

Exhibit 33

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U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

Operational Guidance

SUBJECT: The Withholding of Adjudication (Abeyance) Regulation Contained at 8 CFR § 103.2(b)(18)

Purpose

The Withholding of Adjudication (Abeyance) regulation, 8 CFR § 103.2(b)(18), has long been a tool available to U.S. Citizenship and Immigration Services (USCIS) to facilitate the adjudication of immigration benefits based on all available information, including information stemming from an ongoing investigation. This regulation allows USCIS to suspend the adjudication of an application, petition, or other request¹ during the pendency of an ongoing investigation.

This operational guidance is intended to assist USCIS officers with the use of 8 CFR § 103.2(b)(18), “Withholding Adjudication,” and replaces and supersedes all previous guidance on the subject except the provisions for withholding adjudication in the policy memorandum (PM), Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns, dated February 6, 2009. The intent of this guidance is to provide the procedures that USCIS employees are to follow to implement the regulation correctly and consistently. This operational guidance updates the Adjudicator’s Field Manual (AFM) by adding a new Chapter 10.24 and a new Appendix 10-12 (AFM Update AD12-07).

Scope

This operational guidance applies to and is binding on all USCIS employees unless specifically exempt.

Authority

8 CFR § 103.2(b)(18)

Background

On July 11, 1988, the legacy Immigration and Naturalization Service revised 8 CFR § 103.2(b) to promulgate authority to withhold adjudication of a visa petition or other application in the event of an ongoing investigation and withhold disclosure to the applicant or petitioner if disclosure would

¹ “Request” refers to a request for prosecutorial discretion.

prejudice the investigation. *See* Powers and Duties of Service Officers; Availability of Service Records; Immigration: Adjudication of Application or Petition, 53 FR 26034-01 (July 11, 1988); 8 CFR § 103.2(b)(18).²

The Withholding of Adjudication regulation authorizes USCIS to maintain oversight of applications, petitions, or other requests which have ongoing investigations. Applications, petitions, or other requests involving ongoing investigations require the utmost care in their adjudication, to include not notifying the applicant, petitioner, beneficiary, or requestor that he or she is under investigation, or of any information stemming from the investigation.

There are situations when USCIS may be unable to complete the adjudication because it may prejudice an ongoing investigation. In those cases 8 CFR § 103.2(b)(18) allows USCIS to put the adjudication on hold while not taking other actions that may put the applicant, petitioner, beneficiary, or requestor on notice of the ongoing investigation.

Withholding adjudication should not be confused with standard delays in the adjudicative process, including those for which the applicant, petitioner, beneficiary, or requestor is responsible. For example, if the office adjudicating a benefit is awaiting evidence requested that relates directly to the adjudication of the application or petition, the withholding regulation does not apply.

Withholding of adjudication is not mandatory, automatic, or required because there is an ongoing investigation. USCIS can in many instances continue to adjudicate a benefit even if there is an ongoing investigation. In addition, nothing in the rule permits USCIS to waive statutory or regulatory requirements.

USCIS will follow the guidance stated in the AFM, as amended by this operational guidance, in withholding adjudication of any immigration benefit because of an ongoing investigation.³

² The proposed and final rules contain a history and background for the provision. See 50 FR 27289, 51 FR 19559 and 53 FR 26034. See Attachment A for the text of the regulation.

³ Each USCIS component will update any related guidance documents accordingly. The Asylum Division will update the Affirmative Asylum Procedures Manual (AAPM) and the Identity and Security Check Procedures Manual (ISCPM) accordingly.

Implementation

The AFM is amended as follows:

- ☞ 1. A new Chapter 10.24 is added to read as follows:

Chapter 10 An Overview of the Adjudication Process

* * * * *

10.24 Withholding Adjudication of Visa Petitions, Applications, or Other Requests in the Event of an Ongoing Investigation, and if the Disclosure to the Applicant, Petitioner, Beneficiary, or Requestor Would Prejudice That Investigation.

(a) Initial Requirements: 8 CFR § 103.2(b)(18) provides that withholding of adjudication may be ordered in any case where an investigation has been undertaken, and:

- i. The investigation is ongoing (irrespective of when the investigation commenced or commences);
- ii. The investigation involves a matter that has an impact on eligibility or the exercise of discretion for a pending benefit request; and
- iii. Disclosure to the applicant, petitioner, beneficiary, or requestor of the existence of an investigation and/or information relating to the investigation would prejudice the ongoing investigation.

(b) Additional Requirements and Authority.

- i. Once the above initial requirements have been met, the District Director (DD)¹ may withhold adjudication of a case, subject to the following:
 1. The DD must:
 - A. Determine whether the investigation or information from the investigation relates to either statutory eligibility for an immigration benefit or the exercise of discretion for those petitions, applications, and other requests that contain a discretionary component;
 - B. Determine whether withholding of adjudication is appropriate and in the best interest of the Government; and
 - C. Document the decision in accordance with section 10.24(h).
 2. There is no requirement that a third party and/or Law Enforcement Agency (LEA) request withholding of adjudication based on an ongoing investigation.

3. The DD may withhold adjudication of a case so long as there is an investigation that meets the requirements of 8 CFR § 103.2(b)(18).
4. This policy also applies to Controlled Application Review and Resolution Program (CARRP) cases when an LEA does not wish to or is unwilling to formally request withholding of adjudication.
5. If the investigation is ongoing and has NOT been completed within one (1) year of its inception, the regulation mandates that USCIS, herein referred to as the DD, "WILL review the matter and determine whether adjudication of the case will be withheld for six (6) months or until the investigation is completed, whichever comes sooner." (Emphasis added). 8 CFR § 103.2(b)(18).

- ii. This authority may be delegated by the DD as provided in the definition of District Director in 8 CFR § 1.2. (See section 10.24(g)(iii) below regarding requests for extensions.)

(c) Initiation of Withholding Adjudication Under 8 CFR § 103.2(b)(18):

- i. Outside request. Any law enforcement, regulatory, or administrative agency may notify USCIS of an ongoing investigation and request withholding of adjudication pursuant to 8 CFR § 103.2(b)(18). For ongoing investigations that originate outside of USCIS, USCIS will request the investigating agency to submit a request in writing via formal letter, memo, or e-mail asking that adjudication of the case be withheld in accordance with section 10.24(h)(i)(1) of the AFM. For CARRP cases where an LEA refuses to submit a written request for withholding adjudication, refer to the February 6, 2009 CARRP guidance.
- ii. USCIS volition. USCIS Immigration Service Officers or USCIS Fraud Detection and National Security Immigration Officers (FDNS IOs)² may request withholding by sending evidence of an investigation to the DD. If there is no written evidence of the investigation, the USCIS officer will submit a request in writing via a memo or e-mail describing the investigation as much as possible and how he or she became aware of it. **Appendix 10-12** of this field manual provides an example of such a request, ***Template for Interoffice Memorandum from a USCIS Officer to a District Director Relaying Requests for Withholding of Adjudication under 8 CFR § 103.2(b)(18).***

(d) Qualifying Investigations Under 8 CFR § 103.2(b)(18):

The Withholding of Adjudication regulation does not define the term "investigation." For the purposes of this guidance, the definition of an "investigation" includes the following categories:

- i. Any criminal or administrative investigation conducted by a domestic or foreign law enforcement agency (e.g., Federal Bureau of Investigation, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, New Scotland

Yard, Canada Border Services Agency (CBSA), etc.), or other agency (e.g. the Internal Revenue Service, the Postal Service, the Securities and Exchange Commission, etc.); or

- ii. Any investigation conducted by the USCIS Office of Security and Integrity (OSI) relating to fraud perpetrated by a USCIS employee or contractor.
- iii. Other types of investigations, including administrative, may qualify for withholding of adjudication if the investigation is ongoing, the investigation affects eligibility for an immigration benefit, and the DD otherwise determines in accordance with this guidance that an investigation being pursued by USCIS qualifies for withholding based on the merits of the case.

(e) Impact of the Investigation on Eligibility For a Visa Petition or Other Immigration Benefit or the Exercise of Discretion.

The existence of an investigation, by itself, is not sufficient to permit withholding of adjudication under the regulation. The DD must decide whether to withhold adjudication after all the relevant information has been received and reviewed. When an adjudication will not be completed prior to a statutorily imposed deadline, the DD must consult with local counsel in advance of the deadline.

(f) Disclosure of Information Would Prejudice the Ongoing Investigation.

“Prejudicing” an investigation is any action which would interfere with the investigation. The DD may withhold adjudication only under 8 CFR § 103.2(b)(18) if he or she believes disclosure of information to the applicant, petitioner, beneficiary, or requestor in connection with the adjudication of the application, petition, or other request would prejudice the ongoing investigation. This information may include both the existence of the investigation and/or the specific facts developed during the course of the investigation.

(g) Initial Length and Extensions of Withholding of Adjudication.

- i. Initial Approval. Withholding of adjudication may be approved at any time after the investigation begins. If an investigation has been undertaken and has not been completed within one year of its inception, the DD will review the matter and determine whether adjudication of the application, petition, or other request should be withheld for six months or until the investigation is completed, whichever comes sooner. Once the DD determines that adjudication of a benefit request will be withheld, USCIS will take no further actions on the application, petition, or other request.
- ii. Monitoring of Cases Placed in Withholding of Adjudication. Withholding of Adjudication is discretionary, but compliance with the regulation is not. To comply with the regulation the DD must:

1. Keep a record of all cases for which withholding of adjudication has been approved.
 2. Check the record, as necessary, to determine if an extension is required under 8 CFR § 103.2(b)(18) and this AFM chapter.
 3. Request status updates from the investigating LEA, Federal agency, DHS component or USCIS office as appropriate.
- iii. Extensions of Withholding of Adjudication. When the investigation has not been completed within six (6) months after the initial approval, the DD will determine if more time is needed to complete the investigation. If so, adjudication may be withheld for up to another six (6) months. The DD may consult other USCIS offices on the decision.

If the investigation is not completed after the adjudication has been withheld for twelve (12) months, the DD will request that the next supervisor in his or her chain of command, as appropriate, approve withholding of adjudication for an additional six (6) months.

If the withholding of adjudication has been ongoing for more than eighteen (18) months, the DD will send a request for extension through his or her supervisor to both the HQ Directorate (in his or her respective supervisory chain) and HQFDNS Directorate for joint concurrence on an extension approval.

- iv. Withholding of Adjudication on Cases Previously Withheld under 8 CFR § 103.2(b)(18). USCIS may withhold adjudication on a case for which adjudication had been withheld previously and then released for adjudication. The DD must decide if withholding is proper under section 10.24 of the AFM. Whether it is a new investigation or the continuation of an earlier investigation reopened due to new information which comes to light while the case has not yet been adjudicated, the withholding request is considered new and the withholding time frame begins anew.

(h) Documentation of Withholding of Adjudication.

- i. Requirements for Documenting the A-File, T-File, or Receipt File for Withholding of Adjudication:

Any A-, T-, or receipt file that contains a benefit request for which adjudication is being withheld must also contain:

1. Any formal letter, memo, or e-mail received from an outside agency requesting withholding of adjudication in accordance with section 10.24(c)(i) of the AFM. Subject to the exception for CARRP cases in section 10.24(b)(i)(4) of the AFM, a request for withholding of adjudication from an outside entity, must include the basis for an entity's request for withholding. Therefore, a request must include:

- Name of the requesting entity;
 - Date of such request;
 - Date the investigation commenced, as known to USCIS, by the requesting entity;
 - Reason for the investigation (e.g., public safety concerns, criminal, national security, fraud.) A specific reason must be provided and is preferred; however, the requesting entity may choose to not reveal the exact reason for the investigation. For example, the applicant, petitioner, beneficiary, or requestor having knowledge of the investigation may be enough to impede the investigation; therefore, withholding of adjudication is justified;
 - How the disclosure of information would prejudice the ongoing investigation; the prejudice may be in general terms and could be in an e-mail or in a verbal communication; and
 - Signature, including electronic signature, of the requesting entity representative, to include his or her title and contact information.
2. Interoffice Memorandum from a USCIS Officer to a DD Relaying Requests for Withholding of Adjudication under 8 CFR § 103.2(b)(18): Upon receipt of a formal request or upon learning of an investigation of which information should not be known by the applicant, beneficiary, petitioner, or requestor, the USCIS officer or FDNS IO will complete an interoffice memorandum to the DD.
(See **Appendix 10-12** of this field manual for an example of the interoffice memorandum, **Template for Interoffice Memorandum from a USCIS Officer to a District Director Relaying Requests for Withholding of Adjudication under 8 CFR § 103.2(b)(18)**.)
3. Formal Response from District Director: A written response (letter or printed copy of an e-mail) from the District Director must clearly state the DD's decision (approval/denial) and the rationale behind the decision. The DD's decision must include the following:
- Date of Response;
 - Decision – denial/approval of withholding request;
 - If approved, the date the withholding of adjudication will expire;
 - Reason for decision; and
 - Signature, including electronic signature, of DD.
- (See **Appendix 10-12** of this field manual for an example, **Template for Formal Response from DD**.)
4. Record of Withholding of Adjudication Activities: The record of request must include:
- Type of application, petition, or other request affected by the withholding of adjudication request;
 - Date such application or petition was filed;

- Date investigation was initiated;
- Requesting entity (including name and title of person requesting on behalf of the entity and contact information);
- Date of initial approval/denial of the request for withholding of adjudication and the date of expiration of the withholding;
- Name of reviewing authority (DD/Regional Director/HQ) and whether he or she approves/denies the extension;
- Dates of ALL subsequent reviews for extension of withholding (completed every six (6) months after initial approval, indicating whether investigation is still ongoing, and whether requirements for withholding under this regulation are still being met); and
- Signature of appropriate USCIS manager (DD/Regional Director/HQ) of approval/denial of subsequent extension of withholding.

(See **Appendix 10-12** of this field manual for an example, *Withholding of Adjudication Record of Activities*.)

ii. The documentation for withholding of adjudication is placed on the non-Records side of the alien file. This documentation is not part of the Record of Proceeding (ROP) material and is exempt from FOIA requests. It must be marked appropriately at the top and bottom of each page. (See the templates in **Appendix 10-12** of this field manual.)

(i) Adjudication Time Limits and Withholding.³

The Immigration and Nationality Act (INA) does not mandate a specific time limit for the adjudication of most benefits; however, USCIS strives to adjudicate benefit requests in a timely fashion. The DD will advise and consult with local counsel on all cases described in this section.

- i. Statutory time limits. The INA imposes time limits on the adjudication of certain benefits, including Forms I-90, I-131, I-765, and post-examination Form N-400. Statutorily-imposed time limits are not extended by 8 CFR § 103.2(b)(18); however, the DD may withhold adjudication for these benefit types to assure that all indicators and or information involving national security, fraud, and/or public safety have been investigated.
- ii. Litigation risk. A delay in an adjudication of an adjustment or naturalization application may expose the agency to legal actions to compel the agency to complete the adjudication. Therefore withholding of adjudication must be used judiciously. In the event of litigation, immediately consult agency counsel.
- iii. Form N-400, Application for Naturalization, After the Applicant Interview. In the case of a pending Form N-400, Application for Naturalization, once a naturalization examination has been conducted, USCIS must deny or approve the application within 120 days. If this deadline is not met, the applicant may petition a Federal

district court to naturalize him or her, deny his or her application, or remand the application back to USCIS to decide. (See 8 U.S.C. § 1447(b); INA § 336(b).)⁴ In the right circumstance and in consultation with HQ Counsel, the DD may withhold adjudication until all derogatory information is fully resolved before an applicant is naturalized. Close monitoring and timely action in naturalization cases is essential to ensure proper handling and minimize litigation risk.

(j) Controlled Application Review and Resolution Program (CARRP) Cases.

This Chapter 10.24 in no way replaces the current CARRP guidance. Cases dealing with national security concerns must follow current CARRP guidelines.⁵

(k) Cases on hold based on Terrorist-Related Inadmissibility Grounds (TRIG) Material Support.

Withholding of adjudication is not the same as cases on hold pursuant to the TRIG material support hold policy.⁶ Cases being held under the TRIG hold policy usually do not qualify for withholding of adjudication under 8 CFR § 103.2(b)(18), because cases placed on hold pursuant to TRIG hold policy are: (1) not under investigation; and, (2) the applicant is usually already aware of the hold and the reason for it since information on the purported TRIG inadmissibility most often comes from the applicant's own statements.

(l) Applications, Petitions, or Other Requests Involving an Internal Administrative Investigation.

The DD may authorize withholding of adjudication under 8 CFR § 103.2(b)(18) for a case which is subject to an administrative investigation conducted by USCIS on a case-by-case basis if the requirements of this AFM chapter have been met.

NOTES:

¹ 8 CFR §103.2(b)(18) as corrected refers to USCIS. For purposes of this guidance USCIS means, District Directors, and also Regional Directors, National Benefits Center Director, Service Center Directors, Asylum Office Directors or the officials as may be designated by USCIS Headquarters management.

² Both herein referred to as "USCIS Officers" for purposes of relaying a request for Withholding of Adjudication to a DD under 8 CFR § 103.2(b)(18).

³ The DD, in consultation with local counsel, may withhold adjudication as a matter of discretion even in cases where 8 CFR § 103.2(b)(18) is not applicable.

⁴ For example, 8 U.S.C. § 1447(b), section 336(b) of the Immigration and Nationality Act, imposes a 120-day threshold for adjudication of a naturalization application. If adjudication is withheld it will not preclude the alien from filing a lawsuit to seek judicial review of the USCIS inaction. Indeed, the intent of section 1447(b) was to allow an applicant for naturalization to apply to a U.S. district court in contemplation that applicants with INS/USCIS would encounter delays but not that such delays are an unlawful act. When a delay occurs, a Federal judge may decide that the delay is reasonable or not and take any action deemed reasonable under the circumstances. When withholding of adjudication results in a delay beyond the 120-days following the regulation closely may or may not mitigate any penalty imposed on DHS by the Federal Court.

⁵ See Policy Memorandum, Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns, dated February 6, 2009.

⁶ March 26, 2008, "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups," as revised, most recently by November 20, 2011, Memorandum: "Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases."

- ☞ 2. A new Appendix 10-12 is added as indicated in Attachment B of this Operational Guidance.
- ☞ 3. The AFM Transmittal Memorandum button is revised by adding, in numerical order, a new entry to read:

AD12-07 10/28/2013	Chapter 10.24	Provides guidance on the withholding of adjudication of visa petitions and other applications during the pendency of an ongoing investigation.
	Appendix 10-12	Provides templates relevant to the withholding of adjudication.

Use

This operational guidance is intended solely for the use of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions regarding this Operational Guidance should be directed through appropriate channels to the Service Center Operations Directorate; Refugee, Asylum, and International Operations Directorate; and, the Field Office Directorate.

Attachments

Attachment A – 8 CFR § 103.2(b)(18)

Attachment B – Appendix 10-12

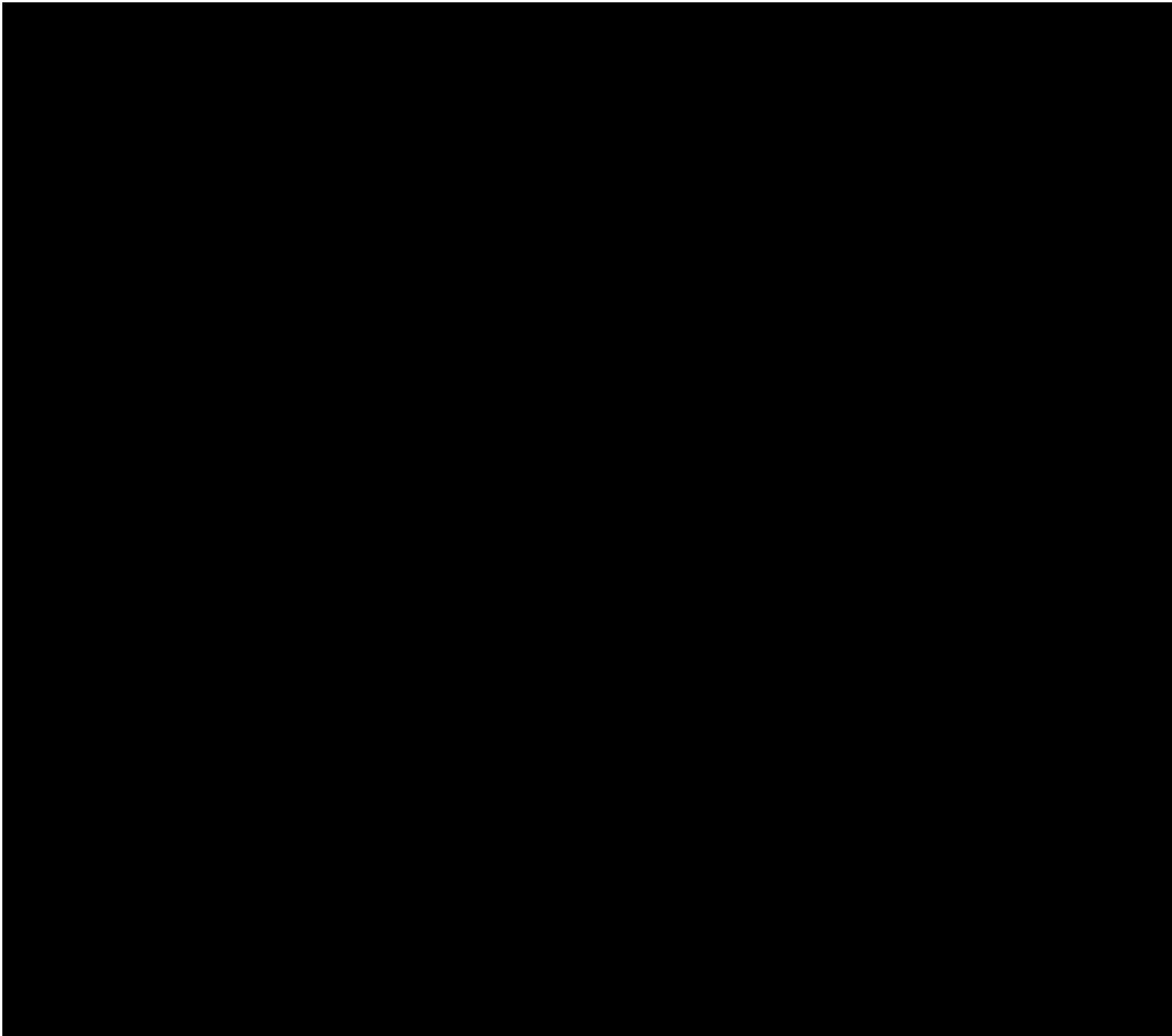
Attachment A – 8 CFR § 103.2(b)(18)

Withholding adjudication. USCIS may authorize withholding adjudication of a visa petition or other application if USCIS determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the benefit request, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the benefit request would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, USCIS will review the matter and determine whether adjudication of the benefit request should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of USCIS's determination, the investigation has not been completed, the matter will be reviewed again by USCIS and, if it concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, USCIS may authorize that adjudication be held in abeyance for another six months. Thereafter, if USCIS determines it is necessary to continue to withhold adjudication pending completion of the investigation, it will review that determination every six months.

Attachment B – Appendix 10-12

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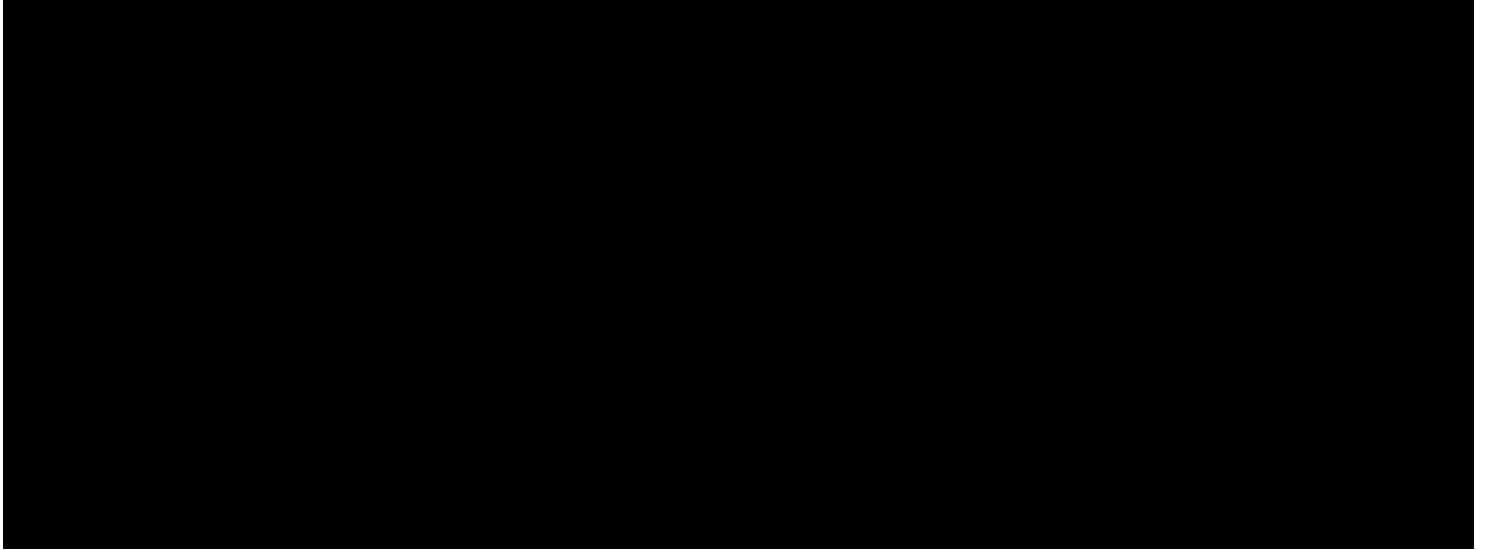
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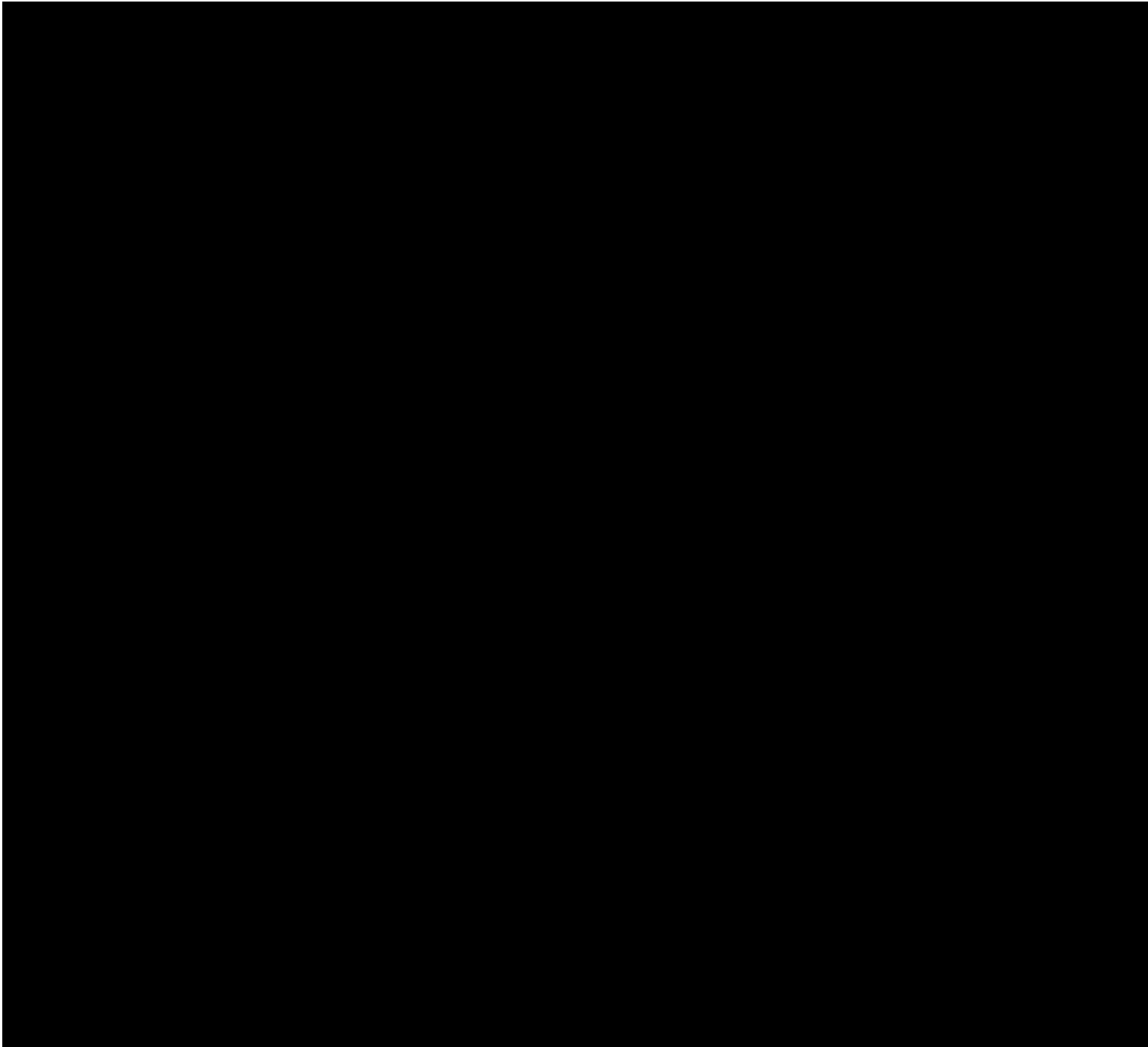
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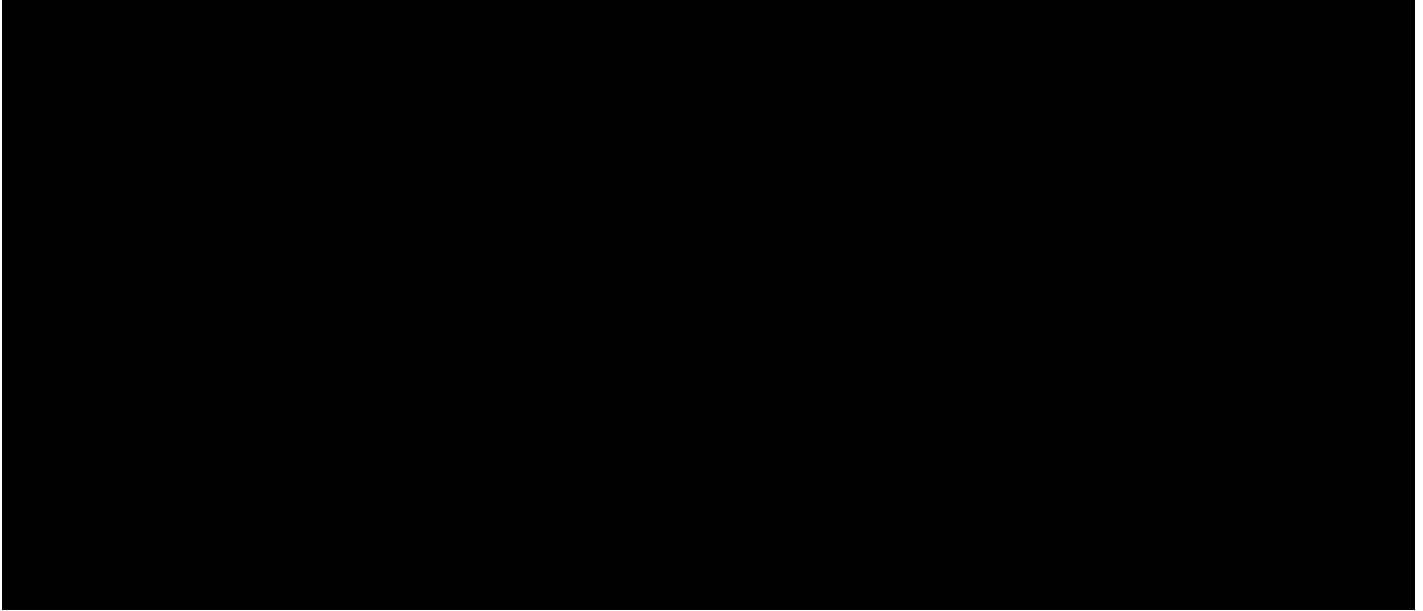
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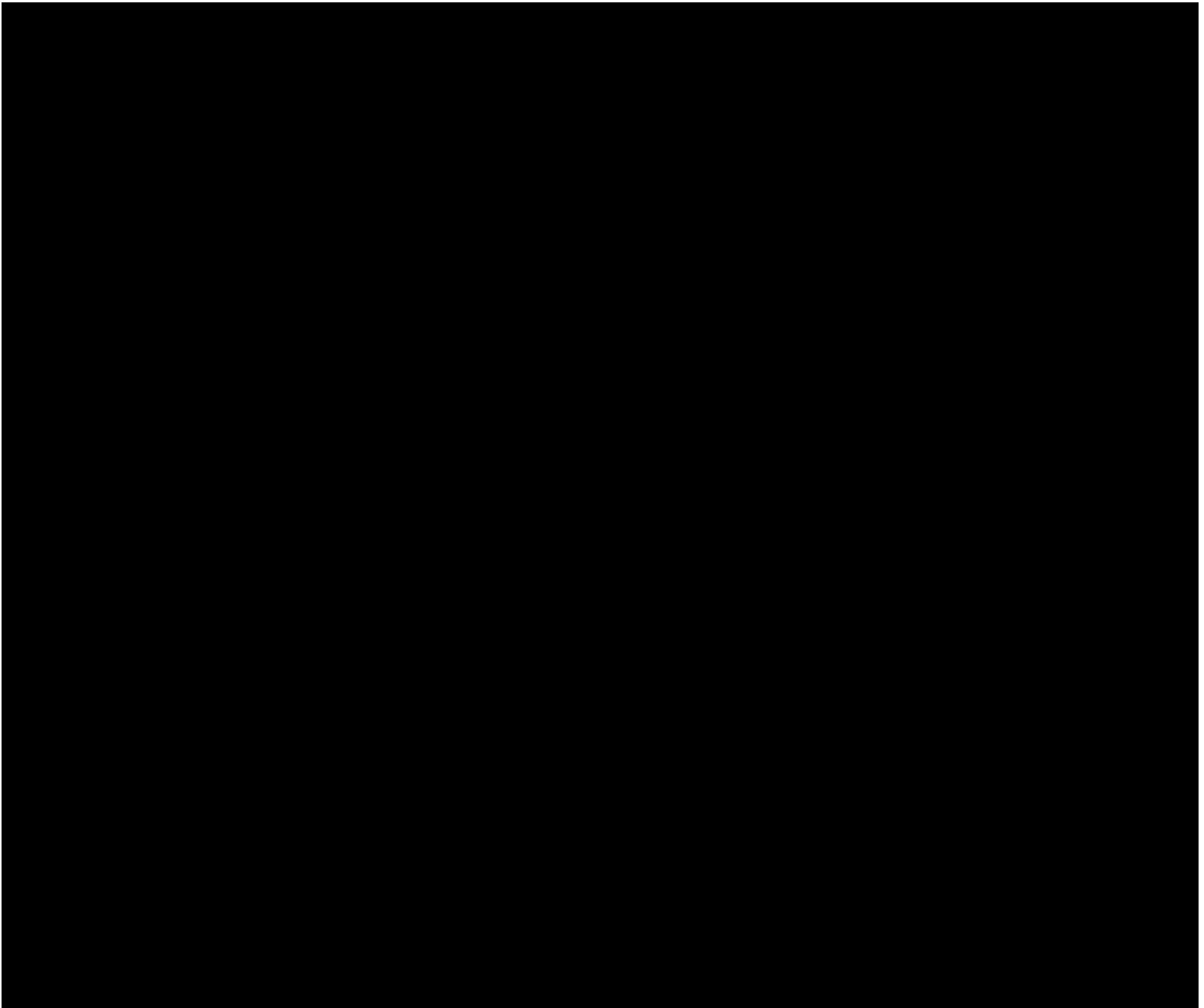
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