



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

NOV 14 2012

MEMORANDUM FOR PRINCIPAL DEPUTY INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Mr. John S. Mester, Senior Executive Service, General Counsel, Defense Finance and Accounting Service (Report No. 10-116078-201)

We recently completed our investigation to address allegations that while serving as General Counsel, Defense Finance and Accounting Service (DFAS), Indianapolis, Indiana, Mr. Mester (b)(6) (b)(7)(C), improperly arranged air travel on non-contract city-pair carriers, misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity, and (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)

We substantiated the allegations regarding Mr. Mester's air travel and the misuse of his public office. (b)(6) (b)(7)(C)

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

The report of investigation, together with Mr. Mester's response, is attached.

We recommend the General Counsel, Department of Defense, consider appropriate corrective action with regard to Mr. Mester.

Marguerite C. Garrison
Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

Attachments:
As stated

REPORT OF INVESTIGATION:
MR. JOHN S. MESTER, SENIOR EXECUTIVE SERVICE (SES)

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that while serving as the General Counsel, Defense Finance and Accounting Service (DFAS), Mr. John S. Mester (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), improperly arranged air travel on non-contract city-pair carriers, misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity, (b)(6) (b)(7)(C).

We substantiated the allegations regarding the use of non-contract city-pair carriers and the misuse of his public office. (b)(6) (b)(7)(C)

We conclude that Mr. Mester improperly arranged air travel on non-contract city-pair carriers.² Mr. Mester lives in (b)(6) (b)(7)(C) Maryland, and maintains two offices – one in Indianapolis, Indiana, and another at the DFAS liaison office in Arlington, Virginia. We found that between January 2009 and August 2010, Mr. Mester traveled round trip on official travel orders from Baltimore-Washington International (BWI) airport to DFAS, Indianapolis (DFAS-IN) 35 times, and once from BWI to Tampa, Florida. On all but one leg of the 72 legs flown, he used an air carrier other than the Government city-pair contract carrier, even though seats were available on the contract carrier. The travel documentation contained the statement, “Does not meet mission requirements,” as the reason for not using the contract carrier. Mr. Mester testified that using the non-contract carrier was convenient and saved him travel time. Joint Travel Regulations (JTR) require the use of the contract carrier and provide for limited exceptions. However, carrier preference and convenience are not appropriate justification for selecting a non-contract carrier. We determined that none of the exceptions applied to Mr. Mester’s use of a non-contract carrier, and that his actions cost the Government approximately \$3,755 in additional costs. We present the details of our review in the Appendix to this report.

We also conclude Mr. Mester misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity. We found the Indiana National Guard gave DFAS 436 free tickets to the 2010 Indianapolis 500 auto race, and that Mr. Mester received four tickets to distribute to employees in the DFAS Office of the General Counsel (OGC). Rather than distribute them to DFAS/OGC employees, Mr. Mester gave the tickets to a (b)(6) (b)(7)(C) at a local hotel where he stayed during his TDY trips to Indianapolis. The Joint Ethics Regulation (JER) prohibits the use of public office for the private gain of the employee or someone with whom the employee is affiliated in a nongovernmental capacity. We determined

¹ (b)(6) (b)(7)(C)

² Each year, the Government Supply Activity Federal Supply Service awards contracts for air transportation for travelers on official travel. The contracts are awarded competitively based on the best overall value to the government.

Mr. Mester received the tickets by virtue of his position and used them for the private gain of an individual with whom he was affiliated in a nongovernmental capacity.

By letter dated April 13, 2012, we provided Mr. Mester the opportunity to comment on a preliminary report of investigation. In his response, dated June 28, 2012, Mr. Mester contested several of our initial findings and conclusions, and provided additional information. He asserted he did not fly on non-contract carriers for personal convenience, that using the non-contract carrier was worth the extra expense because it meant he could spend more time in the DFAS-IN office, and that the then-Principal Deputy Director, DFAS, agreed with his practice. Regarding the misuse of his public office, Mr. Mester admitted to a lapse in judgment and stated he should have given the race tickets to his employees. However, he contended he did not violate the JER because he was not affiliated with (b)(6) (b)(7)(C) in a non-governmental capacity. We disagree with Mr. Mester's arguments and stand by our conclusions in these matters.

In our preliminary report, we also determined that Mr. Mester [REDACTED]
[REDACTED]
[REDACTED] After considering Mr. Mester's response, conducting an additional witness interview, and reexamining the evidence, we modified our determination in the matter. We conclude that Mr. Mester did not [REDACTED] The discussion in Section IV of this report addresses the details of Mr. Mester's response.³

We note that most of Mr. Mester's employees are physically located at DFAS-IN. Although Mr. Mester spends a majority of his time at DFAS-IN, his official worksite is at the DFAS liaison office in Arlington, Virginia. Thus, time spent at DFAS-IN is in a temporary duty (TDY) status. In our review of a 28-month period (from January 2009 to May 2011), we found Mr. Mester traveled to DFAS-IN approximately 56 times, at a cost of approximately \$83,000.00. When not at DFAS-IN, Mr. Mester regularly teleworked from his home in [REDACTED] Maryland, which is located outside the National Capital Region's commuting area, and he infrequently commuted to Arlington, Virginia.⁴ We determined Mr. Mester did not have an approved telework agreement and that his time and attendance records did not reflect he ever teleworked in 2009, 2010, or early 2011. In his response, Mr. Mester provided a telework agreement dated February 10, 2011, but did not comment on our determination regarding his time and attendance records.

We also noted DFAS regularly used the authority granted to Federal agencies to reemploy retired Federal employees without offsetting the rehired annuitant's annual salary. We found that as of September 25, 2012, DFAS employed 56 such rehired annuitants, 10 of whom teleworked full time from DFAS sites closed due to the implementation of the 2005 Defense Base Realignment and Closure (BRAC) Commission recommendations. One rehired annuitant performed supervisory duties from a remote location, and another teleworking annuitant's term

³ While we have included what we believe is a reasonable synopsis of the response provided by Mr. Mester, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Mr. Mester where appropriate throughout this report and provided a copy of his full response to the cognizant management officials together with this report.

⁴ (b)(6) (b)(7)(C)
[REDACTED]
[REDACTED]

began in 2006 and now extends until 2015. We question the practice of sustaining such arrangements over extended periods, while incurring the costs for full-time teleworking annuitants to periodically perform temporary duty at DFAS-IN. The matters appear to us as a lack of attention to succession planning, a concern the then-DFAS Principal Deputy Director specifically noted in his testimony to us. We address these matters and the issues of Mr. Mester's official worksite and telework practices in Section V, "Other Matters," of this report.

This report sets forth our findings and conclusions based on a preponderance of the evidence. We recommend the General Counsel, DoD, consider appropriate action with regard to Mr. Mester, and the Director, DFAS, consider appropriate action with regard to the issues described in Section V, Other Matters.

II. BACKGROUND

In 1991, the Secretary of Defense created DFAS to reduce the cost of Department of Defense (DoD) finance and accounting operations and to strengthen financial management through consolidation of finance and accounting activities across the Department. DFAS pays all DoD military and civilian personnel, retirees, and annuitants, as well as major DoD contractors and vendors. Prior to the implementation of the 2005 BRAC Commission recommendations, DFAS had its headquarters offices in Arlington, Virginia, and maintained five central offices located in Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Indianapolis, Indiana; and Kansas City, Missouri.⁵ There were also 20 DFAS sites located in the continental United States, Japan, and Europe. Since the implementation of BRAC, DFAS closed 18 DFAS sites and realigned its headquarters from Arlington, Virginia, to Indianapolis.

The Defense Legal Services Agency (DLSA) is established as a separate agency of the DoD, under the direction, authority, and control of the General Counsel, DoD, who also serves as the Director, DLSA. DLSA provides legal advice and services for the Defense Agencies, DoD Field Activities, and other assigned organizations. Mr. Mester is assigned to DFAS, but receives technical supervisory oversight from Mr. Scott Castle, Deputy General Counsel (DGC) (Fiscal), DLSA.

Mr. Mester has served as the DFAS General Counsel since November 24, 1991. He supports the DFAS Director, Ms. Teresa McKay, and Principal Deputy Director, Ms. Audrey Y. Davis, who have offices in both Arlington, Virginia, and Indianapolis.⁶ He supervises 35 attorneys and 9 support staff personnel, and renders advice on complex legal issues, laws, regulations, and Congressional inquiries which may affect the DFAS mission, functions, and transformation initiatives. Except for a small group of attorneys who work in Garnishment Operations in Cleveland, Ohio, the vast majority of Mr. Mester's attorneys and support staff are physically located in DFAS-IN. As the Designated Agency Ethics Official (DAEO), Mr. Mester is responsible for administering the DFAS ethics program.

⁵ Unless otherwise specified hereinafter, the term "BRAC," as used in this report, refers to the consolidation and realignment of resources within the DFAS OGC.

⁶ Mr. Mester worked for Mr. Gus Gustafson, former Principal Deputy Director, until December 2011 when Ms. Davis was appointed.

On January 5, 2009, the DFAS Internal Review Criminal Investigations Branch (DICIB) initiated an investigation into allegations of harassment, a hostile work environment, retaliation, and reprisal within DFAS/OGC, and Mr. Mester was identified as a subject.⁷ Investigators completed their investigation on March 2, 2009, and concluded:

DFAS/OGC was experiencing interpersonal conflicts that deteriorated employee morale, teamwork, and potentially impacted productivity and customer service, and created a perception of abuse of authority and favoritism. 14 of the 23 OGC employees (attorneys and non-attorneys) interviewed, voiced concerns with management and 4 attorneys believed that Mr. Mester favored certain employees (by being able to telework and receiving preferential treatment on performance ratings).

The recommendations to the DFAS Principal Deputy Director consisted primarily of generating mediation sessions and sensitivity/team building within DFAS/OGC, and included a recommendation that DFAS Human Resources (DFAS-HR) review DFAS/OGC's telework policy, and performance appraisal process for fairness. By cover letter dated March 2, 2009, the Acting Director for Internal Review, DFAS-IN, approved the DICIB report of investigation. DFAS-HR reviewed OGC's telework policy and recommended that OGC not supplement the DFAS telework policy. The DFAS Chief of Labor and Employee Relations reviewed the performance ratings and payouts from the OGC pay pool process and found no evidence of favoritism. Further, at the time we completed our fieldwork, Mr. Mester had identified sources for conducting supervisory team building training for DFAS/OGC and initiated plans to conduct an organizational effectiveness off-site for his staff.

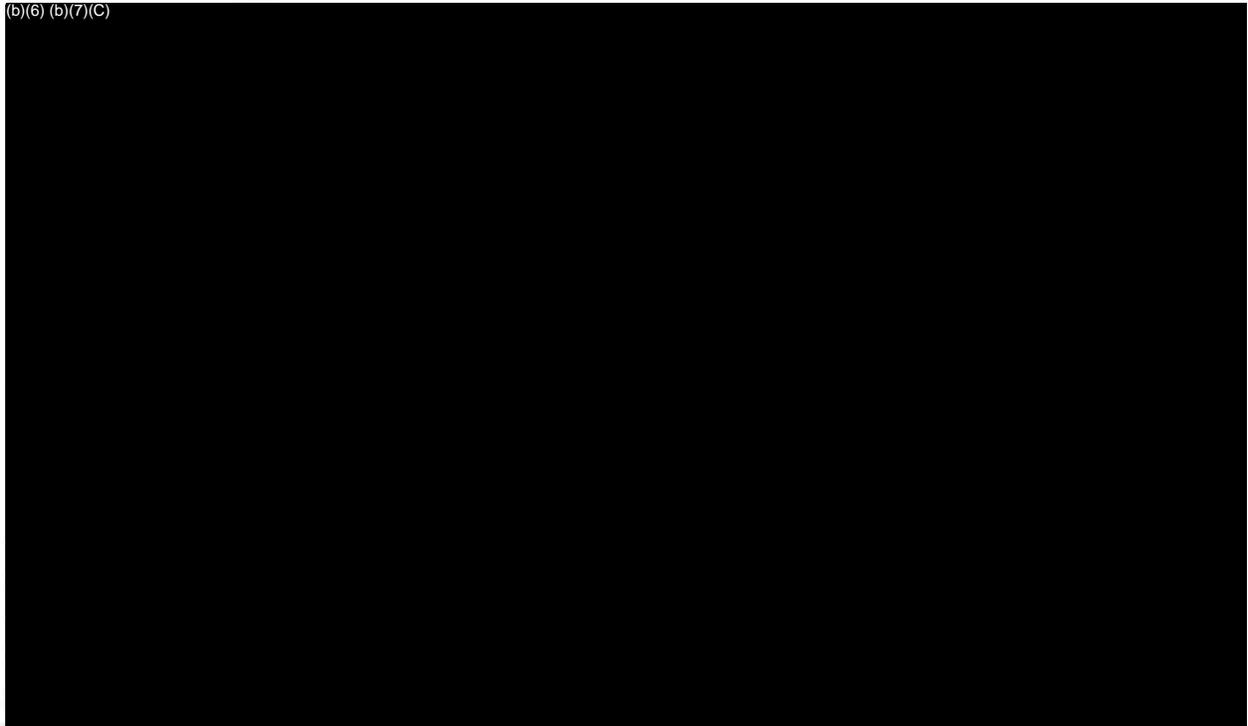
On October 6, 2009, the DoD Inspector General (IG) hotline received an anonymous complaint which contained [REDACTED] by Mr. Mester. On March 12, 2010, this Office forwarded the hotline complaint to the Director, DFAS Internal Review (IR), to determine whether further investigation by our Office was necessary. In a March 29, 2010, memorandum to our Office, the IR Director provided a brief summary of the allegations and provided a copy of the DICIB report of investigation for our review. On July 14, 2010, representatives from DICIB provided our Office with additional [REDACTED], travel improprieties, [REDACTED] against Mr. Mester.

III. SCOPE

During the course of this investigation, we interviewed Mr. Mester, Mr. Gustafson, and 11 witnesses having specific knowledge of the facts and circumstances surrounding the allegations. We reviewed emails, travel orders, vouchers, calendars, and other relevant documentation.

⁷ After receiving several complaints from the Management Employee Relations (MER), Human Resources (HR), DFAS-IN, Mr. Gustafson referred them to the DFAS DICIB for investigation.

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



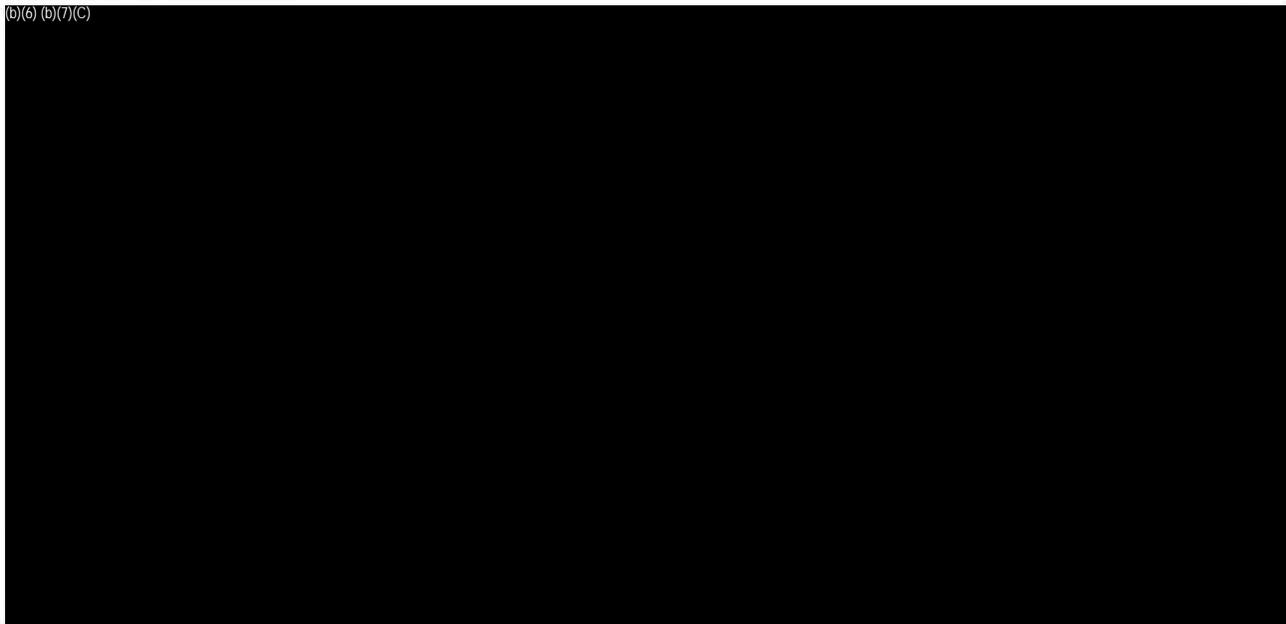
IV. FINDINGS AND ANALYSIS

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Standards

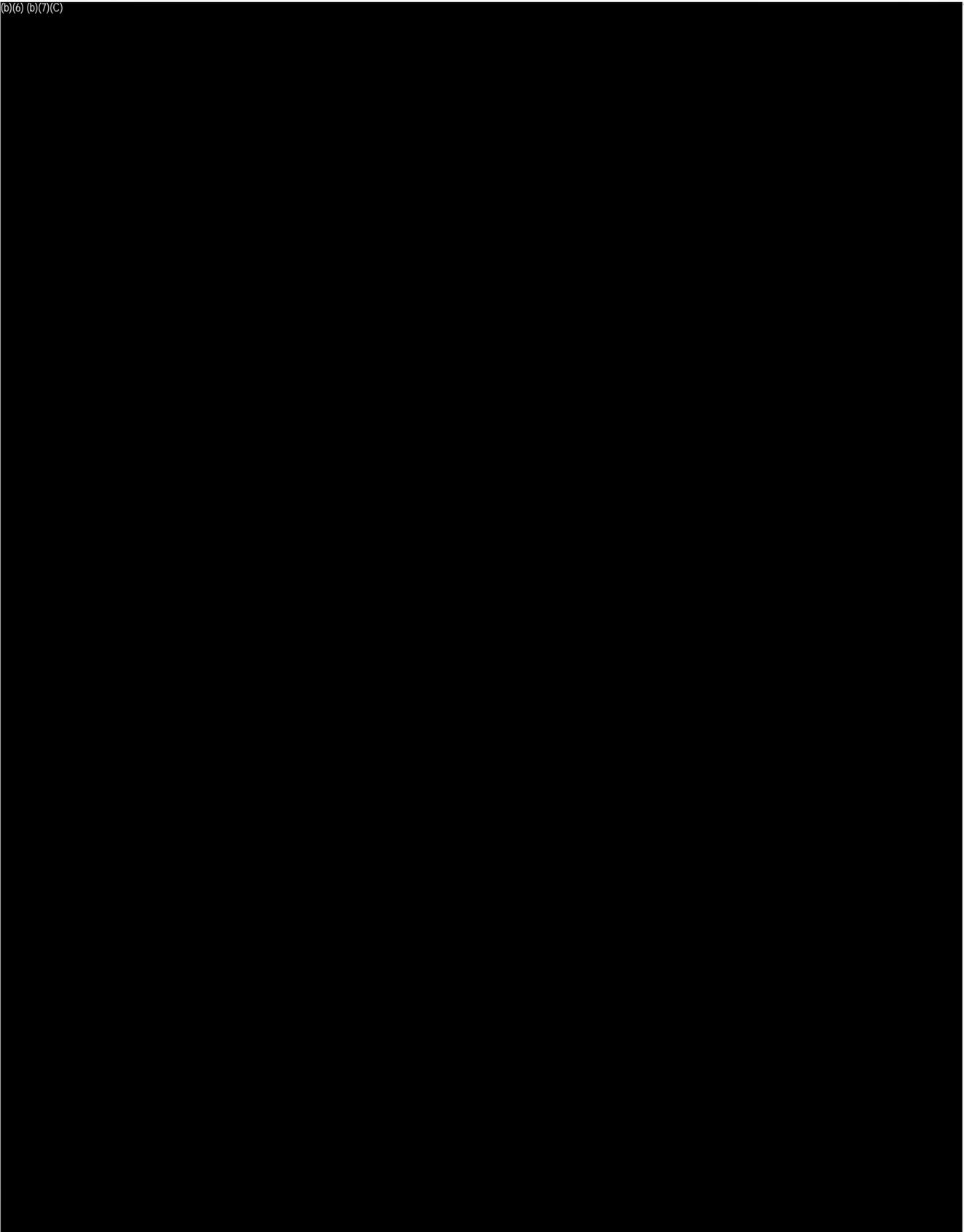
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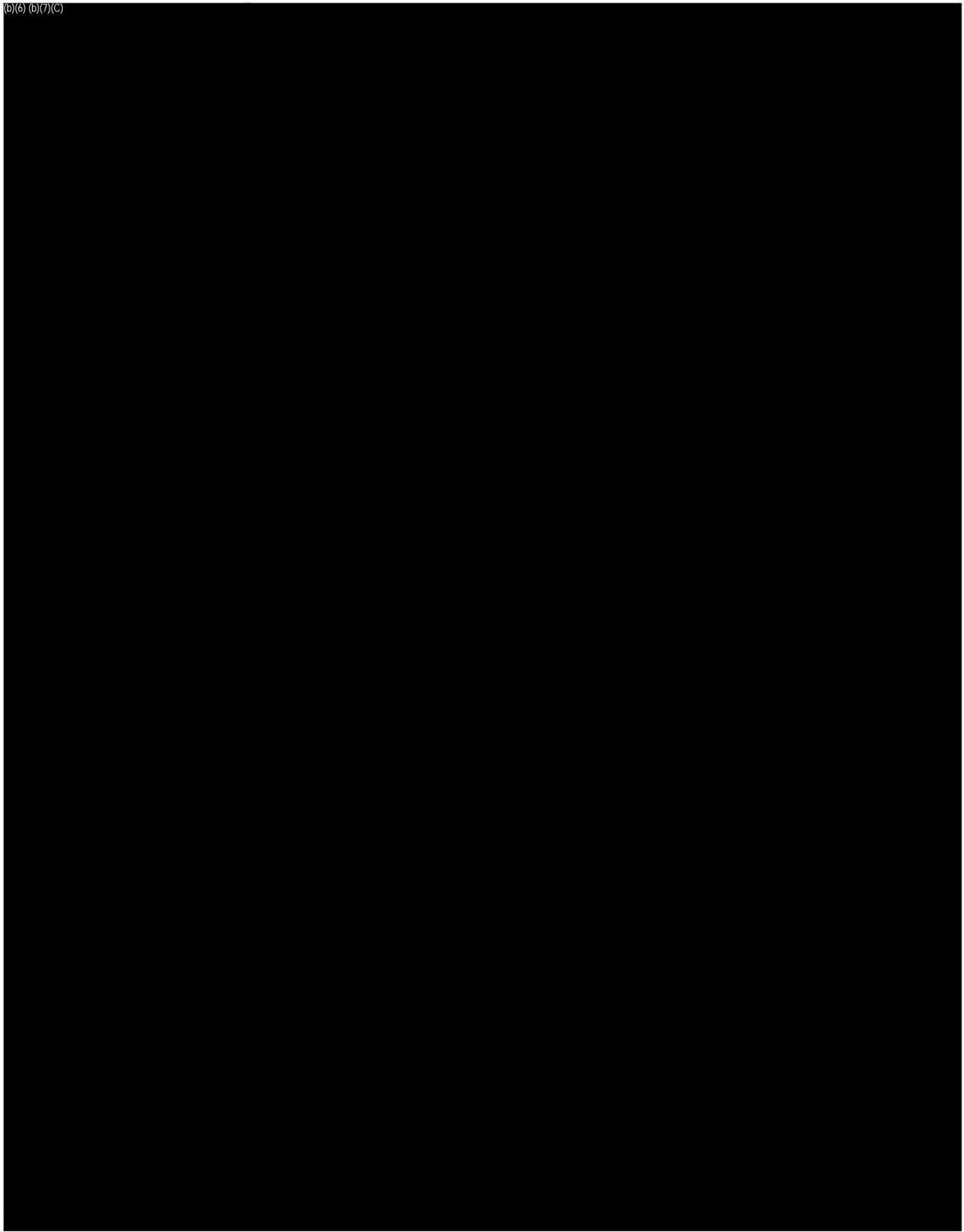
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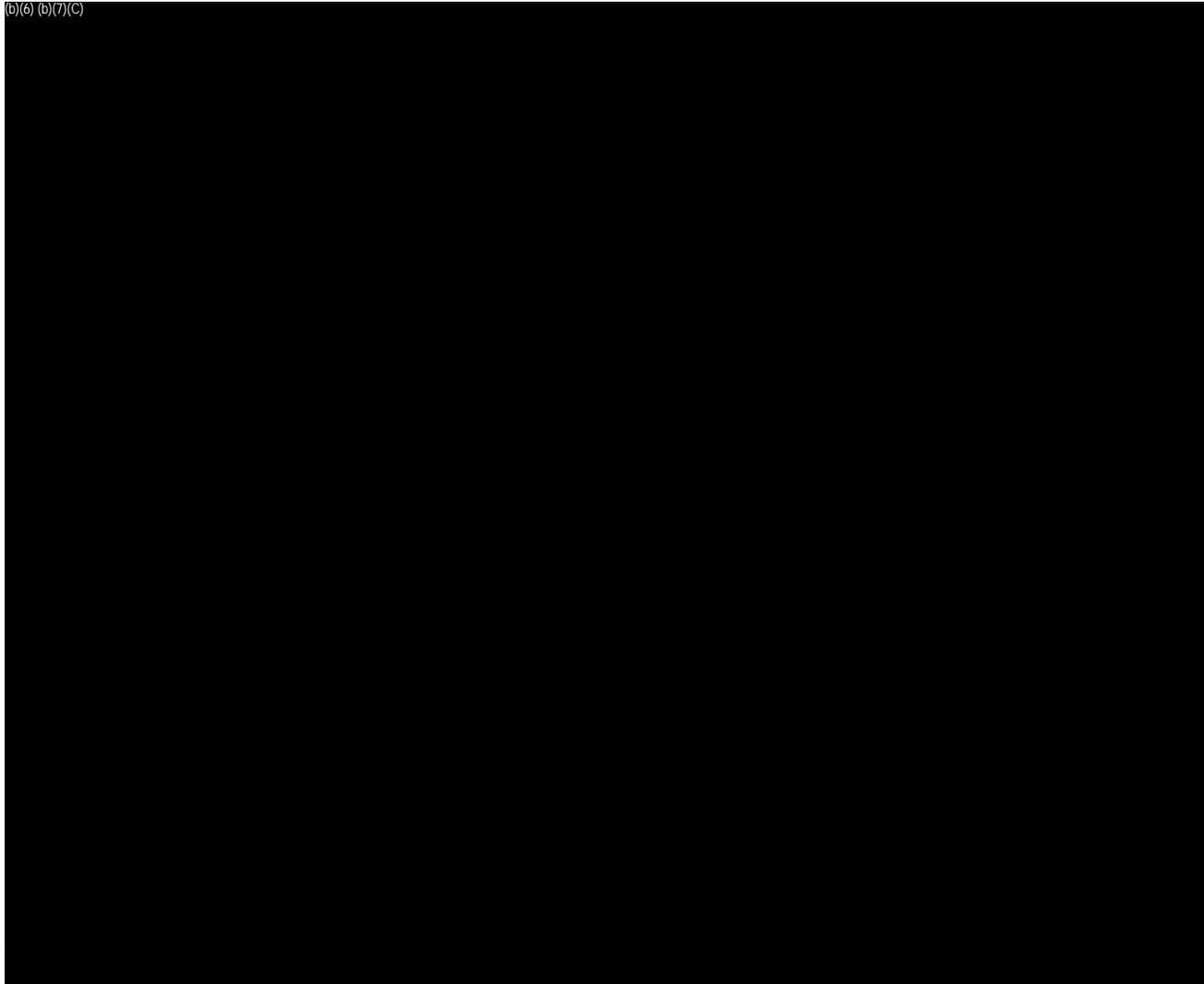
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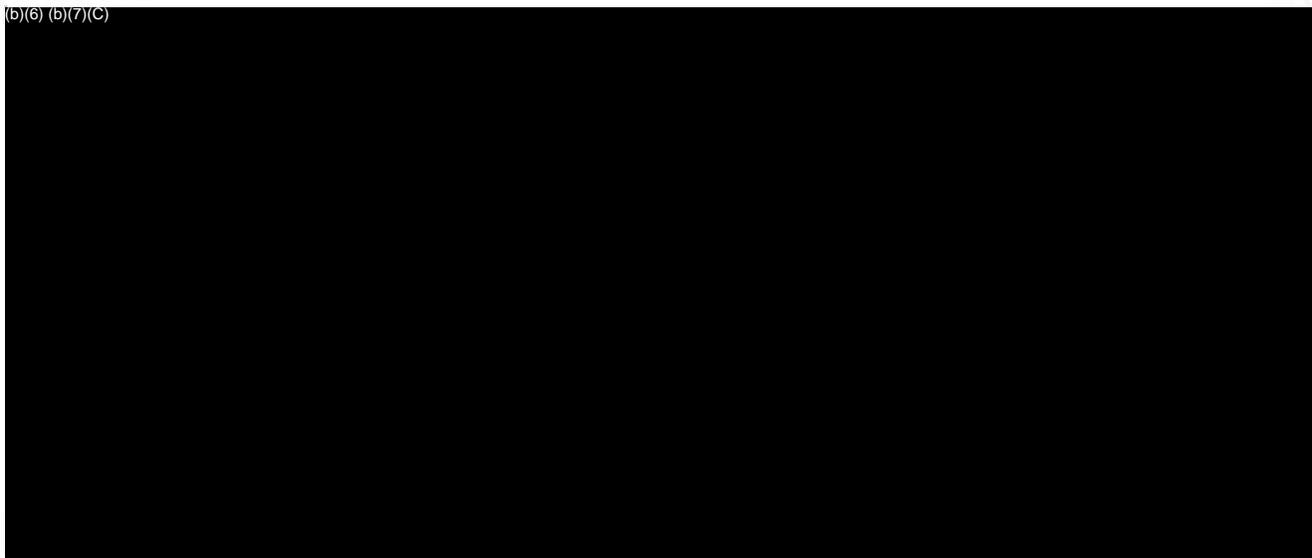


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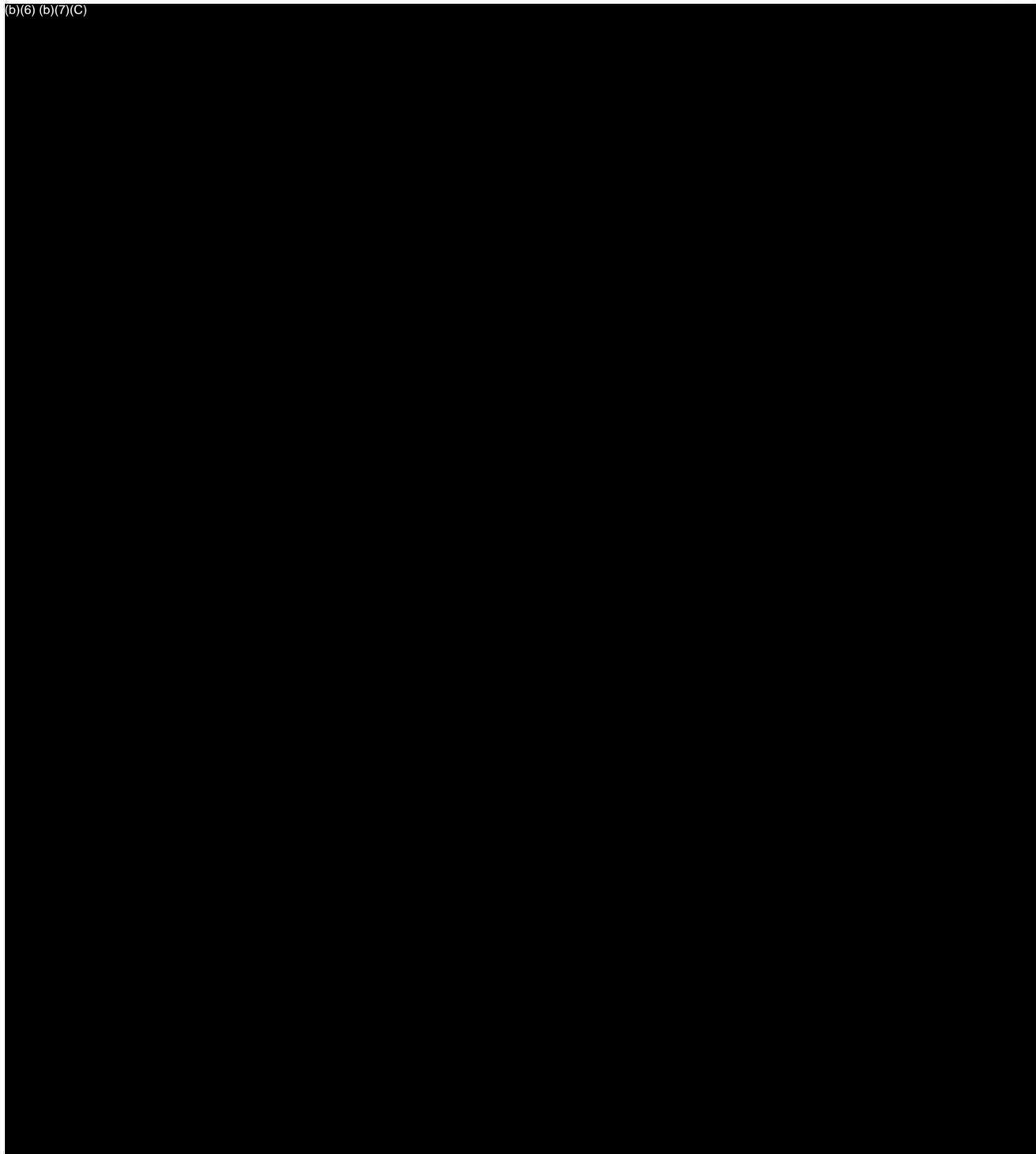


Facts

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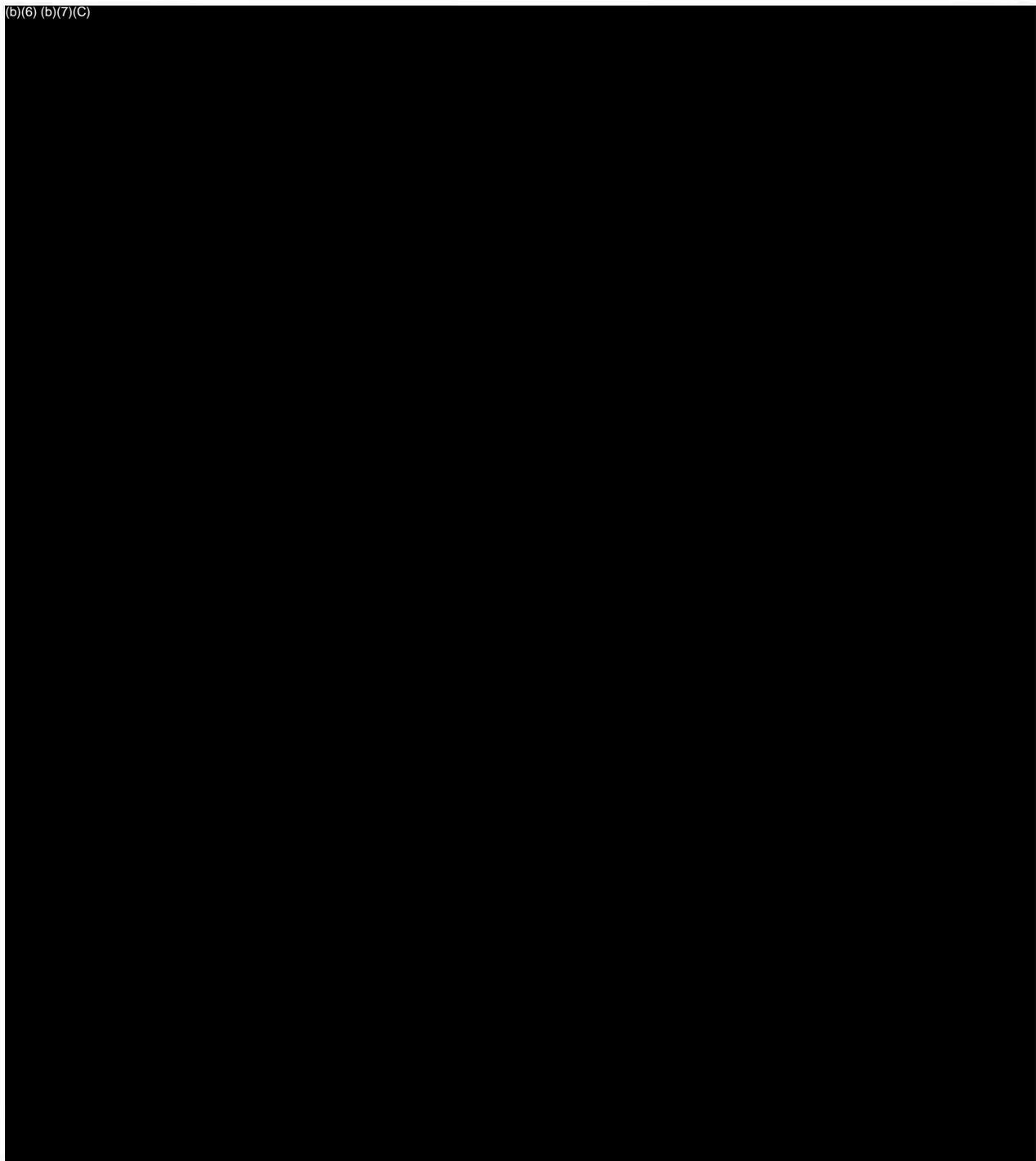
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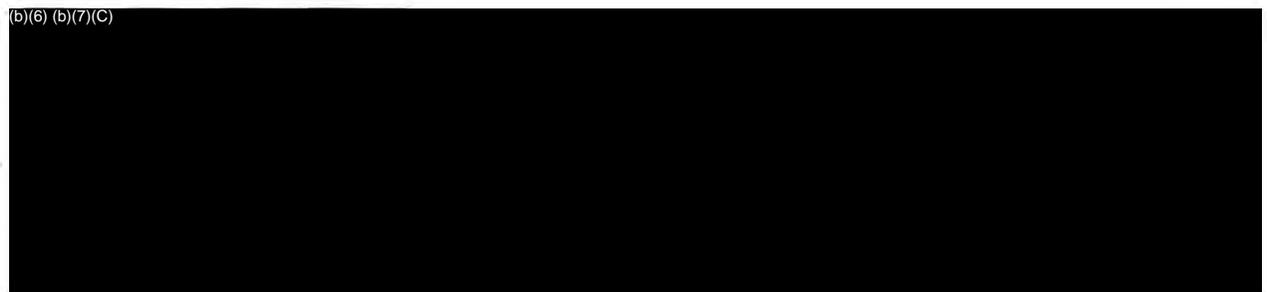
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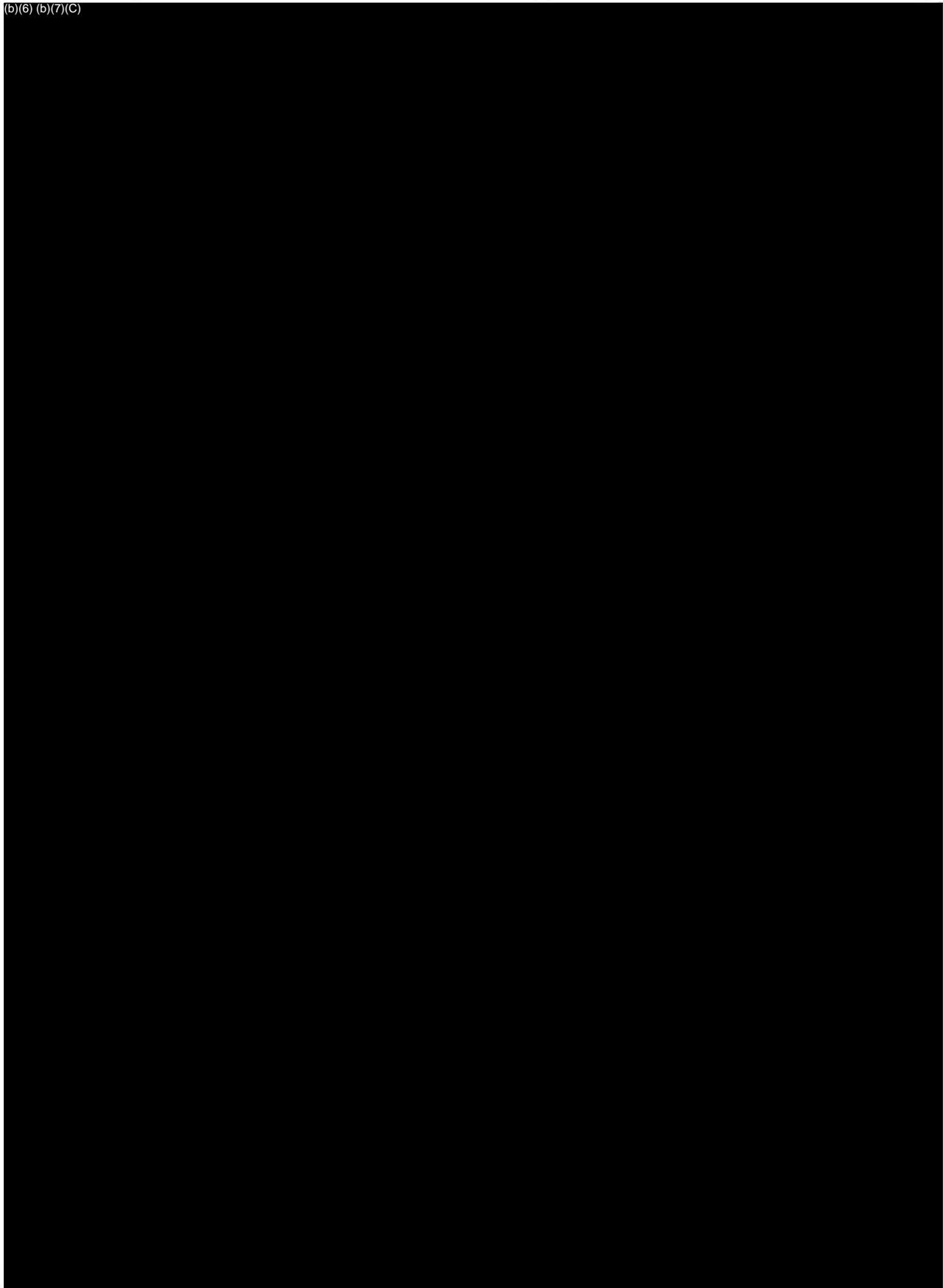
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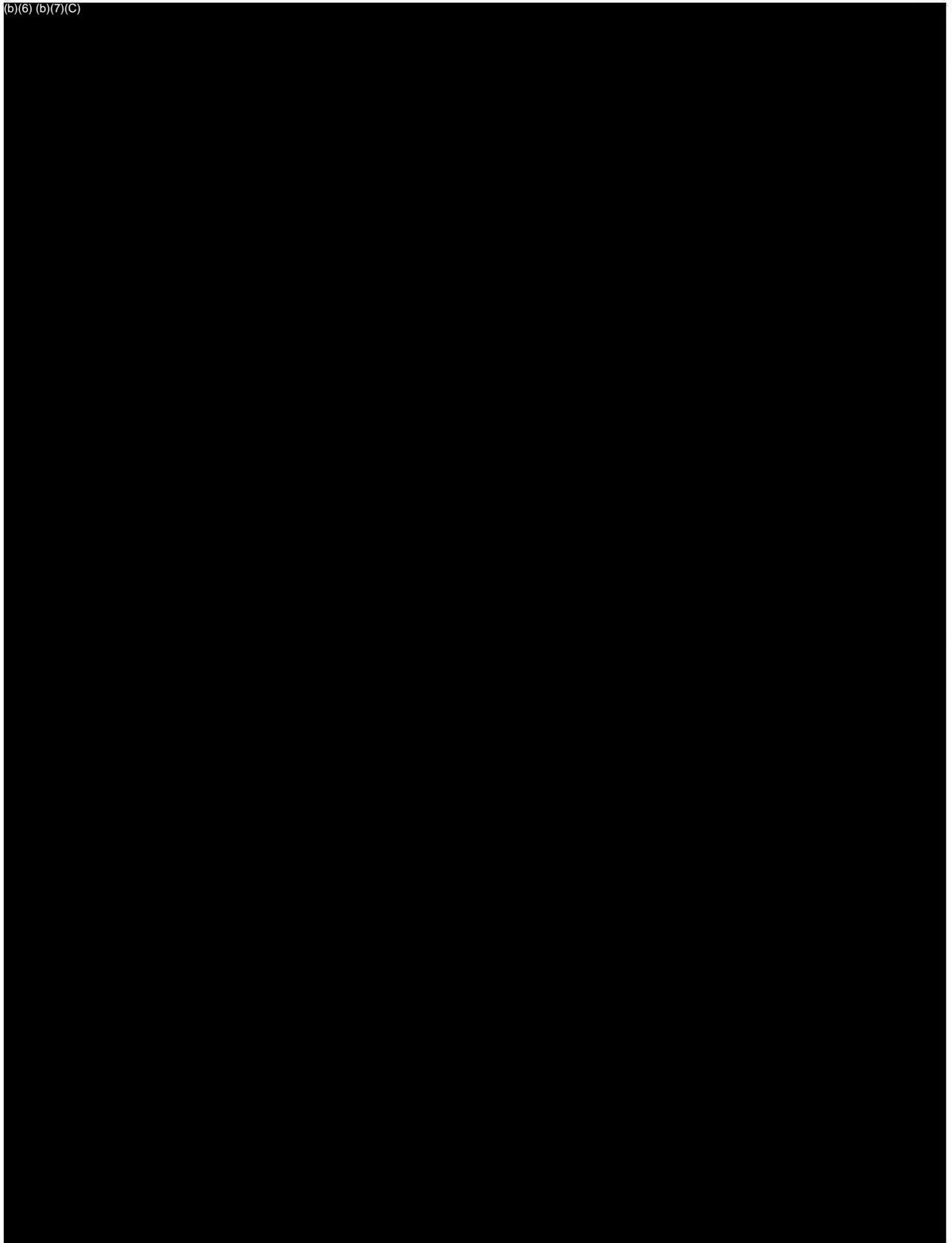
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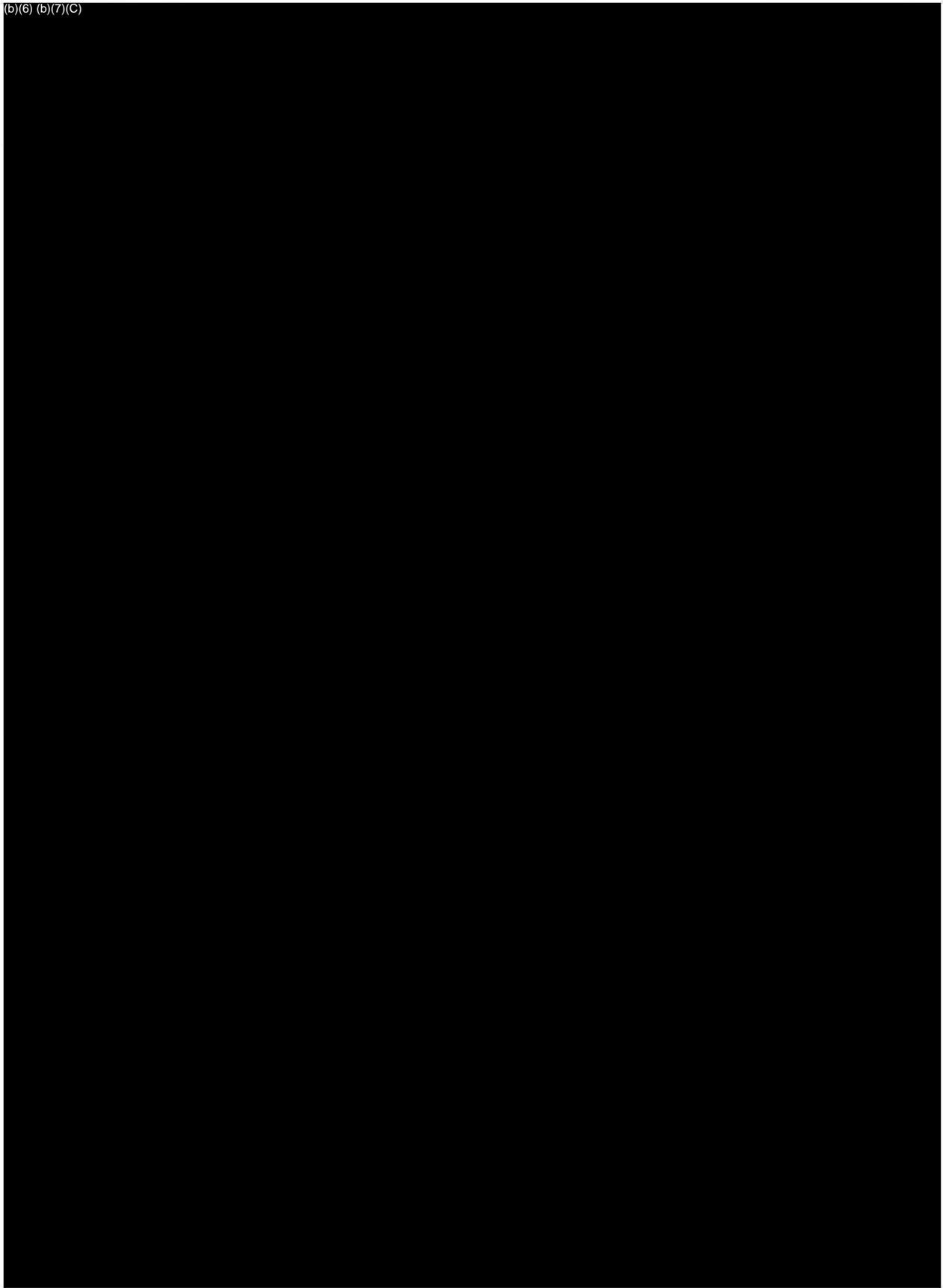
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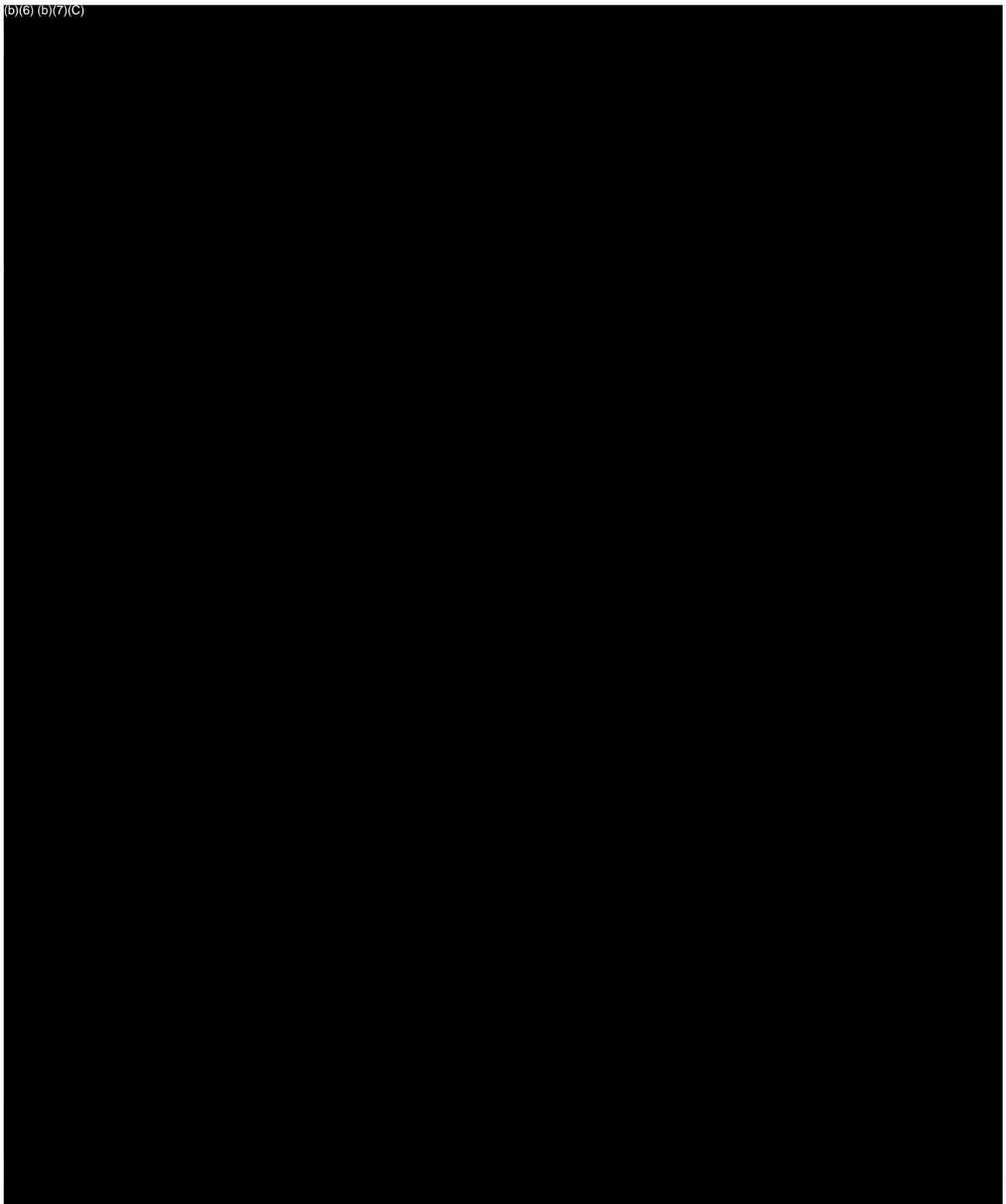
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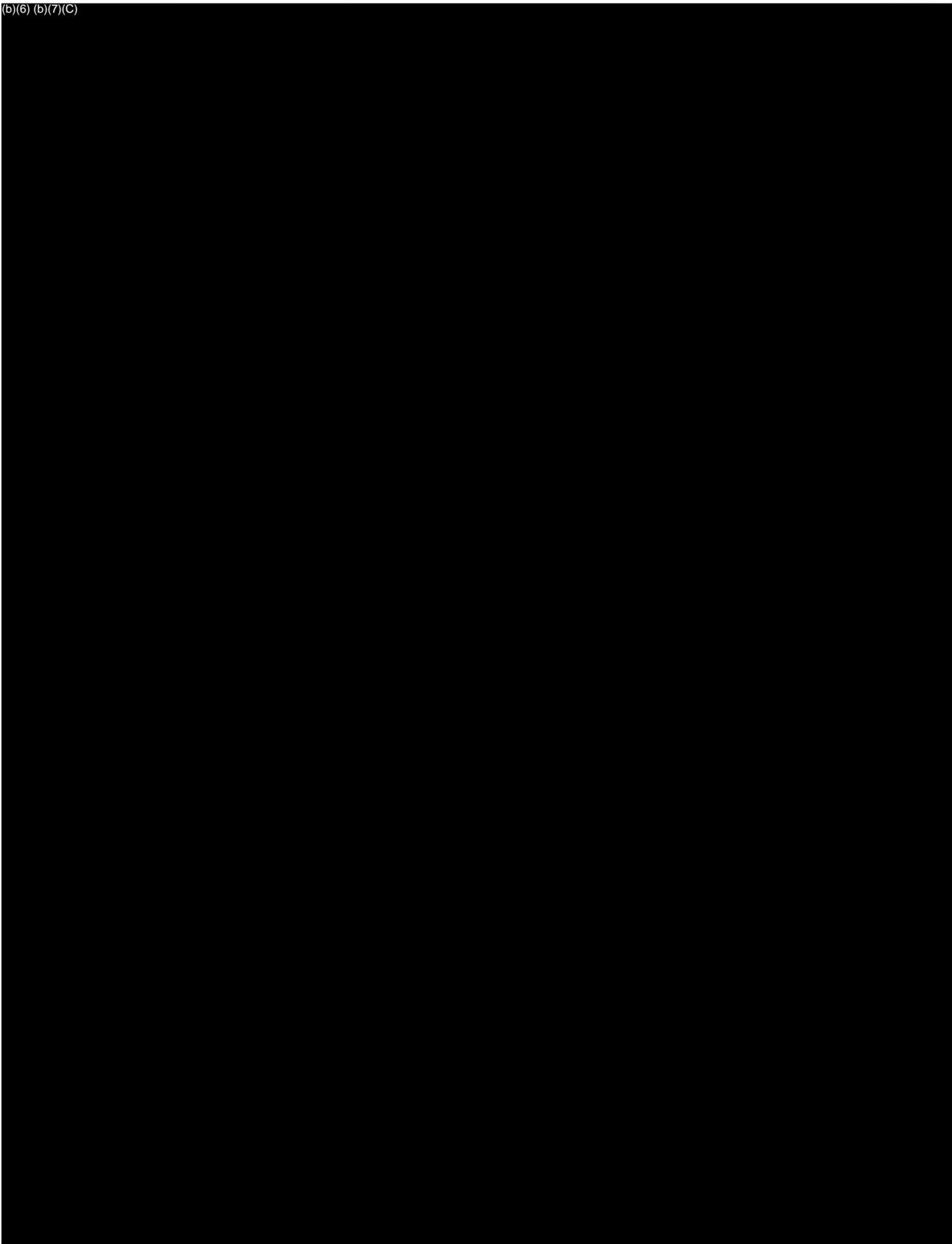
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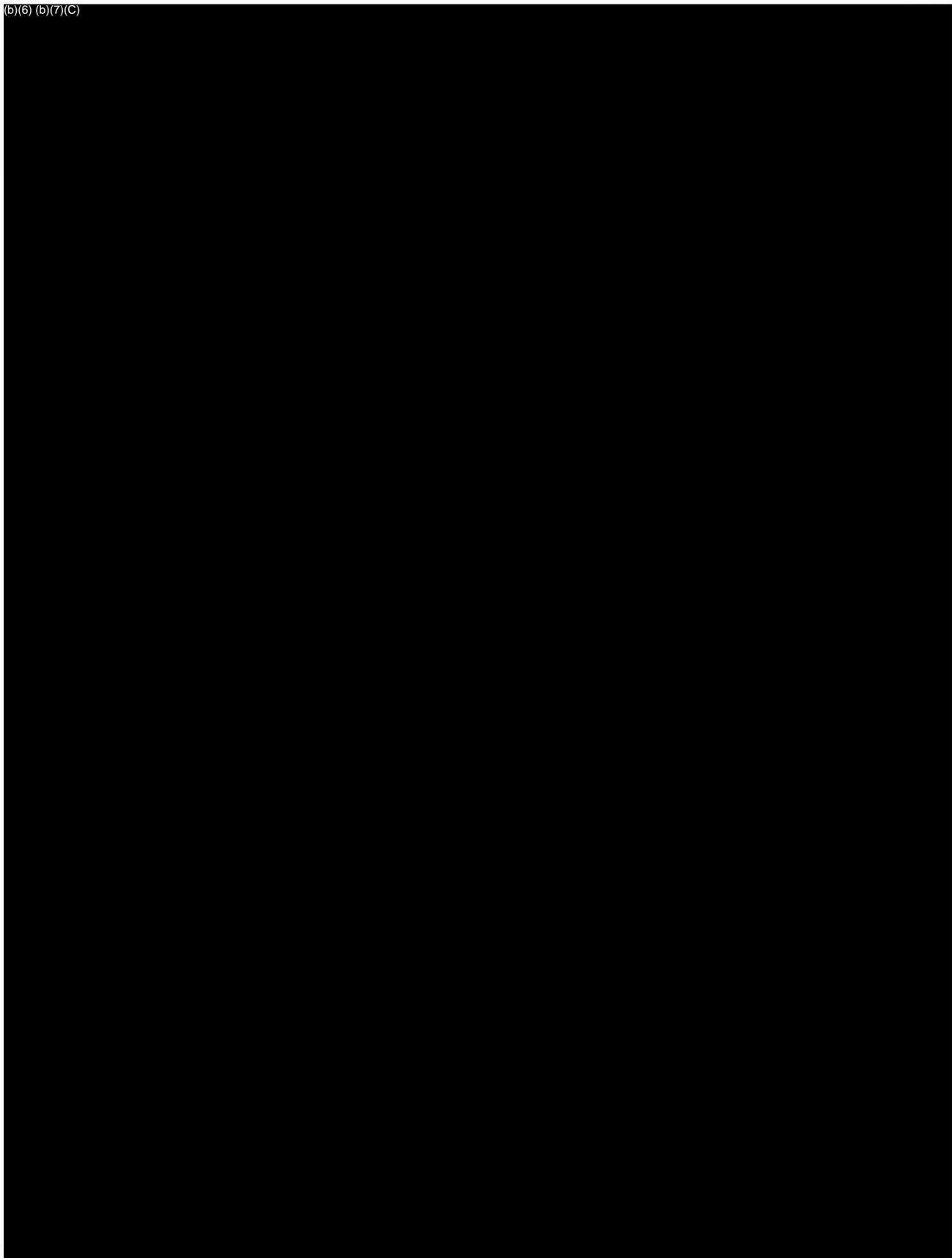
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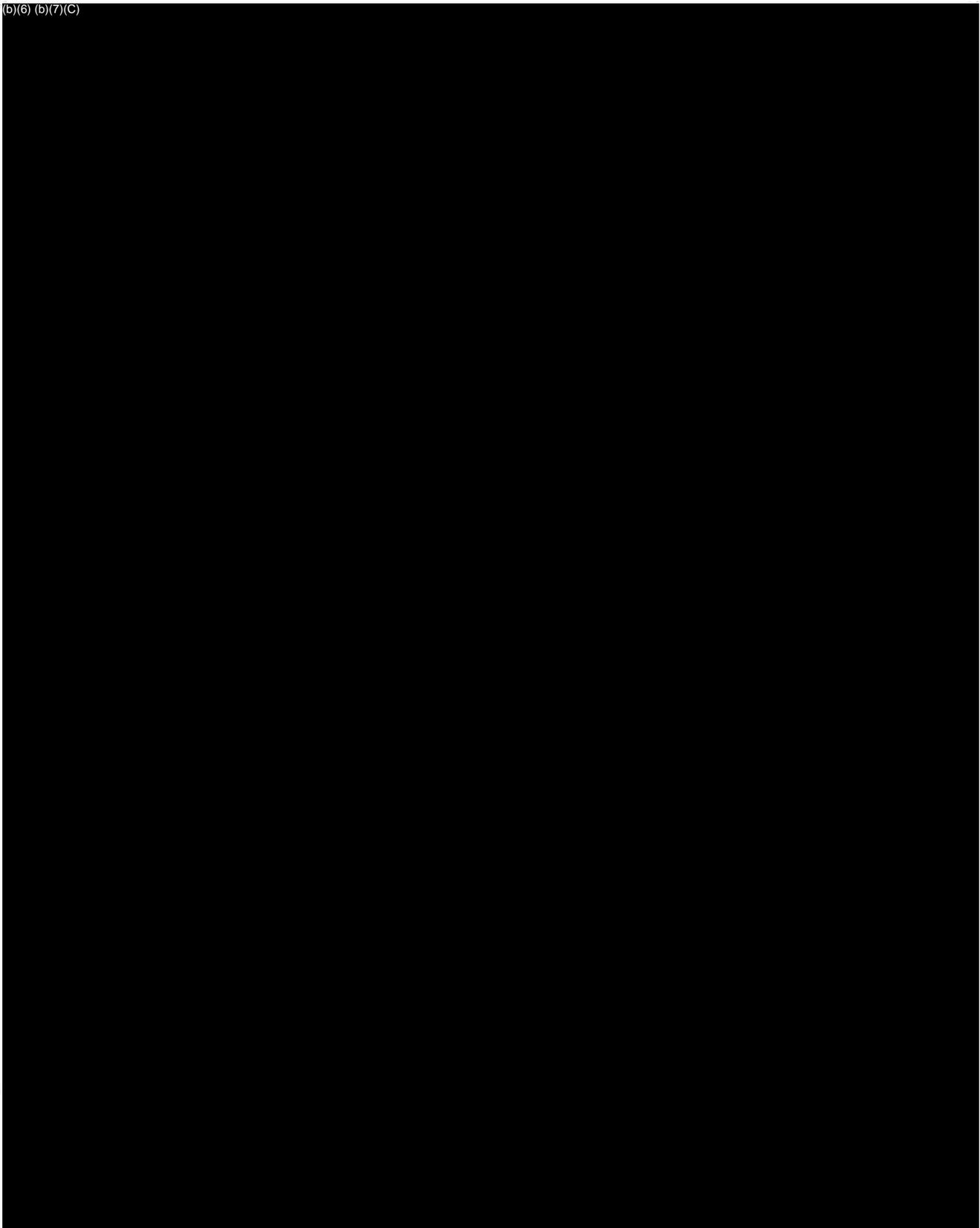
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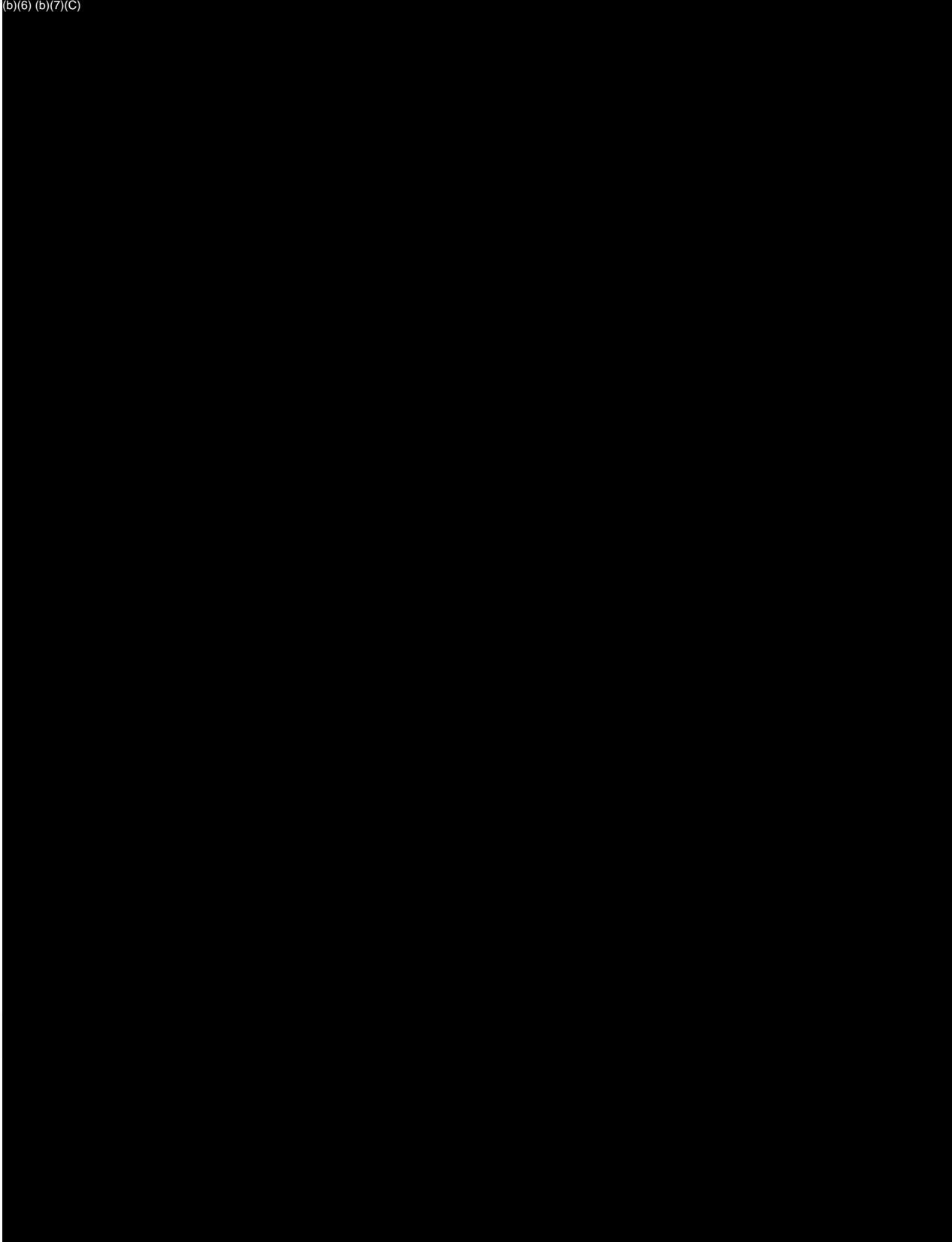
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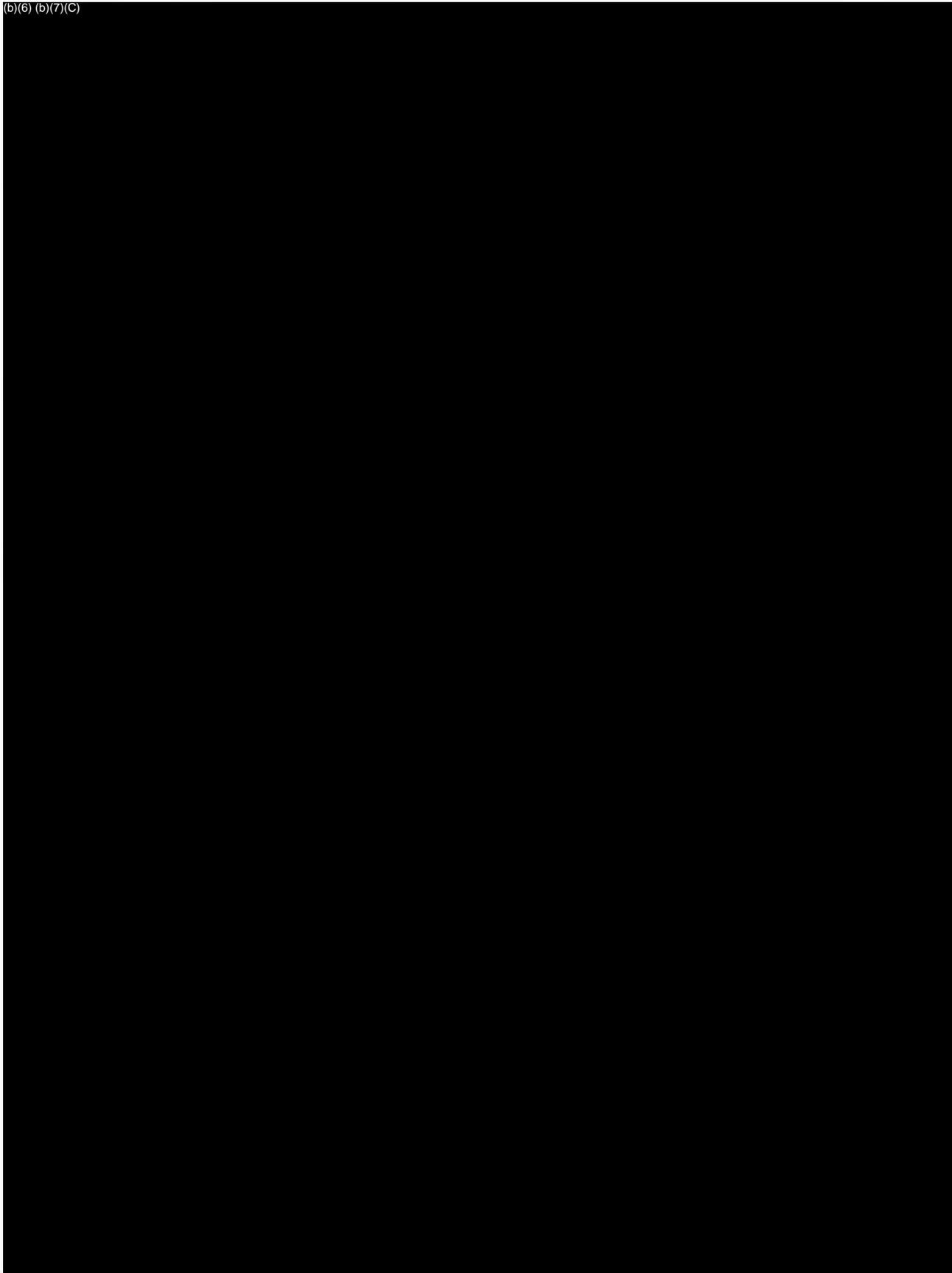
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(b)(6) (b)(7)(C)



B. Did Mr. Mester improperly arrange air travel on non-contract city-pair carriers?

Standards

Joint Travel Regulations (JTR), Volume 2 (Civilian Personnel)

Section C1058 states that Federal employees have an obligation to exercise prudence in travel; i.e., employees shall exercise the same care and regard for incurring Government expenses as a prudent person traveling at personal expense. In that regard, the Section states that excess costs, circuitous routes, delays or luxury accommodations that are unnecessary or unjustified are the employee's financial responsibility.

Section C2000 states that except as noted, use of city-pair airfares, offered by a contract air carrier between certain cities, is to the Government's advantage. These airfares should be used for official air travel between those cities. If a city-pair airfare is not available, the policy-constructed airfare, including a lower unrestricted airfare offered by a non-contract carrier limited to a Government or military traveler on official business, should be used. However, the authorizing official retains the authority to authorize a lesser airfare (e.g., a restricted airfare) and the traveler retains the ability to seek a lesser airfare.

JTR, Appendix P, "City-Pair Program (CPP)"

Paragraph A6, "Exception to the Use of Contract Carriers," states, in part, that one or more of certain conditions, which must be certified on the travel order/authorization, must apply if a non-contract carrier or a contract carrier other than the primary contractor is used for travel within a contract route. Among the conditions were:

- Space on scheduled contract flight not available in time to accomplish the travel purpose, or would require the traveler to incur unnecessary overnight lodging costs that would increase the total trip cost;
- The contract carrier flight schedule is inconsistent with explicit policies of individual federal departments and agencies to schedule travel during normal working hours; and
- A non-contract (DoD approved) U.S. certificated carrier offers a lower airfare available to the general public, the use of which results in a lower total trip cost to the Government, to include the combined costs of transportation, lodging, meals, and related expenses. [exception does not apply if contract carrier offers comparable fare and/or if non-contract carrier fare is only available to military/Government official travel].

Paragraph A7, "Requirements that must be met to use a non-contract fare," states, in part, before purchasing a non-contract fare, one of the exceptions above must be met and the exception annotated as approved on travel documents. NOTE: Carrier preference is not a valid reason for using a non-contract fare.

Facts

The complaint alleged that even though seats were available on the contracted city-pair carrier's flights, Mr. Mester traveled exclusively on Southwest Airlines, resulting in additional costs to the Government.¹⁸

Multiple witnesses, including Mr. Mester's travel coordinator, testified that Mr. Mester generally traveled on Southwest Airlines between BWI and Indianapolis because it gave him greater flexibility and non-stop flights.

We obtained Mr. Mester's travel authorizations, travel vouchers, and associated documents, which indicated that between January 20, 2009 and August 6, 2010, Mr. Mester traveled round trip on official travel orders from BWI to Indianapolis 35 times, and once from BWI to Tampa, Florida. The travel documents showed the purpose of his travel was for "site visits," seats were available on the city-pair airfare, and most of the trips ranged between 4 to 5 days in duration. In all but one leg of the 72 legs flown, he traveled exclusively on Southwest Airlines instead of the city-pair contract carrier.¹⁹

The Defense Travel Service pre-audit justification on each of Mr. Mester's travel authorizations contained the code "(C1) - Does not meet mission requirements," as the reason for not using the city-pair contract carrier. In almost every case, the field for entering the justification for why the city-pair contract carrier did not meet Mr. Mester's mission requirements was blank. In a few instances, however, the field noted that Southwest Airlines did not charge for checked baggage.²⁰

Mr. Mester testified that BWI was the closest airport to his residence in Maryland and that Southwest had the most number of direct flights from BWI to Indianapolis, and traveling on Southwest was very convenient for him. He explained that rather than fly on the city-pair contract carrier, which involved layovers in Philadelphia or New York City, he opted to fly Southwest even though the cost could be \$50 to \$70 more per trip. He told us he thought it was permissible to pick a different flight if the city-pair contract carrier did not meet mission requirements. In his mind, "mission requirement is that I have a lot of work to do, and I don't have a lot of time to sit around in an airport." He explained that it was more productive if, for

¹⁸ Dallas-based Southwest Airlines completed its acquisition of AirTran Airways on May 2, 2011.

¹⁹ The General Services Administration (GSA) website stated that the contracted city-pair carrier for traveling roundtrip from BWI to Indianapolis was Delta for fiscal year (FY) 2009, U.S. Airways for FY 2010, AirTran Airways for FY 2011, which was non-stop, and Southwest Airlines for FY 2012.

²⁰ The GSA website stated Southwest Airlines waives fees for the first and second checked bags and that effective July 9, 2009, contracted city-pair carriers offered government and military travelers an online discount of \$20.00 for the first checked bag. Travelers who participate in frequent flyer programs may elect to use their privileges to waive baggage fees.

example, he worked the entire day on a Monday, departed BWI between 5:00 and 6:00 p.m., arrived in Indianapolis by 7:30 p.m., and was at his desk in Indianapolis by 6:15 a.m. on Tuesday, the next morning.

Mr. Mester's travel authorizations, travel vouchers, and associated documents indicated that on seven instances in 2009 and eight instances in 2010, he departed BWI for Indianapolis at 4:15 p.m. or later on a Monday or Tuesday. There were also three instances when he departed on a Sunday. The majority of the time Mr. Mester departed BWI to fly to Indianapolis on flights between 8:00 and 8:55 a.m. on Mondays, Tuesdays, and Wednesdays. We present the details of our review in the Appendix to this report.

The travel documentation also indicated that Mr. Mester's return flights from Indianapolis to BWI usually occurred after 4:35 p.m. on Friday. The same code, "(C1) - Does not meet mission requirements," was cited on his travel authorizations as the reason for not using the contracted city-pair carrier.

Based on the travel documentation available for Mr. Mester's TDY trips in 2009 and 2010, we calculated that his use of Southwest Airlines, a non-contract carrier, cost the Government approximately \$3,755 in additional costs.²¹

Discussion

We conclude Mr. Mester improperly arranged air travel on non-contract city-pair carriers. We found that between January 2009 and August 2010, Mr. Mester traveled round trip on official travel orders from BWI to Indianapolis 35 times, and once from BWI to Tampa, Florida. We found that on all but one leg of the 72 legs flown, Mr. Mester did not fly on the Government's city-pair contract carrier, although his travel documents indicated seats were available on the contract carrier.

We also found Mr. Mester justified this practice by asserting that using the non-contract carrier was more convenient, that he did not have time to sit around in an airport, and that the non-contract carrier's schedule afforded him the opportunity to depart for Indianapolis after working a full day. However, we found that a majority of the time, Mr. Mester did not fly to Indianapolis after working a full day. For 21 of 36 trips reviewed, Mr. Mester flew to Indianapolis between 8:00 and 8:55 a.m. on a Monday, Tuesday, or Wednesday. He also returned to BWI on Friday evenings on a non-contract carrier.

We further found Mr. Mester indicated on all his travel authorizations, "C1 - Does not meet mission requirements," and that he consistently failed to explain on the authorization why the contract carrier did not meet mission requirements. He occasionally indicated the non-

²¹ To account in our calculations for the fact that the Government did not pay baggage fees when Mr. Mester flew on Southwest Airlines, we subtracted the applicable amounts from his travel expenses: \$15.00 one-way beginning January 20, 2009, which was the baggage fee the city-pair contract carrier charged that year; and \$20.00 one-way after July 9, 2009, when contracted city-pair carrier agreements raised baggage fees but offered a \$20.00 on-line discount.

contract carrier did not charge baggage fees, but we found that explanation not relevant to the issue of flight schedules and mission requirements.

The JTR requires Government employees to exercise prudence in travel and to use contract air carriers. Conditional exceptions which may justify the use of a non-contract air carrier include non-availability of space on a scheduled contract flight with a schedule that allows accomplishing the purpose of the travel, the contract carrier's schedule is inconsistent with DoD or DFAS policy regarding working hours, or the use of a non-contract carrier results in a lower overall trip cost. The JTR further requires that the applicable exception be annotated as approved on the travel authorization.

We determined that Mr. Mester's decision to choose a non-contract carrier (71 of 72 flight legs) violated the JTR because he failed to demonstrate that any of the exception criteria applied. His verbal explanation to us, that the practice allowed him to work a full day prior to departing for Indianapolis, and that he did not have time to sit around in an airport, was insufficient as well as inconsistent with the facts as established in his travel documents. Additionally, his travel authorizations failed to annotate why the contract carrier did not meet his requirements. Further, his travel authorizations indicated seats on a contract carrier flight were available to him. Accordingly, we determined Mr. Mester granted himself an unauthorized blanket exception to the JTR requirement to fly with a contract carrier as a matter of personal convenience. Finally, we determined that Mr. Mester's decisions resulted in approximately \$3,755 in additional costs to the Government.

Response to preliminary report

In his response to our preliminary report, Mr. Mester disagreed with our conclusion and stated our report placed too much emphasis on his statement in our interview that he selected Southwest Airlines because it was convenient for him. He asserted that he chose Southwest, a non-contract carrier, because the contracted carrier's flight schedule made it difficult or impossible for him to achieve the full performance of his duties. With Southwest he could maximize work time and minimize travel time, and this was worth the extra expense of \$50 per trip. He stated the DFAS Principal Deputy Director agreed with this arrangement and approved his travel vouchers.

In effect, Mr. Mester asserted that the JTR exception, which allowed a traveler to select a non-contract carrier when space on a scheduled contract flight was not available in time to accomplish the travel purpose, applied every time he flew between BWI and Indianapolis. We disagree, and emphasize that Mr. Mester's original testimony was that by flying on Southwest he could work a full day prior to departing for Indianapolis. However, his travel documents did not support this assertion and indicated that a majority of the time he flew during duty hours on Mondays, Tuesdays, and Wednesdays, and back to BWI on Friday afternoons. We also note that none of Mr. Mester's travel documents reflected any type of review or approval by the DFAS Principal Deputy Director.

Accordingly, we stand by our determination that Mr. Mester granted himself an unauthorized exception to the JTR, and our conclusion that he improperly arranged air travel on non-contract city-pair carriers.

C. Did Mr. Mester misuse his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (March 23, 2006)

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Title 5, CFR, Part 2635, Subpart G, "Misuse of Position," states, in part, that an employee shall not use his public office for his own private gain, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Facts

In a separate complaint to our Office in July 2010, an anonymous complainant alleged that in May 2010, DFAS/OGC received a number of Indianapolis 500 (Indy 500) tickets. Rather than distribute them to DFAS/OGC employees via lottery or drawing, Mr. Mester allegedly permitted (b)(6), (b)(7)(c) to keep them. (b)(6), (b)(7)(c) reportedly gave the tickets to several of (b)(6), (b)(7) friends who were non-DoD employees.

(b)(6), (b)(7)(c) Indianapolis Site Support Office, DFAS, testified it was longstanding tradition for DFAS to accept complimentary Indy 500 tickets from the Indiana National Guard for subsequent distribution to DFAS employees who worked in Indiana.²² On May 26, 2010, he received 436 free tickets for the May 30, 2010 race. The face value of each ticket was \$80.00. (b)(6), (b)(7)(c) divided the tickets proportionately among each organizational element. Based on the DFAS/OGC's staffing level, (b)(6), (b)(7)(c) gave four tickets to DFAS/OGC. He gave the tickets to (b)(6), (b)(7)(c) to distribute to deserving Government employees and told (b)(6), (b)(7) that the recipients should be told that the tickets could not be resold.

Several witnesses testified they heard that (b)(6), (b)(7)(c) received Indy 500 tickets from (b)(6), (b)(7)(c) but did not know how many or how they were distributed. (b)(6), (b)(7)(c) testified that (b)(6), (b)(7) gave Mr. Mester the four tickets. In an email to Mr. Mester, dated May 27, 2010, (b)(6), (b)(7)(c) wrote:

²² The Site Support Office provides support to the Central Site Director in the areas of financial and resource management, miscellaneous business programs, internal controls programs facilities/logistics/administration, human resource liaison and support, and force protection matters.

Jack: There are some Indy 500 tickets available. [REDACTED] got them from the military who could not use all of their allotment, there are 4 of them. You had mentioned at one time you wanted to offer them to the guy at [REDACTED].²³ They are free, and cost no one anything.

Mr. Mester replied, "Yes, if it's ethical for me. Thanks." [REDACTED] replied back to Mr. Mester and stated that the tickets were for everyone. [REDACTED] added, "He [(b)(6), (b)(7)(c)] didn't run it by ethics because he got them from the military and I haven't told anyone I have them." Mr. Mester testified that when [(b)(6), (b)(7)(c)] gave him the tickets, [REDACTED] told him they were extra tickets the military had and that "we could do whatever we wanted to with them."

Mr. Mester stated that after not thinking much about it, he stuck the tickets in his briefcase. He gave the tickets to the [REDACTED] at the hotel he frequently stayed at while TDY in Indianapolis. Mr. Mester testified:

I had a conversation at some point with [REDACTED] who said, you know, I'd like to get these tickets, but I don't have them. When that occurred, I don't know. I certainly - at some point I had it in my head that this guy at the [REDACTED] couldn't afford to go and was looking for tickets. So, I guess I mentioned that to [REDACTED] that he was hoping to have tickets.

[REDACTED] testified that Mr. Mester told him that he gave the tickets to [REDACTED] [REDACTED] subsequently spoke to [REDACTED], about the situation as a hypothetical scenario. [REDACTED] asked [REDACTED] if the scenario would violate ethics rules. In an undated written opinion, [REDACTED] opined, in part, that the Indy 500 tickets were considered Government property, the supervisor had an obligation to protect and conserve the tickets by using them only for an authorized purpose, and that by providing the tickets to someone outside of the Federal government, the supervisor violated the prohibitions on misuse of government property.

We note that as the DAEO, Mr. Mester is responsible for coordinating and managing the ethics program for DFAS.

When we asked Mr. Mester to explain his rationale for doing what he did, he admitted that he should not have given the tickets to [REDACTED]. He now understood the tickets should have been given to DFAS/OGC employees, and that he should not have convinced himself that "nobody is going to use them."

Discussion

We conclude that Mr. Mester misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity. We found that Mr. Mester received four Indy 500 tickets, with a face value of \$80.00 each, that were designated for appropriate

²³ The [(b)(6), (b)(7)(c)] was a [(b)(6), (b)(7)(c)] at the hotel where Mr. Mester stayed during his TDY trips to Indianapolis.

distribution to Government employees in his office. Mr. Mester admitted to giving the tickets, valued at \$320, to [REDACTED] at the hotel he frequented during his trips to Indianapolis.

The JER prohibits Government employees from using their public office for the private gain of individuals with whom they are affiliated in a nongovernmental capacity. We determined that the Indy 500 tickets were given to Mr. Mester, by virtue of his position as General Counsel, for distribution to the Government employees within his office. We note that Mr. Mester, as the DAEO for DFAS, should have been aware of the ethical rules prohibiting his distribution of the Indy 500 tickets to [REDACTED]. By giving them to [REDACTED] (b)(6), (b)(7)(C) Mr. Mester used his public office for the private gain of a person with whom he was affiliated in a nongovernmental capacity, in violation of the JER.

Response to preliminary report

In his response to our preliminary report, Mr. Mester stated his actions in this matter were a lapse in judgment, and that he should have given the tickets to one or more civilian employees in DFAS/OGC. However, Mr. Mester asserted that his actions did not constitute a misuse of his office because, though he gave the tickets to the [REDACTED] he was not affiliated with the [REDACTED] in a nongovernmental capacity.

We agree that Mr. Mester should have given the tickets to Government employees in DFAS/OGC and disagree with his assertion regarding his affiliation with the [REDACTED]. Mr. Mester's social affiliation with the [REDACTED] was clearly in a nongovernmental capacity.

Accordingly, we stand by our conclusion that Mr. Mester misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity.

[REDACTED]

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (March 23, 2006)

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety. Title 5, CFR, Part 3601, "Supplemental Standards of Ethical Conduct for Employees of the Department of Defense," taken from Chapter 2 of the JER, is the DoD Supplement to Office of Government Ethics (OGE) Standards of Conduct at Title 5, CFR, Part 3601.

(b)(6) (b)(7)(C) [REDACTED] :

(b)(6) (b)(7)(C) [REDACTED]

[REDACTED]

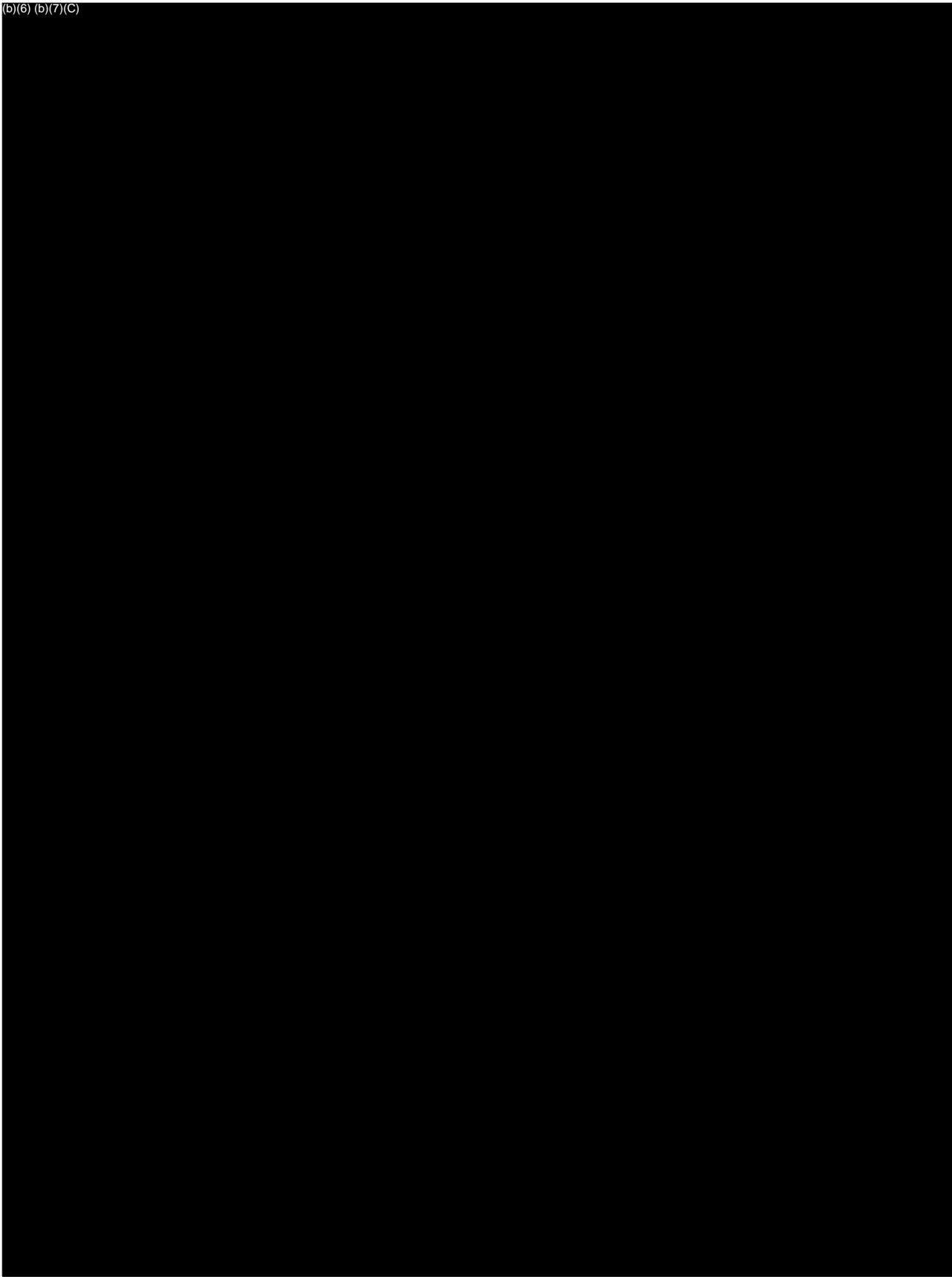
(b)(6) (b)(7)(C)

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

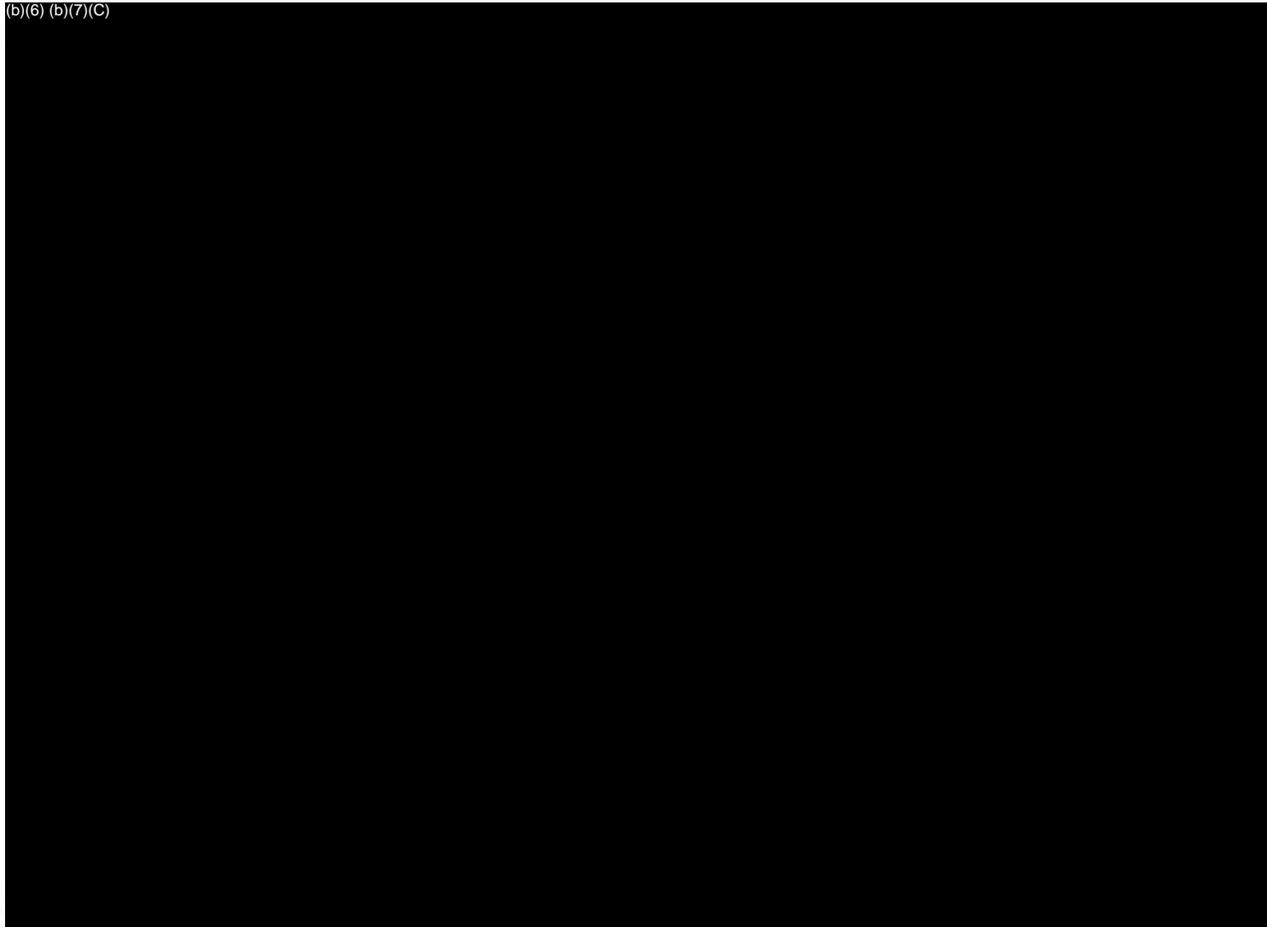
(b)(6) (b)(7)(C)

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

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



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



V. OTHER MATTERS

Mr. Mester's Travel Claims

On his trips to Indianapolis Mr. Mester often used a rental car which cost slightly more than the lowest alternative because he did not want to take a shuttle bus to an off-airport rental agency. In addition, we noted that four travel claims indicated the Government reimbursed Mr. Mester twice for the same rental car expenses. We pointed the double reimbursement out to Mr. Mester, who acknowledged the overpayment and immediately took corrective action to reimburse the Government \$718.35.

Mr. Mester's Official Worksite, Telework, TDY's to DFAS-IN, and the Impact on Pay and Travel Expenses

Mr. Mester's official worksite is at the DFAS Liaison Office in Arlington, Virginia. However, Mr. Mester spends a majority of his time in Indianapolis on TDY where most of his employees work. When not in Indianapolis, Mr. Mester regularly teleworks from his home in (b)(6) (b)(7)(C), Maryland. He infrequently commutes from his home to the DFAS liaison office in Arlington, Virginia.

Mr. Mester told us Ms. McKay allowed him to determine when it was appropriate to telework. Mr. Gustafson told us that Mr. Mester teleworked "four or five times a year" and if it was more than that, he did not know about it. Mr. Gustafson did not know whether Mr. Mester had an approved telework agreement, and stated that Mr. Mester would notify him by email when he planned to telework.

Mr. Mester spent approximately half his time in Indianapolis in 2009 and 2010, and more than half his time there in the first few months of 2011. We reviewed Mr. Mester's calendars, which indicated that between January 2009 and May 2011, Mr. Mester traveled to Indianapolis approximately 56 times and incurred official travel costs (airfare, lodging, per diem, rental car, parking, etc.) of approximately \$83,000.00.²⁴ His travel to Indianapolis increased after Mr. Stinger retired. On many occasions, DFAS paid for Mr. Mester to return from Indianapolis to Maryland on a Friday, only to depart again for Indianapolis early the next week.

Mr. Mester's calendars indicated he teleworked from [REDACTED], Maryland, approximately 1 to 2 weeks per month in 2009 and 2010. Mr. Mester teleworked less than 1 week per month in early 2011, a trend which correlated with his increased travel to Indianapolis during that period. Although teleworking is considered "a supervisor-approved work option," we found that Mr. Mester did not have an approved telework agreement in place, nor did any of his time and attendance records reflect that he ever teleworked during 2009, 2010, or early 2011.

Response to preliminary report

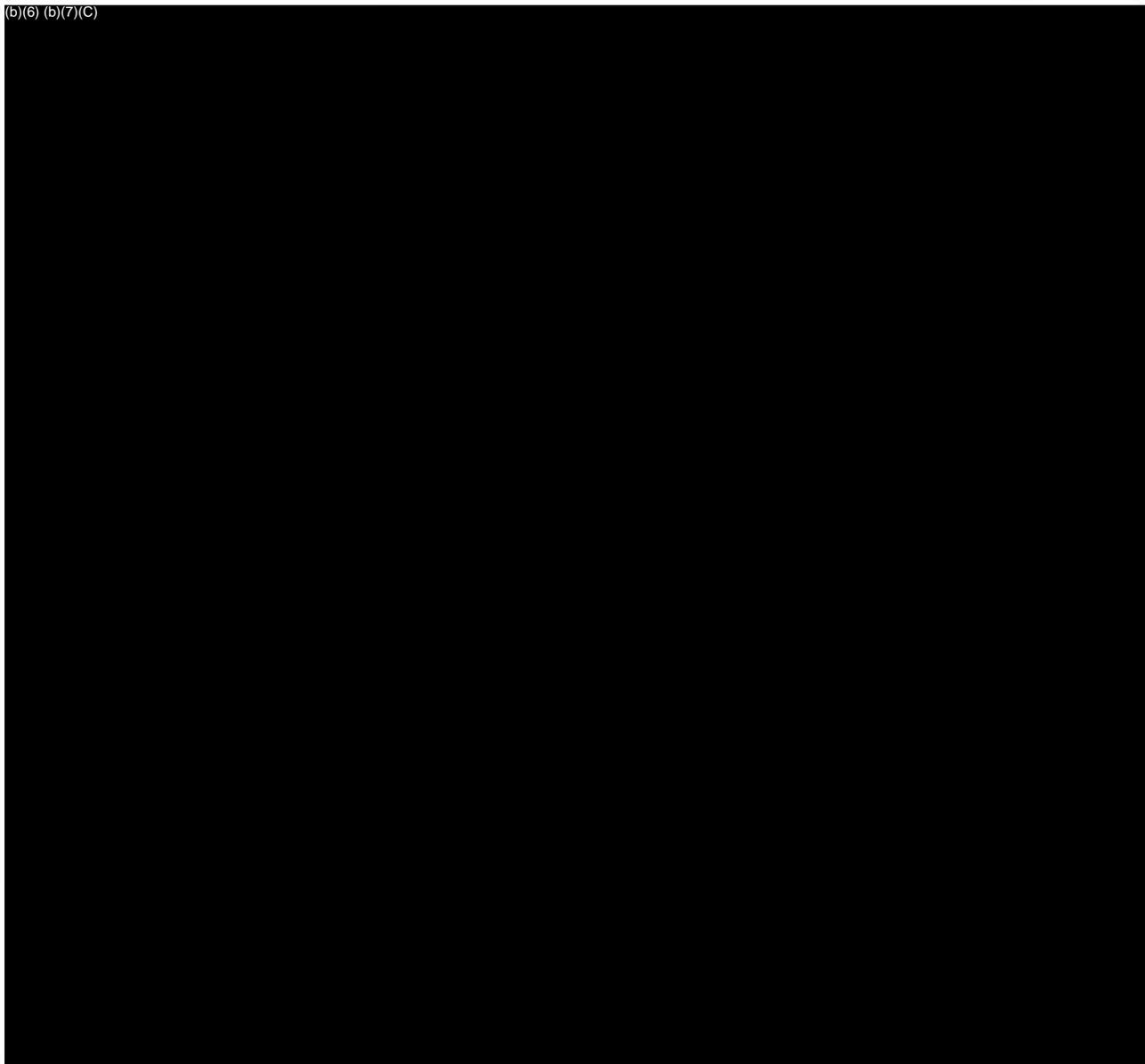
In his response to our preliminary report, Mr. Mester did not attempt to explain why his time and attendance records did not reflect that he ever teleworked in 2009, 2010, or early 2011. He stated he had an approved telework agreement since 2000, but could not locate a copy to provide our Office. Consequently, he executed a new agreement, approved by the then-DFAS Principal Deputy Director on February 10, 2011.

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

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

²⁴ We used the following formulas: For 2009, Mr. Mester averaged two TDY trips per month from BWI to Indianapolis and return at a cost of approximately \$1400 per trip: $\$1400 \text{ (per trip)} \times 2 \text{ (trips per month)} \times 12 \text{ (months)} = \$33,600$. For 2010, Mr. Mester averaged two TDY trips per month from BWI to Indianapolis and return at a cost of approximately \$1500 per trip: $\$1500 \text{ (per trip)} \times 2 \text{ (trips per month)} \times 12 \text{ (months)} = \$36,000$. For January 2011 thru May 2011, Mr. Mester averaged three TDY trips per month from BWI to Indianapolis and return at a cost of approximately \$1500 per trip: $\$1500 \text{ (per trip)} \times 3 \text{ (trips per month)} \times 3 \text{ (months)} = \$13,500$.

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



VI. CONCLUSIONS

- A. Mr. Mester did not 
- B. Mr. Mester improperly arranged air travel on non-contract city-pair carriers.
- C. Mr. Mester misused his public office for the private gain of someone with whom he was affiliated in a nongovernmental capacity.
- D. Mr. Mester did not 

VII. RECOMMENDATIONS

A. The General Counsel, DoD, consider appropriate action with regard to Mr. Mester, including action to recoup the overpayment of \$3,755 in travel pay that Mr. Mester received between January 2009 and August 2010.

B. The Director, DFAS, consider appropriate action with regard to the issues described in Section V, Other Matters.