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NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL

REPORT OF INVESTIGATION

1 April 2016

IV-16-0009

Alleged USERRA Violation

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Approved for Release by NSA on 06-29-2022, FOIA Case # 85643 (Litigation)

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(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

(U) AUDITS

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

(U) INTELLIGENCE OVERSIGHT

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

(U) FIELD INSPECTIONS

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

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(U//~~FOUO~~) On 31 August 2015, the OIG received a complaint from [redacted] GG09, Special Agent; [redacted] who alleged that [redacted] Branch Chief, [redacted] and [redacted], Chief, [redacted] violated his rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) when they considered his service in the United States Coast Guard Reserves as a motivating factor in their decision not to promote him to GG11 in 2014 and 2015. Furthermore, [redacted] alleged that management including [redacted] Branch Chief, [redacted] and [redacted], Branch Chief, [redacted] subjected him to a hostile work environment because of his service in the Coast Guard Reserves.

(U//~~FOUO~~) In addition to obtaining sworn testimony from [redacted], the OIG interviewed 12 employees. The OIG also obtained documentary evidence from several specialists assigned to the Directorate for Human Resources.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not recommend [redacted] for promotion in 2014.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not promote [redacted] in 2015.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] was not subjected to a hostile work environment based on his military service obligations by management in violation of USERRA.

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II. (U) BACKGROUND

(U) Introduction

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(U//~~FOUO~~) [redacted] entered on duty at the Agency on [redacted] as a GG07, Counterintelligence Investigator. After attending new employee orientation training, [redacted] began Special Agent training in February 2013. In May 2013, [redacted] was assigned to [redacted] to complete his on the job training for Special Agent class. He completed Special Agent training in August 2013 and was assigned to work for [redacted] in [redacted] In January 2014, [redacted] attended [redacted] and began working in [redacted] in April 2014. [redacted] resigned from the Agency on [redacted]

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(U//~~FOUO~~) [redacted] is a member of the Coast Guard Reserves. He is covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which protects individuals performing, or who performed, uniformed service from discrimination and adverse employment action on the basis of their uniformed service. USERRA is intended to ensure that uniformed service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not discriminated against in employment because of their military status or obligations.

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(U//~~FOUO~~) Upon completion of Special Agent training, [redacted] was assigned to [redacted] from August 2013-December 2013. His first level supervisor was [redacted] During this time [redacted] was absent for military duty for approximately 27 work days.

(U//~~FOUO~~) In January 2014, [redacted] attended [redacted] and completed training in April 2014. During this time, [redacted] did not have any military duties that took him away from his civilian employment. Upon graduation from [redacted] in April, [redacted] was assigned to [redacted] in an on-the-job-training status. From April 2014-August 2014, [redacted] was gone for military duty for approximately 33 work days.

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(U//~~FOUO~~) In August 2014, [redacted] started reporting to [redacted] in [redacted] was [redacted] first level supervisor until 1 June 2015. In June 2015, [redacted] Chief of [redacted] assigned [redacted] to [redacted] as his first level supervisor. [redacted] reassigned [redacted] to a new supervisor because of a personality conflict with [redacted] [redacted] reported to [redacted] from 1 June 2015 until [redacted] was promoted and accepted another position in October 2015.

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(U//~~FOUO~~) [redacted] alleged that he was not promoted to GG11 in 2014 and 2015 because [redacted] and [redacted] considered his service in the Coast Guard Reserves as a motivating factor in their decisions not to promote him. Furthermore, [redacted] alleged that he was

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subjected to a hostile work environment because of his military duties in the Coast Guard Reserves.

(U) Applicable Authorities

(See Appendix A for relevant excerpts of the authorities)

- (U) UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994, 38 U.S.C. § 4311 - Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.
- (U) 5 CFR Part 335 – PROMOTION AN INTERNAL PLACEMENT § 335.103(b)(2) - Agency promotion programs.
- (U) 5 CFR Part 353 – RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY § 353.106(c) - Personnel actions during employee's absence.
- (U//~~FOUO~~) NSA/CSS Policy Manual 4-13, Chapter 2, Uniformed Services Employment and Reemployment Rights Act

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III. (U) FINDINGS

(U//~~FOUO~~) ALLEGATION 1: Did [redacted] Personnel Security Investigations violate [redacted] rights under USERRA by considering his uniformed service in the Coast Guard Reserves as a motivating factor in her decision to not promote [redacted] to GG11 in 2014?

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(U//~~FOUO~~) CONCLUSION: Unsubstantiated. The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not recommend [redacted] for promotion in 2014.

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(U//~~FOUO~~) ALLEGATION 2: Did [redacted] violate [redacted] rights under USERRA by considering his uniformed service in the Coast Guard Reserves as a motivating factor in their decision to not promote [redacted] to GG11 in 2015?

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(U//~~FOUO~~) CONCLUSION: Unsubstantiated. The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not promote [redacted] in 2015.

(U//~~FOUO~~) ALLEGATION 3: Was [redacted] subjected to a hostile work environment because of his military service obligations in the Coast Guard Reserves in violation of USERRA?

(U//~~FOUO~~) CONCLUSION: Unsubstantiated. The preponderance of the evidence supports the conclusion that [redacted] was not subjected to a hostile work environment in violation of USERRA.

(U//~~FOUO~~) Documentary Evidence

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(U//~~FOUO~~) 2014 Promotion Documentation (Appendix B)

1. Promotion Review Package – [redacted]
2. [redacted] 2014 Promotion Review Scores and Recommendations - spreadsheet
3. Director NSA's Promotion Charge to the NSA workforce

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(U//~~FOUO~~) 2015 Promotion Documentation (Appendix C)

1. Promotion Review Package – [redacted]
2. [redacted] 2015 Promotion Review Scores and Recommendations- spreadsheet

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3. [redacted] 2015 Promotion Review Scores and Recommendations- spreadsheet
4. [redacted] 2015 Promotion Review Scores and Recommendations- spreadsheet
5. Director NSA's Promotion Charge to the NSA workforce

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(U//~~FOUO~~) Email dated 22 April 2015 from [redacted] (Appendix D)
Email to [redacted] leadership from [redacted] with a detailed summary of the [redacted] that he had observed. This email was considered by [redacted] leadership during the 2015 promotion cycle.

(U//~~FOUO~~) Email dated 1 August 2015 from [redacted] Account (Appendix E)
Email to [redacted] from [redacted] Account, Subject: Subjects that have Used Your Name as a Certifying Official; this email started an email exchange which was the basis for [redacted] hostile work environment allegation against [redacted]

(U//~~FOUO~~) Corrections to Written Reports (Appendix F)
Reports obtained from [redacted] on 28 February 2016. These reports include all the documentation that was reviewed by [redacted] and sent back to [redacted] for corrections.

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(U//~~FOUO~~) Written Complaint submitted by [redacted] (Appendix G)

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(U//~~FOUO~~) Email from [redacted] (Appendix H)
Email from [redacted] to [redacted] telling him that his and [redacted] versions of the promotion feedback session were different. [redacted] suggests to [redacted] that he schedule a sit down meeting with [redacted] to look over the documentation she used to base her decision about his promotion packet.

(U) Testimonial Evidence

(U//~~FOUO~~) [redacted]

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(U//~~FOUO~~) On 15 December 2015, [redacted] GG09, Special Agent [redacted] was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] He began employment at the Agency on [redacted] He was assigned to [redacted] in January 2014 when he went to [redacted] school and graduated in April 2014. [redacted] had previously provided the IG with a detailed written complaint dated 7 September 2015. The nature of his complaint is that he was denied promotions in 2014 and 2015 due to his military obligations in violation of USERRA. [redacted] also alleges that he was subjected to a hostile work environment due to his military service.

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(U//~~FOUO~~) [redacted] supervisor during the 2014 promotion cycle was [redacted]. He submitted an employee promotion assessment (EPA) in December 2013 (Appendix B2). At the time he submitted his EPA he believed that his packet was considered for promotion. However, in retrospect he does not believe his packet was considered for promotion. He submitted his packet in December, earlier than required because he was going to [redacted] school in January. In the June timeframe [redacted] was on military orders and knew that his peers had received promotion results. [redacted] called the office to speak with [redacted] and she was out on sick leave. He spoke with the Deputy of [redacted]. [redacted] informed him that he was not selected for promotion. [redacted] referred him back to [redacted] because she was his supervisor. [redacted] told him she did not put him forward for promotion because "I didn't have enough time with you because you were gone so much for military duty." He told [redacted] that her response was not fair and requested a pro-rated assessment based on the number of days he worked compared to his peers. She told him that was not possible. [redacted] told her that he could not accept her answer and that he would speak with the Deputy and Chief of [redacted] She encouraged him to do that and he did meet with them. After meeting with the Deputy and Chief of [redacted] they met with [redacted] and told [redacted] to speak with her again because they believed there was some misunderstanding. [redacted] did not meet with [redacted] because he felt he already knew her reason for not considering him for promotion.

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(U//~~FOUO~~) His next allegation was that he was not promoted during 2015. [redacted] alleged that even though his supervisors did not definitively say his military service was the reason that he did not get promoted, he believes it was weighed heavily in making the decision. During the 2015 promotion cycle his first level supervisor was [redacted] [redacted] submitted an EPA for 2015 (Appendix C4). His EPA was considered and recommended for promotion, but ultimately not selected. [redacted] and [redacted] both provided the promotion feedback to [redacted] in June 2015. When he received his promotion feedback he was told that the reason he did not get promoted was because of an email from [redacted] (Appendix D). [redacted] believes his military service was a factor in his promotion because of the statements that his supervisors made about his military service.

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(U//~~FOUO~~) [redacted] believes that he was subjected to a hostile work environment. He refers to his written complaint for most of the specifics (Appendix G). When [redacted] received feedback on written reports from [redacted], he was told he could be fired for just about anything during the first two years of employment. [redacted] considered [redacted]'s statement a threat. [redacted] told him it was not a threat but that he was probationary employee. [redacted] also told [redacted] that he expected more of him because he was a veteran, had a master's degree, and because he was older than some of his peers. [redacted] claims that [redacted] would write notes on his reports such as "are you kidding me" and [redacted] considered that part of the hostile work environment.

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(U//~~FOUO~~) [redacted] says that his co-workers witnessed the hostile work environment. They were [redacted] [redacted] attended [redacted] school with his peers in [redacted] They each had different quality

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controls managers (QCs) but would compare stories. [redacted] coworkers thought that the feedback he was getting was personal and not the same type of feedback his coworkers received.

(U//~~FOUO~~) [redacted] made statements to [redacted] such as "military vacation" "oh, you are back." [redacted] believes the reason that [redacted] did not like him was in part because of his military service which led to the hostile work environment. [redacted] told him that he did not understand the military and had never had an employee in the military. [redacted] tried to help explain what his unit did to give [redacted] a better understanding of the military.

(U//~~FOUO~~) [redacted] was treated differently than the other employees that worked for [redacted]. While he worked for [redacted] from August 2014-May 2015 he says there were more things that happened but most of them are in his written complaint. [redacted] did not like the way that [redacted] made him feel. As a result, [redacted] went to [redacted] and [redacted] to raise the issues he had with [redacted]. [redacted] told them that he believed that it was personal with [redacted]. One example was that [redacted] took him off the list for temporary duty (TDY). [redacted] says he felt like all eyes were on him and that he was the "black sheep." [redacted] says that the treatment from [redacted] was a weekly occurrence.

(U//~~FOUO~~) In May 2015, [redacted] assigned [redacted] to [redacted]. [redacted] was a disabled veteran and [redacted] thought he would be more understanding of [redacted] military obligations. [redacted] set forth the expectations for [redacted] when he was assigned to [redacted]. [redacted] was very candid with [redacted] about his concerns with [redacted]. His conversations and feedback from [redacted] were very positive initially. [redacted] never kicked back any reports and gave him great feedback on his work performance. [redacted] heard from co-workers that [redacted] was upset with a timesheet issue.

(U//~~FOUO~~) In the summer of 2015, [redacted] was gone for military leave a few times. When he returned [redacted] heard rumors from [redacted] that [redacted] was not happy with his military leave. [redacted] also told [redacted] that [redacted] had gone to human resources to find out what could be done about his military leave.

(U//~~FOUO~~) When [redacted] returned from military leave in August 2015, he had an email from [redacted] [redacted] thought that [redacted] was in [redacted] when he was allegedly on military leave in Virginia. [redacted] responded immediately and told him that he was not in [redacted], but was in fact on military duty in Virginia. The situation turned out to be a misunderstanding about an issue with [redacted] clearance. When [redacted] responded to [redacted] email, [redacted] walked over to [redacted] work center and took him to a private room for a discussion. During that conversation, [redacted] asked [redacted] if he felt that he was being "persecuted." [redacted] told him that he did not think he was being persecuted but felt he was being discriminated against. [redacted] told [redacted] that his absence was not good for the numbers of the office. [redacted] also told [redacted] he felt [redacted] was getting activated on purpose. [redacted] also asked [redacted] if he wanted to transfer from [redacted] to adjudications. After they had the discussion about the JPAS issue things seemed to get better. [redacted] was promoted and left the organization in October 2015.

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(U//~~FOUO~~)

(U//~~FOUO~~) On 23 February 2016 was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) was previously a branch chief in , Investigations, from October 2011-July 2014. As a branch chief her day to day responsibilities included monitoring interviews, reading reports, editing reports, and providing mentorship.

(U//~~FOUO~~) She first met when he was in Special Agent's class in approximately April 2013. was assigned to her for on the job training during Special Agent's class and was permanently assigned to her team when he graduated Special Agent's class in August 2013. She knew had military duties because he would take military leave. was good about letting her know when he would be on leave so that she could schedule permanent change of station (PCS) interviews and work around his absences.

(U//~~FOUO~~) In December 2014, completed his PRP and turned it in to before he left for school in January 2014. considered five different employees for promotion in 2014. scored each employee that she considered for promotion based on categories such as interviewing skills and report writing. After scoring each category she added the scores up to calculate the final EPA score. score was the lowest due to the quality of his work. claimed that it was because he was not at work, however his score was based on his performance when he was at work. work seemed rushed and required a lot of editing. When would send work back to for corrections he would still miss a lot of corrections. described as haphazard and that he did not pay enough attention to detail. strengths were interviewing and his presence in the room. He was confident and charming. His interview skills were the reason supported him going to school.

(U//~~FOUO~~) did not consider military service as a factor in his promotion in any way. knew that she was not allowed to consider his military service and she did not. scored the employees with scores of 95, 94, 93, 78, and 76. recommended the top three ranked employees to the Deputy Chief of for further promotion consideration. did not recommend the two employees with the lowest scores for promotion consideration. scored the lowest of the five employees with a score of 76.

(U//~~FOUO~~) In July 2015, was on medical leave after recovering from surgery. called her on her personal cell phone and wanted to get promotion feedback. had a discussion with him and explained why she did not recommend him for promotion. remembers bringing up his military service and the fact that he had been out of the office. She told him that his absences were not the reason that he was

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not promoted. She considered the time that he was in the office and his work product. When asked if she made the statement, "I didn't have enough time with you because you were gone so much for military duty," [redacted] denied that she ever made that statement. She knew that [redacted] was upset and he told her he was going to speak with her supervisor.

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(U//~~FOUO~~) [redacted] spoke with [redacted] Deputy, [redacted] and [redacted] Chief, [redacted] about her conversation with [redacted]. [redacted] asked [redacted] if she told [redacted] that she did not promote him based on his military service taking him out of the office. [redacted] told [redacted] that she did not make the statement that [redacted] was claiming she made to him. (Appendix H).

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(U//~~FOUO~~) [redacted] and [redacted] had a very good relationship. They talked frequently until the discussion about the promotion. They never had any other contact after the feedback conversation.

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(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 12 January 2016 [redacted] Branch Chief [redacted] was interviewed and provided the following sworn testimony:

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(U//~~FOUO~~) [redacted] is a Branch Chief in [redacted] He has been assigned to [redacted] since approximately 2009 with a two month break in 2015. He is currently a GG14 with day to day responsibilities of monitoring [redacted] conferring with, mentoring, and coaching [redacted] He is also responsible for providing quality control on written reports. Approximately six to eight [redacted] report to him at any given time.

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(U//~~FOUO~~) [redacted] worked for [redacted] starting in June 2014. [redacted] was aware of his military obligations. [redacted] had never had a military reservist work for him so he discussed the administrative issues related to [redacted] military status with management. [redacted] discussed leave, orders, and scheduling because he wanted to make sure he was doing things correctly.

(U//~~FOUO~~) [redacted] was the first line supervisor for [redacted] for the 2014-2015 promotion cycle. [redacted] only considered three individuals for promotion during that cycle. [redacted] did not recommend either of the two other employees for promotion because they did not meet the requirements for promotion. Based on his observations neither of the other two employees were ready to perform at the next higher grade.

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(U//~~FOUO~~) [redacted] did recommend [redacted] for promotion because at the time he felt that he was ready for promotion to GG11. However, in between the time he initially made the recommendation and the time that the third level reviewer made the decision on whether to promote [redacted], he encountered performance issues. [redacted] performance became inconsistent. He would perform well and then go through periods where he did not perform well at all. [redacted] counseled [redacted] on his report writing several times. [redacted] would

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make "fatal" mistakes on some of his report writing as opposed to minor errors. (Appendix F1, F2, F3, F4).

(U//~~FOUO~~) During one of [redacted] interviews the former Chief of [redacted] observed his performance and noticed several issues that he raised with management. [redacted] sent an email outlining his observations to the [redacted] leadership. [redacted] email was a factor that was considered by [redacted] leadership in deciding to not promote him in 2015. [redacted] denies that his military service was ever considered during the promotion process. It was never discussed and only his performance in the office as a [redacted] was considered.

(U//~~FOUO~~) [redacted] did have a meeting with [redacted] and [redacted] to provide feedback on why he did not get promoted. [redacted] did not remember many of the details of the meeting but he recalled that [redacted] did most of the talking. [redacted], the promotion authority and the Chief of [redacted], was not present for the discussion. [redacted] remembered showing [redacted] the email from [redacted] and does not believe the email was discussed with [redacted] before this meeting. [redacted] did not discuss [redacted] military service when providing feedback on his promotion because it was not an issue.

(U//~~FOUO~~) [redacted] sat in close proximity to [redacted] in an open modular office space. [redacted] met with [redacted] several times to discuss corrections on his written reports. [redacted] made corrections in red ink and sent them back to the [redacted] if the mistakes were significant. [redacted] did this for all [redacted] not just [redacted]. [redacted] have five days to turn in reports and [redacted] would normally turn his in within one to two days. [redacted] thought that [redacted] would rush through his reports at times and miss critical information. [redacted] did not recall having a discussion about being a probationary employee with [redacted]. [redacted] is adamant that he never threatened [redacted] about being a probationary employee.

(U//~~FOUO~~) [redacted] never made statements to [redacted] about his military service. He also did not recall hearing anyone else make derogatory statements about [redacted] military service. He says that he may have made statements in jest about being gone from the office but he does not recall making or hearing any statements. [redacted] and others understood that his military service was off the table and no one harassed him for his military service.

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 13 January 2016 [redacted] Program Manager [redacted] was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] is the Quality Assurance Program Manager in [redacted] He is a GG15 and has been assigned as the Program Manager in [redacted] since March 2015. Prior to being assigned as the Program Manager, [redacted] was the Deputy Chief of [redacted] from June 2012- March 2015.

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His day to day responsibilities while assigned as the Deputy Chief were to work for the Chief of [redacted] and run operations.

(U//~~FOUO~~) [redacted] was the second level supervisor for [redacted]. [redacted] was aware of [redacted] military obligations because after he finished [redacted] school [redacted] requested a meeting with [redacted]. [redacted] was concerned that his military duties would have a negative effect on his chances for promotion in [redacted]. [redacted] assured him that it would not affect his chances for promotion.

(U//~~FOUO~~) [redacted] was the second level reviewer for the 2015 promotion cycle for [redacted]. [redacted] was the first level reviewer and both [redacted] and [redacted] recommended [redacted] for promotion from a GG09 to a GG11. After [redacted] made his recommendations but before [redacted] made her decisions she asked for input from the Branch Chiefs and [redacted]. During that time, [redacted] the previous Chief of D2 had returned as a SAR and was observing [redacted] [redacted] sent an email about an examination that he had observed of [redacted] and reported that he did a terrible job. His email stated that [redacted] had made some pretty flagrant mistakes. The email from [redacted] was also taken into consideration by [redacted] before she made her final decision.

(U//~~FOUO~~) [redacted] denies that military service was ever discussed or considered in any way during the promotion process. [redacted], [redacted], and [redacted] were very sensitive to his military service because he had already had a discussion with [redacted] about his military service when [redacted] graduated [redacted] school. [redacted] and [redacted] did have a discussion with [redacted] to provide feedback on why he was not promoted. [redacted] states that military service was never discussed during this meeting. They discussed the email from [redacted] and other performance issues as the reasons that he was not promoted. Normally, the person making the decision meets with the employee but [redacted] was unavailable so she directed [redacted] and [redacted] to meet with [redacted].

(U//~~FOUO~~) [redacted] had regular interaction with [redacted]. [redacted] worked in close proximity to [redacted]. [redacted] never heard or made statements about [redacted] military service. When asked about the specific allegations [redacted] denied ever hearing or making any of those statements. [redacted] states that there was a lot of good natured joking around and that was the general atmosphere. He denies that there was any disrespect, harassment, or abusive behavior. [redacted] never complained about the treatment within the office.

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 15 January 2016 [redacted] Chief [redacted] was interviewed and provided the following sworn testimony:

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(U//~~FOUO~~) is the Chief of She is a GG15 and has been assigned as the Chief of since January 2012. Her day to day responsibilities as Chief consist of managing the division for the Agency. Her staff includes approximately employees.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) until he left the Agency in knew that had military obligations because when he graduated school in 2014 he discussed his military obligation with management. At that time, he was concerned his military service could hurt his chances for promotion. stated that was very accommodating to regarding his military service.

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

(U//~~FOUO~~) In 2015 was considered for promotion. submitted a promotion package that went through his first line supervisor, and then to the Deputy Chief before coming to . For promotions GG12 and below, was the promotion authority. Both and recommended for promotion. did not select for promotion. As the selecting official for the promotions would receive more candidates for promotion than she had authority to promote. In order to make selection decisions she must "rack and stack" the nominees and prioritize the candidates for promotion.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) explained that the "reason for not promoting" column listed on the dashboard printout is limited to a drop down menu. There are only four to five choices and the best choice was "responsibility and independence." specifically remembers that she had more candidates for promotion than she had authority to promote. When she compared him to the other candidates there were several factors that hurt such as report writing issues and missing information during interviews. After comparing him to the others was at the bottom of the list, therefore not promoted. When was ranking candidates for promotion she sought feedback from branch chiefs and the Deputy She did this for all of the candidates for promotion.

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

(U//~~FOUO~~) had extensive report writing issues with . He would continuously make mistakes in his report writing. and also discussed Advanced Individual Training (AIT). AIT is where someone to make sure that proper procedures are followed. Every to include were observed over time. former Chief of conducted an AIT for and provided feedback that he had a poor interview. There were many mistakes and a variety of things that were missing in the report. provided this feedback to management via email and this feedback was considered and discussed by when making her promotion decision. Although the AITs are not punitive, it was a factor in her decision.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) was TDY and not able to provide promotion feedback to She directed and to provide the promotion feedback. During that session they should have discussed the issues with the reports and discussed the feedback from . denies that military service was ever considered as a factor in his promotion. also denies that his military service was ever discussed within management.

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

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states that her office has always accommodated [redacted] and his military service. She stated that the office had a party for [redacted] when he was promoted in the military and that she bought a cake for him.

(U//~~FOUO~~) [redacted] performance was very up and down. [redacted] struggled with whether to forward [redacted] packet for promotion to [redacted]. When [redacted] forwarded the packet [redacted] was performing well. By the time [redacted] was ranking her candidates [redacted] was at a low point and not performing well. [redacted] stated that based on his current performance he would not have sent him forward for promotion. Once [redacted] returned from her FDY she met with [redacted] to discuss his promotion. She discussed the feedback from [redacted] and his mistakes in report writing. [redacted] felt that [redacted] left the meeting in a good place and understood her reasons for not promoting him. [redacted] military service obligations were never discussed in the meeting with [redacted]. [redacted] is confident that [redacted] was treated fairly just like everyone else in [redacted] including the other employees with military service obligations.

(U//~~FOUO~~) [redacted] did not get along with [redacted] and eventually asked [redacted] to move him to another supervisor. When he asked to be moved [redacted] moved him to work for [redacted] states that everything [redacted] asked her to do she did for him. [redacted] never complained to her about a hostile work environment or mistreatment. [redacted] did not hear any of the specific statements that were alleged. She states that if she knew or heard any of the statements alleged it would have been dealt with immediately.

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 12 January 2016 [redacted] Chief [redacted] was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] is the Chief of [redacted] He is a GG14 and has been assigned to [redacted] since October 2015. He worked in [redacted] from January 2010-October 2015. His day-to-day responsibilities while assigned to [redacted] were monitoring [redacted] mentoring, and coaching [redacted] He was also responsible for providing quality control on written reports. He had approximately five to nine [redacted] reporting to him at any given time.

(U//~~FOUO~~) [redacted] worked for [redacted] from June 2015-October 2015. [redacted] was aware of his military obligations. [redacted] is a military veteran and they had discussed each of their military service before [redacted] started working for him. He did discuss the administrative issues related to [redacted] military status with management. Due to the scheduling within [redacted] being completed six weeks in advance, [redacted] short suspense military duties were having an adverse impact on the mission. In the September time frame management made the decision to remove him from the schedule to accommodate his military duty schedule. This allowed management to give him work when he was not on military duty but to not have to reassign work or cancel appointments when he was on military duty. [redacted] also discussed [redacted] military duties with the Deputy Chief and Chief of [redacted]

Management called human resources to make sure that everything was being done correctly with regard to his orders. Human resources informed management that reservist have a five-year cumulative limit on periods of service. However, [redacted] was not close to approaching the maximum time limit for military duty.

(U//~~FOUO~~) [redacted] had several mentoring discussions with [redacted], [redacted] shared that he had problems with his previous branch chief and [redacted] told him they would start fresh. [redacted] was very concerned about getting promoted.

(U//~~FOUO~~) At one point [redacted] had orders to go on military leave on the east coast. While he was on leave [redacted] received a phone call from someone asking him to pass [redacted] clearances. [redacted] asked what location the request was for and it was a location in [redacted] [redacted] sent an email to [redacted] because he did not know his whereabouts (Appendix E). When [redacted] returned to work [redacted] discussed the incident and realized it was a misunderstanding concerning a visitor's request in JPAS. After this discussion [redacted] considered this matter closed and never brought it up again.

(U//~~FOUO~~) [redacted] never had any performance issues with [redacted] considered [redacted] one of his best [redacted] felt that he and [redacted] had great mutual respect for each other's military service. [redacted] felt that he and [redacted] were close. [redacted] was very open with [redacted] that he was looking for other jobs.

(U//~~FOUO~~) [redacted] did hear statements about [redacted] not being in the office. [redacted] never made negative statements to or about [redacted]. When asked about the specific statements in the allegation, [redacted] thought that the statements sounded like playful jabs at someone that has been gone and not running cases. [redacted] states that [redacted] "totally" engaged in the playful banter between [redacted] about how many cases they were working and being out of the office. [redacted] never complained to [redacted] about feeling bullied or harassed in the work place. [redacted] was not treated any differently than any other [redacted]

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 14 January 2016 [redacted] Special Agent, [redacted] was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] is a GG12 [redacted]. She has been assigned to [redacted] for approximately two years. She has worked for the Agency for approximately 10 years. Her day to day responsibilities include conducting [redacted] for the Agency. She went to [redacted] school with [redacted] was prior service and knew that [redacted] was in the Coast Guard Reserves because they discussed their military service.

(U//~~FOUO~~) [redacted] and [redacted] attended [redacted] school in January 2014. After completing approximately three and a half months of class they were each assigned to FANX.

(b) (3)-P.L. 86-36
(b) (6)

(b) (3)-P.L. 86-36
(b) (6)

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

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

(b) (3)-P.L. 86-36
(b) (6)

(b) (3)-P.L. 86-36
(b) (6)

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

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

They worked in the same general area in an open modular office space. She did hear people within the office discussing his military service. showed reports and emails from his supervisors to She felt that his supervisors frowned upon his military service because he was gone from the office so frequently. thought that did not understand the military reserves. did see an email from to She did not hear or see any treatment from the supervisors to directly.

(b) (3)-P.L. 86-36
(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) described as a "fighter" and that he would never let anyone subject him to a hostile work environment. She does recall one time that "called out" and that was ranting about him "calling out." She does not remember the exact words he used but she knew he was unhappy and talking about did think that management treated him differently but couldn't describe how he was treated differently. She did not think the coworkers cared as much about his military service as management. did not witness any conduct that was offensive or abusive. stated that would send unprofessional emails to but also would send the same types of emails to everyone in the office.

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

(U//~~FOUO~~) states that coworkers would joke with him and ask him "how long he would be out" but that it was good natured. She denied hearing any of the other specific allegations. She states that would participate in the joking and that he knew any statements from coworkers were jokes. states that all the coworkers liked and did not hold it against him when he was out.

(U//~~FOUO~~)

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

(U//~~FOUO~~) On 14 January 2016 Special Agent, was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) is a GG11 He has been assigned to for approximately two years. His day to day responsibilities include conducting for the Agency. He went to school with and was aware that was in the reserves.

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

(U//~~FOUO~~) and attended school in January 2014. After completing approximately three and a half months of class they were each assigned to FANX. They worked in the same general area in an open modular office space and sat next to each other. always discussed his military service with other people in the office. did hear people ask where he was but did not hear anyone giving him a hard time about his military service. did not ever witness any supervisors treat him in an unprofessional manner.

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

(U//~~FOUO~~) did hear people ask him "oh you are back," but it was not in a derogatory manner. also heard the statement "part timer" but it was good natured and was fine with it as he joked around with his coworkers. described the work environment as open and did not witness any inappropriate behavior.

(U//~~FOUO~~)

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

(U//~~FOUO~~) On 12 January 2016 Enabling Support Specialist was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) is an Enabling Support Specialist in . She is a GG12 and has been in her current position since May 2014. She has worked at the Agency for approximately 31 years. Her day to day responsibilities include conducting the prescheduling for

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

(U//~~FOUO~~) She knows because he was a confided in her and asked her for advice because he thought that he was not being treated fairly. became aware of his military obligations when she was assigned to because he was on military leave. There were three employees with military obligations in took military leave much more frequently than the other two employees. Originally would provide his orders to . After just a few months of working in quit providing his military orders to her. He would only provide a copy of his orders to another office within the Agency. The office that was provided the orders did not share those with . management basically took his word for it when he would be on leave.

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

(U//~~FOUO~~) heard several people talk about behind his back. The Deputy Chief of called Human Resources to ask what could be done about taking military leave. The feedback from Human Resources was that if he had orders, then he must be allowed to take military leave. was never denied military leave. She heard both co-workers and supervisors talk about military duties. They would say things such as "it's not fair that he gets to be off when other people had to put leave in ahead of time," "no one else had ever heard you could take this much military leave all the time," "he was asking to be put on orders so that he did not have to work for us."

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

(U//~~FOUO~~) first Branch Chief was . would say "not so nice" things about . thought that was playing the system. does not believe that statements were ever made to directly. She believes the treatment from was the reason found it difficult to work in . complained about his evaluation from to and stated that it was going to make it hard for him to get promoted.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) second Branch Chief was also did not like him taking off work for military duty. liked to use colorful language and said negative things about . When did not get promoted she thinks that things got worse. felt that people would not socialize with him. does not believe that anyone was told not to socialize with him. There were a couple of other people in the office that had a reputation for not coming to work and those employees were shunned by coworkers.

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

[redacted] felt that he was being lumped into that group of employees because of his military service.

(U//~~FOUO~~) [redacted] did not hear the Chief and Deputy discuss [redacted] military service but the Chief told her about their discussion after they had called Human Resources. The only comments that [redacted] considered inappropriate were the "he's trying to play the system." That statement was made between supervisors and not told to [redacted] directly.

(U//~~FOUO~~) She heard [redacted] make the statement "how long are you back?" [redacted] made this statement at a time that ACE documents were due and [redacted] was trying to make sure it was completed on time. [redacted] thought of the idea to take him off the schedule. She started this in September 2015. This was not done as punishment of any kind but to help with scheduling. She does not believe that [redacted] was subjected to a hostile work environment. She does believe that he was "blackballed" by his coworkers because of the time that he was out of the office. She did not witness any offensive or abusive behavior. [redacted] believes that the discussions about [redacted] were due to the fact management did not know how to handle him being gone for military leave. She does not believe that anyone was out to get [redacted] or treat him badly.

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 12 January 2016 [redacted] Special Agent, [redacted], was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] is a GG09 [redacted] He has been assigned to [redacted] for approximately two years. He has worked for the Agency since September 2012. His day to day responsibilities include conducting [redacted] for the Agency. He went to [redacted] school with [redacted]. He knew that [redacted] was in the reserves.

(U//~~FOUO~~) [redacted] and [redacted] attended [redacted] school in January 2014. After completing approximately three and a half months of class they were each assigned to FANX until approximately March 2015. They worked in the same general area in an open modular office space. [redacted] never heard anyone discussing [redacted] military service. He never heard anyone giving him a hard time about his military service. He did hear co-workers making jokes that he was not at work, but he never heard any supervisors make any statements regarding [redacted] being out of the office. He described the "jokes" as good natured such as someone saying "hey you aren't at work" not anything derogatory. [redacted] never witnessed [redacted] being intimidated or unhappy at work. He never witnessed anything that he would consider abusive or offensive. [redacted] did know that [redacted] was not promoted and he was unhappy about not getting promoted.

(U//~~FOUO~~) [redacted] stated that it was possible a coworker made a statement such as "oh, you still work here?" He states that management would have never said anything like that to [redacted] or any other employee. [redacted] knew [redacted] was upset he did not

get promoted and that he may be trying to use his military service as a reason he was not promoted.

(U//~~FOUO~~)

(U//~~FOUO~~) On 14 January 2016 Special Agent was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) is a GG09 She has been assigned to for approximately two years. Her day to day responsibilities include conducting for the Agency. She went to school with . She knew that was in the reserves.

(U//~~FOUO~~) and attended school in January 2014. After completing approximately three and a half months of class they were each assigned to FANX. They worked in the same general area in an open modular office space. always discussed his military service with other people in the office. did not witness any supervisors discussing military service. Nor did she hear people discuss military service in a derogatory fashion. She states there was a group within the office that were close and would joke around with each other to include . She never witnessed getting upset about coworkers joking around with him.

(U//~~FOUO~~) did complain to about his supervisor, . He complained that he was hard on him about mistakes on reports and decisions on . There was another incident shared with regarding an email that he received from his supervisor, . She was not sure on the details of the email but it dealt with being on military leave and a misunderstanding about where was located. responded back to the email and then both he and went behind closed doors and had a discussion. She did not witness these two incidents personally but heard about them when complained to her.

(U//~~FOUO~~) never witnessed any supervisor treating unfairly. She never heard a supervisor discussing military service in a derogatory manner. She never witnessed abusive or offensive behavior.

(U//~~FOUO~~) She may have heard statements similar to "how long are you back?" and "you still work here," but they were good natured and was not offended. She did not recall hearing any of the other specific allegations.

(U//~~FOUO~~)

(U//~~FOUO~~) On 20 January 2016 Special Agent was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] is a GG09 [redacted] She has been assigned to [redacted] for approximately two years. Her day to day responsibilities include conducting [redacted] for the Agency. She went to [redacted] school with [redacted]. [redacted] knew that [redacted] was in the Coast Guard reserves because they discussed his military service.

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

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

(U//~~FOUO~~) [redacted] and [redacted] attended [redacted] school in January 2014. After completing approximately 3.5 months of class they were each assigned to FANX. They worked in the same general area in an open modular office space. She did hear people within the office discussing his military service. [redacted] showed reports and emails from his supervisors to [redacted] [redacted] told her that his supervisors frowned upon his military service because he was gone from the office so frequently. [redacted] saw reports that [redacted] corrected for [redacted]. [redacted] did see an email from [redacted] to [redacted]. She did not hear or see any treatment from the supervisors to [redacted] directly.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) [redacted] states that coworkers would joke with him and ask him "how long he would be out," but that it was good natured. She denied hearing any of the other specific allegations. She states that [redacted] would participate in the joking and that he knew any statements from coworkers were jokes. [redacted] states their group of coworkers liked [redacted] and did not hold it against him when he was out. She did not believe that he was subjected to a hostile work environment.

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

(U) Analysis and Conclusions

(U) The USERRA, 38 U.S.C. § 4311(a), and NSA/CSS Policy Manual 4-13, Chapter 2, prohibit the Agency from denying a person promotion or any benefit of employment on the basis of past, present, or future uniformed service.

(U//~~FOUO~~) The USERRA, 38 U.S.C. § 4311(c)(1), and NSA/CSS Policy Manual 4-13, Chapter 2, also state that an employer shall be considered to have engaged in a prohibited act if an individual's uniformed service is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such uniformed service.

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

(U//~~FOUO~~) [redacted] alleged he was not considered for promotion in 2014 by his first line supervisor, [redacted] because she considered his service in the Coast Guard Reserves as a motivating factor in her decision not to promote him to GG11. Furthermore, [redacted] alleges that during his promotion feedback, [redacted] stated, "I didn't have enough time with you because you were gone so much for military duty."

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) The OIG found that [redacted] did consider [redacted] for promotion in 2014. [redacted] drafted a PRP and provided it to [redacted] for consideration in December 2013. [redacted] considered [redacted] for promotion and rated him fifth out of five employees with an employee promotion assessment (EPA) score of 76. The EPA scores for the other four employees were 95, 94, 93, and 78. [redacted] forwarded her top three rated employees for promotion to the next level reviewer. [redacted] promotion packet was considered, ranked, and not forwarded to the next level reviewer.

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

(U//~~FOUO~~) The OIG did not substantiate [redacted] claim that [redacted] considered [redacted] military obligations a motivating factor in her decision to not recommend him for promotion. When asked directly if she told [redacted], "I didn't have enough time with you because you were gone so much for military duty." [redacted] denied ever making any such statement. [redacted] testified that [redacted] brought up his military service and time away from the office as the reason for not getting promoted during their feedback session. According to [redacted], she knew she was not allowed to consider his military service as a factor in her promotion decision and she did not consider it in any way.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) After his discussion with [redacted], [redacted] contacted [redacted] Deputy Chief [redacted] and [redacted] Chief [redacted] to discuss his promotion feedback session with [redacted]. [redacted] called [redacted] to ask her what she told [redacted] about the reasons for not getting promoted. [redacted] told [redacted] she did not make the statement about [redacted] being out of the office and that she did not consider his military service as a factor in his promotion. Finally, [redacted] emailed [redacted] on 2 July 2014 and told him that he and [redacted] differed on what was said during their feedback session over the phone. [redacted] recommended that [redacted] sit down with [redacted] in person so that she could address his concerns and go over the documentation she used to evaluate his performance. [redacted] testified that he did not need to meet with [redacted] in person and never contacted her for in person feedback.

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

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not recommend [redacted] for promotion in 2014.

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

(U//~~FOUO~~) [redacted] next alleged that management violated his rights under USERRA by considering his uniformed service in the Coast Guard Reserves as a motivating factor in their decision to not promote him in 2015.

(U//~~FOUO~~) The OIG found that during the 2015 promotion cycle, [redacted] was recommended for promotion by both his first and second level supervisors, [redacted] and [redacted]. However, [redacted], the promotion authority did not select [redacted] for promotion.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) During the 2015 promotion cycle, [redacted] was the first level supervisor for [redacted]. [redacted] considered three employees for promotion in 2015. [redacted] was the only employee recommended for promotion by [redacted]. [redacted] was the second level reviewer for [redacted]. [redacted] considered 29 employees for promotion in 2015. He recommended 18 employees for promotion to [redacted], Chief, [redacted]. [redacted] was ranked number 11 of the 18 employees recommended to [redacted]. [redacted] was the promotion authority for employees in [redacted] up to the GG12 rank. She considered 37 employees for promotion and selected 24 employees. [redacted] was not selected for promotion by [redacted].

(U//~~FOUO~~) [redacted] testified that in between the time that the first and second level supervisor made their recommendations to her and the time that she made the promotion selection decisions she asked supervisors for feedback when making her final decision on promotions. [redacted] testified that [redacted] performance was inconsistent. [redacted] would go through periods of performing very well and some periods of performing poorly. [redacted] recalled that [redacted] was performing well we he made his initial recommendation that [redacted] should be promoted to GG11. When [redacted] asked for additional feedback several weeks later, [redacted] was not performing as well and [redacted] did not believe that he was still deserving of promotion.

(U//~~FOUO~~) Additionally, during the same time period, [redacted] previous Chief of [redacted], was conducting Advanced Individual Training (AIT) for [redacted] in which he would observe [redacted] employees during interviews to ensure quality control. On 22 April 2015, [redacted], sent an email to [redacted], [redacted], [redacted], and others in leadership that he had just observed a [redacted] conducted by [redacted]. [redacted] stated that he was disappointed in the effort given by [redacted]. The email also described various items that were missed during the interview and areas for improvement. [redacted] testified that this email was another factor that she considered when making her promotion decision. This was corroborated by [redacted], [redacted], and [redacted] who each testified about [redacted] email being discussed during [redacted] promotion feedback session with [redacted] and [redacted].

(U//~~FOUO~~) [redacted], [redacted], and [redacted] all testified that they did not consider [redacted] military service as a factor in his promotion in any way. [redacted] had approached [redacted] leadership when he was first assigned to [redacted] and discussed his military service and whether it would be an issue in getting promoted. [redacted], [redacted], and [redacted] testified that they knew about [redacted] military service obligations and never considered those obligations when accessing [redacted] for promotion.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG found that [redacted] military service was not a motivating factor in [redacted] decision to not select [redacted] for promotion in 2015.

(U//~~FOUO~~) Finally, [redacted] alleged he was subjected to a hostile work environment because of his military service obligations in the Coast Guard Reserves in violation of USERRA.

(b) (3)-P.L. 86-36
(b) (6)

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Because discrimination on the basis of a person's military service obligations is protected by USERRA we must first determine if [redacted] was indeed subjected to a hostile work environment under NSA Policy. NSA/CSS PMM 366, Section 1-3, prohibits employees from engaging in any conduct that creates a hostile work environment and/or interferes with an individual's work performance. It is generally understood that in order to substantiate a hostile work environment claim, the conduct must be sufficiently severe and pervasive to adversely impact the work environment.

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

(U//~~FOUO~~) In this case, [redacted] made three separate allegations he claimed contributed to the hostile work environment:

- During a feedback session with [redacted] [redacted] threatened him by telling him that probationary employees could be terminated "for pretty much anything" within the first two years of employment;

(b) (3)-P.L. 86-36
(b) (6)

- [redacted] created a hostile work environment when he questioned [redacted] whereabouts while he was on military duty; and

(b) (3)-P.L. 86-36
(b) (6)

- Managers and coworkers made negative statements about his military service and his absences while performing military duty that created a hostile working environment.

(U//~~FOUO~~) The OIG found that feedback from [redacted] was not severe and pervasive conduct amounting to a hostile work environment. [redacted] met with [redacted] to provide feedback on his work product as a first level supervisor. [redacted] went over corrections he had made to [redacted] written reports over a period of several weeks. [redacted] adamantly denies threatening [redacted] and does not recall making any statement about probationary employees being terminated. However, even if [redacted] did make the statement as alleged by [redacted], it is within the discretion of the supervisor to inform probationary employees they could be removed from service during their probationary period for unsatisfactory performance. Here, [redacted] testified that he was not considering removal from federal service for [redacted]. He did however, want to address [redacted] performance and help him improve.

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

(U//~~FOUO~~) The OIG found that [redacted] conduct was not severe or pervasive amounting to a hostile work environment. On 1 August 2015, [redacted] received an email that [redacted] had used his name on a clearance certification request. [redacted] contacted the access certification office because he did not expect the email. [redacted] was told that [redacted] was trying to access an unknown facility in [redacted]. The timing of the request caused [redacted] to question if [redacted] was in fact on military duty in Virginia. The OIG determined that it was completely reasonable for [redacted] to question the whereabouts of [redacted]. Supervisors have a duty to know the whereabouts of the employees they supervise. In this case, [redacted] sent an email to [redacted] and had a conversation with him when he returned to the office. After having a discussion with [redacted] and understanding the purpose of the request, [redacted] never took any further action regarding this incident.

(b) (3)-P.L. 86-36
(b) (6)

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(b) (6)

(U//~~FOUO~~) The OIG found that statements regarding [redacted] military service and his absence from work did not amount to severe and pervasive conduct that rise to the level of creating a hostile work environment.

(U//~~FOUO~~) Four different managers from [redacted] chain of command were interviewed. All four denied ever making or hearing derogatory statements in the workplace about [redacted] military service. [redacted] testified that he does not recall doing so but it was possible he may have made statements in jest regarding [redacted] absences from work. Even if [redacted] made such statements, the statements alone as alleged do not rise to the level of severe or pervasive conduct.

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

(U//~~FOUO~~) Additionally, six colleagues of [redacted] were interviewed. Five of those colleagues attended [redacted] with [redacted] and worked in close proximity to him in [redacted] Every one of the five [redacted] testified that the working environment was relaxed and friendly. The [redacted] had good relationships with each other and testified that everyone joked around with each other to include [redacted]. There was no testimony that [redacted] was ever treated maliciously because of his military service or for any other reason by his peers. There is no evidence that [redacted] ever complained of treatment from his coworkers in the workplace.

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

(U//~~FOUO~~) There was no testimony from any of [redacted] coworkers that his military service was discussed by managers in the workplace. [redacted], an enabling support specialist, did testify that management made the statement, "he's trying to play the system." This statement was made behind closed doors and [redacted] was only privy to this statement because of her duties as the support specialist. [redacted] told [redacted] that her Deputy had contacted human resources to inquire about [redacted] military leave. However, this is consistent with the testimony of the management witnesses. [redacted] was concerned about the amount of time [redacted] was out of the office and wanted to know what his options were as a manager. [redacted] also testified that she heard [redacted] make the statement, "how long are you back." According to [redacted], [redacted] made this statement while trying to schedule the close out of ACE documents and there is no indication this statement was derogatory in nature.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) The four female coworkers that were interviewed did discuss [redacted] treatment by his supervisors, [redacted] and [redacted] Each one of them testified that [redacted] complained to them individually. [redacted] showed them emails from [redacted] and written feedback from [redacted]. None of the witnesses would have known about the communications between [redacted] and his supervisors if he did not share it with them. None of [redacted] coworkers personally witnessed any abusive or offensive treatment by his supervisors.

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

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

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] was not subjected to a hostile work environment. The OIG found that even if the specific statements alleged by [redacted] were made the in workplace, the conduct did not meet the definition of a

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

hostile work environment under NSA policy. Therefore, because [redacted] was not subjected to a hostile work environment, the OIG finds that he was not subjected to discrimination on the basis of his military service obligations in violation of USERRA.

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IV. (U) CONCLUSION

(b)(3)-P.L. 86-36
(b)(6)

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

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not recommend [redacted] for promotion in 2014.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] did not violate [redacted] rights under USERRA. The OIG did not establish that [redacted] military service was a motivating factor in [redacted] decision to not promote [redacted] in 2015.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] was not subjected to a hostile work environment in violation of USERRA.

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(b)(3)-P.L. 86-36
(b)(6)

IV-16-0009

V. (U) DISTRIBUTION OF RESULTS

(U//~~FOUO~~) [redacted] and [redacted] will be notified of the results of this investigation.

[redacted]
Senior Investigator

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

Concurred by:

[redacted]
Assistant Inspector General
For Investigations

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APPENDIX A

Authorities

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AUTHORITIES

- **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994, 38 U.S.C. Chapter 43**

  38 U.S.C. § 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

  (a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

  . . .

  (c) An employer shall be considered to have engaged in actions prohibited—

  (1) under subsection (a), if a person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service . . .

- **(U) 5 CFR Part 335 – PROMOTION AN INTERNAL PLACEMENT**

  § 335.103 (b)(2) - Agency promotion programs.
  Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Agencies must also ensure that employees within the area of consideration who are absent for legitimate reason, e.g., . . .in the military service. . . receive appropriate consideration for promotion.

- **5 CFR Part 353 – RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY**

  § 353.106 (c) - Personnel actions during employee's absence.
  Agency promotion plans must provide a mechanism by which employees who are absent because of … uniformed service can be considered for promotion. In addition, agencies have an obligation to consider employees absent on military duty for any incident or advantage of employment that they may have been entitled to had they not been absent. This is determined by:

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(1) Considering whether the "incident or advantage" is one generally granted to all employees in that workplace and whether it was denied solely because of absence for military service;
(2) Considering whether the person absent on military duty was treated the same as if the person had remained at work; and
(3) Considering whether it was reasonably certain that the benefit would have accrued to the employee but for the absence for military service.

- **(U//~~FOUO~~) NSA/CSS Policy Manual 4-13, Chapter 2, Uniformed Services Employment and Reemployment Rights Act**

I. (U) Policy.

I. (U) Prohibition Against Discrimination and Acts of Reprisal

1. (U) A person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform service in a Uniformed Service shall not be denied … promotion, or any employment benefit by an employer on the basis of that membership, an application for membership, performance of service, or an obligation for service in the Uniformed Services.

3. (U) An employer shall be considered to have engaged in an act of discrimination if an individual's membership, application for membership, service, application for service, or obligation for service in the Uniformed Services is a motivating factor in the employer's action, unless the employer can provide that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service or obligation.

K. (U) Promotion Program

1. (U) Employees who are on Military Leave Without Pay (MLWOP) due to a call to active duty must be considered for promotion, if eligible, as though they were working at the Agency in their civilian assignment. It is the responsibility of the employee's first-level supervisor, or whoever would serve in the employee's organization as first-level nominating

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official, to prepare a Promotion Review Package (PRP) containing as much documentation as possible in accordance with current promotion policy and process.

2. (U) When possible, employees who know that they will be absent from the Agency for military service during the timeframe of the annual promotion program should create a Performance Review Package (PRP) and leave it with the immediate supervisor for promotion consideration. In the event that the employee does not prepare a PRP, the supervisor must prepare a PRP on the employee's behalf.

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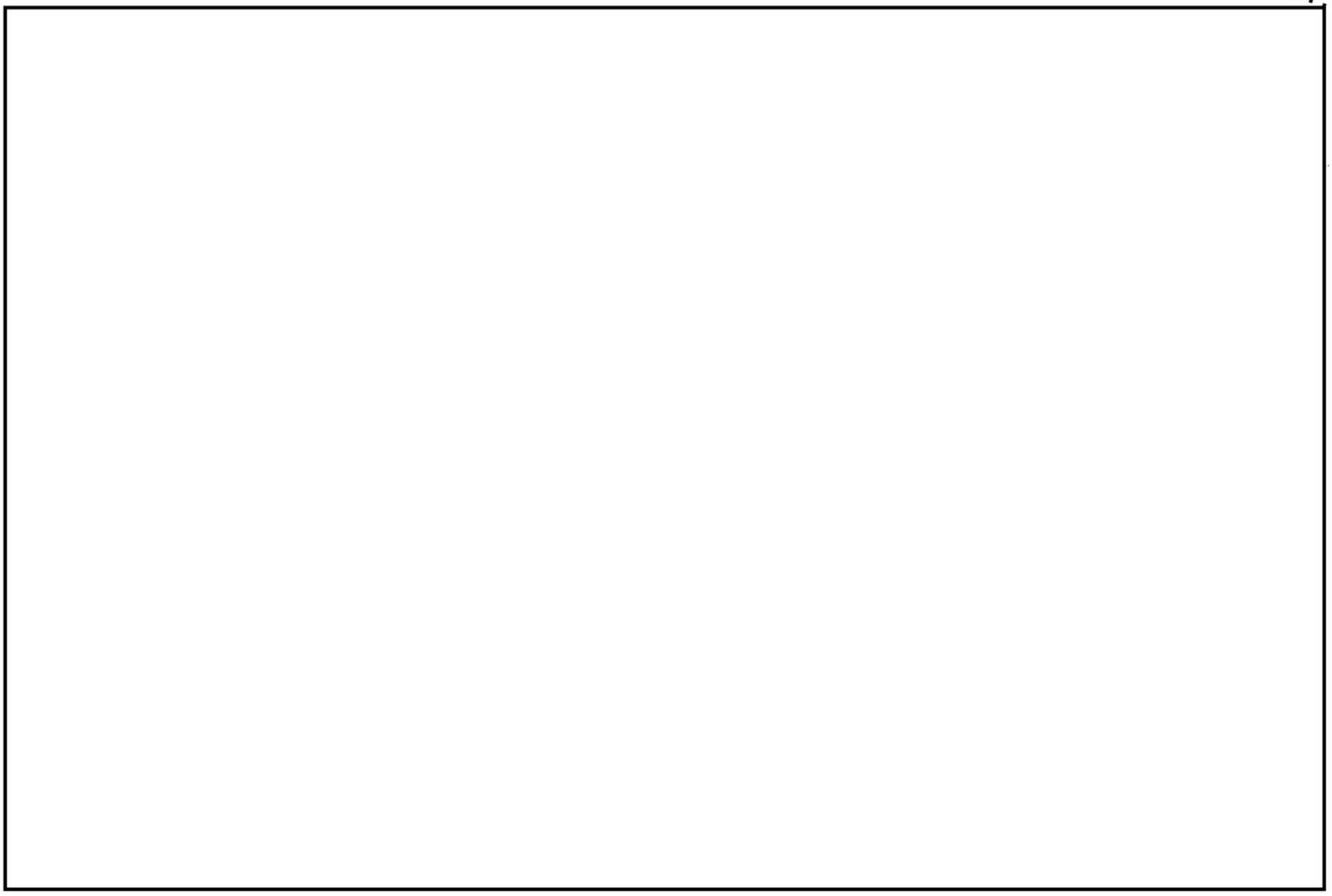
APPENDIX B

2014 Promotion Documentation

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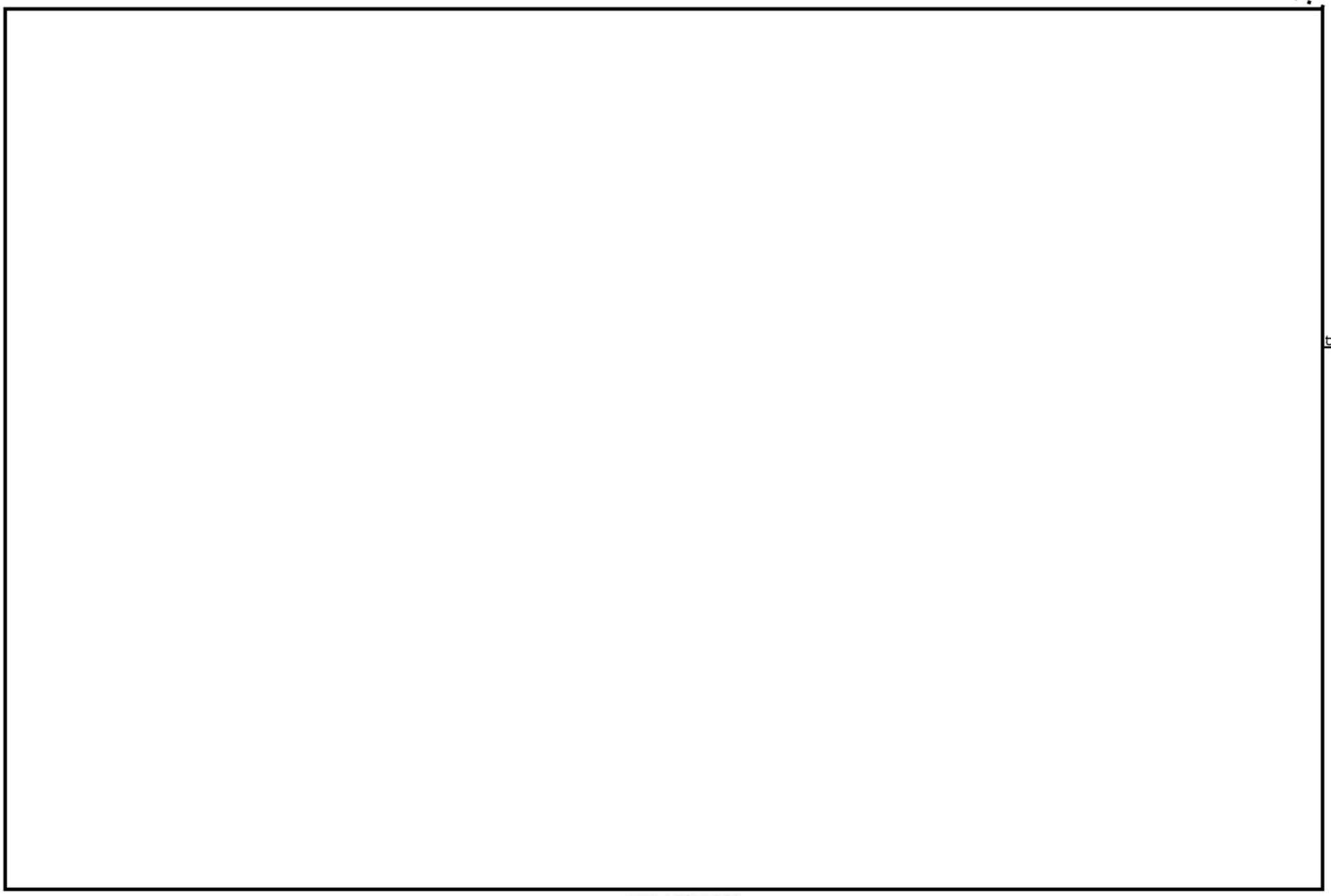
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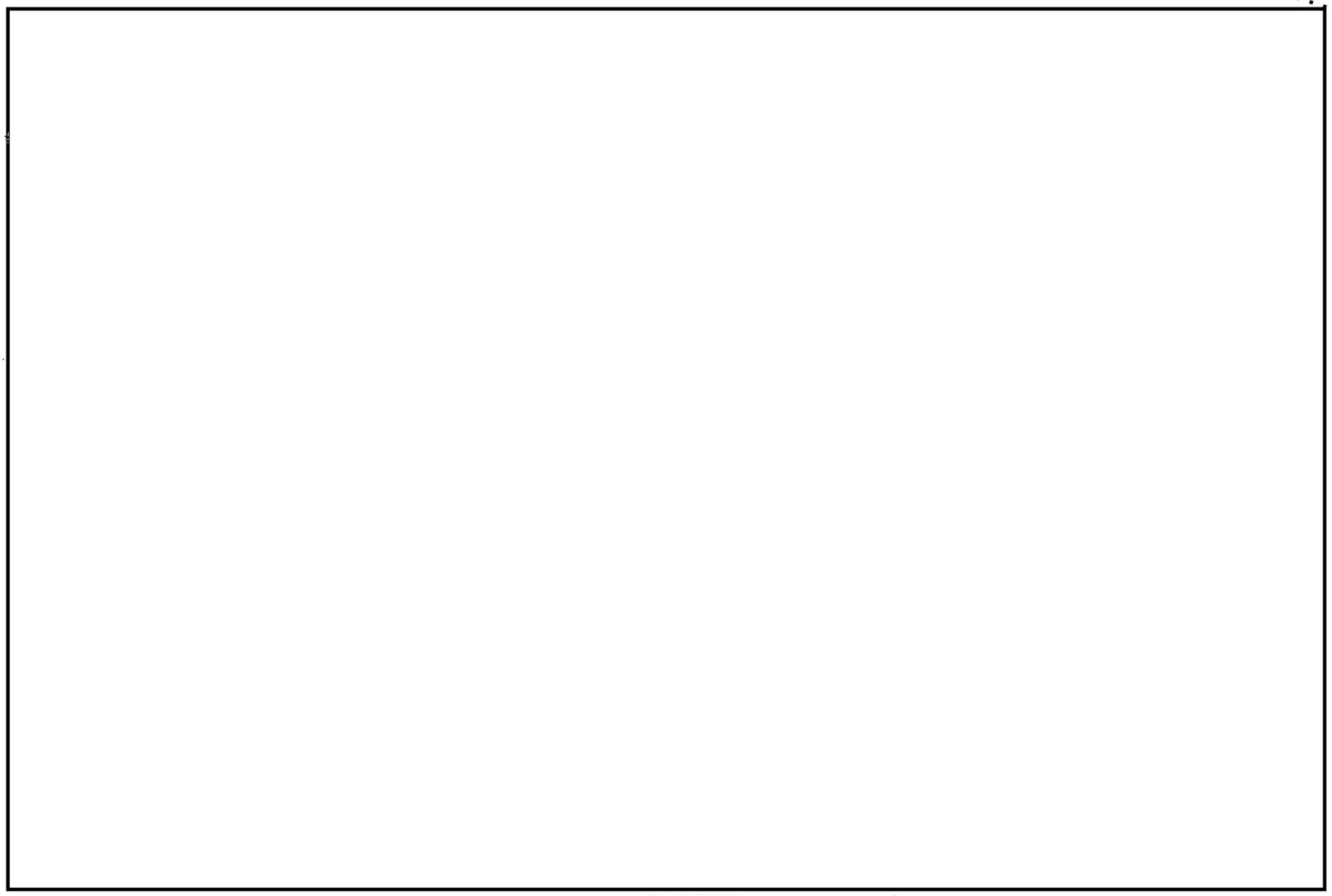
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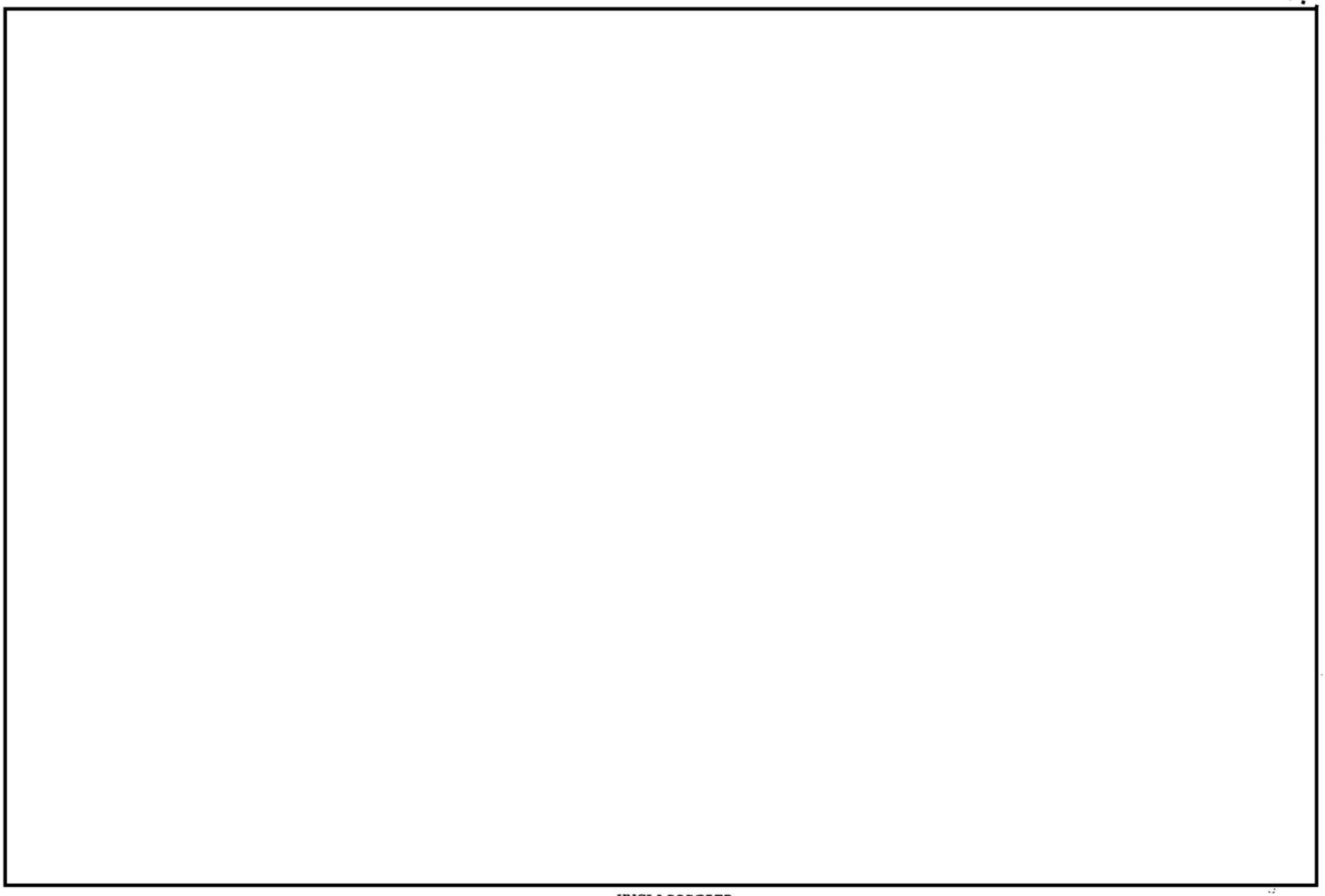
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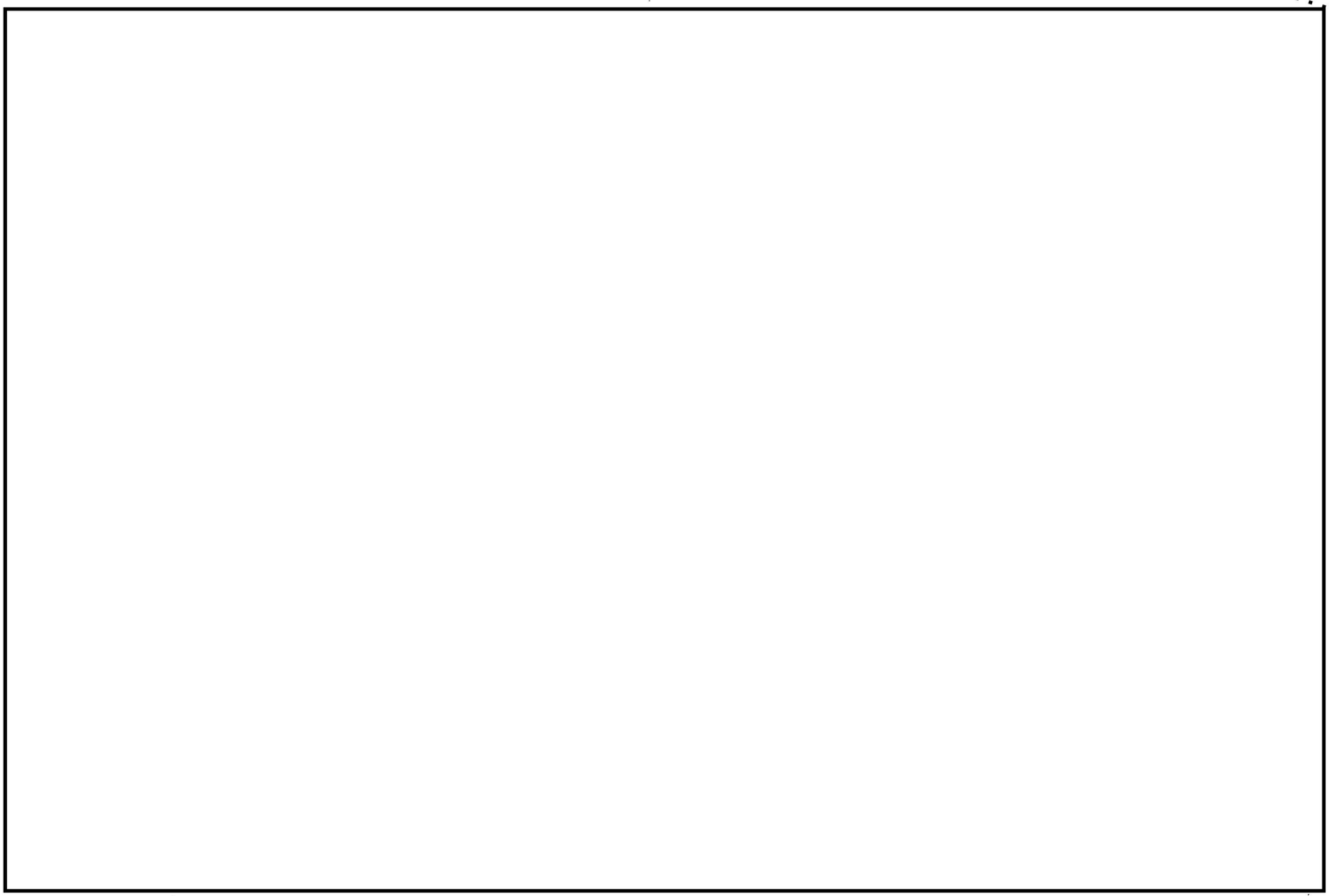
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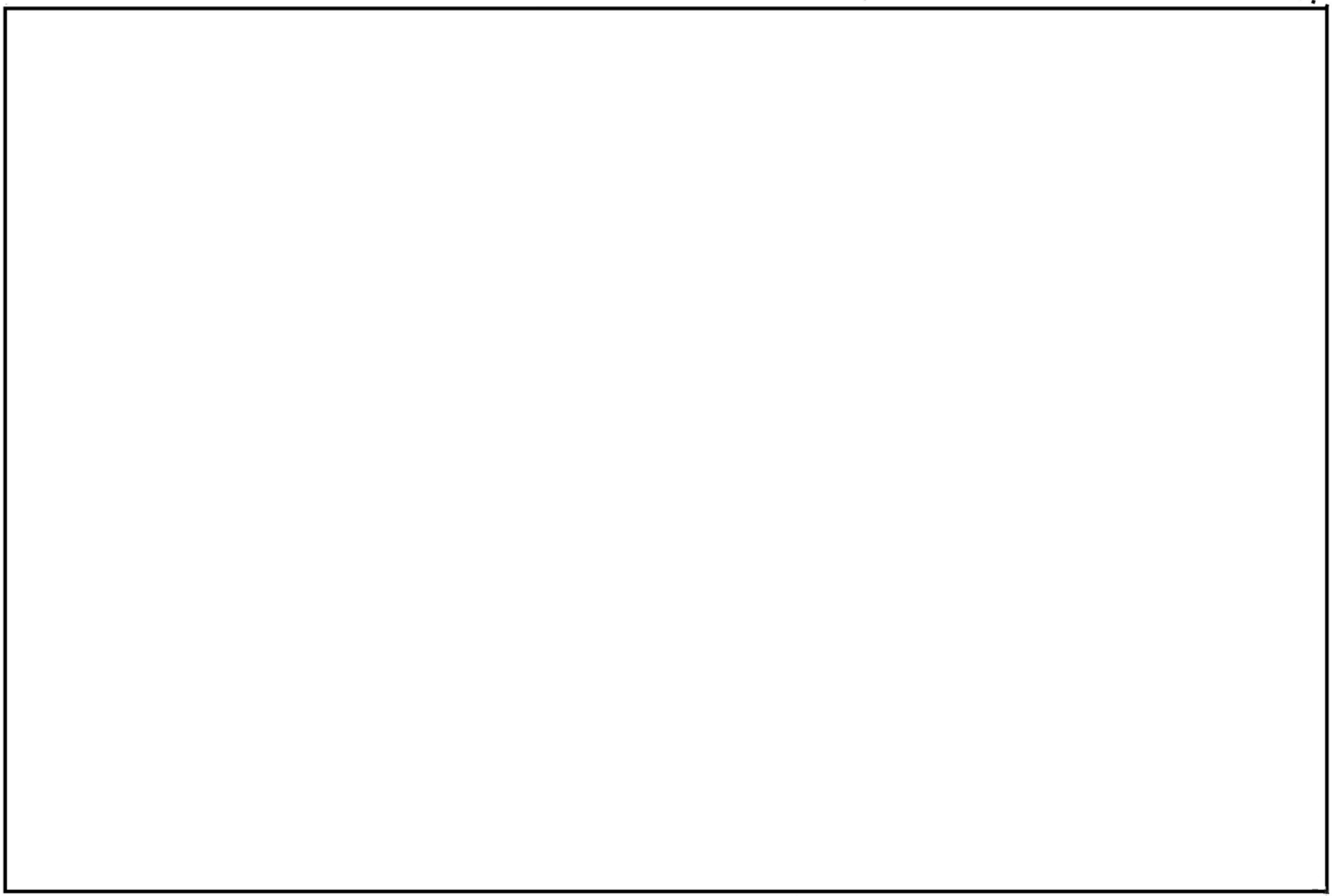
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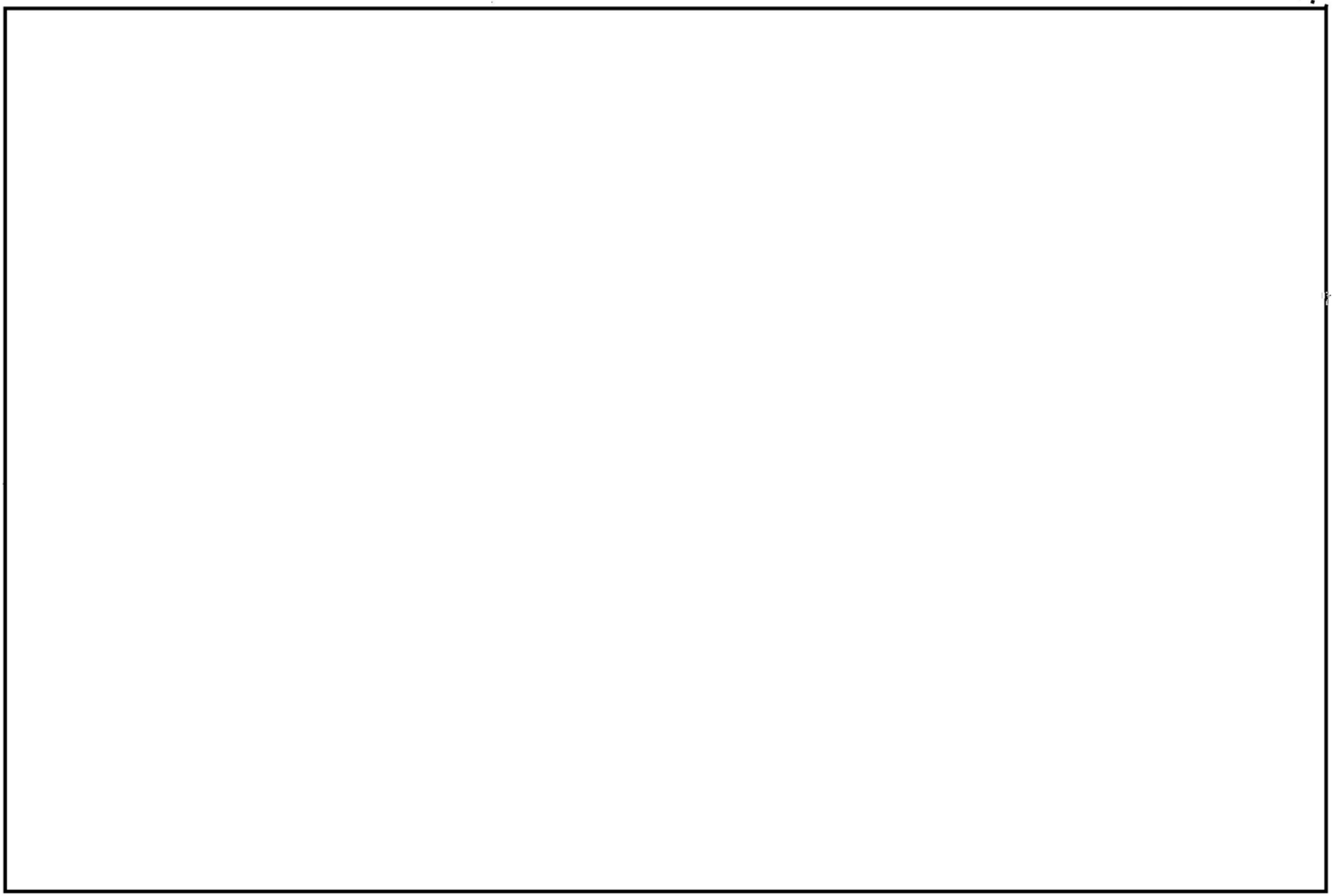
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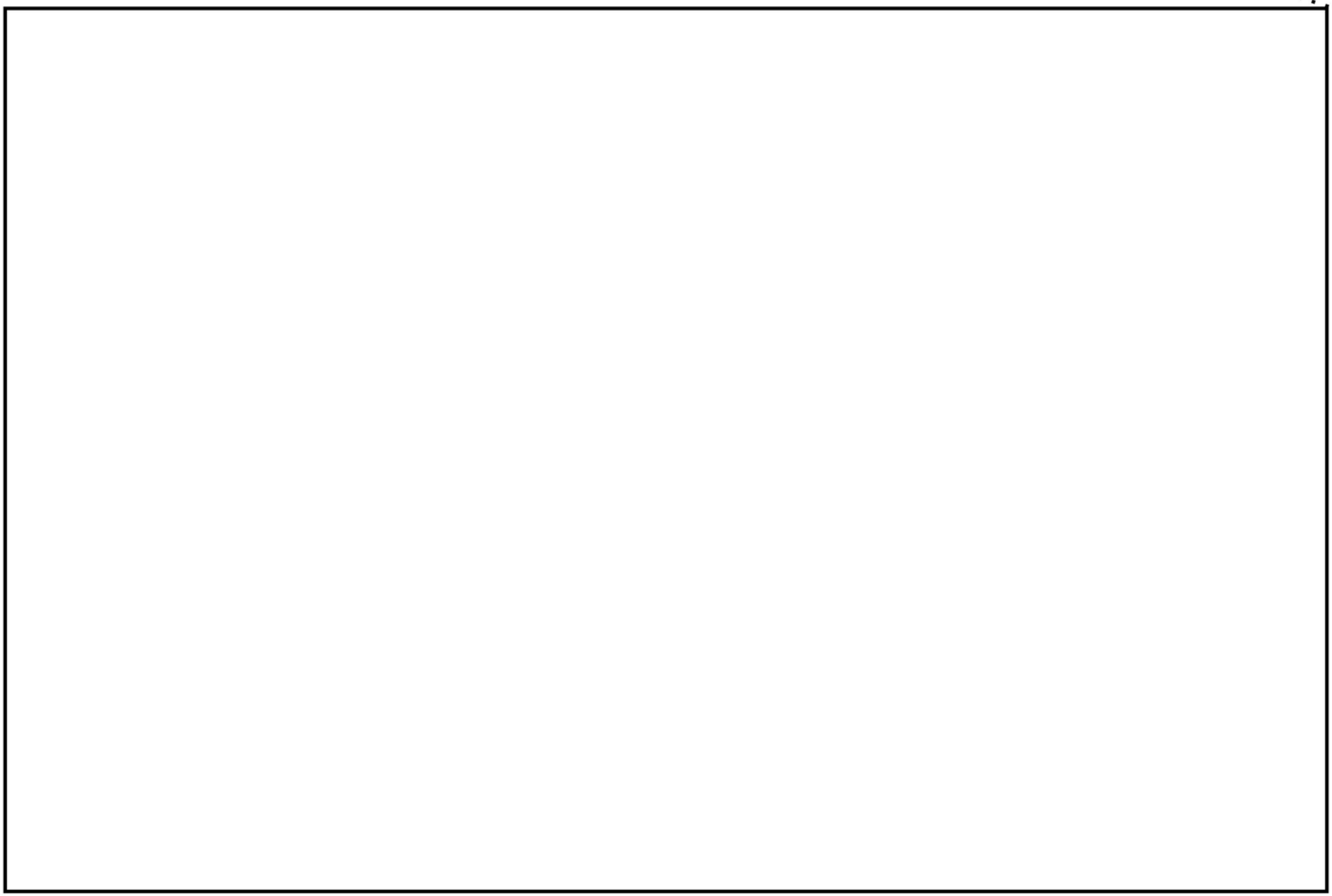
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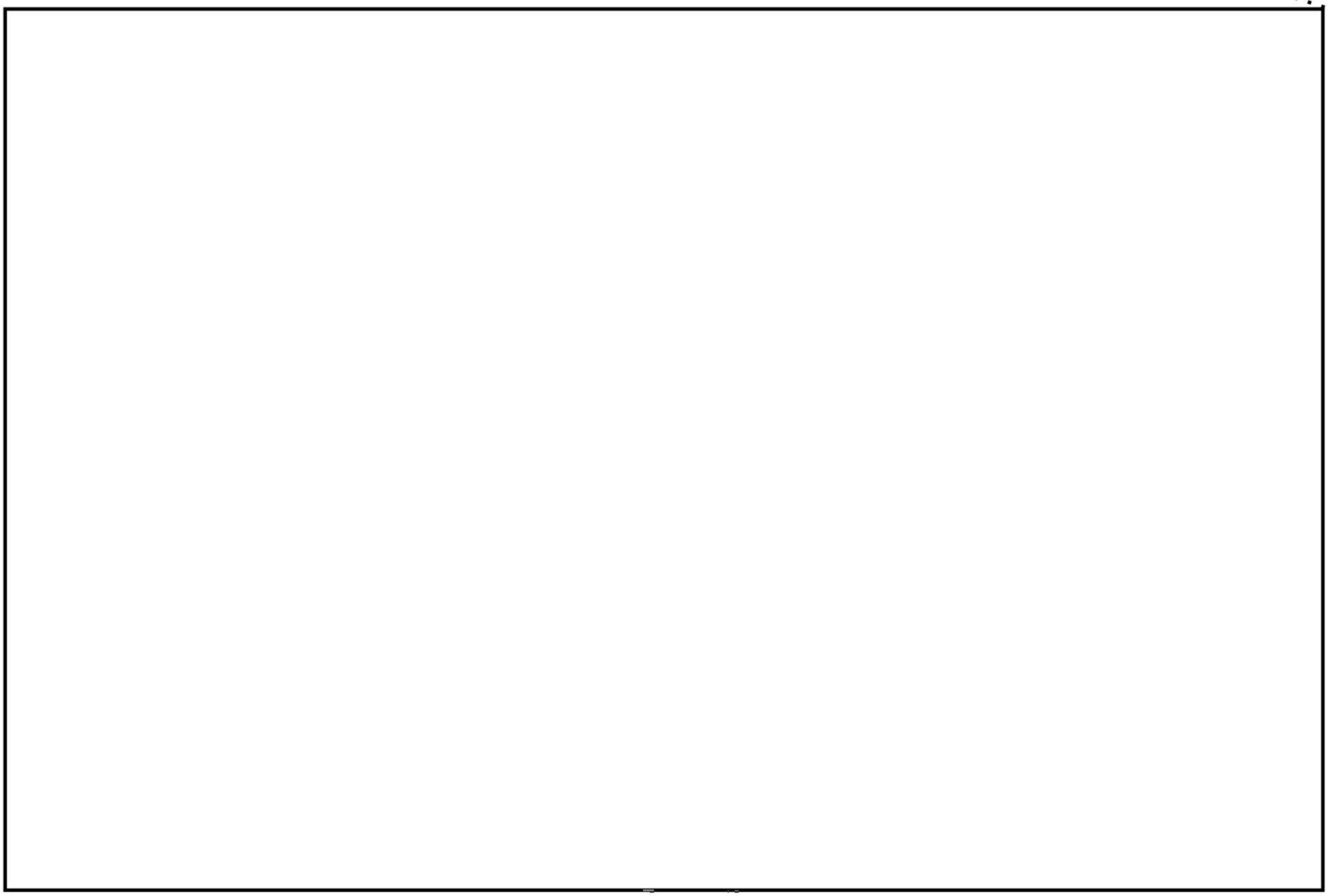
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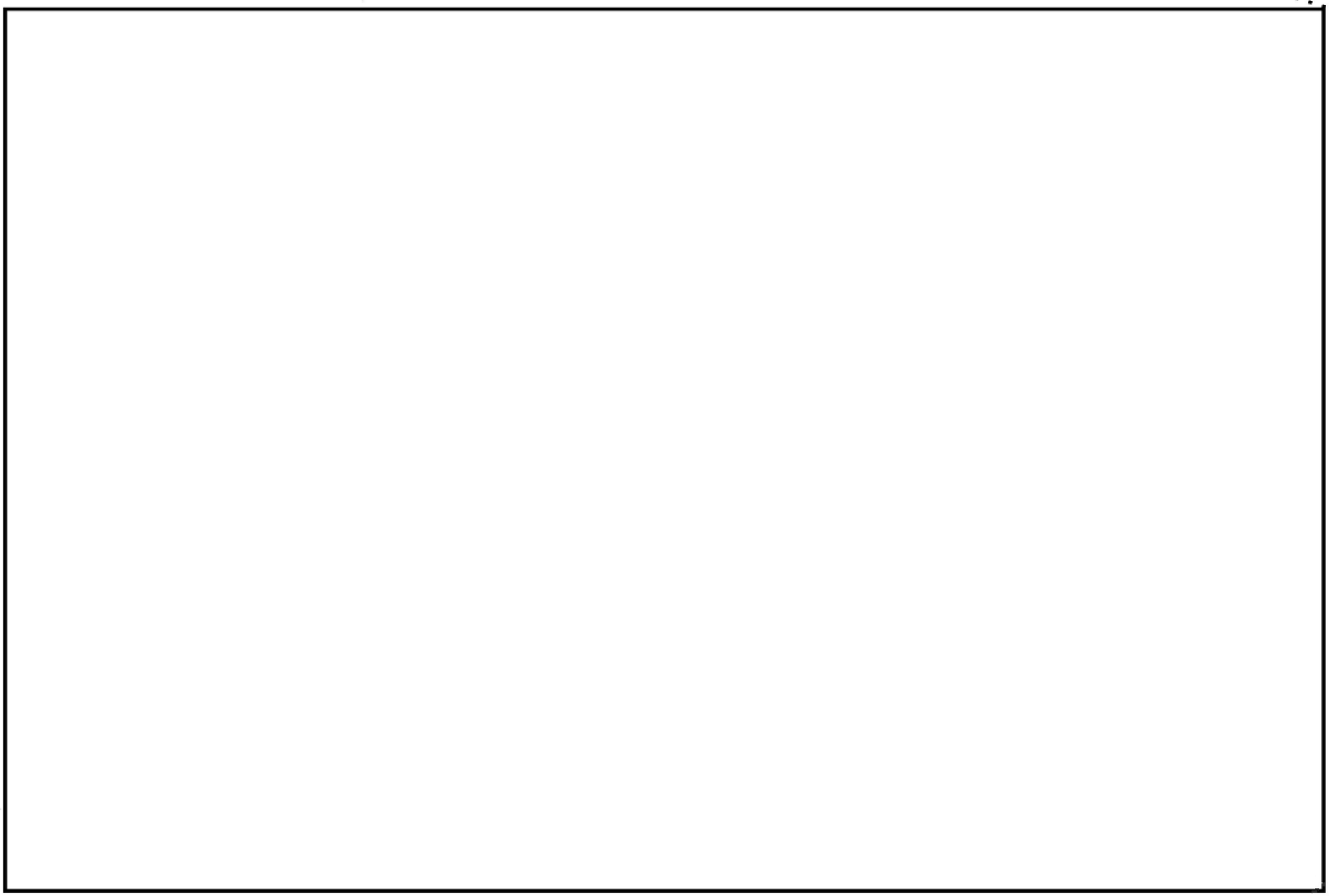
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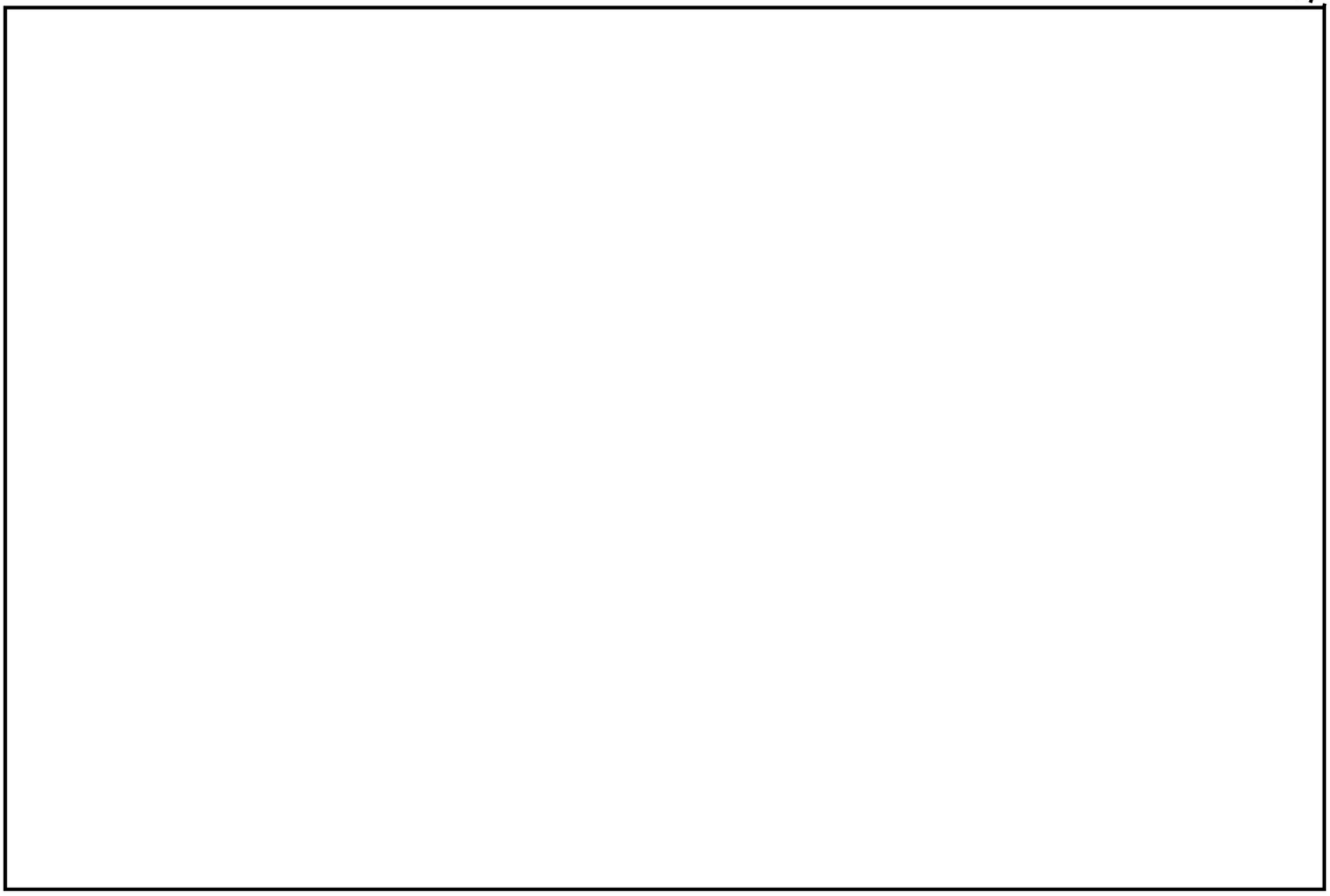
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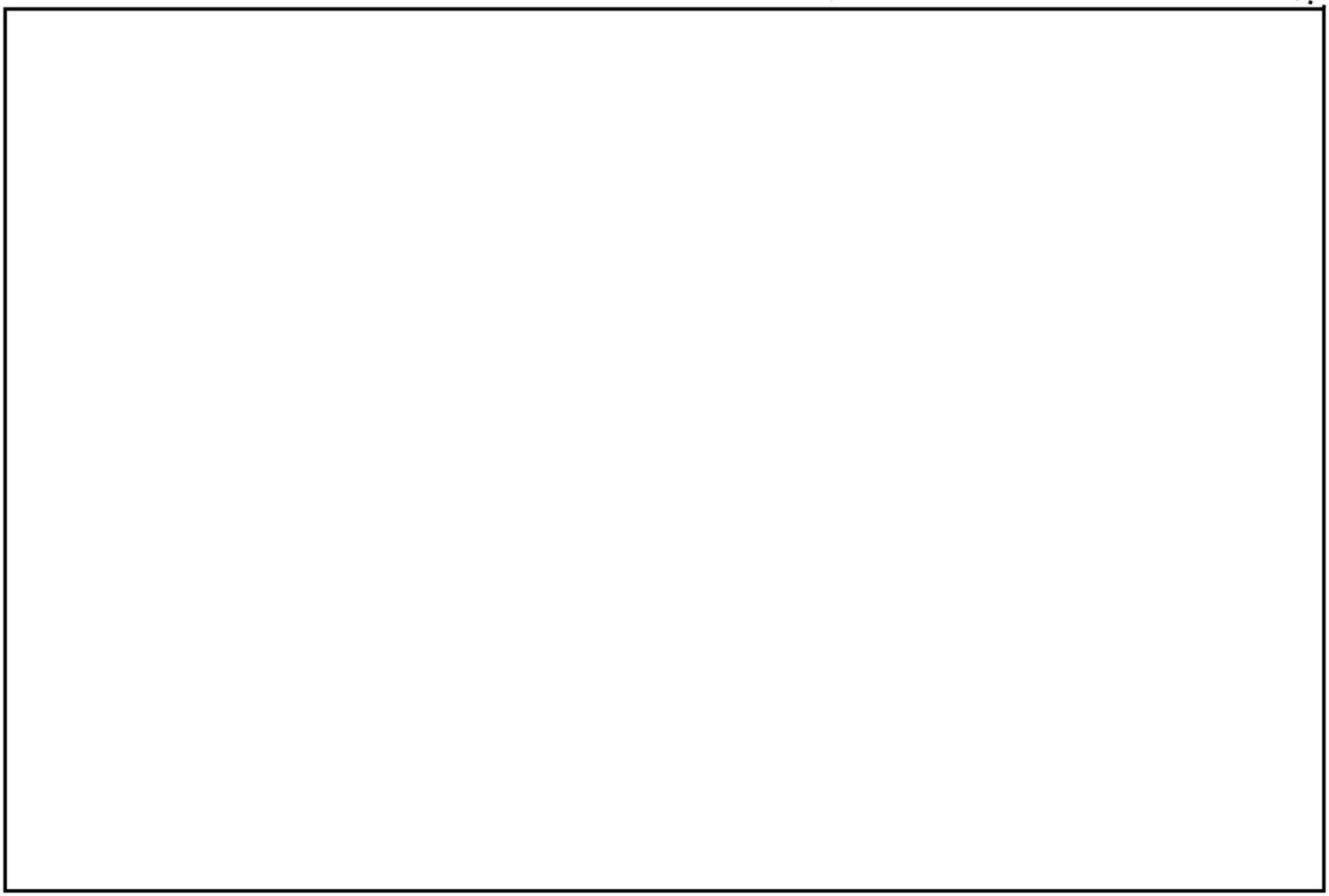
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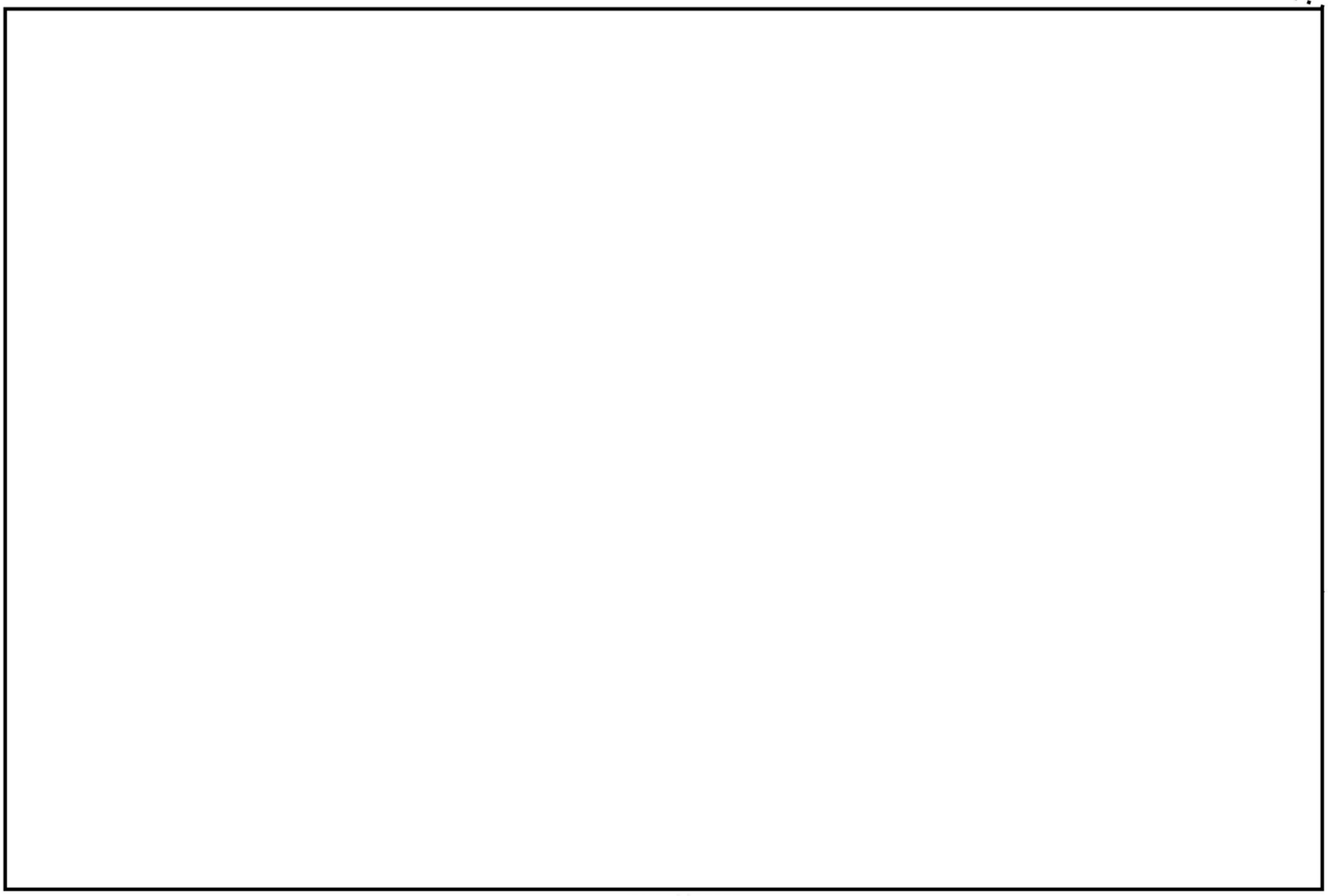
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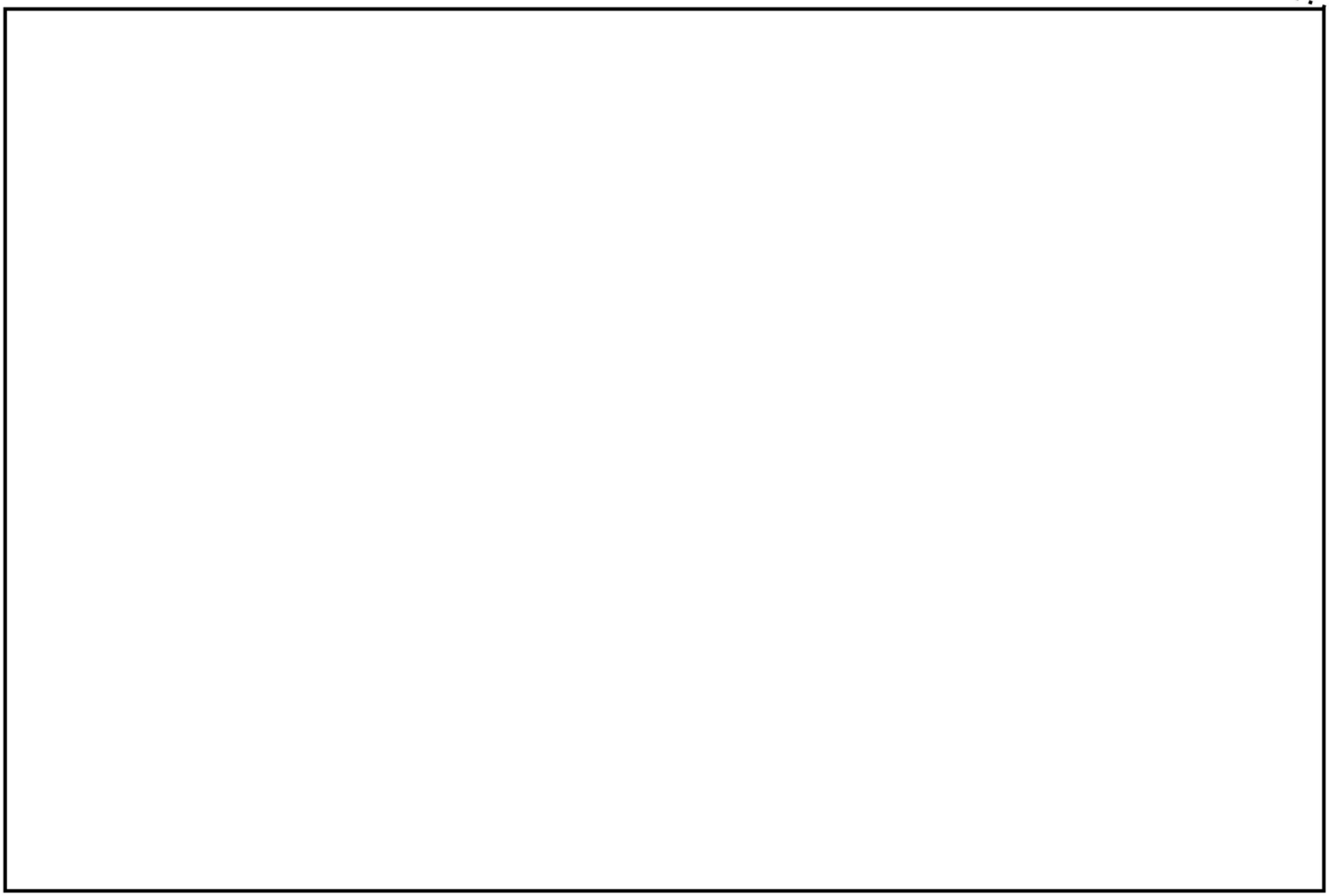
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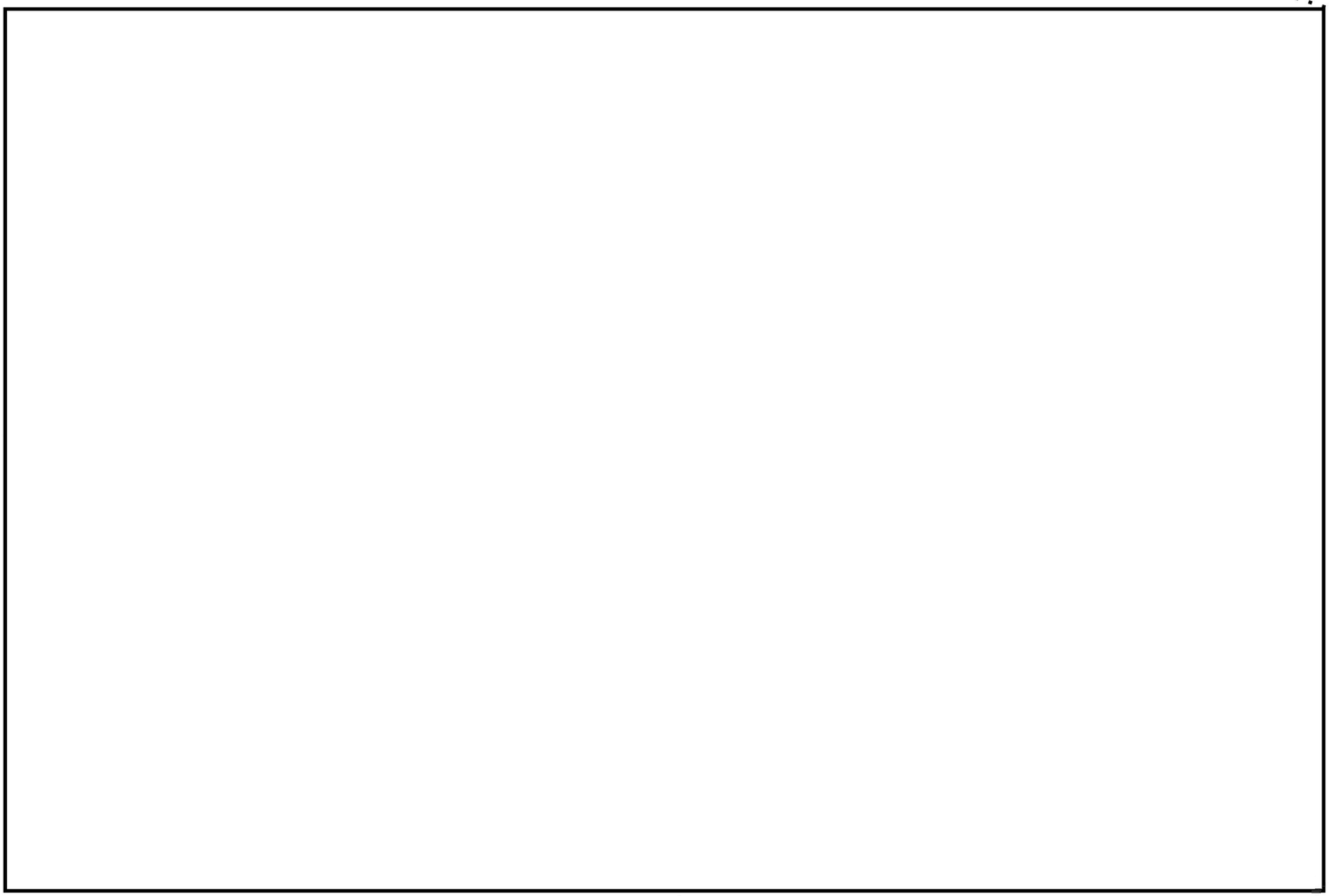
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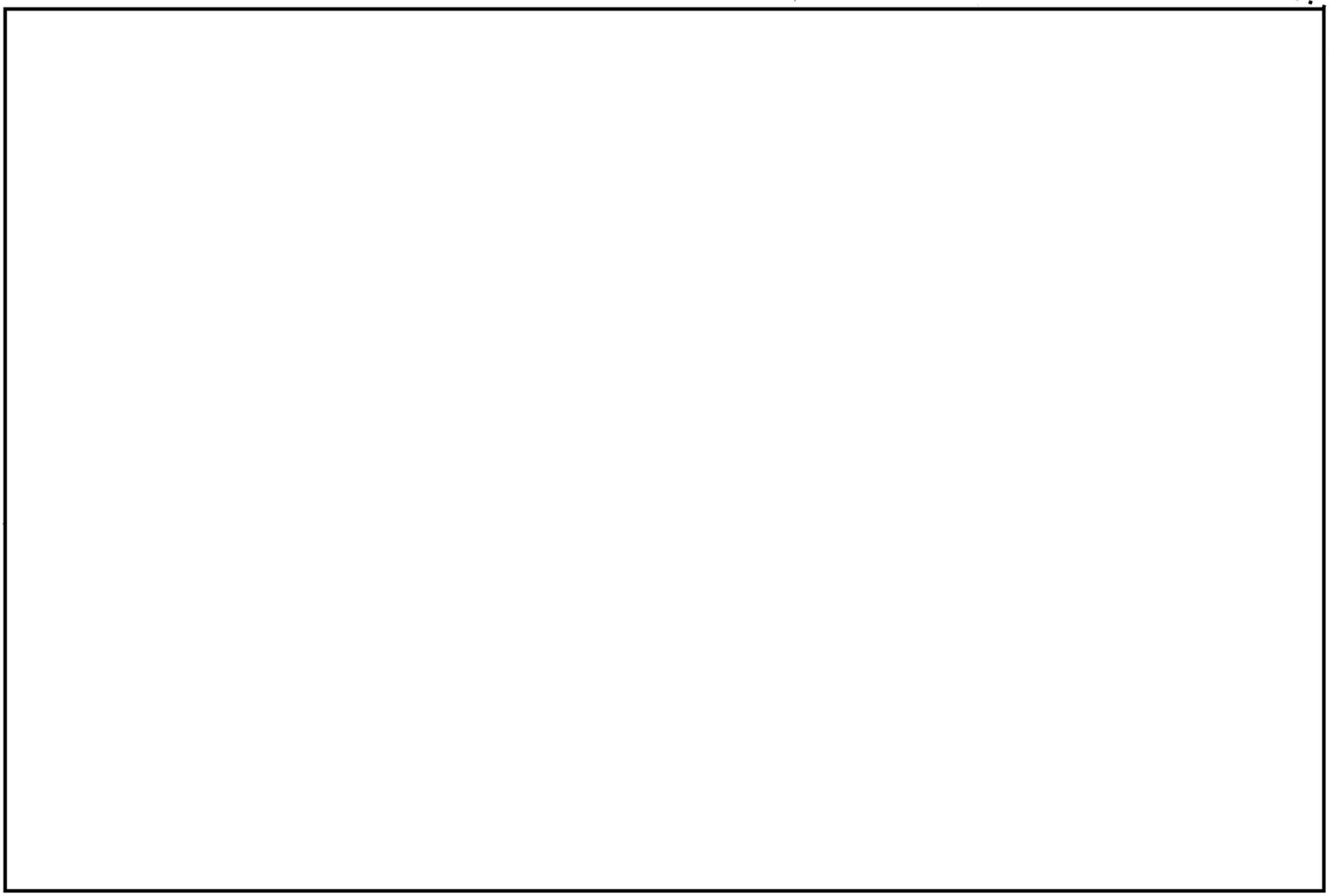
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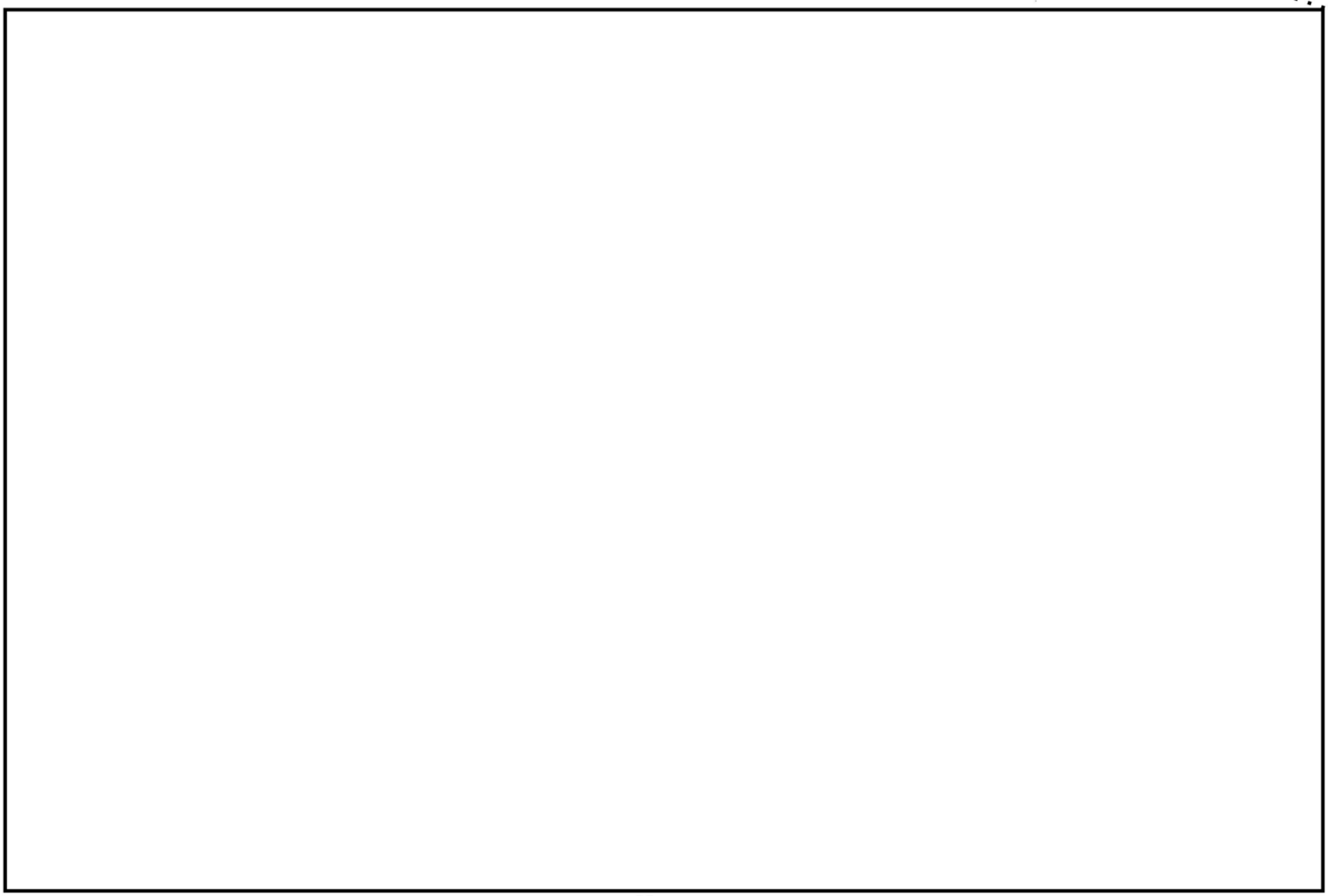
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APPENDIX C

2015 Promotion Documentation

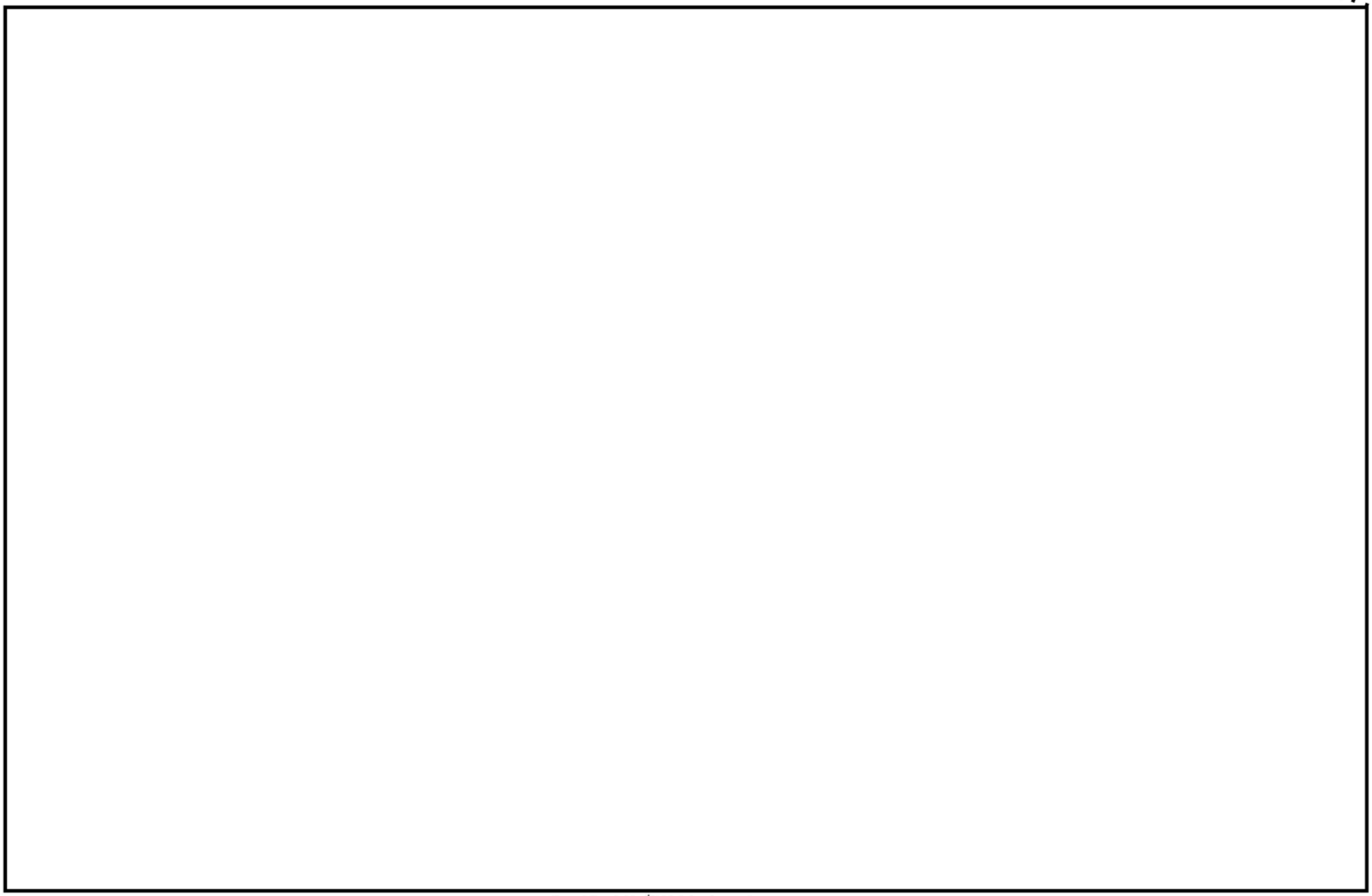
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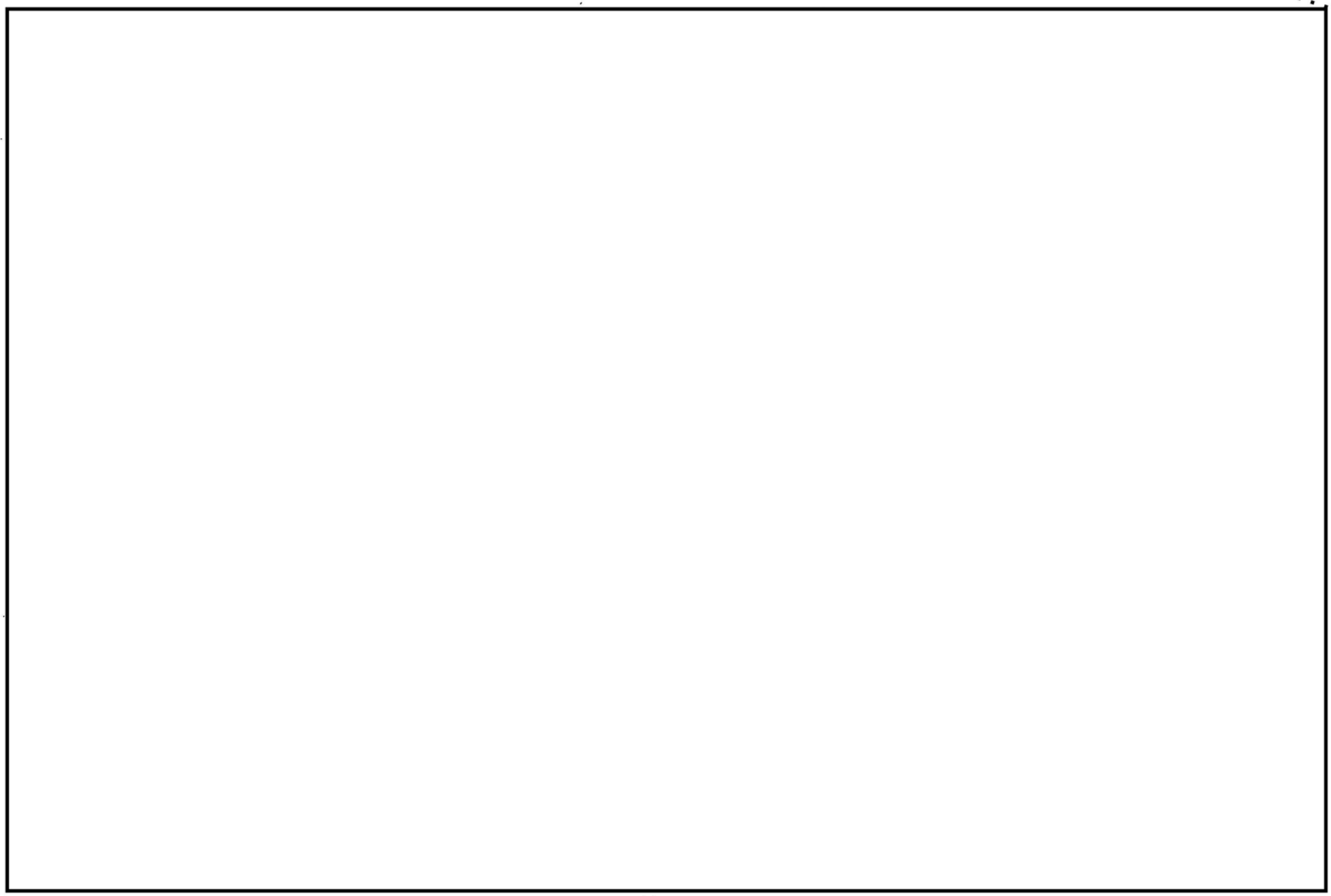
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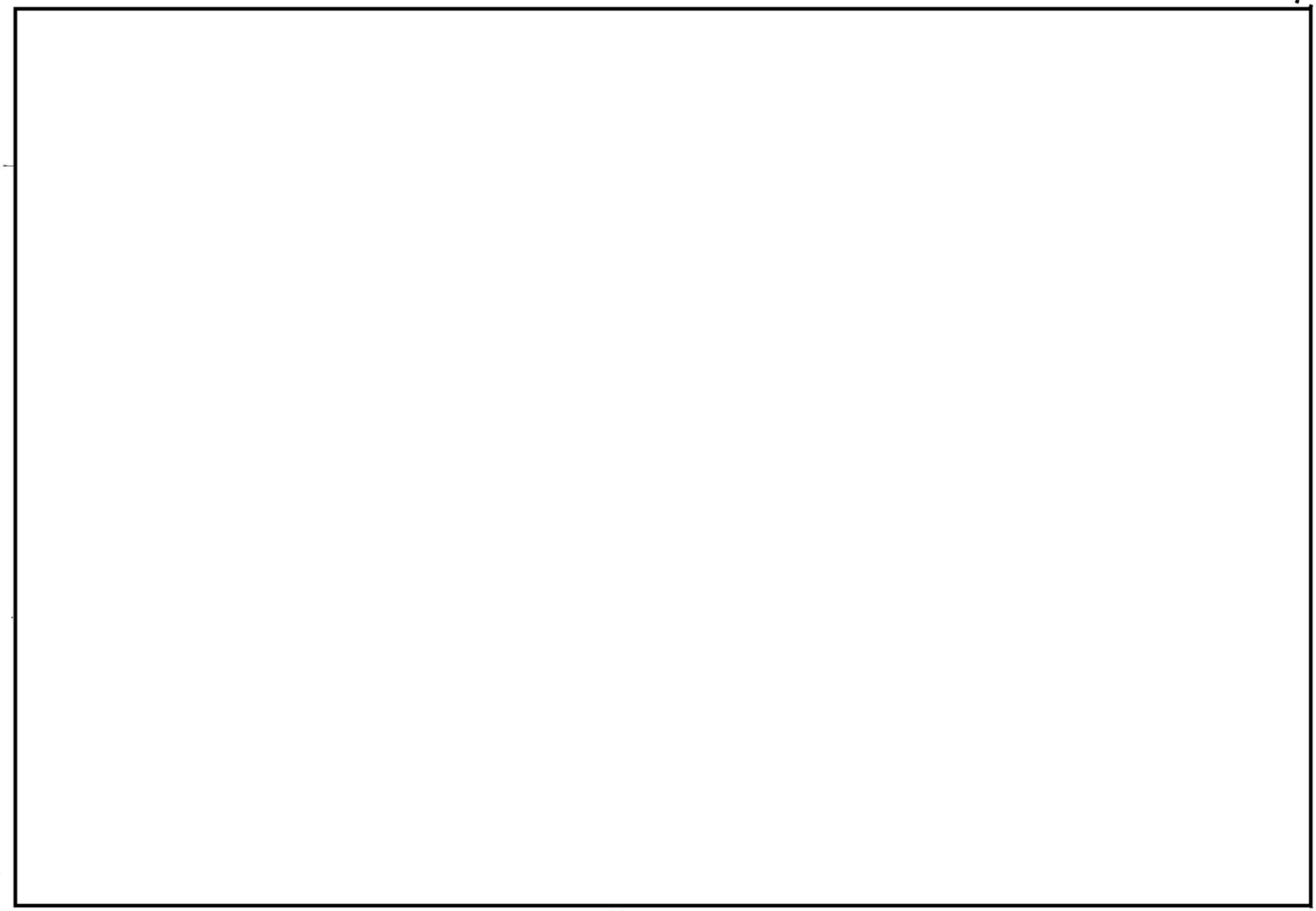
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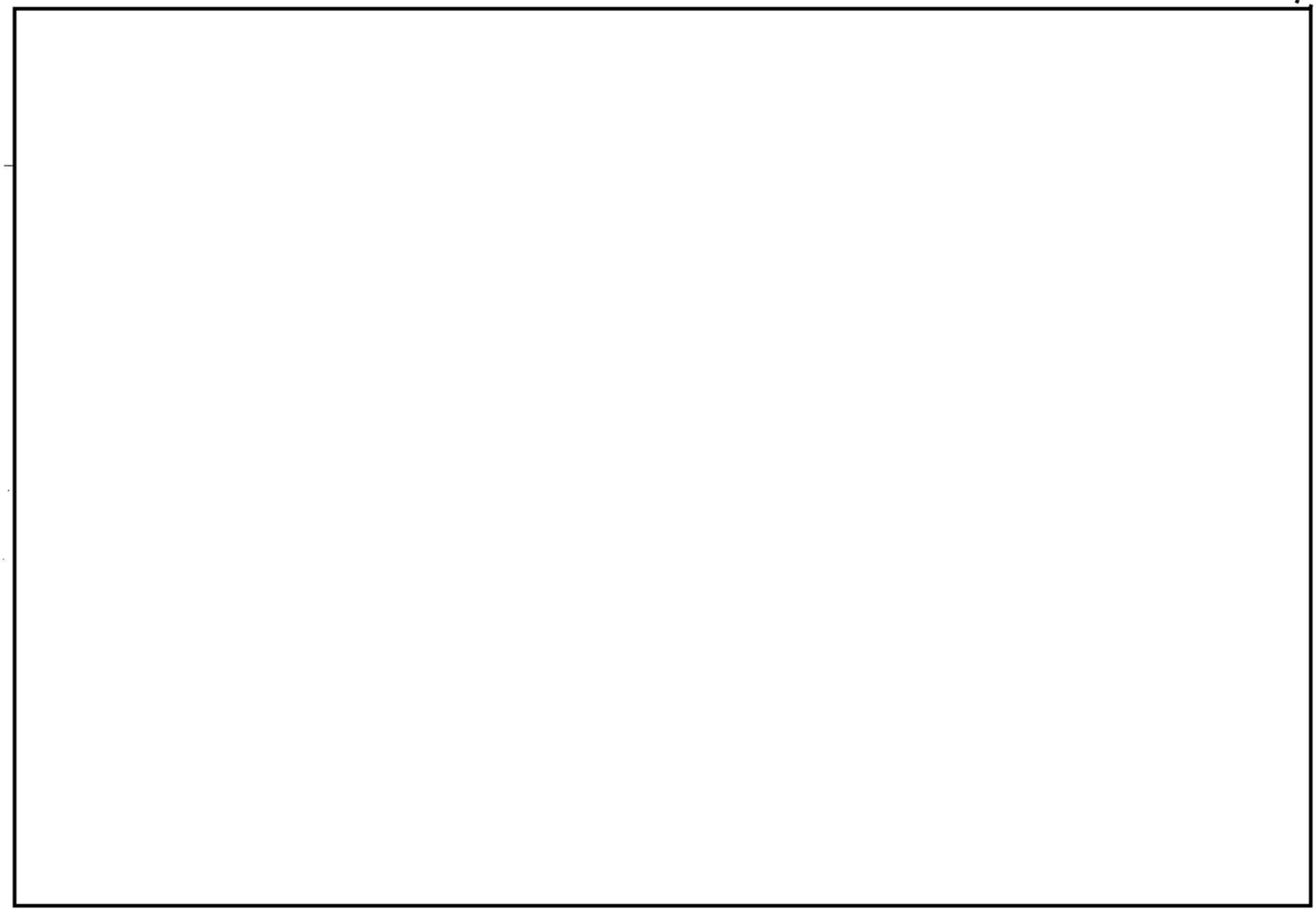
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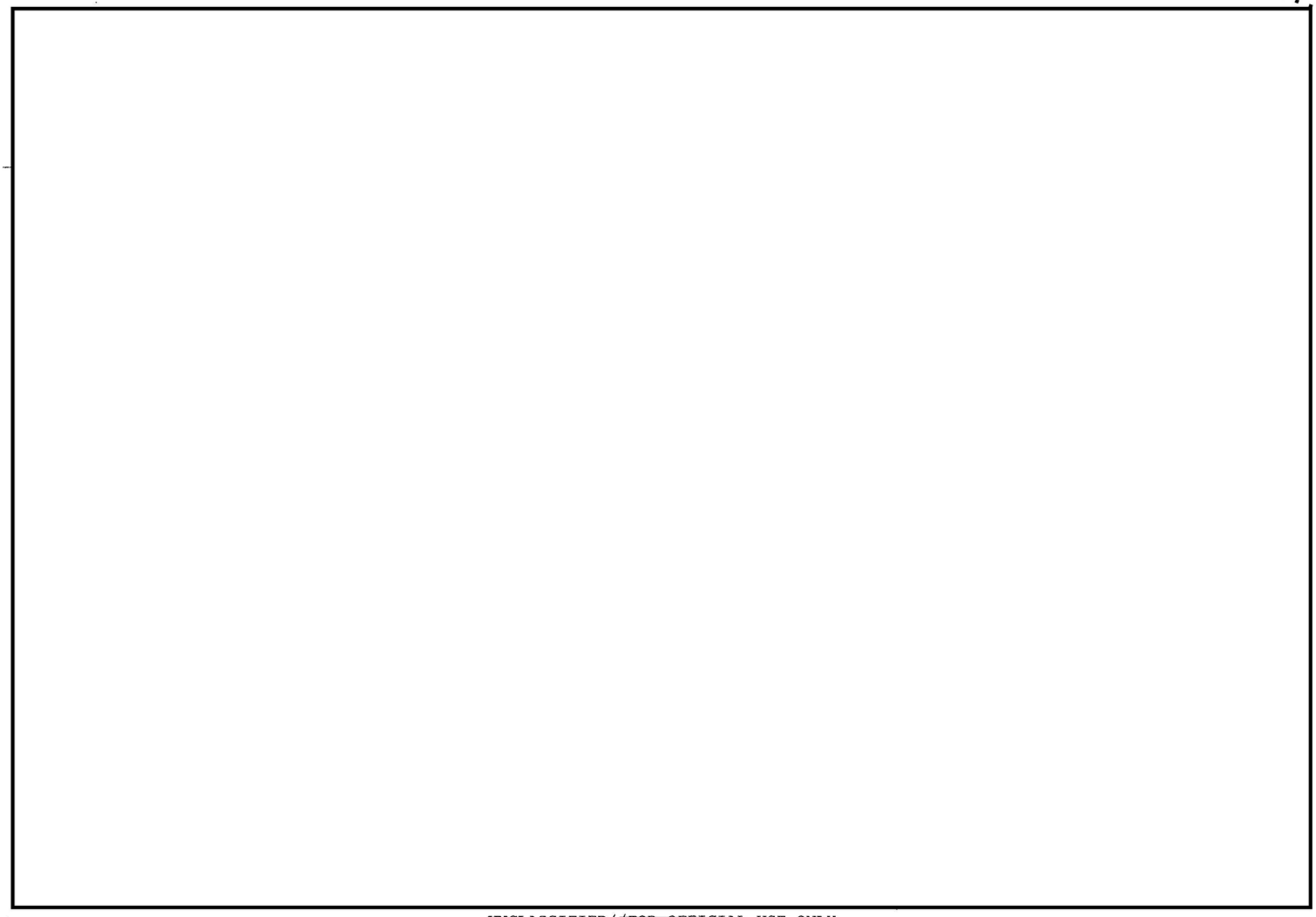


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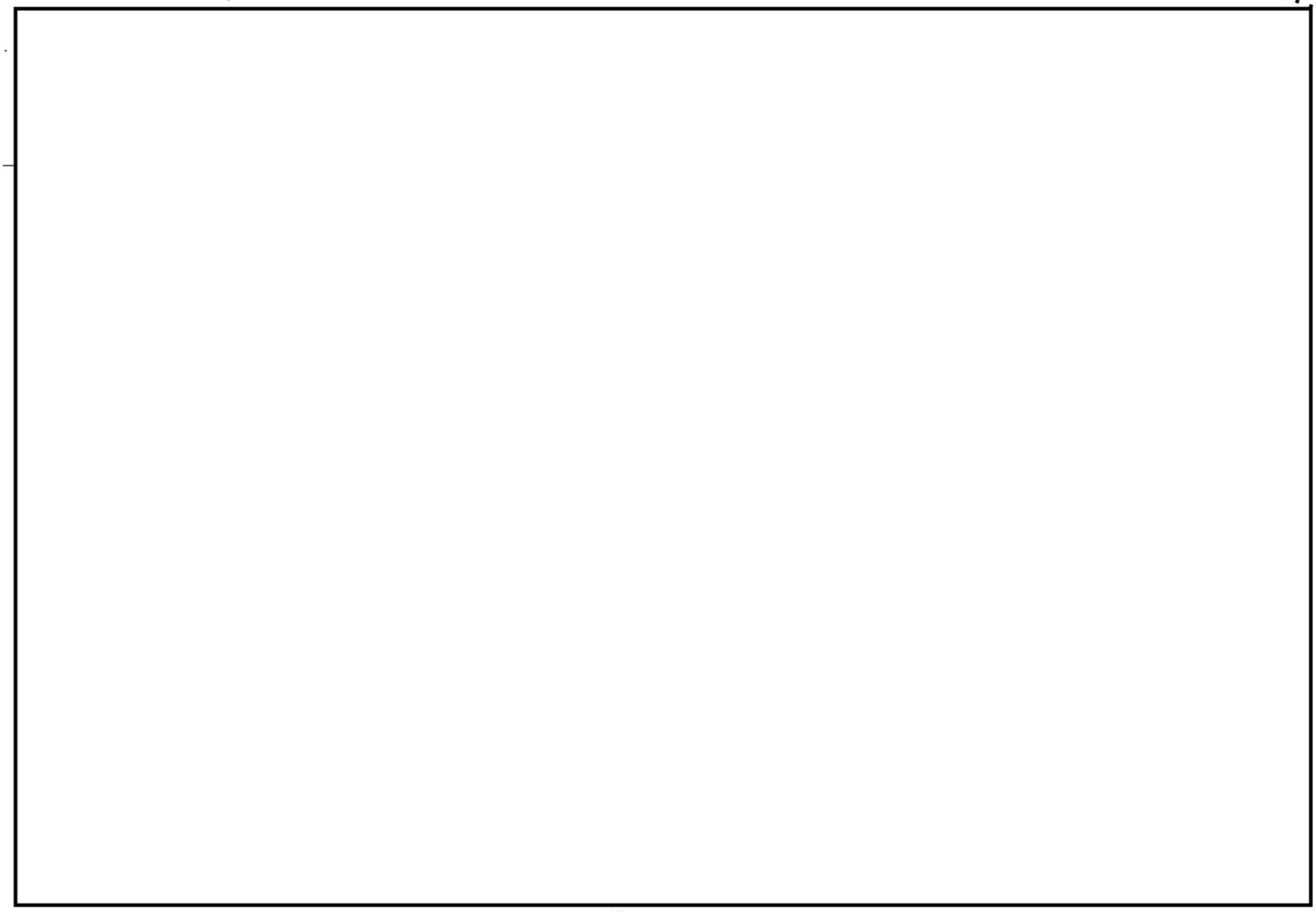


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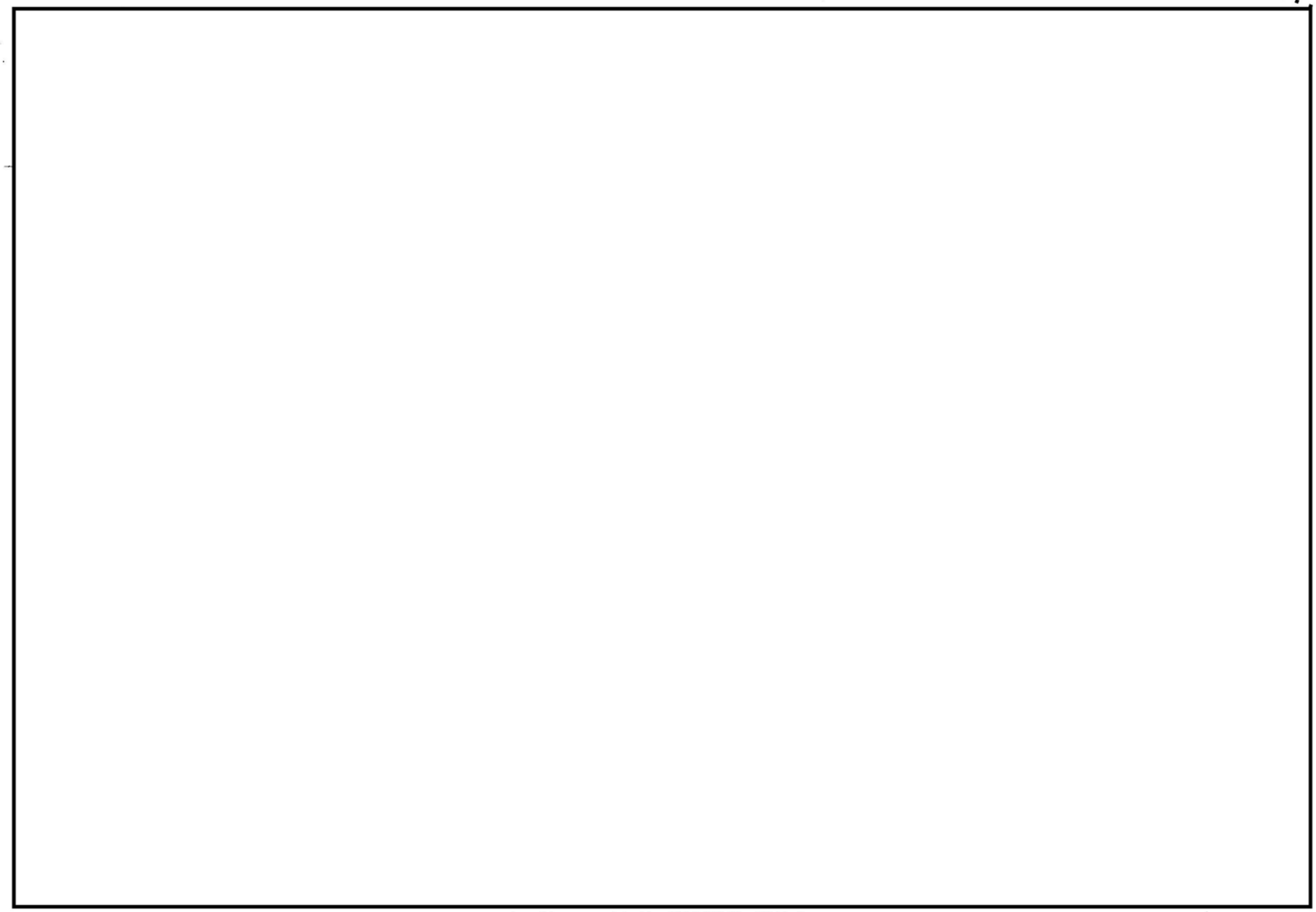
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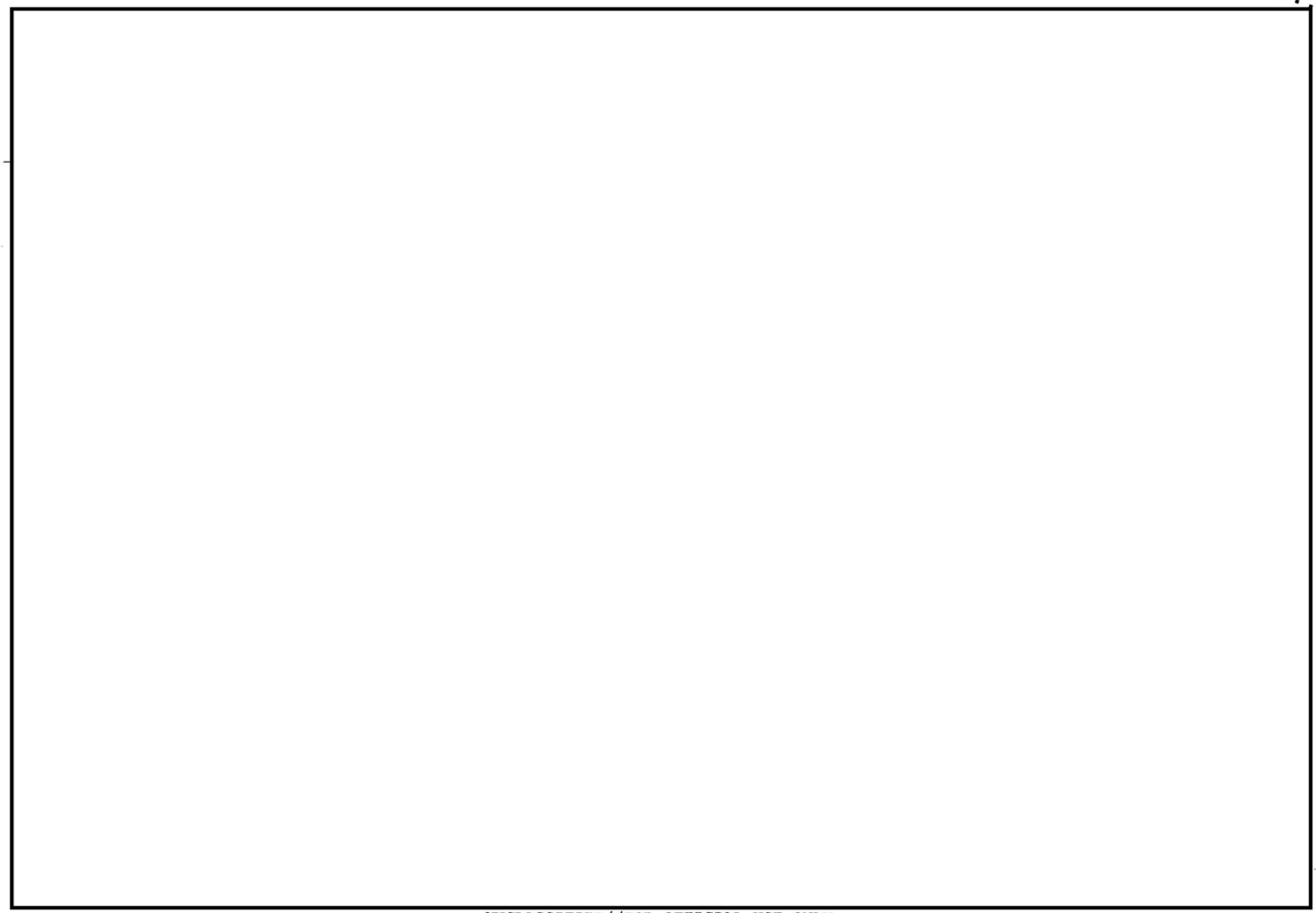
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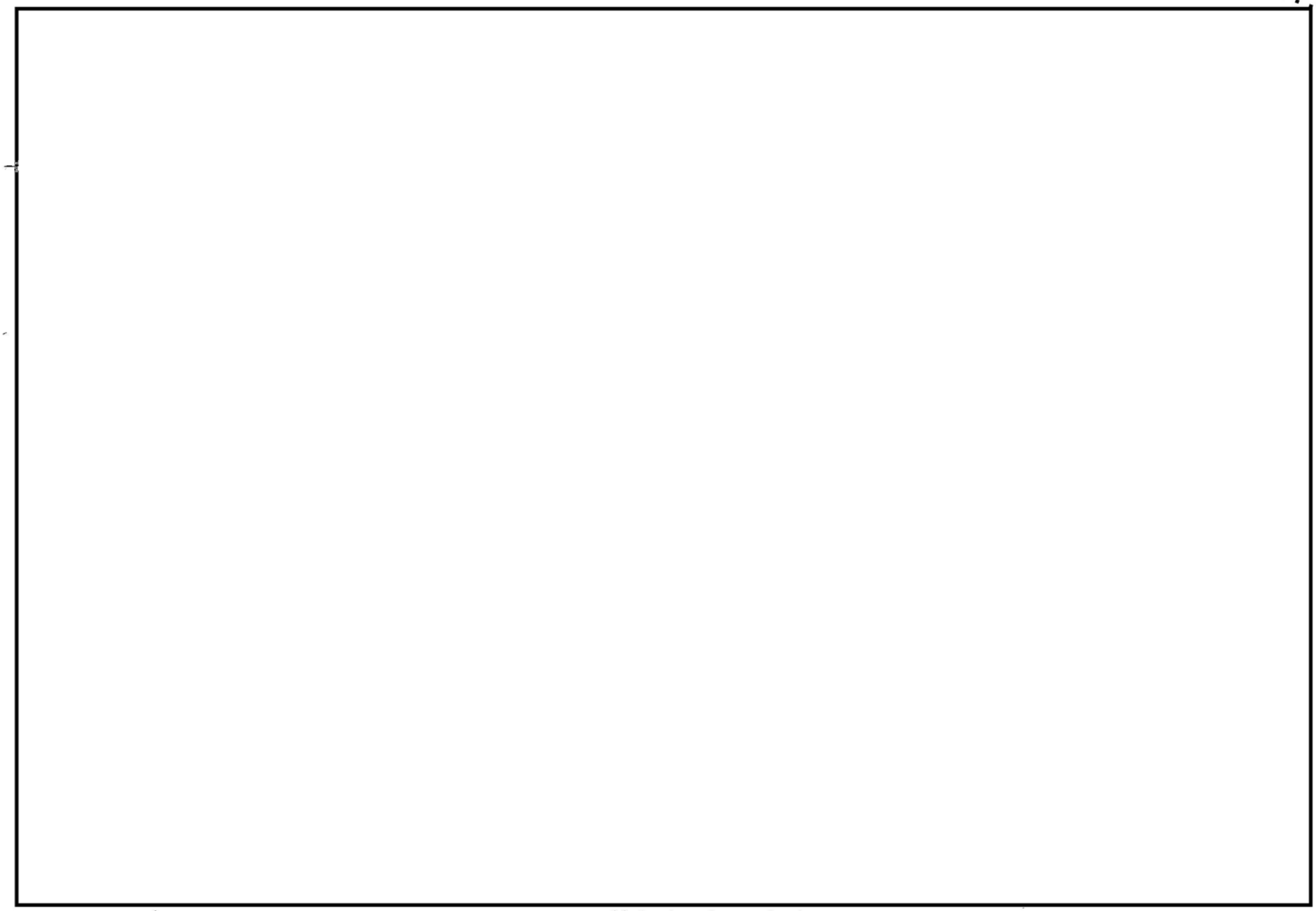
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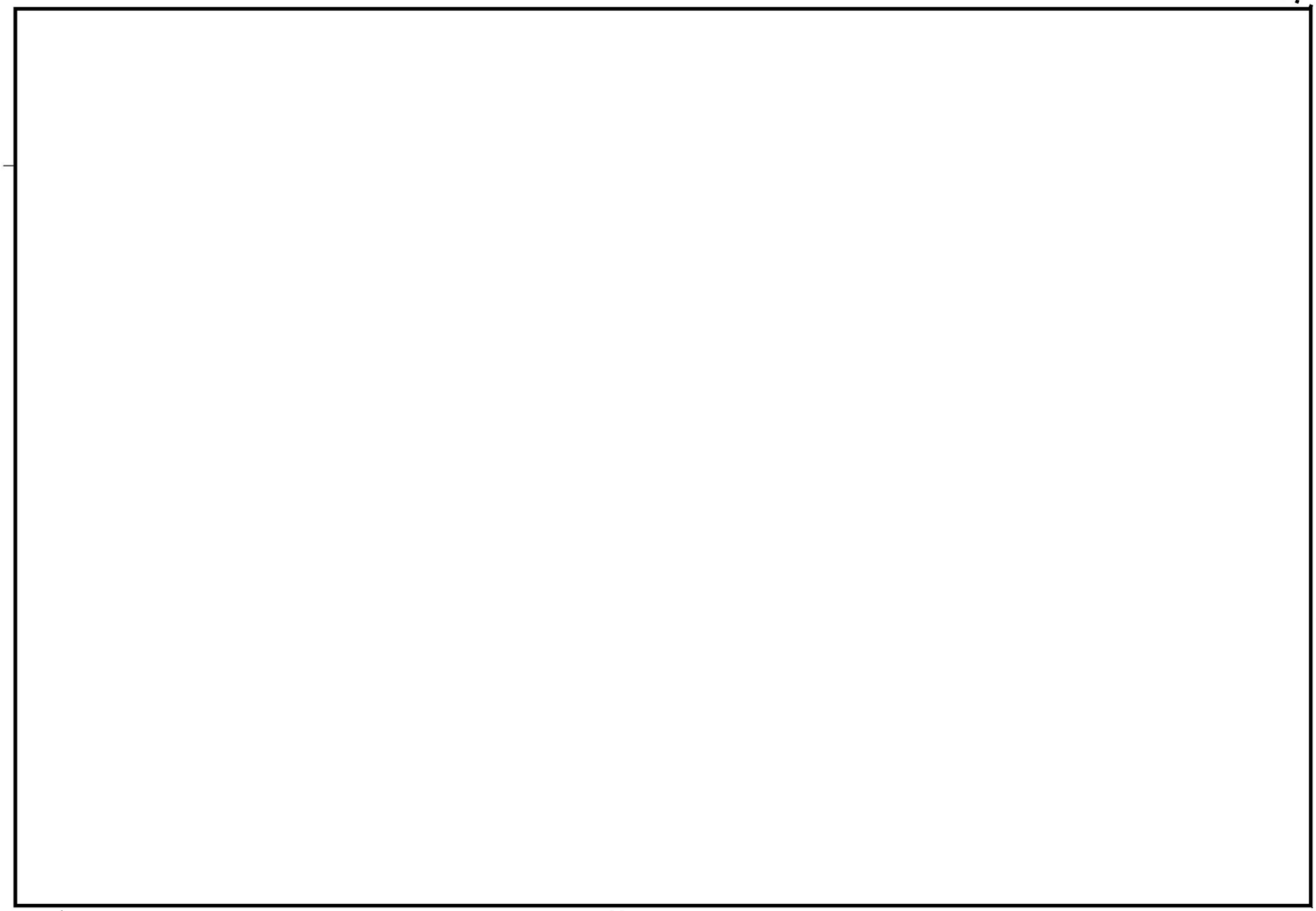
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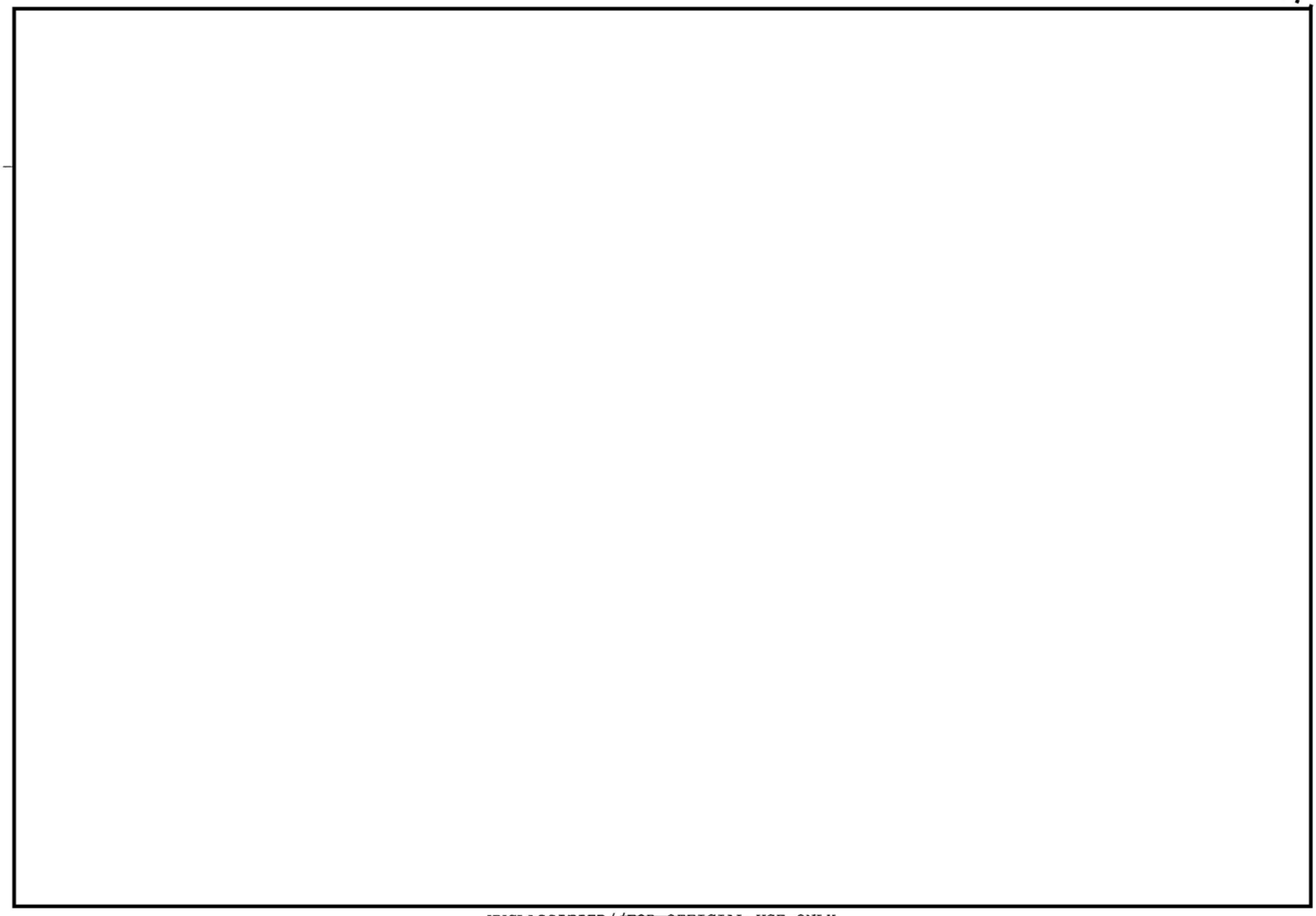
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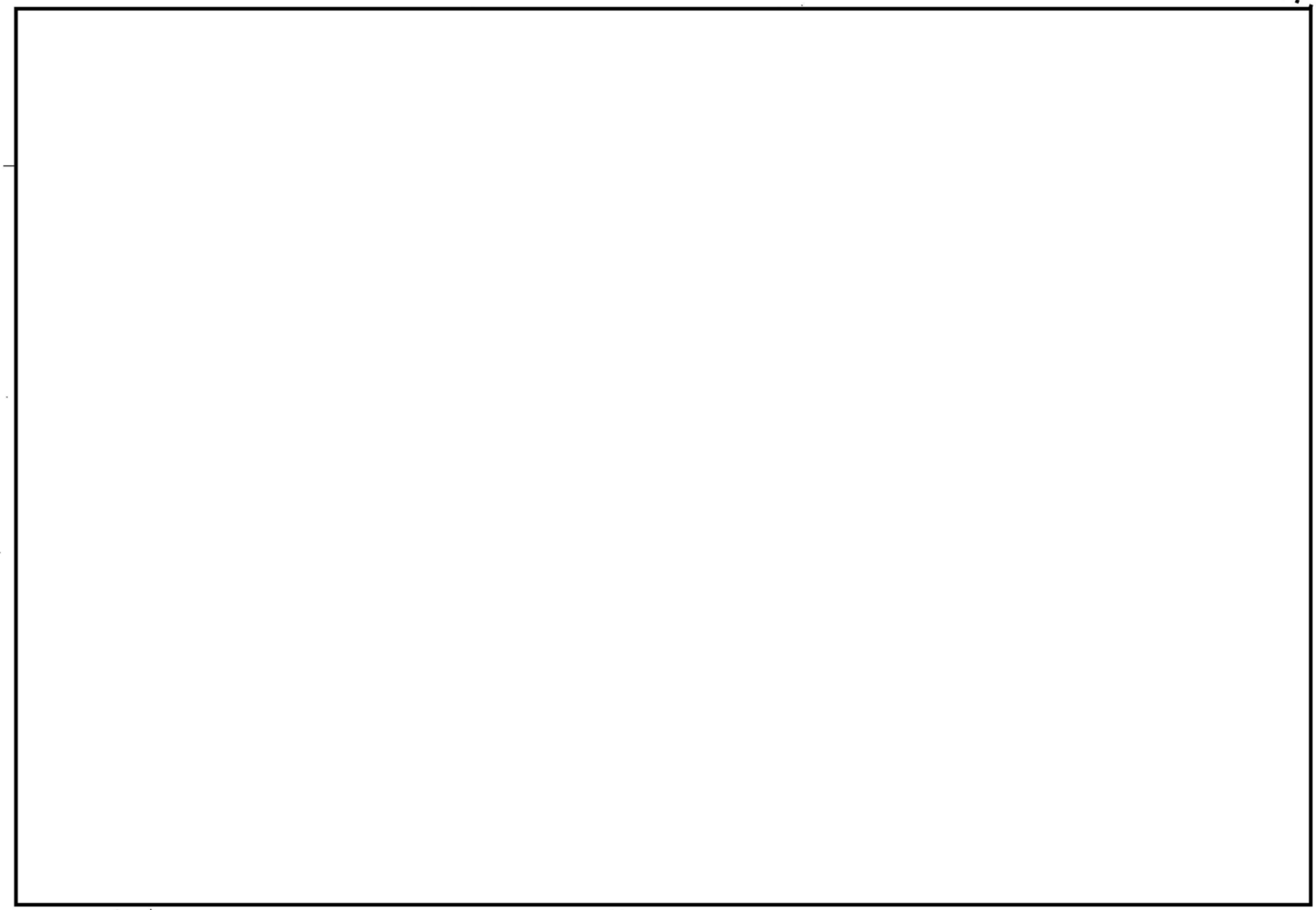
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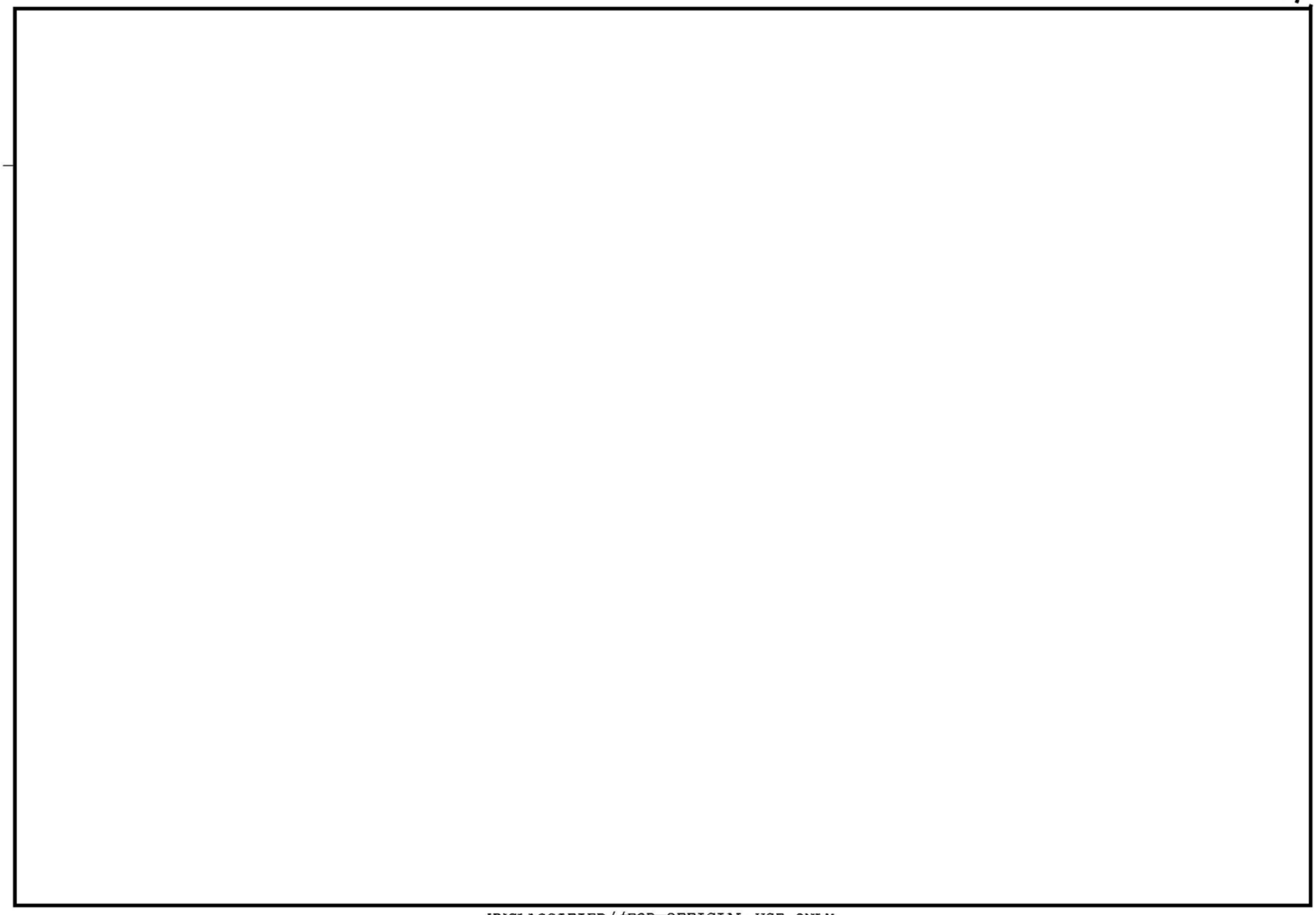
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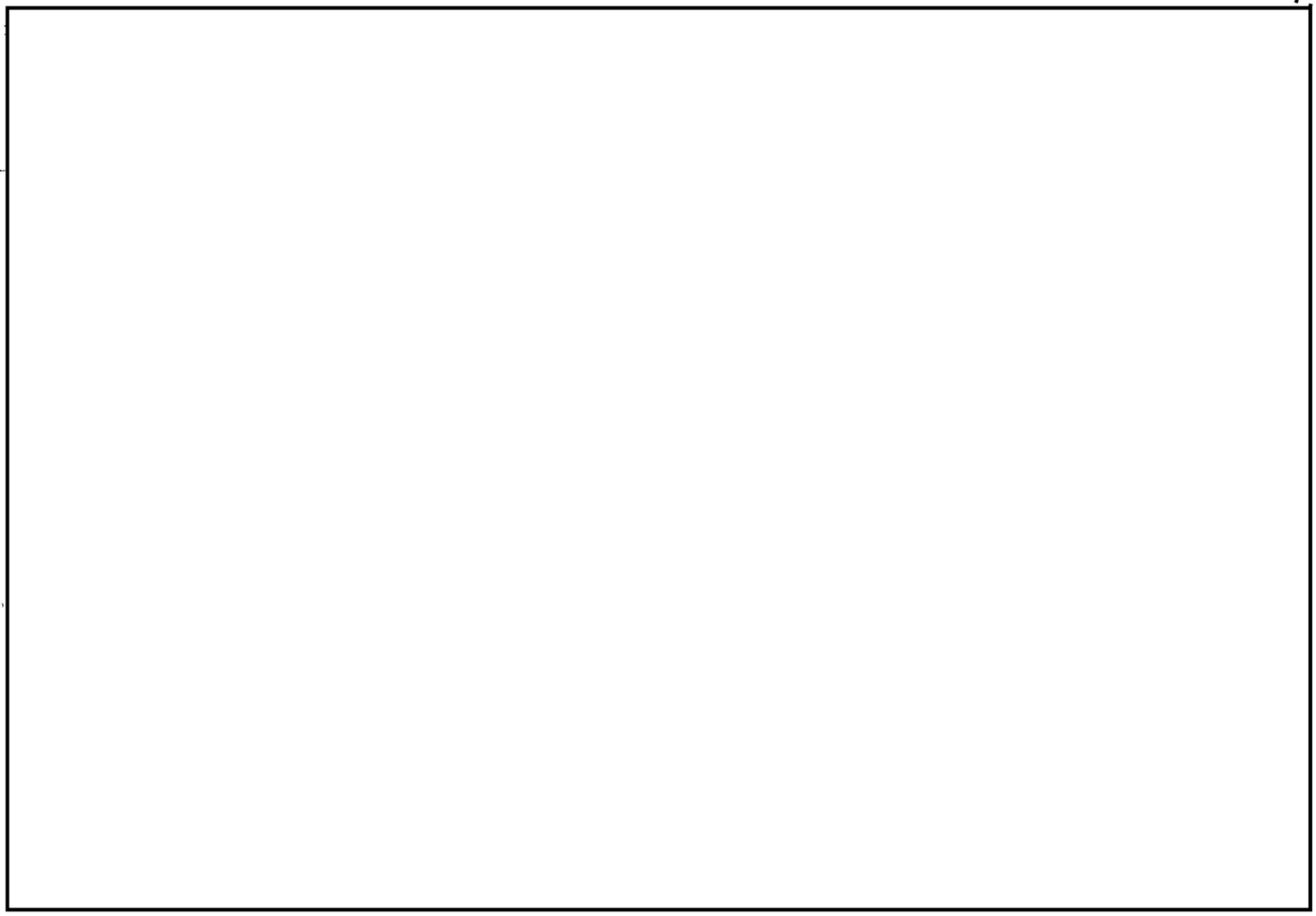
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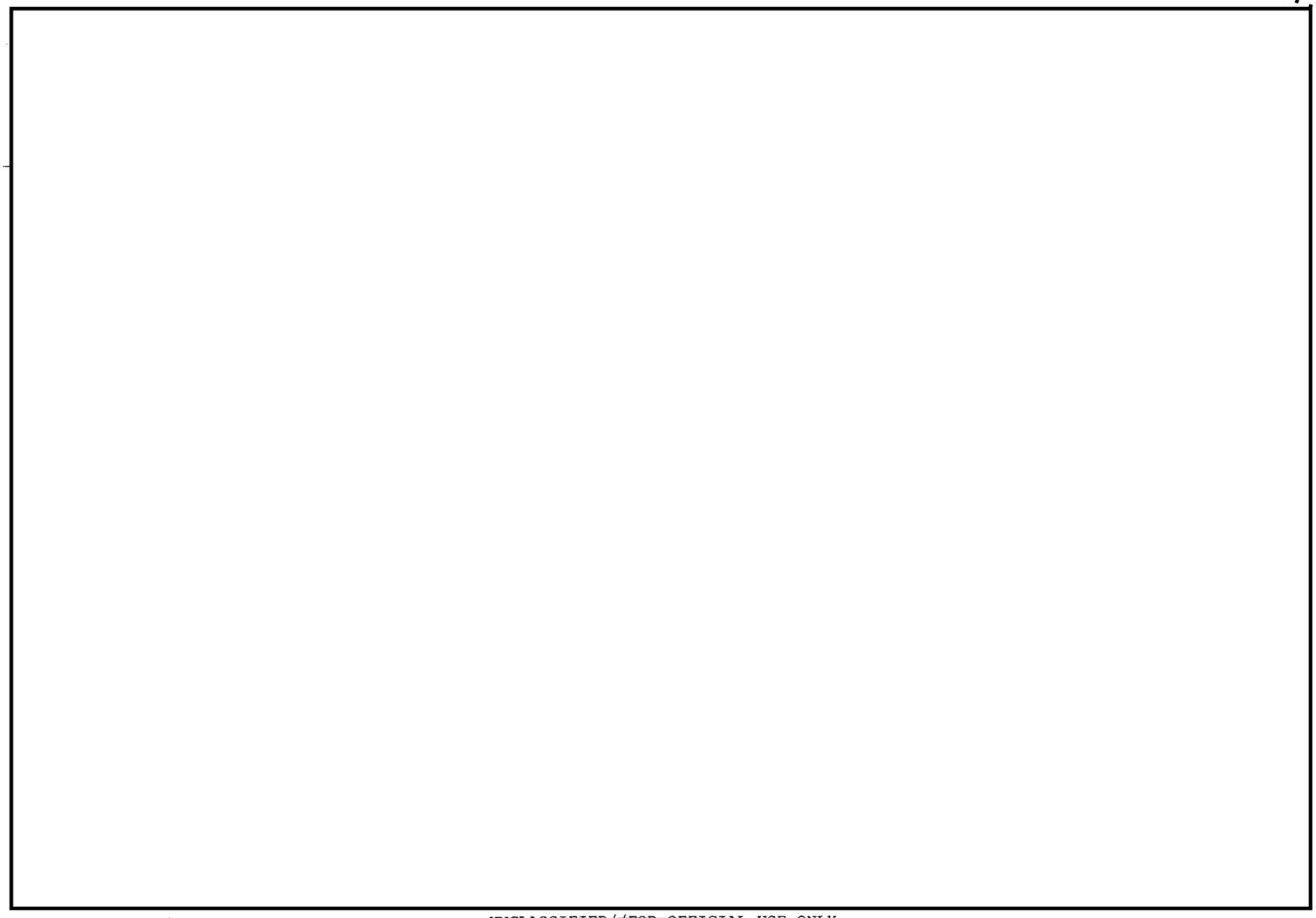
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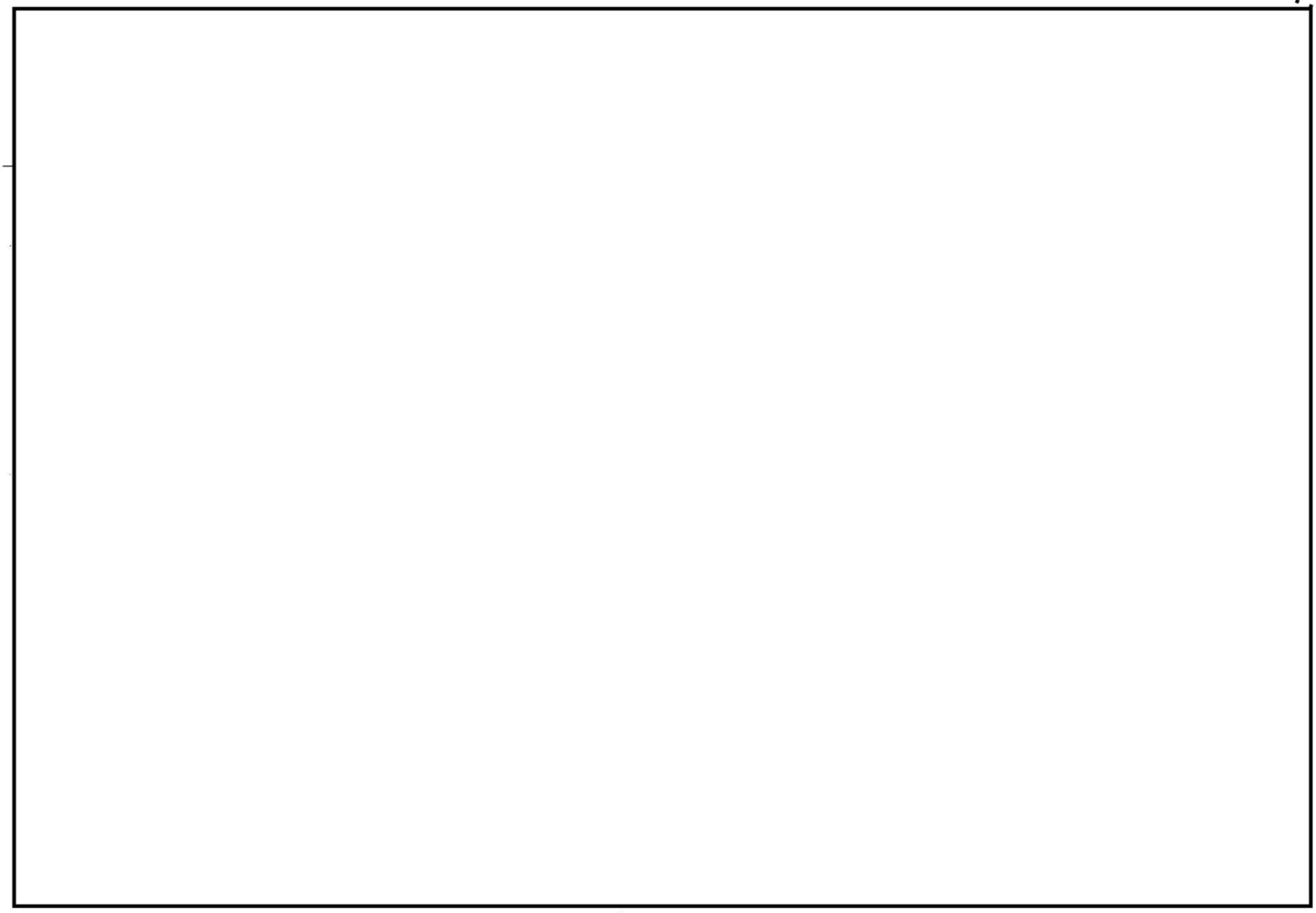
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(b)(3)-P.L. 86-36
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Release 2022-7
NSA 20966

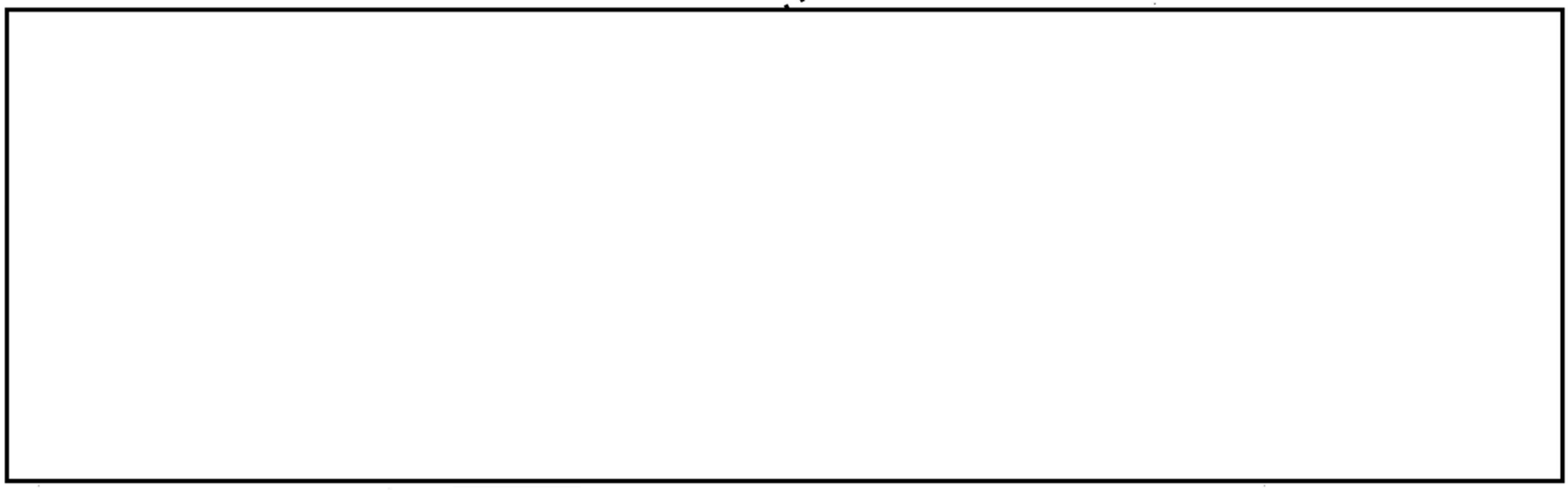
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Release 2022-7
NSA 20967

Doc ID: 6775844

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 20968

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

APPENDIX D

Email dated 22 April 2015 from [redacted]

From: [redacted]
To: [redacted]
Subject: (U) Follow up Info
Date: Friday, January 15, 2016 11:38:01 AM

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

[redacted]

As a follow up to our meeting this morning here is the e-mail from [redacted] regarding his review of [redacted] If you need anything else please don't hesitate to reach out.

[redacted]

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

From: [redacted]
Sent: Thursday, April 23, 2015 10:15 AM
To: [redacted]
Subject: RE: (U) [redacted]

(b) (3)-P.L. 86-36
(b) (6)

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

Morning,
I reviewed the tape this AM and confirmed my initial observations. I added a few other items that I also noted that are now confirmed.
Over to you.

[redacted]

968-3281

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

From: [redacted]
Sent: Wednesday, April 22, 2015 8:00 AM
To: [redacted]
Subject: (U) [redacted]

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

Morning.
Yesterday I watched [redacted] He ran it up here at [redacted] I am a little disappointed in his effort. He seemed to be going through the motions. Before anyone says anything to him though, I want to pull the tape and give it a good sanity check. I don't want to say he missed something that he didn't miss, but I simply didn't hear these things. Seems odd that he could miss this much.
So this is just a heads up. I will listen to the tape again and do due diligence to be certain before

anyone speaks to him.

[redacted]

Forms review:

[redacted]

In addition:

[redacted]

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

[redacted]

968-3281

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

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

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

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

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

APPENDIX E

Email dated 1 August 2015 from [redacted] Account

From: [redacted]
To:
Subject: FW: (U) FW: Subjects that have Used Your Name as a Certifying Official
Date: Tuesday, December 15, 2015 2:30:15 PM

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

[redacted]

This is the last email that I am forwarding. This email is from August 2015, when [redacted] jumped to conclusions and insinuated that I was not on military duty when my orders stated that I was.

Please reach out if you have any questions.

Respectfully,

[redacted]

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

(b)(3)-P.L. 86-36
(b)(6)

-----Original Message-----
From: [redacted]
Sent: Tuesday, August 11, 2015 8:02 AM
To: [redacted]
Subject: RE: (U) FW: Subjects that have Used Your Name as a Certifying Official

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

That's not what the access certification folks said. They said you were attempting to cert your clearances to an unknown facility in [redacted]. You were allegedly on orders in Virginia at the time when you were going to this facility in [redacted]. If you are using an NSAnet system to do USCG business then we need to talk about this. If you are using my name without my knowledge, we have another issue entirely. You need to keep me in the loop on what is going on.

[redacted]
Branch Chief, [redacted]
[redacted]

"This e-mail may contain information subject to the Privacy Act"

-----Original Message-----
From: [redacted]
Sent: Monday, August 10, 2015 9:55 AM
To: [redacted]
Subject: RE: (U) FW: Subjects that have Used Your Name as a Certifying Official

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

No prob. This was a request to have my clearance input in JPAS so that the CG can have visibility on it when they are doing my re-investigation. They told me to put in my Sup's name, so I did.

Let me know if you have any questions.

[redacted]

[redacted]

-----Original Message-----
From: [redacted]
Sent: Monday, August 03, 2015 8:27 AM
To: [redacted]
Subject: (U) FW: Subjects that have Used Your Name as a Certifying Official

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

When you get back, stop by about this.

[redacted]
Branch Chief, [redacted]
[redacted]

"This e-mail may contain information subject to the Privacy Act"

-----Original Message-----
From: [redacted]
Sent: Saturday, August 01, 2015 2:00 AM
To: [redacted]
Subject: Subjects that have Used Your Name as a Certifying Official

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

To view details of a request, log on to the [redacted] Web Services Page.

The subjects listed below have used your name as a Certifying Official for a Clearance Certification Request (CCR), Conference Request (CONF), Visit Request (VR) and/or Badge Request (BDRQ) during the last month.

	CCR	CONF	VR	BDRQ
[redacted]	1	0	0	0

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

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

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

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

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

(b)(3)-P.L. 86-36
(b)(6)

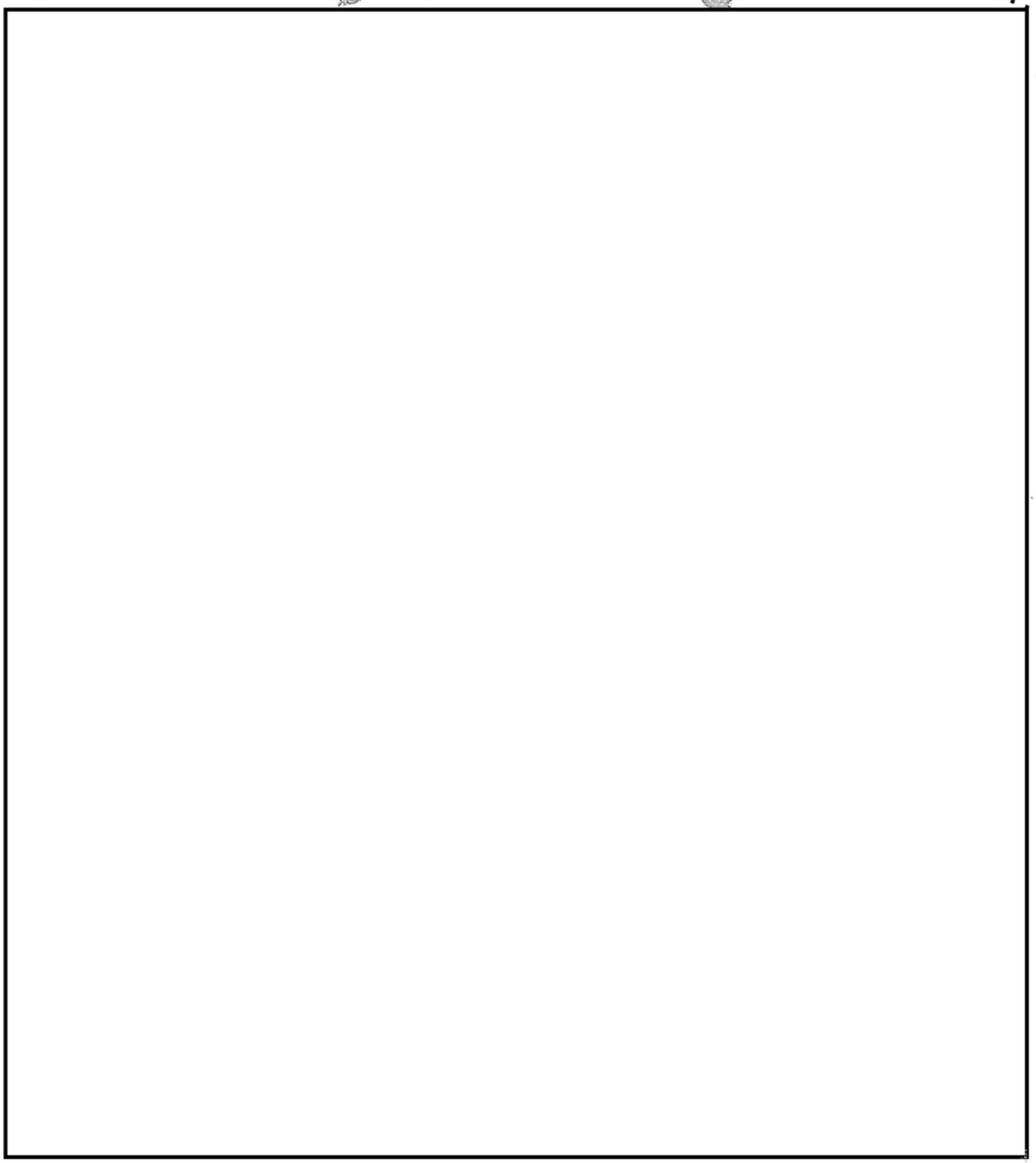
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APPENDIX F

Corrections to Written Reports

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NSA 20976

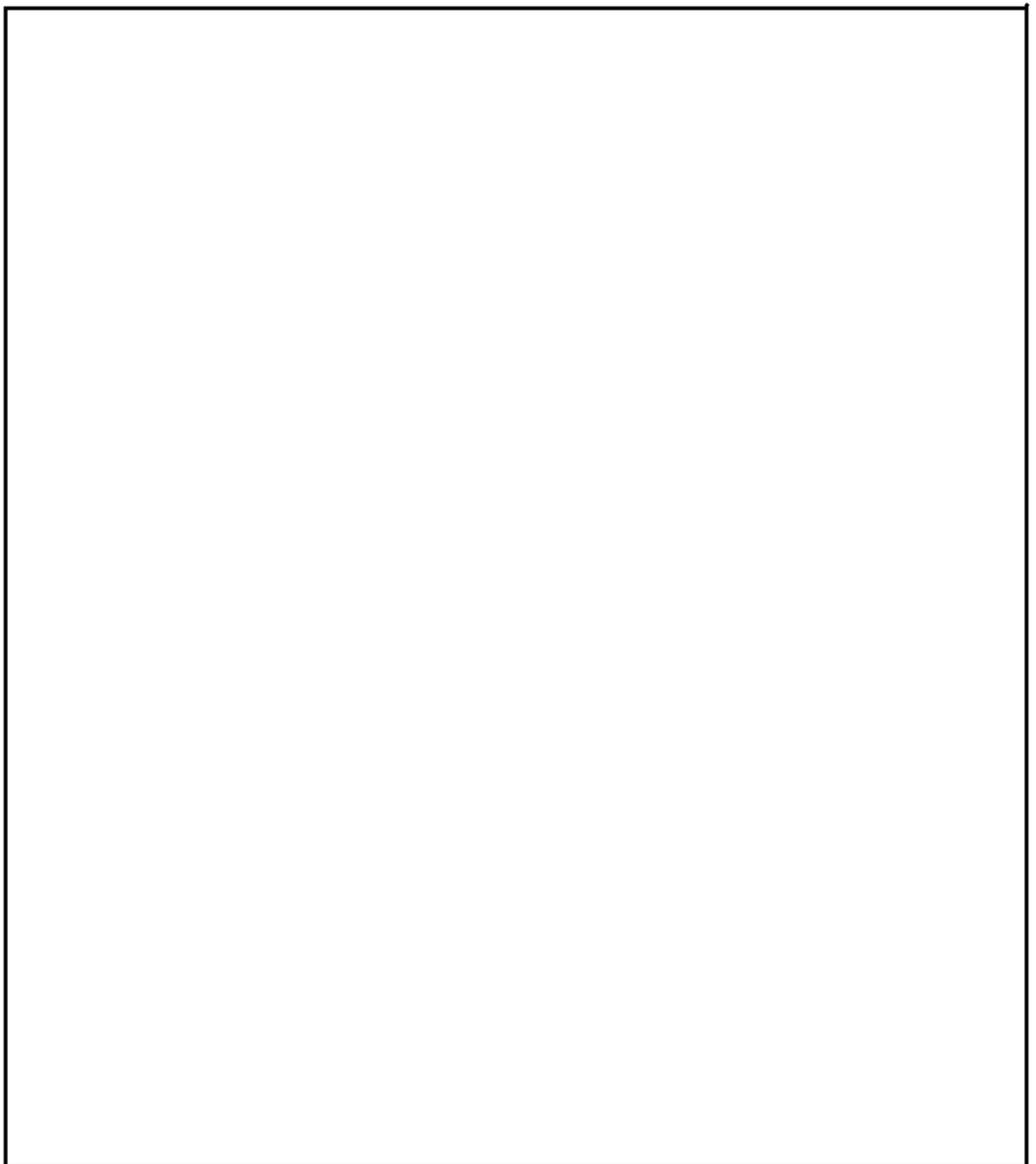
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SI//NF

UNCLASSIFIED//FOR OFFICIAL USE ONLY

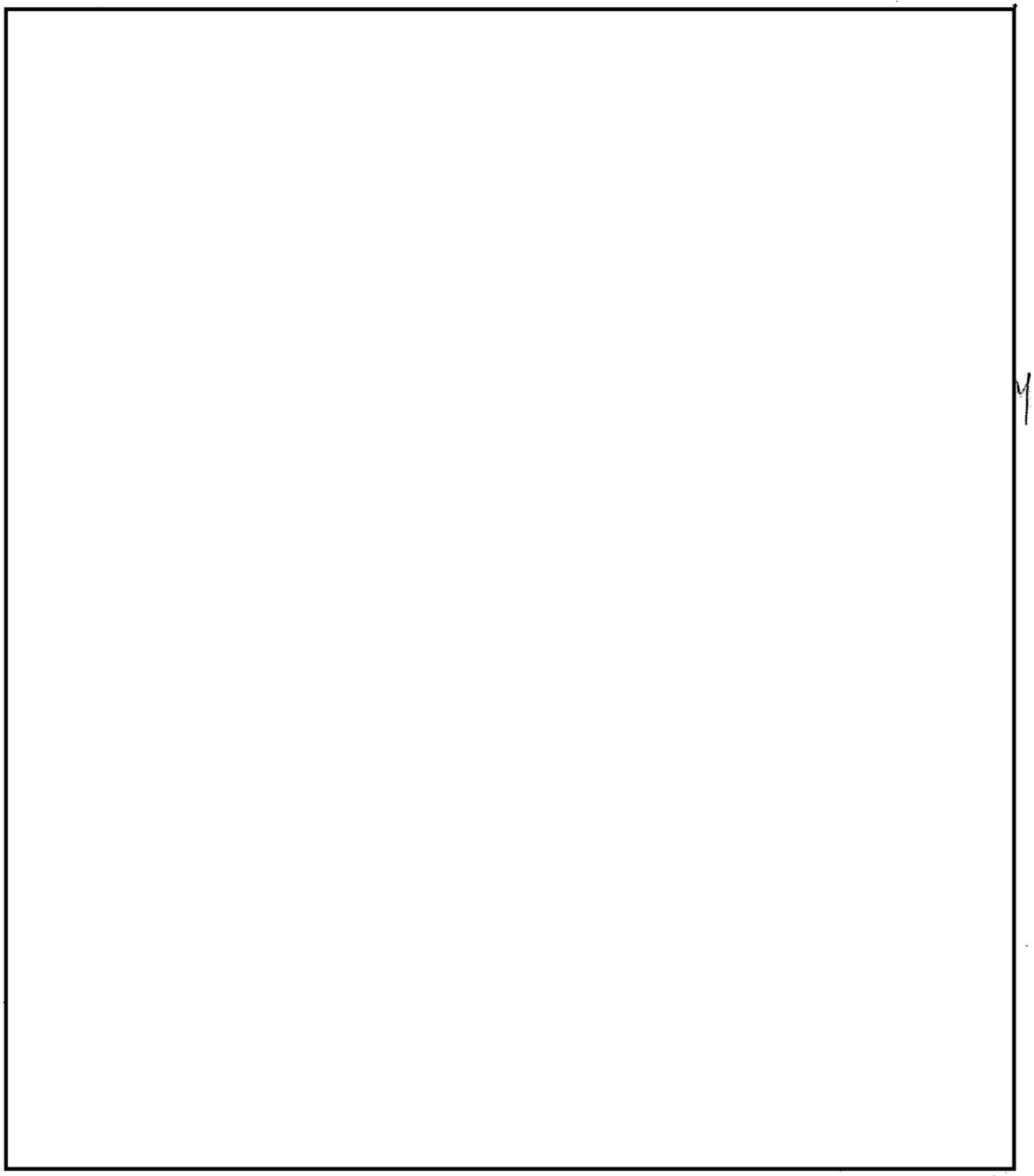
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SI//NF

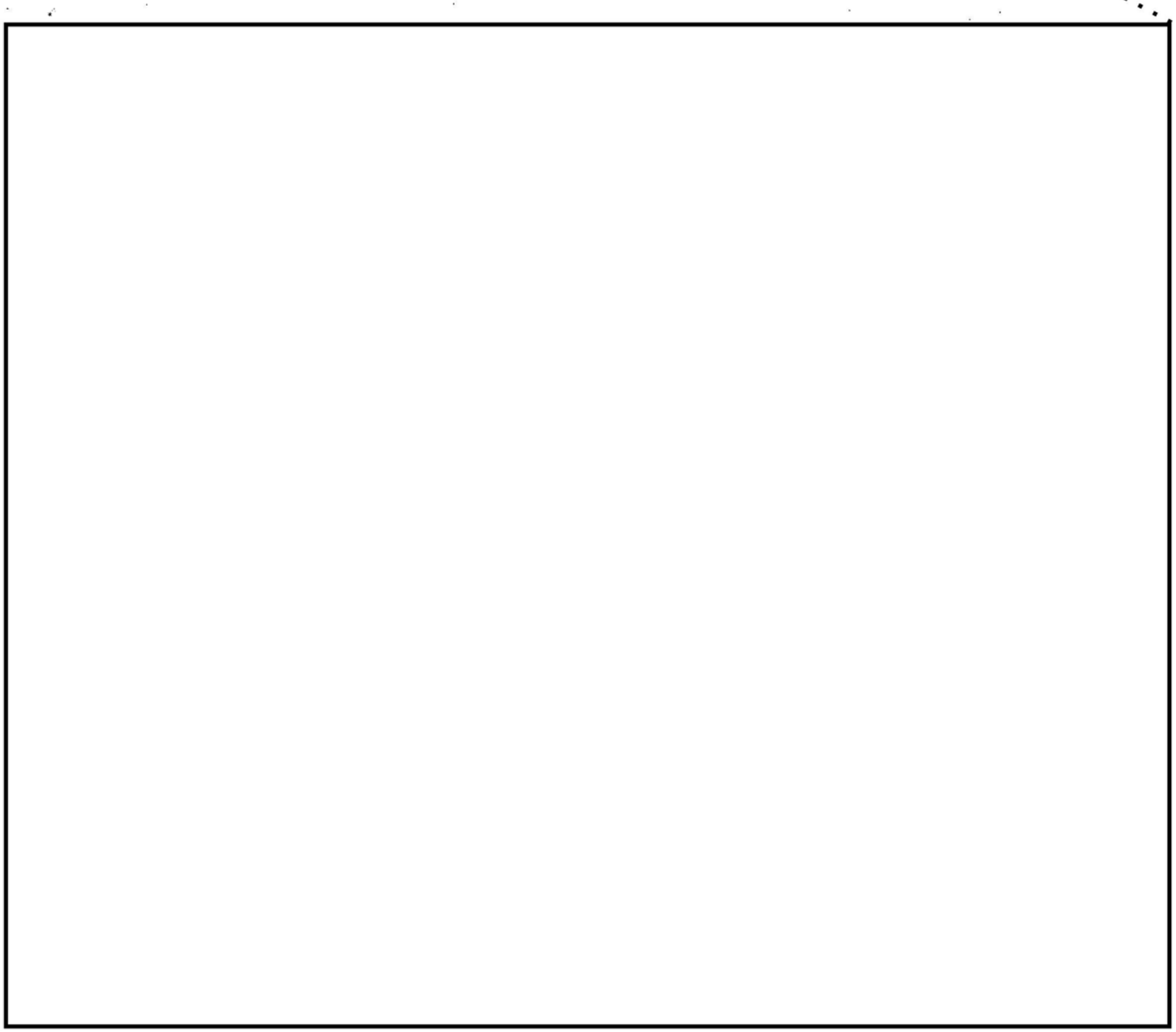
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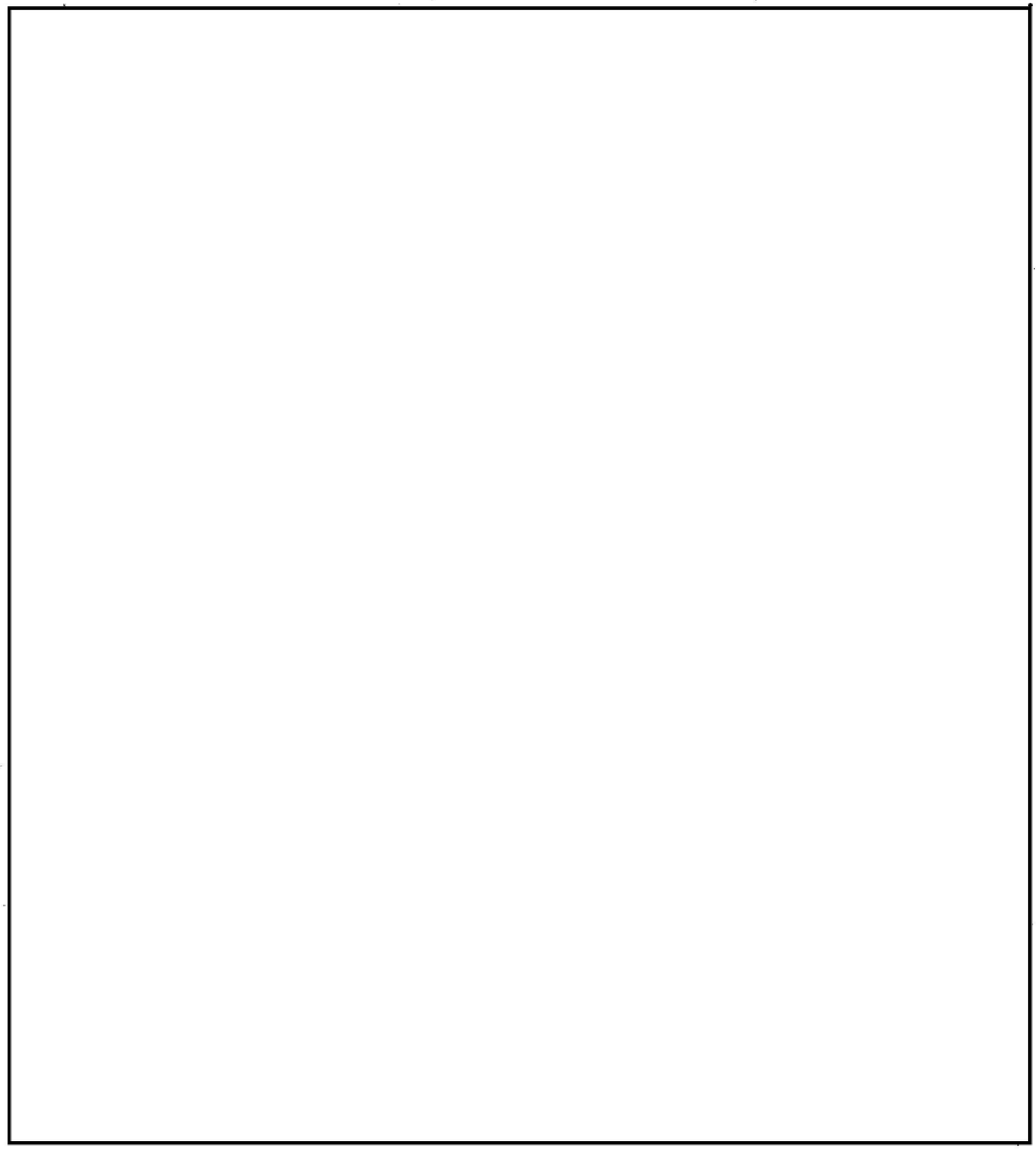
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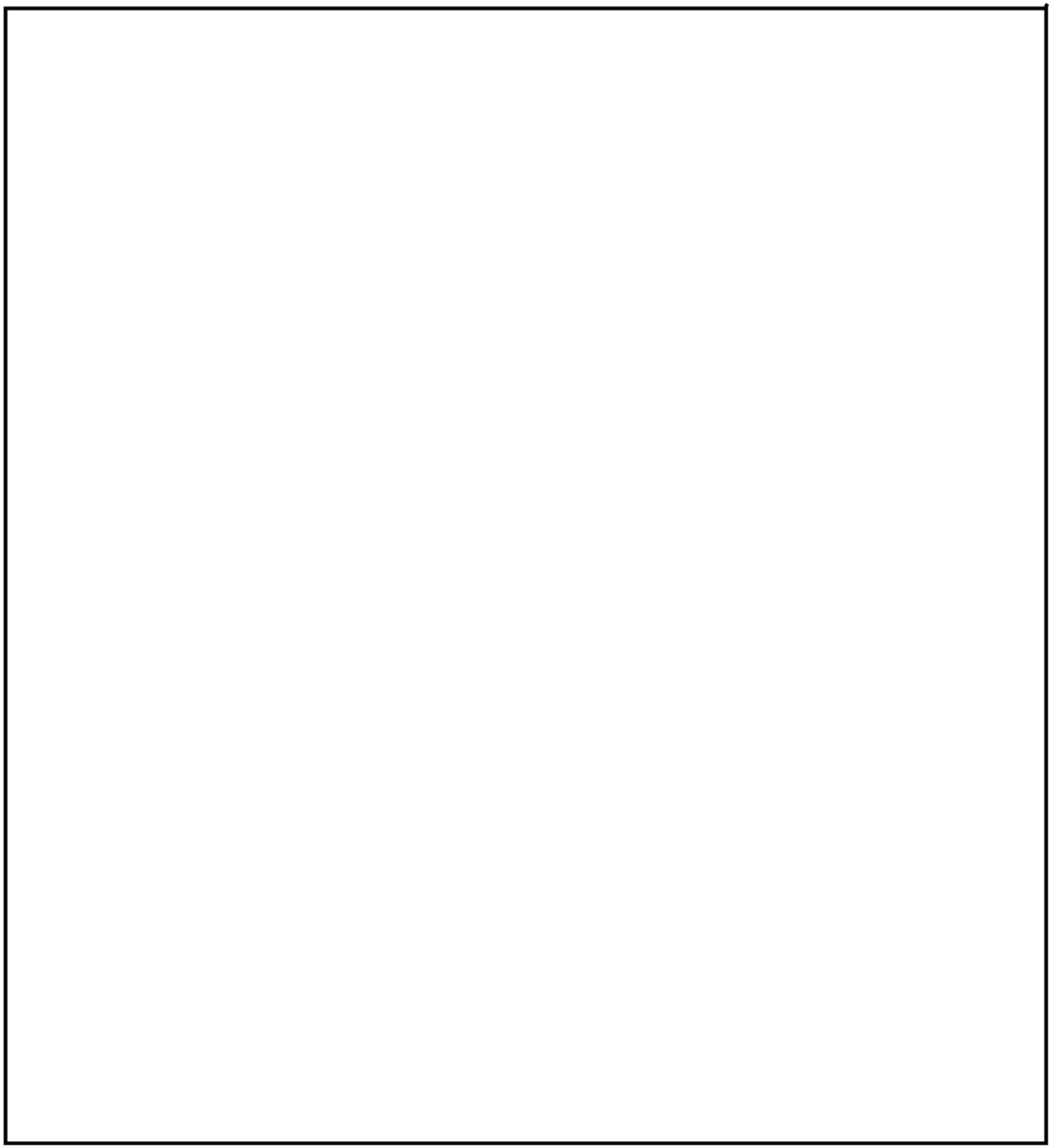
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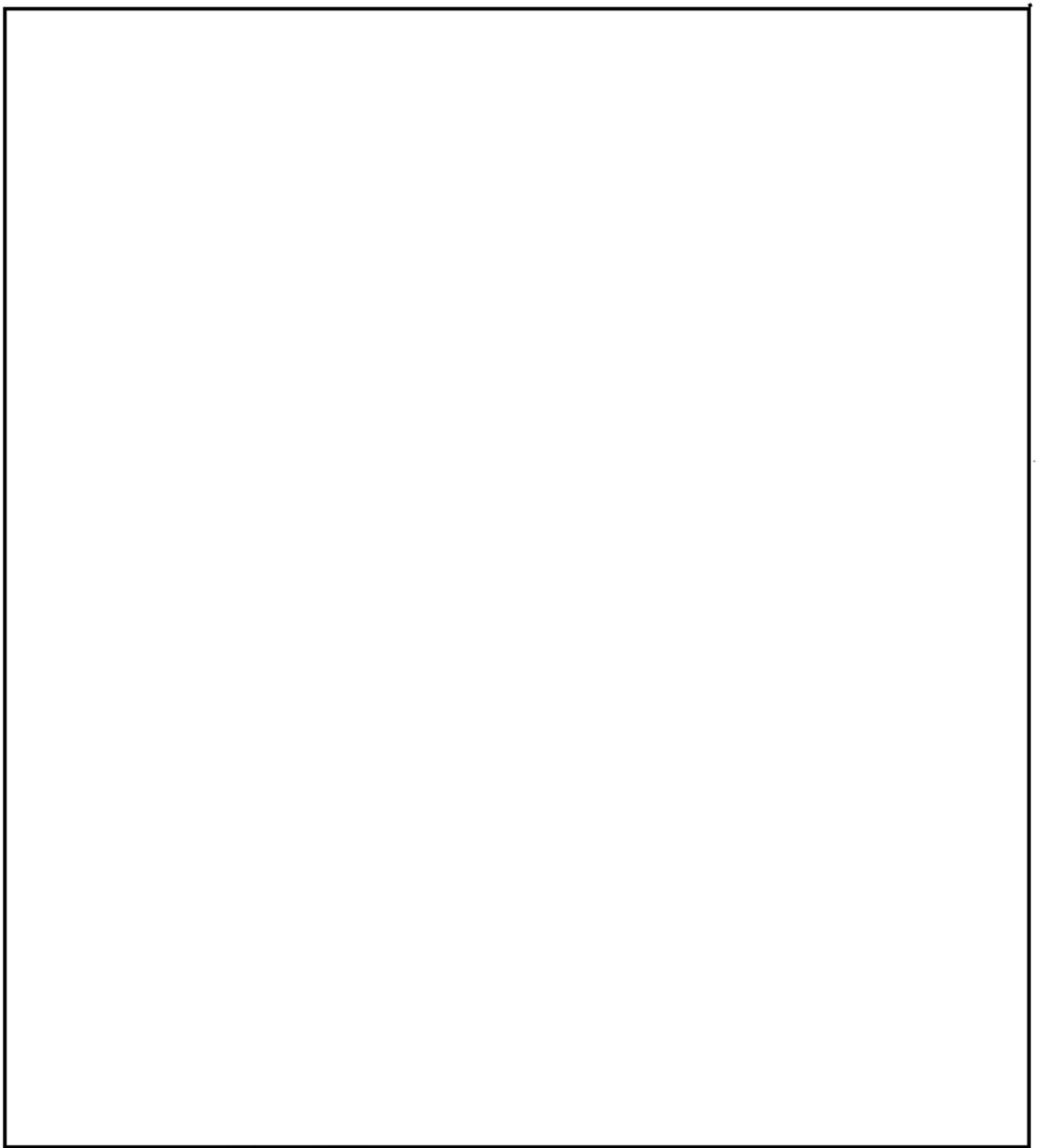
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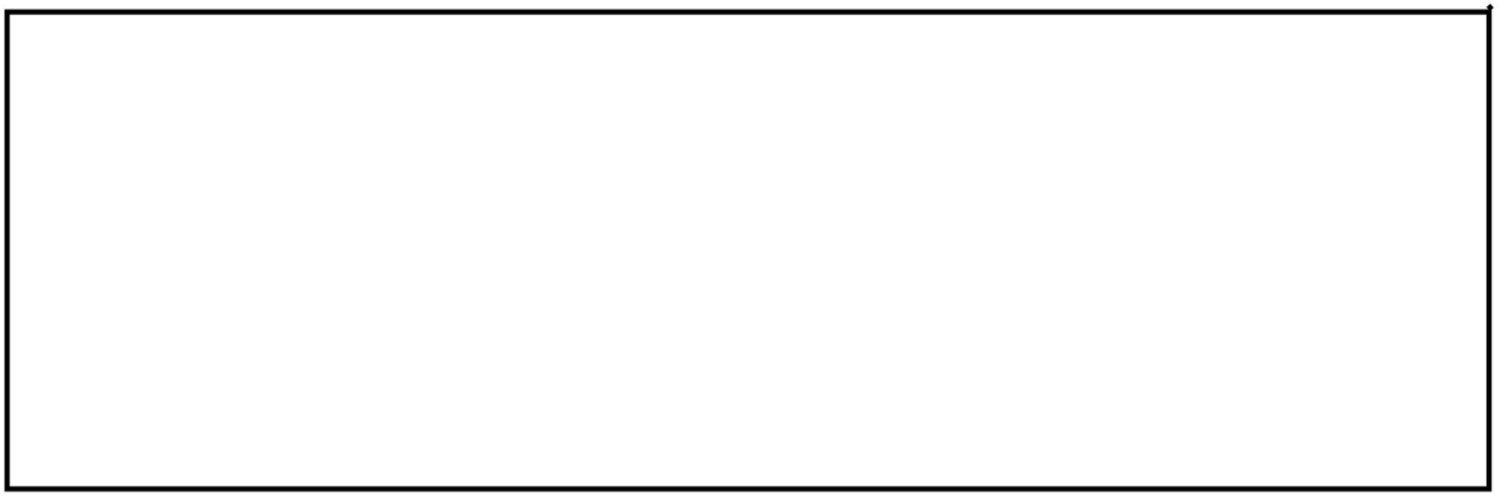
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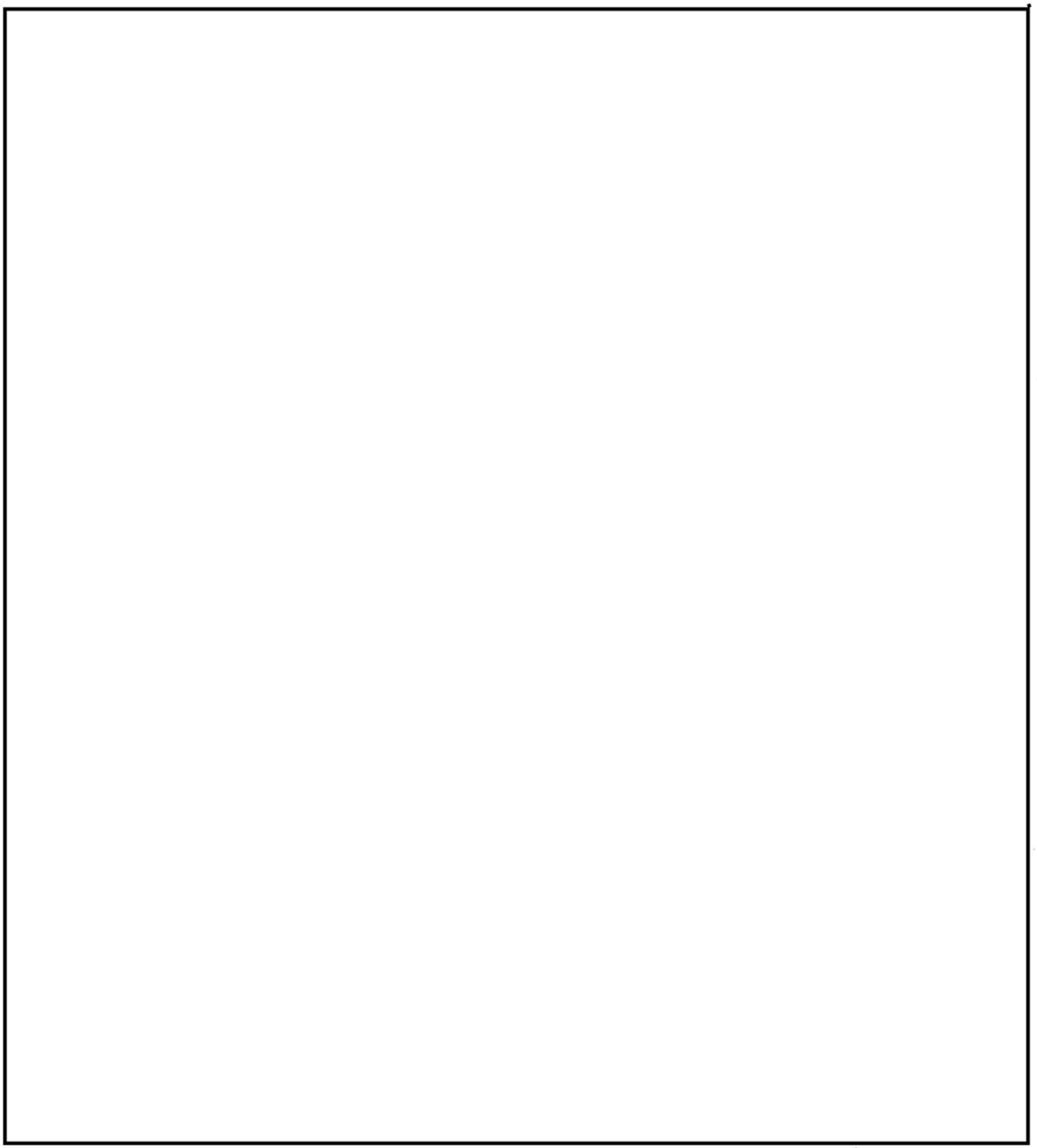


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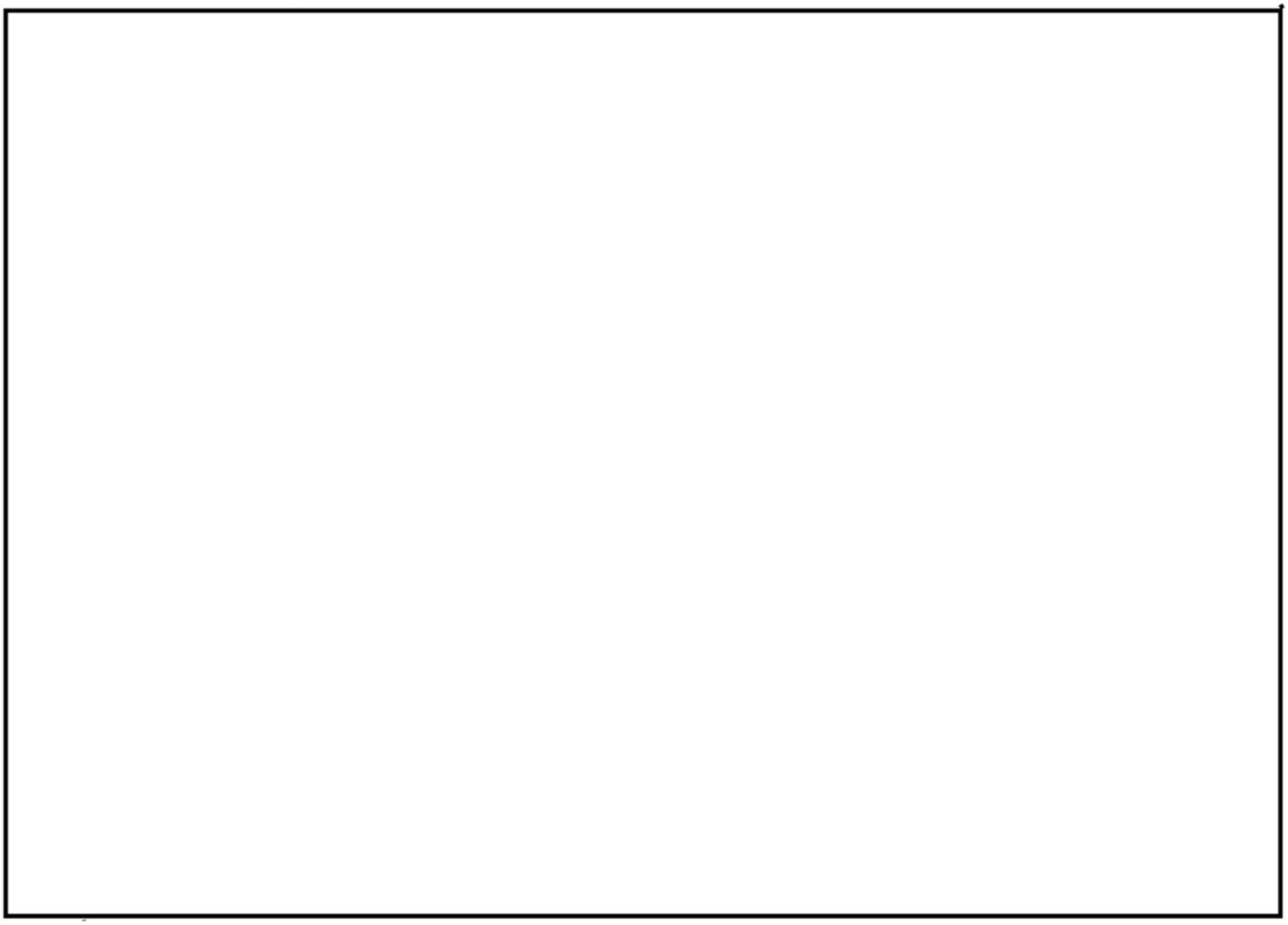


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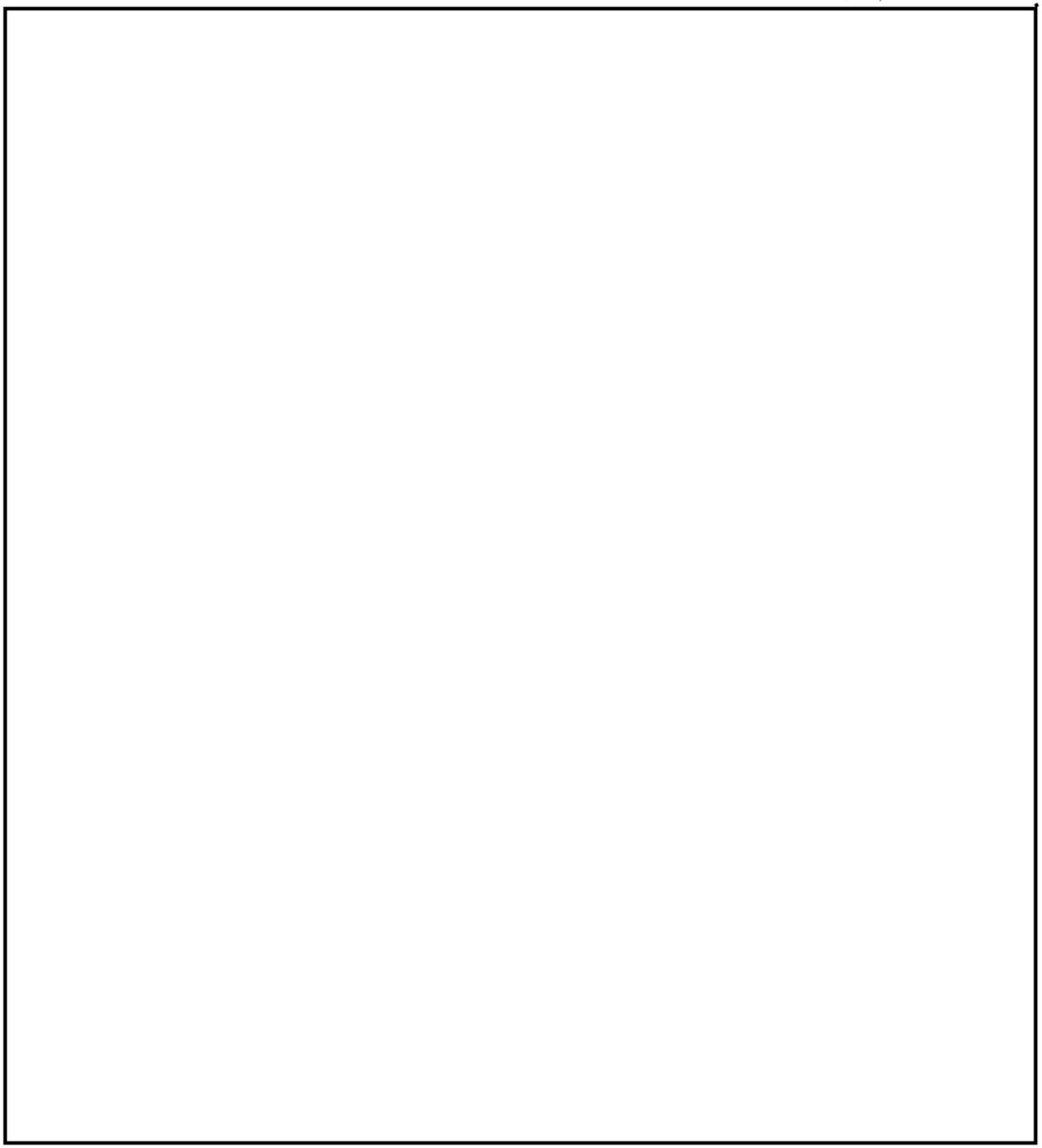
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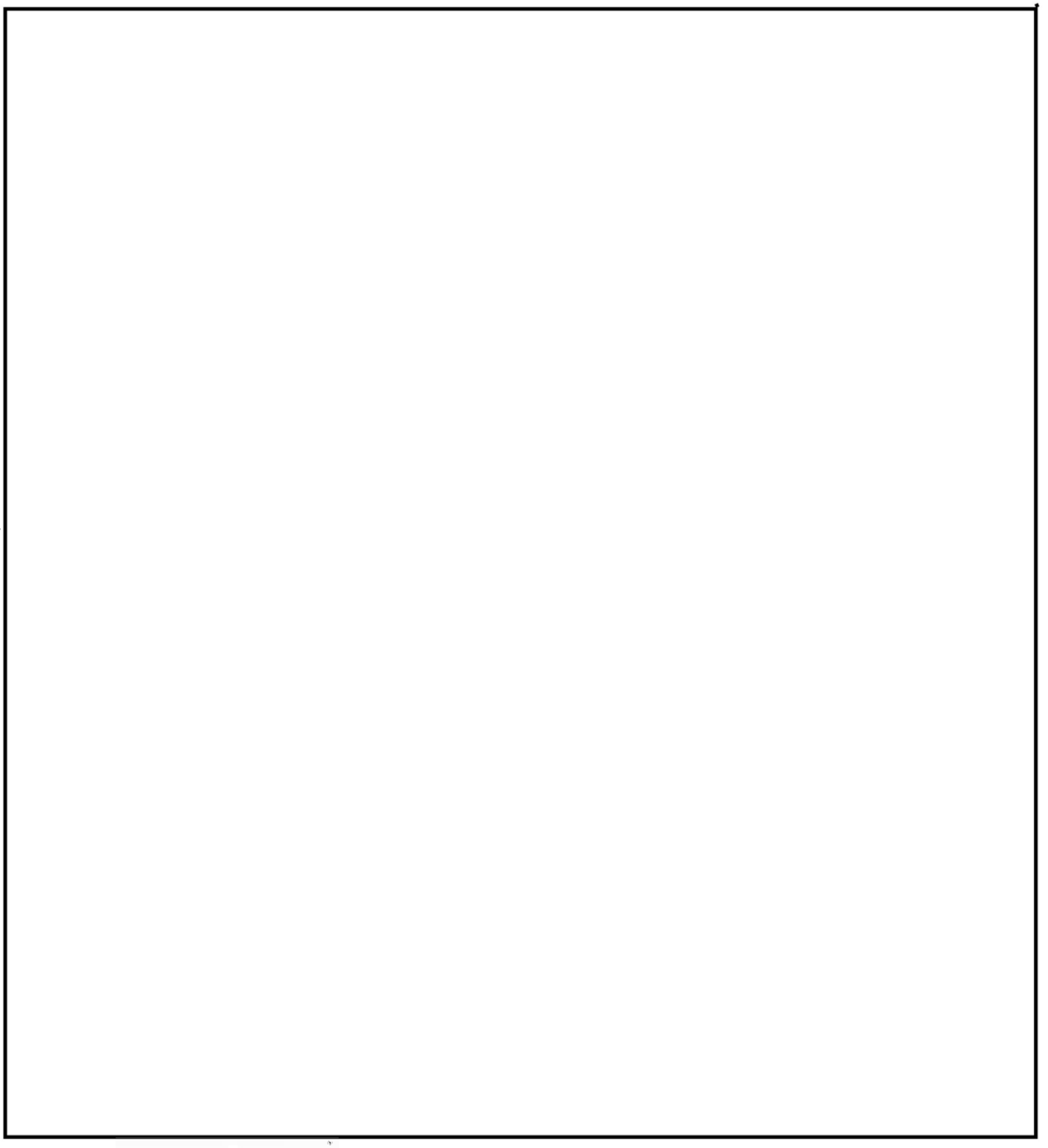
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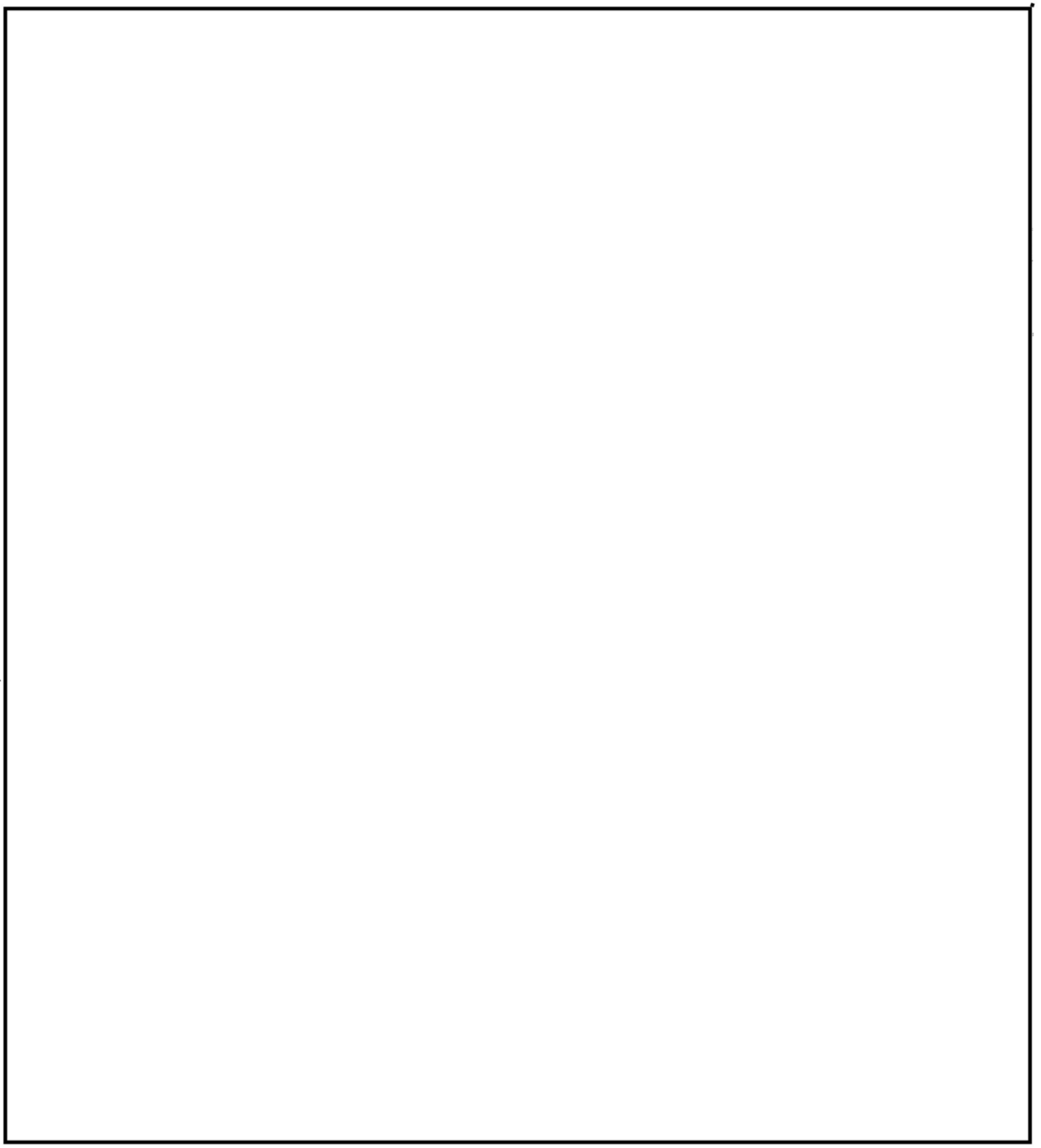
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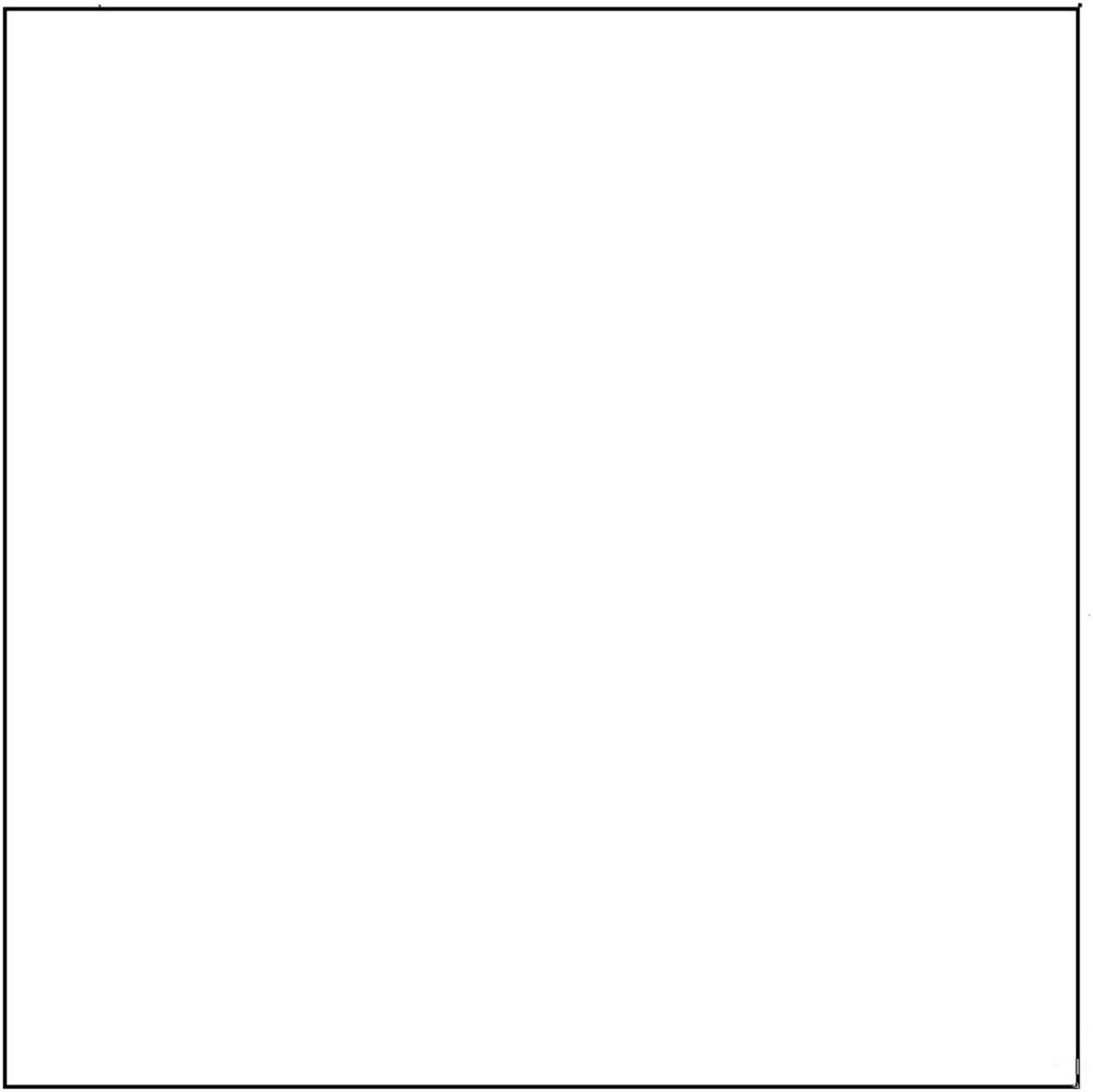
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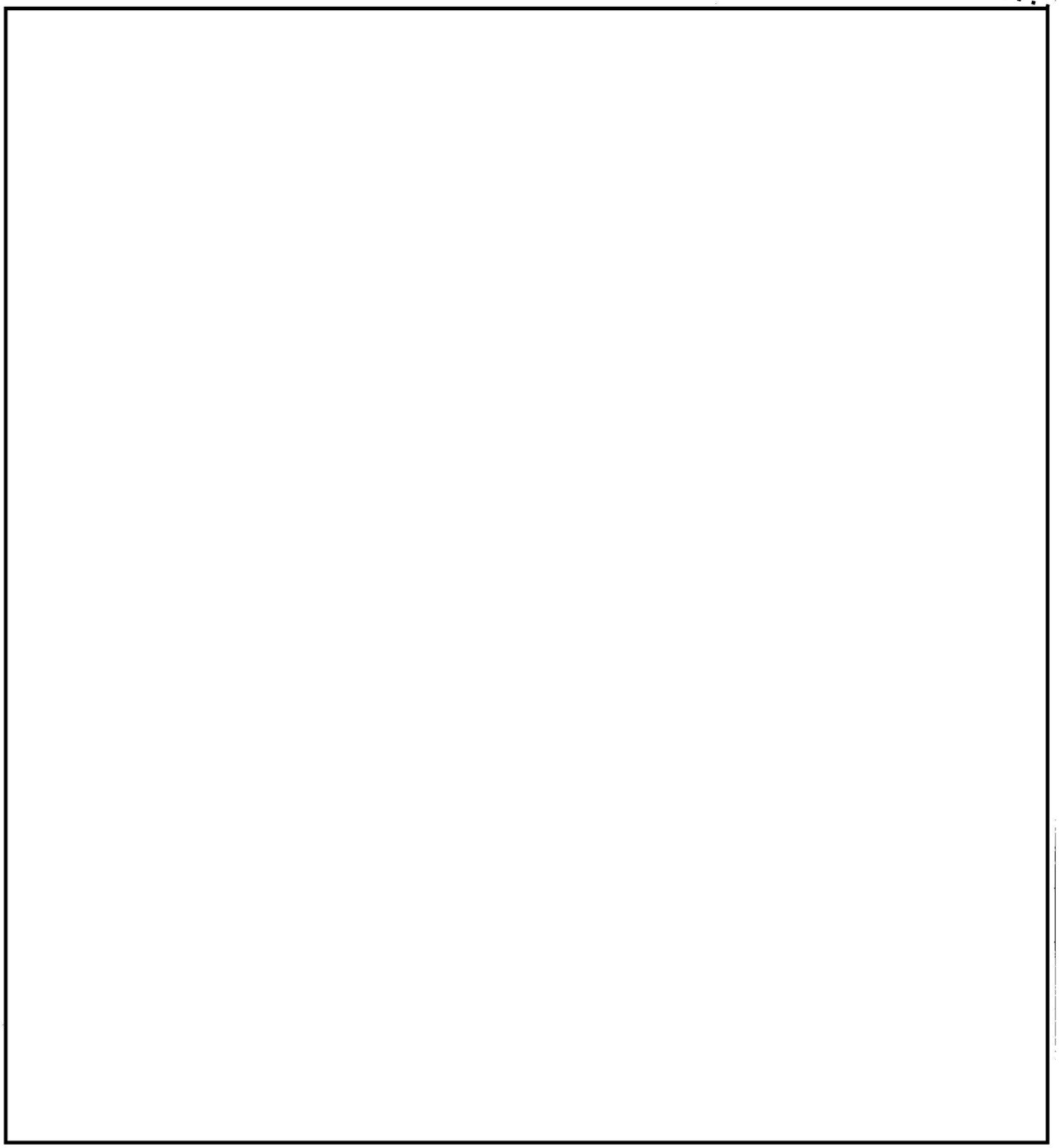


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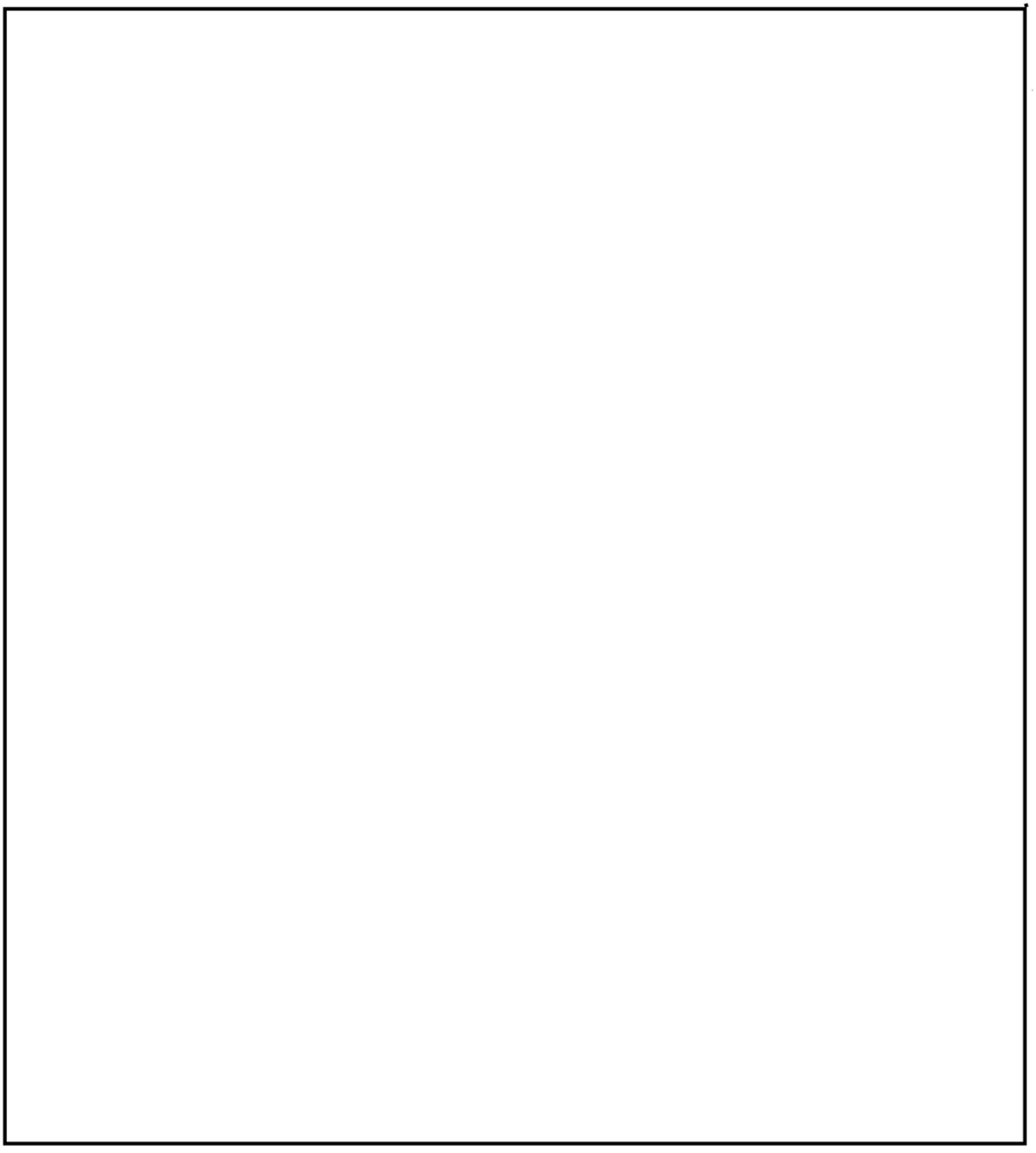


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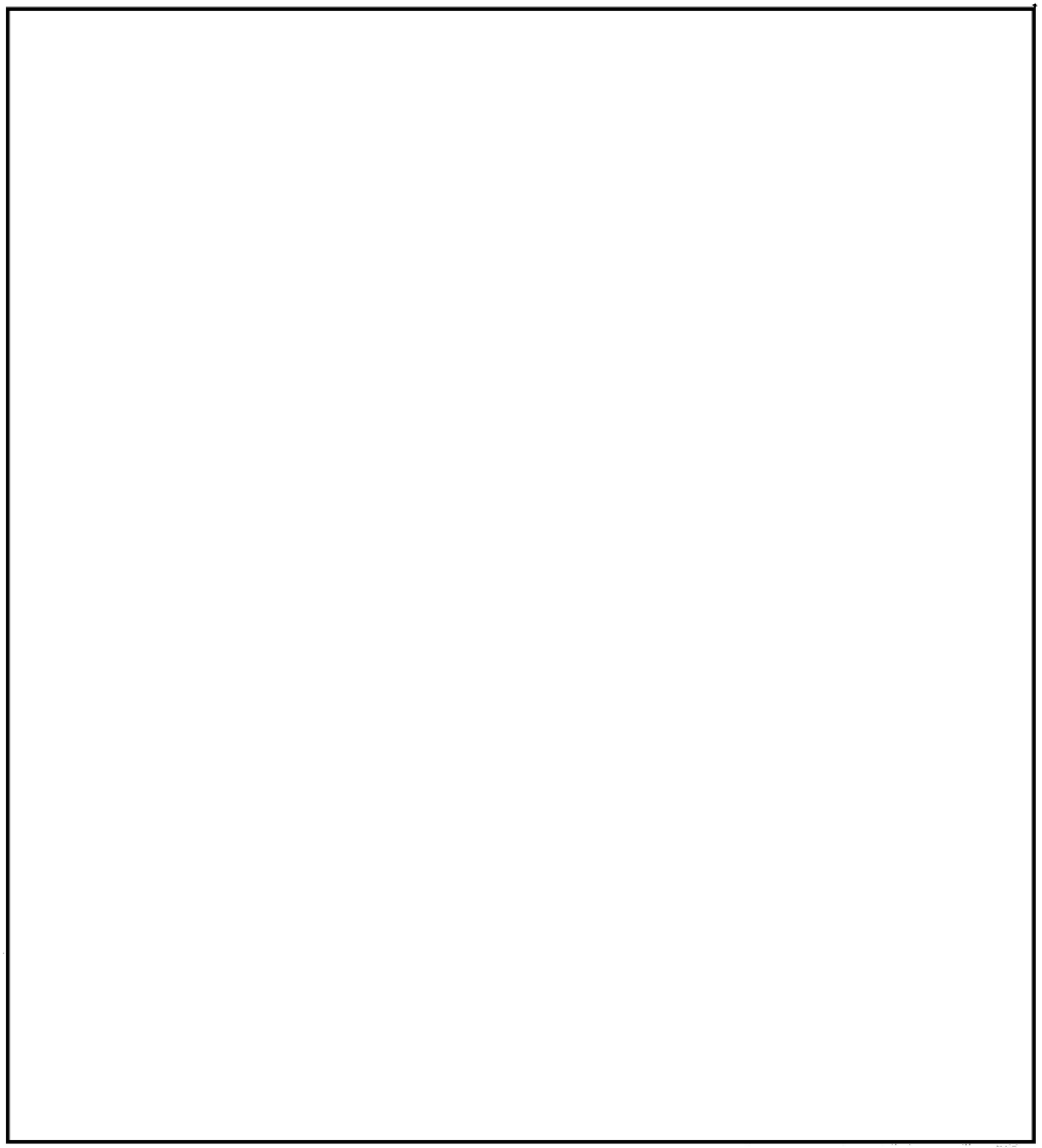
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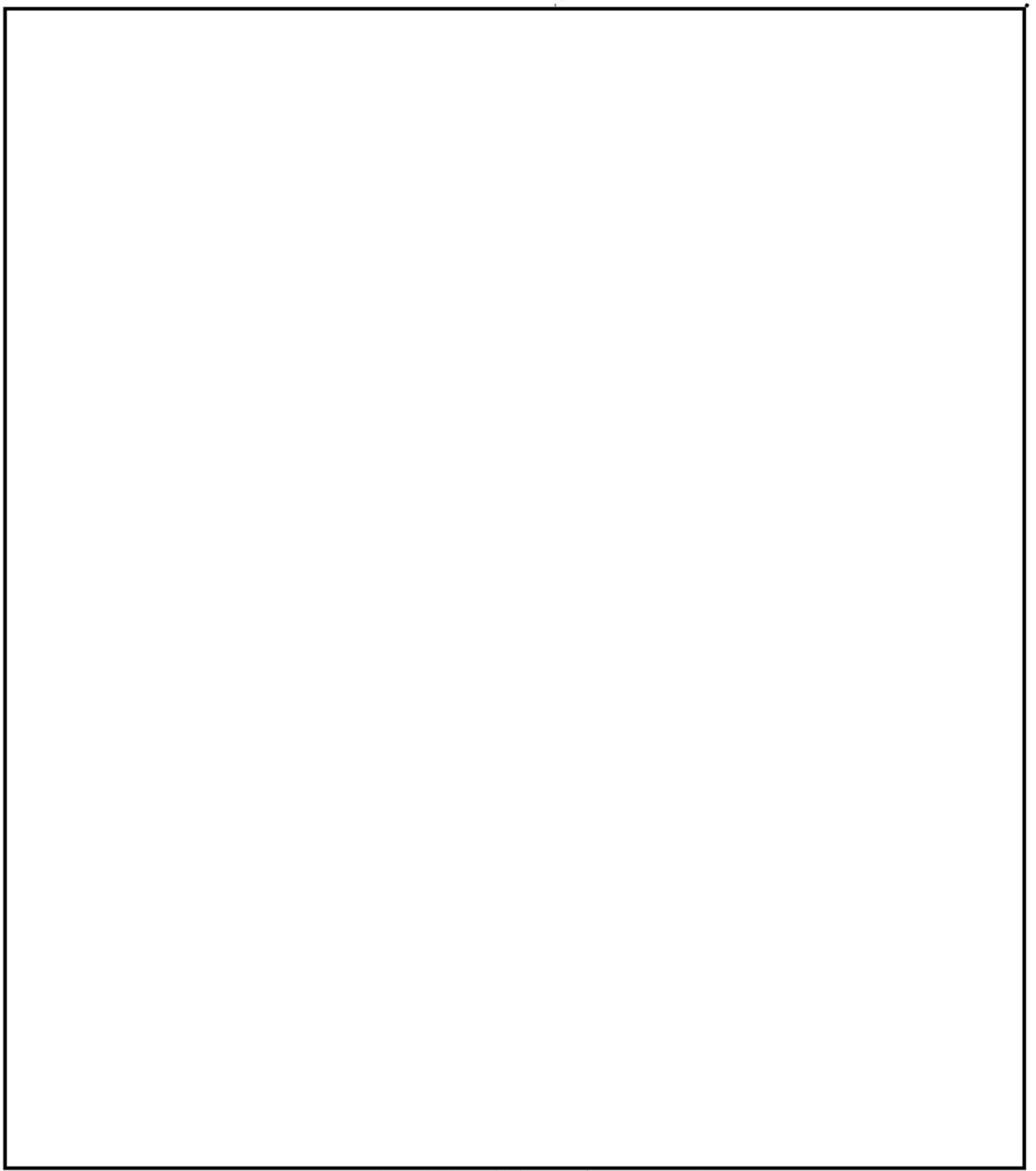
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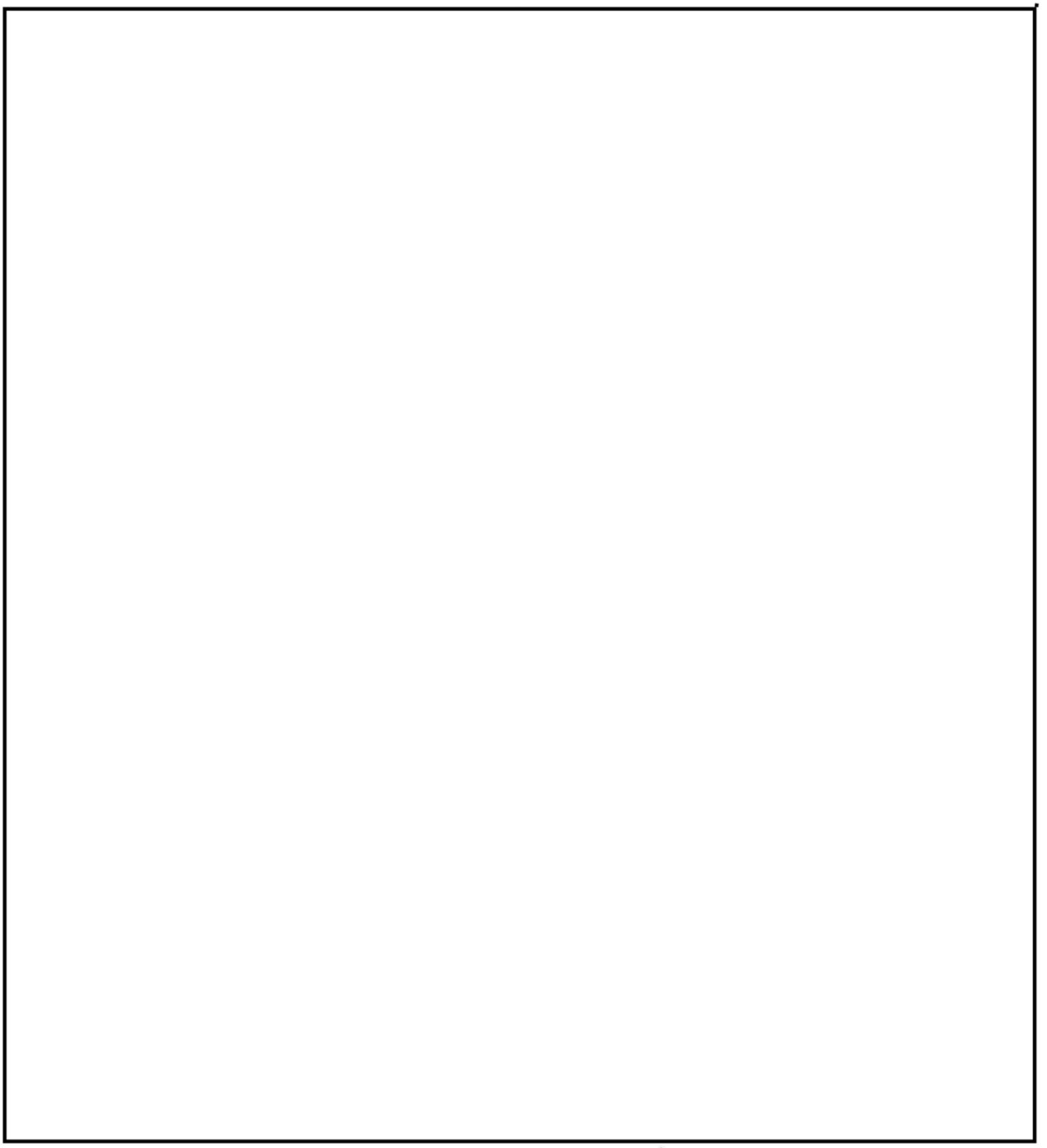
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Release 2022-7
NSA 20994

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Release 2022-7
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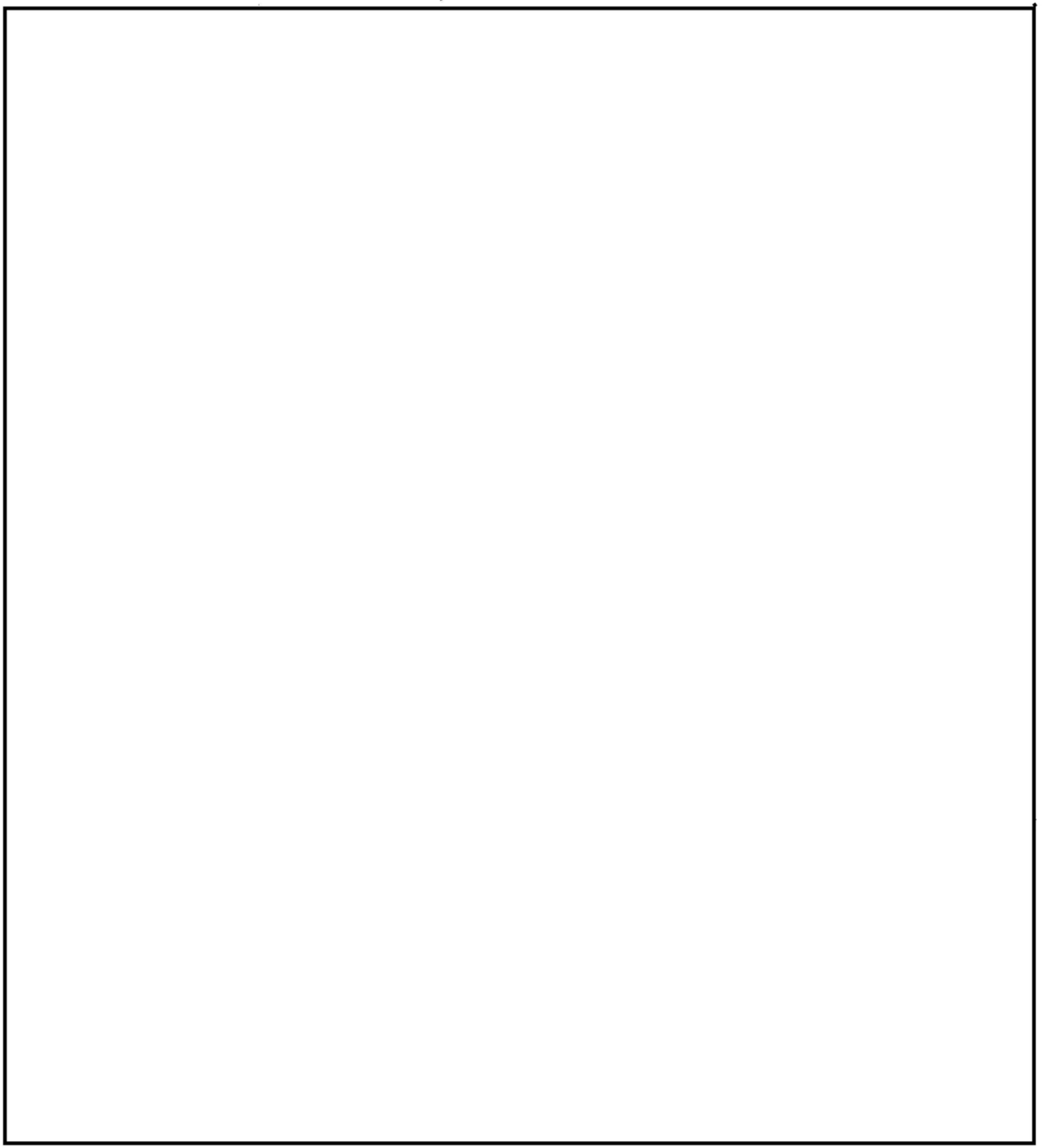
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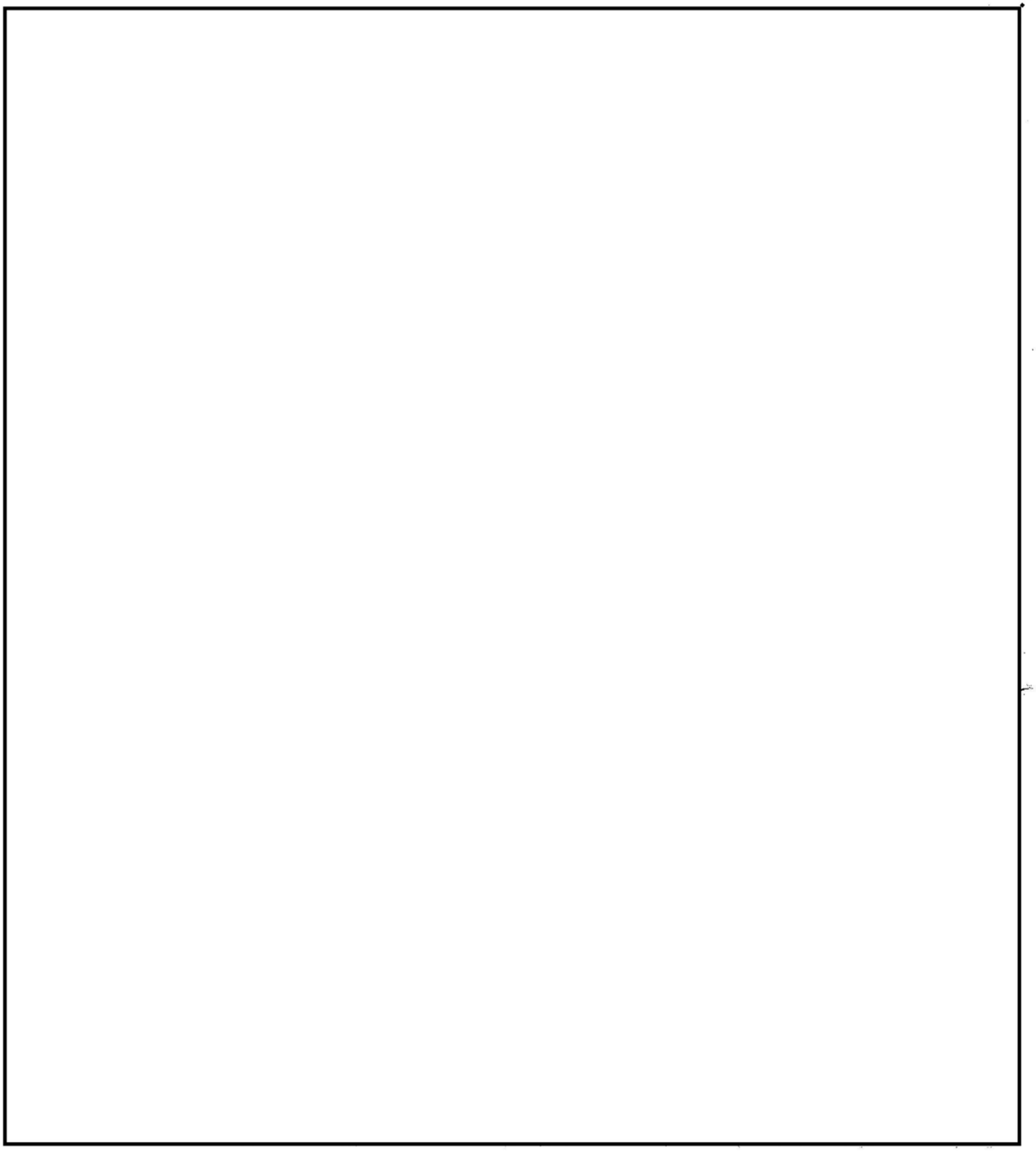
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Release 2022-7
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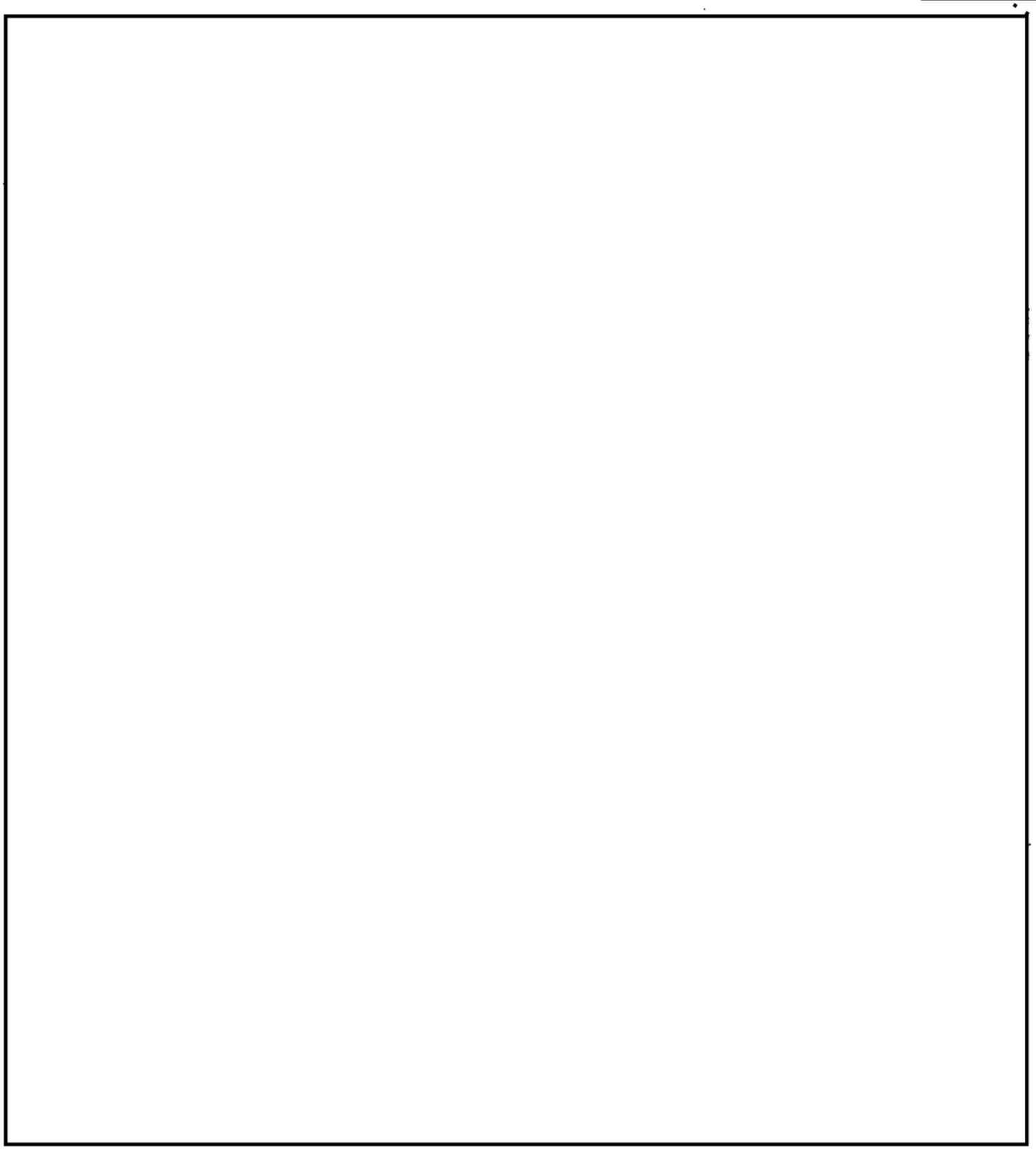


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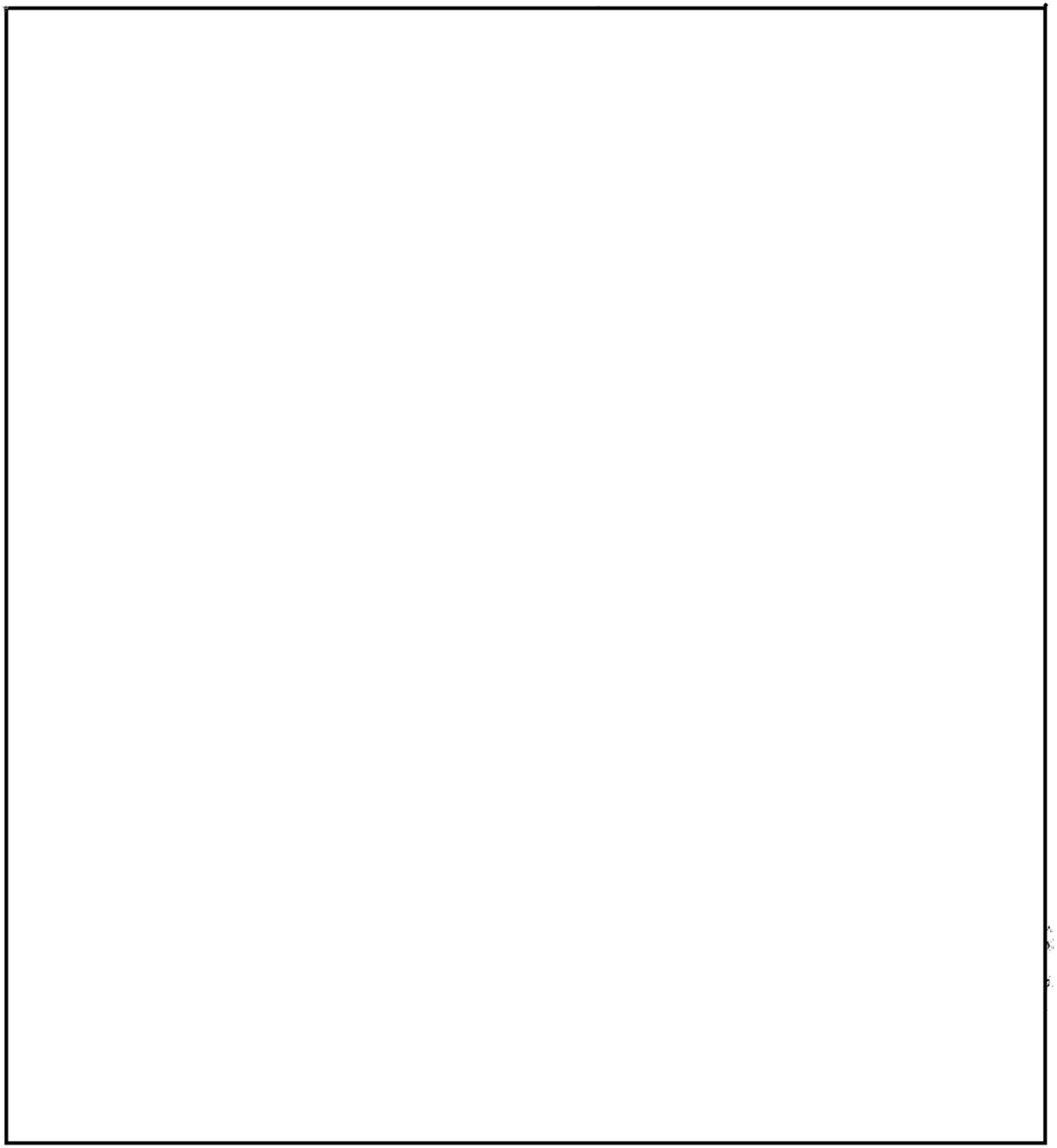
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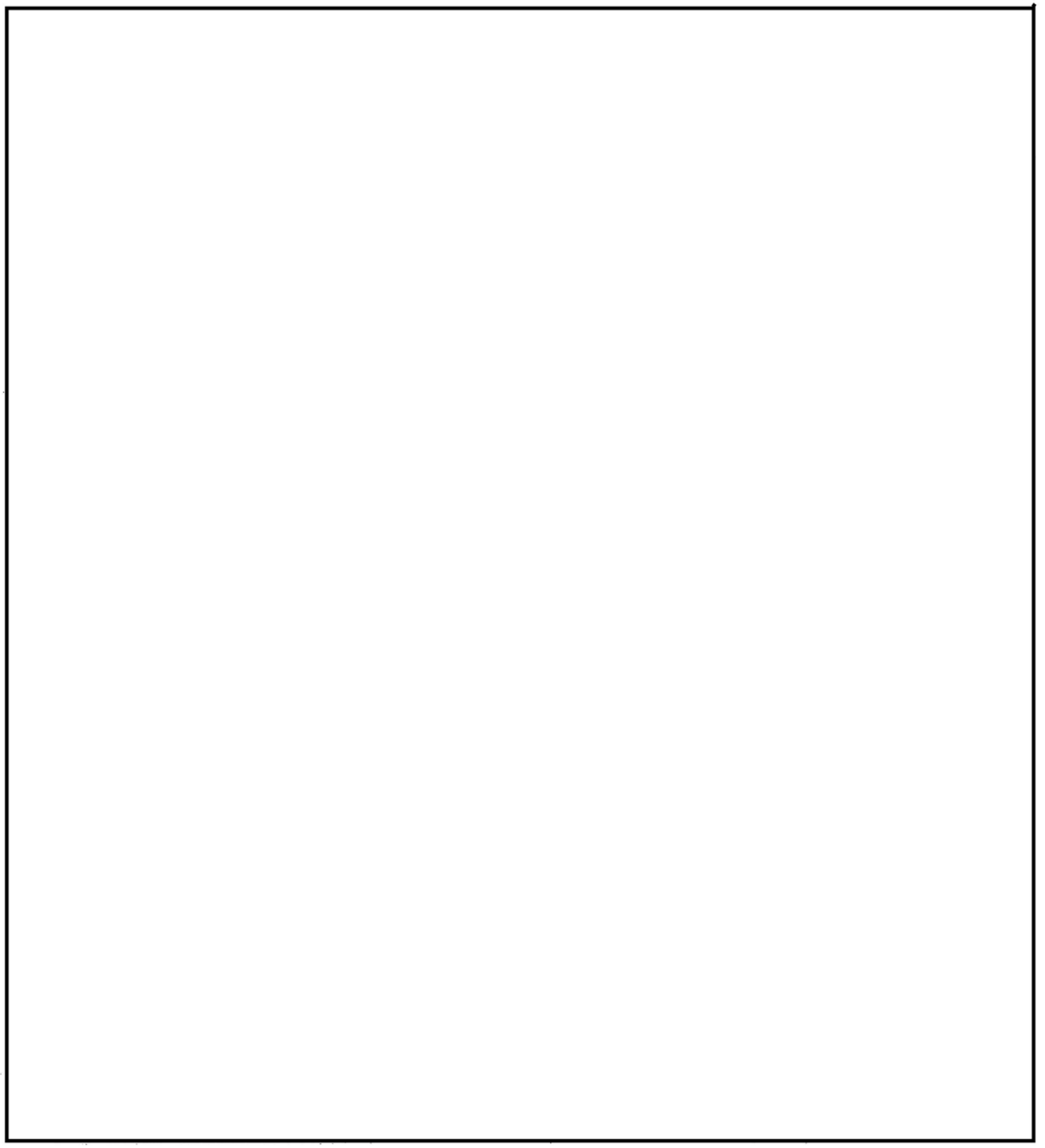
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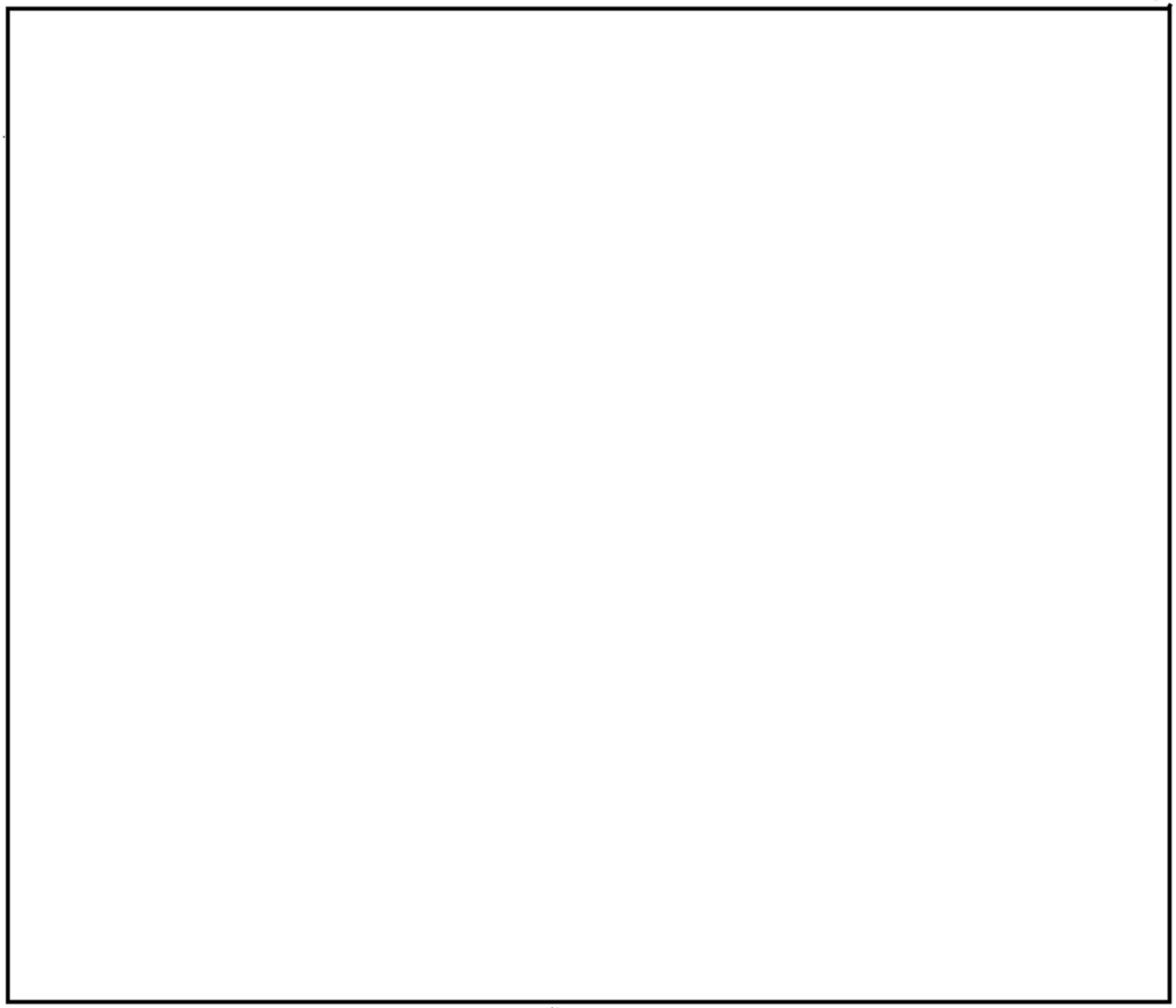
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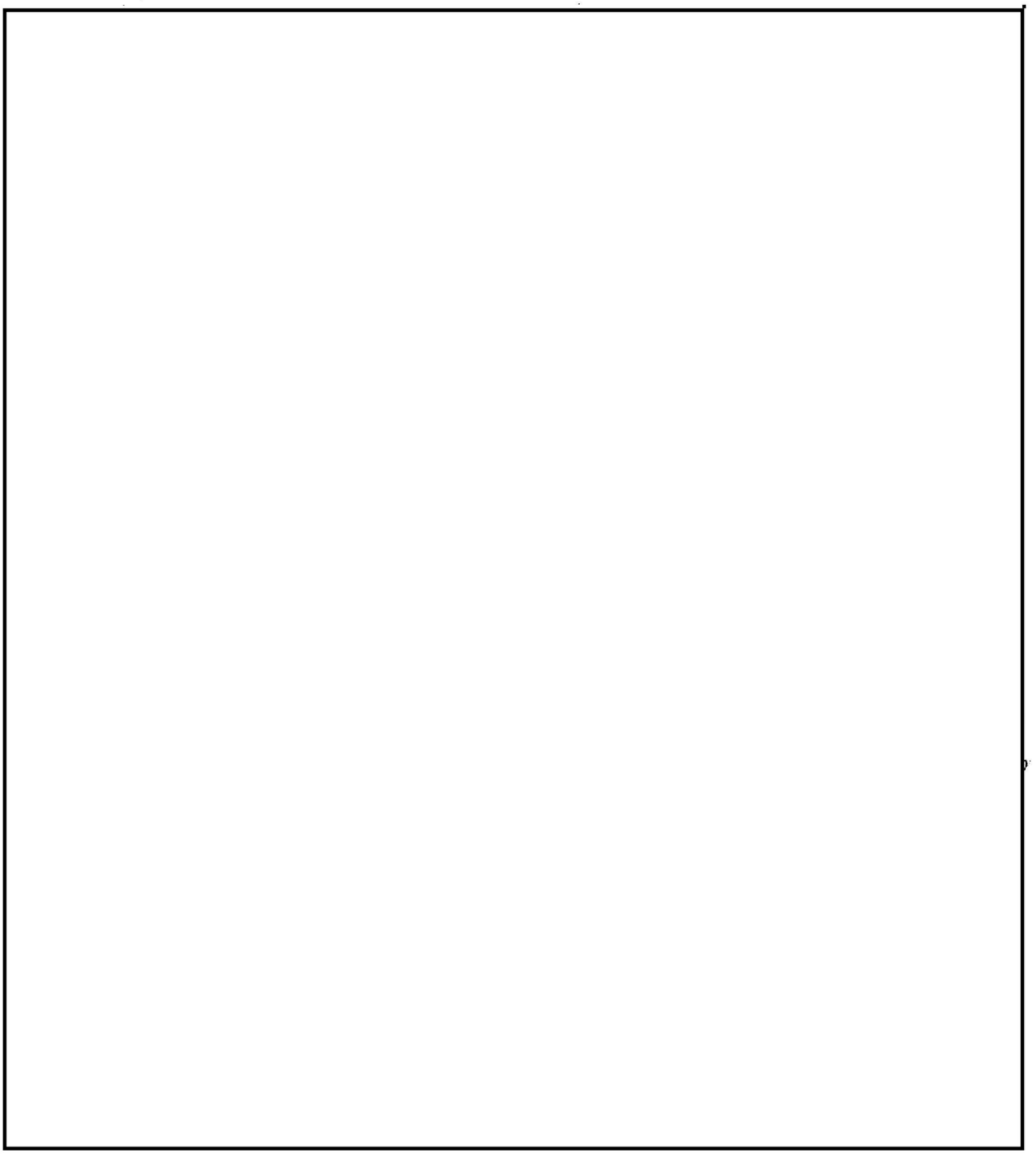
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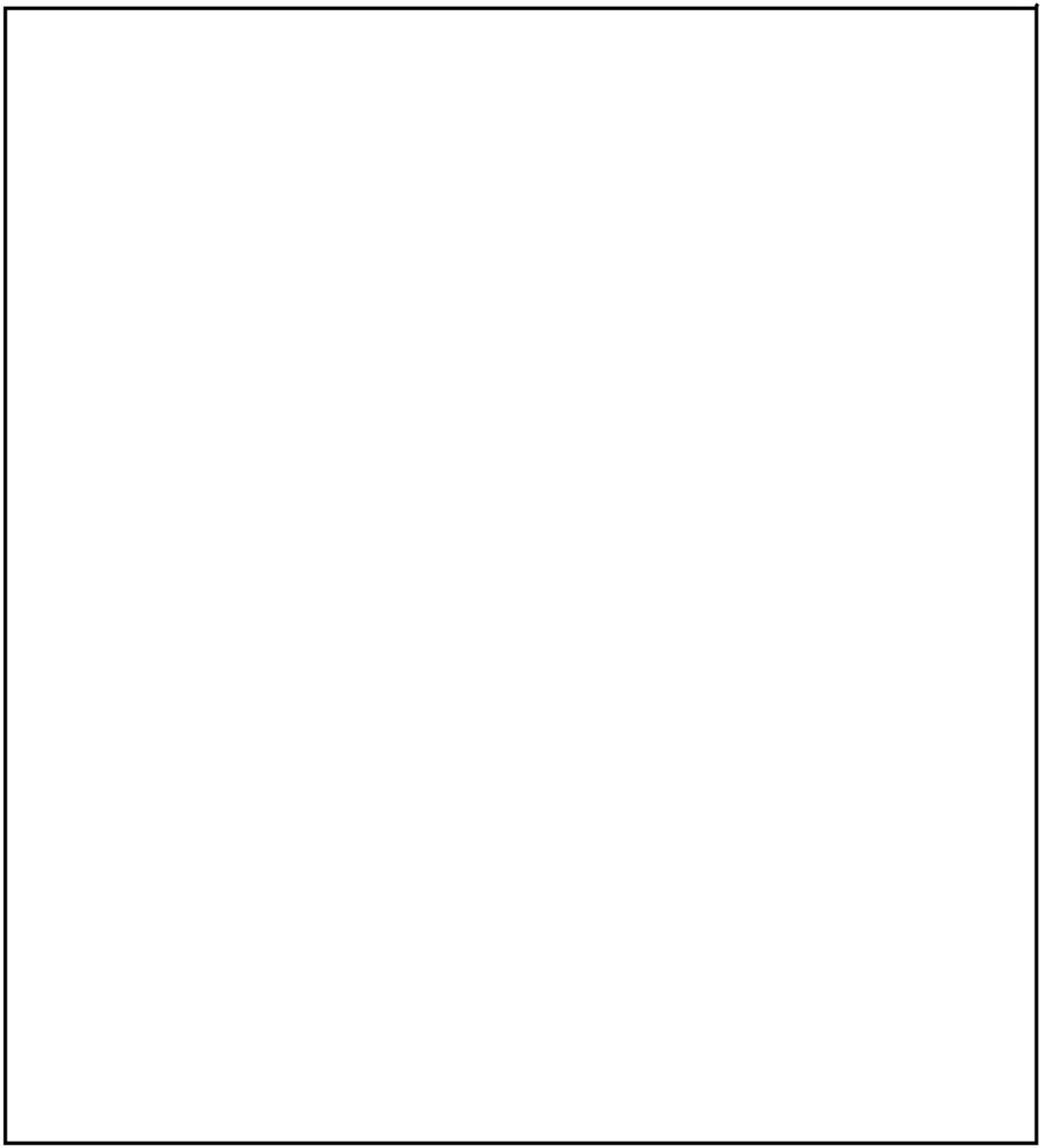
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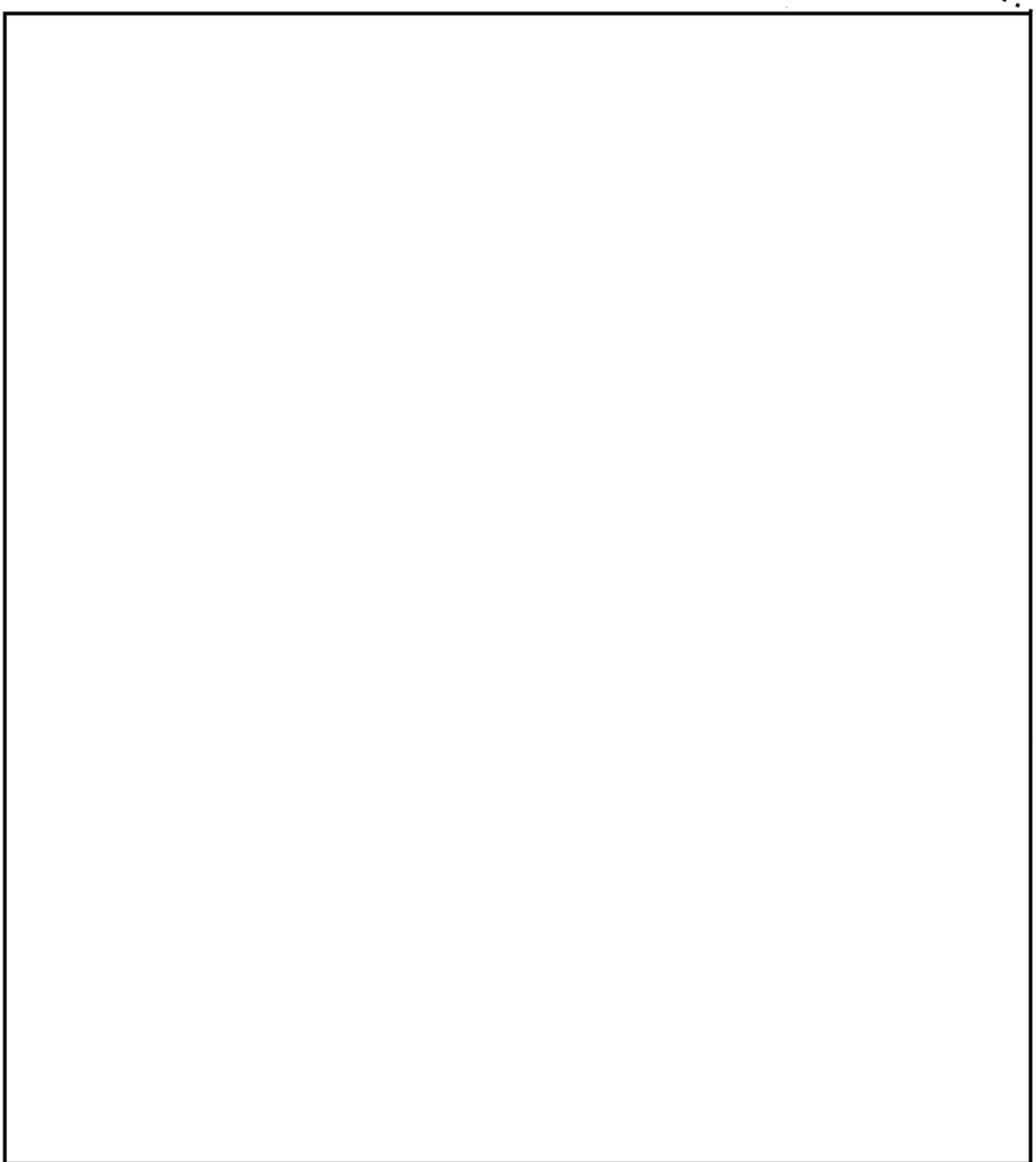
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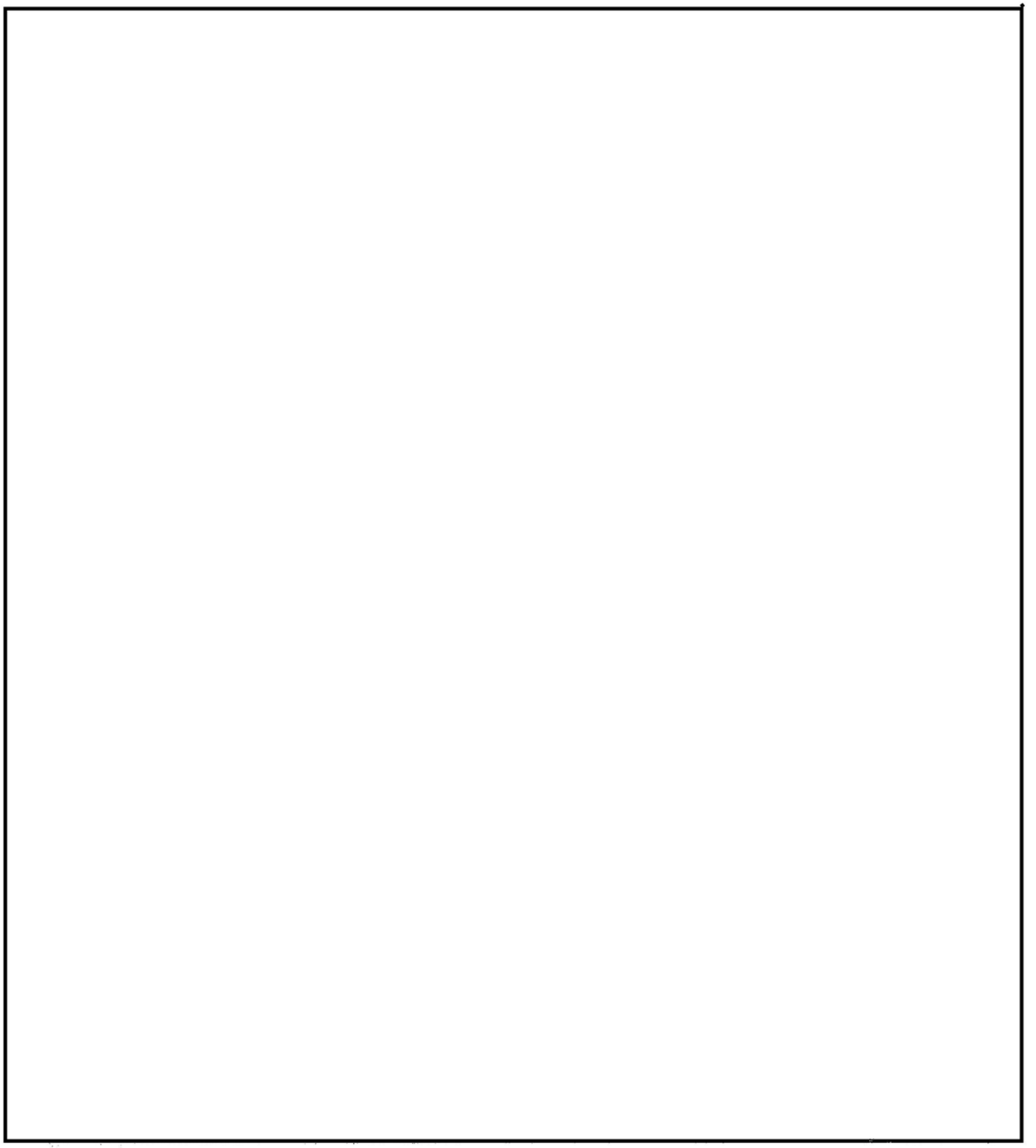
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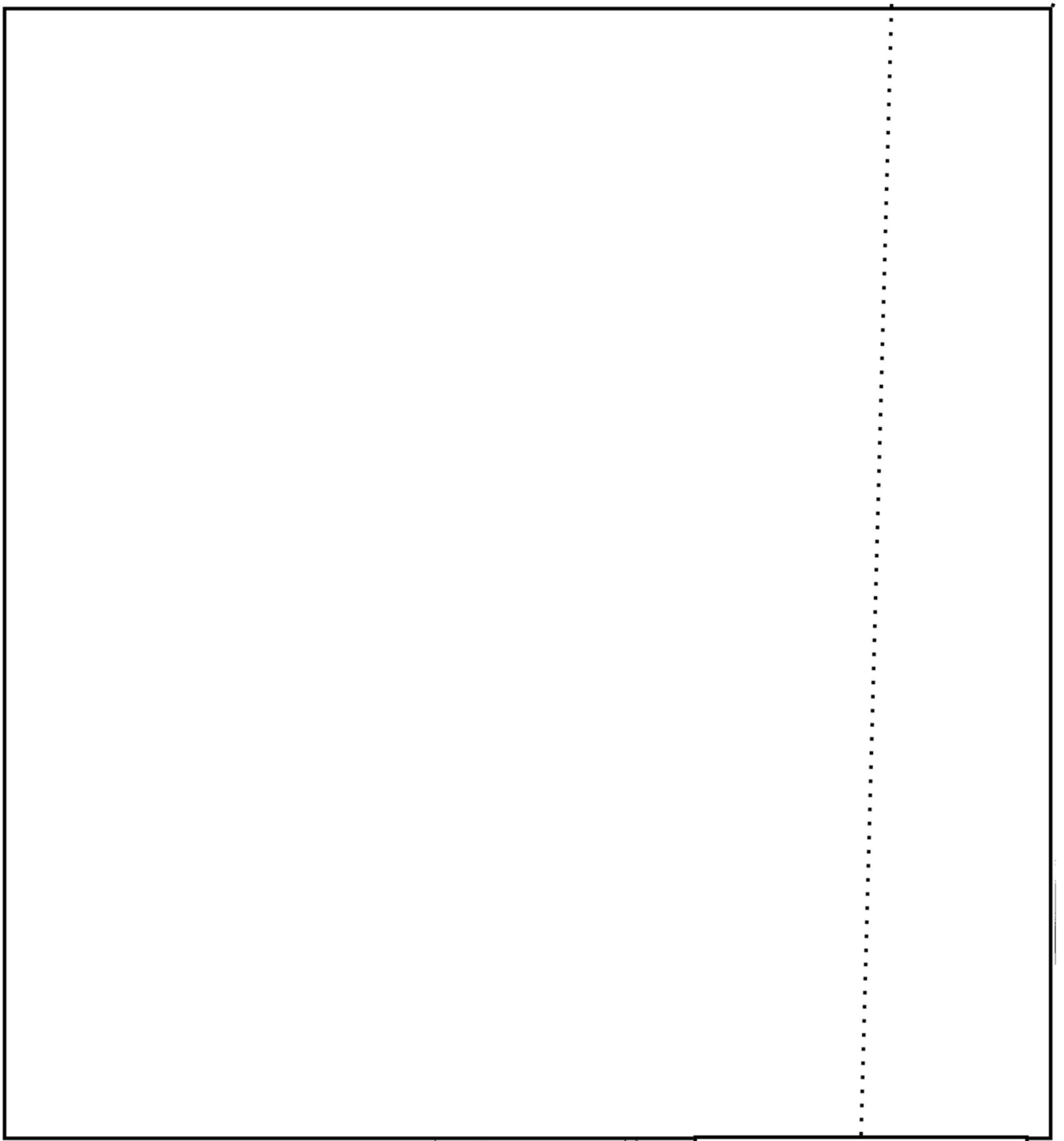
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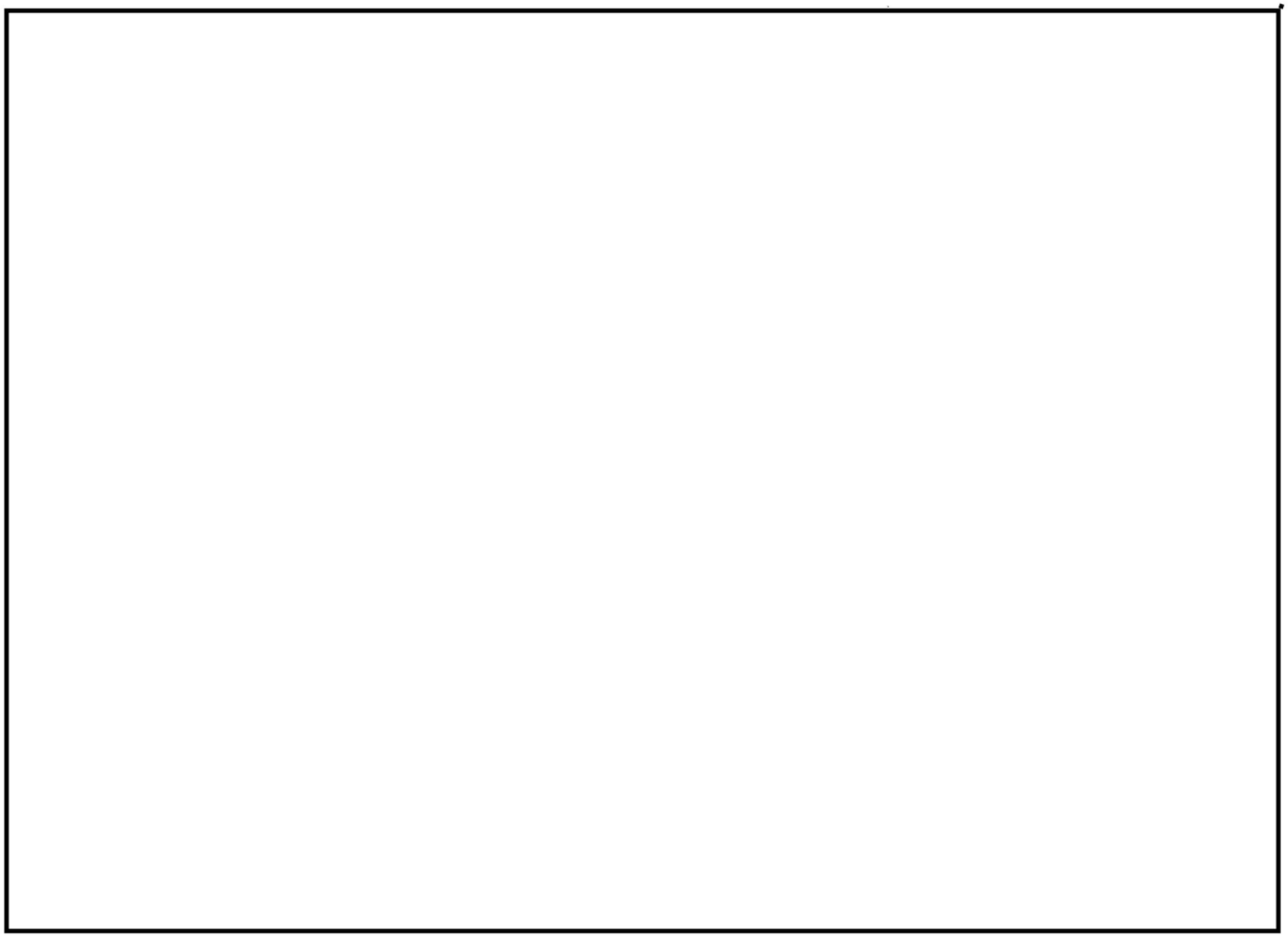
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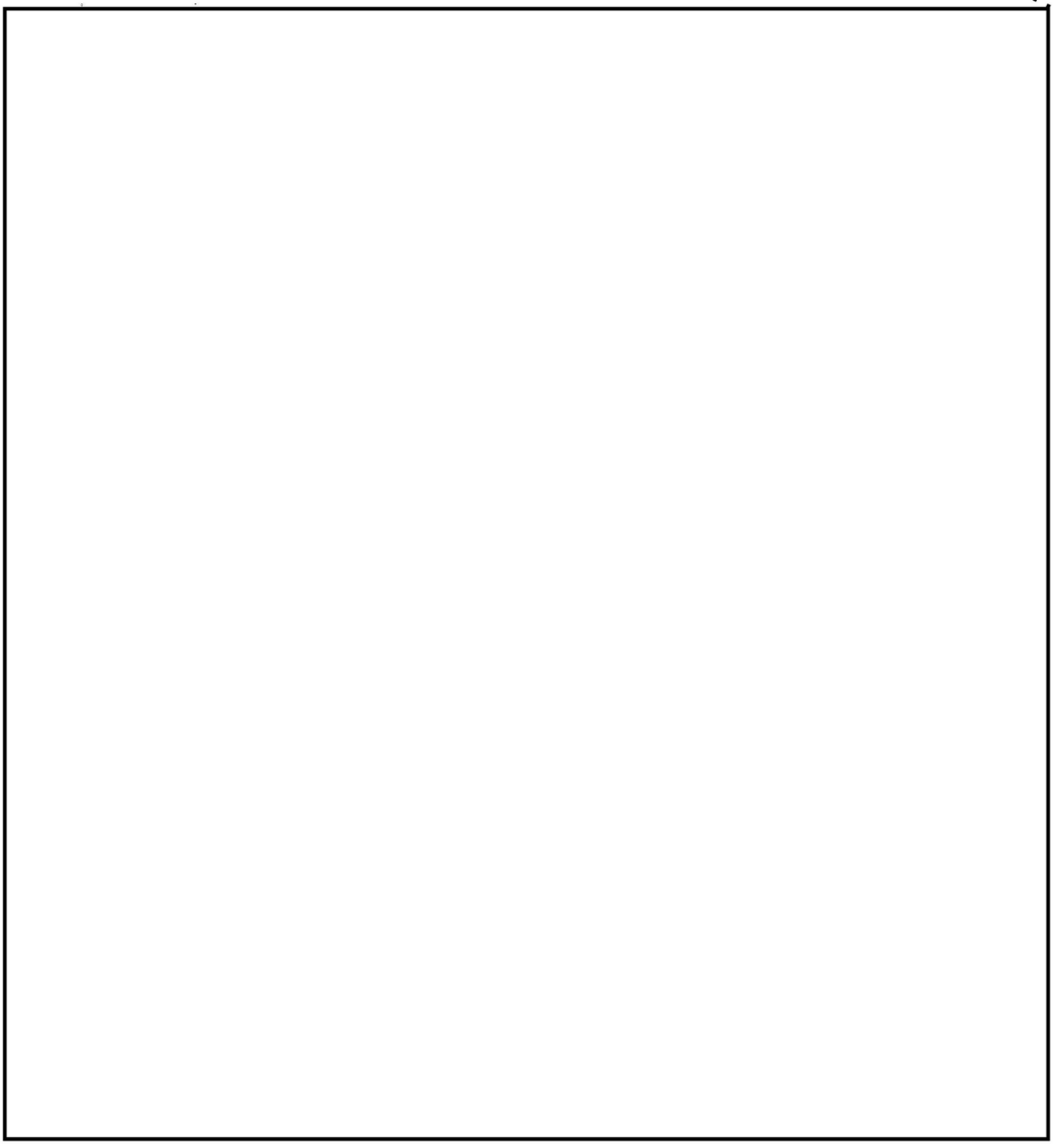
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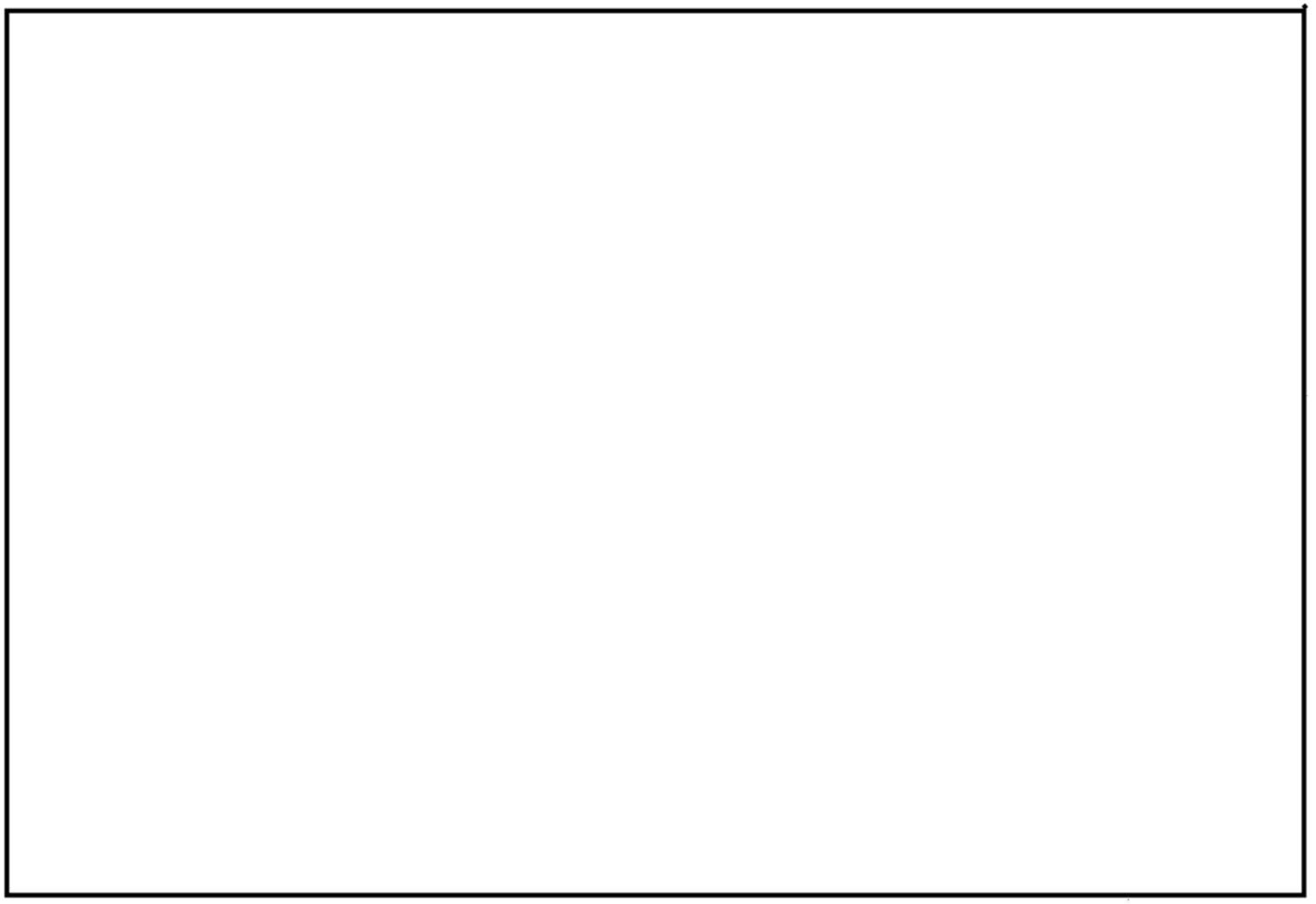
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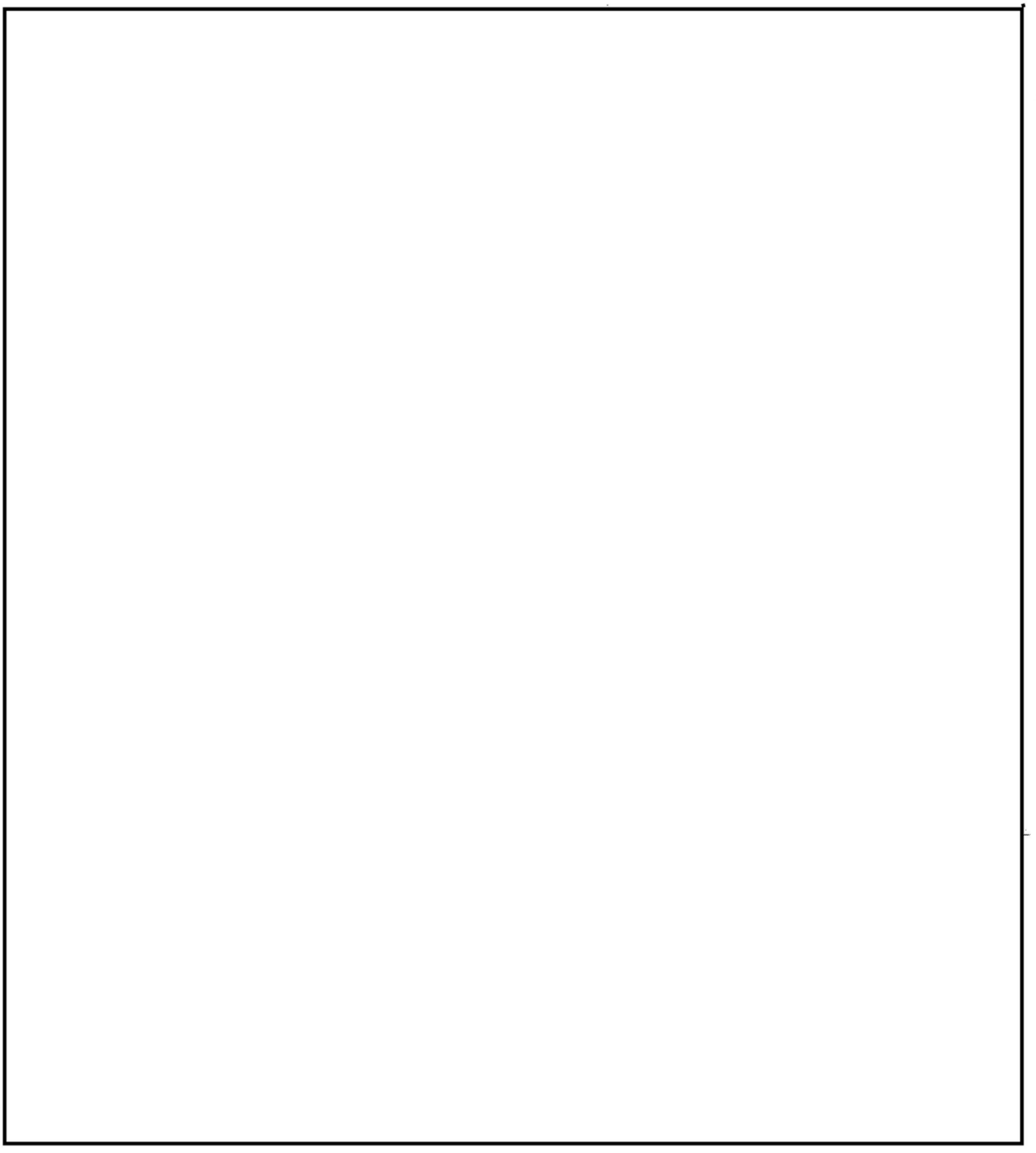
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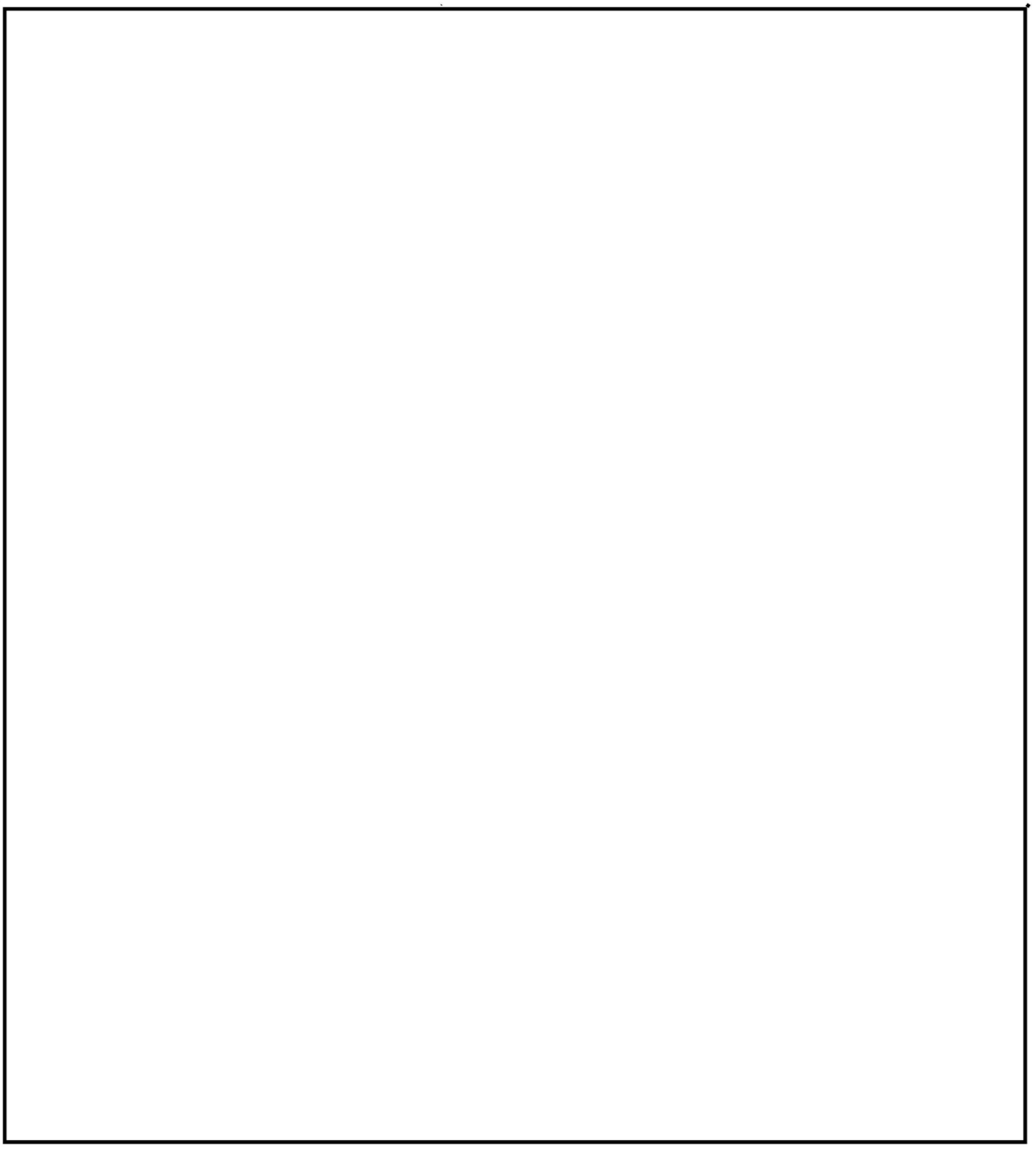
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(b)(3)-P.L. 86-36
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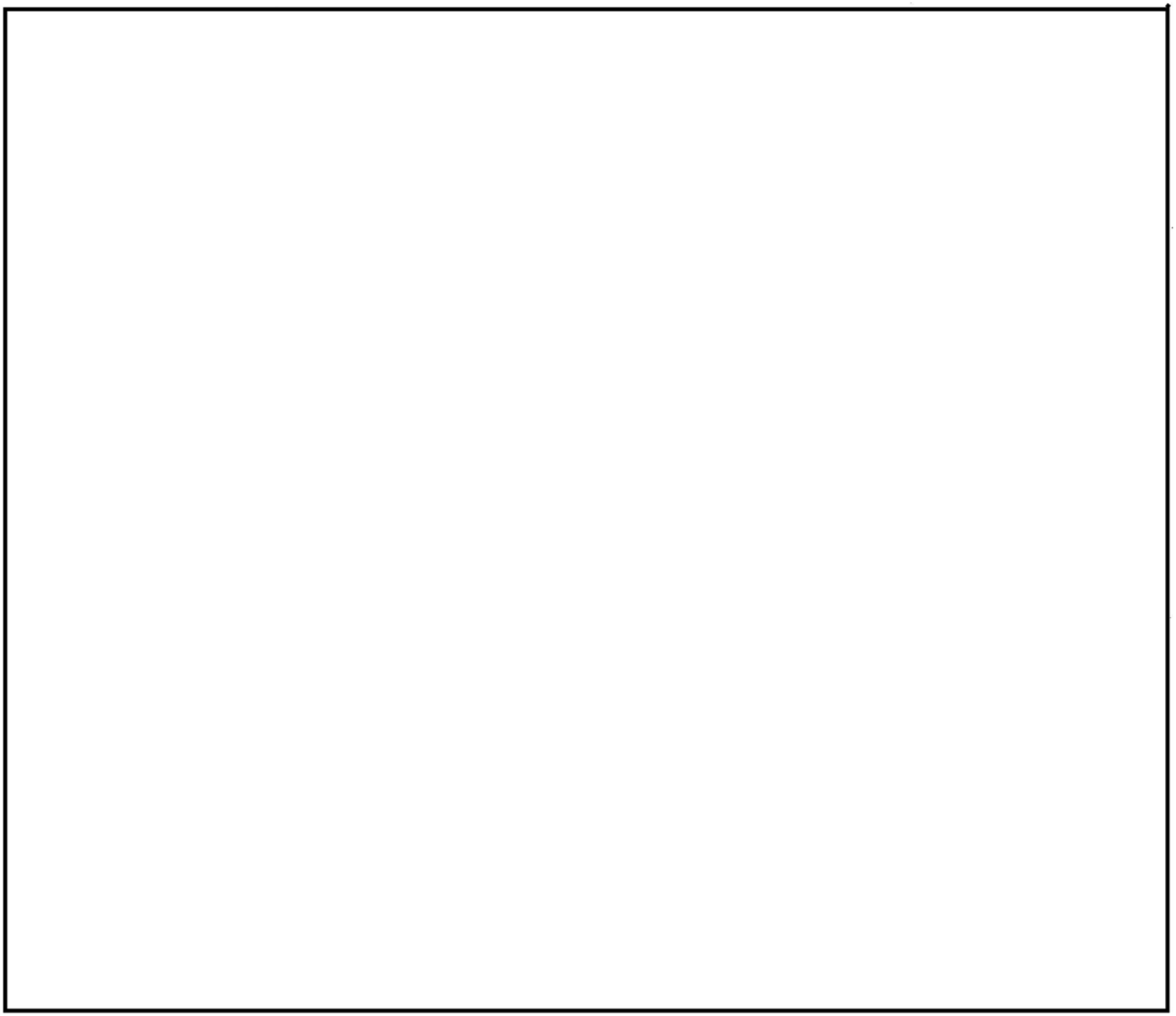
Release 2022-7
NSA 21013

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21014

(b)(3)-P.L. 86-36
(b)(6)

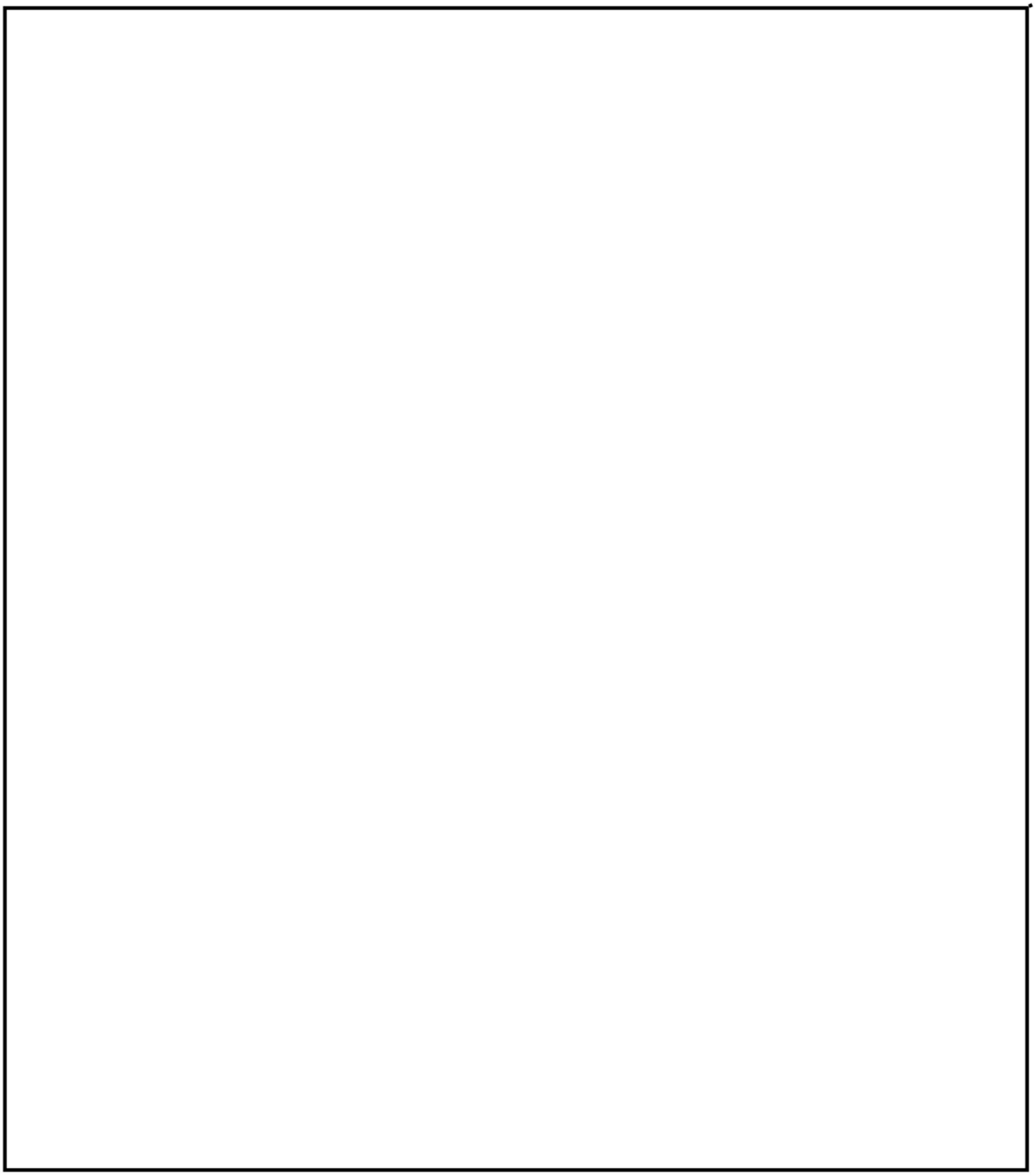


Release 2022-7
NSA 21015

(b)(3)-P.L. 86-36
(b)(6)

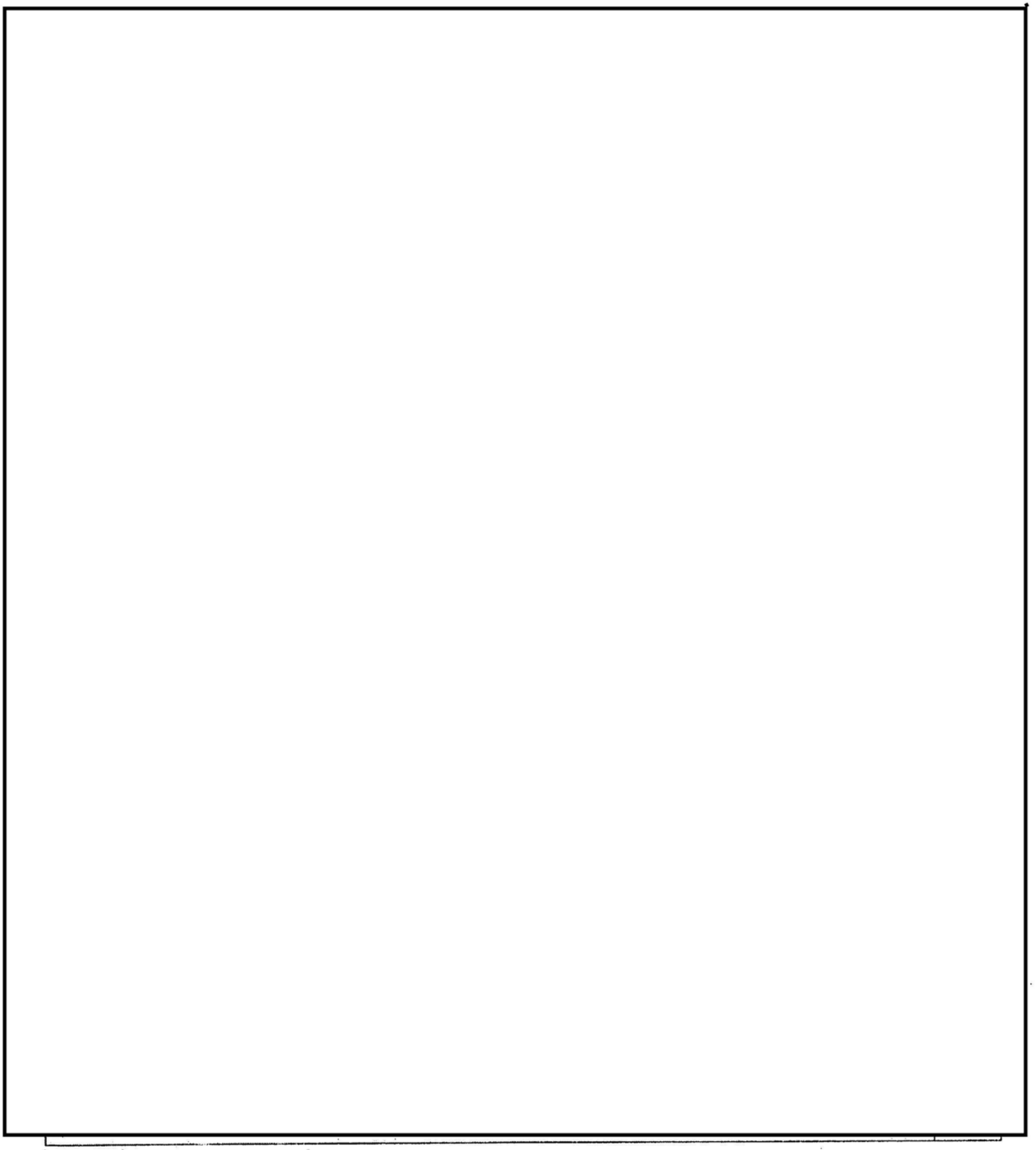
Release 2022-7
NSA 21016

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21017

(b)(3)-P.L. 86-36
(b)(6)

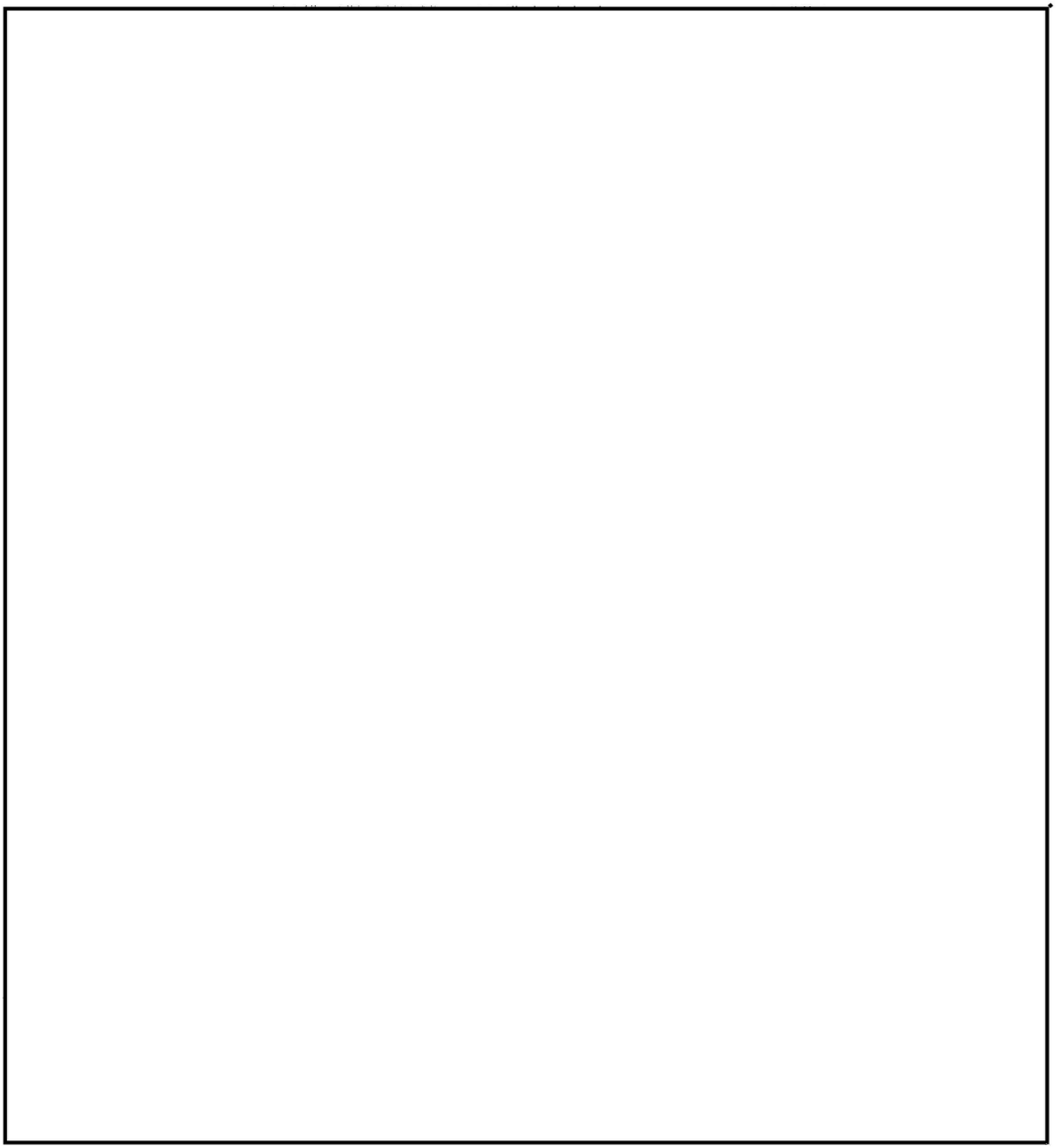


Release 2022-7
NSA 21018

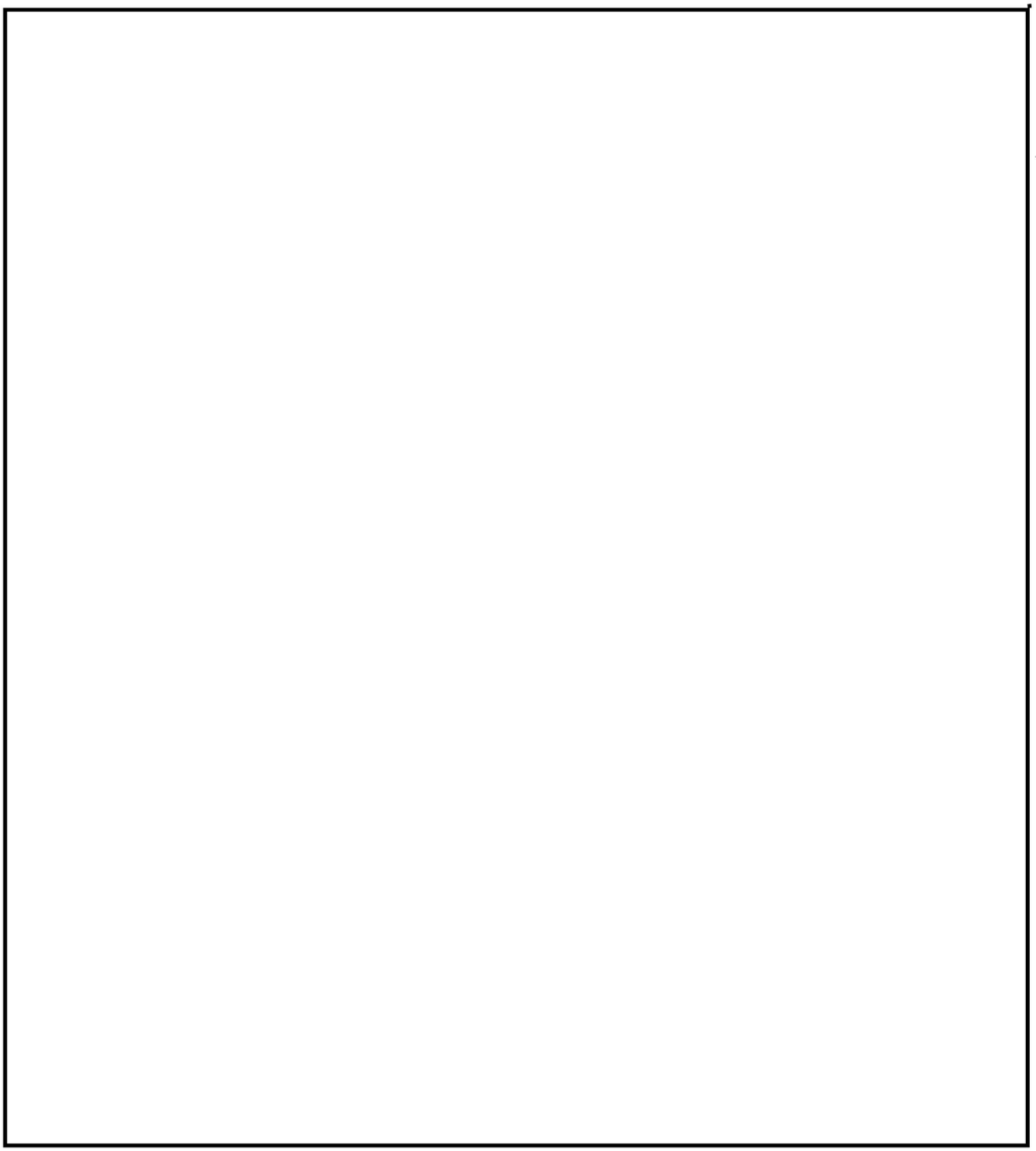
(b)(3)-P.L. 86-36
(b)(6)

Release 2022-7
NSA 21019

(b)(3)-P.L. 86-36
(b)(6)

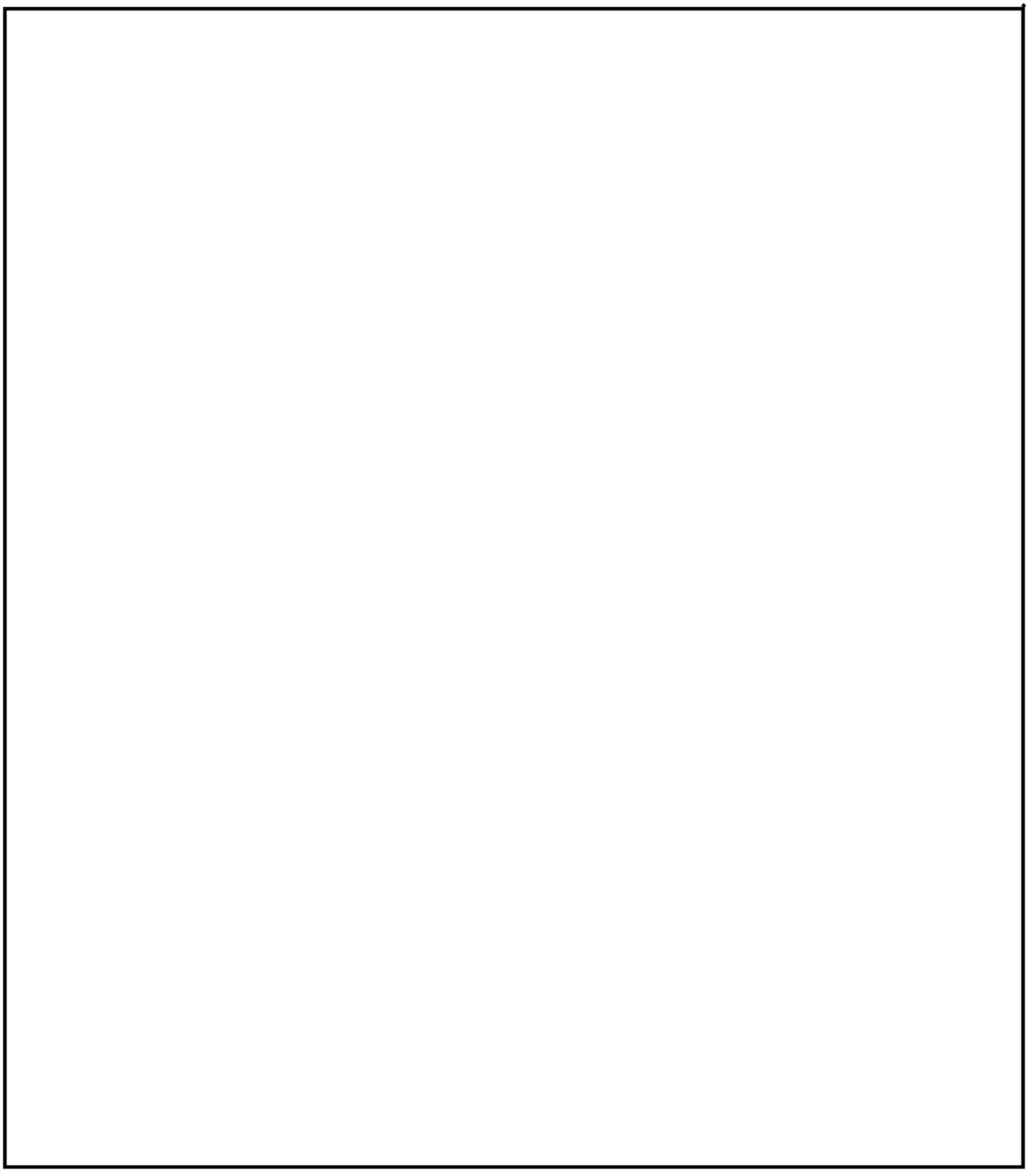


(b)(3)-P.L. 86-36
(b)(6)



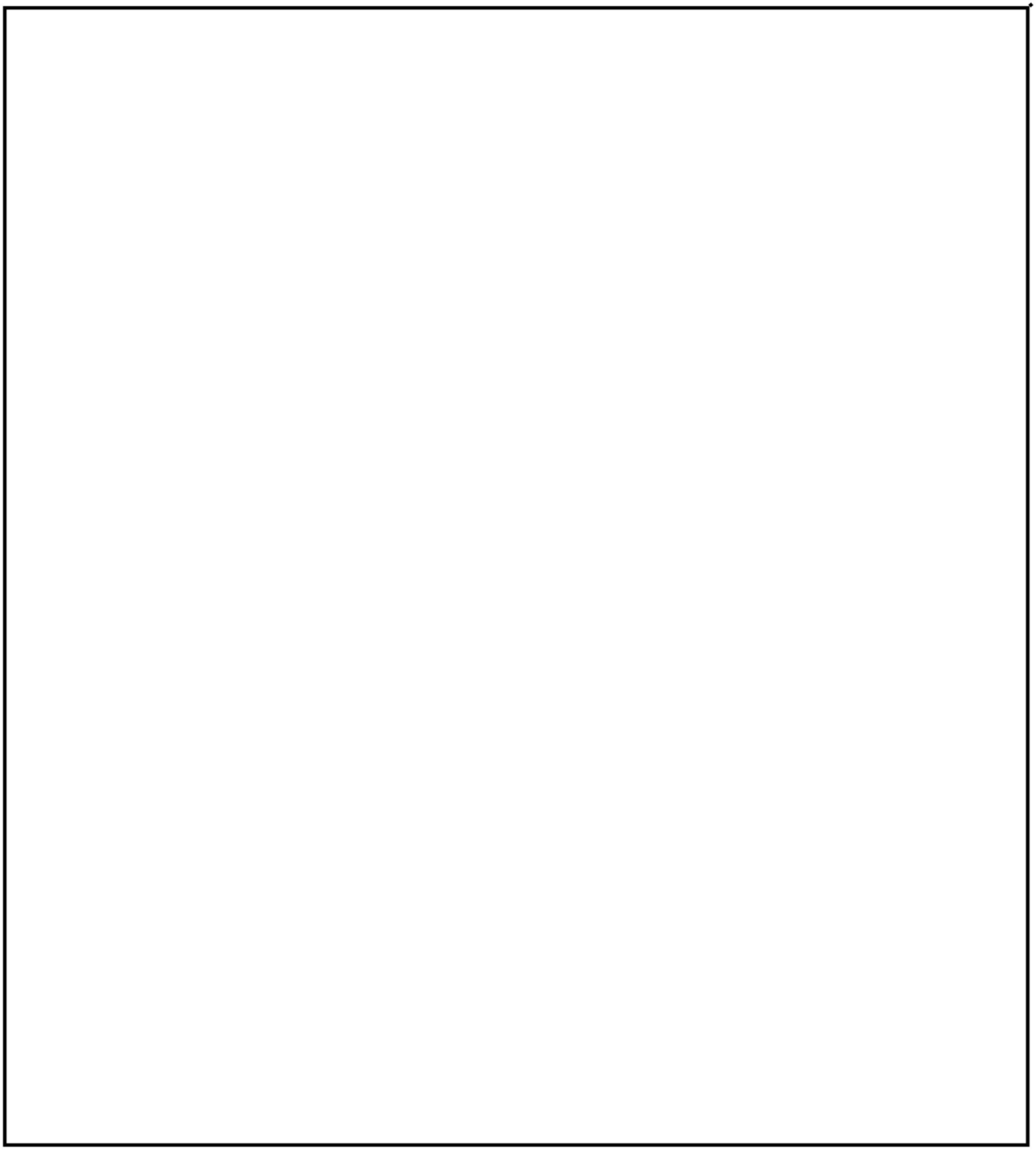
Release 2022-7
NSA 21021

(b)(3)-P.L. 86-36
(b)(6)



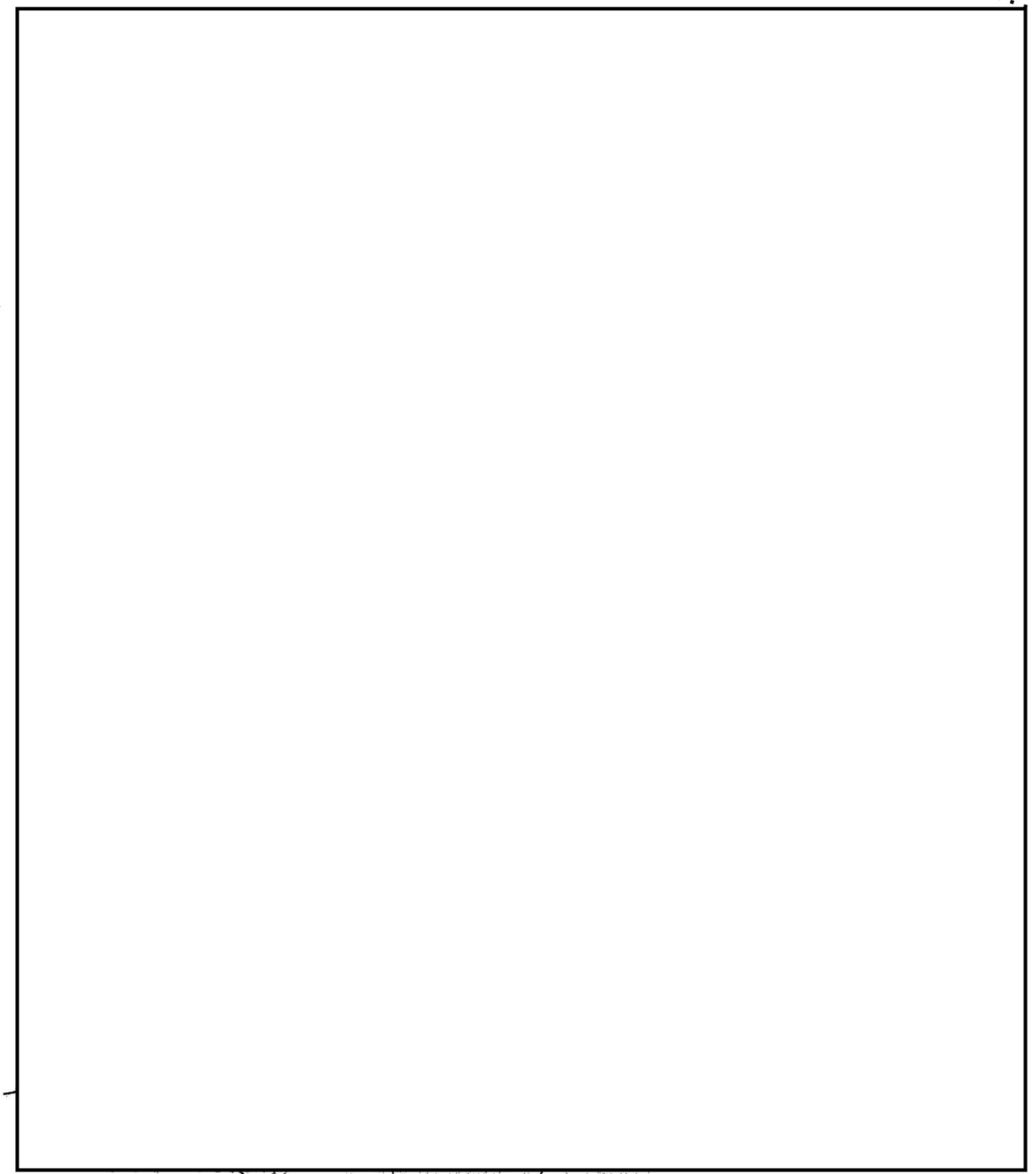
Release 2022-7
NSA 21022

(b)(3)-P.L. 86-36
(b)(6)



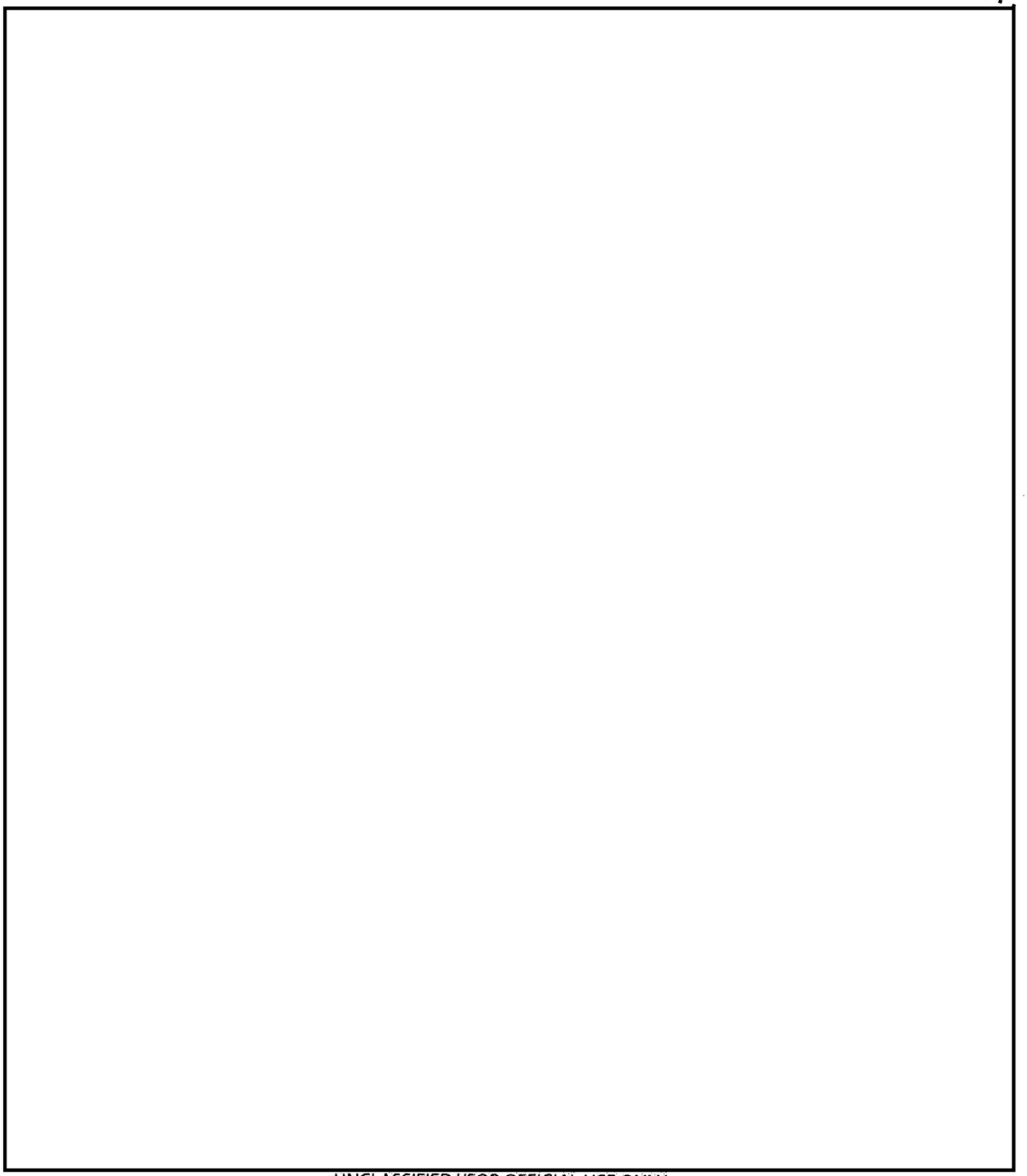
Release 2022-7
NSA 21023

(b)(3)-P.L. 86-36
(b)(6)



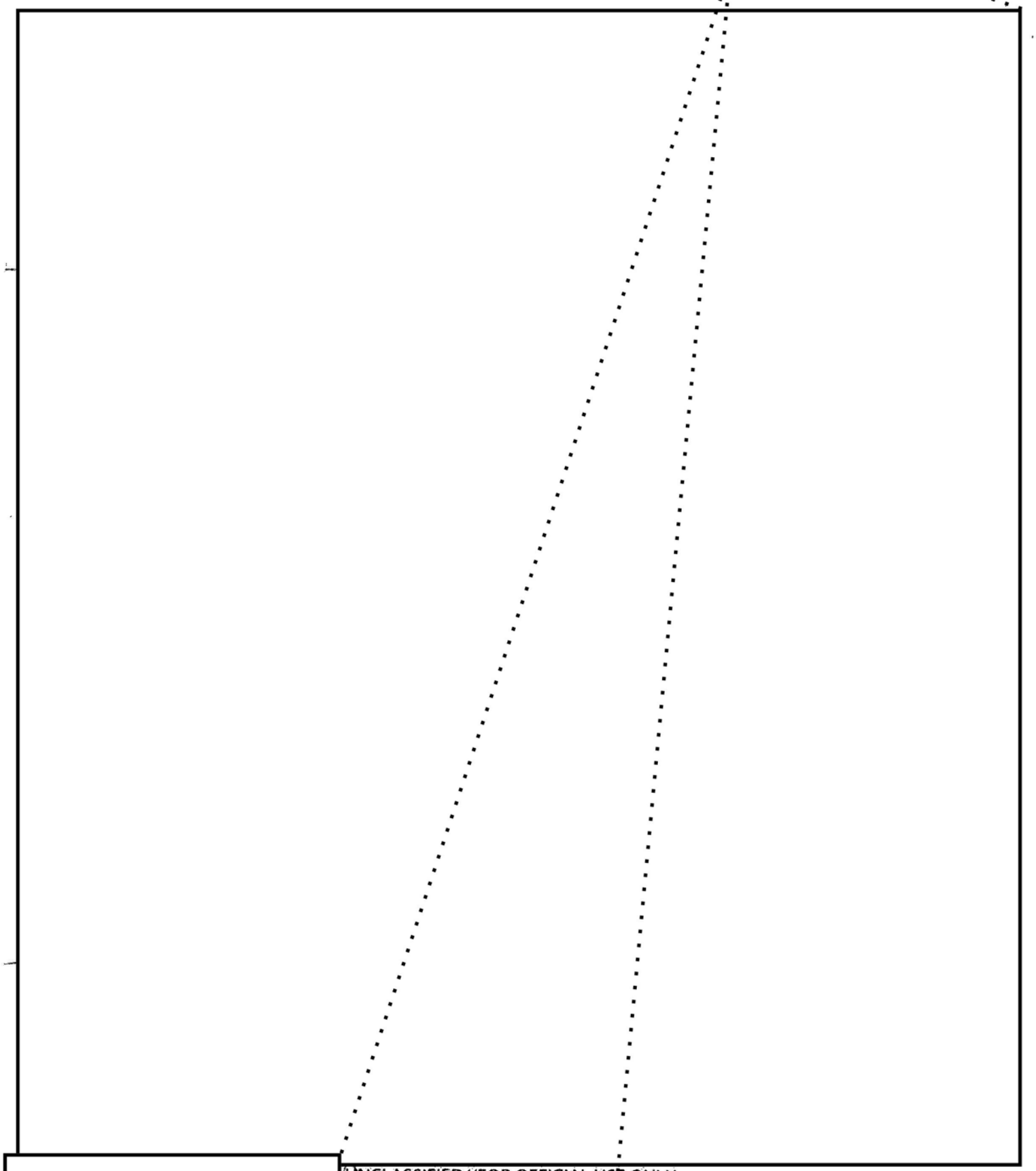
Release 2022-7
NSA 21024

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21025

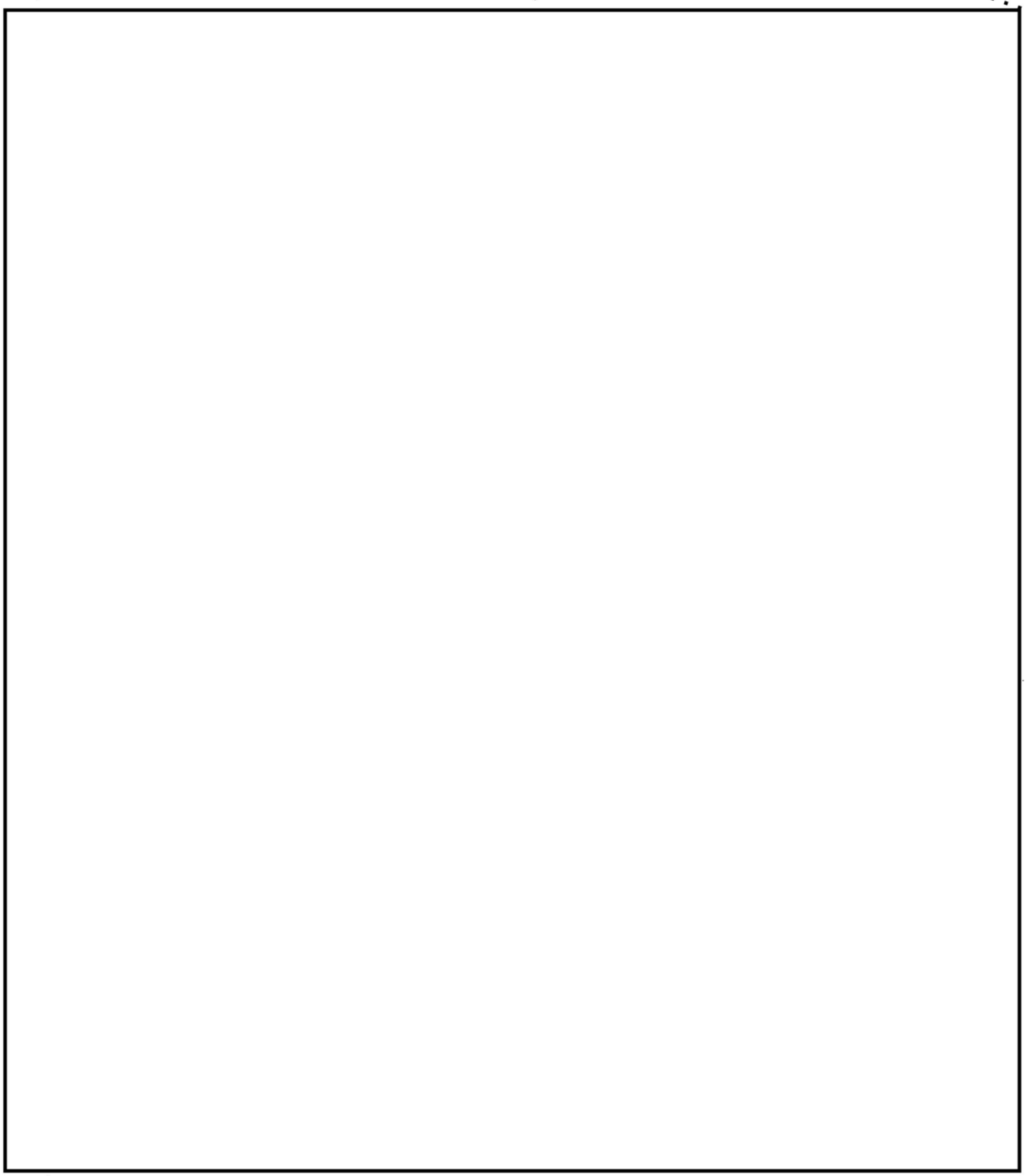
(b)(3)-P.L. 86-36
(b)(6)



(b)(3)-P.L. 86-36
(b)(6)

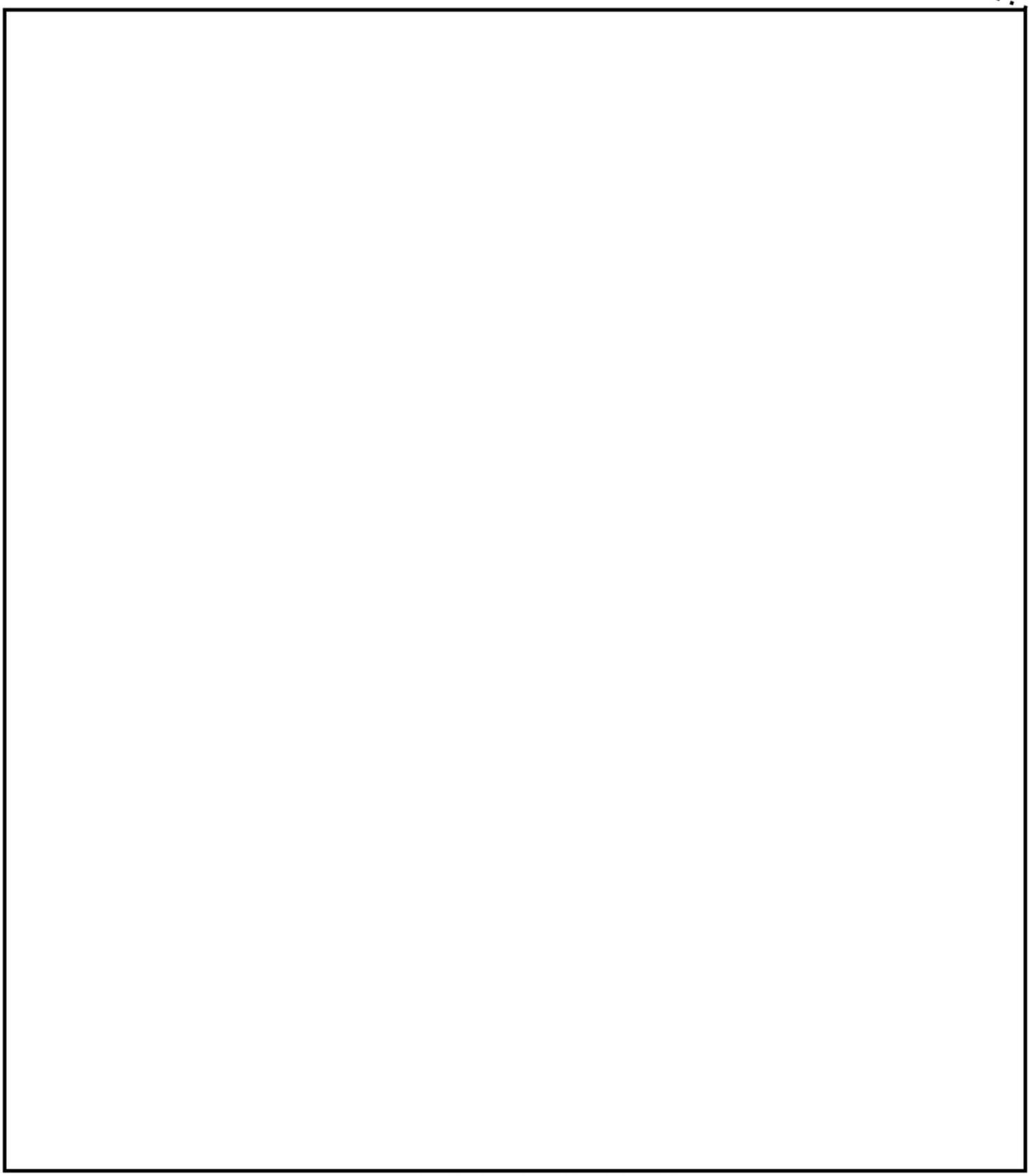
Release 2022-7
NSA 21027

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21028

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21029

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21030

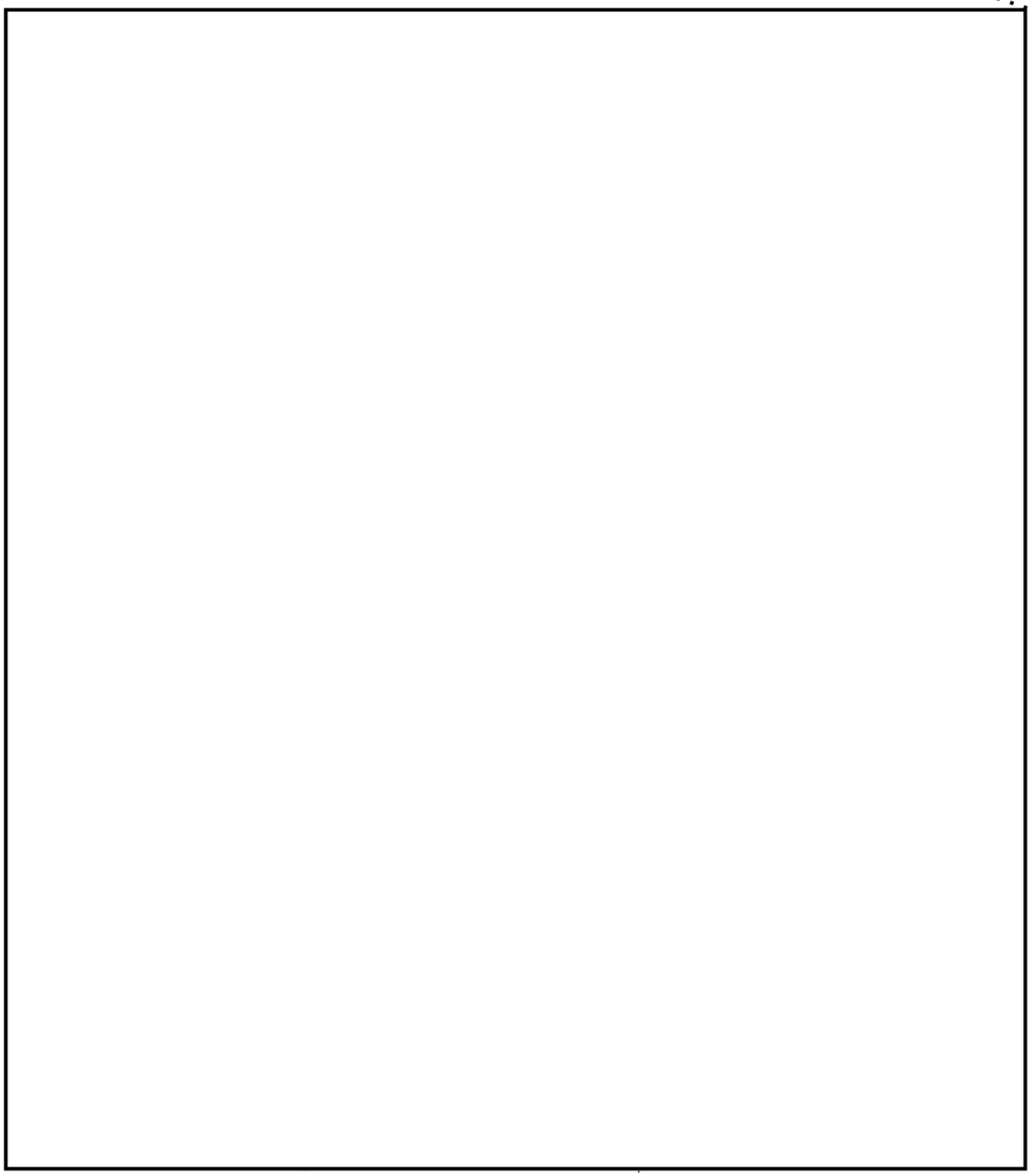
(b)(3)-P.L. 86-36
(b)(6)

Release 2022-7
NSA 21031

(b)(3)-P.L. 86-36
(b)(6)

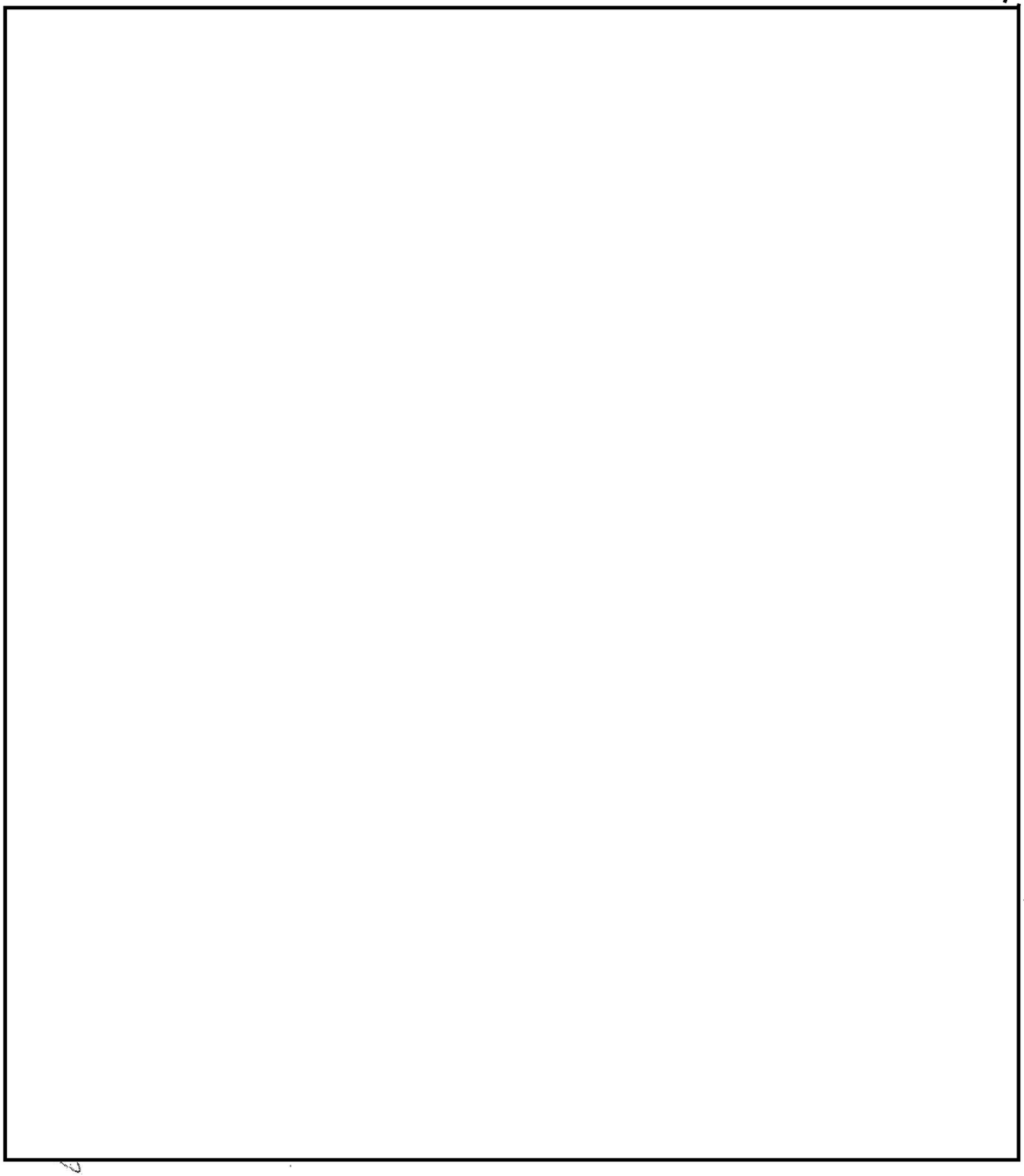
Release 2022-7
NSA 21032

(b)(3)-P.L. 86-36
(b)(6)

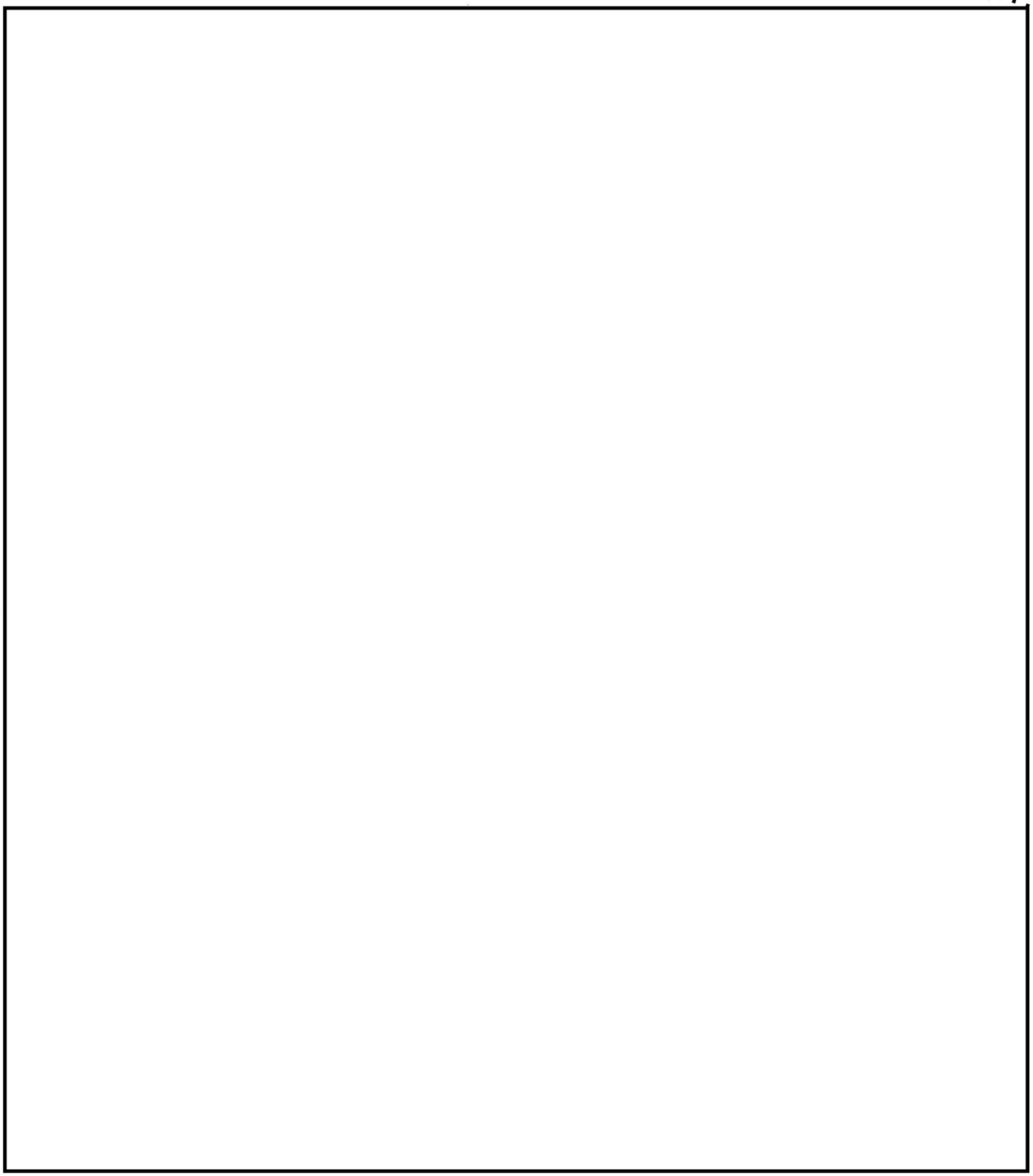


Release 2022-7
NSA 21033

(b)(3)-P.L. 86-36
(b)(6)

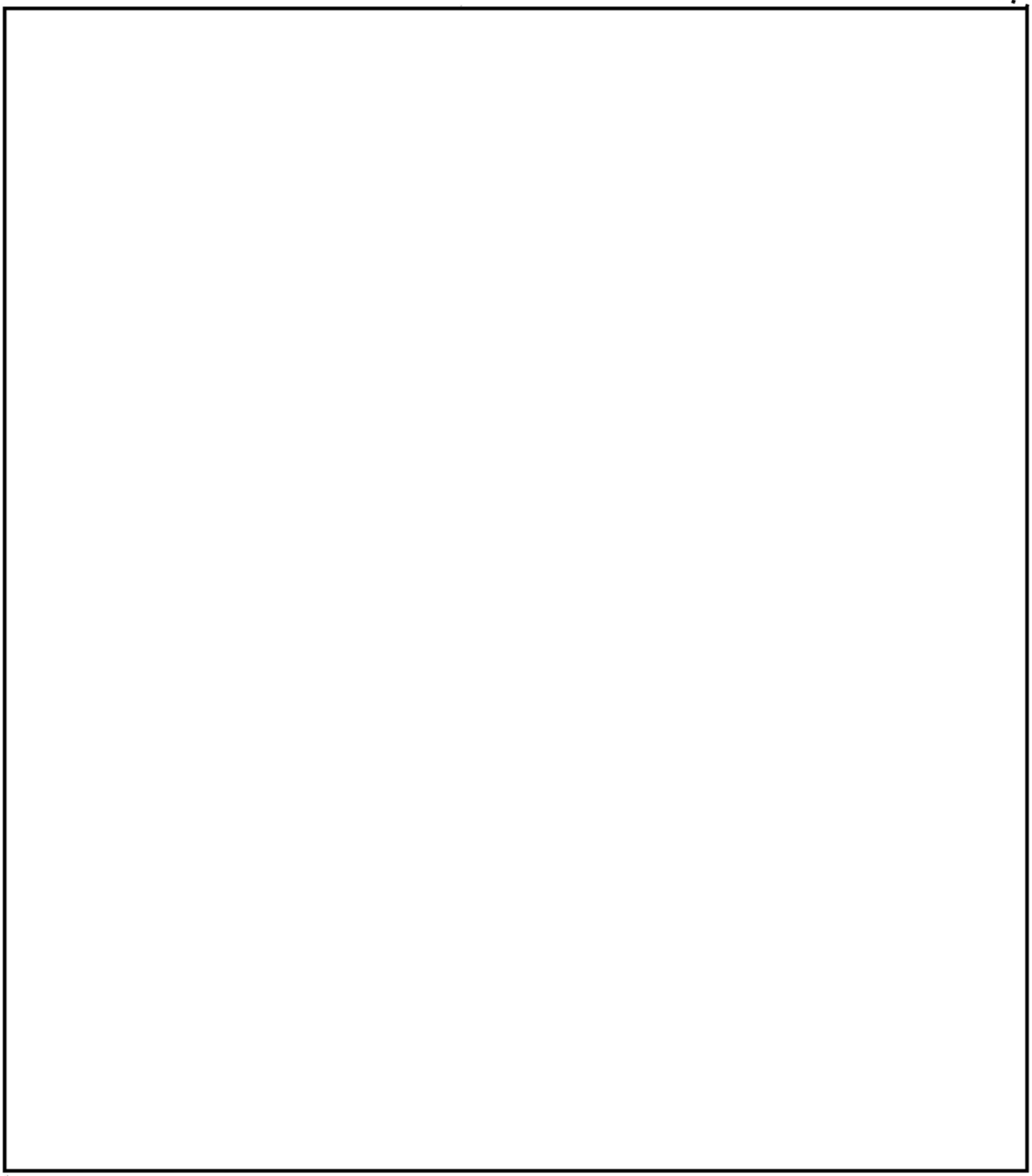


(b)(3)-P.L. 86-36
(b)(6)



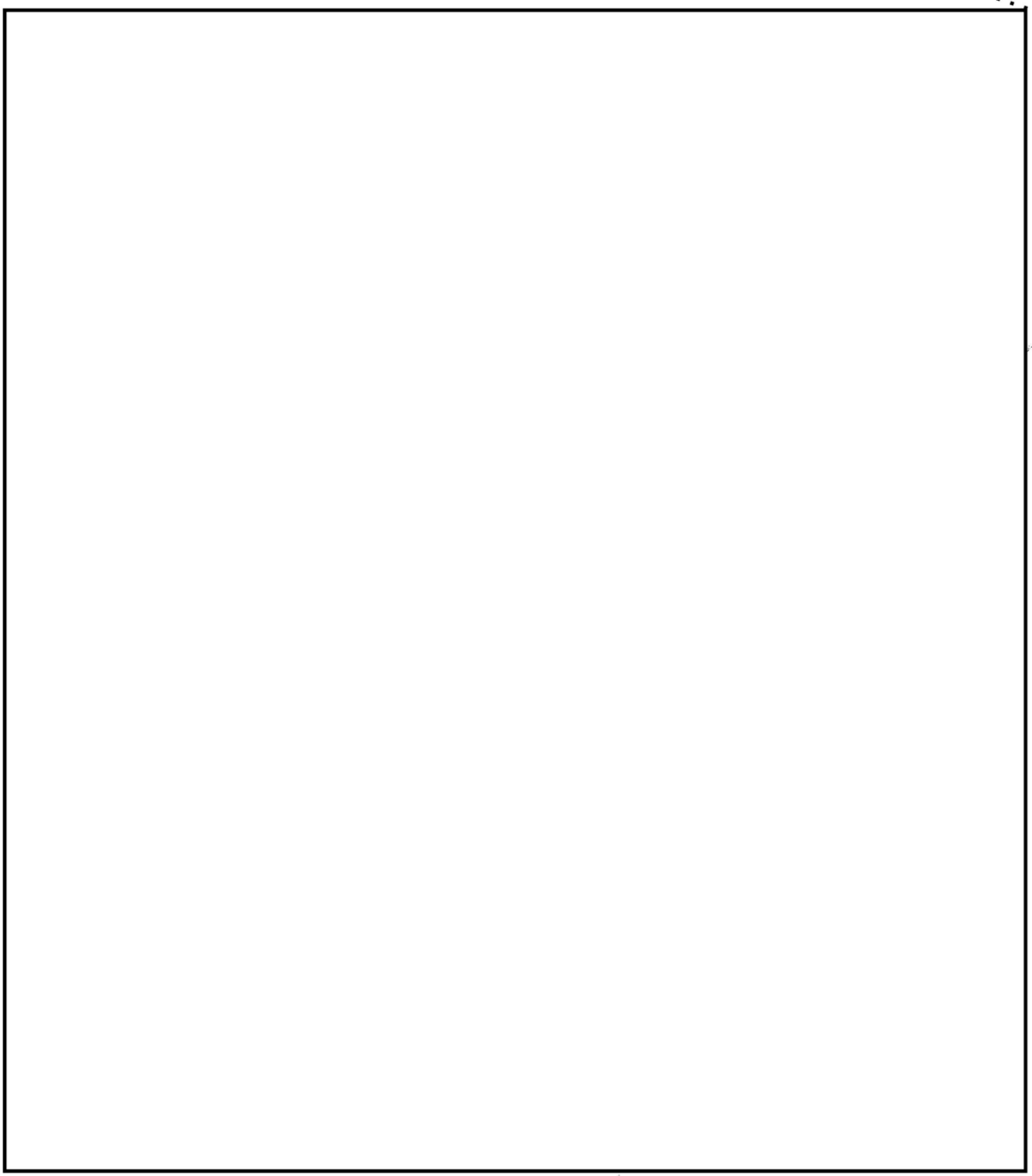
Release 2022-7
NSA 21035

(b)(3)-P.L. 86-36
(b)(6)



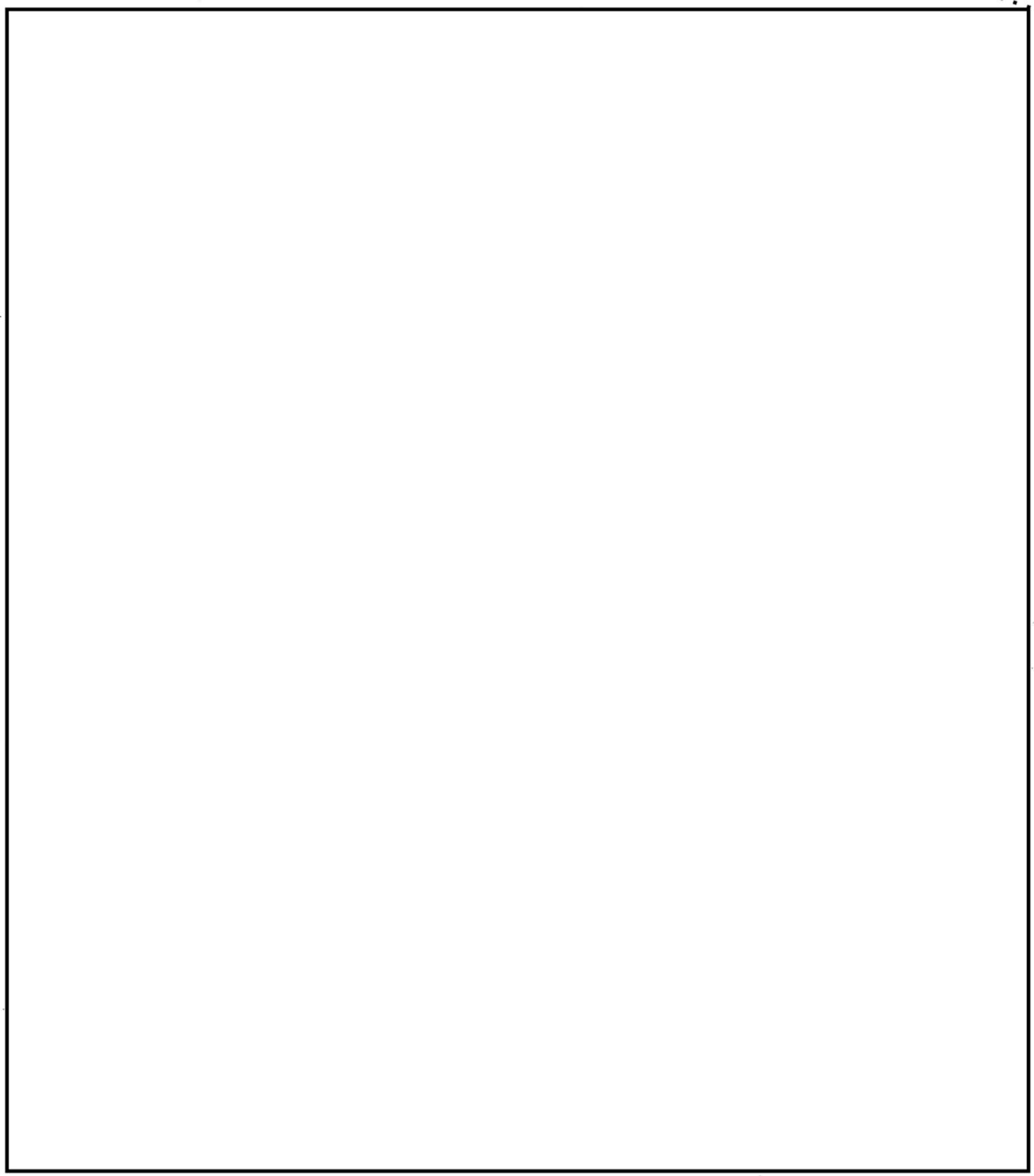
Release 2022-7
NSA 21036

(b)(3)-P.L. 86-36
(b)(6)



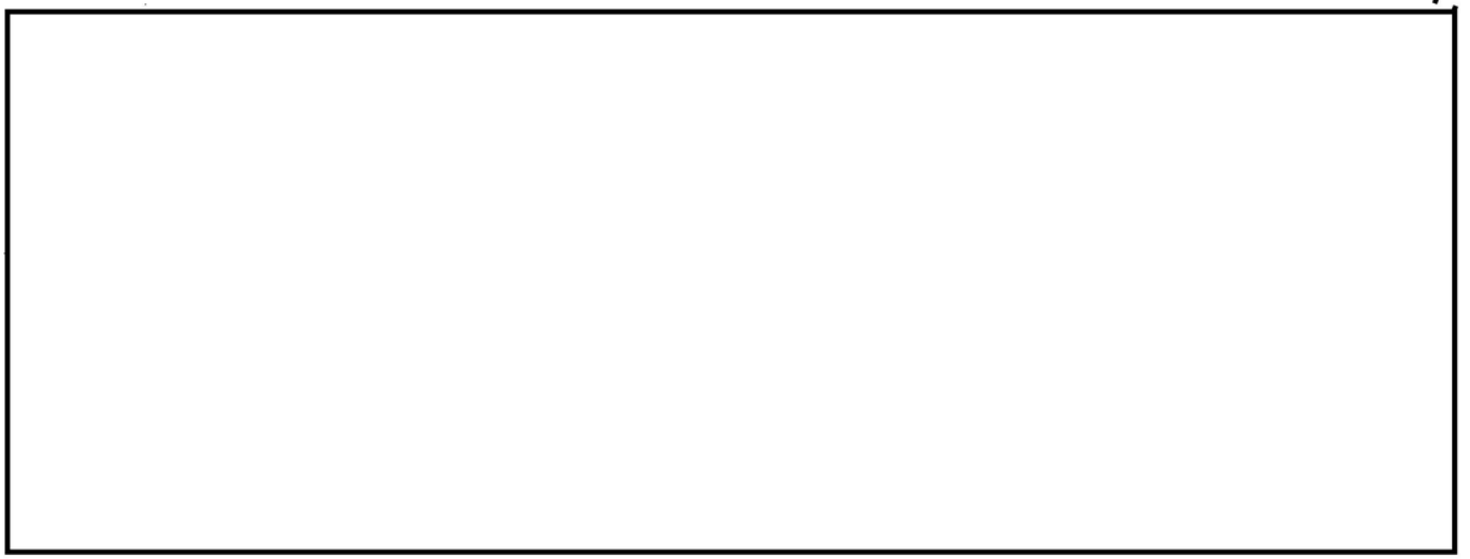
Release 2022-7
NSA 21037

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21038

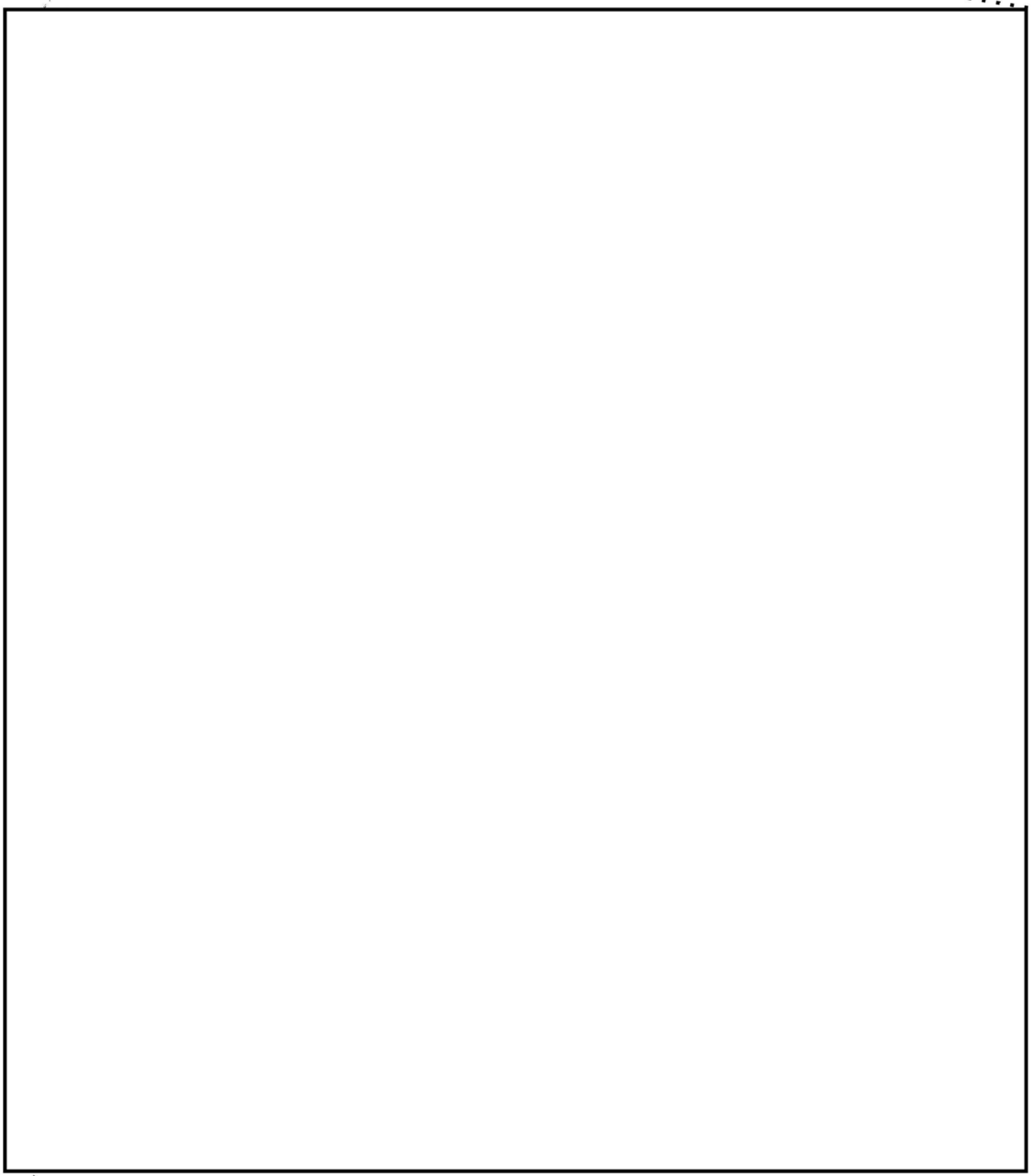
(b)(3)-P.L. 86-36
(b)(6)



(b)(3)-P.L. 86-36
(b)(6)

Release 2022-7
NSA 21040

(b)(3)-P.L. 86-36
(b)(6)

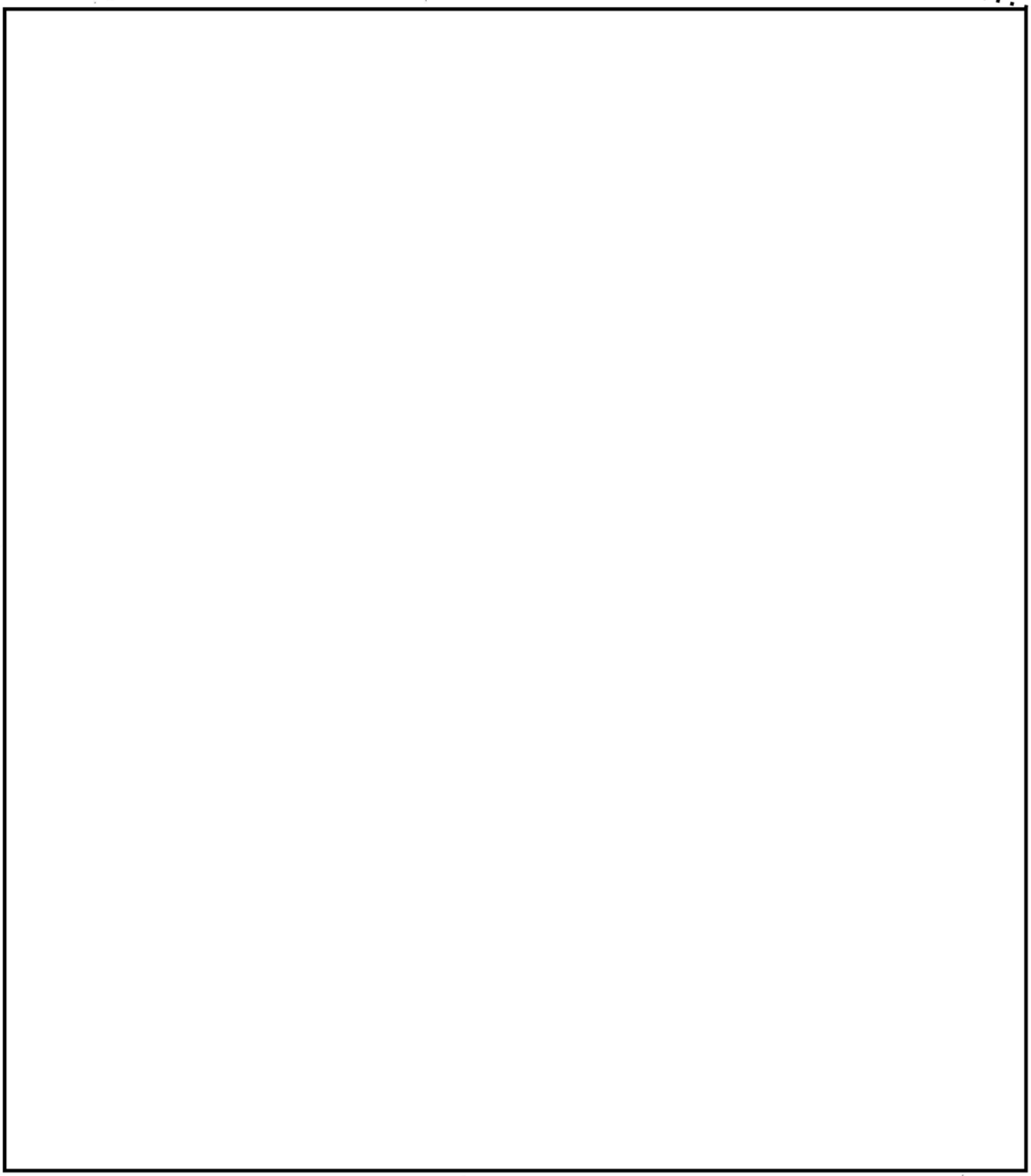


Release 2022-7
NSA 21041

(b)(3)-P.L. 86-36
(b)(6)

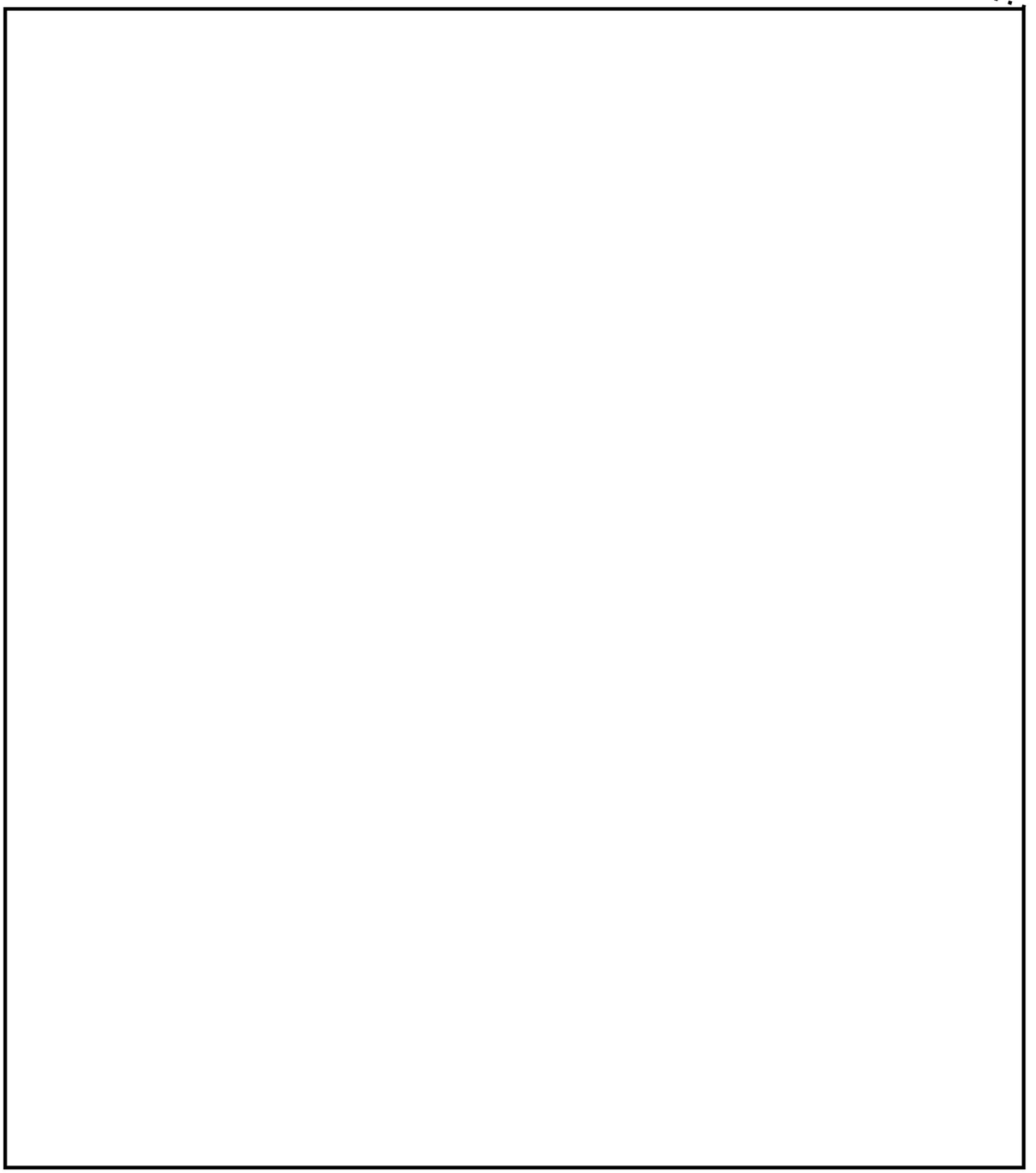
Release 2022-7
NSA 21042

(b)(3)-P.L. 86-36
(b)(6)



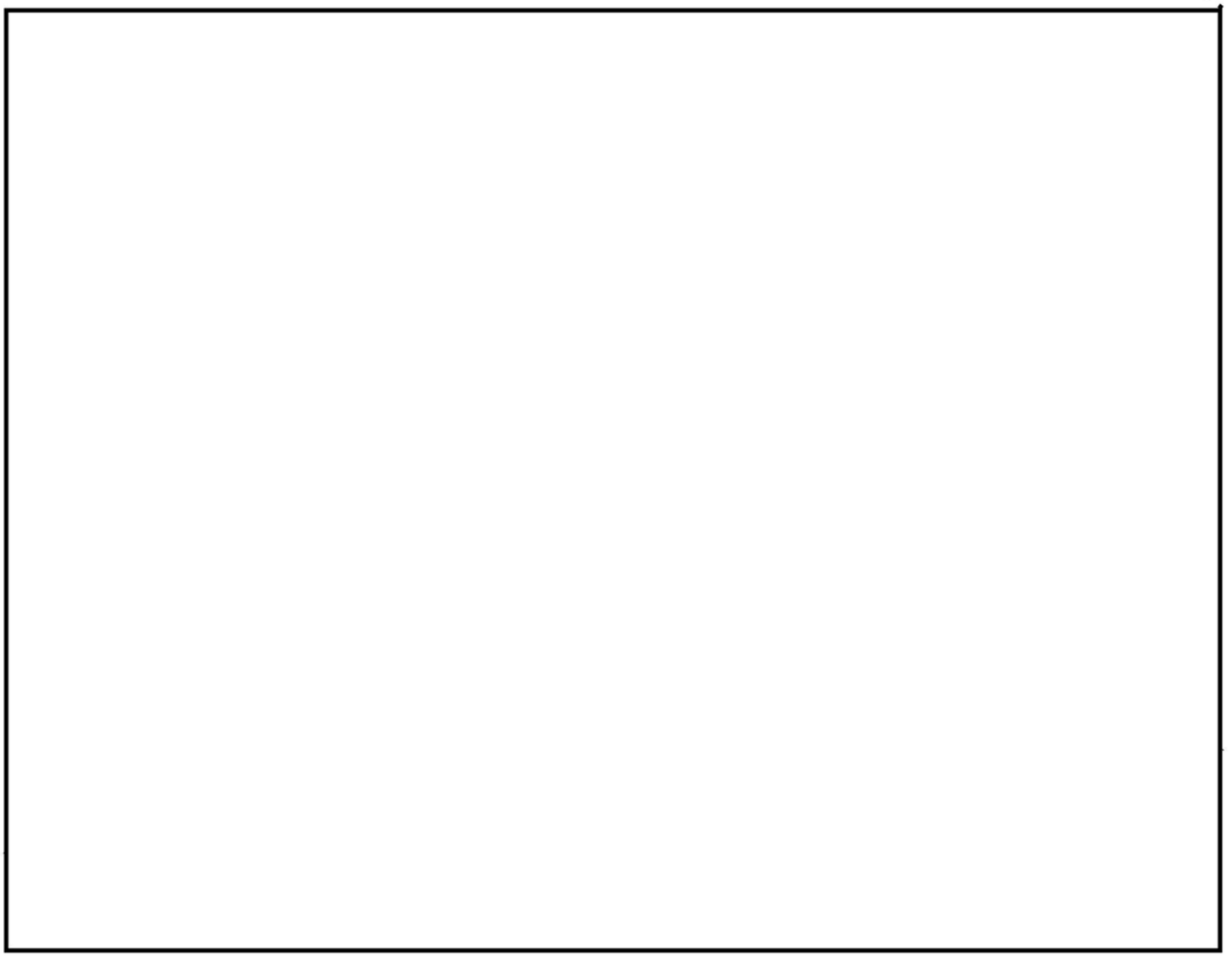
Release 2022-7
NSA 21043

(b)(3)-P.L. 86-36
(b)(6)

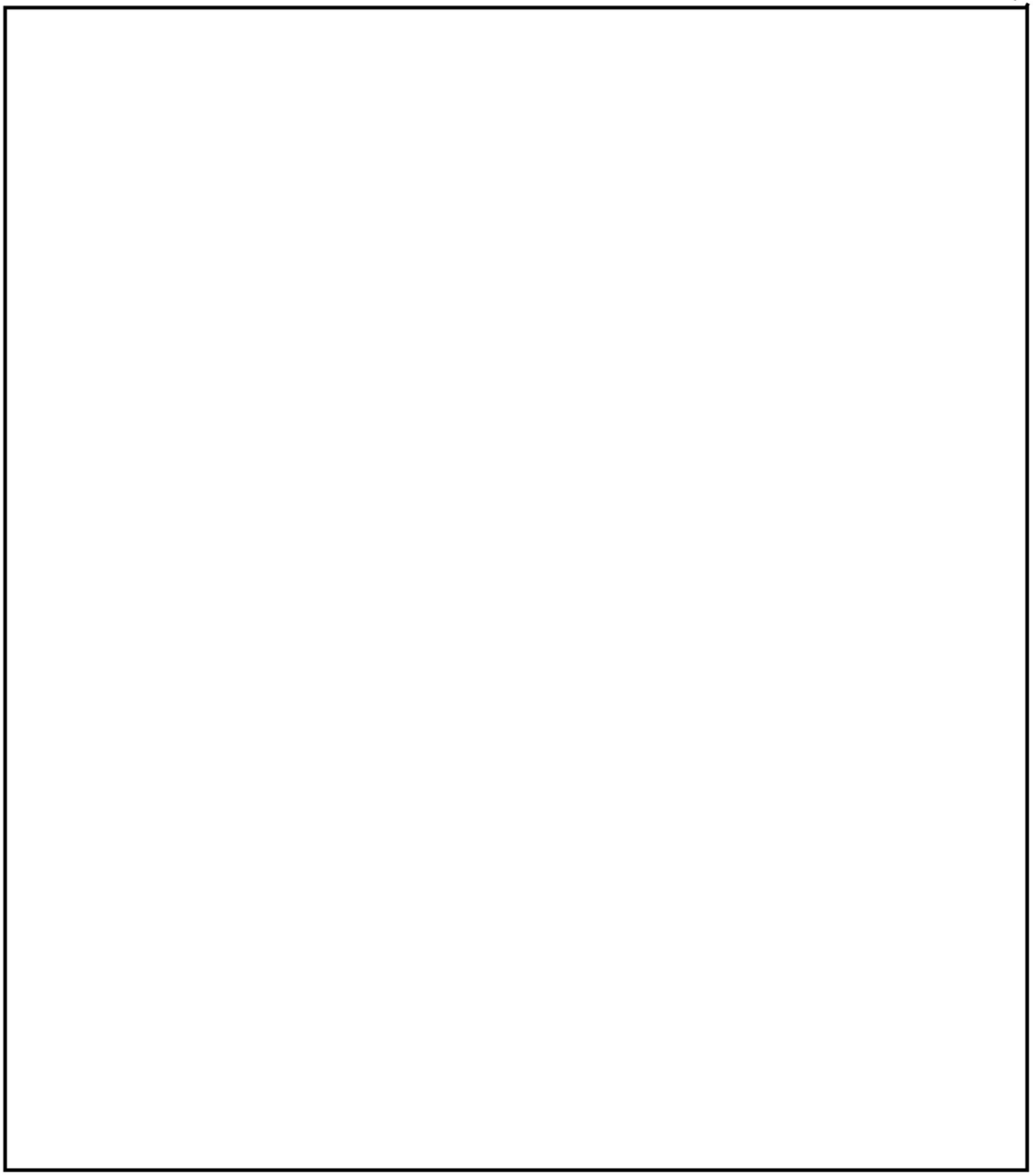


Release 2022-7
NSA 21044

(b)(3)-P.L. 86-36
(b)(6)

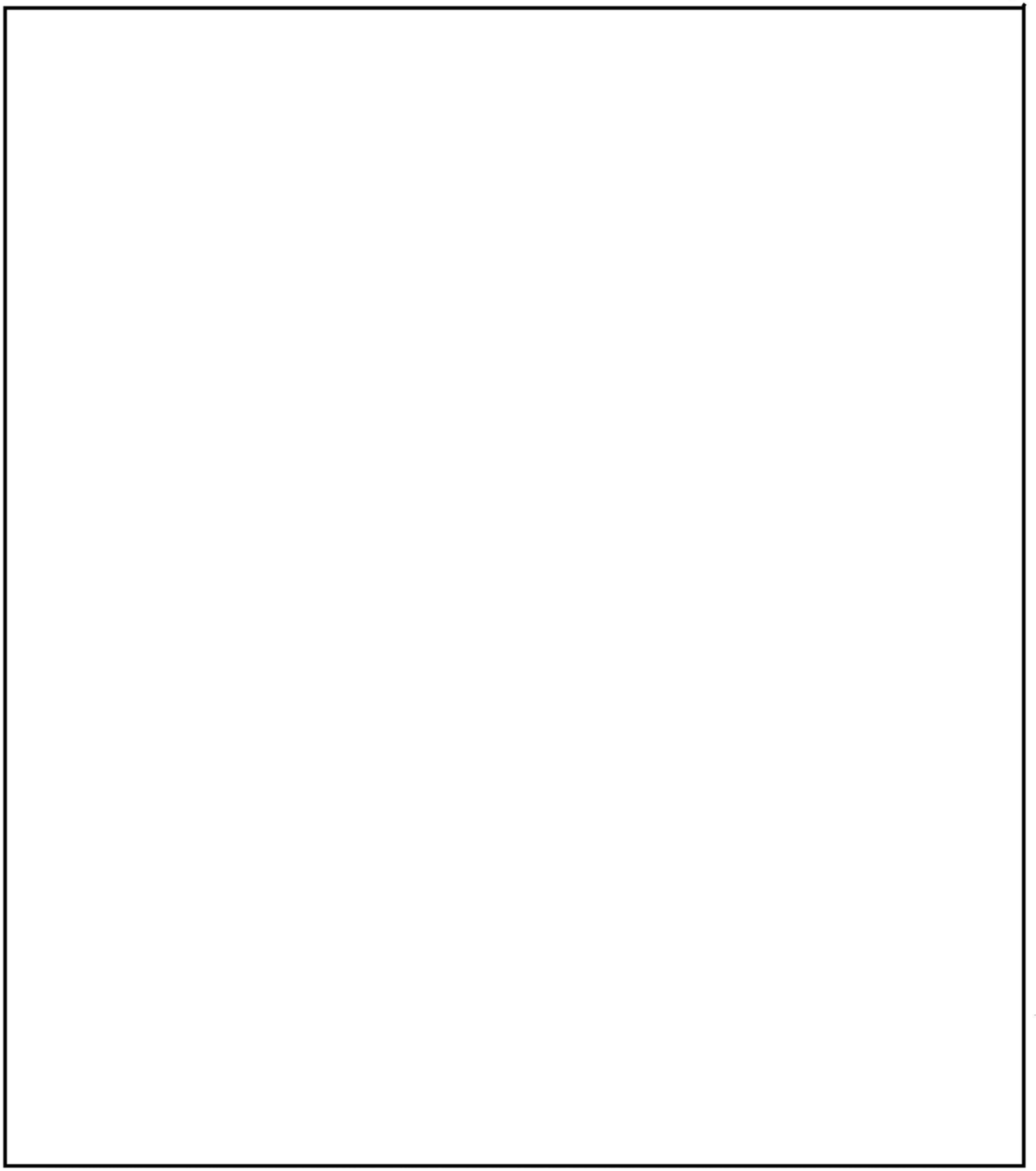


(b)(3)-P.L. 86-36
(b)(6)



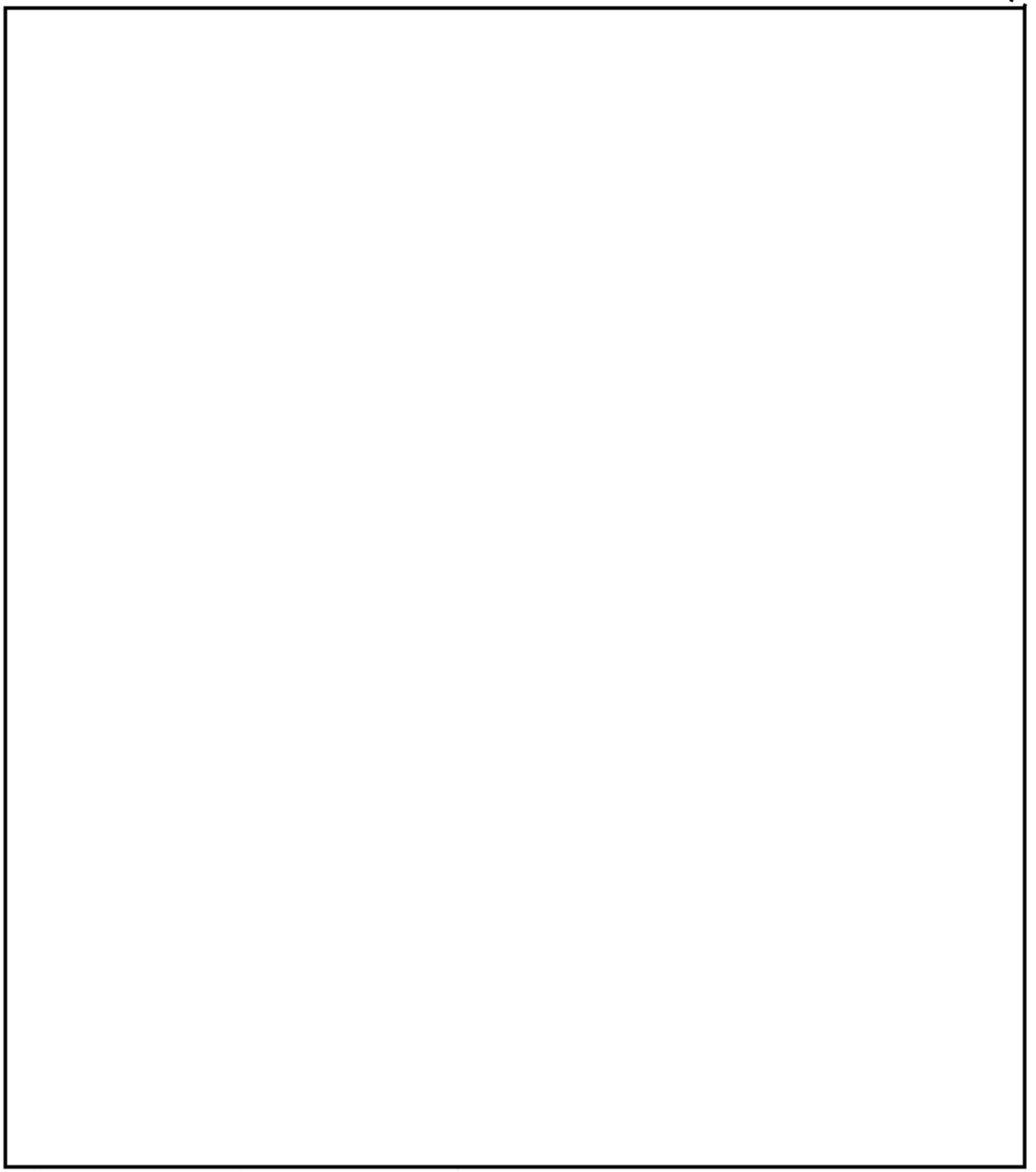
Release 2022-7
NSA 21046

(b)(3)-P.L. 86-36
(b)(6)



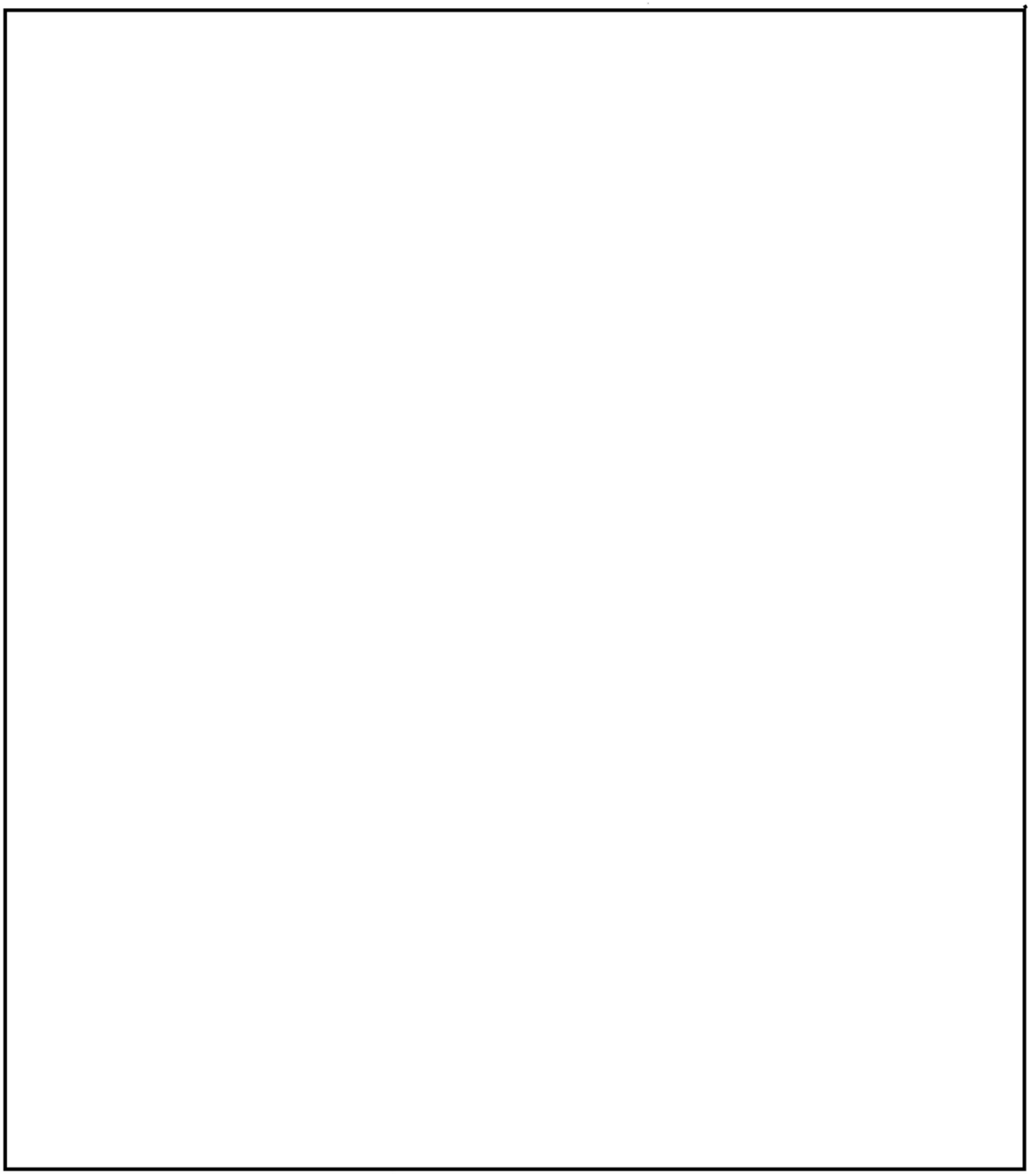
Release 2022-7
NSA 21047

(b)(3)-P.L. 86-36
(b)(6)



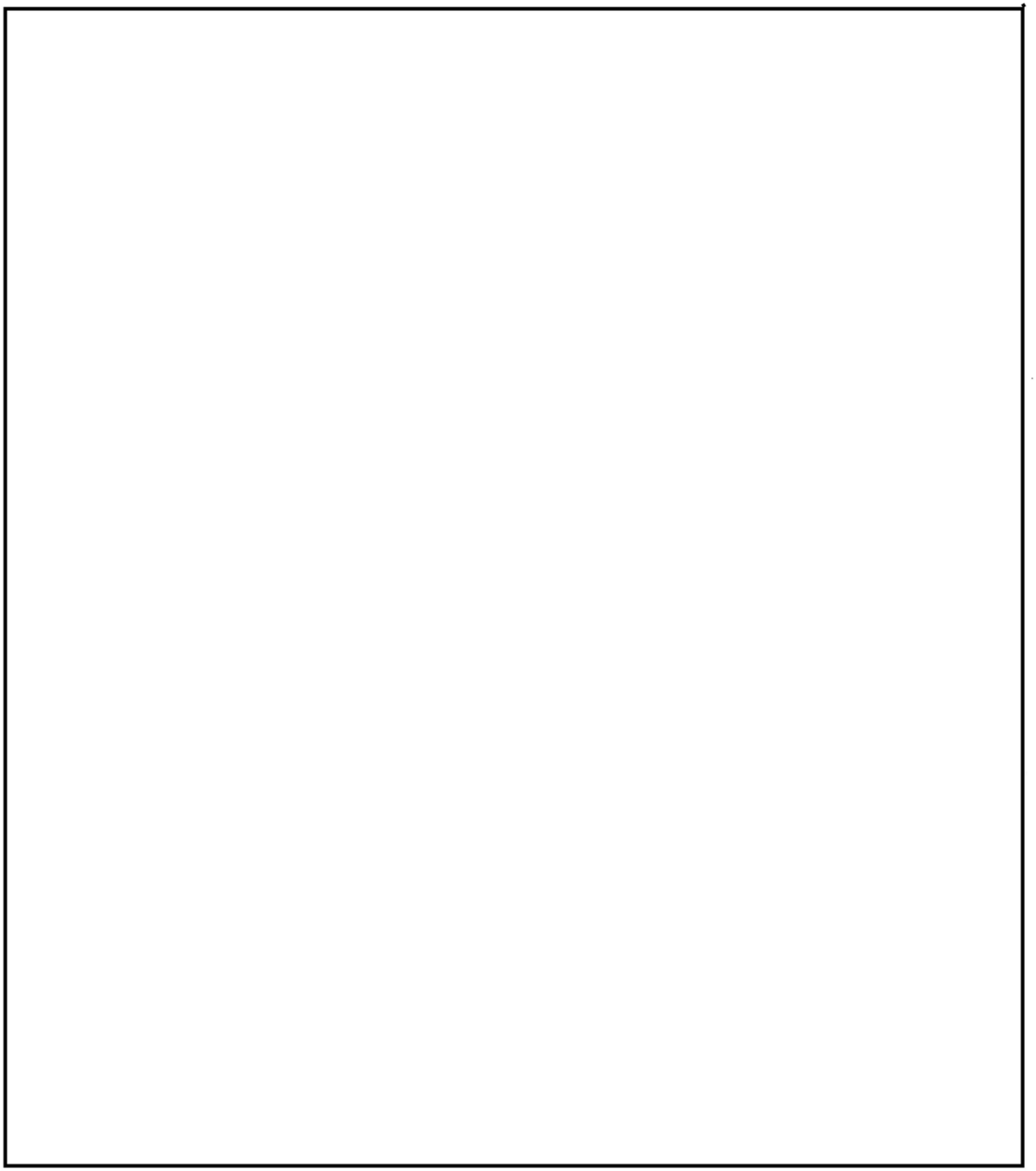
Release 2022-7
NSA 21048

(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21049

(b)(3)-P.L. 86-36
(b)(6)

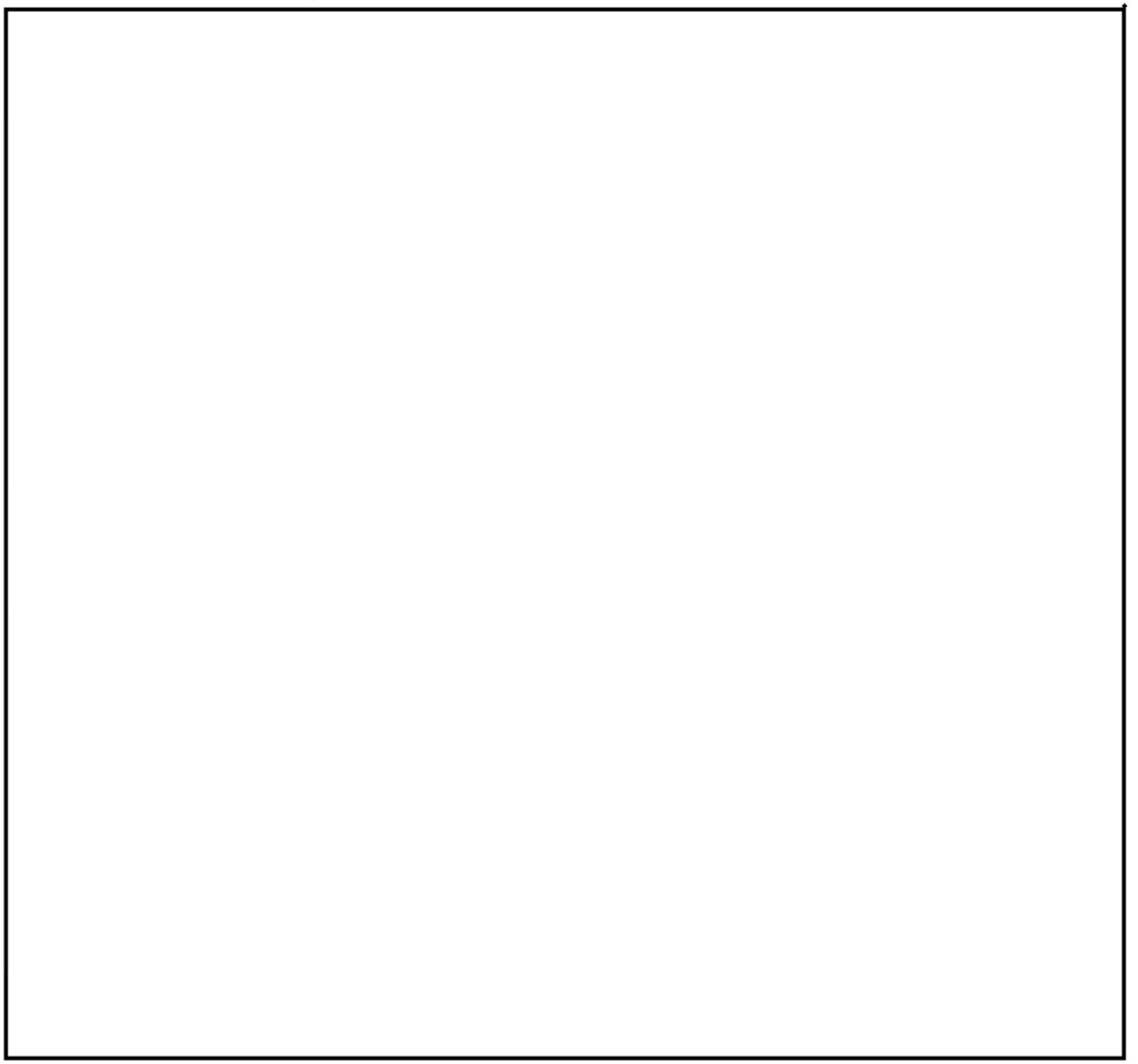


Release 2022-7
NSA 21050

(b)(3)-P.L. 86-36
(b)(6)

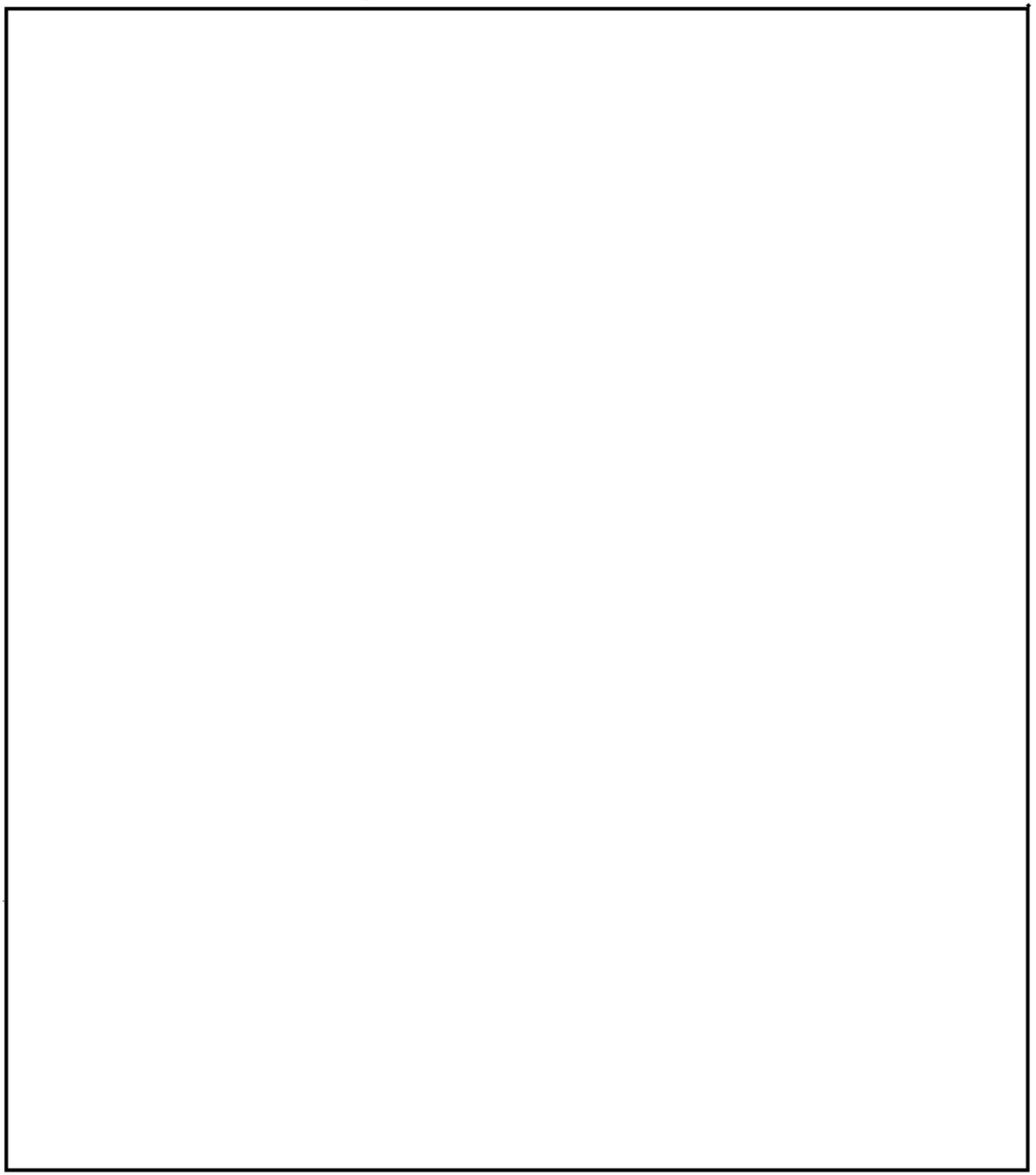
Release 2022-7
NSA 21051

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(b)(6)



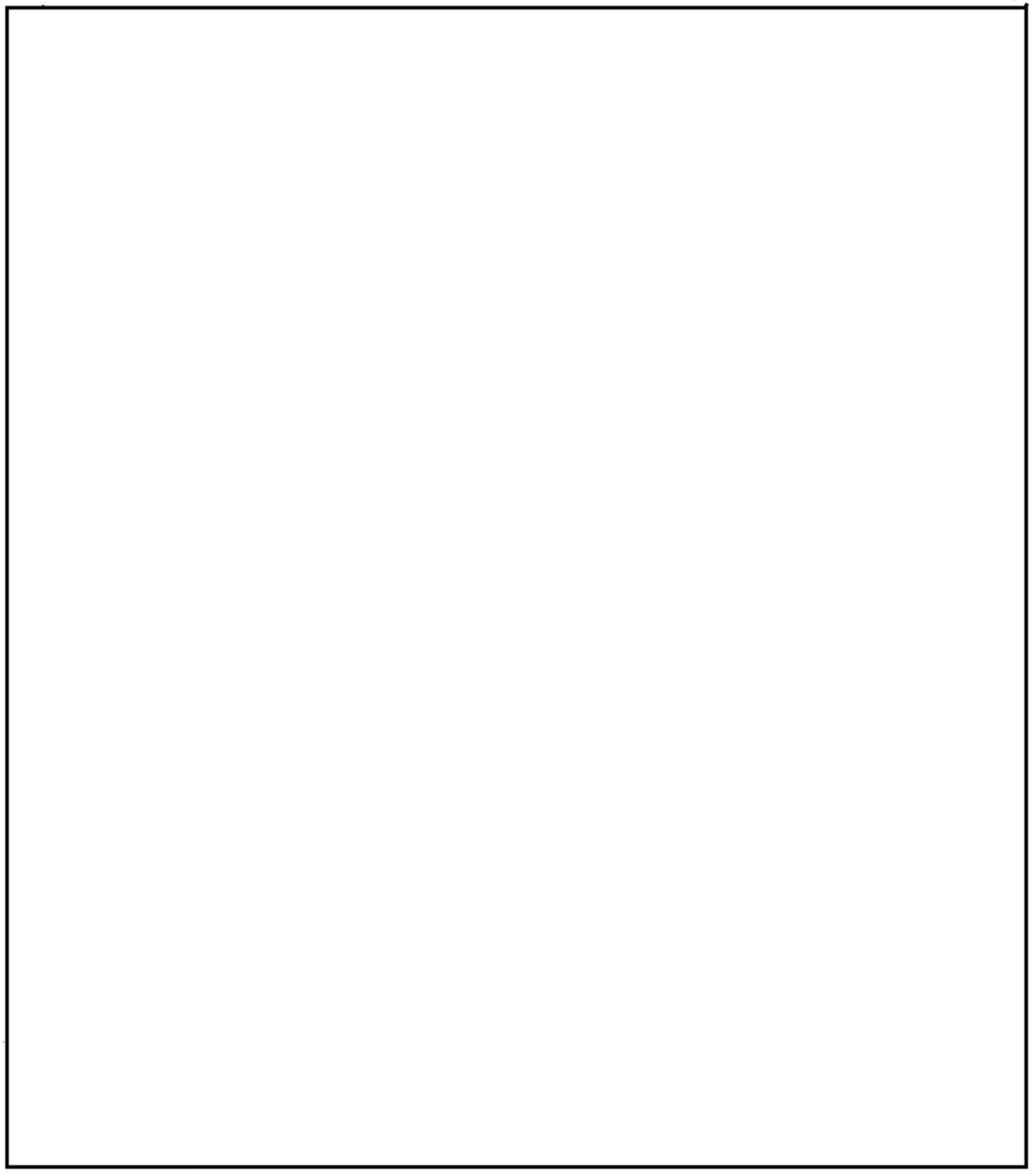
Release 2022-7
NSA 21052

(b)(3)-P.L. 86-36
(b)(6)

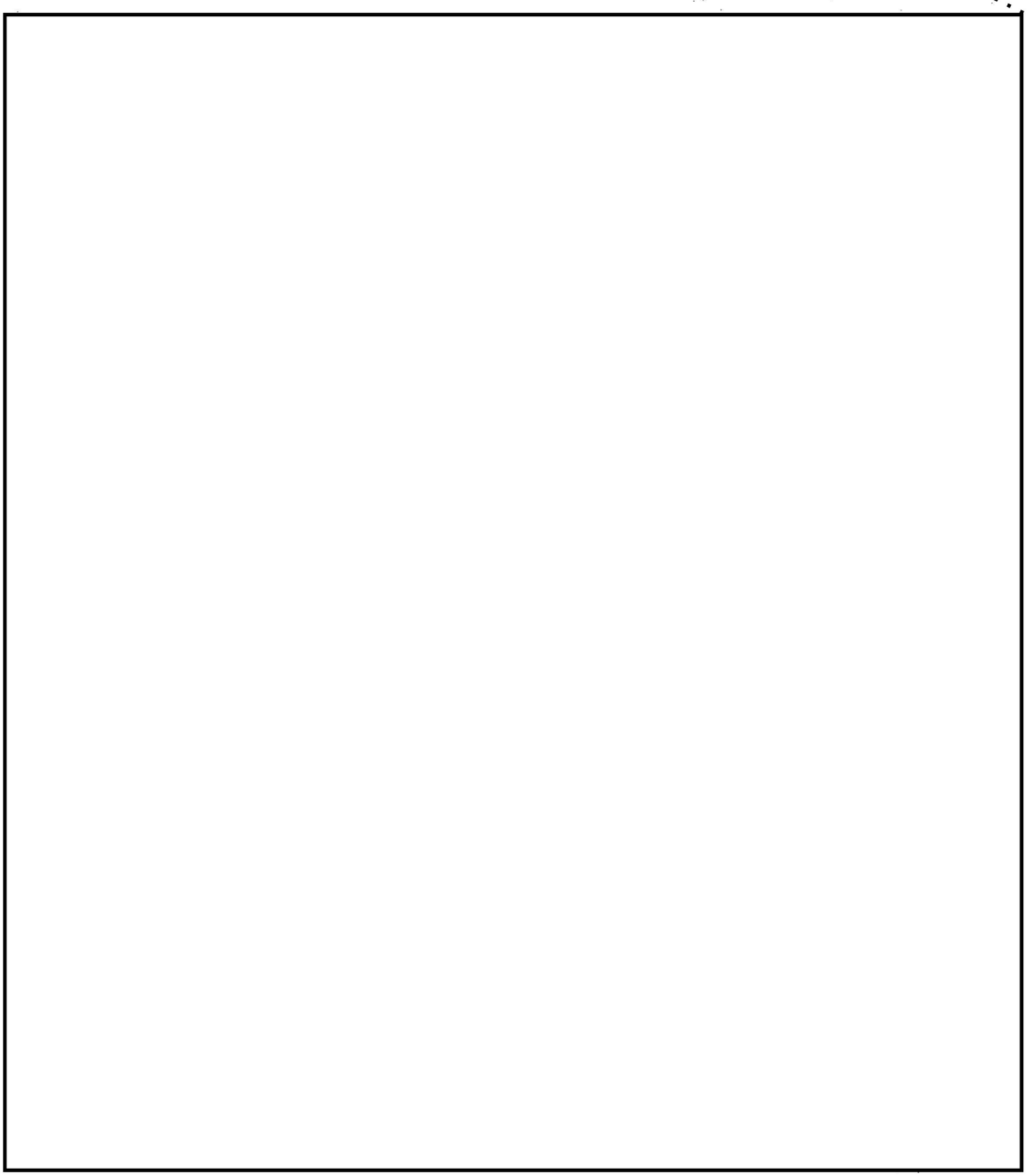


Release 2022-7
NSA 21053

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(b)(6)

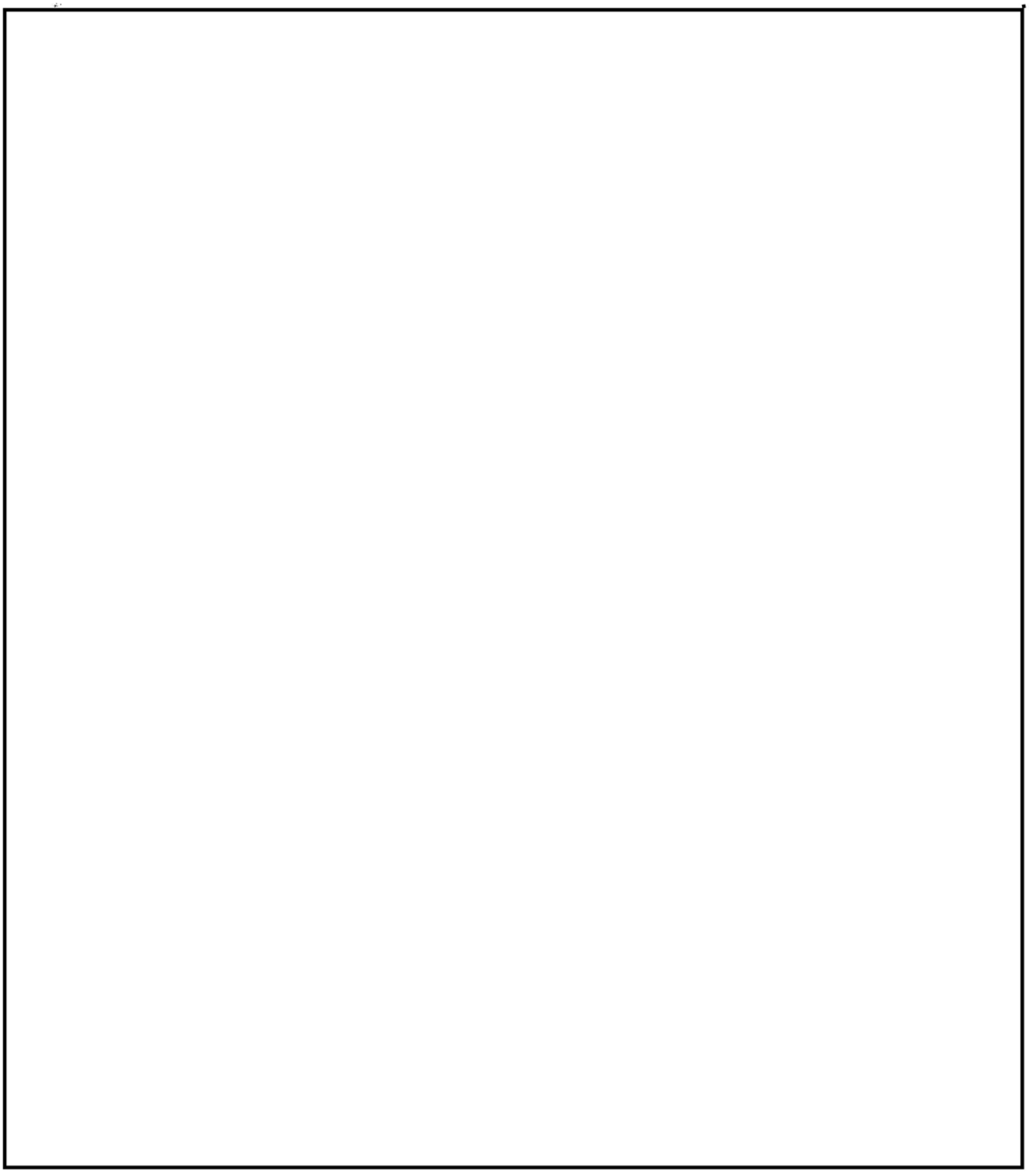


(b)(3)-P.L. 86-36
(b)(6)

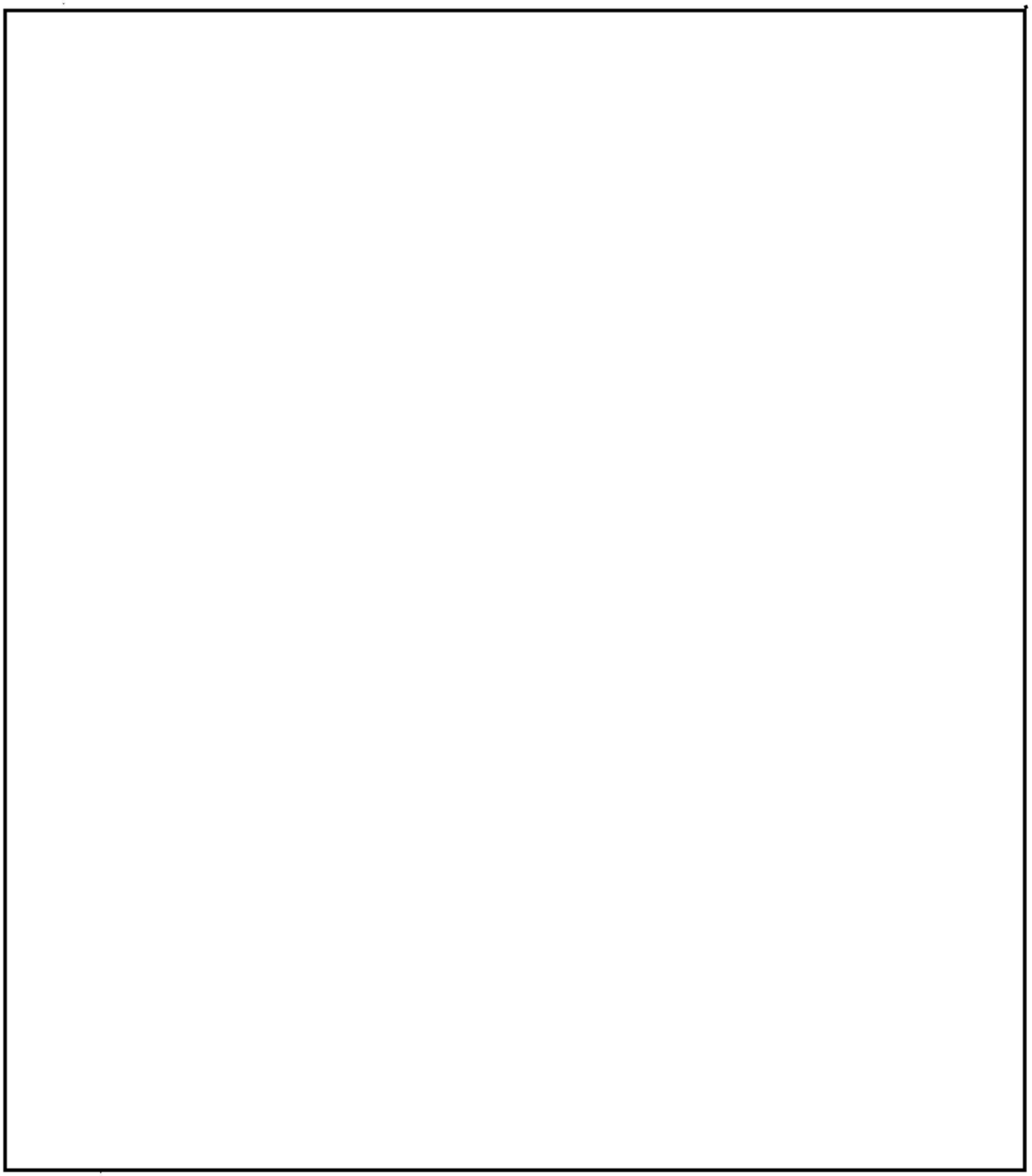


Release 2022-7
NSA 21055

(b)(3)-P.L. 86-36
(b)(6)



(b)(3)-P.L. 86-36
(b)(6)



Release 2022-7
NSA 21057

(b)(3)-P.L. 86-36
(b)(6)

Release 2022-7
NSA 21058

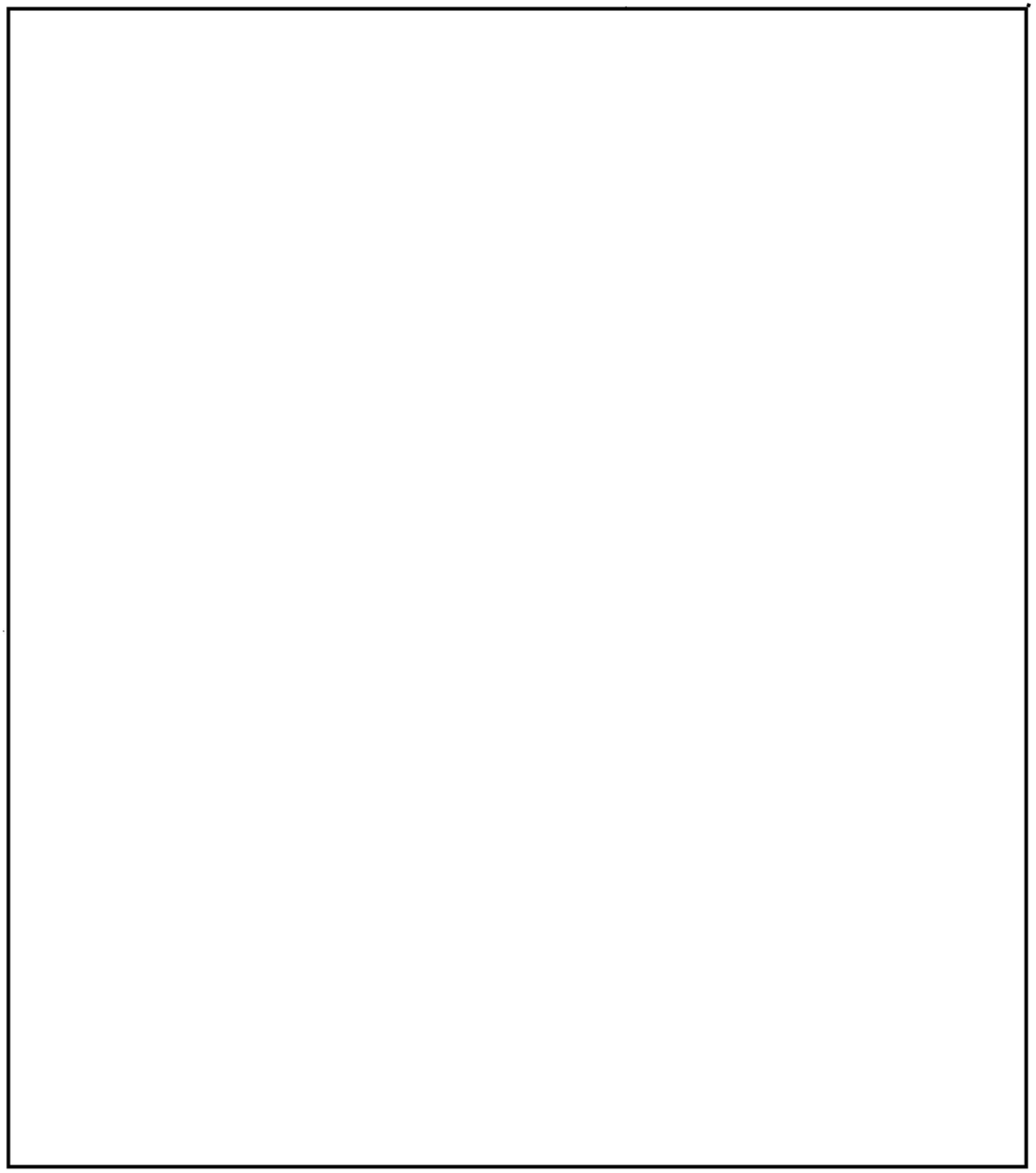
(b) (3)-P.L. 86-36
(b) (6)

Release 2022-7
NSA 21059

(b)(3)-P.L. 86-36
(b)(6)

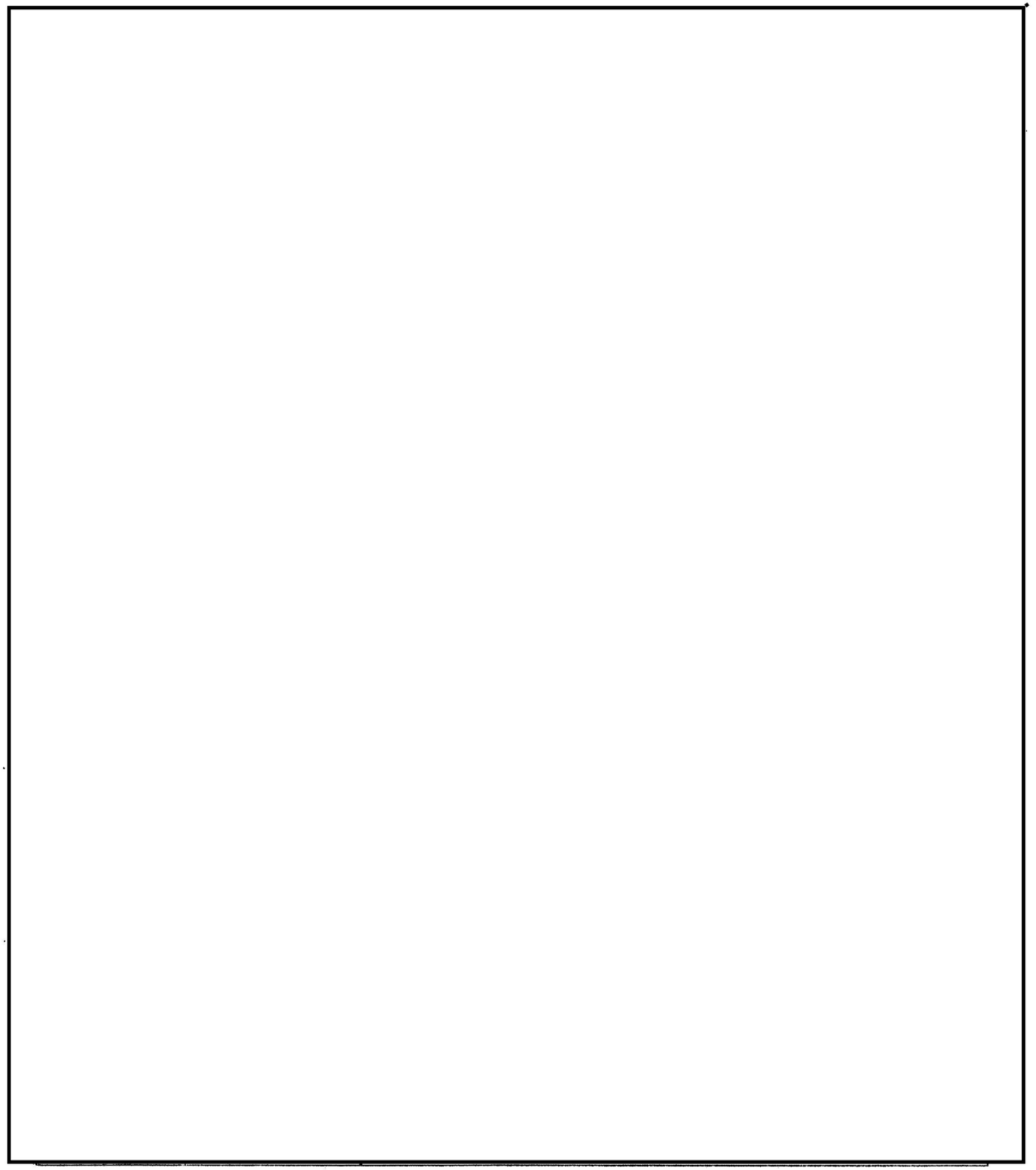
Release 2022-7
NSA 21060

(b)(3)-P.L. 86-36
(b)(6)



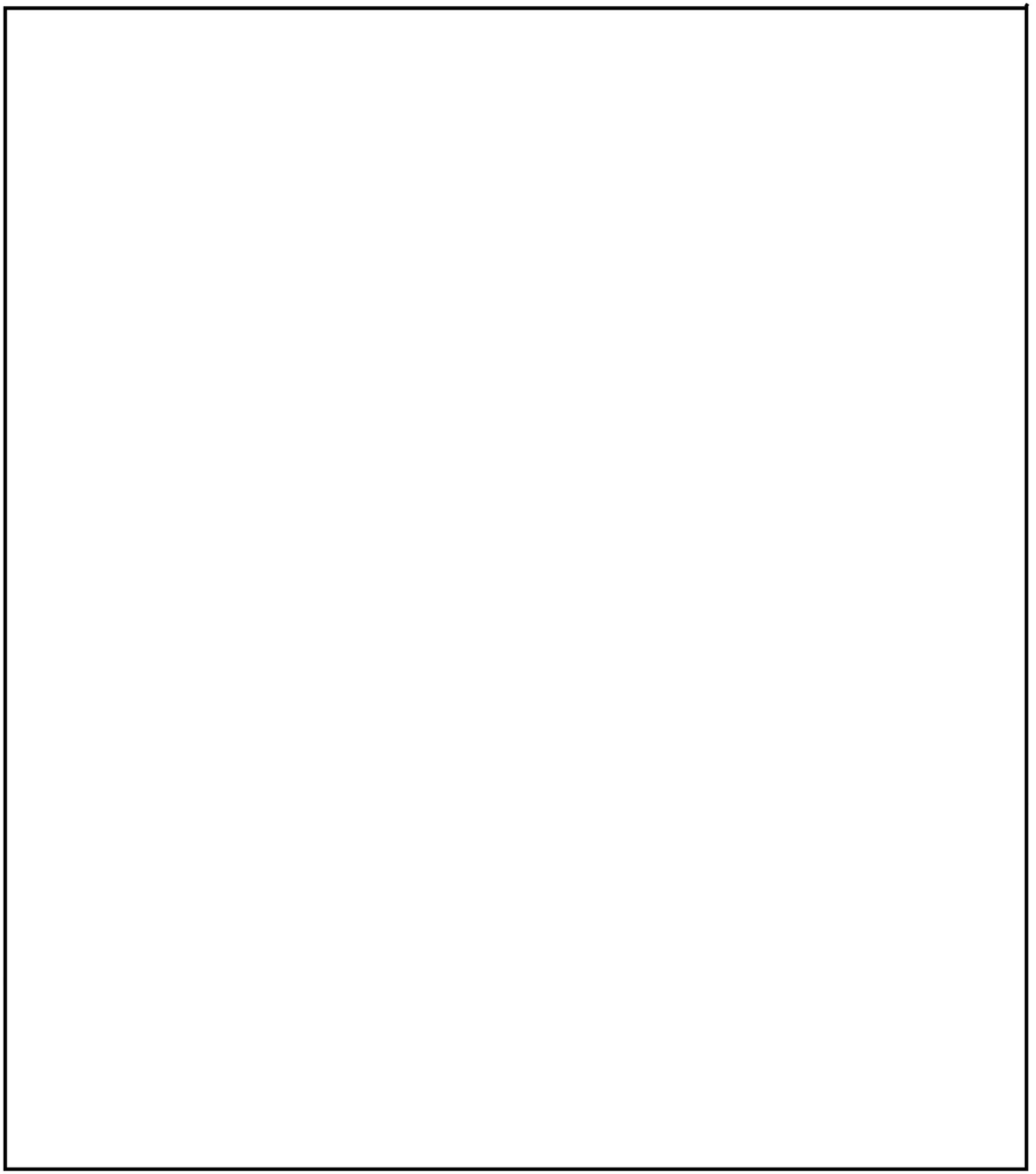
Release 2022-7
NSA 21061

(b)(3)-P.L. 86-36
(b)(6)



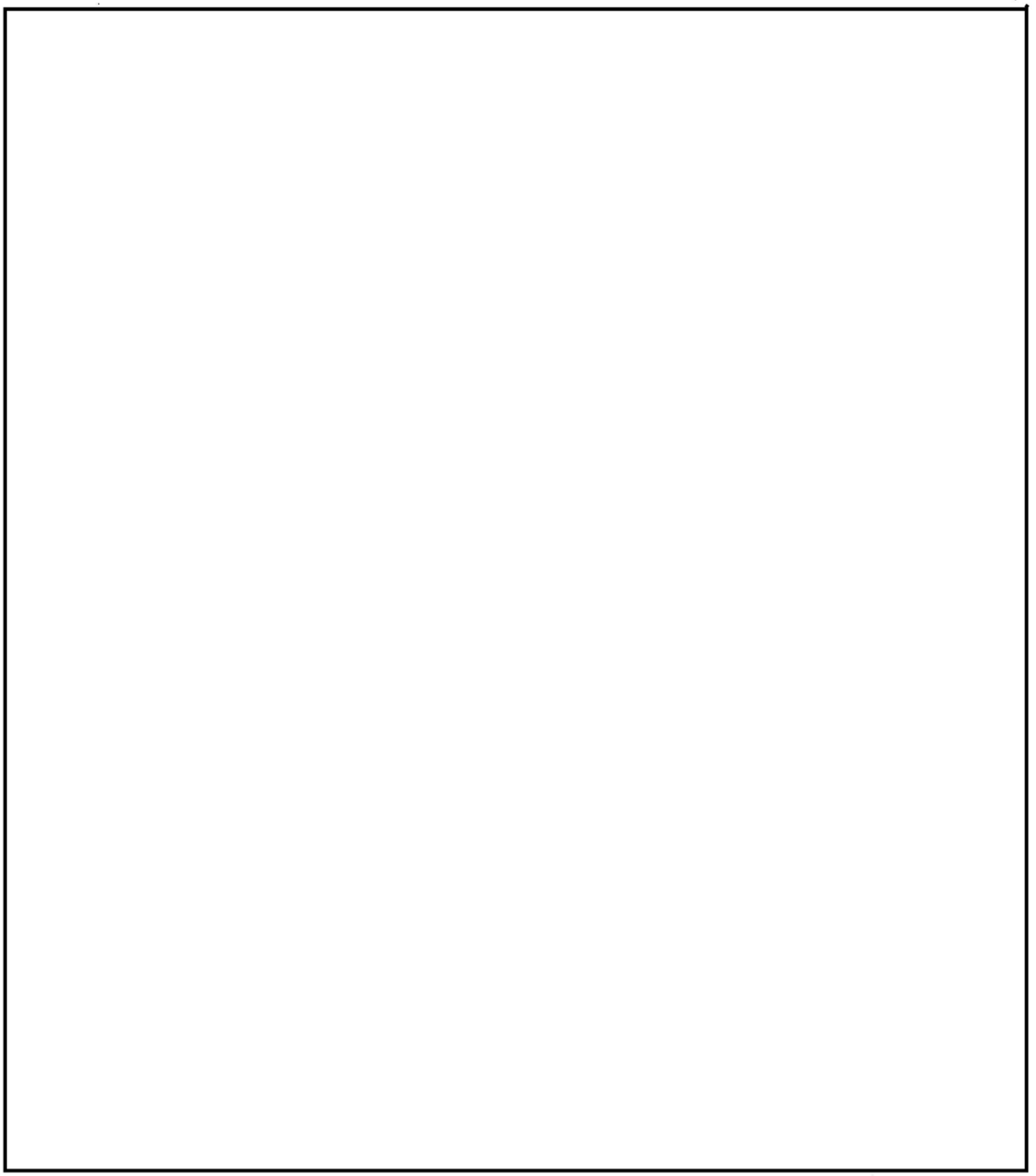
Release 2022-7
NSA 21062

(b)(3)-P.L. 86-36
(b)(6)



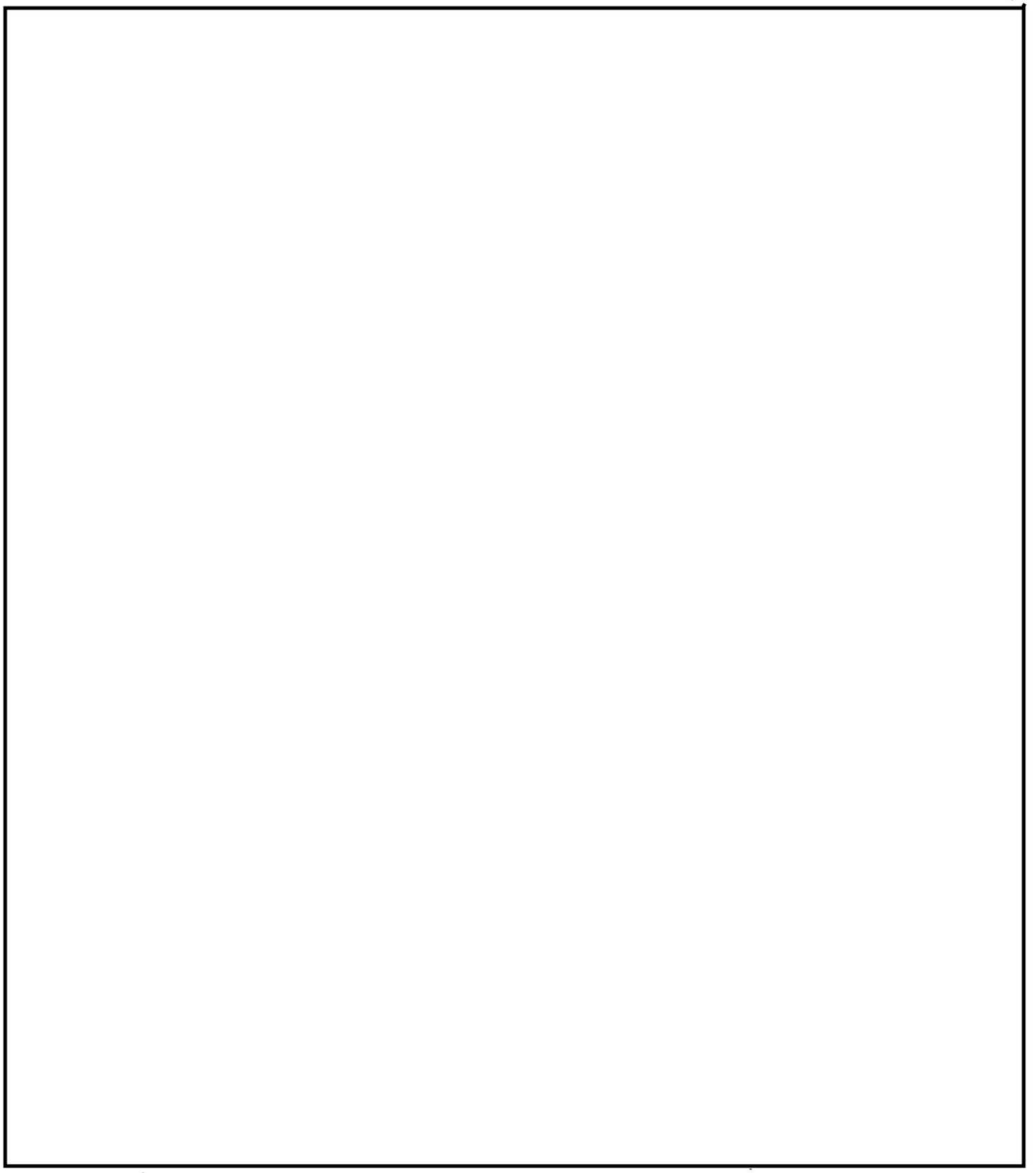
Release 2022-7
NSA 21063

(b)(3)-P.L. 86-36
(b)(6)

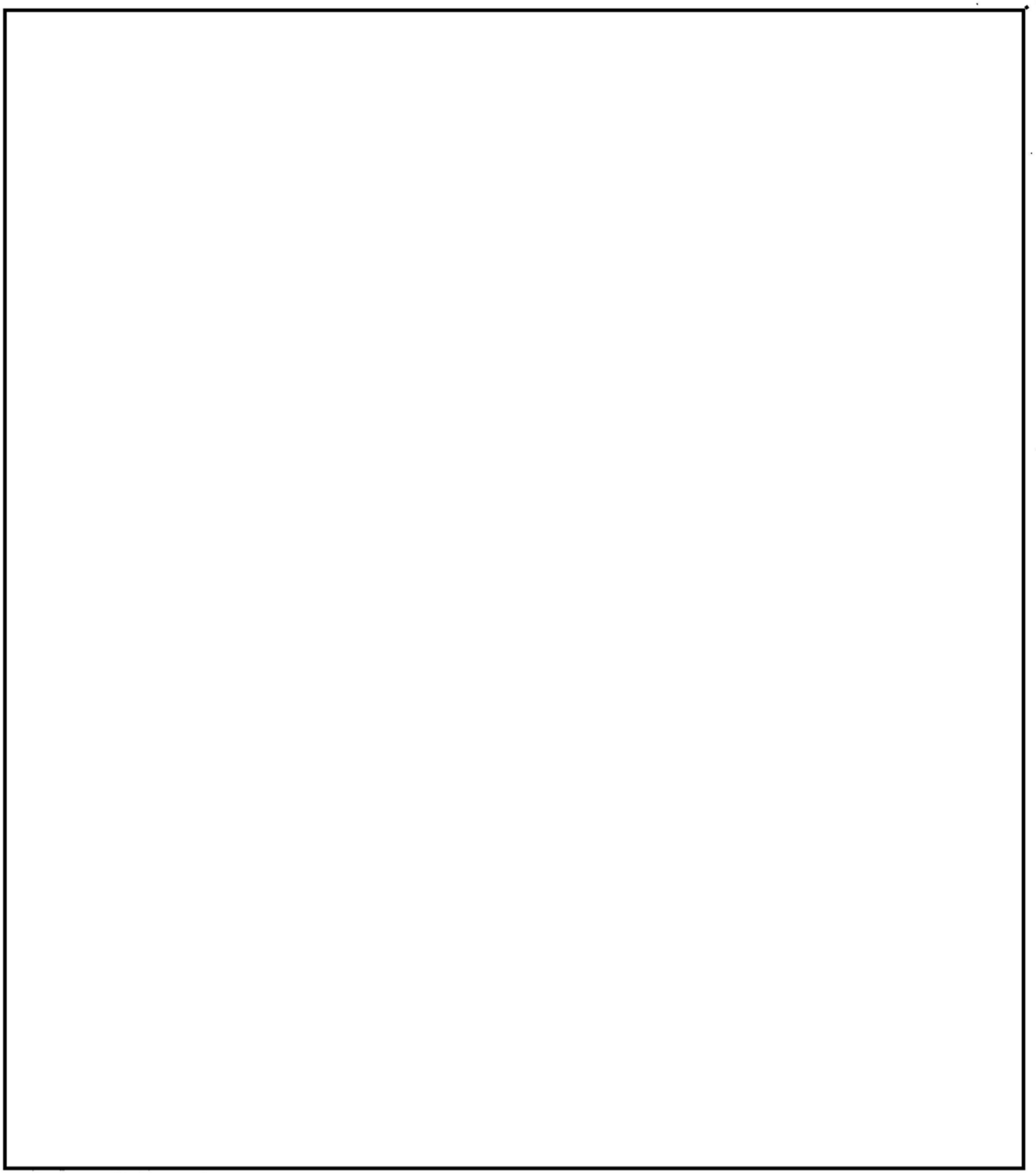


Release 2022-7
NSA 21064

(b)(3)-P.L. 86-36
(b)(6)



(b)(3)-P.L. 86-36
(b)(6)

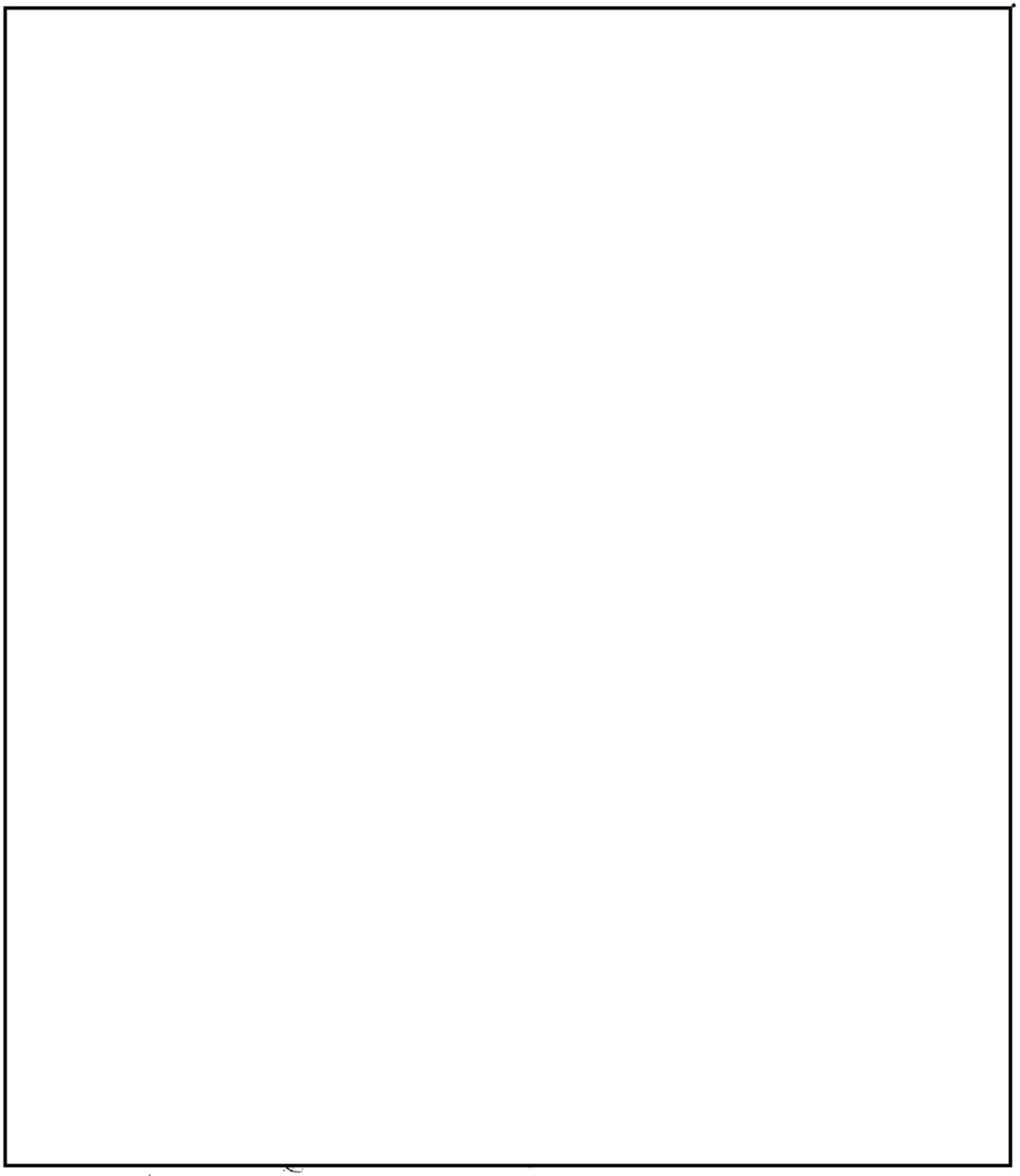


Release 2022-7
NSA 21066

(b)(3)-P.L. 86-36
(b)(6)

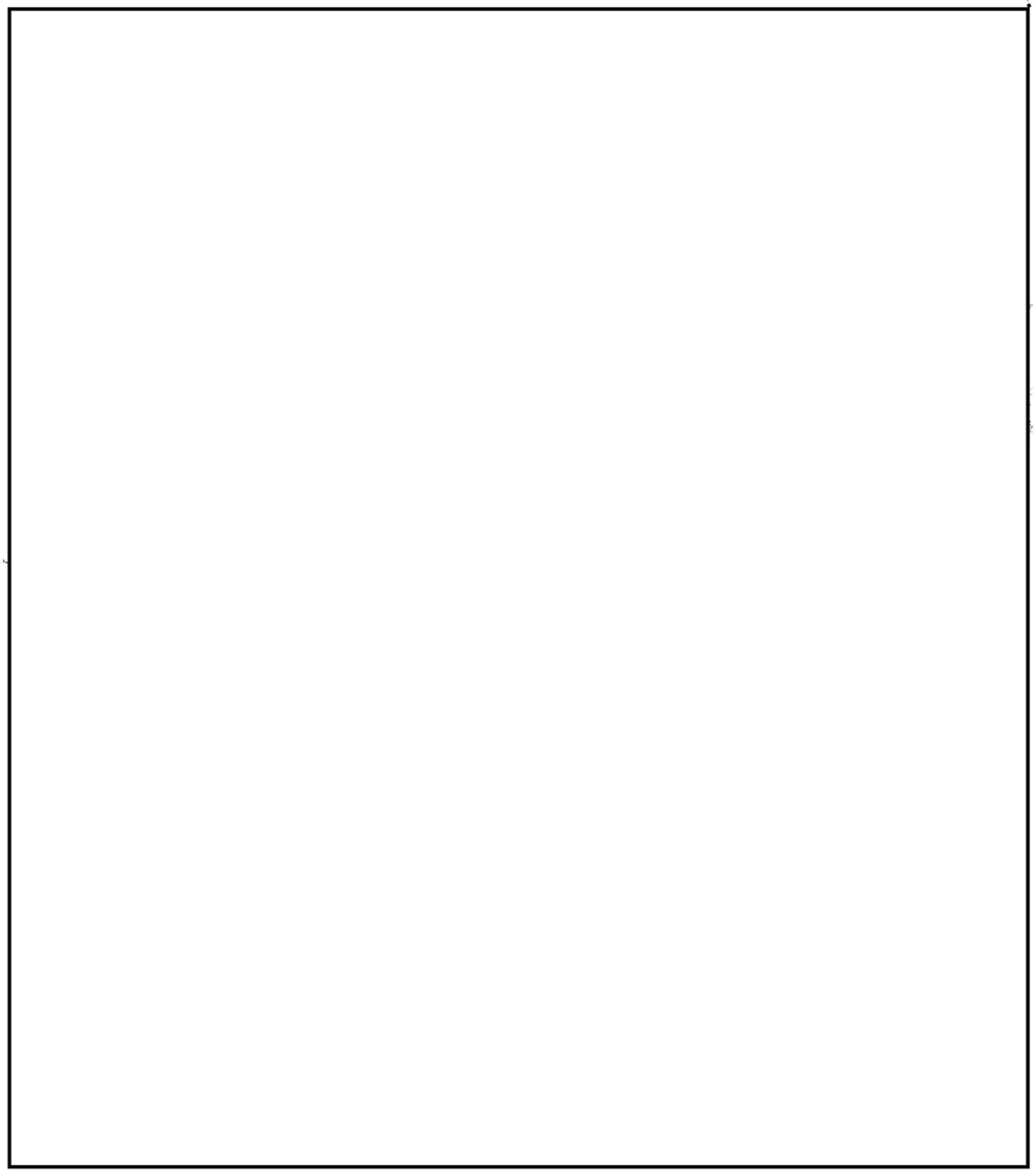
Release 2022-7
NSA 21067

(b)(3)-P.L. 86-36
(b)(6)



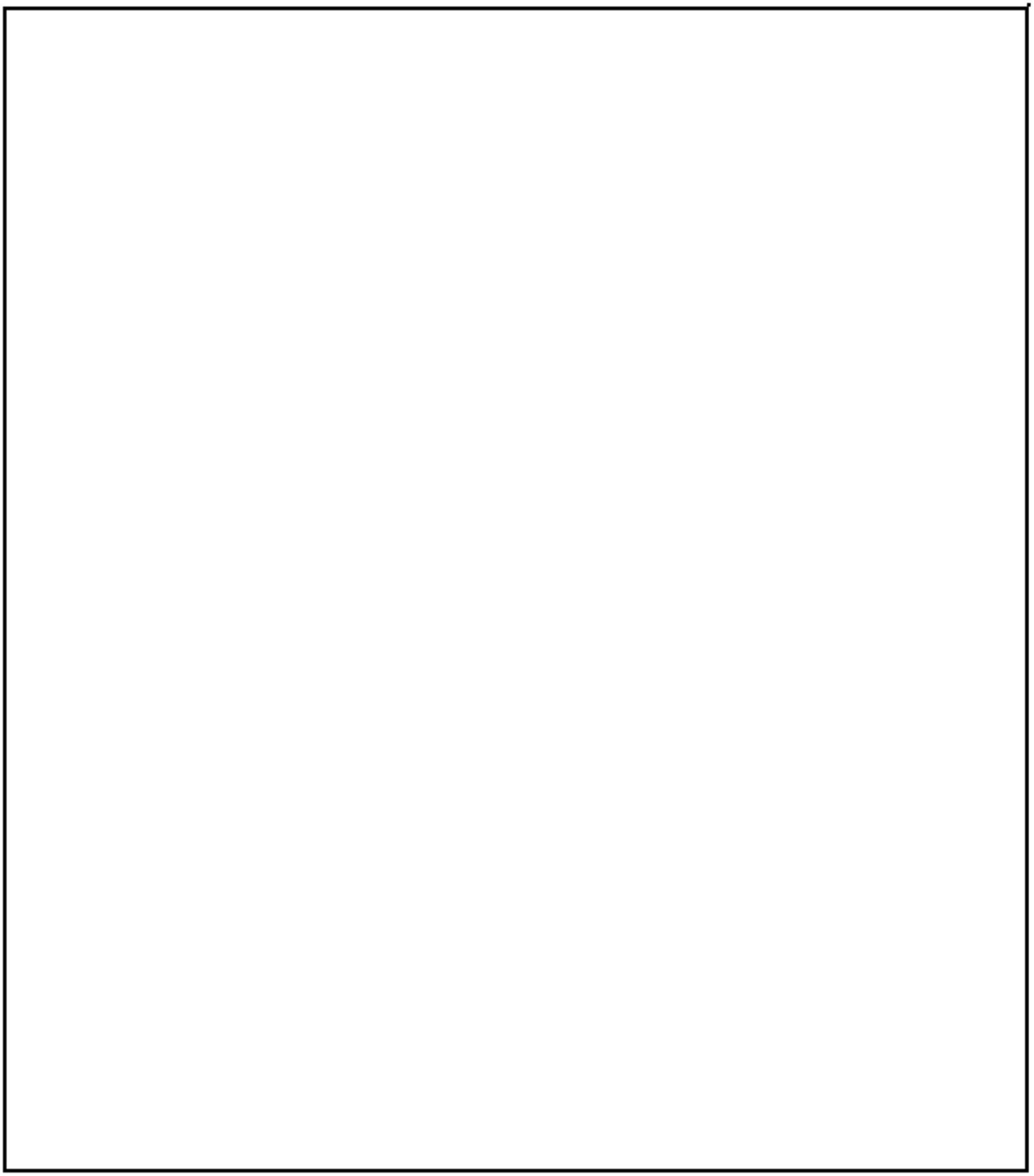
Release 2022-7
NSA 21068

(b)(3)-P.L. 86-36
(b)(6)



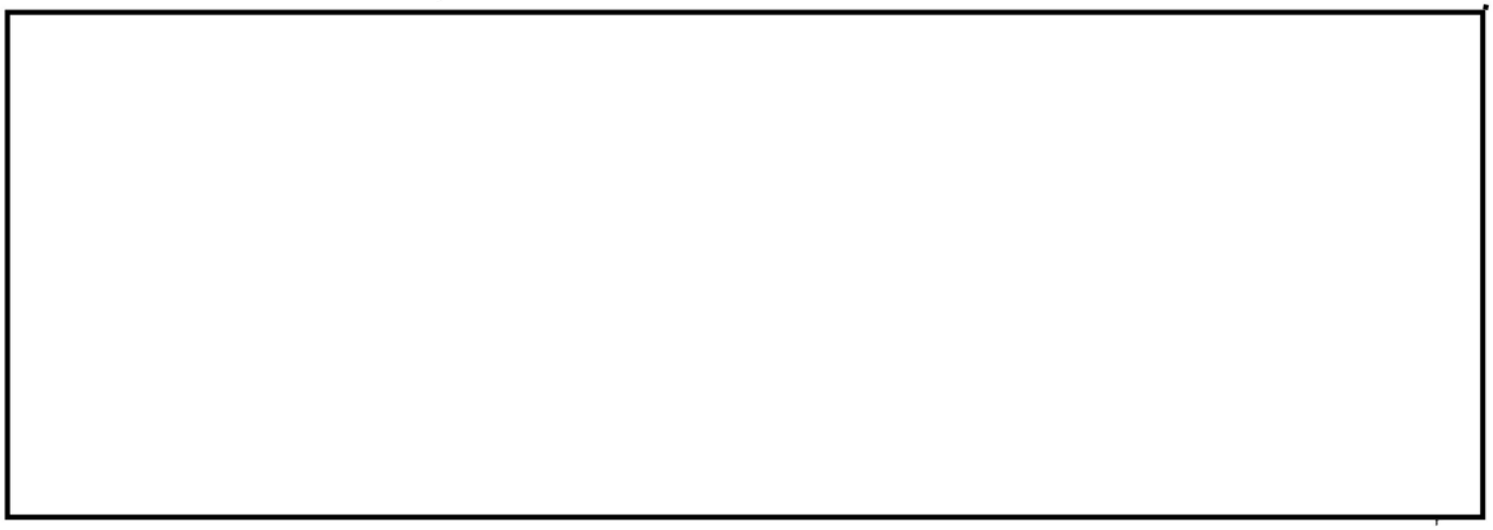
Release 2022-7
NSA 21069

(b)(3)-P.L. 86-36
(b)(6)



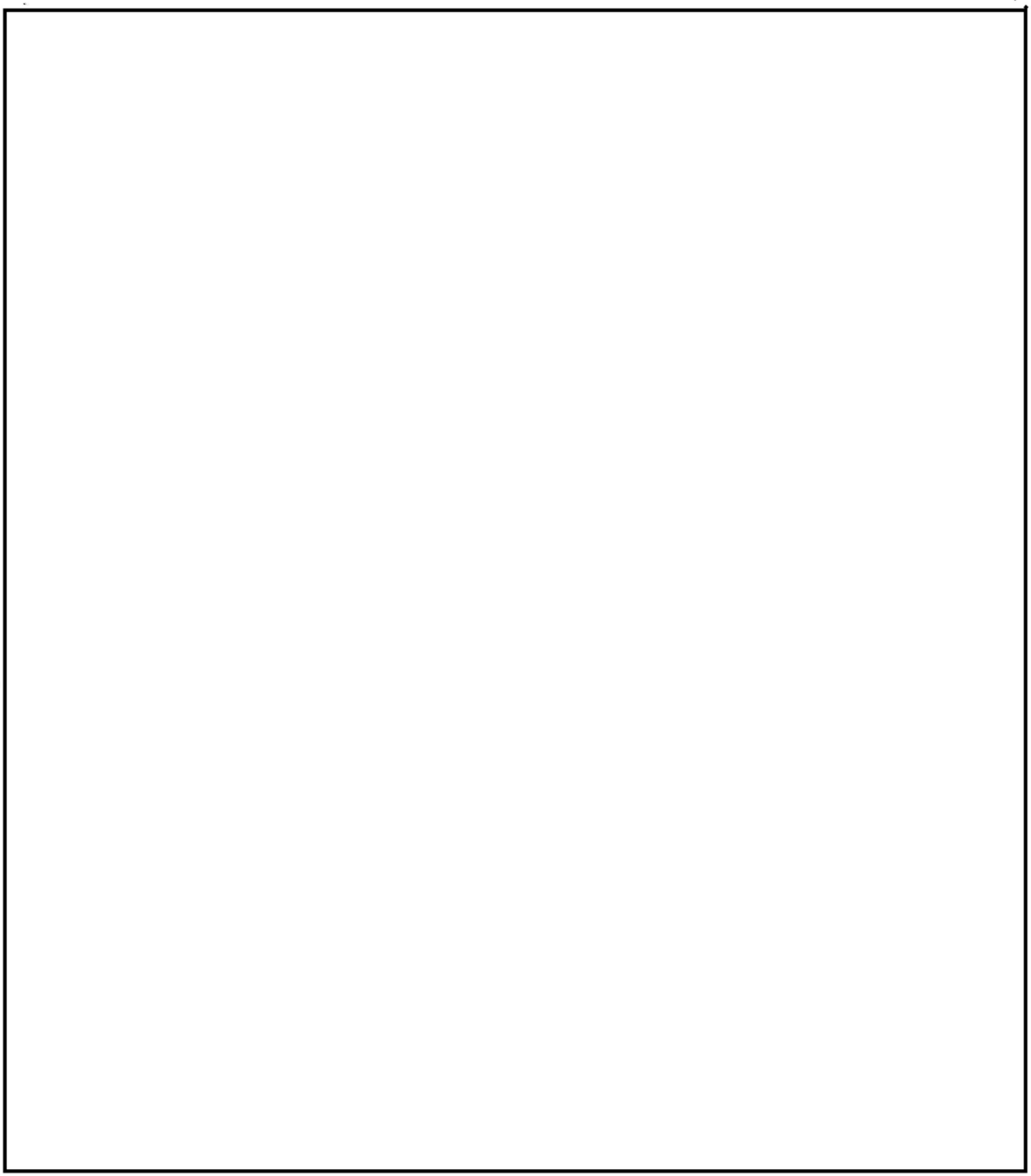
Release 2022-7
NSA 21070

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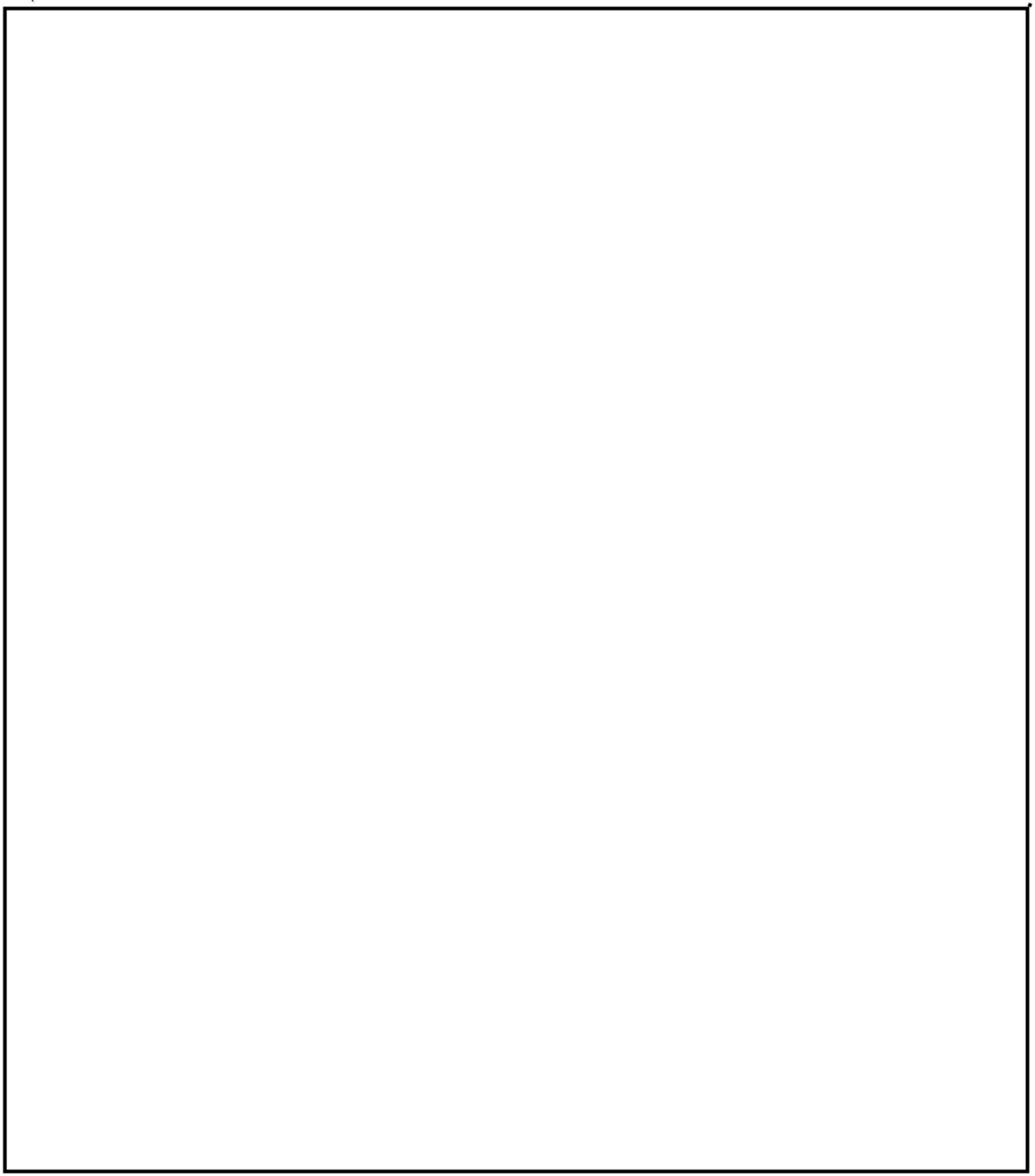
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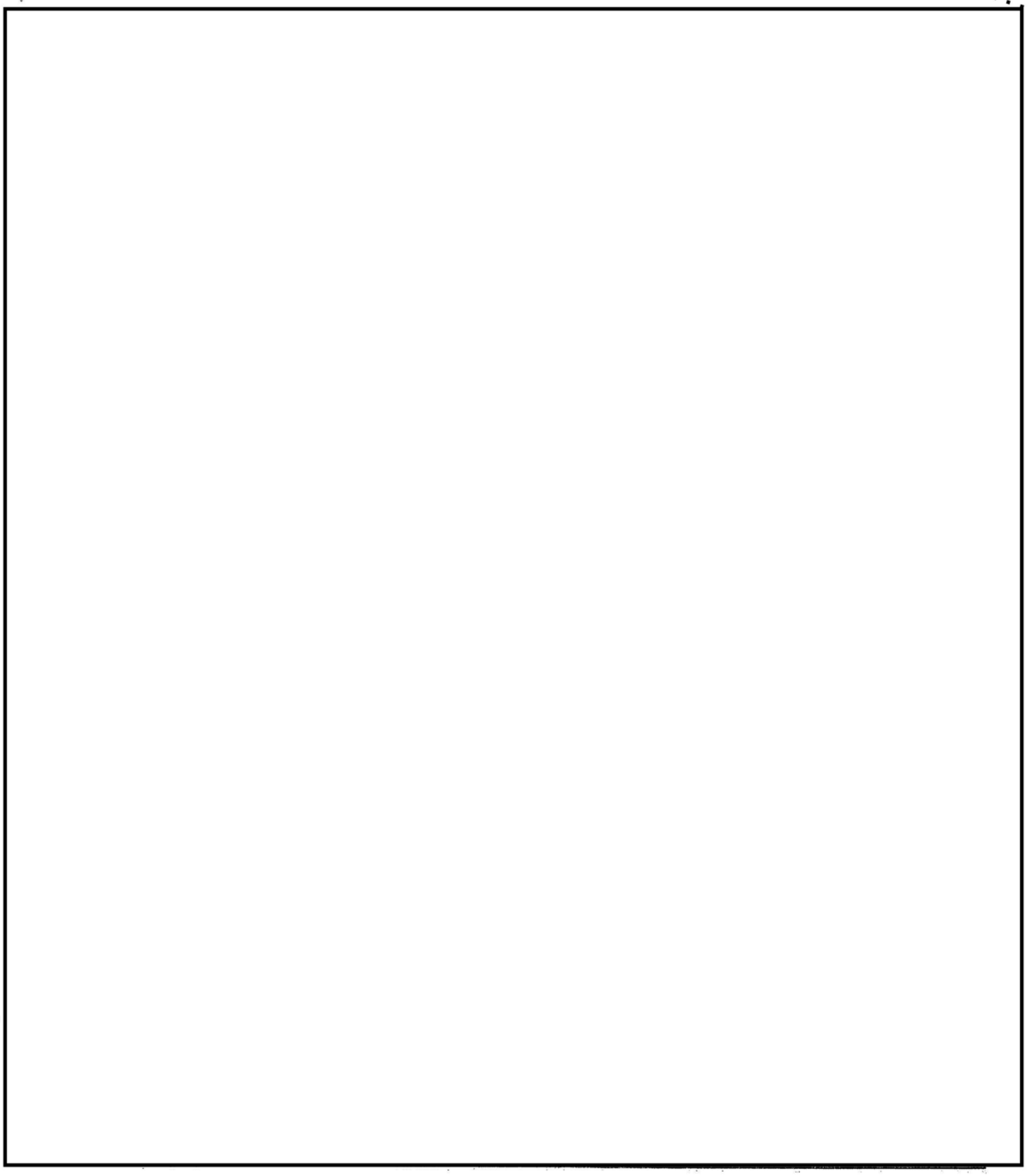


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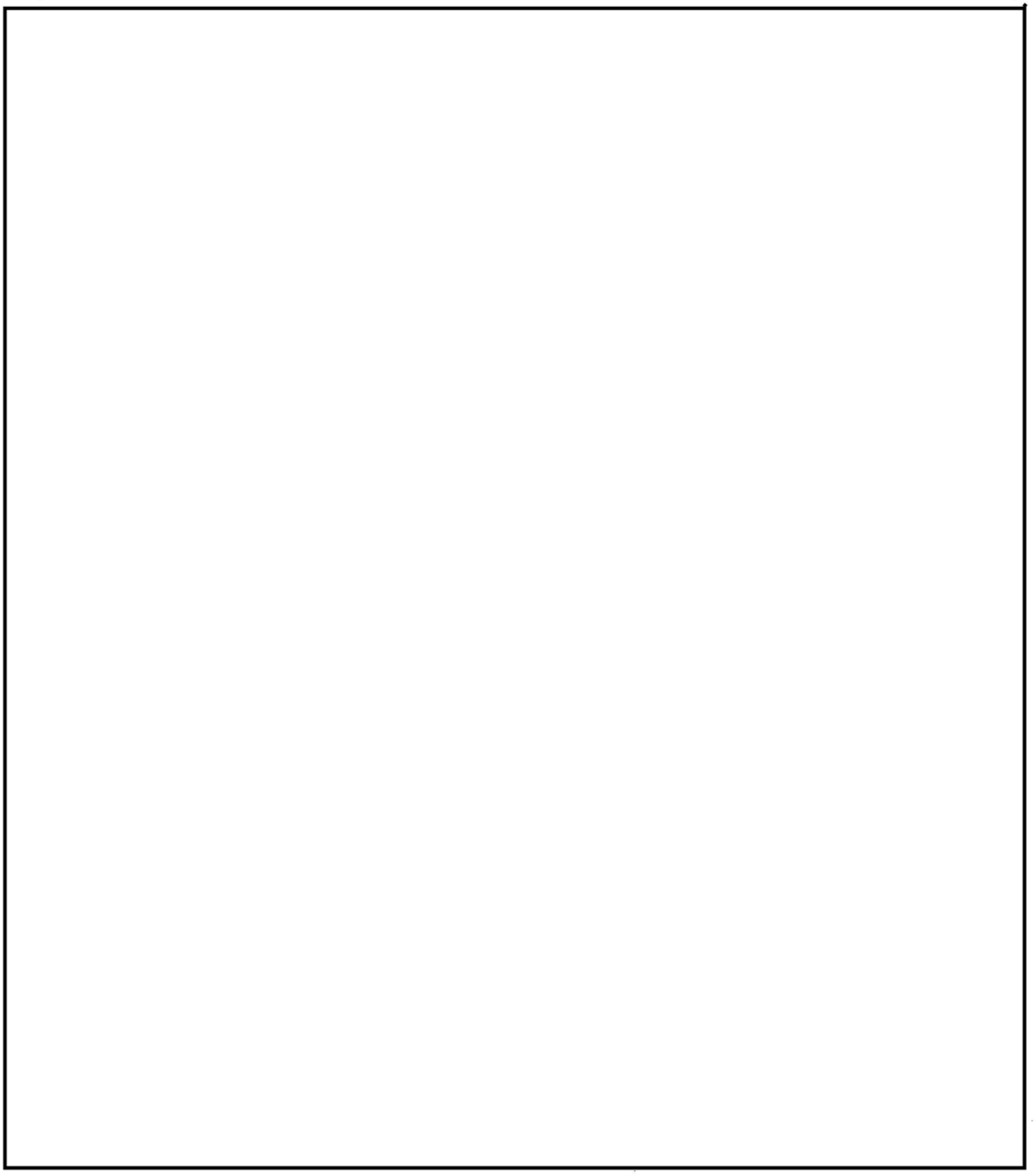


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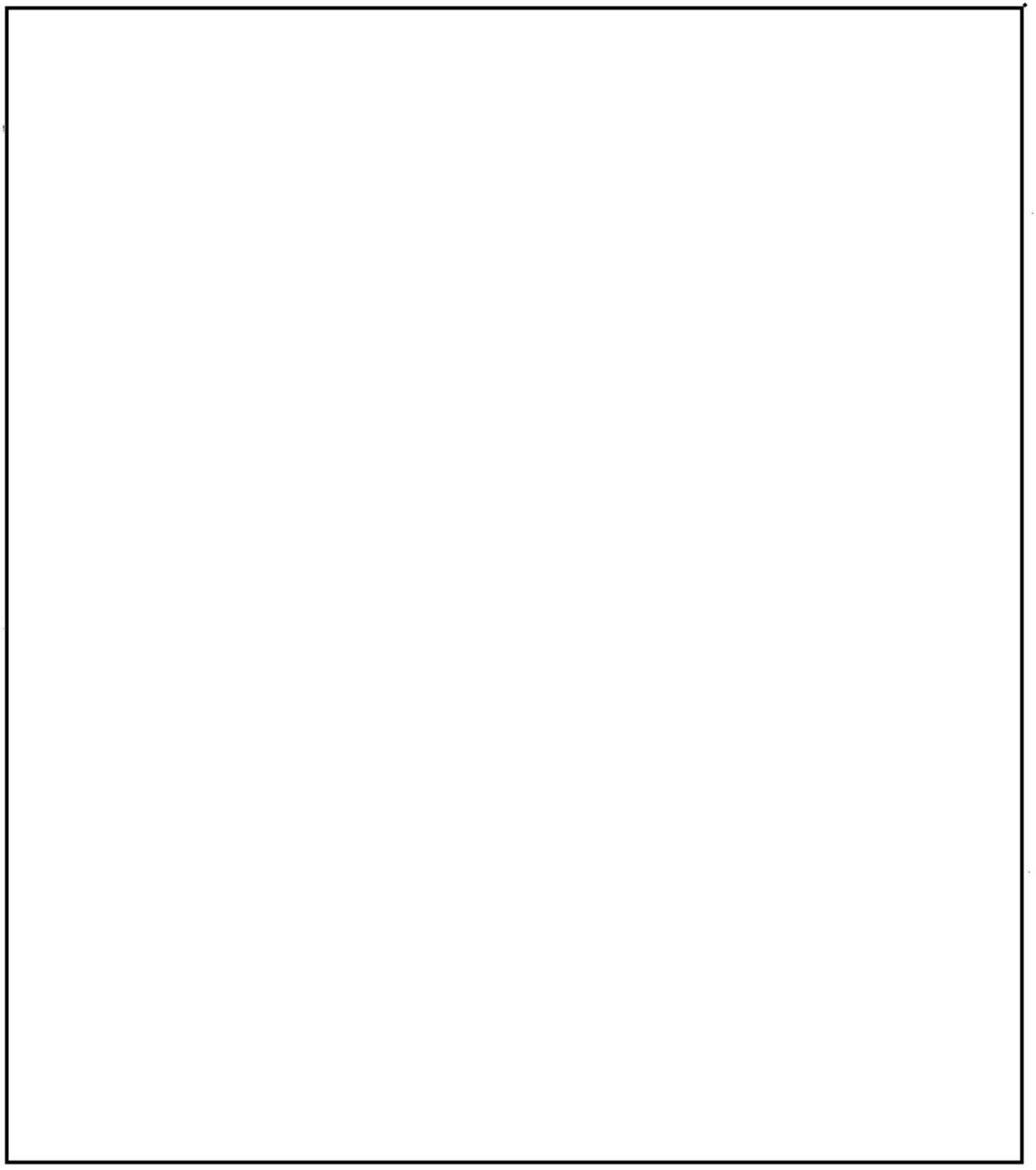


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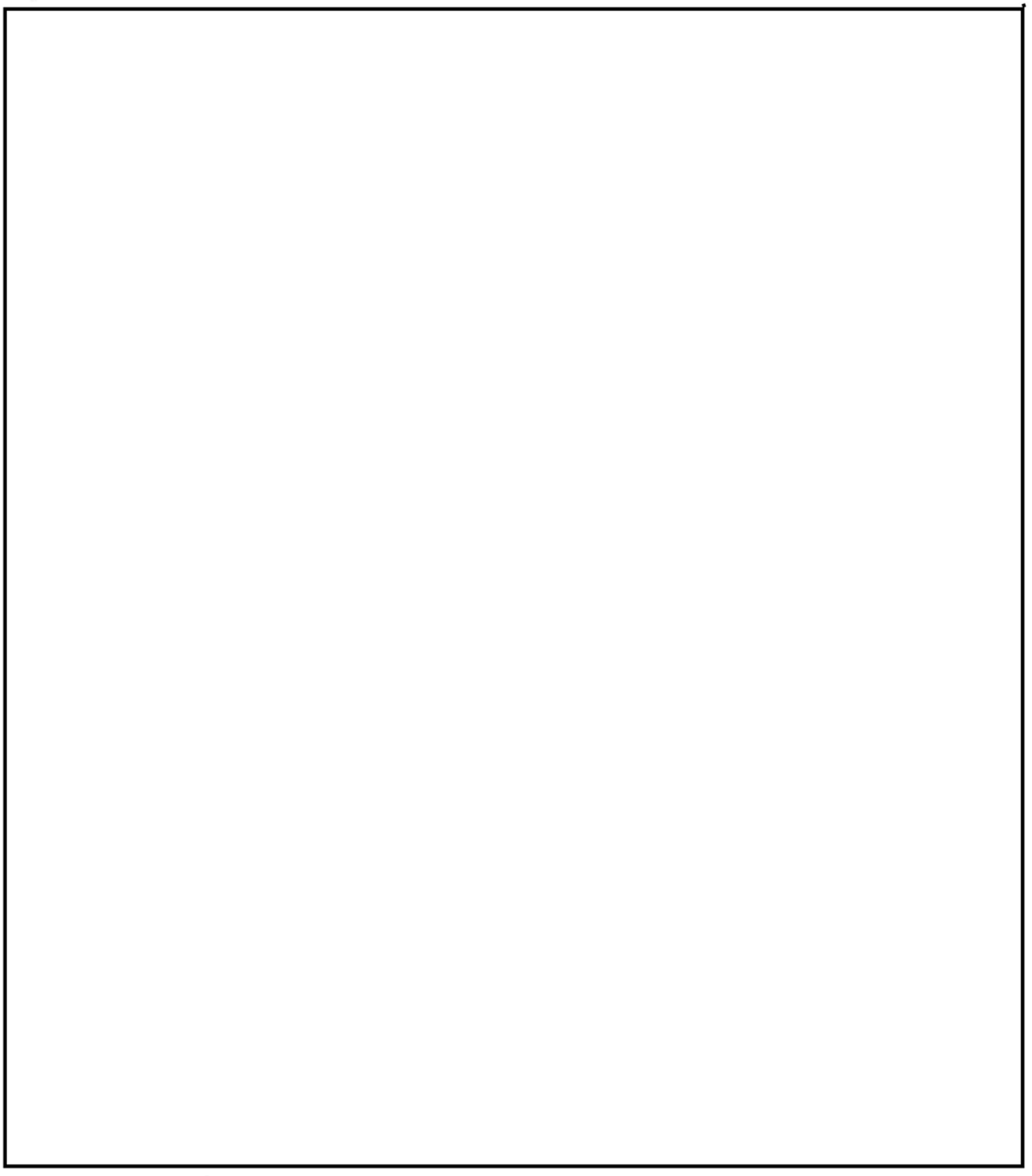


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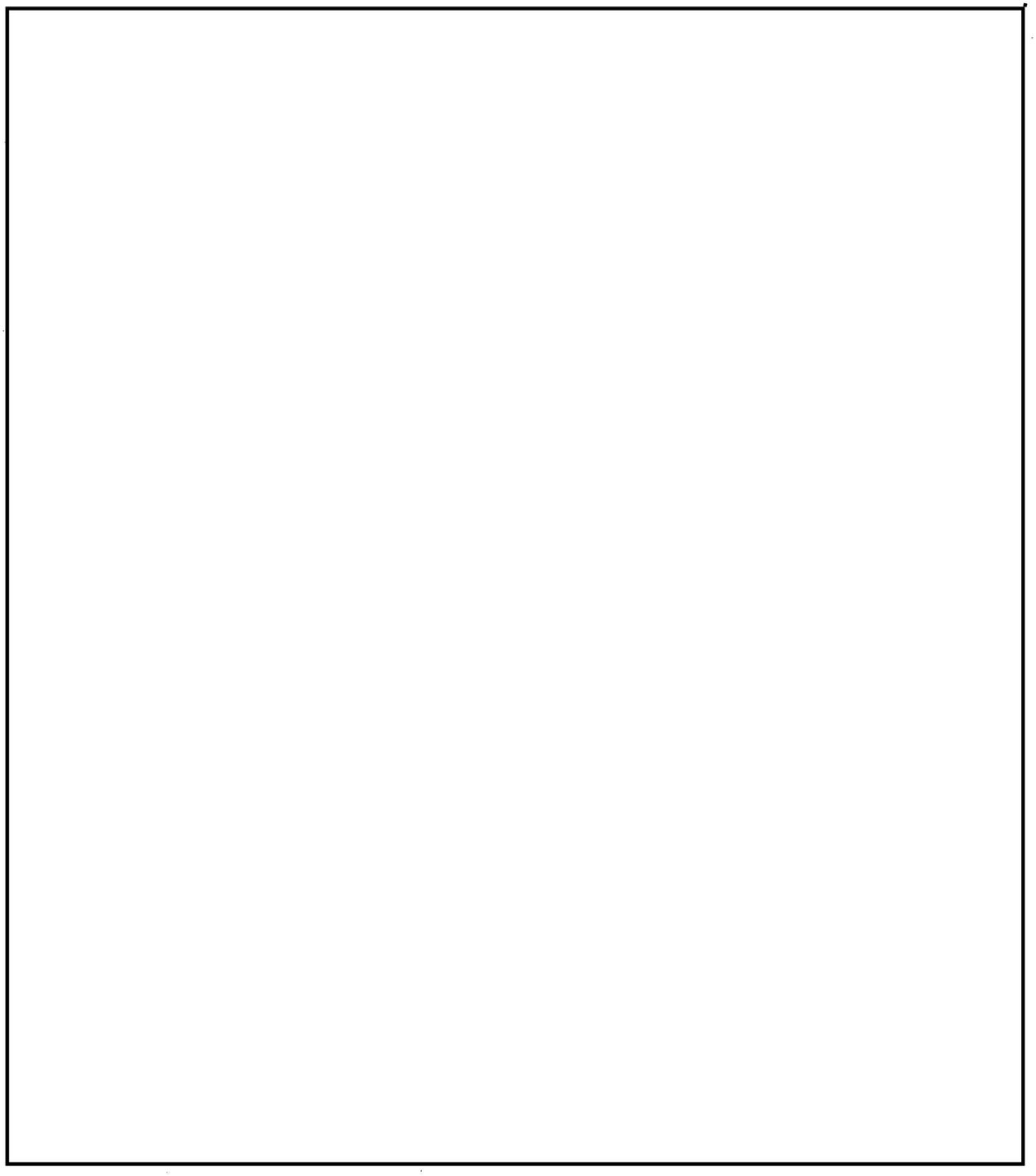


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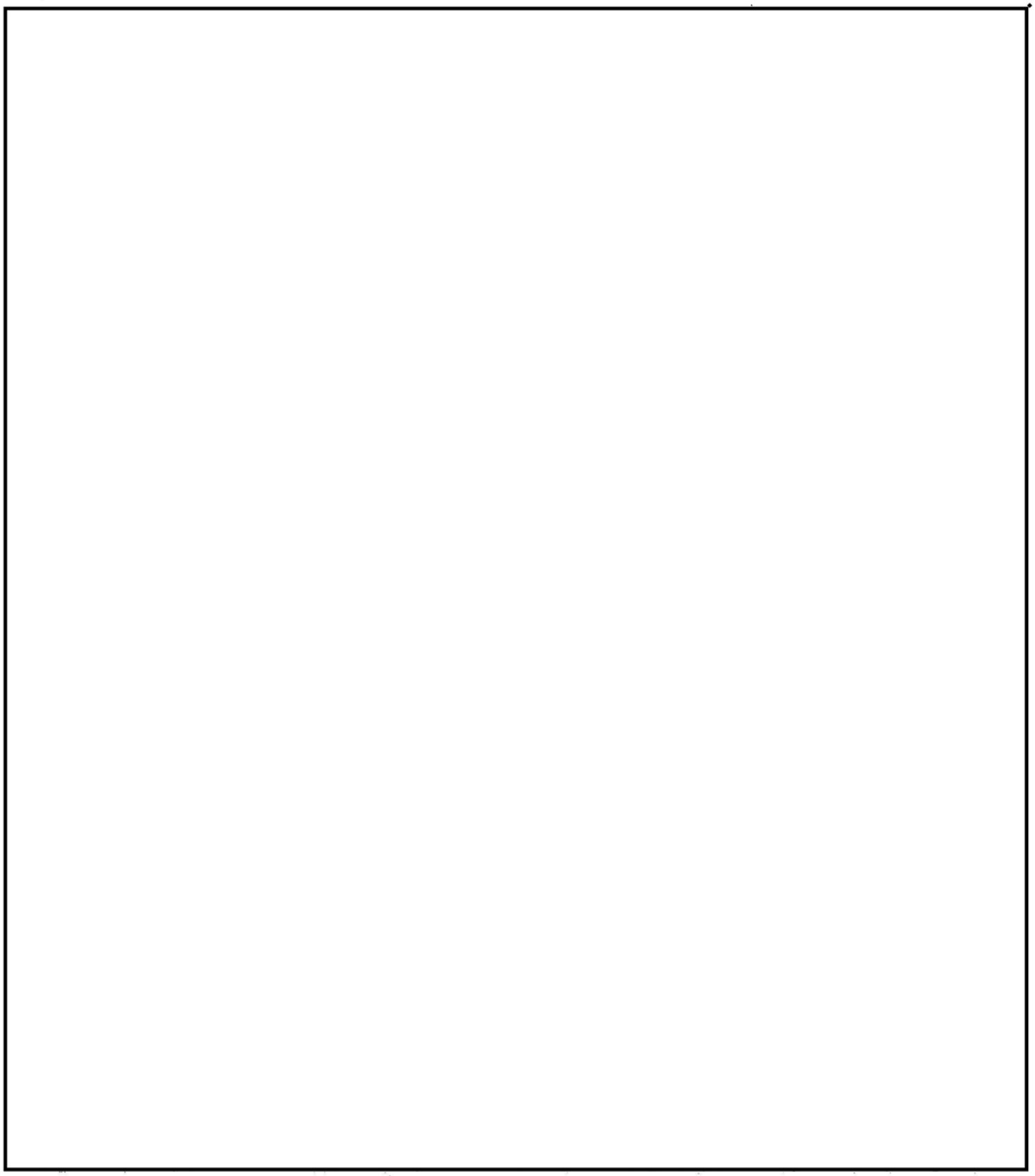


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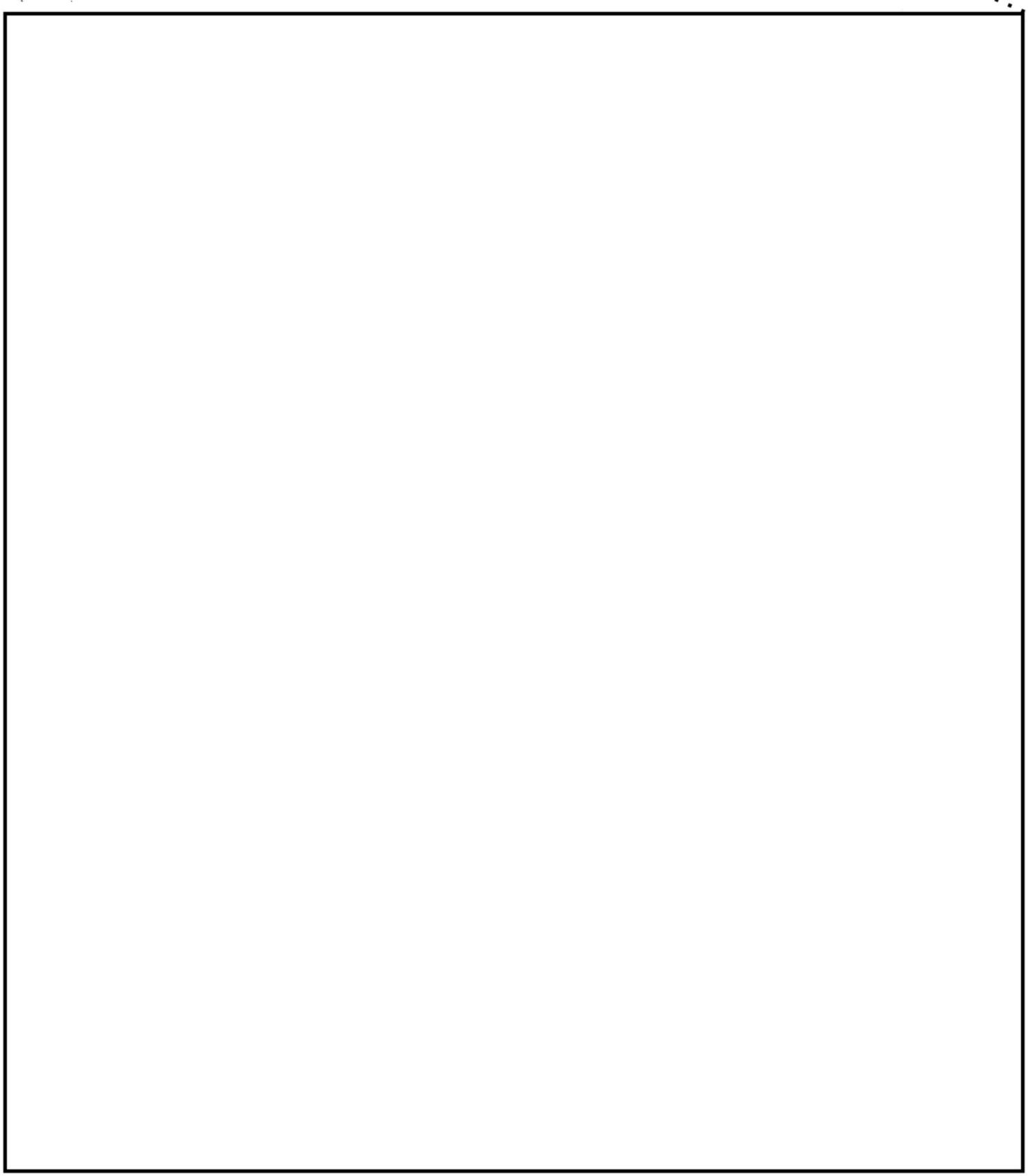
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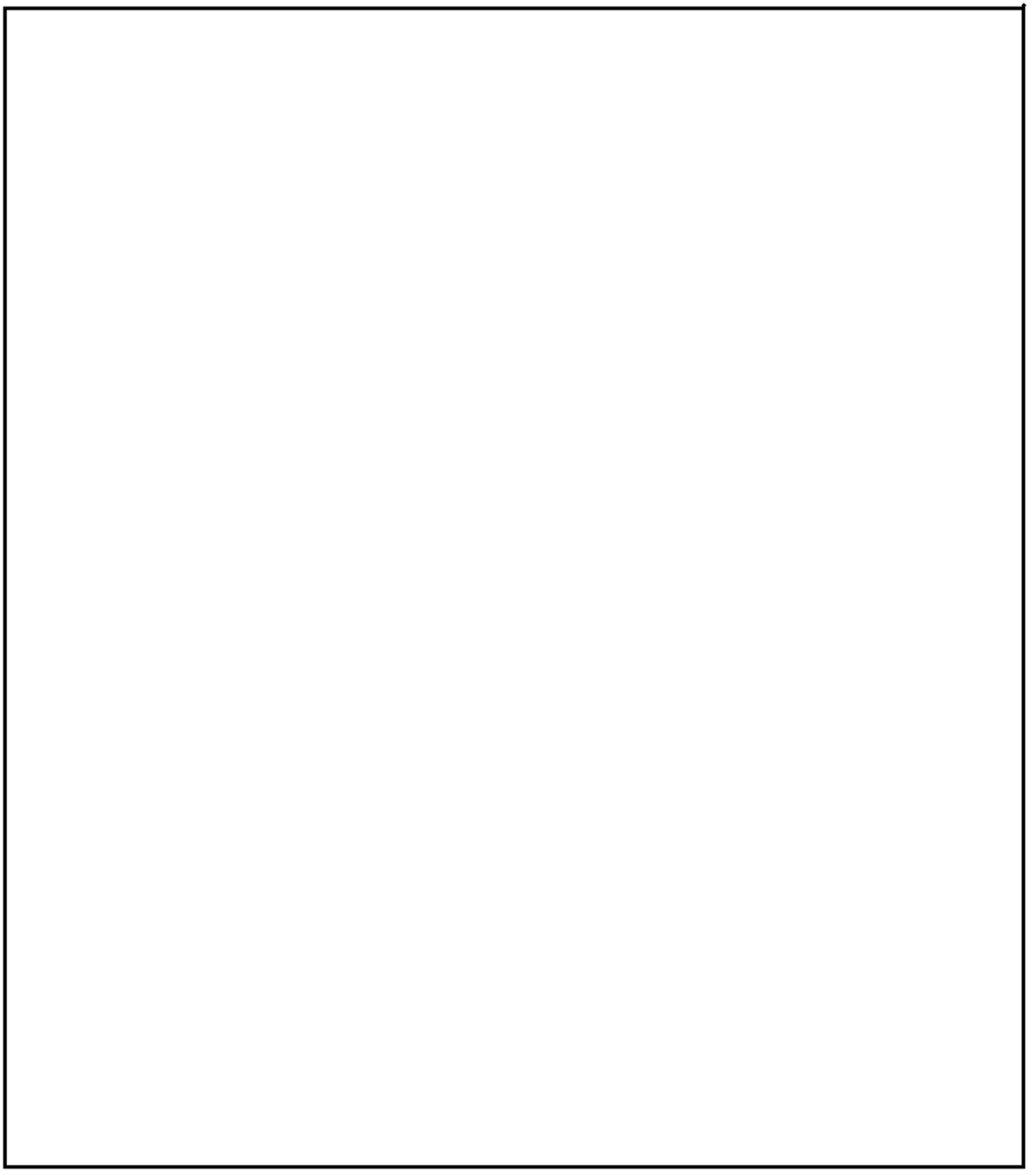


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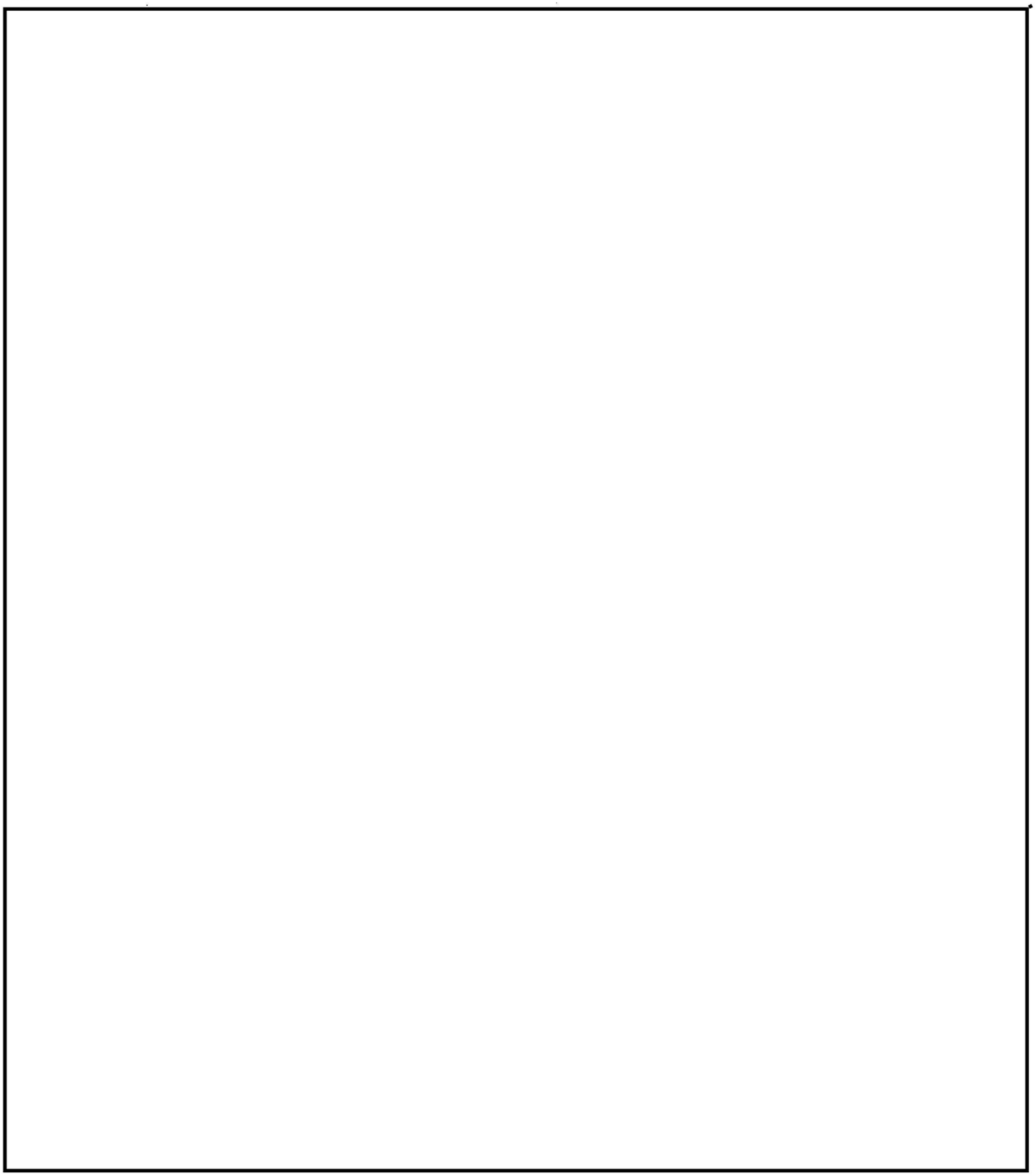


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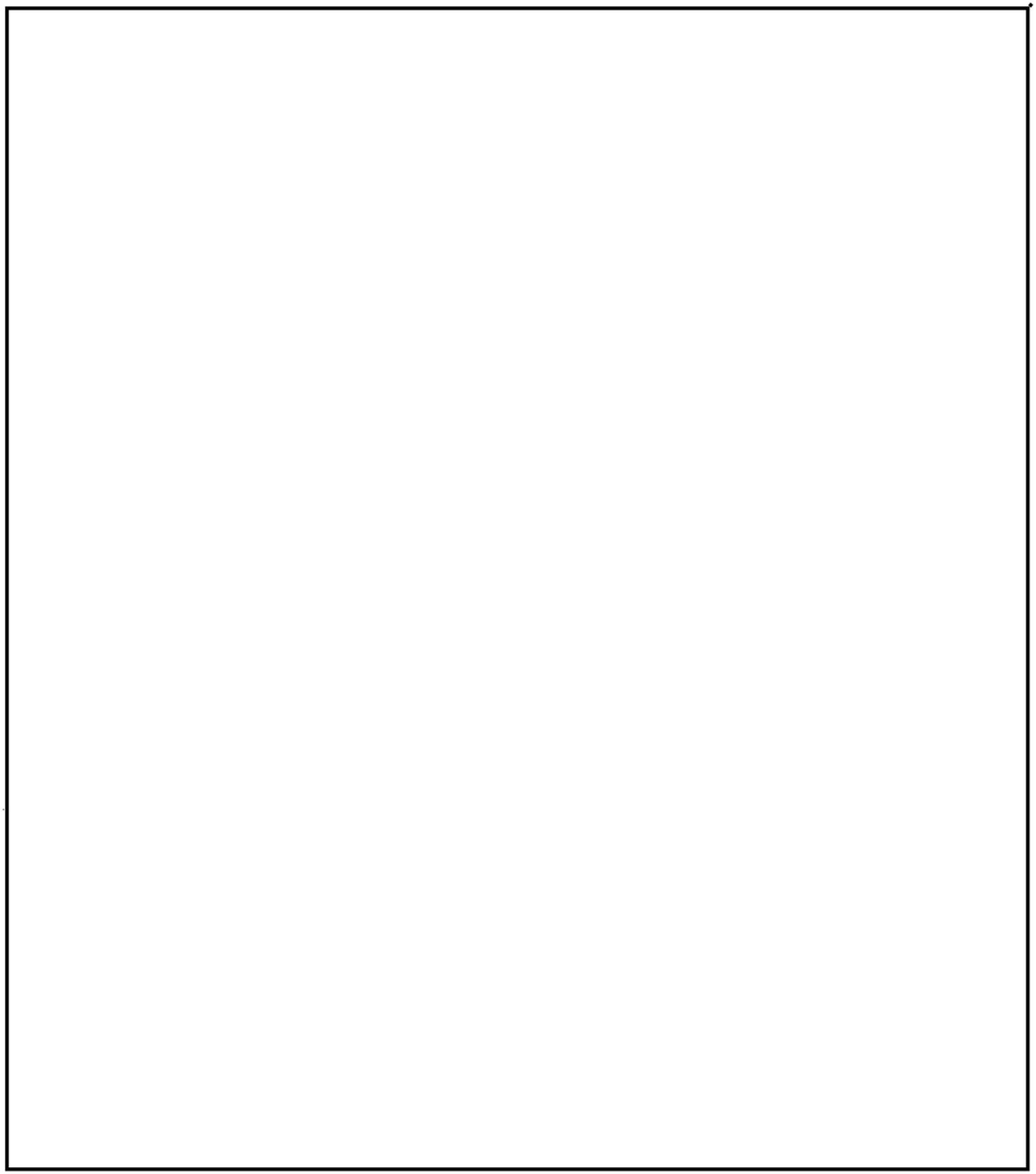


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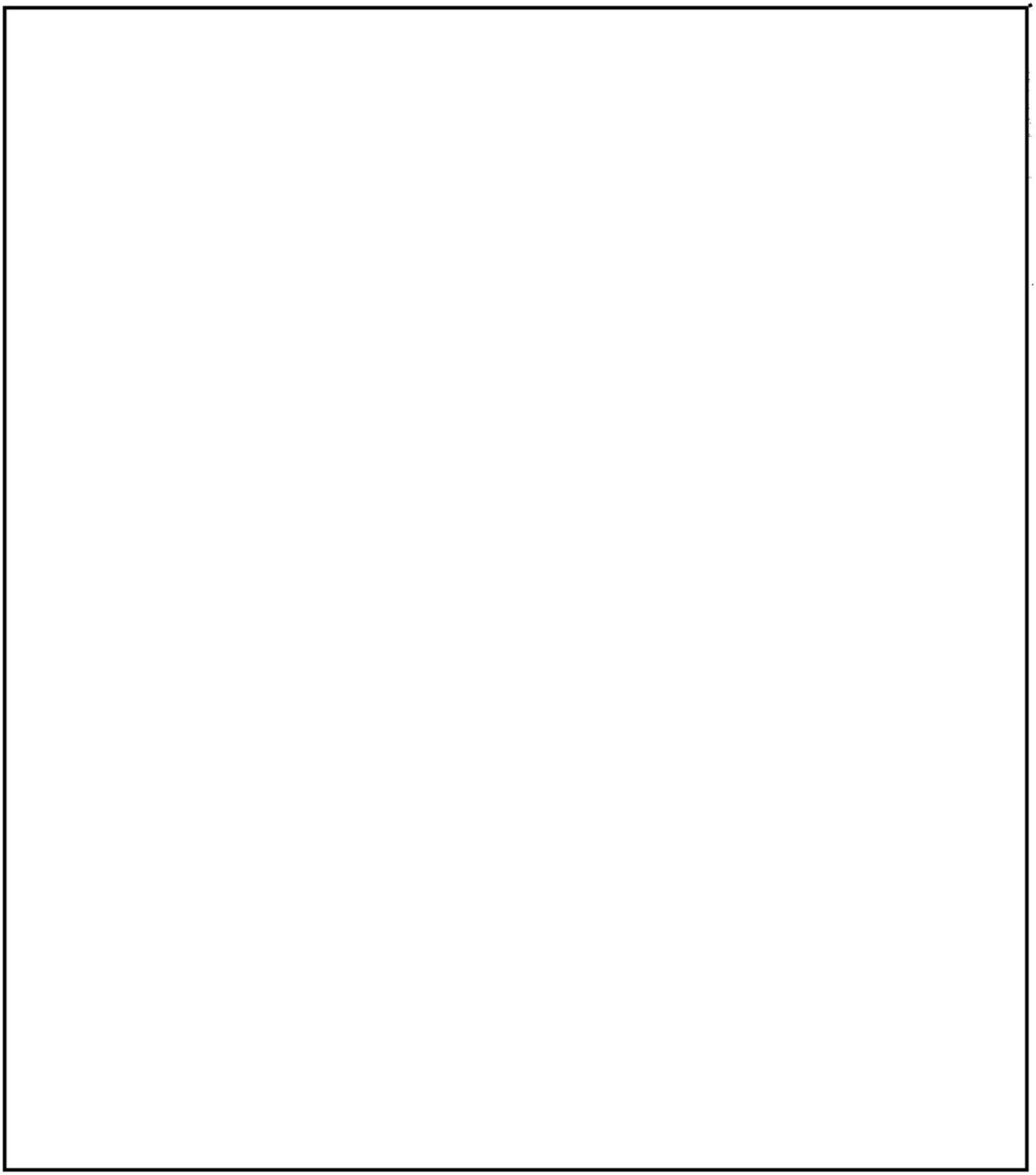
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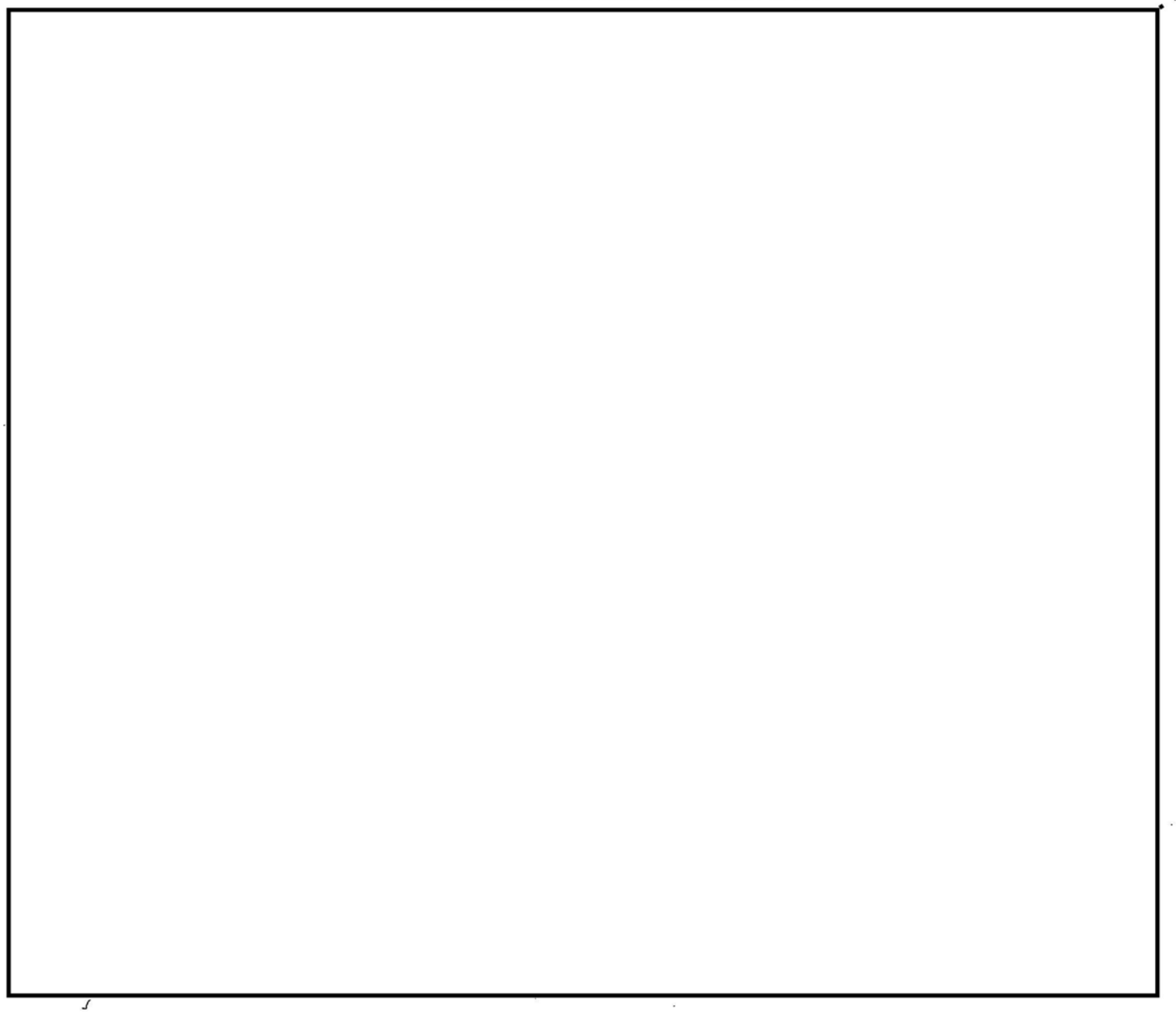


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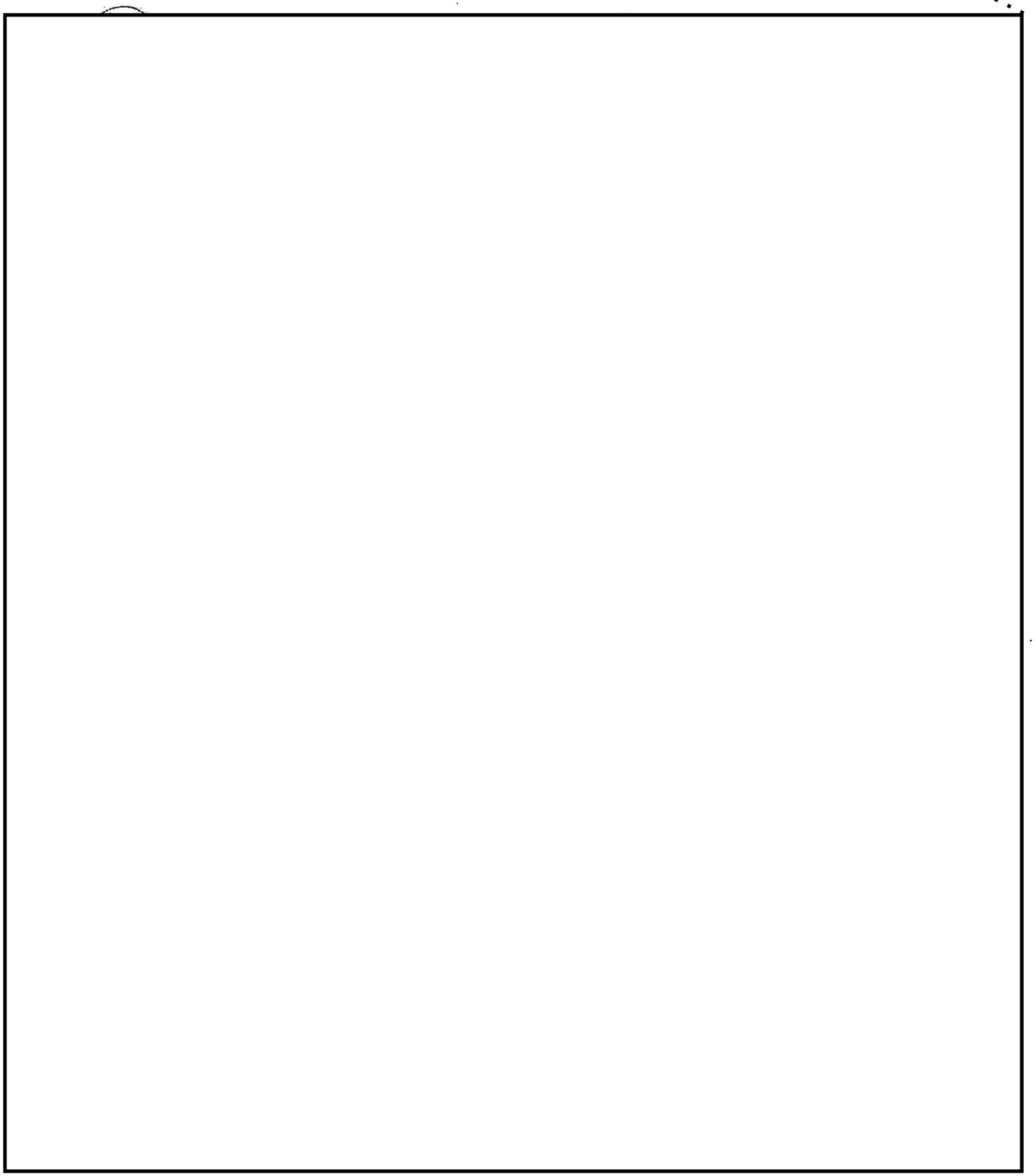
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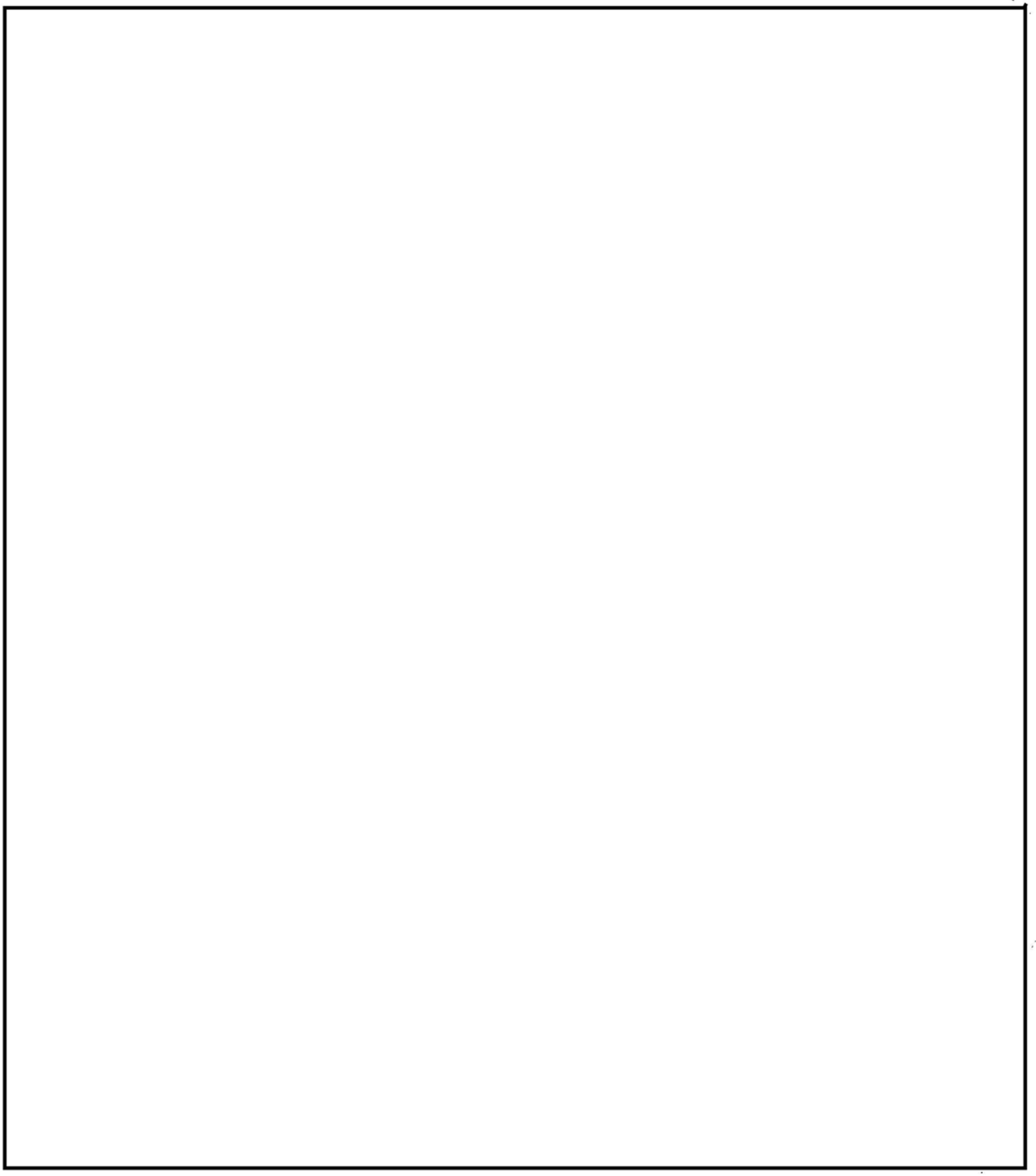
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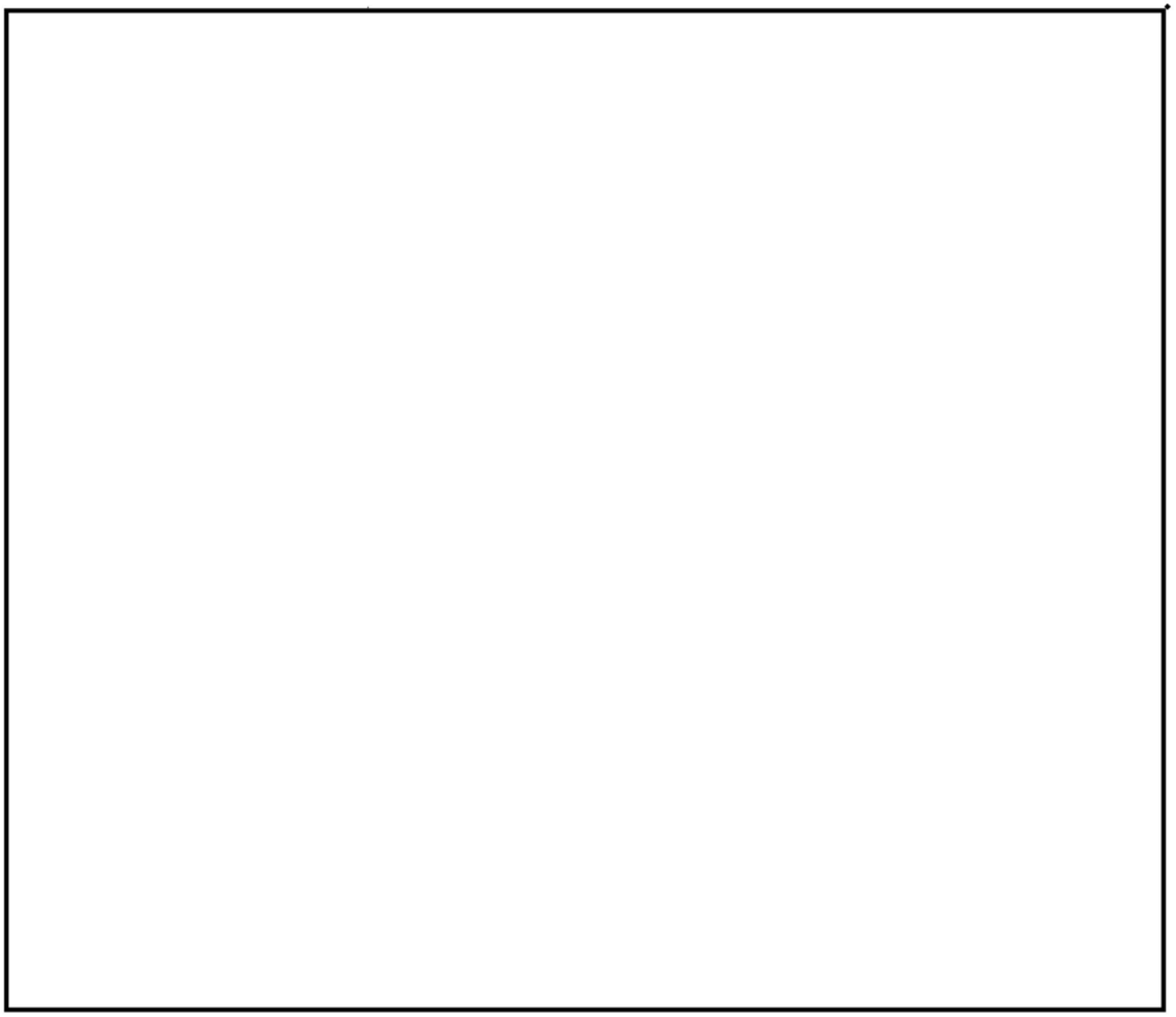


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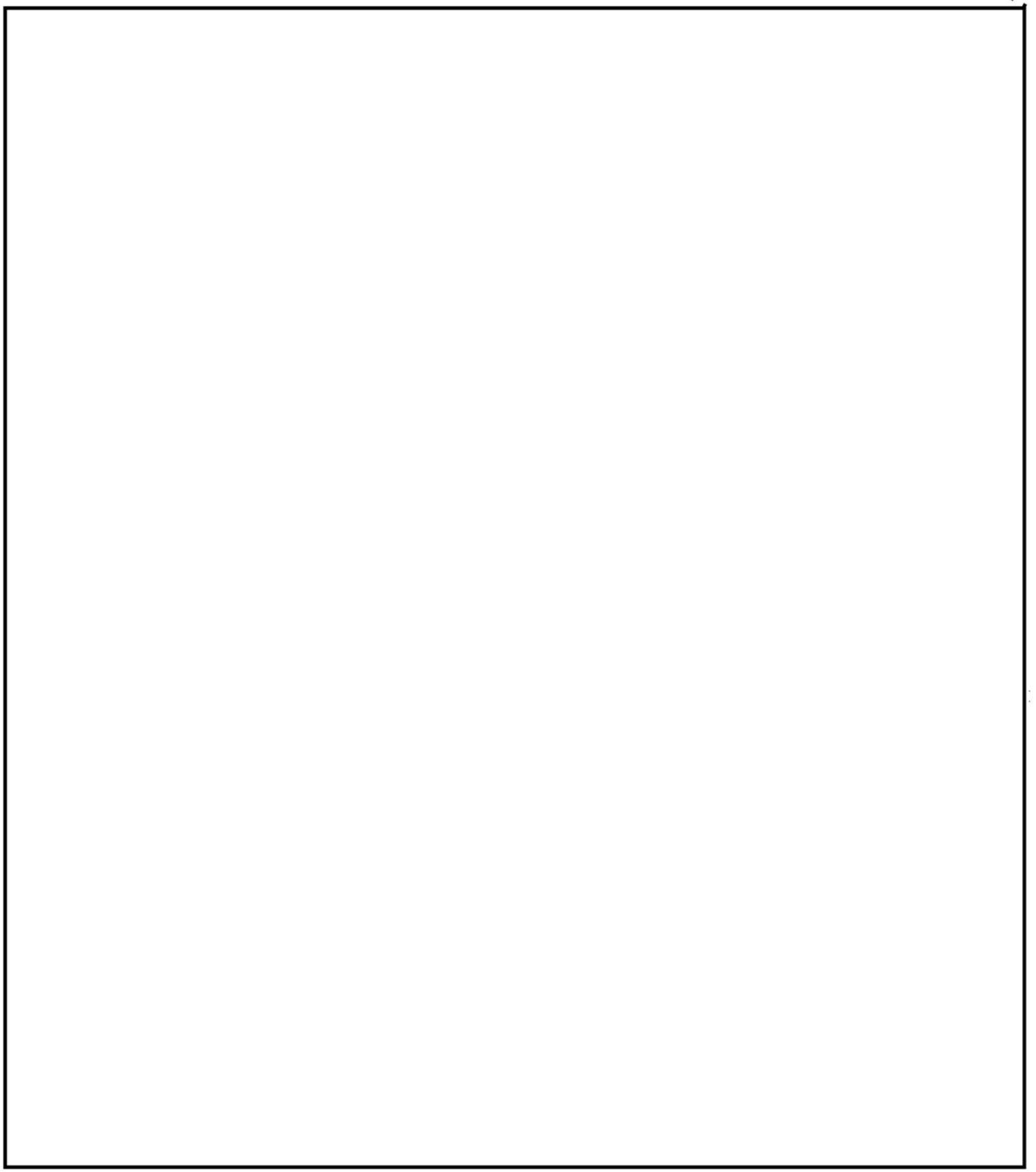
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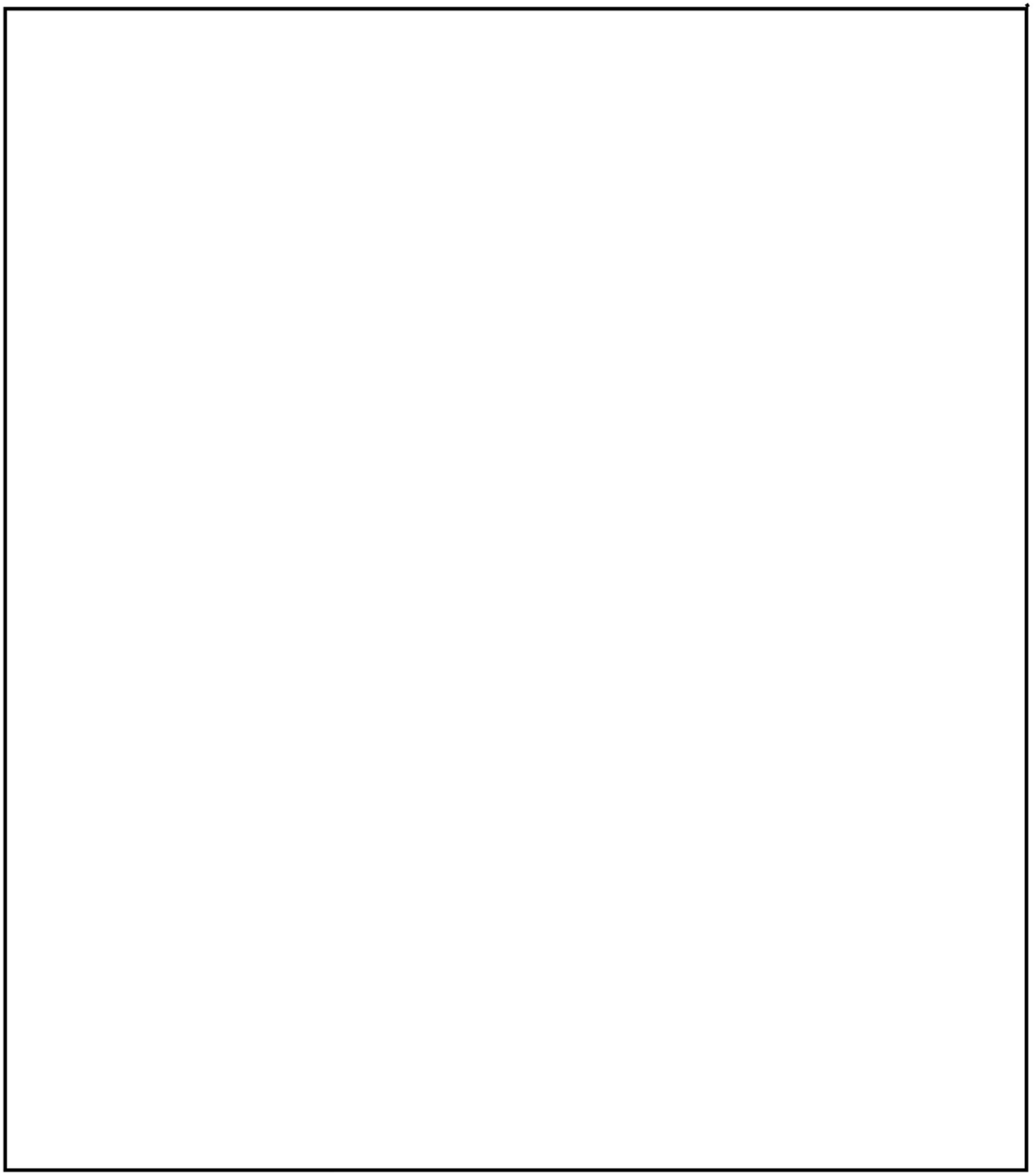


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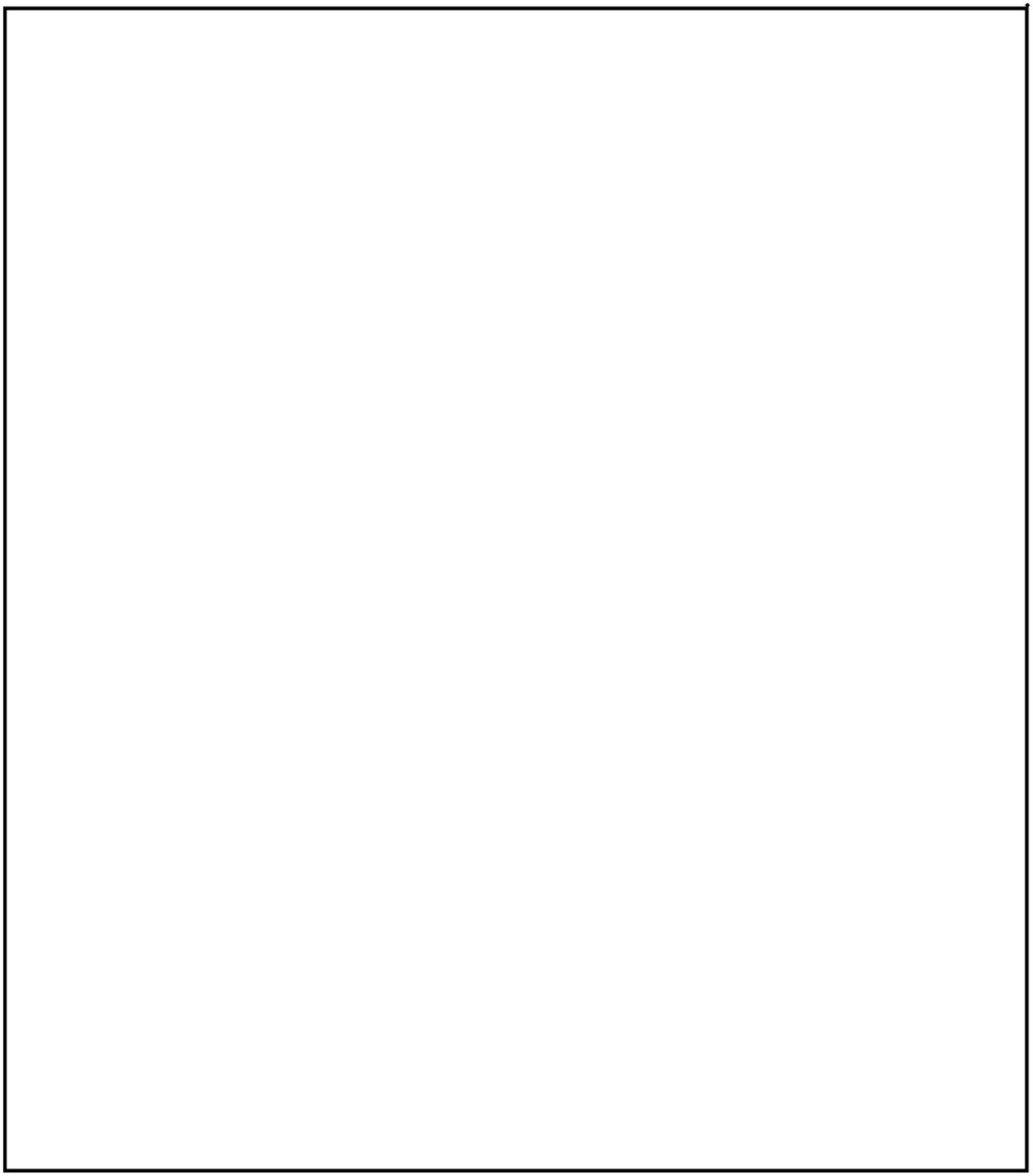
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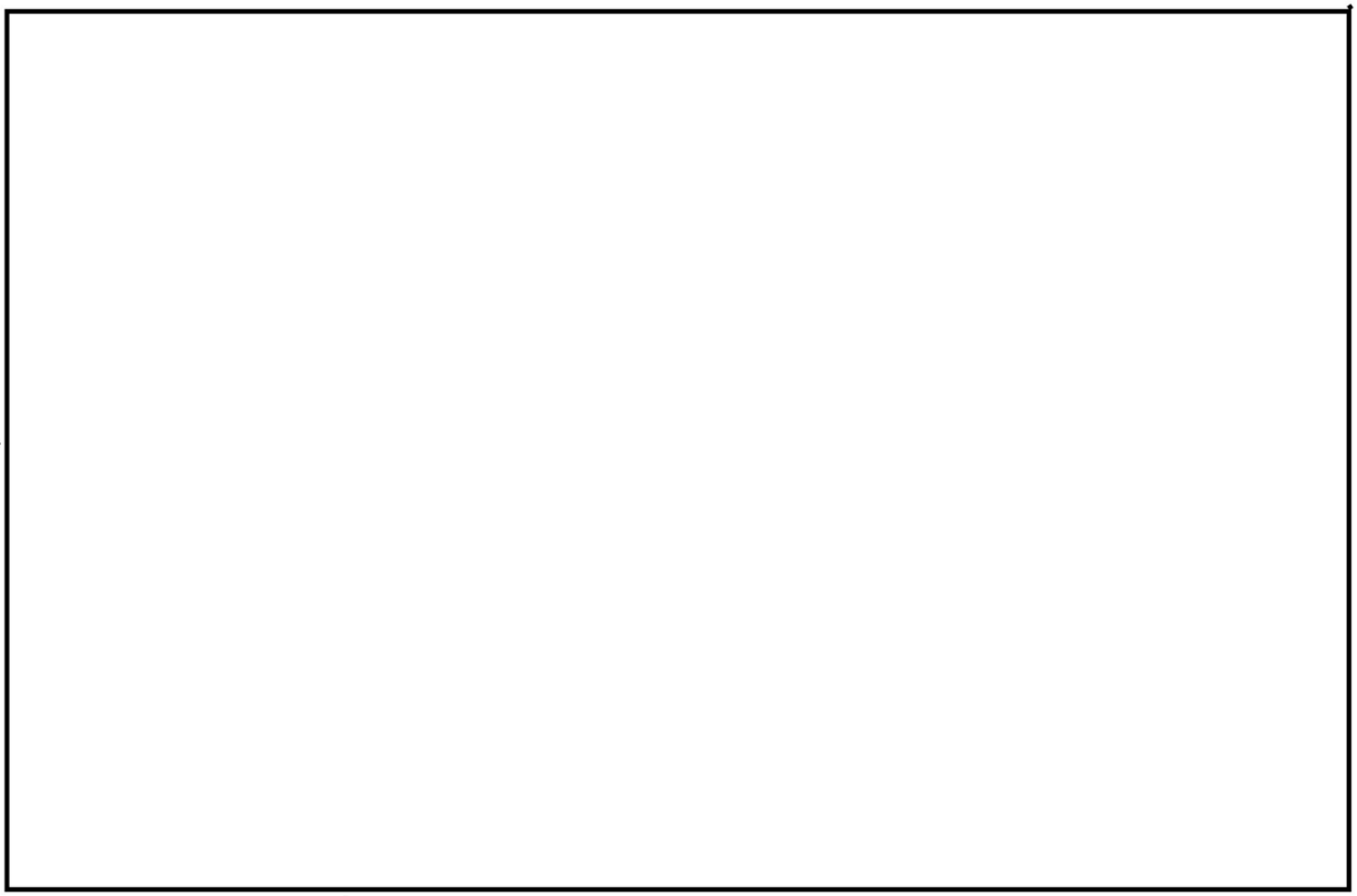
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APPENDIX G

Written Complaint submitted by [redacted]

Doc ID: 6775844

[redacted] - Statement

7 September 2015

[redacted]

(b) (6)

Per our conversation on 31 August 2015 at approximately 10:45 am, below is a summary of what we discussed. The USERRA violations, hostile work environment details, and discriminatory treatment that I have experienced from November 2012 to present are listed below:

On [redacted], I entered on duty as an employee at NSA. I began New Employee Orientation (NEO) and after two weeks, I was assigned to [redacted] at the BRAC located on Fort Meade. My new supervisor was [redacted]. A few days after I reported to [redacted] she sent me an email requesting I fill out and submit a Military Reserve Survey, which I did. I was assigned to [redacted] at the BRAC until February/March 2013, when I started Special Agent's class. Prior to starting at NSA, during my initial interview with [redacted], I advised him that I planned on completing a 20-year career in the U.S. Coast Guard Reserves. He acknowledged and advised me that, "we have many reservists for all different services in [redacted]. Being that we are part of Department of Defense, we are very supportive." My interactions with both [redacted] and [redacted] gave me no reason to believe that I would ever be discriminated against due to military duty or that my duty would ever adversely affect the way I was treated.

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1. In April/May 2013, I was assigned to [redacted]'s branch in [redacted] for my On the Job Training (OJT), which was the latter part of Special Agent's class. In August 2013, upon graduation from Special Agent's class, [redacted] became my immediate supervisor. From August 2013 to December 2013, I was absent from work a total of 27 days due to military orders. As a military member, I did what I could to give [redacted] as much advance notice as possible, but each time I was given the "Again? You just got back..." or "Where are you really going?" Along with her rolling her eyes, which insinuated that I was taking off for vacation or not coming to work because I just didn't want to.

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[redacted] always "gave me" the days off that I needed for military leave, only because she was required to do so by law. However, she set unrealistic expectations for me regarding case closures and turning in reports. For example, I requested [redacted] not give me cases that were time sensitive when I had upcoming military duties because it would be challenging and sometimes impossible to complete them in a timely manner, i.e., she would gave me a time sensitive case on Friday when I was leaving for military duty on Saturday for two weeks in October 2013. She would tell me that she would do her best, but when cases were "overdue", due to this issue, she would send me an email inquiring where the case was, status update, and emphasize that "this case needs to be submitted ASAP." Overall, I had a good working relationship with [redacted] and did not have any overt issues.

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2. In January 2014, I reported to [redacted] school at the [redacted] I graduated on 9 April 2014. During this time period, I did not have any military duties. Due to the academic

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rigor, I specifically requested leave from my military chain of command and to "make-up" my drills when [redacted] school was finished. I graduated [redacted] school and went directly to military duty without reporting to work, traveling from [redacted] to my Coast Guard unit in Newport News, VA. I reported back to [redacted] the week of 15 April 2014. I, along with all of my other classmates that graduated on 9 April 2014, was put in a "training" status, which was the equivalent to OJT. While in a training status, we would run one case every other day until we learned all Standard Operating Procedures (SOP), and the agency specific requirements for NSA [redacted] that are different from what was taught at [redacted].

During the months of my training status, which generally is 90 days in duration, I was on military orders the following dates: [redacted] (b) (6)

[redacted]

I feel it is important to mention that during my aforementioned [redacted] military orders, I received several phone calls and text messages from my colleagues that were back at work. They were receiving notification of whether they were promoted or not because promotions went into effect on or around the first week of July. Hearing this, I called [redacted] on her office phone number, left a few messages, but was unable to get ahold of her. I called [redacted] because she was my supervisor at the time that I submitted my 2013-2014 promotion packet, and would be the one to provide me with feedback or promotion news. I then contacted the D/Chief of [redacted], to see if he could provide some insight as to whether I was promoted or not. He said, "Hasn't [redacted] talked to you." I told him that she hadn't. He said, "Well, you didn't get promoted." I asked him why? He said, "I don't know, I'll have to pull your package. I will call you back." He called me back a few hours later. He said that he didn't know why I didn't get promoted and that [redacted] was probably the one that should be providing my promotion feedback because she was my supervisor at the time I was rated for the 2013-2014 promotion cycle. I then called [redacted] and left a message. I followed up with a text message to which she responded. I told her that I called her and left a few messages about "promotions". She responded, "You didn't get promoted." I told her that I had spoken with [redacted] and he advised me of that, but I am looking for promotion feedback. She said that she would call me later that evening. She called me at approximately 5-6pm that evening. She began the conversation by saying, "I am sorry you didn't get promoted and this is one of the hardest parts of my job." Then she said, "Going from a 11 to a 12 is a big jump." I responded, "Yes it is, but I am going from a 9 to an 11." She said, "You are?" Which led me to believe that she didn't even know what grade I was. She went on to say that she did not put me forward for a promotion because "I didn't have enough time with you because you were gone so much for military duty." I advised her that there are federal laws (USERRA) that protect members like me from things just like this. She said, "When I rated you compared to all of your colleagues, regarding cases closed and leads ran, you just can't compare." I told her that there was no way I could compare because I wasn't at work as many days as they were. She responded,

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"That's not my fault...." I told her that if she told me that my work was below performance level and I wasn't performing where I should have been, I wouldn't be happy, but I could accept it; however, I can't accept what she is saying because I felt it violated USERRA. She said she understood. I asked her if there was some way to give me a prorated assessment based on the amount of days I was there and the amount of cases closed/ leads ran? She said, "We don't have an assessment tool like that where we can prorate Agent's promotion criteria based how many days they are present at work."

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

Once again, I reminded her that it was a violation of USERRA for my military absences to affect opportunities for promotion I told her that I would be following up with [redacted] and [redacted] (Chief/. D.Chief of [redacted] She verbally acknowledged me. When I returned back from military leave in late June 2014, I emailed [redacted] and [redacted] requesting to meet with them regarding the feedback that I received. I met with them a few weeks later. We met in Chief [redacted] office. [redacted] and [redacted] were both present. I began by telling them what had happened. I detailed to them the information that is mentioned above. [redacted] was taking notes the entire time. You could tell by her eyes that she was shocked at what she was hearing. After approximately 30 minutes, they told me that they would look into what I had told them and follow-up with [redacted]. Prior to leaving, I asked [redacted] "If my work was below performance level, if I wasn't where I needed to be, etc., why was I selected for a prestigious position as a [redacted] and my ACE scores show satisfactory?" She stated that she did not have the answer to that question, but I was "100% correct. We ([redacted]) don't just dump bad employees on another department. We won't endorse someone for a position they don't deserve/aren't ready for." Approximately 2 weeks later, I received an email from [redacted] stating that they had followed up with [redacted] and her story is different than mine. They "highly encouraged me to speak with [redacted] again, so she could tell me again why she didn't put me forward for promotion. I did not follow-up with [redacted] because I already knew why she didn't put me forward because she had already told me once before and if she was going to tell me anything different than the first promotion feedback I received, I felt that it would have been a prerehearsed explanation after [redacted] and [redacted] reminded her of the USERRA laws.

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Given that [redacted] has been at the Agency for 25+ years, [redacted] has been at the Agency for 15+ years, and [redacted] has been at the Agency for 25+ years, I felt that they were protecting each other - and that my word (as an employee of just over 1 year at that time) was not going to have an impact on three very senior and influential individuals in [redacted]

I have seen this "good ole boys" mentality happen to some of my colleagues and I did not want my future reputation at the agency to be affected by my speaking up or taking this incident further. Knowing how powerful and influential they were, I felt that by filing a grievance for the aforementioned actions of my superiors I would be targeted, possibly preventing me from being promoted in the 2014-2015 cycle as a way of punishing me for "blowing the whistle."

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3. Upon completion of my last military duty in August 2014, I returned to work. On this occasion, when I came back from duty, my colleagues were no longer in a training status and were working as independent [redacted] running two cases a day. When I arrived back to work, I had two cases in my bin, which was not normal for someone who was in a training status. Having been absent due to military leave for the majority of my training, I inquired with a member of the training team, [redacted] as to whether I was still in a training status or not. He advised me to report to my supervisor, [redacted] When I was leaving for duty, the supervisor that I was supposed to go to when I was finished with my training was [redacted]; however, this changed when I was gone due to an unknown reason. I was advised to run the cases that I had in my bin, so I did as instructed. In mid-August 2014, after I was officially in [redacted] branch, he met with me, and we spoke about his expectations, what he looked for in reports, and areas he wanted to see me excel in, etc.

From the beginning of August 2014, when I first truly reported to [redacted] I received reports back for edits, which was common for any new [redacted] until the new [redacted] gets used to their supervisor's writing style, likes/dislikes, etc. As time went on, I received fewer and fewer reports back for edits, which was a sign to me that I was doing well.

Between August and September 2014, I received an email from [redacted] requesting to meet with me. I met with him in a vacant office in [redacted] and, to my surprise, he told me that my reports need work, that he keeps seeing the same mistake over and over, and that it is unacceptable. [redacted] stated that he expects more from me because I have a Master's Degree and I am a military veteran. I reminded him that I have only been an [redacted] for a few months, I have only been assigned to him for a matter of weeks, and I am still learning. He said that my work will be closely monitored from now on and that he will document this "counseling" and follow-up with a summary email, CC-ing the Chief and D/Chief of [redacted] / [redacted], which he did the following day. I was surprised at the meeting and his statements that I was not meeting the expectations that he had for me. He compared my performance to my fellow classmates from [redacted] school, who weren't having these issues with their supervisors. While this could have been for a variety of reasons, I feel that their additional opportunity to gain time/experience as a [redacted] was the main factor. [redacted] concluded the meeting by implying that I could be terminated for pretty much anything within the first two years of employment at the agency.

I felt that [redacted] statement insinuated that if I didn't conform to his writing style, I would be fired. At this point in my employment with the Agency, I was two months shy of my two-year mark - and this is a fact that [redacted] was well aware of.

4. From September 2014 to December 2014, I received little to no reports back for edits, I received a "Star Fish" award for the superior job I did on a case and, despite checking with him on my progress, [redacted] had nothing to pass. He said, I don't know what you changed, but keep it up. I told him I didn't change anything and that

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everything has been the same. During this time period, I was absent from work due to military duty for a total three days, primarily Fridays. Each time, I submitted the necessary paperwork to verify my military orders and tried my best to provide a sufficient amount of time, so that the [redacted] that I was scheduled for could be rescheduled to another [redacted]. On each occasion [redacted] said in a sarcastic tone, "don't worry, someone will take YOUR cases. "I tried explaining to [redacted] several times both verbally and via email about my military duty. He told me that I am the first military reservist that has worked for him and that he has no idea how military reserve duty works.

[redacted] always questioned the validity of my military orders. For example, when I provided him my military orders for duty, he would ask, "how do I read this?" He also demanded " . . . documentation confirming that you are where you say you are when you leave for 'military leave'." [redacted] did not say these things in a nice or inquisitive way; rather, he would say it as if he did not believe me when I told him I was leaving for military duty. He also said, "How can they just call you last minute and force you to come in to duty." [redacted] made me feel as though I had to justify my service as a member of the Armed Forces and that should never have to be done to any member, active or reserve, when they are called to or volunteer for military orders with their given military component. [redacted] subjected me to several of these comments - and I believe it was because he either did not like that I left for military duty and/or he had seen that I was absent from work for several weeks between April 2014 and August 2014 - and now it was an inconvenience for him that I was in his branch.

5. In January 2015, I received an email from [redacted] to meet. I had no reason to believe that anything was wrong because I had not had any reports sent back, no "counseling" emails, and no verbal advisements of factors that I could improve on. When I met with [redacted] he asked me "Is everything okay?" I asked him what he meant. He clarified, "Is everything okay at home? I have been seeing the same mistakes over and over again. It's the same mistakes that I saw in September." I responded that everything was perfectly fine at home and I am not sure how it was his business if it wasn't. He said, "I was just asking because I have seen a change in your work. It's crazy to me because you can be so good for so long and then you just revert back to your old ways." I asked him what exactly he was referring to because I have received little to no reports back and he had given me no feedback on anything. He said, "I'll be right back. I have a stack at my desk of edits." I waited while he went to his desk to grab reports that he had edited. He came back and showed me reports of mine that I submitted with a bunch of red ink on them indicating that corrections needed to be made. My first question to him was why is this the first time I have seen any of these reports? Followed by, why wouldn't you tell me that you wanted me to write the reports differently? He told me, "I thought that you would just get it, but you didn't." This went on for approximately 20 minutes. We clearly did not see eye to eye on this issue. I asked him if he had an issue with me personally, because his actions and how he treated me made me feel this way. He said that he didn't. He said, "You could be one of the greats in [redacted]. You are perfect in the room. I

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know that I can give you any case and you will do a fantastic job in the room running the case, but your reports suck." Again, I stated that if my reports sucked so much, why wouldn't he come to me, so I can fix it or at a minimum, be cognizant of the mistakes I made so I don't make them again. I then asked him, "On a scale of 1 to 10, 1 being terrible and 10 being perfect, where do my reports fall?" He responded, "7.5." I said, "I will continue to strive for 10." The conversation did not end well. I felt that [redacted] was attacking me for no apparent reason. I felt that he was treating me differently than he treated my coworkers.

My coworkers encouraged me to speak with the Chief, [redacted], about my issues with [redacted], which I did. After speaking with [redacted] and expressing my concern for being targeted by [redacted] and advising her that I feel it is personal between [redacted] and I, she said, "what do you want from me [redacted] I told her that I was not asking for a different supervisor, rather, I was just making her aware of the circumstances and requested she "keep an eye" on this. She ensured me that she would. I also advised her of my question to [redacted] regarding the scale of 1 to 10 and he told me I was a 7.5. She said, "7.5.....that's not that bad. It's actually pretty good." I agreed and said, "That's what I thought."

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6. In February/March 2015, I submitted my Employee Promotion Assessment (EPA) to compete for promotion from GS-9 to GS-11. [redacted] advised me, "Thoroughly outline all your key factors why you should be promoted and I will rate you accordingly." I thought this was a very general guidance to how the new promotion procedures will be assessed by a supervisor. I did as instructed and felt that I had a very competitive promotion packet compared to my colleagues. I had "hit" all the milestones in [redacted] authorized for TDY, authorized for overtime, and authorized to run special interest cases, etc.). I heard nothing further regarding my promotion package until Tuesday, 30 June 2015.

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From January 2015 to May 2015, I was absent from work due to military duty for approximately 46 days. Prior to leaving for duty, I provided [redacted] with the dates, times, and my military orders, if I had them in hand prior to the orders starting. Every time I would notify [redacted] of my upcoming military leave, I could tell by his reactions, shock in his face or snide remarks, that he was becoming increasingly frustrated by me leaving for military duty. I asked him if he needed me to clarify any of my military duties or if he had any questions for me, but he didn't. I again brought this to the attention of [redacted]. She said that she would speak with [redacted] and "keep an eye on it."

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7. In May 2015, when I was briefly back from military duty for approximately two weeks, [redacted] notified me that, as of 1 June 2015, my new supervisor will be [redacted]. She stated, "I think he is more your style. You can learn a lot from [redacted] AND he is a military veteran, so he will be more understanding of your military leave." I acknowledged what she had said and told her that I would continue to work just as hard as I had in [redacted] branch. She said, [redacted] keep on doing good things." A few days after our conversation, I departed for military leave again [redacted]

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[redacted]. Prior to leaving, I also briefly met with [redacted] and advised him that [redacted] had told me I was going to his branch as of 1 June 2015, but I was leaving for military leave. He asked me where I was going. I told him my unit was conducting training at Marine Corp Air Station Cherry Point, NC. He said, "Have fun. We will talk when you get back." Prior to leaving for duty, I provided [redacted] with the dates, times, and my military orders, just like I had done several times before.

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When I reported back to work after my first set of orders were complete on [redacted] I sent [redacted] an email advising him that I was back from military duty and I was free to meet with him whenever he was available. The following day, after my morning or afternoon case was completed [redacted] and I went into a vacant [redacted] suite and we spoke. This meeting was similar to the meeting that I had with [redacted] when I first reported to his branch. [redacted] told me what he expected of me. He told me that he knew I had some issues with [redacted] while in his branch; however, that will not affect me while I am in his branch. [redacted] emphasized to me that he makes his own judgments and decisions based on what he sees and doesn't go by what other individuals or supervisors say. He told me that he has seen me "in the room" and has "no issues" with the work I do. I told him that I had two large cases from May 2015 that I was unable to complete prior to departing for military leave and I had received several emails from [redacted] inquiring about the status of the cases and that they needed to be submitted "ASAP." I advised him that I told [redacted] several times to not schedule cases for me the day or afternoon prior to my military duty; however, he always scheduled me for cases. I told [redacted] that, most times, I stay late or work over-time to ensure my cases are completed prior to leaving for military duty; however, the two cases that I wasn't able to complete were two of the largest cases, length/information wise, that I have had since being assigned to the [redacted] division. He said that he understood and told me to turn them in as soon as I could. I told him that I would, but I was scheduled for two cases every day of the week and had no break to catch up on my typing. He said that he would "see what I can do to give you a break." [redacted] gave me one break and I was able to turn in both of the "overdue" cases within two weeks.

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8. On 30 June 2015, I received an email from [redacted] and [redacted] at approximately 11:30 am requesting to meet with me immediately. I was no longer in [redacted] branch and had limited interaction with the former D/Chief of [redacted] ([redacted]), so I was a little confused initially. They told me to meet them in [redacted] office. They told me to take a seat between them and closed the door. [redacted] began the meeting by stating, "This meeting is to provide you with your promotion feedback. If you didn't already know by now, you didn't get promoted. Generally speaking, [redacted] would be the one to provide this feedback, but in her absence, myself and [redacted] will be providing your feedback." I said okay. He said, "Today is the day that all individuals that ARE receiving a promotion are being notified, but you are not being notified for that reason." He continued, "You know, it seems that with you, when you are good, you are really good. But, when you are bad, you are really bad. What would you attribute this inconsistency to?" As [redacted] and [redacted] are just staring eagerly at me waiting for my response, so they could further attack me, I responded to him by

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outlining several things that are previously mentioned in this statement: First, I do not believe that I am inconsistent. I feel that I have been a solid performer since reporting to [redacted] I am not perfect by any means, and could always use room for improvement, but overall, I have been a solid performer. Secondly, I did not see eye to eye with [redacted]. He was very critical of my writing style when I missed commas or a period, etc. However, the information contained in my reports was clear, accurate, relevant, and timely. Third, when I was "really bad," I was unaware of it because [redacted] neglected to inform me and told me that he thought I would "just get it." I continued to add a few additional points and they listened. [redacted] was shaking his head the entire time and [redacted] was just staring at me what seemed to be in disbelief that I was defending myself from false accusations. This was likely because it is very rare that anyone ever disagree with the "good ole boys" club.

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Then, [redacted] pulled out a piece of paper. The paper was an email from [redacted], former Chief of [redacted] sent to [redacted] and [redacted] asked me if I had ever seen the email. I told him I hadn't. He said, "You ran a case up at [redacted] back in May [redacted] watched your entire interview. You missed quite a few things that you were required to cover." I asked [redacted] what type of case was it? What was the name of the case? Was it a first run, second run, etc.? Can you provide any details about the case? He said he didn't have any details about the case, but the fact is "You missed a lot of information. [redacted] even went back and listened to your interview to confirm that you missed all this information." I told him, "I am not calling [redacted] a liar, but you are telling me about a case that I ran back in May that you have no details about and you expect me to recall this." He said, "I know it's hard to remember, but this email came at the wrong time. Promotions this year were very competitive and this is what it came down to." I said, "I remember running the case up at [redacted] because I have only ran one-two cases up there, but I don't recall ANY details of this case. I run hundreds of [redacted] a year and don't remember a good majority of them." I continued, "You are going to tell me that in a years worth of work, I didn't get promoted because [redacted] watched one of my interviews and I missed a few things? I cannot accept that." I continued, "I didn't know that [redacted] watching my interview was a promotion criteria...." [redacted] said, "it's not, but it's something that we look at and we take into consideration." [redacted] spoke up for the first time and said, "When the former Chief of [redacted] says you are doing something wrong, you listen. Instead of disagreeing with and being disgruntled for not getting promoted, what you should really be doing right now is listening to what we have to say to you." At this point, it got very uncomfortable. I already felt as though I was being attacked, let alone when he cuts me off and tells me that I am wrong for feeling the way I felt and that "they" are right. I told him, "[redacted] asked me my opinion. I gave it. If both of you don't want to hear it, then why did you ask me?" [redacted] spoke over [redacted] and said, please continue. I didn't have much more to say. As you can imagine, this did not end well. I told them that I did not agree with them at all. They encouraged me to speak with [redacted] who authored the email that didn't get me promoted, based on what [redacted] and [redacted] said. Additionally, they said that I could also speak with [redacted] if I felt the need to do so. [redacted] concluded the meeting by saying, "we are done now." When I departed [redacted] office, 12:30 pm cases

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were being called. [redacted] Office Admin, said, [redacted] your case is here." I thanked her, grabbed my case, and went to my interview.

After I picked up my 12:30 pm interviewee, reviewed all of their forms, covered all relevant information, [redacted] completed the interview, went back to my desk, and began to type my report like I always did after [redacted] is over. While I was typing my report, I received an email from [redacted] at approximately 3:00 pm. I immediately opened the email. [redacted] stated that he had watched my entire 12:30 pm case and I did a fantastic job. He said, "You are a man of few words, but you got the job done. You covered everything perfectly. Keep up the good work." I was appalled that, a few hours prior to the email I was reading, I was told that [redacted] watched an interview that I completed in May, and I didn't get promoted because of it. I replied to his email and said, "Thank you for your kind remarks. Would you have time to speak with me today?" He immediately responded, "Yes, but it will have to be fairly quick, as I am leaving for vacation at 3:30. I am located in the back of Contractor Clearances." I wrote him back and told him that I would be right over. I arrived at his office minutes later. He met me in the front. I went in and he closed the door behind me. He said, "What can I help you with?" I told him, "Today, prior to my 12:30 pm case, I received my promotion feedback from [redacted] and [redacted] He seemed shocked because that was the day everyone was being notified that they were being promoted, not that they weren't being promoted. I continued, "and they provided me with a copy of an email you wrote them in April." I then provided him with a copy of his email to [redacted] and [redacted] outlining the mistakes I missed on the case that I ran in April 2015. He said, "Yes, this was a case that you missed quite a few things. I wrote them an email so that they could inform you of the things you missed so you don't miss them again." I told him that today was the first day that I heard anything about that case. He was visibly shocked and said, "Excuse me. Say that again." I repeated what I said and also added that [redacted] and [redacted] told me that his email was the reason I did not get promoted. He then explained to me that his role and reasoning for reviewing [redacted] randomly was to ensure that all [redacted] are on the "same sheet of music" and cover the same exact thing for their cases. I acknowledged what he was saying. He said, "But I had no idea that it was being used as promotion criteria." I told him that I didn't either, but that is exactly, verbatim what they told me. He apologized several times and understood my frustration. He said, "I am not going to say I am just as mad as you are, because I can imagine how mad you are. But, I am pretty close." He said that he will follow-up with [redacted] and ensure that when he sends an email to her, a timely feedback is given, so that the same mistakes aren't made again. This conversation lasted approximately 15 minutes. He apologized again and shook my hand. To date, I have heard nothing further regarding the case I ran in April 2015 or [redacted] email, but yet this is the reason why I didn't get promoted.

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9. From June 2015 to August 2015, I was absent from work due to military leave for approximately 50 days. I was on military orders the following days: [redacted]

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2015. When I would come back to work, I would hear comments like, "Oh, how long are you back this time?" "How was military vacation?" "Oh, you still work here? I thought you were gone years ago?" "You're back? I am sure it won't be long before you are gone again and we have to pick up your slack." I was also called the "part-timer" on numerous different occasions. Each time, I brushed it off and tried not to take it personally, knowing that each individual that said these things meant it to be very personal. These comments would come from [redacted] (current D/Chief [redacted] and also several of my fellow [redacted] who were the ones that had to "pick up my slack" when I was gone for military duty.

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10. In late July 2015, prior to completing my military orders, I emailed [redacted] (aka. [redacted] a copy of my military orders. I did this because my orders had changed and I wanted to make sure that NSA/[redacted] had my orders, so I would not be scheduled to run [redacted] when I had military duty. I requested she send them over to [redacted] so he had a copy for his reference. I emailed [redacted] because she is the individual who is responsible for [redacted] scheduling and I had her unclassified email address and I did not have [redacted] responded to my email by stating, "FYI, I don't think your new supervisor is to understanding of your military leave." I responded, "Thanks for the heads up. I will have to ask you more about this when I get in next week." When I arrived back at work on 10 August 2015, I went to [redacted] office and asked her how things were when I was gone. She explained that, when she forwarded my email to [redacted] he came into her office and said, "Why is he sending his orders to you?" She explained to him that she does the scheduling and that I did not have his unclassified email address. She said, "then he stormed out of my office." She said that she heard he "went to HR about your military leave." I asked why he would do that? She responded, "he was inquiring about how to get you outta here, move you to a different office, or get you fired." I was shocked. I asked her what HR said. She responded, "I am pretty sure they told him that you are a protected veteran and that is against the law." She also told me, "Being that nobody else is going to look out for you, I will." She also advised me that she was in a staff meeting "the other day" and [redacted] asked her, [redacted] what is [redacted] doing in October?" She said that she responded, "I have no idea." She said, [redacted] responded by saying, 'just don't even put him on matrix.' Then she showed me a spreadsheet of where [redacted] put me and I was at the very bottom of the page with nothing beside me, indicating that I was not accounted for. [redacted] said, "This is how much they care about you. Your military duty is not good for their numbers."

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11. After being back at work for one week, I departed again for military duty [redacted] When I came back to work on 24 August 2015, I had several emails, to include an email from [redacted] that stated, "Come see me about this when you get back." The body of the message was an email that he received regarding a "Visitor Request." He forwarded the message, so I could see what exactly he was referring to. To further explain, I applied to a job in May 2015 with the Department of Navy for a Security Specialist position in [redacted] In July/August 2015, they contacted me and told me that they needed my current security clearance to be

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input into the "JPAS System." I advised them that I would contact my current agency (NSA) and request they input it in the JPAS System. I then made about 10 phone calls to several different departments (Visitor Center, BRAC, Military Affairs, etc.) and finally was advised by a [redacted] representative (last name of [redacted]) to contact [redacted] who was the Subject Matter Expert (SME) for any and all JPAS issues. I then called [redacted] and emailed her. She responded to my email by stating that I needed to contact her. I called her back the following day and she asked me what I needed. I explained to her that I am requesting to have my clearances input into the JPAS system. I said, "This will make things a lot easier for me in the event I ever leave the agency and when I am doing my reinvestigation for the Coast Guard." She asked me for my social security number, my current organization, my current supervisor, and a few other standard identifying questions. She then told me that I needed to email her and explain exactly what I was requesting, which I did on 8 July 2015. I asked her if I needed to do anything else for this to be completed and she responded, "No. This is a pretty simple process. It should be updated by Friday." I thanked her for her time and on Friday, 11 July 201, she emailed me and confirmed that it had been updated.

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Apparently, throughout the process of me requesting my clearance be input into JPAS, [redacted] received a "Visitor Request" for me to "access a facility in [redacted]." I don't think this was from [redacted] rather, I think it was from one of the 10 phone calls that I made prior to getting to [redacted] One representative, name unknown, input a Visitor Request on my behalf. I don't think this was done purposely, but it was not what I needed to do to have my clearance input into JPAS. As a result, [redacted], as my supervisor, received an automated email informing him that I was "requesting to access a facility in [redacted]." The aforementioned email that [redacted] wanted me to come see him about was that email. [redacted] thought that I was using my NSA credentials (blue badge) to access a facility in [redacted] to do Coast Guard work. I responded to his initial email something to the effect of, "This is for a request that I put in to have my clearance input into the JPAS system, so it will be easier for my Coast Guard reinvestigation." I had not yet advised him that I had applied for another position and that it was also to have my clearance certified over to another agency. [redacted] responded to my email by stating, "I don't think so. This request was received when you were allegedly on military duty." I responded, "Ha, this is hilarious. Allegedly? Really? You have a copy of my military orders. If you or anyone else has any questions regarding my military duty, where I am, what I am doing, etc., please feel free to contact my direct supervisor. Her name is [redacted] He did not respond to my email, but walked over to my desk and said, "Hey, lets talk." I said okay and followed him to a vacant [redacted] He asked me, "What's your problem?" I responded by telling him I don't like being accused of "Allegedly" going on military orders. He said, "Were you using your NSA credentials to access a NSA facility in [redacted] to do Coast Guard work?" I said, "Absolutely not. I only have a Secret clearance with the Coast Guard." He said, "Well, I received this email for you to access a facility in [redacted]" I said, "Yes, I saw the email. I am not sure why they sent you an email, but I didn't access any facility in [redacted] However, I did request to have my clearance input into JPAS, so the Department f

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Navy can certify it over to their agency for a Security Specialist position that I applied for." I asked him what was the real reason why we were talking and was it because of my military duty because it sure seemed like it. He said, "We are not talking about your military duty." I said, "You aren't, but I am. When people accuse me of "Allegedly" going on military orders or doing things while I am on military orders that are completely erroneous, we need to talk." We exchanged a few comments and then he said, "Do you feel that you are being persecuted against because of your military duty? I said, "Persecuted, no. Discriminated, yes." He said, "What I remember from when I was in the military was that a junior member loses his job. His 1st Lieutenant then puts him on orders so he then has a job. It seems like since you received notification that you weren't promoted, you have a lot of orders. Are you requesting these orders?" I said, "First of all, whether I request them or not, there is no difference under USERRA." He responded, "I know. We have already gone to HR and inquired about you and your military leave." I continued, "Some of my orders I have requested and some I have not. It is the end of the fiscal year and my unit has extra money, so they are willing to send me places that they usually wouldn't have. Either way, when I leave, I give you as much advance notice as I can." He went on to tell me that, "When you are here, you are awesome. But, you're not here that much. How can I get you to where you need to go to get promoted next year if you are not here?" I asked him, "Where do I need to get to? You have seen me run cases. You have seen my reports. You have seen the product that I create. You haven't had any issues, have you?" He said, "No, you create a great product. Your work is great." The conversation went back and forth for approximately 30-45 minutes. Towards the end he asked me, "What do you need from me?" I responded, "Your support would be a good start. Going to HR to inquire about my military leave isn't really supportive. Why wouldn't you just ask me? Only one phone call could have clarified all of this." I continued, "And, yes, It is frustrating to me that I didn't get promoted because I am not in the 'cool kids club' and don't have family here, etc." [redacted] understood my frustration and said, "You're pretty much guaranteed a promotion next year." I told him that what is really frustrating is that "the supervisor or QC that you are assigned can make or break you. You are telling me that my work needs no improvement and I am at where I need to be in order to be 'guaranteed' a promotion for next year. Whereas, [redacted] is telling me that my same work is not okay. And, [redacted] is telling me that I didn't get promoted because of an email [redacted] wrote based on one interview he watched of me. Where is the consistency?" I don't remember him having much to say after that. He concluded it with, "Keep doing good work and you will be fine. I'll make sure of it."

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12. In July/August 2015, when I came back from one of my military duties, I was running an overtime case. When I came out of the room to have my [redacted] QC'd by a supervisor, [redacted] was the only supervisor available. I went into her office and gave her my charts. This was very uncomfortable knowing that she likely knew all of the issues that had been occurring, yet I haven't received any feedback from her as the Chief of [redacted]. She QC'd my [redacted] and also told me that she is aware that I have had a "roller coaster of conflicting feedback. [redacted] tell you one thing, [redacted]

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sent you a bad email, then praises you in another email, [redacted] is very happy with your work." I told her "My work has not changed. I am not perfect and I am sure that I occasionally miss things, but overall I produce a great product and have been consistent since being assigned to [redacted]. She told me to "continue doing great things and I will do what I can to make sure that we are holding our end of the bargain. We have to do better. We must." Then I walked out of her office and back into my interview room to conclude my interview. My conversation with [redacted] was approximately 5 minutes in length. I left there feeling that nothing would change and that she was just saying what she "had" to say. To date, nothing has changed and she has still not followed up on me regarding any of the feedback I have received or the aforementioned issues I have had with my military leave.

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13. A few last notes:

I know that [redacted] has left [redacted] and is working over at Fort Meade and is somehow affiliated with the Office of General Counsel (OGC) or the Office of Inspector General (OIG). I would request that she not be allowed to, in any way shape or form, influence your office (OIG) from pursuing whatever action you see fit.

Everything contained in this statement regarding dates, times, locations, named individuals, etc. is to the best of my knowledge and belief.

I am currently on military duty until 28 September 2015. If you need to contact me, please call me on my cell phone at [redacted] or email me at [redacted]

I, [redacted] waive my rights to confidentiality.

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Signed: [redacted] Date: 9/7/2015

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APPENDIX H

Email dated 2 July 2014 from [redacted]

From: [redacted]
To: [redacted]
Subject: FW: (U) RE: [redacted] - EPA
Date: Tuesday, February 23, 2016 11:01:48 AM

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

[redacted]

Here's an email from my manager regarding [redacted] promotion feedback. He never contacted me to discuss further after our initial phone conversation.

[redacted]

(U//~~FOUO~~)

[redacted]

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This e-mail contains information protected by the Privacy Act*

From: [redacted]
Sent: Wednesday, July 02, 2014 10:15 AM
To: [redacted]
Cc: [redacted]
Subject: FW: (U) RE: [redacted] - EPA

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

[redacted] Welcome back! Here is the response I sent to [redacted] in case he decides he wants to meet with you for further promotion feedback discussion.

[redacted]

[redacted]

This email contains information subject to the Privacy Act.

From: [redacted]

Sent: Wednesday, July 02, 2014 10:14 AM
To: [redacted]
Cc: [redacted]
Subject: (U) RE: [redacted] - EPA

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

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[redacted] spoke with [redacted] yesterday regarding the promotion feedback you received. It sounds like you two differ on what was said during the feedback session [redacted] had with you over the phone. Completely up to you, but it may be productive for you and [redacted] to meet in person when she returns from leave on 14 July. She could address your concerns, go over documentation she used to evaluate your performance, provide you with areas you need to improve upon and explain in greater detail why she made her decision not to recommend you for promotion. If not, as I mentioned to you yesterday, the Agency has an office for employees to seek guidance for concerns such as this called the Office of Administrative Grievances.

[redacted]

[redacted]

This email contains information subject to the Privacy Act.

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From: [redacted]
Sent: Wednesday, July 02, 2014 8:06 AM
To: [redacted]
Subject: [redacted] - EPA

[redacted]

I know yesterday you said that you would need to see my EPA. I have attached it for your reference. I submitted it in December 2013 because I left for [redacted] school in January 2014.

Talk to you soon.

[redacted]

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

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

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