

Appendix 1 – Examples of NEPA Outcomes

Mississippi

Yazoo Pump (2nd District)

The U.S. Army Corps of Engineers wanted to build the world's largest hydraulic pump so that a handful of large farmers could increase production on lands within Mississippi's Yazoo River floodplain. However, the project would have damaged or destroyed 200,000 acres of wetlands -- an area roughly two-thirds the size of the City of Los Angeles -- which acts as a natural buffer to storm surges and thus protects communities. The true cost of this ill-conceived proposal revealed by the NEPA review led the George W. Bush Administration to cancel the Yazoo Backwater Pumping Plant project, which would have cost taxpayers \$220 million in order to benefit a select few.⁴³

Missouri

Palestine Commons Senior Living Facility

The Department of Housing and Urban Development (HUD) proposed to construct the Palestine Commons Senior Living Facility project -- 69-units of elderly housing in a three-story structure in Kansas City, Missouri. HUD planned to build the facility on an old petroleum-tank site to contribute to Kansas City's redevelopment plan and support community revitalization. However, the NEPA process revealed potential soil and groundwater contamination on the site. Thanks to this law, the project plan was modified to include site remediation and thereby protect the facility's future residents.⁴⁴

Montana

U.S. Route 93

Thanks to the NEPA process, a highway project in Montana addressed safety concerns while minimizing damage to a unique cultural landscape. US-93, located north of Missoula in western Montana, saw an increase in traffic fatalities and injuries on a heavily traveled stretch heading toward Glacier National Park. To address concerns, the Montana Department of Transportation (MDT) proposed to widen a 56-mile segment from two lanes to five. This segment runs through the Flathead Indian Reservation, including territory in the heart of the Rocky Mountains -- a popular recreational destination -- and the Ninepipe Wetlands Area, which supports unique and fragile wildlife species. NEPA gave the Confederated Salish and Kootenai Tribal Government and citizen groups an opportunity to participate in the project design process. MDT looked for creative solutions and considered alternatives for the highway mitigated impacts on tribal culture, family farms, and the environment. The final design successfully addressed safety, environmental, and

<https://metro council.org/Transportation/Projects/Light-Rail-Projects/Central-Corridor/Publications-And-Resources/Environmental/CC-ROD/Central-Corridor-Amended-Record-of-Decision-August.aspx>

⁴³ "Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Proposed Yazoo Backwater Area Pumps Project in Issaquena County, MS." *U.S. Environmental Protection Agency*. September 19, 2008. Available at:

<https://www.gpo.gov/fdsys/pkg/FR-2008-09-19/pdf/E8-22002.pdf#page=1>

⁴⁴ "Hazardous Waste management Commission Report: July through September 2013." *Missouri Department of Natural Resources*. Available at: <https://dnr.mo.gov/env/hwp/commission/reports/2013-3rd.pdf>

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cultural concerns.⁴⁵ Slow curves in the roadway were planned along the most scenic areas to discourage speeding and follow the contour of the land. One mile of the highway was relocated around the Ninepipe Wetlands area, and wildlife crossings and fencing were added at the request of the Tribes to make the roads safer for commuters and wildlife.⁴⁶

Blindhorse Outstanding Natural Area (Blackleaf Project, Teton County)

In early 2004, the Bureau of Land Management (BLM) began reviewing proposals for new drilling permits on several existing leases located on public lands in the heart of Montana's Rocky Mountain Front, spurring public outcry. During the public participation process mandated by NEPA, 99% of the more than 49,000 comments received by the BLM urged the agency to halt the drilling proposal. Those opposing the project included 45 state hunter and angler groups from around the nation who sign a resolution calling for a moratorium on oil and gas drilling on Montana's Rocky Mountain Front; a bipartisan coalition of sportsmen, ranchers, local business owners, public officials, and conservationists working to protect the front; and Senators Baucus (D-MT) and Burns (R-MT). In response to the widespread opposition, BLM stopped the environmental review process. This decision removed the immediate threat of drilling on the Rocky Mountain Front and fostered a realistic discussion of a lease buy-out and permanent protection of the Front as wilderness. Mary Sexton, a Teton County Commissioner said, "[t]he strong public support for the Front, questionable benefit of drilling, and limited natural gas resource available along the Front all lead to this sensible step to halt the permitting process. Now the door is open for people to work together...to find resolution to this contentious issue through a lease buy-out or swap that is fair to everyone." "This decision will help protect our tradition of ranching, farming and working along the Rocky Mountain Front," said rancher Karl Rappold. "We have the opportunity to protect the Front -- both for today and for our grandchildren. It's important that we don't let this moment slip away, and we're looking to Congress for initiative, leadership and creative solutions to complete the job and protect this important part of Montana's heritage."⁴⁷

Nevada

Hoover Dam Bypass

The Federal Highway Administration (FHWA) developed the 3.5-mile Hoover Dam Bypass project, which would stretch from Clark County, Nevada, across the Colorado River to Mojave County, Arizona, to address increased congestion at the Hoover Dam crossing. However, the environmental impact statement for the project failed to explore an adequate variety of options. Project manager Dave Zanetell admitted as much, stating that the FHWA had "grossly underestimated some of the alternatives and too quickly dismissed them." To ensure full NEPA compliance, Zanetell's team more thoroughly researched an alternative proposed by environmental groups and added some important features to the project in response to public comments. In its

⁴⁵ "Hwy 93 wildlife crossings reveal quirks in road safety analysis." *The Missoulian*. January 14, 2017. Available at: http://missoulian.com/news/local/hwy-wildlife-crossings-reveal-quirks-in-road-safety-analysis/article_018a3377-a743-5ea7-b787-2e93017872d9.html

⁴⁶ "Record of Decision for U.S. highway 93 Ninepipe/Ronan Improvement Project." *U.S. Department of Transportation, Federal Highway Administration*. May 21, 2008. Available at: https://www.mdt.mt.gov/pubinvolve/docs/eis_ea/eis_ninepipe_rod.pdf

⁴⁷ "U.S. blocks drilling in Montana's Rockies." *The Associated Press*. May 5, 2004. Available at: http://www.nbcnews.com/id/6173112/ns/us_news-environment/t/us-blocks-drilling-montanas-rockies/

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final form, the bypass, which opened in October 2012, runs closer to developed areas instead of cutting through pristine corridors; it also includes accommodations such as sidewalks, pedestrian facilities, and parking to enable pedestrian access. "Oftentimes the public is a huge influence on the project. NEPA is certainly the foundation for public participation," said Zanetell. "We don't look at it as a burden; it is something we relish," he added.⁴⁸

Los Alamos National Laboratory

Los Alamos National Laboratory (LANL) in New Mexico, the site of the World War II "Manhattan Project," where scientists developed the first nuclear weapons, remains to this day an important research center for computer, energy, defense and other technologies. After had accumulating more than a half-century's worth of atomic waste, in 1998 the Department of Energy (DOE) prepared an EIS to guide how they might respond to an accident or emergency on the site. During the input process, the U.S. Forest Service and Department of Interior urged DOE to include the threat of wildfire among the risks that they needed to be prepared for. DOE agreed and by late 1999 had developed and were implementing a detailed set of plans for reducing their wildfire risk. In particular, they reduced fuels and removed wood pallets from around their weapons engineering and waste facilities, which their scenarios indicated would have the highest risk of releasing radiation if they burned.⁴⁹ Just a few months later, the western part of the country entered an unusually severe wildfire season. In total, almost 7 million acres burned that summer. One of those, the Cerro Grande Fire, started as a controlled burn at the Bandelier National Monument in New Mexico. On May 4, 2000, high winds and drought condition drove it out of control. The massive fire swept through Los Alamos, burning 50,000 acres of forest and residential land, including thirty percent of the laboratory's land. The conflagration destroyed many of the historic buildings where the atomic bomb was invented and tested, along with more than 200 homes in the town of Los Alamos. The smoke plume reached the Oklahoma panhandle, hundreds of miles away. The fire's damage was estimated at \$1 billion. Had the fire gotten to the nuclear waste, the consequences would have been far worse. That smoke plume could have easily transported plutonium particles, contaminating a large swath of the Southwest, exposing millions of people to increased risk of cancer.⁵⁰

Nellis Solar Power Plant

In response to increasing oil prices, the Air Force decided to construct a solar plant at Nellis Air Force Base. The plant would be the largest yet built in North America and would meet 30 percent of the base's energy needs. Under the NEPA process, the Air Force conducted an Environmental Assessment (EA). Because the facility would be partially built on a former landfill site, the EA prescribed measures to be taken during construction to prevent contamination, but the project did not present any problems and the Air Force issued a Finding of No Significant Impact (FONSI). The facility was completed in 2007 and exceeded expectations in its first year, generating 8 percent

⁴⁸ "Revisiting the Hoover Dam." *The Economist*. October 22, 2011. Available at: <http://www.economist.com/node/21533393>

⁴⁹ "Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions." *U.S. Department of Energy*. June 2, 2000. Available at: <https://www.energy.gov/nepa/articles/los-alamos-site-wide-eis-analyzed-wildfire-impacts-prompted-mitigation-actions>

⁵⁰ "Environmental impact statements are not a nuisance." *Houston Chronicle*. July 29, 2017. Available at: <http://www.houstonchronicle.com/opinion/outlook/article/Michaels-Environmental-impact-statements-are-not-11718120.php>

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more power than anticipated and saving the Air Force an additional \$1.2 million in energy costs. In fact, the project was so successful that the Air Force is currently considering the construction of a second solar array in the area that would include renewable energy storage.⁵¹

New Hampshire

Highway 93

The proposal to double — from a total of four lanes to a total of eight lanes — the highway capacity of Interstate 93 between the NH/MA border and Manchester, NH raised numerous issues. Concerns related to the project ranged from water pollution to the inducement of yet further traffic demand and traffic congestion, to the inducement of sprawl development.⁵² Thanks to NEPA, the final project addressed many of these concerns. Instead of adding two additional lanes in each direction, the project is proceeding incrementally, adding one lane in each direction to accommodate traffic demand and to reduce water pollution problems associated with chlorides. The project also included the creation of the I-93 Interagency Task Force on Travel Demand Management, which is working to identify and develop measures to reduce traffic, thereby maximizing the capacity of the project to achieve a more economically and environmentally sustainable result.⁵³

Umbagog National Wildlife Refuge Final Comprehensive Conservation Plan

Over the last decade, the economy and land ownership patterns of the communities surrounding New Hampshire and Maine's Umbagog National Wildlife Refuge have changed and public access pressures have increased. For this and other reasons, the U.S. Fish and Wildlife Service (FWS) felt it was necessary to develop a master plan for the refuge, which would provide a 15-year strategic guide for conserving land, helping FWS determine how to expand the refuge and where to locate a new refuge headquarters and visitor's center. During the NEPA process for the plan, the community expressed interest in new public uses of the refuge, including dog-sledding, horseback riding, bicycling, and increased boat access, all of which FWS incorporated into the plan. FWS also expanded hunting opportunities on the refuge in response to the public's request to hunt turkeys there. The final plan balances conservation and public use, while also identifying areas for expansion. In 2012, as the refuge moves towards its acreage goal with conservation purchases and easements, refuge manager Paul Casey said, "This project is an excellent example of what can be accomplished through partnerships. By working with the forest industry, private conservation organizations, and the state, we have been able to craft a broad scale conservation effort that meets each of the partners' needs."⁵⁴

⁵¹ "Nellis Air Force Base solar array provides model for renewable projects." *U.S. Department of Energy*. March 24, 2010. Available at:

<https://energy.gov/articles/nellis-air-force-base-solar-array-provides-model-renewable-projects>

⁵² "Widening Of I-93 Could Change Community Identities North of Concord." *New Hampshire Public Radio*. August 12, 2014. Available at:

<http://nhpr.org/post/widening-i-93-could-change-community-identities-north-concord#stream/0>

⁵³ "Final Environmental Impact Statement: Interstate 93 Improvements Salem to Manchester." *Federal Highway Administration*. April 2004. Available at:

<http://www.rebuildingi93.com/content/overview/feis/>

⁵⁴ "Lake Umbagog National Wildlife Refuge: Final Comprehensive Conservation Plan." December 2008. Available at:

<https://www.fws.gov/northeast/planning/Umbagog/PDF/NewsletterDec08lowres.pdf>

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New Jersey

Route 52

The Route 52 causeway between Ocean City and Somers Point, first built in the 1930's, faced restricted lane and speed usage as it fell into disrepair, and the lack of shoulders posed a safety hazard to motorists. New Jersey and the Federal Highway Administration sought to rebuild the route to better serve the area. Thanks to input from area residents and other federal agencies during the NEPA process, the final environmental impact statement identified an alternative that minimized the route's environmental and socioeconomic impacts. For example, the final project avoided potentially extensive dredging and damage to wetlands as well as extensive property takings and changes in land usage. New bike paths, walking trails, and boat ramps are part of the causeway and mitigation measures were taken to account for the limited dredging and wetlands loss. Construction was finished in 2012.⁵⁵

New Mexico

Solar PEIS

The Solar Programmatic Environmental Impact Statement (PEIS) was prepared by the U.S. Department of Energy (DOE) and the U.S. Department of the Interior (DOI) to assess environmental impacts associated with the development and implementation of environmentally responsible solar energy development in six western states, including New Mexico. The BLM and the DOE identified a need to respond in a more efficient and effective manner to the high-interest in utility-scale solar energy development (in particular development to be sited on public lands), and to ensure consistent application of measures to avoid, minimize, or mitigate the adverse impacts of such development.⁵⁶ The process of developing this PEIS used the NEPA process to select areas with low natural resource values, high solar potential, and needed infrastructure that was suitable for development. By guiding projects to appropriate zones, the agencies ensure that solar projects are built faster, cheaper, and better for the environment, developers, and consumers.⁵⁷

Fence Lake Mine

In 1996, the Bureau of Land Management (BLM) granted an Arizona utility company a permit to mine coal on federal land near New Mexico's Zuni Salt Lake -- a shallow, briny lake sacred to the Zuni, Hopi, Acoma, Laguna, Apache, and Ramah Navajo tribes. Zuni Salt Lake is the home of the deity Salt Mother, and the area surrounding the lake is a sanctuary zone where warring tribes have met since ancient times without conflict to collect salt from the lake in reverence of Salt Mother.

⁵⁵ "Route 52 Reconstruction Project: Final Environmental Impact Statement/Section 4(f) Evaluation." *U.S. Department of Transportation, Federal Highway Administration*. June 11, 2002. Available at: <http://www.state.nj.us/transportation/works/studies/rt52/eis/fulldoc.pdf>

⁵⁶ "Native American Consultation and Section 106 Compliance for the Solar Energy Program Described in Solar Programmatic Environmental Impact Statement." *U.S. Bureau of Land Management Instruction Memorandum No. 2012-032*. December 1, 2011. Available at: http://solareis.anl.gov/documents/docs/IM2012-032_Consultation_and_Section106.pdf

⁵⁷ "Approved Resources Management Plan Amendments/Record of Decision for Solar Energy Development in Six Southwestern States." *U.S. Bureau of Land Management*. October 2012. Available at: http://solareis.anl.gov/documents/docs/Solar_PEIS_ROD.pdf

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However, the mining permit would have allowed the utility company to pump water from underground aquifers that feed Zuni Salt Lake to use at the proposed Fence Lake Mine, thereby significantly depleting the lake's water levels. Due to the environmental and tribal impacts, environmentalists and Native American groups voiced concerns through NEPA's commenting process. In response, BLM issued a hydrological study that determined Zuni Salt Lake would not be impacted by the mine, but the Zuni leadership commissioned their own study showing that the loss of water in the lake would be significant — about four feet of the five-foot-deep lake. In the end, the utility company scrapped the Fence Lake Mine plans and decided to instead mine lower-sulfur coal from already-operating mines in Wyoming. Because of NEPA, groups were able to voice concerns that resulted in the preservation of priceless Native American cultural and religious sites and prevented disruption to the local environment and habitat loss. Additionally, the utility saved money and minimized impacts by using an existing coal mine. In a statement before a Congressional committee, Calbert Seciwa, a member of the Zuni tribe, stated that "[w]ithout NEPA, the membership of the [Zuni Salt Lake] Coalition, affected Tribal Governments, organizations and individuals, Native and Non-Native, would have been largely powerless to play any productive role in the decision-making process regarding this area of sacred land."⁵⁸

New York

Tappan Zee Bridge Replacement

The Tappan Zee Bridge Replacement project in Westchester County, New York is a good example of efficiency through NEPA. The bridge serves about 138,000 vehicles a day and represents a vital link in the regional and national transportation network. Large and complex projects can require as many as four years or more for review, but through a coordinated effort by numerous State and Federal agencies, this project team was able to set an aggressive schedule completing the Federal permitting and requisite NEPA review in 1.5 years, saving up to three years on the timeline of a multi-billion project expected to create an estimated 45,000 jobs.⁵⁹ Furthermore, as a result of the NEPA process, New York Governor Andrew Cuomo was able to successfully negotiate an agreement with the environmental groups Riverkeeper and Scenic Hudson to include extensive environmental mitigation measures in the bridge's development in exchange for promises to avoid litigation.⁶⁰

North Carolina

Highway 12's Bonner Bridge

By requiring a look at a project's effects into the "reasonably foreseeable future," NEPA helps avoid the perils of short-term thinking. One of the best examples is the replacement of the Bonner

⁵⁸ "Record of Decision: Federal Coal Leas Application for the Salt River Project." *U.S. Bureau of Land Management*. December 5, 2000. Available at:

<http://protectnepa.org/wp-content/uploads/2018/02/fance-lake-project-ROD.pdf>

⁵⁹ "Joint Record of Decision and State Environmental Quality Review Act Findings Statement: Tappan Zee Hudson River Crossing Project." *Federal Highway Administration and New York State Department of Transportation*. September 2012. Available at: <http://www.newnybridge.com/environmental-doc/>

⁶⁰ "Governor Cuomo Announces Agreement With Environmental Groups on Support for New NY Bridge." *Office of Governor Andrew M. Cuomo*. March 27, 2013. Available at: <https://www.governor.ny.gov/news/governor-cuomo-announces-agreement-environmental-groups-support-new-ny-bridge>

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Bridge and portions of Highway 12 on North Carolina's Outer Banks. The project has been contentious because the cheapest option in the short term would be to use the existing corridor, which passes through a National Wildlife Refuge. However, Highway 12 is one of the most storm-vulnerable road sections in the entire country: sections of it have washed out or covered by sand from hurricanes and other storms in 2003, 2011, 2012, 2014, 2015, and twice each in 2016 and 2017. Because of sea-level rise and the projected increase in severe storms due to climate change, a road in the existing corridor would require perpetual re-building after washouts. That, along with the additional costs of isolation and loss of access for the residents, means that when all the costs are weighed, the "expensive" choice of re-routing the corridor to the west, is actually economical in the long-term.⁶¹

South Toe River Relocation

One of the most valued aspects of our national forests are the outstanding fishing streams they provide. So, when local anglers caught wind of a proposed project re-routing a portion of North Carolina's South Toe River, they were understandably concerned. The NEPA process gave them and other locals concerned with the proposed project's potential impacts on the river's water quality and prize trout fishing a chance to ask for alternatives. In response, the Forest Service withdrew the original proposal and is currently considering options that will preserve the sportsmen's use of the river for recreational fishing.⁶²

Interstate 26

Many local leaders, officials, and citizens questioned the size and scope of a proposed Interstate 26 highway-widening project, especially the proposed 8- to 10-lane section through the heart of West Asheville, North Carolina.⁶³ It was only through NEPA's public disclosure and review process that the community learned the Federal Highway Administration (FHWA) had wildly overstated highway accident rates in order to justify the project's first phase. On top of that, they actually found that the first phase would exacerbate -- rather than alleviate -- traffic congestion. A federal district court ultimately ruled that NEPA required the FHWA to reassess the project with accurate data and take a comprehensive new look at the overall plan. NEPA ensured sensible and informed decision making rather than a piecemeal and misinformed approach to a project that will have significant and long-term impacts on Asheville and western North Carolina.

Durham-Orange Light Rail Transit Project

Fast-paced growth in Wake and Durham counties' Research Triangle region has led to traffic congestion and air quality problems in the area. This, in turn, resulted in the area's designation as a nonattainment area for ground-level ozone standards. While the Triangle Transit Authority ("TTA") increased bus service, ridesharing, and vanpooling, it knew that it also needed to increase

⁶¹ "NCDOT moves forward on OBX bridge as solution to washed out roads." *WNCT 9 Greenville*. January 17, 2017. Available at:

<https://www.wnct.com/news/ncdot-moves-forward-on-obx-bridge-as-solution-to-washed-out-roads-20180319093722151/1057960774>

⁶² "Decision Memo: South Toe River Restoration project." *USDA, U.S. Forest Service*. Available at:

http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/103587_FSPLT3_3021624.pdf

⁶³ "Is Wider Better?" *Mountain Xpress*. November 25, 1998. Available at:

<https://mountainx.com/news/community-news/1125interstate-php/>

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Amtrak accessibility for residents to fully address the area's air quality problems. To this end, TTA developed a light rail proposal to connect Raleigh, Durham, and Chapel Hill. TTA completely integrated its planning functions, public outreach, and NEPA compliance, creating a model of transparency and proactive decision-making.⁶⁴ For example, they produced common English materials explaining NEPA's scoping process. They also met with citizens in public workshops held as open houses. These steps encouraged robust discussion and greatly boosted public participation and confidence in the results of the process.⁶⁵

North Dakota

U.S. 2 from Minot to Williston

Conducting Tribal consultations early and effectively in the NEPA process has many benefits including the protection of culturally valuable sites and avoiding litigation that can occur when these sites are overlooked. In the initial design phase of U.S. Highway #2 Minot to Williston, North Dakota Department of Transportation (NDDOT), as prescribed by NEPA, discussed the project extensively with five potentially affected Tribes, which requested that NDDOT work with a chosen representative -- Sam Little Owl -- to determine the project's impacts on their cultural sites. NDDOT took Mr. Little Owl to each site and recorded his interpretations and discussions of the cultural importance of each. With Mr. Little Owl's permission, the recording was transcribed and non-sensitive information was later summarized for the NEPA document, helping shape the final project design.⁶⁶

Ohio

U.S. 24

US-24 has been a controversial highway. Many residents are not convinced that it is needed and fear that its construction will lead to significant environmental degradation. In fact, it was included as one of the worst highway projects in a 2001 report by the Sierra Club Ohio Chapter. Despite disappointment in the decision to build US-24, residents have appreciated the opportunity to give input on how it will be laid out in their community. It has been difficult for community members to accept a major highway whose need they do not recognize. However, they do recognize the importance of having a seat at the table to reduce the highway's negative impacts. Early coordination in the NEPA process between the United States Fish and Wildlife Service (USFWS) and the Ohio Department of Transportation (ODOT) helped ensure that the reconstruction of US-24 in Ohio got off on the right foot. Partnerships between these agencies led to the identification of significant resources in the proposed project area and selection of a preferred alternative route. Among the significant natural assets jeopardized were the Maumee State Forest, Maumee State

⁶⁴ "Help plan for growth along planned Durham-Orange Light Rail line Tuesday." *The Herald Sun*. February 5, 2018. Available at:

<https://www.heraldsun.com/news/local/counties/durham-county/article198486209.html>

⁶⁵ "Amended Record of Decision: Durham-Orange Light Rail Transit Project." *Federal Transit Administration*. December 14, 2016. Available at:

http://ourtransitfuture.com/wp-content/uploads/2017/04/0637A_DOLRT-NCCU-Station-Refinement-Amended-ROD_FINAL.pdf

⁶⁶ "In their own light: A Case Study in Effective Tribal Consultation." *Federal Highway Administration*. 2013. Available at:

https://www.fhwa.dot.gov/resourcecenter/teams/environment/tribal_consult.pdf

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Scenic and Recreational River, a number of city and metro parks, several historic properties, and the Oak Openings region, a unique prairie/savannah complex that occurs nowhere else in the state and supports a variety of rare plant and animal species. Working within the framework of NEPA led to creative design and coordination with the public and resource agencies to reduce harm to these special areas. In addition, ODOT rerouted the project twice to avoid impacts to bald eagles when nests were found within a half-mile of the proposed route. This degree of environmental protection would not have taken place without NEPA. Mike Ligibel of ODOT confirms this: "The reason we're doing all this special environmental planning is because of NEPA. Without a law we had to follow we might just sit down, draw a straight line, and build it." Megan Seymour, a wildlife biologist at the USFWS adds, "Because of NEPA, ODOT takes effects on streams and wetlands into account and considers them significant resources." Regarding wetland and forest areas in the Ohio US-24 project, she stated, "There is no guarantee that impacts in these places would have been avoided without NEPA."⁶⁷

U.S. 33 Nelsonville Bypass

The U.S. 33 Nelsonville Bypass was the last of four segments required to connect I-77 (Ravenswood, West Virginia) to I-70 (Columbus, Ohio). Around half of the highway's 8.5 miles would bisect Wayne National Forest -- Ohio's only National Forest -- which provides over 300 miles of trails for hiking, horseback riding, off-road vehicles, and mountain biking. The NEPA process helped mitigate the impacts of project construction in many ways. For example, the final project included tree and grass planting along the sides of the highway for erosion control and native plant restoration and fencing to prevent deer from coming onto the highway. It filled 500,000 cubic yards of newly discovered abandoned underground mines near the highway to prevent car slippage. And, to top it all off, the final plan resulted in the creation of 5.1 miles of new ATV trails to make up for the temporary loss of trails from highway construction.⁶⁸

Oregon

Mt. Hood Corridor

Mt. Hood highway roughly parallels a portion of the Oregon Trail and has rich cultural and historic significance. Stretching from the community of Rhododendron to its intersection with State Highway 35, it passes through the Spotted Owl wetlands and several endangered species habitats. This 35-mile segment came under scrutiny as Mt. Hood National Forest was becoming an increasingly popular recreational destination. As plans for expansion began, pressure to support economic development on the mountain was matched with concern by community interest groups and Native American tribal governments to protect surrounding natural and cultural resources. Oregon's Department of Transportation (ODOT) had begun widening the entire highway piece-by-piece, but in 1994 the Federal Highway Administration intervened and indicated that the NEPA review process was needed before any additional expansion could occur. Geoffrey Kaiser, then unit environmental/major projects manager for ODOT, wanted a method to consider the highway as a whole instead of studying segments individually. "We proposed an alternative to do a

⁶⁷ "Road to Ruin: US Route 24." *Taxpayers for Commonsense*. June 2004. Available at: <http://www.taxpayer.net/wp-content/uploads/ported/images/downloads/RoadToRuin.pdf>

⁶⁸ "Final Environmental Impact Statement: US Route 33 Nelsonville Bypass thru the Wayne NF." *U.S. Forest Service*. June 2005. Available at: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5445685.pdf

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combination for Tier 1 EIS and a 20-year master plan," he said. Completed in 1996, the resulting Mt. Hood Corridor Study yielded a set of guiding principles to be applied to all future modifications to the entire Mt. Hood Highway over the next 20 years. Establishing the guiding resource conservation principles very early in the planning stages became the critical step to avoid many later obstacles and delays in the development and design phases. "This was the first real project where ODOT introduced NEPA in the comprehensive planning phase," Kaiser said. "It took a lot of attitude adjustment. It was a challenge for scientists to think more conceptually, but they began to realize that by being involved early in the planning phase, it lessened the detail work later," he added. The study involved a large advisory committee representing community interest groups as well as development advocates. The group found that widening the segment alone would not alleviate congestion in the area, and thus recommended alternative solutions to mitigating the traffic. These included shuttles, real-time cameras to advise travelers of road conditions, and increased enforcement measures like parking fees to encourage off-peak visits. Kaiser explained the study's message, "Before you leap to widening, make a good effort. So far, it has been a useful master plan," he said. The plan has since been used to support subsequent additions to the highway and other neighboring projects, such as relocating a streambed and adding wildlife crossings. "Each of these projects has to prove that the expansion does not exceed the [development] capacity of the area," said Kaiser. Donna Kilber, the NEPA coordination manager at the time, attributes the successful study to the NEPA process. "If the NEPA process wasn't there, I doubt we would have taken the overall look like we did," said Kilber.⁶⁹

Skeleton Mountain Timber Sale

In 2012, the Bureau of Land Management (BLM) proposed a timber sale from Oregon's Butte Falls Resource Area. However, during NEPA's public comment process, locals expressed concerns about the sale's impacts -- mainly on old forest stands along the Rogue-Umpqua Divide Wilderness and the area's watersheds, including Evans Creek. In response, BLM agreed to modify the timber sale by, among other measures, replacing logging slated for older native forests with an equal amount from younger denser stands, decommissioning excess logging roads, and avoiding new road construction on sensitive soils to protect the watershed and minimize impacts to Coho salmon. These modifications resolved many objections and the project was implemented to widespread public acclaim.⁷⁰

Heceta Shores Stabilization Project

The Forest Service proposed to construct a 325-foot streambank stabilization structure -- mainly out of boulders -- on the bank of Sutton Creek in the Siuslaw National Forest to prevent erosion. However, comments submitted through the NEPA process revealed that hardened structures built to prevent erosion often did the opposite by preventing the beach from replenishing itself.⁷¹ Comments also revealed that such structures often interfered with the public's access to and use of the beaches and river banks on which they are constructed -- for example, by shortening the length of the beach. After listening to the public's information and concerns, the Forest Service expanded

⁶⁹ "Mount Hood Corridor, Final Environmental Impact Statement and Final Section 4(f) Evaluation." *U.S. Dept. of Transportation, Federal Highway Administration, Oregon Division*. 1998. Available at: <https://multicolib.bibliocommons.com/item/show/1596838068>

⁷⁰ "Prospectus: skeleton Mountain bid." *U.S. Bureau of Land Management*. September 15, 2011. Available at: <https://www.blm.gov/or/districts/medford/timbersales/files/FullProSkeletonMtn.pdf>

⁷¹ "Heceta Shores Decision Notice letter." *U.S. Forest Service*. September 12, 2013. Available at: https://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=38044

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its environmental review and redesigned the project. Most importantly, they replaced the hard engineered boulders originally proposed to prevent erosion with "soft" erosion protection structures like sandbags and logs, thereby maintaining the beach's ability to regrow, better protecting the stream's water quality, providing more public access to the area, and minimizing the project's visual impact.⁷²

Modoc Restoration Project

Fremont Winema National Forest's Yamsay Mountain is a culturally important feature of eastern Oregon. Not only is the snow-covered mountain majestic, but it is also central to the mythology of the Klamath people. So folks were concerned when the Forest Service's Modoc Restoration Project proposed an aggressive treatment of white fir, which would have resulted in virtual clearcuts on Yamsay Mountain. Fortunately, through the NEPA process, conservationists were able to convince the Forest Service to modify the heavy-handed treatments to culture individual legacy trees and thin the white fir on about 252 acres of the project.⁷³

Pennsylvania

PA Turnpike/ I-95 Interchange Project

The NEPA process for the PA Turnpike/I-95 Interchange Project, which will close the "gap" in I-95, minimized local and environmental impacts with local and governmental support. Issues of potential impact to historical sites, demands of the construction process, and water or other environmental features led to the development of a thorough monitoring and mitigation plan implemented in the planning and construction of the interchange. There was significant public involvement in the planning process, and testimony and comments received at the Public Hearing, written comments received on the Draft EIS during the comment period, and written comments received on the Final EIS were part of shaping the project. Public participation helped choose an alternative with the lowest environmental impact, the lowest number of business and residential displacements, and the most support from public officials and the general public.⁷⁴

Puerto Rico

El Yunque Rainforest Preserve

At under 30,000 acres, El Yunque (also known as the "Caribbean National Forest") is our country's smallest national forest, as well as the only tropical rainforest in the national forest system. For Puertoricanos, El Yunque is a cultural jewel, largely because of the unique rock engravings made by their ancestors -- the Taino people. So, the community was understandably upset when the Federal Highway Administration (FHWA) proposed to slice the preserve in half to rebuild a road

⁷² "Heceta Shores Stabilization Plan – Florence Fireworks – Counties Deal With Public Safety." *KCFM Radio*. May 29, 2013. Available at: <https://kcfmradio.com/2013/05/30/heceta-shores-stabilization-plan-florence-fireworks-counties-deal-with-public-safety/>

⁷³ "Decision Notice And Finding of No Significant Impact: Modoc Restoration Project." U.S. Forest Service. September 23, 2011. Available at: https://www.fs.usda.gov/nfs/11558/www/nepa/1864_FSPLT2_057340.pdf

⁷⁴ "PA Turnpike / I-95 Interchange Project." *Pennsylvania Department of Transportation*. Accessed January 11, 2018. Available at: <https://www.patpconstruction.com/paturnpikei95/>

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long-closed due to massive landslides. Ignoring endangered species, increased slide risks, drinking water impacts, and requests from federal and local agencies, FHWA decided not to conduct an environmental impact statement (EIS). When a court found that this violated NEPA, FHWA dropped the project rather than study and disclose all of its impacts. Today, the rainforest is intact and the drive around it to the new Forest Service recreation area on its far side takes a mere 25 minutes on existing roads.⁷⁵

Rhode Island

Route 403

In order to alleviate congestion, the Rhode Island Department of Transportation (RIDOT) proposed relocating Route 403 -- a two-lane road through residential North Kingstown -- and building a new four-lane highway. In accordance with NEPA, RIDOT considered alternatives to its original plan, involving the public early in the design process. The NEPA process resulted in modifications to the original plan suggested by local citizens that the RIDOT would not have otherwise thought of, including a reduction in acreage that lessened damage to wetlands. "The people that live [in the affected area] know more than I do," said Peter Healey, Principal Civil Engineer for RIDOT. He explained that a key benefit of public involvement was giving a voice to those who will be regular users of a project. "NEPA played a vital role in balancing [...] views," Healey said. The idea behind NEPA is to, "make a concept available to the public. [...] You can't make all parties happy, but you can certainly balance their interests...The public wants to help you make a project better." All major construction on the freeway was completed in December 2008, one year ahead of schedule; minor projects continued on the relocated route until early 2009.

Providence Community Health Center

Rhode Island's Providence Community Health Center needed additional space for service delivery and ancillary programs at its facility in South Providence, an economically depressed area of the state. The health center chose the abandoned Federated Lithographers complex for this project due to its proximity to the center's existing facilities. In considering this important brownfield redevelopment project, the NEPA process helped the Department of Health and Human Services (HHS) uncover the existence of potential residual contaminants from lithography chemicals and underground tanks left by the site's former inhabitants. As a result of this finding, HHS worked with the Environmental Protection Agency and the Rhode Island Department of Environmental Quality to ensure that the plan for the site included measures necessary to protect the health of construction workers and, eventually, the health center's staff and patients. In the end, the project was constructed in a way that not only protected its occupants from dangerous chemicals but also contributed to the development of one of the most economically distressed neighborhoods in Providence.⁷⁶

⁷⁵ US District Court for the District of Puerto Rico - 797 F. Supp. 1066 (D.P.R. 1992) February 27, 1992. Available at: <https://law.justia.com/cases/federal/district-courts/FSupp/797/1066/1447382/>

⁷⁶ "Rhode Island to Receive \$1.8 Million to Clean Up Brownfields." *Office of Senator Sheldon Whitehouse*. April 7, 2008. Available at: <https://www.whitehouse.senate.gov/news/release/rhode-island-to-receive-18-million-to-clean-up-brownfields>

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South Carolina

Savannah River Site

Built during the 1950's to refine nuclear materials for deployment in nuclear weapons, the Department of Energy's (DOE) Savannah River Site covers 340 square miles of land in South Carolina. Past disposal practices of contaminants such as radioactive waste, arsenic, lead, mercury, and plutonium, have caused significant site contamination, leading DOE and the South Carolina Department of Health and Environmental Control to consider the site the greatest human health risk in South Carolina. Thanks to NEPA's scoping process, DOE has taken a comprehensive approach to the cleanup process that has employed groundbreaking technologies to increase the effectiveness of cleanup efforts and reduce risk. The Environmental Assessment analyzed the waste streams of both low-level and mixed low-level radioactive wastes for the past, current, and anticipated scope of work, and all potential government and commercial waste facility destinations. This resulted in solutions that were much more cost and time efficient and limited the expected transportation impacts over the long term in the surrounding communities. For example, DOE has immobilized contamination with impermeable clay caps to save money while minimizing potential impacts on worker health and safety and reseeded damaged portions of some areas of the site with native vegetation. While cleanup of the site still has a long way to go before it is no longer considered a threat to human health, NEPA has helped ensure the federal government uses the most effective methods available.⁷⁷

South Dakota

PrairieWinds Project

The PrairieWinds Project is the largest wind project owned solely by a cooperative. Basin Electric proposed the wind farm as part of its initiative to supply 10% of its generating capacity from renewable sources. The project includes 108 turbines that supply 162 megawatts of electricity. Through the NEPA analysis, the U.S. Department of Agriculture and Department of Energy minimized both environmental impacts including wetland degradation, potential avian hazards, and local disturbances such as noise. Further, they structured the project so that the turbines are located on leased farmland, 98% of which is still being used for farming. And that's not the only economic benefit this project has contributed to the area! Indeed, the wind farm will provide \$3.1 million to the Tri-Central Schools Fund and \$400,000 in tax revenue to support the cumulative capital development fund and local fire fund. Construction was completed in 2012 and it is currently operational; Basin Electric now draws 12% of its energy capacity from renewable sources.

Tennessee

Oak Ridge National Laboratory Cleanup

To accelerate the cleanup work at the Oak Ridge National Laboratory, the Department of Energy (DOE) submitted plans to build the Transuranic Waste Processing Center (TWPC). While drafting the project's environmental impact statement (EIS) required by NEPA, DOE discovered that it

⁷⁷ "Savannah River Site, Spent Nuclear Fuel Management Final Environmental Impact Statement." *U.S. Department of Energy*. March 2000. Available at:

<https://www.srs.gov/general/pubs/envbul/documents/EIS-0279-FEIS-01-2001.pdf>

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would need to further treat the radioactive waste processed by the TWPC to reduce the risk of human and environmental exposure to radioactive waste and ensure that all parts of the processing facility are placed outside the 500-year floodplain. The EIS also suggested a number of best management practices to ensure that the project would not adversely impact nearby fragile wetlands. Along with protecting the wetlands, the NEPA process made the public aware of the alternatives that DOE was considering and resulted in \$500 million saved.⁷⁸

Texas

Bolivar Beneficial Use Marsh

Historically, deep-draft channel dredged materials had been dumped into unconfined placement areas in Galveston Bay, adversely affecting fish habitat. While going through the NEPA process to create a 200-acre Bolivar Beneficial Use Marsh in the bay, the Army Corps of Engineers worked with other agencies to form the Beneficial Use Group. The group devised a plan that addressed the problems that result from dumping dredged material into the bay while brainstorming creative ways to enhance the existing bay ecosystem. Having identified the loss of intertidal marsh as a critical problem in the Galveston Bay estuary, the Beneficial Use Group decided to use dredged materials to create intertidal marsh and nesting islands for colonial waterbirds, resulting in a better, smarter, more functional project for the Corps, the community, and the environment.⁷⁹

Utah

Timpanogos Cave National Monument Visitor Center

Since the visitor center at Utah's Timpanogos Cave National Monument burned down in 1991, staff have been working out of a double-wide trailer. Not only was the visitor center inadequate in terms of space, but it was also located in a dangerous rock-fall zone. For this reason, the National Park Service proposed to build a new facility. The NEPA analysis included comments from experts who estimated the average size, frequency, and velocity of rock falls in the area. Their input revealed that the hazards from rock falls was much greater than originally thought and allowed the Park Service to identify where such falls were most likely. As a result, the National Park Service was able to site the visitor center in an area that will maximize visitor and staff safety.⁸⁰

Virginia

Route 50 Traffic Improvements

The segment of Route 50 passing through the Virginia towns of Aldie, Middleburg, and Upperville in the foothills of the Blue Ridge Mountains is a classic example of a traditional small-town main street. It was never a major truck or commuter route. However, it began to suffer from problems

⁷⁸ "Record of Decision on Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory." *U.S. Department of Energy*. August 9, 2000. Available at: https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/EIS-0305-ROD-2000.pdf

⁷⁹ "The Houston Ship Channel Beneficial Use Project: Deepening the Houston Ship Channel while Creating Marshes and Islands." *Port of Houston Authority*. November 17, 2010. Available at: <https://www.estuaries.org/pdf/2010conference/wednesday17/galleon3/session3/saunders-creating-marshes.pdf>

⁸⁰ "Timpanogos Cave National Monument Revisits Alternatives for Environmental Assessment." *National Parks Service*. February 1, 2012. Available at: <https://www.nps.gov/tica/learn/news/2012-ca-revisit.htm>

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of speeding, aggressive driving, and congestion during rush hours at one particular intersection. Virginia's Department of Transportation (VDOT) came up with a conventional solution: expand the road into a four-lane divided highway with bypasses around the small towns. The citizens, however, had a different vision. They seized the opportunity for public involvement afforded by the NEPA process and ran with it, creating a coalition to seek alternatives to the plan. The coalition found that a four-lane highway would only increase speeding and local businesses would suffer if bypasses redirected traffic around the towns. So they came up with an alternative plan that would solve the roadway's problems, promote local businesses, protect the area's rural and historic character, and cost much less than conventional highway expansion. Instead of a wider road that bypassed the town, the solution included entranceway features at the edges of the towns, planted medians, raised intersections, changes in pavement for parking areas, and guardrails made from natural materials. In addition to their aesthetic advantages, these additions will reduce speeding and promote pedestrian safety. VDOT approved this design in 2003 and is now implementing it through a partnership with the local communities and local government. In the end, NEPA delivered an innovative, less expensive solution that can be, as coalition member Susan Von Wagoner said, "a model for the nation."⁸¹

Eastern Shore Rural Health Medical Center

The Department of Agriculture granted money to Eastern Shore Rural Health Systems to build the Onley Community Health Center in Onley, Virginia, as part of its Rural Community Facilities Program. However, the proposed construction, which included a new medical building, parking, and infrastructure, was located within an aquifer that supplies more than 50 percent of the surrounding community's water needs. As a result of the NEPA process, the Environmental Protection Agency reviewed the project proposal and suggested modifications to address potential groundwater contamination, and these changes were incorporated into the project. For example, the local Soil and Water Conservation District planted native vegetation on facility grounds to create a healing garden for patients and their families that acts as a natural filter for runoff from the facility, thereby reducing the risk of groundwater contamination.⁸²

Washington

Huckleberry Land Exchange

Under the proposed Huckleberry Land Exchange, the U.S. Forest Service would trade nearly 7,000 acres of mature and old-growth forest in Washington's Mt. Baker-Snoqualmie National Forest, including a portion of the Muckleshoot Tribe's historic Huckleberry Divide Trail, for about 30,000 acres of high-elevation land held by Weyerhaeuser Timber Company. Citizen groups and the Muckleshoot Indian Tribe challenged this proposal. The court found that the Forest Service violated NEPA by failing to consider an adequate range of alternatives and by neglecting to analyze the cumulative impacts of the proposed exchange. As a result, the Forest Service improved their analysis and altered their plans for carrying out the exchange. Ultimately, the Huckleberry

⁸¹ "Six-Year Plan: Northern Virginia Projects Trimmed." *The Washington Post*. Available at: https://www.washingtonpost.com/archive/local/2002/05/22/six-year-plan-northern-virginia-projects-trimmed/b36158ef-9db8-45c0-9c86-1b50deca733f/?utm_term=.c5167f5ac014

⁸² "The Eighth Report on The National Environmental Policy Act Status and Progress for American Recovery And Reinvestment Act Of 2009." *White House Council on Environmental Quality*. February 1, 2011. Available At: https://ceq.doe.gov/docs/ceq-reports/feb2011/CEQ_ARRA_NEPA_Report_February_01_2011_final.pdf

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Land Exchange went forward with a better design that protected old-growth forest and culturally and recreationally important public lands.⁸³

Wisconsin

Highway 26 Bypass

Highway 26 is a regional road that runs through south-central Wisconsin, connecting Illinois to Wisconsin's Fox River Valley. To address increasing traffic from trucks and regional drivers on the road, Wisconsin's Department of Transportation (WisDOT) proposed the construction of a bypass. NEPA provided the opportunity for stakeholders to engage in discussions about the project development. "NEPA forces us into providing alternatives that are representative of the interests of all agencies involved," said James Oeth, WisDOT project manager. As stipulated by NEPA, several alternatives were selected, studied in detail, and made available for public comment. "Without NEPA, we would have just asked what the shortest distance was and built the road through there," said Oeth. The final decision created a route with the least impact and disruption to the community. For example, while the original route would have plowed through Ed McFarland's dairy farm, which sits west of Watertown, the final plan navigated around it. "Public involvement helped us...the less land we lose, the better," said McFarland. Additionally, under the final plan, the bypass skirted the community's urban service area, instead of destroying pristine land. While not all of the community's major requests were accommodated, residents appreciated the opportunity to be involved in the process. "I believe NEPA allowed for these alterations to take place," said Andy Didion, a Jefferson resident. "The DOT is getting much better and realizing this affects people's lives." "We talked out problems and came up with solutions that were agreeable to most participants," stated Greg David, a Jefferson County Supervisor. "The NEPA process has saved us a lot of money, and mitigated many of the externalized consequences of a freeway expansion project."⁸⁴

Wyoming

Clark River Seismic Survey

In 2004, Windsor Wyoming Inc. proposed a seismic survey on land owned by the Bureau of Land Management (BLM), the Forest Service, and private landowners. The environmental analysis called for the drilling of 3,420 seismic shot holes in a 47-mile area surrounding Wyoming's Clark River -- the state's only designated Wild and Scenic River. Under the proposal, explosive charges would be fired into the holes to create a 3-D picture of the area's available resources. After reviewing the draft plan, nearby private property owners represented by Powder River Basin Resources Council -- a bipartisan community group -- noted that it failed to consider how these explosions would affect scarce water resources, elk and other game species, hunting opportunities, Native American historical sites, and private property values. This public input led BLM to re-examine the draft plan and consider the use of a new survey technology called "passive seismic" that would mitigate the damaging effects of the explosive charges. In the end, thanks to NEPA,

⁸³ "Huckleberry land exchange ruled illegal." *CNN*. May 24, 1999. Available at: http://www.cnn.com/NATURE/9905/24/huckleberry_forest.cnn/index.html

⁸⁴ "Getting around Burlington - Bypass opens in its entirety." *The Journal Times*. November 1, 2010. Available at: https://journaltimes.com/news/local/getting-around-burlington---bypass-opens-in-its-entirety/article_546c49b2-e5a9-11df-a614-001cc4c03286.html

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private property owners, land managers, and industry achieved a seismic exploration plan that protected game species, Tribal sites, private property rights, and critical water resources.⁸⁵

Bridger-Teton National Forest Off-Highway Vehicle Route Designation Project

In January 2009, the Forest Service developed a plan to better balance conflicting uses of Wyoming's Bridger-Teton National Forest. The plan designated roads and trails for Off-Highway Vehicles (OHVs) to reduce conflicts between the area's multiple users, reduce resource impacts, and improve route maintenance while allowing for effective enforcement. After conducting an environmental analysis for the project and listening to public comments, as required under NEPA, District Rangers decided to implement a modified plan that addressed concerns from local business owners, citizens, and environmental organizations. The final plan better defined the trail system as a whole, benefitting the environment and individuals using the park for non-OHV activities, as well as OHV enthusiasts. As Bob Hatton, owner of Bob's Quads -- a local ATV service and repair shop—stated, "I can't really see a downside to it. The last thing I want to see is off-highway vehicles running all over the place. I want to be able to go up the Gros Ventre and hike and enjoy the wilderness as well as motorized travel...not to mention the wildlife. Just having an organized trails system with this much research, it's hard to find fault with that." The OHV trails were sited to avoid ecologically-important areas like Wilderness Study Areas, roadless areas, and critical wildlife habitat. Thanks to open communication with the public and the Forest Service's willingness to look at impacted resources and the sustainability of the system as a whole, the project struck a remarkable balance between the area's multiple attributes and users.⁸⁶

Bighorn National Forest Babione Vegetation Management Project

The Forest Service's Babione Vegetation Management Project in Bighorn National Forest, Wyoming, was designed to reduce hazardous fuels -- accumulated dry brush and dead trees that increase the likelihood of large wildland fires -- and restore forest health through various means such as cutting and prescribed burns. However, private landowners adjacent to the project were concerned that increased access to the area necessary to perform these activities would lead to trespassers on their land. Thanks to NEPA, the landowners were able to express their concerns to the Forest Service and, in response, the agency incorporated several design elements into the project to address this issue, such as the erection of gates at key access points.⁸⁷

Court Halts Illegal Coal Leasing in the Powder River Basin

Stretching across Wyoming and Montana, the Powder River Basin holds enough coal to keep America's current coal power plants going for over 100 years. It supplies about 40% of the nation's coal and accounts for 13% of all U.S. greenhouse gas emissions. In September 2015, the BLM opened all this coal to leasing. Federal District Judge Brian Morris says not so fast. The court ruled that the Bureau of Land Management (BLM) violated the National Environmental Policy Act (NEPA) by failing to consider any alternative in its land use plans that would decrease the amount of coal available for leasing. BLM also failed to analyze the impacts of burning the coal, as well

⁸⁵ "Clark residents argue against seismic survey." *The Billings Gazette*. June 23, 2004. Available at: http://billingsgazette.com/news/state-and-regional/wyoming/clark-residents-argue-against-seismic-survey/article_6892b1f7-44a9-50c3-8af1-4019274c8563.html

⁸⁶ "Record of Decision: North Zone OHC Project." *U.S. Forest Service*. January 26, 2009. Available at: https://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=18122

⁸⁷ "Babione HFRA Decision Notice and Finding of No Significant Impact." *U.S. Forest Service*. September 2009. Available at: <https://www.fs.usda.gov/project/?project=17040>

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as oil and gas, from the public lands would have as a result of climate change to which it would contribute. Our public lands are some of our most precious assets. From the San Gabriel Mountains outside Los Angeles to Great Smoky Mountains, they are there for each one of us to enjoy. We trust the government to manage them in our best interest. Such trust, however, is not unbounded. Congress has authorized more uses on BLM lands than in national parks, but the Federal Land Policy and Management Act (FLPMA) nevertheless recognizes all the public's lands as assets that future generations have as much right to enjoy as the present one. BLM must manage the public lands so they are "utilized in the combination that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c). Addressing future needs requires looking at indirect and downstream effects of a proposed action. Judge Morris found that BLM had not. BLM estimated that it would lease over 10 billion tons of coal over the next 20 years. The agency estimated the emissions that would be associated with burning this coal, but did not address the impacts such emissions might have. The judge held that BLM could not wait until it issued leases to specific coal companies. BLM had to analyze and consider the impacts of burning the coal at the time it was deciding how much of the coal to open to leasing. The judge held that the same analysis was required of the impacts of burning oil and gas opened to leasing. To help ensure informed decision-making, NEPA requires an agency to look at reasonable alternatives to a proposed action. Here, every alternative opened the same amount of coal to leasing—ALL of it. BLM relied upon previous coal screening which had failed to consider climate change at all in the decision about how much coal to lease. Judge Morris found that our changing times required new analysis. BLM could not stick its head in the sand. Managing in the public interest in today's carbon-constrained world requires taking into account the consequences of burning the federal fossil fuels we choose to take out of the ground. NEPA requires that "accurate scientific analysis" inform agency decision-making. Here, BLM failed to use the best science available to calculate the impact of the methane emissions. Methane is a much more potent gas than carbon dioxide. BLM looked only at the long-term effects of methane emissions over a 100-year time horizon. The agency failed to explain why it did not use an available 20-year time horizon to assess short-term impacts.⁸⁸

⁸⁸ Western Organization of Resource Councils et al v. U.S. Bureau of Land Management et al, No. 4:2016cv00021 - Document 34 (D. Mont. 2017). Available at: https://assets.nrdc.org/sites/default/files/decision-powder-river-basin-20180326.pdf?_ga=2.127267976.427264738.1531757212-216365016.1504724792



May 23, 2018

Ryan Zinke, Secretary, U.S. Department of the Interior, exec_exsec@ios.doi.gov

David Bernhardt, Deputy Secretary, U.S. Department of the Interior, deputy_secretary@ios.doi.gov

Joseph Balash, Assistant Secretary, Land & Minerals Management, U.S. Department of the Interior, joseph_balash@ios.doi.gov

Stephen Wackowski, Senior Advisor for Alaska Affairs, U.S. Department of the Interior, stephen_wackowski@ios.doi.gov

Karen Mouritsen, Alaska State Director, U.S. Bureau of Land Management, kmourits@blm.gov

By Electronic Mail

Re: Timeline for Arctic Refuge Leasing EIS

Dear Secretary Zinke, Deputy Secretary Bernhardt, Assistant Secretary Balash, Senior Advisor Wackowski, and State Director Mouritsen,

I am writing to express my serious concerns with the process the Bureau of Land Management (BLM) is contemplating for completing an environmental impact statement (EIS) for an oil and gas leasing program for the coastal plain of the Arctic National Wildlife Refuge. The Refuge is the most sensitive and ecologically and culturally significant undeveloped landscape in North America. An adequate public process pursuant to the National Environmental Policy Act (NEPA) to assess the numerous significant social, cultural, economic, and ecological impacts associated with developing an unprecedented leasing program for the coastal plain must be extensive and will necessarily take a substantial amount of time to complete. It will also require the initial collection of a significant amount of scientific information to inform the analysis.

Yet, consistent with an August 2017 [secretarial order](#) aimed at “streamlining” the Interior Department’s NEPA compliance through imposition of arbitrary time and page limits for completing EISs, Deputy Secretary Bernhardt has publicly stated his intention to complete the coastal plain leasing EIS within one year.¹ Senator Murkowski also articulated the “strong commitment [of the Interior Department] to work with [her] to get these leases out before the end of the term.”² On April 27, 2018, the Deputy Secretary issued [additional direction](#) for implementing the 2017 streamlining order, requiring all agency teams

¹ Margaret Kriz Hobson, “Road map for ANWR drilling gets clearer,” *E&E News*, Mar. 12, 2018 (Bernhardt statement at Alaska Support Industry Alliance meeting).

² *Id.* (Murkowski statement at Anchorage business meeting).

preparing EISs within the Department to submit to him, within 30 days, a project schedule for completing the NEPA process within one year and confirmation that the EIS will be no longer than 150 pages. BLM's "tentative schedule" shared last week at a Resource Advisory Council meeting in Fairbanks confirms that the agency is contemplating a one-year timeframe for completing the leasing EIS.

As the former U.S. Fish & Wildlife Service Regional Director for Alaska who has overseen dozens of agency decision-making processes, I can say with certainty that an adequate public process and analysis under NEPA for leasing the coastal plain simply cannot be completed within one year and be limited to 150 pages of environmental analysis. Good planning takes time. This is especially so in Alaska, where the sheer scale and ecological and cultural importance of the landscape and resources are particularly vast and complex. It is also a matter of environmental justice, where meaningful engagement of remote communities and Alaska Native tribes necessarily takes time. In this context, one size decidedly does not fit all. Imposing the timelines and page limits contemplated by the Deputy Secretary to the coastal plain leasing EIS will mean that significant impacts go unanalyzed. Tribal consultation and coordination will likely get short-shrift, important scientific data will not be compiled or considered, and the public's ability to provide meaningful input on alternative courses of action will be compromised. Ultimately, the agency's ability to consider all relevant information, adequately respond to public input, and issue a decision that satisfies all treaty, statutory, and regulatory mandates will be significantly compromised.

By contrast, I was involved with and am aware of several recent EIS-level decision-making processes of significant scope in Alaska that took sufficient time to perform a rigorous NEPA analysis with extensive tribal and public engagement. For instance, the National Petroleum Reserve in Alaska Integrated Activity Plan was completed in approximately 3 years. This plan was not litigated, I believe, because the Department took the necessary time to get it right, including by holding more than a dozen public meetings, conducting significant tribal consultation, and involving many local, state, and federal agencies.

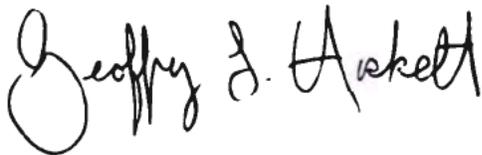
Procedural integrity, not political expediency, must drive the timeline of this unprecedented effort. BLM must identify missing and outdated information, process the best available science, evaluate potential impacts, formulate stringent protective measures, conduct intensive and meaningful government-to-government consultation, and engage the public – this simply doesn't happen quickly. A rushed NEPA process for the coastal plain leasing EIS would be a callous affront to the Gwich'in people, for whom the coastal plain is the "Sacred Place Where Life Begins." It would pose existential threats to wildlife, including the over 200,000-member Porcupine Caribou herd that migrates hundreds of miles each year to their coastal plain calving grounds, and the threatened polar bear that dens and gives birth in designated critical habitat on the coastal plain. It would jeopardize the incredible 200 species of migratory birds that fly to the coastal plain each year from remote corners of the globe, and violate the agency's responsibility to the millions of Americans who cherish the Refuge as North America's last great wilderness.

A rushed approach also undermines fundamental values of government decision-making that are enshrined in NEPA, our country's basic environmental charter. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and informed decisions. It has

ensured that federal decisions are at their core democratic by guaranteeing meaningful public involvement. And it has achieved its stated goal of improving the quality of the human environment by ensuring that decisions rely on sound science to reduce and mitigate harmful environmental impacts. Those promises cannot be met under the pressure of compressed and arbitrary time and page limits.

As you complete the required project timeline for the coastal plain leasing EIS, I ask that you keep these realities in mind and provide a waiver of the Department's one-year/150-page limitations for EISs, which are wholly inadequate for this process. Until the scoping process is complete and BLM has had adequate time to review public comments and determine the scope of the draft EIS, it will not be possible for the agency to produce a defensible project timeline or estimates for the length of the EIS. Even then, the BLM will necessarily need to remain flexible as it engages tribes and the public in this highly significant NEPA process and conducts a robust environmental analysis. In sum, it is critical that BLM allow adequate time and commit the necessary resources to perform a rigorous and transparent study of all the significant environmental, cultural, and socio-economic impacts associated with a leasing program for the coastal plain, and to robustly engage the Gwich'in in a manner that suits their unique sovereign needs and interests.

Sincerely,

A handwritten signature in black ink that reads "Geoffrey J. Haskett". The signature is written in a cursive style with a large initial 'G'.

Geoffrey Haskett
President, National Wildlife Refuge Association

Cc: Greg Siekaniec, Regional Director, U.S. Fish & Wildlife Service, greg_siekaniec@fws.gov
Nicole Hayes, Project Coordinator, Bureau of Land Management, mnhayes@blm.gov

Environmental Collaboration and Conflict Resolution Federal Forum

Meeting Notes

White House Conference Center
726 Jackson Place NW, Washington, DC
Tuesday, July 24, 2018
10:30 AM – 12:00 PM Eastern

Welcome, Agenda Review, and Brief Introductions

Michael Drummond stood in for Ted Boling for this meeting. Michael Drummond welcomed everyone and went over the agenda. Everyone in the room and on the phone introduced themselves by name and agency.

General Updates from CEQ

OMB and CEQ sent out a Memorandum of Understanding to the agencies on implementing One Federal Decision under Executive Order 13807. The MOU established “a cooperative relationship for the timely processing of environmental reviews and authorization decisions for proposed major infrastructure projects under the One Federal Decisions policy established in Executive Order 13806. E.O. 13807 requires the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ), in consultation with the Federal Permitting Improvement Steering Council (Permitting Council), to develop a framework for implementation of the Executive Order.” A dispute resolution process is outlined in the MOU.

The Council on Environmental Quality (CEQ) is extending the public comment period on the Advance Notice of Proposed Rulemaking (ANPRM) to update the Regulations of Implementing the Procedural Provisions of the National Environmental Policy Act. which was originally scheduled to close on July 20, 2018, through August 20, 2018. CEQ is making this change in response to public requests for an extension of the comment period. The notice of the extension of the ANPRM was published in the Federal Register on July 11, 2018.

CEQ is awaiting the conclusion of the hearing on the nomination of Mary Neumayr to be the Chairwoman of Staff for the Council on Environmental Quality which was held July 19, 2018.

General Updates from USIECR

The U.S Institute is celebrating their 20-year anniversary and distributed pamphlets outlining major milestones in their history they produced to the group attending the meeting.

The U.S. Institute is currently working on producing the FY17 ECCR Forum Annual Report for the group to review. Date for distribution is TBD.

The U.S. Institute recently hired a General Counsel staff member, Marc Rosen, to start August 6th. Phil Lemanski, the Executive Director of the Udall Foundation, will retire April of 2019. The U.S. Institute is actively looking for his replacement.

ACR EPP Conference: The ACR EPP Conference was held at George Mason University this year and was well attended. There were open space breakout sessions and the ECCR centers Federal government

break out session was well attended. Next year's conference will be held in Tucson, AZ in conjunction with the yearly ACR conference.

Discussion A: Agency Updates

Department of Energy: In May, DOE had their annual training for environmental attorneys and other professions, including a training conducted by the U.S. Institute. The Department of Justice and DOE participated in mediations on CERCLA disputes.

Environmental Protection Agency: EPA recently mediated a Title 6 Civil Rights Case. They are currently supporting a community at the West Lake Landfill for a cleanup as part of the superfund initiative. Held their bi-annual training for its ECCR specialists. It was extremely successfully to build ECCR and action. They held the bi-annual training in conjunction with the ACR EPP conference which allowed for cost savings and more participation from the employees.

U.S. Forest Service: The Senate may confirm an Under-Secretary soon for USDA.

Department of Transportation: DOT is currently working on historic CERCLA projects. The Operating Administration is using dispute resolution and working on trainings and documents to distribute to the field staff.

Department of Interior: CADR issued their new five-year contract for ECCR at \$35 million. Kearns & West won the bid and are available for anyone in DOI to use. CADR recently established an ECCR network to build a community of practitioners of ECCR. Historically, they've tried to focus on top hierarchy and not the practitioners. Now, they are distributing information and trainings among the bureaus within DOI.

National Oceanic & Atmospheric Administration: Offices within NOAA are gaining more interest in conflict resolution. NOAA is partnering their existing facilitator's network and others within in NOAA who need facilitation for environmental conflicts.

Federal Highway Administration: The U.S. Institute facilitated stakeholder involvement meetings for FHWA regarding the Interstate 11 in Arizona. ECCR services are also being used to update the Programmatic Agreement between FHWA and Puerto Rico under Section 101 of the National Historic Preservation Act. NEPA and collaboration trainings requests are coming from within FHWA.

Bureau of Land Management: More projects are coming through the DOI CADR contract. BLM is putting together a "how to use environmental collaboration on a project" desk guide. Additionally, they are working on rebranding CADR within in BLM as BLM employees think of CADR has resolving internal conflict resolution only.

U.S. Army Corps of Engineers: Every year, USACE captures what they think are the best ECCR cases and distribute that document to the collaboration practitioners in USACE. There is a follow up webinar as well. There has been increasing amount of interest in the USACE's Gnarliest Collaboration Challenge. The Gnarliest Collaboration Challenge is a submission of any USACE district that has a particularly difficult case that is either controversial or difficult to receive funding or support from the USACE.

Discussion B: Benefits & Recommendations Report

Objective: Learn how agencies are utilizing or publicizing the report to date and discuss future opportunities.

Department of Energy: DOE widely distributed it to their stakeholders and at their Annual ECCR Training.

Department of Transportation: The Deputy General Counsel at DOT has further questions about the report.

U.S. Institute: The U.S. Institute distributed to the contacts provided by the ECCR Forum members on behalf of CEQ. Also sent the report to practitioners on their ECCR roster. There has been lots of interest in the report from the private sector and offices on the Hill. It has been useful to refer people to NEPA.gov for downloading the report.

Department of Interior: BLM is putting the report in their desk guide. CADR is using the report as context to set goals for FY19.

Environmental Protection Agency: CPRC is currently working with their Administrator to put out a memo supporting ADR using the benefits and recommendations report for language.

U.S. Army Corps of Engineers: They have used this report to borrow some language for their own internal document that they share with people within the USACE about what they do. This helps show the value of what they do. They also have integrated the report into presentations.

CEQ and DOE have posted the report to their websites. EPA, BLM, and the U.S. Institute may post it soon. NOAA has a link to the U.S. Institute's website.

EPA asked how will OMB and CEQ use the information so that the agencies can communicate this back to their management for decision making? CEQ responded that they have been identifying issues to elevate, and to emphasize the practice of ECCR. The U.S. Institute is actively working with the Permitting Council as well. CEQ has not engaged in interagency conversations on the political level but that they will have some renewed conversations with leadership about ECCR and how to go forward. OMB mentioned that they would take a look at the data and use it more ad hoc as they don't have any form processes on the data. They would use this ad hoc for budget decisions.

Other Topics

The U.S. Institute suggested that at the next ECCR Forum meeting the members discuss reviving the committee on streamlining the ECCR reporting document. Members agreed that this would be a good topic. The annual report for FY18 will stay the same. The changes to the reporting system will be for FY19.

EPA suggested incorporating skill building into the ECCR Forum meetings similar to the IADRWG meetings. David Moora, EPA, could come in and discuss the IADRWG plans.

NOAA asked CEQ for guidance on how to effectively use ECCR in the One Federal Decision process. There is no formal guidance, however, please reference the MOU's dispute resolution portion for clarity.

Action Items

- Steve Miller, DOE, will send Jeanne Briskin, EPA, a list of any cases their agencies are involved in so that they make work more efficiently between the two agencies.
- EPA would like the U.S. Institute to send the Benefits and Recommendations report out to more people within EPA. They will be sending the U.S. Institute a list of e-mails and names.

Next Forum Meeting

CEQ and the U.S. Institute will identify a date for the next forum meeting. Forum Members will receive a calendar invite. If you have any suggestions for topics for the next meeting, please e-mail Courtney Owen, owen@udall.gov.

Attachments

Attachment 1: Attendees

Name	Agency
Alicia Bell Sheeter	U.S. Forest Service
Amy Coyle	Department of Transportation
Cathy Humphrey	Department of the Interior
Chris Gamache	Office of Management and Budget
Courtney Owen	U.S. Institute for Environmental Conflict Resolution
Crorey Lawton	U.S. Army Corps of Engineers
Cyan James	Department of Defense
David Cohen	Department of Transportation
Ethan King	Department of Energy
Frank M. Sprtel	National Oceanic and Atmospheric Administration
Jacob Strickler	Environmental Protection Agency
Jeanne Briskin	Environmental Protection Agency
Matthew Ray	Department of Energy
Michael Drummond	Council on Environmental Quality
Pat Collins	U.S. Air Force
Sarah Palmer	Department of Interior
Stephanie Kavanaugh	U.S. Institute for Environmental Conflict Resolution
Steven Miller	Department of Energy
Tyson Vaughan	U.S. Army Corps of Engineers
Viktoria Seale	Council on Environmental Quality
William Bresnick	Department of Homeland Security
William Hall	Department of Interior
Emily G	Department of Transportation

TVA Comments CEQ NEPA Advanced Notice

From: "Henry, Travis Hill" <thhenry@tva.gov>
To: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Date: Tue, 21 Aug 2018 15:11:04 -0400
Attachments: TVA Comments CEQ NEPA Advanced Notice-08.21.2018.pdf (34.48 kB)

Ted.

We've encountered a snafu on our end regarding the submittal of our comments to CEQ's Advance Notice to Update NEPA Regulations? Any chance we can still provide the attached comments?

Regards,

Hill Henry

Travis Hill Henry
Sr. Prog. Manager, Natural Resources Policy
Environment & Energy Policy

Tennessee Valley Authority
400 West Summit Hill Drive, WT 11B
Knoxville, TN 37902

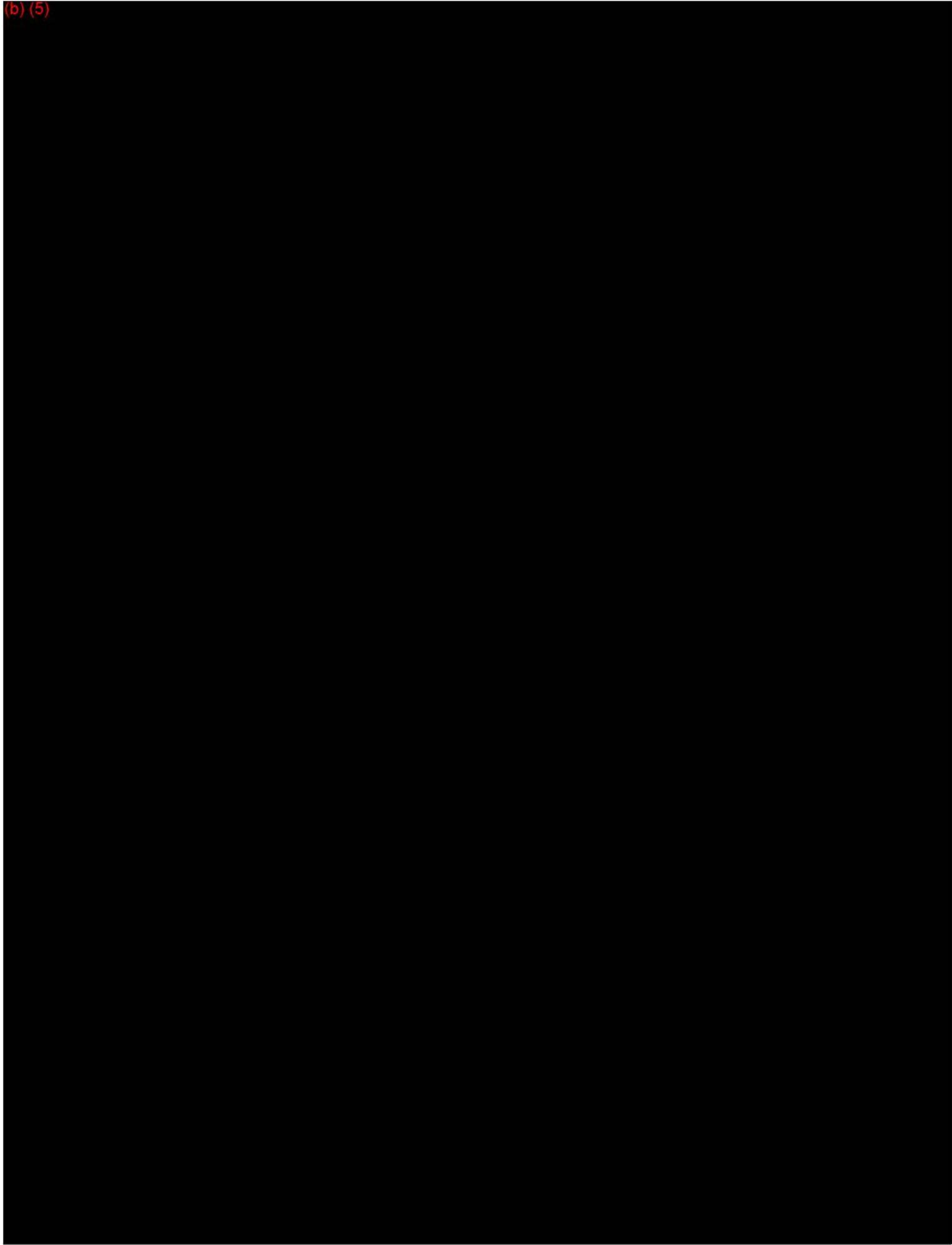
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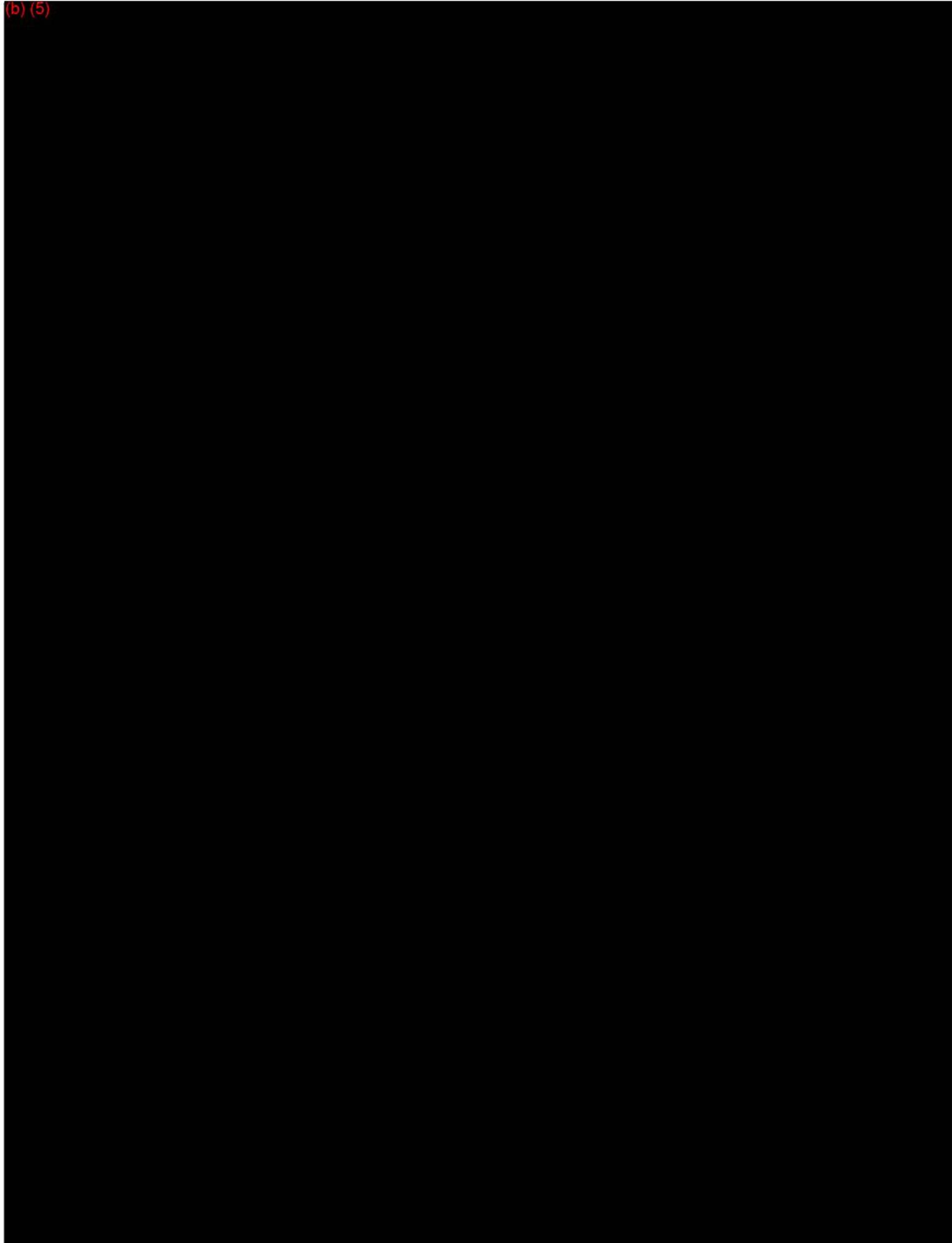
(b) (6)

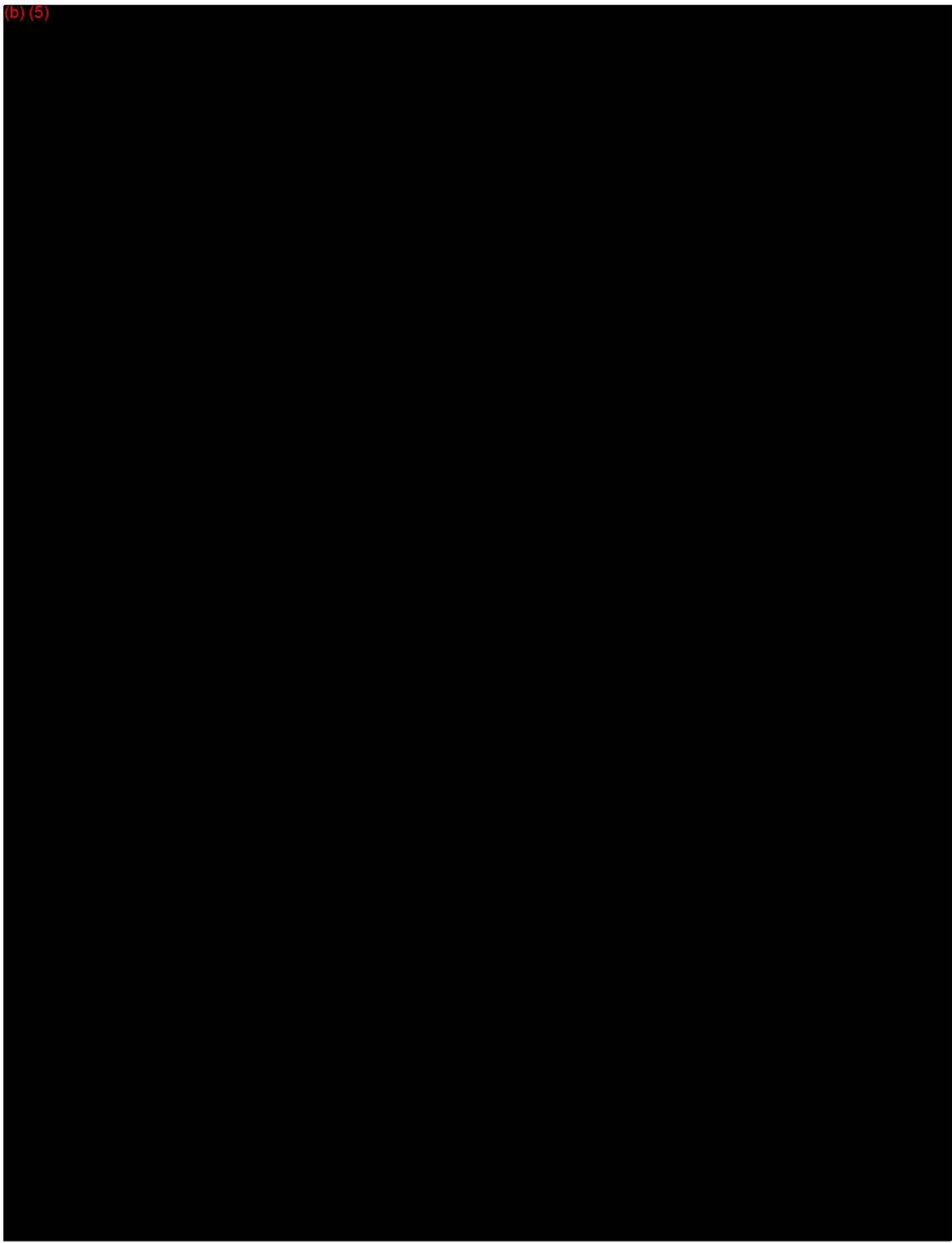
thhenry@tva.gov



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RE: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>
To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>
Cc: "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>
Date: Tue, 21 Aug 2018 08:36:46 -0400
Attachments: CEQ ANPRM CR Comments 8.19.18.pdf (38.33 kB); 12013 Charlotte Roe incoming email.pdf (36.3 kB); 12013 Charlotte Roe forwarded email.pdf (22.16 kB)

I checked the attachments in the original message from the commentor. Here is the attachment that she was unable to post – a slightly expanded text than the one she entered into the comment field. The other incoming attachments appear to be artifacts (blank file, a dividing line).

Also here is a pdf of the original incoming email and a pdf of the forwarded email that includes Ted's question and your request for the pdf – not sure which one you wanted.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Tuesday, August 21, 2018 8:06 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>
Cc: Seale, Viktoria Z. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>
Subject: RE: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

Aaron,

Charlotte Roe successfully posted her comments (below, in body of email) at <https://www.regulations.gov/document?D=CEQ-2018-0001-12013> (attached, from the docket).

Your email below has 3 attachments that were stripped out by the email system. Let me know if I should pursue them further.

Yardena

From: Szabo, Aaron L. EOP/CEQ
Sent: Monday, August 20, 2018 5:24 PM
To: Boling, Ted A. EOP/CEQ <(b) (6)>
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)>
Subject: Re: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

Ted,

Can you please turn this email into a pdf and send it to me?

Thanks.

Sent from my iPhone

On Aug 20, 2018, at 5:22 PM, Boling, Ted A. EOP/CEQ <(b) (6)> wrote:

Trouble at regulations.gov?

Sent from my iPhone

Begin forwarded message:

From: Charlotte Roe <charlotteeroe@yahoo.com>
Date: August 20, 2018 at 4:04:40 PM CDT
To: Mary Neumayr <(b) (6)>
Cc: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Subject: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW
Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations
Implementing the National Environmental Policy Act
(83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential

public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.
3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.
4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,
5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.
If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the "intensity" factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public's ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.
6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public's role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).
7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents noted be revised? **No.** Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to "Apply NEPA early in the process." To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? **No.** Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations. This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised? **No.** Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? **No.** The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? **I do not recommend** revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? **No.** Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents? **No, and no again.** Section 1502.25 of the CEQ regulations states that agencies "[t]o the fullest extent possible" shall prepare draft EISs concurrently with and integrated with other environmental reviews..." Combining NEPA environmental reviews and other decision documents would indelibly harm public participation, as it would cause confusion and obfuscation. If that is the intent of this proposed rulemaking process, it should be dropped immediately.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA? **No.** NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of

changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations? **No changes** are necessary in CEQ regulations to address this issue. If the rulemaking process continues, a revision of language should be considered to broaden the engagement of native American tribes whether or not cultural artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible? This question was answered in responses found above to questions 1, 2, 3, 4 & 17.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised? **No changes** are needed to improve mitigation. CEQ's "Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe

Science Advisor, The Cloud Foundation

Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13

Berthoud, CO 80513

charlotteeroe@yahoo.com

<page4image3681664>

<page5image3682080>

<CEQ ANPRM CR Comments 8.19.18.pdf>

From: [Szabo, Aaron L. EOP/CEQ](#)
To: [Boling, Ted A. EOP/CEQ](#)
Cc: [Mansoor, Yarden M. EOP/CEQ](#); [Seale, Viktoria Z. EOP/CEQ](#)
Subject: Re: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA
Date: Monday, August 20, 2018 5:23:40 PM

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the Appropriate Use of Mitigated Findings of No Significant Impact,” should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe
Science Advisor, The Cloud Foundation
Wild Horse and Burro Project Partner, In Defense of Animals 1621 So.
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Berthoud, CO 80513
charlotteeroe@yahoo.com

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<page5image3682080>

<CEQ ANPRM CR Comments 8.19.18.pdf>

August 19, 2018

Mary Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM)
to Regulations Implementing the National Environmental Policy Act
(83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.
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cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the “intensity” factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public’s ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public’s role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

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CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

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1621 So. County Rd. 13
Berthoud, CO 80513
charlotteeroe@yahoo.com

From: Charlotte Roe <charlotteeroe@yahoo.com>

Date: August 20, 2018 at 4:04:40 PM CDT

To: Mary Neumayr <(b) (6)>

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Subject: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW Washington, DC 20503

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Fwd: [EXTERNAL] Comments on Advance Notice of Proposed Rulemaking for NEPA[Docket No. CEQ-2018-0001]

From: "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To: "Mansoor, Yarden M. EOP/CEQ" <(b) (6)> "Szabo, Aaron L. EOP/CEQ" <(b) (6)>
Date: Tue, 21 Aug 2018 08:19:47 -0400

Sent from my iPhone

Begin forwarded message:

From: Laura Fertig <colcogyne@gmail.com>
Date: August 21, 2018 at 12:26:11 AM CDT
To: (b) (6)
Subject: [EXTERNAL] Comments on Advance Notice of Proposed Rulemaking for NEPA[Docket No. CEQ-2018-0001]

Dear Mr. Boling,

I intended to submit comments on the proposal to amend NEPA. The deadline was 12:00am and I thought I had time until I realized that it was 12:00am EST, not PST. Your name was on the Regulations.gov site as someone to contact, so I'm writing in hopes that you will allow my comments to be considered despite the confusion over the deadline. They are below:

Ms. Mary Neumayr, Chief of Staff

Council on Environmental Quality

730 Jackson Place, N.W. Washington, D.C. 20503

RE: Advance Notice of Proposed Rulemaking 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508 [Docket No. CEQ-2018-0001]

Dear Ms. Neumayr,

As a former federal employee and a frequent commenter on government NEPA documents, I have always been an enthusiastic supporter of the National

Environmental Policy Act. It holds agencies accountable and requires them to conduct analyses of their actions, something they did not always do before the law was enacted. Even more important, NEPA requires agencies to include the public in management of their public lands. As onerous as that is for government staff who simply want to get on with doing whatever they like, public land belongs to everyone. We all have a right to know what the government is planning to do and what the environmental consequences will be.

That's not to say the law can't be improved. Over the decades, it's become apparent that NEPA does need some adjusting. Below are some categories that could be improved.

1. Categorical Exclusions (CXs): The concept of Categorical Exclusions is being abused. These designations were intended for small-scale projects that inherently had little to no environmental effects. Lately, however, large-scale projects are being called CXs and the public has no opportunity to comment or express support or opposition to the proposal. For instance, the BLM's Grand Staircase-Escalante National Monument conducted a 30,000 acre vegetation treatment project as a CX. This activity had many extensive environmental consequences that needed analysis, but the BLM refused to conduct them. CEQ needs to more clearly define when it's appropriate to use a CX and when more analysis is required.

2. Public involvement: CEQ must retain current provisions for public involvement with regard to number and length of comment periods. The public often provides the agency with valuable information and analysis that it otherwise would not have. I have participated in writing comments for many Environmental Assessments and Environmental Impact Statements. They often present far more scientific documentation, citations, and analysis than the documents the agencies put forth for public review. Researching and presenting this information is time-consuming and provides a great service to government agencies that don't have the time or staff to produce such analysis themselves. For that reason, comment periods should not be truncated.

3. The CEQ should reinforce and strengthen requirements for an agency's response to topics that the public brings up in its comments. Often, agencies offer nothing more than a perfunctory, formulaic response to relevant subjects

that they did not analyze or analyzed incompletely. These comments deserve more thorough responses before they are rejected.

4. Definitions and Clarifications: Sometimes an agency will tier a NEPA document or a Determination of NEPA adequacy to outdated information. There should be more specific direction on when it is appropriate to tier to an earlier document and when the information is simply too out of date. In another example from the BLM's Grand Staircase-Escalante National Monument, staff conducted vegetation treatments on areas that were 15 years past the original NEPA. For such malleable resources as vegetation, which can change and degrade quickly under some circumstances, more recent NEPA analysis should be issued. Insisting on the best available, most current science and reasoned analysis should be instituted and enforced.

5. Streamlined Format: The typical NEPA organization with the Description of the Alternatives, Affected Environment, and Environmental Impacts together contain a lot of needless repetition. Surely there is a way to describe or analyze something once and then refer to that section of the document, but not repeat it, in other chapters.

6. Maps: Many EAs and even EISs are presented to the public without adequate maps. Most agencies have access to GIS specialists, at least in state or regional offices. Any updates to NEPA should include standards for clear maps showing the project area in detail on a topographical map(s). No more black and white copies of topo maps with the project area carelessly outlined in smudgy pencil or marker. This leads to public frustration and distrust, followed by less support for the proposed project.

7. Public notification: Virtually all government agencies have some kind of access to the internet. There is no reason, then, why NEPA projects can't be posted on the planning websites for these agencies. Yet, many projects are only posted in hard copy on bulletin boards in agency offices and in obscure weekly newspapers. These regulations for public notification were developed before the internet was available. It's reasonable to update the public notification process and require all projects to be consistently posted on-line in a timely fashion.

8. Enforceable timelines: The Grand Staircase-Escalante National Monument was supposed to have a plan for grazing management in place in 2003. It's 2018 and only now is a draft available. This was not due to any deficit in NEPA. This shameful state of affairs came about due to a reluctance to change status quo management, and it's untenable that it was allowed to continue for this long. It's another example of political influence taking precedence over good management.

9. Agency training and compliance: The CEQ must conduct a thorough and honest assessment how NEPA requirements are conducted on the ground. Many times the perceived burden of environmental review lies not with NEPA itself but with how it is implemented. The quality of the NEPA documents produced and the degree to which NEPA regulations have been implemented has been irregular and inconsistent over agencies and over time. Employees need to be shown that NEPA is not a burden preventing them from going about their business, but a valuable process for determining the best way to proceed with managing public lands and resources. Not having adequate funds is one reason for the disgruntled attitude some public employees have toward NEPA. While that is understandable, one reform that should be undertaken is better training and understanding of the value of NEPA.

10. Consistency in comment deadlines and comment submission formats: Deadlines for comments range from Close of Business to midnight and from PST to EST. Please make that consistent. Also, some field offices require lengthy comments to be submitted by post and won't accept email submissions. In this digital age, it should be standard practice to allow comments and substantiating material to be sent digitally.

While NEPA may need to be fine-tuned, this administration is not the one to accomplish this. It is clear that the current effort to reform NEPA is politically motivated and intended to weaken the provisions of the Act to pacify industry. Already, recent Trump administration changes in regulations to "improve efficiency" have resulted in shoddy documents produced in haste with inadequate analysis. This leads eventually to greater taxpayer expense when projects need to be re-done because critical information was not considered, or environmental

damage was allowed to occur, or improperly-prepared documents lead to litigation by groups trying to protect resources.

The CEQ has responsibility for maintaining the integrity of this process. Any change to NEPA should be conducted by public employees with genuine concern for the intent of NEPA and its successful implementation (I know they exist). NEPA is a reflection of bedrock American values of public participation and environmental review, and it should not be dismantled or neutered at the behest of politicians or corporations. “Streamlining” the process should not be a euphemism for gutting the law. Again, although public involvement can seem burdensome to agencies and the industry representatives who just want quick approval to do whatever they like, the inconvenient fact is that those lands belong to all Americans and everyone has a right to say what happens to them.

If there was a way to reform NEPA without political pressure, it should be done. In the absence of such a way, I urge you to allow NEPA to stand as it is until a sincere effort to improve it can be brought to bear in the future.

Thank you for your time.

Sincerely,

Laura Welp

Kanab, UT

RE: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>
To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>
Cc: "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>
Date: Tue, 21 Aug 2018 08:05:56 -0400
Attachments: 12013 Charlotte Roe, The Cloud Foundation.pdf (329.27 kB)

Aaron,

Charlotte Roe successfully posted her comments (below, in body of email) at <https://www.regulations.gov/document?D=CEQ-2018-0001-12013> (attached, from the docket).

Your email below has 3 attachments that were stripped out by the email system. Let me know if I should pursue them further.

Yardena

From: Szabo, Aaron L. EOP/CEQ
Sent: Monday, August 20, 2018 5:24 PM
To: Boling, Ted A. EOP/CEQ <(b) (6)>
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)>
Subject: Re: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

Ted,

Can you please turn this email into a pdf and send it to me?

Thanks.

Sent from my iPhone

On Aug 20, 2018, at 5:22 PM, Boling, Ted A. EOP/CEQ <(b) (6)> wrote:

Trouble at [regulations.gov](https://www.regulations.gov)?

Sent from my iPhone

Begin forwarded message:

From: Charlotte Roe <charlotteeroe@yahoo.com>

Date: August 20, 2018 at 4:04:40 PM CDT

To: Mary Neumayr <(b) (6)>

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Subject: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW
Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations
Implementing the National Environmental Policy Act
(83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the "intensity" factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public's ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public's role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents noted be revise? **No.** Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to "Apply NEPA early in the process." To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? **No.** Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations.

This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised? **No.** Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? **No.** The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? **I do not recommend** revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? **No.** Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents? **No, and no again.** Section 1502.25 of the CEQ regulations states that agencies "[t]o the fullest extent possible" shall prepare draft EISs concurrently with and integrated with other environmental reviews..." Combining NEPA environmental reviews and other decision documents would indelibly harm public participation, as it would cause confusion and obfuscation. If that is the intent of this proposed rulemaking process, it should be dropped immediately.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA? **No.** NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations? **No changes** are necessary in CEQ regulations to address this issue. If the rulemaking process continues, a revision of language should be considered to broaden the engagement of native American tribes whether or not cultural artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible? This question was answered in responses found above to questions 1,2, 3, 4 & 17.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised? **No changes** are needed to improve mitigation. CEQ's "Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part

of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe

Science Advisor, The Cloud Foundation

Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13

Berthoud, CO 80513

charlotteeroe@yahoo.com

<page4image3681664>

<page5image3682080>

<CEQ ANPRM CR Comments 8.19.18.pdf>



Comment from Charlotte Roe, The Cloud Foundation

This is a Comment on the **Council on Environmental Quality (CEQ) Proposed Rule: Implementation of Procedural Provisions of National Environmental Policy Act**

For related information, [Open Docket Folder](#)

Comment

August 20, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality
730 Jackson Place NW Washington, DC 20503
RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations Implementing NEPA

Dear Ms. Neumayr,

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interiors use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:
1. No changes are necessary. CEQ is already empowered

ID: CEQ-2018-0001-12013

Tracking Number: 1k2-94yl-j7qh

Document Information

Date Posted:

Aug 20, 2018

RIN:

0331-AA03

[Show More Details](#)

Submitter Information

Submitter Name:

Charlotte Roe

Organization Name:

The Cloud Foundation

to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: If its not broken, dont fix it. This needs no fixing.

2. No. This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations.

3. No. Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities.

4. No revision is needed. The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue.

5. No. The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities on this issue.

6. No changes are needed at this time.

7. No. These definitions are clarified by case law and best practices, in our American system based on rule of law.

8. No. Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. No.

10.No. Section 1501.2 of CEQ regulations clearly spells out the why and how to apply NEPA early in the process.

11. No.

12. No. Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. No. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. There is no need to update.

16. No. Combining NEPA environmental reviews and other decision documents would indelibly harm public participation, as it would cause confusion and obfuscation.

17. No. In fact, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. No changes are necessary in CEQ regulations to address this issue.

19. See above responses found above to questions 1,2, 3, 4 & 17.

20. No changes are needed to improve mitigation. CEQs Final Guidance on the Appropriate Use of Mitigation and Monitoring should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation

is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe
Science Advisor, The Cloud Foundation
Wild Horse and Burro Project Partner, In Defense of
Animals

[EXTERNAL] Comments on Advance Notice of Proposed Rulemaking for NEPA[Docket No. CEQ-2018-0001]

From: Laura Fertig <coleogyne@gmail.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Date: Tue, 21 Aug 2018 01:26:11 -0400

Dear Mr. Boling,

I intended to submit comments on the proposal to amend NEPA. The deadline was 12:00am and I thought I had time until I realized that it was 12:00am EST, not PST. Your name was on the Regulations.gov site as someone to contact, so I'm writing in hopes that you will allow my comments to be considered despite the confusion over the deadline. They are below:

Ms. Mary Neumayr, Chief of Staff

Council on Environmental Quality

730 Jackson Place, N.W. Washington, D.C. 20503

RE: Advance Notice of Proposed Rulemaking 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508 [Docket No. CEQ-2018-0001]

Dear Ms. Neumayr,

As a former federal employee and a frequent commenter on government NEPA documents, I have always been an enthusiastic supporter of the National Environmental Policy Act. It holds agencies accountable and requires them to conduct analyses of their actions, something they did not always do before the law was enacted. Even more important, NEPA requires agencies to include the public in management of their public lands. As onerous as that is for government staff who simply want to get on with doing whatever they like, public land belongs to everyone. We all have a right to know what the government is planning to do and what the environmental consequences will be.

That's not to say the law can't be improved. Over the decades, it's become apparent that NEPA does need some adjusting. Below are some categories that could be improved.

1. Categorical Exclusions (CXs): The concept of Categorical Exclusions is being abused. These designations were intended for small-scale projects that inherently had little to no environmental effects. Lately, however, large-scale projects are being called CXs and the public has no opportunity to comment or express support or opposition to the proposal. For instance, the BLM's Grand Staircase-Escalante National Monument conducted a 30,000 acre vegetation treatment project as a CX. This activity had many extensive environmental consequences that needed analysis, but the BLM refused to conduct them. CEQ needs to more clearly define when it's appropriate to use a CX and when more analysis is required.

2. Public involvement: CEQ must retain current provisions for public involvement with regard to number and length of comment periods. The public often provides the agency with valuable information and analysis that it otherwise would not have. I have participated in writing comments for many Environmental Assessments and Environmental Impact Statements. They often present far more scientific documentation, citations, and analysis than the documents the agencies put forth for public review. Researching and presenting this information is time-consuming and provides a great service to government agencies that don't have the time or staff to produce such analysis themselves. For that reason, comment periods should not be truncated.

3. The CEQ should reinforce and strengthen requirements for an agency's response to topics that the public brings up in its comments. Often, agencies offer nothing more than a perfunctory, formulaic response to relevant subjects that they did not analyze or analyzed incompletely. These comments deserve more thorough responses before they are rejected.

4. Definitions and Clarifications: Sometimes an agency will tier a NEPA document or a Determination of NEPA adequacy to outdated information. There should be more specific direction on when it is appropriate to tier to an earlier document and when the information is simply too out of date. In another example from the BLM's Grand Staircase-Escalante National Monument, staff conducted vegetation treatments on areas that were 15 years past the original NEPA. For such malleable resources as vegetation, which can change and degrade quickly under some circumstances, more recent NEPA analysis should be issued. Insisting on the best available, most current science and reasoned analysis should be instituted and enforced.

5. Streamlined Format: The typical NEPA organization with the Description of the Alternatives, Affected Environment, and Environmental Impacts together contain a lot of needless repetition. Surely there is a way to describe or analyze something once and then refer to that section of the document, but not repeat it, in other chapters.

6. Maps: Many EAs and even EISs are presented to the public without adequate maps. Most agencies have access to GIS specialists, at least in state or regional offices. Any updates to NEPA should include standards for clear maps showing the project area in detail on a topographical map(s). No more black and white copies of topo maps with the project area carelessly outlined in smudgy pencil or marker. This leads to public frustration and distrust, followed by less support for the proposed project.

7. Public notification: Virtually all government agencies have some kind of access to the internet. There is no reason, then, why NEPA projects can't be posted on the planning websites for these agencies. Yet, many projects are only posted in hard copy on bulletin boards in agency offices and in obscure weekly newspapers. These regulations for public notification were developed before the internet was available. It's reasonable to update the public notification process and require all projects to be consistently posted on-line in a timely fashion.

8. Enforceable timelines: The Grand Staircase-Escalante National Monument was supposed to have a plan for grazing management in place in 2003. It's 2018 and only now is a draft available. This was not due to any deficit in NEPA. This shameful state of affairs came about due to a reluctance to change status quo management, and it's untenable that it was allowed to continue for this long. It's another example of political influence taking precedence over good management.

9. Agency training and compliance: The CEQ must conduct a thorough and honest assessment how NEPA requirements are conducted on the ground. Many times the perceived burden of environmental review lies not with NEPA itself but with how it is implemented. The quality of the NEPA documents produced and the degree to which NEPA regulations have been implemented has been irregular and inconsistent over agencies and over time. Employees need to be shown that NEPA is not a burden preventing them from going about their business, but a valuable

process for determining the best way to proceed with managing public lands and resources. Not having adequate funds is one reason for the disgruntled attitude some public employees have toward NEPA. While that is understandable, one reform that should be undertaken is better training and understanding of the value of NEPA.

10. Consistency in comment deadlines and comment submission formats: Deadlines for comments range from Close of Business to midnight and from PST to EST. Please make that consistent. Also, some field offices require lengthy comments to be submitted by post and won't accept email submissions. In this digital age, it should be standard practice to allow comments and substantiating material to be sent digitally.

While NEPA may need to be fine-tuned, this administration is not the one to accomplish this. It is clear that the current effort to reform NEPA is politically motivated and intended to weaken the provisions of the Act to pacify industry. Already, recent Trump administration changes in regulations to “improve efficiency” have resulted in shoddy documents produced in haste with inadequate analysis. This leads eventually to greater taxpayer expense when projects need to be re-done because critical information was not considered, or environmental damage was allowed to occur, or improperly-prepared documents lead to litigation by groups trying to protect resources.

The CEQ has responsibility for maintaining the integrity of this process. Any change to NEPA should be conducted by public employees with genuine concern for the intent of NEPA and its successful implementation (I know they exist). NEPA is a reflection of bedrock American values of public participation and environmental review, and it should not be dismantled or neutered at the behest of politicians or corporations. “Streamlining” the process should not be a euphemism for gutting the law. Again, although public involvement can seem burdensome to agencies and the industry representatives who just want quick approval to do whatever they like, the inconvenient fact is that those lands belong to all Americans and everyone has a right to say what happens to them.

If there was a way to reform NEPA without political pressure, it should be done. In the absence of such a way, I urge you to allow NEPA to stand as it is until a sincere effort to improve it can be brought to bear in the future.

Thank you for your time.

Sincerely,

Laura Welp

Kanab, UT

[EXTERNAL] NEPA Submission if you are curious

From: Jeremy Harrell <harrell@clearpathaction.org>
To: Jennifer Loraine <jennifer.loraine@mail.house.gov>, "Prandoni, Christopher D. EOP/CEQ" <(b) (6)>
Date: Tue, 21 Aug 2018 13:52:49 -0400
Attachments: ClearPath - NEPA Reform Submission.pdf (282.07 kB)

It is streamlining Jen... not NEPA defense. Where do you think I went haha.

Good to see you guys.

--

Jeremy B. Harrell
Managing Director, Policy
[ClearPath](#)
611 Maryland Ave. NE
Washington, D.C. 20002
Phone: (513) 403-4620



August 15, 2018

Mary B. Neumayr,
Chief of Staff Council on Environmental Quality
730 Jackson Place NW
Washington D.C. 20503

Re: **Docket No. CEQ-2018-0001/13246**

Dear Ms. Neumayr,

ClearPath Foundation (“ClearPath”) is a nonprofit that advocates for conservative clean energy solutions. ClearPath believes that fostering nuclear carbon capture, hydropower, and other energy technologies is essential to make the domestic energy sector cleaner and that the private sector should, and will, play a leading role in developing the next generation of American power technologies. One of the key technologies that ClearPath believes is crucial is nuclear energy. Based on the need to facilitate the continued development of the nuclear sector as a source of clean energy, ClearPath encourages the White House Council on Environmental Quality (“CEQ”) to amend the implementing regulations for the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. (“NEPA”), per the objective stated in CEQ’s Advanced Notice of Proposed Rulemaking (“ANPR”) published at 83 *Fed. Reg.* 28591 (June 20, 2018): “to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.”

ClearPath believes in the principles underlying NEPA: “to [ensure] that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 CFR § 1500.1(a). At the same time, ClearPath maintains that the manner in which NEPA is implemented in practice may be greatly streamlined without sacrificing the meaningfulness or transparency of the environmental review process. Since their promulgation in 1978, CEQ’s NEPA regulations, codified at 40 CFR §§ 1500–1508, have undergone a single substantive revision. Meanwhile, NEPA reviews have become increasingly complex and onerous, often straying from the doctrine that environmental reviews and documents should “concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.” 40 CFR § 1500.1(b). CEQ should revise its regulations to establish procedures that will ensure streamlined, less confusing, and, ultimately, more effective reviews.

In so doing, CEQ should consider (a) practices implemented to date by individual agencies that have resulted in more efficient NEPA reviews and (b) worthwhile suggestions that governmental officials and regulated entities have made over the years to streamline the NEPA process but that have not been implemented or adopted as law. ClearPath hopes that CEQ’s amendments will lay the groundwork for subsequent amendments to the NEPA requirements of individual governmental authorities, such as the Nuclear Regulatory Commission’s (“NRC’s”) regulations at

10 CFR Part 51, to facilitate, rather than impede, clean energy projects, including nuclear energy initiatives. We hope the following substantive comments can support a more effective NEPA implementation.

Sincerely,

Spencer Nelson, Policy Associate
nelson@clearpath.org

Substantive Comments

1) More Stringent Restrictions Regarding Document Format and Length

ClearPath recommends that CEQ amend its regulations relating to the format and length of NEPA documents. A common criticism of NEPA is that environmental documents – especially, Environmental Impact Statements (“EIS”) and Environmental Assessments (“EA”) – are too long and onerous. NEPA documents tend to be several hundreds, if not thousands, of pages long, making them functionally inaccessible to the public and susceptible to legal challenges, due to the presence of internally inconsistent and confusing statements resulting from the consolidation of extraneous materials. This is the case, even though current regulations impose a 150-page limit on most Environmental Impact Statements, and CEQ guidance establishes a 10- to 15-page limit on Environmental Assessments (“EAs”). Common reasons why these page limits are ignored is that consultants responsible for preparing environmental documents often fail to conduct proper scoping to narrow the range of issues to be addressed in the EA or EIS and, when incorporating other documents by reference (as permitted under 40 CFR § 1502.21), attach the incorporated materials to the NEPA document, although it is unnecessary to do so.

Accordingly, ClearPath proposes that:

- CEQ’s regulations at 40 CFR § 1501.7(a)(7)(b) (“Scoping”) be revised to require federal agencies to establish presumptive page limits for environmental reviews;
- CEQ’s regulations at §§ 1502.7 (page limits for EIS’s) be revised to prohibit the “padding” of an EIS with unnecessary exhibits and attachments (by clarifying that the codified page limit applies to appendices, as well, and that any EIS exceeding the limit will be precluded from the record);
- CEQ’s regulations involving EAs (e.g., § 1508.9) be revised to establish a standardized format and presumptive page limit; and
- CEQ’s regulations involving Records of Decision (“RODs”; § 1505.2) should be amended to allow RODs to incorporate by reference the findings of an EIS, as opposed to restating

them, so that the ROD can then simply memorialize the agency’s final decision on the proposed action.¹

To provide flexibility, the amended regulations should allow for exceedances of presumptive page limits for proposals of “unusual scope or complexity” (the language used in § 1502.7 to authorize 300-page EIS documents), but “unusual scope or complexity” should be clearly defined, and agencies should not apply this exception to more than a certain percentage of documents.

2) A More Stringent Environmental Review Timeline

CEQ should amend its regulations pertaining to the timelines in which agencies must complete environmental reviews. The current regulation at 40 CFR § 1501.8 requires agencies to set time limits upon request. However, it does not specify how the time limit is to be set. Consequently, uncertainty regarding scheduling trickles down to NEPA regulations of individual agencies. For example, in the NRC context, the Commission’s staff has complete discretion on whether or not to establish time limits, unless an applicant requests it, in which case NRC is required to prepare a schedule. *See* 10 CFR 51.15. Even then, the NRC rule does not specify any scheduling criteria. Consequently, NEPA reviews – including those conducted by the NRC – tend to be temporally open-ended. Reviews involving EIS preparation often last two to four years from the publication of the Notice of Intent (“NOI”) to ROD issuance, while the timeframe between project planning and ROD issuance can be even longer, exceeding five or six years. These timeframes can, and should be, reduced.

ClearPath advocates the amendment of 40 CFR § 1501.8 to require agencies to establish, through rulemaking, presumptive time limits for environmental reviews, irrespective of whether a project applicant or third-party requests the establishment of such a timeline. As with the presumptive page limits recommended in the previous comment, exceptions should be made for proposals of “unusual scope or complexity.” Again, this term should be defined clearly and understandably, and limitations should be set on the percentage of instances in which the exception may be invoked. ClearPath further endorses the “tracking” and “scoring” mechanisms called for in Sections 4(b)(i) and 4(b)(ii), respectively, of the White House’s August 15, 2017 Executive Order 13807, to hold agencies accountable for conducting timely environmental reviews.

3) Avoiding Unnecessary Report Preparation Through Expanded Use of Categorical Exclusions

Consistent with the above statements, ClearPath encourages CEQ to amend its regulations to expand the use of categorical exclusions (“CatEx”) in a manner consistent with NEPA’s aims. The regulations at 40 CFR §§ 1500.4 and 1500.5 recommend the use of CatExes to minimize the administrative/paperwork burdens of, and delays in, conducting environmental reviews under NEPA. However, the actual CatEx regulation at § 1508.4 contains an open-ended deferral to implementing agencies to identify the types of actions that do not require review because they “do not individually or cumulatively have a significant effect on the human environment.”

¹ Consistent with NRC’s position on the adequacy of its RODs, as articulated in the July 19, 2013 memorandum to Hubert T. Bell, Inspector General, re: Formal Comments on Office of the Inspector General Draft Report ‘Audit of NRC’s Compliance with 10 CFR Part 51 Relative to Environmental Impact Statements.

Accordingly, in practice, many types of actions are subjected to full environmental review, even if they have a negligible chance of posing environmental impacts.

ClearPath recommends that CEQ require implementing agencies to regularly conduct internal reviews (e.g., every two years) to update through rulemaking the list of actions subject to CatEx. Furthermore, CEQ should develop specific, presumptive CatExes, which individual agencies must incorporate into their own NEPA regulations. For example, CEQ should consider creating a presumptive, CatEx for actions that will impact less than a certain number of acres. Agencies would still be able to rebut the presumption of CatEx using the “extraordinary circumstances” test set forth at § 1508.4. However, by clearly shifting the burden onto agencies, such a requirement would doubtless reduce the amount of unnecessary reviews.

The creation of presumptive CatExes along the lines described above would be of great benefit to promoting clean energy, inasmuch as it would eliminate unnecessary delays in the deployment of “next-generation” nuclear technology. These include micro-reactors, with a capacity of 50MW or less, such as those that are the subject of the pilot program that the Department of Energy must develop under the recently passed National Defense Authorization Act for Fiscal Year 2019. These reactors do not require the same level of safety and siting analysis as the water-based reactors constructed and operated to date. CEQ should amend its CEQ regulations to encourage NRC’s use of CatExes for such reactors, as well as for other actions, such as the development of demonstration reactors and other experimental use technologies, medical isotope facilities, and spent fuel storage facilities of a certain size.

4) Streamlining Unnecessary Analyses of Alternatives and “Need For Action”

A hallmark of NEPA review is the analysis of “reasonable alternatives” to a proposed action, to determine whether the same goals are achievable but at less impact to the environment. *See, e.g.*, 40 CFR §§ 1500.1(e), 1502.1, 1502.14, 1508.25. Too often, the alternatives analysis is open-ended and focuses on potential measures that do not suit the “purpose and need” of the proposed action, due to differences in project type, scale, costs, etc. As an example, ClearPath points to the types of alternatives frequently addressed in EIS documents prepared in connection with applications for combined construction permit and operating permits (“COLs”) for nuclear reactor units intended to provide baseload power. In such cases, even summary consideration of solar or wind power facilities as alternatives to the proposed action is inapposite from a technical and economic standpoint, but frequently encountered in the EIS. Similarly, alternatives that tend to be discussed in greater detail based on presumed viability – e.g., coal- or natural-gas fired power generation – may not be “reasonable” because the private party COL applicant has no desire to construct such facilities or capability to do so.² The environmental review process should accord greater deference to the project proponent’s critical role in most undertaking underlying federal actions subject to NEPA. Moreover, to mitigate further the speculative nature of the alternatives analysis, the alternatives discussed should generally be limited to potential actions under the purview of the lead agency.

² Failure to consider private party motivations is cited as a fundamental flaw in NEPA analysis in “A Case Study of the Direction of a Federal Action Affecting the NEPA Assessment,” prepared by D. Palmrose, U.S. NRC (2014).

Similarly, CEQ's current regulations require that an EIS evaluate the "purpose of and need for" the proposed action, "unless the agency determines that there is a compelling reason to do otherwise." *See* 40 CFR § 1502.10, also 1502.13. However, agencies rarely make such determinations, partly because the concept of "compelling reason" is not clearly defined. For example, environmental reviews triggered by NRC licensing applications often contain lengthy and time-consuming "need for power" analysis, which is entirely superfluous, for: (1) if the impetus to increase or generate power reflects a governmental decision, the need for power analysis has already been performed by governmental authorities; or (2) if the impetus to expand baseload power is a private party decision, the project proponent already would have already performed the analysis and will bear the risk of an incorrect market-based decision.

In view of the above inefficiencies in analyzing alternatives and the purpose of and need for the proposed action, ClearPath recommends that CEQ provide a clearer definition of "reasonable alternative" that will account for alternative actions that project proponents would viably consider. Similarly, the regulations pertaining to "need for" analysis should be amended to make clear that such analysis is unnecessary where the underlying decision to undertake the proposed action is made by a governmental entity or reflects a market-based decision made by a sophisticated private party.

5) Promoting Reliance on Existing Documents

CEQ's existing regulations articulate policies to reduce administrative burdens and delays in the environmental review process. *See* 40 CFR § 1500.4, 1500.5. CEQ should revise these and other regulations to more clearly mandate reliance on existing documents, including those prepared by other federal or state agencies, to avoid "recreating the wheel" or unnecessarily evaluating recurring issues from scratch. Specifically, the amended regulations should authorize reliance on documents that evaluate environmental impacts for the same geographical site as the proposed action, or for the same type of action but at other locations, comparable to the proposed action site, provided that such existing documents are still timely. Regarding the timeliness of existing documents, CEQ should revise its regulations to provide that documents prepared during the last 5 years are presumed to be timely, and that reliance on earlier documents may be appropriate on a case-by-case basis.³ The issue of reliance is also addressed in our comments relating the use of Generic Environmental Impact Statements ("GEIS"), scoping and tiering, and the formatting of RODs.

6) Expanded Use of Generic Environmental Impact Statements

A GEIS is one form of document that agencies should develop and rely on more frequently. Through nearly four decades of implementing NEPA regulations, federal agencies have accumulated data enabling them to identify the likely impacts, alternatives, methods of implementation, etc. of particular actions. CEQ regulations currently permit, but do not clearly advocate, federal agencies to address such actions in a GEIS (40 CFR § 1502.4(c)). Consequently, not all agencies have evinced the same commitment to using GEIS documents. For example, NRC

³ The five-year period is mentioned in the following document: Audit Report: Audit of NRC's Compliance with 10 CFR Part 51 Relative to Environmental Impact Statements (OIG-13-A-20), August 20, 2013 (Office of the Inspector General, U.S. Nuclear Regulatory Commission), at p. 25.

is among the more active agencies in using GEIS's to fulfill its NEPA mandate, and uses such documents for broad actions, such as: (1) relicensing nuclear power plants, (2) handling and storing spent nuclear reactor fuel, (3) decommissioning nuclear facilities, (4) in support of rulemaking on radiological criteria for license termination, and (5) in-situ uranium recovery facilities. However, other agencies tend to be more reluctant to employ the GEIS approach, and there are also inconsistencies in the types of actions that federal and state agencies deem worthy of a GEIS.

To facilitate efficient and timely NEPA review, CEQ should amend its regulations to affirmatively recommend the use of GEIS documents whenever possible. The amended regulations could require agencies to evaluate upfront whether use of a GEIS would be appropriate for certain types of imminent actions that are likely to recur and, absent specific reasons why a GEIS would not suffice, to develop a GEIS for those actions. Consider that the NRC is likely to continue to receive licensing applications for advanced reactors (e.g., small modular reactors, non-light water reactors, micro-reactors, etc.). In the vast majority of these cases, the EIS analysis is likely to be the same; therefore, a GEIS, along the lines of those currently used for *in situ* uranium recovery and license renewals, will suffice to cover the advanced reactor license applications.

7) Promoting Tiering and Scoping

The above comments reflect ClearPath's strong support for tiering and scoping in the NEPA review process, to ensure that environmental reviews utilize and, to the extent necessary, build off existing information and focus on those issues that are truly significant. CEQ's existing regulations reference "tiering" (e.g., 40 CFR §§ 1502.4(d), 1502.20, the definition is given at 1508.28), but do not sufficiently emphasize it as the recommended procedure conducting meaningful review. Such emphasis, coupled with more detailed regulations concerning the procedures for tiering, are necessary to ensure that agencies follow the practice. For example, CEQ should strongly consider amending its EIS regulations to require the development of a new, freestanding EIS, only if the agency can point to specific and compelling reasons, why the same degree of meaningful review cannot be achieved through reliance on existing documents. Absent such a showing, the standard review process should involve reliance on pre-existing materials, including a GEIS, to be complemented with narrowly scoped supplemental environmental impact statements ("SEIS") that address targeted matters not covered in the earlier documents or conditions that have changed since the earlier documents were prepared. Furthermore, CEQ's regulations should be amended to permit the development of an SEIS without mandatory scoping based on a final EIS/GEIS; alternatively, if a governmental authority exercises its discretion to perform scoping, the public should be precluded from raising objections to a draft SEIS on the basis of issues covered during scoping.⁴

8) Increased Coordination Between Federal and State Agencies

Existing NEPA regulations require the lead federal agency to coordinate with state agencies to avoid duplicative analysis. *See* 40 CFR § 1506.2. Such coordination is especially useful when a state lead agency undertakes a NEPA-like review pursuant to a state analog to NEPA – i.e., a State

⁴ Consistent with NRC's position, as articulated in the July 19, 2013 memorandum to Hubert T. Bell, Inspector General, re: Formal Comments on Office of the Inspector General Draft Report 'Audit of NRC's Compliance with 10 CFR Part 51 Relative to Environmental Impact Statements.

Environmental Policy Act (“SEPA”). In such instances, failure to consolidate federal and state environmental reviews can create problems. For example, allowing federal and state environmental review to proceed on separate tracks doubles the burden on all cooperating agencies whose input is necessary for each review. It also stands to create confusion, as NEPA and SEPA reviews may proceed along different timelines, thus resulting in the undesirable outcome of the same project being described at different stages in various public documents. Third, the “two-track” approach affords project opponents twice the opportunity to oppose the proposed action.

To avoid these problems and bolster meaningful coordination between federal and state lead agencies, ClearPath recommends that CEQ amend its regulations to require that, in cases where both NEPA and SEPA review will entail the preparation of an EIS, federal and state lead agencies enter into a memorandum of agreement, as soon as possible, to (1) prepare a single document that will satisfy both review processes and (2) allocate responsibilities to ensure meaningful coordination.⁵

9) Setting Deadlines on Public Participation and Consolidating Hearings

While recognizing that public participation is an integral aspect of NEPA, ClearPath identifies the need for CEQ to amend its regulations to make public participation more efficient. As with other elements of NEPA review, ClearPath recommends that CEQ establish presumptive limits for public notice and comment that can only be extended under unusual circumstances. Moreover, to the extent possible, the amended regulations should direct agencies to consolidate public hearings, which address contested issues, with mandatory administrative hearings, to ensure that all issues raised on the record are dealt with at the same time. Such consolidation is of special interest to the nuclear industry, where the construction of special types of facilities, such as uranium enrichment facilities, are subject to a mandatory hearing requirement separate and apart from any public hearing. NRC has already successfully established “single hearing” procedures with respect to COL applications for multiple modules of essentially identical design at a single facility.

⁵ See, e.g., the recommendations made in the Golder Associates Report to the Washington State Energy Facility Site Evaluation Council, “Small Modular Reactors: An Analysis of Factors Related to Siting and Licensing in Washington State” (2016).

Due Outs

From: "Barnett, Steven W. EOP/CEQ" <(b) (6)>

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

Date: Wed, 29 Aug 2018 14:32:58 -0400

This is what I remember—also is it “Do” or “Due”...? Never heard of it before and Google is predictably no help. Footnote: Tom really, really wants to know if we can spell it “Dew.”

Summary of Do Outs: (b) (5)
[Redacted text block]

RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

From: "Boling, Ted A. EOP/CEQ" <(b) (6)>
"Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Barnett, Steven W. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Loyola, Mario A. EOP/CEQ" <(b) (6)>
To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Sharp, Thomas L. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)>

Date: Fri, 31 Aug 2018 15:33:35 -0400

Attachments: Representative Significant Comments.docx (17.5 kB)

Colleagues,

Mario & NEPA Team's list of representative ANPRM comments is attached.

Happy reading and best wishes for a happy Labor Day!

Ted

From: Szabo, Aaron L. EOP/CEQ
Sent: Thursday, August 30, 2018 12:53 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6)>
Subject: RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

Quick update on your Do/Due Outs (I will now call them "Taskers" to alleviate confusion).

(b) (5)

(b) (5)
[Redacted]

Thank you very much and let me know if you have any questions.

From: Szabo, Aaron L. EOP/CEQ
Sent: Wednesday, August 29, 2018 5:22 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ
<(b) (6)> Drummond, Michael R. EOP/CEQ
<(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)>
Mansoor, Yarden M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ
<(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>
Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ
<(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6)>
Subject: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

Aaron

- (b) (5)
[Redacted]

Steve

- (b) (5)
[Redacted]

Mario and/or NEPA Team

- (b) (5) [Redacted]
- [Redacted]
- [Redacted]

NEPA Team

- (b) (5) [Redacted]
- [Redacted]
- [Redacted]

Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

Aaron L. Szabo
Senior Counsel
Council on Environmental Quality

(b) (6) [Redacted] (Desk)
(b) (6) [Redacted] (Cell)
(b) (6) [Redacted]

Representative Significant Comments

Commenter	Docket #: CEQ-2018-0001-___
<i>State and Local Government</i>	
AGs of CA, IL, MD, MA, NJ, NY, OR, VT, WA, et al.	11812
American Association of Port Authorities	11797
American Association of State Highway and Transportation Officials	8267
California High-Speed Rail Authority	11561
National Association of Counties	12285
New York State Department of Environmental Conservation	11974
North Carolina Department of Transportation	12044
State of Louisiana (CPRA)	11129
Utah (Department of Transportation)	11463
Utah (Office of Governor – Public Lands Policy Office)	12116
Virginia Department of Transportation	12179
Western Pacific Regional Fisheries Management Council	12382
Western Urban Water Coalition	0026
Wyoming County Commissioners Association	11266
<i>Companies and Trade Associations</i>	
American Fuel & Petrochemical Manufacturers (AFPM)	12266
American Road & Transportation Builders Association (ARTBA)	8370
Duke Energy (posted by Nathan Craig)	11135
Ecological Restoration Business Association	12306
Edison Electric Institute	11910
Federal Forest Resource Coalition	11713
Interstate Natural Gas Association (INGAA) et al	11709
National Association of Manufacturers	11931
National Hydropower Association	11847
National Mining Association	11597
Nuclear Energy Institute	11895
Oglethorpe Power Corporation	12115
U.S. Chamber of Commerce	11941
Women’s Mining Coalition	8255
<i>NEPA Experts</i>	
58 Law Professors (David E. Adelman, et al)	11832
Blueprint 2025	11375
Dina Bear	12056
Horst Greczmiel	12381
Jessica Wentz (Columbia University)	9722
Lucinda Low Swartz	3760
Mark Febrizio (GWU Regulatory Studies Center)	9917
National Association of Environmental Professionals	11898
Nicholas Yost	10400
Ray Clark (River Crossing Strategies)	12161
Thomas F. King	1486

<i>Advocacy Groups</i>	
Center for Biological Diversity	<u>11169</u>
Delaware Riverkeeper Network	<u>9723</u>
Environmental Defense Fund	<u>1036</u>
Environmental Protection Network	<u>3773</u>
Friends of the Sonoran Desert (Multiple comments attached)	<u>10560</u>
National Wildlife Federation	<u>3660</u>
Natural Resources Defense Council	<u>9761</u>
Partnership Project, et al (341 public interest organizations)	<u>9786</u>
Pew Charitable Trusts	<u>9482</u>
Rocky Smith and various Advocacy Groups	<u>8509</u>
Southern Environmental Law Center	<u>11215</u>
<i>Tribes</i>	
Alaska Institute for Justice	<u>0498</u>
National Congress of American Indians	<u>11763</u>
Port Gamble S'Klallam Tribe	<u>12043</u>
Shoshone-Bannock Tribes	<u>0529</u>
Standing Rock Sioux	<u>11542</u>

Suggested Reading

From: "Drummond, Michael R. EOP/CEQ" <(b) (6)>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Date: Fri, 31 Aug 2018 11:08:57 -0400

Attachments: 10400 Nicholas Yost.pdf (137.08 kB); 11898 Nicholson (NAEP).pdf (196.87 kB); 11812 Multistate AG comments (76 pages).pdf (3.62 MB); 12056 Dinah Bear.pdf (161.77 kB); 12161 Ray Clark.pdf (113.82 kB); 12381 Horst Greczmiel.pdf (431.04 kB); E-0014 King County WA.pdf (129.6 kB); CEQ-2018-0001-10973-A1.pdf (141.07 kB); 11660-A1.pdf (320.04 kB); 11597-A1.pdf (354.71 kB); 11574-A2.pdf (446.94 kB); 11561-A1.pdf (2.07 MB); 11542-A1.pdf (2.75 MB); 11539-A1.pdf (195.09 kB)

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality

(b) (6)

8.14, 8.29 Minutes

From: "Barnett, Steven W. EOP/CEQ" <(b) (6)>
To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)>
Date: Fri, 31 Aug 2018 13:45:31 -0400
Attachments: CEQ NEPA Implementing Regulation Working Group 8.14.2018.docx (18.74 kB);
CEQ NEPA Implementing Regulation Working Group 8.29.2018.docx (21.53 kB)

Enjoy!

CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

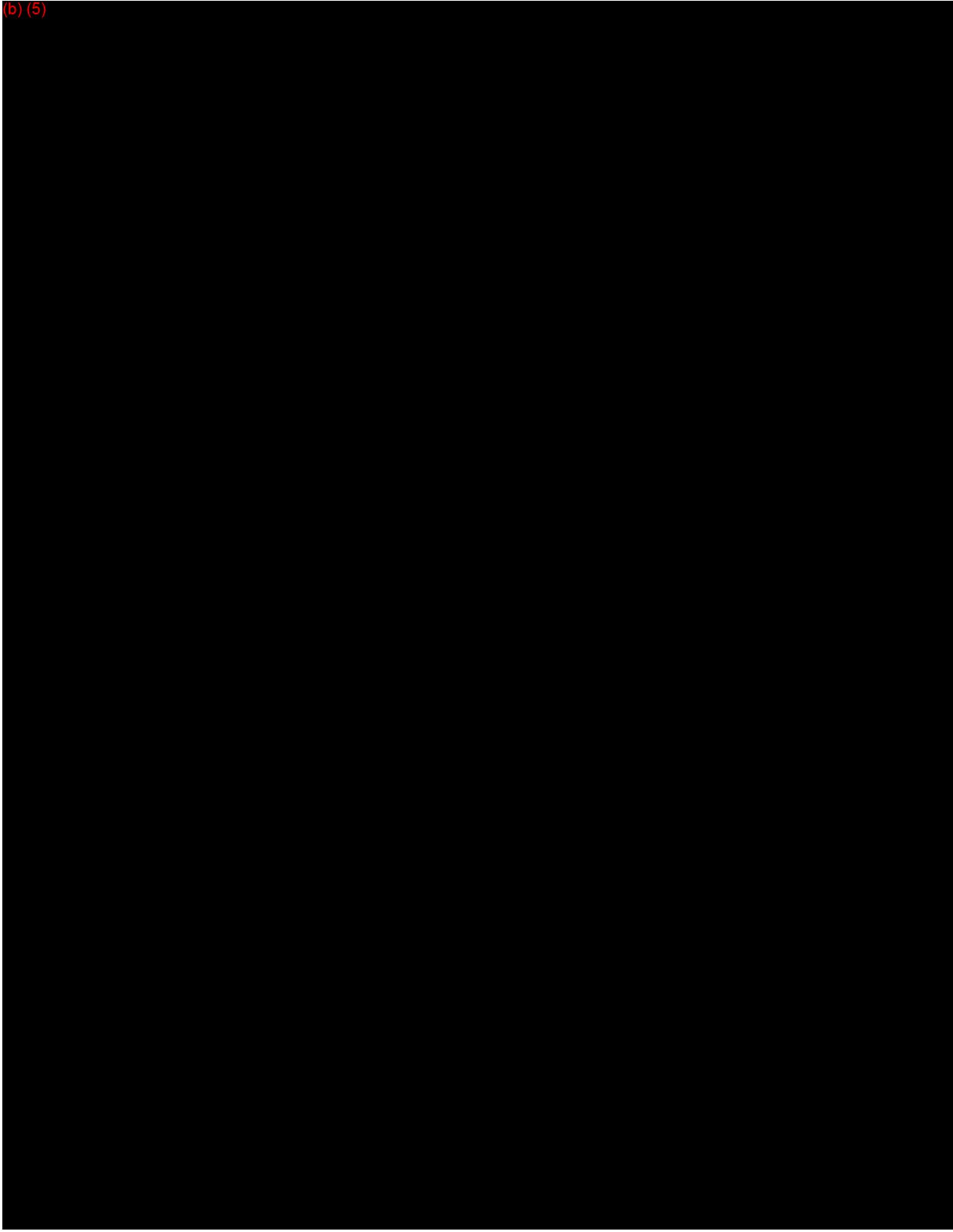
Date: August 29, 2018

Time: 11:30 AM

Present: Mary Neumayr, Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Theresa Pettigrew, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

(b) (5)





CEQ NEPA Implementing Regulation Working Group

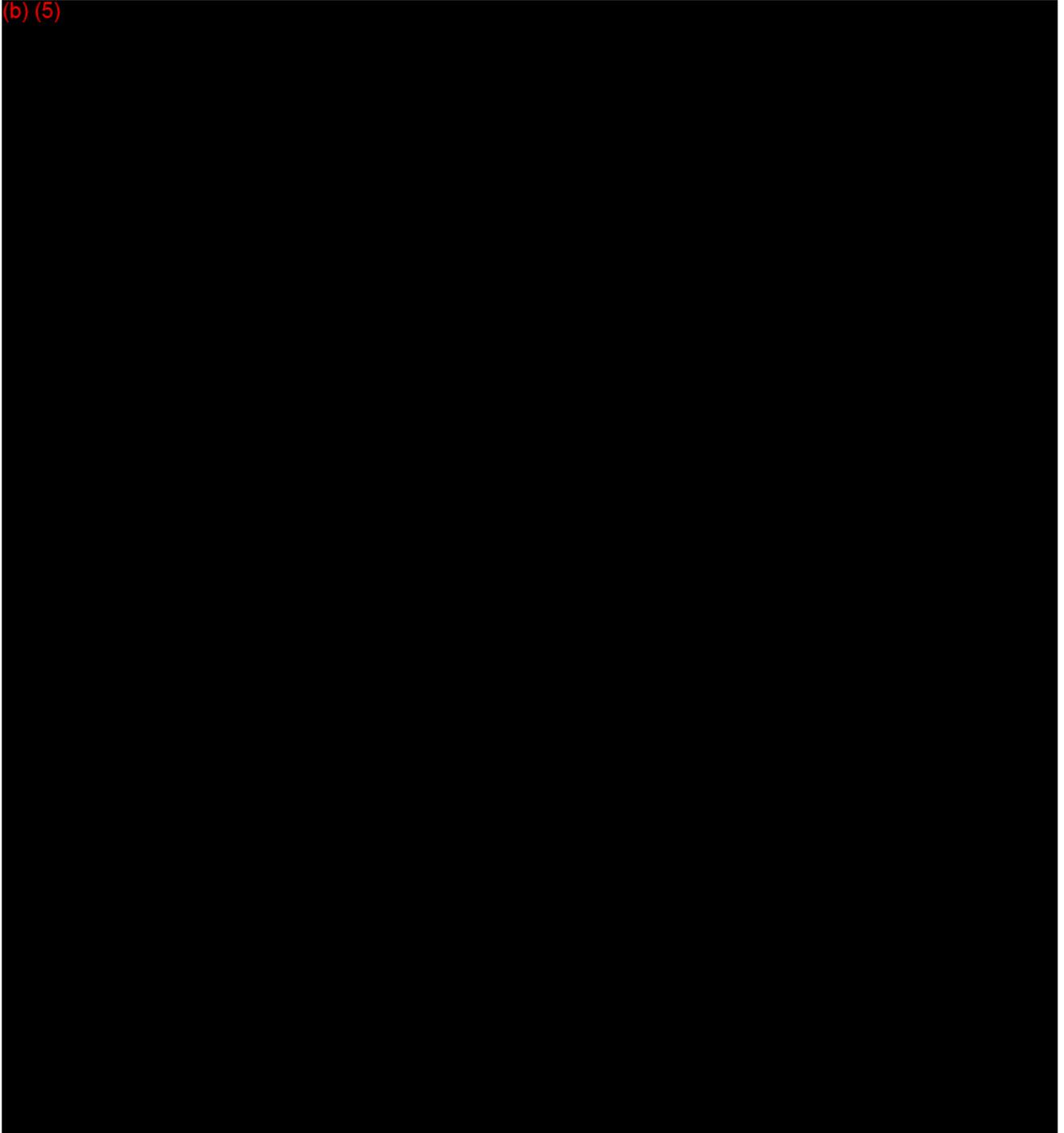
Meeting Minutes

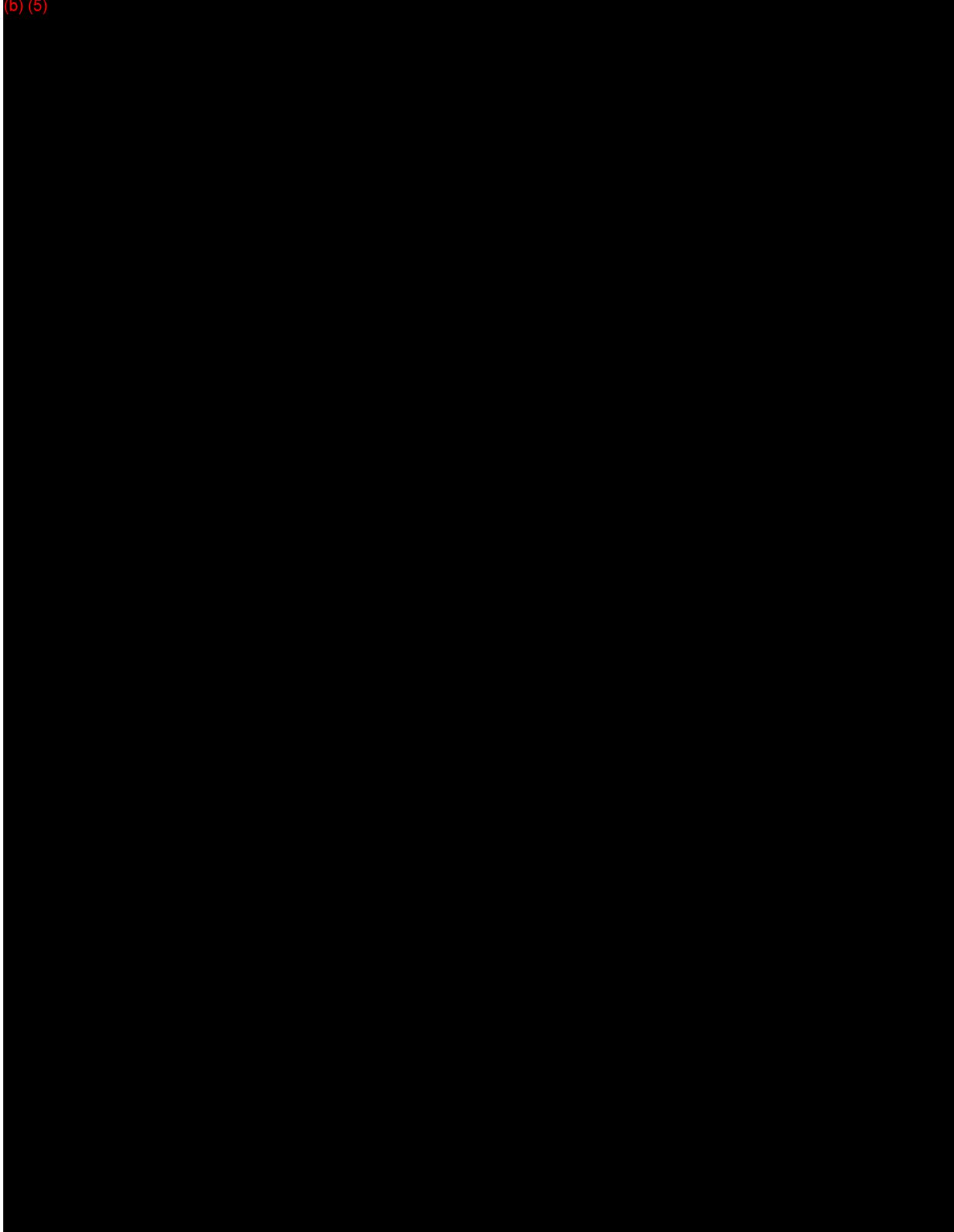
Date: August 14, 2018

Time: 3:30 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp; Theresa Pettigrew

(b) (5)





QFR and Additional Responses

From: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>
To: "Schneider, Daniel J. EOP/CEQ" <(b) (6)>
Date: Wed, 05 Sep 2018 16:22:08 -0400
Attachments: Letter to Senator Carper_Additional Responses_081718.pdf (4.35 MB); All Neumayr QFRs 07.19.2018 Final Responses.pdf (236.57 kB)

For your records. Thanks, Theresa

Theresa L. Pettigrew
Associate Director for Legislative Affairs
Council on Environmental Quality
Executive Office of the President
(b) (6) (office)
(b) (6) (fax)
www.whitehouse.gov/ceq

Senate Committee on Environment and Public Works
Hearing entitled, “Hearing on the Nominations of Mary Bridget Neumayr to be a Member of
the Council on Environmental Quality and John C. Fleming to be Assistant Secretary of
Commerce for Economic Development”

July 19, 2018

Questions for the Record for Mary Bridget Neumayr

Chairman Barrasso:

1. Red tape and a lack of coordination among federal agencies has significantly delayed infrastructure projects across the country. I am glad to see that the Trump administration has taken meaningful steps to improve the environmental review process and increase coordination among federal agencies. I am especially glad to see that the administration set a two-year goal for completing environmental reviews for these projects. Can you give us a progress report on these efforts? Specifically, are federal agencies on track to meet this two-year goal?

Executive Order (EO) 13807 of August 15, 2017, titled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” directed Federal agencies to carry out environmental reviews and authorization decisions for major infrastructure projects pursuant to a “One Federal Decision” policy. The EO sets a government-wide goal of reducing the average time for such reviews to two years, measured from the date of publication of a notice of intent (NOI) to prepare an environmental impact statement (EIS) to the date of issuance of a record of decision (ROD).

Pursuant to EO 13807, on March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued a framework memorandum to assist agencies with implementing the One Federal Decision policy. On April 9, 2018, President Trump announced that 11 Federal agencies and the Federal Permitting Improvement Steering Council (Permitting Council) had executed a Memorandum of Understanding (MOU) committing to work collaboratively to meet the two-year goal for major infrastructure projects. Under the EO, “major infrastructure projects” are projects for which multiple Federal authorizations are required, the lead Federal agency has decided to prepare an EIS, and the project sponsor has identified the reasonable availability of funds.

CEQ has convened an interagency working group and is working with Federal agencies to implement the One Federal Decision policy and MOU for major infrastructure projects. Additionally, pursuant to the EO, OMB is currently working to establish an accountability system to track agency performance for processing environmental reviews and meeting the two-year goal.

2. Earlier this year 11 agencies and the Permitting Council established by the FAST Act signed a Memorandum of Understanding (MOU) outlining the Administration's One Federal Decision policy. This policy establishes a coordinated and timely process for environmental reviews of major infrastructure projects. Under the MOU, the federal agencies agreed to work together to develop a single Permitting Timetable.

- a. Can you explain how this will help achieve a timely, predictable permitting process?

Under the MOU, the lead Federal agency for a proposed major infrastructure project, in consultation with cooperating agencies, will develop a joint schedule, referred to as a Permitting Timetable, that provides for a two-year timeframe from the date of publication of an NOI to prepare an EIS to the date of issuance of a ROD. Federal agencies will develop a single EIS and single ROD, subject to limited exceptions. They will also coordinate with regard to scoping and concurrence points, and elevate and resolve issues and disputes to avoid unnecessary delays. The MOU is intended to coordinate agencies' processes while preserving each agency's statutory authorities and independence.

- b. What types of projects do you see as benefitting from the One Federal Decision process with a two-year goal for permitting decisions?

Projects that may benefit from the One Federal Decision process include a wide range of projects to modernize our nation's infrastructure, including transportation, energy, water, and environmental restoration projects.

- c. What is the goal of the One Federal Decision process? How does One Federal Decision seek to address delays in the permitting process?

The goal of the One Federal Decision process is to improve coordination between Federal agencies and provide greater transparency, accountability, and predictability in the Federal environmental review and authorization process for infrastructure projects.

3. On June 20, 2018, CEQ issued an Advanced Notice of Proposed Rulemaking (ANPR) entitled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act [(NEPA)]." Will you confirm that CEQ, through the ANPR, is considering ways to improve the NEPA process for all applicable federal decision-making, including routine land-management decisions made by the Bureau of Land Management and the U.S. Forest Service?

Yes, in the Advance Notice of Proposed Rulemaking, CEQ is requesting comment on potential revisions to update and clarify its regulations in order to ensure a more effective, timely, and efficient process for decision-making

by all Federal agencies, consistent with the policy stated in Section 101 of the National Environmental Policy Act. This includes land management decisions made by the Bureau of Land Management and the U.S. Forest Service.

Ranking Member Carper:

4. Whistleblower laws protect the right of federal employees to make lawful disclosures to agency management officials, the Inspector General, and the Office of Special Counsel. They also have the right to make disclosures to Congress.

Specifically, 5 U.S.C. § 7211 states that the “right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” Further, 5 U.S.C. § 2302(b)(8), makes it a violation of federal law to retaliate against a whistleblower because of “(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation...” In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry.

- a. If you are confirmed, will you commit to protect the rights of all CEQ career employees to make lawful disclosures, including their right to speak with Congress?

Yes.

- b. Will you commit to communicate employees’ whistleblower rights via email to all CEQ employees within a week of being sworn in?

Yes. The Whistleblower Protection Act of 1989, the Whistleblower Protection Enhancement Act of 2012, and related laws provide the right for all covered employees to make whistleblower disclosures and ensure that employees are protected from whistleblower retaliation. In 2017 and 2018, the Council on Environmental Quality (CEQ) took steps to complete the requirements of the Office of Special Counsel (OSC) Certification Program for Federal agencies to meet their statutory obligations under these statutes. In 2018, CEQ was added to the list of agencies that have completed OSC’s Certification Program.

5. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

Yes.

6. Do you agree with the President's decision in 2017 to withdraw from the Paris Climate Accord? Please explain why or why not.

The President announced his decision on June 1, 2017. This decision was within his authority, and I support the decision.

7. As you know, 96 percent of highway projects are categorically excluded from NEPA, meaning they're in a category of actions that don't significantly impact the environment and therefore don't require further analysis. In fact, the vast majority of all Federal actions are categorically excluded from NEPA. When Wyoming DOT Director Bill Panos testified before our committee last year, he indicated that in recent years, all their projects have been Categorical Exclusions from NEPA. Do you agree that for this vast majority of projects, NEPA approvals do not constitute a significant burden? If not, why not?

Categorical exclusions are a well-established, efficient means of addressing National Environmental Policy Act (NEPA) compliance for actions that are not individually or cumulatively significant.

8. Several court decisions have held that federal agencies are obligated to analyze the effects of climate change as it is relevant to proposed actions in the course of complying with NEPA. (See for example, *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (9th Cir. 2008), and *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003).
 - a. Were those decisions wrongly decided in your view? If so, please explain why.
 - b. Given that President Trump revoked CEQ's guidance to agencies on how to incorporate climate change impacts into federal environmental reviews, how specifically are you now supporting agencies' efforts to consider climate change as part of their NEPA analyses?
 - c. In your view, how should greenhouse gas impacts and sea level rise be considered in the NEPA analysis?

There have been a number of court decisions relating to NEPA implementation and greenhouse gas or climate change related considerations, and Federal agencies have sought to comply with these court decisions. As a general matter, Federal agencies are required under NEPA to review the potential environmental consequences of proposed major Federal actions that may significantly affect the quality of the environment. In conducting NEPA analyses, Federal agencies have discretion and should use their experience and expertise to decide how and to what degree to analyze particular effects. Pursuant to CEQ's NEPA implementing regulations, agencies should identify methodologies and ensure information is of high quality, consistent with 40 CFR 1500.1(b) and 40 CFR 1502.24.

9. The CEQ regulations are intended to be flexible so that they may apply broadly to all agency actions. CEQ directs agencies to supplement these regulations as appropriate with agency-specific regulations that encompass the nature of actions taken by that agency and the additional authorities or statutory requirements that agency has. In this way, NEPA may be integrated into an agency's decision-making process in a way that is tailored for that agency. Do you believe that it is appropriate for the CEQ regulations to be flexible in this way to enable NEPA to function as an umbrella to other laws and processes administered by the agency? If not, why not?

Yes.

10. The US Government Accountability Office released a report on July 19, 2018, titled "Highway and Transit Projects: Better Data Needed to Assess Changes in the Duration of Environmental Reviews". The report indicated that it is unclear whether recent changes to the environmental review process for highway and transit projects has had an impact on timelines because agencies "lack reliable data and tracking systems." This is a finding that reiterates findings from past GAO reports, such as a report from 2014 that found that government-wide data on the number and type of NEPA analyses are not readily available, and that agencies' data is poor because they do not routinely track the number of EAs and CEs they complete, nor the time required to complete NEPA reviews. This deficit of accurate and reliable data makes it difficult to determine either the success of past streamlining efforts or the potential benefits of additional streamlining or other changes. There is also very little data on the costs and benefits of completing NEPA analyses. CEQ is the agency tasked with NEPA implementation.

- a. Would you agree that it is important to improve the data quality in this field, and that better data is needed for Congress to be able to target procedural improvements that would speed up project delivery without damaging the environment?

It is important that Congress have access to information that is of high quality, including data relating to environmental reviews, when considering legislative proposals.

- b. Will you further commit to providing an analysis of how the statutory project delivery changes from the last 10 years have been working out? If so, please provide a timeline and description of all planned efforts, and if not, why not?

CEQ is currently in the process of compiling data from 2010 through 2017 relating to completed environmental impact statements (EIS) across all Federal agencies, including transportation-related projects. This compilation will include information on the time for completion of the review, measured from the date of publication of a notice of intent (NOI) to prepare an EIS to the date of issuance of a record of decision (ROD).

11. Over the last several years there have been numerous reports, from non-partisan government entities such as the Government Accountability Office and Congressional Research Service, as well as academia and private studies – all of which indicate that the primary causes of project and permitting delay are not related to the NEPA process. Do you agree with these conclusions? If not, please explain specifically why not, and provide documentation to support your explanation.

Environmental reviews under NEPA are among the many factors that shape the timeline for project and permitting decisions. Recognizing that there can be many reasons for delays, it is important to consider whether there are commonsense measures to promote improved coordination and planning by Federal agencies in order to ensure that the NEPA process is more efficient, timely, and predictable, without compromising environmental protection.

12. Would you agree that agencies need the resources, staff, and training necessary to implement NEPA and the many existing flexibilities in the current regulations?
- a. In your view, do agencies have sufficient resources necessary to implement NEPA? Please explain your response.
 - b. In your view, do agencies have sufficient staff necessary to implement NEPA? Please explain your response.
 - c. In your view, do agencies have sufficient training necessary to implement NEPA? Please explain your response.
 - d. In your view does CEQ have sufficient staff capacity to oversee the 70 or more Federal agencies that are subject to NEPA? Please explain your response.
 - e. To the extent that agencies do not have sufficient resources, staff, or training, will you advocate for budget increases that will enable agencies to implement NEPA appropriately?
 - f. Would you commit to working with agencies in conducting a review of agencies' resources and needs with regard to NEPA compliance to inform any kind of regulatory review process?

I believe Federal agencies have sufficient resources to implement NEPA. CEQ is currently working with agencies to better coordinate their NEPA reviews and more effectively allocate resources, including through the establishment of joint schedules, environmental analyses, and records of decision. CEQ's NEPA implementing regulations set forth in 40 CFR 1507.2 and 1506.5 direct agencies to ensure that they have the capability to implement NEPA.

CEQ's staff conduct periodic training for Federal agency NEPA practitioners. In addition, CEQ coordinates NEPA training with non-profit organizations, including the National Association of Environmental Professionals, Rocky Mountain Mineral Law Foundation, American Law Institute, American Bar Association, and the Environmental Law Institute. CEQ also conducts quarterly NEPA Contacts meetings to consult with staff

across Federal agencies regarding issues relating to implementation of NEPA.

If confirmed, I commit to working to ensure that agencies effectively allocate resources to enable them to implement NEPA appropriately.

13. A few years ago, CEQ issued a guidance document, clarifying to agencies that there are ample flexibilities within the existing NEPA regulations that are available and either underused, or not used at all, and which would facilitate more efficient timely reviews.
 - a. Shouldn't those authorities be both fully implemented and their impacts understood prior to undertaking a proposal to revise the NEPA regulations themselves?
 - b. What flexibilities within the regulations do you think should be better used by agencies?
 - c. Why don't you think the agencies are using these existing flexibilities?

On June 20, 2018, CEQ published an Advance Notice of Proposed Rulemaking (ANPRM) to consider potential updates and clarifications to its NEPA implementing regulations. The ANPRM requests comment on a wide range of topics relating to NEPA implementation in order to facilitate more efficient and timely reviews, and comments received will inform any future action. It is important to consider all relevant CEQ guidance as the agency considers whether revisions to update and clarify its regulations may be appropriate.

14. CEQ is inextricably tied to NEPA, which lays out the nation's environmental policy and enshrines two basic principles, environmental impact review and public input, into federal decisions. The chair of CEQ is meant to implement that policy. Recently, CEQ issued an Advanced Notice of Proposed Rulemaking (ANPRM) announcing an intention to revise the regulations. Have you been involved? If so, how?

CEQ developed the ANPRM and as a staff member I participated in its development. It was subject to interagency review conducted by the Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order (EO) 12866.

15. The NEPA regulations are one of the most broadly applicable in the federal government, and the statute and regulations often provide the only opportunity for the public to weigh in on government decisions and projects impacting their communities. This process has led in many cases to better projects with community buy-in. When CEQ undertook regulatory reviews in 1978, 1981, 1985, and 1997, it held public meetings to solicit additional input of private citizens and stakeholders, whether for the release of studies, guidance, or regulations.

- a. In response to my letter to you on this topic, you stated that, “Robust public engagement is critical to the rulemaking process.” While I agree with you, will you commit to my specific request that CEQ hold public meetings to solicit additional input of private citizens and stakeholders? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?
- b. Can you commit to holding public meetings around the country and have a process that is commensurate with the scope of this undertaking and that complies with the spirit of public input NEPA embodies? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?
- c. What specific types of additional public outreach will CEQ commit to beyond those required by the rulemaking process to ensure the public has a chance to meaningfully respond?
- d. Have you met with any stakeholders and discussed possible revisions? Who did you meet with and when? Please provide copies of all calendar items for CEQ senior staff and yourself for our review.
- e. What steps are you taking to ensure CEQ is both soliciting input from all groups – especially traditionally marginalized groups – and then incorporating that input into your rulemaking?
- f. What additional steps are you planning, in addition to the minimum legal requirements, to make sure the public has a say in how these regulations are rewritten?

On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. CEQ staff developed the ANPRM and it was subject to interagency review conducted by OIRA pursuant to EO 12866. The ANPRM requests comments on a wide range of topics relating to CEQ’s regulations, and does not include any regulatory proposals. As part of the interagency review process, CEQ staff met with various stakeholders.

CEQ supports transparency in the rulemaking process and earlier this year integrated its system with [regulations.gov](https://www.regulations.gov) in order to ensure that all comments submitted would be publically available, and that the public would have access to information relating to prior CEQ actions. In response to requests from the public, CEQ also extended the comment period for the ANPRM from July 20, 2018, to August 20, 2018, and will be accepting comments submitted to [regulations.gov](https://www.regulations.gov) as well as comments by regular mail. CEQ has also posted the ANPRM on its website at <https://ceq.doe.gov/laws-regulations/regulations.html>. As of July 27, 2018, CEQ has received over one thousand comments.

CEQ has not made any decision with regard to future actions, and will consider comments received in response to the ANPRM. Should CEQ determine that it would be appropriate to issue a proposed rule setting forth

potential revisions to its NEPA regulations, CEQ will consider all options for public engagement, including public meetings. CEQ will also ensure that comments received are posted on [REDACTED] so that stakeholders and the public will have timely access to all comments received.

16. You previously indicated in 2012 that you were concerned with the speed with which new regulations were being promulgated.¹ You stated, “I think one of the major concerns is the pace at which they're issuing these regulations. They're very lengthy, they're very complex. Each rule may have effects relating to other rules. The pace at which they're being issued is a genuine concern, because the staff at the Agency is under pressure and the public is under pressure to read all of these rules, to analyze them, and to prepare their comments.” In response to an audience question about what kind of time frame you would desire for the formulation and implementation of environmental regulations, you further stated that to “issue rules before you fully analyzed what the actual impact may be is an approach that raises concern.” Do you still agree with these statements?

Yes.

17. NEPA is the primary way in which the federal government implements EO 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) because NEPA is closely aligned with the principles of environmental justice. NEPA ensures that the environmental, health, and economic impacts of federal projects are disclosed and communities impacted by federal projects are given a meaningful voice.

- a. If confirmed as Chair, what specific actions would you take to increase meaningful public input, transparency, and disclosure of disproportionate impacts?
- b. It is widely known that the impacts of climate change will disproportionately impact low-income communities and communities of color. If confirmed as chair, will you commit to disclosing the impacts of climate change on such communities in NEPA analyses? If not, why not?

In 1994, President Clinton issued EO 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directed Federal agencies to address disproportionately high and adverse human health or environmental effects on minority and low income communities. CEQ issued related guidance in 1997, and CEQ participates in the Federal interagency working group led by the Environmental Protection Agency (EPA) which addresses environmental justice issues. In March 2016, the working group issued a document titled “Promising Practices for EJ Methodologies in NEPA Reviews” which CEQ has posted on its website and is available at [REDACTED]. In addition, on February 23, 2018, EPA issued a

¹ 42 FR 10191 (March 2012). “EPA and the Economy: Seeing Green?” available at [REDACTED]

memorandum affirming EPA’s commitment to the implementation of the 1994 EO. If confirmed, I commit that addressing environmental issues for low income and minority communities will be a priority, including actions under NEPA to facilitate the development of new or improved infrastructure in these communities.

18. Were you involved with developing the Administration’s Infrastructure Plan? If yes, were you involved with the proposal and the permitting provisions? If yes, to what extent?

The Administration’s “Legislative Outline for Rebuilding Infrastructure in America” (Legislative Principles) released in February 2018 was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, and also included relevant Federal agencies. The Legislative Principles were intended to inform Congress’ consideration and development of infrastructure-related legislative proposals.

19. The Administration’s Infrastructure Plan proposed to limit injunctive relief, even though it is already considered an extraordinary remedy. With regard to NEPA, can you identify and list any cases in which a court abused its power to authorize injunctive relief? If not, can you explain what the problem is with allowing impacted communities to obtain injunctive relief against the government?

Over the past four decades, Federal appellate courts have on a number of occasions reversed NEPA related decisions by lower courts to grant injunctive relief. This has included the U.S. Supreme Court, as well as Federal appellate courts, concluding that injunctive relief was inappropriate.

20. The Administration’s Infrastructure Plan proposes to eliminate EPA review responsibilities under Section 309 of the Clean Air Act. It is well documented² that the 309 process adds value to lead agency analysis and an ultimate decision. Do you agree? If not, why do you believe that EPA shouldn’t have an oversight role? If so, would you urge retention of this provision?

As stated in the Legislative Principles, separate from its authority under Section 309 of the Clean Air Act, EPA currently has responsibility to review and comment on EISs on matters within its jurisdiction. EPA typically is included as a cooperating agency for areas within its technical expertise, and the review under Section 309 is separate and in addition to this existing responsibility for matters within its jurisdiction. This proposal, as stated in the Legislative Principles, would not eliminate EPA’s regulatory responsibilities to comment during the development of EISs on matters within EPA’s jurisdiction or affect EPA’s responsibilities to collect and publish EISs. As stated in the Legislative

Principles, it also would not prevent EPA from providing technical assistance to the lead or a cooperating agency upon request.

21. At the roundtable on the FAST Act on June 27, several members of the Senate and your staff, citing CEQ, said that FAST-41 has saved a billion dollars. I have seen no documentation to substantiate that assertion. Can you present documentation supporting that assertion?

Facilitating coordinated environmental reviews and authorization decisions can result in cost savings. In her testimony, the Acting Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) stated that the Permitting Council has “succeeded in saving FAST-41 projects over \$1 billion in costs that would have otherwise resulted from avoidable permitting process delays.” My understanding is that this estimate is based on information provided to the Permitting Council by project sponsors.

22. Recent guidance issued by the Bureau of Land Management (BLM) ([REDACTED]) has not only removed the requirement for environmental review prior to issuing oil and gas leases but has also removed the requirement to provide an opportunity for public review and comment and shortened the time for filing an administrative protest (now the only way for the public to provide input on millions of acres put up for lease every quarter) to just 10 days.

- a. How is this consistent with NEPA’s direction to ensure that government decisions are subject to public scrutiny?
- b. How would you recommend agencies provide sufficient opportunities for public input prior to making final decisions to turn public lands over to third parties?

Public participation is very important and Federal agencies can comply through a range of approaches. If confirmed, I will work with agencies to ensure their compliance with applicable law and regulations.

23. As you may be aware, EO 13792 directed the Department of the Interior to review national monument designations and create a report of recommendations to the President via the Chair of CEQ. During the review, a historic number of comments were received by DOI. Despite this, DOI never publicly acknowledged the total breakdown of comments, although interior DOI documents made available via FOIA show that over 99 percent of all comments opposed changes to national monument designations. Even worse, the documents indicate that DOI staff omitted these figures from their report and recommendations.³ Instead, the report disparaged the comments by claiming that they “demonstrated a well-orchestrated national campaign organized by multiple organizations.” The President went on to take unprecedented and likely illegal actions to eliminate over two million acres of Bears Ears and Grand Staircase-Escalante National

³ Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act, available at: [REDACTED]

Monuments – the largest rollback of public lands protections in history – based in part on incomplete and misleading information.

- a. In your capacity as Chief of Staff at CEQ, did you see a draft of the DOI report before it was transmitted to the President, and were you aware that the vast majority of comments were in opposition to the recommendations, a fact which was not made evident in the report? If not, when did you become aware of this?
- b. As Chair of CEQ do you think it is appropriate for an agency to obscure the true breakdown of public sentiment from the decision makers and public, and to make recommendations that contradict the vast majority of public comments received?
- c. Do you think it is appropriate that DOI would make recommendations to the President without making him aware that 99% of respondents to the proposal opposed those recommendations?

The final report issued by the Department of the Interior (DOI) in response to EO 13792, titled “Review of Designations Under the Antiquities Act,” was reviewed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ. In the final report sent to the President on December 5, 2017, the DOI described the nature and volume of the public comments received. It is important to include stakeholder input in the development of policies and recommendations.

24. NEPA is a short statute and the NEPA guidance has been key to implementing that law. Major rewrites have been time consuming because of the varied interests and types of projects that are subject to these regulations. Since CEQ’s budget has been significantly reduced over the past years, the agency has had to rely more and more on detailees.
 - a. Will the use of detailees be necessary to redo these regulations?
 - b. If so, would you provide the Committee with a list of the present and future expected detailees, their NEPA experience, the agencies they are from, what their primary role(s) in rewriting the NEPA regulations is/are expected to be, and what is happening to their agency portfolio while at CEQ?

On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. CEQ will review comments on the ANPRM, and these comments will inform any future action including whether to pursue any proposed revisions to the CEQ regulations. Should CEQ determine that it would be appropriate to issue a proposed rule setting forth potential revisions to its NEPA regulations, CEQ will work with relevant federal agencies to develop the proposal.

25. As you know, one of CEQ’s statutory responsibilities is to analyze conditions and trends in environmental quality [specifically, “to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining

whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;” 42 U.S.C. § 4344(2)]. Can you describe how CEQ would carry out that responsibility under your leadership?

As issues arise, I will consult with relevant Federal agencies on environmental matters within their expertise. Additionally, 42 U.S.C. 4345 authorizes CEQ to utilize the services, facilities, and information of public and private agencies and organizations that have developed information on particular environmental issues.

26. As you may know, American Indians and Alaska Natives share a unique relationship with the federal government. As part of that relationship, the federal government has a duty to perform meaningful consultation with Indian Tribes and Alaska Native villages regarding issues that affect tribal communities and tribal members. Do you commit to engage in essential and honest consultation with tribes and tribal governments?

Yes.

27. Please define the Council on Environmental Quality (CEQ)’s mission and the role you believe that sound science plays in fulfilling that mission.

CEQ’s mission includes overseeing implementation of NEPA by Federal agencies. In addition, CEQ also provides recommendations to the President and coordinates with Federal agencies regarding environmental policy matters. In carrying out its mission, CEQ should be informed by sound science.

28. Do you think the U.S. National Academy of Sciences is a reliable authority on scientific matters? If not, why not?

Yes.

29. If confirmed, how do you plan to maintain a relationship with the White House Office of Science and Technology Policy (OSTP)?

CEQ works closely with OSTP on a variety of matters including as Co-Chairs of the Ocean Policy Committee, established under EO 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States.” If confirmed, I look forward to continuing to work closely with OSTP.

30. NOAA reported this year that extreme weather events costing \$1 billion or more have doubled on average in frequency over the past decade – costing this country \$425 billion in the last five years. With a little extra planning – combined with prudent, targeted investments – the federal government can help save lives, livelihoods and

taxpayer dollars. On March 28, 2017 through Executive Order 13783, President Trump rescinded Executive Order 13653, *Preparing the United States for the Impacts of Climate Change*, which provided tools for American communities to “strengthen their resilience to extreme weather and prepare for other impacts of climate change.” Included in the revoked Executive Order were provisions that made it easier for communities hit by extreme weather events to rebuild smarter and stronger to withstand future events, including rebuilding roads and infrastructure to be more climate-resilient, and investing in projects that better protect communities from flooding and their drinking water from contamination.

- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13783, in particular language that rescinded the Executive Order 13653? Please explain in detail.

EO 13783, titled “Promoting Energy Independence and Economic Growth,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies.

- b. In light of the extreme weather damages observed since March 28, 2017, would you support the reinstatement of federal guidance and tools for American communities to “strengthen their resilience to extreme weather and prepare for other impacts of climate change?” If not, why not?

Extreme weather events highlight the importance of modern, resilient infrastructure. I support efforts to pursue technology and innovation, the development of modern, resilient infrastructure, and environmentally beneficial projects, including restoration projects, to address future risks, including climate related risks. I also support efforts to improve weather data, forecasting, modeling and computing in order to prepare for and respond to extreme weather events.

- c. President Trump also rescinded CEQ’s issued guidance to federal agencies requiring the consideration of greenhouse gasses and climate change effects when evaluating potential impacts of a federal action under NEPA. What role, if any, did you or your staff have in contributing to the drafting of language that rescinded this guidance?

EO 13783 directed CEQ to rescind this guidance. Pursuant EO 13783, CEQ published a notice of withdrawal of the guidance on April 5, 2017 at 82 FR 16576.

- d. Should the federal government consider the social costs of carbon in federal actions? If not, why not?

NEPA and CEQ's NEPA implementing regulations do not require agencies to monetize the costs and benefits of a proposed action. CEQ's regulations at 40 CFR 1502.23 provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis, and that such analysis should not be used when there are important qualitative considerations. Social cost of carbon (SCC) estimates were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for project level reviews under NEPA.

To the extent that SCC estimates are used for rulemaking purposes, EO 13783 directs Federal agencies to be consistent with the guidance contained in the Office of Management and Budget (OMB) Circular A-4 of September 17, 2003. This guidance addresses consideration of domestic versus global impacts as well as appropriate discount rates, and specifically directs agencies to consider the domestic costs and benefits of rulemakings.

31. Two weeks prior to Hurricane Harvey devastated vast portions of Texas, Executive Order 13807 on "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure" went so far as to repeal the Federal Floodplain Risk Management Standard (FFRMS), which would have held new infrastructure projects to more resilient standards. The FFRMS guidance provided three flexible options for meeting the standard in flood hazard areas: (1) build standard infrastructure, such as federally funded housing and roads, two feet above the 100-year flood standard and elevate critical infrastructure, like hospitals and fire departments, by three feet; (2) elevate infrastructure to the 500 year flood standard; or (3) simply use data and methods informed by the best-available, actionable climate science. In short, the FFRMS was meant to protect taxpayer dollars spent on projects in areas prone to flooding, not to mention the human toll of such events. That is a common-sense approach given that in just the past five years, all 50 states have experienced flood damage.
- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13807, in particular language that rescinded the FFRMS? Please explain in detail.
 - b. In light of the hurricane-related damage observed last season and the extreme weather events this country has seen this year, would you support the reinstatement of the FFRMS? If not, why not, and how would you suggest resiliency be factored into the infrastructure project design and approval process?
 - c. Do you agree that infrastructure projects that do not account for flooding hazards in the manner(s) prescribed by the FFRMS would be more likely to suffer flood damage over the lifetime of the infrastructure? Would such damage be likely to result in additional costs to repair? If not, why not?
 - d. Do you view the repeal of the FFRMS as a national security threat, given the security threat that rising sea levels could pose to military bases? If not, why not?

EO 13807, titled “Establishing Discipline and Accountability in Environmental Review and Permitting Process for Infrastructure Projects,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies. Agencies are currently implementing EO 11988, titled “Floodplain Management,” which was published on May 24, 1977, 42 FR 26951. I support efforts to prepare and plan for extreme weather events, including through the development of modern, resilient infrastructure to address such events.

32. In Executive Order 13834, President Trump also revoked Executive Order 13693, *Planning for Federal Sustainability in the Next Decade*, which stated that “each agency shall prioritize actions that reduce waste, cut costs, enhance the resilience of Federal infrastructure and operations, and enable more effective accomplishments of its mission.” This includes a goal of cutting the federal government’s greenhouse gas emissions by forty percent over ten years.

- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to revoking Executive Order 13693? Please explain in detail.

EO 13834, titled “Efficient Federal Operations,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies. The EO reflects this Administration’s priorities to protect the environment, promote efficient management, and save taxpayer dollars.

- b. EO 13693 provided a commitment and plan for Federal agencies to meet certain statutory requirements related to energy and environmental performance of Federal facilities, vehicles, and operations. Are there requirements under Executive Order 13834 that currently are not being met? If so, please list them.

EO 13834 provides agencies with greater discretion and flexibility to comply with statutory requirements. These statutory requirements are listed on CEQ’s website at [REDACTED] CEQ plans to provide consolidated data and information relating to Federal agency performance on this website in the near future.

- c. Will you commit to ensure each of these statutory requirements are being satisfied?

I commit to working with Federal agencies to meet their statutory requirements and to continue to make progress going forward. In implementing the EO, CEQ plans to work with OMB to monitor agency implementation and track performance.

- d. Will you commit to further review of Executive Order 13693 and discussion with my staff to determine if there are specific actions to be reinstated that could reduce waste, cut costs, or enhance the resilience of Federal infrastructure and operations?

I commit to working with Congress, including your staff, to identify opportunities to further drive and promote efficiency across the Federal government.

33. Please list all Clean Air Act regulations that were promulgated by the Obama Administration – not a voluntary or grant program – that you support and why?

I support regulations promulgated under the Clean Air Act that are consistent with the EPA's statutory authorities.

34. Are there any other EPA regulations – not a voluntary or grant program - that are on the books today that you support? If so, please list them.

I support EPA regulations that are consistent with the agency's statutory authorities.

35. Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by state and region. Can you comment on why it is imperative that we have national standards for the reduction in carbon pollution? If you do not believe it is imperative, why not?

To address climate change related concerns, I believe it is important to pursue technology and innovation to adapt to a changing climate, consistent with Congressional directives. This includes current efforts pursuant to the Weather Research and Forecasting Innovation Act to improve weather data, modeling, computing, forecasting, and warnings. In addition, it is important to pursue continued research to improve our understanding of the climate system. Further, it is important to pursue a strong economy which allows us to develop modern, resilient infrastructure to address future risks, including climate related risks.

36. In December 2007, President Bush's EPA proposed to declare greenhouse gases as a danger to public welfare through a draft Endangerment Finding, stating, "The Administrator proposes to find that the air pollution of elevated levels of greenhouse gas (GHG) concentrations may reasonably be anticipated to endanger public welfare...Carbon dioxide is the most important GHG (greenhouse gas) directly emitted by human activities, and is the most significant driver of climate change."⁴ Do you agree with these statements, if not, why not?

I believe that the climate is changing and that human activity has a role.

37. In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015.⁵ Do you agree with the courts that EPA has an obligation to address CO₂? If not, why not?

The Endangerment Finding was issued in 2009 and upheld by the D.C. Circuit in 2012. Any reconsideration of the Endangerment Finding by the EPA would be subject to the Administrative Procedure Act.

38. Do you agree with President Trump's decision to withdraw the United States from the International Paris Climate Accord? If so, please explain.

The President announced this decision on June 1, 2017. The decision was within his authority and I support the decision.

39. For the most part, patients and their families only participate in scientific trials and studies once they know their privacy - and any resulting health-related information - will remain confidential and secure. If confirmed, do you commit to respecting confidentiality agreements that exist between researchers and their subjects? Will you protect the health information of the thousands of people that have participated in health studies in the past?

Yes, it is important to respect confidentiality agreements between researchers and their subjects, and to protect the health information of people who participate in health studies.

40. On April 17, 2012, Dr. Jerome Paulson, Chair, Council on Environmental Health, American Academy of Pediatrics, testified before the EPW Committee, stating, "Methyl mercury causes localized death of nerve cells and destruction of other cells in the developing brain of an infant or fetus. It interferes with the movement of brain cells and the eventual organization of the brain... The damage it [methylmercury] causes to an individual's health and development is permanent and irreversible. ... There is no evidence demonstrating a "safe" level of mercury exposure, or a blood mercury concentration below which adverse effects on cognition are not seen. Minimizing mercury exposure is essential to optimal child health."⁶

- a. Do you agree with the American Academy of Pediatrics' finding on the

⁵ <https://www.epa.gov/climatechange/us-court-appeals-dc-circuit-upholds-epas-action-reduce-greenhouse-gases-under-clean>

⁶ <https://www.epw.senate.gov/public/cache/files/4/3/4324fd62-dc89-4820-bd93-ff3714fcb30/01AFD79733D77F24A71FEF9DAFCCB056.41712hearingwitness testimony paulson.pdf>

importance of minimizing mercury exposures for child health? If not, please cite the scientific studies that support your disagreement.

It is important to minimize the exposure to methylmercury, especially for children, consistent with the laws established by Congress.

- b. Do you agree the record supports EPA's findings that mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants emitted from uncontrolled power plants pose public health hazards? If not, why not?

EPA published the "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," (referred to as the Mercury and Air Toxics Standards (MATS) Rule) on February 16, 2012, based on a record that found mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants from uncontrolled power plants pose public health hazards.

- c. Do you agree it is currently difficult, or impossible, to monetize the reduced risk of human health and ecological benefits from reducing mercury emissions from power plants? If so, please explain. If not, why not?

EPA monetized the benefits from reductions in mercury exposure in the MATS Rule based on analysis of health effects due to recreational freshwater fish consumption. EPA also identified unquantified impacts for both benefits and costs related to the MATS Rule.

- d. Do you agree that EPA's recent consideration of the costs of the Mercury and Air Toxics Rule shows that the agency has met the "necessary and appropriate" criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?

On June 29, 2015, the U.S. Supreme Court in *Michigan v. EPA* remanded the MATS Rule based on the agency's failure to consider costs when making its finding that the regulation was appropriate and necessary under Section 112(n) of the Clean Air Act. EPA announced in its Spring 2018 Regulatory Agenda that the agency is planning to propose a rule titled "Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review." EPA also stated in the Spring 2018 Regulatory Agenda that, in its April 2017 court filing, the agency requested that oral argument for the MATS litigation be continued to allow the current Administration adequate time to review the Supplemental Cost Finding, and to determine whether it will be

reconsidered. That reconsideration is currently under review by EPA.

41. What, if any, are the casual connections between hydraulic fracturing and environmental problems such as contamination of drinking water and emissions of air pollution and greenhouse gasses?

With respect to drinking water, EPA published a study in December 2016, titled “Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States.” This study assessed the potential for activities in the hydraulic fracturing water cycle to impact the quality or quantity of drinking water resources and to identify factors that affect the frequency or severity of those impacts. The study found that under some circumstances the hydraulic fracturing water cycle can impact drinking water resources, and that, “impacts can range in frequency and severity, depending on the combination of hydraulic fracturing water cycle activities and local- and regional-scale factors.”

With respect to air emissions associated with hydraulic fracturing, EPA has established standards under the Clean Air Act. In particular, on August 16, 2012, EPA published standards for the oil and gas sector that established control measures to limit the emission of volatile organic compounds (VOCs) as well as other air pollutants. For the 2012 rule, EPA estimated that control measures for VOCs would reduce methane emissions annually by 1 million to 1.7 million short tons as a co-benefit.

Senator Capito:

42. Mineral mining is a significant industry with obvious economic and other benefits to West Virginia and the nation. Typical projects employ numerous skilled miners and more in ancillary industries, and require huge investments that would benefit from prompt and firm regulatory decisions. The Federal Permitting Improvement Steering Council (FPISC), established under Title 41 of the FAST Act (FAST-41), is tasked with improving coordination among federal agencies to ensure the timely review and authorization of covered projects. While several areas of activity were identified in FAST-41 as being covered projects, the FPISC has the authority to determine additional eligible activities. Given that the Chairman of the Council on Environmental Quality is a member of the FPISC, what are your thoughts on including mineral mining as a covered project under FAST-41?

The Council on Environmental Quality (CEQ) is one of 16 agencies that serve as members of Federal Permitting Improvement Steering Council (Permitting Council). On July 28, 2017, the Permitting Council received a request to add mining as an infrastructure sector under the FAST-41 definition of a “covered project,” which may be determined by majority vote of the Permitting Council. The Permitting Council has developed a Standard Operating Procedure (SOP) for Adding a New Sector to consider the potential addition of new sectors of covered projects not expressly enumerated under FAST-41, which includes stakeholder outreach. To date, the Permitting Council has not made any determination to add any new sector of covered projects pursuant to the SOP and FAST-41. In connection with any future action with regard to requests to add a sector, it is important for CEQ to consult with all of the members of the Permitting Council, and to consider the views of stakeholders.

Senator Duckworth:

43. For nearly two decades, Executive Order 12898 has guided Federal efforts to advance environmental justice initiatives. This landmark Executive Order directs that “Each Federal Agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income population.”

If confirmed to lead the Council on Environmental Quality (CEQ), will you commit to upholding and achieving the goals contained in this critical environmental justice Executive Order 12898?

Yes. In 1994, President Clinton issued EO 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directed Federal agencies to address disproportionately high and adverse human health or environmental effects on minority and low income communities. CEQ issued related guidance in 1997, and CEQ participates in the Federal interagency working group led by Environmental Protection Agency (EPA) which addresses environmental justice issues. In March 2016, the working group issued a document titled “Promising Practices for EJ Methodologies in NEPA Reviews” which CEQ has posted on its website and is available at <https://ceq.doe.gov/nepa-practice/justice.html>. In addition, on February 23, 2018, EPA issued a memorandum affirming EPA’s commitment to the implementation of the 1994 EO. If confirmed, I commit that addressing environmental issues for low income and minority communities will be a priority, including actions under NEPA to facilitate the development of new or improved infrastructure in these communities.

44. The Centers for Disease Control and Prevention has made clear that there is no safe level of lead in a person’s bloodstream, particularly a child. However, our Nation’s laws and regulations fail to eliminate the presence of lead in drinking water and claim success for merely lowering the amount of lead present in water supplies. There is no public health justification for being satisfied with only a small amount of lead in our drinking water and I simply refuse to accept excuses or explanations from cynics who claim that the United States is incapable of solving this problem.

If confirmed to lead CEQ, will you commit to taking concrete and meaningful action to make sure the Trump Administration prioritizes modernizing and strengthening the Lead and Copper Rule by no later than early 2019?

If confirmed, I will work with the EPA to prioritize development of this rule.

45. Illinois is home to an innovative Archer Daniels Midland project that is leading the way in helping to reduce emissions by capturing and storing carbon. This Carbon Capture, Utilization and Storage (CCUS) system is capable of storing more than 1 million tons of

carbon emissions, and it represents the type of CCUS technology that will prove vital in empowering our Nation and countries around the world to reduce emissions and protect our planet.

If confirmed to lead CEQ, will you commit to working with the U.S. Department of Energy and other agencies to support project developers and operators of Carbon Capture, Utilization and Storage facilities?

Yes. If confirmed, I will work with the Department of Energy and other relevant agencies on this issue.

Senator Markey:

46. On June 19, 2018 Trump rescinded the National Ocean Plan and replaced it with the Ocean Policy Committee co-chaired by the Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy. The Northeast Ocean Plan, established in 2012, created the very successful Northeast Ocean Data Portal. The Portal helps ocean stakeholders plan activities such as fishing, marine traffic routes, and energy development by combining and layering data in regards to different ocean uses onto one map.
- a. As the head of CEQ and co-chair of the new Ocean Policy Committee, will you work to ensure federal agencies continue to engage with states and regions on regional ocean plans? Will you work to ensure federal agencies continue to engage with diverse stakeholders including fishermen, the tourism industry, the recreational industry, port operators, local communities, offshore wind development, the science community, and conservation groups?
 - b. Will you ensure that the Northeast Ocean Plan and other regional ocean plans continue to receive updated data and support so that local stakeholders, governments, states, federal agencies, industry, tribes, and the science community can make more informed management decisions?
 - c. Can you guarantee that federal support for data collection and management, including for publicly available data, will continue?

Executive Order (EO) 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States,” specifically directs the Ocean Policy Committee (OPC) established under the EO to engage with stakeholders, including Regional Ocean Partnerships (ROPs), “to address ocean-related matters that may require interagency or intergovernmental solutions.” The EO also directs the OPC to coordinate the release of unclassified data and other ocean-related information through “common information management systems, such as the Marine Cadastre, that organize and disseminate this information.” The Marine Cadastre is a primary source of Federal coastal and ocean spatial data for ROPs. The Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP) have issued guidance to agencies relating to implementation of EO 13840 which is available at



47. The National Environmental Policy Act (NEPA) is often blamed for delays in infrastructure projects, but analyses done by federal agencies and reports by the Congressional Research Service have repeatedly pointed to issues like a lack of funding as the main cause of delays. Additional changes to the NEPA process required by recent legislation have also resulted in conflicting, duplicative, and confusing directions to staff responsible for conducting NEPA reviews.

- a. Before or as part of the broader NEPA rulemaking, would you commit to conducting a review of the resources that agencies have and are missing that are necessary to perform environmental impact statements and environmental assessments?

I believe Federal agencies have sufficient resources to implement NEPA. CEQ is currently working with agencies to better coordinate their NEPA reviews and to more effectively allocate resources, including the establishment of joint schedules, environmental analyses, and records of decision. CEQ's NEPA implementing regulations set forth in 40 CFR 1507.2 and 1506.5 direct agencies to ensure that they have the capability to implement NEPA. If confirmed, I commit to working to ensure that agencies effectively allocate resources to enable them to implement NEPA appropriately.

48. President Trump signed an executive order directing agencies to use a "One Federal Decision" mechanism, which designates a lead agency to shepherd a single NEPA review to completion.

- a. What role do you think CEQ plays in the "One Federal Decision" approach?

Pursuant to EO 13807, CEQ and the Office of Management and Budget (OMB) were directed to develop a framework for implementation of the One Federal Decision policy. On March 20, 2018, CEQ and OMB issued a memorandum to Federal agencies providing a framework for implementation of the policy. On April 9, 2018, President Trump announced that 11 Federal agencies and the Federal Permitting Improvement Steering Council (Permitting Council) executed a Memorandum of Understanding committing to work collaboratively to implement the policy and to meet the two-year goal for major infrastructure projects. Pursuant to EO 13807, CEQ will continue to work with the agencies to implement the One Federal Decision policy, including through the interagency working group convened by CEQ in fall 2017 to implement the EO.

Senator Merkley:

49. We have seen storm surges, floods, droughts, increased frequency and severity of natural disasters, ocean acidification, and general environmental distress across the country – a trend that will only continue with the climate chaos we are currently facing. In your testimony, you said that you believed humans are impacting the world’s climate. If confirmed as the head of CEQ, what steps will you take to proactively combat the environmental concerns listed above?

To address climate change related concerns, I believe it is important to pursue technology and innovation to adapt to a changing climate, consistent with Congressional directives. This includes current efforts pursuant to the Weather Research and Forecasting Innovation Act to improve weather data, modeling, computing, forecasting, and warnings. I also believe it is important to pursue continued research in order to improve our understanding of the climate system.

50. We are reaching a breaking point in terms of climate change impacts, and it is clear that this country need leaders who are willing to take action now to prevent us from rapidly reaching a point of no return in terms of climate change impacts. This cannot happen if science and the impacts of climate disruption are ignored. In your leadership role with the CEQ, what steps will you take to arrest and reverse climate change?

I believe it is important to pursue a strong economy which allows us to have the resources to advance technology and innovation and to develop resilient infrastructure to address future risks, including climate related risks. In addition, it is important to advance projects to achieve environmental protection, including environmental restoration projects. To facilitate the development of such projects in a timely manner, the Council on Environmental Quality (CEQ) has been working with Federal agencies to streamline environmental reviews that are conducted pursuant to the National Environmental Policy Act (NEPA) and related statutes.

51. CEQ’s primary role is leading coordination between environmental agencies. In an ANPRM (Advanced Notice of Proposed Rule Making) published last month, it seems clear the administration is looking to revamp the NEPA review process, which could allow for industry to bypass environmental regulations. As head of CEQ, can you please describe how you will ensure that this NEPA overhaul will not cut environmental review requirements?

On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. As stated in the ANPRM, “CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective process consistent with the national environmental policy stated in NEPA.” CEQ will review comments on the ANPRM, and these comments will inform any

future action including whether to pursue any proposed revisions to the CEQ regulations.

52. On June 19th, President Donald Trump issued an Executive Order replacing the existing U.S. Ocean Policy with one that follows a shift away from environment to economy, changing U.S. ocean policy from one that was focused on stewardship of our valuable and vulnerable ocean life to resource use and extraction. If confirmed as the head of CEQ, how will you work to prioritize ocean conservation and coastal protection? How will you ensure the ecological health of our oceans and coastlines?

Congress has issued many statutes to address the management of our ocean resources and environmental protection of our oceans, Great Lakes, and coastal waters. Executive Order (EO) 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States,” supports ocean stewardship by directing Federal agencies to work to ensure economic, security, and environmental benefits for present and future generations by coordinating ocean policy. The EO establishes an Ocean Policy Committee (OPC) and subcommittees to address science and technology and ocean resource management issues. Matters relating to ocean conservation and coastal protection may be addressed by the OPC and its subcommittees. If confirmed, as Co-Chair of the OPC, I commit to working with Federal agencies to continue to make data and information that supports conservation and coastal protection publicly available.

53. It seems as though the prioritization of economic development, and the president’s vow to expand fossil fuel extraction from our oceans, run directly counter to the CEQ’s goal of environmental protection and a productive harmony between humans and their environment? Please explain how the Trump Executive Order encourages healthy ocean ecosystems. If confirmed as the head of the CEQ, will you support these policies that will undoubtedly harm the long-term health and sustainability of our oceans?

EO 13840 specifically directs the OPC to engage and collaborate with stakeholders, including Regional Ocean Partnerships (ROPs), address regional coastal and ocean matters potentially requiring interagency or intergovernmental solutions, expand public access to Federal ocean-related data and information, and identify priority ocean research and technology needs to facilitate the use of science in establishing policy. The EO also facilitates the collection, development, dissemination, and exchange of information among agencies. If confirmed, as Co-Chair of the OPC, I commit to working with Federal agencies to implement the EO in a manner that advances environmental protection.

Senator Whitehouse:

54. Last month, President Trump issued an Executive Order repealing President Obama's National Ocean Policy Executive Order and implementing his own ocean priorities. The EO focused on extracting as much as possible from the oceans with little regard for conservation. It also omitted any mention of climate change and its effects on oceans and coasts.
- a. Do you agree that the primary focus of the United States' policy on oceans management should be on the exploitation of our oceans for short-term economic gain at the expense of long-term conservation and sustainable use?
 - b. Explain your understanding of the consequences of climate change and carbon pollution on our oceans and coasts, including warming, deoxygenation, sea level rise, and ocean acidification?
 - c. What role did you play in the development and drafting of President Trump's Executive Order?
 - i. Did you recommend or support the emphasis on extraction of resources in the EO?
 - ii. Did you recommend or support the exclusion of any mention of climate change or ocean acidification from the EO?

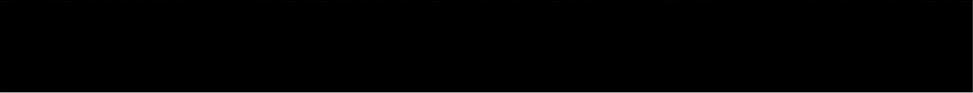
Executive Order (EO) 13840, titled "Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States," is an order that addresses interagency processes and coordination with regard to ocean-related research and resource management. This EO was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including the Council on Environmental Quality (CEQ), and also included relevant Federal agencies.

The EO establishes an Ocean Policy Committee (OPC) and establishes two subcommittees, including a subcommittee on science and technology, and a subcommittee on resource management. I anticipate that matters relating to climate change and ocean acidification may be addressed by one or both subcommittees.

55. The EO establishes an interagency Ocean Policy Committee which is co-chaired by the Council on Environmental Quality and Director of the Office of Science and Technology Policy. The Co-chairs are directed, in coordination with the Assistants to the President for National Security Affairs, Homeland Security and Counterterrorism, Domestic Policy, and Economic Policy, to "regularly convene and preside at meetings of the Committee, determine its agenda, and direct its work, and shall establish and direct subcommittees of the Committee as appropriate."
- a. Given your current status as the highest ranking official at CEQ, what steps have you taken to establish the Committee, and set its agenda and meeting schedule?

- b. When do you plan to hold the first Committee meeting?
- c. What subcommittees and specific tasks for these subcommittees do you anticipate forming?

To implement EO 13840, on June 20, 2018, CEQ and the Office of Science and Technology Policy (OSTP) which co-chairs the OPC, held a call with state representatives from regions across the country, including the Northeast region, to discuss the new EO. On June 28, 2018, CEQ and OSTP also issued guidance to Federal agencies relating to implementation of the



CEQ and OSTP have scheduled the first OPC Meeting for August 1, 2018. At the meeting Federal agencies will discuss implementation of EO 13840, including: i) the function and structure of the OPC and establishment of the subcommittees; ii) the timely release of Federal ocean-related data and information; iii) priority ocean research and technology needs; iv) Federal participation in ocean research projects, including through the National Oceanographic Partnership Program; and v) interagency coordination.

56. The EO also “recognizes and supports Federal participation in regional ocean partnerships.” These partnerships manage ocean planning and data collection for the purposes of sustainable ocean management.
- a. If confirmed, how will you advise federal agencies to support and participate in these regional ocean partnerships?
 - b. How should federal agencies consider the data and recommendations from the regional ocean partnerships in their own work and decision-making?

As stated above, on June 28, 2018, CEQ and OSTP issued guidance to Federal agencies relating to implementation of the EO, including continued support for Regional Ocean Partnerships (ROPs) or their functional equivalents.

EO 13840 directs the OPC to identify priority ocean research and technology needs to facilitate the use of science in establishing policy, and the collection, development, dissemination, and exchanges of information among agencies. It also directs that the OPC address coordination and Federal participation in projects conducted under the National Oceanographic Partnership Program. Data and recommendations from the ROPs should inform these activities.

57. The EO emphasizes the importance of ocean data and monitoring, a priority for the Senate Oceans Caucus. As we develop legislation to support enhanced ocean data and

monitoring technologies and methods, will you work with us to improve and implement the legislation, if passed?

Yes.

58. The growing threat of plastic pollution and other marine debris are endangering our coastal economies and wildlife. The bipartisan Save Our Seas Act, which aims to increase federal involvement in both domestic and international efforts to combat marine debris, passed the Senate by unanimous consent last August. The House of Representatives is expected to pass their bipartisan companion bill shortly. The issue of marine debris has captured the attention of the nation and concerned citizens of all political leanings.
- a. What role can CEQ play in coordinating federal efforts to research, monitor, and reduce marine plastic pollution?
 - b. If confirmed, do you commit to working with the bipartisan Senate Oceans Caucus to build on the Save Our Seas Act and build on U.S. investments in marine debris research, prevention, and innovation?

Addressing marine debris is an important issue. If confirmed, as Co-Chair of the OPC, I commit to working with you and your colleagues on this issue going forward.

59. At your confirmation hearing, you told Senator Van Hollen that you “agree that the climate is changing and that human activity has a role.” My question to you is do you believe that human activity, namely the burning of fossil fuels, is the primary driver of climate change? If not, what is?

I agree that the climate is changing and human activity has a role. The climate system is driven by complex interactions, and examination of the climate involves complex models and assumptions, as well as projections which may extend far into the future. To improve our understanding of the climate system, it is important to continue climate related research.

60. In your time as chief of staff at CEQ, you have already withdrawn guidance issued under the Obama administration that directed relevant agencies to consider the carbon emissions and associated climate change effects in NEPA reviews. Given that Freddie Mac, the insurance industry trade publication Risk & Insurance, and the Union of Concerned Scientists all warn that sea level rise caused by climate change will have a severe impact on coastal real estate values, and the Bank of England and numerous researchers, economists, and other academics warn of the risks of a “carbon bubble,” please explain why you think that it is good policy to not require that the climate effects of projects be considered in NEPA reviews?

As a general matter, Federal agencies are required under NEPA to review the potential environmental consequences of proposed major Federal actions that may significantly affect the quality of the environment.

61. How should greenhouse gas impacts and sea level rise be considered in NEPA project reviews?

In conducting NEPA analyses, Federal agencies have discretion and should use their experience and expertise to decide how and to what degree to analyze particular effects. Pursuant to CEQ's NEPA implementing regulations, agencies should identify methodologies and ensure information is of high quality, consistent with 40 CFR 1500.1(b) and 40 CFR 1502.24.

62. The Obama administration had estimated the social cost of carbon to be around \$45 per ton of emissions in 2020. Former EPA Administrator Scott Pruitt reduced this number to between \$1 and \$6 per ton, notably by excluding the costs of climate change that are borne outside our borders.
- a. Do you agree that the social cost of carbon is a valuable tool for policy makers that should be used to help them assess the true costs of projects and true benefits of regulations limiting carbon emissions?
 - b. Do you agree with Pruitt's decision to reduce the value of the social cost of carbon by excluding costs that are borne outside our borders?

NEPA and CEQ's regulations do not require agencies to monetize the costs and benefits of a proposed action. CEQ's regulations at 40 CFR 1502.23 provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis, and that such analysis should not be used when there are important qualitative considerations. Social cost of carbon (SCC) estimates were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for project level reviews under NEPA.

To the extent that SCC estimates are used for rulemaking purposes, EO 13783 directs Federal agencies to be consistent with the guidance contained in the Office of Management and Budget (OMB) Circular A-4 of September 17, 2003. This guidance addresses consideration of domestic versus global impacts as well as appropriate discount rates, and specifically directs agencies to consider the domestic costs and benefits of rulemakings.

63. Former EPA Administrator Scott Pruitt issued a proposed rule that would prohibit EPA from considering in its rulemaking process studies whose underlying data is not public. This proposed rule would exclude many public health studies that rely upon confidential patient data. Do you support Pruitt's approach of excluding peer-reviewed public health

studies simply because many of the people whose health data is used in them have not consented to making their data public?

Transparency and reproducibility of findings are essential for scientific research. It is important to respect confidentiality agreements between researchers and their subjects, and to protect the health information of people who participate in health studies. The proposed rule has been issued for public comment and comments submitted will inform any future action.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

August 17, 2018

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

Dear Senator Carper:

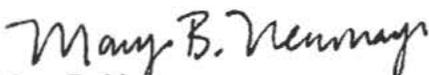
Thank you for your letter of August 3, 2018, requesting additional responses to your questions for the record. I appreciate the opportunity to provide these answers and to offer my commitments to your other requests.

In your letter, you asked for my commitment that the Council on Environmental Quality (CEQ) hold public meetings, including at least one meeting in the Mid-Atlantic region, should CEQ propose revisions to its National Environmental Policy Act (NEPA) implementing regulations. While no proposal has been made, and therefore no locations have been determined, I can commit to you to hold at least one public meeting in the Mid-Atlantic region should CEQ propose revisions to its implementing regulations.

You also asked for my commitment to work with your office to support reinstatement of provisions of three Executive Orders, including EO 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), EO 13653 (Preparing the United States for the Impacts of Climate Change), and EO 13693 (Planning for Federal Sustainability in the Next Decade). Although I cannot make commitments regarding the development of new Executive orders, I commit to working with you and your staff on matters relating to improving the nation's preparedness and resilience to future risks, including climate-related risks, as well as on matters involving Federal sustainability, including improving energy and environmental performance across Federal government agencies.

Thank you again for the opportunity to provide additional information with this letter and the enclosed attachments. If confirmed, I look forward to working with you and your colleagues, as well as your staff, to promote environmental protection consistent with Congressional directives.

Sincerely,


Mary B. Neumayr
Chief of Staff

Enclosure

Recycled Paper

ADDITIONAL RESPONSES

Follow-up Request (Question 7): Do you agree for the vast majority of highway projects, NEPA approvals do not constitute a significant burden?

I agree that the majority of highway projects fall within categorical exclusions and do not constitute a significant burden because they do not require preparation of an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act (NEPA). A Government Accountability Office (GAO) report issued in June 2012 titled “Highway Projects: Some Federal and State Practices to Expedite Completion Show Promise” (2012 GAO Report) stated: “Based on data collected in 2009, the Federal Highway Administration (FHWA) estimates that 96 percent of environmental reviews for highway projects are processed as categorical exclusions.”

The 2012 GAO Report also noted that resurfacing, constructing bicycle lanes, installing noise barriers, and landscaping are examples of the types of highway projects generally processed as categorical exclusions. For major highway infrastructure projects, such as construction of new highways and corridor and bypass improvement projects, the FHWA must typically undertake development of an EIS or EA, which can be a complex, multi-year process and may involve a number of other Federal agencies.

Follow-up Request (Question 11): Do you agree with the conclusions from non-partisan government entities such as the Government Accountability Office and Congressional Research Service, as well as academia and private studies, all of which indicate that the primary causes of project and permitting delay are not related to the NEPA process?

Although, the specific reports and studies to which this question refers are not identified, I agree that there can be many causes for project and permitting delays, including funding. While there may be a number of causes for delays, prior administrations have identified the need for improvements to the review and permitting process, including in a 2013 Presidential Memorandum titled “Modernizing Federal Infrastructure Review and Permitting Regulations, Policies and Procedures.” Congress has also passed legislation seeking to streamline environmental reviews in order to reduce project and permitting delays. This legislation includes Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), Pub. L. No. 114-94; the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59 (SAFETEA-LU). Because its core responsibilities include overseeing implementation of NEPA, I believe it is important for CEQ to consider potential improvements to the environmental review and authorization process, including improved coordination and planning by Federal agencies, while also ensuring environmental protection consistent with Congressional directives.

Follow-up Request (Question 15): When CEQ undertook regulatory reviews in 1978, 1981, 1985, and 1997, it held public meetings to solicit additional input of private citizens and stakeholders, whether for the release of studies, guidance, or regulations. Please submit

responses to each sub-part of our questions regarding additional public input should CEQ move forward with a Notice of Proposed Rulemaking.

Question 15(a): In response to my letter to you on this topic, you stated that, “Robust public engagement is critical to the rulemaking process.” While I agree with you, will you commit to my specific request that CEQ hold public meetings to solicit additional input of private citizens and stakeholders? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?

While no regulatory proposal has been made, and therefore no locations for public meetings have been determined, I can commit to you to hold at least one public meeting in the Mid-Atlantic region should CEQ propose revisions to its implementing regulations.

Question 15(b): Can you commit to holding public meetings around the country and have a process that is commensurate with the scope of this undertaking and that complies with the spirit of public input NEPA embodies? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?

CEQ will hold public meetings to receive comments and will pursue a process that is commensurate with the scope of the rulemaking if CEQ proposes revisions to update its NEPA implementing regulations.

Question 15(c): What specific types of additional public outreach will CEQ commit to beyond those required by the rulemaking process to ensure the public has a chance to meaningfully respond?

In connection with review of its NEPA implementing regulations, CEQ has engaged in significant public outreach beyond what is required by the rulemaking process. This has included issuance of an Advance Notice of Proposed Rulemaking (ANPRM) which, while not required as part of the rulemaking process, is providing an opportunity for comment by the public on a wide range of topics relating to CEQ’s NEPA implementing regulations. Further, CEQ has for the first time integrated its system with www.regulations.gov in order to ensure that all comments submitted relating to the ANPRM will be available to the public, and that the public will also have access to information relating to prior CEQ actions. In response to requests from the public, CEQ has also extended the comment period for the ANPRM from July 20, 2018, to August 20, 2018, and will be accepting comments submitted to www.regulations.gov as well as by regular mail.

As stated above, should CEQ propose revisions to update its NEPA implementing regulations, CEQ will conduct the types of additional public outreach activities described in response to Question 15(e) below. In addition, CEQ will also hold public meetings to receive public comment, including a meeting in the Mid-Atlantic region.

Question 15(d): Have you met with any stakeholders and discussed possible revisions? Who did you meet with and when? Please provide copies of all calendar items for CEQ senior staff and yourself for our review.

In connection with the ANPRM, CEQ staff met with various stakeholders and briefed me on those meetings. These meetings were held during the interagency review process conducted by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order 12866. The meetings involved the following organizations on the following dates and times below:

- **June, 7, 2018; 4:00 pm with Natural Resources Defense Council**
- **June 8, 2018; 4:00 pm with American Petroleum Institute, Shell, Chevron, ExxonMobil, Phillips 66, and BP**
- **June 12, 2018; 3:00 pm with the Partnership Project**
- **June 13, 2018; 11:30 am with Earthjustice**
- **June 14, 2018; 12:30 pm with Environmental Law & Policy Center**
- **June 14, 2018; 3:30 pm with Defenders of Wildlife**

Question 15(e): What steps are you taking to ensure CEQ is both soliciting input from all groups – especially traditionally marginalized groups – and then incorporating that input into your rulemaking?

The ANPRM was published in the Federal Register on June 20, 2018, and is posted on CEQ's website at <https://www.whitehouse.gov/ceq/initiatives/> and on NEPA.gov at <https://ceq.doc.gov/laws-regulations/regulations.html>. In conducting public outreach, CEQ has distributed the ANPRM to a wide range of stakeholders, including to CEQ's stakeholder distribution list which includes points of contact at over 250 environmental organizations, academic institutions, trade associations, and other non-governmental organizations.

While the comment period has not yet closed, as of August 17, CEQ has received over 8,800 comments. For a list of organizations that have provided comments, including State, local, tribal, and non-governmental organizations, please see the attached appendix.

Question 15(f): What additional steps are you planning, in addition to the minimum legal requirements, to make sure the public has a say in how these regulations are rewritten?

If CEQ proposes revisions to update its NEPA implementing regulations, CEQ would conduct public outreach as described in the responses above to Questions 15(a)-(e) above. This would include posting the proposed rule on CEQ's website and on NEPA.gov, distribution to CEQ's stakeholder list, and public meetings to receive public comment. If the proposed rule is determined by OIRA to be significant, as occurred with the ANPRM, the public would also have the opportunity to provide views during the Executive Order 12866 interagency review process for the proposed rule.

Follow-up Request (Question 21): At the roundtable on FAST-41 provisions of the FAST Act that was held on June 27, 2018, several members of the Senate and your staff, citing CEQ, said

that FAST-41 has saved a billion dollars. Would you please present documentation supporting that assertion?

The statement regarding estimated cost savings referred to in this question was made by the Acting Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council). The Permitting Council is housed within the General Services Administration. For documentation supporting this statement, my staff will provide your office with a point of contact at the Permitting Council.

Follow-up Request (Questions 30 or 31): NOAA reported this year that extreme weather events have cost our nation more than \$425 billion over the past five years. It will be your responsibility to help prepare the American public for the grave challenges of climate change and to provide tools that communities can use to protect themselves and increase their resilience to flooding and other disasters. In your answers, you've failed to answer what, if any, role you personally had in revoking the resiliency Executive Orders; if you commit to reinstating the resiliency Executive Orders; and if repealing the Federal Floodplains Risk Management Standard (FFRMS) is a security threat and makes our infrastructure more vulnerable to flooding. Please submit responses to each sub-part of our questions regarding your views on the resilient Executive Orders.

Question 30(a): What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13783, in particular language that rescinded the Executive Order 13653? Please explain in detail.

EO 13783, titled "Promoting Energy Independence and Economic Growth," was issued on March 28, 2017. This Executive Order was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President (EOP), including CEQ, as well as relevant Federal agencies. As CEQ's Chief of Staff I participated in this process, but I did not have a role in the drafting of the Executive Order.

Question 30(b): In light of the extreme weather damages observed since March 28, 2017, would you support the reinstatement of federal guidance and tools for American communities to "strengthen their resilience to extreme weather and prepare for other impacts of climate change?" If not, why not?

Although I cannot make commitments with regard to the development of new Executive orders, I commit to supporting the Federal Emergency Management Agency (FEMA) and other Federal agencies to improve the nation's preparedness and resilience. I also commit to working with you and your staff on actions to strengthen the resilience of communities, including but not limited to planning and preparing for extreme weather events, and the development of modern, resilient infrastructure to address future risks, including climate related risks.

Question 30(c): President Trump also rescinded CEQ's issued guidance to federal agencies requiring the consideration of greenhouse gasses and climate change effects when evaluating

potential impacts of a federal action under NEPA. What role, if any, did you or your staff have in contributing to the drafting of language that rescinded this guidance?

As stated above, EO 13783 was developed pursuant to a deliberative interagency process that included multiple components within the EOP, including CEQ, as well as relevant Federal agencies. As CEQ's Chief of Staff I participated in this process, but I did not have a role in the drafting of the Executive Order. Following the issuance of EO 13783, I worked with CEQ's staff to prepare a notice to withdraw the August 2016 guidance issued by CEQ relating to consideration of greenhouse gases for further consideration. As CEQ's Chief of Staff, I signed the withdrawal notice that was published in the Federal Register on April 5, 2017.

Question 30(d): Should the federal government consider the social costs of carbon in federal actions? If not, why not?

As stated in my earlier responses, social cost of carbon estimates (SCC) were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for project level reviews under NEPA. To the extent that SCC estimates are used for rulemaking purposes, EO 13783 directs Federal agencies to be consistent with the guidance contained in OMB Circular A-4 of September 17, 2003. This guidance addresses consideration of domestic versus global impacts as well as appropriate discount rates, and specifically directs agencies to consider the domestic costs and benefits of rulemakings. With respect to implementation of NEPA, CEQ's regulations do not require agencies to monetize the costs and benefits of a proposed action. CEQ's regulations at 40 CFR 1502.23 provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis, and that such analysis should not be used when there are important qualitative considerations.

Question 31(a): What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13807, in particular language that rescinded the FFRMS? Please explain in detail.

EO 13807, titled "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" and issued August 15, 2017, was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies. In my role as Chief of Staff at CEQ, I, together with CEQ staff, participated in the development and review of the Executive Order.

Question 31(b): In light of the hurricane-related damage observed last season and the extreme weather events this country has seen this year, would you support the reinstatement of the FFRMS? If not, why not, and how would you suggest resiliency be factored into the infrastructure project design and approval process?

While I cannot commit to reinstatement of previously withdrawn Executive Orders, I can commit to working with you and your staff on efforts to improve the nation's

preparedness and resilience against hazards, including flooding hazards. With respect to how resiliency should be factored into the infrastructure project design and approval process, this involves project-specific and site-specific considerations. In terms of the discussion and analyses to be included in environmental impact statements, 40 CFR 1502.24 of CEQ's NEPA implementing regulations provides that "[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements."

Question 31(c): Do you agree that infrastructure projects that do not account for flooding hazards in the manner(s) prescribed by the FFRMS would be more likely to suffer flood damage over the lifetime of the infrastructure? Would such damage be likely to result in additional costs to repair? If not, why not?

I agree that it is important to account for flooding hazards. Executive Order 13807 left in place EO 11988, titled "Floodplain Management," which was published on May 24, 1977, 42 FR 26951. This Executive Order provides for floodplain management standards and procedures across the Executive Branch. In a March 6, 2018, Federal Register notice, published at 83 FR 9473, FEMA indicated that it "will continue to seek more effective ways in its programs to assess and reduce the risk of current and future flooding and increase community resilience." In addition, states and localities continue to adopt design standards as appropriate for their circumstances to account for flood hazards. If confirmed, I commit to supporting FEMA and other relevant Federal agencies as they work to address these issues.

Question 31(d): Do you view the repeal of the FFRMS as a national security threat, given the security threat that rising sea levels could pose to military bases? If not, why not?

I believe matters relating to the security of military bases are most appropriately addressed by the Department of Defense (DOD). Under the recently passed National Defense Authorization Act, signed into law by the President, Congress has directed DOD to undertake various actions, including flood mitigation planning, incorporation of projections relating to changing environmental conditions into military construction and design, and consideration of energy and climate resiliency efforts in major military installation master plans.

Follow-up Request (Questions 37): In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015. I asked if you agreed with the courts that EPA has an obligation to address CO₂? If not, why not? You stated that "Any reconsideration of the Endangerment Finding by the EPA would be subject to the Administrative Procedure Act." It is unclear from this answer if you believe EPA has an obligation to address CO₂ or merely can stop regulating if it goes through a rule making process. Please clarify your answer to (Q37).

Under the D.C. Circuit's decision which is referenced above and which upheld the Endangerment Finding relating to greenhouse gases, the Environmental Protection Agency (EPA) has an obligation to address carbon dioxide (CO2) emissions. That obligation will continue as long as the Endangerment Finding continues to be in effect. On May 16, 2018, EPA Assistant Administrator for Air and Radiation, William Wehrum, testified before the House Energy and Commerce Committee that EPA does not have any plans at this time to reconsider the Endangerment Finding.

APPENDIX

350 Bay Area
350 New Orleans
350.org
AAMU Community Development Corporation
Alabama Environmental Council
Alaska Clean Water Advocacy
Alaska Climate Action Network
Alaska Environmental Council
Alaska Institute for Justice
Alaska Wilderness League
Alaska's Big Village Network
All-Creatures.org
Allegheny Defense Project
Alliance for Democracy
Alliance for the Great Lakes
Alliance for the Wild Rockies
American Bird Conservancy
American Rivers
American Society of Civil Engineers
American Water Works Association
Americas for Conservation + the Arts
Amigos de Tres Palmas
Animal Legal Defense Fund
Animal Welfare Institute
Animas Valley Institute
Arizona Game and Fish Department
Arizona Mining Coalition
Association of Metropolitan Water Agencies
Atchafalaya Basinkeeper
Audubon Naturalist Society
Ballona Institute
Bark
Basin and Range Watch
Battle Creek Alliance
Bay Area - System Change not Climate Change
Bay Planning Coalition
Berkshire Environmental Action Team
Biofuelwatch
Bird Conservation Network
Black Hills Clean Water Alliance
Black Warrior Riverkeeper

Blue Mountains Biodiversity Project
Blue Ridge Environmental Defense League
Blue Water Baltimore
Bold Alliance
Bonneville Trails Foundation
Boulder County Audubon Society
Boulder Rights of Nature, Inc.
Buffalo Field Campaign
Buka Environmental
Bullitt Foundation
Cahaba River Society
California Brain Tumor Association
California Chaparral Institute
California Environmental Health Initiative
California Native Plant Society
California Sportfishing Protection Alliance
Californians for Alternatives to Toxics
Californians for Western Wilderness
Cascade Forest Conservancy
Cascades Raptor Center
CEMAR
Center for Biological Diversity
Center for Climate Adaptation Science and Solutions, University of Arizona
Center for International Environmental Law
Center for People, Food and Environment
Center for Safer Wireless
Center for Science in the Public Interest
Center for Sierra Nevada Conservation
Central New Mexico Audubon Society
Charleston Audubon
Chesapeake Bay Foundation
Chesapeake Climate Action Network
Cheyenne and Arapaho Tribes
Citizens Action Coalition of Indiana
Citizens Against Ruining the Environment
Citizens Against the Newport Silicon Smelter
Citizens Coalition for a Safe Community
Citizens Committee to Complete the Refuge
City of Phoenix Aviation Department
Clean Air Watch
Clean Water Action
Climate Law & Policy Project
Climate Resilience Consulting

Coal River Mountain Watch
Coalition for American Heritage
Coalition to Protect America's National Parks
Coast Action Group
Coast Range Association
Colorado EcoWomen
Colorado Native Plant Society
Coming Clean
Committee for Green Foothills
Compassion Over Killing
Concerned Health Professionals New York
Conservation Congress
Conservation Kids
Conservation Northwest
Conserve Southwest Utah
Consumers for Safe Cell Phones
CORALations
County News Service
Coyote Valley Band of Pomo Indians
Crawford Stewardship Project
CRSP
Cynthia Howard Architect & Preservation Planner
Dakota Rural Action
DC Environmental Network
DC Statehood Green Party
Deer Creek Valley Natural Resources Conservation Association
Defenders of Wildlife
Delaware-Otsego Audubon Society (NY)
Desert Tortoise Council
Dogwood Alliance
Dolores River Boating Advocates
Don't Waste Arizona
DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming
Duke University
Earth Guardians
Earth Island Institute
Earthjustice
Earthworks
EcoFlight
Eco-Justice Ministries
El Sendero Backcountry Ski and Snowshoe Club
EMF Safety Network
Endangered Habitats League

Endangered Species Coalition
Energy and Wildlife Action Coalition
Enterprise Community Partners
Environment and Human Health Inc.
Environment New Jersey
Environmental Defense Fund
Environmental Protection Information Center
Environmental Protection Network EPN
Eyak Preservation Council
Fairmont, MN Peace Group
Family Farm Defenders
Farmworker Association of Florida
Federated Indians of Graton Rancheria
Food Democracy Now!
Food Empowerment Project
For Love of Water
Foundation for Louisiana
Four Years. Go.
Franciscan Action Network
Friends of Blackwater
Friends of Corte Madera Creek Watershed
Friends of Dyke Marsh
Friends of Harbors, Beaches and Parks
Friends of Merrymeeting Bay
Friends of Milwaukee's Downtown Forest
Friends of the Bitterroot
Friends of the Clearwater
Friends of the Columbia River Gorge
Friends of the Earth US
Friends of the Eel River
Friends of the Inyo
Friends of the Kalmiopsis
Friends of the Locust Fork River
Friends of the Northern San Jacinto Valley
Friends of the Sonoran Desert
Friends of the Weskeag
Fund for Wild Nature
GARDEN Inc. (Growing Alternative Resource Development and Enterprise Network)
Gasp
Generation E Political Action Committee
Georgia Forest Watch
Geos Institute
Gila Conservation Coalition

Global Justice Ecology Project
Global Union Against Radiation Deployment from Space (GUARDS)
Glynn Environmental Coalition
Golden West Women Flyfishers
Grand Canyon Trust
Grand Canyon Wildlands Council
Grassroots Ecology
Great Basin Water Network
Great Egg Harbor Watershed Association
Great Old Broads for Wilderness
Great Rivers Environmental Law Center
Greater Fort Worth Sierra Club
Greater Hells Canyon Council
Green Party of Philadelphia
Green Retirement, Inc.
Green River Action Network
GreenARMY
GreenLatinos
Greenpeace USA
Greg Alan Walter Insurance
Gulf Restoration Network
Hands Across the Sand
Harambee House, Inc./Coalition for Environmental Justice (CFEJ)
Heartwood
High Country Conservation Advocates
Hilton Pond Center for Piedmont Natural History
Honor the Earth
Howarth & Marino Lab Group, Cornell University
Hualapai Tribe
Humboldt Baykeeper
Idaho Conservation League
Idaho Sporting Congress, Inc.
Illinois Council of Trout Unlimited
iMatter
inNative
Institute for Fisheries Resources
International Wildlife Rehabilitation Council (IWRC)
Jamestown S'Klallam Tribe
Kentucky Heartwood
Kettle Range Conservation Group
Klamath Forest Alliance
KyotoUSA
Lahontan Audubon Society

Lake Superior Research Institute
Laurie M. Tisch Center for Food, Education & Policy, Teachers College Columbia University
Law for the Environmental Grassroots
League of Conservation Voters
Living Economy Advisors
Local Clean Energy Alliance
Long Beach 350
Long Beach Gray Panthers
Los Angeles Audubon Society
Los Padres ForestWatch
Louisiana Environmental Action Network/Lower Mississippi Riverkeeper (LEAN)
Lower Brazos Riverwatch
Lower Ohio River Waterkeeper
Mankato Area Environmentalists
Maryland Ornithological Society
Maryland Smart Meter Awareness
Mass Forest Rescue Campaign
Miami Waterkeeper
Midwest Pesticide Action Center
Mining Action Group of the Upper Peninsula Environmental Coalition
Minnesota Center for Environmental Advocacy
Minnesota DOT
Moloka'i Community Service Council
Moms Advocating Sustainability (MOMAS)
Montgomery County Quiet Skies Coalition
Mount Graham Coalition
MountainTrue
National Alliance of Community Economic Development Associations (NACEDA)
National Butterfly Center
National Congress of American Indians
National Institute for Science, Law & Public Policy
National Latino Farmers & Ranchers Trade Association
National Whistleblower Center
National Wildlife Federation
Native Conservancy Land Trust
Native Justice Coalition
Natural Resource Defense Council
Nature Coast Conservation, Inc.
NC WARN
New Jersey Conservation Foundation
New Jersey Highlands Coalition
New Mexico Audubon Council
New Mexico Wild

No Smart Meters or Small Cells LI
North Cascades Conservation Council
Northcoast Environmental Center
Northeast Oregon Ecosystems
Northeastern Minnesotans for Wilderness
Northwest Animal Rights Network
Northwest Indian Fisheries Commission
Ocean Conservancy
Ocean Conservation Research
Oceana
Ohio Valley Environmental Coalition (OVEC)
Ohio Wetlands Association
Olympic Forest Coalition
One More Generation
Operation HomeCare, Inc.
Orca Conservancy
Oregon Natural Desert Association
Oregon Shores Conservation Coalition
Oregon Wild
Oxfam America
Pacific Coast Federation of Fishermen's Association
Pacific Rivers
Partnership for Policy Integrity
Partnership for the National Trails System
Partnership for Working Families
Peace and Social Justice Center of South Central Kansas
Pelican Media
Penguin PI LLC
Pinelands Preservation Alliance
Pipeline Awareness Southern Oregon
PolicyLink
Port Gamble S'Klallam Tribe
Portland Housing Bureau
Post Carbon Institute
Powder River Basin Resource Council
Prairie Hills Audubon Society of Western South Dakota
Presidio Historical Association
Progressive Caucus Action Fund
PSR Arizona
Public Citizen
Public Lands Project
Quapaw Tribe of Oklahoma
Rails-to-Trails Conservancy

Rainier Audubon Society
Raptors Are The Solution
Regional Association of Concerned Environmentalists (RACE)
Regional Parks Association, Berkeley CA
Richmond Trees
Rivers Without Borders
Riverside County Transportation Commission
Rock Creek Alliance
Rocky Mountain Wild
Rural Coalition
Sacramento Audubon Society
Safe Alternatives for our Forest Environment
Salt River Project
San Bernardino Valley Audubon Society
San Diego State University
San Francisco Baykeeper
San Juan Citizens Alliance
San Luis Valley Ecosystem Council
SanDiego350
Save Nevada's Water: Ban Fracking In Nevada
Save Our Cabinets
Save Our Shores
Save Our Sky Blue Waters
SAVE THE FROGS!
Save the Scenic Santa Ritas
Science and Environmental Health Network
Seattle Housing Authority
Selkirk Conservation Alliance
Sequoia ForestKeeper
SF Municipal Transportation Agency
Shawnee Chapter, Illinois Audubon Society
Shawnee Forest Defense
Shawnee Forest Sentinels
Shoshone Bannock Tribes
Sierra Club
Sky Island Alliance
Slow Food USA
Smith River Alliance
Snake River Alliance
Soda Mountain Wilderness Council
Song to Gaia
Southern Illinoisans Against Fracturing Our Environment
Spottswoode Winery

Sustain Rural Wisconsin Network
Sustainable Arizona
Swan View Coalition
Talon Scientific
TAP Communications
Tennessee Environmental Council
The Bay Institute
The Campaign for Sustainable Transportation
The Clinch Coalition
The Coalition for Sonoran Desert Protection
The EcoHawk Foundation
The Interfaith Council for the Protection of Animals and Nature
The Lands Council
The Moving Forward Network
The Partnership Project
The Rewilding Institute
The Story of Stuff Project
The Urban Wildlands Group
The Wilderness Society
Thlopthlocco Tribal Town
Time Laboratory
Topanga Peach Alliance and MLK Coalition of Greater Los Angeles
Torrance Refinery Action Alliance
TransForm
Transition Cornwall Network
Transportation Agency for Monterey County
Tre Gatti Vineyards
Tri-Valley CAREs (Communities Against a Radioactive Environment)
Trustees for Alaska
Tulane Institute on Water Resources Law and Policy, Tulane Law School
Turtle Island Restoration Network
Umpqua Watersheds, Inc.
Upper Peninsula Environmental Coalition
Uranium Watch
Utah Physicians for a Healthy Environment
Utility Water Act Group
Valley Watch
Virginia Department of Transportation
Wallin Mental Medical
Washington State Attorney General's Office
Waterways Restoration Institute
West Montgomery County Citizens Association
Western Colorado Alliance for Community Action

Western Environmental Law Center
Western Nebraska Resources Council
Western New York Environmental Alliance
Western Organization of Resource Councils
Western Resource Advocates
Western Urban Water Coalition
Western Watersheds Project
Western Wildlife Conservation
Western Wildlife Outreach
Wholly H2O
Wild Connections
Wild Heritage Planners
Wild Horse Education
Wild Nature Institute
WILDCOAST
WildEarth Guardians
Wilderness Workshop
Wildlands Network
Women's International League for Peace and Freedom, U.S./Earth Democracy Group
Worksafe
Wyoming Department of Transportation
Wyoming Stock Growers Association

RE: NEPA Team Meeting

From: "Drummond, Michael R. EOP/CEQ" <(b) (6)>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Date: Wed, 05 Sep 2018 11:20:35 -0400

Okay, here's the agenda as it currently stands. Any edits?

- 3:00** **Welcome**
- 3:05** **Update on Advance Notice of Proposed Rulemaking**
 - CEQ
- 3:20** **Categorical Exclusion List**
 - Michelle Lennox, NOAA
- 3:30** **NEPA Timelines and One Federal Decision**
 - CEQ
- 3:45** **EPA Update**
 - Rob Tomiak or Kelly Knight, EPA
- 4:00** **13807 Implementation Update**
 - CEQ
- 4:10** **Looking Ahead: NEPA 50th Anniversary**
 - Ted Boling
- 4:20** **Questions / Discussion**

From: Boling, Ted A. EOP/CEQ

Sent: Wednesday, September 5, 2018 11:06 AM

To: Drummond, Michael R. EOP/CEQ <(b) (6)>

Subject: RE: NEPA Team Meeting

(b) (5)

From: Drummond, Michael R. EOP/CEQ

Sent: Wednesday, September 5, 2018 10:54 AM

To: Boling, Ted A. EOP/CEQ <(b) (6)>

Subject: RE: NEPA Team Meeting

Hello Jessie!

(b) (5)

From: Boling, Ted A. EOP/CEQ
Sent: Wednesday, September 5, 2018 10:43 AM
To: Drummond, Michael R. EOP/CEQ <(b) (6)>
Subject: RE: NEPA Team Meeting

Jessica McGrath sends her regards

From: Drummond, Michael R. EOP/CEQ
Sent: Wednesday, September 5, 2018 10:31 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)>
Subject: NEPA Team Meeting

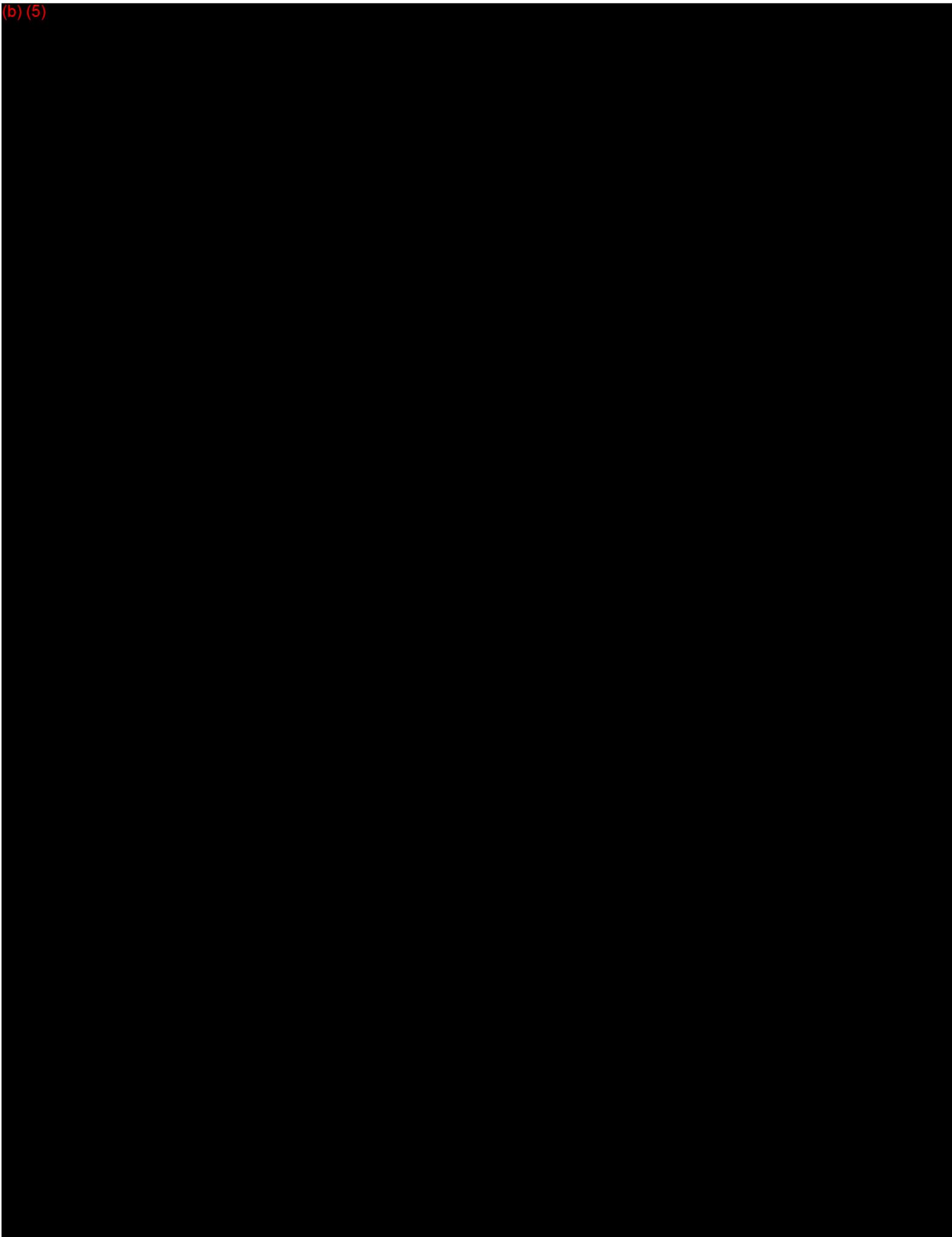
Concluded in 29 minutes.

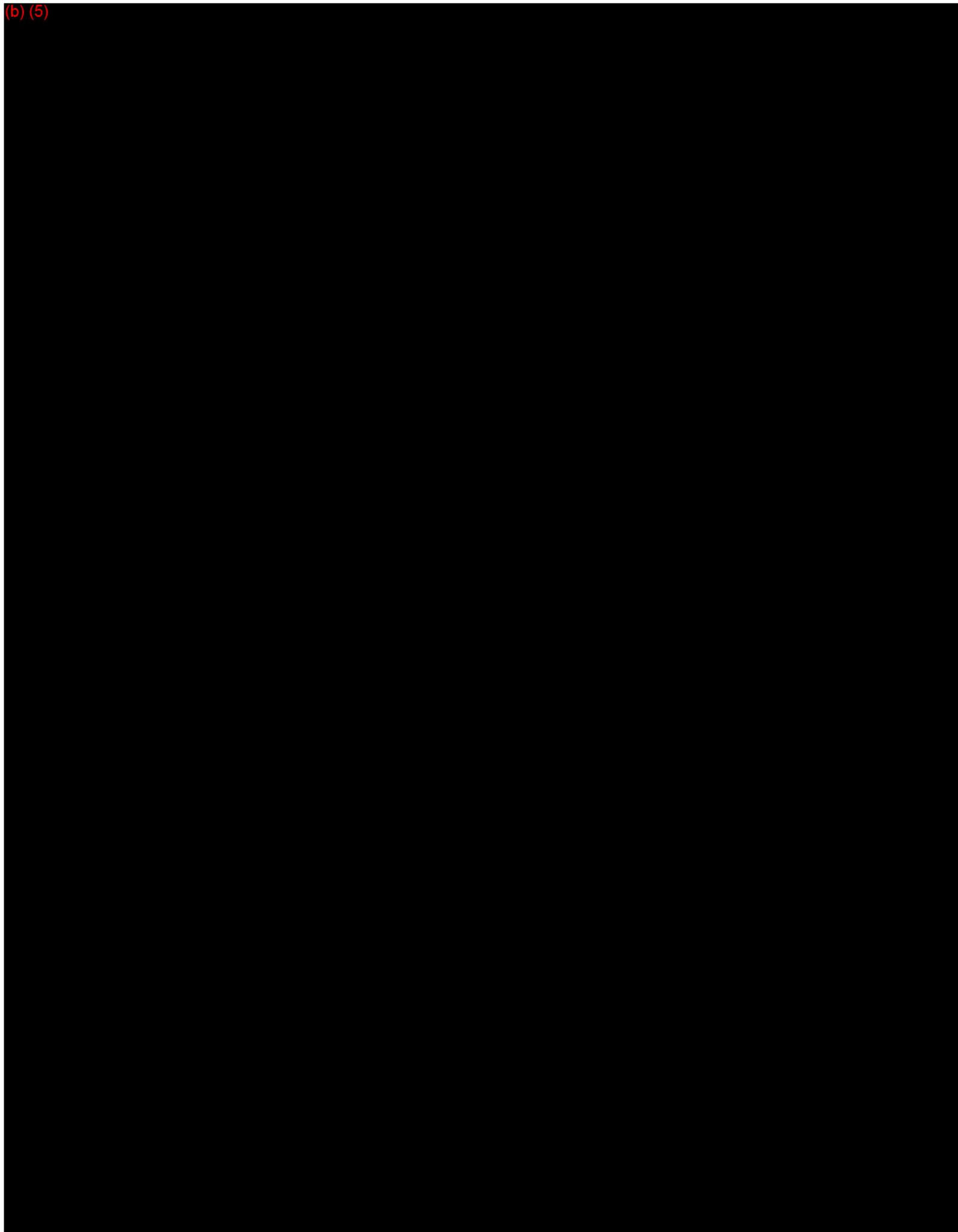
Let me know if you have time today to chat.

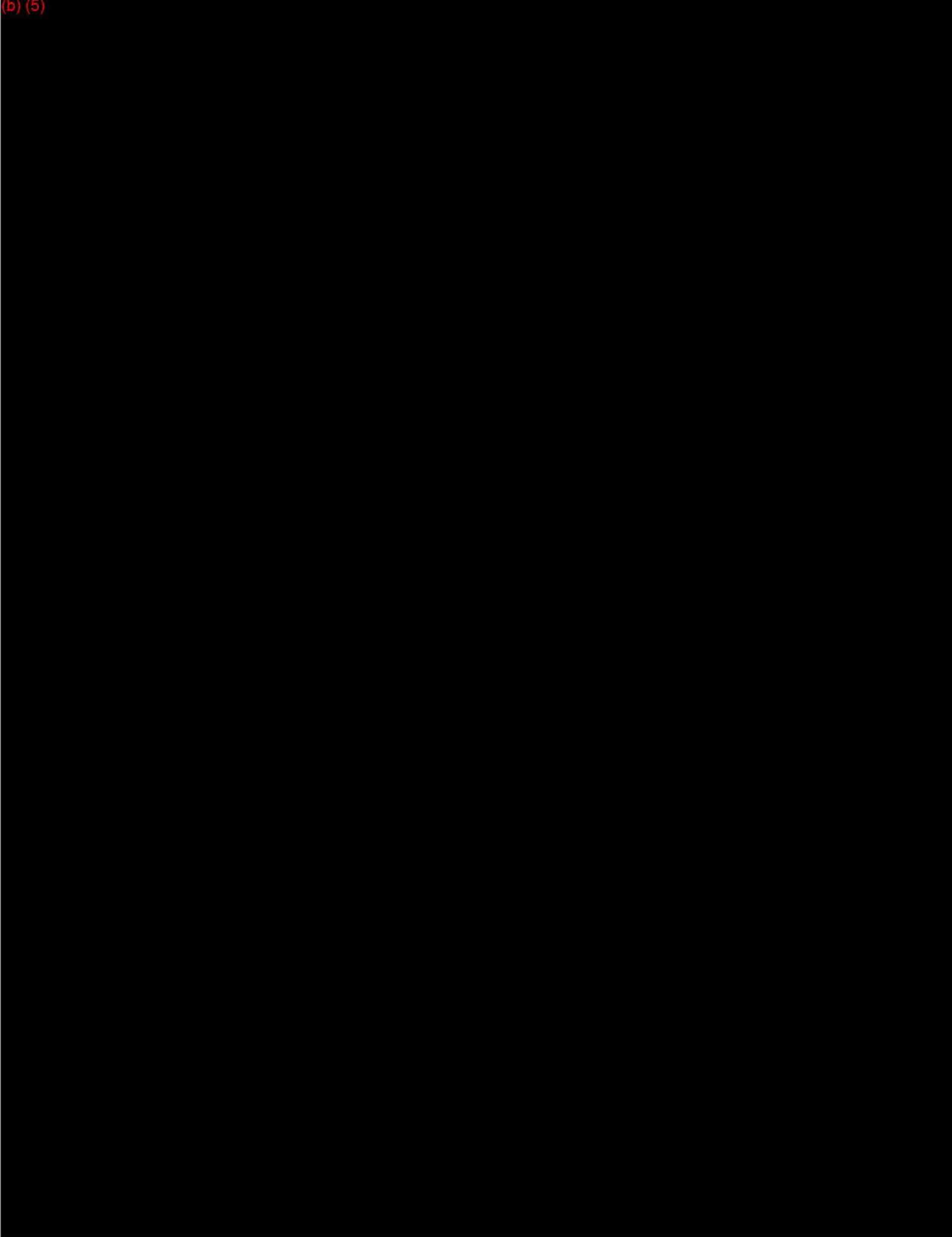
Best,

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality

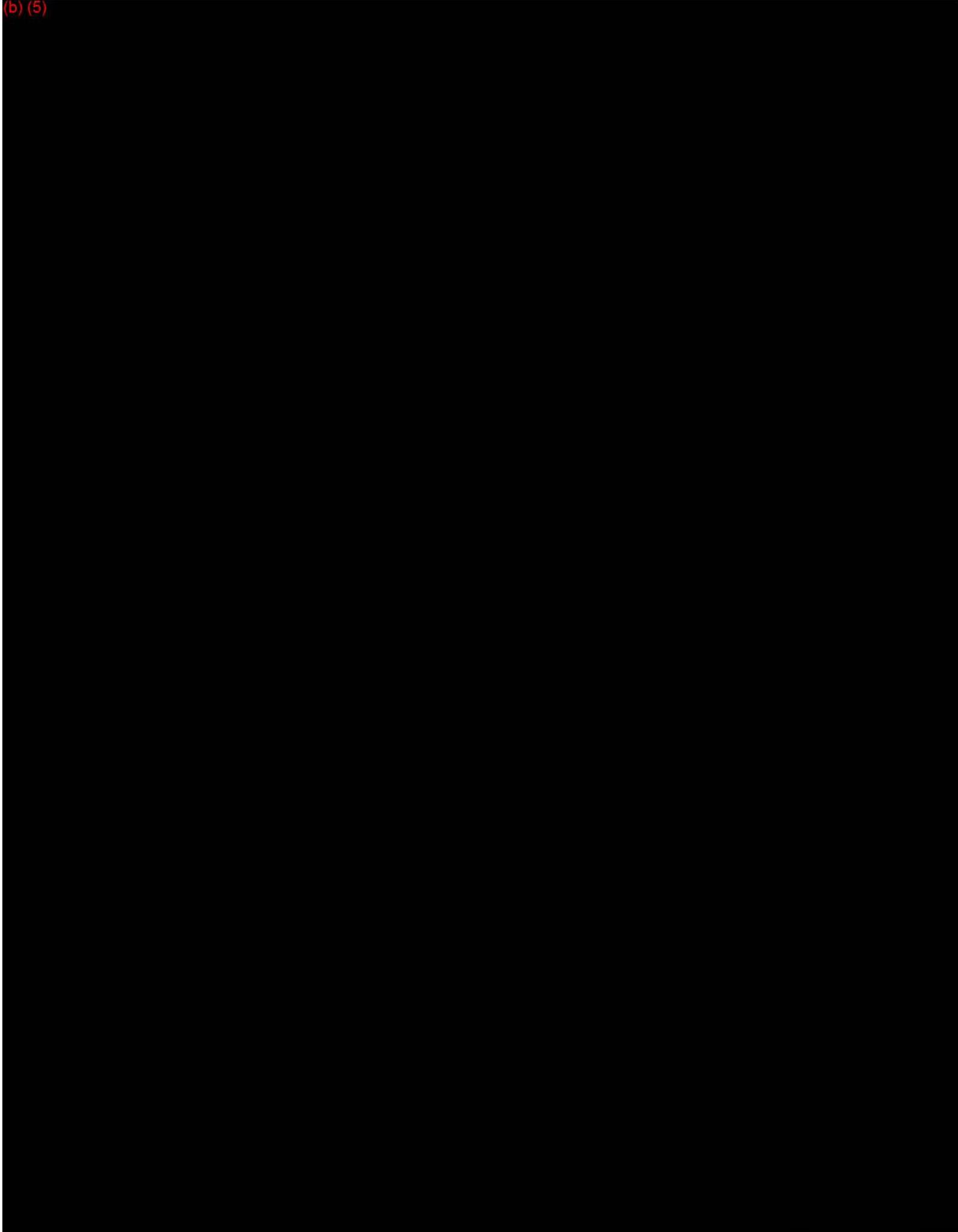
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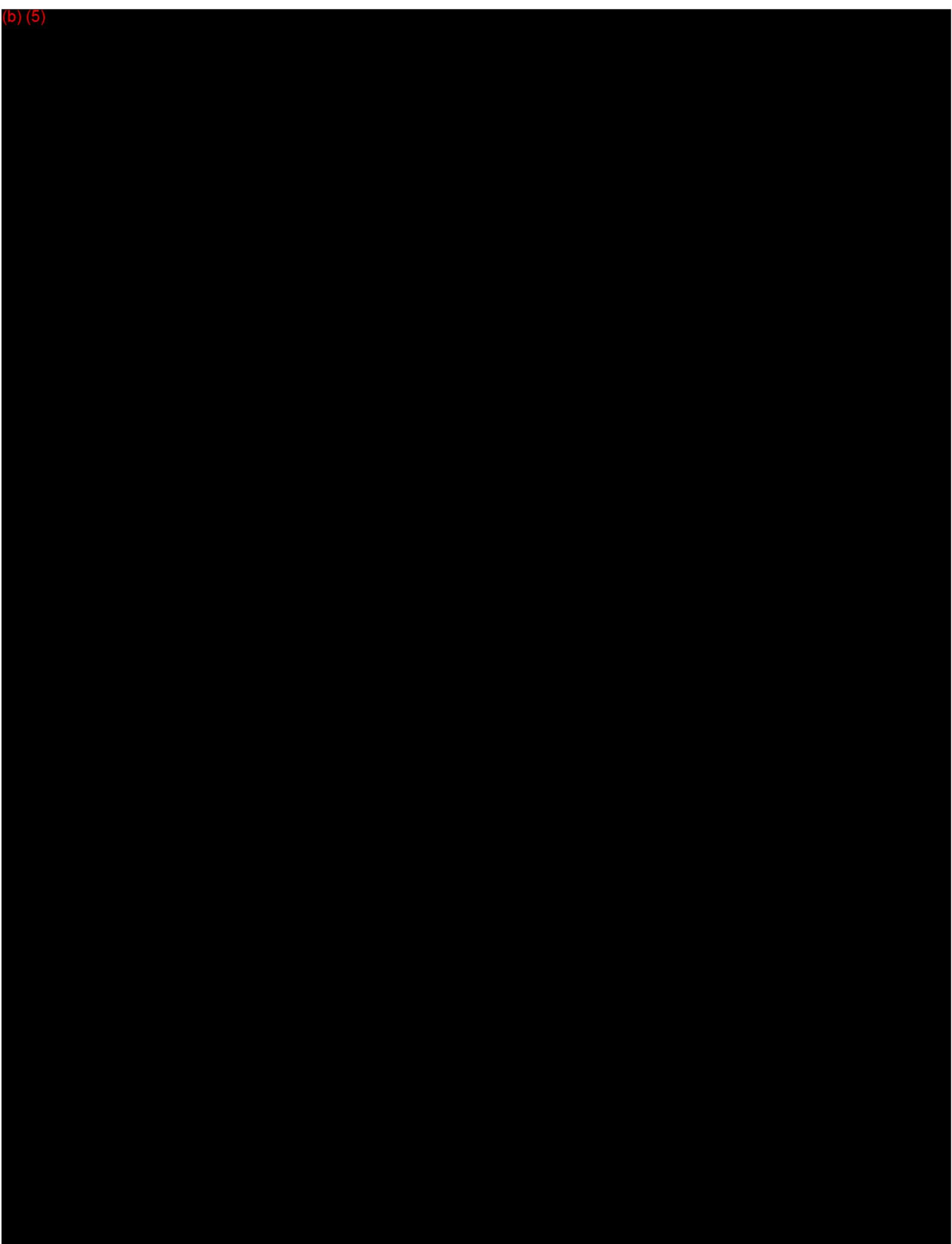


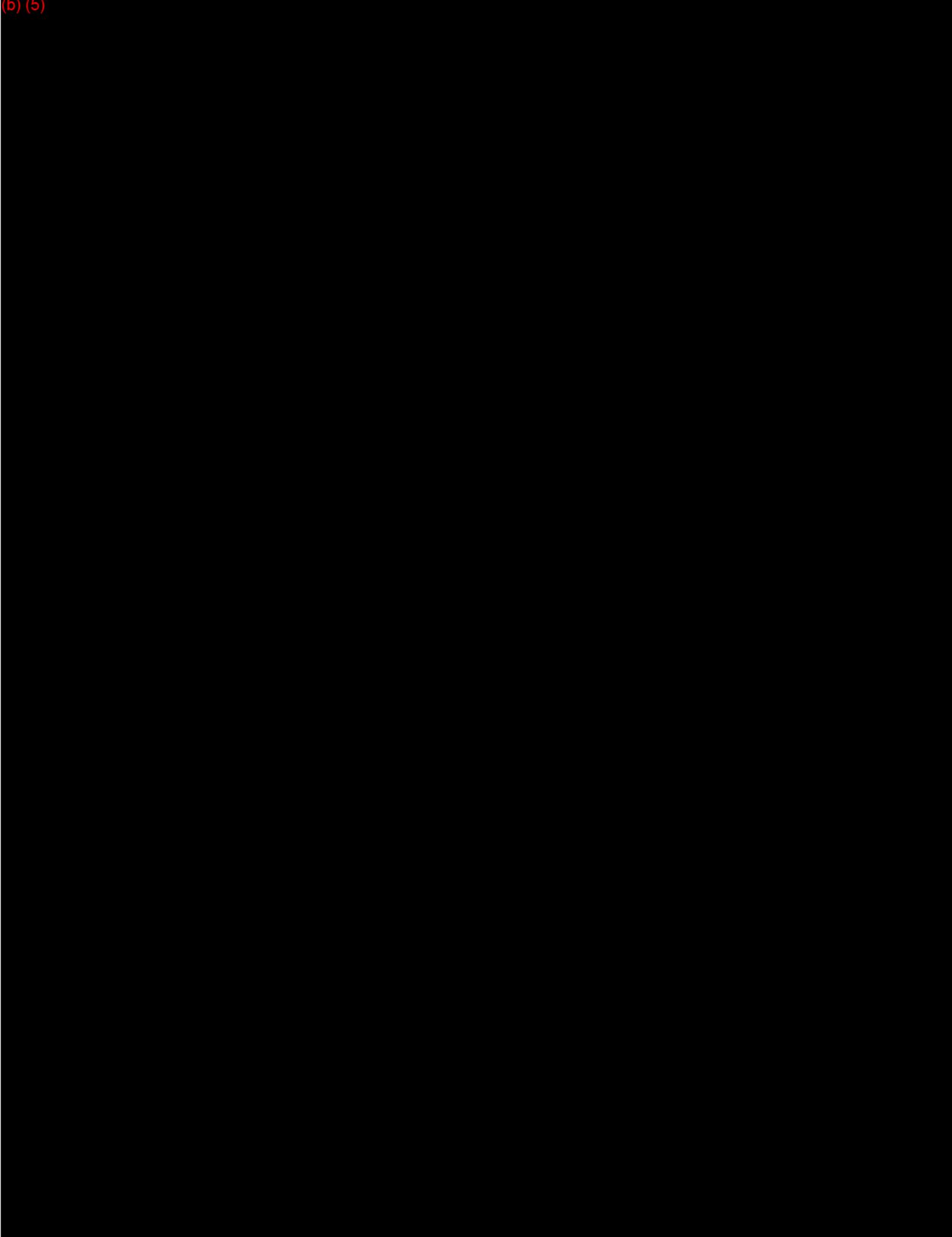


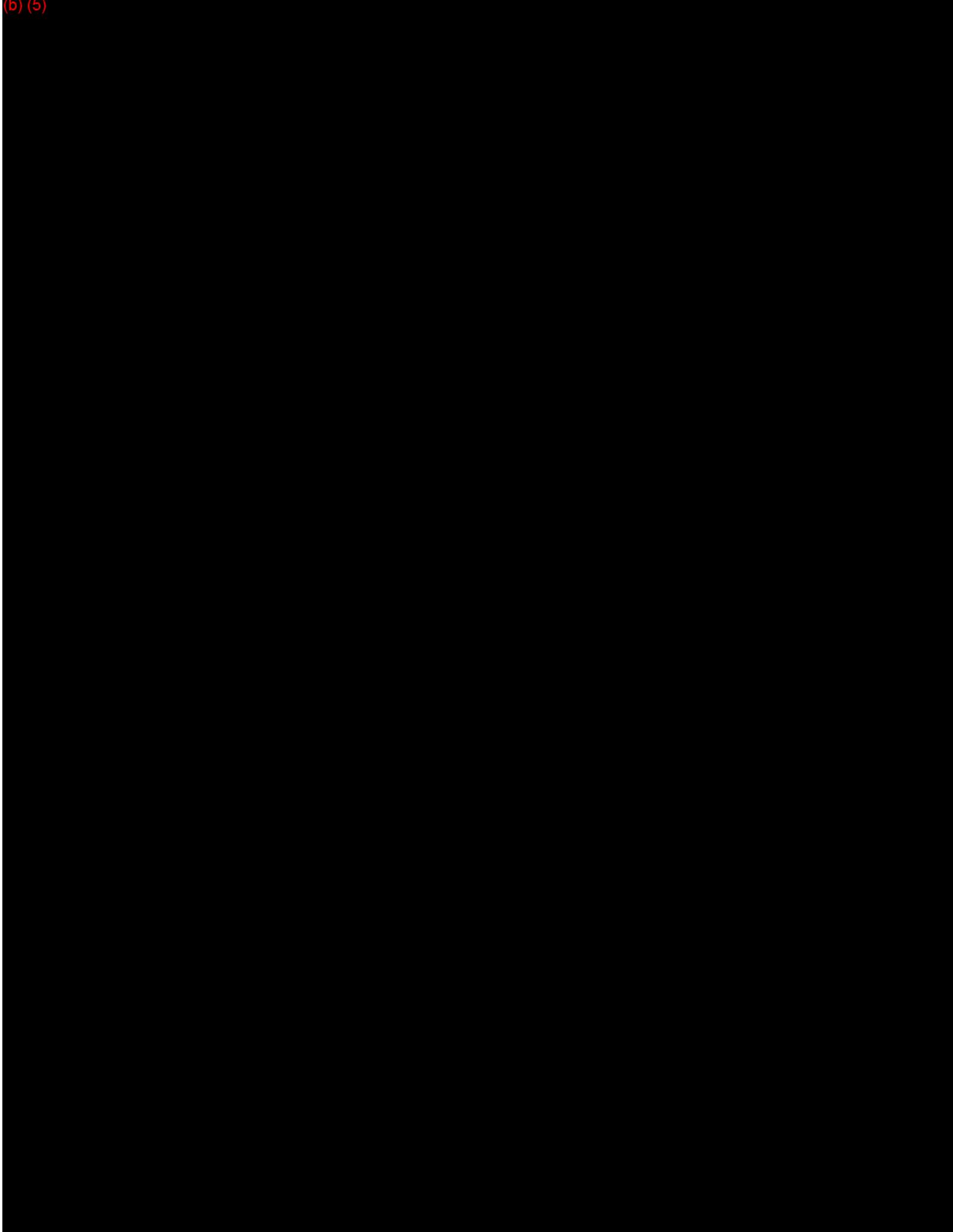


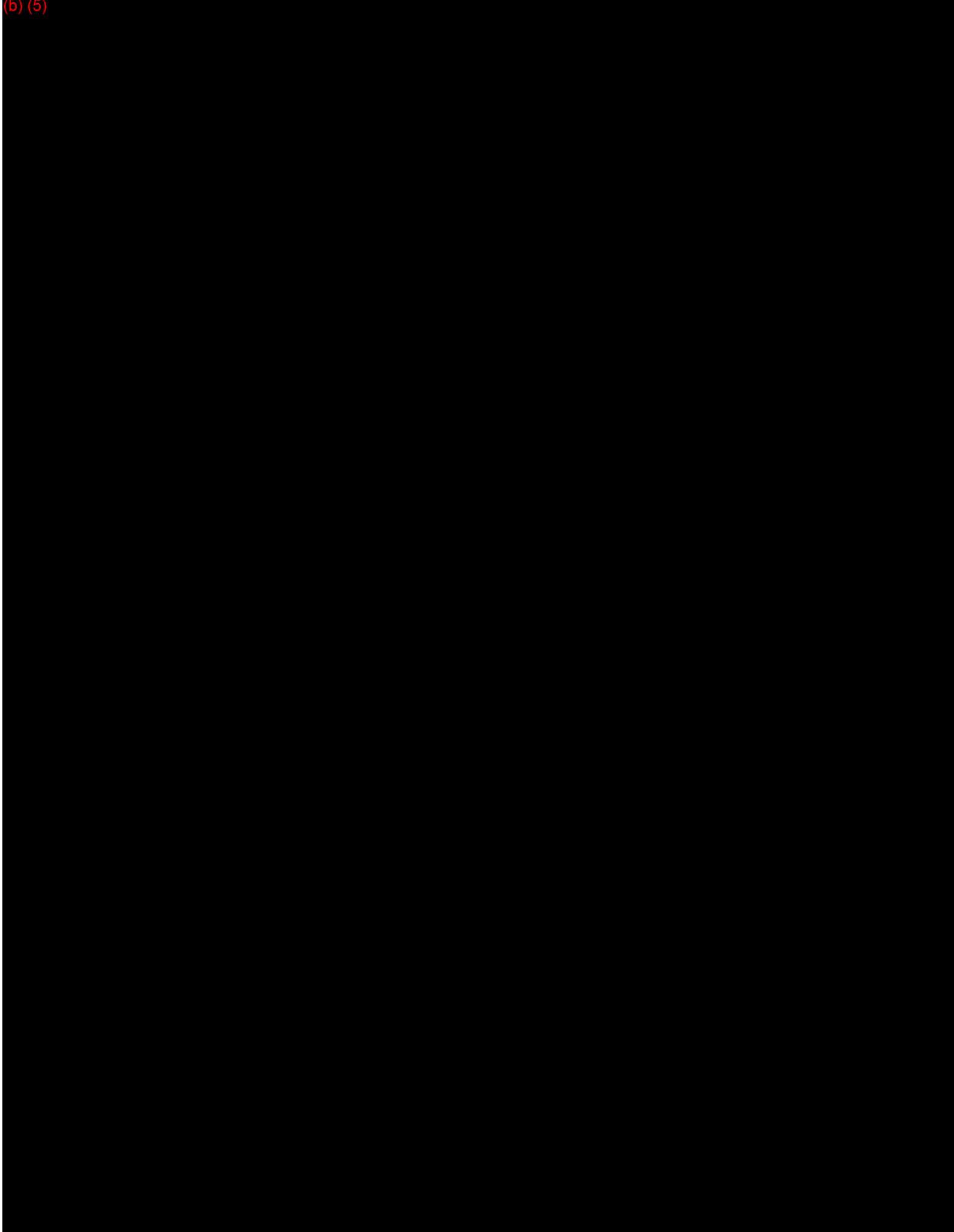
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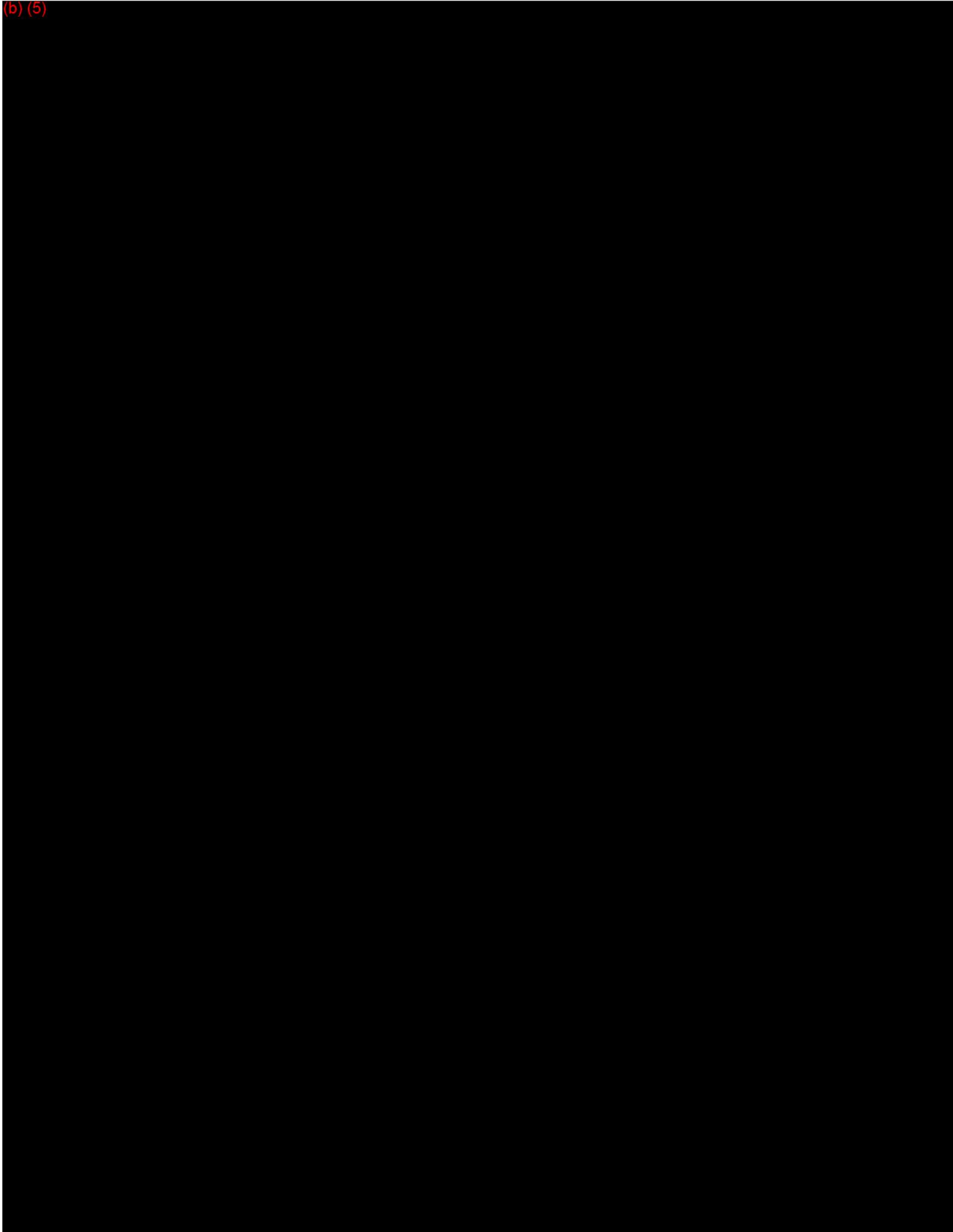


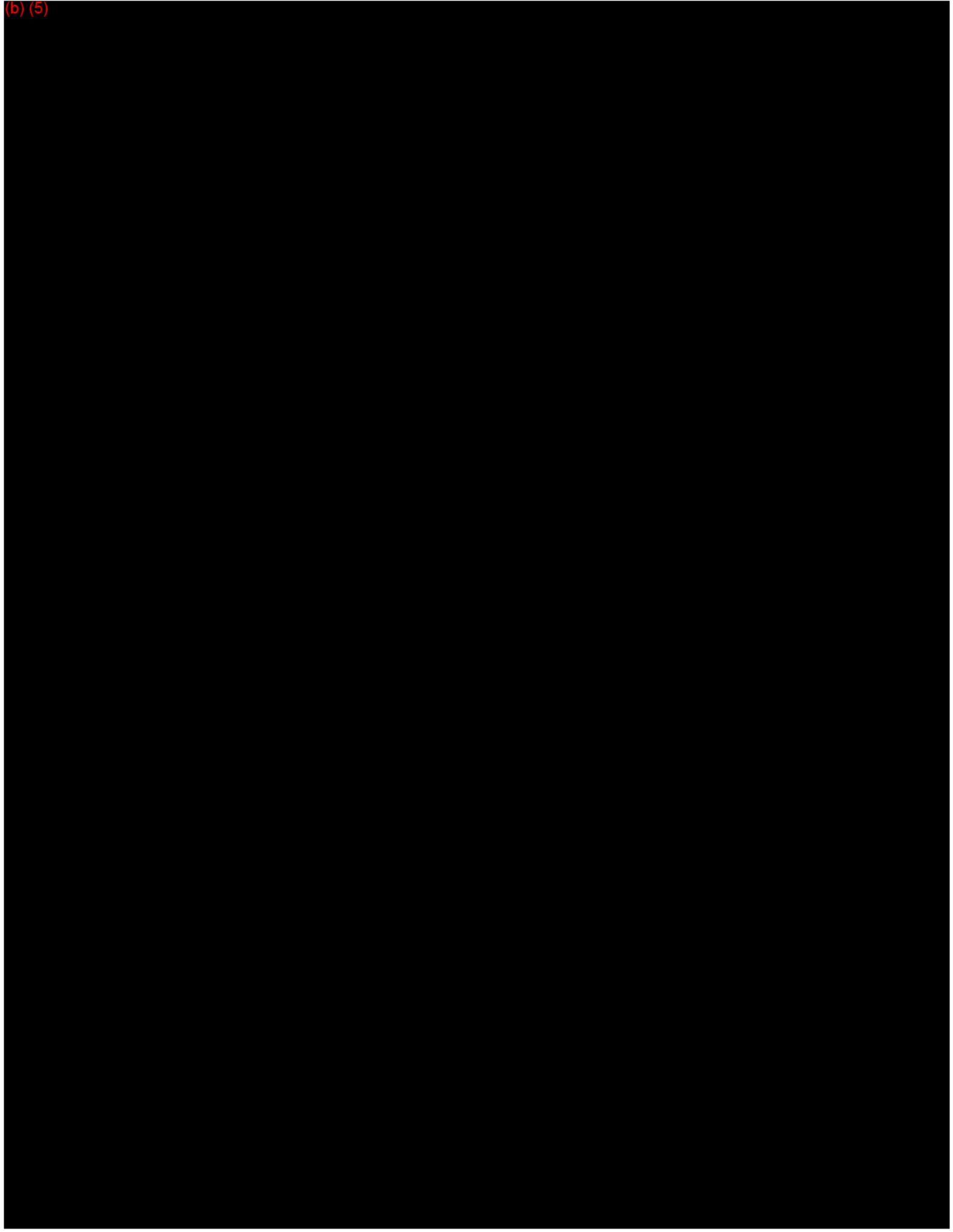


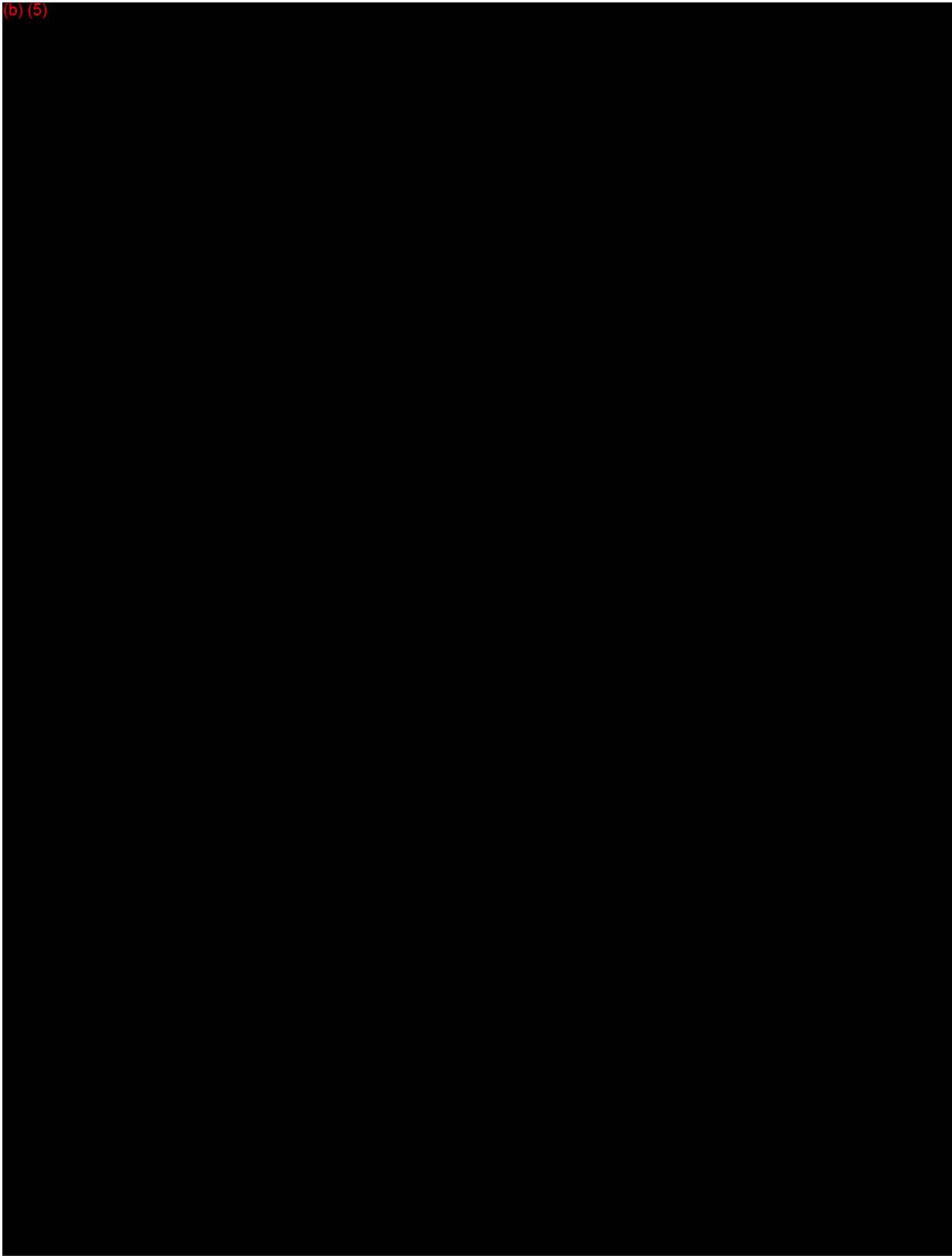


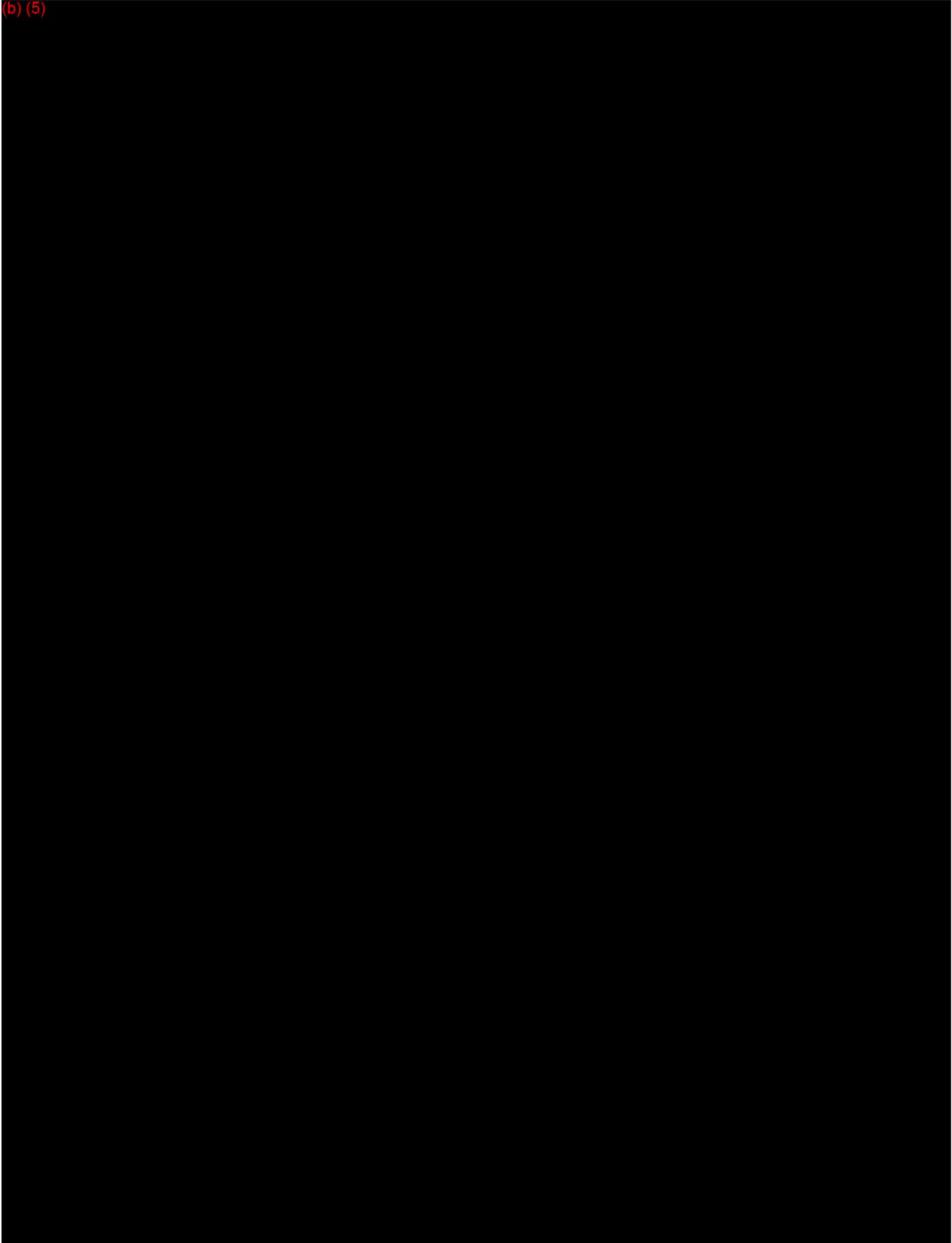


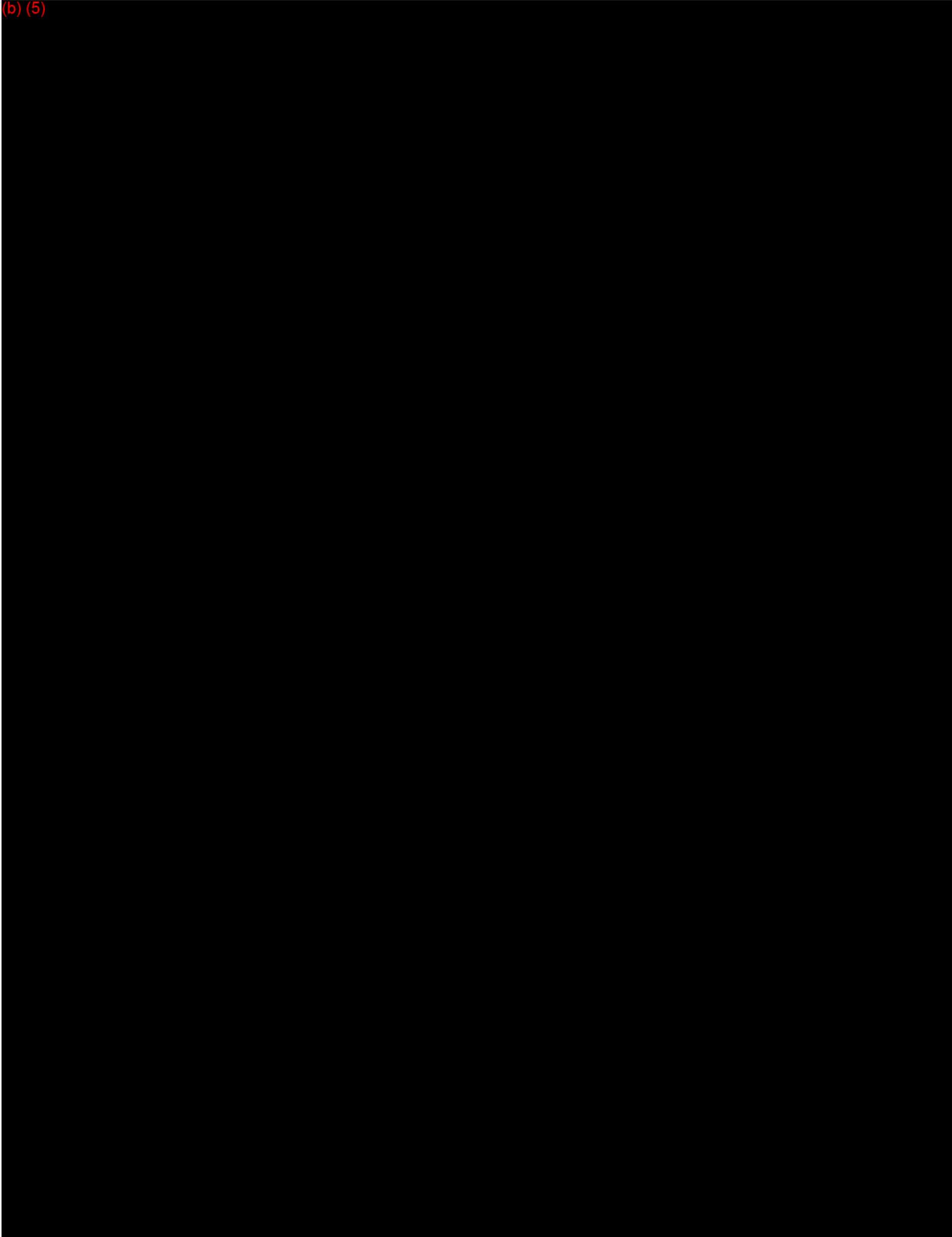


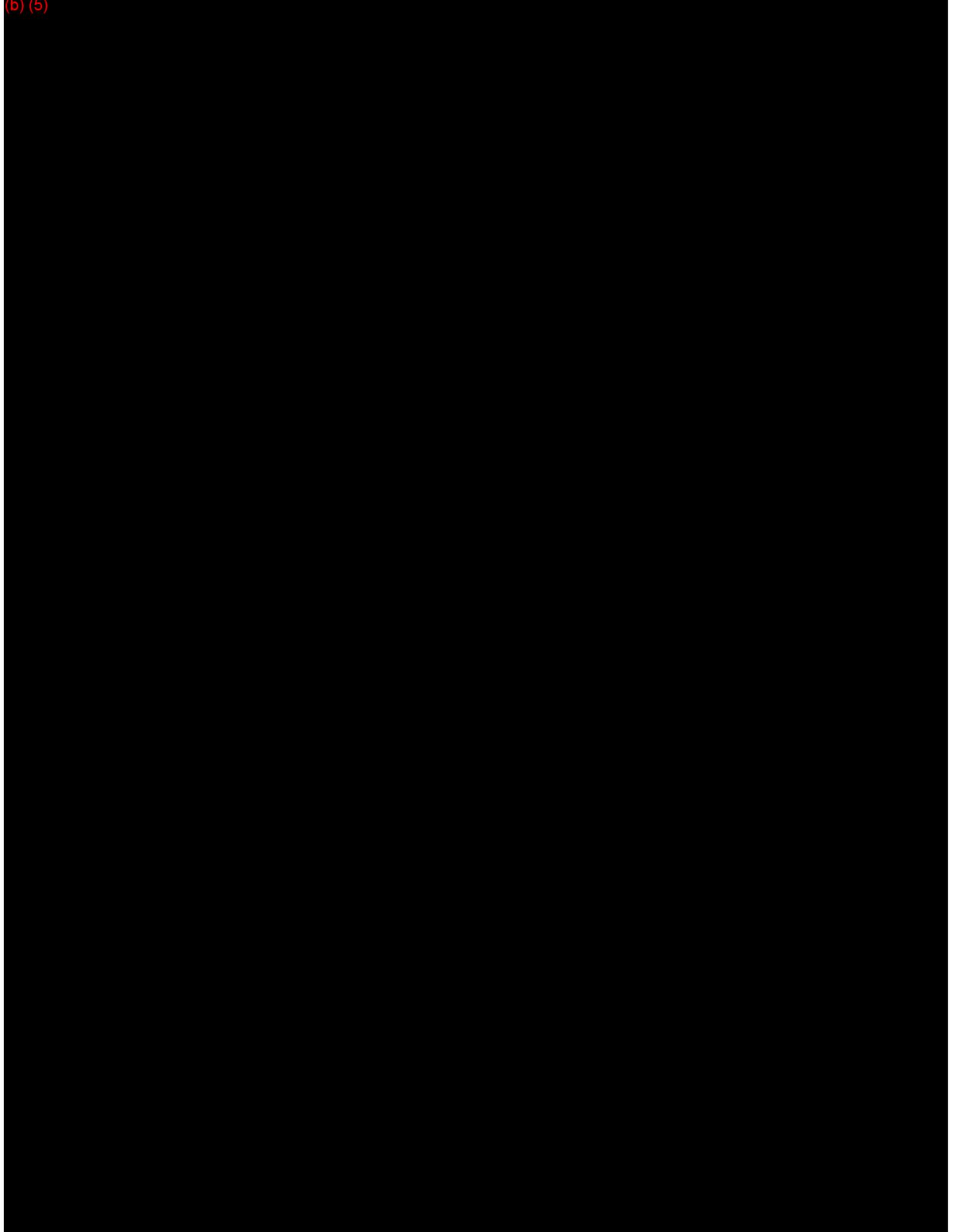


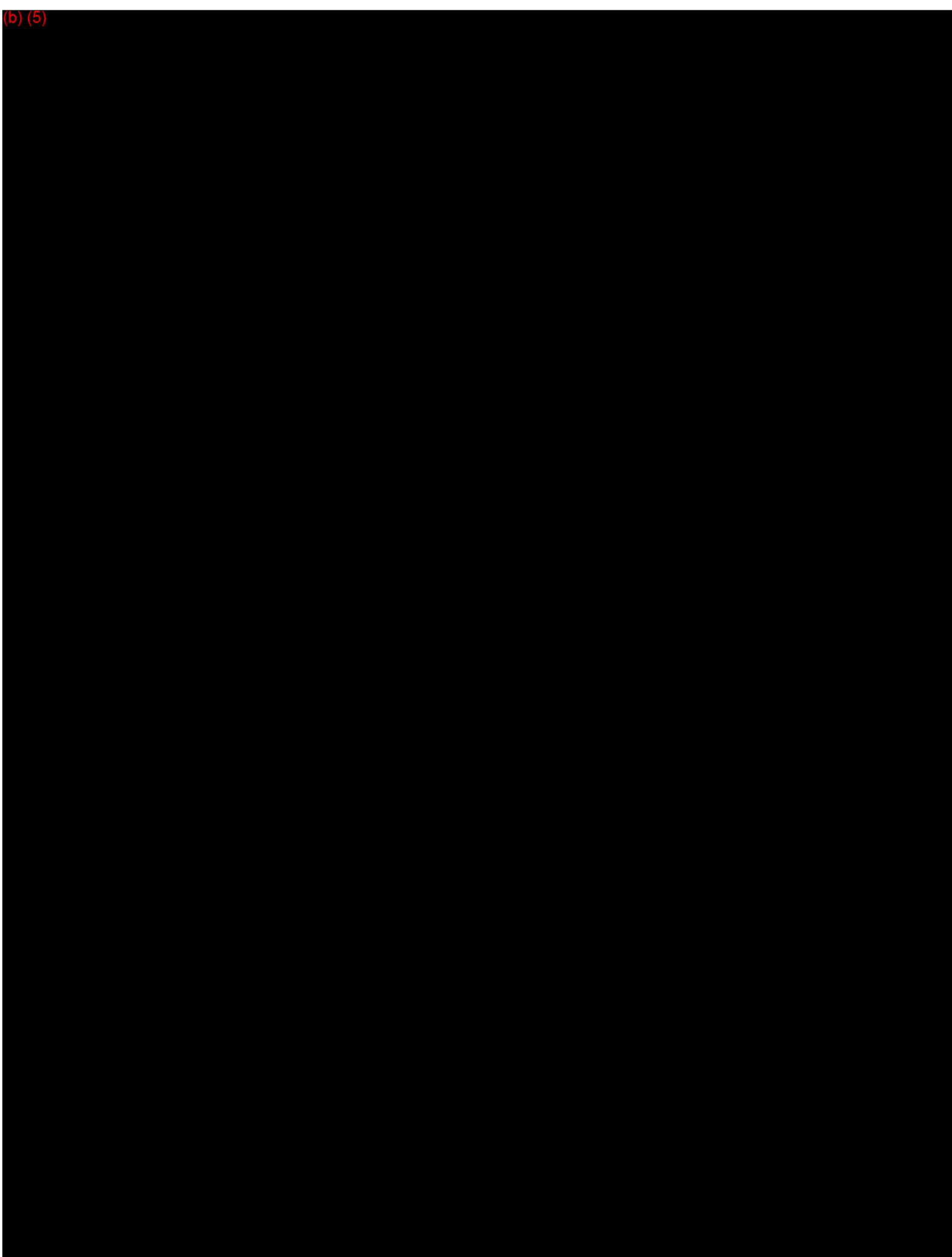


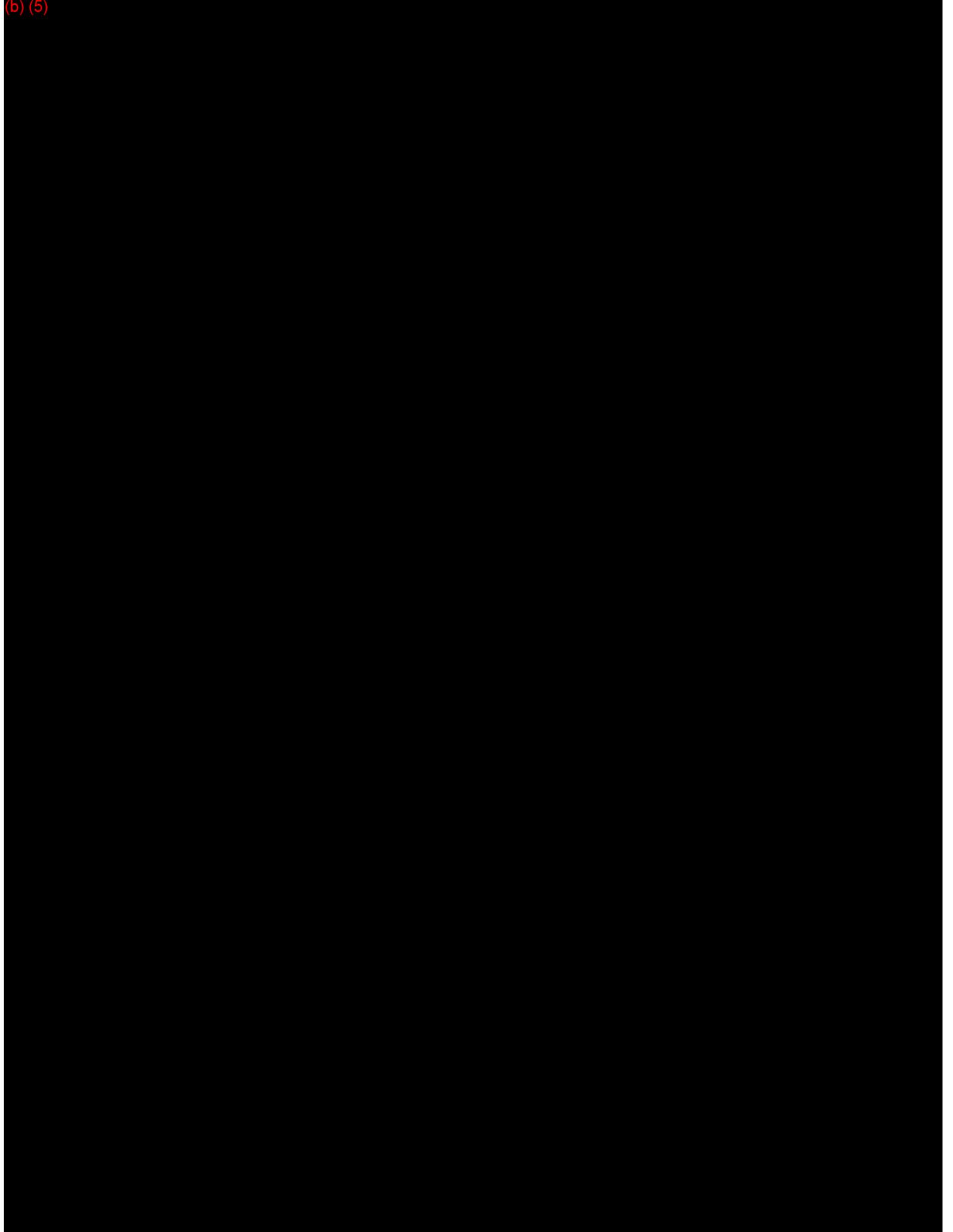


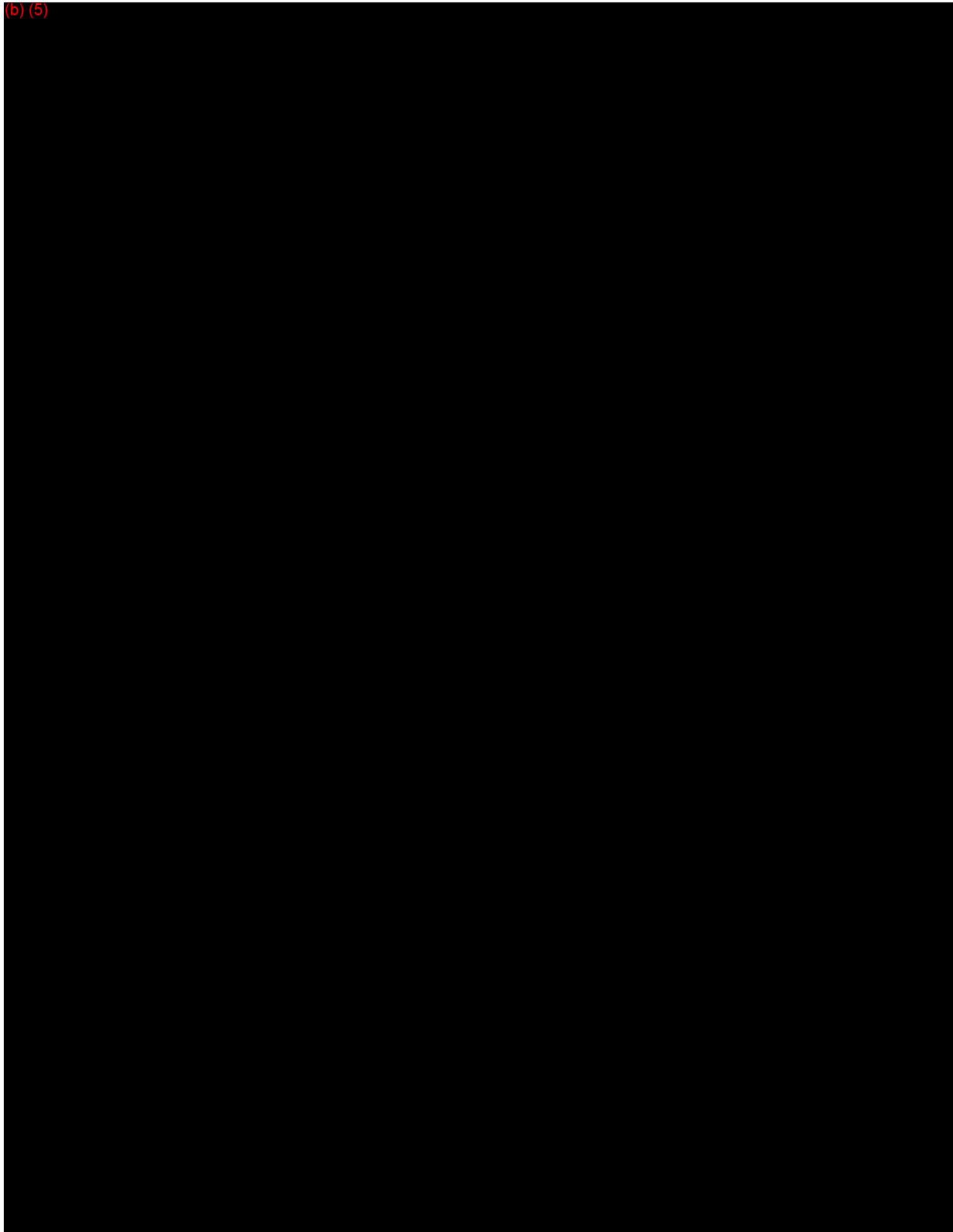


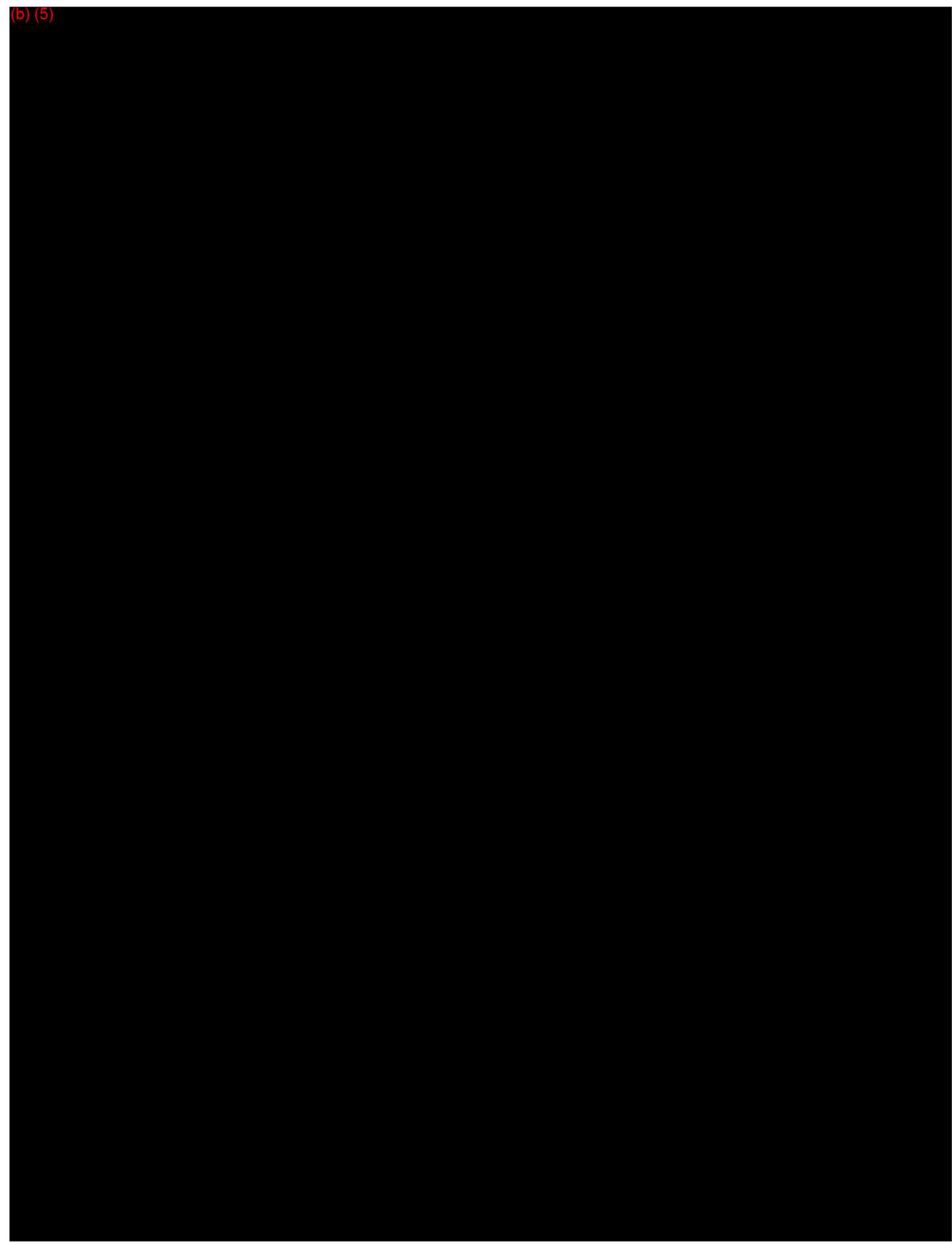


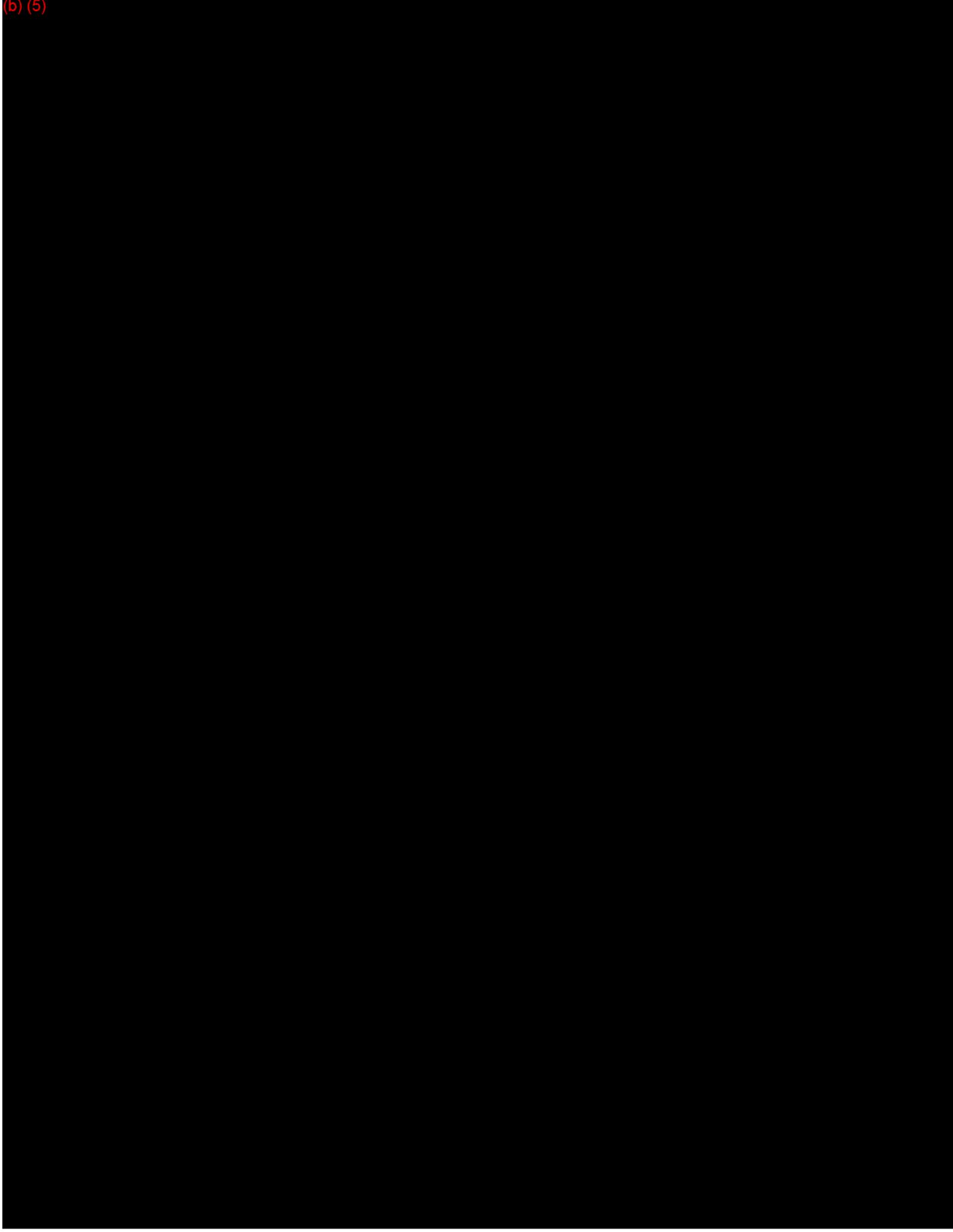


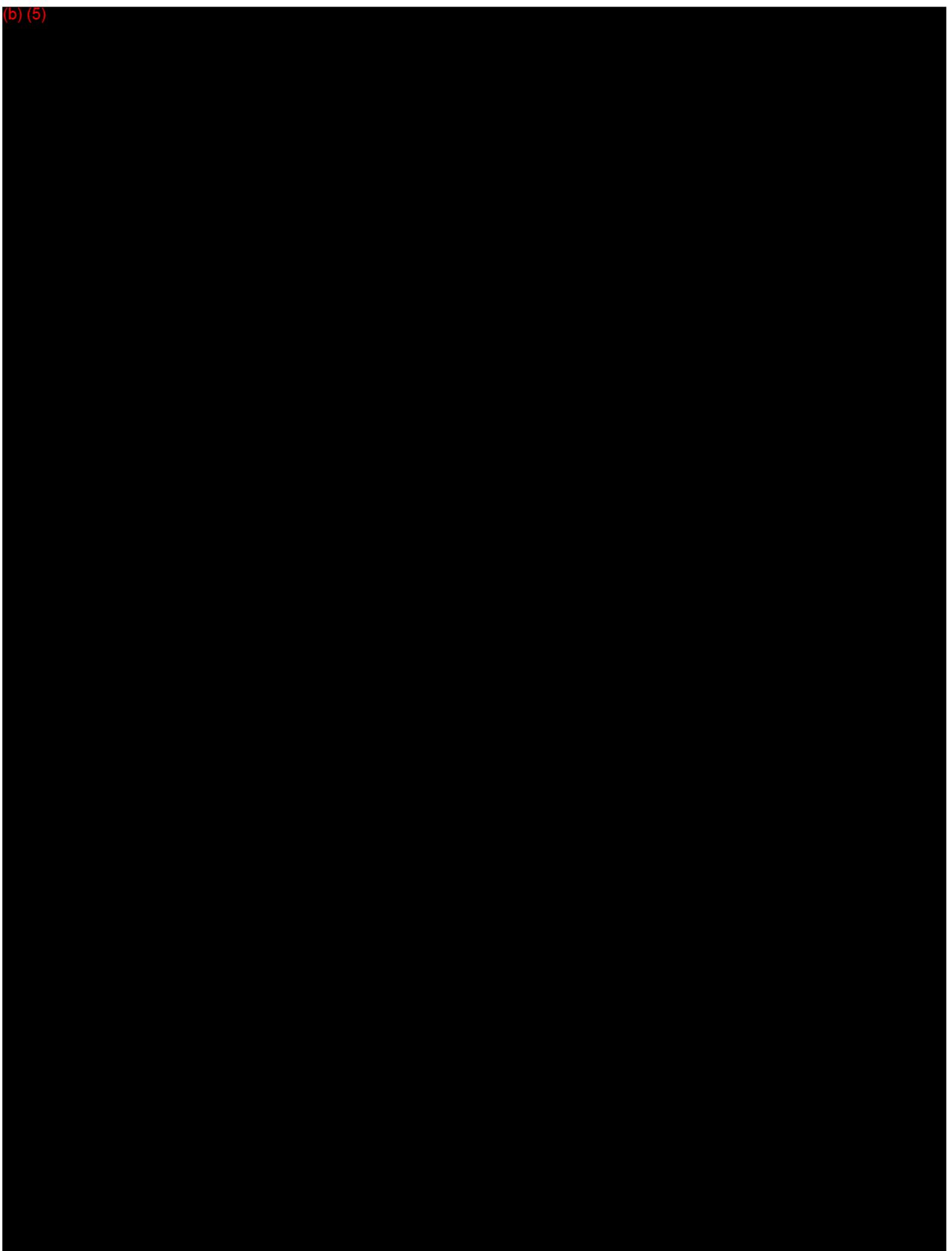


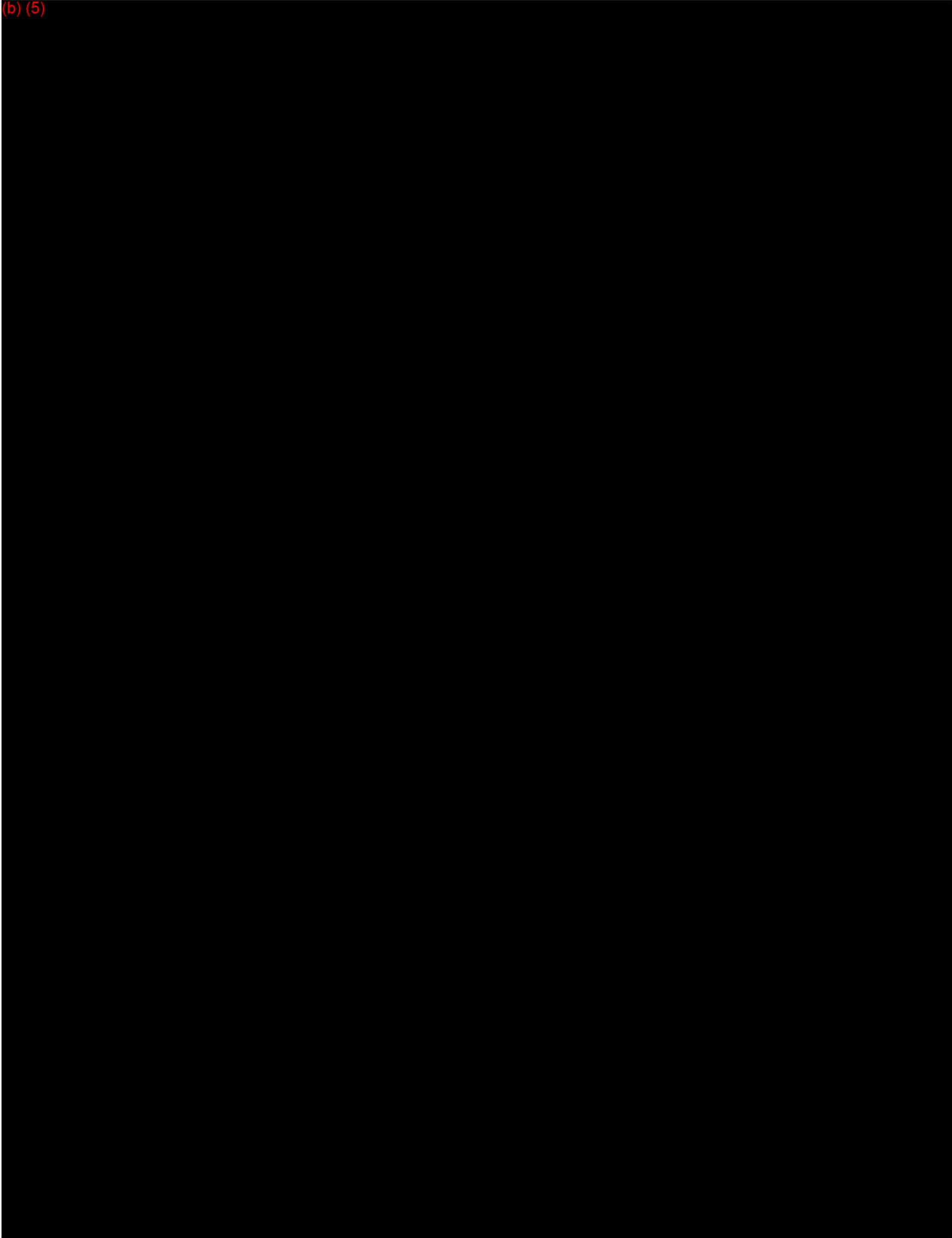


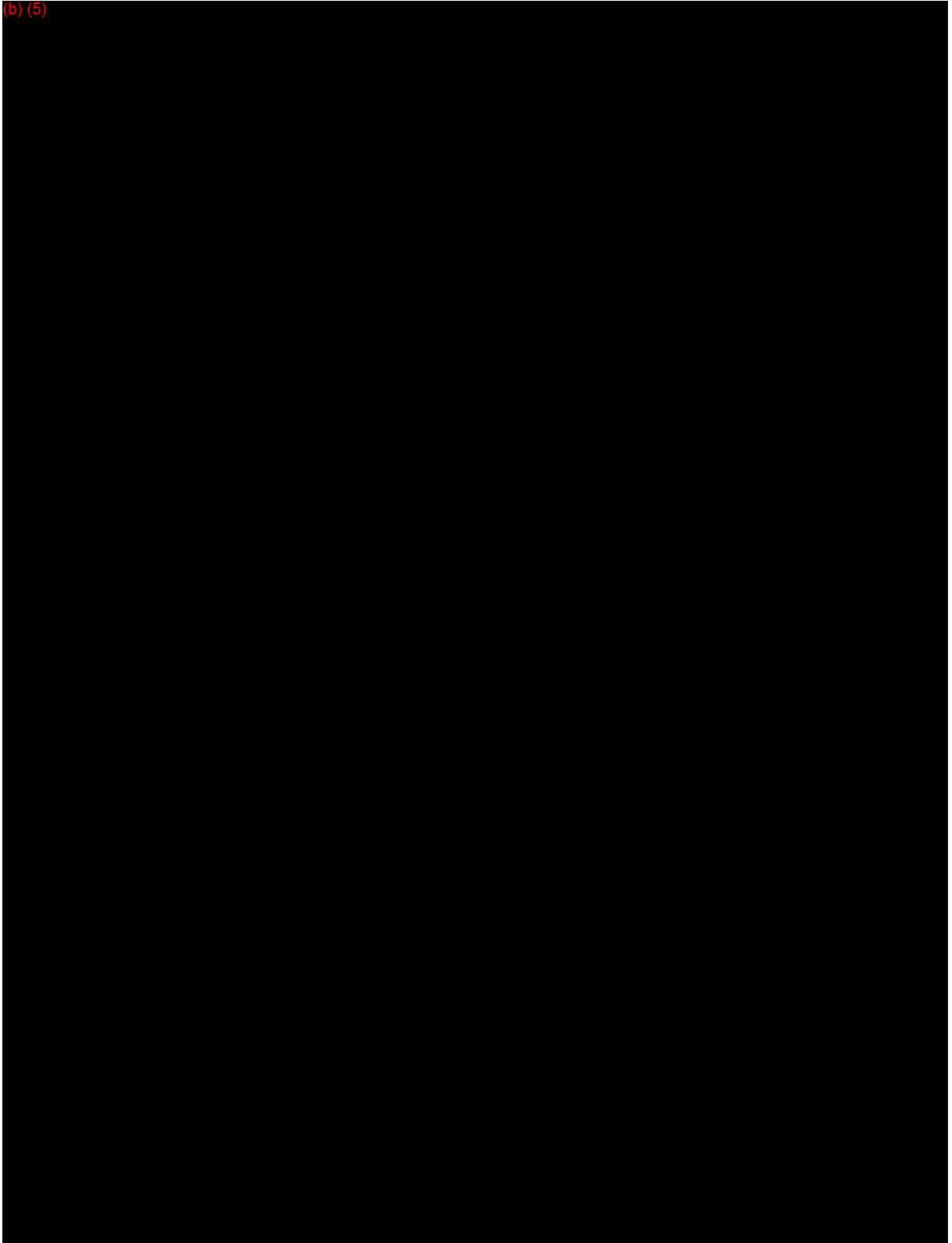


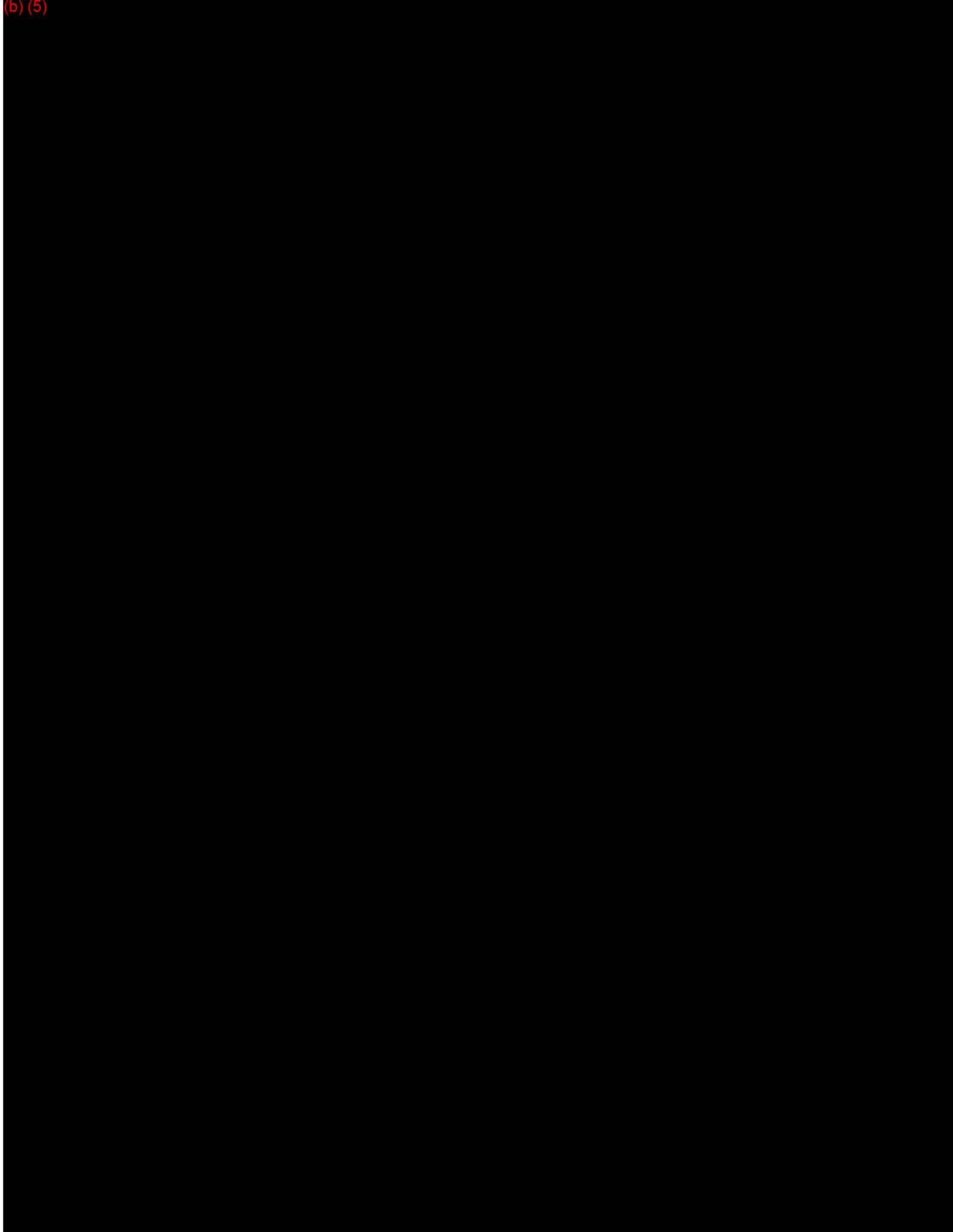


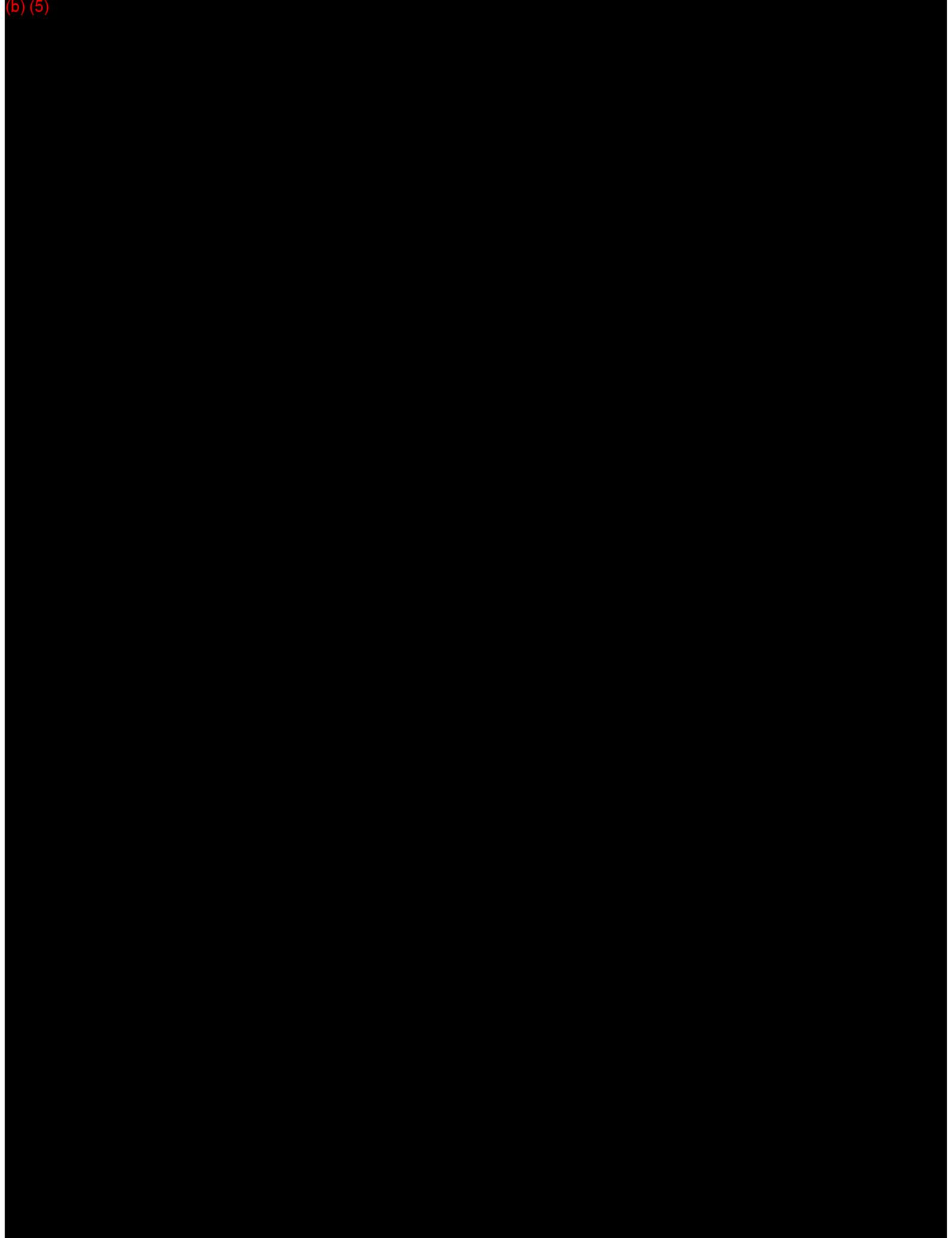


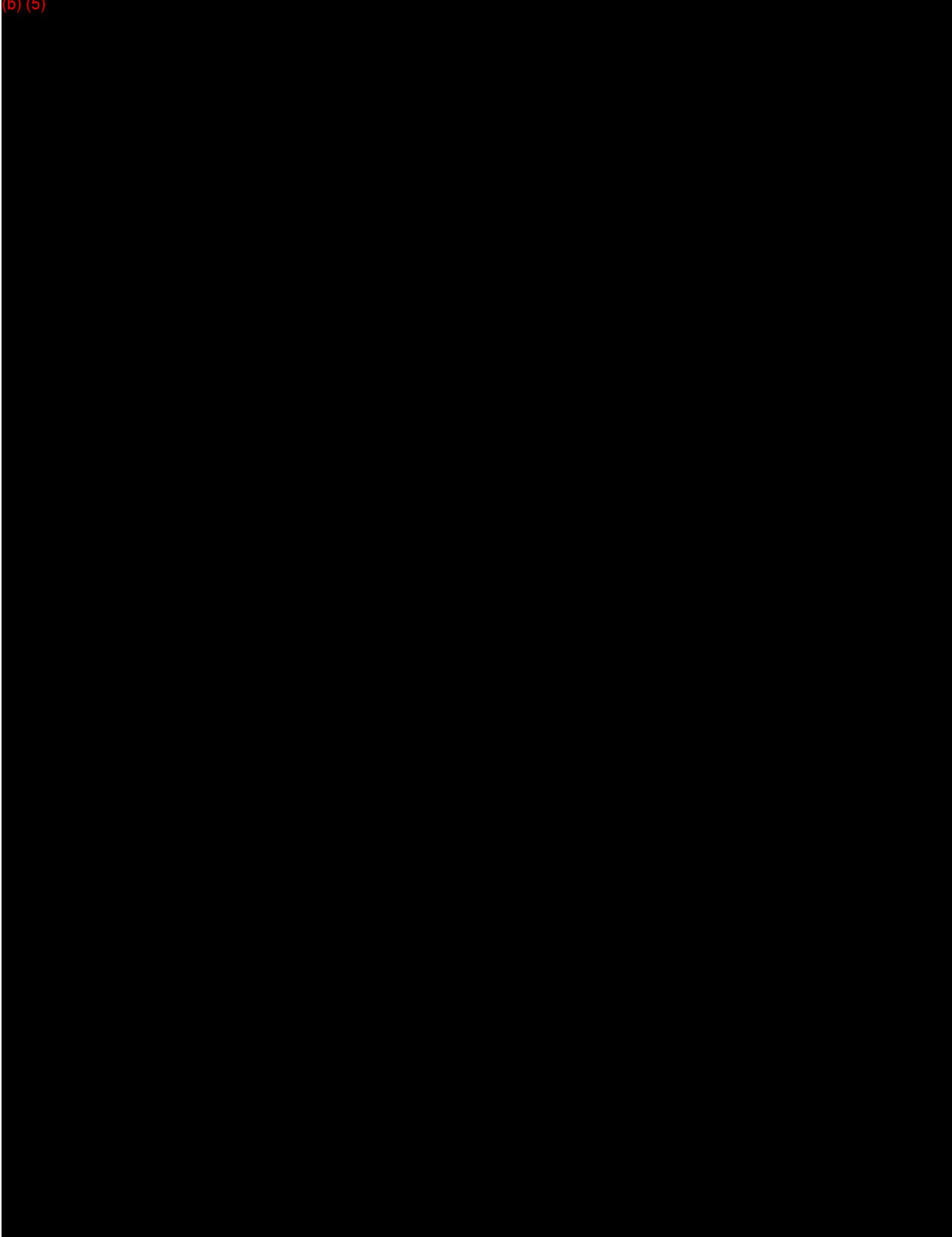




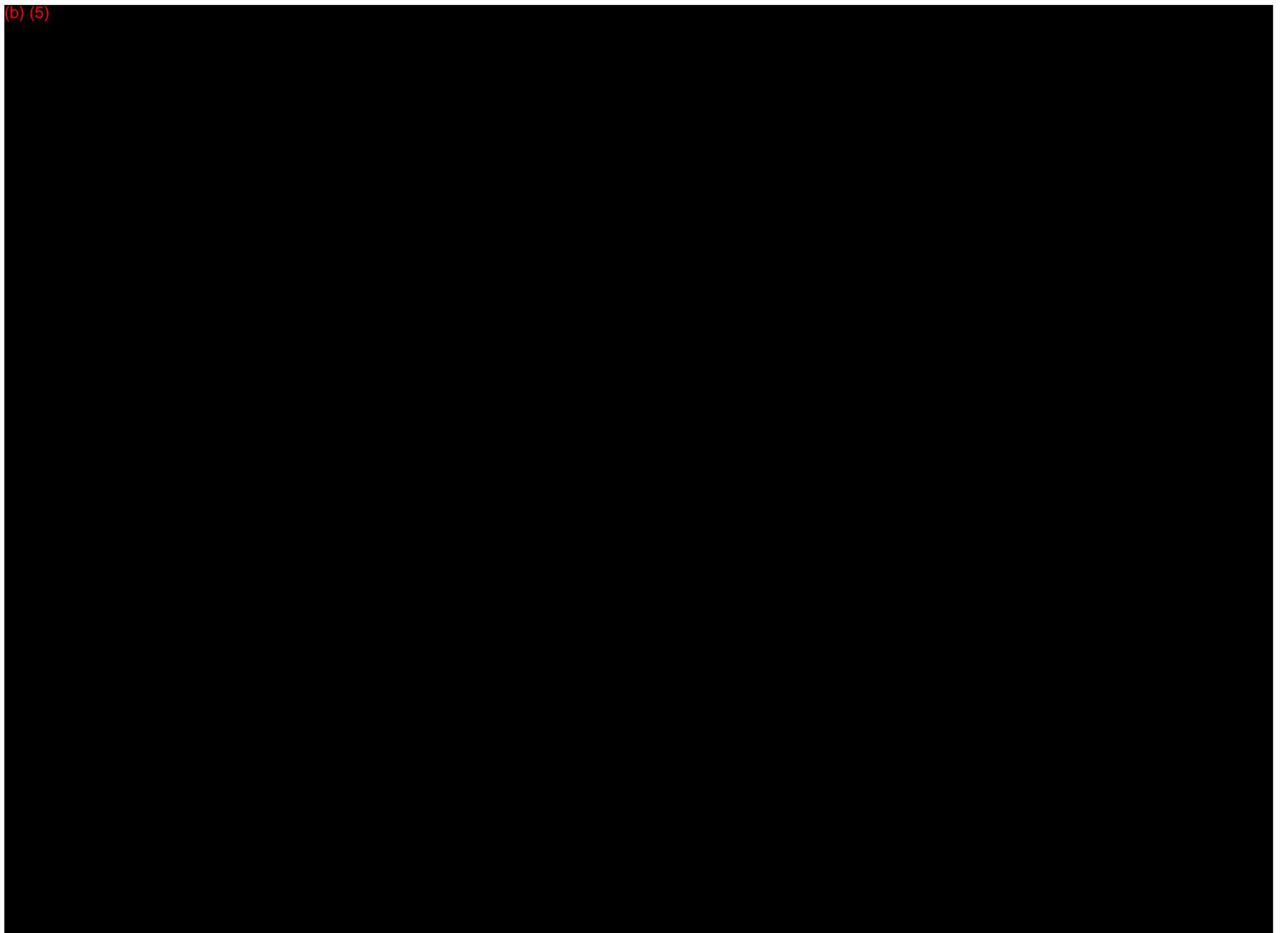


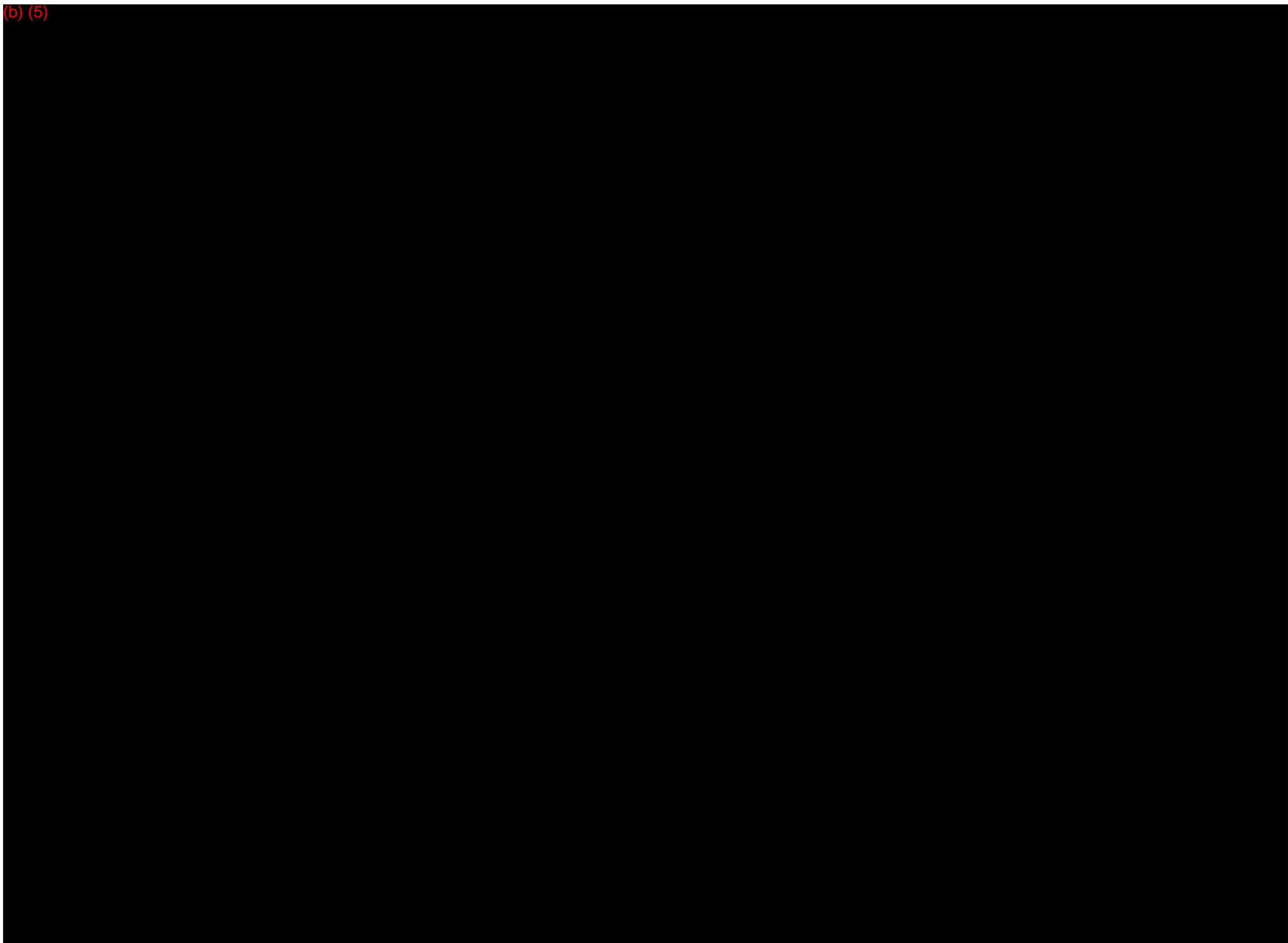


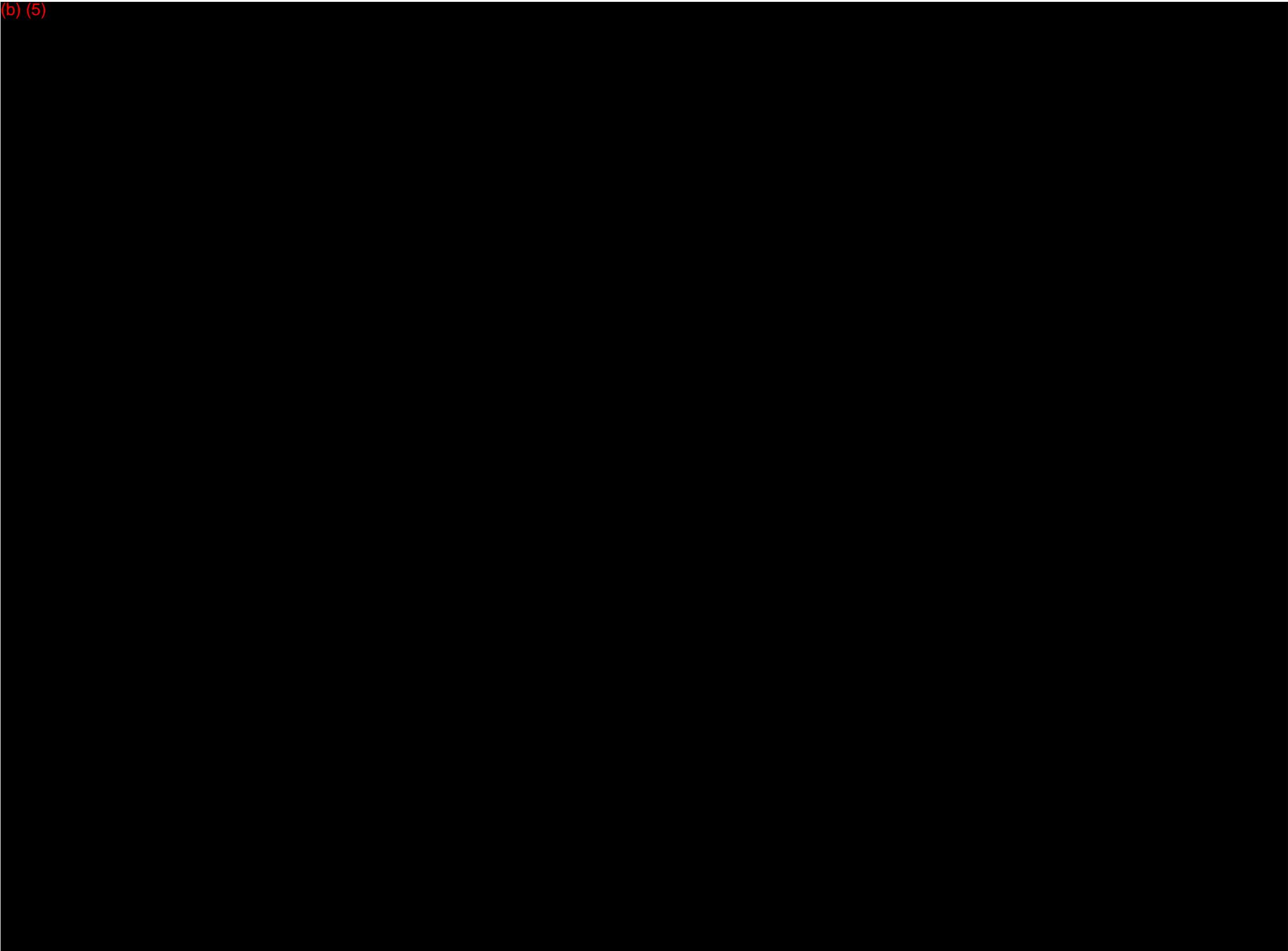


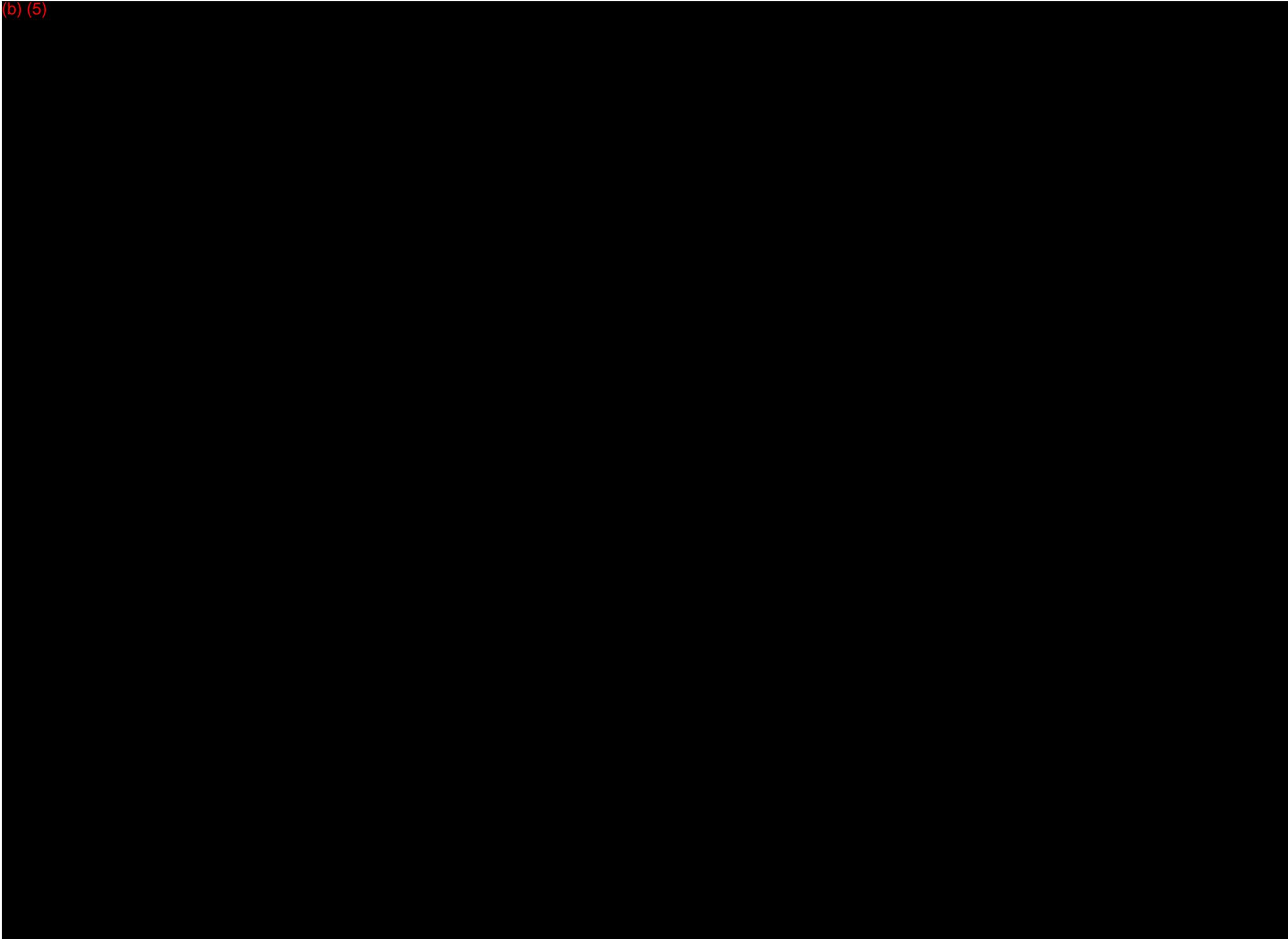


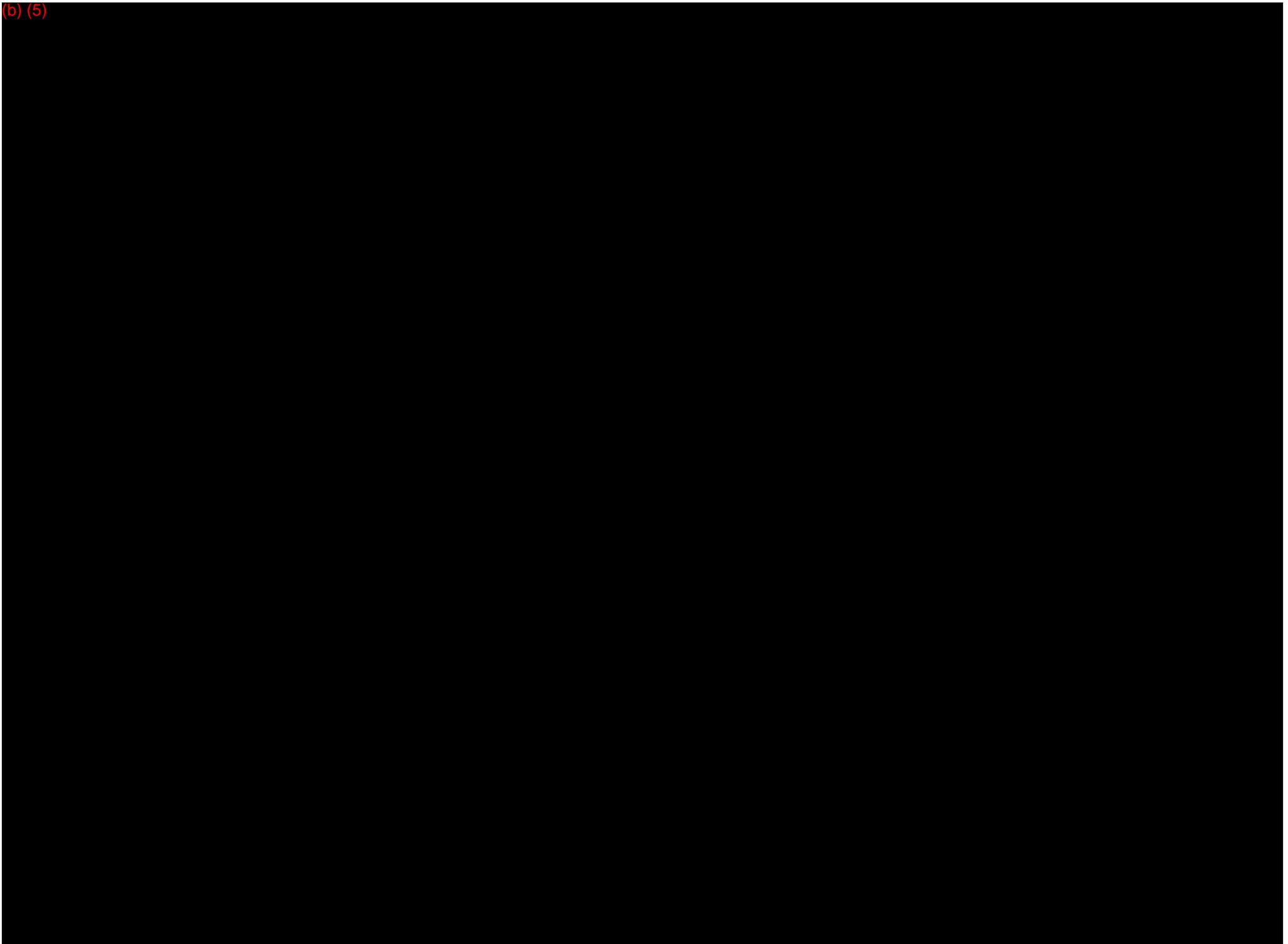
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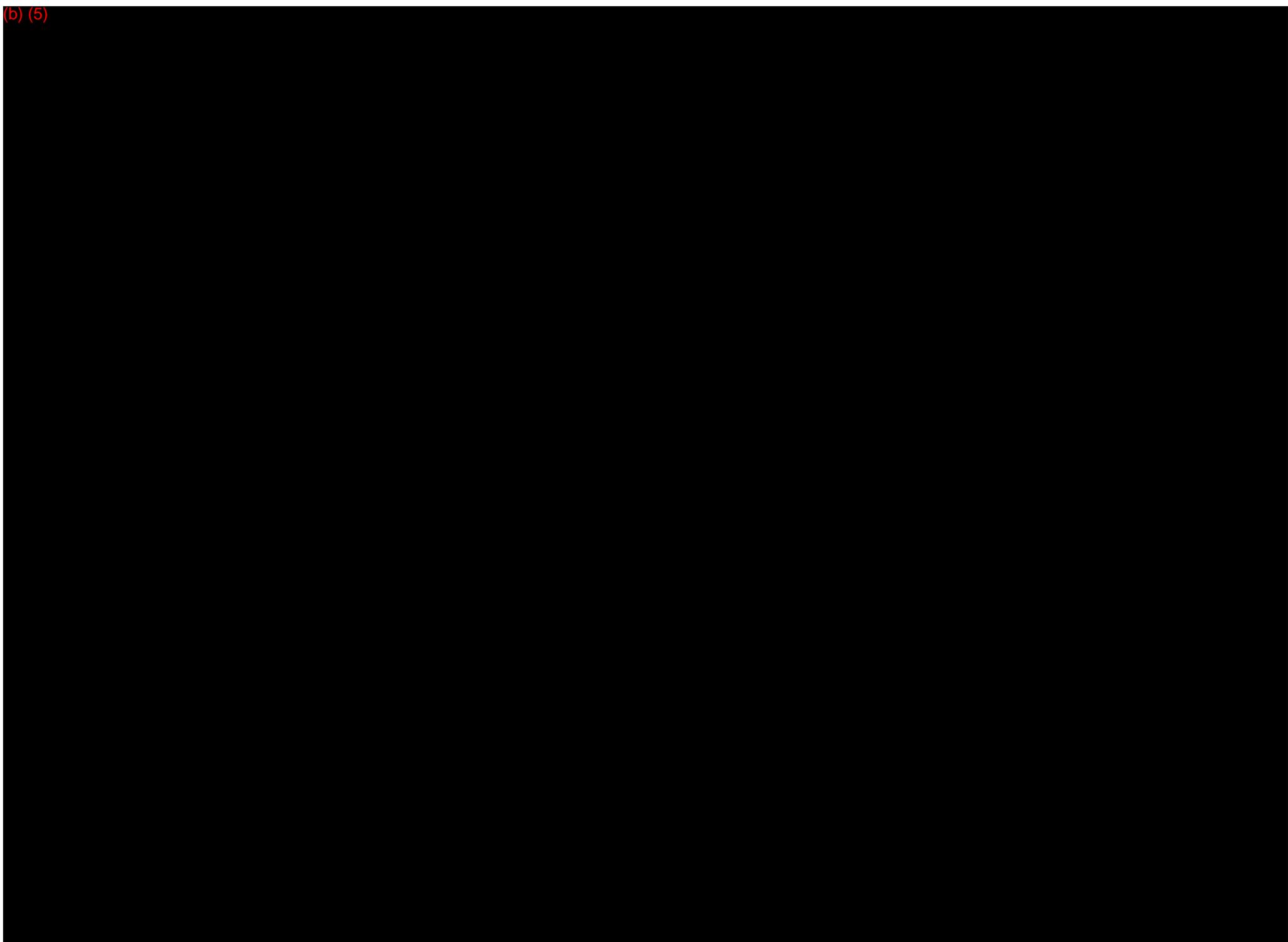


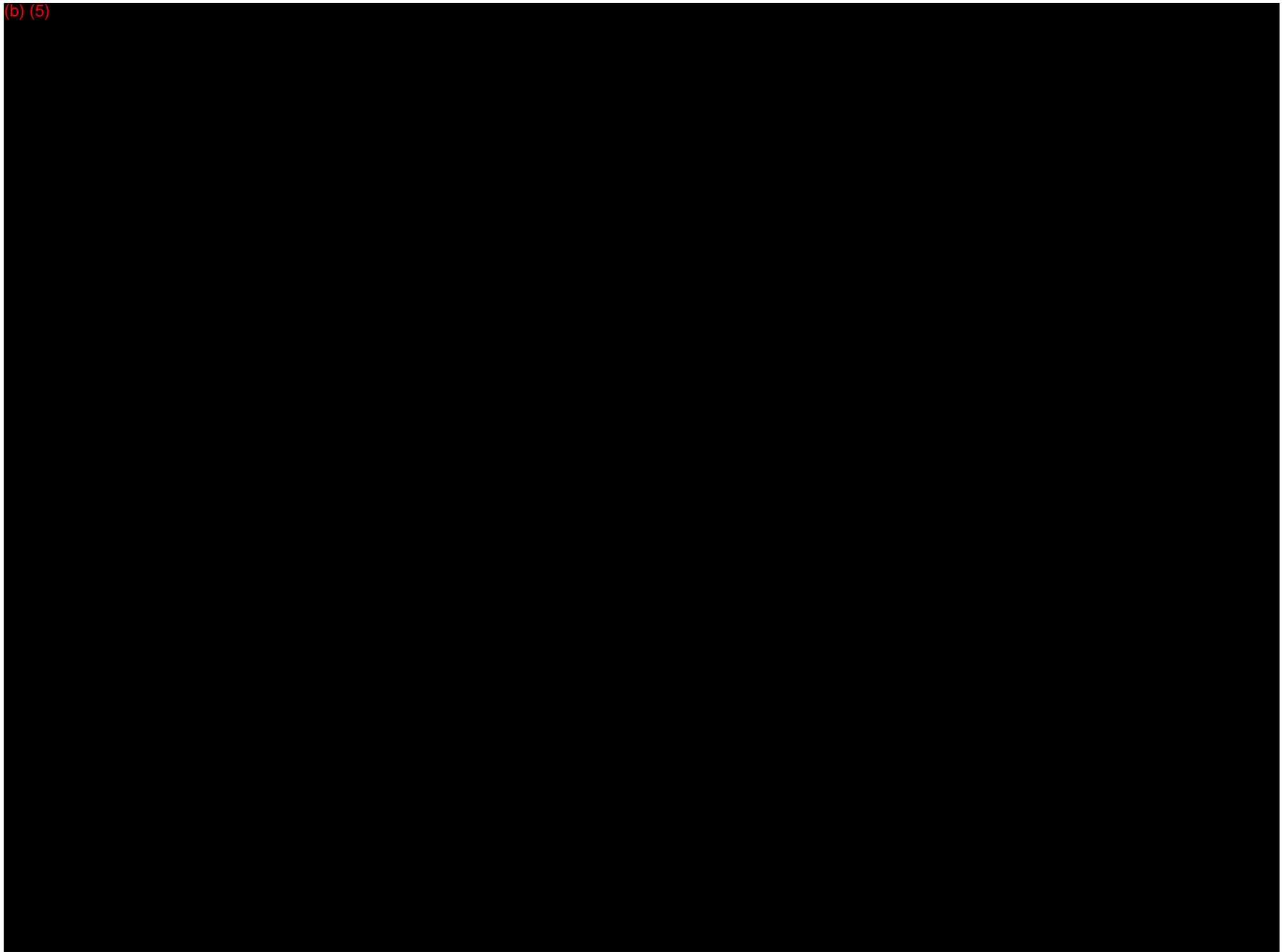




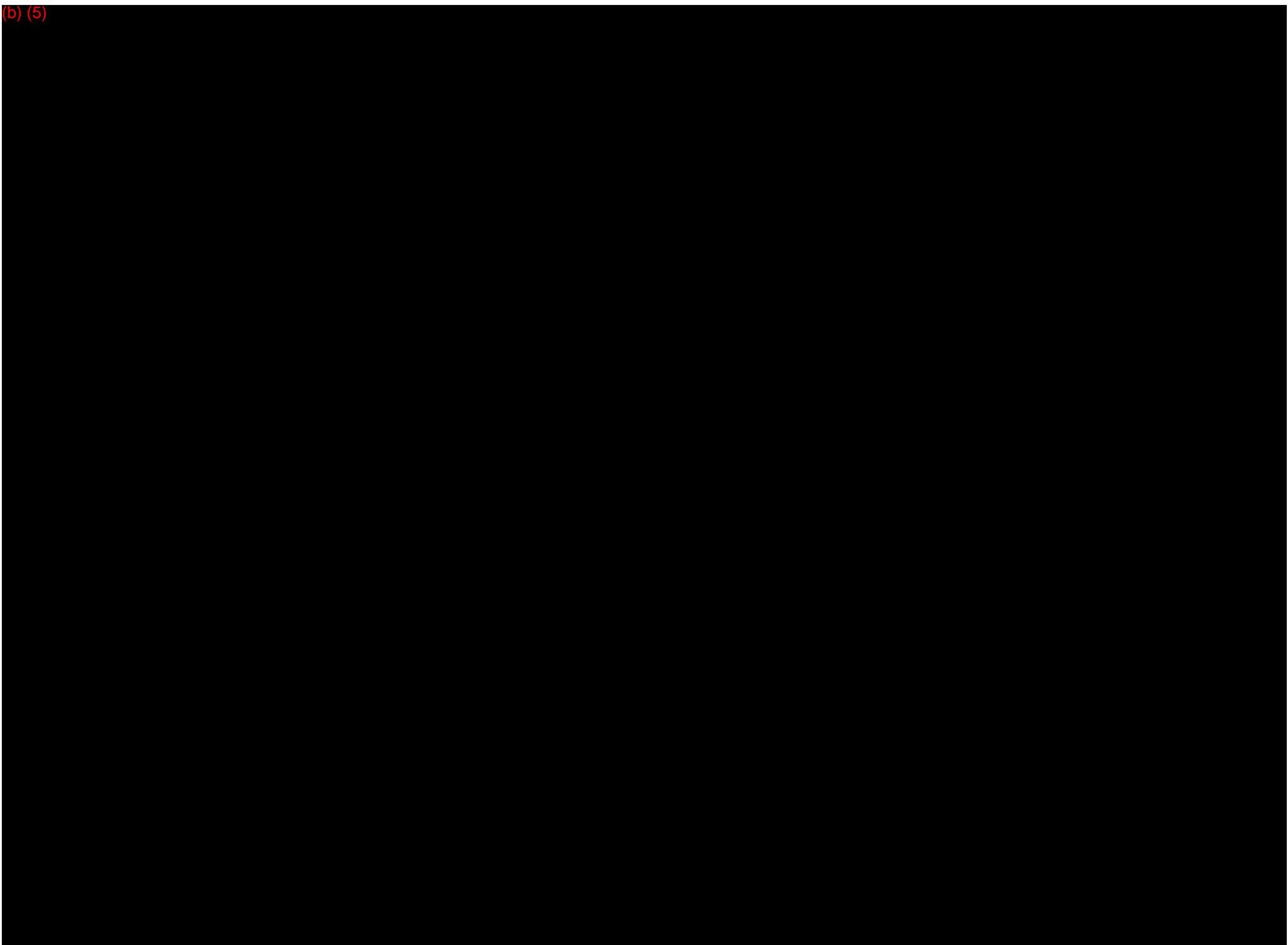




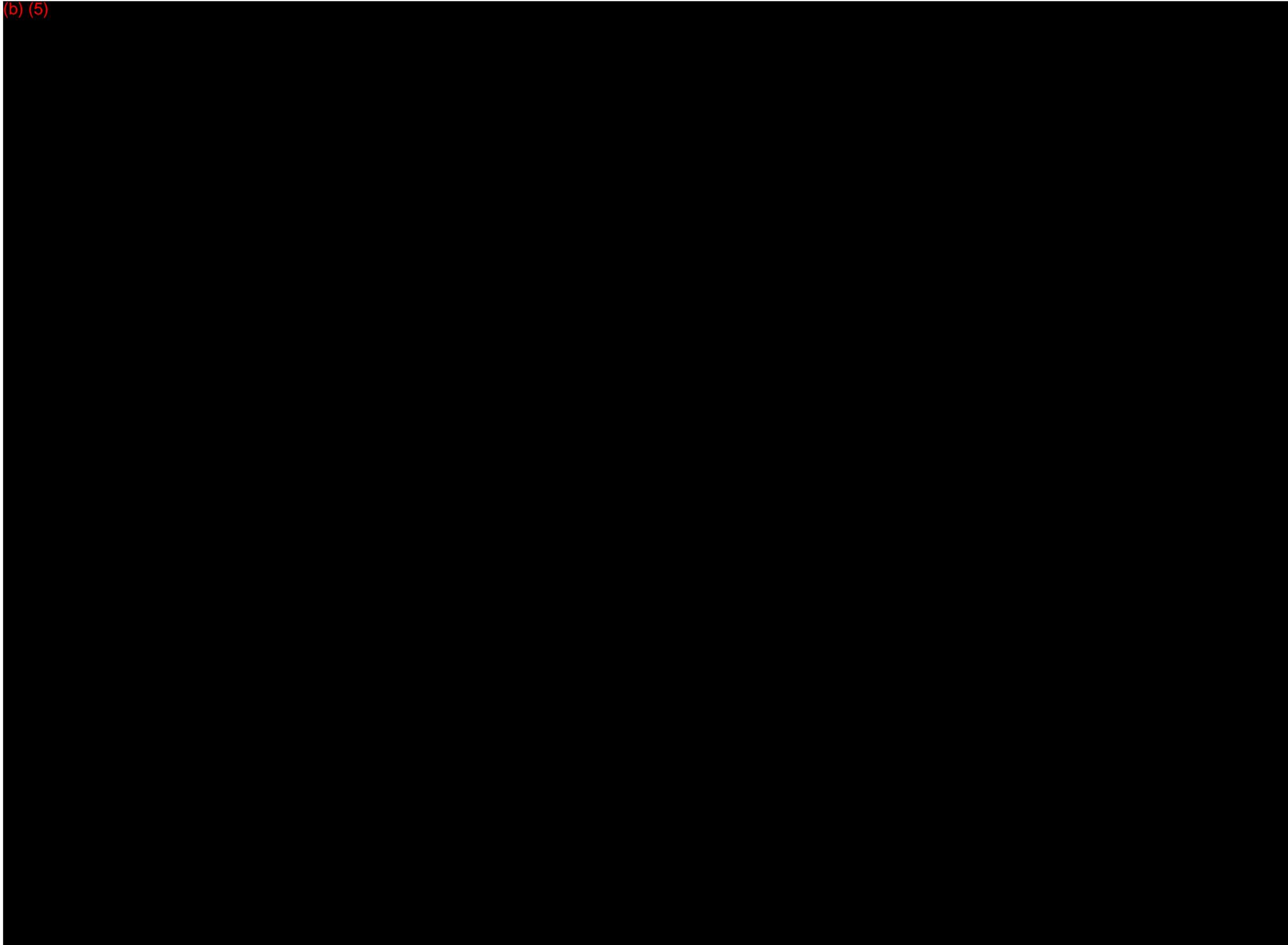


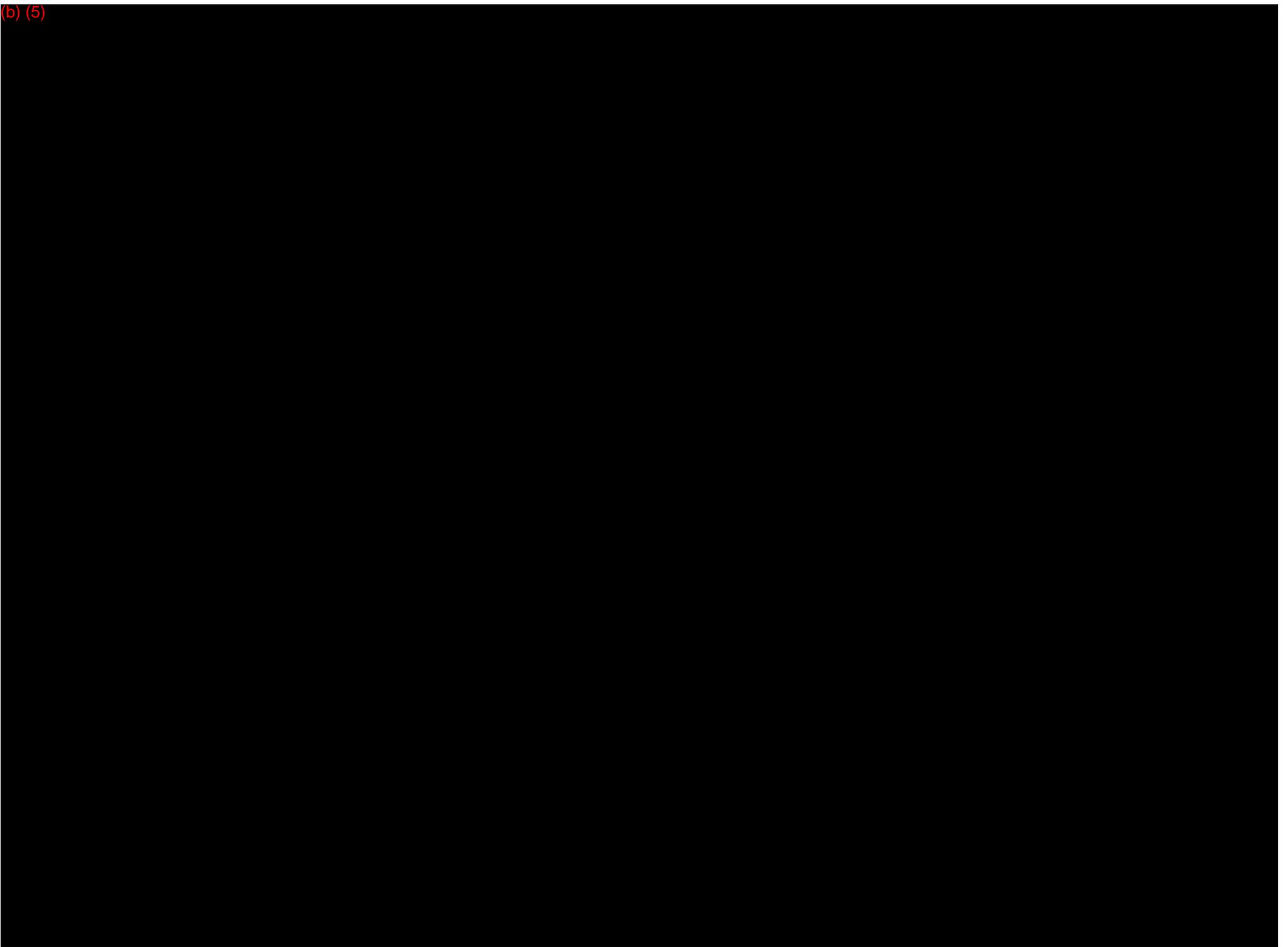


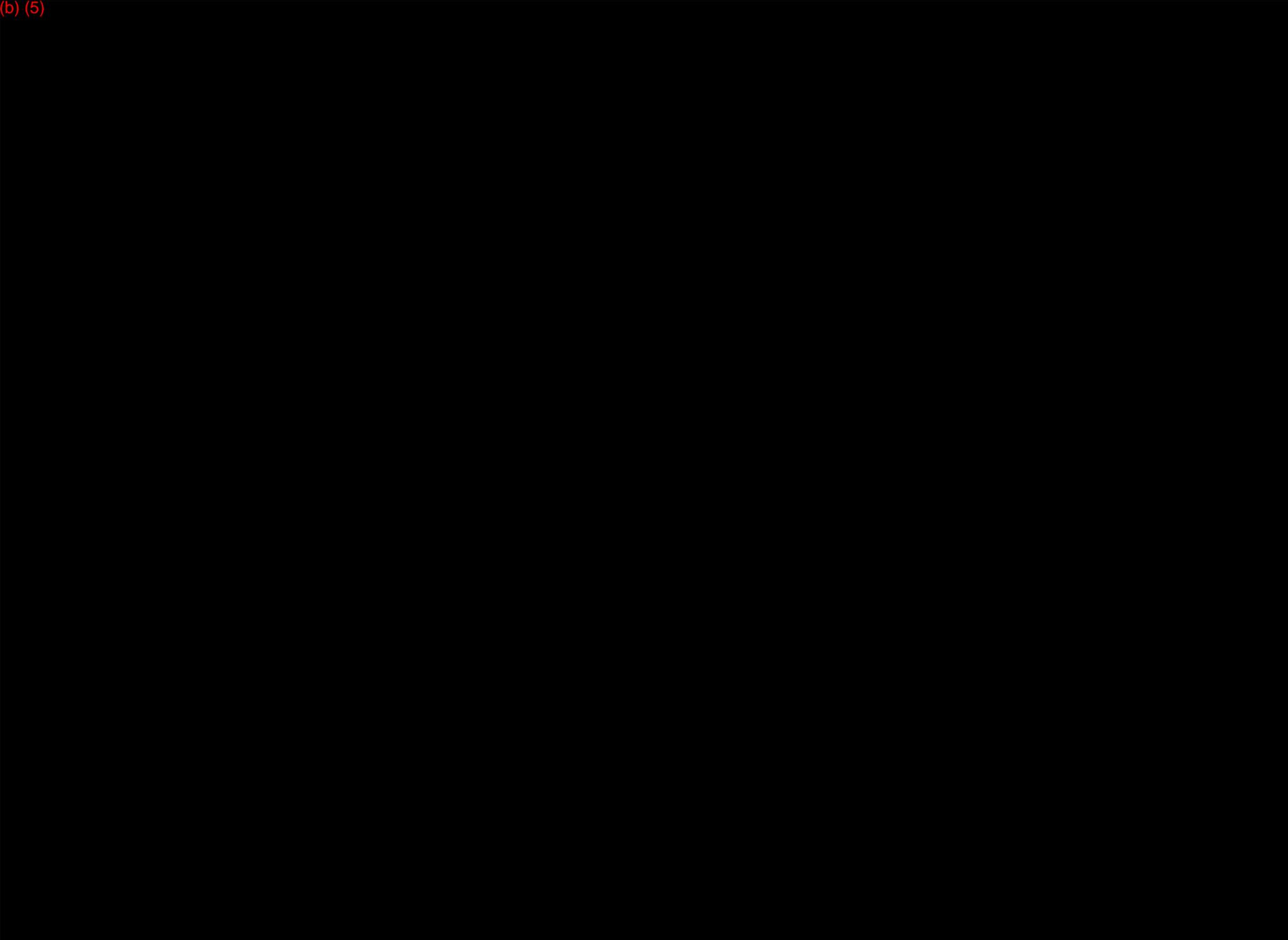


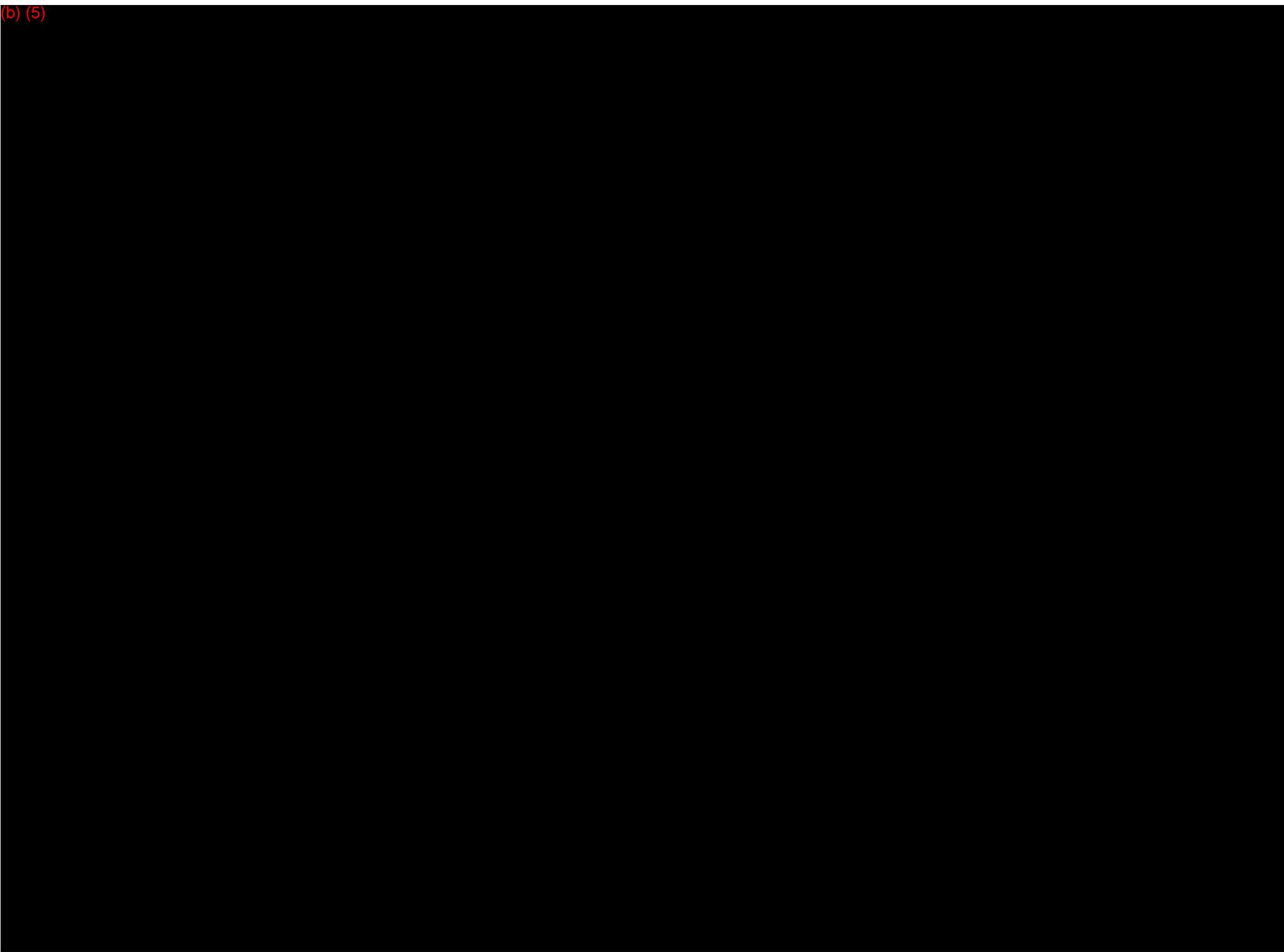


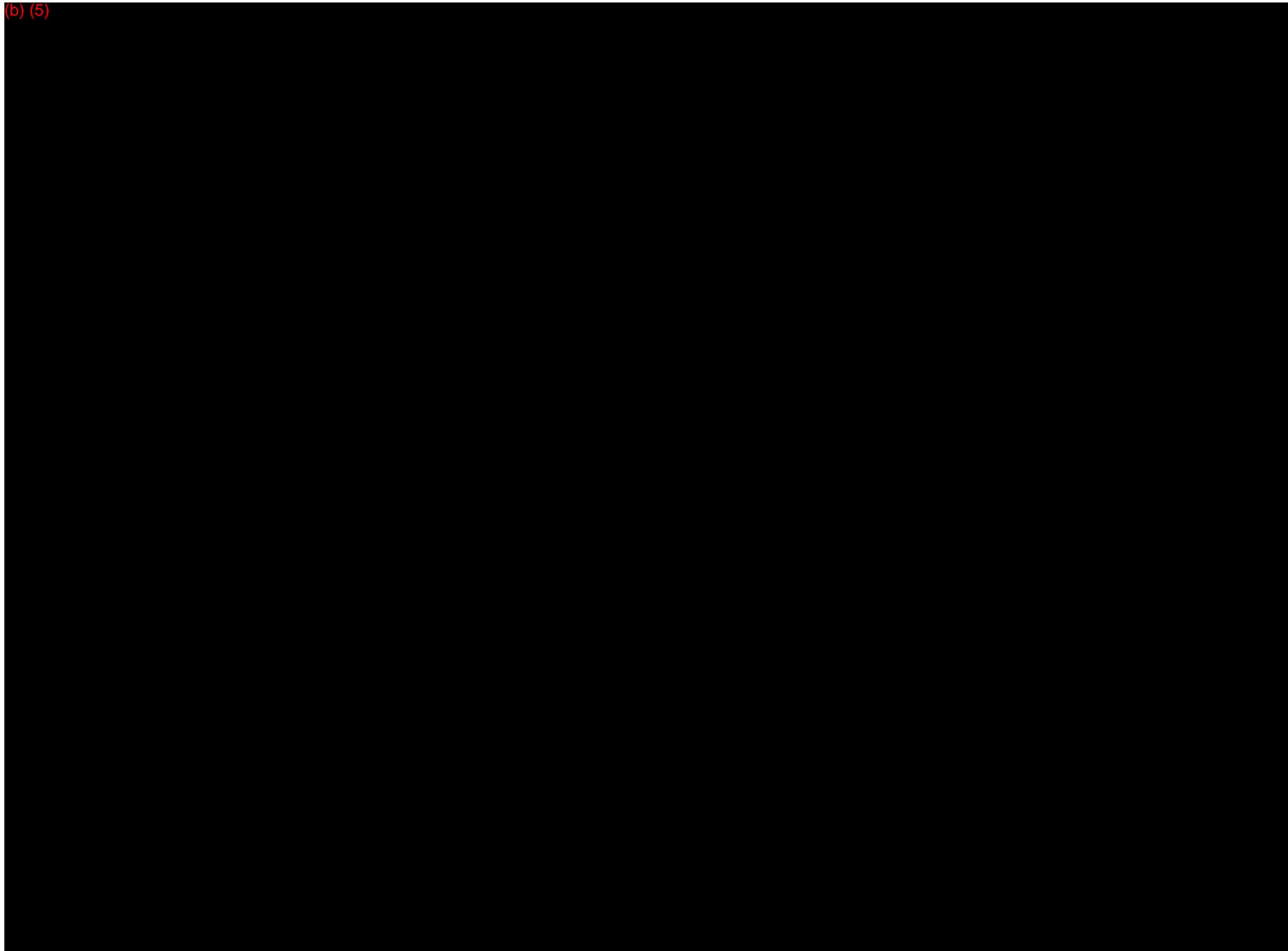
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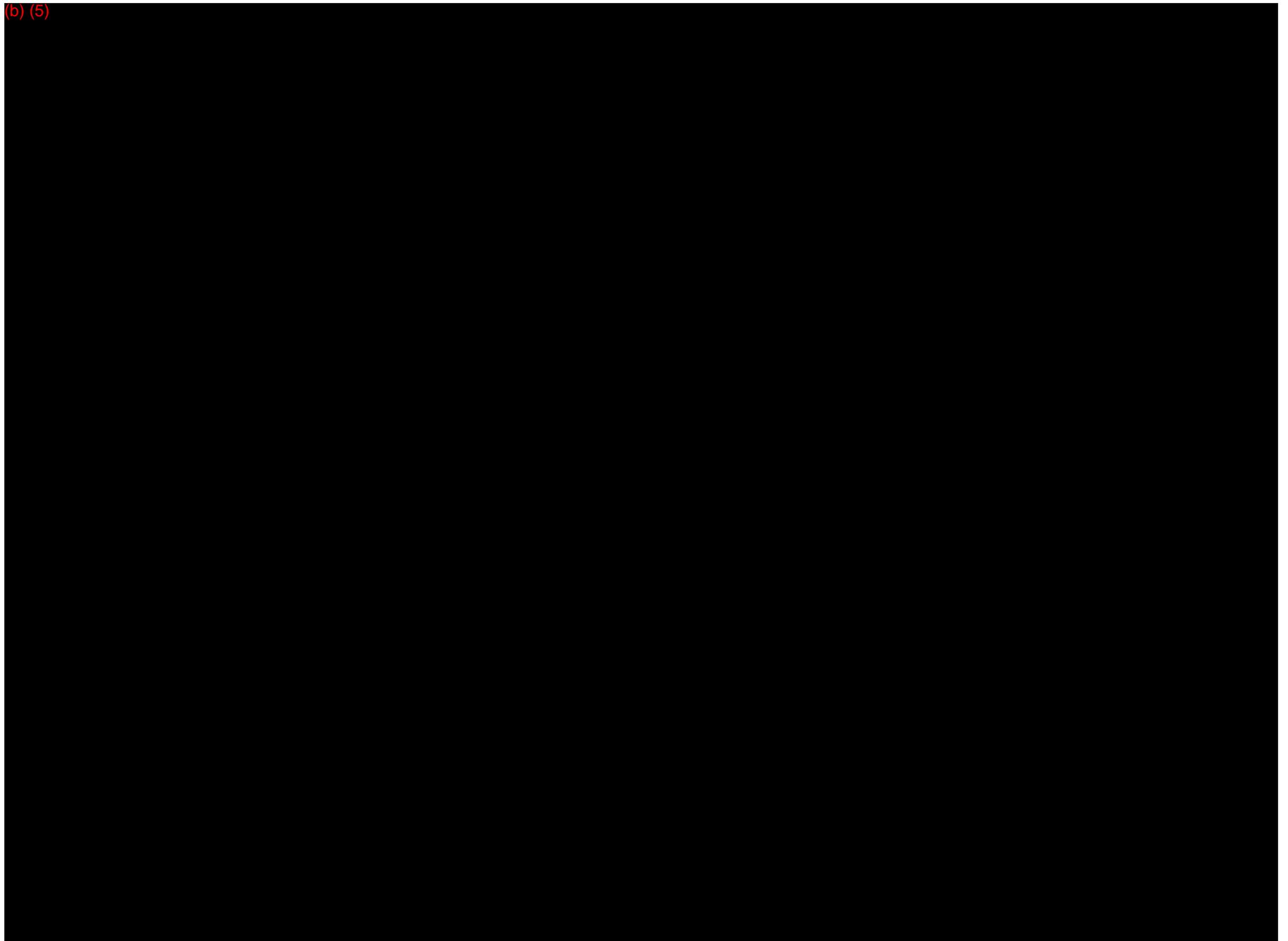


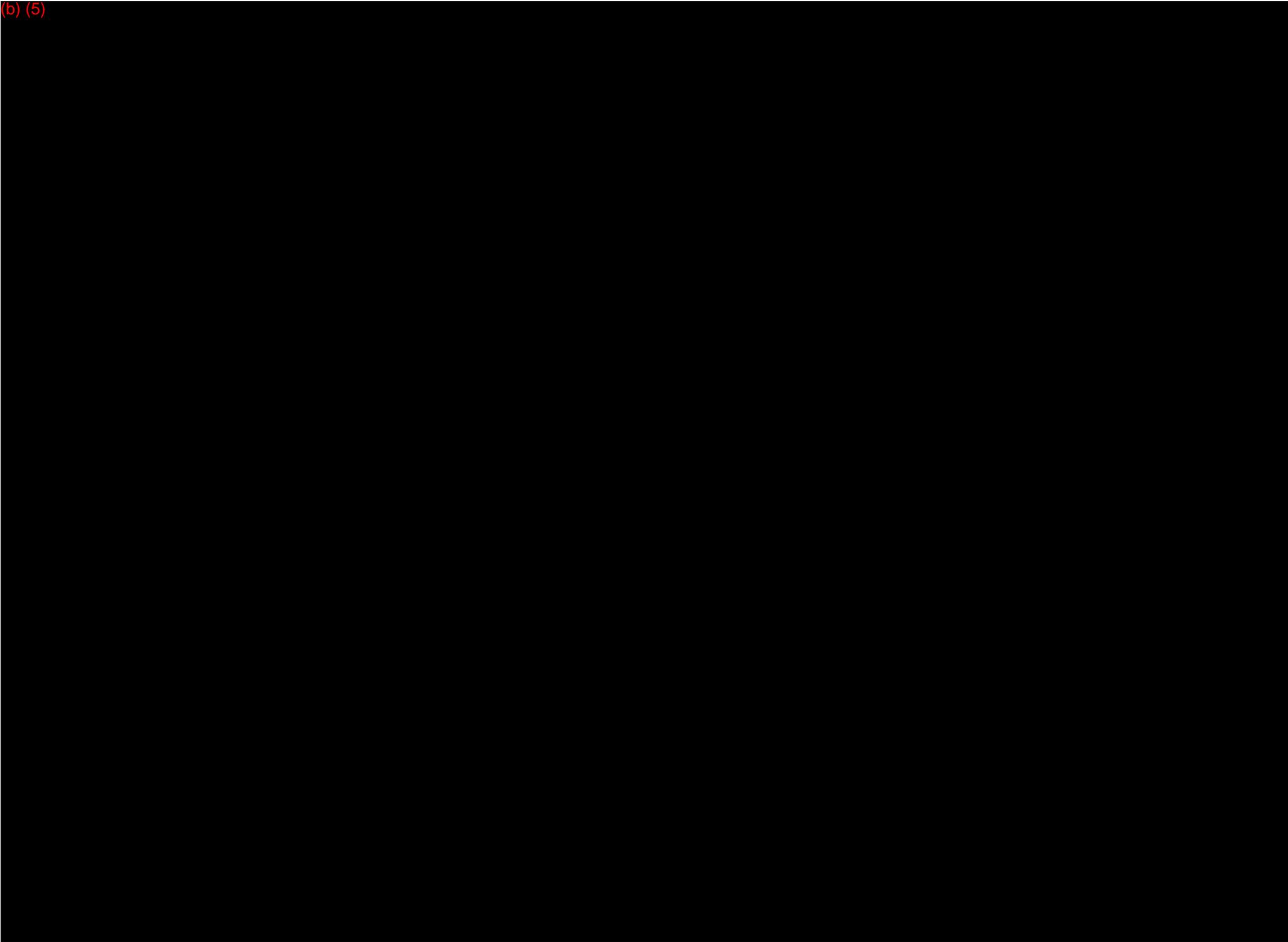


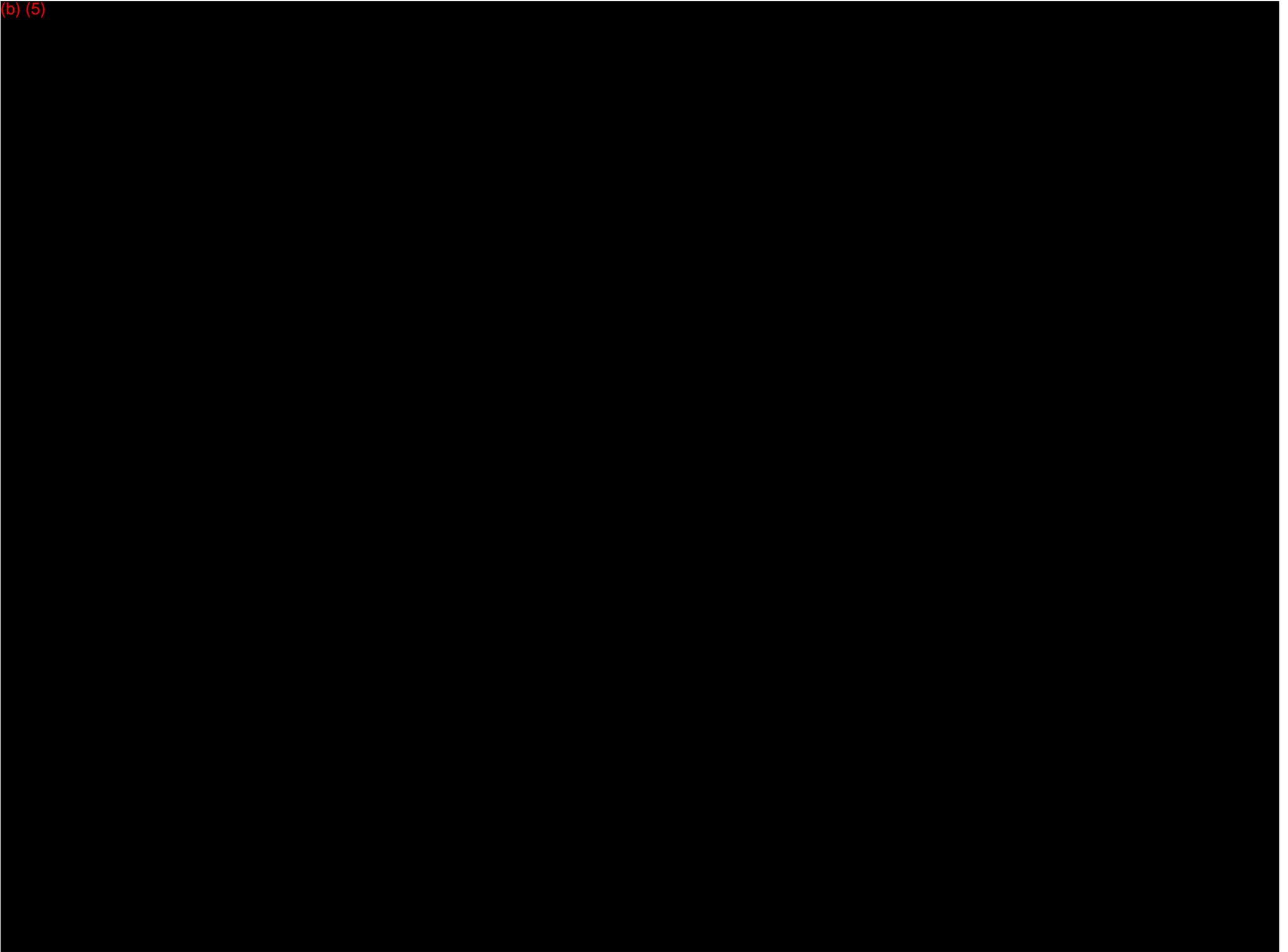




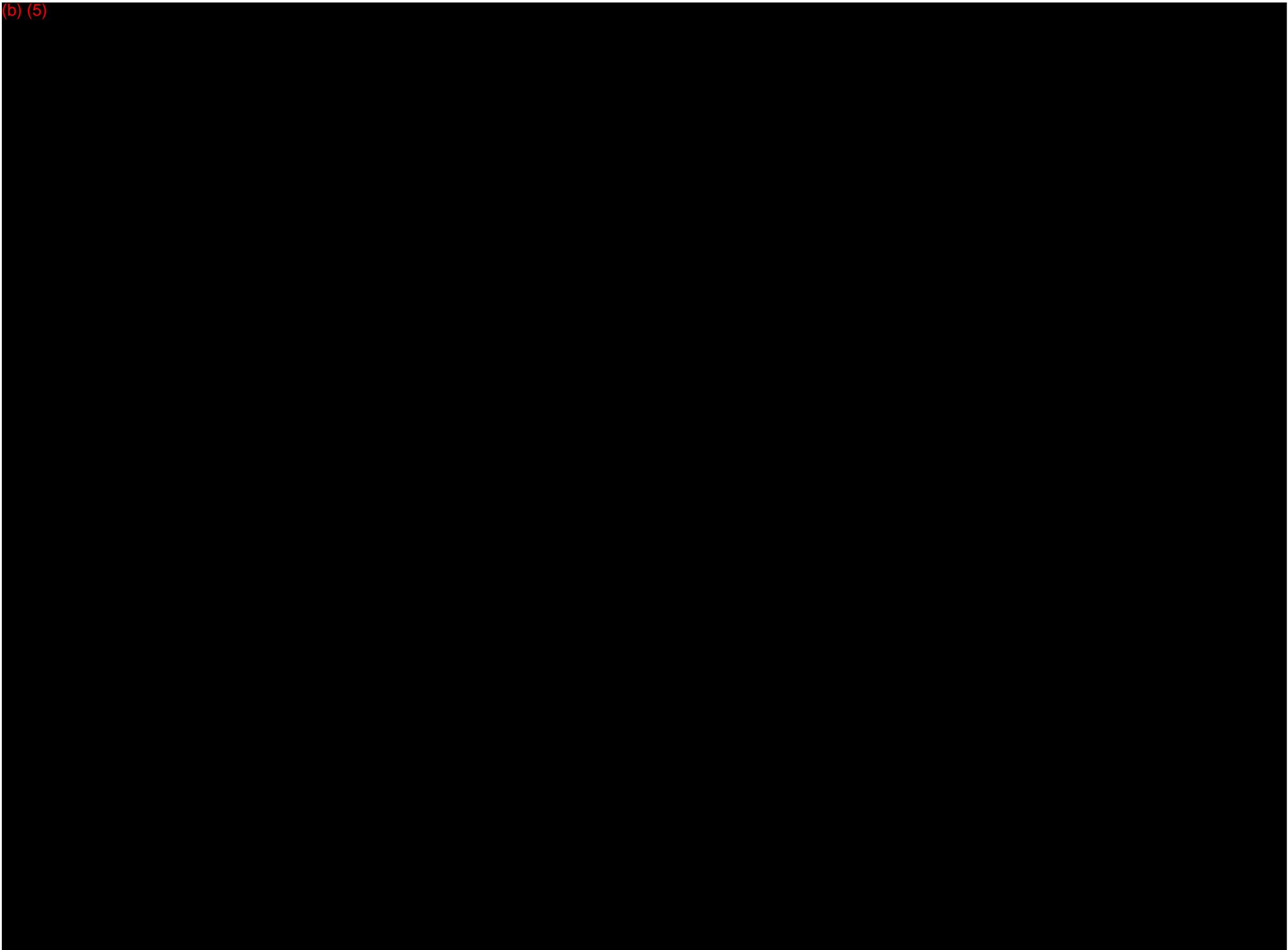


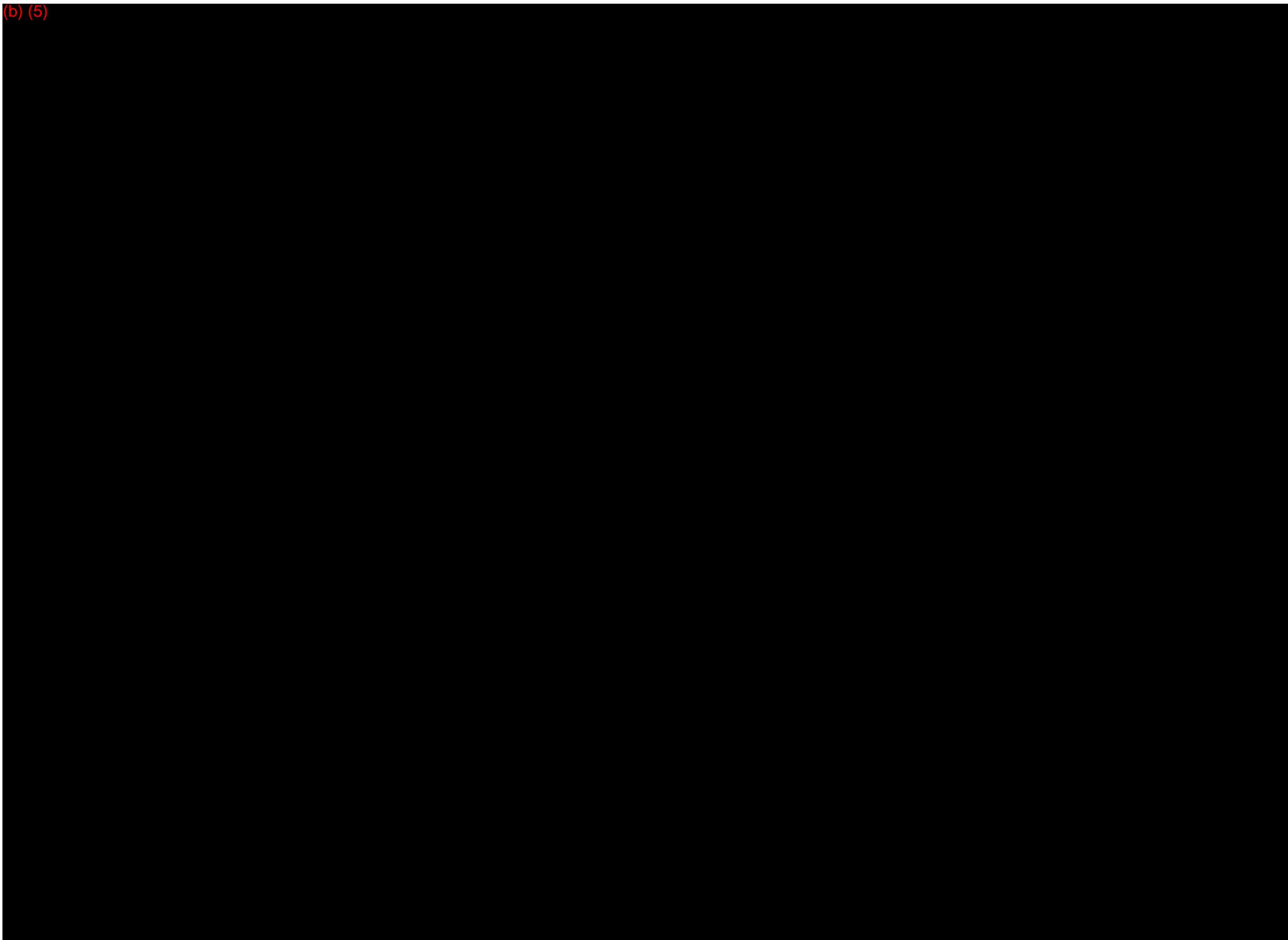


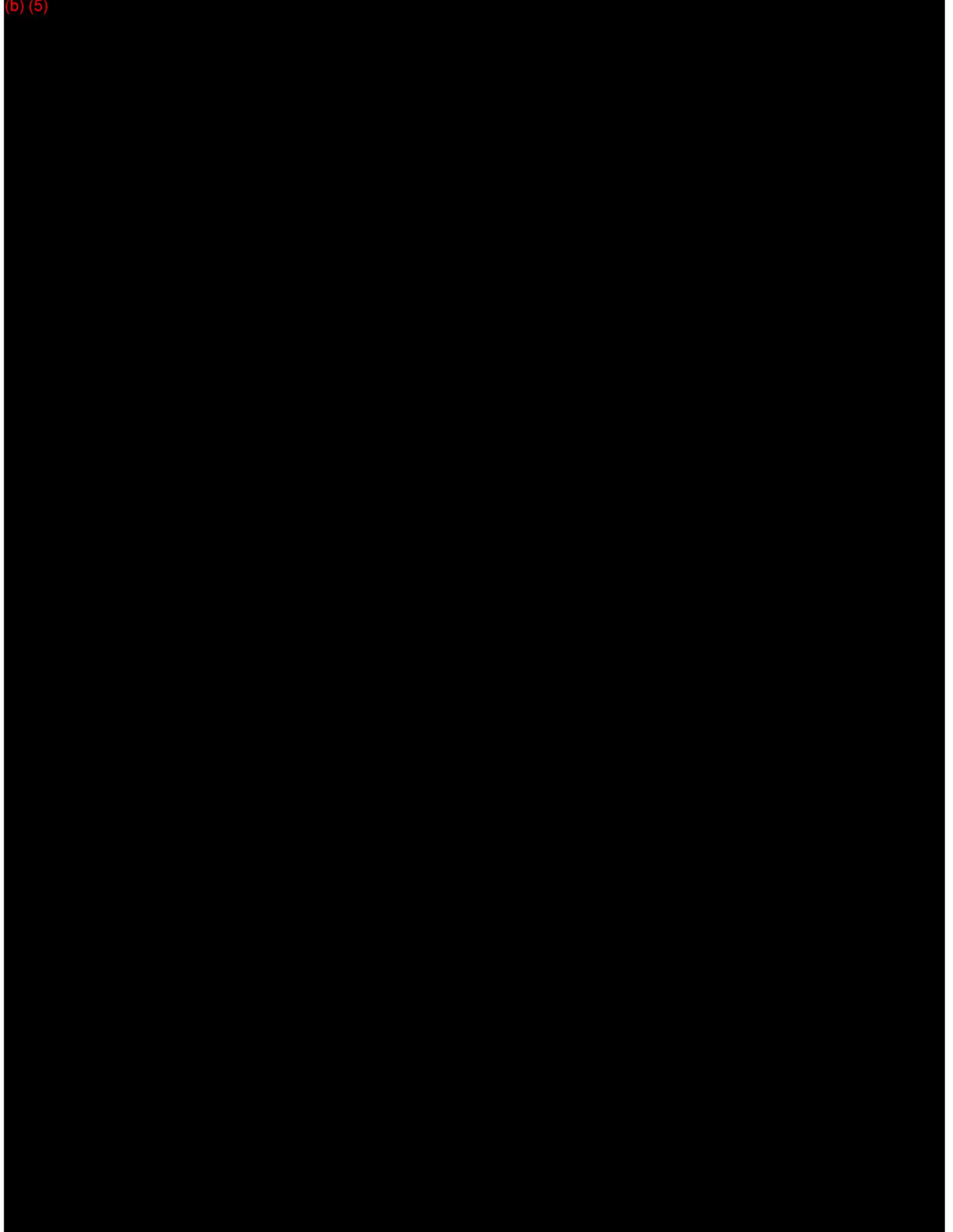


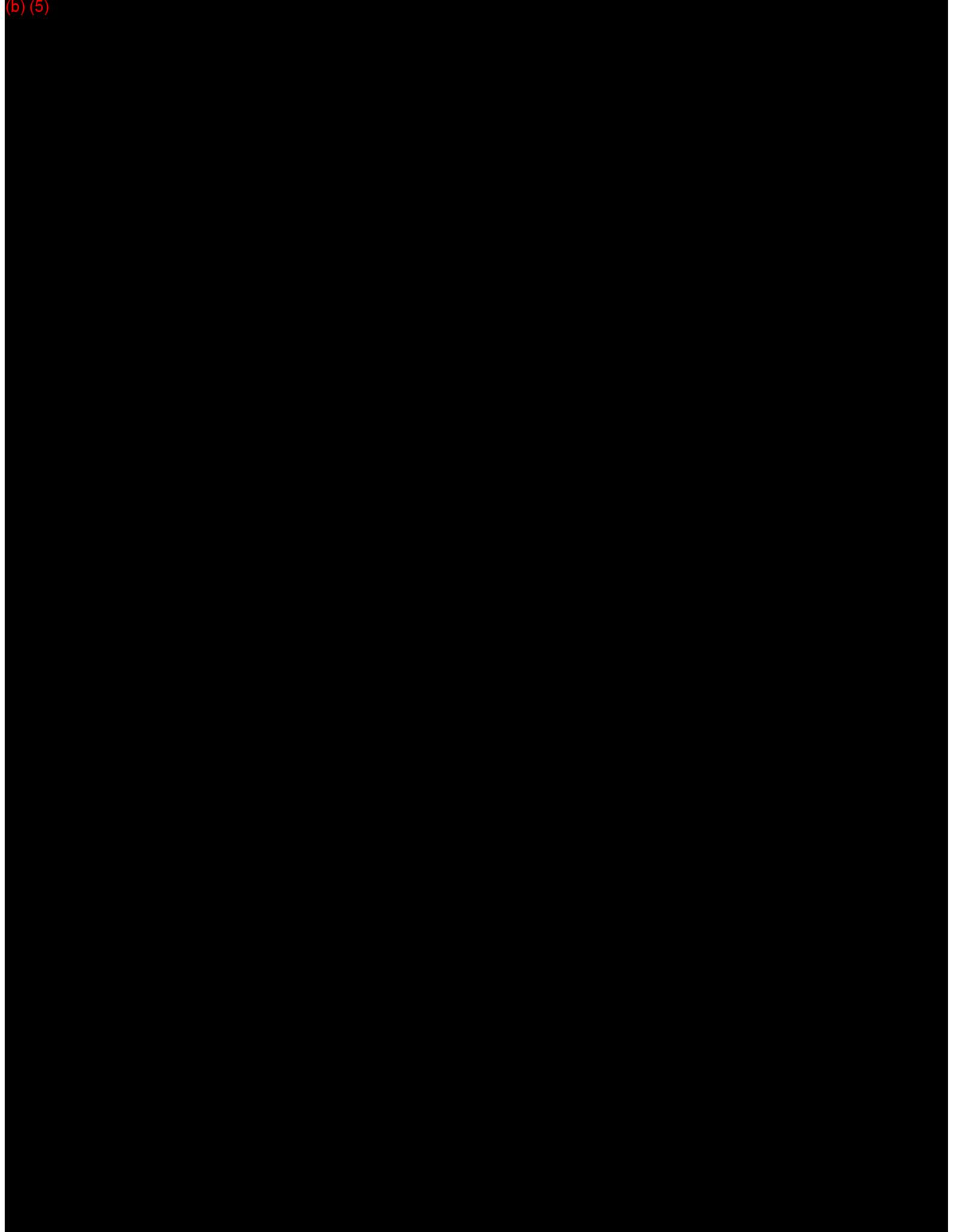


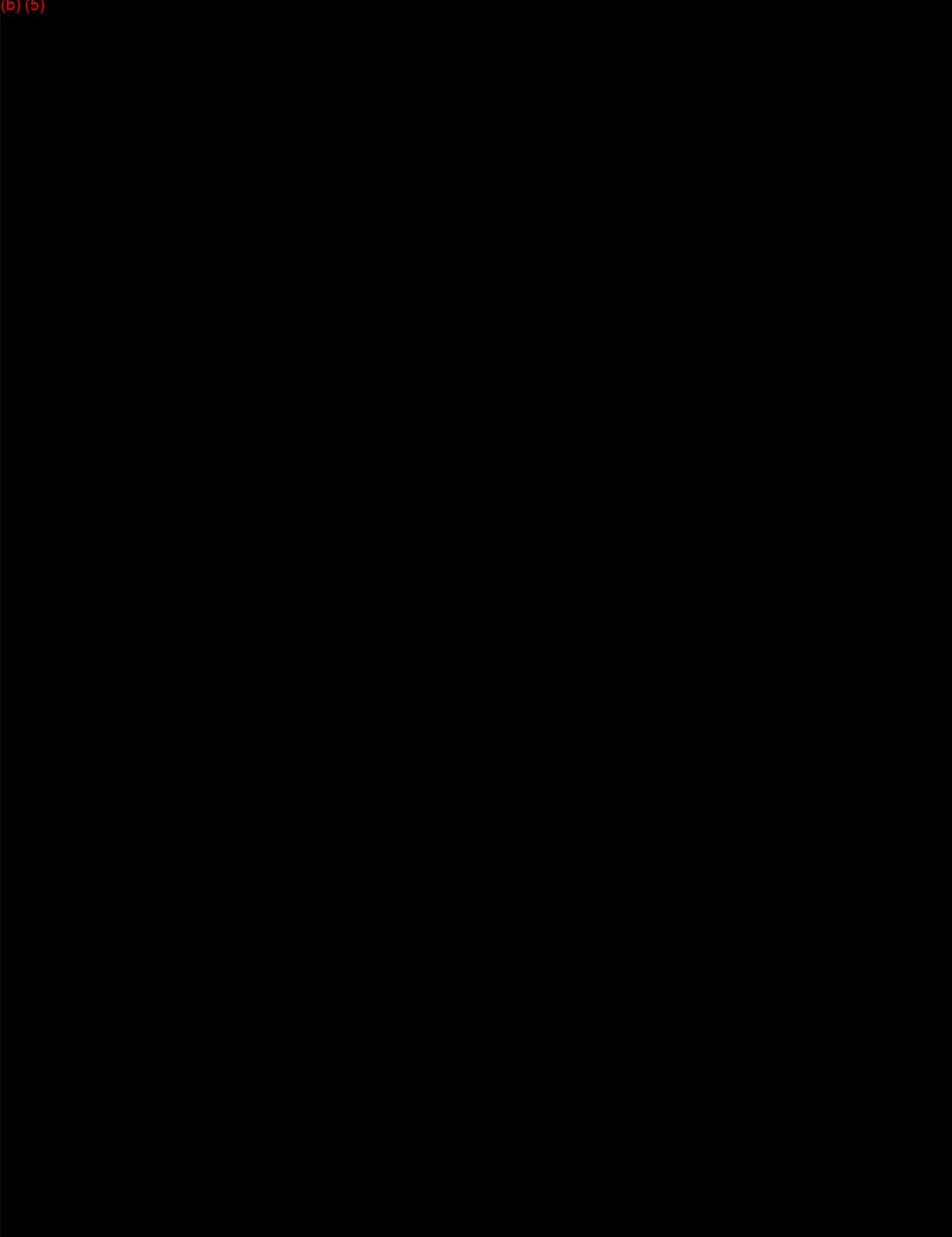


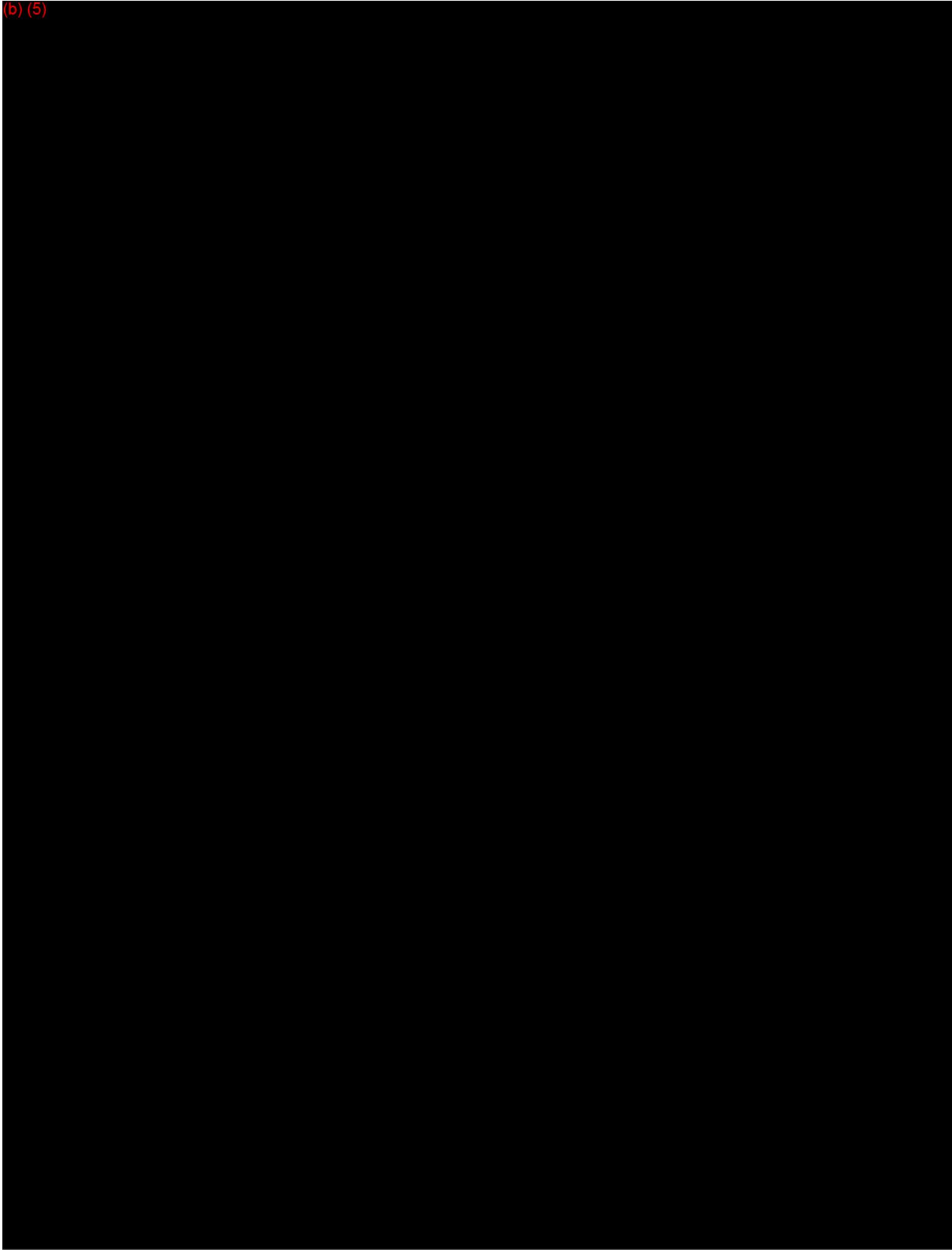


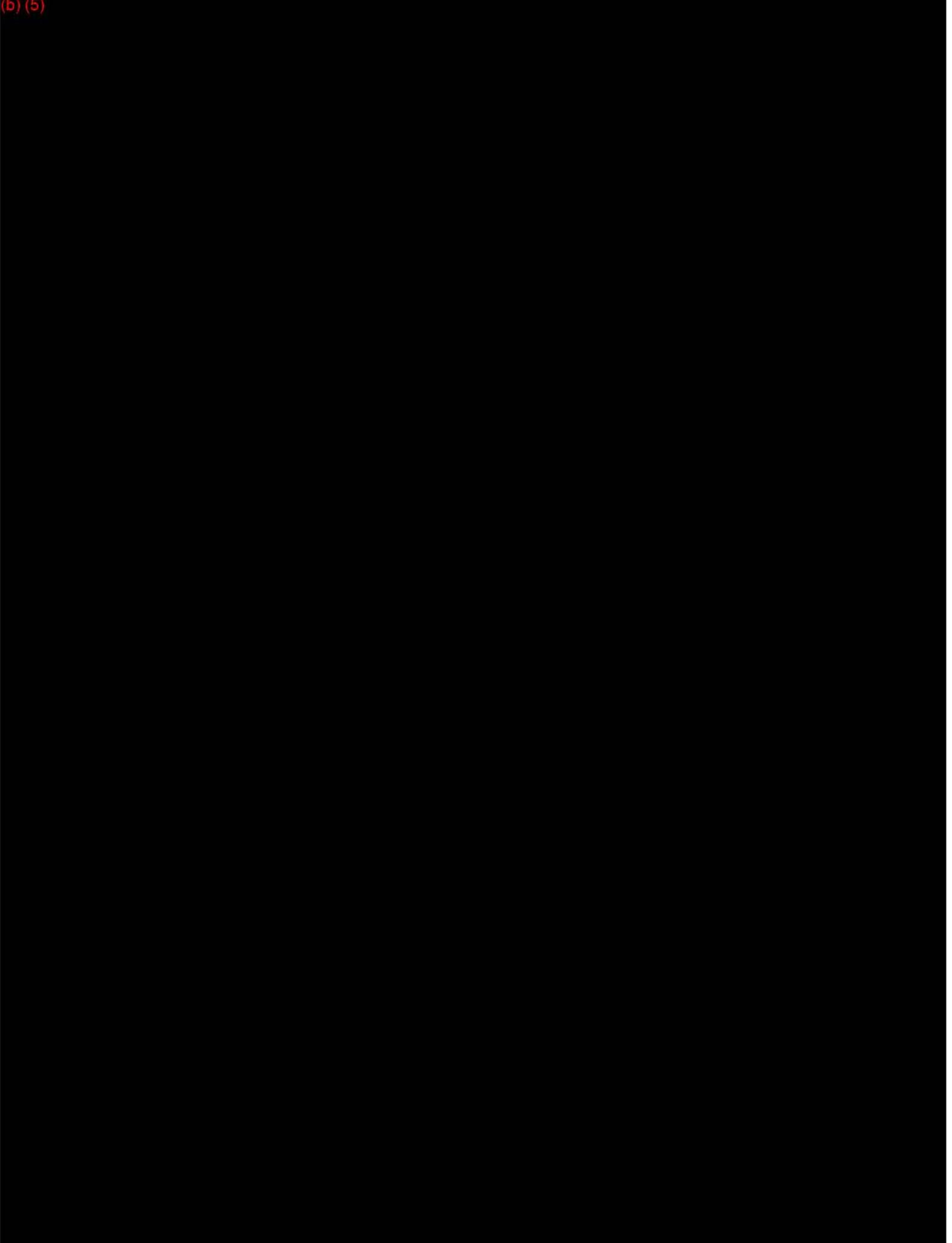


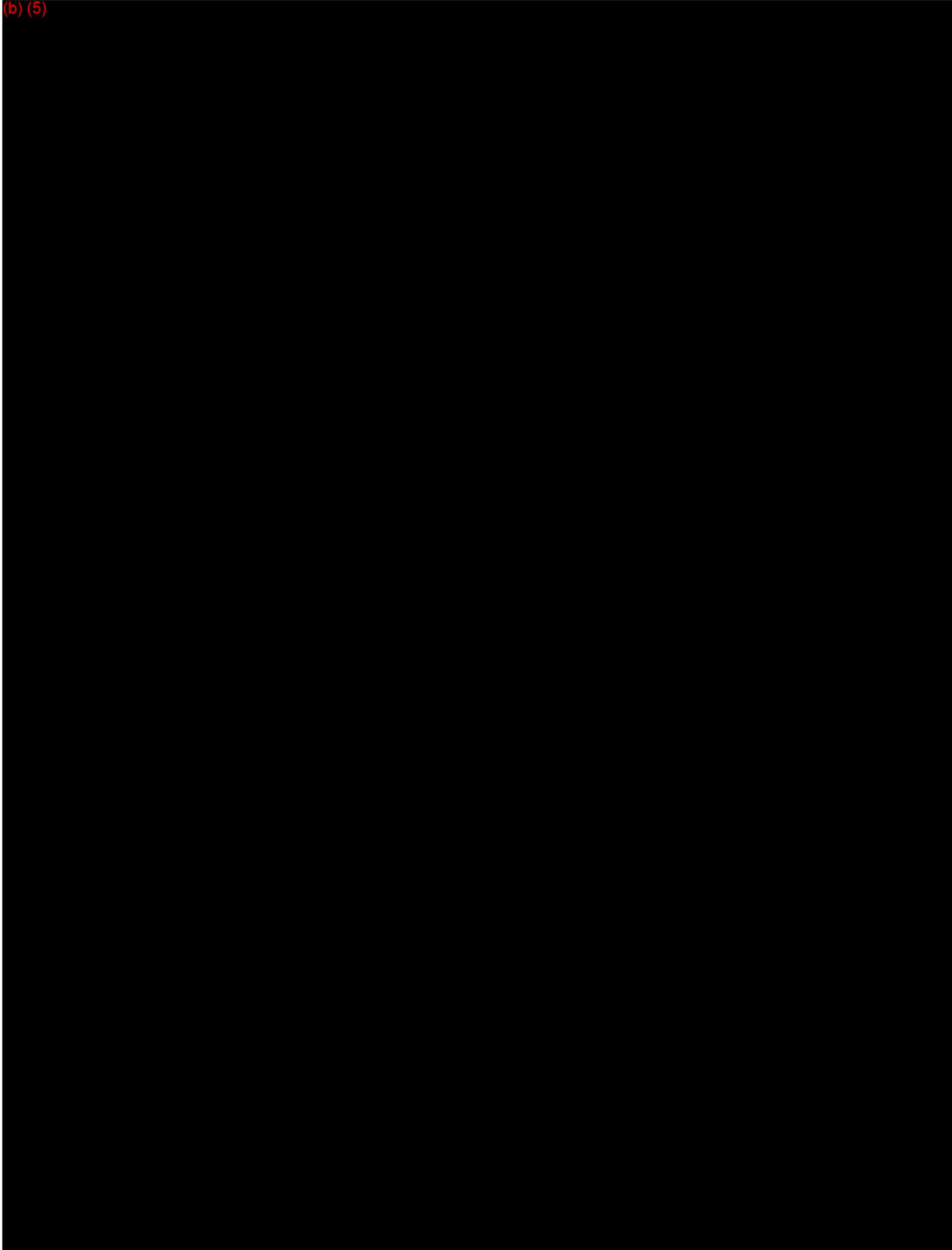


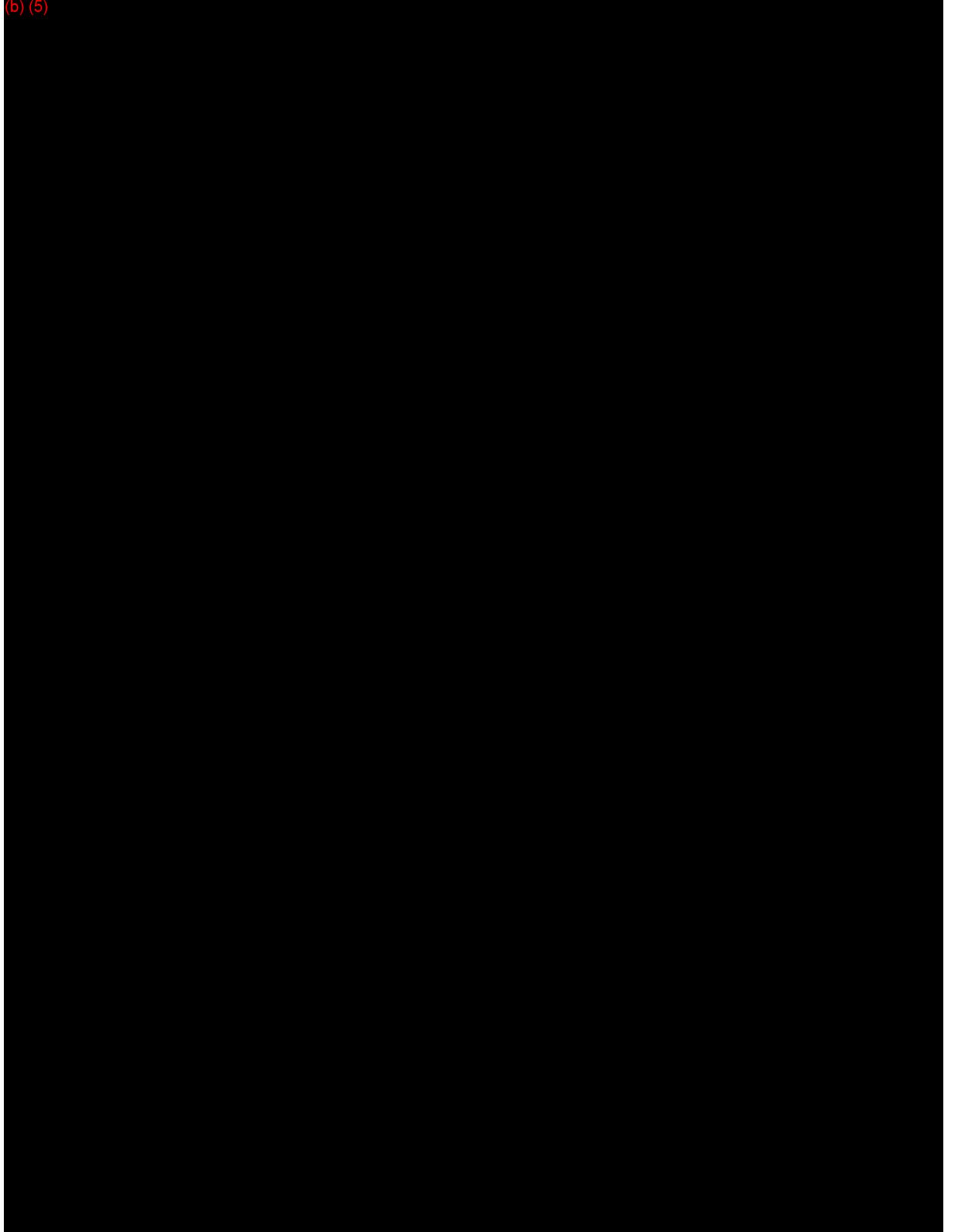


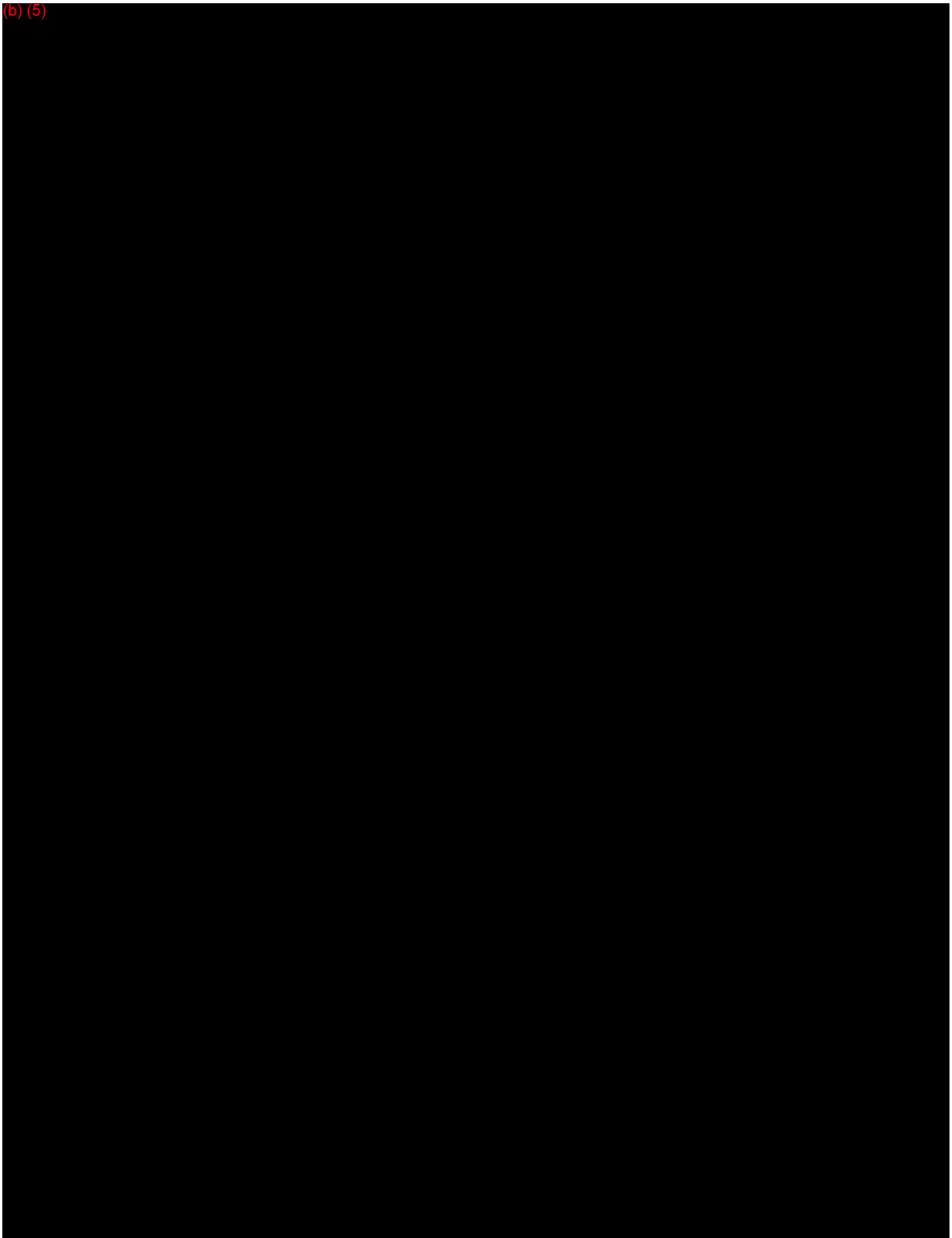


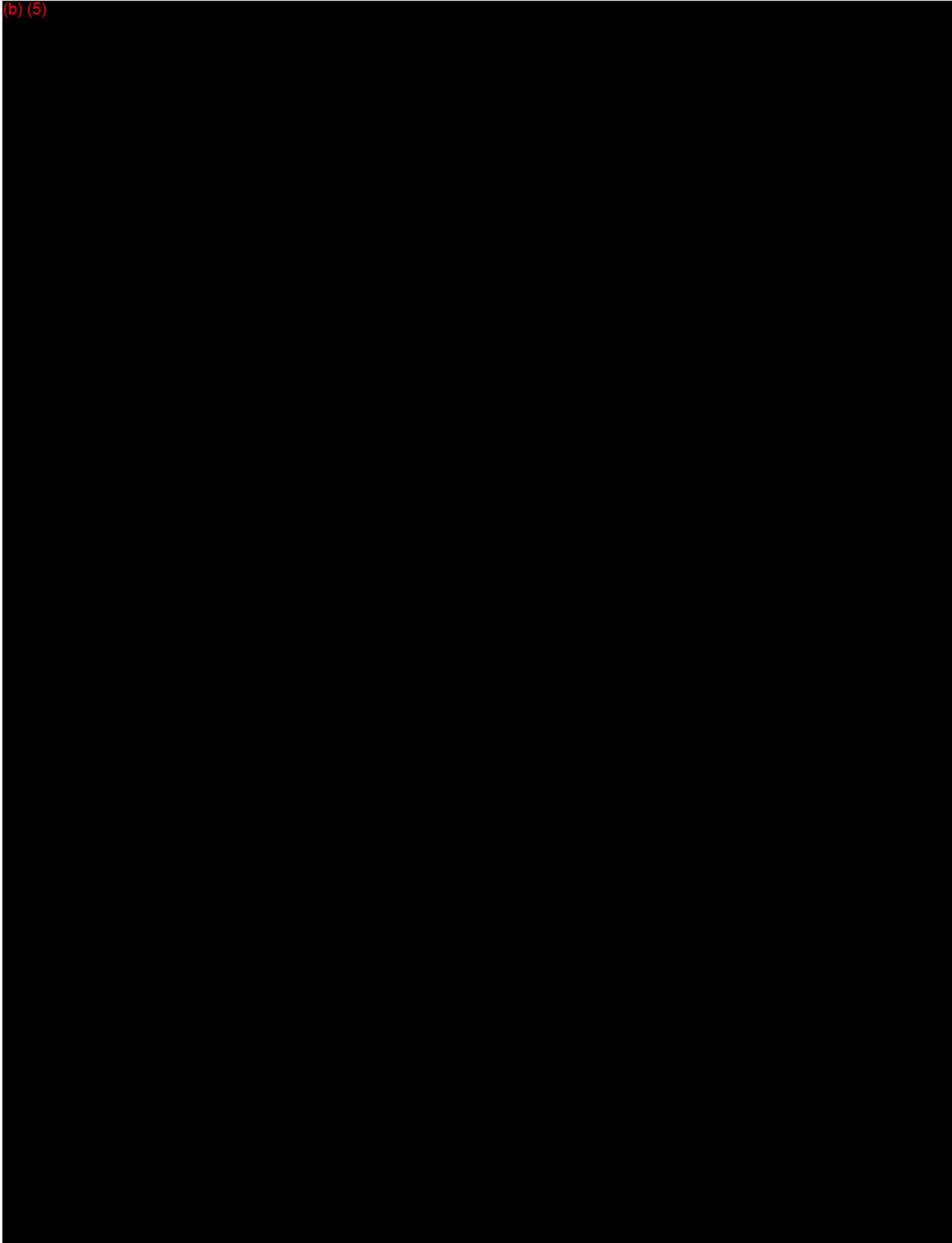


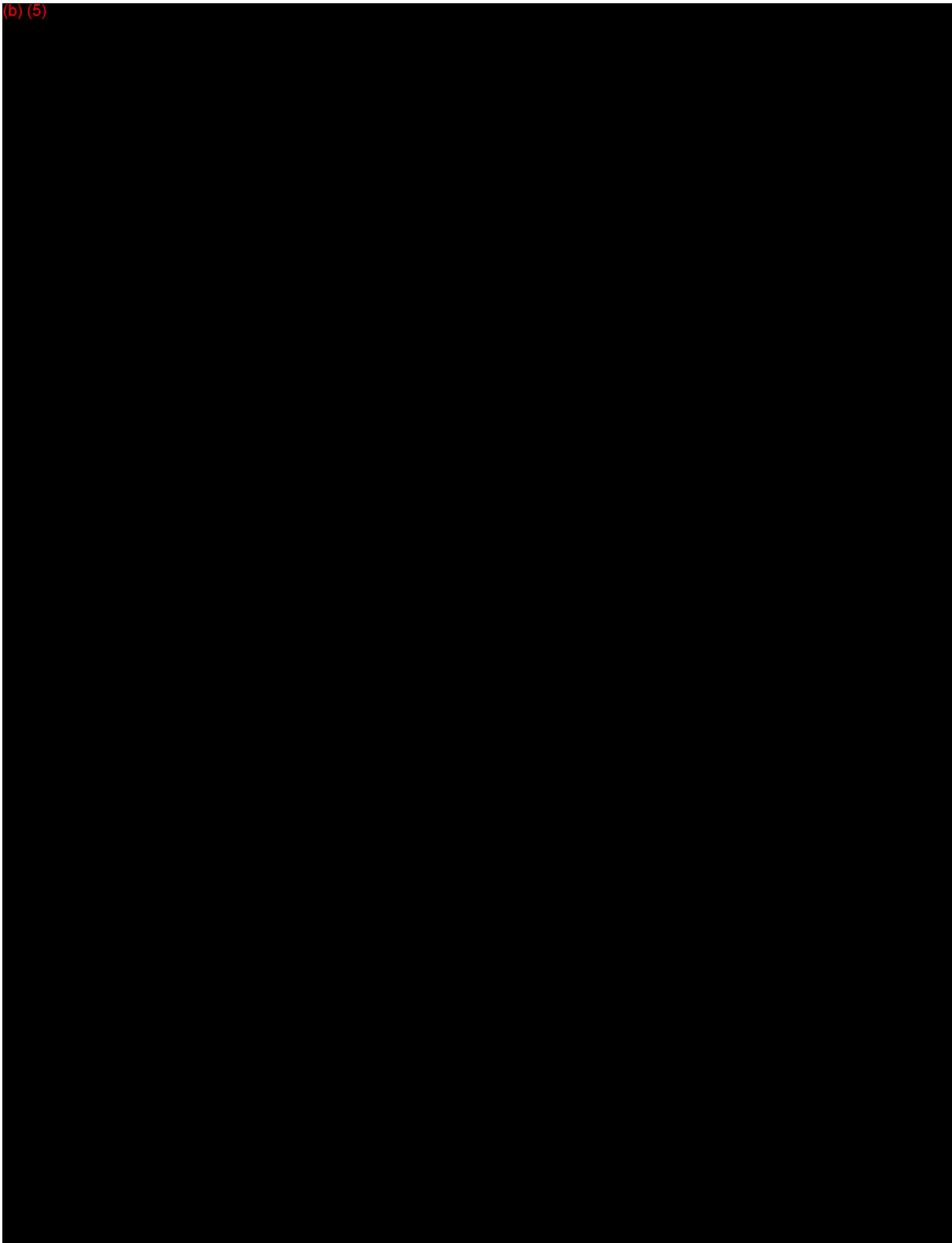


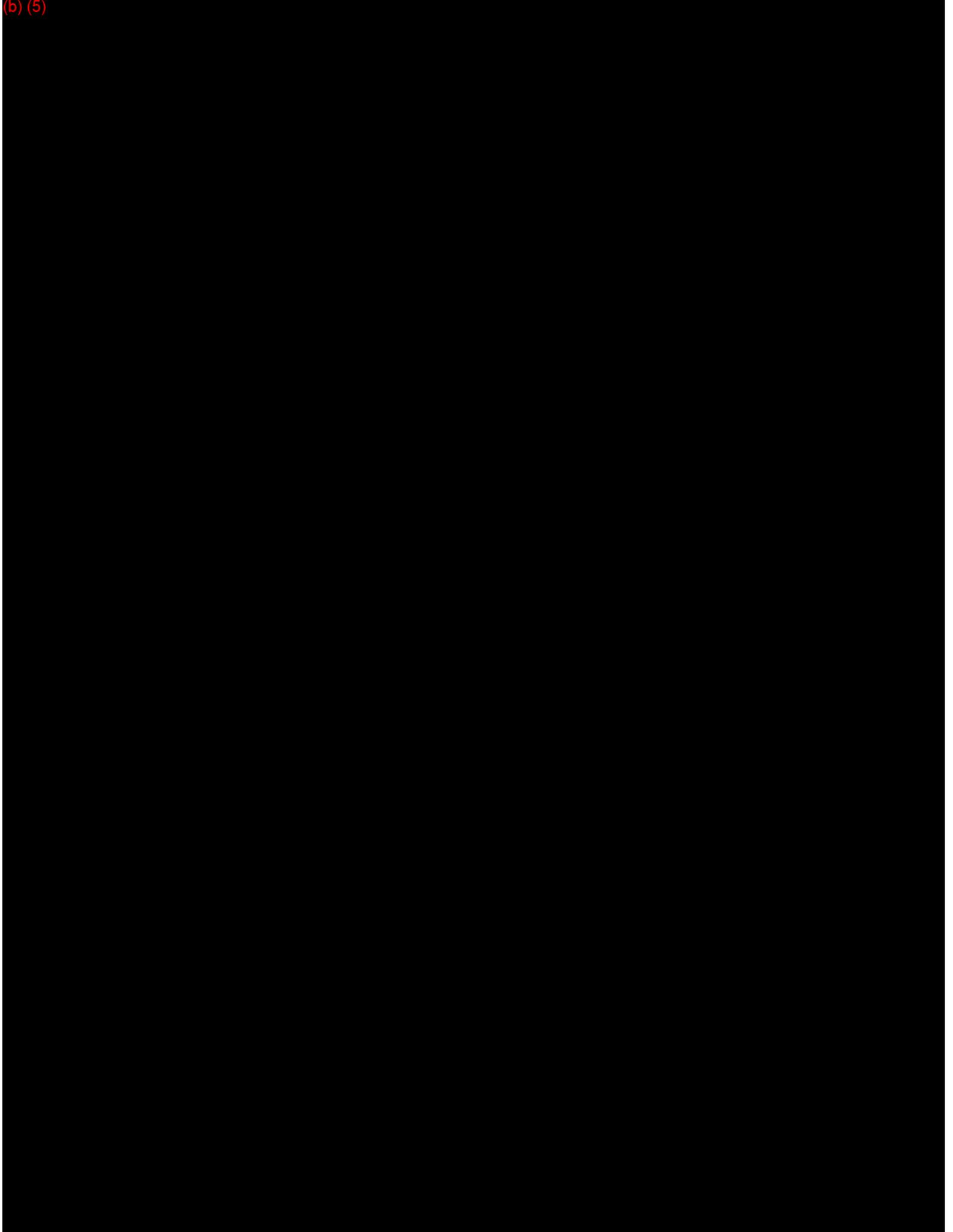


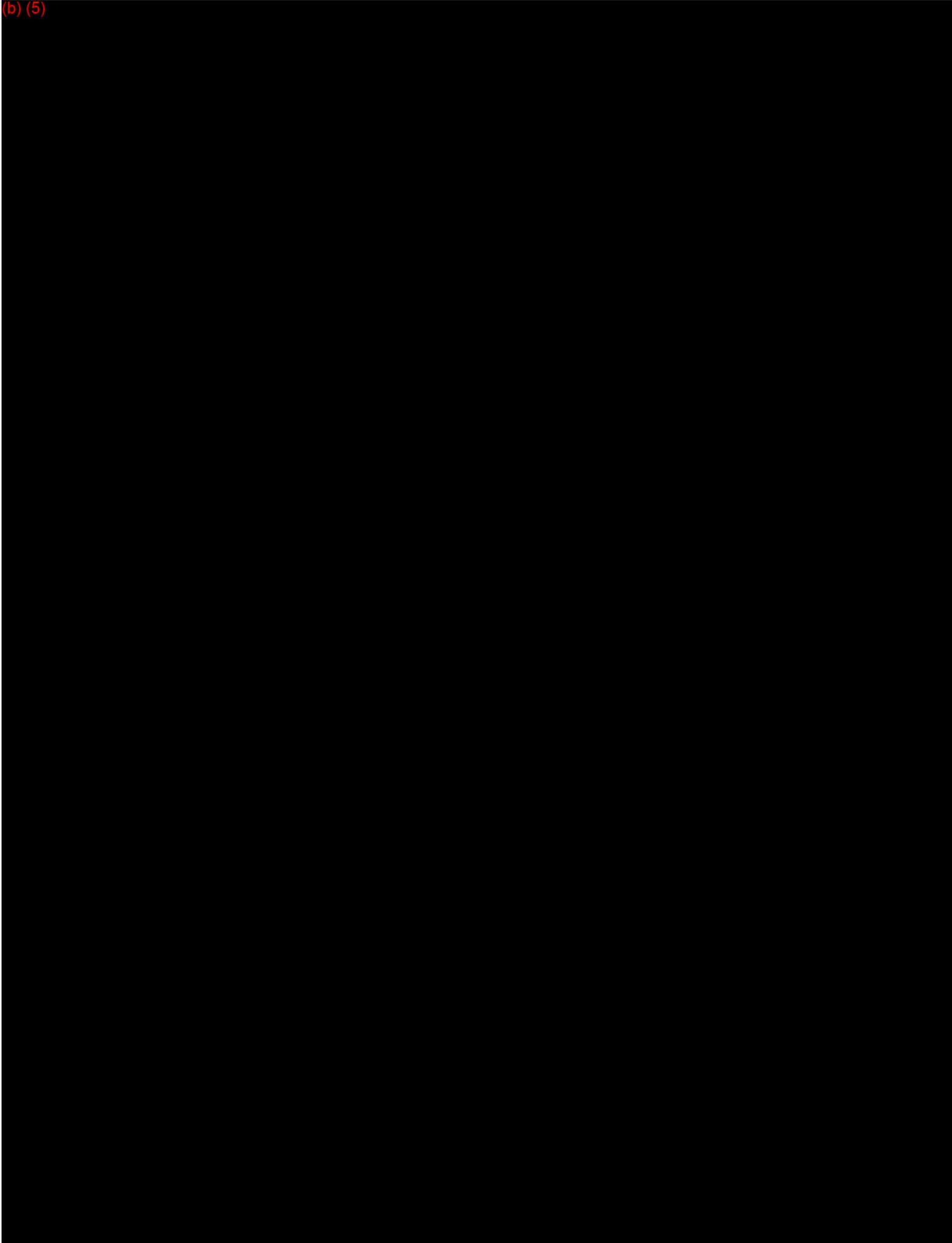


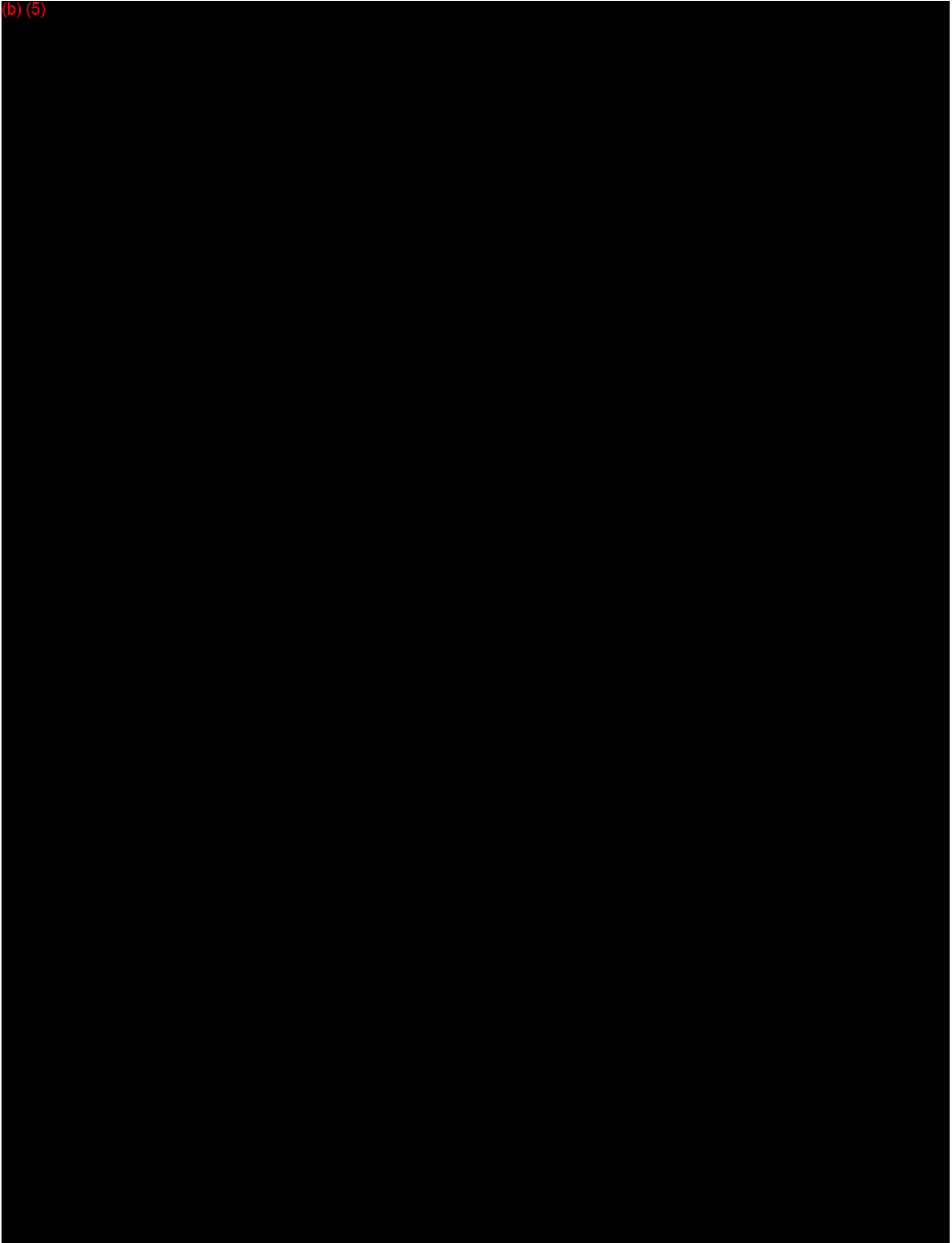


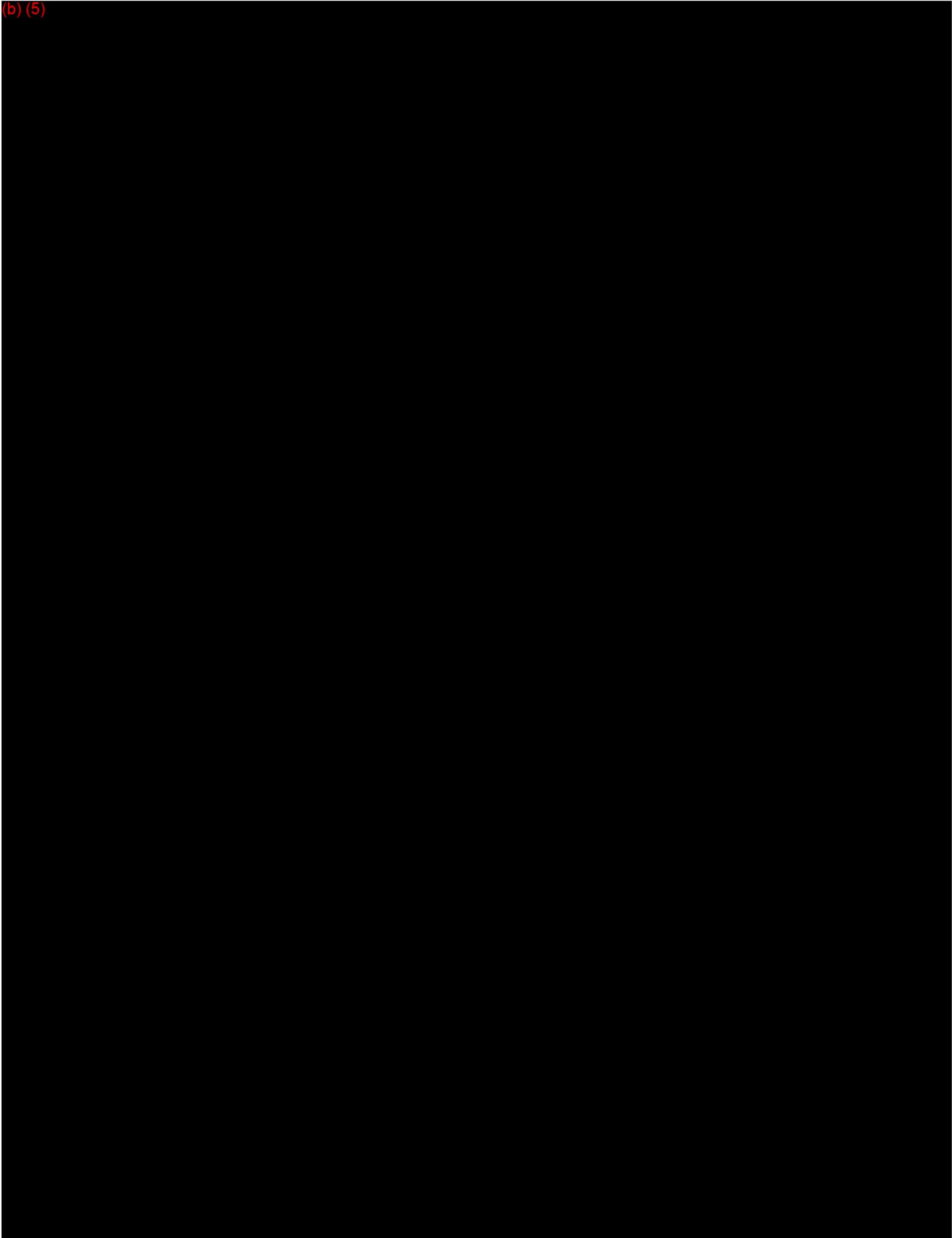


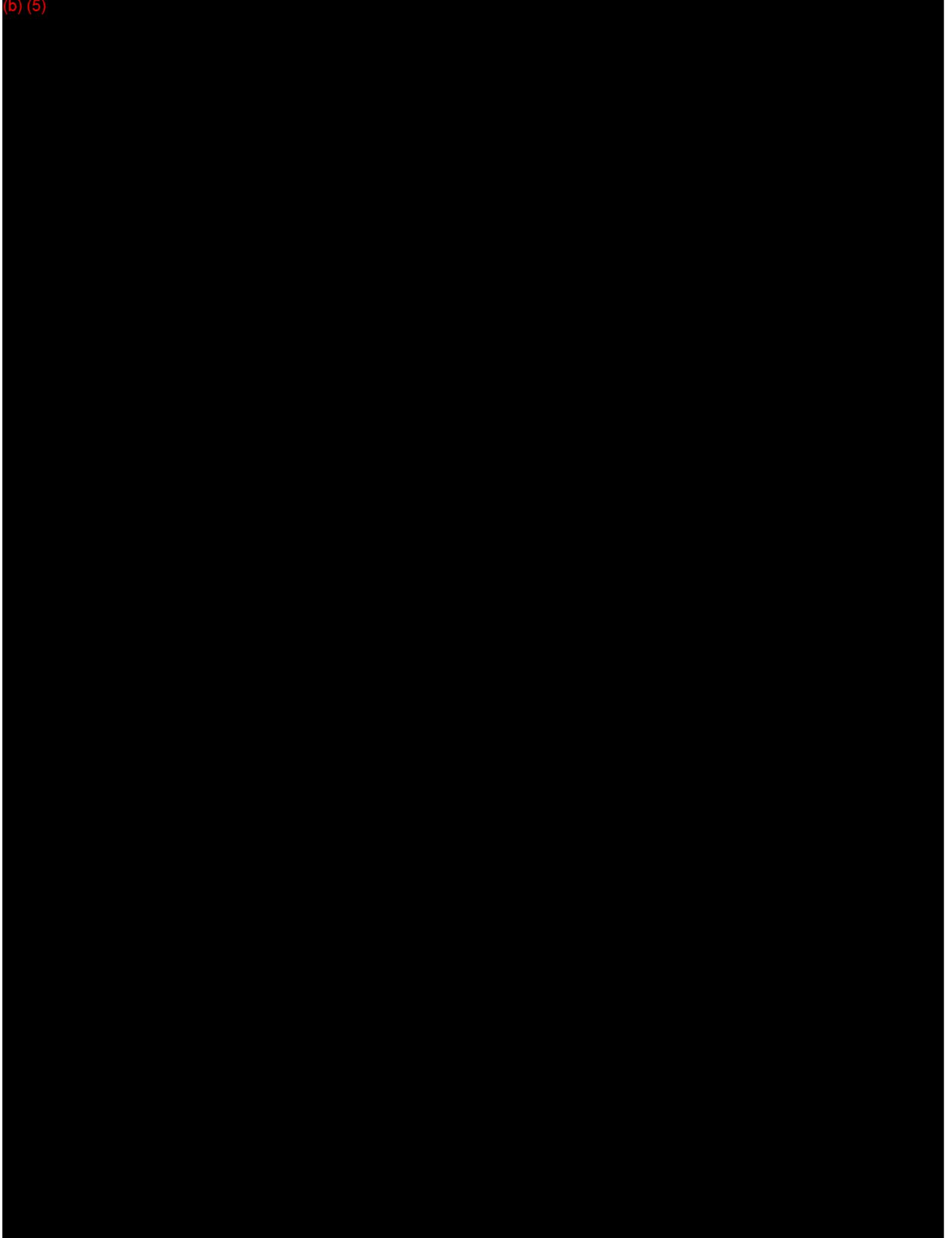


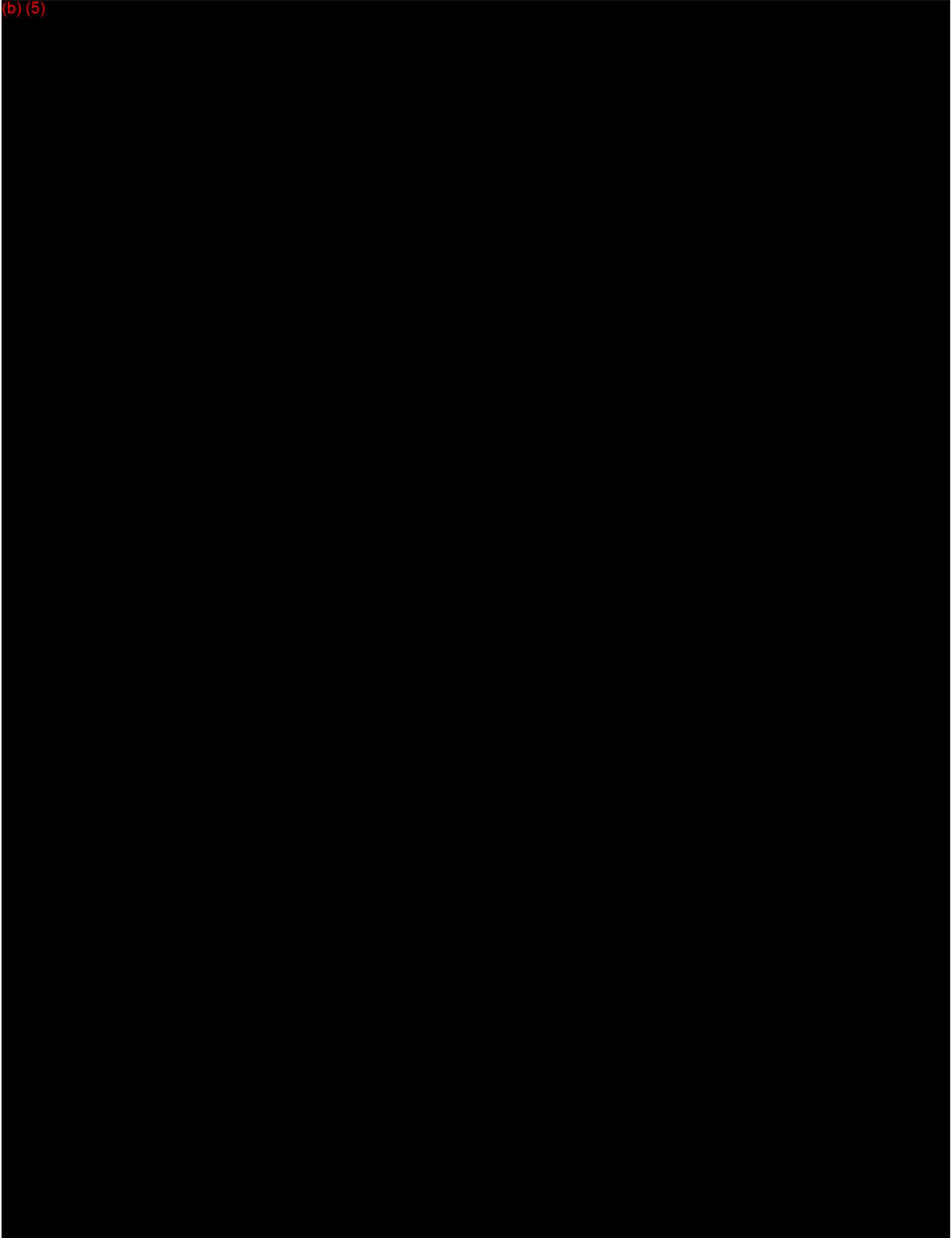


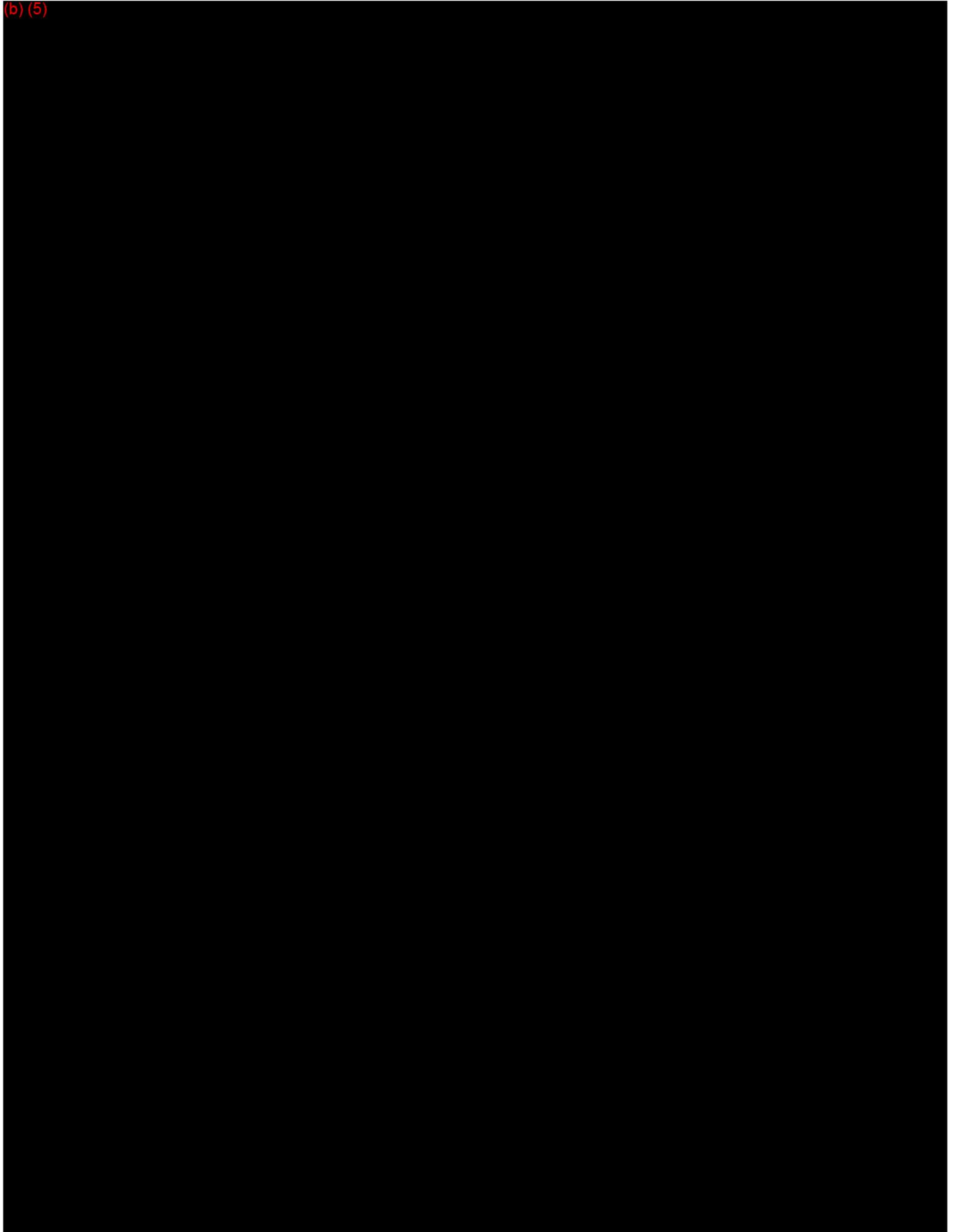


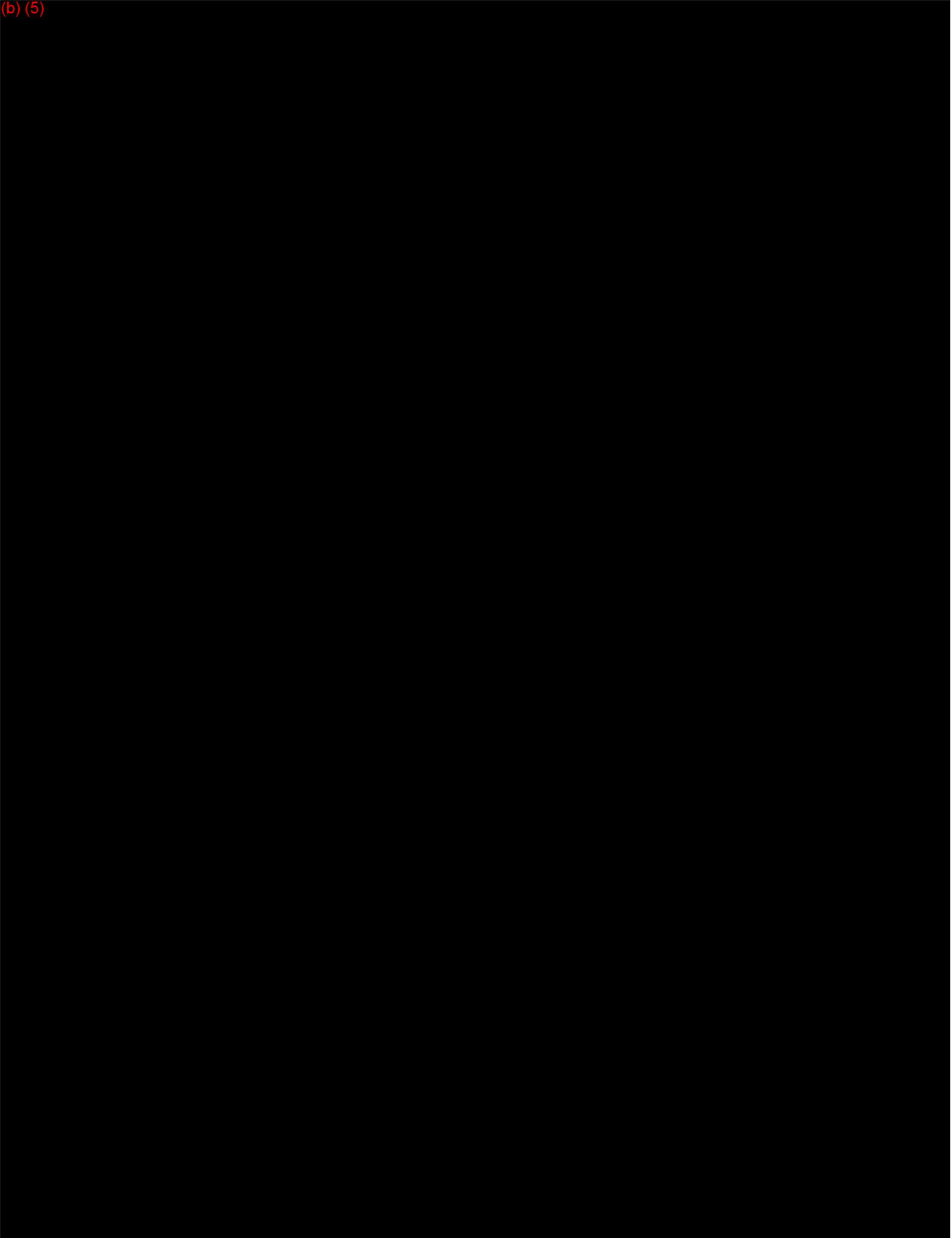




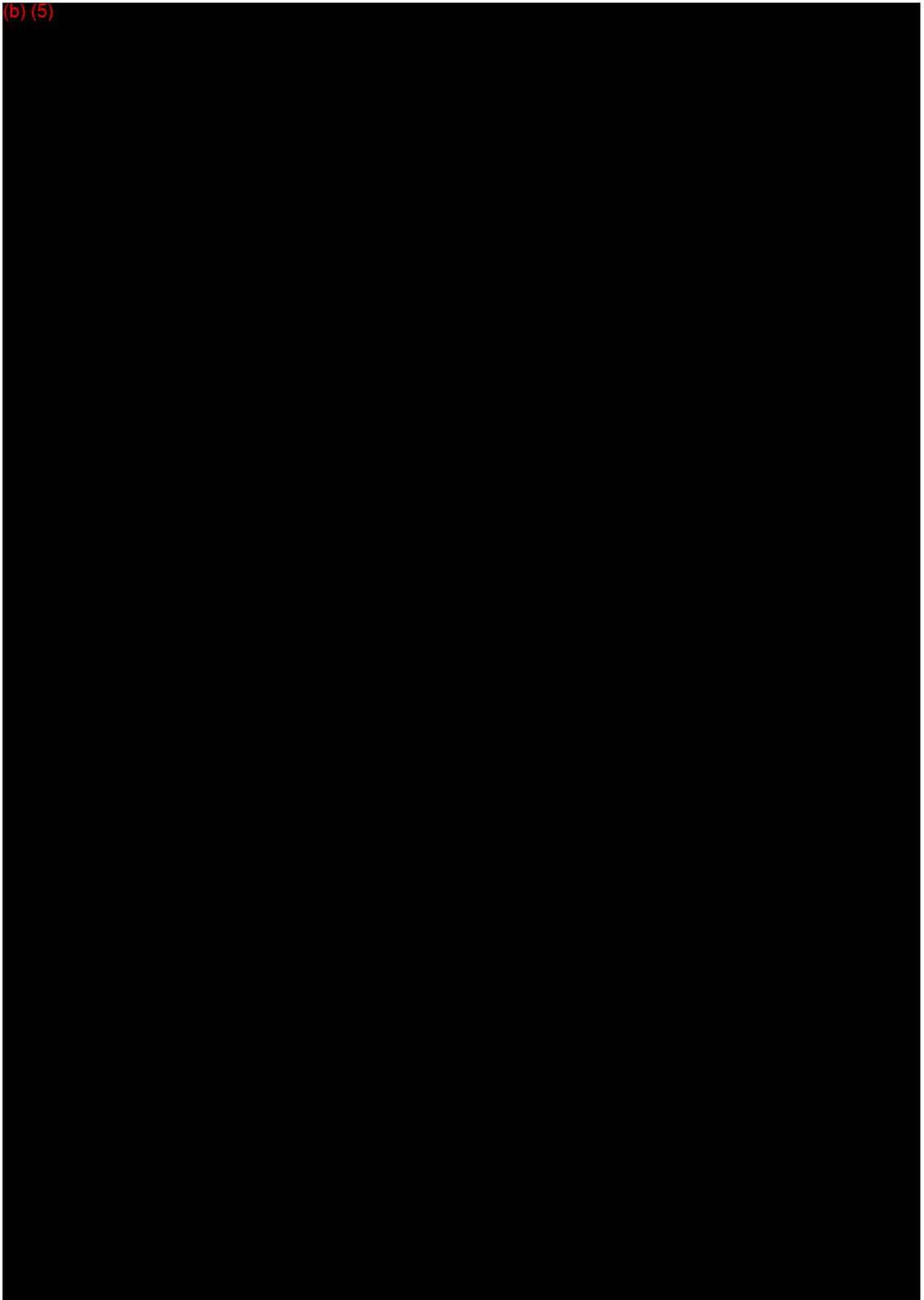




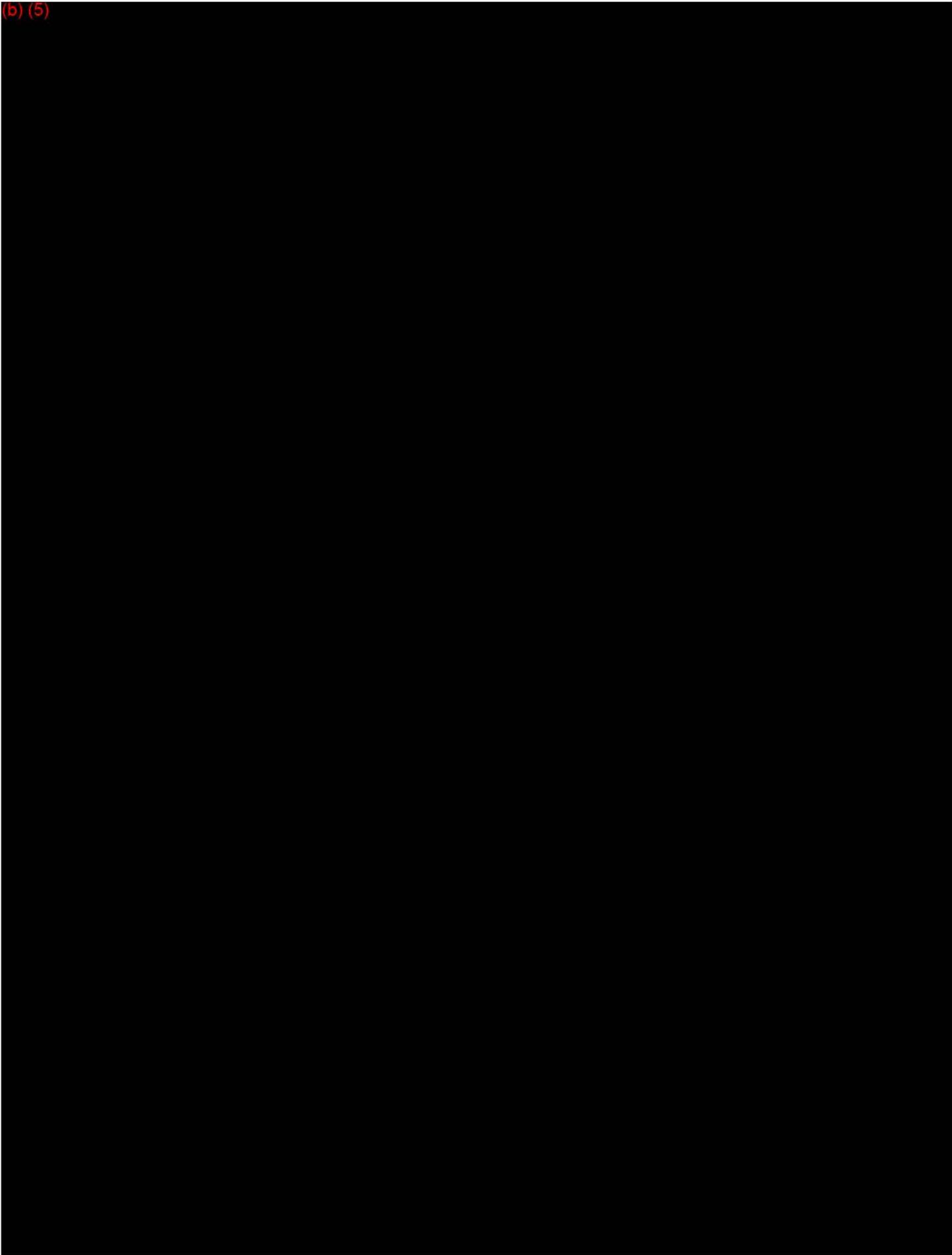




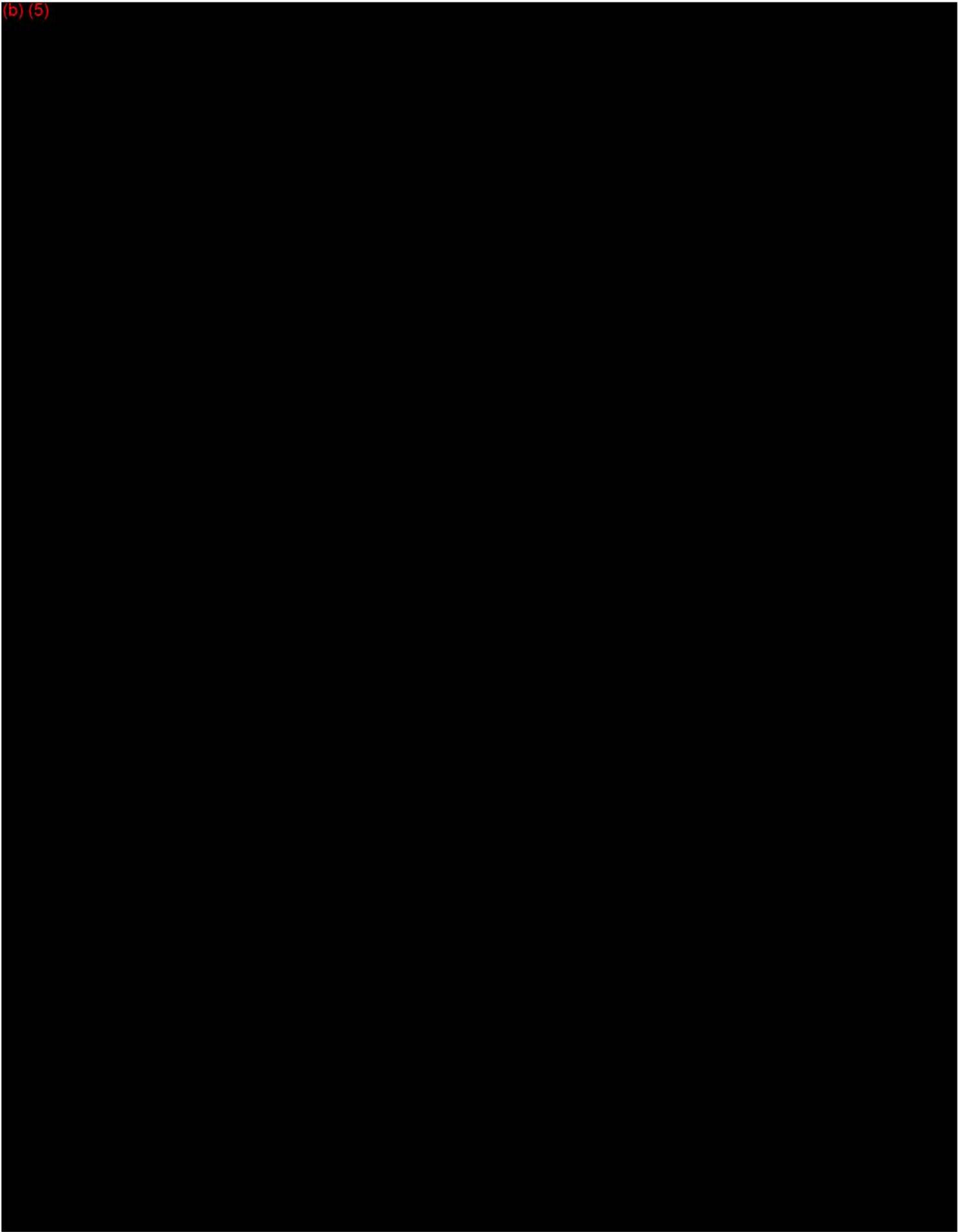
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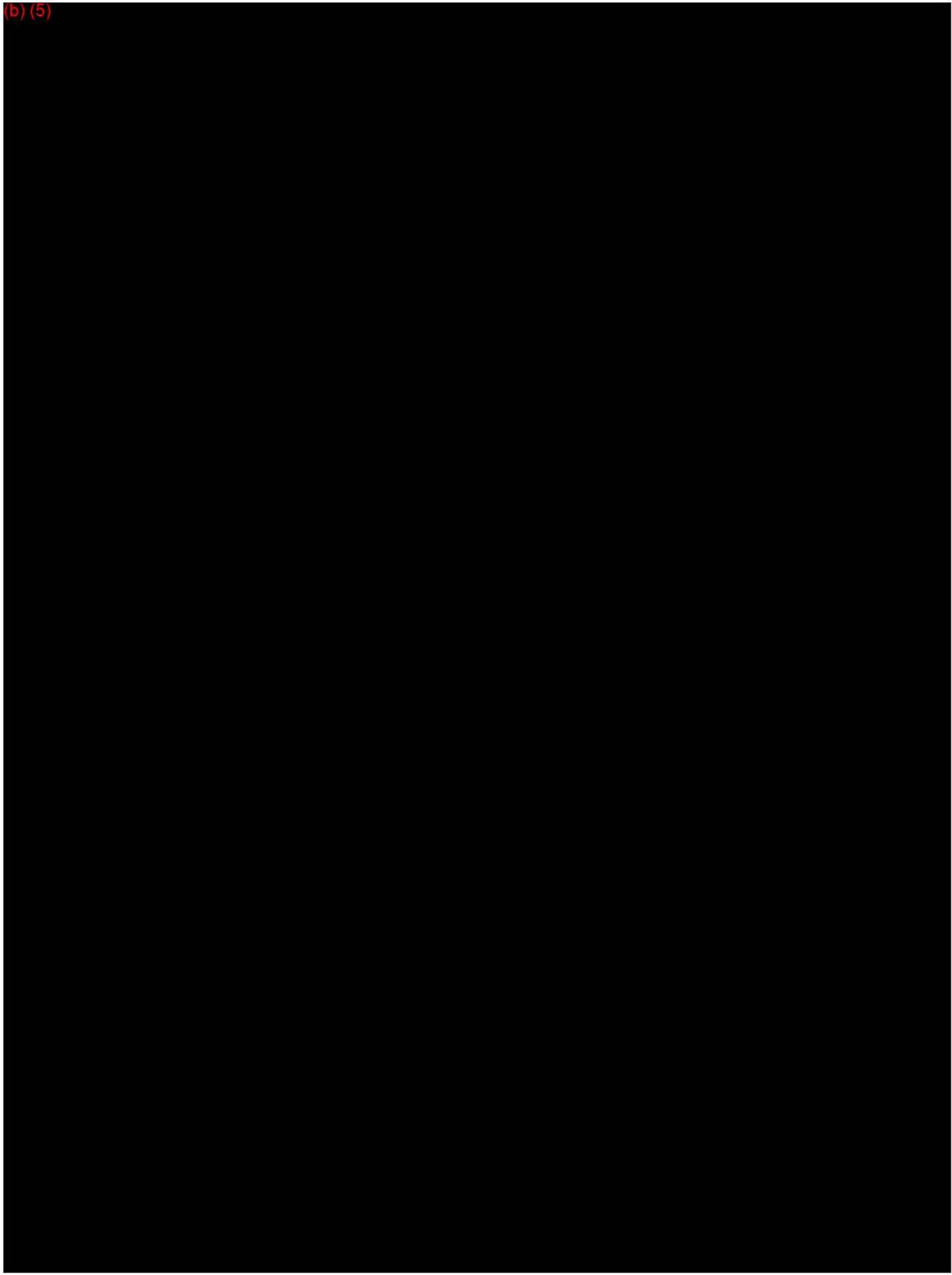
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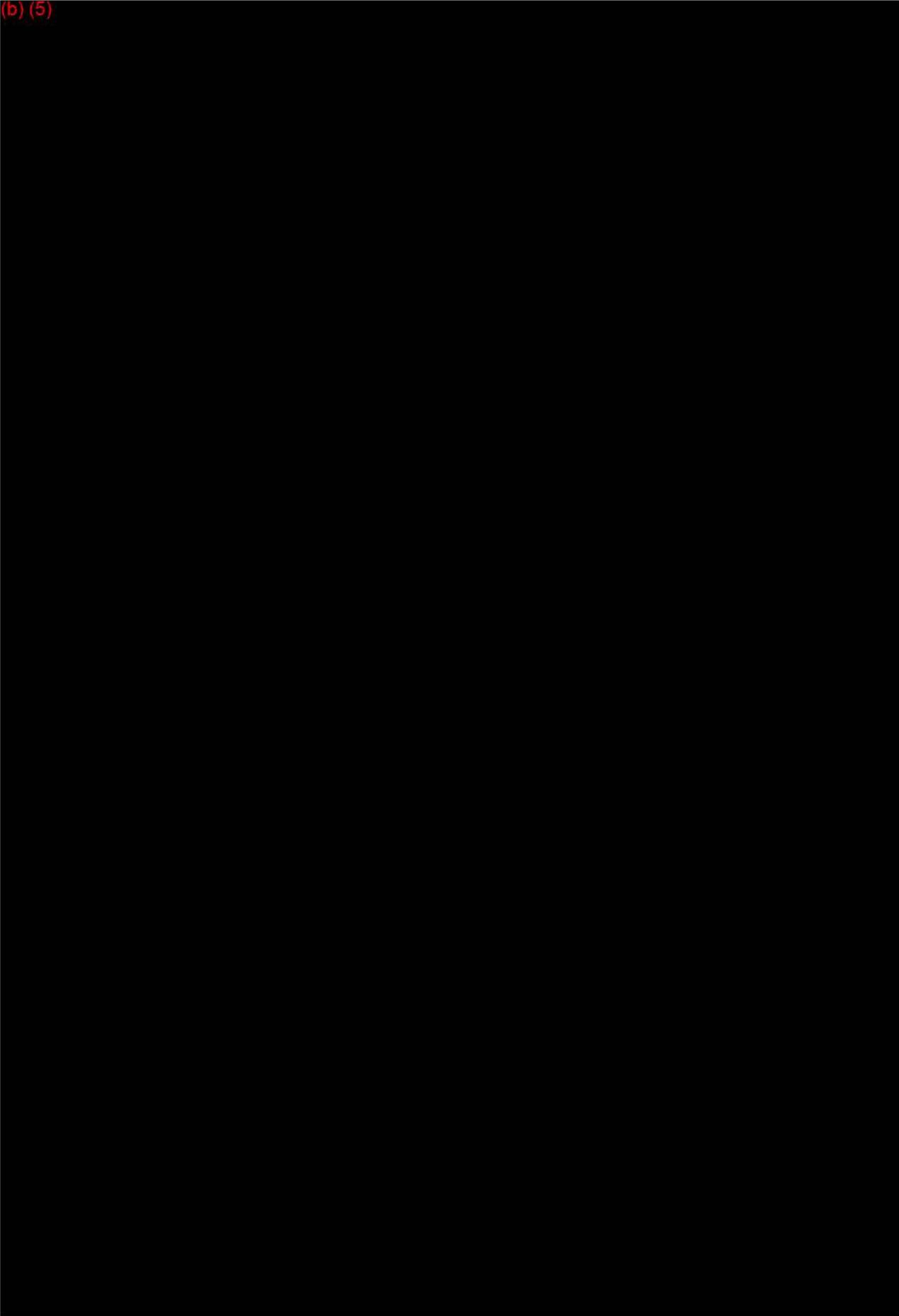
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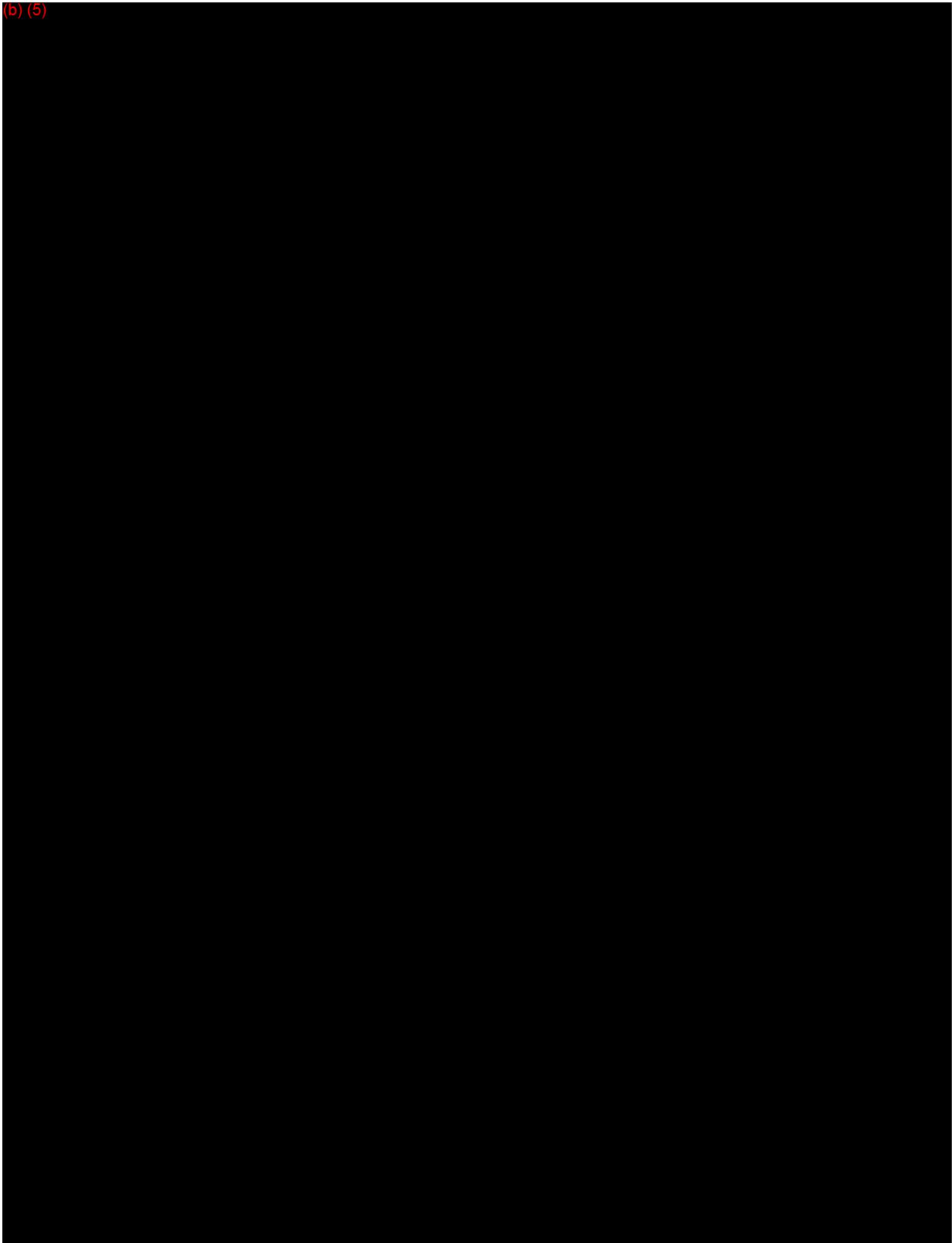


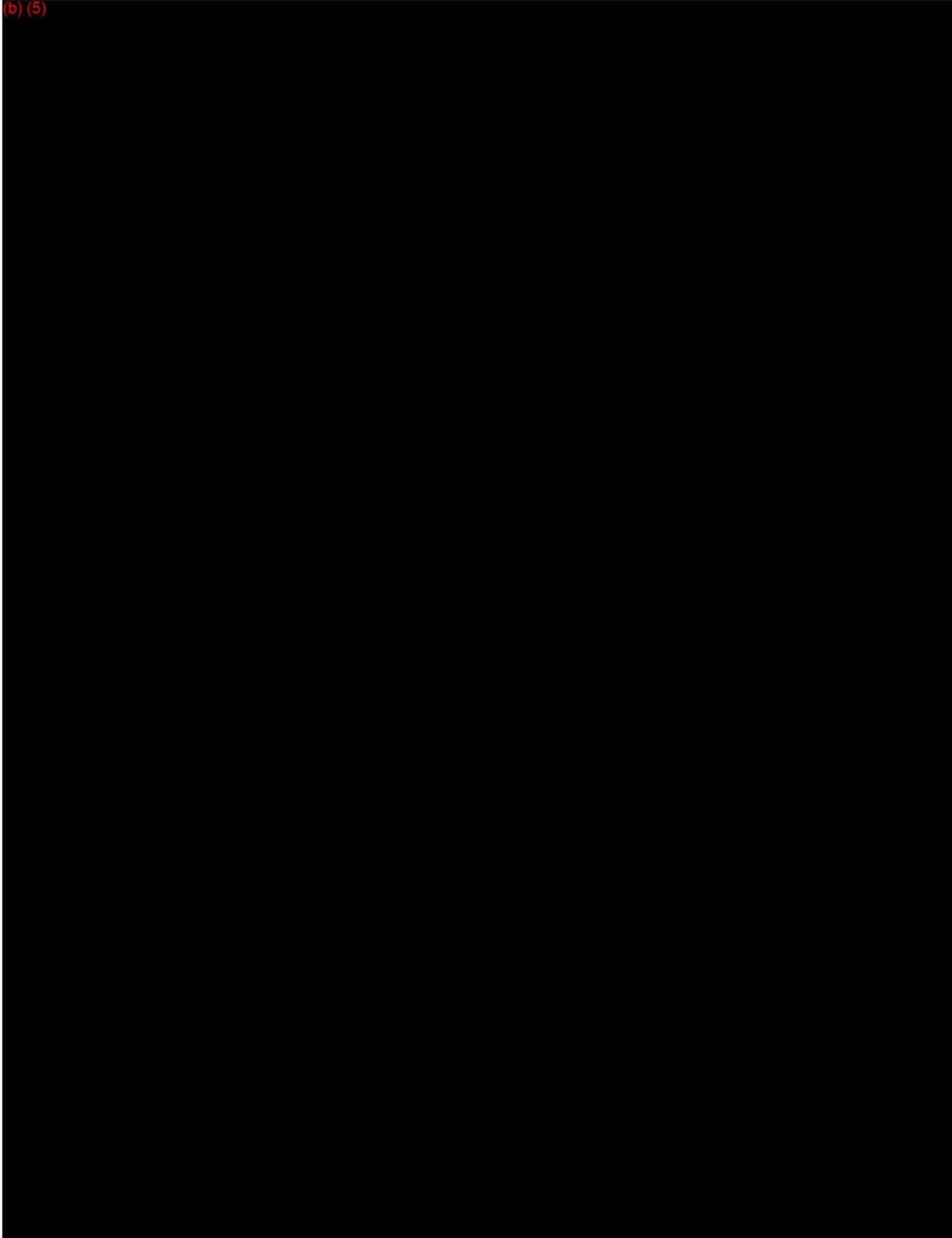
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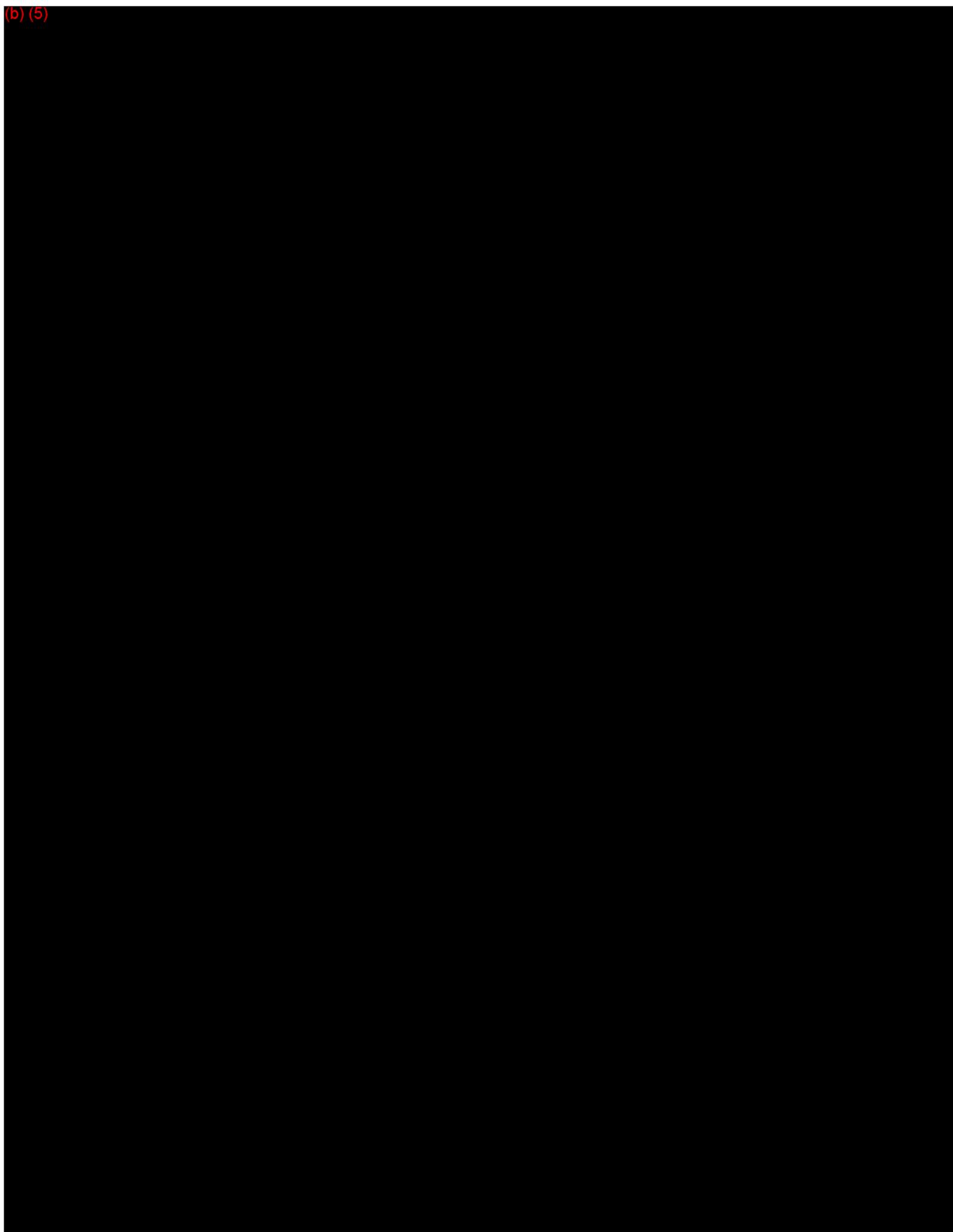
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Council on Environmental Quality Requests Public Comment on Potential Revisions to Update National Environment Policy Act Regulations

On June 15, 2018, the Council on Environmental Quality (CEQ) submitted an Advance Notice of Proposed Rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” to the *Federal Register* for publication and public comment.

Background:

- On August 15, 2017, President Trump issued [Executive Order 13807](#) which directed CEQ to develop an initial list of actions it would take to enhance and modernize the Federal environmental review and authorization process.
- In its [initial list of actions](#) published in the *Federal Register* on September 14, 2017, CEQ stated that it intended to review its 1978 regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify potential updates and clarifications to those regulations.
- Over the past four decades, CEQ has issued numerous guidance documents but has amended its NEPA regulations substantively only once in 1986. Given the length of time since those regulations were issued, CEQ has determined it appropriate to solicit public comment on potential revisions to update the regulations.

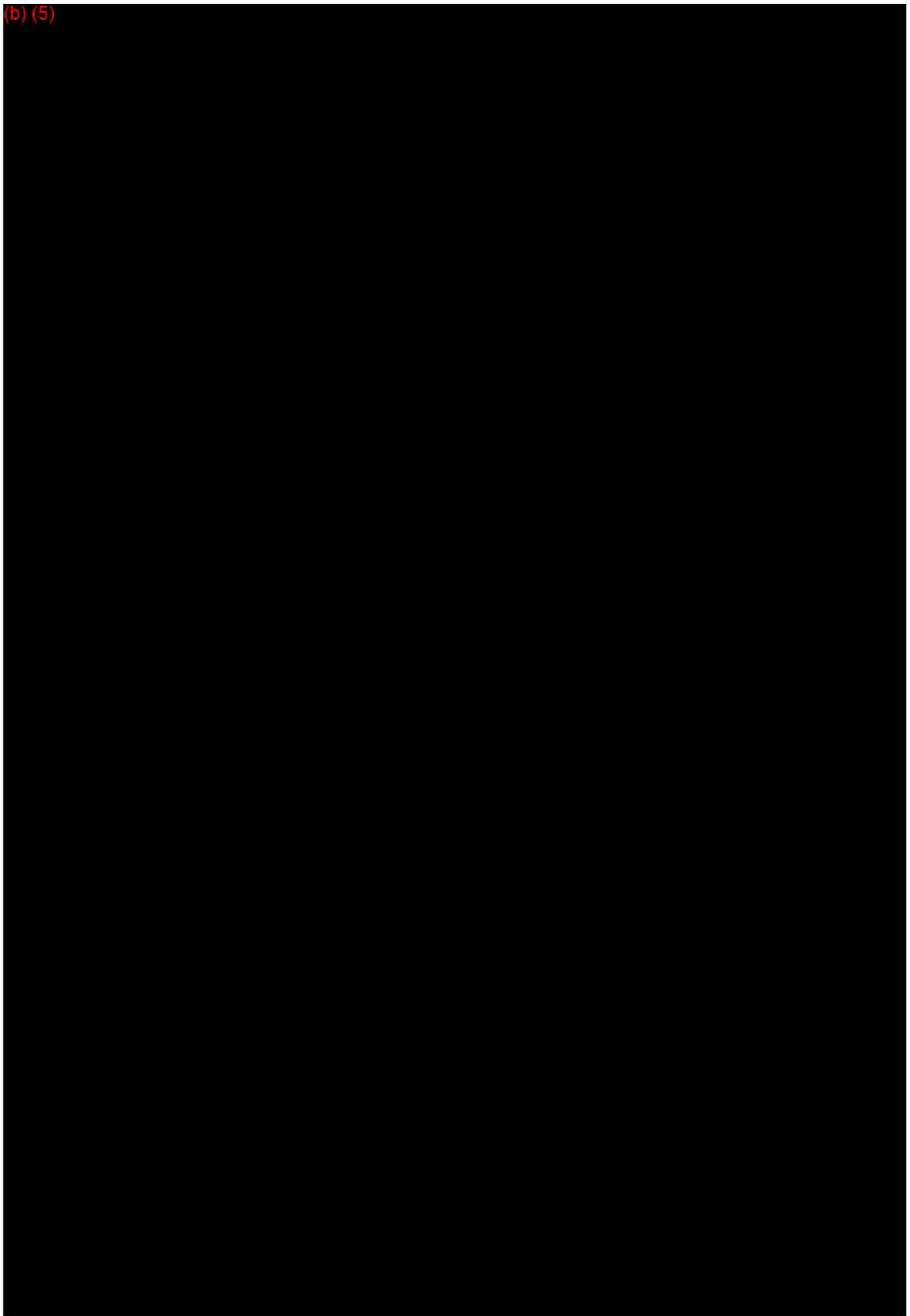
Request for Public Comment:

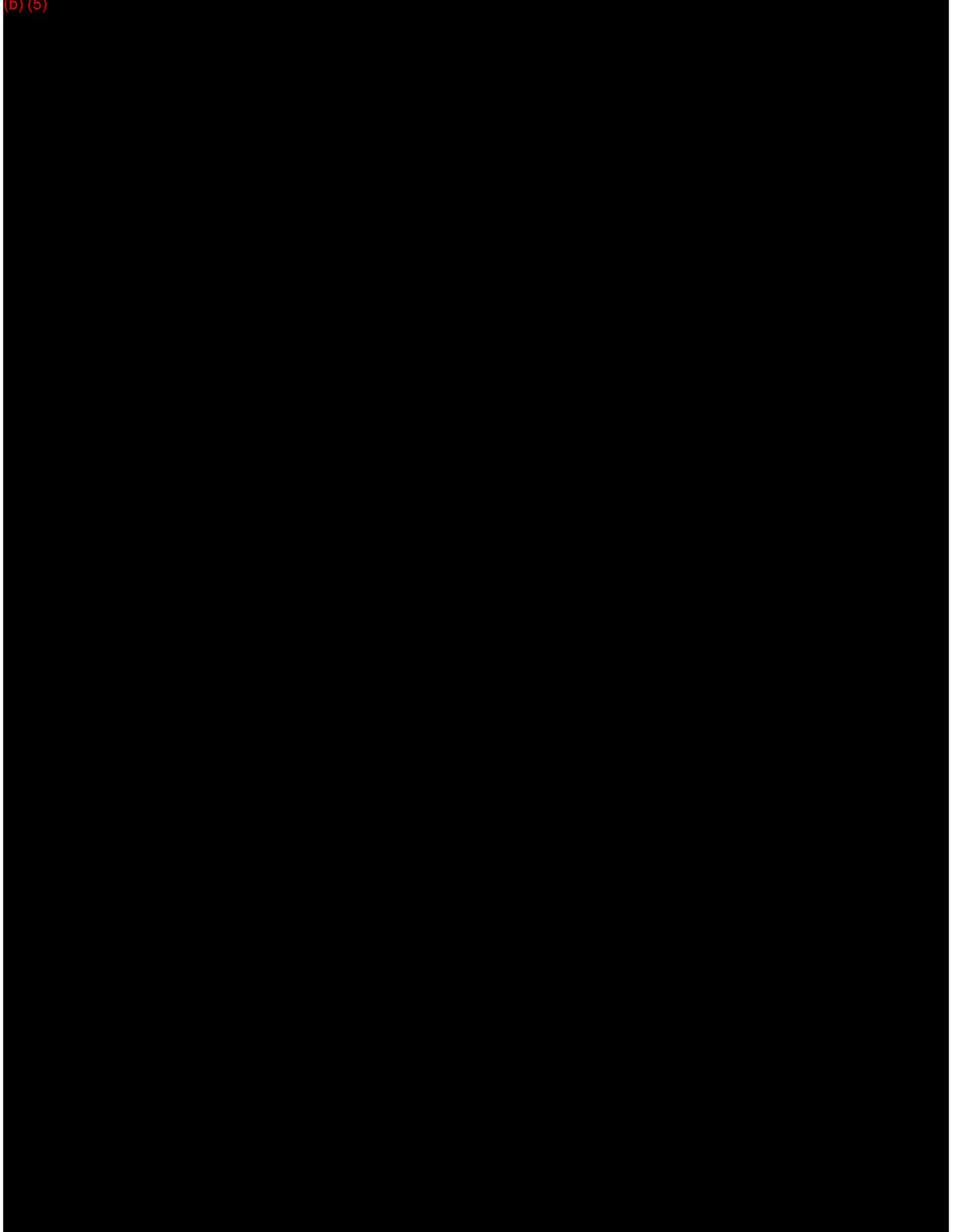
- CEQ requests comment on potential revisions to update and clarify CEQ’s NEPA regulations. Comments should be submitted on or before 30 days after the date of publication in the *Federal Register*. To comment, go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. CEQ-2018-0001.
- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

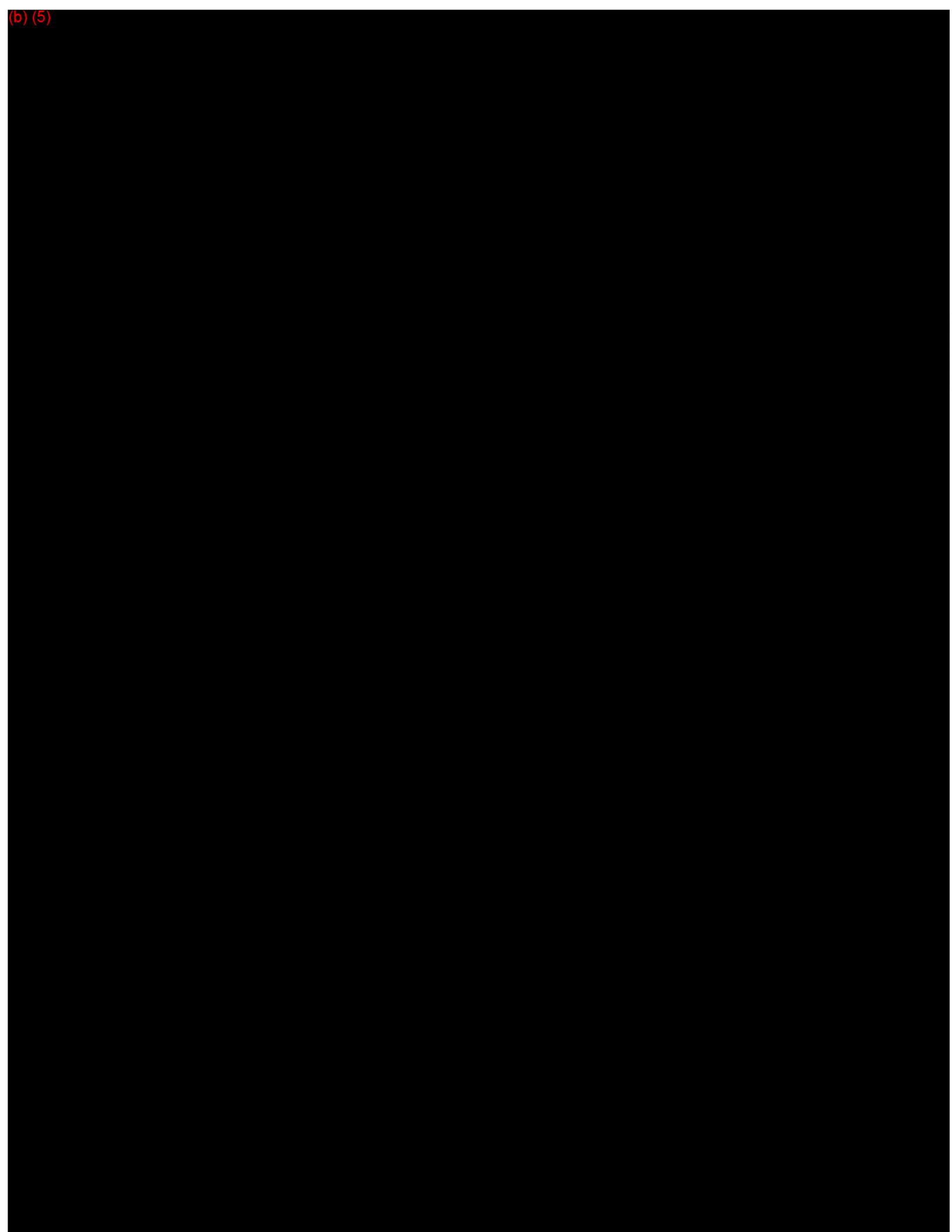
Next Steps:

- Following the conclusion of the public comment period, CEQ will review the comments before taking any potential further action.

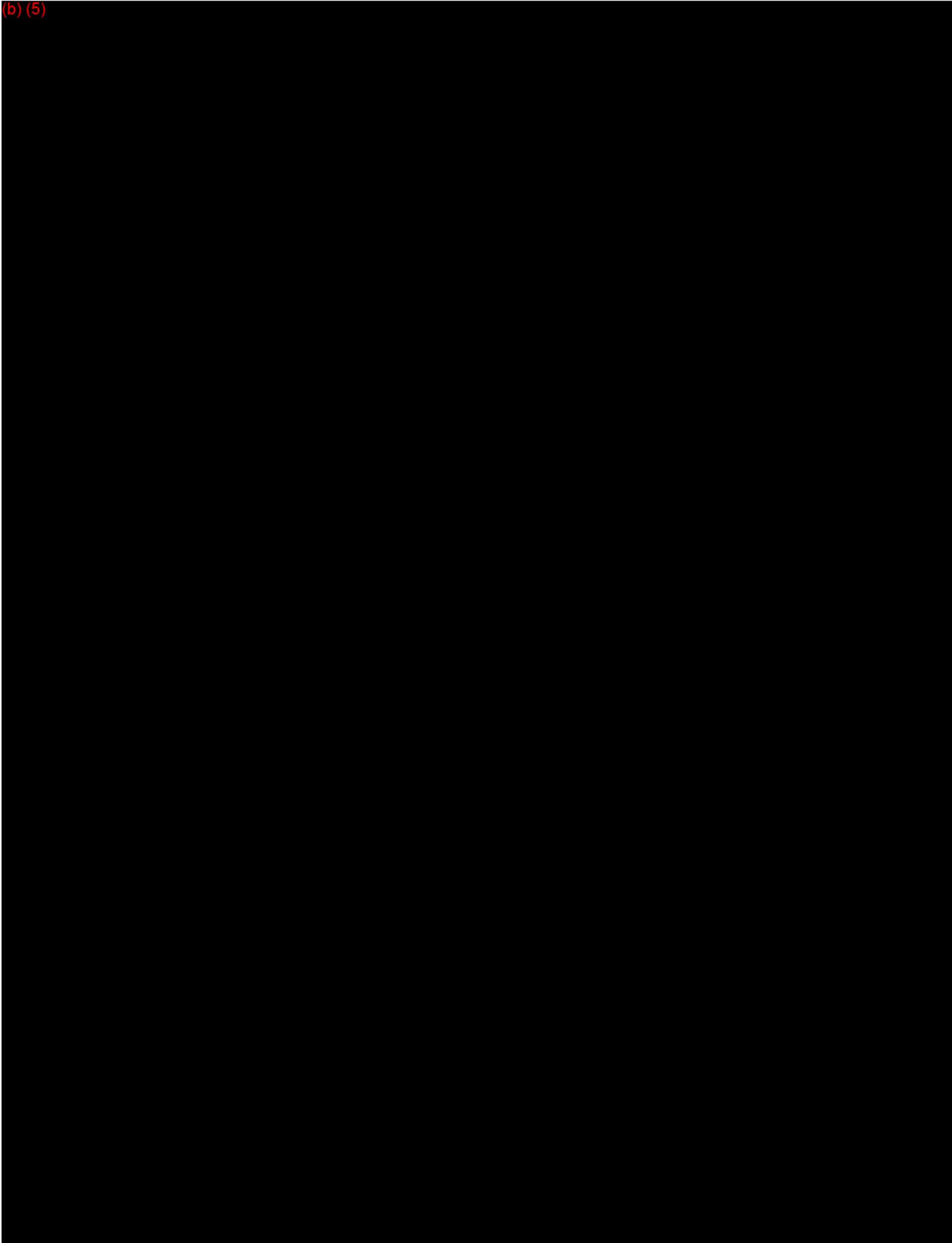
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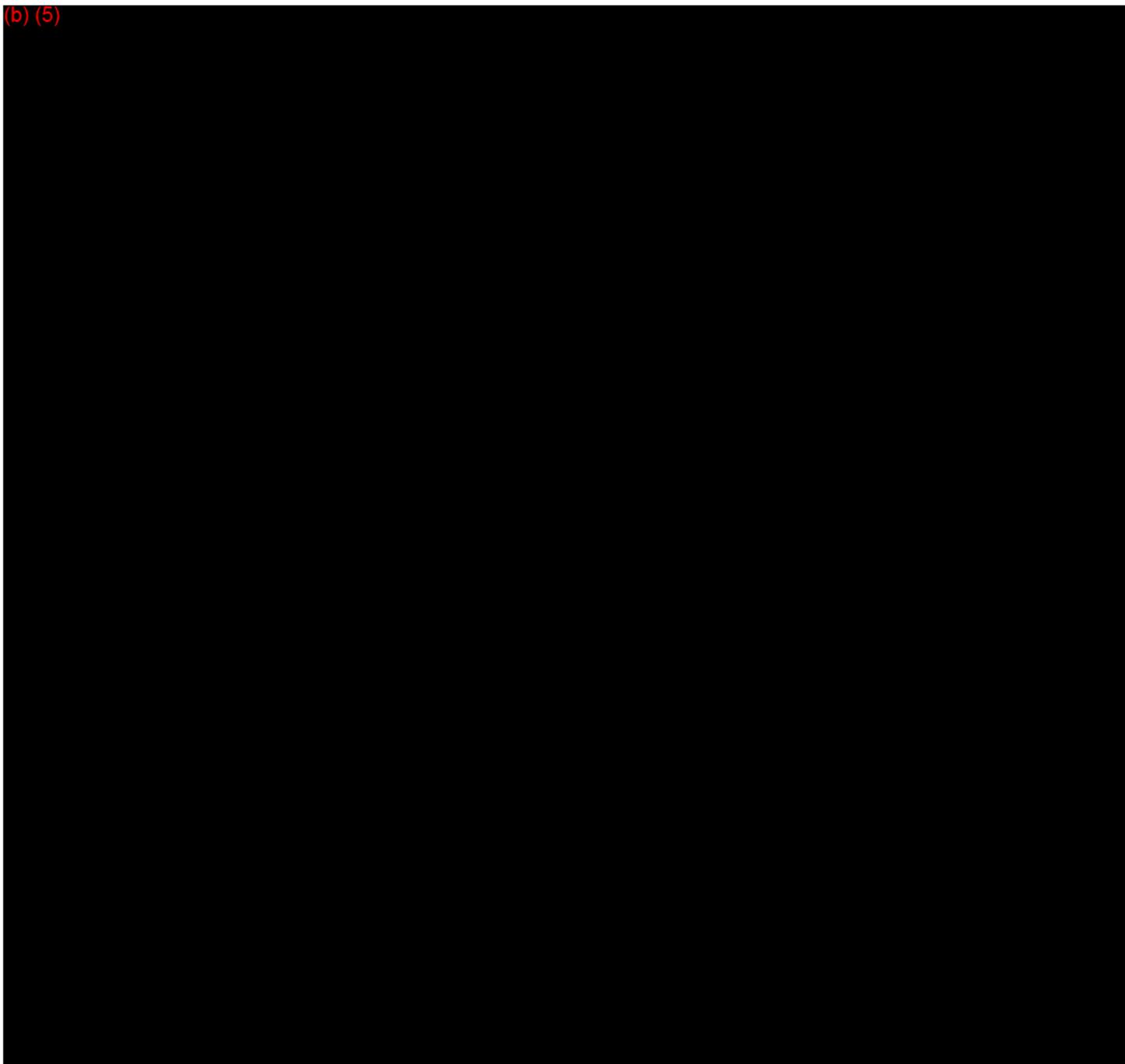
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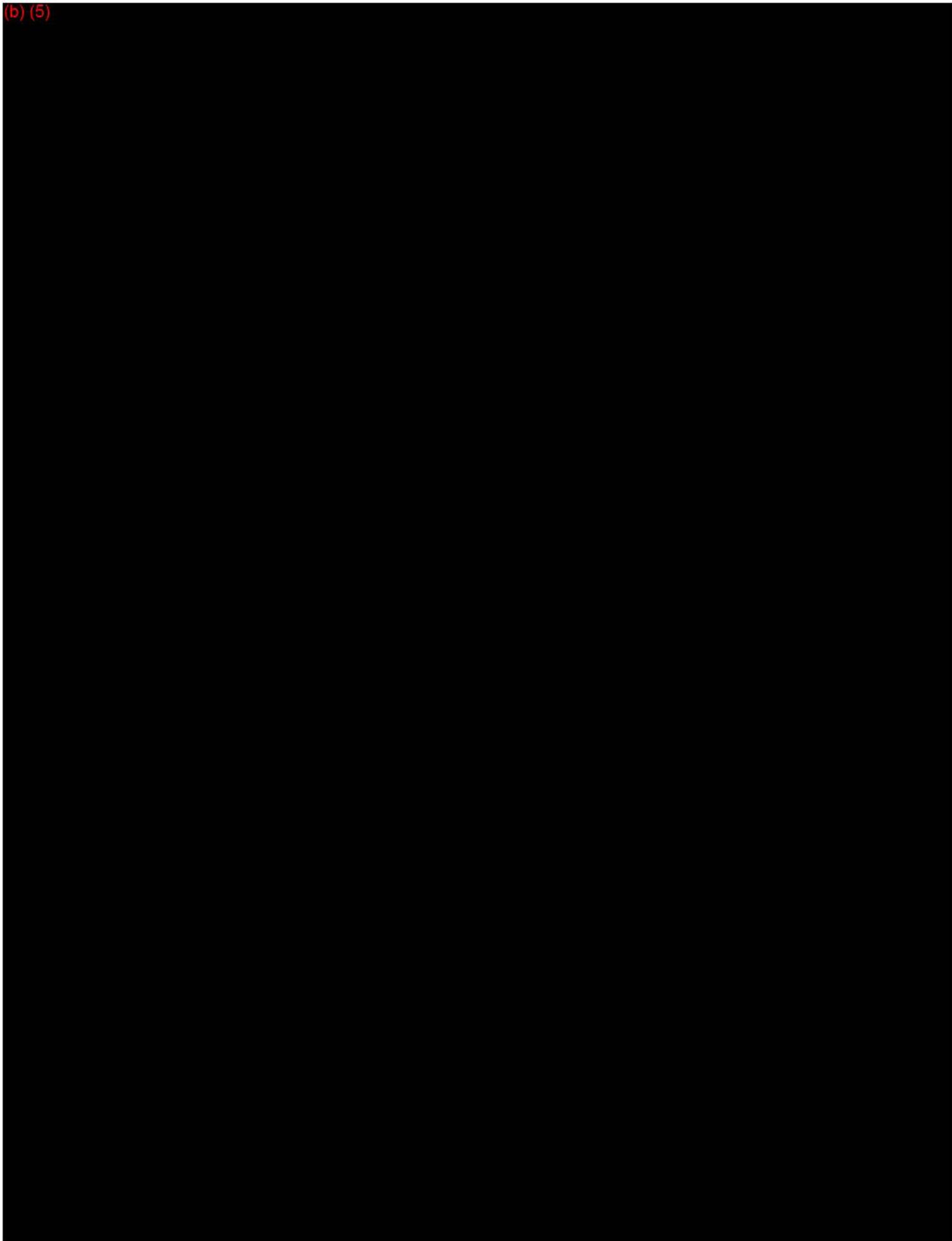
STATEMENT OF
ALEXANDER HERRGOTT
ASSOCIATE DIRECTOR FOR INFRASTRUCTURE
COUNCIL ON ENVIRONMENTAL QUALITY
BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

June 27, 2018

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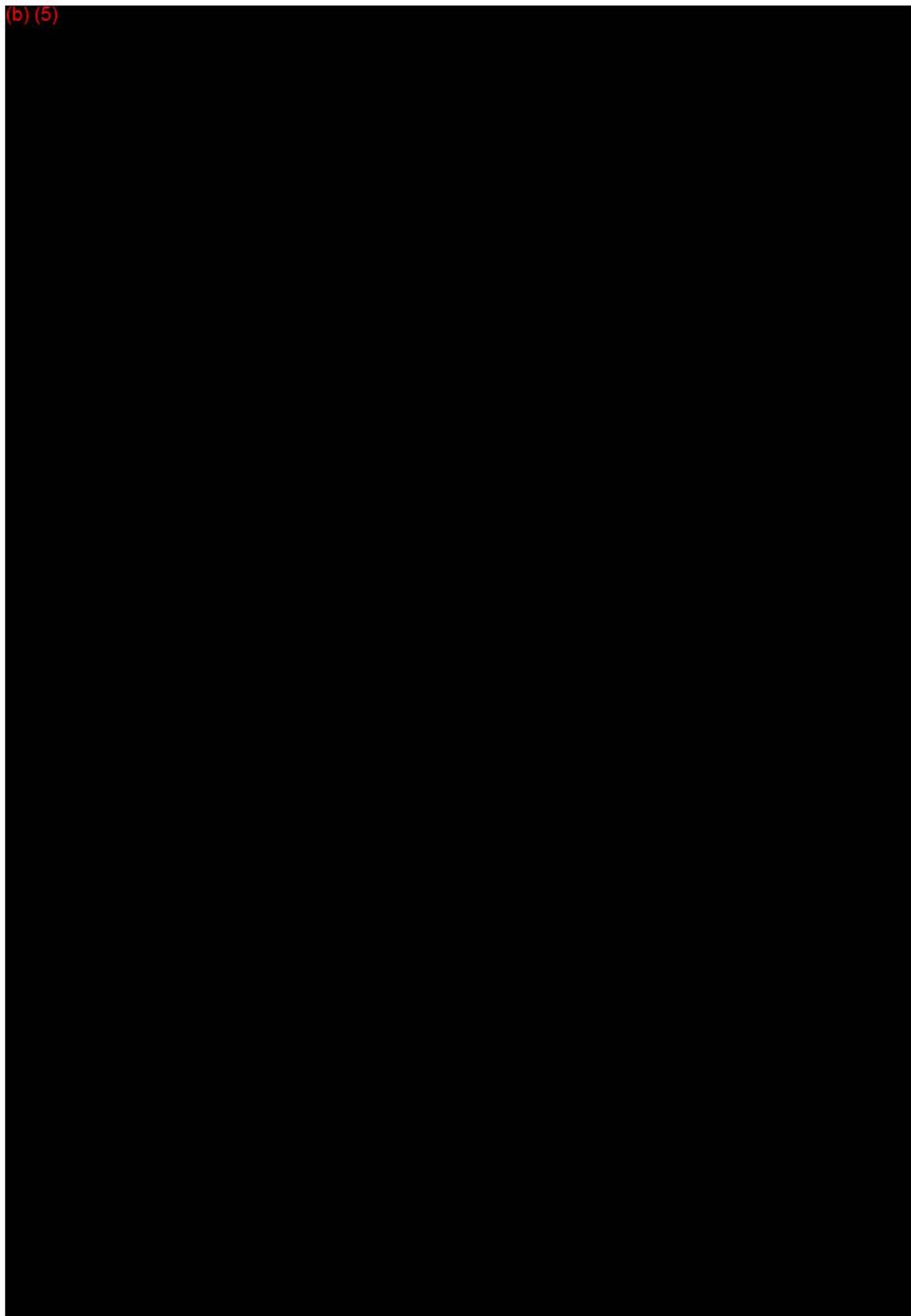
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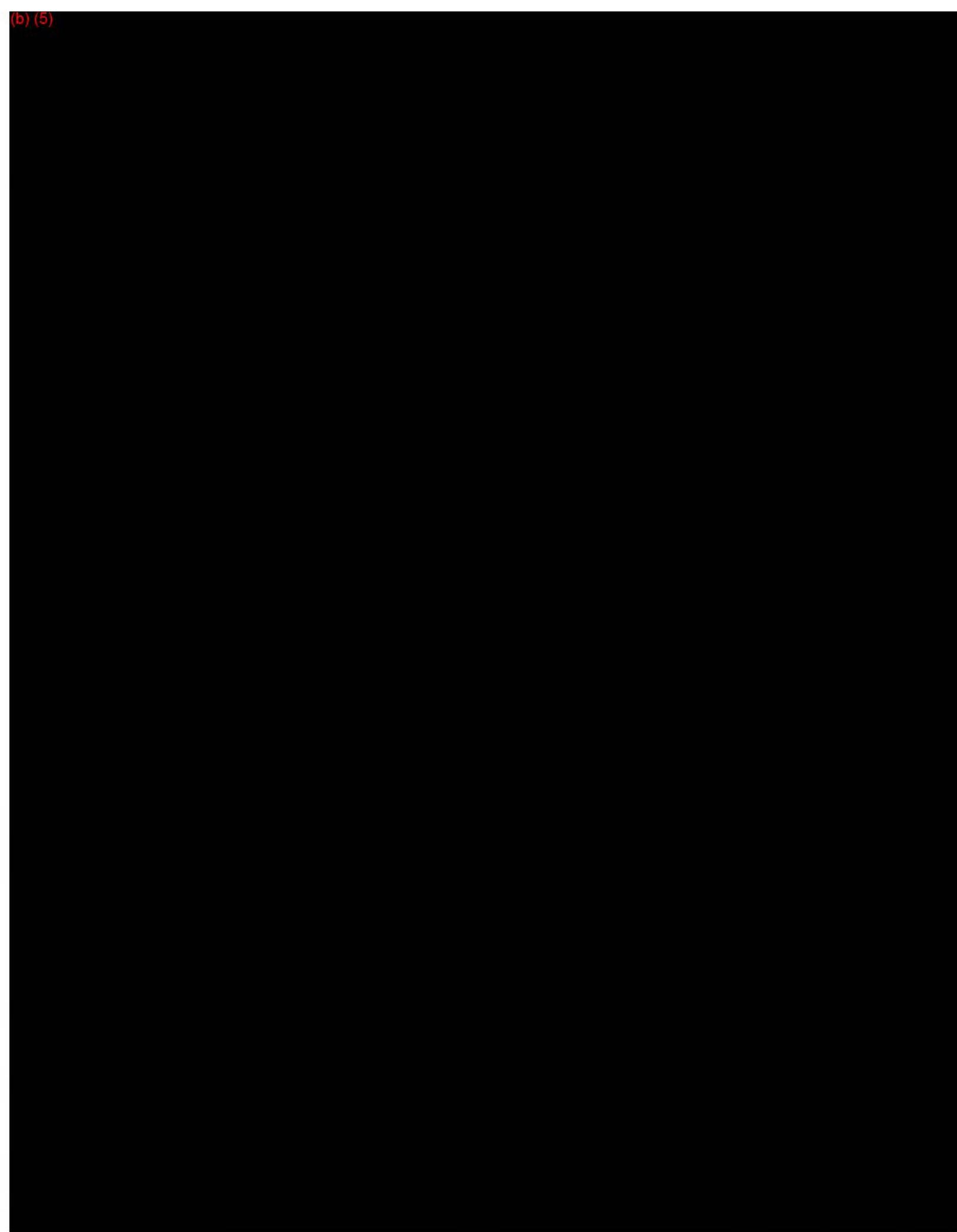


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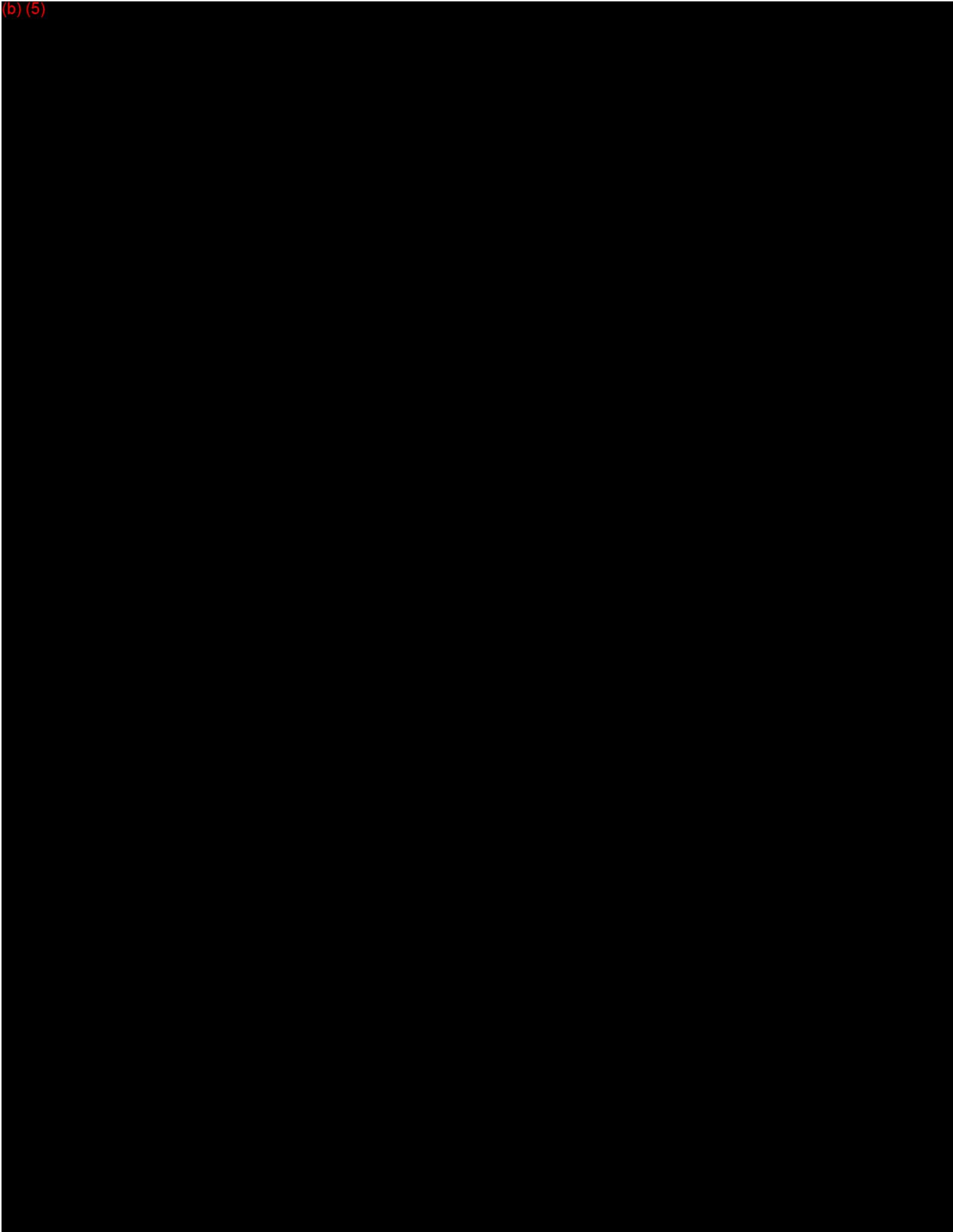
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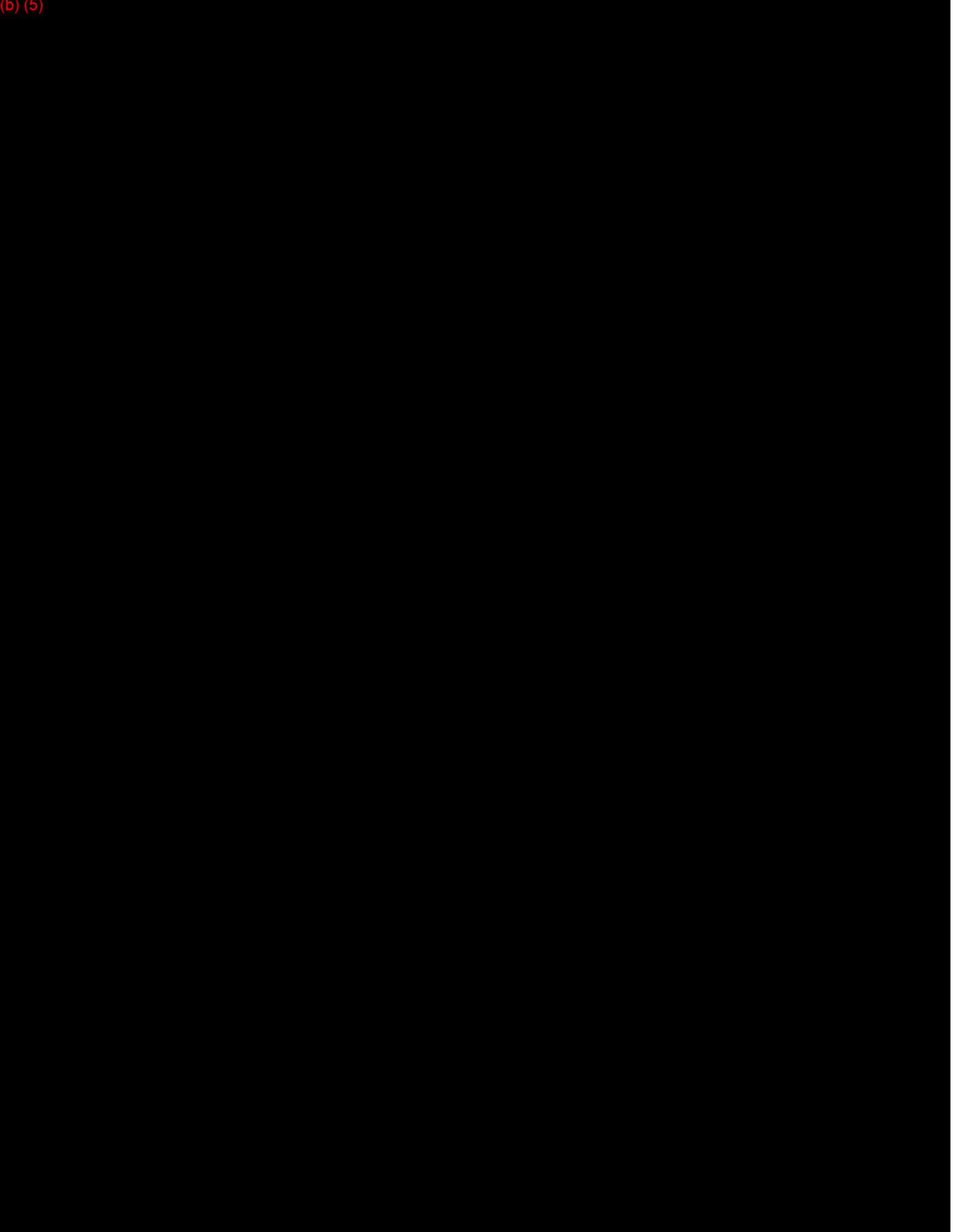
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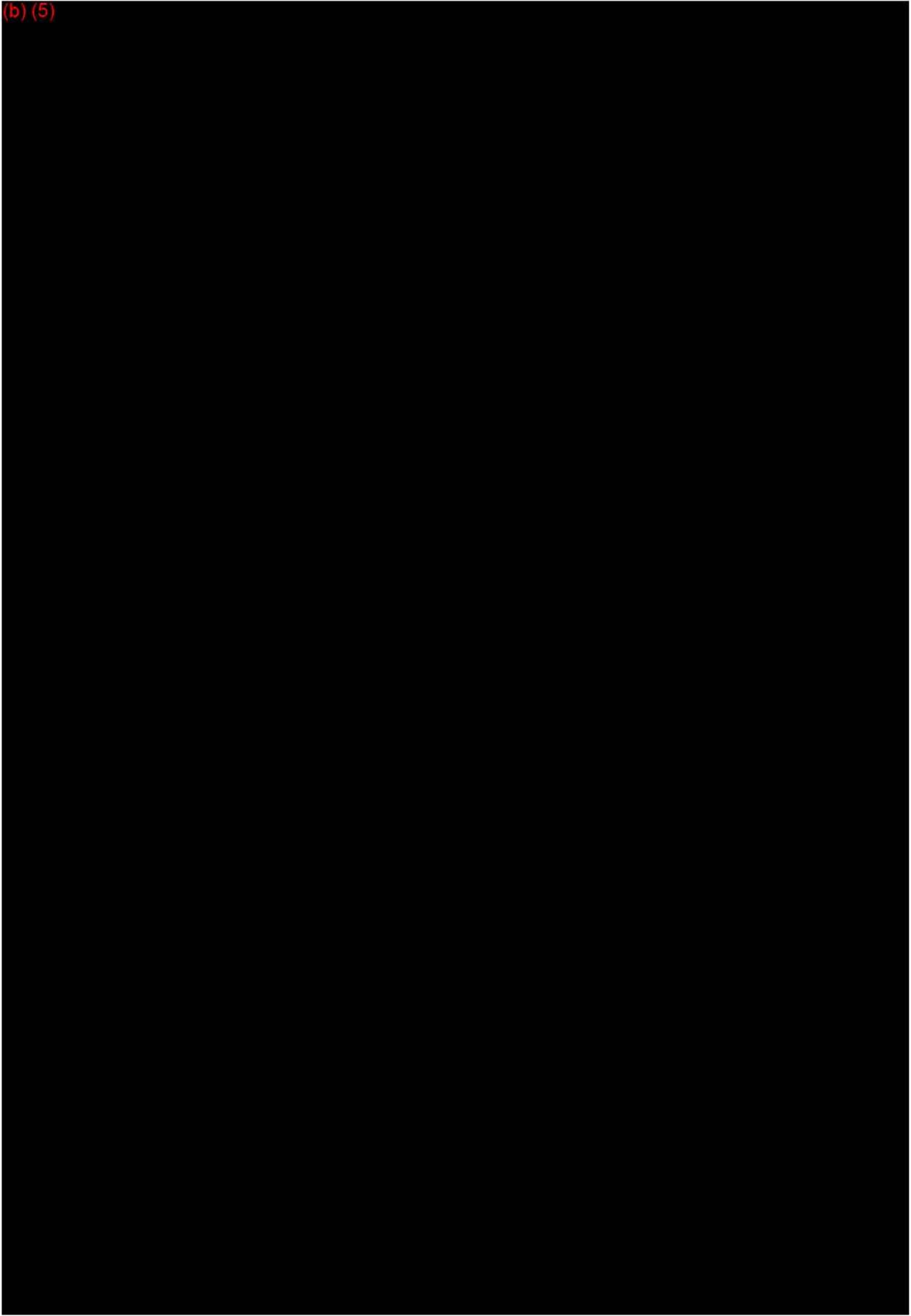


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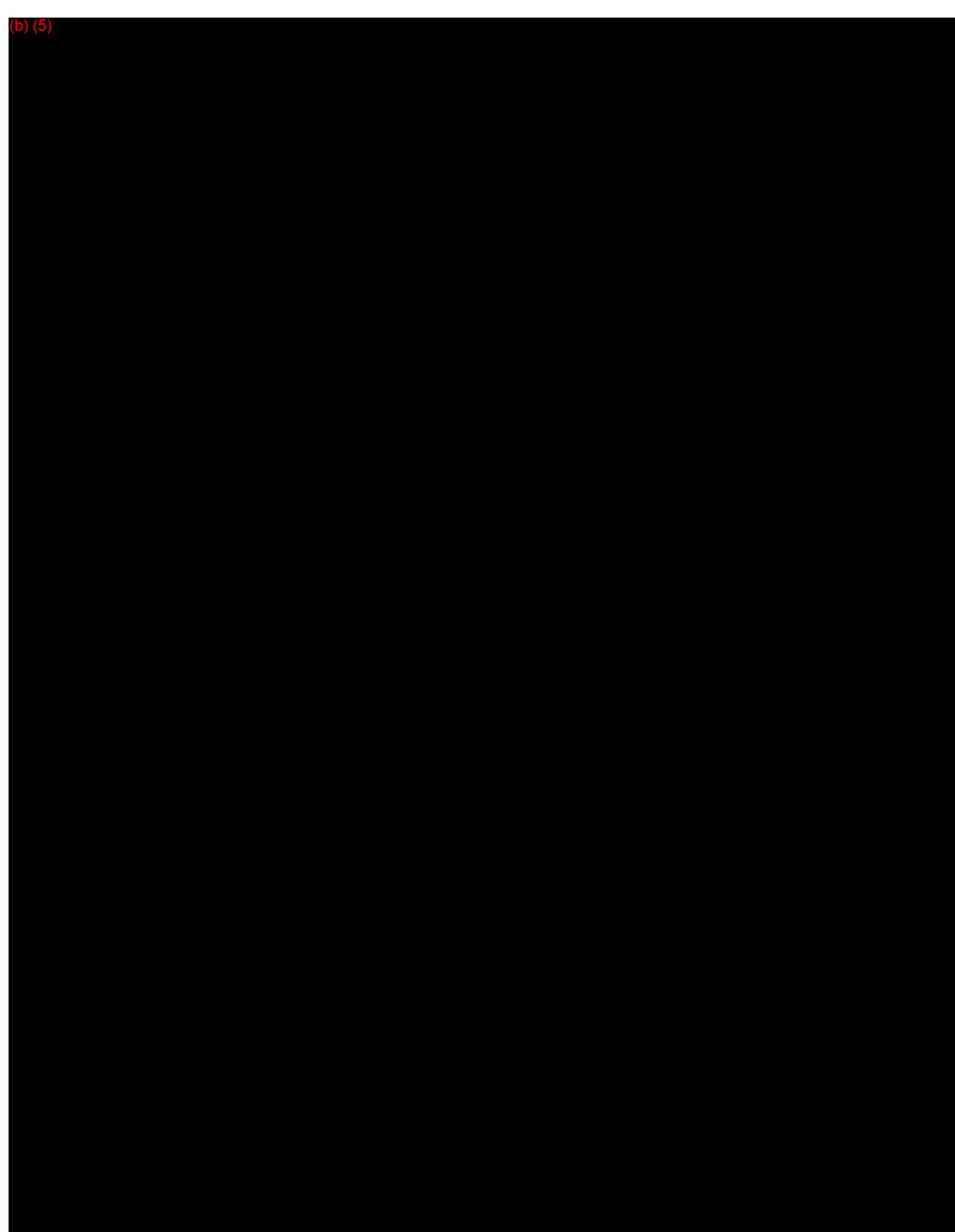


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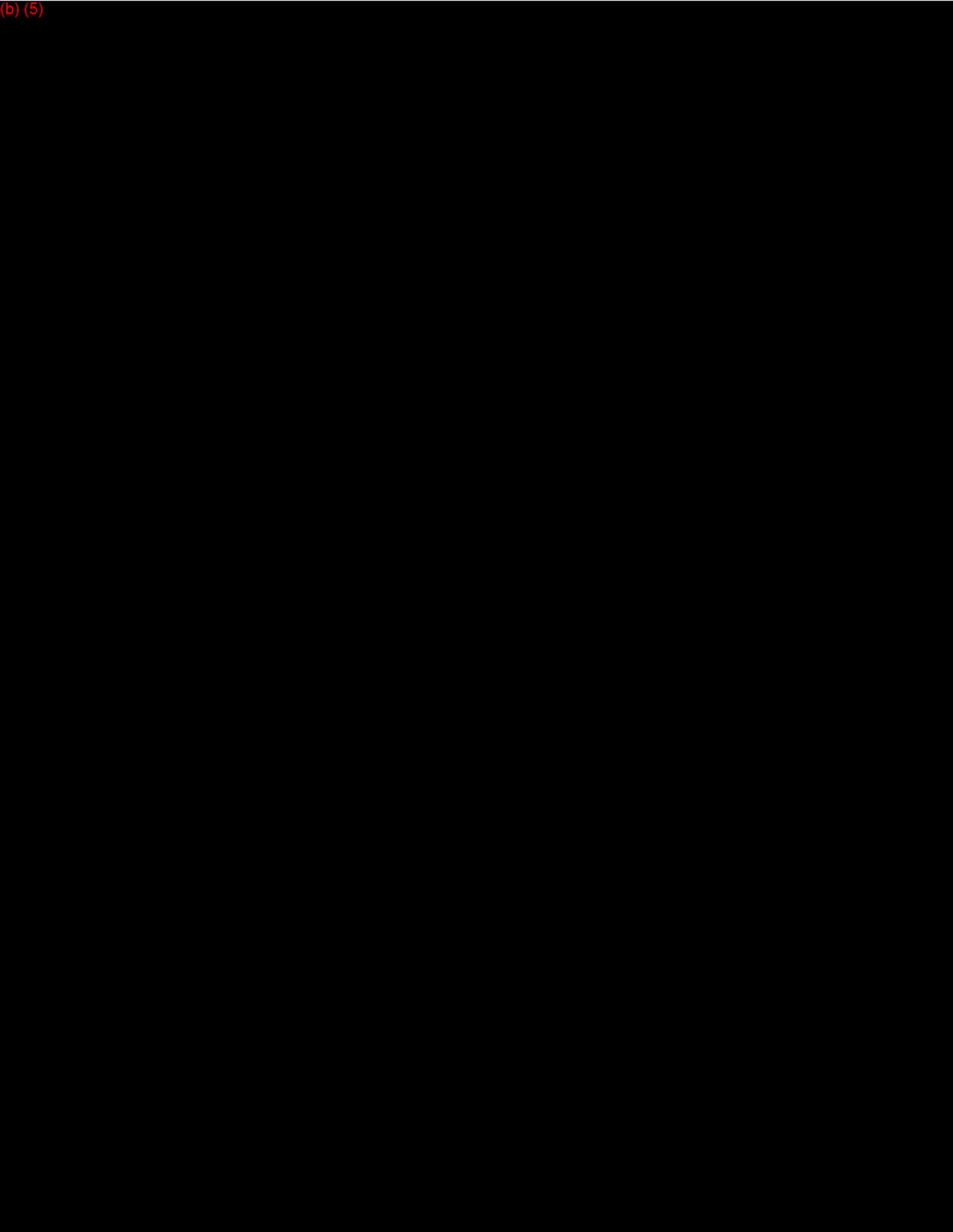




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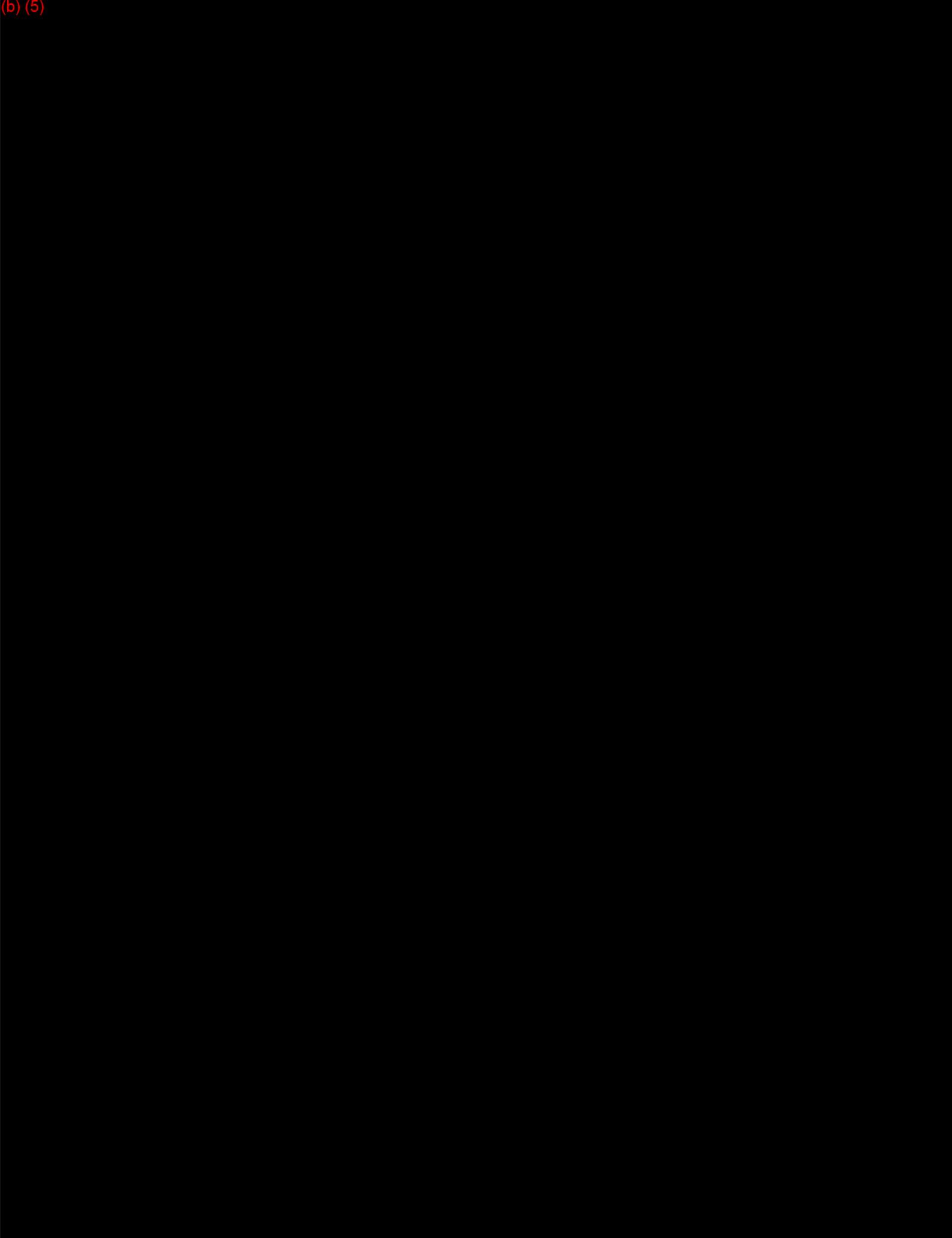


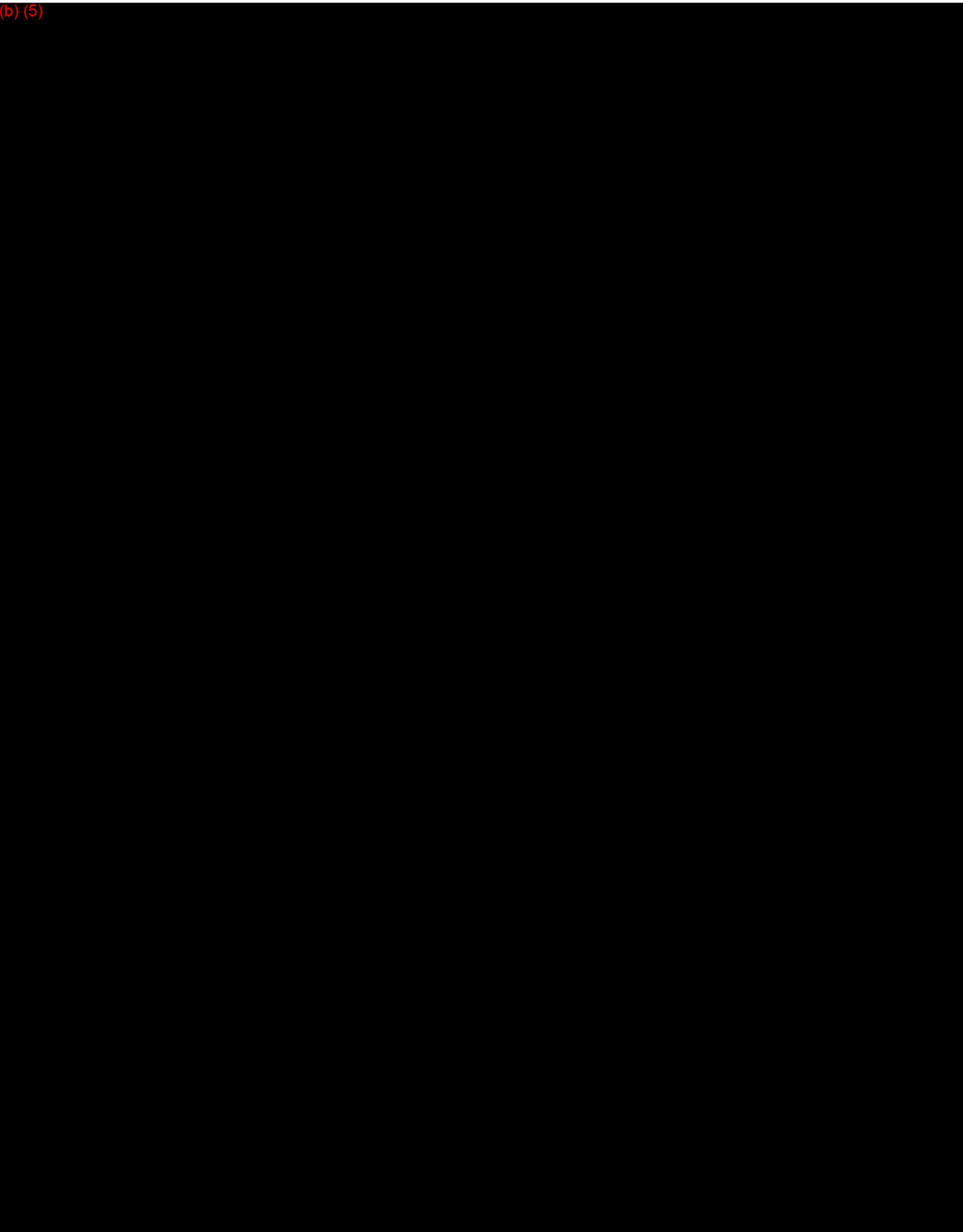
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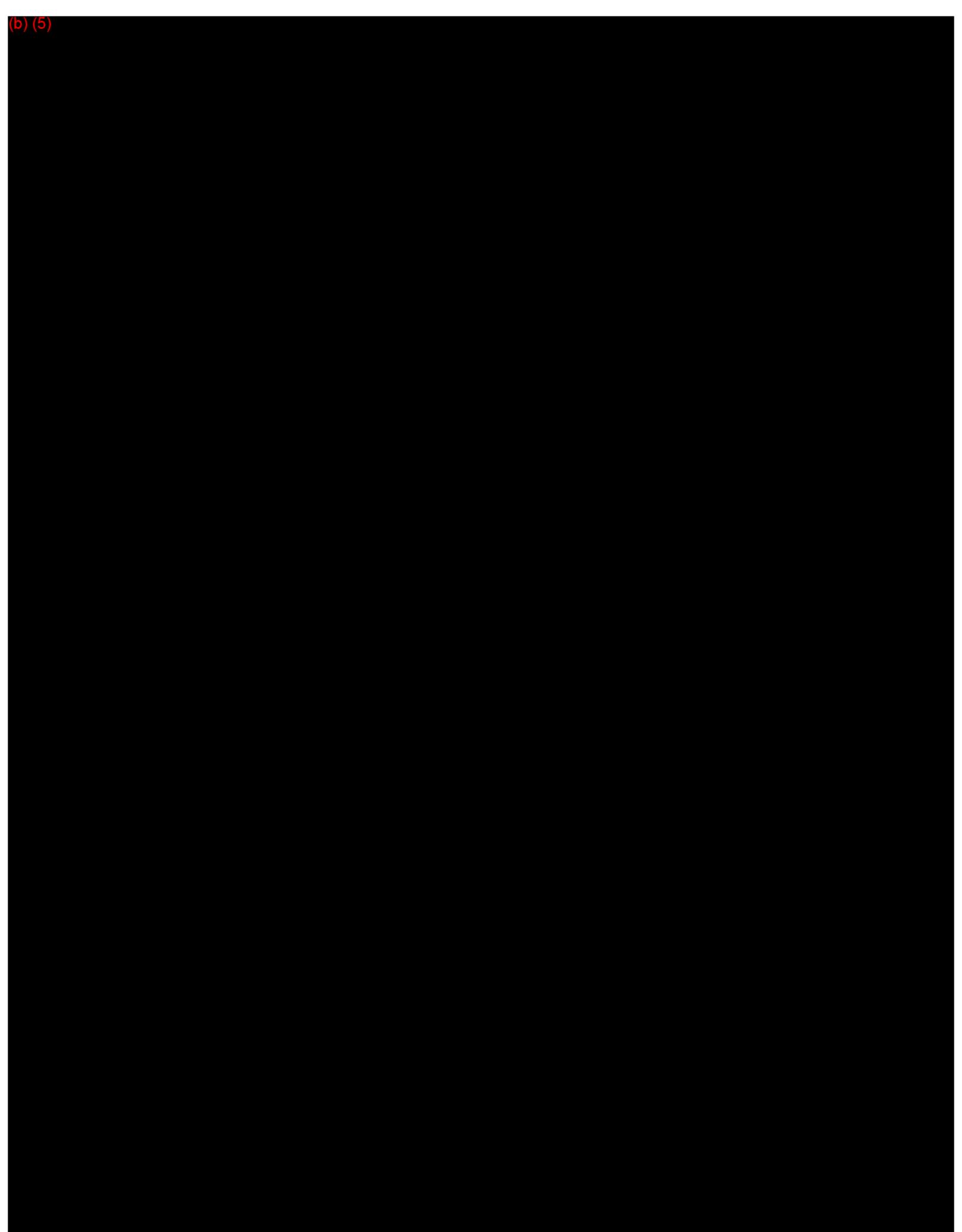


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ORAL STATEMENT OF
ALEXANDER HERRGOTT
ASSOCIATE DIRECTOR FOR INFRASTRUCTURE
COUNCIL ON ENVIRONMENTAL QUALITY
BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

June 27, 2018

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for major infrastructure projects. We appreciate this Committee's willingness to have a meaningful dialogue on this topic as we work toward a shared goal of reducing permitting delays and providing the American people the modernized infrastructure they undoubtedly need.

As many of you know, a major cause of delay has been too many decision makers without effective cross agency communication and coordination. Multiple federal agencies oversee potentially dozens of federal statutes that project sponsors must navigate before beginning construction on a major infrastructure project. Over time, this has created a redundant and often inconsistent federal permitting process. Too often, these processes do not share a single framework or time frame. For example, a highway project could have as many as 10 different federal agencies involved in 16 different permitting decisions, in addition to the state, local, and tribal agencies with separate permitting and approval processes.

The result is a federal permitting process that often takes too long, increases costs, and creates uncertainty. We are actively working to address these challenges while ensuring environmental protection. With process enhancements and a common-sense, harmonized approach among federal agencies, infrastructure projects will move through the environmental review permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout these agencies.

Executive Order 13807

On August 15, 2017, President Trump signed Executive Order 13807 implementing a policy of "One Federal Decision." Under One Federal Decision, federal agencies will administer the National Environmental Policy Act (NEPA) so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) are prepared for all reviewing agencies, and all applicable permitting decision processes will be conducted concurrently with the NEPA process to ensure that the necessary permitting decisions can be made within 90 days of the ROD. One Federal Decision also provides that federal agencies will seek to complete the environmental

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review process within an average of 2 years of the publication of a Notice of Intent to prepare an EIS. As a result of One Federal Decision, the federal environmental review and permitting process will be streamlined, more transparent, and predictable.

One Federal Decision builds on the statutory authorities provided in the Fixing America's Surface Transportation Act (FAST Act) to streamline permitting and provides a framework to further improve efficient coordination between federal agencies. The FAST-41 process, established in Title 41 of the FAST Act, provides a range of tools for large and complex infrastructure projects to navigate the federal environmental review and authorization process. In brief, FAST-41 established project-specific procedures that may be applicable or available to agencies and project sponsors in meeting permitting and review obligations. One Federal Decision broadly impacts how agencies conduct and coordinate environmental reviews while preserving each agency's statutory authority, independence, and ability to comply with NEPA and related statutes, like FAST-41.

Memorandum of Understanding

On April 9, 2018, President Trump announced that the following 12 federal agencies signed a One Federal Decision Memorandum of Understanding (MOU): Department of the Interior (Interior), Department of Agriculture (USDA), Department of Housing and Urban Development, Department of Commerce, Department of Transportation, Department of Energy (DOE), United States Army Corps of Engineers, Department of Homeland Security, Environmental Protection Agency (EPA), Federal Energy Regulatory Commission (FERC), Advisory Council on Historic Preservation, and the Federal Permitting Improvement Steering Council (FPISC). Under the MOU, these agencies committed to following the President's One Federal Decision framework. In doing so, the agencies agreed to implement an unprecedented level of coordination and collaboration in conducting their environmental reviews of major infrastructure projects.

The Council on Environmental Quality (CEQ), in coordination with other components of the White House, has convened a federal interagency working group to develop the framework under which agencies will implement One Federal Decision. This framework establishes the standard operating procedures for how agencies process environmental reviews from beginning to end. The agencies will work together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete other procedural steps to ensure that all necessary decisions can be made within the timelines established by Executive Order 13807.

Agency Action

To date, agencies have been taking steps to advance One Federal Decision principles, starting first with normalizing regular interagency working group meetings and collaboration between agencies and CEQ to improve interagency coordination and the quality of environmental analysis. Since the agencies signed the MOU, CEQ and agency leadership have engaged in numerous meetings on agency streamlining efforts to identify and implement policy, process, and regulatory changes that include:

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- The Federal Highway Administration signed an agreement with the United States Fish and Wildlife Service, the Army Corps of Engineers, EPA, United States Coast Guard, and National Oceanic and Atmospheric Administration (NOAA), committing to working together to achieve the goals of Executive Order 13807. These agencies collaboratively developed a chart coordinating each agency's processes;
- Interior issued Secretarial Order 3355 and additional guidance that advance the department's NEPA-streamlining efforts within Executive Order 13807;
- The Army Corps of Engineers issued Section 408 policy changes adopting other agencies' NEPA documents and issued a policy memorandum operationalizing "risk-informed decision making" to improve coordination and risk management across disciplines;
- USDA, FERC, DOE, and EPA are improving internal clearance processes along with increasing agency capacity for projects with dedicated staff assignments;
- USDA, the Army Corps of Engineers, NOAA Fisheries and the United States Fish and Wildlife Service are expanding the use of time-saving programmatic consultation processes; and
- Agencies will be issuing directives and conducting training at all levels of their organizations, from headquarters to field offices, on timetables and plans to implement the One Federal Decision policy nationwide.

Agency Accountability

The Office of Management and Budget is developing a performance accountability system and appropriate performance metrics to ensure that agencies are implementing One Federal Decision, including the adherence to lead federal agency permitting timetables. The Administration plans to consider agency performance during budget formulation, and agency delays from the permitting timetable may be quantified. Key agency personnel also will have accountability and performance criteria added to their performance plans to measure their effectiveness in processing project permits.

Regulatory Reforms

Following the direction laid out in Executive Order 13807, CEQ published an initial list of actions in the *Federal Register* on September 14, 2017, outlining its plans to enhance and modernize the federal environmental review and authorization process. Last fall, CEQ announced its intent to review its 1978 regulations implementing the procedural requirements of NEPA to identify potential updates and clarifications to those regulations. Just last week, CEQ published in the *Federal Register* for public comment an Advance Notice of Proposed Rulemaking titled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act."

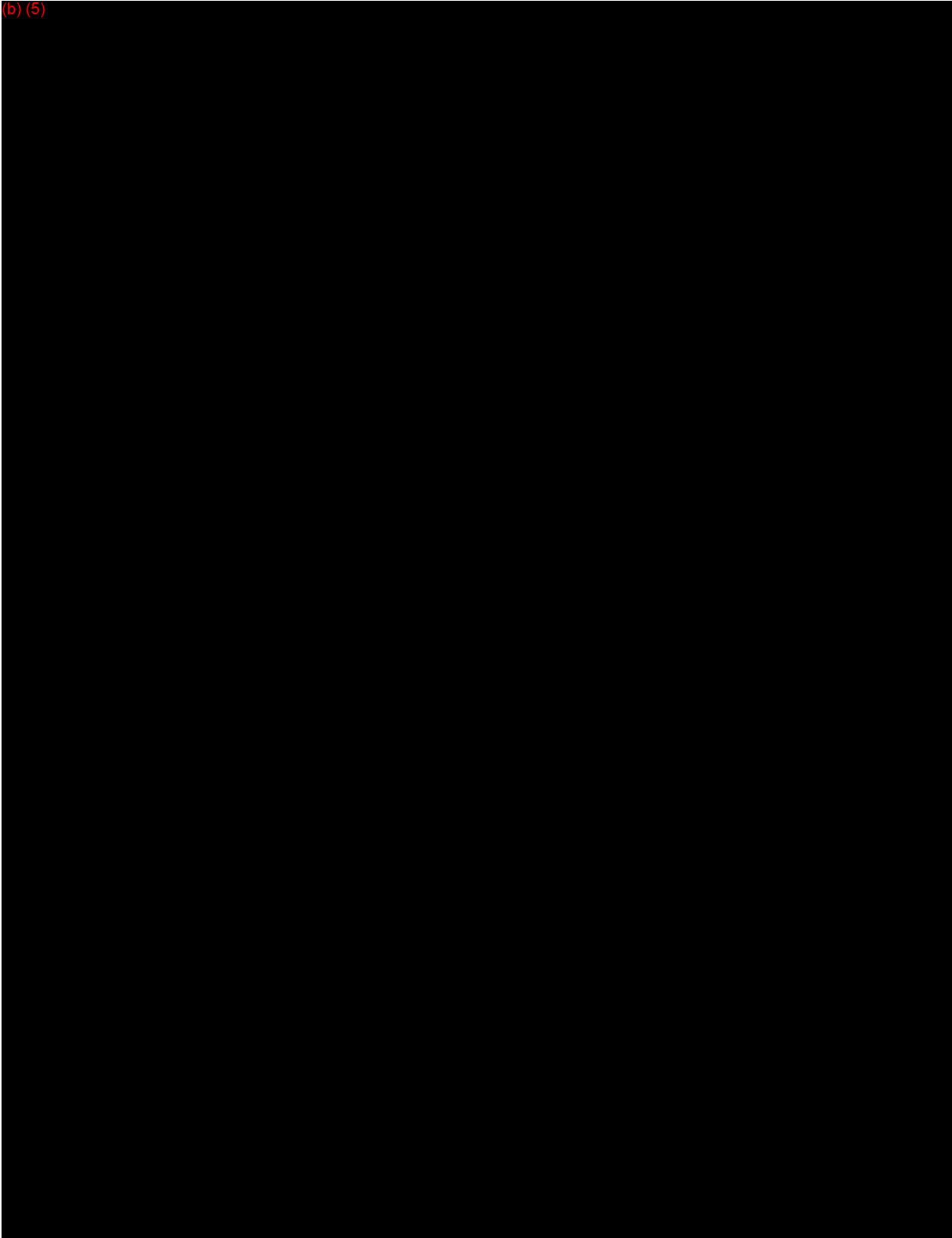
Through improved agency coordination, increased transparency and accountability and timely decision making, we can improve our infrastructure permitting process and get projects completed and to the market faster for the benefit of the American people.

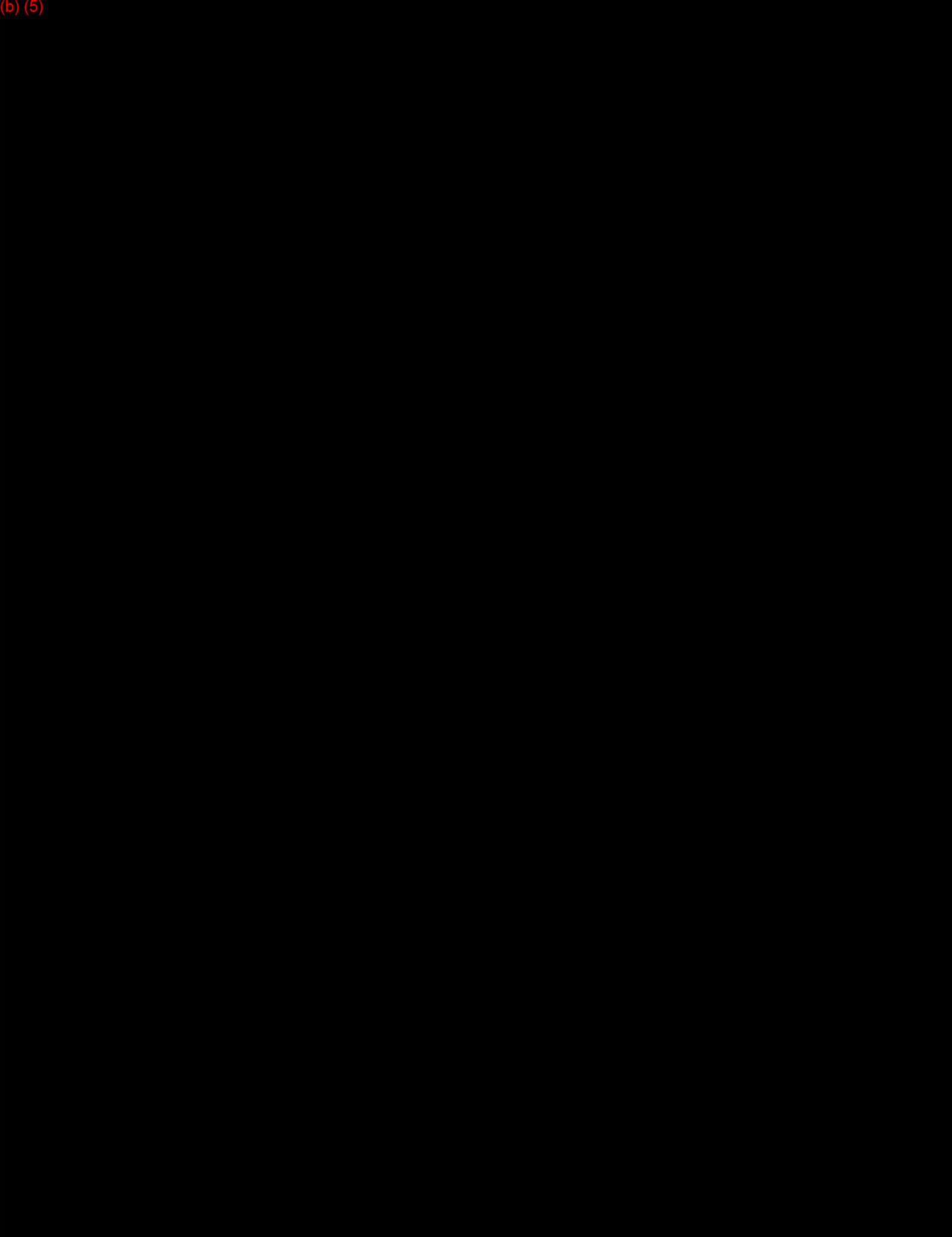
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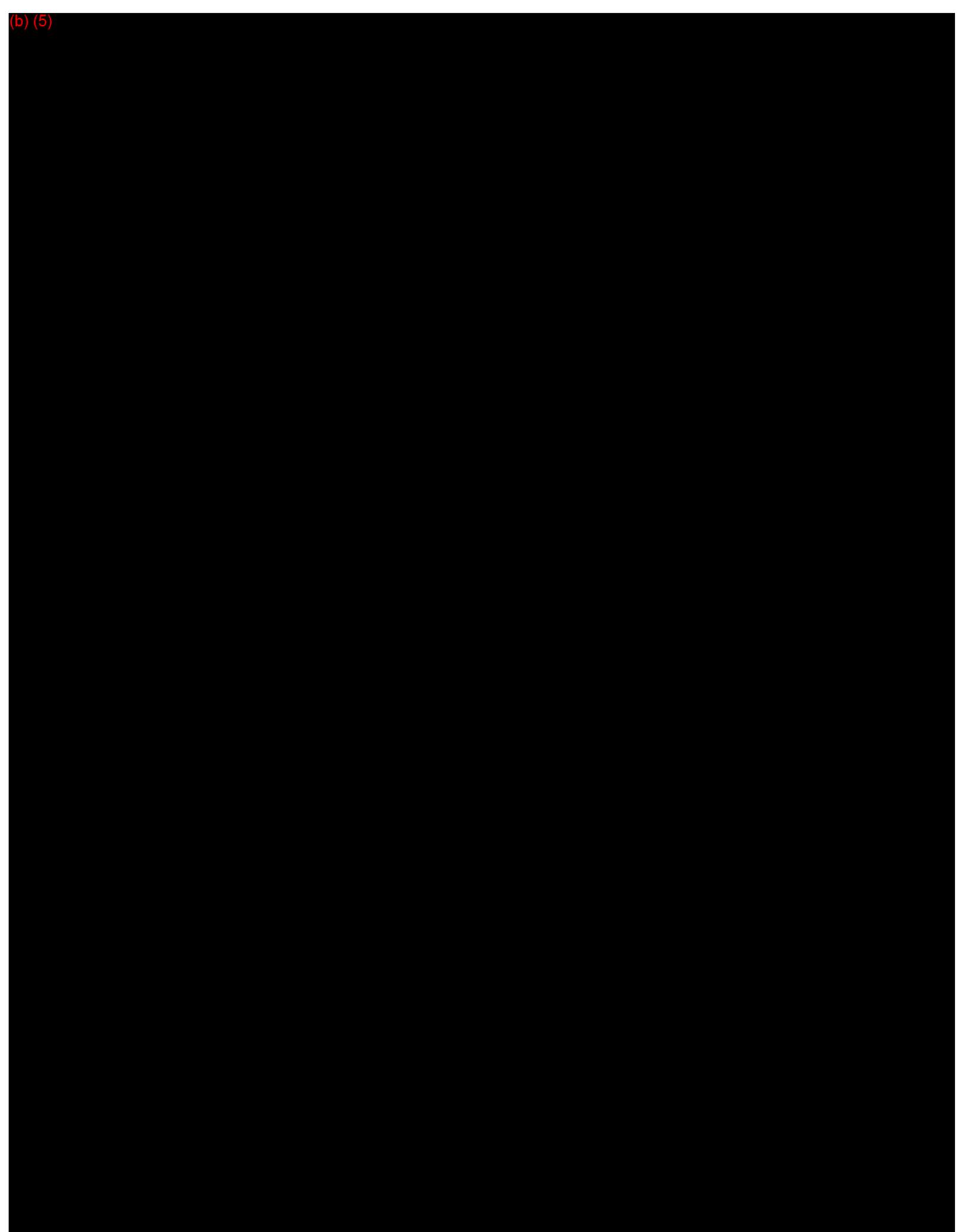
While CEQ is focused on the development of a better process for all infrastructure project permitting, the Federal Permitting Improvement Steering Council is focused on overcoming obstacles on a project-by-project basis. My colleague, Angela Colamaria, the acting Executive Director of the Permitting Council, will expand further on the implementation of FAST-41 and FPISC's role in streamlining the federal permitting process.

Thank you again for the opportunity to participate in today's discussion.

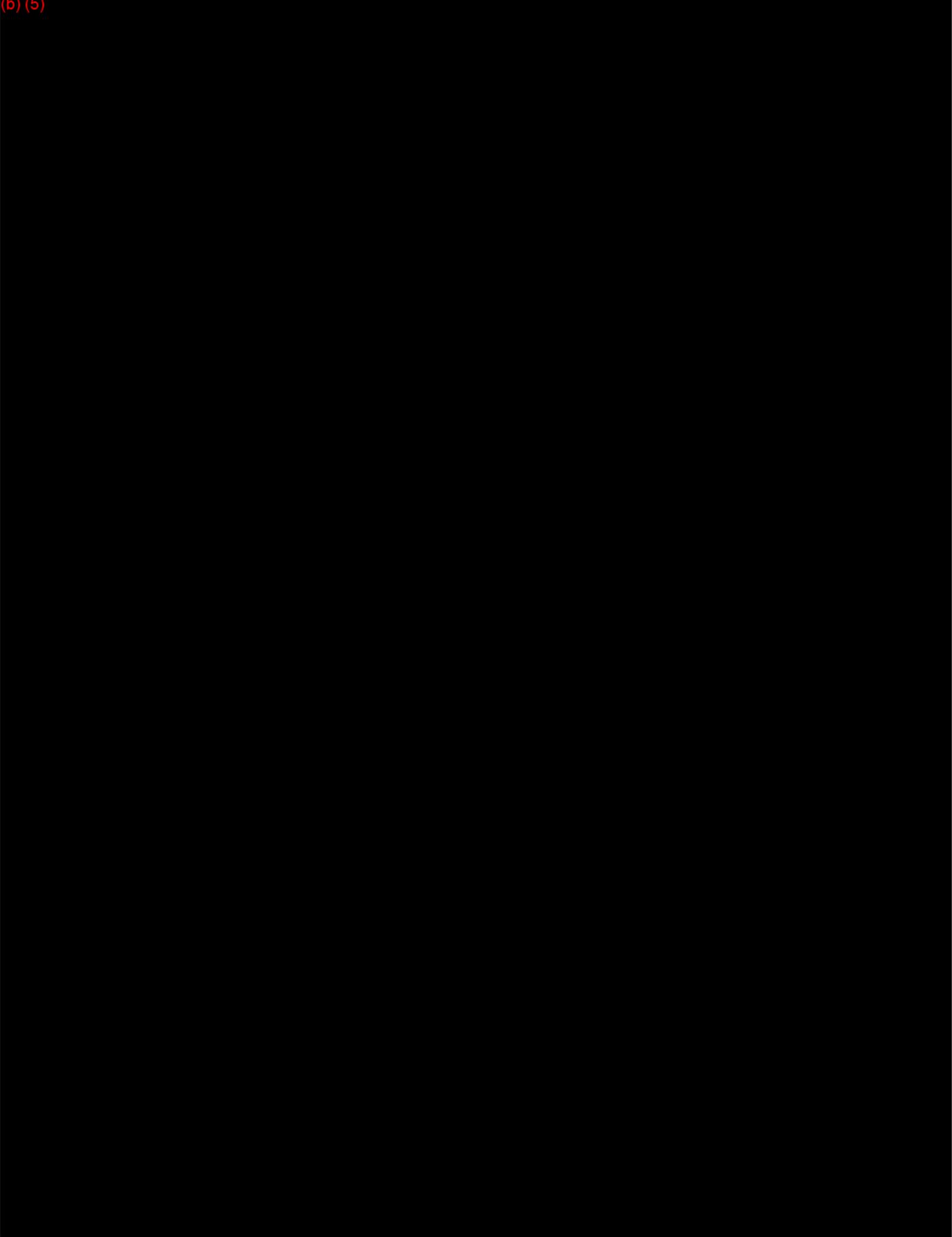
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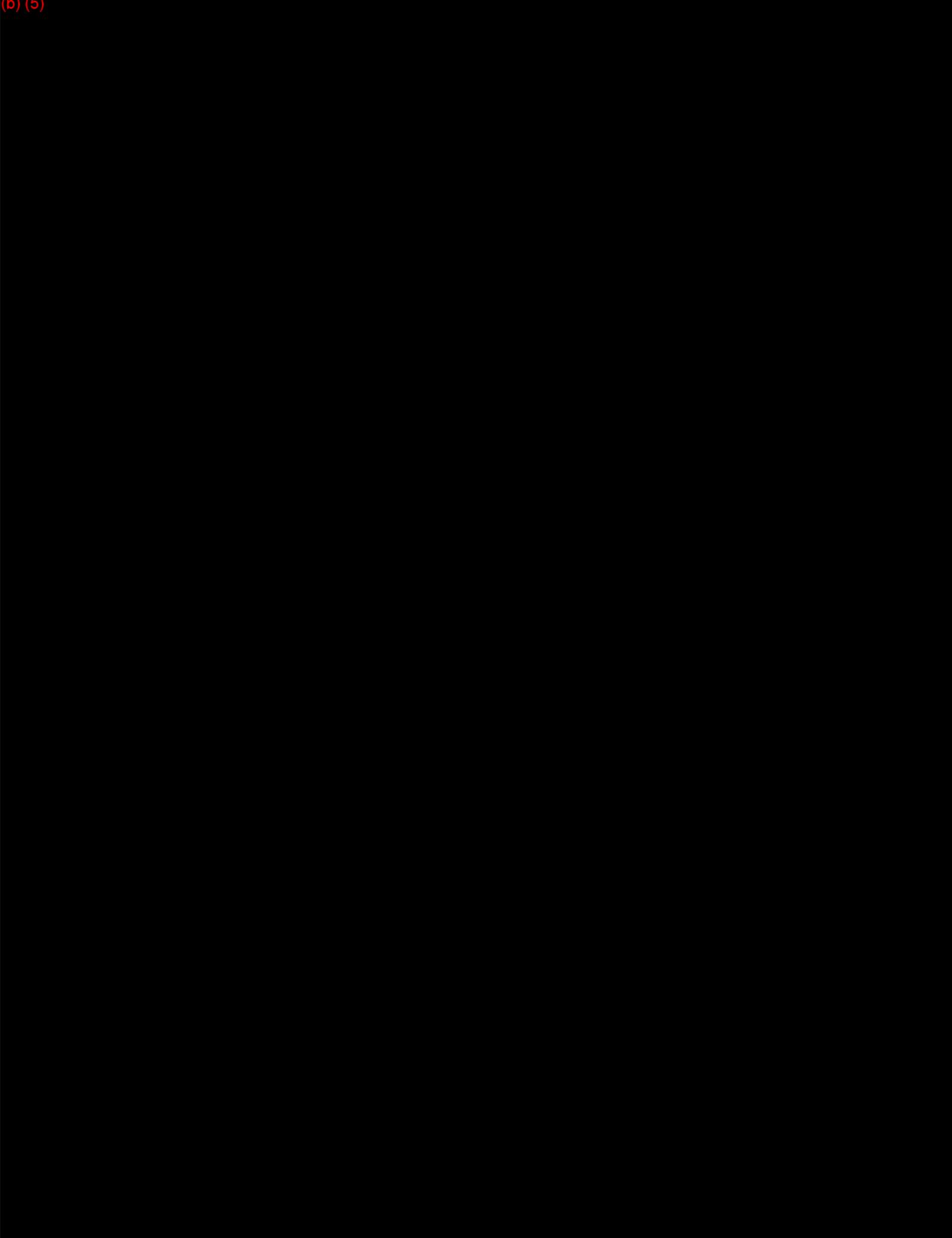


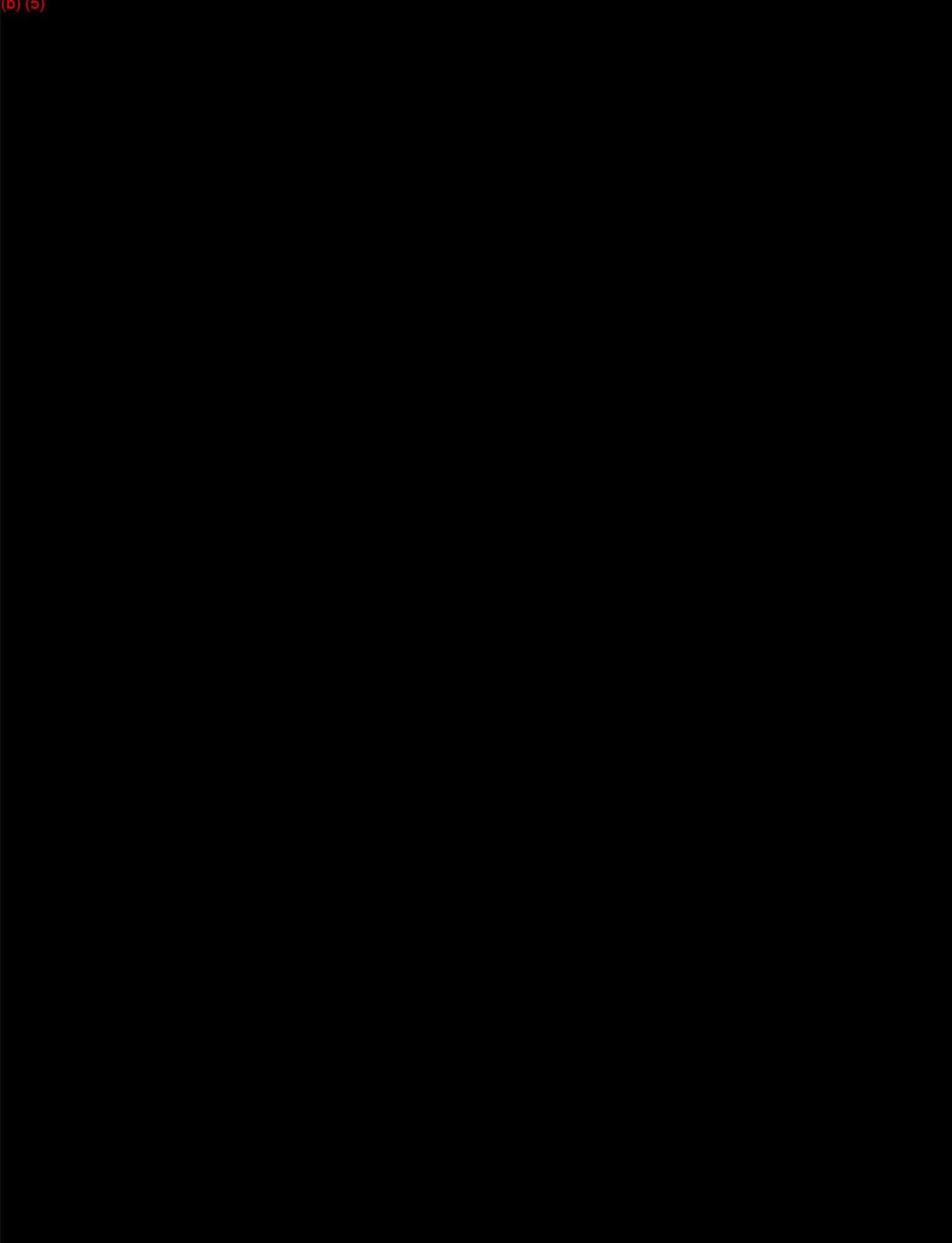


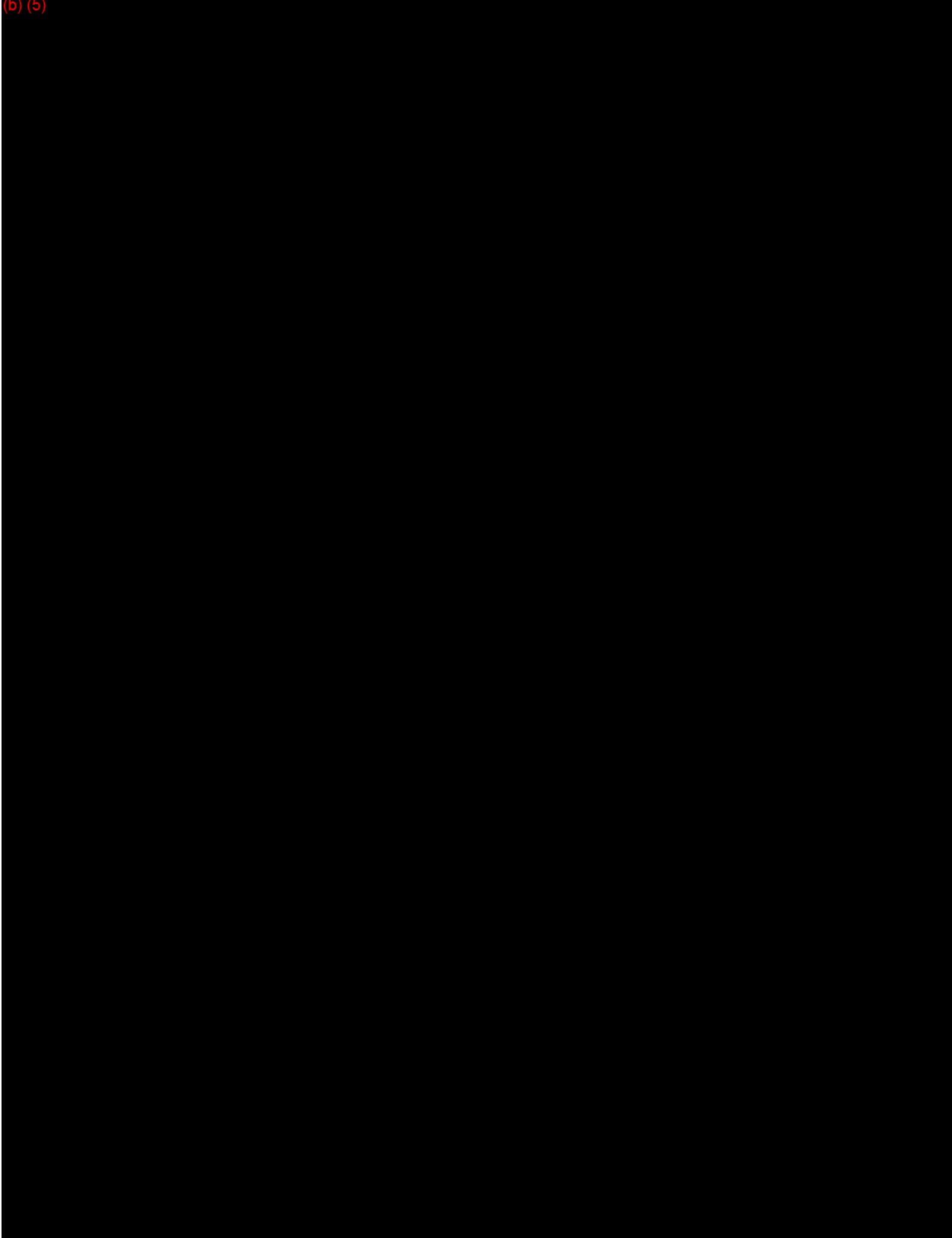


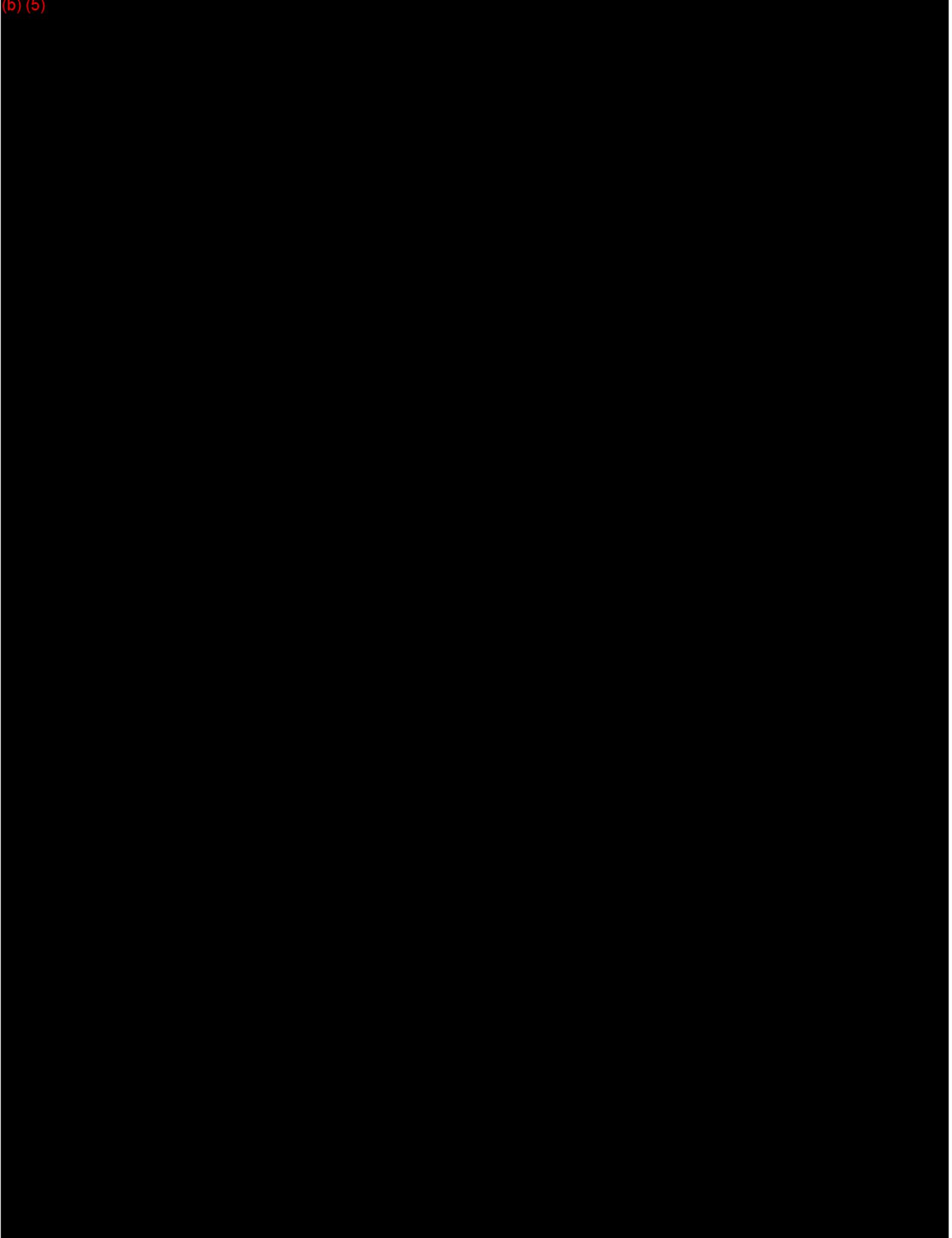
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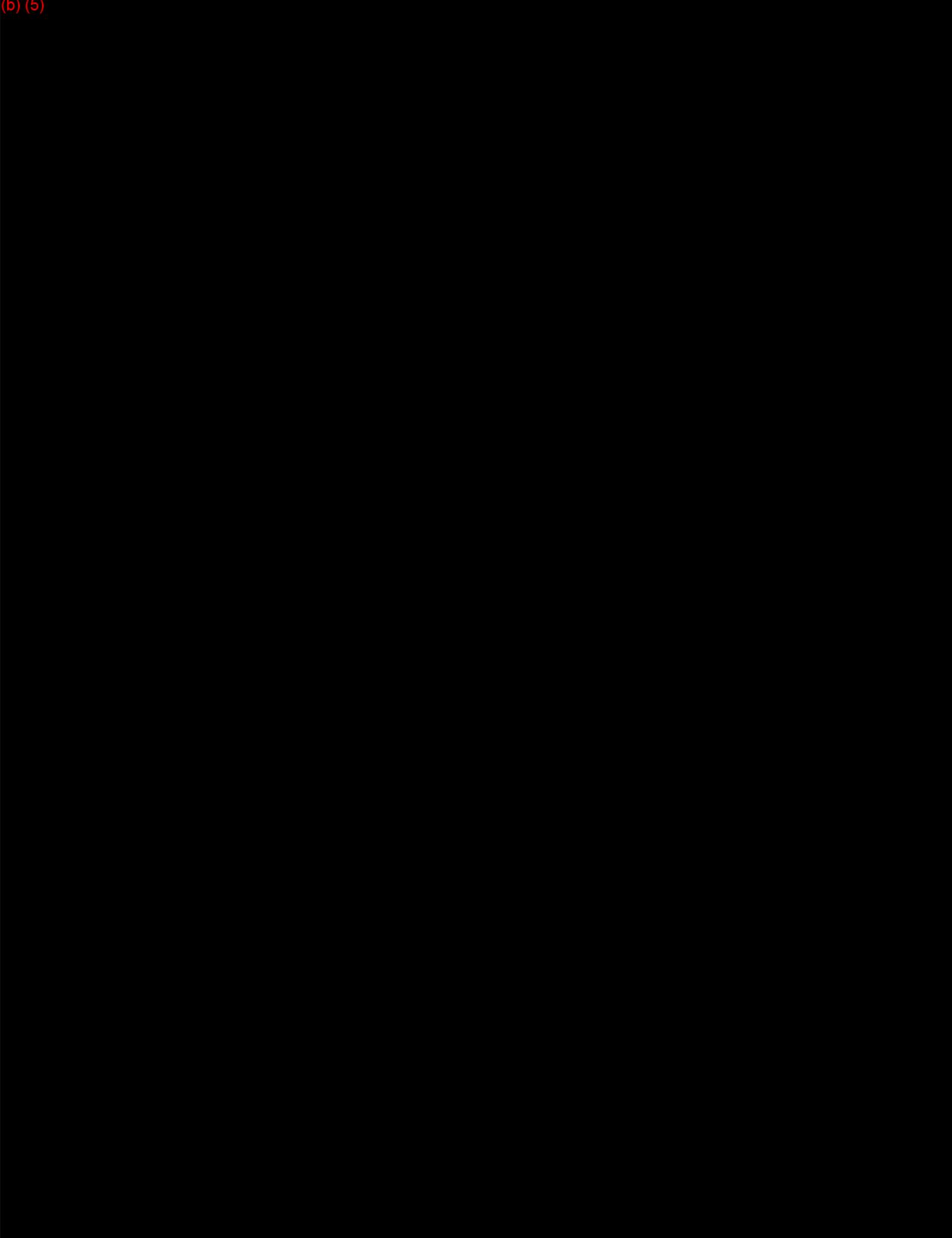


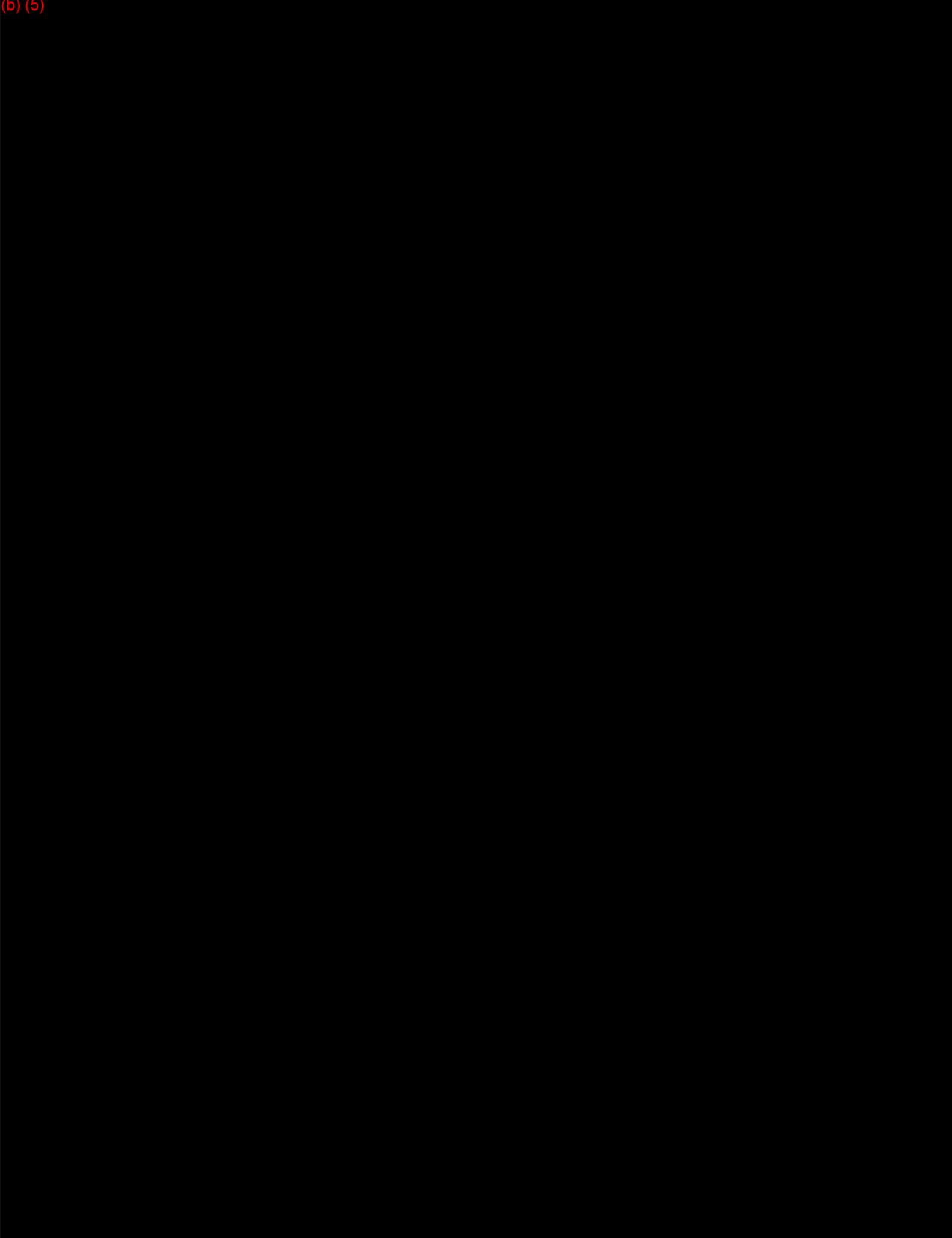


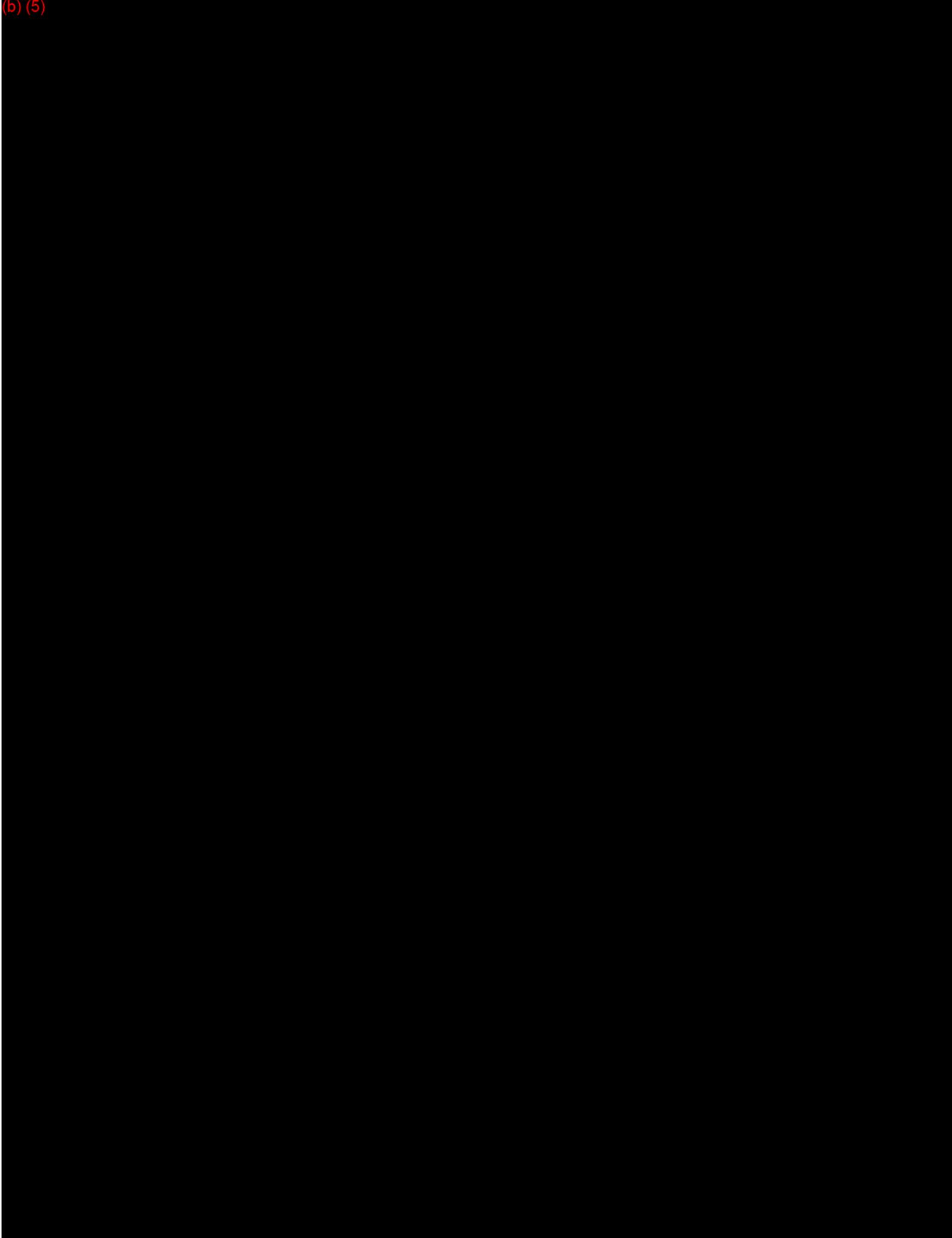


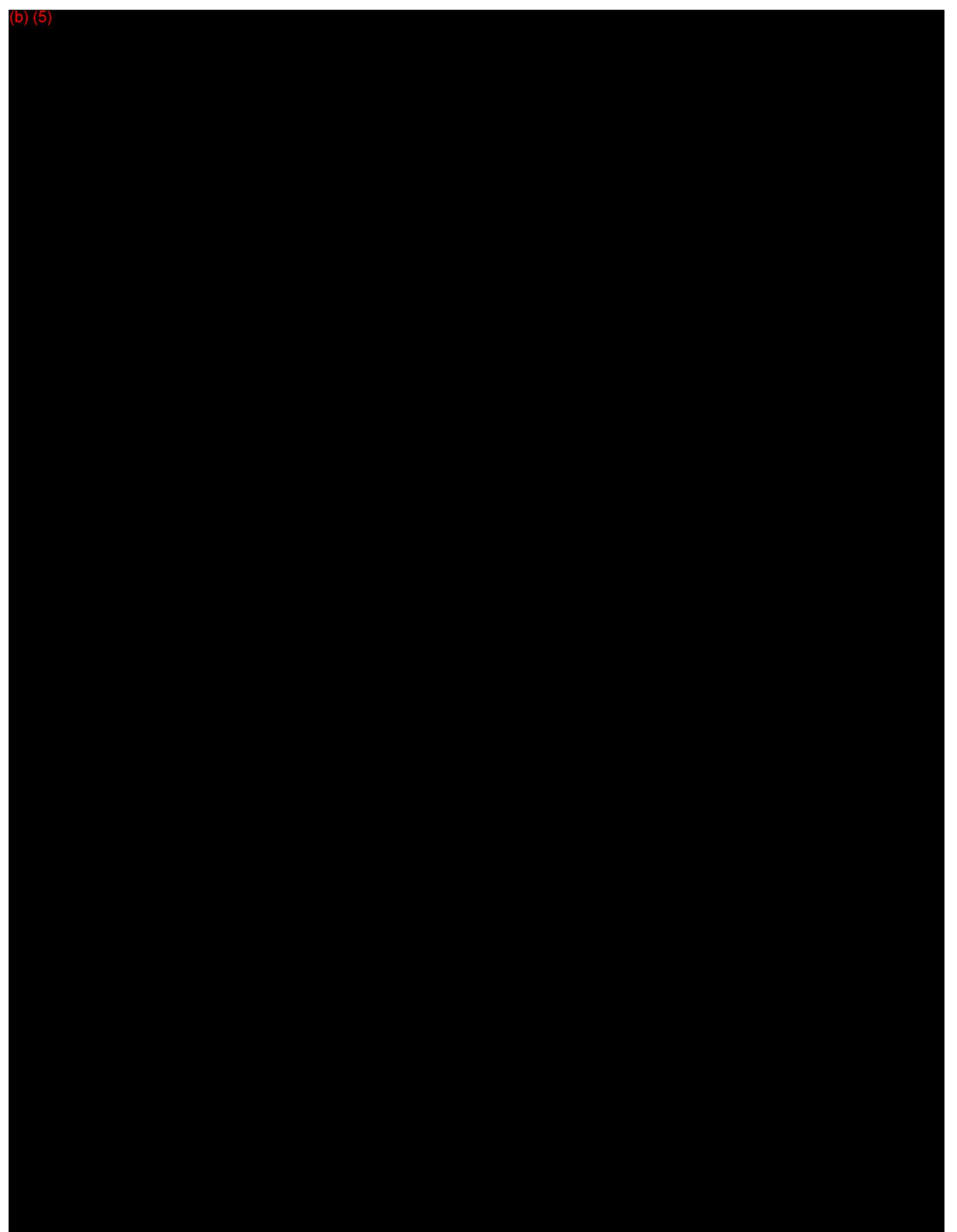




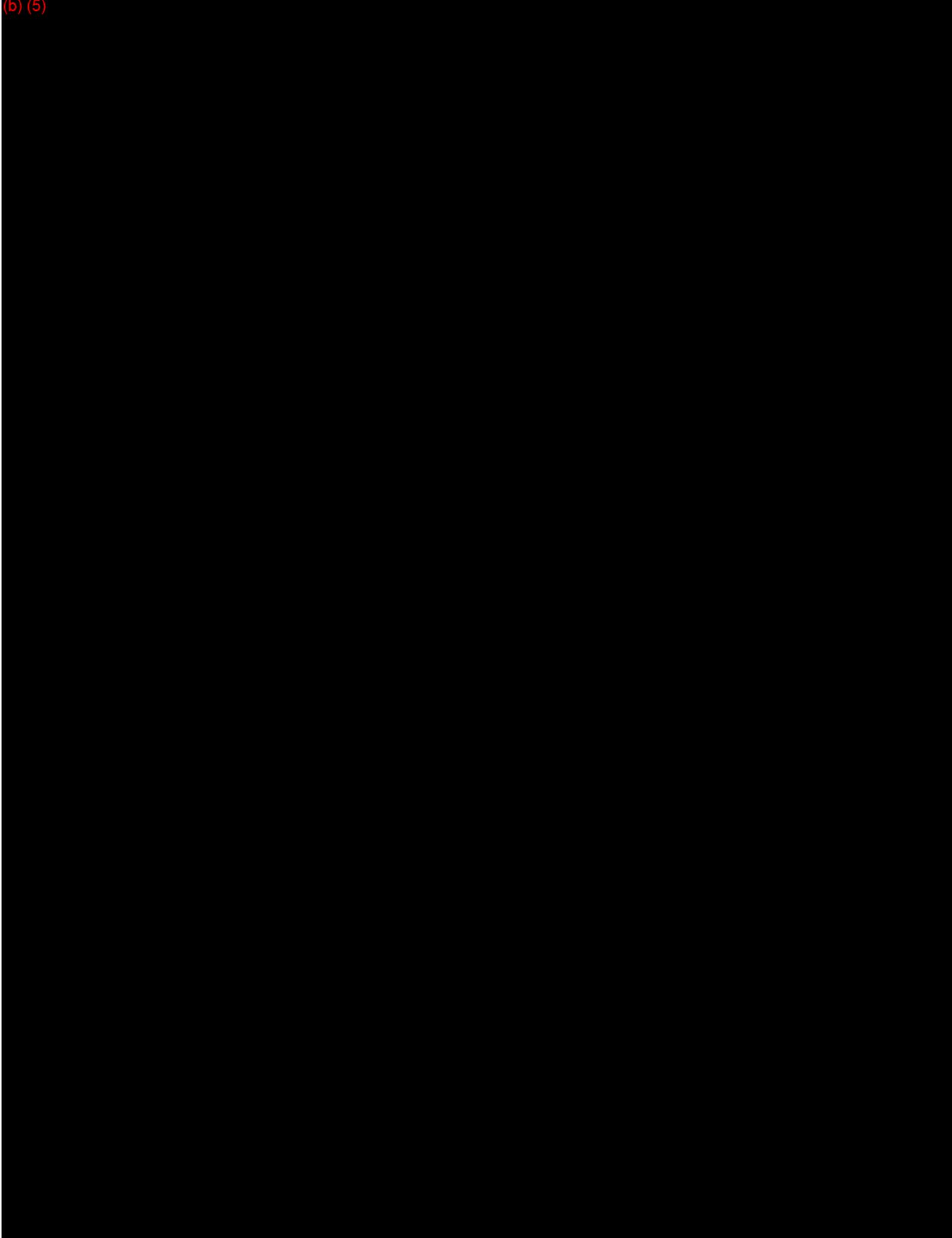


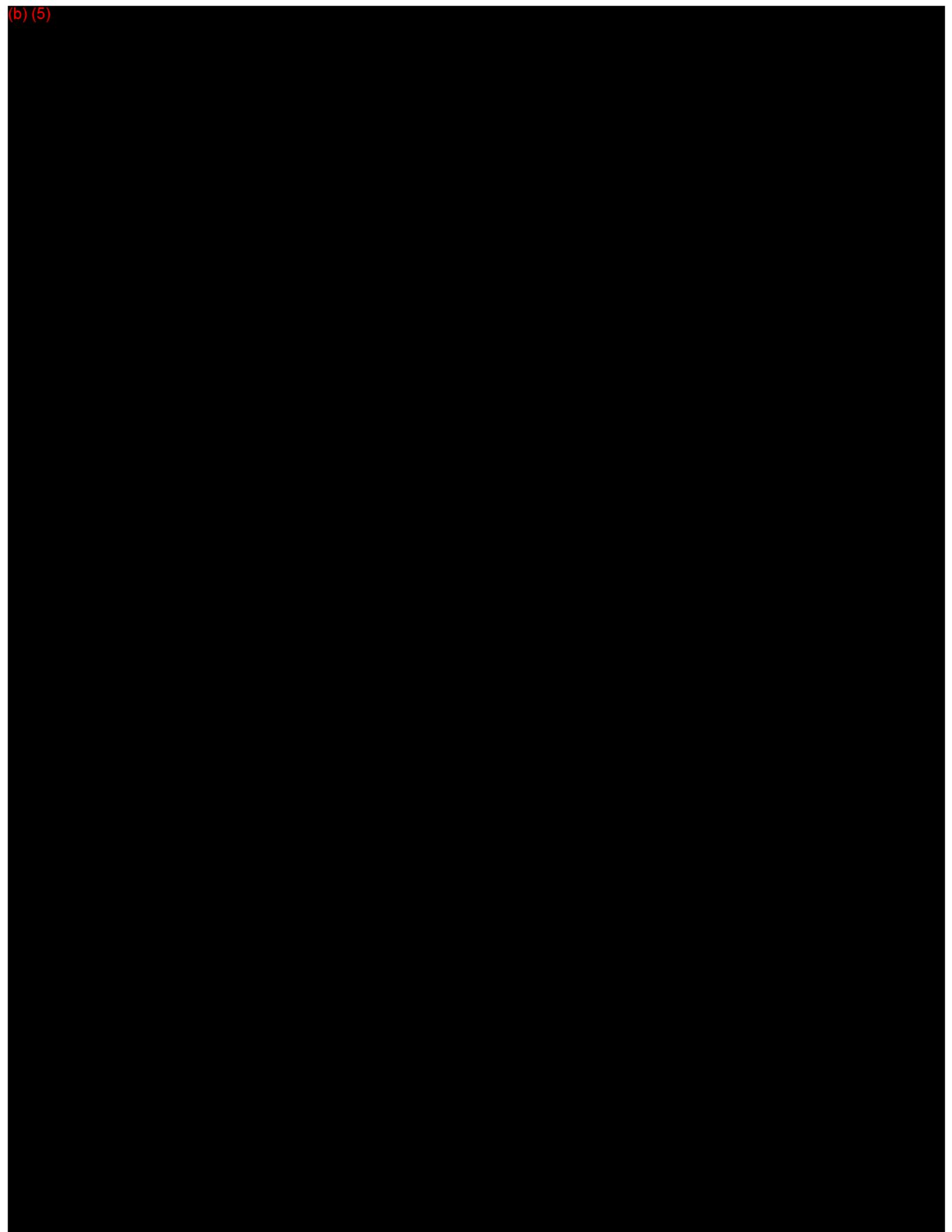


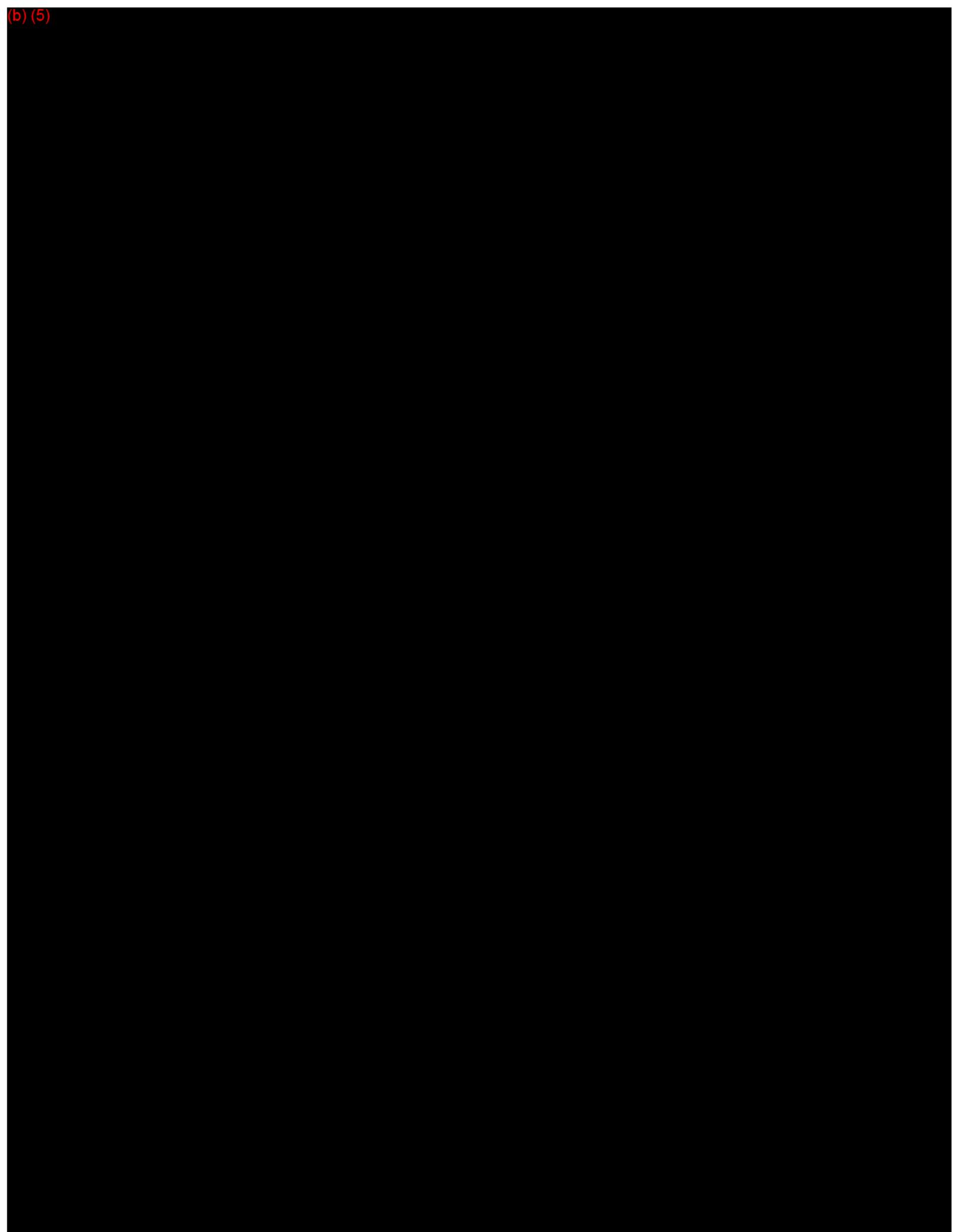


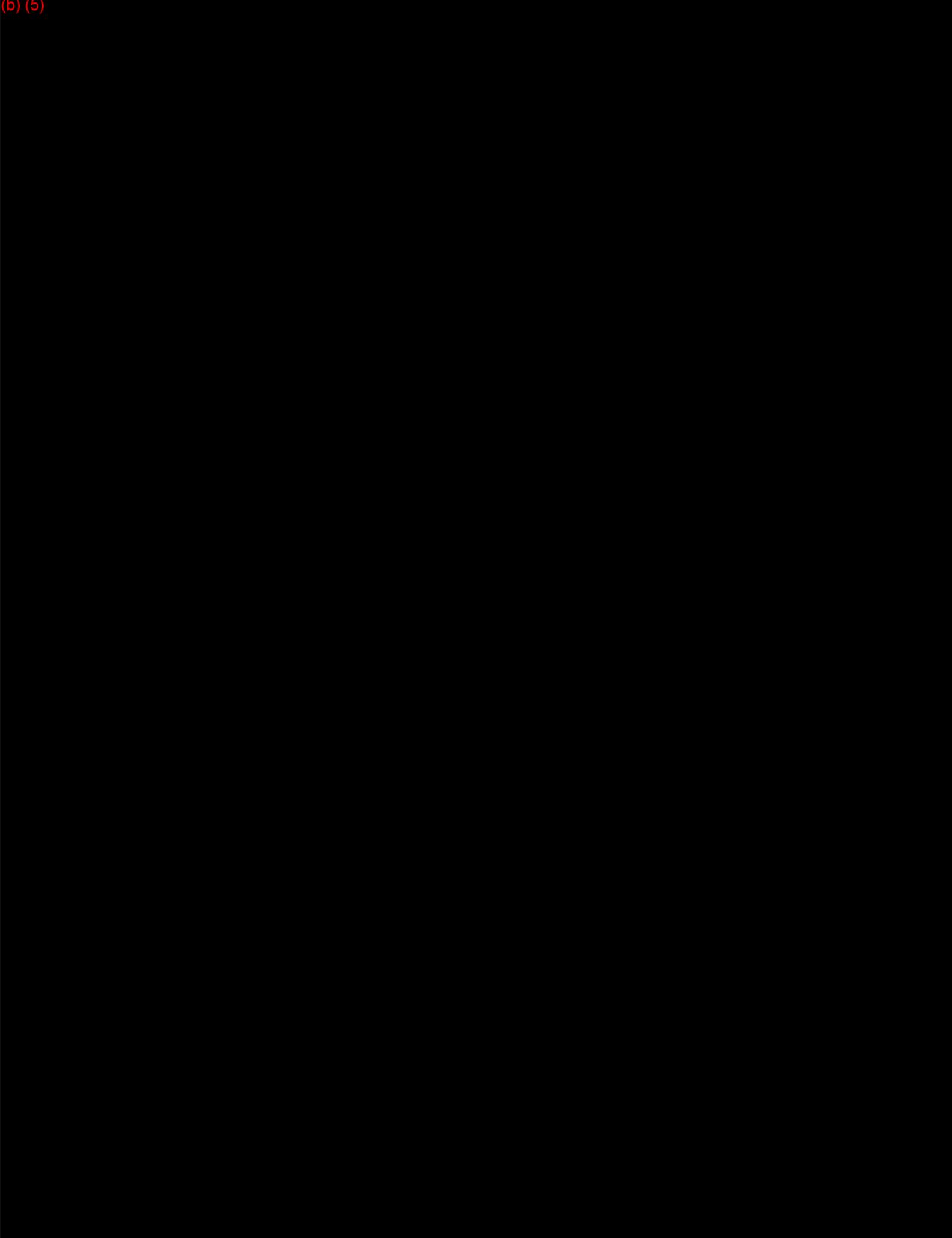


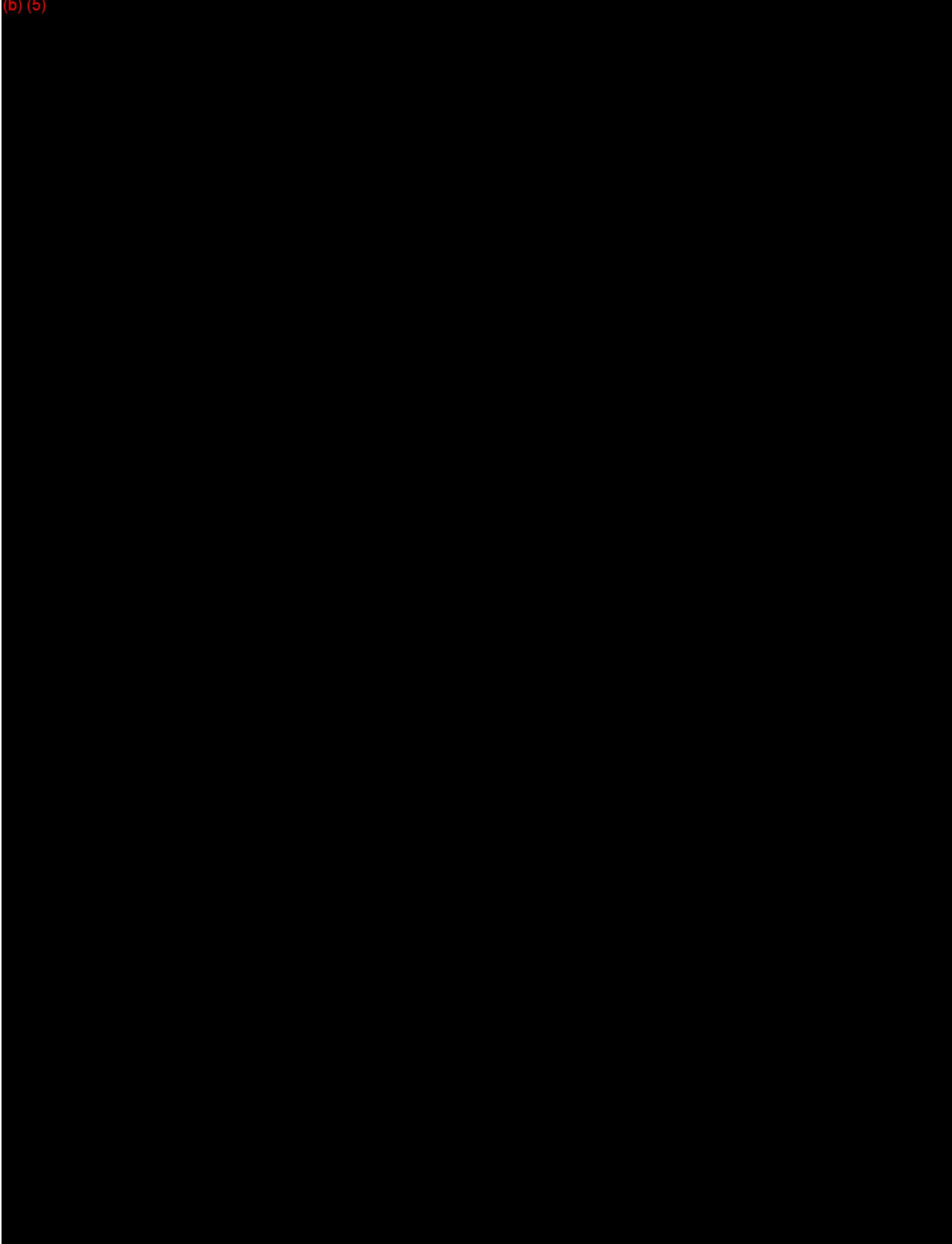
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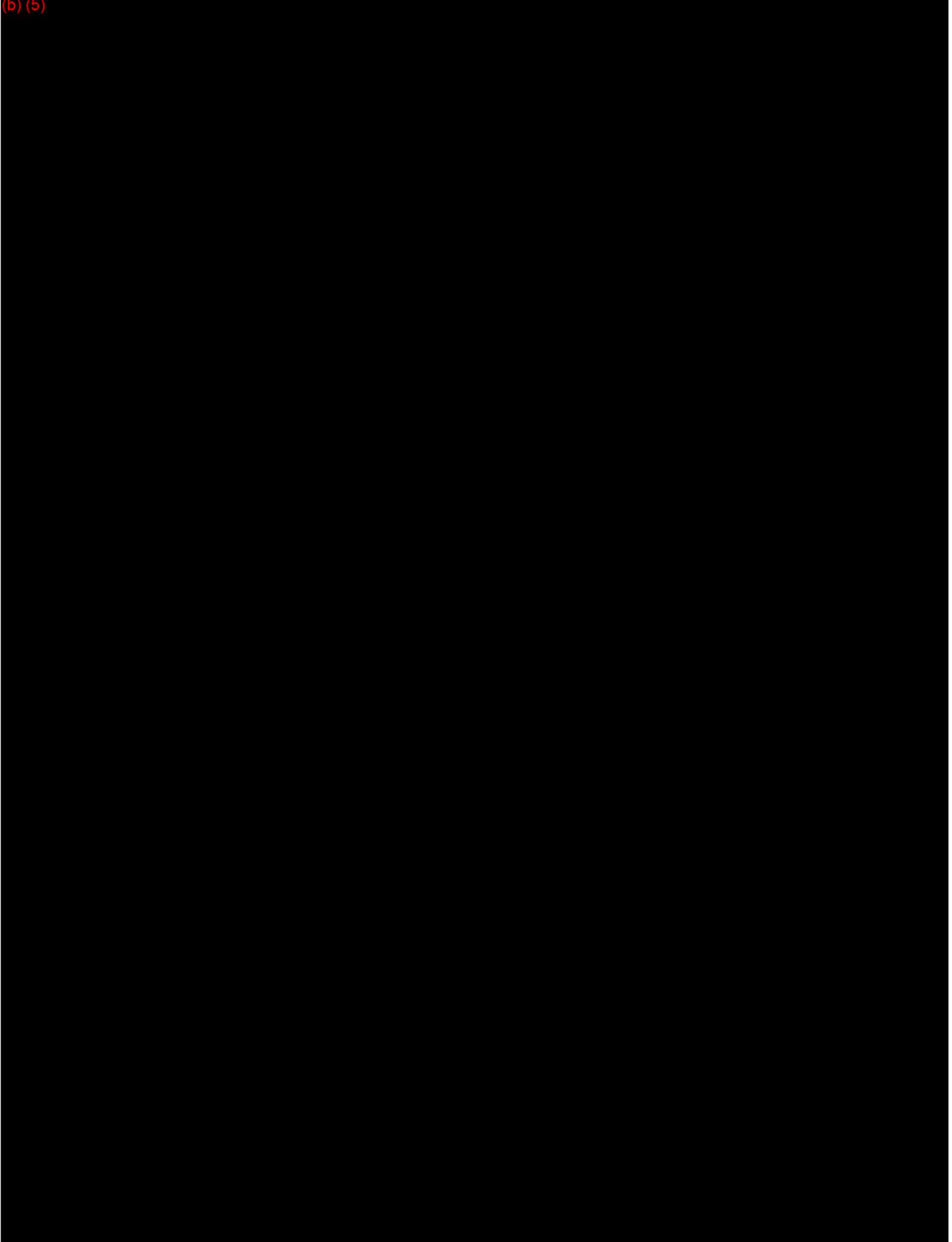


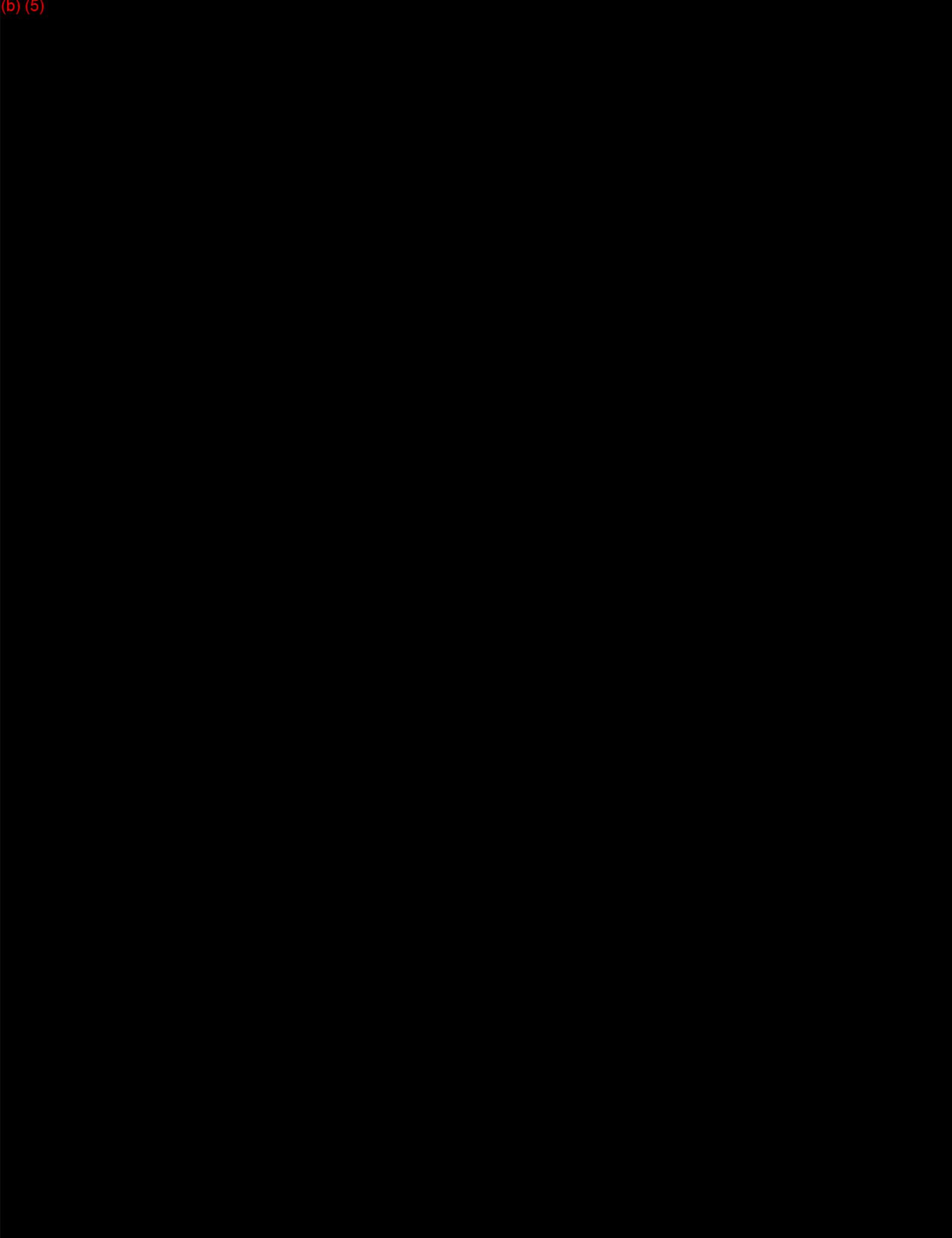


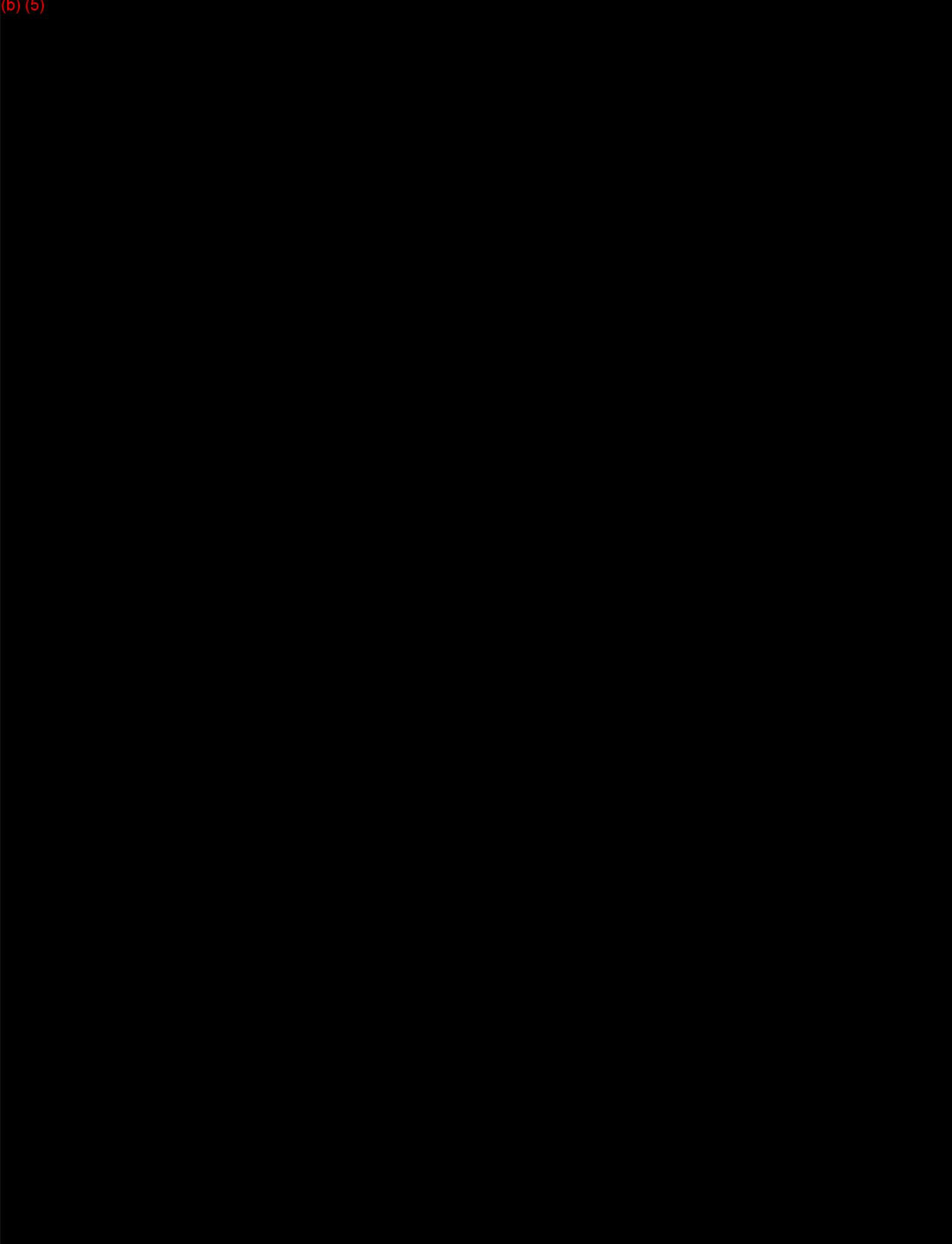


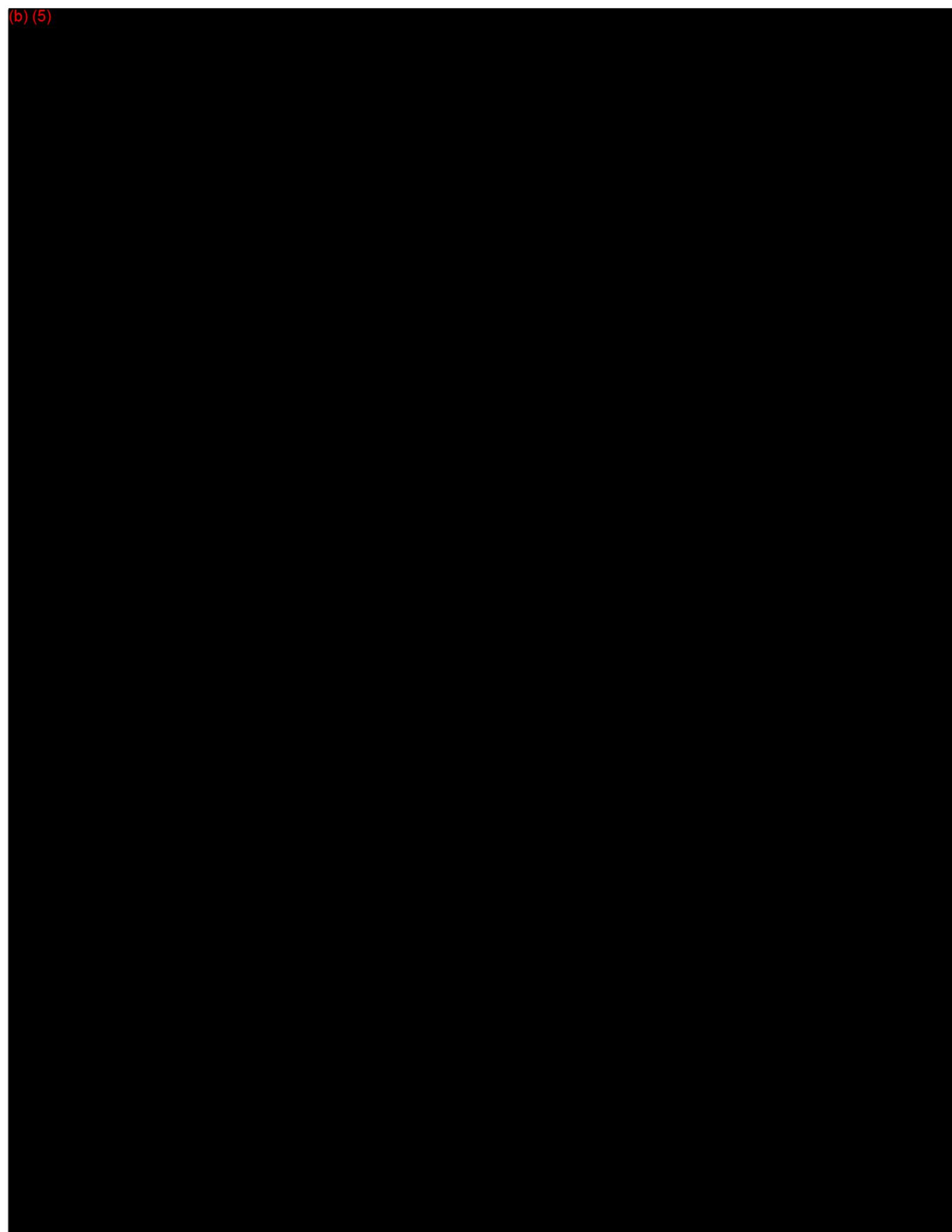




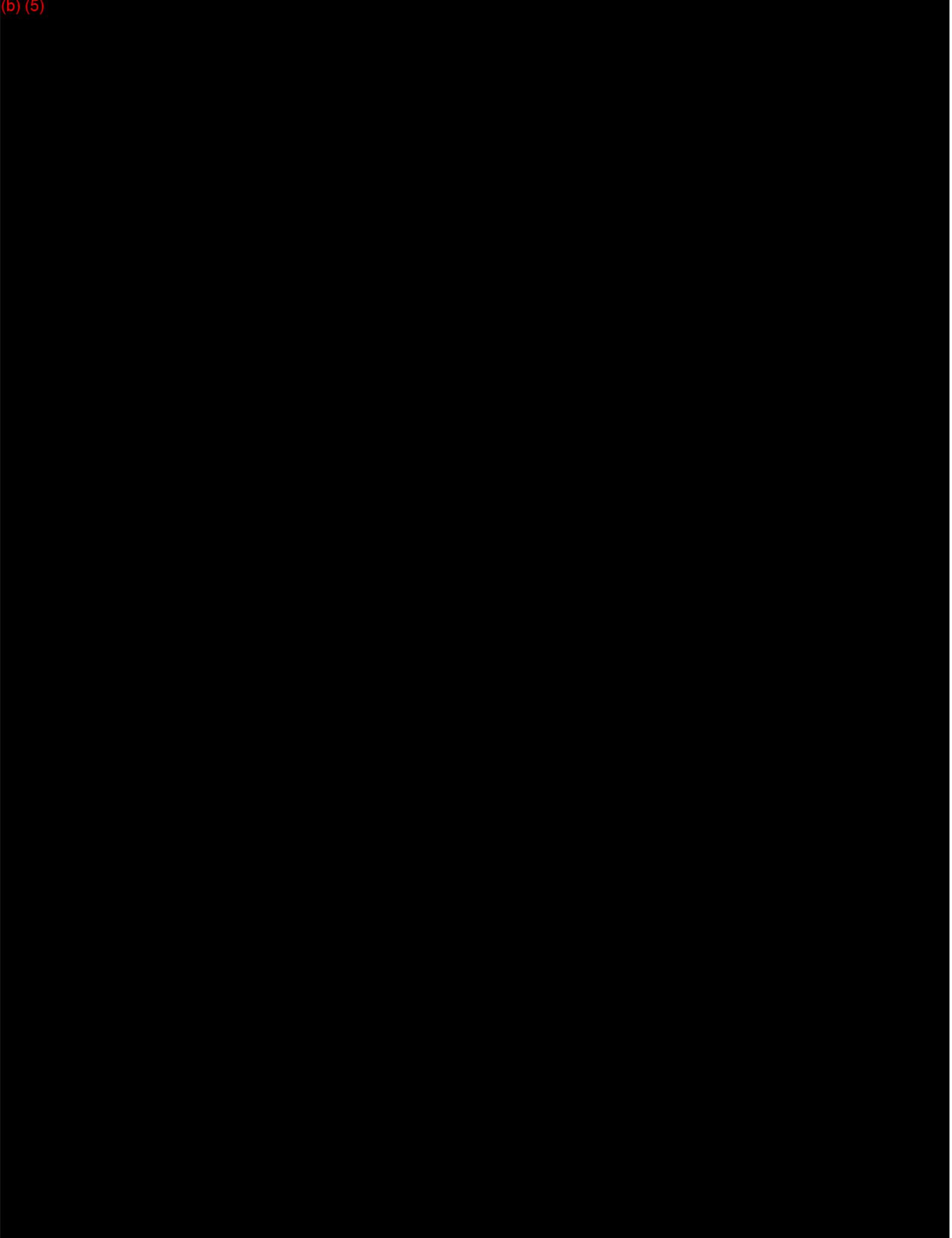


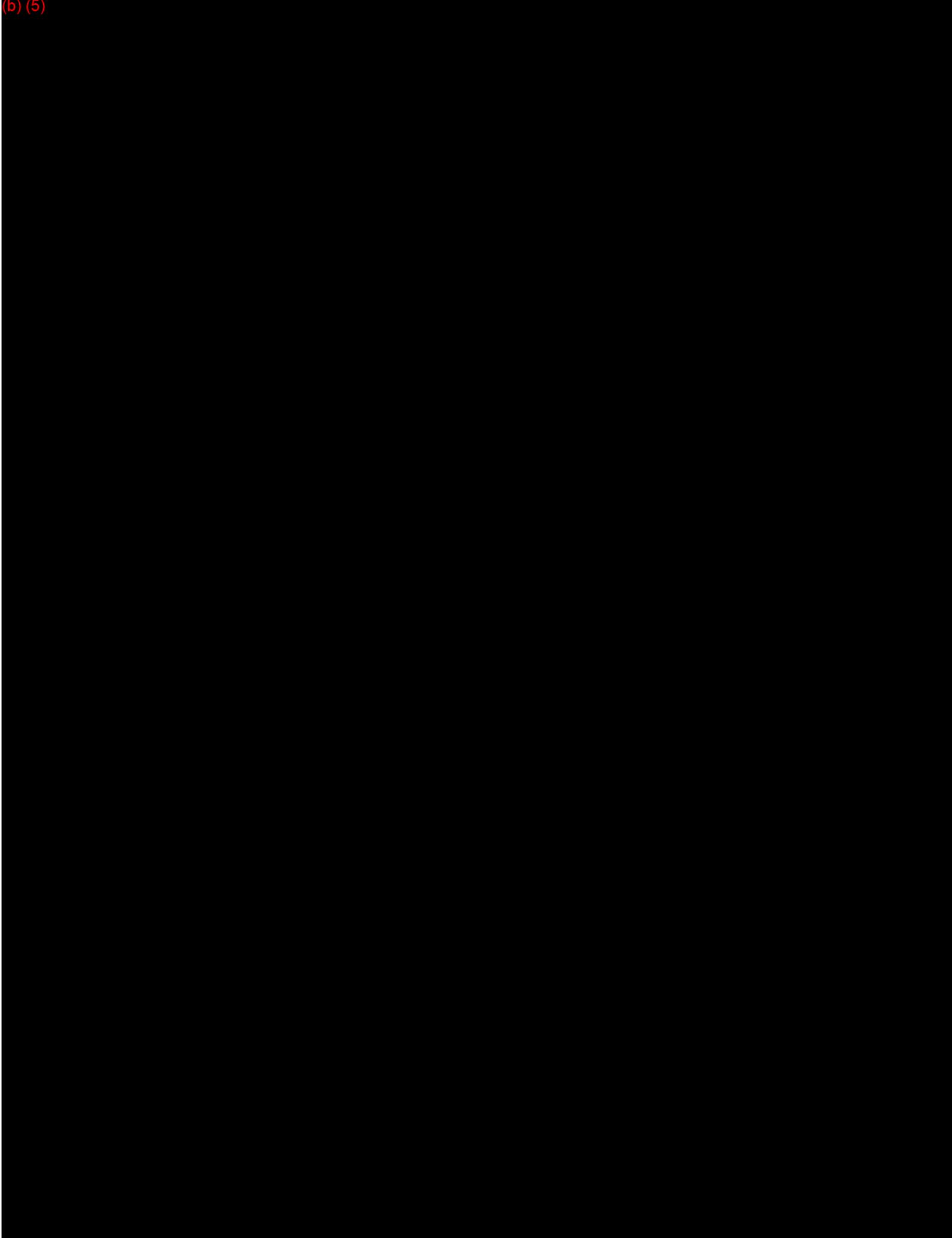


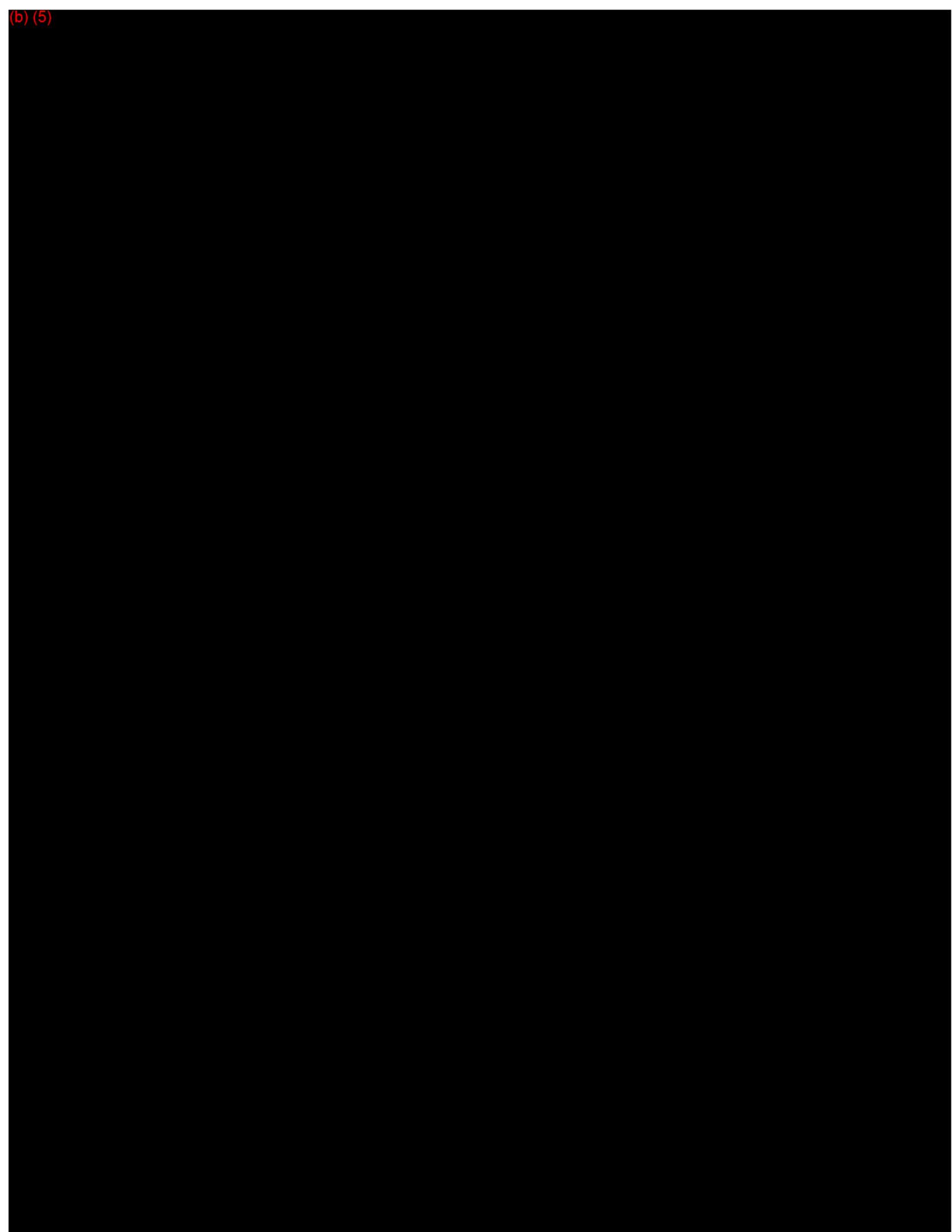




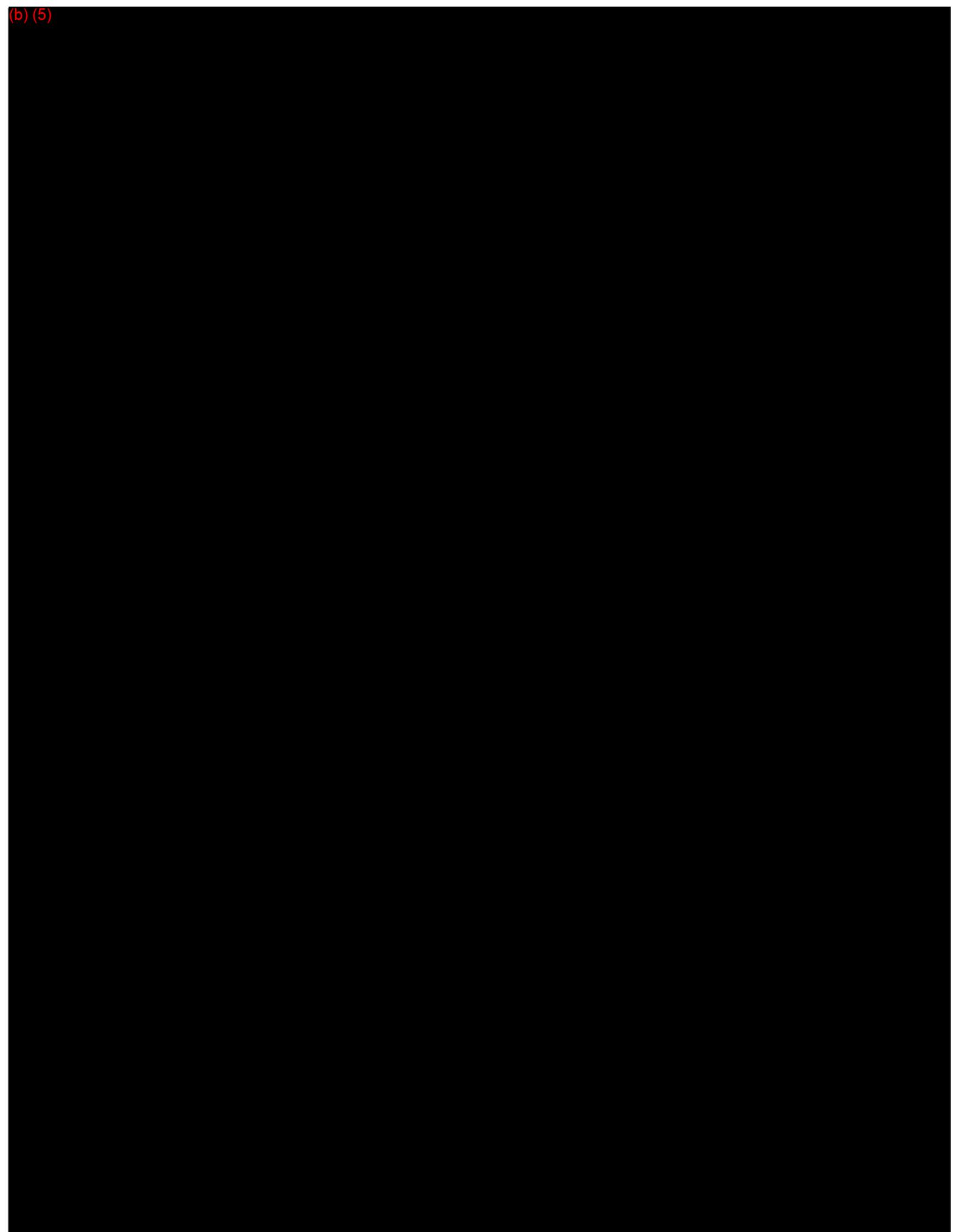
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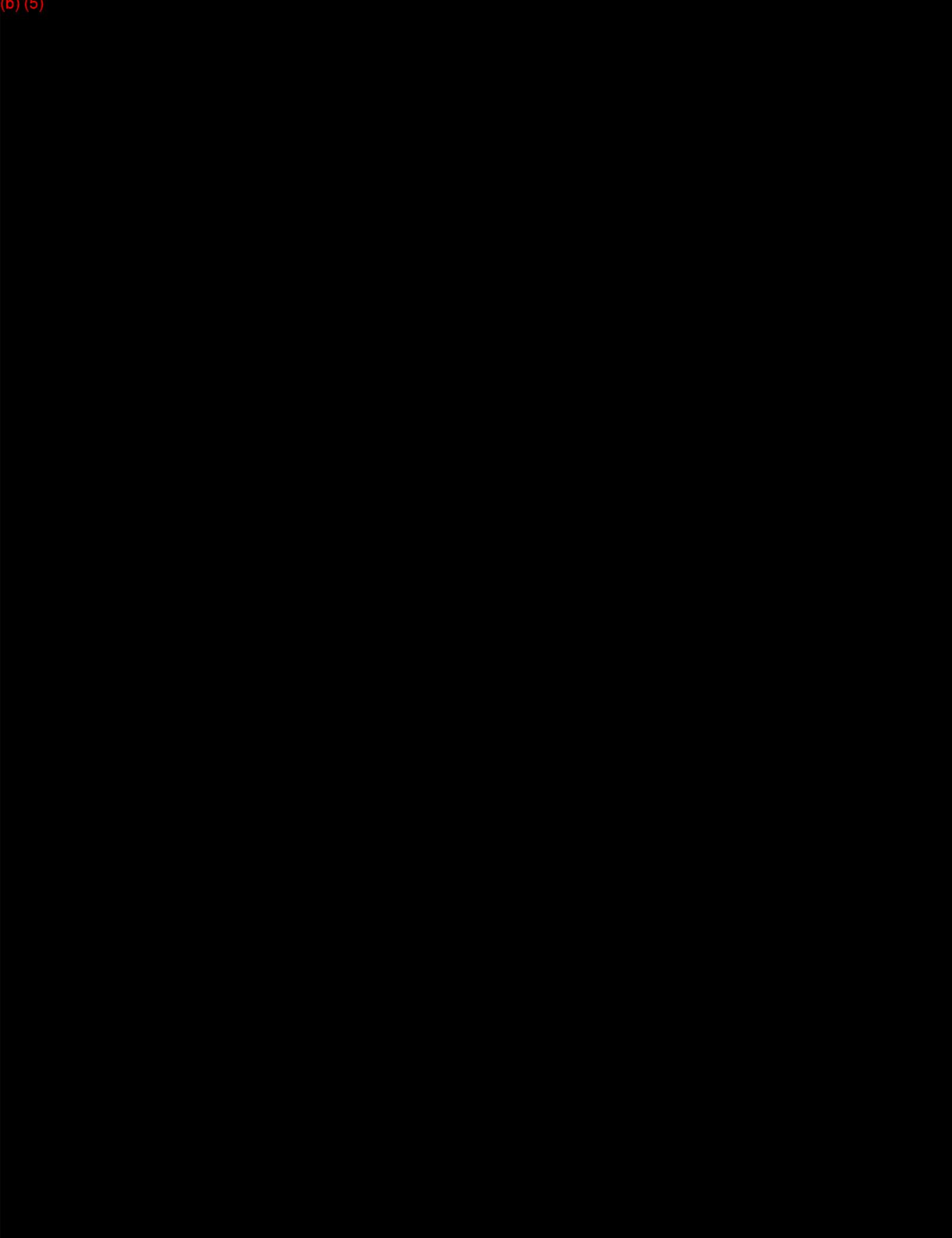


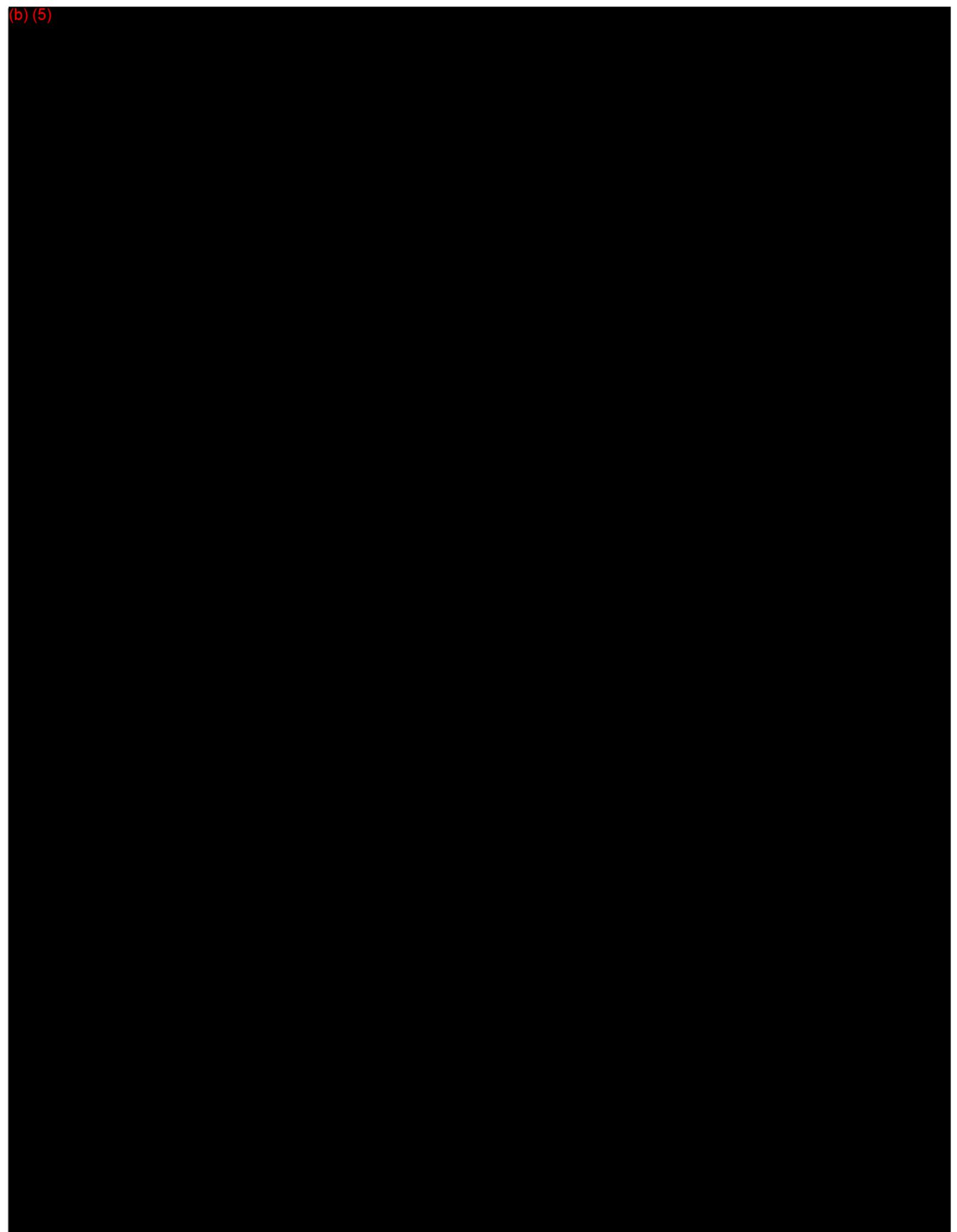




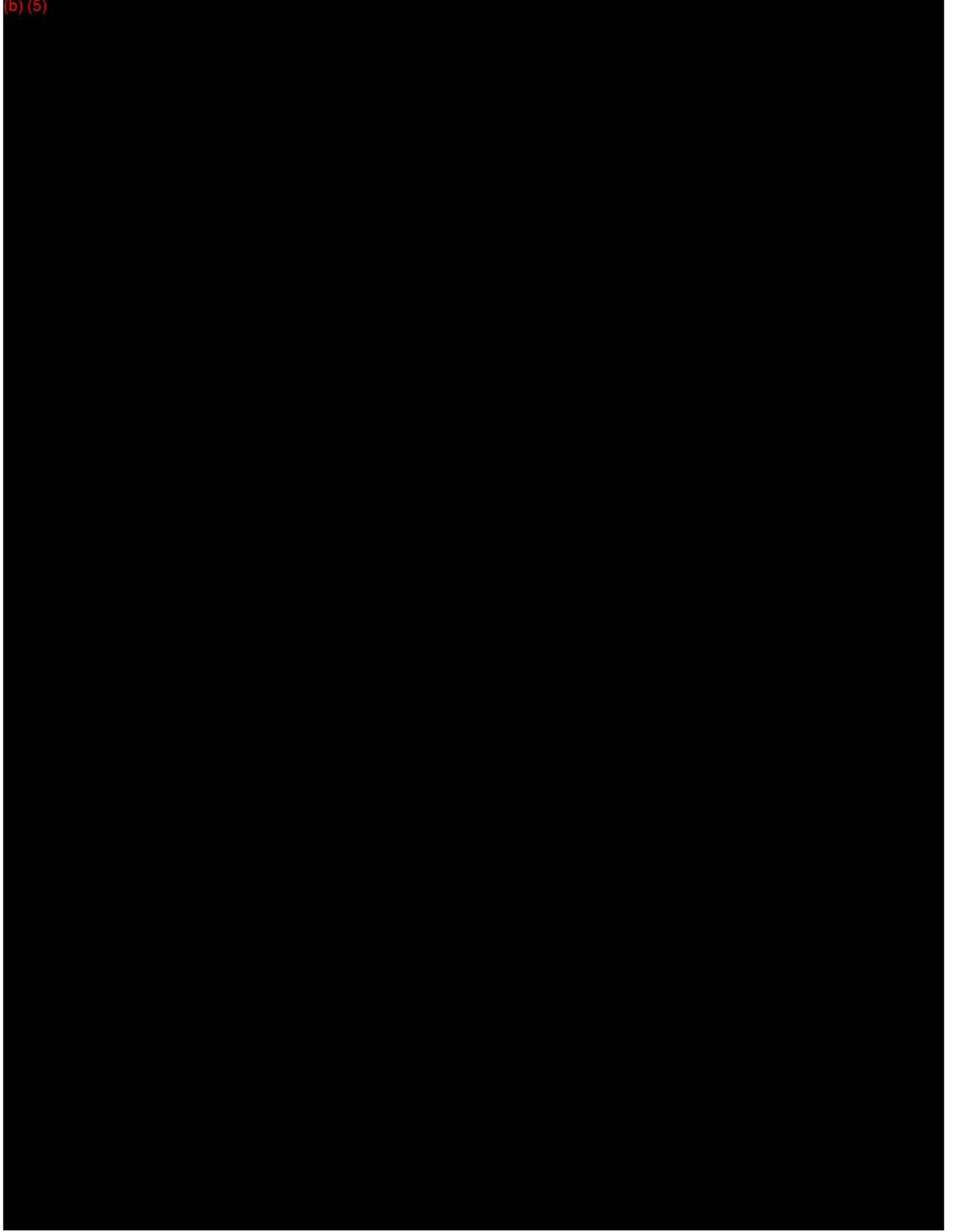
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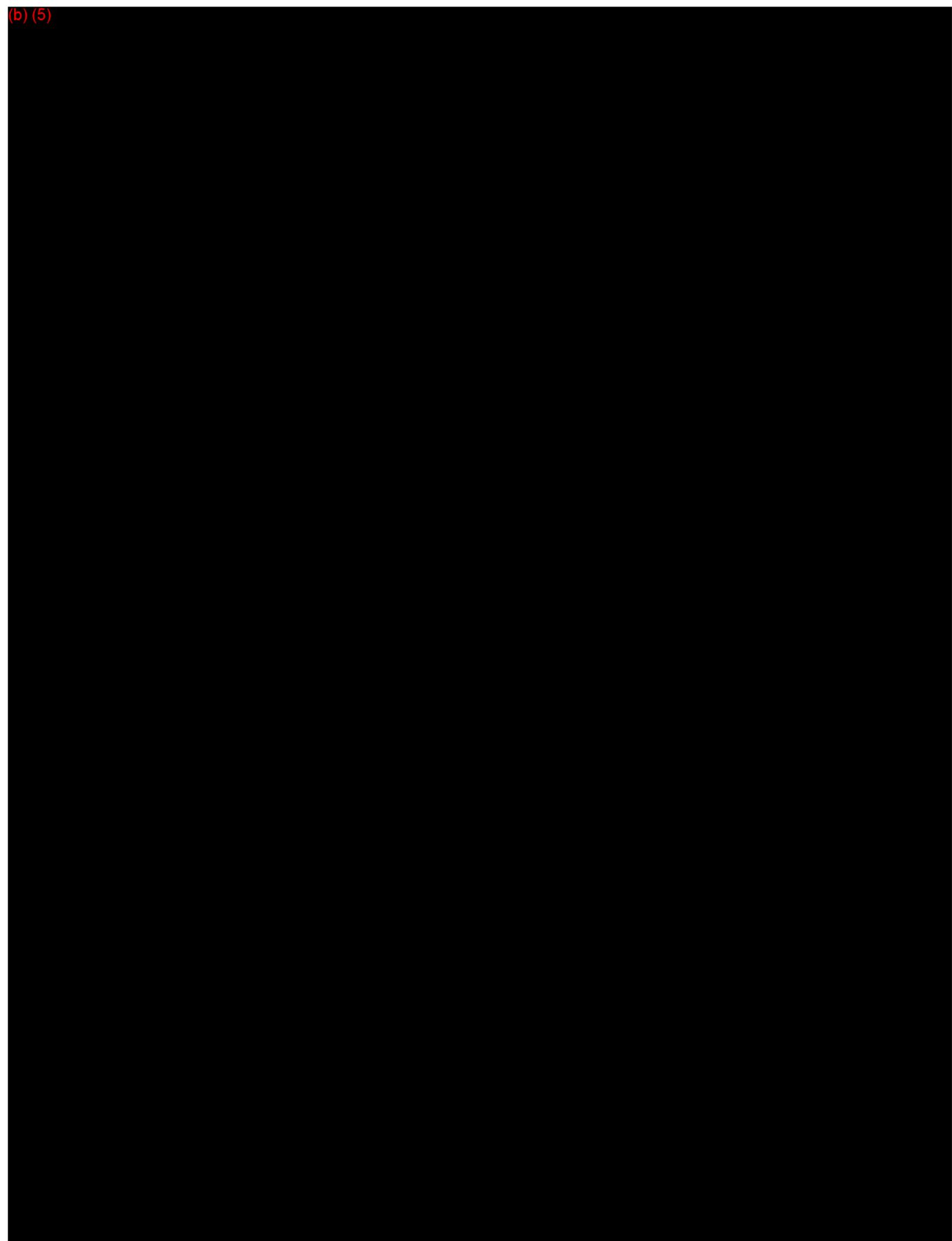


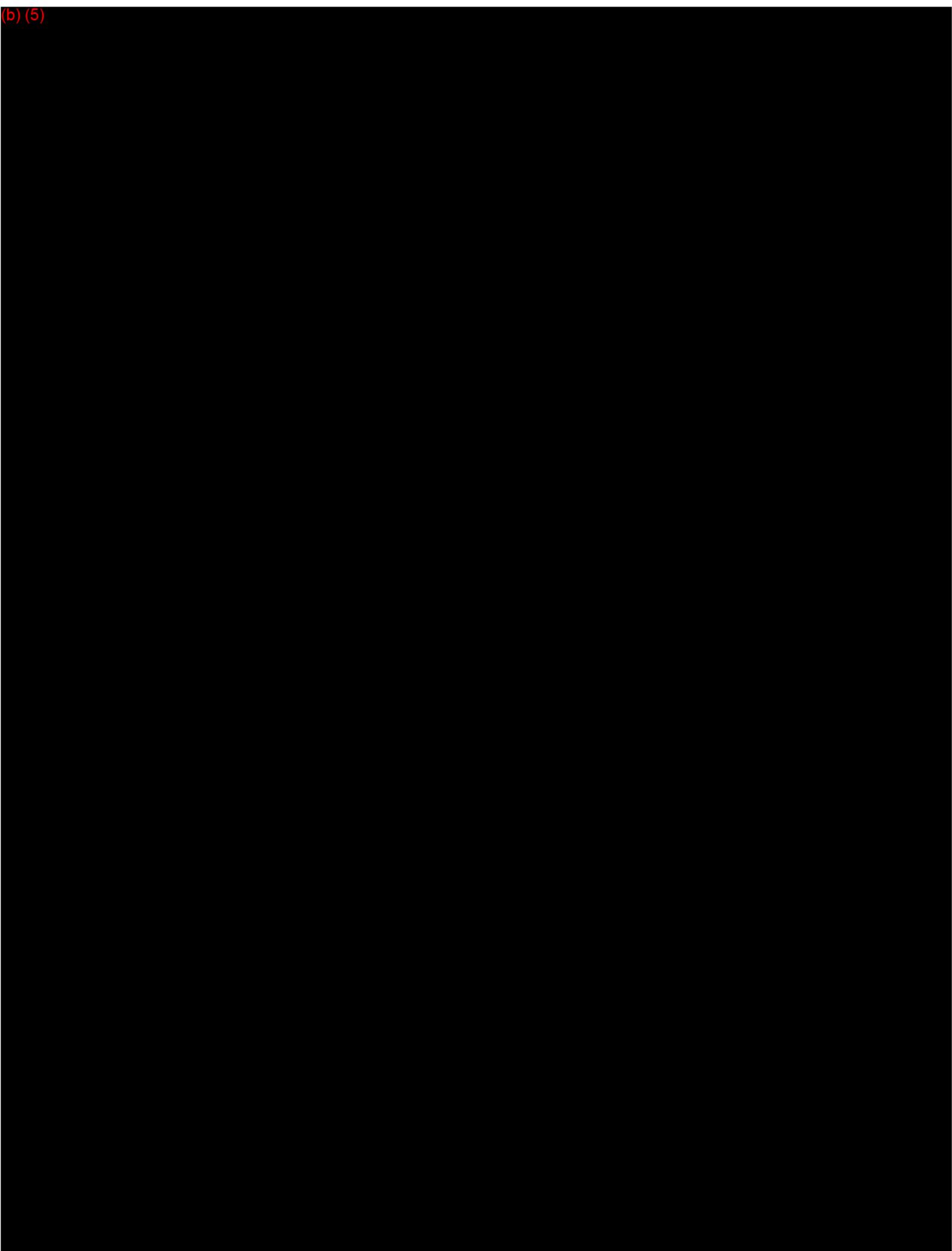


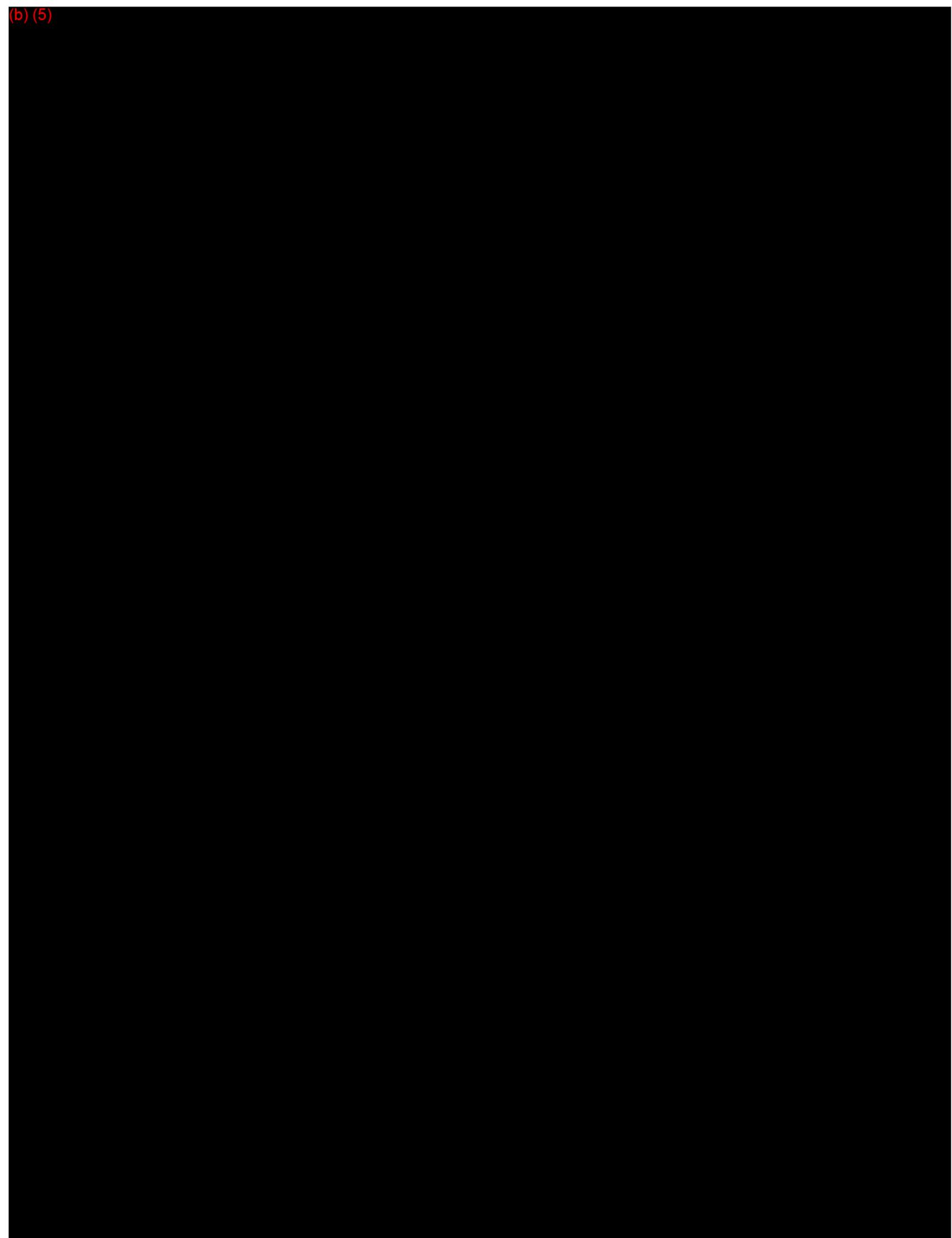


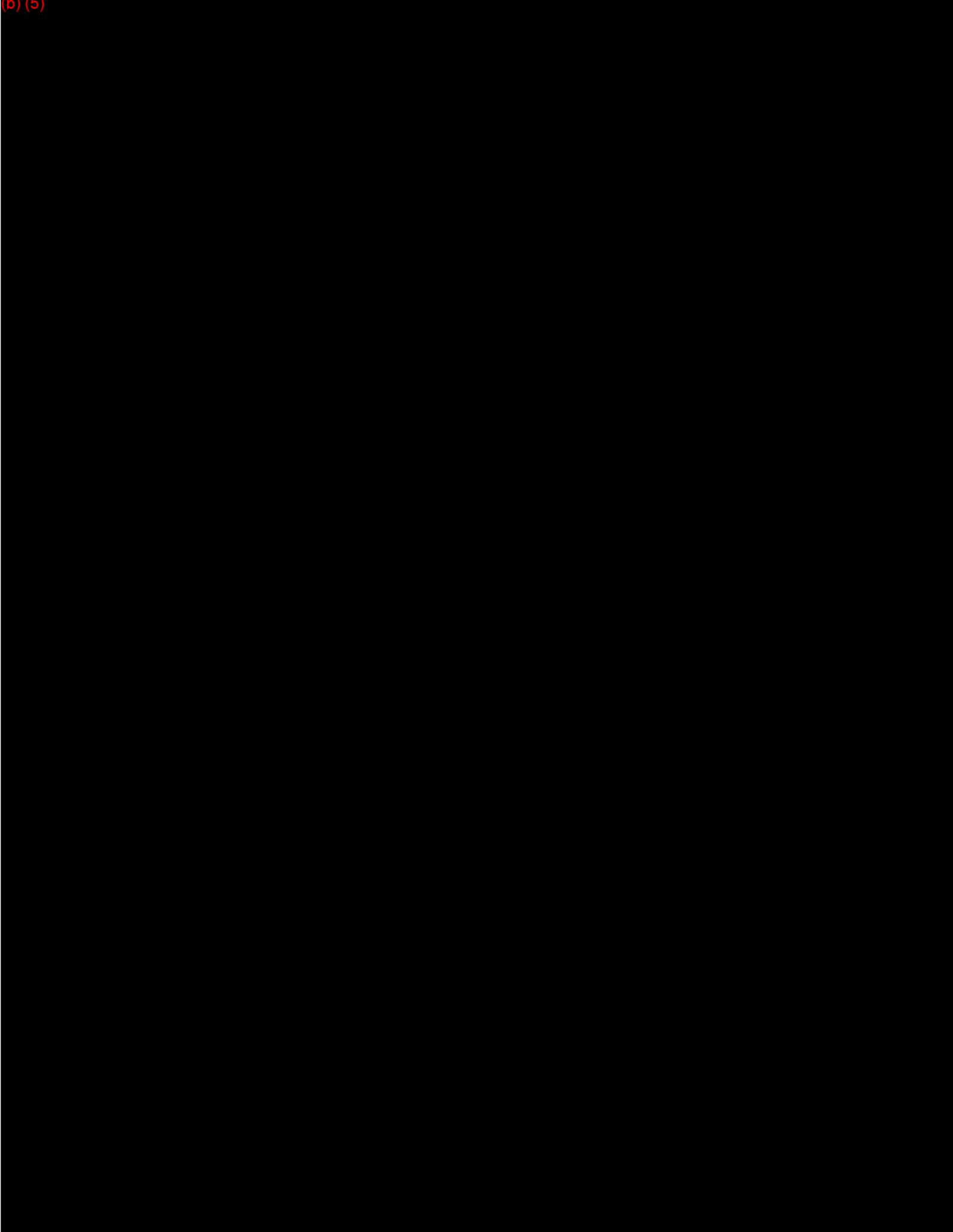
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

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- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

Next Steps:

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Date: July 13, 2018

Re: Backgrounder for Mary Neumayr Nomination

Background: On June 18, 2018, President Trump nominated Mary Bridget Neumayr, of Virginia, to be the Chair of the White House Council on Environmental Quality (CEQ). The following document provides a brief overview of the ongoing news surrounding Ms. Neumayr's nomination.

Overview:

Ms. Neumayr has been serving as CEQ's Chief of Staff since March 2017. Prior to joining CEQ, she served in a variety of positions with the Committee on Energy and Commerce in the U.S. House of Representatives; including as Deputy Chief Counsel, Energy and Environment (2017); Senior Counsel (2011-2017); and Counsel (2009-2010). Ms. Neumayr also served as Deputy General Counsel for Environment and Nuclear Programs at the U.S. Department of Energy (2006-2009), and as Counsel to the Assistant Attorney General for the Environment and Natural Resources Divisions at the U.S. Department of Justice (2003-2006). Prior to her government service, Ms. Neumayr was in private legal practice from 1989 through 2003. She received her B.A. from Thomas Aquinas College and her J.D. from the University of California, Hastings College of Law.

White House press release on intent to nominate: <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-46/>

White House press release on formal nomination: <https://www.whitehouse.gov/presidential-actions/seventeen-nominations-one-withdrawal-sent-senate-today/>

Post-Nomination News:

06/12/2018: E&E News, *Trump nominates Mary Neumayr as CEQ head:*

<https://www.eenews.net/stories/1060084231>

- "I am pleased that the President has nominated Mary Neumayr to lead the Council on Environmental Quality," Sen. Jim Inhofe (R-Okla.) said in a statement. "We've worked well together and I appreciate her commitment to protecting the environment while also cutting duplicative and unnecessary regulations. She will play a key role in working with Congress to promote good government reforms as we work towards an infrastructure bill. I congratulate her on her nomination, and look forward to her confirmation."

06/13/2018: The Hill, *Trump taps Hill veteran for White House environment job:*

<http://thehill.com/policy/energy-environment/392038-trump-taps-hill-veteran-for-white-house-environment-job>

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- Neumayr took her post at CEQ in March 2017. Before that, she held various senior roles working for Republicans on the House Energy and Commerce Committee for eight years, including most recently as deputy chief counsel for energy and environment

06/13/2018: Inside EPA, *Trump taps acting CEQ chair for permanent role*:

<https://insideepa.com/daily-feed/trump-taps-acting-ceq-chair-permanent-role>

- Neumayr oversaw the withdrawal of the Obama administration's guidance for how to consider greenhouse gases in National Environmental Policy Act (NEPA) reviews, and is also conducting a broader rewrite of NEPA implementing rules. That effort is awaiting first-time public release as an advance notice of proposed rulemaking currently [under review](#) by the White House Office of Information & Regulatory Affairs.
- One industry lawyer who works on NEPA issues called Neumayr's nomination "very good news. She will definitely be confirmed, and she brings a great deal of background knowledge and experience in issues CEQ is dealing with now on NEPA and permit reform." The lawyer adds that she is "a careful and reasonable voice on these issues, and I think having someone like her at the helm will advance the cause of putting some of the reforms that the administration supports both into practice and codifying them with potential amendments to the regulations that are [soon to be] proposed." The lawyer stresses the difference between Neumayr and White as "night and day," with Neumayr being an "apolitical pro."
- A former CEQ official also offers praise for Neumayr's work ethic. "In her time as acting chair, Mary has built a track record of solid management of decisions and process and of treating staff well and empowering them to be effective."

06/13/2018: Politico Morning Energy: <https://www.politico.com/newsletters/morning-energy/2018/06/13/pruitt-hits-the-road-again-249986>

- **TRUMP TAPS NEUMAYR:** The White House announced that Trump plans to nominate Mary Neumayr to run his Council on Environmental Quality. Neumayr's appointment would make official her role at CEQ, where she has been the acting head since March 2017. One of her most important acts thus far at CEQ was the withdrawal of Obama-era CEQ guidance on incorporating greenhouse gas emissions into environmental reviews, Pro's Alex Guillén [reports](#).
- **Prior to her time at CEQ,** Neumayr spent eight years at the House Energy and Commerce Committee as deputy chief counsel, and during the George W. Bush administration worked as deputy general counsel for environment and nuclear programs at the Energy Department and as a counsel to the assistant attorney general for the Justice Department's Energy and Natural Resources Division. She helped author a Supreme Court [brief](#) in 2011 for Republican lawmakers arguing that the courts should leave climate change policy to the legislative and executive branches. In that case, *AEP v. Connecticut*, the high court unanimously [backed up EPA's authority](#) under the Clean Air Act to regulate greenhouse gases.

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06/13/2018: New York Times, *Trump tires again to fill a top environmental job*:
<https://www.nytimes.com/2018/06/13/climate/could-earths-ice-sheets-collapse.html>

- Brett Hartl, director of government affairs at the Center for Biological Diversity, an environmental group, criticized Ms. Neumayr as “instrumental” in Republican efforts to roll back clean air protections during her time on Capitol Hill. He called her appointment “very bad news for human health and the health of the environment.”
- Representative Rob Bishop of Utah, the Republican chairman of the House Committee on Natural Resources, noted Ms. Neumayr’s experience. He said it would be key in handling looming issues like overhauling the National Environmental Policy Act, which spells out the review process for major federal projects. He called Ms. Neumayr a “superb choice.”

06/14/2018: The Washington Post, *Trump tries more middle-of-the-road pick for top White House environment post*: https://www.washingtonpost.com/news/energy-environment/wp/2018/06/13/trump-tries-a-more-middle-of-the-road-pick-for-top-white-house-environment-post/?utm_term=.5443f5d1d879

- Sen. John Barrasso (R-Wyo.) said in a statement Wednesday that Neumayr will “make a strong leader at the Council on Environmental Quality,” given her experience at the White House and on Capitol Hill.
- Michael Catanzaro, who served as special assistant to the president for domestic energy and environmental policy before rejoining the D.C.-based consulting group CGCN this spring, said in an email Wednesday that “Neumayr is a consummate professional, who possesses outstanding legal skills and exceptional knowledge of environmental policy. She has been and will continue to be a tremendous asset to CEQ, the President, and the country.”
- “The thing about Mary is that you can work with her and talk with her and have a cordial professional conversation,” said one of the staffers.

06/14/2018: E&E News, *Even some greens like Trump’s pick for CEQ*:
<https://www.eenews.net/climatewire/2018/06/14/stories/1060084471>

- “She is a good selection for the administration to oversee CEQ and certainly a stark contrast with the conscious outlier and extreme figure that they initially selected,” said John Walke, clean air director with the Natural Resources Defense Council. “She always made a point of coming down to the witness table after the hearing to thank me for my testimony, which doesn’t always happen — especially for those whose bosses don’t always take the same position of NRDC,” Walke said. “I think she will do her job well. She is not a bomb thrower, and she is not someone who governs through sound bites and shrill press releases.”
- “I think she combines the best of being a true believer — a good, solid pro-business Republican — with just being very, very knowledgeable about how the executive and legislative branches implement the laws and deal with the laws,” said Jim Barnette, a

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partner at Steptoe & Johnson LLP who worked with Neumayr when he was Energy and Commerce Committee general counsel until 2012.

- "She's one of the most conscientious, hardworking and thoughtful energy policy staffers in D.C. with deep experience in a wide range of law and policy," said Maryam Brown, vice president of federal affairs with Sempra Energy. Brown and Neumayr worked together on the Energy and Commerce Committee before Brown moved onto then-House Speaker John Boehner's (R-Ohio) staff, where they kept in contact on energy and environment legislation.

06/14/2018: E&E News, *No 'alarm sirens' over second CEQ pick – Carper:*

<https://www.eenews.net/eedaily/2018/06/14/stories/1060084439>

- Sen. Tom Carper (D-Del.), who urged the White House to abandon efforts to confirm Trump's first pick to lead CEQ, Kathleen Hartnett White, said yesterday he did not personally know Mary Neumayr but had been told by staff members who have worked with her that "alarm sirens don't go off". I look forward to meeting with her to learn her views on a range of issues," Carper told E&E News of Neumayr, who has been leading CEQ as its chief of staff since joining in March of 2017.
- Rep. John Shimkus (R-Ill.), a senior member of the Energy and Commerce panel, praised Neumayr yesterday. "In my dealings with her she was respectful, hardworking, diligent and I think would be a good choice," he told E&E News.
- Neumayr was also praised by Stephen Brown, a lobbyist with energy giant Andeavor, who called her "one of the most principled, hard-working and intelligent people I know in the energy/environmental space. Her work in particular on the Clear Air Act issues at the House E&C Committee was unparalleled and I have no doubt that her efforts to bring some sanity to [the National Environmental Policy Act] and related permitting topics will be top notch," Brown wrote in an email.

06/14/2018: Chemical and Engineering News, *White House picks environmental advisor:*

<https://cen.acs.org/environment/White-House-picks-environmental-advisor/96/i25>

- Neumayr is a much less controversial pick to lead CEQ and likely to win Senate confirmation.

06/19/2018: E&E News, *Greens gird for fight as White House starts NEPA overhaul:*

<https://www.eenews.net/greenwire/stories/1060085087/search?keyword=Mary+neumayr>

- There is also a wild card in the process that could help both the agency and industry groups hoping to get the rewrite done quickly: President Trump's nomination of veteran Capitol Hill staffer Mary Neumayr to lead CEQ. She appears to be a more popular nominee than Kathleen Hartnett White, Trump's last pick to lead the agency.
- "I thought it was a very positive step for people who are interested in seeing this rulemaking come to fruition," Wagner said. "She is very well versed in these rules, very well versed in her background and knowledge of process."

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06/25/2018: E&E News, Panel sets first permitting hearing since CEQ nomination:

<https://www.eenews.net/eedaily/stories/1060086257/search?keyword=Mary+neumayr>

- First, President Trump last week nominated Mary Neumayr as chairwoman of the White House Council on Environmental Quality. The council, which oversees permitting regulations under the National Environmental Policy Act, has lacked a permanent director. Trump's original pick, Kathleen Hartnett White, withdrew her name from consideration after it became clear she would not pass the Senate.

07/03/2018: E&E News, *Trove of emails reveals constellation of climate aides*:

<https://www.eenews.net/climatewire/stories/1060087535/search?keyword=Mary+neumayr>

- Two others at the meeting have been elevated to new roles, leaving their old slots empty. They are Francis Brooke, who left Pence's office to take Catanzaro's position, and Mary Neumayr, who has been nominated to lead the Council on Environmental Quality after serving as its de facto head.

Pre-Nomination News:

02/01/2018: E&E News, *Who's who in Trump's infrastructure initiative*:

<https://www.eenews.net/stories/1060072527>

- CEQ chief of staff Neumayr is also being eyed as a pivotal player in Trump's bid to speed NEPA reviews.
- "If they're going to spend money on infrastructure, the only way they're going to be able to do it is if they streamline the NEPA permitting process," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute, who led the Trump transition at U.S. EPA. "Since CEQ is in charge of NEPA, that means Mary and her team will be important."
- Neumayr also brings deep Capitol Hill experience, having served as deputy chief counsel on energy and environment for the House Energy and Commerce Committee.
- Before that, Neumayr served in the George W. Bush administration as deputy general counsel for environment and nuclear programs at the Energy Department from 2006 to 2009, and as counsel to the assistant attorney general for the Justice Department's Environment and Natural Resources Division from 2003 to 2006.

02/05/2018: E&E News, *Skeptic's retreat sparks questions about alternative science*:

<https://www.eenews.net/stories/1060072867>

- Another explanation is that CEQ's work has continued apace, even if its relatively slim staff is taxed. Many inside the administration believe the acting chief, Mary Neumayr, is capable of steering the council in the interim.

02/21/2018: New York Times, *New Candidates Emerge for Trump's Top Environmental*

Advisor: <https://www.nytimes.com/2018/02/21/climate/trump-environment-adviser-candidates.html>

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- The short list also includes Mary Neumayr, who as the agency's chief of staff since March has been doing the job in an acting capacity for nearly a year, said Jeffrey Holmstead, a partner at the firm Bracewell and a former E.P.A. air chief.
- "She's been a steady hand at C.E.Q. since she got there and everyone thinks she's been doing a great job," Mr. Holmstead said. But, he added, "I'm not sure that she wants the attention that comes with being the chair and having to run the gantlet of the confirmation process."
- Ms. Neumayr's views on topics like climate change are far less well known than Mr. van der Vaart's.

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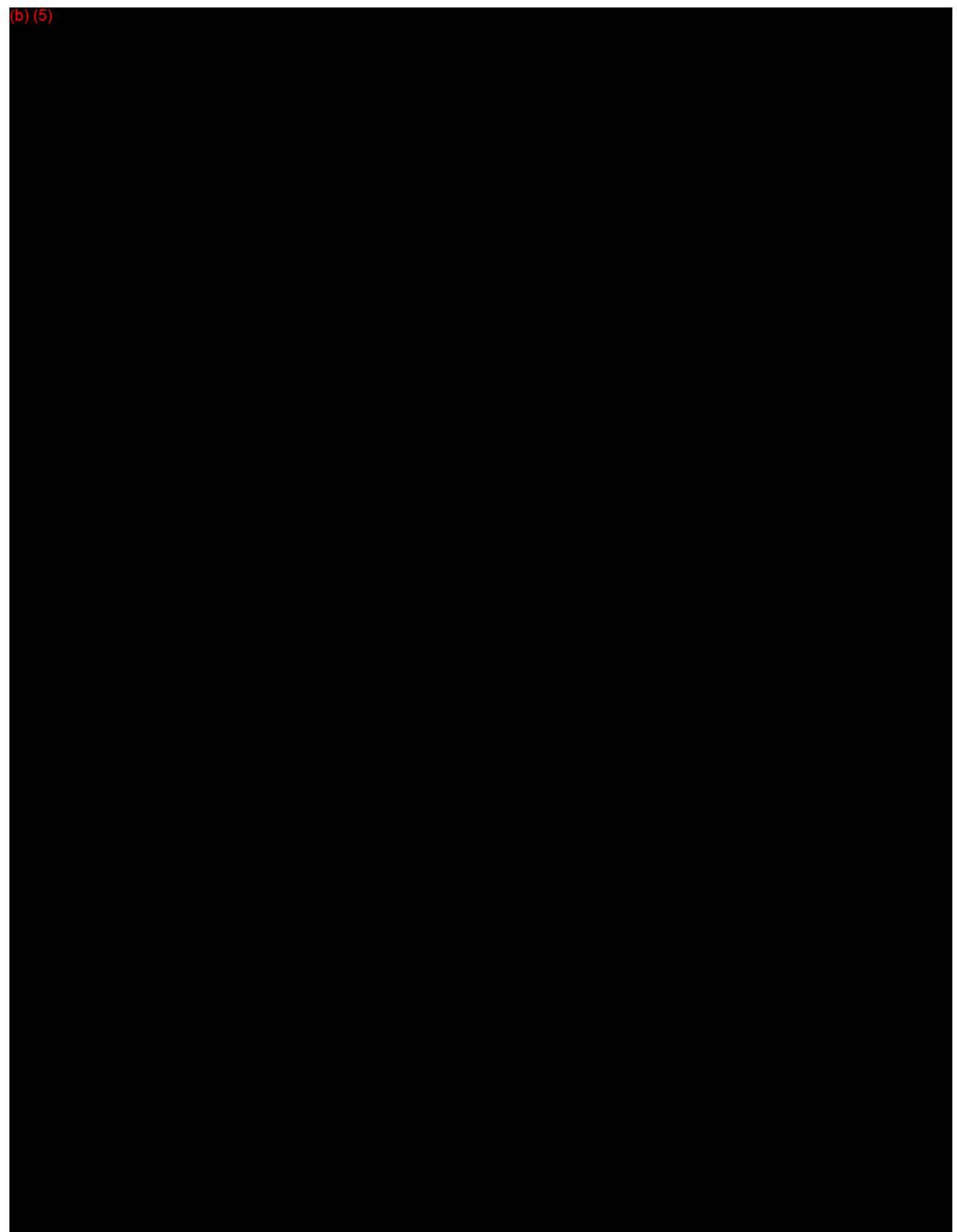
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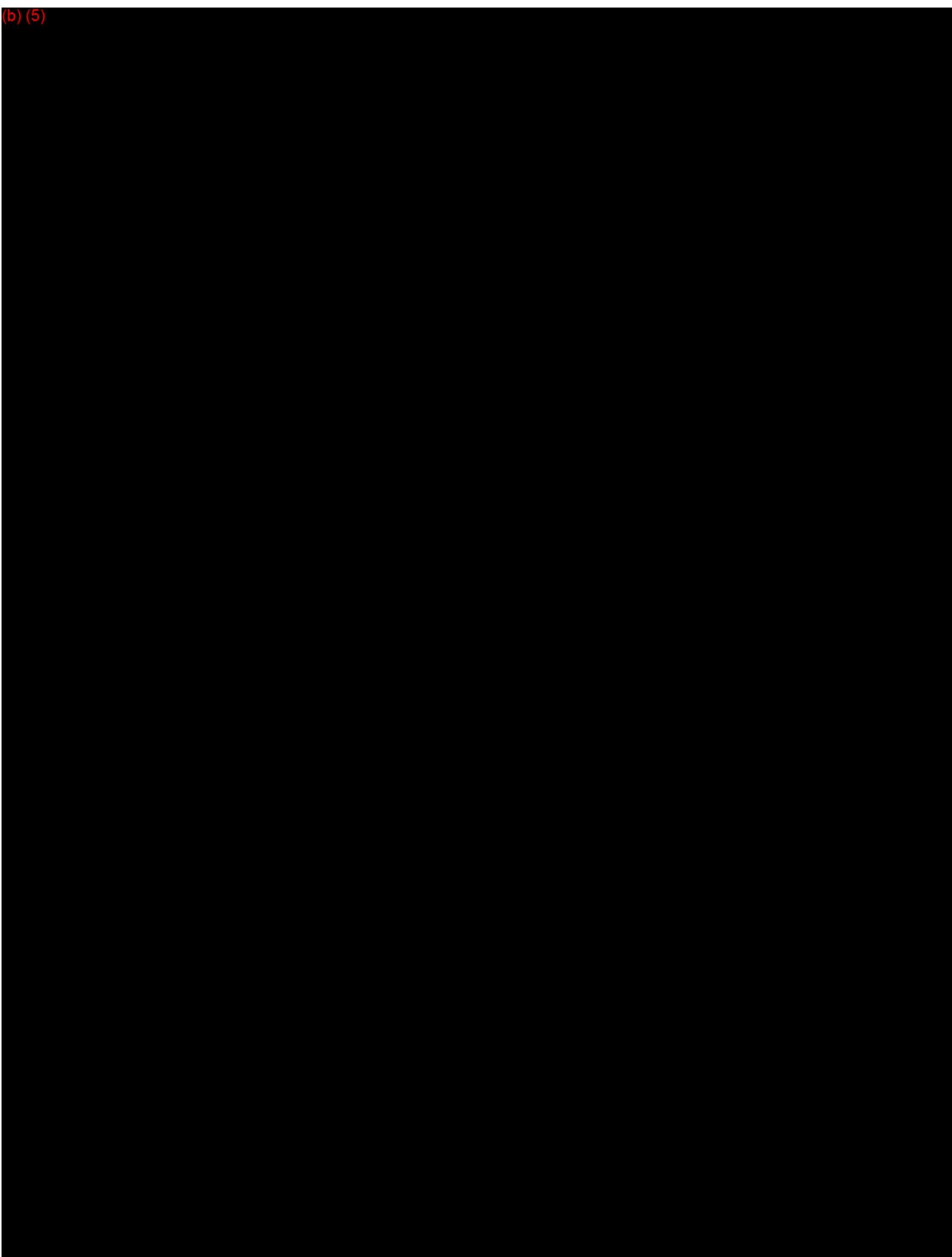
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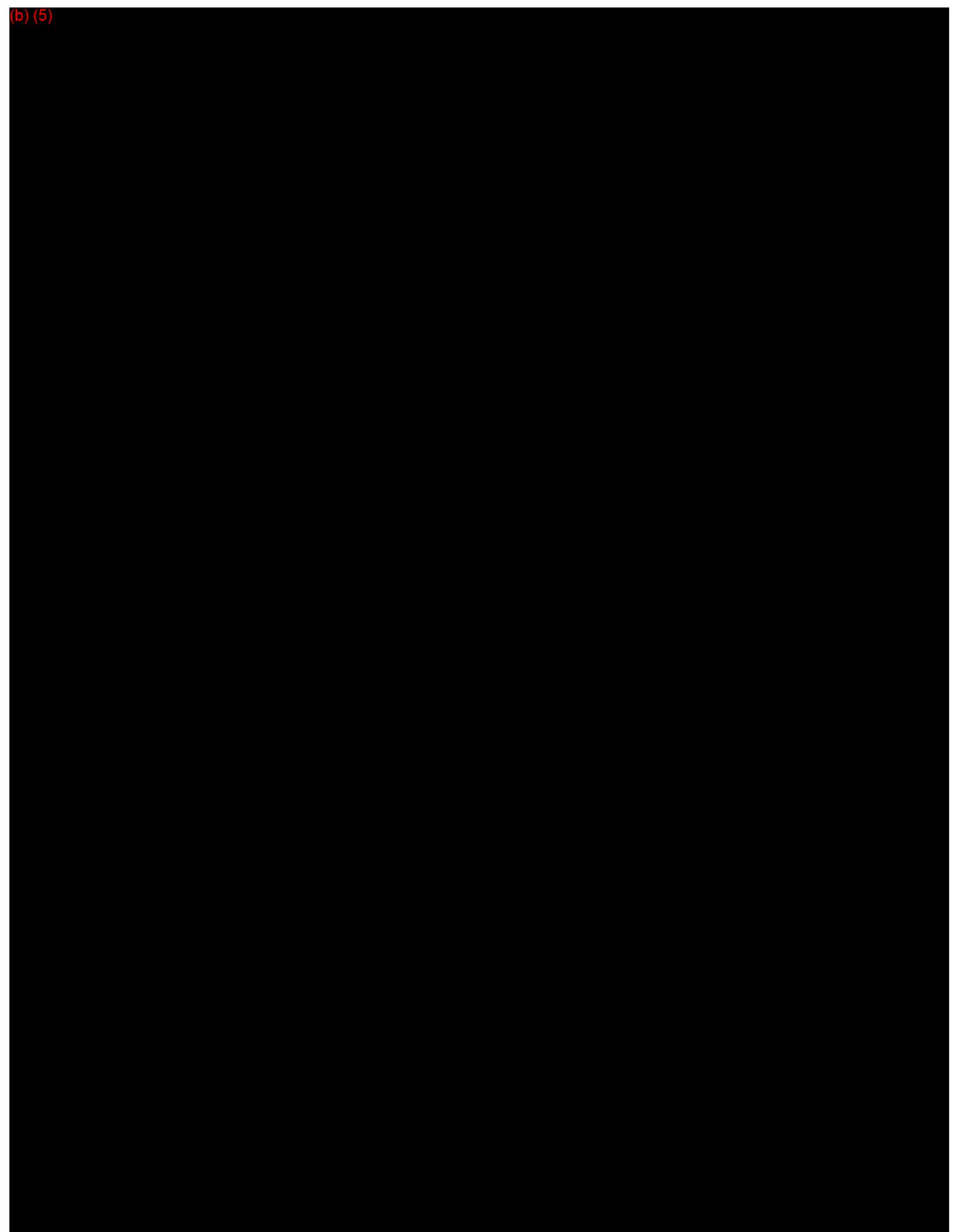
- CEQ requests comment on potential revisions to update and clarify CEQ’s NEPA regulations. Comments should be submitted on or before August 20, 2018. To comment, go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. CEQ-2018-0001.
- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

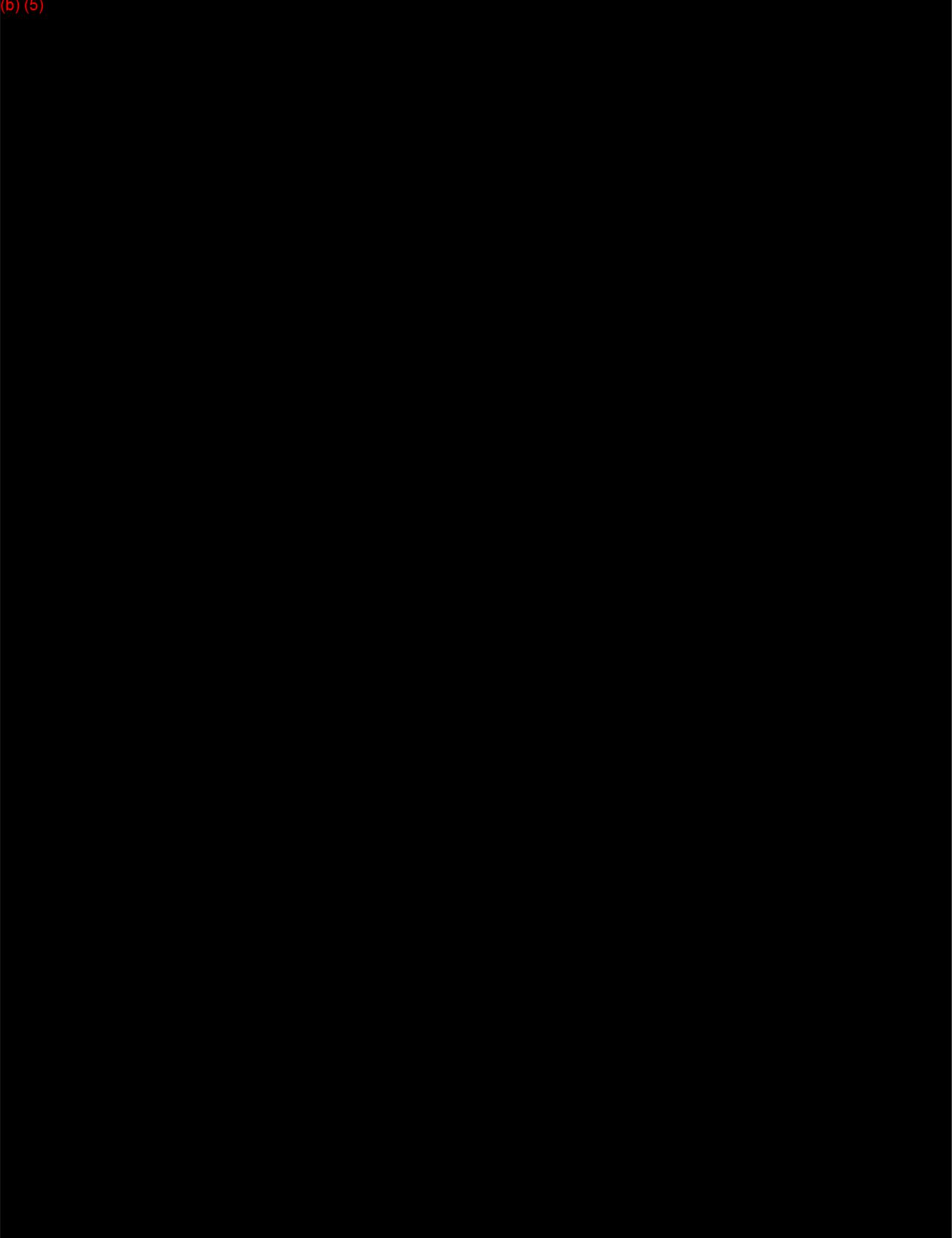
Next Steps:

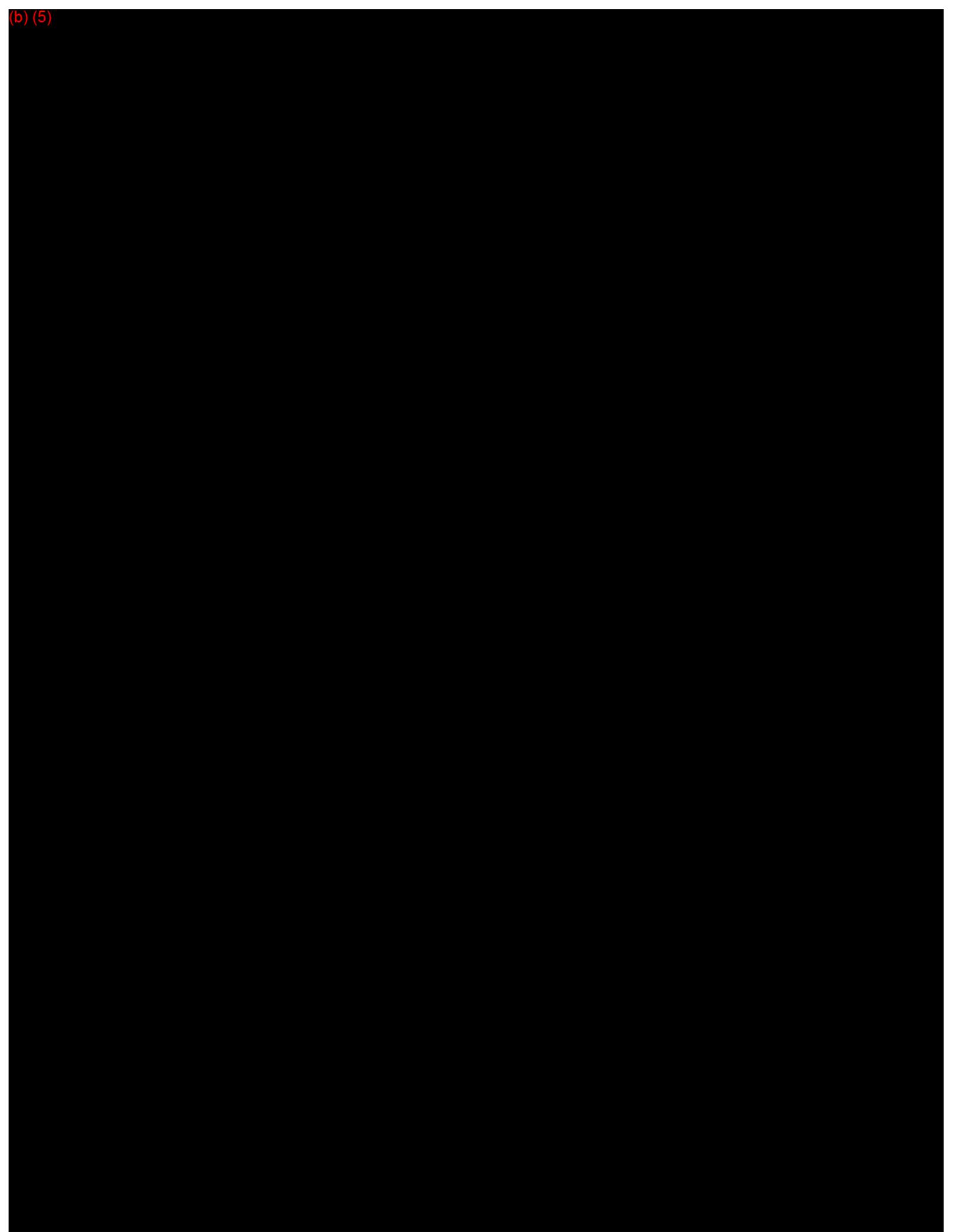
- Following the conclusion of the public comment period, CEQ will review the comments before taking any potential further action.



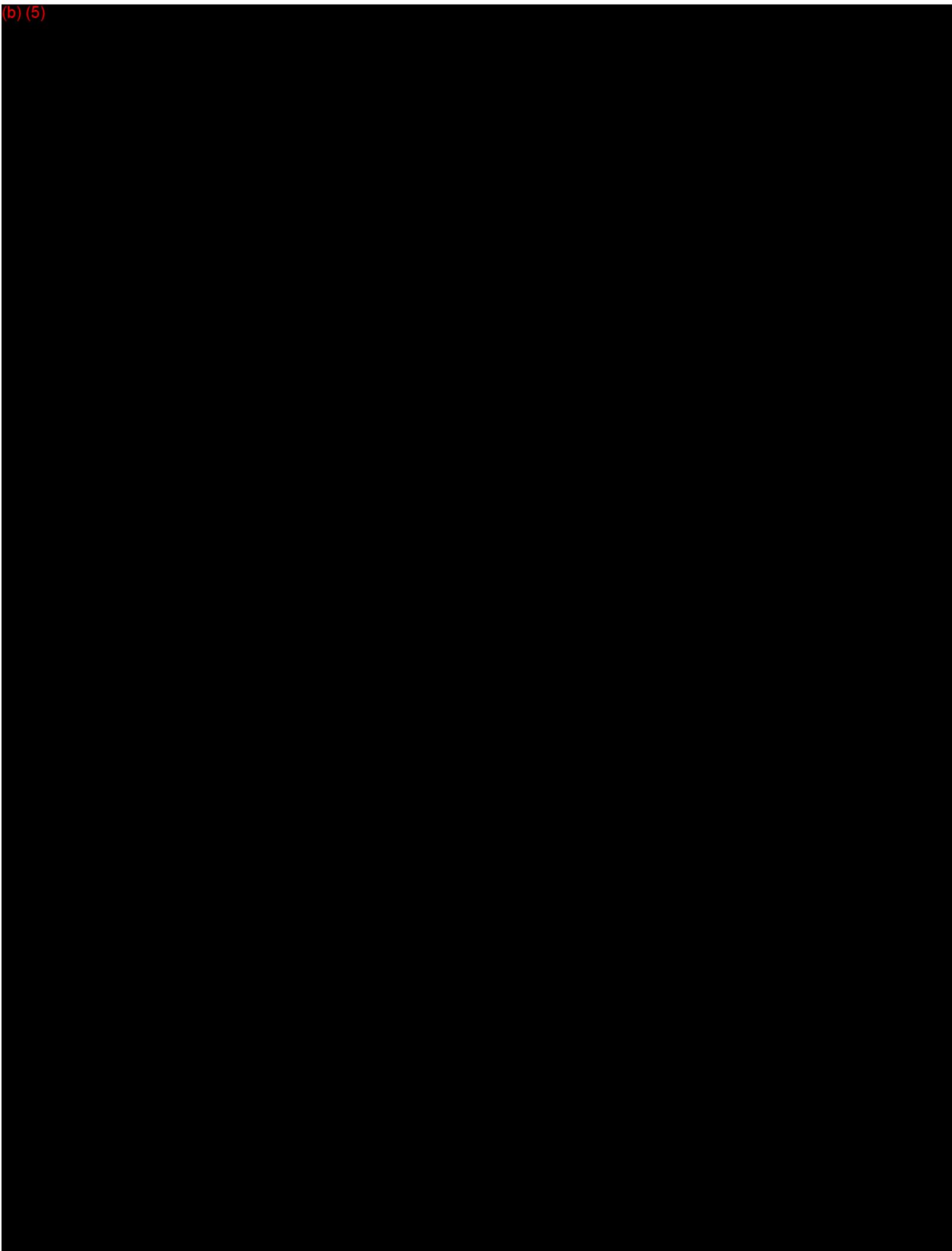


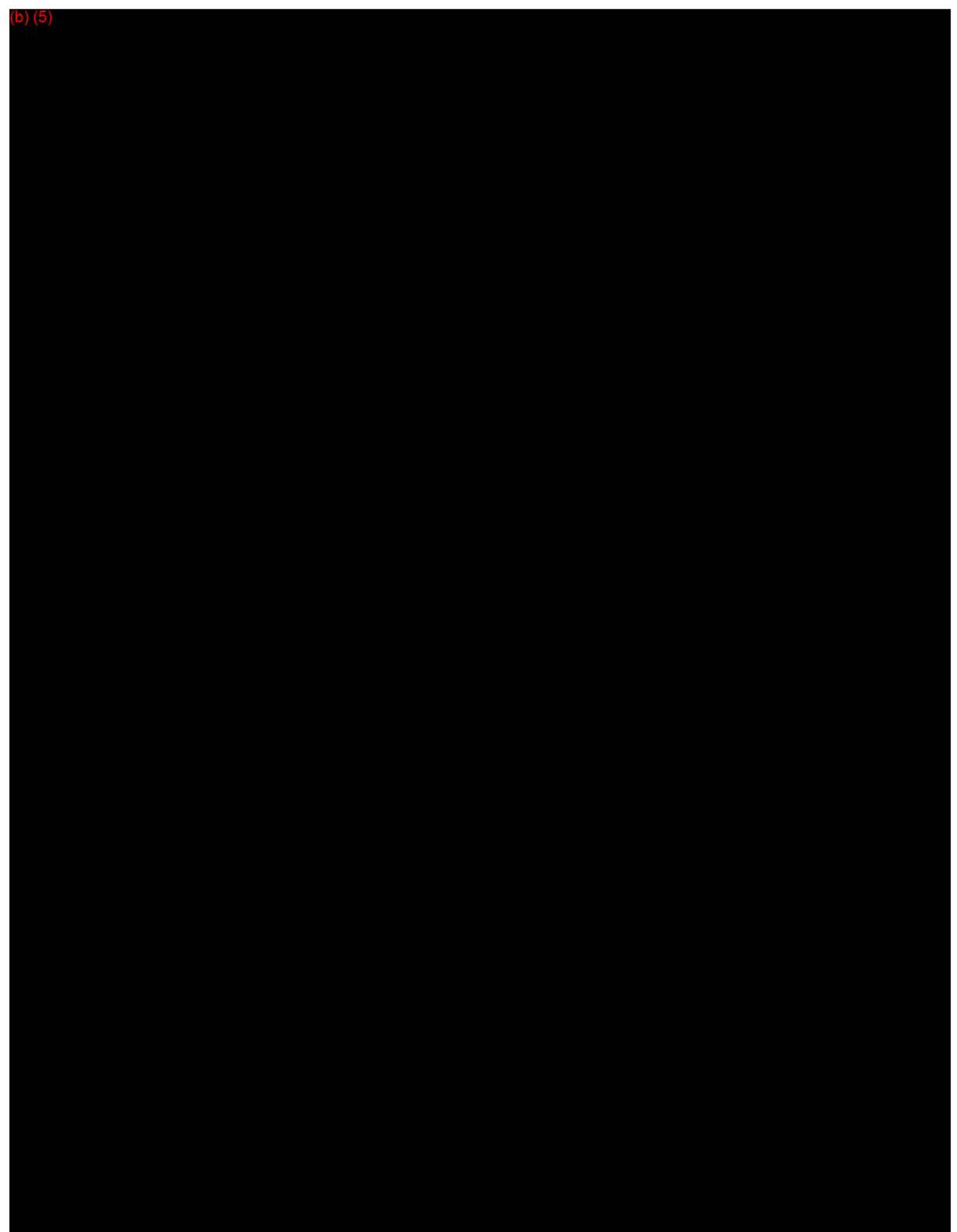




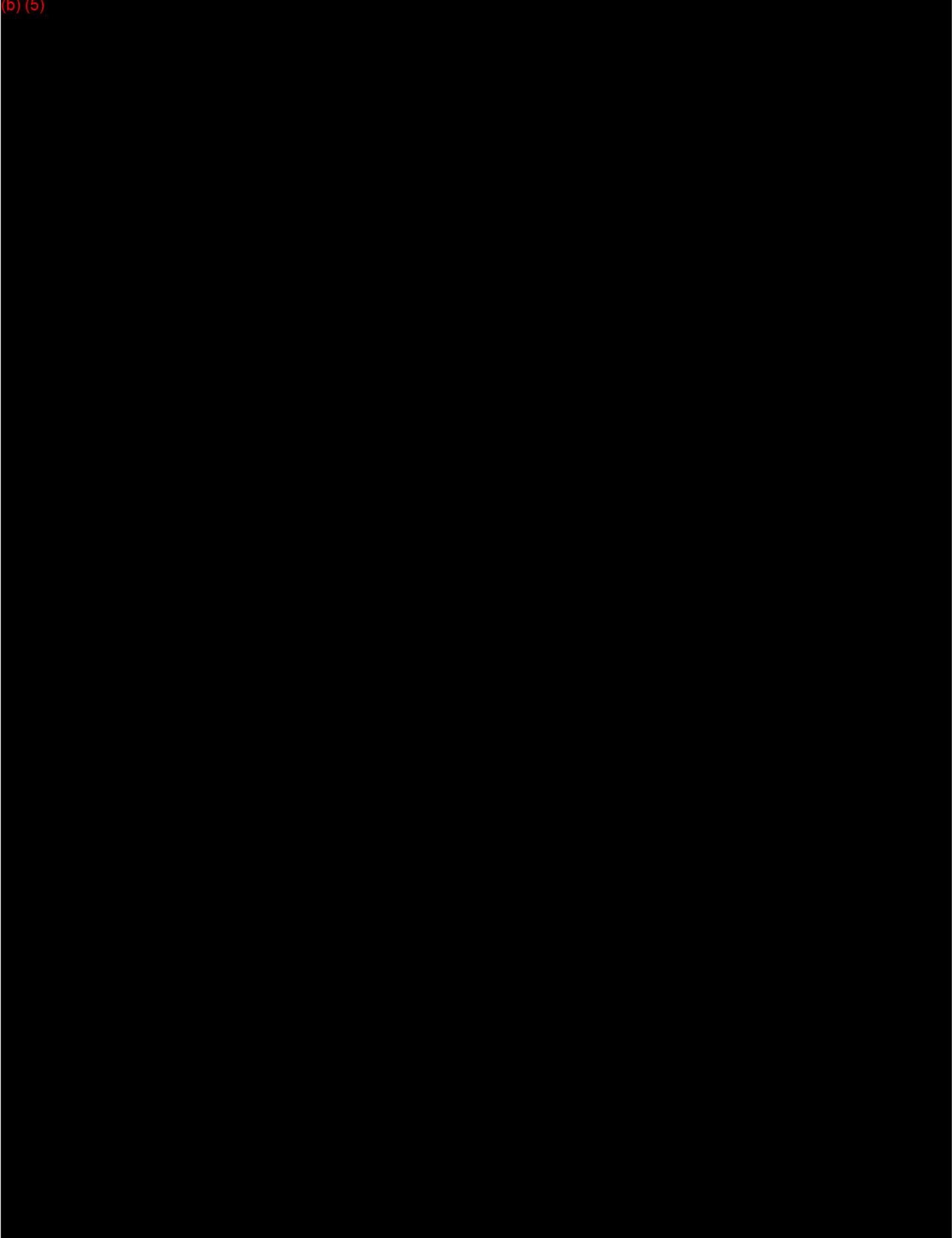


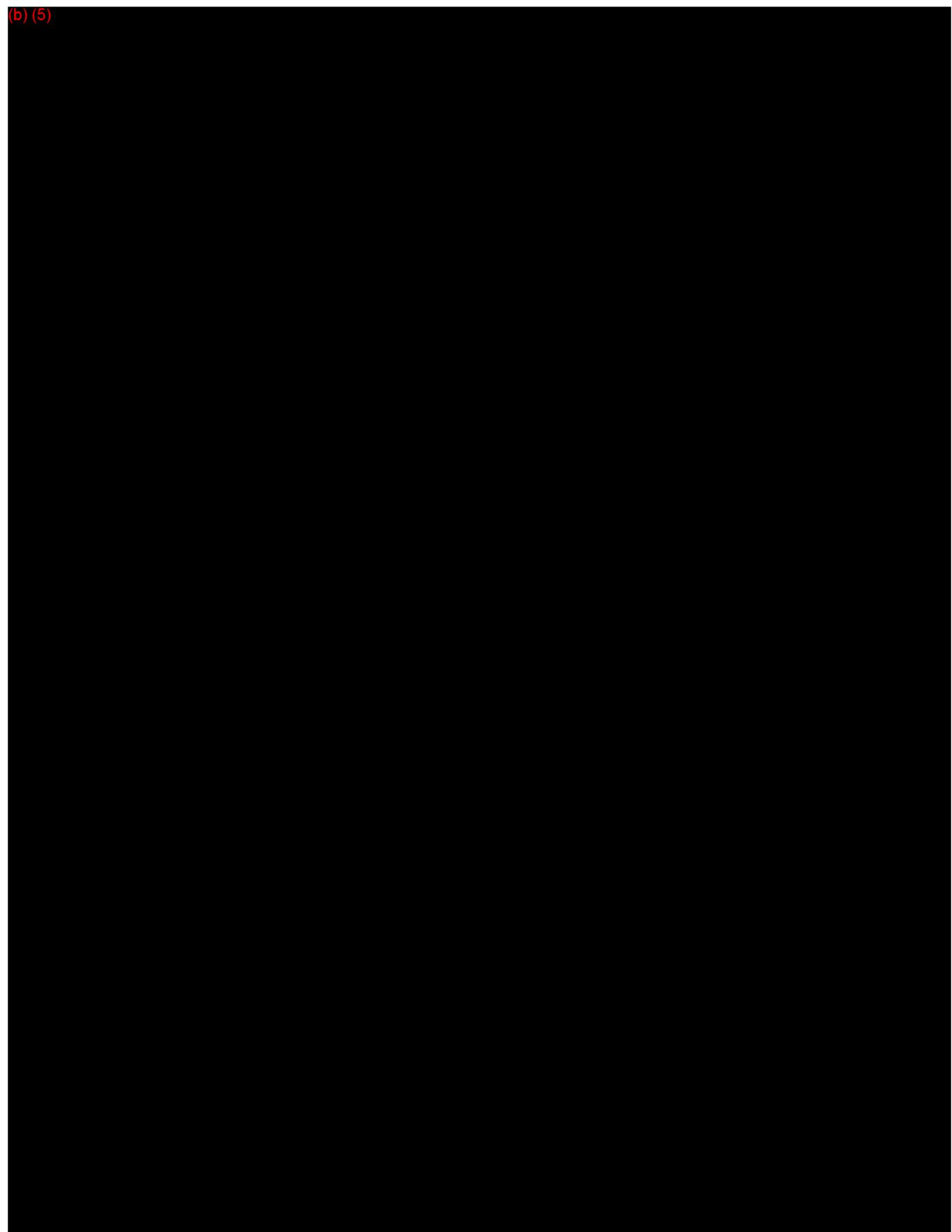
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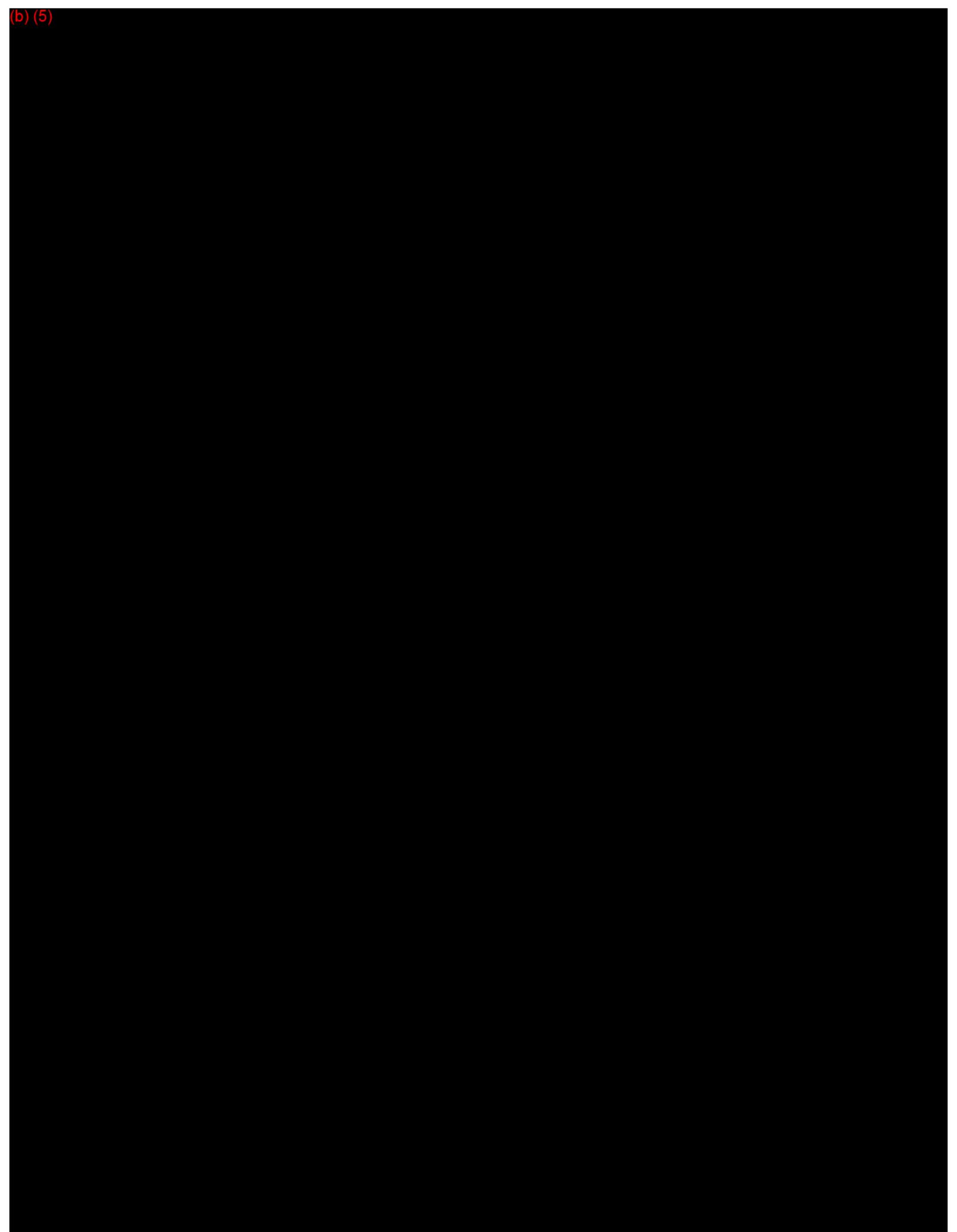




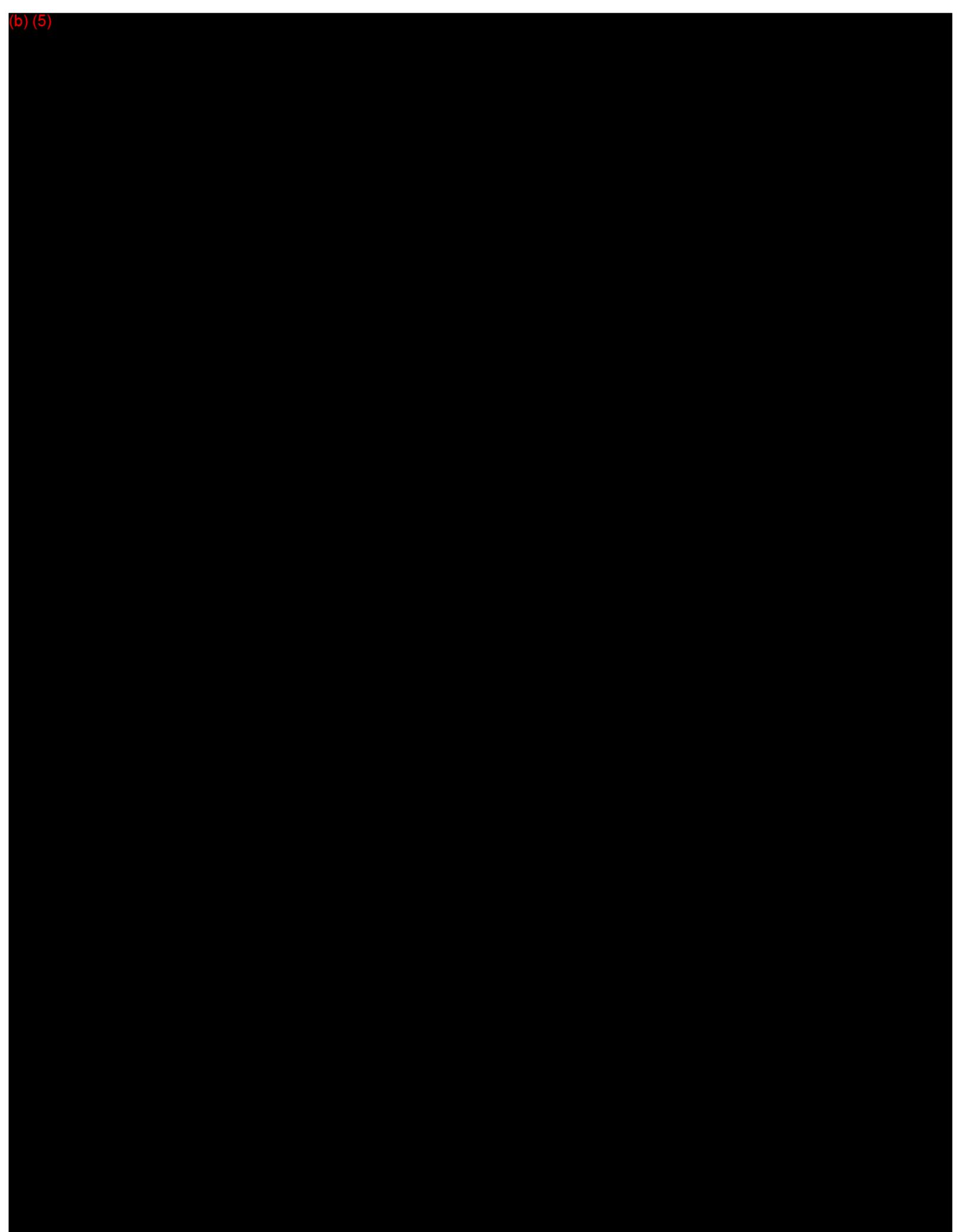
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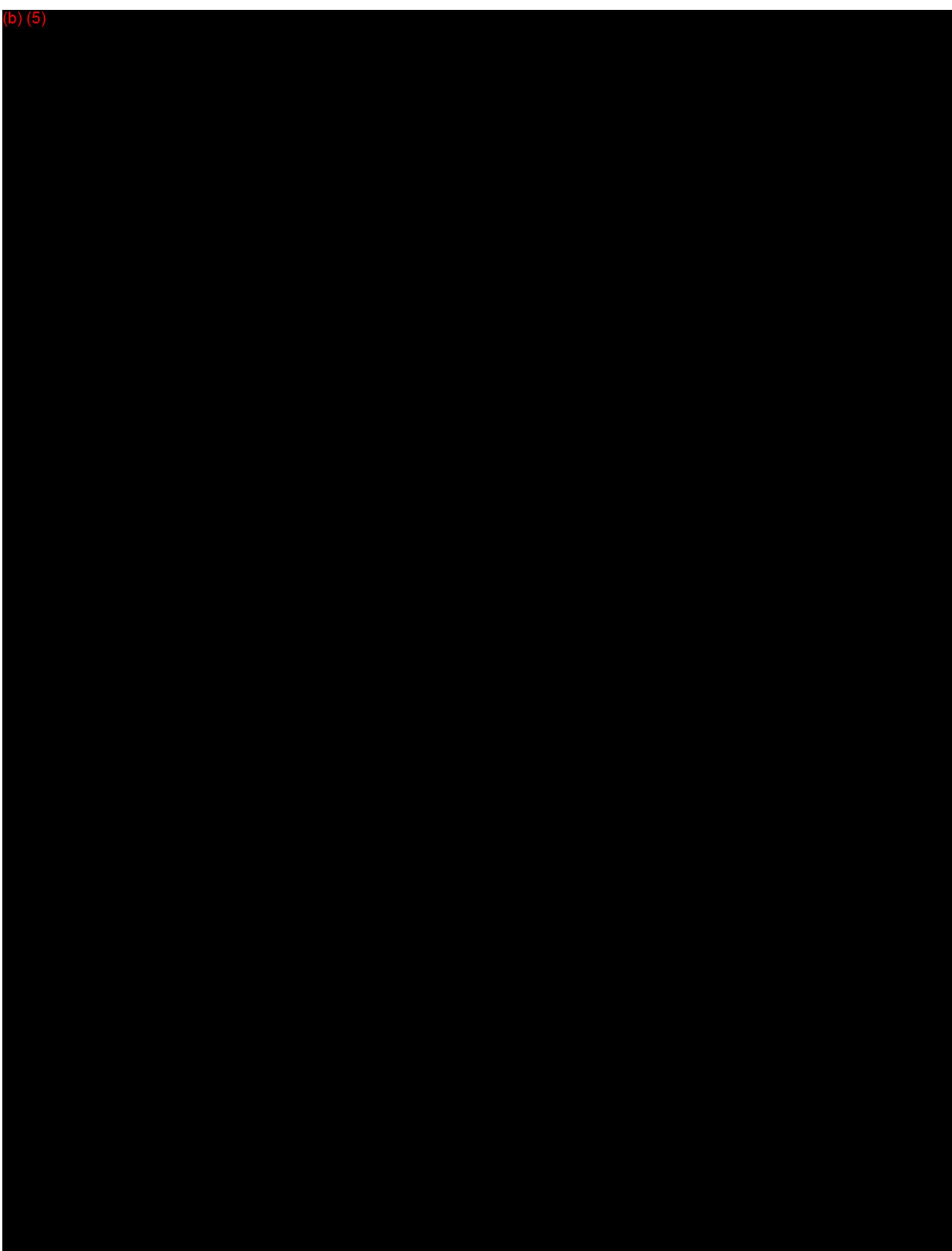


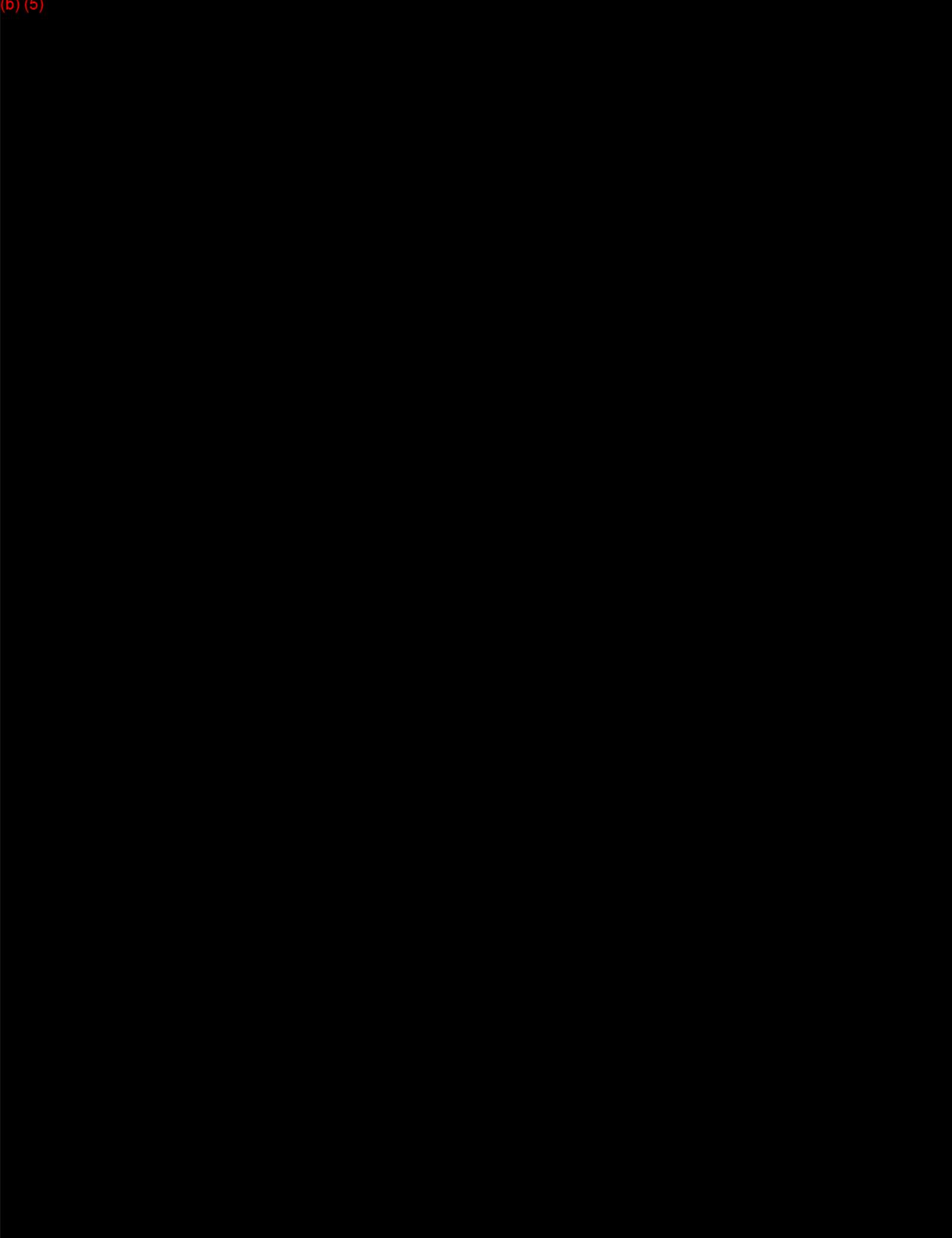


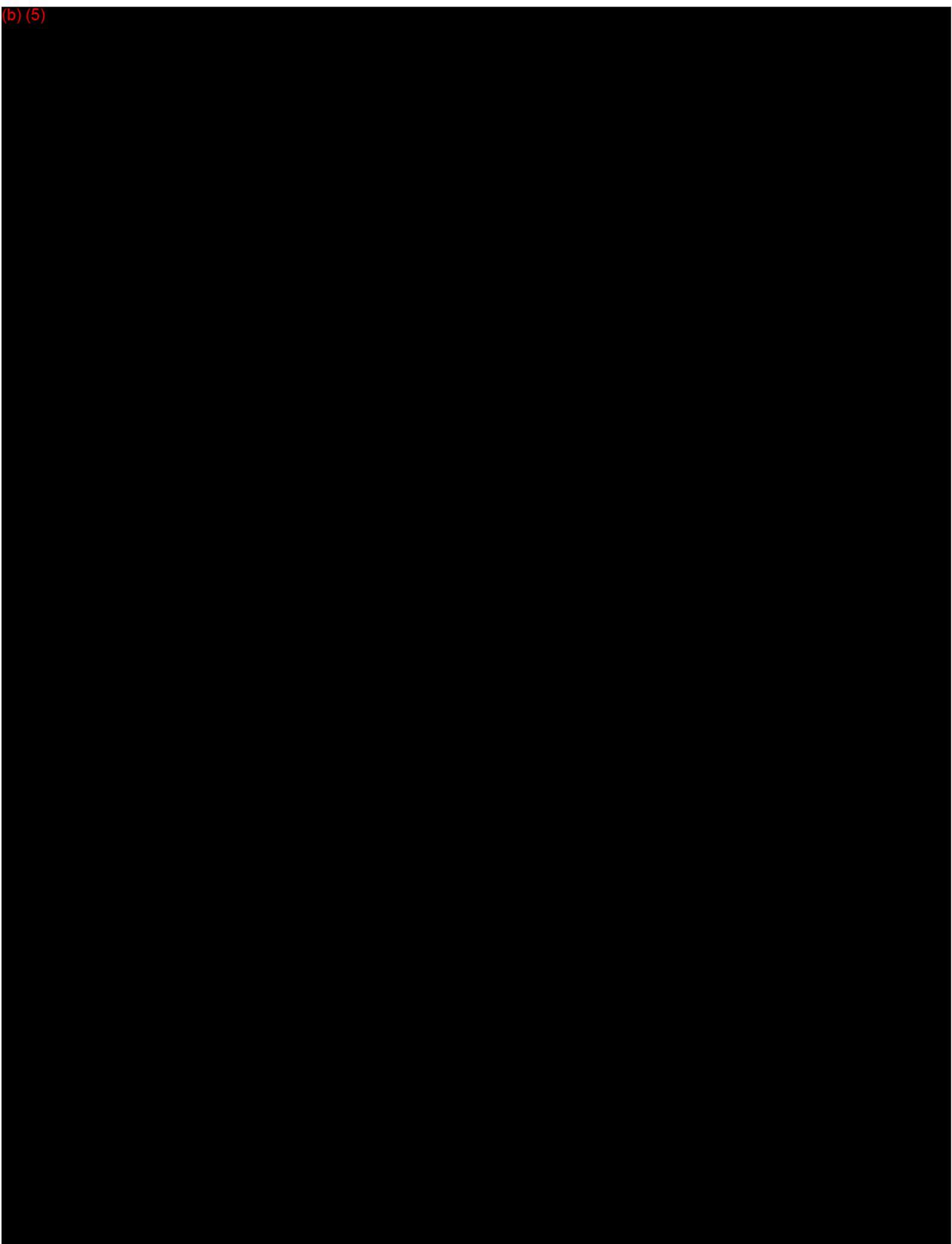
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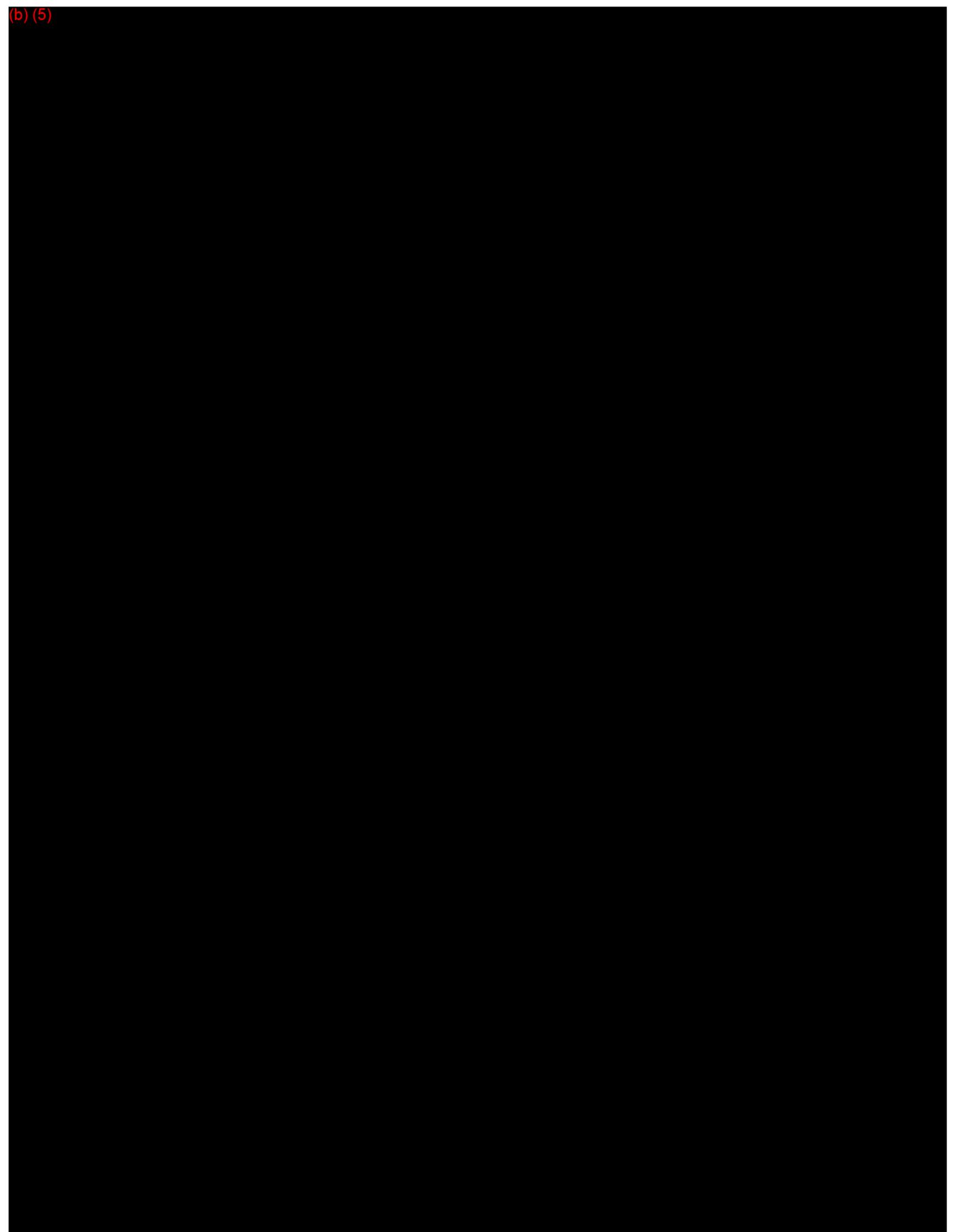


(b) (5)

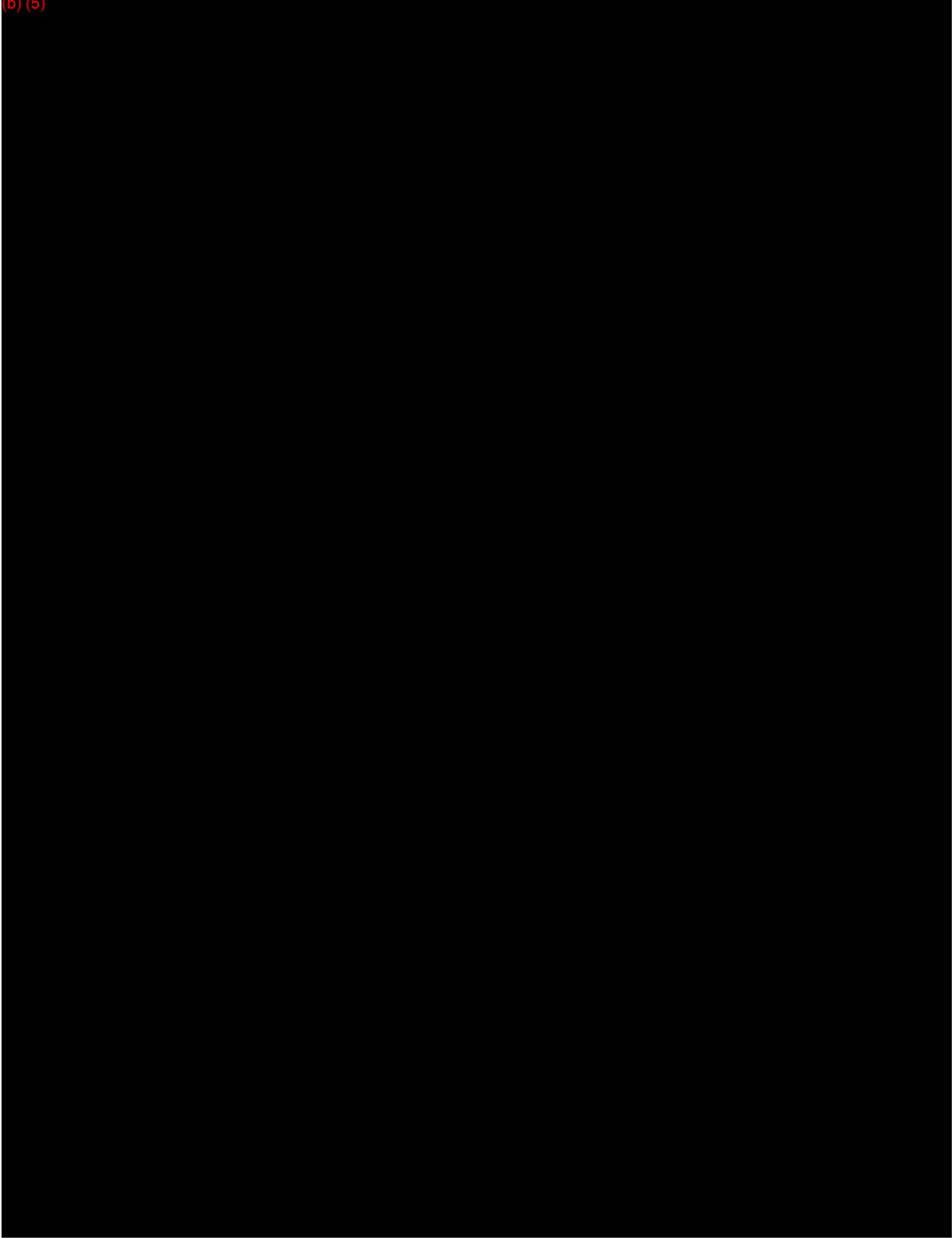


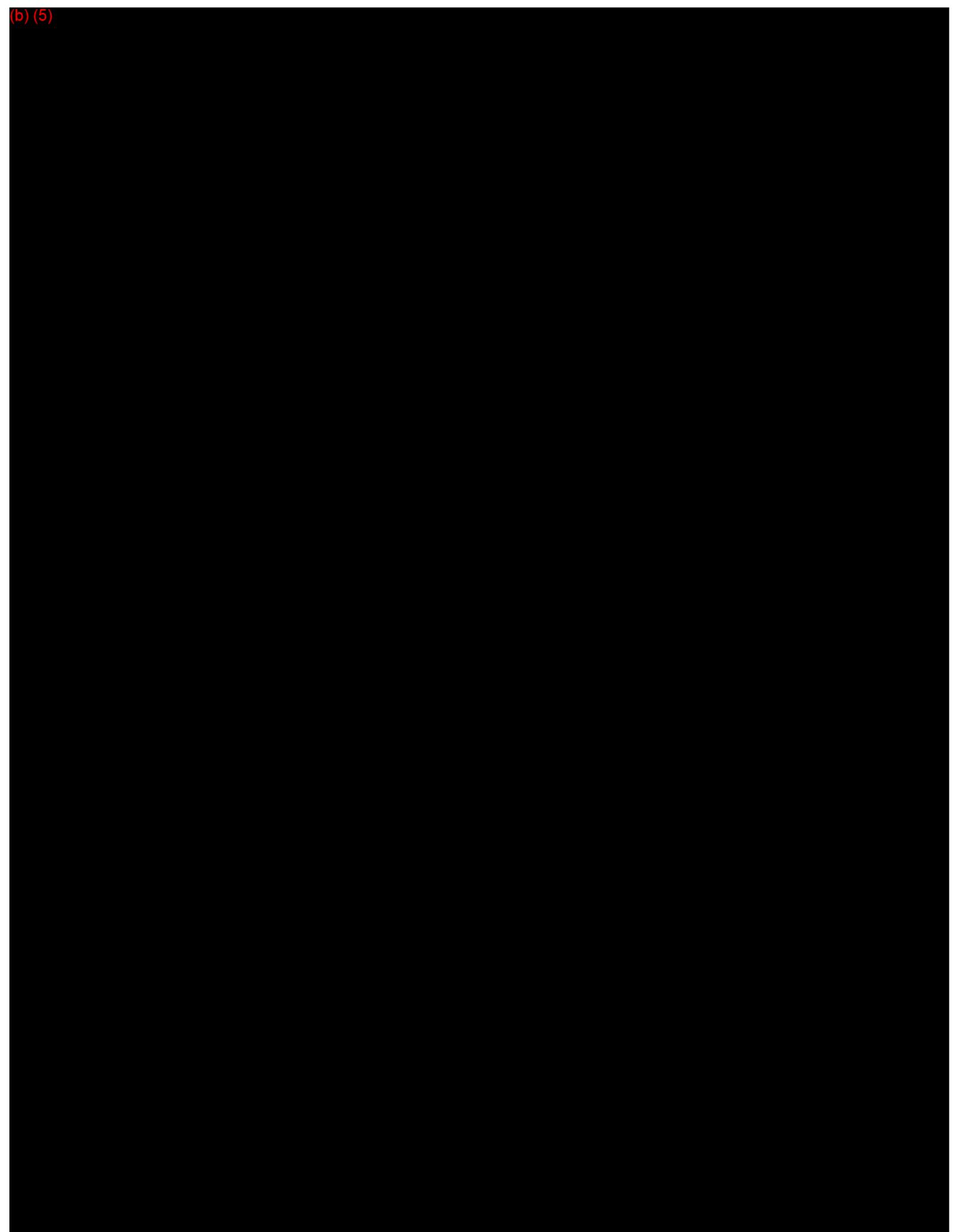


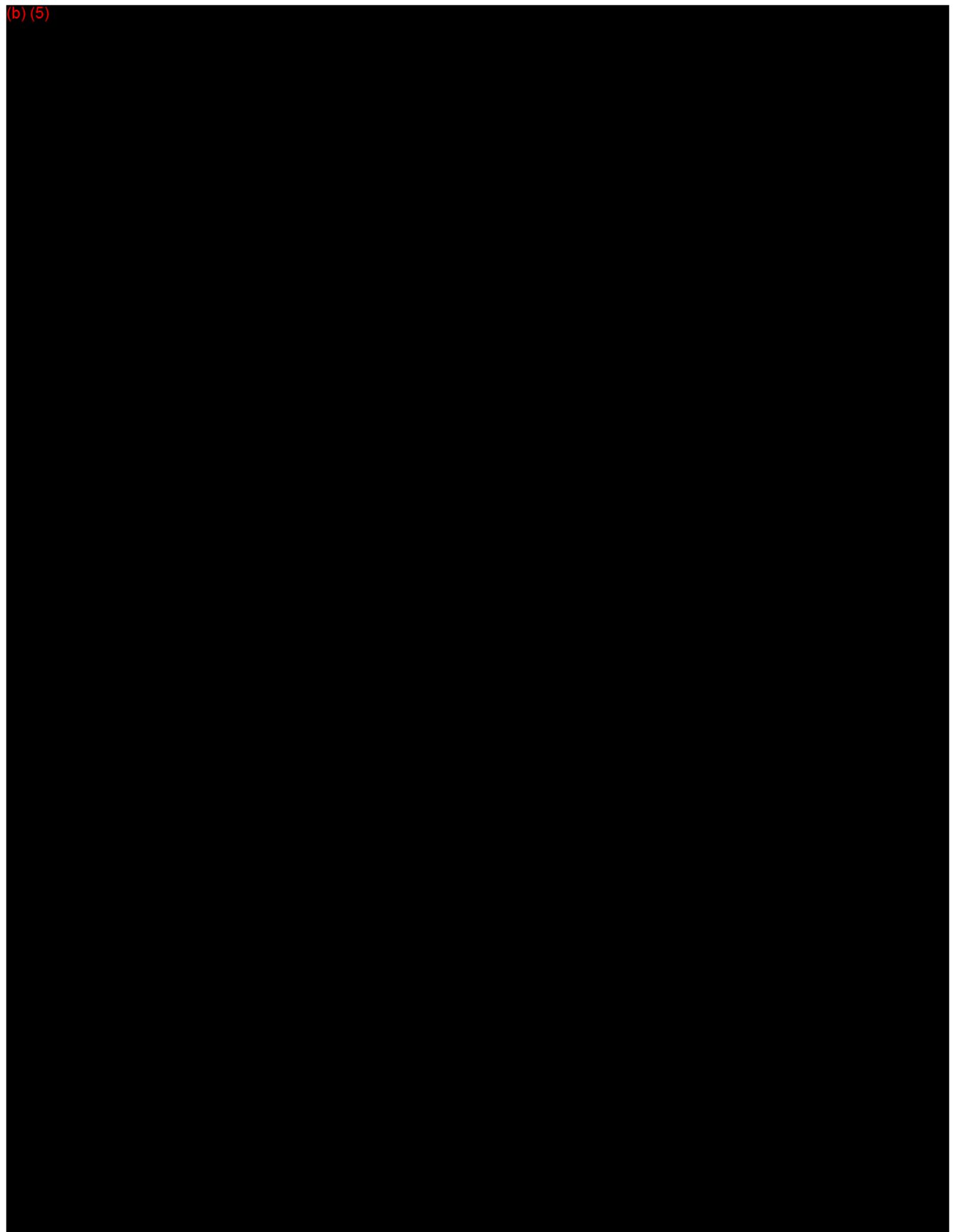


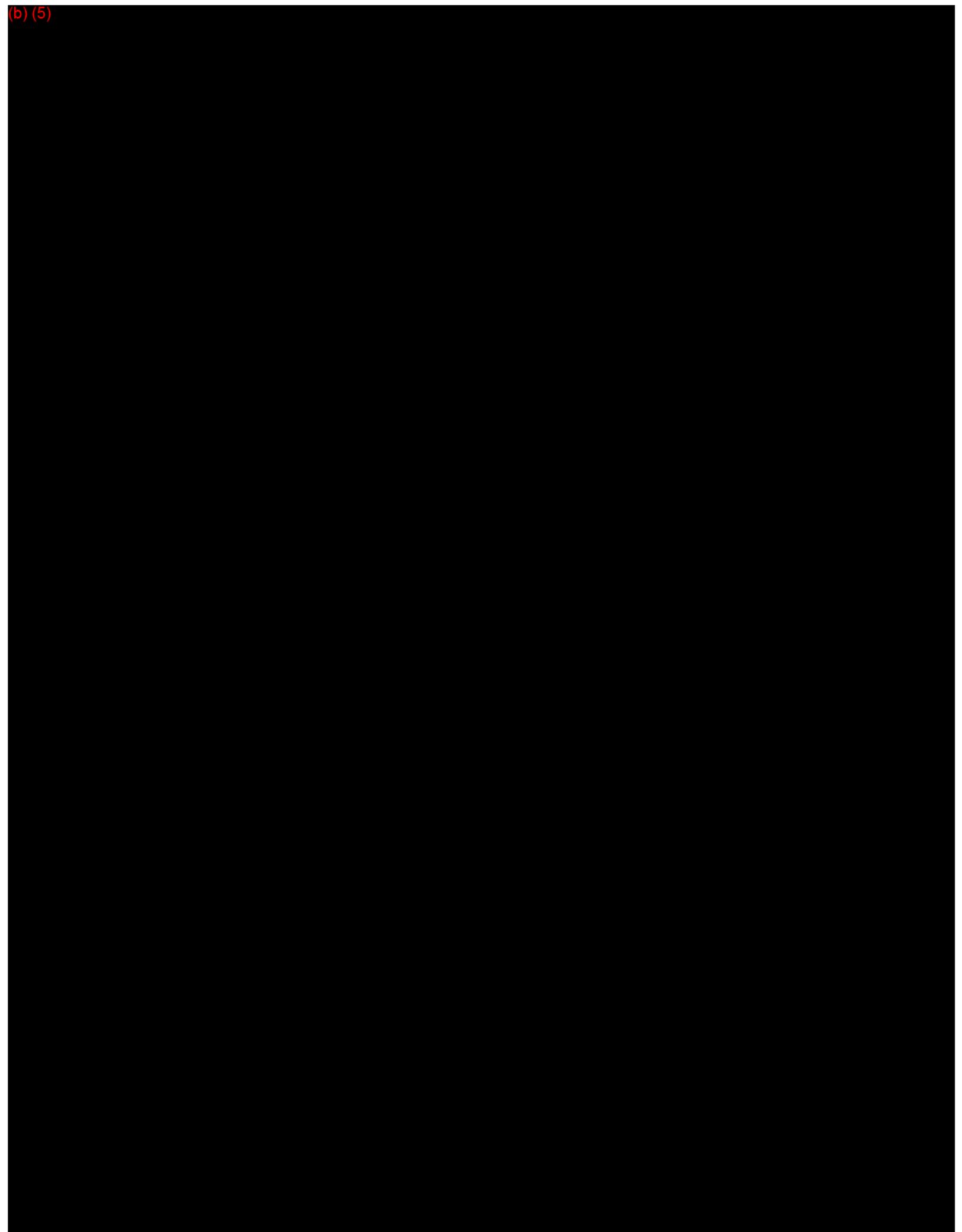


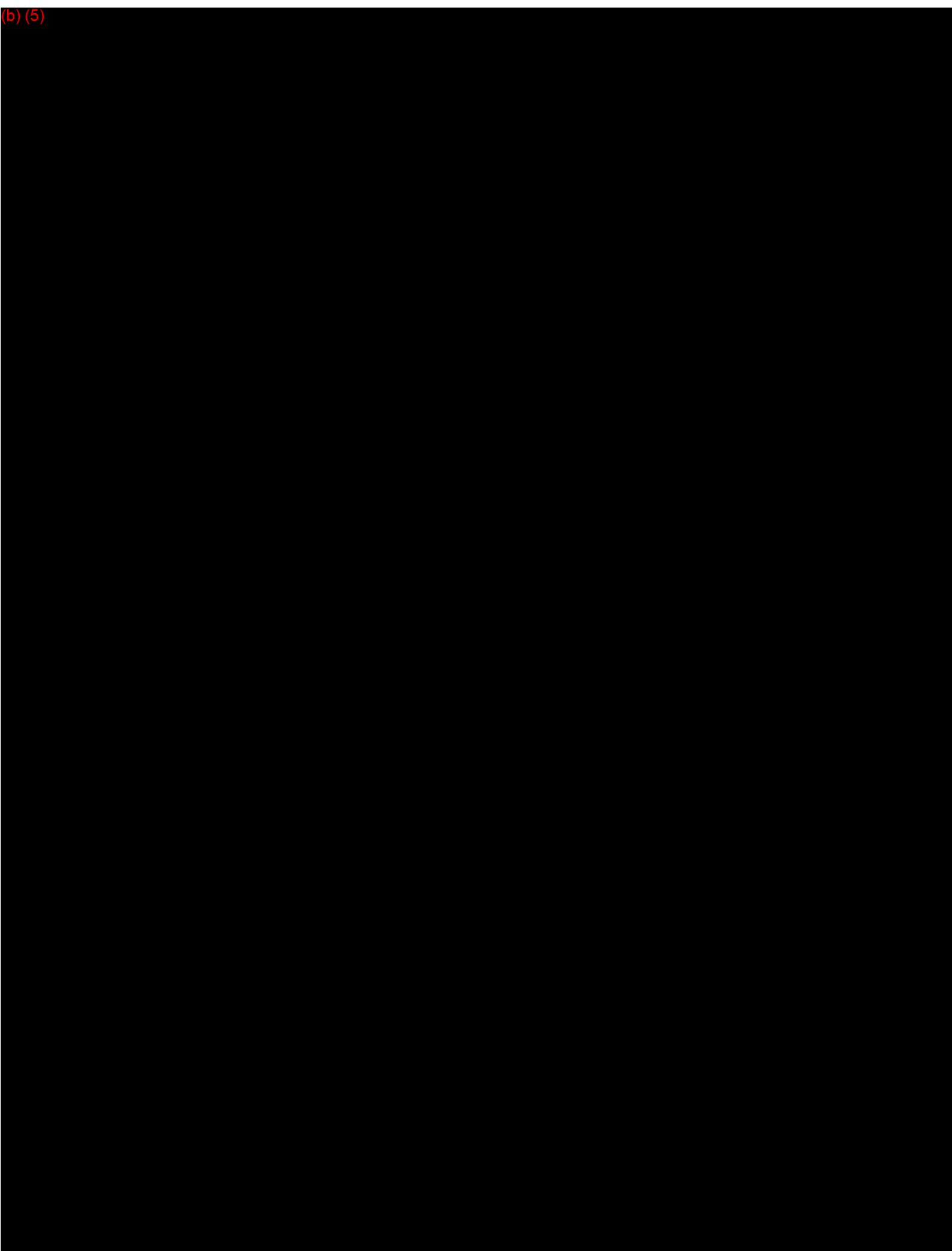
(b) (5)











**RE: FW: Invitation: Reclamation /CEQ -- Title Transfer CE @
Wed Feb 28, 2018 11am - 12pm (EST)**

(b) (6)

From: "Prandoni, Christopher D. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=8c7259a79a094fb8b901a30a5c698949-pr">
To: "Ewell, Austin" <austin_ewell@ios.doi.gov>
Date: Wed, 23 May 2018 10:08:41 -0400
Attachments
: EO12866 Review CEQ NEPA ANPRM - 5-07-2018.docx (47.71 kB)

Austin!

Sorry for just responding. Great to hear things are moving.

Re your earlier email on NEPA: Attached is an ANPRM we sent to OIRA. OIRA then distributed it to agencies. (b) (5)

Next step is for OIRA to send CEQ agency feedback and then we'll decide whether to proceed with publishing the ANPRM.

Chris

From: Ewell, Austin <austin_ewell@ios.doi.gov>
Sent: Tuesday, May 22, 2018 4:26 PM
To: Prandoni, Christopher D. EOP/CEQ <(b) (6)>
Subject: Fwd: FW: Invitation: Reclamation /CEQ -- Title Transfer CE @ Wed Feb 28, 2018 11am - 12pm (EST) (b) (6)

Hi Chris,

I hope all is well. Just wanted to forward along the latest. Hopefully we'll get word back from Ted and we can continue moving things along.

I greatly appreciate your time and assistance on this.

Sincerely,

Austin

Austin B. Ewell III | Deputy Assistant Secretary - Water and Science | Department of the Interior [1849 C Street NW, Washington DC 20240](#) | MIB Room 6650 | 202-513-0314 (O)

----- Forwarded message -----

From: **Hess, James** <jhess@usbr.gov>

Date: Tue, May 22, 2018 at 4:21 PM

Subject: Re: FW: Invitation: Reclamation /CEQ -- Title Transfer CE @ Wed Feb 28, 2018 11am - 12pm (EST) (b) (6)

To: "Boling, Ted A. EOP/CEQ" <(b) (6)>

Cc: "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "acoyskendall@usbr.gov" <acoyskendall@usbr.gov>, Austin Ewell <austin_ewell@ios.doi.gov>, "ccunningham@usbr.gov" <ccunningham@usbr.gov>, Lisa Vehmas <lvehmas@usbr.gov>

Ted --

As a follow up to our previous conversation on the development of a categorical exclusion for a small subset of Reclamation's title transfers, you suggested that as the next step that we develop a Notice to be published in the Federal Register to seek comment on the proposal to establish this CE.

You also offered to review our next draft -- give any insights/thoughts/suggestions in anticipation of publishing it.

We'll be careful what you offer, since because attached is our draft and we'd appreciate your review and insights.

Once you've had a chance to look it over, we'd be available for a follow up call if necessary.

Thanks again for your willingness to do this and for helping us to keep this moving in a positive direction.

James

On Wed, Feb 28, 2018 at 10:25 AM, Boling, Ted A. EOP/CEQ

(b) (6) wrote:

James – I have a conflict and proposed that this call be pushed back to 11:30. Is that not possible? Sorry for following up so late. Your Google Calendar invitation does not show up on my Outlook calendar.

-----Original Appointment-----

From: Boling, Ted A. EOP/CEQ

Sent: Thursday, February 15, 2018 6:22 PM

To: jhess@usbr.gov

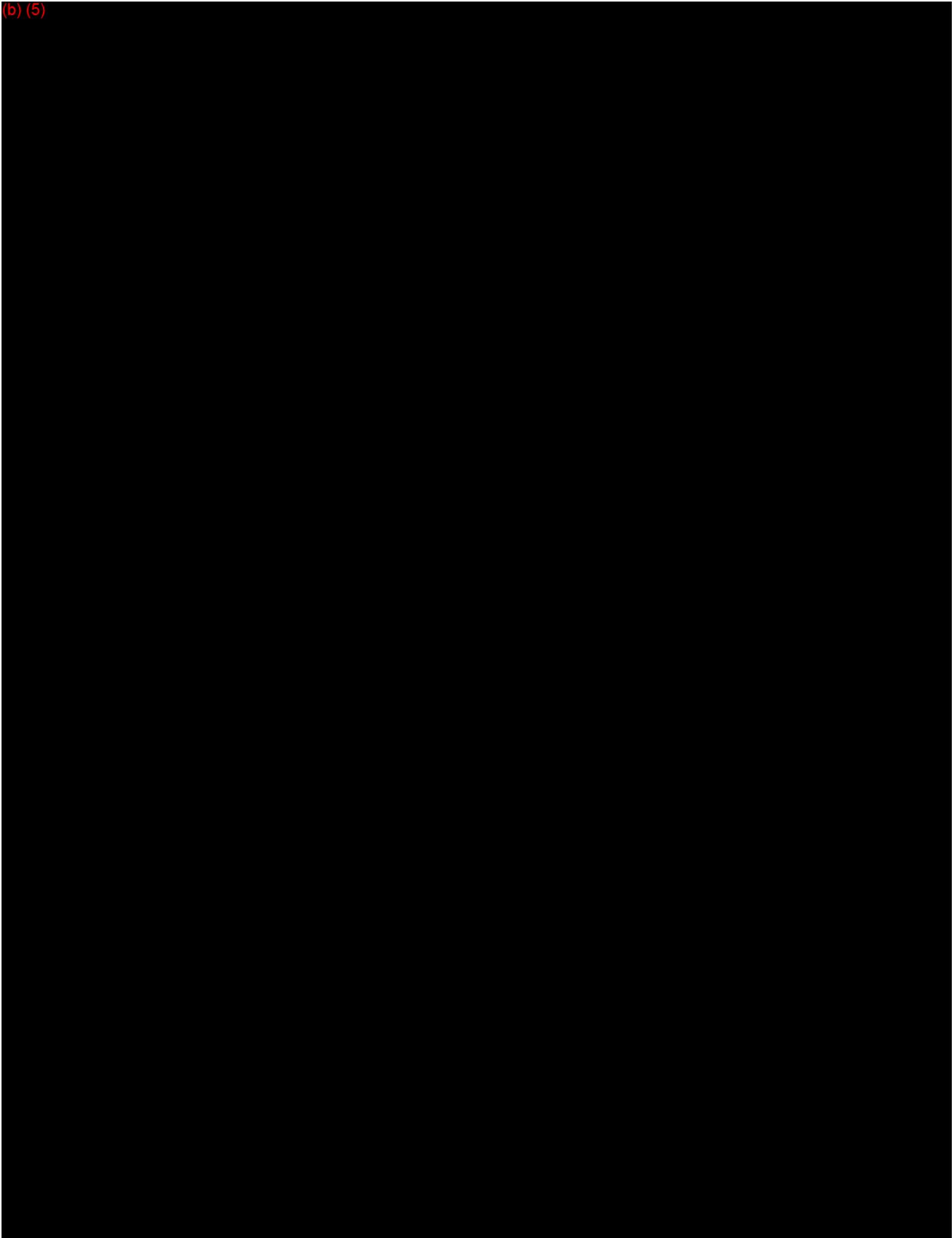
Subject: New Time Proposed: Invitation: Reclamation /CEQ -- Title Transfer CE @ Wed Feb 28, 2018 11am - 12pm (EST) ((b) (6))

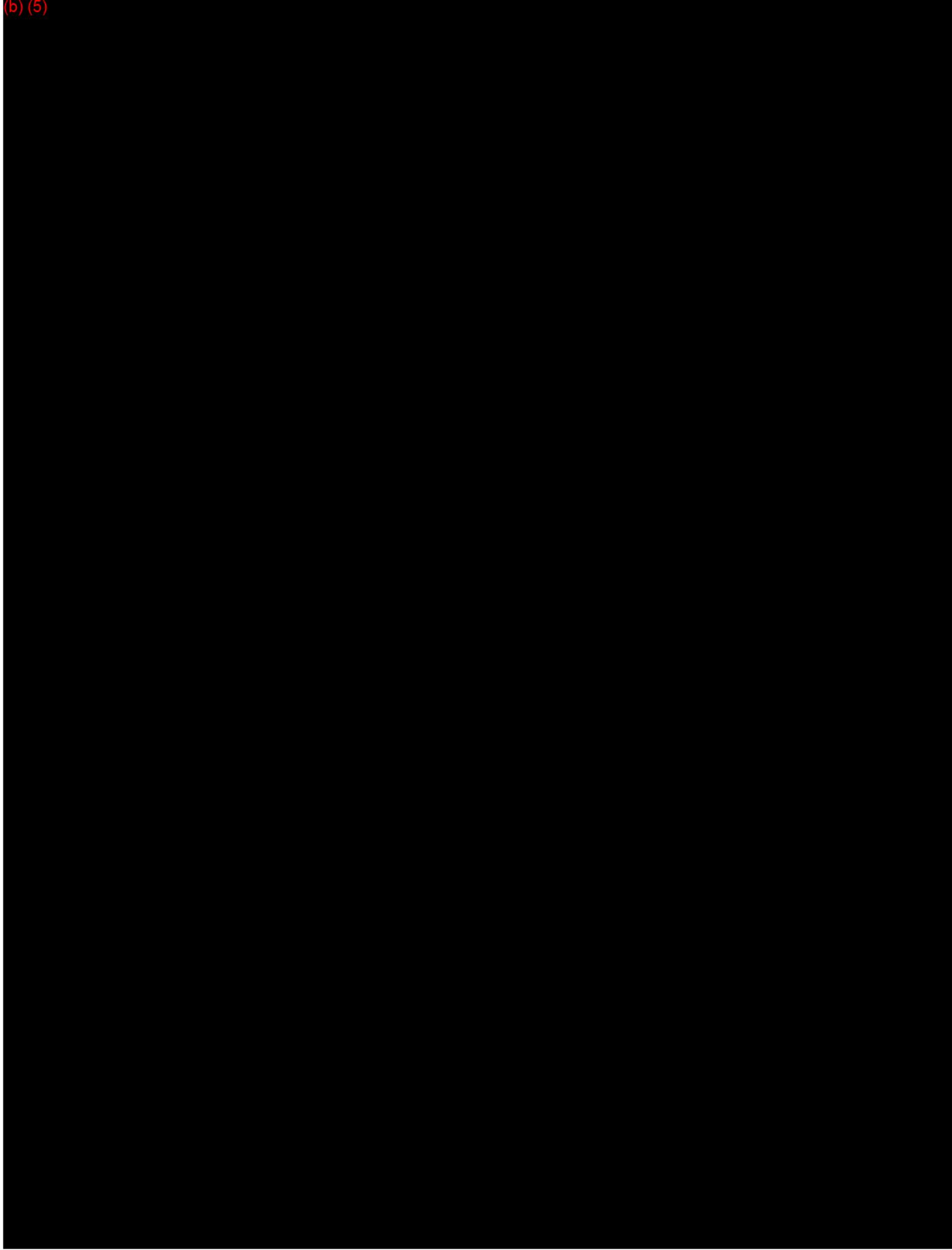
When: Wednesday, February 28, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

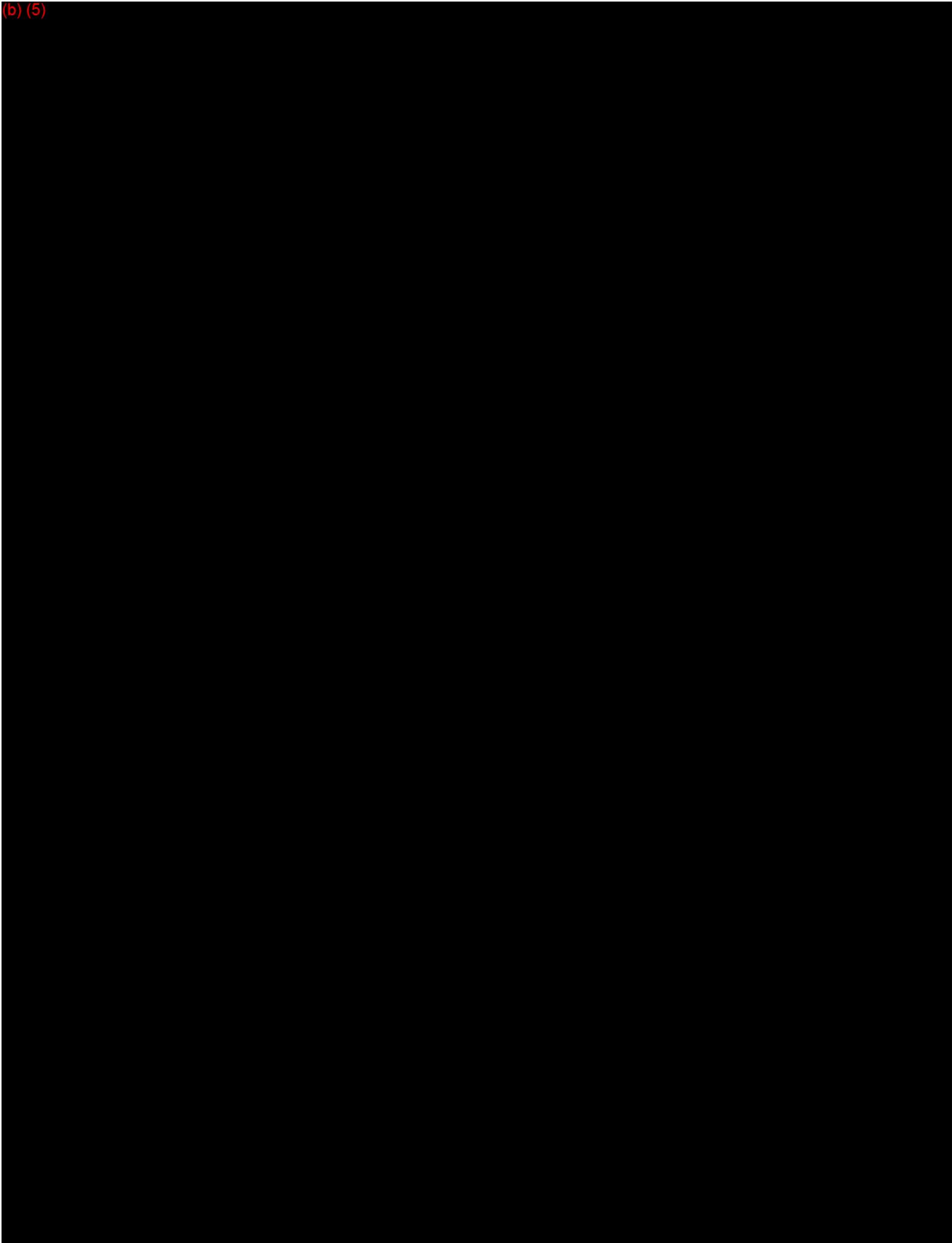
Where: BOR-WRO Teleconference EIA Line ((b) (6)) Passcode ((b) (6)) BOR-WRO
Teleconference Commissioner Line ((b) (6)) Passcode ((b) (6))

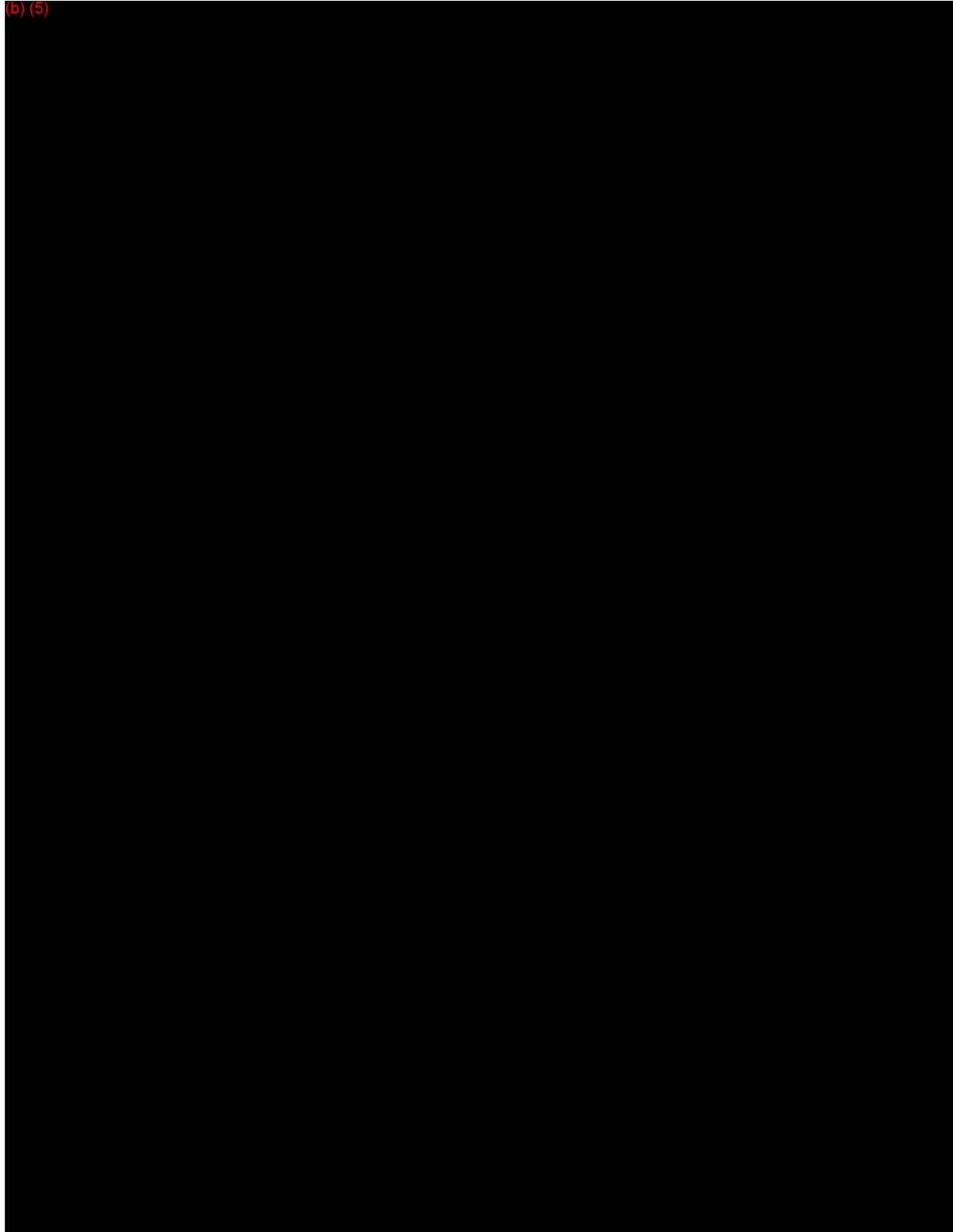
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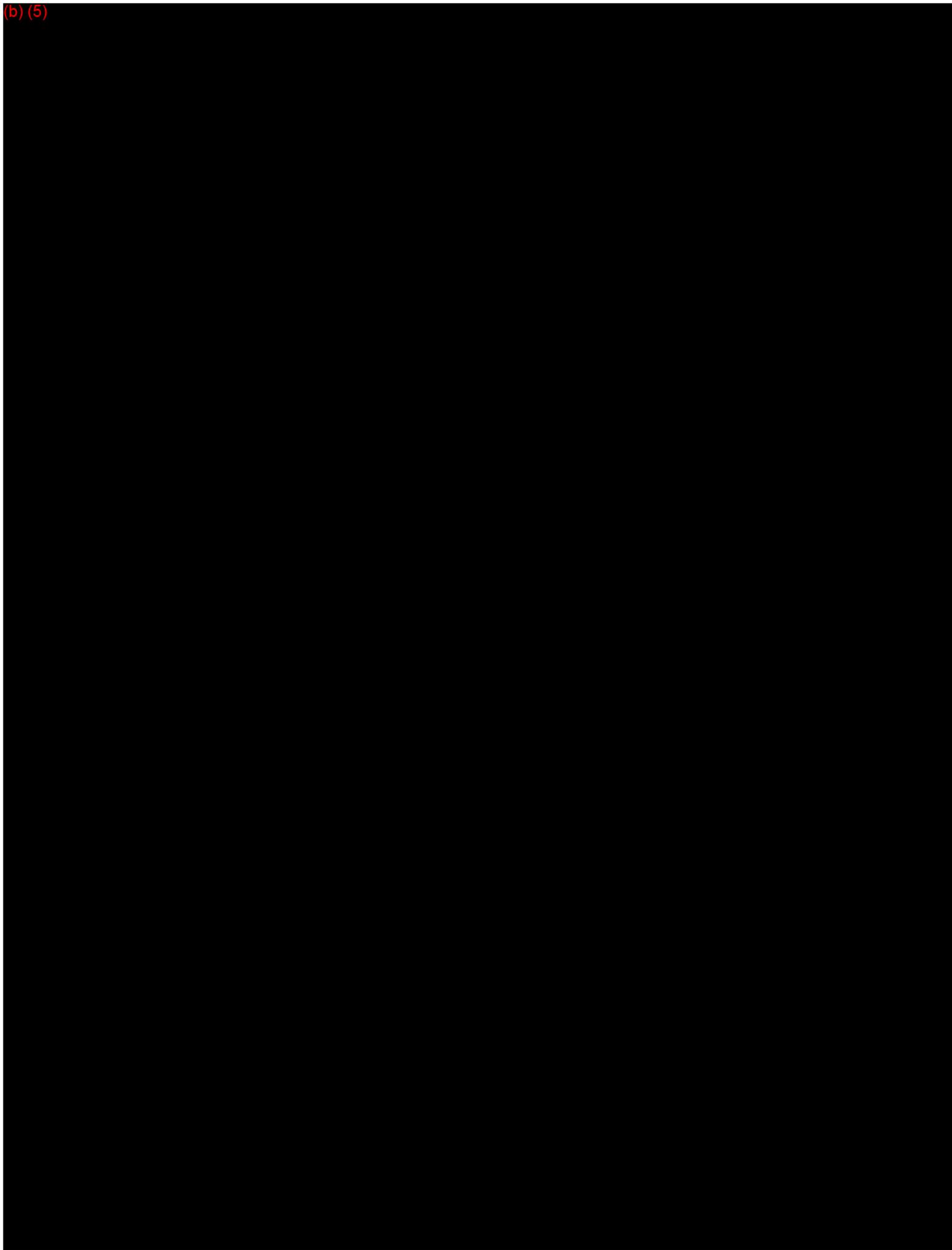
James Hess
Chief of Staff
Bureau of Reclamation
jhess@usbr.gov
202-513-0543

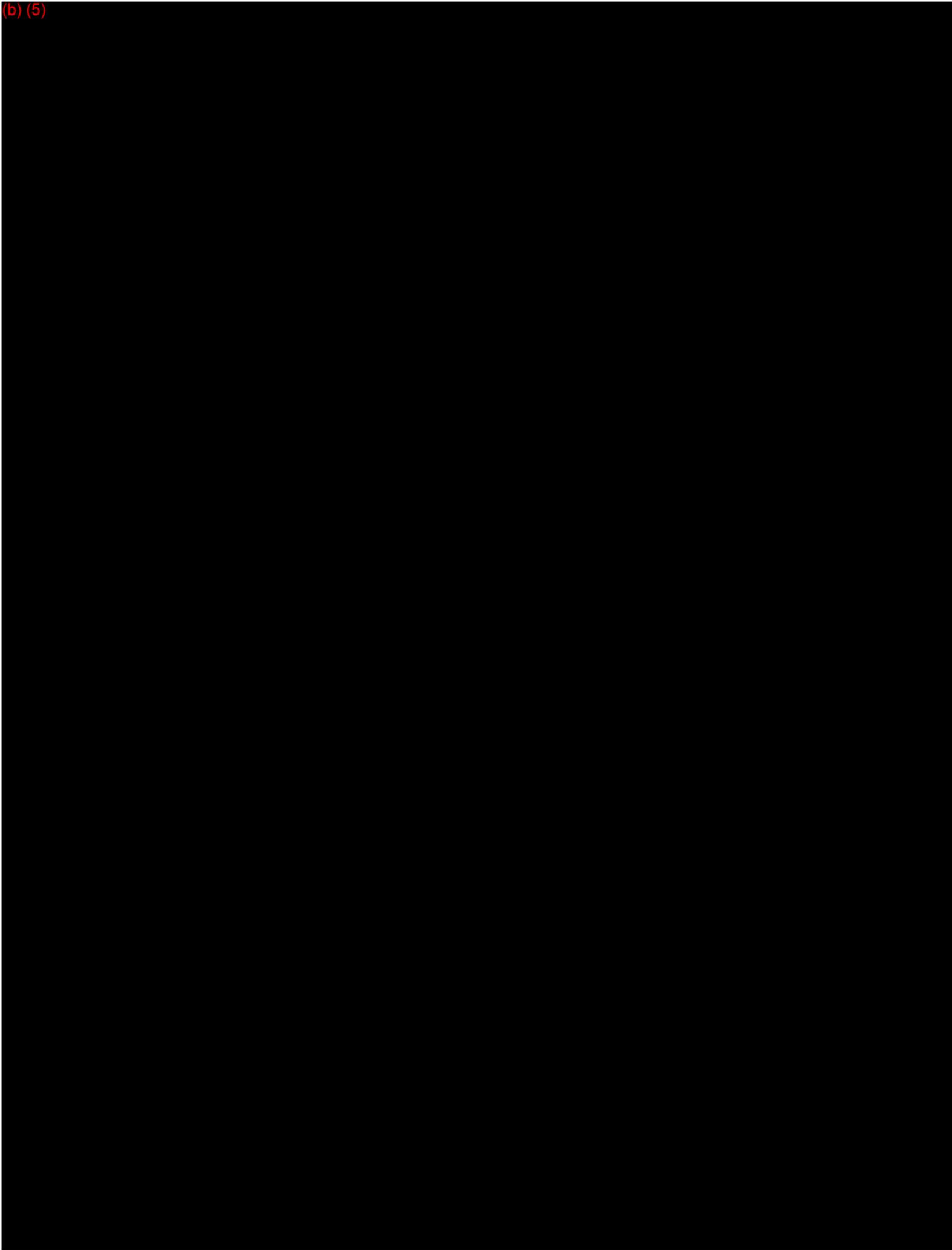


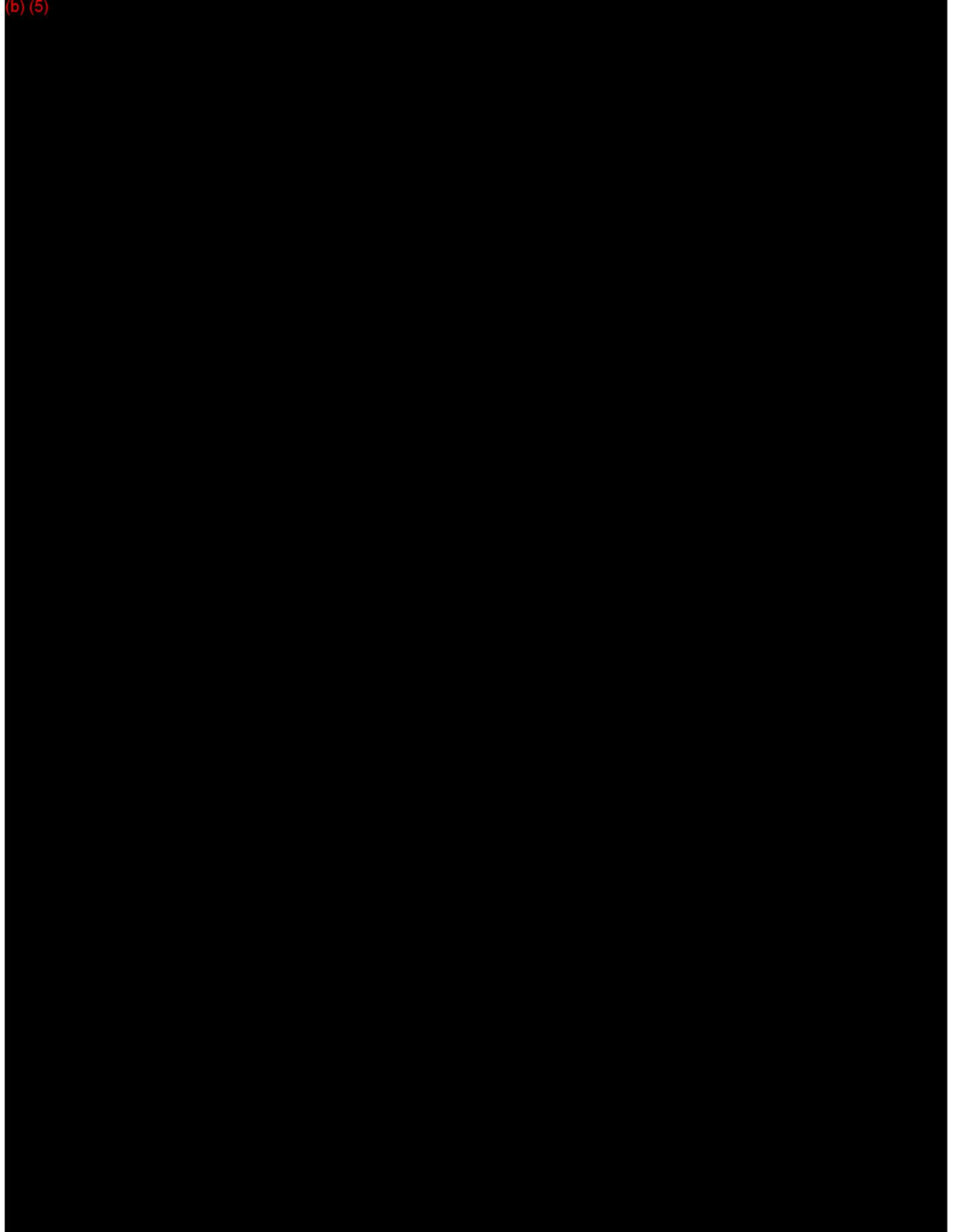


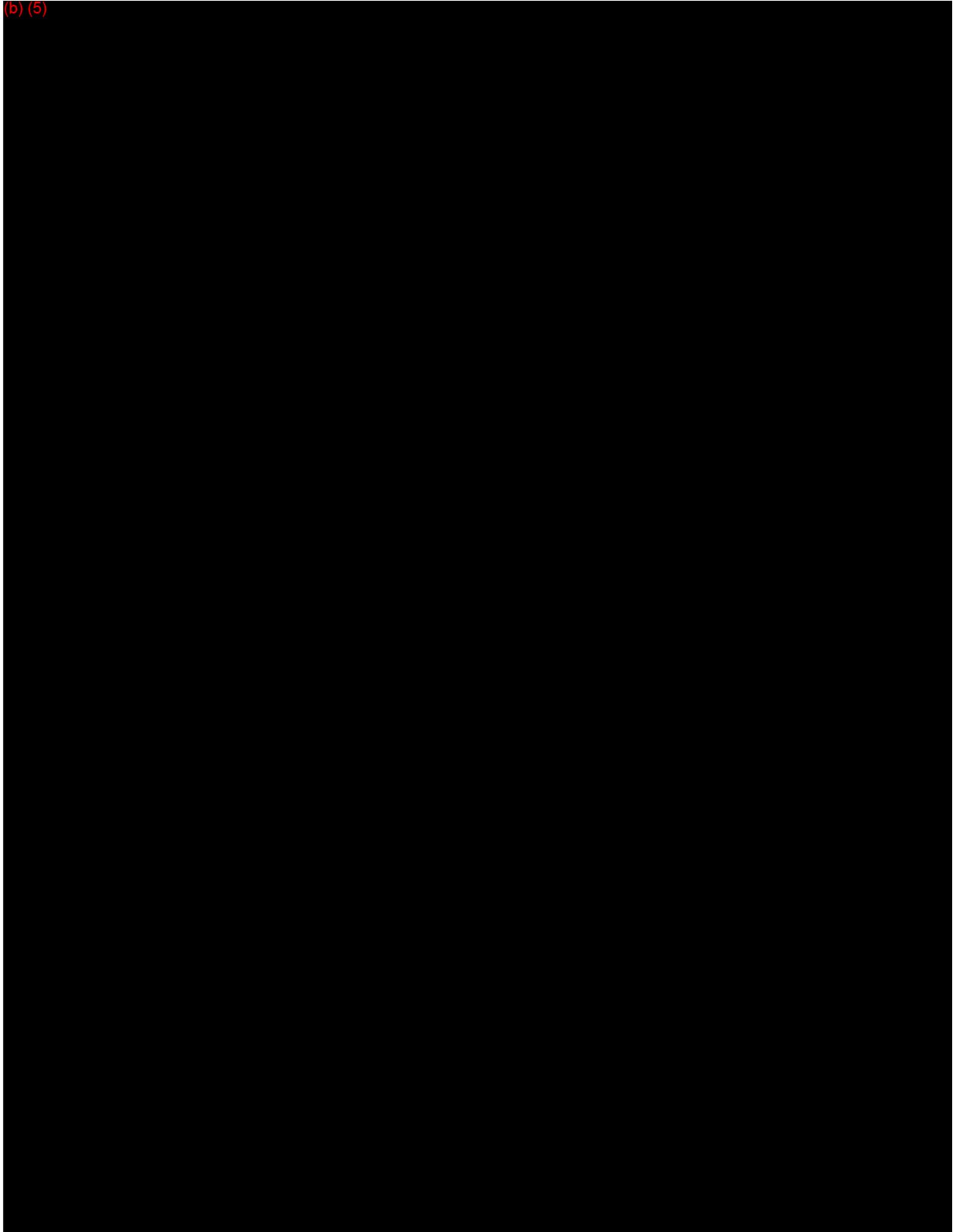


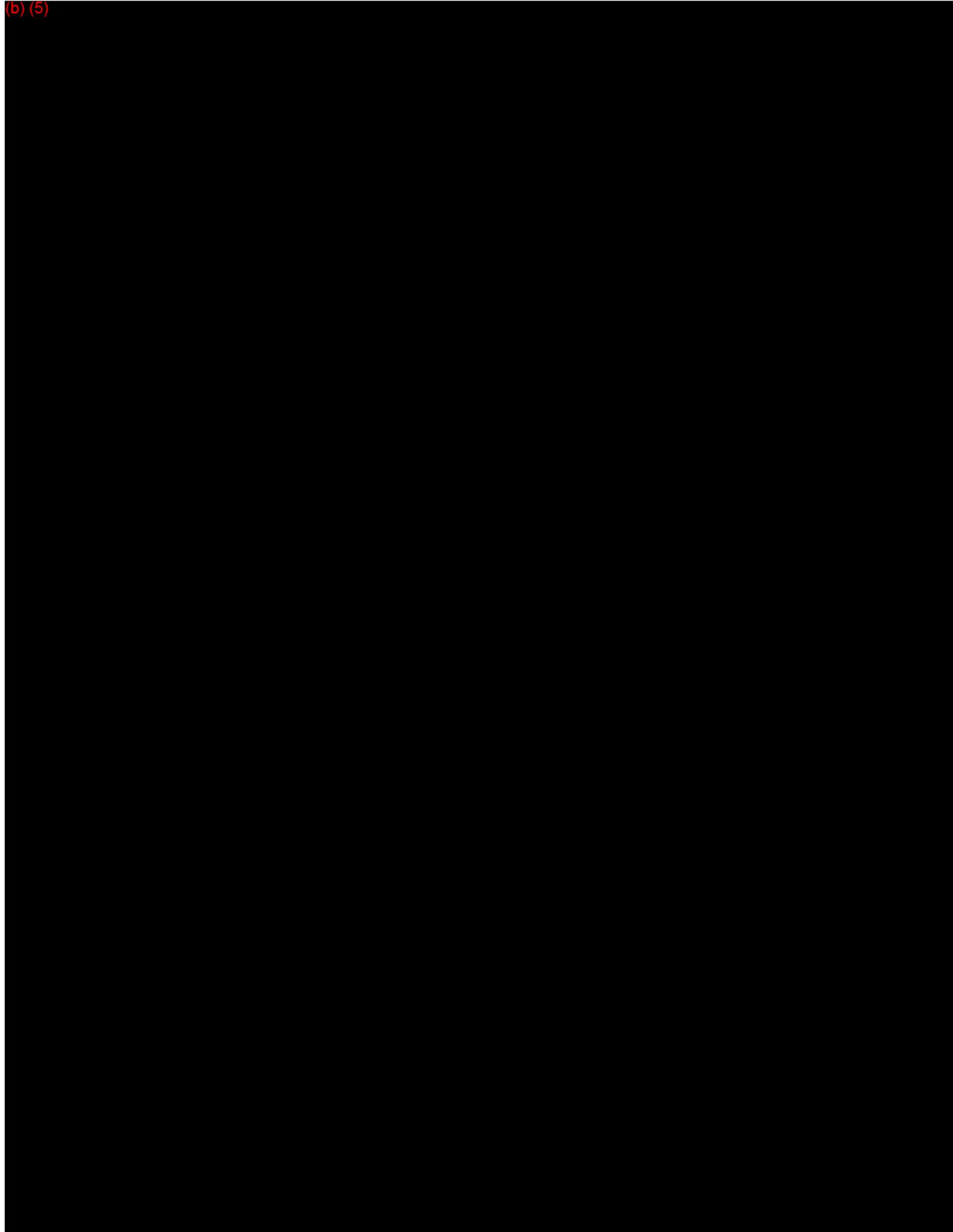












RE: Time for Coffee or an Early Lunch on Friday

From: "(b) (6)" CIV OASN EI&E" (b) (6) @navy.mil>
To: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Cc: (b) (6) I&L, GF-7" (b) (6) @usmc.mil>, "(b) (6) CIV OASN (EI&E)" (b) (6) @navy.mil>
Date: Tue, 04 Sep 2018 15:40:23 -0400
Attachments: smime.p7m (991.2 kB)

Ted,

Attached are the slides that (b) (6) and I worked up. Not many. You'll note that it is broken into two parts - emerging issues National and emerging issues DON.

Thinking you will talk the National issues. The brief you sent had a lot of slides. We only have an hour. Do you want to pare down at all? Or you can just skip over some of them. Let me know. Ideally, we would combine into one brief.

(b) (6)

-----Original Message-----

From: Boling, Ted A. EOP/CEQ <(b) (6)>
Sent: Friday, August 31, 2018 3:56 PM
To: (b) (6) CIV OASN EI&E" (b) (6) @navy.mil>
Cc: (b) (6) I&L, GF-7 <(b) (6) @usmc.mil>; (b) (6) CIV OASN (EI&E) <(b) (6) @navy.mil>
Subject: RE: Time for Coffee or an Early Lunch on Friday

Here it is in PDF. I may want to do an update on September 11, if the OMB accountability system is out by then.

-----Original Message-----

From: (b) (6) CIV OASN EI&E" (b) (6) @navy.mil>
Sent: Friday, August 31, 2018 3:45 PM
To: Boling, Ted A. EOP/CEQ <(b) (6)>
Cc: (b) (6) I&L, GF-7 <(b) (6) @usmc.mil>; (b) (6) CIV OASN (EI&E) <(b) (6) @navy.mil>
Subject: RE: Time for Coffee or an Early Lunch on Friday

Ted,

For some reason, your brief got stripped. Can you resend as a PDF?

Also, great news on you being able to attend! Will be great for the audience to hear the latest directly from you! I'll delete our "Emerging Issues NEPA - National" slides and Ron and I will just talk to DON initiatives. Will probably expand the time for this session as well.

Attached is the latest agenda. Note plenary sessions are first day and first half of second day. NEPA track gets started at 1300 on Wed the 12th. You are welcome to come listen in on any part of the symposium. Will add your name to the agenda!

Also attaching other information about the symposium in the attached memo and map.

(b)

-----Original Message-----

From: Boling, Ted A. EOP/CEQ <(b) (6)>
Sent: Friday, August 31, 2018 2:17 PM
To: (b) (6) (b) (6) (b) (6) CIV OASN EI&E (b) (6) @navy.mil>
Cc: (b) (6) (b) (6) I&L, GF-7 <(b) (6) @usmc.mil>
Subject: RE: Time for Coffee or an Early Lunch on Friday

(b)

I'm happy to confirm that I will be able to drive down to Norfolk on September 12 to offer thoughts along the lines of the attached ppt, which I used with Air Force CEC and JAG last week in San Antonio.

I'll need to be back home that night to take the parental hand-off, but you can expect me in Norfolk early on the 12th. Please send me the agenda and other particulars.

Best,

Ted

From: (b) (6) (b) (6) CIV OASN EI&E <(b) (6) @navy.mil>
Sent: Tuesday, August 28, 2018 3:26 PM
To: Boling, Ted A. EOP/CEQ <(b) (6)>
Cc: (b) (6) (b) (6) I&L, GF-7 <(b) (6) @usmc.mil>
Subject: Time for Coffee or an Early Lunch on Friday

Hey Ted! We have a DON environmental symposium (note, not just NEPA) coming up in a few weeks in Norfolk; 11-13 Sept.

(b) and I are hosting a one hour session on "Emerging Issues in NEPA." We would like to pick your brain on, well, the latest NEPA gouge. Do you have time for coffee or an early lunch this Friday?

(b)

(b)

Director, Environmental Planning and Terrestrial Resources

Office of the Deputy Assistant Secretary of the Navy

1000 Navy Pentagon, Room 4A674

Washington, DC 20350-1000

(b) (6)

(b) (6) (c)

Emerging Issues in NEPA



(b) (6) [REDACTED] (ODASN(E))

(b) (6) [REDACTED] (HQMC/MCICOM I&L)

12 September 2018

Topics



- Emerging Issues – National
 - CEQ advanced notice of proposed rulemaking to update NEPA regulations
 - FAST-41 Act and EO 13807
 - Pending CEQ guidance and tools
 - MMPA amended to allow for 7-year authorizations (vice 5)
- Emerging Issues – DON
 - Aug 2016 Environmental Planning Memo reminders
 - New policy/agreements/guidance
 - April 2018 NHPA memo
 - ESA consultation agreement with USFWS Region 1
 - ESA guiding principles
 - OPNAV Instruction 5090 and Marine Corps Order 5090 updates
 - NEPA Process Automation & Management Support (PAMS) – USMC
 - “Art of NEPA Project Management Course” update
 - NEPA webinars and blog updates
- NEPA Quad Chart – How we facilitate readiness



Pending CEQ Rulemaking

- CEQ Notice of Advanced Notice of Proposed Rulemaking to Update NEPA Regulations (83 FR 28591; 6/20/2018)
 - OSD provide consolidated input on 20 Aug

(b) (5)

SUMMARY: The Council on Environmental Quality (CEQ) is considering updating its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA). Over the past four decades, CEQ has issued numerous guidance documents but has amended its regulations substantively only once. Given the length of time since its NEPA implementing regulations were issued, CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.

Streamlining Public Infrastructure Projects



- Fixing America's Surface Transportation Act (FAST-41 Act) – 2015
 - Created Governance structure through new agency
 - Federal Permitting Improvement Steering Council (FPISC)
 - Angela Colomaria, Acting Director
 - Procedures with public transparency & accountability
 - Funding authorities
- EO 13807 – Streamlining Federal Permitting and Approvals for Public Infrastructure Projects
 - One Federal Decision – Complete Federal environmental reviews & authorization decisions within 2 years
 - Agency EO Workgroup led by OMB & CEQ Infrastructure
 - NEPA Streamlining Guidance – Agency EO Workgroup led by CEQ NEPA
 - Public transparency with all projects and timelines on Permitting Dashboard
 - MOU between Federal agencies signed in April 2018
 - Implementing One Federal Decision under EO 13807



How Will This Affect DoD?

- Basing/Real Estate
 - Right of Way approvals on Military Services property
 - Withdrawn lands
- Coordination and consultations
 - NEPA as a Cooperating Agency
 - ESA/MMPA/NHPA Section 106/Tribal Consultations
 - Joint consultation(s) or lead agency
 - Mitigation impacts on mission and/or capabilities
- Siting Clearinghouse
 - Defense mission compatibility reviews (land use, airspace)
 - Energy corridors
- Other
 - Renews efforts to create energy right-of-way corridors on Federal lands
 - Revokes Federal Flood Risk Management Standard - EO 13690
- Projects on fast track with limited opportunity for relief
 - Scheduling
 - Alternatives

Need to monitor our consultations to ensure we are not pushed to the
“back of the line”



How is DoD Involved?

- Federal Permitting Improvement Steering Council (FPISC)
 - Council Representative – Lucian Niemeyer, ASD(EI&E)
 - Chief Environmental Review & Permitting Officer (CERPO) Maureen Sullivan
 - Assistant Secretary of Army (Civil Works) separate participation for regulatory and civil works efforts
 - OMB/FPISC staff weekly
 - FPISC meets quarterly
 - CERPOs meet on Coordinated Project Planning ad hoc
 - Projects (<https://www.permits.performance.gov/>)

- EO 13807 Workgroups
 - One Federal Decision
 - NEPA (several)

Ten West Link	MCAS Yuma, AZ	Marines
Alaska Liquid Natural Gas Pipeline	Clear AFB, AK	Air Force
Bay State Wind	Atlantic Ocean, near MA	Navy
Boardman to Hemingway Transmission line	Boardman Range, OR NAS Whidbey Island	Navy

- Other
 - Mission Compatibility reviews – OSD Siting Clearinghouse
 - <https://www.acq.osd.mil/dodsc/contact/dod-review-process.html>



Pending CEQ Guidance & Tools

- CEQ published its initial list of actions pursuant to EO 13807 (82 FR 43226; 9/14/2017)
 - Develop framework for implementing “One Federal Decision”
 - Recommend High Priority Infrastructure projects to FIPSC Dashboard
 - Revise, modify or supplement existing CEQ guidance
 - Review CEQ regulations implementing NEPA
 - Issue additional guidance to simplify and accelerate NEPA reviews for infrastructure projects
 - Convene FIPSC Working Group to address impediments to efficient and effective processing of environmental reviews
- Training Modules
- EA Guidance

Aug 2016 Env Planning Memo Reminders



- Early planning
 - For EAs – must document early planning discussions
 - For EISs – must convene a Project EIS Review Team (PERT) and include results in NOI package
- CATEX guidance
- Document preparation tools
 - Preparation guide, templates and region-specific language
- New training
- Metrics

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New Policy/Agreements/Guidance

- April 2018 NHPA Guidance Memo
 - Command leadership involvement
 - Early involvement by SMEs in helping shape projects
 - Ask the hard questions and seek to achieve a balanced outcome
 - Termination available but only if all other means exhausted
- ESA consultation agreement with USFWS Region 1
 - Outgrowth of difficult consultations in the Pacific AOR
 - Focus is on early coordination, consultation package requirements, role of conservation measures and terms & conditions, timing and dispute resolution
- ESA guiding principles
 - Recognition that we need to be consistent in how we execute Section 7 consultations

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National Environmental Policy Act (NEPA)

Why?

- Required by law; not optional
- NEPA reviews:
 - Three levels of document complexity - Record of Categorical Exclusion (CATEX), Environmental Assessment (EA), or Environmental Impact Statement (EIS)
 - Serve as the “umbrella” process for compliance with other laws - e.g. the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Marine Mammal Protection Act (MMPA), etc.

Scope & Cost

- On average, DON completes:
 - ~ 3,000 CATEXs (routine actions - building additions, easements)
 - ~ 70 EAs (no significant impact – MILCON projects)
 - ~ 5 EISs (significant impact – homebasing, fleet training, major construction efforts)
- \$30M/year; Average \$10K/action
- Average time to complete
 - CATEXs – 2 weeks (98% of actions)
 - EAs – 18 months
 - EISs – 42 months

How? (People & Processes)

- Improving Processes
 - Aug 2016 ASN Policy – NEPA - “smart from the start”
 - May 2018 ASN Policy – NHPA - “ask the hard questions”
 - (b) (5)
 - (b) (5)
 - Agreements – Consultation agreement with USFWS to streamline ESA consultations
 - Collaborating with resource agencies; building partnerships and streamlining approvals
- Training NEPA practitioners ongoing

NEPA Enables Readiness (Capability) – Key EISs Underway or Recently Completed

- (b) (5)
- [Redacted]
- [Redacted]
- [Redacted]
- *Support MEB/MAGTF training at MCAGCC Twentynine Palms*
- (b) (5)

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CE0075FY18150_000010605



EISs Supporting Readiness

(b) (5)

[Redacted text block]



(b) (5)

(b) (5)

[Redacted text block]



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(b) (5)

[Redacted text block]



(b) (5)



MEB/MAGTF Training at MCAGCC Twentynine Palms, CA (recently completed)

- Original EIS completed in 2012
- FY13 NDAA significantly expanded training areas
- Completed Supplemental EIS completed in 2017
 - Allowed translocation of over 1,000 endangered desert tortoises out of training areas
 - Freed areas for unencumbered training



Enabling MEB/MAGTF Training!



CE [redacted] SFY18150_000010605

Slide Notes

Slide 4:

Fixing America's Surface Transportation Act (FAST 41)
Federal Permitting Improvement Steering Council (FPISC)
Permitting Dashboard <https://www.permits.performance.gov/>
Chief Environmental Review and Permitting Officer (CERPO)

One Federal Decision

Executive Order 13807 – “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects
Interagency MOU – signed April 9, 2018
24 month timeline for EIS completion
Agency tracking performance
OMB and CEQ guidance M-18-13 date March 20, 2018

Improve Authorization and Environmental Review Processes through:

High level oversight for covered projects
Environmental review and authorization process improvement
Early consultation
Coordinated project plans
Public Dashboard tracking (project timetables)
Dispute resolution procedures
Recommended best practices and recommended performance schedules

Central Point of Contact for Entire Federal Process

Federal Permitting Improvement Steering Council (Deputy Secretary level) led by an Executive Director (ED) appointed by the President
Created agency Chief Environmental Review and Permitting Officers (CERPOs)

Clarifies or Changes Some Existing NEPA Provisions:

Reduces statute of limitations from 6 years to 2 years for covered projects (under the APA)
Encourages state participation and adoption/incorporation of state reviews

Allows formation of interstate compacts

Provides direction on determination of range of alternatives and treatment of preferred alternative

Slide 6:

Lead agency

Cooperating agency – legal authority

Participating agency - interest

Proposed Brief for NEPA Emerging Issues 12 Sept

From: "(b) (6) [REDACTED] CIV OASN EI&E" <(b) (6) [REDACTED] i@navy.mil>
To: "(b) (6) [REDACTED] I&L, GF-7" (b) (6) [REDACTED] @usmc.mil>, "Boling, Ted A. EOP/CEQ" <(b) (6) [REDACTED]>
Date: Wed, 05 Sep 2018 09:21:24 -0400
Attachments: smime.p7m (4.59 MB)

(b) (6) /Ted,

Attached are the proposed slides for our brief next Wednesday at 1300. 35 "substantive" slides. We have one hour.

Ted, I cut out a few of yours but left many in place – hoping you can plow through a number of them fairly quickly.

Let me know if you believe any more slides can come out. Need to finalize ASAP.

Txs,

(b) (6)

(b) (6) [REDACTED]
Director, Environmental Planning and Terrestrial Resources
Office of the Deputy Assistant Secretary of the Navy
1000 Navy Pentagon, Room 4A674
Washington, DC 20350-1000

(b) (6) [REDACTED]

(b) (6) [REDACTED] (c)

Emerging Issues in NEPA



Ted Boling (CEQ)

(b) (6) (ODASN(E))

(b) (6) (HQMC/MCICOM I&L)

12 September 2018

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 - Funding authorities
- EO 13807 – Streamlining Federal Permitting and Approvals for Public Infrastructure Projects
 - One Federal Decision – Complete Federal environmental reviews & authorization decisions within 2 years
 - Agency EO Workgroup led by OMB & CEQ Infrastructure
 - NEPA Streamlining Guidance – Agency EO Workgroup led by CEQ NEPA
 - Public transparency with all projects and timelines on Permitting Dashboard
 - MOU between Federal agencies signed in April 2018
 - Implementing One Federal Decision under EO 13807



FAST Act Title 41 (FAST-41)

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- FAST-41, 42 U.S.C. §§ 4370m *et seq.*, created a new governance structure (the “Permitting Council” and Chief Environmental Review and Permitting Officers) to improve the Federal environmental review and authorization process for covered infrastructure projects.
- OMB and CEQ, in coordination with the Permitting Council, issued guidance on January 13, 2017 (<https://www.permits.performance.gov/tools>).
- Projects requiring NEPA analysis that are large (+\$200 million) and complex can apply to become a covered project.
- The Permitting Council ensures early, formalized coordination on covered projects and encourages



Federal Permitting Improvement Steering Council

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Executive Director, Federal Permitting Improvement Steering Council, is appointed by the President.

21 infrastructure projects – including conventional, renewable energy, pipeline, and water resource projects – currently are “planned,” “in progress,” or “paused” and tracked as “covered projects” on the Permitting Dashboard under FAST Act Title 41.

+200 FHWA, FRA, FTA, and FAA projects requiring an EIS are also posted to the Dashboard by the Department of Transportation.



<https://www.permits.performance.gov/projects>





FAST Act Title 41: Covered Projects

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• Any activity in the U.S. that requires authorization or environmental review by a Federal agency Involving construction of infrastructure in a designated sector:

- Renewable or conventional energy - production
- Electricity transmission
- Surface transportation*
- Aviation
- Ports and waterways*
- Water resource projects*
- Broadband
- Pipelines
- Manufacturing
- Any other sector as determined by a majority vote of the Council

• ...that is subject to NEPA, and

- Does not qualify for an abbreviated review process and is likely to cost more than \$200M; or
- Is of a size/complexity likely to benefit from enhanced oversight/coordination in the opinion of the Council, including:
 - Projects likely to require an Environmental Impact Statement
 - Projects likely to require reviews from more than 2 Federal agencies

***Exemption:** Does not include projects subject to Section 139 of MAP-21 or Section 2045 of WRDA (2007)



Cooperating State Agencies Under FAST-41

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- Under FAST-41, the universe of cooperating agencies is the same as NEPA with respect to Federal agencies (those with jurisdiction or special expertise), but only includes States that choose to participate in the FAST-41 process and apply the requirements under FAST-41 to State authorizations.
- FAST-41 “cooperating agency” has a concurrence role for the permitting timetable, a heightened role for modification of schedules and decisions to extend public comment periods, a specific role in alternatives analyses and selection of methodologies for environmental review of the covered project, and a concurrence role in decisions to develop the preferred alternative to a higher level of detail.
- An MOU, 42 U.S.C. § 4370m-2(c)(3)(C), assures that a State, local, or tribal agency that chooses to participate has acknowledged and accepted its assigned authorities and responsibilities as a FAST-41 cooperating agency.
- State, local, or tribal agencies can still be a cooperating agency under NEPA for covered projects without being a cooperating agency subject to FAST-41 requirements.

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FAST Act on Mitigation

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Coordinated Project Plan:

Under Sec. 41003 (c)(1)(B)(iii), the facilitating or lead agency shall establish a Coordinated Project Plan that includes “a discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.”

Applicable factors to be considered:

- The size and complexity of the covered project;
- The sensitivity of the natural or historical resources that may be affected by the project;
- The extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

Preferred Alternative:

Under Sec. 41005 (c)(4), with the concurrence of cooperating agencies, the lead agency may develop the preferred alternative to a higher level of detail in order to “facilitate the development of mitigation measures . . .”

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Permitting Dashboard – Mapping Page

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PERMITTING DASHBOARD
FEDERAL INDUSTRIAL PROJECTS

About Projects Resources & Tools Map

GO GO

Overlays
 [Blue] FAST-41 Covered Projects
 [Green] DOT Projects
 [Yellow] Other Traditional Projects
 [Red] Legacy Projects

Submit Feedback

Permitting Dashboard – List of Covered Projects

PERMITTING DASHBOARD

FEDERAL INFRASTRUCTURE PROJECTS

[About](#)
[Projects](#)
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[Map](#)

Title▲	Lead Agency	Bureau/Mode	Sector	Project Type	Status
Alya Solar Project (Moapa)	Department of Interior	Bureau of Indian Affairs	Renewable Energy Production	Solar	Complete
Atlantic Coast Pipeline, Atlantic Coast Pipeline Amendment, Supply Header, and ACP-Piedmont Lease	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	In Progress
Atlantic Sunrise	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	In Progress
Denbury Riley Ridge to Natrona	Department of Interior	Bureau of Land Management	Pipelines	Land-based Oil & Gas - Production/Extraction	In Progress <input type="button" value="Submit Feedback"/>

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Permitting Dashboard – Project Detail

PERMITTING DASHBOARD

FEDERAL INFRASTRUCTURE PROJECTS

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MID-BARATARIA SEDIMENT DIVERSION

Project Information

Sector: Water Resources

Project Category: FAST-41 Covered Projects

Project Status: In Progress

Project Website: Mid-Barataria Sediment Diversion EIS

Total Estimated Project Cost: \$1,400,000,000

Description:

On June 22, 2016, CPRA submitted a joint permit application which included a brief project description:

"The Mid-Barataria Sediment Diversion is a large scale, complex civil works and ecosystem restoration project. When operated, up to 75,000 cubic feet per second (cfs) of sediment laden water would be diverted from the Mississippi River to the mid-Barataria Basin to reconnect and re-establish the natural or deltaic sediment deposition process between the Mississippi River and the Barataria Basin to deliver sediment, freshwater, and nutrients to reduce land loss and sustain wetlands."

The proposed MBSD project has the potential for significant impacts and requires an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) to inform a permit decision relative to the lead federal agency under Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act (Section 10), and permissions under Section 14 of the Rivers and Harbors Act (Section 408) The USACE-MVN Regulatory permit processing number is MVN-2012-2806-E00.



Primary Location

Latitude: 29.661806000000

Longitude: -89.963500000000

Lead Agency Information:

POC Name: Jeffrey Varisco

POC Title: Project Manager

POC Email: jeffrey.j.varisco@usace.army.mil

Agency/Department: Department of Defense

Sponsor Contact Information:

Project Sponsor: Coastal Protection & Restoration Authority

POC Name: Brad Barth

POC Title: Operation Manager

POC Email: bradley.barth@la.gov

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Authorization Actions and Target Completion Dates

PERMITTING DASHBOARD
FEDERAL INFRASTRUCTURE PROJECTS

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PERMITTING TIMELINE

Action	Agency	Target Completion	Status
▶ Section 408 Permit	US Army Corps of Engineers - Civil Works	10/31/2022	In Progress
▶ Environmental Impact Statement (EIS)	US Army Corps of Engineers - Regulatory	08/31/2022	In Progress
▶ Clean Water Act Section 404 Permit	US Army Corps of Engineers - Regulatory	10/31/2022	In Progress
▶ Section 10 Permit	US Army Corps of Engineers - Regulatory	10/31/2022	In Progress
▶ Endangered Species Act Consultation - FWS	Fish and Wildlife Service (Cooperating under FAST-41), (Cooperating under NEPA)	12/31/2021	Planned
▶ Fish and Wildlife Coordination Act Review	Fish and Wildlife Service (Cooperating under FAST-41), (Cooperating under NEPA)	12/31/2021	Planned
▶ Endangered Species Act Consultation - NOAA-NMFS	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
▶ Consultation to Protect Essential Fish Habitat	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
▶ Marine Mammal Protection Act Incidental Take Authorization	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned

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Permitting Reports

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<https://www.permits.performance.gov/projects>

1. [Recommended Performance Schedules.](#)
This first report provides a generic permitting timetable for covered projects and establishes the groundwork for future development of performance schedules.
2. [Recommended Best Practices.](#) Federal agencies are encouraged to make improvements consistent with these recommendations, as appropriate, in the execution of the environmental reviews authorizations for infrastructure projects.



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