

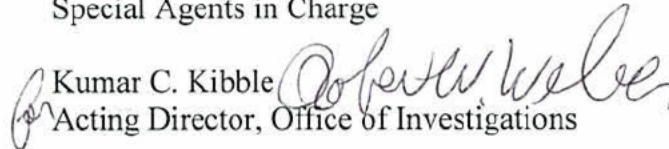


**U.S. Immigration  
and Customs  
Enforcement**

DEC - 3 2009

MEMORANDUM FOR: Assistant Directors  
Deputy Assistant Directors  
Special Agents in Charge

FROM:

 Kumar C. Kibble  
Acting Director, Office of Investigations

SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons  
Forms

The legacy U.S. Customs Service and Immigration and Naturalization Service (INS) subpoena and summons forms have been rebranded/updated and reissued. These new forms, which are attached to this memorandum, include:

- Department of Homeland Security (DHS) Form 3115, "Summons," and the accompanying DHS Form 3115A, "Summons Notice," which supersede Customs Form (CF) 3115 and CF 3115A, respectively;
- DHS Form I-138, "Immigration Enforcement Subpoena," which supersedes legacy INS Form I-138;
- U.S. Immigration and Customs Enforcement (ICE) Form 73-021, "Controlled Substances Enforcement Subpoena," which supersedes CF 389; and
- ICE Form 73-022, "Export Enforcement Subpoena," which supersedes CF 337.

Special Agents in Charge (SACs) should continue to issue the subpoenas and summons in accordance with the legal authorities and general guidelines that governed the legacy forms. The following additional guidance and reminders apply to the use of the three subpoenas and the summons.

Requirement to Maintain a Log

SACs are responsible for maintaining an accurate log of subpoenas or summonses issued each fiscal year, as well as copies of the subpoenas and summonses issued. The log must be kept for at least 5 years from the date of the last entry and shall contain, at a minimum, the following information:

1. the title of the proceedings, if any, for which the subpoena or summons is issued;
2. the entity to whom the subpoena or summons is served;
3. the issuing officer;
4. whether the subpoena or summons was issued to compel the appearance of a witness to provide testimony; the production of books, papers, or documents; or both;
5. the date of service of the subpoena or summons;
6. the means of service of the subpoena or summons; and
7. a tracking number for each subpoena or summons (tracked by fiscal year, e.g., NY-08-001; NY-08-002, etc.).

Limitations Related to Indicted Defendants or Aliens in Removal Proceedings

The issuance of an administrative subpoena or summons is authorized after a case has been referred to the Department of Justice (DOJ) for criminal prosecution. However, once the subjects of investigation have been indicted or a criminal complaint has been filed and they become defendants, the subjects of the investigation should not be subpoenaed. OI Special Agents (SAs) can continue issuing subpoenas and summonses in ongoing civil and criminal investigations to obtain information, but not from indicted defendants.

Typically, when a grand jury returns an indictment, the grand jury investigation is concluded and the grand jury no longer has the ability to issue grand jury subpoenas. The conclusion of the grand jury subpoena process does not preclude the use of an administrative subpoena or summons. However, SAs should be cognizant of the potential appearance of impropriety that could result from issuing an administrative subpoena or summons in investigations where the grand jury process has ended.

SAs considering using an administrative subpoena or summons subsequent to the indictment of any defendants should consult with and obtain the concurrence of the Assistant United States Attorney handling the criminal investigation and the appropriate ICE Office of the Chief Counsel (OCC).

SAs requiring an immigration enforcement subpoena in any matter that has been referred to an immigration judge should consult with the local ICE OCC, who may petition the immigration judge for the subpoena.

#### Limitations related to the Right to Financial Privacy Act

Administrative subpoenas or summonses compelling production of customer records from a financial institution must comply with the Right to Financial Privacy Act (RFPA). Under the RFPA, unless specific exemptions apply, no Government authority may have access to or obtain copies of the financial records, or the information contained in the financial records, of any customer from a financial institution, except through the specific procedures defined in the statute, 12 U.S.C. § 3402. SAs considering the issuance of an administrative subpoena or summons compelling the production of records from a financial institution pursuant to 12 U.S.C. § 3405 must consult with the local ICE OCC or appropriate ICE attorney to ensure that ICE complies with the RFPA for appropriate notice to the financial institution and its customer, or that an exemption applies, such as 12 U.S.C. § 3413(g).

#### Authority with Respect to Subpoenas

As stated in the respective OI Delegation Orders, the authority to use the Immigration Enforcement Subpoena, the Controlled Substances Enforcement Subpoena, and the Export Enforcement Subpoena is delegated to the OI Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge. This authority cannot be redelegated.

#### Authority with Respect to the Summons

As stated in the respective OI Delegation Order, the authority to use the 19 U.S.C. § 1509 Summons is delegated to OI Assistant Directors, Deputy Assistant Directors, and Special Agents in Charge. This authority cannot be redelegated.

#### Posting of the Subpoena/Summons Forms

The subpoena and summons forms have been made fillable and are posted on the OI Proprietary Website by clicking on “Documents” and then “Forms.”

#### Prohibition Against Making Changes to the Subpoena/Summons Forms

OI SAs and other personnel are prohibited from making any changes to the subpoena and summons forms.

#### Governing ICE Directives

ICE is developing directives which will provide policies and detailed procedures to be followed when using each of the rebranded/updated subpoenas and summons. Upon

**SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons Forms**  
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issuance of each of these directives, OI employees must comply with that directive when using the related summons or subpoena form. When all four directives are issued, this memorandum will be cancelled.

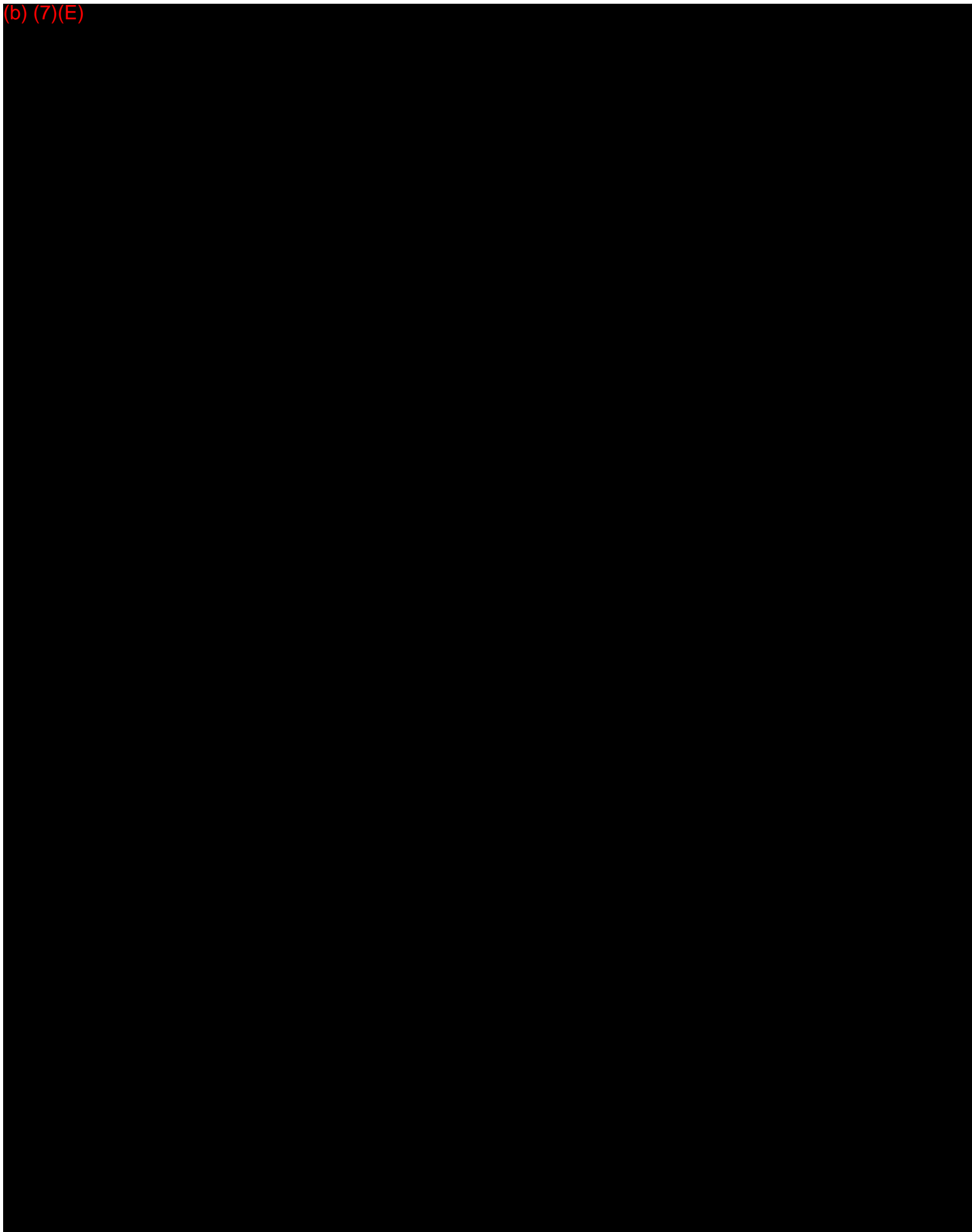
**Superseded Documents**

This memorandum supersedes OI memorandum entitled, "Accountability of Subpoenas and Summons," dated March 13, 2007, and Section 43.3 of the legacy INS Special Agent Field Manual entitled, "Administrative Subpoenas."

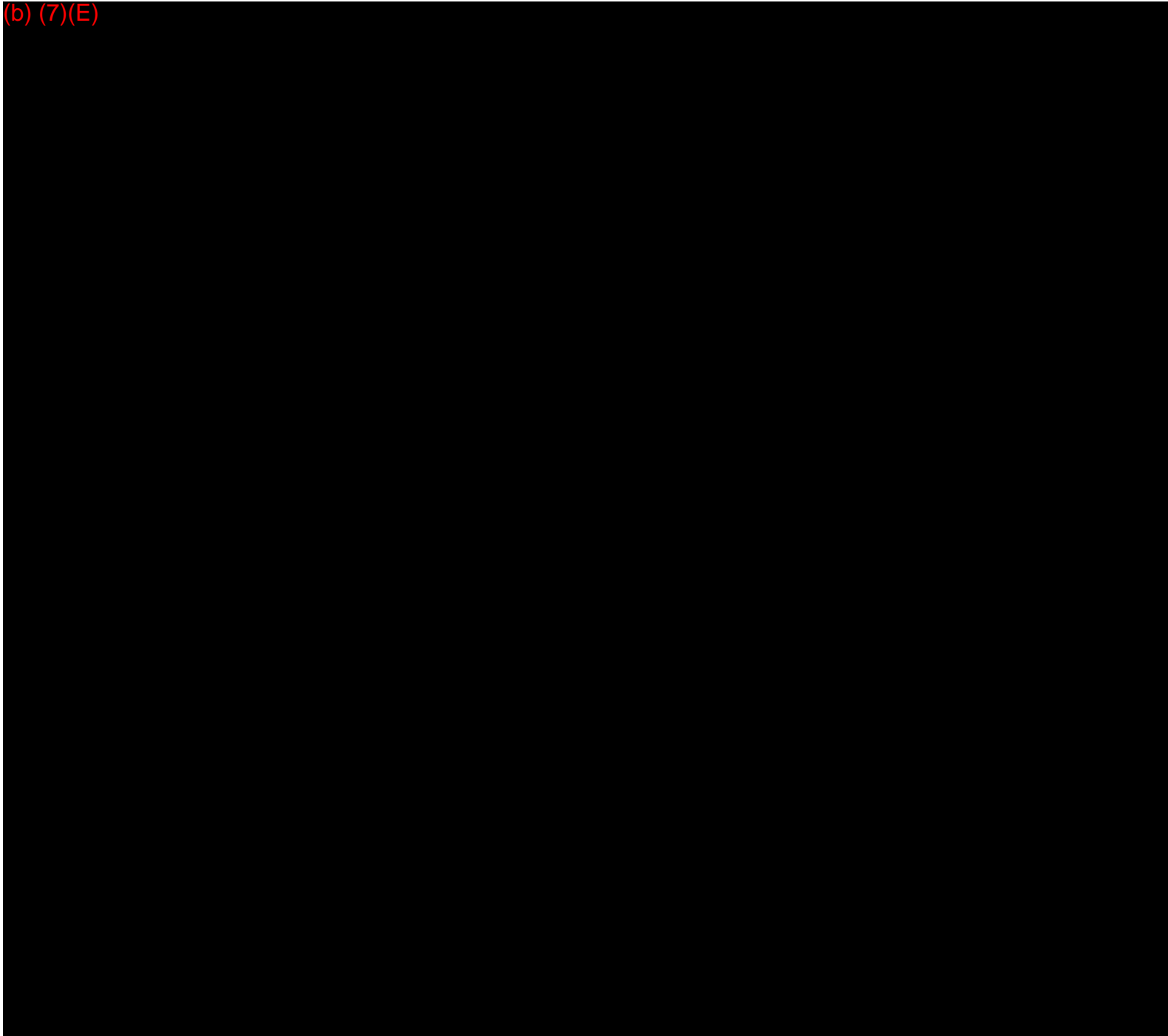
**Attachments**

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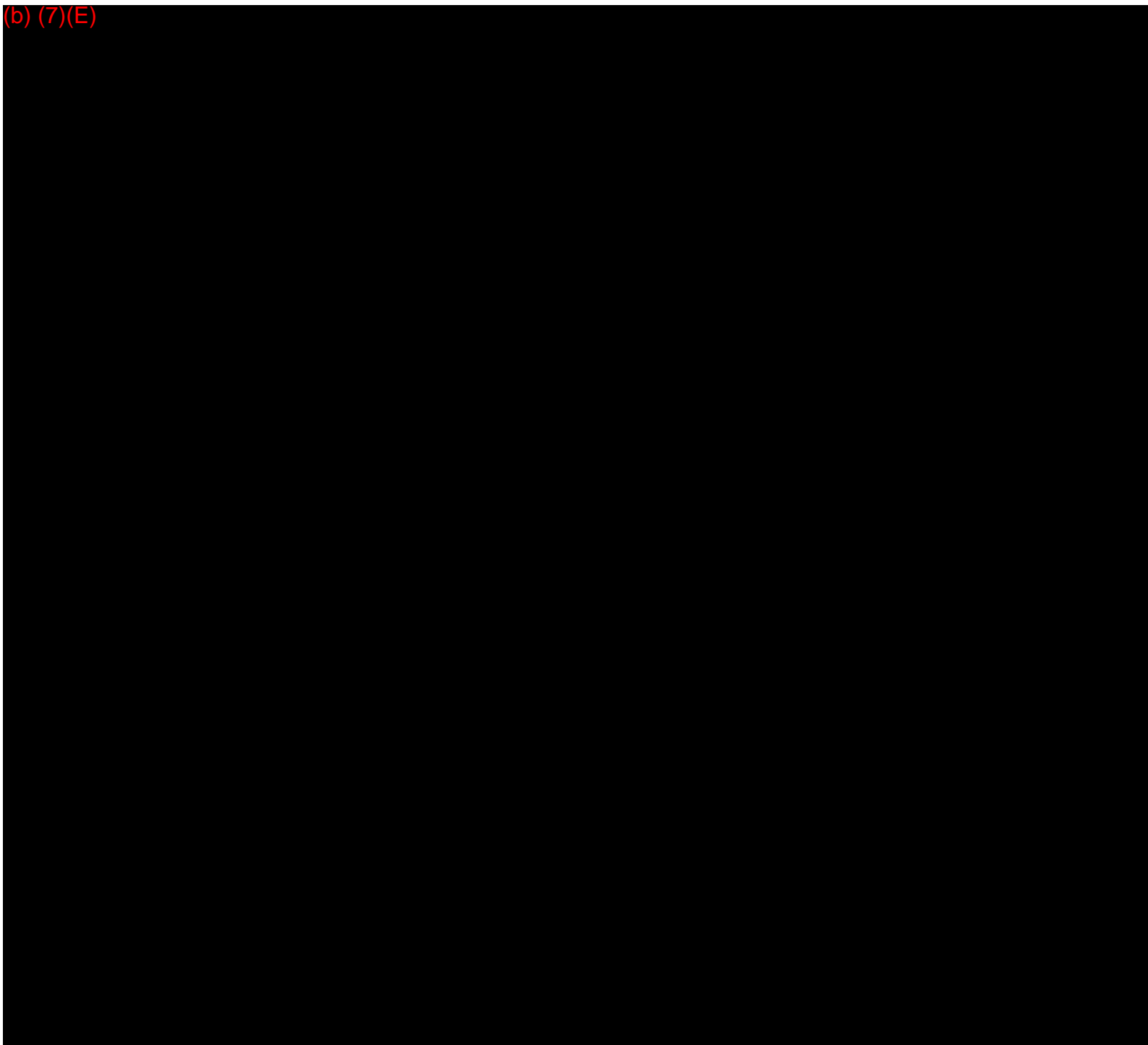


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