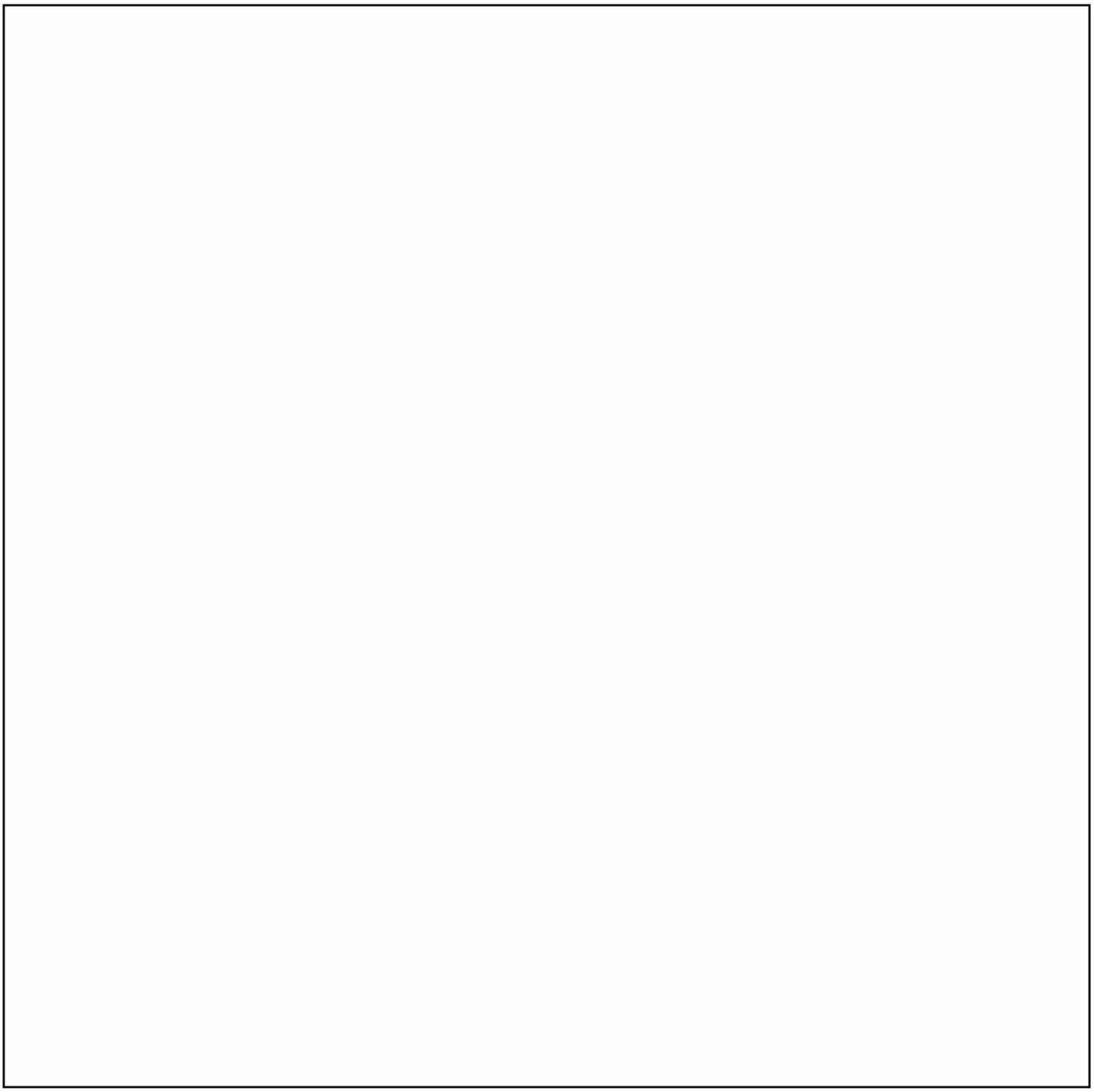
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Proposed response: (b)(5)

AMERICAN OVERSIGHT

(b)(5)



AMERICAN OVERSIGHT

From: Bell, Stephen P
Subject: FW: 20200423 USCIS COVID-19 SITREP
To: #CIS OCC CHIEFS ALL; #CIS OCC DEPUTIES ALL
Cc: Gentry, Anthony E (Tony)
Sent: April 23, 2020 2:51 PM (UTC-05:00)
Attached: 20200423 USCIS COVID-19 Situational Report.docx

Please see the attached daily USCIS Leadership Situational Report. This is forwarded for your awareness and should not be further disseminated without first coordinating with AnnMarie, Molly, John, Phil, and myself.

Stay "Agile & Flexible & Healthy!"

(b)(6)

- Steve Bell
Chief of Staff
USCIS Office of the Chief Counsel
US Department of Homeland Security

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From: USCIS Command Center
Sent: Thursday, April 23, 2020 2:27 PM
To: Burnett, Kelsey D; Dibbins, Susan F; Dumas, Jessica L; Velarde, Barbara Q; Bailey, Morgan; Nuebel Kovarik, Kathy; Bonic, Andrew V; Collins, Jessica B; Delgado, Daniel; Levine, Laurence D; Patching, Laura D; Rexrode, Kathryn S; Rodriguez, Sarah; Rowe, Monterey; Withington, Jonathan B; Wooden, Janeen R; Booth Colson, Amanda L; Carter, Constance L; Dove, Stephen W (Steve); Drake, Johnetta; Miller, James P Jr (Paul); USCIS Exec Sec; Emrich, Matthew D; Friedmann, Pamela E; McAllum, Jessica L; Kvortek, Lisette E; Renaud, Daniel M; Slattery, Shannon E; Valverde, Michael; Bowes, Lee F; Mayhew, Michael X; Meckley, Tammy M; Sloan, Terry G; Sohn, Eunice J; Tyler, Karen E; Wheelock, Amy J; Biddle, Timothy W; Compton, Dana C; Dawson, Inga I; Denayer, Larry C; Riley, James M (DASHO); USCIS-MedicalOfficer; Bell, Stephen P; Busch, Philip B; Gentry, Anthony E (Tony); Groom, Molly M; Highsmith, AnnMarie R; Miles, John D; Corradi, Danyale M; Kett, David R; Higgins, Jennifer B; Thomas, Paula; Coleman, Kristinn W; Evans, Gary E; Gramiccioni, Jennifer L; Law, Robert T; Stiefel, Nathaniel I; Clark, Walter L; Clarke, Mark; Conklin, Jeffery A; Flaherty, Mark B; Gann, Chon A; Gutierrez, Johnny

(b)(6)

AMERICAN OVERSIGHT

(b)(6)

; Harry, Ryan J ; Kramer, Kurt W
>; Perez, Hernando R >; Reynolds, Anthony Z (Zane)
; Steinhour, Cicely N >; Yi, Jennifer H (Jen)
>; Young, Jason M v>; Chappell-Kirby, Shvonne L
>; Hawkins, Donald K >; Washington, Angela Y ; Baker, Katherine H >; Boland, Emily H v>; Caudill-Mirillo, Ashley B >; Davidson, Andrew J >; Higgins, Jennifer B >; Kim, Ted H
v>; Anderson, Kathryn E >; Nguyen, Vincent P (Vinnie)
>; RAIO Clearance >; Ruppel, Joanna
v>; Stone, Mary M >; Warden Yutacom, Jessica S
>; Wheeler Roberts, Shannon L
; Bae, Connie J ; Moran, Karla V
>; Nolan, Connie L >; Renaud, Tracy L
>; Moore, Bryan R
; Mumma, Keith E ; Saylor, Michael E
>; Oshinnaiye, Opeyemi B (Yemi) ; Wittman, Gregory J (Greg) ; Lester-Saura, Victoria ; Sauer, John C >; '; Christensen, Gillian M
>; McElhaney, William S (Bill) >; Allsteadt, Edward >; Denayer, Larry C >; Duchek, Elizabeth F (Liz) >; Emrich, Matthew D >; Favero, Anthony J (AJ) >; Highsmith, AnnMarie R ; Law, Robert T
; Meckley, Tammy M ; Renaud, Daniel M
>; Krause, Timothy E (Tim) >; Renaud, Tracy L
; Rexrode, Kathryn S >; Weinhold, Kasey D
>; Moore, Lauren E >; Barrett, Gina V
>; - 5th Floor, ATL Shared Conference Room
ov>; Holley, Lakisha M (CTR) <l Kilaru, Lakshmi S

Subject: 20200423 USCIS COVID-19 SITREP

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SITREP Cover Sheet for: COVID-19
Agency: USCIS
Report Point of Contact:

Input for: COVID-19 Distribution List
Current as of: 1330, 04/23/2020
Classification: U//FOUO

(b)(6)

EXECUTIVE SUMMARY INPUTS: (Updated for 23 APR)

0. On April 22, the President issued Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak. The Proclamation will be in effect for 60 days.
1. The CMT formed a sub-working group with stakeholders from the operational directorates and Facilities to evaluate administrative and engineering controls that could be used to mitigate COVID-19 exposure when public-facing operations resume.
2. Contracting has procured disinfectant wipes, nitrile gloves, and hand sanitizer and is arranging for shipment to the Forms Centers and Harrisonburg; some items have been received and efforts are underway to distribute to offices with little or

AMERICAN OVERSIGHT

no inventory. Active solicitations are out for N95 respirators, surgical masks, and cleaning chemicals. Facilities is also procuring tape to assist offices with marking social distancing lines.

3. Suspension of in-person services at field offices, asylum offices and ASCs has been extended to May 3. Offices are tentatively scheduled to reopen to the public on May 4.
4. Due to delayed deposits from lockboxes and service centers, OCFO estimates up to a 30% reduction in Immigration Examinations Fee Account (IEFA) non-premium revenue over the course of the next three months. Reduced deposits will put financial strain on the agency until operations return to normal.
5. RFI requests:
    0. COVID-19 Posture for AS2 – RFI due daily until further notice
    1. AS1 COVID-19 White House Daily Update – RFI due daily until further notice

NEW SIRS (SINCE LAST REPORT):

- New York Asylum Office (updates):
    - Employees 1, 2, and 18 - Confirmed positive, recovered.
    - Employee 3 – Previously confirmed and believed to have recovered, but is experiencing recurrence or delayed onset of additional symptoms. Confirmed positive by second test result.
    - Employees 7, 8, 10, and 13 - Presumed positive, recovered.
    - Employees 9 and 11 – Previously symptomatic, recovered.
    - Employees 12 and 19 - Received negative test results.
    - Employee 14 - Reports development of fever.
- Northeast Regional Office – Confirmed positive employee has recovered.
- Potomac Service Center – Employee presumed positive based on symptoms (non-confirmed).
- Nebraska Verification Operation Center – Employee presumed positive based on symptoms (non-confirmed).

PAST SIRS (PREVIOUS 24 HOURS):

- Potomac Service Center – Employee confirmed positive.
- Los Angeles FO – Symptomatic employee presumed positive.
- New Orleans Asylum Office (update) – Confirmed positive employee has recovered.
- Vermont Service Center / Tabor Building – Employee presumed positive.

OPERATIONAL IMPACTS:

6. All field offices, asylum offices, and ASCs are closed to the public from March 18 through May 3.
7. The Nairobi, Rome, Beijing, and Guangzhou Field Offices are closed to the public until further notice. Appointments have been or will be rescheduled for a later date.
8. The National Records Center (NRC) remains operational, but with a reduced number of physically present personnel. During this time, the NRC cannot:
    0. Request records from the Federal Record Center (FRC), nor
    1. Receive records for retirement, such as class of admission (COA), US citizen (USC), abandoned (ABD), or deceased (DEC).
9. USCIS is no longer accepting in-person Service of Process at any location. A notice has been circulated and posted on the public-facing uscis.gov website regarding the new procedures for emailing the USCIS-Service of Process email box.

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Signs will also be posted in the facilities. No OCC attorney or employee will be accepting Service of Process on behalf of the agency in-person if contacted; instead, those individuals will be referred to send their service by email.

10. USCIS expanded flexibility for responding to requests issued between March 1, 2020 and May 1, 2020. The flexibility also applies to certain Notices of Intent to Revoke (NOIR) and Notices of Intent to Terminate (NOIT) regional investment centers, as well as certain filing date requirements for Form I-290B, Notice of Appeal or Motion.

KEY CURRENT ACTIONS/DECISIONS (PREVIOUS 24-48 HRS):

- Added a link to the User Guide within the incident form in the COVID-19 incident tracker. The CMT continues to meet with OIT weekly to make enhancements to the system.

KEY FUTURE ACTIONS/DECISIONS (NEXT 24-48 HRS):

- Analyze data obtained from enterprise risk data call.

KEY FUTURE COMMUNICATIONS (NEXT 24-48 HRS):

- Operations Security: Money Mule Scams (Working From Home), originating with OSI.
- Background investigation process, originating with OSI.
- Modifications to cleaning guidance, originating with OSI.
- Modifications to social distancing guidance, originating with OSI.
- Special Edition of Feature Friday, originating with OPA.

V/r,

USCIS COMMAND CENTER
Office of Security and Integrity
U.S. Citizenship and Immigration Services
[redacted] (b)(6)
Toll Free: [redacted]
Fax: [redacted]

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(b)(6)

From: USCIS Command Center
Subject: 20200423 USCIS COVID-19 SITREP
To: Burnett, Kelsey D; Dibbins, Susan P; Dumas, Jessica L; Velarde, Barbara Q; Bailey, Morgan; Nuebel Kovarik, Kathy; Bonic, Andrew V; Collins, Jessica B; Delgado, Daniel; Levine, Laurence D; Patching, Laura D; Rexrode, Kathryn S; Rodriguez, Sarah; Rowe, Monterey; Withington, Jonathan B; Wooden, Janeen R; Booth Colson, Amanda L; Carter, Constance L; Dove, Stephen W (Steve); Drake, Johnetta; Miller, James P Jr (Paul); USCIS Exec Sec; Emrich, Matthew D; Friedmann, Pamela E; McAllum, Jessica L; Kvortek, Lisette E; Renaud, Daniel M; Slattery, Shannon E; Valverde, Michael; Bowes, Lee F; Mayhew, Michael X; Meckley, Tammy M; Sloan, Terry G; Sohn, Eunice J; Tyler, Karen E; Wheelock, Amy J; Biddle, Timothy W; Compton, Dana C; Dawson, Inga I; Denayer, Larry C; Riley, James M (DASHO); USCIS-MedicalOfficer; Bell, Stephen P; Busch, Philip B; Gentry, Anthony E (Tony); Groom, Molly M; Highsmith, AnnMarie R; Miles, John D; Corradi, Danyale M; Kett, David R; Higgins, Jennifer B; Thomas, Paula; Coleman, Kristinn W; Evans, Gary E; Gramiccioni, Jennifer L; Law, Robert T; Stiefel, Nathaniel I; Clark, Walter L; Clarke, Mark; Conklin, Jeffery A; Flaherty, Mark B; Gann, Chon A; Gutierrez, Johnny; Harry, Ryan J; Kramer, Kurt W; Perez, Hernando R; Reynolds, Anthony Z (Zane); Steinhour, Cicely N; Yi, Jennifer H (Jen); Young, Jason M; Chappell-Kirby, Shvonne L; Hawkins, Donald K; Washington, Angela Y; Baker, Katherine H; Boland, Emily H; Caudill-Mirillo, Ashley B; Davidson, Andrew J; Higgins, Jennifer B; Kim, Ted H; Anderson, Kathryn E; Nguyen, Vincent P (Vinnie); RAIO Clearance; Ruppel, Joanna; Stone, Mary M; Warden Yutacom, Jessica S; Wheeler Roberts, Shannon L; Bae, Connie J; Moran, Karla V; Nolan, Connie L; Renaud, Tracy L; [redacted] Moore, Bryan R; Mumma, Keith E; Saylor, Michael E; Oshinnaiye, Opeyemi B (Yemi); Wittman, Gregory J (Greg); Lester-Saura, Victoria; Sauer, John C; 'D2PJBE@uscis.dhs.gov'; Christensen, Gillian M; McElhaney, William S (Bill); Allsteadt, Edward; Denayer, Larry C; Duchek, Elizabeth F (Liz); Emrich, Matthew D; Favero, Anthony J (AJ); Highsmith, AnnMarie R; Law, Robert T; Meckley, Tammy M; Renaud, Daniel M; Krause, Timothy E (Tim); Renaud, Tracy L; Rexrode, Kathryn S; Weinhold, Kasey D; Moore, Lauren E; Barrett, Gina V; - 5th Floor, ATL Shared Conference Room; Holley, Lakisha M (CTR); Kilaru, Lakshmi S
Sent: April 23, 2020 1:27 PM (UTC-05:00)
Attached: 20200423 USCIS COVID-19 Situational Report.docx

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SITREP Cover Sheet for: COVID-19
Agency: USCIS
Report Point of Contact: **Kurt Kramer** [redacted]

Input for: COVID-19 Distribution List
Current as of: 1330, 04/23/2020
Classification: U//FOUO

(b)(6)

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V/r,

USCIS COMMAND CENTER
Office of Security and Integrity
U.S. Citizenship and Immigration Services
[redacted]
(b)(6)
Toll Free: [redacted]
Fax: [redacted]

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Referred to Department of Homeland Security

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AMERICAN OVERSIGHT

Referred to Department of Homeland Security

AMERICAN OVERSIGHT

From: Law, Robert T
Subject: RE: ok with these edits?
To: Nuebel Kovarik, Kathy
Sent: April 23, 2020 10:44 AM (UTC-05:00)
Attached: Talking Points on Temporary Immigration Restrictions - mb (002).docx

Looks good, just a few more for your consideration.

Robert Law
[redacted] office)
cell)

(b)(6)

From: Nuebel Kovarik, Kathy [redacted]
Sent: Thursday, April 23, 2020 11:36 AM
To: Law, Robert T [redacted]
Subject: ok with these edits?

Kathy Nuebel Kovarik
Chief of Staff
U.S. Citizenship and Immigration Services
Mobile [redacted]

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Referred to Department of Homeland Security

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	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.1: 30 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
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8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		0	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$467**	**$414**	**$369**	**$365**	**$360**	**$436**	**$471**	**$495**	**$507**	**$535**	**$523**	**$511**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.2: 60 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
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8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
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25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
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30	***Carryover Balance***
31	
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33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
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18																					
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21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
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31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.3: 90 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
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8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	7,000	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($73)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$278**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**$29**	**$16**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$536**	**$552**	**$507**	**$504**	**$498**	**$575**	**$609**	**$634**	**$646**	**$674**	**$662**	**$650**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.1: 30 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
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8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		0	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($106)**	**($117)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$401**	**$284**	**$179**	**$114**	**$45**	**$49**	**$16**	**($25)**	**($76)**	**($105)**	**($169)**	**($234)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.2: 60 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
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7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($37)**	**($117)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$470**	**$353**	**$248**	**$183**	**$114**	**$119**	**$85**	**$45**	**($6)**	**($35)**	**($99)**	**($164)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.3: 90 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
4	
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7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	7,000	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($73)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$278**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($37)**	**($48)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$470**	**$422**	**$317**	**$253**	**$183**	**$188**	**$154**	**$114**	**$63**	**$34**	**($30)**	**($95)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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2		***Assumptions (Scenario 7)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September		
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021		
14		12.) 32% GE cut ($480 million)		

AMERICAN OVERSIGHT

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5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
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7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1		**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending C**												
2		As of August 19, 2020												
3														
4			**FY 2020**						**FY 2**					
5			**Q3**		**Q4**				**Q1**			**Q2**		
6			**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**
7														
8		**Headcount**		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307
9		Details		0	0	0	0		174	386	560	648	529	411
10		***Headcount Total***		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**
11														
12														
13		**Revenue ($ in millions)**												
14		Projected Revenue		$275	$280	$280	$217		$304	$289	$296	$301	$301	$364
15		Recoveries		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5
16		***Total Revenue***		**$309**	**$293**	**$282**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**
17														
18														
19		**Cost ($ in millions)**												
20		Payroll		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199
21		Payroll Savings		$0	$0	$0	$0		($2)	($4)	($6)	($7)	($6)	($4)
22		Realignment to Premium/Fraud/H-1B		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0
23		Non-Pay		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118
24		Reductions to align to Revenue/Sweeps				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)
25		***Total Cost***		**$275**	**$270**	**$205**	**$263**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**
26														
27		***Monthly Cash Flow***		**$34**	**$23**	**$77**	**($45)**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**
28														
29		***Carryover Balance***	**$291**	**$325**	**$348**	**$425**	**$380**		**$340**	**$287**	**$242**	**$238**	**$233**	**$309**
30														
31		**Risk Profile**		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*
32														

AMERICAN OVERSIGHT

	O	P	Q	R	S	T	U	V	W	X
1	**uts + Spending Pull backs (BAU)**									
2										
3										
4	**021**									
5		**Q3**			**Q4**					
6	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**				
7										
8	18,307	18,307	18,307	18,307	18,307	18,307				
9	236	143	87	0	0	0				92
10	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**				
11										
12										
13										
14	$350	$340	$328	$345	$305	$305				
15	$5	$5	$5	$5	$5	$5				
16	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**				
17										
18										
19										
20	$200	$200	$200	$200	$200	$200				
21	($3)	($2)	($1)	$0	$0	$0				
22	$0	$0	$0	$0	$0	$0				
23	$143	$142	$142	$142	$142	$142				
24	($20)	($20)	($20)	($20)	($20)	($20)				
25	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**				
26										
27	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**				
28										
29	**$344**	**$368**	**$380**	**$408**	**$396**	**$384**				
30										
31	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*				
32										

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 8: No Furlough + No Hill Assistance + No Spending Cu

As of August 19, 2020

		FY 2020						FY 2					
		Q3		Q4				Q1			Q2		
		May	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar
Headcount			18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307
Details			0	0	0	0		174	386	560	648	529	411
Headcount Total			**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**
Revenue ($ in millions)													
Projected Revenue			$275	$280	$280	$217		$238	$225	$236	$240	$237	$292
Recoveries			$34	$13	$2	$1		$5	$5	$5	$5	$5	$5
Total Revenue			**$309**	**$293**	**$282**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**
Cost ($ in millions)													
Payroll			$207	$181	$181	$272		$181	$181	$181	$199	$199	$199
Payroll Savings			$0	$0	$0	$0		($2)	($4)	($6)	($7)	($6)	($4)
Realignment to Premium/Fraud/H-1B			$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0
Non-Pay			$68	$109	$125	$101		$250	$250	$250	$168	$168	$118
Reductions to align to Revenue/Sweeps					($73)	($72)		$0	$0	$0	$0	$0	$0
Total Cost			**$275**	**$270**	**$205**	**$263**		**$429**	**$427**	**$425**	**$360**	**$361**	**$313**
Monthly Cash Flow			**$34**	**$23**	**$77**	**($45)**		**($186)**	**($197)**	**($184)**	**($115)**	**($119)**	**($16)**
Carryover Balance		**$291**	**$325**	**$348**	**$425**	**$380**		**$194**	**($3)**	**($188)**	**($303)**	**($422)**	**($438)**
Risk Profile			*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*

AMERICAN OVERSIGHT

	O	P	Q	R	S	T	U	V	W	X
1	**ts + Spending Pull backs (BAU)**									
2										
3										
4	**2021**									
5		**Q3**			**Q4**					
6	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**				
7										
8	18,307	18,307	18,307	18,307	18,307	18,307				
9	236	143	87	0	0	0				92
10	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**				
11										
12										
13										
14	$282	$275	$265	$288	$253	$252				
15	$5	$5	$5	$5	$5	$5				
16	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**				
17										
18										
19										
20	$200	$200	$200	$200	$200	$200				
21	($3)	($2)	($1)	$0	$0	$0				
22	$0	$0	$0	$0	$0	$0				
23	$143	$142	$142	$142	$142	$142				
24	$0	$0	$0	$0	$0	$0				
25	**$340**	**$340**	**$341**	**$342**	**$342**	**$342**				
26										
27	**($53)**	**($60)**	**($71)**	**($49)**	**($84)**	**($85)**				
28										
29	**($491)**	**($552)**	**($623)**	**($672)**	**($756)**	**($841)**				
30										
31	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*				
32										

AMERICAN OVERSIGHT

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1																		
2		***Assumptions (Scenario 7)***																
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.																
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).																
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most recent those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and applies that change to the revenue c get a projection for July-September 2020.																
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.																
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.																
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).																
9		7.) FY 2021 spending includes a 1% pay raise.																
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.																
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September																
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021																
14		12.) 32% GE cut ($480 million)																
15																		
16		***Assumptions (Scenario 8) - Scenario 7 with below revisions***																
17		1.) FY 2021 Revenue reflects an enjoined fee rule and loss of nearly $800 million in revenue																
18		2.) No FY 2021 spending cuts until confirmed reductions																
19		3.) No personnel furloughs																

AMERICAN OVERSIGHT

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5	t two week period and compares collected for July-September 2019 to			
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10	r Market During the Economic			
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AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fe	$ 2,500

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cut

As of August 14, 2020

		FY 2020					FY 2021										
		Q3	Q4				Q1			Q2			Q3			Q4	
	Ma	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Headcount		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
Details		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0
Headcount Total		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**
Revenue ($ in millions)																	
Projected Revenue		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305
Recoveries		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
Total Revenue		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**
Cost ($ in millions)																	
Payroll		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200
Payroll Savings		$0	$0	$0	$0		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0
Realignment to Premium/Fraud/H-1B		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Non-Pay		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142
Reductions to align to Revenue/Sweeps				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)
Total Cost		**$275**	**$270**	**$205**	**$263**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**
Monthly Cash Flow		**$34**	**$23**	**$77**	**($22)**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**
Carryover Balance		**$325**	**$348**	**$425**	**$403**		**$363**	**$310**	**$265**	**$261**	**$256**	**$332**	**$367**	**$391**	**$403**	**$431**	**$419**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*

AMERICAN OVERSIGHT

	T	U	V	W	X	Y	Z
1	**ts + Spending Pull backs (BAU)**						
2							
3							
4							
5							
6	**Sep**						
7							
8	18,307						
9	0				92		
10	**18,307**						
11							
12							
13							
14	$305						
15	$5						
16	**$310**						
17							
18							
19							
20	$200						
21	$0						
22	$0						
23	$142						
24	($20)						
25	**$322**						
26							
27	**($12)**						
28							
29	**$407**						
30							
31	*High Risk*						
32							

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.1: 30 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
4	
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6	
7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		0	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$467**	**$414**	**$369**	**$365**	**$360**	**$436**	**$471**	**$495**	**$507**	**$535**	**$523**	**$511**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
33																					

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.2: 60 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**$29**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$536**	**$483**	**$438**	**$434**	**$429**	**$506**	**$540**	**$565**	**$577**	**$605**	**$593**	**$581**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8.3: 90 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
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8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
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28	***Monthly Cash Flow***
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30	***Carryover Balance***
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32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	7,000	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($73)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$278**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**$29**	**$16**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$536**	**$552**	**$507**	**$504**	**$498**	**$575**	**$609**	**$634**	**$646**	**$674**	**$662**	**$650**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.1: 30 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
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7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
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30	***Carryover Balance***
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32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		0	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($106)**	**($117)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$401**	**$284**	**$179**	**$114**	**$45**	**$49**	**$16**	**($25)**	**($76)**	**($105)**	**($169)**	**($234)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.2: 60 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
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7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	0	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($37)**	**($117)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$470**	**$353**	**$248**	**$183**	**$114**	**$119**	**$85**	**$45**	**($6)**	**($35)**	**($99)**	**($164)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 9.3: 90 Day Furlough @ 7,000 + No Hill Assistance + 32% S**
2	As of August 14, 2020
3	
4	
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7	
8	**Headcount**
9	Furloughs
10	Details
11	***Headcount Total***
12	
13	
14	**Revenue ($ in millions)**
15	Projected Revenue
16	Recoveries
17	***Total Revenue***
18	
19	
20	**Cost ($ in millions)**
21	Payroll
22	Payroll Savings
23	Realignment to Premium/Fraud/H-1B
24	Non-Pay
25	Reductions to align to Revenue/Sweeps
26	***Total Cost***
27	
28	***Monthly Cash Flow***
29	
30	***Carryover Balance***
31	
32	**Risk Profile**
33	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**pending Cuts + Spending Pull backs (BAU) + Details + Fee Rule Enjoined**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9			0	0	7,000		7,000	7,000	0	0	0	0	0	0	0	0	0	0			
10		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
11		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
12																					
13																					
14																					
15		$275	$280	$280	$240		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252			
16		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
17		**$309**	**$293**	**$282**	**$241**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**			
18																					
19																					
20																					
21		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
22		$0	$0	$0	($104)		($71)	($73)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
23		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
25				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
26		**$275**	**$270**	**$205**	**$159**		**$280**	**$278**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
27																					
28		**$34**	**$23**	**$77**	**$82**		**($37)**	**($48)**	**($104)**	**($65)**	**($69)**	**$4**	**($33)**	**($40)**	**($51)**	**($29)**	**($64)**	**($65)**			
29																					
30	**$291**	**$325**	**$348**	**$425**	**$507**		**$470**	**$422**	**$317**	**$253**	**$183**	**$188**	**$154**	**$114**	**$63**	**$34**	**($30)**	**($95)**			
31																					
32		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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2		***Assumptions (Scenario 7)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September		
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021		
14		12.) 32% GE cut ($480 million)		

AMERICAN OVERSIGHT

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5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
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8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cuts**
2	As of August 14, 2020
3	
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8	**Headcount**
9	Details
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
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AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**+ Spending Pull backs (BAU)**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
11																					
12																					
13																					
14		$275	$280	$280	$240		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
16		**$309**	**$293**	**$282**	**$241**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
17																					
18																					
19																					
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
21		$0	$0	$0	$0		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
24				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
25		**$275**	**$270**	**$205**	**$263**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
26																					
27		**$34**	**$23**	**$77**	**($22)**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
28																					
29	**$291**	**$325**	**$348**	**$425**	**$403**		**$363**	**$310**	**$265**	**$261**	**$256**	**$332**	**$367**	**$391**	**$403**	**$431**	**$419**	**$407**			
30																					
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C	D
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2		***Assumptions (Scenario 7)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September		
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021		
14		12.) 32% GE cut ($480 million)		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
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5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
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10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cuts**
2	As of August 14, 2020
3	
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8	**Headcount**
9	Details
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
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AMERICAN OVERSIGHT

+ Spending Pull backs (BAU)

	FY 2020					FY 2021											
	Q3		Q4			Q1			Q2			Q3			Q4		
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
		0	0	0	0	174	386	560	648	529	411	236	143	87	0	0	0
		18,307	**18,307**	**18,307**	**18,307**	**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**
		$275	$280	$280	$240	$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
		$34	$13	$2	$1	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
		$309	**$293**	**$282**	**$241**	**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
		$207	$181	$181	$272	$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
		$0	$0	$0	$0	($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0
		$0	($20)	($28)	($38)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
		$68	$109	$125	$101	$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142
				($73)	($72)	($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)
		$275	**$270**	**$205**	**$263**	**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**
		$34	**$23**	**$77**	**($22)**	**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**
	$291	**$325**	**$348**	**$425**	**$403**	**$363**	**$310**	**$265**	**$261**	**$256**	**$332**	**$367**	**$391**	**$403**	**$431**	**$419**	**$407**
		Risk	*Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenario 7)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September		
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021		
14		12.) 32% GE cut ($480 million)		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
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14																	

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C
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2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cuts**
2	As of August 14, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Details
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	**+ Spending Pull backs (BAU)**																				
2																					
3																					
4	**FY 2020**						**FY 2021**														
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**					
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**			
7																					
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307			
9		0	0	0	0		174	386	560	648	529	411	236	143	87	0	0	0			
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,133**	**17,921**	**17,747**	**17,659**	**17,778**	**17,896**	**18,071**	**18,164**	**18,220**	**18,307**	**18,307**	**18,307**			
11																					
12																					
13																					
14		$275	$280	$280	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305			
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5			
16		**$309**	**$293**	**$282**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**			
17																					
18																					
19																					
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200			
21		$0	$0	$0	$0		($2)	($4)	($6)	($7)	($6)	($4)	($3)	($2)	($1)	$0	$0	$0			
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142			
24				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)			
25		**$275**	**$270**	**$205**	**$263**		**$349**	**$347**	**$345**	**$310**	**$311**	**$293**	**$320**	**$320**	**$321**	**$322**	**$322**	**$322**			
26																					
27		**$34**	**$23**	**$77**	**($45)**		**($40)**	**($53)**	**($44)**	**($4)**	**($5)**	**$76**	**$35**	**$25**	**$12**	**$28**	**($12)**	**($12)**			
28																					
29	**$291**	**$325**	**$348**	**$425**	**$380**		**$340**	**$287**	**$242**	**$238**	**$233**	**$309**	**$344**	**$368**	**$380**	**$408**	**$396**	**$384**			
30																					
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*			
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7.1: 90 Day Furlough + No Hill Assistance + No Spending C**
2	As of August 14, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
1	**uts + Spending Pull backs (BAU)**																					
2																						
3																						
4	**FY 2020**						**FY 2021**															
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**						
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**				
7																						
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307				
9		0	0	0	#####		#####	#####	0	0	0	0	0	0	0	0	0	0				92
10		**#####**	**#####**	**#####**	**4,907**		**4,907**	**4,907**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**				
11																						
12																						
13																						
14		$275	$280	$280	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305				
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5				
16		**$309**	**$293**	**$282**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**				
17																						
18																						
19																						
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200				
21		$0	$0	$0	($199)		($132)	($132)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0				
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0				
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142				
24				($73)	($72)																	
25		**$275**	**$270**	**$205**	**$64**		**$299**	**$299**	**$431**	**$367**	**$367**	**$317**	**$343**	**$342**	**$342**	**$342**	**$342**	**$342**				
26																						
27		**$34**	**$23**	**$77**	**$154**		**$10**	**($5)**	**($130)**	**($61)**	**($61)**	**$52**	**$12**	**$3**	**($9)**	**$8**	**($32)**	**($32)**				
28																						
29	**$291**	**$325**	**$348**	**$425**	**$579**		**$590**	**$585**	**$455**	**$394**	**$333**	**$385**	**$397**	**$400**	**$391**	**$399**	**$367**	**$335**				
30																						
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*				
32																						

AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenario 7.1)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September		
13		11.) Details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021		
14		12.) 32% GE cut ($480 million)		
15				
16				
17		***Assumptions (Scenario 7.2)***		
18		1.) Scenario 7.1 1-9 assumptions plus		
19		2.) 90 Day furlough Septmber through November		
20		3.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - Septmeber		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11																	
12																	
13																	
14																	
15																	
16																	
17																	
18																	
19																	
20																	

AMERICAN OVERSIGHT

	V
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5	applies
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AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Details
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
1	**+ Spending Pull backs (BAU)**																			
2																				
3																				
4	**FY 2020**						**FY 2021**													
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**				
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**		
7																				
8		18,307	18,307	18,307	18,307		18,215	18,123	18,031	17,939	17,847	17,755	18,307	18,307	18,307	18,307	18,307	18,307		
9		0	0	0	0		174	386	560	842	917	992	817	530	0	0	0	0		
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,041**	**17,737**	**17,471**	**17,097**	**16,930**	**16,763**	**17,490**	**17,777**	**18,307**	**18,307**	**18,307**	**18,307**		
11																				
12																				
13																				
14		$275	$280	$280	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305		
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5		
16		**$309**	**$293**	**$282**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**		
17																				
18																				
19																				
20		$207	$181	$181	$272		$180	$179	$178	$188	$187	$186	$200	$200	$200	$200	$200	$200		
21		$0	$0	$0	$0		($2)	($4)	($6)	($9)	($10)	($10)	($9)	($6)	$0	$0	$0	$0		
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$143	$142	$142	$142	$142	$142		
24				($73)	($72)		($80)	($80)	($80)	($50)	($50)	($20)	($20)	($20)	($20)	($20)	($20)	($20)		
25		**$275**	**$270**	**$205**	**$263**		**$348**	**$345**	**$342**	**$297**	**$295**	**$274**	**$314**	**$316**	**$322**	**$322**	**$322**	**$322**		
26																				
27		**$34**	**$23**	**$77**	**($45)**		**($39)**	**($51)**	**($41)**	**$9**	**$11**	**$95**	**$41**	**$29**	**$11**	**$28**	**($12)**	**($12)**		
28																				
29	**$291**	**$325**	**$348**	**$425**	**$380**		**$341**	**$290**	**$248**	**$257**	**$267**	**$363**	**$404**	**$433**	**$444**	**$472**	**$460**	**$448**		
30																				
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*		
32																				

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenario 7)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12		**10.) $145 million of funding sweeps in FY 20 Q4; re-disbursed to FY 2021 March - September**		
13		**11.) 4,000 details for 90 days rolling start in October; 25% of details extended for additional 90 days ending in June 2021**		
14		**12.) Hiring Freeze October 2020-March 2020 (6 months)**		
15		**13.) 32% GE cut ($480 million)**		
16		**14.) Re-distributed cuts to keep monthly carryover over $300 million**		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11																	
12																	
13																	
14																	
15																	
16																	

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Appr

As of July 31, 2020

		FY 2020						FY 2021										
		Q3		Q4				Q1			Q2			Q3			Q4	
		May	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Headcount			#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307
Furlough #			0	0	0	0		0	0	0	0	0	0	0	0	0	0	0
Headcount Total			#####	#####	#####	#####		#####	#####	#####	**18,307**	**18,307**	**18,307**	#####	#####	#####	#####	**18,307**
Revenue ($ in millions)																		
Projected Revenue			$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305
Recoveries			$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
Total Revenue			**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**
Cost ($ in millions)																		
Payroll			$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200
Payroll Savings			$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Realignment to Premium/Fraud/H-1B			$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Non-Pay			$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118
Reductions to align to Revenue								$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Cost			**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**
Monthly Cash Flow			**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**
One-Time Appropriation						$200												
Carryover Balance	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*

AMERICAN OVERSIGHT

	T	U	V	W	X	Y
1	**ppriation) + No Spending Cuts (BAU)**					
2						
3						
4						
5						
6	**Sep**					
7						
8	18,307					
9	0					
10	**18,307**					
11						
12						
13						
14	$305					
15	$5					
16	**$310**					
17						
18						
19						
20	$200					
21	$0					
22	$0					
23	$117					
24	$0					
25	**$317**					
26						
27	**($7)**					
28						
29	**$18**					
30						
31	*High Risk*					
32						

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cut

As of July 31, 2020

		FY 2020					FY 2021										
		Q3	Q4				Q1			Q2			Q3			Q4	
	M	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Headcount		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
Furlough #		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0
Headcount Total		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
Revenue ($ in millions)																	
Projected Revenue		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253
Recoveries		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
Total Revenue		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**
Cost ($ in millions)																	
Payroll		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200
Payroll Savings		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Realignment to Premium/Fraud/H-1B		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Non-Pay		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118
Reductions to align to Revenue							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Cost		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**
Monthly Cash Flow		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**
Carryover Balance		**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*

AMERICAN OVERSIGHT

	T	U	V	W	X
1	**s (BAU) + Fee Rule Enjoined**				
2					
3					
4					
5					
6	**Sep**				
7					
8	18,307				
9	0				
10	**18,307**				
11					
12					
13					
14	$252				
15	$5				
16	**$257**				
17					
18					
19					
20	$200				
21	$0				
22	$0				
23	$117				
24	$0				
25	**$317**				
26					
27	**($60)**				
28					
29	**($927)**				
30					
31	*High Risk*				
32					

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cut

As of July 31, 2020

		FY 2020					FY 2021								
		Q3	Q4				Q1			Q2			Q3		
	Ma	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Headcount		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
Furlough #		0	0	0	0		0	0	0	0	0	0	0	0	0
Headcount Total		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
Revenue ($ in millions)							2,500	Premium Processing Fee Toggle							
EX Revenue		275	280	226	217		304	289	296	301	301	364	350	340	328
EP Revenue		41	79	43	40		68	67	67	73	74	76	100	100	99
EX Recoveries		34	13	2	1		5	5	5	5	5	5	5	5	5
EP Recoveries		9	2	1	1		3	3	3	3	3	3	3	3	3
Total Revenue		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**
Cost ($ in millions)															
EX Payroll		207	181	181	272		181	181	181	199	199	199	200	200	200
EX Payroll Savings		0	0	0	0		0	0	0	0	0	0	0	0	0
EX Realignment to EP/Fraud/H-1B		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0
EX Non-Pay		68	109	125	101		250	250	250	168	168	118	118	118	118
EP Pay & Non-Pay		64	7	45	45		58	70	75	80	85	85	80	60	60
EP Loan Repayment							20	20	20	22	22	23	30	30	30
Reductions to align to Revenue							0	0	0	0	0	0	0	0	0
Total Cost		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**
Monthly Cash Flow		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**
Carryover Balance		**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*

AMERICAN OVERSIGHT

	R	S	T	U	V
1	**ts (BAU) + Premium Toggle**				
2					
3					
4					
5		**Q4**			
6	**Jul**	**Aug**	**Sep**		
7					
8	18,307	18,307	18,307		
9	0	0	0		
10	**18,307**	**18,307**	**18,307**		
11					
12					
13					
14	345	305	305		
15	122	76	75		
16	5	5	5		
17	3	3	3		
18	**475**	**389**	**388**		
19					
20					
21					
22	200	200	200		
23	0	0	0		
24	0	0	0		
25	118	118	117		
26	60	60	60		
27	37	23	22		
28	0	0	0		
29	**415**	**401**	**399**		
30					
31	**61**	**(12)**	**(12)**		
32					
33	**$180**	**$169**	**$157**		
34					
35	*Risk*	*High Risk*	*High Risk*		
36					

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spendir

As of July 31, 2020

		FY 2020					FY 2021									
		Q3	Q4				Q1			Q2			Q3			
	May	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Headcount		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####
Furlough #		0	0	0	0		0	0	0	0	0	0	0	0	0	0
Headcount Total		#####	#####	#####	#####		#####	#####	#####	**18,307**	**18,307**	**18,307**	#####	#####	#####	#####
Revenue ($ in millions)																
Projected Revenue		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345
Recoveries		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
Total Revenue		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**
Cost ($ in millions)																
Payroll		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200
Payroll Savings		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Realignment to Premium/Fraud/H-1B		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Non-Pay		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118
Reductions to align to Revenue/Sweeps				($23)	($22)		($126)	($140)	($132)	($10)	($9)	($9)	($9)	($9)	($9)	($9)
Total Cost		**$275**	**$270**	**$255**	**$313**		**$305**	**$291**	**$299**	**$357**	**$358**	**$308**	**$309**	**$309**	**$309**	**$309**
Monthly Cash Flow		**$34**	**$23**	**($27)**	**($95)**		**$4**	**$3**	**$2**	**($51)**	**($52)**	**$61**	**$46**	**$36**	**$24**	**$41**
Carryover Balance	#	**$325**	**$348**	**$321**	**$226**		**$230**	**$233**	**$235**	**$184**	**$132**	**$193**	**$239**	**$275**	**$299**	**$340**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*

AMERICAN OVERSIGHT

	S	T	U	V	W	X	Y
1	**ng Cuts + Spending Pull backs (BAU)**						
2							
3							
4							
5	**Q4**						
6	**Aug**	**Sep**					
7							
8	18,307	18,307					
9	0	0					
10	**18,307**	**18,307**					
11							
12							
13							
14	$305	$305					
15	$5	$5					
16	**$310**	**$310**					
17							
18							
19							
20	$200	$200					
21	$0	$0					
22	$0	$0					
23	$118	$117					
24	($9)	($9)					
25	**$309**	**$308**					
26							
27	**$1**	**$2**					
28							
29	**$341**	**$343**					
30							
31	*High Risk*	*High Risk*					
32							

AMERICAN OVERSIGHT

USCIS Cash Flow (IEFA Non-Premium) Scenario 8: No Furlough + No Hill Assistance + Fee Rule enjoin

As of July 31, 2020

		FY 2020					FY 2021									
		Q3	Q4				Q1			Q2			Q3			
	Ma	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Headcount		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307
Furlough #		0	0	0	0		0	0	0	0	0	0	0	0	0	0
Headcount Total		#####	#####	#####	#####		#####	#####	#####	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
Revenue ($ in millions)																
Projected Revenue		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288
Recoveries		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
Total Revenue		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**
Cost ($ in millions)																
Payroll		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200
Payroll Savings		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Realignment to Premium/Fraud/H-1B		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Non-Pay		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118
Reductions to align to Revenue/sweeps				($23)	($22)		($126)	($140)	($132)	($10)	($9)	($9)	($9)	($9)	($9)	($9)
Total Cost		**$275**	**$270**	**$255**	**$313**		**$305**	**$291**	**$299**	**$357**	**$358**	**$308**	**$309**	**$309**	**$309**	**$309**
Monthly Cash Flow		**$34**	**$23**	**($27)**	**($95)**		**($62)**	**($61)**	**($58)**	**($112)**	**($116)**	**($11)**	**($22)**	**($29)**	**($39)**	**($16)**
Carryover Balance		**$325**	**$348**	**$321**	**$226**		**$164**	**$103**	**$45**	**($67)**	**($183)**	**($194)**	**($216)**	**($245)**	**($284)**	**($300)**
Risk Profile		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*

AMERICAN OVERSIGHT

	S	T	U	V	W	X	Y	Z	AA	AB	AC
1	**ed + 32% Spending Cuts (BAU) + Spending Pull backs (BAU)**										
2											
3											
4											
5	**Q4**										
6	**Aug**	**Sep**									
7											
8	18,307	18,307									
9	0	0									
10	**18,307**	**18,307**									
11											
12											
13											
14	$253	$252									
15	$5	$5									
16	**$258**	**$257**									
17											
18											
19											
20	$200	$200									
21	$0	$0									
22	$0	$0									
23	$118	$117									
24	($9)	($9)									
25	**$309**	**$308**									
26											
27	**($51)**	**($51)**									
28											
29	**($351)**	**($402)**									
30											
31	*High Risk*	*High Risk*									
32											

AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenarios 1 - 5)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12				
13		***Assumptions (Scenario 6)***		
14		1.) #s 2 - 8 from scenarios 1 - 5, plus:		
15		2.) Estimates reflect IEFA non-premium and premium spending and revenue.		
16		3.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
17		4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The		
18		5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April		
19		6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.		
20		7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11																	
12																	
13																	
14																	
15																	
16																	
17	number of additional staff are subject to the final scope of expansion.																
18	USCIS is still in the process of developing the FY 2021 AOP.																
19																	
20																	

AMERICAN OVERSIGHT

	V
1	
2	
3	
4	
5	applies
6	
7	
8	
9	
10	
11	
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13	
14	
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16	
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19	
20	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Approp**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	One-Time Appropriation
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**riation) + No Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28					$200													
29	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**	**$18**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Fee Rule Enjoined**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**	**($60)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**	**($927)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	EX Revenue
15	EP Revenue
16	EX Recoveries
17	EP Recoveries
18	***Total Revenue***
19	
20	
21	**Cost ($ in millions)**
22	EX Payroll
23	EX Payroll Savings
24	EX Realignment to EP/Fraud/H-1B
25	EX Non-Pay
26	EP Pay & Non-Pay
27	EP Loan Repayment
28	Reductions to align to Revenue
29	***Total Cost***
30	
31	***Monthly Cash Flow***
32	
33	***Carryover Balance***
34	
35	**Risk Profile**
36	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**3AU) + Premium Toggle**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13							2,500	**Premium Processing Fee Toggle**										
14		275	280	226	217		304	289	296	301	301	364	350	340	328	345	305	305
15		41	79	43	40		68	67	67	73	74	76	100	100	99	122	76	75
16		34	13	2	1		5	5	5	5	5	5	5	5	5	5	5	5
17		9	2	1	1		3	3	3	3	3	3	3	3	3	3	3	3
18		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**	**475**	**389**	**388**
19																		
20																		
21																		
22		207	181	181	272		181	181	181	199	199	199	200	200	200	200	200	200
23		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
24		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0	0	0	0
25		68	109	125	101		250	250	250	168	168	118	118	118	118	118	118	117
26		64	7	45	45		58	70	75	80	85	85	80	60	60	60	60	60
27							20	20	20	22	22	23	30	30	30	37	23	22
28							0	0	0	0	0	0	0	0	0	0	0	0
29		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**	**415**	**401**	**399**
30																		
31		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**	**61**	**(12)**	**(12)**
32																		
33	**$673**	**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**	**$180**	**$169**	**$157**
34																		
35		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
36																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 7: No Furlough + No Hill Assistance + 32% Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue/Sweeps
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**+ Spending Pull backs (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24				($23)	($22)		($126)	($140)	($132)	($10)	($9)	($9)	($9)	($9)	($9)	($9)	($9)	($9)
25		**$275**	**$270**	**$255**	**$313**		**$305**	**$291**	**$299**	**$357**	**$358**	**$308**	**$309**	**$309**	**$309**	**$309**	**$309**	**$308**
26																		
27		**$34**	**$23**	**($27)**	**($95)**		**$4**	**$3**	**$2**	**($51)**	**($52)**	**$61**	**$46**	**$36**	**$24**	**$41**	**$1**	**$2**
28																		
29	**$291**	**$325**	**$348**	**$321**	**$226**		**$230**	**$233**	**$235**	**$184**	**$132**	**$193**	**$239**	**$275**	**$299**	**$340**	**$341**	**$343**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 8: No Furlough + No Hill Assistance + Fee Rule enjoined +**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**32% Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24				($23)	($22)		($126)	($140)	($132)	($10)	($9)	($9)	($9)	($9)	($9)	($9)	($9)	($9)
25		**$275**	**$270**	**$255**	**$313**		**$305**	**$291**	**$299**	**$357**	**$358**	**$308**	**$309**	**$309**	**$309**	**$309**	**$309**	**$308**
26																		
27		**$34**	**$23**	**($27)**	**($95)**		**($62)**	**($61)**	**($58)**	**($112)**	**($116)**	**($11)**	**($22)**	**($29)**	**($39)**	**($16)**	**($51)**	**($51)**
28																		
29	**$291**	**$325**	**$348**	**$321**	**$226**		**$164**	**$103**	**$45**	**($67)**	**($183)**	**($194)**	**($216)**	**($245)**	**($284)**	**($300)**	**($351)**	**($402)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenarios 1 - 5)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12				
13		***Assumptions (Scenario 6)***		
14		1.) #s 2 - 8 from scenarios 1 - 5, plus:		
15		2.) Estimates reflect IEFA non-premium and premium spending and revenue.		
16		3.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
17		4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The		
18		5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April		
19		6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.		
20		7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11																	
12																	
13																	
14																	
15																	
16																	
17	number of additional staff are subject to the final scope of expansion.																
18	USCIS is still in the process of developing the FY 2021 AOP.																
19																	
20																	

AMERICAN OVERSIGHT

	V
1	
2	
3	
4	
5	applies
6	
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19	
20	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Approp**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	One-Time Appropriation
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**riation) + No Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28					$200													
29	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**	**$18**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Fee Rule Enjoined**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**	**($60)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**	**($927)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	EX Revenue
15	EP Revenue
16	EX Recoveries
17	EP Recoveries
18	***Total Revenue***
19	
20	
21	**Cost ($ in millions)**
22	EX Payroll
23	EX Payroll Savings
24	EX Realignment to EP/Fraud/H-1B
25	EX Non-Pay
26	EP Pay & Non-Pay
27	EP Loan Repayment
28	Reductions to align to Revenue
29	***Total Cost***
30	
31	***Monthly Cash Flow***
32	
33	***Carryover Balance***
34	
35	**Risk Profile**
36	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Premium Toggle**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13							2,500	**Premium Processing Fee Toggle**										
14		275	280	226	217		304	289	296	301	301	364	350	340	328	345	305	305
15		41	79	43	40		68	67	67	73	74	76	100	100	99	122	76	75
16		34	13	2	1		5	5	5	5	5	5	5	5	5	5	5	5
17		9	2	1	1		3	3	3	3	3	3	3	3	3	3	3	3
18		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**	**475**	**389**	**388**
19																		
20																		
21																		
22		207	181	181	272		181	181	181	199	199	199	200	200	200	200	200	200
23		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
24		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0	0	0	0
25		68	109	125	101		250	250	250	168	168	118	118	118	118	118	118	117
26		64	7	45	45		58	70	75	80	85	85	80	60	60	60	60	60
27							20	20	20	22	22	23	30	30	30	37	23	22
28							0	0	0	0	0	0	0	0	0	0	0	0
29		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**	**415**	**401**	**399**
30																		
31		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**	**61**	**(12)**	**(12)**
32																		
33	**$673**	**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**	**$180**	**$169**	**$157**
34																		
35		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
36																		

AMERICAN OVERSIGHT

	A	B	C	D
1				
2		***Assumptions (Scenarios 1 - 5)***		
3		1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.		
4		2.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
5		3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most rec that change to the revenue collected for July-September 2019 to get a projection for July-September 2020.		
6		4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.		
7		5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.		
8		6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).		
9		7.) FY 2021 spending includes a 1% pay raise.		
10		8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. La		
11		9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.		
12				
13		***Assumptions (Scenario 6)***		
14		1.) #s 2 - 8 from scenarios 1 - 5, plus:		
15		2.) Estimates reflect IEFA non-premium and premium spending and revenue.		
16		3.) July figures represent preliminary actuals (i.e. pre-reconciliation).		
17		4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The		
18		5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April		
19		6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.		
20		7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.		

AMERICAN OVERSIGHT

	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																	
2																	
3																	
4																	
5	ent two week period and compares those volumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and a																
6																	
7																	
8																	
9																	
10	bor Market During the Economic Recovery Following the COVID-19 Outbreak (and subsequent amendments).																
11																	
12																	
13																	
14																	
15																	
16																	
17	number of additional staff are subject to the final scope of expansion.																
18	USCIS is still in the process of developing the FY 2021 AOP.																
19																	
20																	

AMERICAN OVERSIGHT

	V
1	
2	
3	
4	
5	applies
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Approp**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	One-Time Appropriation
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**riation) + No Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28					$200													
29	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**	**$18**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Fee Rule Enjoined**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**	**($60)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**	**($927)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of August 5, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	EX Revenue
15	EP Revenue
16	EX Recoveries
17	EP Recoveries
18	***Total Revenue***
19	
20	
21	**Cost ($ in millions)**
22	EX Payroll
23	EX Payroll Savings
24	EX Realignment to EP/Fraud/H-1B
25	EX Non-Pay
26	EP Pay & Non-Pay
27	EP Loan Repayment
28	Reductions to align to Revenue
29	***Total Cost***
30	
31	***Monthly Cash Flow***
32	
33	***Carryover Balance***
34	
35	**Risk Profile**
36	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Premium Toggle**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13							2,500	**Premium Processing Fee Toggle**										
14		275	280	226	217		304	289	296	301	301	364	350	340	328	345	305	305
15		41	79	43	40		68	67	67	73	74	76	100	100	99	122	76	75
16		34	13	2	1		5	5	5	5	5	5	5	5	5	5	5	5
17		9	2	1	1		3	3	3	3	3	3	3	3	3	3	3	3
18		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**	**475**	**389**	**388**
19																		
20																		
21																		
22		207	181	181	272		181	181	181	199	199	199	200	200	200	200	200	200
23		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
24		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0	0	0	0
25		68	109	125	101		250	250	250	168	168	118	118	118	118	118	118	117
26		64	7	45	45		58	70	75	80	85	85	80	60	60	60	60	60
27							20	20	20	22	22	23	30	30	30	37	23	22
28							0	0	0	0	0	0	0	0	0	0	0	0
29		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**	**415**	**401**	**399**
30																		
31		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**	**61**	**(12)**	**(12)**
32																		
33	**$673**	**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**	**$180**	**$169**	**$157**
34																		
35		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
36																		

AMERICAN OVERSIGHT

	B
1	
2	***Assumptions (Scenarios 1 - 5)***
3	1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.
4	2.) July figures represent preliminary actuals (i.e. pre-reconciliation).
5	3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most recent two week period and compares those vo
6	a projection for July-September 2020.
7	4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.
8	5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.
9	6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).
10	7.) FY 2021 spending includes a 1% pay raise.
11	8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery P
12	9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.
13	
14	***Assumptions (Scenario 6)***
15	1.) #s 2 - 8 from scenarios 1 - 5, plus:
16	2.) Estimates reflect IEFA non-premium and premium spending and revenue.
17	3.) July figures represent preliminary actuals (i.e. pre-reconciliation).
18	4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The number of additional staff are subject to the
19	5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April; USCIS is still in the process of developing t
20	6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.
21	7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
1																	
2																	
3																	
4																	
5	lumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and applies that change to the revenue collected for July-September 2019 to get																
6																	
7																	
8																	
9																	
10																	
11	ollowing the COVID-19 Outbreak (and subsequent amendments).																
12																	
13																	
14																	
15																	
16																	
17																	
18	inal scope of expansion.																
19	he FY 2021 AOP.																
20																	
21																	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Approp**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	One-Time Appropriation
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**riation) + No Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28					$200													
29	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**	**$18**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**3AU) + Fee Rule Enjoined**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**	**($60)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**	**($927)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	EX Revenue
15	EP Revenue
16	EX Recoveries
17	EP Recoveries
18	***Total Revenue***
19	
20	
21	**Cost ($ in millions)**
22	EX Payroll
23	EX Payroll Savings
24	EX Realignment to EP/Fraud/H-1B
25	EX Non-Pay
26	EP Pay & Non-Pay
27	EP Loan Repayment
28	Reductions to align to Revenue
29	***Total Cost***
30	
31	***Monthly Cash Flow***
32	
33	***Carryover Balance***
34	
35	**Risk Profile**
36	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**BAU) + Premium Toggle**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13							2,500	**Premium Processing Fee Toggle**										
14		275	280	226	217		304	289	296	301	301	364	350	340	328	345	305	305
15		41	79	43	40		68	67	67	73	74	76	100	100	99	122	76	75
16		34	13	2	1		5	5	5	5	5	5	5	5	5	5	5	5
17		9	2	1	1		3	3	3	3	3	3	3	3	3	3	3	3
18		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**	**475**	**389**	**388**
19																		
20																		
21																		
22		207	181	181	272		181	181	181	199	199	199	200	200	200	200	200	200
23		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
24		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0	0	0	0
25		68	109	125	101		250	250	250	168	168	118	118	118	118	118	118	117
26		64	7	45	45		58	70	75	80	85	85	80	60	60	60	60	60
27							20	20	20	22	22	23	30	30	30	37	23	22
28							0	0	0	0	0	0	0	0	0	0	0	0
29		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**	**415**	**401**	**399**
30																		
31		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**	**61**	**(12)**	**(12)**
32																		
33	**$673**	**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**	**$180**	**$169**	**$157**
34																		
35		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
36																		

AMERICAN OVERSIGHT

	B
1	
2	***Assumptions (Scenarios 1 - 5)***
3	1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.
4	2.) July figures represent preliminary actuals (i.e. pre-reconciliation).
5	3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most recent two week period and compares those vo
6	a projection for July-September 2020.
7	4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.
8	5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.
9	6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).
10	7.) FY 2021 spending includes a 1% pay raise.
11	8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery P
12	9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.
13	
14	***Assumptions (Scenario 6)***
15	1.) #s 2 - 8 from scenarios 1 - 5, plus:
16	2.) Estimates reflect IEFA non-premium and premium spending and revenue.
17	3.) July figures represent preliminary actuals (i.e. pre-reconciliation).
18	4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The number of additional staff are subject to the
19	5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April; USCIS is still in the process of developing t
20	6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.
21	7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
1																	
2																	
3																	
4																	
5	lumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and applies that change to the revenue collected for July-September 2019 to get																
6																	
7																	
8																	
9																	
10																	
11	ollowing the COVID-19 Outbreak (and subsequent amendments).																
12																	
13																	
14																	
15																	
16																	
17																	
18	inal scope of expansion.																
19	he FY 2021 AOP.																
20																	
21																	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 1: No Furlough + No Hill Assistance + No Spending Cuts**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**(BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**$59**	**($78)**	**($208)**	**($269)**	**($330)**	**($278)**	**($241)**	**($214)**	**($199)**	**($167)**	**($175)**	**($182)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 2: 60 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	#####	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**4,907**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	($132)	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$146**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**$82**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$430**	**$513**		**$391**	**$254**	**$124**	**$63**	**$2**	**$54**	**$91**	**$118**	**$133**	**$165**	**$157**	**$150**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 3: 30 Day Furlough + No Hill Assistance + No Spending Cu**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**ts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	#####		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**4,907**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	($199)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$136**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**$82**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$380**		**$258**	**$121**	**($9)**	**($70)**	**($131)**	**($79)**	**($42)**	**($15)**	**$0**	**$32**	**$24**	**$17**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 4: No Furlough + Hill Assistance ($200M One-Time Approp**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	One-Time Appropriation
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**riation) + No Spending Cuts (BAU)**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	#####	#####	18,307	18,307	18,307	#####	#####	#####	#####	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**#####**	**#####**	**18,307**	**18,307**	**18,307**	**#####**	**#####**	**#####**	**#####**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$304	$289	$296	$301	$301	$364	$350	$340	$328	$345	$305	$305
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$309**	**$294**	**$301**	**$306**	**$306**	**$369**	**$355**	**$345**	**$333**	**$350**	**$310**	**$310**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($122)**	**($137)**	**($130)**	**($61)**	**($61)**	**$52**	**$37**	**$27**	**$15**	**$32**	**($8)**	**($7)**
28					$200													
29	**$291**	**$325**	**$348**	**$298**	**$381**		**$259**	**$122**	**($8)**	**($69)**	**($130)**	**($78)**	**($41)**	**($14)**	**$1**	**$33**	**$25**	**$18**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 5: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	Projected Revenue
15	Recoveries
16	***Total Revenue***
17	
18	
19	**Cost ($ in millions)**
20	Payroll
21	Payroll Savings
22	Realignment to Premium/Fraud/H-1B
23	Non-Pay
24	Reductions to align to Revenue
25	***Total Cost***
26	
27	***Monthly Cash Flow***
28	
29	***Carryover Balance***
30	
31	**Risk Profile**
32	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**3AU) + Fee Rule Enjoined**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		#####	#####	#####	#####		#####	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**#####**	**#####**	**#####**	**#####**		**#####**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13																		
14		$275	$280	$226	$217		$238	$225	$236	$240	$237	$292	$282	$275	$265	$288	$253	$252
15		$34	$13	$2	$1		$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5	$5
16		**$309**	**$293**	**$228**	**$218**		**$243**	**$230**	**$241**	**$245**	**$242**	**$297**	**$287**	**$280**	**$270**	**$293**	**$258**	**$257**
17																		
18																		
19																		
20		$207	$181	$181	$272		$181	$181	$181	$199	$199	$199	$200	$200	$200	$200	$200	$200
21		$0	$0	$0	$0		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
22		$0	($20)	($28)	($38)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
23		$68	$109	$125	$101		$250	$250	$250	$168	$168	$118	$118	$118	$118	$118	$118	$117
24							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
25		**$275**	**$270**	**$278**	**$335**		**$431**	**$431**	**$431**	**$367**	**$367**	**$317**	**$318**	**$318**	**$318**	**$318**	**$318**	**$317**
26																		
27		**$34**	**$23**	**($50)**	**($117)**		**($188)**	**($201)**	**($190)**	**($122)**	**($125)**	**($20)**	**($31)**	**($38)**	**($48)**	**($25)**	**($60)**	**($60)**
28																		
29	**$291**	**$325**	**$348**	**$298**	**$181**		**($7)**	**($208)**	**($398)**	**($520)**	**($645)**	**($665)**	**($696)**	**($734)**	**($782)**	**($807)**	**($867)**	**($927)**
30																		
31		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
32																		

AMERICAN OVERSIGHT

	B
1	**USCIS Cash Flow (IEFA Non-Premium) Scenario 6: No Furlough + No Hill Assistance + No Spending Cuts (E**
2	As of July 31, 2020
3	
4	
5	
6	
7	
8	**Headcount**
9	Furlough #
10	***Headcount Total***
11	
12	
13	**Revenue ($ in millions)**
14	EX Revenue
15	EP Revenue
16	EX Recoveries
17	EP Recoveries
18	***Total Revenue***
19	
20	
21	**Cost ($ in millions)**
22	EX Payroll
23	EX Payroll Savings
24	EX Realignment to EP/Fraud/H-1B
25	EX Non-Pay
26	EP Pay & Non-Pay
27	EP Loan Repayment
28	Reductions to align to Revenue
29	***Total Cost***
30	
31	***Monthly Cash Flow***
32	
33	***Carryover Balance***
34	
35	**Risk Profile**
36	

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1	**3AU) + Premium Toggle**																	
2																		
3																		
4	**FY 2020**						**FY 2021**											
5	**Q3**		**Q4**				**Q1**			**Q2**			**Q3**			**Q4**		
6	**May**	**Jun**	**Jul**	**Aug**	**Sep**		**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
7																		
8		18,307	18,307	18,307	18,307		18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307	18,307
9		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
10		**18,307**	**18,307**	**18,307**	**18,307**		**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**	**18,307**
11																		
12																		
13							2,500	**Premium Processing Fee Toggle**										
14		275	280	226	217		304	289	296	301	301	364	350	340	328	345	305	305
15		41	79	43	40		68	67	67	73	74	76	100	100	99	122	76	75
16		34	13	2	1		5	5	5	5	5	5	5	5	5	5	5	5
17		9	2	1	1		3	3	3	3	3	3	3	3	3	3	3	3
18		**360**	**374**	**272**	**259**		**380**	**364**	**371**	**382**	**383**	**448**	**458**	**448**	**435**	**475**	**389**	**388**
19																		
20																		
21																		
22		207	181	181	272		181	181	181	199	199	199	200	200	200	200	200	200
23		0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0
24		0	($20)	($28)	($38)		0	0	0	0	0	0	0	0	0	0	0	0
25		68	109	125	101		250	250	250	168	168	118	118	118	118	118	118	117
26		64	7	45	45		58	70	75	80	85	85	80	60	60	60	60	60
27							20	20	20	22	22	23	30	30	30	37	23	22
28							0	0	0	0	0	0	0	0	0	0	0	0
29		**339**	**277**	**323**	**380**		**509**	**521**	**526**	**469**	**474**	**425**	**428**	**408**	**408**	**415**	**401**	**399**
30																		
31		**21**	**97**	**(51)**	**(121)**		**(129)**	**(157)**	**(155)**	**(87)**	**(91)**	**23**	**30**	**40**	**27**	**61**	**(12)**	**(12)**
32																		
33	**$673**	**$694**	**$791**	**$740**	**$619**		**$489**	**$332**	**$177**	**$90**	**($1)**	**$22**	**$52**	**$92**	**$120**	**$180**	**$169**	**$157**
34																		
35		*Risk*	*Risk*	*Risk*	*Risk*		*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*	*High Risk*	*Risk*	*Risk*	*Risk*	*Risk*	*High Risk*	*High Risk*
36																		

AMERICAN OVERSIGHT

	B
1	
2	***Assumptions (Scenarios 1 - 5)***
3	1.) Estimates reflect only IEFA non-premium spending and revenue; premium is excluded.
4	2.) July figures represent preliminary actuals (i.e. pre-reconciliation).
5	3.) FY 2020 August - September revised revenue is based on the same methodology used in the 4.20 and 5.28 forecasts; it takes receipt volumes for the most recent two week period and compares those vo
6	a projection for July-September 2020.
7	4.) FY 2020 August - September recoveries are reduced due to increased recovery activity spanning April through June.
8	5.) FY 2021 costs are a notional estimate based on the FY 2020 Base AOP. USCIS is still in the process of developing the FY 2021 AOP.
9	6.) FY 2021 Q1 spending is higher than Q2-Q4 due to contracts that have not been confirmed as permanent cuts (FY 2020 Q3-Q4 deferrals).
10	7.) FY 2021 spending includes a 1% pay raise.
11	8.) FY 2021 revenue estimate accounts for the revenue impact associated with the Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery P
12	9.) FY 2021 recoveries are estimated low due to the high activity in FY 2020.
13	
14	***Assumptions (Scenario 6)***
15	1.) #s 2 - 8 from scenarios 1 - 5, plus:
16	2.) Estimates reflect IEFA non-premium and premium spending and revenue.
17	3.) July figures represent preliminary actuals (i.e. pre-reconciliation).
18	4.) Premium processing expansion to more forms will require additional staff to handle additional workload within the expedited 15-day processing timeframe. The number of additional staff are subject to the
19	5.) Premium processing accounts for additional contract support associated electronic processing. FY 2021 costs are notional and awards phased in through April; USCIS is still in the process of developing t
20	6.) Premium processing accounts for 30% of higher fees being used to repay either loan or appropriation.
21	7.) Premium processing assumes carryover from current authority will be available to use under expanded authority.

AMERICAN OVERSIGHT

	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
1																	
2																	
3																	
4																	
5	lumes against volumes from the same period 1-year ago. It then takes the year-on-year percentage change by form and applies that change to the revenue collected for July-September 2019 to get																
6																	
7																	
8																	
9																	
10																	
11	ollowing the COVID-19 Outbreak (and subsequent amendments).																
12																	
13																	
14																	
15																	
16																	
17																	
18	inal scope of expansion.																
19	he FY 2021 AOP.																
20																	
21																	

AMERICAN OVERSIGHT

	A	B	C
1			
2		Current EP Fee	$ 1,440
3		Proposed EP Fee	$ 2,500

AMERICAN OVERSIGHT

	A	B	C	D	E	F
1	**FURLOUGHED Agency Wide by POD *as of 7/07/2020 1:24pm***					
2						
3	**POD**		**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	AAO	Administrative Appeals Office	73	27	0	100
5	COW	Office of the Director	2	5	0	7
6	EXA	External Affairs	486	151	0	637
7	EXS	Executive Secretariat	11	5	0	16
8	FDNS	Fraud Detection & National Security Directorate	134	139	1	274
9	FOD	Field Operations Directorate	5577	2323	47	7947
10	IRIS	Immigration Records and Identity Services	627	285	4	916
11	IVD	Office of Investigations	48	18	0	66
12	MGT	Management Directorate	1110	817	10	1937
13	OCC	Office of the Chief Counsel	97	231	1	329
14	OEOI	Office of Equal Opportunity and Inclusion	23	8	0	31
15	OPS	Office and Policy and Strategy	76	52	0	128
16	PVY	Office of Privacy	14	6	2	22
17	RAIO	Refugee, Asylum and International Operations	1535	714	4	2253
18	SCOPS	Service Center Operations	3542	1651	25	5218
19	**Grand Total**		**13355**	**6432**	**94**	**19881**

AMERICAN OVERSIGHT

	A	B	C	D	E
1	**FURLOUGHED BY STATE/AREA and POD *as of 7/07/2020 1:24pm***				
2					
3	**State or Area/POD**	**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	**AK**	**9**	**4**	**0**	**13**
5	FOD	9	4	0	13
6	**AL**	**30**	**9**	**0**	**39**
7	FOD	29	9	0	38
8	MGT	1	0	0	1
9	**AR**	**12**	**4**	**0**	**16**
10	FOD	11	4	0	15
11	MGT	1	0	0	1
12	**AZ**	**116**	**48**	**0**	**164**
13	EXA	1	0	0	1
14	FOD	108	36	0	144
15	MGT	5	10	0	15
16	OCC	1	2	0	3
17	RAIO	1	0	0	1
18	**CA**	**2302**	**989**	**9**	**3300**
19	EXA	83	19	0	102
20	FDNS	0	2	0	2
21	FOD	1001	379	5	1385
22	IRIS	59	25	0	84
23	IVD	6	2	0	8
24	MGT	41	35	0	76
25	OCC	22	27	0	49
26	OPS	0	1	0	1
27	PVY	2	0	0	2
28	RAIO	254	127	1	382
29	SCOPS	834	372	3	1209
30	**CO**	**73**	**32**	**1**	**106**
31	EXA	1	0	0	1
32	FOD	70	24	1	95
33	MGT	1	5	0	6
34	OCC	1	2	0	3
35	PVY	0	1	0	1
36	**CT**	**60**	**26**	**1**	**87**
37	FOD	60	24	1	85
38	OCC	0	2	0	2
39	**DC**	**1688**	**1036**	**7**	**2731**
40	COW	2	5	0	7
41	EXA	125	90	0	215
42	EXS	11	5	0	16
43	FDNS	117	111	1	229
44	FOD	183	139	1	323
45	IRIS	178	61	0	239
46	IVD	12	8	0	20
47	MGT	547	319	2	868
48	OCC	30	85	0	115

AMERICAN OVERSIGHT

	A	B	C	D	E
49	OEOI	11	3	0	14
50	OPS	75	50	0	125
51	PVY	9	4	2	15
52	RAIO	291	127	1	419
53	SCOPS	97	29	0	126
54	**DE**	**1**	**0**	**0**	**1**
55	FOD	1	0	0	1
56	**FL**	**733**	**299**	**2**	**1034**
57	EXA	6	2	0	8
58	FOD	557	204	2	763
59	IRIS	0	2	0	2
60	IVD	7	2	0	9
61	MGT	18	12	0	30
62	OCC	6	16	0	22
63	PVY	1	0	0	1
64	RAIO	138	61	0	199
65	**GA**	**142**	**52**	**1**	**195**
66	EXA	2	0	0	2
67	FOD	100	34	1	135
68	IRIS	0	1	0	1
69	MGT	4	4	0	8
70	OCC	0	2	0	2
71	RAIO	36	11	0	47
72	**HI**	**34**	**14**	**0**	**48**
73	FOD	32	11	0	43
74	MGT	1	1	0	2
75	OCC	0	2	0	2
76	OPS	1	0	0	1
77	**IA**	**15**	**6**	**0**	**21**
78	FOD	15	6	0	21
79	**ID**	**14**	**4**	**0**	**18**
80	FOD	14	4	0	18
81	**IL**	**306**	**153**	**1**	**460**
82	EXA	3	0	0	3
83	FOD	131	64	0	195
84	MGT	2	10	0	12
85	OCC	2	4	1	7
86	RAIO	168	75	0	243
87	**IN**	**33**	**15**	**0**	**48**
88	FOD	32	11	0	43
89	MGT	0	1	0	1
90	OCC	1	0	0	1
91	RAIO	0	3	0	3
92	**KS**	**225**	**133**	**9**	**367**
93	EXA	36	12	0	48
94	FOD	188	118	9	315
95	MGT	1	2	0	3
96	OCC	0	1	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
97	**KY**	**24**	**12**	**2**	**38**
98	FDNS	2	1	0	3
99	FOD	18	7	2	27
100	IRIS	0	1	0	1
101	MGT	4	3	0	7
102	**LA**	**65**	**24**	**1**	**90**
103	FOD	28	6	1	35
104	MGT	0	2	0	2
105	OCC	1	0	0	1
106	RAIO	36	16	0	52
107	**MA**	**186**	**68**	**6**	**260**
108	EXA	1	0	0	1
109	FOD	161	54	6	221
110	MGT	3	1	0	4
111	OCC	2	4	0	6
112	RAIO	19	9	0	28
113	**MD**	**98**	**42**	**0**	**140**
114	FOD	97	39	0	136
115	MGT	1	1	0	2
116	OCC	0	2	0	2
117	**ME**	**10**	**5**	**0**	**15**
118	EXA	0	1	0	1
119	FOD	10	4	0	14
120	**MI**	**71**	**34**	**0**	**105**
121	FOD	69	31	0	100
122	MGT	1	0	0	1
123	OCC	1	3	0	4
124	**MN**	**126**	**109**	**3**	**238**
125	FOD	57	24	0	81
126	IVD	1	0	0	1
127	MGT	56	80	3	139
128	OCC	0	1	0	1
129	OEOI	12	4	0	16
130	**MO**	**720**	**468**	**14**	**1202**
131	FDNS	6	12	0	18
132	FOD	453	299	9	761
133	IRIS	234	128	4	366
134	IVD	4	2	0	6
135	MGT	20	20	1	41
136	OCC	2	6	0	8
137	OEOI	0	1	0	1
138	PVY	1	0	0	1
139	**MS**	**12**	**7**	**0**	**19**
140	FOD	3	0	0	3
141	MGT	9	7	0	16
142	**MT**	**9**	**3**	**0**	**12**
143	FOD	9	3	0	12
144	**NC**	**79**	**33**	**0**	**112**

AMERICAN OVERSIGHT

	A	B	C	D	E
145	EXA	0	1	0	1
146	FOD	77	28	0	105
147	IRIS	0	1	0	1
148	MGT	1	0	0	1
149	OCC	1	3	0	4
150	**ND**	**1**	**1**	**0**	**2**
151	FOD	1	1	0	2
152	**NE**	**919**	**407**	**13**	**1339**
153	FOD	24	8	0	32
154	IRIS	52	20	0	72
155	MGT	3	8	0	11
156	OCC	2	6	0	8
157	SCOPS	838	365	13	1216
158	**NH**	**10**	**11**	**0**	**21**
159	FDNS	0	1	0	1
160	FOD	9	10	0	19
161	OCC	1	0	0	1
162	**NJ**	**321**	**138**	**2**	**461**
163	FOD	203	82	2	287
164	MGT	1	1	0	2
165	OCC	2	4	0	6
166	RAIO	115	51	0	166
167	**NM**	**13**	**4**	**0**	**17**
168	FOD	13	4	0	17
169	**NV**	**54**	**21**	**0**	**75**
170	FOD	54	20	0	74
171	OCC	0	1	0	1
172	**NY**	**918**	**323**	**4**	**1245**
173	EXA	224	24	0	248
174	FOD	472	184	4	660
175	IRIS	99	42	0	141
176	IVD	4	2	0	6
177	MGT	5	5	0	10
178	OCC	4	12	0	16
179	RAIO	110	53	0	163
180	SCOPS	0	1	0	1
181	**OH**	**79**	**33**	**0**	**112**
182	EXA	1	0	0	1
183	FOD	76	31	0	107
184	MGT	2	0	0	2
185	OCC	0	2	0	2
186	**OK**	**24**	**9**	**0**	**33**
187	FOD	24	9	0	33
188	**OR**	**54**	**20**	**0**	**74**
189	FOD	54	19	0	73
190	OCC	0	1	0	1
191	**PA**	**139**	**39**	**1**	**179**
192	EXA	1	0	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
193	FOD	135	38	1	174
194	MGT	2	0	0	2
195	OCC	1	1	0	2
196	**RI**	**19**	**10**	**0**	**29**
197	FOD	18	10	0	28
198	MGT	1	0	0	1
199	**SC**	**79**	**22**	**0**	**101**
200	EXA	1	0	0	1
201	FDNS	1	2	0	3
202	FOD	35	15	0	50
203	IRIS	0	1	0	1
204	MGT	39	2	0	41
205	OCC	2	2	0	4
206	SCOPS	1	0	0	1
207	**SD**	**2**	**0**	**0**	**2**
208	FOD	2	0	0	2
209	**TN**	**49**	**19**	**1**	**69**
210	FOD	48	19	1	68
211	MGT	1	0	0	1
212	**TX**	**1377**	**666**	**5**	**2048**
213	EXA	0	1	0	1
214	FDNS	2	1	0	3
215	FOD	486	162	0	648
216	IVD	6	1	0	7
217	MGT	45	26	1	72
218	OCC	8	23	0	31
219	OPS	0	1	0	1
220	PVY	1	0	0	1
221	RAIO	185	82	0	267
222	SCOPS	644	369	4	1017
223	**UT**	**30**	**10**	**0**	**40**
224	FOD	30	10	0	40
225	**VA**	**777**	**349**	**6**	**1132**
226	AAO	73	27	0	100
227	EXA	1	0	0	1
228	FDNS	1	2	0	3
229	FOD	137	54	1	192
230	IRIS	5	1	0	6
231	IVD	4	1	0	5
232	MGT	2	4	0	6
233	OCC	3	5	0	8
234	RAIO	180	83	2	265
235	SCOPS	371	172	3	546
236	**VT**	**1109**	**631**	**5**	**1745**
237	EXA	0	1	0	1
238	FDNS	5	7	0	12
239	FOD	49	13	0	62
240	IRIS	0	1	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
241	IVD	4	0	0	4
242	MGT	290	256	3	549
243	OCC	4	9	0	13
244	PVY	0	1	0	1
245	SCOPS	757	343	2	1102
246	**WA**	**117**	**44**	**0**	**161**
247	FOD	115	40	0	155
248	MGT	2	2	0	4
249	OCC	0	2	0	2
250	**WI**	**25**	**11**	**0**	**36**
251	FOD	25	11	0	36
252	**WV**	**1**	**0**	**0**	**1**
253	FOD	1	0	0	1
254	**Territories**				
255	**GU**	**13**	**6**	**0**	**19**
256	FOD	13	6	0	19
257	**PR**	**20**	**8**	**0**	**28**
258	FOD	20	7	0	27
259	IRIS	0	1	0	1
260	**VI**	**10**	**4**	**0**	**14**
261	FOD	10	4	0	14
262	**International Offices**				
263	**BU (Beijing, China)**	**0**	**1**	**0**	**1**
264	OCC	0	1	0	1
265	**CH (Guangzhou, China)**	**0**	**5**	**0**	**5**
266	RAIO	0	5	0	5
267	**DR (Santo Domingo, Dominican Republic**	**0**	**1**	**0**	**1**
268	RAIO	0	1	0	1
269	**ES (San Salvador, El Savador)**	**0**	**2**	**0**	**2**
270	RAIO	0	2	0	2
271	**GH (Accra, Ghana)**	**0**	**1**	**0**	**1**
272	RAIO	0	1	0	1
273	**GT (Gautemala City, Guatemala)**	**0**	**1**	**0**	**1**
274	RAIO	0	1	0	1
275	**IT (Rome, Italy)**	**1**	**1**	**0**	**2**
276	RAIO	1	1	0	2
277	**KE (Nairobi, Kenya)**	**0**	**2**	**0**	**2**
278	RAIO	0	2	0	2
279	**MX (Mexico City, Mexico)**	**0**	**2**	**0**	**2**
280	RAIO	0	2	0	2
281	**UK (London, United Kingdom)**	**1**	**1**	**0**	**2**
282	RAIO	1	1	0	2
283	**Grand Total**	**13355**	**6432**	**94**	**19881**

INTERIM OVERSIGHT

	A	B	C	D	E	F
1	**FURLOUGHED Agency Wide by POD *as of 7/07/2020 1:24pm***					
2						
3	**POD**		**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	AAO	Administrative Appeals Office	73	27	0	100
5	COW	Office of the Director	2	5	0	7
6	EXA	External Affairs	486	151	0	637
7	EXS	Executive Secretariat	11	5	0	16
8	FDNS	Fraud Detection & National Security Directorate	134	139	1	274
9	FOD	Field Operations Directorate	5577	2323	47	7947
10	IRIS	Immigration Records and Identity Services	627	285	4	916
11	IVD	Office of Investigations	48	18	0	66
12	MGT	Management Directorate	1110	817	10	1937
13	OCC	Office of the Chief Counsel	97	231	1	329
14	OEOI	Office of Equal Opportunity and Inclusion	23	8	0	31
15	OPS	Office and Policy and Strategy	76	52	0	128
16	PVY	Office of Privacy	14	6	2	22
17	RAIO	Refugee, Asylum and International Operations	1535	714	4	2253
18	SCOPS	Service Center Operations	3542	1651	25	5218
19	**Grand Total**		**13355**	**6432**	**94**	**19881**

AMERICAN OVERSIGHT

	A	B	C	D	E
1	**FURLOUGHED BY STATE/AREA and POD *as of 7/07/2020 1:24pm***				
2					
3	**State or Area/POD**	**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	**AK**	**9**	**4**	**0**	**13**
5	FOD	9	4	0	13
6	**AL**	**30**	**9**	**0**	**39**
7	FOD	29	9	0	38
8	MGT	1	0	0	1
9	**AR**	**12**	**4**	**0**	**16**
10	FOD	11	4	0	15
11	MGT	1	0	0	1
12	**AZ**	**116**	**48**	**0**	**164**
13	EXA	1	0	0	1
14	FOD	108	36	0	144
15	MGT	5	10	0	15
16	OCC	1	2	0	3
17	RAIO	1	0	0	1
18	**CA**	**2302**	**989**	**9**	**3300**
19	EXA	83	19	0	102
20	FDNS	0	2	0	2
21	FOD	1001	379	5	1385
22	IRIS	59	25	0	84
23	IVD	6	2	0	8
24	MGT	41	35	0	76
25	OCC	22	27	0	49
26	OPS	0	1	0	1
27	PVY	2	0	0	2
28	RAIO	254	127	1	382
29	SCOPS	834	372	3	1209
30	**CO**	**73**	**32**	**1**	**106**
31	EXA	1	0	0	1
32	FOD	70	24	1	95
33	MGT	1	5	0	6
34	OCC	1	2	0	3
35	PVY	0	1	0	1
36	**CT**	**60**	**26**	**1**	**87**
37	FOD	60	24	1	85
38	OCC	0	2	0	2
39	**DC**	**1688**	**1036**	**7**	**2731**
40	COW	2	5	0	7
41	EXA	125	90	0	215
42	EXS	11	5	0	16
43	FDNS	117	111	1	229
44	FOD	183	139	1	323
45	IRIS	178	61	0	239
46	IVD	12	8	0	20
47	MGT	547	319	2	868
48	OCC	30	85	0	115

AMERICAN OVERSIGHT

	A	B	C	D	E
49	OEOI	11	3	0	14
50	OPS	75	50	0	125
51	PVY	9	4	2	15
52	RAIO	291	127	1	419
53	SCOPS	97	29	0	126
54	**DE**	**1**	**0**	**0**	**1**
55	FOD	1	0	0	1
56	**FL**	**733**	**299**	**2**	**1034**
57	EXA	6	2	0	8
58	FOD	557	204	2	763
59	IRIS	0	2	0	2
60	IVD	7	2	0	9
61	MGT	18	12	0	30
62	OCC	6	16	0	22
63	PVY	1	0	0	1
64	RAIO	138	61	0	199
65	**GA**	**142**	**52**	**1**	**195**
66	EXA	2	0	0	2
67	FOD	100	34	1	135
68	IRIS	0	1	0	1
69	MGT	4	4	0	8
70	OCC	0	2	0	2
71	RAIO	36	11	0	47
72	**HI**	**34**	**14**	**0**	**48**
73	FOD	32	11	0	43
74	MGT	1	1	0	2
75	OCC	0	2	0	2
76	OPS	1	0	0	1
77	**IA**	**15**	**6**	**0**	**21**
78	FOD	15	6	0	21
79	**ID**	**14**	**4**	**0**	**18**
80	FOD	14	4	0	18
81	**IL**	**306**	**153**	**1**	**460**
82	EXA	3	0	0	3
83	FOD	131	64	0	195
84	MGT	2	10	0	12
85	OCC	2	4	1	7
86	RAIO	168	75	0	243
87	**IN**	**33**	**15**	**0**	**48**
88	FOD	32	11	0	43
89	MGT	0	1	0	1
90	OCC	1	0	0	1
91	RAIO	0	3	0	3
92	**KS**	**225**	**133**	**9**	**367**
93	EXA	36	12	0	48
94	FOD	188	118	9	315
95	MGT	1	2	0	3
96	OCC	0	1	0	1

AMERICAN OVERSIGHT

Furlough by Area and POD

	A	B	C	D	E
97	**KY**	**24**	**12**	**2**	**38**
98	FDNS	2	1	0	3
99	FOD	18	7	2	27
100	IRIS	0	1	0	1
101	MGT	4	3	0	7
102	**LA**	**65**	**24**	**1**	**90**
103	FOD	28	6	1	35
104	MGT	0	2	0	2
105	OCC	1	0	0	1
106	RAIO	36	16	0	52
107	**MA**	**186**	**68**	**6**	**260**
108	EXA	1	0	0	1
109	FOD	161	54	6	221
110	MGT	3	1	0	4
111	OCC	2	4	0	6
112	RAIO	19	9	0	28
113	**MD**	**98**	**42**	**0**	**140**
114	FOD	97	39	0	136
115	MGT	1	1	0	2
116	OCC	0	2	0	2
117	**ME**	**10**	**5**	**0**	**15**
118	EXA	0	1	0	1
119	FOD	10	4	0	14
120	**MI**	**71**	**34**	**0**	**105**
121	FOD	69	31	0	100
122	MGT	1	0	0	1
123	OCC	1	3	0	4
124	**MN**	**126**	**109**	**3**	**238**
125	FOD	57	24	0	81
126	IVD	1	0	0	1
127	MGT	56	80	3	139
128	OCC	0	1	0	1
129	OEOI	12	4	0	16
130	**MO**	**720**	**468**	**14**	**1202**
131	FDNS	6	12	0	18
132	FOD	453	299	9	761
133	IRIS	234	128	4	366
134	IVD	4	2	0	6
135	MGT	20	20	1	41
136	OCC	2	6	0	8
137	OEOI	0	1	0	1
138	PVY	1	0	0	1
139	**MS**	**12**	**7**	**0**	**19**
140	FOD	3	0	0	3
141	MGT	9	7	0	16
142	**MT**	**9**	**3**	**0**	**12**
143	FOD	9	3	0	12
144	**NC**	**79**	**33**	**0**	**112**

AMERICAN OVERSIGHT

	A	B	C	D	E
145	EXA	0	1	0	1
146	FOD	77	28	0	105
147	IRIS	0	1	0	1
148	MGT	1	0	0	1
149	OCC	1	3	0	4
150	**ND**	**1**	**1**	**0**	**2**
151	FOD	1	1	0	2
152	**NE**	**919**	**407**	**13**	**1339**
153	FOD	24	8	0	32
154	IRIS	52	20	0	72
155	MGT	3	8	0	11
156	OCC	2	6	0	8
157	SCOPS	838	365	13	1216
158	**NH**	**10**	**11**	**0**	**21**
159	FDNS	0	1	0	1
160	FOD	9	10	0	19
161	OCC	1	0	0	1
162	**NJ**	**321**	**138**	**2**	**461**
163	FOD	203	82	2	287
164	MGT	1	1	0	2
165	OCC	2	4	0	6
166	RAIO	115	51	0	166
167	**NM**	**13**	**4**	**0**	**17**
168	FOD	13	4	0	17
169	**NV**	**54**	**21**	**0**	**75**
170	FOD	54	20	0	74
171	OCC	0	1	0	1
172	**NY**	**918**	**323**	**4**	**1245**
173	EXA	224	24	0	248
174	FOD	472	184	4	660
175	IRIS	99	42	0	141
176	IVD	4	2	0	6
177	MGT	5	5	0	10
178	OCC	4	12	0	16
179	RAIO	110	53	0	163
180	SCOPS	0	1	0	1
181	**OH**	**79**	**33**	**0**	**112**
182	EXA	1	0	0	1
183	FOD	76	31	0	107
184	MGT	2	0	0	2
185	OCC	0	2	0	2
186	**OK**	**24**	**9**	**0**	**33**
187	FOD	24	9	0	33
188	**OR**	**54**	**20**	**0**	**74**
189	FOD	54	19	0	73
190	OCC	0	1	0	1
191	**PA**	**139**	**39**	**1**	**179**
192	EXA	1	0	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
193	FOD	135	38	1	174
194	MGT	2	0	0	2
195	OCC	1	1	0	2
196	**RI**	**19**	**10**	**0**	**29**
197	FOD	18	10	0	28
198	MGT	1	0	0	1
199	**SC**	**79**	**22**	**0**	**101**
200	EXA	1	0	0	1
201	FDNS	1	2	0	3
202	FOD	35	15	0	50
203	IRIS	0	1	0	1
204	MGT	39	2	0	41
205	OCC	2	2	0	4
206	SCOPS	1	0	0	1
207	**SD**	**2**	**0**	**0**	**2**
208	FOD	2	0	0	2
209	**TN**	**49**	**19**	**1**	**69**
210	FOD	48	19	1	68
211	MGT	1	0	0	1
212	**TX**	**1377**	**666**	**5**	**2048**
213	EXA	0	1	0	1
214	FDNS	2	1	0	3
215	FOD	486	162	0	648
216	IVD	6	1	0	7
217	MGT	45	26	1	72
218	OCC	8	23	0	31
219	OPS	0	1	0	1
220	PVY	1	0	0	1
221	RAIO	185	82	0	267
222	SCOPS	644	369	4	1017
223	**UT**	**30**	**10**	**0**	**40**
224	FOD	30	10	0	40
225	**VA**	**777**	**349**	**6**	**1132**
226	AAO	73	27	0	100
227	EXA	1	0	0	1
228	FDNS	1	2	0	3
229	FOD	137	54	1	192
230	IRIS	5	1	0	6
231	IVD	4	1	0	5
232	MGT	2	4	0	6
233	OCC	3	5	0	8
234	RAIO	180	83	2	265
235	SCOPS	371	172	3	546
236	**VT**	**1109**	**631**	**5**	**1745**
237	EXA	0	1	0	1
238	FDNS	5	7	0	12
239	FOD	49	13	0	62
240	IRIS	0	1	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
241	IVD	4	0	0	4
242	MGT	290	256	3	549
243	OCC	4	9	0	13
244	PVY	0	1	0	1
245	SCOPS	757	343	2	1102
246	**WA**	**117**	**44**	**0**	**161**
247	FOD	115	40	0	155
248	MGT	2	2	0	4
249	OCC	0	2	0	2
250	**WI**	**25**	**11**	**0**	**36**
251	FOD	25	11	0	36
252	**WV**	**1**	**0**	**0**	**1**
253	FOD	1	0	0	1
254	**Territories**				
255	**GU**	**13**	**6**	**0**	**19**
256	FOD	13	6	0	19
257	**PR**	**20**	**8**	**0**	**28**
258	FOD	20	7	0	27
259	IRIS	0	1	0	1
260	**VI**	**10**	**4**	**0**	**14**
261	FOD	10	4	0	14
262	**International Offices**				
263	**BU (Beijing, China)**	**0**	**1**	**0**	**1**
264	OCC	0	1	0	1
265	**CH (Guangzhou, China)**	**0**	**5**	**0**	**5**
266	RAIO	0	5	0	5
267	**DR (Santo Domingo, Dominican Republic**	**0**	**1**	**0**	**1**
268	RAIO	0	1	0	1
269	**ES (San Salvador, El Savador)**	**0**	**2**	**0**	**2**
270	RAIO	0	2	0	2
271	**GH (Accra, Ghana)**	**0**	**1**	**0**	**1**
272	RAIO	0	1	0	1
273	**GT (Gautemala City, Guatemala)**	**0**	**1**	**0**	**1**
274	RAIO	0	1	0	1
275	**IT (Rome, Italy)**	**1**	**1**	**0**	**2**
276	RAIO	1	1	0	2
277	**KE (Nairobi, Kenya)**	**0**	**2**	**0**	**2**
278	RAIO	0	2	0	2
279	**MX (Mexico City, Mexico)**	**0**	**2**	**0**	**2**
280	RAIO	0	2	0	2
281	**UK (London, United Kingdom)**	**1**	**1**	**0**	**2**
282	RAIO	1	1	0	2
283	**Grand Total**	**13355**	**6432**	**94**	**19881**

INTERIM
OVERSIGHT

	A	B	C	D	E	F
1	**FURLOUGHED Agency Wide by POD *as of 7/07/2020 1:24pm***					
2						
3	**POD**		**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	AAO	Administrative Appeals Office	73	27	0	100
5	COW	Office of the Director	2	5	0	7
6	EXA	External Affairs	486	151	0	637
7	EXS	Executive Secretariat	11	5	0	16
8	FDNS	Fraud Detection & National Security Directorate	134	139	1	274
9	FOD	Field Operations Directorate	5577	2323	47	7947
10	IRIS	Immigration Records and Identity Services	627	285	4	916
11	IVD	Office of Investigations	48	18	0	66
12	MGT	Management Directorate	1110	817	10	1937
13	OCC	Office of the Chief Counsel	97	231	1	329
14	OEOI	Office of Equal Opportunity and Inclusion	23	8	0	31
15	OPS	Office and Policy and Strategy	76	52	0	128
16	PVY	Office of Privacy	14	6	2	22
17	RAIO	Refugee, Asylum and International Operations	1535	714	4	2253
18	SCOPS	Service Center Operations	3542	1651	25	5218
19	**Grand Total**		**13355**	**6432**	**94**	**19881**

AMERICAN OVERSIGHT

	A	B	C	D	E
1	**FURLOUGHED BY STATE/AREA and POD *as of 7/07/2020 1:24pm***				
2					
3	**State or Area/POD**	**Furlough**	**Retain**	**Other (Military Deployment/Departed)**	**Grand Total**
4	**AK**	**9**	**4**	**0**	**13**
5	FOD	9	4	0	13
6	**AL**	**30**	**9**	**0**	**39**
7	FOD	29	9	0	38
8	MGT	1	0	0	1
9	**AR**	**12**	**4**	**0**	**16**
10	FOD	11	4	0	15
11	MGT	1	0	0	1
12	**AZ**	**116**	**48**	**0**	**164**
13	EXA	1	0	0	1
14	FOD	108	36	0	144
15	MGT	5	10	0	15
16	OCC	1	2	0	3
17	RAIO	1	0	0	1
18	**CA**	**2302**	**989**	**9**	**3300**
19	EXA	83	19	0	102
20	FDNS	0	2	0	2
21	FOD	1001	379	5	1385
22	IRIS	59	25	0	84
23	IVD	6	2	0	8
24	MGT	41	35	0	76
25	OCC	22	27	0	49
26	OPS	0	1	0	1
27	PVY	2	0	0	2
28	RAIO	254	127	1	382
29	SCOPS	834	372	3	1209
30	**CO**	**73**	**32**	**1**	**106**
31	EXA	1	0	0	1
32	FOD	70	24	1	95
33	MGT	1	5	0	6
34	OCC	1	2	0	3
35	PVY	0	1	0	1
36	**CT**	**60**	**26**	**1**	**87**
37	FOD	60	24	1	85
38	OCC	0	2	0	2
39	**DC**	**1688**	**1036**	**7**	**2731**
40	COW	2	5	0	7
41	EXA	125	90	0	215
42	EXS	11	5	0	16
43	FDNS	117	111	1	229
44	FOD	183	139	1	323
45	IRIS	178	61	0	239
46	IVD	12	8	0	20
47	MGT	547	319	2	868
48	OCC	30	85	0	115

AMERICAN OVERSIGHT

	A	B	C	D	E
49	OEOI	11	3	0	14
50	OPS	75	50	0	125
51	PVY	9	4	2	15
52	RAIO	291	127	1	419
53	SCOPS	97	29	0	126
54	**DE**	**1**	**0**	**0**	**1**
55	FOD	1	0	0	1
56	**FL**	**733**	**299**	**2**	**1034**
57	EXA	6	2	0	8
58	FOD	557	204	2	763
59	IRIS	0	2	0	2
60	IVD	7	2	0	9
61	MGT	18	12	0	30
62	OCC	6	16	0	22
63	PVY	1	0	0	1
64	RAIO	138	61	0	199
65	**GA**	**142**	**52**	**1**	**195**
66	EXA	2	0	0	2
67	FOD	100	34	1	135
68	IRIS	0	1	0	1
69	MGT	4	4	0	8
70	OCC	0	2	0	2
71	RAIO	36	11	0	47
72	**HI**	**34**	**14**	**0**	**48**
73	FOD	32	11	0	43
74	MGT	1	1	0	2
75	OCC	0	2	0	2
76	OPS	1	0	0	1
77	**IA**	**15**	**6**	**0**	**21**
78	FOD	15	6	0	21
79	**ID**	**14**	**4**	**0**	**18**
80	FOD	14	4	0	18
81	**IL**	**306**	**153**	**1**	**460**
82	EXA	3	0	0	3
83	FOD	131	64	0	195
84	MGT	2	10	0	12
85	OCC	2	4	1	7
86	RAIO	168	75	0	243
87	**IN**	**33**	**15**	**0**	**48**
88	FOD	32	11	0	43
89	MGT	0	1	0	1
90	OCC	1	0	0	1
91	RAIO	0	3	0	3
92	**KS**	**225**	**133**	**9**	**367**
93	EXA	36	12	0	48
94	FOD	188	118	9	315
95	MGT	1	2	0	3
96	OCC	0	1	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
97	**KY**	**24**	**12**	**2**	**38**
98	FDNS	2	1	0	3
99	FOD	18	7	2	27
100	IRIS	0	1	0	1
101	MGT	4	3	0	7
102	**LA**	**65**	**24**	**1**	**90**
103	FOD	28	6	1	35
104	MGT	0	2	0	2
105	OCC	1	0	0	1
106	RAIO	36	16	0	52
107	**MA**	**186**	**68**	**6**	**260**
108	EXA	1	0	0	1
109	FOD	161	54	6	221
110	MGT	3	1	0	4
111	OCC	2	4	0	6
112	RAIO	19	9	0	28
113	**MD**	**98**	**42**	**0**	**140**
114	FOD	97	39	0	136
115	MGT	1	1	0	2
116	OCC	0	2	0	2
117	**ME**	**10**	**5**	**0**	**15**
118	EXA	0	1	0	1
119	FOD	10	4	0	14
120	**MI**	**71**	**34**	**0**	**105**
121	FOD	69	31	0	100
122	MGT	1	0	0	1
123	OCC	1	3	0	4
124	**MN**	**126**	**109**	**3**	**238**
125	FOD	57	24	0	81
126	IVD	1	0	0	1
127	MGT	56	80	3	139
128	OCC	0	1	0	1
129	OEOI	12	4	0	16
130	**MO**	**720**	**468**	**14**	**1202**
131	FDNS	6	12	0	18
132	FOD	453	299	9	761
133	IRIS	234	128	4	366
134	IVD	4	2	0	6
135	MGT	20	20	1	41
136	OCC	2	6	0	8
137	OEOI	0	1	0	1
138	PVY	1	0	0	1
139	**MS**	**12**	**7**	**0**	**19**
140	FOD	3	0	0	3
141	MGT	9	7	0	16
142	**MT**	**9**	**3**	**0**	**12**
143	FOD	9	3	0	12
144	**NC**	**79**	**33**	**0**	**112**

AMERICAN OVERSIGHT

	A	B	C	D	E
145	EXA	0	1	0	1
146	FOD	77	28	0	105
147	IRIS	0	1	0	1
148	MGT	1	0	0	1
149	OCC	1	3	0	4
150	**ND**	**1**	**1**	**0**	**2**
151	FOD	1	1	0	2
152	**NE**	**919**	**407**	**13**	**1339**
153	FOD	24	8	0	32
154	IRIS	52	20	0	72
155	MGT	3	8	0	11
156	OCC	2	6	0	8
157	SCOPS	838	365	13	1216
158	**NH**	**10**	**11**	**0**	**21**
159	FDNS	0	1	0	1
160	FOD	9	10	0	19
161	OCC	1	0	0	1
162	**NJ**	**321**	**138**	**2**	**461**
163	FOD	203	82	2	287
164	MGT	1	1	0	2
165	OCC	2	4	0	6
166	RAIO	115	51	0	166
167	**NM**	**13**	**4**	**0**	**17**
168	FOD	13	4	0	17
169	**NV**	**54**	**21**	**0**	**75**
170	FOD	54	20	0	74
171	OCC	0	1	0	1
172	**NY**	**918**	**323**	**4**	**1245**
173	EXA	224	24	0	248
174	FOD	472	184	4	660
175	IRIS	99	42	0	141
176	IVD	4	2	0	6
177	MGT	5	5	0	10
178	OCC	4	12	0	16
179	RAIO	110	53	0	163
180	SCOPS	0	1	0	1
181	**OH**	**79**	**33**	**0**	**112**
182	EXA	1	0	0	1
183	FOD	76	31	0	107
184	MGT	2	0	0	2
185	OCC	0	2	0	2
186	**OK**	**24**	**9**	**0**	**33**
187	FOD	24	9	0	33
188	**OR**	**54**	**20**	**0**	**74**
189	FOD	54	19	0	73
190	OCC	0	1	0	1
191	**PA**	**139**	**39**	**1**	**179**
192	EXA	1	0	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
193	FOD	135	38	1	174
194	MGT	2	0	0	2
195	OCC	1	1	0	2
196	**RI**	**19**	**10**	**0**	**29**
197	FOD	18	10	0	28
198	MGT	1	0	0	1
199	**SC**	**79**	**22**	**0**	**101**
200	EXA	1	0	0	1
201	FDNS	1	2	0	3
202	FOD	35	15	0	50
203	IRIS	0	1	0	1
204	MGT	39	2	0	41
205	OCC	2	2	0	4
206	SCOPS	1	0	0	1
207	**SD**	**2**	**0**	**0**	**2**
208	FOD	2	0	0	2
209	**TN**	**49**	**19**	**1**	**69**
210	FOD	48	19	1	68
211	MGT	1	0	0	1
212	**TX**	**1377**	**666**	**5**	**2048**
213	EXA	0	1	0	1
214	FDNS	2	1	0	3
215	FOD	486	162	0	648
216	IVD	6	1	0	7
217	MGT	45	26	1	72
218	OCC	8	23	0	31
219	OPS	0	1	0	1
220	PVY	1	0	0	1
221	RAIO	185	82	0	267
222	SCOPS	644	369	4	1017
223	**UT**	**30**	**10**	**0**	**40**
224	FOD	30	10	0	40
225	**VA**	**777**	**349**	**6**	**1132**
226	AAO	73	27	0	100
227	EXA	1	0	0	1
228	FDNS	1	2	0	3
229	FOD	137	54	1	192
230	IRIS	5	1	0	6
231	IVD	4	1	0	5
232	MGT	2	4	0	6
233	OCC	3	5	0	8
234	RAIO	180	83	2	265
235	SCOPS	371	172	3	546
236	**VT**	**1109**	**631**	**5**	**1745**
237	EXA	0	1	0	1
238	FDNS	5	7	0	12
239	FOD	49	13	0	62
240	IRIS	0	1	0	1

AMERICAN OVERSIGHT

	A	B	C	D	E
241	IVD	4	0	0	4
242	MGT	290	256	3	549
243	OCC	4	9	0	13
244	PVY	0	1	0	1
245	SCOPS	757	343	2	1102
246	**WA**	**117**	**44**	**0**	**161**
247	FOD	115	40	0	155
248	MGT	2	2	0	4
249	OCC	0	2	0	2
250	**WI**	**25**	**11**	**0**	**36**
251	FOD	25	11	0	36
252	**WV**	**1**	**0**	**0**	**1**
253	FOD	1	0	0	1
254	**Territories**				
255	**GU**	**13**	**6**	**0**	**19**
256	FOD	13	6	0	19
257	**PR**	**20**	**8**	**0**	**28**
258	FOD	20	7	0	27
259	IRIS	0	1	0	1
260	**VI**	**10**	**4**	**0**	**14**
261	FOD	10	4	0	14
262	**International Offices**				
263	**BU (Beijing, China)**	**0**	**1**	**0**	**1**
264	OCC	0	1	0	1
265	**CH (Guangzhou, China)**	**0**	**5**	**0**	**5**
266	RAIO	0	5	0	5
267	**DR (Santo Domingo, Dominican Republic**	**0**	**1**	**0**	**1**
268	RAIO	0	1	0	1
269	**ES (San Salvador, El Savador)**	**0**	**2**	**0**	**2**
270	RAIO	0	2	0	2
271	**GH (Accra, Ghana)**	**0**	**1**	**0**	**1**
272	RAIO	0	1	0	1
273	**GT (Gautemala City, Guatemala)**	**0**	**1**	**0**	**1**
274	RAIO	0	1	0	1
275	**IT (Rome, Italy)**	**1**	**1**	**0**	**2**
276	RAIO	1	1	0	2
277	**KE (Nairobi, Kenya)**	**0**	**2**	**0**	**2**
278	RAIO	0	2	0	2
279	**MX (Mexico City, Mexico)**	**0**	**2**	**0**	**2**
280	RAIO	0	2	0	2
281	**UK (London, United Kingdom)**	**1**	**1**	**0**	**2**
282	RAIO	1	1	0	2
283	**Grand Total**	**13355**	**6432**	**94**	**19881**

INTERIM OVERSIGHT