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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

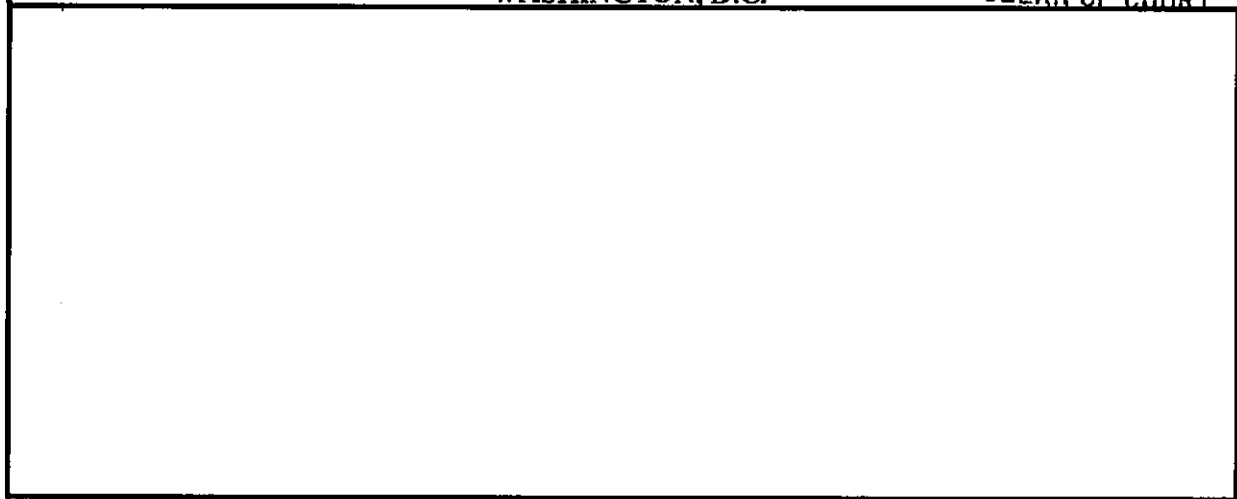
WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2019 FEB -1 AM 11:05

LEEANN FLYNN HALL
CLERK OF COURT

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(b) (3) -50 USC 3024 (i)



**(U) GOVERNMENT'S RESPONSE TO THE COURT'S
OCTOBER 18, 2018 ORDER AND MOTION FOR EXTENSION OF TIME**

~~(S//NF)~~ The United States submits this response to an Order of the Foreign Intelligence Surveillance Court ("FISC" or "Court") issued on October 18, 2018, regarding how the Federal Bureau of Investigation ("FBI") is implementing the retention guidelines set forth in Section III.G.2 of the Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended ("FBI 702 SMPs" or "702 SMPs"). The Court's Order required the Government to provide certain information by January 31, 2019. Specifically, the Court's Order required the Government to describe "the types of information acquired by the FBI under Section 702 that the government regards as metadata and the extent to

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Classified by: Chief, Oversight Section, OI, NSD, DOJ
Derived from: FBI NSICG INV; DOJ/NSI SCG-1, 1.6
Declassify on: 20440131

OI Tracking No: 87751

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(b) (3) -50 USC 3024 (i)

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which such metadata can reveal location information about U.S. persons[.]” See [redacted]

[redacted]

[redacted] 6, 7C per NSD

3, 7E per FBI

The Government also seeks a one-day extension of

time to file this response.

I. (U) BACKGROUND

~~(S//NF)~~ The FBI 2016 Section 702 Minimization procedures provided [redacted]

1, 3, 7E per FBI
[redacted]

acquired metadata retained outside a system used solely for link analysis, impaired the FBI’s

ability [redacted] 1, 3, 7E per FBI to support national security investigations,

without commensurately enhancing the security or privacy of this information. [redacted]

1, 3, 7E per FBI
[redacted]

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1, 3, 7E per FBI

In approving the current FBI 702 SMPs on October 18, 2018, the Court found that the FBI's Section 702 SMPs and querying procedures provide sufficient protection for U.S. person privacy concerns "related to the indefinite retention of Section 702-acquired metadata [REDACTED]

1, 3, 7E per FBI

1, 3, 7E per FBI

[REDACTED] October 18, 2018 Opinion at 113-114. The Court further noted that in considering "the type and volume of metadata acquired under Section 702 and the manner in which the government uses such metadata when evaluating the sufficiency of the targeting, minimization, and querying procedures, the Court will require the government to describe the types of metadata acquired by the FBI under Section 702 that the government regards as metadata and the extent to which such metadata can reveal location information about U.S. persons." *Id.* at 114.

~~(S//NF)~~ In a similar order that was issued on July 26, 2018, the Court ordered the Government to provide, *inter alia*, a description of the types of information acquired by FBI under Titles I and III of FISA that the government regards as metadata and the extent to which that metadata can indicate the location of the user of a targeted facility. The July 26, 2018 Order also required the Government to provide [REDACTED]

1, 3, 7E per FBI

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1, 3, 7E per FBI

1, 3, 7E per FBI

The Government submitted responses on

October 19, 2018 and December 10, 2018, addressing the Court's July 26, 2018 Order. As explained in the Government's December 10, 2018 Response, the Government's investigation regarding certain types of information acquired under the FBI's Title I and III authorities, and which the FBI considers metadata, is ongoing.

[Redacted]

~~(S//NF)~~ To respond to the Court's questions about the types of metadata that the FBI collects under Section 702 and the extent to which that metadata is indicative of the location of U.S. persons, the National Security Division (NSD) requested that the FBI provide information about the types of data it acquires pursuant to Section 702 that it regards as "metadata" and that it

3, 7E per FBI

NSD worked with FBI attorneys

and technologists to understand the various fields of metadata,³ a process that included distinguishing between metadata as that term is defined in the FBI 702 SMPs and other types of metadata, including metadata that also contains content. The FBI 702 SMPs define "metadata" as "dialing, routing, addressing, or signaling information associated with a communication, but does not include information concerning the substance, purport, or meaning of the communication." See FBI 702 SMPs § III.G.1.

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(b) (3)-50 USC 3024(i)

² ~~(S//NF)~~ The Government's October 19, 2018 Response addressing these two questions from the Court's July 26, 2018 Order, applies equally in the Section 702 context. See also October 18, 2018 Opinion at 116.

³ ~~(S//NF)~~

[Redacted]

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~~(S//NF)~~ For example, under Section 702 of FISA, the FBI acquires the sender and recipient e-mail addresses associated with an e-mail communication. The Government regards this as non-content dialing, routing, addressing, or signaling (DRAS) information associated with a communication [redacted]

[redacted] 3, 7E per FBI [redacted]

[redacted]

Such information would not qualify as "metadata" as that term is currently defined in the FBI 702 SMPs, [redacted] 1, 3 per ODNI [redacted] As a result, such non-DRAS information would be subject to the retention time limits in Section III.G.1 of the FBI 702 SMPs.

~~(S//NF)~~ This response describes only the metadata that the FBI regards as non-content DRAS [redacted] 1, 3, 7E per FBI [redacted]

[redacted] 1, 3, 7E per FBI [redacted] As a result of discussions with the FBI regarding the fields of metadata that the FBI acquires [redacted] 1, 3, 7E per FBI [redacted]

[redacted] 1, 3, 7E per FBI [redacted] which are detailed below. [redacted]

[redacted]

⁴~~(S//NF)~~ The types of metadata described below represent the data the FBI acquires under Section 702 authorities that the FBI treats as dialing, routing, addressing, and signaling information. This filing does not document the entire scope of information - metadata or content - obtained by the FBI under Section 702 authorities. This information is accurate as of January 31, 2019. Technological change may impact the types of metadata FBI acquires under its Section 702 authorities. [redacted]

[redacted]

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[Redacted] 3, 7E per FBI

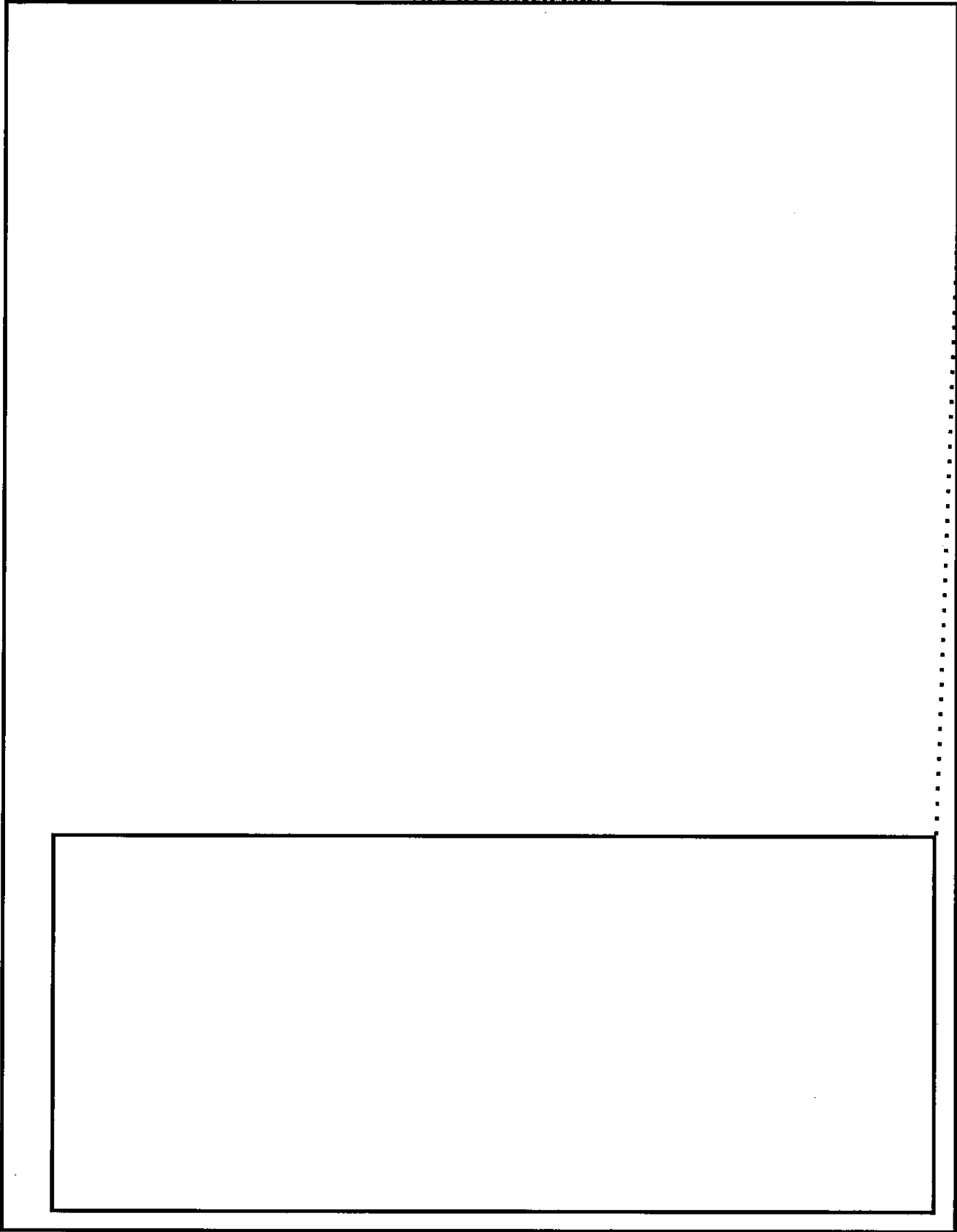
Government's ongoing effort to determine which aspects of that information constitute metadata,
as defined by the FBI 702 SMPs.

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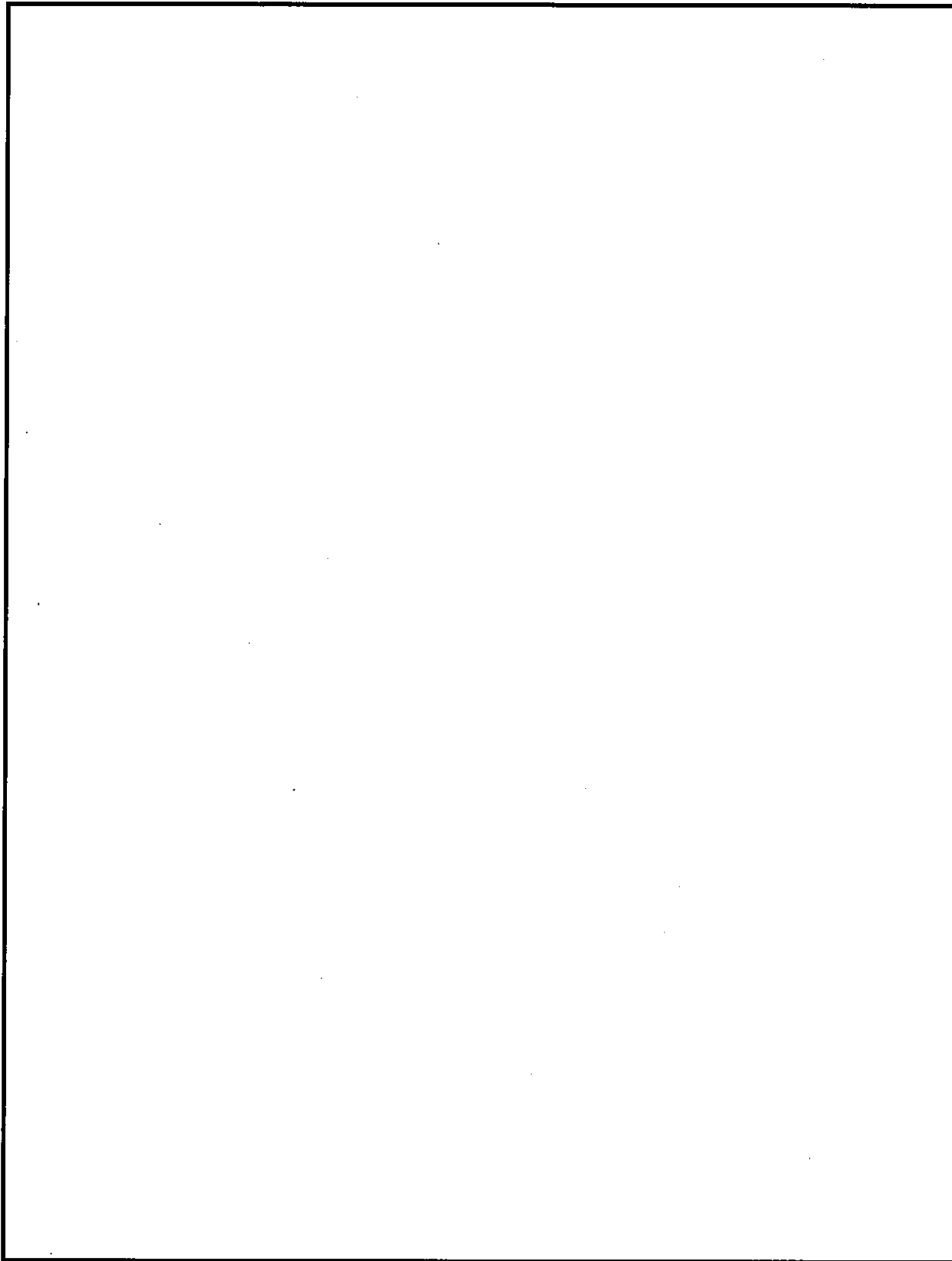
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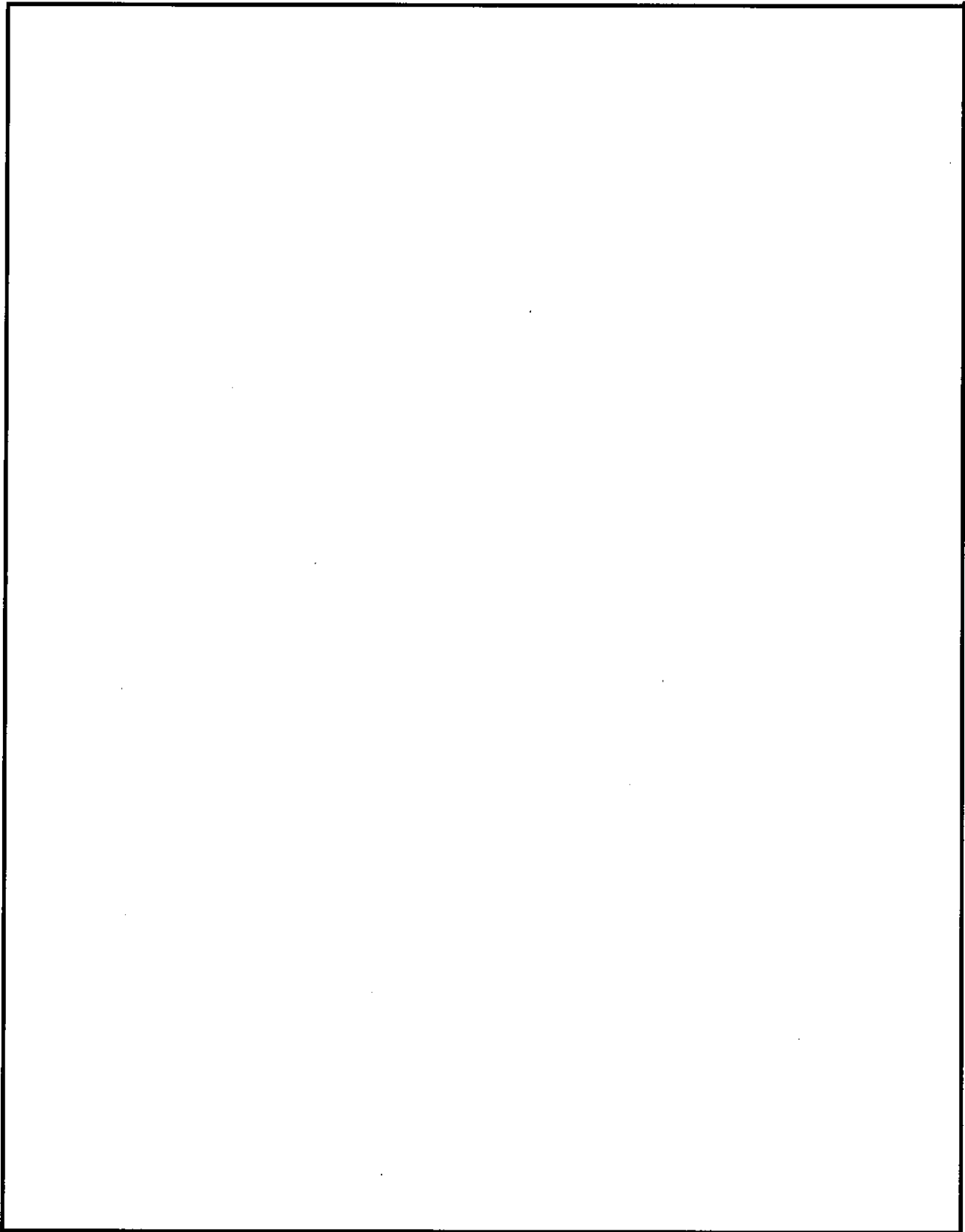
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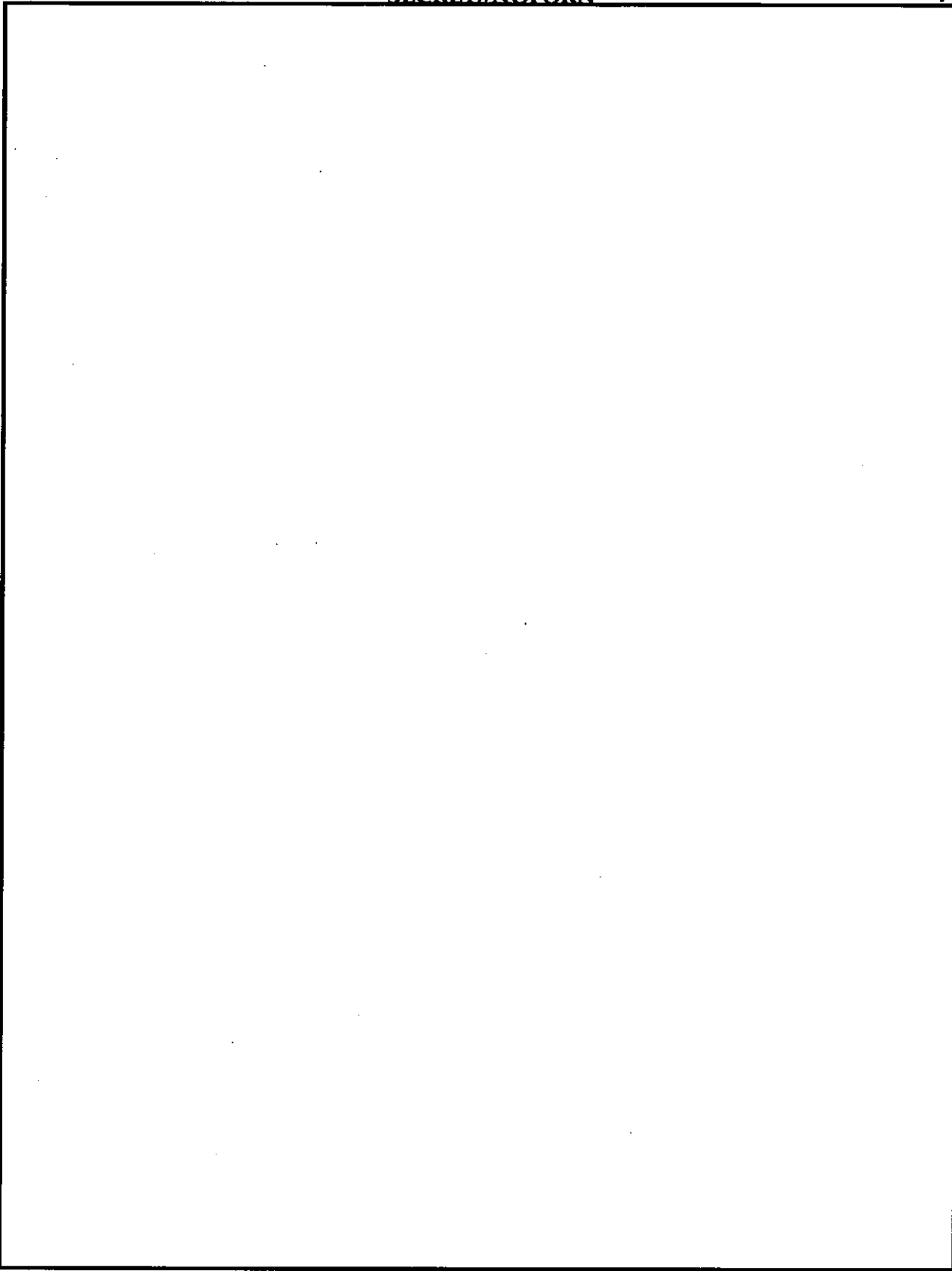
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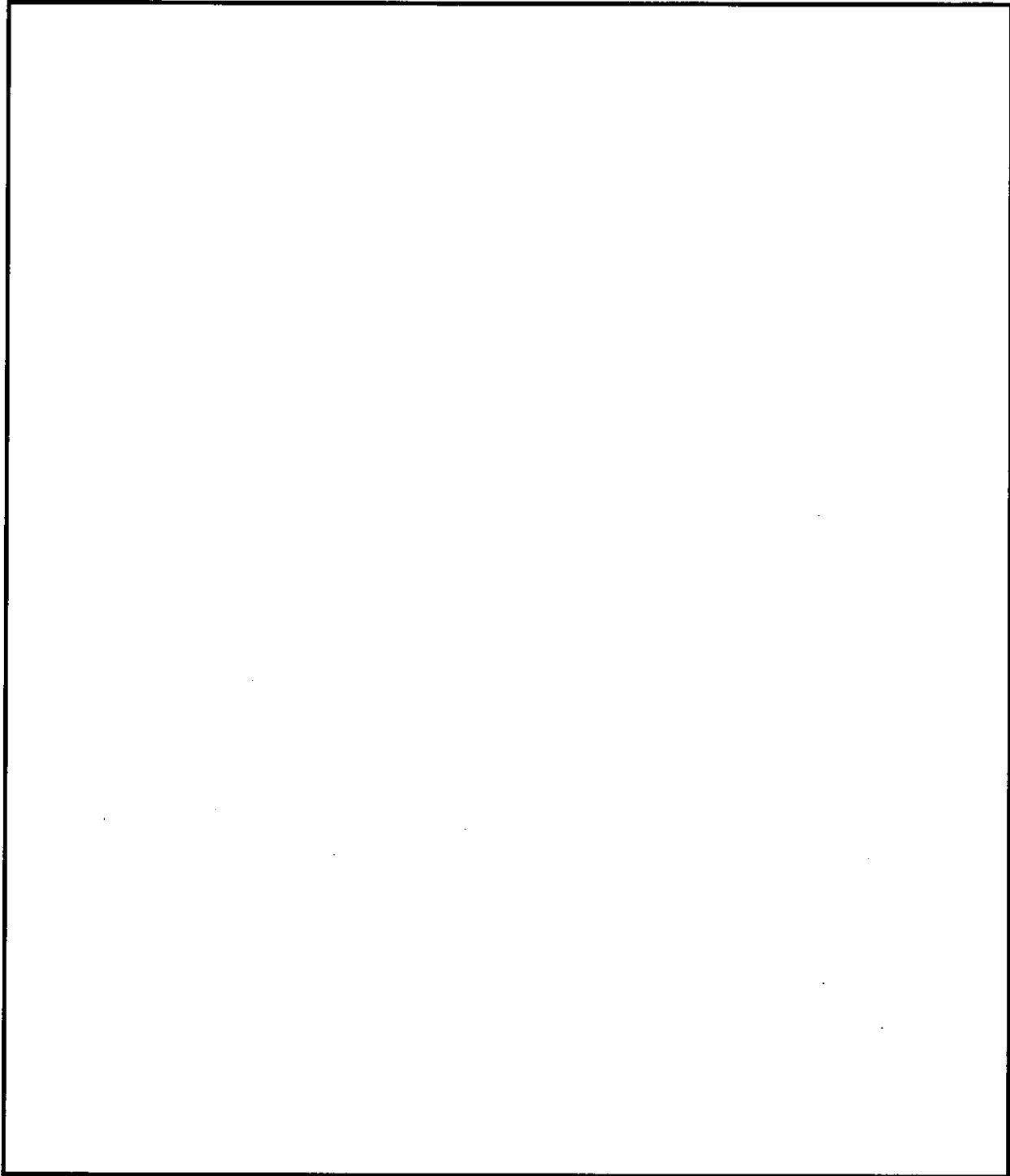
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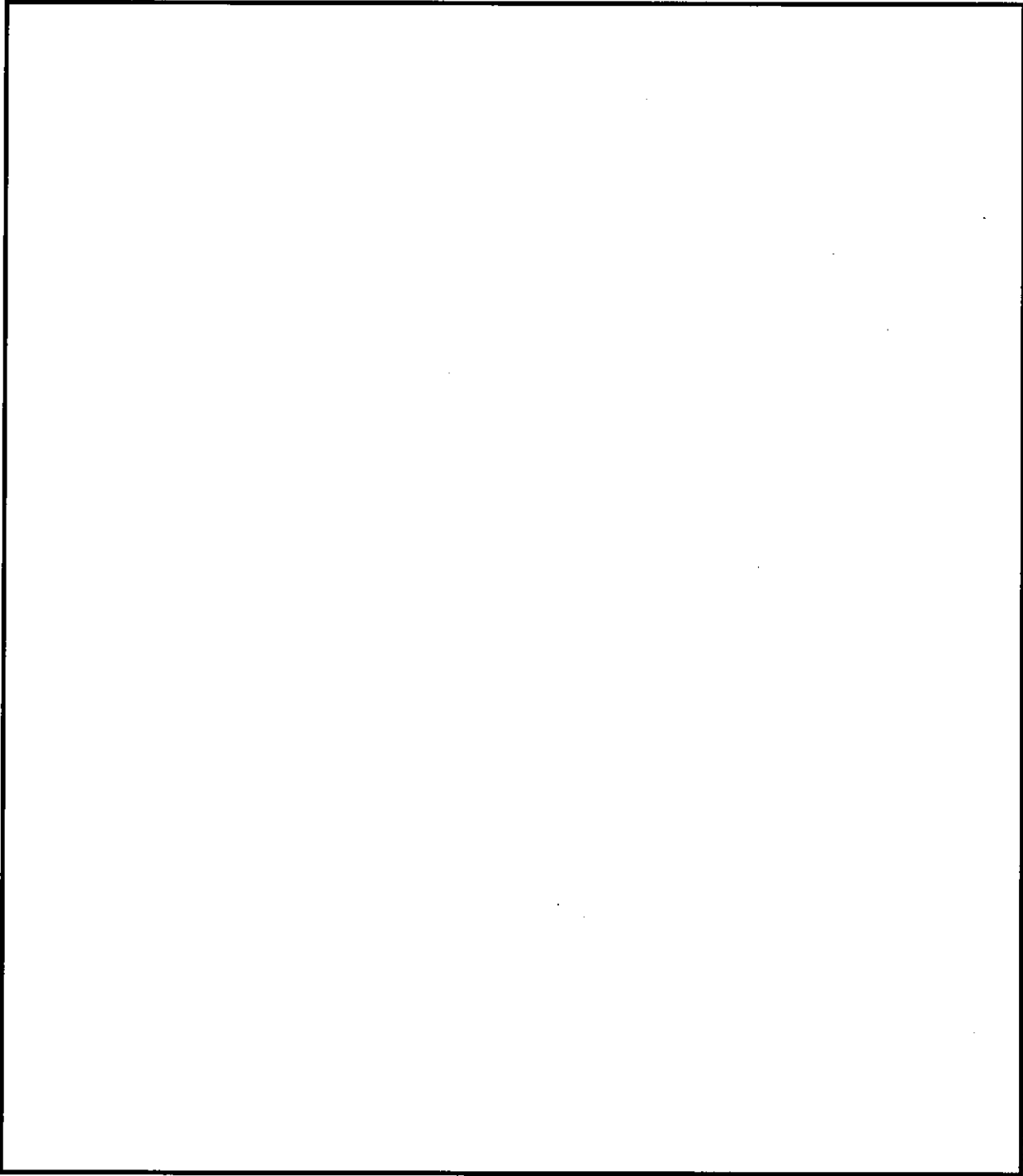
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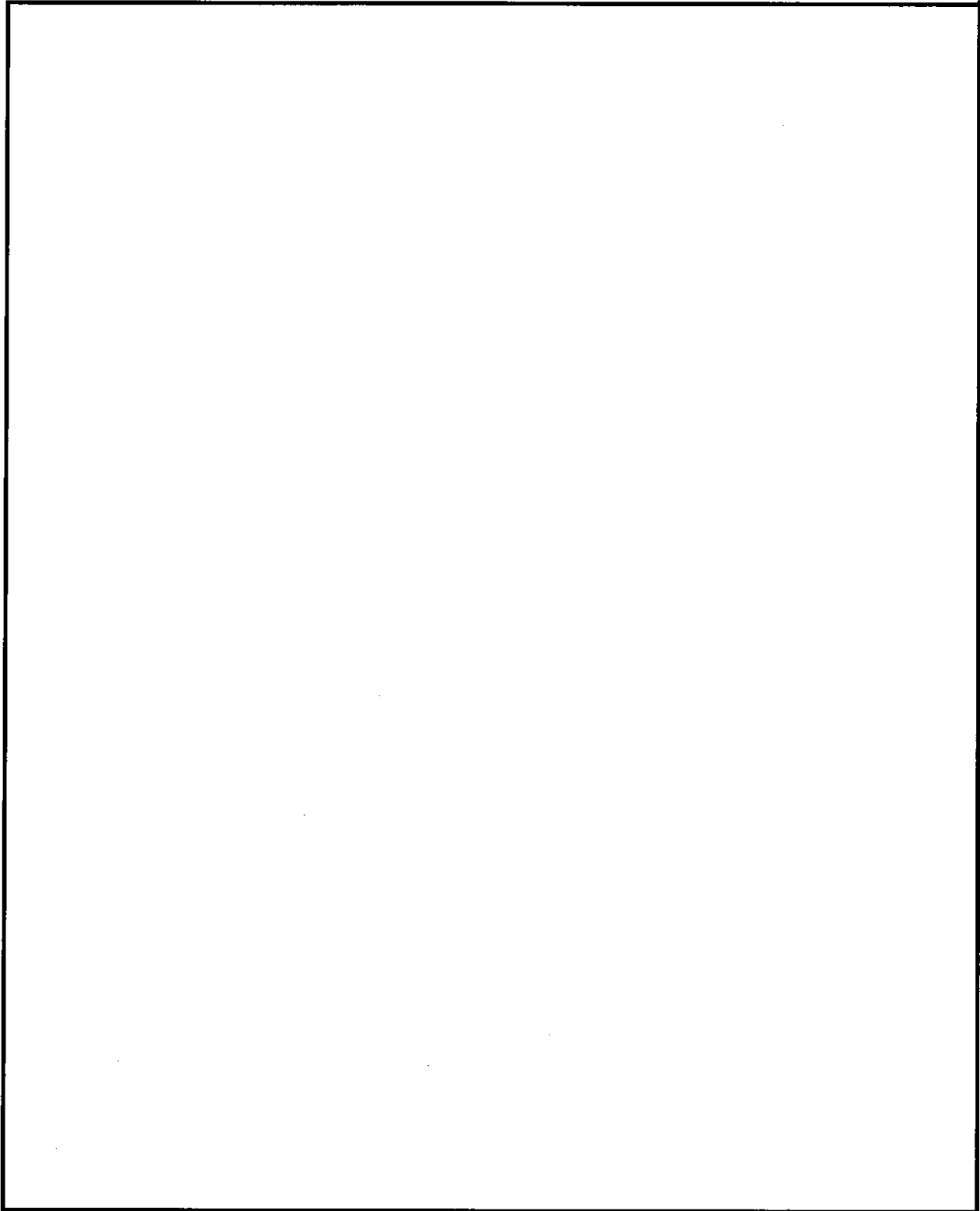
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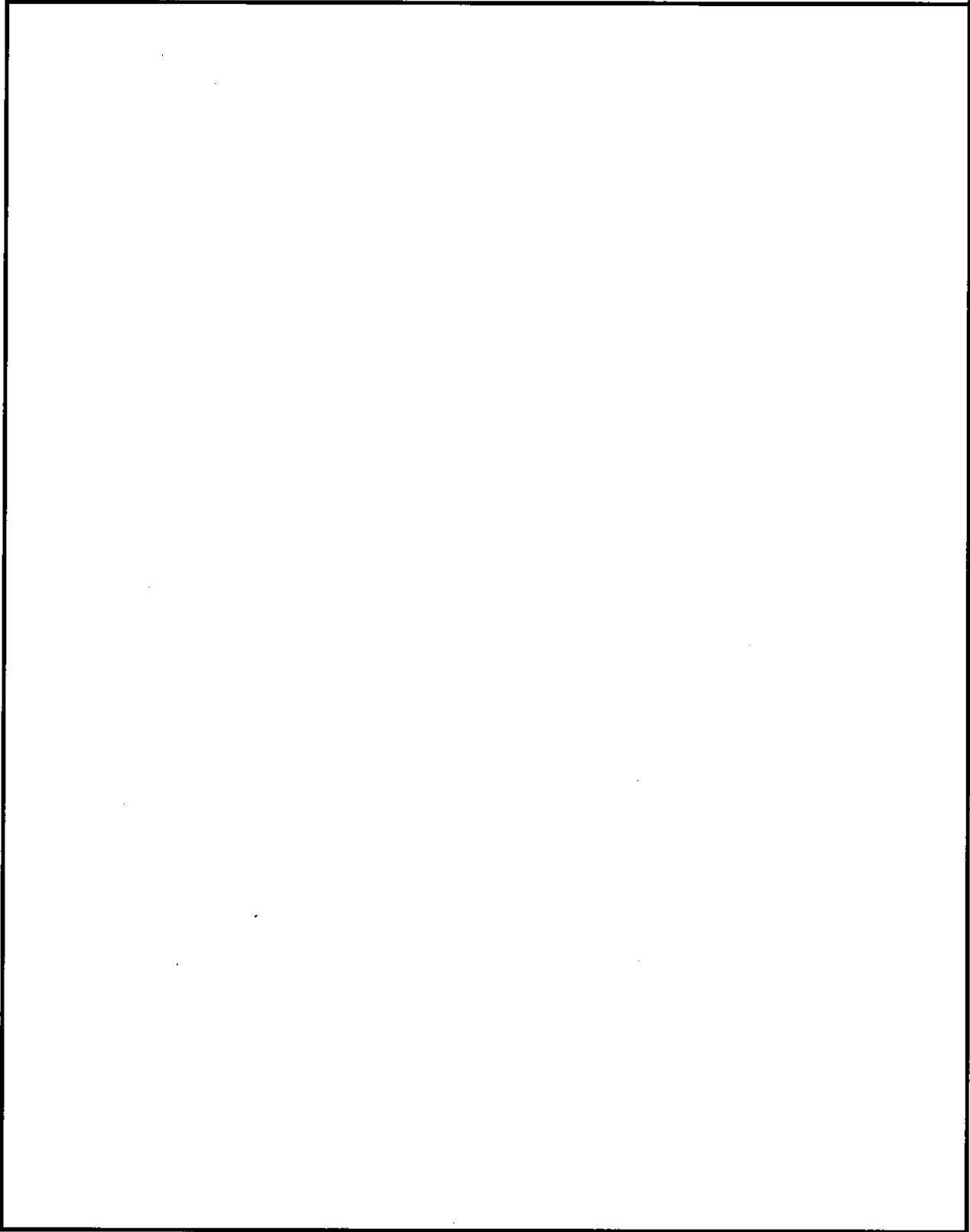
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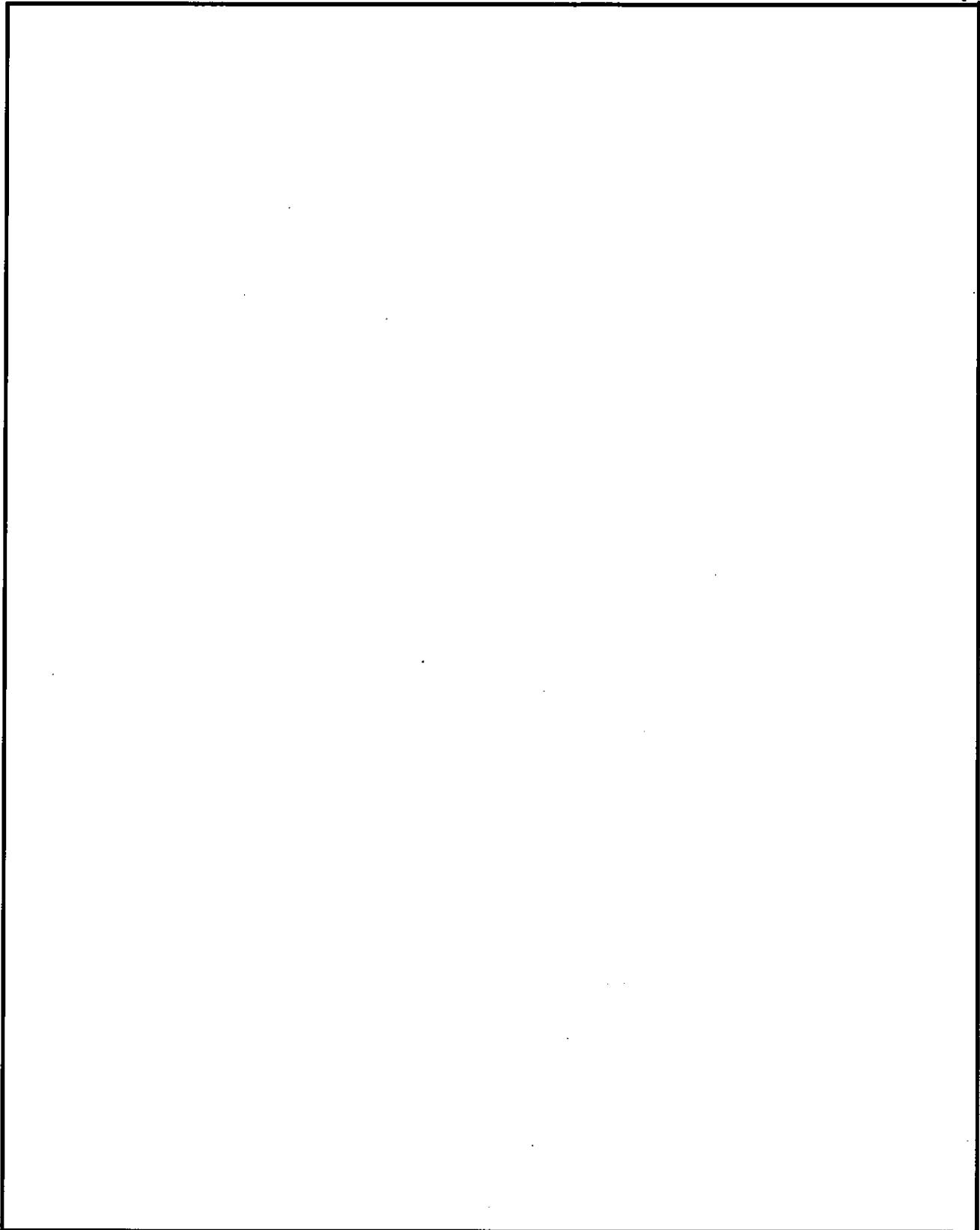
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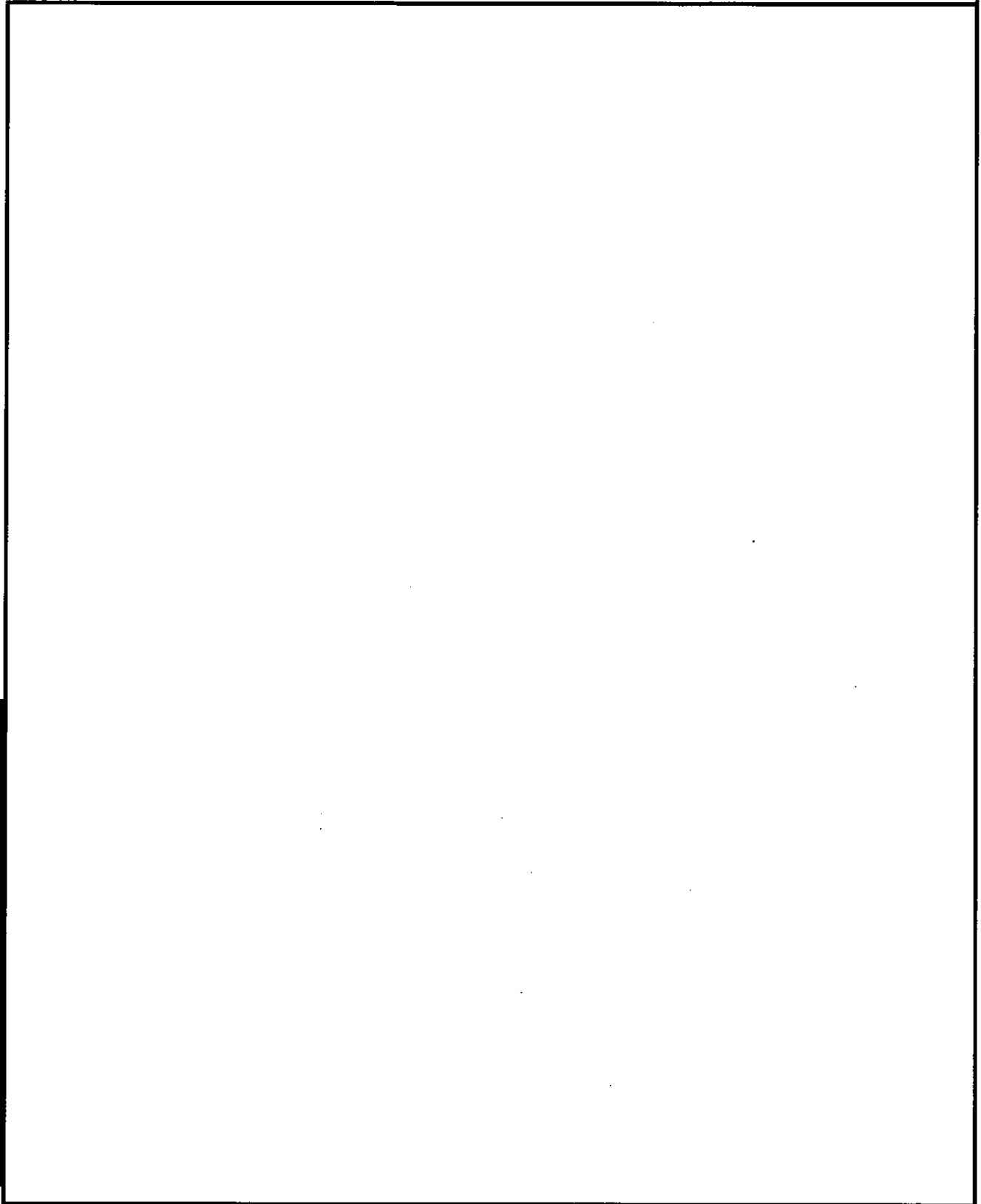
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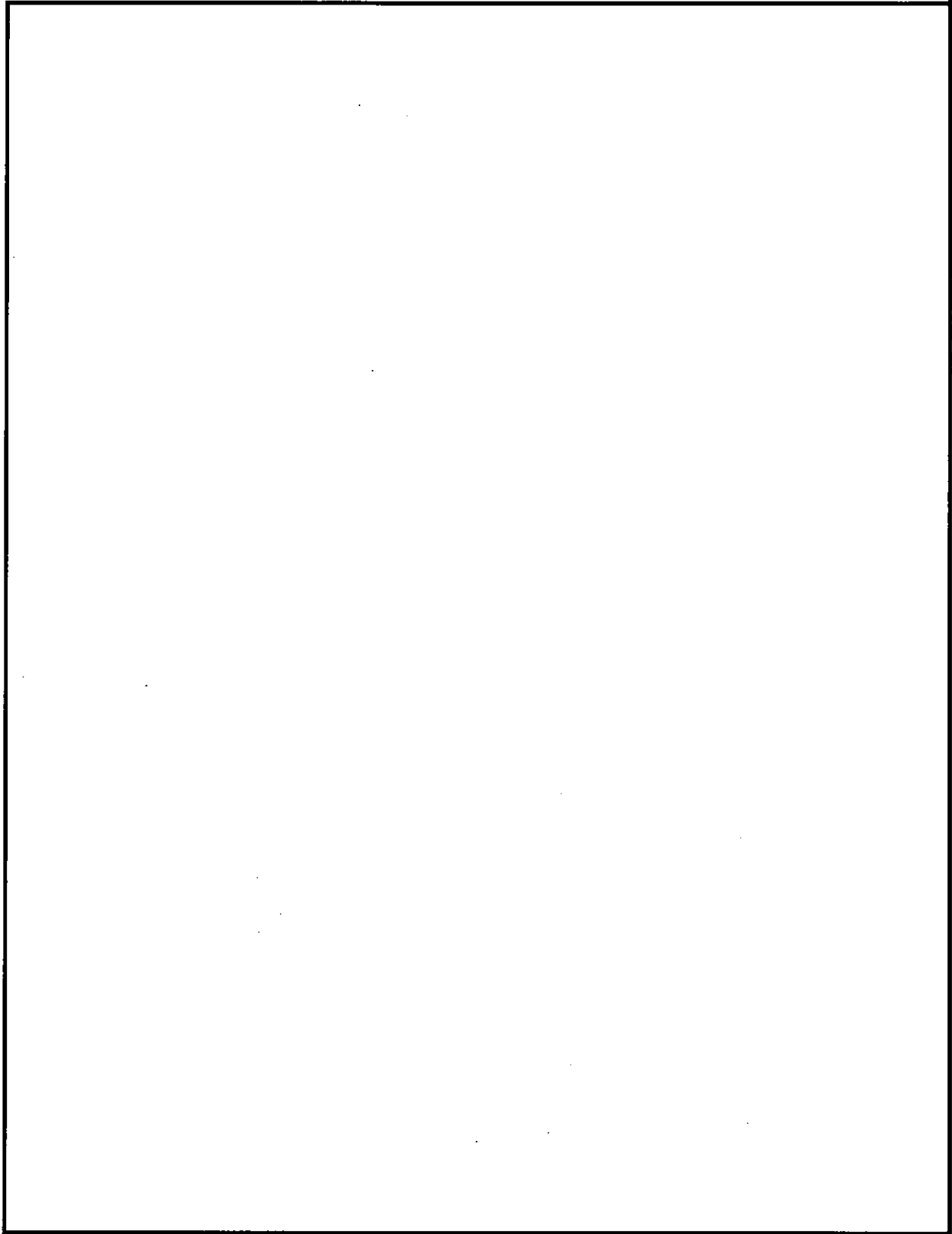
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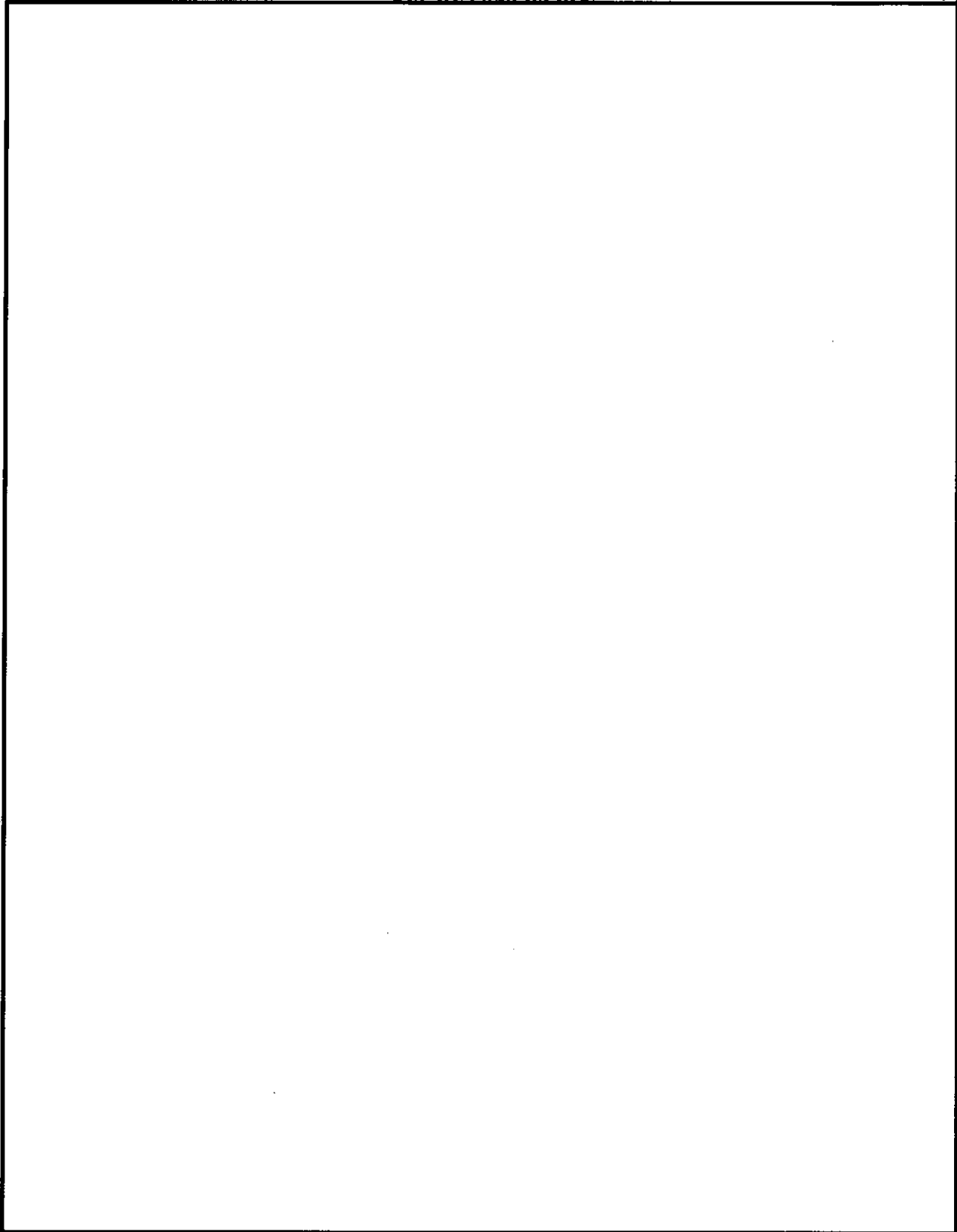
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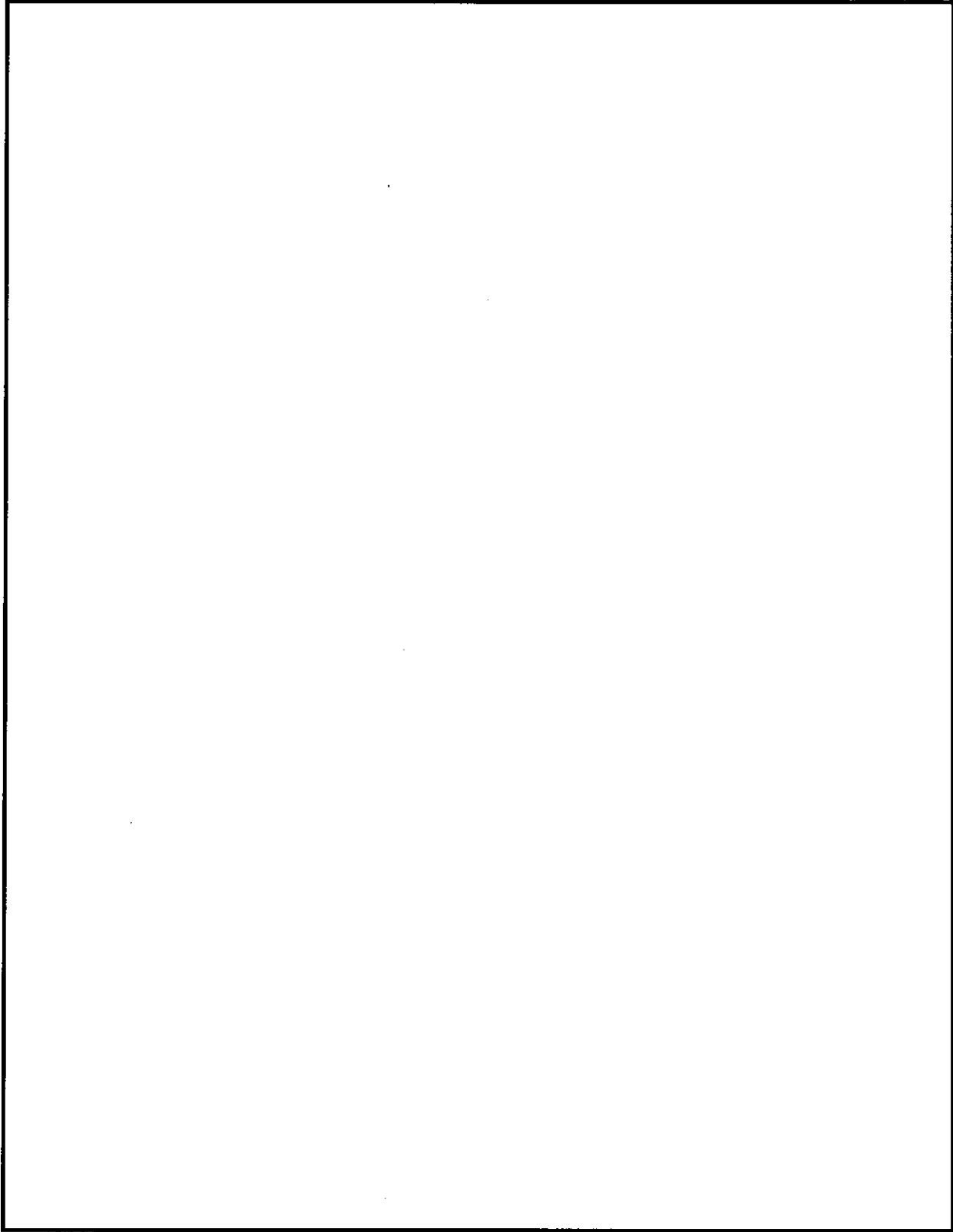
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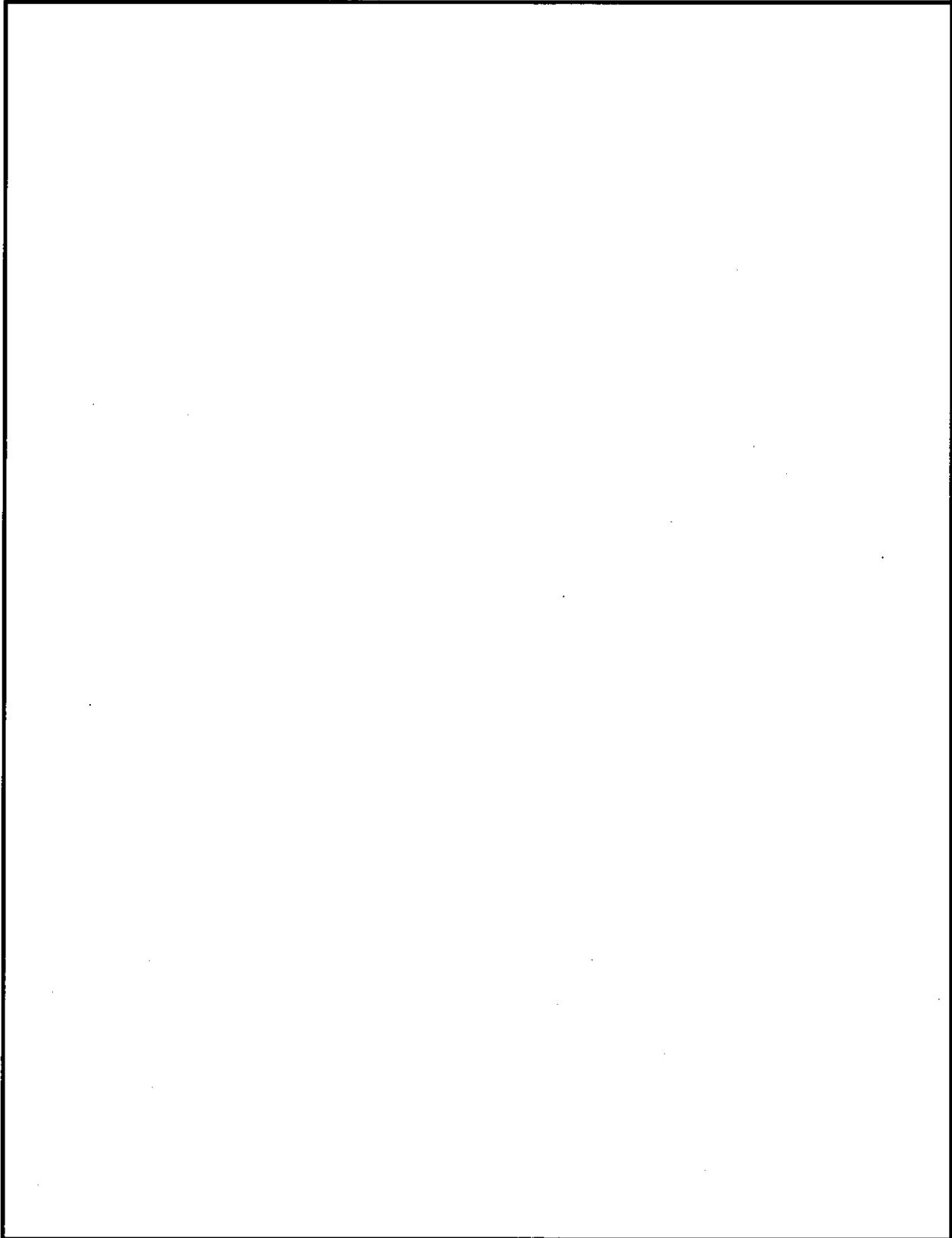
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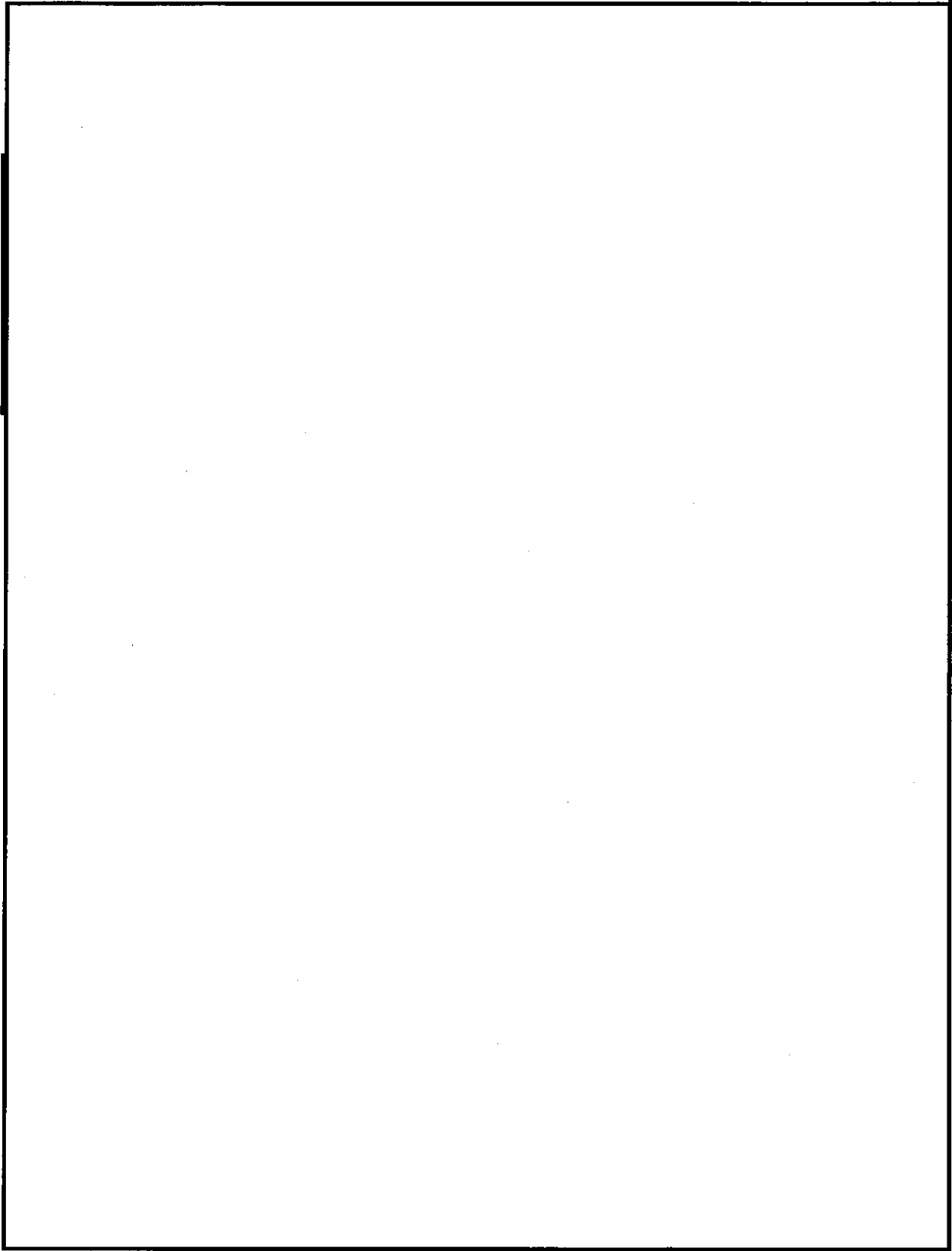
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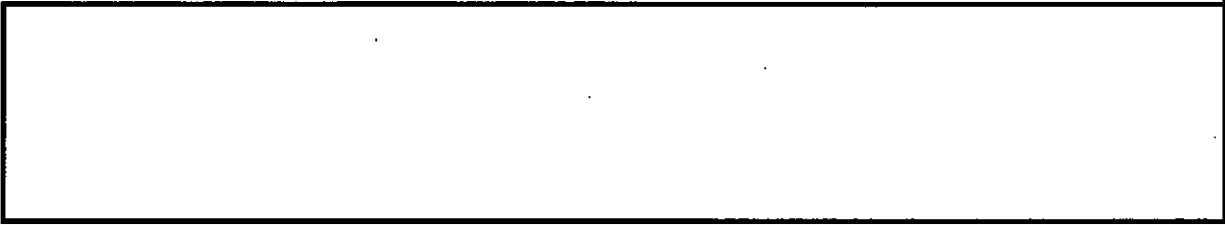
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V. (U) REQUEST FOR EXTENSION OF TIME

~~(S//NF)~~ As described above, the Court's Order required that this response be filed by January 31, 2019. Due to difficulties on January 31, 2019, in FBI's ability to obtain a signed verification from the appropriate FBI official, the Government was unable to timely file the response. The government respectfully requests a one day extension until February 1, 2019, to file the attached response. A proposed order to this effect is attached.

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(U) CONCLUSION

~~(S//NF)~~ The above includes the Government's response to the Court's October 18, 2018 Order and motion for an extension of time.

Respectfully submitted,

Dated: January 31, 2019

6, 7C per NSD

 *for*
Kevin J. O'Connor
Chief, Oversight Section
Office of Intelligence
National Security Division
U.S. Department of Justice

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(U) VERIFICATION

~~(S//NF)~~ I declare under penalty of perjury that the foregoing information regarding metadata that FBI acquires under Section 702 of FISA is true and correct. The matters stated herein are based on my personal knowledge, my review and consideration of the documents and information available to me in my official capacity, and information furnished by other employees of the FBI. My conclusions have been reached in accordance therewith. Executed pursuant to Title 28, United States Code, § 1746 on 01/31/2019.



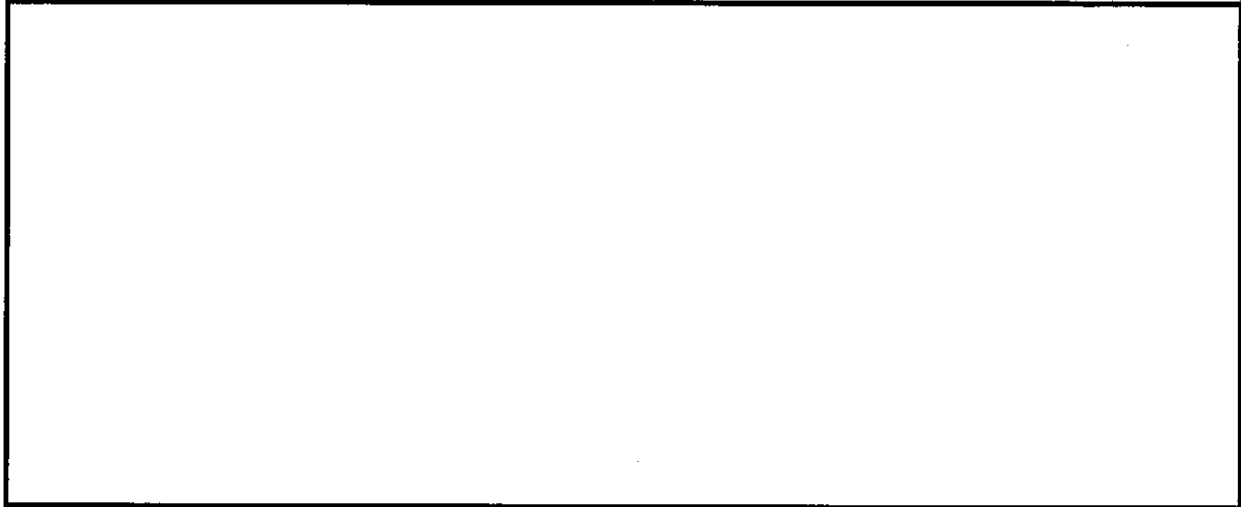
Brian K. Brooks
Assistant Director
Operational Technology Division
Federal Bureau of Investigation

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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.



ORDER

~~(S//NF)~~ This matter is before this Court on the motion of the United States for an order extending the deadline for the Government's response to this Court's October 18, 2018, Order in the above-captioned matter. Having given full consideration to the representations in the Government's motion, it is hereby ordered that the deadline for the Government's response to the October 18, 2018 Order is extended.

WHEREFORE, IT IS HEREBY ORDERED that the Government's motion is GRANTED; and

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Derived from: FBI NSICG INV;
DOJ/NSI SCG-1, 1.6
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IT IS FURTHER ORDERED that the deadline for the Government to file its response to this Court's October 18, 2018, Order is EXTENDED to February 1, 2019.

Signed _____ Eastern Time
 Date Time

JAMES E. BOASBERG
Judge, United States Foreign
Intelligence Surveillance Court

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