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DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL


REPORT OF INVESTIGATION

SUBJECT		CASE NUMBER	
(b)(6); (b)(7)(C) Immigration Judge		2021-009180	
(b)(6); (b)(7)(C)			
OFFICE CONDUCTING INVESTIGATION		DOJ COMPONENT	
Boston Area Office		Executive Office for Immigration Review	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office NYFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOIR <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for Immigration Review (EOIR) alleging that EOIR Immigration Judge (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) sexually harassed (b)(6); (b)(7)(C) by making inappropriate comments (b)(6); (b)(7)(C) at after-work social gathering (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

The OIG investigation substantiated the allegation that (b)(6); (b)(7)(C) sexually harassed a female DOJ employee by making inappropriate comments about her breasts during an after-work social gathering (b)(6); (b)(7)(C) in violation of DOJ's zero tolerance policy on harassment and EOIR policy. (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

DATE	September 19, 2023	SIGNATURE	(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)			
PREPARED BY SPECIAL AGENT		SIGNATURE	 Digitally signed by RYAN GEACH Date: 2023.09.19 09:09:27 -04'00'
DATE	September 19, 2023		
Ryan T. Geach			
APPROVED BY SPECIAL AGENT IN CHARGE			

OIG Form III-210/1 (04/15/2022)

Portions of the Report of Investigation may not be exempt under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).



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Regarding the allegation of sexual harassment, during the OIG's investigation, two witnesses told the OIG that they were present with (b)(6); (b)(7)(C) at an after-work social gathering and witnessed him make comments to a female DOJ employee about her breasts that the witnesses felt were inappropriate. The female DOJ employee who was the recipient of (b)(6); (b)(7)(C) comments also confirmed to the OIG that (b)(6); (b)(7)(C) made the comments, the comments were unwelcome, and the comments made her feel uncomfortable.

(b)(6); (b)(7)(C)

In a voluntary interview, (b)(6); (b)(7)(C) denied that he made any inappropriate comments to (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) recalled the specific social gathering where he is alleged to have made the inappropriate comments, but denied making any comments about a female employee's chest. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

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(b)(6); (b)(7)(C)

A review of (b)(6); (b)(7)(C) LearnDOJ Internal Training Report by the OIG revealed that (b)(6); (b)(7)(C) had completed thirty-six training courses that included Annual Ethics Training and DOJ Sexual Harassment and Misconduct Awareness Training.

(b)(6); (b)(7)(C)

The OIG has completed its investigation and is providing this report to the EOIR and the Department's Professional Misconduct Review Unit for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

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DETAILS OF INVESTIGATION

Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for Immigration Review (EOIR) alleging that EOIR Immigration Judge (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) sexually harassed (b)(6); (b)(7)(C) by making inappropriate comments (b)(6); (b)(7)(C) at after work social gathering; (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following EOIR personnel:

- (b)(6); (b)(7)(C)
-
-
-
-
-
-
- (b)(6); (b)(7)(C) Immigration Judge

Interview of the following personnel:

- (b)(6); (b)(7)(C)
-

Review of the following:

- LearnDOJ training history for (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) **Inappropriate, Sexually Oriented Comments about a Female EOIR Employee's Breasts**

The information provided to the OIG alleged that (b)(6); (b)(7)(C) sexually harassed (b)(6); (b)(7)(C) by making inappropriate comments (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

29 C.F.R. § 1604.11, "Sexual Harassment," states in pertinent part the following:

- (a) Harassment on the basis of sex is a violation of section 703 of title VII. 1 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or

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condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

...

- (b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

5 C.F.R. § 735.203, "Employee Responsibilities and Conduct" states in pertinent part the following:

"an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

The DOJ, Office of the Attorney General, Prevention of Harassment in the Workplace, Policy Memorandum 2015-04, states in part:

The Department of Justice will maintain a zero tolerance work environment that is free from harassment (including sexual harassment) based on sex, race, color, religion, national origin, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliations, or any other impermissible factor. . . . Harassing conduct is defined as any unwelcome verbal or physical conduct that is based on any of the above-referenced characteristics when this conduct explicitly or implicitly affects an individual's employment; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.

To enforce this zero tolerance policy, the Department will treat harassing conduct as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. The Department will not wait for a pattern of offensive conduct to emerge before addressing claims of harassment. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. Even where a single utterance of an ethnic, sexual, racial, or other offensive epithet may not be severe enough to constitute unlawful harassment in violation of Title VII, it is the Department's view that such conduct must be prevented whenever possible through awareness, robust policies and effective and appropriate follow-up, investigation, and enforcement of the zero tolerance policy. The Department will not tolerate retaliation against any employee for making a good-faith report of harassing conduct or for participating in any inquiry about such a report

The DOJ, Office of the Attorney General, Off-Duty Conduct Policy Memorandum dated January 29, 2016, in part:

The following sets forth the basis for the expectation that Department employees will comport themselves appropriately on and off the job; explains the legal foundation for the principle that off-duty conduct may be grounds for discipline; and gives examples of off-duty activities that have resulted in employee discipline.

Executive Order 12674 as modified by Executive Order 12731 provides that "Public Service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain." Relevant to activities outside of the workplace, the Executive Order states that - Employees shall [1] satisfy

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in good faith their obligations to citizens, including all just financial obligations that are imposed by law, [2] adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap, and [3] avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order, specifically, off-duty conduct which has resulted in federal employees being disciplined, and in some cases removed from federal service, includes: sexual misconduct; racist or sexist remarks or conduct.

EOIR Ethics and Professionalism Guide for Immigration Judges, details, in part:

Standards of Conduct - An Immigration Judge shall comply with the standards of conduct applicable to all attorneys in the Department of Justice, including the Standards of Ethical Conduct for Employees of the Executive Branch, Codified in Title 5 of the Code of Federal Regulations, and the Department's supplemental regulations at 5 C.F.R. Part 3801 and 28 C.F.R Part 45.

Appearance of Impropriety - An Immigration Judge shall endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or Applicable ethical standards.

In an OIG interview, (b)(6); (b)(7)(C) said that she attended a social gathering (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Among those also in attendance were (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said that during the social gathering and in the presence of others, (b)(6); (b)(7)(C) said to her, "I can't stop looking at your boobs." (b)(6); (b)(7)(C) told the OIG that (b)(6); (b)(7)(C) repeated this or similar comments referencing her breasts and his inability to stop looking at them more than once and she confirmed that the comments made her feel uncomfortable. (b)(6); (b)(7)(C) said that, at the time (b)(6); (b)(7)(C) made the inappropriate comments, she was wearing a button-down blouse and a button on the blouse was inadvertently unfastened. (b)(6); (b)(7)(C) said that she did not respond to (b)(6); (b)(7)(C) comments and simply hoped they would stop, but after the comments were repeated, she went to the restroom with (b)(6); (b)(7)(C) and fastened the button on her shirt. (b)(6); (b)(7)(C) told the OIG that she and (b)(6); (b)(7)(C) agreed that (b)(6); (b)(7)(C) comments were inappropriate, but neither felt comfortable reporting them (b)(6); (b)(7)(C) because they believed (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) were friends. (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) briefly joined the social gathering approximately forty minutes after (b)(6); (b)(7)(C) made his last comment about her breasts.

In an OIG interview, (b)(6); (b)(7)(C) said that she attended a social gathering (b)(6); (b)(7)(C) and witnessed (b)(6); (b)(7)(C) make comments about (b)(6); (b)(7)(C) breasts during the gathering. (b)(6); (b)(7)(C) said she heard (b)(6); (b)(7)(C) tell (b)(6); (b)(7)(C) that he could not stop looking at her "boobs" on two occasions during the gathering. (b)(6); (b)(7)(C) told the OIG that she and (b)(6); (b)(7)(C) later went to the bathroom together and agreed that (b)(6); (b)(7)(C) comments were "weird." (b)(6); (b)(7)(C) said that she was not surprised that (b)(6); (b)(7)(C) would make such comments (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

In an OIG interview, (b)(6); (b)(7)(C) said that she also attended a social gathering (b)(6); (b)(7)(C) and witnessed (b)(6); (b)(7)(C) make comments about (b)(6); (b)(7)(C) breasts during the gathering. (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) comments included, "you make me feel like I want to stare at them," or "they're beautiful and I don't want to stare at them," and "I feel like I really just need to stare at them." (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) repeated comments

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made her feel uncomfortable, and therefore she left the gathering with [REDACTED] who was also in attendance.

[REDACTED]

In a voluntary interview, [REDACTED] confirmed to the OIG that he attended a social gathering [REDACTED] with [REDACTED] and [REDACTED] but he strongly denied making any remarks about [REDACTED] or anyone else's breasts. [REDACTED] agreed that such comments would be inappropriate, but insisted he never made any such comments. [REDACTED] described to the OIG many of the same details pertaining to the gathering as was reported by [REDACTED] and [REDACTED] including the presence of [REDACTED] being in attendance. [REDACTED] told the OIG that he remembered telling [REDACTED] the day following the social gathering that it was nice to meet [REDACTED] and asked the investigating agents, "Why would I make a comment like that when [REDACTED] was sitting right there?" [REDACTED]

[REDACTED]

The OIG reviewed [REDACTED] LearnDOJ training report provided by EOIR. The report confirmed that [REDACTED] completed thirty-six training courses from [REDACTED] to include Annual Ethics Training on [REDACTED] and DOJ Sexual Harassment and Misconduct Awareness Training on [REDACTED]

[REDACTED]

OIG's Conclusion

The OIG investigation concluded that [REDACTED] made inappropriate, sexually oriented comments to [REDACTED] about her body and clothing, as alleged, during an afterwork social gathering [REDACTED] in violation of DOJ's zero tolerance policy on harassment, including sexual harassment, and EOIR's policy. Although [REDACTED] strongly denied making any comments about [REDACTED] breasts, descriptions of the incident by [REDACTED] and two witnesses were assessed and deemed to be credible by the OIG. These independent descriptions were consistent with each other in the important details and, although [REDACTED] denied the allegations, some of the answers he provided were also consistent with the recollections of the other three attendees. In addition, [REDACTED] told the OIG that he remembered telling [REDACTED] the day after the social gathering that it was nice to meet [REDACTED] and asked the OIG



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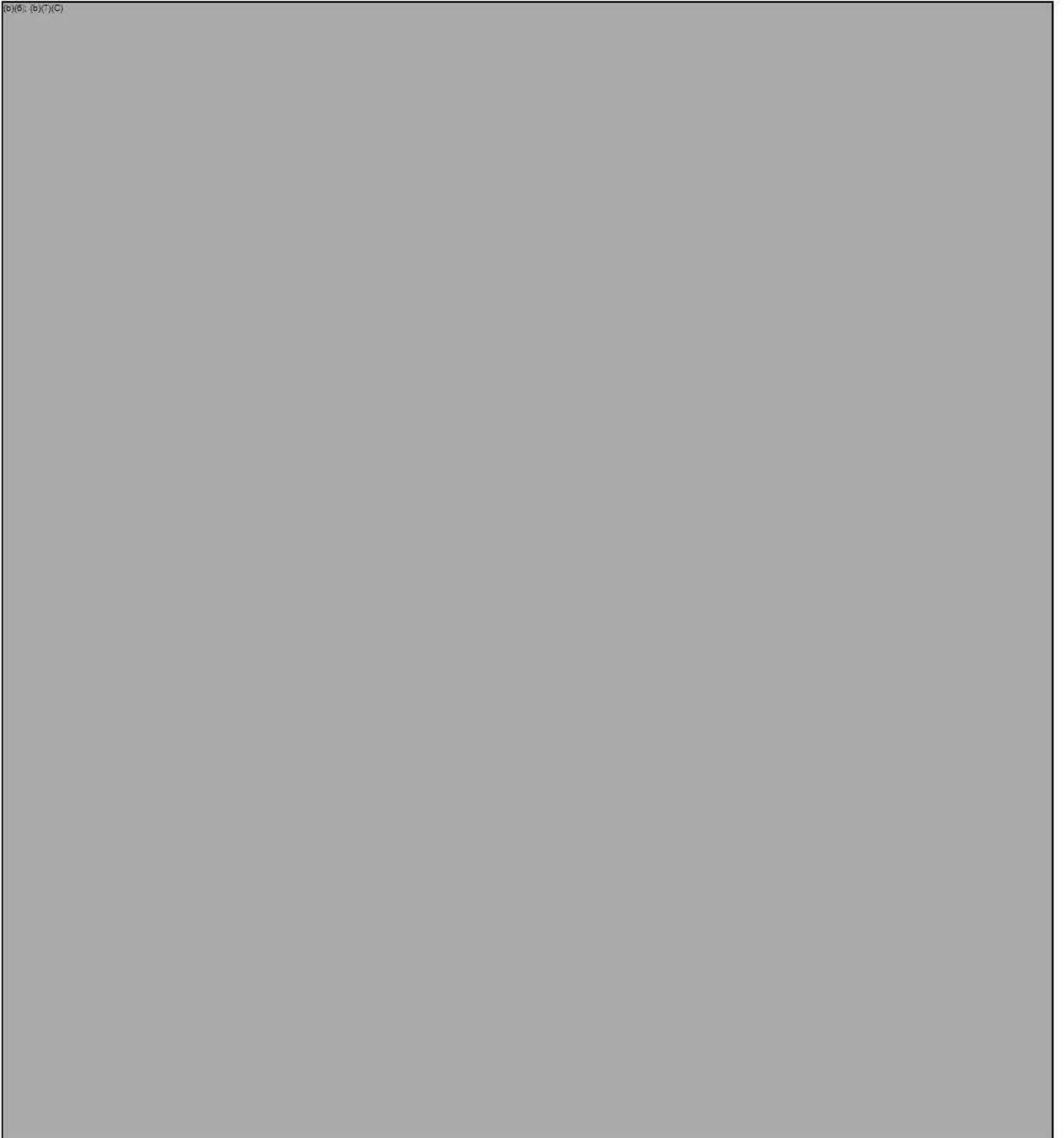
investigators, "Why would I make a comment like that when (b)(6); (b)(7)(C) was sitting right there?" The OIG assessed (b)(6); (b)(7)(C) statement to be somewhat revealing because, during the interview, (b)(6); (b)(7)(C) was not identified as being the victim of the sexual harassment being investigated by the OIG. At no point in the interview did (b)(6); (b)(7)(C) seem to consider that the alleged comments could have been directed at (b)(6); (b)(7)(C) who he clearly recalled (b)(6); (b)(7)(C) or at (b)(6); (b)(7)(C) who told the OIG (b)(6); (b)(7)(C). The consistent, independent statements of witnesses, combined with (b)(6); (b)(7)(C) responses to questions about his behavior causes the OIG to believe that it is more likely than not that (b)(6); (b)(7)(C) made the inappropriate statements to (b)(6); (b)(7)(C) as alleged.

(b)(6); (b)(7)(C)



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(b)(6); (b)(7)(C)

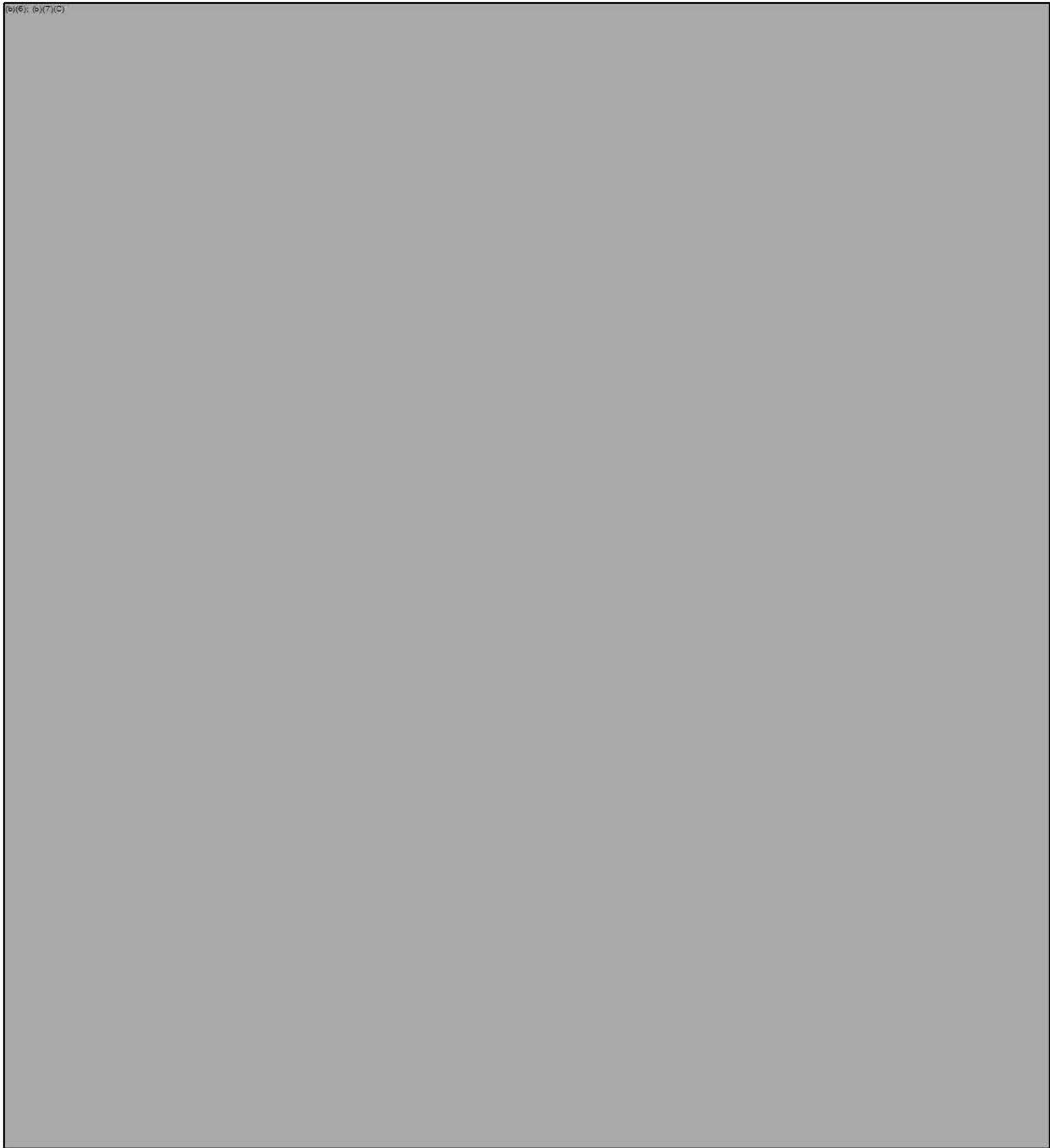


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(b)(6); (b)(7)(C)

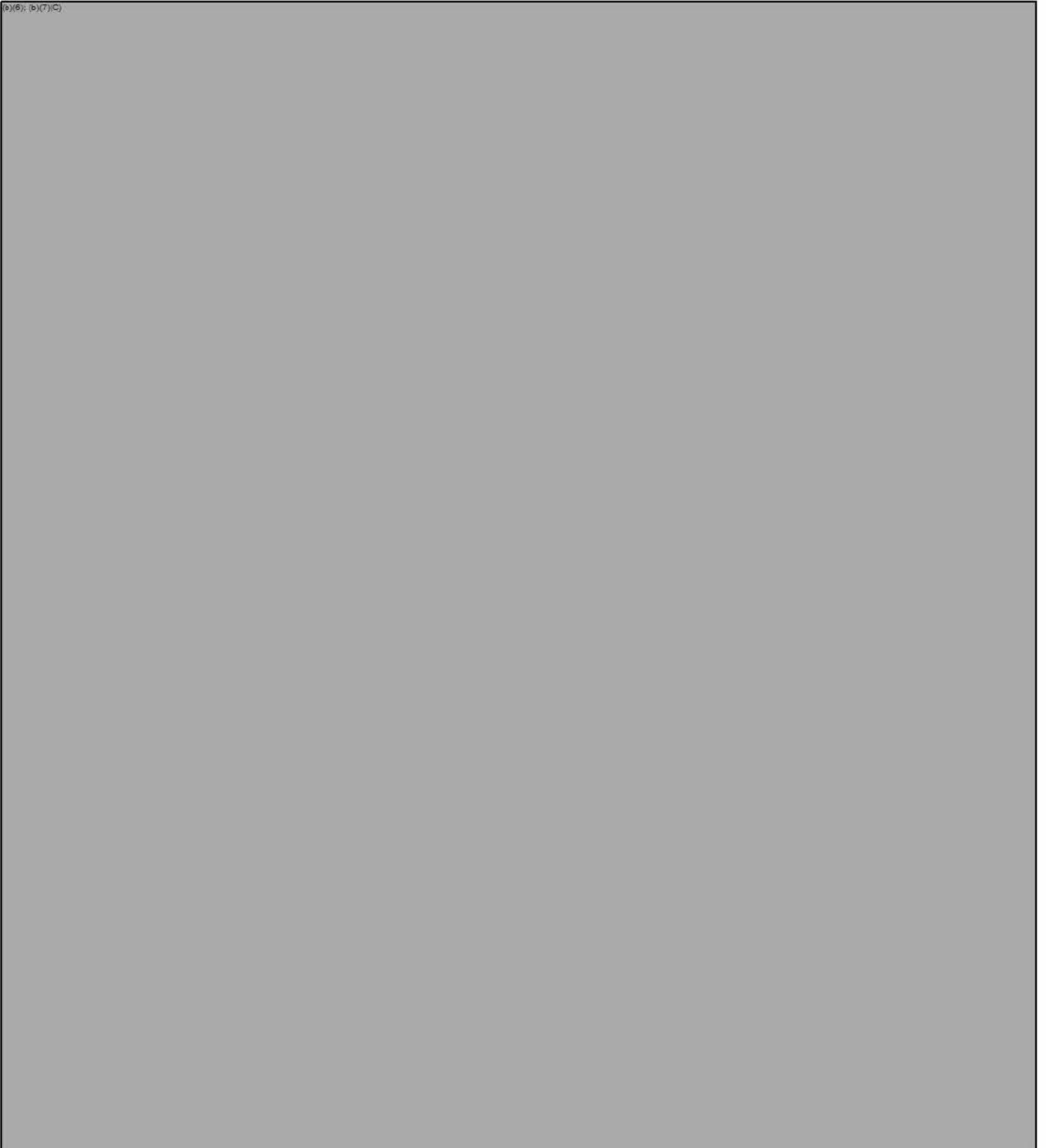


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(b)(6); (b)(7)(C)



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(b)(6); (b)(7)(C)

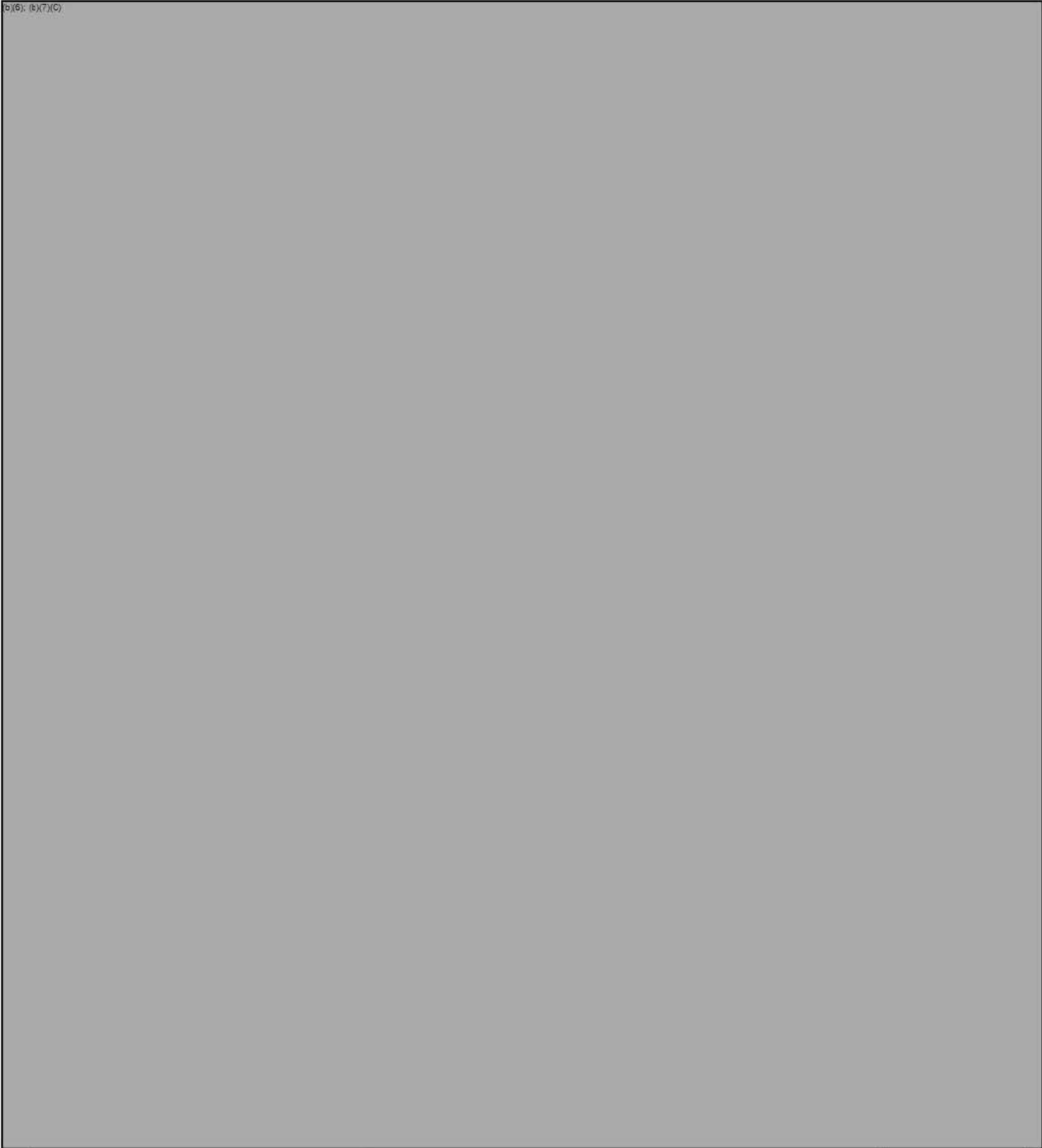


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b(6); (b)(7)(C)



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(b)(6), (b)(7)(C)



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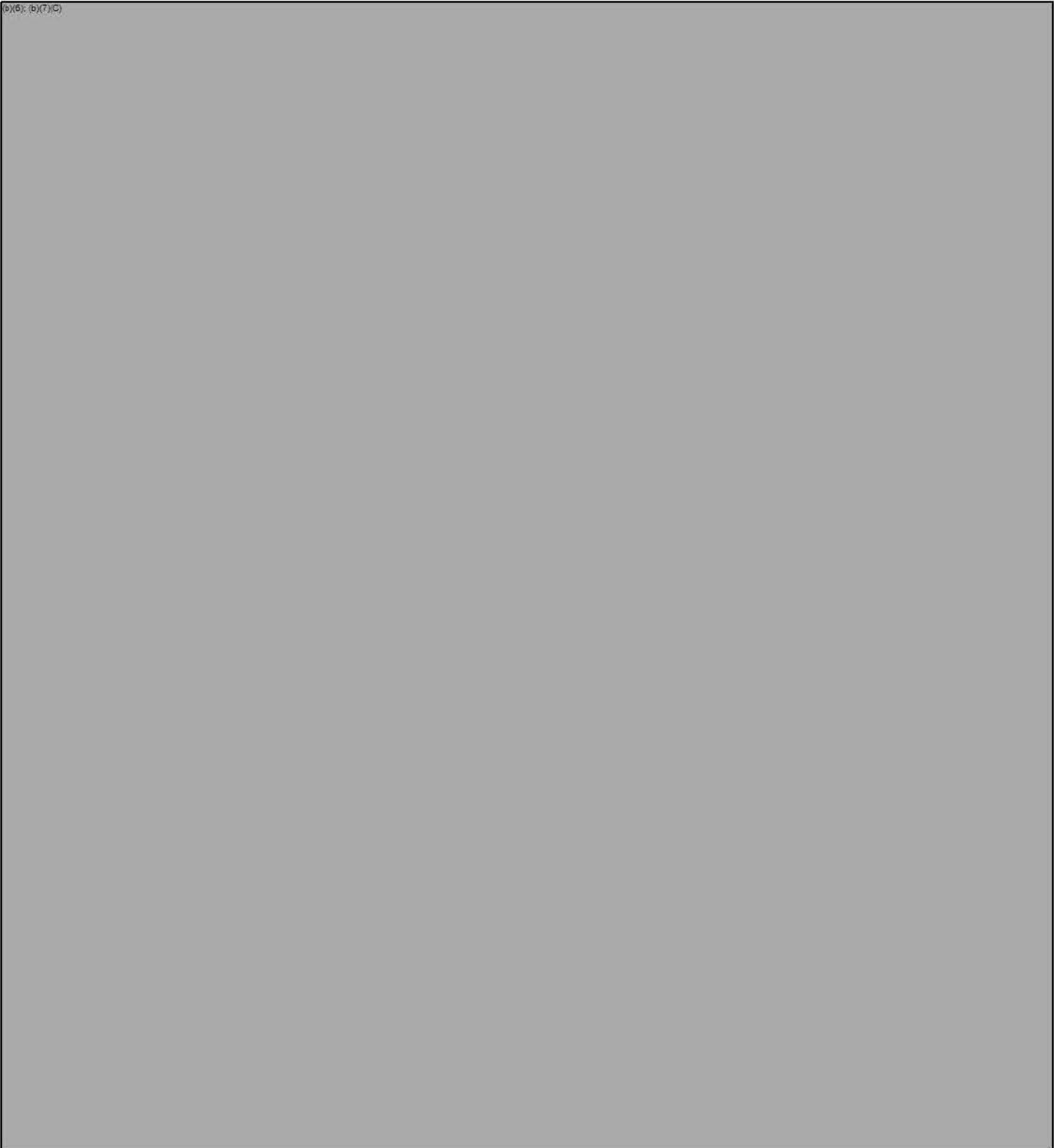
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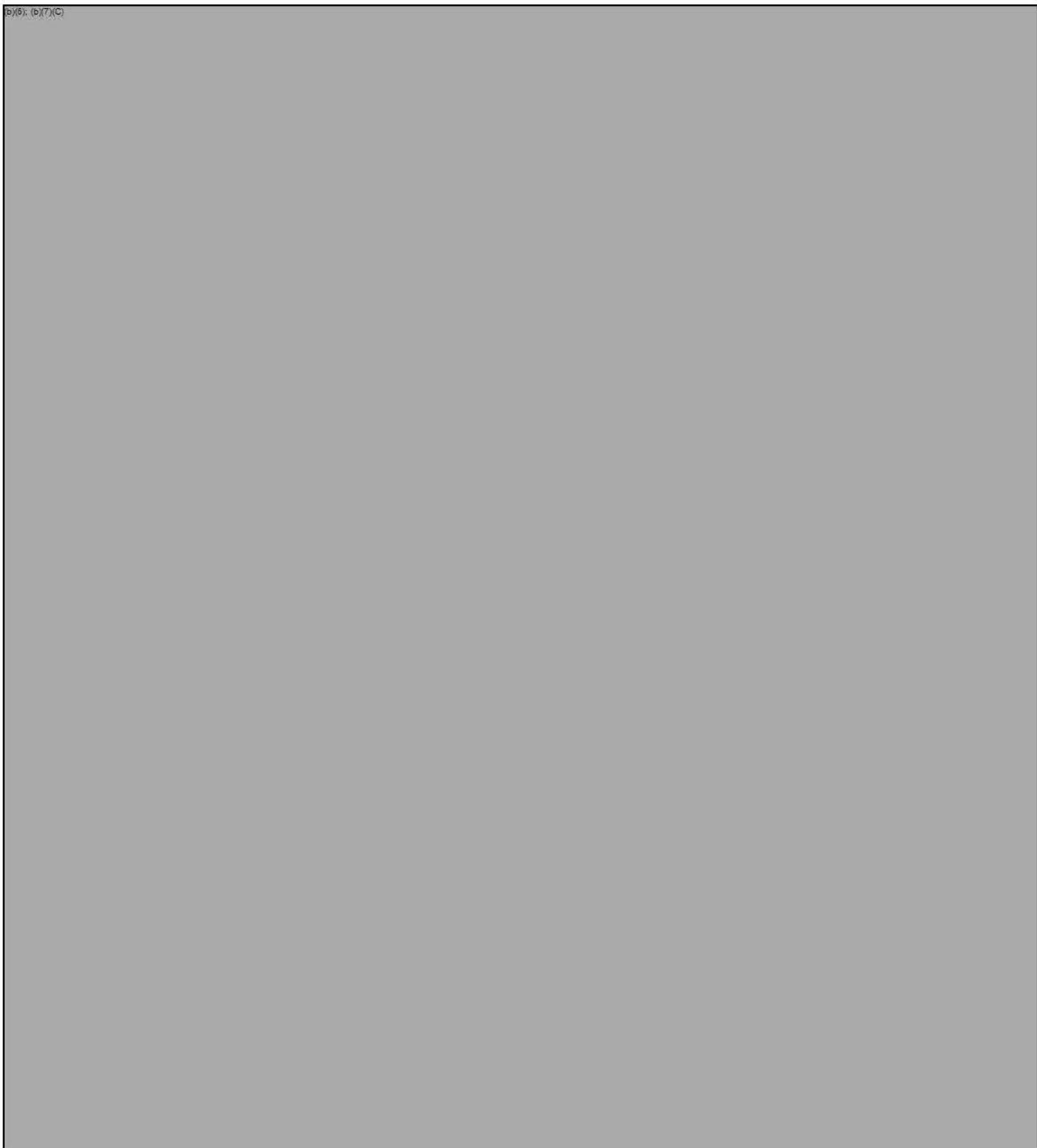
(b)(6); (b)(7)(C)



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(b)(6); (b)(7)(C)

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(b)(6); (b)(7)(C)



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