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HANDLE VIA (b)(3) NatSecAct CHANNELS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NASSER AL-AULAQI, on his own)	
behalf and as next friend)	
acting on behalf of)	
ANWAR AL AULAQI)	
)	
Plaintiff,)	No. 1:10cv01469 (JDB)
)	
v.)	
)	
BARACK H. OBAMA, President of the)	
United States,)	
ROBERT M. GATES, Secretary of)	
Defense,)	
LEON E. PANETTA, Director, Central)	
Intelligence Agency)	
(in their official capacities))	
)	
Defendants.)	

(U) CLASSIFIED, IN CAMERA, EX PARTE
DECLARATION AND FORMAL CLAIM OF
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES
BY LEON E. PANETTA, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

(U) I, LEON E. PANETTA, hereby declare:

I. (U) INTRODUCTION

1. (U) I am the Director of the Central Intelligence Agency ("DCIA") and have served in this capacity since 13 February 2009.¹ As DCIA, I serve as the executive head of the CIA pursuant to the National Security

¹ (U) Prior to serving as DCIA, I served as Chief of Staff to President William J. Clinton, from 1994 to 1997; Director of the Office of Management and Budget, from 1993 to 1994; Member of the U.S. House of Representatives from California's 17th District, from 1977 to 1993; and First Lieutenant in the U.S. Army from 1964 to 1966, for which I received the Army Commendation Medal.

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Act of 1947, as amended.² In my capacity as DCIA, I lead the CIA and manage the Intelligence Community's human intelligence and open source collection programs on behalf of the Director of National Intelligence ("DNI").³ [redacted]

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2. (U) Through the exercise of my official duties, I have been advised of this litigation and I have read the Complaint filed in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

3. (U) The purpose of this declaration is to formally assert and claim the state secrets privilege, as well as relevant statutory privileges under section 102A(i)(1) of the National Security Act of 1947, as amended, and section 6 of the CIA Act of 1949, as amended, to protect intelligence activities, sources, and methods that may be implicated by the allegations in the Complaint

² (U) 50 U.S.C.A. § 403-4a (West Supp. 2010).

³ (U) Executive Order 12333, as amended, §§ 1.6-1.7, sets forth in full the duties of the DCIA. See 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25 (West Supp. 2010), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008).

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or otherwise at risk of disclosure in this case. I make these claims of privilege in my capacity as the Director of the CIA and after deliberation and personal consideration of the matter.

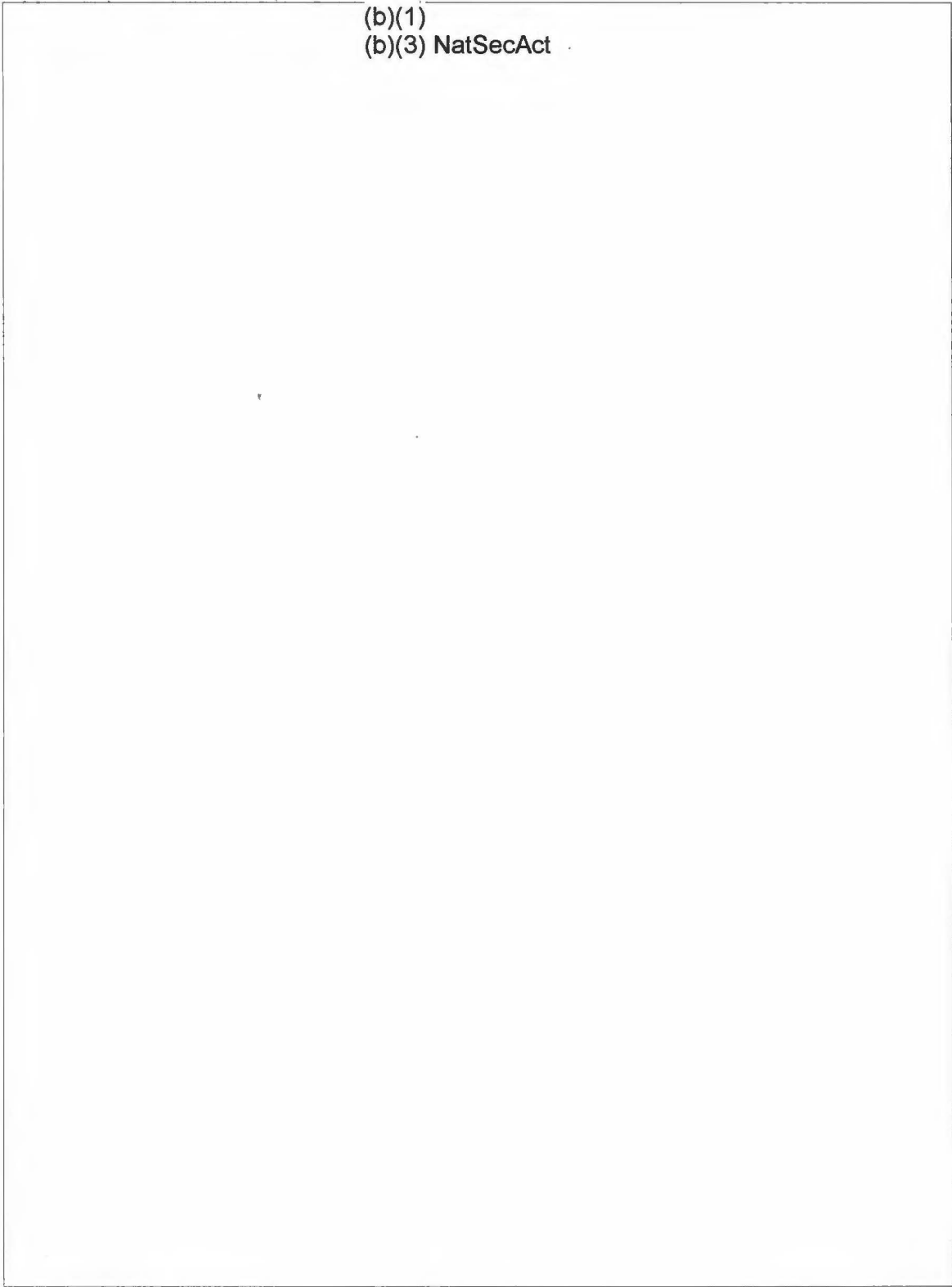
II. (U) EXECUTIVE SUMMARY

4. [(b)(1) (b)(3) NatSecAct] Dual U.S.-Yemeni citizen

Anwar al Aulqi ("Aulqi") is one of the world's most dangerous terrorists. As the chief of external operations for al-Qa'ida in the Arabian Peninsula ("AQAP"), a Yemen-based regional node of al-Qa'ida, Aulqi is responsible for the planning and execution of terrorist attacks against the United States, our allies, and American interests worldwide. Although perhaps best known for his pivotal role in AQAP's attempt to blow up a U.S. airliner bound for Detroit on December 25, 2009, Aulqi continues to seek to recruit, vet, and train other terrorists for future attacks against the U.S. Homeland. Indeed, no other member of AQAP possesses Aulqi's near-celebrity status (he is a well-known Islamic scholar), his English-language abilities, or his knowledge of the West (he was born and educated in the U.S.). These characteristics make him a particularly effective recruiter and advocate for al-Qa'ida's violent ideology.

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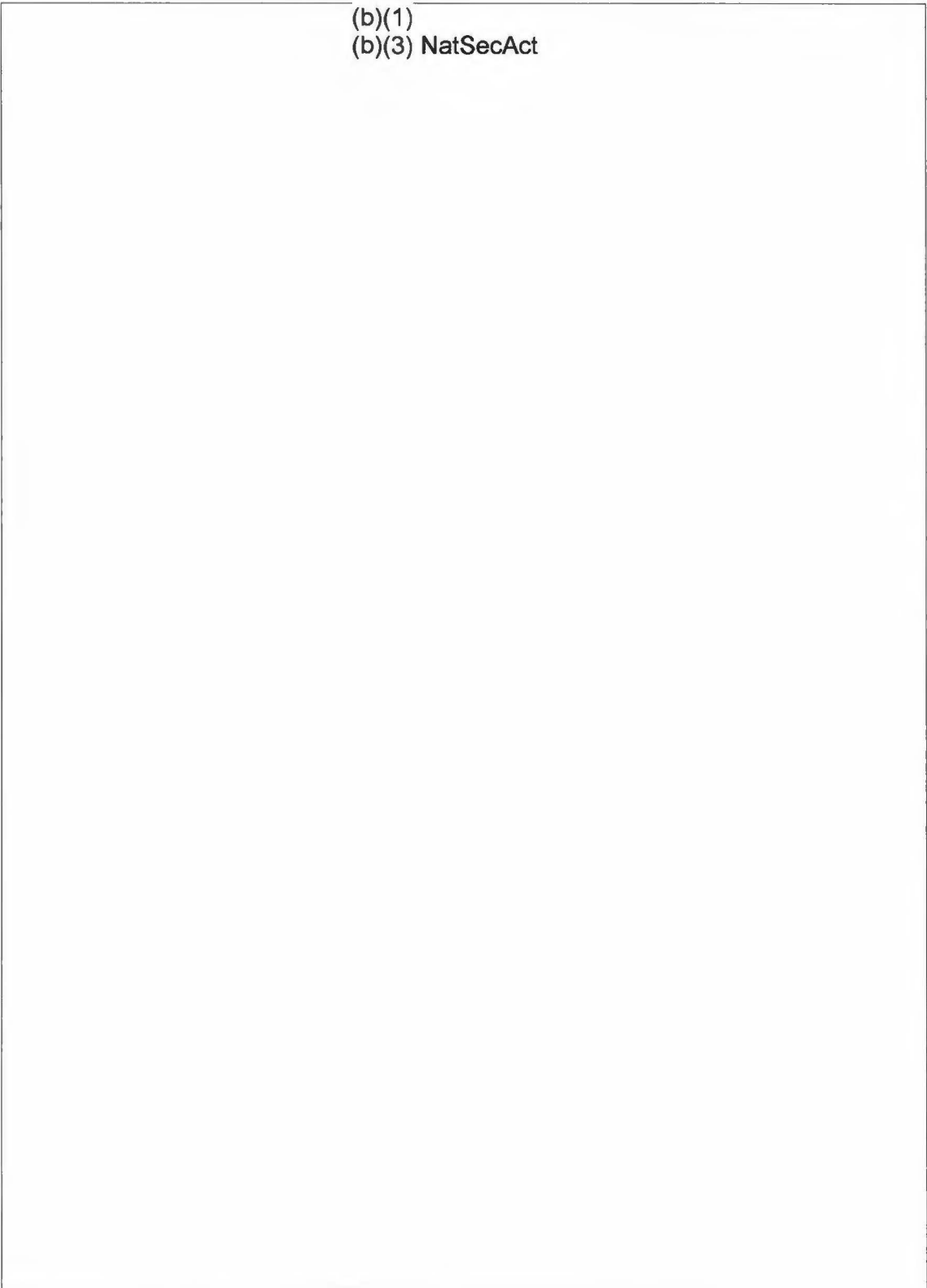


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9. (U) As Director of the CIA, I am bound by both law and duty to do everything in my power to protect from disclosure the details of the CIA's efforts against al-Qa'ida. I therefore have determined that I must assert the state secrets privilege and relevant statutory privileges in this case to protect from disclosure a wide range of intelligence sources, methods, and activities implicated by the Complaint. I do not make these claims lightly.

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⁵ (U) It is my belief that this declaration adequately explains why this case cannot be litigated without risking or requiring the disclosure of classified and privileged intelligence information that must not be disclosed. Should the Court require additional information concerning my claims of privilege, however, I respectfully request an opportunity to provide such additional information prior to the entry of any ruling regarding my privilege claims.

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III. (U) CLASSIFICATION AND CONTROL MARKINGS

11. (b)(1) (S)/(b)(3) NatSecAct classification and control markings affixed to this declaration and each paragraph were made pursuant to the requirements of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), reprinted in 50 U.S.C.A. 435 note at 215 (2010) ("E.O. 13526") and applicable regulations. The classification level of this declaration as a whole is the same as the highest classification level of information contained in any of its paragraphs. The overall classification of this document is

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Each individual paragraph is portion-marked to indicate the classification of that paragraph: "(U)" for unclassified, "(S)" for SECRET and "(TS)" for TOP SECRET. Some paragraphs are marked with the "NF" dissemination control, which stands for "Not Releasable to Foreign Nationals," or NOFORN, and denotes that dissemination of that information is limited to U.S. citizens.

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14. (U) Because this declaration contains classified information, I am submitting it in camera, ex parte solely for the eyes of the presiding Article III judge(s) reviewing this case. It must be stored in accordance with government-approved security procedures, and in a Sensitive Compartmented Information Facility, or "SCIF," when not in the personal possession of the presiding judge(s).

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IV. (U) FACTUAL BACKGROUND

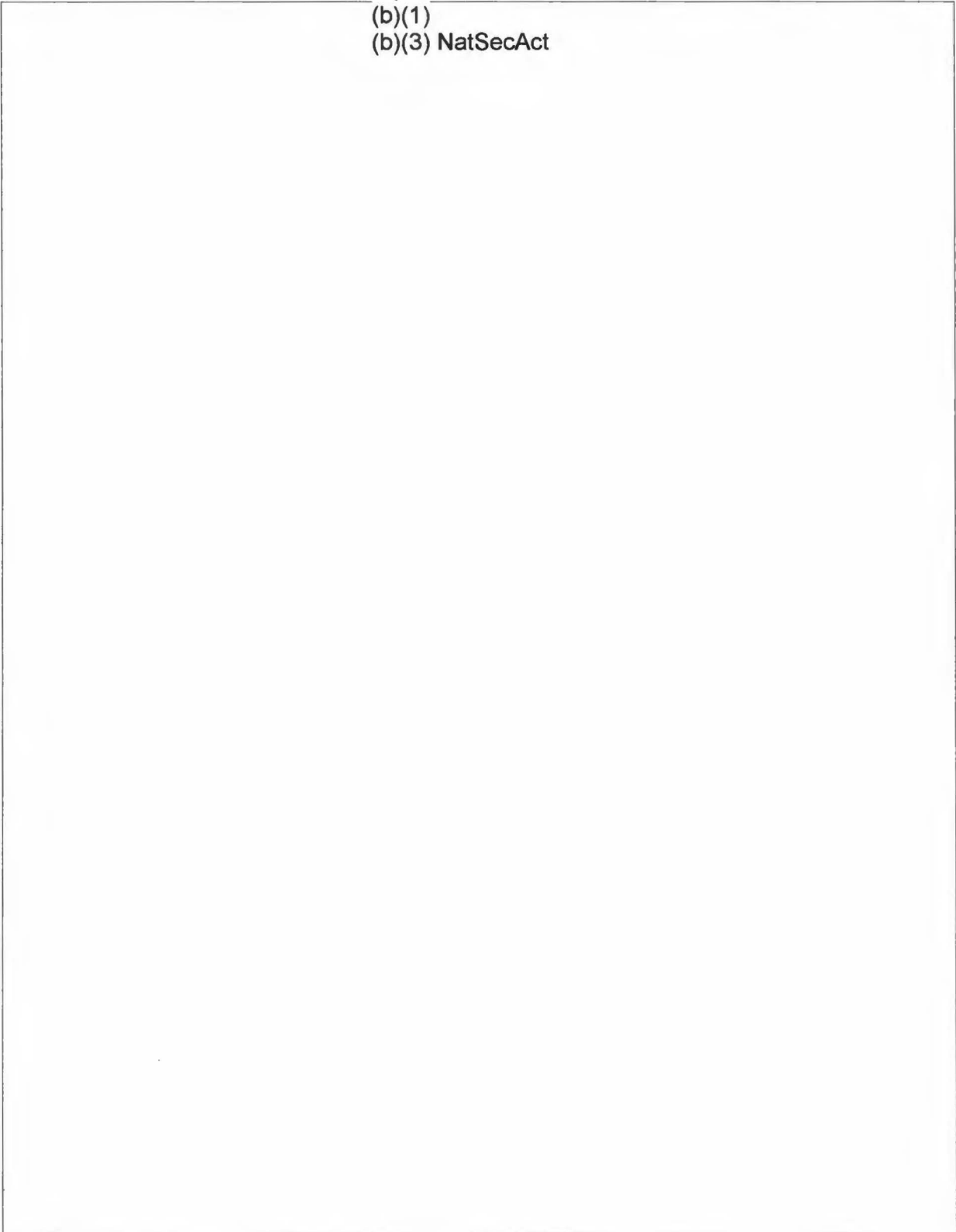
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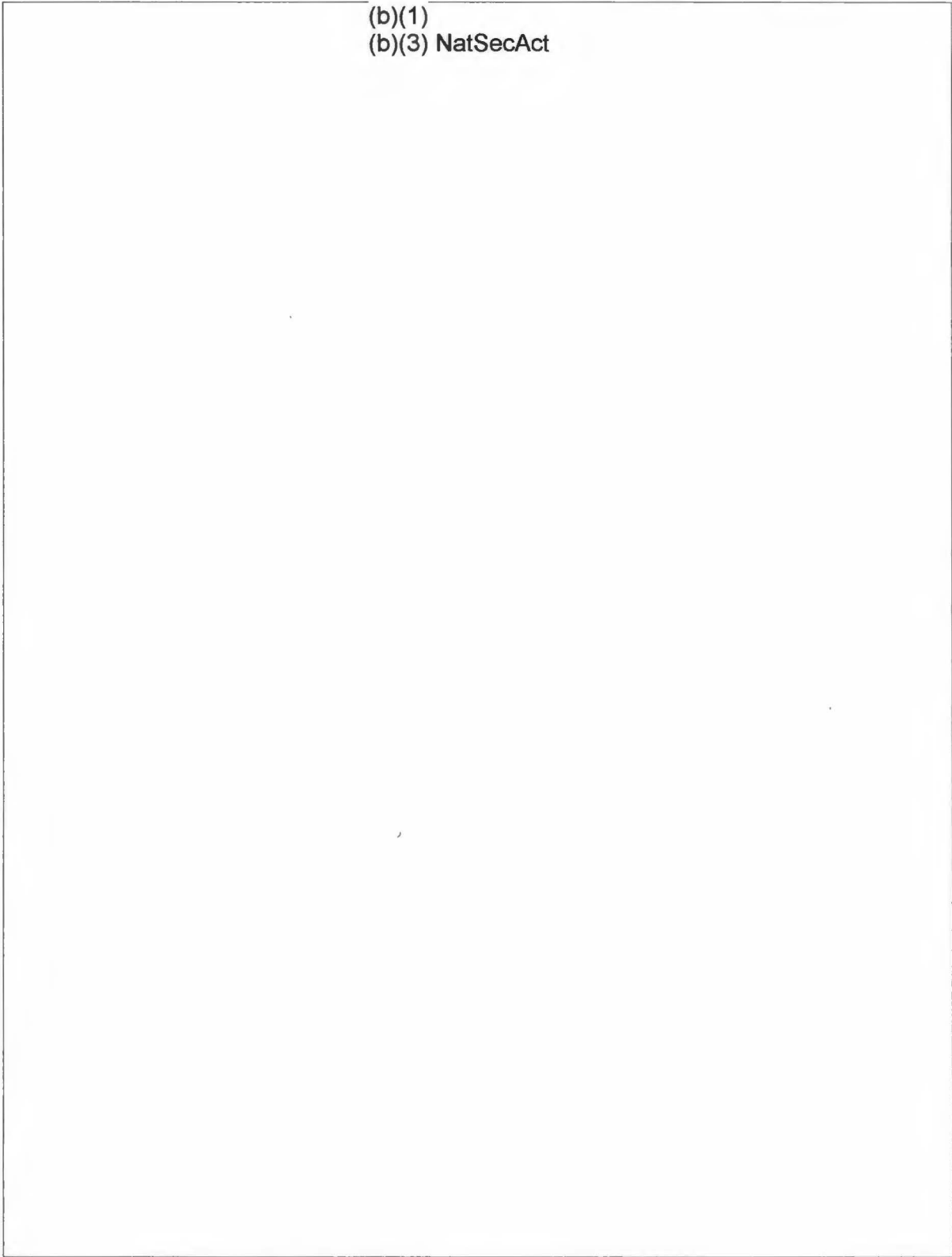
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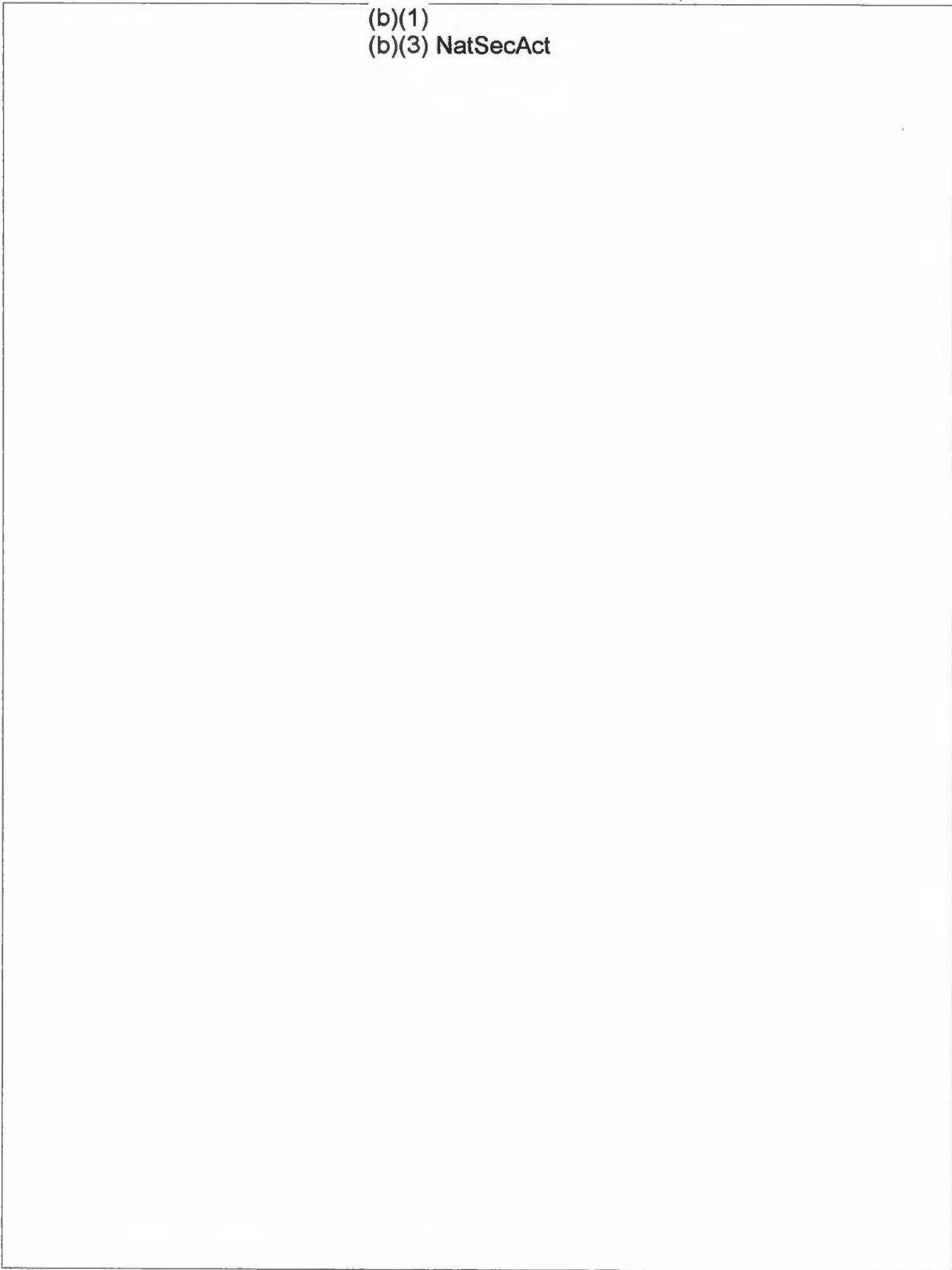
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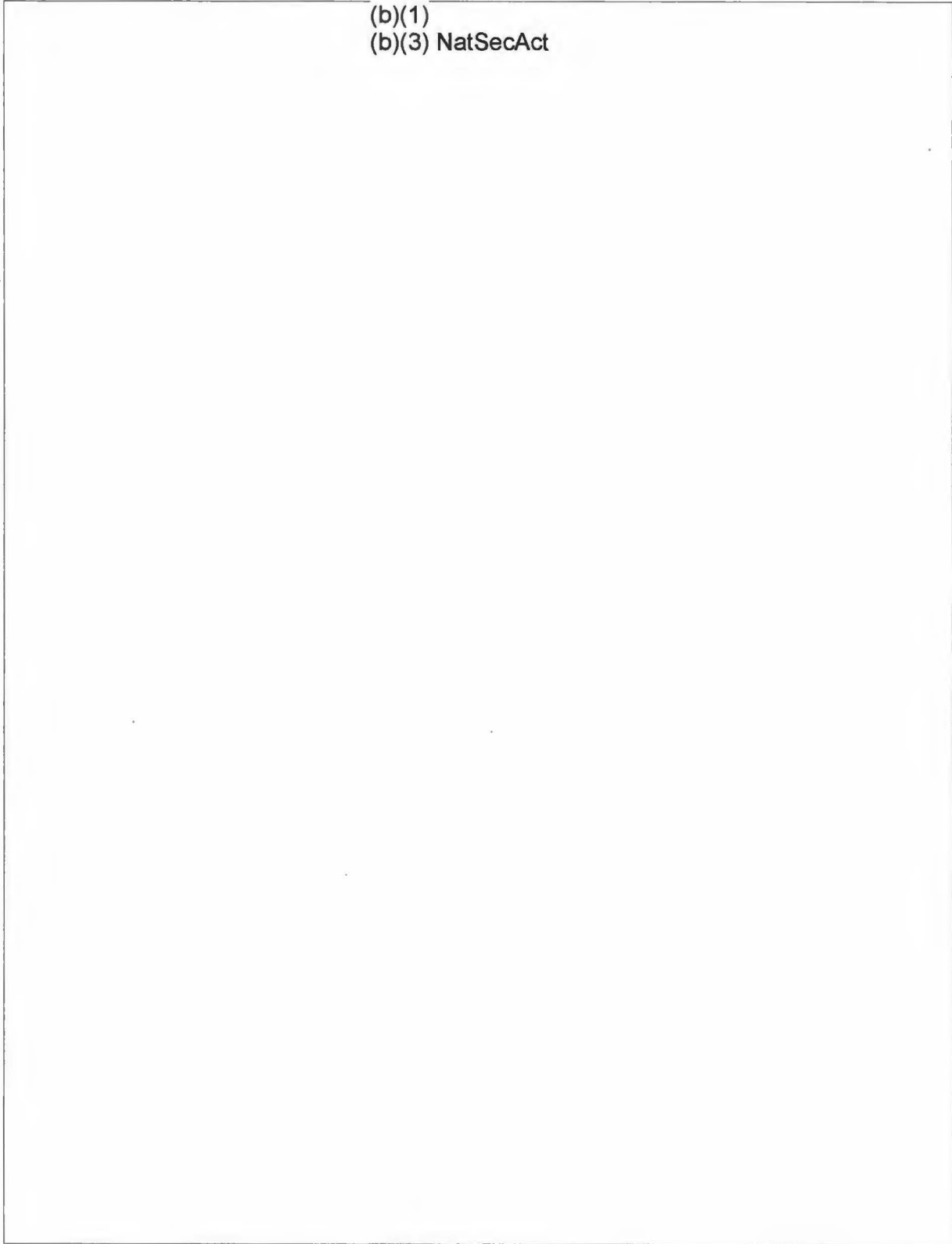
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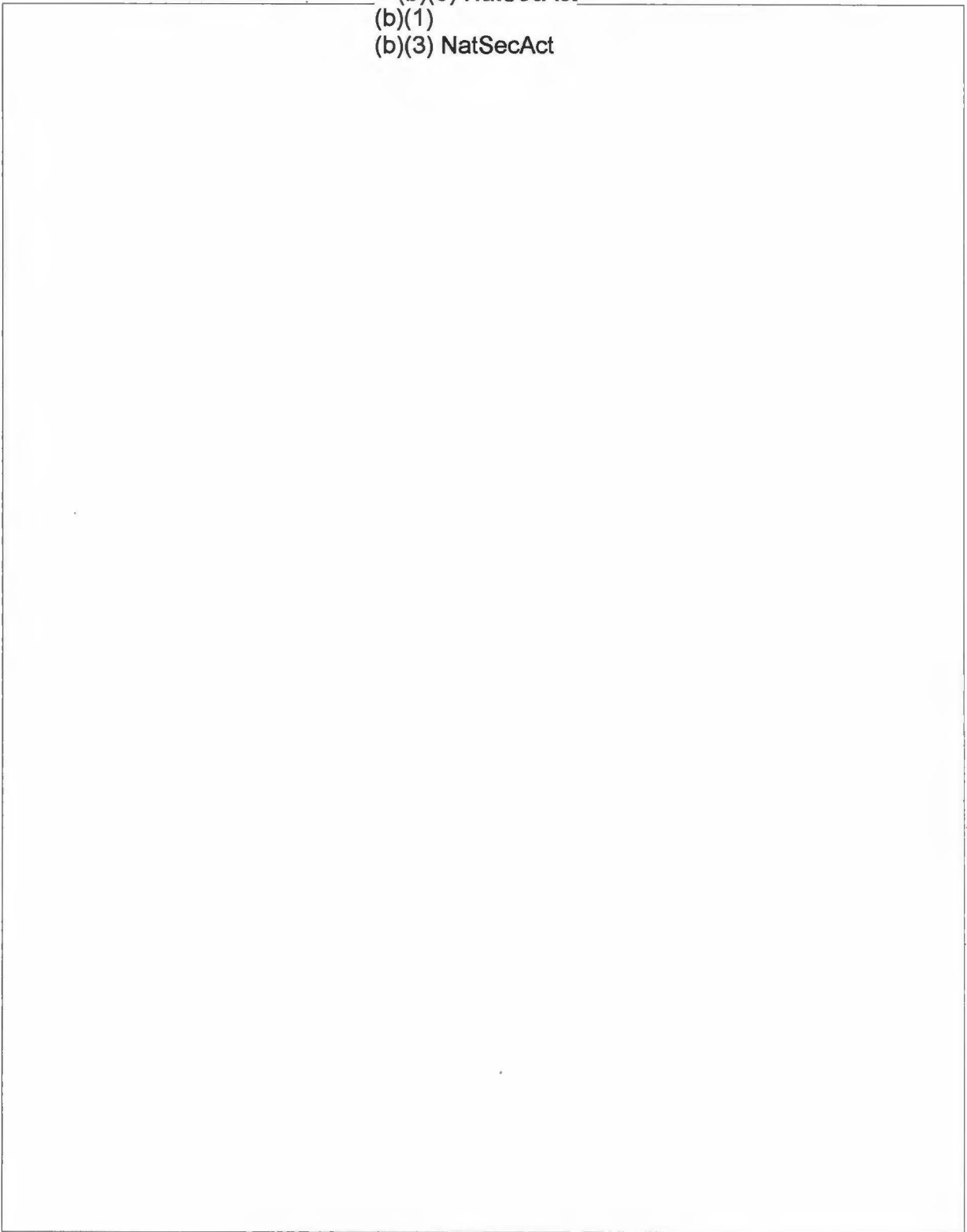
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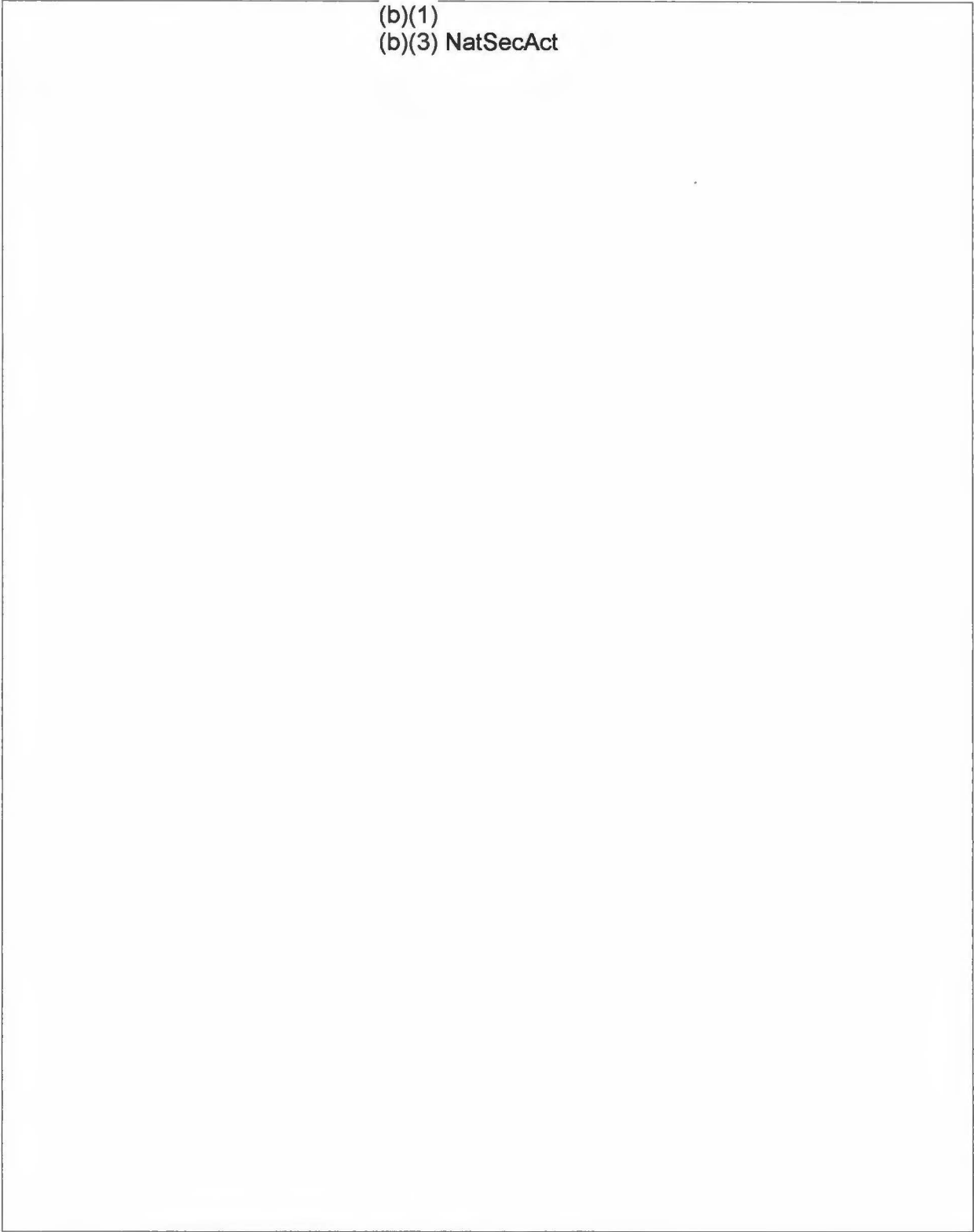
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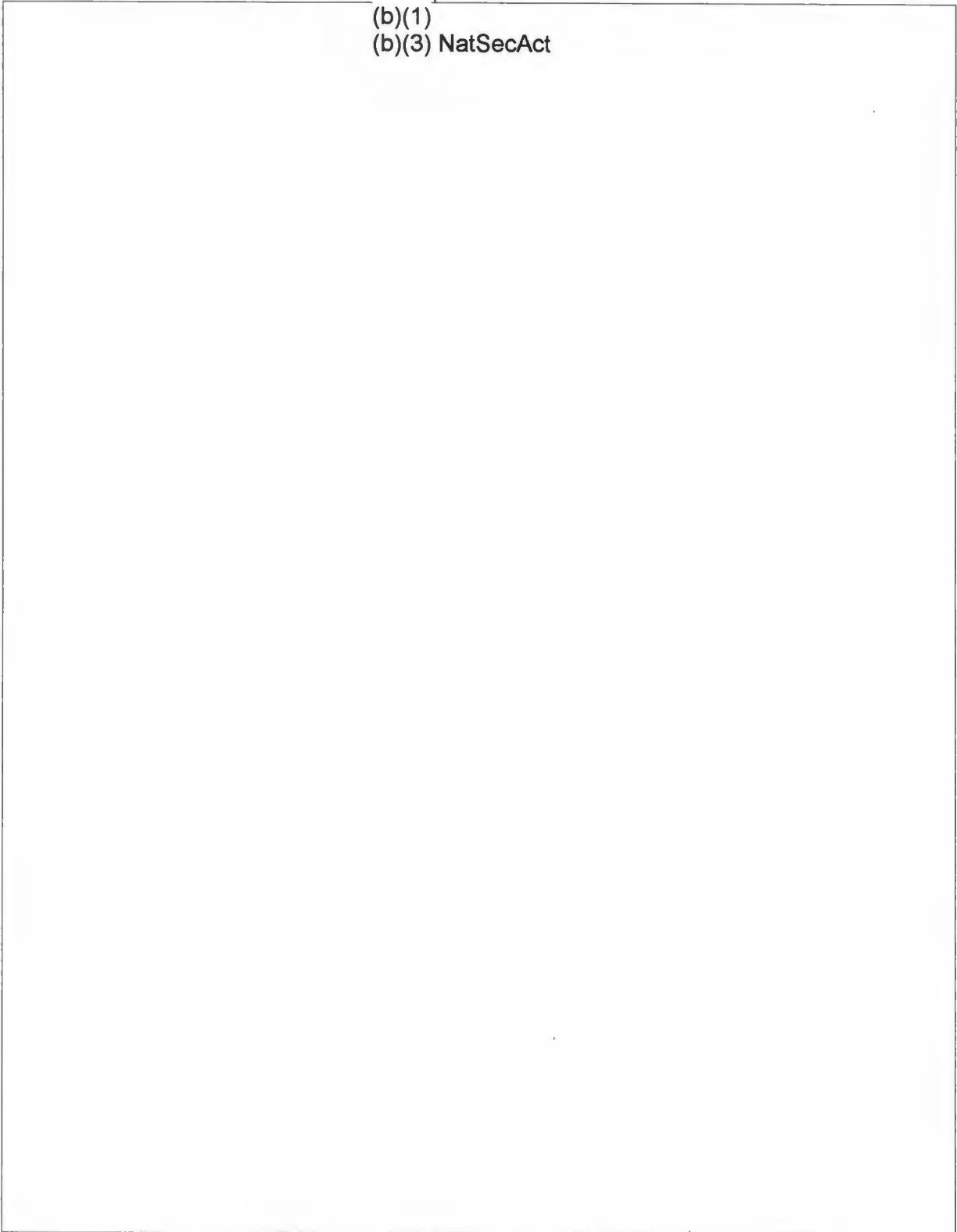
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V. (U) ASSERTION OF THE STATE SECRETS PRIVILEGE

28. (U) I hereby formally assert and claim the state secrets privilege in order to protect intelligence activities, sources, and methods that may be implicated by the allegations in the Complaint or otherwise at risk of disclosure in this case. I make this claim of privilege in my capacity as the Director of the CIA and after deliberation and personal consideration of the matter.

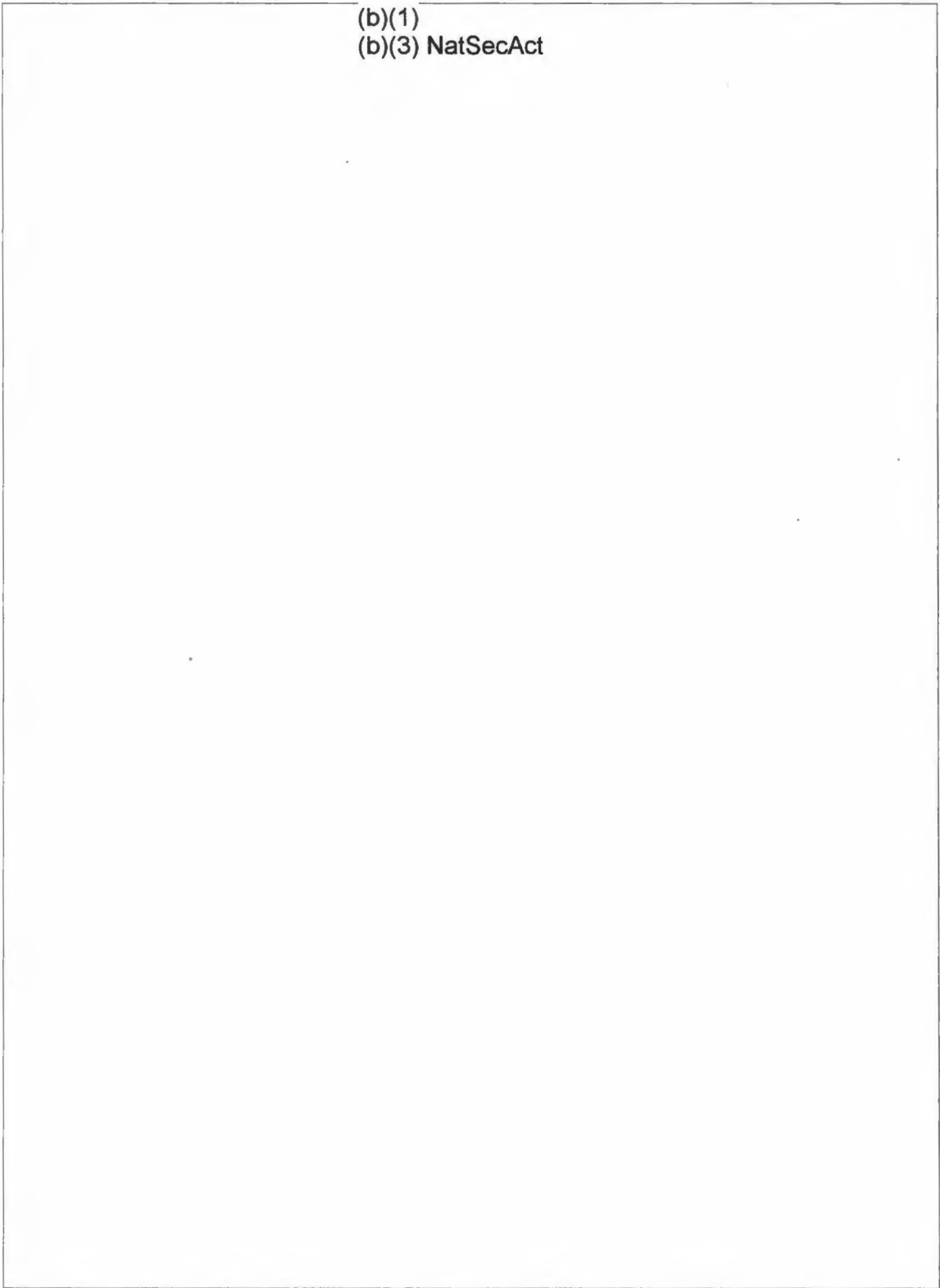
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VI. (U) ASSERTION OF STATUTORY PRIVILEGES

30. (U) Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-1(i) (1) (West Supp. 2010) (the "NSA"), provides that the DNI "shall protect intelligence sources and methods from unauthorized disclosure." Pursuant to section 102A of the NSA, as amended, 50 U.S.C.A. § 403-1(i), and consistent with section 1.6(d) of Executive Order 12333,⁹ the CIA is authorized to protect intelligence sources and methods from unauthorized disclosure.

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⁹ (U) Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25 (West Supp. 2010), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008) requires the Director of the Central Intelligence Agency to "protect intelligence sources, methods and activities from unauthorized disclosure"

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32. (U) I hereby formally assert and claim these statutory privileges -- which are coextensive with my assertion of the state secrets privilege -- in order to protect the Privileged Information described in Part V of this declaration, above. I make this claim of privilege in my capacity as the Director of the CIA and after deliberation and personal consideration of the matter.

VII. (b)(1) ~~(S)~~ (b)(3) NatSecAct TO U.S. NATIONAL SECURITY

33. (b)(1) ~~(S)~~ (b)(3) NatSecAct ating this case would risk or require disclosure of the Privileged Information because to adequately defend itself from these allegations, the CIA would be required to proffer information that reasonably could be expected to expose extremely sensitive and classified intelligence sources, methods and activities.

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¹⁰ (U) As the Director of the CIA, acting under a delegation of authority pursuant to section 1.3(c) of E.O. 13526, I hold original classification authority at the TOP SECRET level. This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of E.O. 13526 and applicable regulations. I have determined that the Privileged Information described in this declaration is currently and properly classified at the SECRET and TOP SECRET level pursuant to the provisions of E.O. 13526. This means that its unauthorized disclosure reasonably could be expected to cause serious or exceptionally grave damage to U.S. national security. Executive Order 13526 replaced Executive Order 12958, as amended, as of June 27, 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

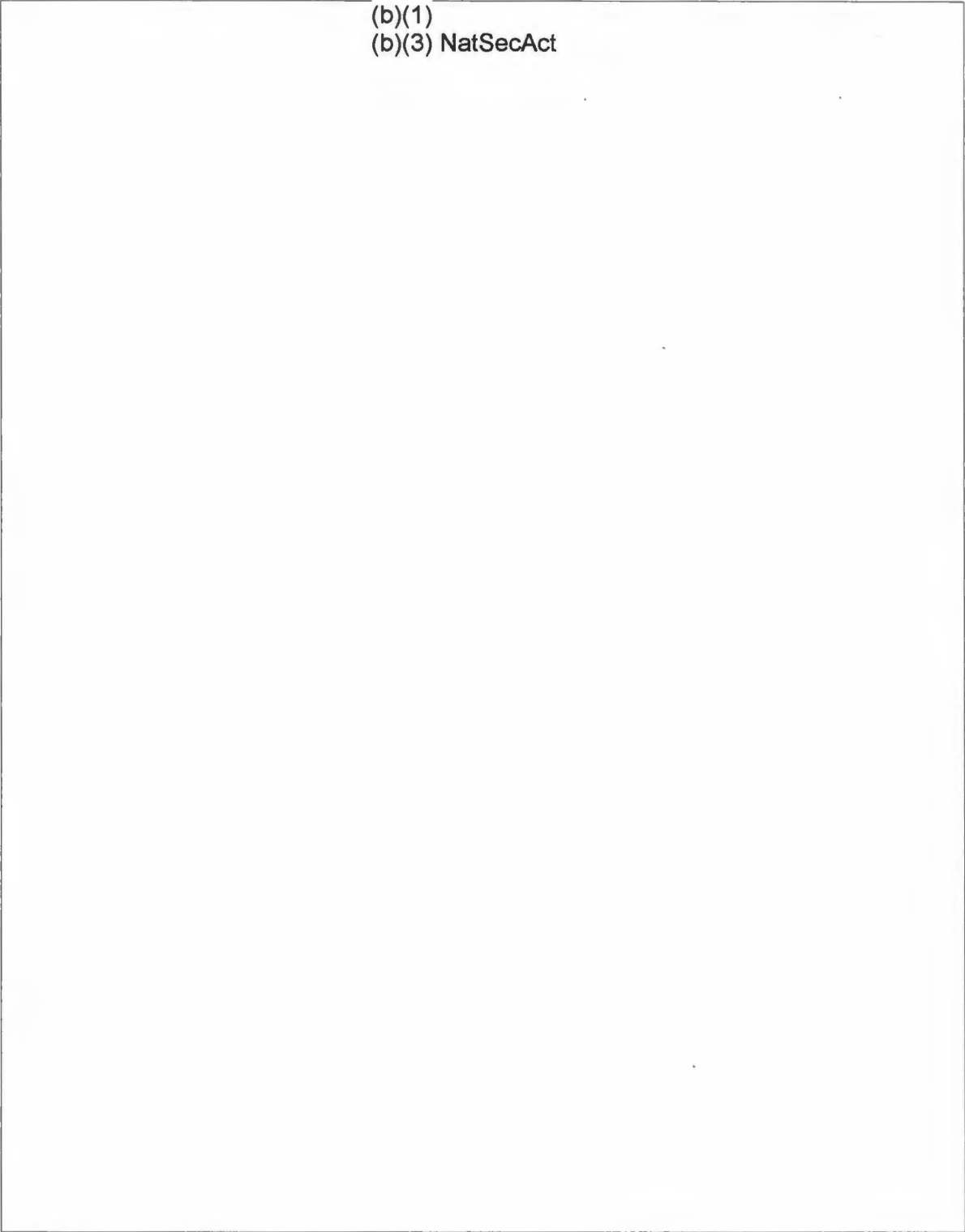
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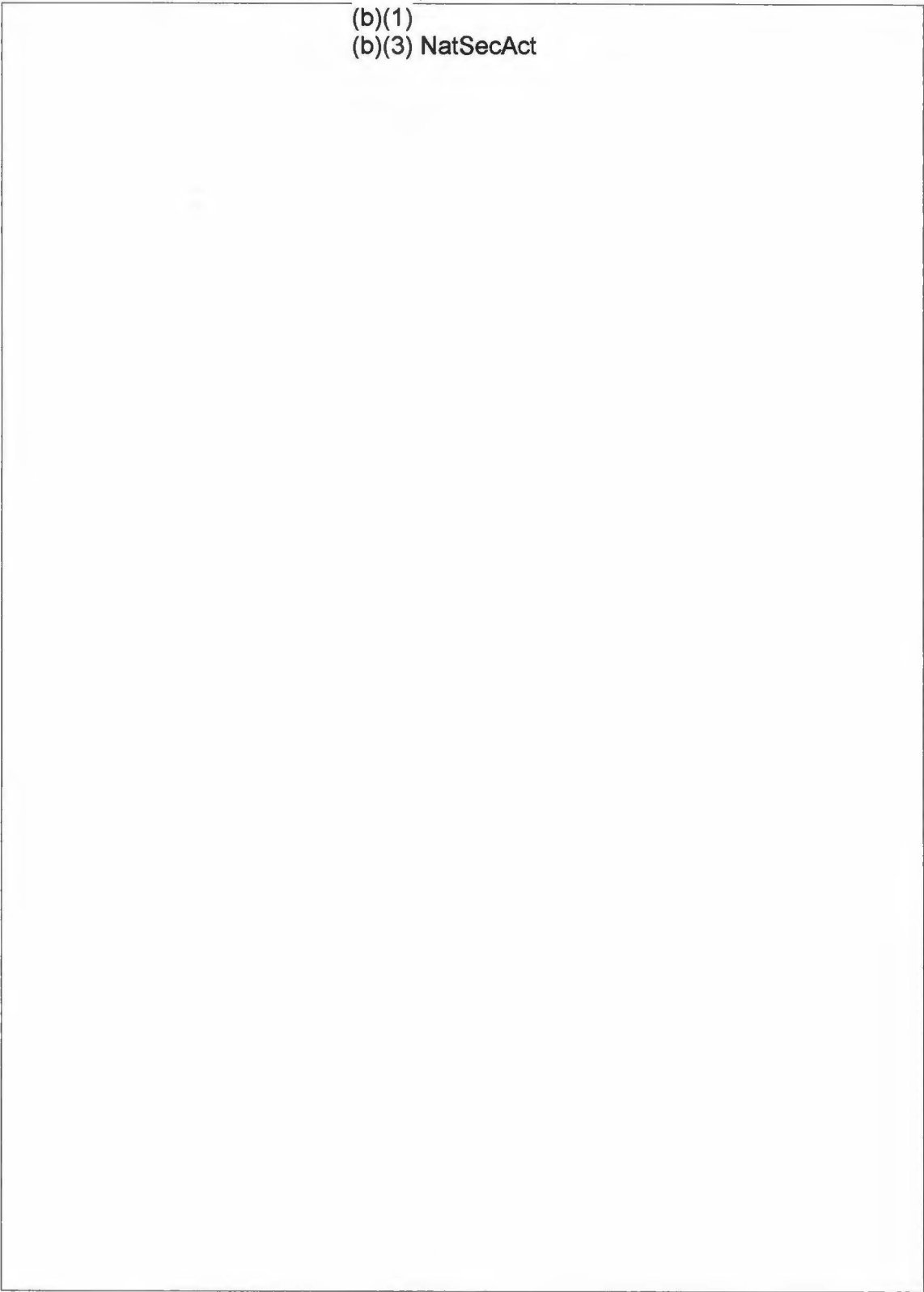
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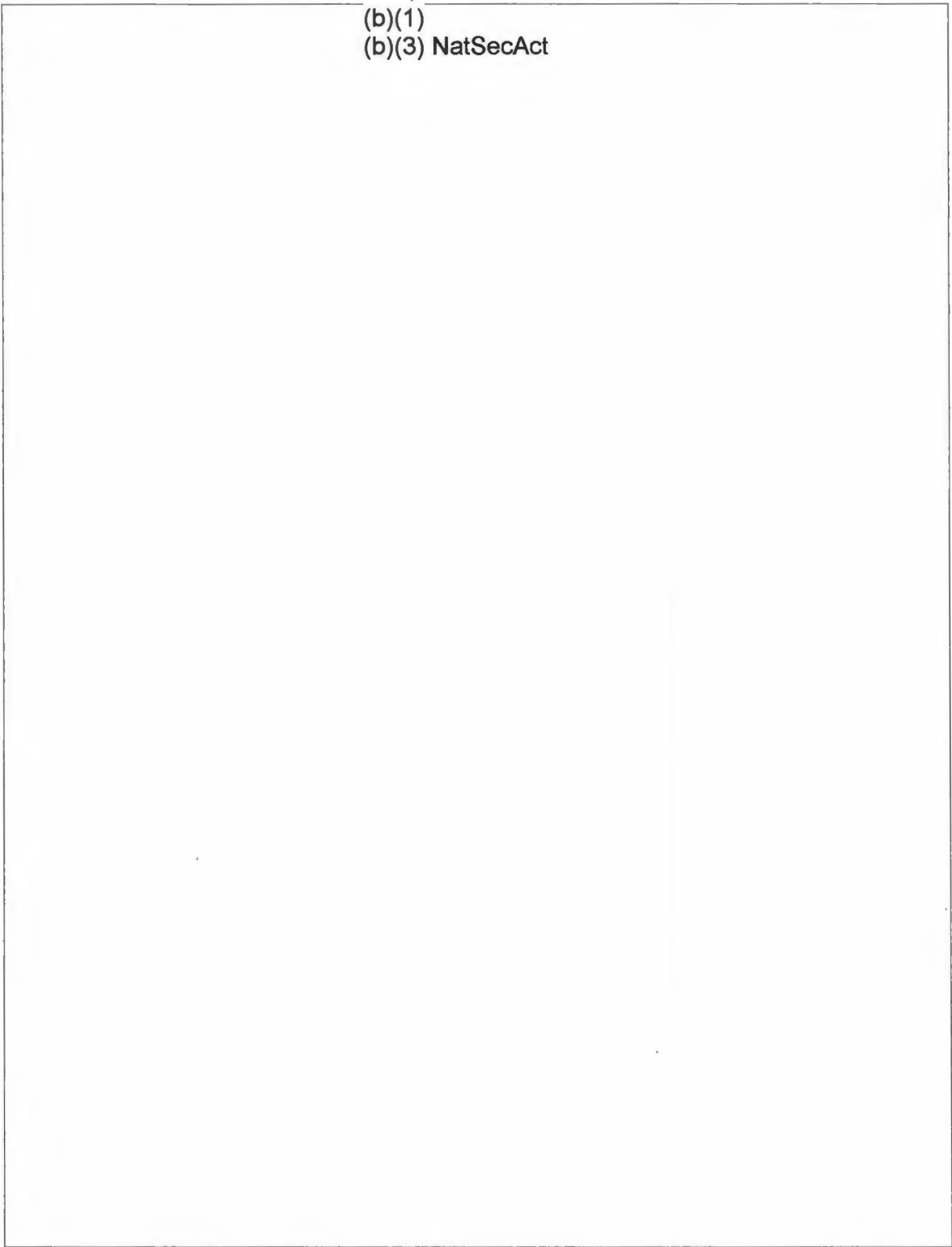
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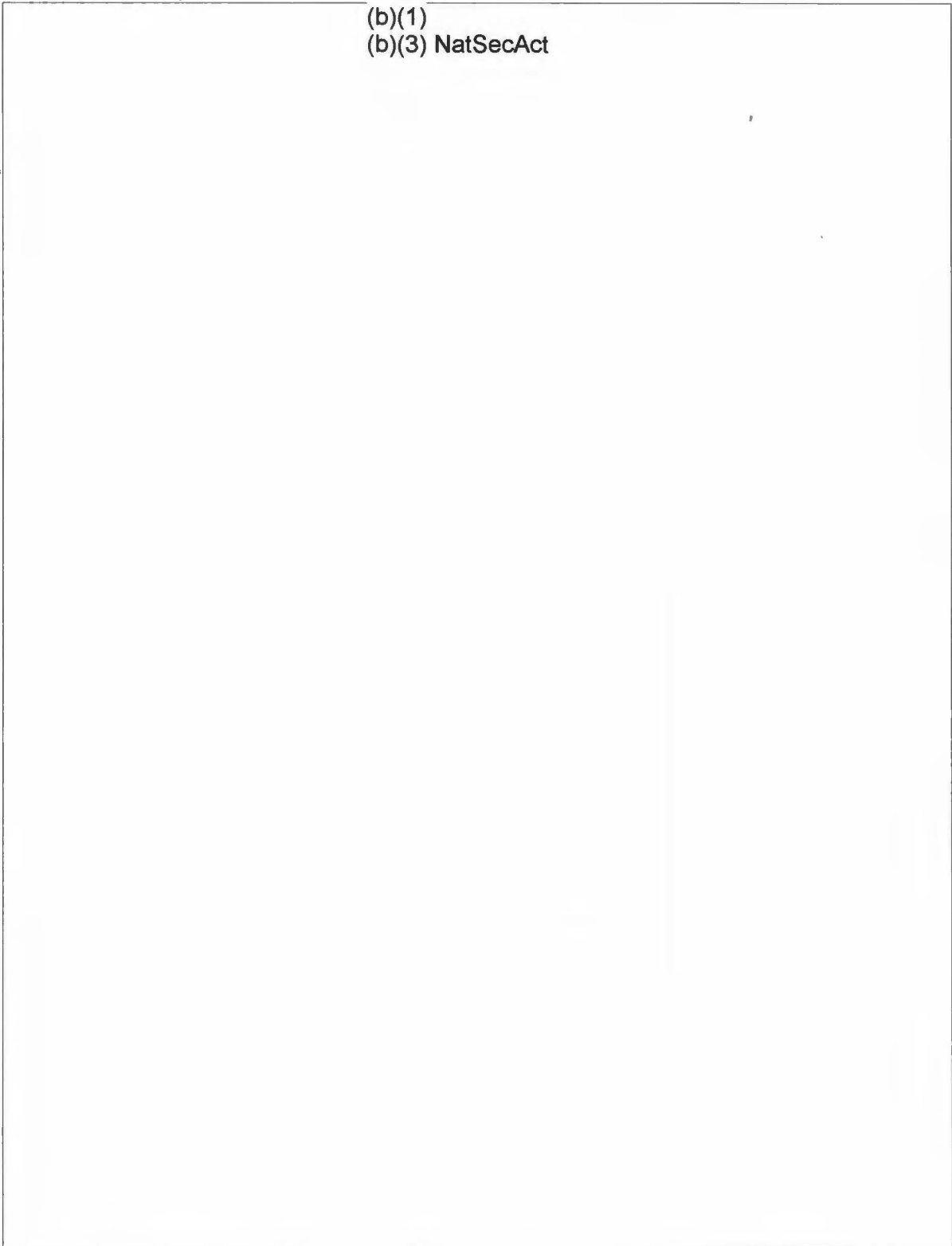
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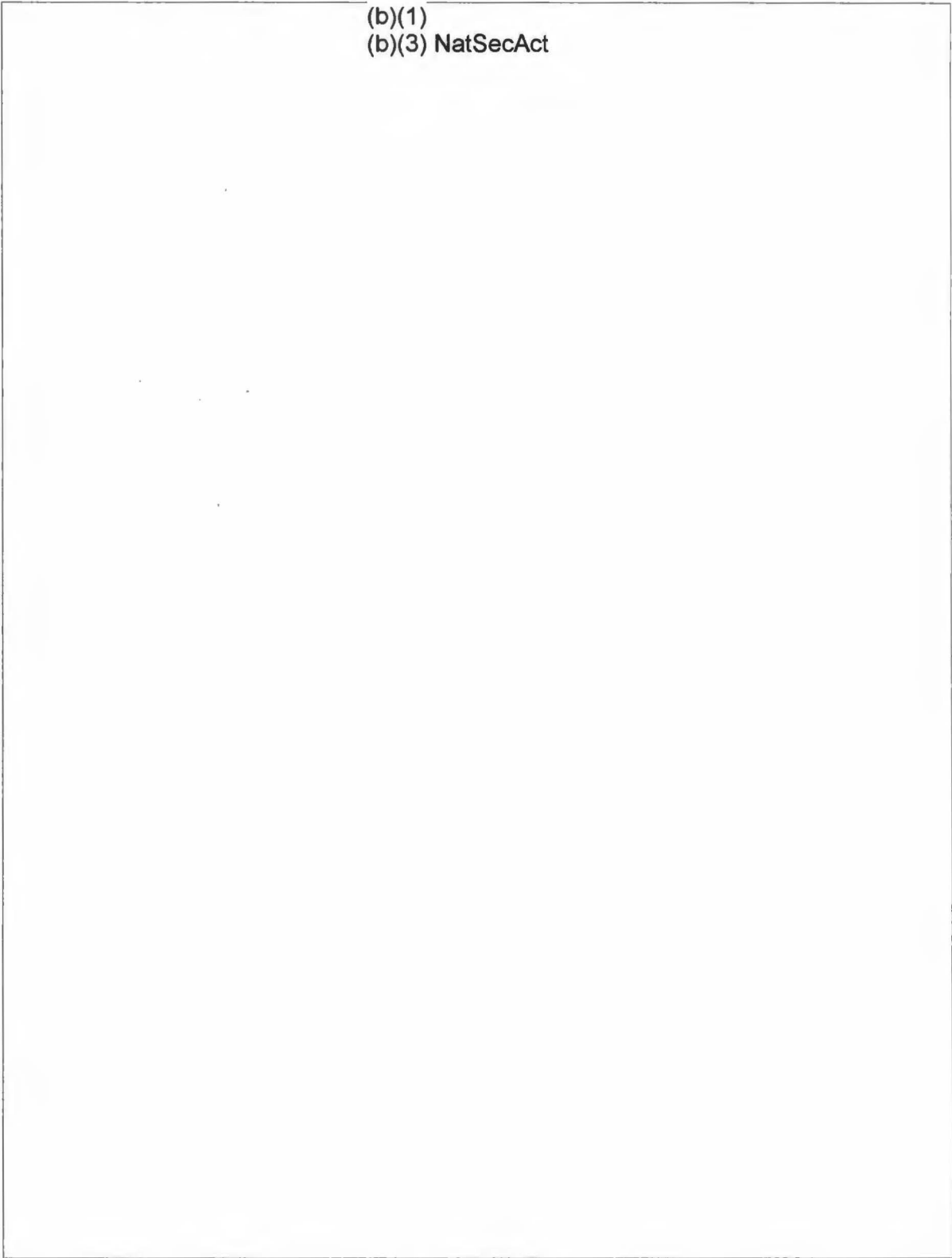
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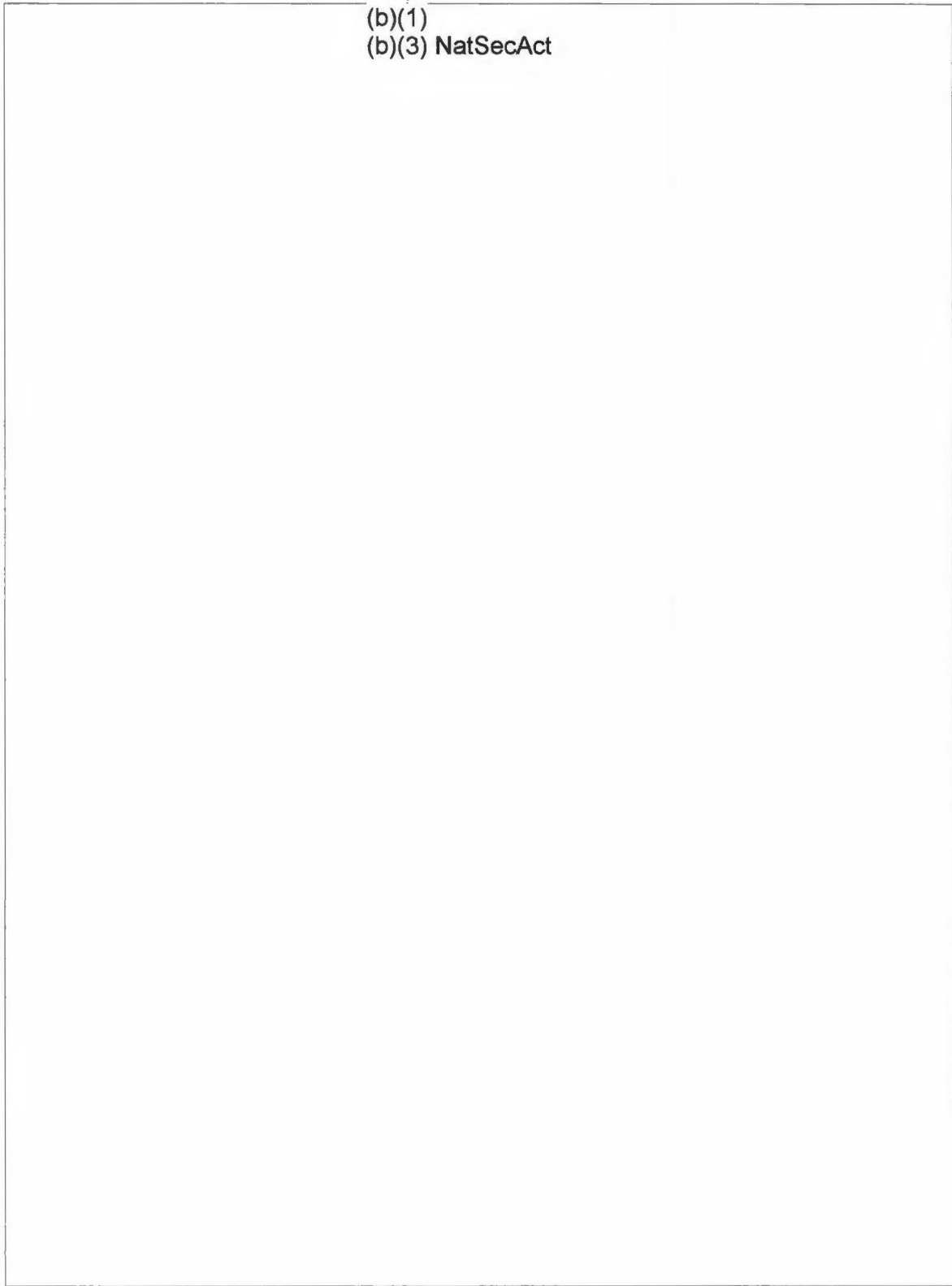
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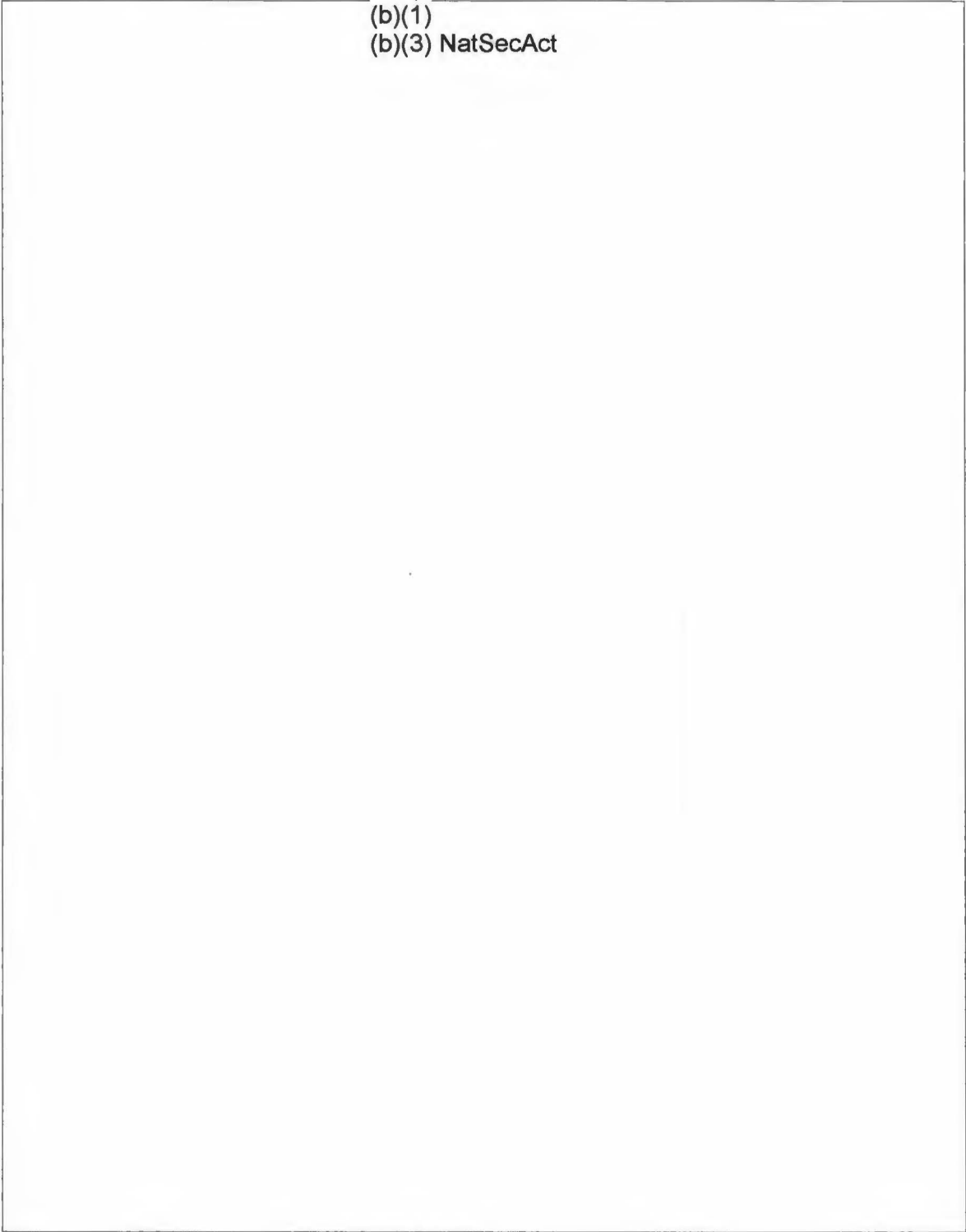
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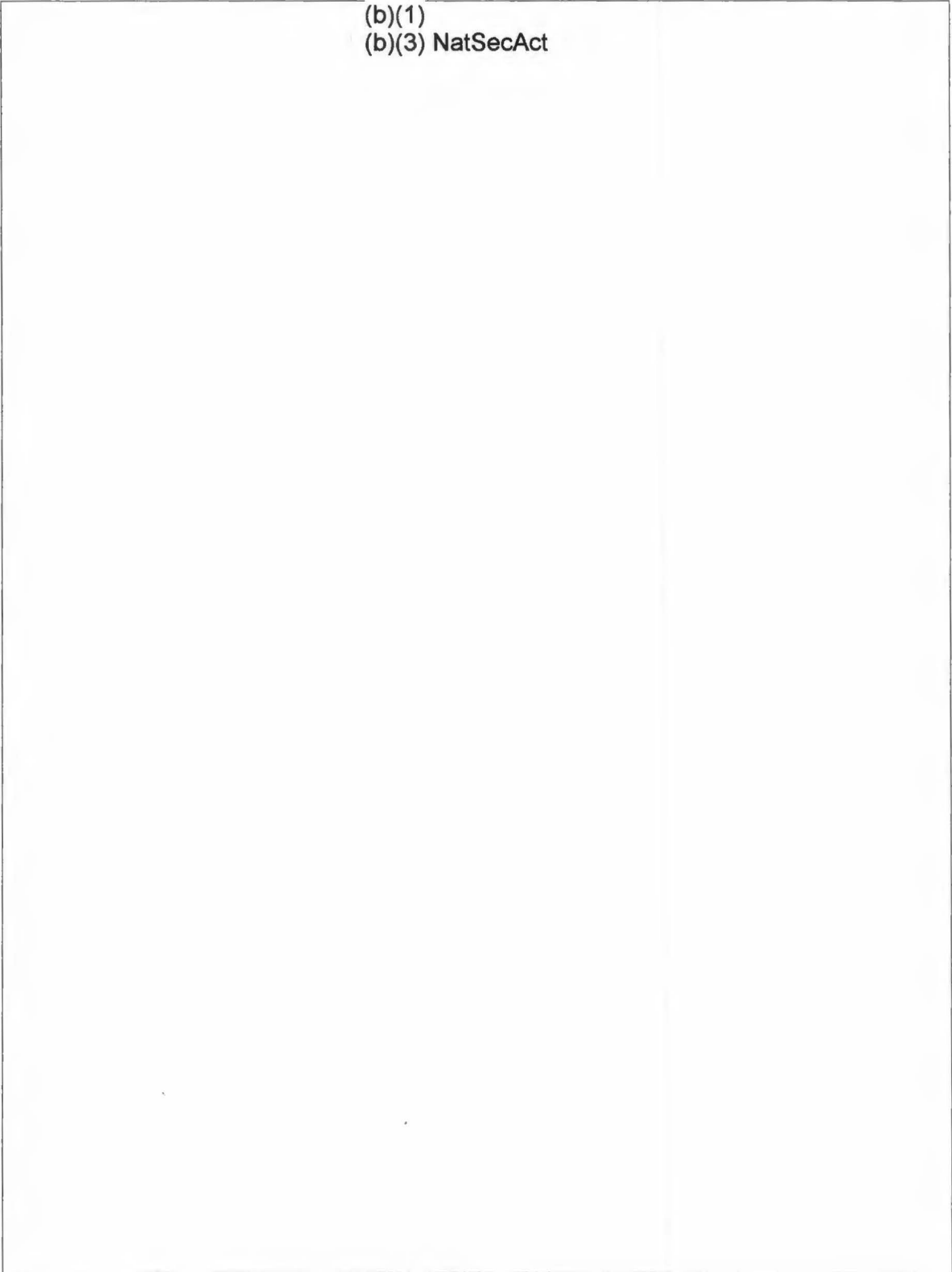
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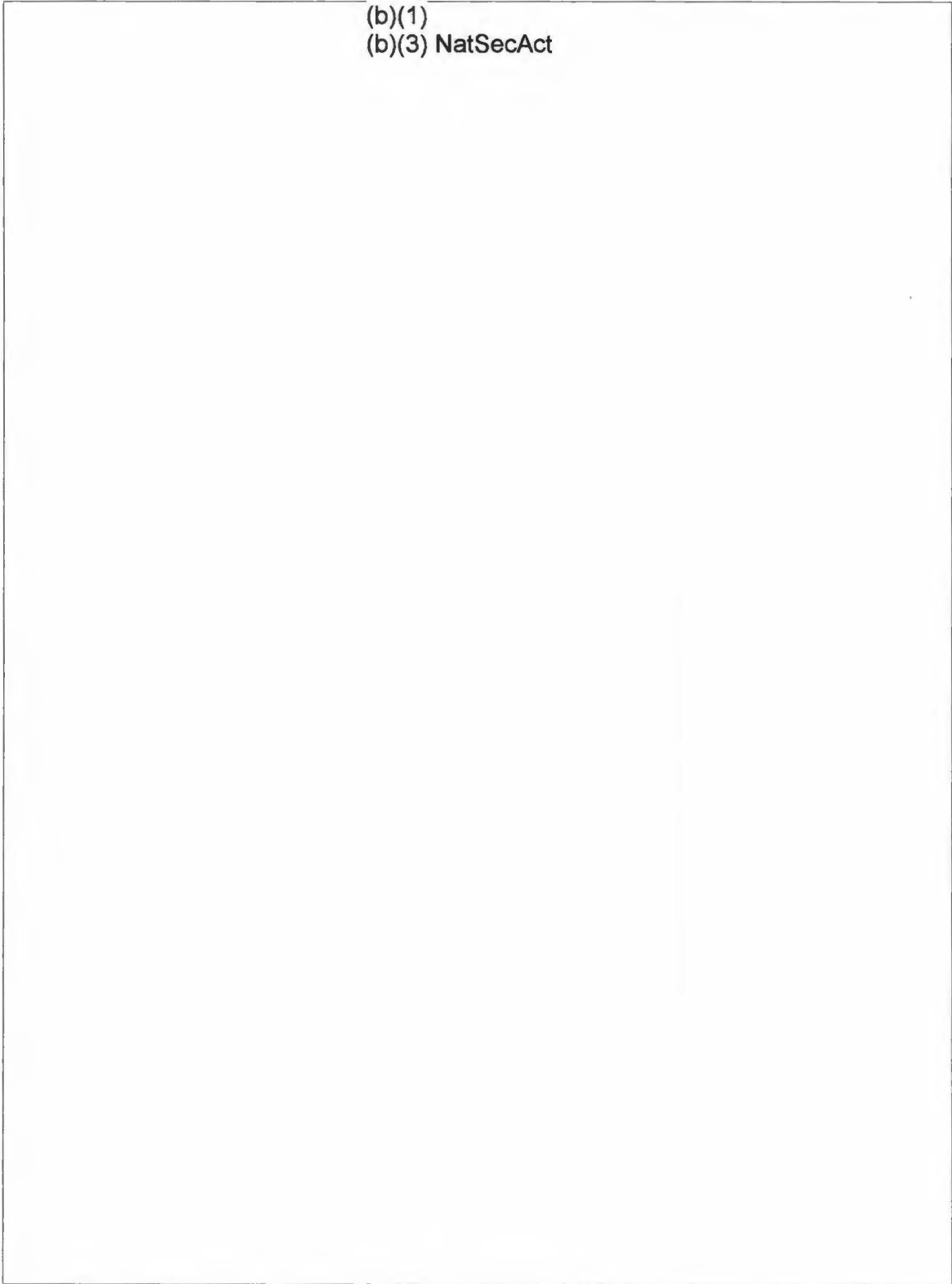
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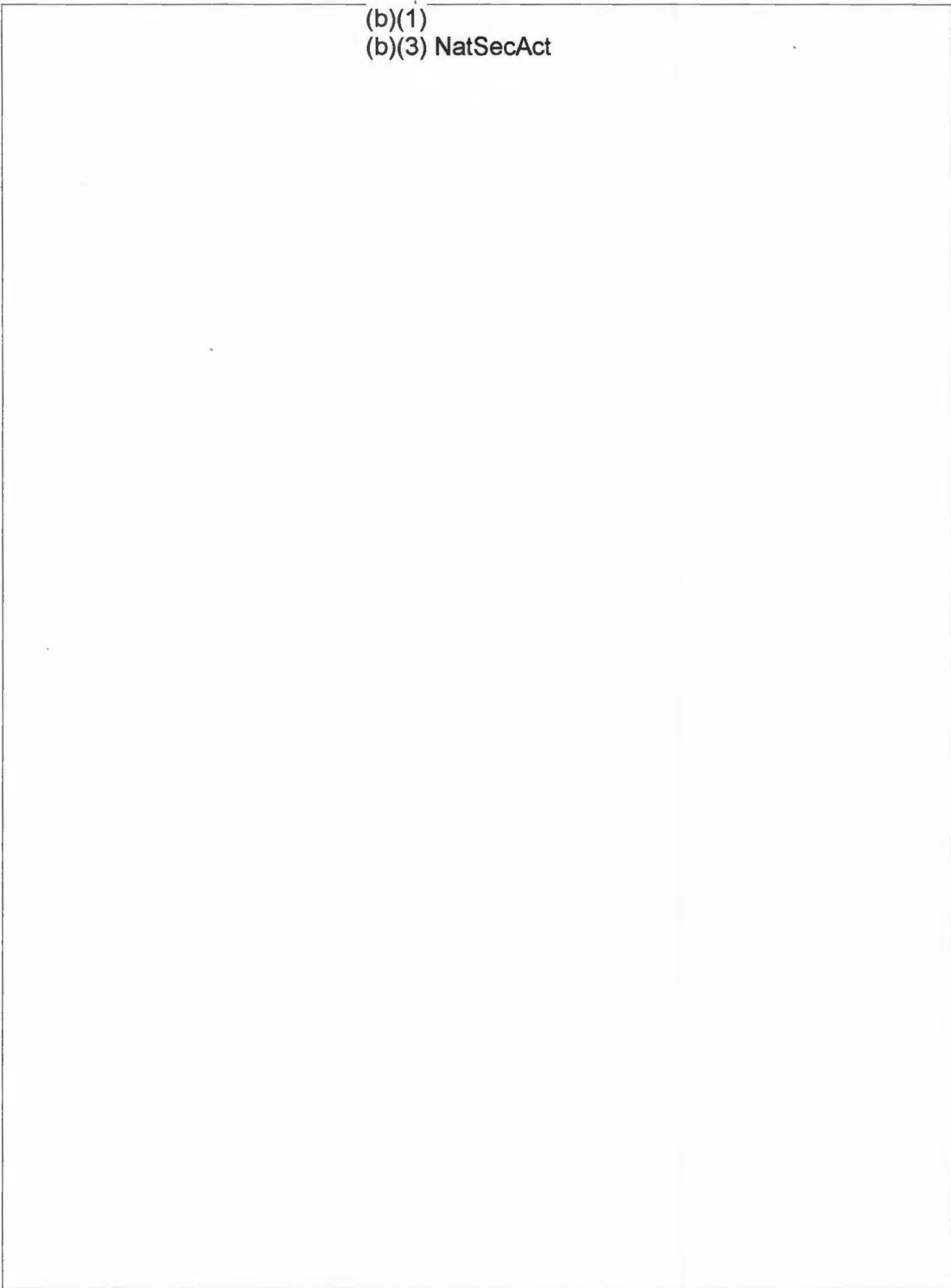
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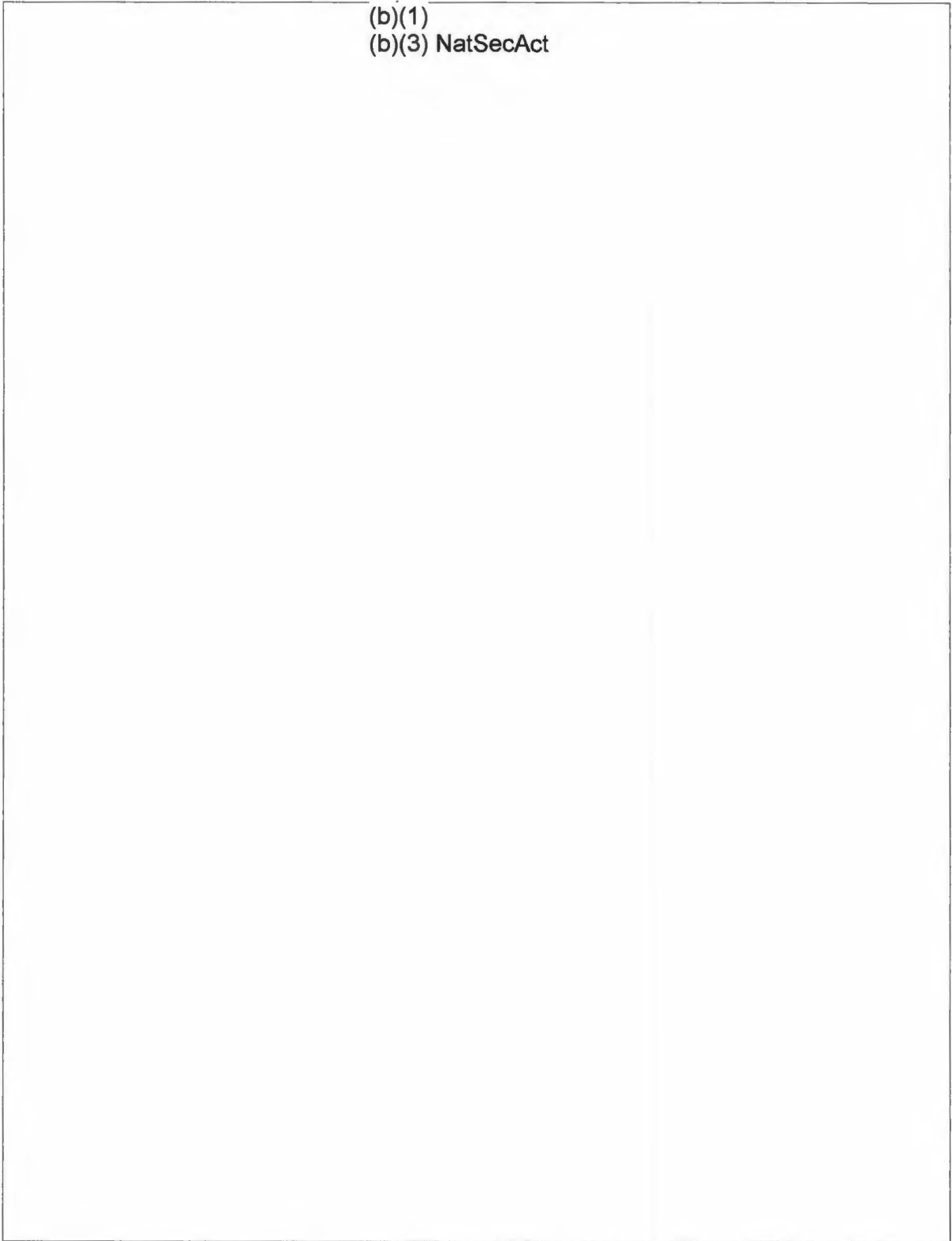
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IX. (U) CONCLUSION

67. (U) For all of the reasons stated above, and after personal consideration of this matter in my capacity as head of the CIA, I hereby formally assert the state secrets privilege and the relevant statutory privileges to

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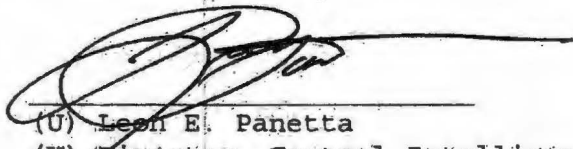
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protect intelligence sources, methods and activities from disclosure. I join other agencies impacted by this case in asserting the privilege because I have determined that there are no other adequate means to ensure the protection of the national security and foreign relations interests addressed in both this declaration and other agencies' declarations without asserting the state secrets privilege.

(U) I hereby declare under penalty of perjury that the foregoing is true and correct.

(U) Executed this 23rd day of September, 2010.



(U) Leon E. Panetta

(U) Director, Central Intelligence Agency

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