



NATIONAL SECURITY AGENCY
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 109360H
14 November 2023

AMERICAN OVERSIGHT
1030 15th ST NW, SUITE B255
WASHINGTON DC 20005

Dear American Oversight:

Enclosed with this letter is a further partial response to your Freedom of Information Act (FOIA) request of 28 February 2020 (1:20-cv-01008). We have completed our review and processing of the enclosed 8 documents (55 pages). Please be advised that the Agency reasonably foresees that disclosure of the withheld information would be harmful to an interest that is protected by the identified exemptions.

Some of the withheld information has been found to be currently and properly classified in accordance with Executive Order 13526, Section 1.4(c), and remains classified as provided in Section 1.2. As such, it is withheld pursuant to 5 U.S.C. 552(b)(1). Additionally, NSA is authorized by various statutes to withhold certain information pursuant to 5 U.S.C. 552(b)(3). The applicable statutes are 18 U.S.C. 798, 50 U.S.C. 3024(i), and Section 6, Public Law 86-36 (50 U.S.C. 3605). Information also has been withheld by our Agency pursuant to 5 U.S.C. 552(b)(5) and 5 U.S.C. 552(b)(6).

Additionally, as reflected in the documents, the NSC has asked that we protect certain information under their authority pursuant to 5 U.S.C. 552(b)(6).

We will continue to produce documents to you on a rolling basis. If you have any questions, your counsel may contact Department of Justice Senior Counsel Stephen Elliott at (202) 598-3810 or stephen.m.elliott@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Paula A. Gill".

PAULA A. GILL
Chief, FOIA/PA Division
NSA Initial Denial Authority

Encl(s):
a/s

To: Soule Trumbull D NSA-P3 USA CIV [redacted]
From: Gerstell Glenn S NSA-D2 USA CIV [redacted]
Sent: 2019-12-05T15:33:27Z
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests
Received: 2019-12-05T15:33:29Z

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36
(b) (5)

Classification: TOP SECRET [redacted]

Thanks for your help.
Glenn

(b) (1)
(b) (3)-P.L. 86-36

(b) (3)-P.L. 86-36

From: Soule Trumbull D NSA-P3 USA CIV
Sent: Wednesday, December 4, 2019 4:27 PM
To: Barnes George C NSA-D USA CIV ; Gerstell Glenn S NSA-D2 USA CIV ; Nakasone Paul M GEN NSA-D USA USA
Cc: Noble Wendy NSA-D USA CIV ; Anthony Teisha M NSA-D2 USA CIV ; [redacted] CIV ; Morris Paul F NSA-D2 USA CIV
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

Classification: TOP SECRET [redacted]

(b) (5)

(U) Here's where I think we are on all the requests. We have completed the first three tranches. Below is an outline of everything outstanding as of right now.

(U//FOUO) Glenn, I would suggest that, [redacted]

NSC

(b) (6)
OGA

----DRAFT FOLLOWS-----

[Large redacted area]

Approved for Release by NSA on 11-14-2023, FOIA Case # 109360 (litigation)

[Redacted]

-----END DRAFT-----

V/R
Trum

(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36
(b) (5)

(b) (3) -P.L. 86-36

(U//FOUO)
Trumbull D. Soule
NSA Director, Legislative, State, Local and Academic Engagement

[Redacted]

From: Barnes George C NSA-D USA CIV [Redacted]
Sent: Wednesday, December 4, 2019 3:06 PM
To: Gerstell Glenn S NSA-D2 USA CIV [Redacted]; Nakasone Paul M GEN NSA-D USA USA
Cc: Noble Wendy NSA-D USA CIV [Redacted]; Soule Trumbull D NSA-P3 USA CIV
[Redacted]; Anthony Teisha M NSA-D2 USA CIV [Redacted]
[Redacted] Morris Paul F NSA-D2 USA CIV [Redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

Classification: ~~TOP SECRET//SI//NOFORN~~

[Redacted]

George C. Barnes
Deputy Director, NSA

(b) (5)

[Redacted]

From: Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Sent: Wednesday, December 4, 2019 3:05 PM
To: Barnes George C NSA-D USA CIV [Redacted]; Nakasone Paul M GEN NSA-D USA USA
Cc: Noble Wendy NSA-D USA CIV [Redacted]; Soule Trumbull D NSA-P3 USA CIV
[Redacted]; Anthony Teisha M NSA-D2 USA CIV [Redacted]
[Redacted] Morris Paul F NSA-D2 USA CIV [Redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

Classification: ~~TOP SECRET//SI//NOFORN~~

[Redacted]

Glenn

From: Barnes George C NSA-D USA CIV [redacted]
Sent: Wednesday, December 4, 2019 2:56 PM
To: Gerstell Glenn S NSA-D2 USA CIV [redacted]; Nakasone Paul M GEN NSA-D USA USA [redacted]
Cc: Noble Wendy NSA-D USA CIV [redacted]; Soule Trumbull D NSA-P3 USA CIV [redacted]; Anthony Teisha M NSA-D2 USA CIV [redacted]; Morris Paul F NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

(b) (5)

~~Classification: TOP SECRET//SI//NOFORN~~

[Large redacted block]

Sound right?

George

George C. Barnes
Deputy Director, NSA

[Redacted block]

From: Gerstell Glenn S NSA-D2 USA CIV [redacted]
Sent: Wednesday, December 4, 2019 1:56 PM
To: Nakasone Paul M GEN NSA-D USA USA [redacted]
Cc: Barnes George C NSA-D USA CIV [redacted]; Noble Wendy NSA-D USA CIV [redacted]; Soule Trumbull D NSA-P3 USA CIV [redacted]; Anthony Teisha M NSA-D2 USA CIV [redacted]; Morris Paul F NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

~~Classification: TOP SECRET//SI//NOFORN~~

I just received a call from John Eisenberg, the NSC General Counsel, who asked for copies of "currently outstanding requests from Congress for documents with WH equities." This was probably generated by my conversation earlier in the day with Brad Brooker, ODNI Deputy GC, in which I relayed that we hadn't received any further guidance from the WH following the Nov. 23rd weekend production of serialized reports previously delivered to HPSCI.

John said they would want to review any such documents before we released them to HPSCI. As a first step he wanted to know what requests were open at this point. (Trum, can you please forward

(b) (3) - P, L, 86-36

(b) (5)

them to me or alternatively can you forward that information to your NSC counterpart?)

John understands that our document production has been in response to specific requests from HPSCI, [redacted]

Thanks.

Glenn

From: Soule Trumbull D NSA-P3 USA CIV [redacted]
Sent: Tuesday, December 3, 2019 1:58 PM
To: Barnes George C NSA-D USA CIV [redacted]; Nakasone Paul M GEN NSA-D USA USA [redacted]
Cc: Noble Wendy NSA-D USA CIV [redacted]; Gerstell Glenn S NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

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(b) (3) - P.L. 86-36

(U//FOUO) We connected with ODNI Office of Legislative Affairs. They have no firm guidance at this time, other than to hold. ODNI OGC is talking to White House Counsel at 1700 EST, perhaps earlier, to determine direction. But as of right now, ODNI is asking the White House for direction, in writing, with left and right limits. I will provide more as I have it. For now, NSA is on hold, and we have told ODNI that we will do nothing until they give us authoritative guidance.

V/R
Trum

(U//FOUO)
Trumbull D. Soule
NSA Director, Legislative, State, Local and Academic Engagement

From: Barnes George C NSA-D USA CIV [redacted]
Sent: Tuesday, December 3, 2019 9:59 AM
To: Nakasone Paul M GEN NSA-D USA USA [redacted]; Soule Trumbull D NSA-P3 USA CIV [redacted]
Cc: Noble Wendy NSA-D USA CIV [redacted]; Gerstell Glenn S NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

~~Classification: TOP SECRET//SI//NOFORN~~

Trum,

Hold up. Just spoke with DNI PE. They are in a hold mode and awaiting guidance from WH regarding

these continued requests. Please connect with your Leg Affairs counterparts at ODNI prior to any further actions.

Thanks,

George

George C. Barnes
Deputy Director, NSA

[Redacted]

From: Nakasone Paul M GEN NSA-D USA USA [Redacted]
Sent: Tuesday, December 3, 2019 2:41 AM
To: Soule Trumbull D NSA-P3 USA CIV [Redacted]
Cc: Barnes George C NSA-D USA CIV [Redacted]; Noble Wendy NSA-D USA CIV [Redacted]; Gerstell Glenn S NSA-D2 USA CIV [Redacted] (b) (5)
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests
Importance: High

~~Classification: TOP SECRET//SI//NOFORN~~

Trum. [Redacted]
Glenn. [Redacted]

(b) (3) -P.L. 86-36

From: Soule Trumbull D NSA-P3 USA CIV
Sent: Monday, December 2, 2019 4:39 PM
To: Nakasone Paul M GEN NSA-D USA USA [Redacted]
Cc: Barnes George C NSA-D USA CIV [Redacted]; Noble Wendy NSA-D USA CIV [Redacted]; Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Subject: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36
(b) (5)

~~Classification: TOP SECRET//SI//NOFORN~~

Sir,

[Large Redacted Block]

[Redacted]

(U//~~FOUO~~) Recommendation: [Redacted]

[Redacted]

(U) May we proceed? [Redacted]

[Redacted]

V/R
Trum

(b) (5)

(b) (1)
(b) (3) - P.L. 86-36
(b) (5)

(U//~~FOUO~~)
Trumbull D. Soule
NSA Director, Legislative, State, Local and Academic Engagement

[Redacted]

(b) (1)
(b) (3) - 18 USC 798
(b) (3) - 50 USC 3024(i)
(b) (3) - P.L. 86-36
(b) (5)

Classified By: [Redacted]
Derived From: NSA/CSSM 1-52
Dated: 20130930
Declassify On: 20441201

Classification: ~~TOP SECRET//SI//NOFORN~~

(b) (3) - P.L. 86-36

Classified By: [Redacted]
Derived From: NSA/CSSM 1-52
Dated: 20130930
Declassify On: 20441201

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [Redacted]

Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20130930
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

(b) (3) - P.L. 86-36

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]

Derived From: NSA/CSSM 1-52

Dated: 20130930

Declassify On: ~~20441201~~

(b) (3) - P.L. 86-36

Classification: ~~TOP SECRET~~ [redacted]

Classified By: [redacted]

Derived From: NSA/CSSM 1-52

Dated: 20180110

Declassify On: ~~20441201~~

Classification: ~~TOP SECRET~~ [redacted]

(b) (1)
(b) (3) - P.L. 86-36

To: Gerstell Glenn S USA GOV [redacted]
From: Soule Trumbull D NSA-P3 USA CIV
Sent: 2019-12-04T19:02:05Z
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests
Received: 2019-12-04T19:02:06Z

~~Classification: TOP SECRET//SI//NOFORN~~

Working it..stay tuned.

(U//FOUO)

Trumbull D. Soule

NSA Director, Legislative, State, Local and Academic Engagement

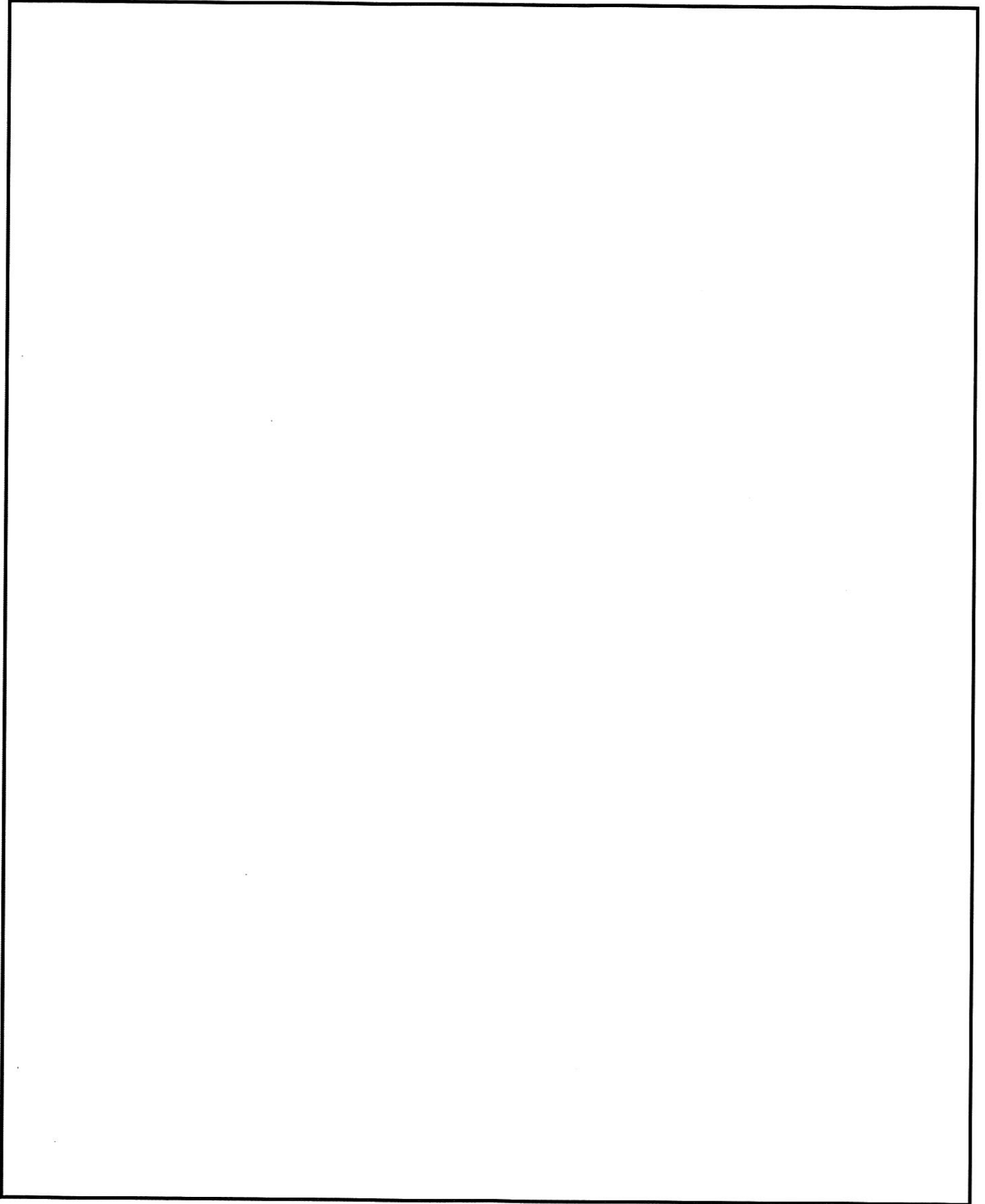
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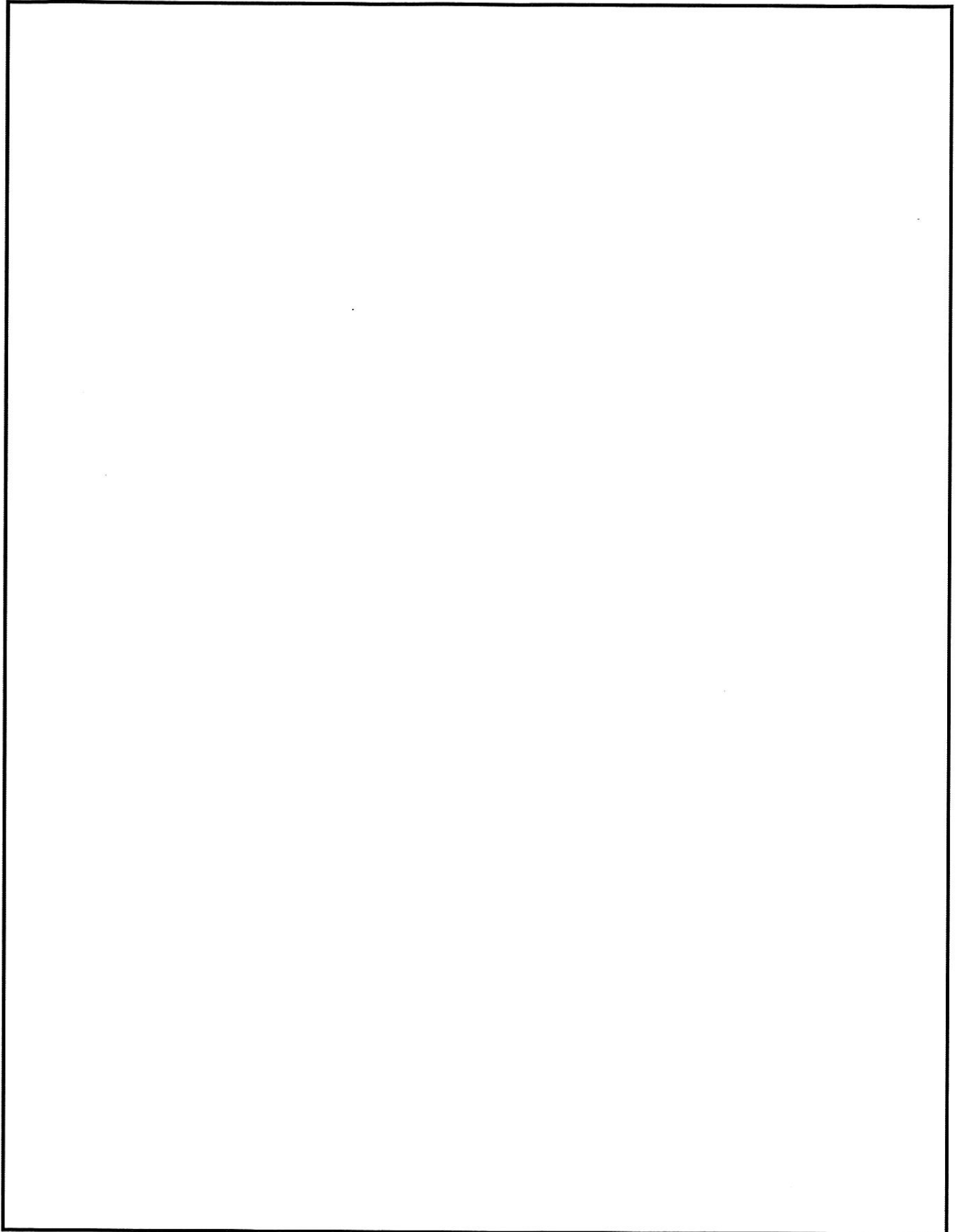
From: Gerstell Glenn S NSA-D2 USA CIV [redacted]
Sent: Wednesday, December 4, 2019 1:56 PM
To: Nakasone Paul M GEN NSA-D USA USA [redacted]
Cc: Barnes George, C NSA-D USA CIV [redacted] Noble Wendy NSA-D USA CIV
[redacted] Soule Trumbull D NSA-P3 USA CIV [redacted] Anthony Teisha M
NSA-D2 USA CIV [redacted]
Morris Paul F NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

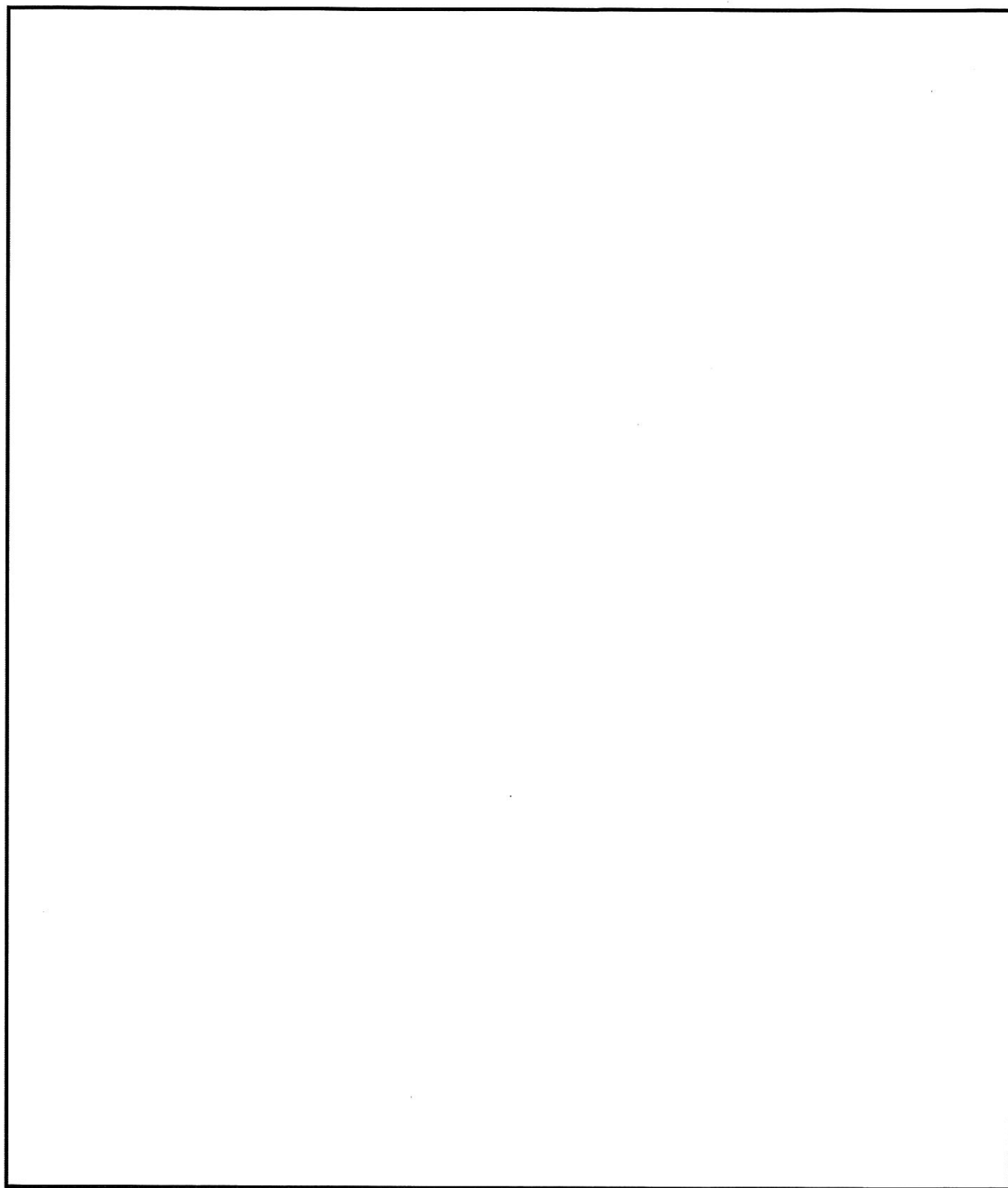
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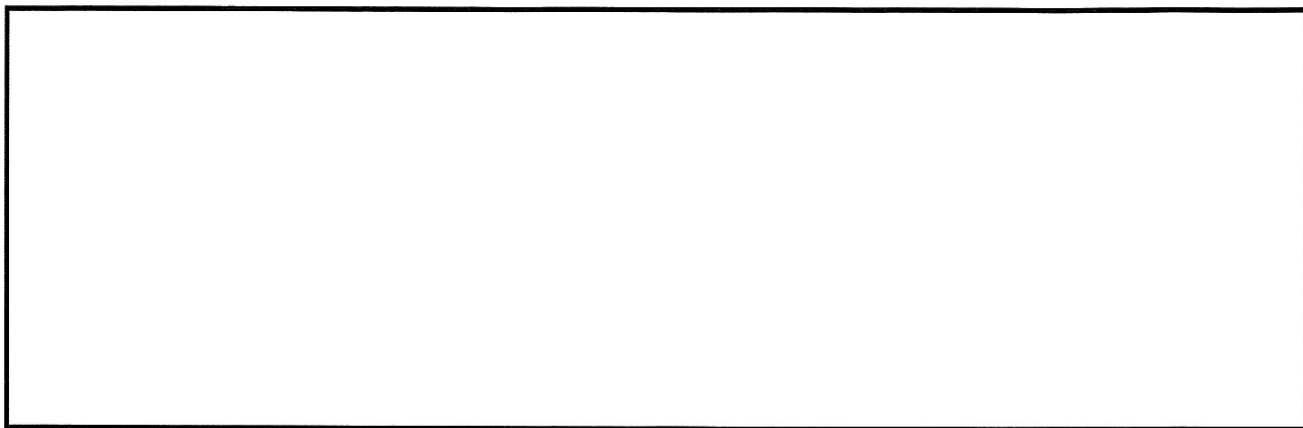
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(b) (3) - P. L. 86-36









Classified By:

Derived From: NSA/CSSM 1-52

Dated: 20130930

Declassify On: ~~20441201~~

(b) (3) - P.L. 86-36

Classification: ~~TOP SECRET//SI//NOFORN~~

To: Soule Trumbull D NSA P3 USA GOV [redacted] Barnes George C NSA D USA GOV [redacted]
Cc: Noble Wendy NSA D USA GOV [redacted] Gerstell Glenn S USA GOV [redacted]
From: Nakasone Paul M GEN NSA-D USA USA
Sent: 2019-12-03T20:34:32Z
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests
Received: 2019-12-03T20:34:35Z

~~Classification: TOP SECRET//SI//NOFORN~~

ACK

From: Soule Trumbull D NSA-P3 USA CIV [redacted]
Sent: Wednesday, December 4, 2019 3:58 AM
To: Barnes George C NSA-D USA CIV [redacted] Nakasone Paul M GEN NSA-D USA USA [redacted]
Cc: Noble Wendy NSA-D USA CIV [redacted] Gerstell Glenn S NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

~~Classification: TOP SECRET//SI//NOFORN~~

(U//FOUO) We connected with ODNI Office of Legislative Affairs. They have no firm guidance at this time, other than to hold. ODNI OGC is talking to White House Counsel at 1700 EST, perhaps earlier, to determine direction. But as of right now, ODNI is asking the White House for direction, in writing, with left and right limits. I will provide more as I have it. For now, NSA is on hold, and we have told ODNI that we will do nothing until they give us authoritative guidance.

V/R
Trum

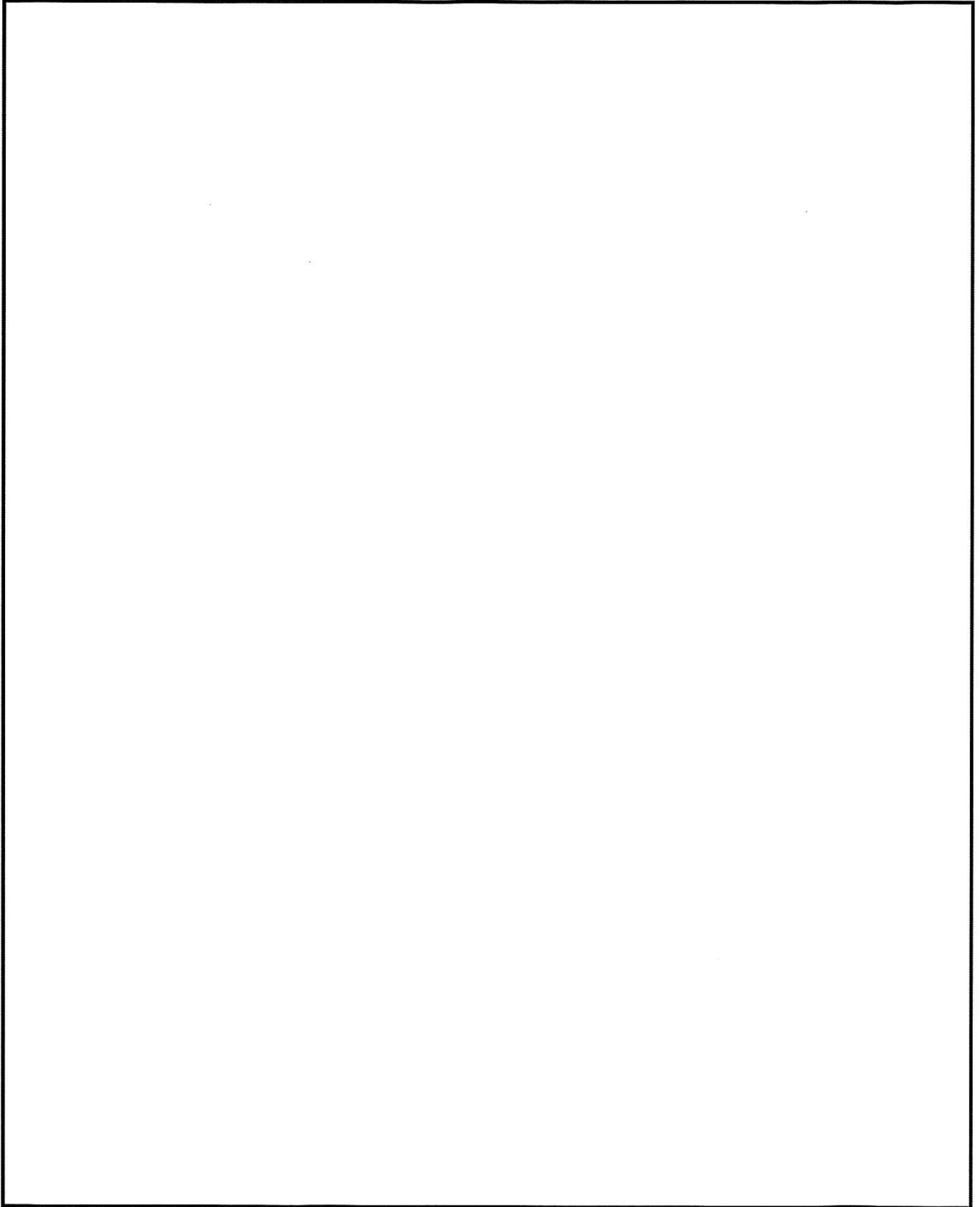
(U//FOUO)
 Trumbull D. Soule
 NSA Director, Legislative, State, Local and Academic Engagement

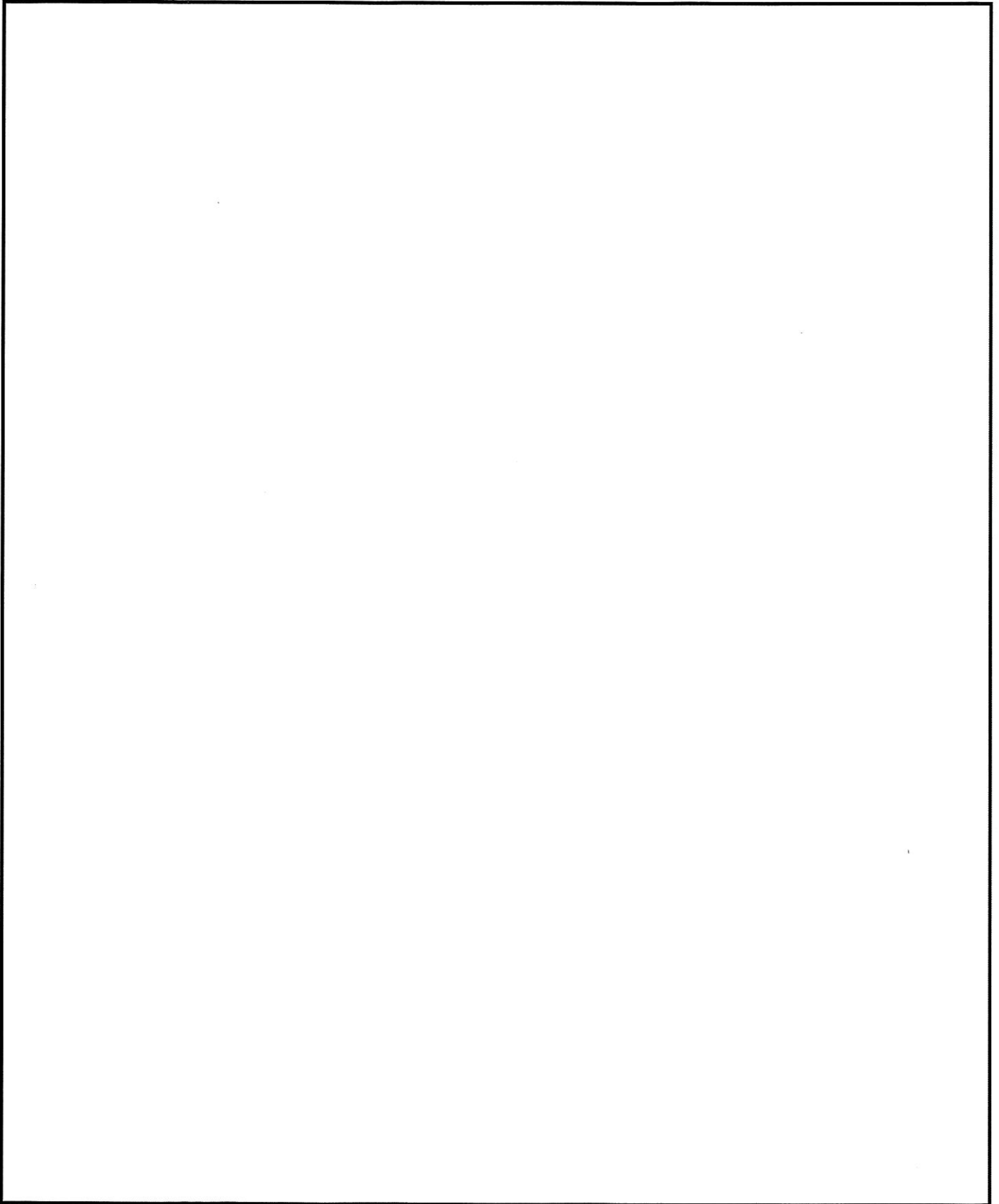
From: Barnes George C NSA-D USA CIV [redacted]
Sent: Tuesday, December 3, 2019 9:59 AM
To: Nakasone Paul M GEN NSA-D USA USA [redacted] Soule Trumbull D NSA-P3 USA CIV [redacted]
Cc: Noble Wendy NSA-D USA CIV [redacted] Gerstell Glenn S NSA-D2 USA CIV [redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

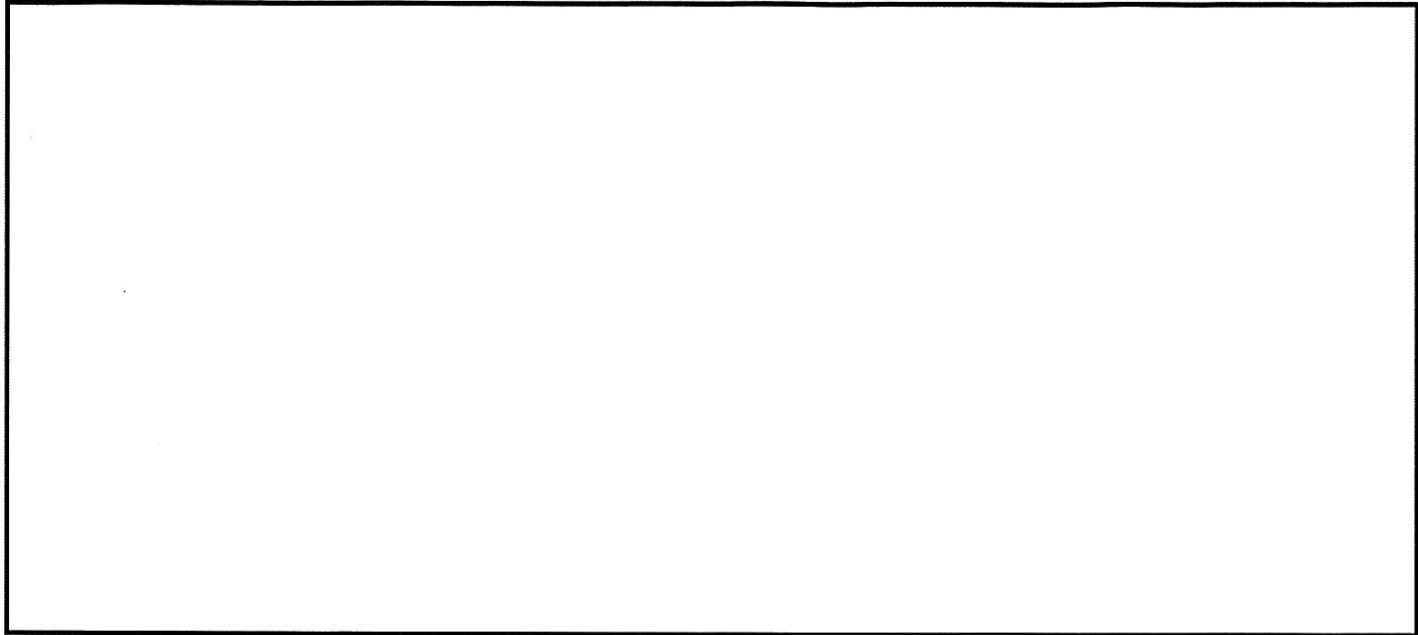
Text below is duplicated in A6727136

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(b) (3) - P.L. 86-36







Classified By:
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

(b) (3) - P.L. 86-36

Classification: ~~TOP SECRET//SI//NOFORN~~

To: Barnes George C NSA D USA GOV [redacted] Nakasone Paul M GEN NSA D USA USA [redacted]
 Cc: Noble Wendy NSA D USA GOV [redacted] Gerstell Glenn S USA GOV [redacted]
 From: Soule Trumbull D NSA-P3 USA CIV
 Sent: 2019-12-03T15:10:17Z
 Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests
 Received: 2019-12-03T15:10:20Z

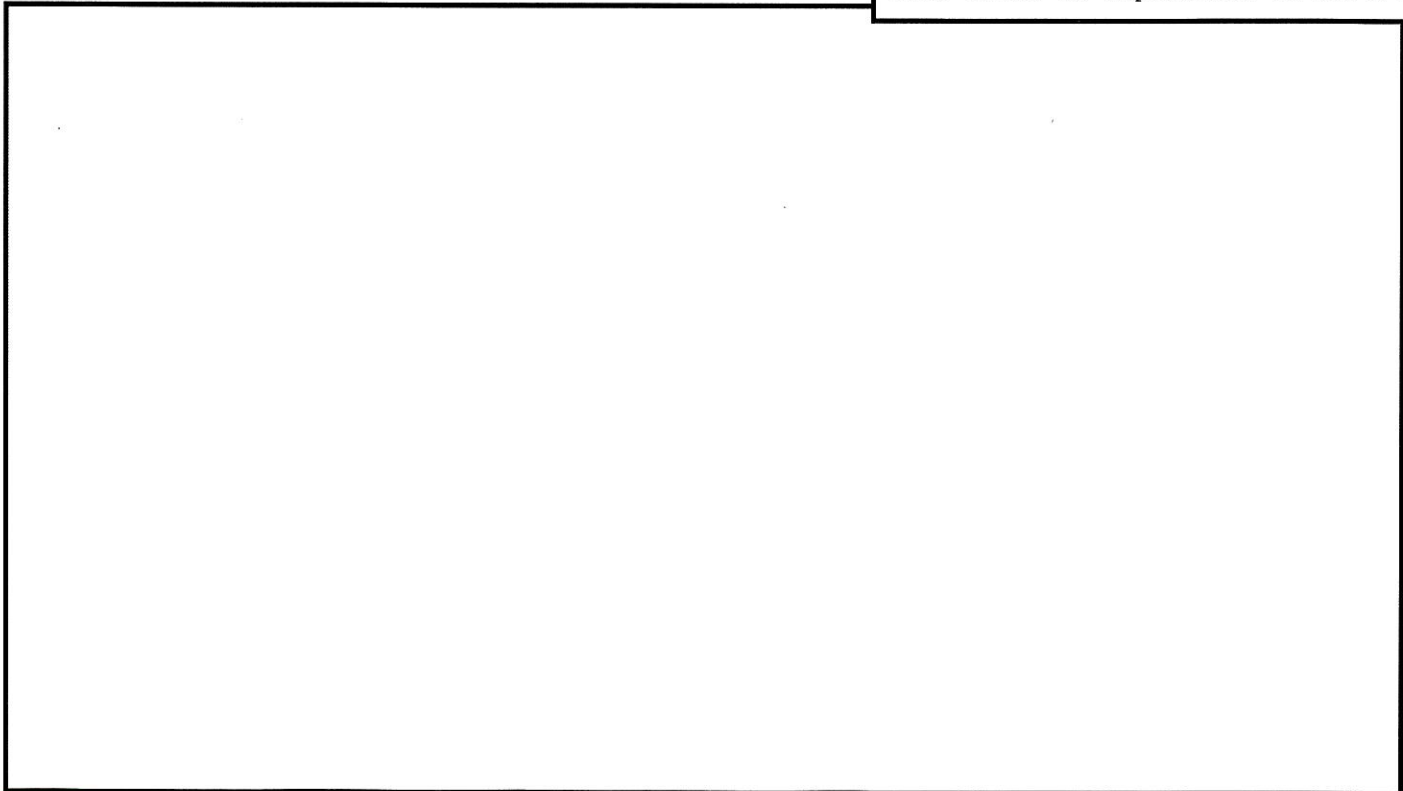
Classification: ~~TOP SECRET//SI//NOFORN~~

Got it.
Trum

(U//FOUO)
 Trumbull D. Soule
 NSA Director, Legislative, State, Local and Academic Engagement

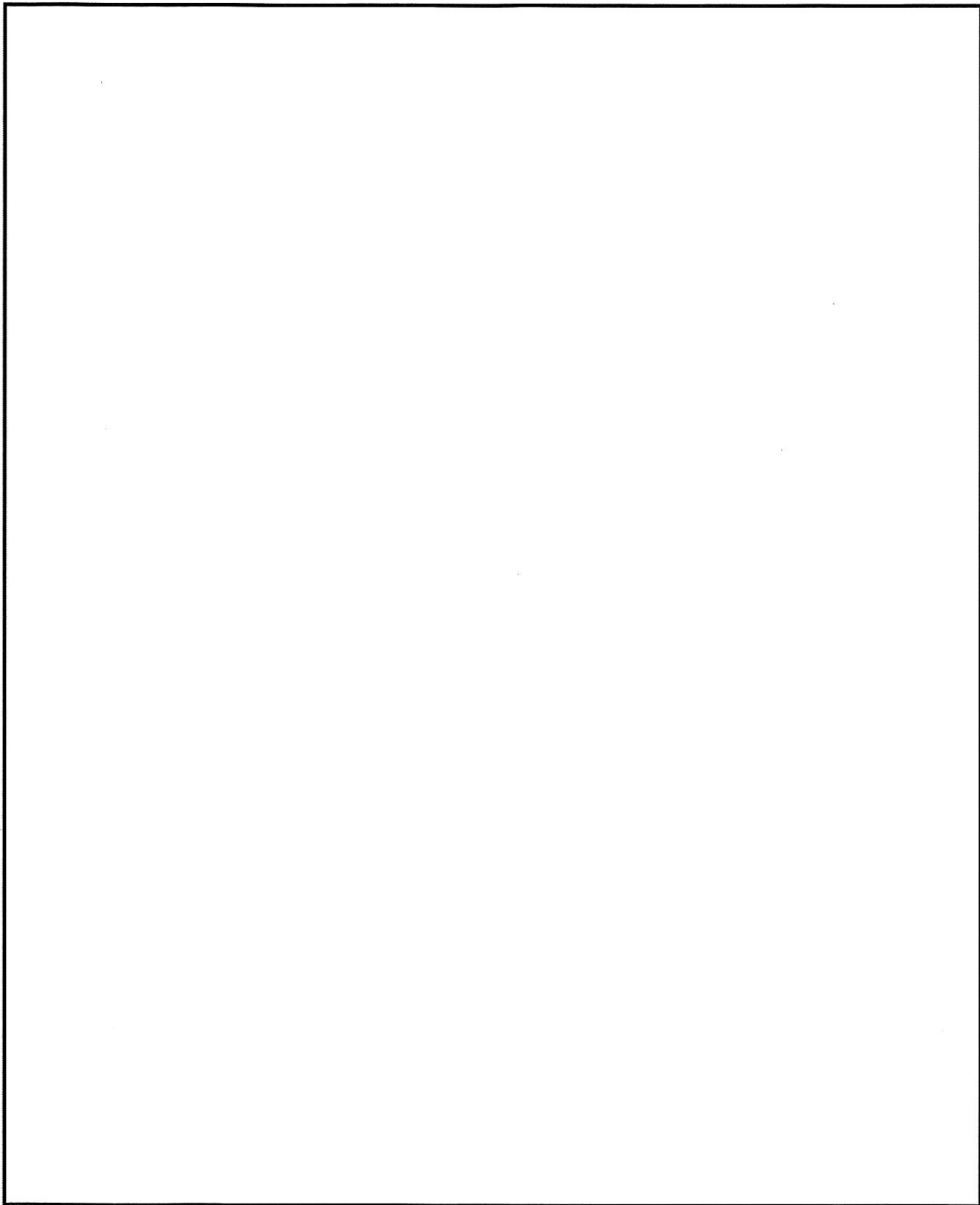
[redacted]
 From: Barnes George C NSA-D USA CIV [redacted]
 Sent: Tuesday, December 3, 2019 9:59 AM
 To: Nakasone Paul M GEN NSA-D USA USA [redacted]; Soule Trumbull D NSA-P3 USA CIV [redacted]
 Cc: Noble Wendy NSA-D USA CIV [redacted] Gerstell Glenn S NSA-D2 USA CIV [redacted]
 Subject: RE: (U) Request for Additional Guidance on HPSCI [redacted] Requests

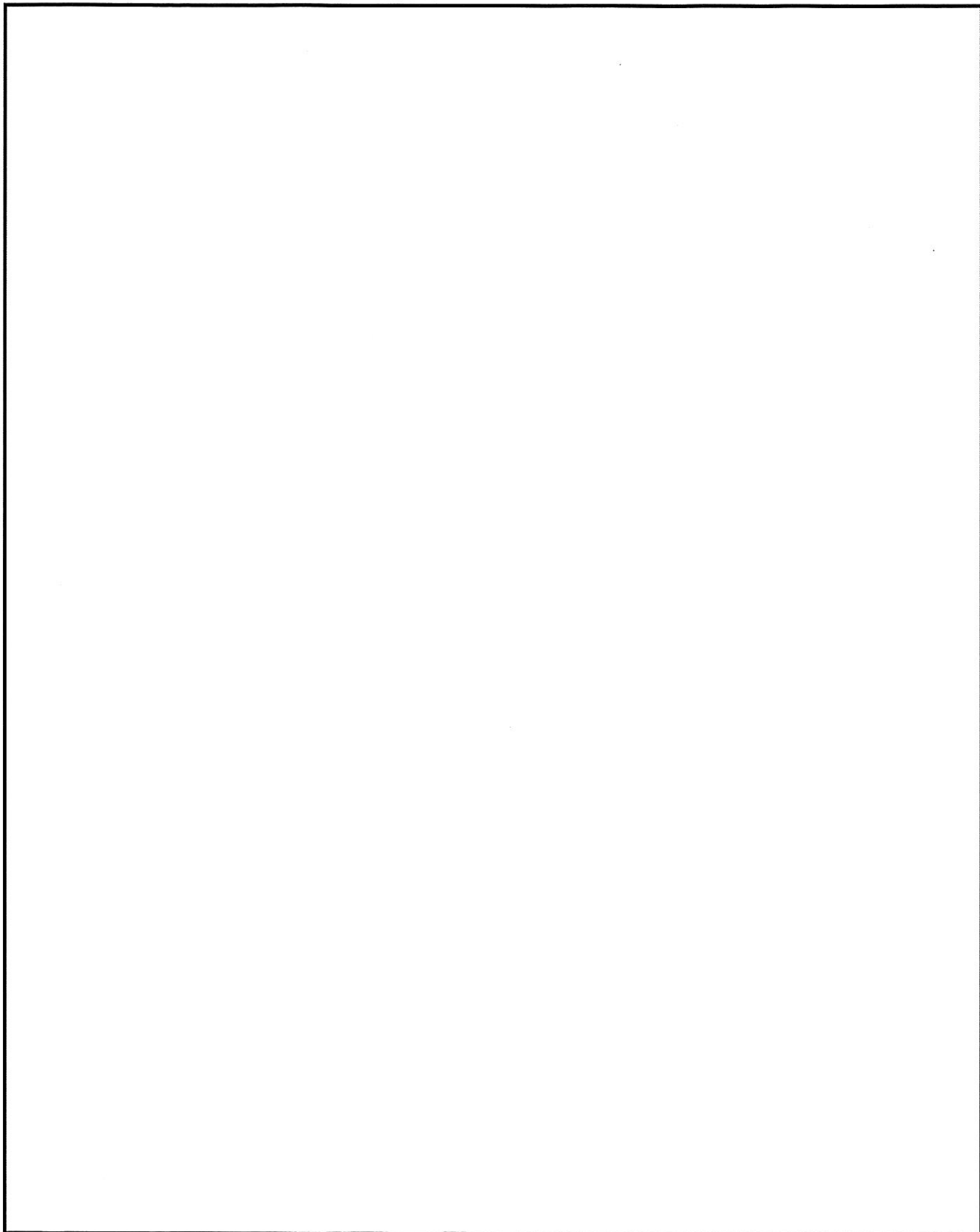
Text below is duplicated in A6727136



Approved for Release by NSA on 11-14-2023, FOIA Case # 109360 (litigation)

(b) (3) - P, I, 86-36





[Redacted]

From: Soule Trumbull D NSA-P3 USA CIV
Sent: Monday, December 2, 2019 5:00 PM
To: Nakasone Paul M GEN NSA D USA USA
Cc: Barnes George C NSA D USA GOV; Noble Wendy NSA D USA GOV; Gerstell Glenn S USA GOV
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

Classification: ~~TOP SECRET//SI//NOFORN~~

Copy. Holding.

(U//FOUO)

Trumbull D. Soule
NSA Director, Legislative, State, Local and Academic Engagement

[Redacted]

From: Nakasone Paul M GEN NSA-D USA USA [Redacted]
Sent: Monday, December 2, 2019 5:00 PM
To: Soule Trumbull D NSA-P3 USA CIV [Redacted]
Cc: Barnes George C NSA-D USA CIV [Redacted]; Noble Wendy NSA-D USA CIV [Redacted]; Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

Classification: ~~TOP SECRET//SI//NOFORN~~

Please wait on this—more to follow. GEN N

From: Soule Trumbull D NSA-P3 USA CIV [Redacted]
Sent: Tuesday, December 3, 2019 6:39 AM
To: Nakasone Paul M GEN NSA-D USA USA [Redacted]
Cc: Barnes George C NSA-D USA CIV [Redacted]; Noble Wendy NSA-D USA CIV [Redacted]; Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Subject: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

Classification: ~~TOP SECRET//SI//NOFORN~~

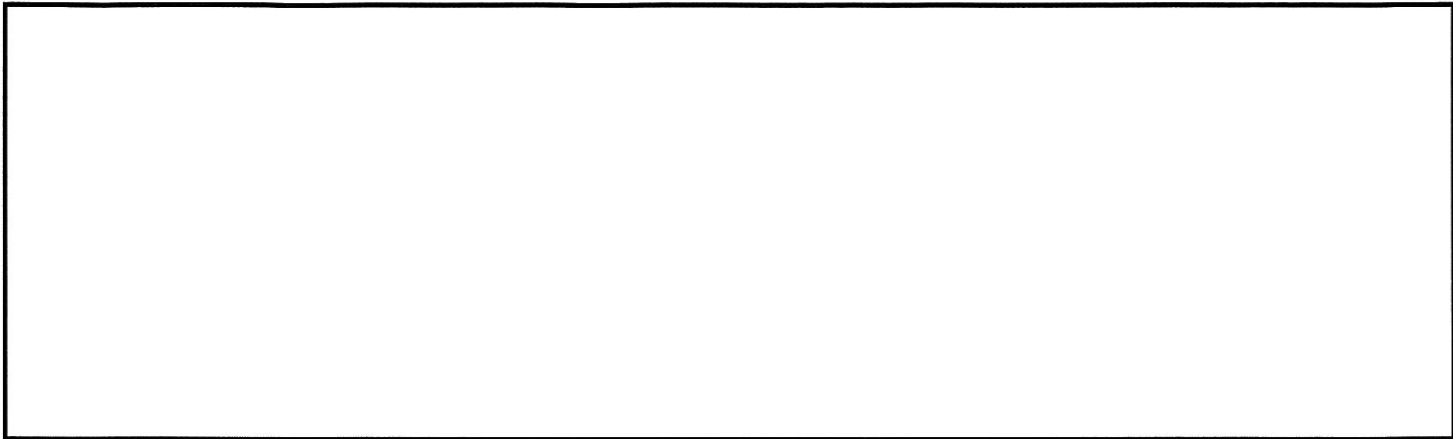
Sir,

[Large Redacted Block]

Approved for Release by NSA on 11-14-2023, FOIA Case # 109360 (litigation)

(b) (3) -P.L. 86-36

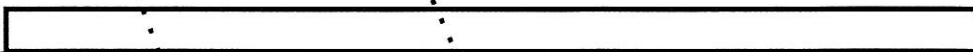
(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36
(b) (5)



(U//~~FOUO~~) Recommendation:



(U) May we proceed?



V/R
Trum

(b) (5)

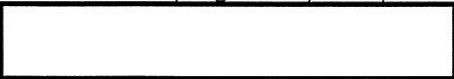
(b) (1)
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(b) (5)

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(b) (3) - P.L. 86-36
(b) (5)

(U//~~FOUO~~)

Trumbull D. Soule

NSA Director, Legislative, State, Local and Academic Engagement



Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20130930
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20180110
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20130930
Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

(b) (3) - P.L. 86-36

[Redacted]

From: [Redacted]
Sent: Wednesday, December 4, 2019 3:13 PM
To: Soule Trumbull D NSA-P3 USA CIV; [Redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

(b) (3) - P.L. 86-36

Classification: ~~TOP SECRET//SI//NOFORN~~

Trum,

I've included additional detail in red below.

Thanks,

[Redacted]

***** (U//FOUO) *****

[Redacted]

Legislative Affairs Officer
NSA Legislative Affairs Office [Redacted]

[Redacted]

***** (U//FOUO) *****

From: Soule Trumbull D NSA-P3 USA CIV [Redacted]
Sent: Wednesday, December 4, 2019 2:47 PM
To: [Redacted]
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests

(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36
(b) (5)

Classification: ~~TOP SECRET//SI//NOFORN~~

Will discuss with you momentarily:

(b) (5)

Glenn,
(U//FOUO) I would suggest that, [Redacted]

[Redacted]

Approved for Release by NSA on 11-14-2023, FOIA Case # 109360 (litigation)

(b) (6)
OGA NSC

(b) (3) - P.L. 86-36

[Redacted]

(U//FOUO)
Trumbull D. Soule
NSA Director, Legislative, State, Local and Academic Engagement

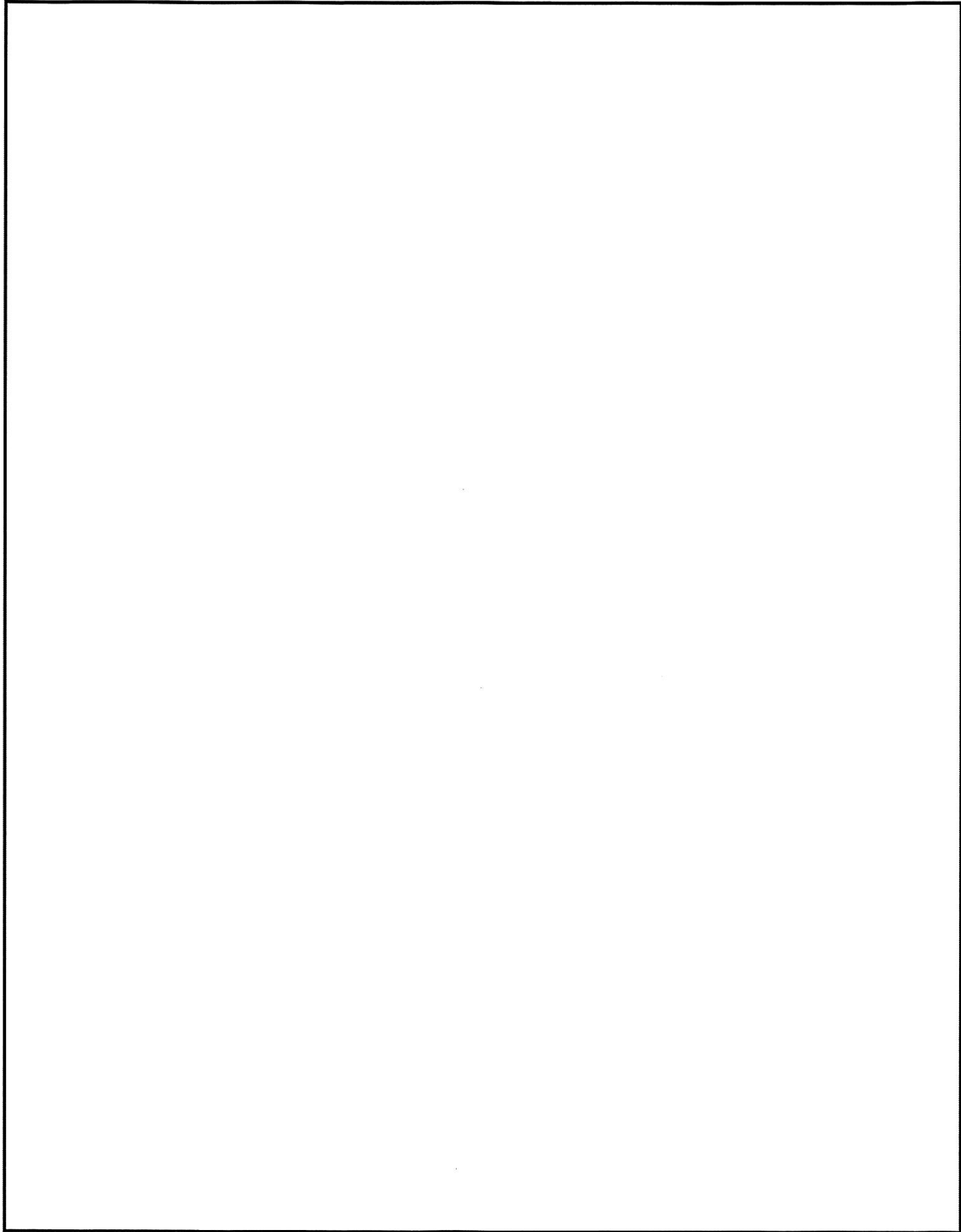
[Redacted]

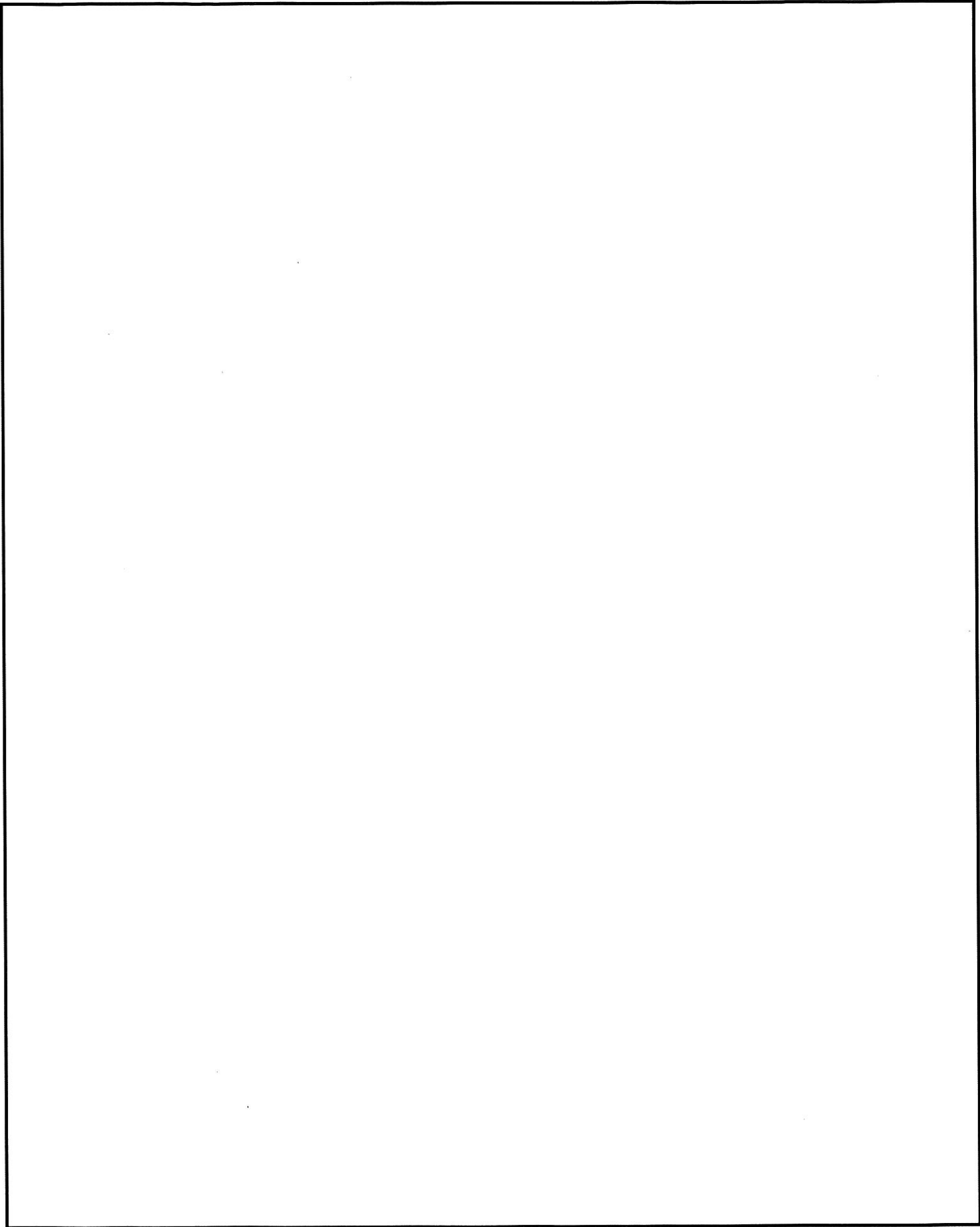
(b) (1)
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(b) (3) - P.L. 86-36
(b) (5)

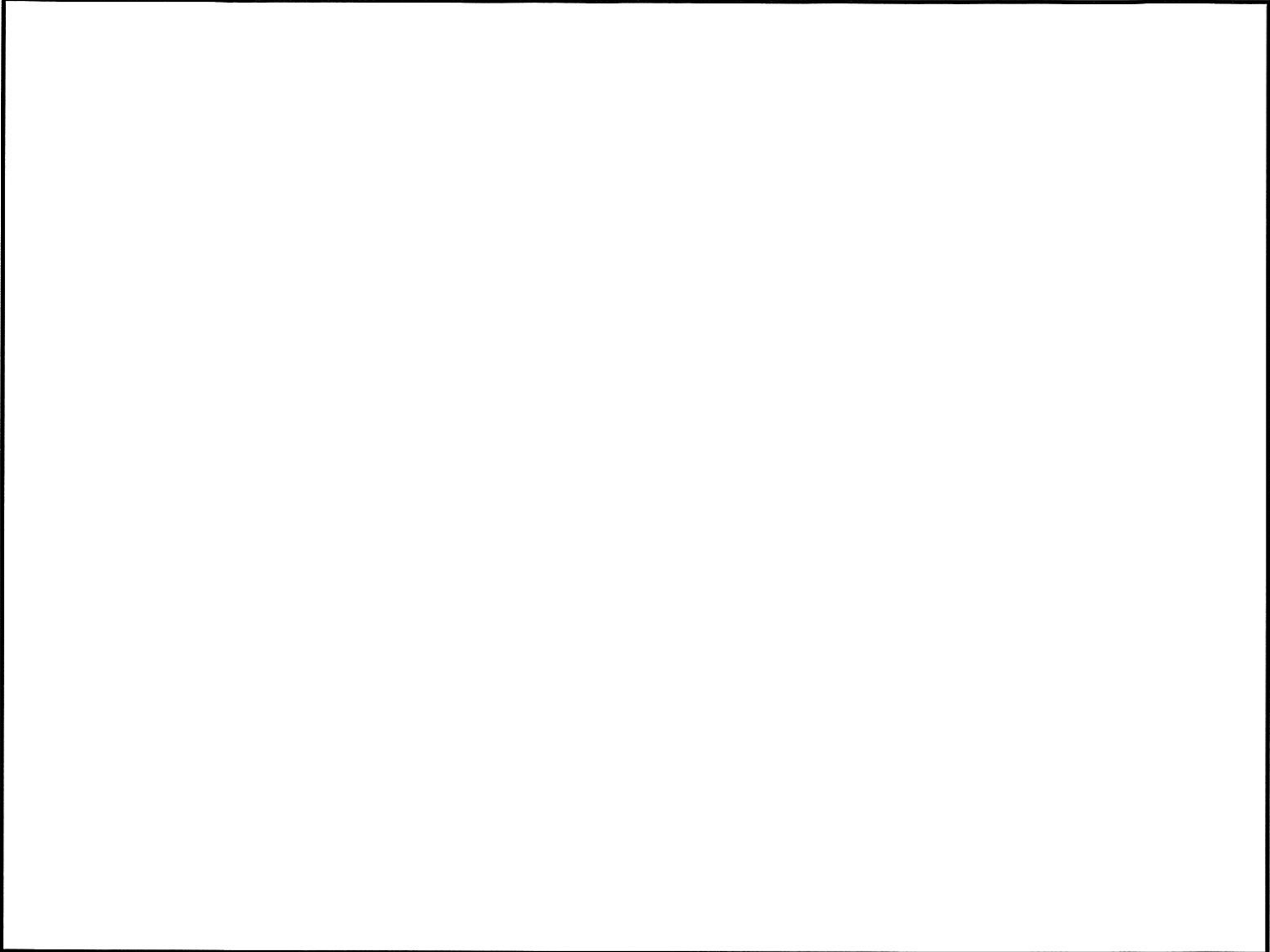
From: Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Sent: Wednesday, December 4, 2019 1:56 PM
To: Nakasone Paul M GEN NSA-D USA USA [Redacted]
Cc: Barnes George C NSA-D USA CIV [Redacted]; Noble Wendy NSA-D USA CIV [Redacted]; Soule Trumbull D NSA-P3 USA CIV [Redacted]; Anthony Teisha M NSA-D2 USA CIV [Redacted]

Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Request [Redacted] Text below is duplicated in A6727136

[Redacted]







Classified By:

Derived From: NSA/CSSM 1-52

Dated: 20130930

Declassify On: ~~20441201~~

(b) (3) - E.L. 86-36

Classification: ~~TOP SECRET//SI//NOFORN~~

Classified By:

Derived From: NSA/CSSM 1-52

Dated: 20130930

Declassify On: ~~20441201~~

Classification: ~~TOP SECRET//SI//NOFORN~~

(b) (3) - P.L. 86-36

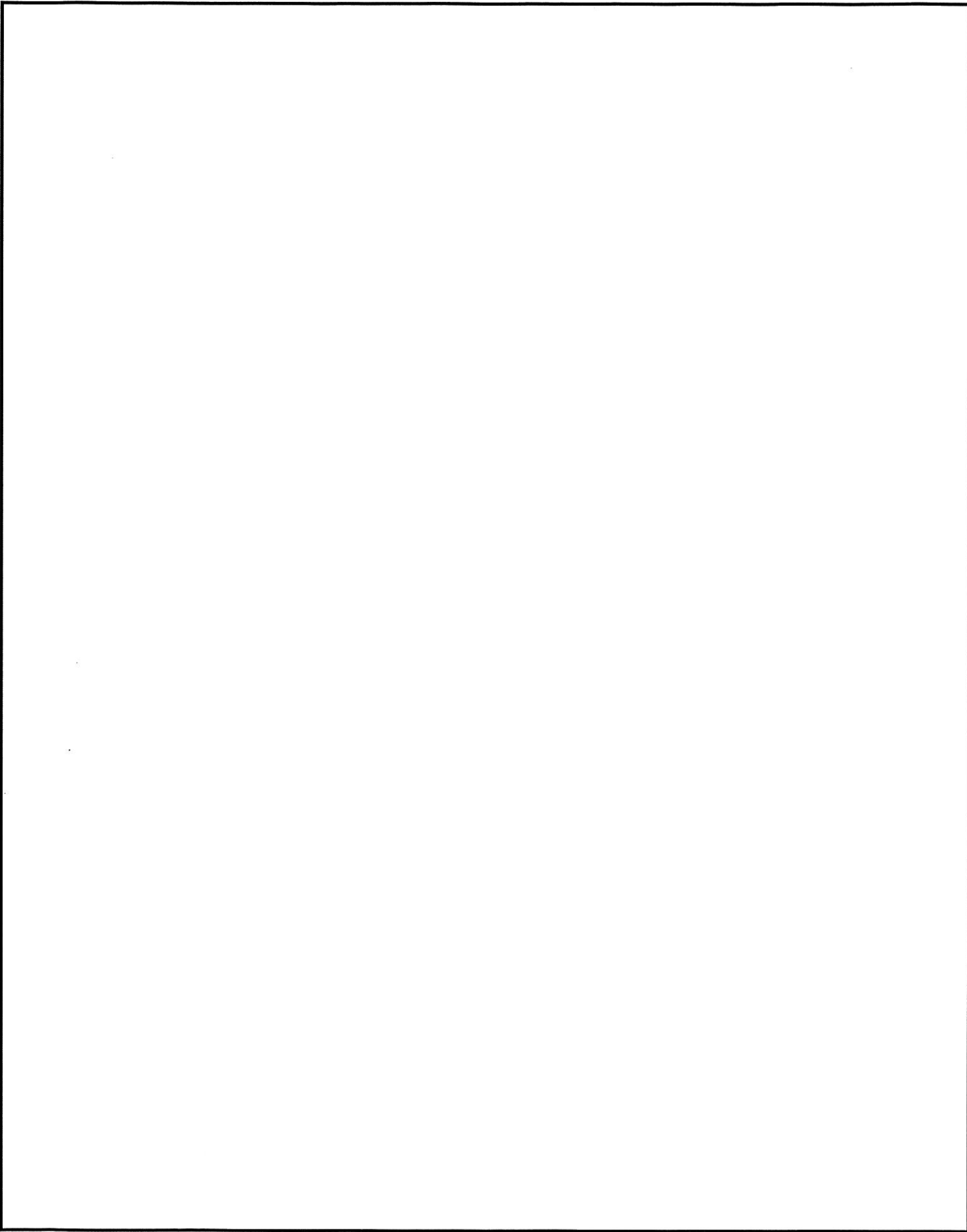
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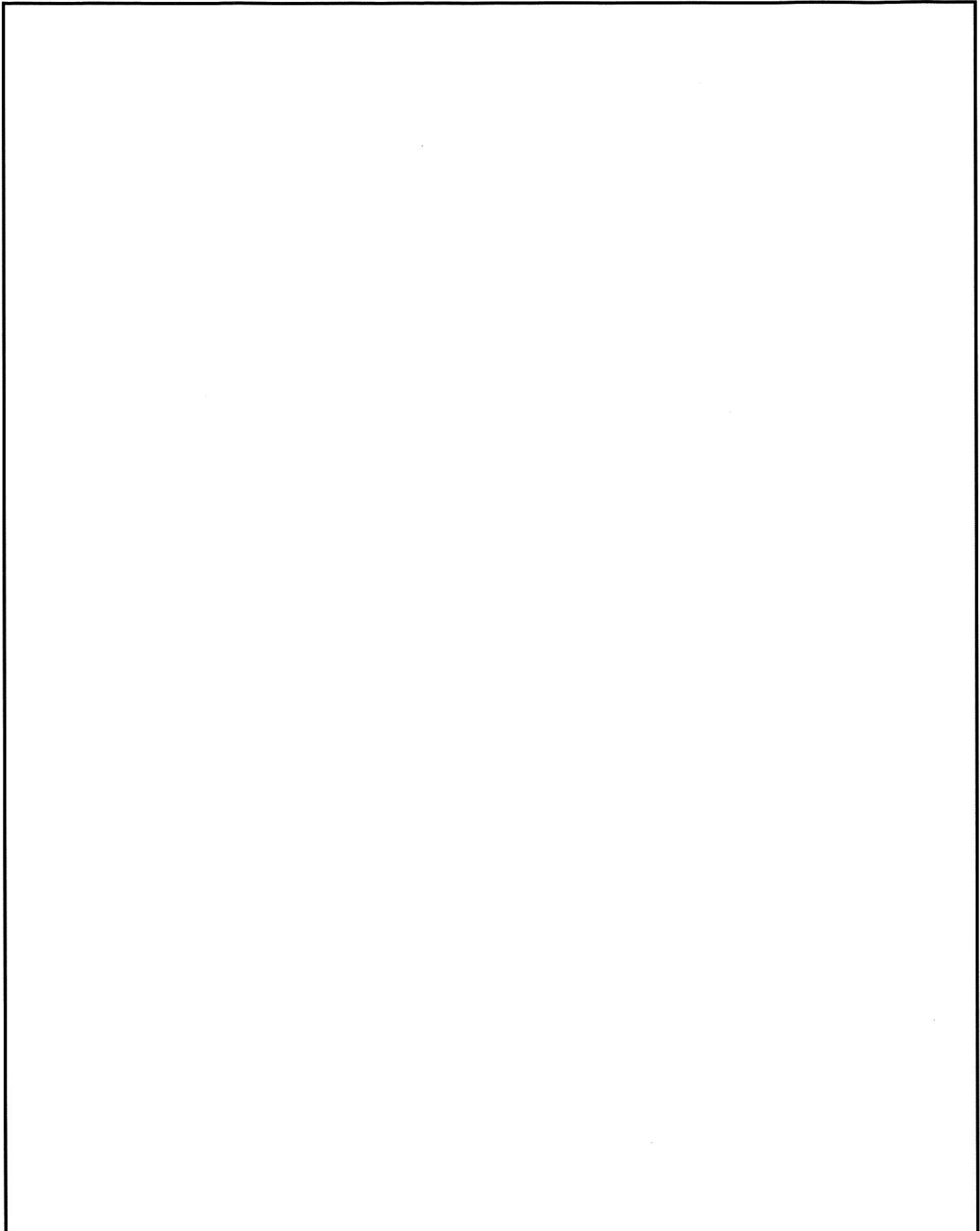
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(b) (3) -18 USC 798
(b) (3) -50 USC 3024(i)
(b) (3) -P.L. 86-36

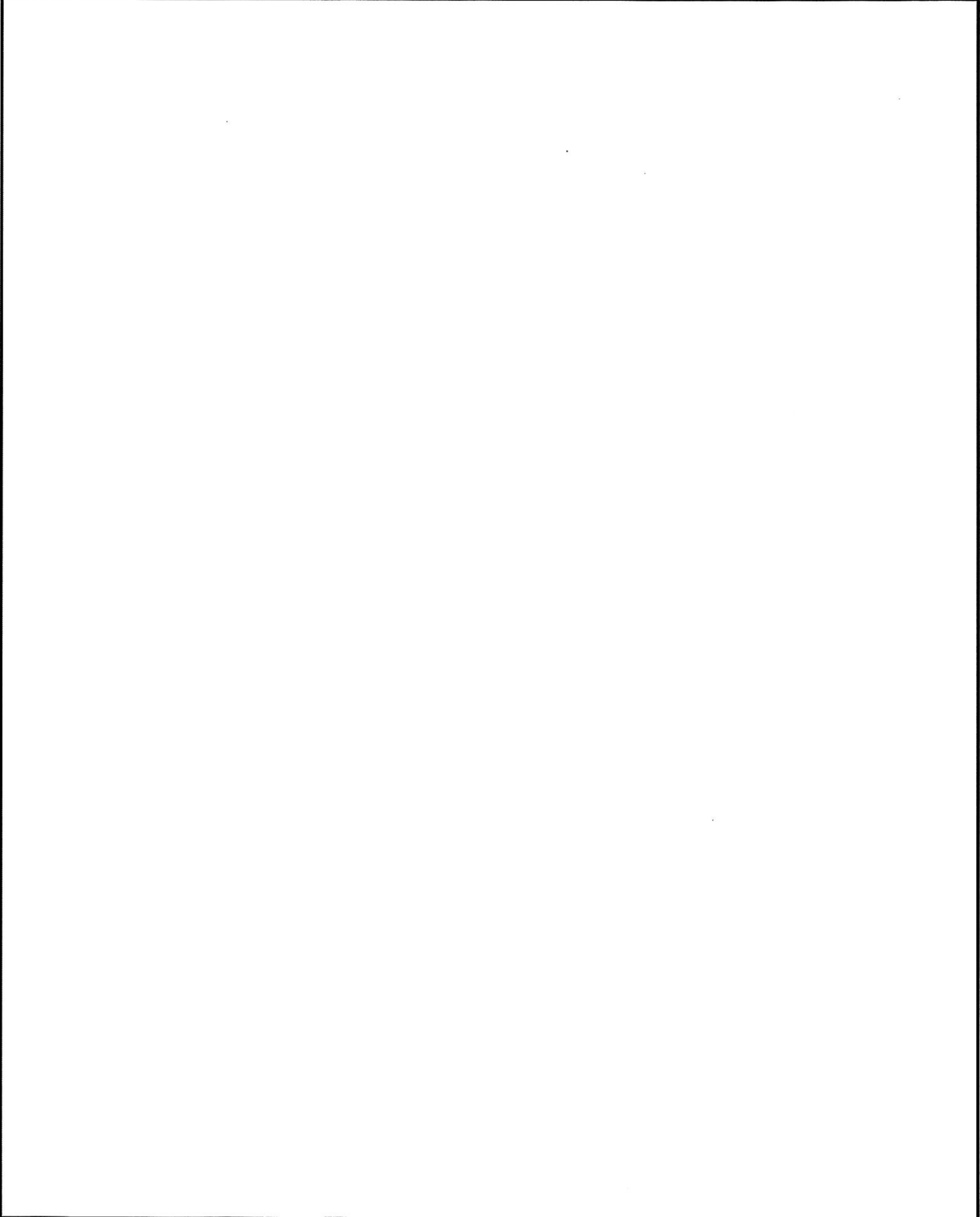
From: Soule Trumbull D NSA-P3 USA CIV
Sent: Wednesday, December 4, 2019 4:27 PM
To: Barnes George C NSA D USA GOV; Gerstell Glenn S USA GOV; Nakasone Paul M GEN NSA D USA USA
Cc: Ndbte Wendy NSA D USA GOV; Anthony Teisha M NSA D2 USA GOV; [Redacted] Morris Paul F NSA D2 USA GOV
Subject: RE: (U) Request for Additional Guidance on HPSCI [Redacted] Requests
Attachments: [Redacted] [Redacted]

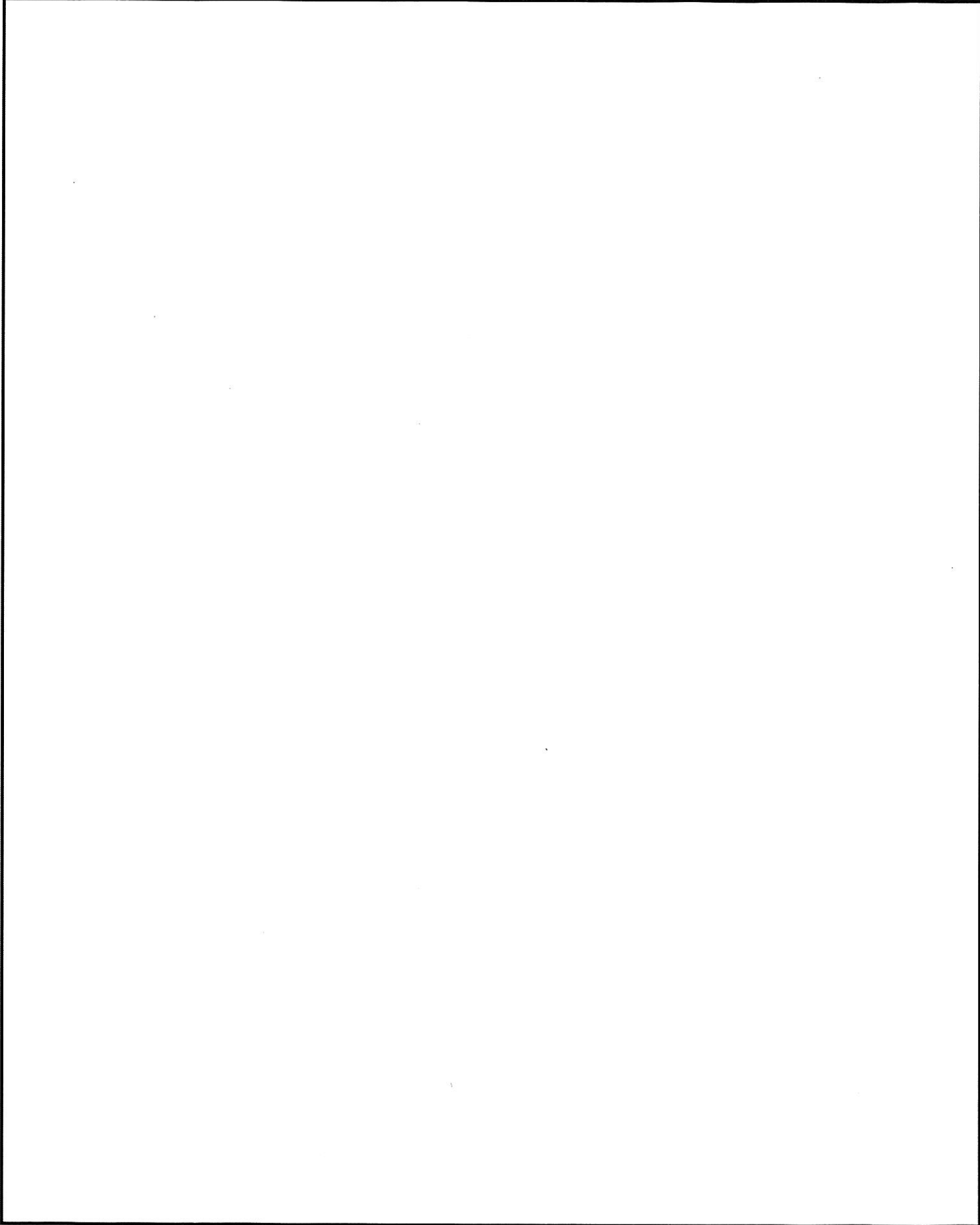
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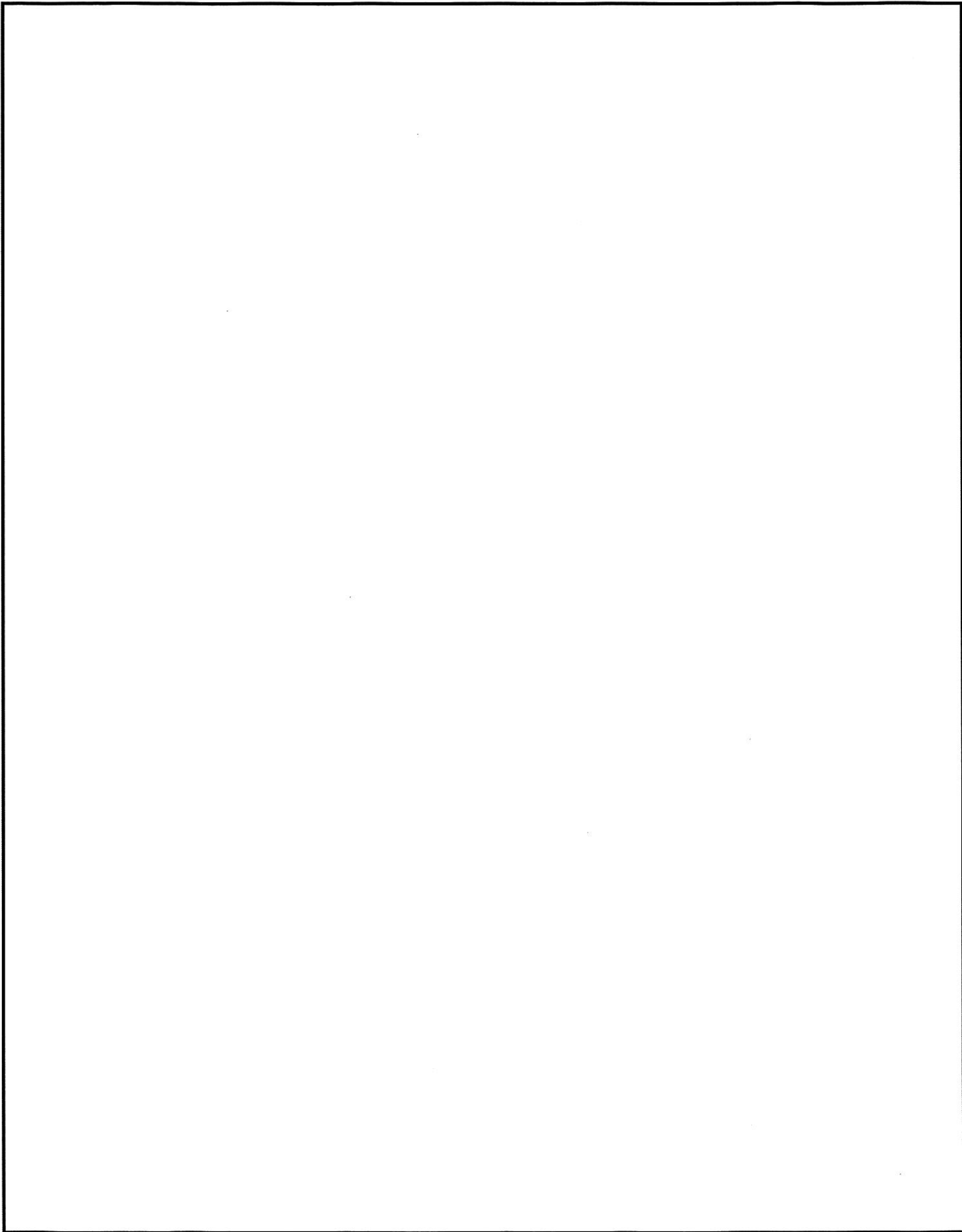
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(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024 (i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024 (i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024 (i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
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(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024 (i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024 (i)
(b) (3)-P.L. 86-36

[Attachment]

(b) (1)
(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36

[Attachment]

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(b) (3) -P.L. 86-36

[Attachment]

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[Attachment]

(b) (1)
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[Attachment]

(b) (1)
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[Attachment]

(b) (1)
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[Attachment]

(b) (1)
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(b) (3) -P.L. 86-36

[Attachment]

(b) (1)
(b) (3) -18 USC 798
(b) (3) -50 USC 3024 (i)
(b) (3) -P.L. 86-36

[Attachment]

Morris Paul F NSA D2 USA GOV

From: Gerstell Glenn S NSA-D2 USA CIV
Sent: Friday, December 20, 2019 5:36 PM
To: [Redacted] Morris Paul F NSA-D2 USA CIV
Subject: FW: (U) DoD response to Subpoena
Attachments: DoD Response_15Oct19.pdf

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

In case this becomes relevant next week.

Glenn

From: [Redacted]
Sent: Friday, December 20, 2019 5:30 PM
To: Gerstell Glenn S NSA-D2 USA CIV [Redacted]
Subject: FW: (U) DoD response to Subpoena

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

NSA Deputy Chief, Legislative, State, Local and Academic Engagement
Engagement and Policy Directorate

[Redacted]

From: [Redacted]
Sent: Friday, December 20, 2019 5:21 PM
To: [Redacted]
Subject: (U) DoD response to Subpoena

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Approved for Release by NSA on 11-14-2023, FOIA Case # 109360 (litigation)

(b) (3) - P.L. 86-36



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON DC 20301-1300

OCT 15 2019

The Honorable Al Franken
Chairman
House Permanent Select Committee on Intelligence
Washington, DC 20515

The Honorable Eliot L. Engel
Chairman
House Committee on Foreign Affairs
Washington, DC 20515

The Honorable Elijah E. Cummings
Chairman
House Committee on Oversight and Reform
Washington, DC 20515

Dear Messrs. Chairmen:

I write on behalf of the Department to confirm that we received your letter of September 20, 2019, seeking the production of all documents and communications in the custody, possession, or control of the Department of Defense for fourteen categories of information contained in a subpoena on October 18, 2019. As your cover letter states, the Permanent Select Committee on Intelligence, in consultation with the Committee on Foreign Affairs of the Committee on Oversight and Reform, issued the subpoena "[p]ursuant to the House of Representatives' impeachment inquiry."

The Department understands the significance of your request for information and has taken steps to identify, preserve, and collect potentially responsive documents. The customary process of oversight and accommodation has historically served the interests of congressional committees and the Department well. The Department is prepared to engage in that process consistent with longstanding practice and provide the responsive information needed for the resolution of this matter.

The current subpoena, however, raises a number of legal and practical concerns that must first be addressed. For example, although your letter asserts that the subpoena is issued "[p]ursuant to the House of Representatives' impeachment inquiry," the House has not authorized your committees to conduct any such inquiry. The Supreme Court has held that the first step in assessing the validity of a subpoena from a congressional committee is determining whether the committee was authorized to issue the subpoena when requiring compliance. *United States v. Egan*, 345 U.S. 41, 42-43 (1953). Here, none of your committees has notified any House rule or House resolution that authorized the committee to require

inquiry pursuant to the impeachment power. In marked contrast with historical precedents, the House has not expressly adopted any resolution authorizing an impeachment investigation.

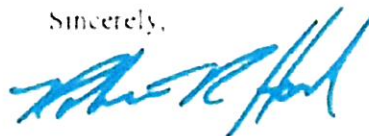
The House also has not delegated such authority to any of your three committees by rule. See H. Res. 6, 116th Cong. (2019). To the contrary, House Rule X is currently the only source of your three committees' jurisdiction, and that rule does not provide any of the committees the power to initiate an impeachment inquiry. Indeed, the rule does not mention impeachment at all. See H. Rule X, cl. 1(i), (n), cl. 11. Absent a delegation by House Rule or a resolution of the House, none of your committees has been delegated jurisdiction to conduct an investigation pursuant to the impeachment power under Article I, Section 2 of the Constitution.

Even if the inquiry were validly authorized, much of the information sought in the subpoena appears to consist of confidential Executive Branch communications that are potentially protected by executive privilege and would require careful review to ensure that no such information is improperly disclosed. Furthermore, as a practical matter, given the broad scope of your request, the time required to collect the documents, review them for responsiveness and relevant privileges, and produce responsive, non-privileged documents to the committee is not feasible within the mere eight days afforded to the Department to comply with the subpoena.

On a separate note, the Department also objects to your letter's assertion that the Secretary of Defense's "failure or refusal to comply with the subpoena, including at the direction or behest of the President or the White House, shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against [the Secretary] and the President." Invoking reasonable legal defenses to a subpoena, including invoking legal privileges that are held by the President, in no way manifests evidence of obstruction or otherwise warrants an adverse inference. Indeed, the very idea that reasonably asserting legal rights is itself evidence of wrongdoing turns fundamental notions of fairness on their head and is inconsistent with the rule of law. In fact, the department is diligently preserving and collecting potentially responsive documents.

In light of these concerns, and in view of the President's position as expressed in the White House Counsel's October 8 letter, and without waiving any other objections to the subpoena that the Department may have, the Department is unable to comply with your request for documents at this time. Nevertheless, the Department respects the oversight role of the appropriate committees of Congress, and stands ready to work with your committees should there be an appropriate resolution of this matter. Any such resolution would have to protect the constitutional prerogatives and confidentiality interests of the co-equal Executive Branch and ensure fundamental fairness to any Executive Branch employees involved in this process.

Sincerely,



Robert R. Hood
Assistant Secretary of Defense
for Legislative Affairs