CLOSED,Sealed Case

U.S. District Court
District of Columbia (Washington, DC)
CRIMINAL DOCKET FOR CASE #: 1:26-sw-00318-MJS-1 *SEALED*

Case title: USA v. SEALED

Date Filed: 10/02/2026

Assigned to: Magistrate Judge Matthew J. Sharbaugh

Defendant (1)

ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41

Pending Counts	**Disposition**
None	

Highest Offense Level (Opening)

None

Terminated Counts	**Disposition**
None	

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
None	

Plaintiff

USA

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text

10/07/2026	1	SUPPLEMENTAL EX PARTE BRIEF by USA as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41 (Attachments: # 1 Exhibit Ex 1 [signed] [redacted] SW Package, # 2 Exhibit Ex 2 Proposed Search Protocol, # 3 Exhibit Ex 3 [redacted] # 4 Exhibit Ex 4 Proposed Search Protocol)(Massucco-LaTaif, George) Modified text on 10/9/2026 (zstd). (Entered: 10/07/2026)
10/07/2026	2	ORDER as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. Signed by Magistrate Judge Matthew J. Sharbaugh on 10/7/2026. (ztl) (Entered: 10/07/2026)
10/07/2026	3	SECOND SUPPLEMENTAL EX PARTE BRIEF by USA as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41 (Massucco-LaTaif, George) Modified text on 10/9/2026 (zstd). (Entered: 10/07/2026)
10/07/2026		[redacted]
10/08/2026		[redacted]
10/09/2026	4	Application and Affidavit for Search/Seizure Warrant under Rule 41 by USA as toONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. (Massucco-LaTaif, George) (Entered: 10/09/2026)
10/09/2026	5	MOTION to Seal Case by USA as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. (Attachments: # 1 Text of Proposed Order)(Massucco-LaTaif, George) (Entered: 10/09/2026)
10/09/2026	6	Search and Seizure Warrant Issued by Magistrate Judge Matthew J. Sharbaugh on 10/9/2026 as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. (zstd) (Entered: 10/09/2026)
10/09/2026	7	ORDER granting 5 Motion to Seal Case as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41 (1). Signed by Magistrate Judge Matthew J. Sharbaugh on 10/9/2026. (zstd) (Entered: 10/09/2026)
10/13/2026	8	Search and Seizure Warrant Returned Executed on 10/12/2026 in case as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41 (Massucco-LaTaif, George) (Entered: 10/13/2026)
10/15/2026	9	MEMORANDUM ORDER as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. Signed by Magistrate Judge Matthew J. Sharbaugh on 10/15/2026. (ztl) (Entered: 10/15/2026)
10/15/2026		MINUTE ORDER: The Court intends to promptly unseal the Memorandum Order just docketed. The Court does not believe it references or contains any sensitive information that necessitates continued sealing. Nevertheless, if the government believes any redactions are necessary, it should file an appropriately detailed notice to that effect by no later than 12 PM on Friday October 16, 2026. SO ORDERED. Signed by Magistrate Judge Matthew J. Sharbaugh on 10/15/2026. (ztl) (Entered: 10/15/2026)
10/15/2026	10	[redacted]
10/15/2026	11	[redacted]

		[redacted]
10/16/2026	12	Emergency MOTION to Stay *UNSEALING EX PARTE SUPPLEMENTAL MEMORANDUM ORDER* by USA as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41. (Massucco-LaTaif, George) (Entered: 10/16/2026)
10/17/2026		MINUTE ORDER as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41: As the United States' latest filing indicates, the broader issue of unsealing judicial records in this case is now the subject of at least two separate cases pending before the Chief Judge: 26-mc-144 and 26-mc-145. Given that development, and to allow for an opportunity for the United States' position on continued sealing to be evaluated in the context of adversarial briefing, this Court will defer any decision on unsealing at this time. SO ORDERED. Signed by Magistrate Judge Matthew J. Sharbaugh on 10/17/2026. (ztl) (Entered: 10/17/2026)
11/04/2026	16	Ex Parte STATUS REPORT *re Need for Sealing* by USA as to ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41 (Serano, Alessandra) (Entered: 11/04/2026)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	SW No. 26-SW-318 (MJS) **FILED UNDER SEAL**

THE UNITED STATES OF AMERICA'S SUPPLEMENTAL *EX PARTE* BRIEF IN SUPPORT OF AFFIDAVIT FOR SEARCH WARRANT

At approximately 10:33 a.m. on Friday, October 2, 2026, the government applied to the Court under Federal Rule of Criminal Procedure 41 for a warrant to search the premises known as [redacted] (the "Target Location") for "[a]ll records and information that constitute fruits, contraband, evidence, and instrumentalities of violations of [redacted], those violations involving Ilhan Nur Said Elmi a/k/a Ilhan Abdullahi Omar, and occurring between 1980 to the present (the "Target Offenses"). Application, Attachment B, at 1. The government requested that the Court swear it out on Monday, October 5. After several inquiries as to the status of the warrantr, the Court stated that it would get to it on Tuesday, October 6, 2026.

That morning, the Court requested the government's [redacted] input on, among other topics, the potential Speech or Debate Clause implications of the requested warrant under D.C. Circuit precedent given that the Target Location is the private residence of a sitting Member of Congress. The government offers this brief [redacted]. For the reasons given [redacted], the Court should sign the requested search warrant as submitted. Alternatively, the government proposes two options to help allay any concerns that the proposed warrant will implicate any Speech or Debate privilege the Member may have over digital and analog items seized during the search of her residence.

I. The requested search warrant has no overlap with the Member's legislative acts.

For starters, nothing about the requested search warrant and the case it services implicates the Speech or Debate Clause: unlike the underlying bribery investigation into Congressman Jefferson in *United States v. Rayburn House Off. Bldg., Room 2113*, 497 F.3d 654, 661 (D.C. Cir. 2007), this investigation has no potential overlap with the Member's congressional work; investigators seek to seize nothing over which the Member could assert Speech or Debate privilege; and the Target Location is not the Member's congressional office, but her private residence—an area that Congressman Jefferson himself assured the Supreme Court that *Rayburn* 'would not necessarily apply to' when successfully opposing the cert petition to take it up.

In *Rayburn*, the court rejected the government and district court's filter team proposal because, while it "may demonstrate good faith," it still violated the Clause because the government couldn't "deny that compelled review ... occurred in a location where legislative materials were inevitably to be found." *Rayburn*, 497 F.3d at 661. Sixteen years later, the court confirmed that the non-disclosure "privilege applies whenever the Executive Branch searches 'a location where legislative materials ***[a]re inevitably to be found***.'" *In re Sealed Case*, 80 F.4th 355, 366 n.6 (D.C. Cir. 2023) (quoting *Rayburn*, 497 F.3d at 661)(emphasis added). That's how *Rayburn* has been understood from the beginning. *See* Appellee's Brief in Opposition, *United States v. Rayburn House Off. Bldg., Room 2113*, No. 07-816, 2008 WL 467883, at *31 (U.S. Feb. 19, 2008) ("BIO") (Congressman Jefferson promising that *Rayburn*'s effects would be limited because "[t]he decision applies only to locations where 'legislative materials were inevitably to be found'" (quoting *Rayburn*, 497 F.3d at 661)).

The Clause, after all, applies only to "legislative acts undertaken within the legislative process." *In re Sealed Case*, 80 F.4th at 363. "Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House." *United States v. Gravel*, 408 U.S. 606, 626

(1972). Any "matter[]" beyond that "must be an integral part of the deliberative and communicative processes" for committees, legislation, or anything else in Members' purview. *Id.*; *accord Doe v. McMillan*, 412 U.S. 306, 313 (1973); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 (1975) ("*USSF*"). The Clause is extended "only when necessary to prevent indirect impairment of such deliberations," *Gravel*, 408 U.S. at 625 (citation modified); to "preserve the integrity of the legislative process," *United States v. Brewster*, 408 U.S. 501, 517 (1972); or to preserve the legislature's "independence," *USSF*, 421 U.S. at 511. The privilege is "restrained to things done in the House in a Parliamentary course" and cannot "exceed the bounds and limits of [a Member's] place and duty." *Hutchinson v. Proxmire*, 443 U.S. 111, 125 (1979) (citation modified); *accord In re Sealed Case*, 80 F.4th at 363 (citing 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION, § 863).

The courts have repeatedly cautioned against unduly expanding the definition of 'legislative acts.' "[I]t would not be 'wise, simply out of an abundance of caution to doubly insure legislative independence, to extend the privilege beyond its intended scope, its literal language, and its history, to include all things in any way related to the legislative process.'" *In re Sealed Case*, 80 F.4th at 363 (quoting *Brewster*, 408 U.S. at 516). Actions that have met this demanding definition include speeches on the floor, introducing or voting on legislation, committee hearings, creating committee reports, conducting investigations by questioning witnesses, and subpoenaing records for committee. *United States v. Cuellar*, 800 F. Supp. 3d 716, 729-30 (S.D. Tex. 2025) (summarizing Supreme Court cases). Standard legislative job duties that do *not* count as "legislative acts" include lobbying agencies to influence the President or his subordinates; interacting with constituents; procuring government contracts; and disseminating information outside Congress through speeches, newsletters, or republishing the Congressional record. *Id.* at

730 (same); *see also In re Sealed Case*, 80 F.4th at 364 (similar list). Those latter acts may all be part of an average "day's work for a Member of Congress, [but] they are not privileged under the" Clause. *Id.* After all, "there is a difference between actions taken by legislators, however frequently, and legislative activity protected by the" Clause. *McSurely v. McClellan*, 553 F.2d 1277, 1286 n.28 (D.C. Cir. 1976) (en banc). "[S]erv[ing] *legislative functions*" or "*relating* to the legislative process" isn't enough. *In re Sealed Case*, 80 F.4th at 364, 371 (citation modified); *see, e.g.*, *id.* at 367 (holding that informal factfinding was not per se a "legislative act").

Given this restrictive definition of 'legislative acts,' it's not at all 'inevitable' that the government will find evidence of 'legislative acts' at the Member's private Washington, D.C., residence. 'Inevitable' doesn't mean possible or probable or likely or anything like it: it means "[c]ertain to occur; impossible to prevent or avoid." *Inevitable*, BLACK'S LAW DICTIONARY (12th ed. 2024). That's a high bar—not one cleared by guesswork and surmise. "[M]agistrate judges may" of course "'draw such reasonable inferences . . . from the material supplied to [them] by applicants for a warrant.'" *Matter of Search of Info. that is Stored at Premises Controlled by Google LLC*, 579 F. Supp. 3d 62, 78 (D.D.C. 2021) (quoting *Illinois v. Gates*, 462 U.S. 213, 240 (1983)). They can't speculate, though—basing decisions on a daisy chain of 'mights' and 'maybes'. *See United States v. Griffith*, 867 F.3d 1265, 1268 (D.C. Cir. 2017). Yet that's exactly what the Court would have to do here to find that it's "inevitable" that the government will see documentary evidence of legislative acts at the Member's private house, which is located less than five miles from her House Office. This string of conjectures would have to include the certainty that the Member is printing material, the certainty that she's taking it home, and the certainty that the material includes evidence of legislative acts.

But none of that is inevitable. First off, the modern world no longer runs primarily on paper. Unlike 25 or 50 years ago (perhaps less than 10 years ago), it's not at all certain that a Member is schlepping around briefcases filled with reports and bills. That's doubly true when a Member has over a dozen staff members to carry and keep her papers for her. Far more likely that, like the average person, the great bulk of her professional work is done on her Government issued work computer and phone. What's more, the search warrant shows that the Member has a private residence just a few minutes away from her congressional office. It's therefore more natural and easy for her to maintain the normal professional-private bifurcation and leave physical work at work. After all, if someone is just a few minutes away from all the paper copies one would need, there's less incentive to haul it home every day. In other words, nothing about the Member's living situation disturbs the default division and assumption of work and home life.

Further, even if the Member was one of the vanishing breed of people who prefers to print, and even if she were taking those work documents home, only a small subset of those work documents would memorialize "legislative acts." Recall the sorts of evidence of "legislative acts" the Supreme Court and D.C. Circuit say are protected under the Clause: evidence of delivered or draft floor speeches, evidence of the Member introducing or voting on legislation, evidence transcribing committee hearings, evidence showing the creation of committee reports, or evidence in the form of committee subpoenas. That's a limited, tightly bound list. Many categories of legislative work—like the Member's constituent work or other informal communications and factfinding—don't count. And the Supreme Court has said that the Court can't expand that list out of an abundance of caution.

There isn't a shred of evidence that any of these conjectures are true. Yet the Court needs them all to be true to find that the government will discover evidence of the Member's legislative

acts in her private D.C. residence. Because the Court must ground its warrant decisions in the affidavit's facts and reasonable inferences from those facts, this sort of speculation is off limits. The Court therefore cannot find that the government will "inevitably" uncover evidence of legislative acts during the execution of this search warrant.

This conclusion makes sense. Common sense and a passing understanding of the Clause's purposes tells us that there must be *some* limit to *Rayburn*—some fact pattern laser focused on a Member's private life where their personal effects may be searched without triggering *Rayburn*'s burdensome inevitability-based protocols. Notably, Congressman Jefferson's Brief in Opposition to Certiorari (authored by now D.C. District Court Judge Amy Berman Jackson) imagined just that when it said that *Rayburn*'s inevitability-based protocols "would not necessarily apply to Members' cars or homes." BIO *supra* at *31. Quite right. For all the reasons articulated above, searching a Member's private home for evidence of strictly private conduct just doesn't implicate *Rayburn*'s concerns.

Indeed, the extreme dissimilarity of these facts to other Clause cases shows how poor of a fit *Rayburn*'s "inevitable" language is here. This isn't *In re Sealed Case*, where the government searched a Member's private cellphone that he admitted using to communicate with fellow Members, staff, Executive Branch officials, and private citizens "about whether to certify a presidential election" and about legislation on "federal election procedures." 80 F.4th at 372. Nor is this *Rayburn*, where the FBI spent 18 hours combing through physical documents in a congressional office for evidence of bribery. 497 F.3d at 657. Nor is this *Brown & Williamson Tobacco Corp. v. Williams*, where a tobacco company civilly subpoenaed two Members to produce certain congressional records a whistleblower had given to a committee that was investigating nicotine's health effects. 62 F.3d 408, 411-12 (D.C. Cir. 1995). Nor is it *MINPECO, S.A. v.*

Conticommodity Servs., Inc., where silver dealers trying to show a House witness's testimony was changed between the testimony itself and the publication of it civilly subpoenaed a subcommittee for staff information, committee records and testimony, and internal subcommittee correspondence. 844 F.2d 856, 857-58 (D.C. Cir. 1988). Rather, this is a search of a Member's private residence for evidence of her explicitly private conduct without a scintilla of proof that the government will stumble across evidence of legislative acts. Unlike the seeking party in those other Clause cases (government and private alike), the government here isn't interested in conduct bumping up against or intertwined with "legislative acts," doesn't want or need to see "legislative acts," and wouldn't be helped if it found evidence of any. And the search warrant here is appropriately framed to avoid just that.

II. The Court recently signed a broader search warrant with fewer protections.

[redacted] *cf. In re Sealed Case*, 80 F.4th at 363 (the Clause applies only to "legislative acts undertaken within the legislative process"); *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 523 (1977) (Burger, C.J.,

dissenting) ("this Court has always assumed that the immunity conferred by the Speech or Debate Clause is available to a Member of Congress after he leaves office") (citing *Brewster*, 408 U.S. at 501).

[redacted] Here, the government simply asks that the Court apply to the requested search warrant involving Congresswoman Omar the same standard it applied to the one it granted [redacted]. Under that standard, this warrant supplies more than sufficient protections to ensure that any legislative privilege remains intact.

III. There are additional protocols available to protect any Speech or Debate privilege without transforming the Member into a "super-citizen" immune to criminal liability.

In the event the Court is inclined to apply a different standard to the instant application, there are several proposed alternative protocols that the Court could deploy to ensure further protection for any Speech or Debate Clause issues. One is a special search procedure modeled after one [redacted]. Under this protocol, special search procedures will be employed [redacted]

[redacted]

If the Court deems [redacted]. In the event the Court deems its chambers insufficient to serve as an adequate location for the safe and secure storage of these materials, the Court can ask the parties to propose the appointment of a Special Master to log and house the materials while the Member reviews them and makes her proposed claims of privilege for the Court's ultimate review.

* * * *

Again, the government believes the warrant application should be signed as-is, and contains sufficient protections for any legislative privilege that may come up. It offers these additional protocols as options to provide additional protection on top of what already exists. Anything beyond that, however, would risk turning all "Members of Congress super-citizens, immune from criminal responsibility," *Brewster*, 408 U.S. at 516, and transforming many a private place into "a sanctuary for crime," *id.* at 521 (citation modified)—especially if the seized evidence is allowed to sit at the Target Location for any longer, accessible to anyone intent on modifying, moving, or destroying it. It should never be the case that Members can "easily avoid[]" and "shield themselves fully from" investigations by just gesturing to the Clause. *In re Search of Elec. Commc'ns in the Acct. of chakafattah gmail.com at Internet Serv. Provider Google, Inc.*, 802 F.3d 516, 528 (3d Cir. 2015); Kelly M. McGuire, *Limiting the Legislative Privilege: Analyzing the Scope of the Speech or Debate Clause*, 69 WASH. & LEE L. REV. 2125, 2163 (2012) (saying

Rayburn could make investigating corrupt "legislators much more difficult"). For example, a Member could put privileged material in private locations, creating a "shield" and "de facto blanket immunity" for those locations. John D. Pingel, *Do Congressmen Still Pay Parking Tickets? The D.C. Circuit's Overextension of Legislative Privilege in* United States v. Rayburn House Office Building, 42 U.C. DAVIS L. REV. 1621, 1644 (2009); *accord* McGuire, *supra*, at 2162-63. Yet the Clause wasn't designed to "impair investigations" by "creating physical sanctuaries for evidence." Michael L. Shenkman, *Talking About Speech or Debate: Revisiting Legislative Immunity*, 32 YALE L. & POL'Y REV. 351, 399 (2014). This "blanket immunity" creates an "imbalance between the executive and legislative branches," Pingel, *supra*, at 1647, and an "incentive structure that allow[s]" Members to evade "any real risk of criminal or civil sanctions," Anna Fodor, *Congressional Arbitrage at the Executive's Expense: The Speech or Debate Clause and the Unenforceable Stock Act*, 108 NW. U. L. REV. 607, 638 (2014).

This isn't bluster. Sometimes unscrupulous legislators abuse the privilege. It was "grossly abused" in England long before the Clause. *See* Columbia Law Review, Brewster, Gravel, *and Legislative Immunity*, 73 COLUM. L. REV. 125, 127 (1973). The Founders early on suspected it was being abused in America. 4 LETTERS AND OTHER WRITINGS OF JAMES MADISON 221 (Philadelphia, J.B. Lippincott & Co. 1865) ("It is certain that the privilege has been abused in British precedents, and may have been in American also."). Any measure that could discourage congressional corruption and, thus, fulfil the Clause's original purpose—protecting the integrity of the legislative process—should be pursued. *Fattah*, 803 F.3d at 528-29; *McGuire*, *supra*, at 2163 (saying *Rayburn* could increase "betrayal[s] of the public trust"). Insulating Members from the rule of law "only harm[s] legislative independence." *United States v. Renzi*, 651 F.3d 1012, 1036 (9th Cir. 2011). And it betrays the principles that "legislators ought not to stand above the law" and don't

get a "general exemption … from liability or process in criminal cases. Quite the contrary is true." *Gravel*, 408 U.S. at 615, 626.

Reading *Rayburn* so broadly as to reject the government's proposed protocols and insulate the Member from any seizure whatsoever would turn that all on its head and twist the privilege to permit corruption at the expense of justice; to aggrandize the Legislature to the detriment of the Executive and Judiciary; and to serve the Member rather than the public trust.

CONCLUSION

The Court should grant the requested search warrant as submitted, or alternatively, sign it with one of the proposed protocols.

Respectfully submitted,

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Dated: October 7, 2026

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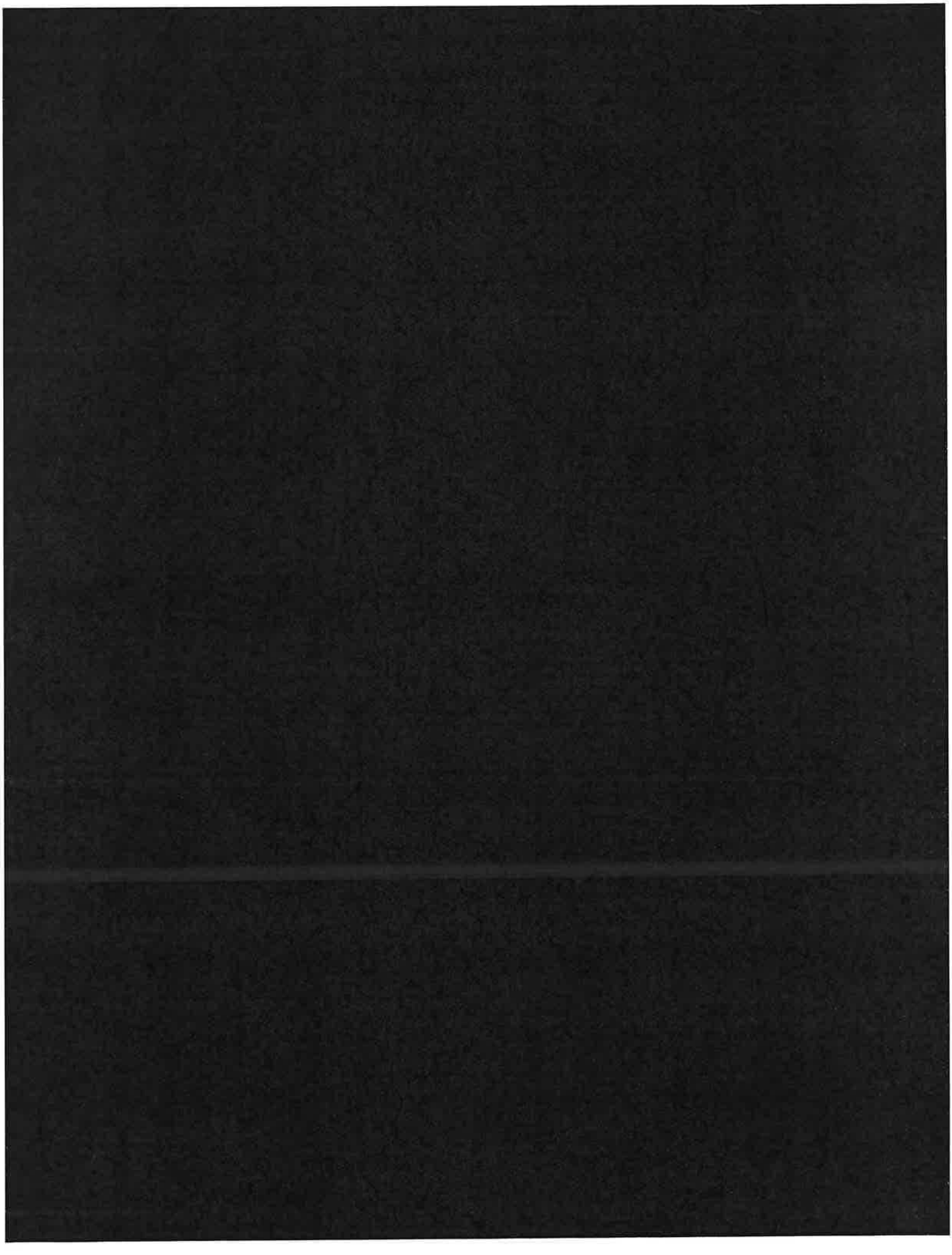
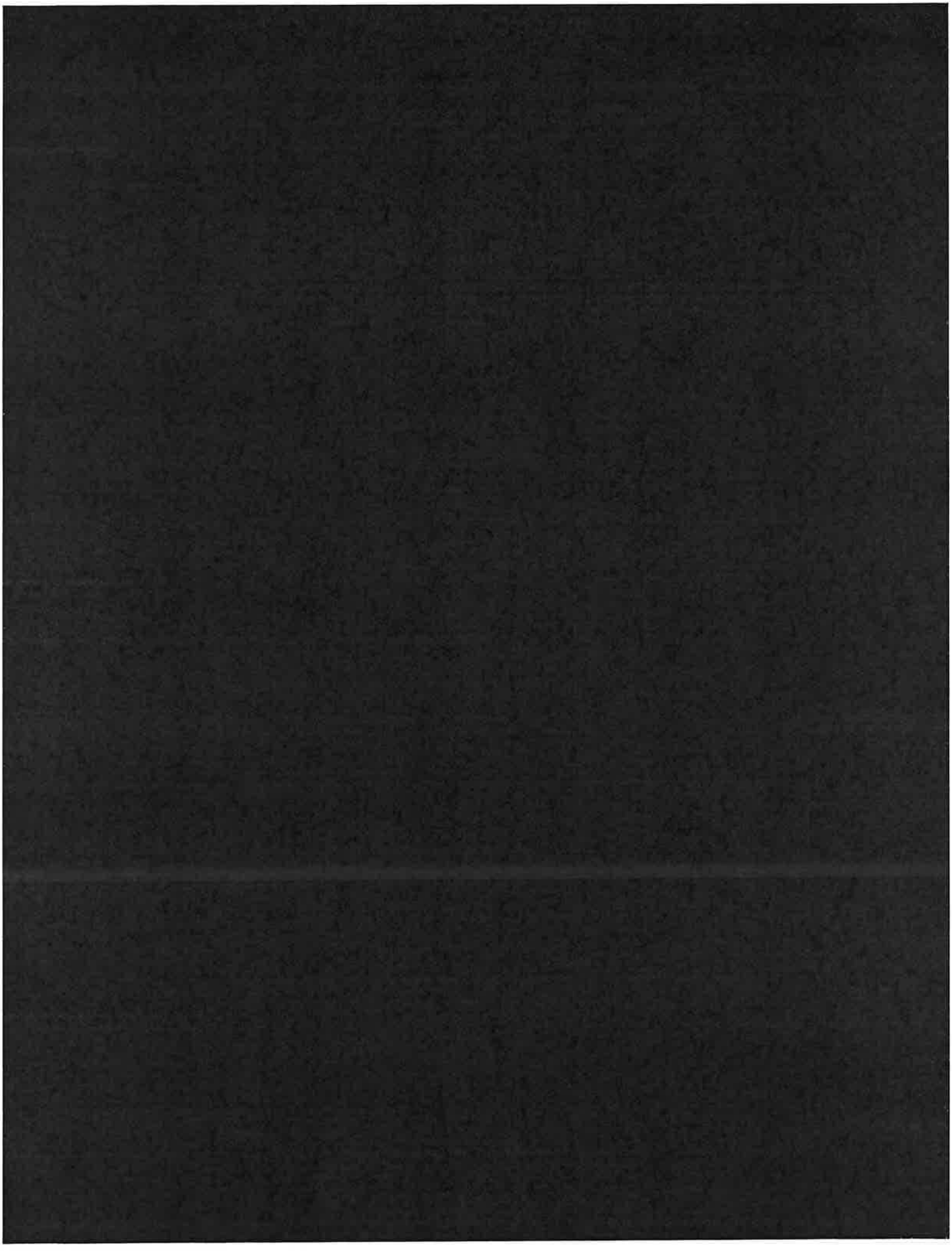
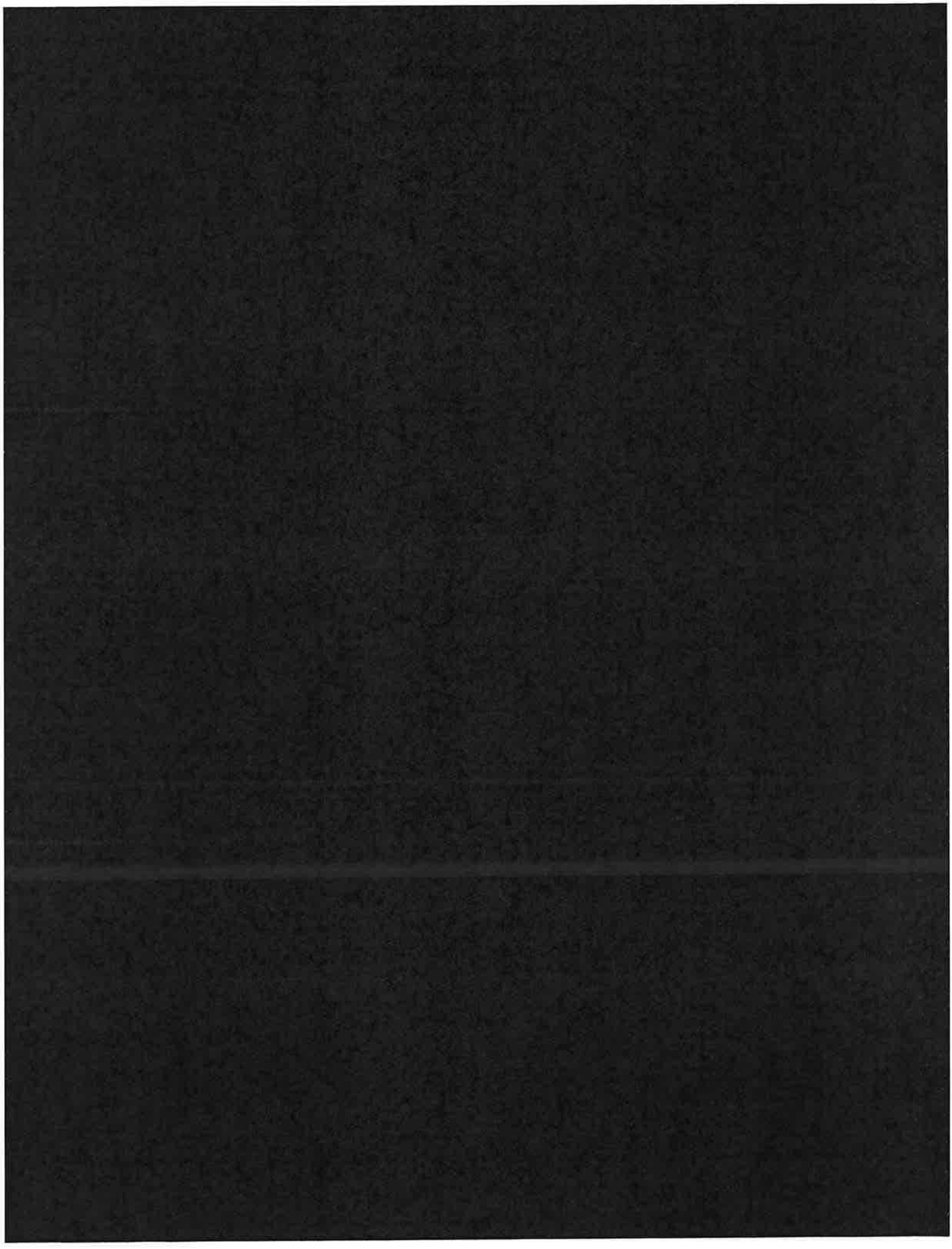
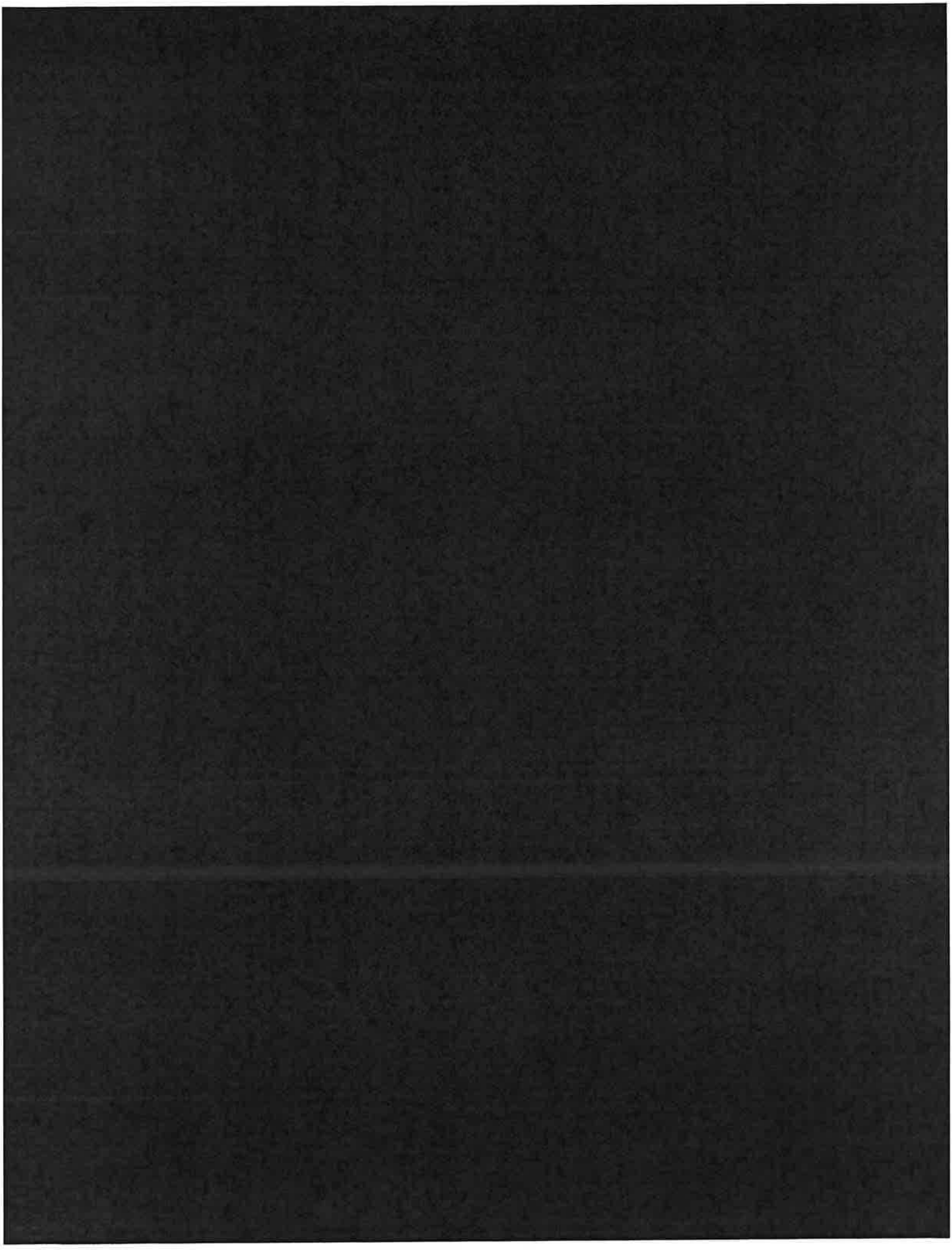
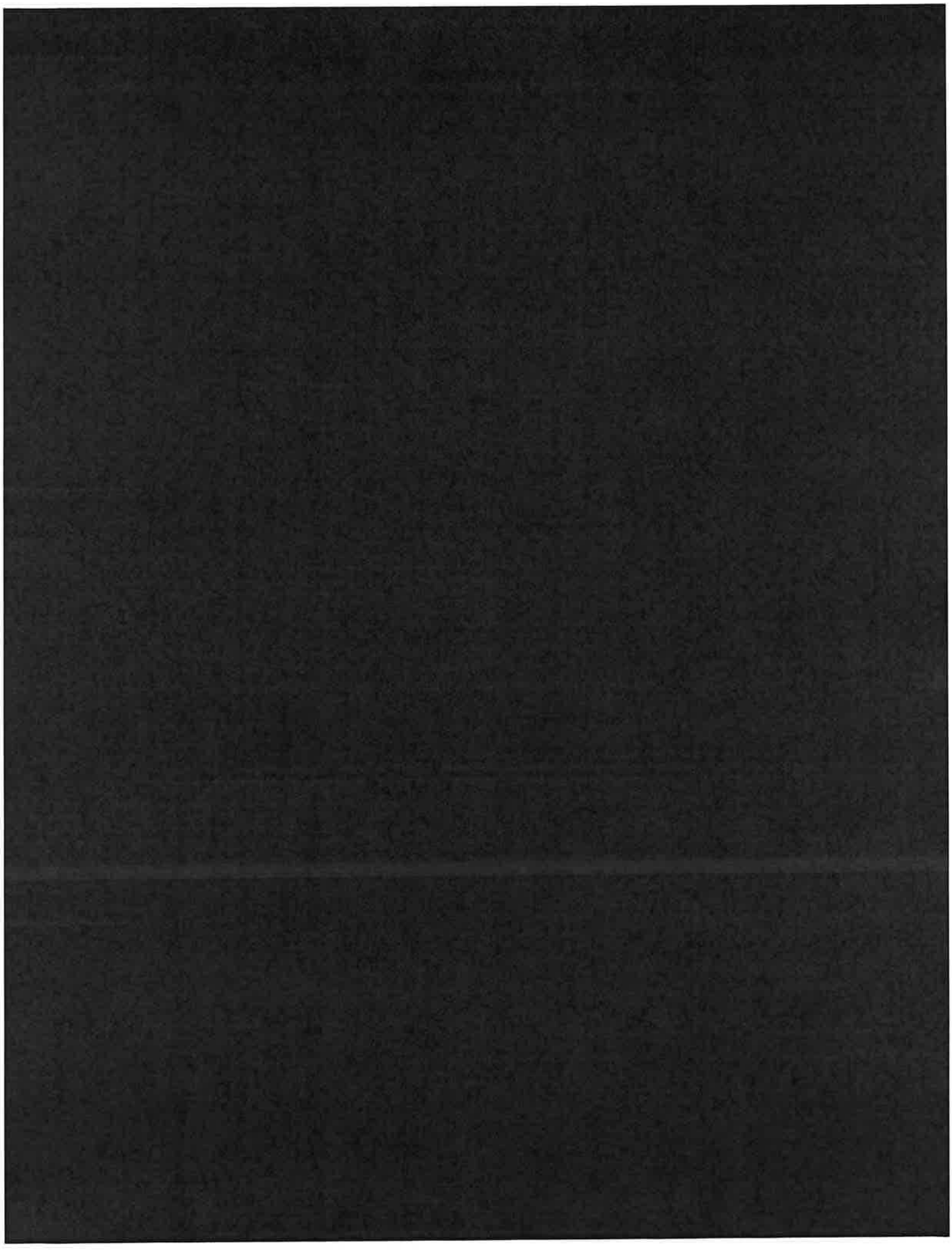
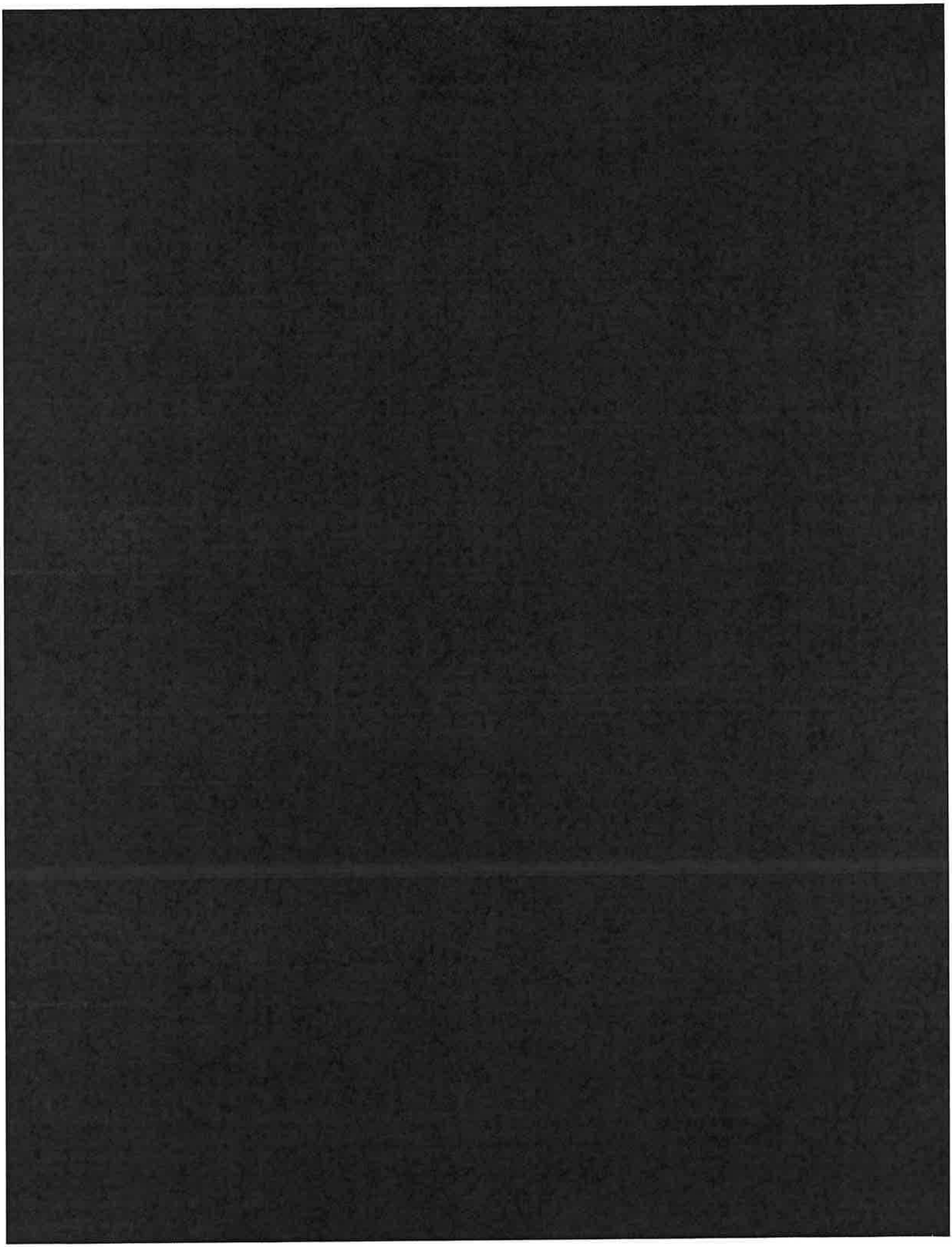


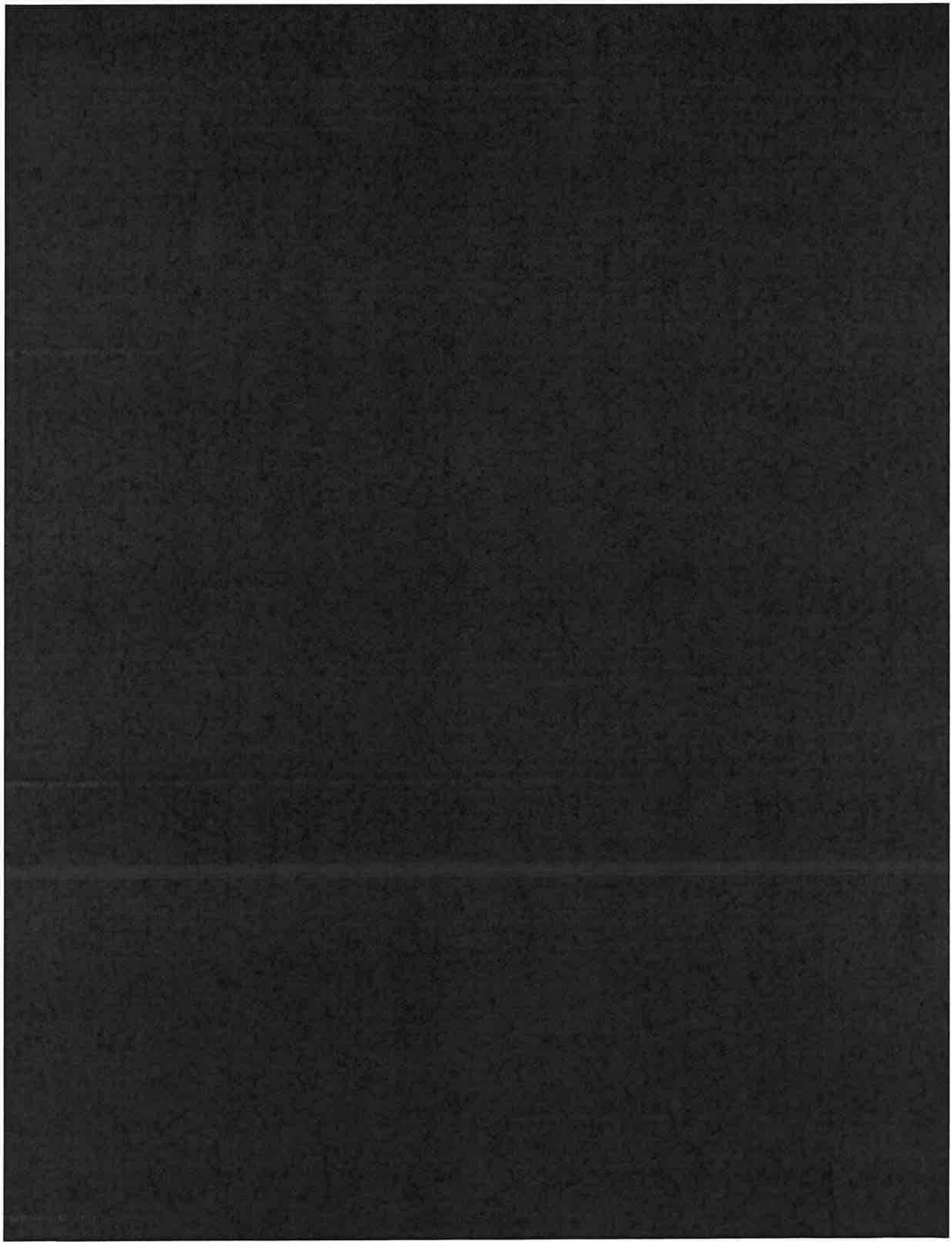


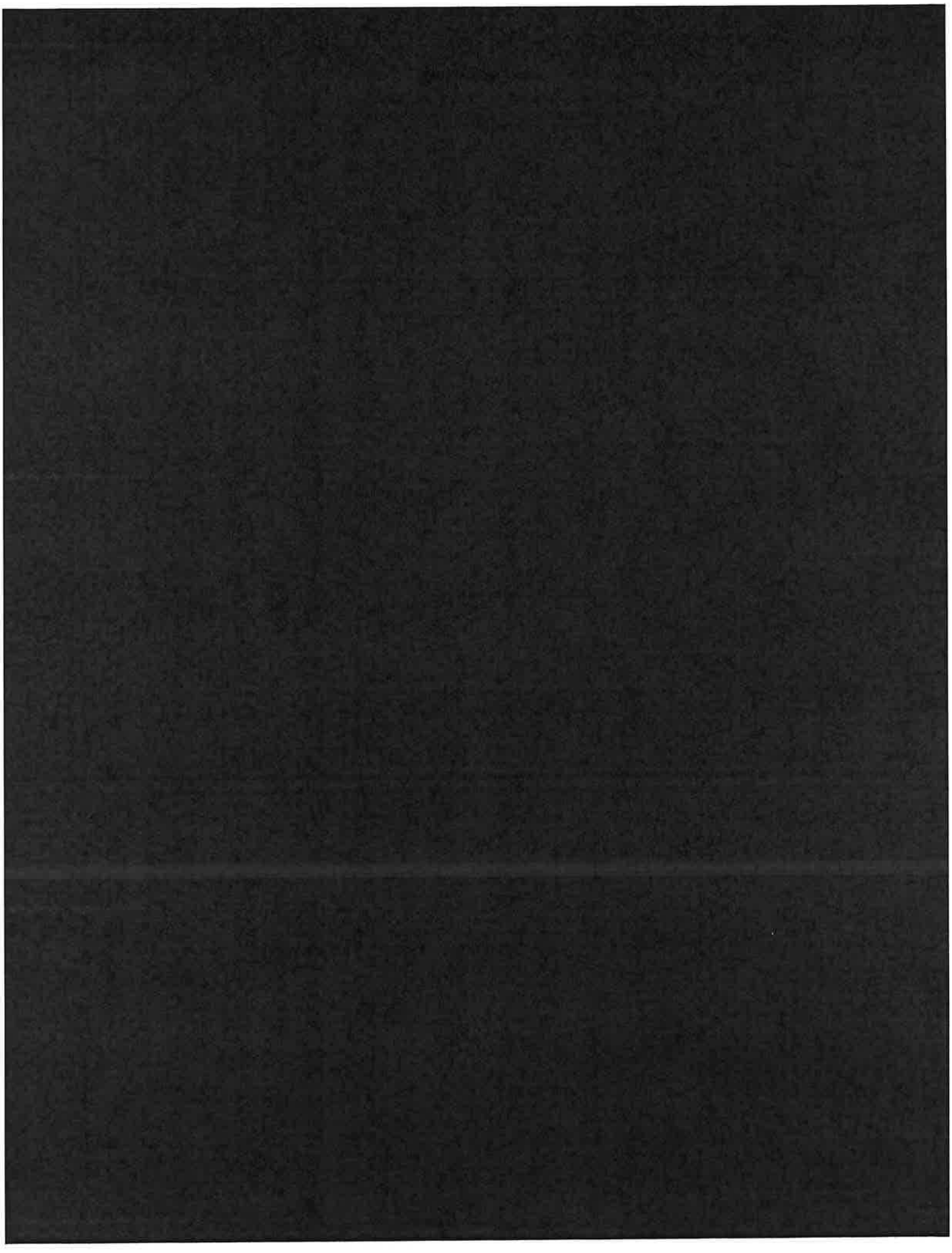


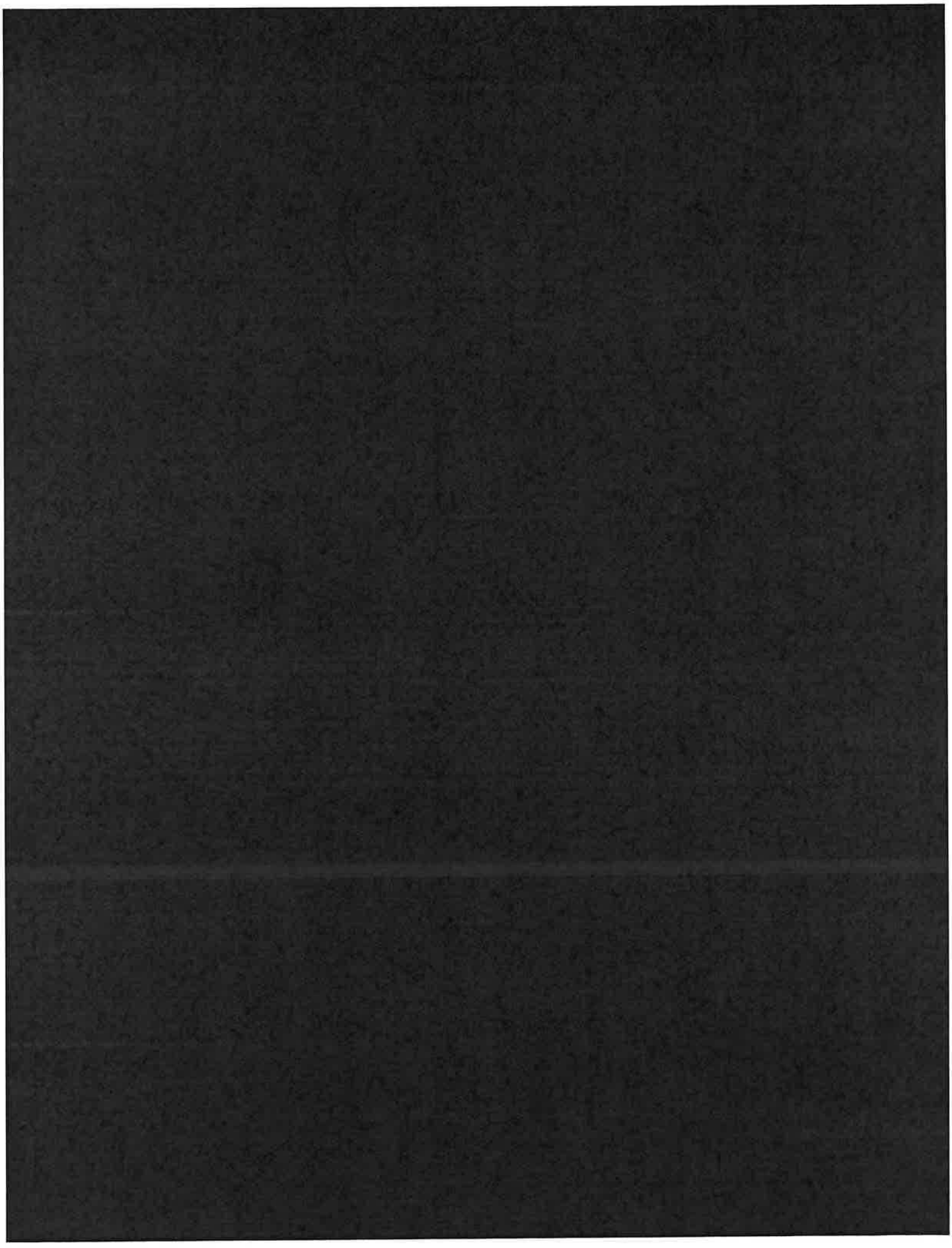


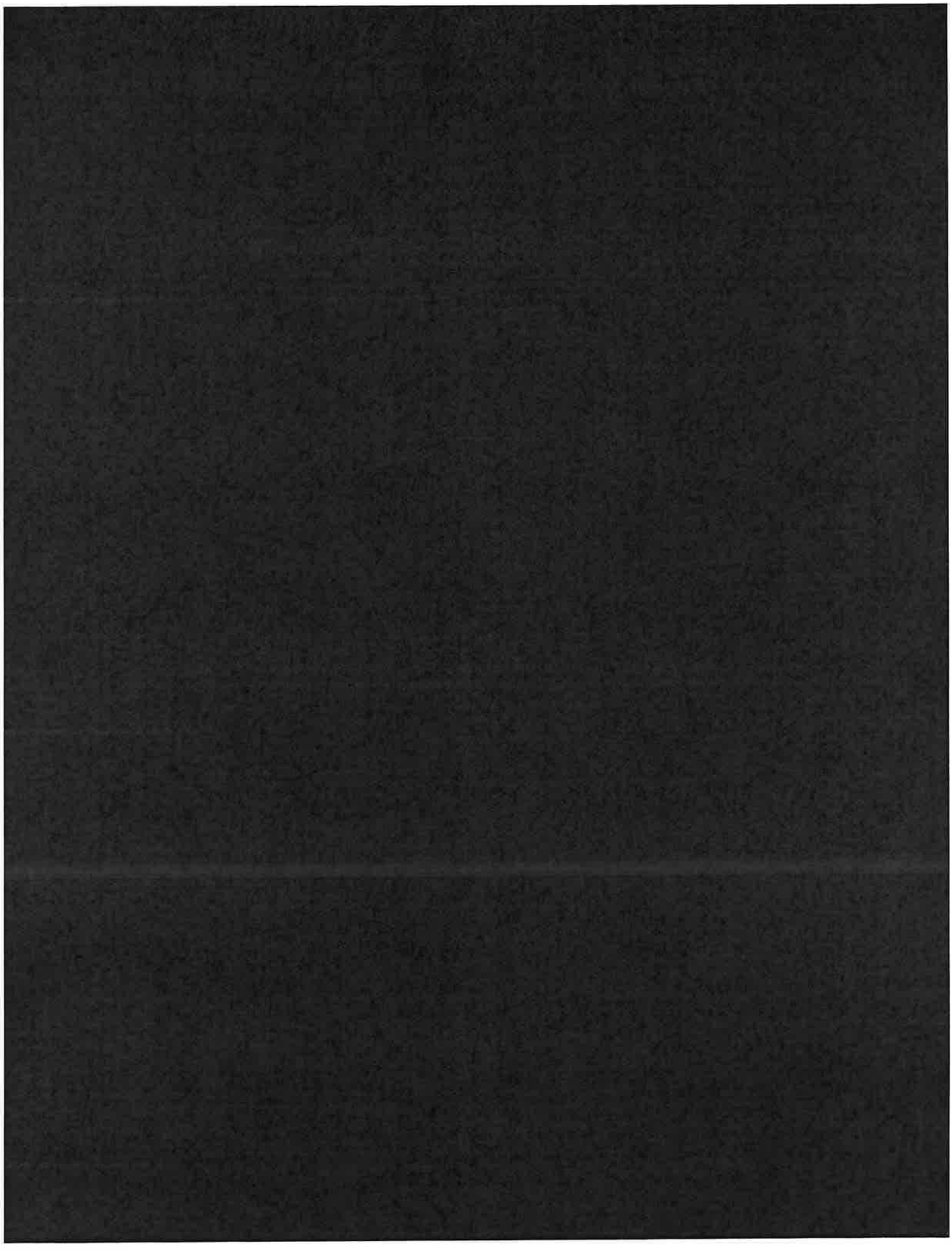


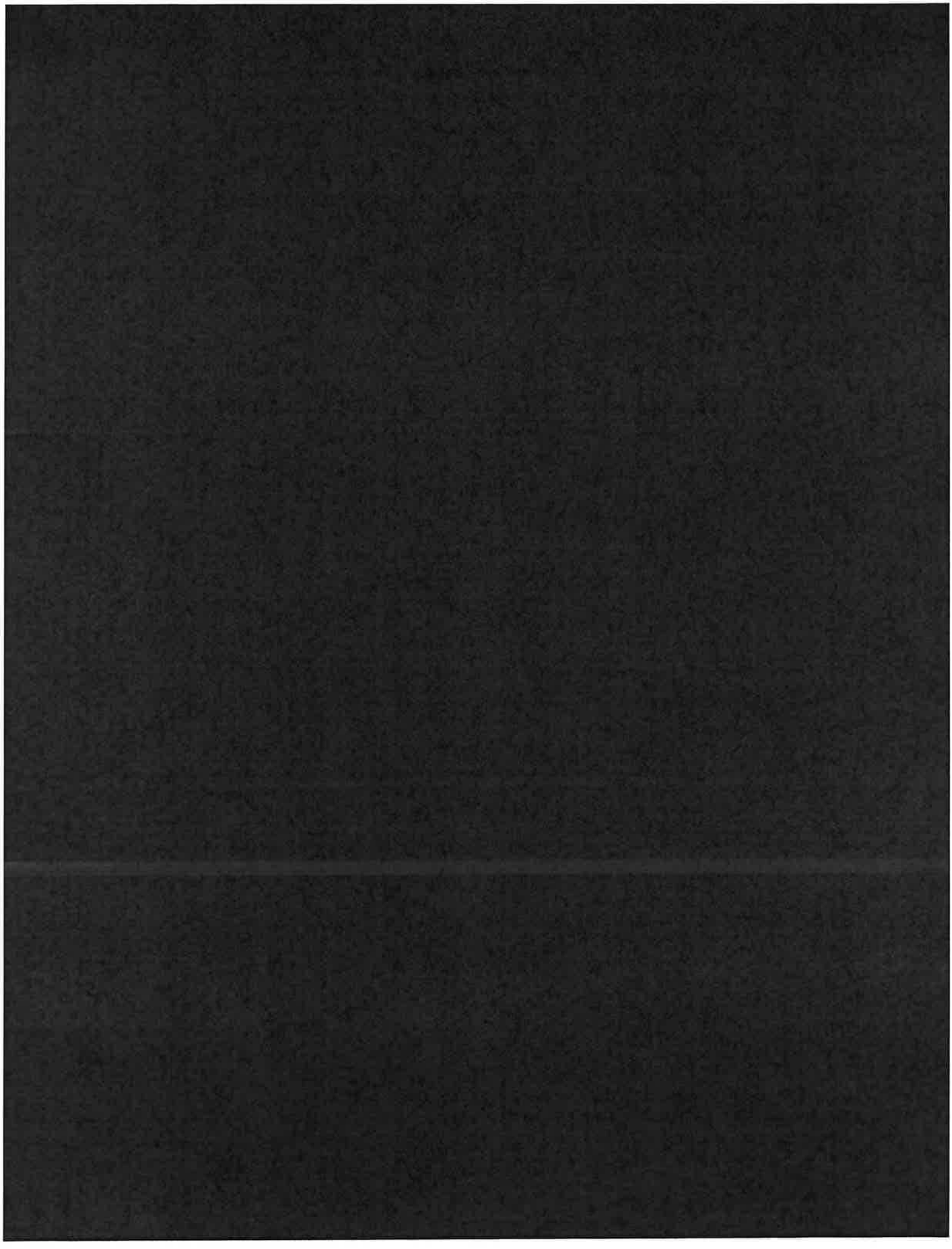


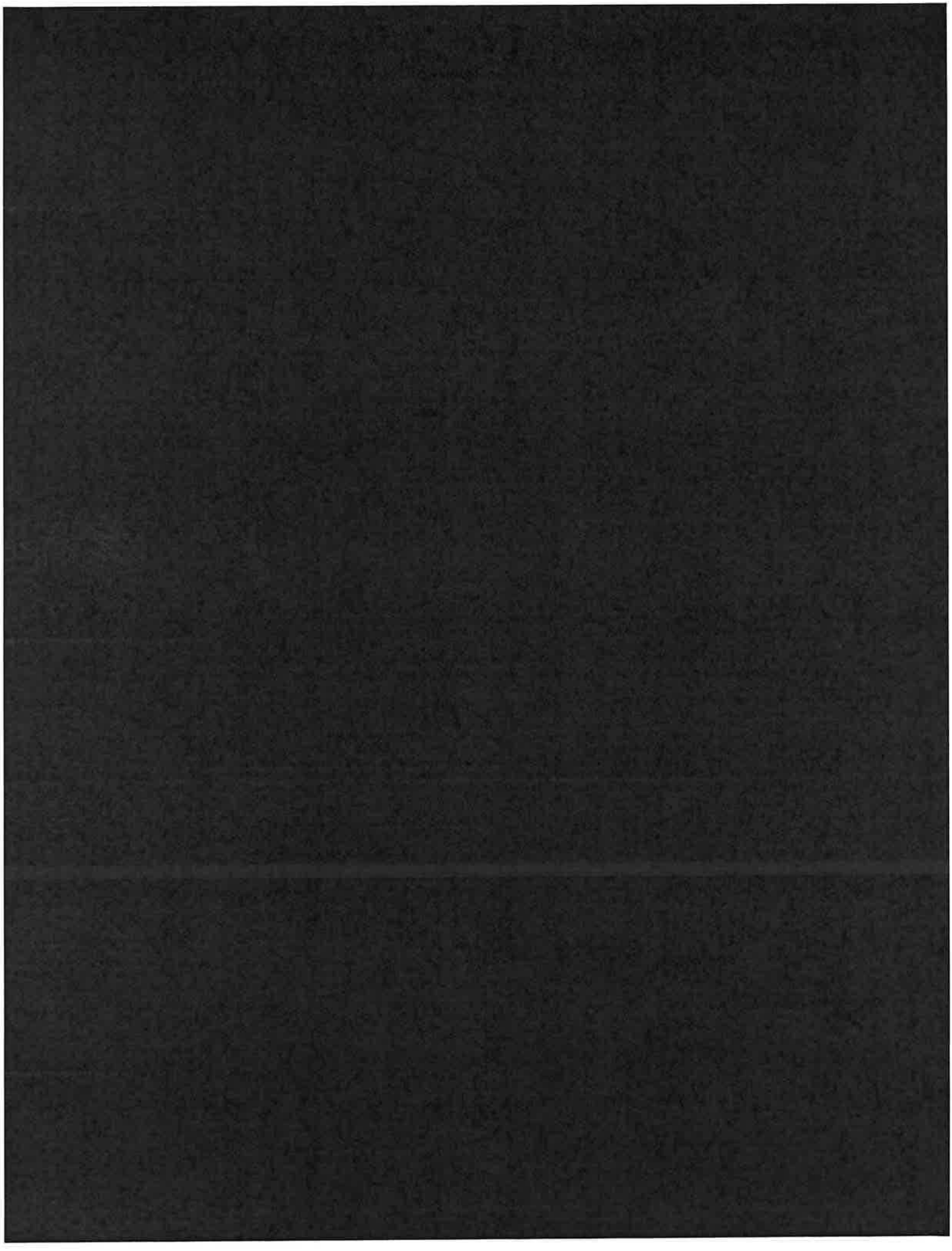


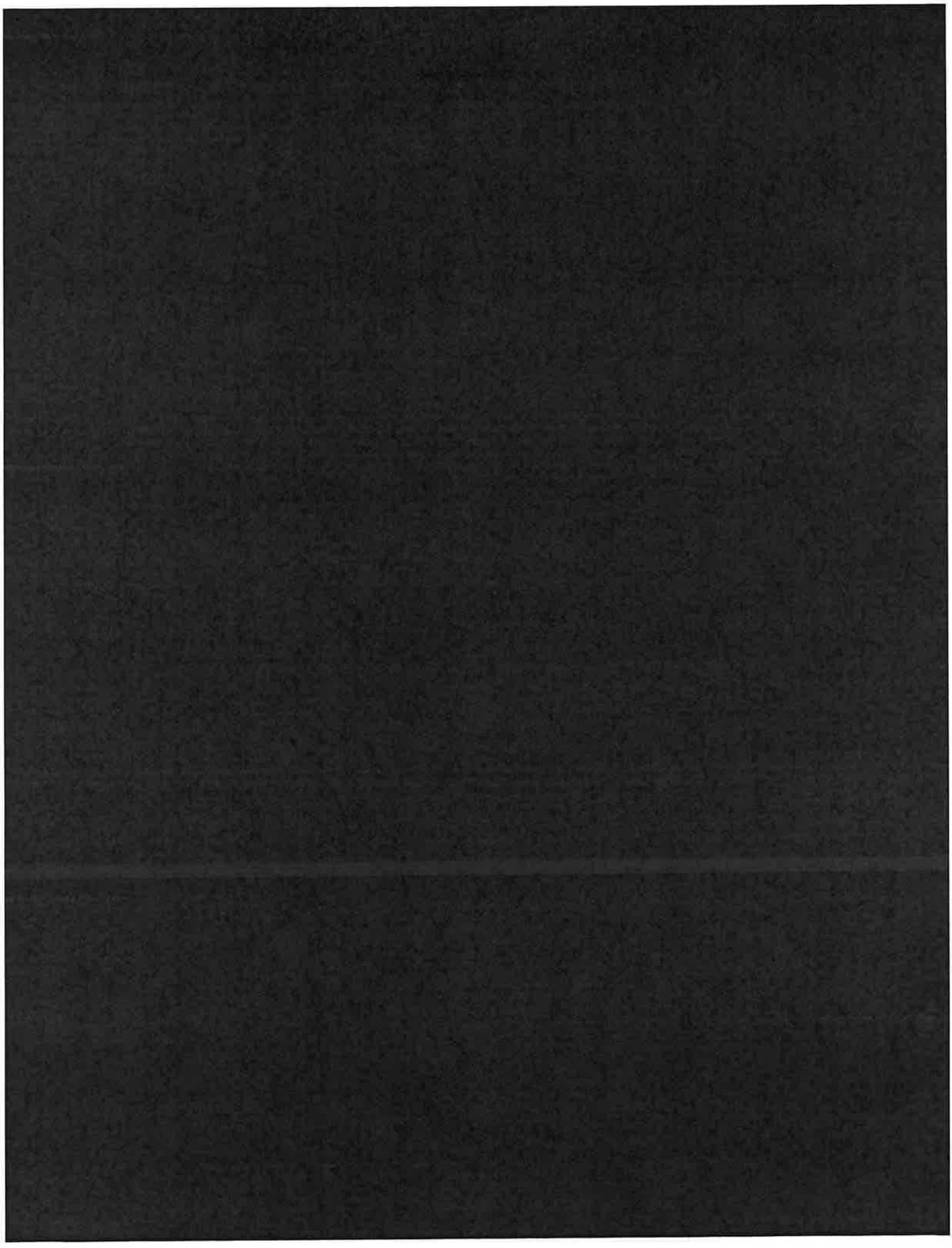


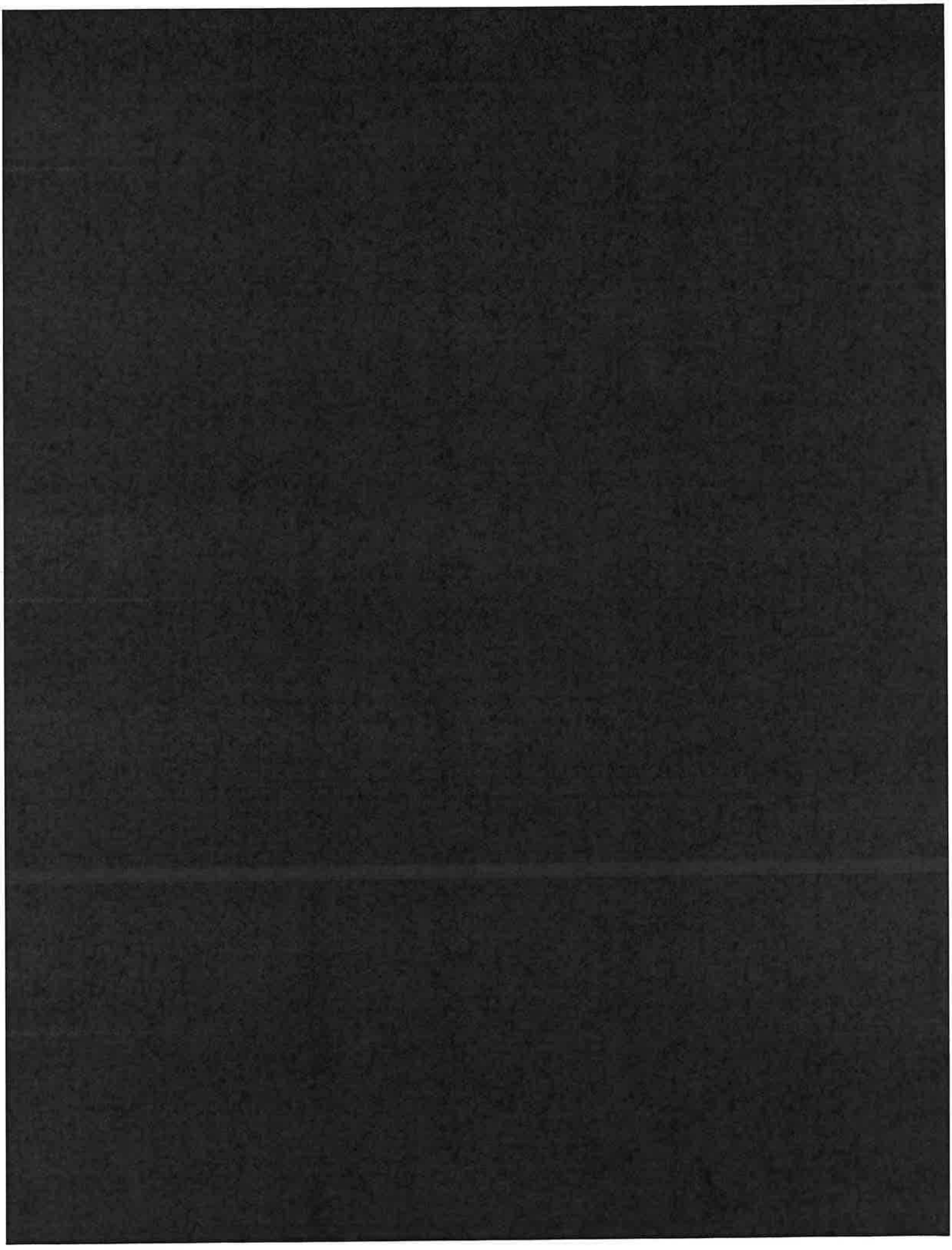


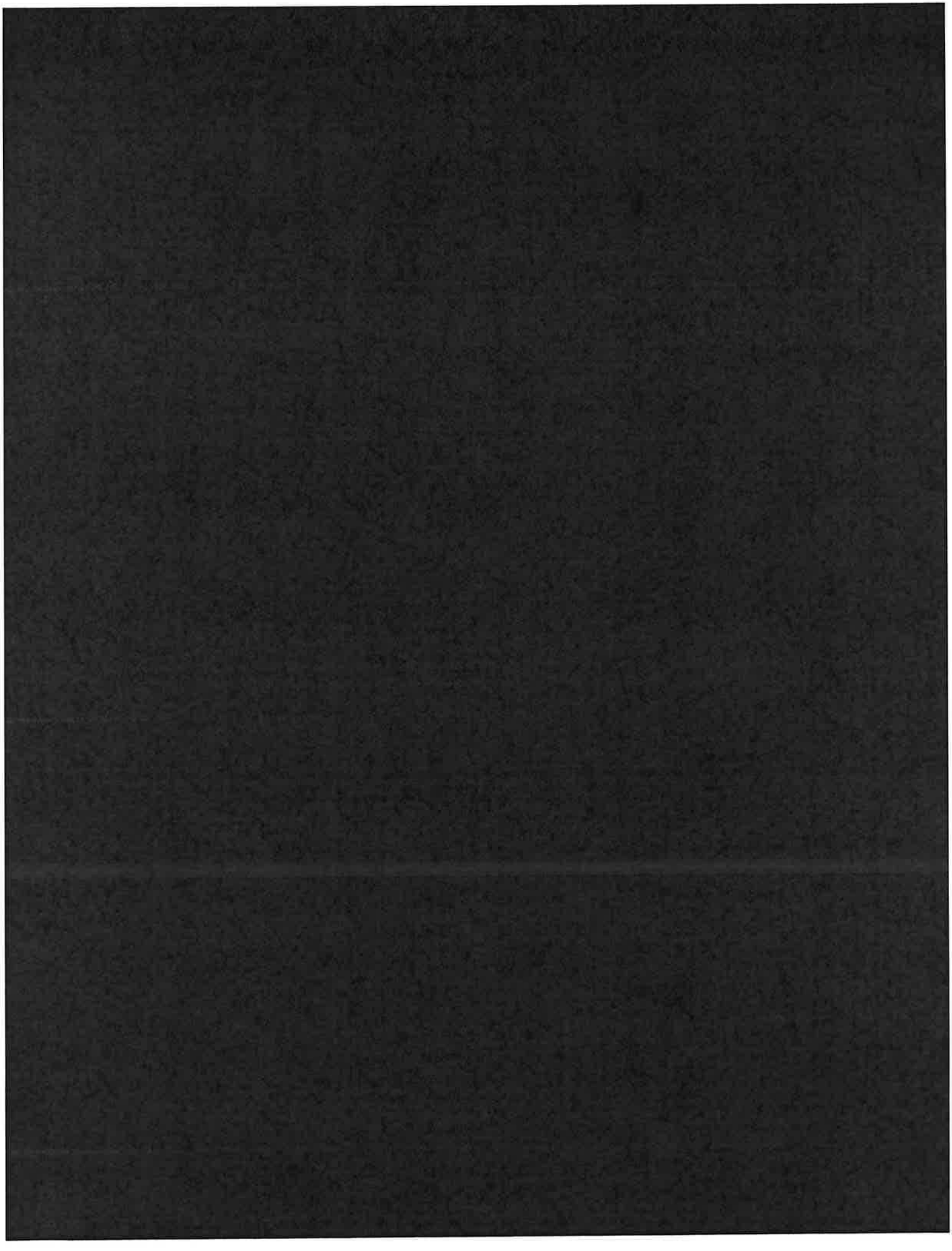


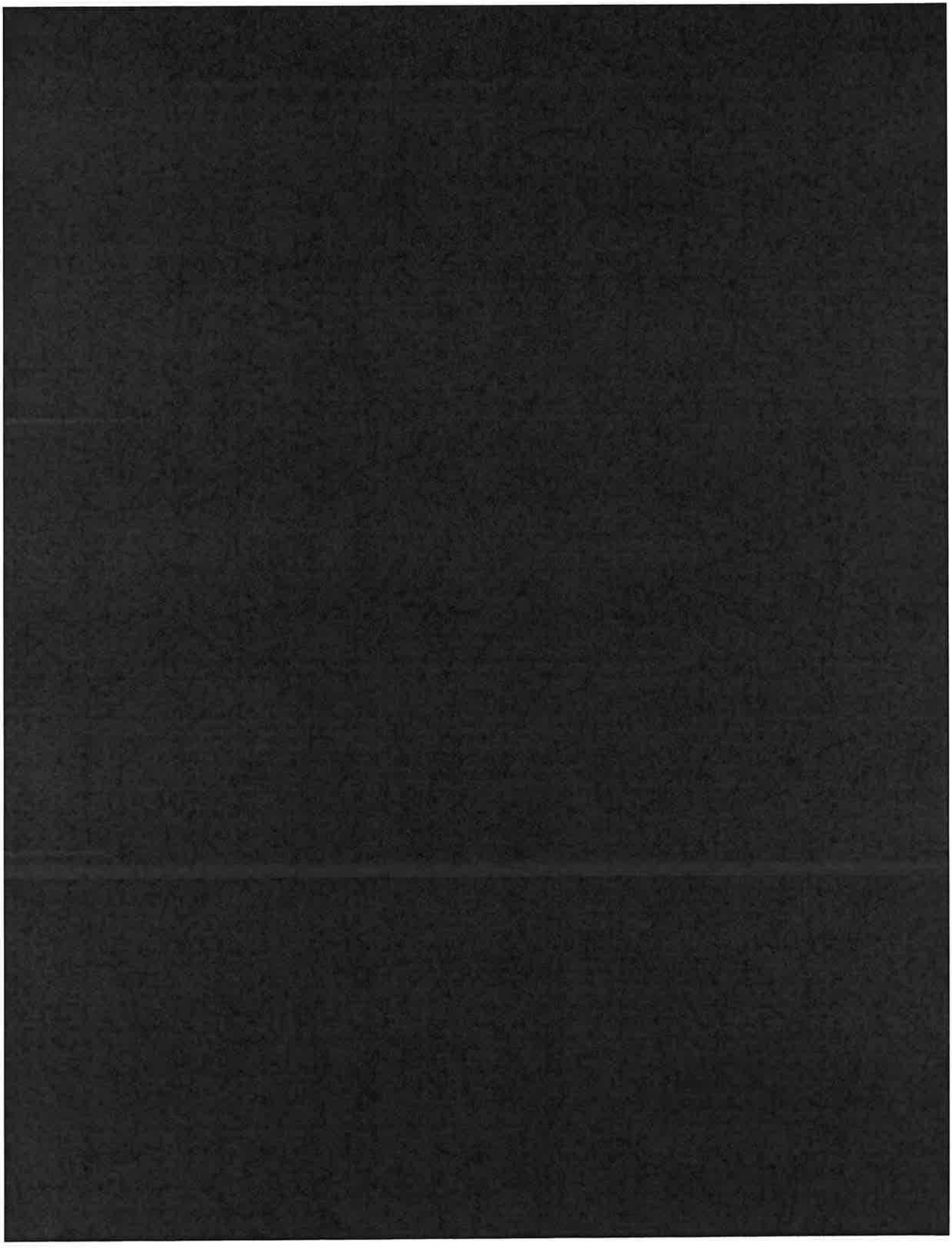


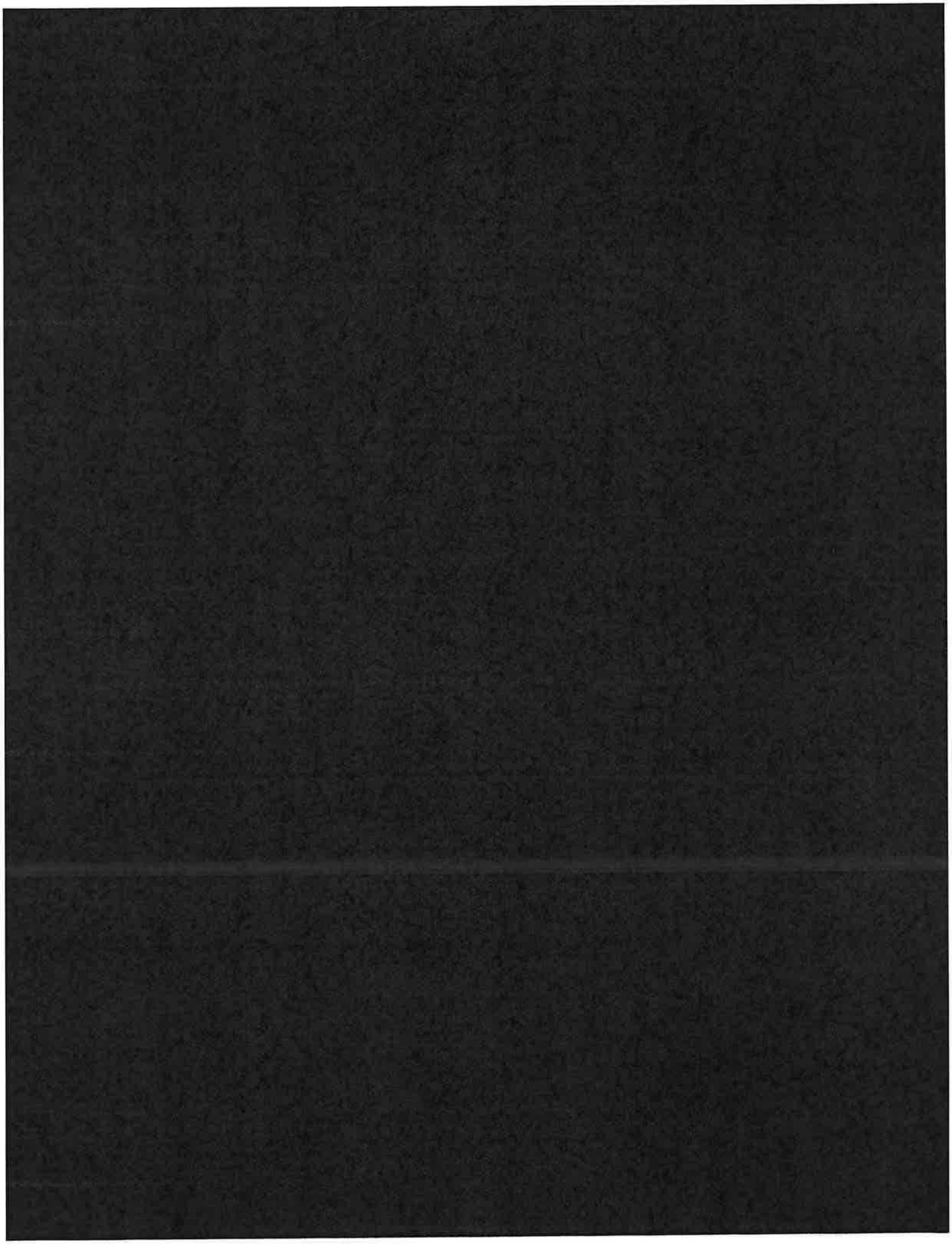


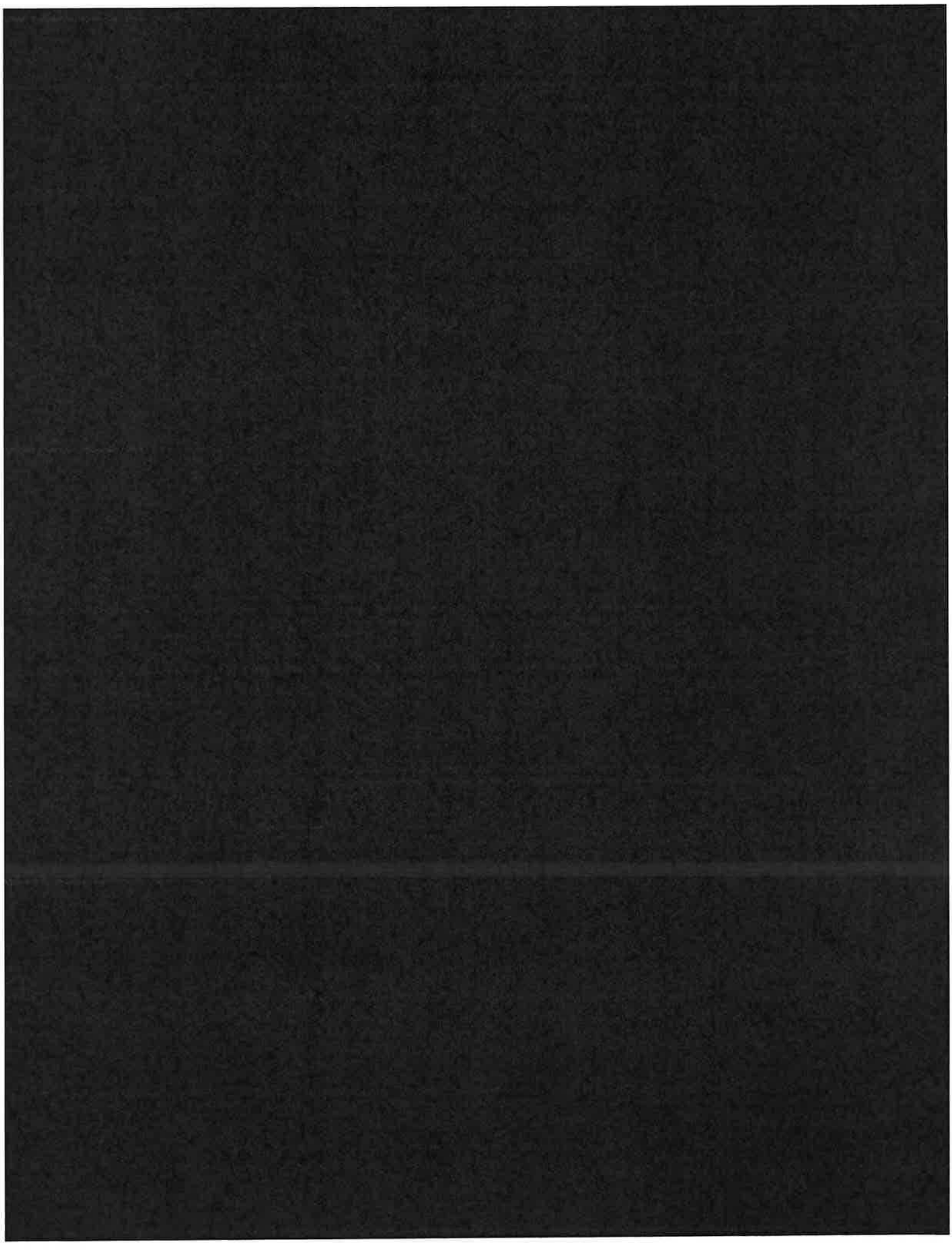


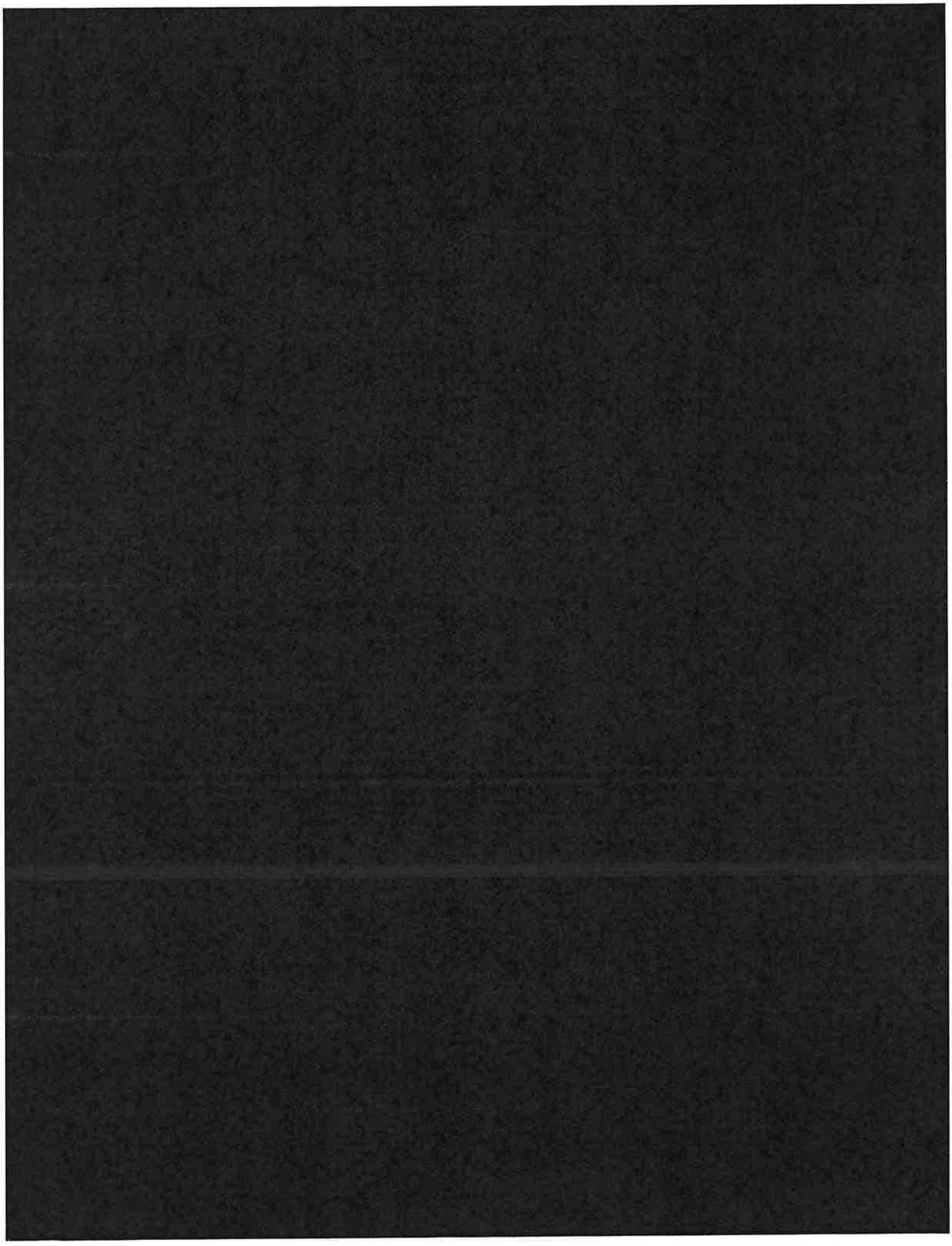








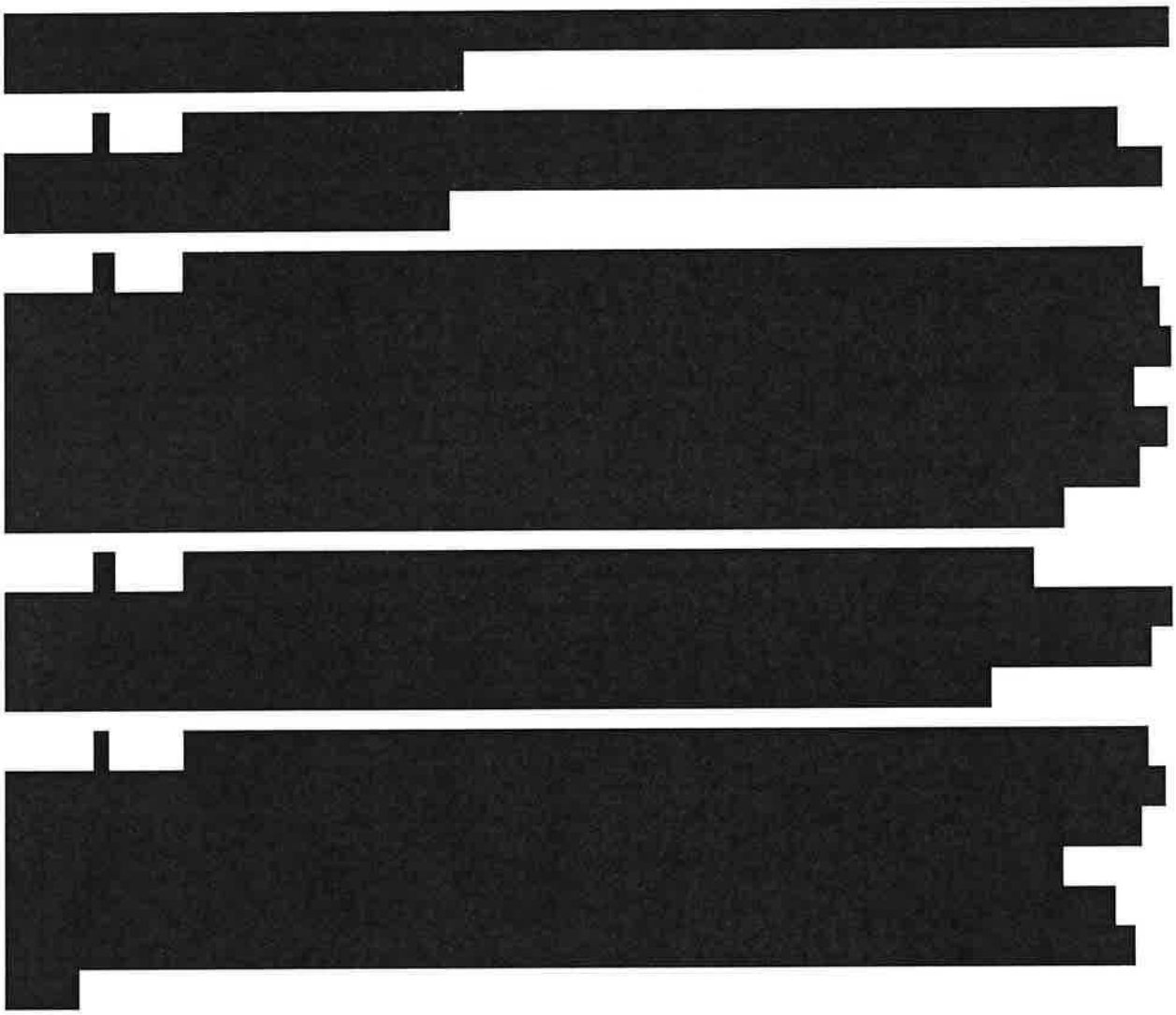




ATTACHMENT C

Special Search Procedures

[redacted]



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Special Search Procedures

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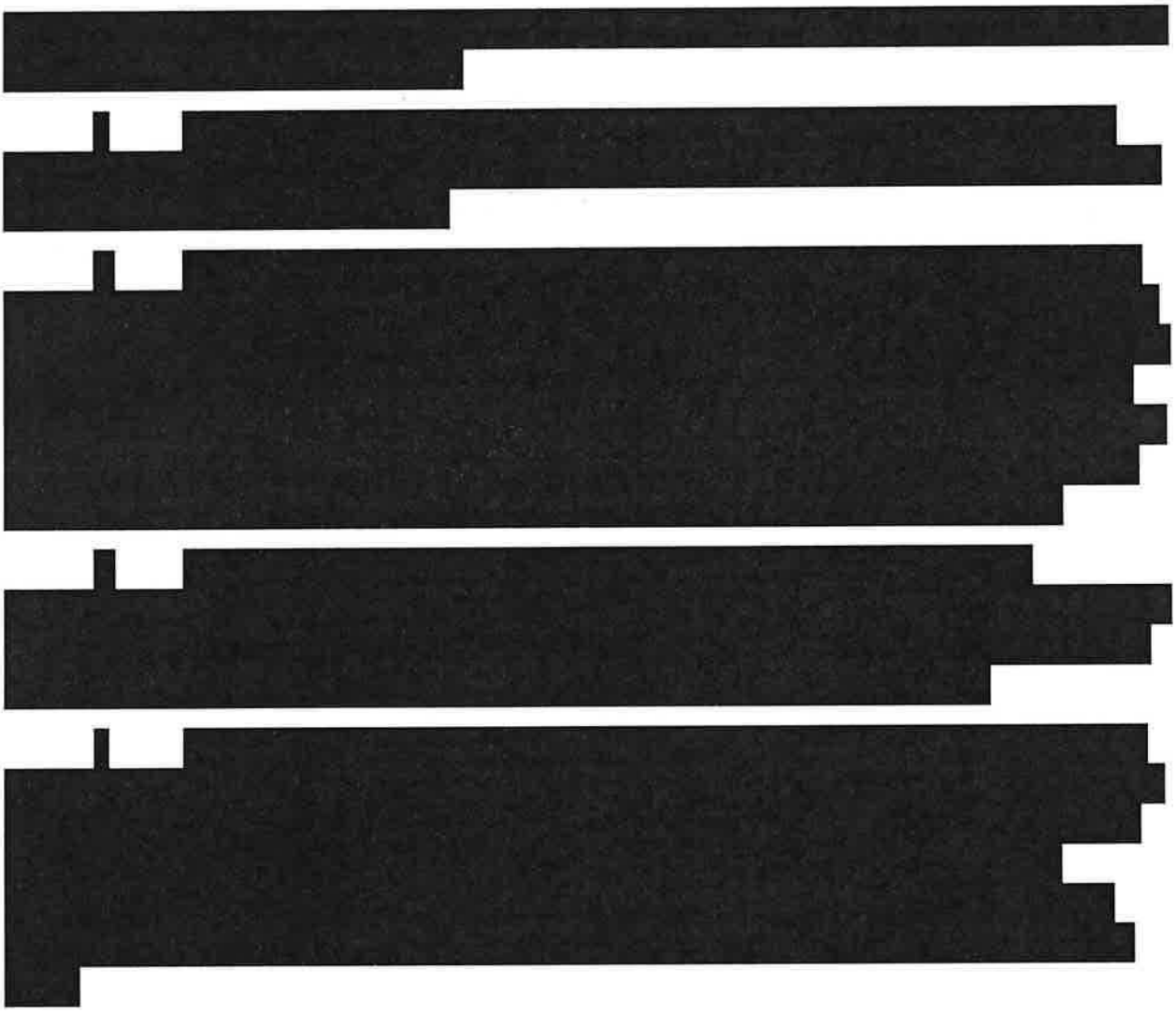
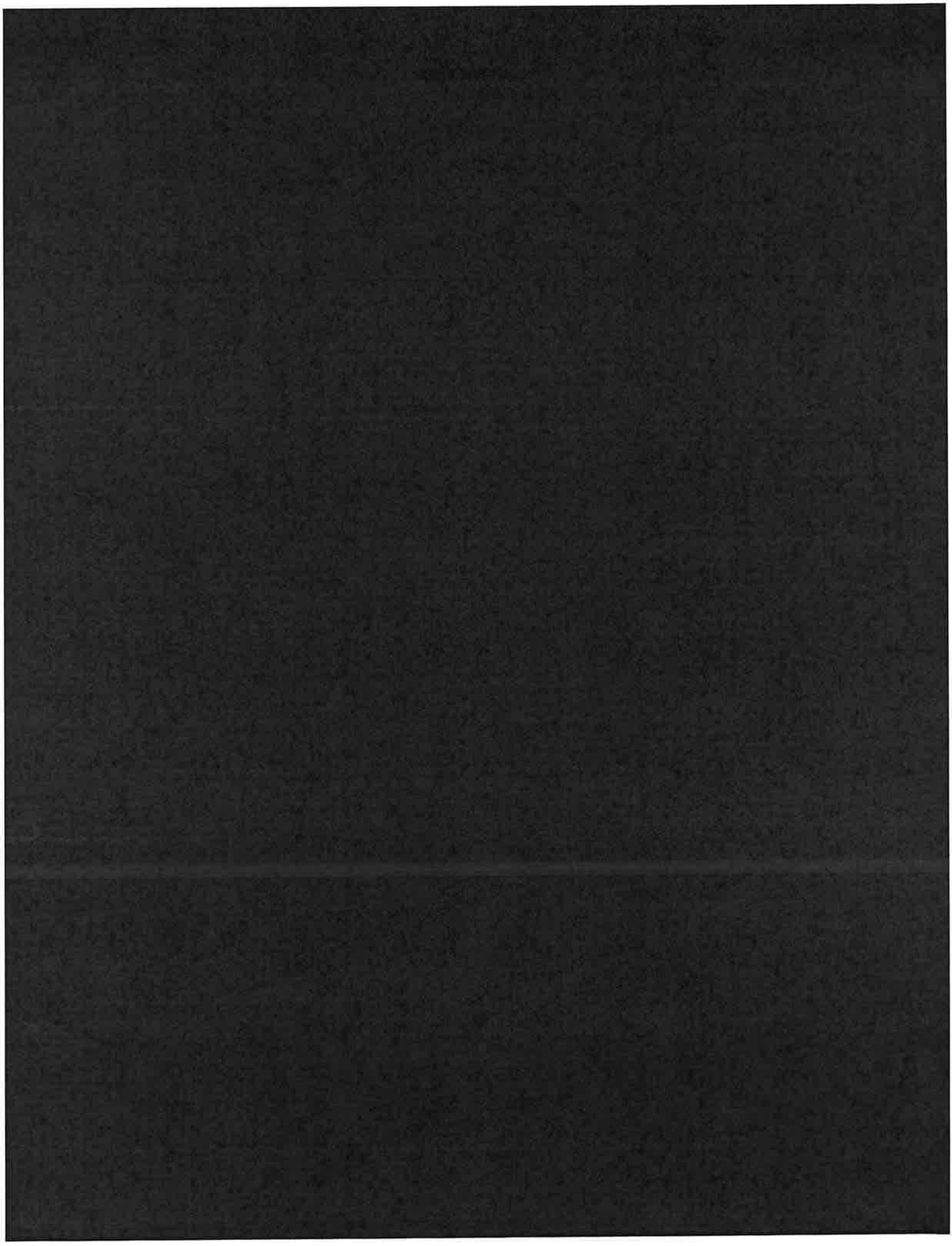
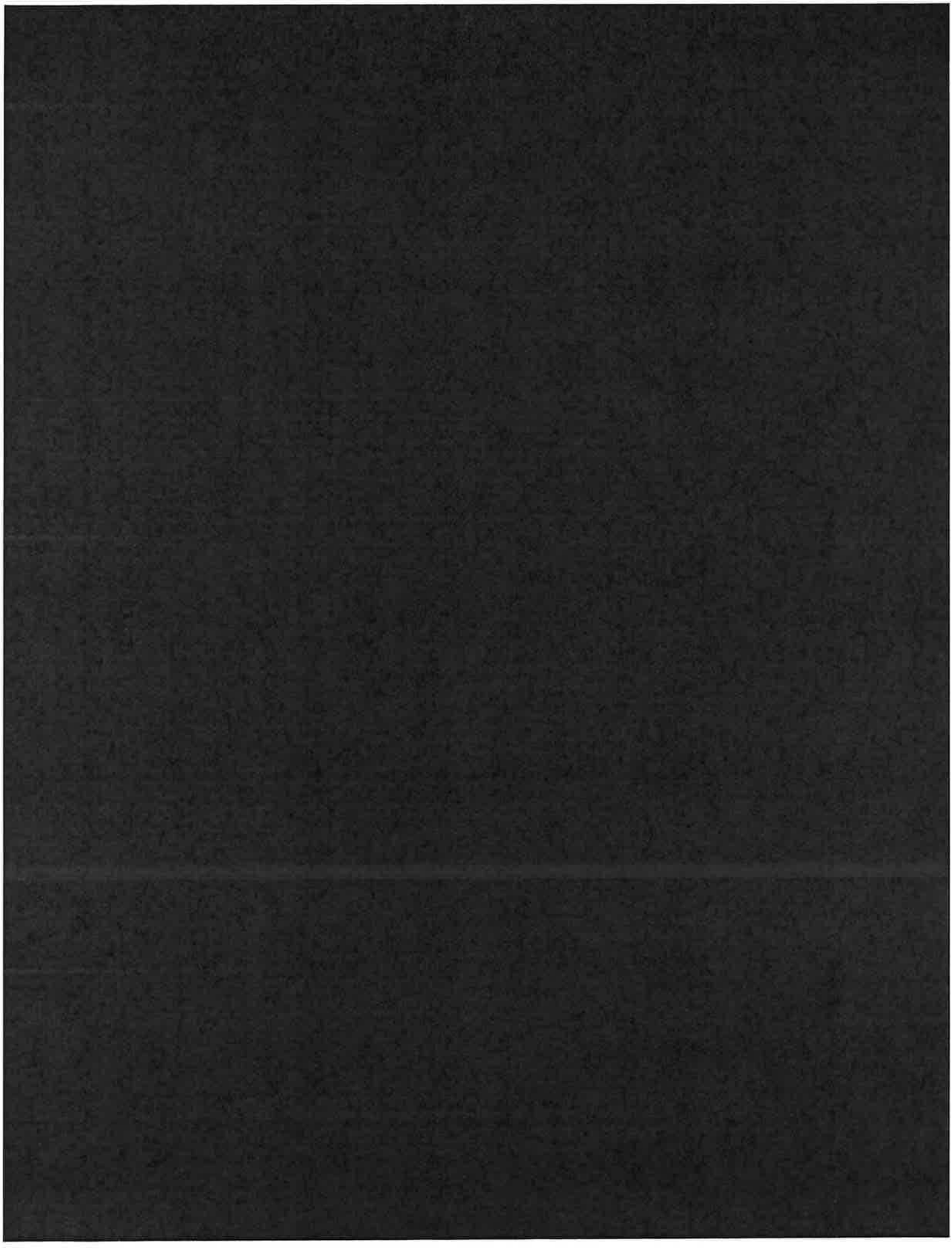
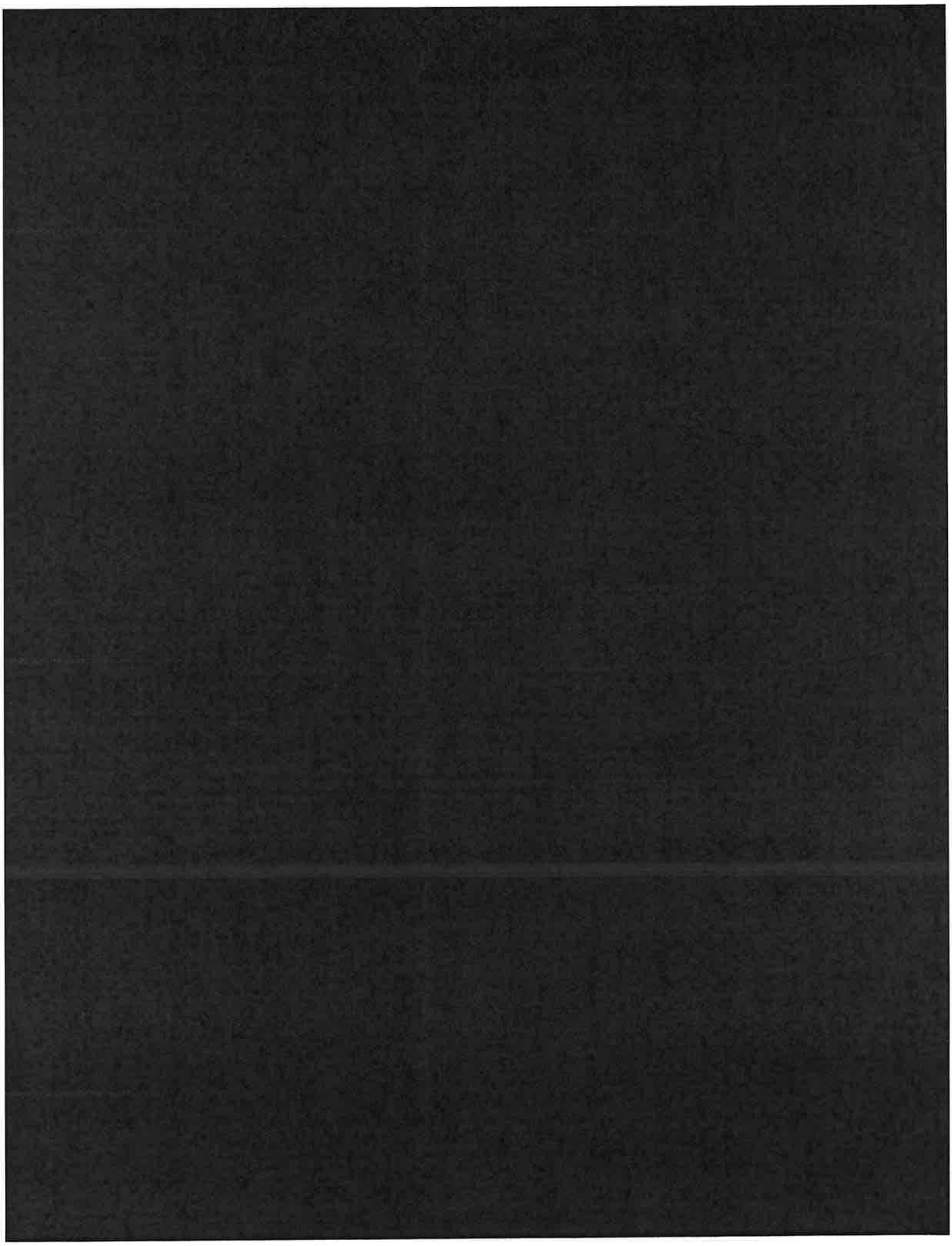
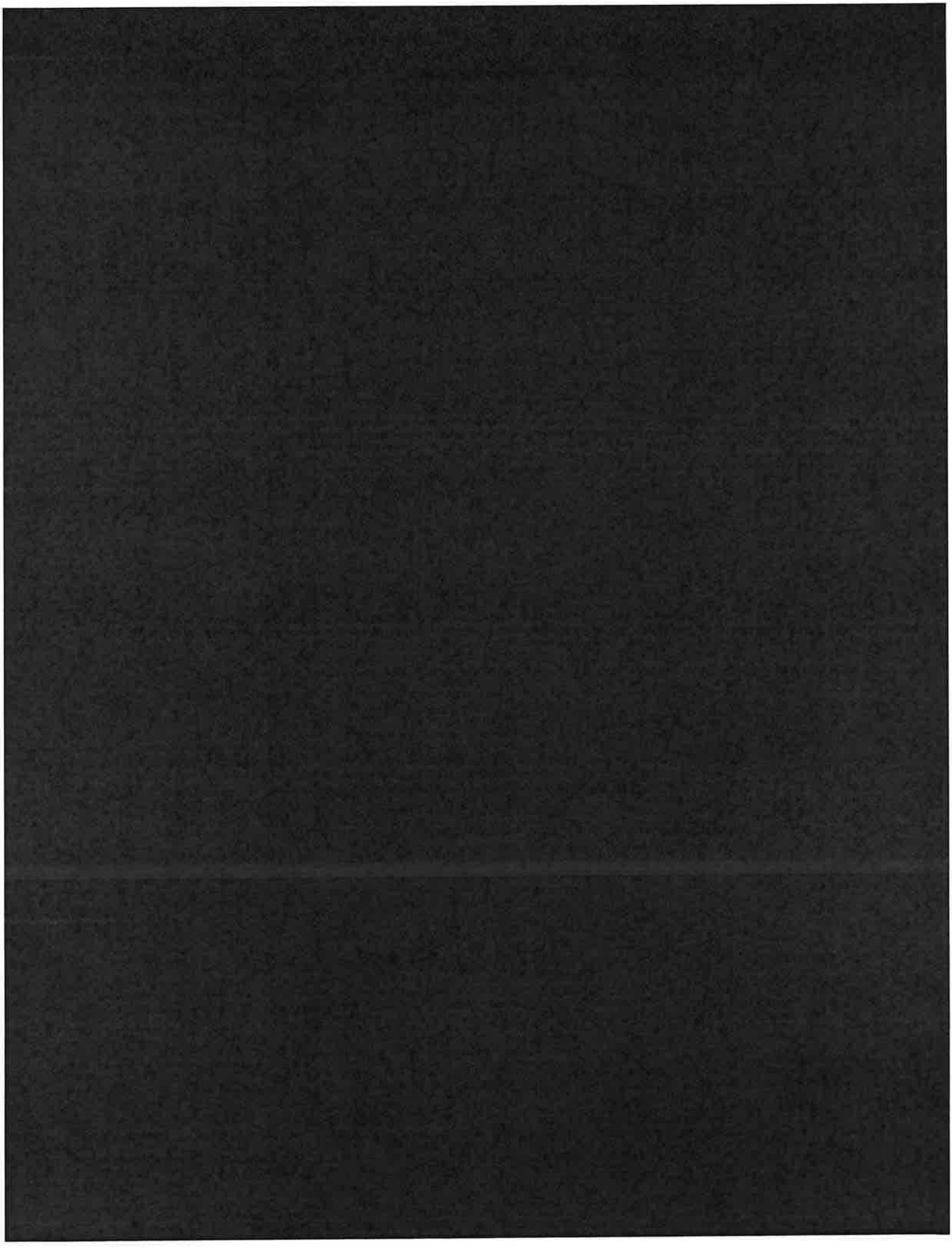
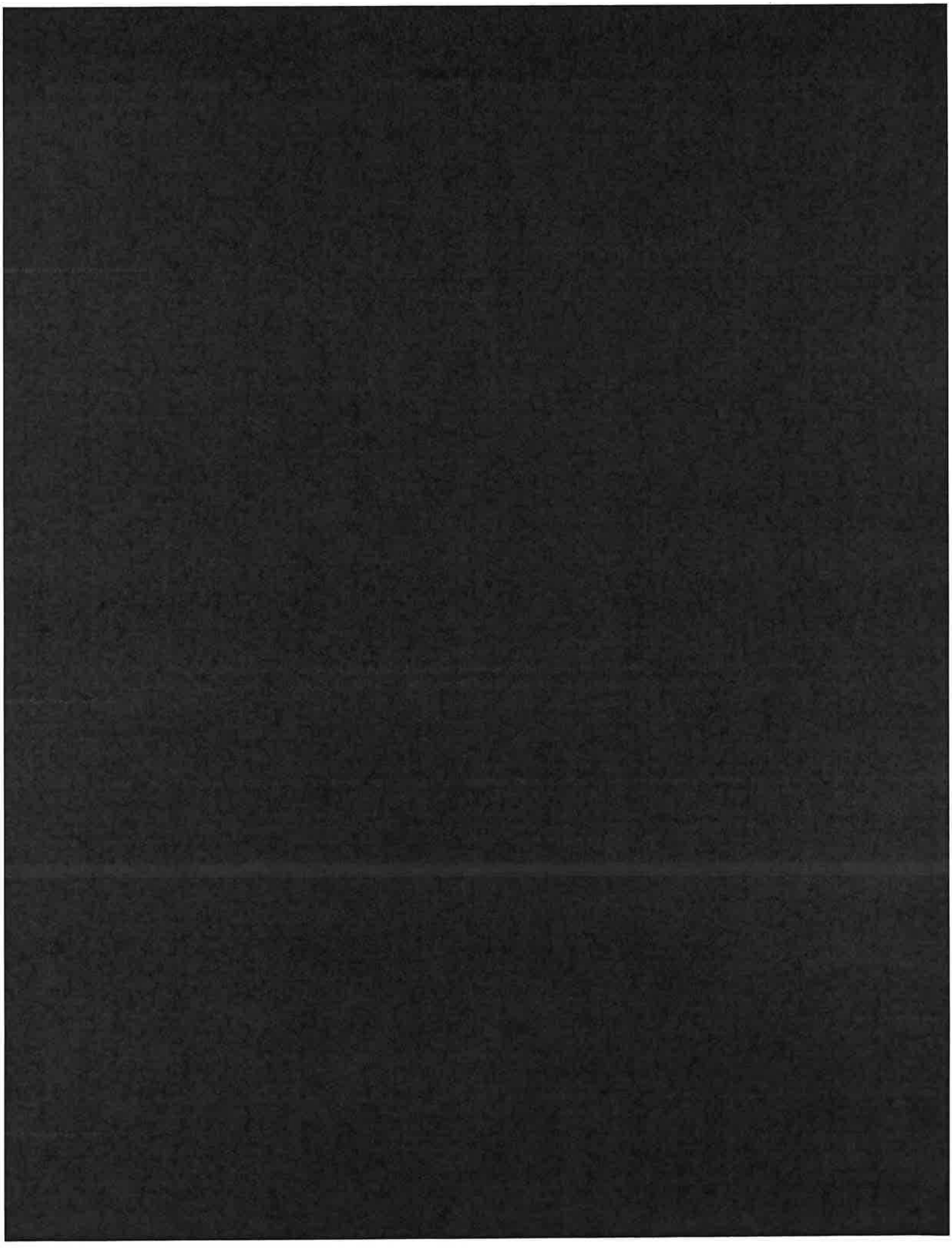


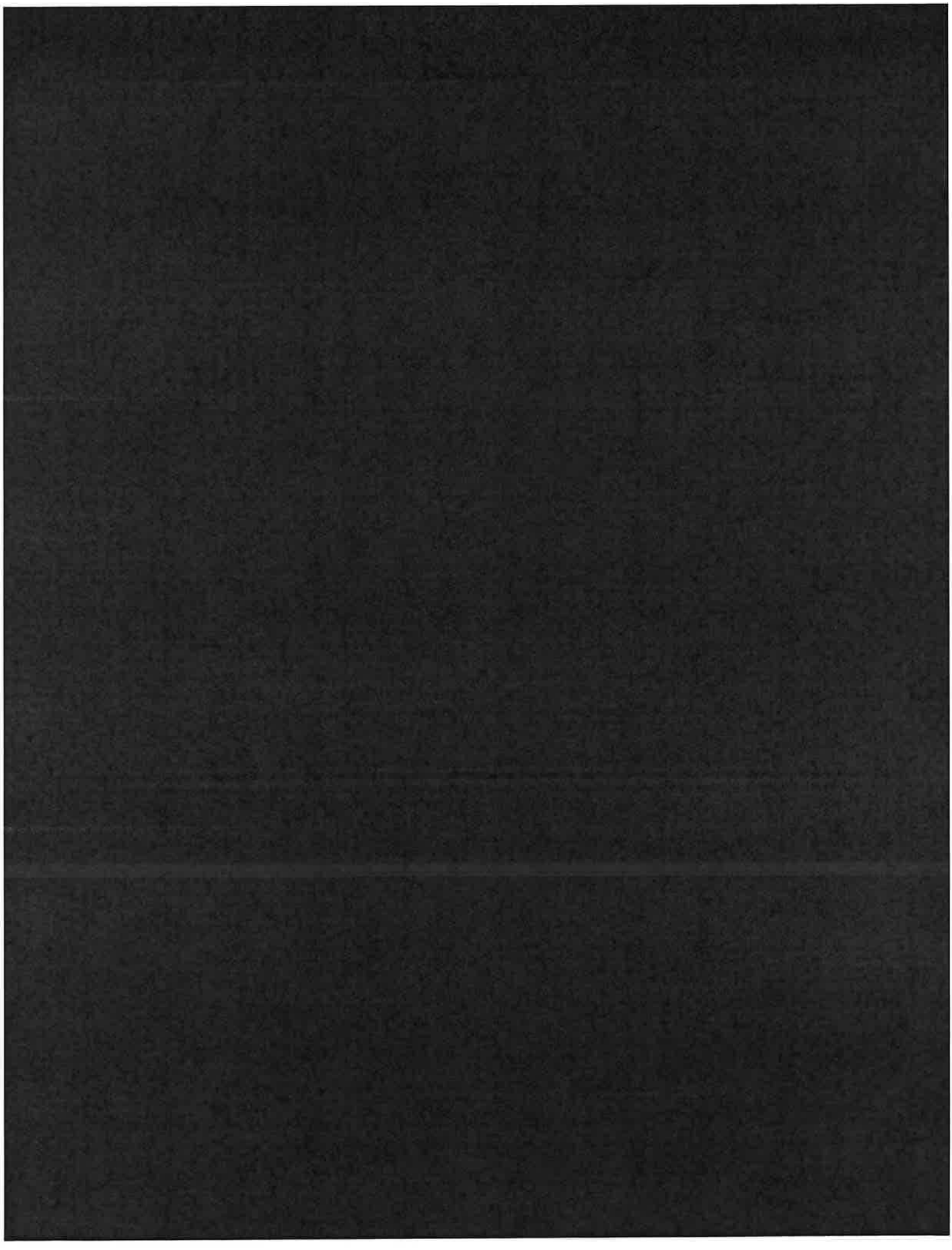


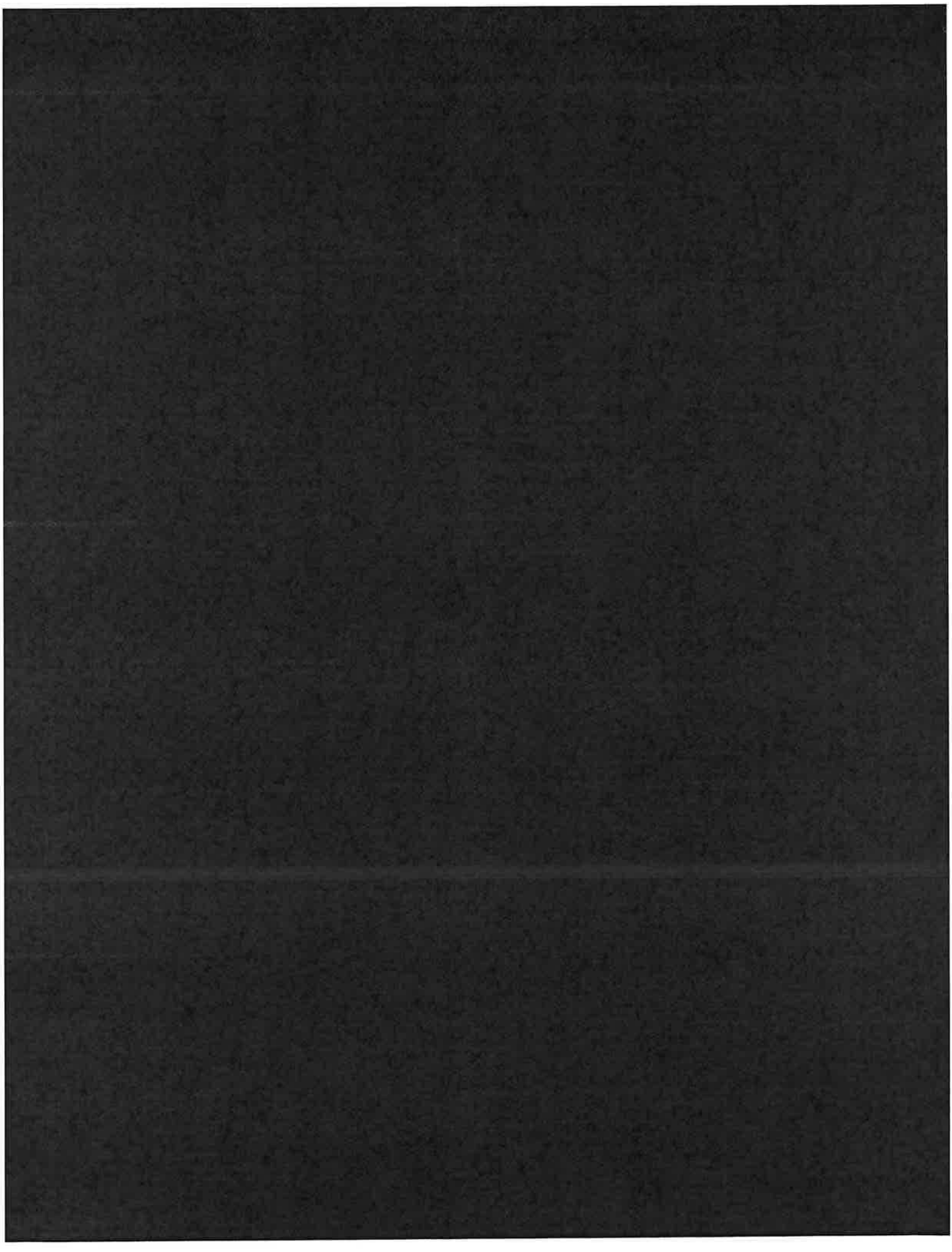


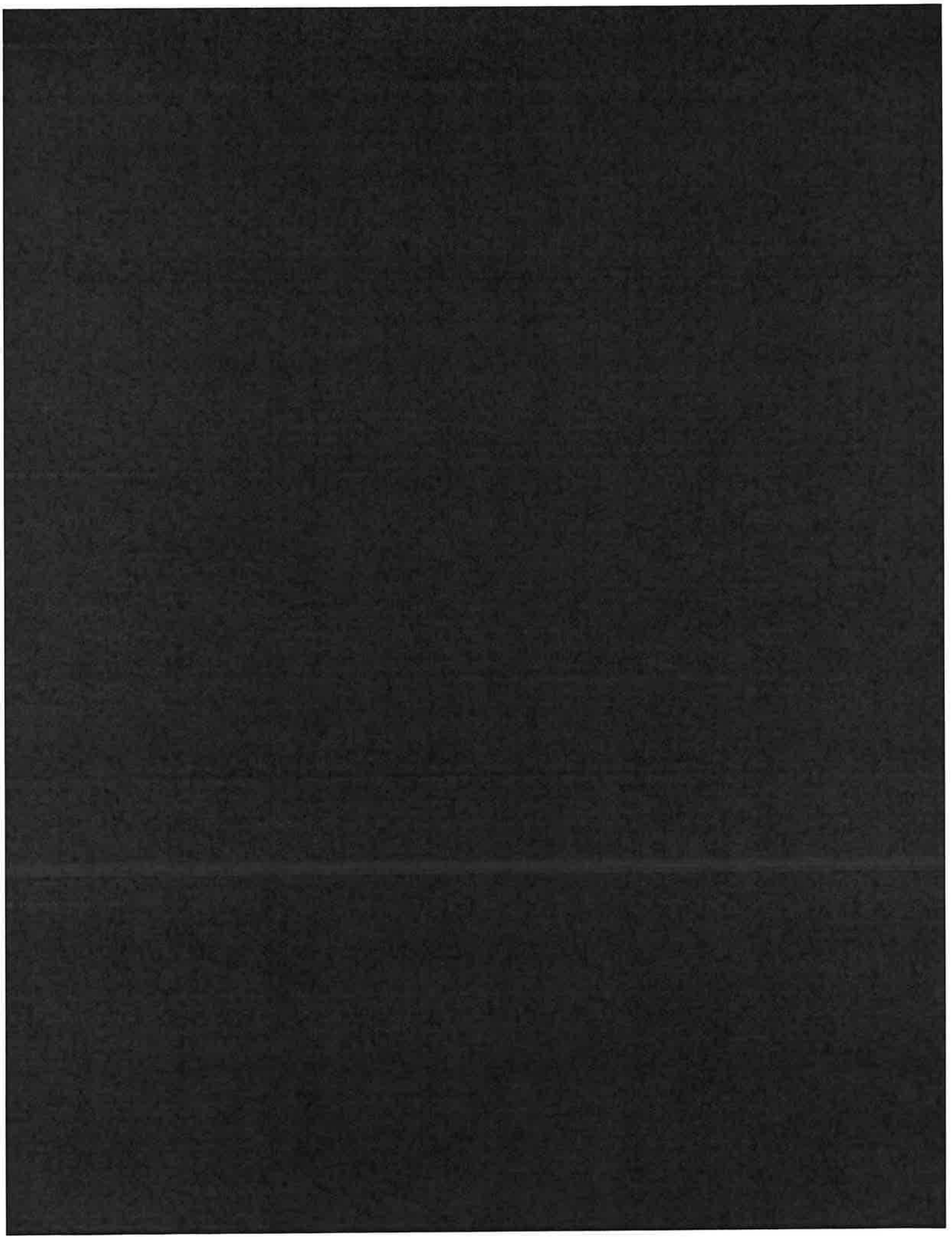


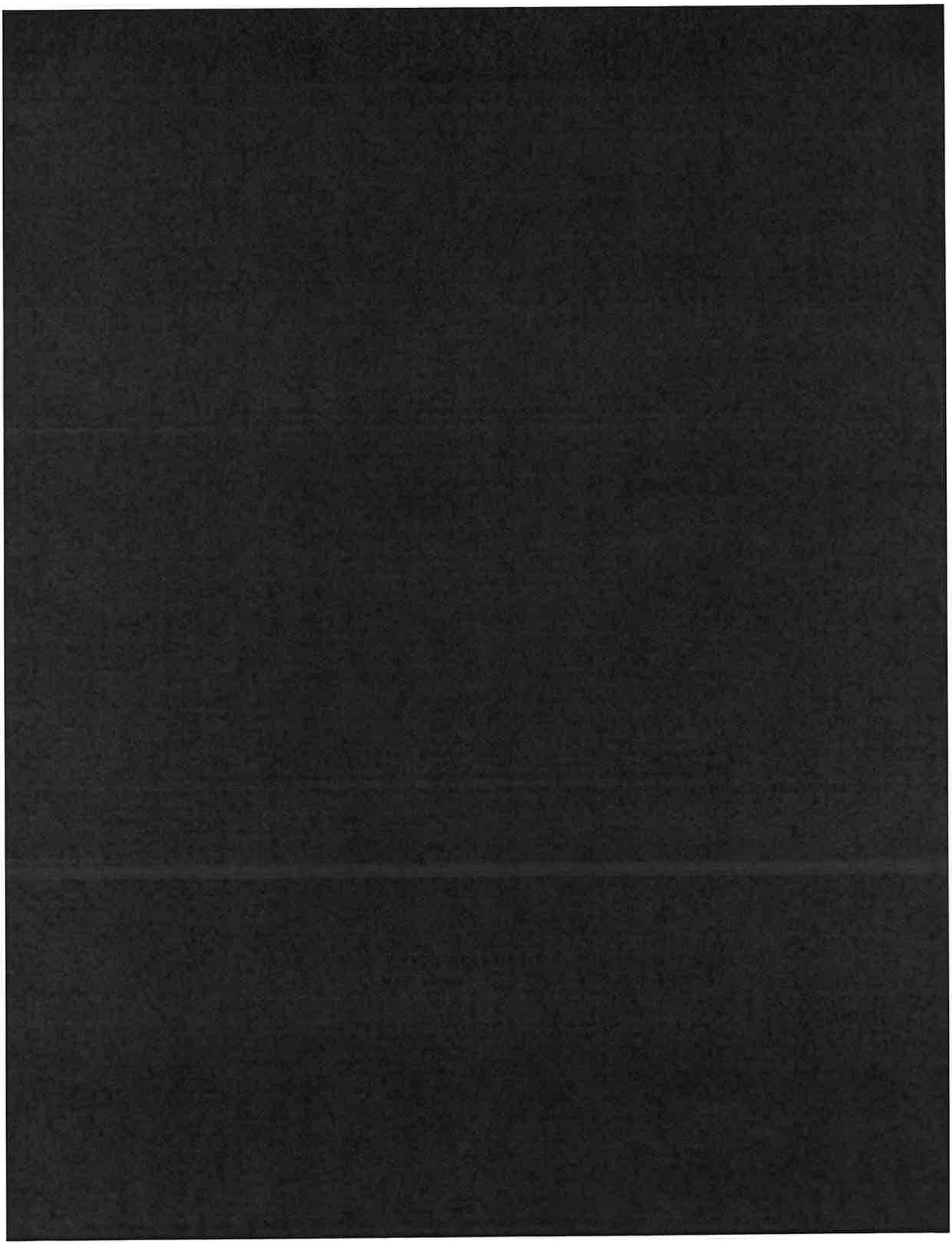


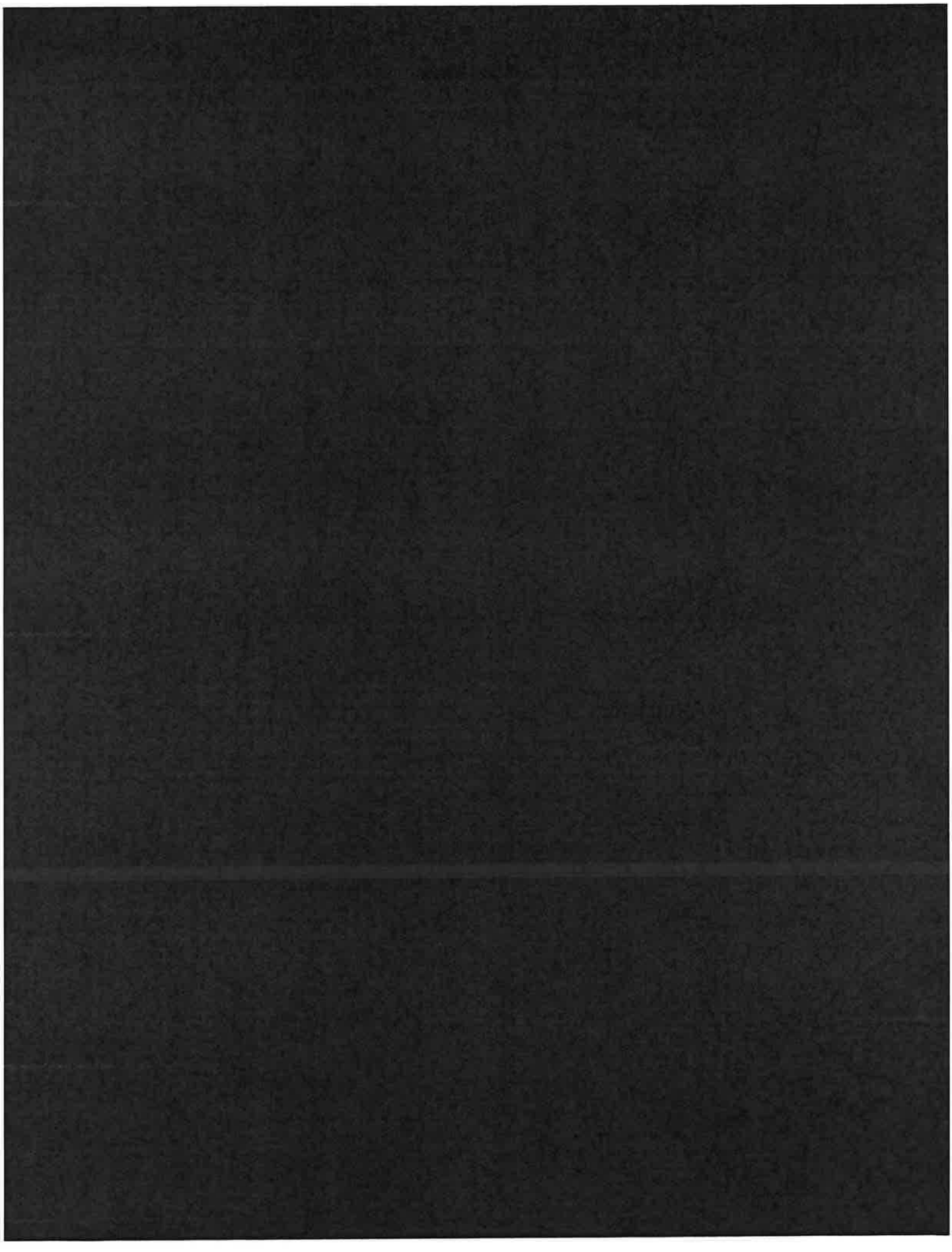


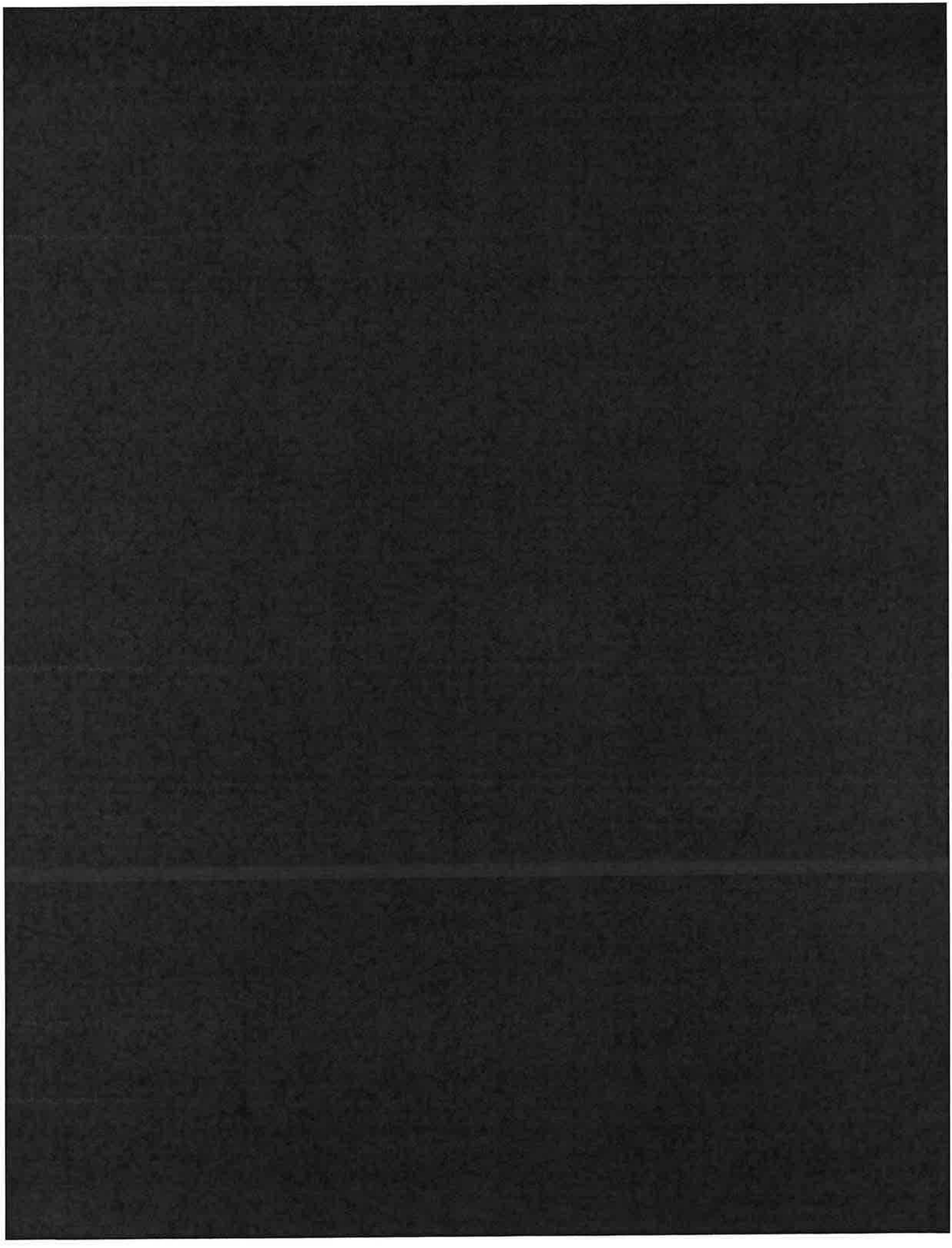


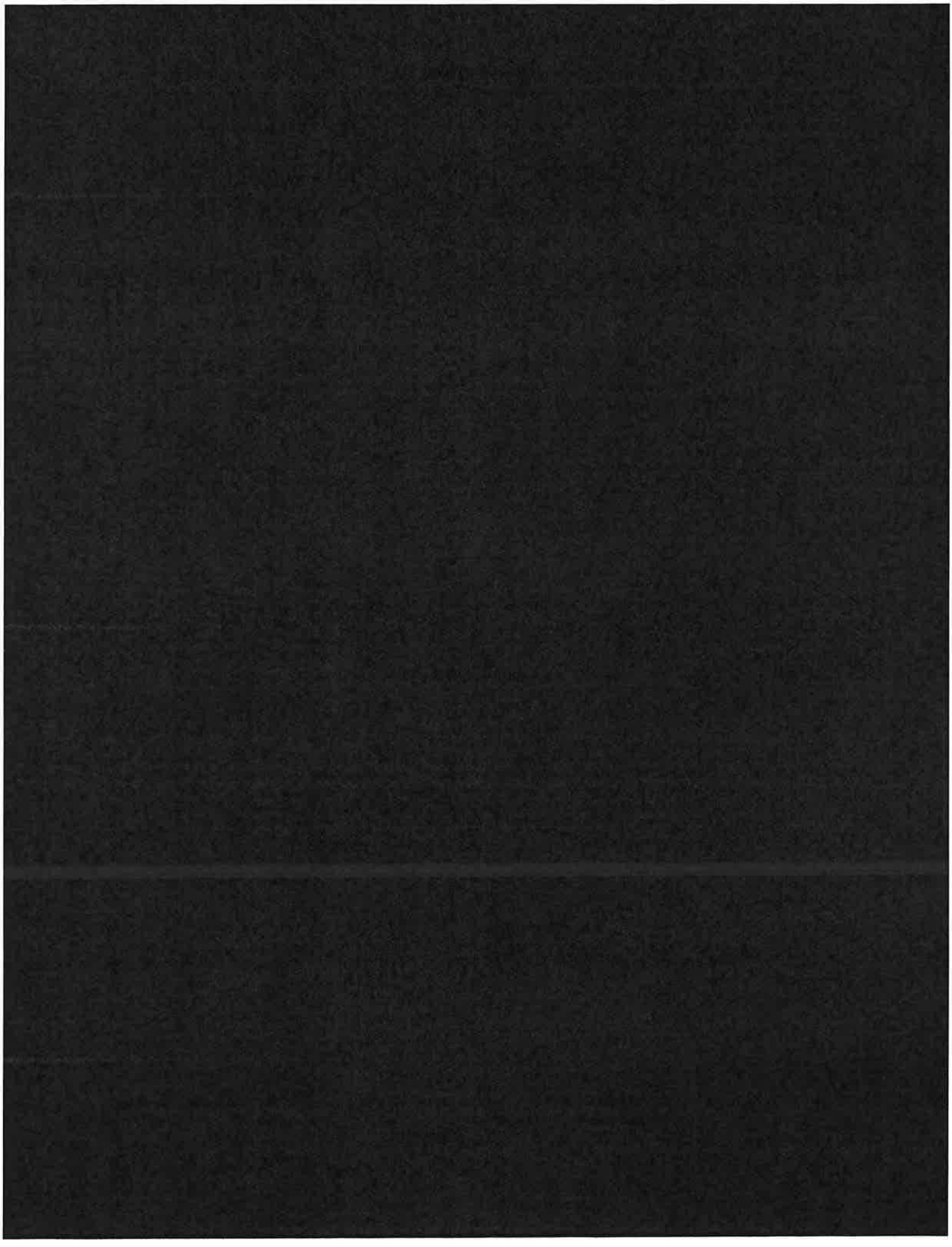








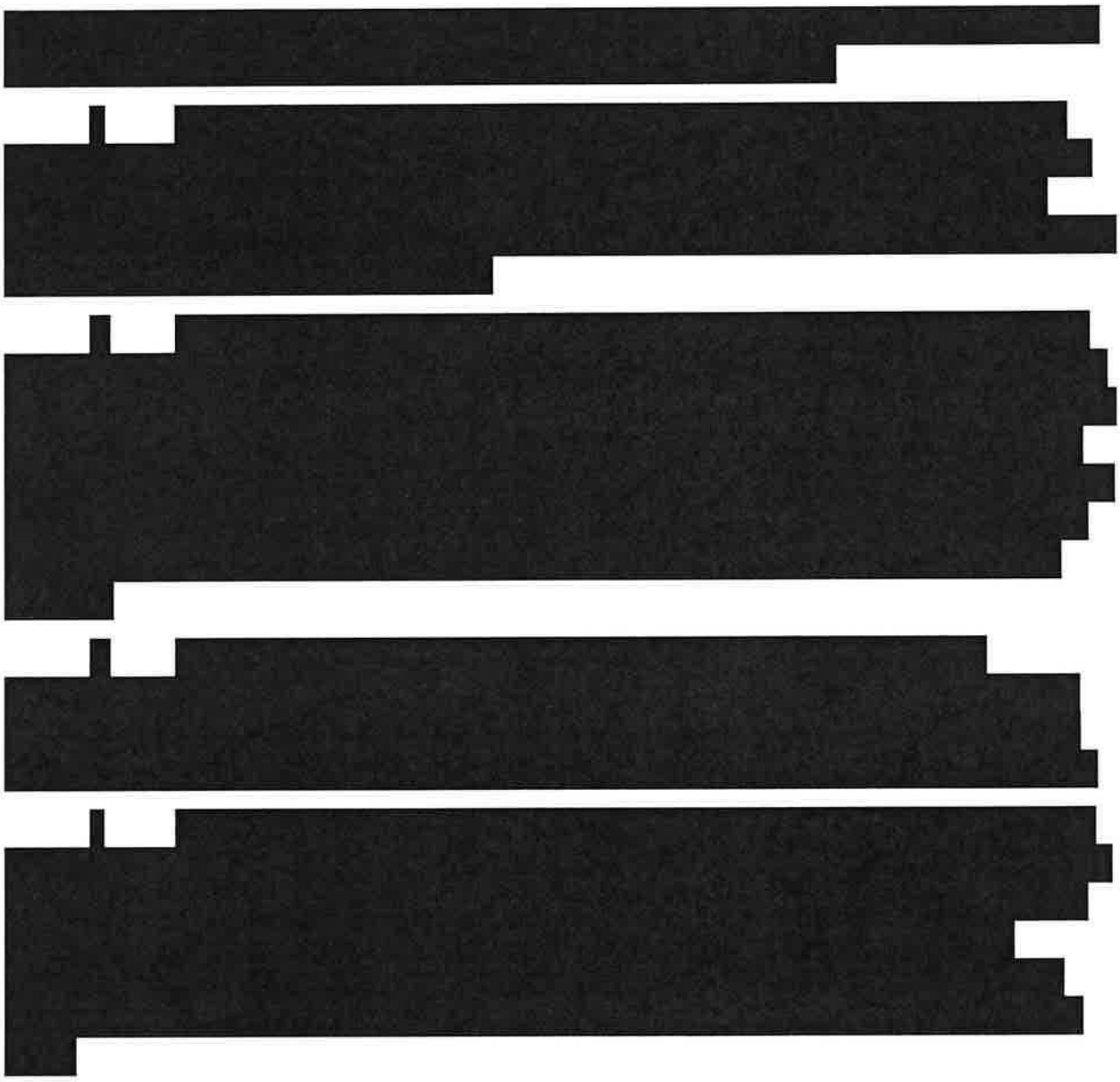




ATTACHMENT C

Special Search Procedures

[redacted]



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	Case No. 26-sw-318 (MJS) **FILED UNDER SEAL**

ORDER

Following [redacted], the Court directs the United States to submit a supplemental *ex parte* brief in support of its warrant application that more fully explains its theory (or theories) of probable cause for [redacted], accompanied by citations to any relevant caselaw for the Court's consideration.

Separately, the Court received overnight an *ex parte* brief from the United States addressing its position on the Speech or Debate Clause implications of the warrant under the D.C. Circuit's decision in *United States v. Rayburn House Off. Bldg. Room 2113*, 497 F.3d 654 (D.C. Cir. 2007). In its submission, the United States principally argues that *Rayburn* is inapplicable to the Executive's proposed search of the residence of a sitting Member of Congress in this instance—as distinct from any potential search of the Member's cell phone, *see In re Sealed Case*, 80 F.4th 355 (D.C. Cir. 2023). In its forthcoming supplemental brief, the United States shall address the alternative scenario that assumes *Rayburn* does, in fact, reach the search of a Member's residence (reserving any arguments to the contrary) and shall specify a proposed search protocol that the United States believes would properly balance the interests explicated in *Rayburn*, bearing in mind *Rayburn's* conclusion that the filter-team approach used in that case did not suffice.

The United States shall file its supplemental brief, *ex parte* and under seal, by no later than 8:00 PM today, although it may certainly file sooner if it wishes.

SO ORDERED.

Dated: October 7, 2026

MATTHEW J. SHARBAUGH
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	SW No. 26-SW-318 (MJS) **FILED UNDER SEAL**

THE UNITED STATES OF AMERICA'S SECOND SUPPLEMENTAL *EX PARTE* BRIEF IN SUPPORT OF AFFIDAVIT FOR SEARCH WARRANT

At approximately 10:33 a.m. on Friday, October 2, 2026, the government applied to the Court under Federal Rule of Criminal Procedure 41 for a warrant to search the premises known as [redacted] (the "Target Location") for "[a]ll records and information that constitute fruits, contraband, evidence, and instrumentalities of violations of [redacted], those violations involving Ilhan Nur Said Elmi a/k/a Ilhan Abdullahi Omar, and occurring between 1980 to the present (the "Target Offenses"). Application, Attachment B, at 1. The government requested that the Court swear it out on Monday, October 5. After several inquiries as to the status of the warrant, the Court stated that it would get to it on Tuesday, October 6, 2026. [redacted].

Just after midnight on October 7, the government submitted to the Court via email an *ex parte* brief [redacted] specifically arguing that (1) "nothing about the requested search warrant and the case it services implicates the Speech or Debate Clause"; (2) the Court should "apply to the requested search warrant involving Congresswoman Omar the same standard it applied to the one it granted"

"[redacted]"; and (3) in the alternative, consider "several proposed alternative protocols that the Court could deploy to ensure further protection for any Speech or Debate Clause issues" implicated by the applied-for warrant. *See* The United States of America's Supplemental *Ex Parte* Brief in Support of Affidavit for Search Warrant ("First Supplemental Brief"), at 2–11. The government filed the same brief under seal on the docket at approximately 9 hours later.

At approximately 12:13 p.m., the Court issued an order asking for "an *ex parte* brief in support of its warrant application that more fully explains its theory (or theories) of probable cause for [redacted], accompanied by citations to any relevant caselaw for the Court's consideration." October 7, 2026 Order, at 1. The Court also asked for supplemental briefing by 8:00 p.m. that addresses "the alternative scenario that assumes [*United States v.*] *Rayburn* [*House Off. Bldg., Room 2113*, 497 F.3d 654, 661 (D.C. Cir. 2007)] does, in fact, reach the search of a Member's residence (reserving any arguments to the contrary) and shall specify a proposed search protocol that the United States believes would properly balance the interests explicated in *Rayburn*, bearing in mind *Rayburn*'s conclusion that the filter-team approach used in that case did not suffice." *Id.* at 1–2. Given the fact the government submitted the application last Friday and the urgency to have these matters addressed as discussed in Court, the government contacted the court *ex parte* stating that it would have this brief filed no later than 3:30 p.m.

While preserving its earlier arguments, the government offers the Court here a rock-solid basis to issue the warrant both based on probable cause that evidence of the Target Offenses, further described in Attachment B, is located at the Target Location, further described in Attachment A, while sufficiently balancing *Rayburn*'s Speech or Debate Clause interests.

I. There is probable cause for violations of *all* the Target Offenses, not just [redacted].

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by establishing that "no [w]arrants shall issue, but upon probable cause ... and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. "A showing of probable cause is not a high bar, … and, in the context of a search warrant, requires only a fair probability that ... evidence of a crime will be found in a particular place." *United States v. Thorne*, 548 F.Supp. 3d 70, 93–94 (D.D.C. 2021), *as corrected* (July 16, 2021), *aff'd*, 169 F.4th 1117 (D.C. Cir. 2026) (citation modified).

"To evaluate whether this standard is met, courts focus on whether the warrant application provides a substantial basis for concluding that a search would uncover evidence of wrongdoing by demonstrating cause to believe that evidence is likely to be found at the place to be searched and that a nexus exists ... between the item to be seized and criminal behavior." *Id.* (citation modified) Here, the Court need only have a "substantial basis for ... concluding that probable cause existed." *Thorne*, 548 F. Supp. 3d at 94 (citation modified). And "[w]hile courts must conscientiously review the sufficiency of the affidavits upon which warrants were issued, … the affidavits are entitled to a presumption of validity, … and the magistrate judge's initial determination of probable cause," if later challenged, "is entitled to great deference." *Id.* (citation modified). The standard is the standard, and it does not raise or lower based on the Target Offenses cited within that search warrant; in other words, the same level of probable cause that justified the Court's recent search warrant involving [redacted]

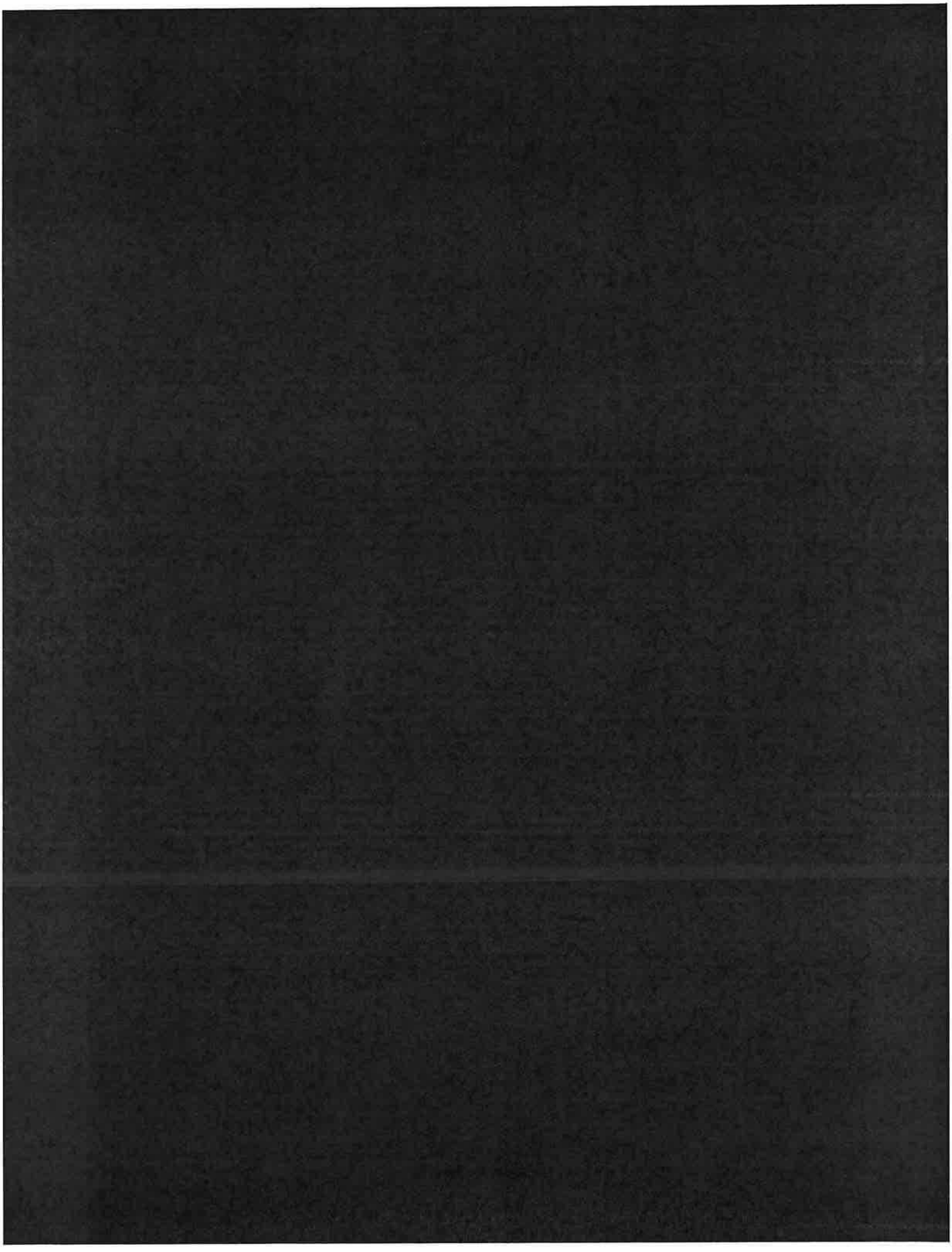
[redacted] applies to House Member Omar's[1] [redacted]

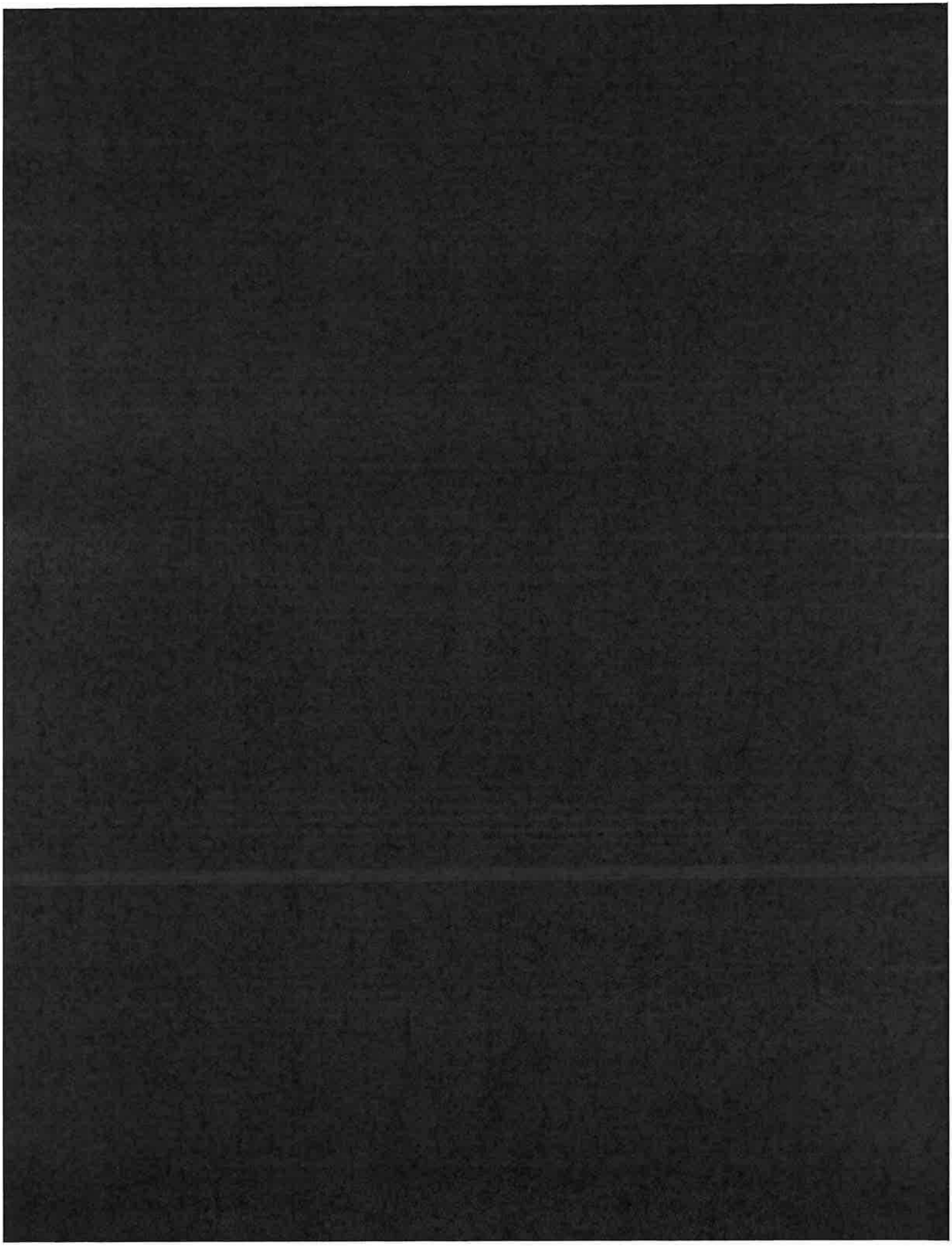
[redacted]

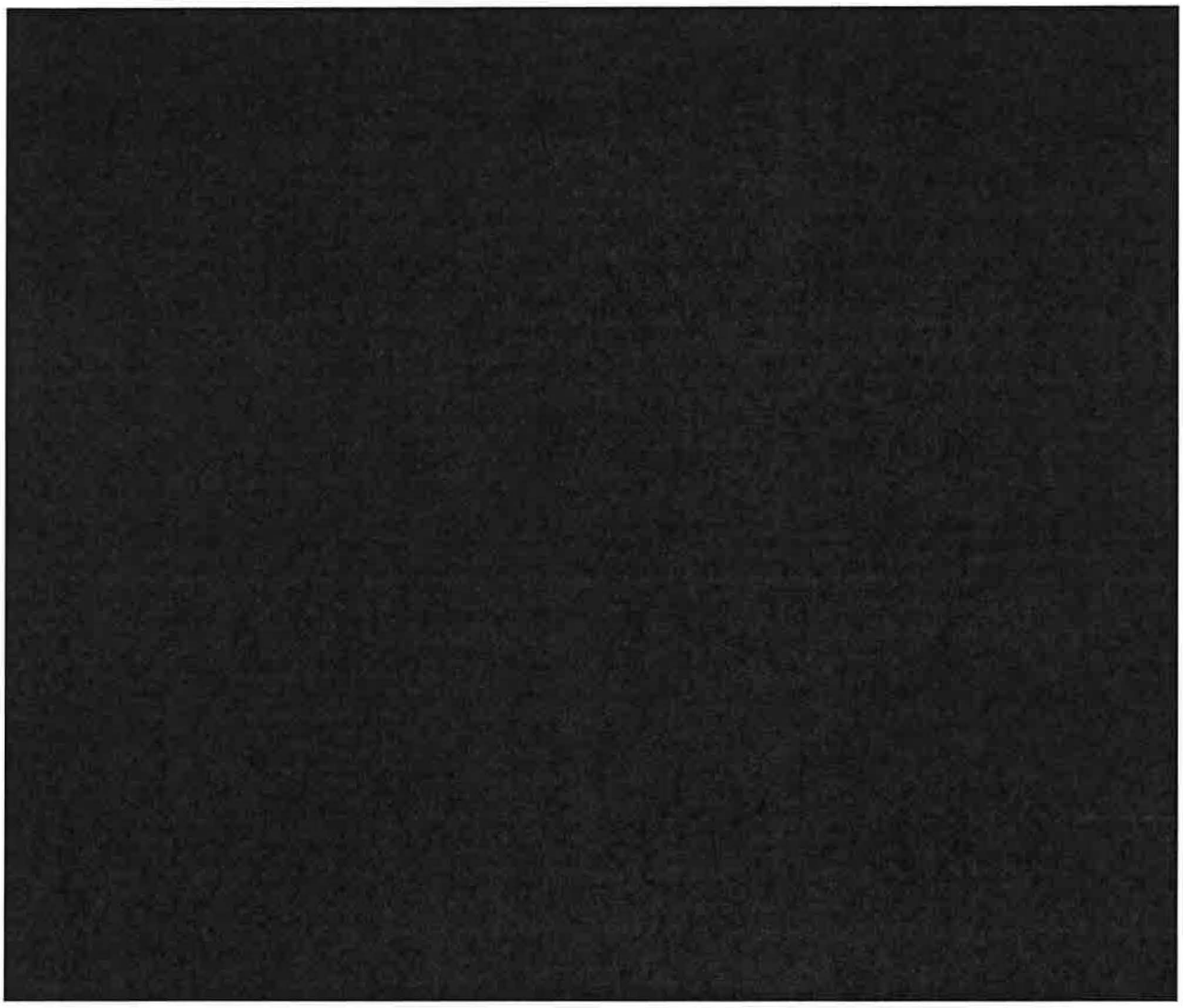
The submitted application here supplies probable cause related to each of the Target Offenses, not just the two the Court flagged in its recent order. Because the court decides probable cause under a holistic, "totality-of-the-circumstances analysis," *Massachusetts v. Upton*, 466 U.S. 727, 732 (1984) (citation modified), the government will as a courtesy point the Court to a few paragraphs for each crime that deserve the Court's special attention, but the ultimate probable-cause determination must be based on a review of the *entire application* and the story it tells.

[redacted]

[1] [redacted]







II. The Government proposes additional protocols to sufficiently balance *Rayburn*'s Speech or Debate Clause interests after this search warrant is executed.

As stated in its First Supplemental Brief, the government submits that no additional protocols are needed for the Member's private residence for all of the reasons previously cited and based upon this Court's [redacted]. However, the government proposed two additional protocols that the Court could deploy to ensure further protection for any Speech or Debate Clause issues on top of the protections already in place in the existing Application itself. *See* First Supplemental Brief, at 8–9 [redacted]

[redacted]. Under each protocol, the Member will be afforded an appropriate opportunity, in accordance with *Rayburn* and *In re Sealed Case*, 80 F.4th 355, 366 n.6 (D.C. Cir. 2023), [redacted]. These protocols align with the methodology set forth for phones in *In Re Sealed Case*, *supra*, where the originals are maintained in a sterile environment and the Member can identify what items are purposedly subject to the Speech or Debate Privilege. The government submits that because [redacted].

CONCLUSION

The Court should grant the requested search warrant as is, or with one of the two protocol previously submitted.

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

s/Alessandra P. Serano
Associate Deputy Attorney General

Dated: October 7, 2026

s/ G. A. Massucco-LaTaif
G. A. MASSUCCO-LATAIF
Chief, Criminal Division
PA Bar Number 70718
United States Attorney's Office
601 D Street, N.W.
Washington, D.C. 20530
Telephone: 202-252-7066
Email: George.Massucco@usdoj.gov

UNITED STATES DISTRICT COURT

for the

District of Columbia

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)
ONE RESIDENCE IN WASHINGTON, D.C.
UNDER RULE 41

Case No. 26-SW-318

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location):*

See Attachment A (incorporated by reference)

Located within the jurisdiction of the District of Columbia, there is now concealed *(identify the person or describe the property to be seized):*

See Attachment B (incorporated by reference)

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
[redacted]	

The application is based on these facts:

See Affidavit in Support of Application for Search Warrant.

- ☑ Continued on the attached sheet.
- ☐ Delayed notice of _____ days *(give exact ending date if more than 30 days:* _____ *)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[redacted]
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
Telephone *(specify reliable electronic means).*

Date: 10/9/2026

Judge's signature

City and state: Washington, D.C.

Matthew J. Sharbaugh
(United States Magistrate Judge)

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means ☑ Original ☐ Duplicate Original

UNITED STATES DISTRICT COURT

for the

District of Columbia

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	)	Case No. 26-SW-318

WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search and seizure of the following person or property located within the jurisdiction of the District of Columbia.
(identify the person or describe the property to be searched and give its location):

See Attachment A (incorporated by reference).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

See Attachment B (incorporated by reference).

YOU ARE COMMANDED to execute this warrant on or before October 23, 2026 *(not to exceed 14 days)*
☑ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to Matthew J. Sharbaugh
(United States Magistrate Judge).

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*
❒ for ____ days *(not to exceed 30)* ❒ until, the facts justifying, the later specific date of _____.

Date and time issued: 10/9/2026

Judge's signature

City and state: Washington, D.C.

Matthew J. Sharbaugh
United States Magistrate Judge

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means (Page 2)

Return

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
26-SW-318		

Inventory made in the presence of :

Inventory of the property taken and name(s) of any person(s) seized:

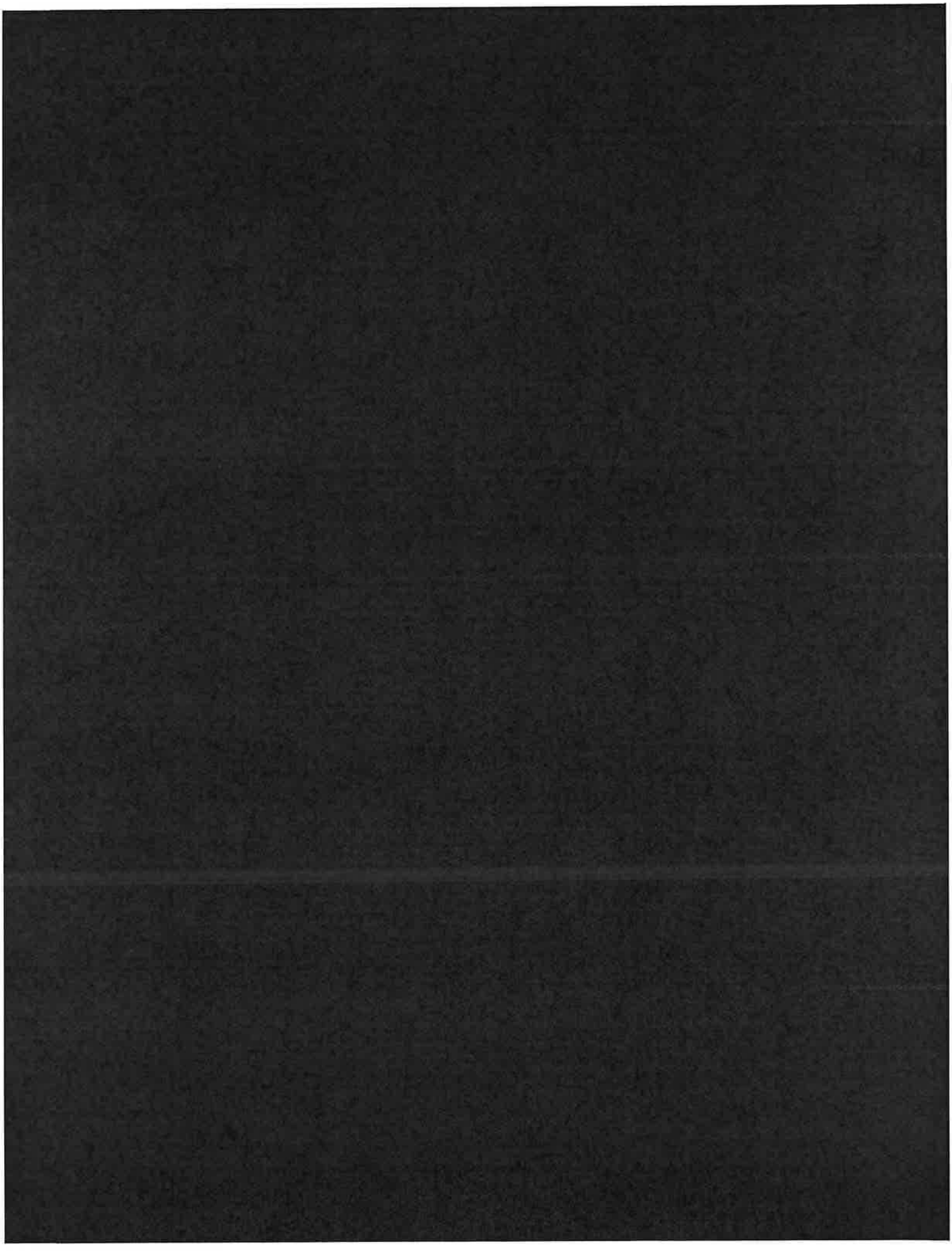
Certification

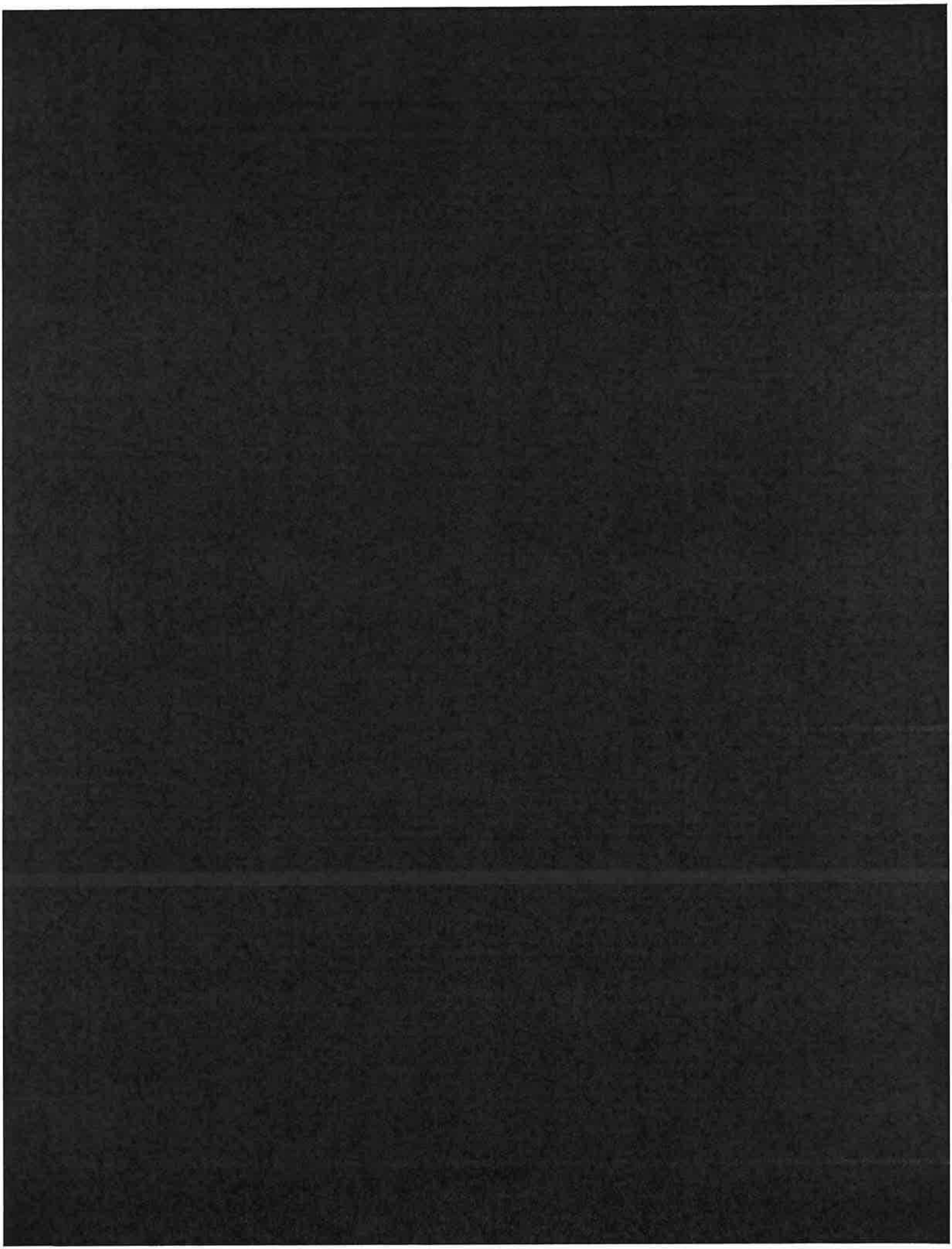
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

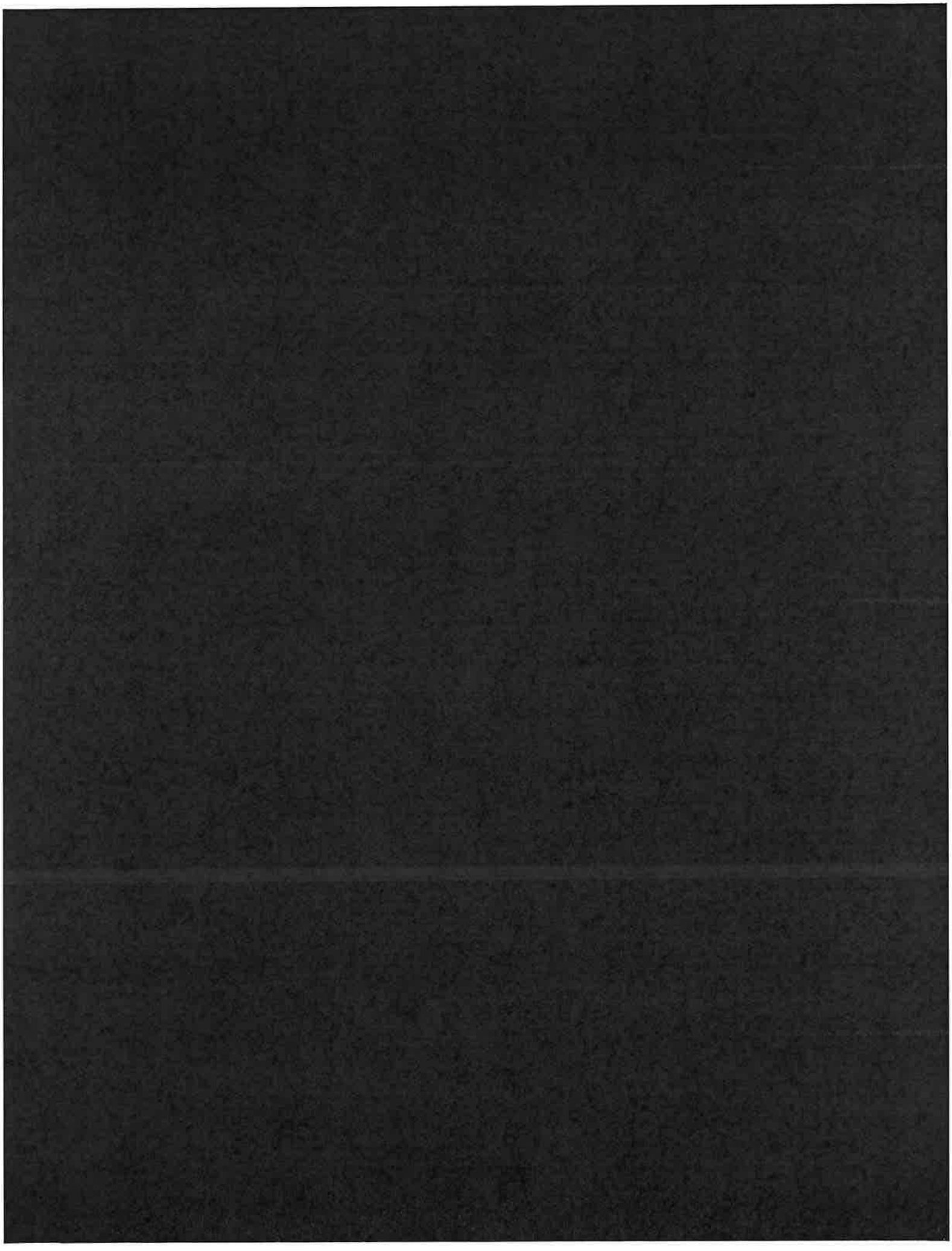
Date: _____

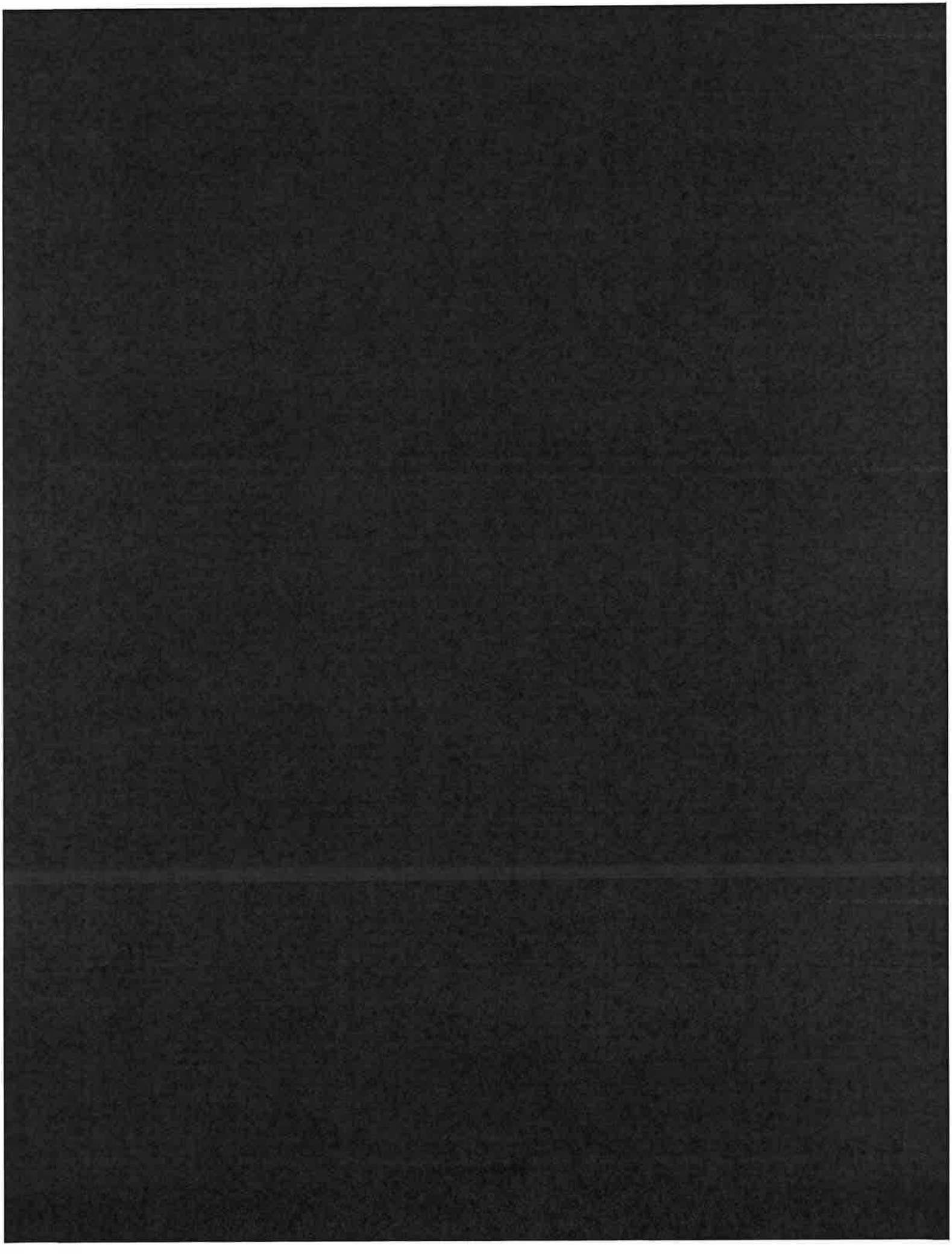
_____
Executing officer's signature

_____
Printed name and title









UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	**SW No. 26-sw-318** **Filed Under Seal**

APPLICATION TO SEAL SEARCH WARRANT, AFFIDAVIT IN SUPPORT, AND MEMORANDUM IN SUPPORT THEREOF

The United States of America, by and through its undersigned counsel, respectfully submits under seal this *ex parte* application for an Order placing the above-captioned search warrant, and the application and affidavit in support thereof, and all attachments thereto and other related materials such as this application and order (collectively, the "Warrant") under seal until further order of the Court.

LEGAL BACKGROUND FOR SEALING

1. The Court has the inherent power to seal court filings when appropriate, including the Warrant. *United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). *See also, e.g., In re Sealed Affidavit(s) to Search Warrants*, 600 F.2d 1256, 1257 (9th Cir. 1979) (finding that the court has inherent power to seal search warrant affidavits). Such sealing is within the discretion of the District Court. *See Nixon*, 435 U.S. at 598 (common-law right to inspect and copy judicial records is not absolute, but the decision whether to permit access is best left to the sound discretion of the trial court in the light of the relevant facts and circumstances of the particular case).

2. More particularly, the Court may seal the Warrant and related filings to prevent serious jeopardy to an ongoing criminal investigation when, as in the present case, such jeopardy

creates a compelling governmental interest in preserving the confidentiality of the Warrant. *See Washington Post v. Robinson*, 935 F.2d 282, 287-89 (D.C. Cir. 1991).

3. Courts have traditionally been "highly deferential to the government's determination that a given investigation requires secrecy and that warrant materials be kept under seal." *Times Mirror Co. v. United States*, 873 F.2d 1210, 1214 (9th Cir. 1989). Therefore, courts have routinely granted government requests to seal warrant materials where there is a need for secrecy. *Id.*; *see also id.* at 1215, 1219 n.13 (Sealed search warrant materials have been treated as the functional equivalent of grand jury materials in their shared need for secrecy.). While courts may disagree whether there even exists a qualified right under the common law or the First Amendment to access to sealed search warrant materials,[1] courts are in general agreement that a movant is not entitled to access to sealed search warrant materials if disclosure would compromise an ongoing investigation or endanger witnesses. *See, e.g., id.* at 1212-1221 ("warrant proceedings and materials should not be accessible to the public, at least while a pre-indictment investigation is still ongoing"); *Baltimore Sun Co.*, 886 F.2d at 64 ("the need for sealing affidavits may remain after execution and in some cases even indictment"); *In re Search Warrants for National Builder Corp.*, 833 F. Supp 644, 645-646 (N.D. Ohio 1993) (grand jury target was not entitled to the unsealing of a search warrant affidavit if it would compromise an ongoing investigation).

[1] *See, e.g., Times Mirror Co.*, 873 F.2d at 1212-1221 (no right of access to sealed search warrant materials exists under the First Amendment, the common law, or Fed. R. Crim. P. 41(g)); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989) (no First Amendment right of access, but qualified common law right of access); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (qualified First Amendment right of access).

REQUEST FOR SEALING

4. Such an Order is appropriate because the Warrant relates to an ongoing criminal investigation that is neither public nor known to the subject(s) of the investigation. In particular, the nature and scope of evidence available to law enforcement, as set forth in the search warrant affidavit, is neither public nor known to the subject(s) of the investigation. Accordingly, disclosure may reveal the existence, scope, and direction of the Government's ongoing and confidential investigation. Once alerted to the investigation and the scope of such evidence available to law enforcement, potential subject(s) could be immediately prompted to flee from prosecution, destroy or conceal incriminating evidence, alter their operational tactics to avoid future detection, attempt to influence or intimidate potential witnesses, and otherwise take steps to undermine the investigation and avoid future prosecution.

5. Therefore, based on the foregoing, there are reasonable grounds to believe that disclosure of the Warrant and the details in the search warrant affidavit would result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, or other serious jeopardy to this investigation. *Cf.* 18 U.S.C. § 2705(b)(2)-(5). In short, because of such potential jeopardy to the investigation, there exists a compelling governmental interest in confidentiality to justify the sealing the Warrant, this application, and this Order. *See Robinson*, 935 F.2d at 287-89.

ACCORDINGLY, it is respectfully requested that the above-captioned warrant, the application and affidavit in support thereof, and all attachments thereto and other related materials (including this application) be placed under seal until further order of this Court.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY

By: */s/ G. A. Massucco-LaTaif*
G. A. MASSUCCO-LATAIF
Chief, Criminal Division
PA Bar Number 70718
United States Attorney's Office
601 D Street, N.W.
Washington, D.C. 20530
Telephone: 202-252-7066
Email: George.Massucco@usdoj.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	**SW No. 26-sw-318** **Filed Under Seal**

ORDER

This matter having come before the Court pursuant to the application of the United States to seal the above-captioned warrant and related documents, including the application and affidavit in support thereof and all attachments thereto and other related materials (collectively the "Warrant"), the Court finds that, because of such reasonable grounds to believe the disclosure will result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the investigation, the United States has established that a compelling governmental interest exists to justify the requested sealing.

1. IT IS THEREFORE ORDERED that the application is hereby GRANTED, and that the warrant, the application and affidavit in support thereof, all attachments thereto and other related materials, the instant application to seal, and this Order are sealed until otherwise ordered by the Court.

2. IT IS FURTHER ORDERED that the Clerk's office shall not make any entry on the public docket of the Warrant until further order of the Court.

Date: October 9, 2026

HONORABLE MATTHEW J. SHARBAUGH
UNITED STATES MAGISTRATE JUDGE

cc: **G. A. MASSUCCO-LATAIF**
Chief, Criminal Division
United States Attorney's Office
601 D Street, N.W., Washington, D.C. 20530

UNITED STATES DISTRICT COURT

for the

District of Columbia

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)
ONE RESIDENCE IN WASHINGTON, D.C.
UNDER RULE 41

Case No. 26-SW-318

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location):*

See Attachment A (incorporated by reference)

Located within the jurisdiction of the District of Columbia, there is now concealed *(identify the person or describe the property to be seized):*

See Attachment B and Attachment C (incorporated by reference)

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
[redacted]	

The application is based on these facts:

See Affidavit in Support of Application for Search Warrant.

☑ Continued on the attached sheet.

☐ Delayed notice of _____ days *(give exact ending date if more than 30 days:* _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[redacted]
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
Telephone *(specify reliable electronic means).*

Date: 10/9/2026

Judge's signature

City and state: Washington, D.C.

Matthew J. Sharbaugh
(United States Magistrate Judge)

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means ☑ Original ☐ Duplicate Original

UNITED STATES DISTRICT COURT

for the

District of Columbia

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	)	Case No. 26-SW-318

WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search and seizure of the following person or property located within the jurisdiction of the District of Columbia.
(identify the person or describe the property to be searched and give its location):

See Attachment A (incorporated by reference).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

See Attachment B and Attachment C (incorporated by reference).

YOU ARE COMMANDED to execute this warrant on or before October 23, 2026 *(not to exceed 14 days)*
☑ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to Matthew J. Sharbaugh.
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*
☐ for ____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of ____.

Date and time issued: 10/9/2026

Judge's signature

City and state: Washington, D.C.

Matthew J. Sharbaugh
United States Magistrate Judge

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means (Page 2)

Return		
Case No.: 26-SW-318	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name(s) of any person(s) seized:		

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: _____

_____
Executing officer's signature

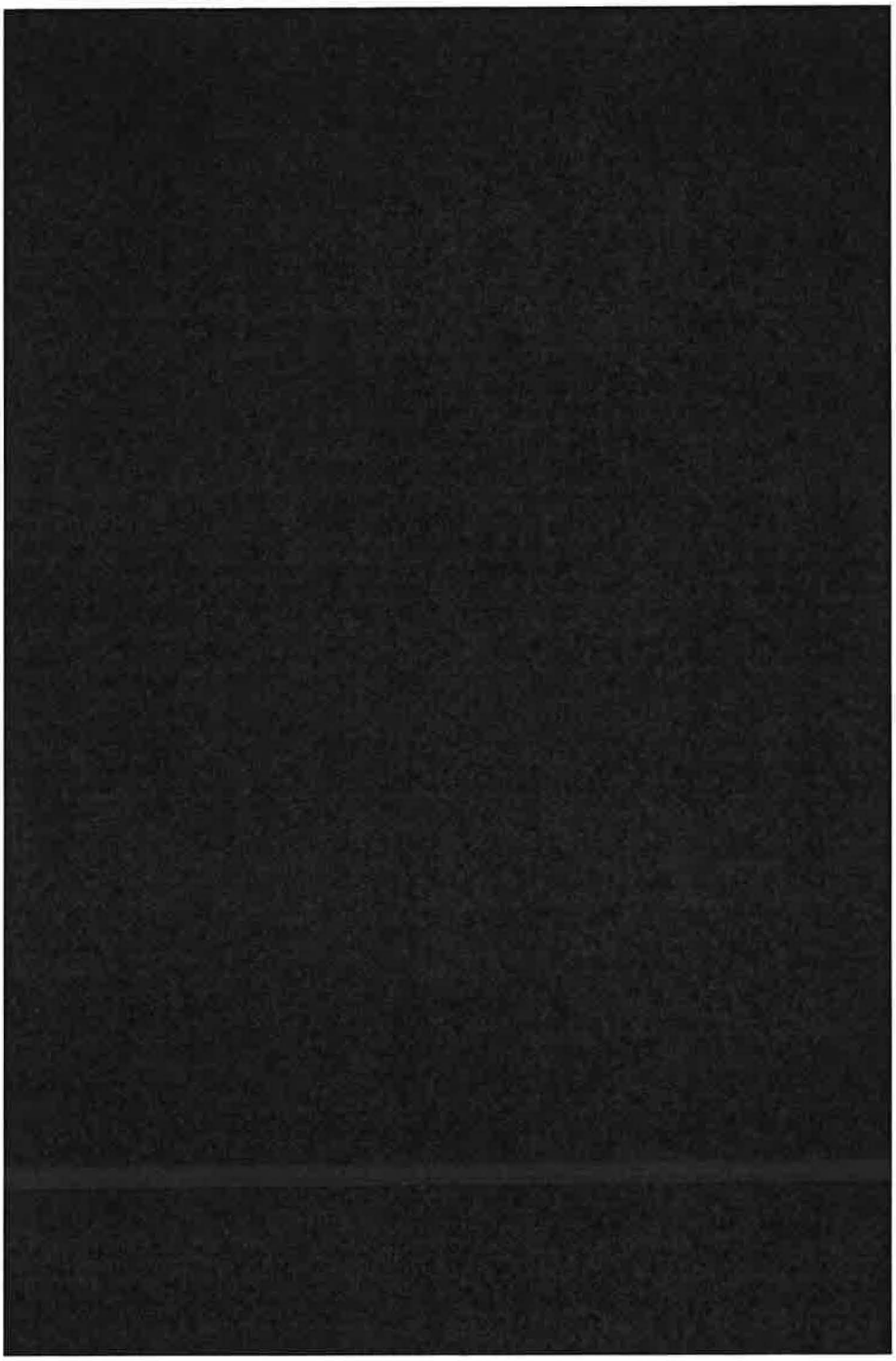
_____
Printed name and title

ATTACHMENT A

Property to be searched

The property located at [redacted] ("TARGET LOCATION"). [redacted] See attached photographs.

Covered areas, temporary structures, and outbuildings located within the curtilage of the property. [redacted]



Attachment B

Property to be seized from the TARGET LOCATION

All records and information that constitute fruits, contraband, evidence, and instrumentalities of violations of [redacted] (the "Target Offenses"). These records and materials are more specifically described below:

1. [redacted]

2. Papers, records, photographs, documents and any other physical objects relating to [redacted]

3. [redacted]

4. [redacted]

5. Thumb drives, external hard drives, computers, or other electronic media storage devices holding any of the above records or documents.

6. Cellular phones registered to or used by ILHAN.

7. For any digital device owned, used, or controlled by ILHAN, or in proximity to evidence of the TARGET OFFENSES, which is capable of containing and reasonably could contain fruits, evidence, information, contraband, or instrumentalities as described in the search warrant affidavit, hereinafter the "Device(s)" **will be seized, copied, and searched pursuant to the procedures in Attachment C.**

ATTACHMENT C

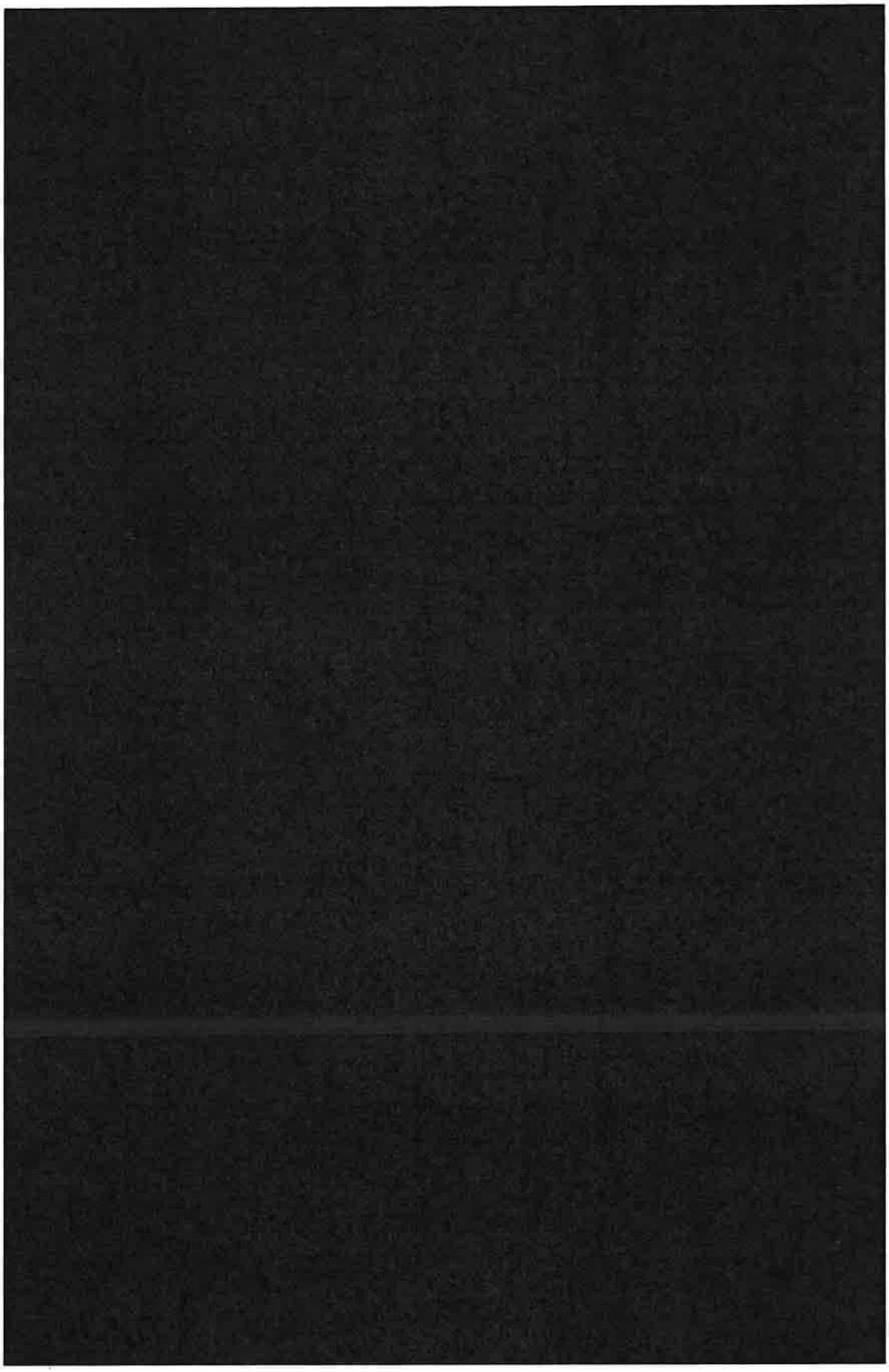
Special Speech or Debate Clause Search Procedures

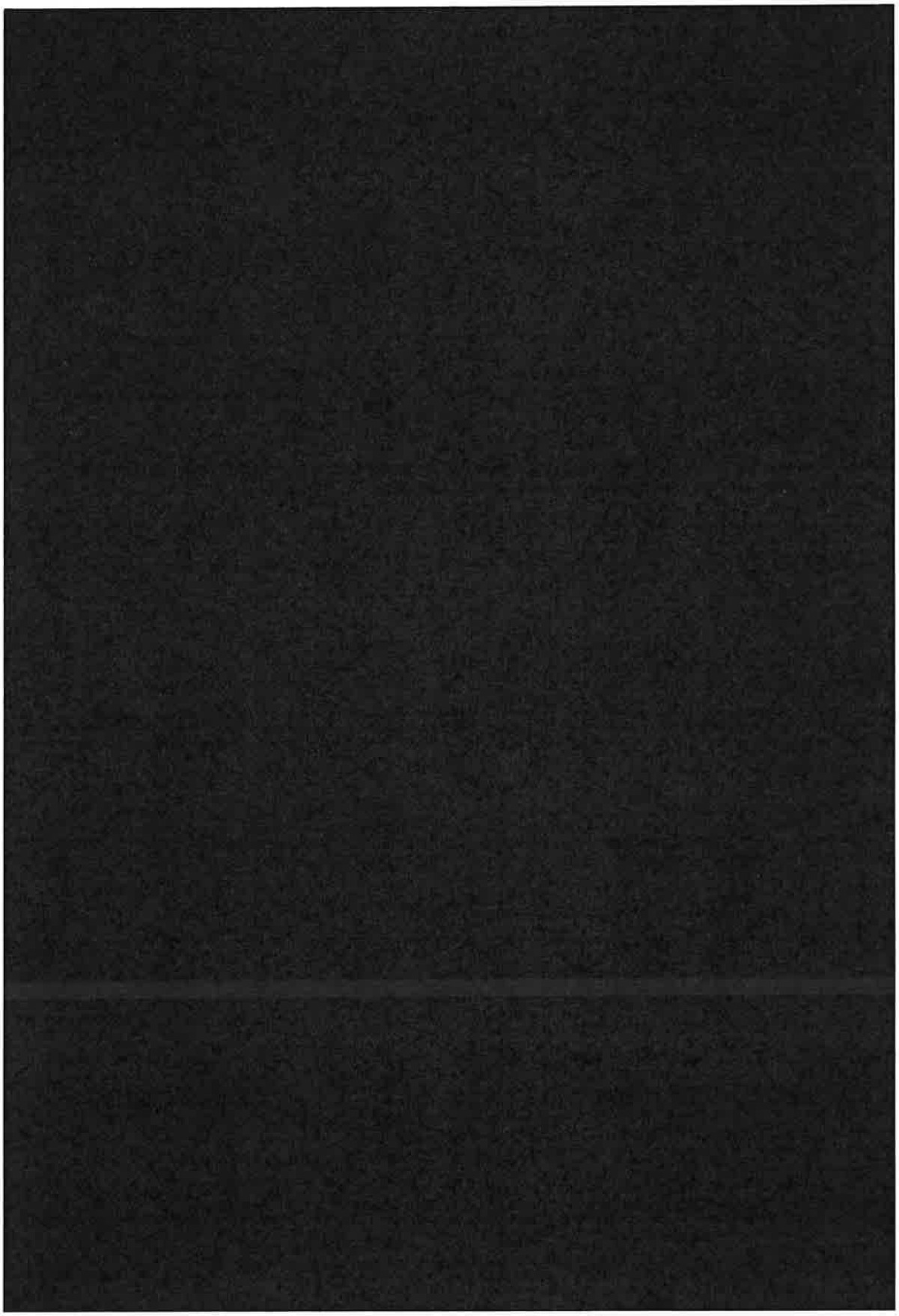
1. I have been informed by the Prosecutors overseeing the investigation in this matter that they will comply with the Court's request to adopt special procedures in light of the possibility [redacted] (the "TARGET LOCATION"), further described in Attachment A, may contain materials that are privileged under the Speech or Debate Clause, U.S. Const. art I, § 6, cl. 1 (the "Privilege").

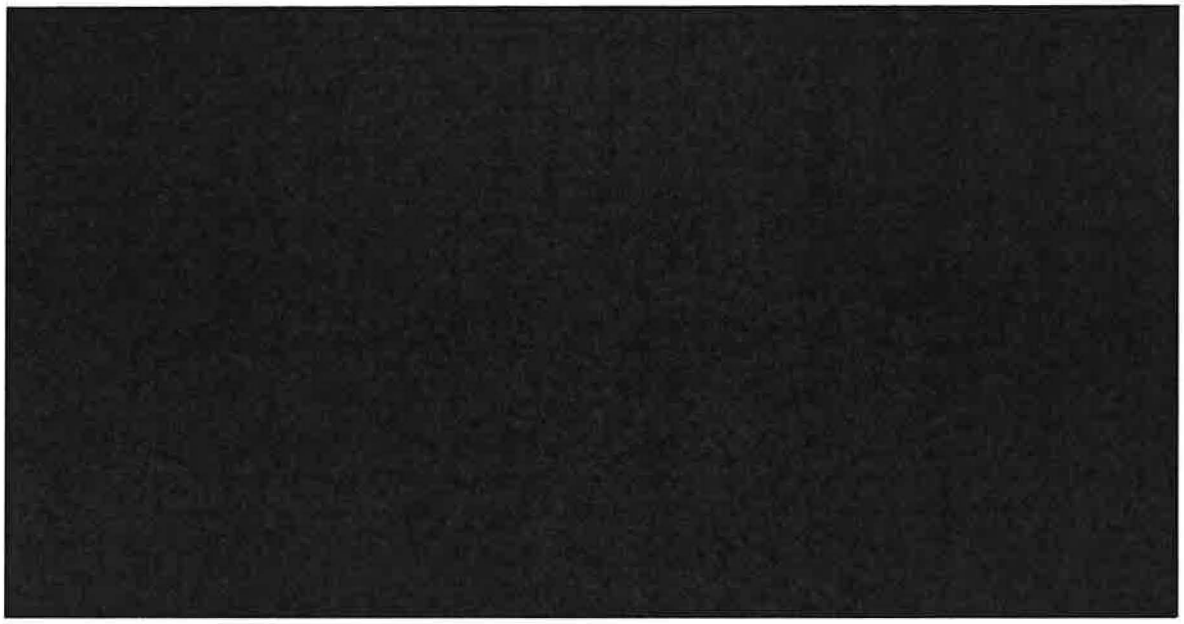
2. The following special search procedures will be employed with respect to the TARGET LOCATION to ensure that Ilhan Nur Said Elmi a/k/a Ilhan Abdullahi Omar ("ILHAN") is afforded an opportunity to "assert the [P]rivilege with respect to legislative materials *before* their compelled disclosure to Executive agents," *United States v. Rayburn House Off. Bldg., Room 2113*, 497 F.3d 654, 662 (D.C. Cir. 2007) (emphasis added)[1]:

[redacted]

[1] In *Rayburn*, the D.C. Circuit held that even incidental review of Speech or Debate privileged material by Executive agents during the execution of a search warrant violates the Privilege, if the Member is not provided the opportunity to assert the Privilege before legislative materials are disclosed. 497 F.3d at 662.







UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	**SW No. 26-sw-318** **Filed Under Seal**

ORDER

This matter having come before the Court pursuant to the application of the United States to seal the above-captioned warrant and related documents, including the application and affidavit in support thereof and all attachments thereto and other related materials (collectively the "Warrant"), the Court finds that, because of such reasonable grounds to believe the disclosure will result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the investigation, the United States has established that a compelling governmental interest exists to justify the requested sealing.

1. IT IS THEREFORE ORDERED that the application is hereby GRANTED, and that the warrant, the application and affidavit in support thereof, all attachments thereto and other related materials, the instant application to seal, and this Order are sealed until otherwise ordered by the Court. The United States shall file a sealing status report within 30 days, unless unsealed by then.

2. IT IS FURTHER ORDERED that the Clerk's office shall not make any entry on the public docket of the Warrant until further order of the Court.

Date: October 9, 2026

HONORABLE MATTHEW J. SHARBAUGH
UNITED STATES MAGISTRATE JUDGE

cc: **G. A. MASSUCCO-LATAIF**
Chief, Criminal Division
United States Attorney's Office
601 D Street, N.W., Washington, D.C. 20530

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means ☑ Original ☐ Duplicate Original

UNITED STATES DISTRICT COURT

for the

District of Columbia

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	)	Case No. 26-SW-318

WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search and seizure of the following person or property located within the jurisdiction of the District of Columbia.
(identify the person or describe the property to be searched and give its location):

See Attachment A (incorporated by reference).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

See Attachment B and Attachment C (incorporated by reference).

YOU ARE COMMANDED to execute this warrant on or before October 23, 2026 *(not to exceed 14 days)*
☑ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to Matthew J. Sharbaugh
(United States Magistrate Judge).

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*
☐ for ____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of ____.

Date and time issued: 10/9/2026

Judge's signature

City and state: Washington, D.C.

Matthew J. Sharbaugh
United States Magistrate Judge

AO 93C (08/18) Warrant by Telephone or Other Reliable Electronic Means (Page 2)

Return

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
26-SW-318	10/12/2026 0605	Ilhan Nur Said Elmi Mohamed

Inventory made in the presence of: [redacted]

Inventory of the property taken and name(s) of any person(s) seized:

See attached inventory

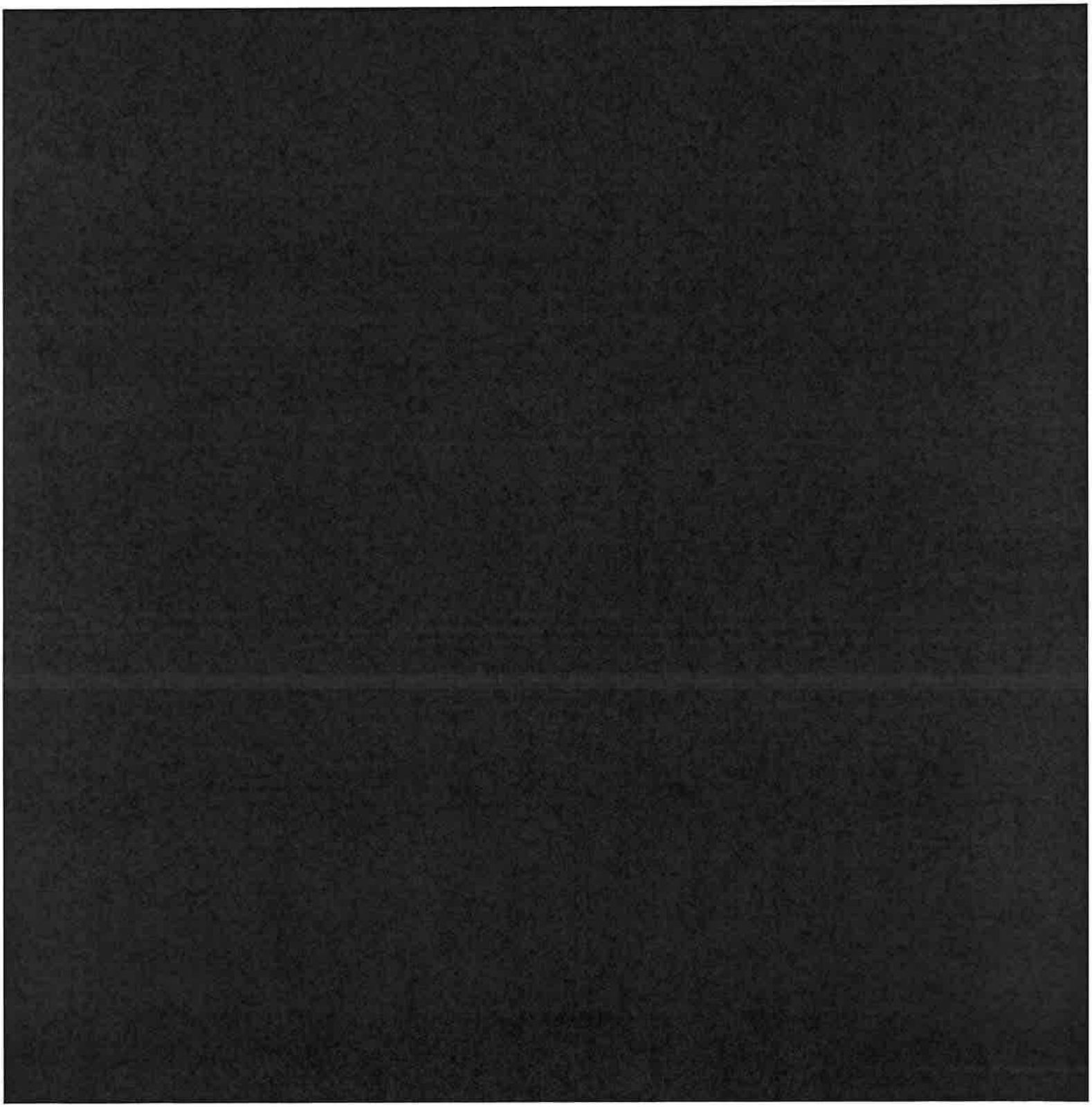
Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: 10/13/2026

[redacted]

Printed name and title



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	Case No. 26-sw-318 (MJS) **FILED UNDER SEAL**

MEMORANDUM ORDER

On October 8, 2026, the Court issued an oral ruling addressing the Speech or Debate Clause implications of the government's search warrant application in this case. The Court now issues this Memorandum Order to supplement its oral ruling.

* * *

The search warrant here is directed to a sitting member of the United States House of Representatives. This means that, even after ensuring that there exists probable cause to issue the warrant, *see* Fed. R. Crim. P. 41(d)(1), the Court must separately balance any necessary constitutional considerations under governing precedent—principally *United States v. Rayburn House Office Building, Room 2113*, 497 F.3d 654 (D.C. Cir. 2007), and its interpretation of the Speech or Debate Clause privilege enshrined in the United States Constitution.

The Speech or Debate Clause provides that "for any Speech or Debate in either House, [Members of Congress] shall not be questioned in any other Place." U.S. Const. art. I § 6 cl. 1. "[B]y the time of the Constitutional Convention, the privilege embodied in the Speech or Debate Clause was 'recognized as an important protection of the independence and integrity of the legislature,' and was to serve as a protection against possible 'prosecution by an unfriendly executive and conviction by a hostile judiciary." *Rayburn*, 497 F.3d at 659 (quoting *United States v. Johnson*, 383 U.S. 169, 178–79 (1966)). As the Supreme Court described it more than half a

century ago, "[t]he Speech or Debate Clause was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch." *Gravel v. United States*, 408 U.S. 606, 616 (1972).

In *Rayburn*, the D.C. Circuit reaffirmed that the Clause encompasses both a testimonial privilege as well as a privilege against compelled disclosure. *Rayburn*, 497 F.3d at 660 (citing *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 420 (D.C. Cir. 1995)). The D.C. Circuit emphasized that "when the privilege applies it is absolute," such that "the degree of disruption caused by probing into legislative acts is immaterial." 497 F.3d at 660. Even the Executive's "incidental review" of protected legislative materials—and even in the course of executing a duly issued search warrant supported by probable cause—runs afoul of the Clause. *Id.* at 661. Simply put, "a search that allows agents of the Executive to review privileged materials without the Member's consent violates the Clause." *Id.* at 663.

The government here acknowledges that the requested warrant triggers at least some Speech or Debate Clause implications, specifically as related to a search of the Member's electronic devices. *See In re Sealed Case*, 80 F.4th 355 (D.C. Cir. 2023) (applying *Rayburn* to the search of a Member's cellphone). But the issue that remains—and the issue this Court independently raised with the government after its initial review of the warrant application—is whether the search of a sitting Member of Congress's *residence* implicates the Speech or Debate Clause. The government says no. This Court sees it differently. It concludes that the government's proposed search of the residence of a sitting Member of Congress, at least on the facts here, requires the balancing of interests that the D.C. Circuit explicated in *Rayburn*.

To be sure, *Rayburn* involved the search of the official Congressional office of a sitting Member. But the D.C. Circuit did not cabin its holding to the specific location of the government's

search. The court's focus was on the *character* of materials to be searched, not simply where those materials were located, though the location in that case surely simplified the analysis.

In fact, just a few years ago, the D.C. Circuit rejected an argument from the government that *Rayburn* is limited to law-enforcement searches of a Member's official office. *See In re Sealed Case*, 80 F.4th at 366 n.6 ("[T]he government asks us to limit *Rayburn* to searches of physical offices, as opposed to Members' cell phones. *Rayburn*, however, explained that the privilege applies *whenever the Executive Branch searches a location where legislative materials are inevitably to be found*. A Member's cell phone is realistically such a location.") (emphasis added) (citation omitted). Now, the Government revives the same restrictive argument the D.C. Circuit rejected in *Rayburn*, with a twist—insisting that *Rayburn* is limited only to official Congressional offices, and certain electronic devices, and no more. That logic does not hold.

For starters, in the year 2026, most professional adults in the United States bring at least some work home. Many Americans have home offices where they keep work-related materials, both in electronic and paper format. And many Americans work in at least some capacity from home, whether from a home-office setting, from the kitchen table, or otherwise. That reality is increasingly true in the wake of the COVID-19 pandemic and the widespread prevalence of remote work that became commonplace during that period. More, even for those working professionals who do not work from home on a regular cadence, most people still carry some sort of briefcase or bag with them to and from the office—bringing home a bit of work they were not able to finish that day, or a bit of work they hope to get ahead of before the daily rush hits them the next morning.

Surely Members of Congress are not outliers in that regard. A Member's legislative work is not limited to banker's hours. And a Member's legislative work is not neatly cabined to the four

walls of their Congressional office. More so than many vocations, the work of a Congressperson occurs in many different settings in many different places at many different times.

The Government essentially just waves its hand at these points, disclaiming any likelihood that "a Member is schlepping around briefcases filled with reports and bills" and invoking what it calls "the vanishing breed of people who prefer[] to print." (*See* ECF No. 1 ("Gov. Br.") at 5.) On the government's view, any conclusion that Members of Congress have legislative materials at home rests on a "daisy chain of mights and maybes." (*Id.*) That perspective blinks reality.

The Court acknowledges that electronic work on laptops and tablets is increasingly more commonplace these days than hardcopy work. But that does not mean paper and analog documents have disappeared. And again, Members of Congress are not outliers in that regard. To name just a few likely examples that spring to mind, consider briefing books on contemplated or pending legislation that a Member's staff prepared for their review after a long day of meetings, binders created to assist a Member in preparing for upcoming committee hearings, or hardcopy drafts of legislation or floor speeches that a Member might prefer to take home to mark-up in paper format on a flight back to their home district in lieu of battling spotty WiFi on the plane.

In short, the Court has no trouble concluding that the presence of at least some legislative materials along those lines is "inevitable" in the residence of a sitting member of Congress, whether in a formal home office setting, a work bag inside the home that travels back and forth to Capitol Hill, or otherwise. And that means *Rayburn*'s protections apply.

The government's remaining argument is that any potentially protected materials would at most be a "small subset" of any hardcopy documents that might be found in a Congressperson's home. (Gov. Br. at 5.) And that is especially true here, the government says, because the materials the government seeks to seize are, by the government's telling, unrelated to any legitimate

legislative activity. Maybe so. But that does not cure the *Rayburn* problem. After all, the D.C. Circuit emphasized that the protections afforded by the Speech or Debate Clause are "absolute," such that even the Executive's "incidental review" of legislative materials without consent is a violation. *Rayburn*, 497 F.3d at 660. No matter how small the potential volume of legislative materials at issue, the constitutional protections remain. Frankly, if anything, a small volume of legislative materials would suggest that the resulting burden on the government of allowing the Member to invoke Speech or Debate Clause protections *before* any Executive review is less onerous than if the volume were greater.

Finally, the Court rejects the suggestion that implementing Speech or Debate Clause protections in this context will somehow convert Congresspersons into "super-citizens" immune from prosecution. (Gov. Br. at 9.) Under *Rayburn*, the government can still pursue criminal investigations against Members of Congress, and it can still secure and execute search warrants along the lines contemplated here. It simply must do so while fairly balancing the legislative branch's interests by allowing the Congressperson targeted by any such search warrant an opportunity to identify any protected material before the search, subject to potential further scrutiny and review by the courts, if necessary. *Id.* at 662 ("There would appear to be no reason why the Congressman's privilege under the Speech or Debate Clause cannot be asserted at the outset of a search in a manner that also protects the interest of the Executive in law enforcement.").

* * *

Having found that *Rayburn*'s protections apply to the proposed search of a Member's residence, the question becomes what sort of search protocol is necessary to implement those protections. With its supplemental brief, the government offered two alternative proposals. Several provisions of both proposals go a long way toward honoring the principles the D.C. Circuit laid

down in *Rayburn*. But both proposals remain deficient in one key respect: they still contemplate that Executive agents will carry out the initial search of the Congressperson's records before providing any opportunity for the Congressperson—even if only in the presence of counsel—to identify any legislative materials within the premises before the search commences. *See In re Sealed Case*, 80 F.4th 366 ("[T]he Representative must be given some opportunity to assert the privilege in court *before* the Executive c[an] view the documents.") (emphasis added).

The Court flagged this issue in an interim order directed at the government. (ECF No. 2.) In addition to asking the government for briefing on certain issues related to probable cause, the Court asked the government to rethink its proposed search protocols on the assumption, at least for the sake of argument, that *Rayburn* applies to the search of a Member's residence:

> In its forthcoming supplemental brief, the United States shall address the alternative scenario that assumes *Rayburn* does, in fact, reach the search of a Member's residence (reserving any arguments to the contrary) and shall specify a proposed search protocol that the United States believes would properly balance the interests explicated in *Rayburn*, bearing in mind *Rayburn's* conclusion that the filter-team approach used in that case did not suffice.

(*See id*.) The government opted not to engage with the Court on that front. Instead, it stood pat on its existing proposed search protocols without further modification.

None of this is to say that there is only one rigid set of requirements that must invariably be followed in these sorts of situations. The Court is keenly aware that it is attempting to balance the interests of the other two branches of government. And in a perfect world, precisely "[h]ow that accommodation is to be achieved is best determined by the legislative and executive branches in the first instance." *Rayburn*, 497 F.3d at 663. But if *Rayburn* teaches anything on that front, it reflects that courts have some role to play at this juncture. Accordingly, the Court made certain revisions to the government's proposed protocol that it believed would appropriately balance the Member's privilege under the Speech or Debate Clause alongside the government's asserted law

enforcement interests, and the Court shared that draft with government counsel. From there, and after additional back-and-forth, the government ultimately put forward a special search protocol that the Court found acceptable under *Rayburn*, including because it spelled out a process through which the Member would be given a chance—at the outset of the government's execution of the warrant—to identify and invoke privilege over any Speech or Debate Clause material before executive agents otherwise carried out their search. The final protocol was made a part of the warrant (as Attachment C) that the Court ultimately approved. (*See* ECF No. 6.)

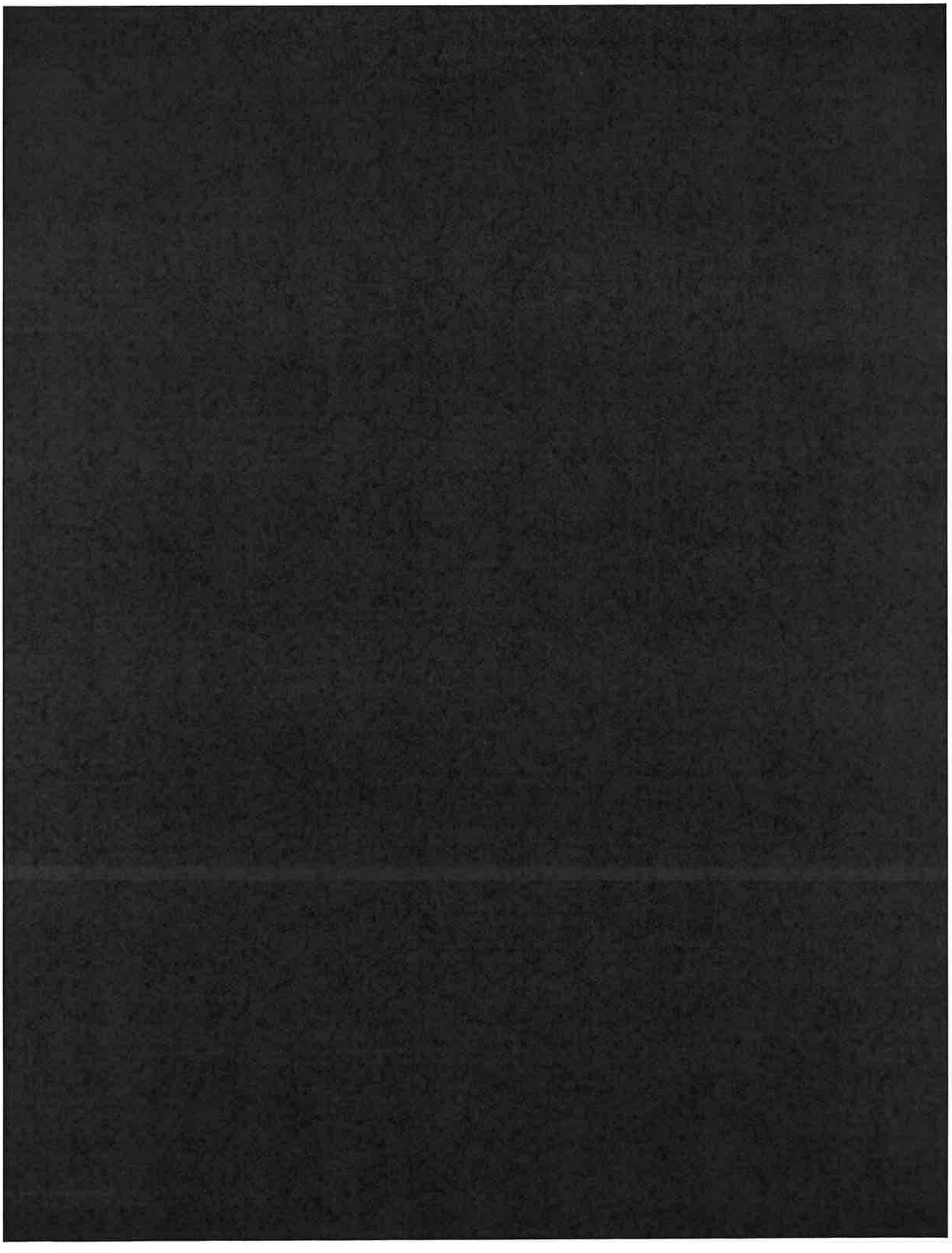
* * *

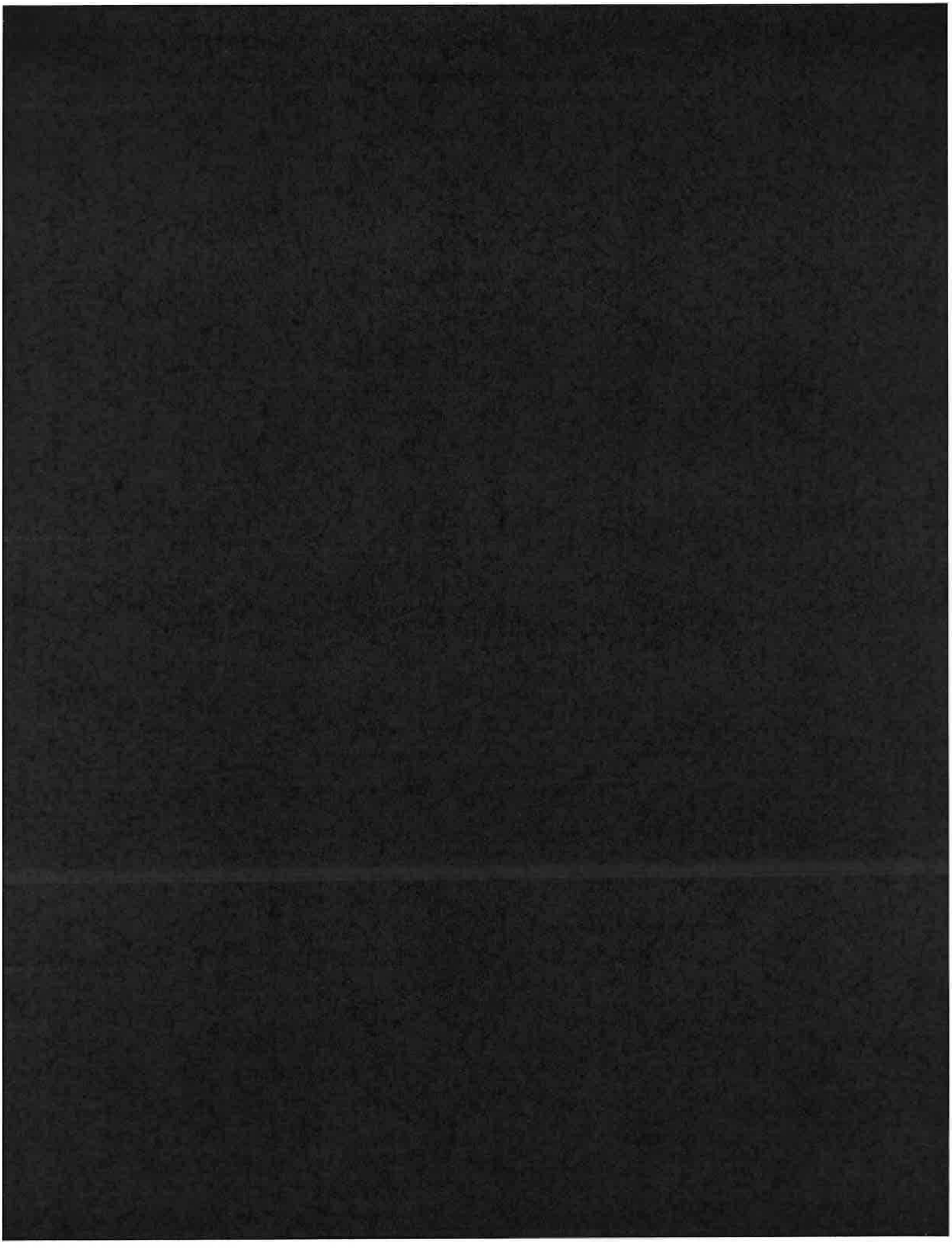
To sum up, the Court holds that the Speech or Debate Clause is implicated by the executive's execution of a search warrant at the residence of a sitting Member of Congress, at least on some level. That means *Rayburn* applies. And under *Rayburn*, courts must carefully and thoughtfully balance the relevant inter-branch governmental interests at play. As this Memorandum Order explains, this Court did its level best to carry out that responsibility here.

SO ORDERED.

Dated: October 15, 2026

MATTHEW J. SHARBAUGH
United States Magistrate Judge





UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	**SW No. 26-SW-318 (MJS)** **FILED UNDER SEAL**

THE UNITED STATES OF AMERICA'S EMERGENCY *EX PARTE* BRIEF IN OPPOSITION TO UNSEALING *EX PARTE* SUPPLEMENTAL MEMORANDUM ORDER

The United States submits this emergency *ex parte* brief opposing the Court's stated intent to promptly unseal its *sua sponte* October 15, 2026 Memorandum Order (the "*Ex Parte* Order") supplementing [redacted] its back-and-forth exchange with the United States (the "*Ex Parte* Proceedings") before signing a search warrant for the personal residence of Congresswoman Ilhan Nur Said Elmi a/k/a Ilhan Abdullahi Omar ("ILHAN").

The United States respects the Court's prerogative to memorialize this back-and-forth and does not necessarily oppose unsealing of the *Ex Parte* Order at a later date along with the entire docket so that the public may have an opportunity to observe firsthand how the legal process worked.

But it opposes in the strongest possible terms the Court's decision to *sua sponte* unseal the *Ex Parte* Order now. Because search warrant proceedings—which occur on a daily basis in every federal court in the United States—are *ex parte* exchanges held in secret between the magistrate judge and prosecutor, and the *Ex Parte* Order is an extension of those exchanges, it would be unlawful and inappropriate to make it public—at least at this time. Just a few years ago, Chief Judge Boasberg ruled that search warrant proceedings and related documents should *not* be made open to the public while an investigation is ongoing. The Chief Judge was merely echoing many

other courts—like the D.C. Circuit, the Ninth Circuit, the Fourth Circuit, and others—when he said that. The public has no right to access search warrant proceedings *preindictment*. And with good reason. Allowing the public to rummage around in an ongoing investigation would almost certainly imperil the investigation itself, the rights of any targets, and the federal grand jury's role in overseeing it. The Court's proposed *sua sponte* ruling exposing search warrant proceedings to public view in the middle of an open investigation would be as damaging as it is unprecedented.

What's more, the *Ex Parte* Order puts on full display one of the dangers of unsealing a small piece of an otherwise locked down investigation: misunderstandings because of a lack of context. The *Ex Parte* Order criticizes the United States's position and conduct here multiple times. But because the United States's briefing, the search warrant affidavit, [redacted] are all still sealed, the public would be left to understand the process using only the *Ex Parte* Order—an incomplete and flawed summary of what occurred. Allowing a branch of government to publicly offer its narrative of a secret proceeding while a co-equal branch sits in silence to preserve the integrity of its investigation is, to put it simply, wrong.

If after considering the United States's position the Court still believes that prompt unsealing of the *Ex Parte* Order is appropriate, the United States respectfully requests that the Court indicate so in an order with its stated reasons and set a future date for unsealing that affords the United States adequate time to seek appropriate review of that decision, including a motion for an emergency stay with Chief Judge Boasberg.[1]

[1] The United States was alerted the existence of this *Ex Parte* Order on Thursday, October 15, 2026 at 2:31 p.m. via email from a colleague in the D.C. U.S. Attorney's Office who had been alerted to it only after trying to identify where a separate filing was located. The Court did not alert the United States that the *Ex Parte* Order was filed or the accompanying minute order on its own. The minute order provided: "The Court intends to promptly unseal the Memorandum Order just docketed. The Court does not believe it refernces any sensitive informaiton that necessitates continued sealing. Nevertheless, if the government believes any redactions are necessary, it should file an appropriately detailed notice to that effect by no later than 12 PM on Friday October 16, 2026." ECF Docket Entry No. 2. This minute order gave the United States less than 24 hours to respond and was limited only to "redactions."

BACKGROUND

On October 9, 2026, the Court signed a warrant to search the premises known as [redacted] (the "Target Location") for "[a]ll records and information that constitute fruits, contraband, evidence, and instrumentalities of violations of [redacted], those violations involving" ILHAN (the "Target Offenses"). *See* October 9, 2026 Signed Search Warrant. The Target Location is ILHAN's private D.C. residence. Between October 2, 2026 (when the warrant application was first submitted) and October 9, 2026 (when it was signed), the Court asked the United States to revise the warrant to bring it in alignment with the Court's view of potential Speech or Debate Clause issues under D.C. Circuit precedent. This process included several rounds of revisions to the Affidavit and its attachments shaped through [redacted], two supplemental sealed *ex parte* briefs from the United States, and one sealed order from the Court.

Along the way, the United States specifically argued that (1) "nothing about the requested search warrant and the case it services implicates the Speech or Debate Clause"; (2) the Court should "apply to the requested search warrant involving [ILHAN] the same standard it applied to the one it granted" "weeks ago for the person, devices, and two private Washington, D.C. residences of [redacted]," which included zero special Speech or Debate procedures; and (3) in the alternative, the Court should consider "several proposed alternative protocols that the Court could deploy to ensure further protection for any Speech or Debate Clause issues" implicated by the applied-for warrant. United States's First *Ex Parte* Brief at 2-11. Throughout this process, the United States preserved its arguments that *United States v. Rayburn House Off. Bldg., Room 2113*, 497 F.3d 654 (D.C. Cir. 2007), and *In re Sealed Case*, 80

F.4th 355 (D.C. Cir. 2023), did not apply to searches of a Member's private residence for evidence of offenses totally unrelated to her work. *See* United States's Second *Ex Parte* Brief at 8-9.

The United States also explained why there is a sufficient basis to issue the warrant based on probable cause that evidence of the Target Offenses (described in Attachment B) is located at the Target Location (described in Attachment A); and it showed how its special protocols sufficiently respected the Member's legislative privilege as understood in *Rayburn*. *See* United States's Second *Ex Parte* Brief at 3-8. Satisfied that its requested revisions had been made to the special Speech or Debate procedures it requested, the Court signed the warrant. *See* October 9, 2026 Signed Search Warrant Attachment C (explaining that the Court requested that the executing agents adopt certain special procedures "in light of the possibility [that the Target Location] … may contain materials that are privileged under the Speech or Debate Clause").

Notably, prior to the warrant's execution, an attorney from the U.S. Department of Justice notified the United States House of Representatives General Counsel that the warrant would be executed on the private residence of a Member of Congress. But House Counsel refused to be involved in the search. Echoing the United States's position, he explained that, in his view, Speech or Debate Clause protections *do not extend* to a Member's private residence. Around 6:05 a.m. on October 12, 2026, agents from Homeland Security Investigations (HSI) executed the warrant on the Target Residence. [redacted]

[redacted]. Throughout its search, the United States complied with the special search protocols outlined in Attachment C.

Sometime before 2 p.m. on October 15, 2026, the Court entered the *Ex Parte* Order and a corresponding Minute Order stating that it "intends to promptly unseal" the *Ex Parte* Order *without any notice* to the United States. October 15, 2026 Minute Order. The *Ex Parte* Order explains that it is merely supplementing the Court's "oral ruling addressing the Speech or Debate Clause implications of the government's search warrant application in this case." *Ex Parte* Order at 1. The Court gave the United States less than 24 hours to "file an appropriately detailed notice" of any redactions it believes are necessary before unsealing occurs. October 15, 2026 Minute Order. At 4:23 p.m., an attorney for the United States contacted the Court to "respectfully request the Court [] delay the unsealing of the memorandum until the United States has had a full and fair opportunity to be heard on this matter," and that "[i]f this Court is unwilling to give us this opportunity, we request the Court inform us of that decision and allow us adequate time to seek appropriate review." At 7:03 p.m., the Court confirmed receipt of the United States's response and requested that "the government file its position, or any related request for relief, on the docket," and the Court would "review any filings once filed."

The United States files this brief to support its opposition to the unsealing of the *Ex Parte* Order at this time.

DISCUSSION

I. Unsealing the *Ex Parte* Order at this time would be unlawful.

The Court and the United States appear to have some common ground. The United States doesn't disagree that the Court can reduce its *ex parte* oral rulings on search warrant-related privilege questions to writing. Nor does it disagree that the Court can file the *Ex Parte* Order under seal on the docket. Nor does it disagree that at some point that order can be made public; in fact,

the United States expects that at the appropriate time—*i.e.*, sometime post-indictment—it would agree with unsealing and making public a great deal of the underlying materials in this case (with appropriate redactions).

The United States does disagree, however, with the Court's inexplicable rush to make that ex parte *search warrant*-related ruling public at *this stage* of the case.

For starters, the Court shouldn't unseal this *ex parte* memorandum order because magistrate judge-prosecutor conversations about search warrants—including how to best navigate privilege issues—are, as a rule, private. *In re Press Application for Access to Jud. Recs. in Case No. 23-SC-31*, 704 F. Supp. 3d 161, 174 (D.D.C. 2023) (Boasberg, C.J.) ("Search-warrant applications traditionally have been filed ex parte and thus out of the public's view."). Search warrants proceedings are secret and ex parte—an exchange limited to the prosecutor and magistrate that "involves no public or adversary proceedings." *United States v. United States District Court*, 407 U.S. 297, 321 (1972). Even the "procedures" by which a warrant issues are "by no means public." *Florida v. White*, 526 U.S. 559, 573 (1999) (Stevens, J., dissenting). The whole "proceeding is necessarily ex parte." *Franks v. Delaware*, 438 U.S. 154, 169 (1977).

Here, the Court casts the *Ex Parte* Order as a "supplement" to its oral ruling that merely explains more fully its reasons for holding that *Rayburn* applies and why it eventually adopted the United States's proposed Attachment C. *Ex Parte* Order at 1. The content and grammar of the order confirms that the Court views this as effectively capturing its pre-search oral ruling. *See, e.g.*, *Ex Parte* Order at 4 (using the present tense—"the materials the government seeks to seize"—to describe a search that technically took place several days before); *see generally id.* (omitting from the Speech or Debate analysis that the House Counsel told the Department the Speech or Debate clause doesn't apply to Member's private residences [redacted]

[redacted]). But remember the audience for the oral ruling: the prosecutor—and *no one else*. Magistrate judges don't usually fling open the doors of their chambers or courtrooms so every passerby can listen in on their *ex parte* conversations with prosecutors about probable cause and privileges. That would be inappropriate for host of obvious reasons—not least of which is the need for investigative secrecy (more on that below).

Yet flinging open the metaphorical doors and inviting the public to listen in is precisely what the Court proposes doing here. That runs directly contrary to the most basic "hallmark of search-warrant proceedings": "secrecy." *In re Press Application*, 704 F. Supp. 3d at 174. Public accessibility wasn't appropriate when the Court [redacted], it wasn't appropriate when the Court orally ruled on those questions, and it's not appropriate now that the Court wants to add to that oral ruling. Because "[w]arrant application proceedings are highly secret in nature and have historically been closed to the press and public," the audience for this supplemental ruling should be the same audience for the original: the United States—and no one else. *United States v. All Funds on Deposit at Wells Fargo*, 643 F. Supp. 2d 577, 583 (S.D.N.Y. 2009).

Further, and relatedly, the United States's investigation is still in full swing: [redacted]. In short, the United States is in the throes of *preindictment investigation*. That posture, which the *Ex Parte* Order doesn't really grapple with, is tremendously important. As Chief Judge Boasberg summarized a few years ago, historical practice suggests that "search warrants *and related documents*" are "not open … to public examination when an investigation is ongoing." *In re Press Application*, 704 F. Supp. 3d at 174 (emphasis added); *see id.* (repeating that during "an active

investigation" courts will "freely … restrict access to warrant materials" (citation modified)). 'Related documents' squarely includes the *Ex Parte* Order.

So no surprise that the *ex parte* supplemental memorandum identifies *no* authority that would allow it to be made public. This puts the United States in somewhat of a bind: the Court proposes an unprecedented breach of the normal search warrant-procedure secrecy norms but without invoking legal justification—leaving the United States to guess at the Court's putative authority. The United States shouldn't have to guess: before unsealing the *Ex Parte* Order, the Court should clearly identify the authority it believes permits that breach and give the United States adequate time to address that position.

Unsurprisingly, the United States has not been able to find cases addressing this seemingly unprecedented fact pattern. But plenty of case law addresses the more general question of whether the public has a pre-indictment right to access these sorts of search warrant-related documents under authorities like the common law right to public access and First Amendment. The short answer: no. As the D.C. Circuit put it nearly 30 years ago, "[t]here is, for instance, no right of access to 'documents which have traditionally been kept secret for important policy reasons'"—especially during "preindictment" proceedings. *In re Motions of Dow Jones & Co.*, 142 F.3d 496, 504 (D.C. Cir. 1998) (quoting *Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir. 1989)). "[S]earch warrant materials" and ancillary judicial orders "related to an ongoing investigation" like the *Ex Parte* Order are just such documents. *Computer Pros. for Soc. Resp. v. Secret Serv.*, No. 92-5140, 1993 WL 20050, at *1 (D.C. Cir. Jan. 5, 1993).

These decisions were based on the good work of other circuits, which have long held the same: the public shouldn't be able to see search warrant materials or review those proceedings preindictment. *See, e.g.*, *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989)

("[P]roceedings for the issuance of search warrants are not open."). In *Times Mirror*, for example, the Ninth Circuit said that there is "no historical tradition of open search warrant proceedings and materials" and, thus, no "right of access to warrant proceedings." 873 F.2d at 1214. "On the contrary, the experience of history implies a judgment that warrant proceedings and materials should not be accessible to the public, at least while a pre-indictment investigation is still ongoing as in these cases." *Id.*; *see also United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1192 (9th Cir. 2011) ("Our case law has identified two categories of documents that are not covered by the common law right of access: grand jury transcripts and warrant materials in the midst of a pre-indictment investigation." (citation modified)). This Court has repeatedly invoked *Times Mirror* and the Ninth Circuit's muscular standard when discussing these issues. *See Leopold v. Manger*, 102 F.4th 491, 502 (D.C. Cir. 2024); *Matter of the Application of WP Co. LLC*, 201 F. Supp. 3d 109, 125, 129 n.10 (D.D.C. 2016). Applied here, the standard leaves no doubt: the Court may not lawfully unseal the *Ex Parte* Order under the theories normally used to justify public access to the Executive Branch's investigative work.

II. The live unsealing issue deserves fulsome briefing, which will happen in the parallel litigation currently pending before Chief Judge Boasberg.

As a matter of judicial prudence and economy, the Court should refrain from unsealing the *Ex Parte* Order for the time being. Just yesterday, the New York Times[3], and in a separate filing, 14 press organizations[4], filed a motion to intervene and unseal all of the search warrant materials in this case. These motions, therefore, directly raise very similar public-access questions to the public-access question the *Ex Parte* Order appears to implicitly raise. The United States is starting

[3] 26-MC-0145 (under seal).

[4] 26-MC-0144 (under seal).

to draft its response to the motions now. Rather than deciding that question before Chief Judge Boasberg has a chance to weigh in, the Court should wait for him to rule because that order will likely control any public-access analysis here.

Regardless, if the Court isn't inclined to wait a few weeks for the chief judge to rule, it should in fairness give the United States sufficient time to file a brief fully addressing these public-access arguments—at least the standard two weeks given to parties responding to motions in criminal cases. *See* LCrR 47(b). At the very least, the Court should give the United States the chance to brief these issues [redacted].

III. It's fundamentally unjust to unseal the *Ex Parte* Order, which contains factual inaccuracies and omissions and unfair characterizations of the United States's position, because the primary materials necessary to check the *Ex Parte* Order's accuracy aren't available.

Promptly unsealing the *Ex Parte* Order without more will only serve to confuse the public—it will lack crucial context from the *Ex Parte* Proceedings that sourced it, [redacted]. Further compounding this problem are key factual inaccuracies about the *Ex Parte* Proceedings in the *Ex Parte* Order—factual inaccuracies that would go unrebutted and thus uncorrected if the *Ex Parte* Order issues inside this context vacuum. Consider some examples:

A. The *Ex Parte* Order mischaracterizes the United States's arguments on the Clause.

For starters, it is inaccurate to say that the United States conceded "that the requested warrant triggers at least some Speech or Debate Clause implications, specifically as related to a search of the Member's electronic devices" without also distinguishing between 'work devices' and 'private devices.' *Ex Parte* Order at 2 (citing *In re Sealed Case*, 80 F.4th 355 (D.C. Cir. 2023)). In its briefing and at oral argument, the United States went to great lengths to distinguish a

Member's "Government issued work computer and phone" from her personal devices, and laid out "the extreme dissimilarity of the[] facts [in this case] to other Clause cases" to "show[] how poor of a fit *Rayburn*'s 'inevitable' language is here." United States's First *Ex Parte* Brief at 5-6. It made clear that this case *isn't* "*In re Sealed Case*, where the government searched a Member's private cellphone that he admitted using to communicate with fellow Members, staff, Executive Branch officials, and private citizens 'about whether to certify a presidential election' and about legislation on 'federal election procedures'"; and it *isn't* "*Rayburn*, where the FBI spent 18 hours combing through physical documents in a congressional office for evidence of bribery." *Id.* at 6 (quoting *In re Sealed Case*, 80 F.4th at 372, and citing *Rayburn*, 497 F.3d at 657).

It's also inaccurate to say that the United States "insist[ed] that *Rayburn* is limited only to official Congressional offices, and certain electronic devices, and no more." *Ex Parte* Order, at 3. The United States's argument was far more modest: it merely argued that absent some case-specific facts, the Court can't say evidence of legislative acts will inevitably be found at a Member's private residence. *See, e.g.*, United States's First *Ex Parte* Brief at 6. It also argued that no court has ruled that the Speech or Debate privilege was intended to cover private residences. But again, the public would never get to see that inaccuracy or judge for themselves because only the Court's narrative is being told.

B. The *Ex Parte* Order omits any mention of what is perhaps the most difficult fact to square with the Court's ruling: [redacted].

The United States argued "that no additional protocols are needed for the Member's private residence for all of the reasons previously cited and based upon this Court's [redacted]" United States's Second *Ex Parte* Brief at 8 (citing [redacted]

[redacted] Yet the *Ex Parte* Order doesn't breathe a word about that uncomfortable fact. And it was only out of an abundance of caution, not a concession, that the United States included in the warrant application certain device-specific protections [redacted]. *See, e.g.*, United States's First *Ex Parte* Brief at 7-8 and United States's Second *Ex Parte* Brief at 8-9 (quoting [redacted]).

C. The United States did not ignore the Court's request for search protocols.

The United States's proposed protections call attention to another factual inaccuracy in the Court's *Ex Parte* Order: the claim that "[t]he government opted not to engage with" the Court's purported request "to rethink [the United States's] proposed search protocols on the assumption, at least for the sake of argument, that *Rayburn* applies to the search of a Member's residence," and instead "stood pat on its existing proposed search protocols without further modification." *Ex Parte* Order at 6. That is not what happened.

[redacted], the Court expressed its concern that a filter team along the lines of the one rejected in *Rayburn* would not provide sufficient protections for any potentially privileged materials found at the Target Location, a private residence. In *Rayburn*, "the FBI agents conducting the search" were supposed "to review and seize paper documents responsive to the warrant, copy all electronic files on the hard drives or other electronic media in the Congressman's office, and then turn over the files for review by a filter team consisting of two Justice Department attorneys and an FBI agent." 497 F.3d at 656. That team would then review and determine "(1) whether any of the seized documents were not responsive

to the search warrant, and return any such documents to the Congressman; and (2) whether any of the seized documents were subject to the Speech or Debate Clause privilege or other privilege," which, "absent the Congressman's consent to Executive use of a potentially privileged document, [would] be submitted to the district court for review, with a log and copy of such documents provided to the Congressman's attorney within 20 business days of the search." *Id.* at 656-57. And "[t]he filter team would make similar determinations with respect to the data on the copied computer hard drives." *Id.* at 657.

In response to the Court's concern, the United States submitted an *ex parte* brief with *two* proposed protocols that the Court could deploy to ensure further protection for any Speech or Debate Clause issues on top of the protections already in place in the existing Application itself—both of which would have avoided the rejected procedure in *Rayburn* by prohibiting the agents executing the search warrants from *any review* of the seized contents before ILHAN had a chance to either waive or claim Speech or Debate privilege. *See* United States's First *Ex Parte* Brief at 8-9 & Exhibits 2 and 4 (citing *Rayburn*'s language about avoiding incidental review and stating that "**prior to any review** of the content seized from the TARGET LOCATION by employees of the Executive Branch," "[f]ilter team agents with [HSI] (not part of the investigative team) will execute the search warrant at the TARGET LOCATION and seize everything that could potentially fall into the category of items listed in Attachment B" but "**[n]othing will be reviewed** or otherwise searched"). Under each protocol, ILHAN would have been afforded an appropriate opportunity, in accordance with *Rayburn* and *In re Sealed Case* "to either waive or assert the Privilege, prior to any review of the content seized from the TARGET LOCATION by employees of the Executive Branch," and all materials—analog and digital—would have been held by either HSI or the Court for safekeeping while that process played out pursuant to future court guidance.

The Court's order following the United States's submission of this first *ex parte* brief did not even acknowledge that the United States submitted these protocols, much less indicate the Court's view on them. *See* October 7, 2026 Order. And it certainly did not "ask[] the government to rethink" these protocols assuming that *Rayburn* does apply to the Target Location. *Ex Parte* Order at 6. The Court's order instead reads as if the Court did not consider the protocols at all, much less whether the strict no-review limitations within them were different enough from those that were rejected in *Rayburn*. To be sure, if the Court had considered and rejected them as-is, the United States would *never* have re-submitted them as-is for the Court's consideration in the next *ex parte* brief it filed in response to that order. *See* United States's Second *Ex Parte* Brief at 8-9 (citing United States's First *Ex Parte* Brief at 8-9 & Exhibits 2 and 4). Instead, the United States would have submitted new ones tailored to the Court's expressed feedback, just as it did with the version of the special protocols that took its ultimate form in the signed warrant's Attachment C.

D. The *Ex Parte* Order implies that the United States's filings may be dishonest when the still sealed primary materials show the United States's claim is true.

In summarizing the United States's arguments in the *Ex Parte* Proceedings, the Court says that the materials the United States "seeks to seize are, by the government's telling, unrelated to any legitimate legislative activity. Maybe so." *Ex Parte* Order at 4-5. No. Not 'maybe so'—demonstrably so. The United States included a list of crimes that there is probable cause to believe ILHAN has violated; it included in detail its theory of the case based on much of the evidence it currently has; it included in Attachment B a specific list of materials it was seeking to seize; and it included a thorough definition of the "legislative acts" protected by the Clause. This is everything the Court needs to determine whether the materials the United States seeks are related to "legislative acts." *See also contra id.* (wrongly describing the United States's Speech or Debate argument as implicating "legitimate legislative activity" instead of "legislative acts"). The United

States believes ILHAN has committed [redacted] crimes over decades—beginning long before she was ever in Congress. Nothing in the search warrant affidavit, briefing, or oral argument indicates that the United States's case has anything to do with ILHAN's professional life. But the *Ex Parte* Order gives the false impression that it's an open question, unknowable by the Court at this phase.

There are other examples which the undersigned can cite and will reserve the right to supplement the record [redacted] so as to avoid further inaccuracies.

* * * *

These examples show the injustice of allowing the Court's voice to be the only one describing the *Ex Parte* Proceedings at this juncture of the case. The Judiciary and Executive are co-equal branches—the Court is "not superior to" the United States. *Brookfield Const. Co. v. Stewart*, 234 F. Supp. 94, 97 (D.D.C. 1964). This is not an adversarial proceeding where the Court weighs arguments and acts as a neutral arbiter between two parties; this is a secret *ex parte* proceeding in which the only participants and witnesses are the Court and United States. So it would be fundamentally unfair to allow the Court to publicly offer its view or opinion about these highly secret search warrant proceedings without the primary sources to check its perspective. And it'd be even more unjust to force the United States to choose between correcting the record in a high visibility case by releasing primary sources and maintaining the integrity of its investigation.

CONCLUSION

The United States isn't arguing that the Court can never assure the world that it "did its level best to carry out [its] responsibility" to "carefully and thoughtfully balance the relevant inter-branch governmental interests at play" here. *Ex Parte* Order at 7. It's just wrong to do it *right now*.

The Court should withdraw its minute order where it would unseal its *Ex Parte* Order today and keep the matter under seal until which time the United States moves to unseal the matter after it concludes its investigation. Alternatively, this Court should stay its order until the Chief Judge has an opportunity to review full briefing and rule on the New York Times and other press Outlets' motions to unseal as they are intertwined with this issue.

Dated: October 16, 2026

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF ONE RESIDENCE IN WASHINGTON, D.C. UNDER RULE 41	SW No. 26-SW-318 (MJS) **FILED UNDER SEAL**

THE UNITED STATES OF AMERICA'S STATUS REPORT RE: NEED FOR CONTINUED SEALING OF SEARCH WARRANT

The United States files this status report in accordance with the Court's order of October 9, 2026.

1. On October 12, 2026, at approximately 6:05 a.m., Homeland Security Investigations ("HSI") executed the search warrant for Ilhan Omar's (the "Subject") residence. [redacted]

2. [redacted]

[redacted]

[redacted] The above information was conveyed to this Court prior to the execution of the warrant.

3. [redacted]

4. [redacted]

5. [redacted]

[redacted]

6. On October 14, 2026, the New York Times and other press organizations filed motions to unseal this docket. Those case numbers are 26-mc-144, 26-mc-145, and 26-mc-147. The United States opposed this motion setting forth a variety of reasons including that the investigation is ongoing, and that the warrant is not fully executed [redacted]. The United States does assert that the materials could be unsealed at some point but not at this time. The matters are assigned to Chief Judge Boasberg. Final briefing on the motions to unseal was filed on October 30, 2026, and the parties await a decision.

7. The United States maintains that the docket, [redacted], and all pleadings should remain sealed for the reasons set forth above: there is an ongoing investigation involving an incomplete search warrant execution, [redacted].

CONCLUSION

The Court should continue to keep the matter sealed for the reasons set forth above.

Respectfully submitted,

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Date: November 4, 2026

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