

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

~~(U)~~ AE628 (AAA)

~~(U)~~ UNCLASSIFIED NOTICE
Mr. al Baluchi's Motion to Suppress
Alleged Statements as Involuntary and
Obtained by Torture

~~(U)~~ 15 May 2019

~~(U)~~ In accordance with the Military Commission Trial Judiciary Rules, the defense provides this unclassified notice that it has filed a classified version of the above captioned motion. The classified version has been filed by hand delivery to the Trial Judiciary and to the parties.

~~(U)~~ Attachment:

A. ~~(U)~~ Certificate of Service

~~(U)~~ Very respectfully,

~~(U)~~ //s//
JAMES G. CONNELL, III
Learned Counsel

~~(U)~~ //s//
STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

~~(U)~~ //s//
ALKA PRADHAN
Defense Counsel

~~(U)~~ //s//
BENJAMIN R. FARLEY
Defense Counsel

~~(U)~~ //s//
MARK E. ANDREU
Capt, USAF
Defense Counsel
Counsel for Mr. al Baluchi



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~~(S)~~ CERTIFICATE OF SERVICE

~~(S)~~ I certify that on the 15th day of May, 2019, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

~~(S)~~ /s//
JAMES G. CONNELL, III
Learned Counsel

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~~(S)~~ 15 May 2019

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- (a) ~~(U)~~ that the statements were obtained by torture and cruel, inhuman, and degrading treatment within the meaning of 10 U.S.C. § 948r(a), MCRE 304(a)(1), and United States Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment Art. 15;⁴
- (b) ~~(U)~~ that the statements were not voluntary within the meaning of the Due Process Clause, 10 U.S.C. § 948r(c)(2)(B), and MCRE 304(a)(2)(B)(ii);
- (c) ~~(U)~~ that the statements are not reliable and possessing sufficient probative value within the meaning of the Due Process Clause, 10 U.S.C. § 948r(c)(1), and MCRE 304(a)(2)(A).

3. ~~(U)~~ Burden of proof:

~~(U)~~ Constitutionally, the burden of proof is on the government to prove the voluntariness of statements by a preponderance of the evidence.⁵ This burden applies whether the coercion occurred at the time of the challenged statements or at an earlier time.⁶ Under MCRE 304(d), “When an appropriate motion or objection has been made by the defense under this rule, the prosecution has the burden of establishing the admissibility of the evidence.”⁷ “The military judge

voluntariness. These five grounds are condensed here to three. Mr. al Baluchi will present his arguments for suppression of statements on grounds other than voluntariness in a separate motion.

⁴ ~~(U)~~ G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc A/39/51 (1984).

⁵ ~~(U)~~ *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *see also, e.g., United States v. Kelsey*, 917 F.3d 740, 751 (D.C. Cir. 2019).

⁶ ~~(U)~~ *United States v. Cuento*, 60 M.J. 106, 108-09 (C.A.A.F. 2004); *see also Al Rabiah v. United States*, 658 F. Supp. 2d 11, 36 (D.D.C. 2009).

⁷ ~~(U)~~ MCRE 304(d).

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~~(U)~~ must find by a preponderance of the evidence that a statement by the accused comports with the requirements of [MCRE 304] before it may be received into evidence.”⁸

4. ~~(U)~~ Overview:

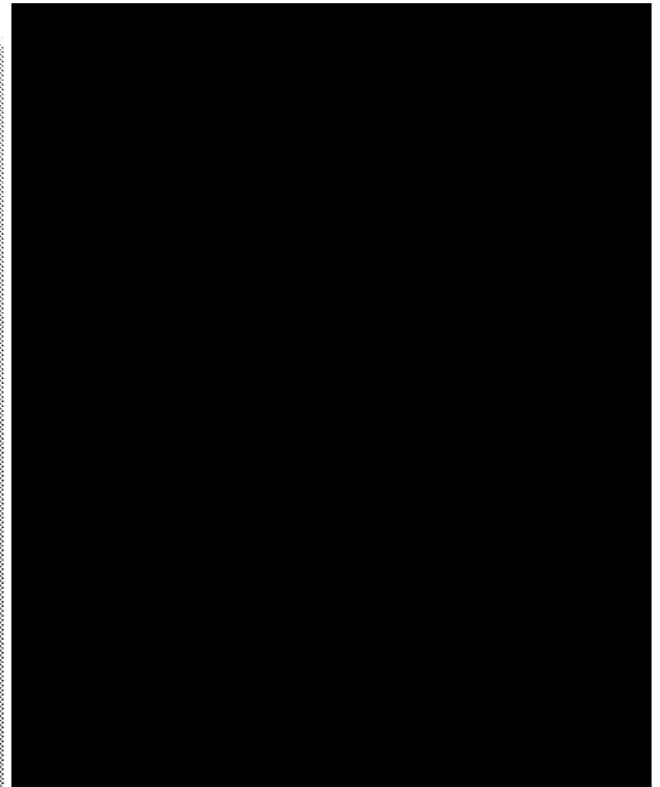
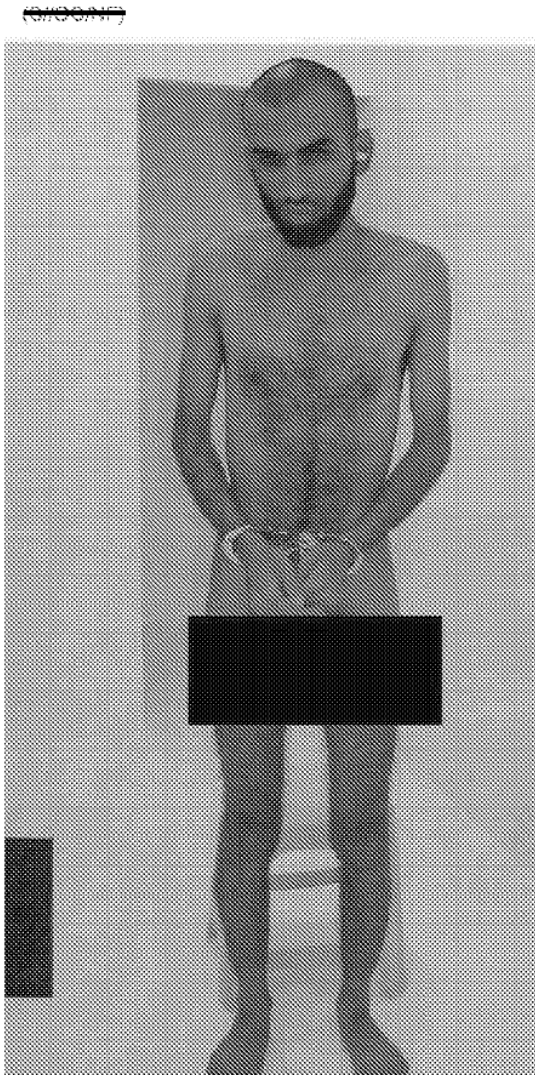
~~(U)~~ At the height of World War II, the Supreme Court wrote:

The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession. There have been, and are now, certain foreign nations with governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government.⁹

~~(U)~~ The prosecution seeks the blessing of this military commission to use statements wrung from Ammar al Baluchi through physical and mental torture in secret custody by organizations possessed of unrestrained power. This motion fundamentally presents the question: does America actually have that kind of government?

⁸ ~~(U)~~ MCRE 304(d)(1).

⁹ ~~(U)~~ *Ashcraft v. Tennessee*, 322 U.S. 143, 155 (1944).



~~(S)~~ Both legally and factually, torture is not an isolated event, but involves a process of establishing mental rather than physical control over the prisoner. In other words, the aim of torture—in the “RDI Program” as in

every other instance of its use—is to use intimate, personal violence to establish a situation where questioners need not use violence at all. Torturers do not beat answers out of their victims; torturers beat the free will out of their victims, and answers come naturally.

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(U) Dr. James Mitchell, the architect of the CIA's torture program, drew on tried-and-true torture techniques used both by American enemies and allies in the Cold War. He also, however, drew on "Pavlovian classical conditioning" ¹⁰ to establish what the CIA called "learned helplessness." He has explained that in his experience with Mr. al Baluchi and others, "only two EITs were required for the conditioning process: walling and sleep deprivation." ¹¹ Interrogators used these techniques, and many more, on Mr. al Baluchi to obtain a "compliance posture" in which he provided answers on a wide variety of topics over hundreds of interrogations. [REDACTED]

[REDACTED]

[REDACTED]

¹⁰ (U) James E. Mitchell & Bill Harlow, *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America* 46 (2016).

¹¹ (U) *Id.* at 235.

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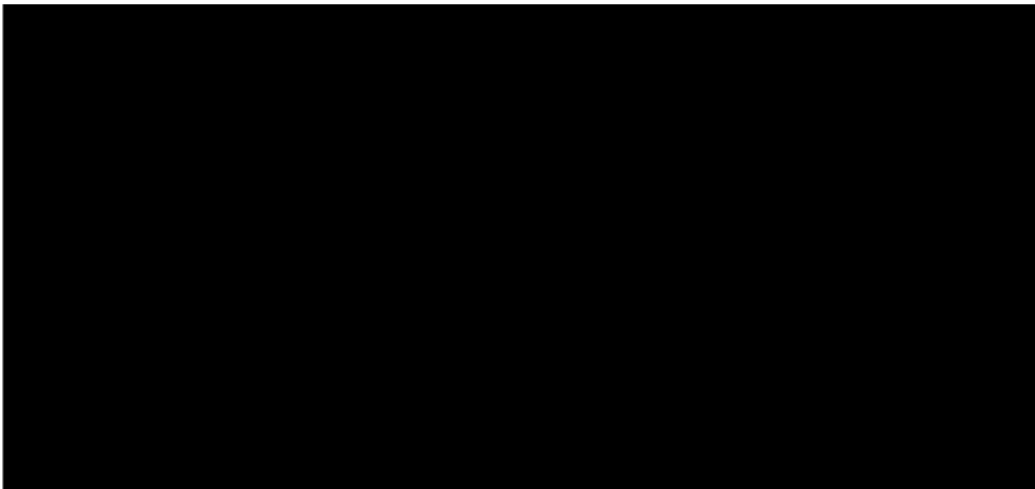
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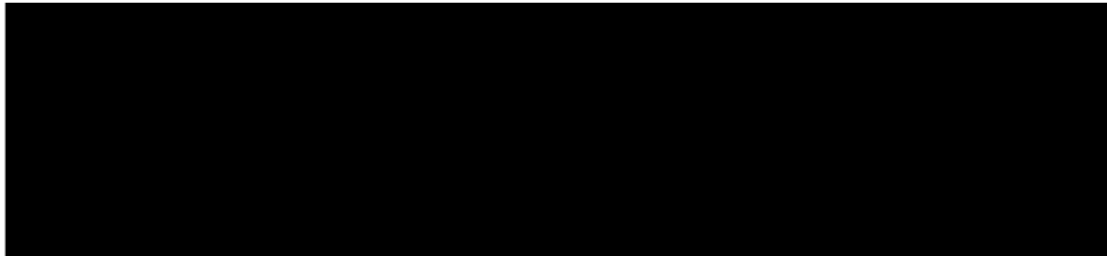
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agency obtains statements by torture. Although “involuntary” is too weak a description of the comprehensive destruction of free choice, the involuntariness and unreliability of Mr. al Baluchi’s statements may serve as an alternative ground for their suppression. In any case, the military commission must prohibit the use of Mr. al Baluchi’s statements to U.S. agents for any purpose and in any hearing.

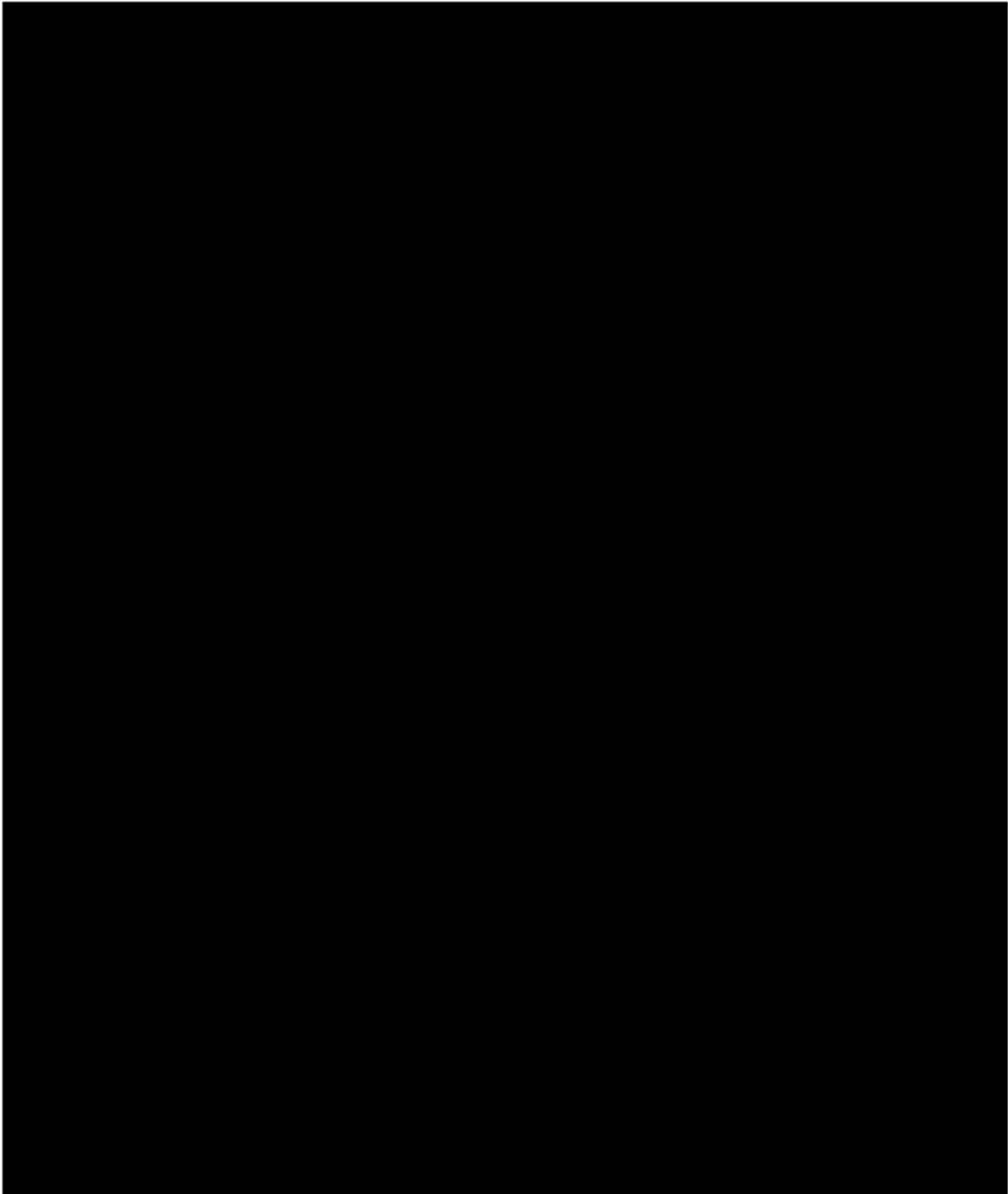
5. ~~(U)~~ Statement of facts:¹³

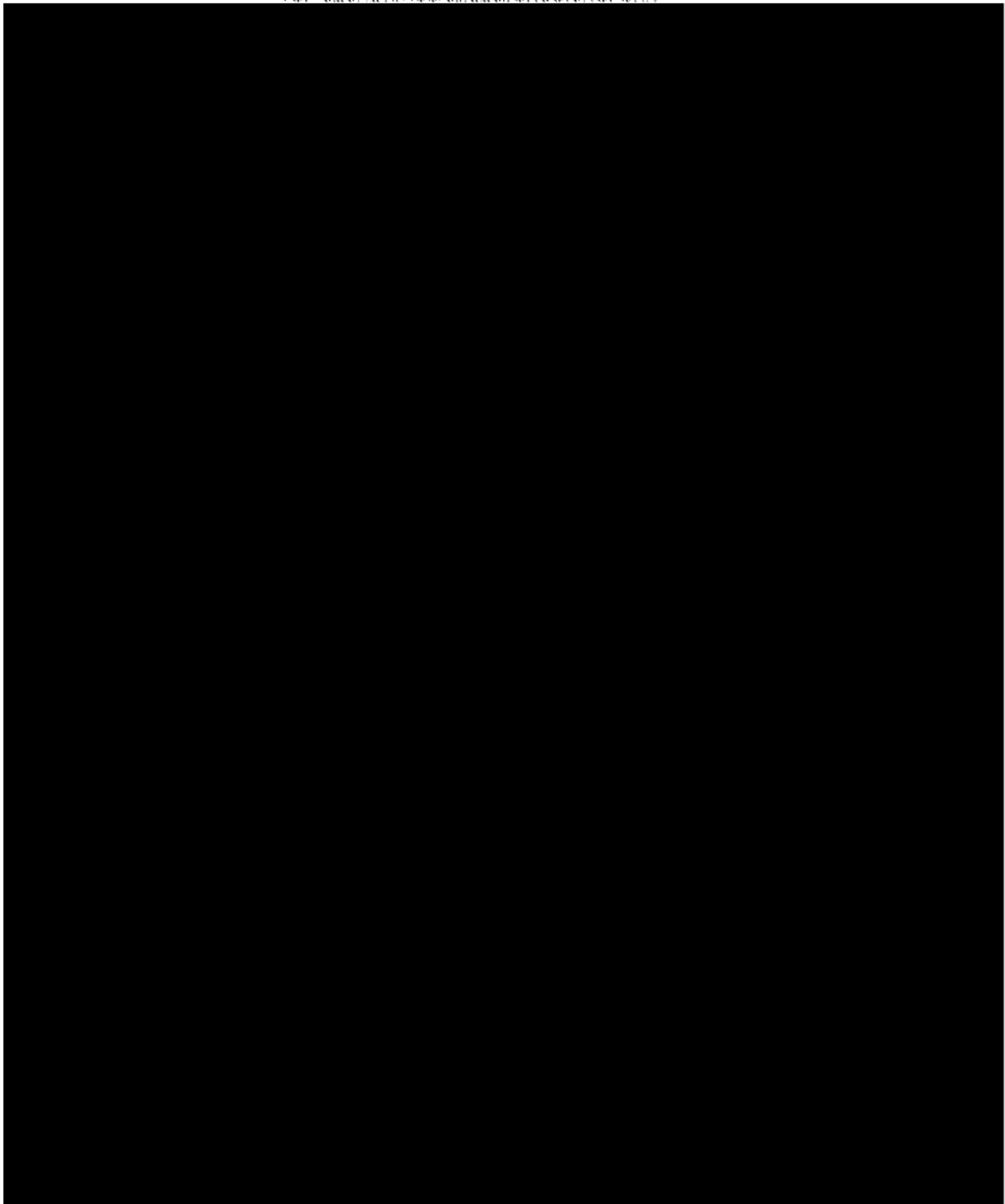


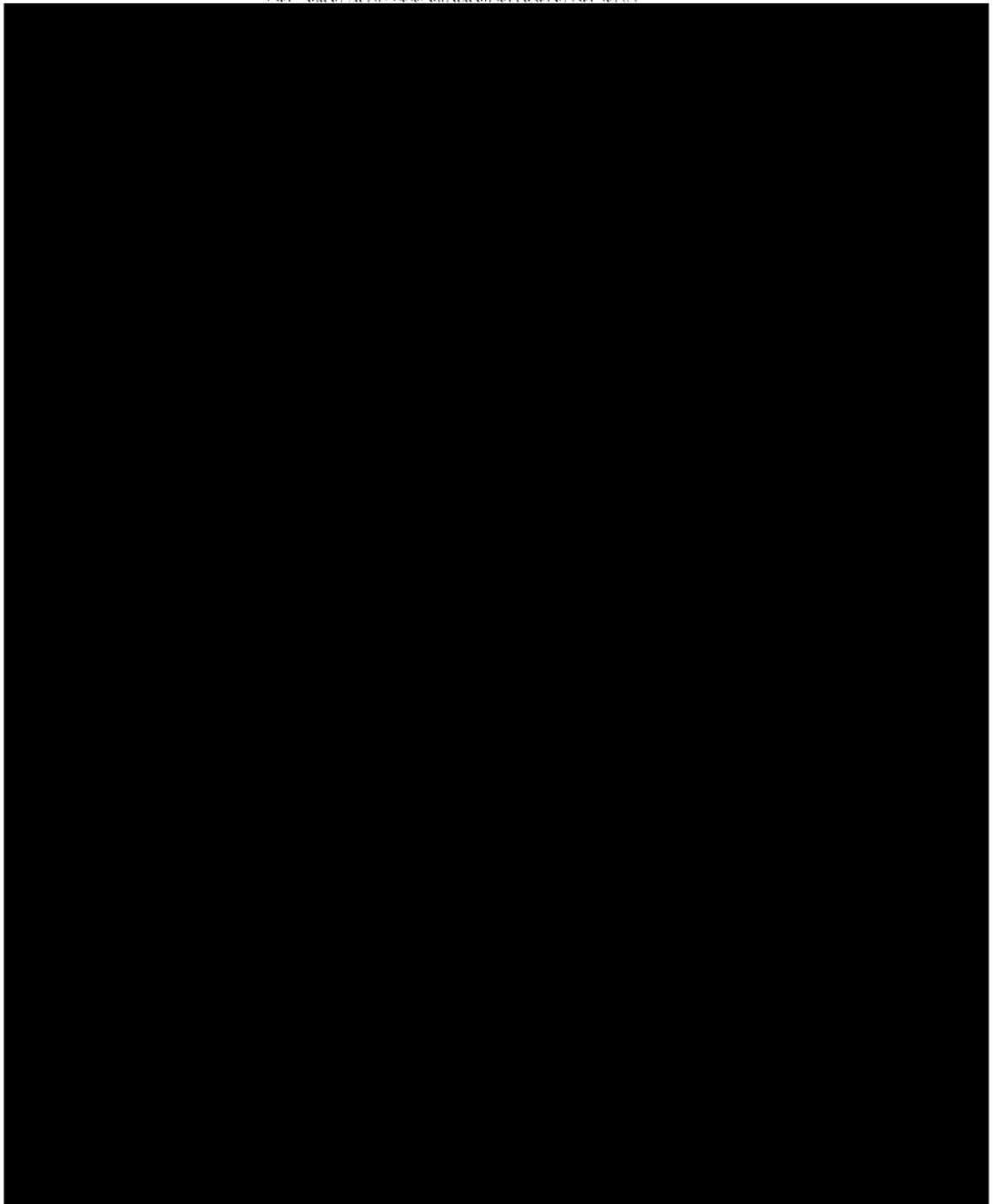
¹³ ~~(U)~~ Counsel for Mr. al Baluchi have frequently argued that the government has produced summaries of RDI-related documents mostly stripped of specific dates. There are also large gaps in discovery, either through natural degradation of information over time (i.e. the necessary documents are missing or destroyed), or have been withheld by the government or the relevant agencies. As a result, some dates and facts herein (noted) are derived from or hypothesized based on other known information.

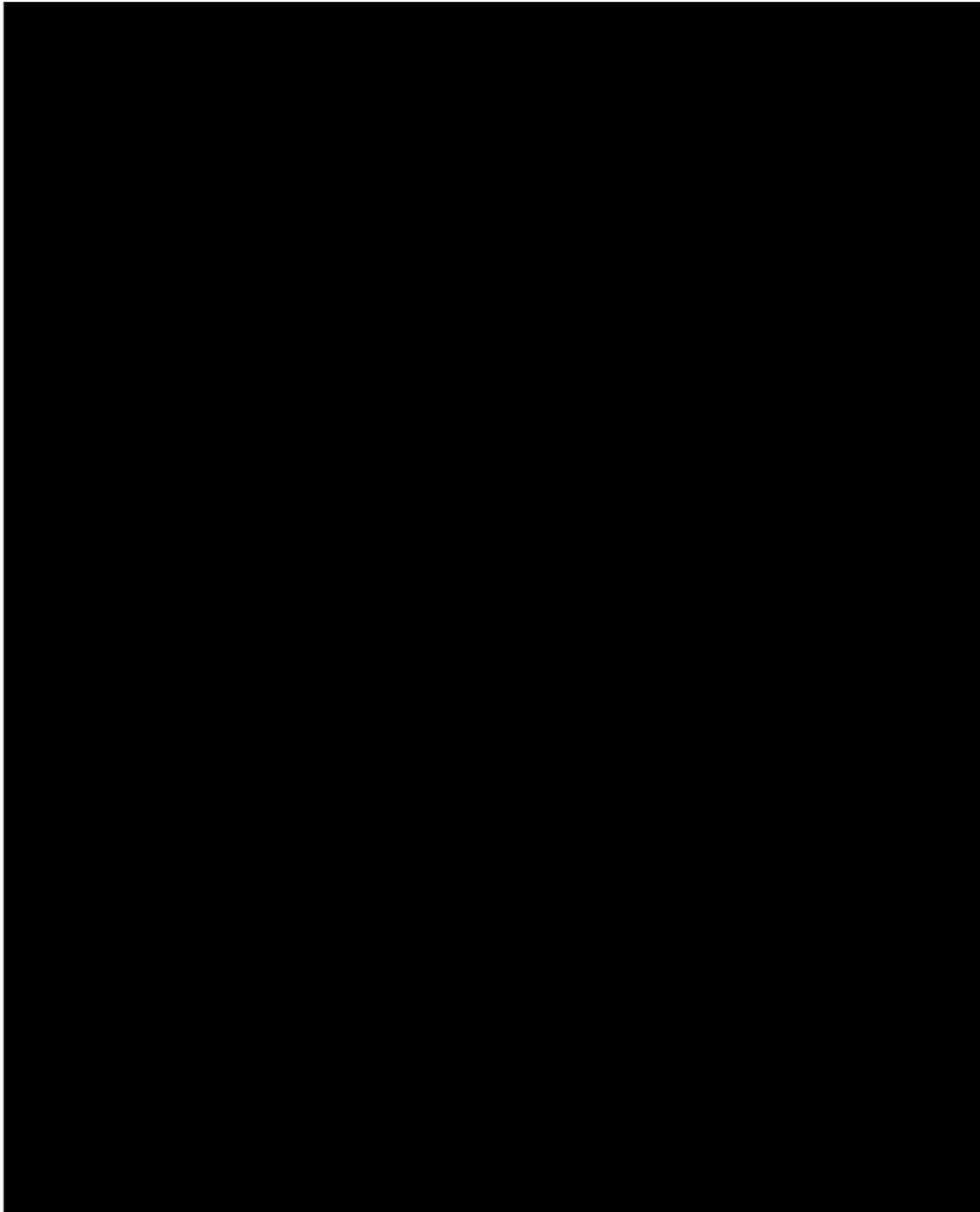


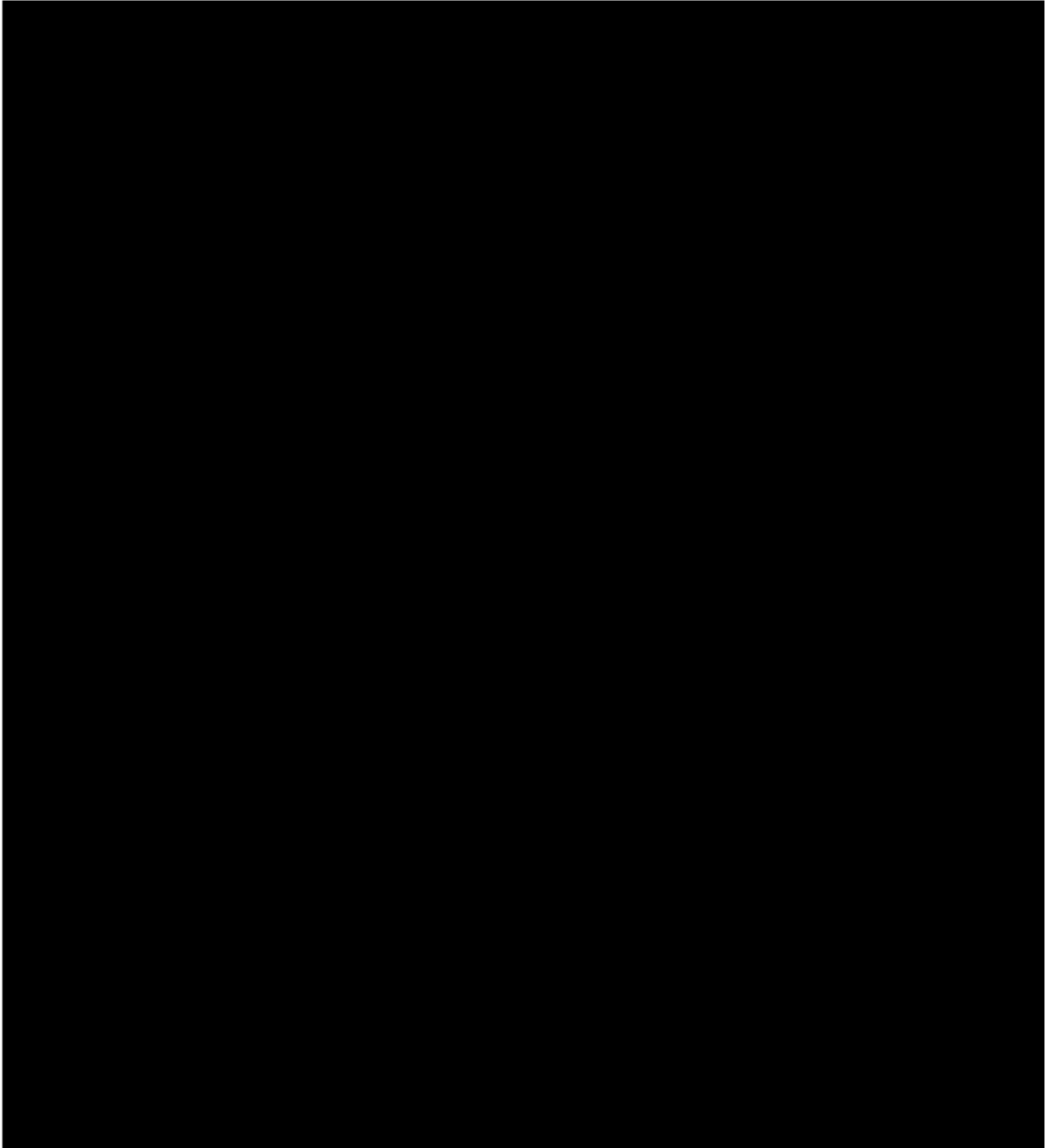
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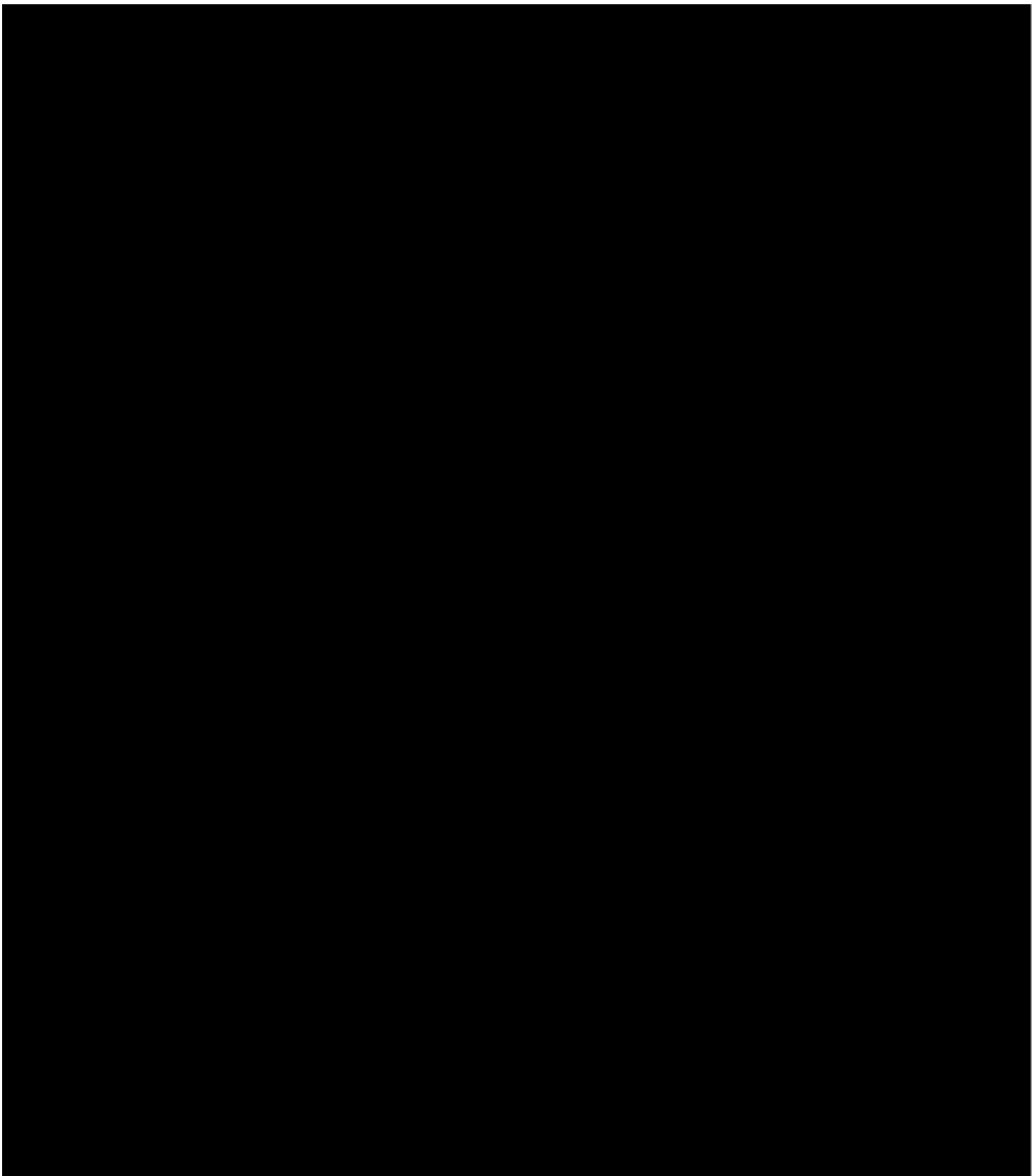


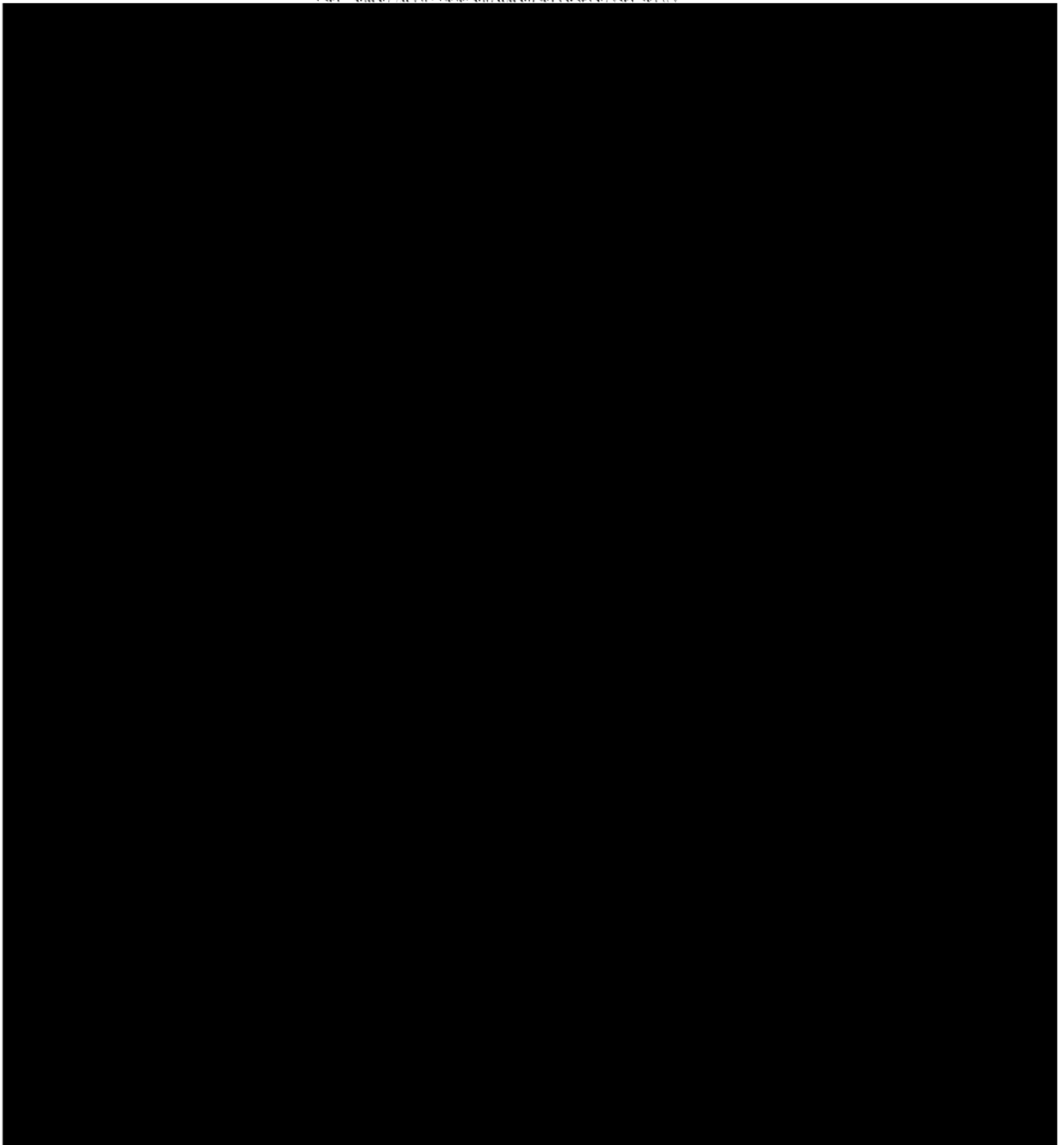




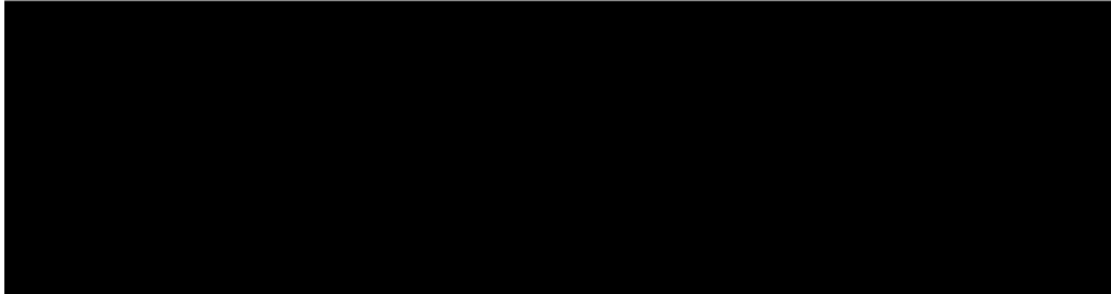






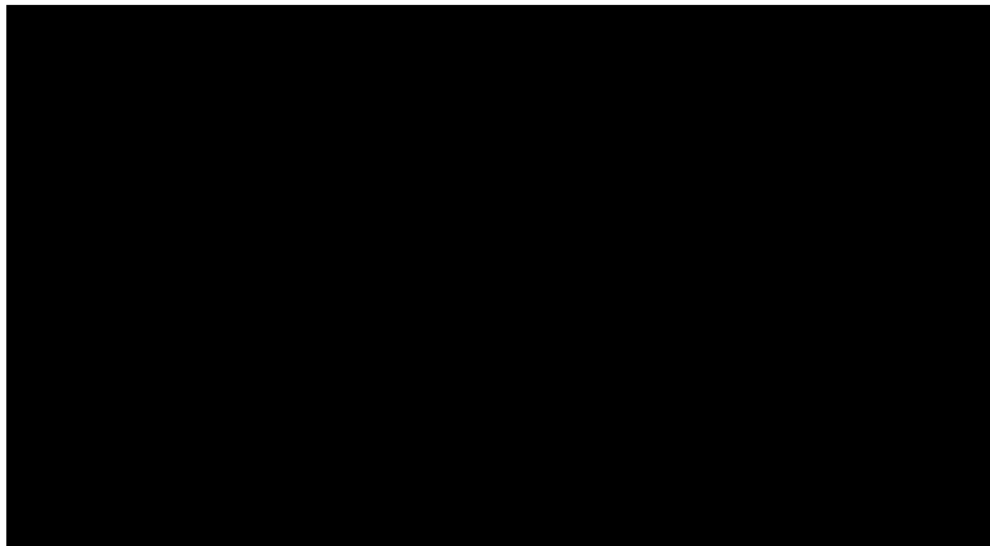


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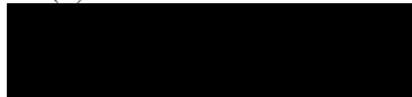
(S) Additional meetings took place in July 2002 with Director Mueller, D'Amuro, and Mueller's Chief of Staff Daniel Levin, who recalled attending a meeting at the National Security Council at which the approved techniques were discussed.⁵²

Mueller stated categorically to the OIG that⁵³



⁵² (S) *Id.* at MEA-FBI-00022836. *See also*, Frontline, "John Rizzo: The Case for Enhanced Interrogation," (9 May 2015).

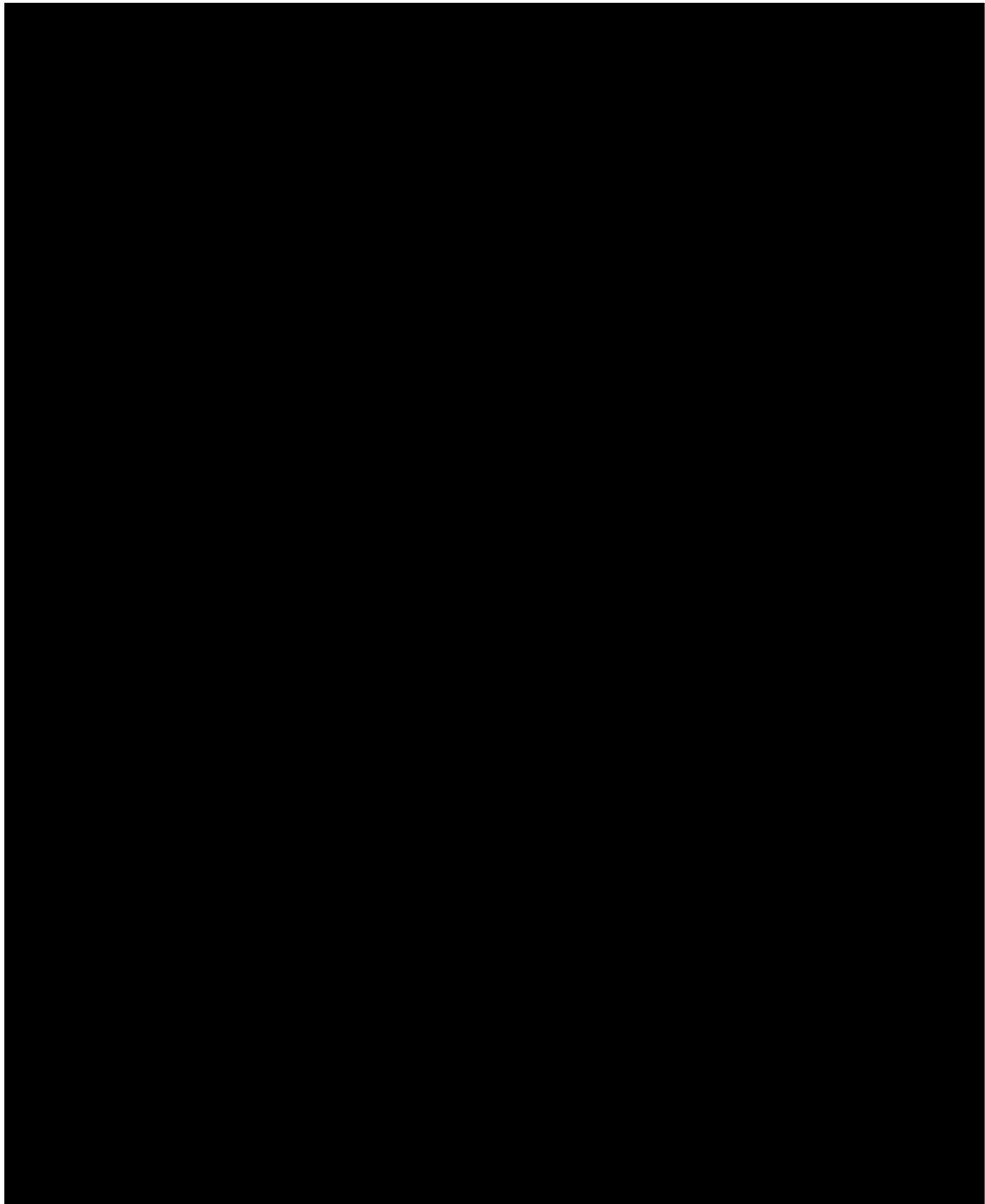
⁵³ (S) *Id.*

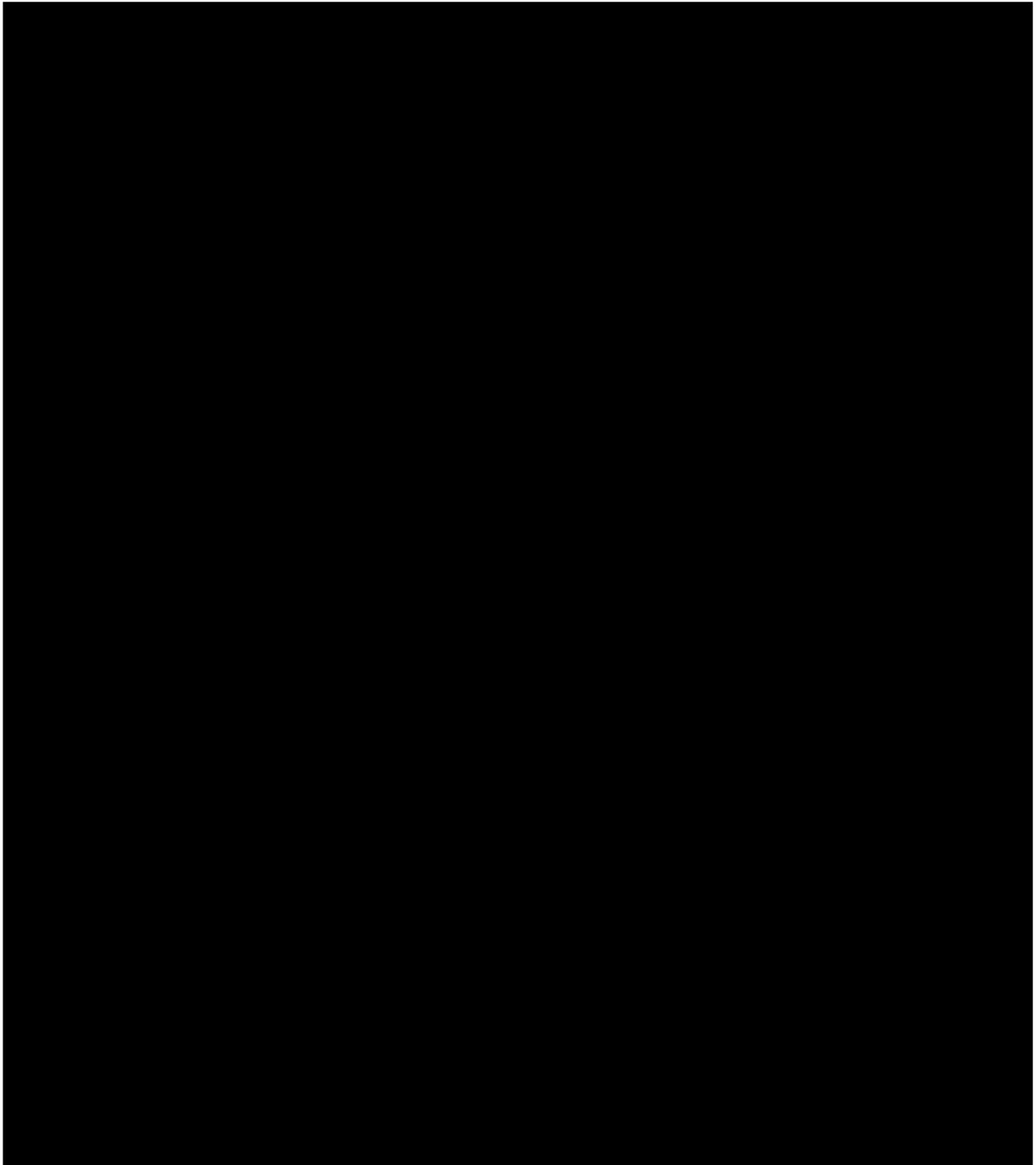


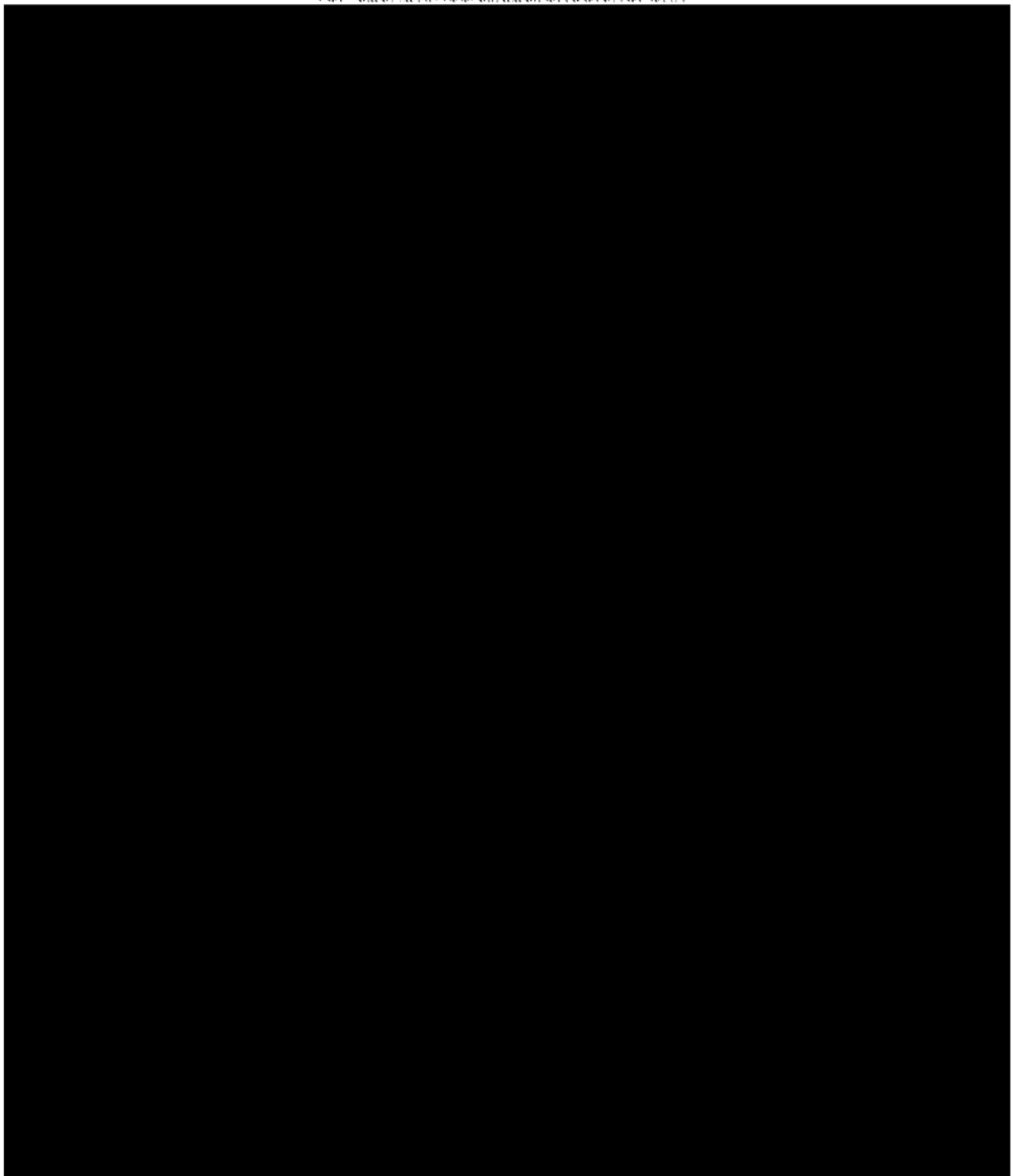
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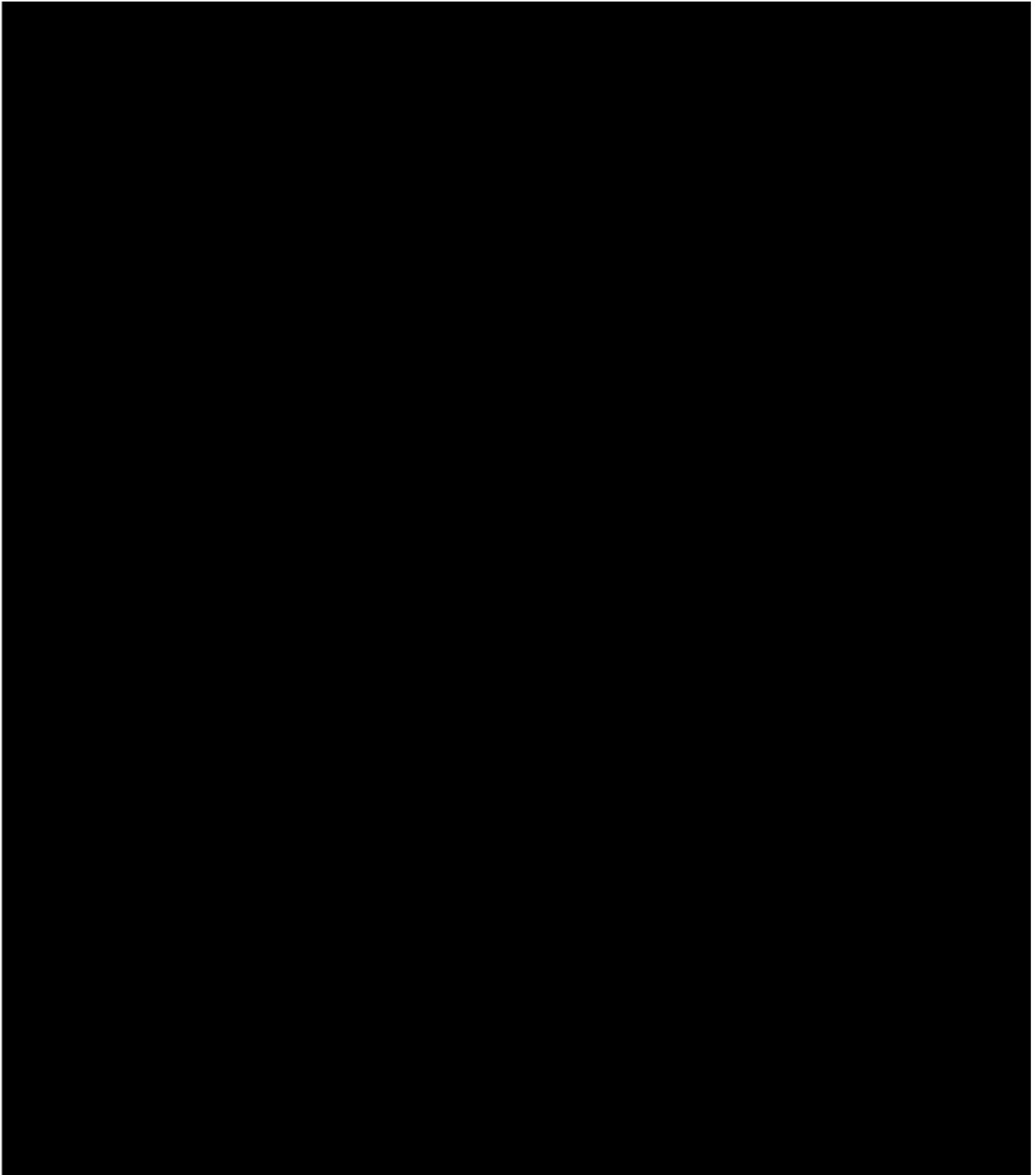
100% of the respondents were female, and 100% were white. The majority of the respondents were in the 18-24 age range (50%), followed by 25-34 (30%), 35-44 (10%), 45-54 (10%), and 55-64 (10%). The majority of the respondents were in the 18-24 age range (50%), followed by 25-34 (30%), 35-44 (10%), 45-54 (10%), and 55-64 (10%).

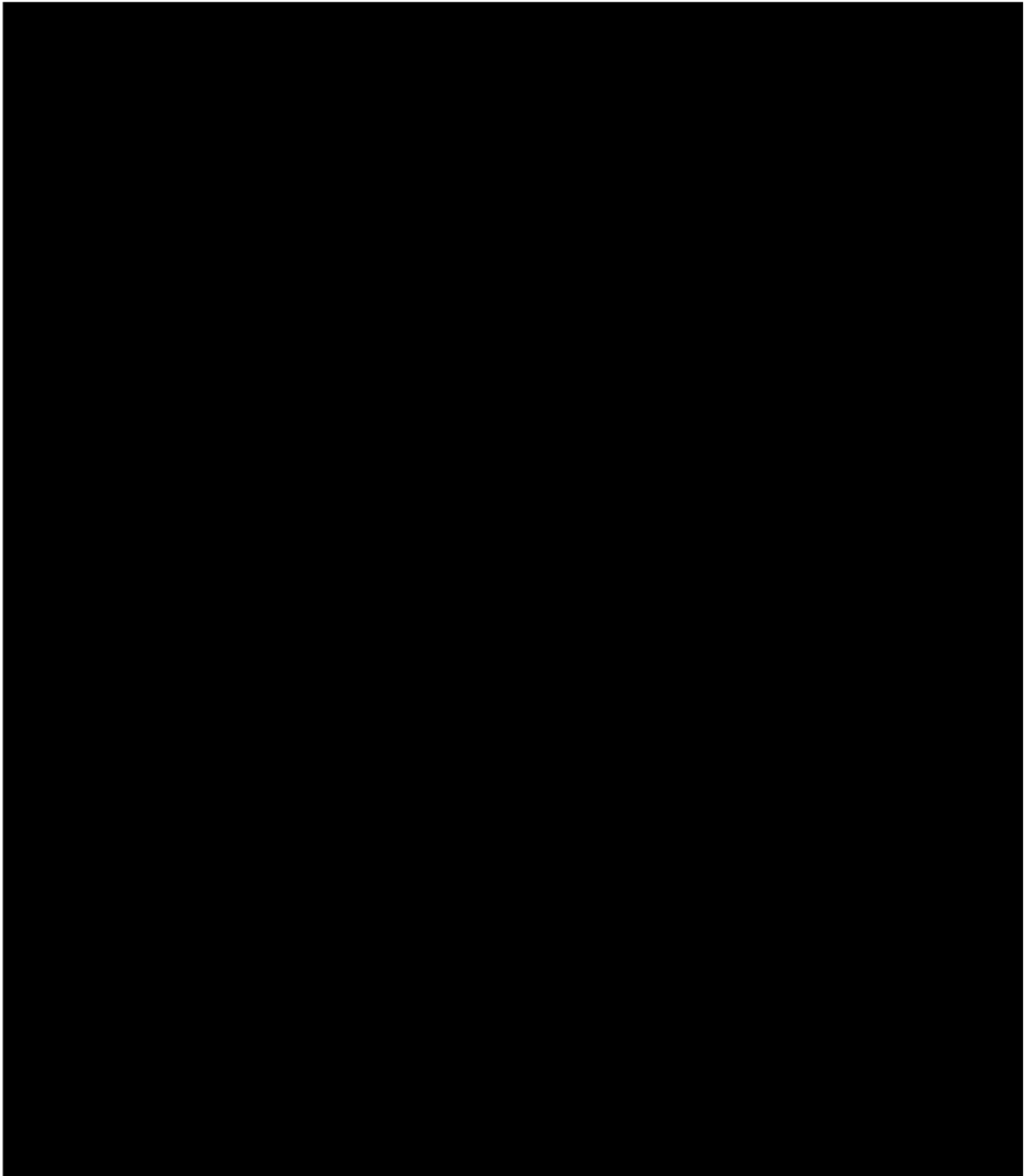
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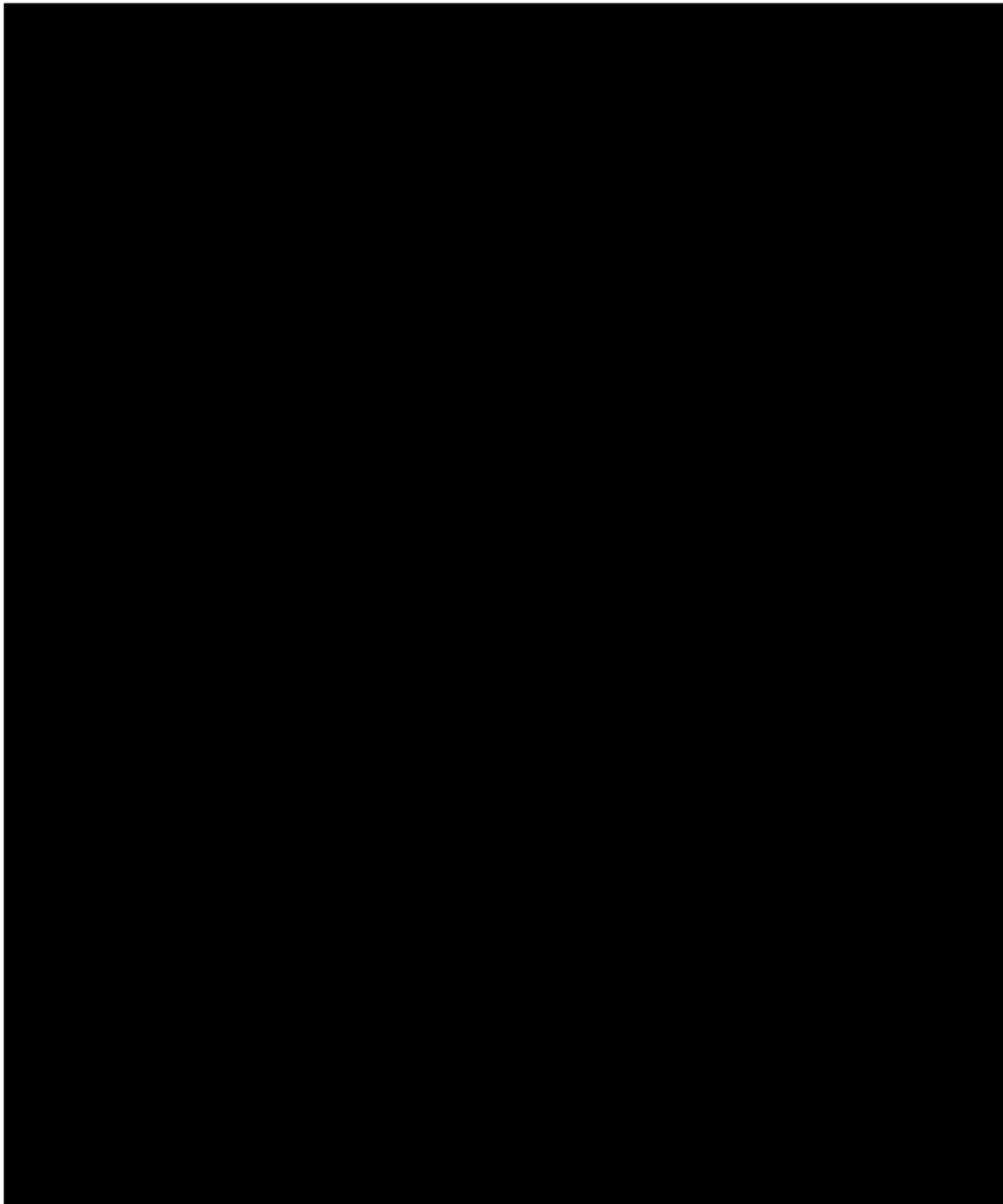


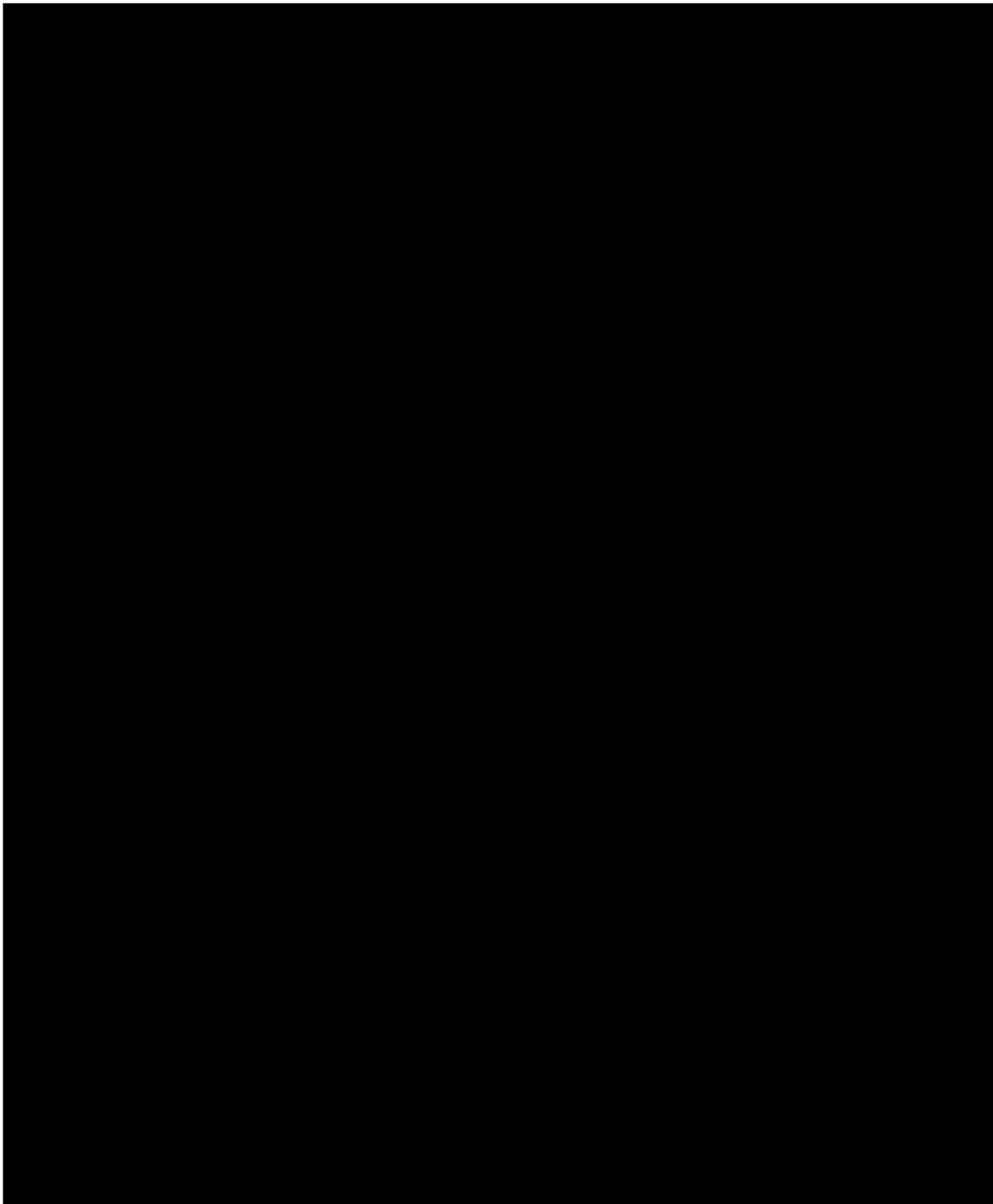


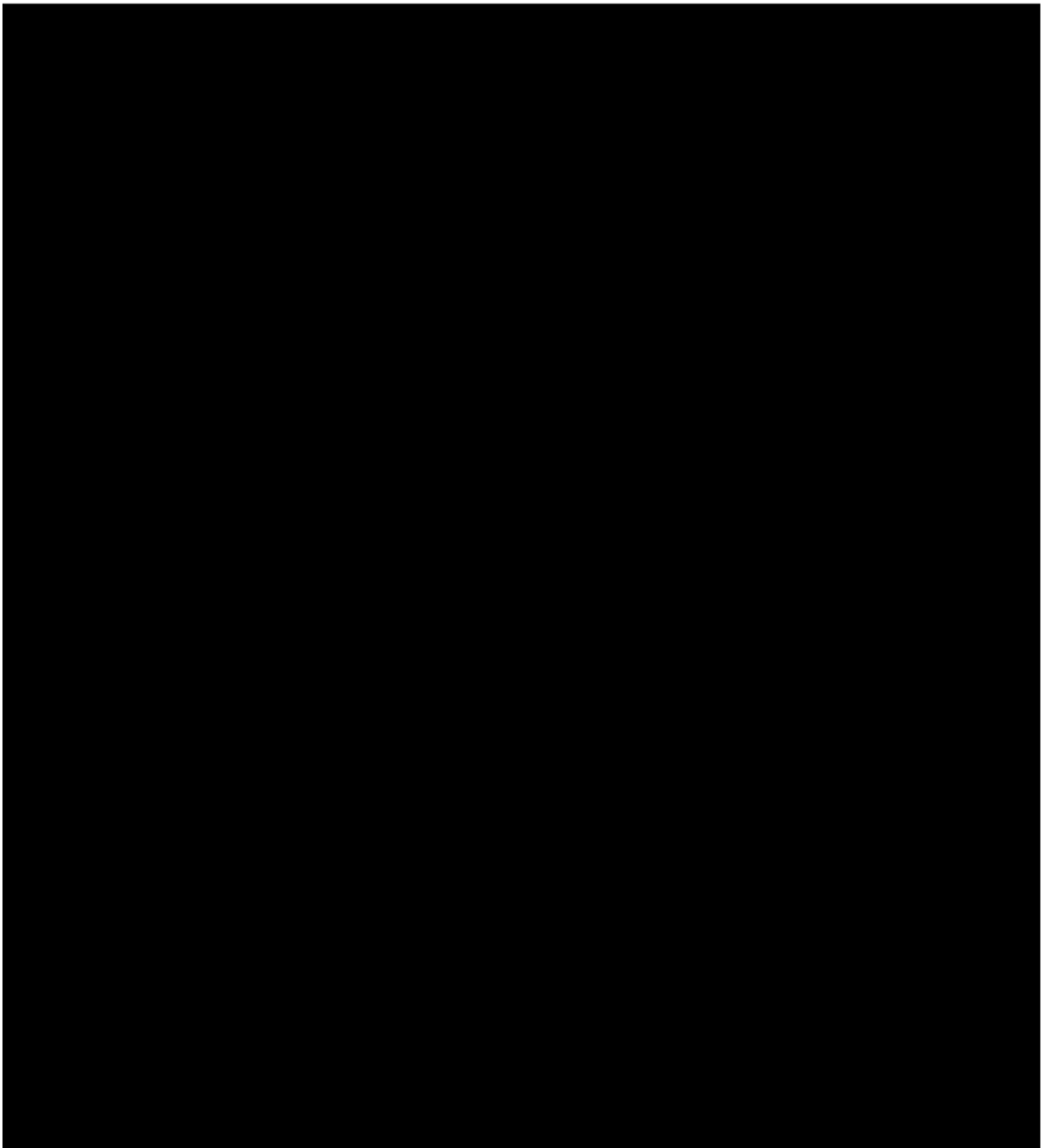


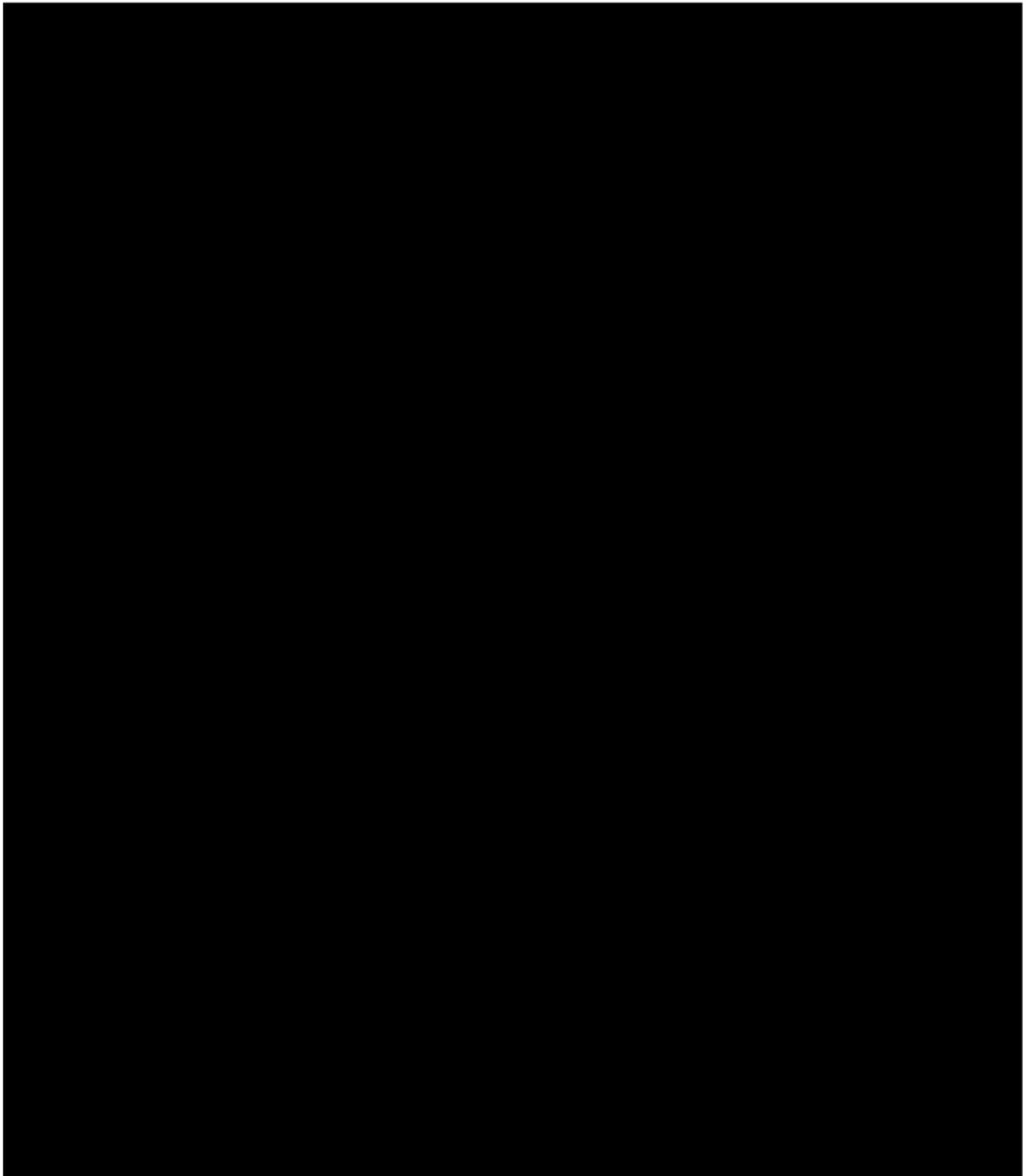




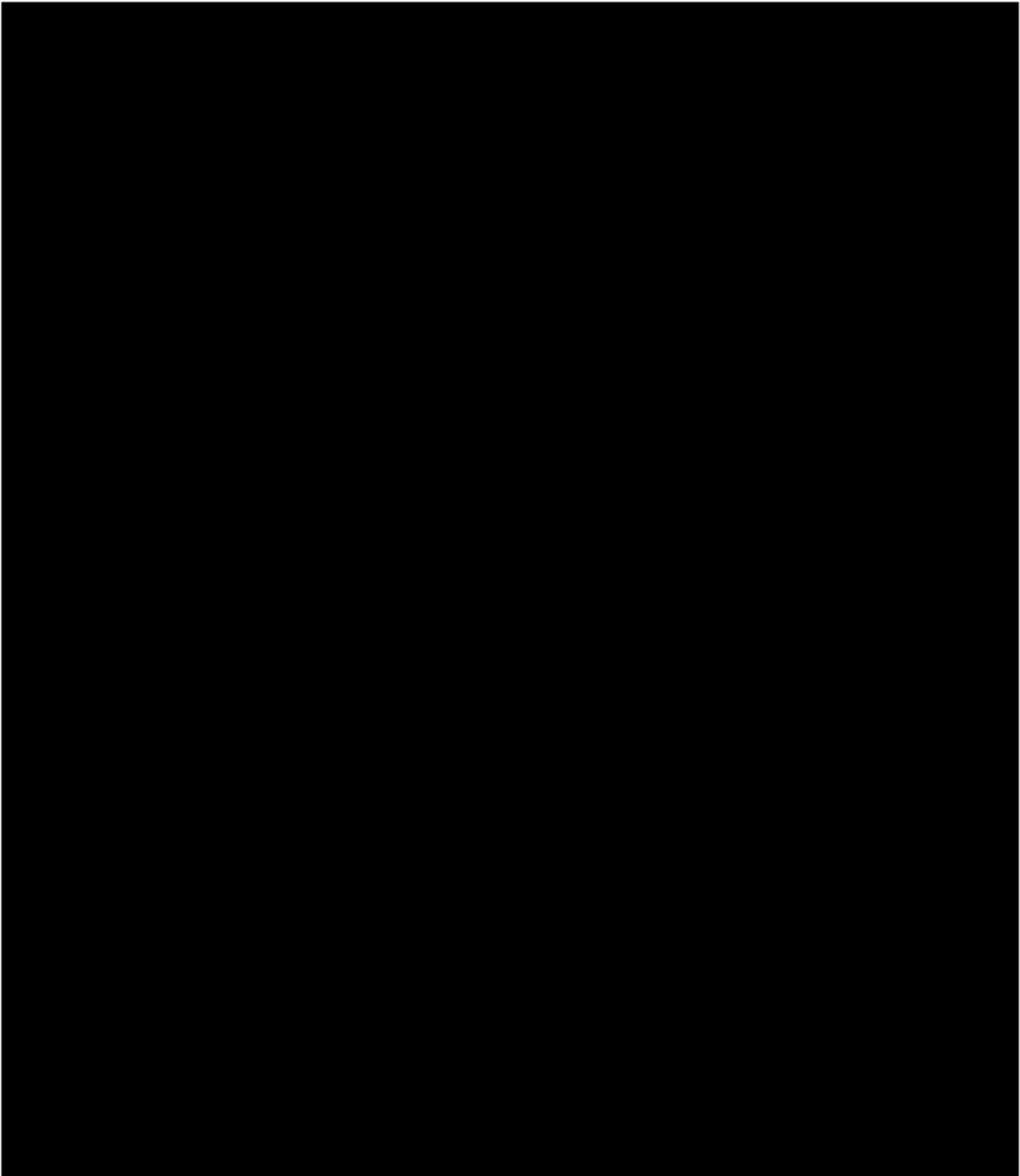






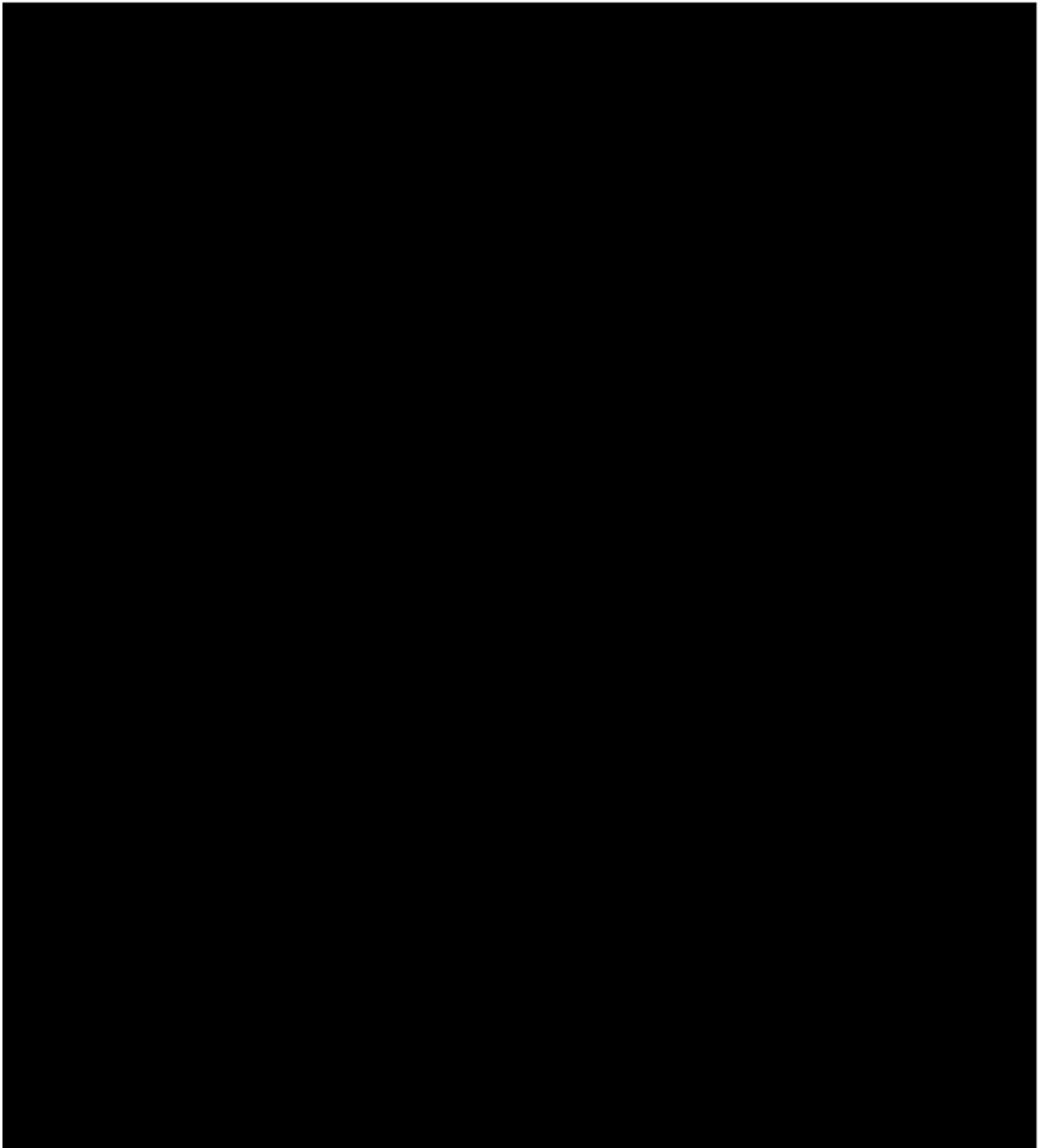


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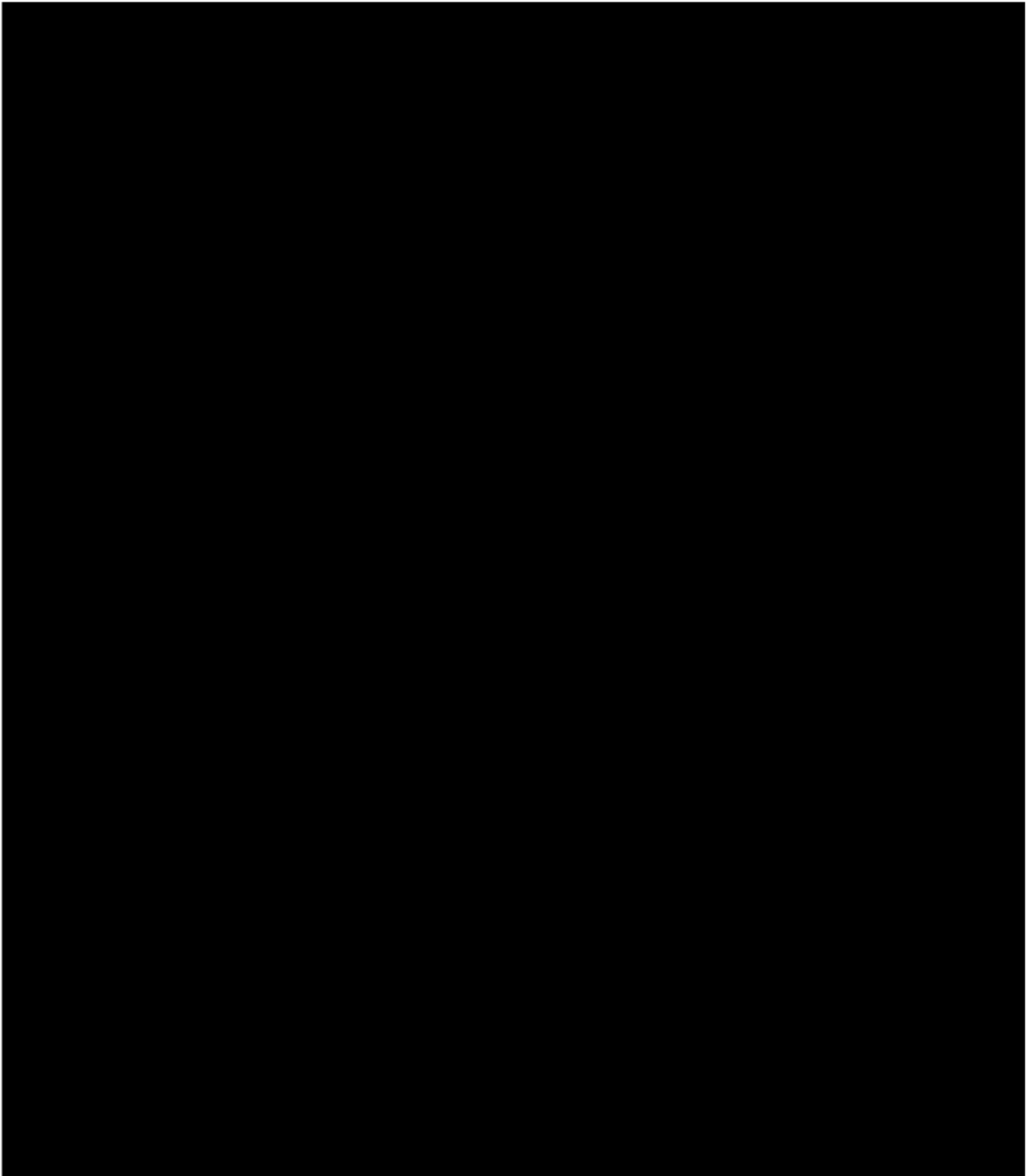


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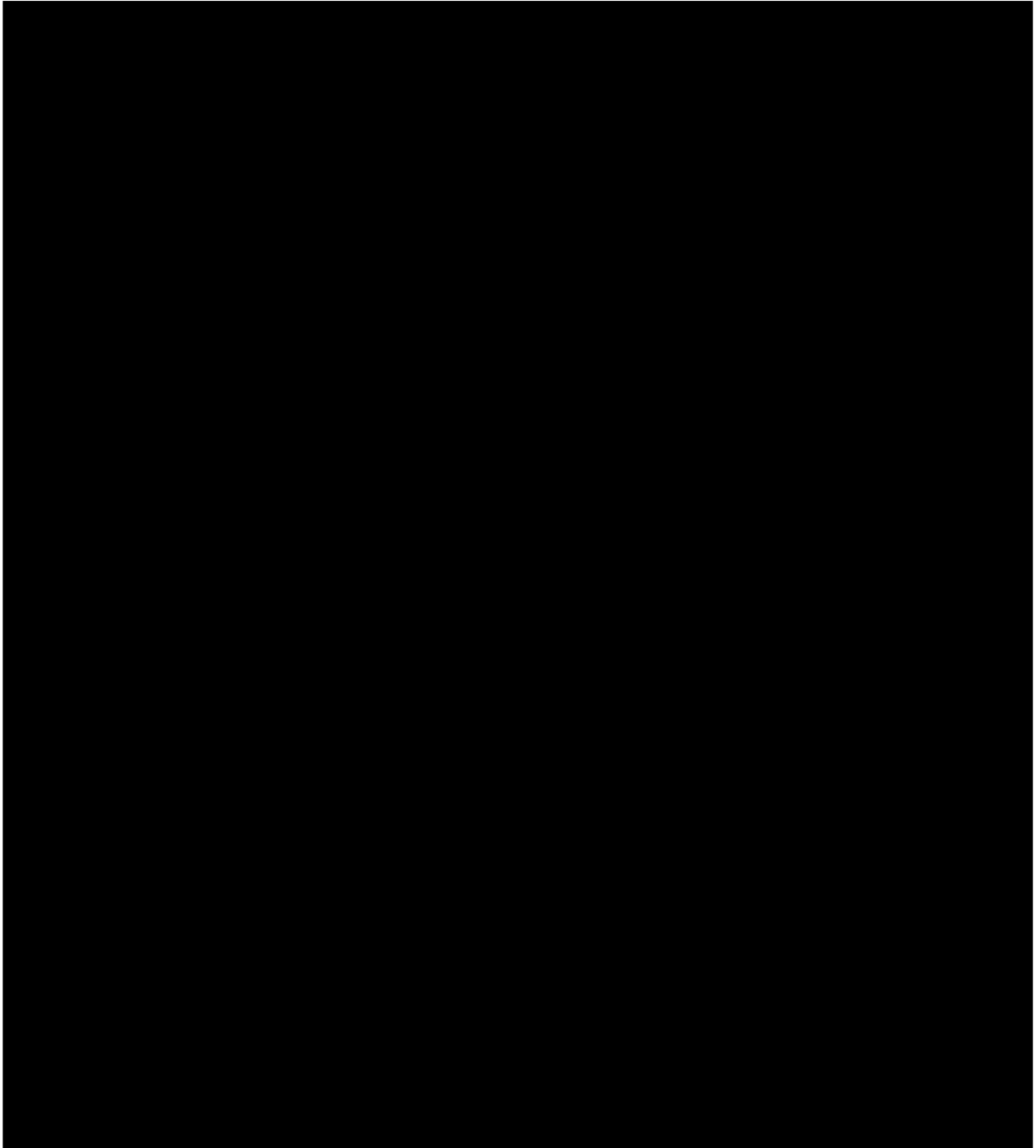
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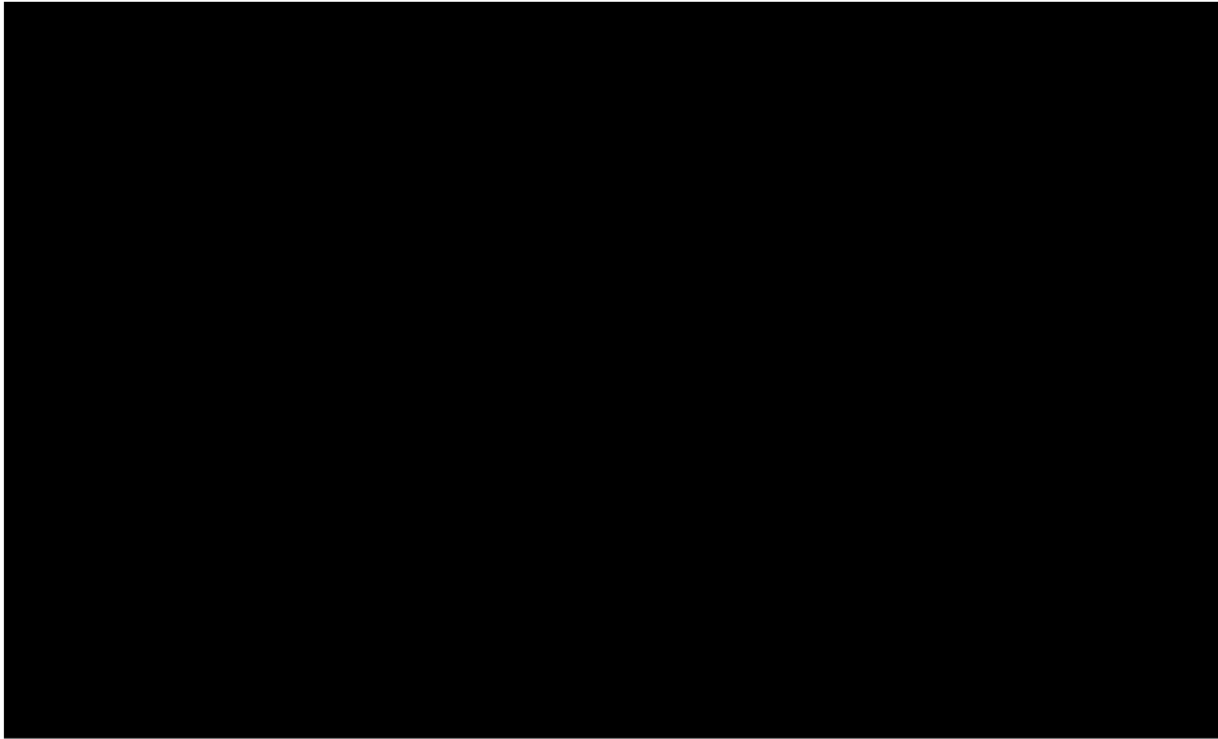


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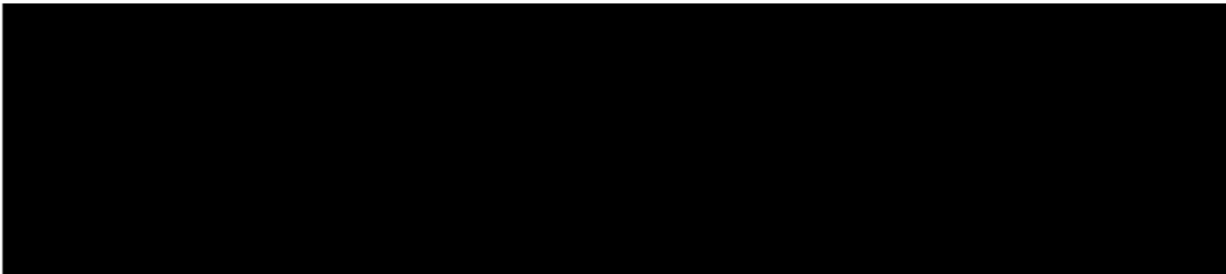


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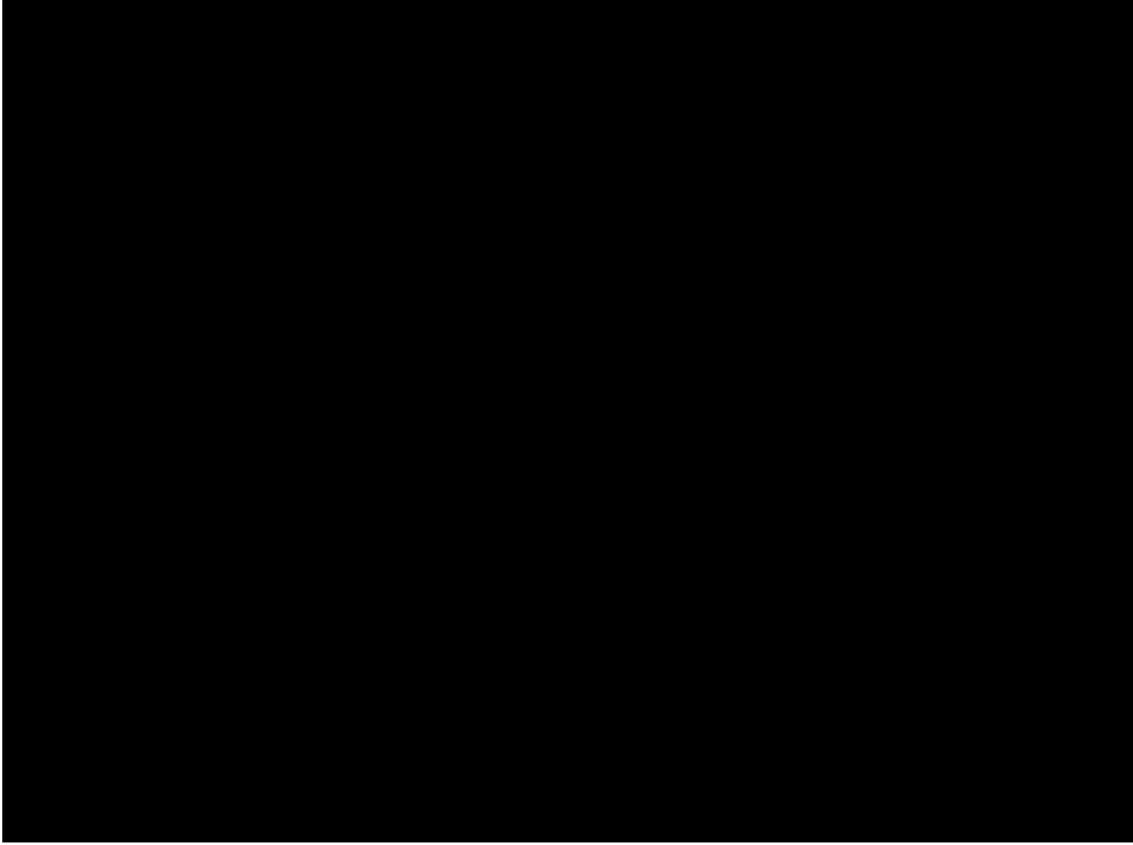
43. ~~(U)~~ Also in April 2005, a CIA psychologist stated that Mr. bin al Shibh had remained in isolation for two and a half years, which was having a “clear and escalating effect on his psychological functioning.”¹²⁷ The psychologist noted that because Mr. bin al Shibh was previously a “high functioning individual,” his deterioration was all the more



¹²⁷ ~~(U)~~ SSCI Executive Summary at 80.

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“alarming.”¹²⁸ The SSCI Executive Summary noted the “onset of psychological problems brought out by . . . long-term social isolation *and his anxiety that the CIA would return to using its enhanced interrogation techniques against him.*”¹²⁹



¹²⁸ ~~(S)~~ *Id.*

¹²⁹ ~~(S)~~ *Id.*

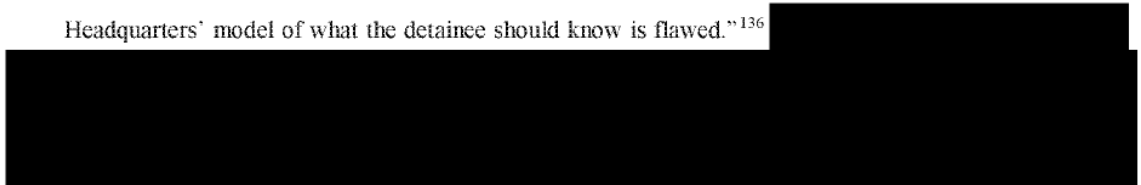


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46. ~~(U)~~ A cable written by Mitchell and Jessen in August 2002 recommended that “ ‘the aggressive phase [against Abu Zubaydah] should be used as a template for future interrogations . . . ’ not because [the torture] produced useful information, but because [it] confirmed that Abu Zubaydah did not possess the intelligence that CIA Headquarters [believed he had].”¹³³ Mitchell and Jessen stated that “Our goal was to reach the stage where we have broken any will or ability of subject to resist . . . [the two psychologists] familiar with interrogation, exploitation, and resistance to interrogation *should shape compliance of high value captives prior to debriefing by substantive experts.*”¹³⁴

47. ~~(U)~~ By mid-2003, senior CIA officials recognized that subject matter experts often provided interrogation requirements that were “not valid or well thought out.”¹³⁵ One senior CIA interrogator told the Office of Inspector General that “in every case so far, Headquarters’ model of what the detainee should know is flawed.”¹³⁶

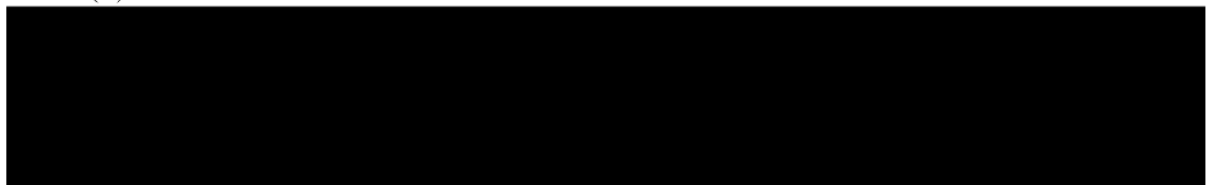


¹³³ ~~(U)~~ SSCI Executive Summary at 46.

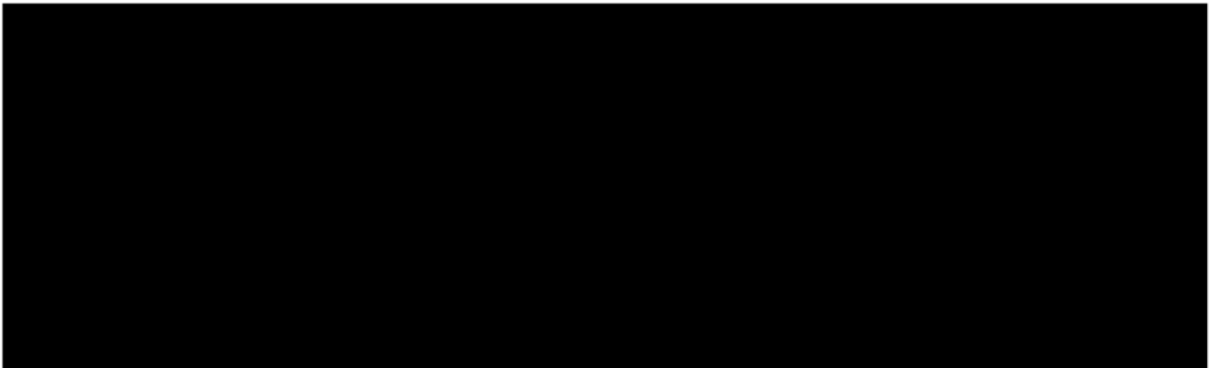
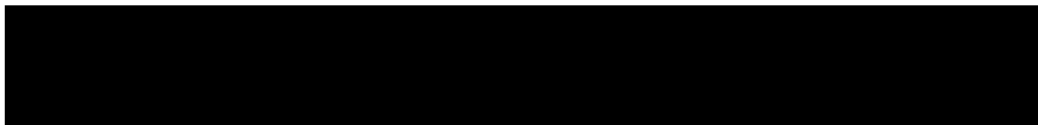
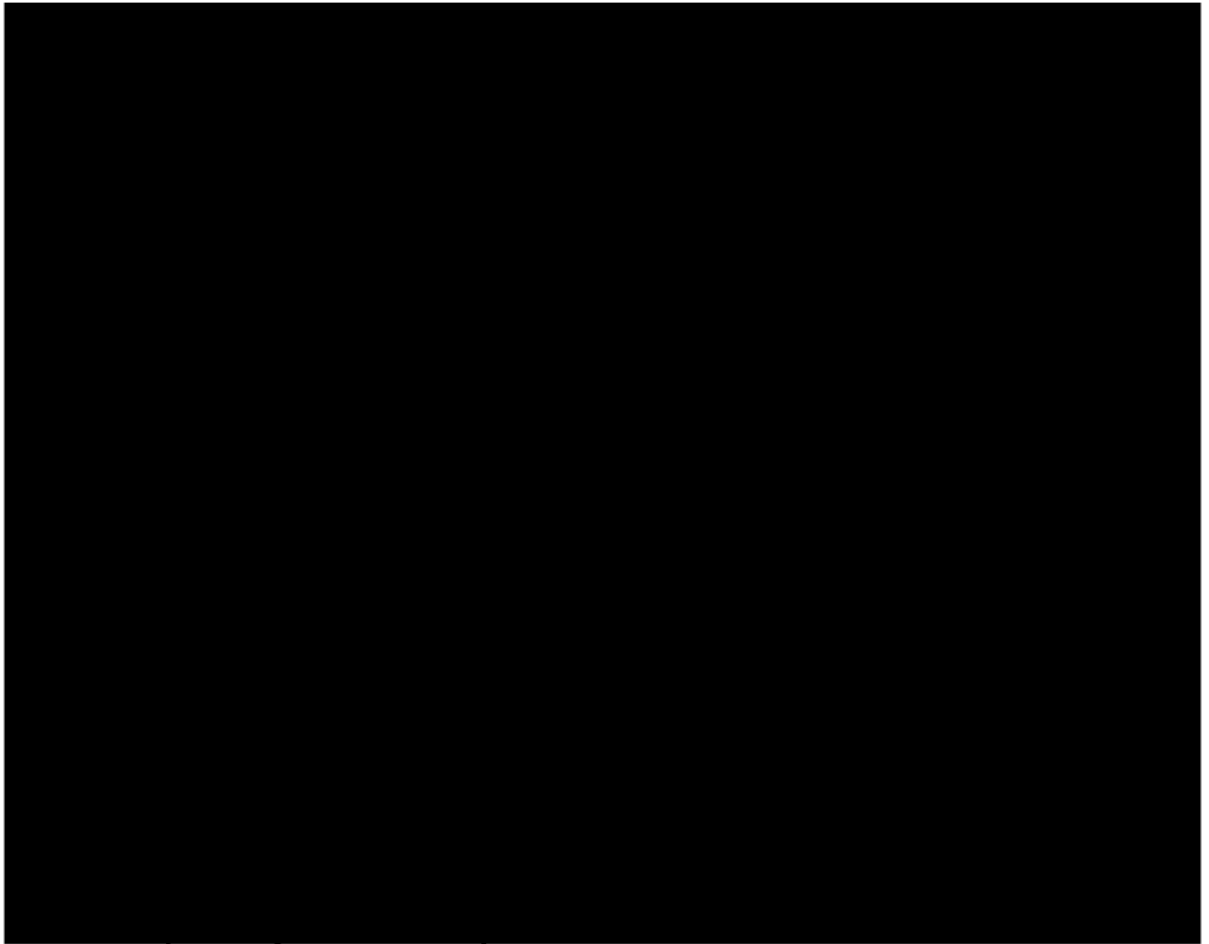
¹³⁴ ~~(U)~~ *Id.*

¹³⁵ ~~(U)~~ SSCI Executive Summary at 121 n. 722.

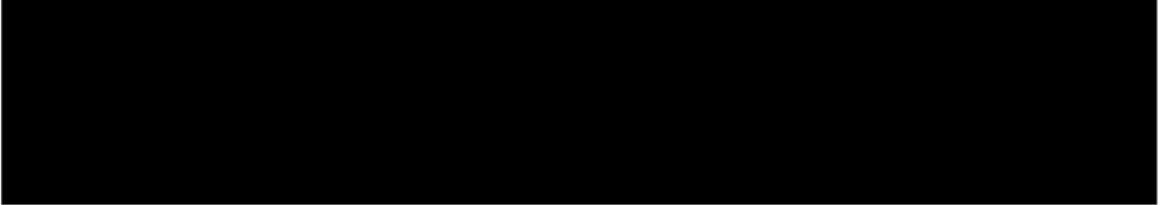
¹³⁶ ~~(U)~~ *Id.*



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against Mr. Mohammad. The SSCI Executive Summary stated that on 6 March 2003, the FBI reopened its investigation into Ohio truck driver Iyman Faris.¹⁴³ On 17-18 March 2003, amidst Mr. Mohammad's 183 incidences of waterboarding, the CIA "queried the FBI for 'additional details' on Mr. Faris, 'including a readout on his current activities and plans for FBI continued investigation,'" primarily because of statements made by Mr. Mohammad during his torture.¹⁴⁴ On 20 March 2003, the FBI picked up Mr. Faris for questioning, and told SSCI staff that they did so pursuant to the cables received from the CIA regarding Mr. Mohammad's statements during his torture interrogations.¹⁴⁵ Therefore, "the FBI investigators went into [the interview with Mr. Faris] armed with the information reveals by [Mr. Mohammad and Mr. Khan]" following use of torture techniques.¹⁴⁶ On 24 March 2003, immediately after Mr. Mohammad underwent his "fifteenth and final documented" waterboarding session, he was confronted with torture-acquired reporting from Majid Khan as well as FBI reports from Iyman Faris about the Parachas.¹⁴⁷ Mr. Mohammad, "boxed in by the new reporting," reported the Parachas' plan to smuggle explosives into the United States.¹⁴⁸



¹⁴³ (U) *Id.* at 282.

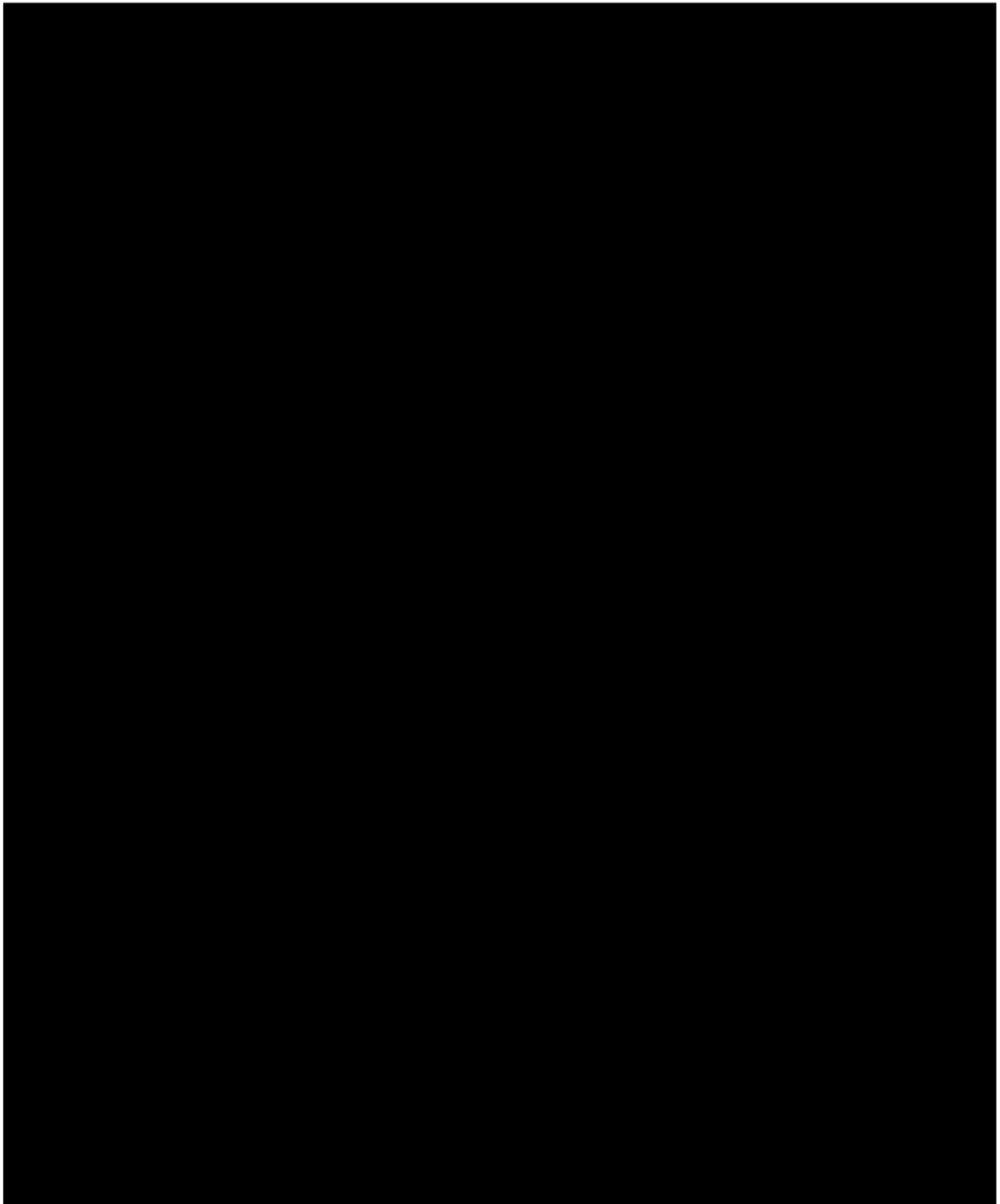
¹⁴⁴ (U) SSCI Minority Views at 60.

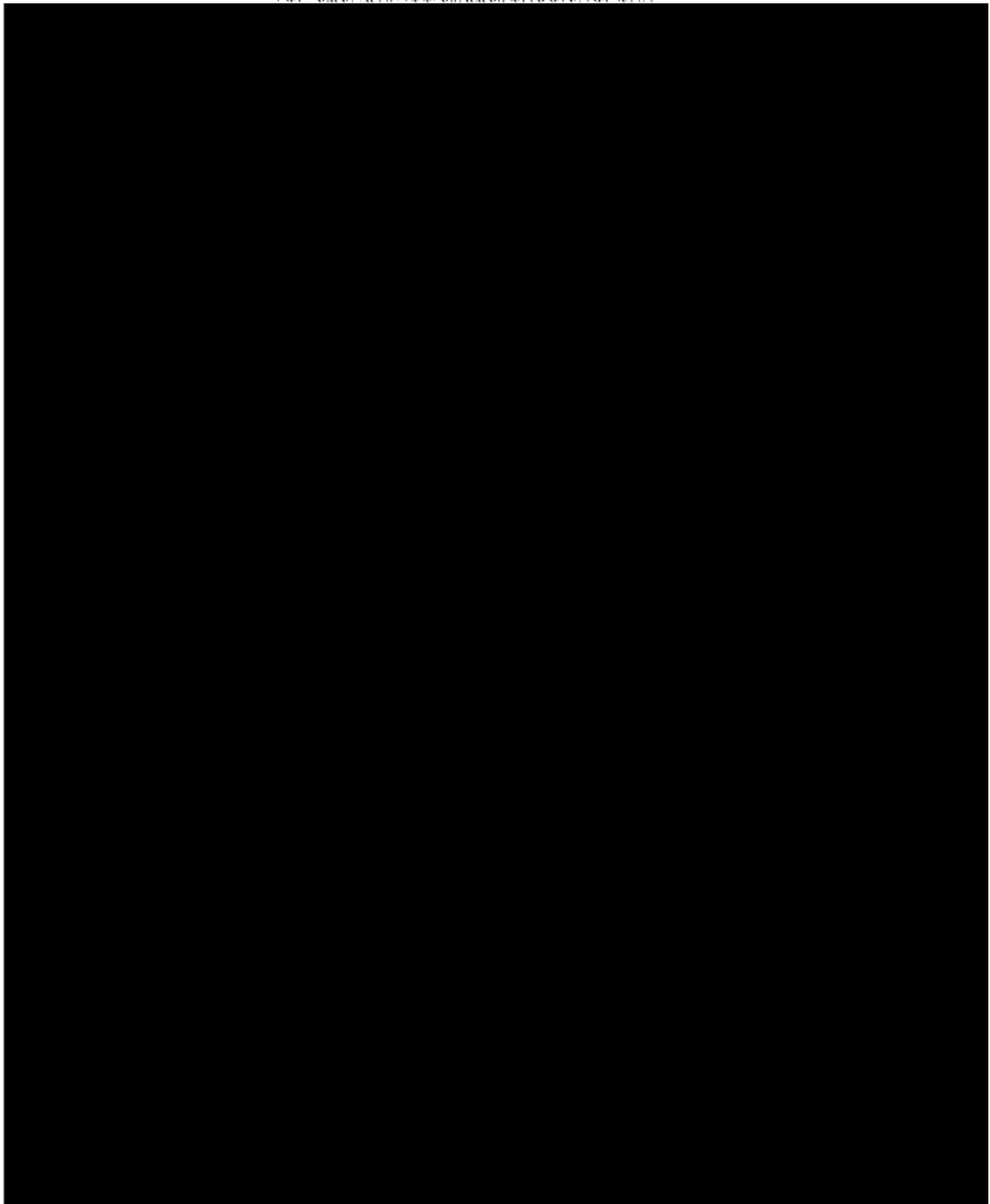
¹⁴⁵ (U) *Id.*

¹⁴⁶ (U) *Id.*

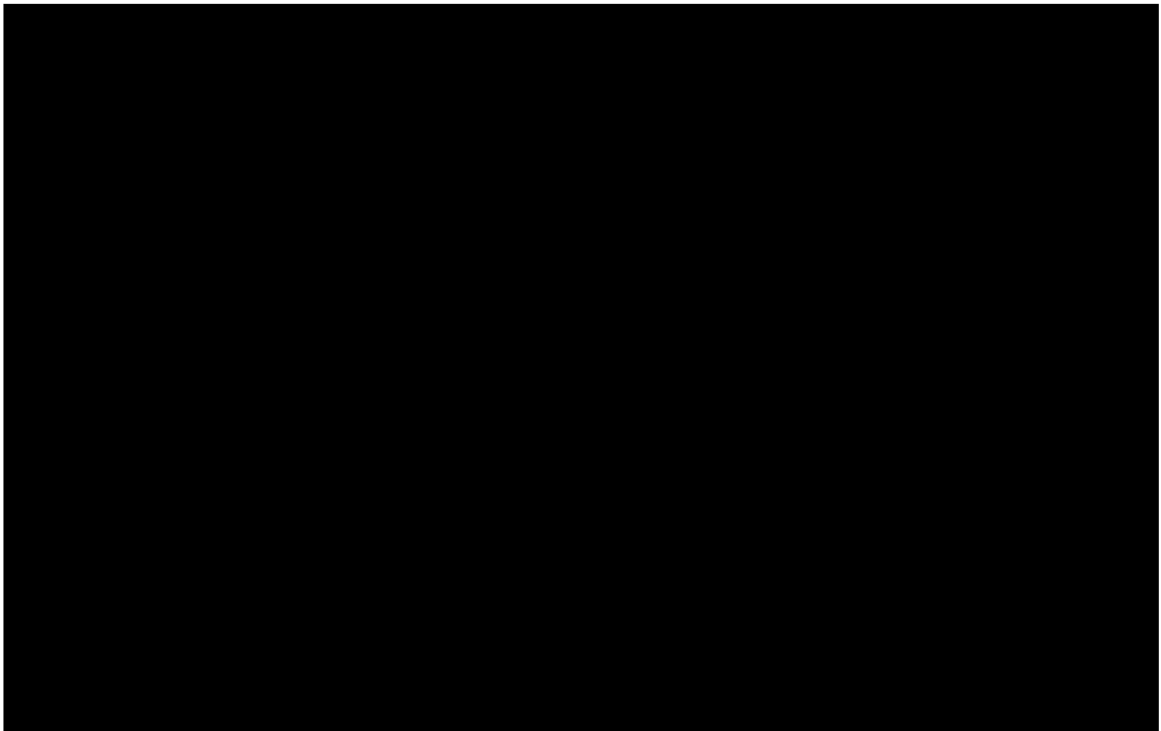
¹⁴⁷ (U) SSCI Executive Summary at 92.

¹⁴⁸ (U) *Id.*

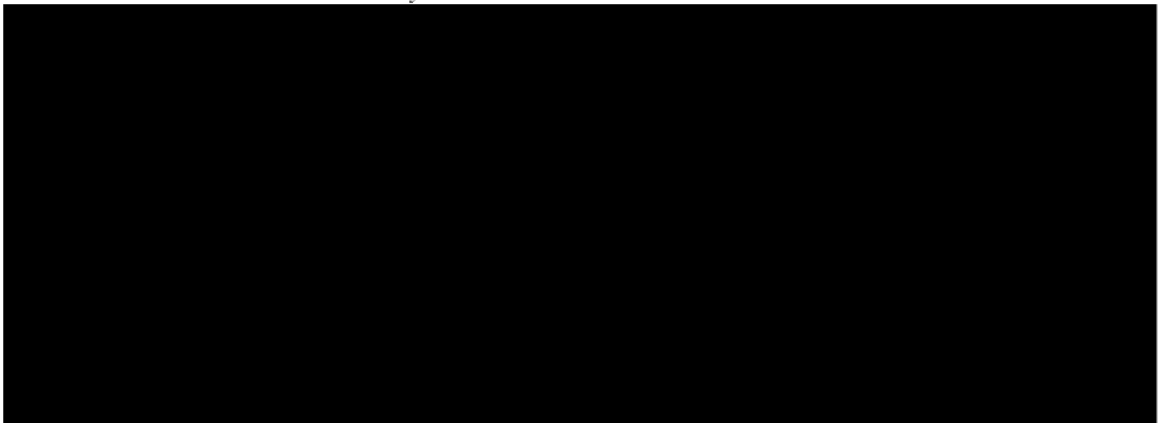




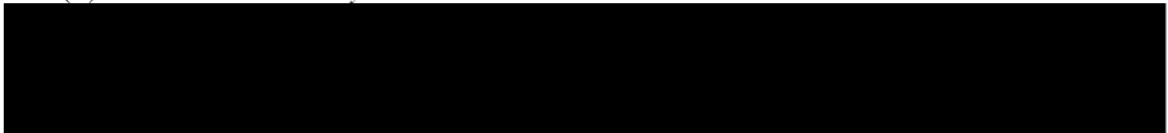
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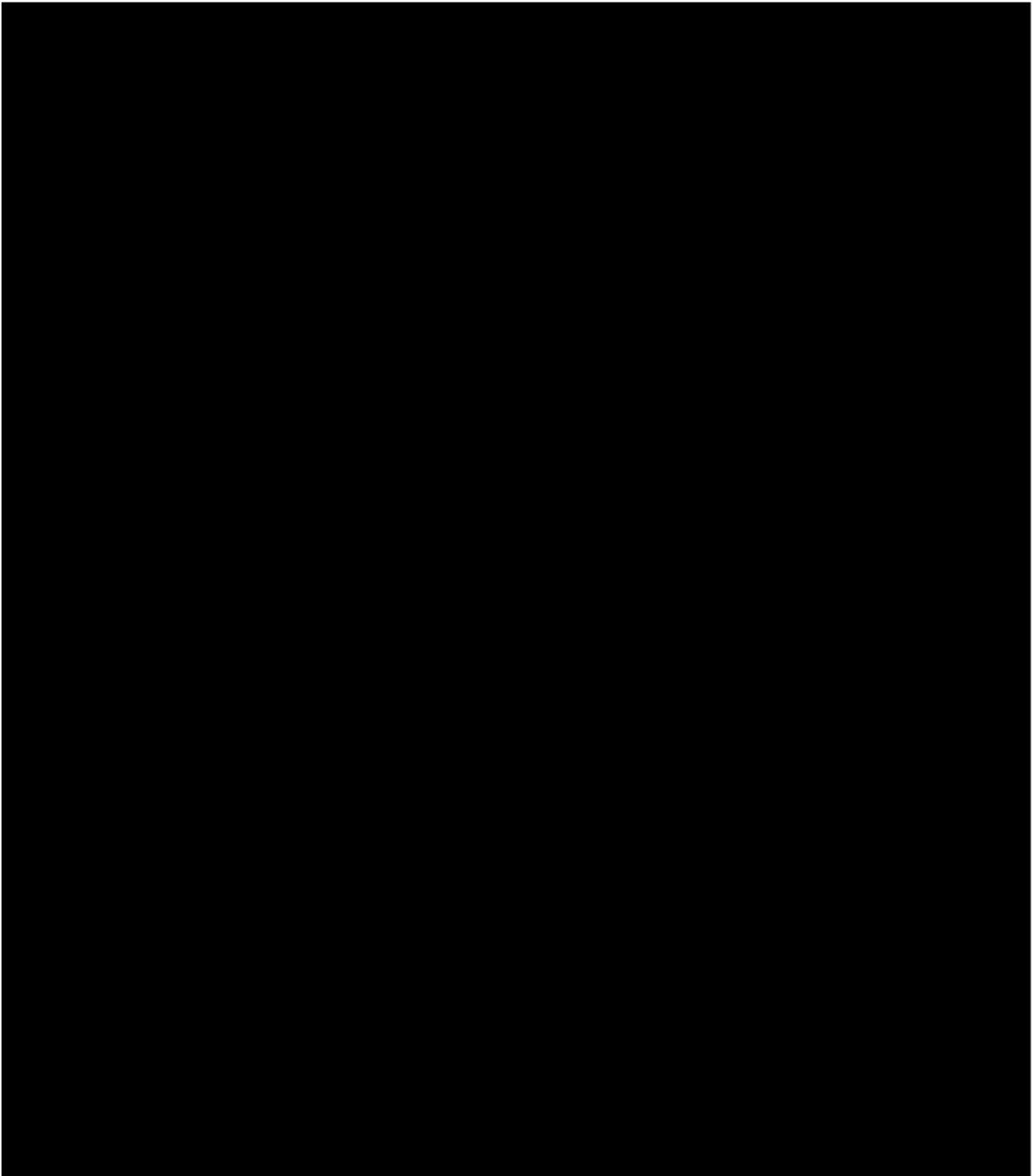
57. ~~(S)~~ Director Mueller's last reported phone call to DCI Tenet regarding requested access to Mr. Mohammad was on 21 May 2003.¹⁶³

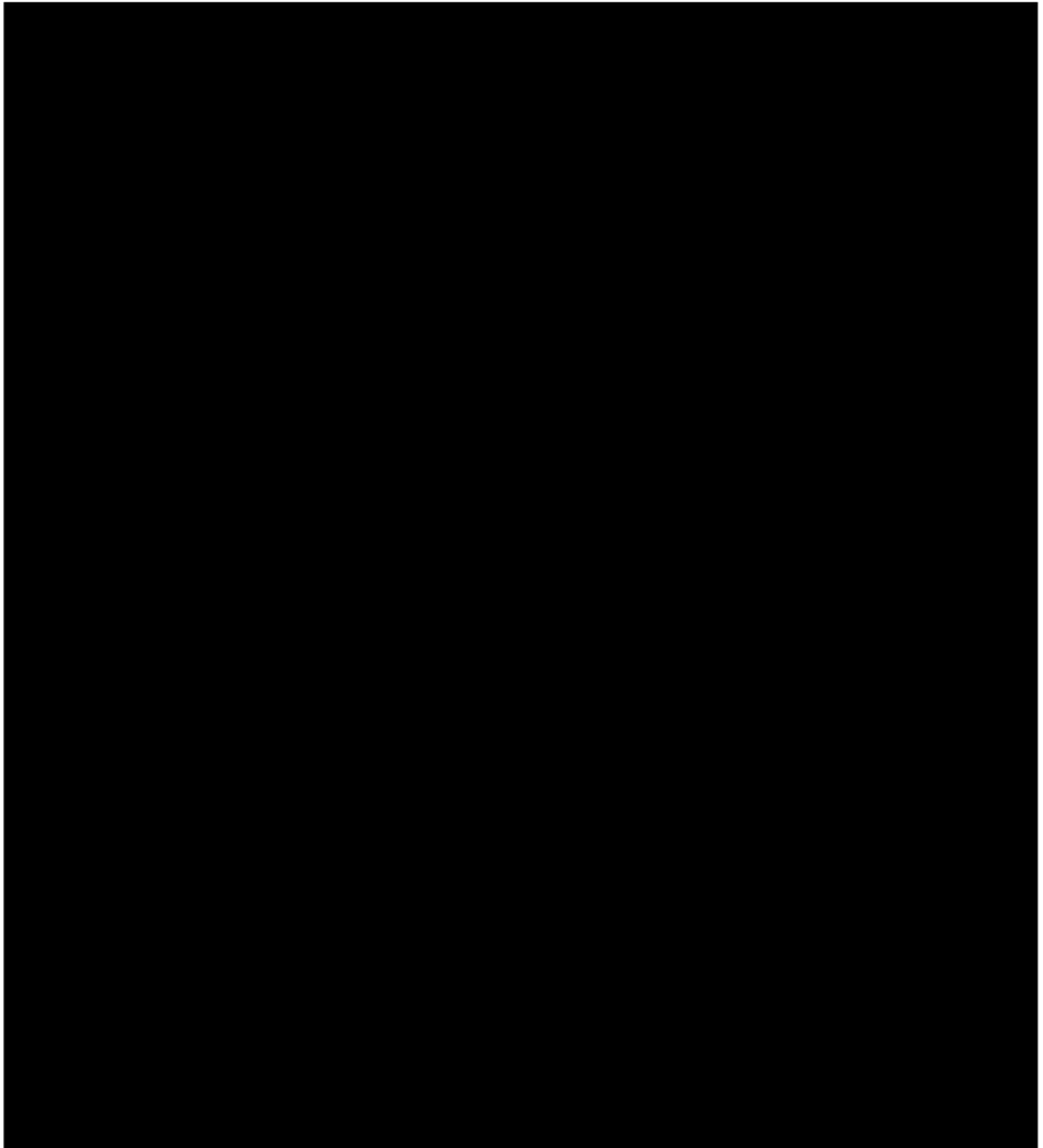


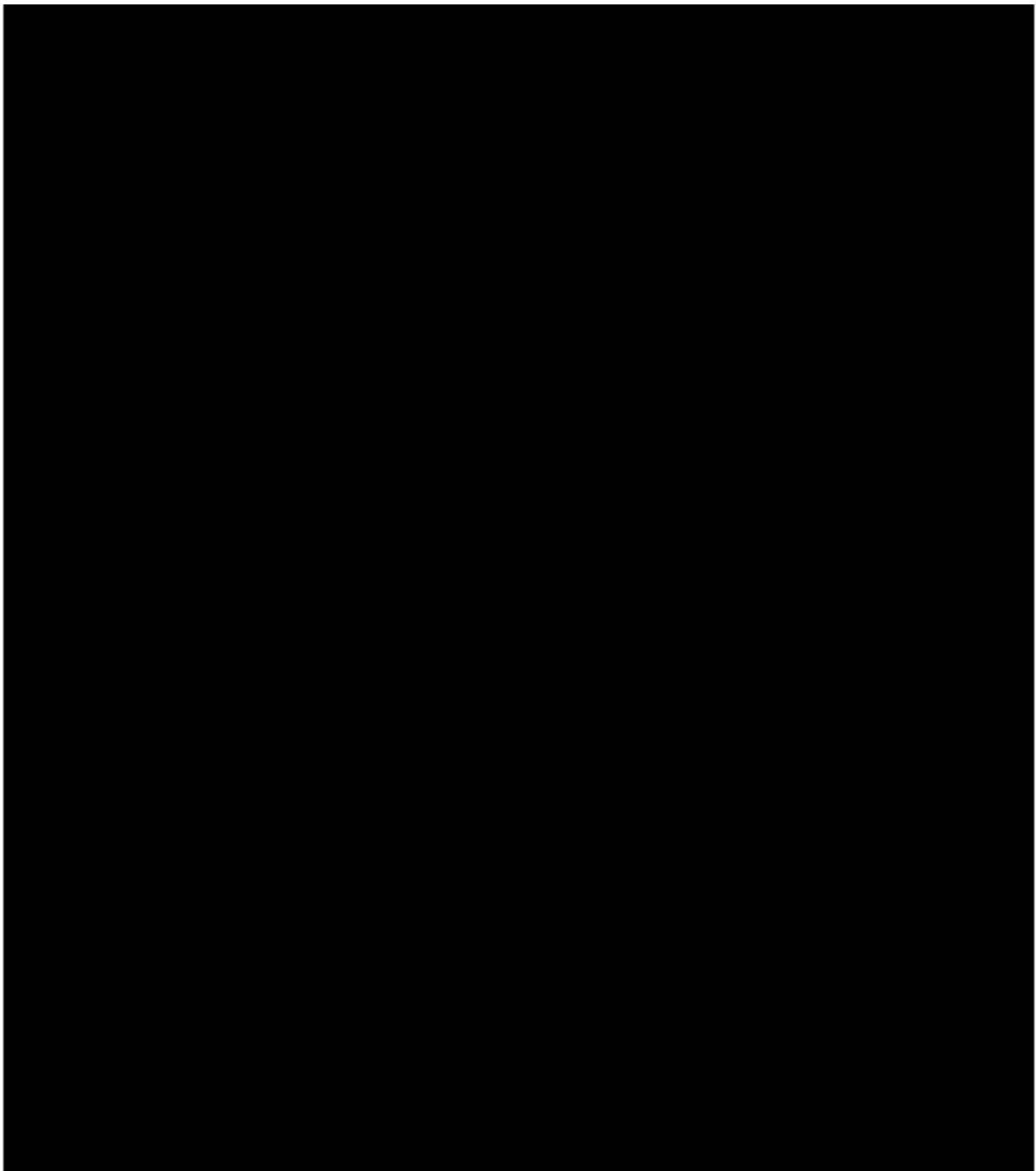
¹⁶³ ~~(S)~~ SSCI Executive Summary at 94 n.538.

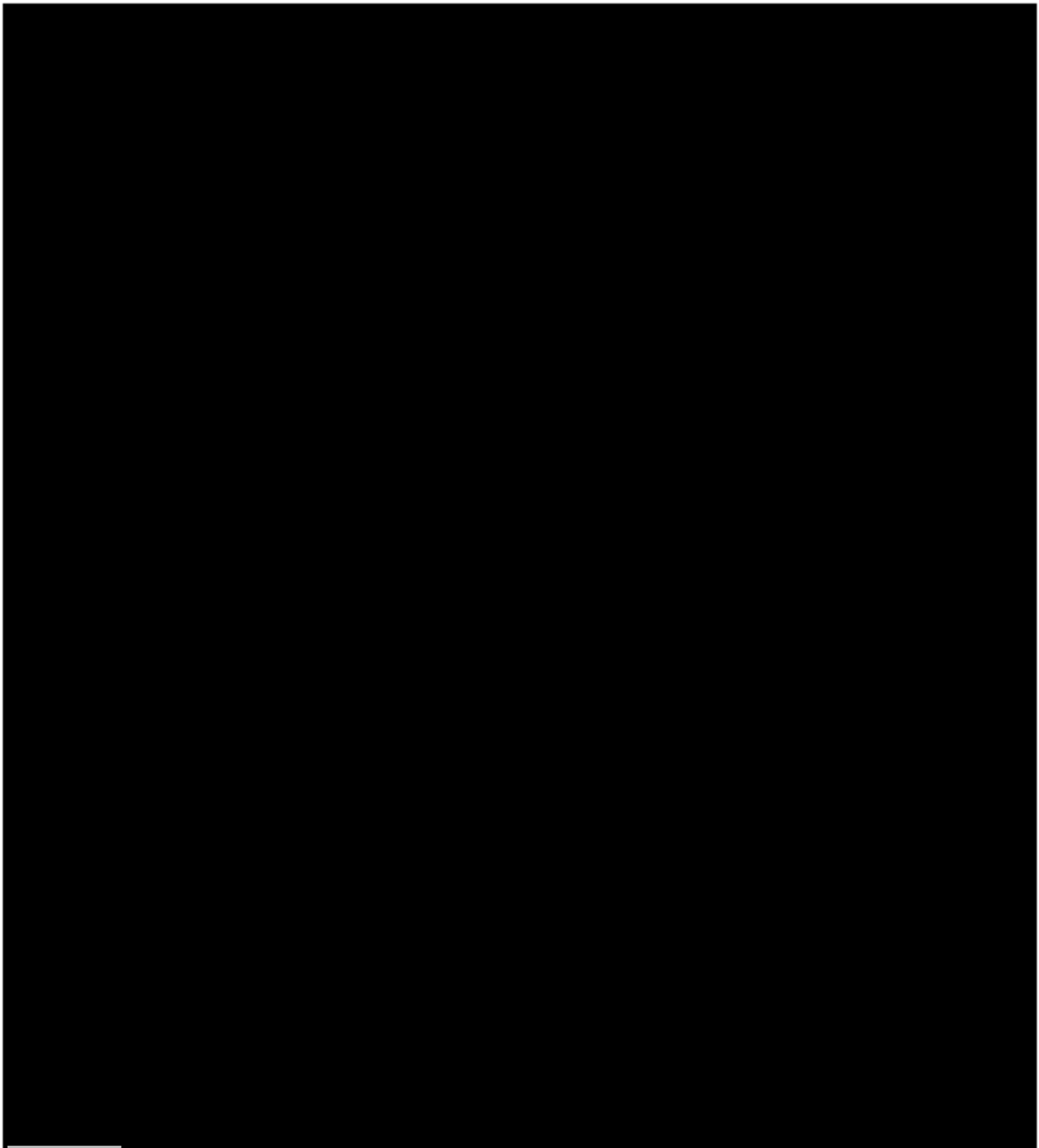


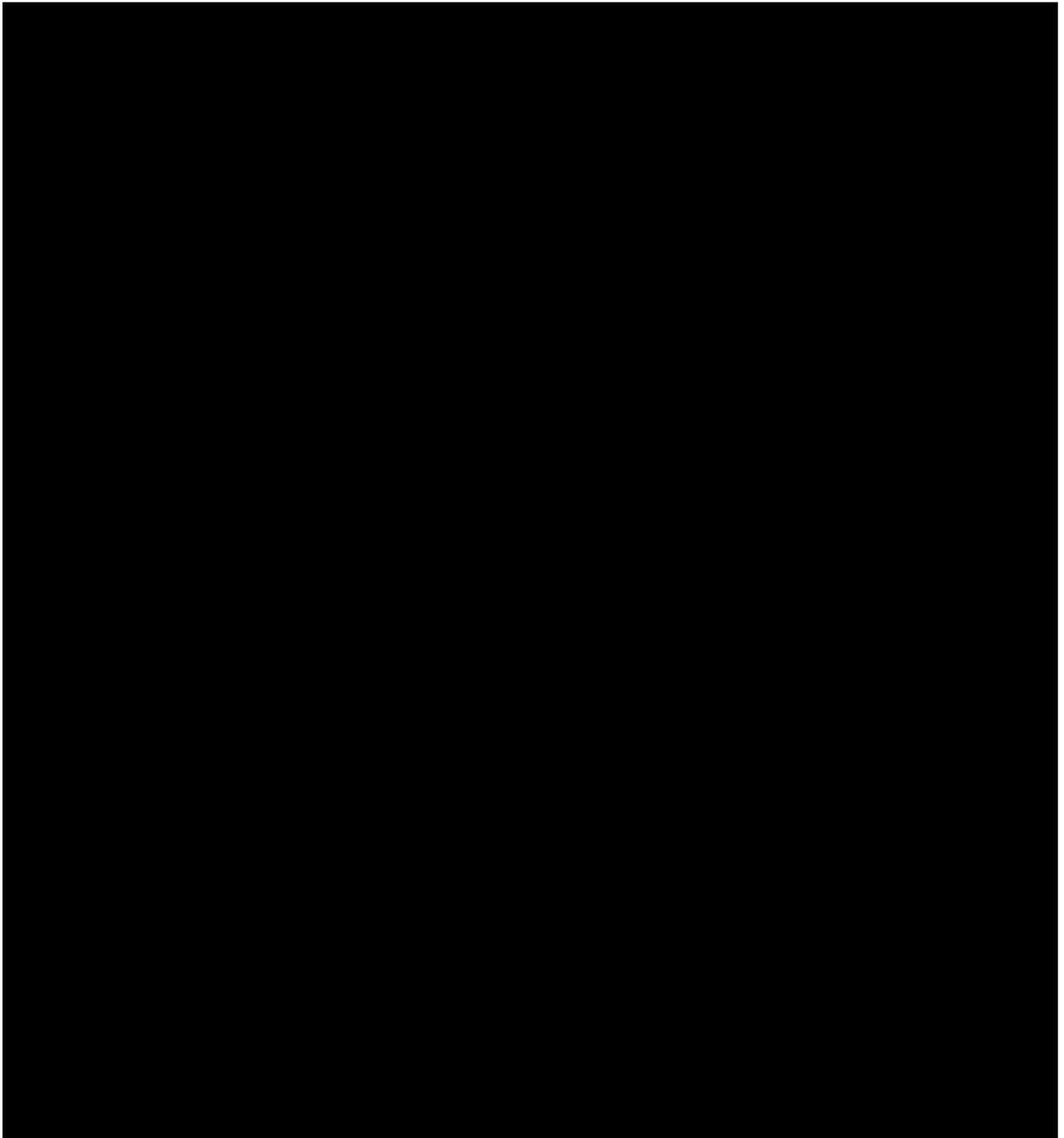
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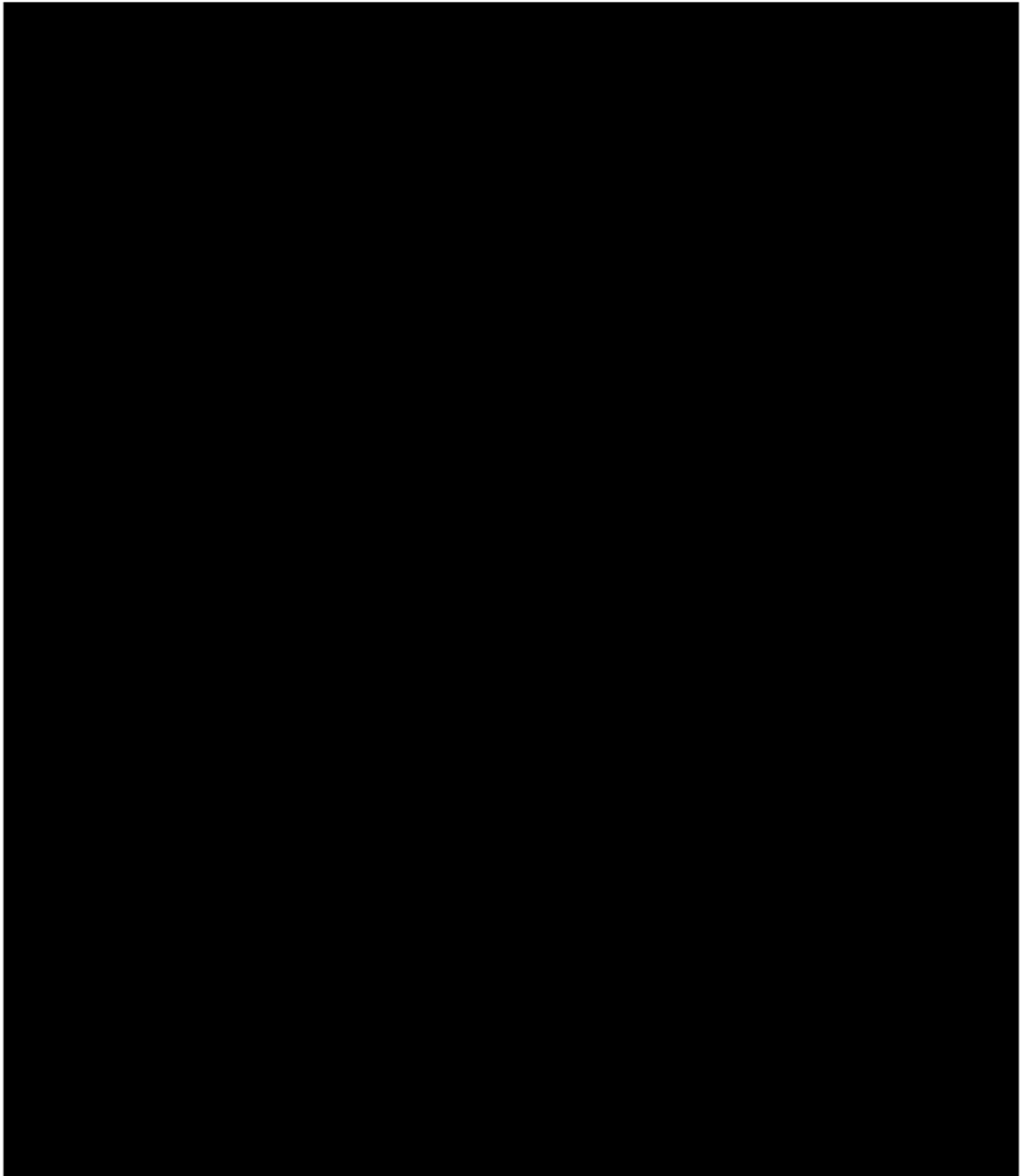


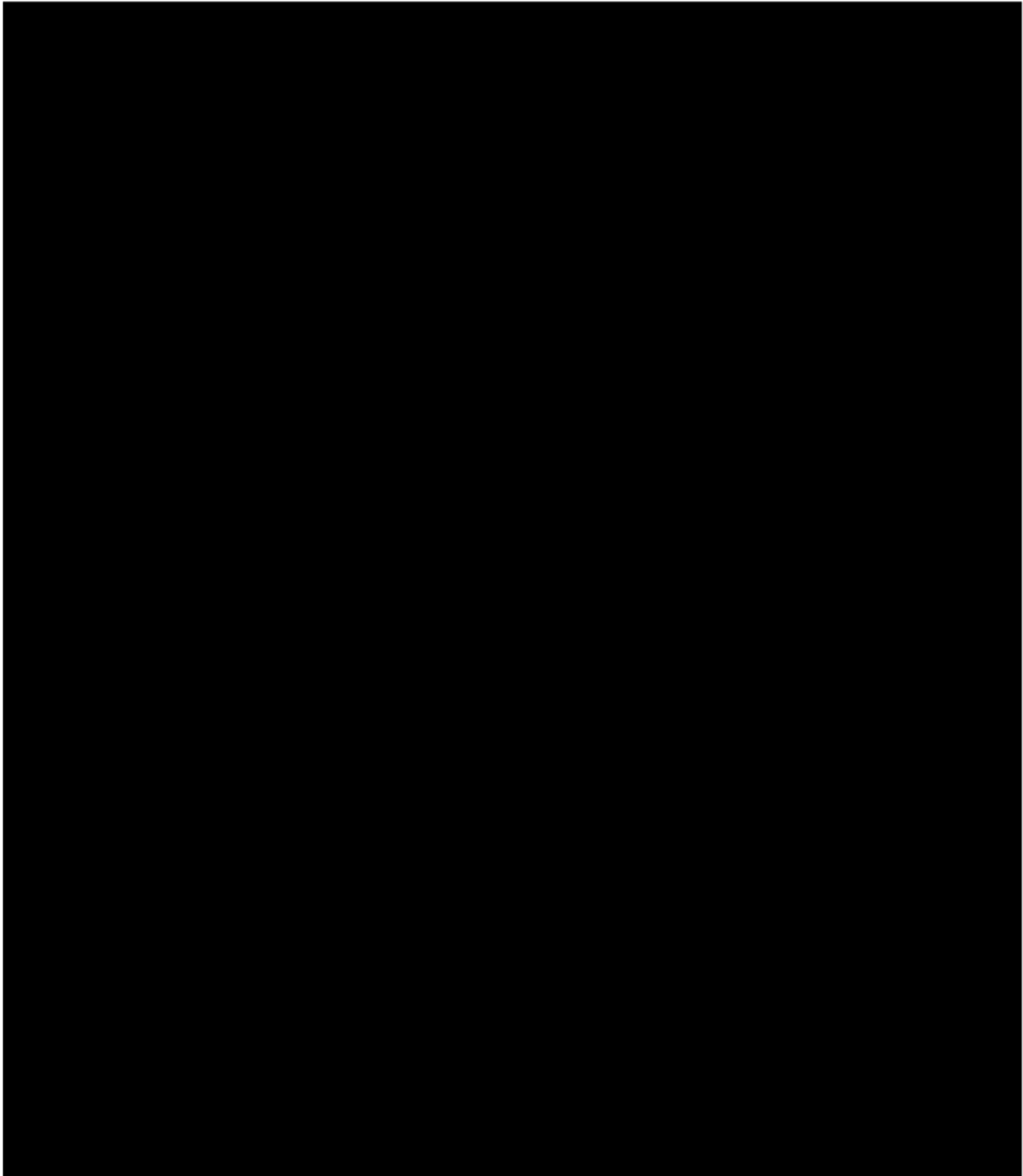


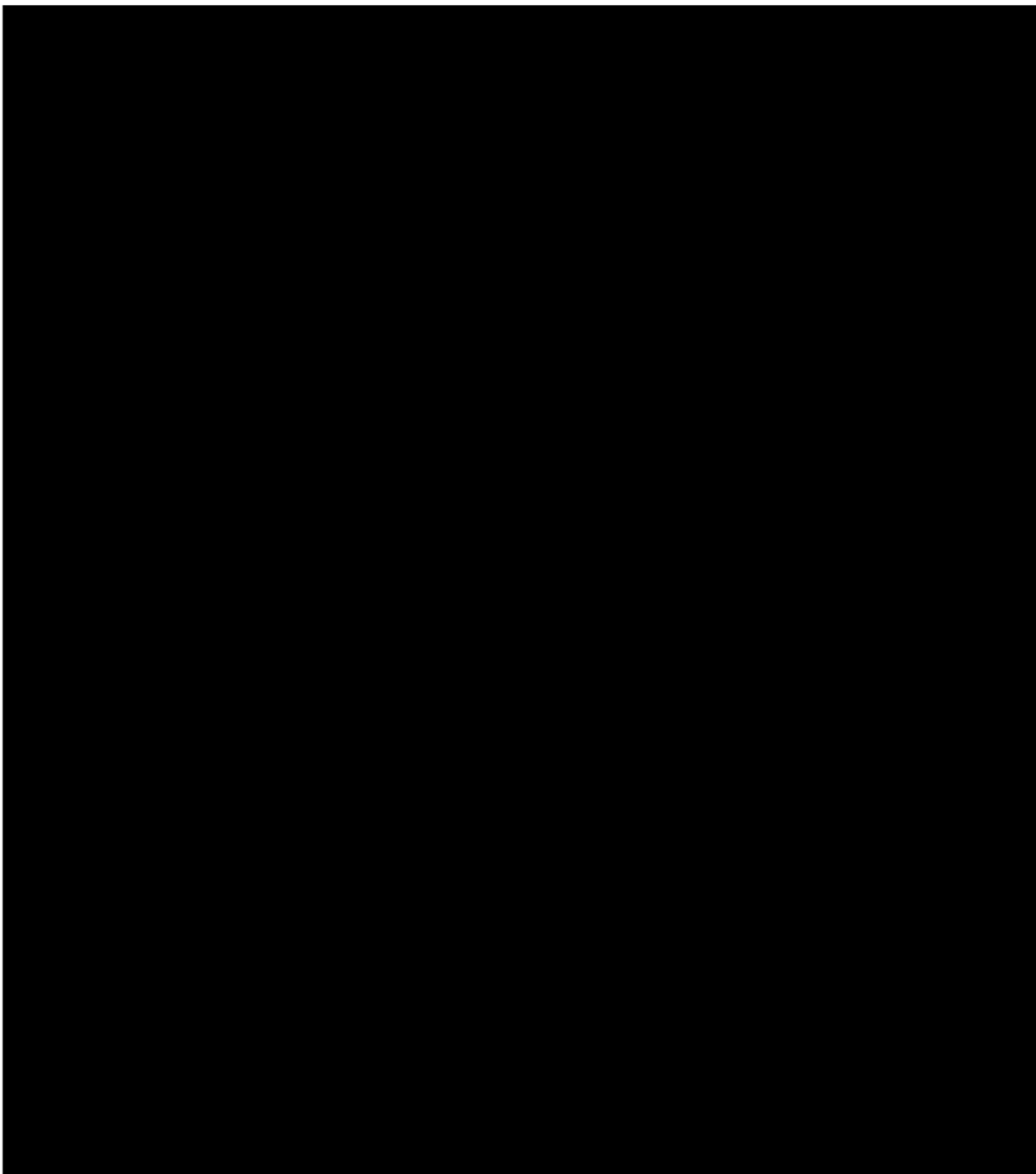




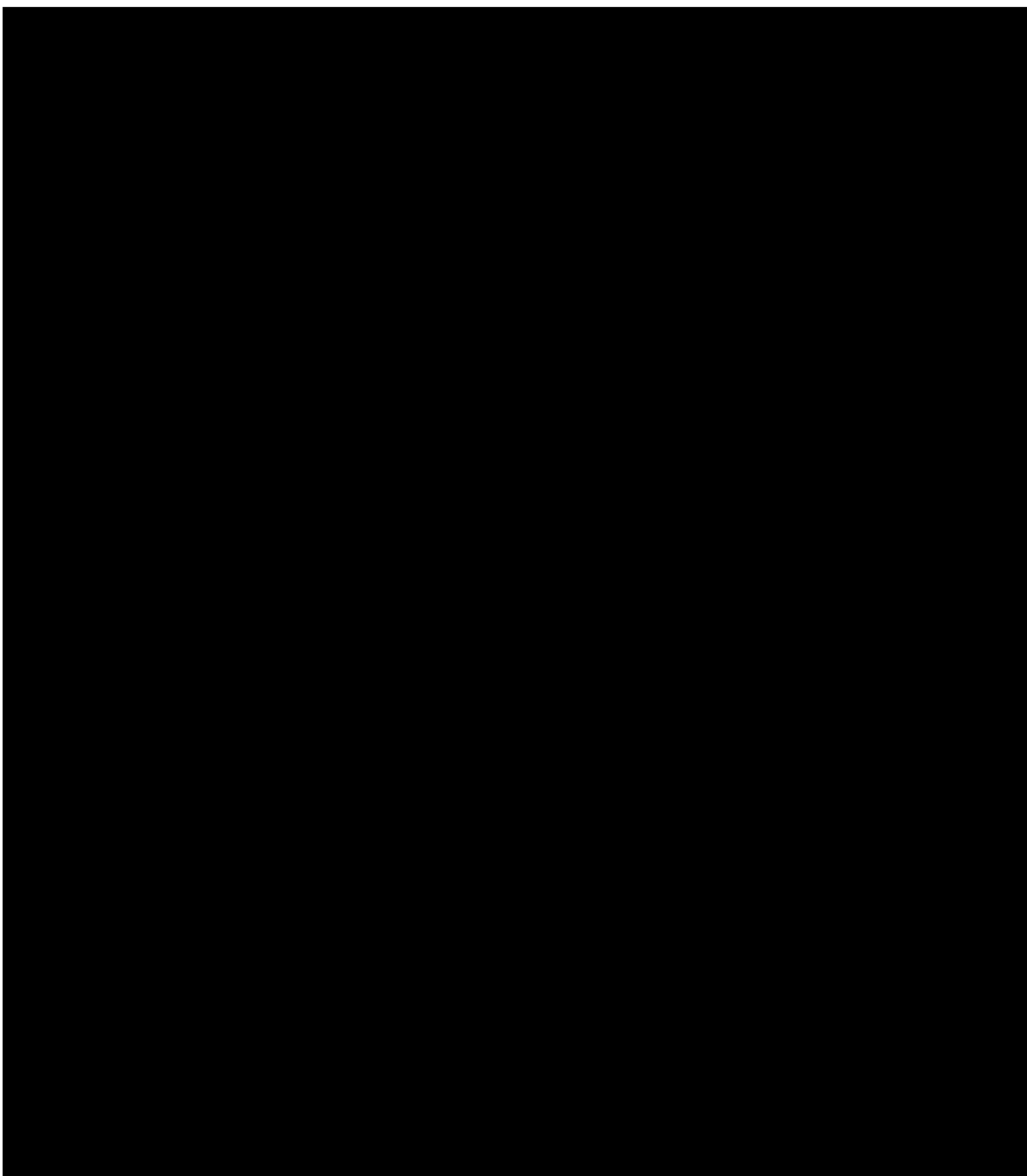


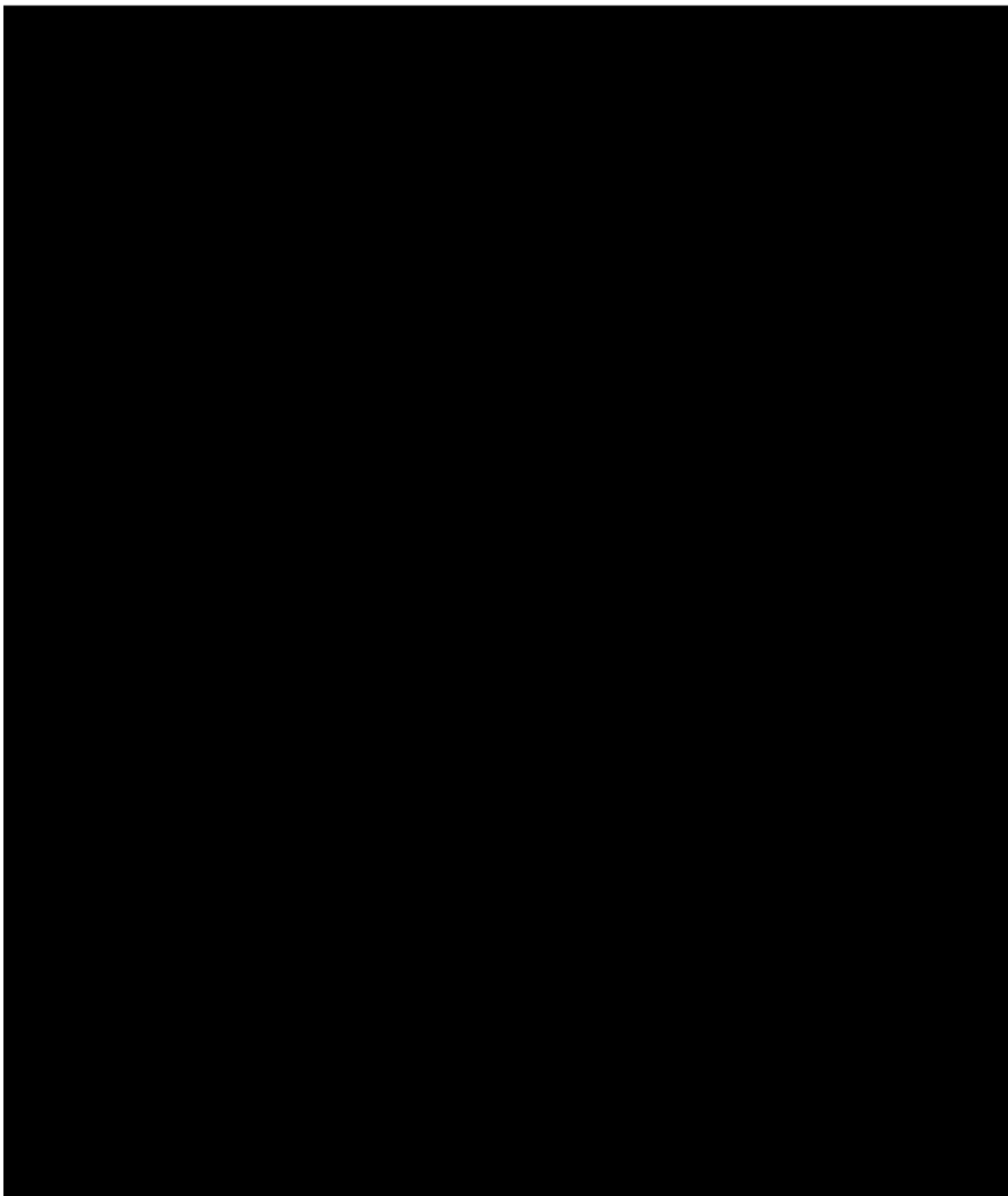




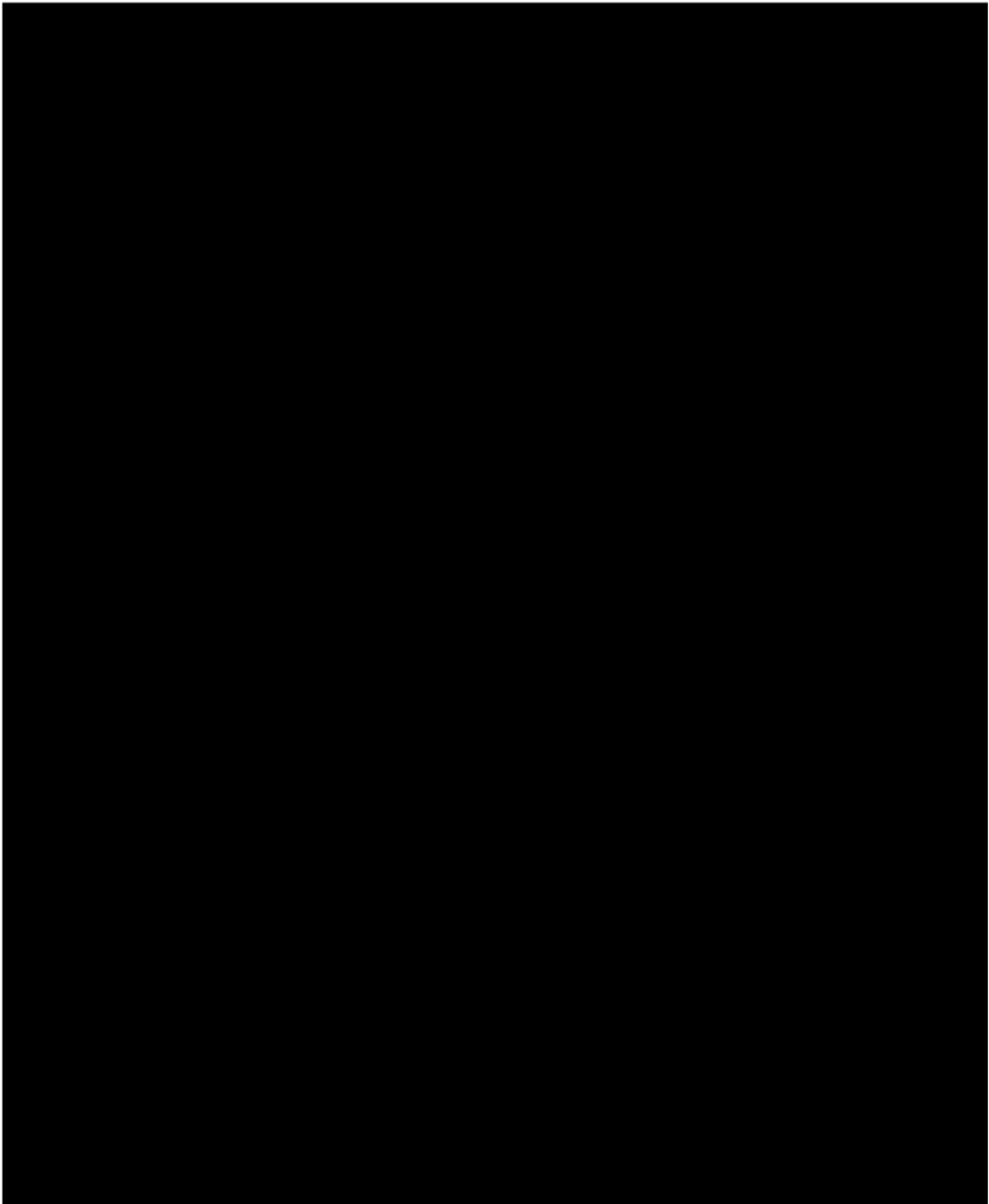


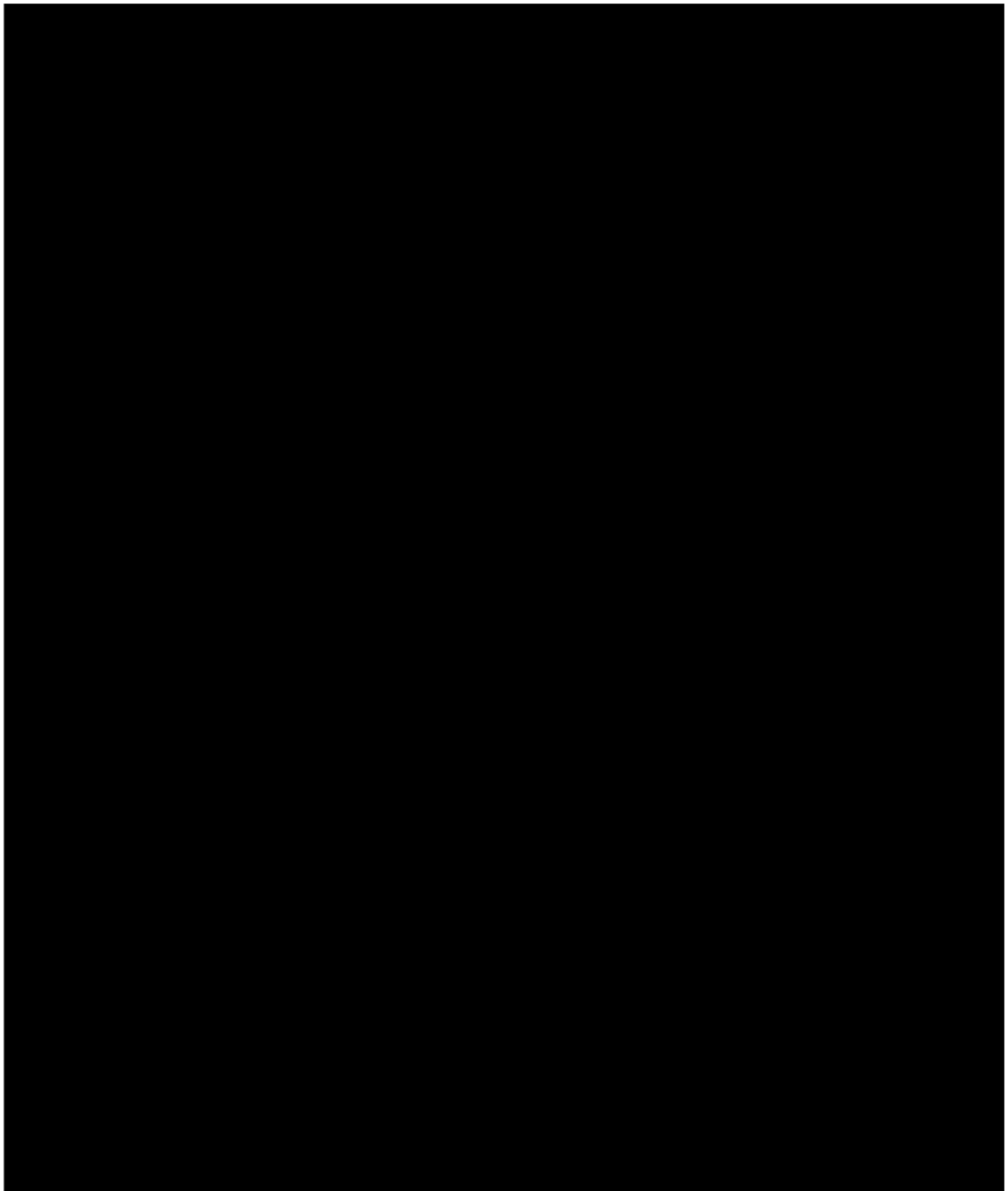
95% CI, 89% (95% CI, 85%–93%); OR, 2.72 (95% CI, 2.45–3.00) (95% CI, 2.12–3.34); 95% CI, 89% (95% CI, 85%–93%); OR, 3.42 (95% CI, 2.45–4.79); 95% CI, 89% (95% CI, 85%–93%); OR, 2.72 (95% CI, 2.45–3.00).

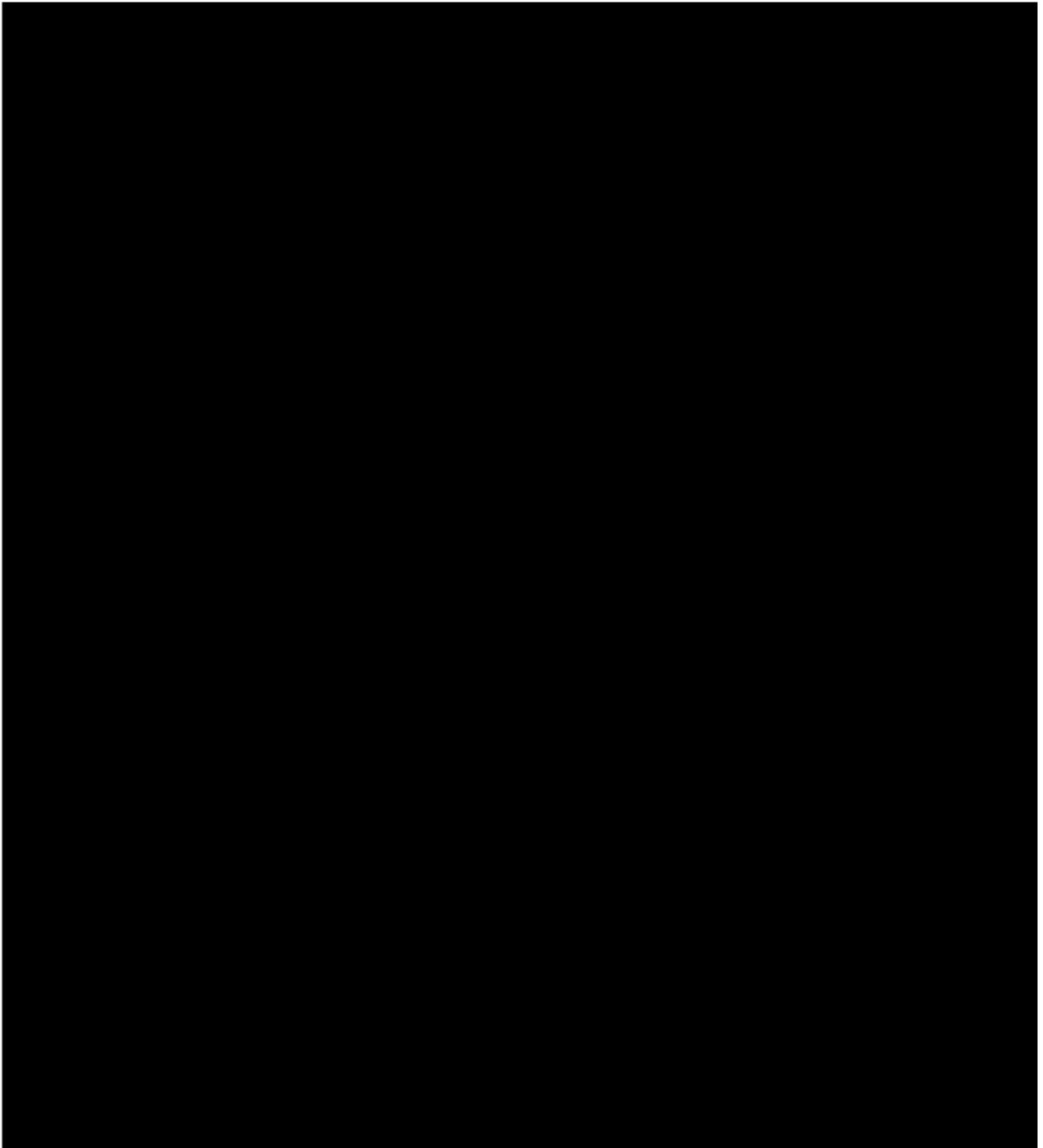
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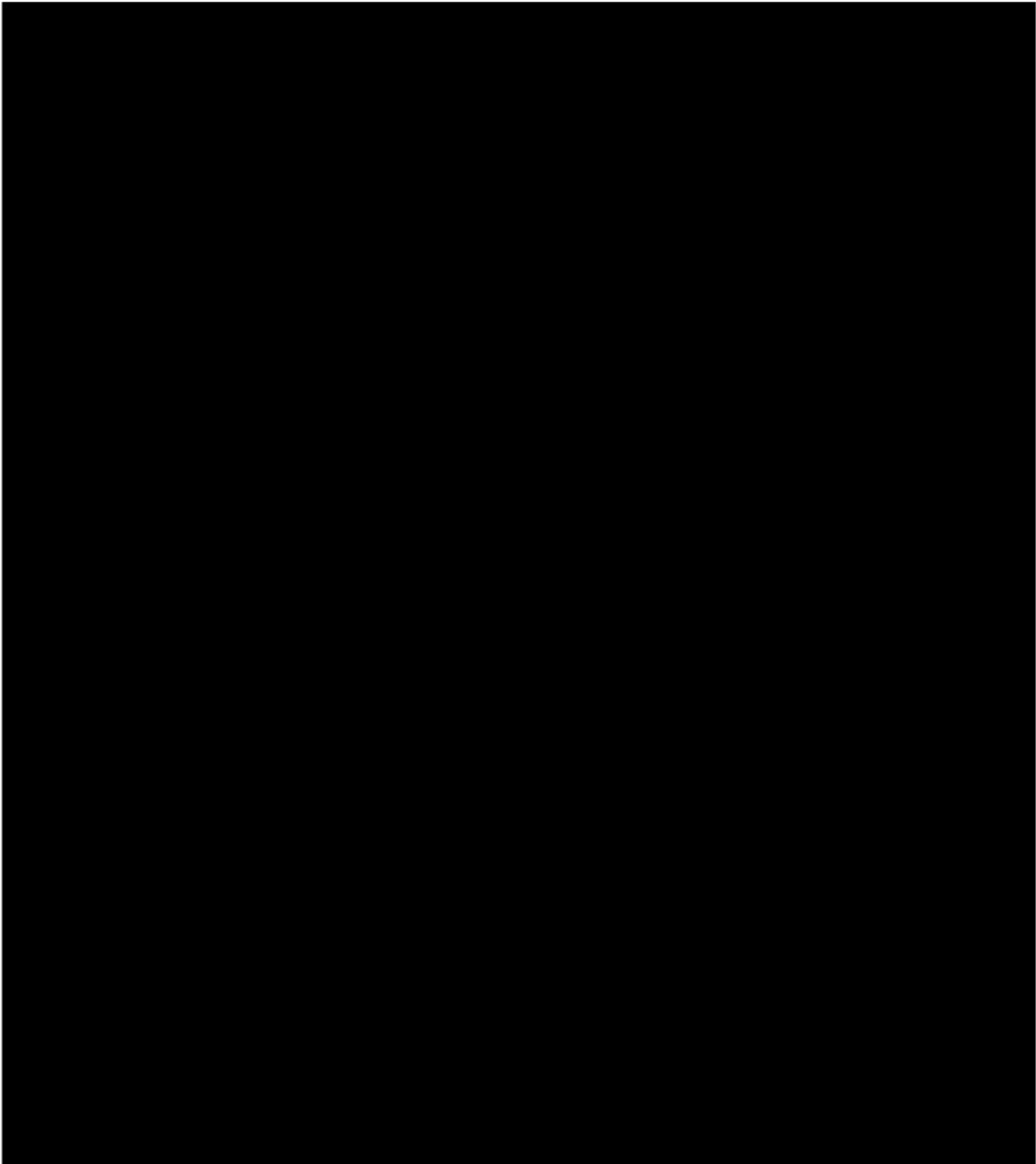


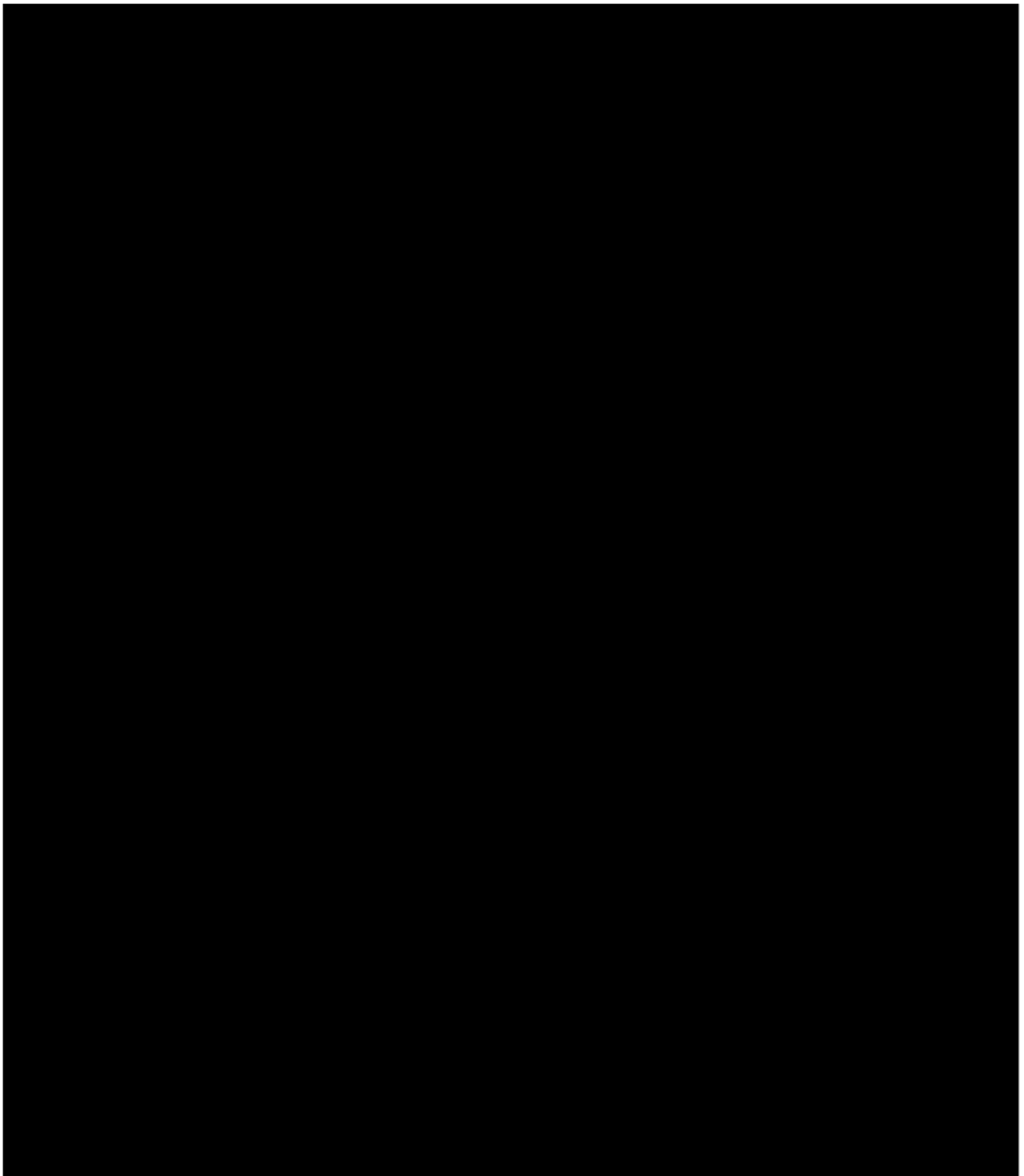
95% CI, 89%–95%; $P < .001$). The 95% CI for the relative risk of death in patients with aortic regurgitation was 1.03–1.17 ($P = .001$).

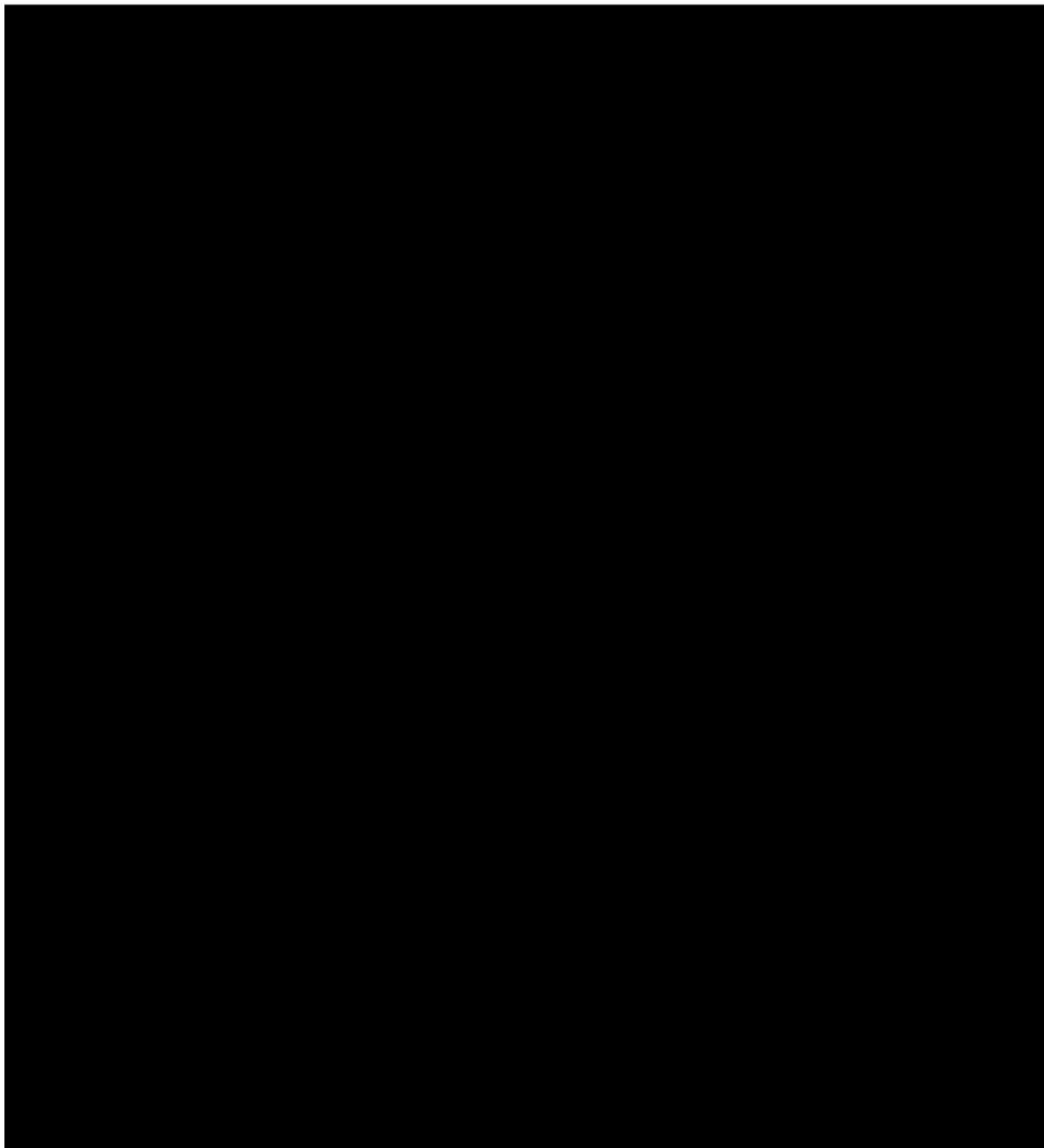




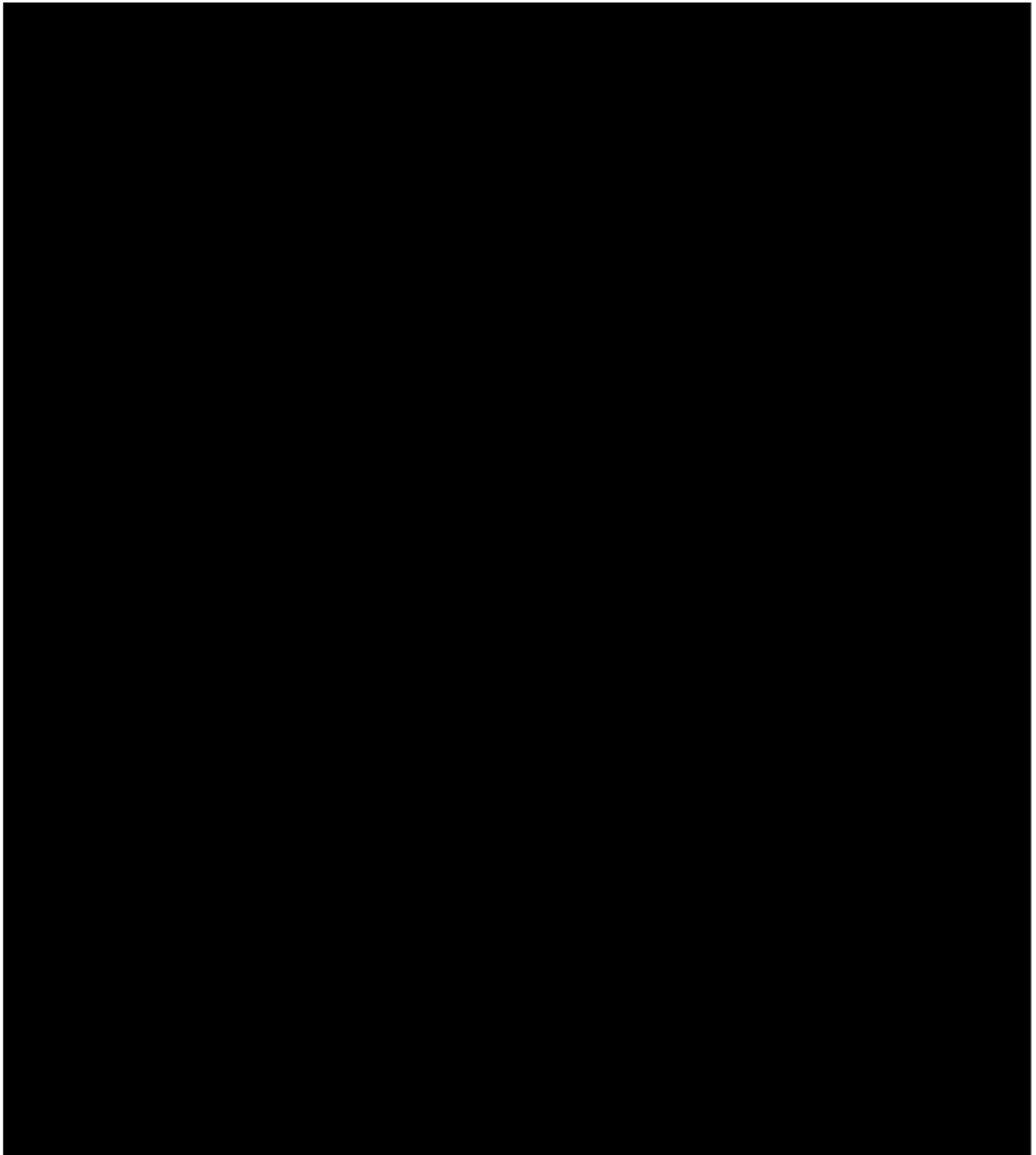






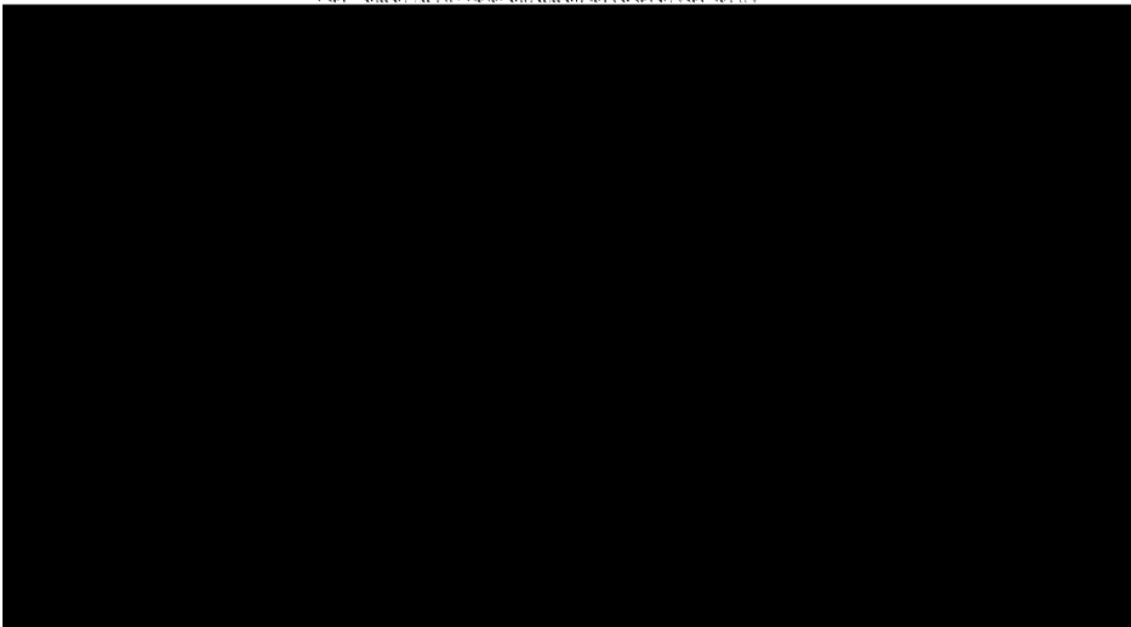
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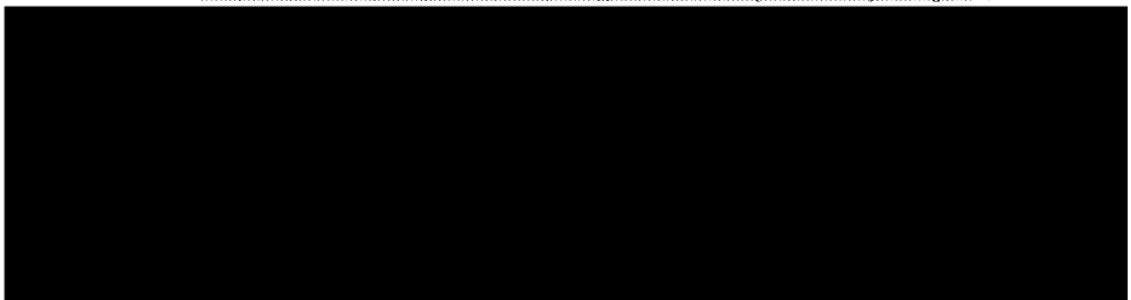
Appellate Exhibit 628 (AAA)
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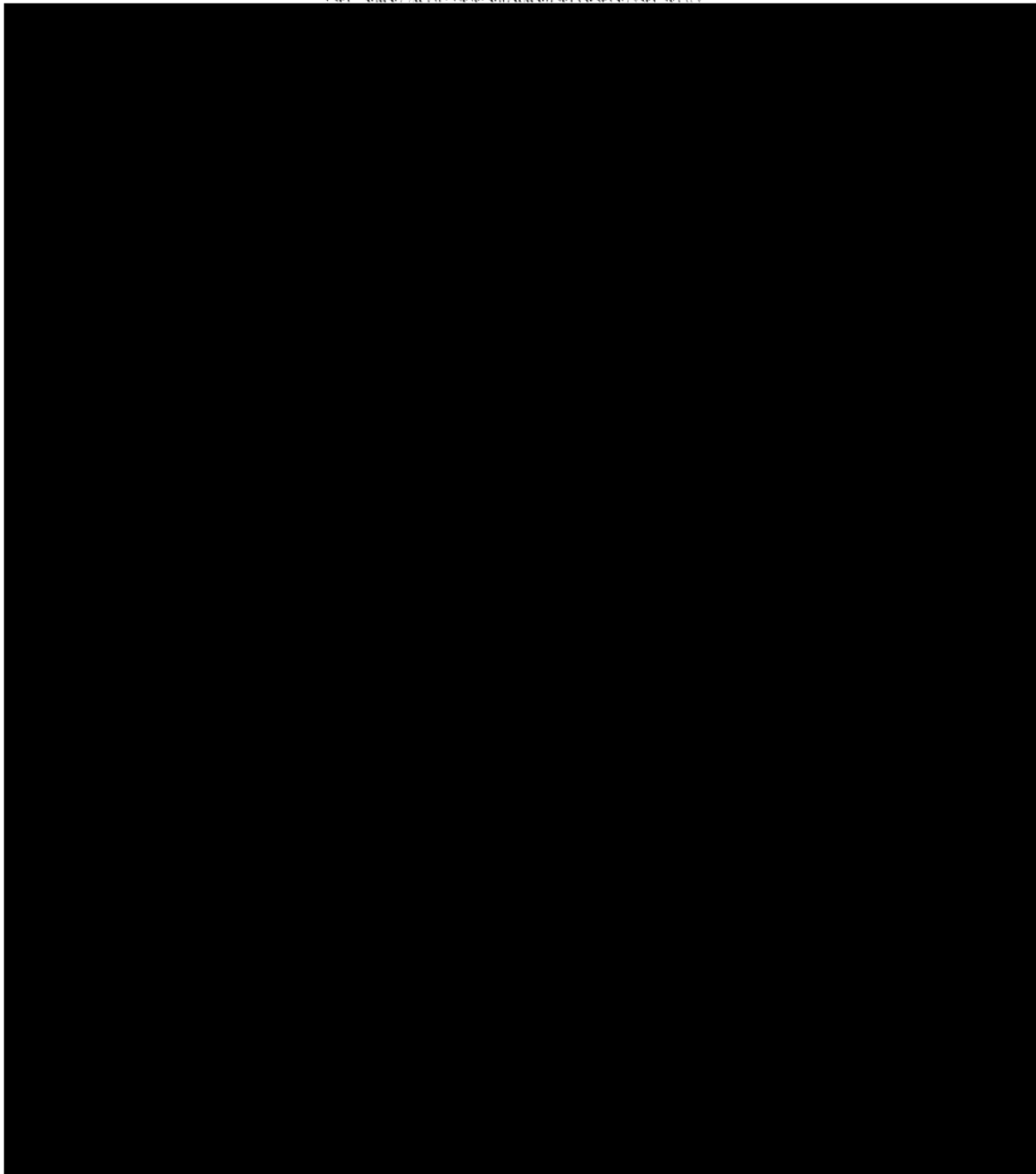
85. ~~(U)~~ The SSCI Report commented on the CIA's lack of records detailed the rendition procedures²²⁶:

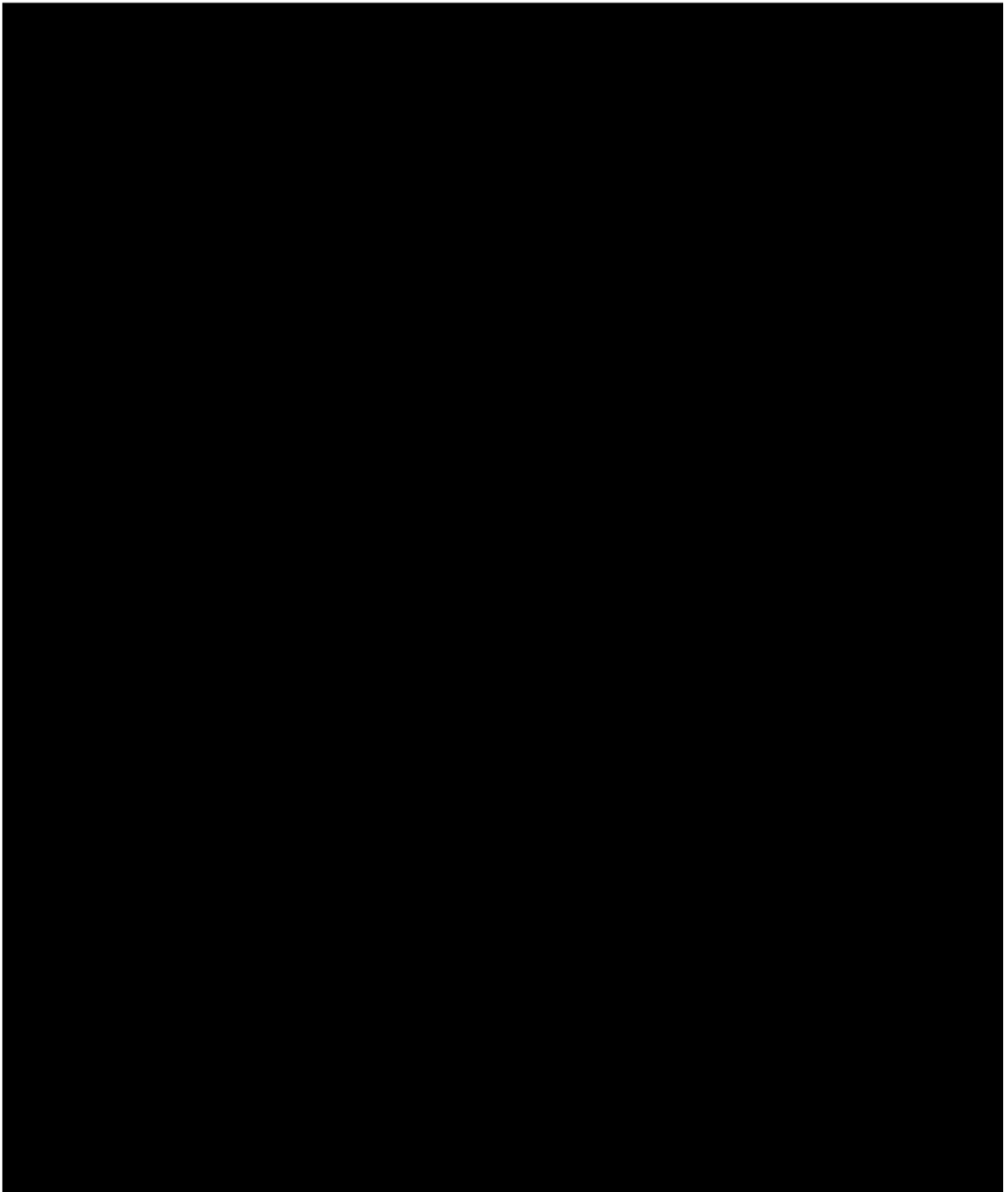
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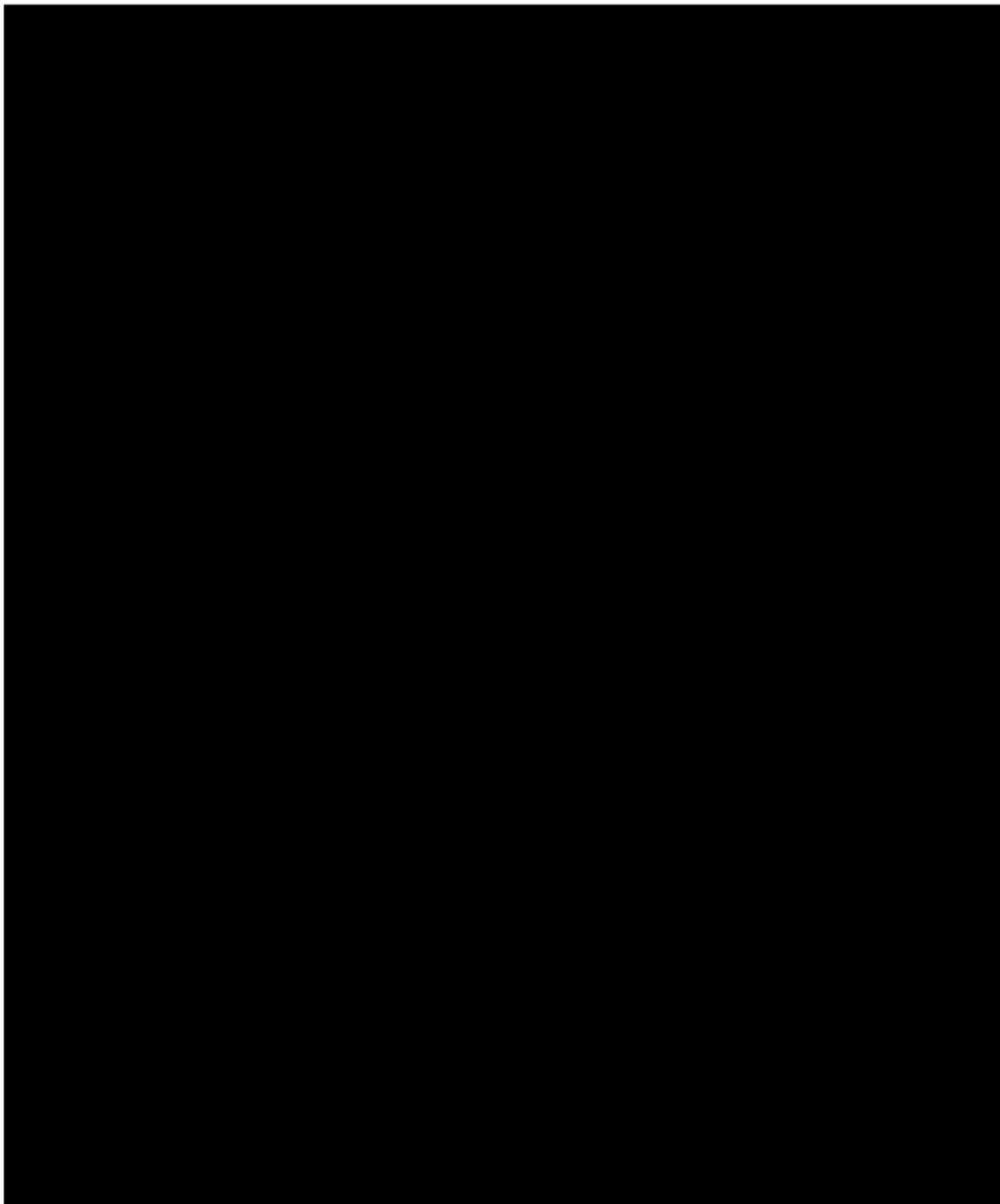
during an interrogation. There are also few CIA records detailing the rendition process for detainees and their transportation to or between detention sites. CIA records do include detainee comments on their rendition experiences and photographs of detainees in the process of being transported. Based on a review of the photographs, detainees transported by the CIA by aircraft were typically hooded with their hands and feet shackled. The detainees wore large headsets to eliminate their ability to hear, and these headsets were typically affixed to a detainee's head with duct tape that ran the circumference of the detainee's head. CIA detainees were placed on diapers and not permitted to use the lavatory on the aircraft. Depending on the aircraft, detainees were either strapped into seats during the flight, or laid down and strapped to the floor of the plane horizontally like cargo. See

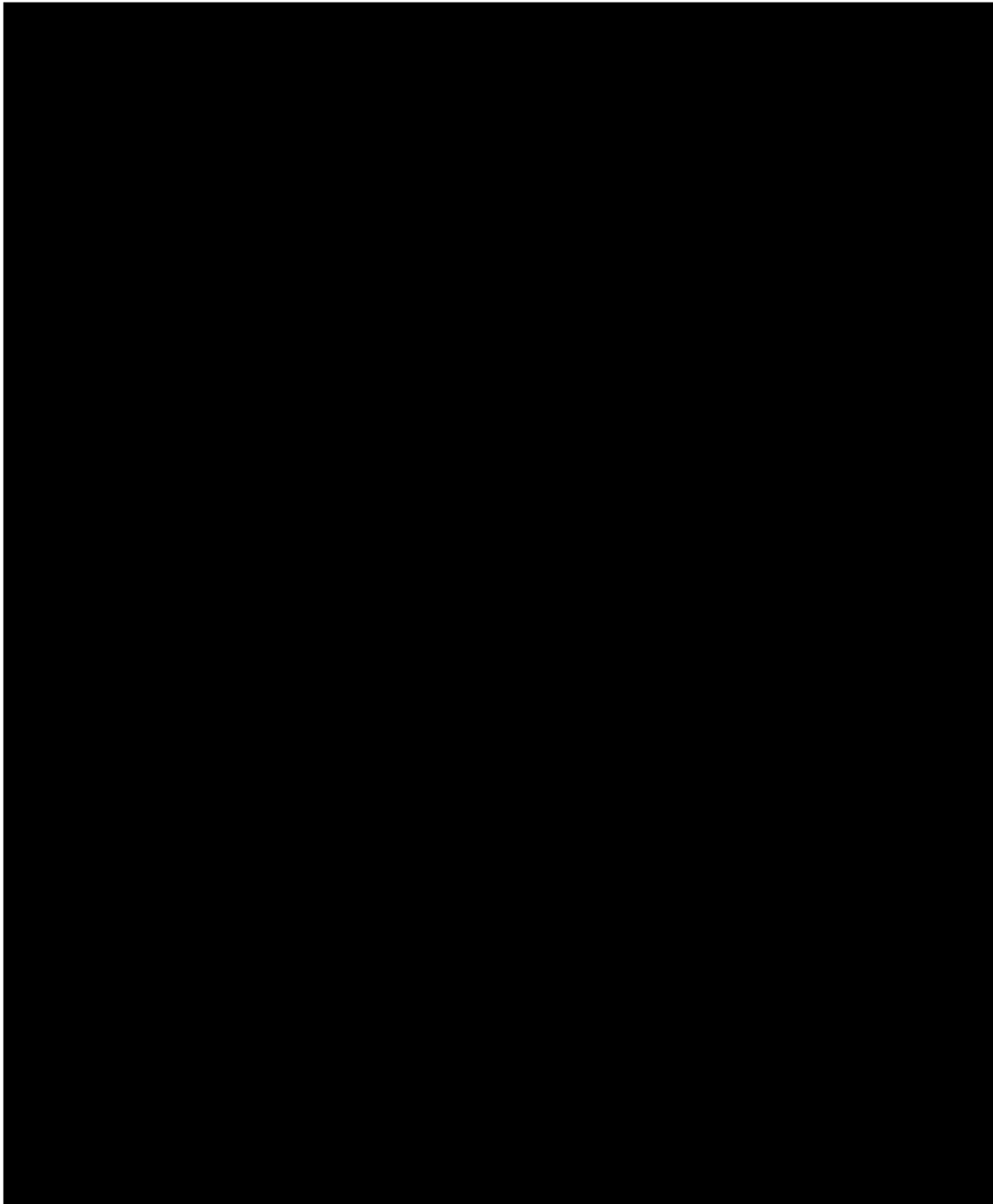


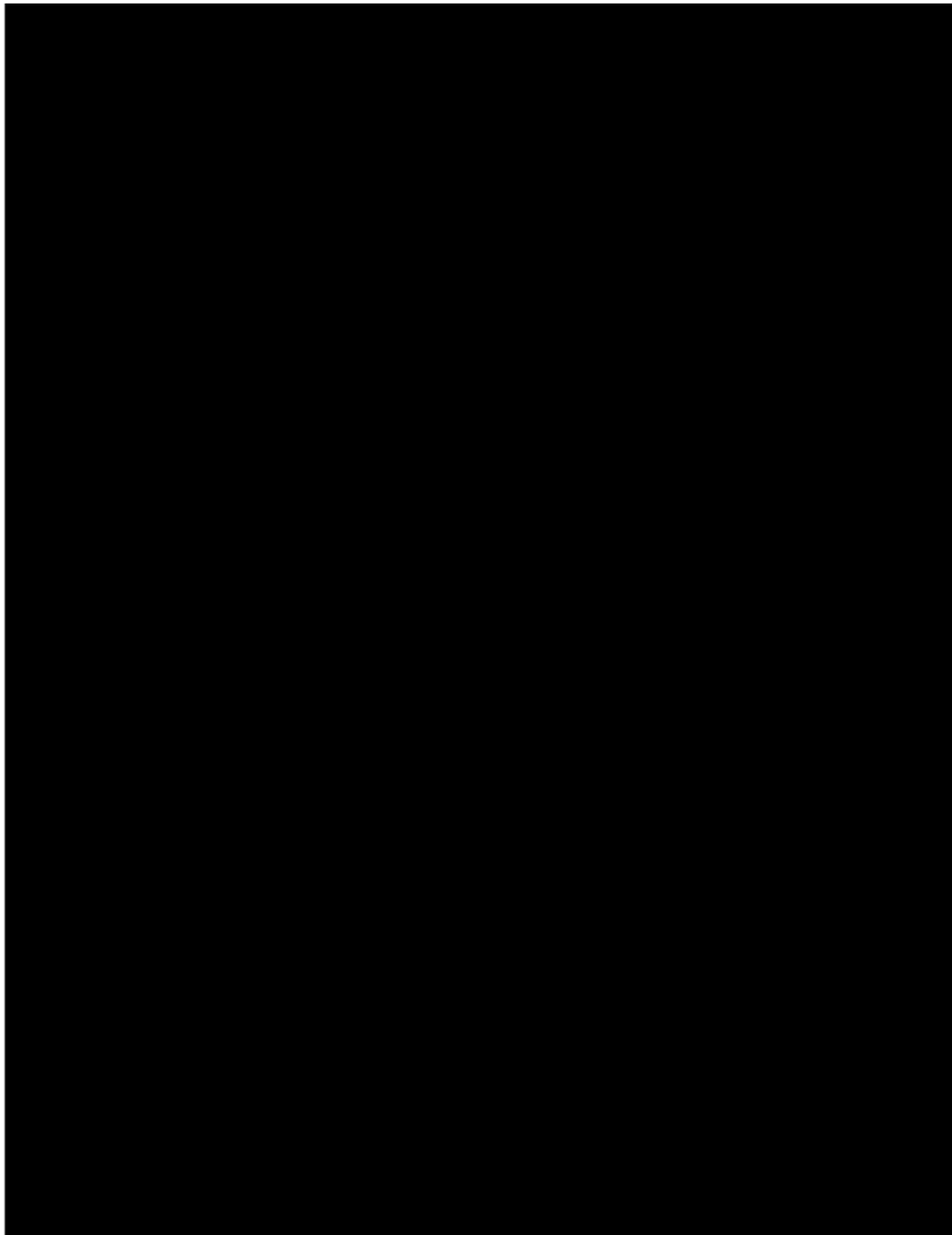
²²⁶ ~~(U)~~ SSCI Executive Summary at 64 n.318.

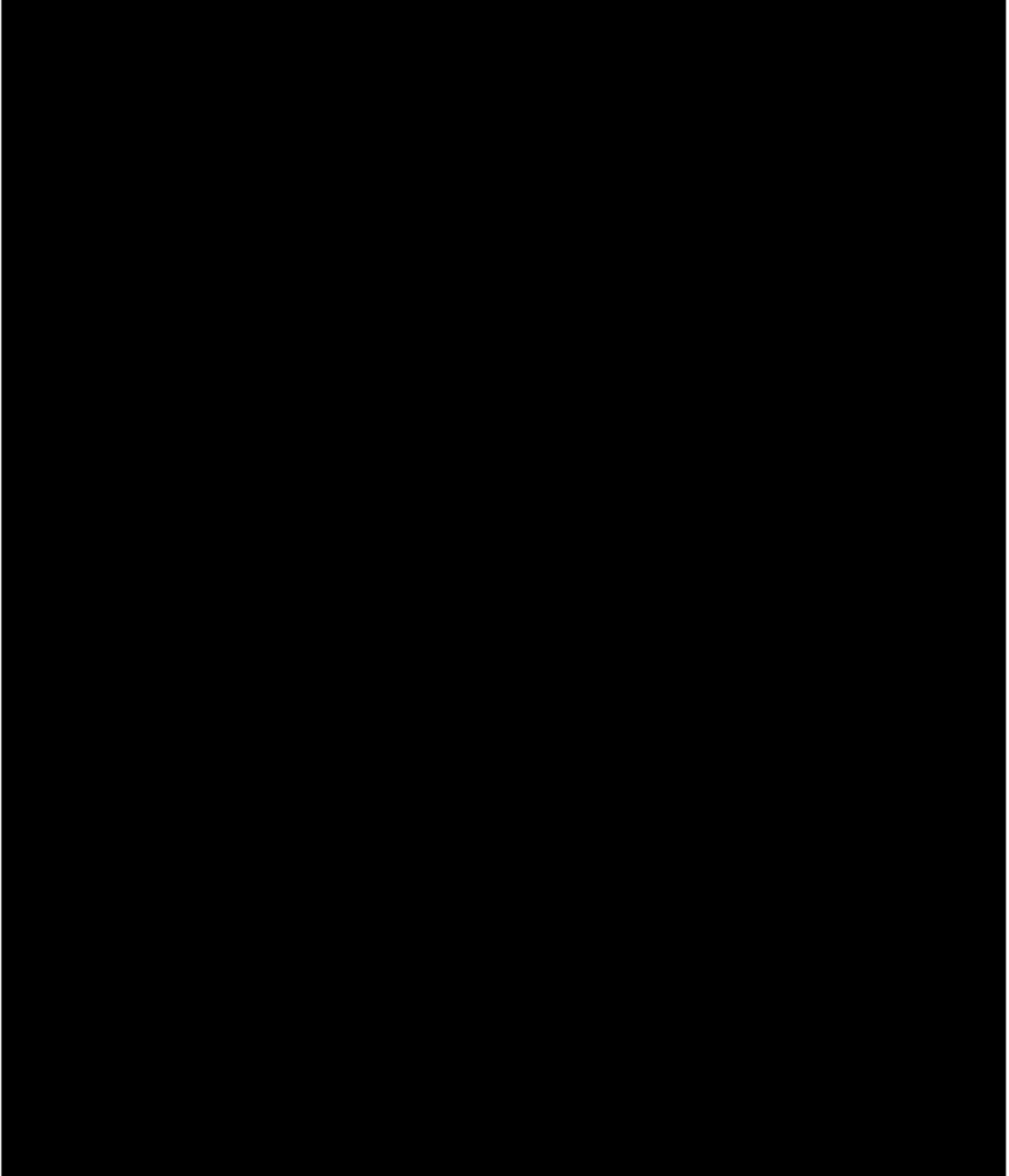








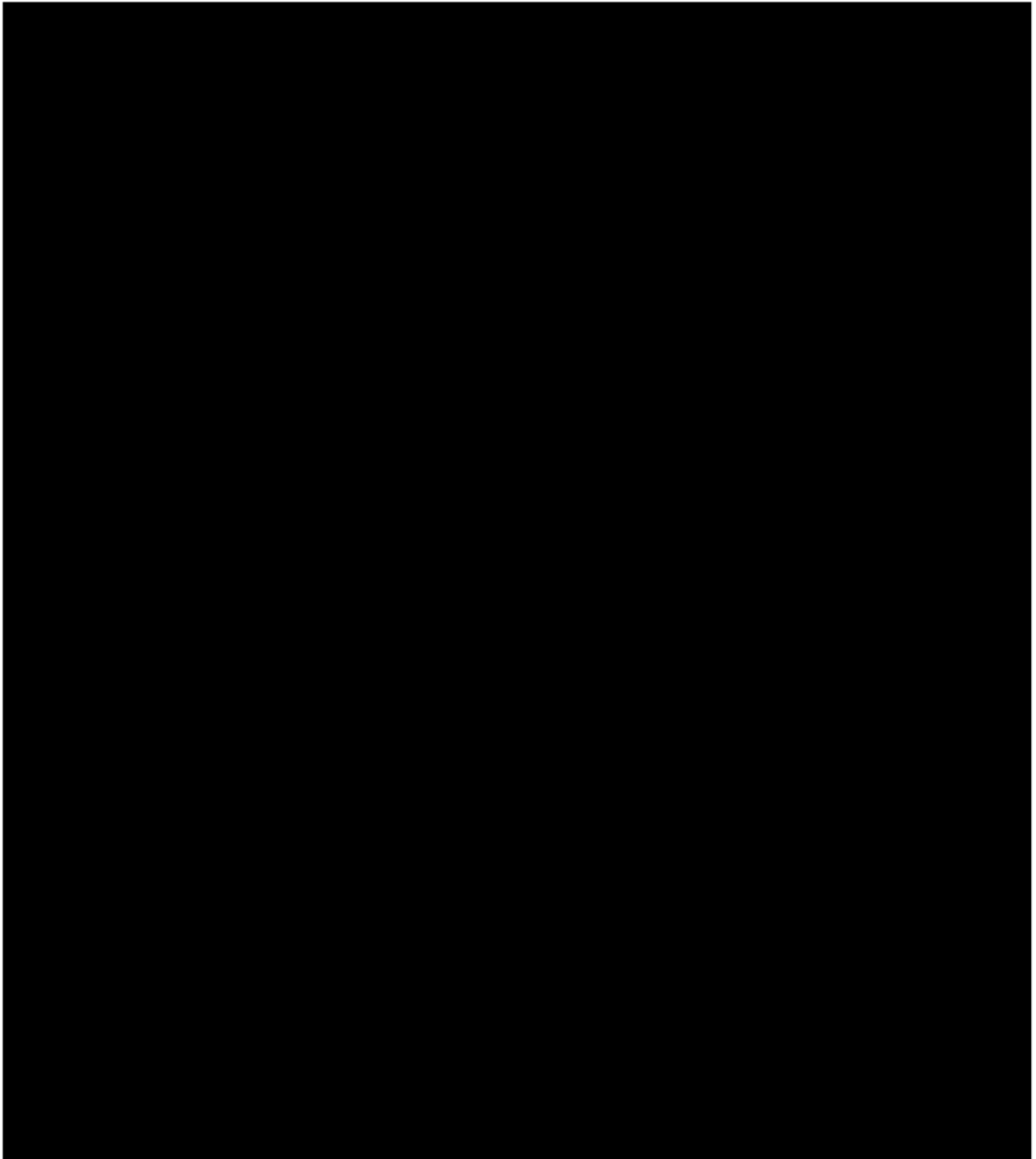


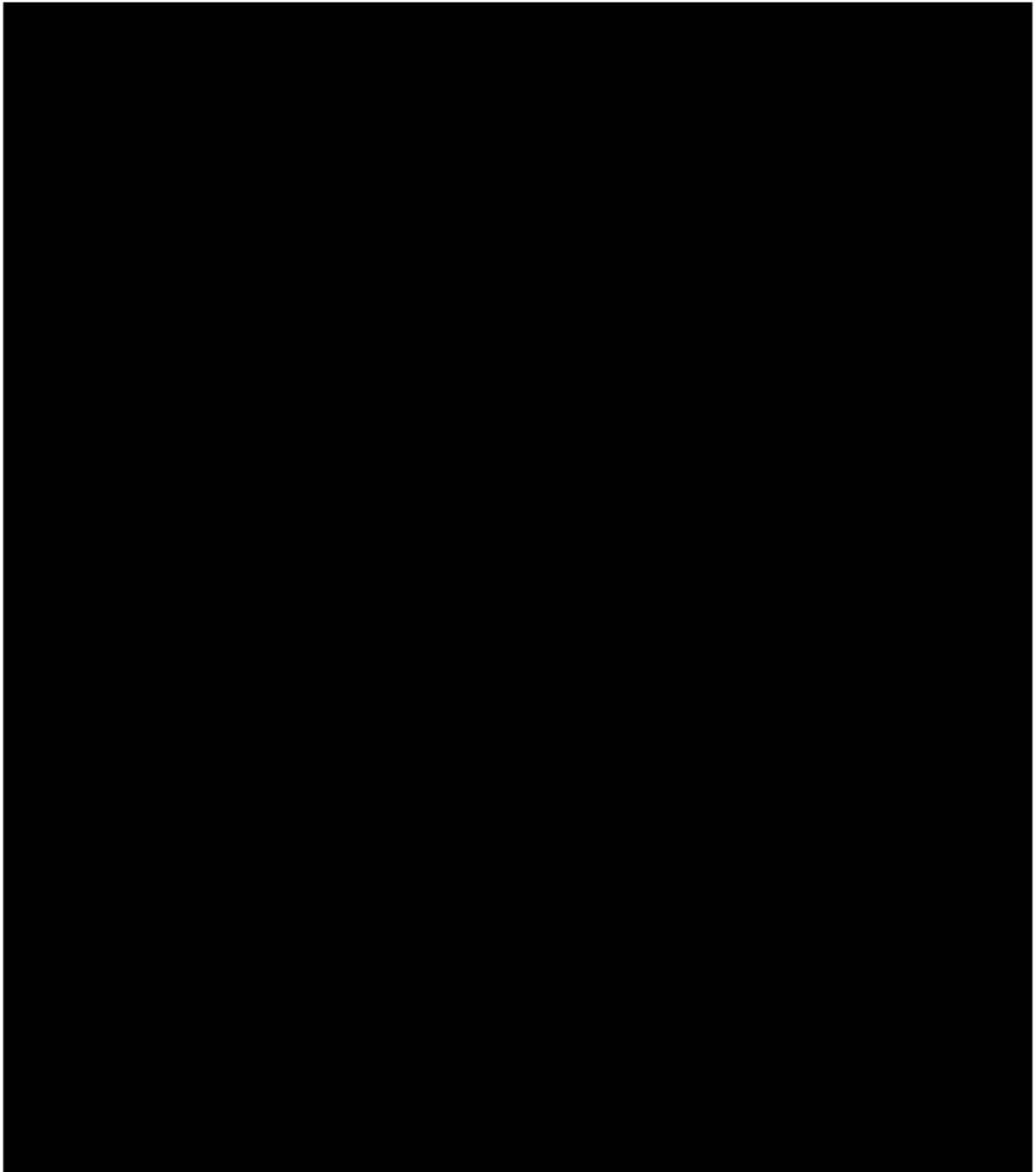


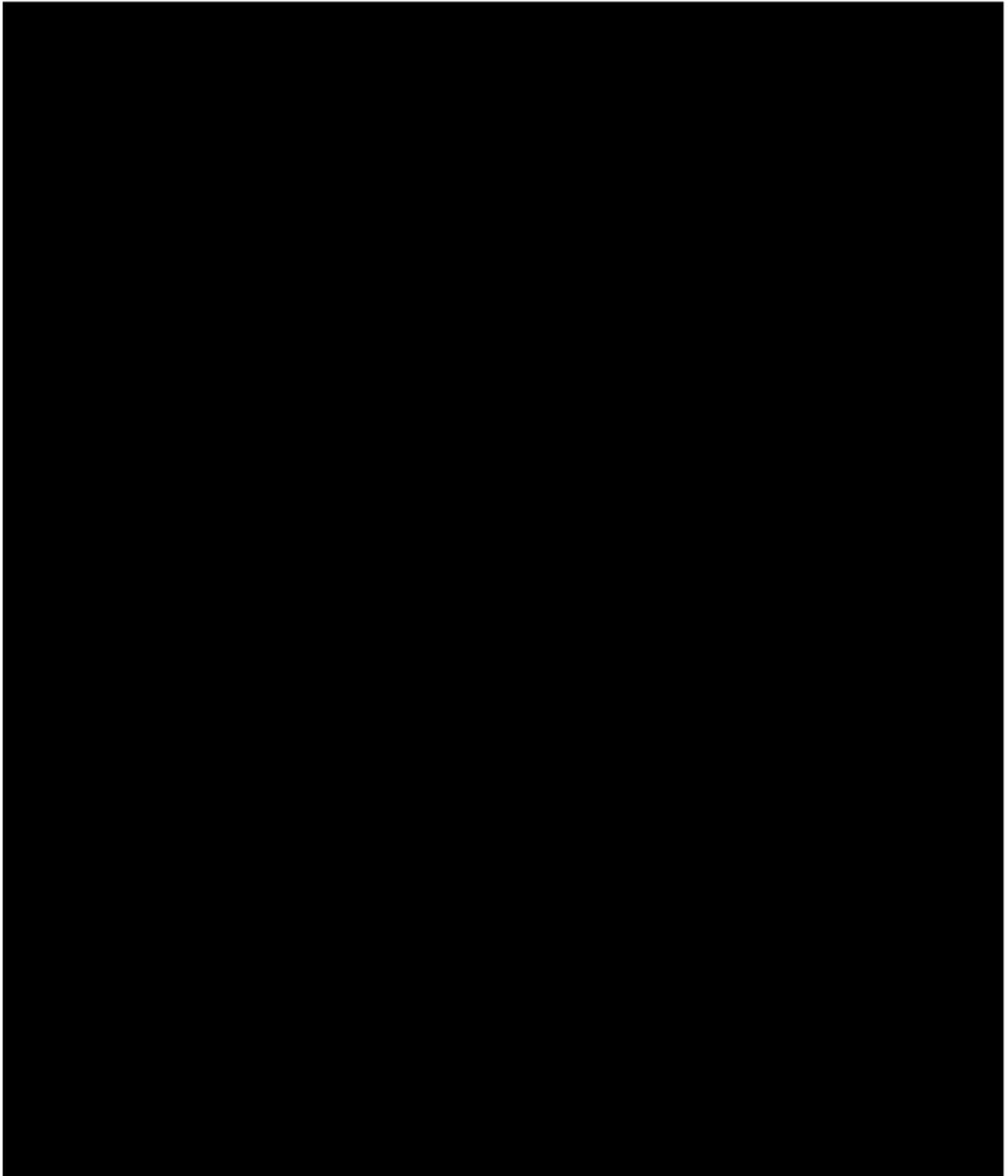
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Figure 1





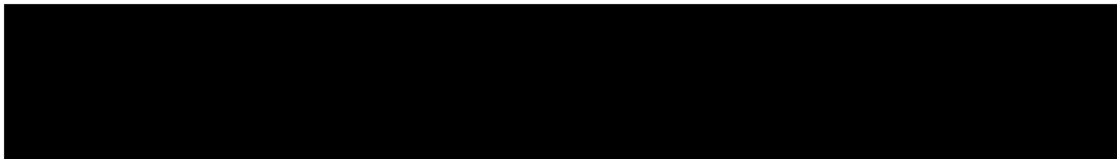




(U)

END OF MAY EARLY JUNE 2003
Head Trauma (Injury) Incident 1
At the CIA Black site. In the very first days
After US Gov Agents shaved my head. Then they smashed
my head against the wall repeatedly.

(U) Mr. al Baluchi explained: "It continued until I lost count at each session. As my head was being hit each time, I would see sparks of light in my eyes. As the intensity of these sparks were [sic] increasing as a result of repeated hitting . . . I felt a strong jolt of electricity in my head then I couldn't see anything, everything went dark and I passed out."²⁵⁹



²⁵⁹ (U) *Id.*

~~(U)~~ Mr. al Baluchi then woke up “in a different place suspended to the ceiling in a dark cold cell. I don’t know for how many hours I was unconscious.”²⁶⁰

~~(U)~~ Mr. al Baluchi described being

~~(U)~~ [n]aked while my legs were swollen as a result of extended standing. My legs couldn’t support my body. The handcuffs were cutting my wrists which were pulled over my head. A very sharp throbbing pain in my head. There was an extremely loud and disturbing music with a mixture of grating, screeching, shrill sounds cutting into my ears pounding my mind.²⁶¹

~~(U)~~ Mr. al Baluchi further states that “every now and then an agent would come and hit the steel door with a metal bar in his/her hands, making verbal threats pointing to the metal bar in addition to flashing a sharp light into my face . . . [following the sleep deprivation] I lost my ability to sleep ever since.”²⁶²

98. ~~(U)~~ Regarding walling, Mr. al Baluchi recalled that²⁶³,

~~(U)~~

²⁶⁰ ~~(U)~~ *Id.*

²⁶¹ ~~(U)~~ *Id.*

²⁶² ~~(U)~~ *Id.*

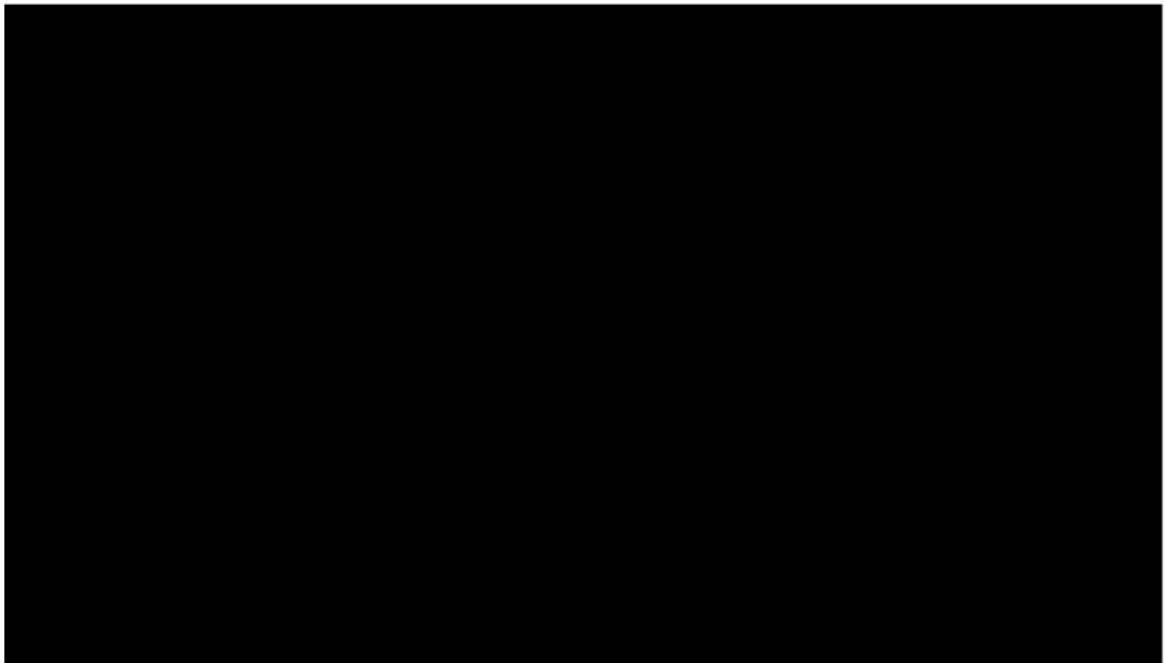
²⁶³ ~~(U)~~ *Id.* at Att. F.

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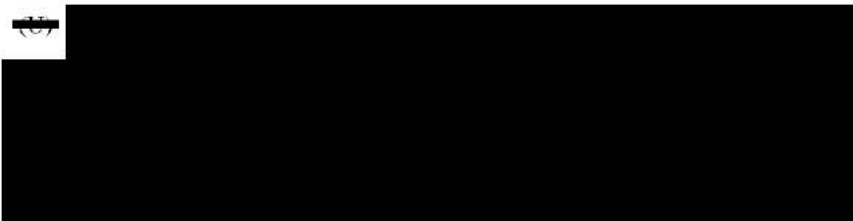
For example when they say "walling" it's in reality
Head smacking where they're something around my neck
to gain full control of my head in order to smash it
and hit it against the wall repeatedly for dozen
and dozen of times.



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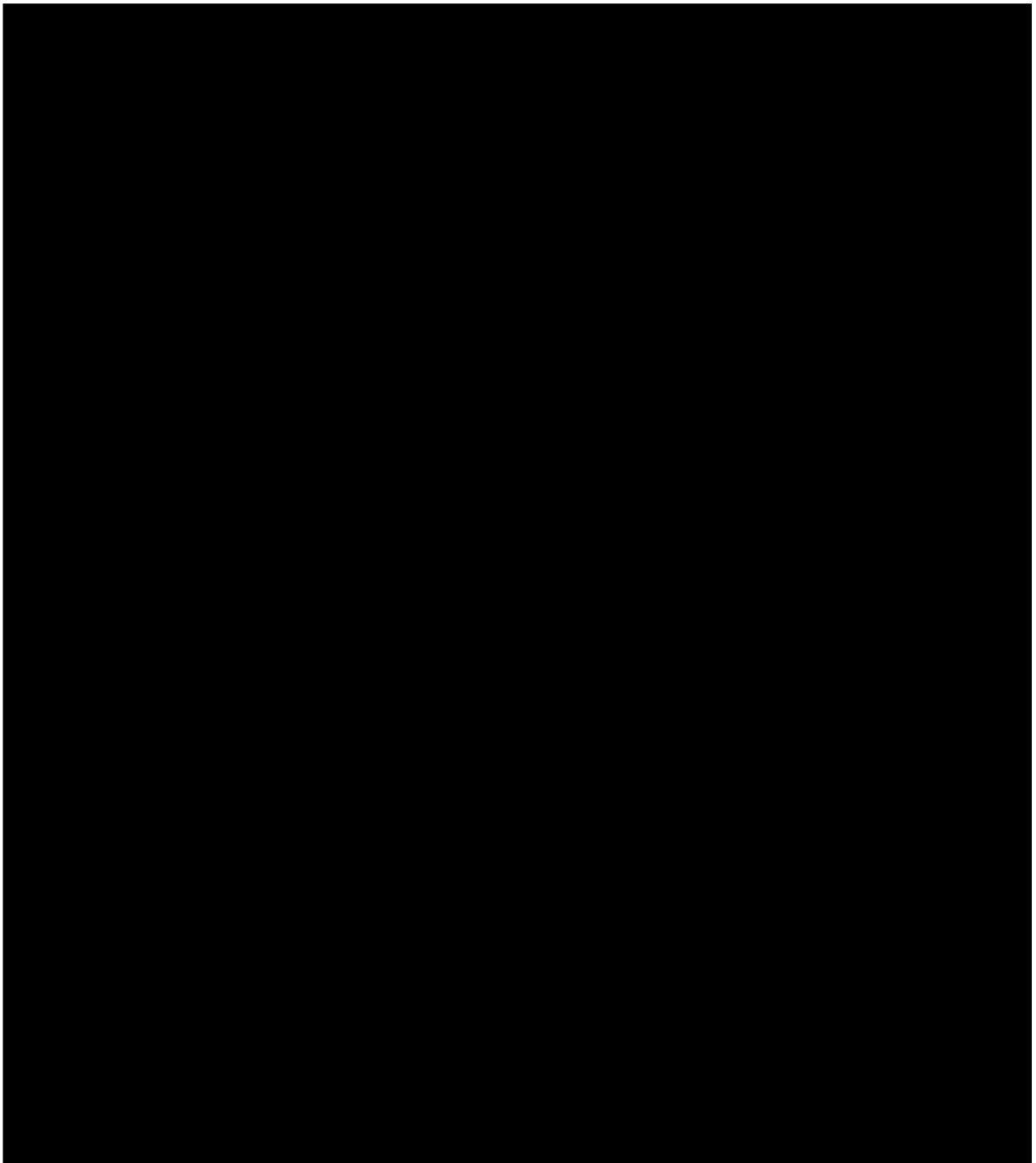


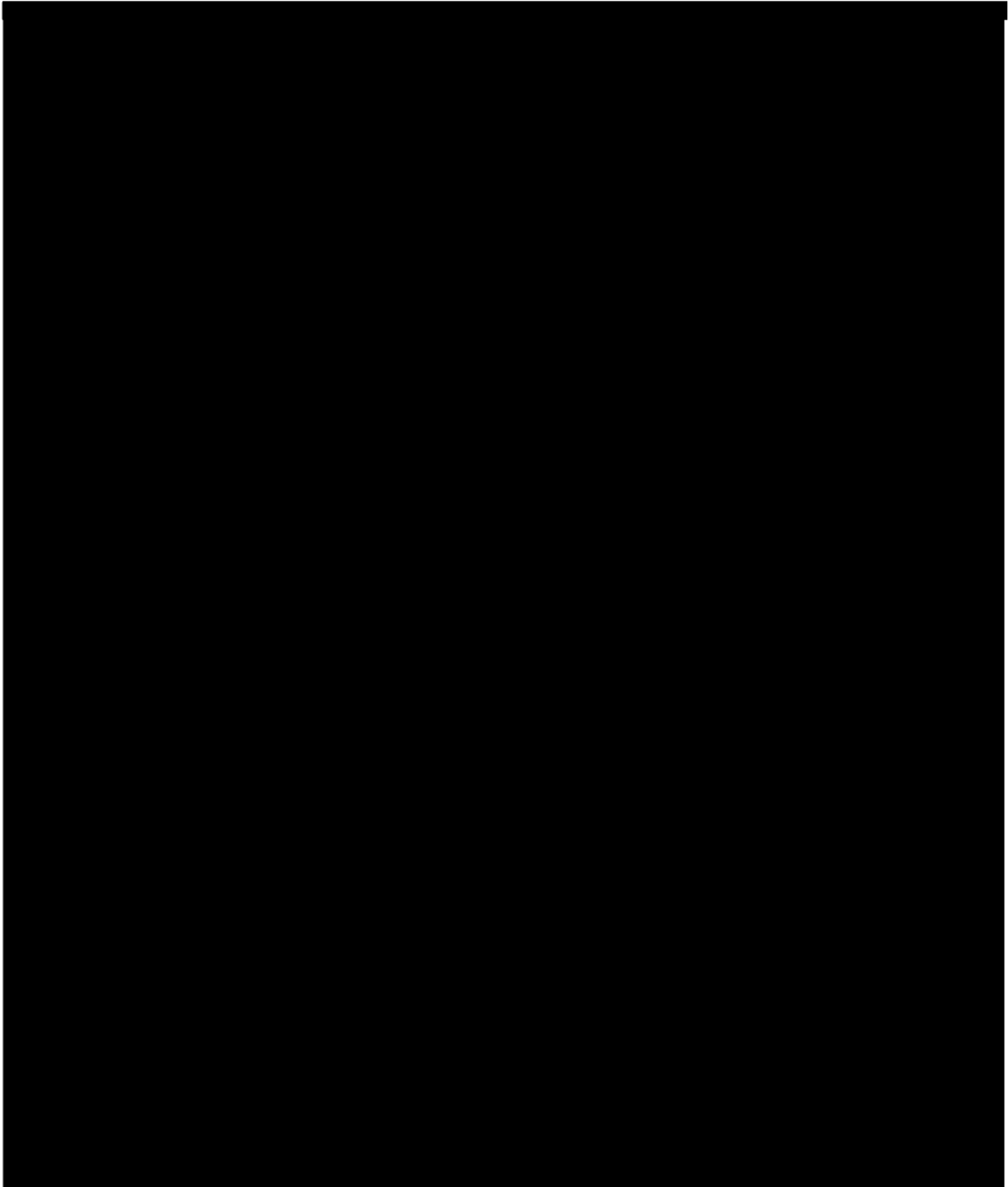
(b) Mr. al Baluchi's walling was so severe that he actually sustained a [REDACTED] injury – unsurprising given that his head was smashed against the wall so violently by the trainee interrogators that they had to keep taking turns as they became fatigued.²⁶⁸ Dr. Stephen Xenakis, who examined Mr. al Baluchi in 2015, stated that,



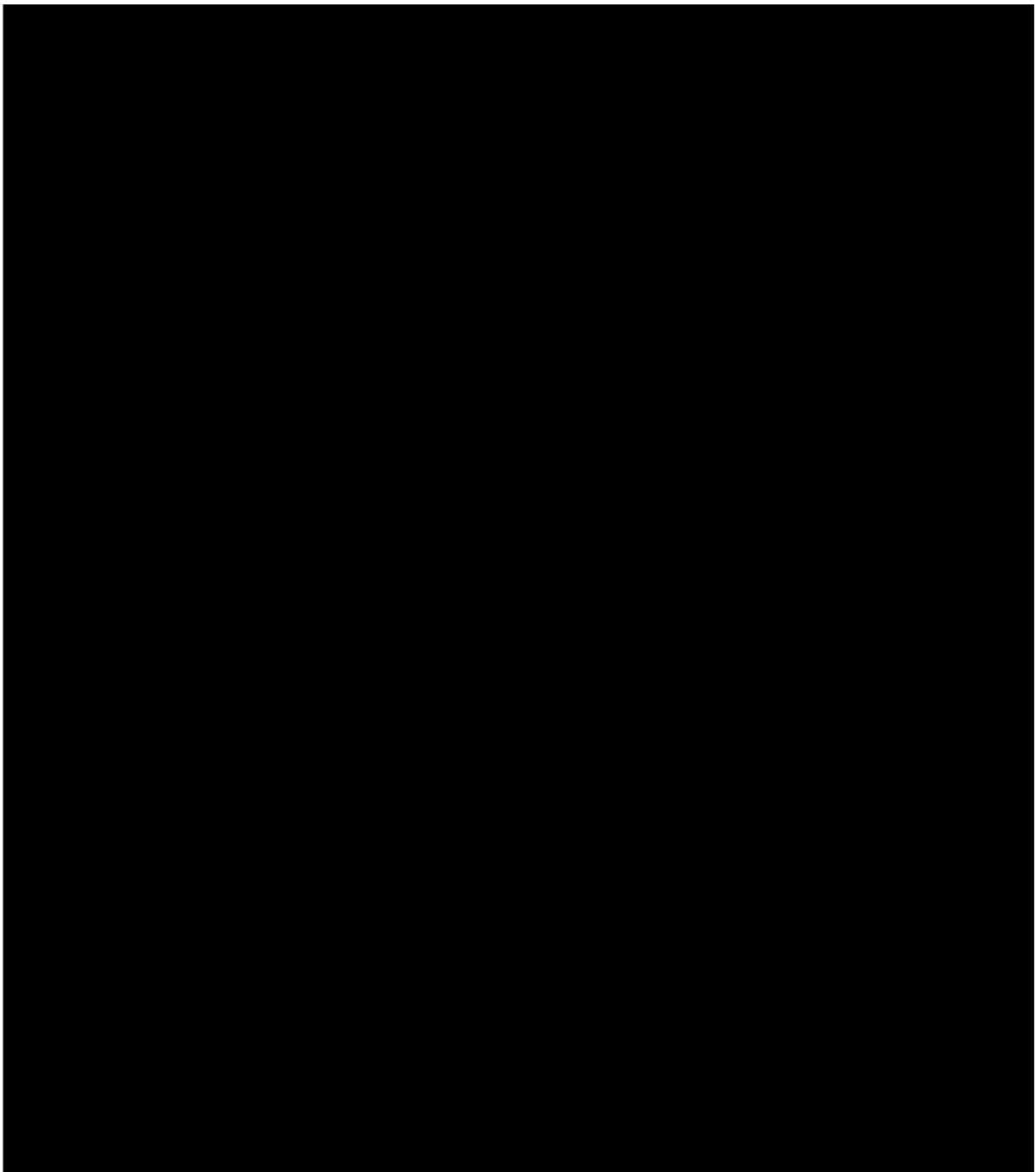
²⁶⁹ (b) *Id.*

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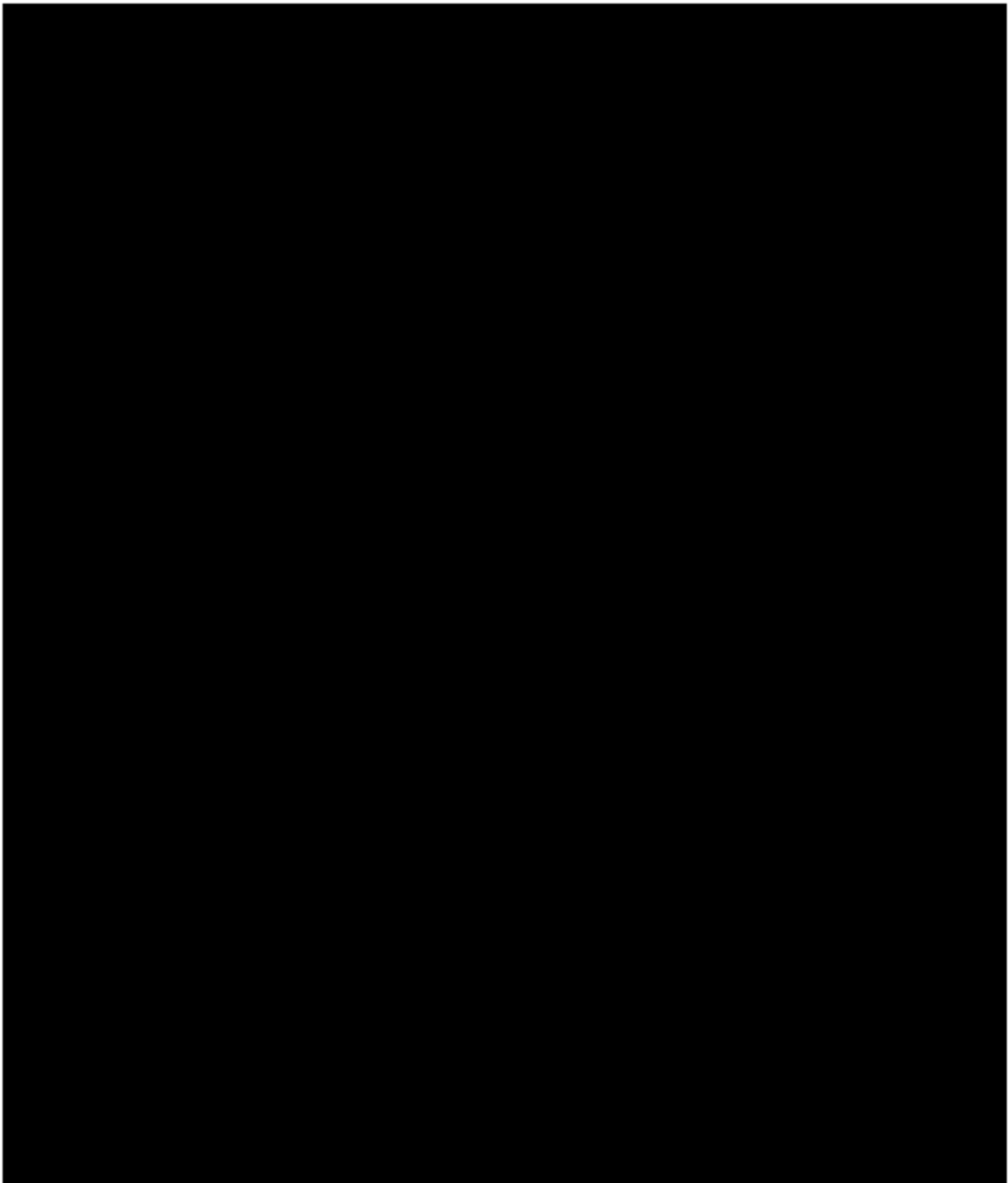




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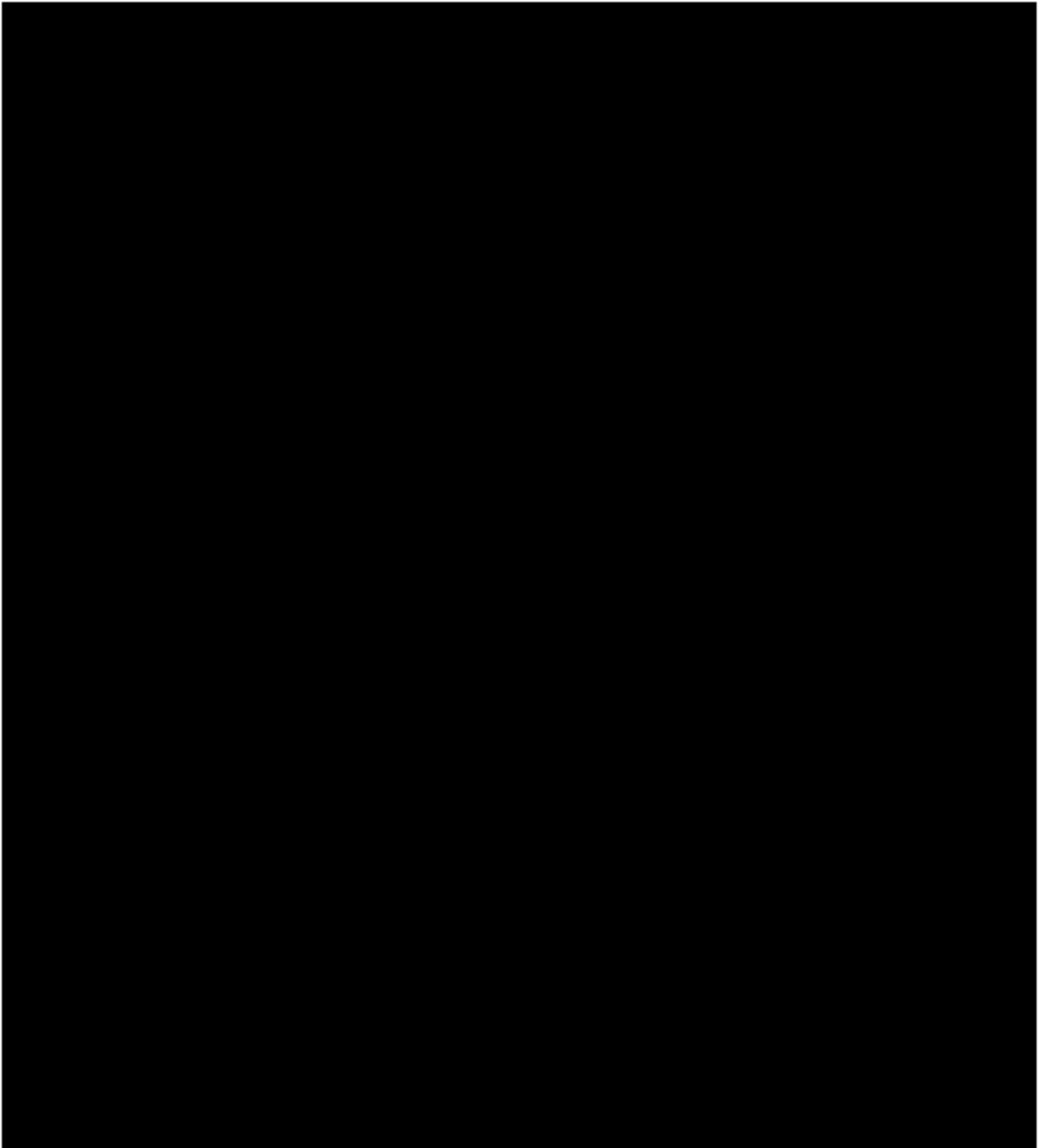


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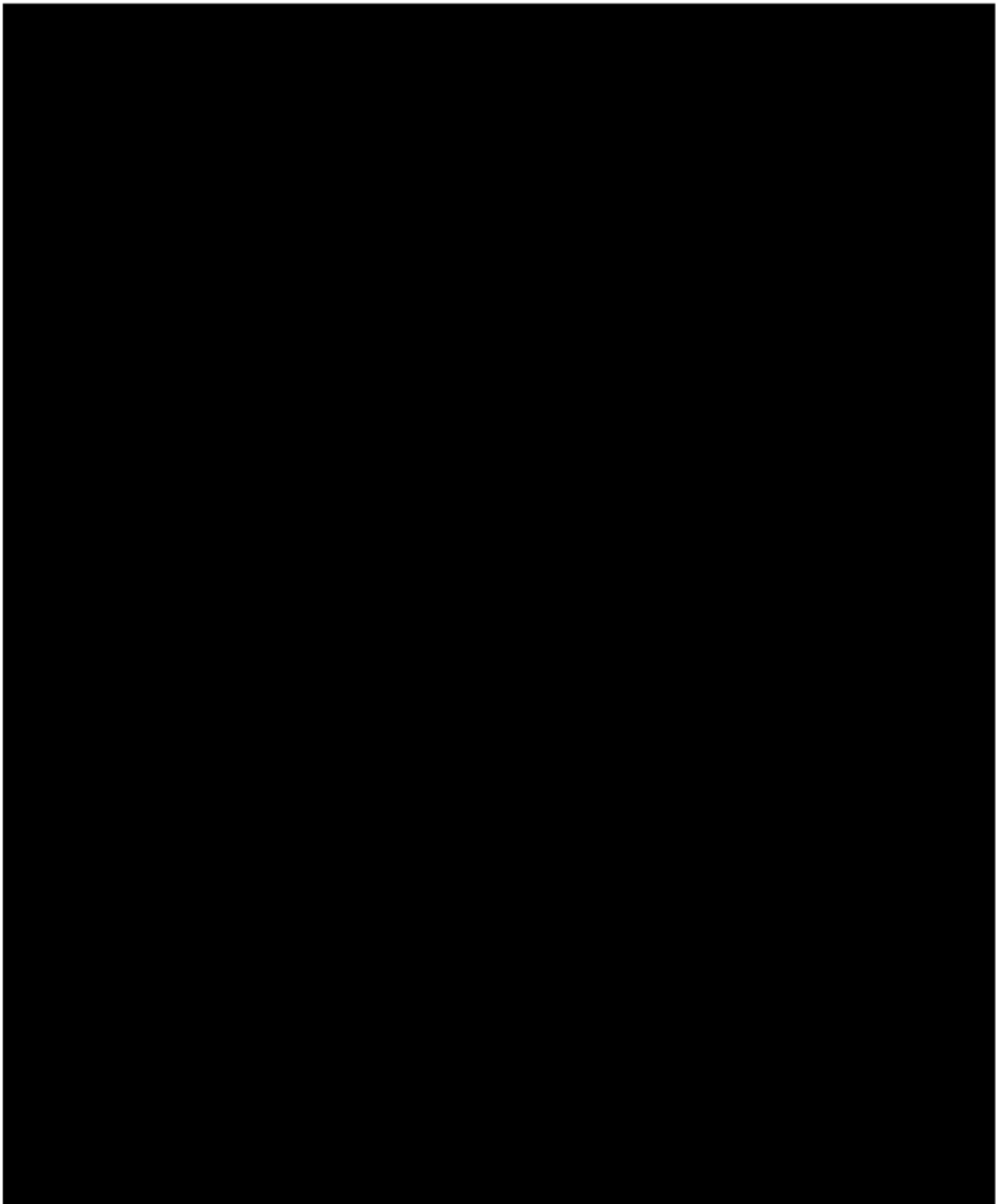


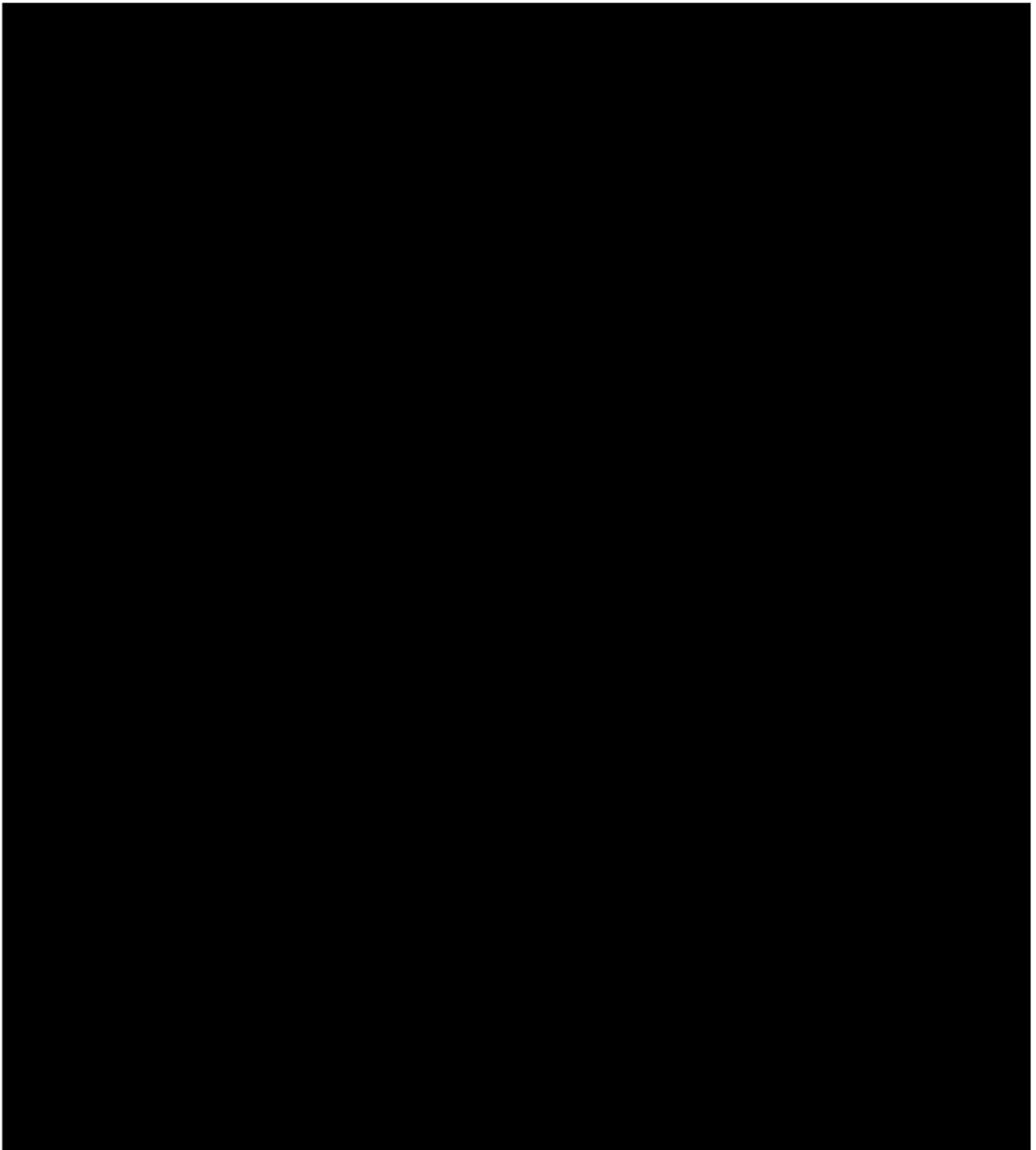
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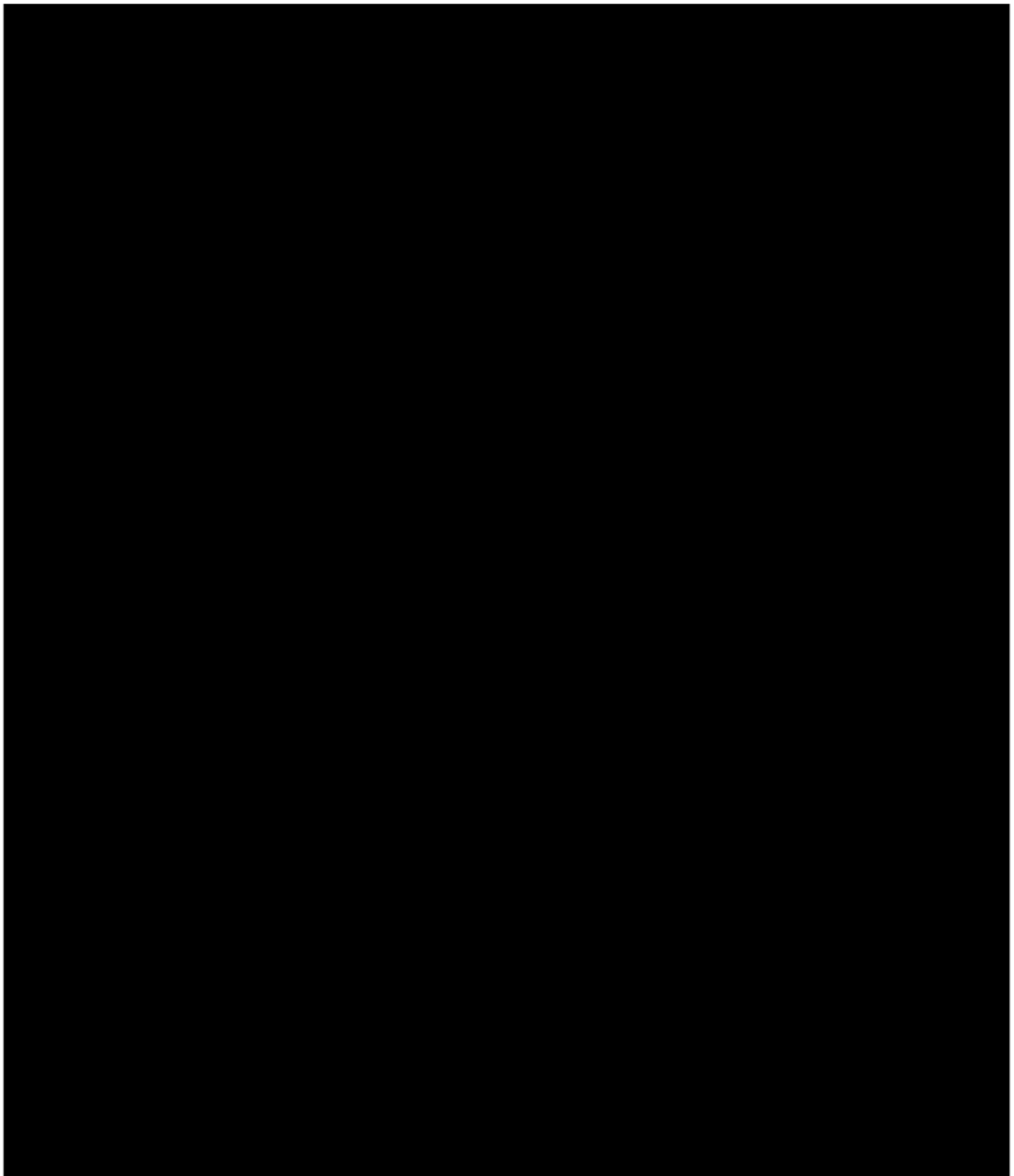
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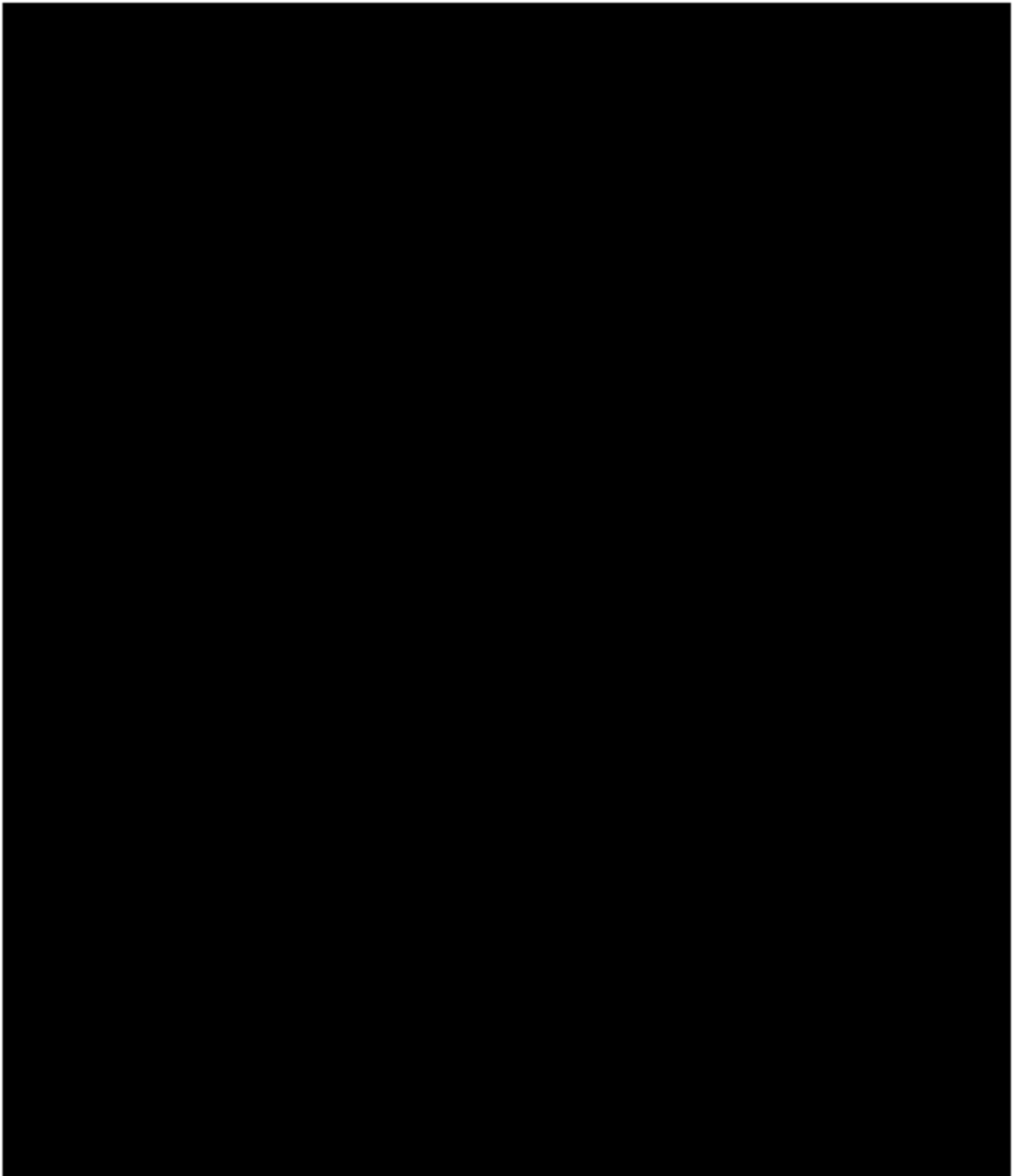


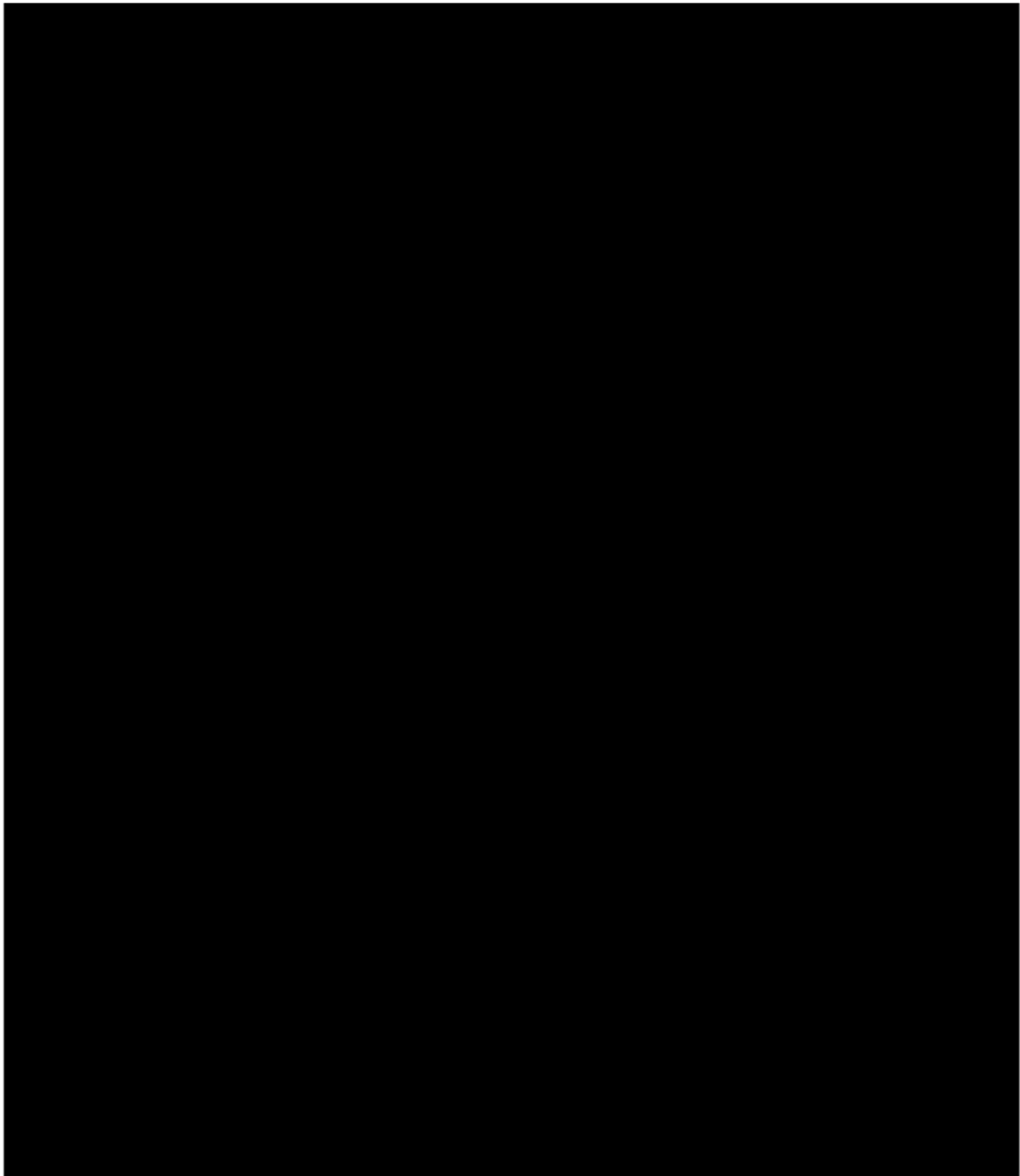
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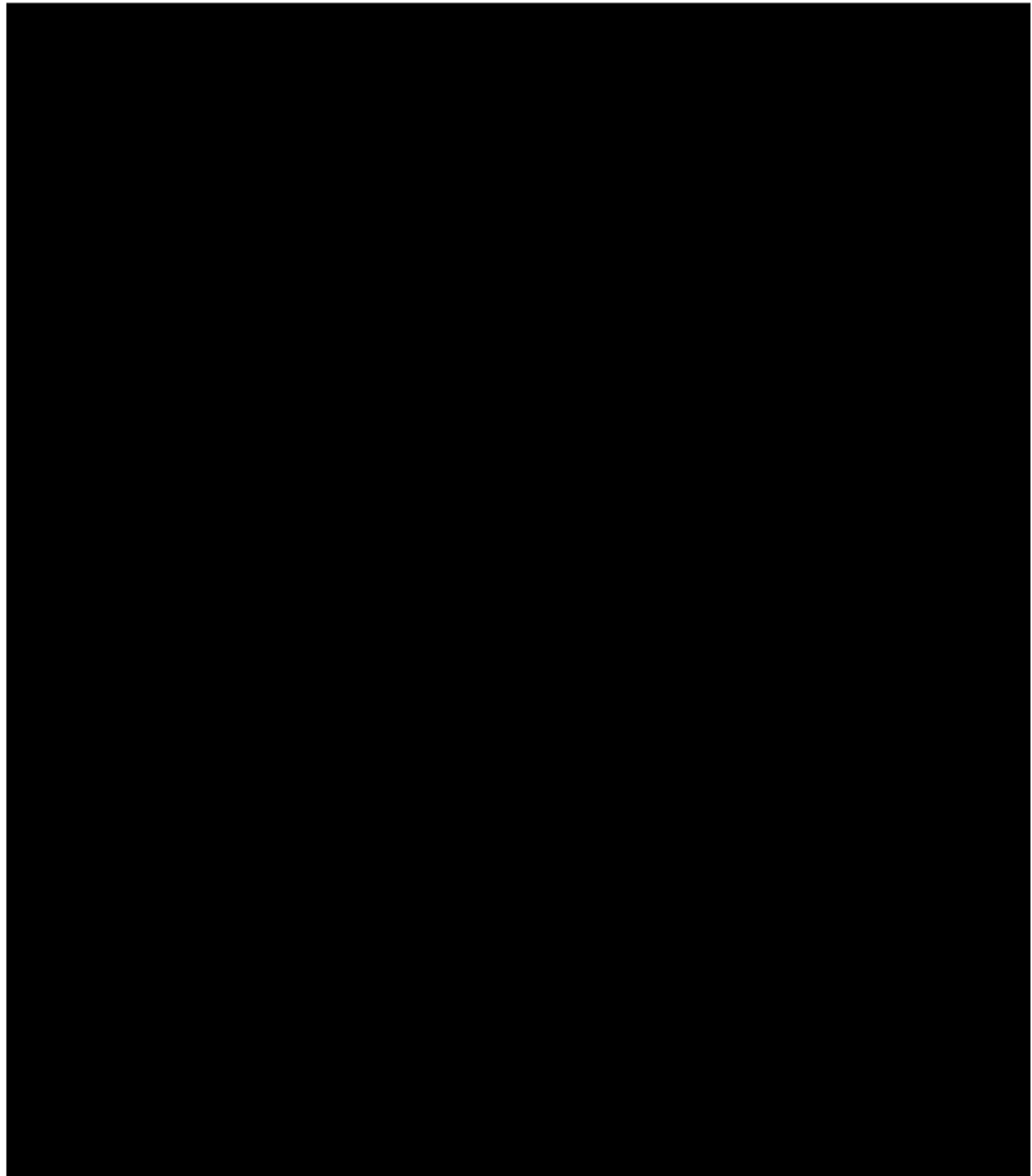






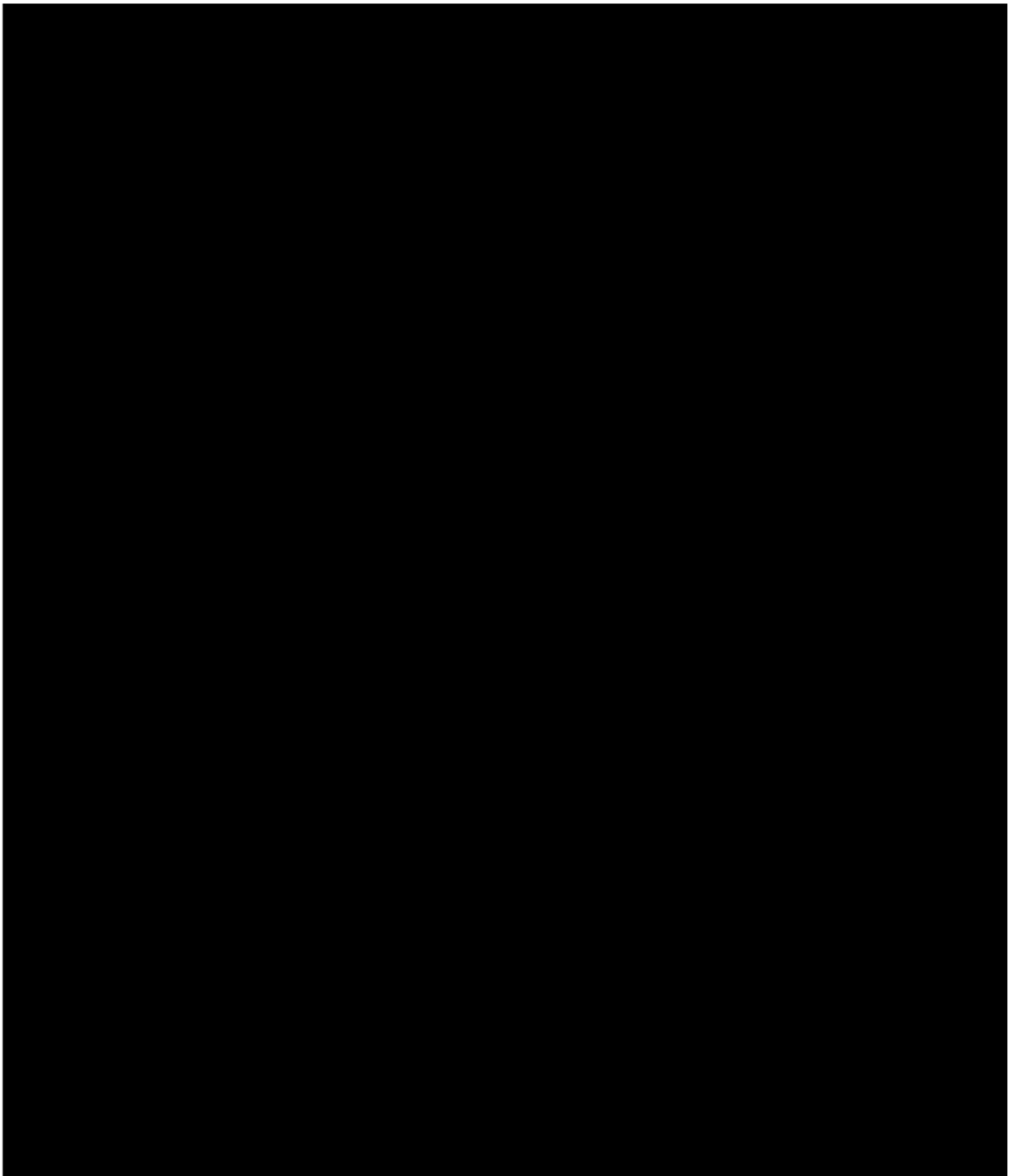
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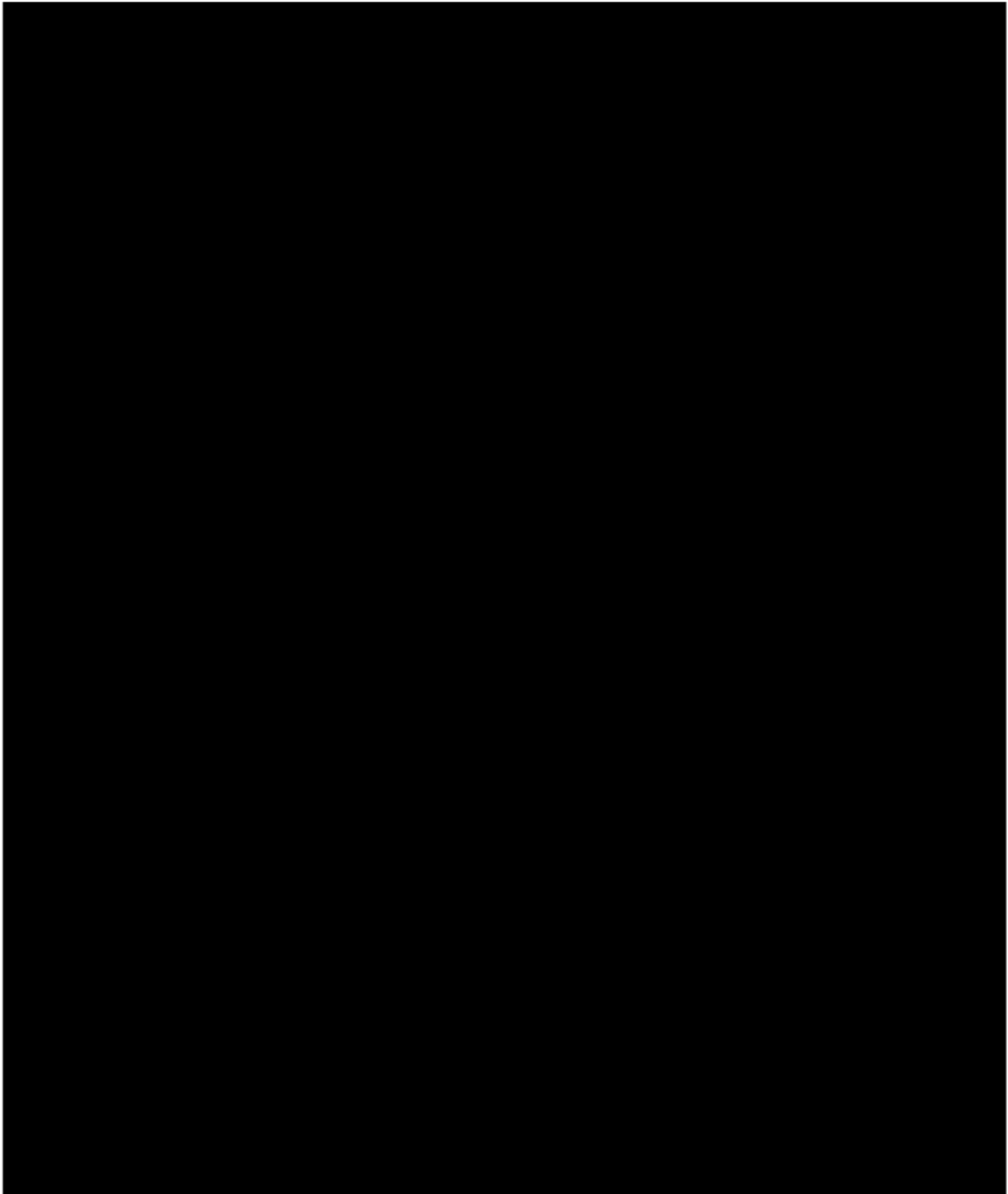


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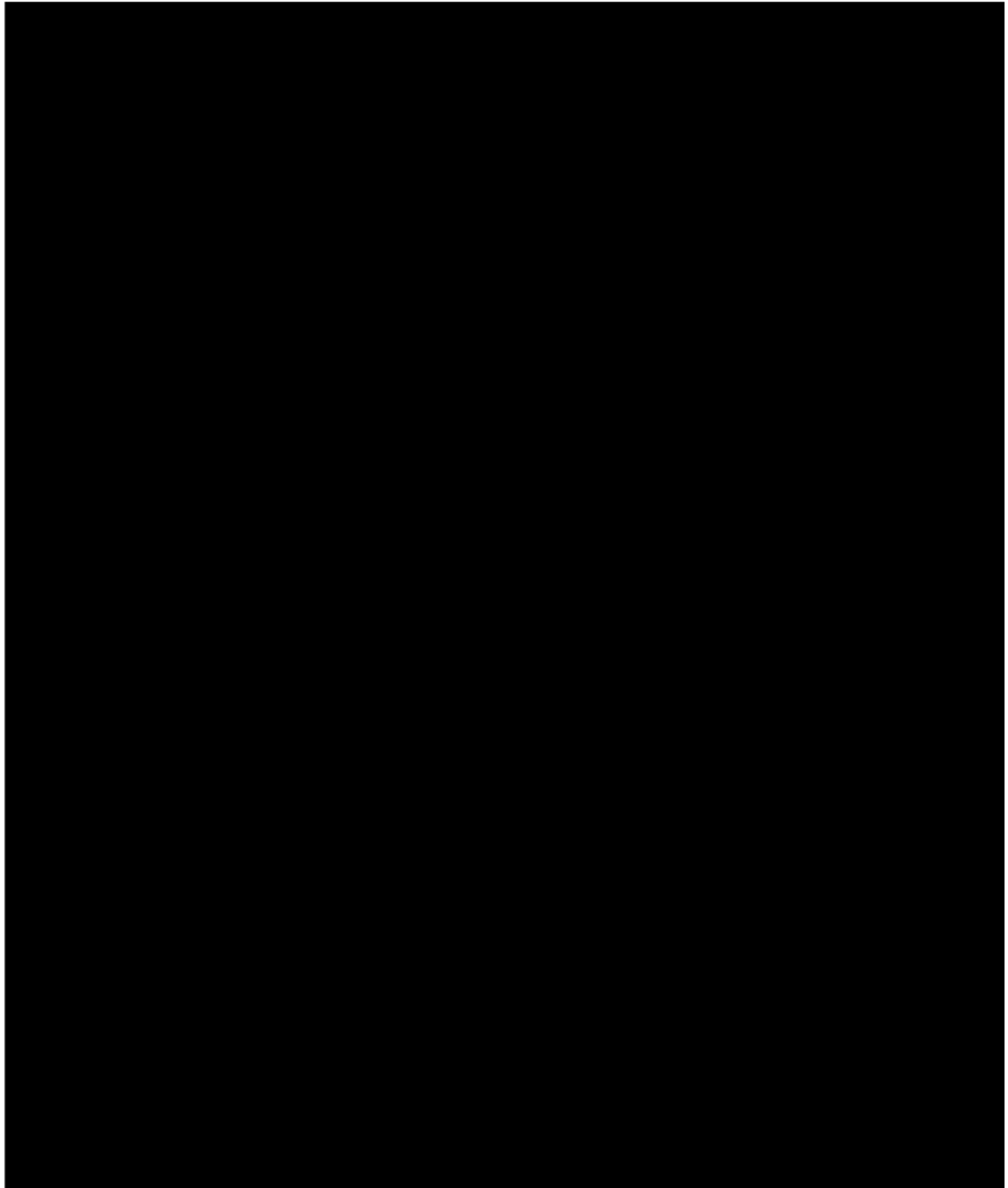
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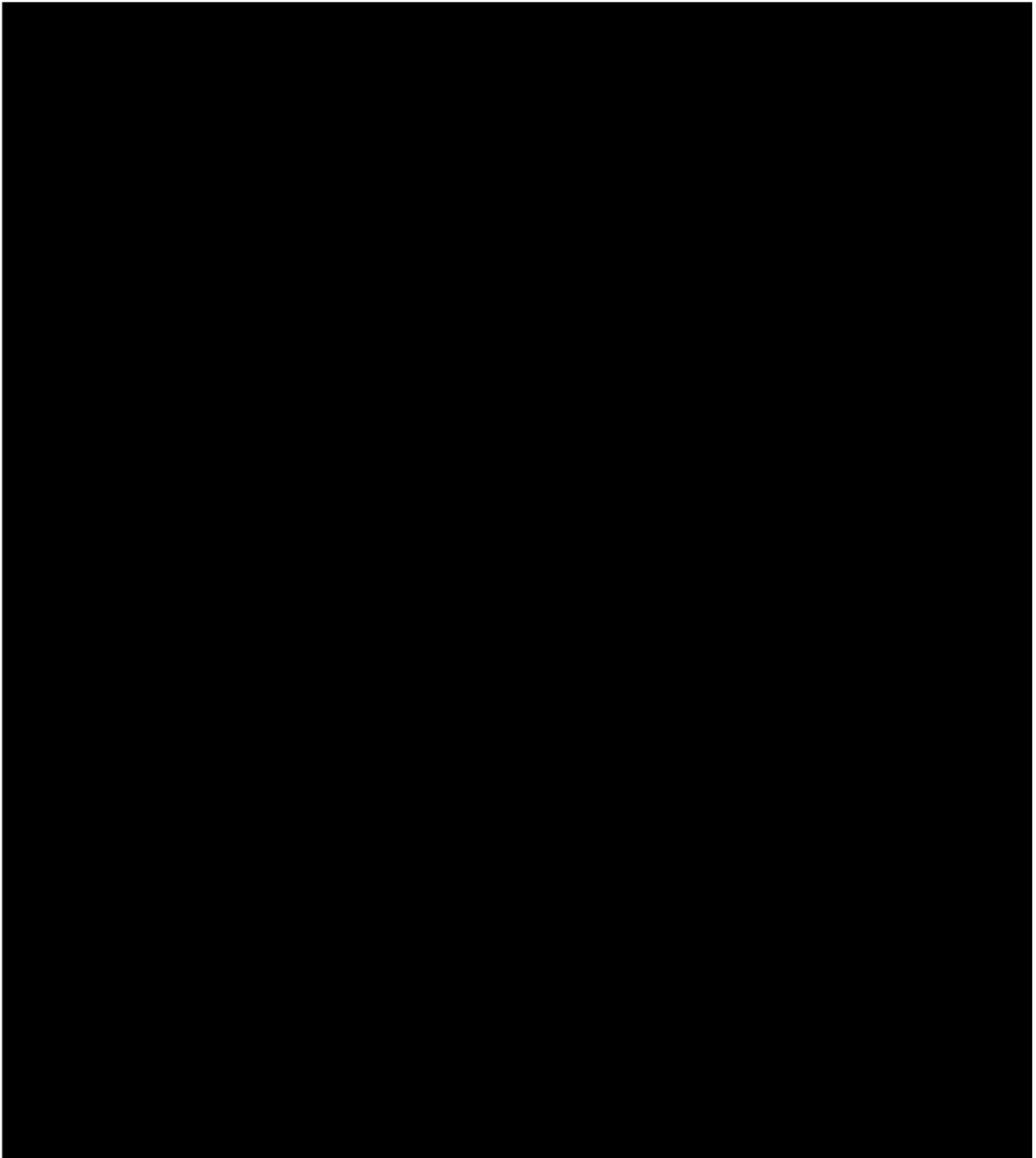


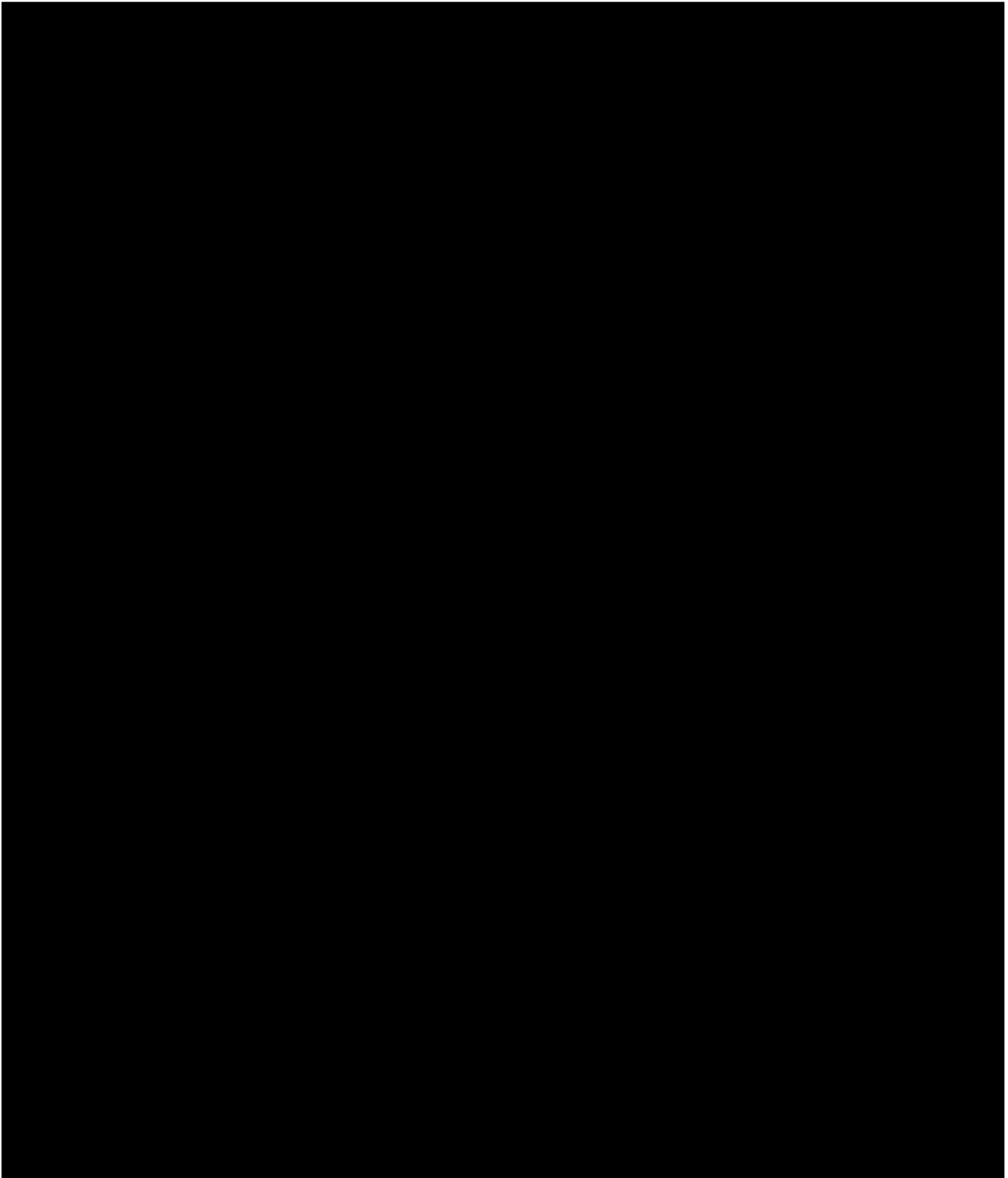
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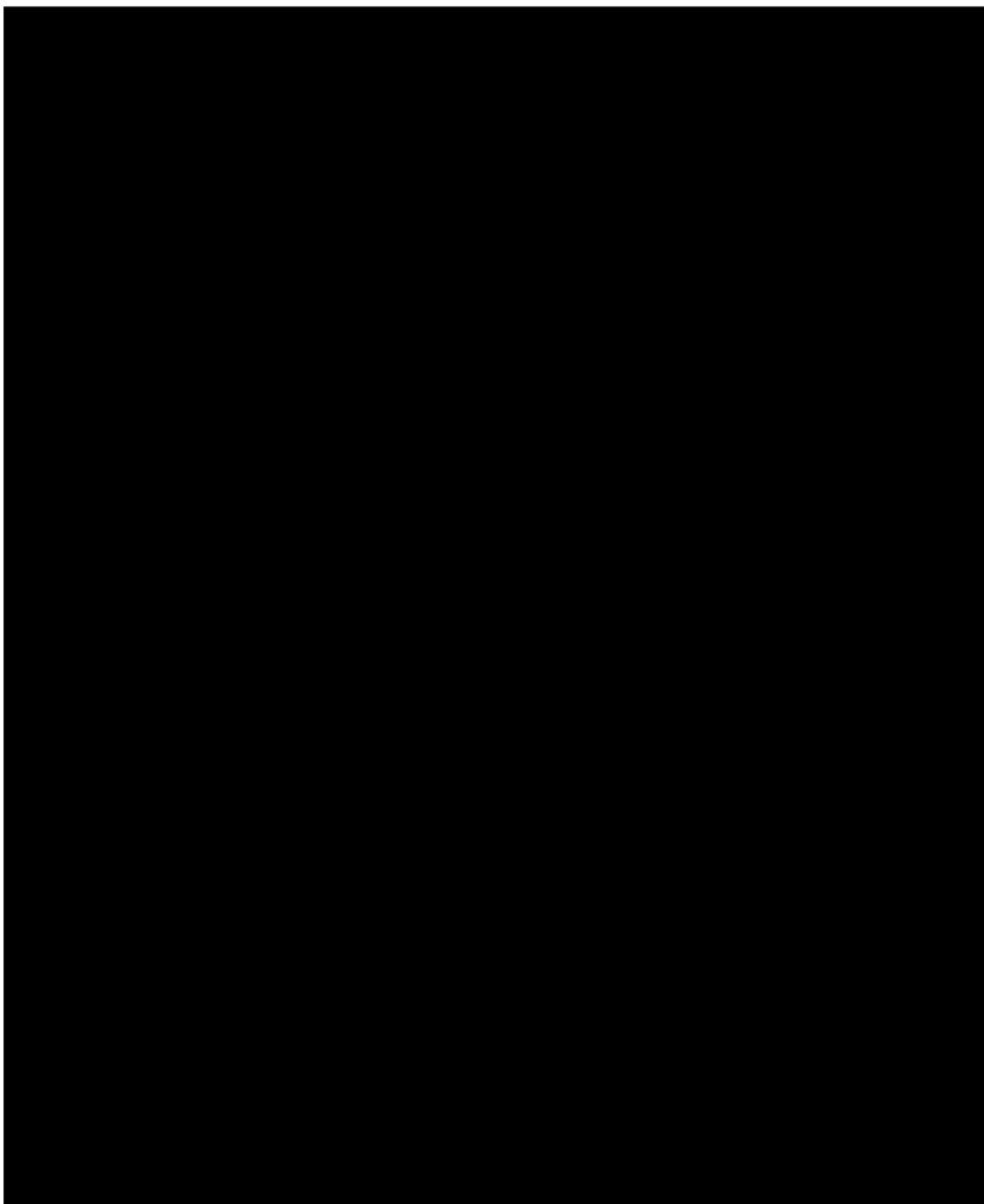


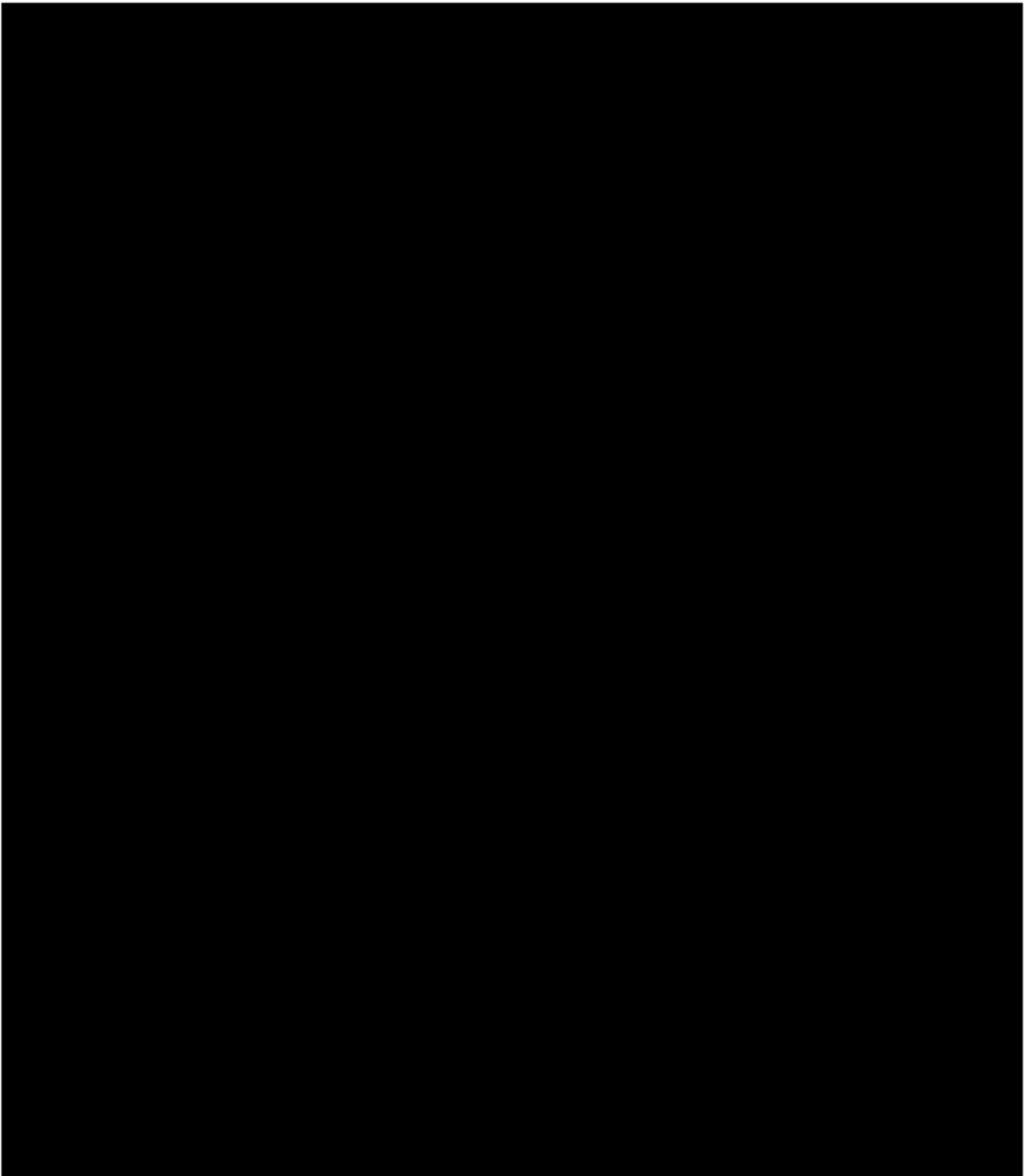
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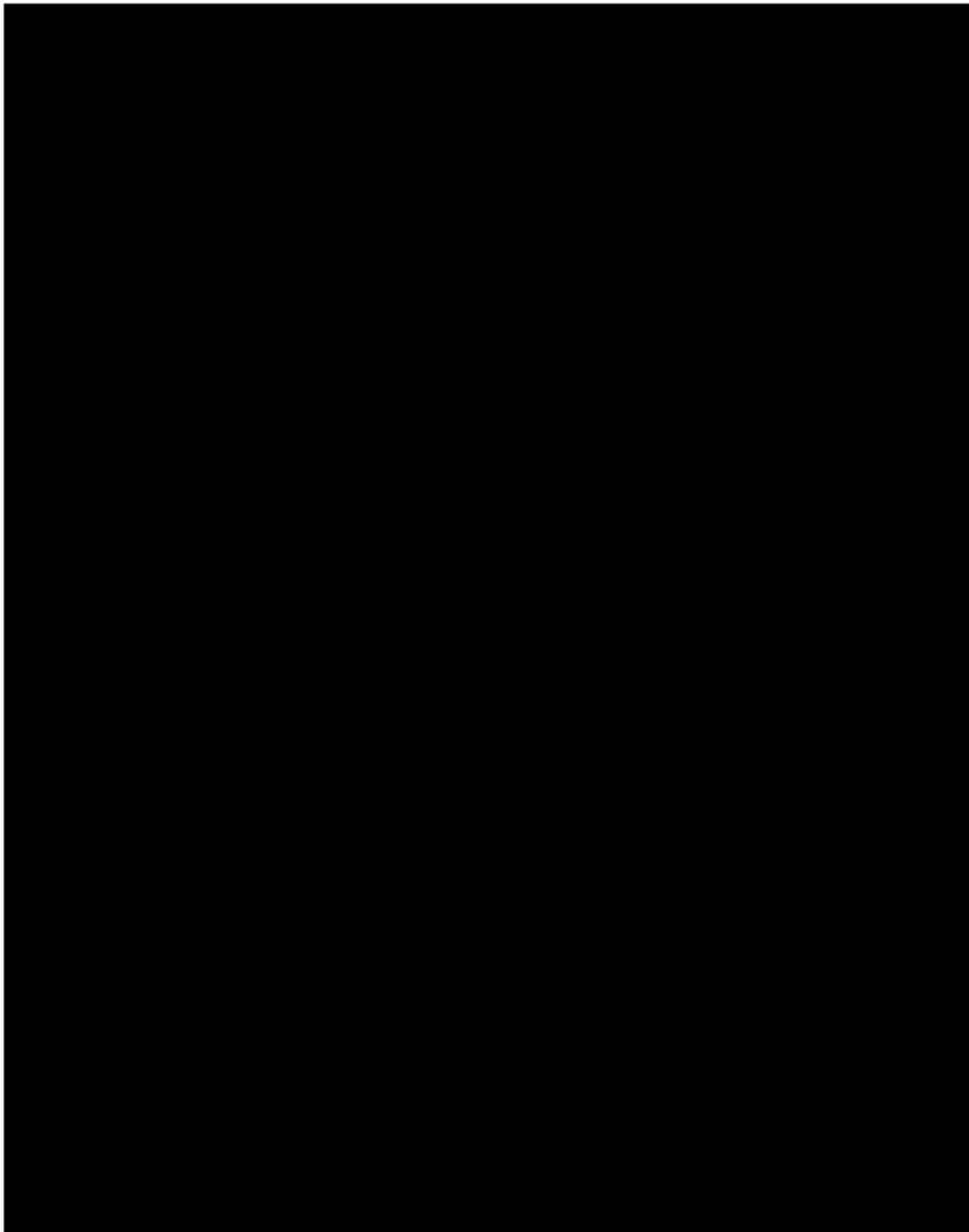


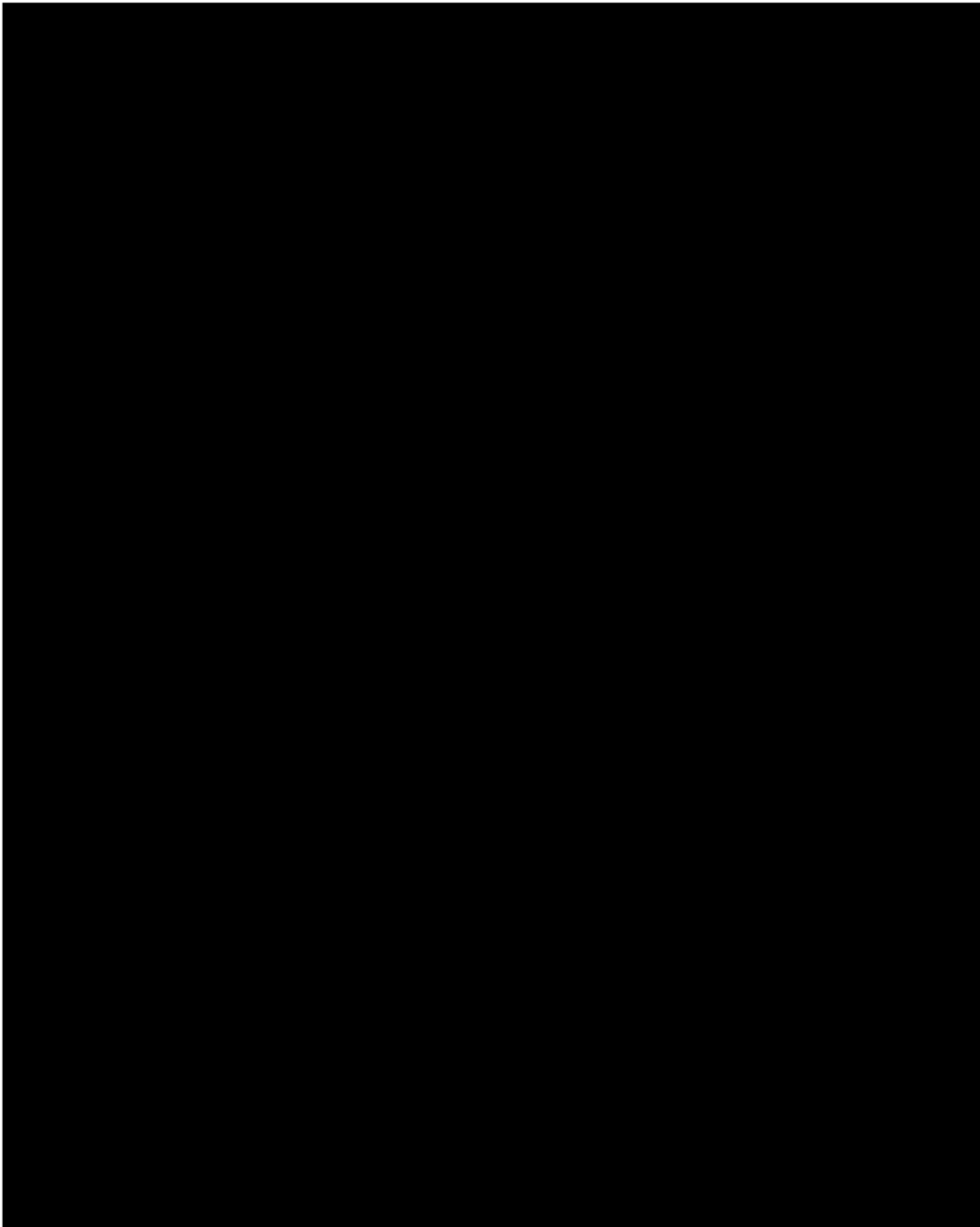


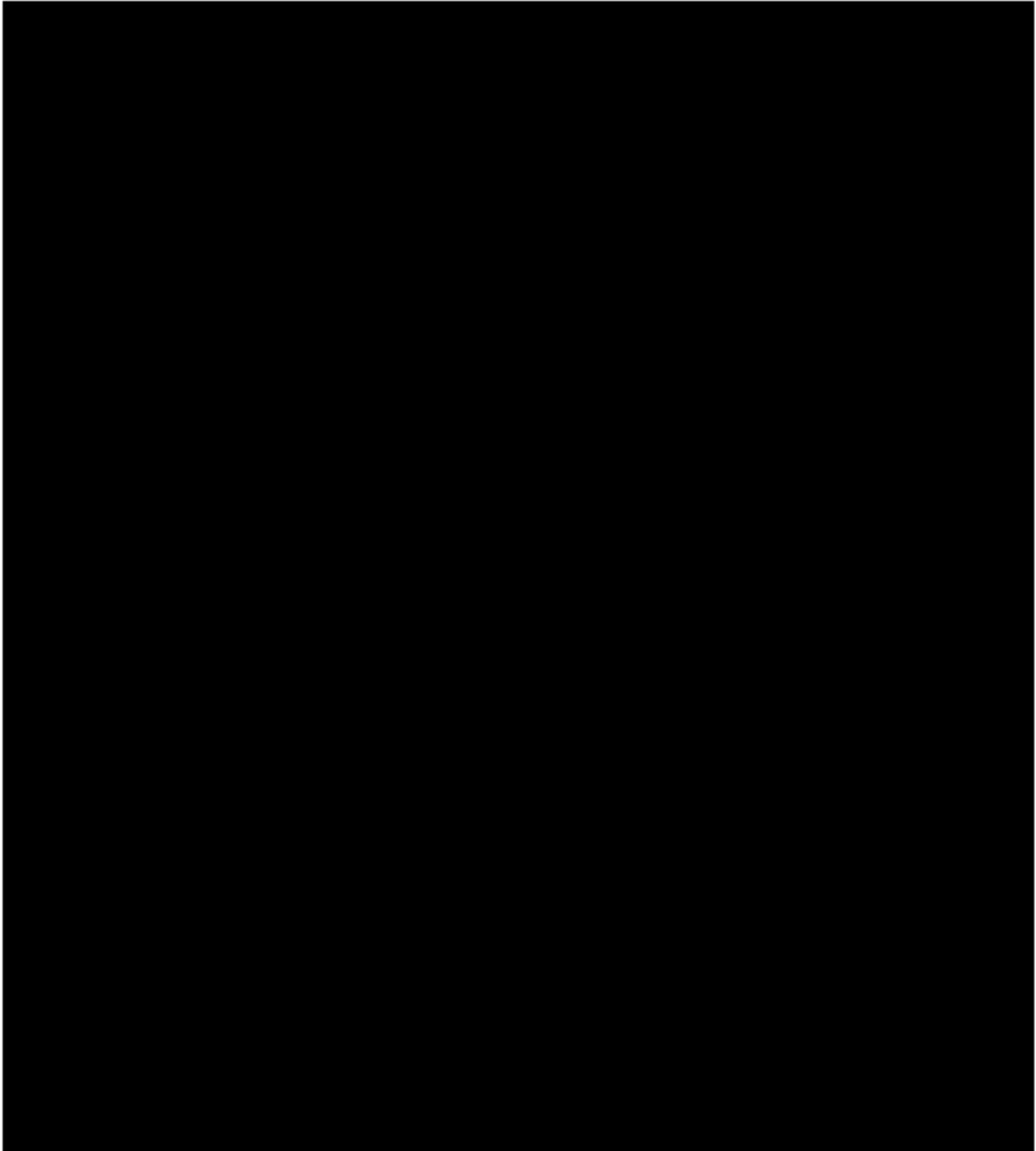


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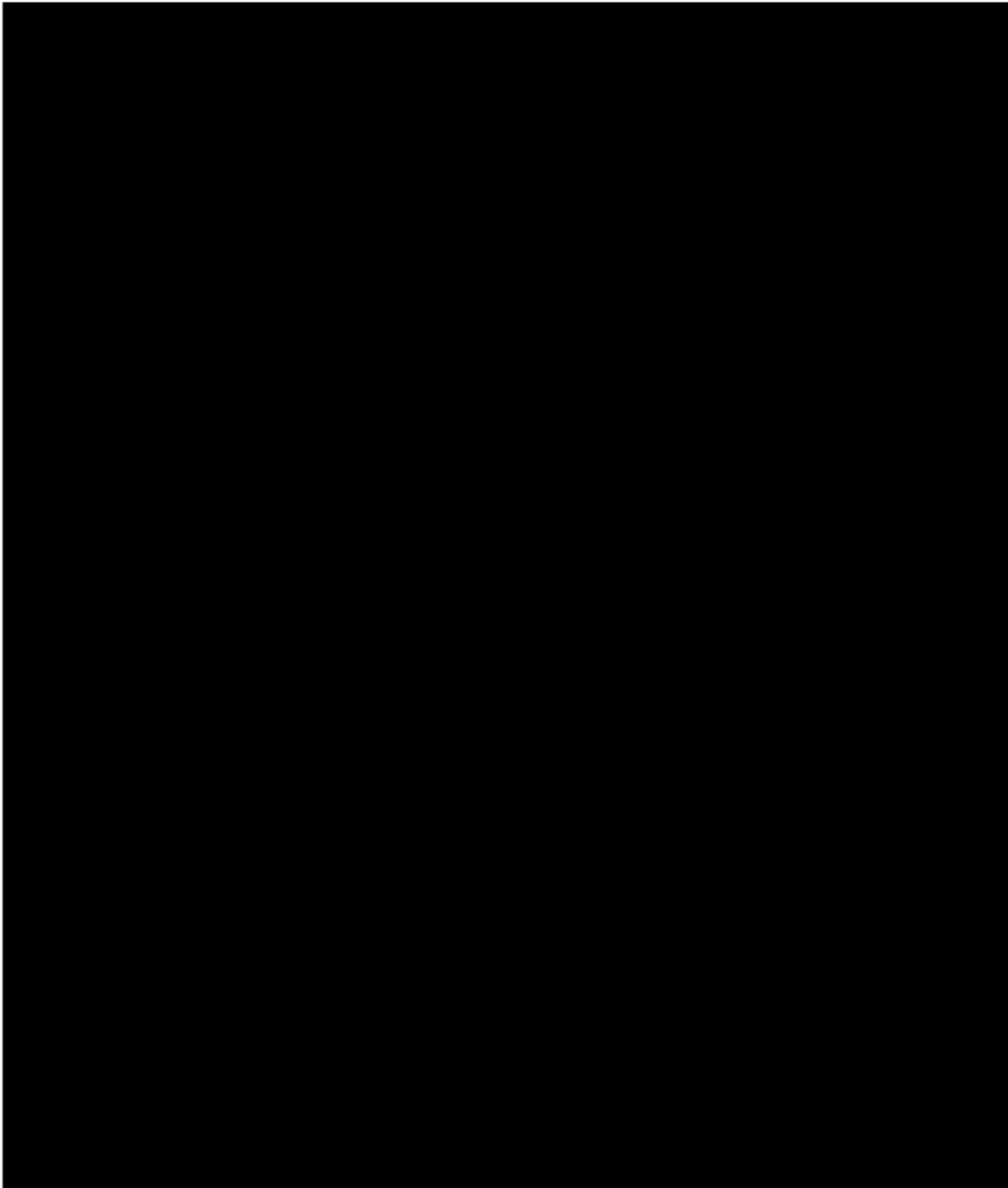








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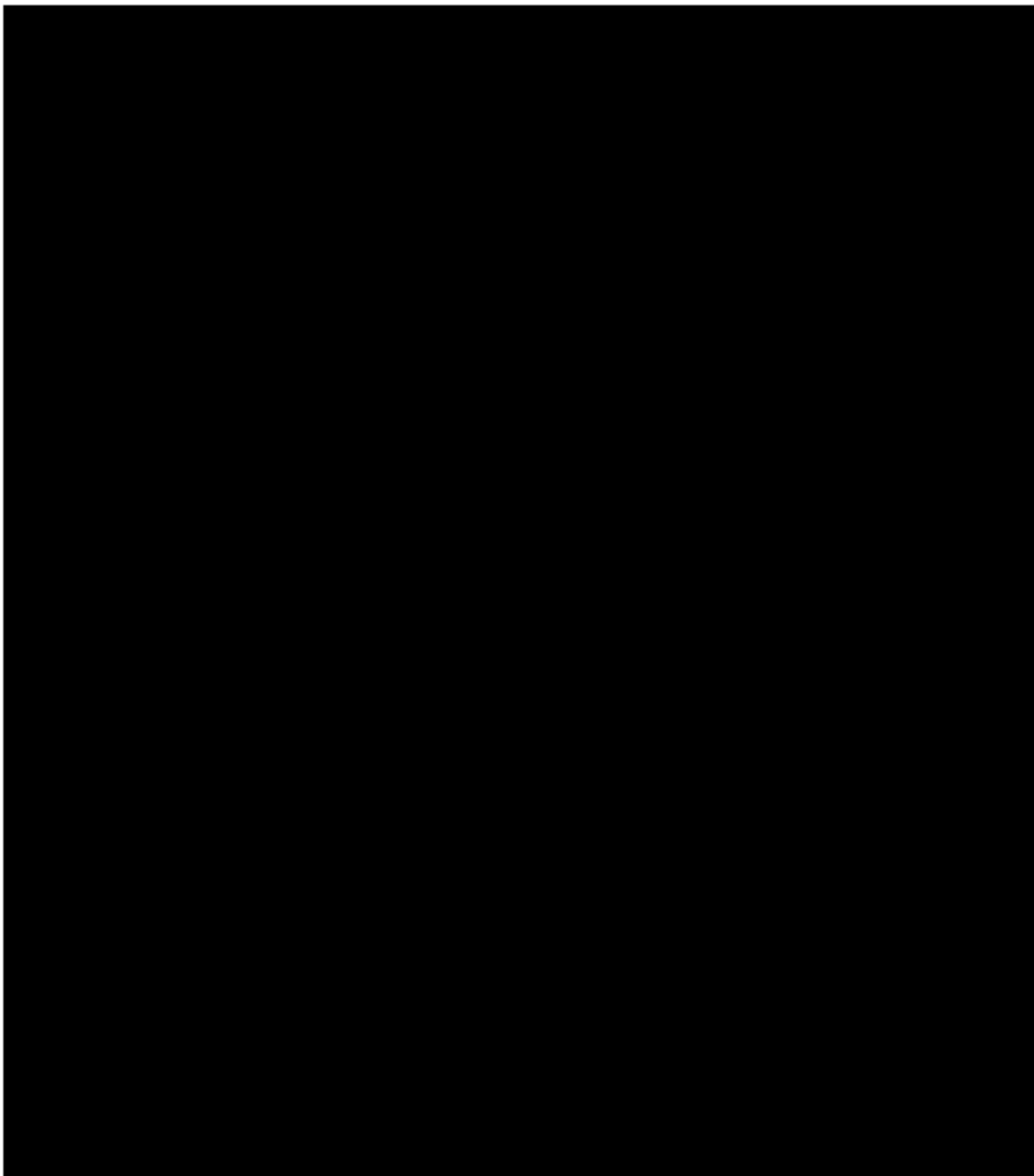
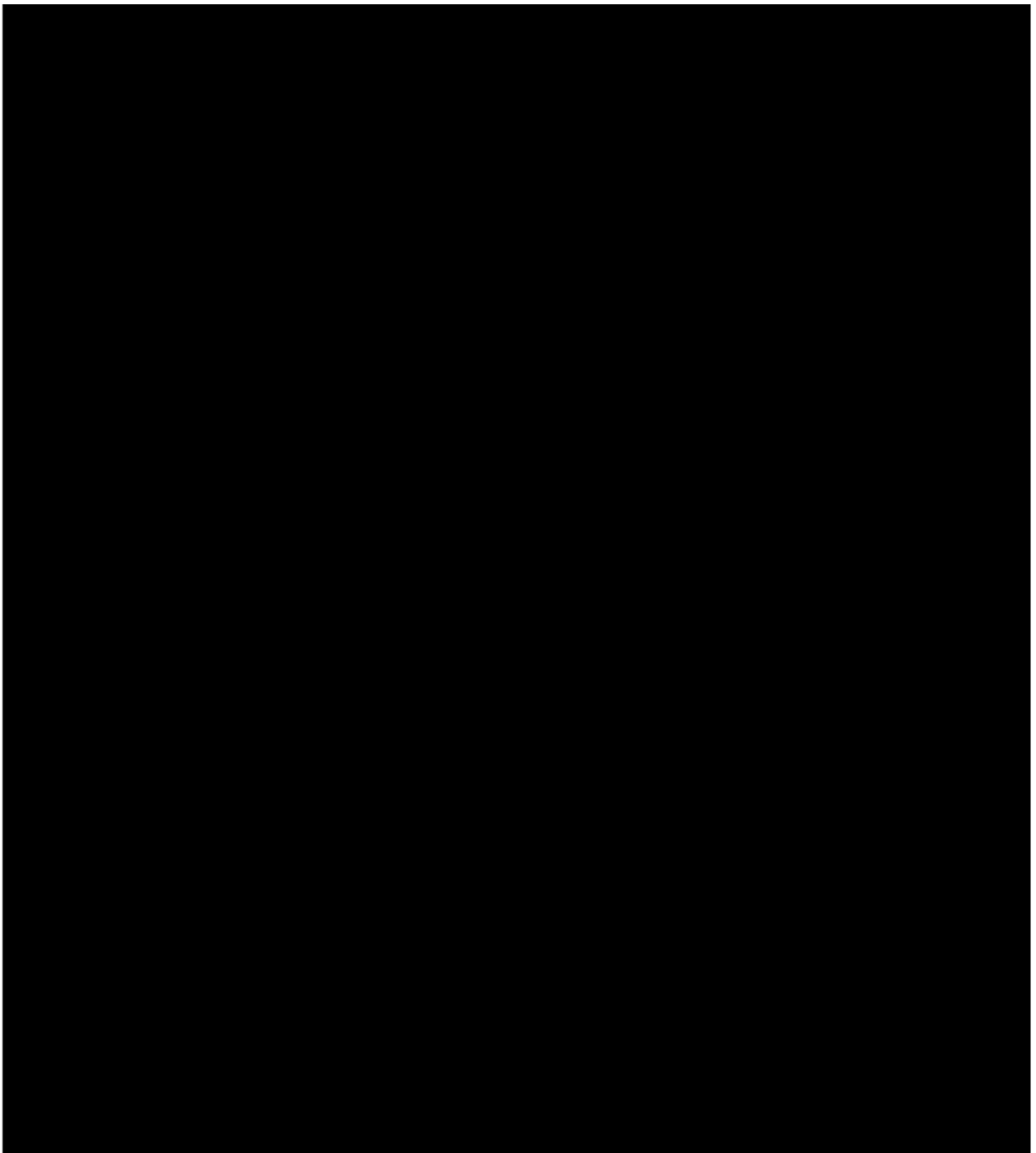
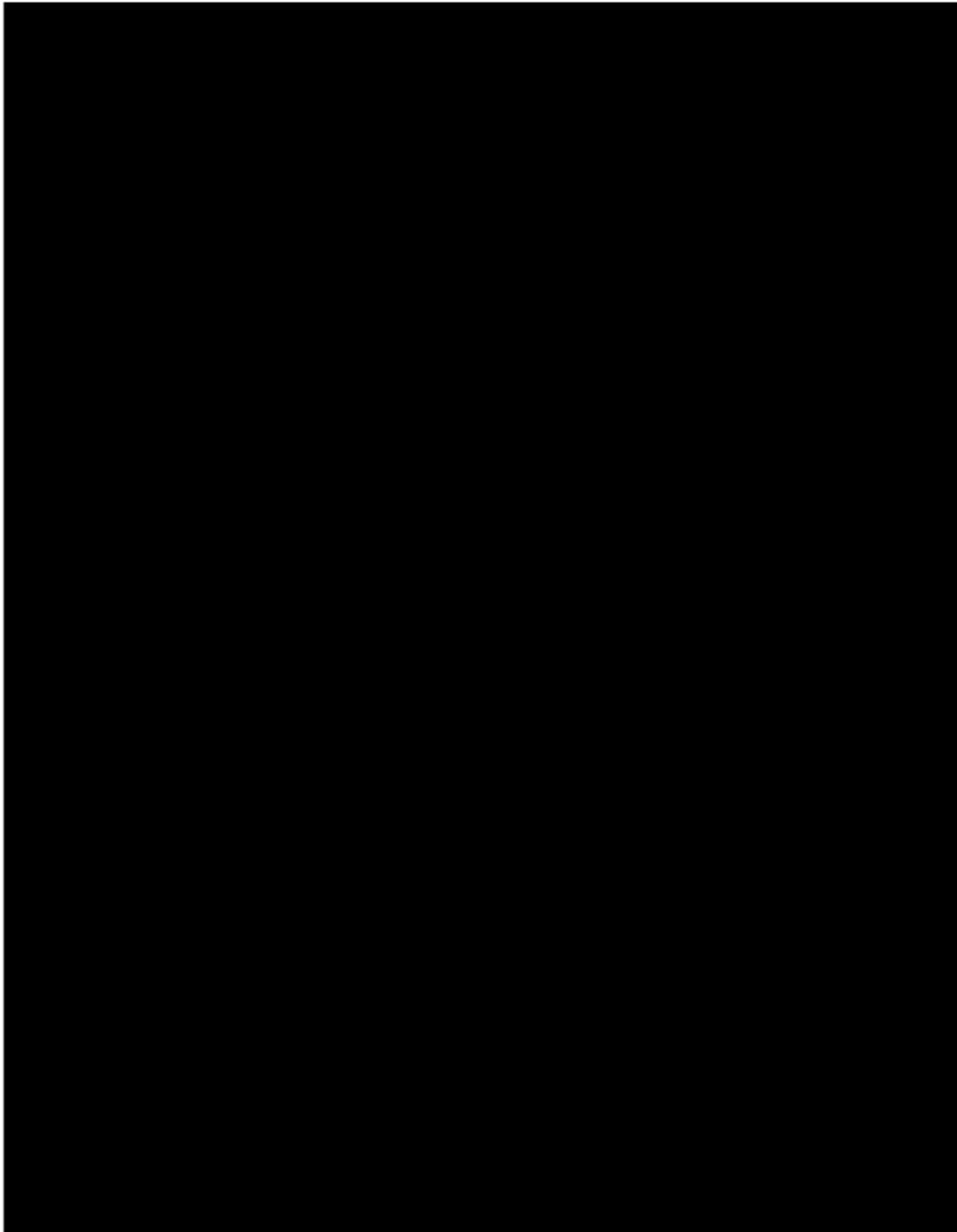


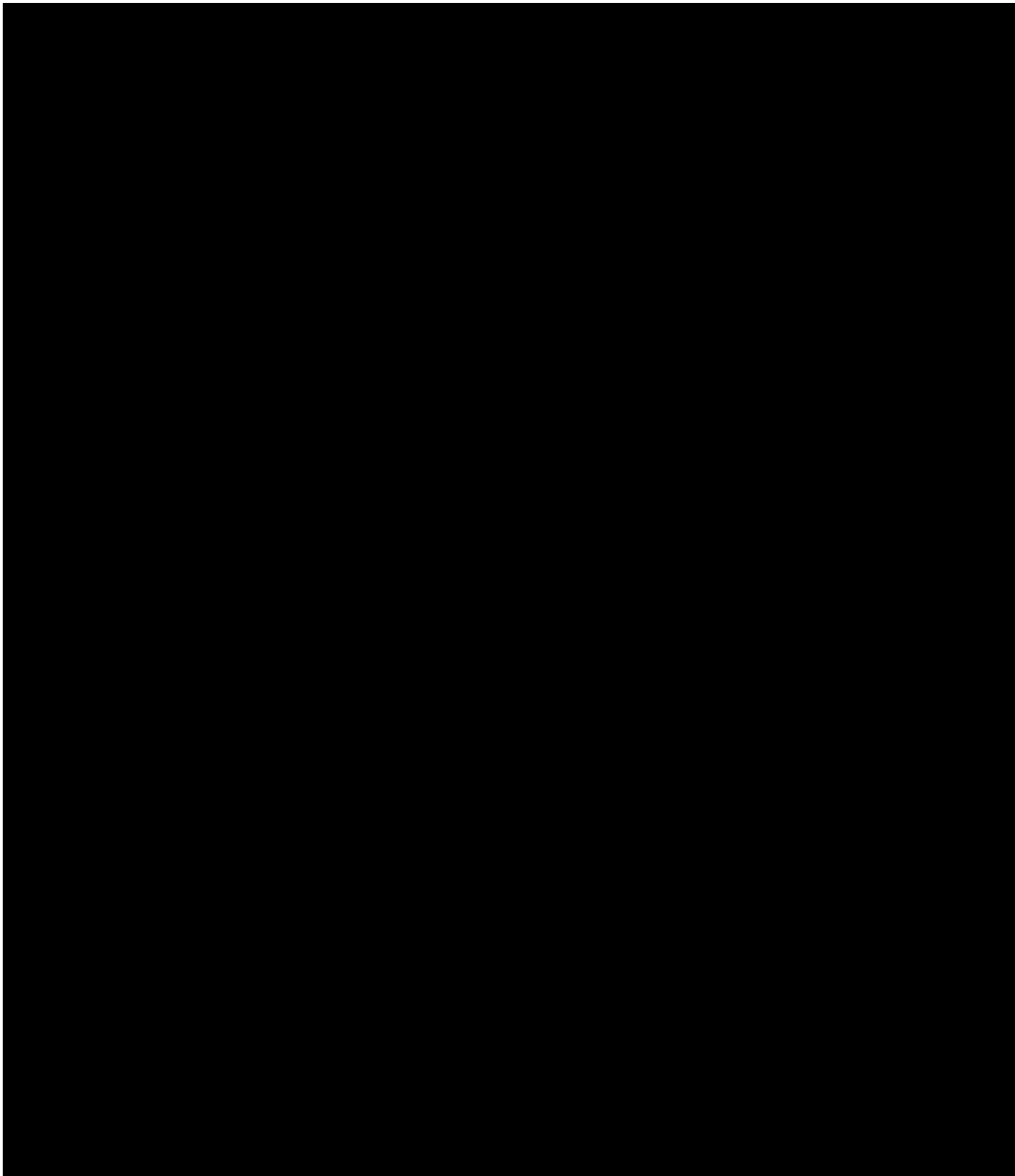
Figure 1

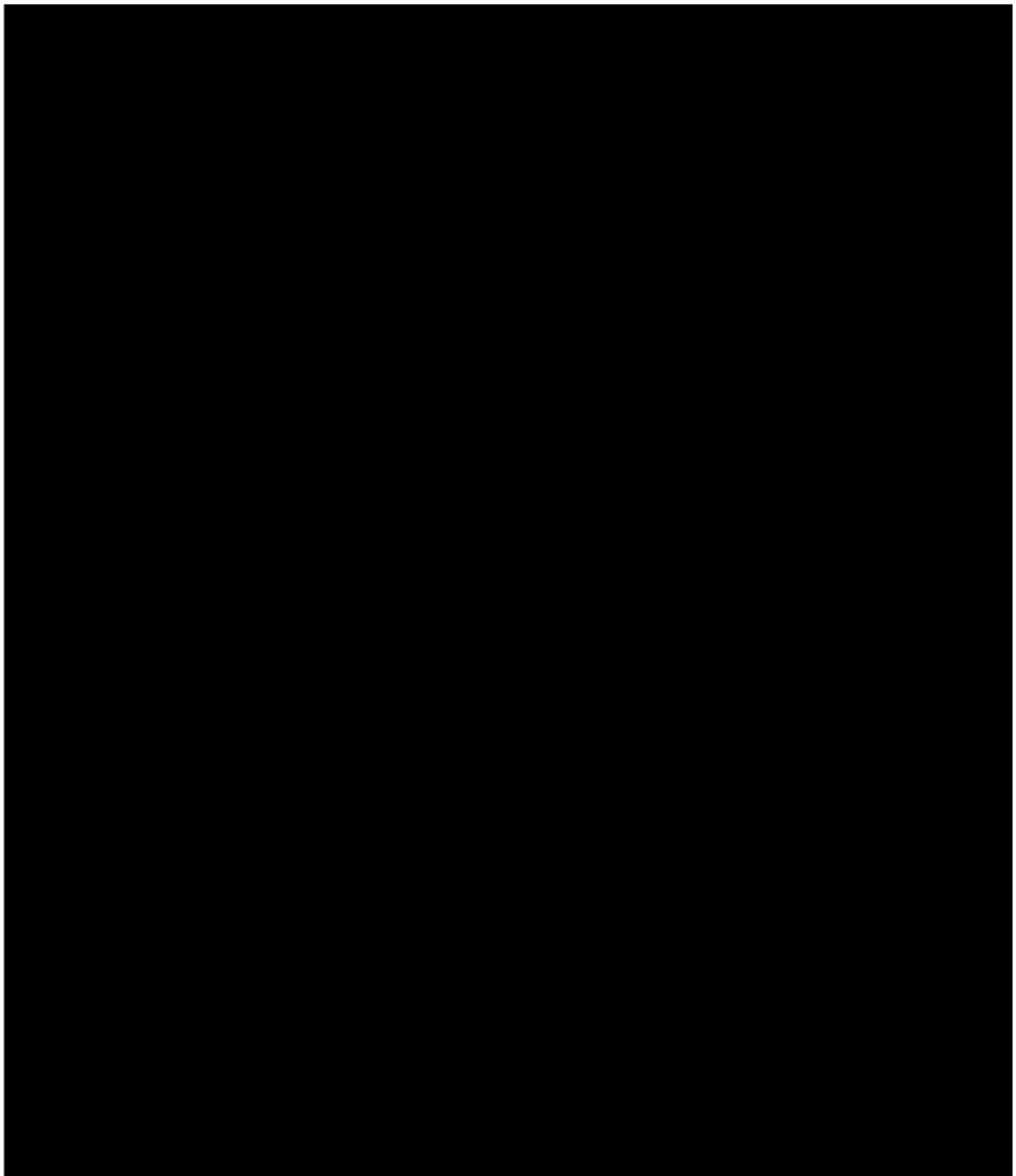


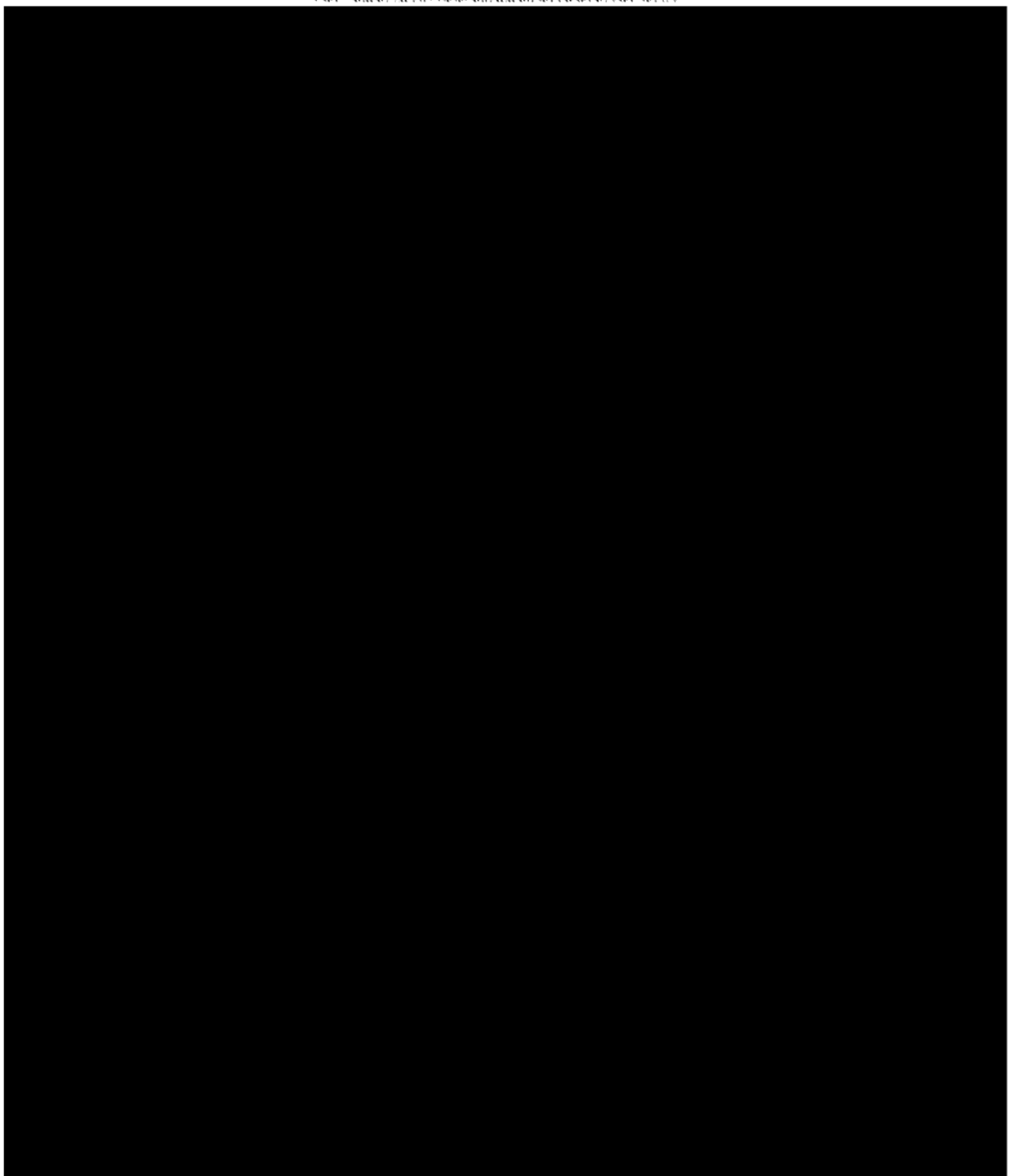
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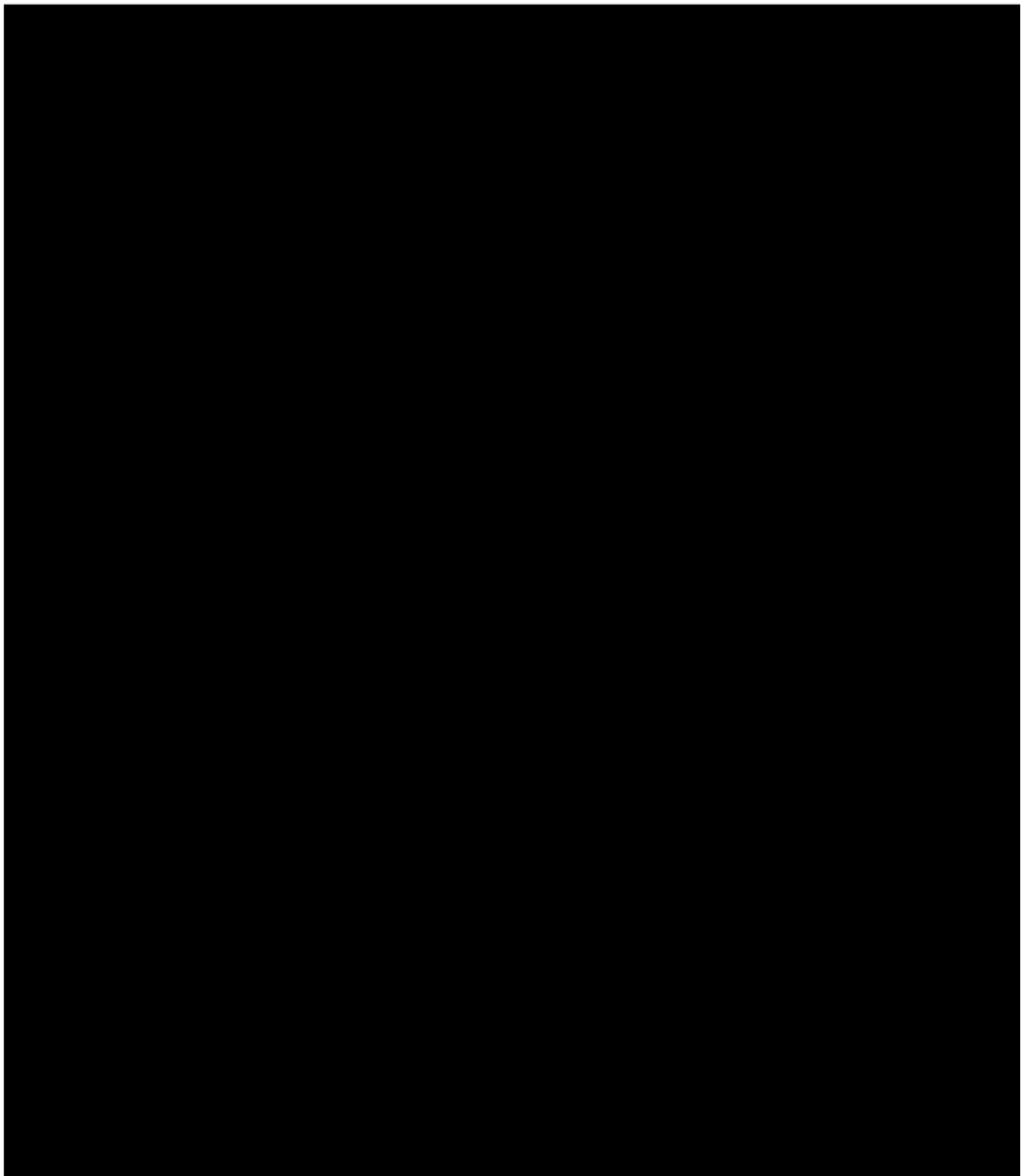


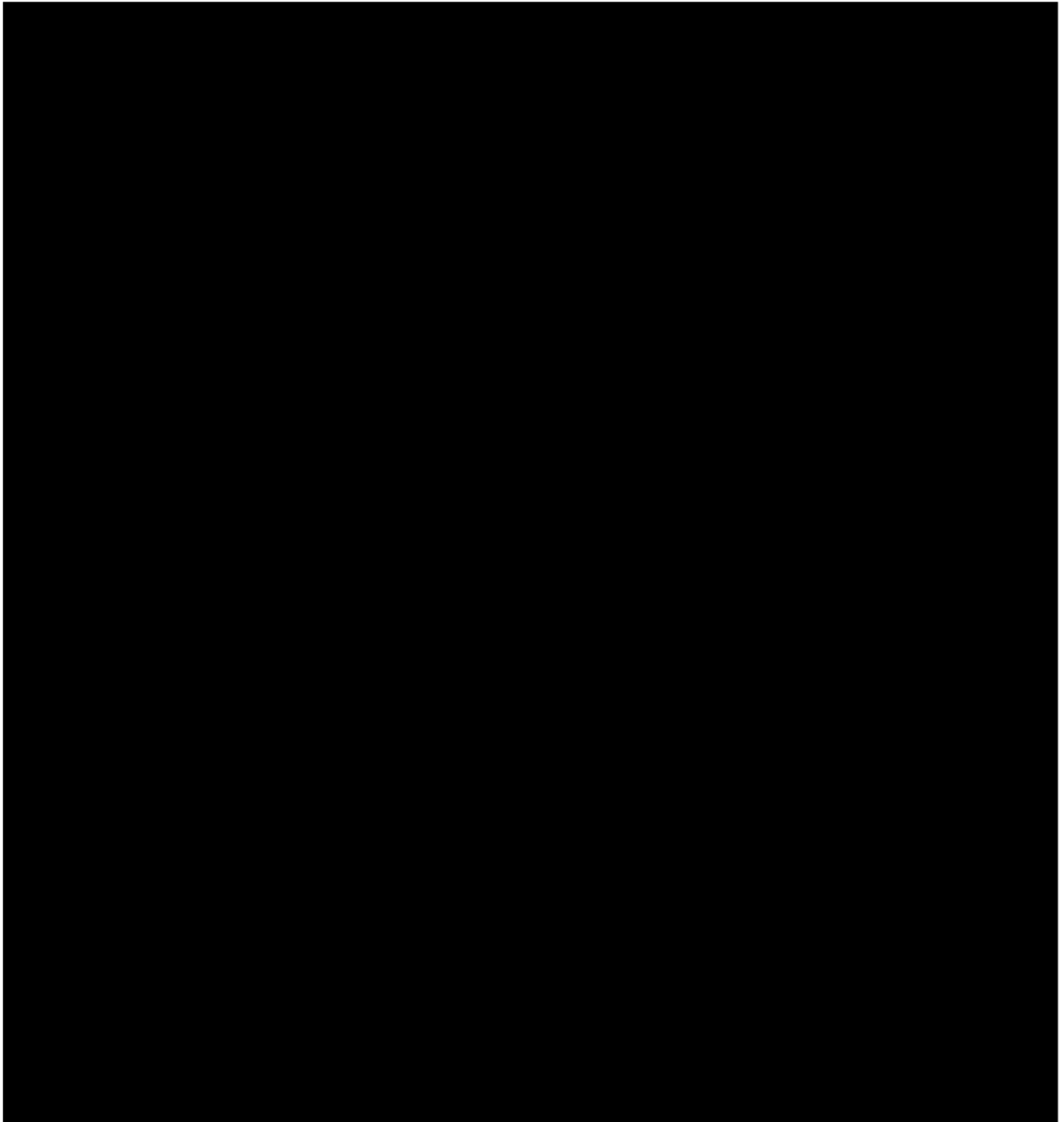
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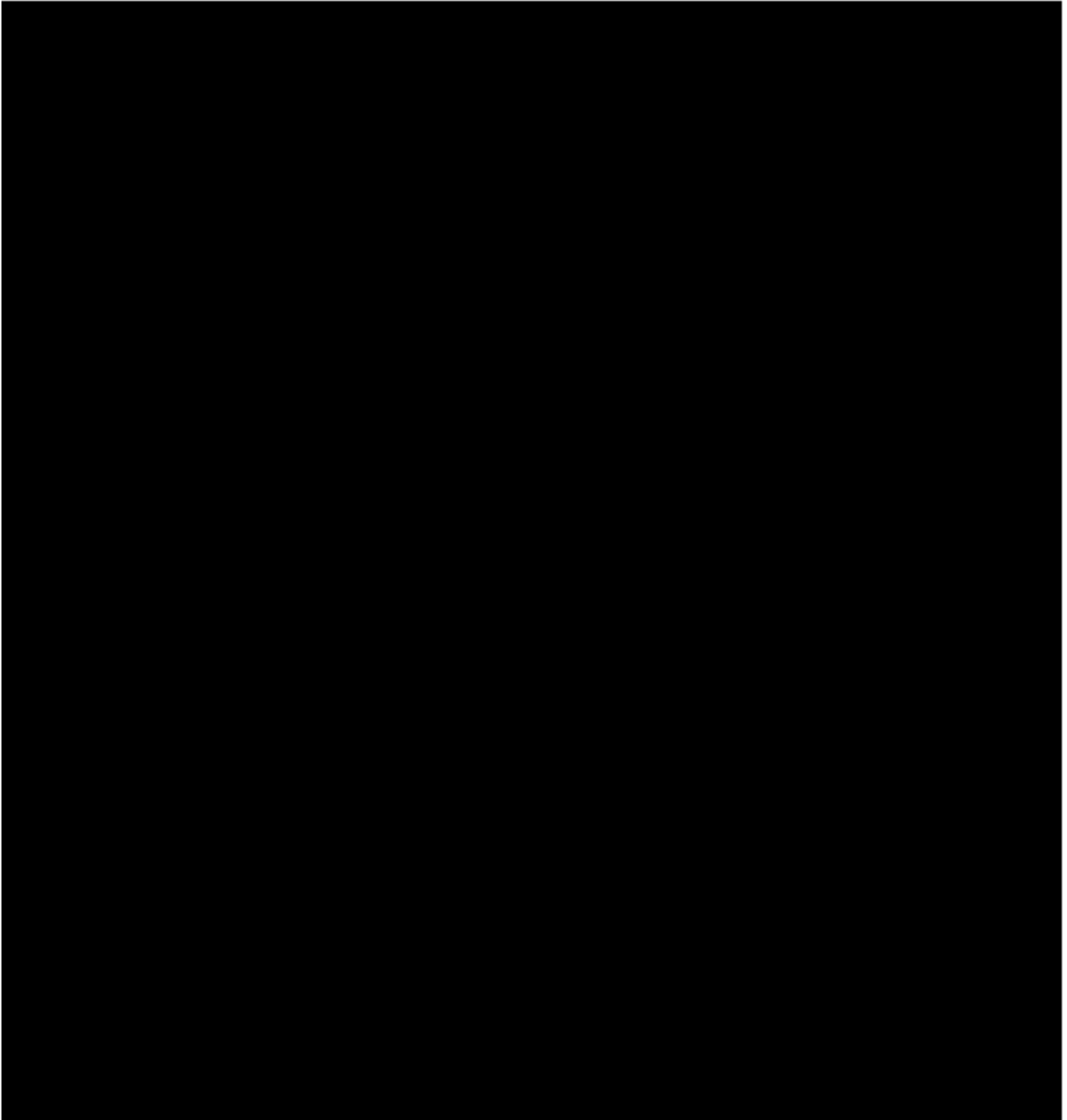




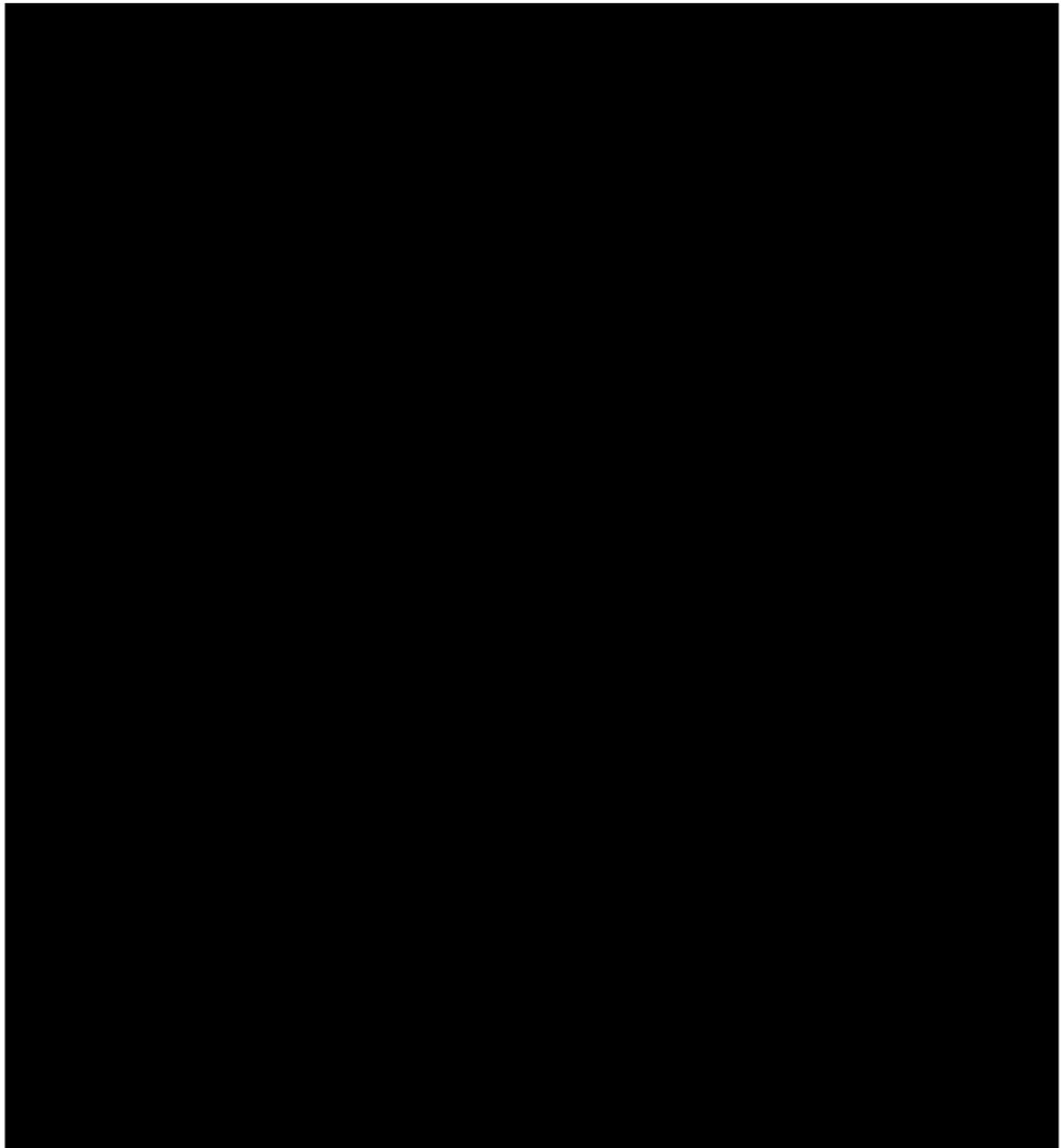


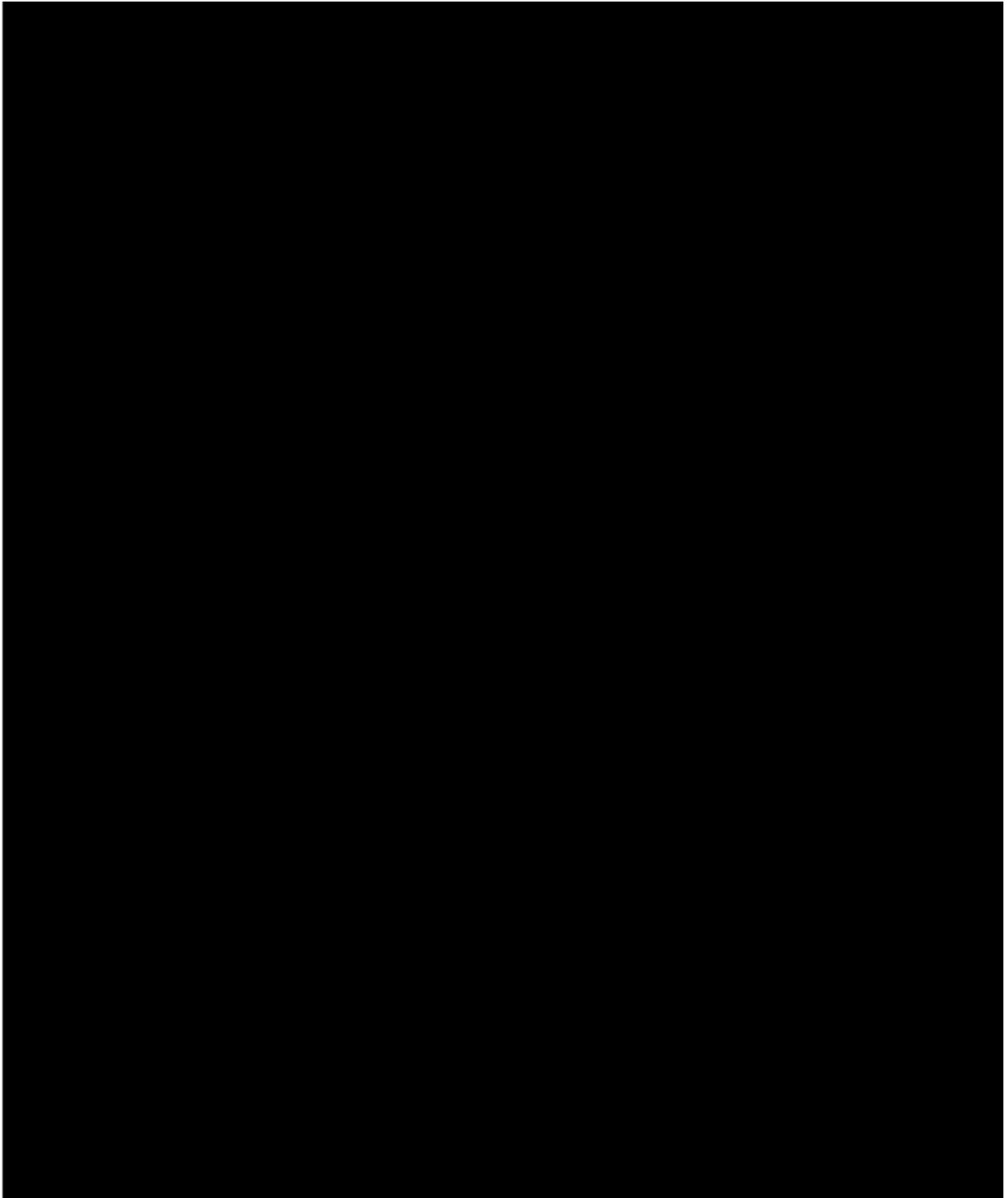


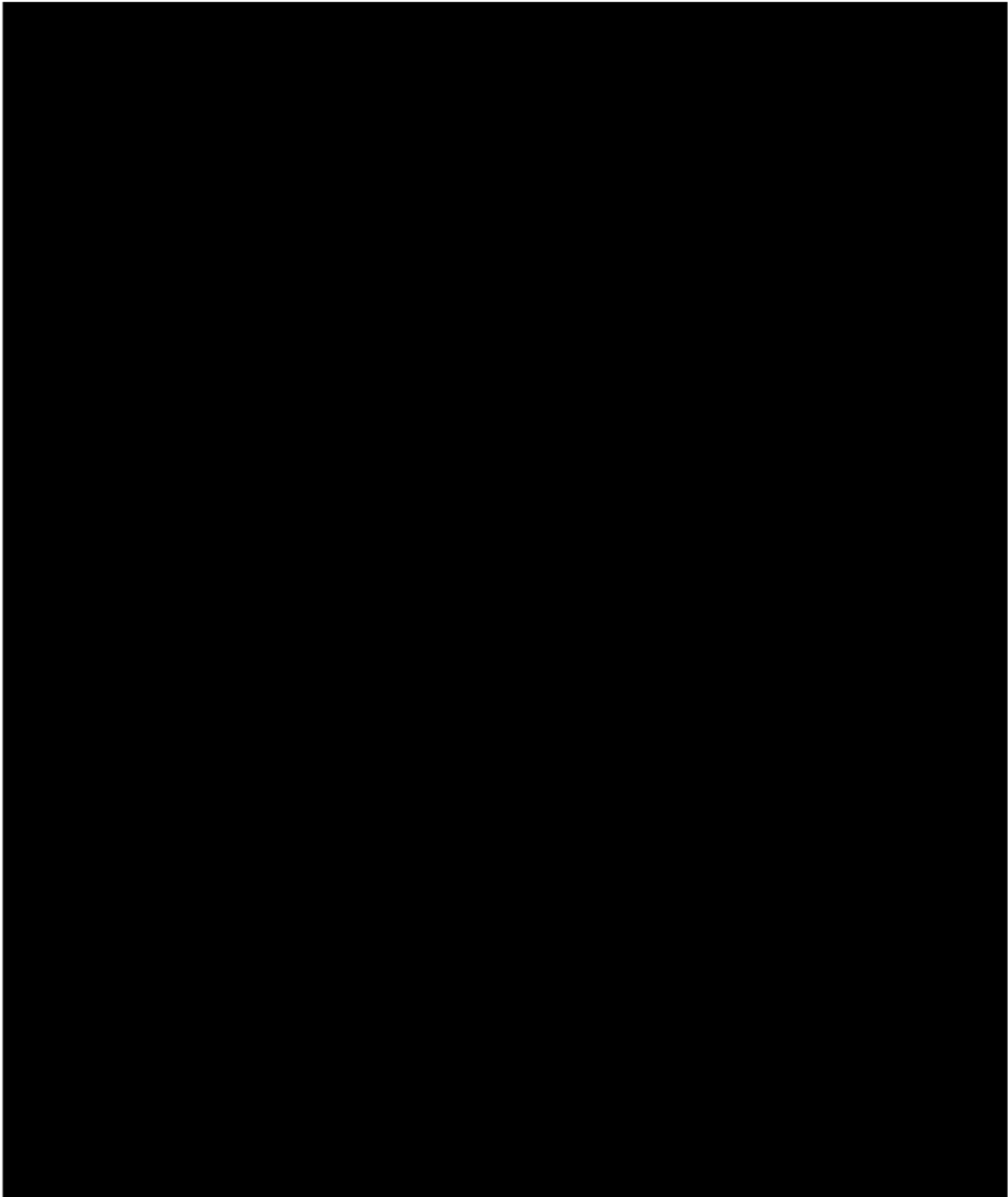
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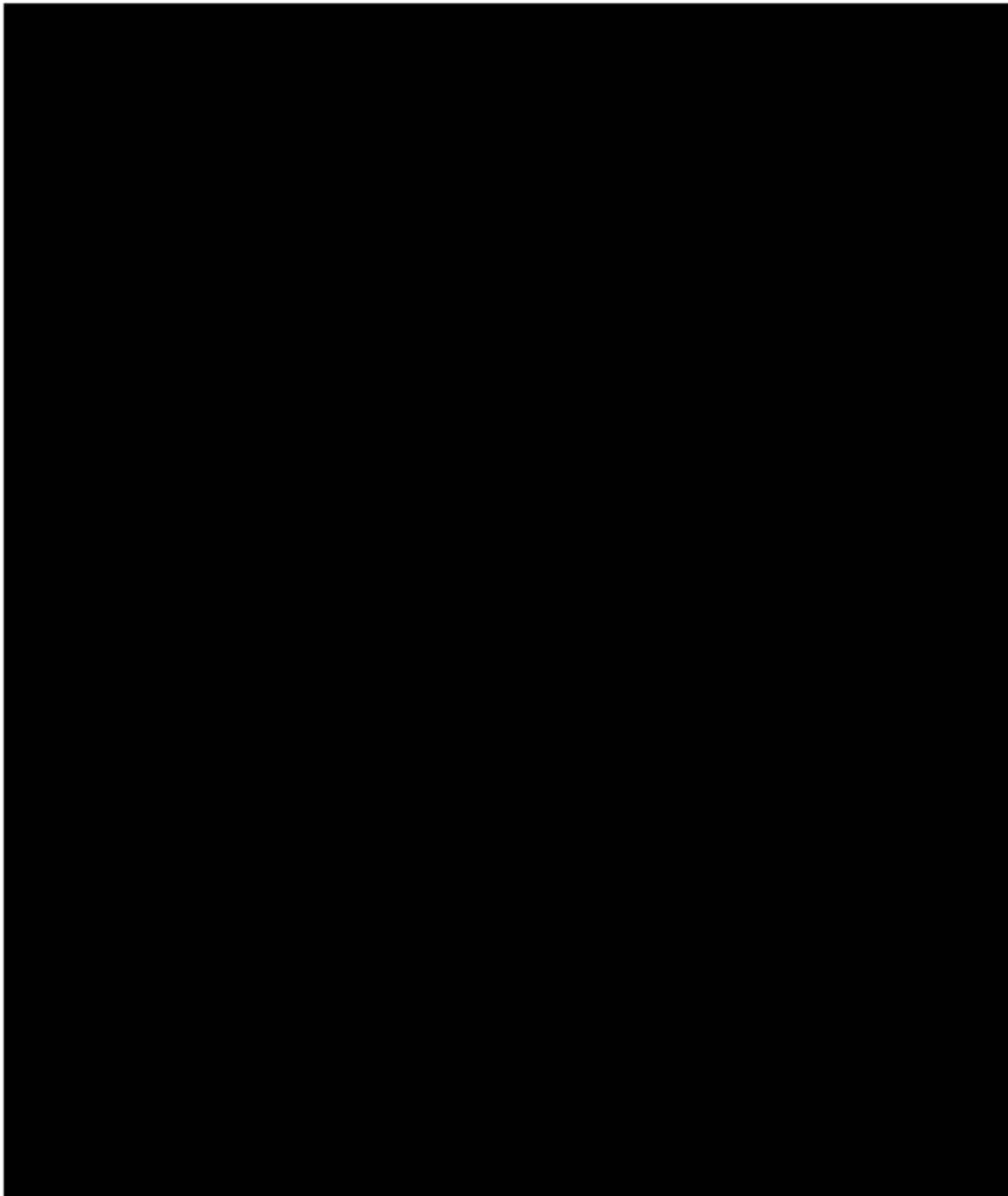
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145. ~~(S)~~ At the end of May 2004, DCI Tenet “suspended” use of the techniques pending reauthorization by the OLC, and issued a formal memo on 4 June.

146. ~~(S)~~ On 2 July 2004, Attorney General Ashcroft and Deputy Attorney General James Comey “attended a meeting of select National Security Council principals, the topic of which was the proposed interrogation of [detainee] Janat Gul.”⁴⁰⁶ On July 22, Attorney General Ashcroft sent a letter to acting CIA Director John McLaughlin stating that nine of the 1 August techniques were authorized, except the waterboard – primarily because “the technique had been employed in a different fashion than that which the DOJ initially approved.”⁴⁰⁷ On 30 July, the CIA provided descriptions of four new techniques that they characterized as a “supplement” to the 1 August 2002 memos.⁴⁰⁸ These were dietary manipulation, the abdominal slap, nudity, standing sleep deprivation, the use of diapers, and water dousing, all of which had already been used by the CIA by that point on Mr. al Baluchi).⁴⁰⁹

147. ~~(S)~~ Once again, the CIA was asking for retroactive authorization for techniques described far differently in their letter than they were applied in practice. For example:⁴¹⁰

⁴⁰⁶ ~~(S)~~ SSCI Executive Summary at 414.

⁴⁰⁷ ~~(S)~~ *Id.*

⁴⁰⁸ ~~(S)~~ *Id.*

⁴⁰⁹ ~~(S)~~ *Id.* at 414-415.

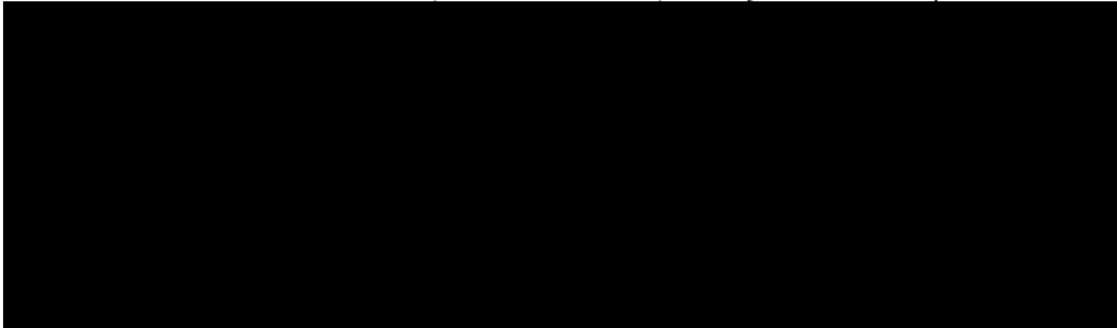
⁴¹⁰ ~~(S)~~ *Id.*

(U)

how the CIA had applied the techniques in practice. The CIA description of a minimum caloric intake was incongruent with the history of the program, as no minimum caloric intake existed prior to May 2004 and the March 2003 draft OMS guidelines allowed for food to be withheld for

one to two days.⁴¹²⁸ The CIA represented to the OLC that nude detainees were “not wantonly exposed to other detainees or detention facility staff,” even though nude detainees at the CIA’s DETENTION SITE COBALT were “kept in a central area outside the interrogation room” and were “walked around” by guards as a form of humiliation.⁴¹²⁹ The CIA’s description of water dousing made no mention of cold water immersion, which was used on CIA detainees and taught in CIA interrogator training.⁴¹³⁰ The CIA representation describing a two-hour limit for the

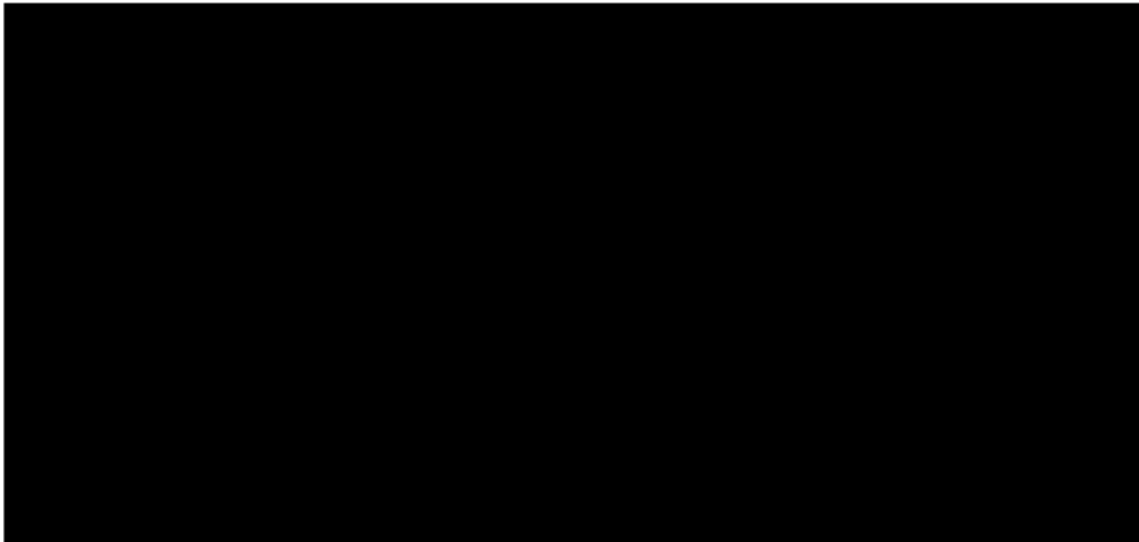
148. (U) With Mr. Goldsmith having resigned in July 2004 following his withdrawal of the 1 August memo, Acting Assistant Attorney General Daniel Levin – formerly Director Mueller’s Chief of Staff at the FBI - was directed by Mr. Comey to prepare a replacement. Mr. Levin, who stated that his reaction to the 1 August 2002 memo was “[the same as] I think everybody who reads it has — ‘this is insane, who wrote this?’”⁴¹¹ wrote and received a series of letters to Scott Muller, CIA General Counsel, to clarify use of the techniques.⁴¹²



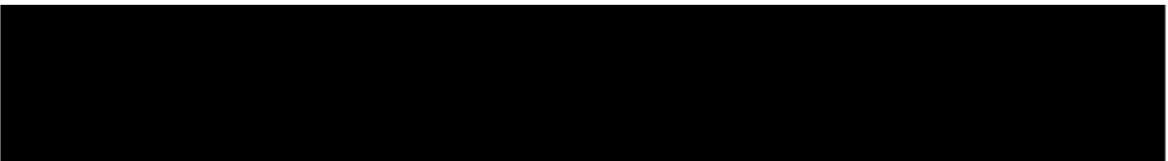
⁴¹¹ (U) Department of Justice Office of Professional Responsibility, Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Related to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists (29 July 2009) at 28 (“OPR Report”).

⁴¹² (U) See, e.g., Letter from Daniel B. Levin (Acting Ass’t Att’y Gen., OLC) to Scott W. Muller (Gen. Counsel, CIA) (July 22, 2004), *available at* <http://www.aclu.org/torturefoia/released/082409/olcremand/2004olc65.pdf>.

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150. ~~(U)~~ Mr. Levin ended up completing only a 29 December 2004 memo replacing John Yoo's previous memo to Alberto Gonzales on the applicability of the torture statute and the CAT to the CIA's use of interrogation techniques. That memo concluded that "[w]hile we have identified various disagreements with the August 2002 Memorandum (including, crucially, the difficulty in determining "gradations of pain"), we have reviewed this Office's prior opinions addressing issues involving treatment of detainees and do not believe that any of their conclusions would be different under the standards set forth in this memorandum."⁴¹⁶



⁴¹⁶ ~~(U)~~ Memorandum from Daniel B. Levin (Acting Ass't Att'y Gen., OLC) to Deputy Attorney General, DOJ, Legal Standards Applicable Under 18 U.S.C. §§ 2340--2340A (Dec. 30, 2004) [hereinafter Levin Torture Statute Memo], available at <http://www.justice.gov/olc/18usc23402340a2.htm>

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151. ~~(U)~~ Mr. Levin's failure to complete a memo replacing the 1 August 2002 "techniques" memo to Rizzo was a source of concern all the way up to the White House.⁴¹⁷ The job now fell to Acting Assistant Attorney General Steven Bradbury, who submitted two new memos for Mr. Rizzo on 10 May 2005. The first evaluated specific interrogation techniques and

- ~~(U)~~ assumed that, prior to interrogation, each detainee is evaluated by medical and psychological professionals from the CIA's Office of Medical Services to ensure that he is not likely to endure any severe physical or mental pain or suffering; and that medical and psychological personnel are on-scene;
- ~~(U)~~ discussed in detail the following techniques: dietary manipulation, nudity, attention grasp, walling, facial hold, facial slap (insult slap), abdominal slap, cramped confinement, wall standing, stress positions, water dousing, sleep deprivation, and waterboarding;
- ~~(U)~~ found that, subject to the understandings, limitations, and safeguards discussed, including ongoing medical and psychological monitoring and team intervention as necessary, each of the techniques, considered individually, would not violate the Torture Statute, but that the issues raised by sleep deprivation and the waterboard require great caution in their use;
- ~~(U)~~ determined that, in sharp contrast to those practices universally condemned as torture over the centuries, the techniques considered here

⁴¹⁷ ~~(U)~~ OPR Report at 142.

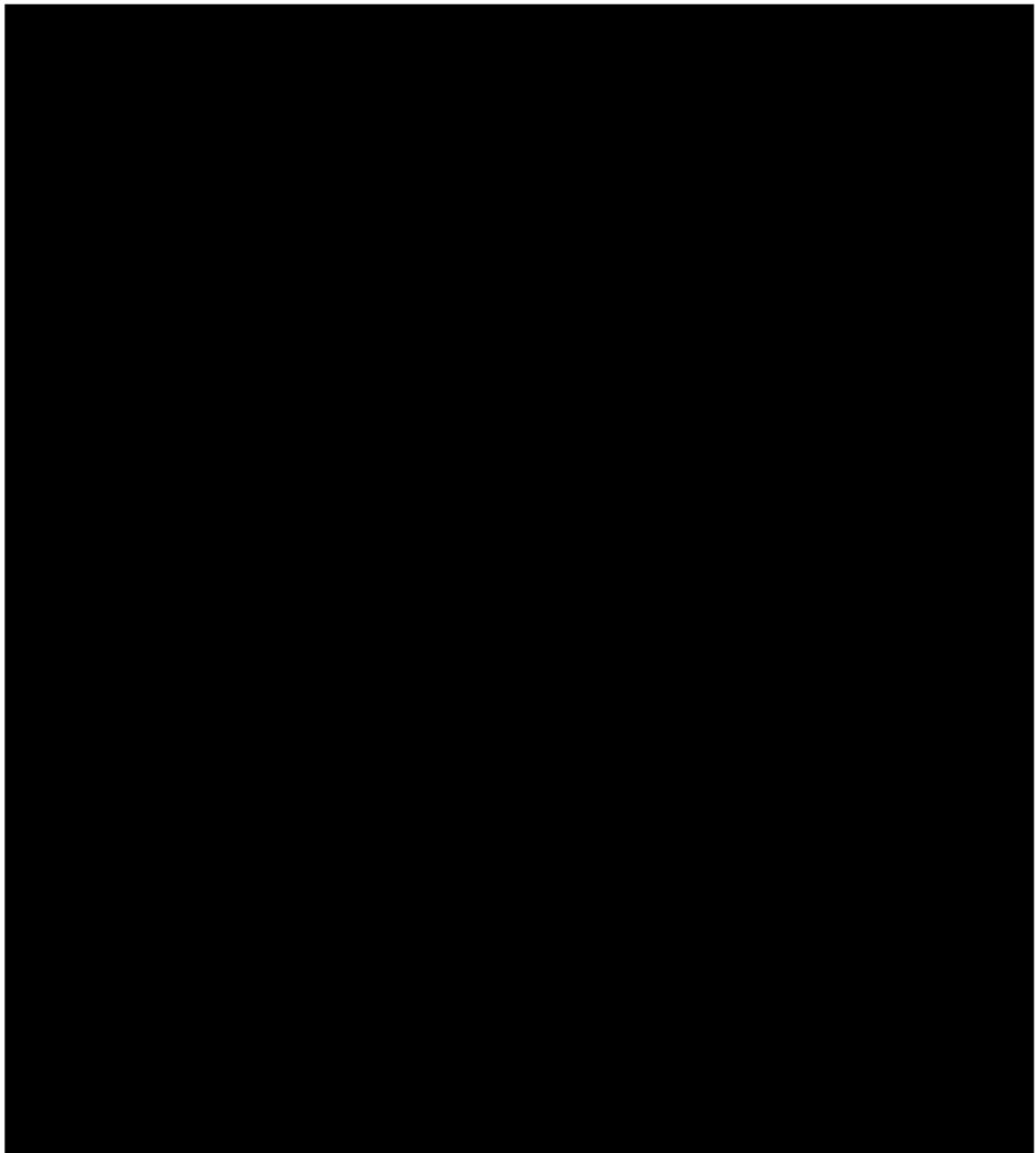
were carefully evaluated to avoid causing severe pain or suffering to the detainees.⁴¹⁸

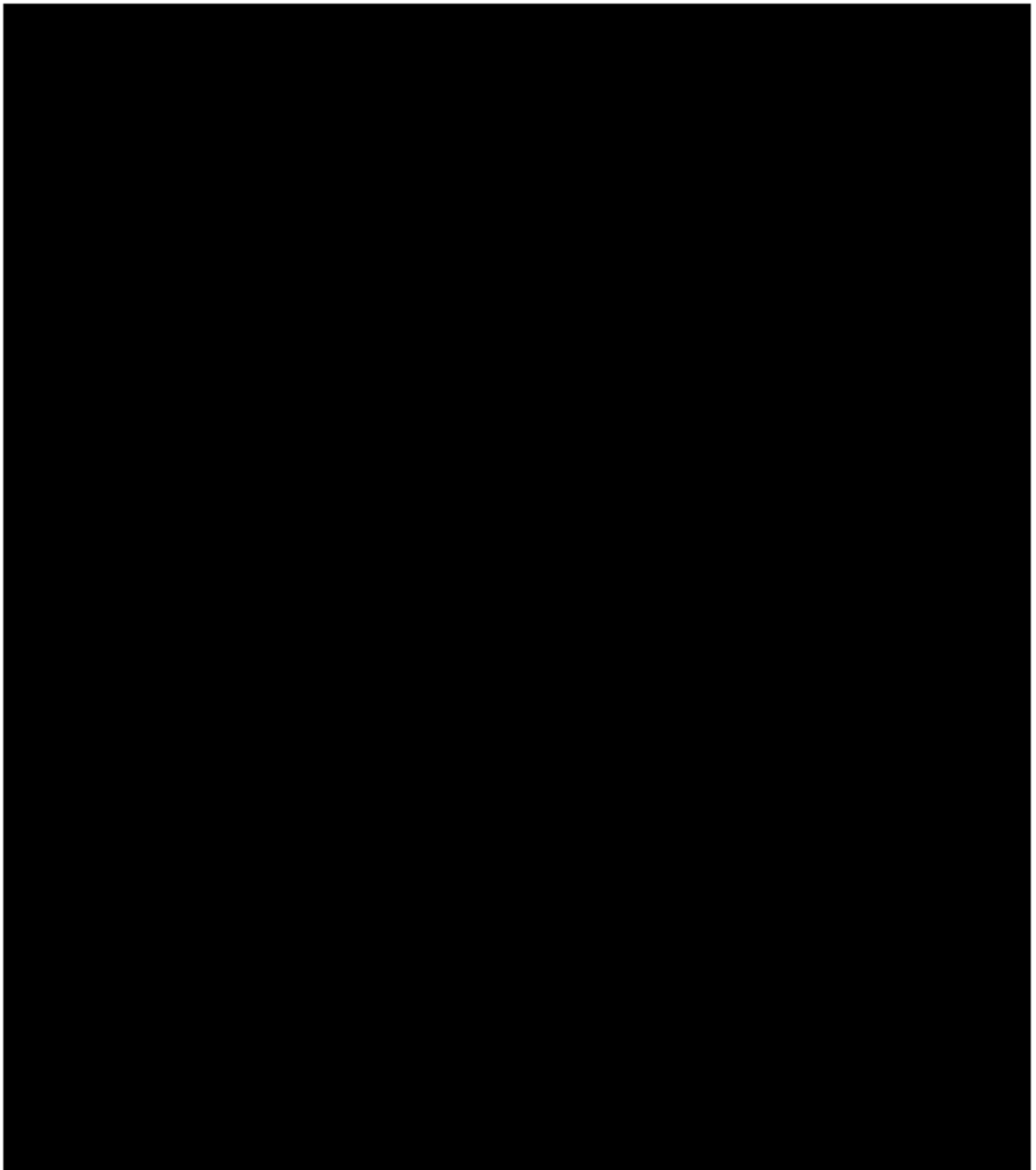
152. ~~(U)~~ The second memo evaluated the combined use of the techniques, and concluded that “the combined use of these techniques also cannot reasonably be expected to cause severe physical suffering.”⁴¹⁹ Mr. Comey vigorously disagreed with the issuance of the second “combined use” memo, stating in emails that the second opinion “would come back to haunt . . . the Department,” and that “when this all comes out, [he hoped that] the hit is taken by those individuals who occupied positions at OLC and OAG and were too weak to stand up for those principles that undergird the rest of this great institution.”⁴²⁰

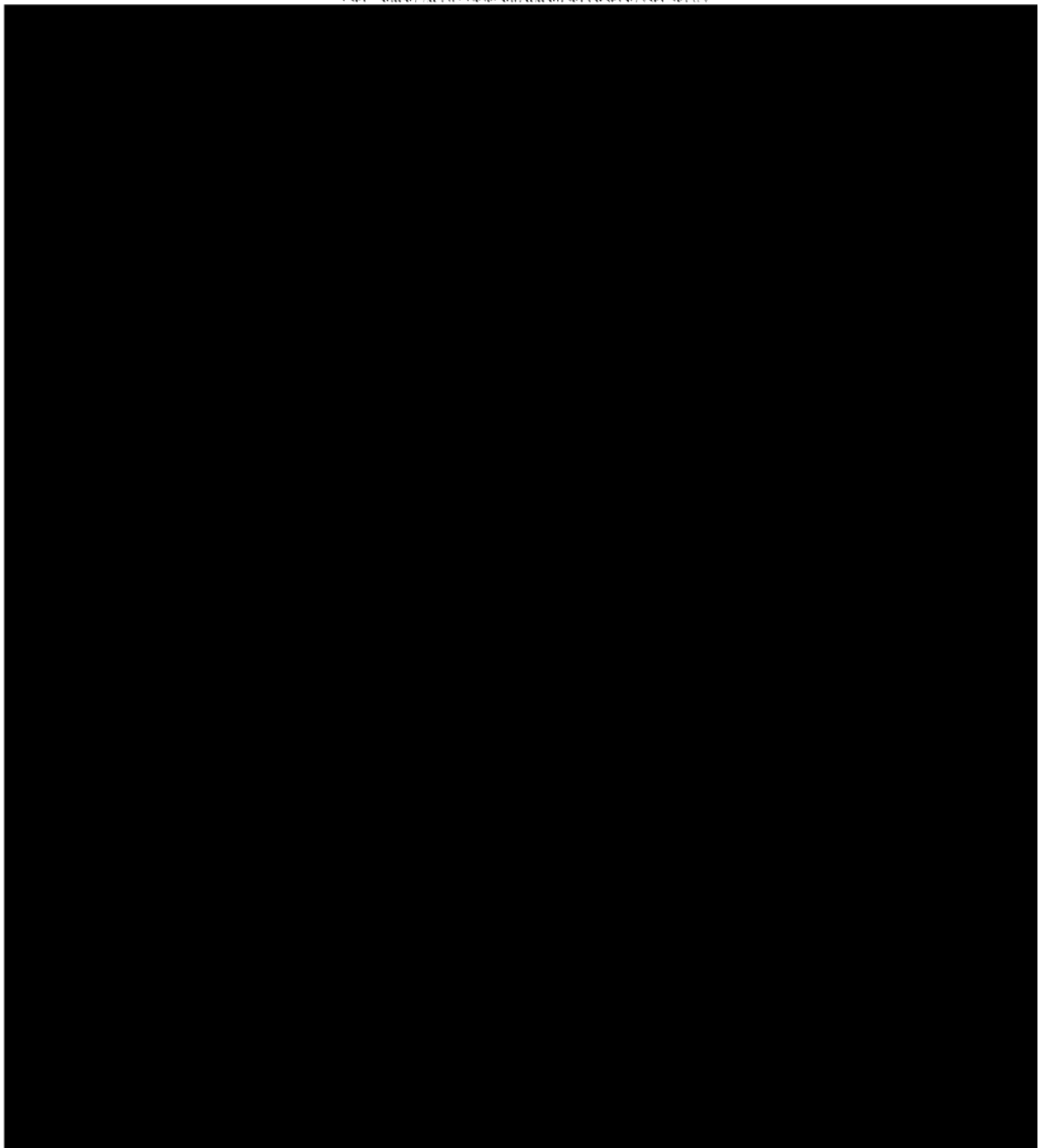
⁴¹⁸ ~~(U)~~ Constitution Project report at 154, citing Memorandum from Steven G. Bradbury (Acting Ass’t Att’y Gen., OLC) to John A. Rizzo (Senior Deputy Gen. Counsel, CIA), Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value Al Qaeda Detainee (May 10, 2005 [No. 13]), available at http://media.luxmedia.com/achu/olc_05102005_bradbury46pg.pdf

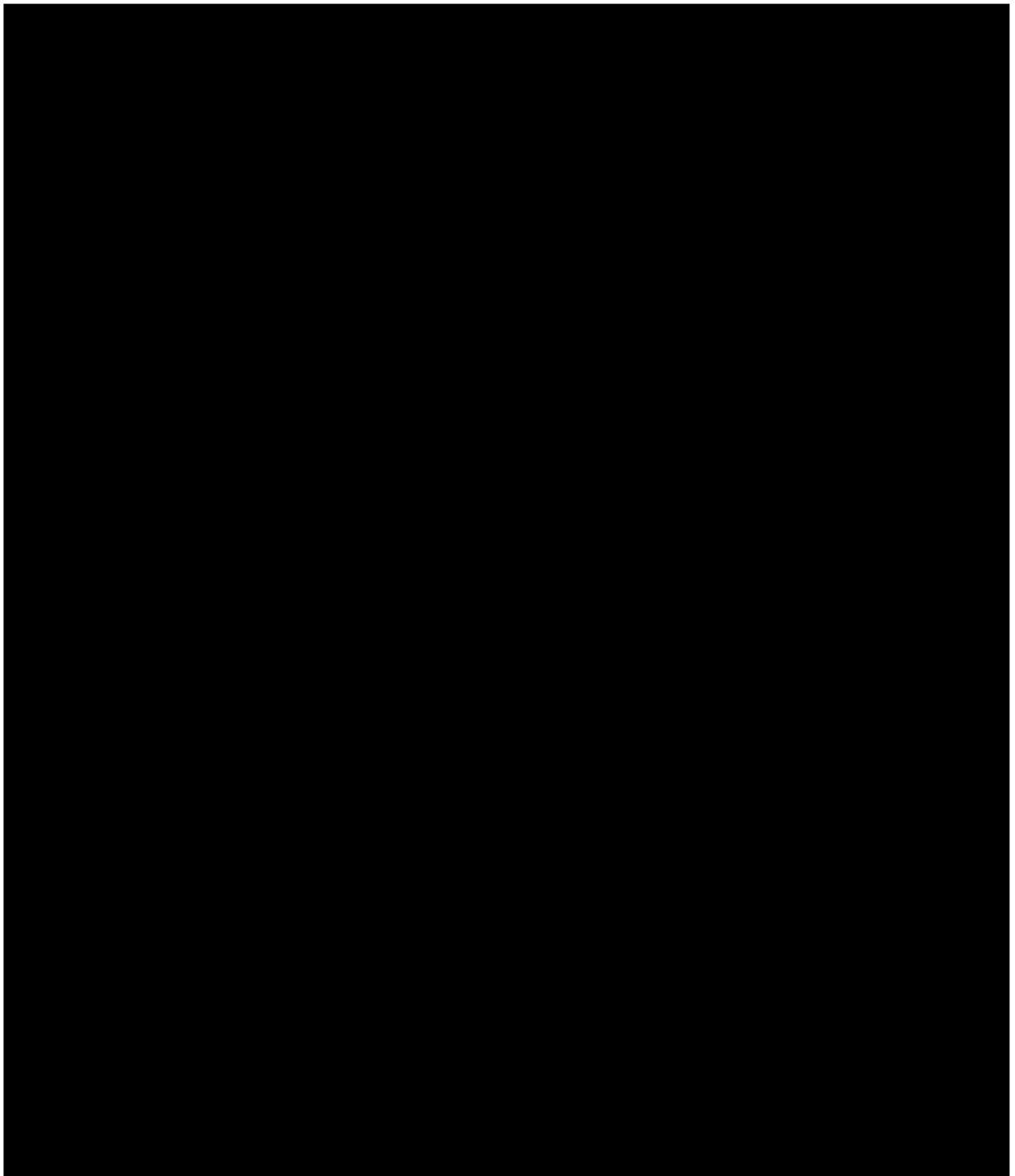
⁴¹⁹ ~~(U)~~ Memorandum from Steven G. Bradbury (Acting Ass’t Att’y Gen., OLC) to John A. Rizzo (Senior Deputy Gen. Counsel, CIA), Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value Al Qaeda Detainee (May 10, 2005 [No. 12]) available at http://media.luxmedia.com/achu/olc_05102005_bradbury_20pg.pdf.

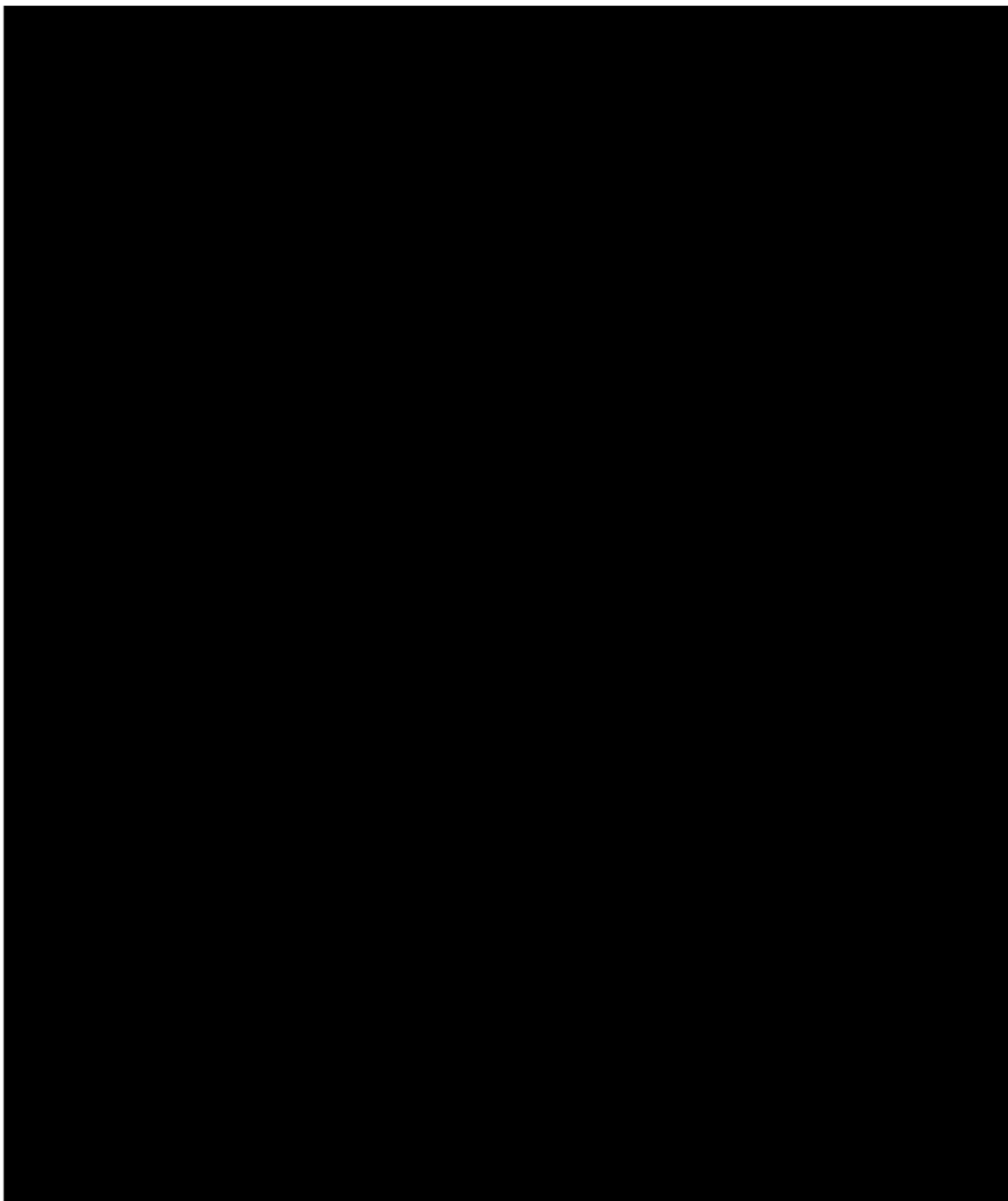
⁴²⁰ ~~(U)~~ Email from James Comey to Chuck Rosenberg, “Re: Interrogation,” 28 April 2005, available at <https://www.nytimes.com/interactive/projects/documents/justice-department-communication-on-interrogationopinions?action=click&contentCollection=Politics&module=RelatedCoverage&region=EndOfArticle&pgtype=article#p=1>. Comey was not the only person appalled by the Bradbury memos. Sen. Lindsey Graham, one of the co-sponsors of the Detainee Treatment Act in 2005 along with Sen. McCain, said of the legal memoranda that approved waterboarding, “the [legal] guidance that was provided during this period of time, I think, will go down in history as some of the most irresponsible and shortsighted legal analysis ever provided to our Nation’s military and intelligence communities.” In an interview with Constitution Project staff, Graham said: “They

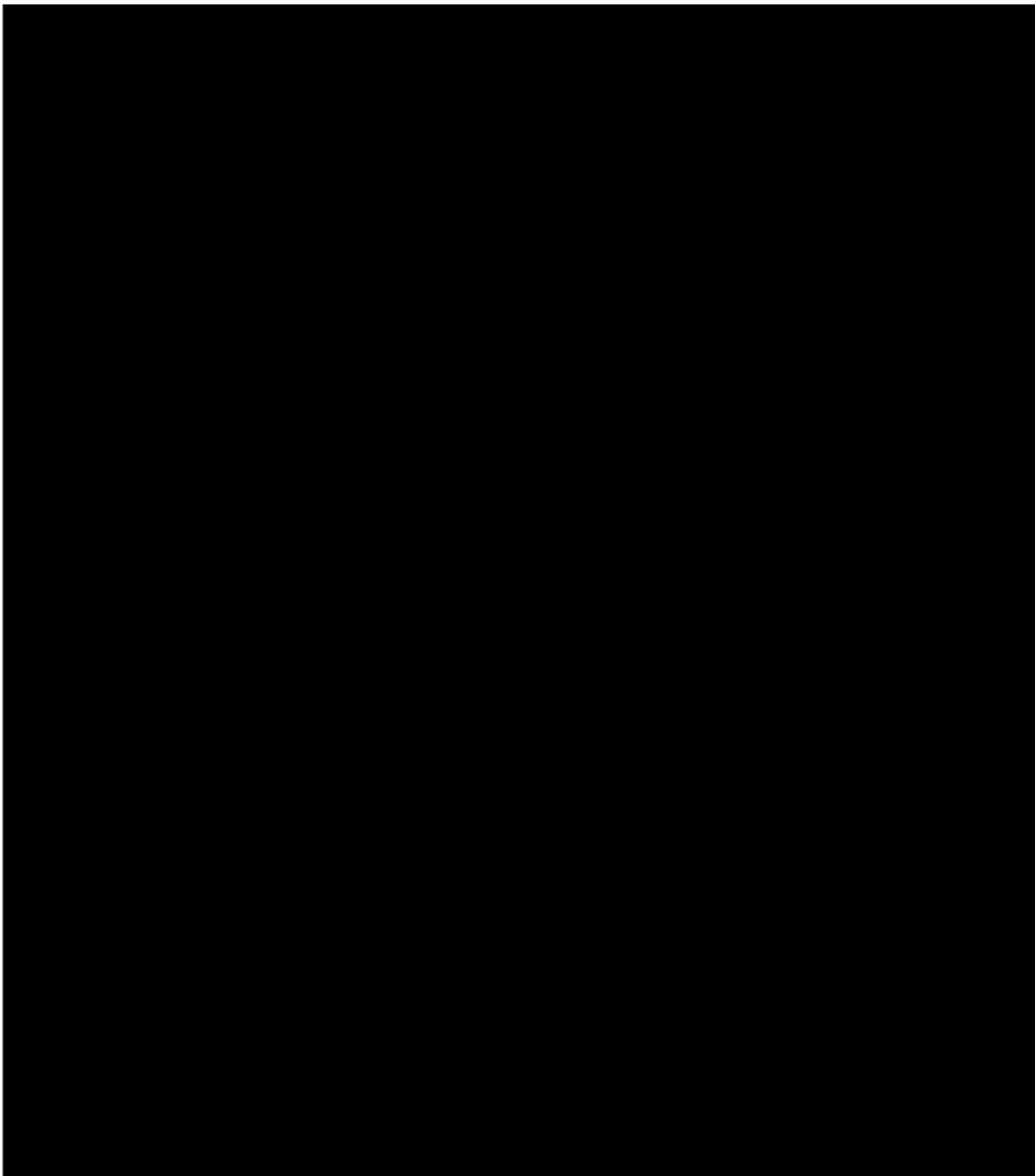


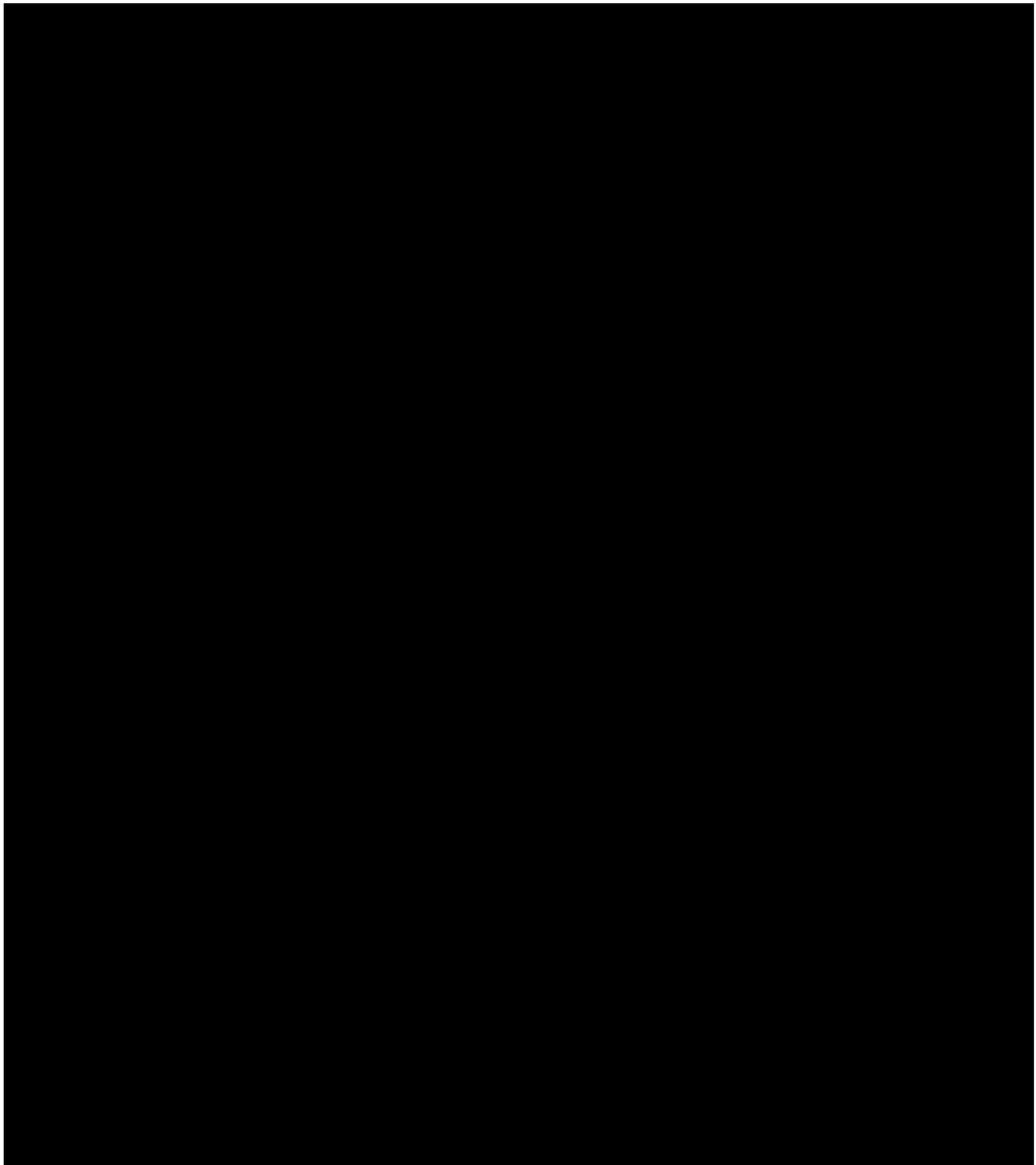




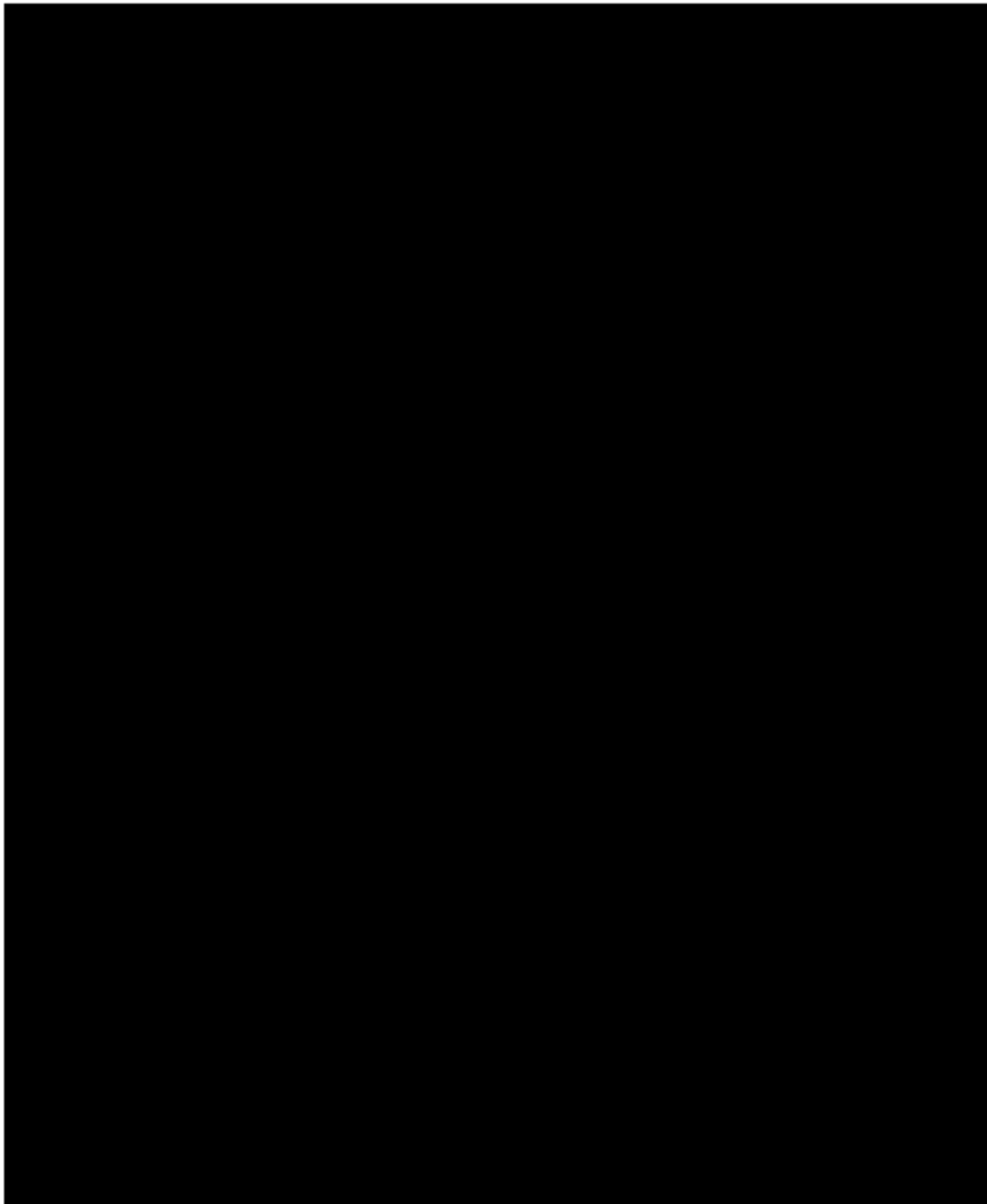


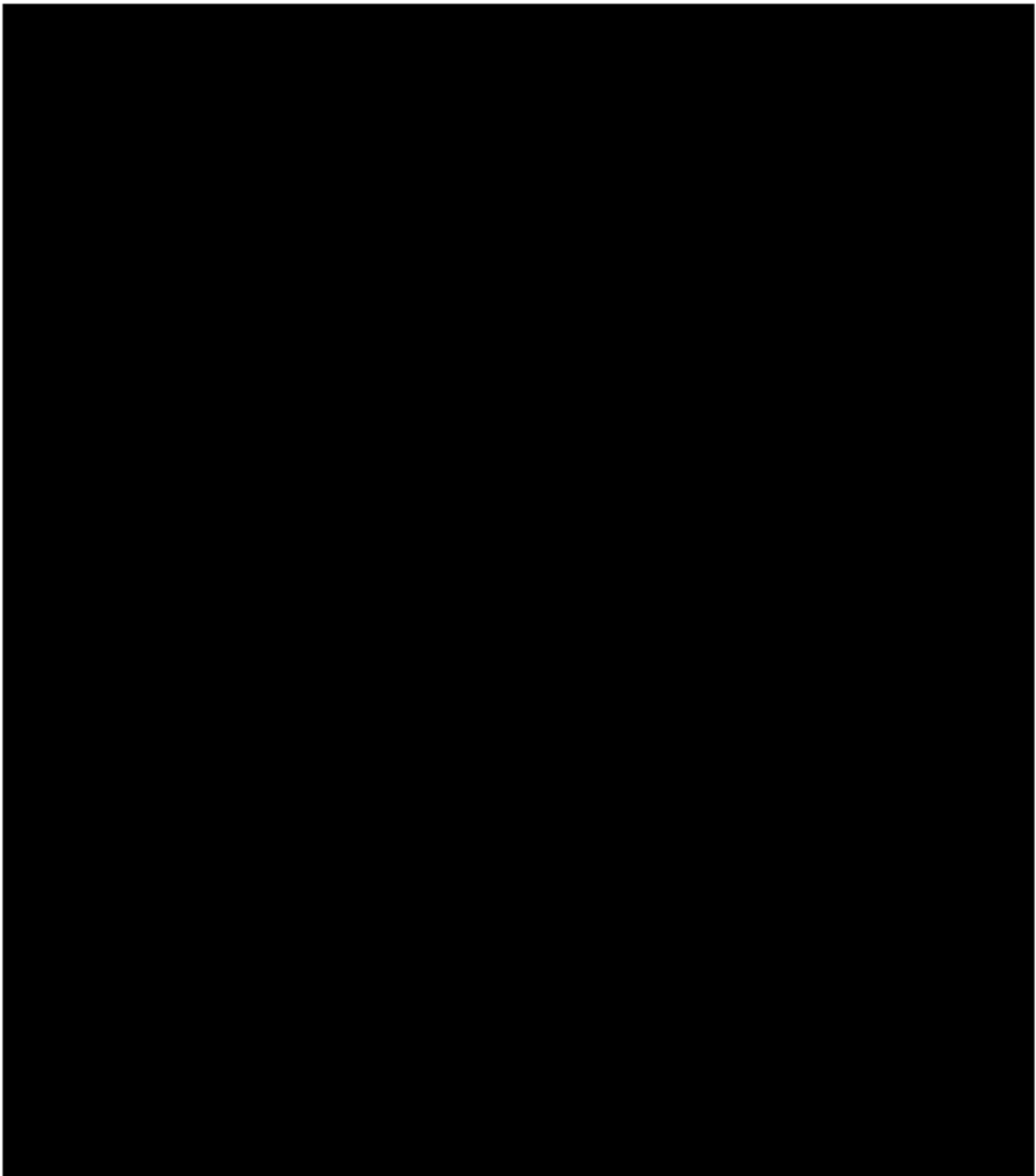
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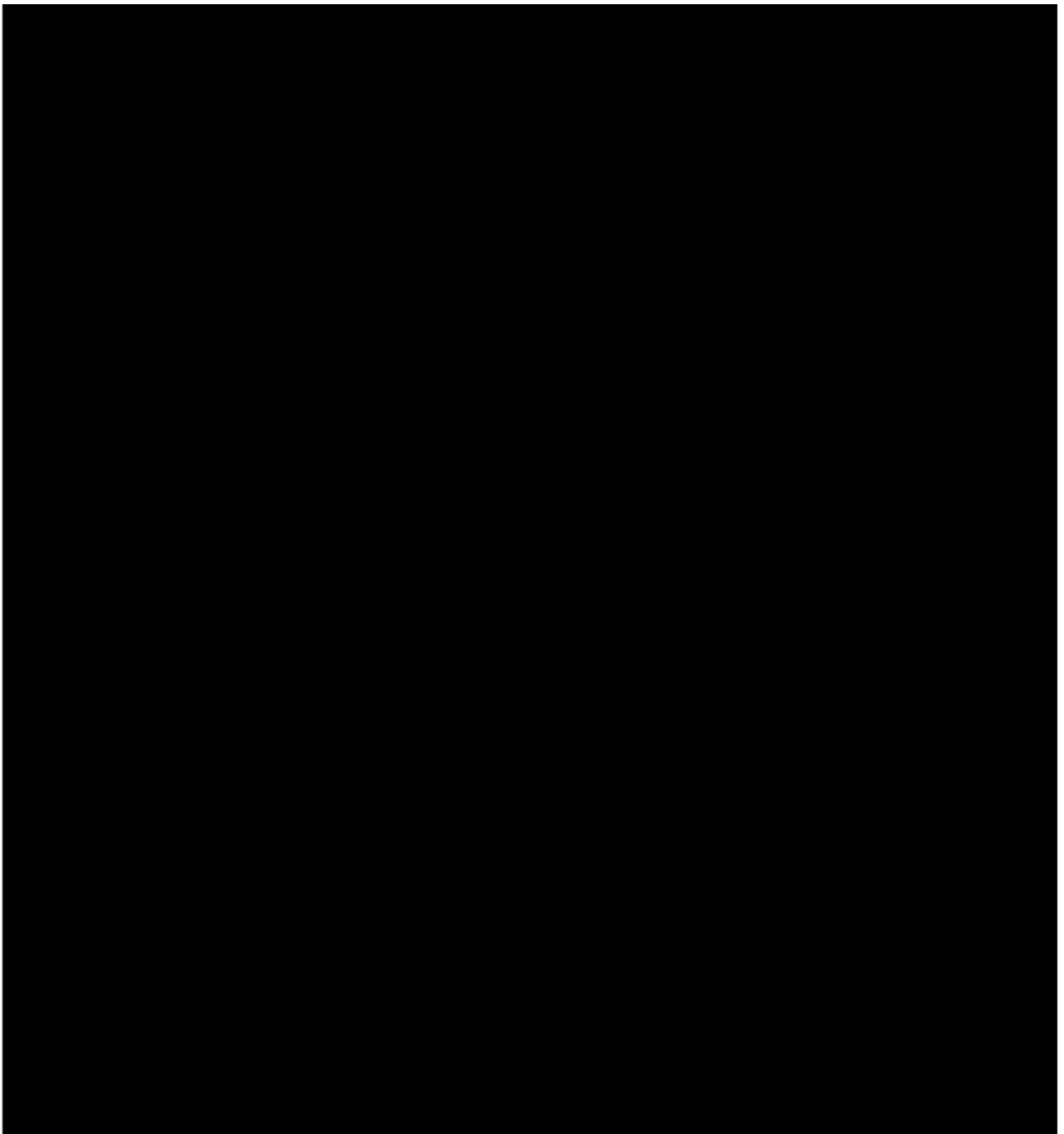


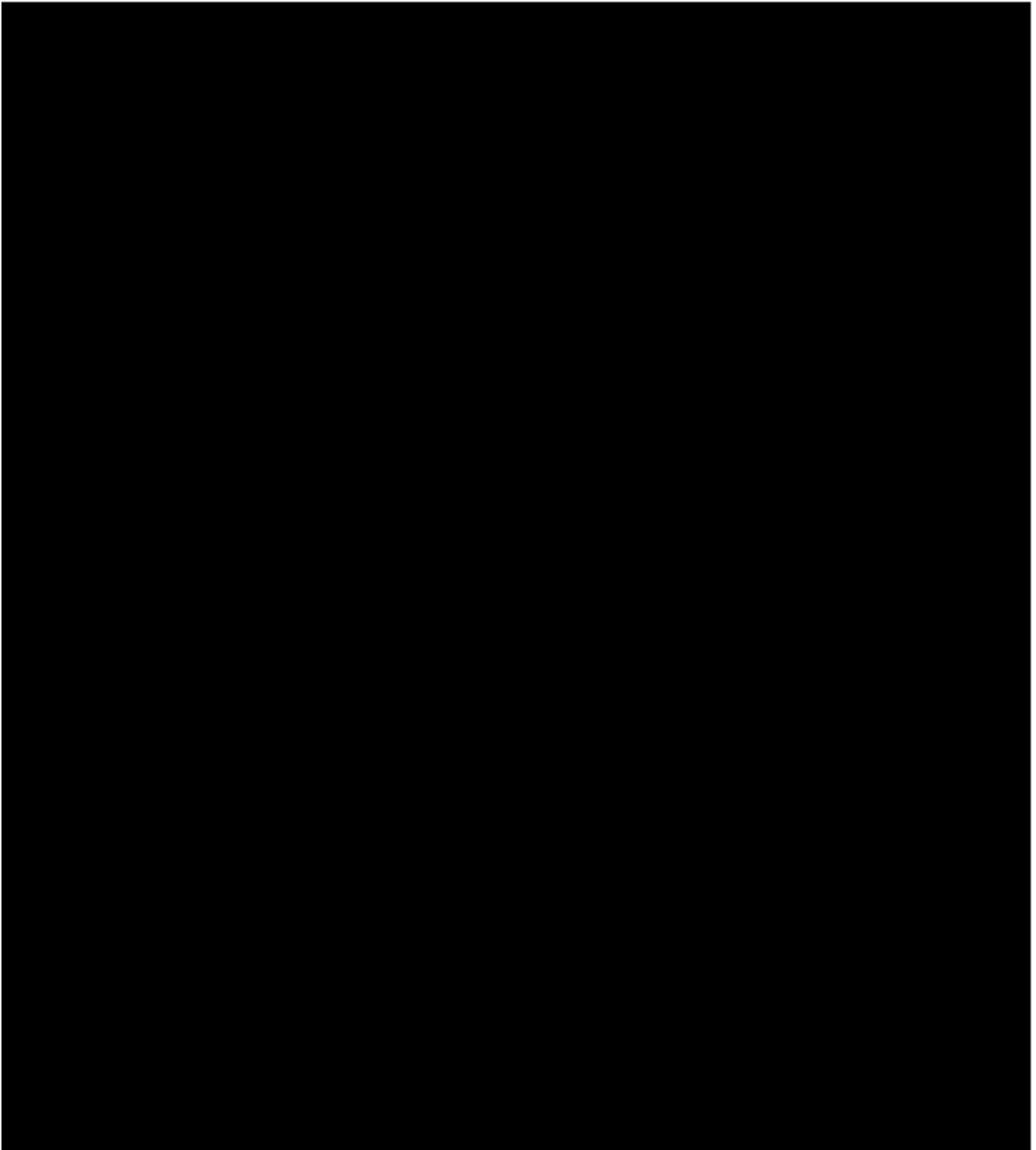


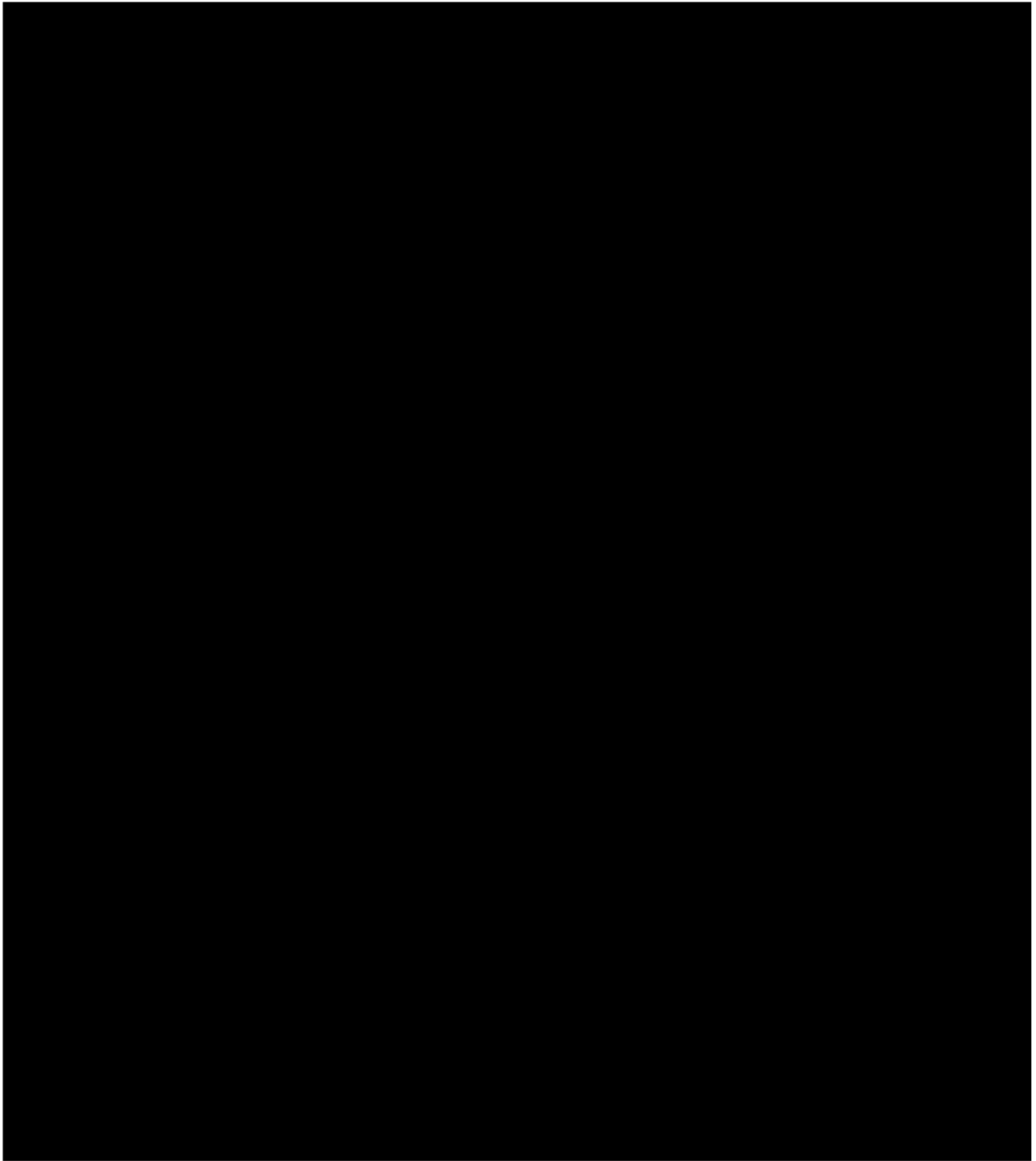




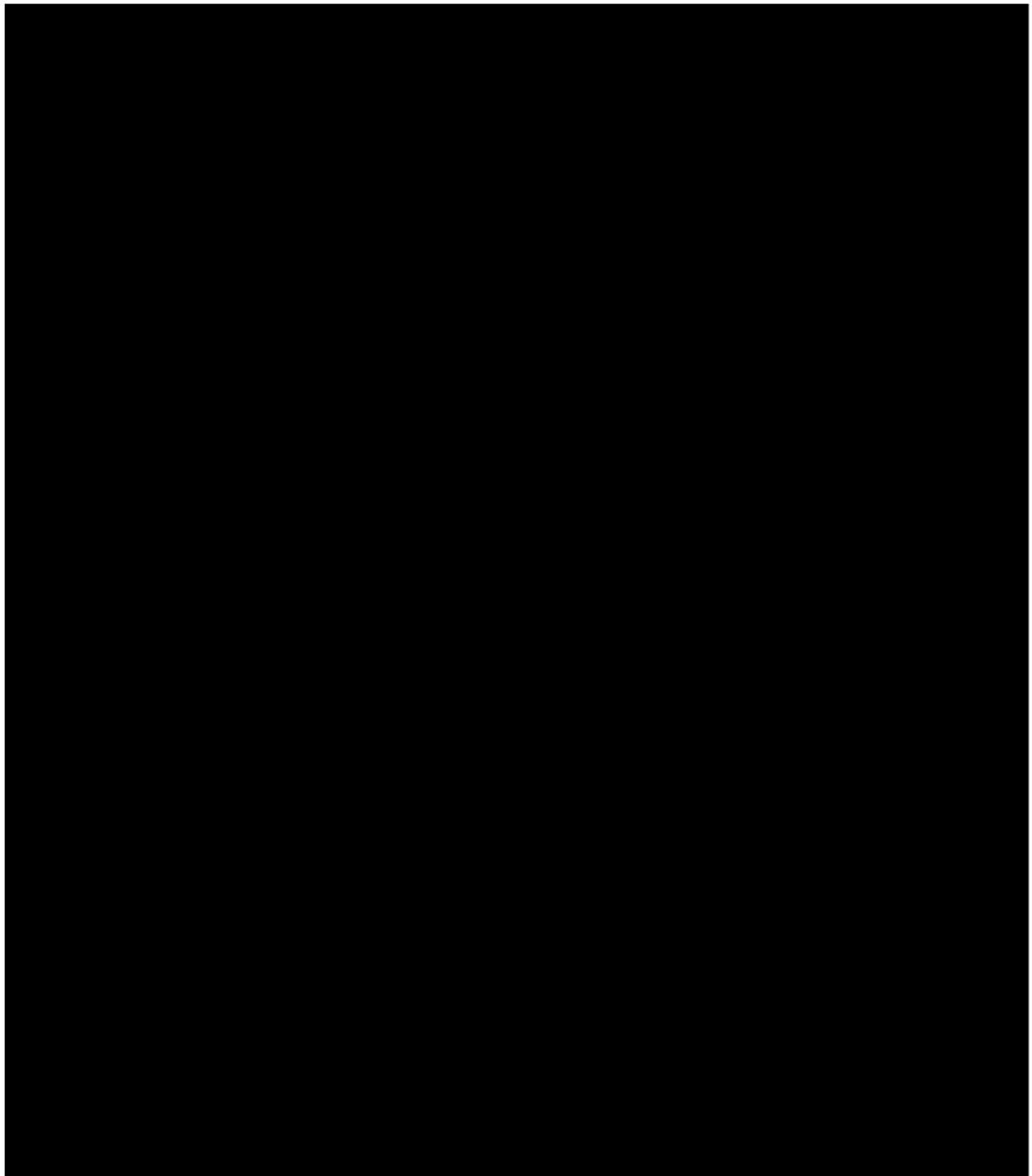


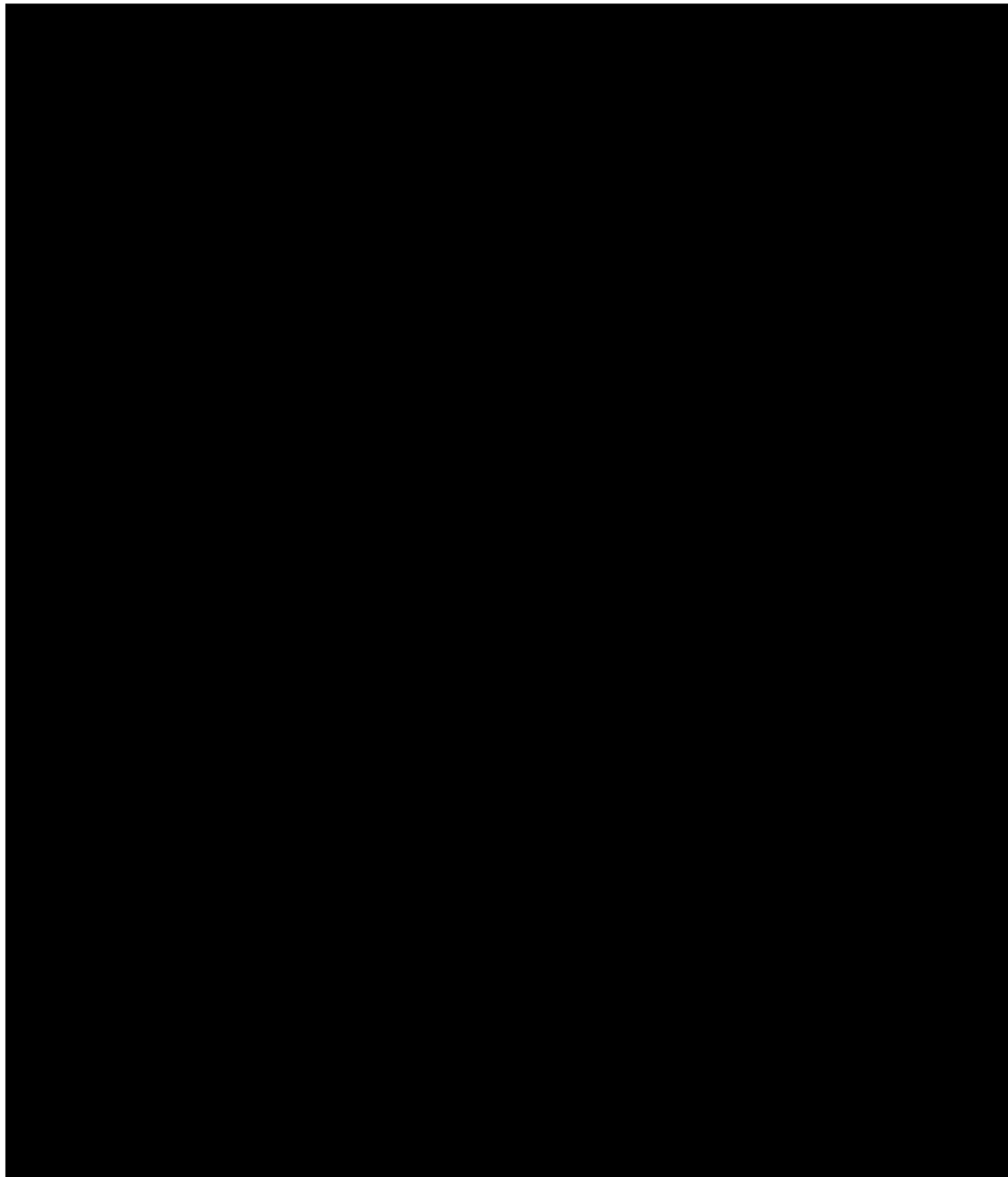


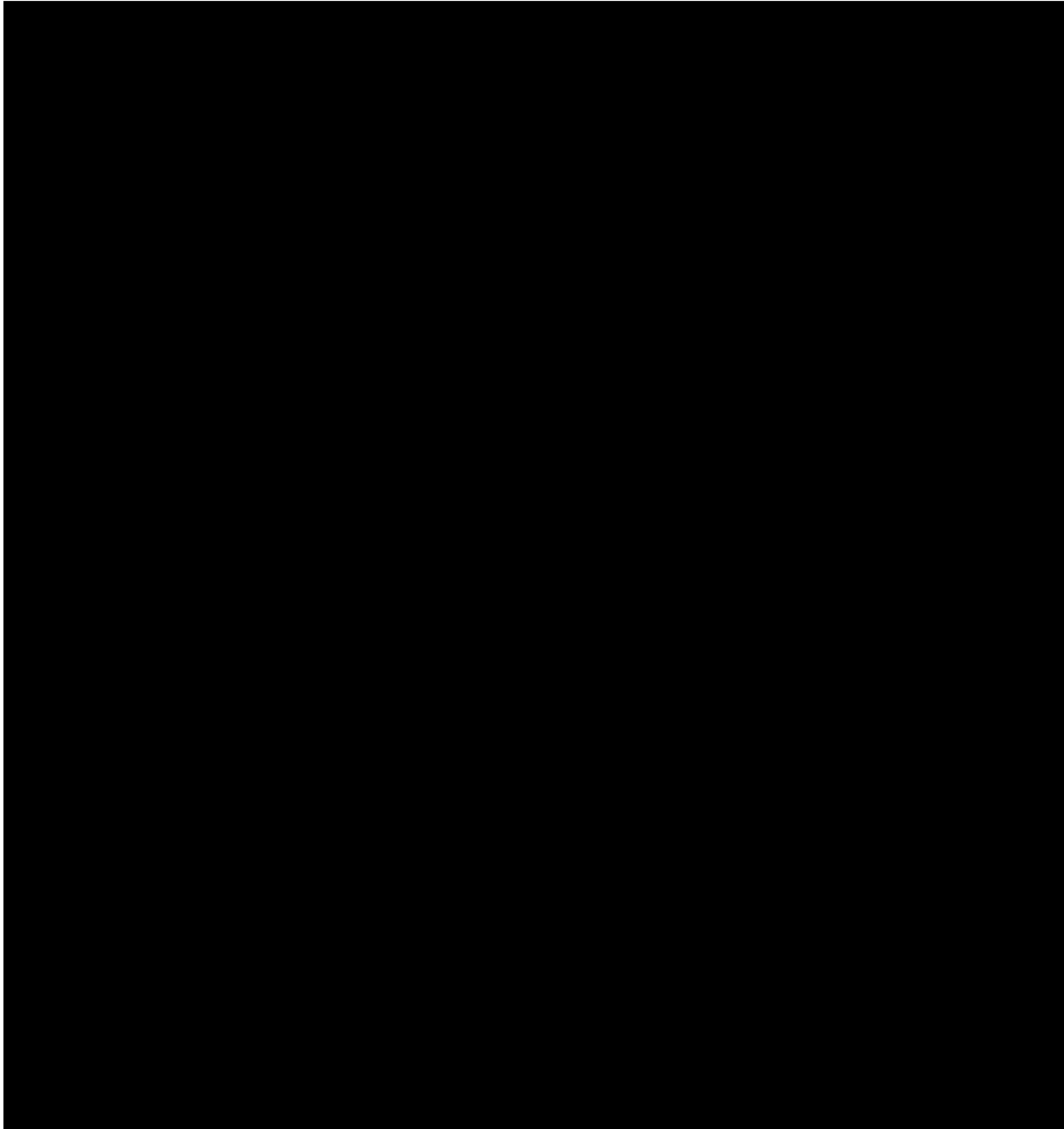




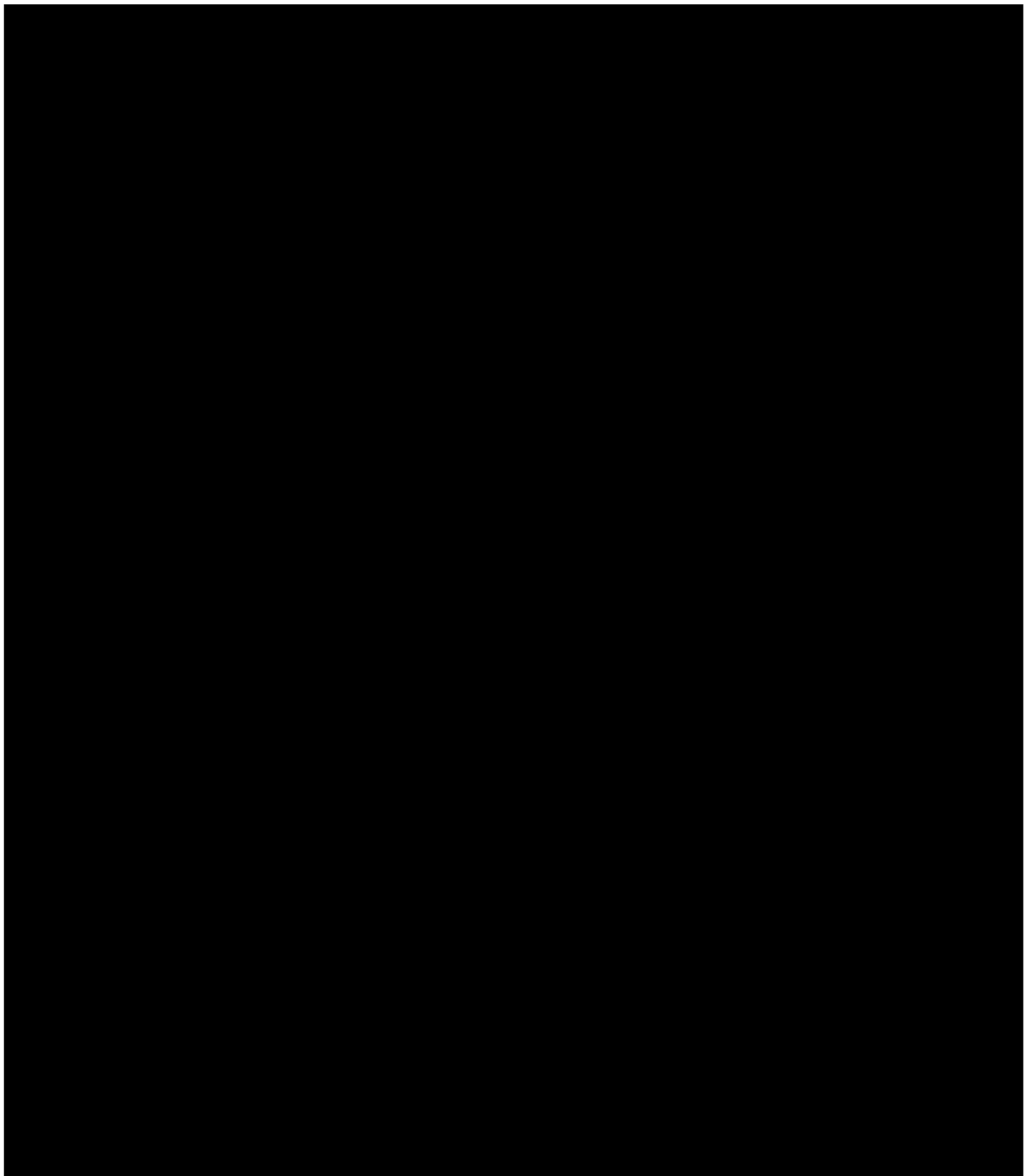
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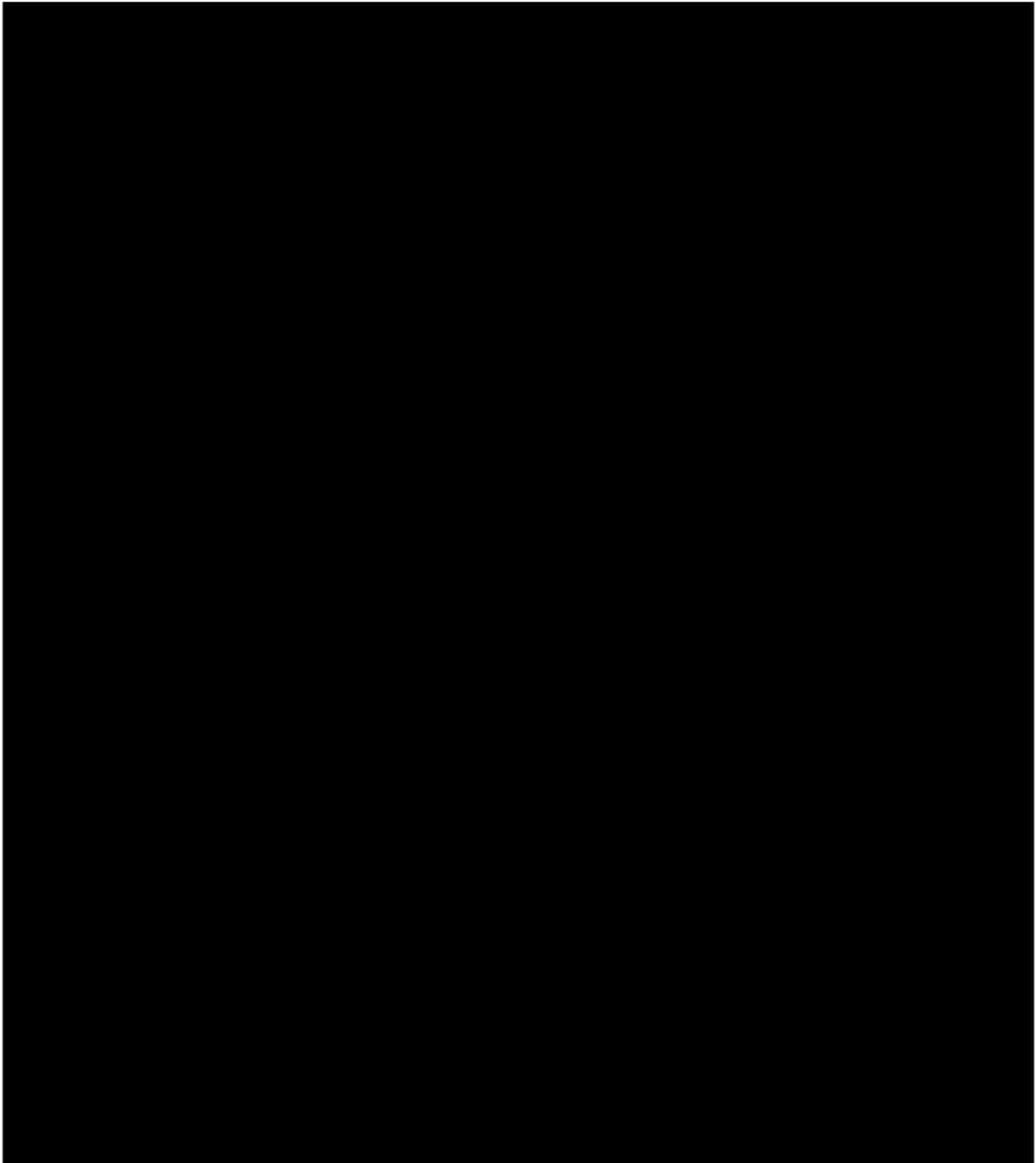


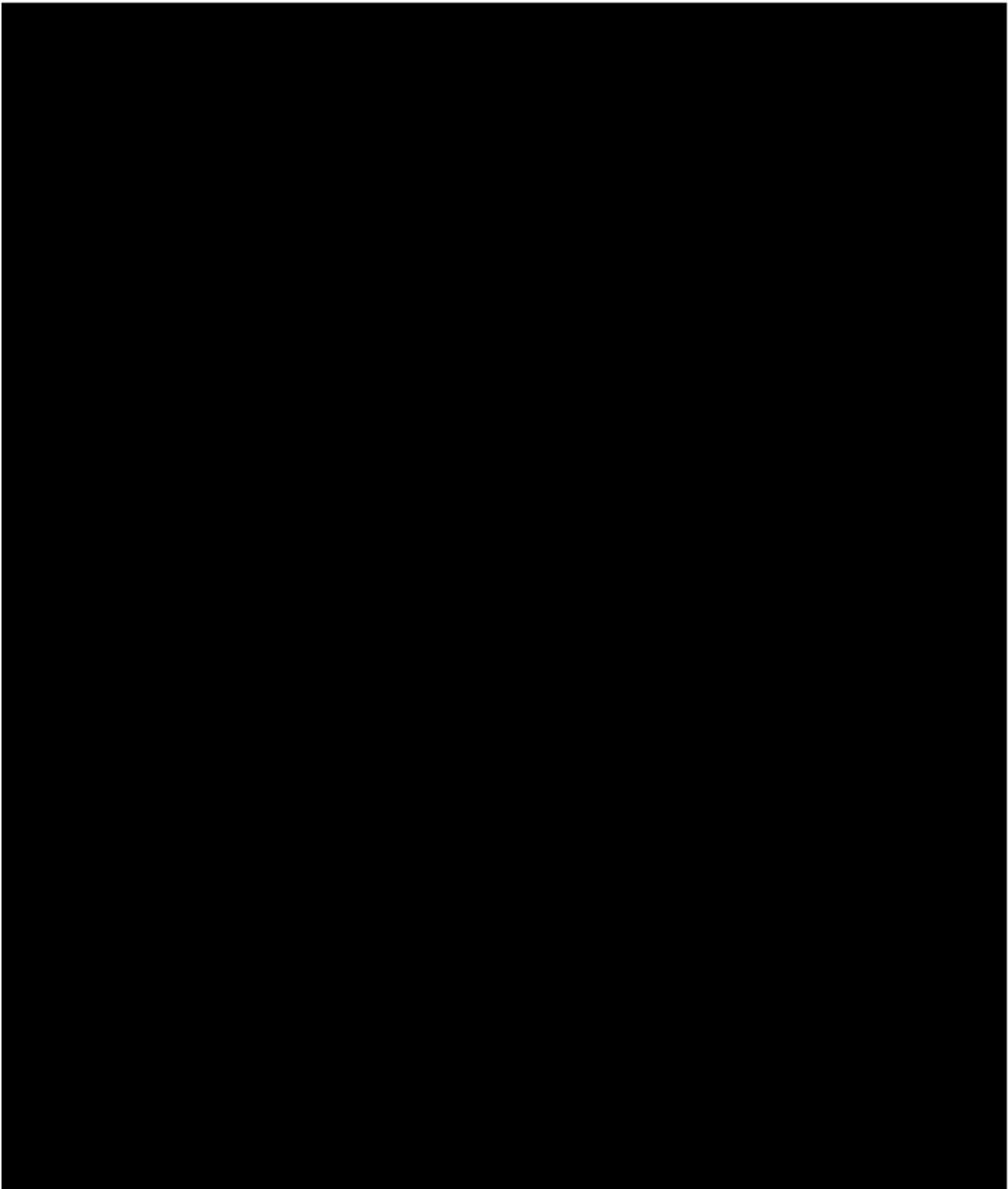


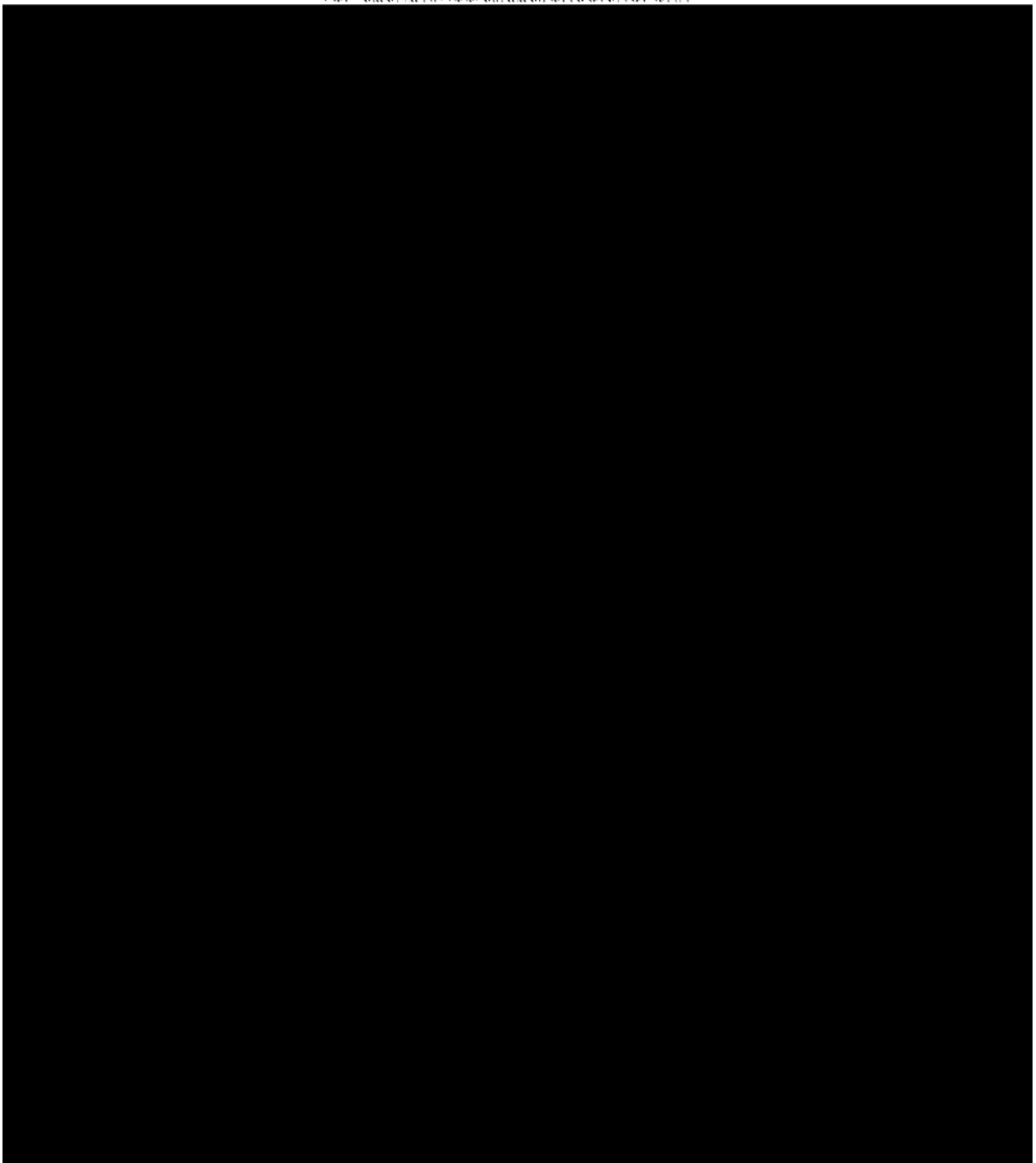


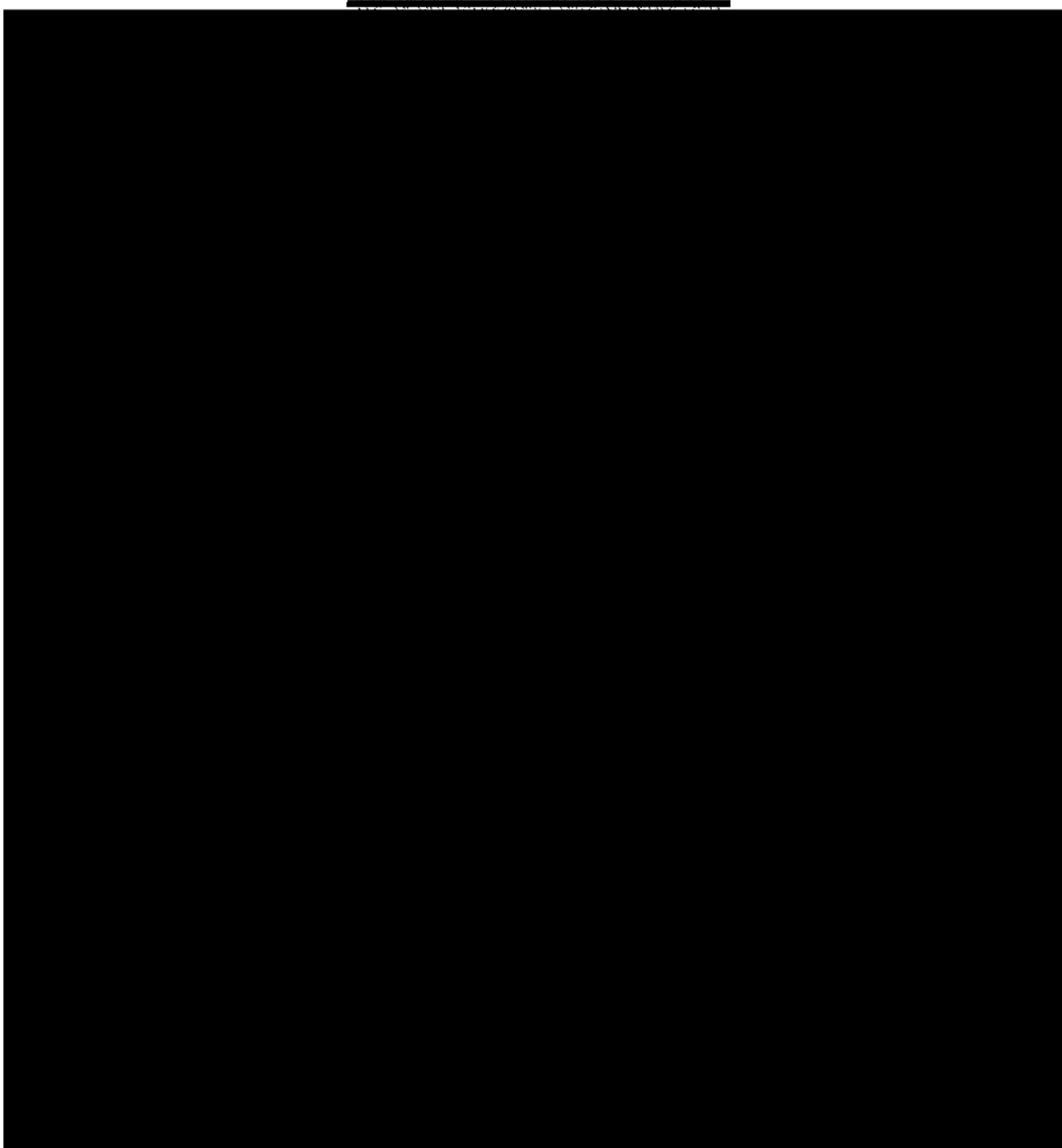
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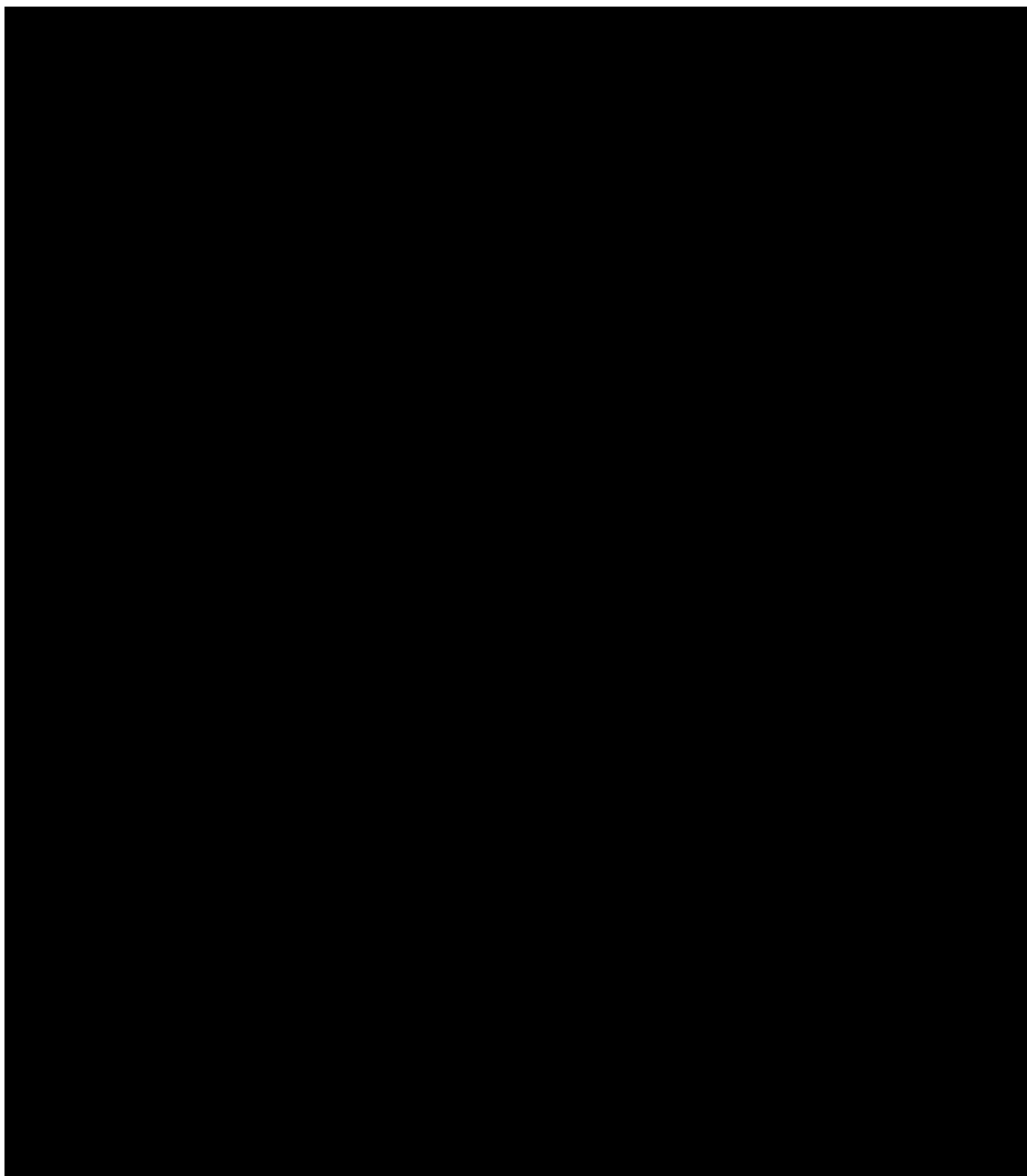




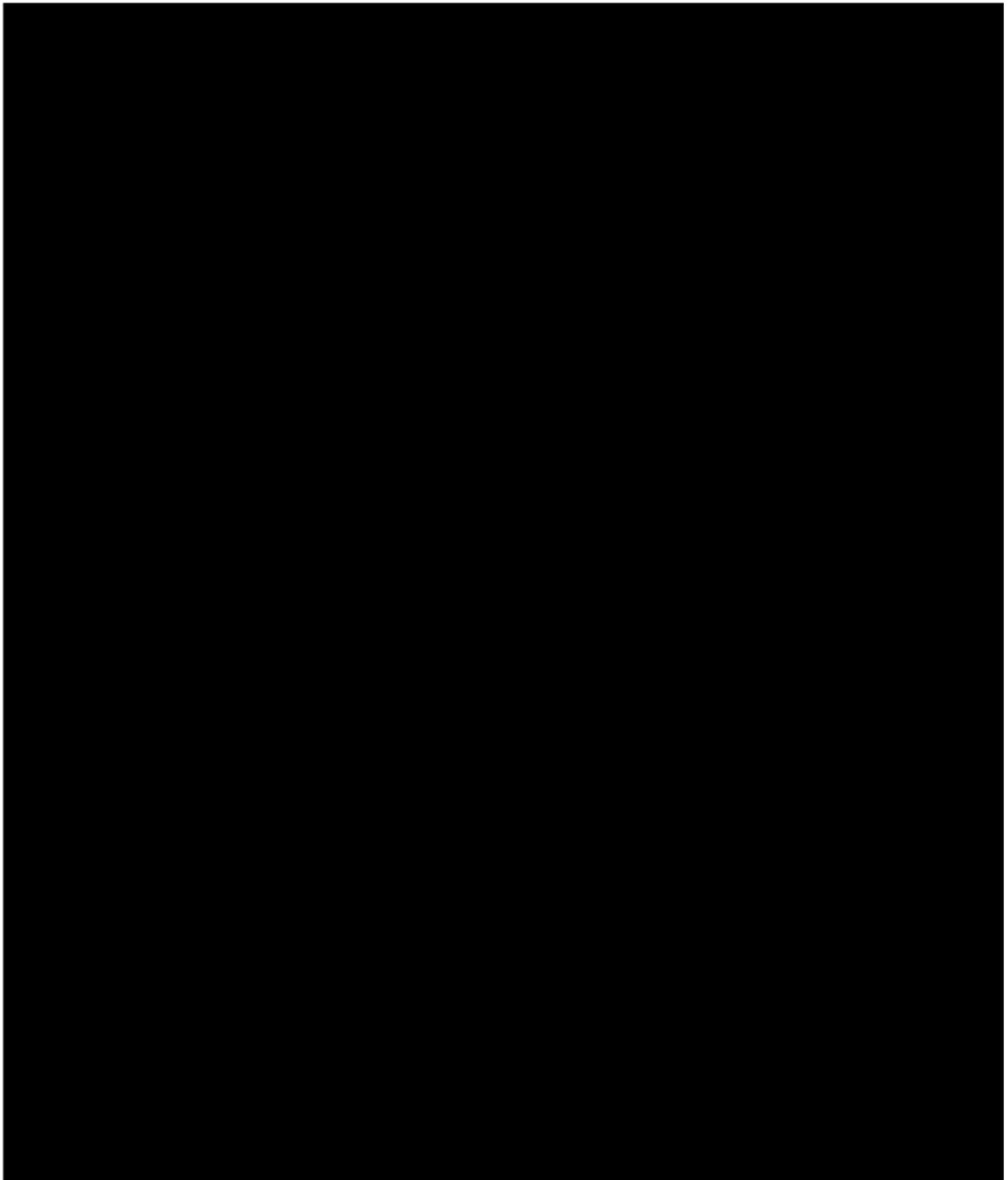


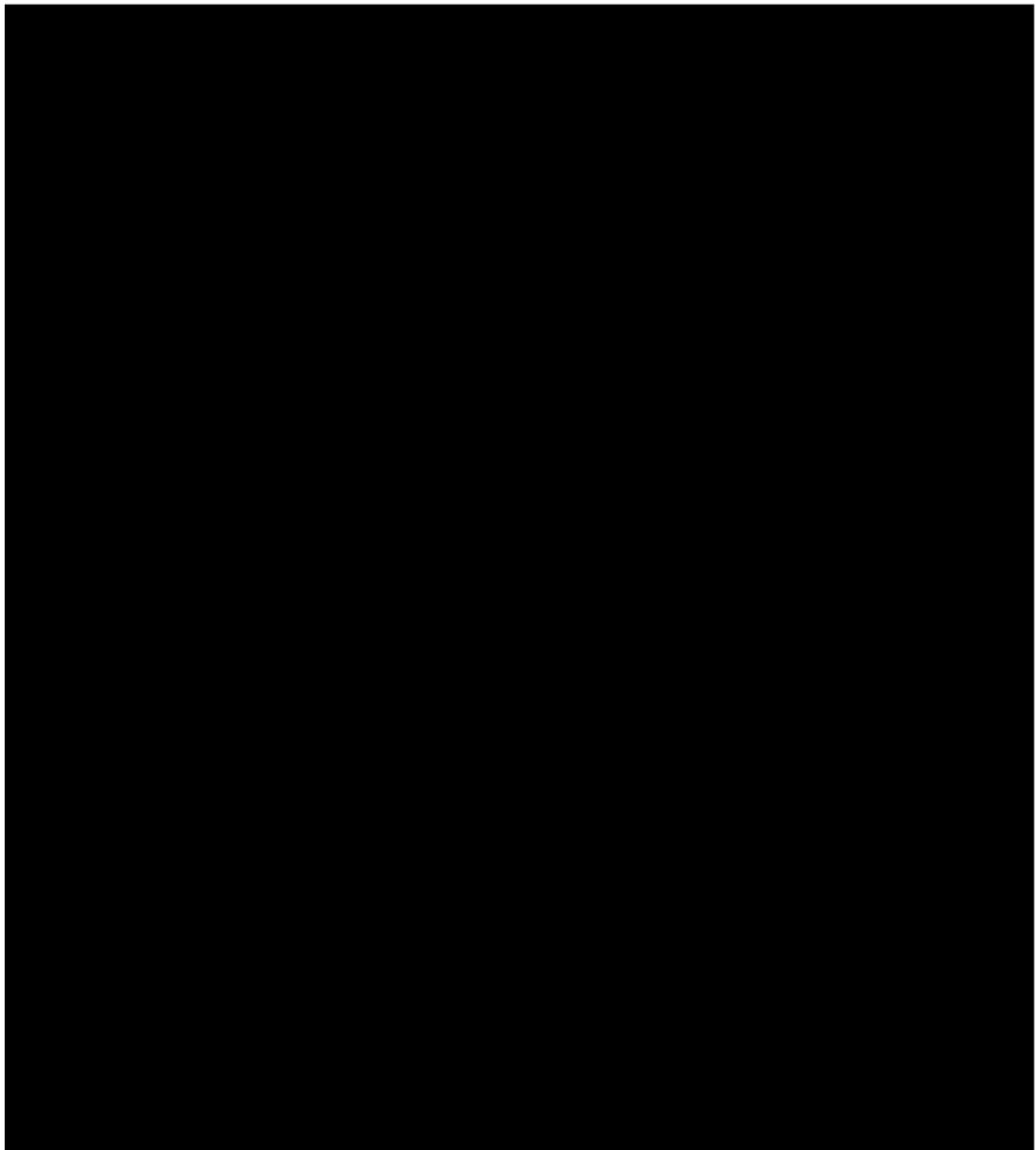




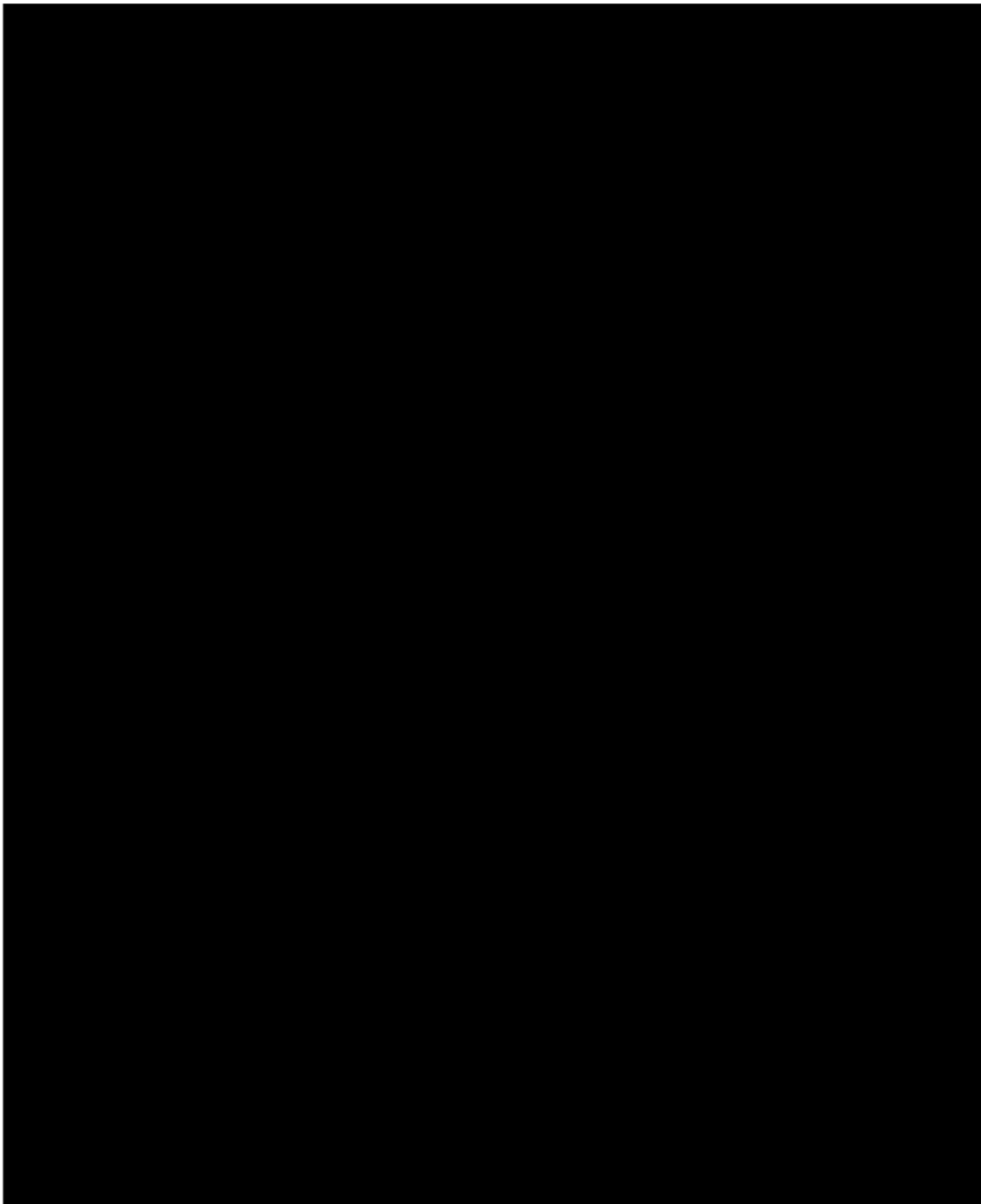


95% CI, 89%–95%; $P < .001$), and the risk of death was significantly higher in patients with a history of stroke (OR, 1.45; 95% CI, 1.05–2.00; $P = .02$) and in patients with a history of heart failure (OR, 1.45; 95% CI, 1.05–2.00; $P = .02$). The risk of death was not significantly higher in patients with a history of hypertension (OR, 1.15; 95% CI, 0.85–1.55; $P = .35$), a history of diabetes (OR, 1.05; 95% CI, 0.75–1.45; $P = .75$), or a history of peripheral vascular disease (OR, 1.05; 95% CI, 0.75–1.45; $P = .75$). The risk of death was not significantly higher in patients with a history of chronic kidney disease (OR, 1.05; 95% CI, 0.75–1.45; $P = .75$).

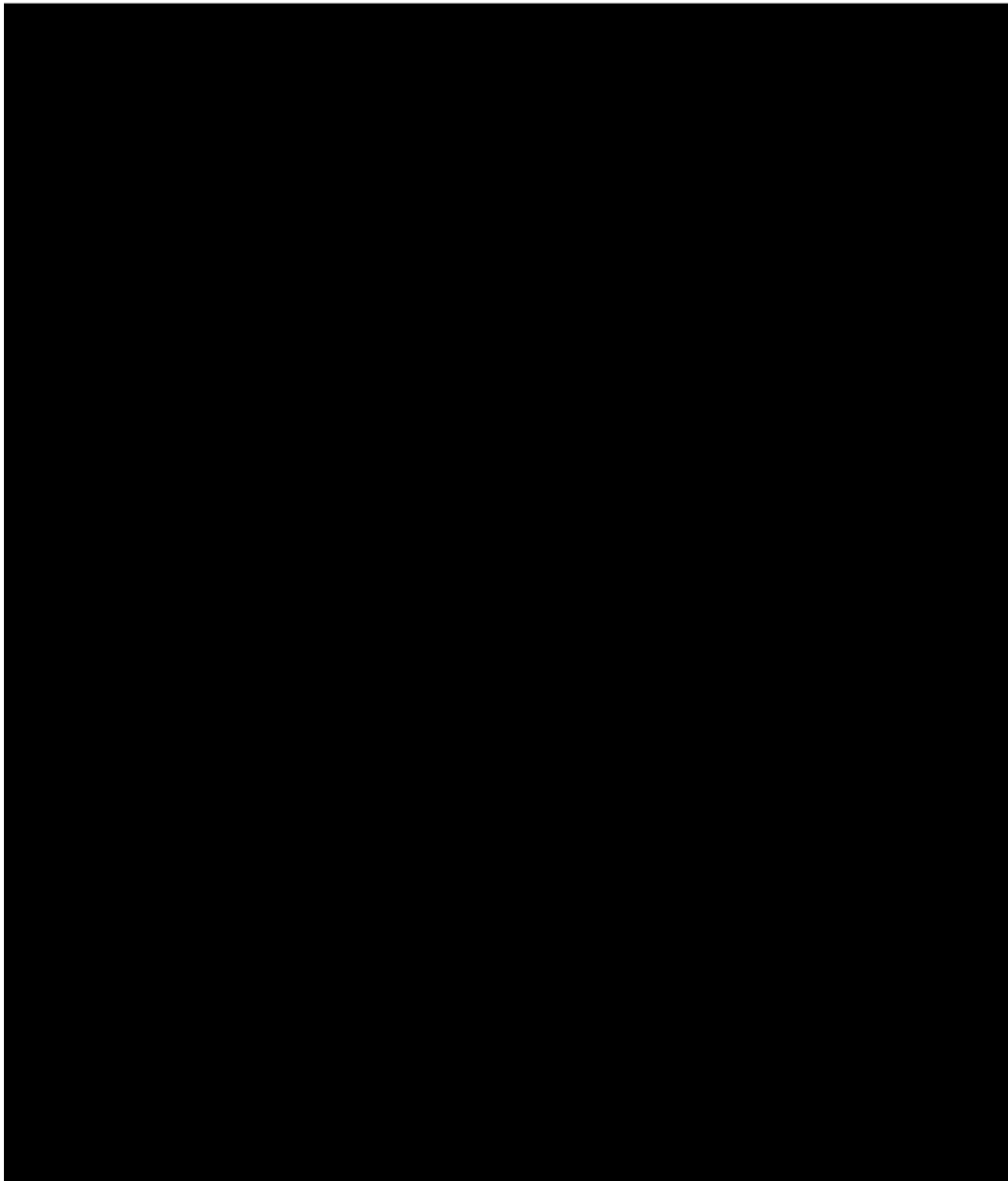


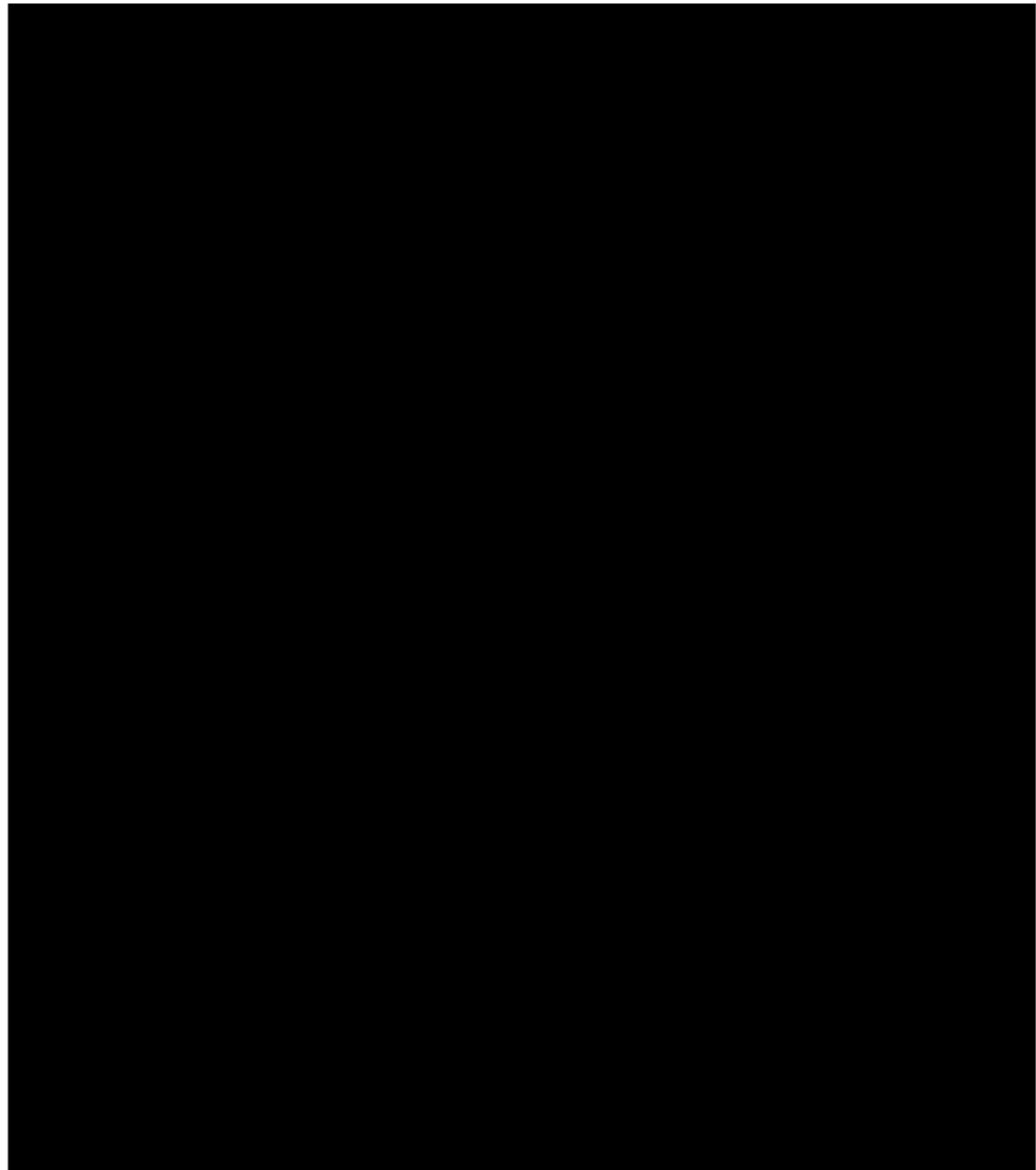


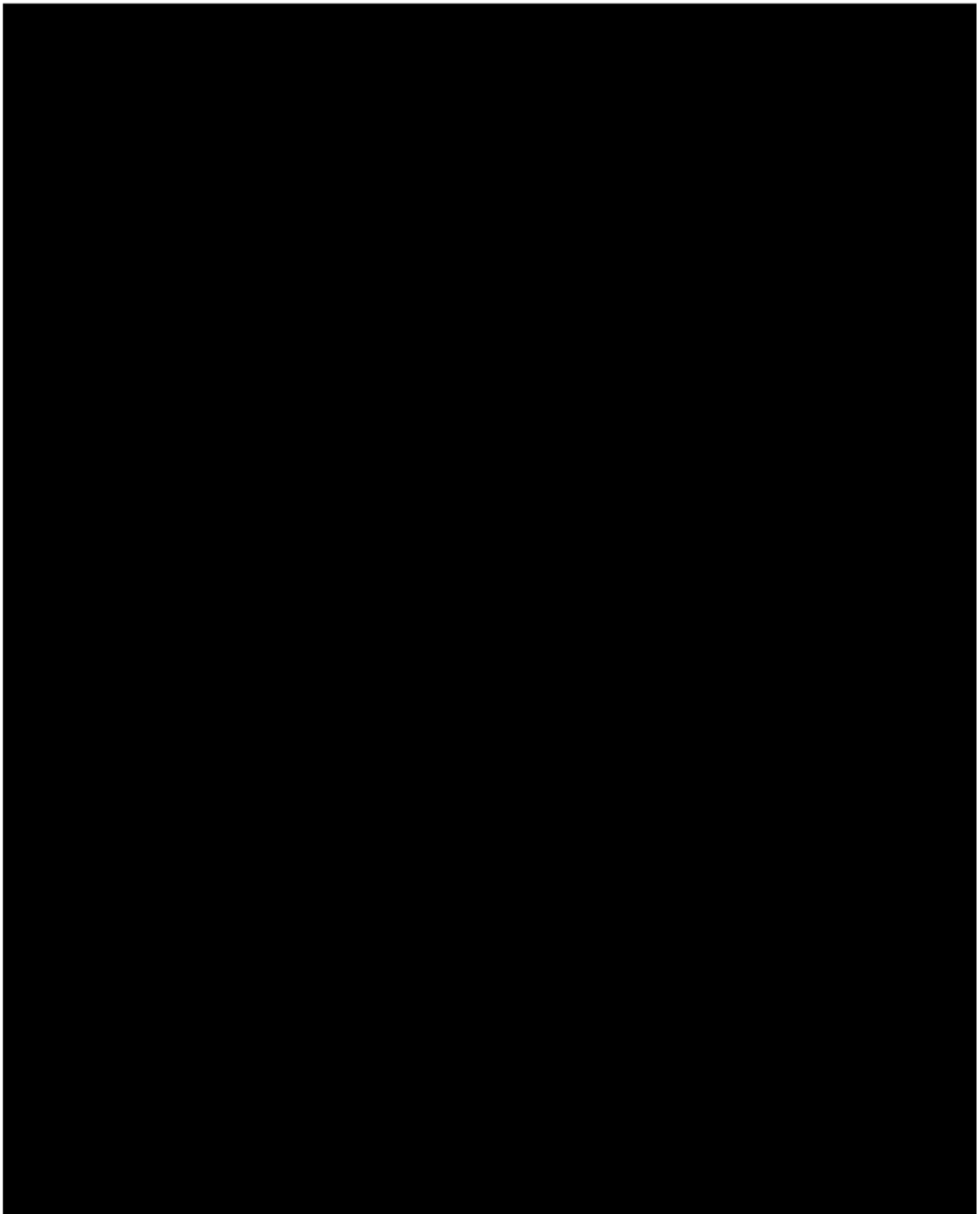
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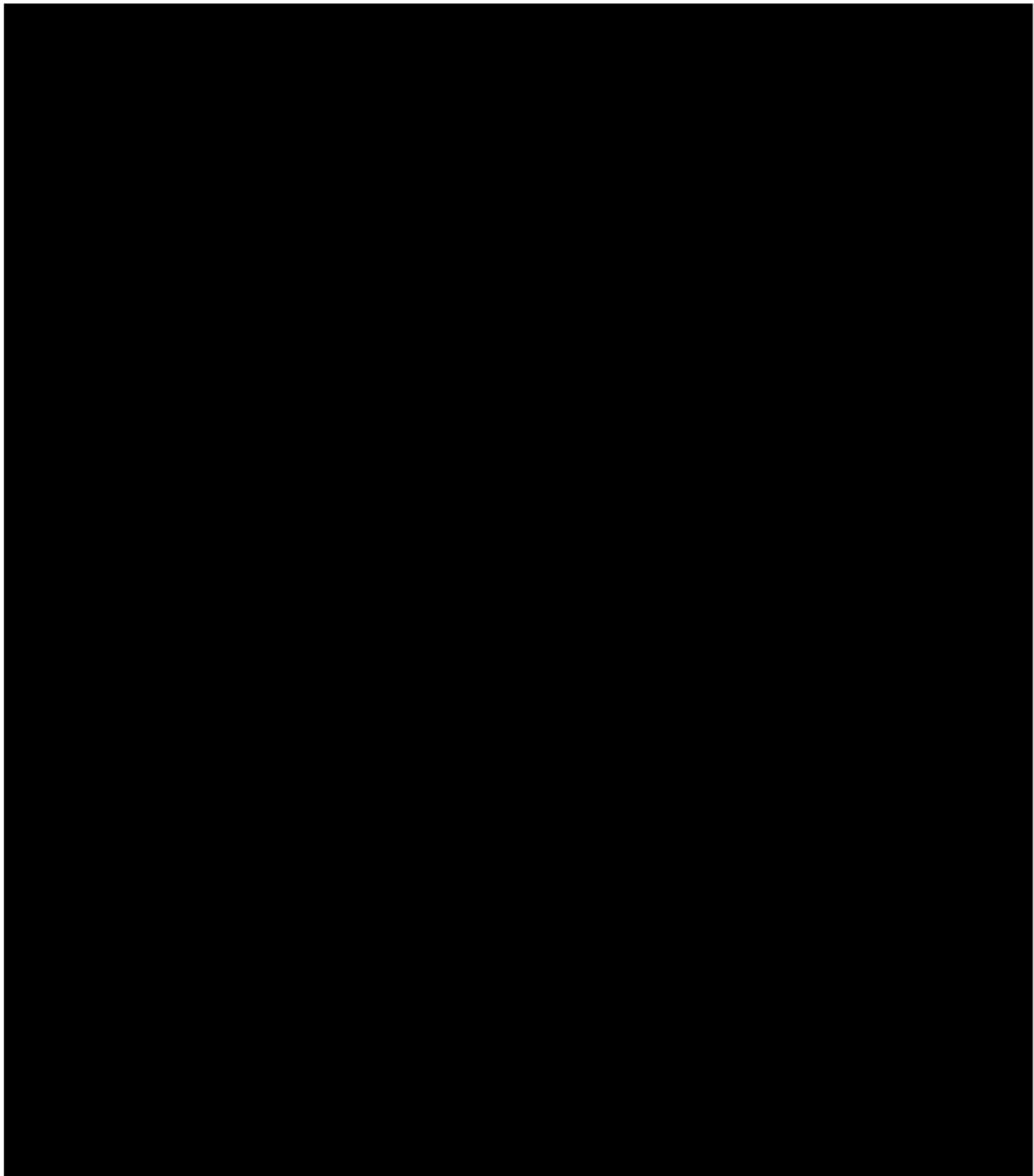


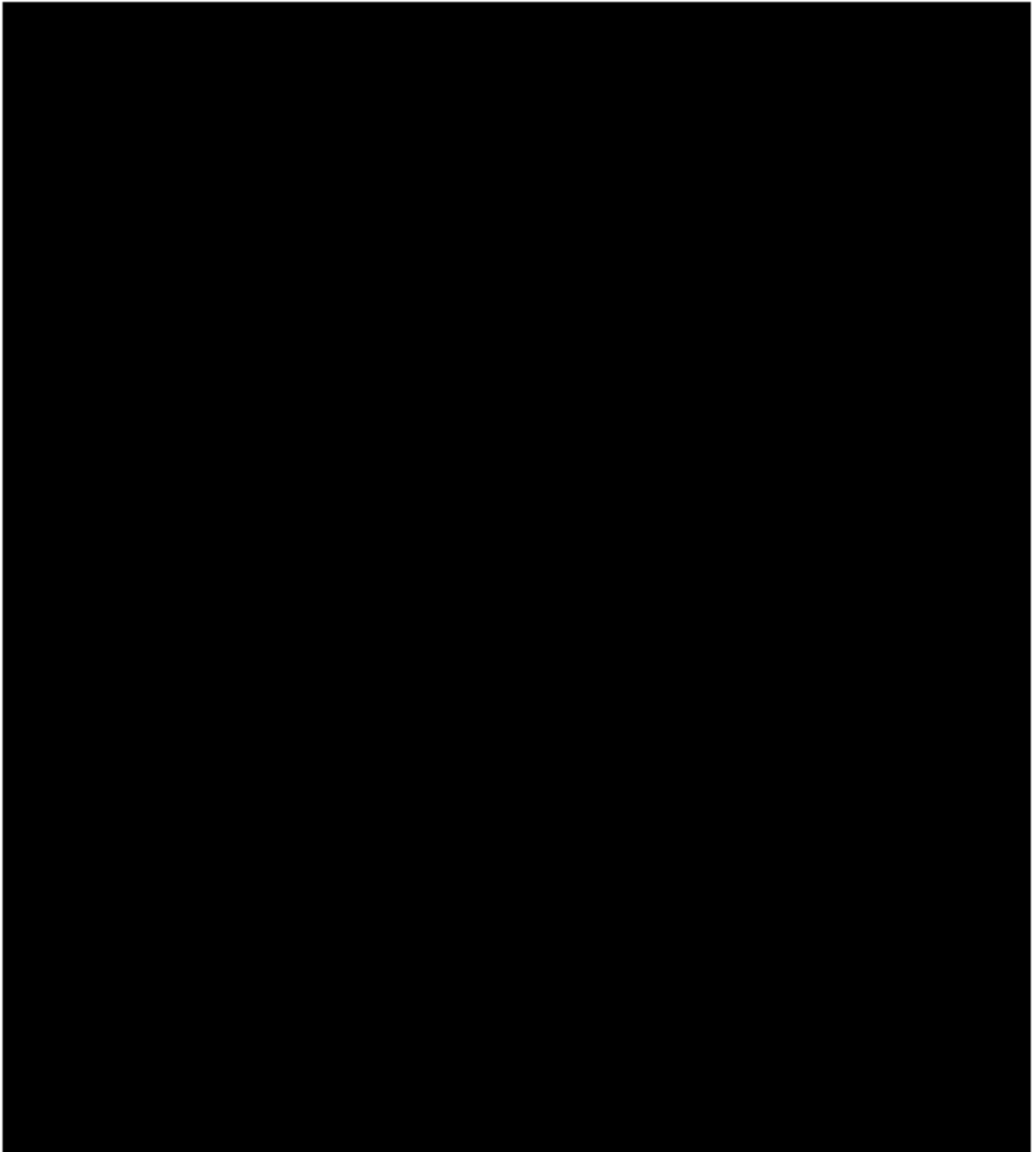
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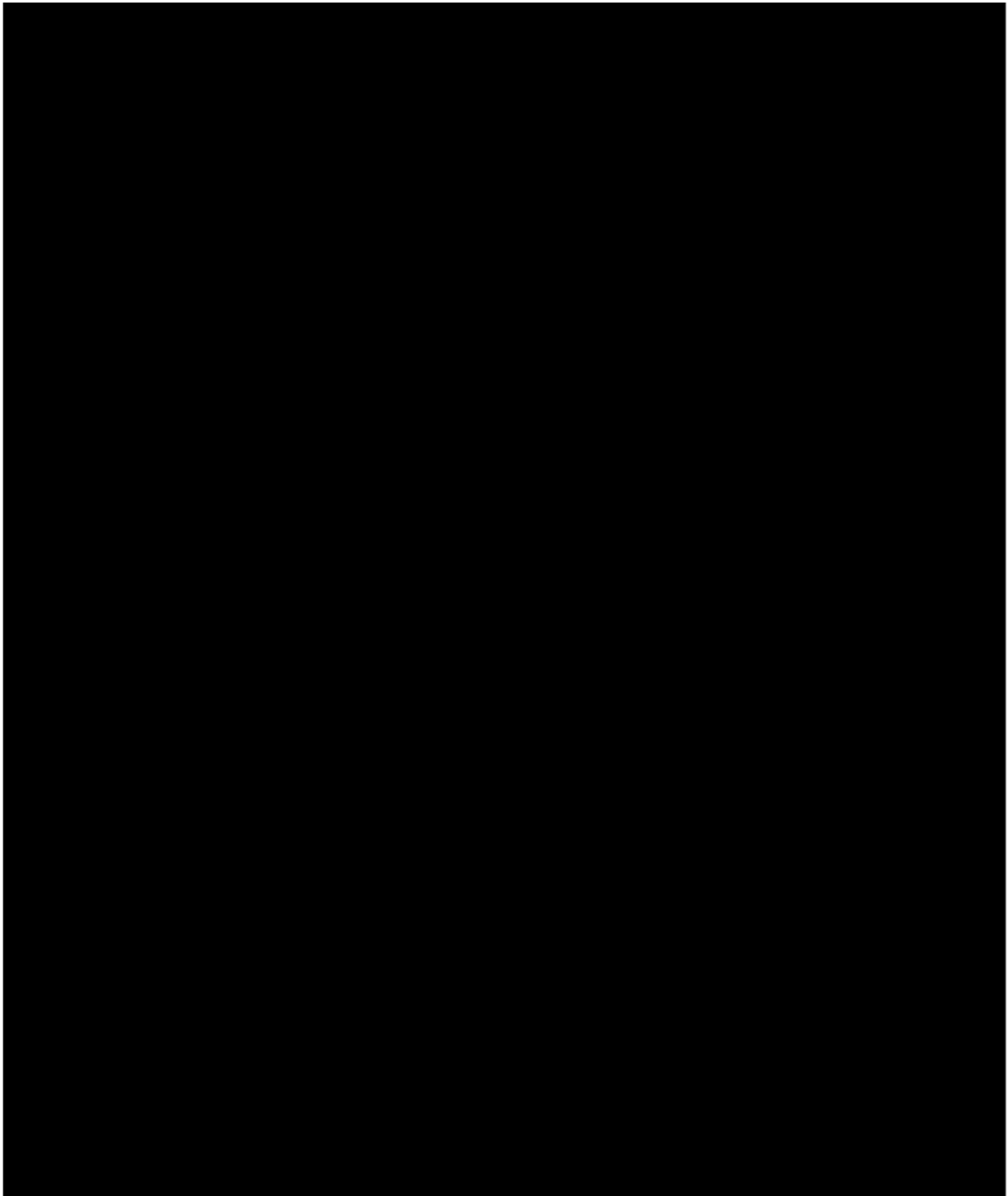




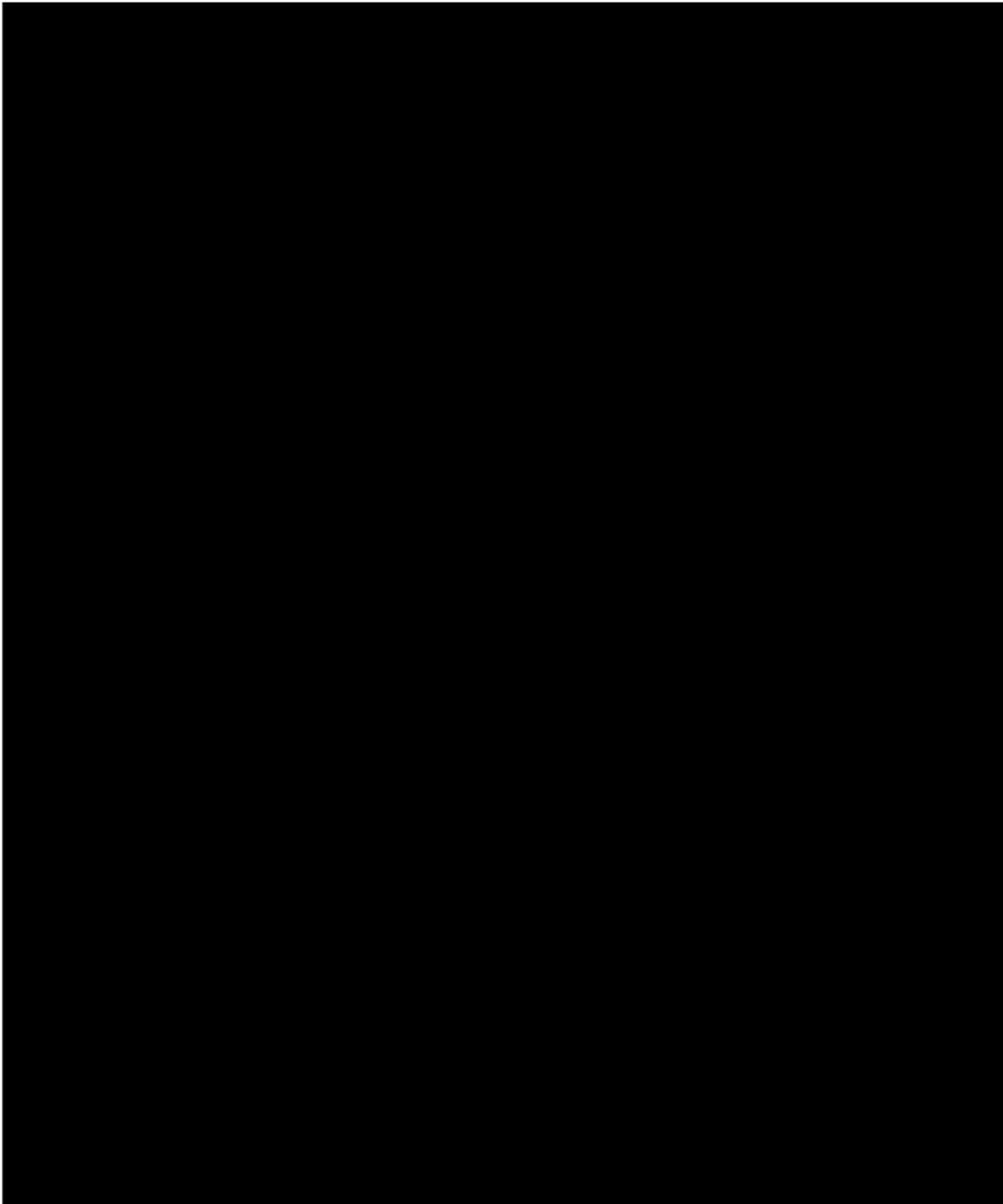


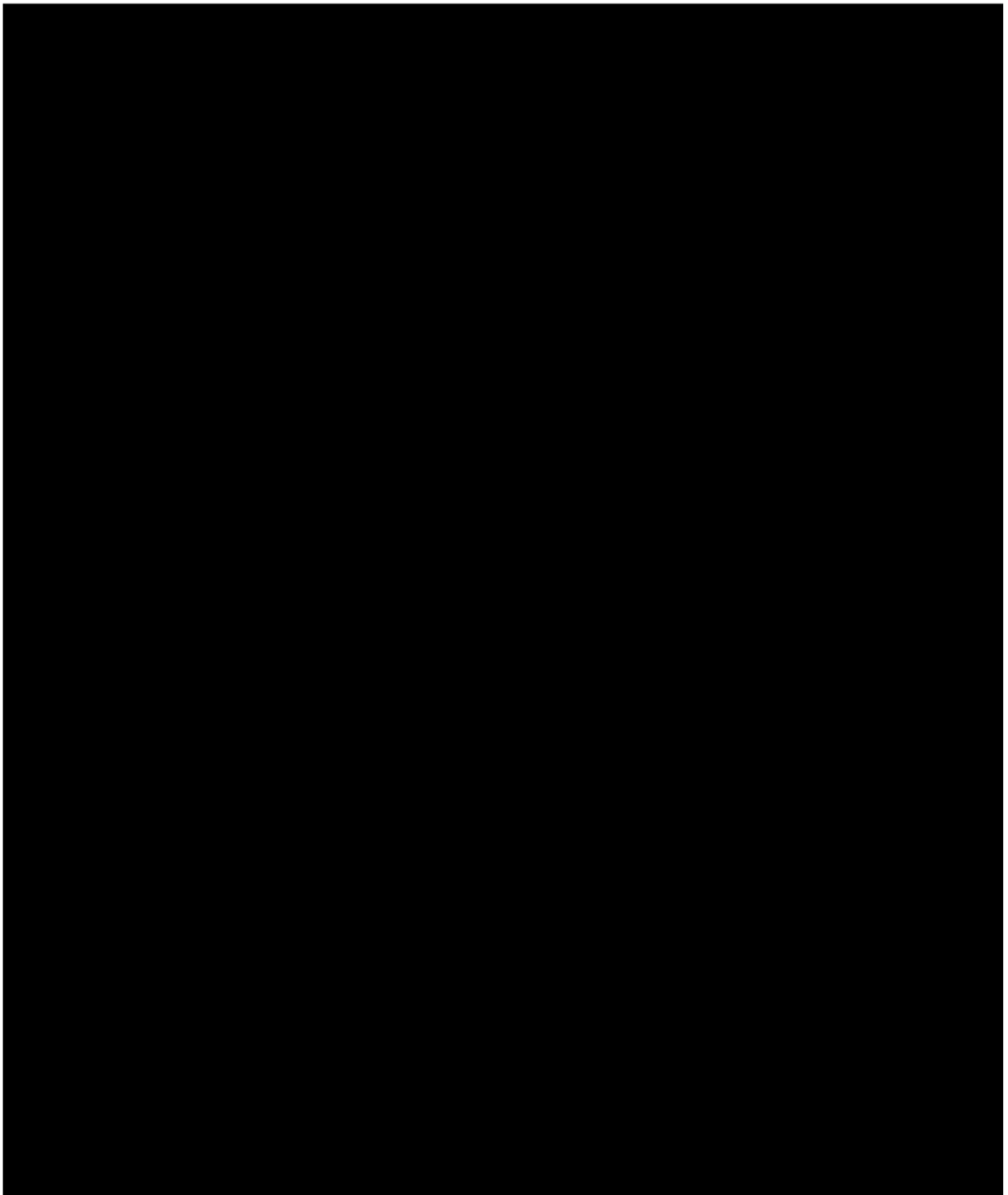


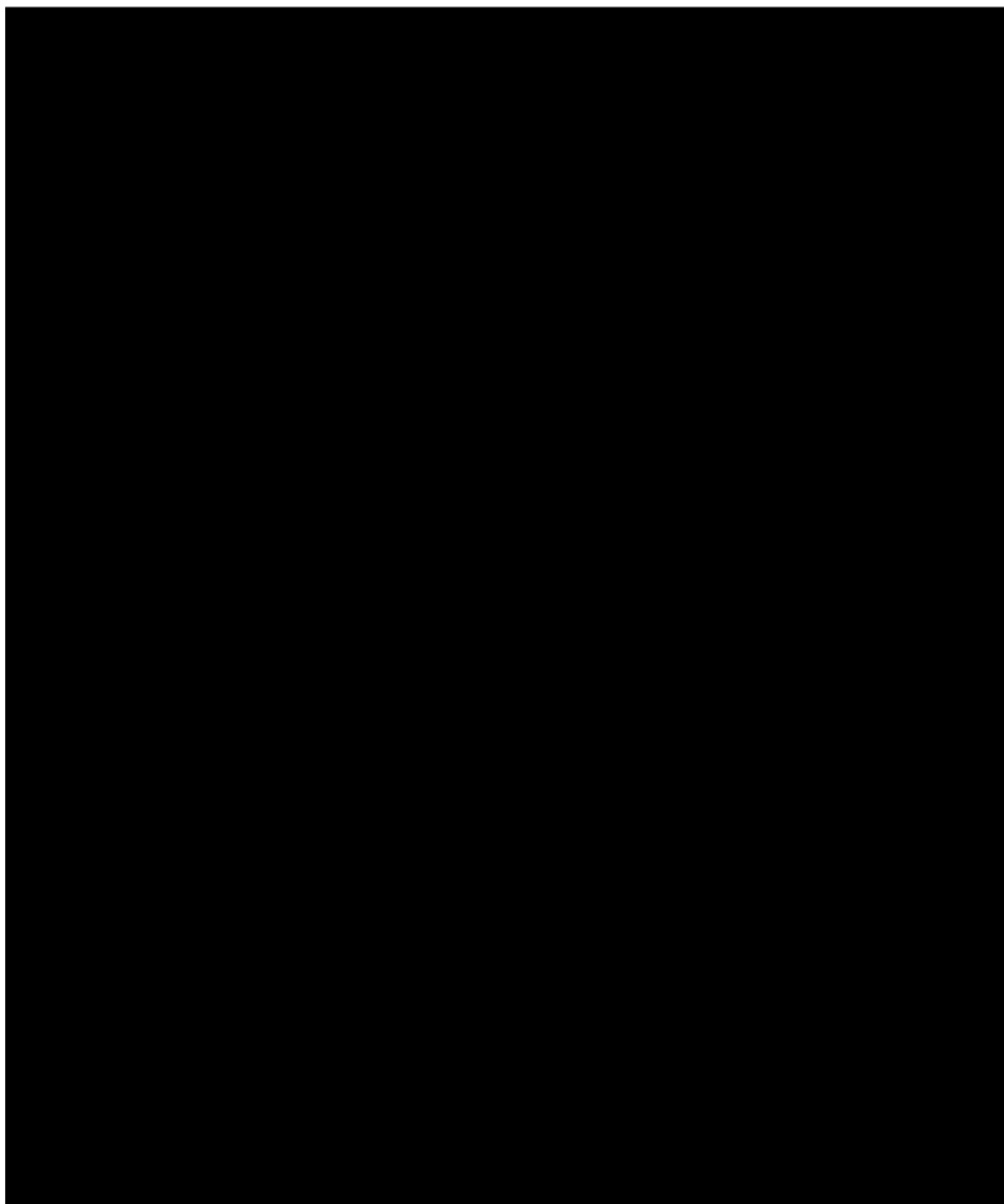
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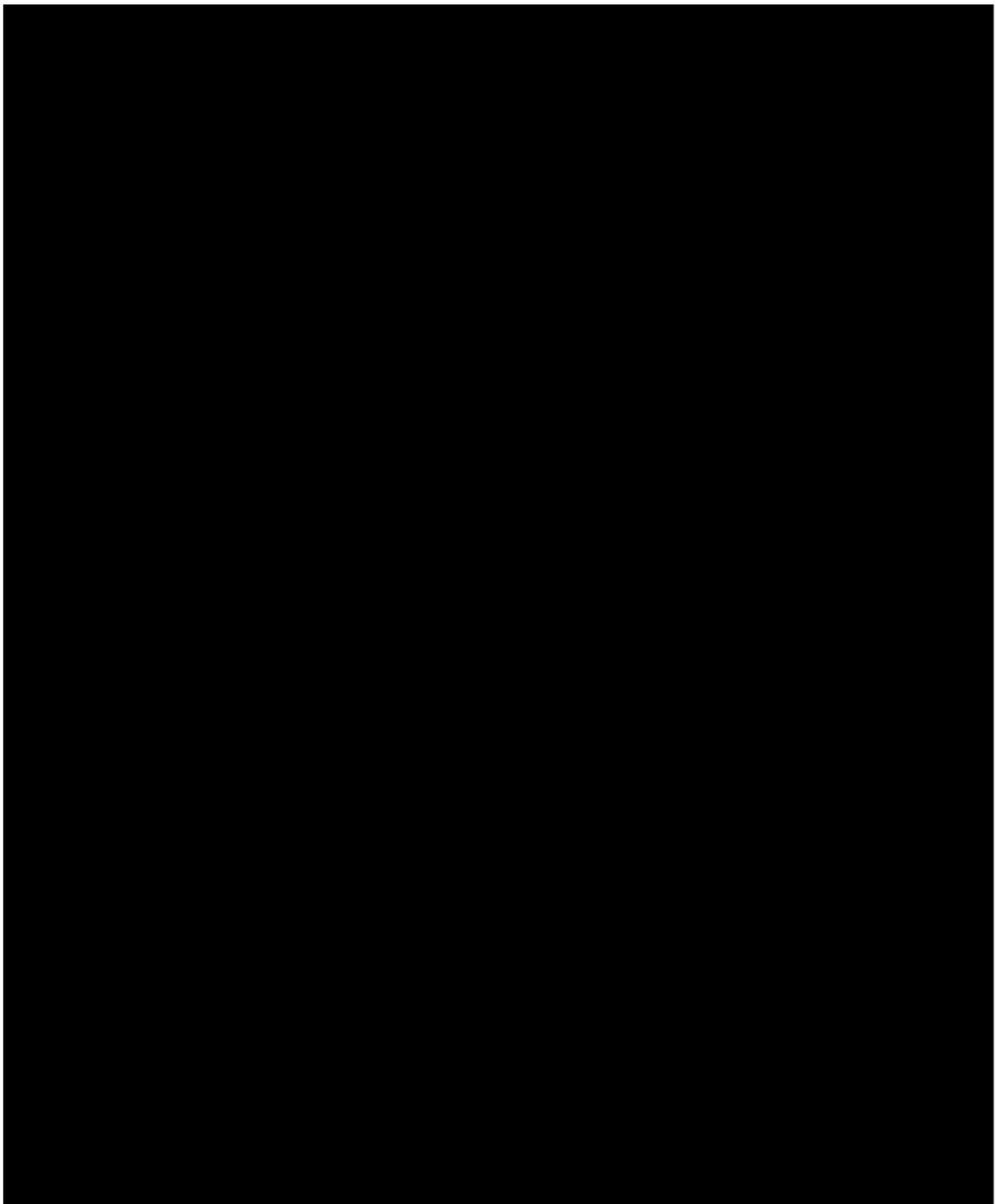
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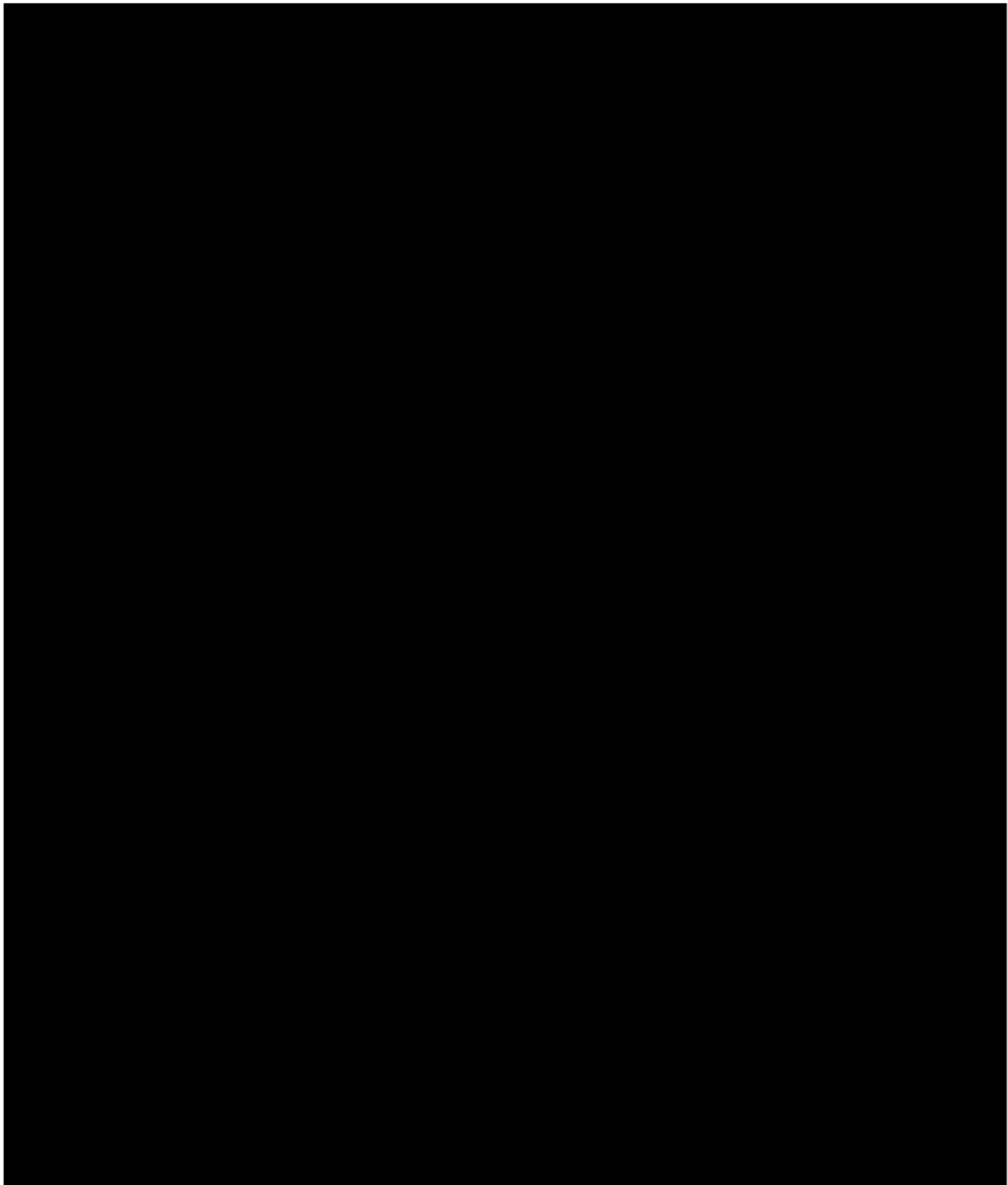


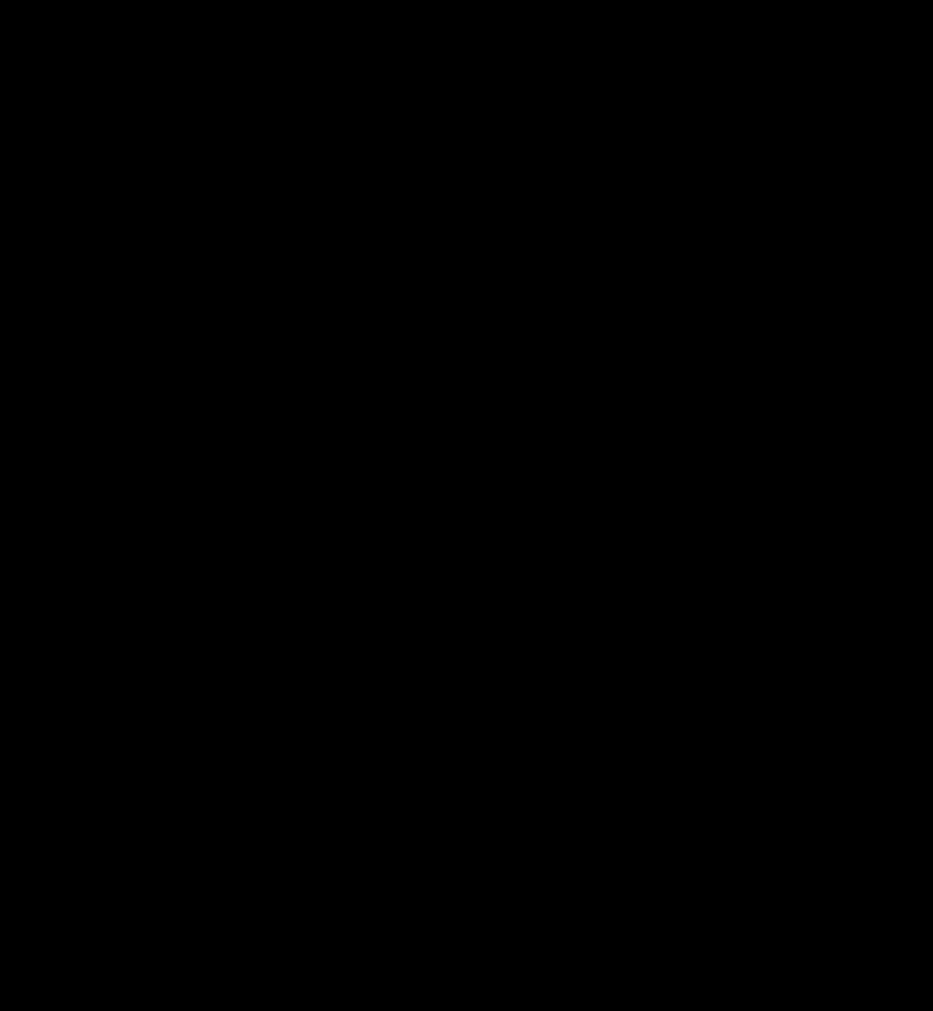
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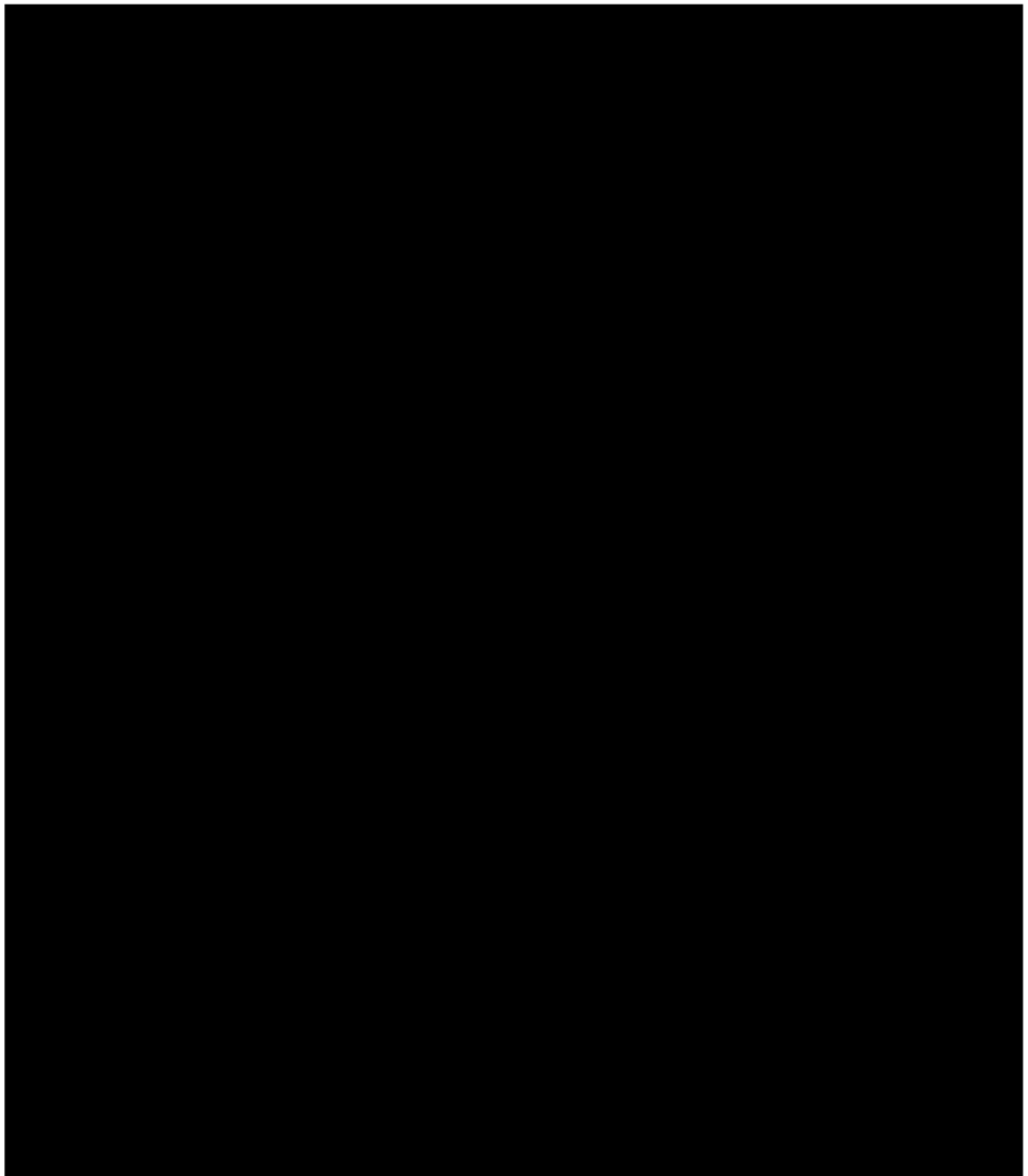
198. ~~(U)~~ According to a former Camp 7 OIC, Camp 7 was built “sometime in 2004” for use by the CIA, although it was likely not used for long since the CIA moved detainees out of Guantanamo Bay in anticipation of the Supreme Court’s decision in *Rasul v. Bush*.⁵²³
199. ~~(S)~~ On 6 September 2006, Mr. al Baluchi was transferred to Guantanamo Bay, Cuba.

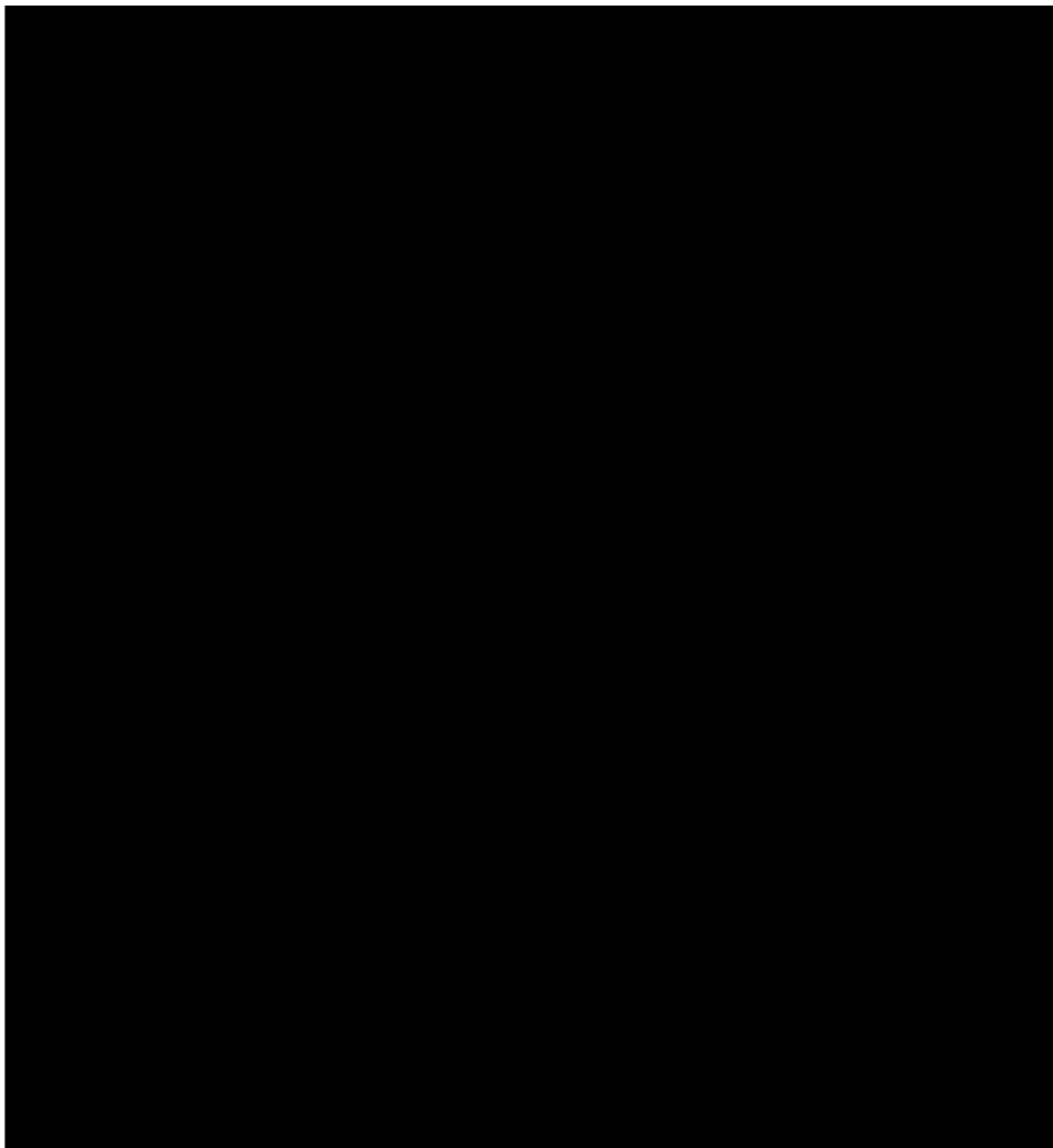
⁵²³ ~~(S)~~ T. 06/03/16 at 12096.

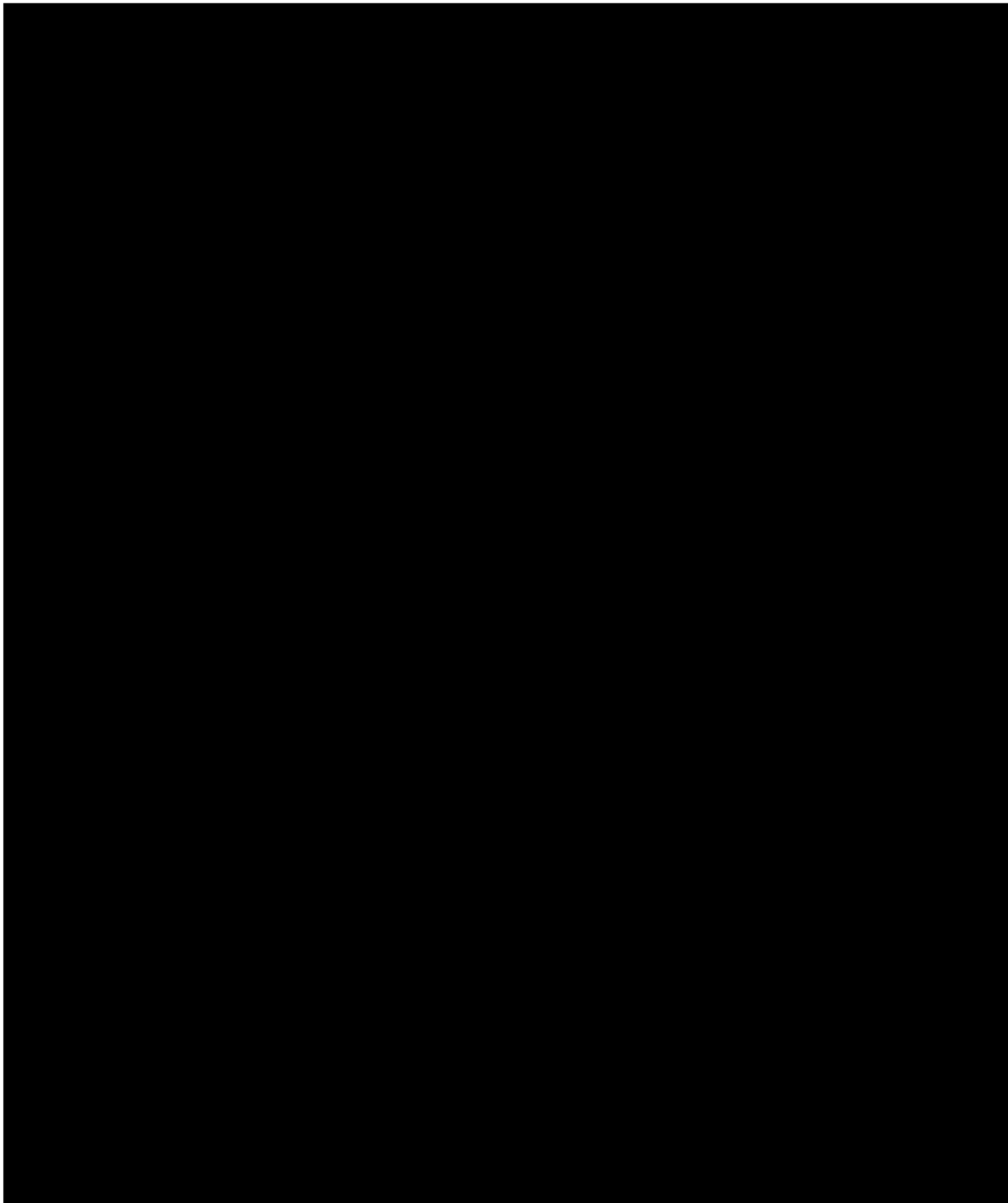


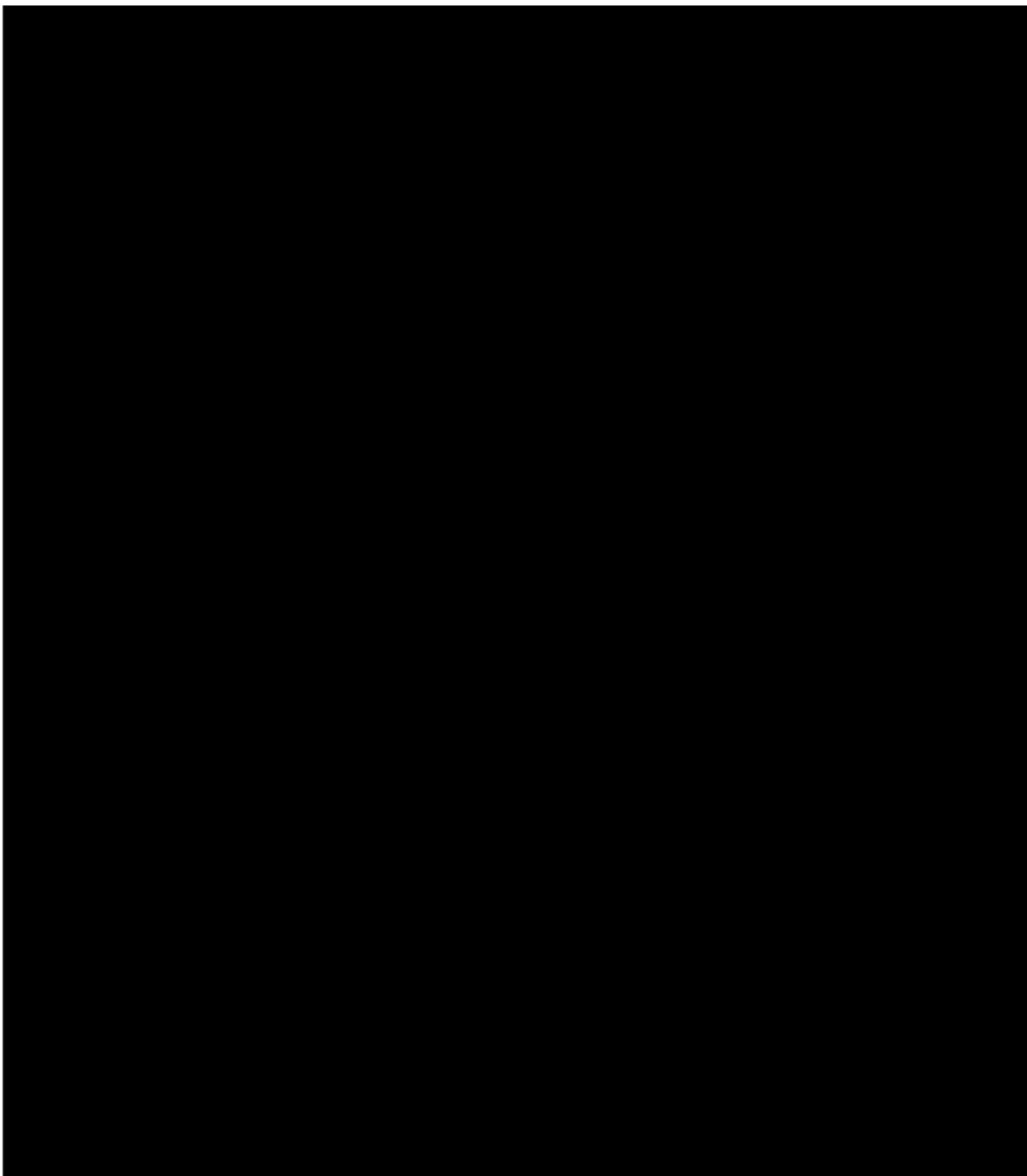


[REDACTED]



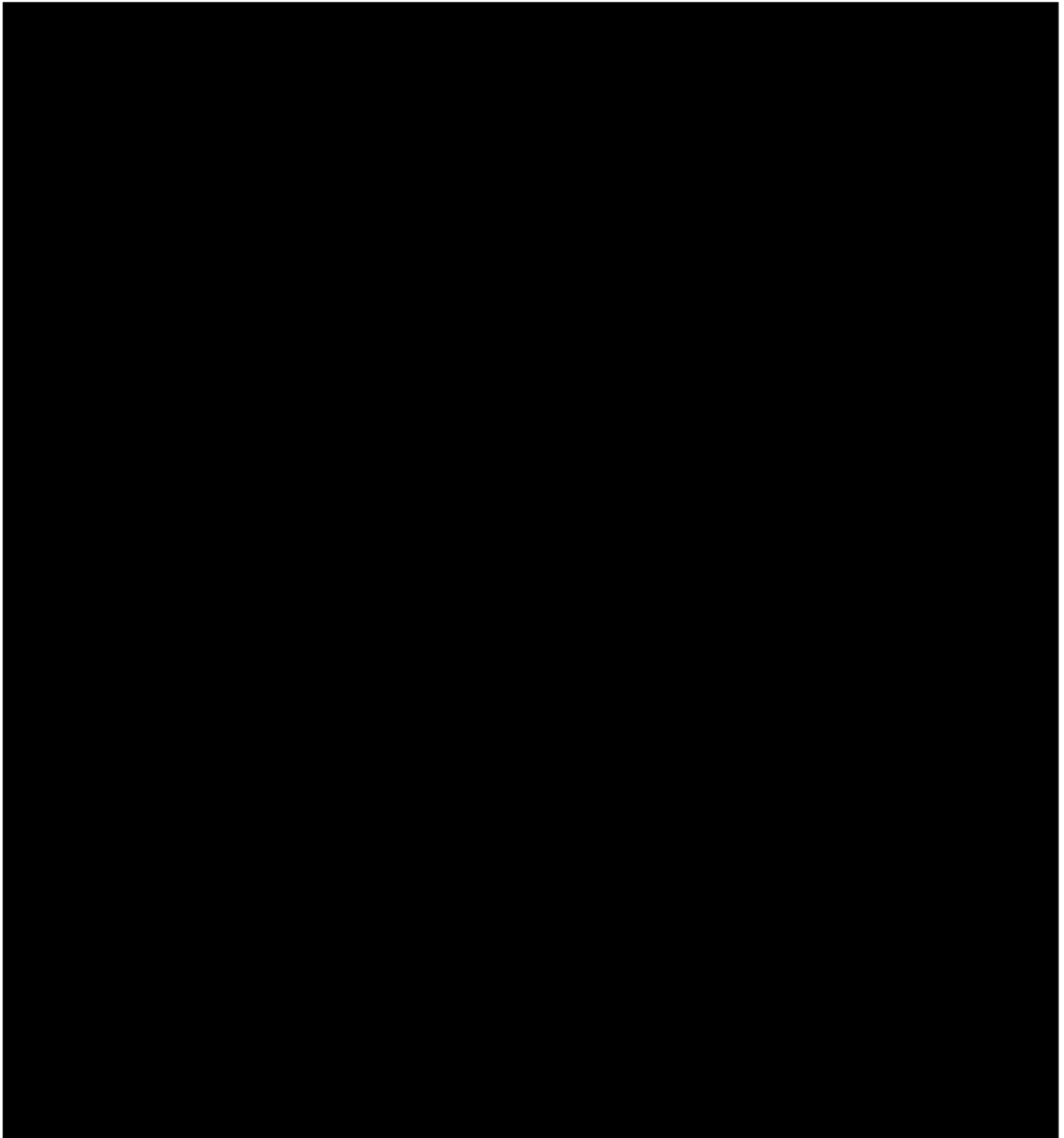
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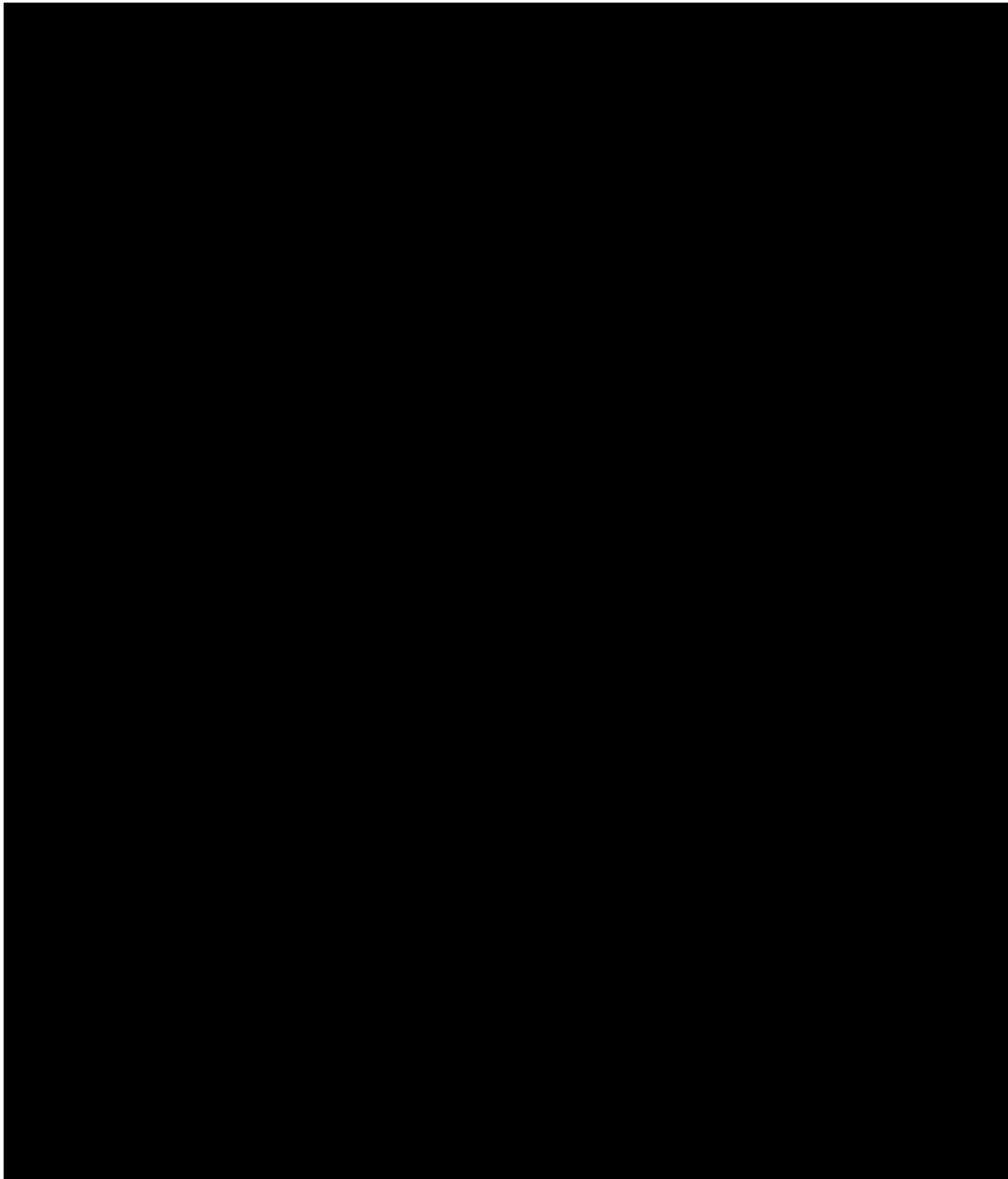


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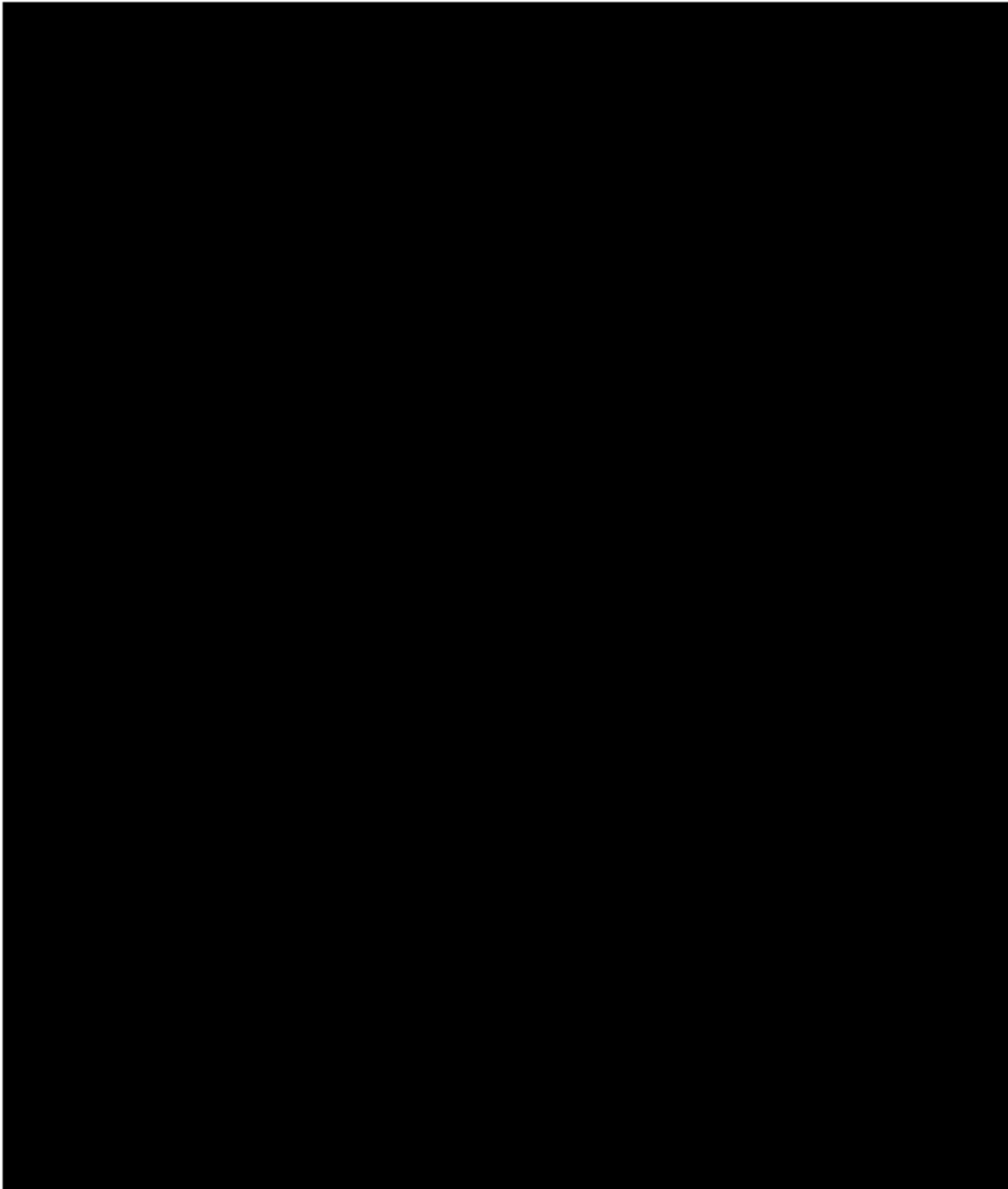
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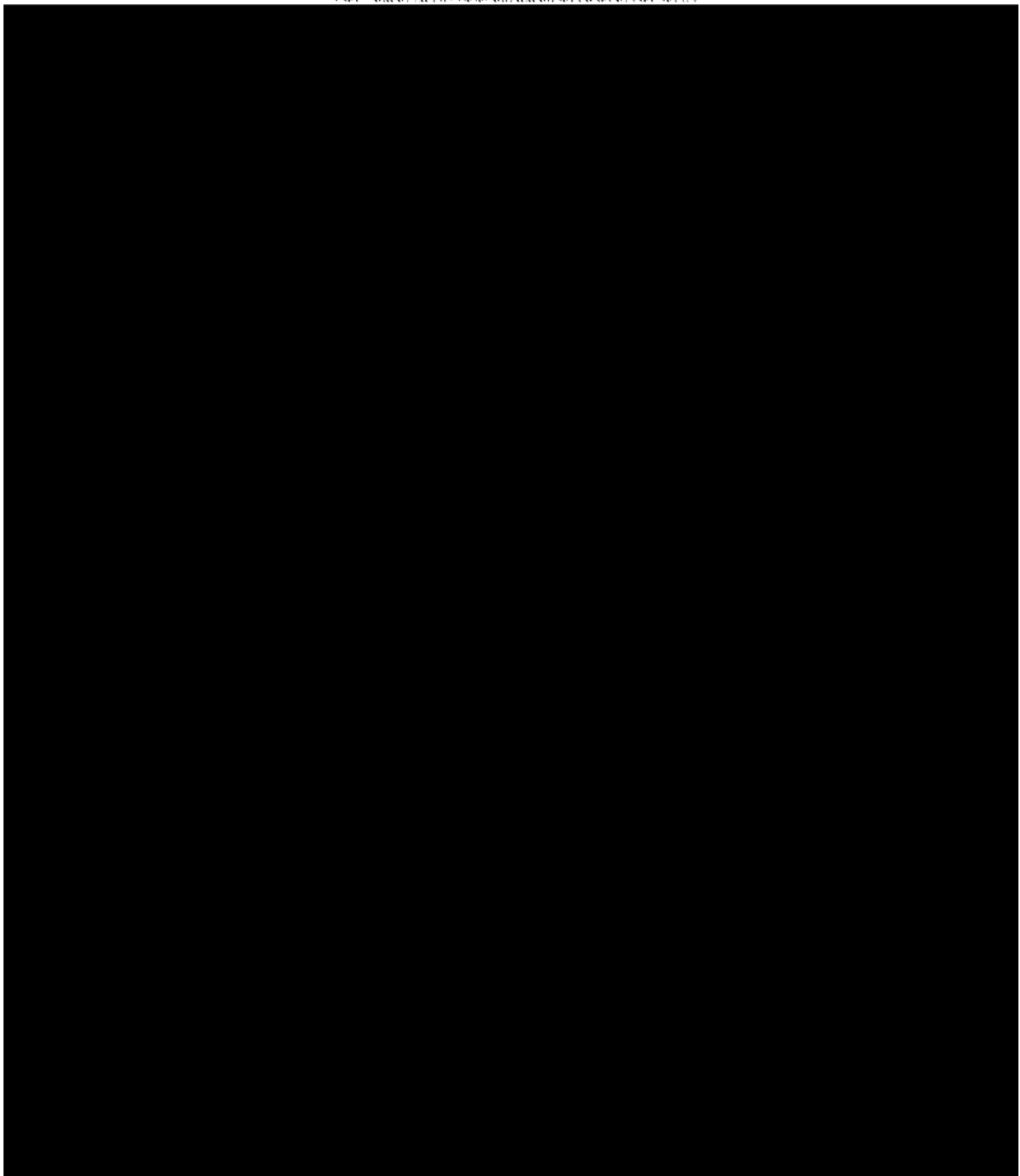
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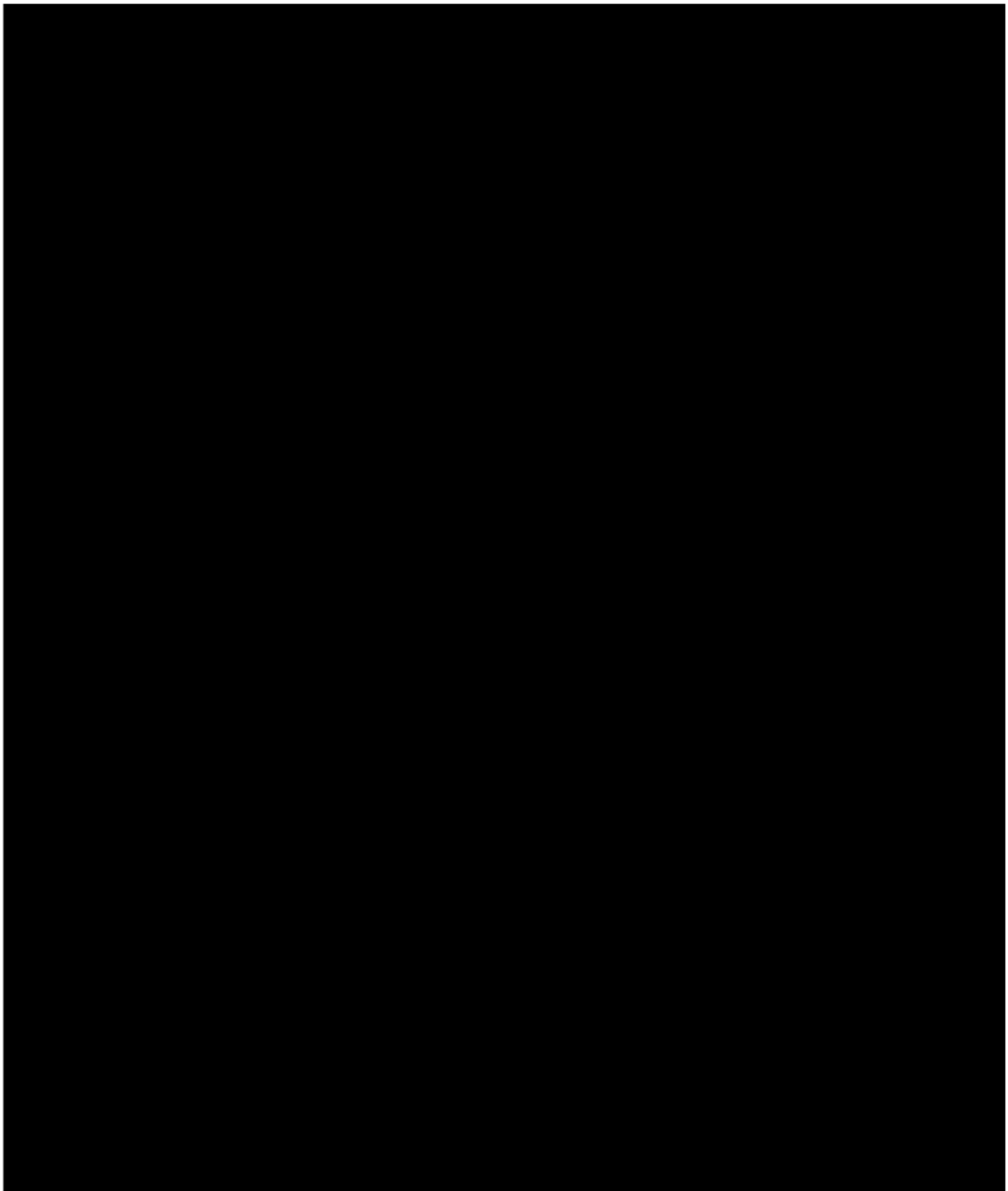


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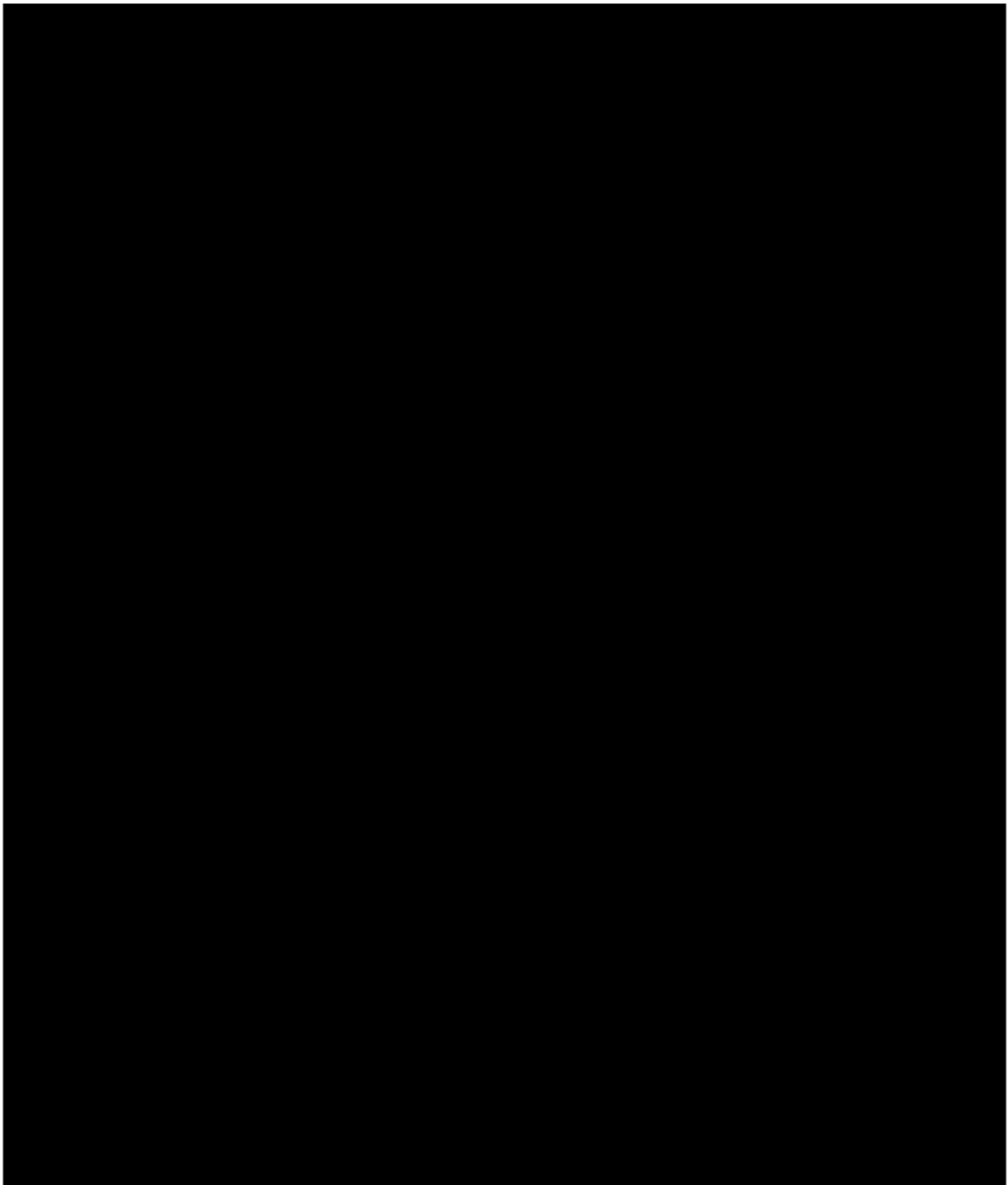


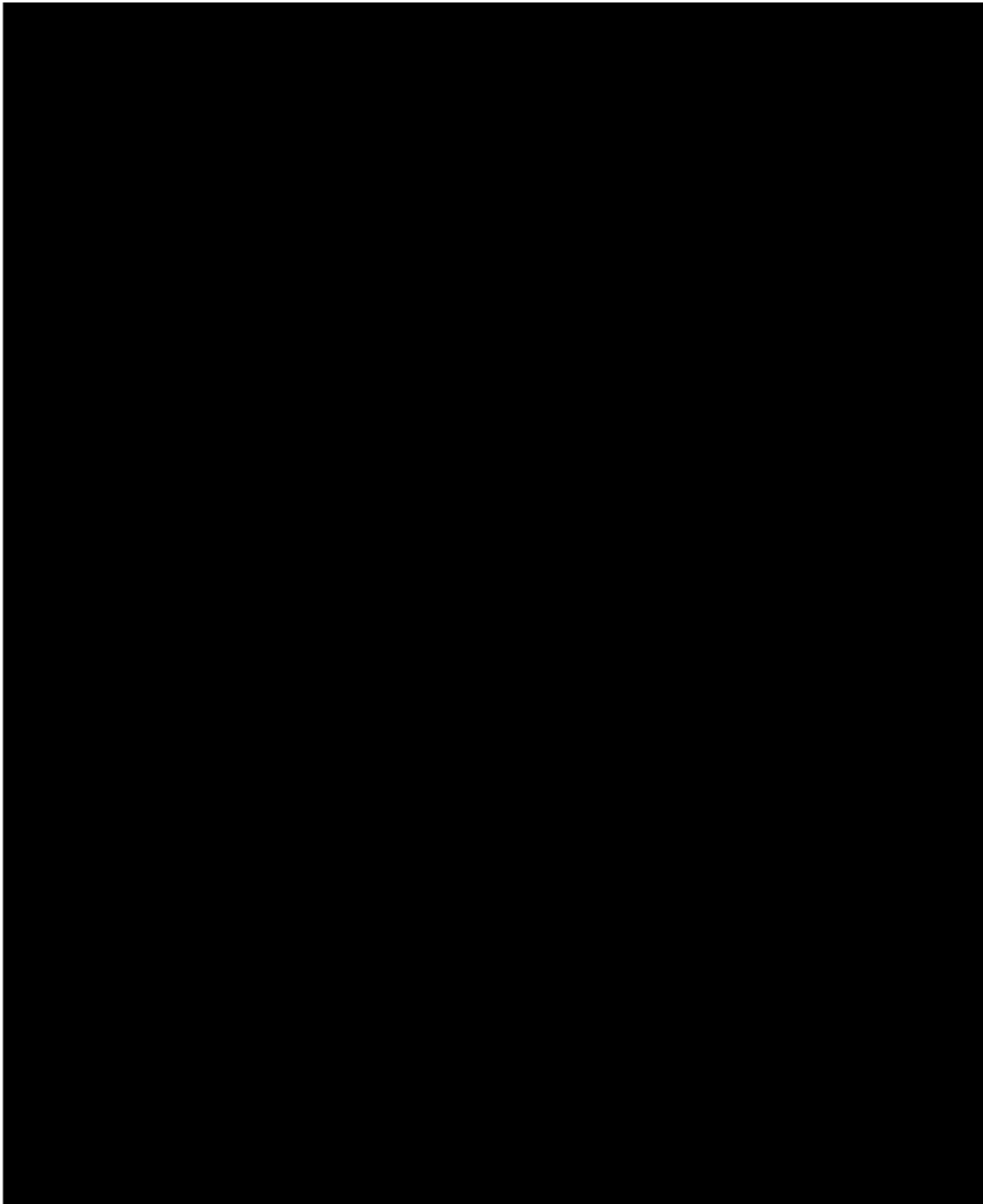
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[REDACTED]





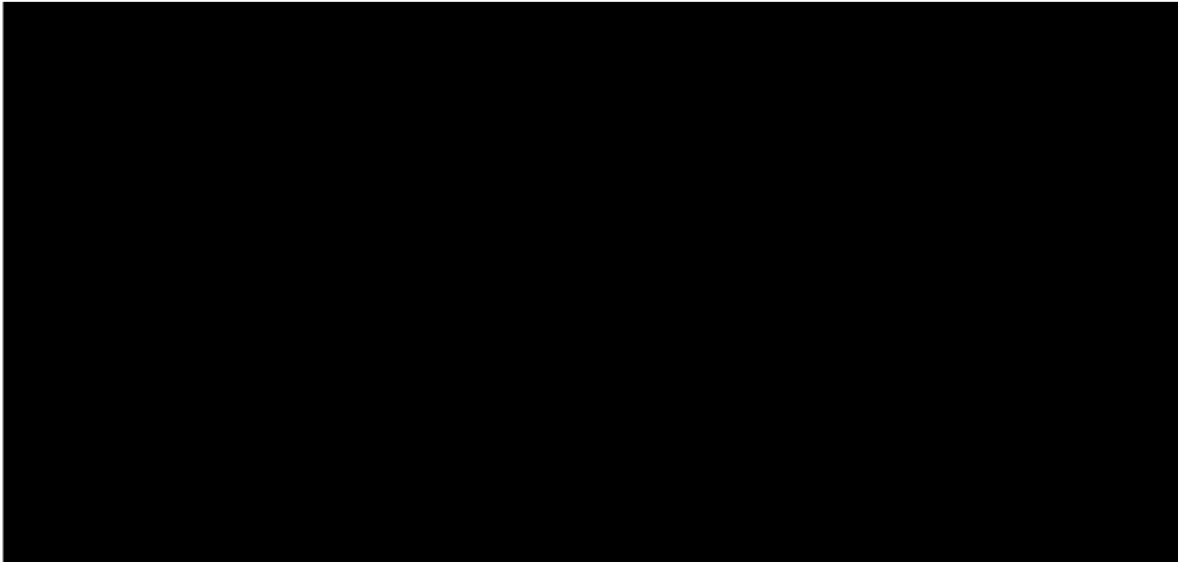
214. (S) In October 2006, all of the detainees met with ICRC representatives for the first time and gave detailed accounts of their torture and interrogations over the previous 3-4 years. The CIA shrugged:⁵⁴⁹

claims to the CIA.⁹⁷⁸ Acting CIA General Counsel John Rizzo emailed the CIA director and other CIA senior leaders, following a November 8, 2006, meeting with the ICRC, stating:

"[a]s described to us, albeit in summary form, what the detainees allege actually does not sound that far removed from the reality... the ICRC, for its part, seems to find their stories largely credible, having put much stock in the fact that the story each detainee has told about his transfer, treatment and conditions of confinement was basically consistent, even though they had been incommunicado with each other throughout their detention by us."⁹⁷⁹

⁵⁴⁹ (S) SSCI Executive Summary at 160.

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218. ~~(S)~~ Medical doctor and psychotherapist Dr. Pierre Duterte, an international torture expert, had stated that "Aside from the effects of physical torture, I have observed the following physical manifestations of post-traumatic stress disorder and other traumas among my patients: digestive problems, vision problems, body aches, and headaches. In my opinion, physical and psychological effects may occur even twenty or more years after the initial trauma."⁵⁵³

219. ~~(S)~~ Dr. Duterte also stated that "[S]evere trauma may 'fragment' the memory such that many patients can no longer recall correct facts of conditions about a traumatic event, and are unable to have chronological and logical memory of the traumatic events. They

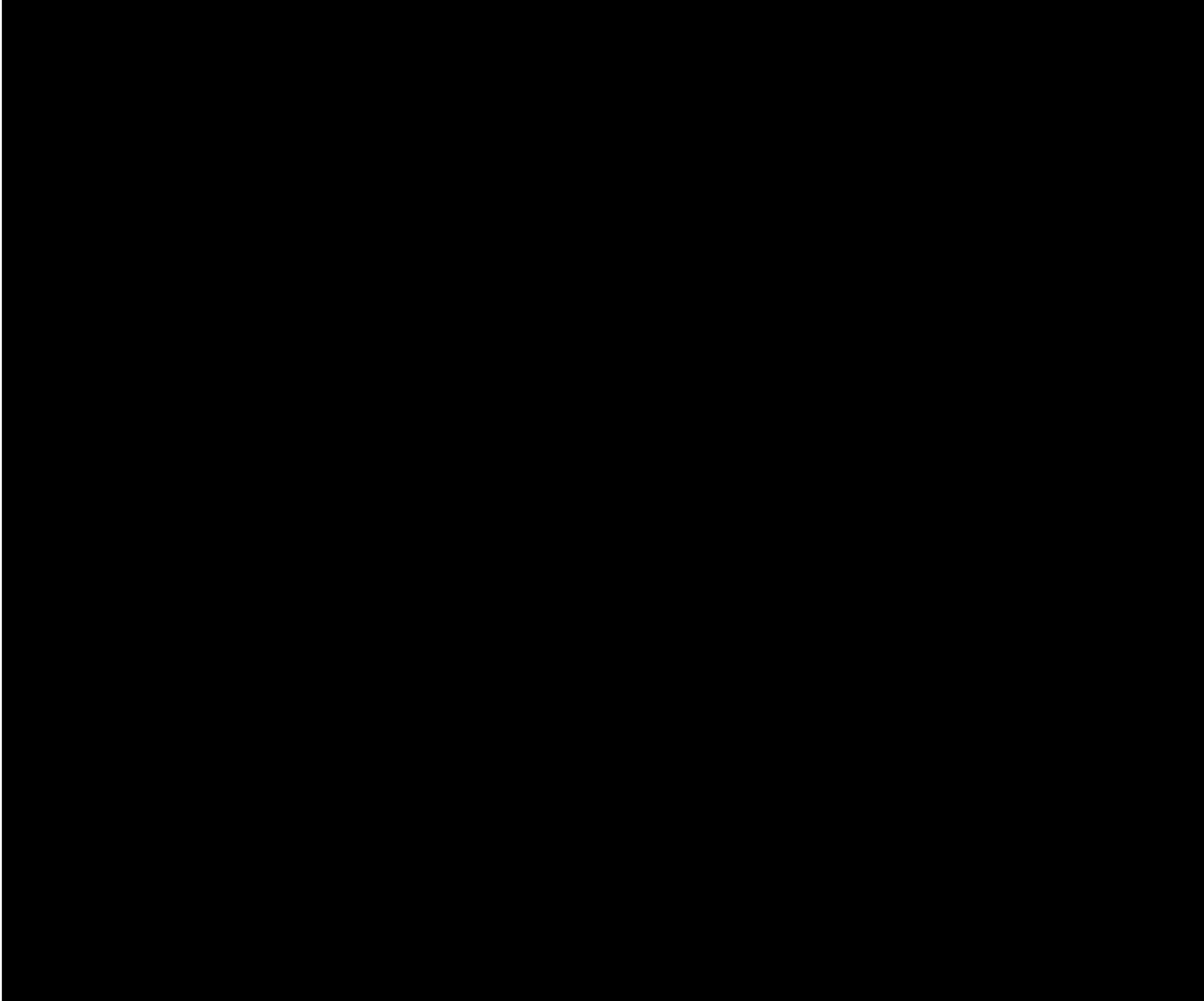


⁵⁵³ ~~(S)~~ AE425E, Att. B (Declaration of Pierre Duterte). Dr. Duterte is expected to testify at the evidentiary hearing.

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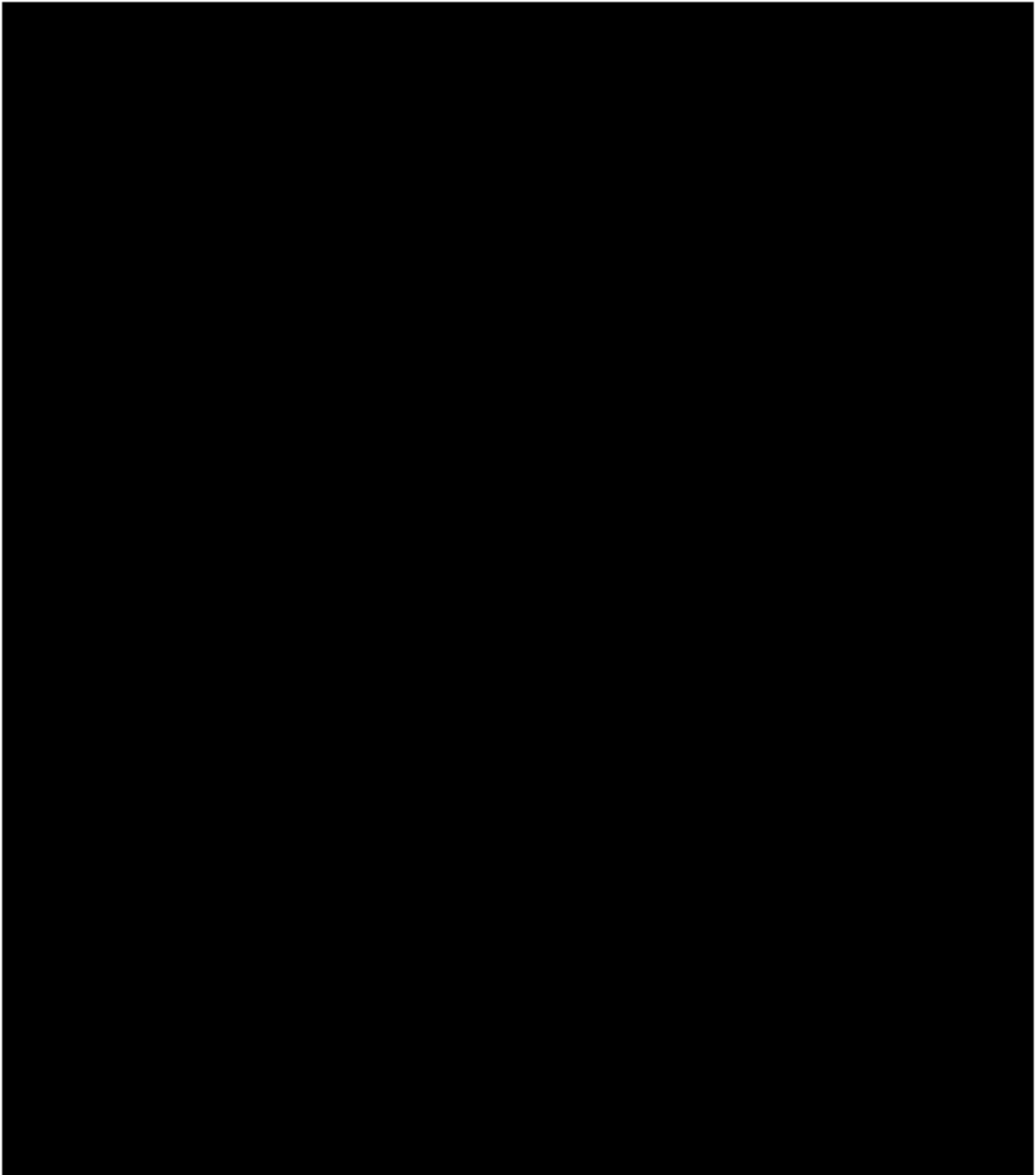
~~FOUO - Subject has been identified as a source of information~~

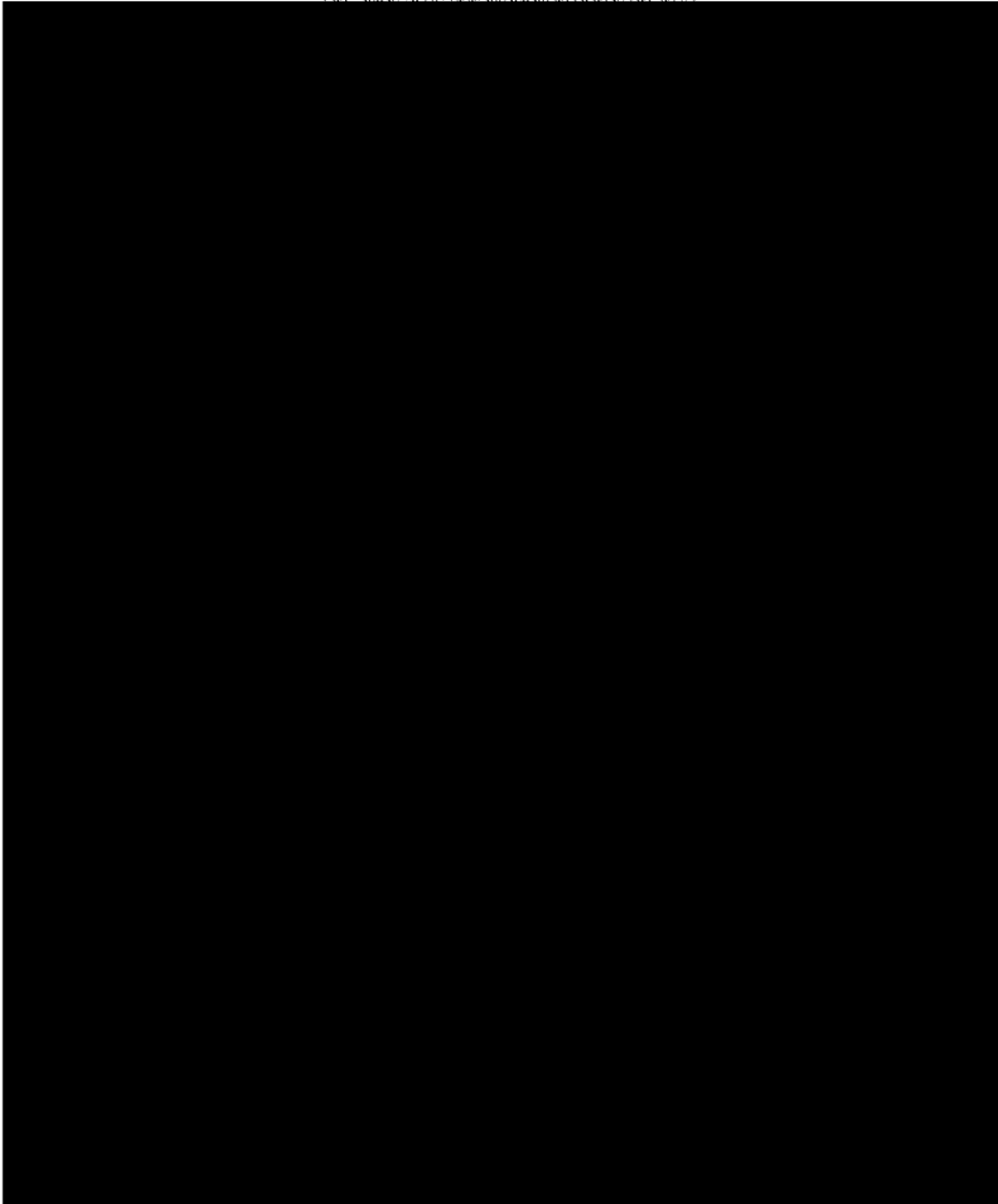
instead recount memories that may contain details created as coping mechanisms during or after the trauma.”⁵⁵⁴

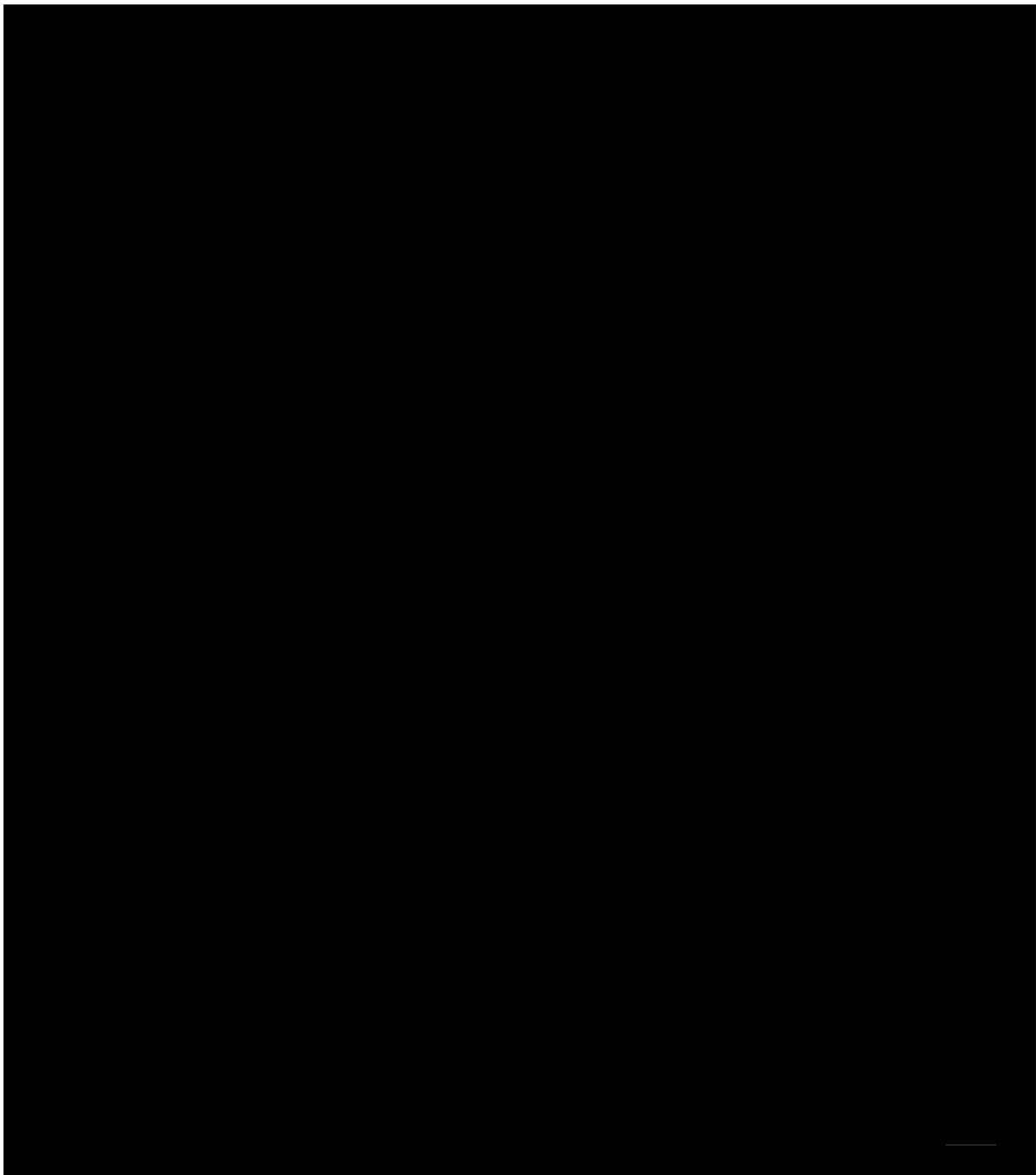


⁵⁵⁴ ~~(U)~~ *Id.*









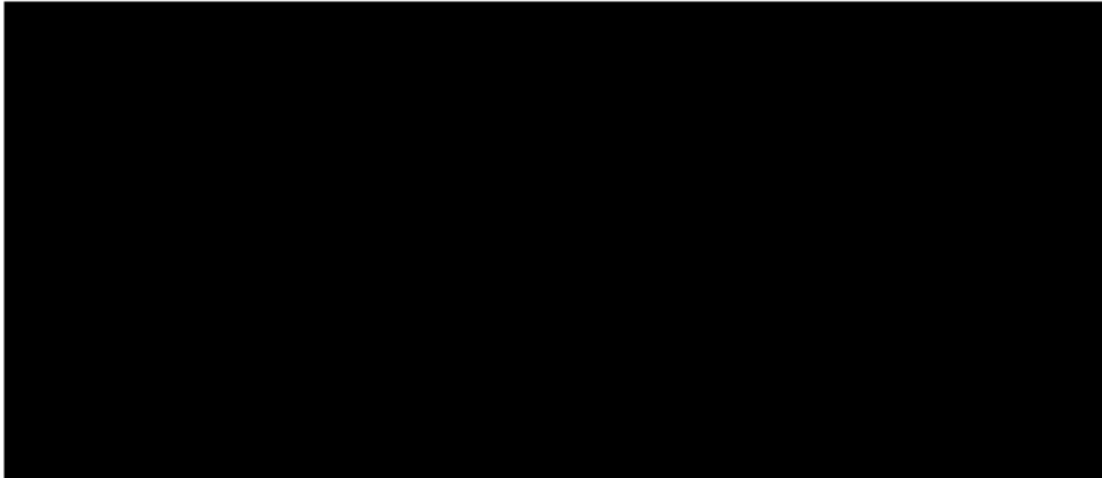


⁵⁶⁷ ~~(U)~~ AE502XX(MAH) at MEA-LHM-00001430-1435.

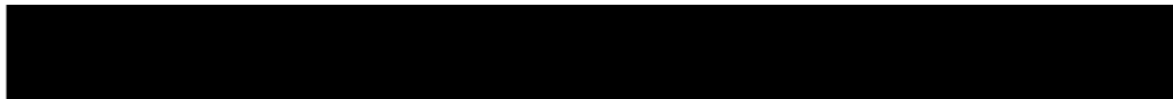
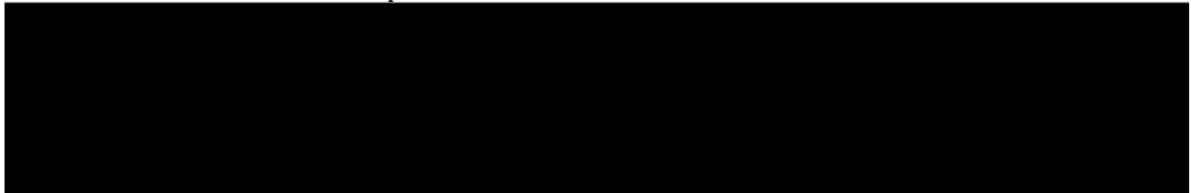
⁵⁶⁸ ~~(U)~~ *Id.* at MEA-LHM-00001431.

⁵⁶⁹ ~~(U)~~ *Id.*

FOIA b 7 - Exemption of the following information from automatic declassification: [REDACTED]



233. ~~(U)~~ Finally, the 10 January Memorandum stated that the LHM interviews would be documented on CIA-supplied laptops. If a detainee reported previous torture at the CIA black sites, “even though coming from a detainee,” that information was “deemed by the CIA to be national security information.”⁵⁷² Therefore, FBI agents were instructed to create separate memoranda to document those allegations of torture, rather than including them in the same LHM memoranda created to document detainee answers to the case-related questions. The torture information, therefore, would be siloed away from detainee answers that would be used to prosecute them.



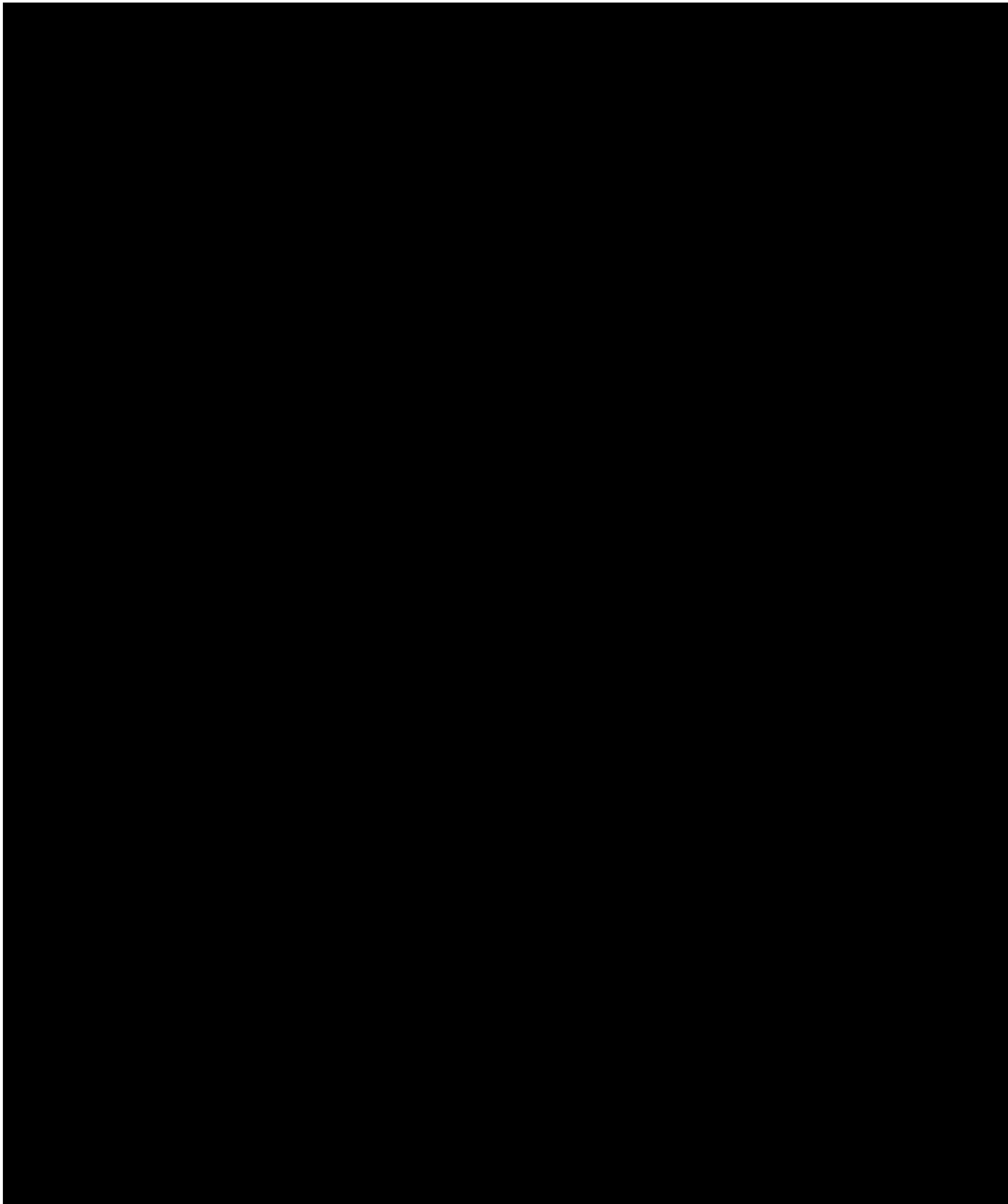
⁵⁷² ~~(U)~~ *Id.* at MEA-LHM-00001433.

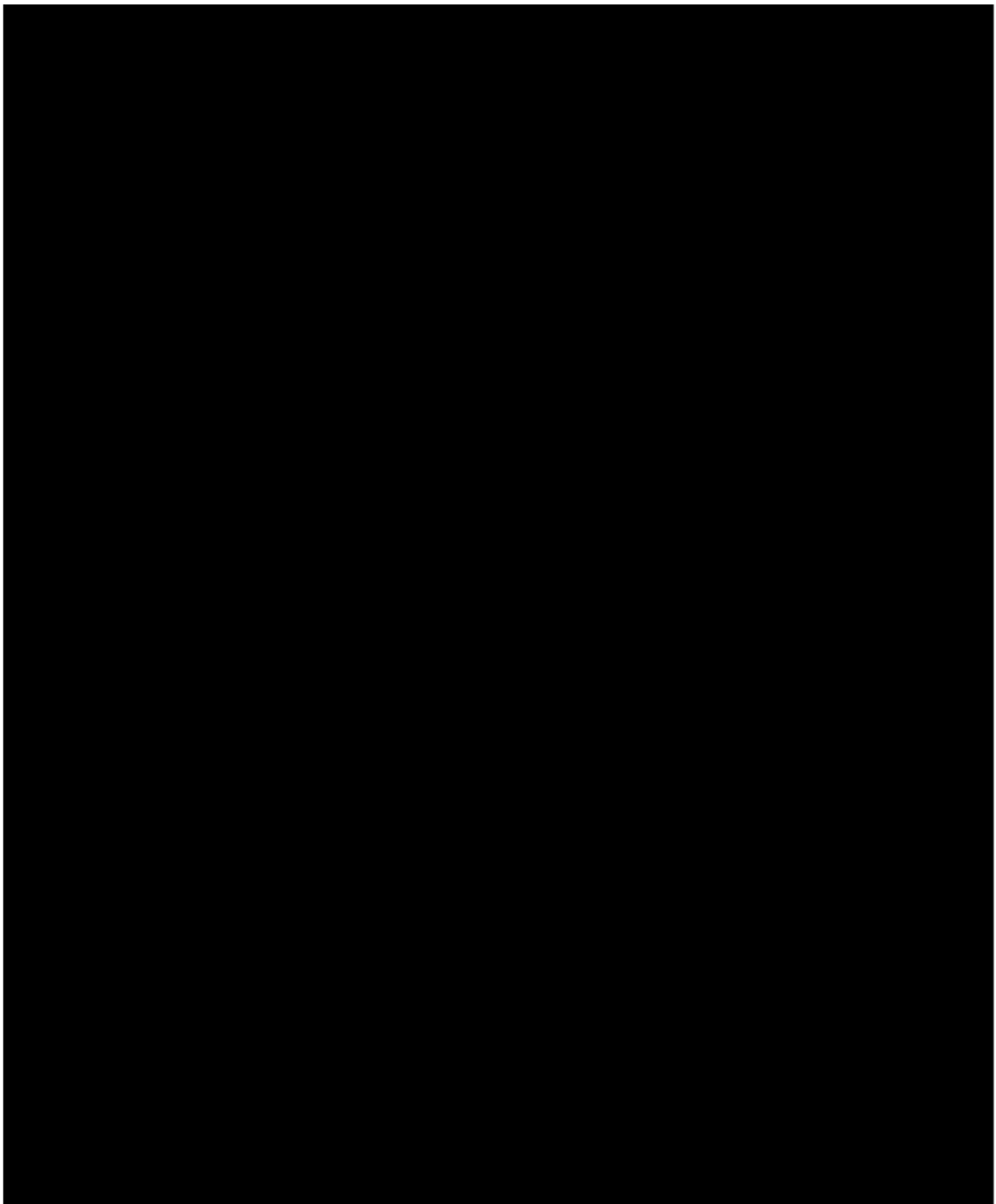


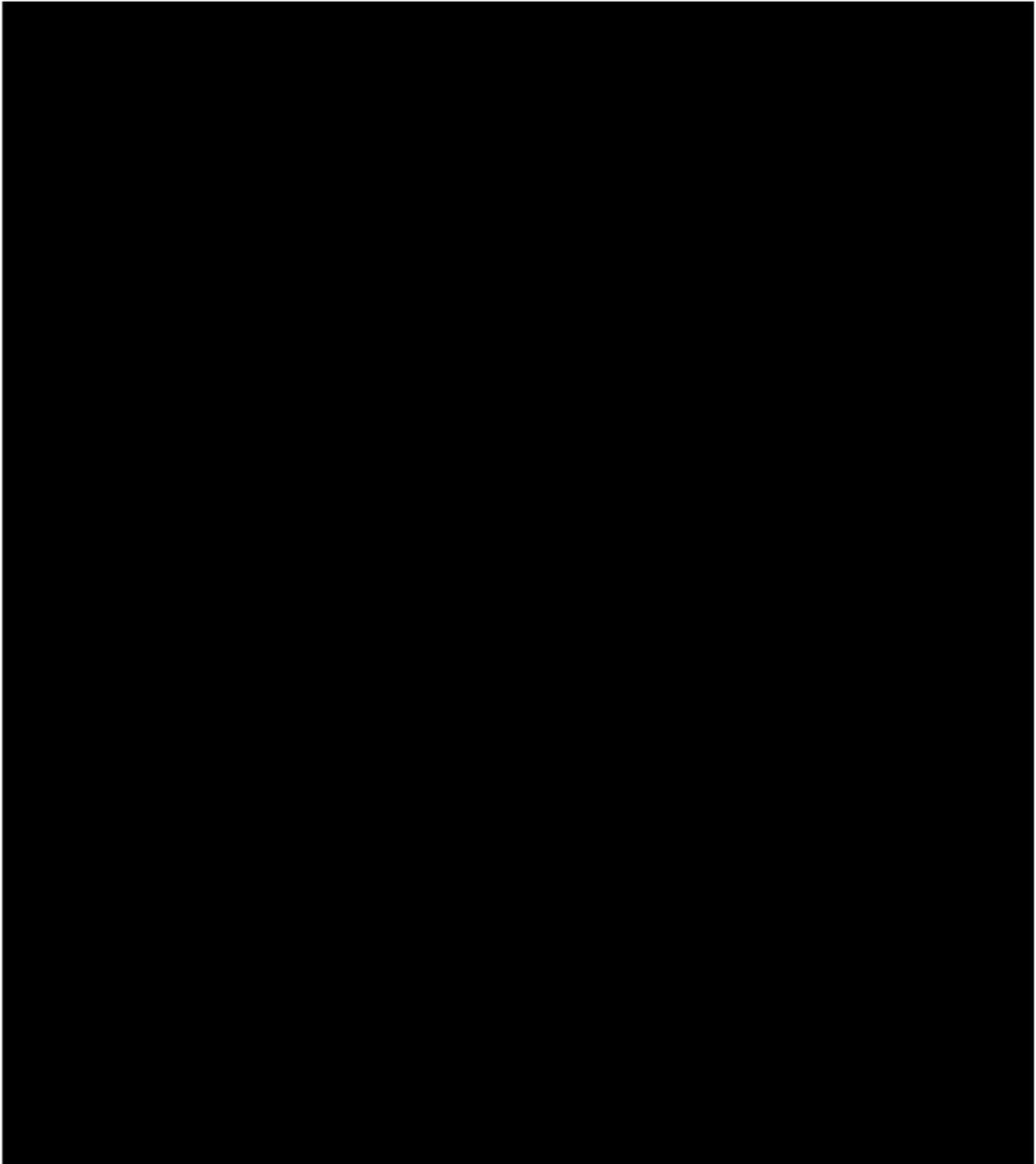
FOIA b 7 - Exemption of the following information from automatic declassification: [REDACTED]

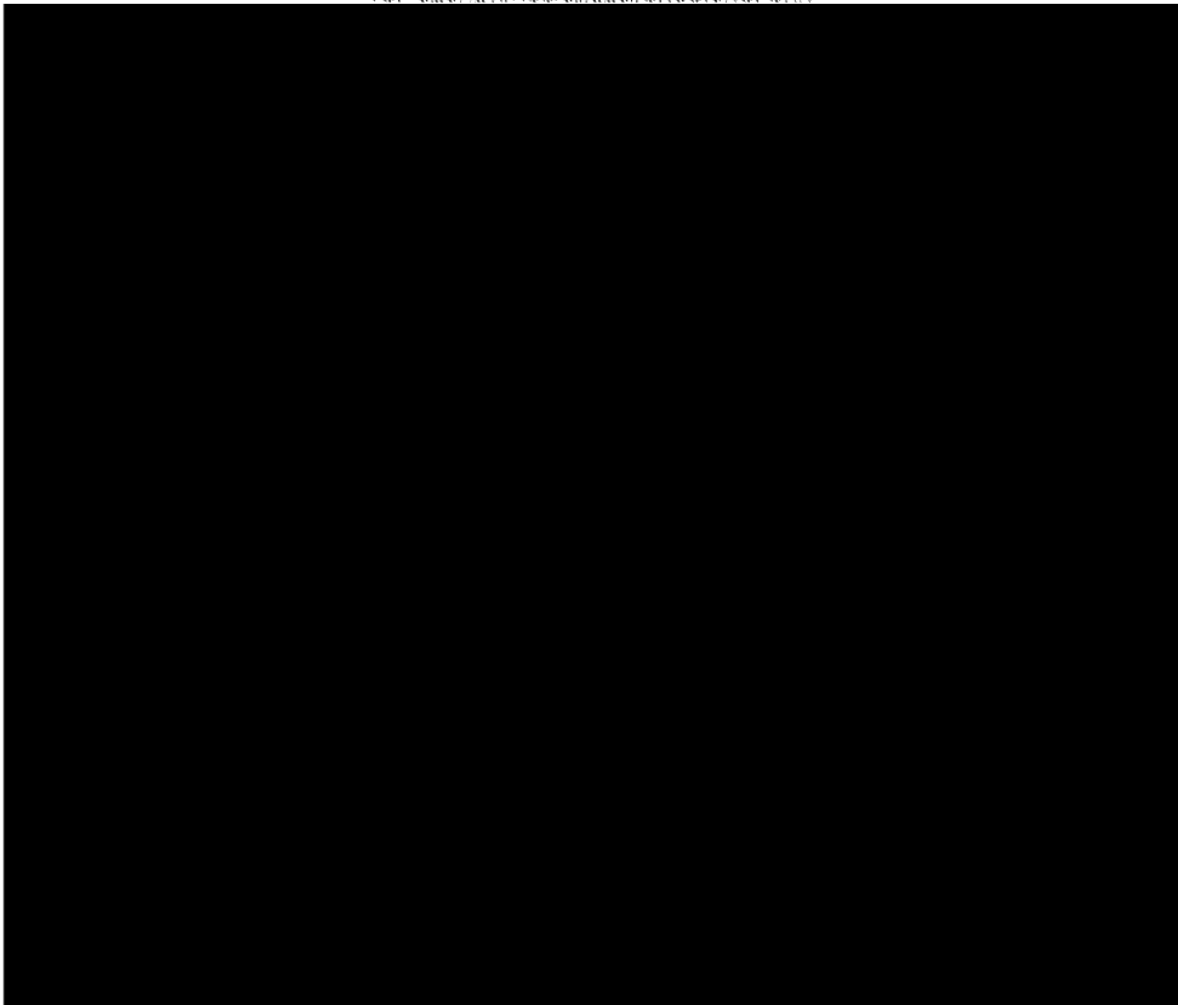
[illegible][illegible]

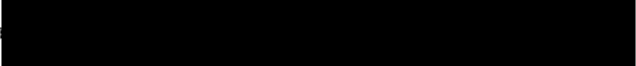
Table 1. Mean values of the variables measured during the 60-min test



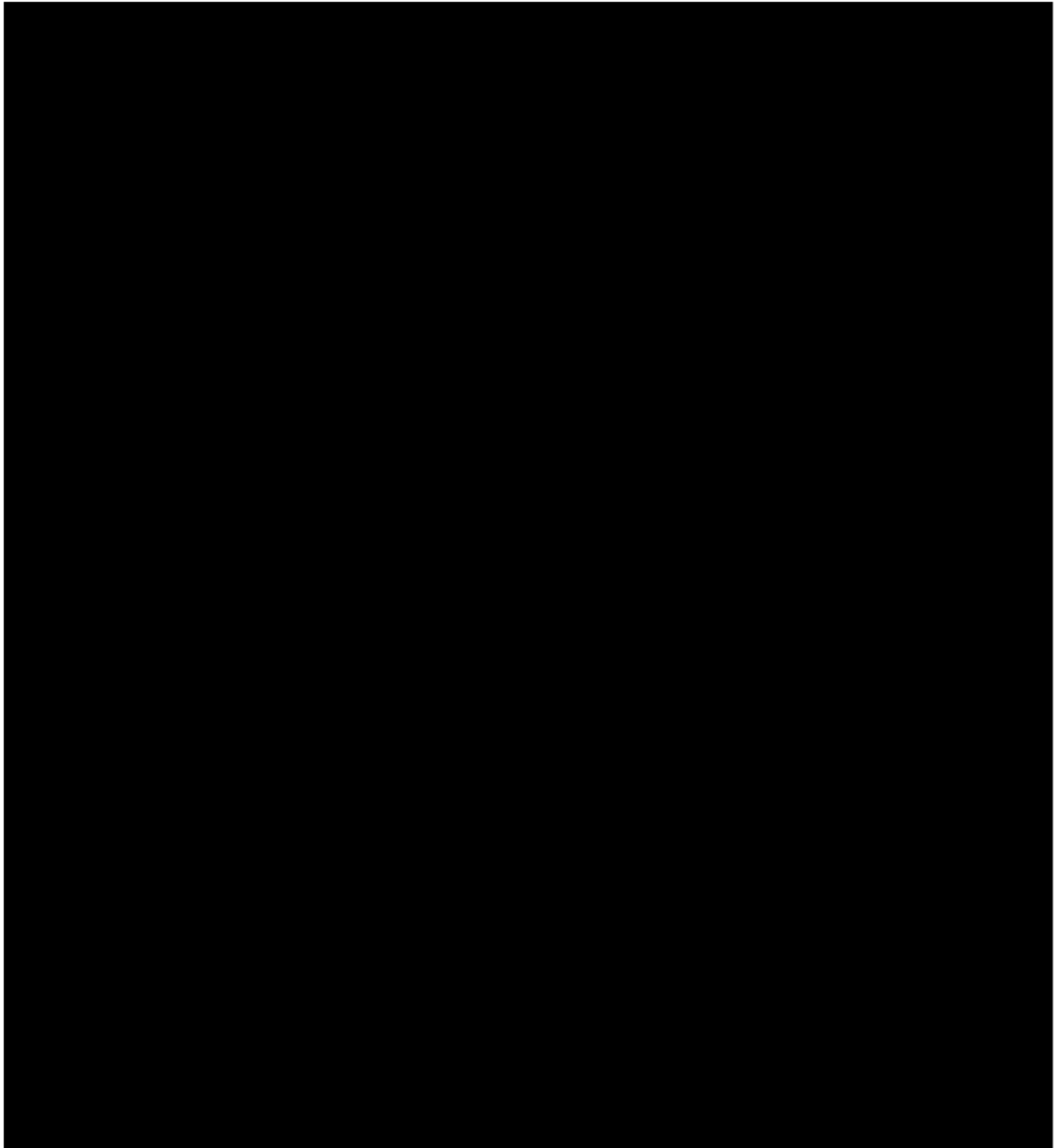




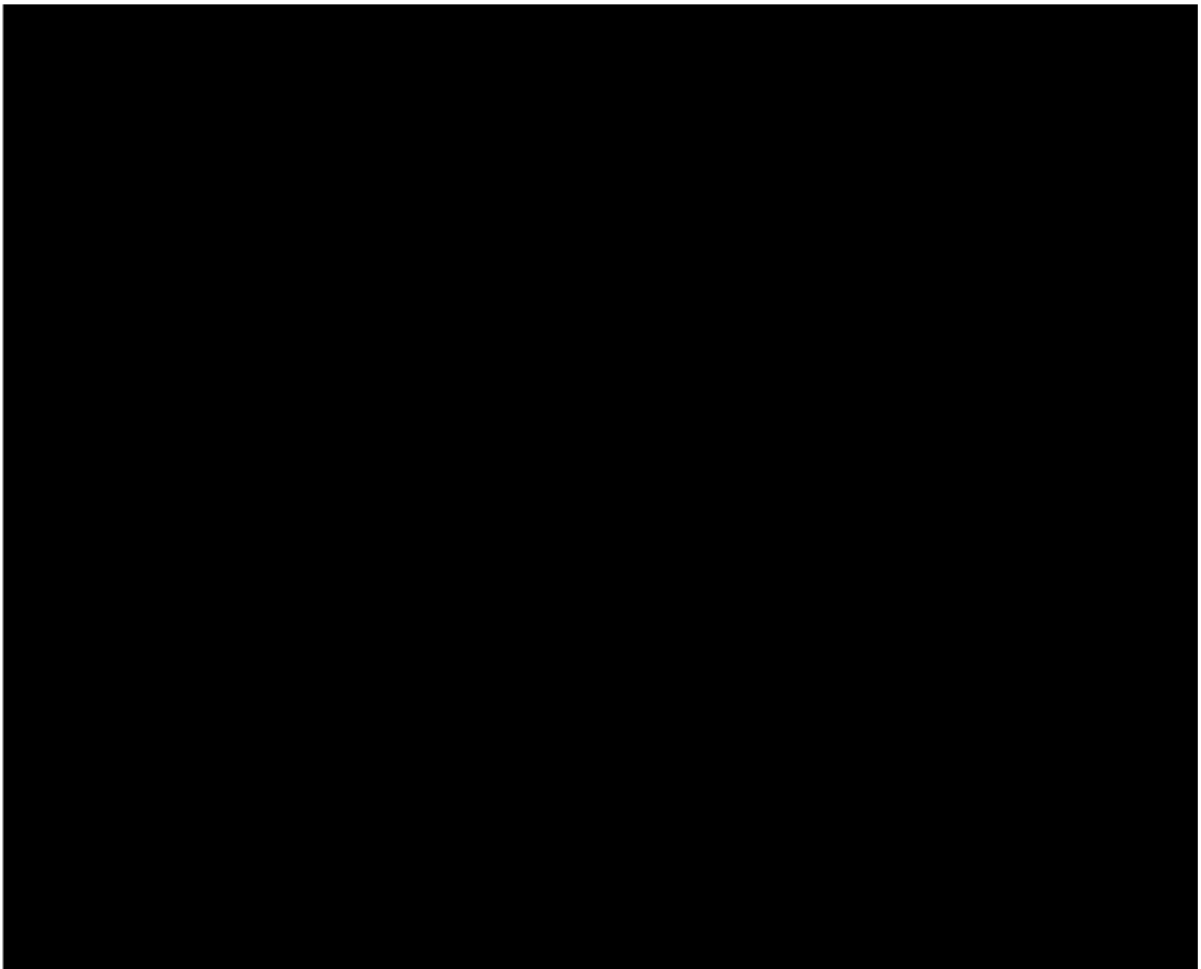


~~(U)~~ Mr. al Baluchi appeared to agree wholeheartedly with everything he was “told” by the agents, and seemed eager to offer corroborating information for each of the above statements they made to him 

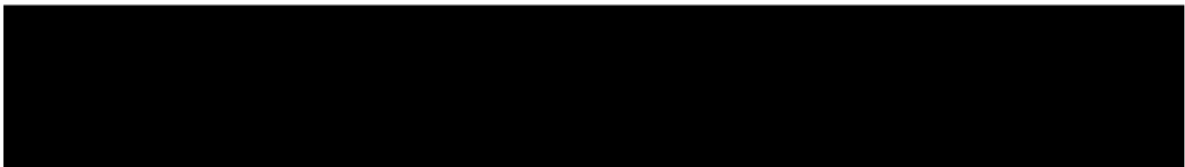




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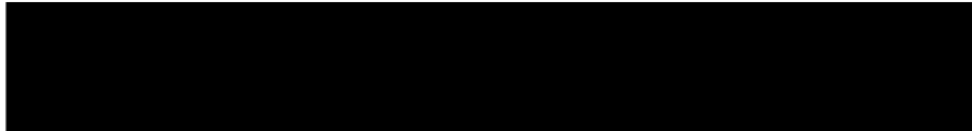


244. ~~(S)~~ In 2014, upon release of the SSCI Executive Summary, the Republican minority members of the SSCI released their own "Minority Views," in which they provided their own analysis of the RDI program 

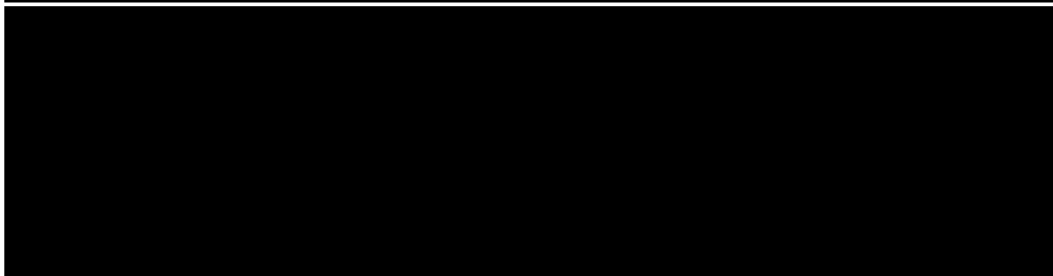
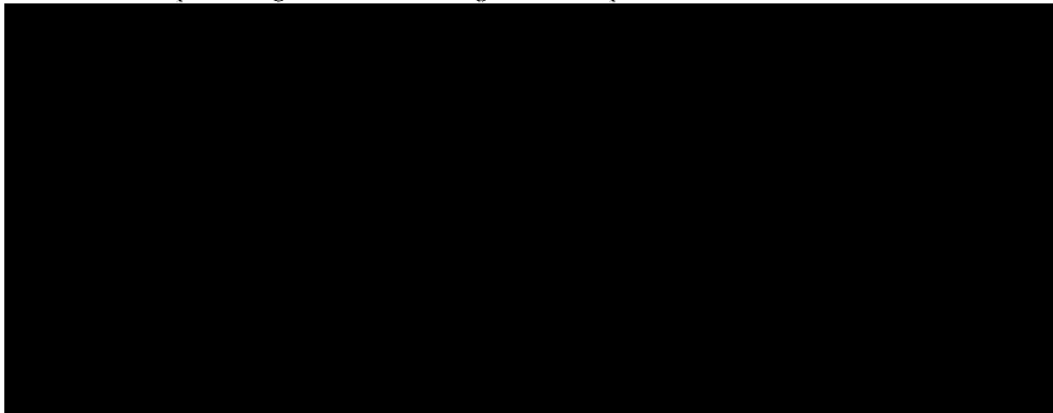


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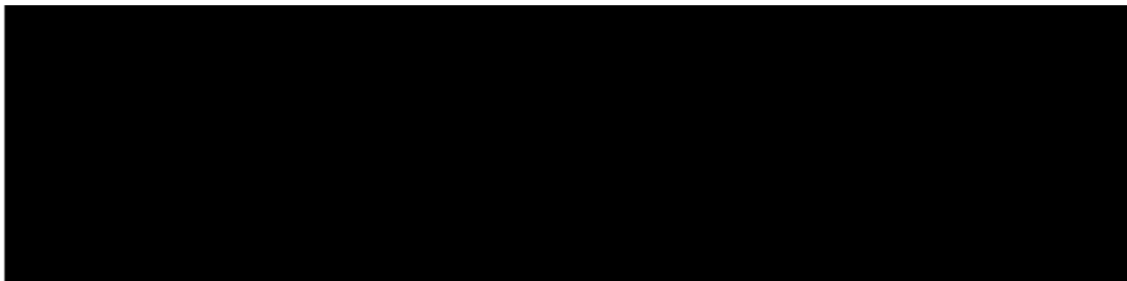
In judging what caused [Mr. Husayn] to give up valuable intelligence . . . it is impossible to separate or disaggregate enhanced interrogation techniques from rapport-building techniques *after enhanced techniques are applied*. Enhanced interrogation techniques are designed to compel detainees to cooperate with questioning and are used in conjunction with traditional questioning methods or interrogation techniques.⁵⁸⁹



⁵⁸⁹ ~~(S)~~ SSCI Minority Views at 36.



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247. (S) Through the present day, Mr. al Baluchi lives in a black site (Camp 7) and attends attorney-client meetings in a black site (Echo 2).

~~(U)~~ The central goal of the interagency effort against Mr. al Baluchi and other prisoners was to use violence to create a psychological condition in which the prisoners would provide information without the use of further violence by interrogators. CIA called this process “learned helplessness”; torture program architect Dr. James Mitchell called it “Pavlovian classical conditioning.”⁵⁹² Both phrases describe a psychological state in which the will of the prisoner is permanently replaced by that of the questioners.

[REDACTED]

~~(U)~~ Dr. Mitchell believes "that only two EITs were required for the conditioning process: walling and sleep deprivation."⁵⁹³ Interrogators could, and did, break human beings quickly: "by seventy-two hours detainees usually were starting to look for ways to cooperate, and thanks to the conditioning process, [interrogators] rarely had to use walling when a detainee drifted back into being duplicitous."⁵⁹⁴ This seventy-two hour benchmark appears to apply Mr. al Baluchi; the SSCI Executive Summary states that Mr. al Baluchi underwent "EITs" between 17-20 May 2003.⁵⁹⁵

~~(U)~~ Walling and sleep deprivation, in conjunction with ice-water-drowning in a tarpaulin, starvation, forced nudity and sexual humiliation, hanging from the ceiling, being chained to the floor, and isolation from human contact other than his captors for years, broke Mr. al Baluchi—psychologically and neurologically. Walling and other torments damaged Mr. al Baluchi's brain,

[REDACTED]

For a short time, they literally drove him insane,⁵⁹⁶ calling into question how Mr. al Baluchi can ever know which of his memories are actually his own.

[REDACTED]

⁵⁹³ ~~(U)~~ Mitchell & Harlow at 235.

⁵⁹⁴ ~~(U)~~ *Id.* at 201.

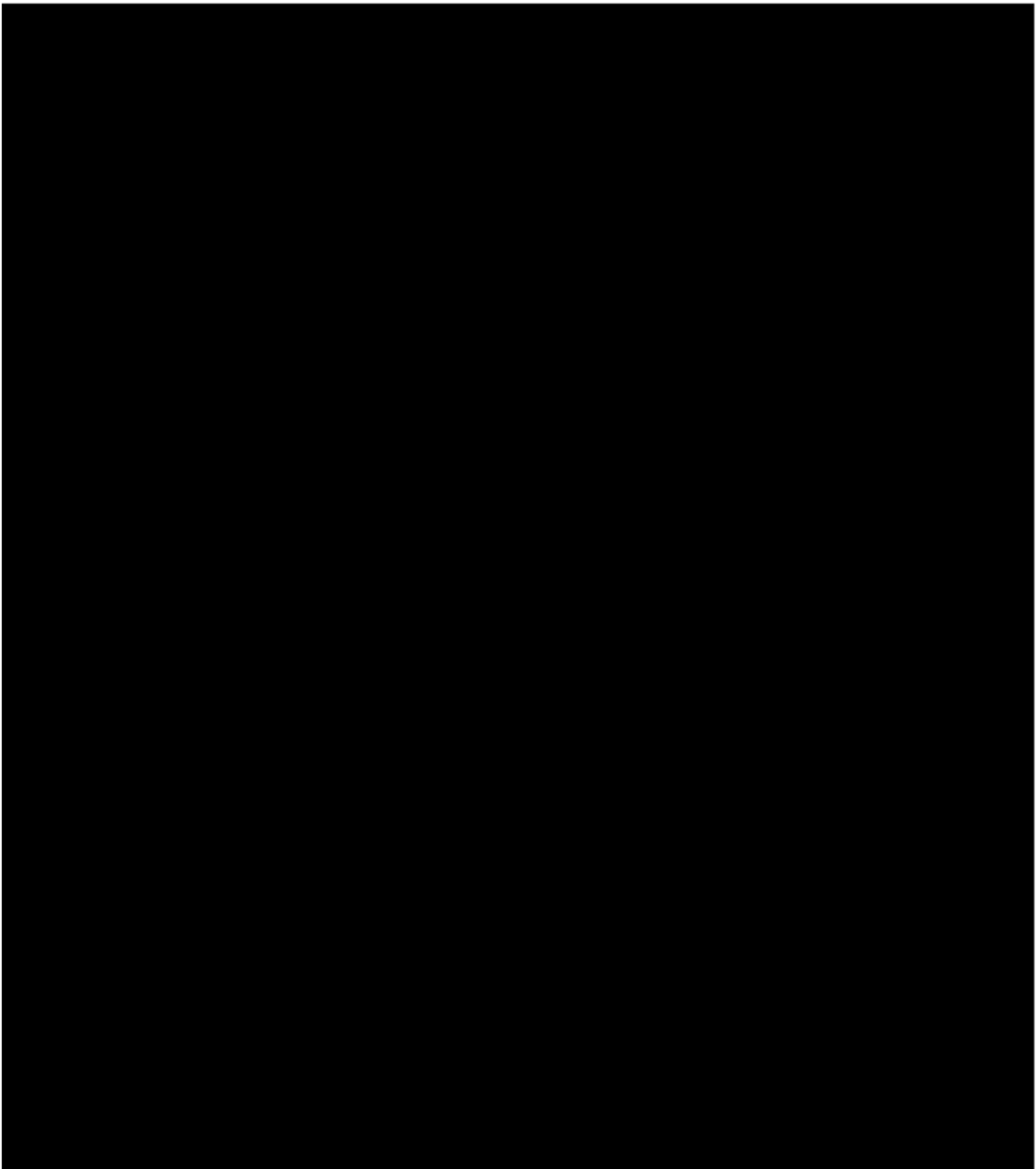
⁵⁹⁵ ~~(U)~~ SSCI Executive Summary at 388. Mr. al Baluchi has no actual timeline of what was done to Mr. al Baluchi and when. Mr. al Baluchi cannot acquire such a timeline because (1) the government refuses to produce the actual information; and (2) PO#4 prohibits Mr. al Baluchi from acquiring it through his own investigation.

⁵⁹⁶ ~~(U)~~ Attachment J.

⁵⁹⁷ ~~(U)~~ See, e.g., Attachment I; AE200MM, Att. E.

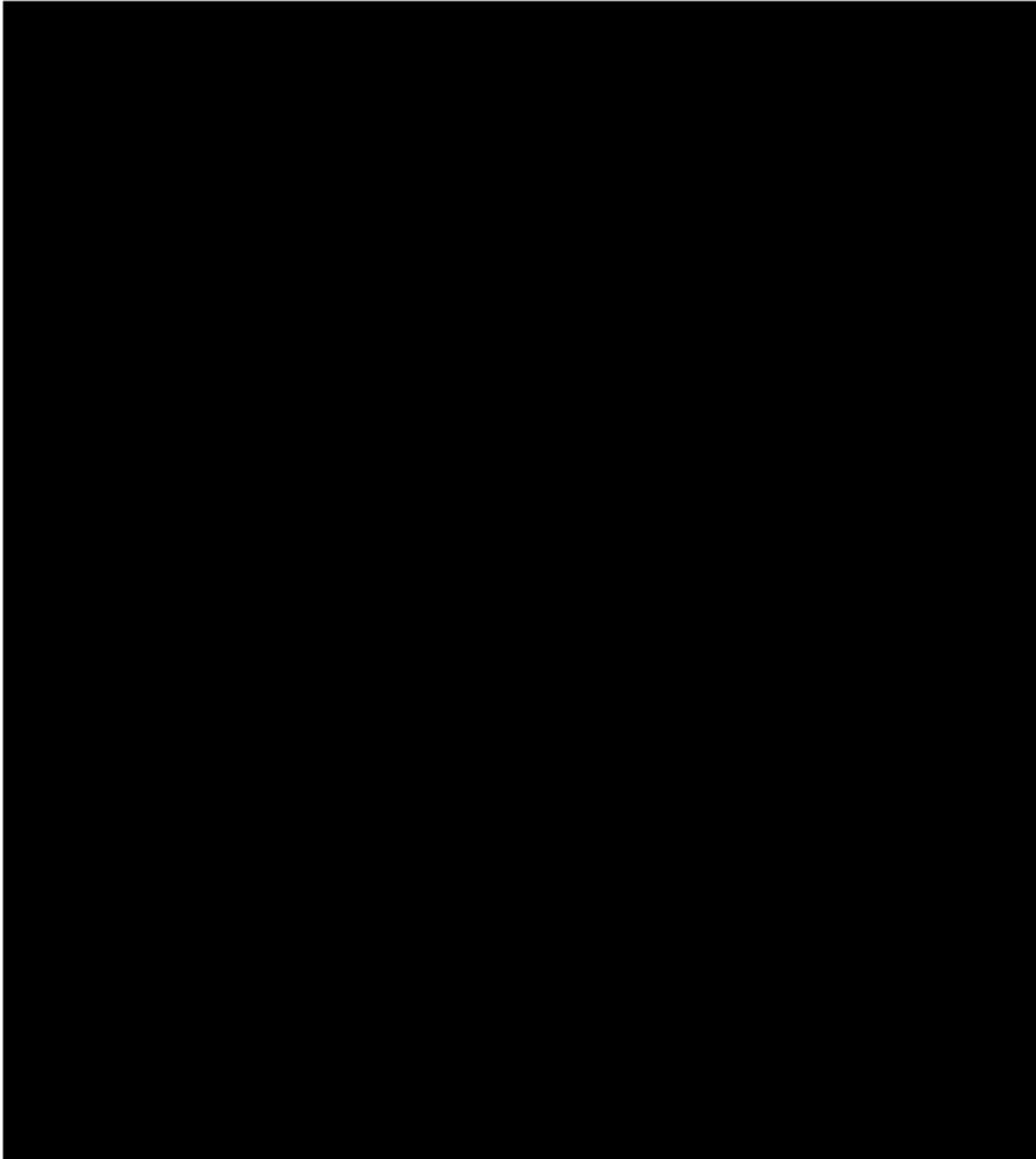
⁵⁹⁸ ~~(U)~~ Attachment D at MEA-10018-00005985-86.

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~~(S)~~ ~~(U)~~ Mr. al Baluchi's alleged January 2007 statements were obtained by the use of torture or cruel, inhuman, or degrading treatment within the meaning of 10 U.S.C. § 948r(a) and the Due Process Clause.

~~(S)~~ The suppression standard in 10 U.S.C. § 948r(a), while technically more demanding than voluntariness, is the best description of the evidence before the military commission: "obtained by the use of torture or cruel, inhuman, or degrading treatment." This standard is not limited to individual acts or statements, but provides an apt summary of the entire interagency project of extrajudicial kidnapping, *incommunicado* detention, physical and mental abuse, secrecy, and lies which provide the basis for this prosecution. "In the criminal context, confessions or testimony procured by torture are excluded under the Due Process Clause because such admissions would run contrary to 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.'"⁶¹⁴ The military commission should suppress all statements Mr. al Baluchi allegedly has made to agents of the United States.

~~(S)~~ Title 10 U.S.C. § 948r(a) provides in relevant part:⁶¹⁵

⁶¹⁴ ~~(S)~~ *Mohammed v. Obama*, 704 F. Supp. 2d 1, 24 (D.D.C. 2009) (quoting *Brown*, 297 U.S. at 286).

⁶¹⁵ ~~(S)~~ MCRE 304(a)(1) contains the same language.

~~(U)~~ **Exclusion of statements obtain[ed] by torture or cruel, inhuman, or**

degrading treatment.—No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. § 2000dd)), whether or not under color of law, shall be admissible in a military commission under this chapter . . .

~~(U)~~ MCRE 304(b)(3) draws its definition of torture from 18 U.S.C. § 2340, which in turn draws on the United Nations Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment:⁶¹⁶ “an act specifically intended to inflict severe physical or mental pain or suffering⁶¹⁷ (other than pain or suffering incident to lawful sanctions) upon another person within the actor’s custody or physical control.”

~~(U)~~ The leading case in the D.C. Circuit on the meaning of torture is *Price v. Socialist People’s Libyan Arab Jamahiriya*.⁶¹⁸ Under *Price*, the definition of torture involves two main

⁶¹⁶ ~~(U)~~ 18 U.S.C. § 2340, along with §§ 2340A-B, implements the United States Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc A/39/51 (1984) [hereinafter CAT], in the context of the United States’ Reservations, Understandings, and Declarations. Congress added § 2340 in the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 108 Stat. 464 (1994). Title V, Section 506, which included § 2340, was titled “Torture Convention Implementation,” and was contingent on the United States becoming a party to CAT.

⁶¹⁷ ~~(U)~~ “‘Severe mental pain or suffering’ is defined as the prolonged mental harm caused by or resulting from: (A) the intentional inflict or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.” MCRE 304(b)(3).

⁶¹⁸ ~~(U)~~ 294 F.3d 82 (D.C. Cir. 2002). *Price* arose in the context of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-11 [hereinafter FSIA], which allows suits against foreign states or their agents for torture. See 18 U.S.C. § 1605(e) (before 2008), § 1605A (after 2008). The FSIA draws its definition of torture from the Torture Victim Protection Act, 28 U.S.C. § 1350

elements: severity and purpose.⁶¹⁹ These elements serve to distinguish true torture from “mere police brutality.”⁶²⁰

(U) The first inquiry is severity. The D.C. Circuit explained, “The critical issue is the degree of pain and suffering that the alleged torturer intended to, and actually did, inflict upon the victim. The more intense, lasting, or heinous the agony, the more likely it is to be torture.”⁶²¹ The court gave “sustained systematic beating” and “tying up or hanging in positions that cause extreme pain” as examples of “extreme, deliberate and unusually cruel practices” that meet the severity requirement of torture.⁶²² It is permissible to infer the intent to cause pain from the facts of the abuse.⁶²³ Courts have characterized treatment milder than that at issue here as torture.⁶²⁴

(note) [hereinafter TVPA]. TVPA, like § 2340, draws its definition from CAT. *See Price*, 294 F.3d at 92.

⁶¹⁹ (U) *Price*, 294 F.3d at 92; *Warmbier v. Democratic People’s Republic of Korea*, 356 F. Supp. 3d 30, 46 (D.D.C. 2018) (“To establish torture, the plaintiffs must show that the conduct was sufficiently severe and purposeful.”).

⁶²⁰ (U) *Price*, 294 F.3d at 93.

⁶²¹ (U) *Id.*

⁶²² (U) *Id.* at 92-93 (quoting S. Exec. Rep. No. 101-30, at 14 (1990)); *see also Fritz v. Islamic Republic of Iran*, 320 F. Supp. 3d 48, 80 (D.D.C. 2018) (“And, on the other extreme, we know, for example, that ‘sustained systematic beating . . . and tying up or hanging in positions that cause extreme pain’ clearly cross the line.” (quoting *Price*, 294 F.3d at 93)).

⁶²³ (U) *Fritz*, 320 F. Supp. 3d at 82.

⁶²⁴ (U) *See, e.g., Allan v. Islamic Republic of Iran*, 2019 U.S. Dist. LEXIS 49541 (D.D.C. Mar. 25, 2019) (describing punches, kicks, sexually assaults, slaps, stress positions, refusal of access to food and water, denial lavatories, mock executions, threats, and imprisonment in apartments, garages, and basement prisons as torture).

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~~(U)~~ Under D.C. Circuit law, torture is generally not a single event, but rather a course of abusive treatment over time. Thus, “beatings, unsanitary conditions, inadequate food and medical care, and mock executions” over a period of eighteen months constitute torture.⁶²⁵

~~(U)~~ The second inquiry is purpose. Regardless of “its specific goal,” conduct reaches the level of torture “only when the production of pain is purposive, and not merely haphazard. [An alleged torturer] must impose suffering cruelly and deliberately, rather than as the unforeseen or unavoidable incident of some legitimate end.”⁶²⁶ The D.C. Circuit, and indeed the TVPA itself, provide obtaining information as an example of purposeful behavior which supports a finding of torture.⁶²⁷

~~(U)~~ Cruel, inhuman, and degrading treatment is the “cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments”⁶²⁸ “Conditions [of confinement] . . . alone or in combination, may deprive inmates of the minimal civilized measure of life’s necessities. Such conditions could be cruel and unusual under the contemporary standards of decency”⁶²⁹ Unsanitary living conditions, long-term isolation,

⁶²⁵ ~~(U)~~ *Kilburn v. Islamic Republic of Iran*, 699 F. Supp. 2d 136, 152 (D.D.C. 2010); *see also Fritz*, 320 F. Supp. 3d at 82; *Regier v. Islamic Republic of Iran*, 281 F. Supp. 2d 87, 91, 92, 97 (D.D.C. 2003); *Cicippio v. Islamic Republic of Iran*, 18 F. Supp. 2d 62, 65 (D.D.C. 1998).

⁶²⁶ ~~(U)~~ *Price*, 294 F.3d at 94.

⁶²⁷ ~~(U)~~ *Id.* at 92 (quoting TVPA § 3(b)(1)); *see also Warmbier*, 356 F. Supp. 2d at 47 (finding North Korean extraction of confession sufficient purpose to support allegation of torture).

⁶²⁸ ~~(U)~~ MCRE 304(b)(4).

⁶²⁹ ~~(U)~~ *Rhodes v. Chapman*, 452 U.S. 337, 347-48 (1981).

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limited diet, and denial of medical care are examples of Fifth, Eighth, and Fourteenth Amendment violations which can constitute CIDT.⁶³⁰

[REDACTED]

(U) The psychological control established by the United States over Mr. al Baluchi was critical to the success of the January 2007 interrogations. "Torture and 'enhanced interrogation techniques' employed by the Government during the War on Terror have been shown to be 'geared toward creating anxiety or fear in the detainee while at the same time removing any form of control from the person to create a state of total helplessness.'"⁶³² The "Pavlovian classical conditioning" Dr. Mitchell's torture program created did not dissipate with the transfer of Mr. al Baluchi from one CIA prison to another, but persisted well beyond January 2007. It continues to this day, [REDACTED]

[REDACTED]⁶³³

(U) This program of forcing a prisoner to produce information through conditioning was

⁶³⁰ (U) See, e.g., *Rhodes*, 452 U.S. at 347-48; *Hutto v. Finney*, 437 U.S. 678, 685 (1978); *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

[REDACTED]

⁶³² (U) *Mohammed*, 704 F. Supp. 2d at 27 (quoting Metin Basuglu, *Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the Distinction Real or Apparent?* 64 Archives of Gen. Psychiatry 277, 283 (2007)).

⁶³³ (U) Attachment I. Dr. [REDACTED] is expected to testify at the evidentiary hearing.

~~(S) [REDACTED]~~

especially successful in Mr. al Baluchi's case because it included the neurophysiological element of concussion and brain damage. Prolonged and extreme stress, like that associated with CIA enhanced and standard interrogation techniques, has a deleterious effect on frontal lobe function.⁶³⁴ At the same time, Mr. al Baluchi suffered [REDACTED] from untreated Post-Concussion Syndrome.⁶³⁵ [REDACTED]

⁶³⁴ ~~(S)~~ Mohammed, 704 F. Supp. 2d at 27 (quoting Shane O'Mara, *Torturing the Brain: On the Folk Psychology and Folk Neurobiology Motivating 'Enhanced and Coercive Interrogation Techniques,'* Trends in Cognitive Sciences (2009)). Dr. O'Mara is expected to testify at the evidentiary hearing.

⁶³⁵ ~~(S)~~ Attachment I. [REDACTED] s expected to testify at the evidentiary hearing. [REDACTED]

~~(S) [REDACTED]~~

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(U) Walling and other forms of torture robbed Mr. al Baluchi of parts of his brain tissue,

[REDACTED]

This brain damage means that interrogating agents had the advantage not only of Mr. al Baluchi's learned and entirely rational fear of American interrogators, but also of induced inability to handle that fear or accurately remember the actual facts which underlie hundreds of previous interrogations.

[REDACTED]

[REDACTED]

[REDACTED]

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~~(U)~~ The constitutional rule is clear: Under the Fifth Amendment, otherwise “reliable and probative evidence” must be excluded “for *all* purposes” “when it is derived from involuntary statements.”⁶³⁸ Even where the deterrence purpose of the exclusionary rule does not exist (such as with foreign interrogators), the poisonous fruit of coerced statements are inadmissible.⁶³⁹ Neither the statements themselves, nor their fruits, are admissible in a judicial proceeding.

Statutorily, 10 U.S.C. § 948r(c) provides in relevant part:⁶⁴⁰

~~(U)~~ **Other statements of the accused.**—A statement of the accused may be admitted into evidence in a military commission under this chapter only if the military judge finds—

(1) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(2) that— . . .

(B) the statement was voluntarily given.

(U) The test for whether a statement is voluntary “is whether the statement was a ‘product



⁶³⁸ ~~(U)~~ *Michigan v. Harvey*, 494 U.S. 344, 351 (1990).

⁶³⁹ ~~(U)~~ See *United States v. Abu Ali*, 395 F.3d 210, 227 (4th Cir. 2008) (holding that statements obtained from foreign defendants from foreign law enforcement agents outside of the United States are generally admissible if voluntary); *United States v. Yousef*, 327 F.3d 56, 145 (2nd Cir. 2003) (same); *United States v. Karake*, 443 F. Supp. 2d 8, 50 (D.D.C. 2006) (holding that conditions and mistreatment of defendant while under foreign interrogation shocked the conscience, therefore statements involuntary and inadmissible in U.S. courts).

⁶⁴⁰ ~~(U)~~ MCRE 304(a)(2) contains the same language.

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of an essentially free and unconstrained choice by its maker.”⁶⁴¹ “The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession.”⁶⁴²

(U) The techniques used to obtain statements are a critical focus of inquiry.⁶⁴³ “[T]he admissibility of a confession turns on as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant’s will was in fact overborne.”⁶⁴⁴

(U) The analysis of voluntariness requires “careful evaluation of all the circumstances of the interrogation.”⁶⁴⁵ These circumstances classically include but are “not limited to the defendant’s age and education, the length of the detention, whether the defendant was advised of his rights, and the nature of the questioning.”⁶⁴⁶ Other factors include “the defendant’s prior

⁶⁴¹ (U) *United States v. Murdock*, 667 F.3d 1302, 1305 (D.C. Cir. 2012) (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)).

⁶⁴² (U) *Culombe*, 367 U.S. at 602.

⁶⁴³ (U) The military commission, of course, has prohibited Mr. al Baluchi from most independent investigation to determine the techniques used to obtain statements from Mr. al Baluchi, whether in Guantanamo or a different black site, when that information is held by a CIA employee or contractor.

⁶⁴⁴ (U) *Miller v. Fenton*, 474 U.S. 104, 116 (1985) (citing *Gallegos v. Colorado*, 370 U.S. 49, 51 (1962) and *Culombe*, 367 U.S. at 605).

⁶⁴⁵ (U) *Mincey v. Arizona*, 437 U.S. 385, 401 (1978). This very standard illustrates why the investigative prohibitions in PO #4 prevent a meaningful testing of voluntariness through a motion to suppress. PO #4 prevents investigation into “all the circumstances of the interrogation” where those circumstances are known to CIA employees or contractors.

⁶⁴⁶ (U) *Murdock*, 667 F.3d at 1305-06 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)).

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experience with the legal process[] and familiarity with the *Miranda* warnings.”⁶⁴⁷

(U) For all the reasons described above, including almost four years of isolation, denial of access to counsel or consul, ignorance of the legal system prosecuting him, conditioning to answer, and actual physiological changes to Mr. al Baluchi’s brain structures, Mr. al Baluchi’s answers to questions from the FBI-CITF interrogation team were not the result of free and unconstrained choice. “There is torture of mind as well as body; the will is as much affected by fear as by force.”⁶⁴⁸

(U) In addition, the January 2007 interrogation was clearly the fruit of the prior years of coercive interrogations. “Where a confession is obtained at a lawful interrogation that comes after an earlier interrogation in which a confession was obtained due to actual coercion, duress, or inducement, the subsequent confessions is presumptively tainted as a product of the earlier one.”⁶⁴⁹

Title 10 U.S.C. § 948r(d) provides:⁶⁵⁰

Determination of voluntariness.—In determining for purposes of subsection (c)(2)(B) whether a statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

- (1) The details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities;
- (2) The characteristics of the accused, such as military training, age, and education

⁶⁴⁷ (U) *Miller*, 474 U.S. at 117.

⁶⁴⁸ (U) *Watts v. Indiana*, 338 U.S. 49, 52 (1949).

⁶⁴⁹ (U) *United States v. Cuento*, 60 M.J. 106, 108-09 (C.A.A.F. 2004); *see also Al Rabiah v. United States*, 658 F. Supp. 2d 11, 36 (D.D.C. 2009) (holding that government had not carried its burden to demonstrate a clean break between coercive and non-coercive interrogations).

⁶⁵⁰ (U) MCRE 304(a)(4) contains the same language.

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level;

- (3) The lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

(U) “This multi-factor inquiry aims to uncover whether there has been a ‘break in the stream of events . . . sufficient to insulate the statement from the effect of all that went before.’”⁶⁵¹ In addition to these enumerated factors—derived from *Oregon v. Elstad*⁶⁵²—“courts should examine, *inter alia*, the age, education, intelligence, and mental health of the witness; whether he has received advice regarding his Constitutional rights; the length of detention; the ‘repeated and prolonged nature of the questioning’; and the ‘use of physical punishment such as the deprivation of food or sleep.’”⁶⁵³

(U) Additionally, courts should consider “the continuing effect of the prior coercive techniques on the voluntariness of any subsequent confession.”⁶⁵⁴ “The effect of earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the later confession is involuntary.”⁶⁵⁵

(U) Aside from the tactics employed by the interrogators themselves, conditions of confinement—such as isolation or inhuman living conditions—directly affect the voluntariness of

⁶⁵¹ (U) *Mohammed*, 704 F. Supp. 2d at 25 (quoting *Clewis v. State of Texas*, 386 U.S. 707, 710 (1967)).

⁶⁵² (U) 470 U.S. 298, 310 (1985).

⁶⁵³ (U) *Mohammed*, 704 F. Supp. 2d at 25 (quoting *Schneckloth*, 412 U.S. at 226).

⁶⁵⁴ (U) *Karake*, 443 F. Supp. 2d at 87.

⁶⁵⁵ (U) *Lyons v. Oklahoma*, 322 U.S. 596, 603 (1944).

~~(U)~~ [REDACTED]

statements. In *Brooks v. Florida*, for example, the Supreme Court held that a confession was involuntary where it was extracted after *two weeks* of incommunicado detention in which the accused was “completely under the control and dominion of his jailers.”⁶⁵⁶

[REDACTED]

~~(U)~~ This interrogation followed an extensive period of incommunicado detention and abuse. Factors such as “the length of the abuse, its severity, and the fact that it was targeted to overwhelm the [prisoner] mentally as well as physically”⁶⁵⁷ weigh against a finding of attenuation. The length, severity, and purpose of the abuse are especially important here because of the [REDACTED] effect on Mr. al Baluchi. [REDACTED]

[REDACTED]

On this occasion, the conduct of intelligence operations is a factor counseling exclusion.

~~(U)~~ Evaluation of Mr. al Baluchi’s individual circumstances must take into account “the

⁶⁵⁶ ~~(U)~~ 389 U.S. 413, 414 (1967).

⁶⁵⁷ ~~(U)~~ *Mohammed*, 704 F. Supp. 2d at 26.

[REDACTED]

~~(U)~~ [REDACTED]

psychological effects of this lengthy and inhumane treatment.”⁶⁵⁹ Mr. al Baluchi’s torture-induced

[REDACTED] is one factor which cuts against a finding of attenuation.⁶⁶⁰ In addition to years of conditioning for interrogation compliance [REDACTED]

[REDACTED] Mr. al Baluchi had no prior acquaintance with an legal system, much less the American legal system. He knew only a lawless system of secret prisons, denial of access to counsel, and torture. The RDI Program was in many ways an anti-legal system, designed to remove Mr. al Baluchi from constitutional and human rights protections.

(U) The simple passage of time does nothing to suggest attenuation, especially when the time was spent nearly *incommunicado* in a CIA-controlled prison. “When considering the amount of time which has elapsed between the coerced confession and the subsequent one, courts have never insisted that a specific amount of time must pass before the taint of earlier mistreatment has dissipated. Indeed, as a legal matter, it has been held that the effects of earlier coercion could last for nearly one year.”⁶⁶¹ “A totality of the circumstances inquiry, therefore, cannot be reduced simply to mechanical computations of time.”⁶⁶²

(U) Finally, the change in individual questioners means little in this context. Over his years in CIA custody, over 150 individuals interrogated Mr. al Baluchi. These three were simply the latest in a long string of questioners. As in the case of Binyam Mohammed, “even though the identity of the individual interrogators changed (from nameless Pakistanis, [REDACTED])

⁶⁵⁹ (U) *Mohammed*, 704 F. Supp. 2d at 27.

⁶⁶⁰ (U) *Id.* at 27.

⁶⁶¹ (U) *Id.* at 26 (citing *Al-Rabiah* classified opinion).

⁶⁶² (U) *Id.* at 26 (citing *Schneekloth*, 412 U.S. at 226).

~~(U)~~ In *Suhail Abdu Anam v. Obama*, the U.S. District Court for the District of Columbia applied the above factors to determine that statements made by an Accused to United States officials at Guantanamo Bay were tainted by prior maltreatment by different United States forces in Afghanistan.⁶⁶⁴ The court inferred that the interrogators at Guantanamo had access to the Accused's coerced confessions overseas. "Far from being insulated from his coerced confessions, his Guantanamo confessions were thus derived from them." The court also found that the Accused's post-traumatic stress disorder "seemingly exacerbated the taint from any harsh treatment."⁶⁶⁵

~~(U)~~ Although the military commission should exclude the statements under § 948r(a), it is also true the Mr. al Baluchi's alleged statements were involuntary. Either way, the military commission should exclude them for all purposes.

(3) ~~(U)~~ The statements are not "reliable and possessing sufficient probative value" within the meaning of 10 U.S.C. § 948r(c)(1).

~~(U)~~ Finally, the military commission should also exclude Mr. al Baluchi's alleged statements because they are unreliable. Like the Due Process Clause, Section 948r(c)(1) prohibits the admissibility of statements that are not "reliable and possessing sufficient probative value."⁶⁶⁶

⁶⁶⁴ ~~(U)~~ 696 F. Supp. 2d 1, 7 (D.D.C. 2010).

⁶⁶⁵ ~~(U)~~ *Id.* at 8.

⁶⁶⁶ ~~(U)~~ 10 U.S.C. § 948r(c)(1).

~~(U)~~ Coercion in itself diminishes the reliability of statements. “[A]s a practical matter, resort to coercive tactics by an interrogator renders the information less likely to be true.”⁶⁶⁷ The District of D.C. concluded in the case of Binyam Mohammed that, “throughout his detention, a constant barrage of physical and psychological abuse was employed in order to manipulate him and program him into telling investigators what they wanted to hear.” [REDACTED]

[REDACTED]

~~(U)~~ Because of [REDACTED] provoked by chronic extreme stress, Mr. al Baluchi and others like him are prone to confabulation, or the production of false memories.⁶⁷⁰ It can be “difficult or perhaps impossible to determine during interrogation whether the information that a suspect reveals is true: information presented by the captor to elicit responses during interrogation might inadvertently become part of the [subject’s] memory, especially because [subjects] are under extreme stress and are required to tell and retell the same events that might have happened over a period of years.”⁶⁷¹

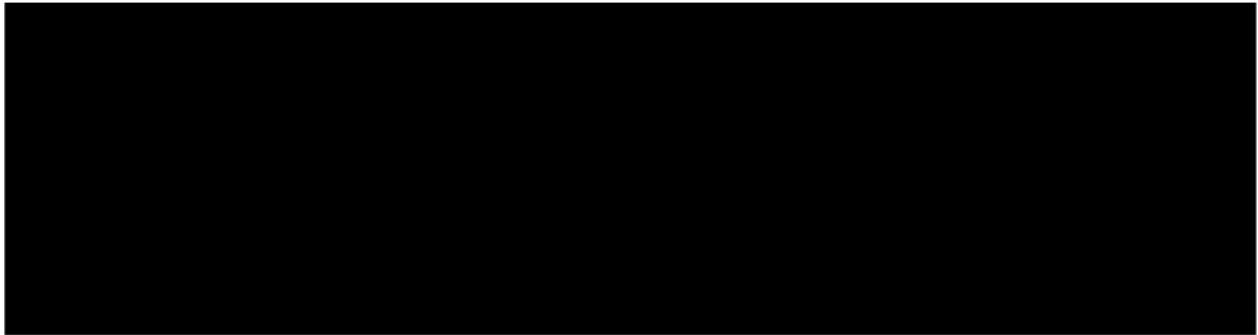
⁶⁶⁷ ~~(U)~~ *Mohammed*, 704 F. Supp. at 24-25 (citing *Linkletter v. Walker*, 381 U.S. 618, 638 (1965)).

[REDACTED]

⁶⁷⁰ ~~(U)~~ *Mohammed*, 704 F. Supp. 2d at 27.

⁶⁷¹ ~~(U)~~ *Id.* at 28 (quoting O’Mara). Dr. O’Mara is expected to testify at the evidentiary hearing.

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~~(U)~~ America does not have a system of government which tolerates conviction and execution on the basis of evidence acquired by a program of torture and interrogation conducted outside the realm of law. On a spectrum of interrogation abuses, this case lies at the end far from civilized behavior consistent with a democratic state. If these statements were admissible, the most fundamental constitutional and statutory protections would have ceased to function. The military commission should vindicate these basic principles and suppress the statements at issue here.

7. ~~(U)~~ **Request for witnesses:** As directed in AE524LLL, Mr. al Baluchi will make a separate request for witnesses to the government.

8. ~~(U)~~ **Certificate of conference:** The government initially stated its position as follows: "The Prosecution will oppose Mr. [al Baluchi's] motion to suppress statements made to law enforcement in January 2007. As the Prosecution does not intend to introduce any statement taken from Mr. [al Baluchi] while he was in the custody of the United States and in the RDI Program from 2003 to September 2006, the Prosecution opposes Mr. [al Baluchi]'s motion to suppress any such statements on ripeness and/or mootness grounds." Upon request for clarification, the government stated as follows: "The Prosecution will defer stating its position on any statements



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taken prior to the time Mr. [al Baluchi] was in the custody of the United States until the Prosecution has an opportunity to read your motion and assess its merits.”

9. ~~(C)~~ Attachments:

- A. Certificate of Service
- B. 2A Chronologies of Defendants’ Black Site Detention
- C. MEA-DR-034-MOH-00001, Linking of Locations and Identities in SSCI EXSUM With Corresponding Identifiers Produced in Discovery.
- D. Medical Records (MEA-10018-00002967).
- E. Additional JDM
[REDACTED]
- G. Additional STA
- H. CP7 Documents
- I. Dr. [REDACTED] Report
[REDACTED]
- K. Echo 2 photographs
- L. AE214A Discovery
- M. XYM Discovery
- N. MEA-13E-00000572
- O. Assessment of Current Status
- P. Letter from John Yoo

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~~(U)~~Very respectfully,

~~(U)~~//s//
JAMES G. CONNELL, III
Learned Counsel

~~(U)~~//s//
STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

~~(U)~~//s//
ALKA PRADHAN
Defense Counsel

~~(U)~~//s//
BENJAMIN R. FARLEY
Defense Counsel

~~(U)~~//s//
MARK E. ANDREU
Capt, USAF
Defense Counsel

~~(U)~~Counsel for Mr. al Baluchi

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~~(U)~~ Attachment A

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~~(S)~~ CERTIFICATE OF SERVICE

~~(S)~~ I certify that on the 15th day of May, 2019, I hand delivered the foregoing document to be filed with the Clerk of the Court and served on all counsel of record.

~~(S)~~ /s/

JAMES G. CONNELL, III
Learned Counsel

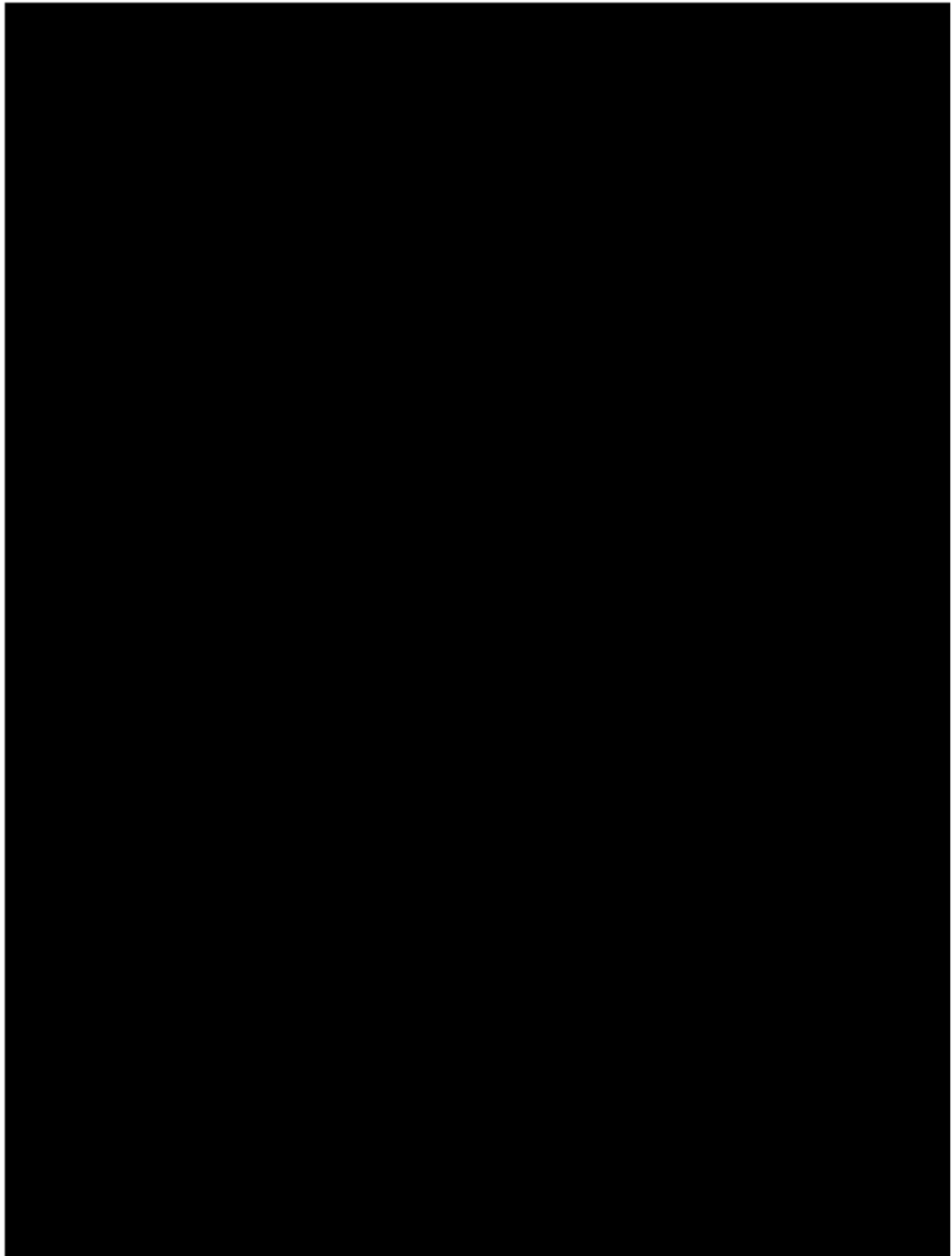
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~~(U)~~ Attachment B

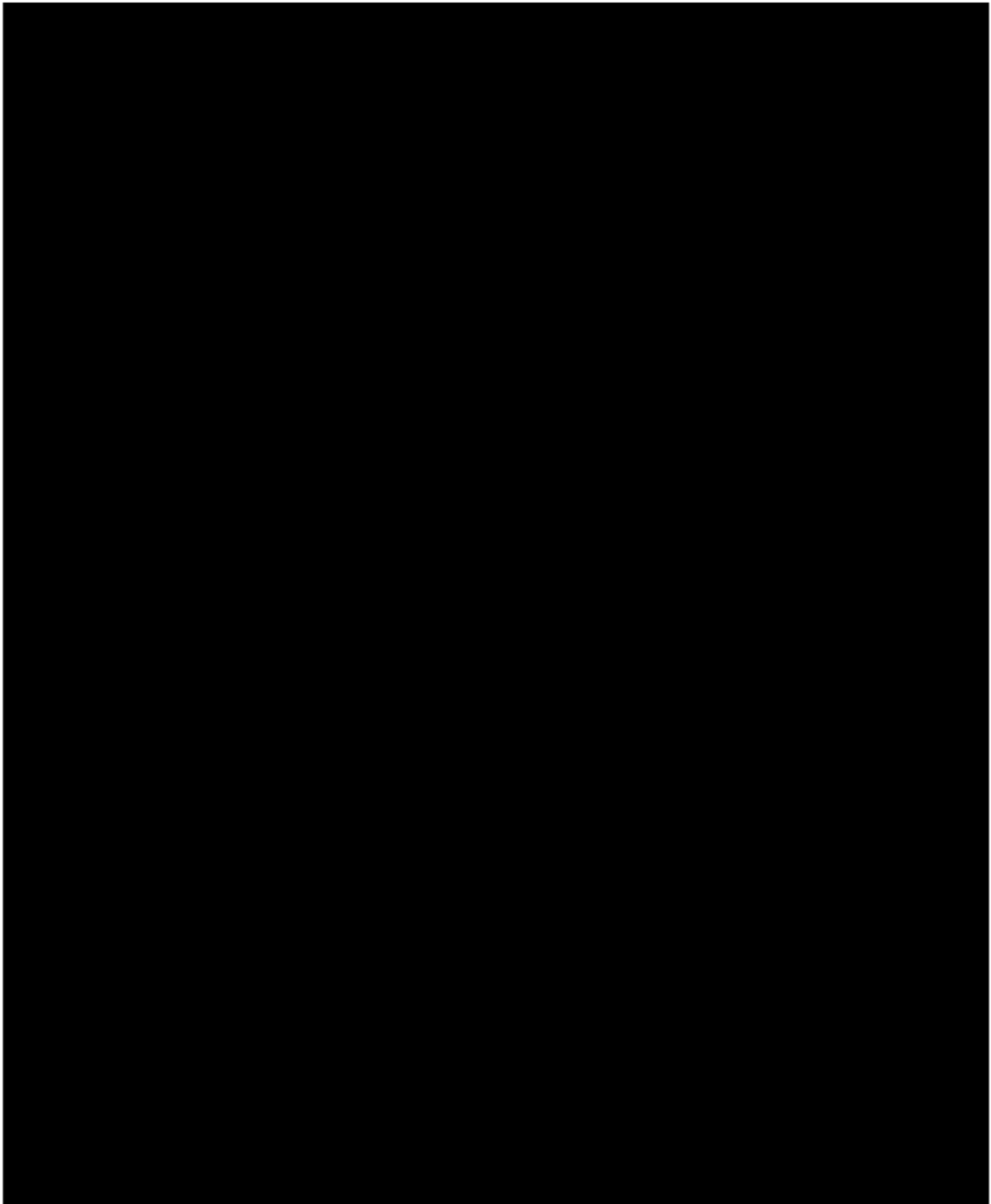
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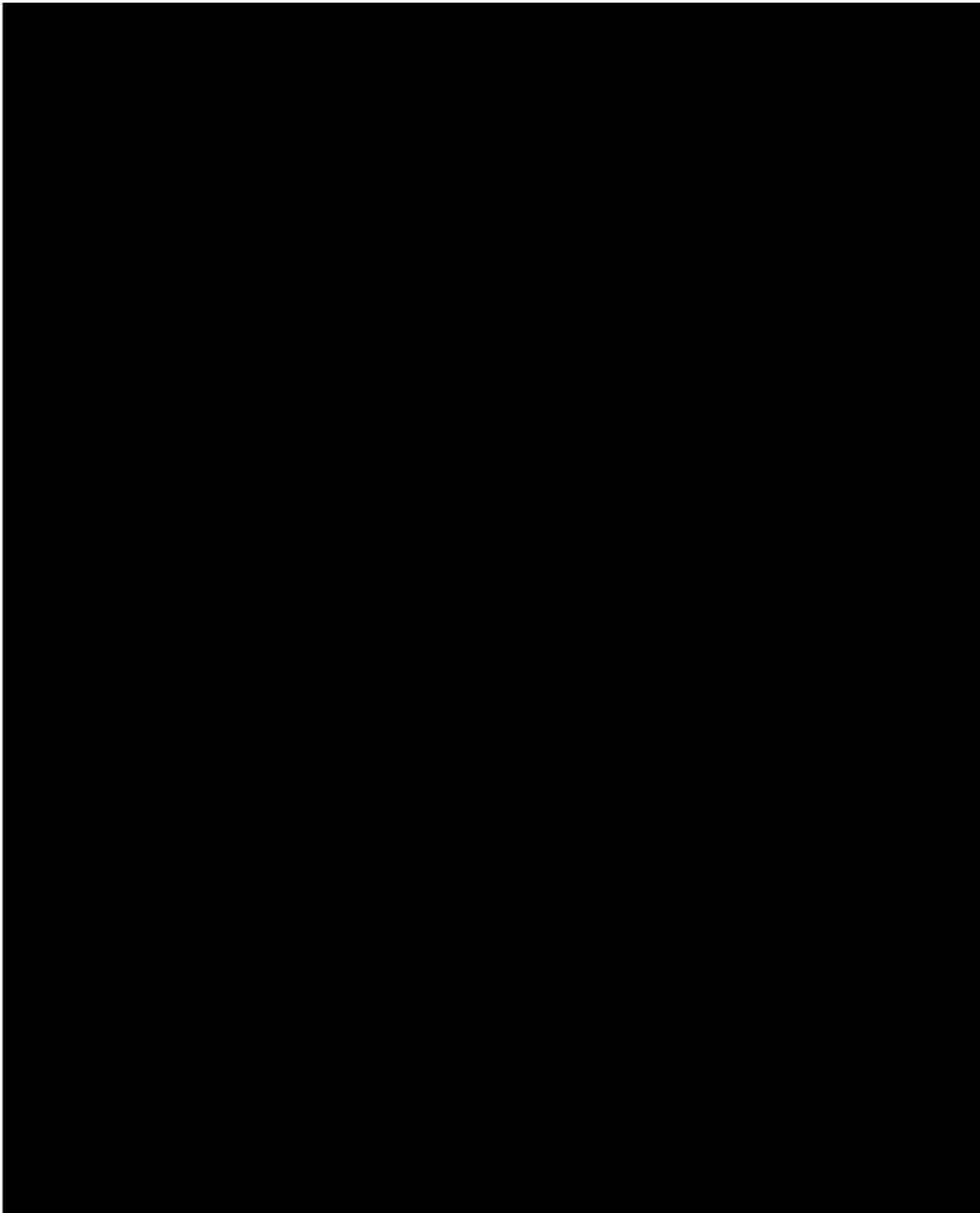
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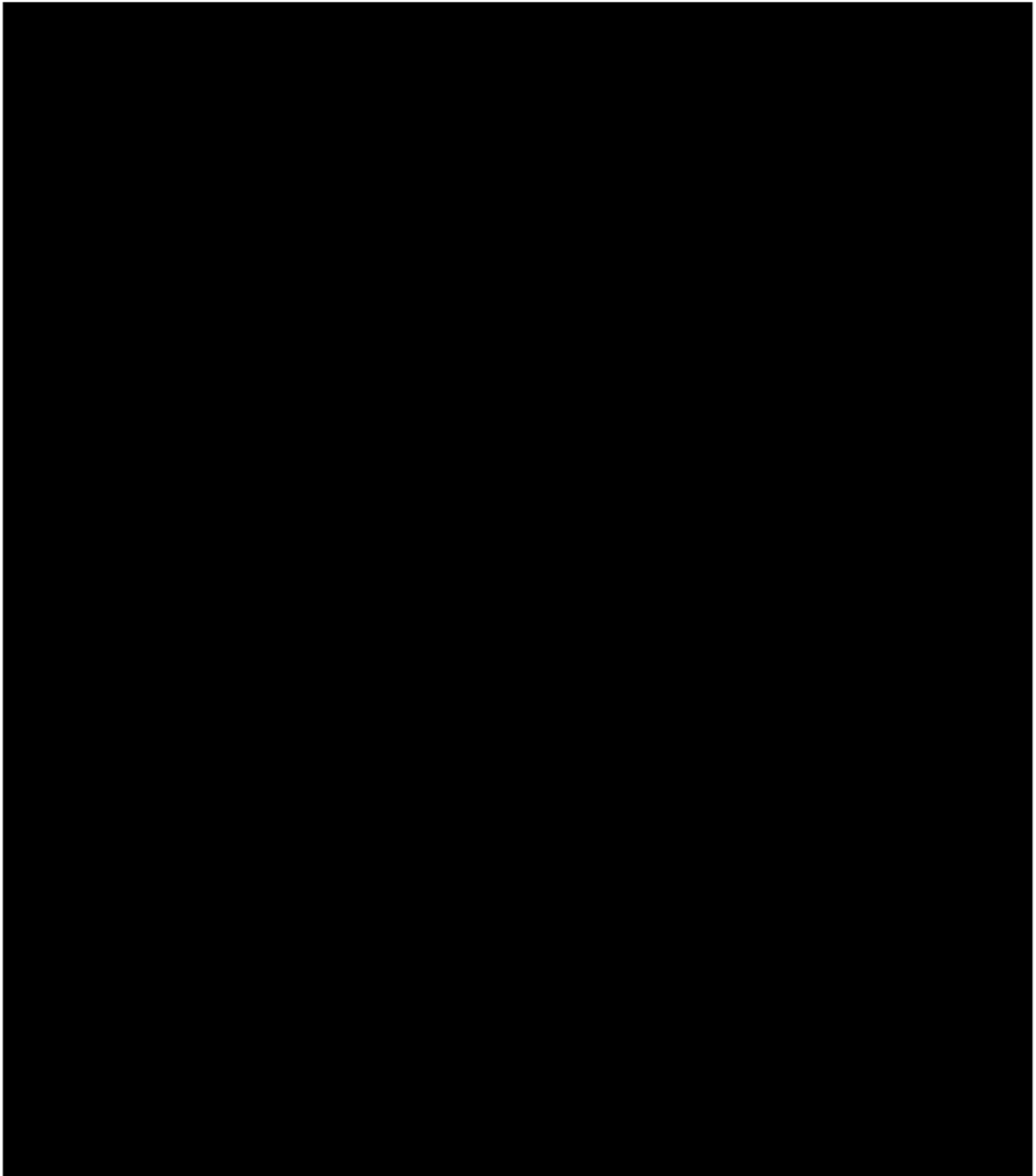
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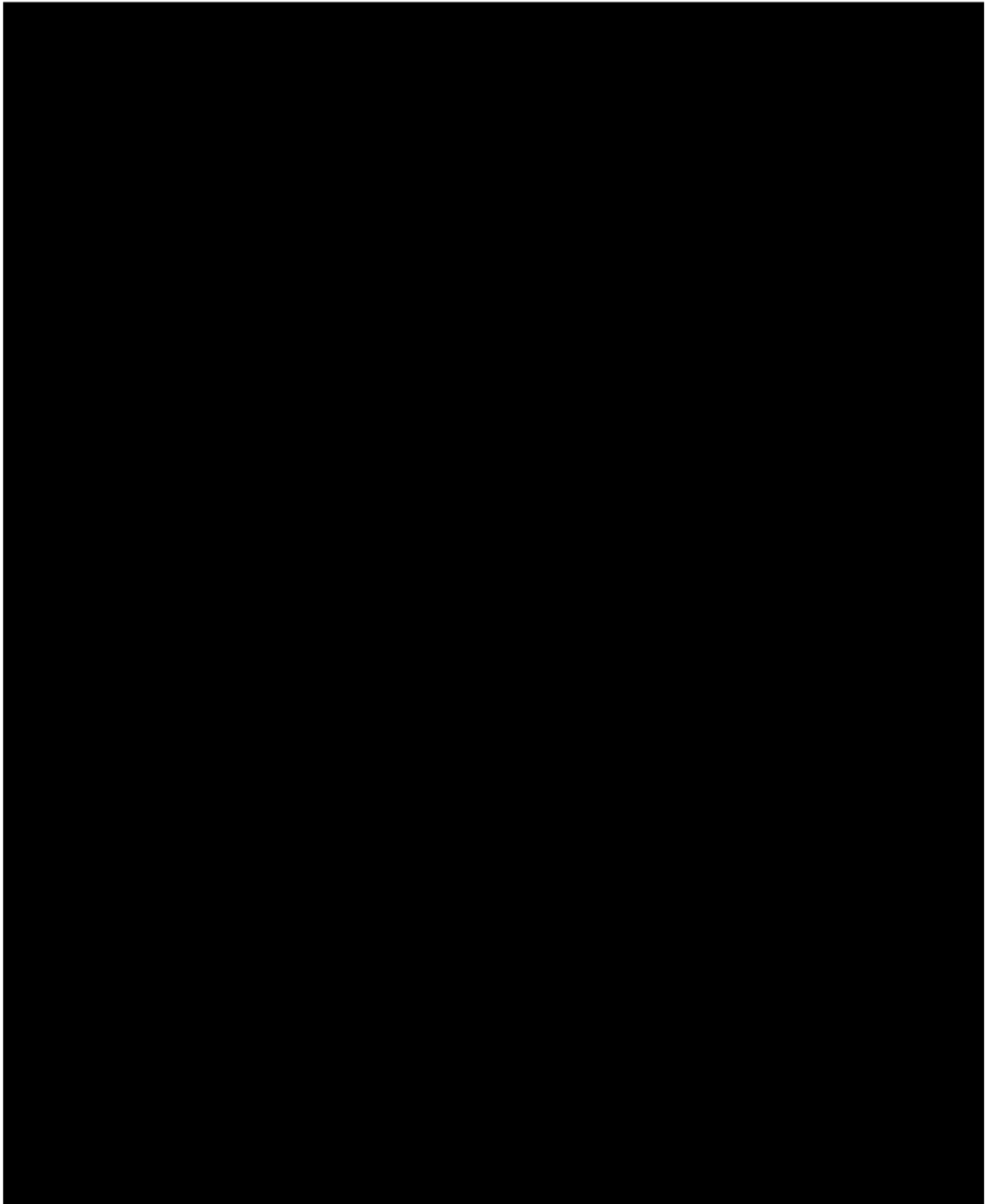
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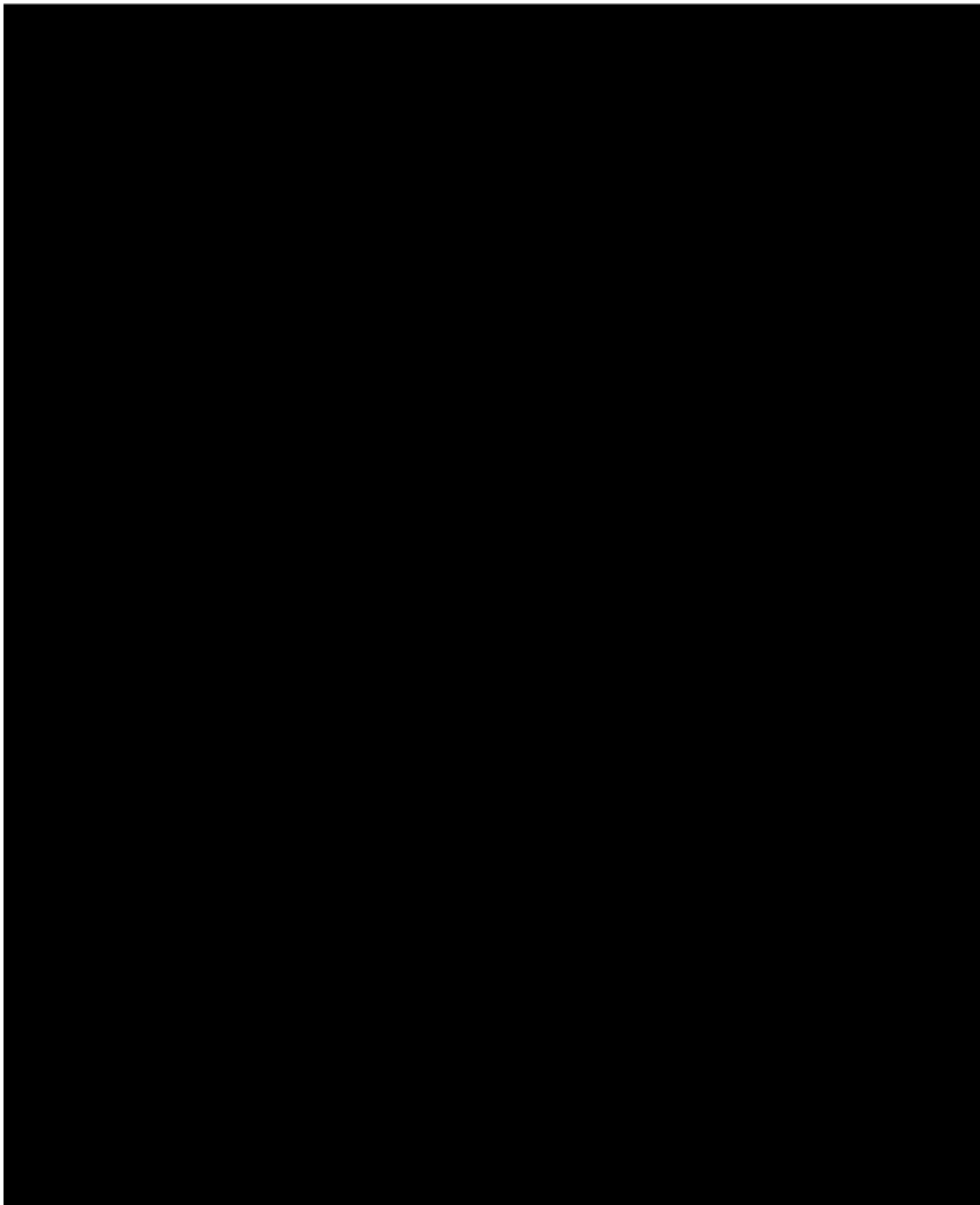
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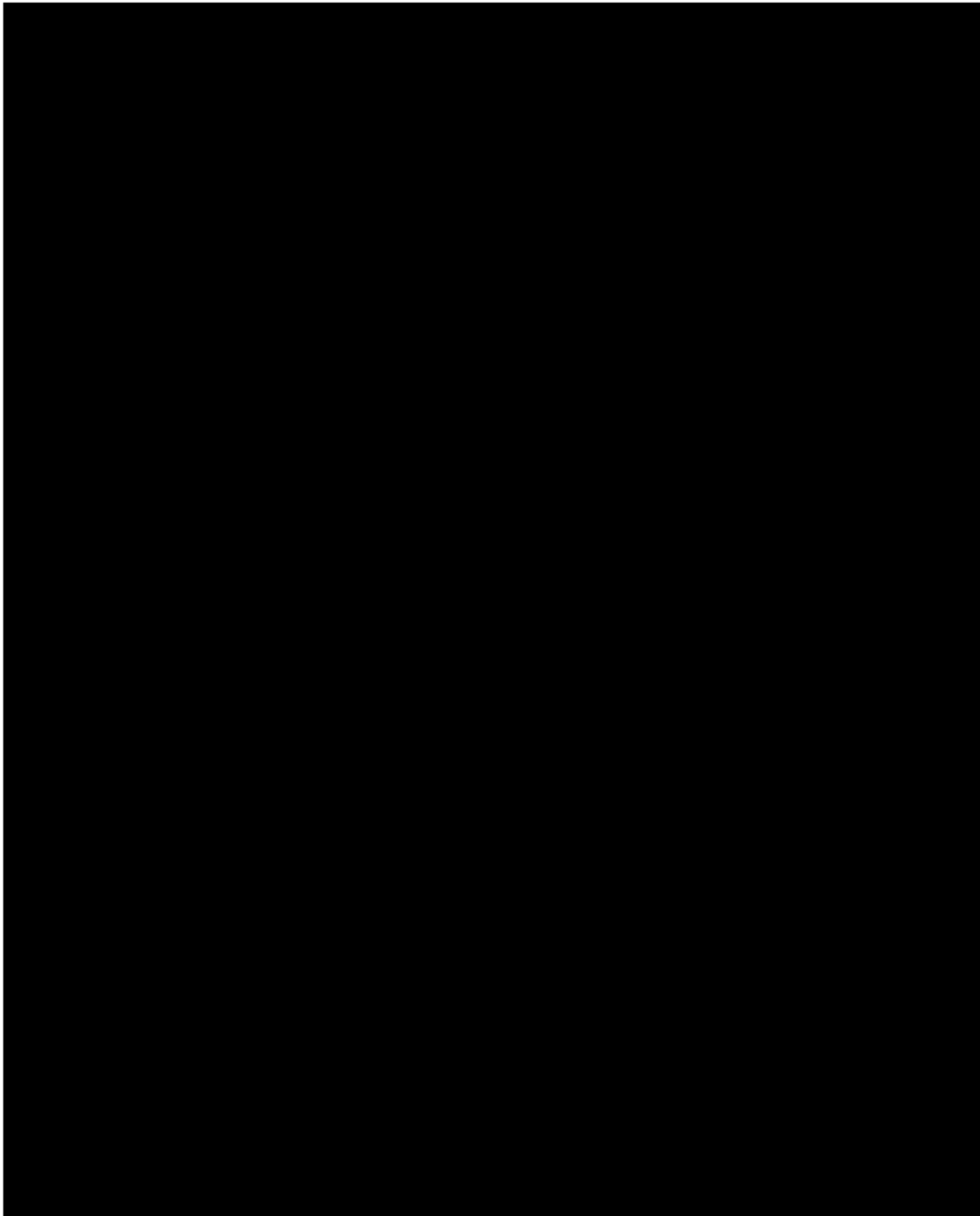
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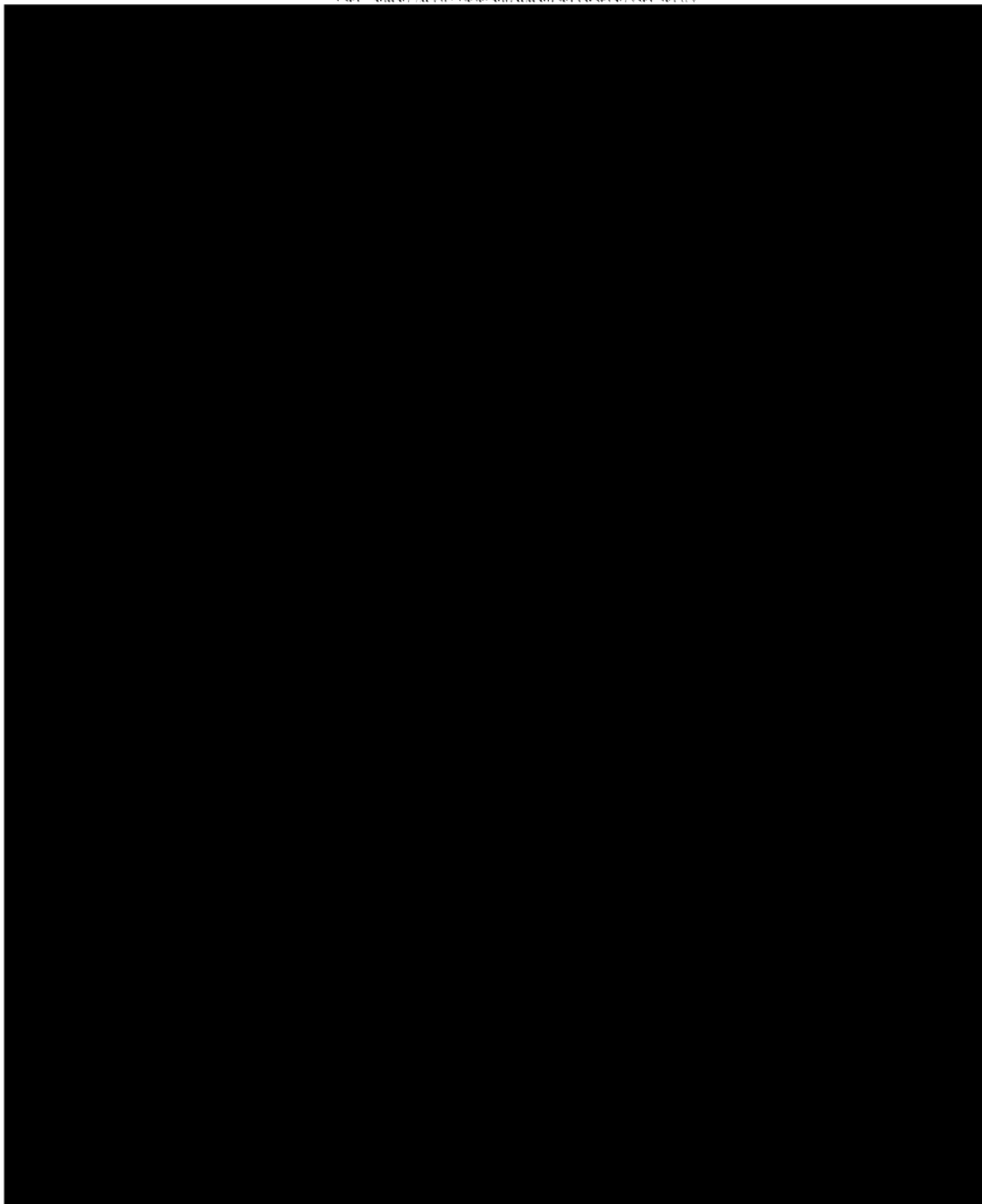


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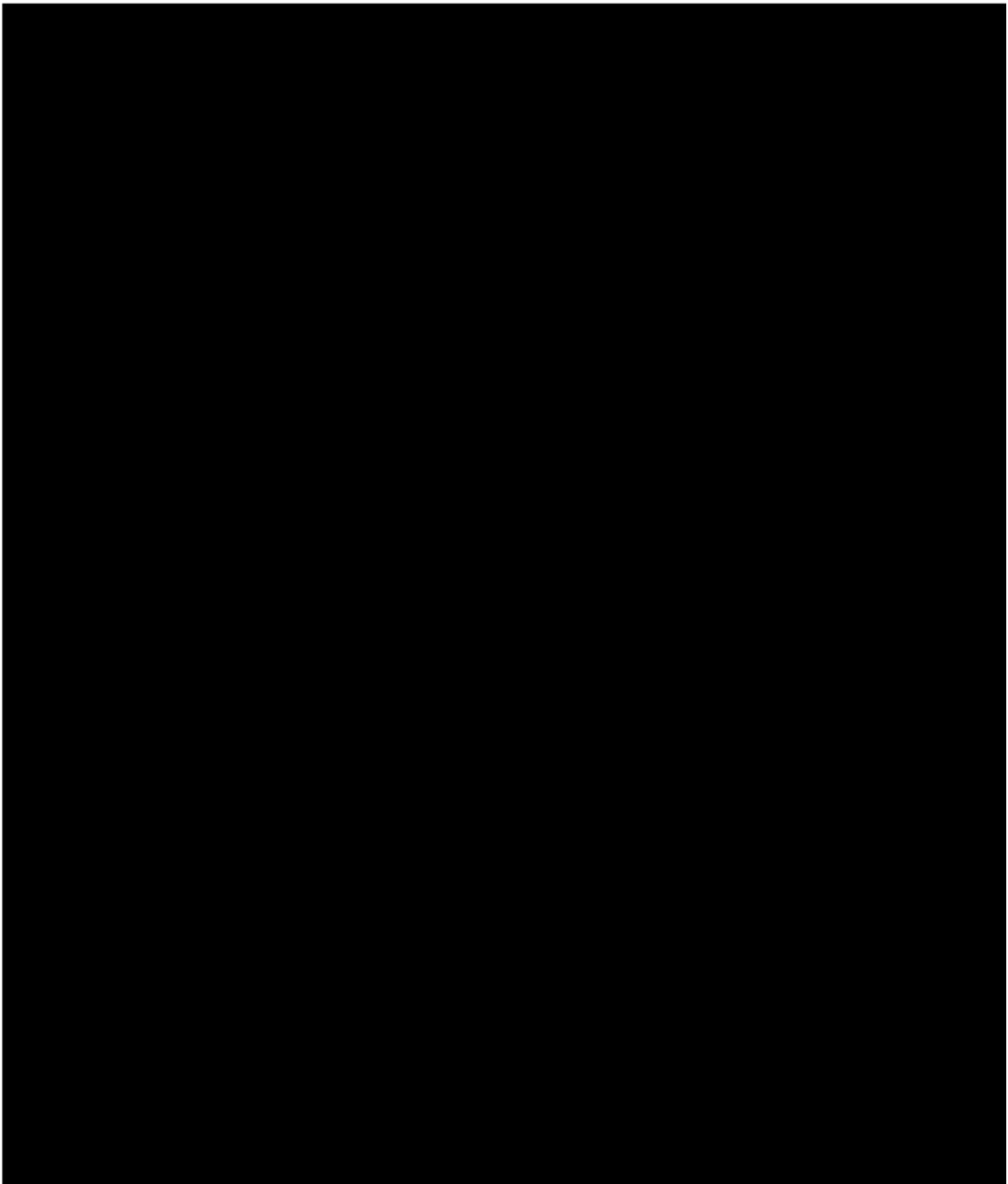
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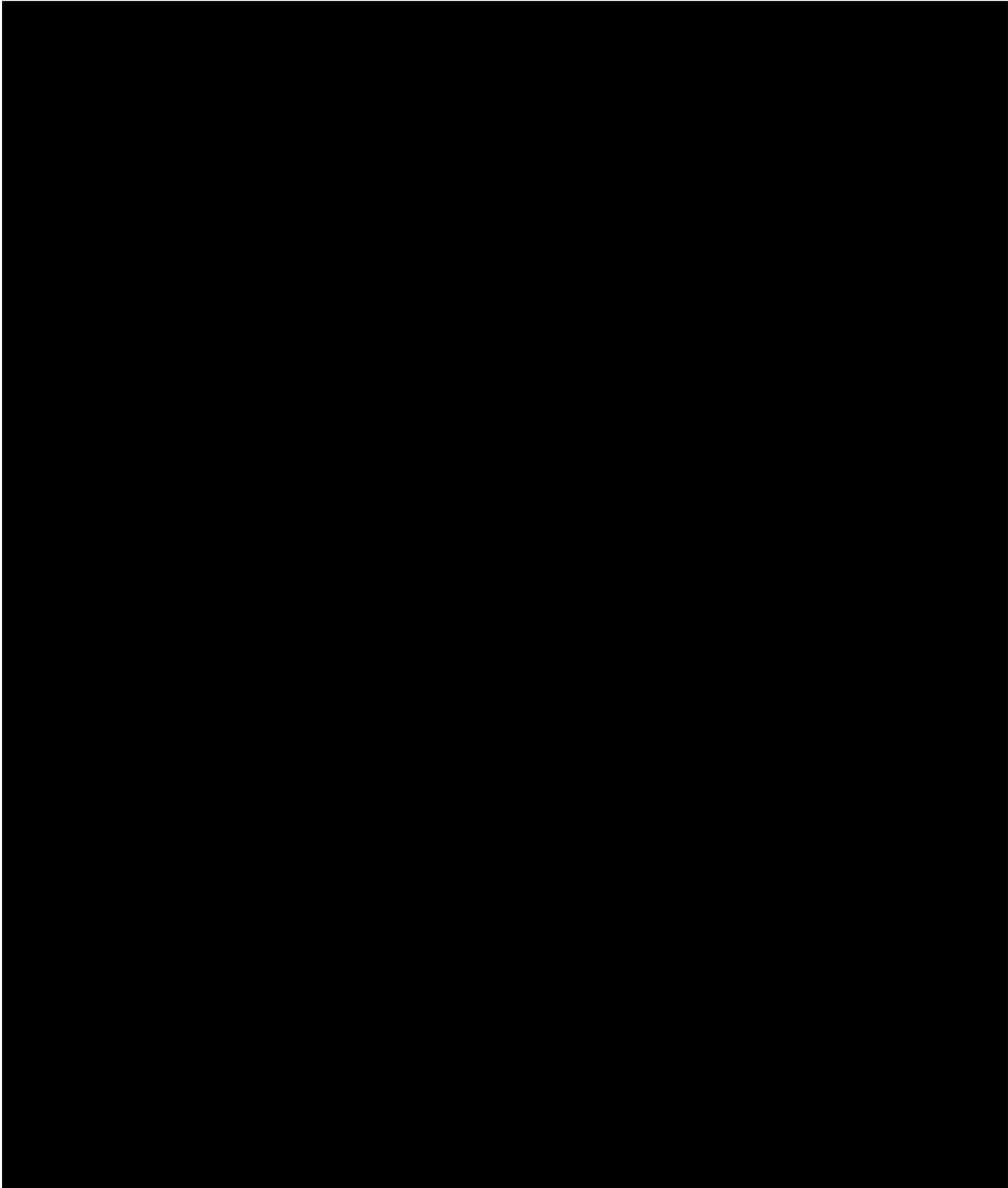


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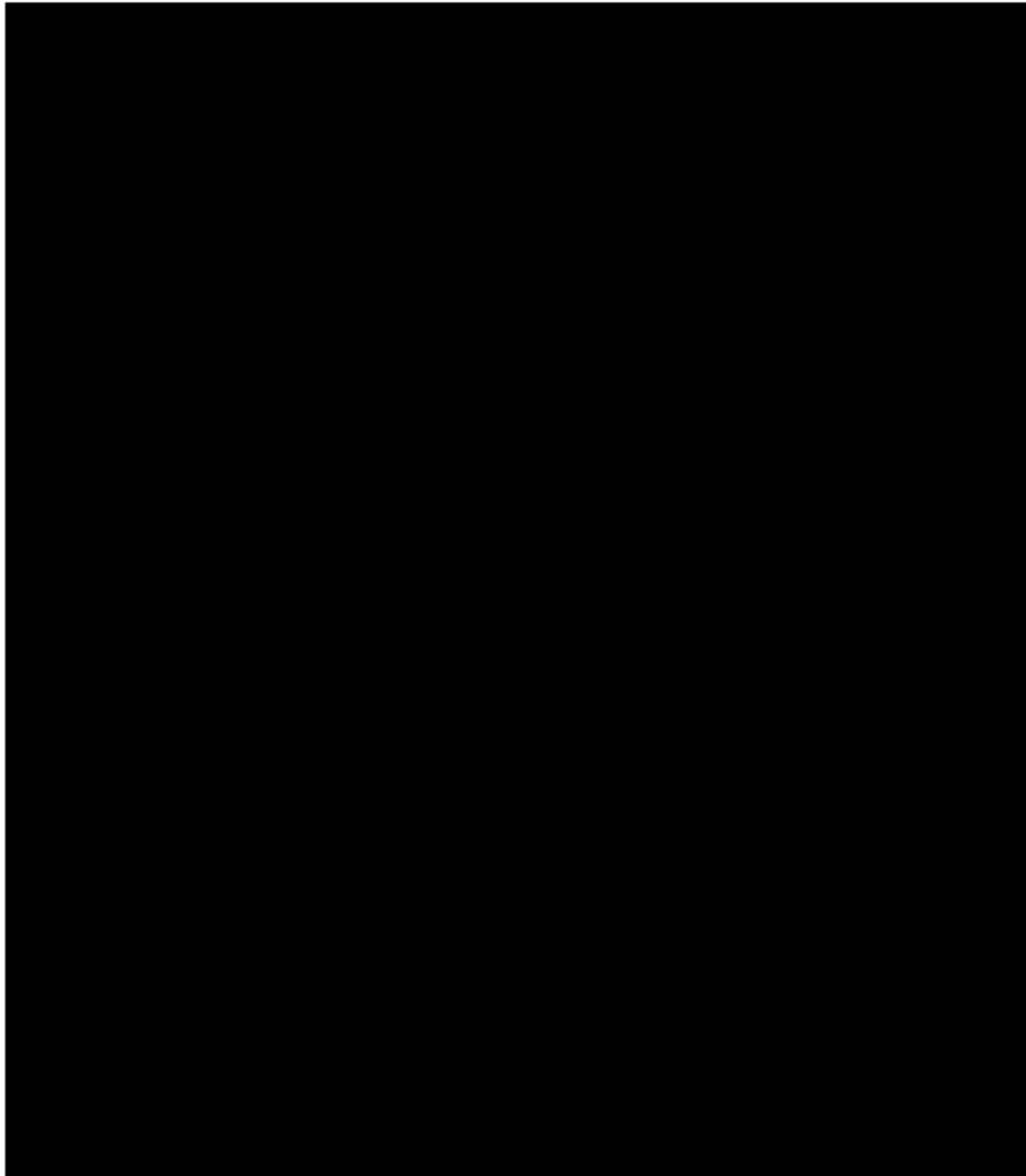
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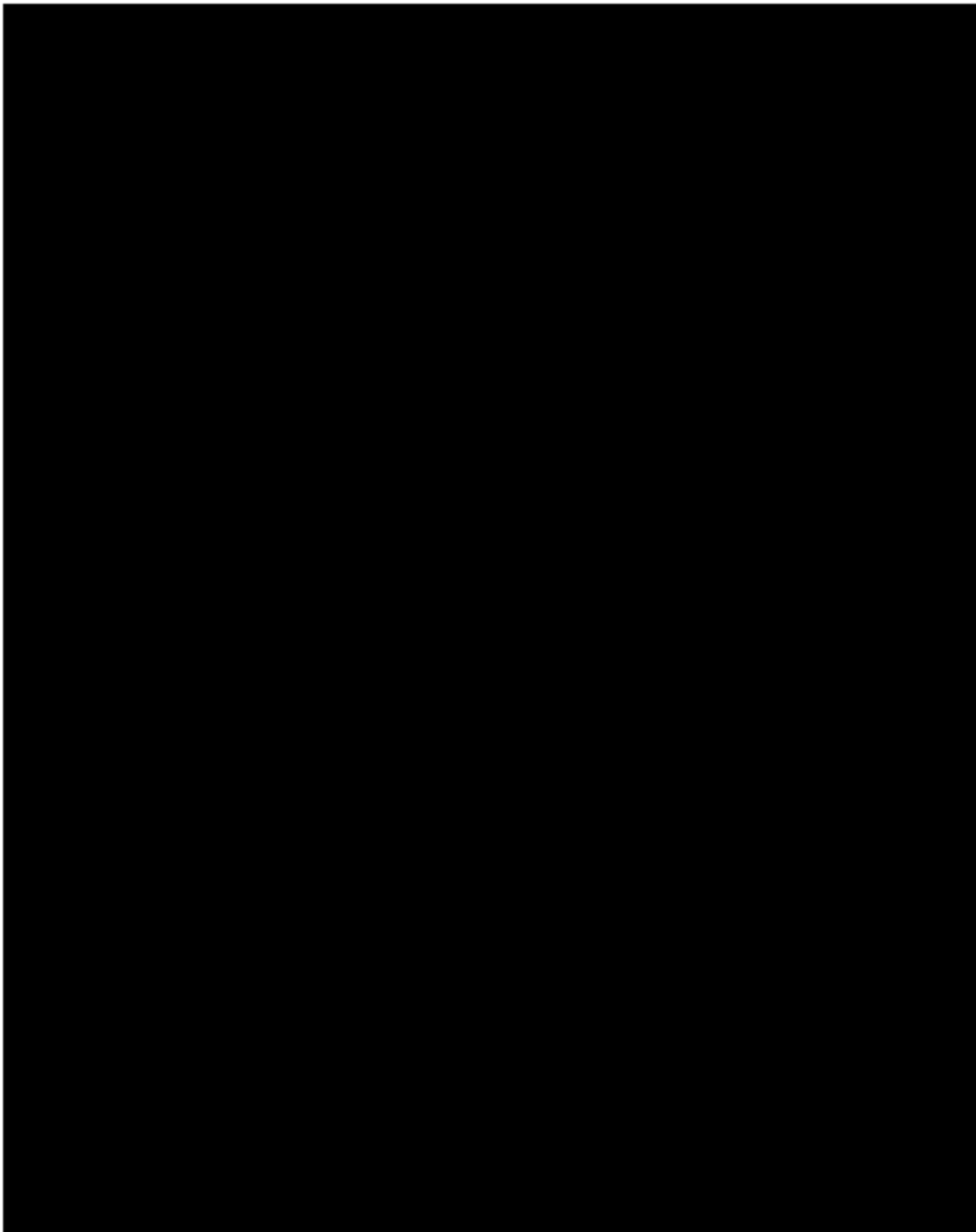


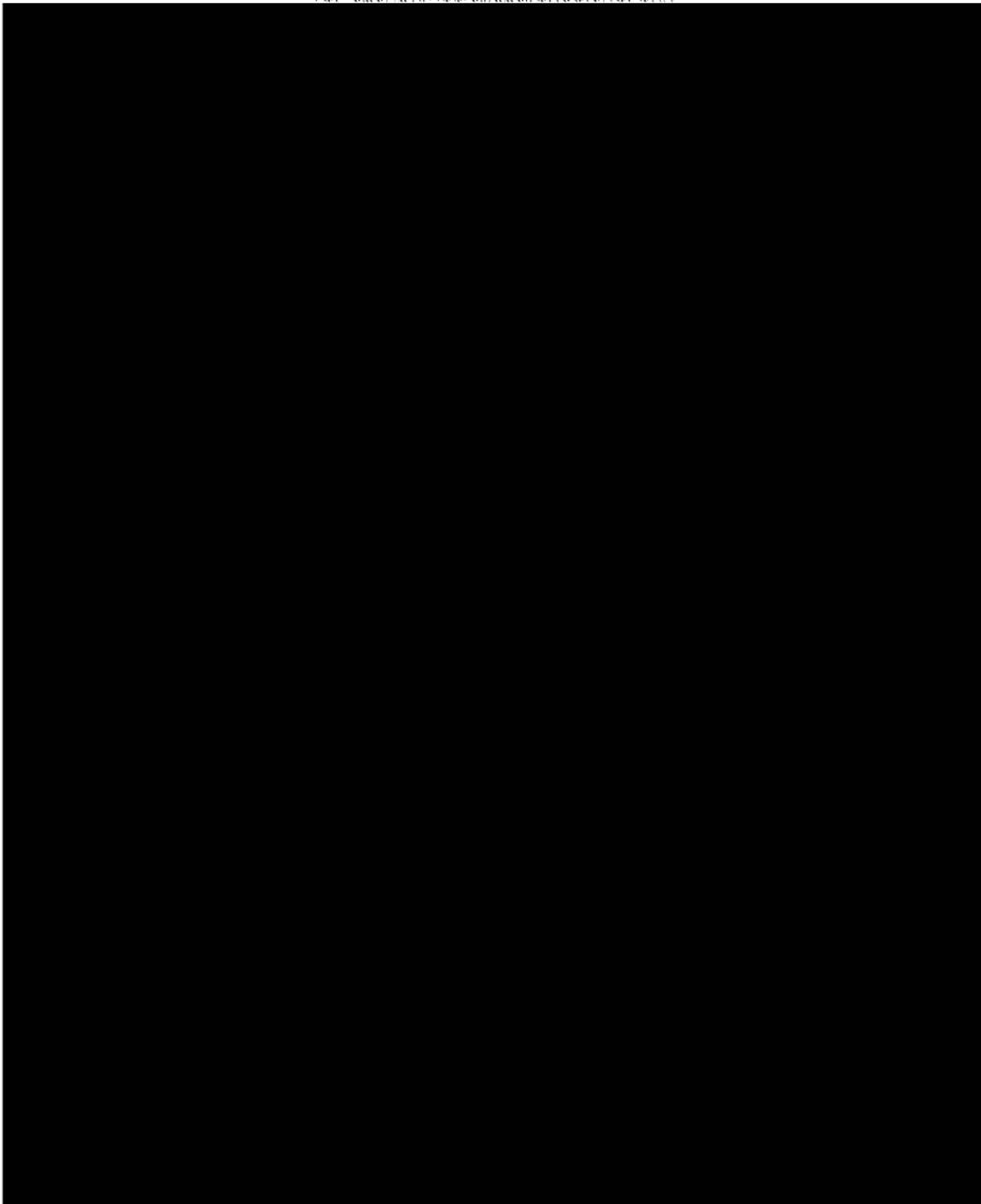
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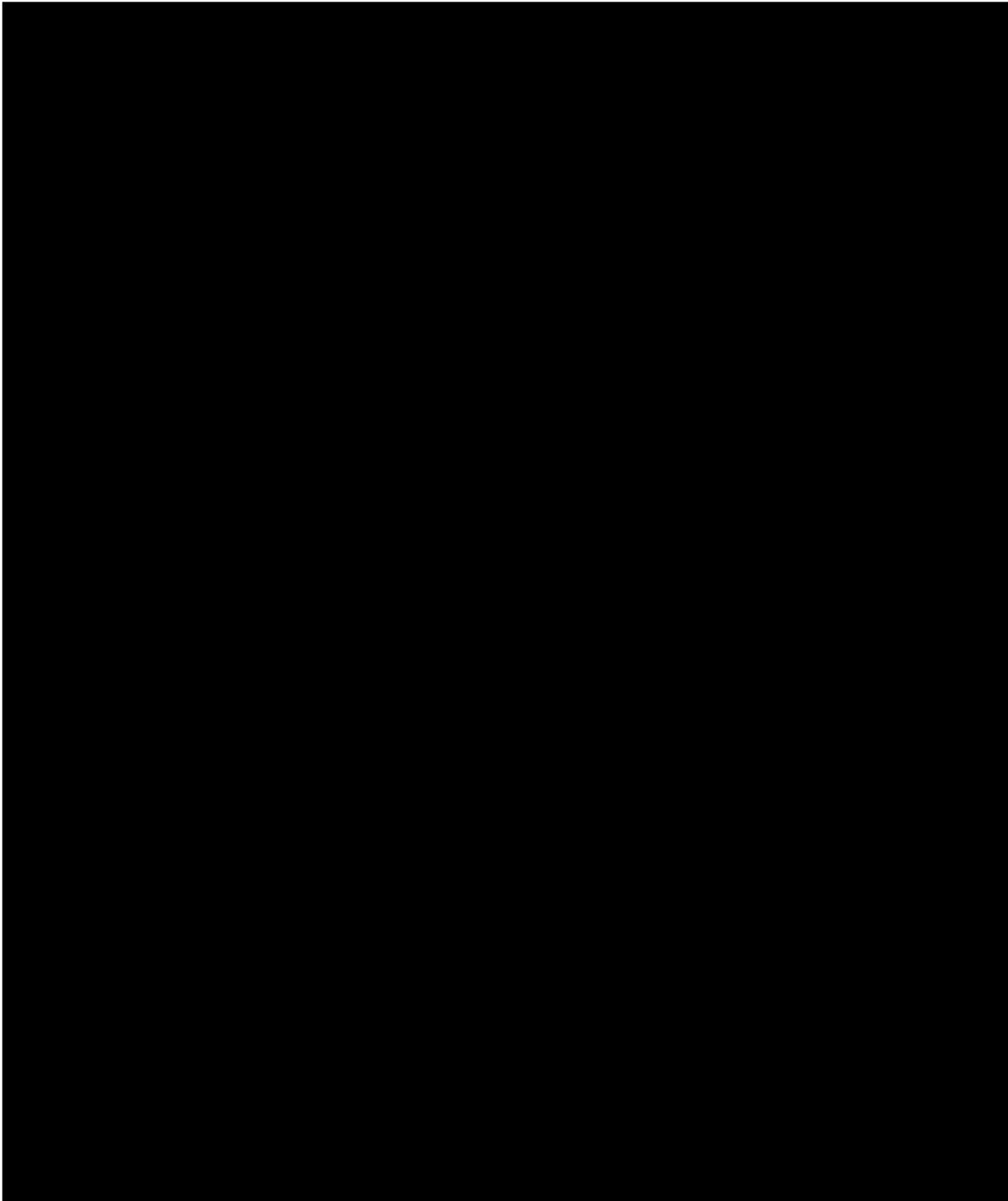
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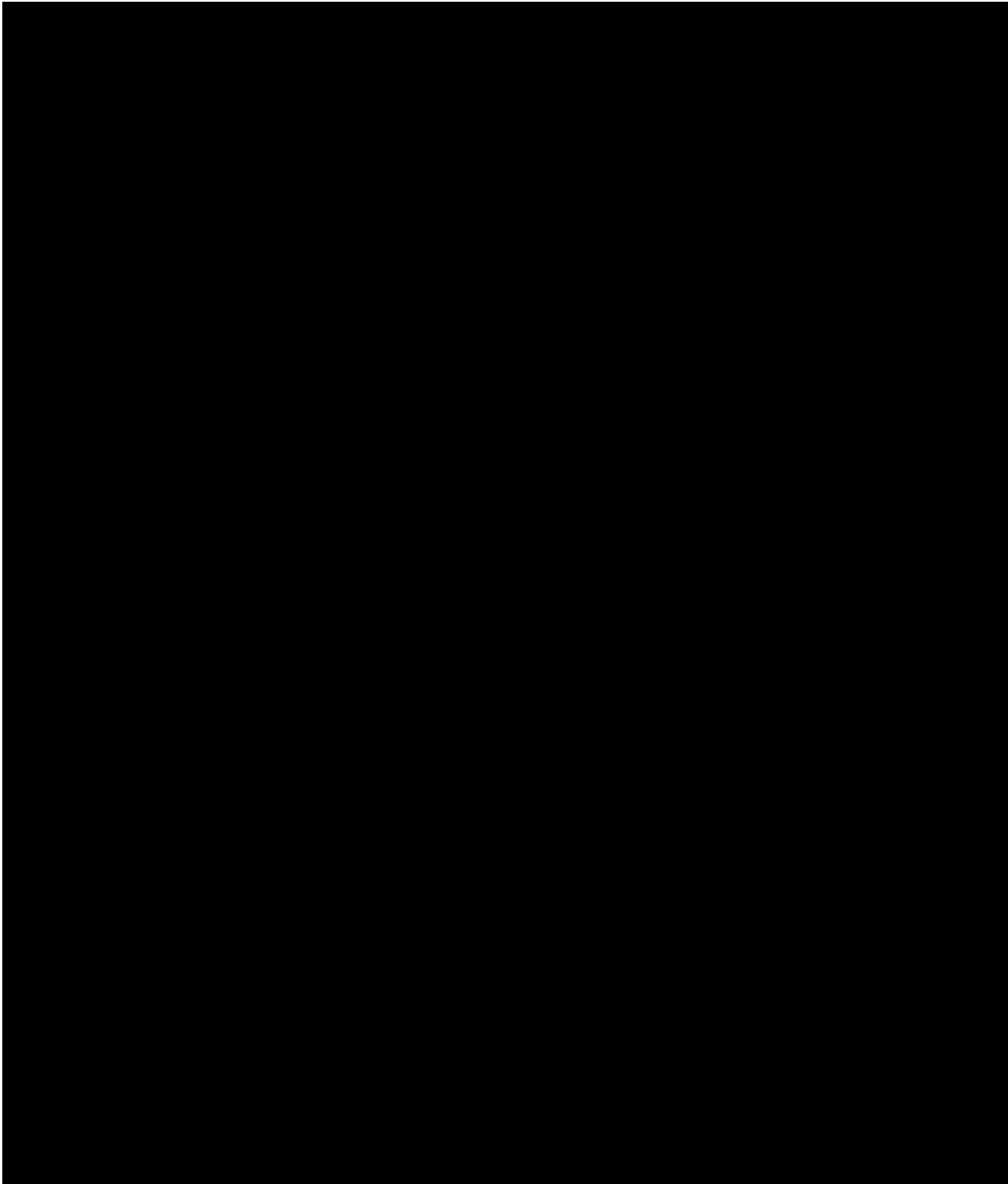


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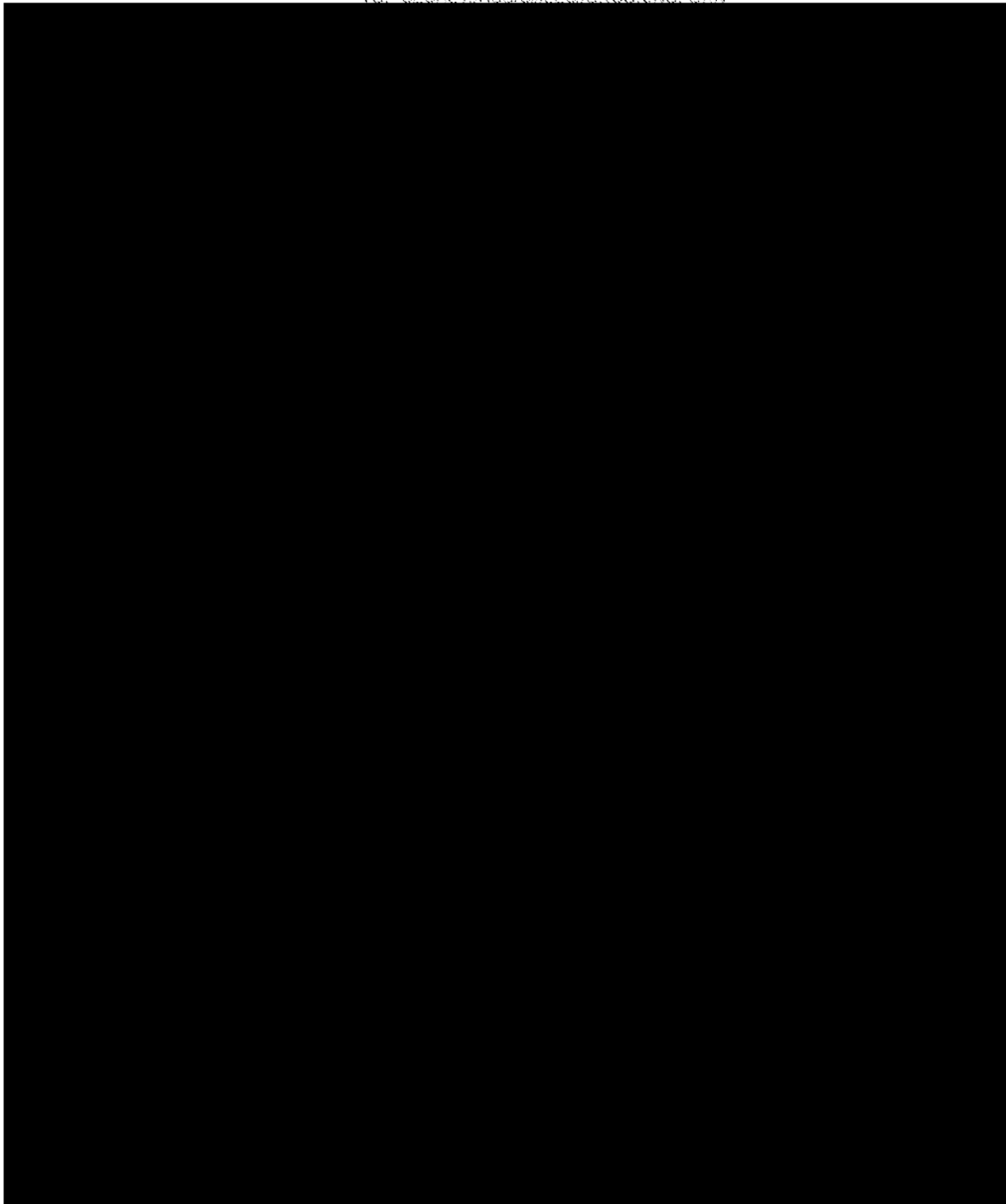


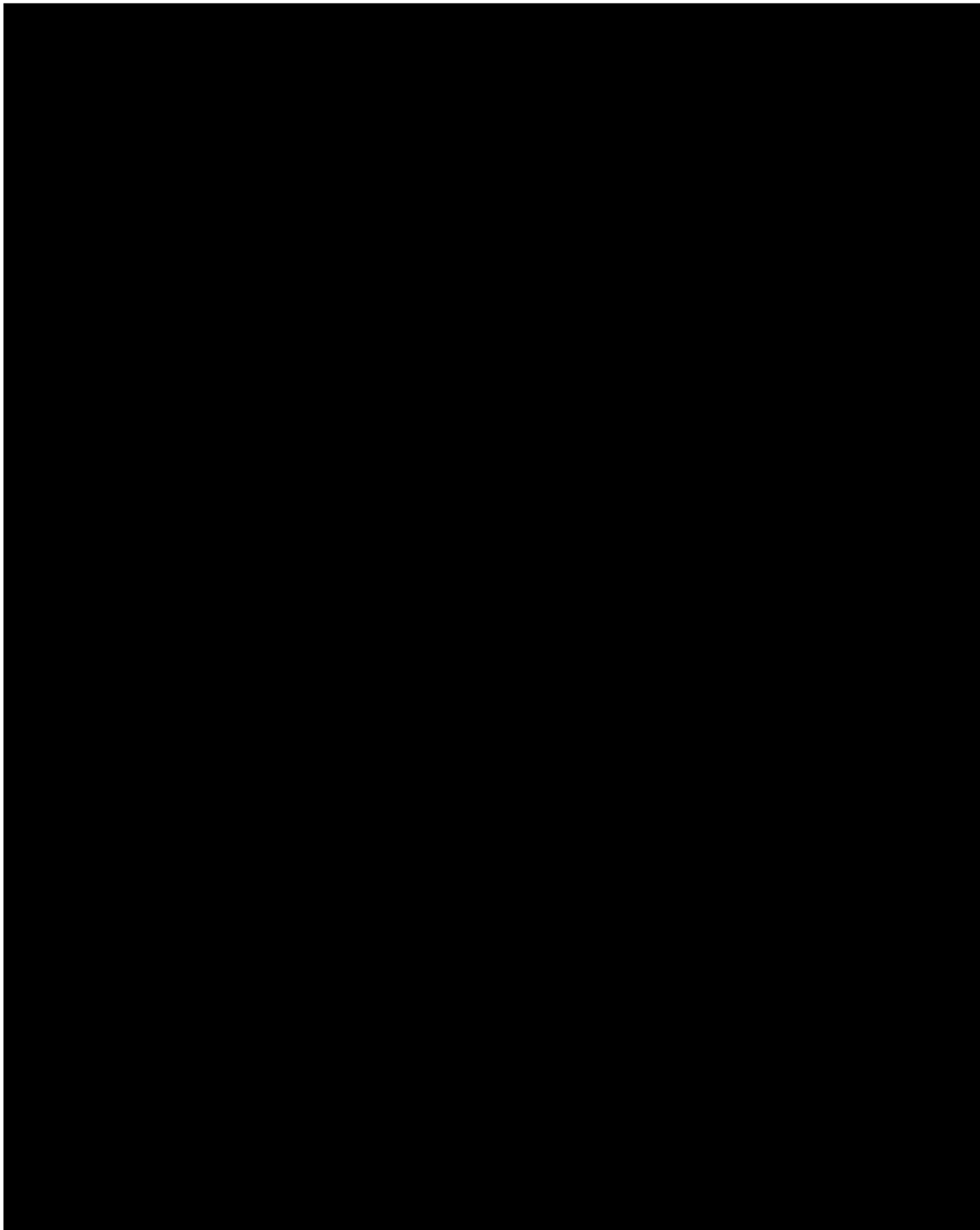
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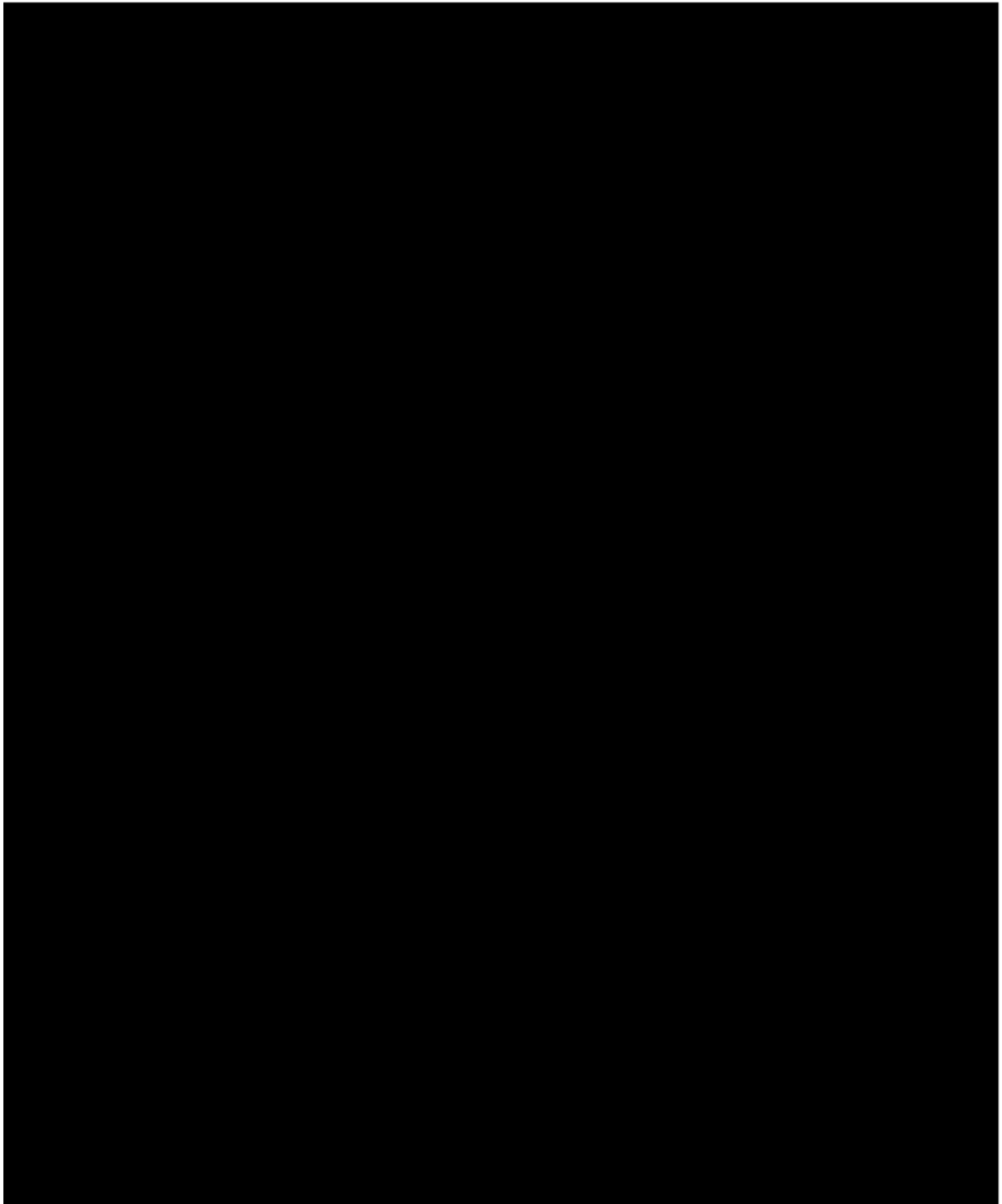
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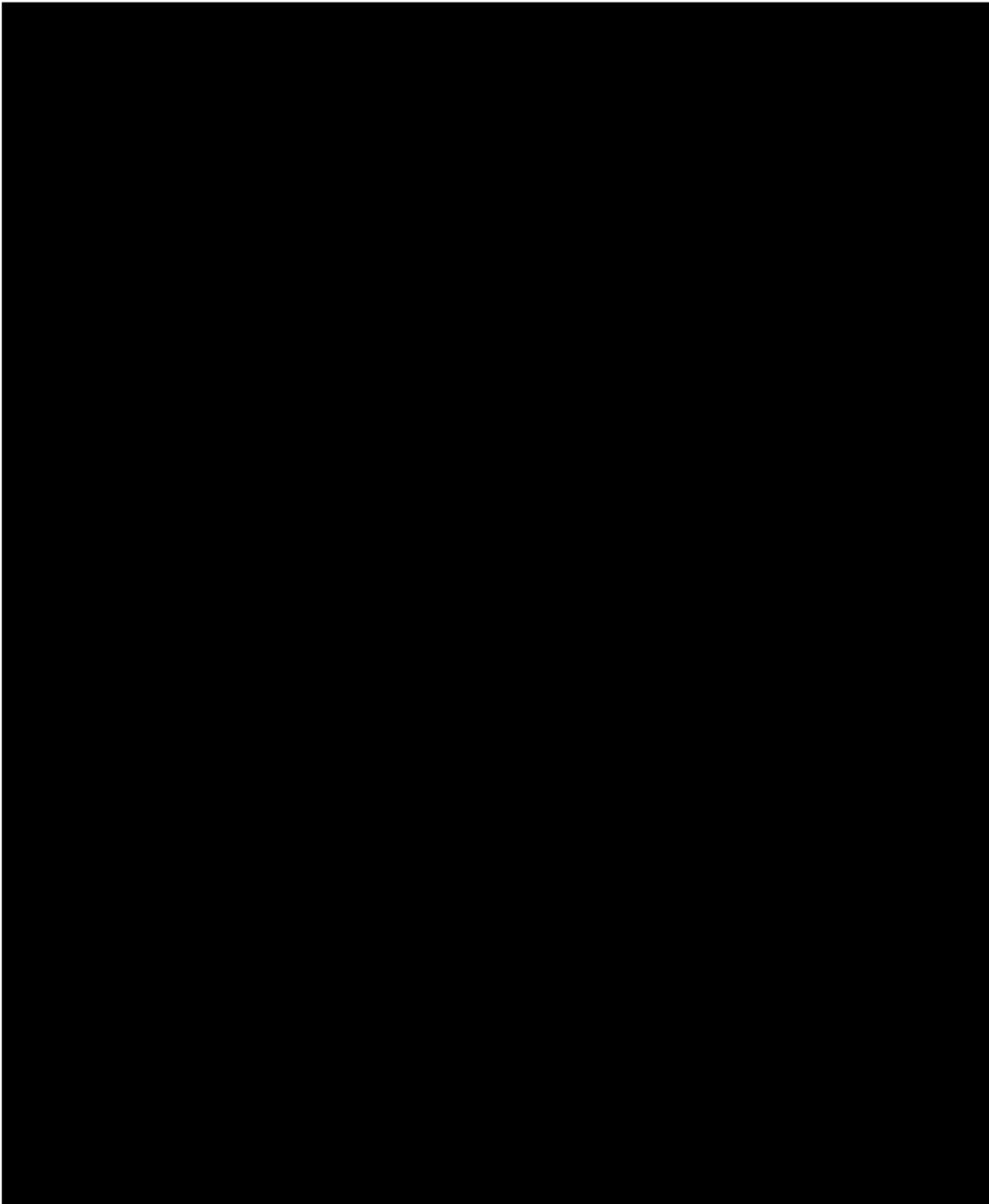
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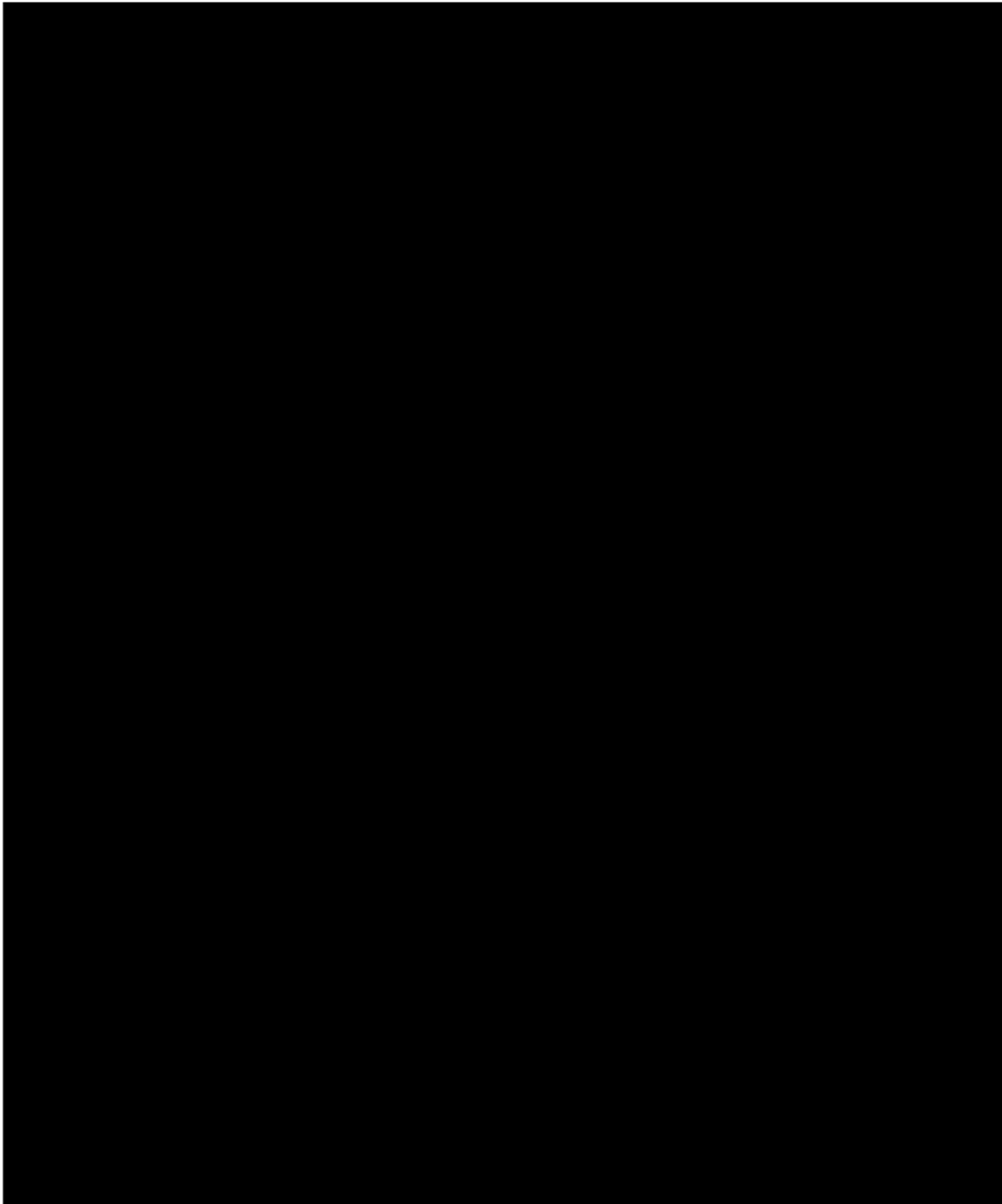


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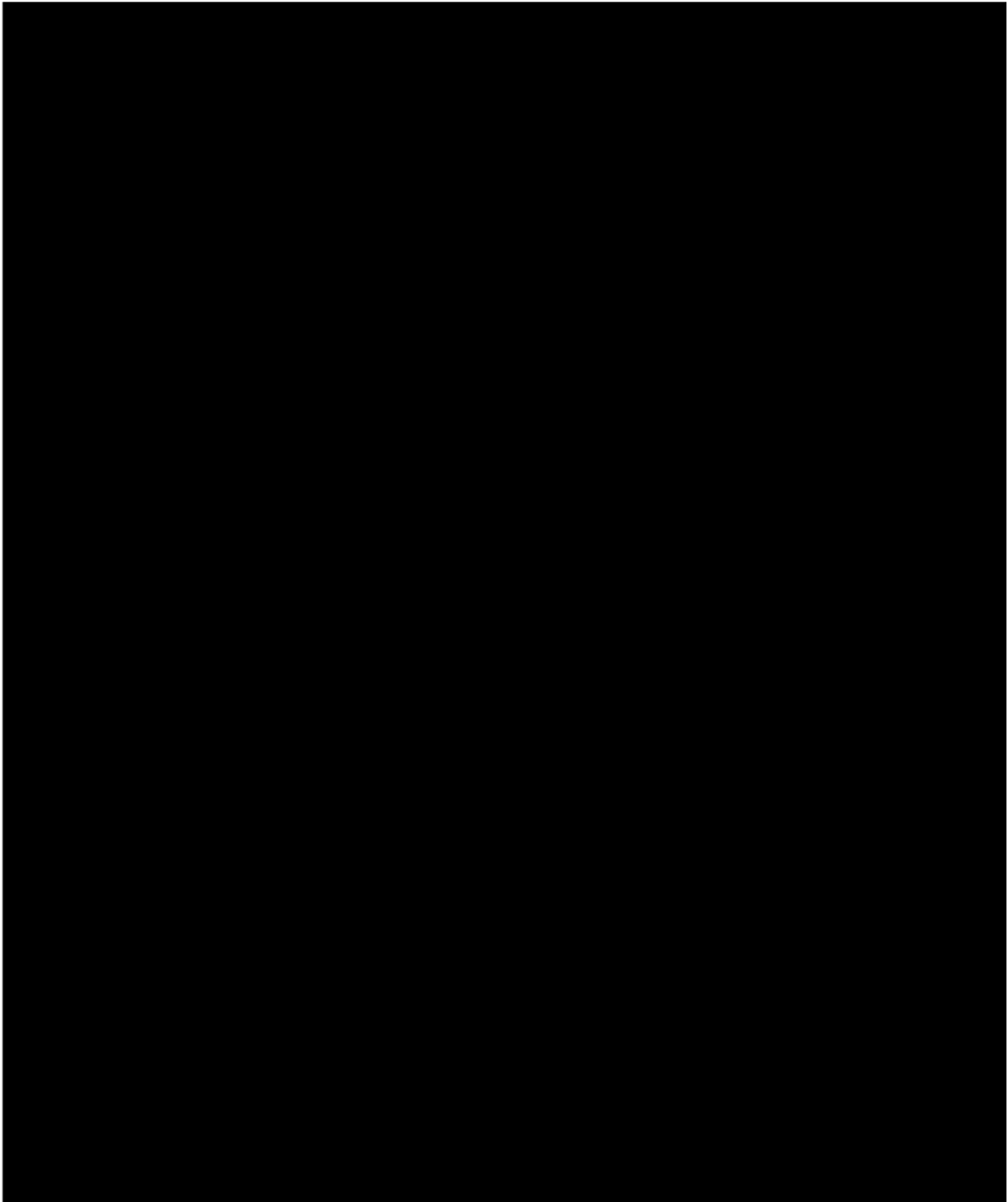
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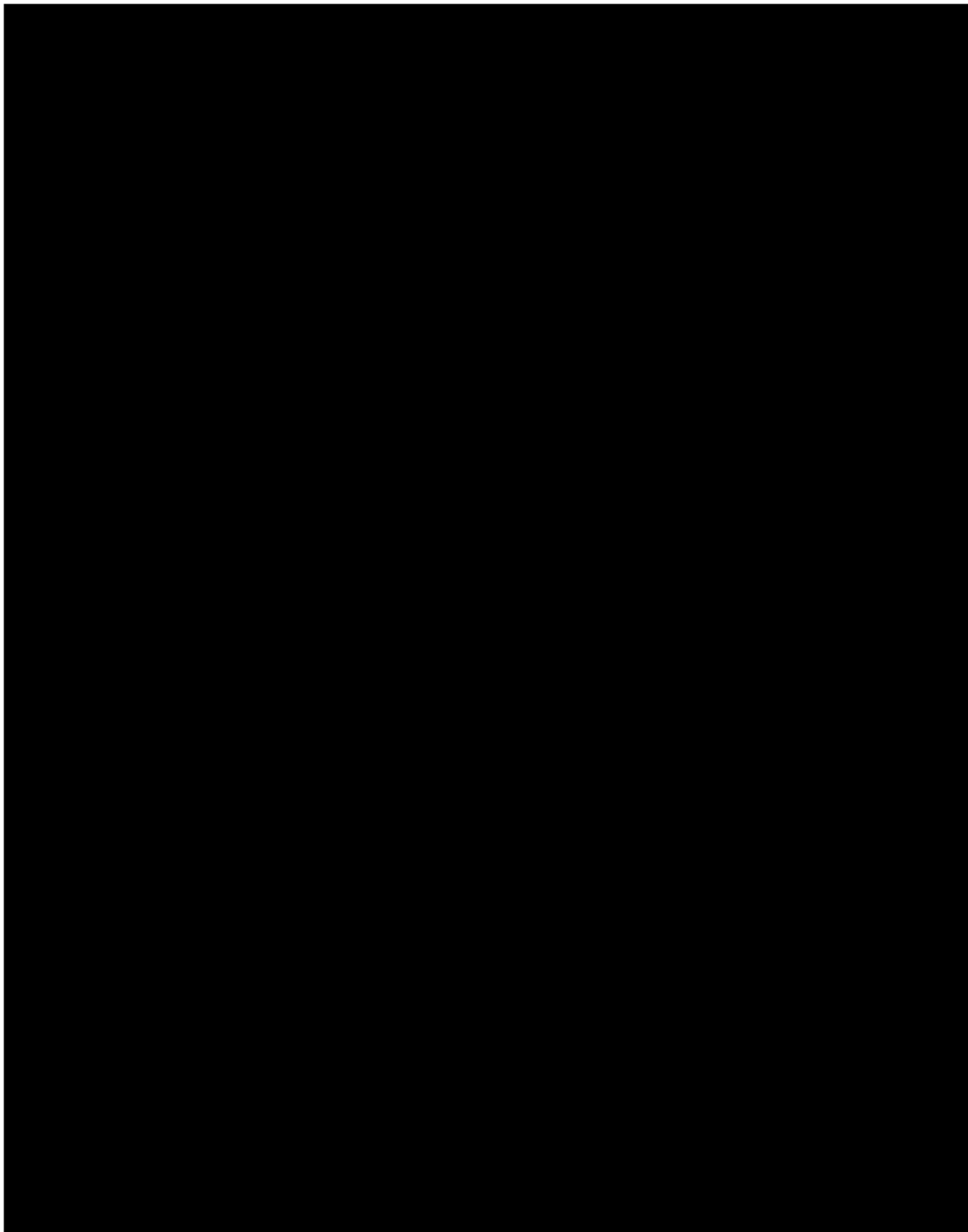


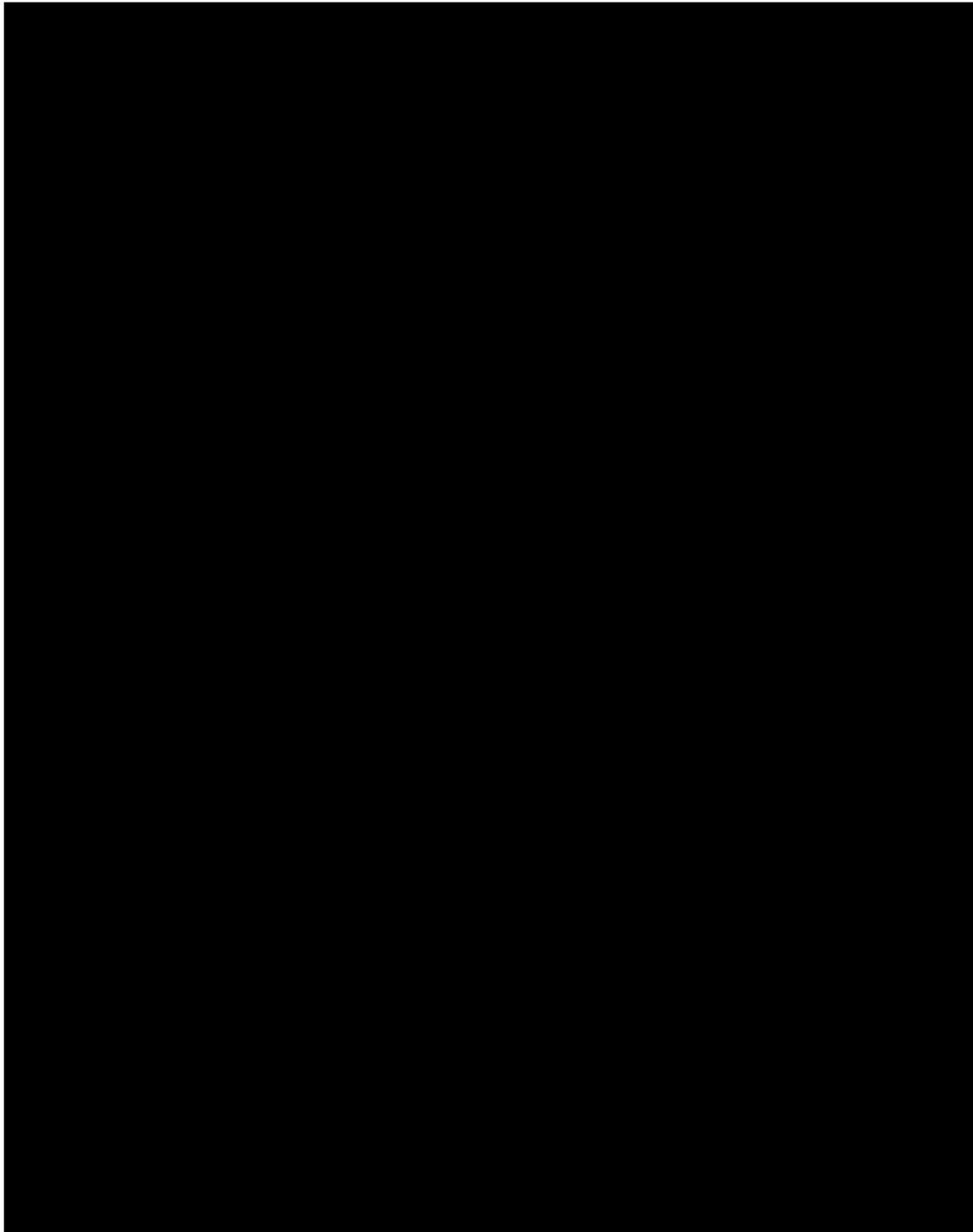
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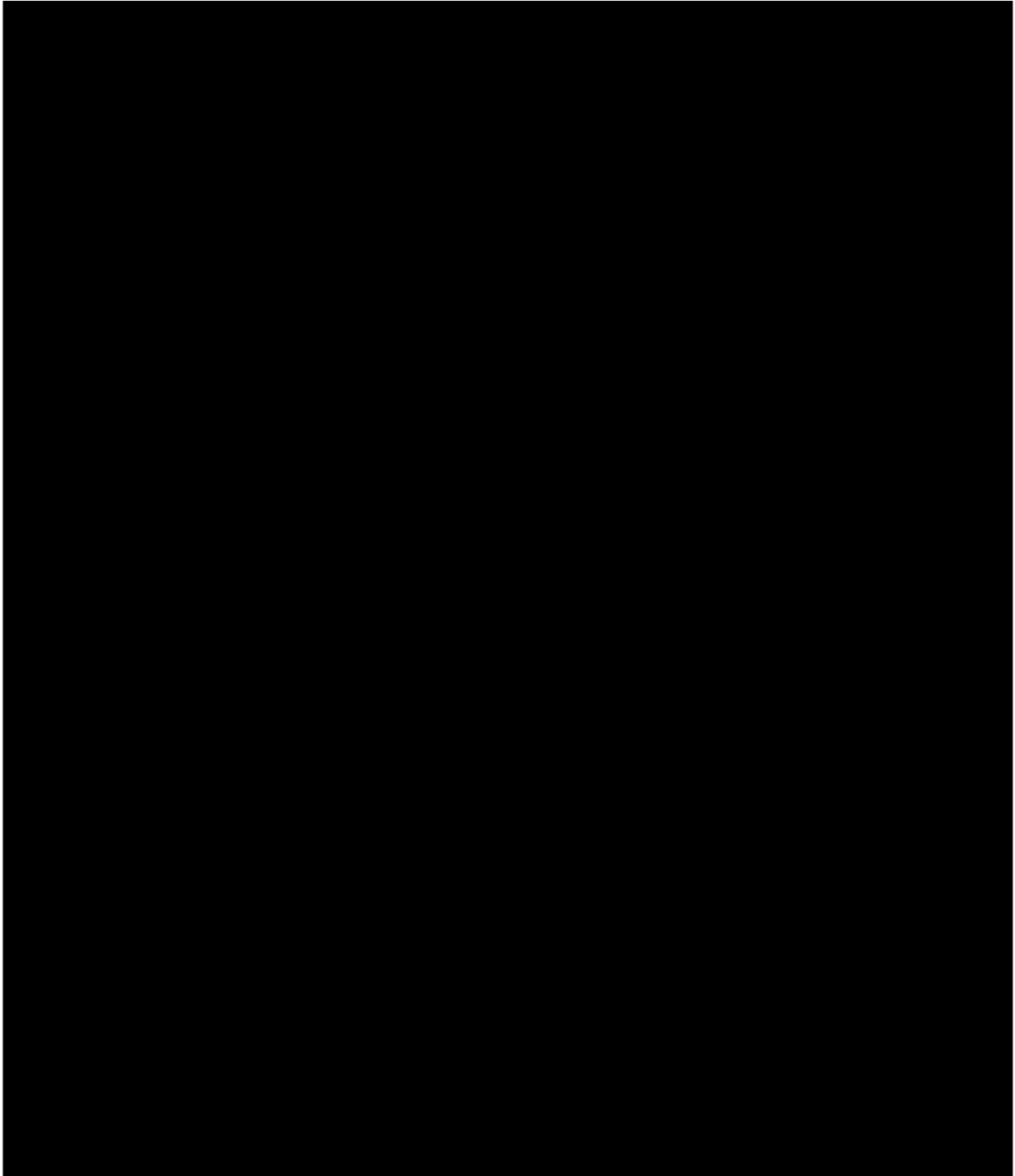


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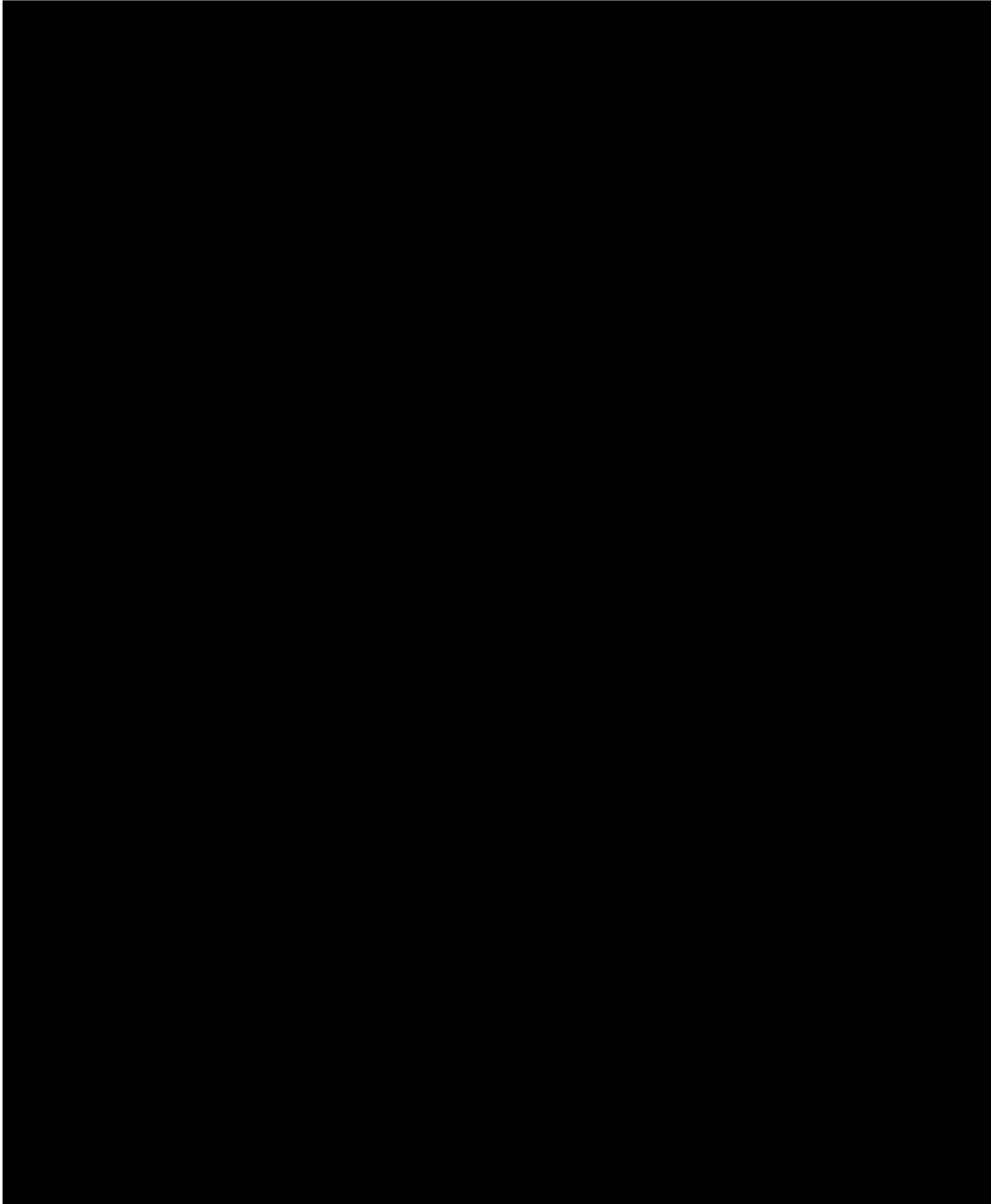


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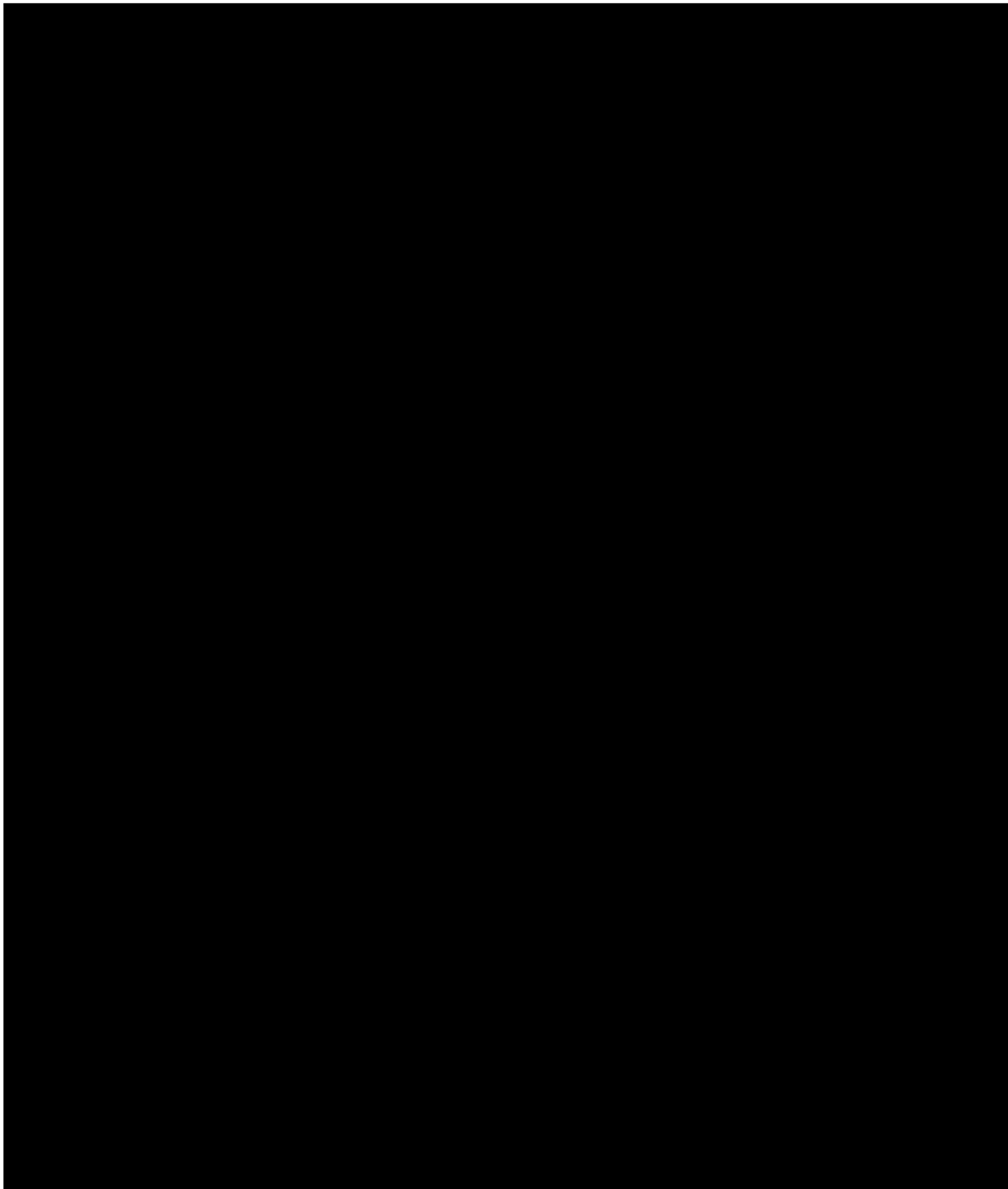
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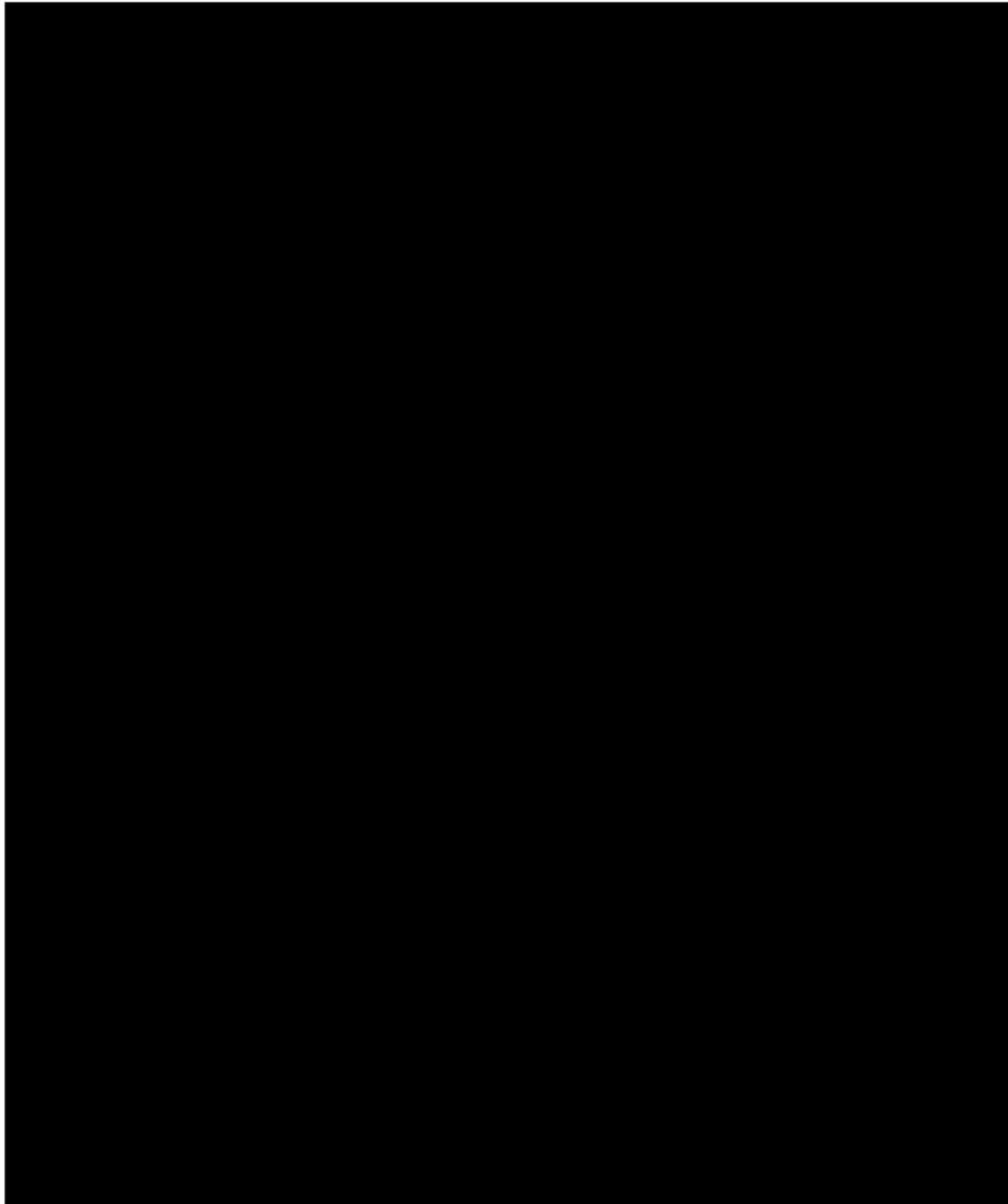


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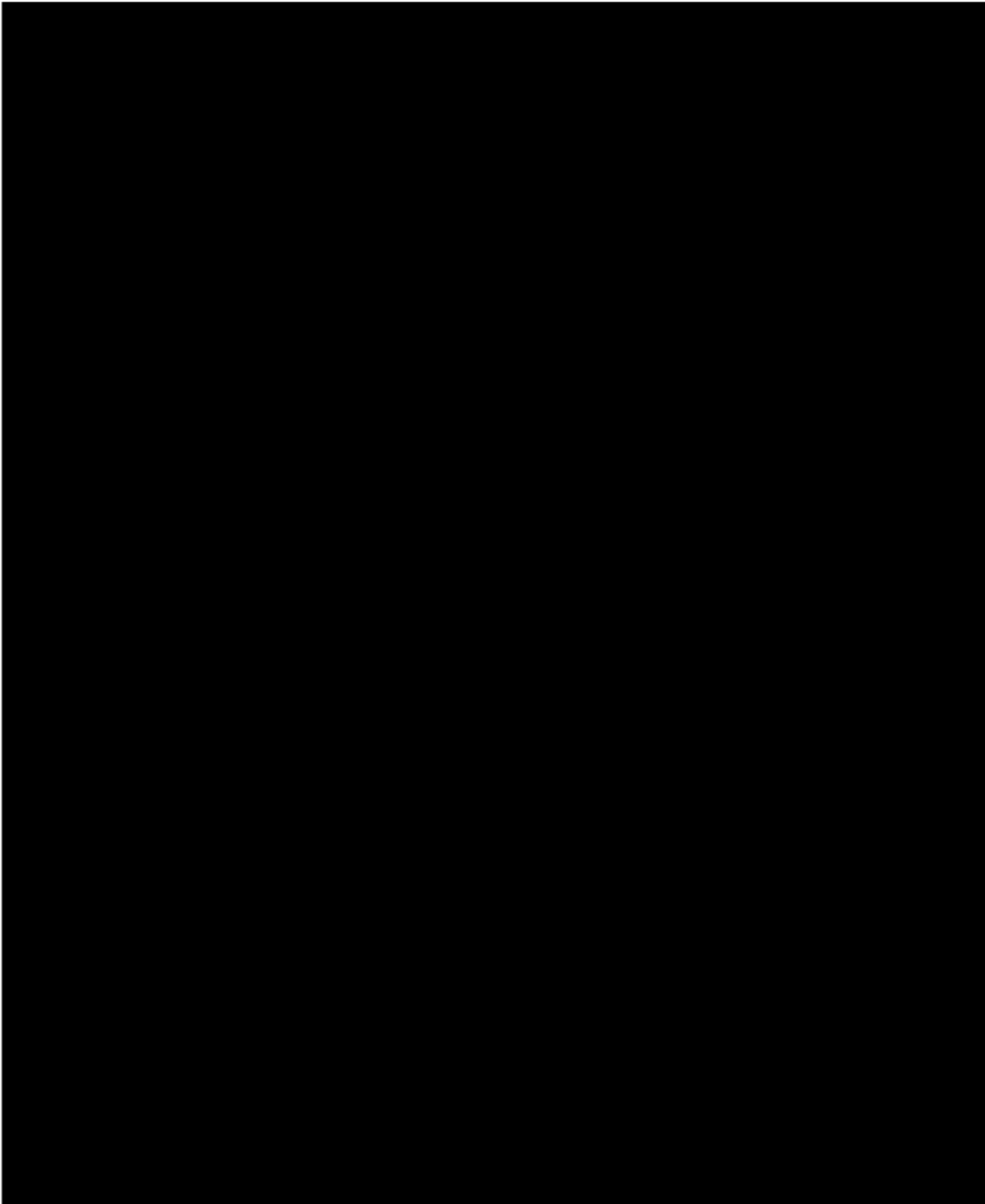
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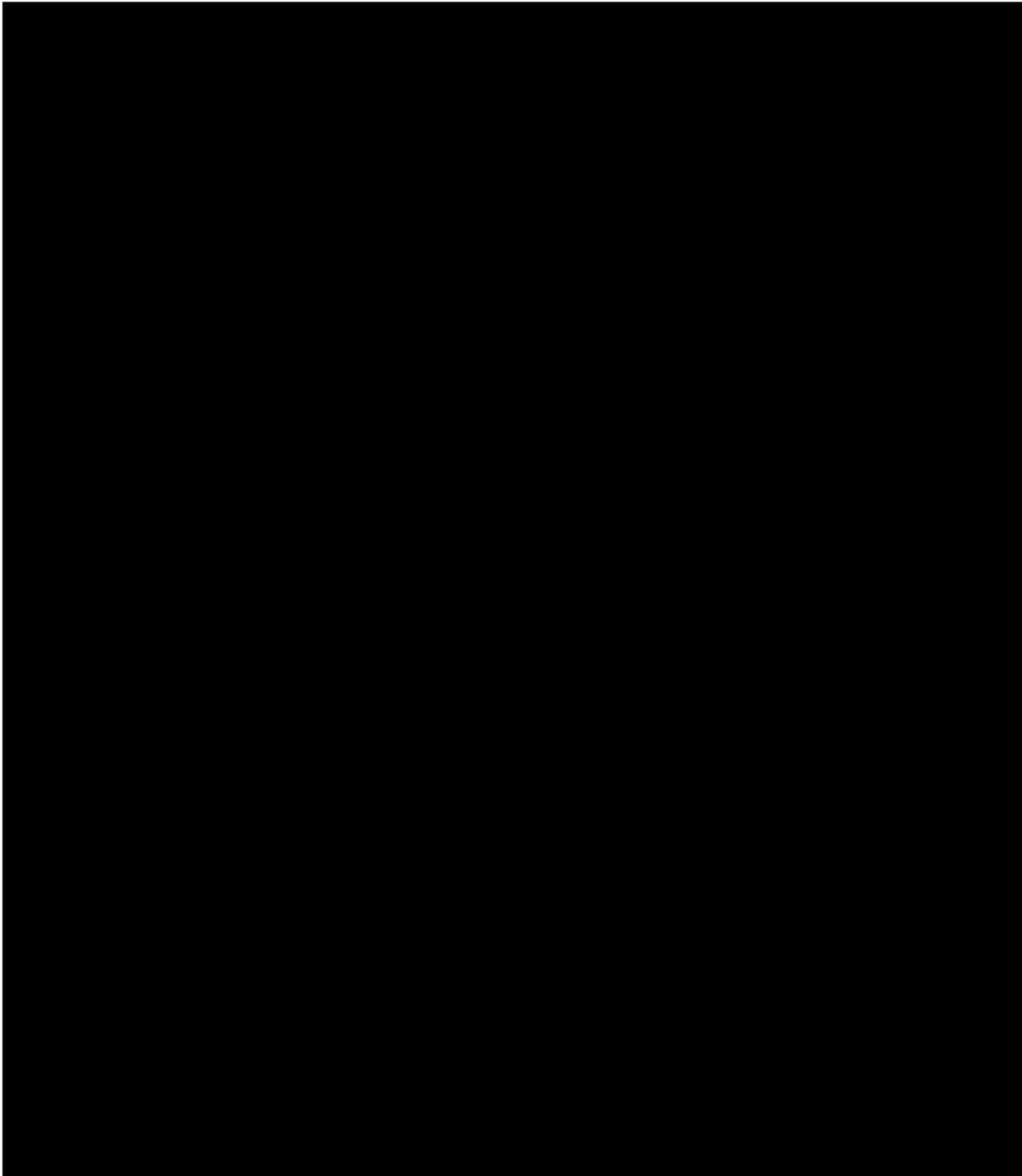


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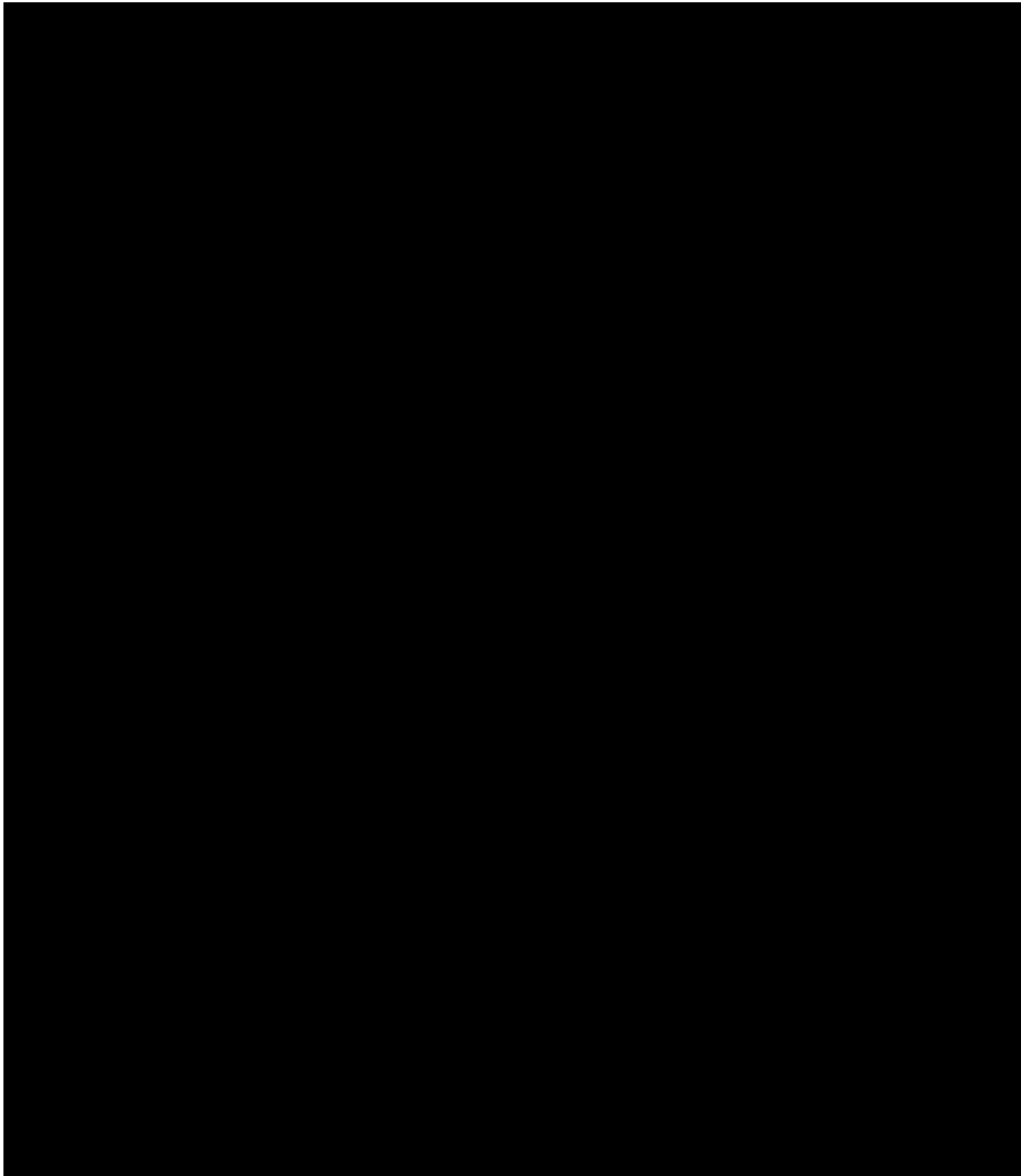
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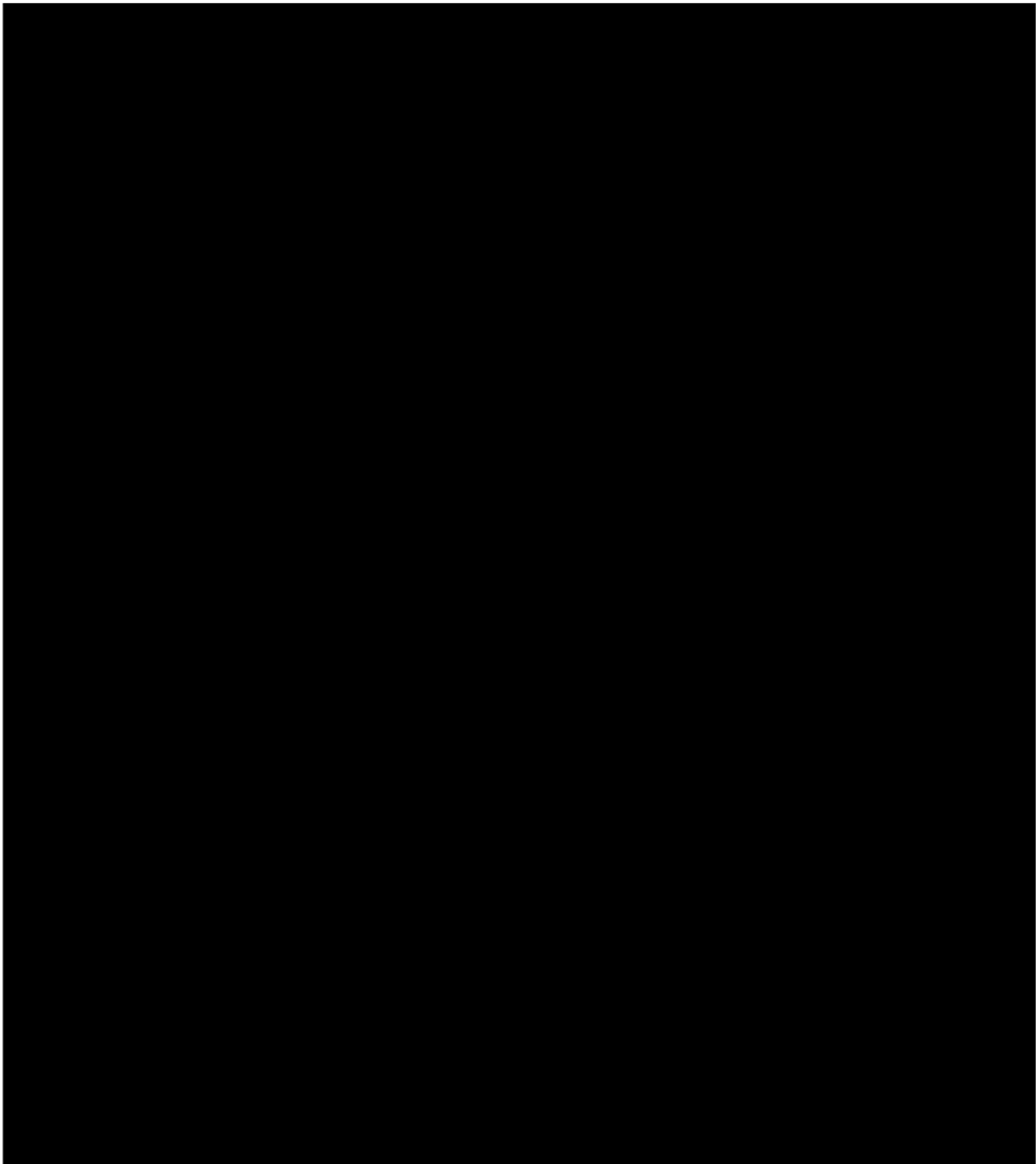
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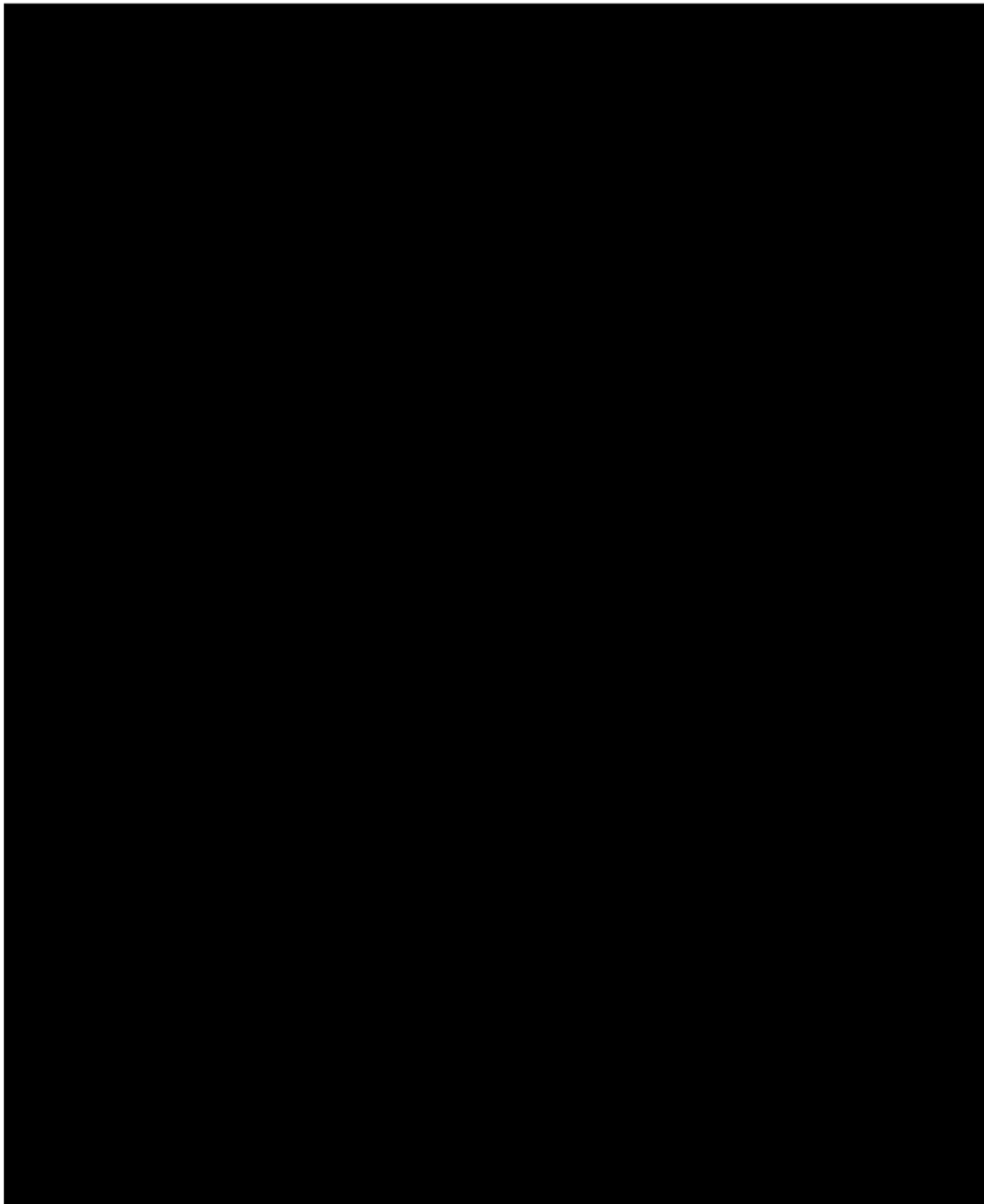
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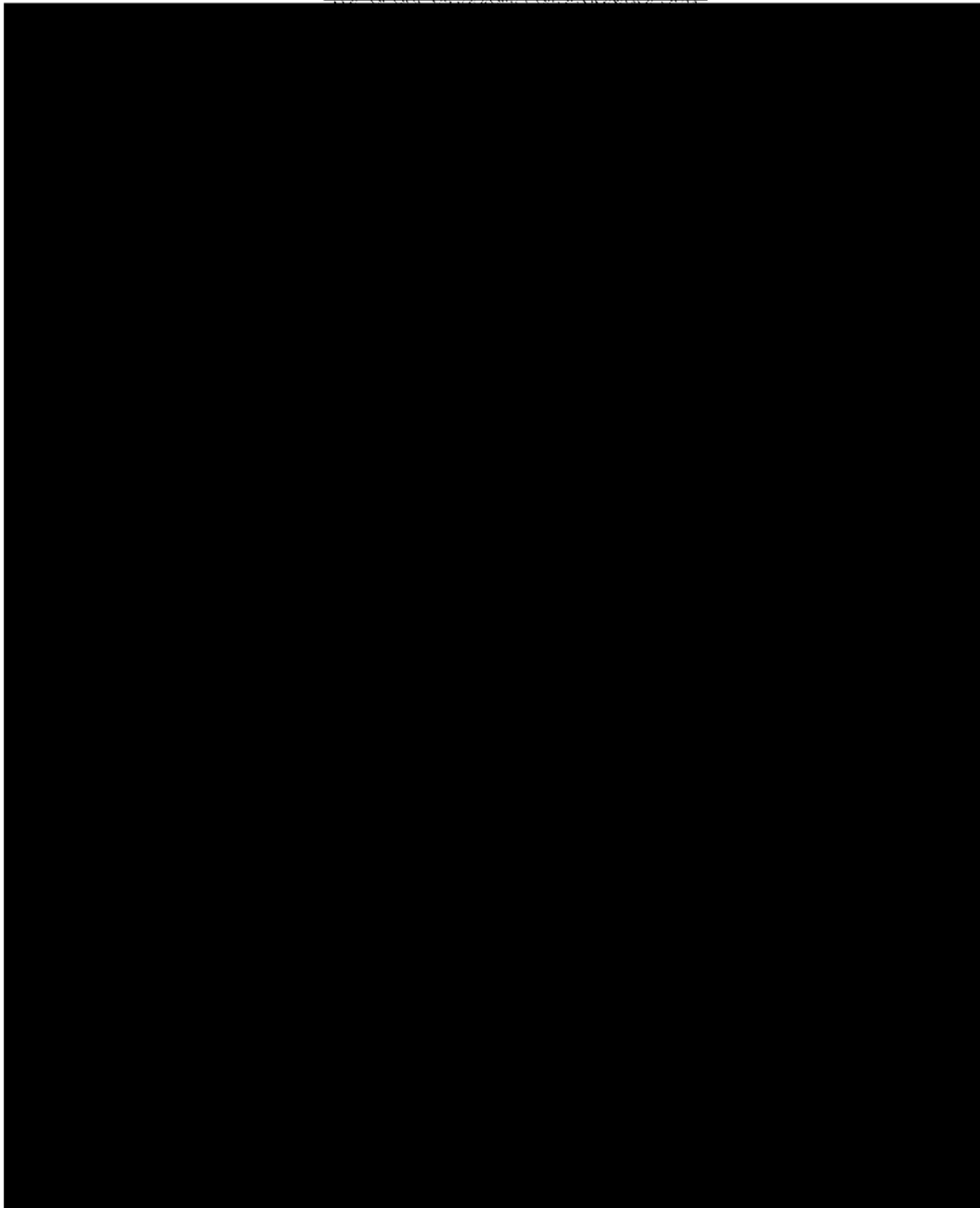


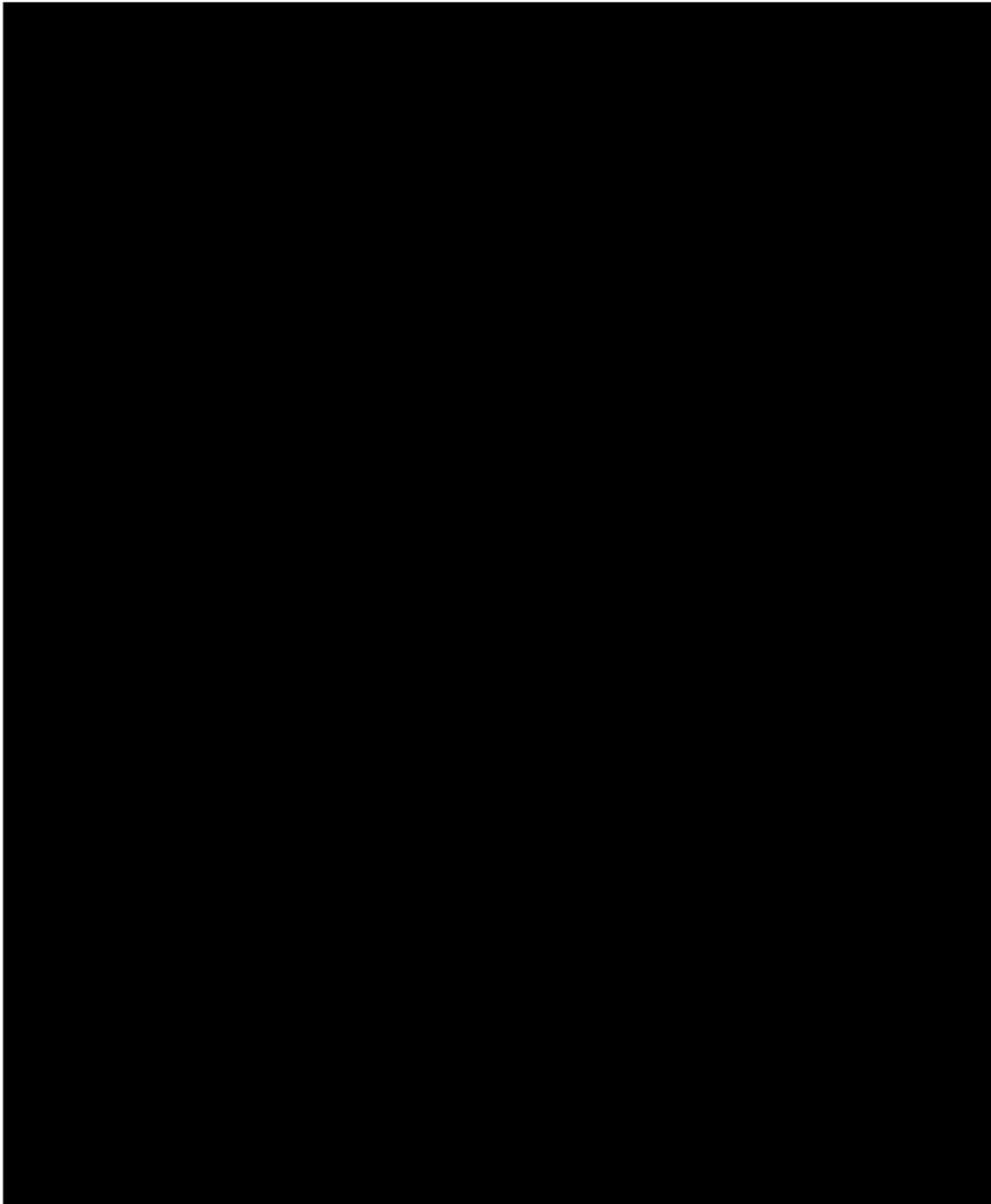
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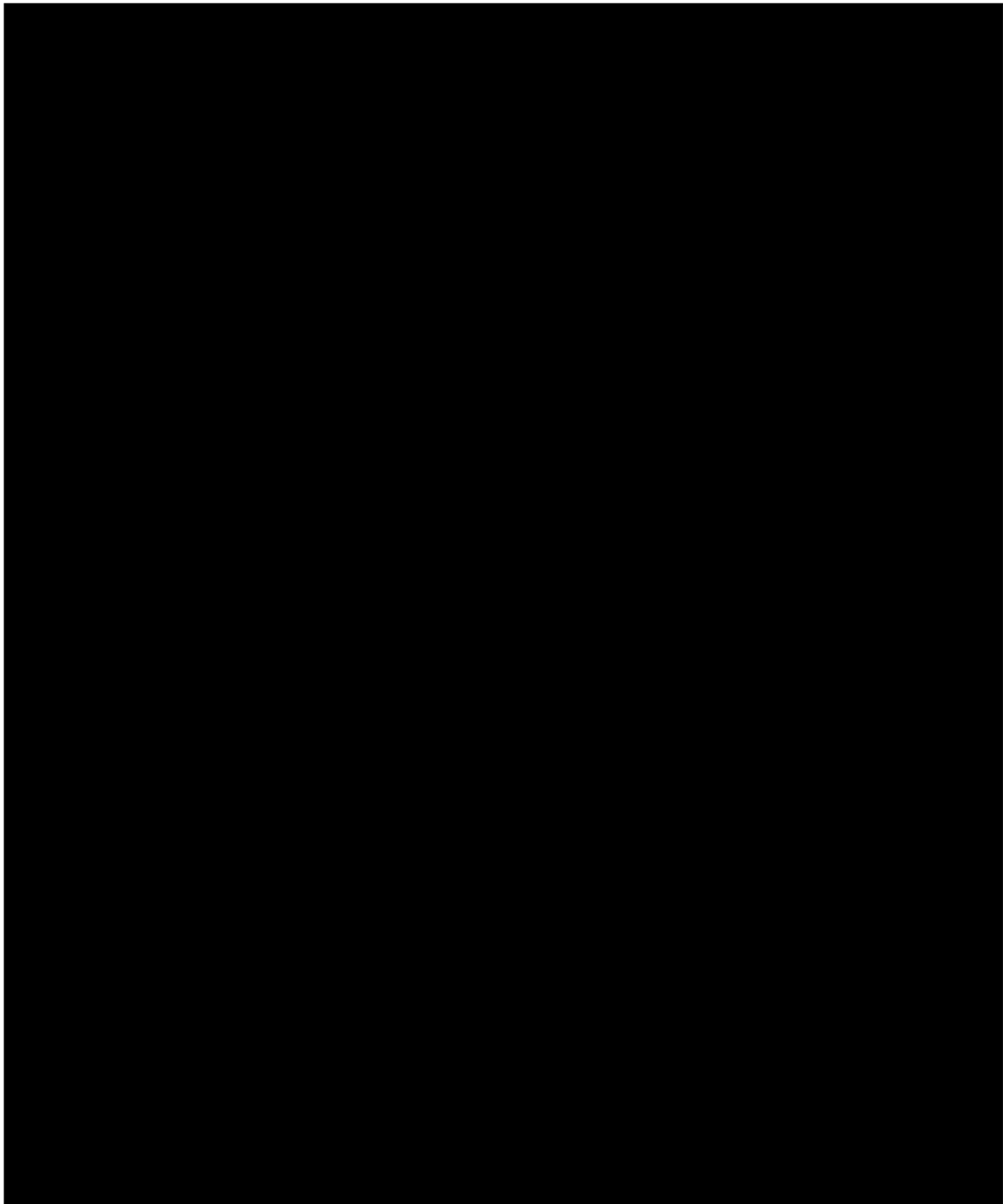


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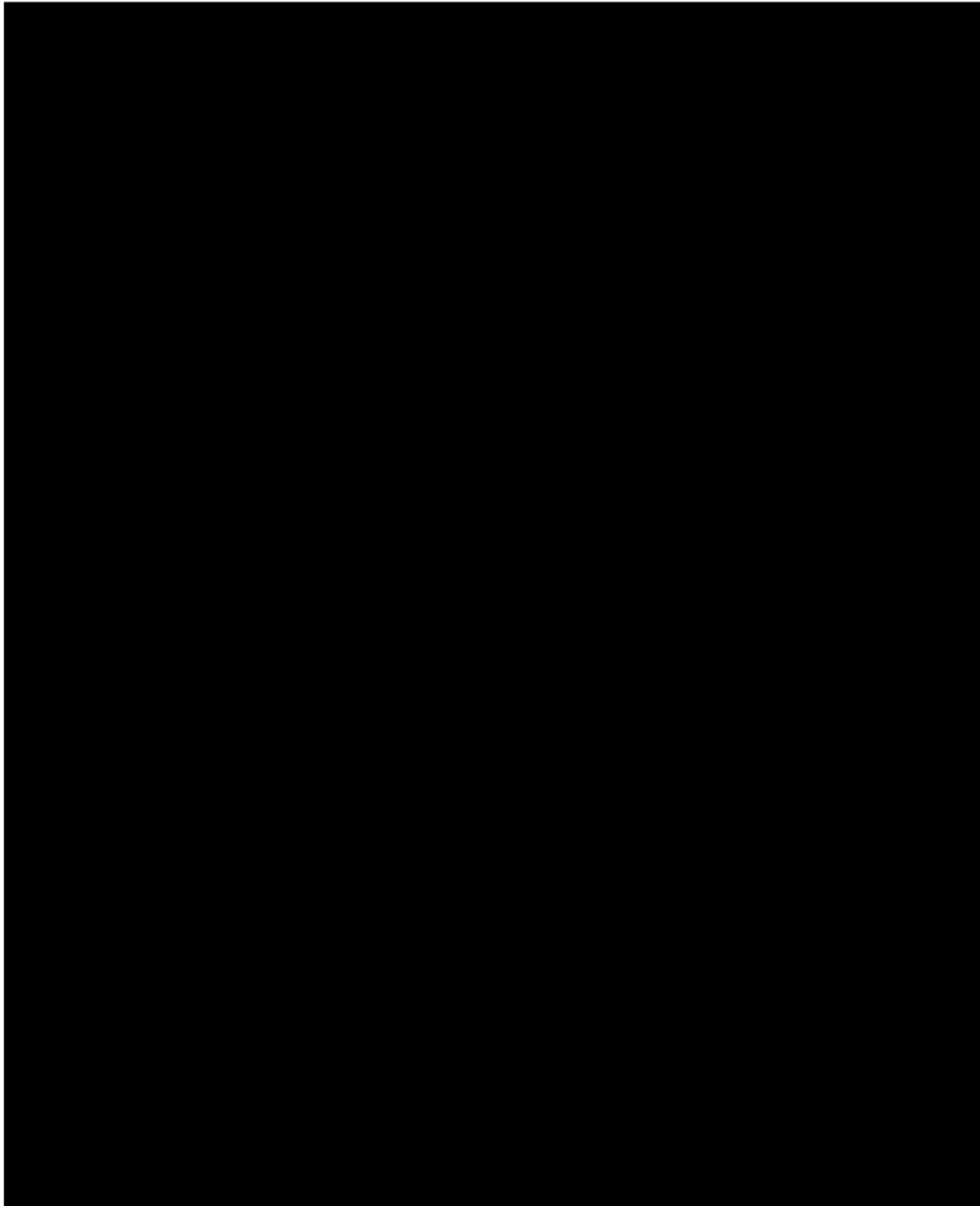




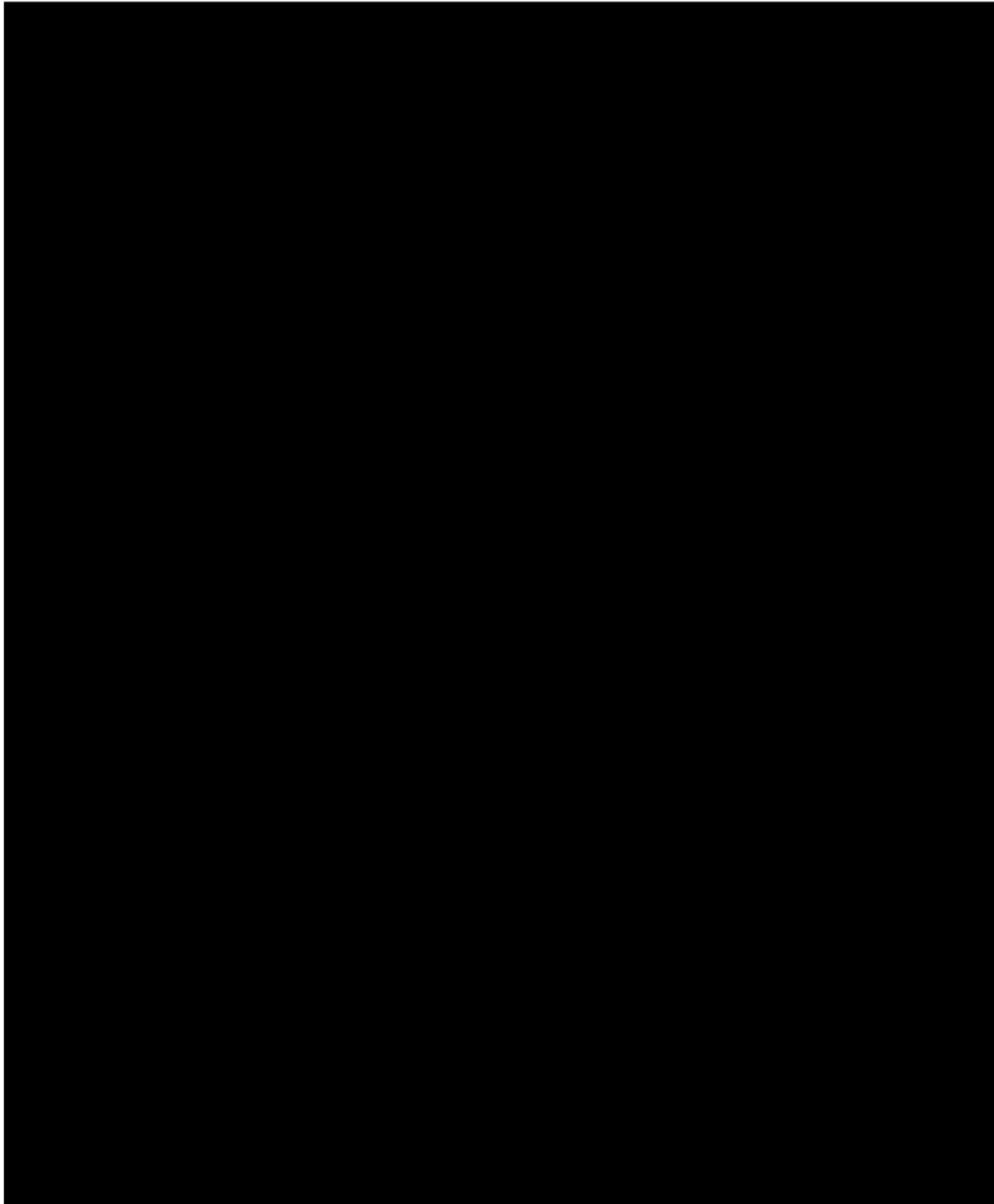
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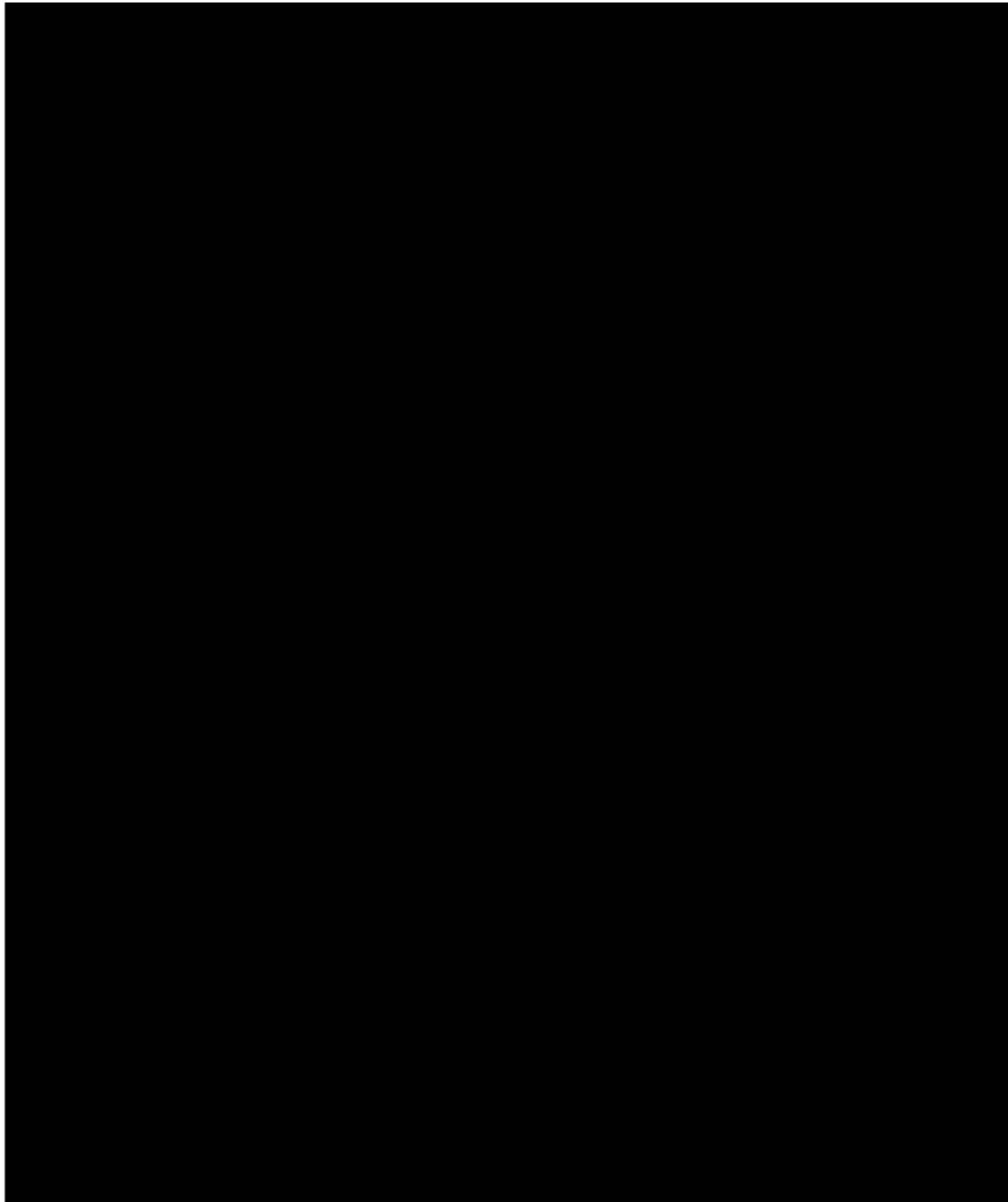


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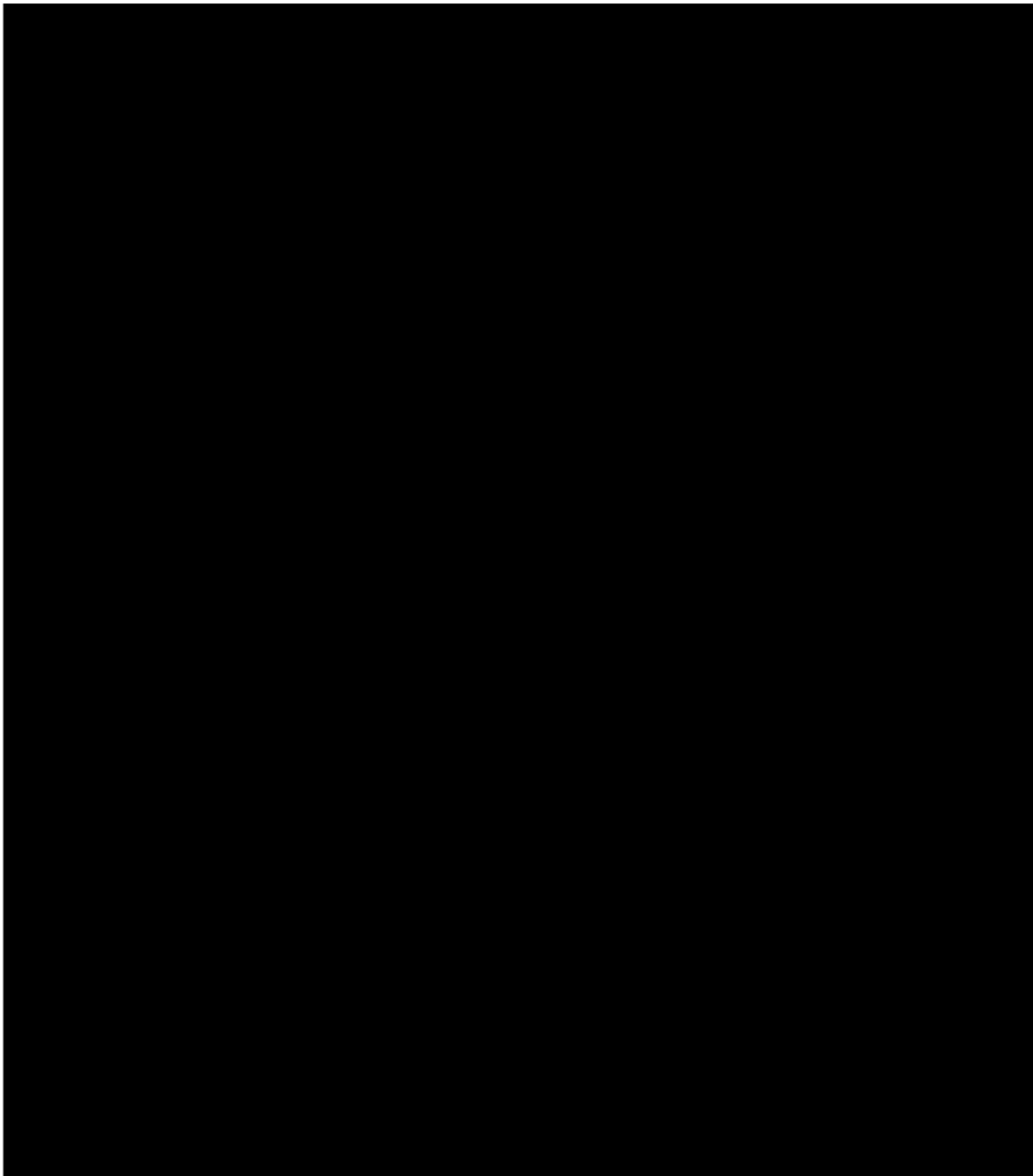
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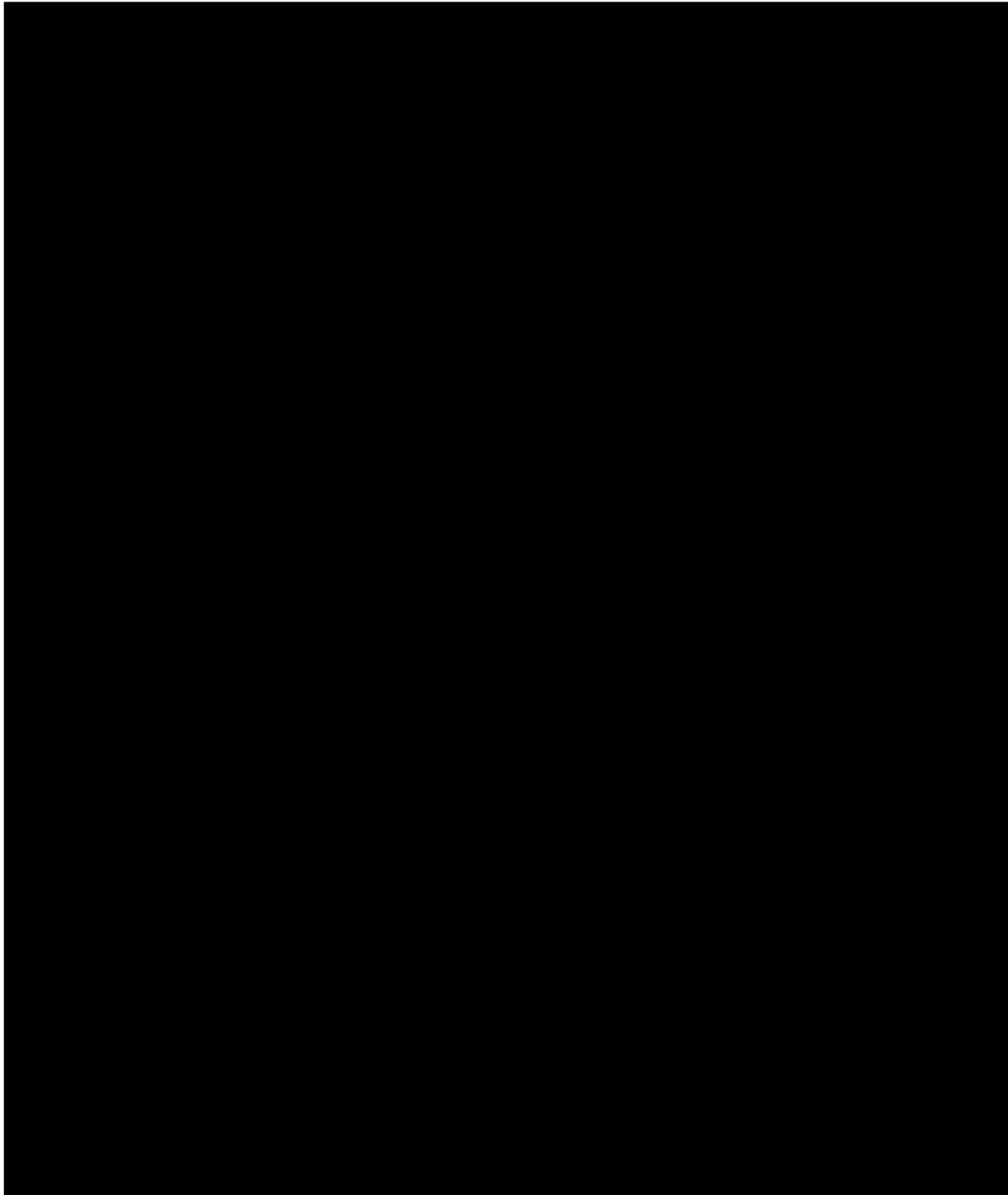


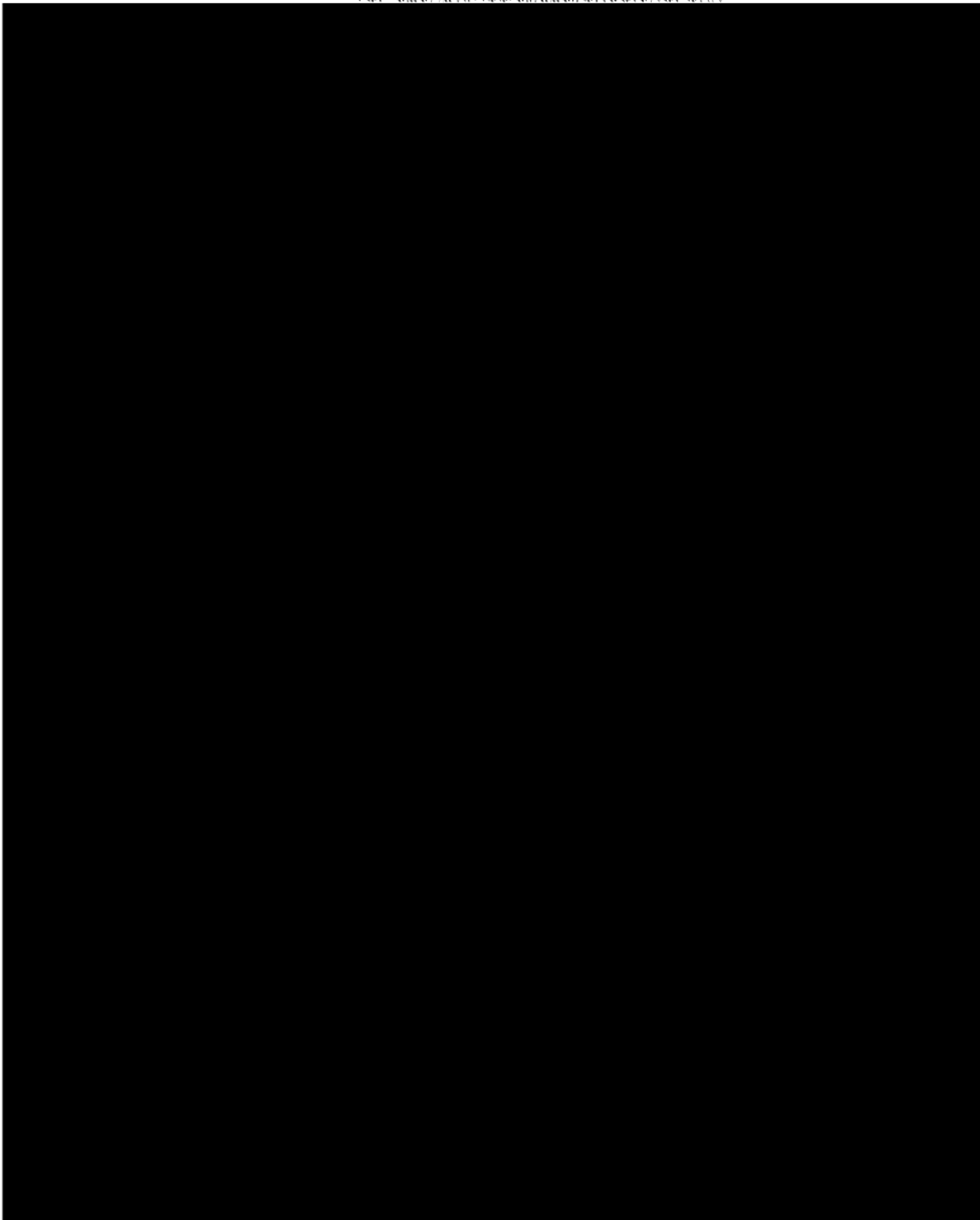
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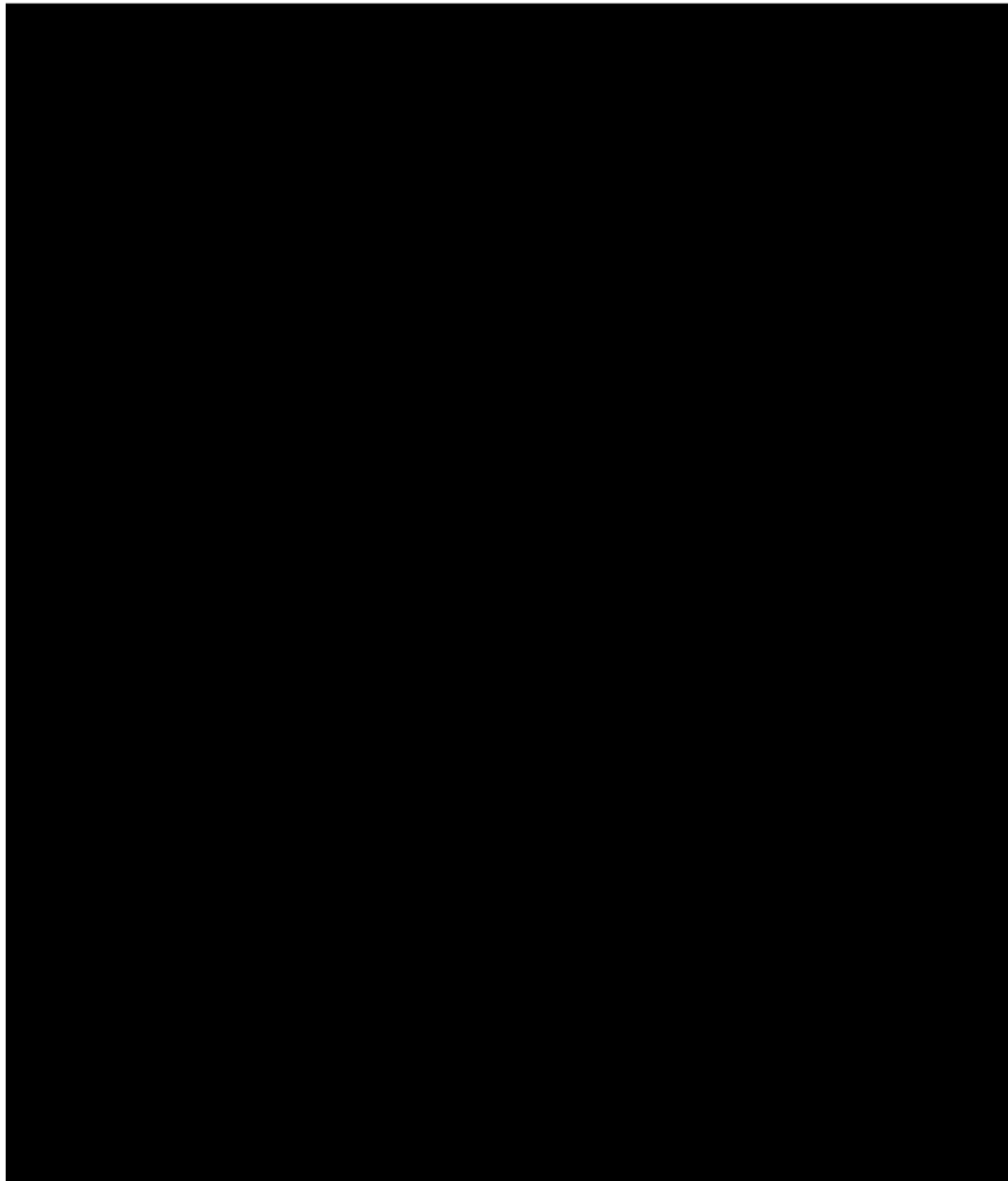


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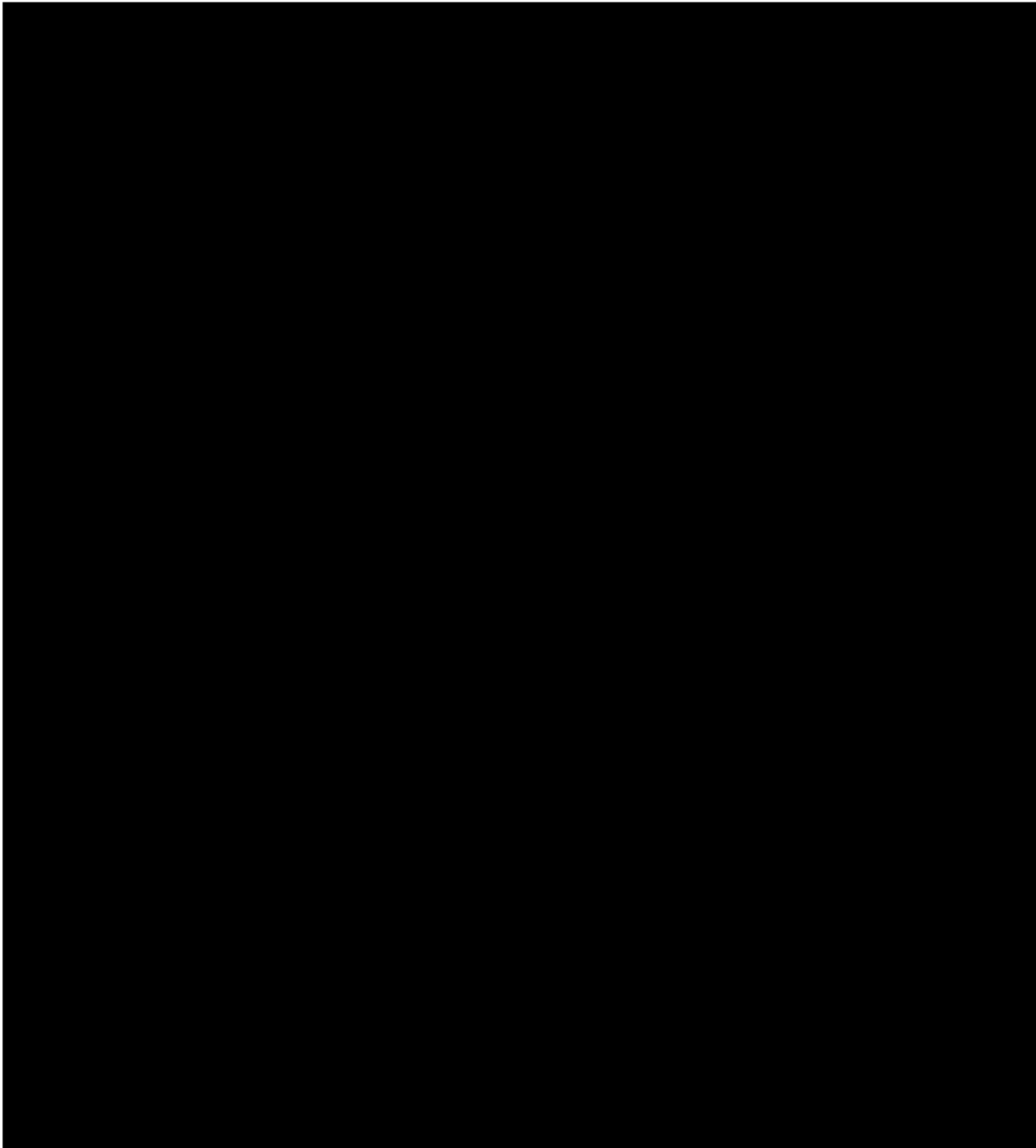
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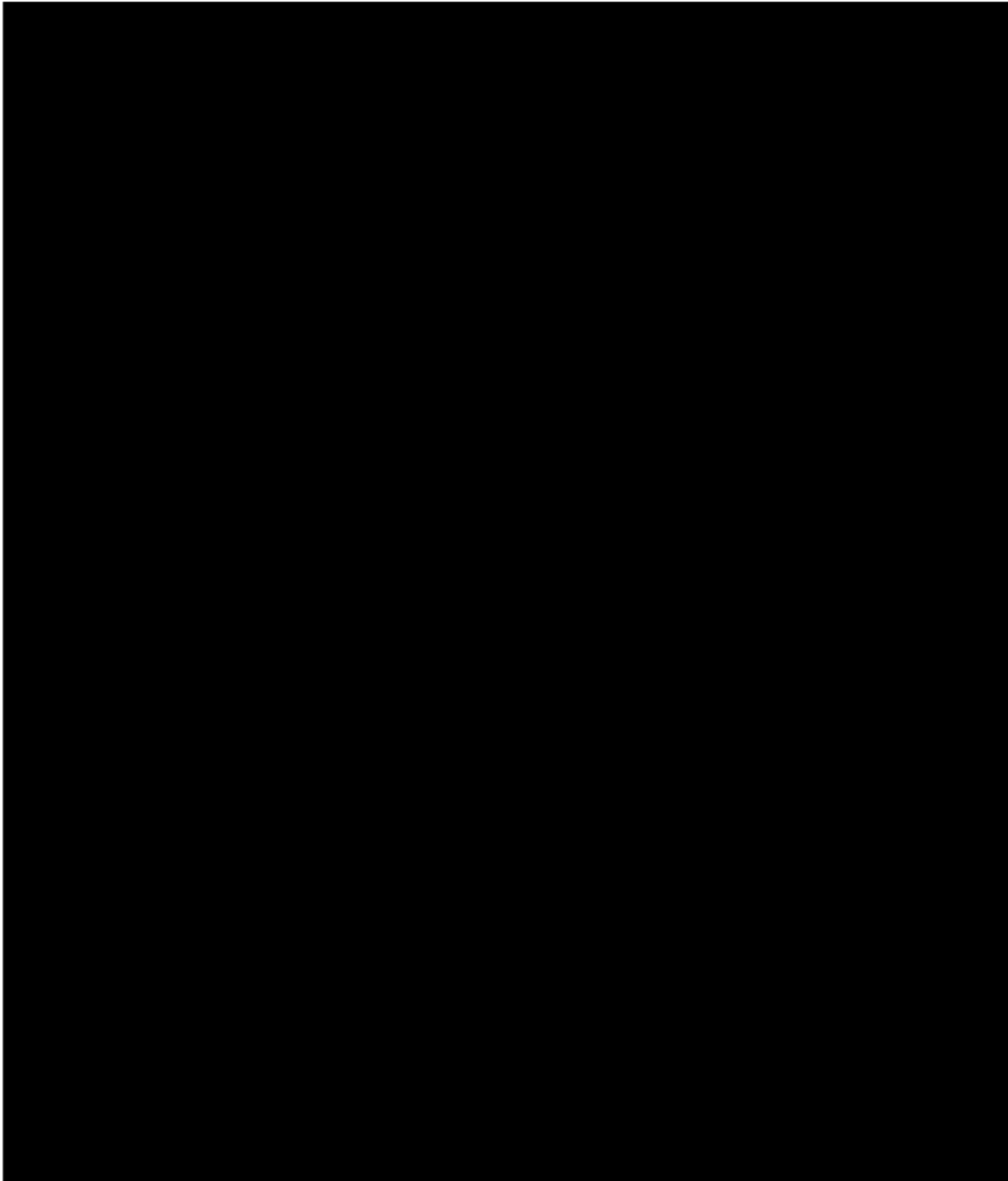
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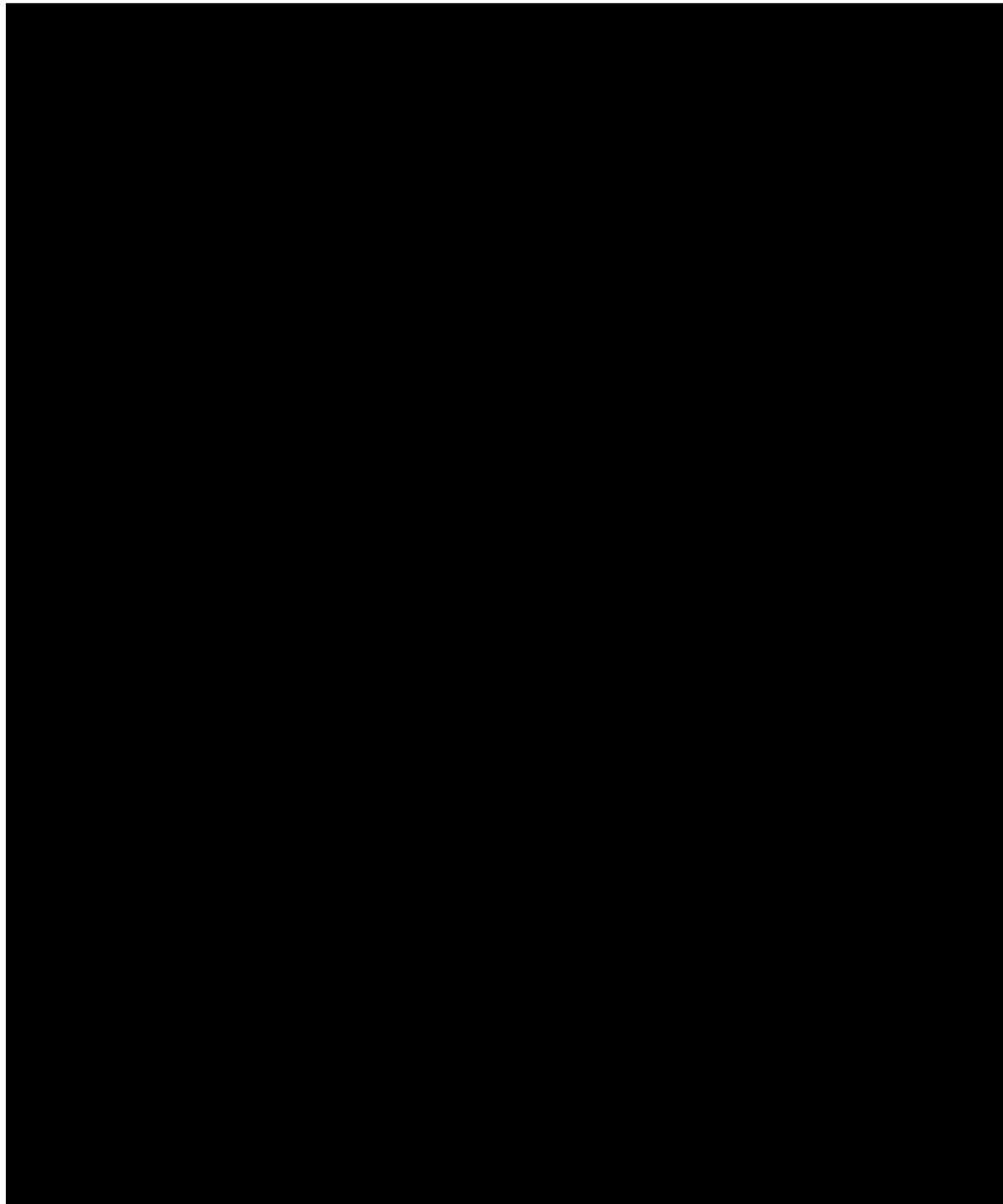
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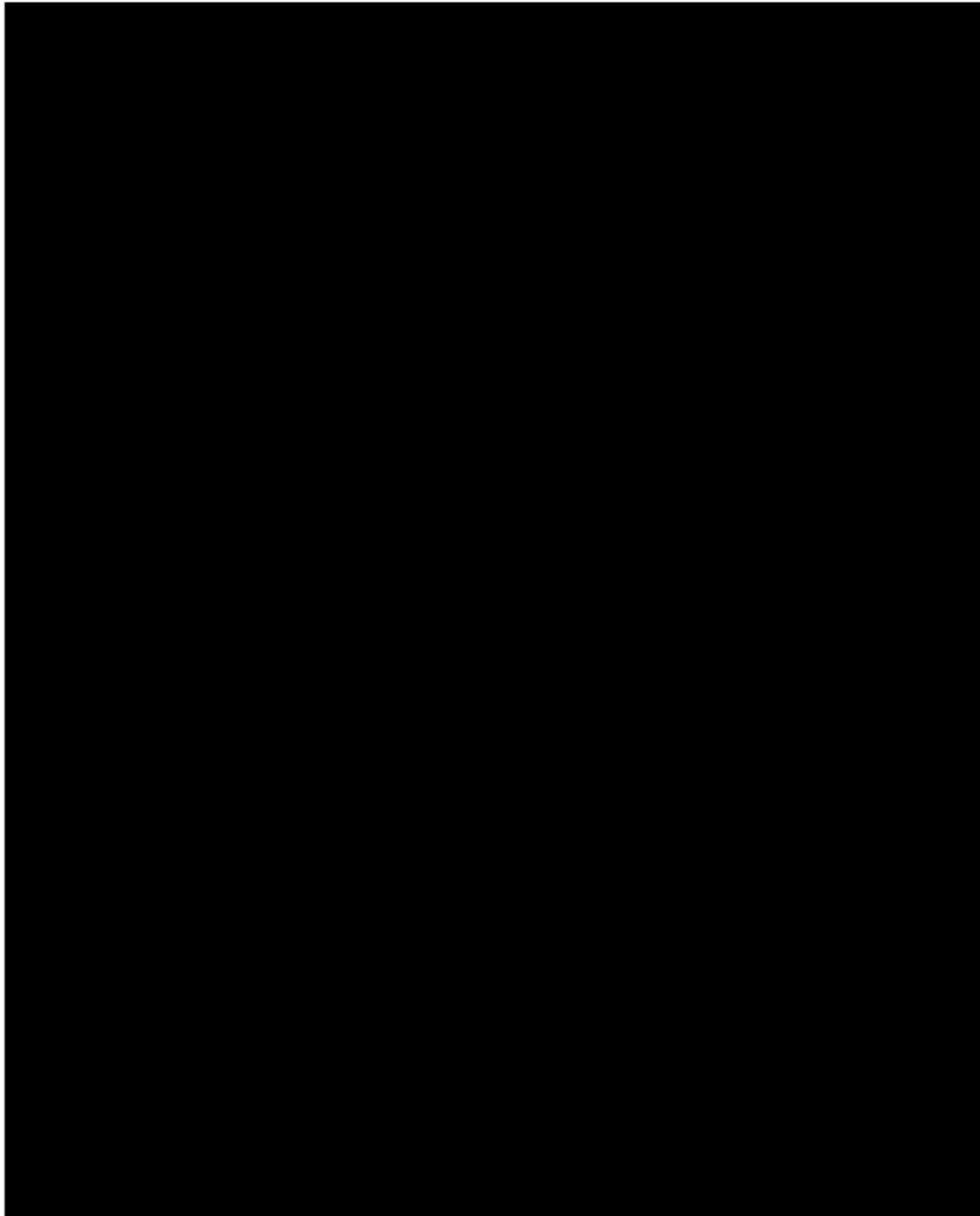
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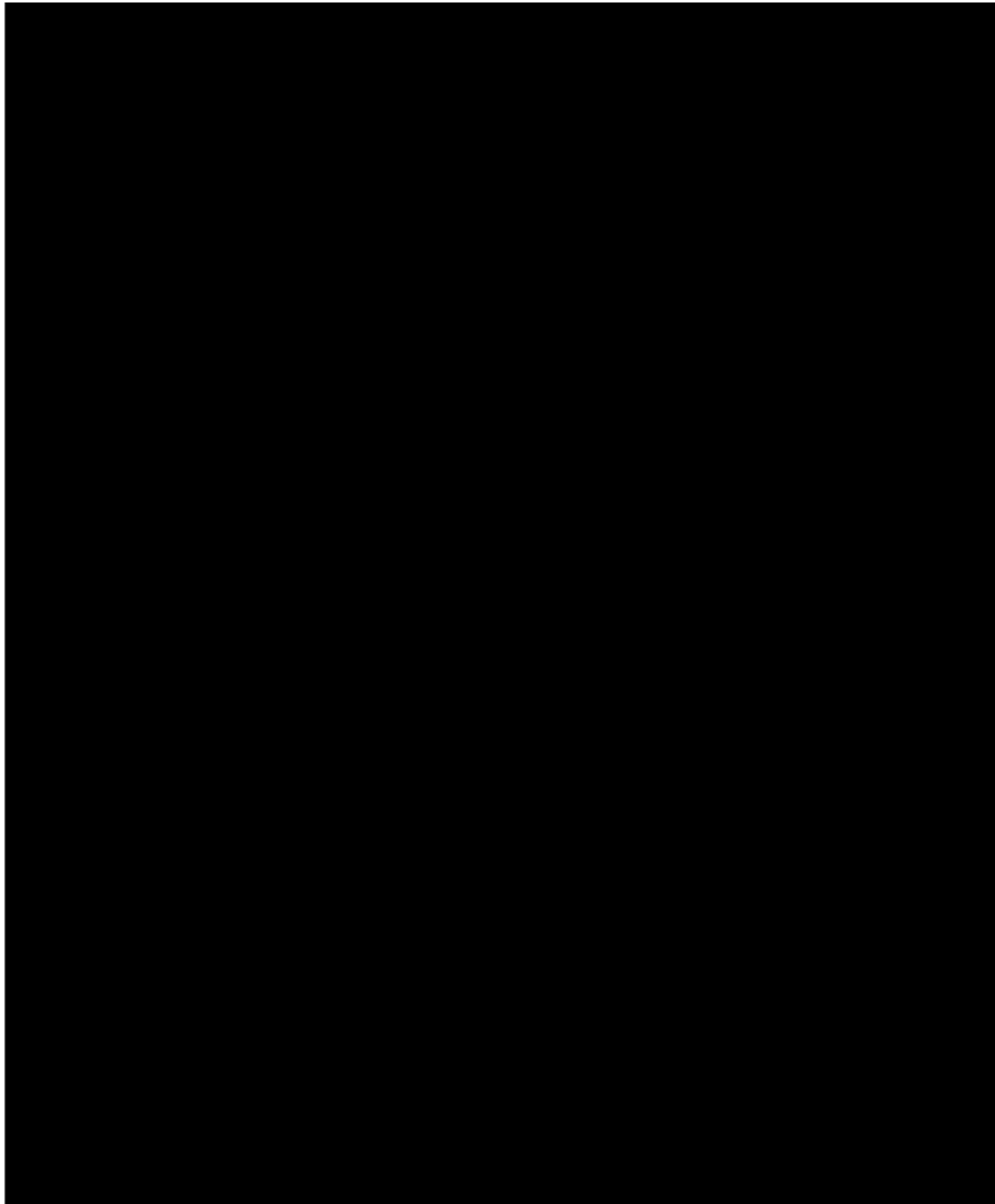
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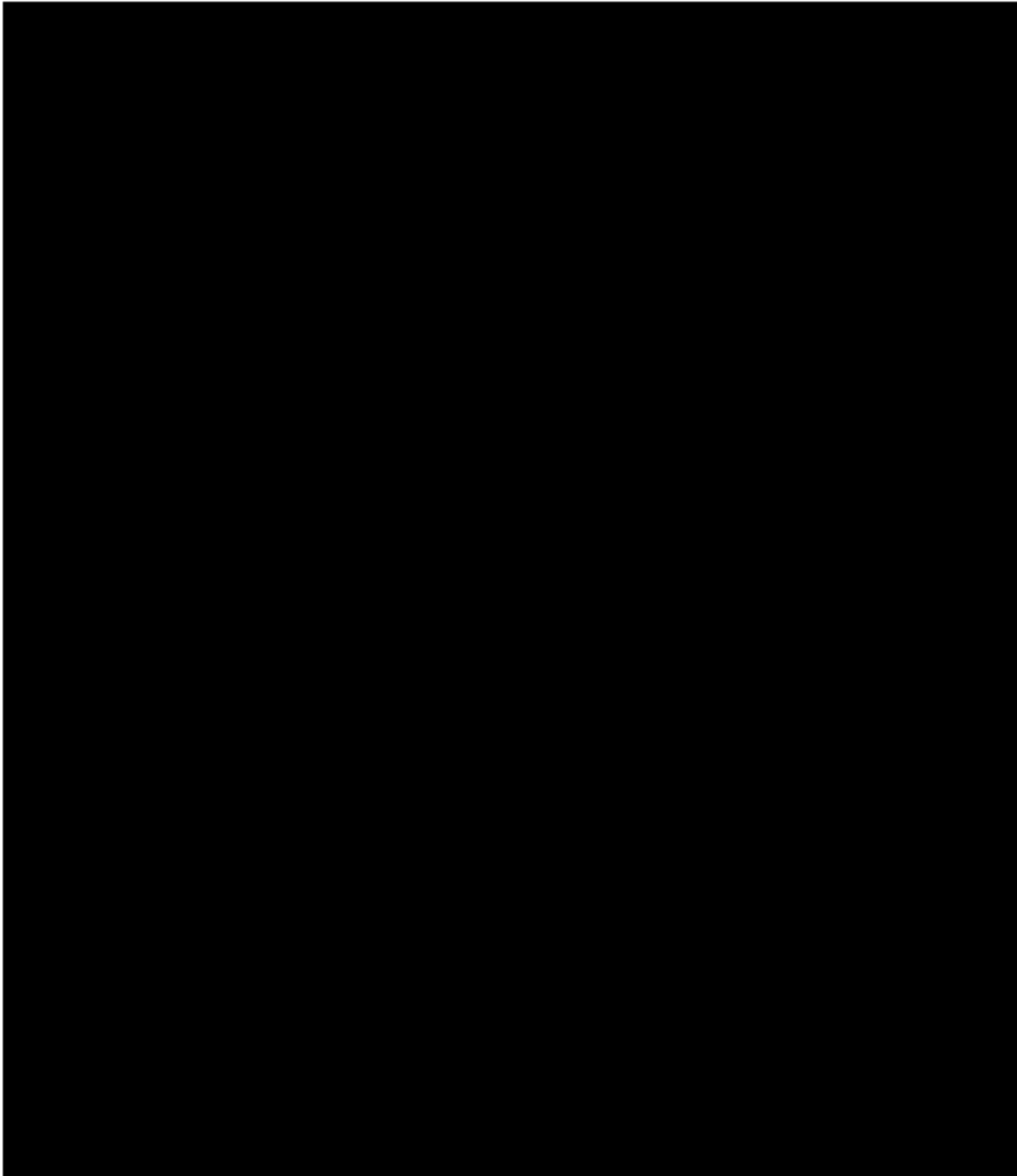


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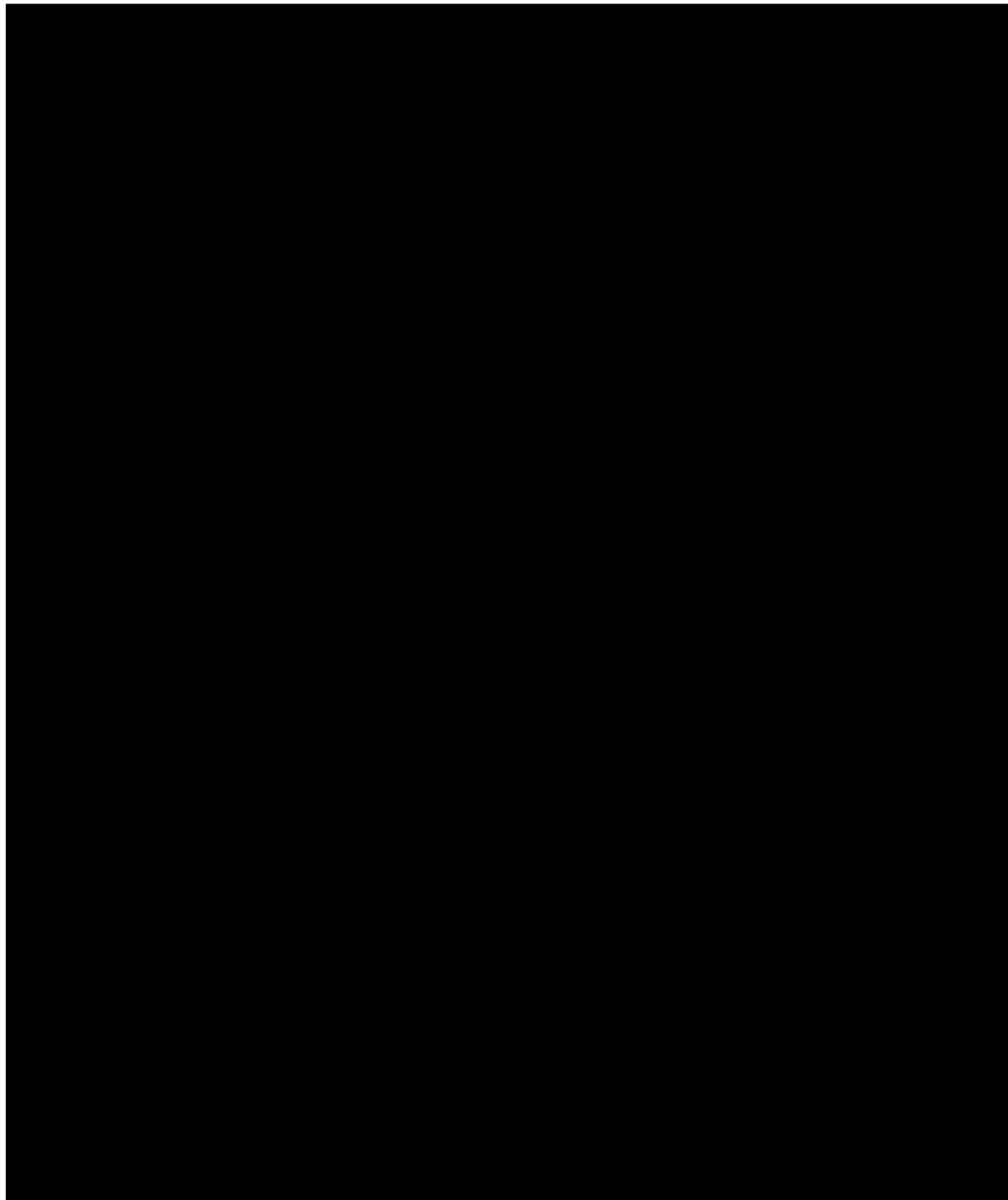


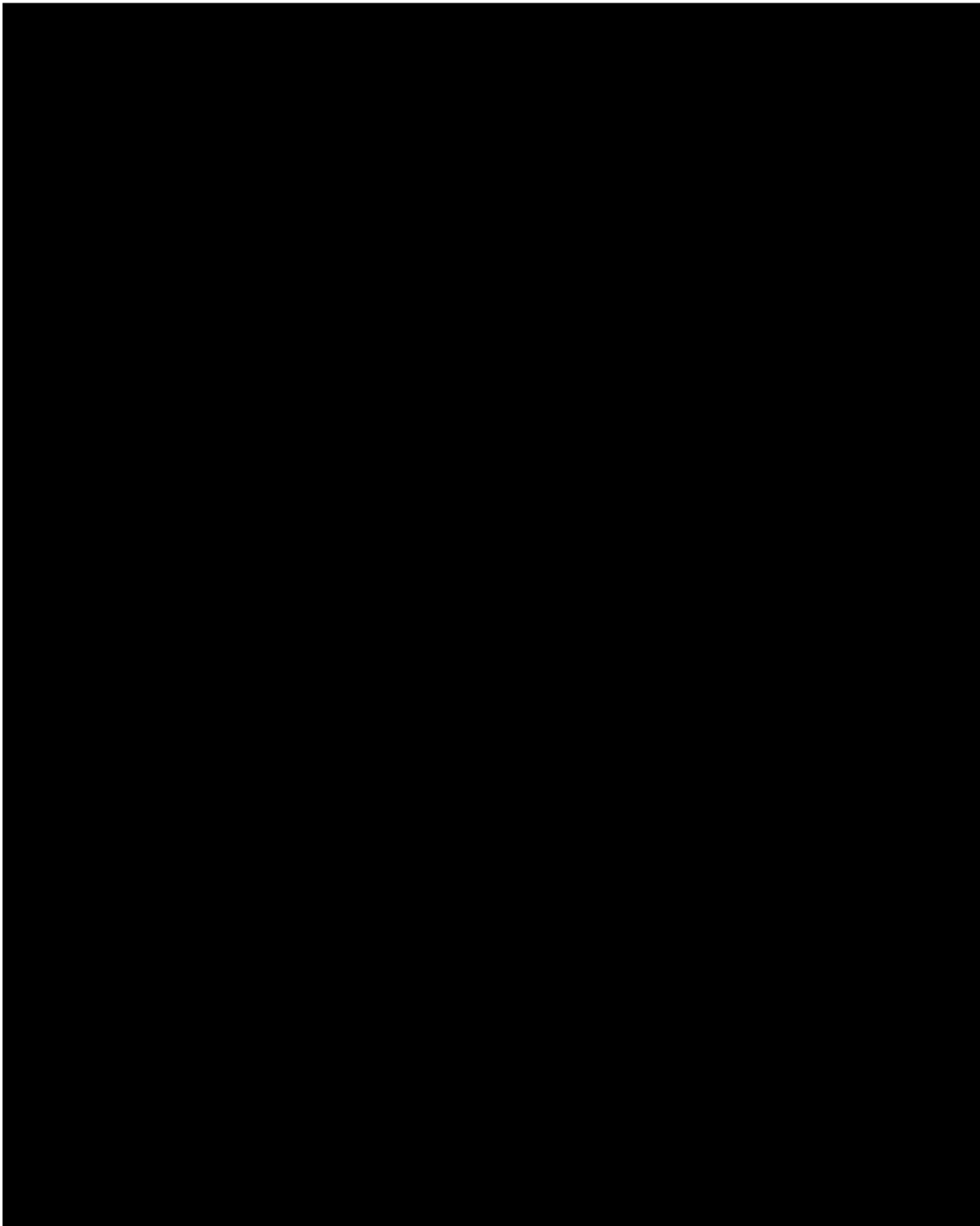
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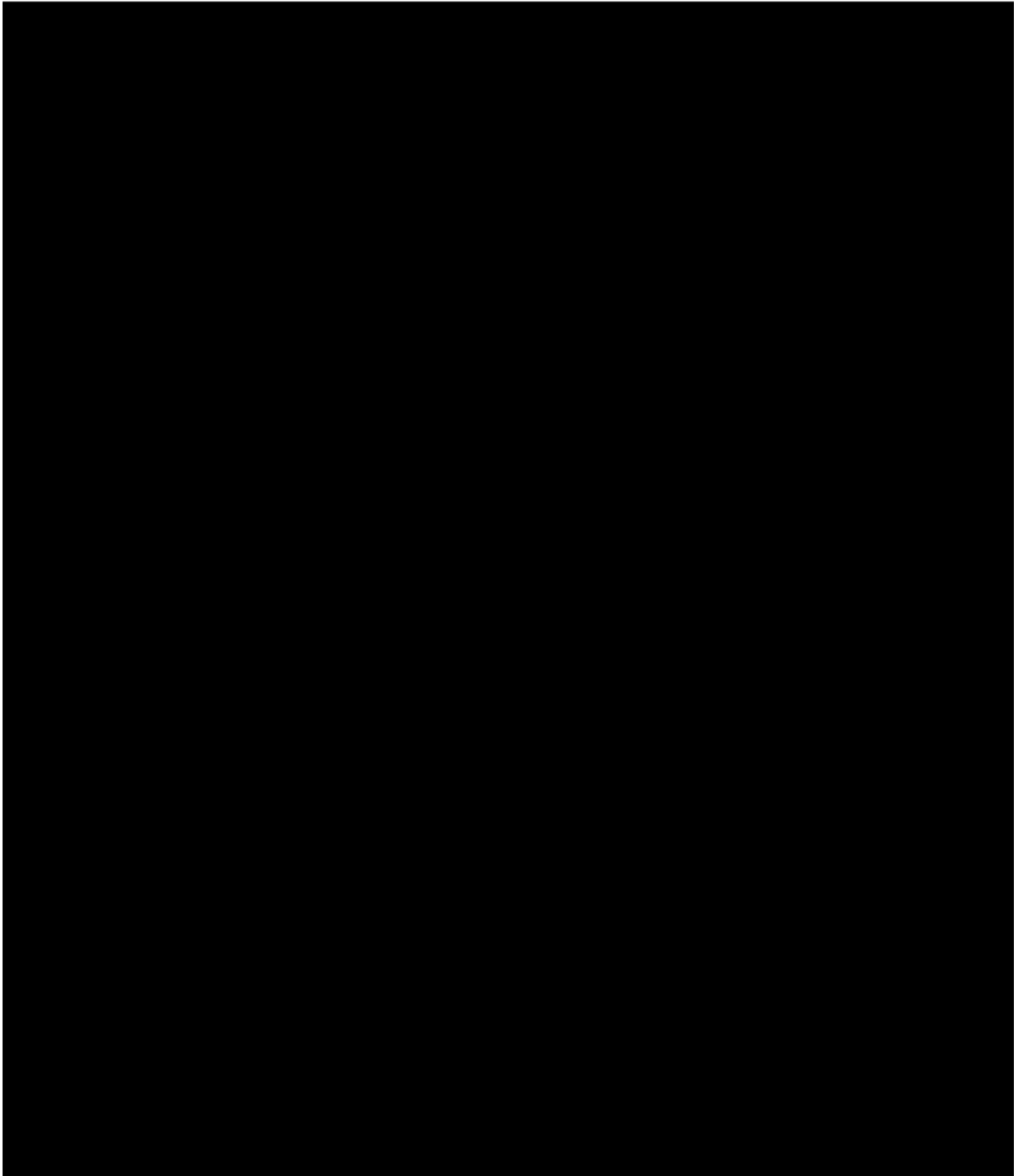


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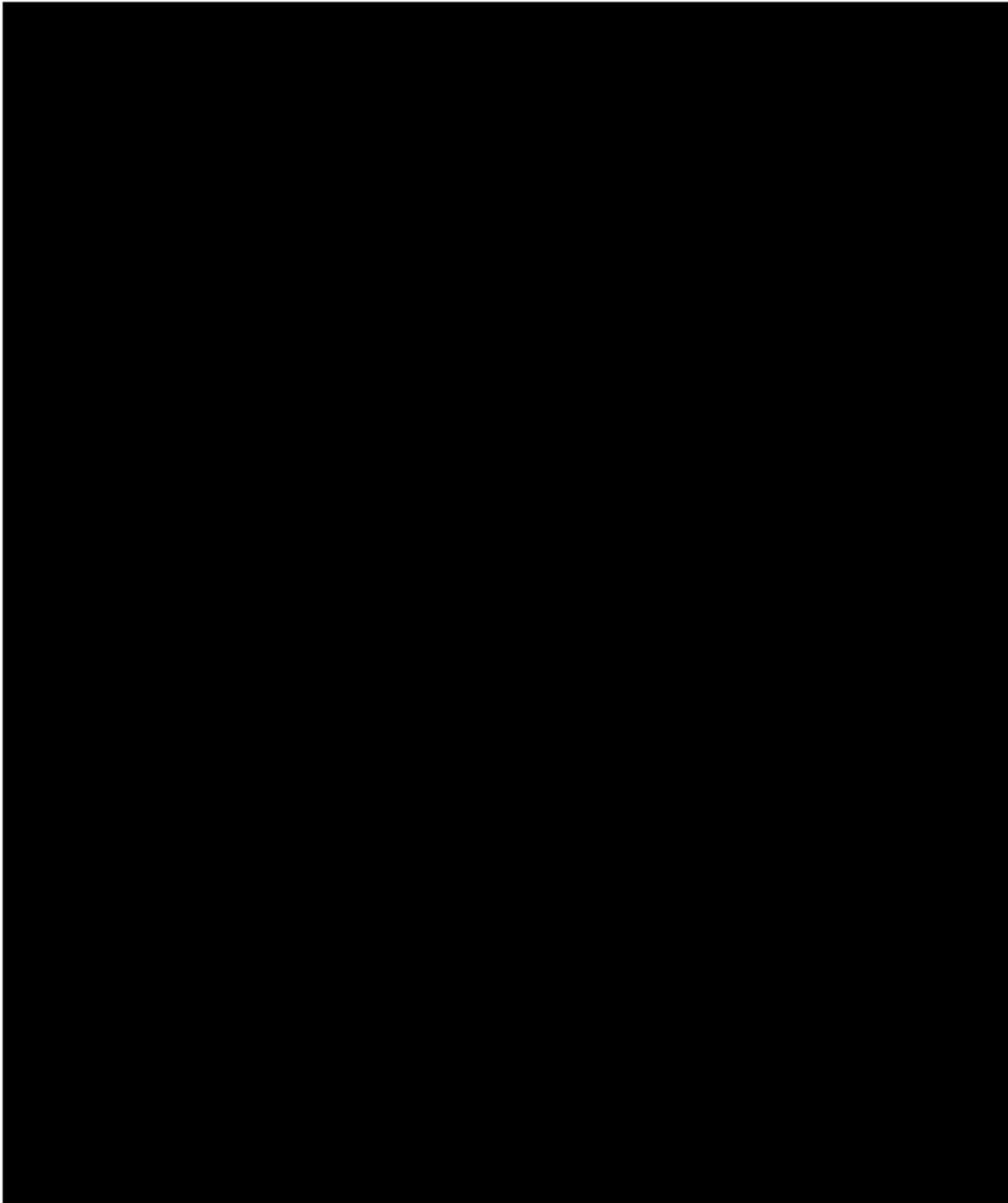




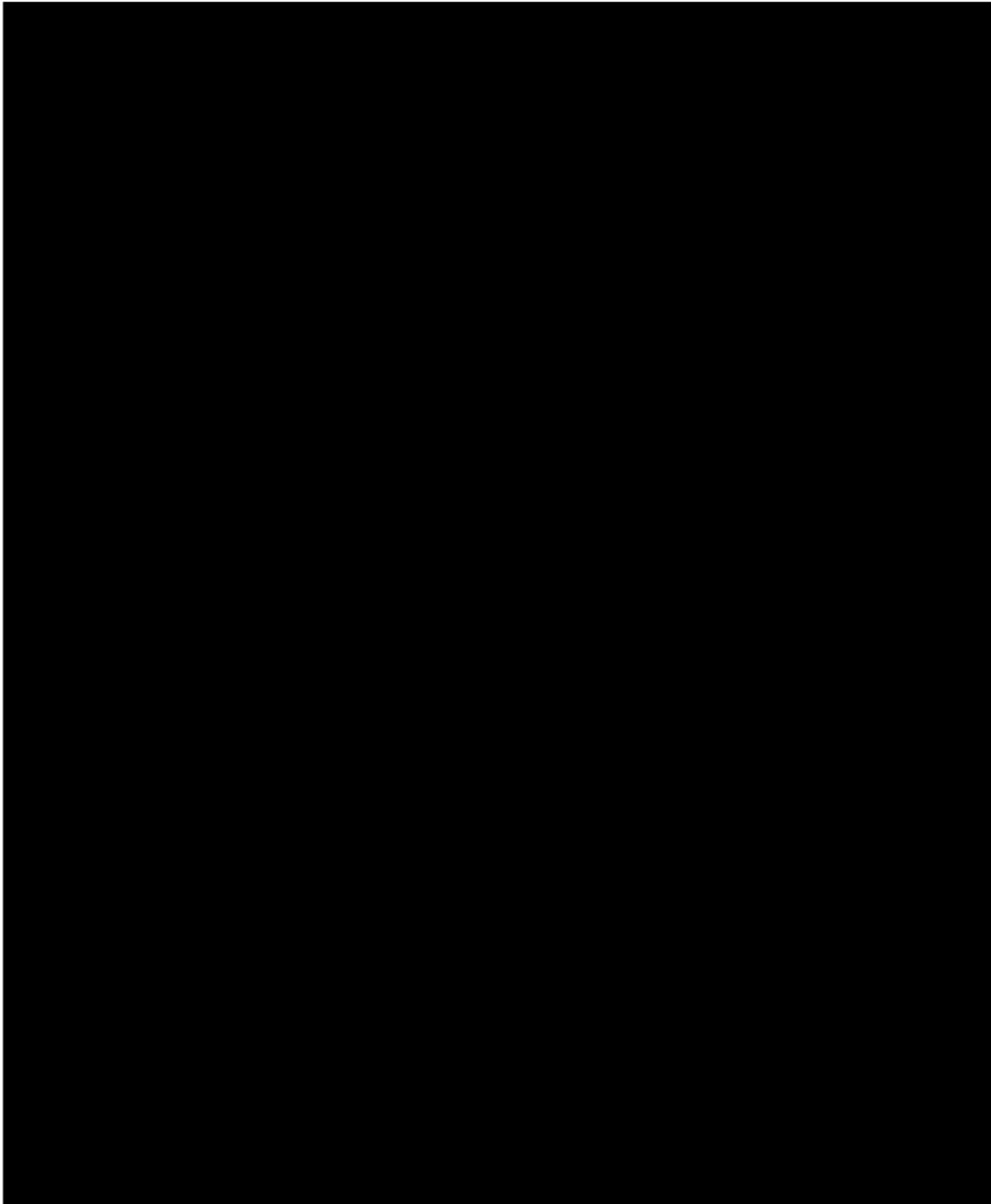
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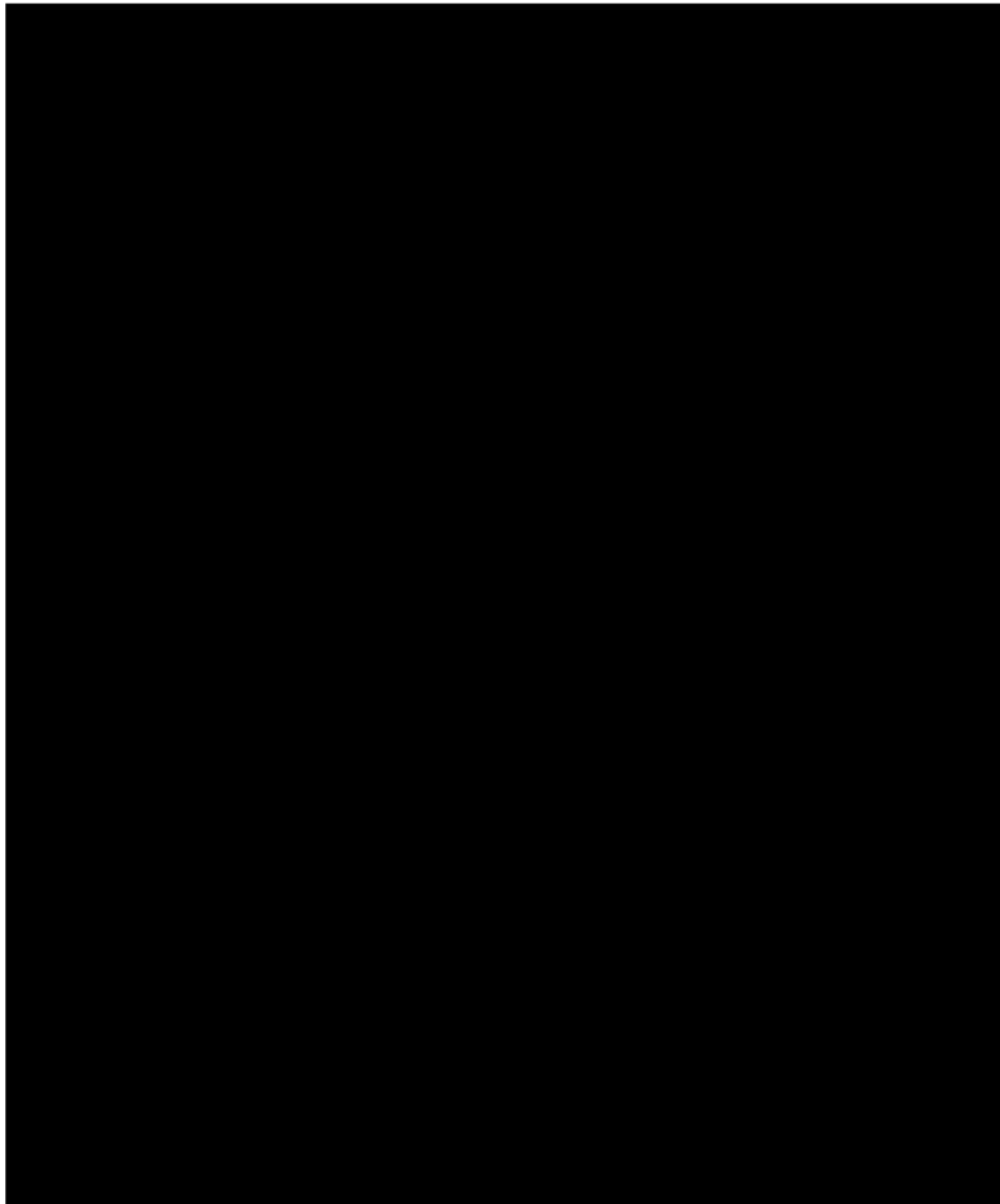
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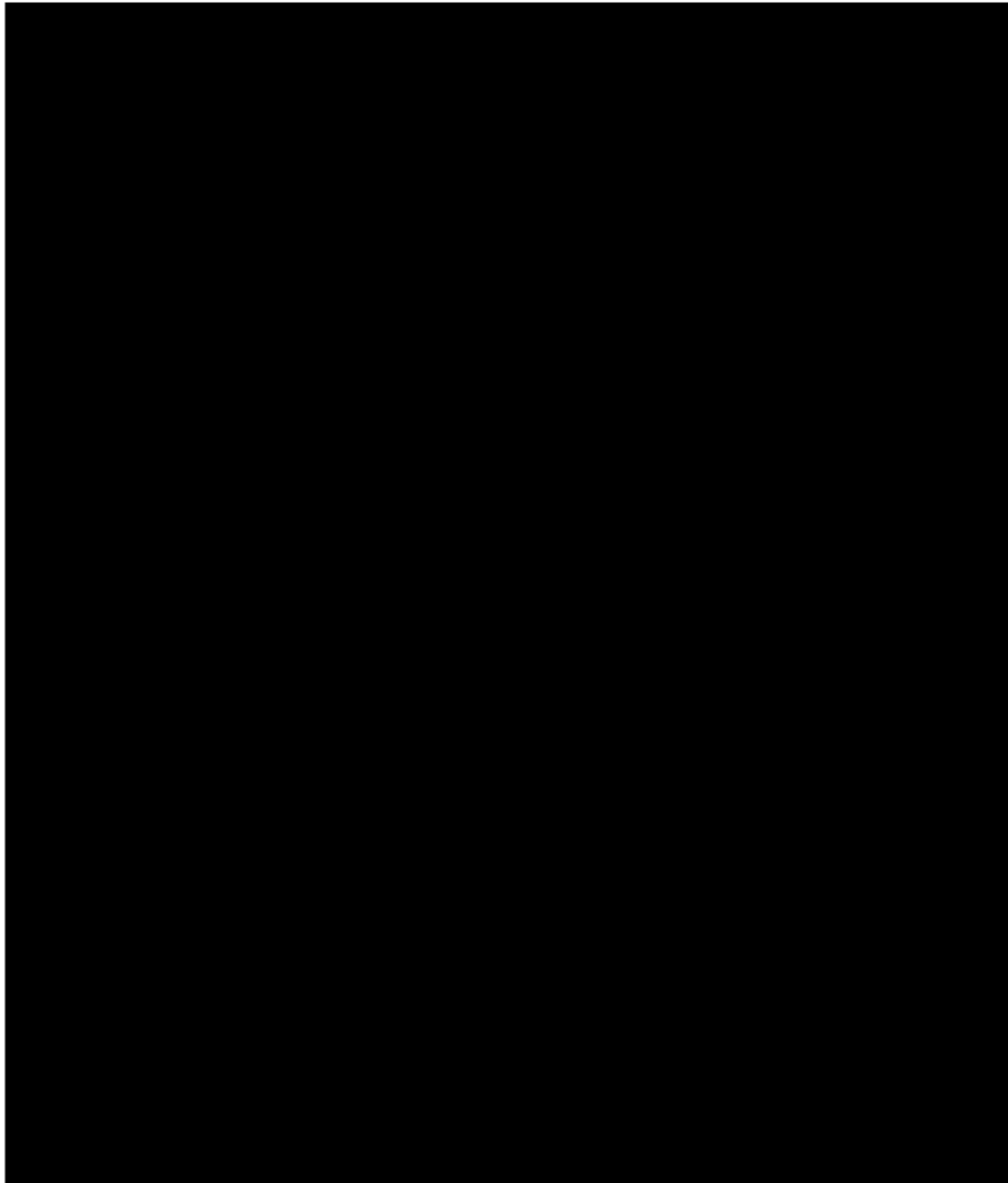


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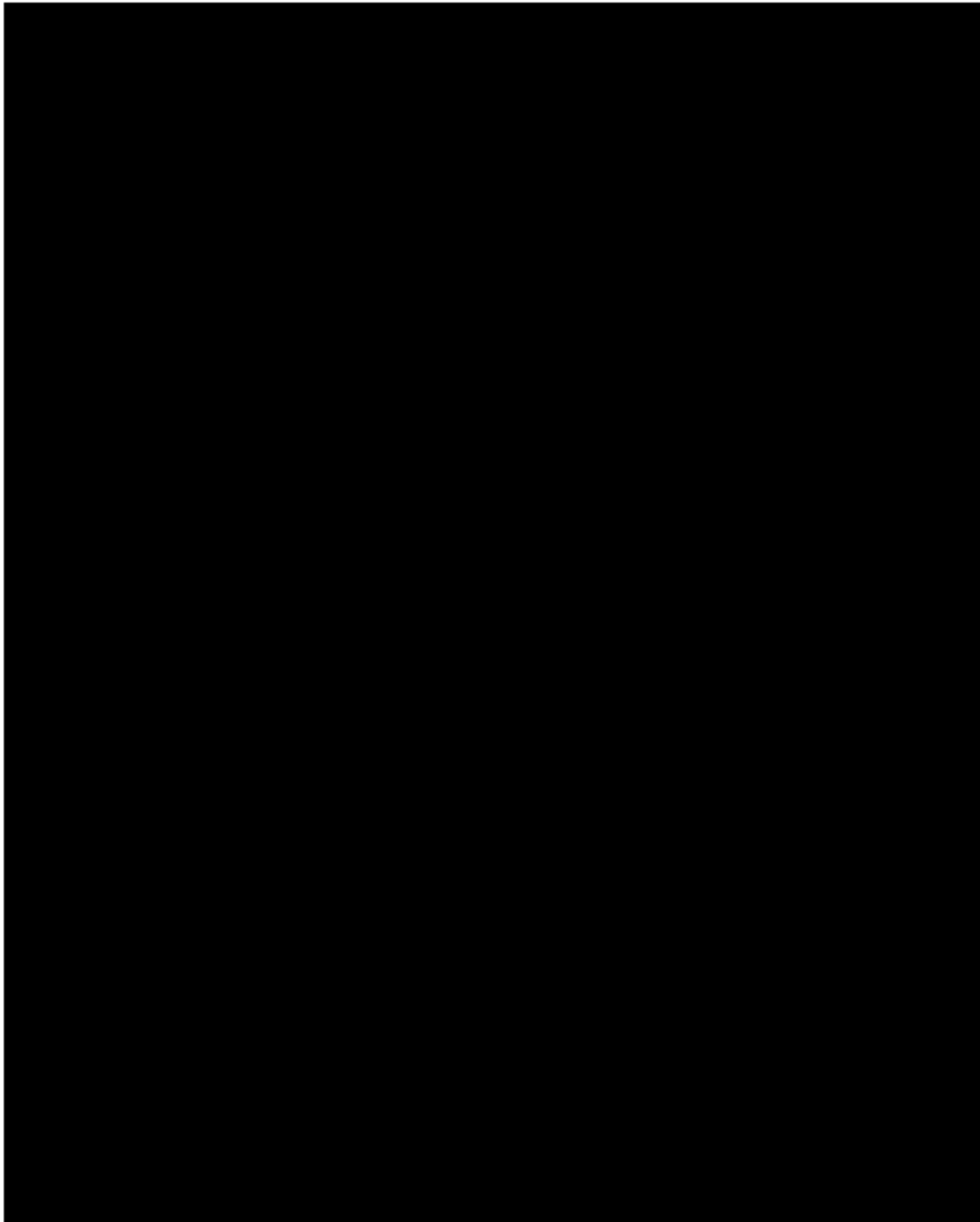
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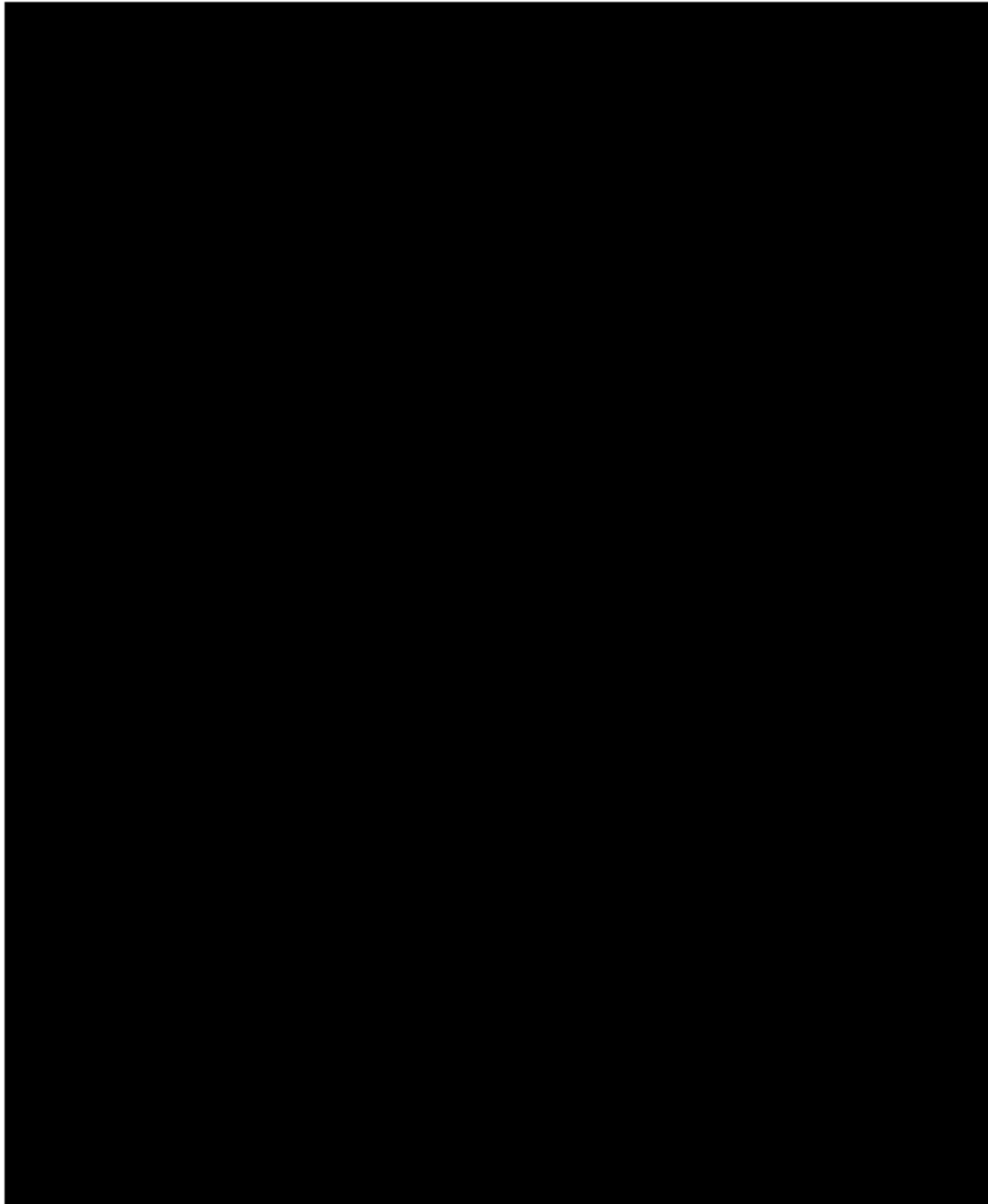


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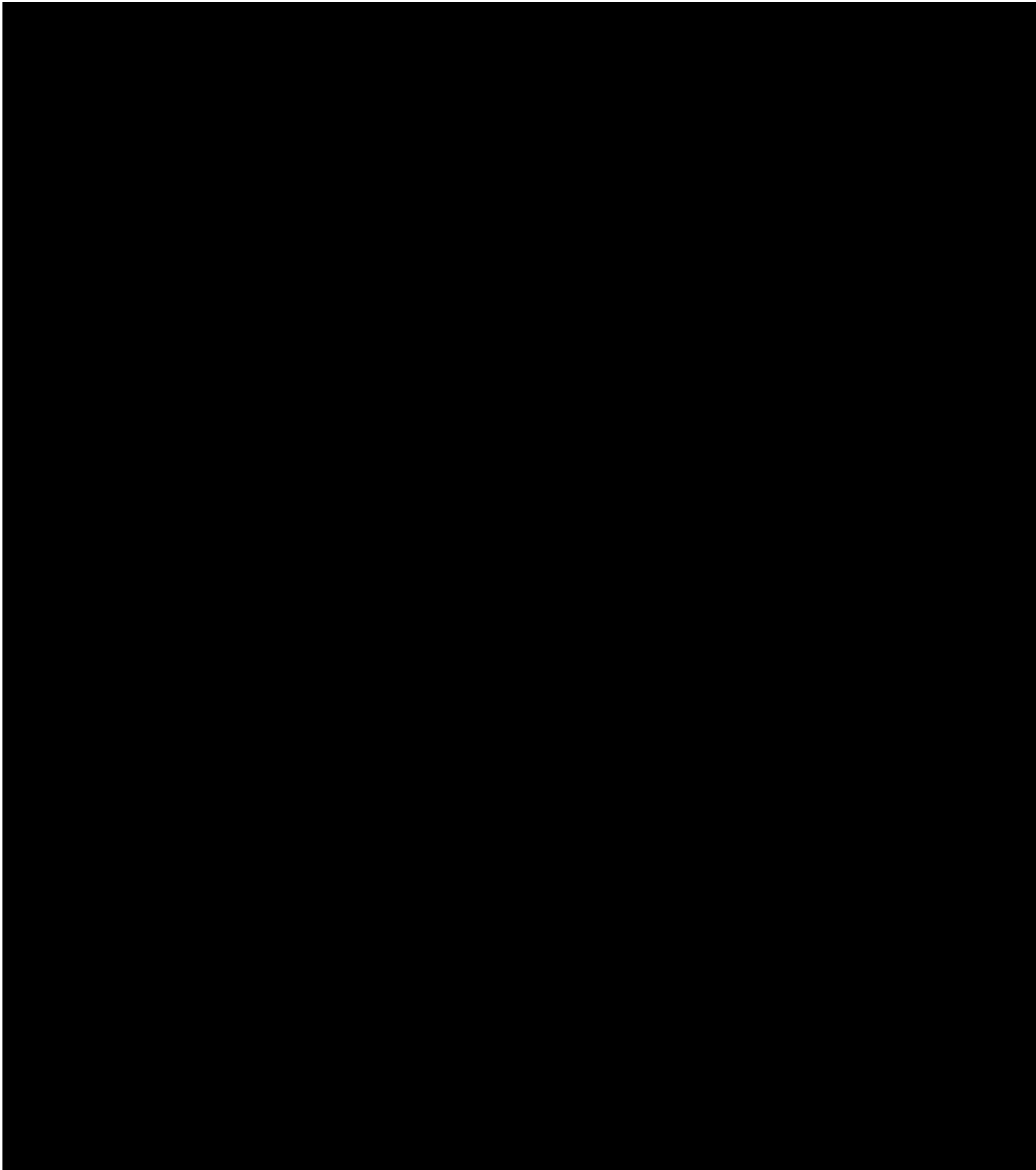
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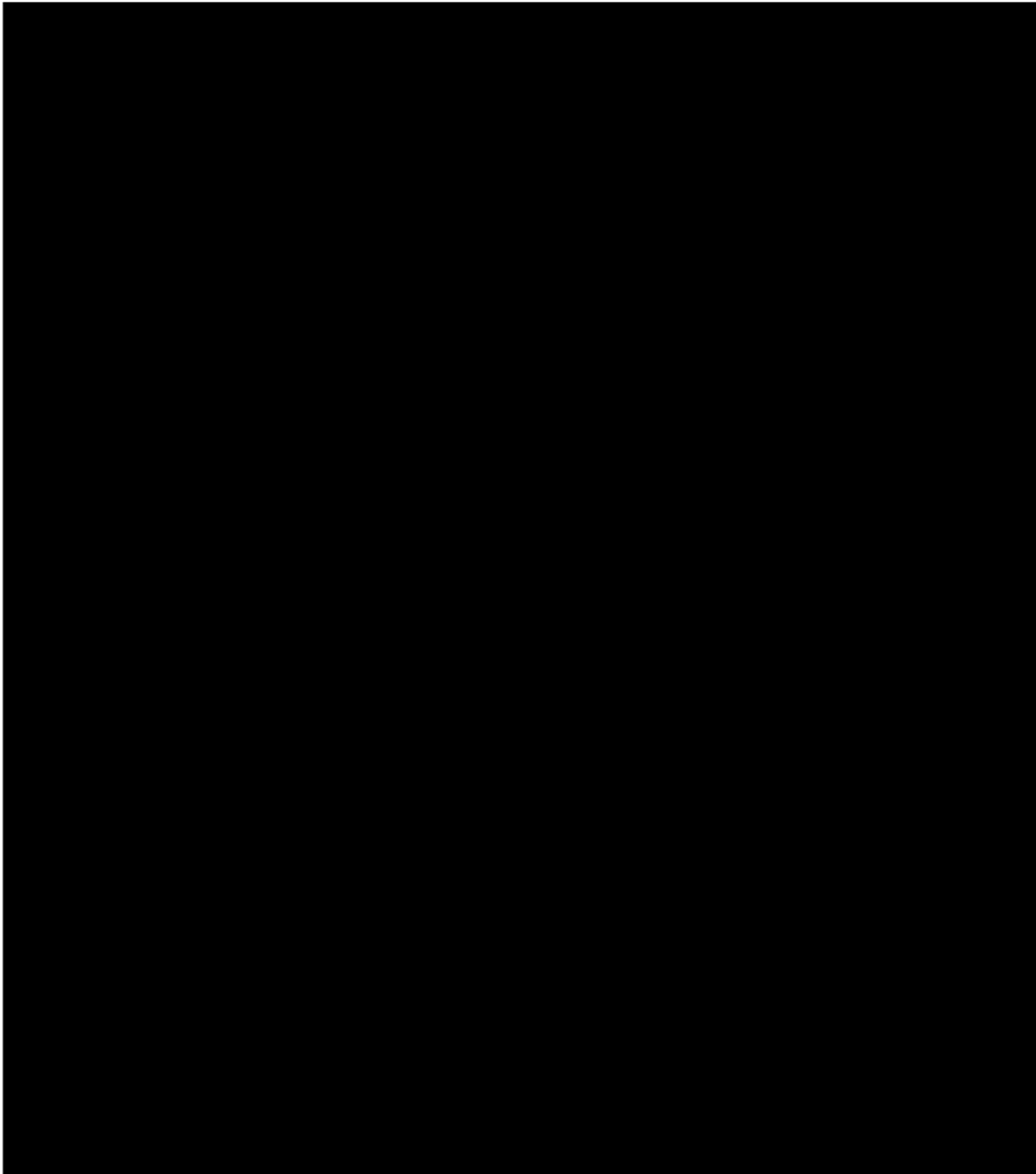


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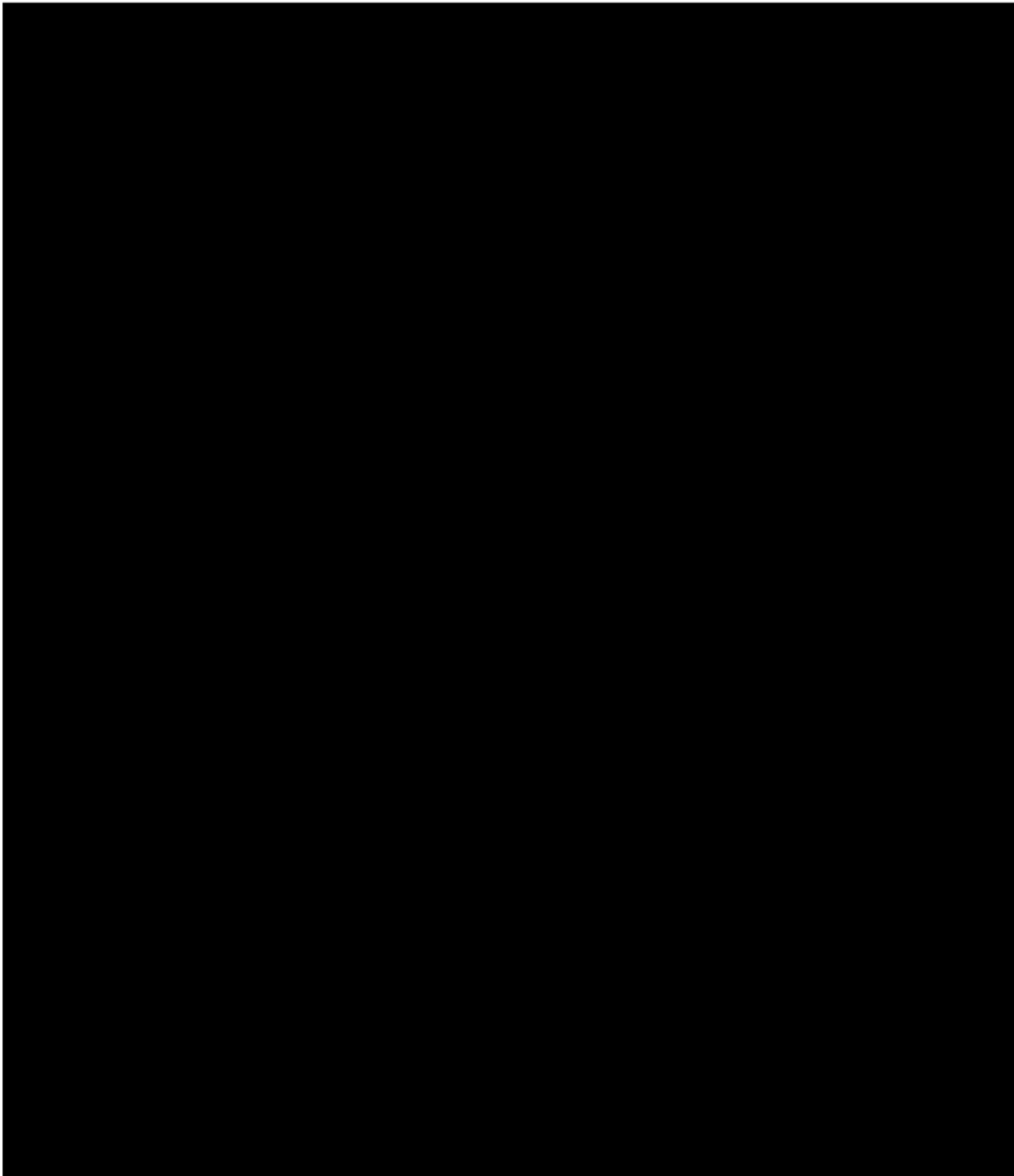
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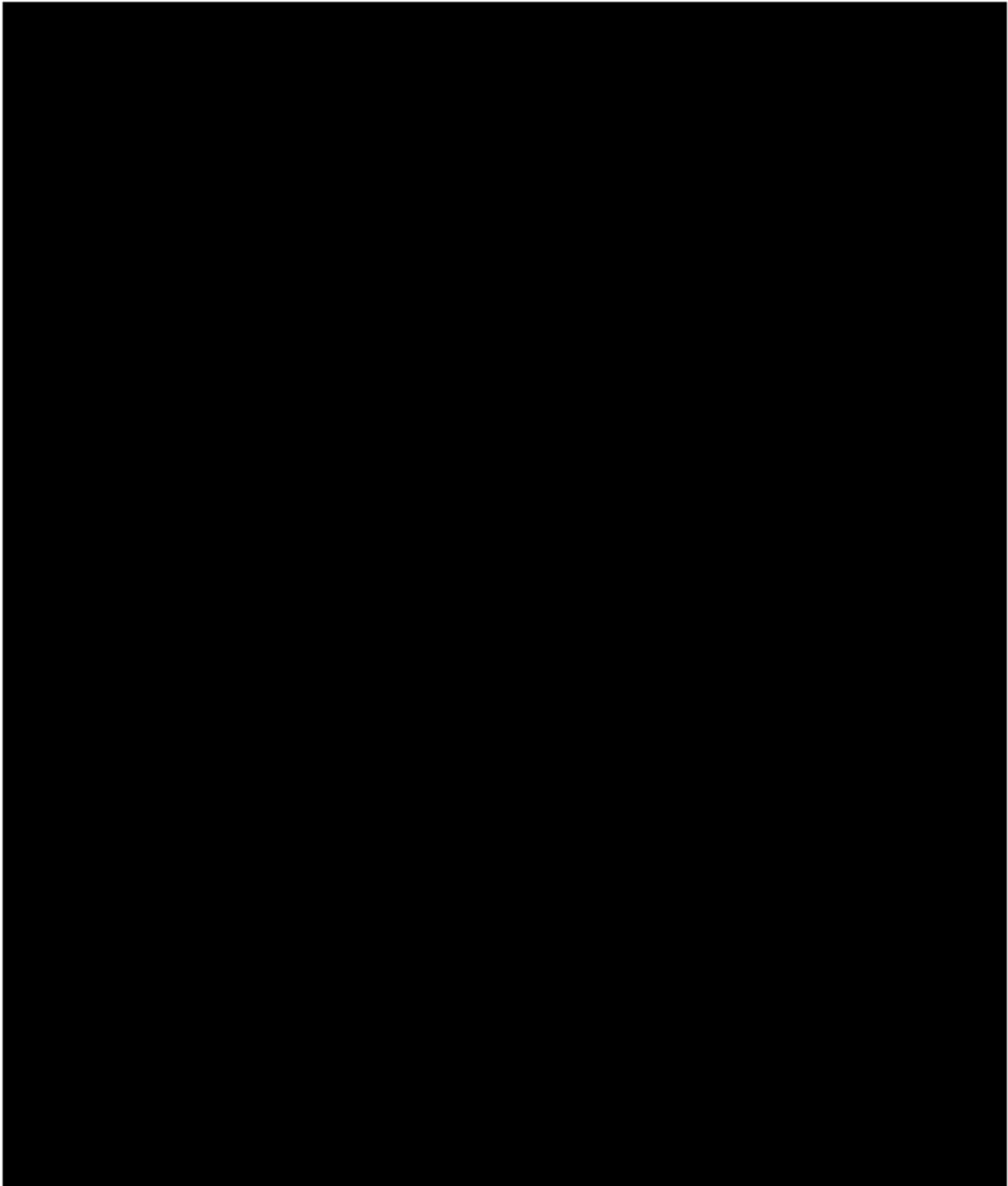


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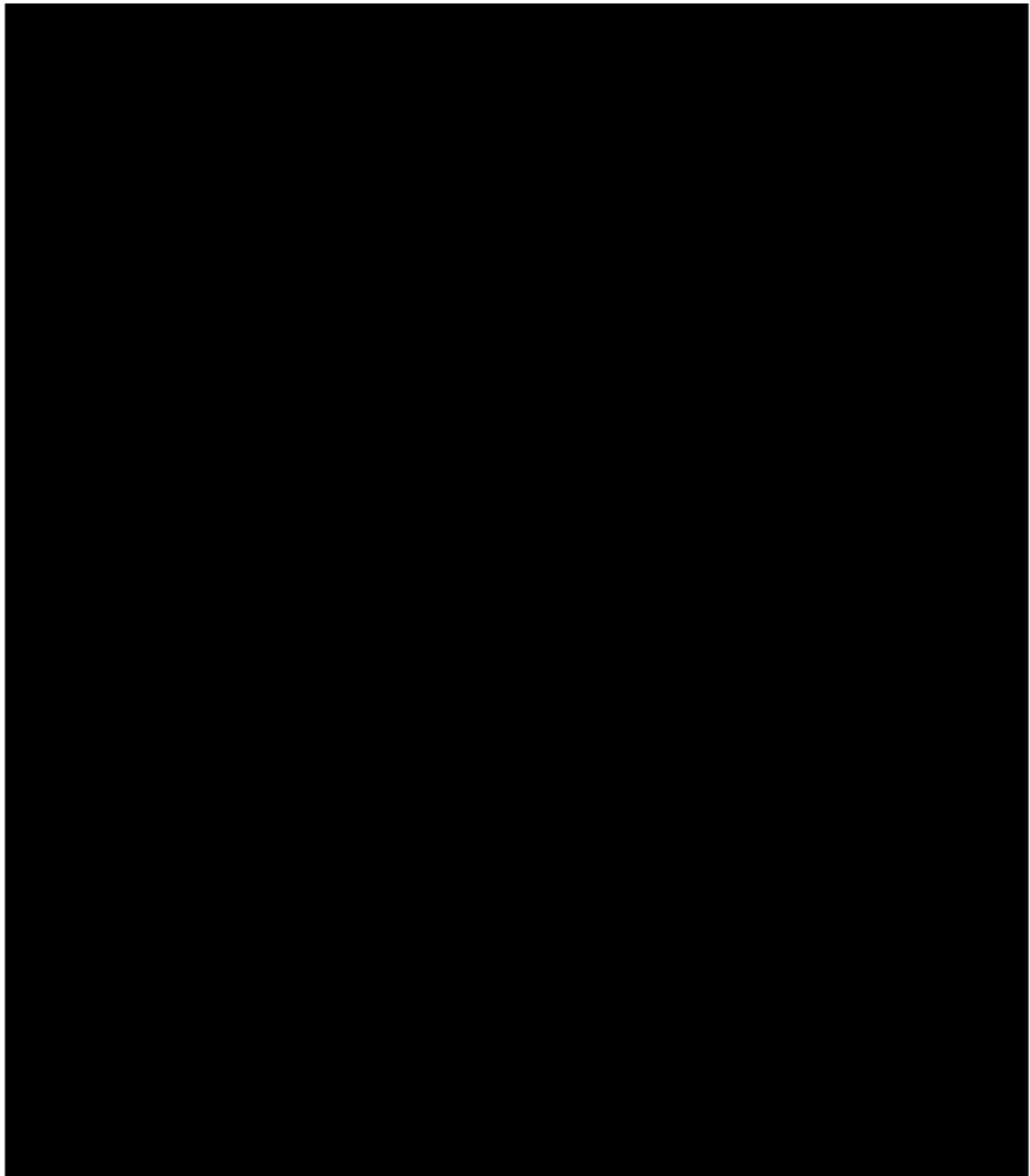
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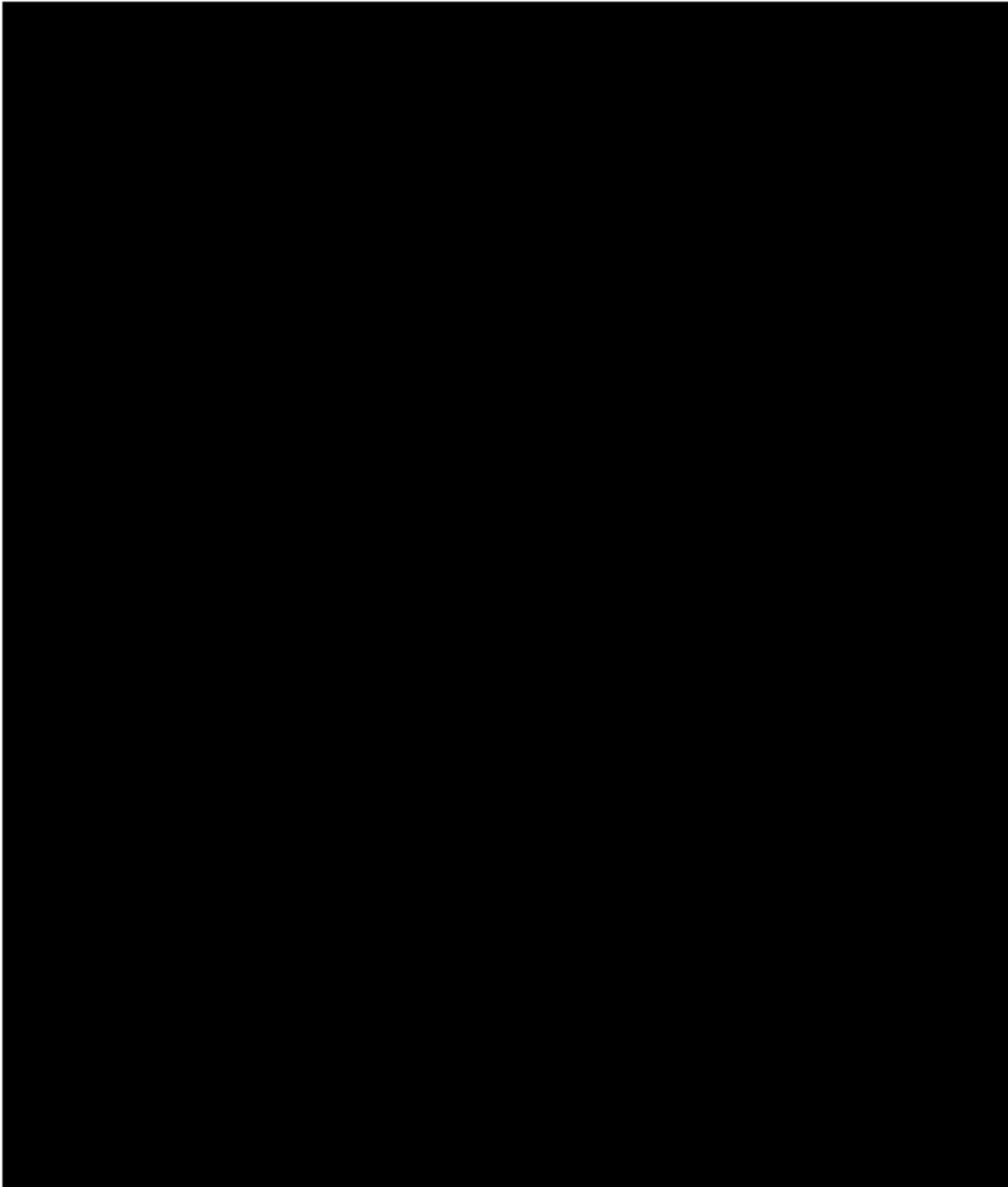


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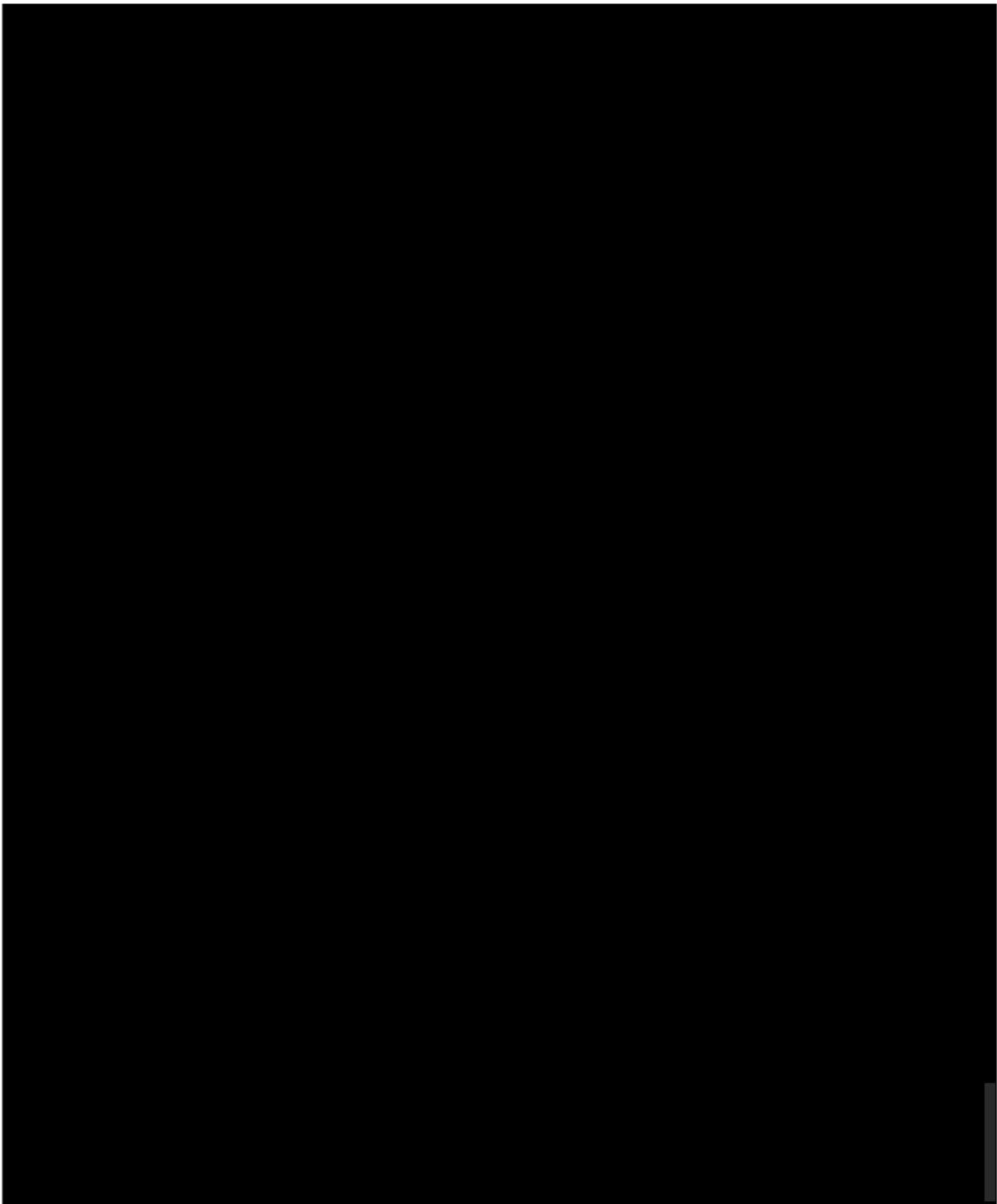


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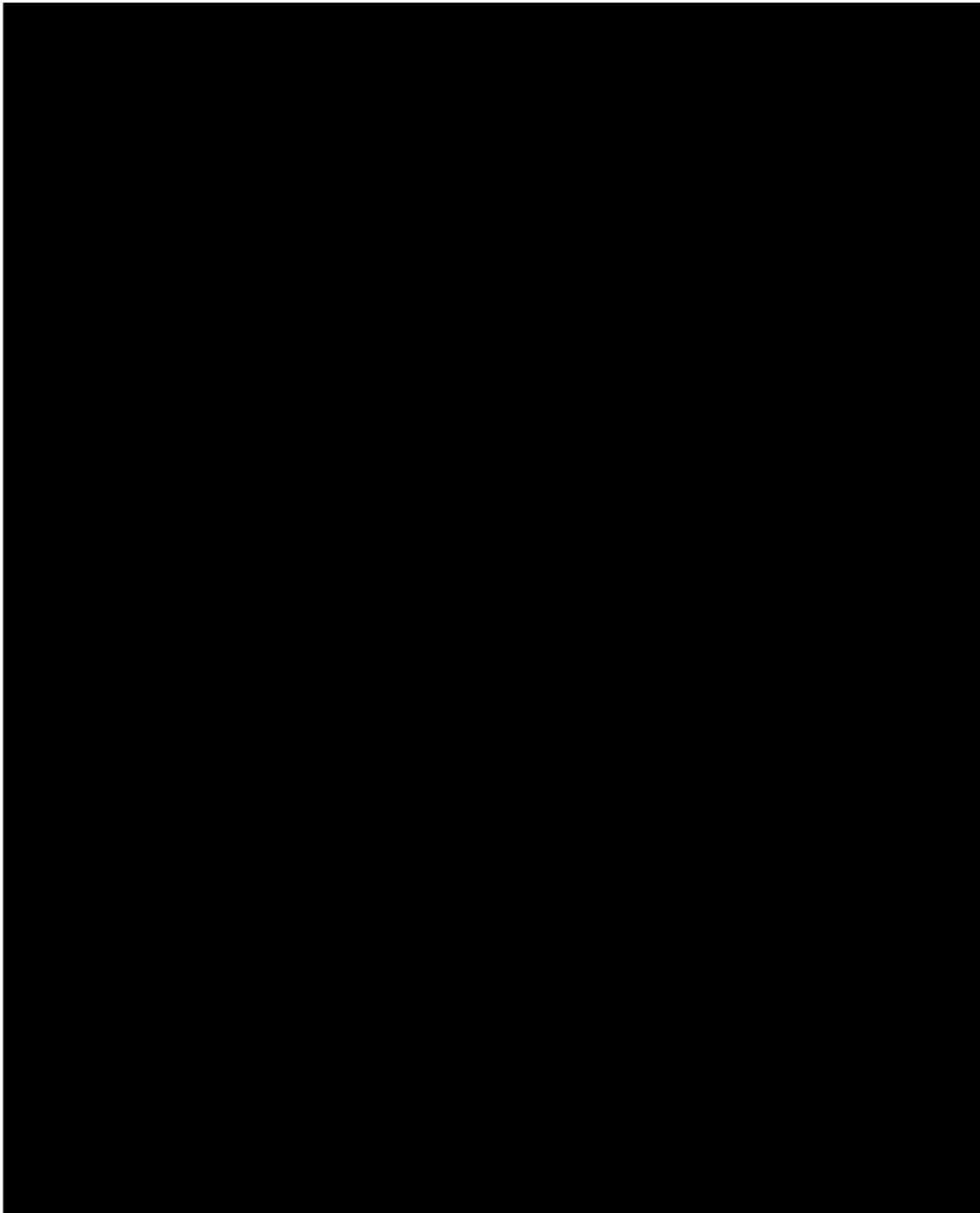
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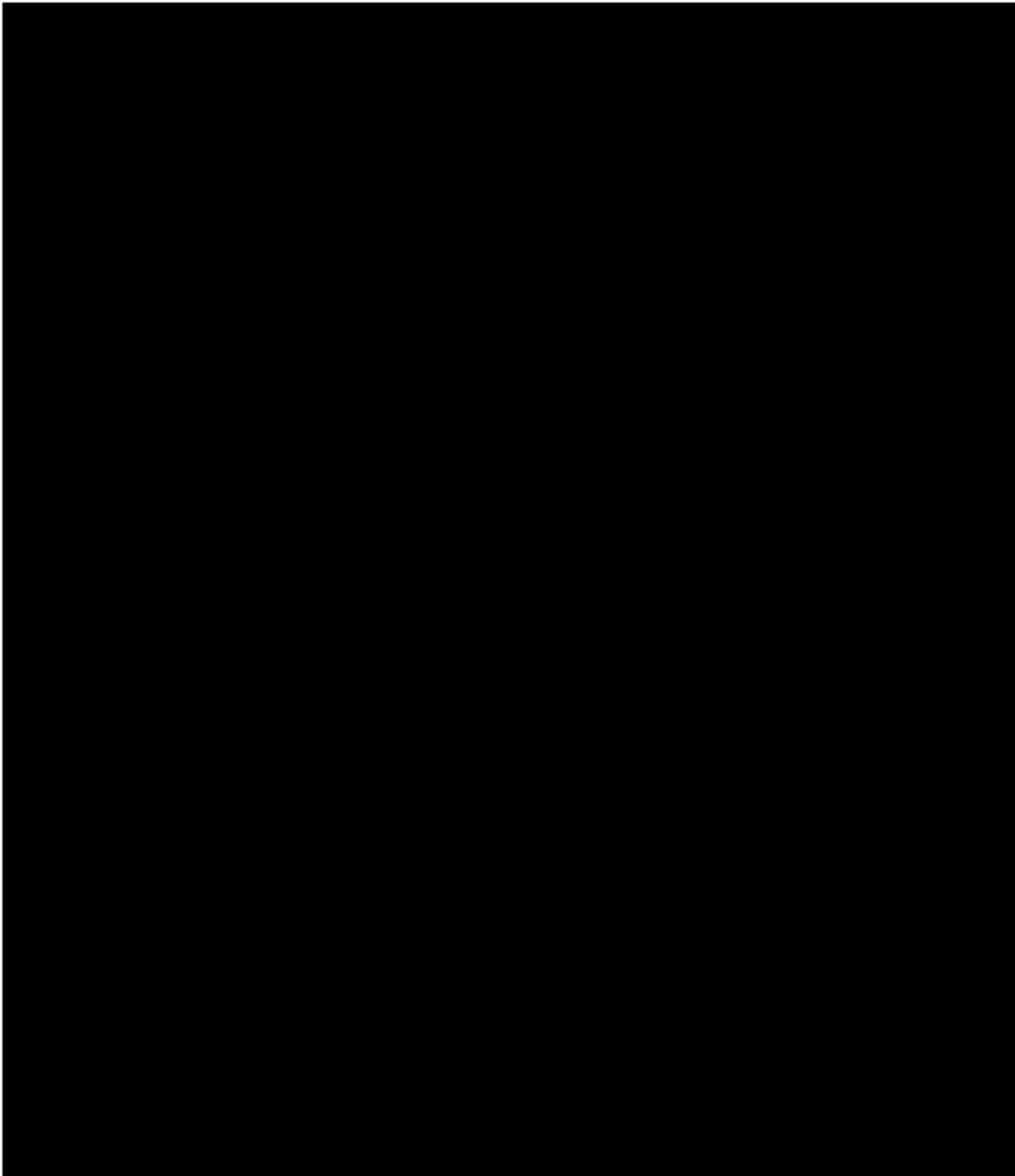


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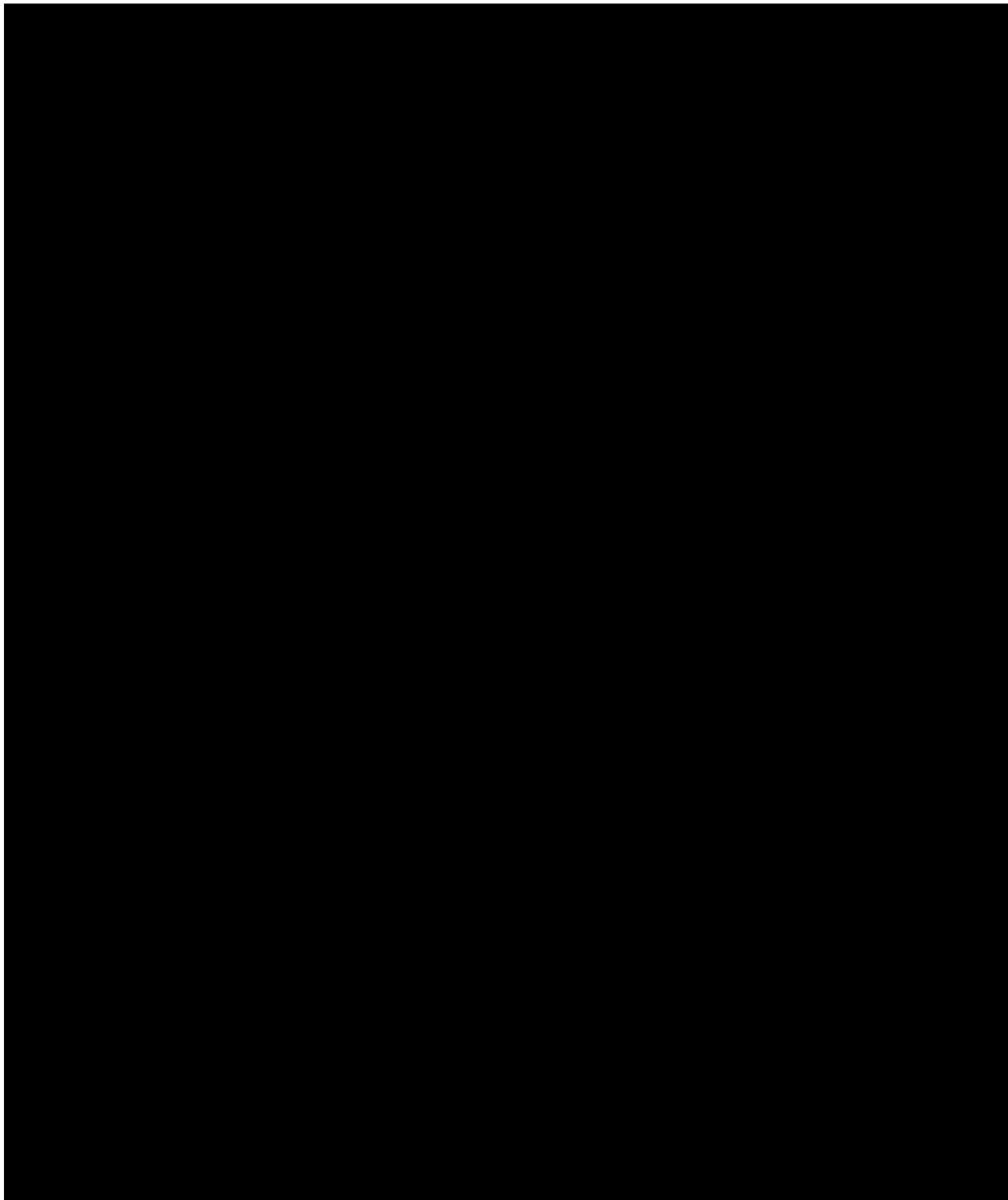
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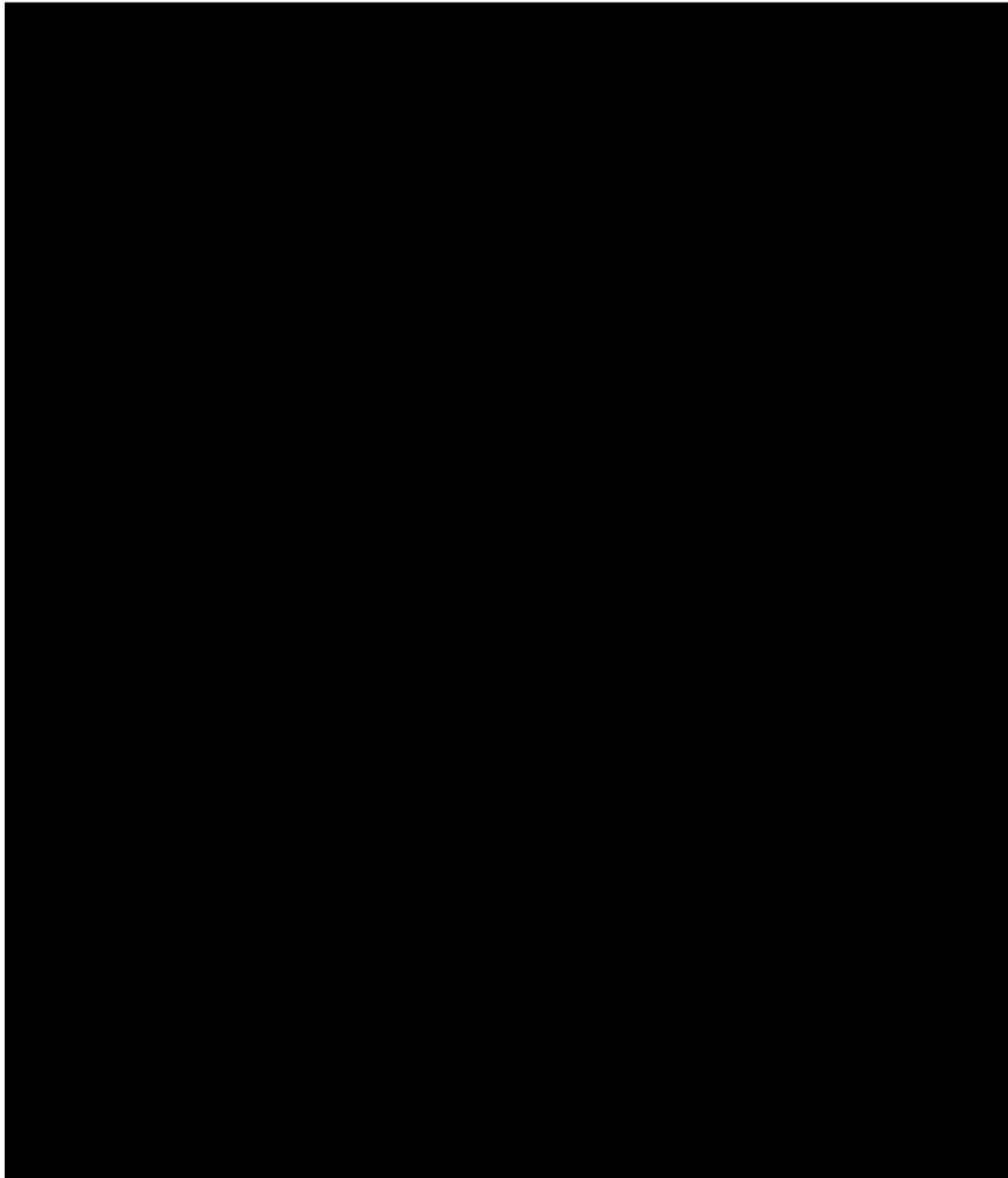
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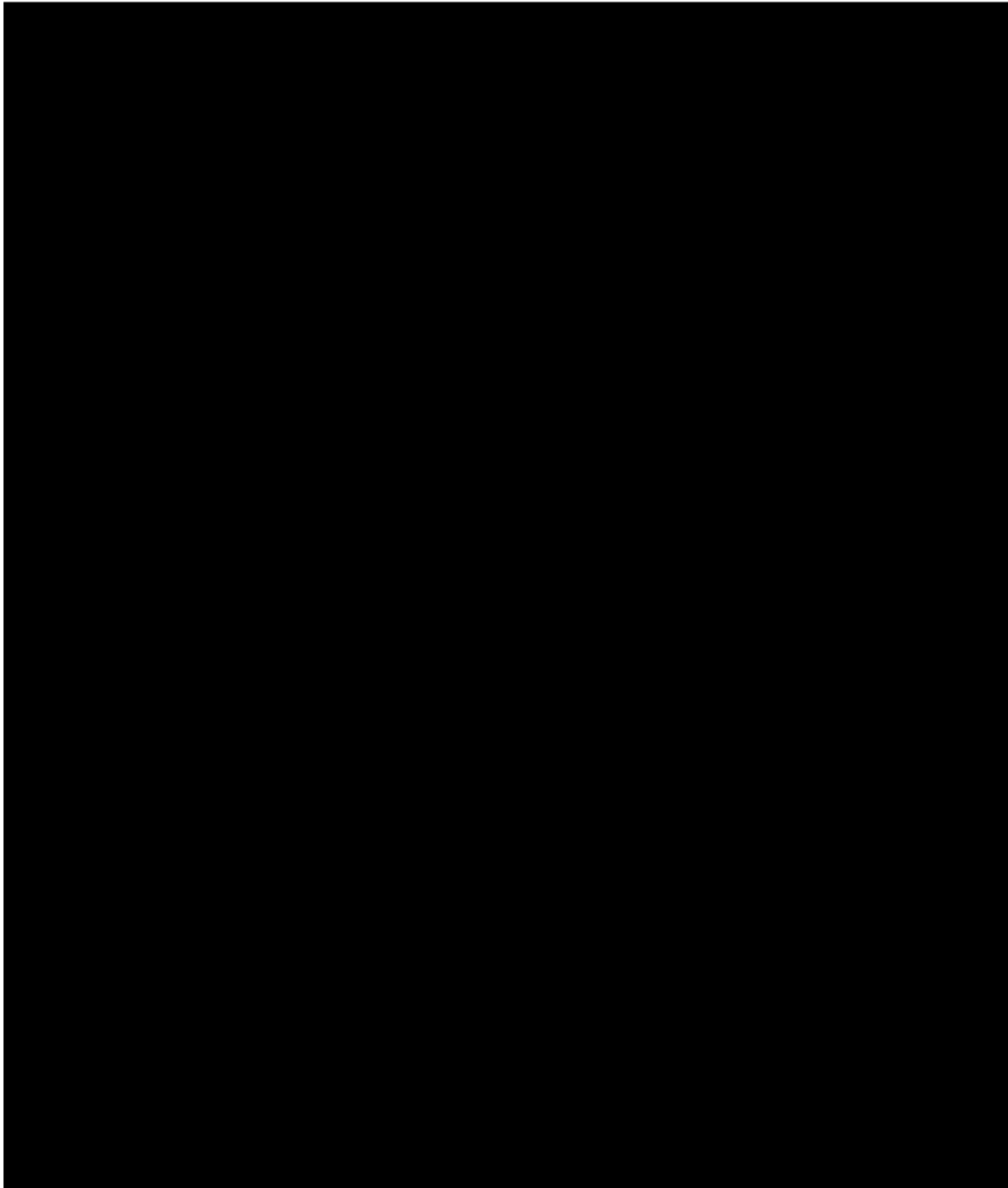
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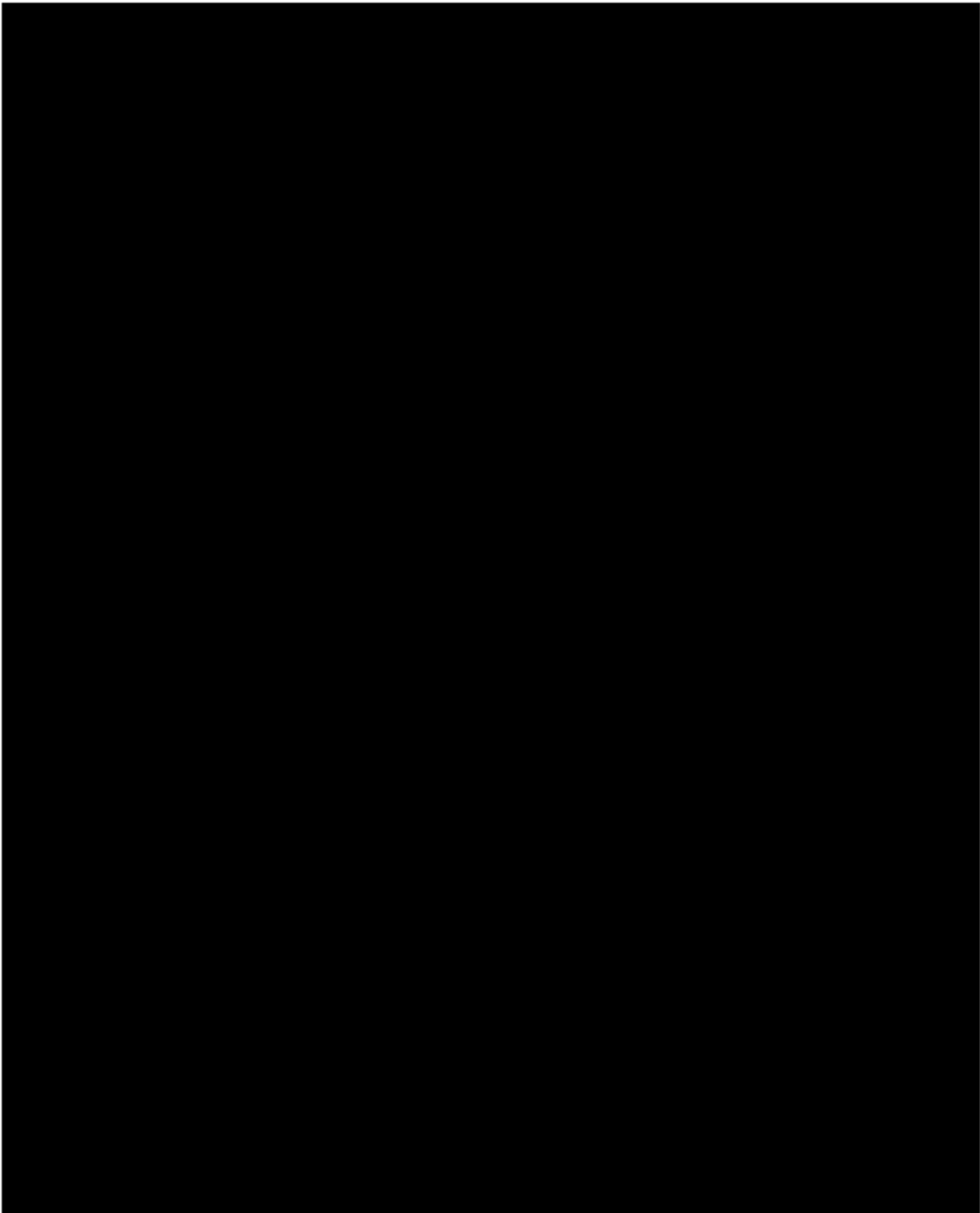


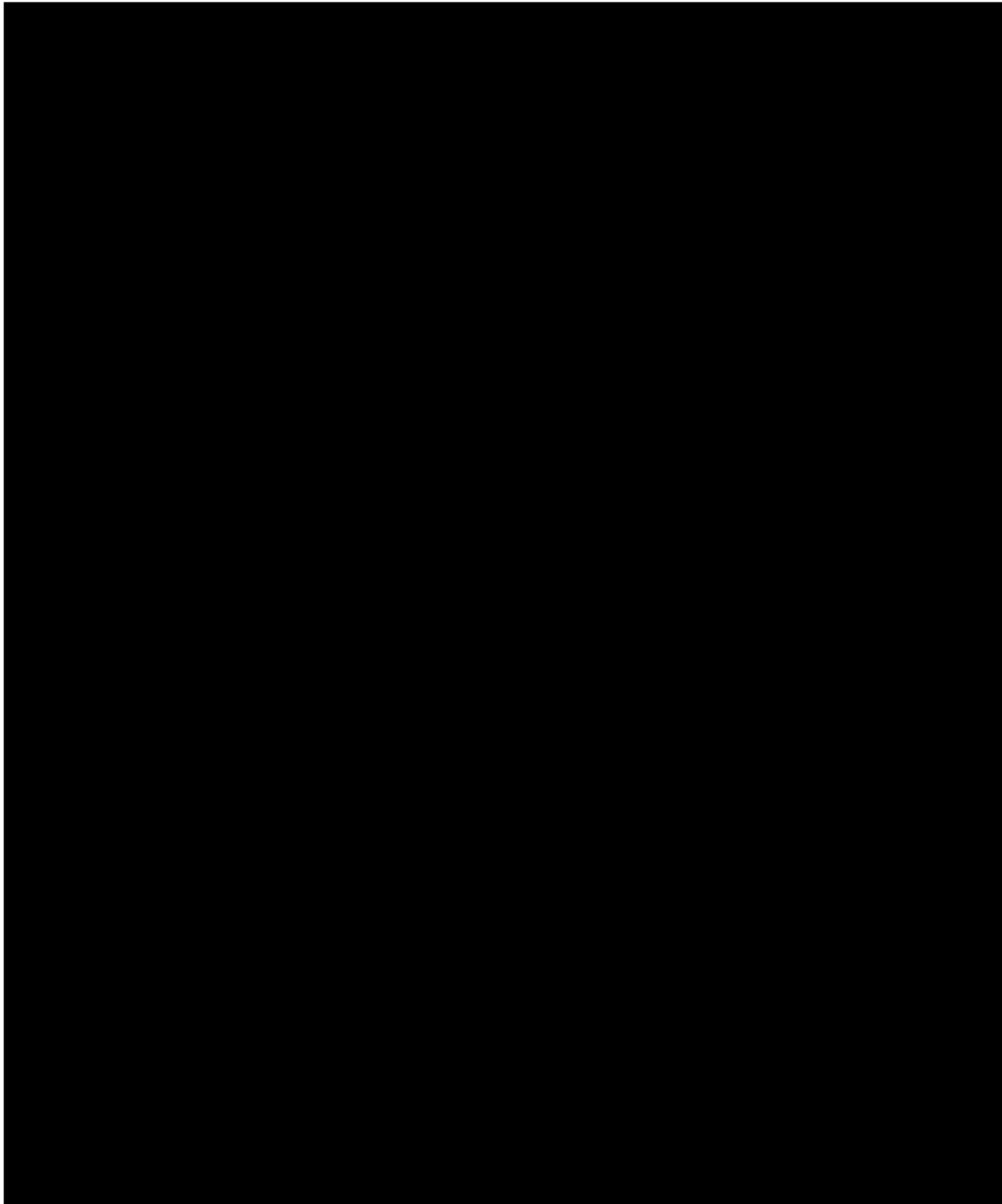
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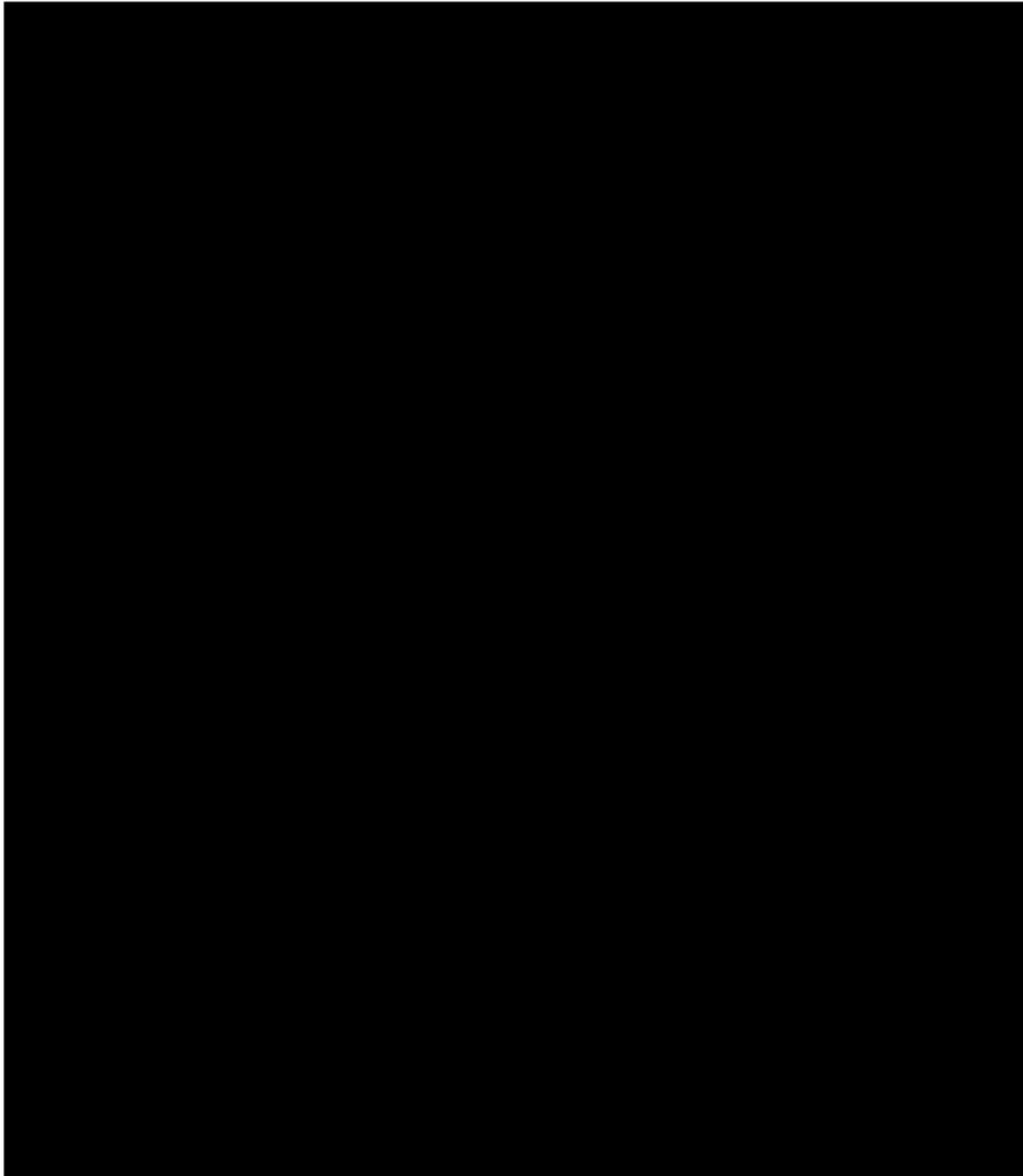


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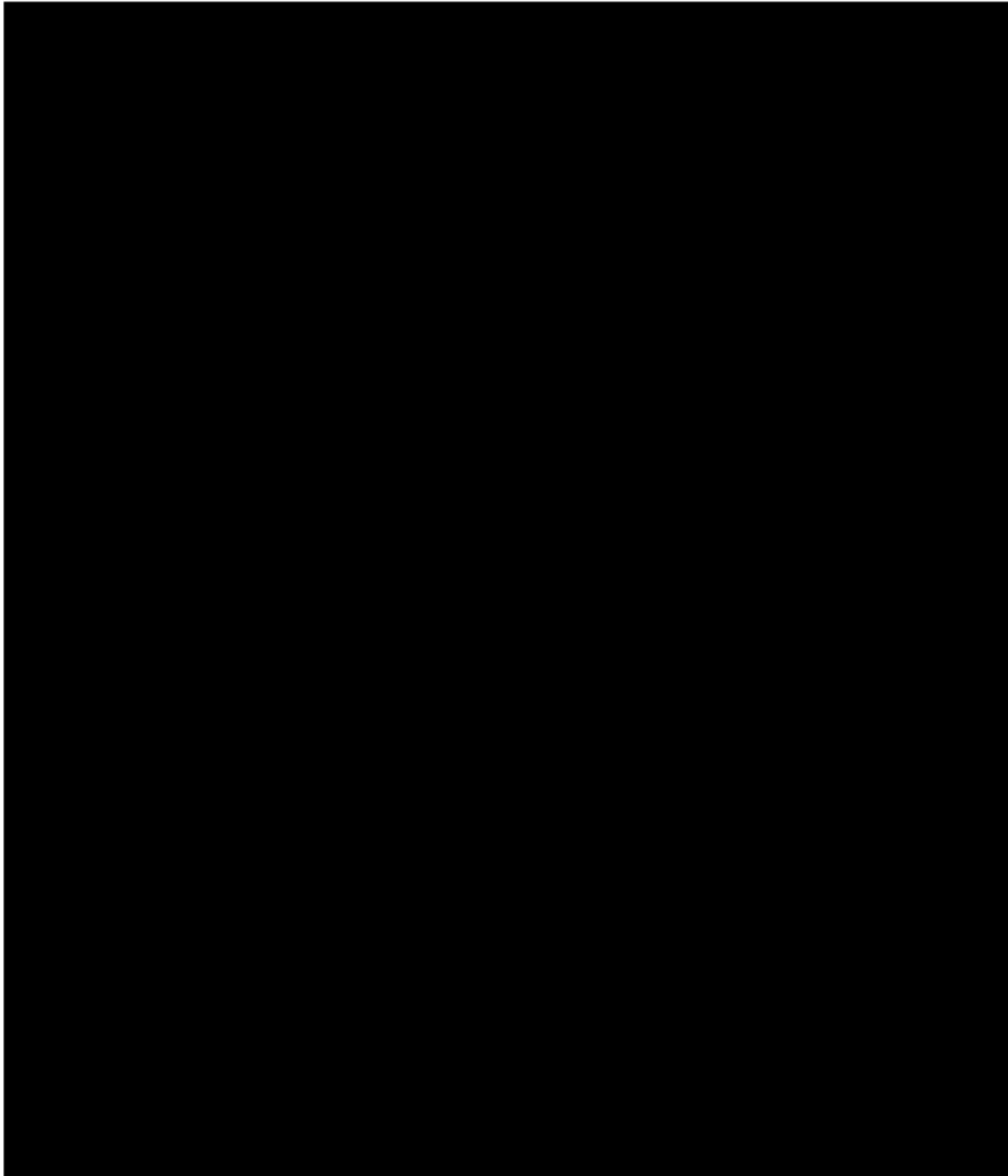


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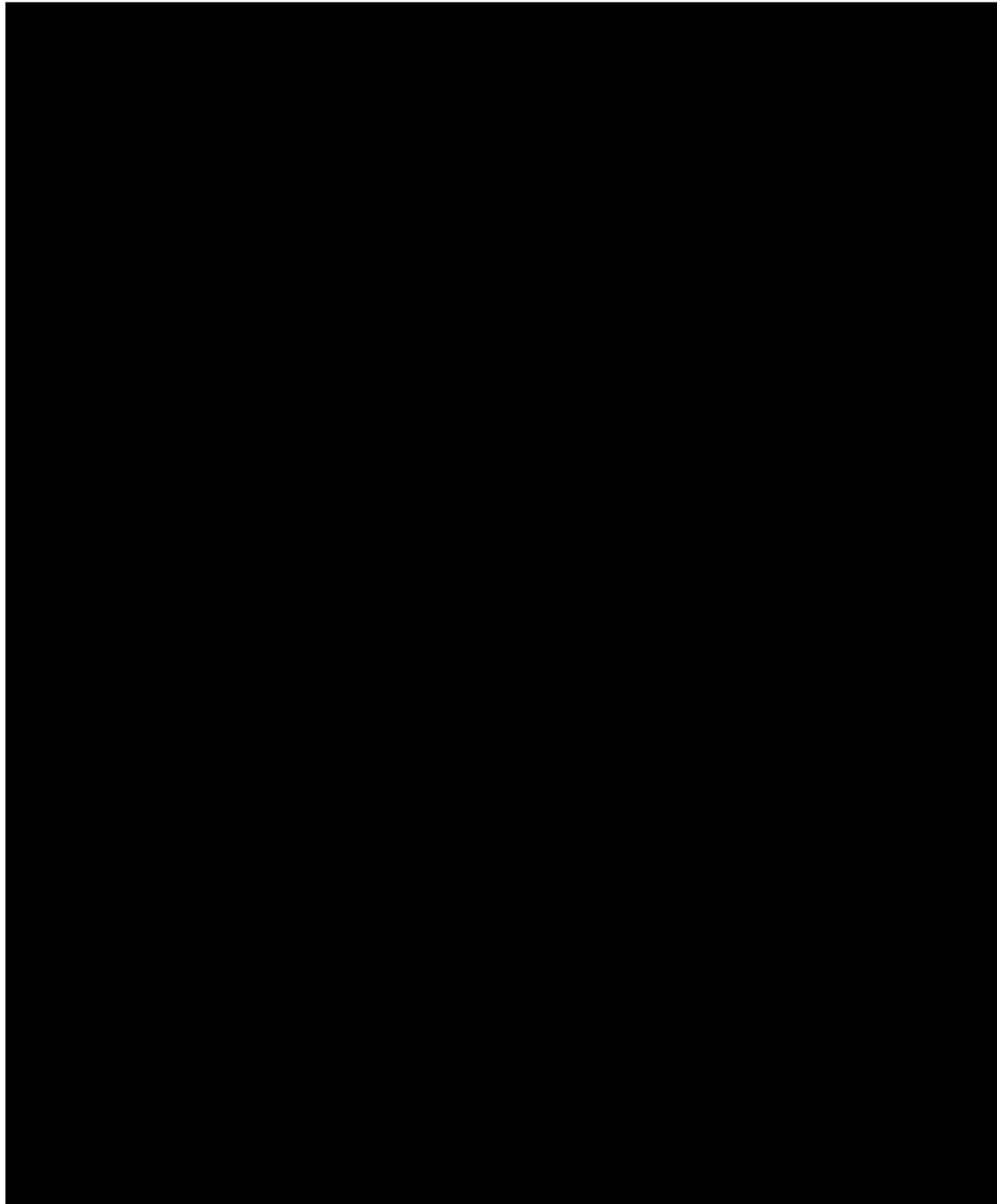


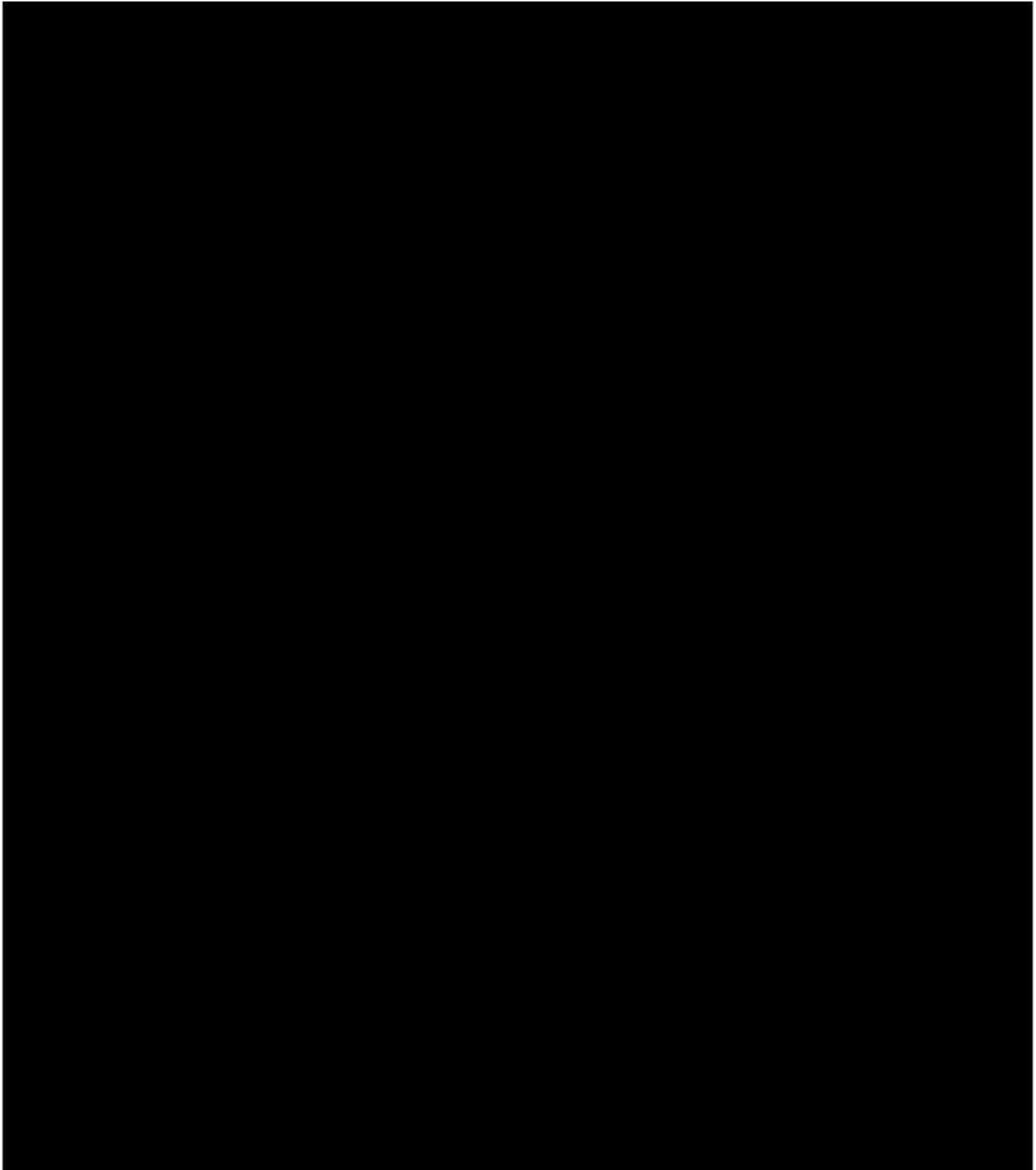
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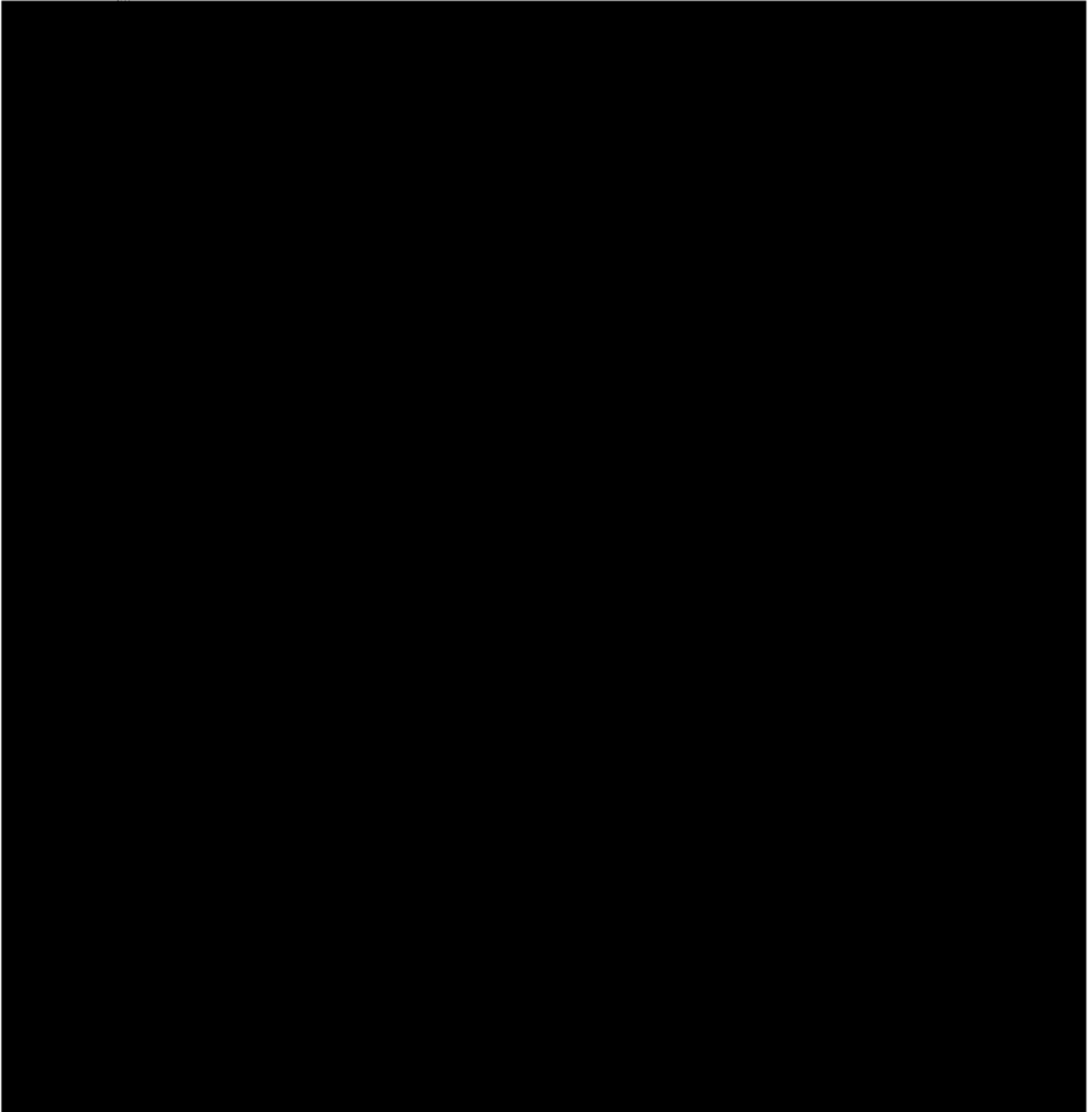


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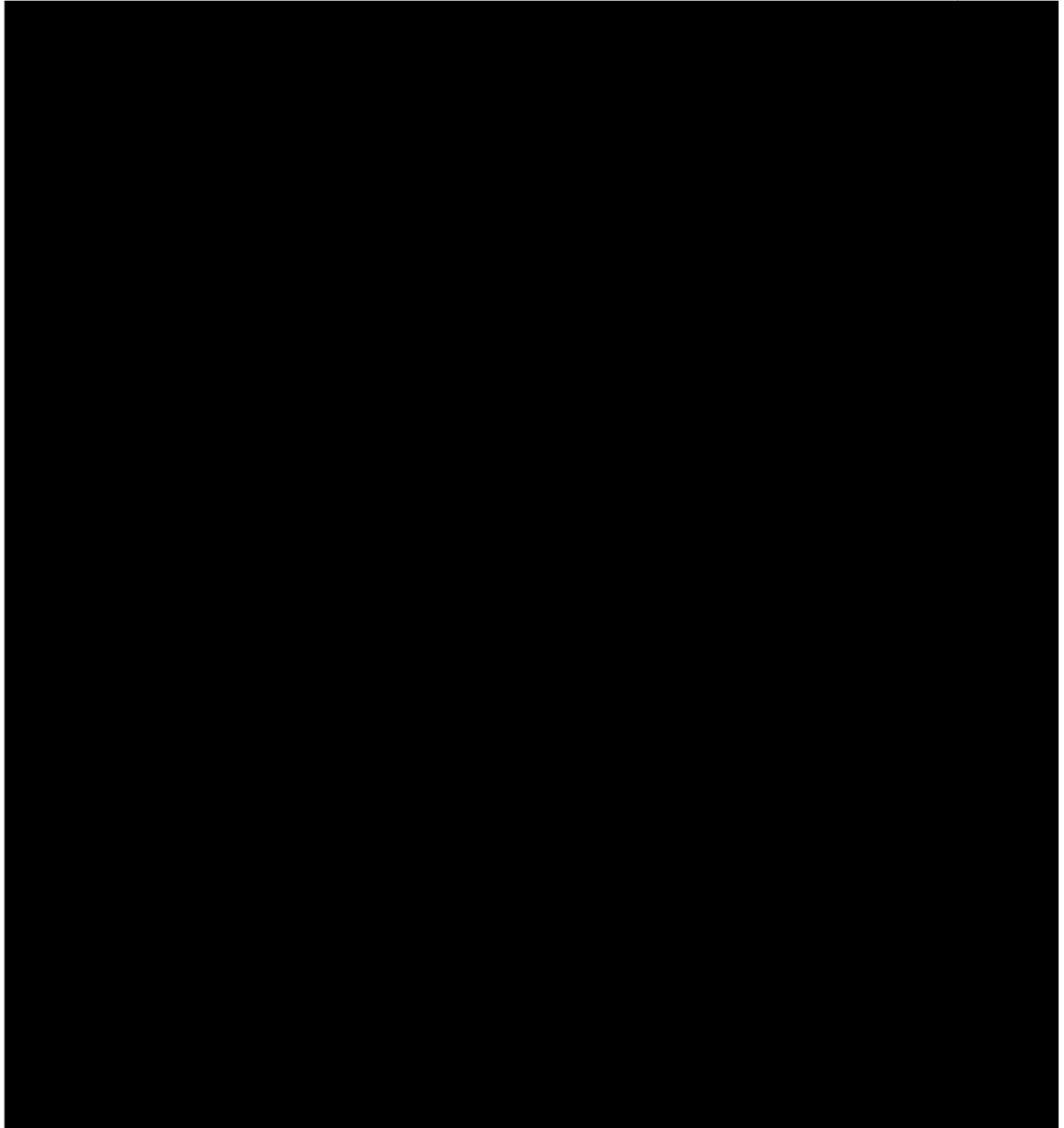


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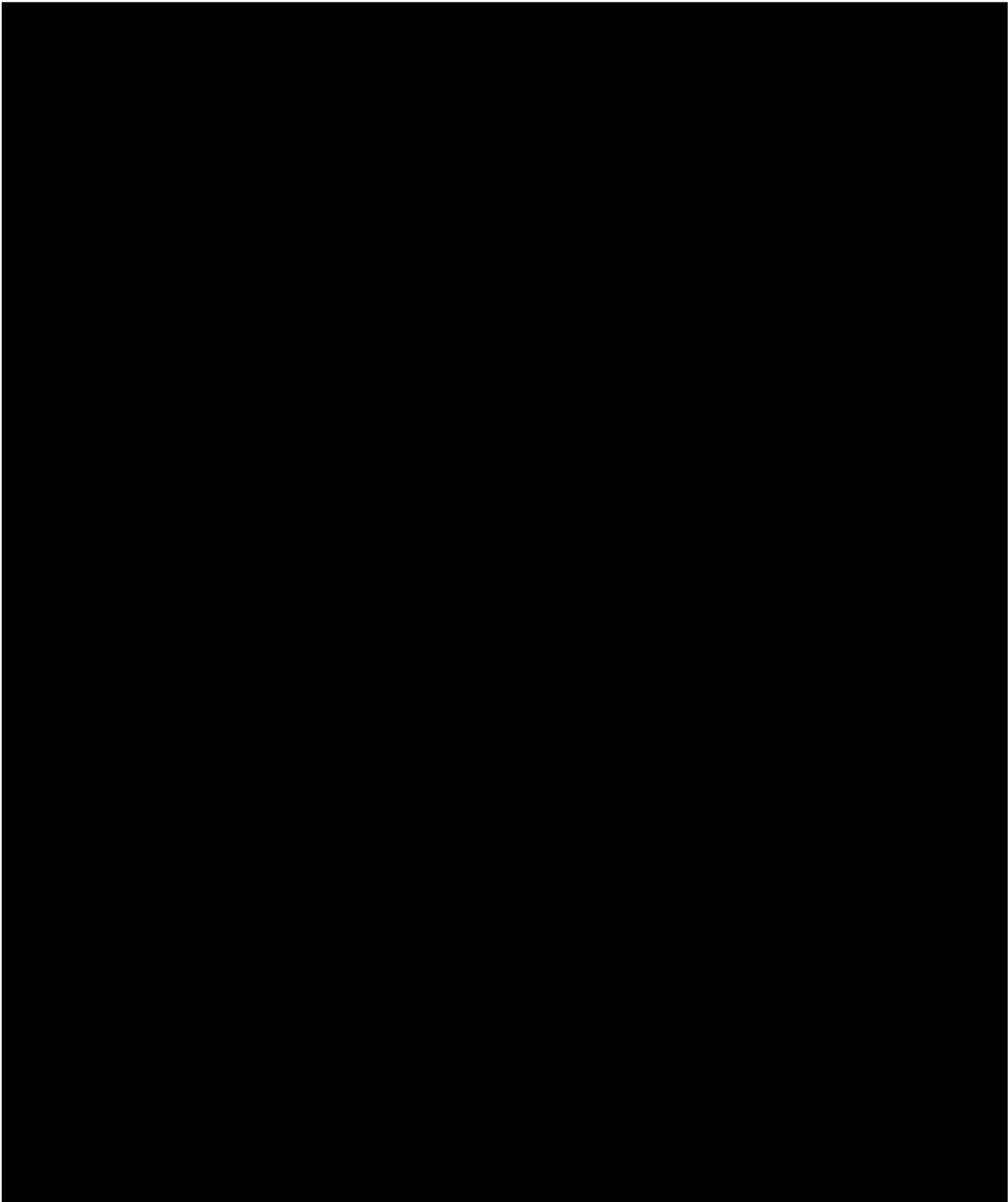


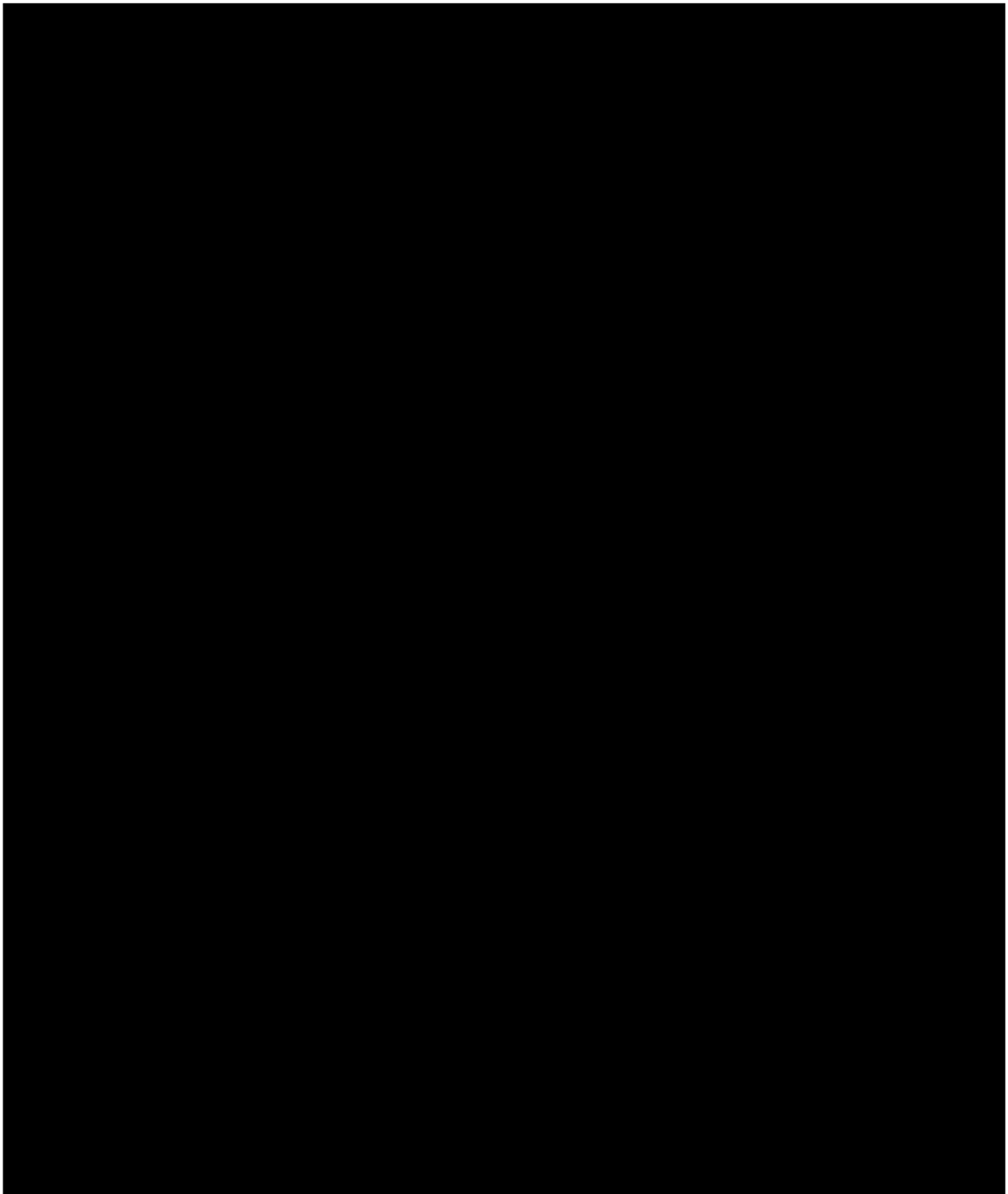
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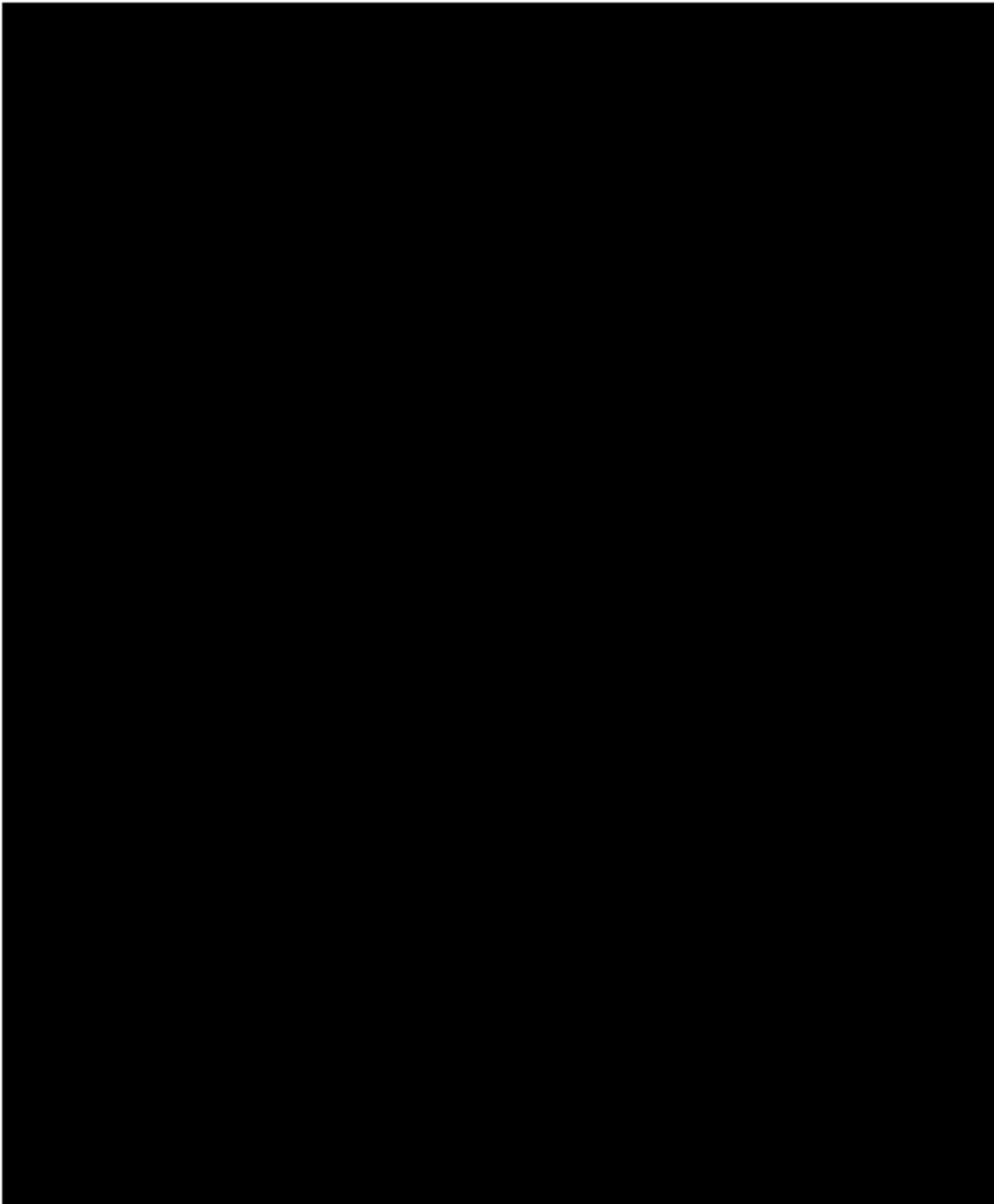


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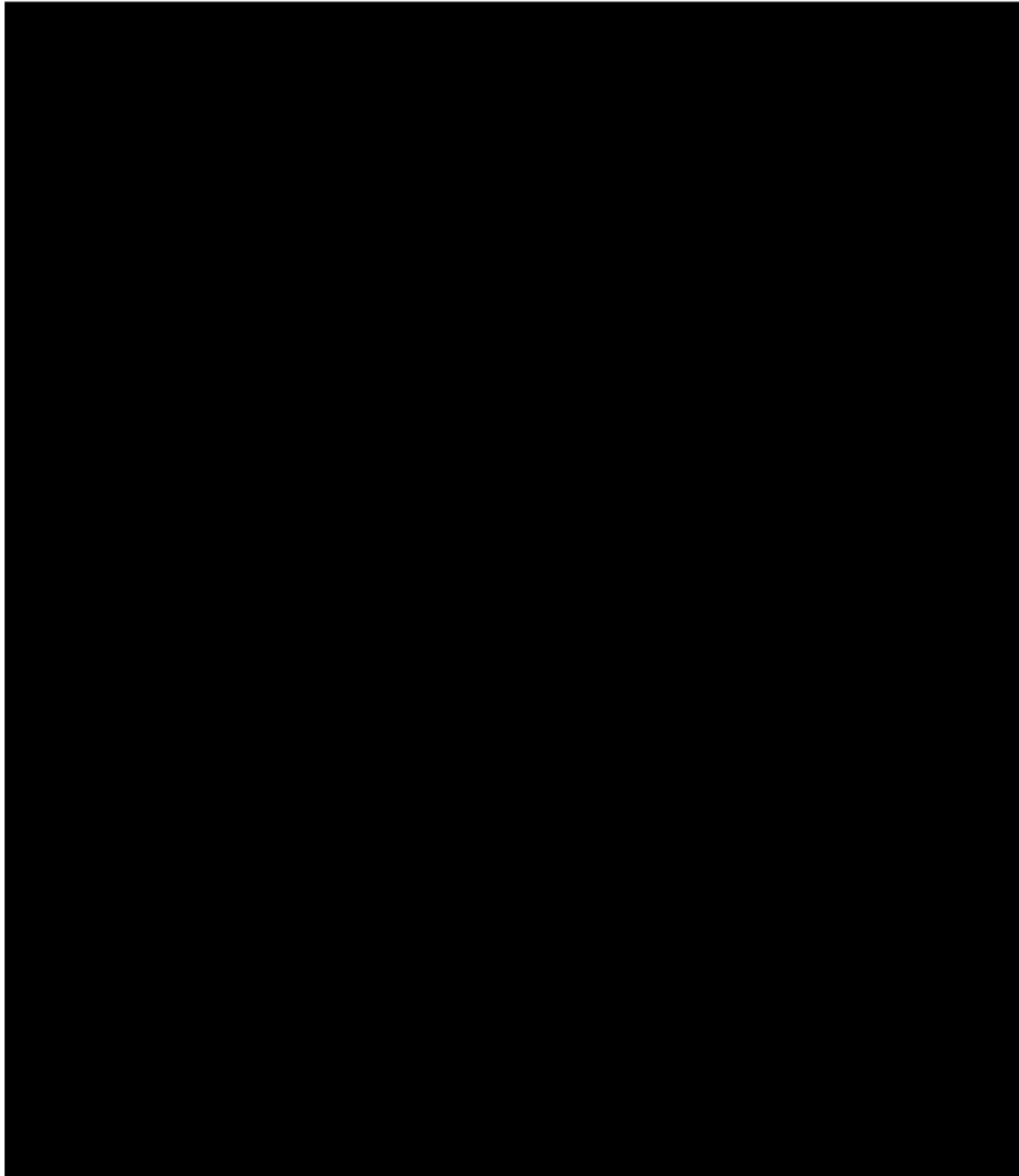


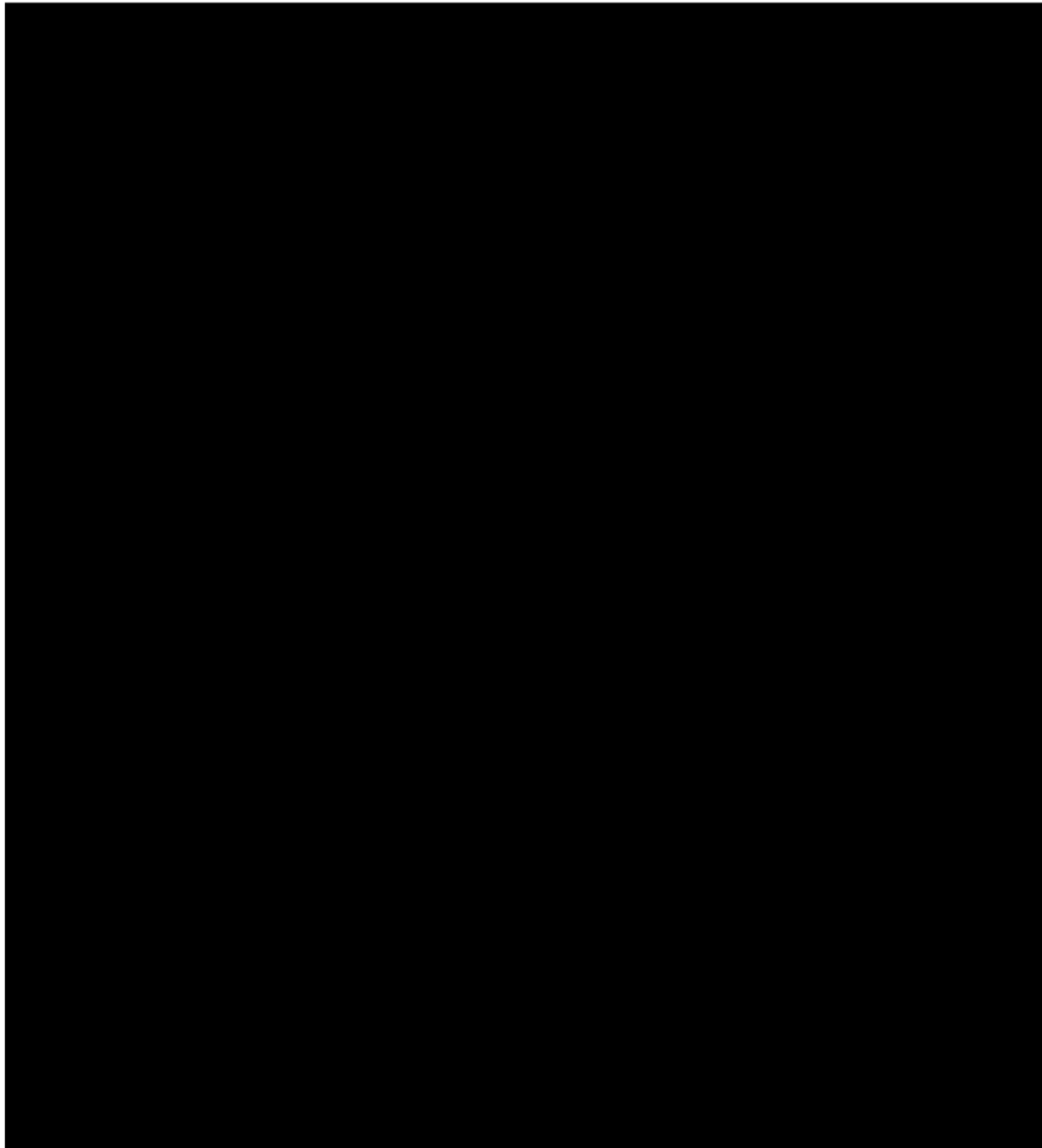


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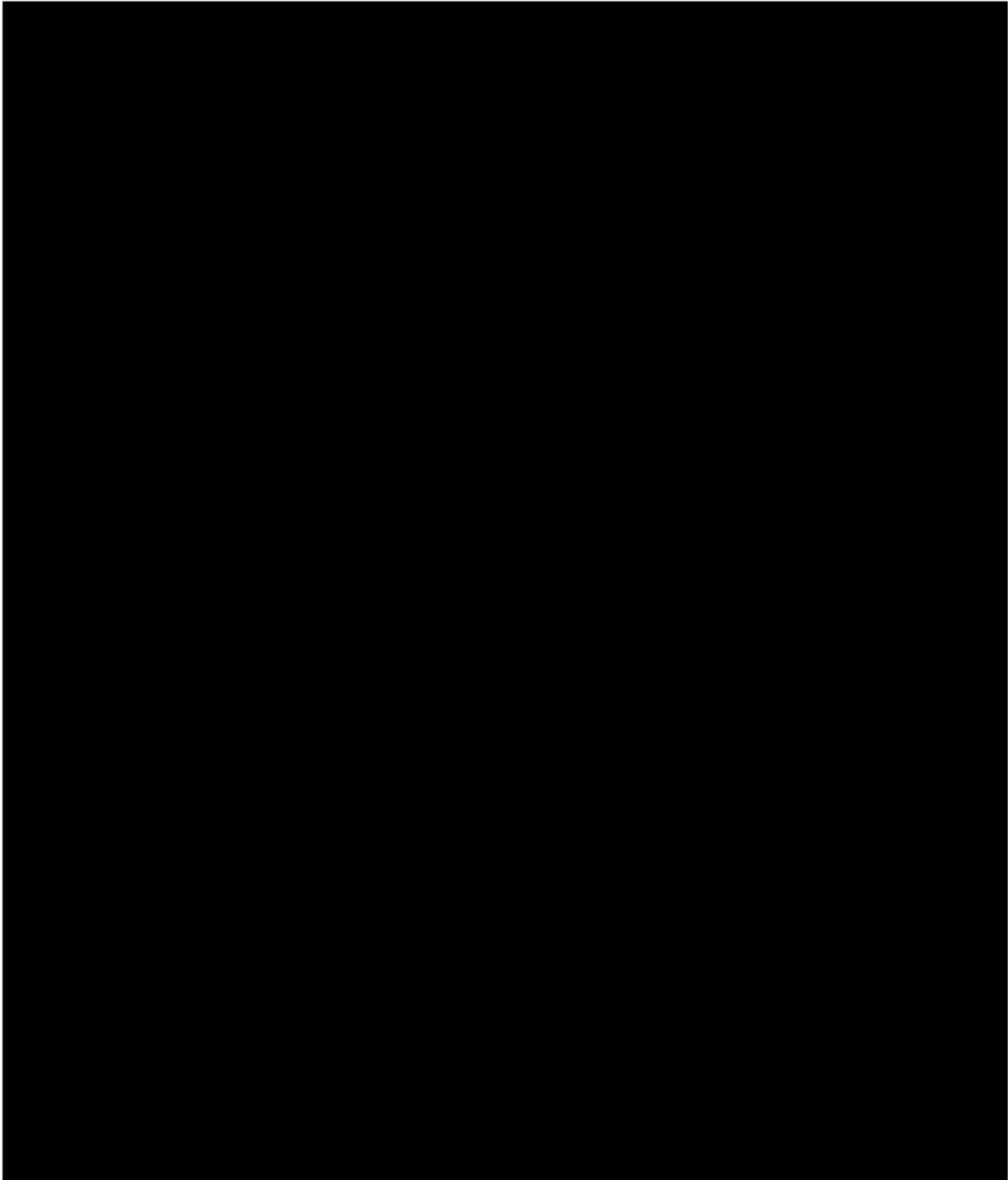


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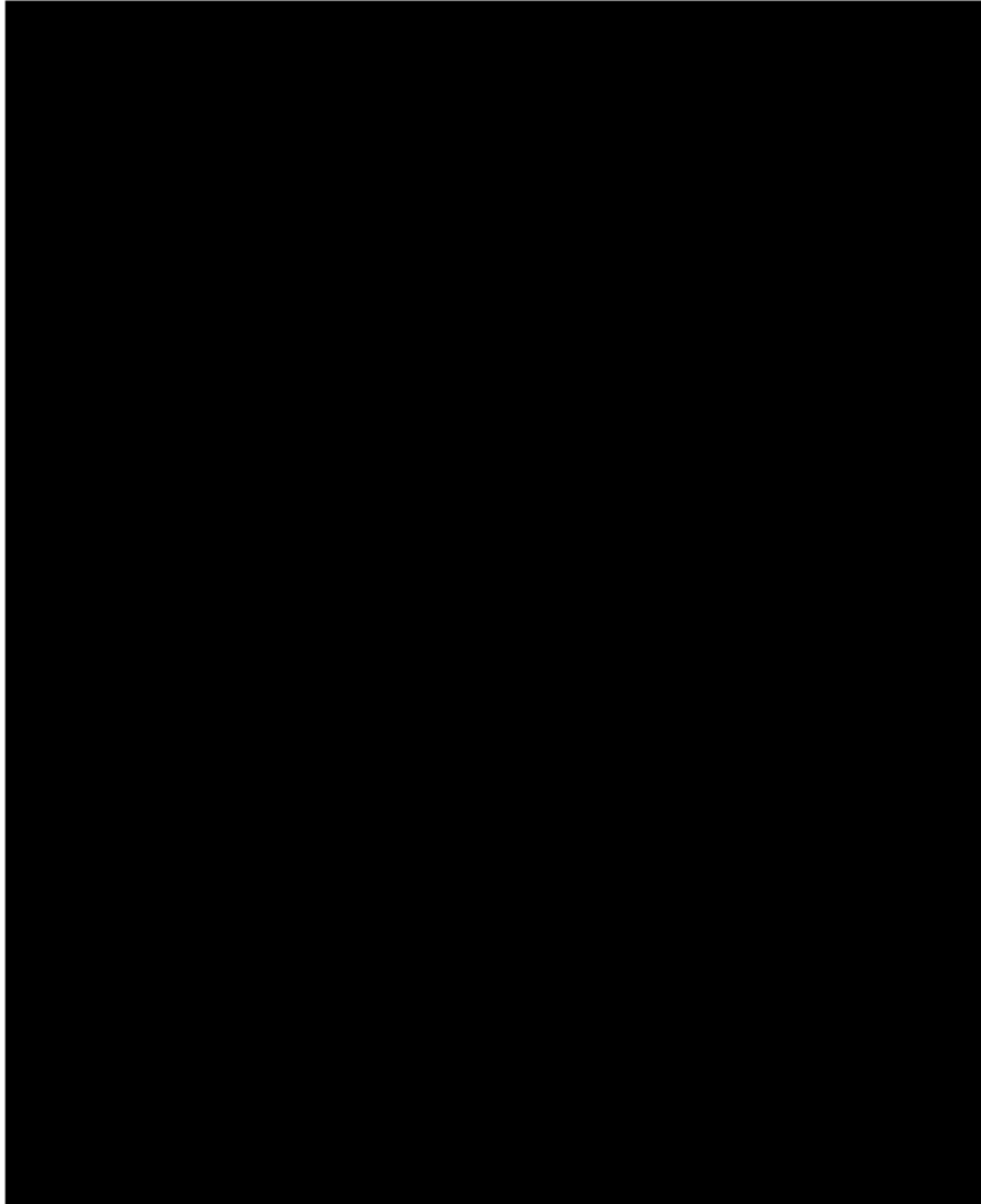


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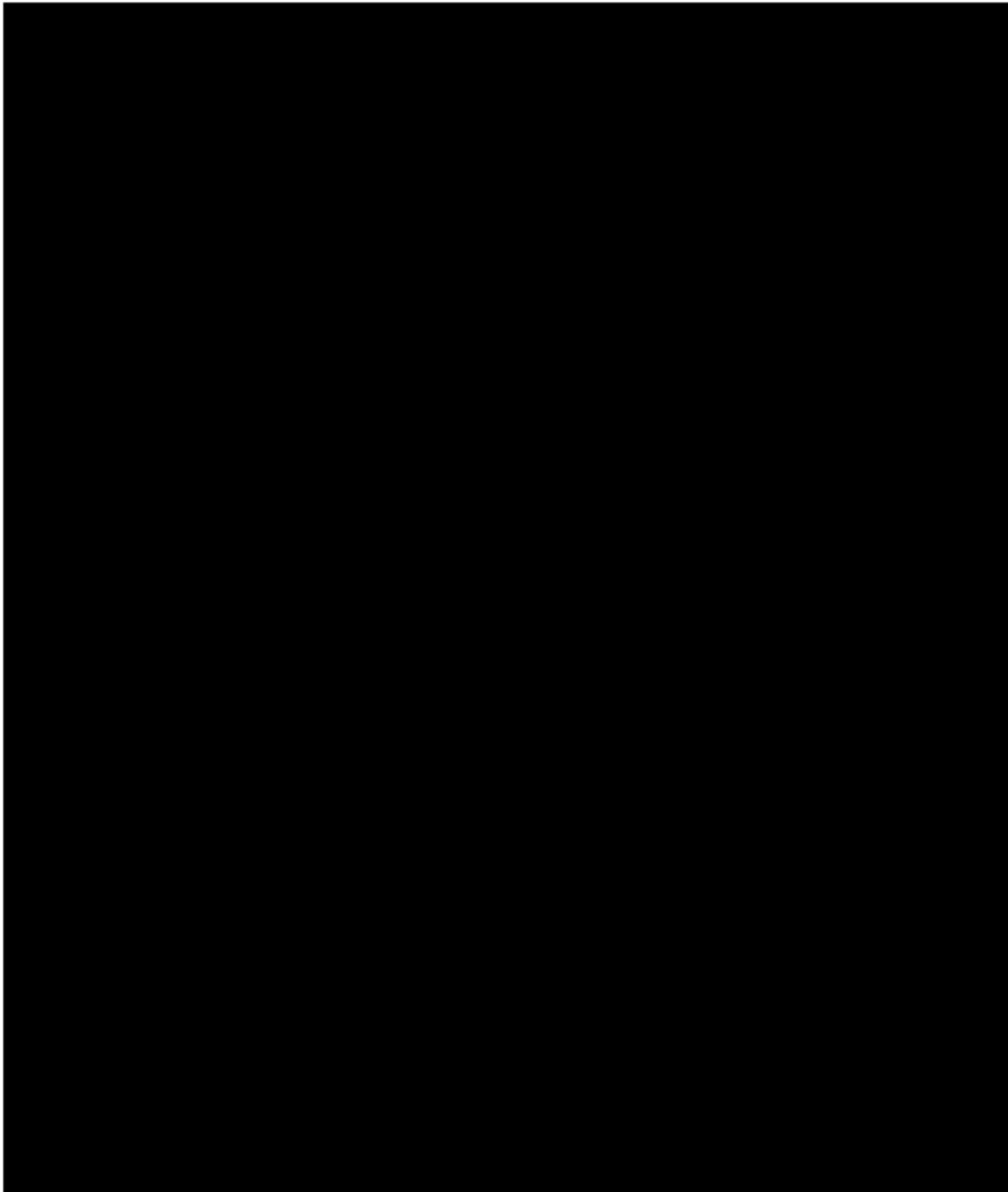
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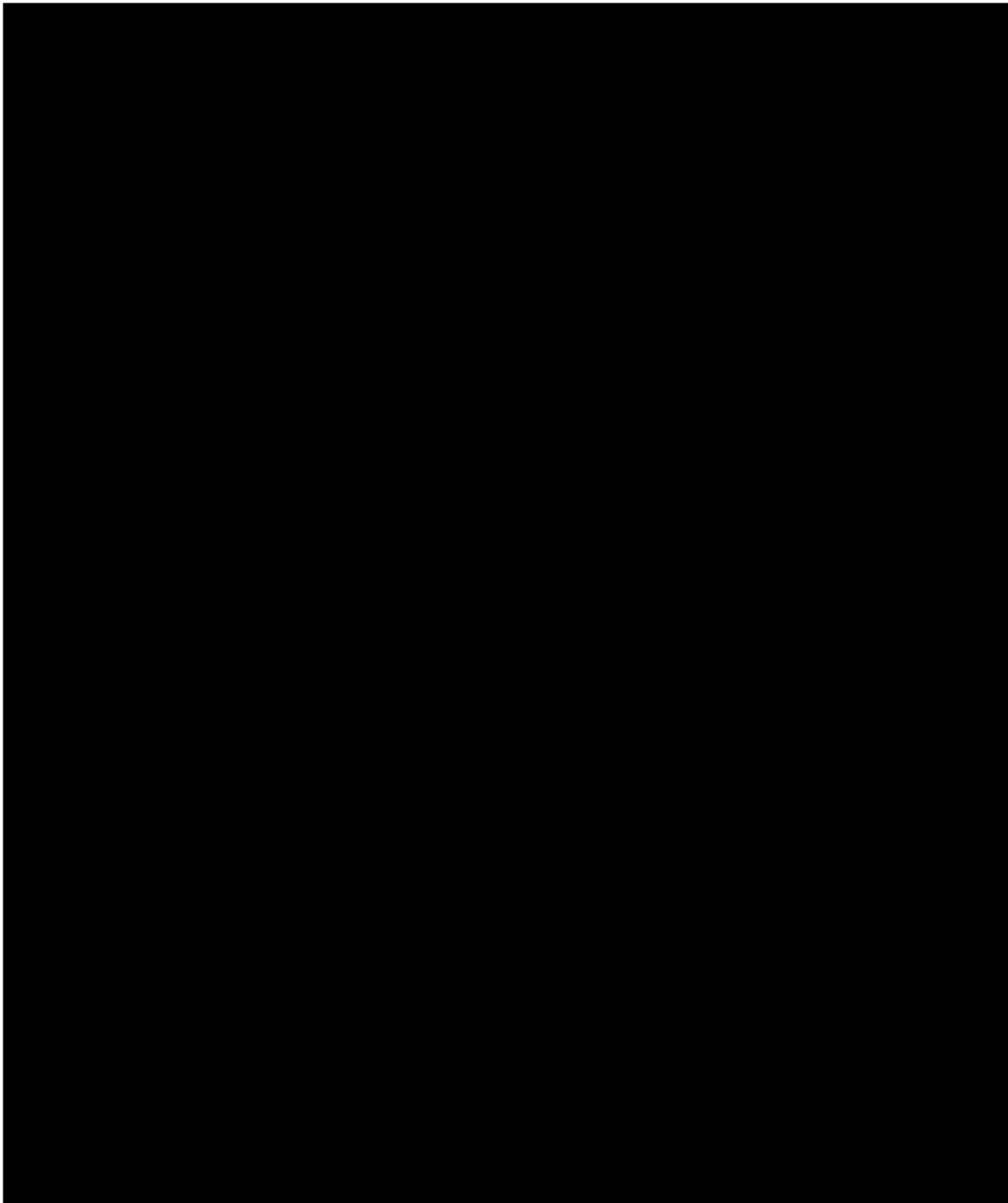
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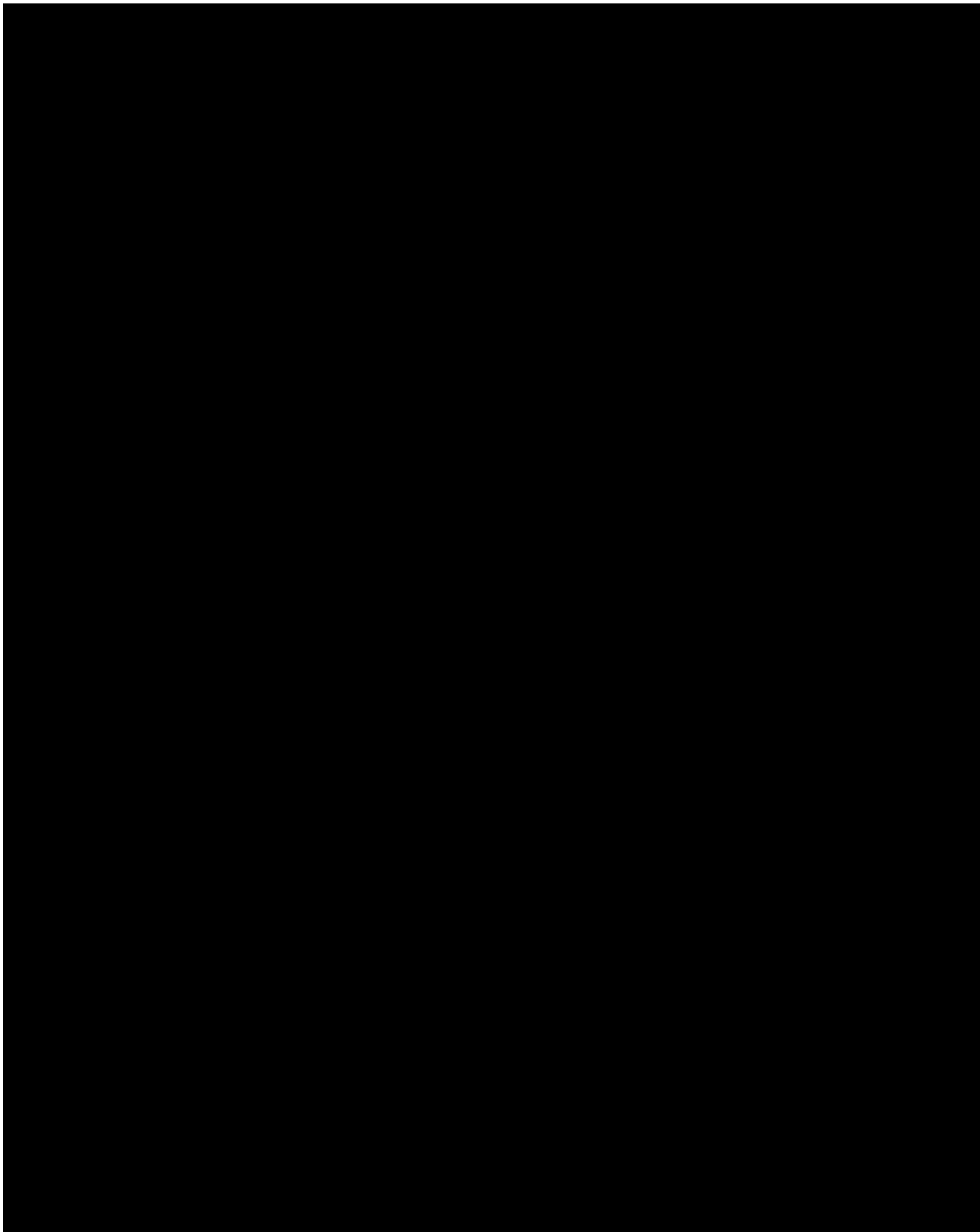
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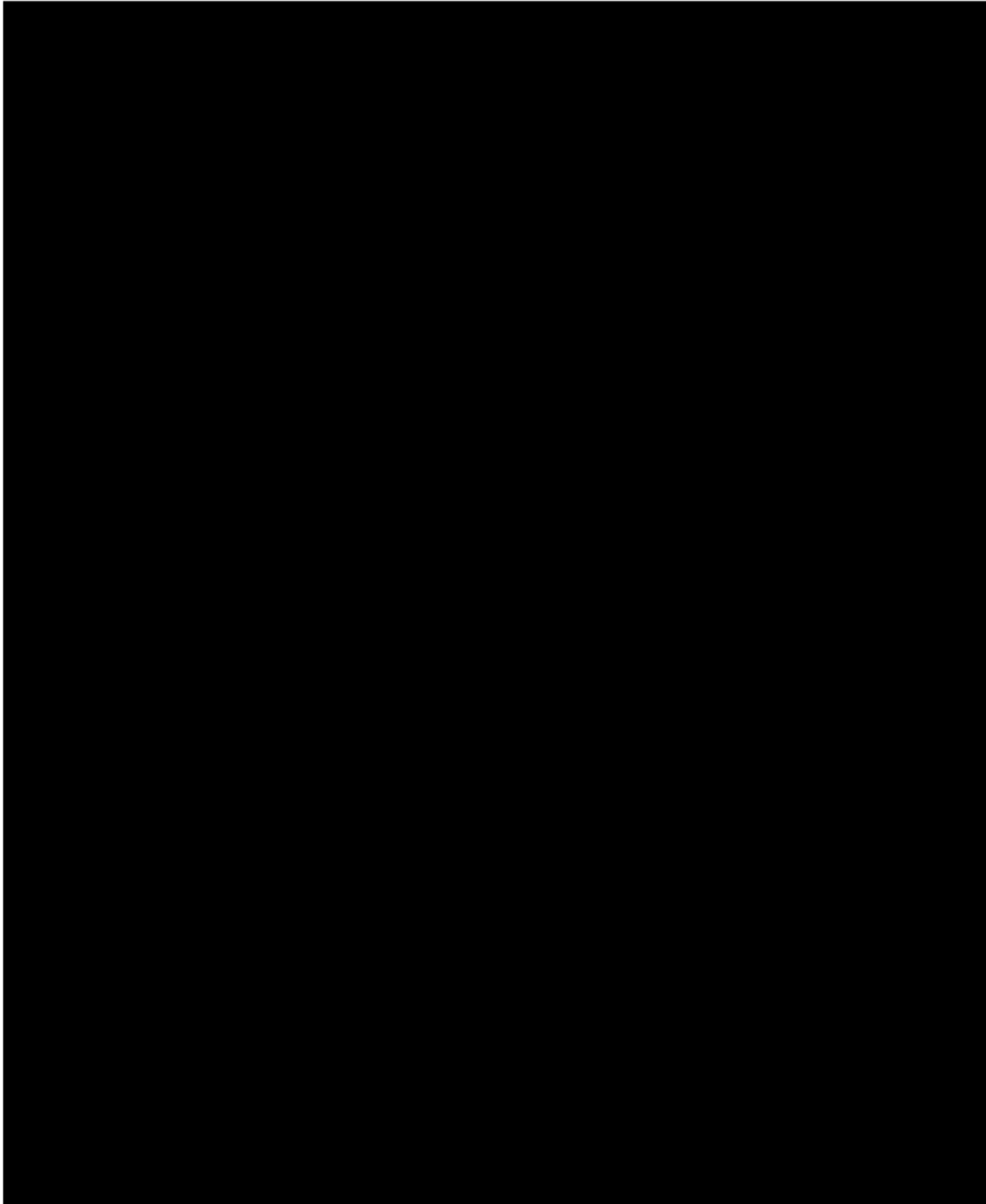
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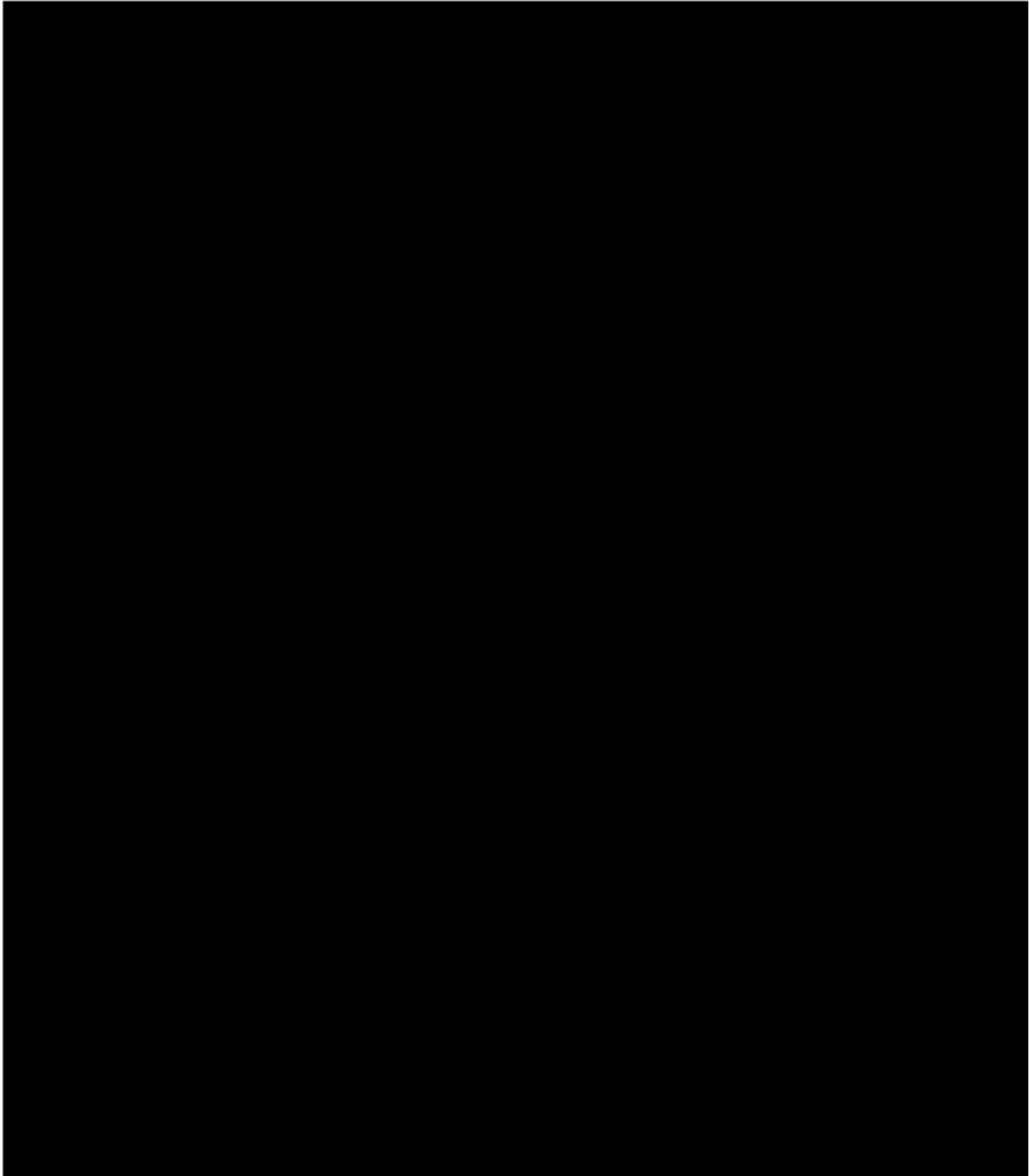
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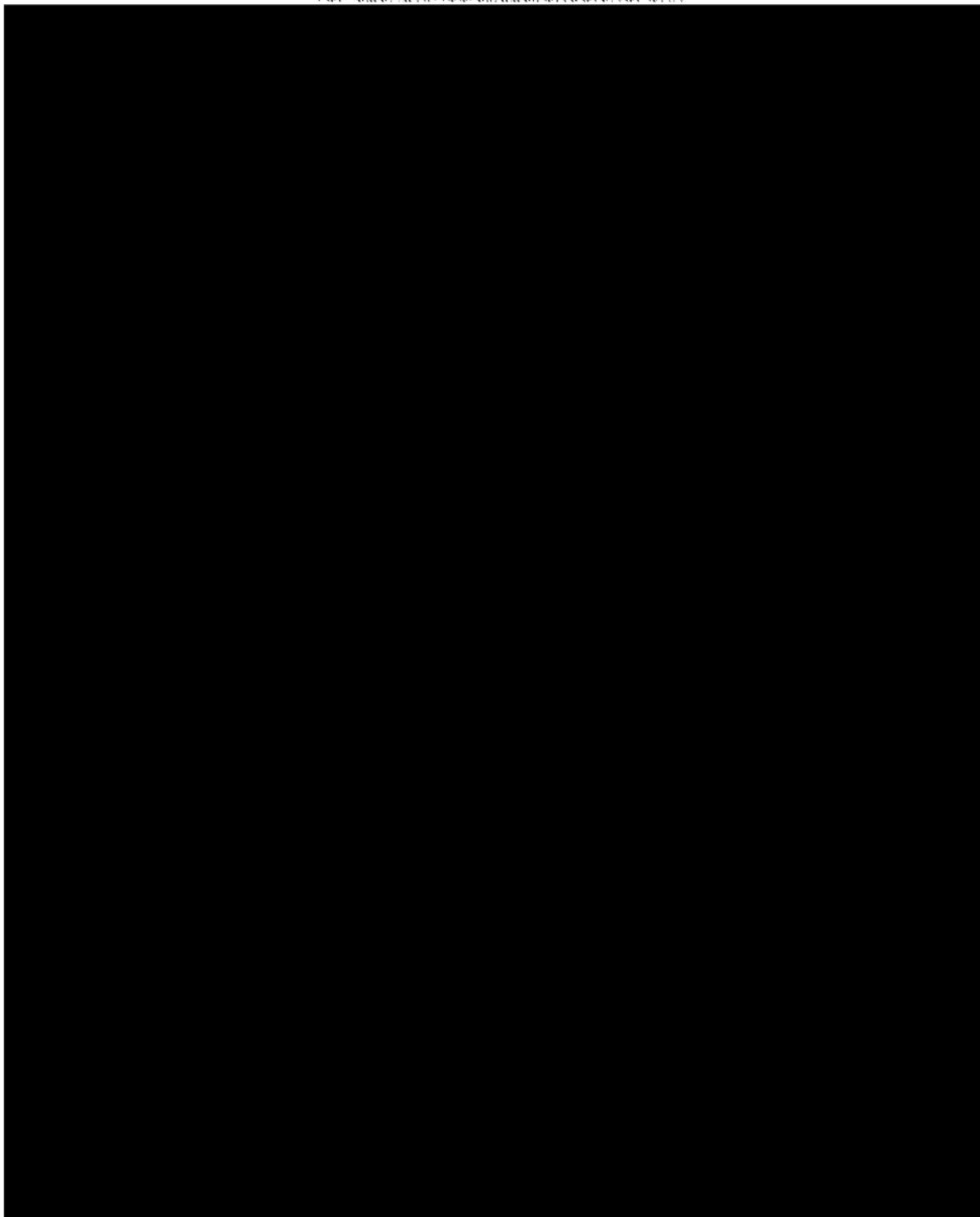


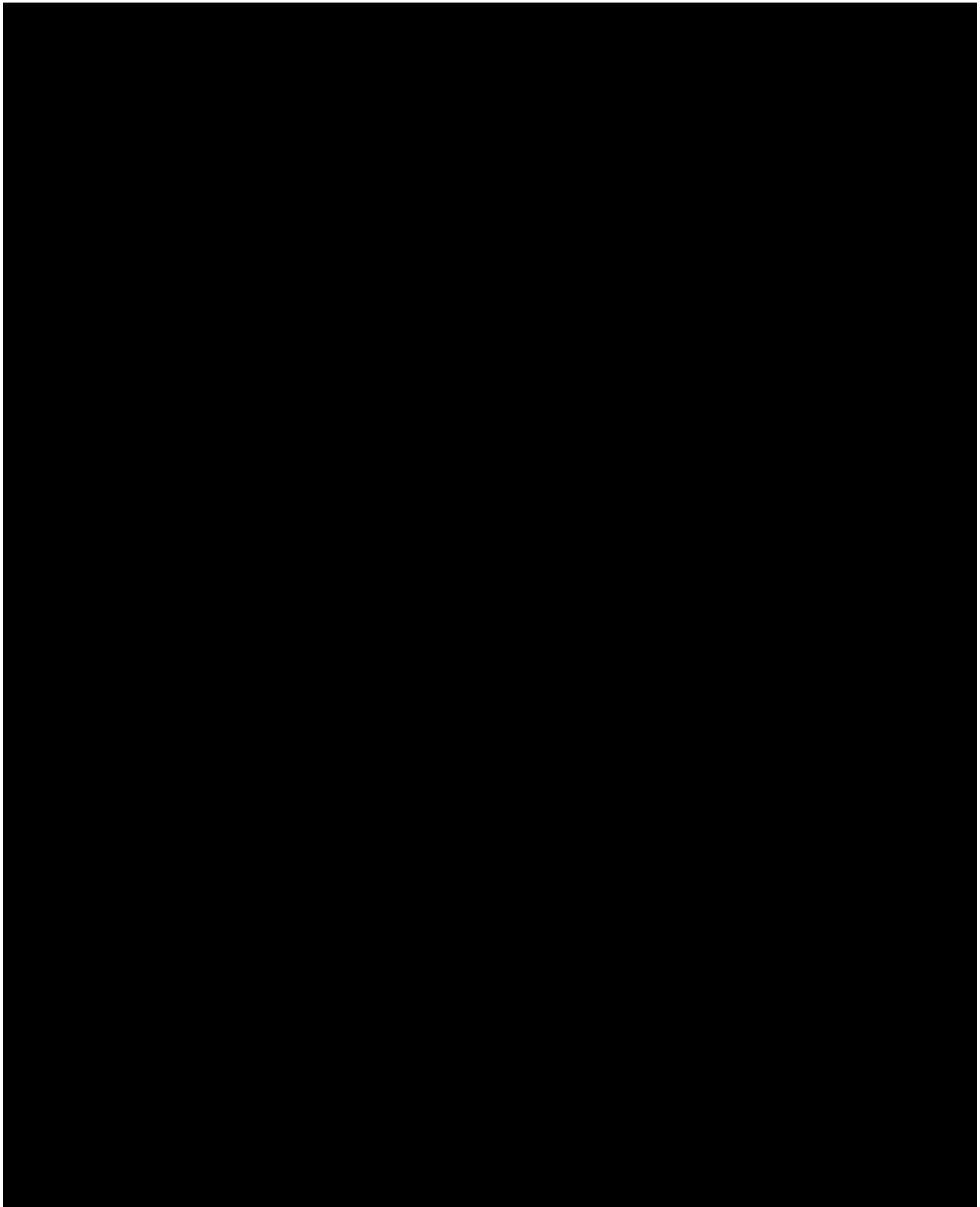
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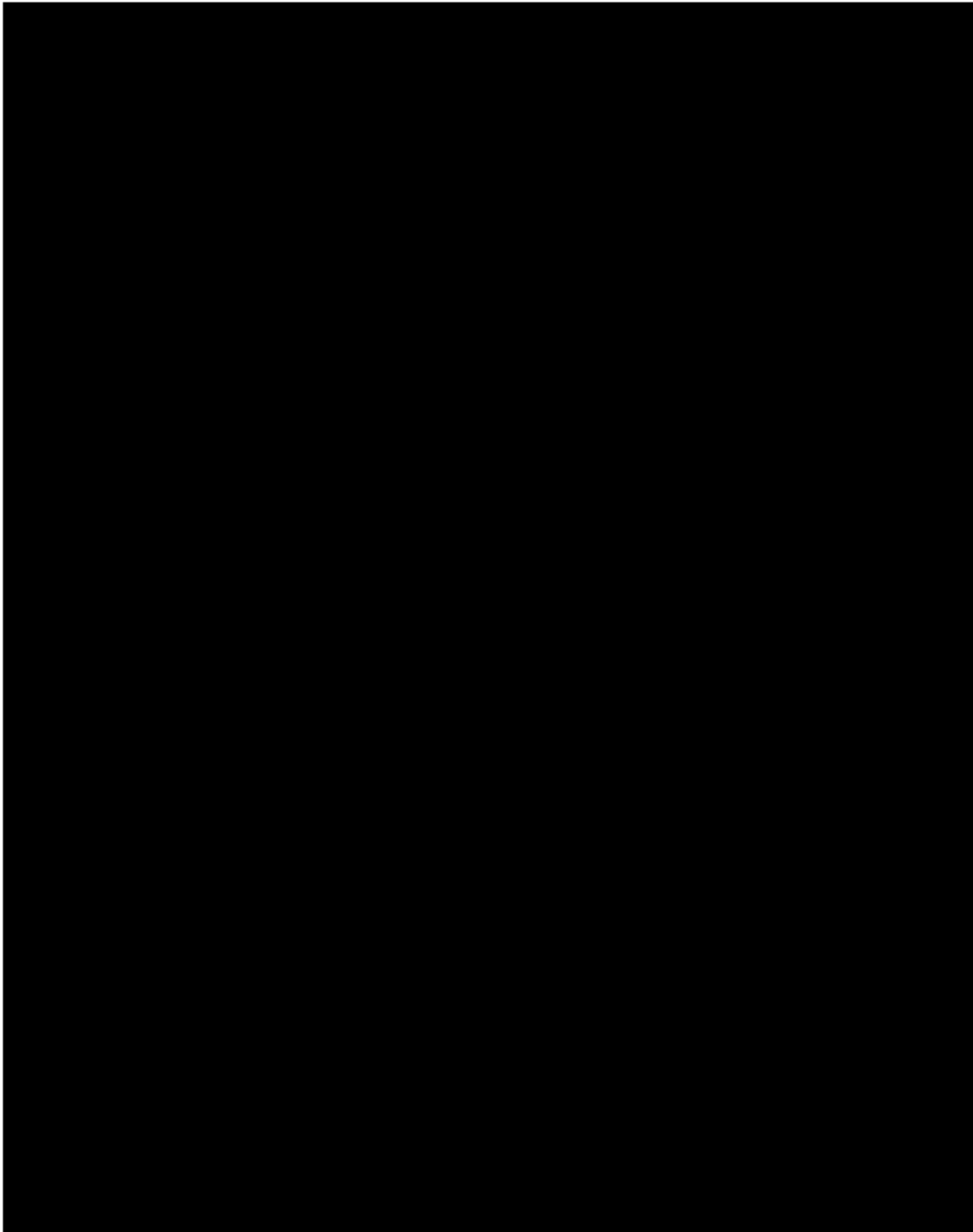
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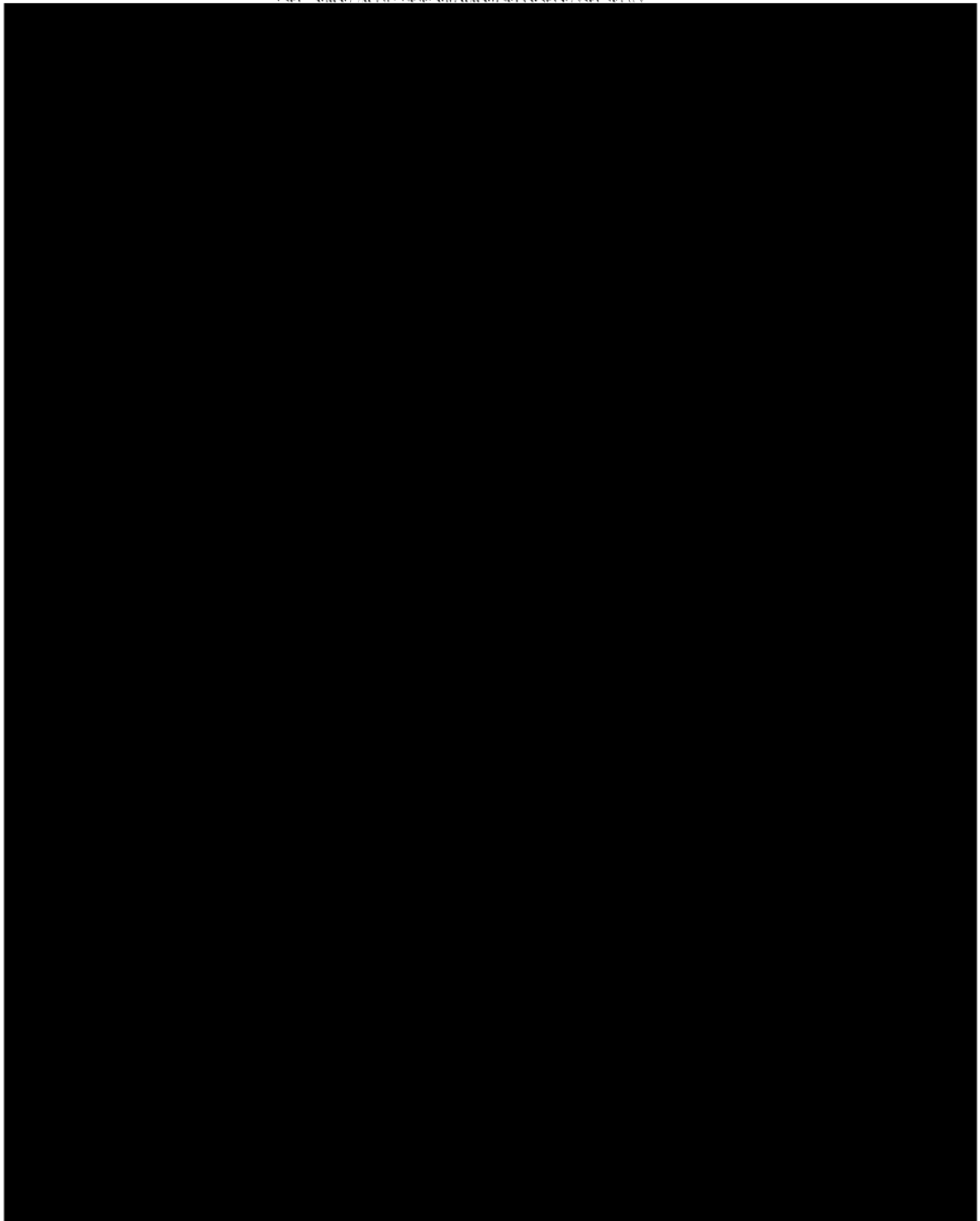


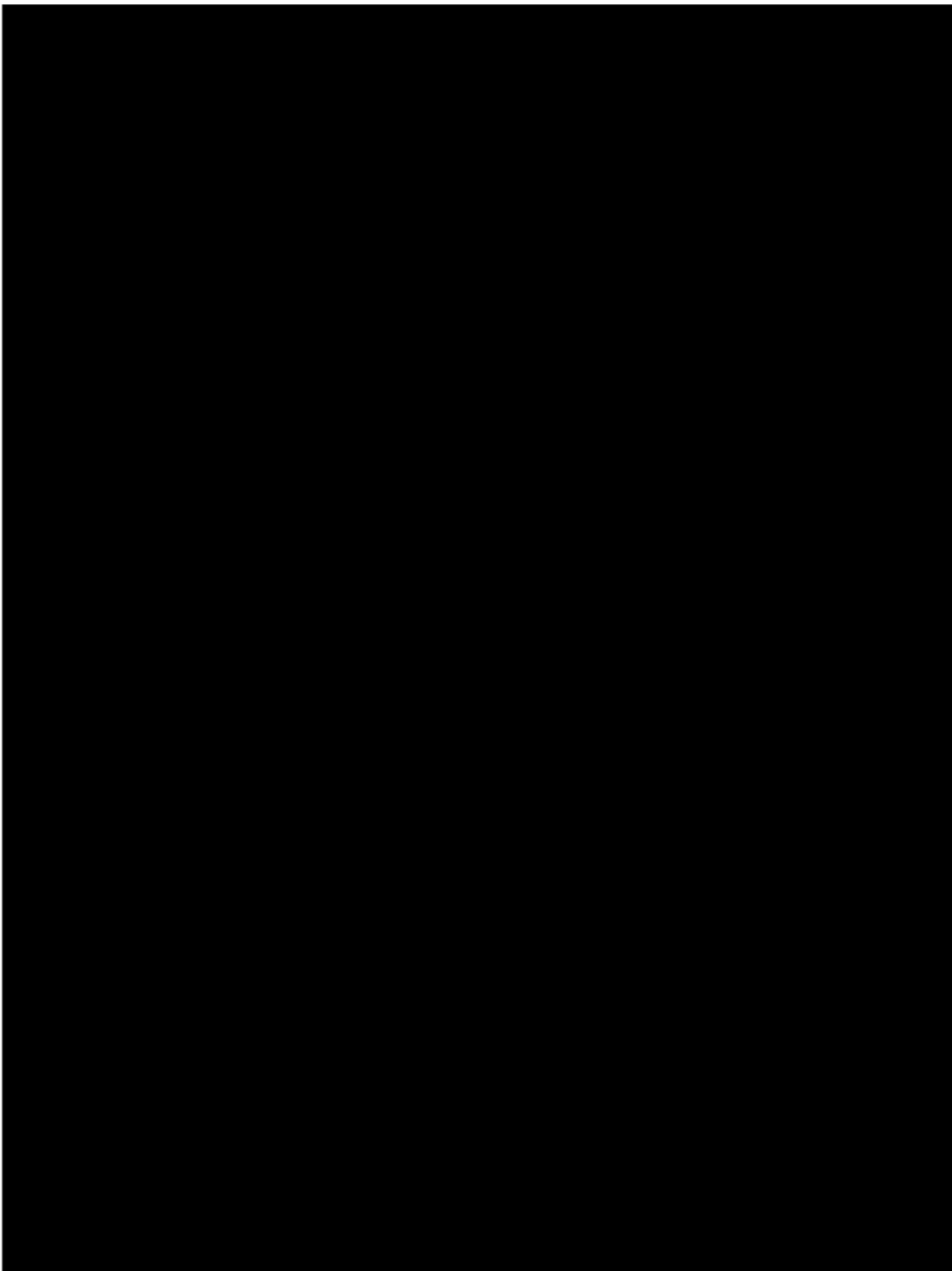
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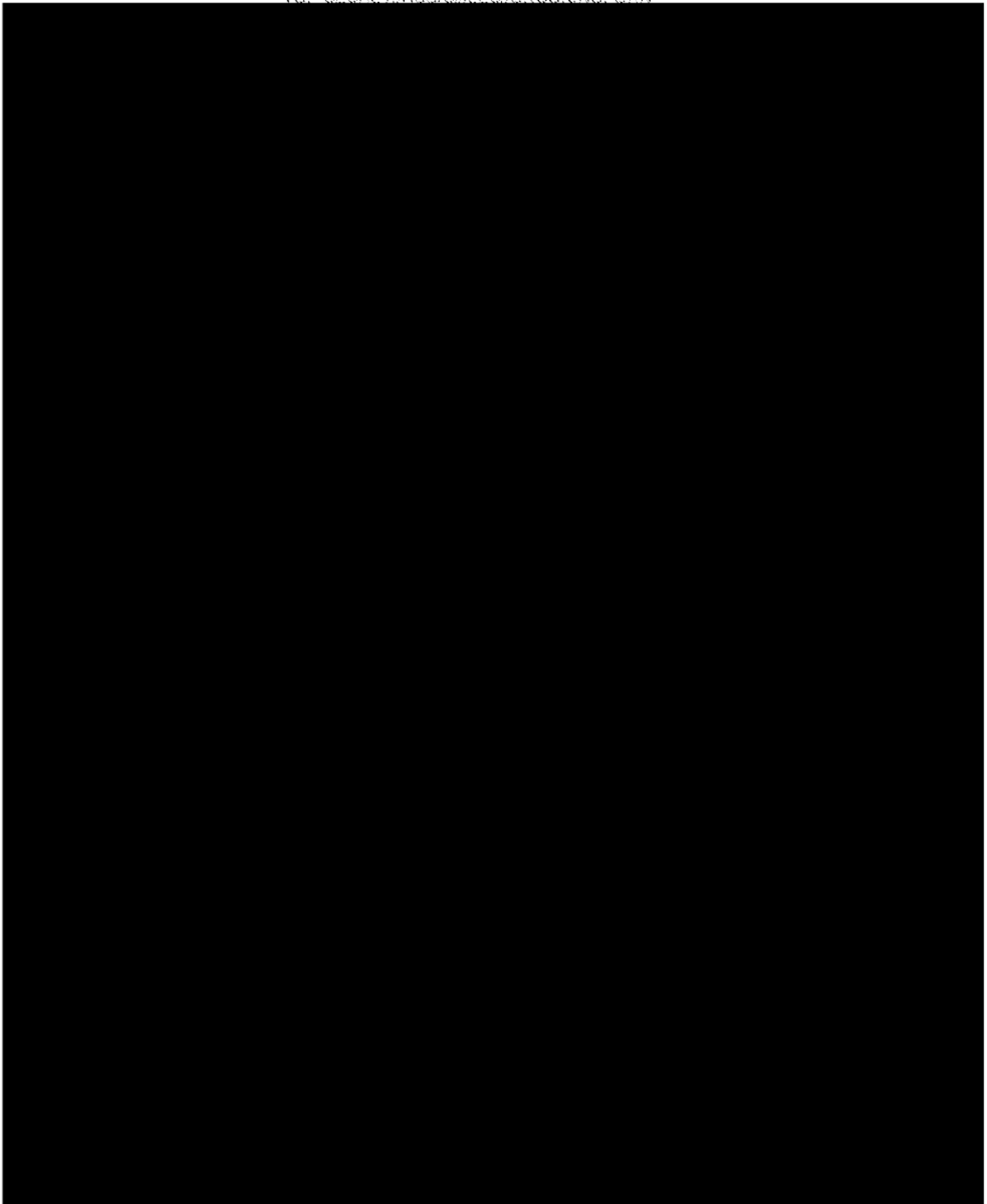


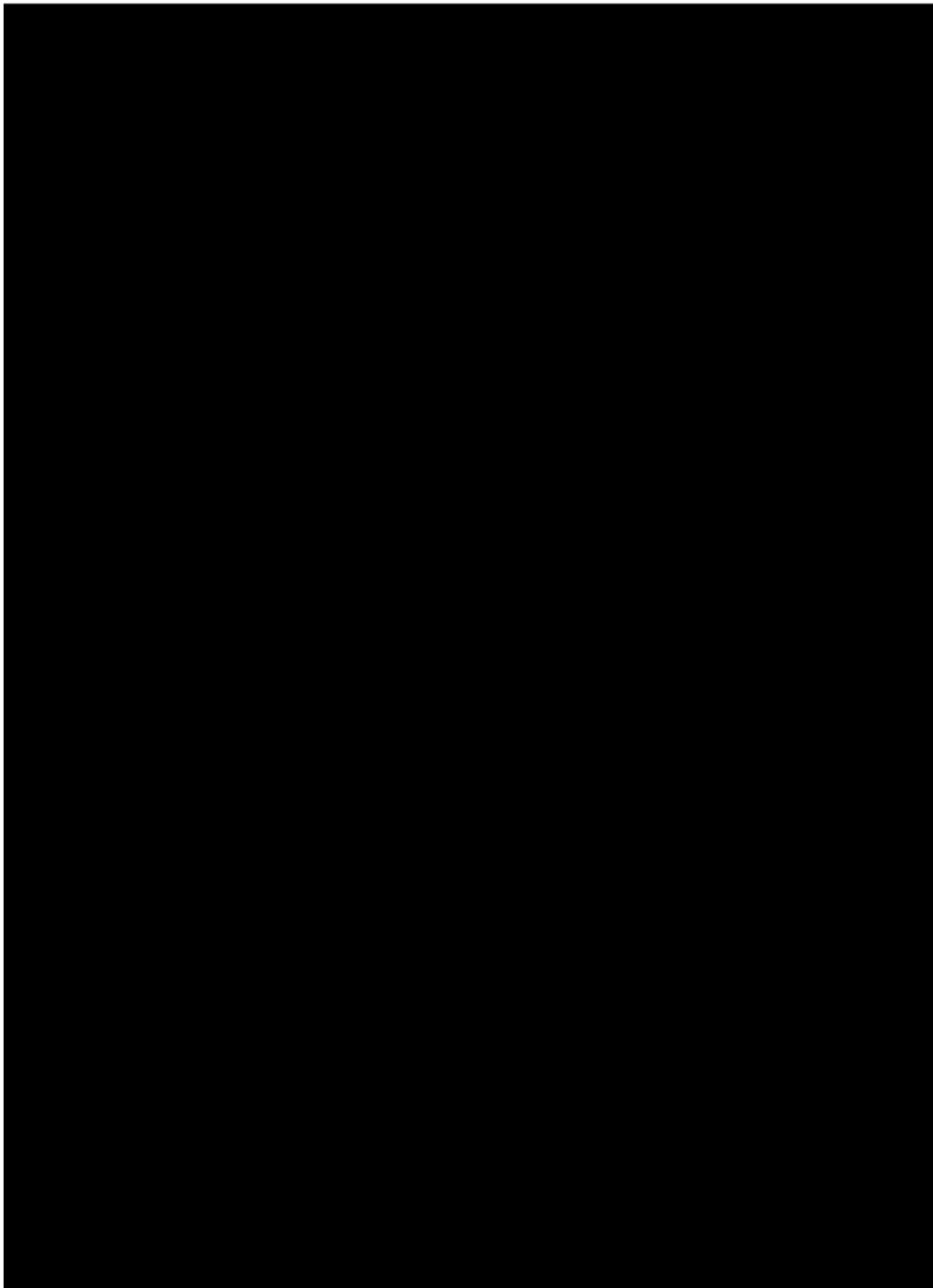


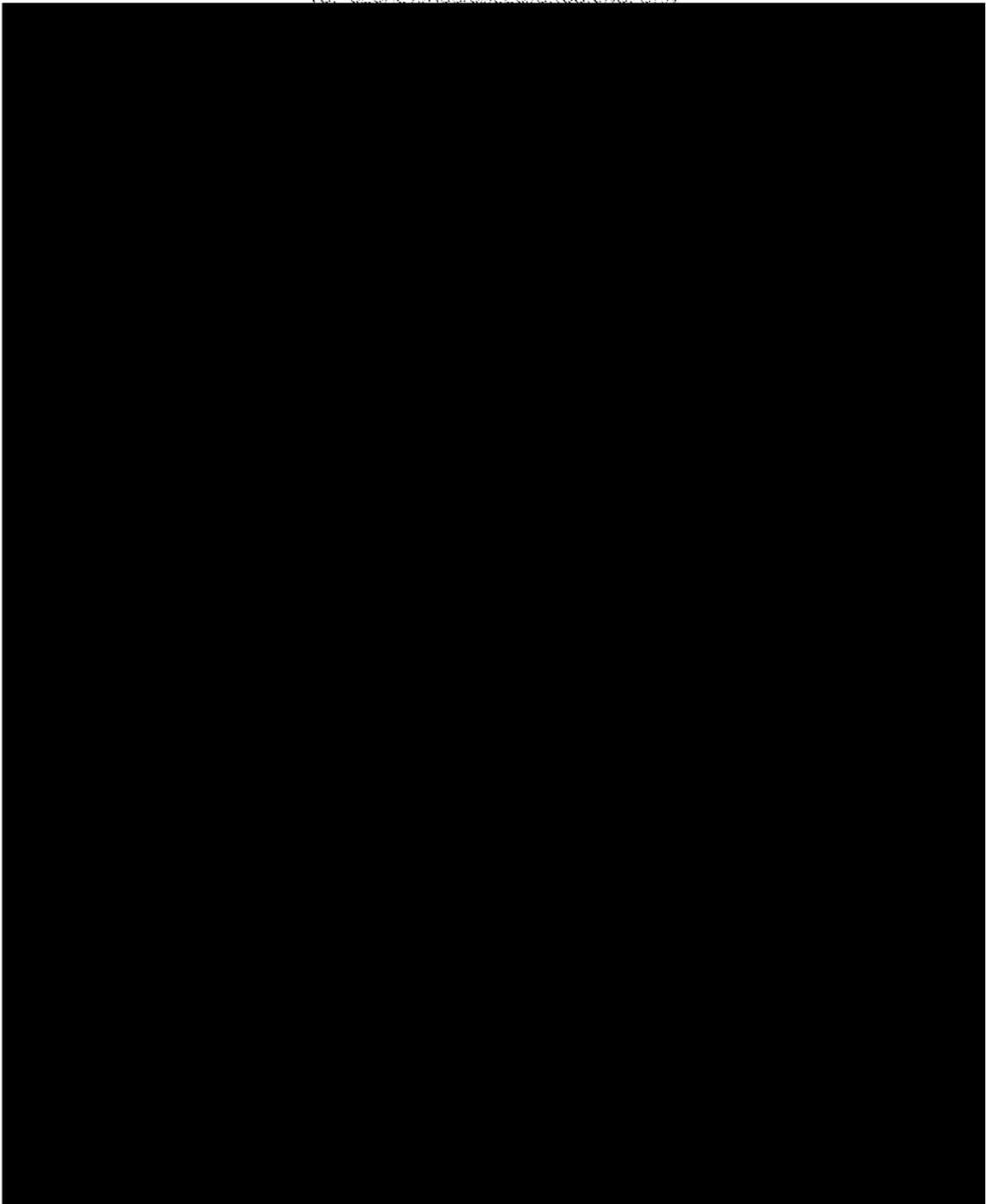


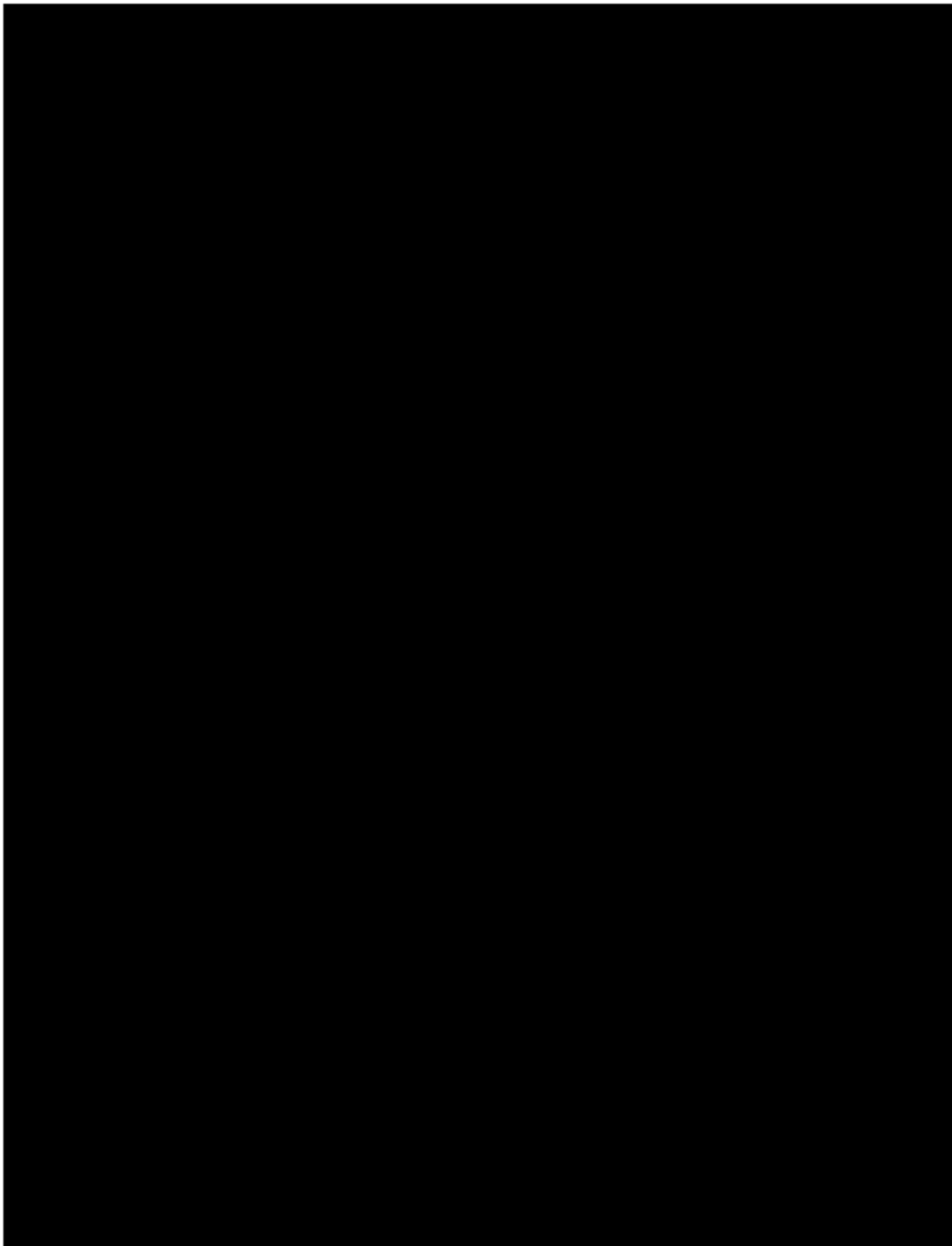


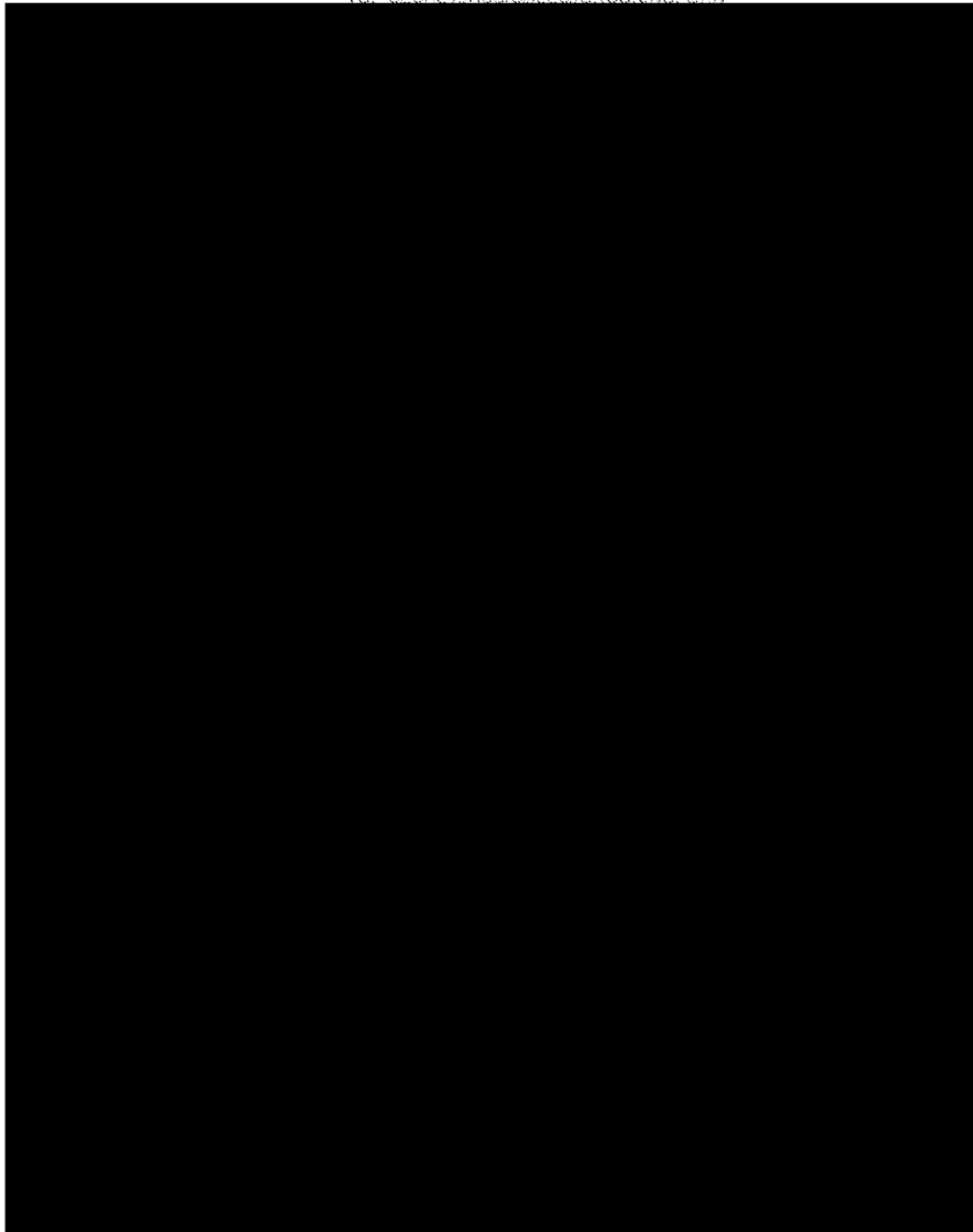


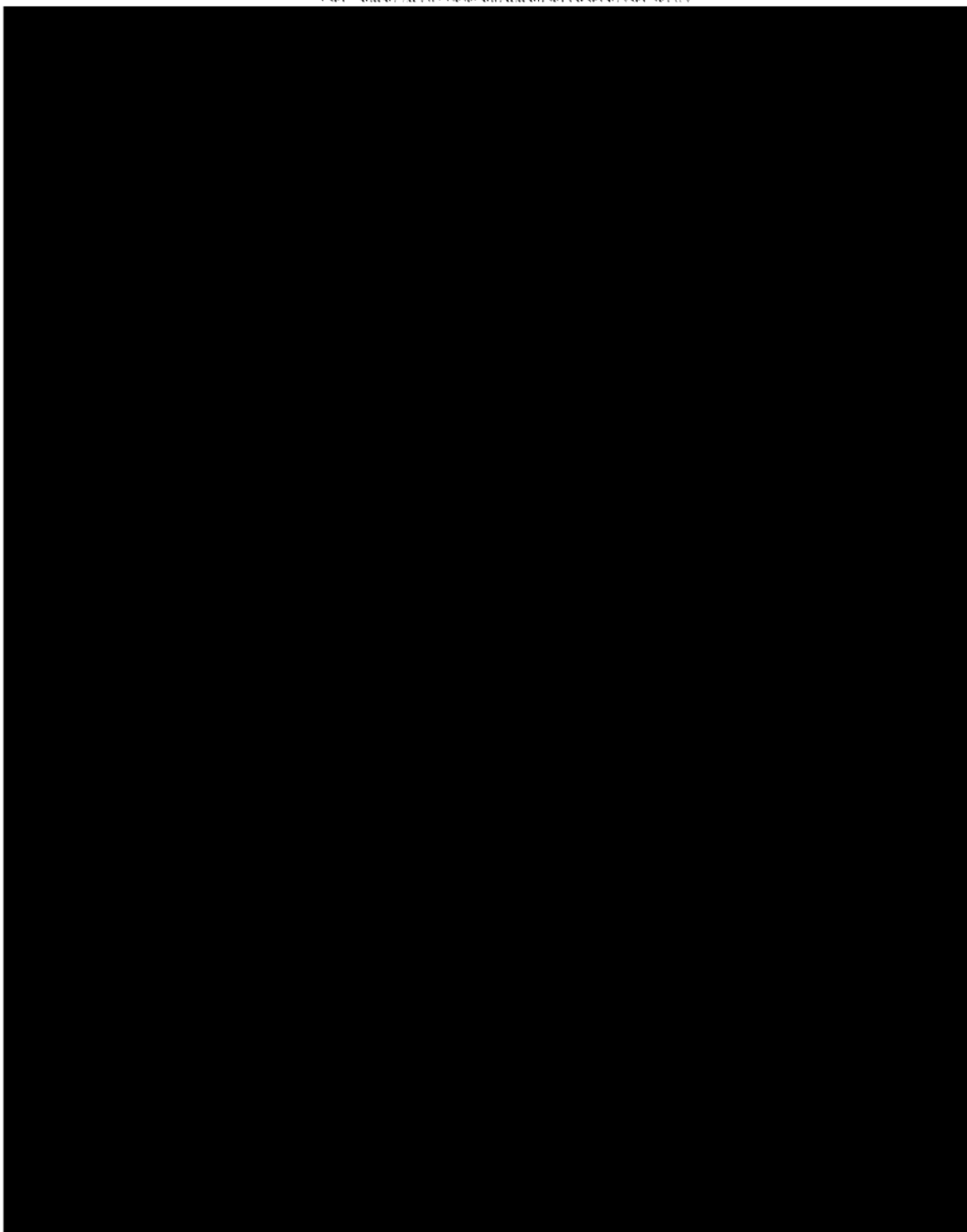


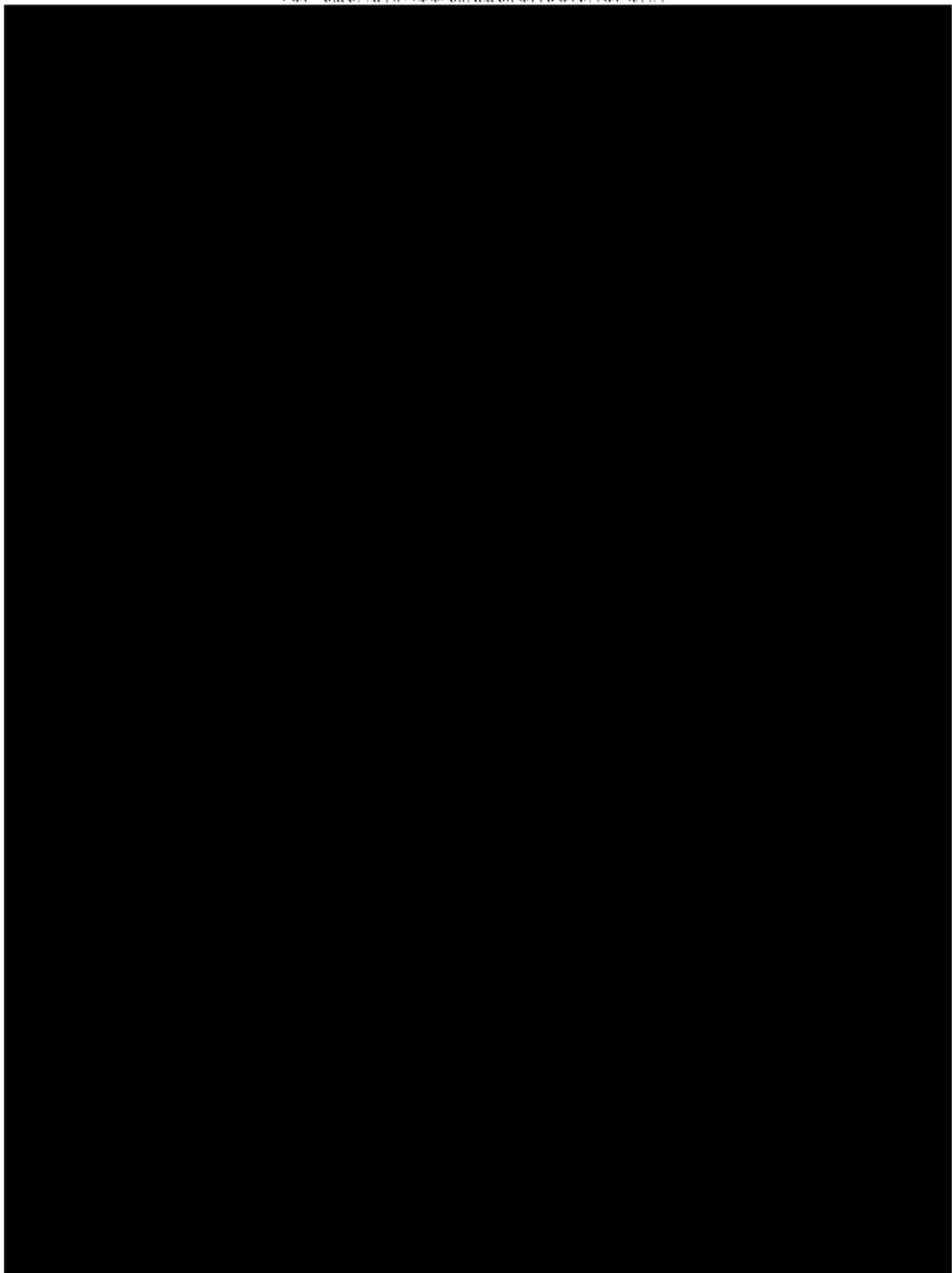


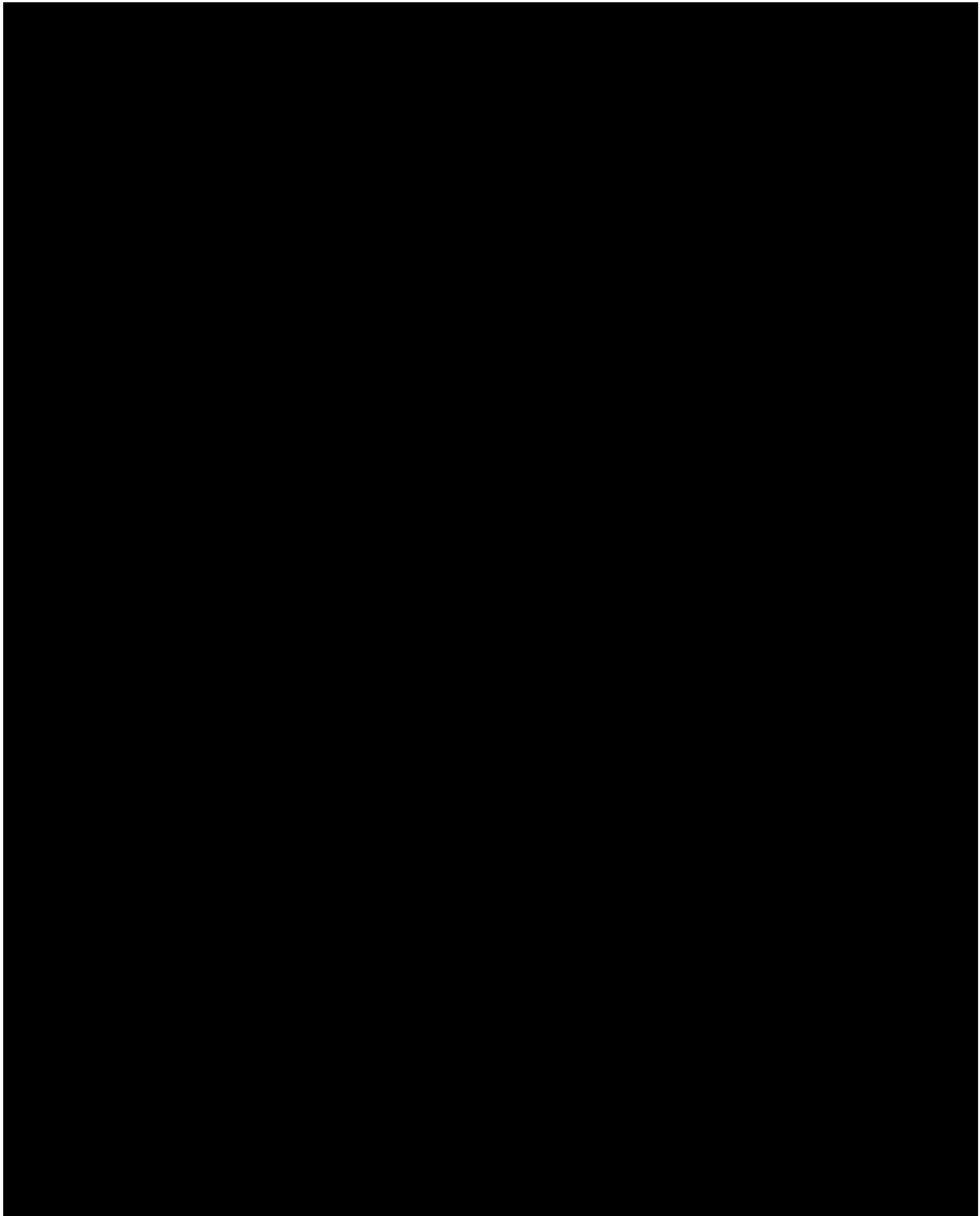


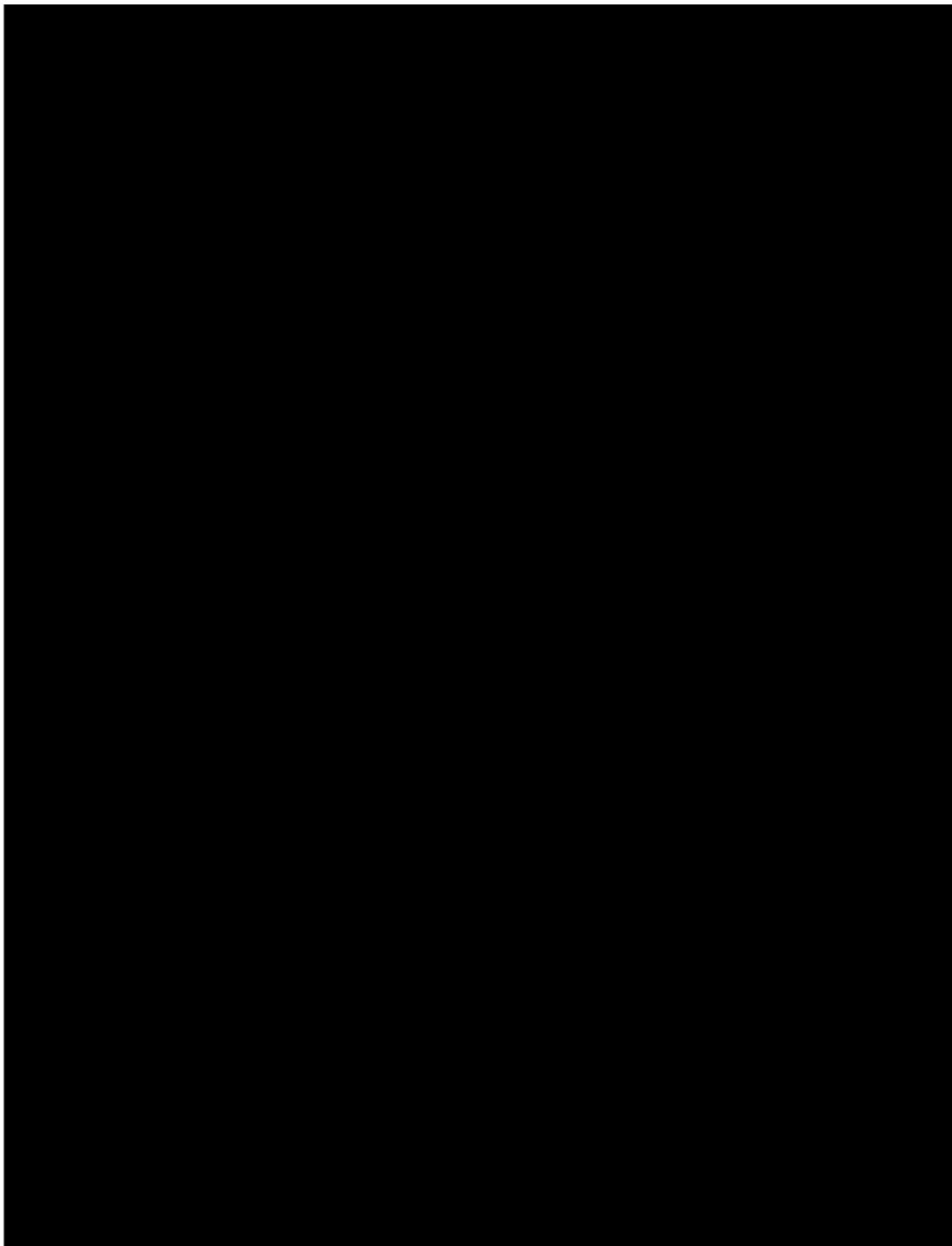


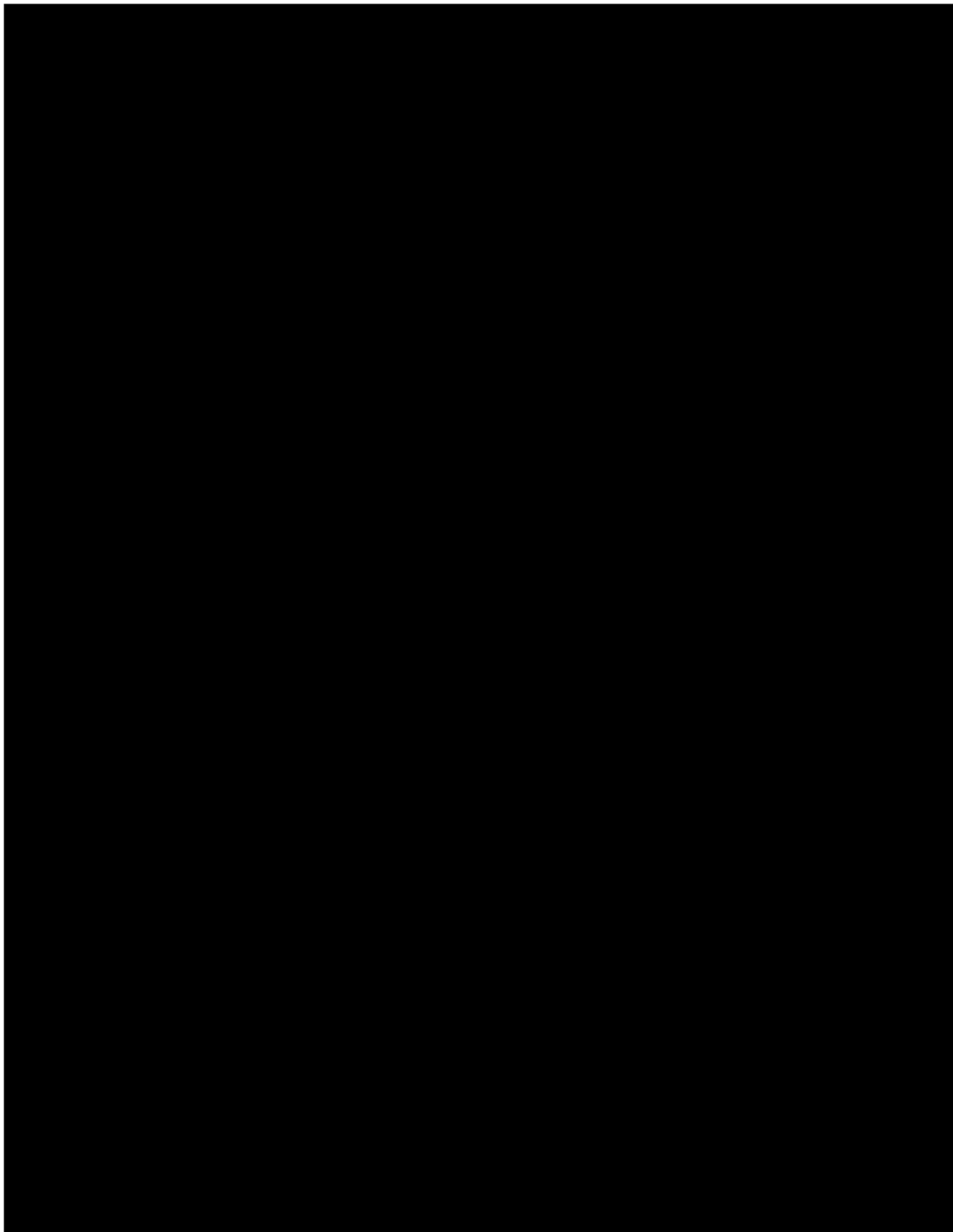


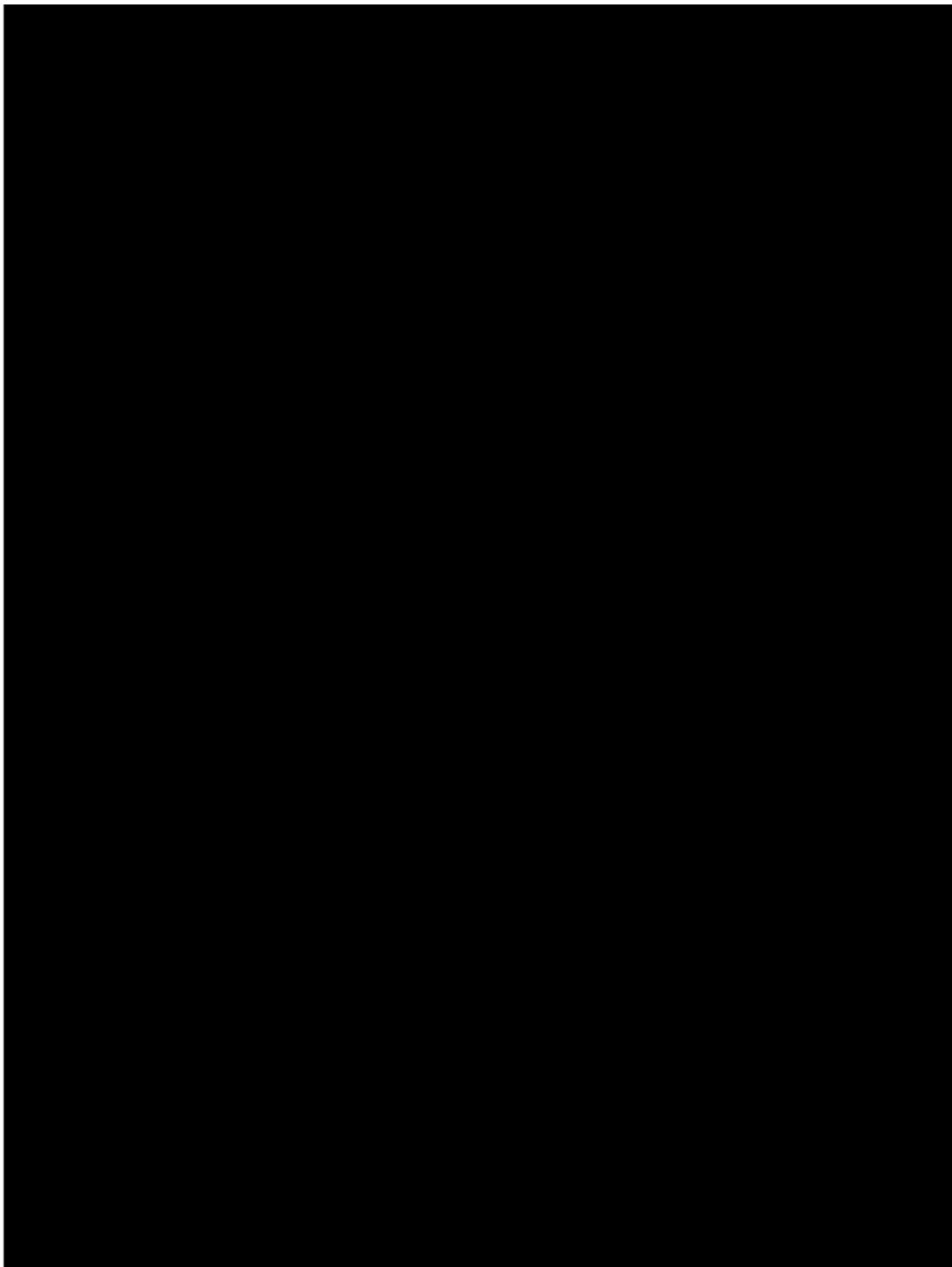


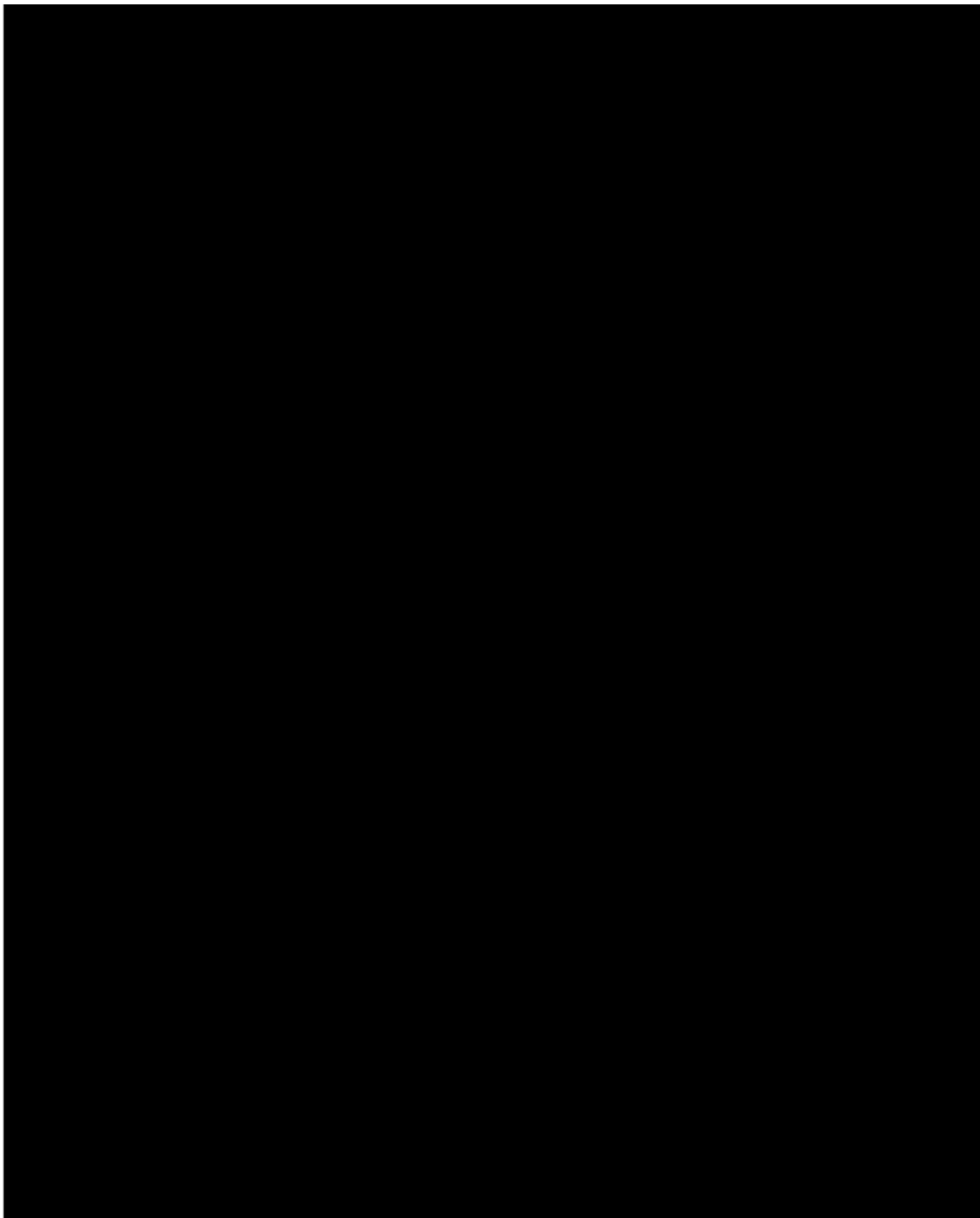


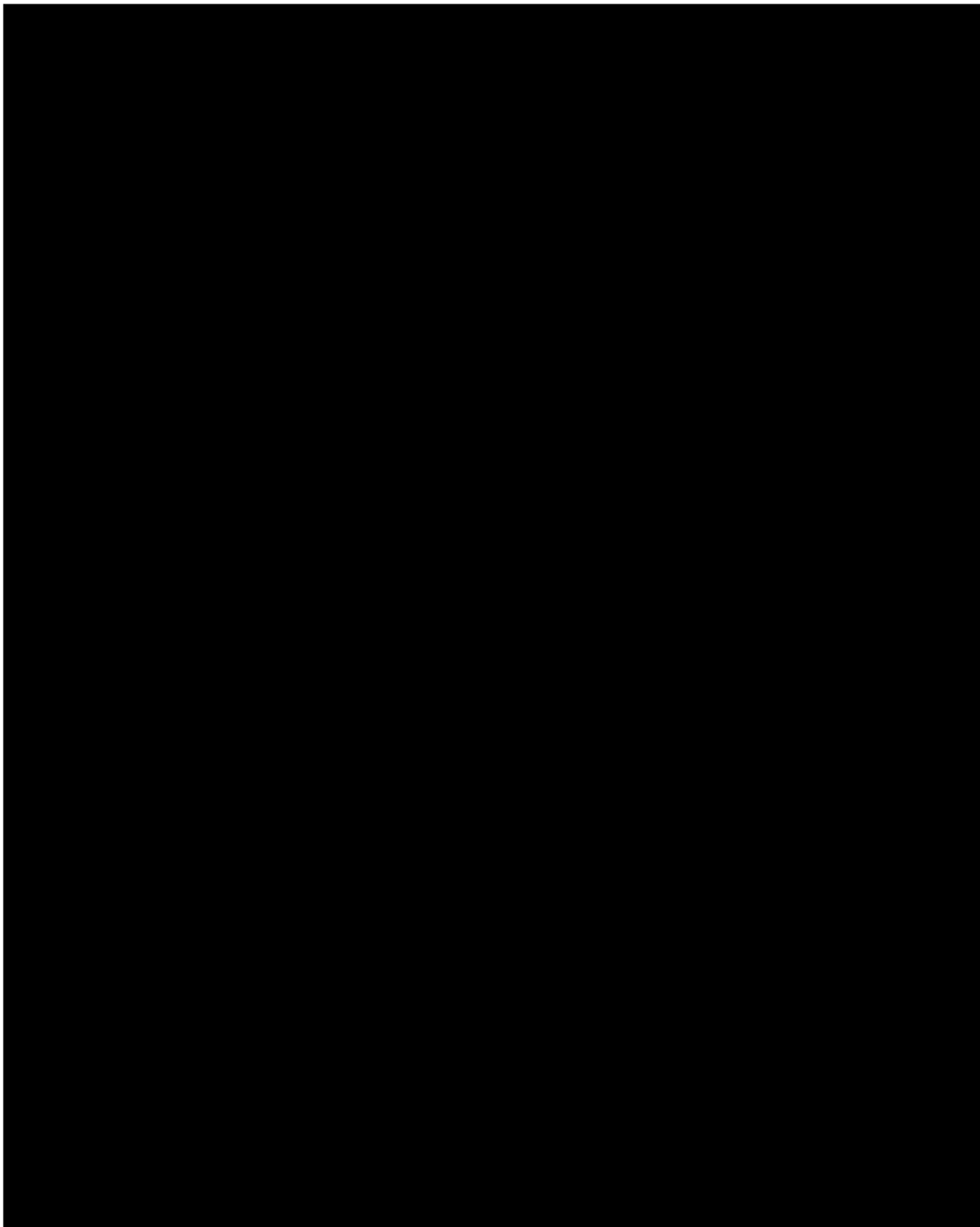


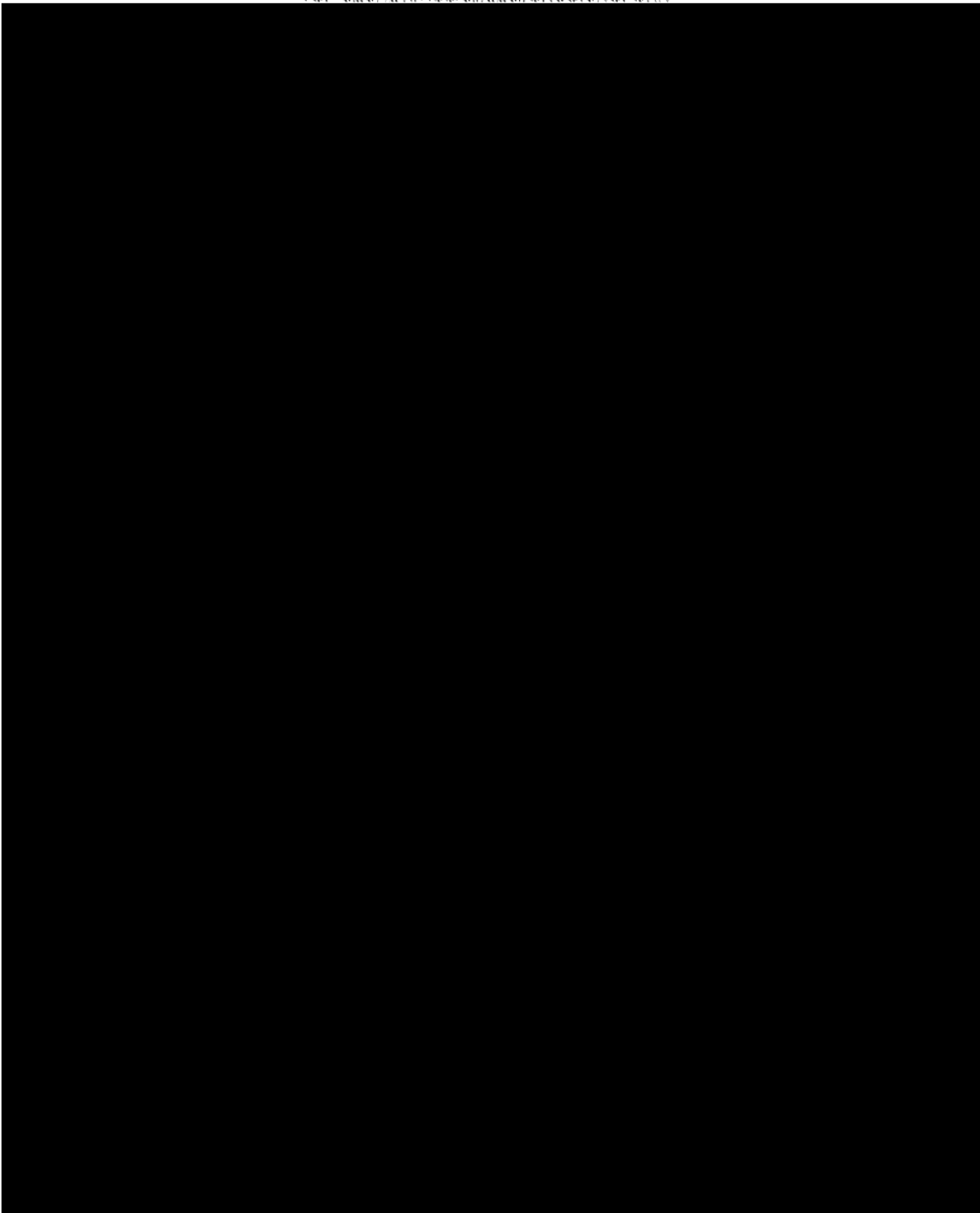




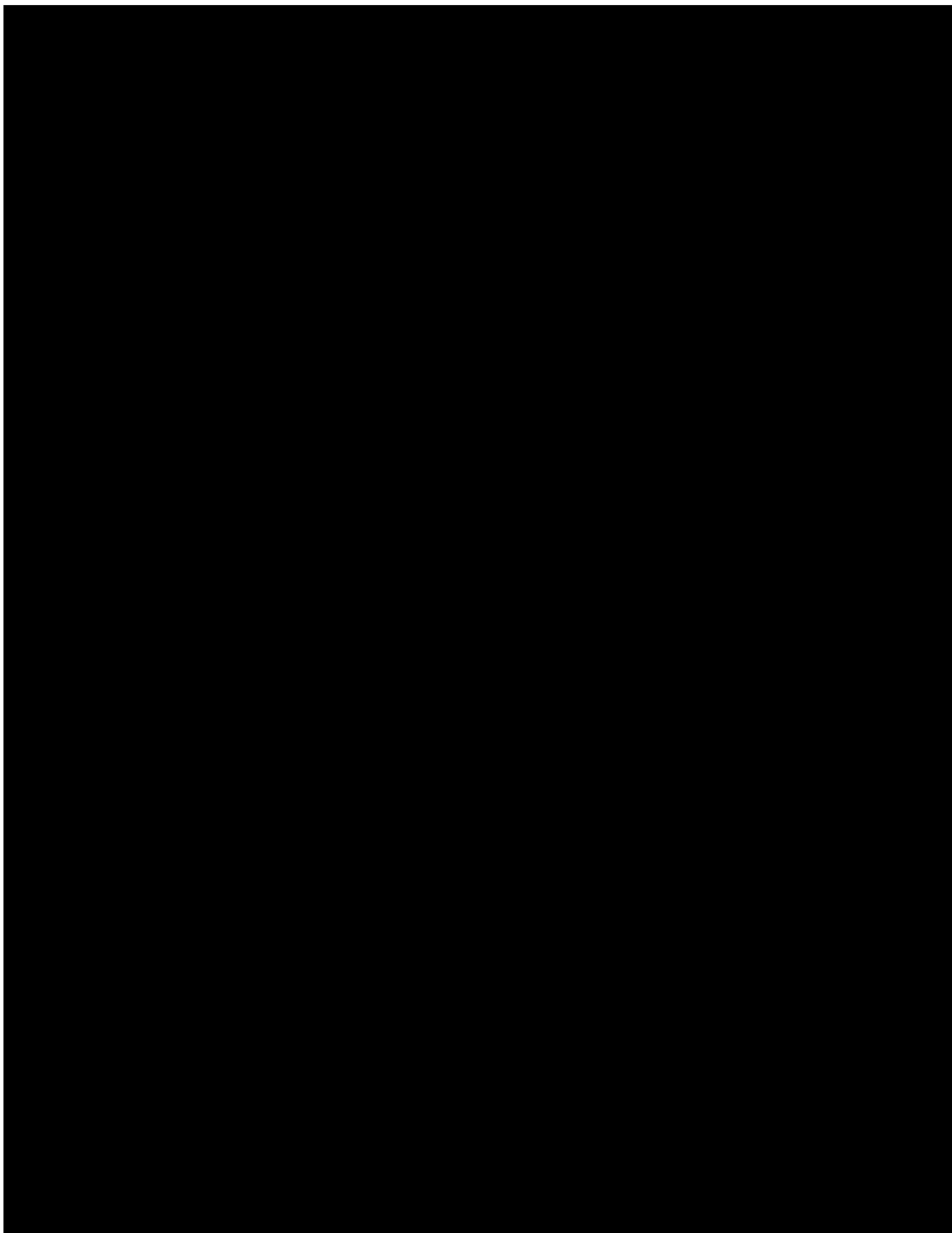






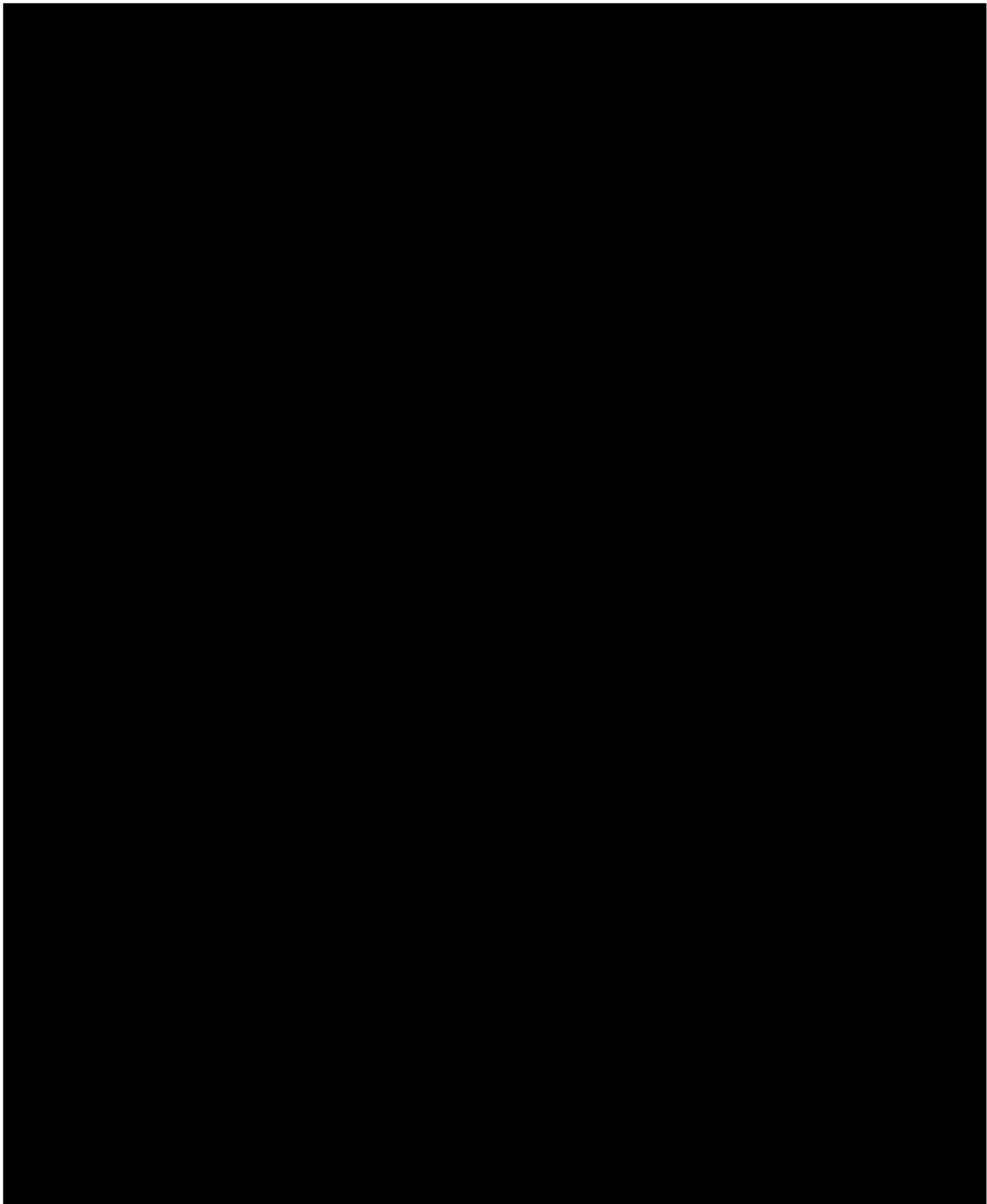


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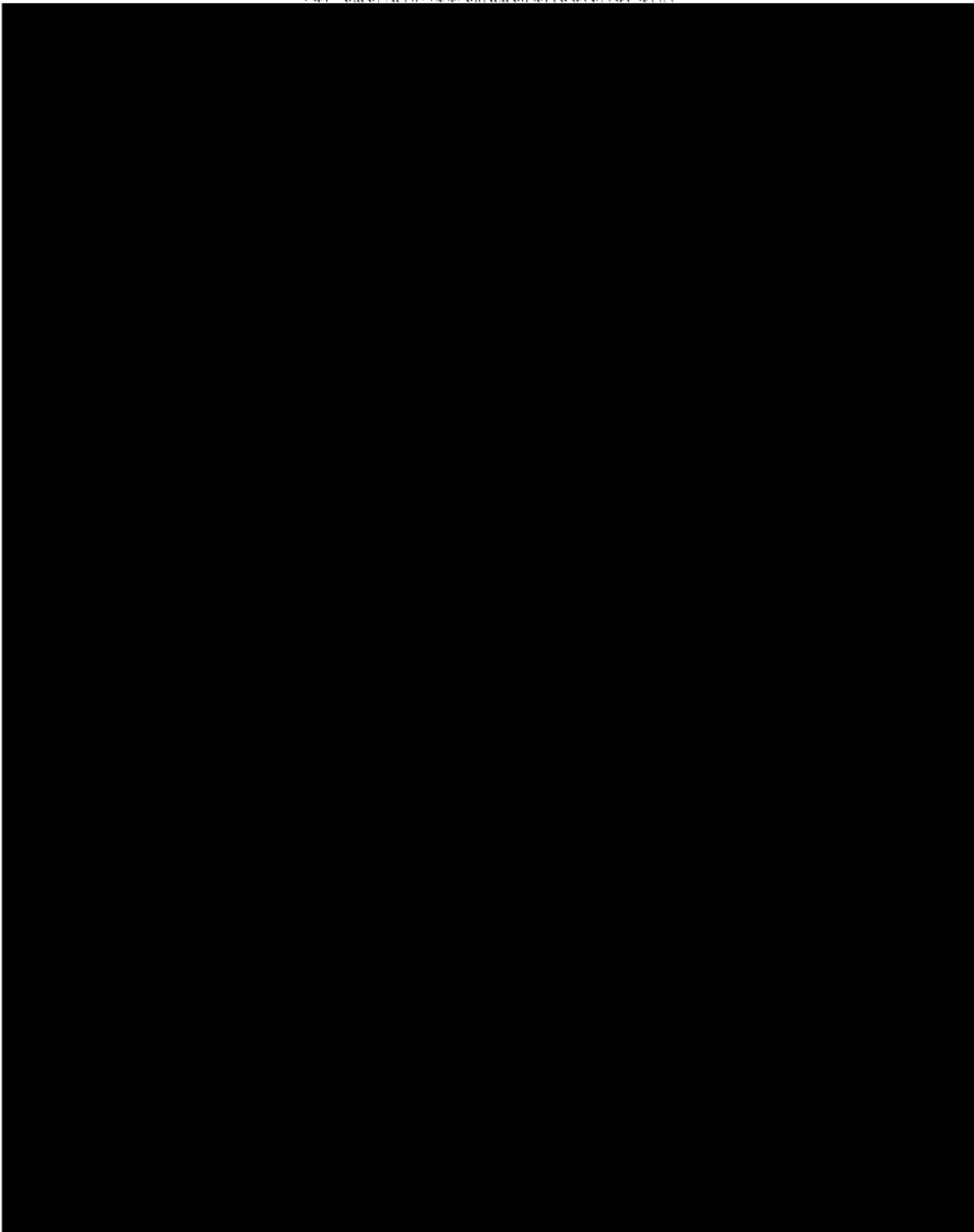


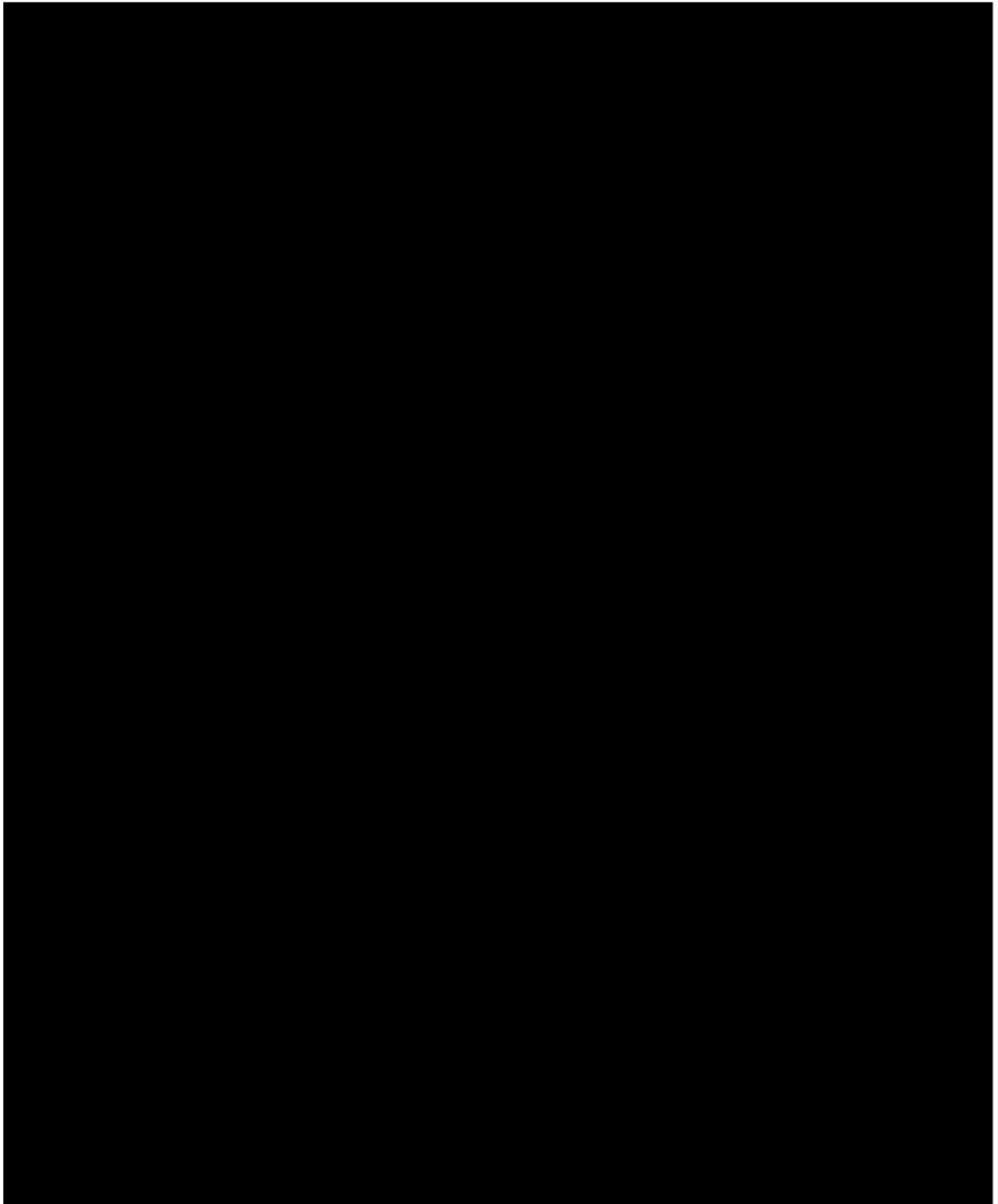
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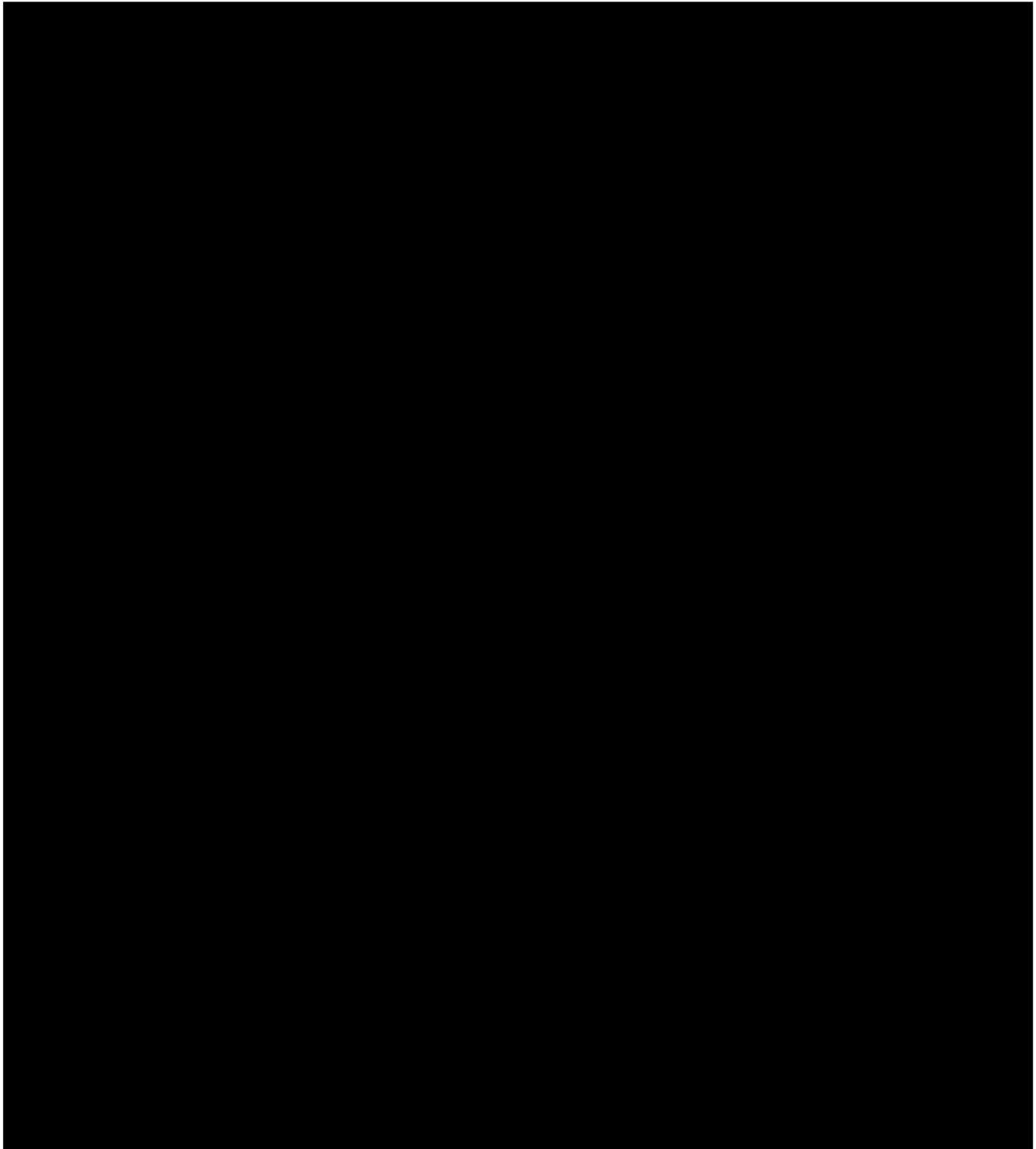


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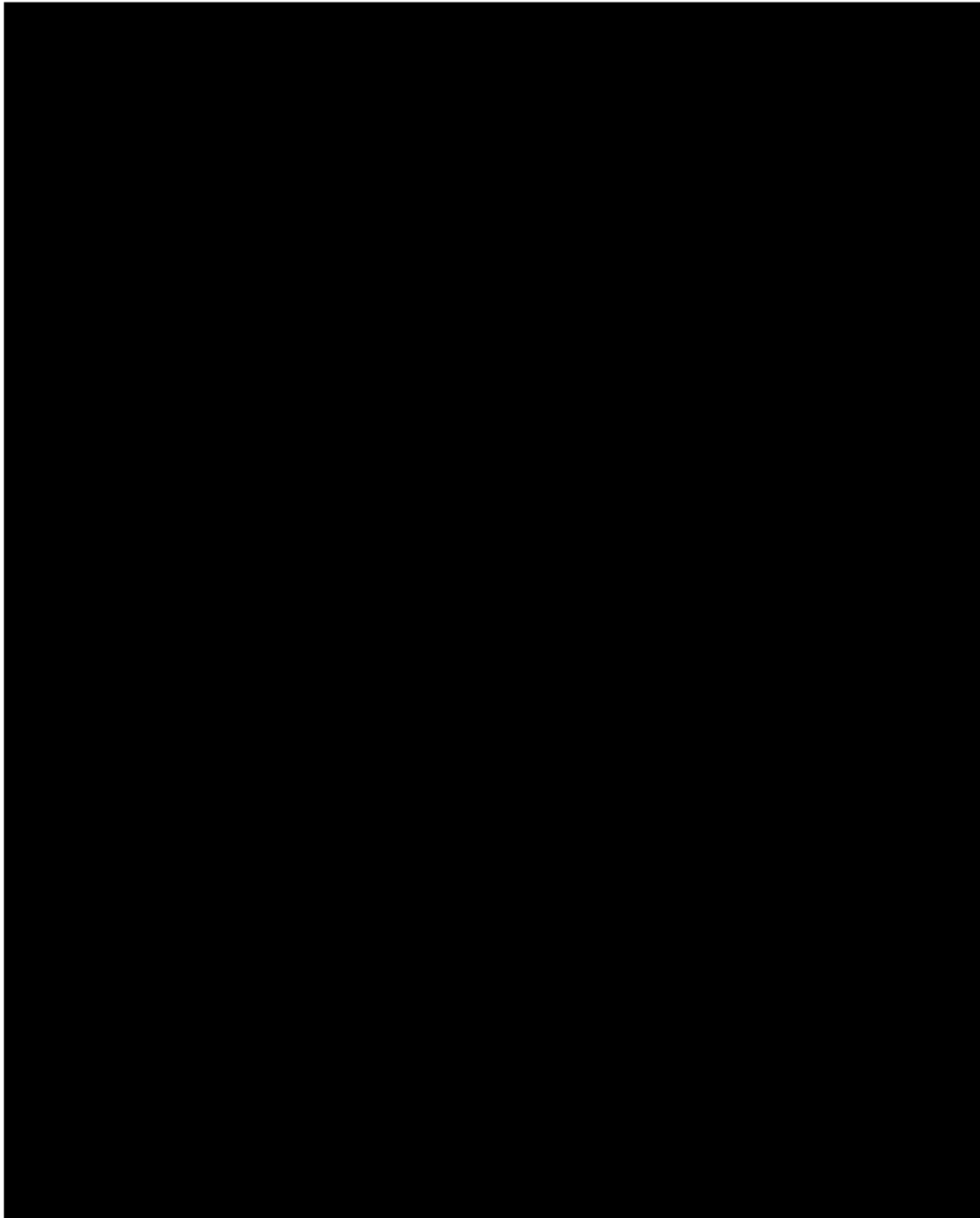


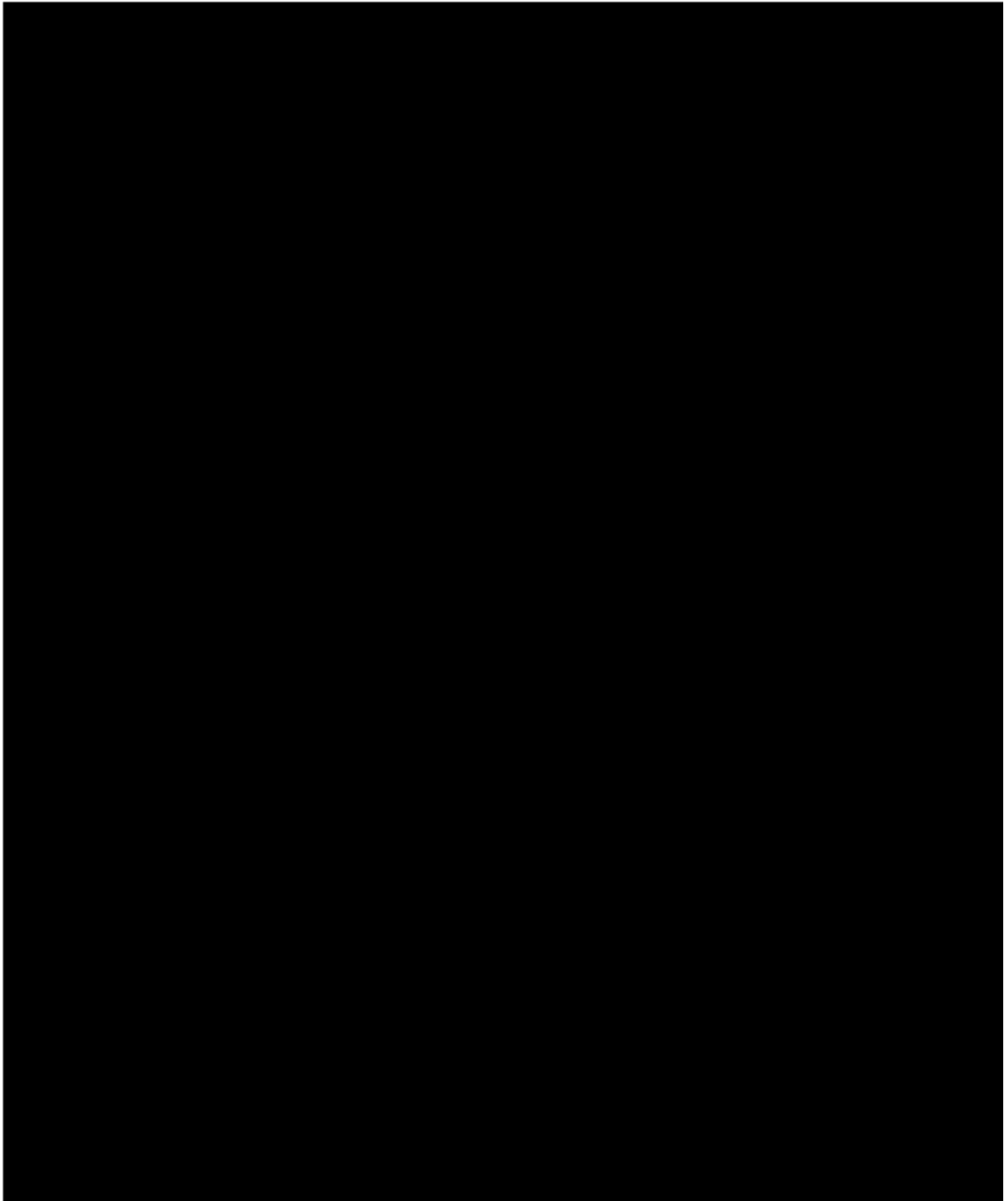


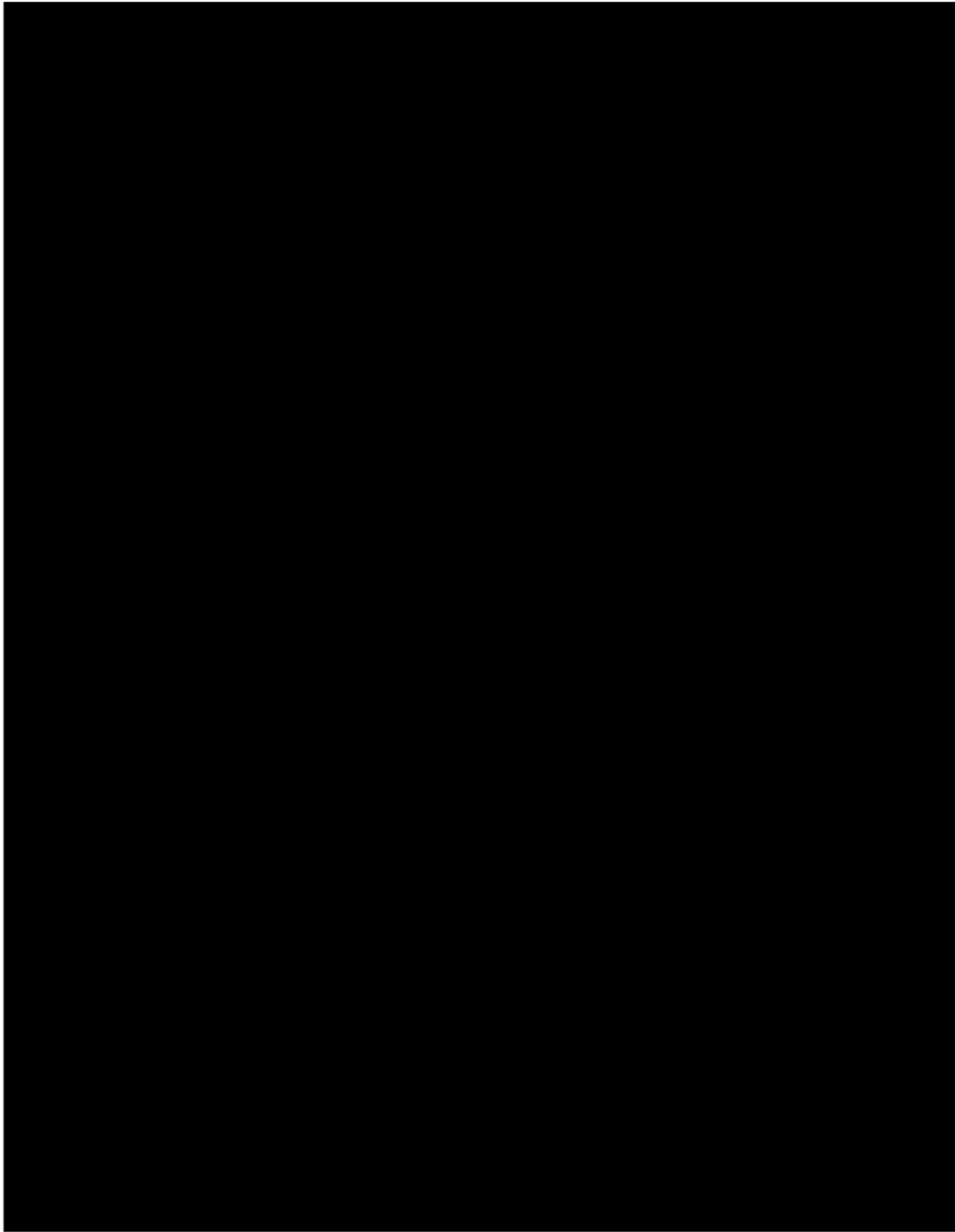
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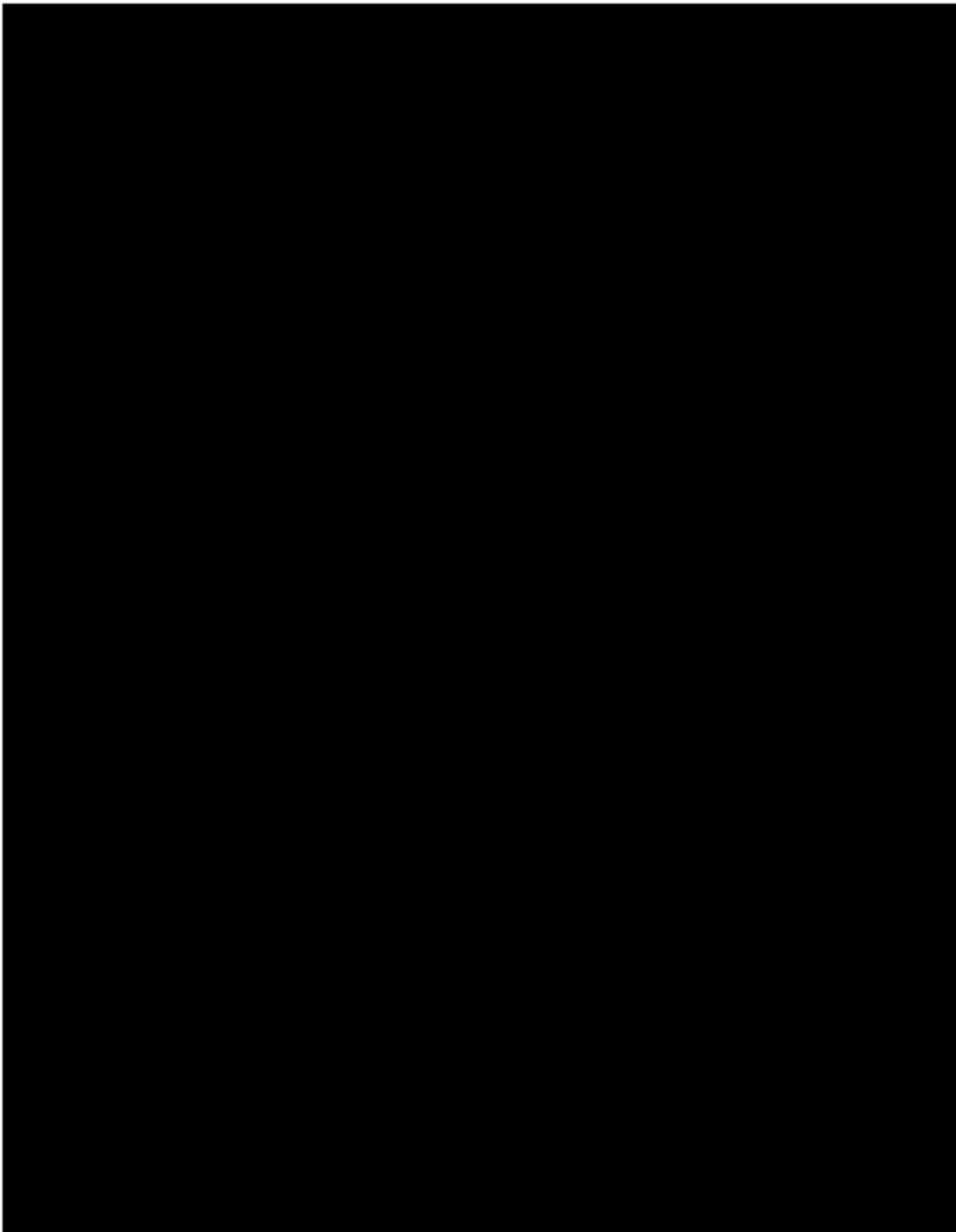
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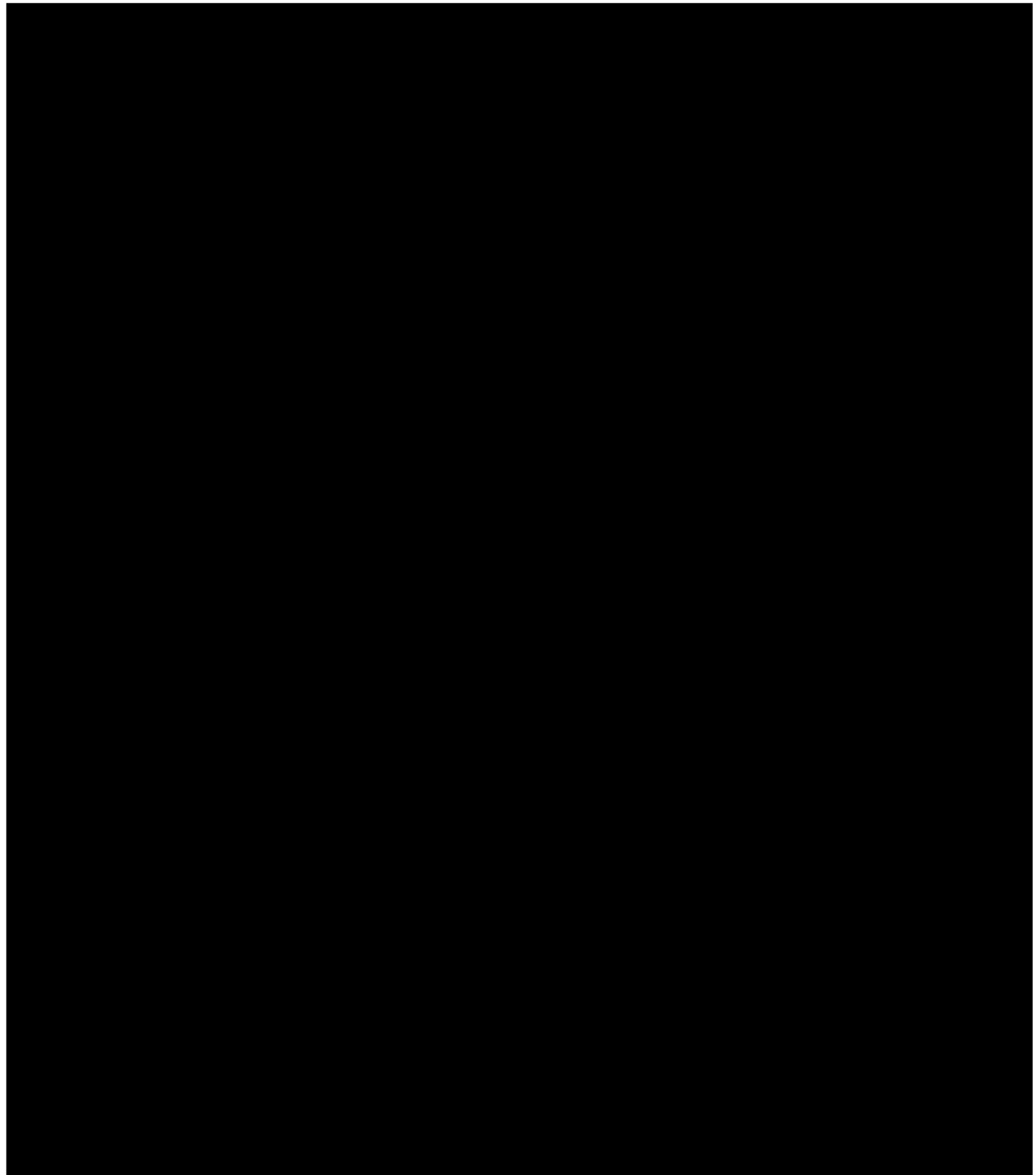


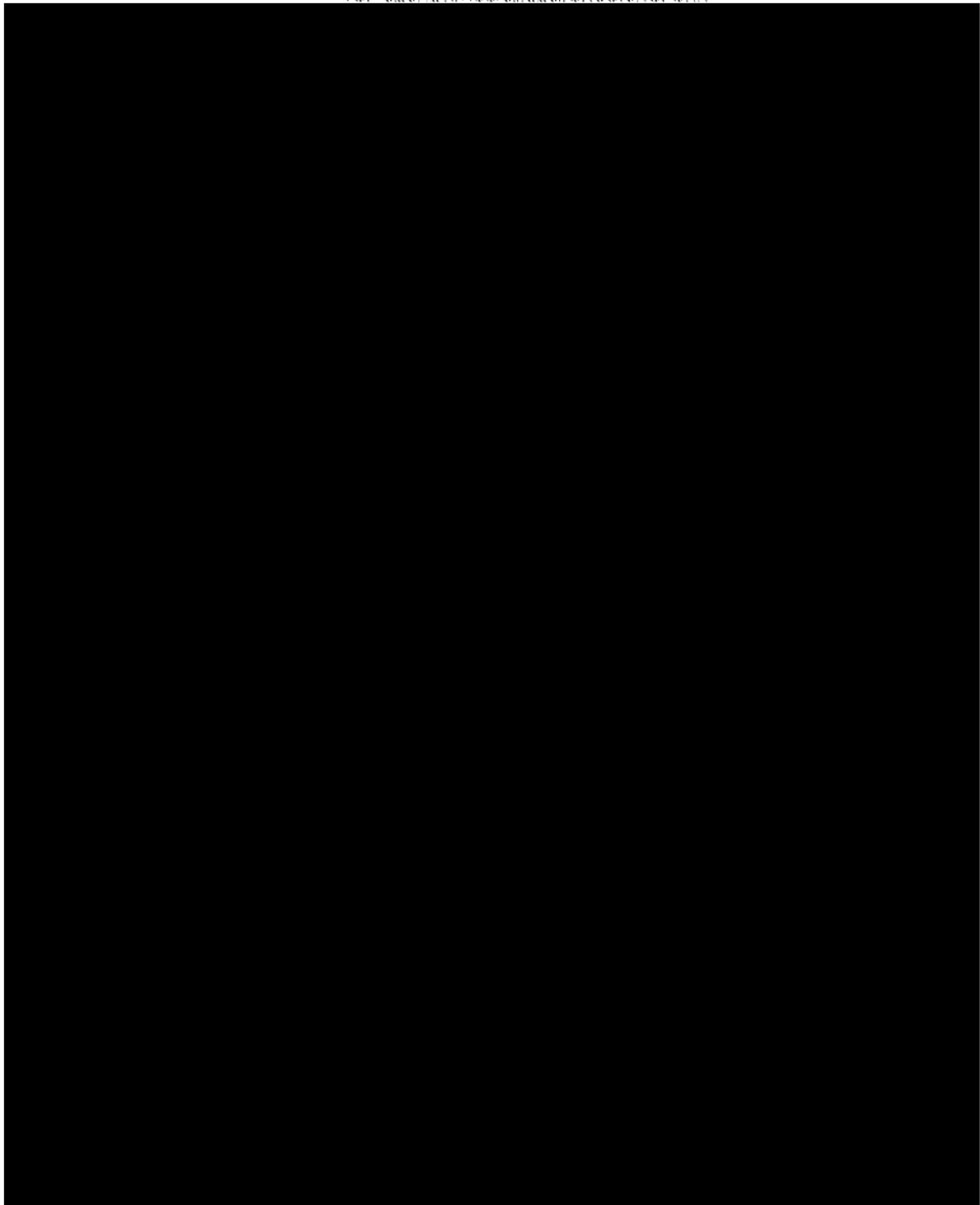


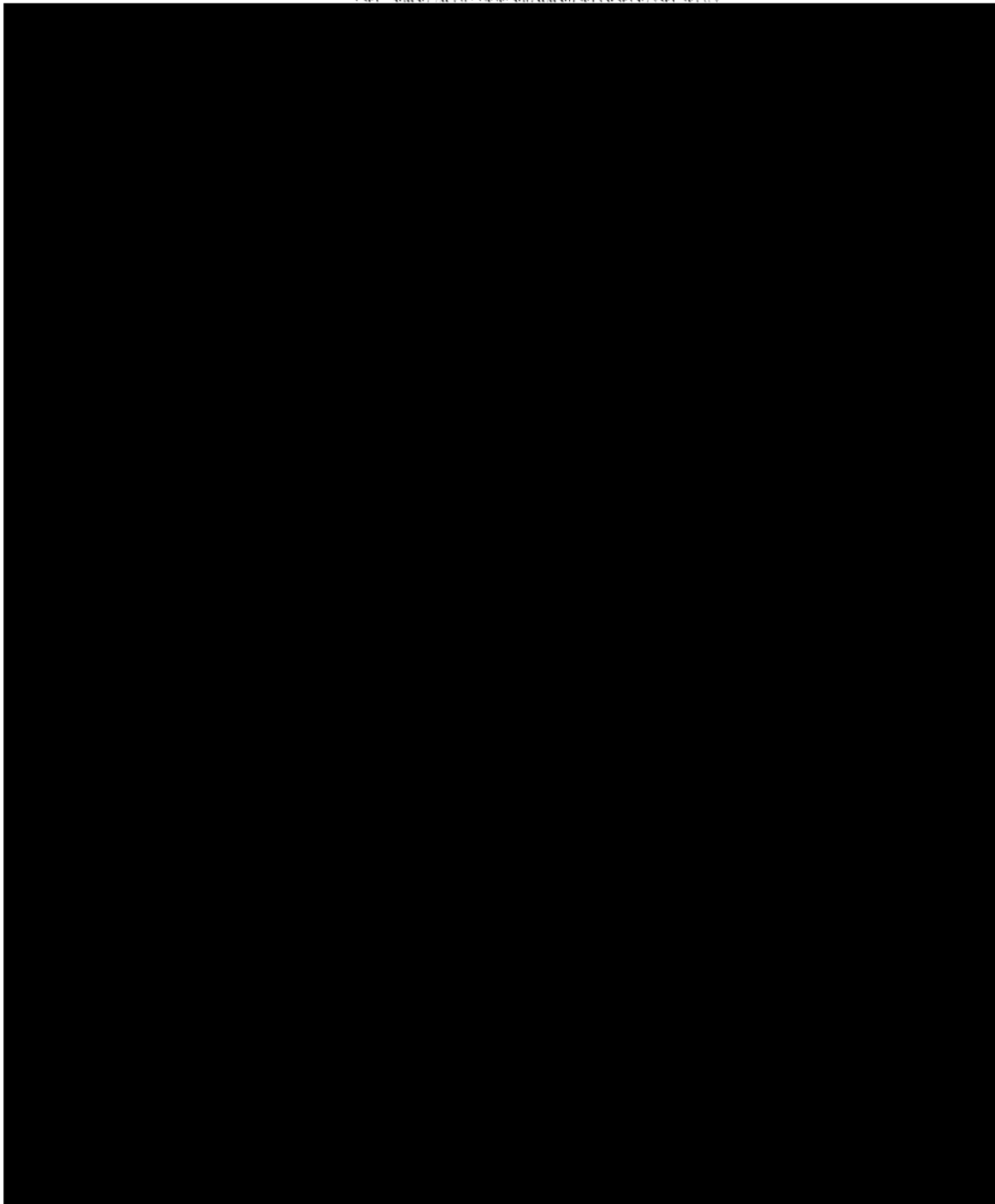
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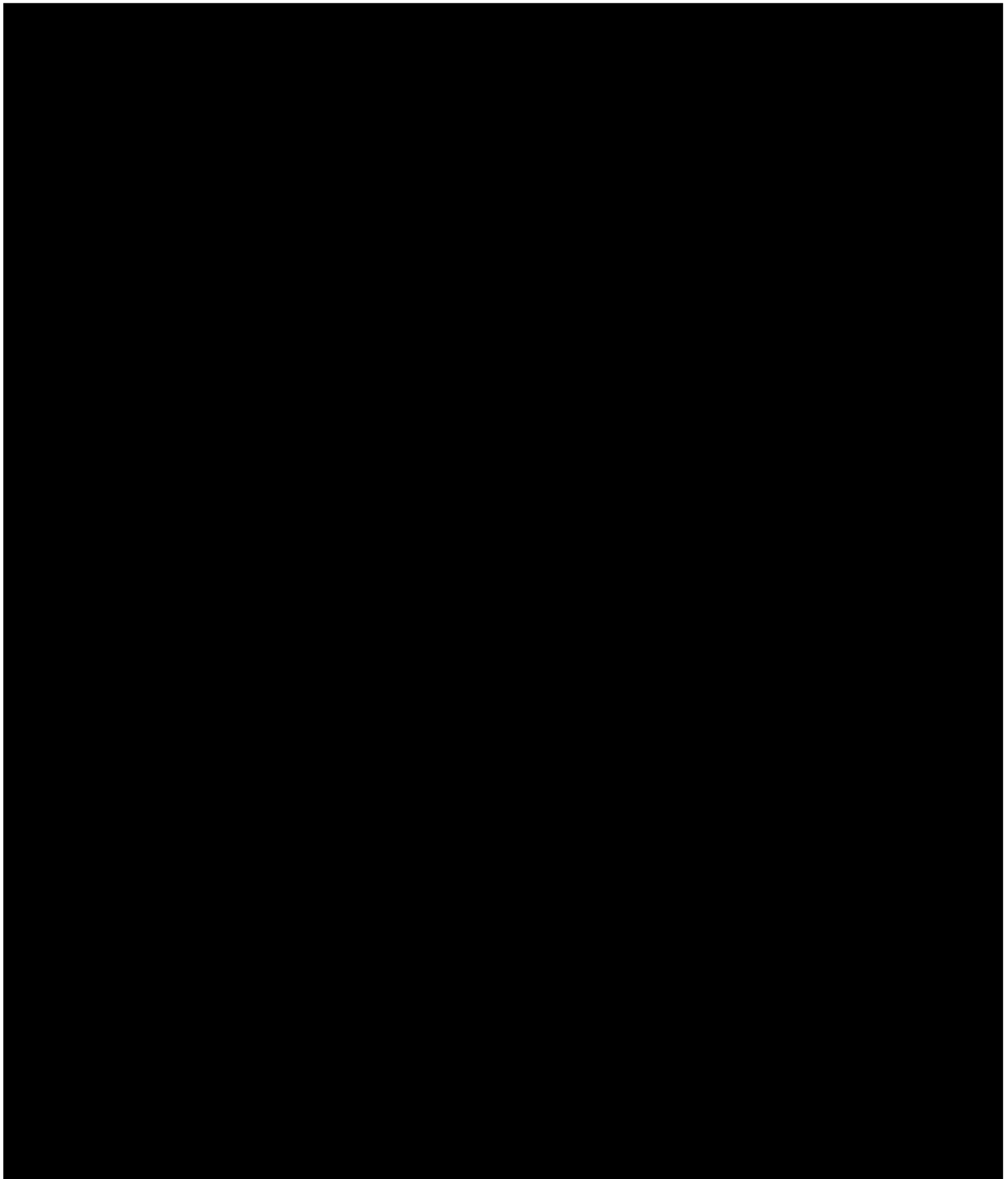


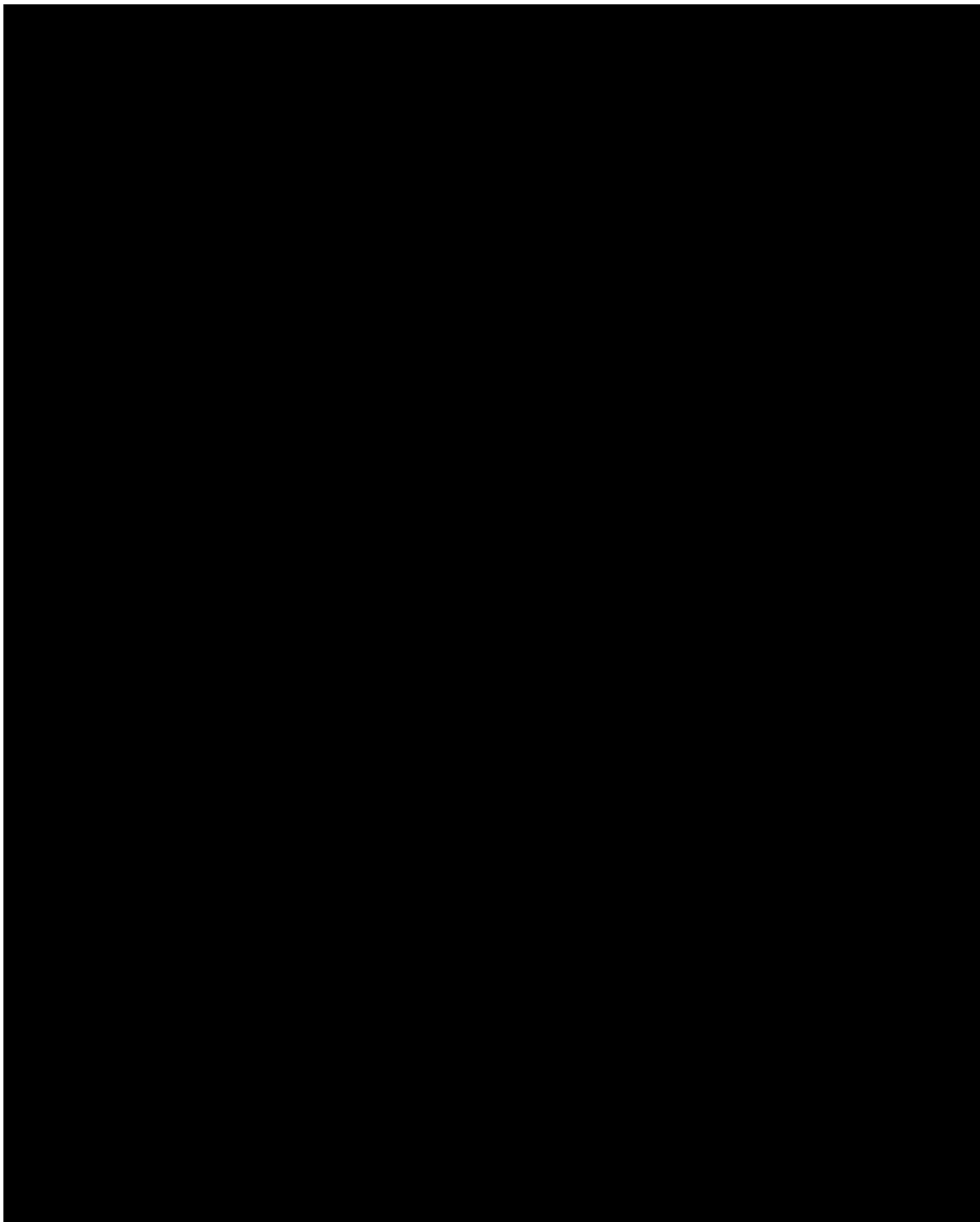
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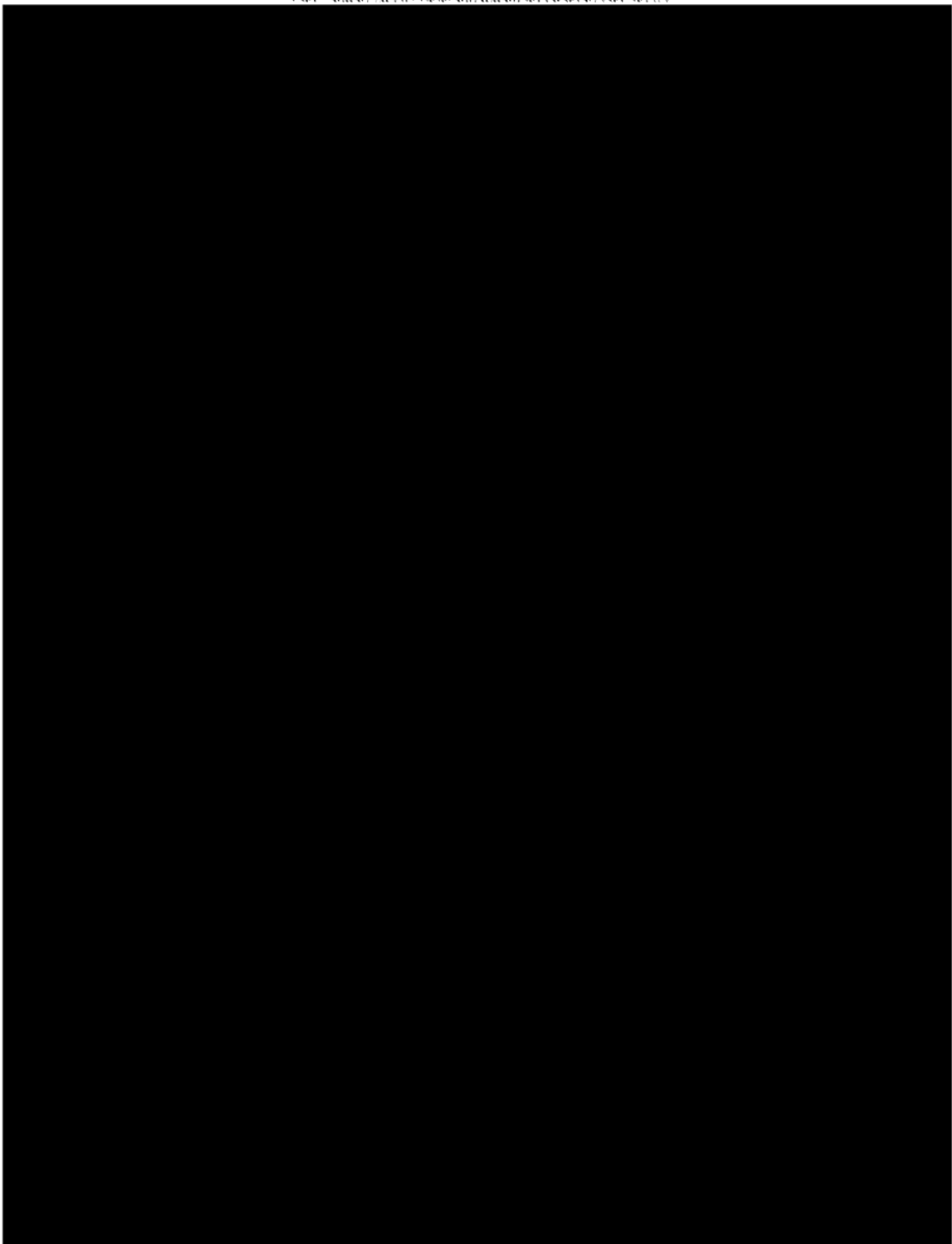


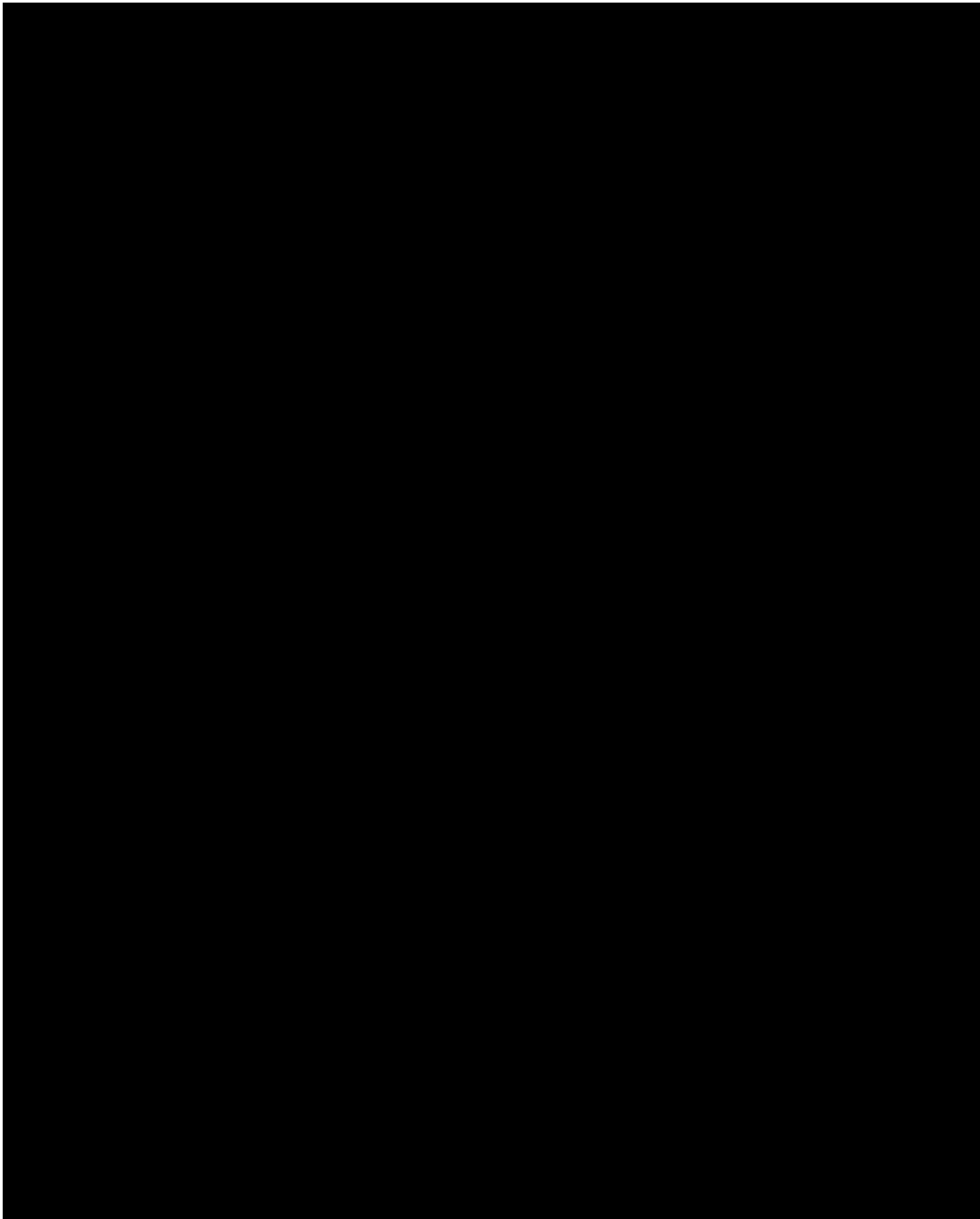




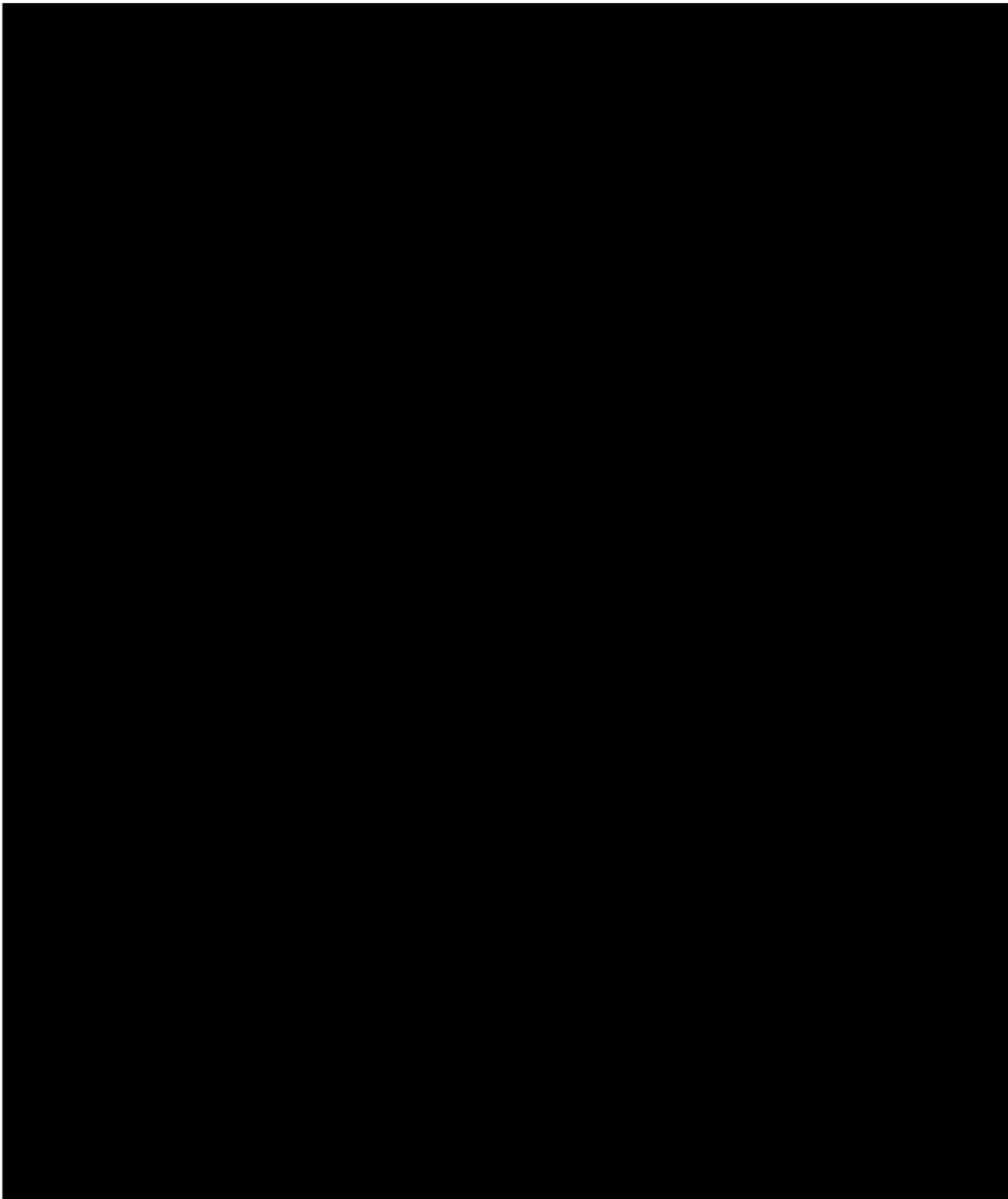




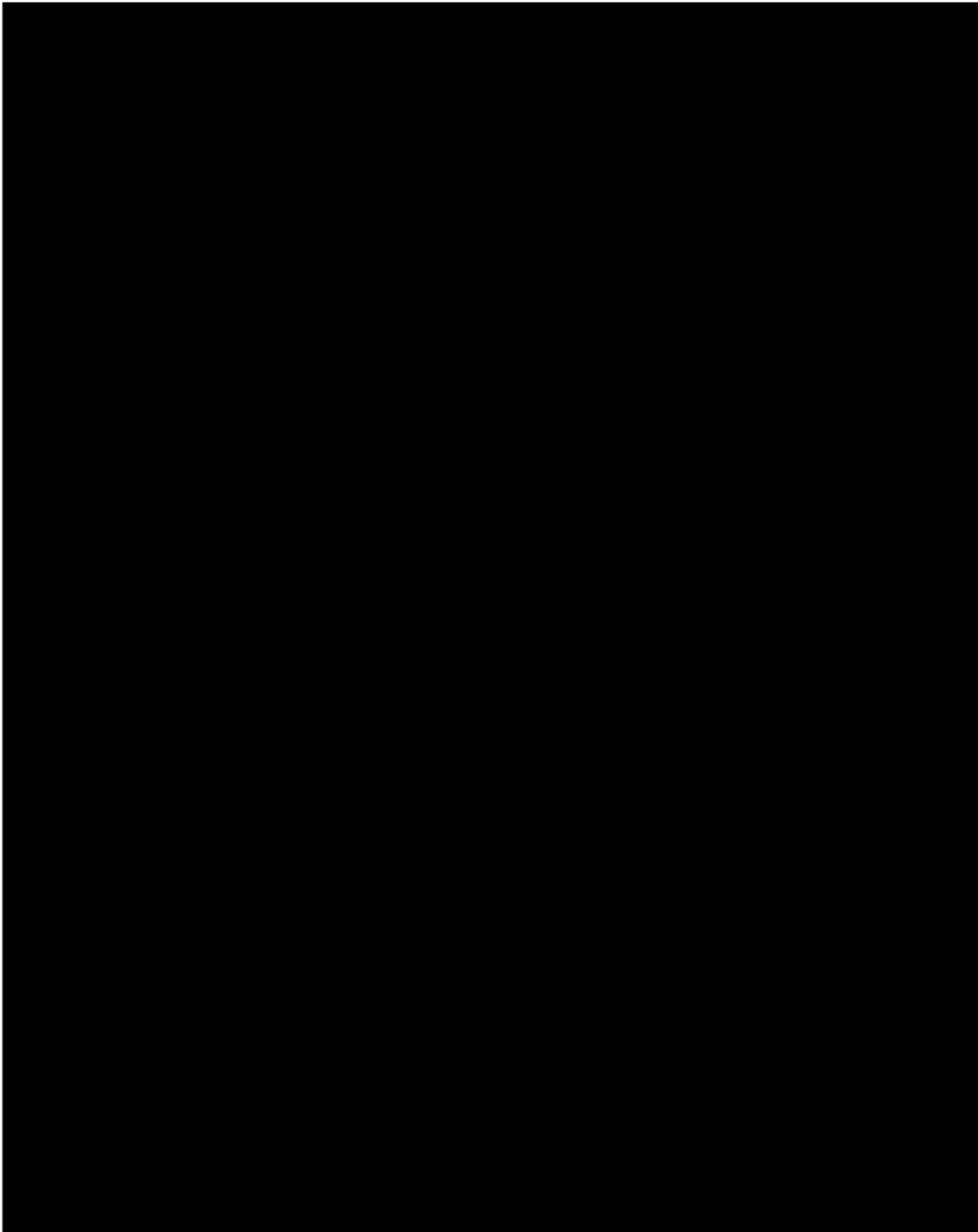




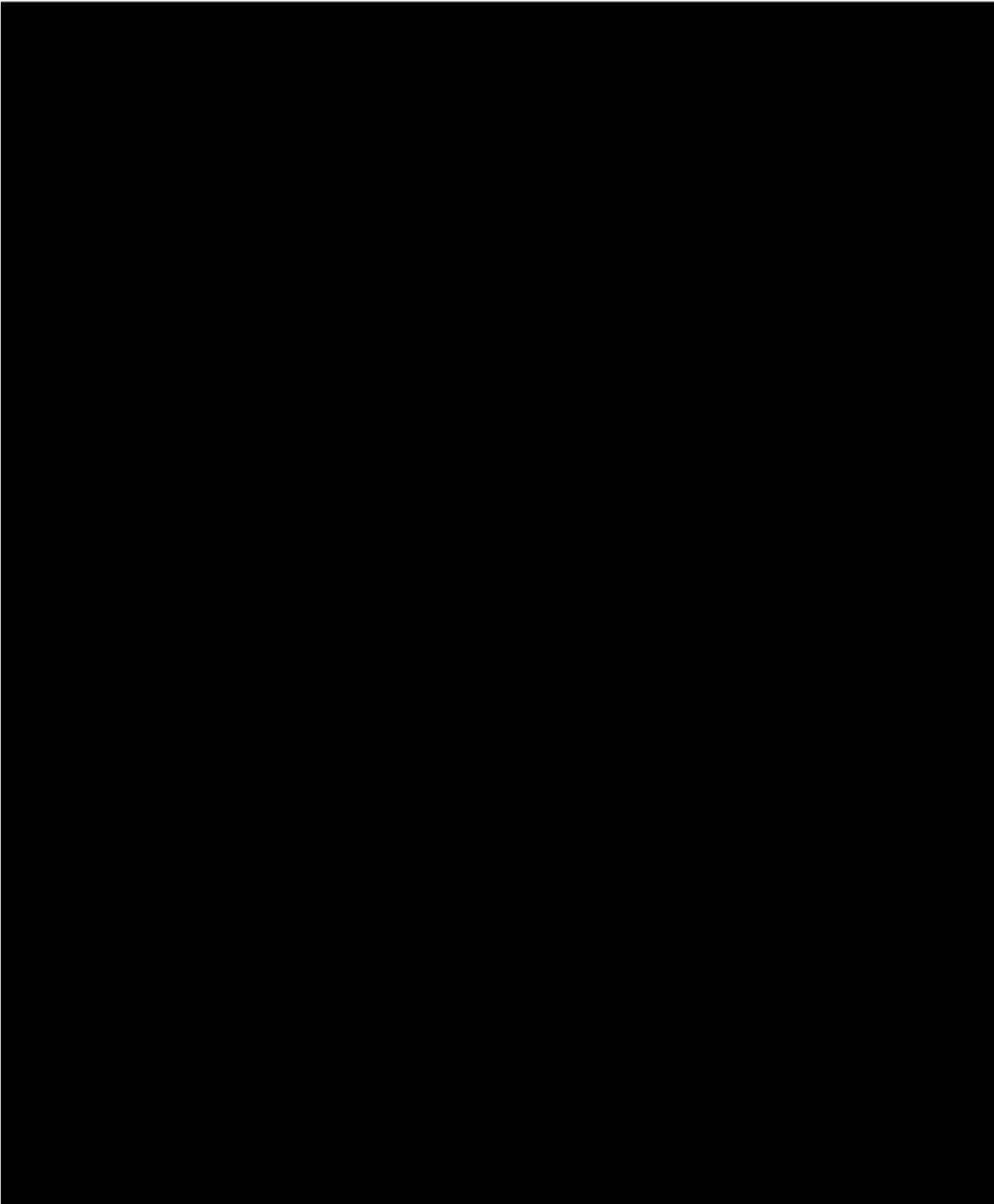
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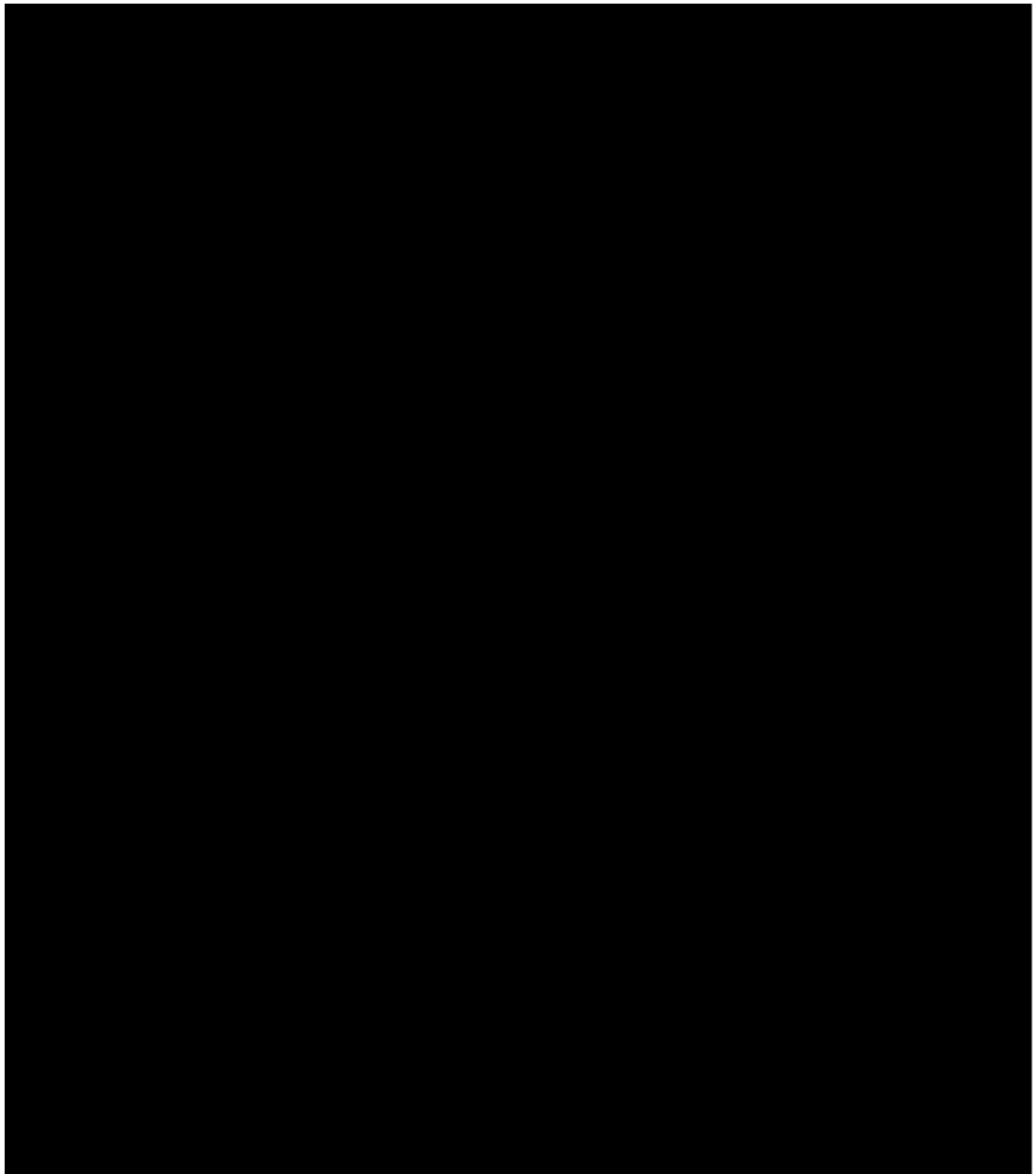
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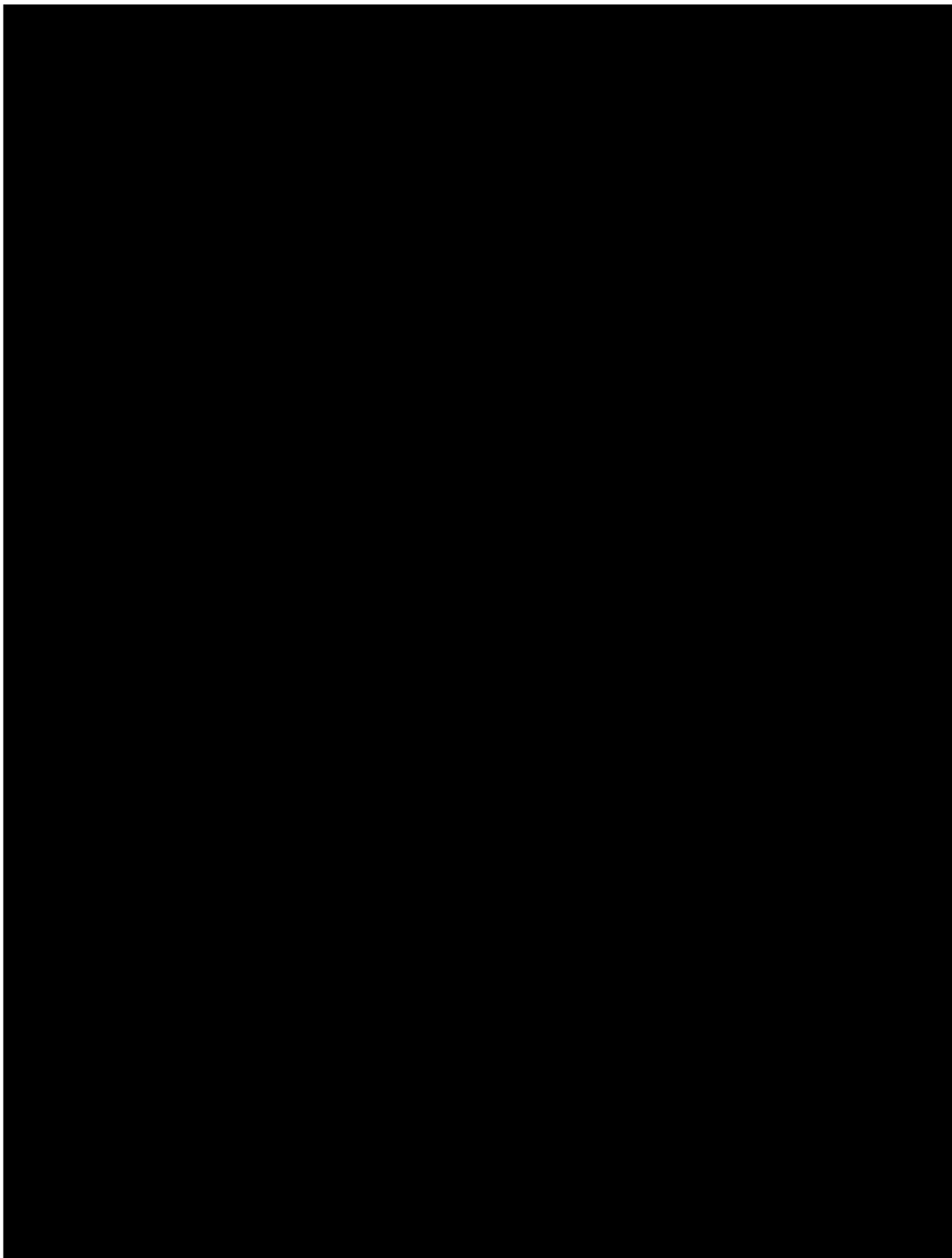


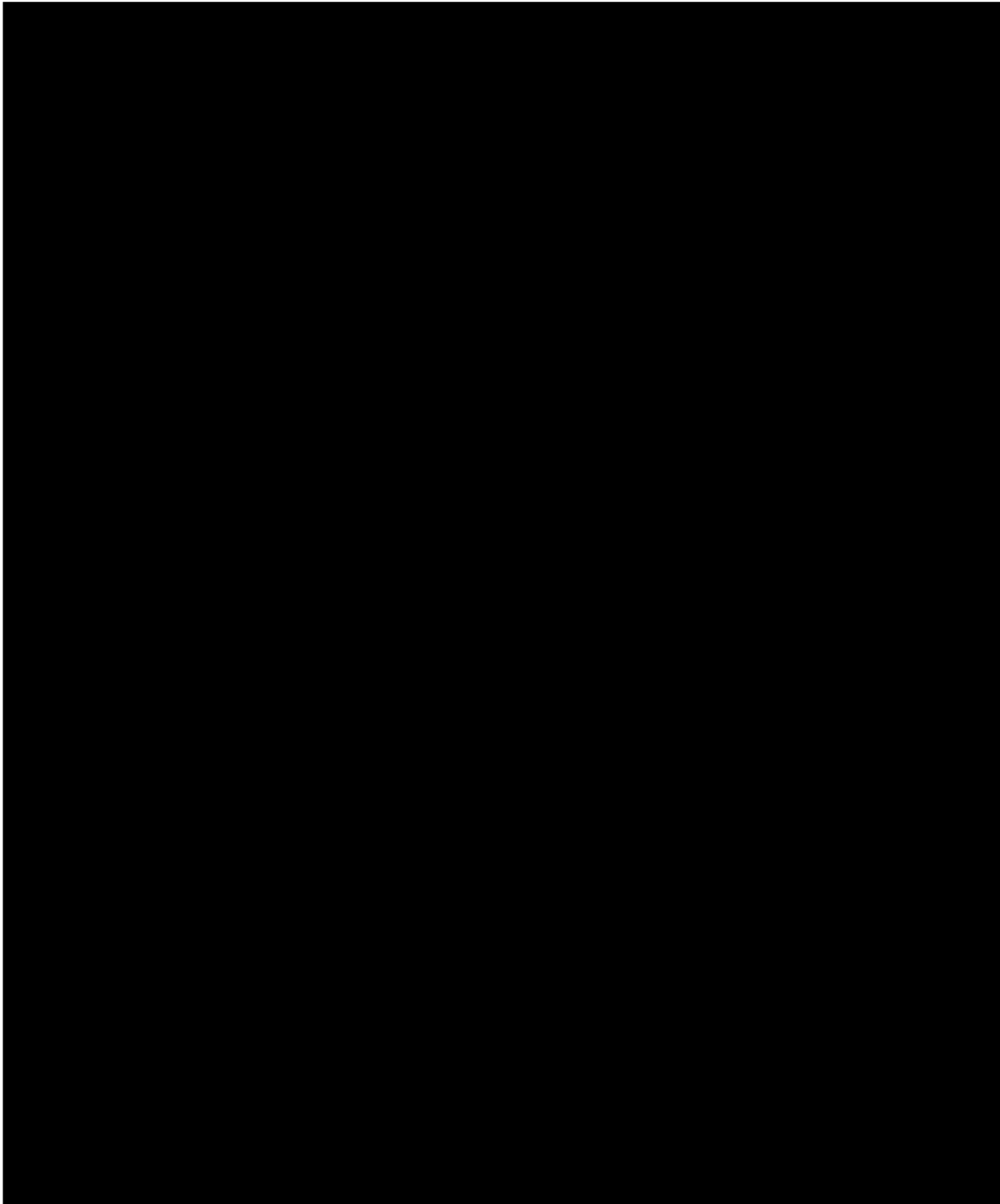
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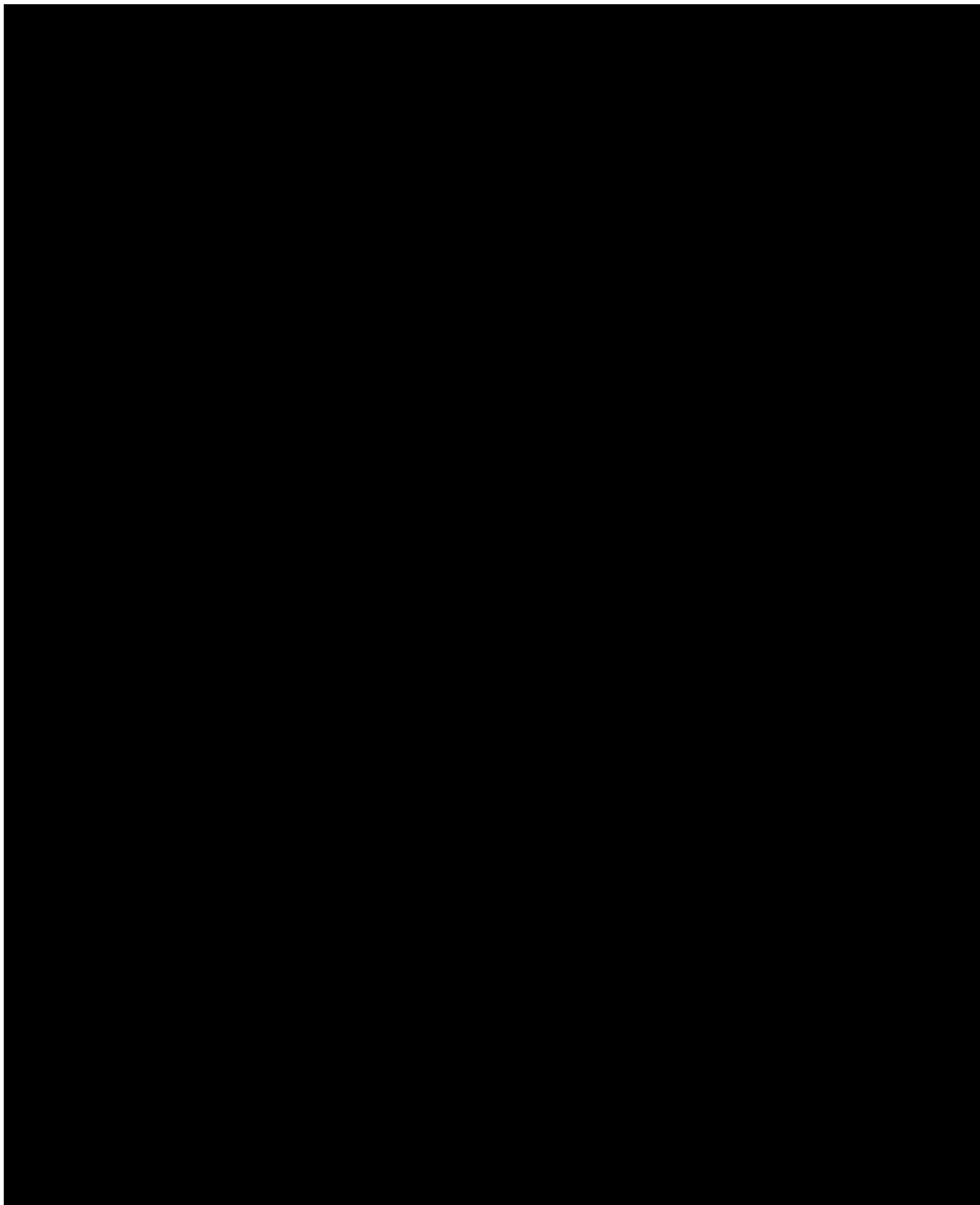


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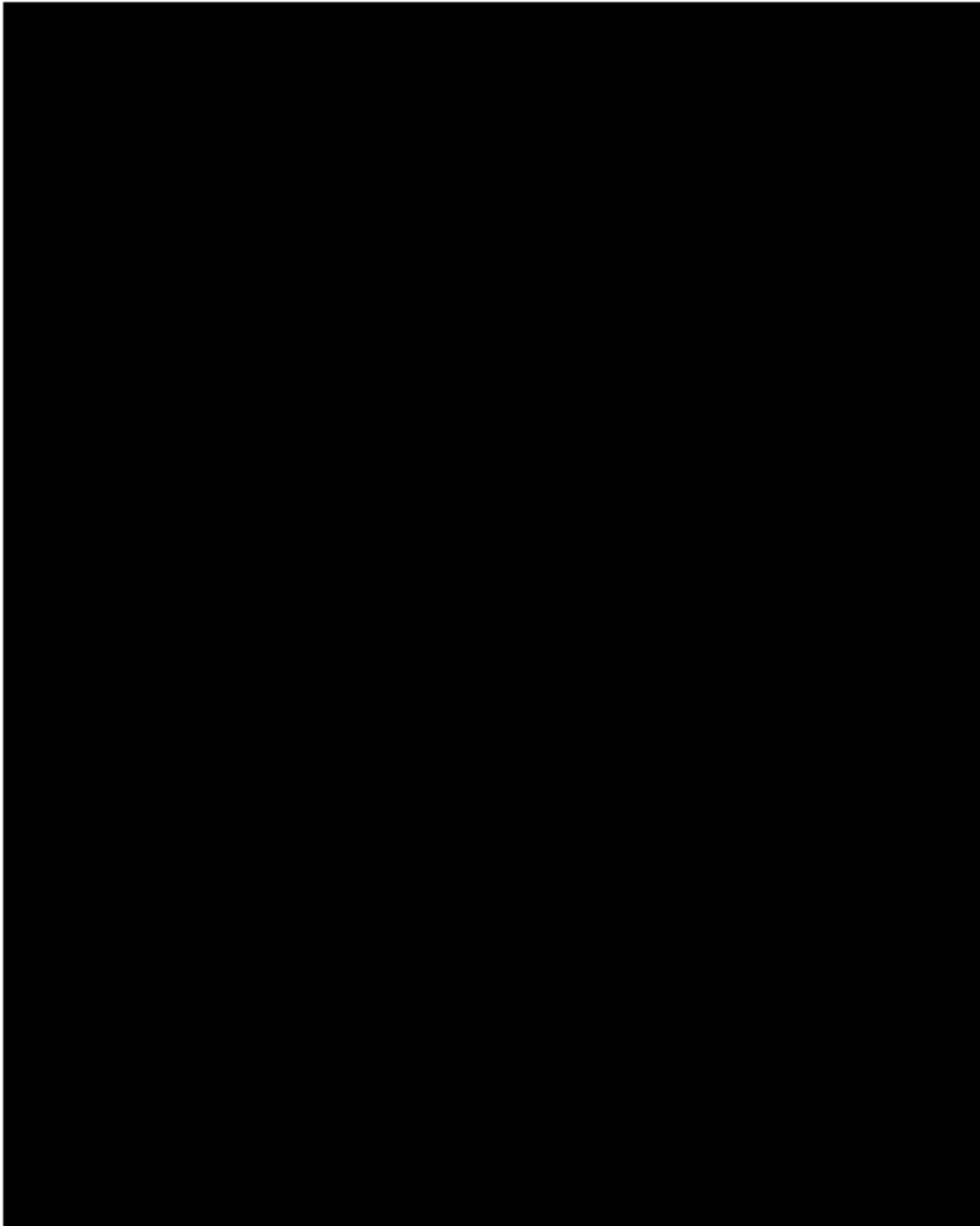






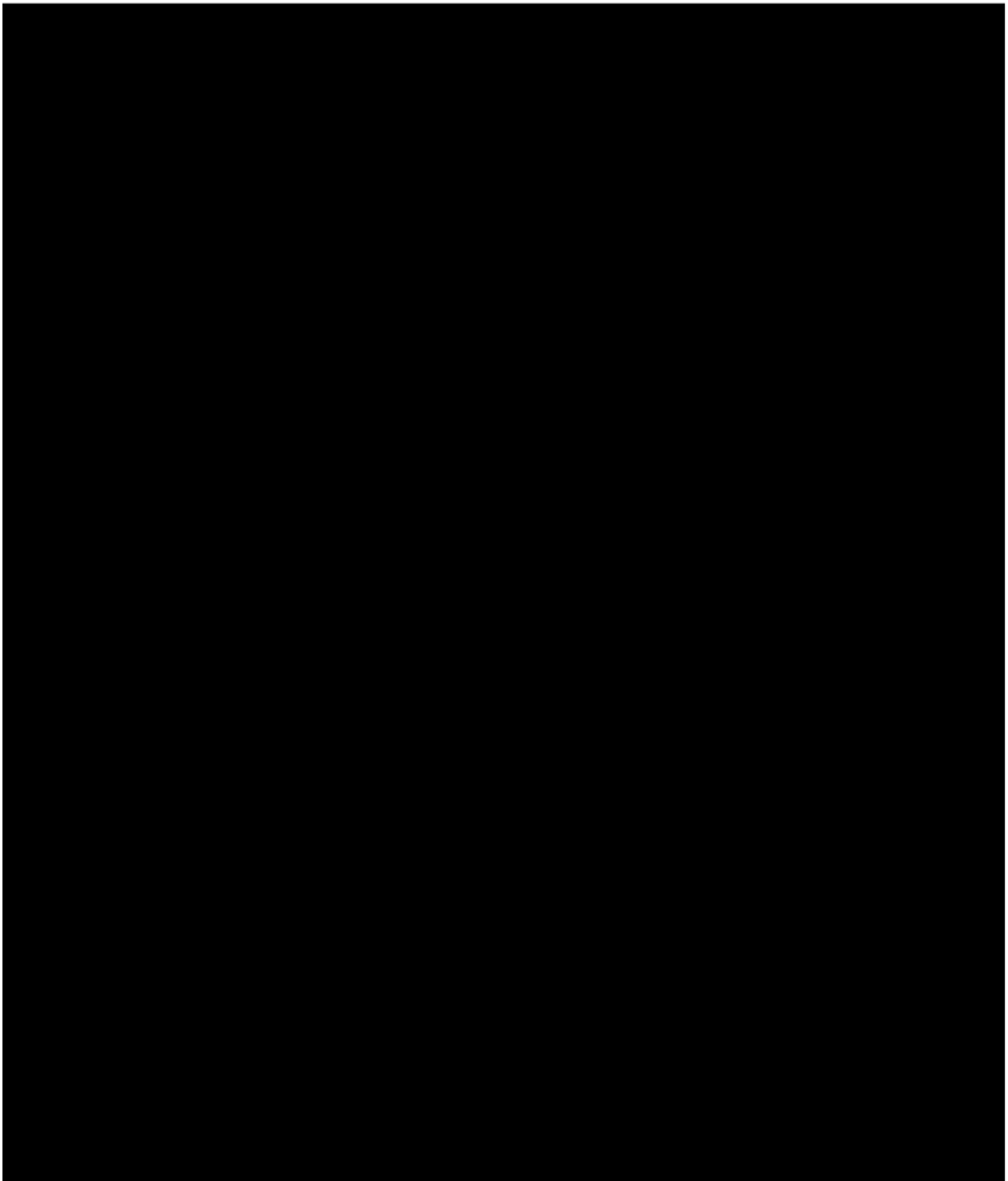


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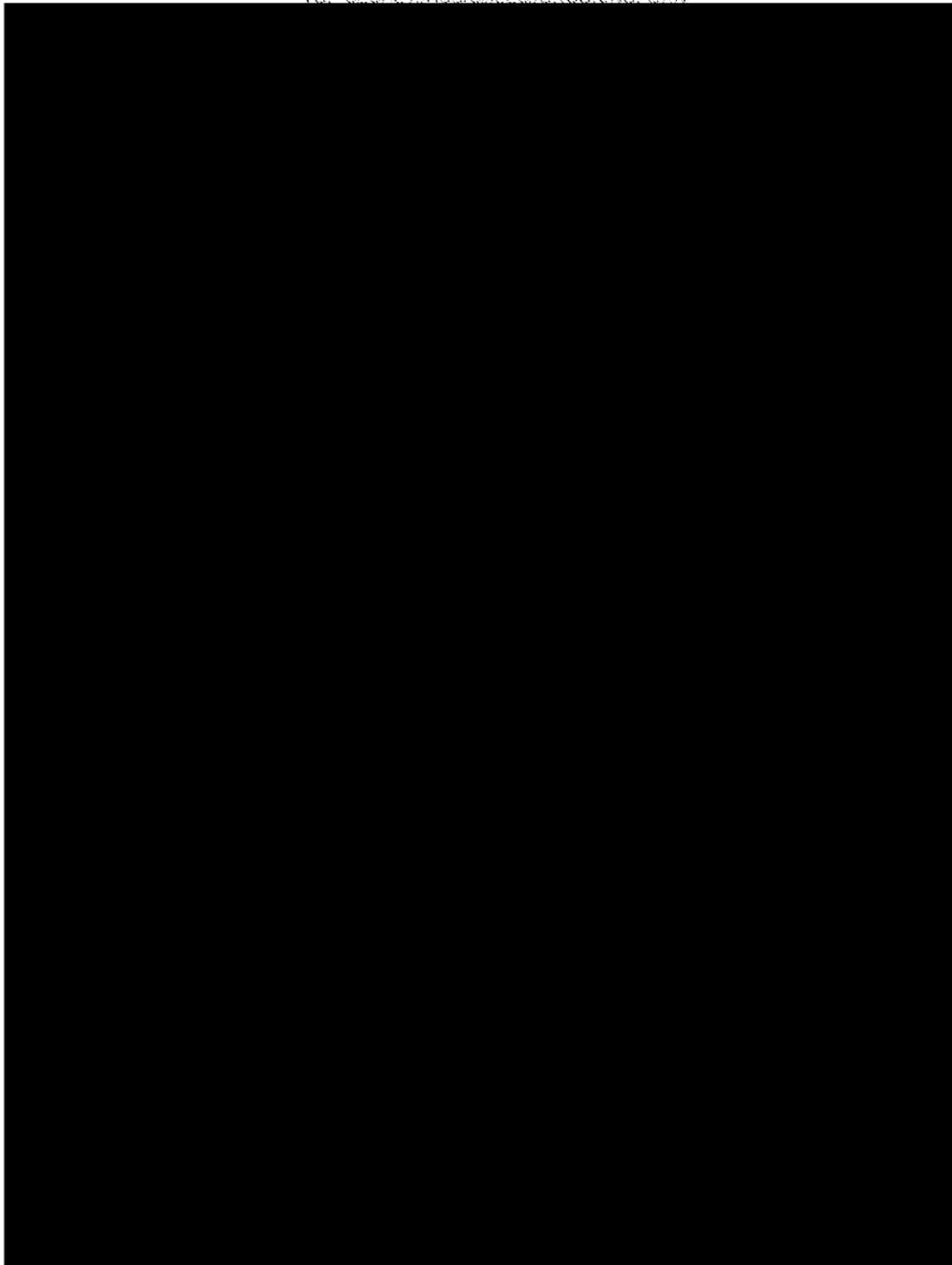


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Office of the Inspector General

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A Review of the FBI's Involvement in
and Observations of Detainee
Interrogations in Guantanamo Bay,
Afghanistan, and Iraq (U)



Office of the Inspector General
Oversight and Review Division
May 2008

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~~(S)~~ EXECUTIVE SUMMARY¹I. ~~(S)~~ Introduction

~~(S)~~ This Executive Summary summarizes the results of the review conducted by the Department of Justice (DOJ) Office of the Inspector General (OIG) regarding the Federal Bureau of Investigation's (FBI) involvement in and observations of detainee interrogations in Guantanamo Bay (GTMO), Afghanistan, and Iraq. The focus of our review was whether FBI agents witnessed incidents of detainee abuse in the military zones, whether FBI employees reported any such abuse to their superiors or others, and how those reports were handled. The OIG also examined whether FBI employees participated in any detainee abuse. In addition, we examined the development and adequacy of the policies, guidance, and training that the FBI provided to the agents it deployed to the military zones.

~~(S)~~ As part of our review, the OIG developed and distributed a detailed survey to over 1,000 FBI employees who had deployed to one or more of the military zones. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees reported such incidents to their FBI supervisors or others.²

¹ ~~(S)~~ The OIG has redacted (blacked out) from the public version of this report information that the FBI, the Central Intelligence Agency (CIA), or the Department of Defense (DOD) considered classified. We have provided full versions of the classified reports to the Department of Justice, the CIA, the DOD, and Congressional committees. The effort to identify classified information in this report has been a significant factor delaying release of this report. To obtain the agencies' classification comments, we provided a draft report to the FBI, the CIA, and the DOD for classification review on October 25, 2007. The FBI and the CIA provided timely responses. The DOD's response was not timely. Eventually, the DOD provided initial classification comments to us on March 28, 2008. However, we believed those classification markings were over-inclusive. After several additional weeks of discussion with the DOD about these issues, the DOD provided revised classification comments. The DOD's delay in providing comments, and its over-inclusive initial comments, delayed release of this report.

² ~~(S)~~ Although a major focus of our investigation was to collect information about the observations by FBI agents of DOD interrogation practices in the military zones, the OIG did not attempt to make an ultimate factual determination regarding the alleged misconduct by non-FBI personnel. Such a determination would have exceeded the DOJ OIG's jurisdiction. Moreover, the OIG did not have access to all of the

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(S) The OIG also interviewed more than 230 witnesses and reviewed over 500,000 pages of documents provided by the FBI, other components of the Department of Justice (DOJ), and the Department of Defense (DOD). OIG employees made two trips to GTMO to tour the detention facilities, review documents, and interview witnesses, including five detainees held there. We also interviewed one released detainee by telephone.³

(S) Our review focused primarily on the activities and observations of FBI agents deployed to military facilities under the control of the Department of Defense between 2001 and 2004. With limited exceptions, we were unable to and did not investigate the conduct or observations of FBI agents regarding detainees held at CIA facilities for several reasons. First, we were unable to obtain highly classified information about CIA-controlled facilities, what occurred there, and what legal authorities governed their operations. Second, during the course of our review we learned that in January 2003 the CIA Inspector General had initiated a review of the CIA terrorist detention and interrogation program. Therefore, our review focused mainly on the conduct and observations of the approximately 1,000 FBI employees related to detainee interviews in military zones.

A. (S) Organization of Report

(S) The OIG's complete report, which contains the full results of our review, has been classified by the relevant government agencies at the Top Secret/SCI level. The full report contains 12 chapters. The first three chapters provide introductory and background information, including a description of the role of the FBI in the military zones and the various FBI interrogation policies in place at the time of the September 11 attacks. Chapter Four discusses the FBI's involvement in the joint interrogation of a "high value detainee," Zayn Abidin Muhammed Hussein Abu Zubaydah, shortly after his capture, and the subsequent deliberations within the FBI regarding the participation of its agents in joint interrogations with agencies that did not follow FBI interview policies. Chapter Five examines the dispute between the FBI and the

witnesses, such as DOD or CIA personnel, who would have been necessary to make such a determination.

³ (S) In addition, the OIG examined prior reports addressing the issue of detainee treatment in the military zones. Among the most significant of those reports were the *Church Report*, a review of DOD interrogation operations conducted in 2004 and 2005 by the DOD, and the *Schmidt-Furlow Report*, a DOD investigation in 2005 into allegations of detainee abuse at GTMO.

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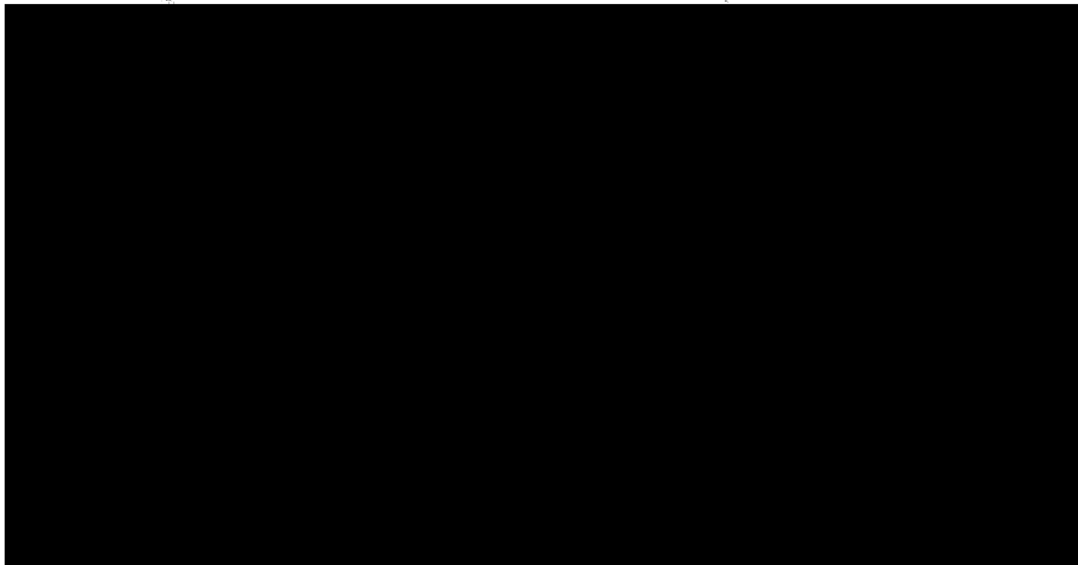
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DOD regarding the treatment of another detainee held at GTMO, Muhammad Al-Qahtani. The dispute regarding Al-Qahtani arose from the tension between the differing interrogation techniques employed by the FBI and the military. This dispute was elevated to higher-level officials and eventually resolved in favor of the DOD's approach.

(S) Chapter Six examines the FBI's response to the public disclosure of detainee mistreatment at Abu Ghraib prison in Iraq and related concerns expressed by FBI agents in the military zones. These responses included issuance of the FBI's May 2004 Detainee Policy, which reminded FBI agents not to use force, threats, or abuse in detainee interviews and instructed FBI agents not to participate in joint interviews in which other agencies were using techniques that were not in compliance with FBI rules. The FBI also conducted an internal review to determine the extent of the FBI's knowledge regarding detainee mistreatment. The seventh chapter discusses the communication of FBI policies to FBI employees who were deployed in military zones, including the FBI's efforts to provide training and guidance to its agents on appropriate interrogation techniques.

(S) Chapters Eight, Nine, and Ten detail the results of the OIG's survey and investigation into what FBI agents saw, heard about, and reported with respect to detainee interrogations in GTMO, Afghanistan, and Iraq.



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(U) Chapter Eleven discusses our investigation of eight separate allegations that FBI agents in the military zones were involved in detainee abuse or mistreatment.

(U) Chapter Twelve presents the OIG's conclusions and recommendations.

B. (U) Summary of OIG Conclusions

(U) Our report found that after FBI agents in GTMO and other military zones were confronted with interrogators from other agencies who used more aggressive interrogation techniques than the techniques that the FBI had successfully employed for many years, the FBI decided that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.

(U) Our review determined that the vast majority of FBI agents complied with FBI interview policies and separated themselves from interrogators who used non-FBI techniques. In a few instances, FBI agents used or participated in interrogations during which techniques were used that would not normally be permitted in the United States. These incidents were infrequent and were sometimes related to the unfamiliar circumstances agents encountered in the military zones. They in no way resembled the incidents of detainee mistreatment that occurred at Abu Ghraib.

(U) However, FBI agents continued to witness interrogation techniques by other agencies that caused them concern. Some of these concerns were reported to their supervisors, which sometimes resulted in friction between FBI and the military over the use of these interrogation techniques on detainees. Some FBI agents' concerns were resolved directly by the agents working with their military counterparts, while other concerns were never reported. Ultimately, however, the DOD made the decisions regarding which interrogation techniques could be used on the detainees in military zones. In our report, we describe the types of techniques that FBI employees reported to their supervisors.

(U) We also concluded that the FBI had not provided sufficient guidance to its agents on how to respond when confronted with military interrogators who used interrogation techniques that were not permitted by FBI policies.

(U) In sum, while our report concluded that the FBI could have provided clearer guidance earlier, and while the FBI and DOJ could have pressed harder for resolution of FBI concerns about detainee treatment, we believe the FBI should be credited for its conduct and professionalism.

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in detainee interrogations in the military zones and in generally avoiding participation in detainee abuse.

(U) The remainder of this unclassified Executive Summary summarizes in more detail the factual background and findings contained in our full report.

II. (U) Factual Background

(U) As a result of the September 11 attacks, the FBI changed its top priority to counterterrorism and preventing terrorist attacks in the United States. As a consequence of this shift in its priorities, and in recognition of the FBI's investigative expertise and familiarity with al-Qaeda, the FBI became more involved in collecting intelligence and evidence overseas, particularly in military zones in Afghanistan, at GTMO, and in Iraq.

(U) Beginning in December 2001, the FBI sent a small number of agents and other employees to Afghanistan to obtain actionable intelligence for its counterterrorism efforts, primarily by interviewing detainees at various facilities. In January 2002, the military began transferring "illegal enemy combatants" from Afghanistan to GTMO, and the FBI began deploying personnel to GTMO to obtain further intelligence and evidence from detainees in cooperation with military interrogators. Following the invasion of Iraq in March 2003, the FBI also sent agents and other employees to Iraq for the primary objective of collecting and analyzing information to prevent terrorist attacks in the United States and to protect U.S. personnel or interests overseas.

(U) FBI deployments in the military zones peaked at approximately 25 employees in Afghanistan, 30 at GTMO, and 60 in Iraq at any one time between 2001 and the end of 2004, the period covered by our review. In total, more than 200 FBI employees served in Afghanistan between late 2001 and the end of 2004, more than 500 employees served at GTMO during this period, and more than 260 served in Iraq. In each military zone, FBI agents were supervised by an FBI On-Scene Commander.

III. (U) FBI and DOD Interrogation Policies

A. (U) FBI Policies Prior to the September 11 Attacks

(U) Most of the FBI's written policies regarding permissible interrogation techniques for its agents and for its agents' conduct in collaborative or foreign interviews were developed prior to the

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September 11 attacks. When these policies were drafted, they reflected the FBI's primary focus on domestic law enforcement, which emphasized obtaining information for use in investigating and prosecuting crimes. These policies are designed to ensure that witness statements met legal and constitutional requirements of voluntariness so that they would be admissible in U.S. courts. In addition, the FBI has consistently stated its belief that the most effective way to obtain accurate information is to use rapport-building techniques in interviews.

(b) Conducting Interviews The FBI's Legal Handbook for Special Agents states, among other things, that "[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." The FBI's Manual of Administrative and Operational Procedures (MAOP) describes the importance of FBI agents not engaging in certain activities when conducting investigative activities, including foreign counterintelligence, and specifically states that "[n]o brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced"

(b) Joint Interviews Prior to the September 11 attacks, the FBI had policies for working with other government agencies, both domestic and foreign, in joint or cooperative investigations. However, the FBI's work with the military in GTMO, Afghanistan, and Iraq raised new issues regarding which agency's interrogation policies would apply and how the FBI would work with personnel from other agencies who operated under different interrogation rules. FBI agents told us that they have always been trained to adhere to FBI protocols, not to other agencies' rules with respect to interview policies or evidence collection.

(b) However, the FBI's expanded mission after the September 11 attacks gave rise to circumstances in which (1) entities other than the FBI were the lead agencies and had custody of the witnesses, (2) prosecution of crimes was not necessarily the primary goal of the interrogations, and (3) the evidentiary rules of U.S. Article III courts did not necessarily apply. As a consequence and as detailed below, existing FBI policies were not always sufficient to address these circumstances.

(b) Reporting Misconduct FBI policies prior to the September 11 attacks required FBI agents to report to FBI Headquarters any incidents of misconduct or improper performance by other FBI employees. However, the duty of an FBI employee to report on the activities of non-FBI government personnel was limited to criminal behavior by other personnel. We did not find any FBI policy prior to May 2004 imposing an obligation on FBI employees to report abuse or mistreatment of detainees by non-FBI government employees falling short of a crime.

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~~TOP SECRET~~ ~~ORCON/NOFORN~~**B. (U) DOD Interrogation Policies**

(U) In our report, we summarize the detainee interrogation policies adopted by the DOD after the September 11 attacks for prisoners and detainees. These policies were generally developed for use in war zones rather than in the law-enforcement context. The range of permissible DOD techniques was expanded after the September 11 attacks and was modified over time. These military policies permitted techniques that were inconsistent with the FBI's longstanding approach towards witness interrogations.

(U) Although DOD policies were not applicable to FBI agents, they were relevant to our report for several reasons. First, as detailed below, the tensions between DOD policies and the FBI's interview policies created concerns for some FBI agents in the military zones which sometimes led to conflicts between FBI and DOD employees.

(U) Second, FBI agents in the military zones had a unique opportunity to observe the conduct of other agencies' interrogators, including conduct related to alleged detainee abuse in GTMO, Iraq, and other detention facilities. A significant portion of our review involved the FBI's observations regarding the treatment of detainees by military interrogators. Because military interrogators were governed by the DOD's interrogation policies, these policies are relevant to the OIG's report.

(U) Third, in May 2004 the FBI instructed its agents to report to their superiors any incidents of known or suspected abuse or mistreatment of detainees by other agencies' interrogators. Some FBI agents were told that they should report any abusive interrogation technique that the agent believed was outside the legal authority of the interrogator. This instruction required FBI agents to have some familiarity with other agencies' policies, which we briefly summarize below.

(U) **DOD Policies for GTMO** When interrogations began at GTMO in January 2002, military interrogators relied on Army Field Manual 34-52, *Intelligence Interrogation*, for guidance as to permissible interrogation techniques. In addition to conventional direct questioning techniques, Field Manual 34-52 permitted military interrogators to utilize methods that, depending on the manner of their use, might not be permitted under FBI policies, such as "Fear Up (Harsh)," defined as exploiting a detainee's pre-existing fears including behaving in an overpowering manner with a loud and threatening voice. On December 2, 2002, the Secretary of Defense approved additional techniques for use on detainees at GTMO, including stress positions for a maximum of 4 hours, isolation,

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deprivation of light and auditory stimuli, hooding, 20-hour interrogations, removal of clothing, and exploiting a detainee's individual phobias (such as fear of dogs).

On January 15, 2003, the Secretary of Defense rescinded his approval of these techniques. On April 16, 2003, the Secretary of Defense promulgated revised guidance approving 24 techniques for use at GTMO, most of which were taken from or closely resembled those in Field Manual 34-52. The April 2003 GTMO Policy also approved the use of dietary manipulation, environmental manipulation, sleep adjustment, and isolation. This policy continued in effect for GTMO until September 2006 when the U.S. Army issued Field Manual 2-22.3, discussed below.

DOD Policies for Afghanistan Prior to 2003, the only official guidance regarding military detainee interrogation techniques in effect in Afghanistan was that contained in Field Manual 34-52. In early 2003, the military followed a policy that permitted techniques similar to those approved under the December 2002 GTMO Policy, including isolation, sleep adjustment, hooding, stress positions, sensory deprivation, and mild physical contact. In February 2003, after a military investigation into two detainee deaths at the Bagram Collection Point in December 2002, the military revised its approved interrogation tactics and prohibited handcuffing as a means to enforce sleep deprivation and physical contact for interrogation purposes.

In March 2004 the military issued a new policy for Afghanistan interrogations that was based on the prior Afghanistan policies and the April 2003 GTMO Policy. This policy added dietary manipulation and environmental manipulation to the list of approved techniques and relaxed the prior prohibitions on using stress positions as an incentive for cooperation. In June 2004, in the aftermath of the Abu Ghraib disclosures, the military in Afghanistan adopted the same policy that was issued for Iraq on May 13, 2004 (discussed below).

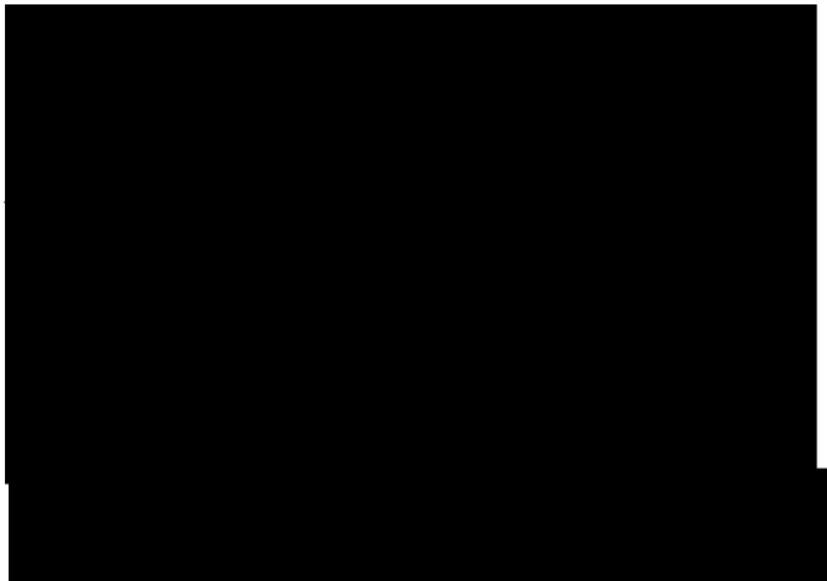
DOD Policies for Iraq For the first few months of the war in Iraq, military interrogators were governed by Field Manual 34-52. In September 2003, the DOD adopted a policy describing 29 permissible interrogation techniques. Most were adopted nearly verbatim from the April 2003 GTMO Policy approved by the Secretary of Defense, but additional approved techniques included muzzled military working dogs, sleep management, yelling, loud music, light control, and stress positions for up to 1 hour per use.

On October 12, 2003, the Commander in Iraq rescinded approval for several of these techniques. On May 13, 2004, in the wake of the Abu Ghraib abuse revelations, the military further revised its

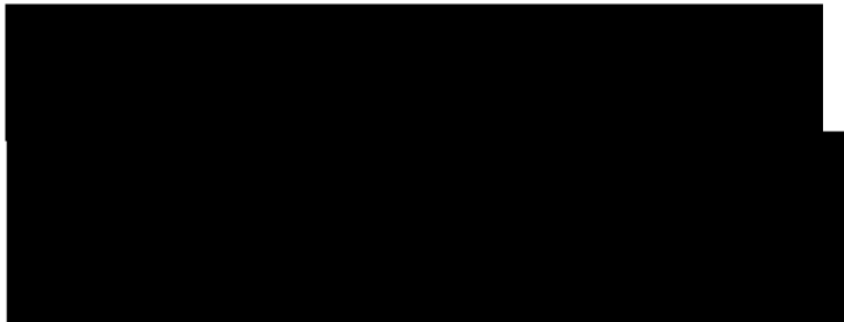
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policies to specify that "under no circumstances" would requests for certain techniques be approved, including "sleep management, stress positions, change of scenery, diet manipulation, environment manipulation, or sensory deprivation." In January 2005, the military adopted an interrogation policy for Iraq that approved only those techniques listed in Field Manual 34-52, with additional safeguards, prohibitions, and clarifications, including explicit prohibitions against the removal of clothing and the use or presence of military working dogs during interrogations.

Field Manual 2-22.3 In September 2006, the U.S. Army issued Field Manual 2-22.3 in fulfillment of a mandate of the Detainee Treatment Act, enacted in December 2005, requiring a uniform standard for treatment of detainees under DOD custody. Field Manual 2-22.3 reiterated and elaborated on many of the techniques listed in its predecessor, Field Manual 34-52, but placed much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identified several prohibited actions, including nudity, sexual acts or poses, beatings, waterboarding, use of military dogs, and deprivation of food or water. Field Manual 2-22.3 also placed specific controls on the use of the technique of isolating detainees from other detainees. However, Field Manual 2-22.3 was not in effect during any part of the period that was the focus of the OIG's review.

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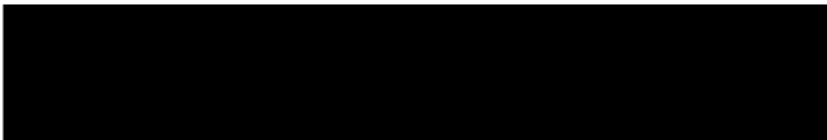
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V. ~~(S)~~ FBI Concerns about Military Interrogations at GTMO

~~(S)~~ Late in 2002, FBI agents assigned to GTMO also began raising questions to FBI Headquarters regarding harsh interrogation techniques being used by the military. These concerns were focused particularly on the treatment of Muhammad Al-Qahtani, who had unsuccessfully attempted to enter the United States in August 2001 shortly before the September 11 attacks, allegedly for the purpose of being an additional hijacker. After his capture and transfer to GTMO, Al-Qahtani resisted initial FBI attempts to interview him. In September 2002, the military assumed control over his interrogation, although behavioral specialists from the FBI continued to observe and provide advice.

~~(S)~~ The FBI agents became concerned when the military announced a plan to keep Al-Qahtani awake during continuous 20-hour interviews every day for an indefinite period and when the FBI agents observed military interrogators use increasingly harsh and demeaning techniques, such as menacing Al-Qahtani with a snarling dog during his interrogation.

~~(S)~~ The friction between FBI officials and the military over the interrogation plans for Al-Qahtani increased during October and November 2002. The FBI continued to advocate a long-term rapport-based strategy, while the military insisted on a different, more aggressive approach. Between late November 2002 and mid-January 2003, the military used numerous aggressive techniques on Al-Qahtani, including

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attaching a leash to him and making him perform dog tricks, placing him in stress positions, forcing him to be nude in front of a female, accusing him of homosexuality, placing women's underwear on his head and over his clothing, and instructing him to pray to an idol shrine. FBI and DOJ officials did not learn about the techniques used between late November 2002 and mid-January 2003 until much later. However, in early December 2002, an agent learned that Al-Qahtani was hospitalized briefly for what the military told the FBI was low blood pressure and low core body temperature.

(S) As a result of the interrogations of Al-Qahtani and other detainees at GTMO, several FBI agents raised concerns with the DOD and FBI Headquarters about: (1) the legality and effectiveness of DOD techniques; (2) the impact of these techniques on the future prosecution of detainees in court or before military commissions; and (3) the potential problems that public exposure of these techniques would create for the FBI as an agency and FBI agents individually. Some of these concerns were expressed to FBI Headquarters in e-mails from agents at GTMO. The informal response that some of these agents received from FBI Headquarters was that agents could continue to witness DOD interrogations involving non-FBI authorized techniques so long as they did not participate.

(S) During this period, however, FBI agents continued to raise objections directly with DOD officials at GTMO and to seek guidance from senior officials in the FBI's Counterterrorism Division. No formal responses were ever received by the agents who wrote these communications.

(S) We determined, however, that some of the FBI agents' concerns regarding the DOD's interrogation approach at GTMO were communicated by officials in the FBI's Counterterrorism Division to senior officials in the Criminal Division of DOJ and ultimately to the Attorney General. FBI Headquarters officials said they discussed the issue in meetings with senior officials in the DOJ Criminal Division. Two witnesses told us that they recalled conversations with Alice Fisher (at the time the Deputy Assistant Attorney General for the Criminal Division) regarding the ineffectiveness of military interrogations at GTMO, but they did not recall discussing specific techniques with Fisher. Fisher told us that she could not recall discussing detainee treatment or particular interrogation techniques with the FBI, but that she was aware that the FBI did not consider DOD interrogations at GTMO to be effective.

(S) Concerns about the efficacy of DOD interrogation techniques also reached then Assistant Attorney General for the Criminal Division Michael Chertoff, Deputy Attorney General Larry Thompson, and

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Attorney General John Ashcroft.⁶ The senior-level witnesses we interviewed generally said they recalled that the primary concern expressed about the GTMO interrogations was that DOD techniques and interrogators were ineffective at developing actionable intelligence. These senior DOJ officials did not identify FBI agents' concerns about the legality of the techniques or their impact on future prosecutions as a focus of these discussions.

(b) In addition, we were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation techniques were ever addressed by any of the federal government's inter-agency structures created for resolving disputes about anti-terrorism issues. These structures included the Policy Coordinating Committee, the "Principals" Committee, and the "Deputies" Committee, all chaired by the National Security Council (NSC).

(b) Several senior DOJ Criminal Division officials told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council, but they did not recall that any changes were made at GTMO as a result. Several witnesses also told us that they believed that Attorney General Ashcroft spoke with the NSC or the DOD about these concerns, but we could not confirm this because former Attorney General Ashcroft declined to be interviewed for this review.

(b) We found no evidence that the FBI's concerns influenced DOD interrogation policies. Ultimately, the DOD made the decisions regarding what interrogation techniques would be used by military interrogators at GTMO, because GTMO was a DOD facility and the FBI was there in a support capacity. Similarly, the DOD controlled what techniques were used in Afghanistan and Iraq. As a result, once it was clearly established within each zone that military interrogators were permitted to use interrogation techniques that were not available to FBI agents, the FBI On-Scene Commanders said they often did not elevate additional reports of harsh detainee interrogations to their superiors at FBI Headquarters.

(b) Eventually, the DOD modified its own policies as a result of its internal deliberations. As noted above, on January 15, 2003, Defense Secretary Rumsfeld rescinded his prior authorization of some of the more aggressive DOD interrogation techniques. In April 2003, Al-Qahtani became cooperative with military interrogators. Based on the information we obtained in the OIG survey and our follow-up interviews, we believe that around this time the military also reduced the frequency

⁶ Former Attorney General Ashcroft declined to be interviewed for this review.

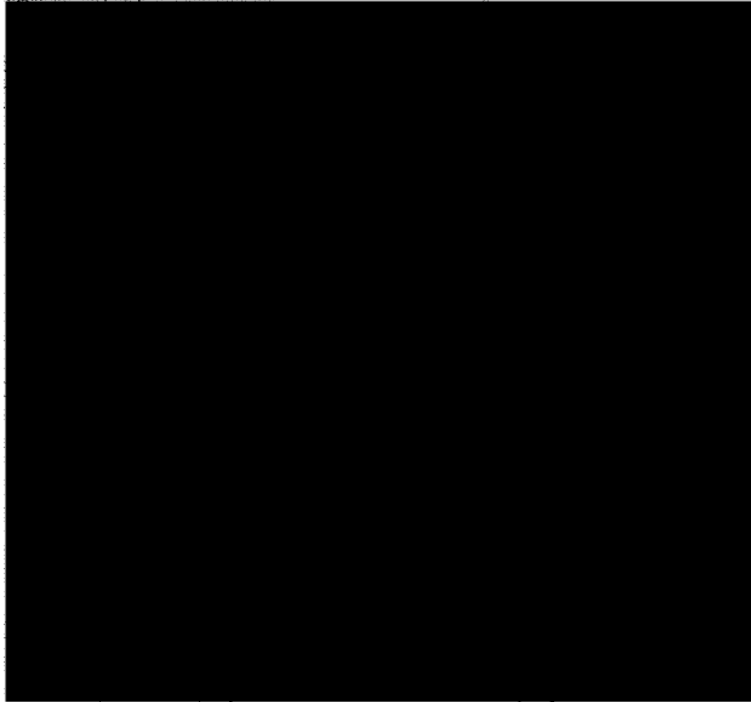
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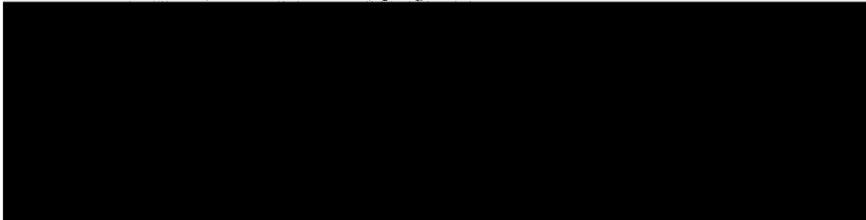
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and severity of its use of many of the techniques that concerned the FBI agents deployed at GTMO.



(S) We also determined that the DOD opposed the proposal for Al-Qahtani, and the proposal was never adopted. Moreover, Al-Qahtani began cooperating with military interrogators in April 2003, obviating the underlying rationale for the proposal.



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VI. (S) The FBI's Response to the Disclosure of Detainee Mistreatment at Abu Ghraib

(S) In January 2004, senior managers in the FBI learned about allegations of prisoner mistreatment at Abu Ghraib prison in Iraq. Managers in the FBI's Counterterrorism Division agreed with the recommendation of the FBI's On-Scene Commander that the military should conduct the investigation into the alleged abuses at Abu Ghraib without the assistance of the FBI, because the matter was outside of the FBI's mission and the FBI's participation might harm its relationship with the military.

(S) However, as described below, public disclosure of explicit photographs and accounts of detainee mistreatment at the Abu Ghraib prison in late April 2004 triggered a significant effort within the FBI to assess the adequacy of its own policies regarding detainee treatment in the military zones and to determine what, if anything, its agents knew about detainee mistreatment at Abu Ghraib, GTMO, and Afghanistan.

A. (S) The FBI's May 2004 Detainee Policy

(S) Following the Abu Ghraib disclosures, the FBI quickly determined that although existing FBI policies prohibited FBI agents from utilizing coercive interview techniques, no policy had ever been issued to address the question of what FBI agents should do if they saw non-FBI interrogators using coercive or abusive techniques. On May 19, 2004, the FBI General Counsel issued an official FBI policy regarding "Treatment of Prisoners and Detainees."⁷ This policy included the following instructions for FBI agents in dealing with detainees:

- (S) Agents were reminded that existing FBI policy prohibited agents from obtaining statements during interrogations by the use of force, threats, physical abuse, threats of such abuse, or severe physical conditions.
- (S) Agents were told that FBI personnel may not participate in any treatment or use any interrogation technique that is in violation of these guidelines, regardless of whether the co-interrogator is in compliance with his or her own guidelines. If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation.

⁷ (S) We refer to the policy as the "FBI's May 2004 Detainee Policy."

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- ~~(S)~~ Agents were told that if an FBI employee knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee, the FBI employee must report the incident to the FBI On-Scene Commander, who shall report the situation to the appropriate official at FBI Headquarters. FBI Headquarters is responsible for further follow up with the other party.

B. ~~(S)~~ Concerns Expressed by FBI Agents in the Field

~~(S)~~ Shortly after the public disclosure of the Abu Ghraib abuses, several FBI agents in the military zones expressed significant concerns about how the military's use of certain interrogation techniques could affect the FBI. For example, in May 2004 an FBI supervisor stationed in Afghanistan sent a series of e-mails to senior Counterterrorism Division officials in FBI Headquarters stating that although the military had temporarily restricted the use of aggressive interrogation techniques such as stress positions, dogs, and sleep deprivation, military interrogators were likely to resume such methods soon. The FBI supervisor stated that even if the FBI was not present during such interrogations, FBI agents would inherently be participating in the process because they would be interviewing detainees who had either recently been subjected to such techniques by the military or who would be subjected to them after the FBI interviews were completed. He questioned whether it would be ethical for FBI agents to be involved in such a process and whether they would be held culpable for detainee abuse. He recommended that the FBI move quickly to issue definitive guidance to its agents in Afghanistan. By this time, the FBI Office of General Counsel was in the process of drafting the FBI's May 2004 Detainee Policy (described above).

~~(S)~~ However, almost immediately after the FBI's May 2004 Detainee Policy was issued, several FBI employees raised additional questions and concerns. In late May 2004, the FBI's On-Scene Commander in Iraq transmitted an e-mail to senior managers in the FBI's Counterterrorism Division stating that the instruction in the FBI's May 2004 Detainee Policy that agents report any known or suspected abuse or mistreatment did not draw an adequate line between conduct that is "abusive" and techniques such as stress positions, sleep management, stripping, or loud music that, while seemingly harsh, may have been permissible under orders or policies applicable to non-FBI interrogators.

~~(S)~~ In late May 2004, the FBI General Counsel stated in an e-mail to the FBI Director that agents who asked about the meaning of "abuse" in the FBI's May 2004 Detainee Policy were being told that the intent of

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the Policy was for agents to report conduct that they "know or suspect is beyond the authorization of the person doing the harsh interrogation," and that there was no reason to report on "routine" harsh interrogation techniques that the DOD had authorized its interrogators to use. Consistent with this interpretation, senior FBI officials in the Counterterrorism Division drafted a "clarification" of the May 2004 Detainee Policy instructing FBI agents to report any techniques that exceed "lawfully authorized practices." This clarification was never formally issued, although the interpretation contained in it was communicated to some FBI agents in the military zones.

(S) In addition, in response to concerns expressed by agents and attorneys in the FBI after the May 2004 Policy was issued, the FBI General Counsel directed lawyers in the Office of General Counsel to prepare legal advice that addressed, among other things, how long FBI agents needed to wait after another agency interrogated a detainee so as not to be considered a participant in the harsh interrogation. Several drafts of supplemental policy to address this issue were prepared by the Office of General Counsel, but none was ever finalized. However, as detailed in Section VII below, this issue was addressed in training provided to agents prior to their deployment in the military zones.

C. (S) OIG Assessment of FBI Policies

(S) As described below, our report concluded that while the FBI provided some guidance to its agents about conduct in the military zones, FBI Headquarters did not fully or timely respond to repeated requests from its agents in the military zones for additional guidance regarding their participation in detainee interrogations.

(S) **FBI Interview Techniques** Although FBI agents were aware that FBI policies regarding interviews prohibited the use of threats or coercion, we believe that the agents had several reasons to be uncertain about whether the rules were different in the military zones. Following the September 11 attacks, the FBI announced a change in priorities from evidence collection for prosecution to intelligence collection for terrorism prevention. In addition, conditions at detention facilities in the military zones were vastly different from conditions in U.S. jails or prisons. We believe that under these circumstances FBI agents in the military zones could reasonably have concluded that traditional law enforcement constraints on interview techniques were not strictly applicable in the military zones, particularly with respect to "high value" detainees.

(S) Ultimately, senior FBI management determined that pre-existing FBI standards should remain in effect for all FBI interrogations in military zones even where future prosecution was not contemplated.

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However, we determined that this message did not reach all FBI agents

May 2004 that it needed to issue written guidance addressing the question of whether its pre-September 11 policies and standards for custodial interviews should continue to be strictly applied in the military zones.

(U) Joint Interrogations The FBI's May 2004 Detainee Policy stated: "If a co-interrogator is in compliance with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." Yet, the question of whether the FBI should participate in, assist, or observe interrogations conducted by others using non-FBI techniques was raised to FBI Headquarters well before the Abu Ghraib scandal broke, and we believe that the FBI should have clarified its guidance before May 2004.

(U) FBI Interrogations Following Other Agencies' Interrogations The FBI's May 2004 Detainee Policy also does not address the issue of whether FBI agents may interview a detainee who had previously been subjected to non-FBI interrogation techniques by other agencies. Although the problem was diminished somewhat when the military promulgated a new, uniform interrogation policy in 2006 for all military theaters that stresses non-coercive interrogation approaches (Field Manual 2-22.3), we believe this has not fully eliminated the need for clearer FBI guidance with regard to this question. The revised military policy still permits DOD interrogators to use some techniques that FBI agents probably cannot employ.

(U) We therefore recommend in our report that the FBI consider completing the project that its Office of General Counsel began shortly after the issuance of its May 2004 Detainee Policy and address the issue of when FBI agents may interview detainees previously interrogated by other agencies using non-FBI techniques. We also recommend that the FBI address the circumstances under which FBI agents may use information obtained in interrogations by other agencies that employed non-FBI techniques.

(U) Reporting Prior to issuance of the FBI's May 2004 Detainee Policy, the FBI did not provide specific or consistent guidance to its agents regarding when or how the conduct of other agencies toward

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detainees should be reported. Some agents told us they were instructed to report problematic interrogation techniques, but the definition of what to report was left unclear. Leaving this matter to the discretion of individual FBI agents put them in a difficult position because FBI agents were trying to establish a cooperative working relationship with the DOD while fulfilling their intelligence-gathering responsibilities. Under these circumstances, FBI agents had reasons to avoid making reports regarding potential mistreatment of detainees. In addition, the agents lacked information regarding what techniques were permissible for non-FBI interrogators. It was therefore not surprising that some agents who later told us that they observed or heard about potentially coercive interrogation techniques did not report such incidents to anyone at the time.

(U) It is important to note, however, that despite the absence of clear guidance, several FBI agents brought concerns about other agencies' interrogation techniques to the attention of their On-Scene Commanders or senior officials at the FBI. We believe these agents should be commended for their actions.

(U) In addition, in light of the recurring instances beginning in 2002 in which FBI agents in the military zones raised questions about the appropriateness of other agencies' interrogation techniques, we believe that FBI management should have recognized sooner the need for clearer and more consistent standards and procedures for FBI agents to make these reports. If this issue had been more fully addressed by FBI and DOD Headquarters officials, it would have reduced friction between FBI agents in the military zones and their military counterparts. Such an approach should have clarified: (1) what DOD policies were, (2) how the DOD was dealing with deviations from these policies, and (3) what FBI agents should do in the event they observed such deviations.

(U) The FBI's May 2004 Detainee Policy, while providing some guidance, did not fully resolve these issues. The Policy requires FBI employees to report any instance when the employee "knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee," but it contains no definition of abuse or mistreatment. According to an e-mail from the FBI General Counsel to the Director dated May 28, 2004, agents with questions about the definitions of abuse or mistreatment were instructed to report conduct that they know or suspect is "beyond the authorization of the person doing the harsh interrogation." Agents told us, however, that they often did not know what techniques were permitted under military policies.

(U) Going forward, the military's adoption of a single interrogation policy for all military zones (Field Manual 2-22.3) may reduce the

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difficulties for FBI agents seeking to comply with the reporting requirement in the FBI's May 2004 Detainee Policy. Nevertheless, military interrogators are still permitted to use some techniques not available to FBI agents, and it is therefore important for agents to receive training on the approved military interrogation policies and for the FBI to clarify what conduct should or should not be reported.

(S) As a result, in our report we recommend that the FBI consider supplementing its May 2004 Detainee Policy or expanding pre-deployment training to clarify the circumstances under which FBI agents should report potential mistreatment by other agencies' interrogators. If the FBI requires its employees to report any conduct beyond the interrogator's authority, then the FBI should provide guidance to its agents on what interrogation techniques are permitted under military policy. If the FBI requires agents to report "abuse or mistreatment," it should define these terms and explain them with examples, either in the policy itself or in agent training.

VII. (S) FBI Training Regarding Detainee Treatment

(S) We also examined the training that FBI agents received regarding issues of detainee interrogation and detainee abuse or mistreatment in connection with their deployments to the military zones during the periods before and after issuance of the FBI's May 2004 Detainee Policy.

(S) A large majority of agents who completed their deployments prior to May 19, 2004, reported in the OIG survey that they did not receive any training, instruction, or guidance concerning FBI or other agency standards of conduct relating to detainees prior to or during their deployment. Most of the FBI agents who reported receiving training regarding detainee mistreatment issues said they received it orally from their On-Scene Commander or other FBI agents after they arrived at the military zone.

(S) By January 2004, the FBI had implemented a 5-day pre-deployment training program for agents detailed to Iraq. The agenda provided to the OIG included approximately 1 hour of training regarding "Interviewing Techniques," but it did not specifically identify any issues relating to detainee mistreatment.

(S) Almost all the FBI agents who received training during this period told us that they were instructed to continue to adhere to the same FBI standards of conduct that applied to custodial interviews in the United States. Most agents told us they did not receive any specific information regarding which interrogation techniques were permissible

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for military interrogators. Several agents told us the FBI did not provide specific training about how to conduct joint interviews with the DOD, including whether agents could observe or assist in interviews led by other agencies who were using techniques not permitted in the FBI. Several agents told us they were instructed to leave the interview if they saw anything "extreme" or "inappropriate." A few FBI agents also said they were told to report detainee mistreatment by other agencies, but they received little guidance on what conduct was sufficiently improper to trigger the reporting requirement.

(S) We determined that in the months following the issuance of the FBI's May 2004 Detainee Policy, the FBI's Military Liaison and Detainee Unit (MLDU) substantially increased the scope of pre-deployment training provided to FBI agents who were being sent to the military zones, particularly Iraq and Afghanistan. After May 2004, the FBI began addressing the issue of detainee treatment in a more systematic way than it had prior to the Abu Ghraib disclosures. Agents received a legal briefing that included training regarding the contents of the May 2004 Detainee Policy. Agents were also told to "attenuate" their interviews of potential criminal defendants in cases where the detainee had previously been questioned by a foreign government or other intelligence community agency so as to enhance the likelihood that any resulting statement would be admissible in a judicial proceeding, such as by allowing a lapse of time and choosing a different location for the FBI interview.

(S) We found no indication that the FBI devised a comparable pre-deployment program for agents assigned to GTMO. However, in August 2004 the FBI Office of General Counsel attorney stationed at GTMO began giving training to FBI personnel deployed there, advising them to rely on the guidance provided in the Legal Handbook for Special Agents. He told the newly arrived FBI employees that if they saw anything "untoward" beyond what the FBI was authorized to do or outside the scope of the military's authority, the agent was to remove himself from the room and report the incident to the Office of General Counsel attorney or to the FBI's On-Scene Commander at GTMO. The Office of General Counsel attorney told us that he and the On-Scene Commander instructed the newly arrived employees on the scope of the military's approved techniques.

(S) Although the quantity and quality of FBI training clearly increased after issuance of the FBI's May 2004 Detainee Policy, numerous agents told us in survey responses and interviews that it would have been useful to them to receive a more detailed explanation of what constituted "abuse" and what techniques were permissible to

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military or other government agency interrogators under their agencies' policies.

VIII. (S) FBI Observations Regarding Detainee Treatment at GTMO

(S) In this section we summarize our report's findings regarding what more than 450 FBI agents who served at GTMO told us they observed or heard about regarding detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports. These findings, as well as our corresponding findings relating to Afghanistan and Iraq that are also summarized below, were based on our survey of FBI employees and numerous follow-up interviews.

(S) Our survey sought information about whether FBI agents observed or heard about approximately 40 separate aggressive interrogation techniques, including such techniques as using water to create the sense of drowning ("waterboarding"), using military dogs to frighten detainees, and mistreating the Koran.

(S) A majority of FBI employees who served at GTMO reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey. However, over 200 FBI agents said they had observed or heard about military interrogators using a variety of harsh interrogation techniques on detainees. These techniques generally were not comparable to the most egregious abuses that were observed at Abu Ghraib prison in Iraq. Moreover, it appears that some but not all of these harsh interrogation techniques were authorized under military policies in effect at GTMO.

(S) The most commonly reported technique used by non-FBI interrogators on detainees at GTMO was sleep deprivation or disruption. Over 70 FBI employees had information regarding this technique. "Sleep adjustment" was explicitly approved for use by the military at GTMO under the policy approved by the Secretary of Defense on April 16, 2003. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to disrupt detainees' sleep in an effort to lessen their resistance to questioning and to undermine cell block relationships among detainees. Only a few FBI agents participated in this program by requesting military officials to subject particular detainees to frequent cell relocations.

(S) Other FBI agents described observing military interrogators use a variety of techniques to keep detainees awake or otherwise wear down their resistance. Many FBI agents told the OIG that they witnessed or heard about the military's use of bright flashing strobe lights on

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detainees, sometimes in conjunction with loud rock music. Other agents described the use of extreme temperatures on detainees.

(S) Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at GTMO. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve. A DOD investigation, discussed in the *Church Report*, classified the practice of short-shackling prisoners as a "stress position." Stress positions were prohibited at GTMO under DOD policy beginning in January 2003. However, these FBI agents' observations confirm that prolonged short-shackling continued at GTMO for at least a year after the revised DOD policy took effect.

(S) Many FBI agents reported the use of isolation at GTMO, sometimes for periods of 30 days or more. In some cases, isolation was used to prevent detainees from coordinating their responses to interrogators. It was also used to deprive detainees of human contact as a means of reducing their resistance to interrogation.

(S) In addition, a few FBI agents reported other harsh or unusual interrogation techniques used by the military at GTMO. These incidents tended to be small in number, but they became notorious at GTMO because of their nature. They included using a growling military dog to intimidate a detainee during an interrogation; twisting a detainee's thumbs back; using a female interrogator to touch or provoke a detainee in a sexual manner; wrapping a detainee's head in duct tape; and exposing a detainee to pornography.

(S) We also examined how the reports from FBI agents regarding detainee treatment at GTMO were handled by the FBI. In addition to the reports relating to Al-Qahtani described above in Part V of this Executive Summary, we found that early FBI concerns about detainee short-shackling were raised with the military command at GTMO in June 2002. However, FBI agents continued to observe the use of short-shackling as a military interrogation technique as late as February 2004. Reports to FBI Headquarters about these techniques led to the instructions that FBI agents should stand clear of non-FBI techniques. As time passed, other reports from FBI agents to their On-Scene Commanders regarding military conduct were not elevated within the FBI chain of command because the On-Scene Commanders understood that the conduct in question was permitted under DOD policy.

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(S) FBI agents also reported to us that detainees sometimes told FBI agents they had previously been abused or mistreated. FBI practices in dealing with such allegations varied over time. Some agents were told to record such allegations for inclusion in a "war crimes" file; others were told to include the allegations in their regular FD-302 interview summaries. As noted above, other FBI agents told us they were instructed not to record such allegations at all. No formal FBI procedure for reporting incidents or allegations of mistreatment to the military was established until after the Abu Ghraib prison abuses became public in 2004.

IX. (S) FBI Observations Regarding Detainee Treatment in Afghanistan

(S) In this section we summarize our report's findings regarding what more than 170 FBI agents who served in Afghanistan told us they observed or heard about with respect to detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports.

(S) FBI employees in Afghanistan conducted detainee interviews at the major military collection points in Bagram and Kandahar and at other smaller facilities. A majority of FBI employees who served in Afghanistan reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey. However, some FBI employees reported witnessing or hearing about certain techniques.

(S) Like at GTMO, the most frequently reported technique used by military interrogators in Afghanistan was sleep deprivation or disruption. According to the *Church Report*, sleep deprivation was a prohibited technique under military policy, but sleep disruption (in which the detainee was permitted to sleep a total of at least 4 hours per 24-hour period) was permitted prior to June 2004. FBI agents observed sleep deprivation or disruption at the major detainee facilities in both Kandahar and Bagram. Many FBI agents also described the use of loud music or bright or flashing lights to interfere with detainees' sleep.

(S) FBI agents in Afghanistan also told us about observing the use of shackles or other restraints in a harsh, painful, or prolonged manner in Afghanistan. However, most of the agents stated that these restraints were used primarily as a military security measure rather than an interrogation technique. In addition, several agents told us that they observed or heard about the use of stressful or painful positions by the military in Afghanistan.

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(S) Several FBI agents also described the use of prolonged isolation by the military in Afghanistan, but not as a punishment for a detainee's refusal to cooperate with questioners. Instead, the agents described the use of isolation to prevent the coordination of stories among detainees and as punishment for disruptive behavior.

(S) Several FBI employees told us they had heard about two detainee deaths at the military facility in Bagram, but none of the FBI employees said they had personal knowledge of these deaths. According to the *Church Report*, two detainees died at the Bagram facility following interrogations in which they were shackled in standing positions and kicked and beaten by military interrogators and military police.⁸

(S) We found few contemporaneous reports by FBI agents to their supervisors in Afghanistan regarding concerns about the potential mistreatment of detainees. In several cases the agents believed, sometimes incorrectly, that the conduct they saw or heard about was authorized for use by military interrogators and therefore did not need to be reported. Moreover, the need for FBI agents to establish their role in Afghanistan and their dependence on the military for their protection and material support may have contributed to their reluctance to elevate their concerns about the military's treatment of detainees. In addition, several agents told the OIG that they were able to resolve concerns about the mistreatment of individual detainees by speaking directly to military supervisors in Afghanistan.

X. (S) FBI Observations Regarding Detainee Treatment in Iraq

(S) In this section we summarize our report's findings regarding what more than 260 FBI agents who served in Iraq told us they observed or heard about regarding detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports.

(S) We received varied reports from FBI agents who were detailed to Iraq. For example, several FBI agents said they observed detainees deprived of clothing. Other frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations. FBI

⁸ (S) The Army's Criminal Investigative Division recommended charges against 28 soldiers in connection with these deaths. At least 15 of these soldiers have been prosecuted by the Army, and at least 6 have pleaded guilty or been convicted of assault and other crimes. Several have been acquitted.

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employees also reported the use of stress positions, prolonged shackling, and forced exercise in Iraq. In addition, several FBI agents told the OIG that they became aware of unregistered "ghost detainees" at Abu Ghraib whose presence was not reflected in official DOD records.

Although several FBI agents had been deployed to the Abu Ghraib prison in Iraq, they told us that they did not witness the extreme conduct that occurred at that facility in late 2003 and that was publicly reported in April 2004. The FBI agents explained that they typically worked outside of the main prison building where the abuses occurred, and they did not have access to the facility at night when much of the abuse took place.

Few of the FBI agents who served in Iraq made contemporaneous reports to anyone in the FBI or the military regarding mistreatment of detainees in Iraq. Almost all of the FBI On-Scene Commanders who served in Iraq in 2003 and 2004 told the OIG that they never received any reports from FBI agents regarding detainee mistreatment. We believe this occurred at least in part because there was no formal FBI reporting requirement prior to May 19, 2004, and some agents assumed that the conduct that they observed was permitted under military interrogation policies in Iraq. As in the other military zones, FBI agents in Iraq generally did not consider their role to include policing the conduct of the military personnel with whom they were working. Some agents also told us that they were able to get their concerns resolved by taking them directly to military officials.

XI. Specific Allegations of Misconduct by FBI Agents

We also investigated several specific allegations that FBI agents participated in abuse of detainees in connection with interrogations in the military zones. Some of these allegations were referred to us by the FBI, and others came to our attention during the course of our review.

In general, we did not find support for these allegations. We found that the vast majority of FBI agents in the military zones understood that existing FBI policies prohibiting coercive interrogation tactics continued to apply in the military zones and that they should not engage in conduct overseas that would not be permitted under FBI policy in the United States. To the FBI's credit, as noted above, it decided in 2002 to continue to apply FBI interrogation policies to the detainees in the military zones. As a result, most FBI agents adhered to the FBI's traditional rapport-based interview strategies in the military zones and avoided participating in the aggressive or questionable interrogation

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techniques that the military employed. We found no instances in which an FBI agent participated in clear detainee abuse of the kind that some military interrogators used at Abu Ghraib prison. For this, we credit the good judgment of the agents deployed to the military zones as well as the guidance that some FBI supervisors provided.

(H) The following paragraphs discuss the most significant allegations against FBI agents that we reviewed.

(H) **Begg** We investigated allegations made against the FBI by Moazzam Begg, a British national who was arrested in Pakistan in late January 2002 and detained in Afghanistan and at GTMO until his release in January 2005. Begg alleged that an FBI agent and a New York Police Department (NYPD) officer working with the agent participated in interrogations at Bagram Air Force Base during which Begg was threatened with rendition to Egypt and implied threats were made against Begg's family. Begg stated he was also subjected to a ploy to make him believe his wife was being tortured in a nearby room in the facility. Begg also alleged that on one occasion he was hooded and "hog-tied" by military personnel as punishment for failing to tell the interrogators what they wanted to hear, struck or kicked in the back and head, and left in this position overnight. He stated that the FBI agent and the NYPD officer directed or were aware of this treatment. Begg also alleged that the same FBI agent and NYPD officer later coerced him into signing a written statement at GTMO by threats of imprisonment and execution.

(H) We did not find sufficient evidence to support Begg's allegations with respect to the FBI agent. Specifically, Begg stated that the CIA and the DOD were in charge of his interrogations in Afghanistan. Begg's own version of events did not establish that an FBI employee participated in threatening Begg with rendition, threatening his family, or staging a harsh interrogation of a female. There was also no evidence that the FBI participated in, observed, or knew about the alleged "hog-tying" incident.

(H) **Saleh** We investigated allegations that the FBI participated in abusive interrogations of detainee Saleh Mukleif Saleh in Iraq in early 2004. Saleh claimed that interrogators tortured him, cuffed him in a "scorpion" position, punched him, forced him to drink water until he vomited, dragged him across barbed wire, and subjected him to loud music. We did not find evidence of FBI involvement in most of these activities. However, we found that four FBI agents were present during an interview of Saleh and another detainee in March 2004 in which a DOD interrogator poured water down the detainees' throat while the detainees were in a cuffed, kneeling position, and in a rough manner that

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would be considered coercive and would not be permissible conduct for FBI agents conducting interviews in the United States.⁹

(S) The FBI agents did not join actively in this conduct. In addition, the FBI's May 2004 Detainee Policy requiring agents to remove themselves from such situations and report them to their superiors had not yet been issued. However, the FBI was the lead agency during this interrogation and we believe that agents could have influenced the techniques used by other interrogators during this interview, or at least reported this incident to their On-Scene Commander. We also found that the FBI participated in using duct tape to blindfold one of the detainees in a potentially painful matter, but we were unable to determine which FBI agent participated in this activity.

(S) **Slahi** We investigated several allegations by detainee Mohammed Ould Slahi relating to FBI agents at GTMO. Slahi alleged that an FBI agent was involved in subjecting him to a harrowing boat ride as a ruse for making him believe he was being transferred to a different location, that another FBI agent implied that Slahi would be tortured by the military if Slahi did not cooperate with the FBI, that another FBI agent said Slahi would be sent to Iraq or Afghanistan if the charges against him were proved, and that an interrogator told Slahi he would be sent to a "very bad place" if Slahi did not provide certain information.

(S) However, we determined that the FBI was not involved in the boat ride ruse that the military used with Slahi. We concluded that an Army Sergeant impersonated an FBI agent, without the consent of the FBI, in connection with this incident.

(S) We also concluded that although an FBI agent who was leaving GTMO may have told Slahi that the military would treat him differently than the FBI, he did not intend to threaten Slahi. The military implemented a plan to use much harsher techniques on Slahi, but this plan was not agreed to or condoned by the FBI. We also found insufficient evidence to conclude that another FBI agent threatened Slahi by telling him he would be transferred to Iraq or Afghanistan if convicted.

(S) **Al-Sharabi** We investigated several allegations relating to FBI agents who were involved in questioning GTMO detainee Zuhail Abdo Al-Sharabi. We found that the military kept Al-Sharabi in an isolation cell for at least 2 months in 2003 in order to break his resistance to

⁹ (S) This activity was not equivalent to "waterboarding" as that technique has been described in media reports.

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(u) As discussed previously, the FBI policy reiterating that existing FBI policies applied in the military zones was not issued until May 19, 2004. We believe that the Al-Sharabi matter illustrated the inadequacy and lack of clarity in the guidance provided to FBI agents regarding permissible interrogation techniques in the military zones.

~~(b)~~ We also found that at least one FBI agent participated in subjecting Al Qarani to a program of disorientation and sleep disruption, and that the On-Scene Commander at GTMO was aware that other FBI agents participated in this technique.

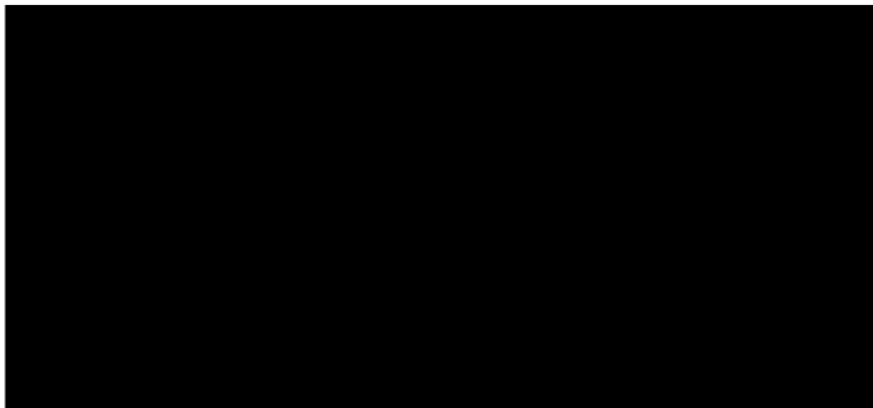
Al Harbi We investigated an allegation in a written FBI interview summary that detainee Muhammad A. A. Al Harbi claimed he was beaten by unidentified FBI agents in Afghanistan. However, during his interview with the OIG, Al Harbi told us that he had no complaints about his treatment by the FBI and that he believed that the individuals who struck him in Afghanistan were from another agency.

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(U) We also examined the FBI's internal investigation regarding an allegation that the same FBI agent disclosed classified information about this interrogation and other subjects to persons not authorized to receive such information. The FBI agent's ex-fiancé and a friend of hers alleged that the agent told them numerous specific details about his participation in the interrogation of a terrorism subject at an overseas location. The FBI's Inspection Division investigated the matter, and the FBI's Office of Professional Responsibility concluded that it was unable to determine whether information alleged to have been improperly disclosed was in fact classified or sensitive because of the vague descriptions provided by the ex-fiancé and her friend.

(U) However, we found that the information the ex-fiancé attributed to the FBI agent was detailed, specific, and accurate, and appeared to contain classified information about the Zubaydah interrogation. Further, we found no indication that the FBI made any attempt to determine whether the ex-fiancé's detailed account of the FBI agent's activities was accurate and if so whether the information was classified or sensitive. Consequently, we believe that the FBI's investigation of this allegation was deficient.

(U) **Facility in or near Baghdad** We addressed allegations relating to FBI conduct during the spring and summer of 2004 at a DOD facility in or near Baghdad. An FBI agent serving in his capacity as an active duty officer in the U.S. Army was the officer in charge of the facility. Several other FBI agents were detailed to the facility to serve as

¹⁰ (U) As noted above in footnote 4, because the CIA objected to our access to Zubaydah we were unable to fully investigate these allegations.

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interrogators during this period. The allegations included claims that detainees were kept in inhumane conditions at the facility, were denied showers and medical attention, were deprived of food and water, and were subjected to harsh interrogation techniques such as nudity and dripping cold water, prolonged in-cell restraints, and threats.

(U) In evaluating the conduct of the officer in charge, we recognized that the officer was acting in his capacity as a military commander while he was stationed at the detention facility, not as an FBI employee. In this capacity, he was expected to comply with military regulations relating to the treatment of detainees, not FBI policies. The other FBI agents deployed to the facility were not military, however, and were subject to FBI rules.

(U) We found that conditions inside the cells in the facility were primitive and likely extremely hot and uncomfortable during the summer. However, we did not find that the officer in charge of the facility was responsible for these conditions, which existed before he arrived, or that he could control them. We also found insufficient evidence to conclude that the officer was responsible for any inadequacies in medical treatment at the facility.

(U) We found evidence that the military used the following interrogation techniques at the facility, which may have been prohibited under military policies in effect at the time:

- (U) Depriving detainees of food and water for the first 24 hours after their arrival
- (U) Sleep deprivation
- (U) "Harsh up" interrogation techniques such as nudity, stress positions, dripping cold water on the detainee, and forced exercise
- (U) A categorization system in which detainees who did not cooperate with interrogators were kept with hands cuffed behind their backs while in their cells, while more cooperative detainees were not restrained in the cells
- (U) Use of blindfolds or blacked-in goggles during interrogations
- (U) Threatening detainees with the arrest and prosecution of family members

(U) We recommend that the military make its own findings regarding whether these practices at the facility violated military policies, and whether the officer in charge was responsible for any violation.

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XII. (S) Conclusion

(S) The FBI deployed agents to military zones after the September 11 attacks in large part because of its expertise in conducting custodial interviews and in furtherance of its expanded counterterrorism mission. The FBI has had a long history of success in custodial interrogations using non-coercive, rapport-based interview techniques developed for the law enforcement context. Some FBI agents deployed to GTMO experienced disputes with the DOD, which used more aggressive interrogation techniques. These disputes placed some FBI agents in difficult situations at GTMO and in the military zones. However, apart from raising concerns with their immediate supervisors or military officials, the FBI had little leverage to change DOD policy.

(S) Our review found that the vast majority of the FBI agents deployed in the military zones dealt with these issues by separating themselves from other interrogators who used non-FBI techniques and by continuing to adhere to FBI policies. In only a few instances did FBI agents use or participate in interrogations using techniques that would not be permitted under FBI policy in the United States.

(S) The FBI decided in the summer of 2002 that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used. However, the FBI did not issue formal written guidance about detainee treatment to its agents until May 2004, shortly after the Abu Ghraib abuses became public. We believe that the FBI should have recognized earlier the issues raised by the FBI's participating with the military in detainee interrogations in the military zones and should have moved more quickly to provide clearer guidance to its agents on these issues.

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(U) In sum, we believe that while the FBI could have provided clearer guidance earlier, and while the FBI could have pressed harder for resolution of concerns about detainee interrogations by other agencies, the FBI should be credited for its conduct and professionalism in detainee interrogations in the military zones in Guantanamo Bay, Afghanistan, and Iraq and in generally avoiding participation in detainee abuse.

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CHAPTER ONE

(S) INTRODUCTION

I. (S) Introduction

(S) On April 28, 2004, the television news program *60 Minutes II* broadcast photographs of detainee abuses at the Abu Ghraib prison in Iraq. In the days and weeks that followed, many more details of detainee abuses at the prison were made public. Published photographs included images of soldiers taunting naked Iraqi prisoners in humiliating poses, a hooded detainee mounted on a box and attached to electrical wires, and military dogs threatening or attacking Iraq prisoners. In addition, excerpts from a secret U.S. Army Report were published, which detailed some of the abuse as follows:

(S) Breaking chemical lights and pouring the phosphoric acid on detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick; using military working dogs to frighten and intimidate detainees with threats of attack; and in one instance actually biting a detainee.¹¹

(S) Federal Bureau of Investigation (FBI) agents had been deployed in Iraq during October through December 2003, the period when many of these abuses occurred. Some FBI agents spent time at the Abu Ghraib prison during this time period. Within days of the Abu Ghraib disclosures becoming public, the FBI began an internal inquiry to determine whether any of its agents had "first hand knowledge of any abuses" at Abu Ghraib and if so, how the FBI had responded. Within a short time the FBI also initiated internal inquiries into whether agents had observed aggressive treatment of detainees at the detention facility in Guantanamo Bay, Cuba (GTMO) and in Afghanistan.

(S) The Department of Justice Office of the Inspector General (OIG) became aware of these FBI investigations, and the OIG made a document request to the FBI for the purpose of determining whether the OIG should

¹¹ (S) "Torture at Abu Ghraib," *The New Yorker*, May 10, 2004, quoting from Article 15-6 *Investigation of the 800th Military Police Brigade ("Taguba Report")* at 17.

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initiate an independent review of FBI activities in the military zones. The FBI provided approximately 2,500 pages of documents in response to this request. In addition, the FBI released a large quantity of documents relating to detainee issues to the American Civil Liberties Union (ACLU) pursuant to a request under the Freedom of Information Act (FOIA). Many of the documents released to the ACLU were heavily redacted; unredacted versions were supplied to the OIG. Taken together, the documents made available to the OIG revealed that FBI agents deployed to GTMO had raised concerns to their superiors about the military's interrogation practices as early as October 2002.

(S) The OIG decided to initiate a review relating to the conduct and observations of FBI agents in the military zones with respect to the treatment of detainees. Subsequent to the initiation of this review, the OIG received several communications from members of Congress seeking information about the OIG's investigation and urging the OIG to address various issues and documents relating to the FBI's role in detainee matters.

II. (S) The OIG Investigation

(S) The focus of the OIG investigation was whether FBI agents witnessed incidents of detainee abuse in the military zones, whether FBI employees reported any such abuse to their superiors or others, and how those reports were handled by the FBI. We also examined the development and adequacy of the policies, guidance, and training that the FBI provided to the agents that it deployed to the military zones. In addition, the OIG examined whether FBI employees participated in any incident of detainee abuse. The FBI referred several specific allegations of wrongdoing by FBI agents for investigation by the OIG. In other cases, the OIG initiated an investigation of particular FBI employees on the basis of information that the OIG developed during the course of our review.

(S) The OIG team investigating these issues included OIG attorneys, special agents, and a paralegal specialist. The OIG developed and distributed a detailed survey to over 1,000 FBI employees who had deployed overseas to one of the military zones. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees reported such incidents to their FBI supervisors or others.

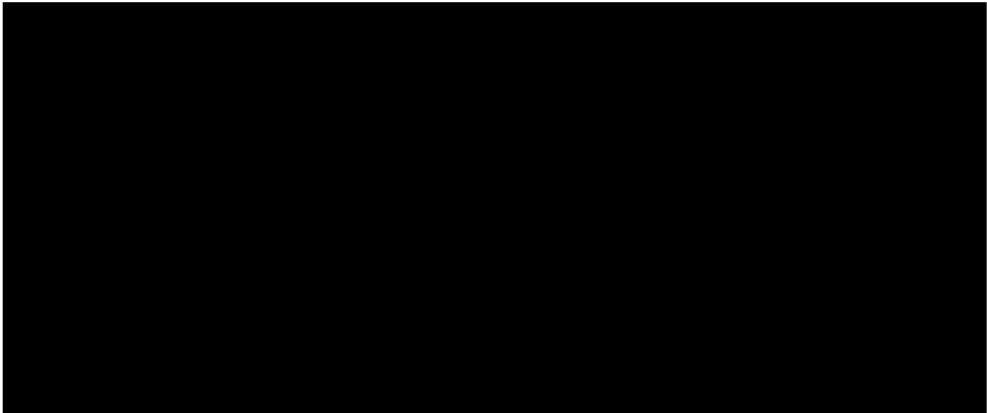
(S) The OIG team also interviewed over 230 witnesses. We selected many of these witnesses on the basis of survey responses indicating that the respondent had information relevant to our review. Other witnesses were selected on the basis of their positions or responsibilities within the FBI.

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We reviewed over 500,000 pages of documents provided by the FBI, other components of the Department of Justice (DOJ), and the Department of Defense (DOD). We made two trips to GTMO to tour the detention facilities, review documents, and interview witnesses, including five detainees. We also interviewed one released detainee by telephone.



III. (S) Prior Reports Regarding Detainee Mistreatment

(S) Several prior reports have addressed the issue of detainee treatment in the military zones. Among the most significant of these are the following:

(S) **Taguba Report.** In response to reports of detainee abuse at Abu Ghraib prison, in January 2004 the Chief of Staff of the U.S. Central Command directed an investigation into the 800th Military Police (MP) Brigade detention and internment operations from November 2003 to present. The report of this investigation (*Article 15-6 Investigation of the 800th Military Police Brigade*, also known as the "Taguba Report") was completed in March 2004; as noted above, it found intentional abuse of detainees by military police personnel. The forms of abuse included punching and kicking detainees, photographing naked detainees in sexually



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explicit and humiliating circumstances, and using unmuzzled military dogs to intimidate detainees.

(S) **Fay and Jones Reports.** Following the completion of the *Taguba Report*, the Combined Joint Task Force Commander ordered an investigation into the conduct of the 205th Military Intelligence Brigade at Abu Ghraib. Two reports were issued as a result of this request: the "*Fay Report*" and the "*Jones Report*." These two reports found numerous instances in which detainee abuse was "requested, encouraged, condoned, or solicited" by military intelligence personnel and that in some cases, military intelligence personnel were directly involved. The reports identified the primary cause of the abuse as "misconduct (ranging from inhumane to sadistic) by a small group of morally corrupt soldiers and civilians." The reports also identified systemic failures that contributed to the abuse, such as inadequate interrogation policies and training, the intense pressure to produce actionable intelligence, lack of clear lines of responsibility between Military Intelligence and Military Police personnel, and inadequate leadership oversight. The *Fay Report* and *Jones Report* also identified interactions with non-DOD agencies (the CIA) that were perceived to operate under different rules as a contributing factor that led to abuse.

(S) **Schlesinger Report.** In May 2004, Secretary of Defense Donald Rumsfeld chartered an independent panel chaired by James R. Schlesinger to review ongoing or completed DOD investigations on detention operations and to identify the causes and contributing factors to problems in detainee operations. The Final Report of the Independent Panel to Review Detention Operations (the "*Schlesinger Report*") was issued in August 2004. It identified 66 confirmed incidents of detainee abuse in GTMO, Afghanistan, and Iraq including five deaths. With respect to the Abu Ghraib prison, which was the location of the vast majority of confirmed abuses, the *Schlesinger Report* found that contributing causes included deficient and frequently changing interrogation policies and inadequate resources, training, leadership, and oversight.

(S) **Church Report.** On May 25, 2004, Defense Secretary Rumsfeld directed the Naval Inspector General to conduct a comprehensive review of DOD interrogation operations. The resulting report (the "*Church Report*") was submitted on March 7, 2005. The *Church Report* detailed the history of DOD interrogation policies issued in each of the military zones. It reviewed the interrogation techniques employed by military interrogators in GTMO, Afghanistan, and Iraq. The *Church Report* was complimentary of military operations at GTMO, but it found that dissemination of interrogation policies in Afghanistan and Iraq was generally poor, and that unit-level compliance with the policy was poor in Iraq even when the policies were known. The *Church Report* found no evidence that the environment at Abu Ghraib in the fall of 2003 related to detainee mistreatment was repeated

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elsewhere. The *Church Report* found 71 instances of substantiated detainee abuse, including 6 detainee deaths. The *Church Report* determined that DOD interrogation policies did not cause detainee abuse. Instead, the Church investigators attributed instances of detainee abuse to episodic breakdowns in discipline and oversight, particularly at the point of capture in Afghanistan or Iraq.

(S) Schmidt-Furlow Report. Following the FBI's release of documents to the ACLU in December 2004, the U.S. Army Southern Command ordered an investigation into several allegations about the conduct of military interrogators contained in FBI communications released to the public. The investigation was led by Lieutenant General Randall M. Schmidt and Brigadier General John T. Furlow. The results of this investigation are set forth in the *AR-15-6 Report FBI Allegations of Abuse (9 June 2005)* (the "*Schmidt-Furlow Report*"). This report found that out of the 24,000 interrogations conducted at GTMO, there were a total of 3 violations of DOD interrogation policies: (1) detainees were "short-shackled" to the eye-bolt in the floor of an interrogation room; (2) duct tape was used to "quiet" a detainee; and (3) military interrogators improperly threatened a detainee and his family. The investigators also found that the interrogation of one high value detainee resulted in degrading and abusive treatment, but did not rise to the level of inhumane treatment.

IV. **(S) Methodology of OIG Review of Knowledge of FBI Agents Regarding Detainee Treatment**

(S) In this section we describe the methodology of the OIG's investigation relating to what FBI employees deployed to Afghanistan, GTMO, and Iraq saw or heard about the treatment of detainees in those military zones. FBI employees were deployed in significant numbers to assist with interviewing detainees at many of the locations where abuses allegedly occurred. Although the FBI generally had limited authority to control the conditions of detainees in the military zones, FBI employees deployed to these locations participated in interviewing detainees and were also potential witnesses to incidents of detainee abuse.

(S) The focus of this part of the OIG's review was to obtain information from FBI employees who were detailed to the military zones during the period our survey covered (from late 2001 until December 2004) regarding the treatment of detainees in those zones. Our review relied primarily on the results of a comprehensive survey sent to more than 1,000 FBI employees in June 2005, and our follow-up interviews of FBI employees.

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A. ~~(S)~~ The OIG June 2005 Survey

~~(S)~~ On June 2, 2005, the OIG distributed a detailed survey to FBI personnel who had deployed overseas. This survey was distributed to a total of 1,031 FBI personnel who had been deployed at some time to one or more of the military zones. The distribution list was compiled from FBI records and responses to an internal FBI e-mail instructing all employees who were deployed to the military zones to identify themselves. The OIG received a total of 913 responses, for a response rate of approximately 90 percent.¹³

~~(S)~~ The survey consisted of 76 questions, some with subparts, and some with additional questions which were asked depending on the agent's response. A copy of the survey is provided as Appendix A to this report. The survey was divided into six parts: (1) basic contact information and basic information concerning where and when the respondents were deployed; (2) the nature and extent of training for agents prior to and during their deployments; (3) respondent observations or knowledge of specific interview or interrogation techniques and other types of detainee treatment; (4) knowledge of incidents involving impersonation of FBI agents, sham interviews, or denial of access to detainees; (5) information concerning whether agents reported interview or interrogation techniques and other types of detainee treatment, and any actions taken in response to such reports; and (6) the extent and nature of any post-deployment FBI debriefings.

~~(S)~~ The 37 questions we asked about particular interview or interrogation techniques and other types of detainee treatment (Questions 27 through 63) were based upon information indicating that such forms of coercive or otherwise questionable treatment of detainees had occurred in one or more of the overseas locations to which FBI personnel had been deployed. The sources of such information included documents produced to us by the FBI, interviews conducted prior to the survey, reports of military and other investigations, and press reports. For each form of conduct, we asked respondents to state whether they personally observed the conduct or observed detainees in a condition that led them to believe the conduct had occurred, whether detainees told them that this conduct had occurred, whether others who observed the conduct described it to them, whether

¹³ ~~(S)~~ We did not or could not obtain responses from 118 individuals who were originally identified as survey recipients for a variety of reasons. These recipients fell primarily into the following categories: (1) agents who were posted to overseas locations without the necessary software to complete the survey; (2) persons who had been identified erroneously as FBI personnel but who were not; (3) persons who had been erroneously identified as having served in the military zones when they never did; and (4) persons who were no longer FBI employees by the time of the survey.

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they otherwise obtained information about such conduct other than from media accounts, or if they never observed such conduct or heard about it from someone who did. We also asked respondents to indicate whether they had relevant information as to each form of conduct that was classified above "Secret." Finally, we included several questions soliciting information concerning other interrogation practices about which the respondents had knowledge, but which were not specified in our other questions.¹⁴

B. ~~(S)~~ **OIG Selection of FBI Personnel for Interviews**

~~(S)~~ Using the survey responses as a screening tool, we interviewed selected respondents who indicated they had information pertaining to several interrogation techniques, or pertaining to the most serious forms of alleged abuse. We also attempted to interview all of the On-Scene Commanders (OSC) and Deputy OSCs who served in each military zone because these agents had supervisory responsibility for FBI personnel and were positioned to observe or receive reports regarding detainee mistreatment.¹⁵ We interviewed almost all of the former OSCs and all of the 6 Deputy OSCs who served in Afghanistan between late December 2001 and the end of 2004. We also interviewed all eight of the FBI OSCs in Iraq and five of the seven Deputy OSCs who served during that period. We interviewed 15 of the 16 OSCs who served in GTMO. (There were no Deputy OSCs in GTMO.) We also interviewed several employees who did not respond to the survey but who we otherwise determined had significant relevant information.

~~(S)~~ Because OIG resources did not enable us to interview all of the FBI personnel who served in the military zones, we generally did not interview survey respondents who only described conduct clearly justified by concerns for safety and security of U.S. personnel, or by the need for proper prison order and discipline. We often chose not to interview those who said that they had merely heard about conduct observed by others. We also excluded some respondents who indicated in their survey responses that they had information only about techniques such as sleep disruption, about which we had substantial other information from other respondents and witnesses. Finally, we excluded those respondents who provided information that we concluded was in fact not within the scope of the question or our investigation.

¹⁴ ~~(S)~~ The FBI Inspection Division provided valuable assistance to the OIG in identifying appropriate respondents and designing and administering the questionnaire.

¹⁵ ~~(S)~~ As detailed in Chapter Six, the FBI's May 2004 Detainee Policy required agents serving in military zones to report known or suspected abuse of detainees to their OSCs.

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C. ~~(S)~~ **OIG Treatment of Military Conduct**

~~(S)~~ We report the results of our investigation regarding what the FBI agents observed in the military zones in Chapters Eight through Ten. Some of the interrogation techniques reported by FBI agents in the military zones are addressed in policies applicable to military interrogators. The question of whether military interrogators violated their own agencies' policies is outside the jurisdiction and expertise of the DOJ OIG. Moreover, we did not attempt to determine whether military witnesses would dispute the accuracy of reports made to the OIG by FBI employees. An investigation of this scope would have been beyond our jurisdiction and our available resources.

~~(S)~~ However, in this report, we identify potentially applicable DOD policies in each discussion of a particular technique reported by FBI agents based on the description of those policies supplied in the *Church Report* or the *Schmidt-Furlow Report*. For comparative purposes, we also indicate whether prior investigations found instances of conduct similar to that reported by the FBI agents.

V. ~~(S)~~ **Organization of the OIG Report**

~~(S)~~ This OIG report is organized into 12 chapters. Chapter One contains this Introduction. Chapter Two provides background information relevant to the issues addressed later in this report. It describes how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 terrorist attacks. Chapter Two also describes the organizational structure of FBI Headquarters with respect to international terrorism and detainee operations. It also discusses other DOJ entities involved in overseas detainee issues, as well as inter-agency entities and agreements relevant to this OIG investigation. In the last part of Chapter Two, we discuss each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

~~(S)~~ Chapter Three provides background information regarding the pre-existing interrogation policies of the FBI prior to the September 11 attacks. These policies, which prohibit the use of coercive interrogation techniques, are based on constitutional considerations regarding the voluntariness of custodial confessions and the FBI's position, from years of law enforcement experience, that rapport-based interview techniques are the most effective and yield the most reliable information. In Chapter Three, we also address the various interrogation policies that the DOD adopted for

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use in the military zones, and we explain reasons for the dramatic differences between the FBI's interrogation policies and those issued by the military for use in military zones overseas.



FBI Director Robert S. Mueller III decided that the FBI would not participate in interrogations involving aggressive techniques that were approved for other agencies in the military zones.

Chapter Five examines the dispute between the FBI and the DOD relating to Muhammad Al-Qahtani, a detainee held at GTMO who is widely believed to have been an additional hijacker in the September 11 conspiracy but who was prevented from entering the United States by immigration officials at the airport in Orlando, Florida. We examine the treatment of this detainee in detail because his interrogation became a focal point for tension between the divergent interrogation models followed by the FBI and the military. The dispute regarding the interrogation strategy for Al-Qahtani, which was elevated to senior officials in the FBI and DOJ, was ultimately resolved in favor of DOD's interrogation approach.

In Chapter Six, we examine the FBI's response to the Abu Ghraib disclosures in the spring of 2004. We discuss the development of the FBI's formal written policy addressing agent conduct with respect to detainees in GTMO, Afghanistan, and Iraq: an Electronic Communication (EC) issued by the FBI Office of General Counsel on May 19, 2004 (the "FBI's May 2004 Detainee Policy"). Chapter Six also examines how the FBI addressed the concerns raised by agents in the field after the policy was promulgated. These concerns related to whether the FBI agents would be deemed to have "participated" in coercive interrogation techniques used by other agencies by their presence alone, and the circumstances under which FBI agents would be required to report interrogation tactics used by other agencies. We also describe the internal investigations that the FBI conducted following the Abu Ghraib disclosures.

In Chapter Seven we examine the communication of FBI policies to agents who were deployed to the military zones. First, we describe the FBI's early efforts to provide training or guidance to its agents regarding how they should address detainee issues, including the question of what action they should take in response to witnessing the use of aggressive interrogation techniques by other agencies. Second, we describe the expanded training programs that the FBI developed for agents deployed to

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the military zones after the Abu Ghraib disclosures and the issuance of the FBI's May 2004 Detainee Policy.

(S) Chapters Eight, Nine, and Ten detail the results of the OIG's investigation into what FBI agents saw, heard about, and reported with respect to detainee mistreatment in GTMO, Afghanistan, and Iraq. Each of these chapters follows the same organization. The responses to the OIG's survey are summarized in tabular form. We then describe the FBI agents' observations regarding specific techniques, with particular attention to the harshest techniques and those techniques most commonly observed in the particular military zone. In the last part of each of these chapters, we examine the disposition of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment.

(S) In Chapter Eleven we discuss our investigation of eight separate allegations that FBI agents in the military zones were involved in detainee abuse or mistreatment. While some of the allegations we investigated were made by detainees, others allegations came from other FBI agents, in most instances in response to the OIG's survey.

(S) Chapter Twelve presents the OIG's conclusions and recommendations regarding the FBI's involvement in detainee interrogations in the military zones.

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CHAPTER TWO

(S) FACTUAL BACKGROUND

(S) In this chapter we provide background information regarding the FBI's activities in overseas military zones. In Part I we explain how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 attacks. In Part II we describe the FBI Headquarters organizational structure with respect to international terrorism and detainee operations. In Part III we describe other DOJ entities involved in overseas detainee issues, and in Part IV we describe inter-agency entities and agreements relevant to this OIG investigation. In Part V we describe each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

I. (S) The Changing Role of the FBI After September 11

(S) The FBI is the nation's lead domestic agency for the collection of foreign counterintelligence information, which includes information relating to international terrorist activities.¹⁶ Since September 11, the Attorney General and the FBI Director have elevated counterterrorism and the prevention of future terrorist attacks against United States interests as the top priority of the DOJ and the FBI. In response to the attacks, Attorney General Ashcroft directed all DOJ components to focus their efforts on disrupting any additional terrorist threats. The Attorney General summarized the Department's new mandate in a speech he gave on October 25, 2001, in which he said: "Our single objective is to prevent terrorist attacks by taking suspected terrorists off the street." This caused a dramatic shift in the focus of the Department of Justice, including the FBI. Former Deputy Attorney General Larry Thompson described this change to the OIG as a huge paradigm shift within DOJ from prosecution to prevention. Similarly, other high-level DOJ and FBI officials told us that after September 11, they worked to transform the FBI into an organization that would prevent attacks as opposed to react to attacks.

¹⁶ (S) The authority for the FBI's broad mission to act as the nation's lead domestic intelligence agency is set forth most clearly in Presidential Executive Order 12333, implemented on December 4, 1981.

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