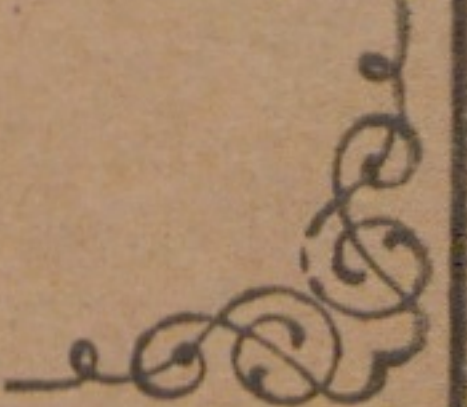
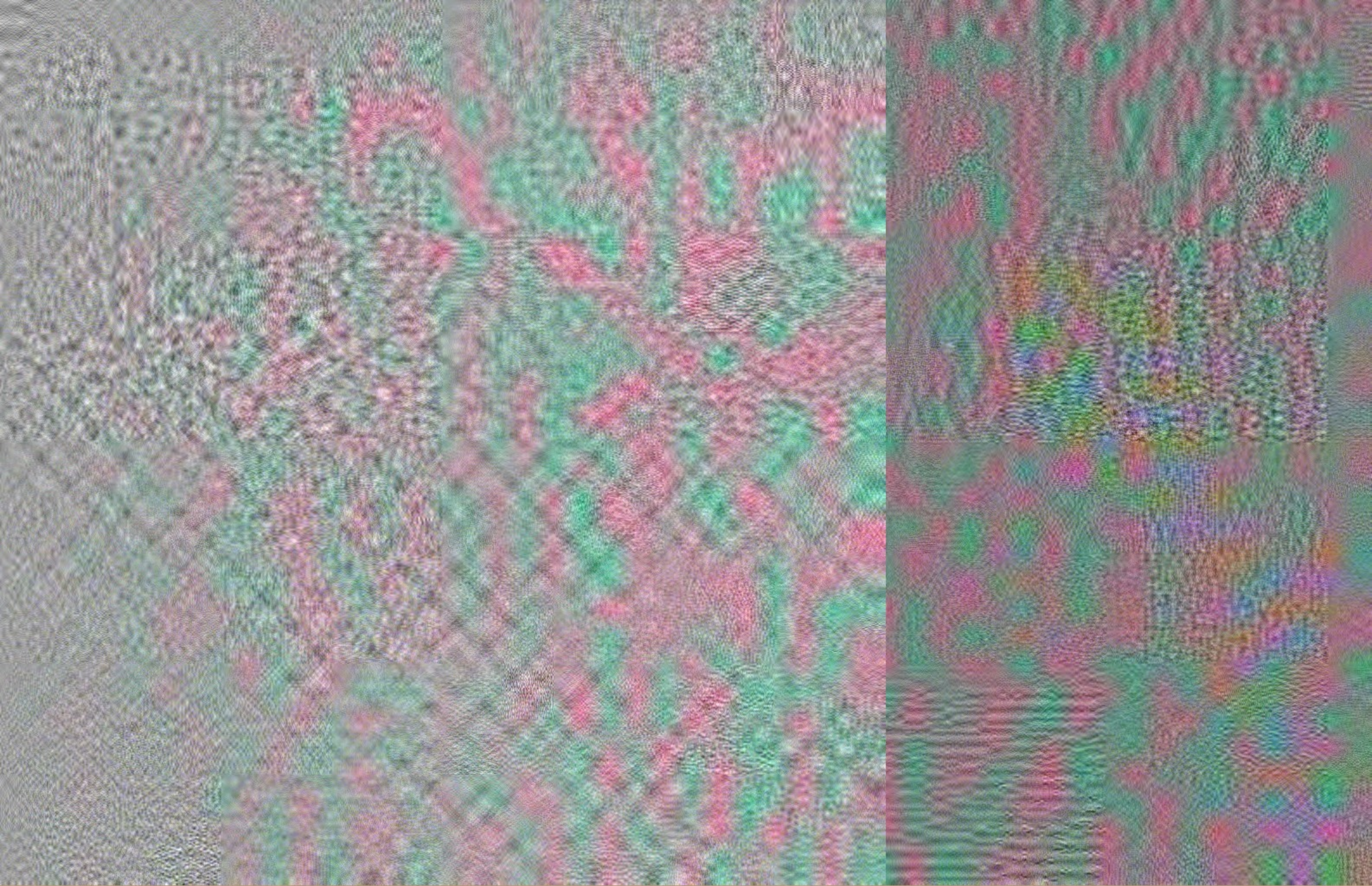


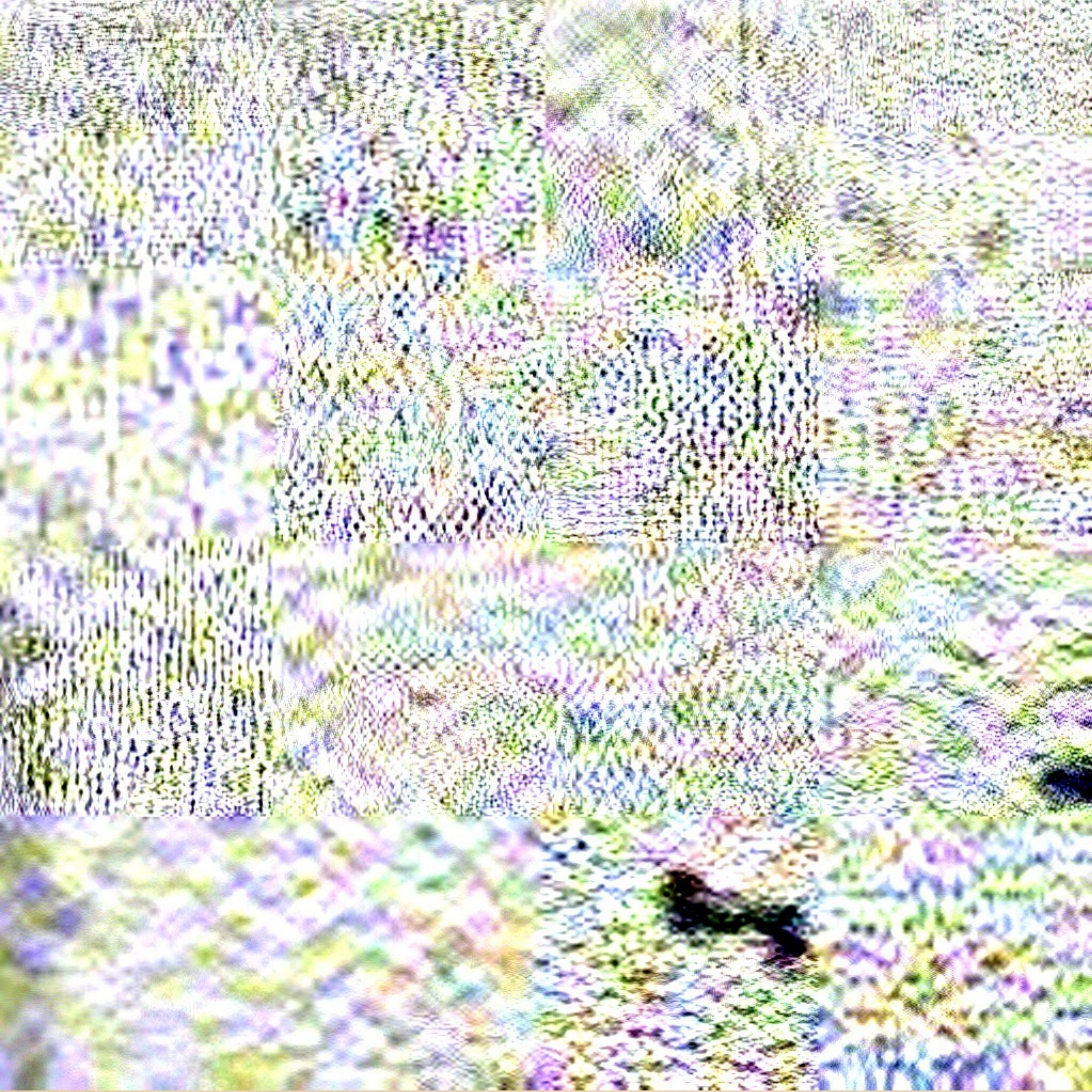
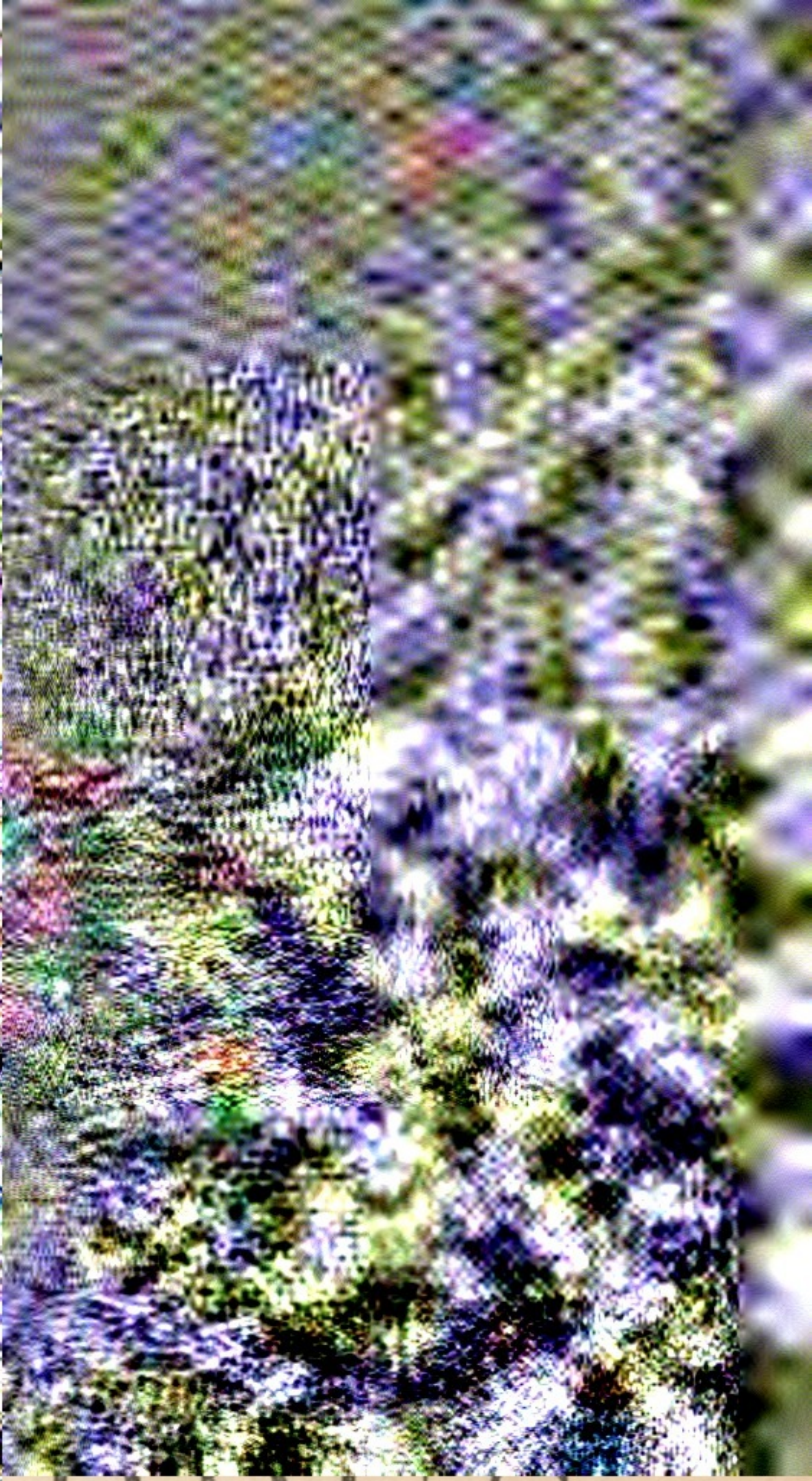
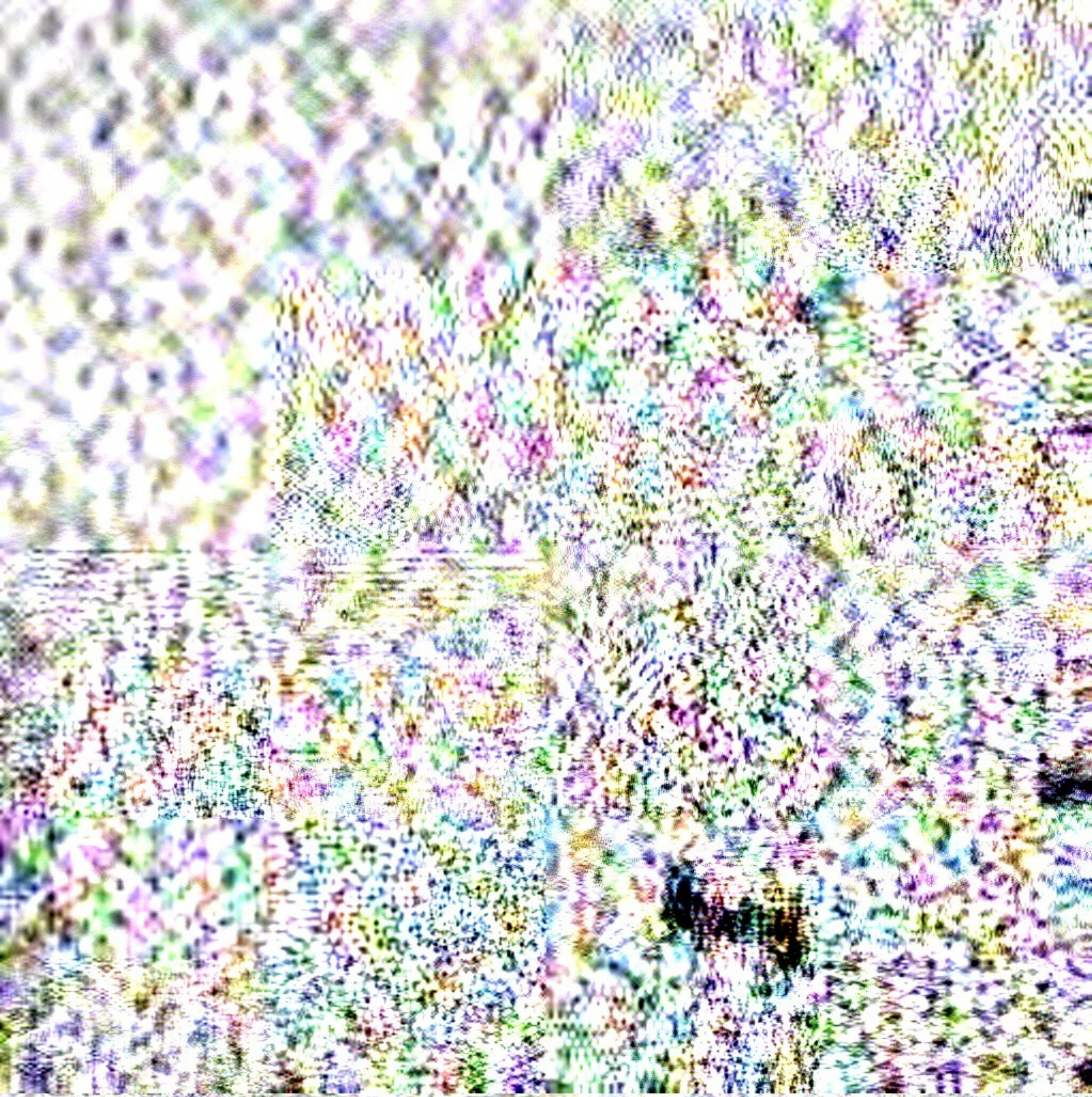
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1862.





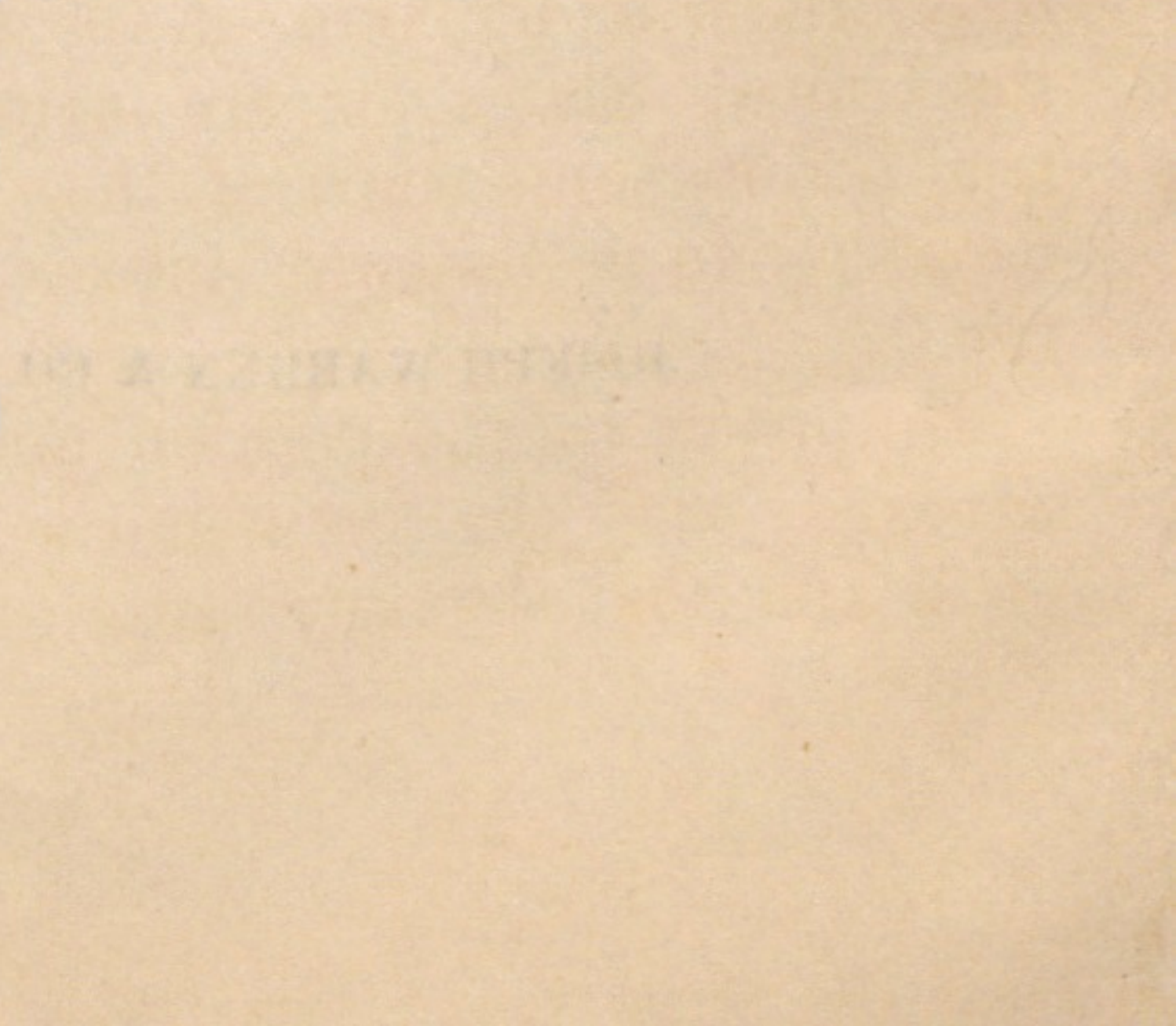
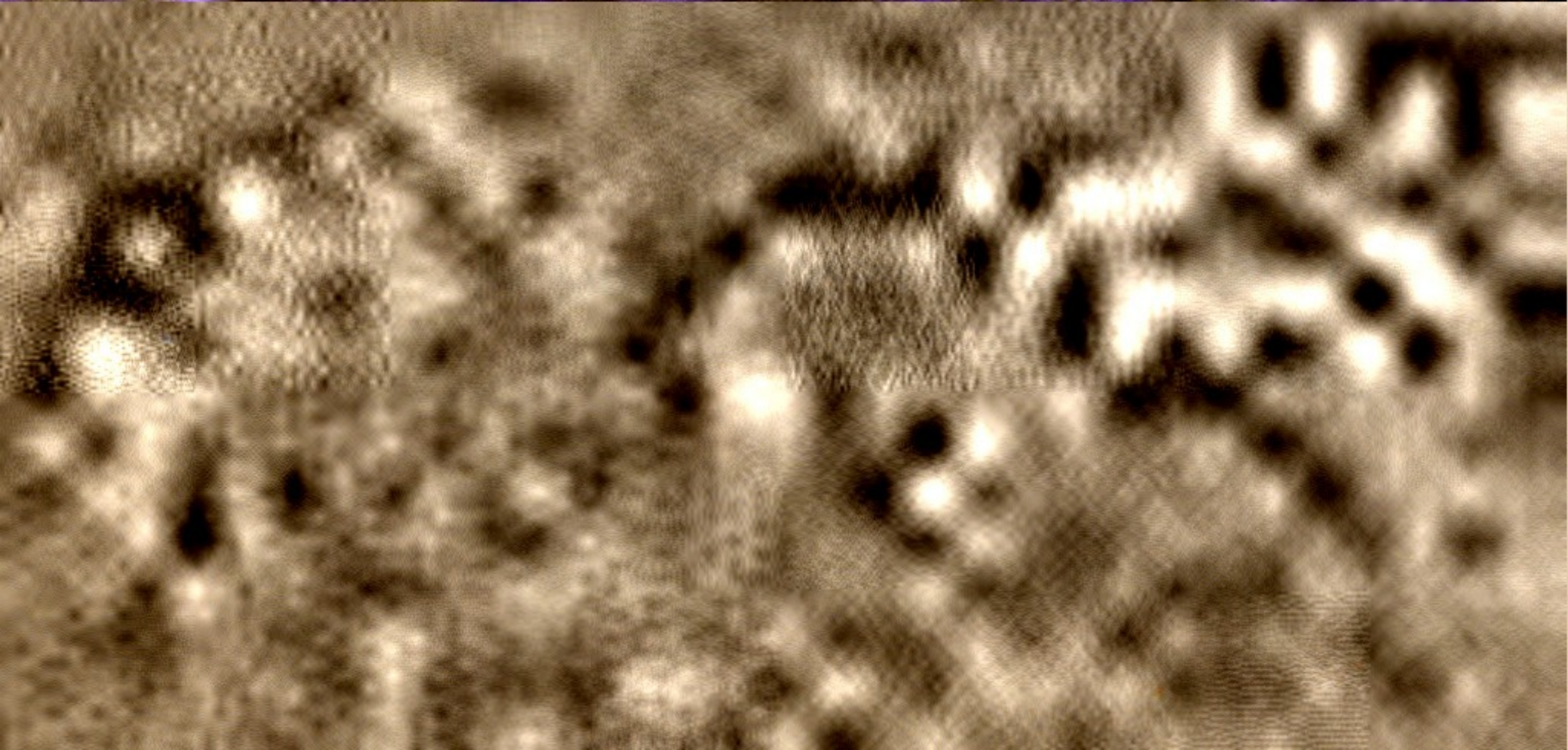
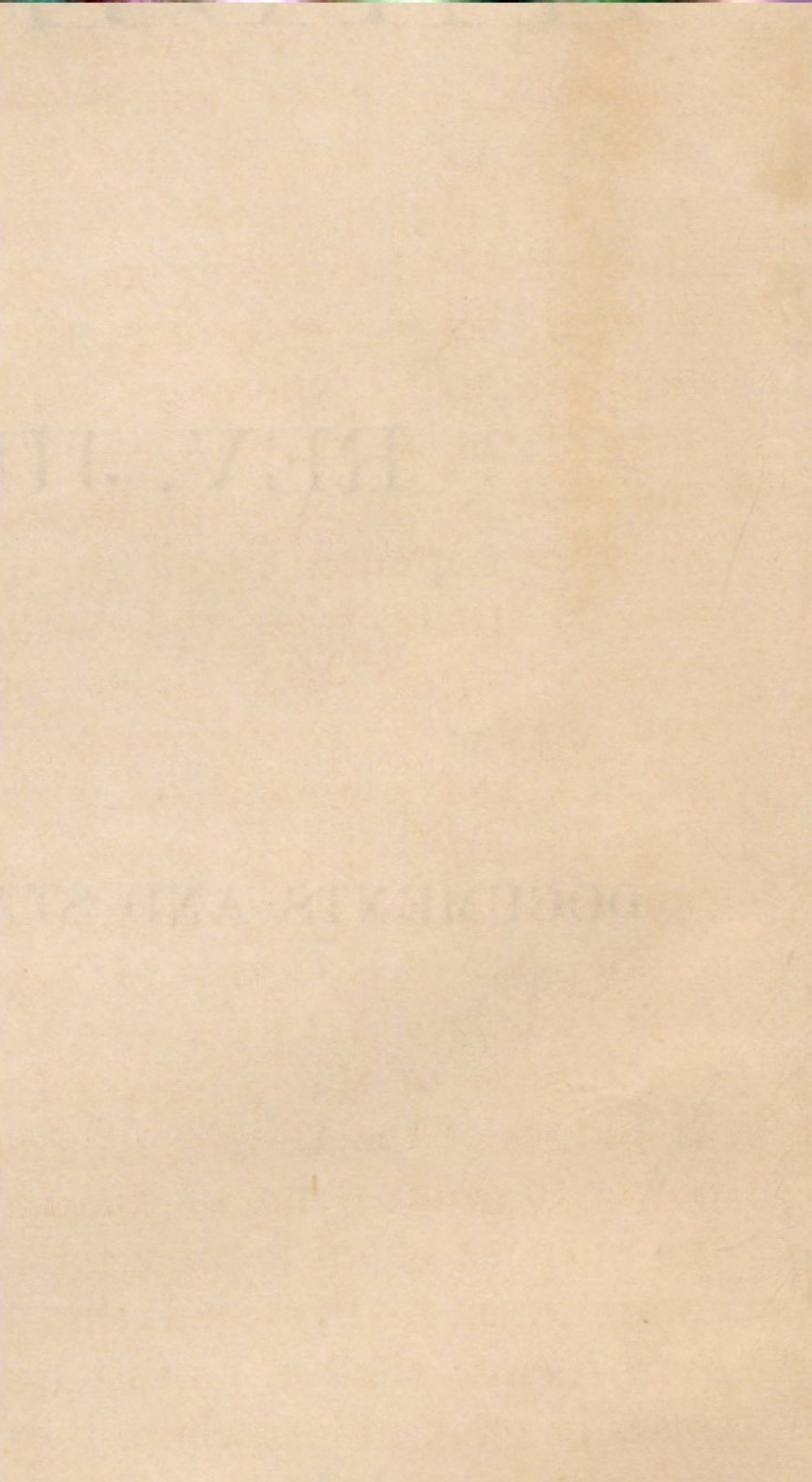
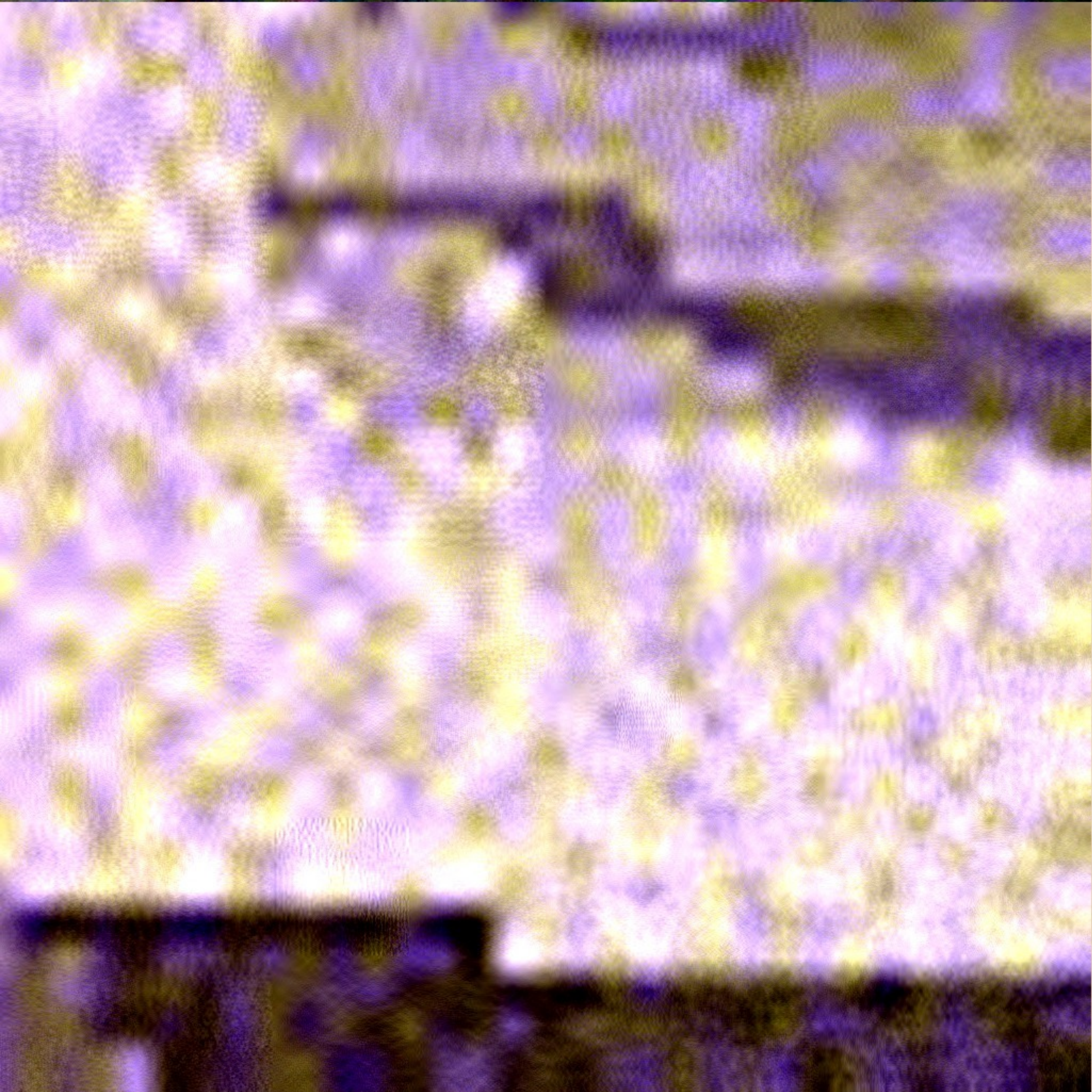
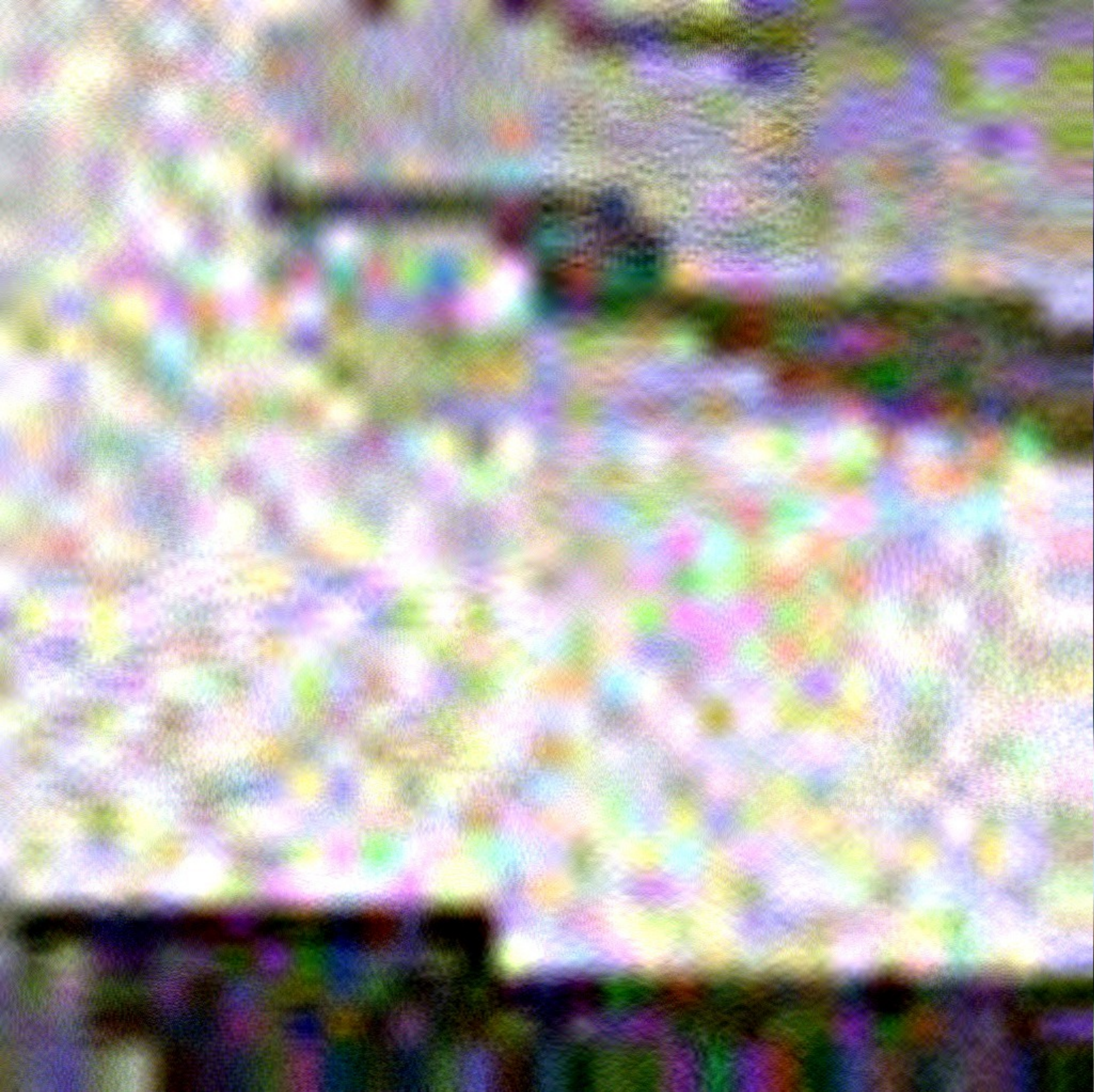


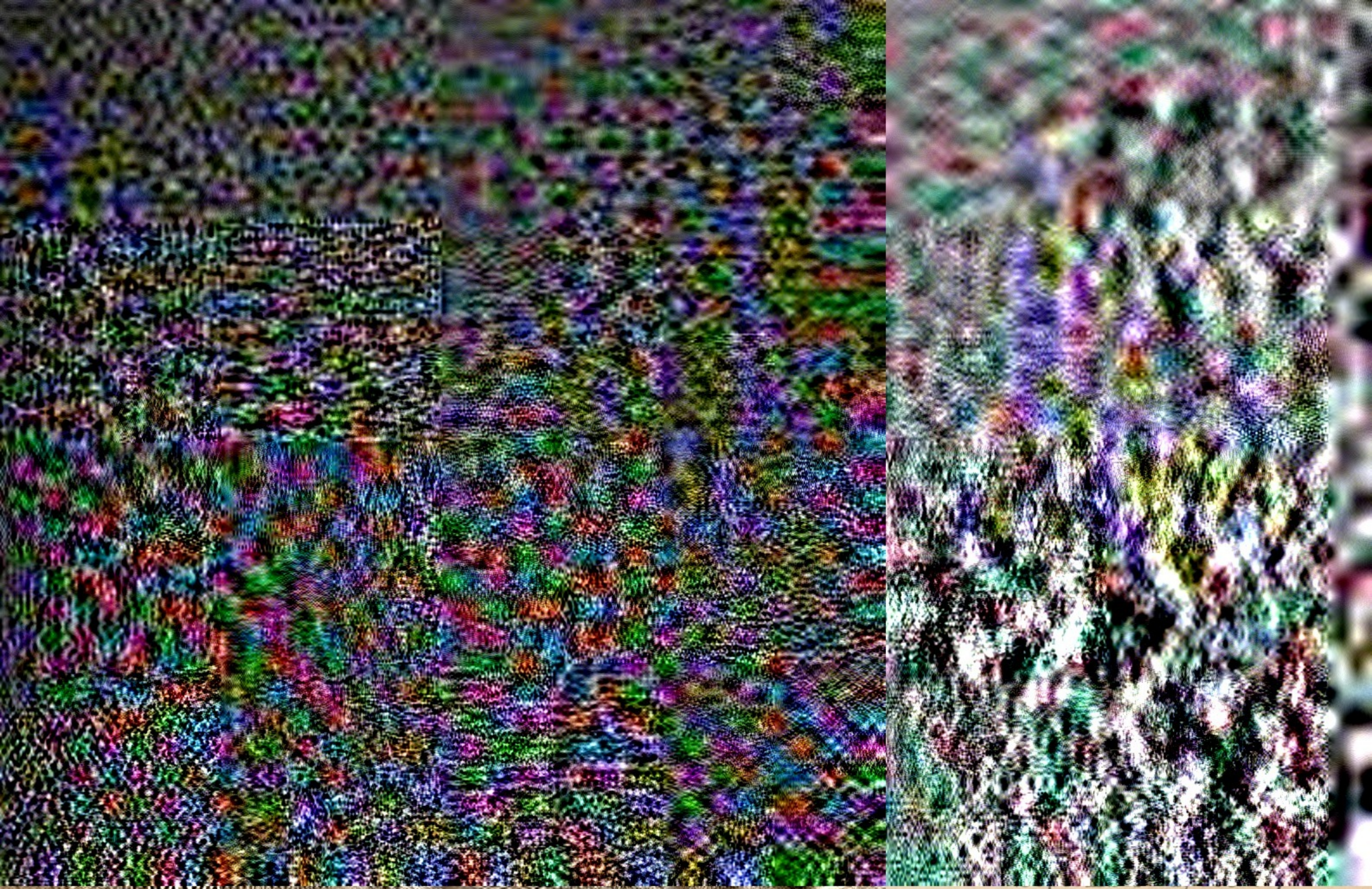
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today, under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

It appears by the petition and affidavits annexed, that the petitioner is confined in gaol, and that the only cause of his deten-

ment will take from Fort Porter, Samings, James Parker, Antoine Noah B. Clark, and Jared Benes confined there. committed unto the War Department, and remove to Erie County Jail for safe keeping, retain them until further order, the Sheriff or Jailor of said County will retain them until further order, in said Jail.

A. G. STEVENS,  
U. S. Dep. Marshal."

Chapin, and the Sheriff, and the County."

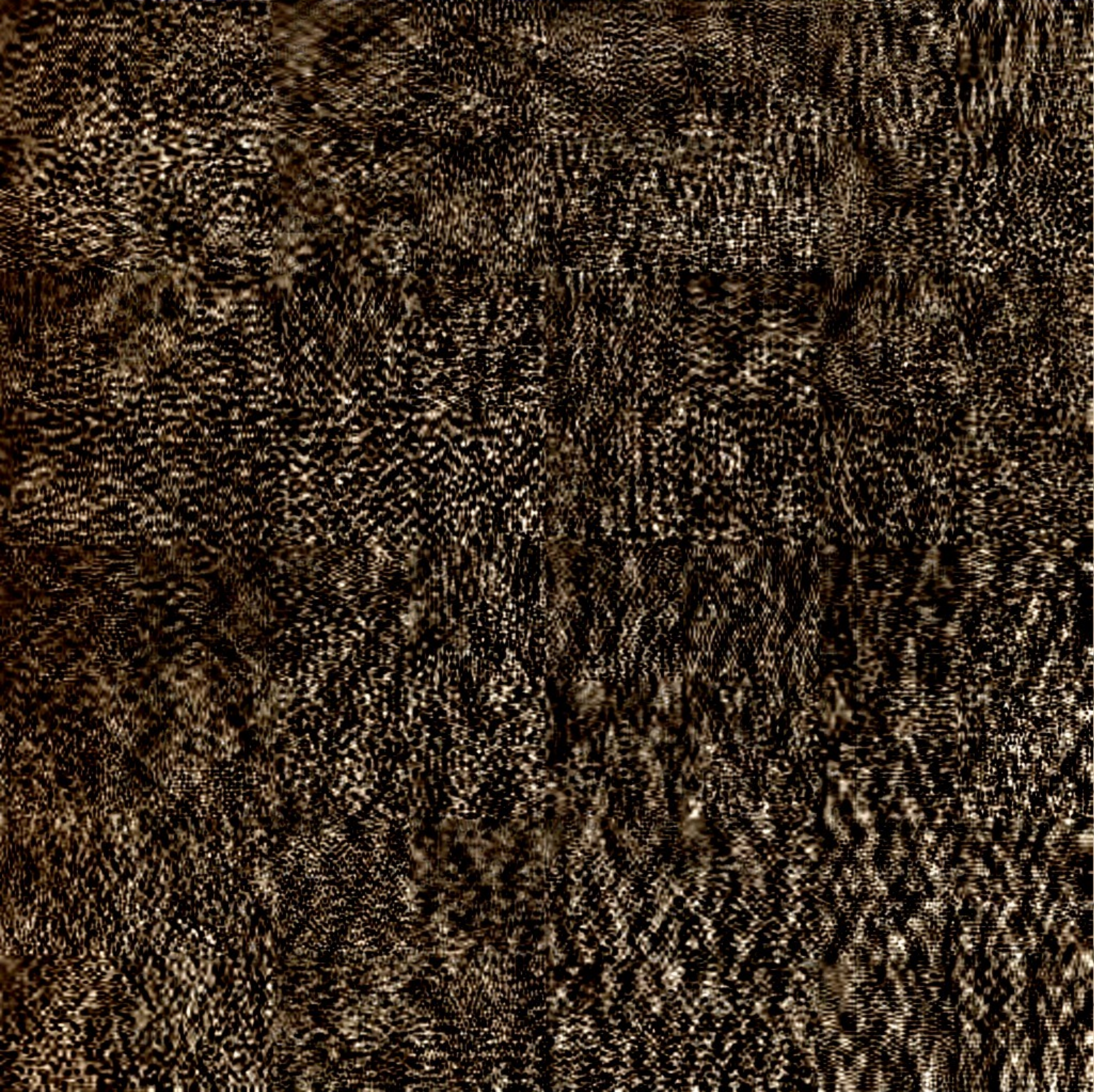
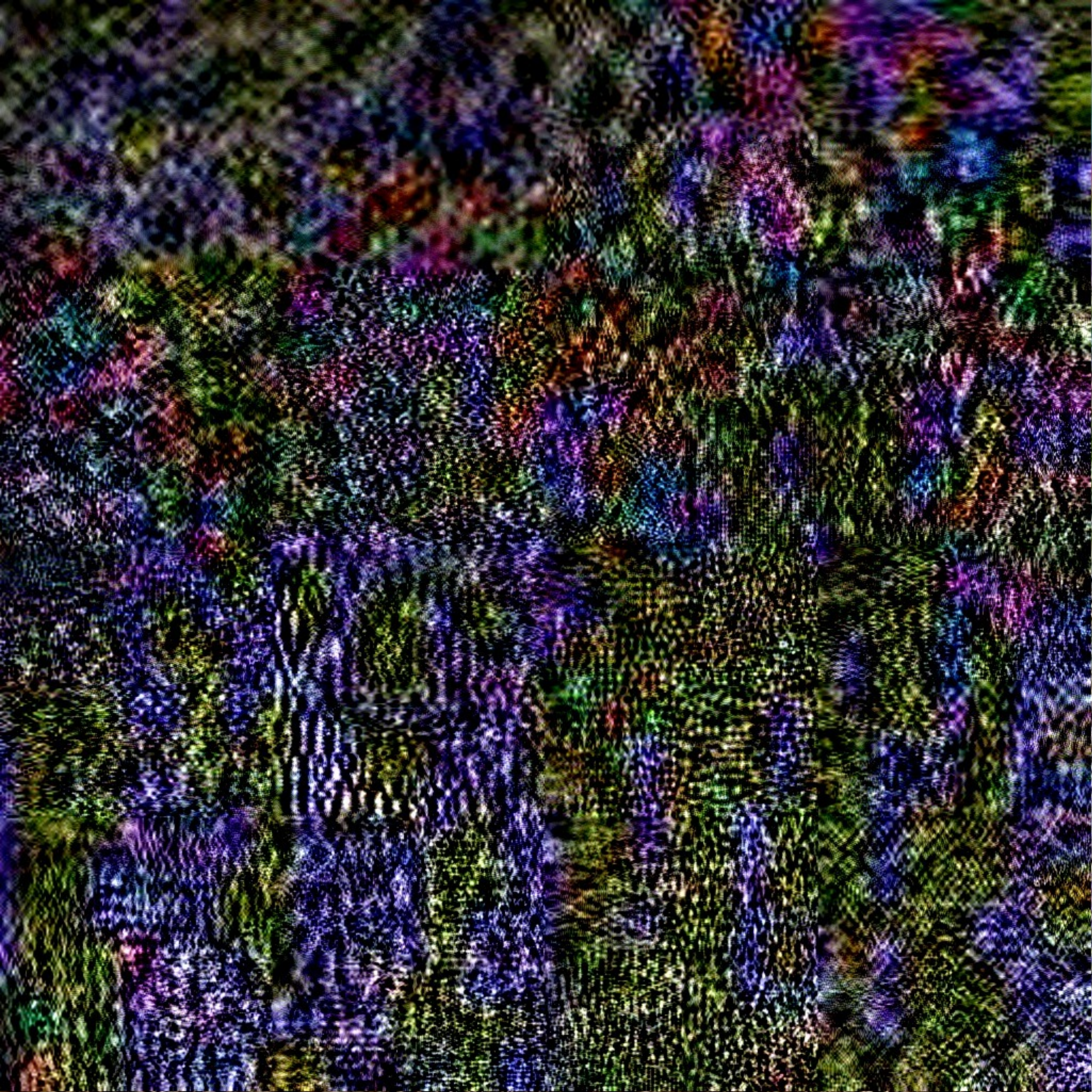
It clearly appears that the petitioner is in custody by color of the authority of the United States, either under the War Department, or of the Sheriff, who is an officer, deriving his authority as such, from the United States.

It further shows that when the writ was applied to by the petitioner, and asked "If you have the petitioner by virtue of any order or paper," that officer said he had not, but showed the counsel a slip, from a newspaper, purporting to contain a copy of an order of the War Department, in the following words:

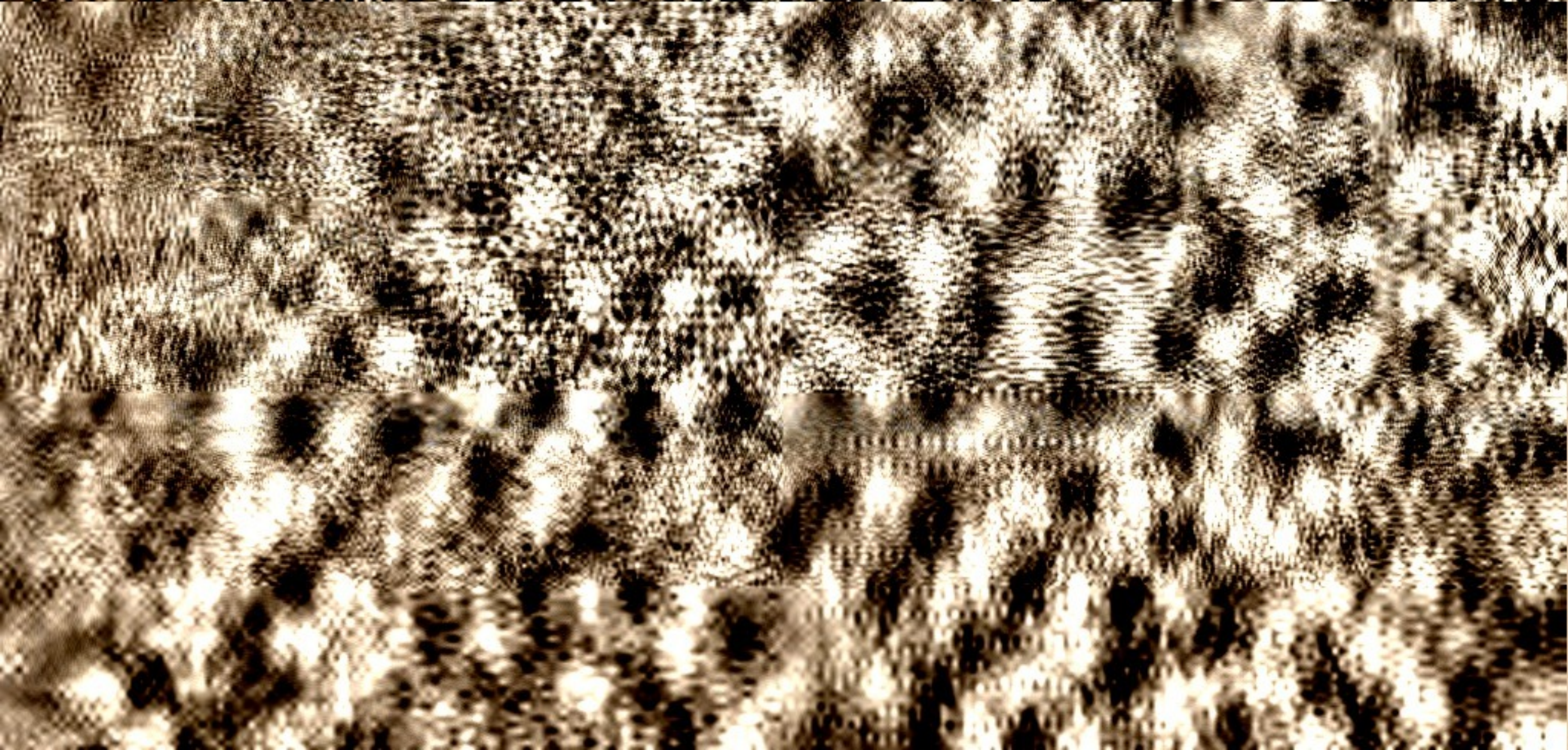
"WAR DEPARTMENT,  
Washington, August 8th, 1862. }

Ordered First—That all United States Marshals, and Superintendents, and Chiefs of Police, of any town, city, or district, be and they are hereby authorized and directed to arrest and

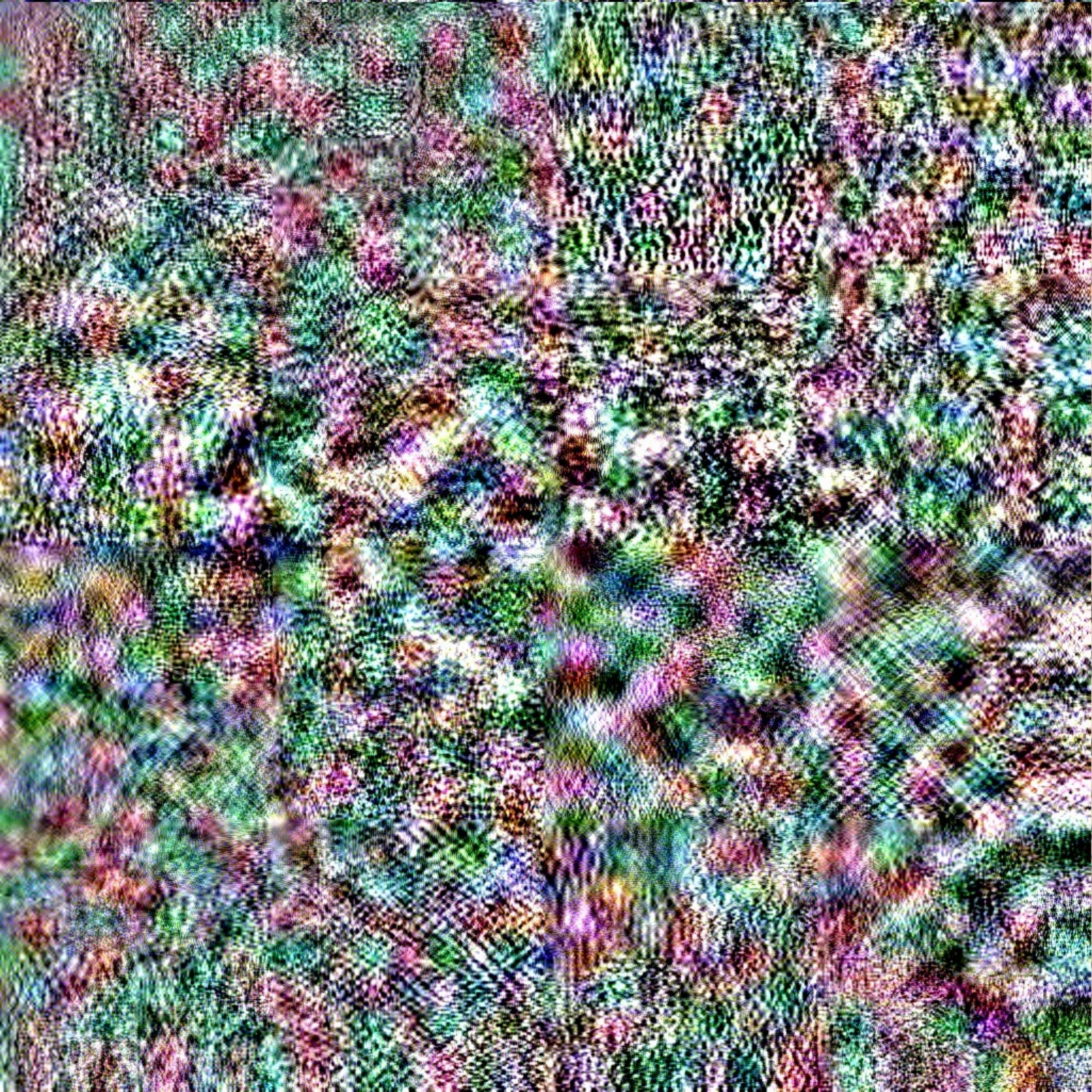
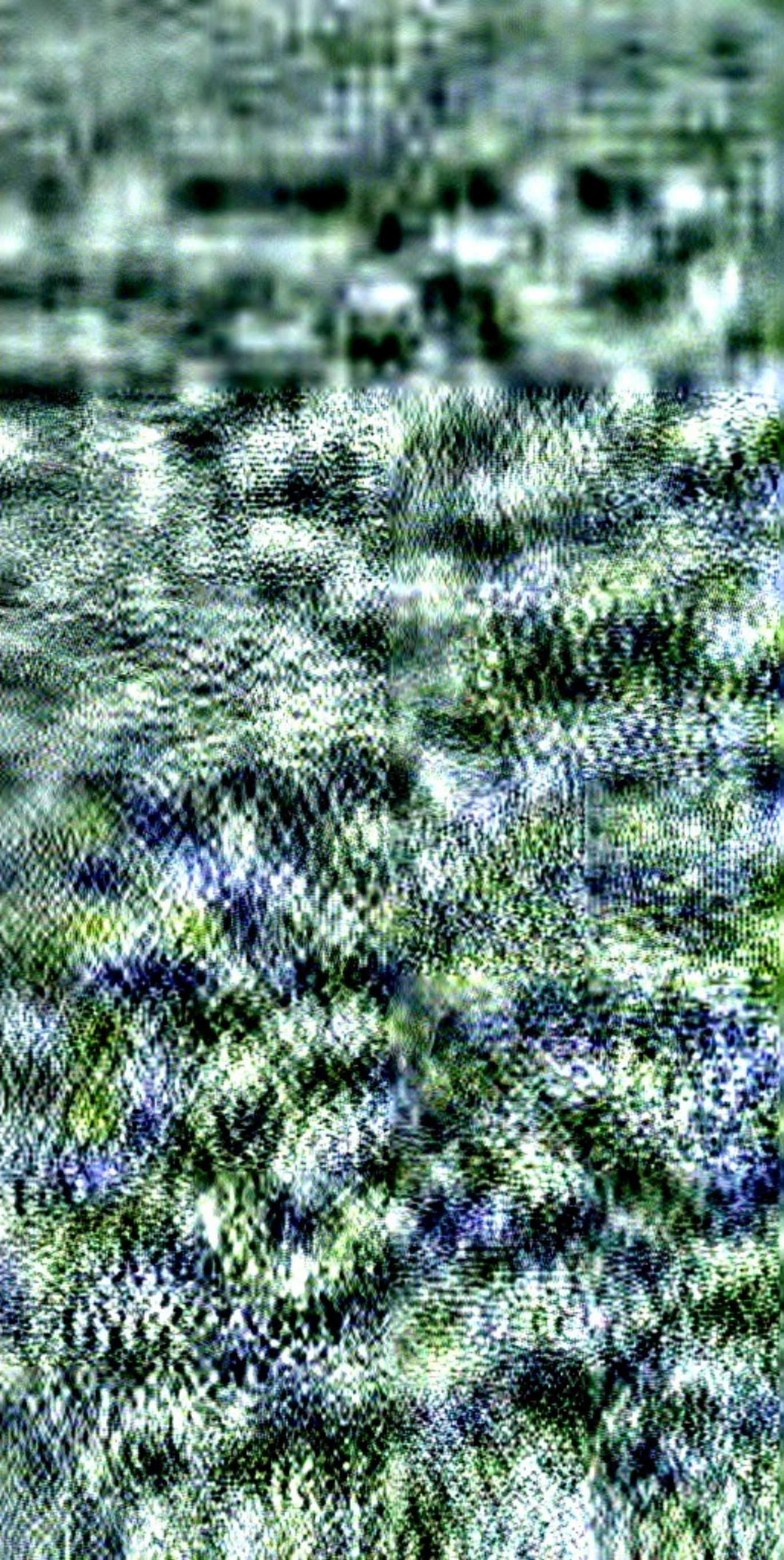
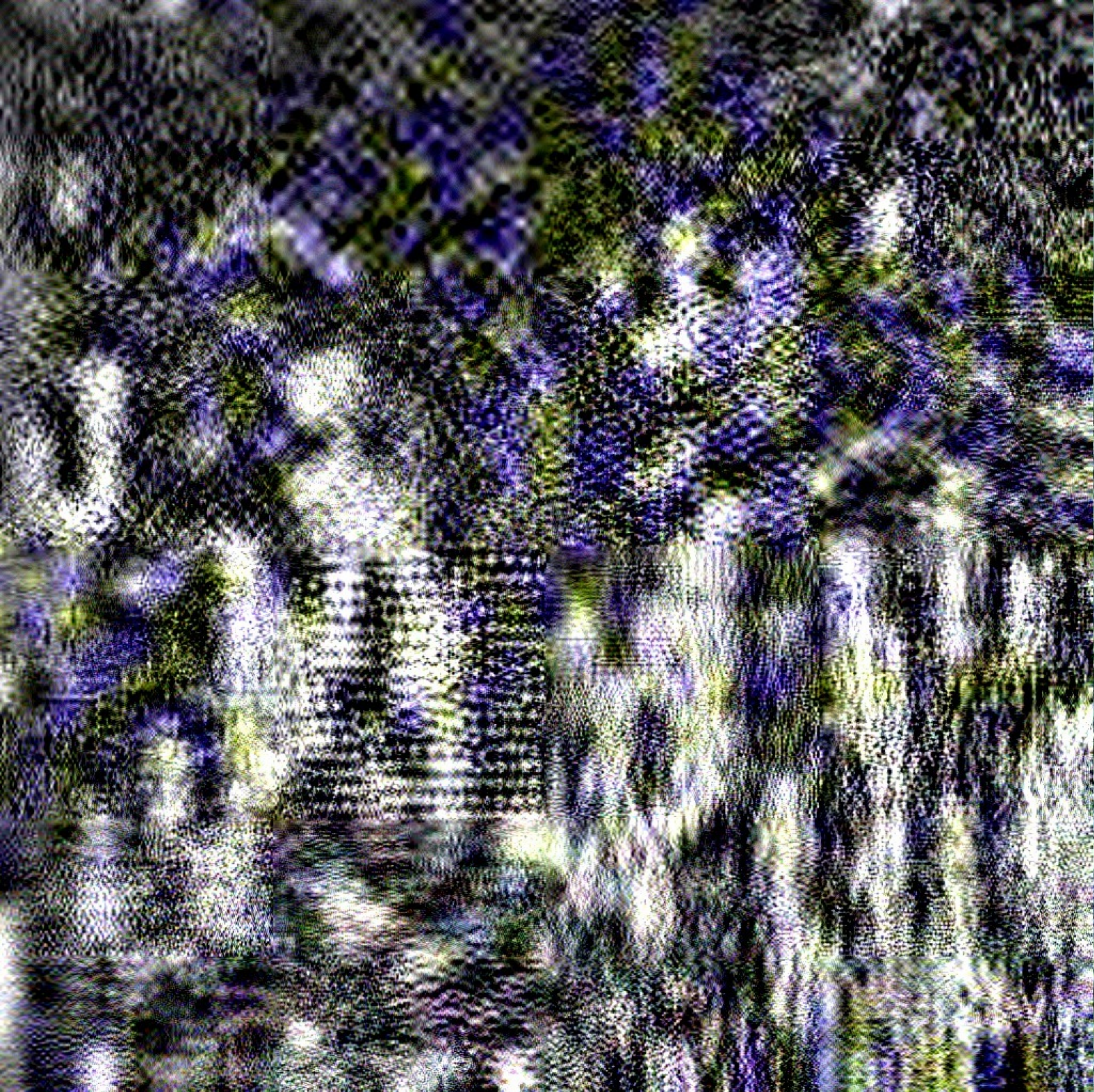




be far removed from the several  
ary operation. All the arts  
ons of peace can be and are  
tire security, and all the laws  
and Union can be administered  
ary Courts of justice as freely,  
as efficiently, as in time of pro-  
The execution of the laws of  
s not been resisted by our  
the contrary, they have  
the calls of the General Gov-  
unexampled unanimity and  
have offered their blood and  
e without stint to maintain the  
constitutional government.—  
waited for no conscription, but  
ndreds of thousands of volun-  
field to meet, without com-  
e exposures, all the vicissitudes  
angers of the camp and the  
Without waiting for the tax-  
have voluntarily and freely  
untold millions to hasten the  
hese volunteers and strengthen  
the Government established  
nstitution of the Union. Is it  
such orders as those above  
ntended to operate upon such  
he loyal States, and place their  
e mercy of every military offi-  
cer of police, and every police-  
men to suspend the writ of *ha-*  
n such manner as to prevent a



such orders as those above  
ntended to operate upon such  
he loyal States, and place their  
e mercy of every military offi-  
cer of police, and every police-  
men to suspend the writ of *ha-*  
n such manner as to prevent a



should not forget the teach-  
story of the past, and re-  
al and unimportant, constitu-  
bles, the persistent violation of  
ed to the dethronement of  
e overthrow of long established  
ernment. We should not for-  
s *du cachet* of the French Mon-  
illegal imprisonments under  
First. In our efforts to read  
profit by the terrible lesson  
esent condition of our unhappy  
ents, we should not forget what  
Hallam, and Blackstone, and  
Story, and Kent, have taught  
uage of Blackstone, [1. Black-  
134, 135, 136] has been often  
approved, and it states with ac-  
ws and constitution of Eng-  
practice of the French mon-  
ime he wrote. This, with the  
f the House of Commons up-  
ated Petition of Right, shows  
ce which the sore experience  
of England had given to the  
olved in the present case.—

army from the Rapid Ann to the Potomac,  
and express a doubt of the competency of  
that General, was discouraging enlistments  
and giving aid and comfort to the enemy.

I confess, nevertheless, that there is some  
reason for assuming that the fair construc-  
tion of the language of the order of the War

Blackstone says: [vol. 1, p. 134] "Next to  
personal security, the law of England re-  
gards, asserts, and preserves the personal  
liberty of individuals. This personal liberty  
consists in the power of locomotion, of  
changing situation, or moving one's person  
to whatsoever place, one's own inclination may





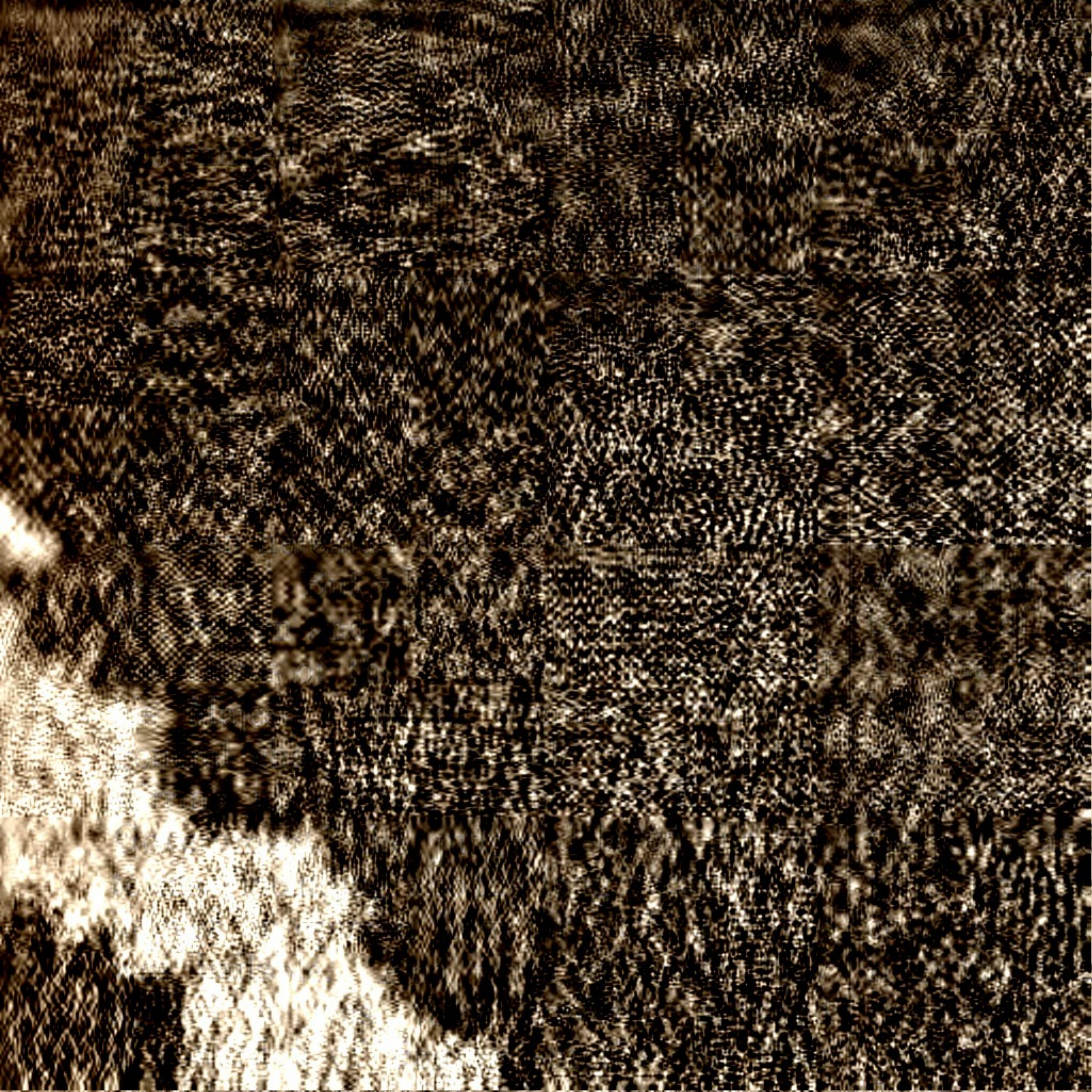
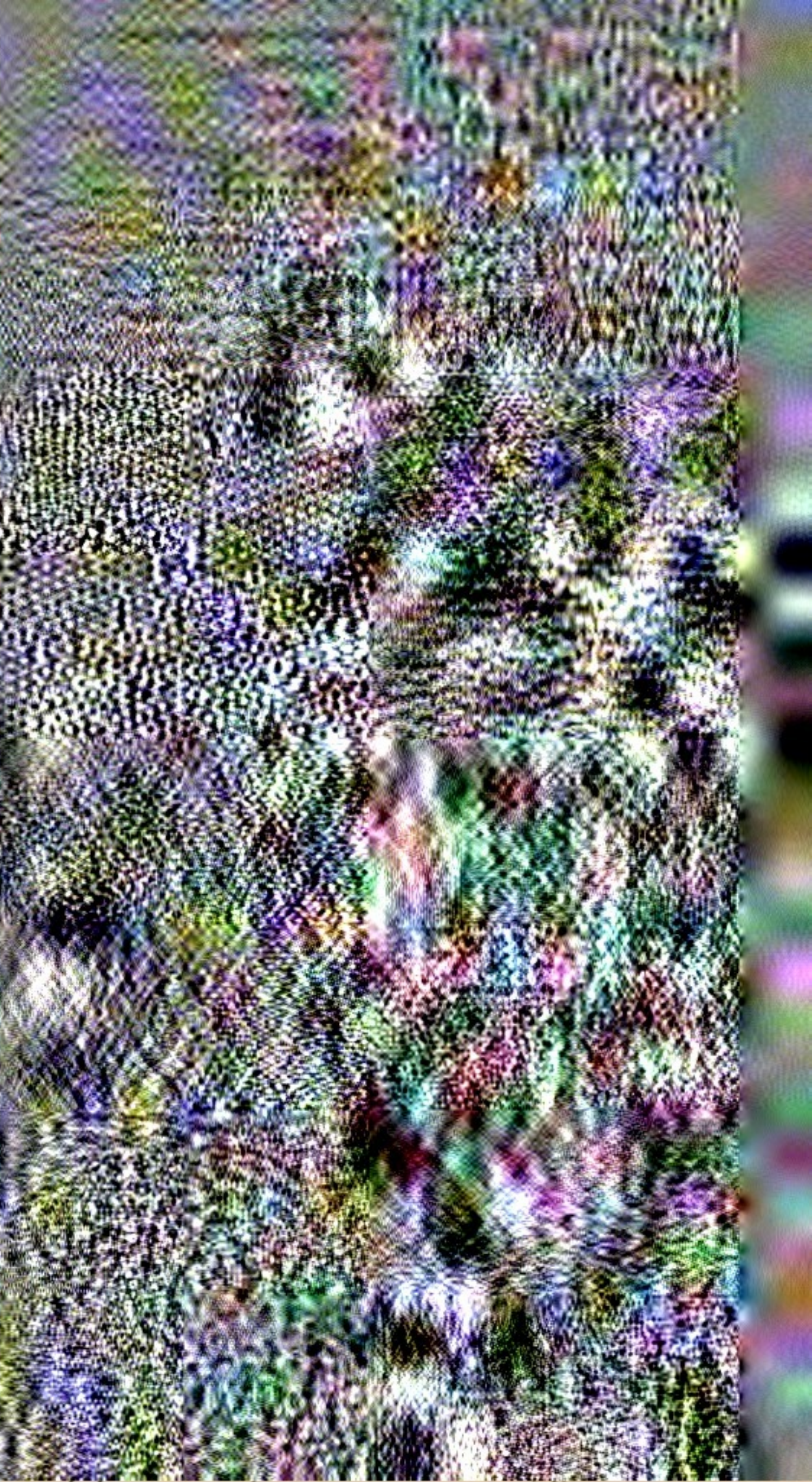
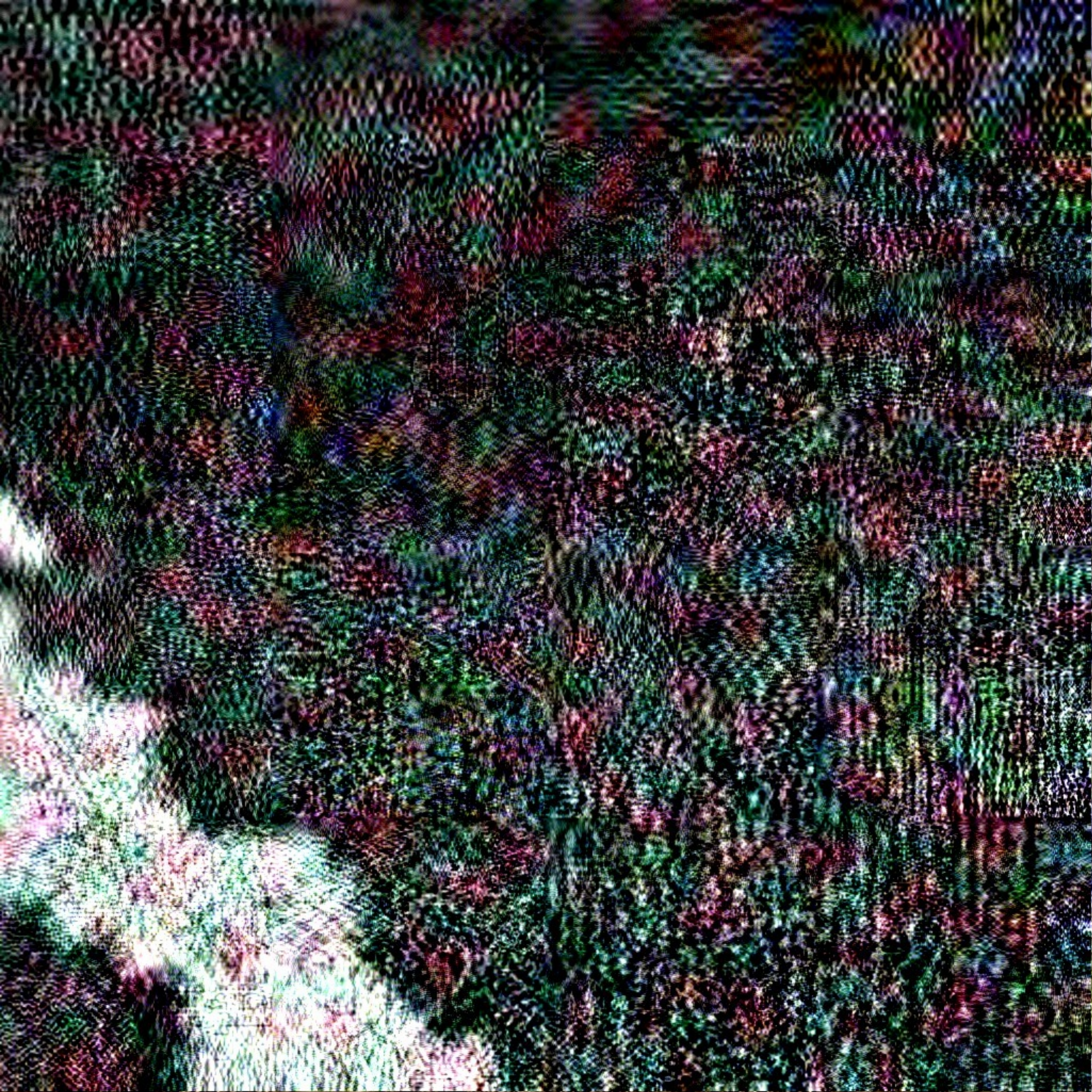
bail ought not to be required.

Of great importance to the public is the preservation of this personal liberty; for, if once it were left in the power of any, the highest magistrate, to imprison whomever he or his officers thought proper, (as in France it is daily practiced by the Crown,)

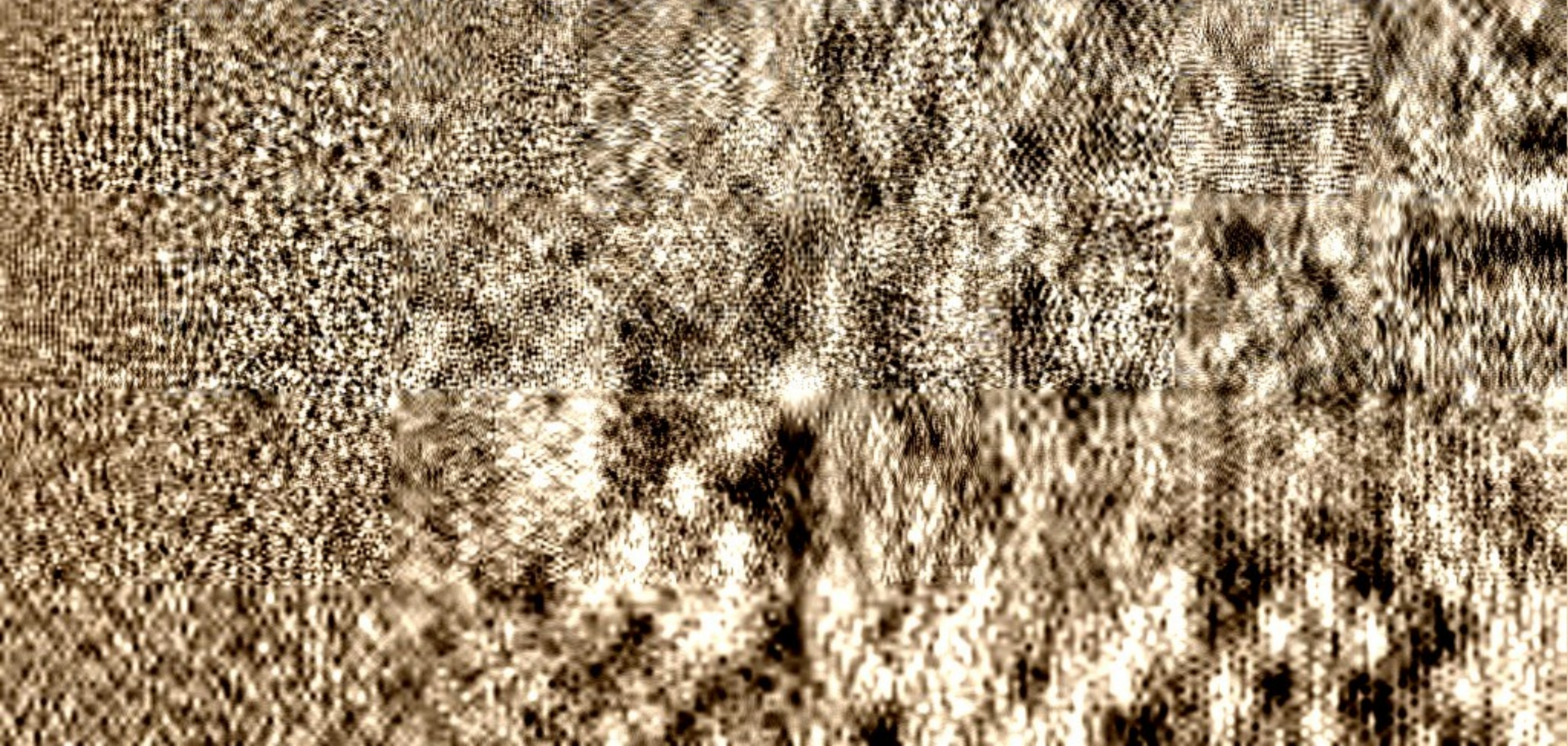
power to determine when the State is so great as to render expedient; for it is the parliamentary power, that, when proper, can authorize the suspending the *habeas corpus* act and limited time, to imprison persons without giving any reason as the Senate of Rome was recourse to a dictator, a man of absolute authority, when they were in any imminent danger to the Republic in any imminent

Blackstone says, [vol. iii, pp. 133, 134:] "In a former part of these lectures we expatiated at large on the nature of the subject. This was a natural, inherent right, which was surrendered or forfeited unless in consequence of some great and atrocious crime which ought not to be abridged without the special permission of the legislature. This doctrine coeval with the first constitution of the English constitution, and descended to us from our Saxon ancestors,

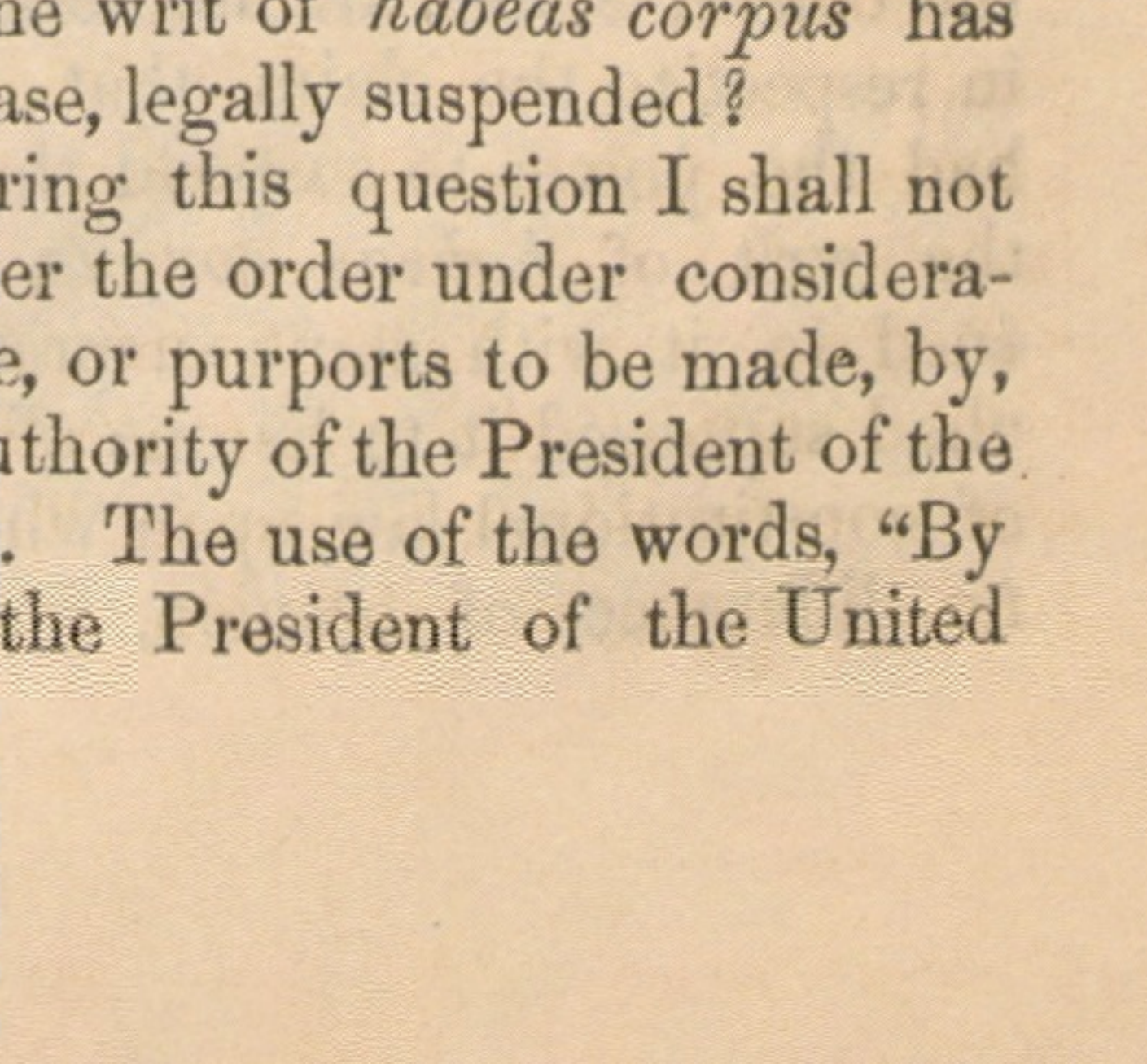
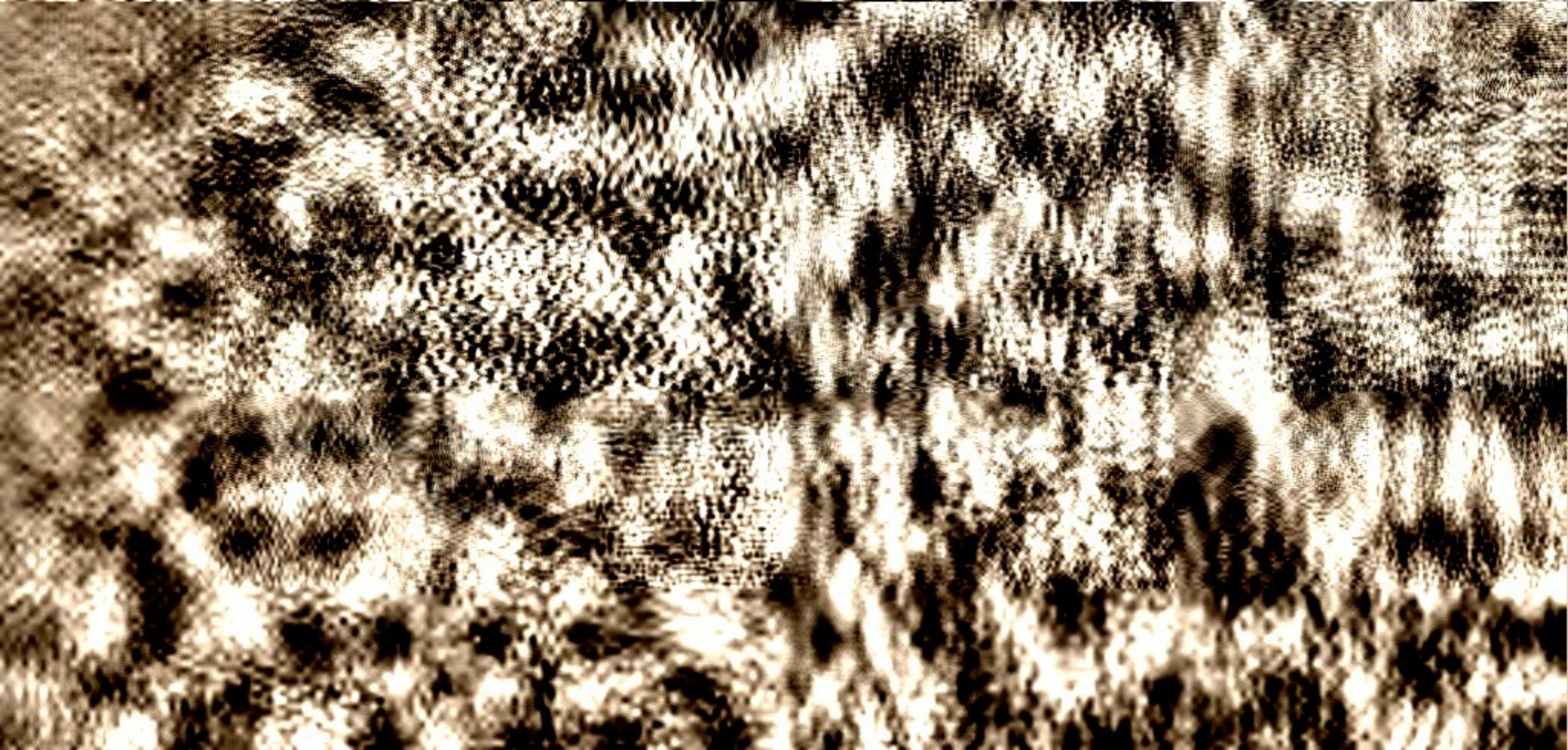
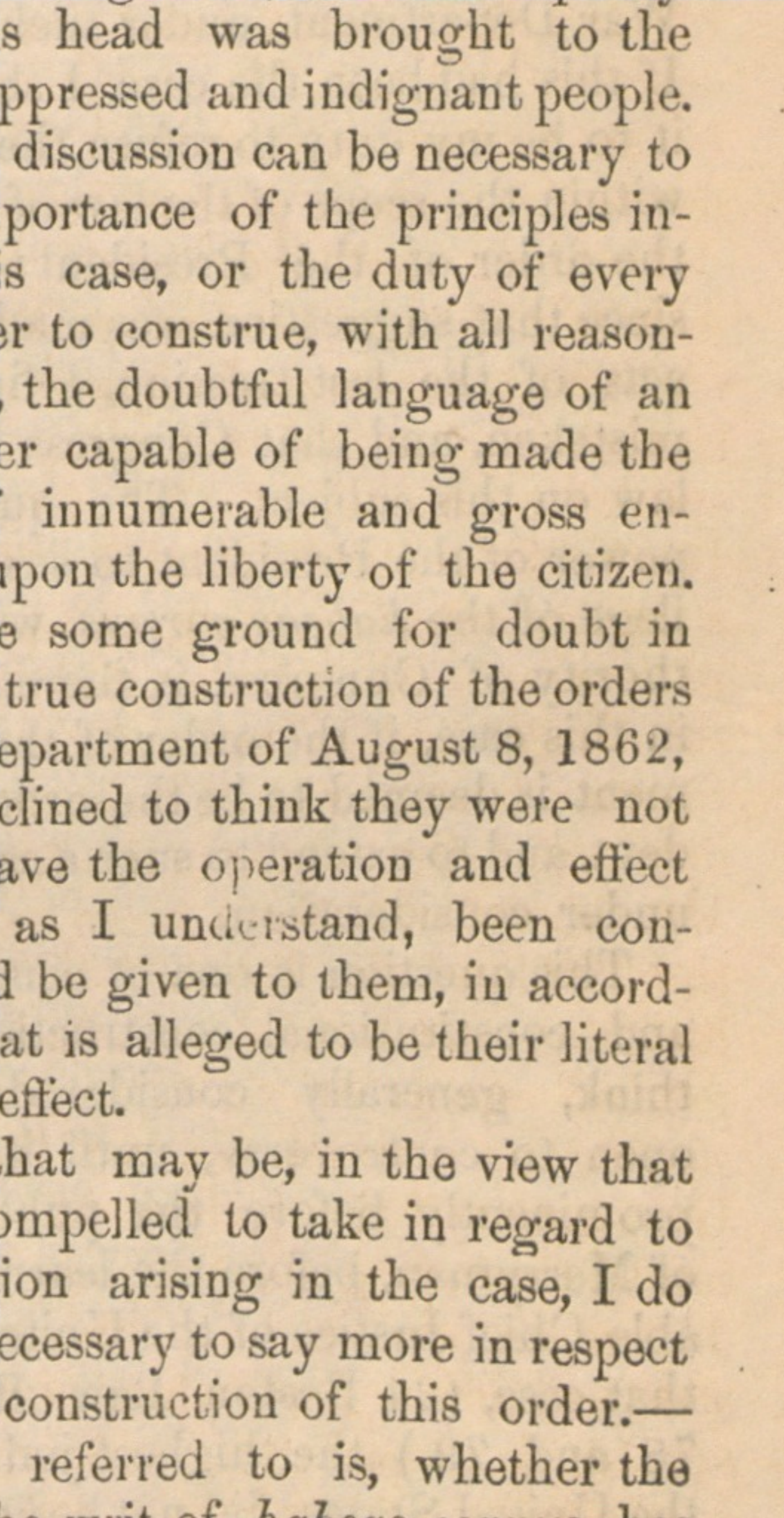
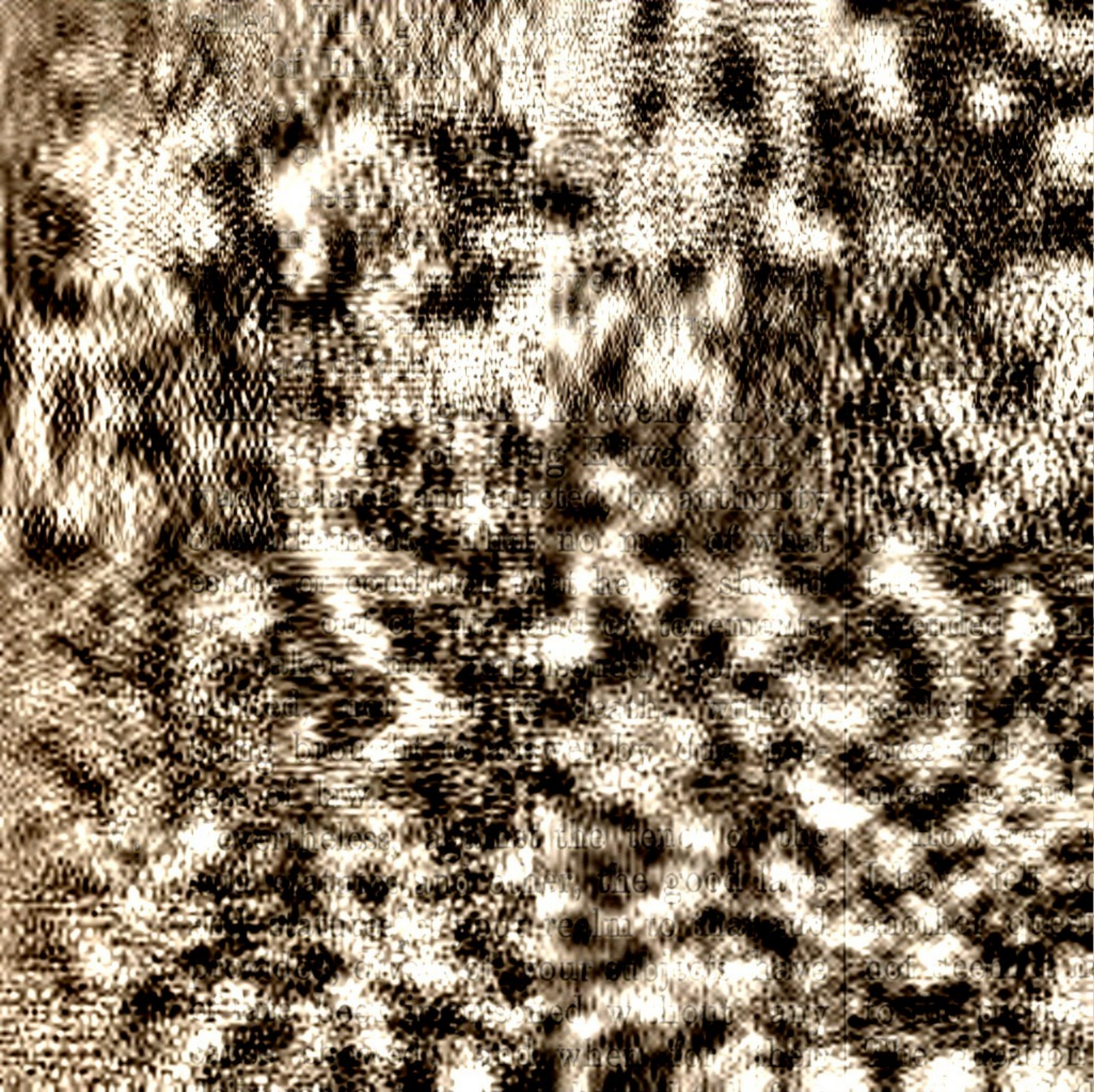
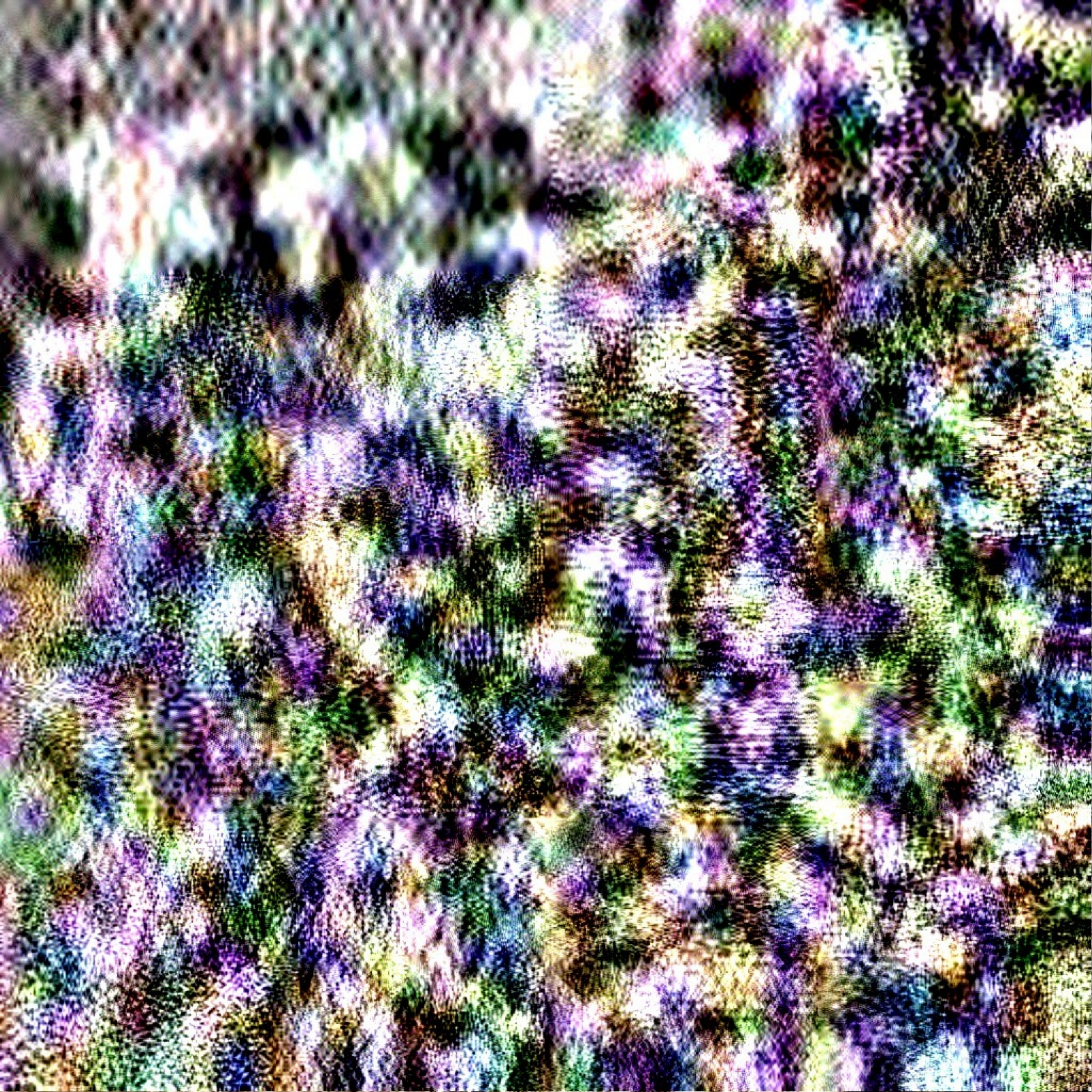
notwithstanding all their struggles with the Danes, and the violence of the Norman conquest; asserted afterwards and confirmed by the conqueror himself and his descendants and though sometimes a little impaired by the ferocity of the times, and the occasional despotisms of jealous and usurping princes,



ding such prisoner. Yet, still  
Jenks, before alluded to, who,  
as committed by the King in  
turbulent speech at Guildhall,  
and devices were made use of  
enlargement by law, the Chief  
ell as the Chancellor,) declin-  
a writ of *habeas corpus ad*  
in vacation, though at last he  
er to award the usual writs *ad*  
&c., whereby the prisoner  
ed at the Old Bailey. Other  
so crept into daily practice,  
some measure, defeated the  
is great constitutional remedy.  
prisoning was at liberty to de-  
nce to the first writ, and might  
ond and third, called an *alias*  
ere issued, before he produced  
l many other vexatious shifts  
d to detain State prisoners in  
t whoever will attentively con-  
lish history may observe that  
abuse of any power, by the  
ministers, has always been pro-  
ruggle, which either discovers  
of that power to be contrary to  
al, restrains it for the future,  
case in the present instance;  
n of an obscure individual gave  
amous *habeas corpus* act (31  
which is frequently considered

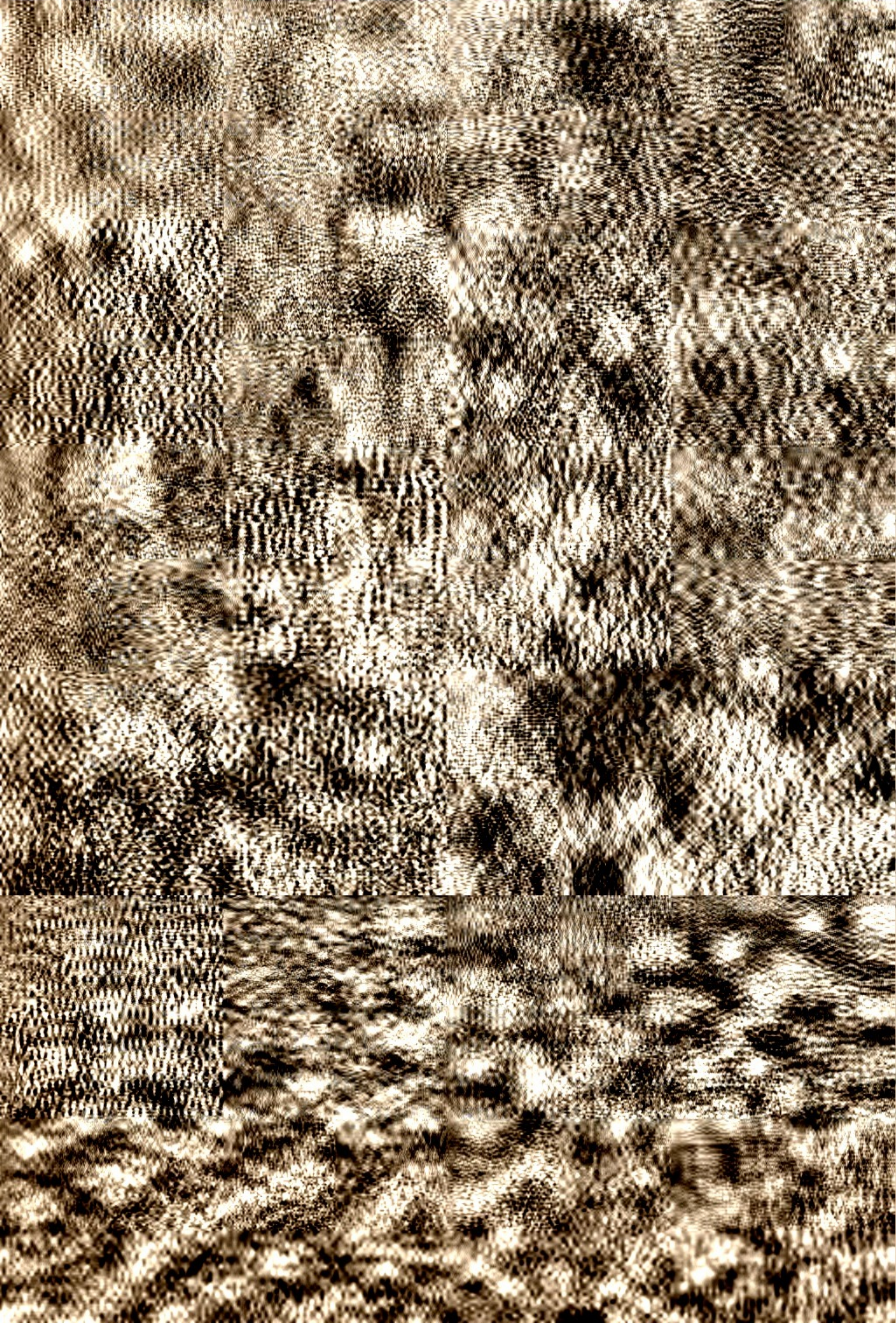
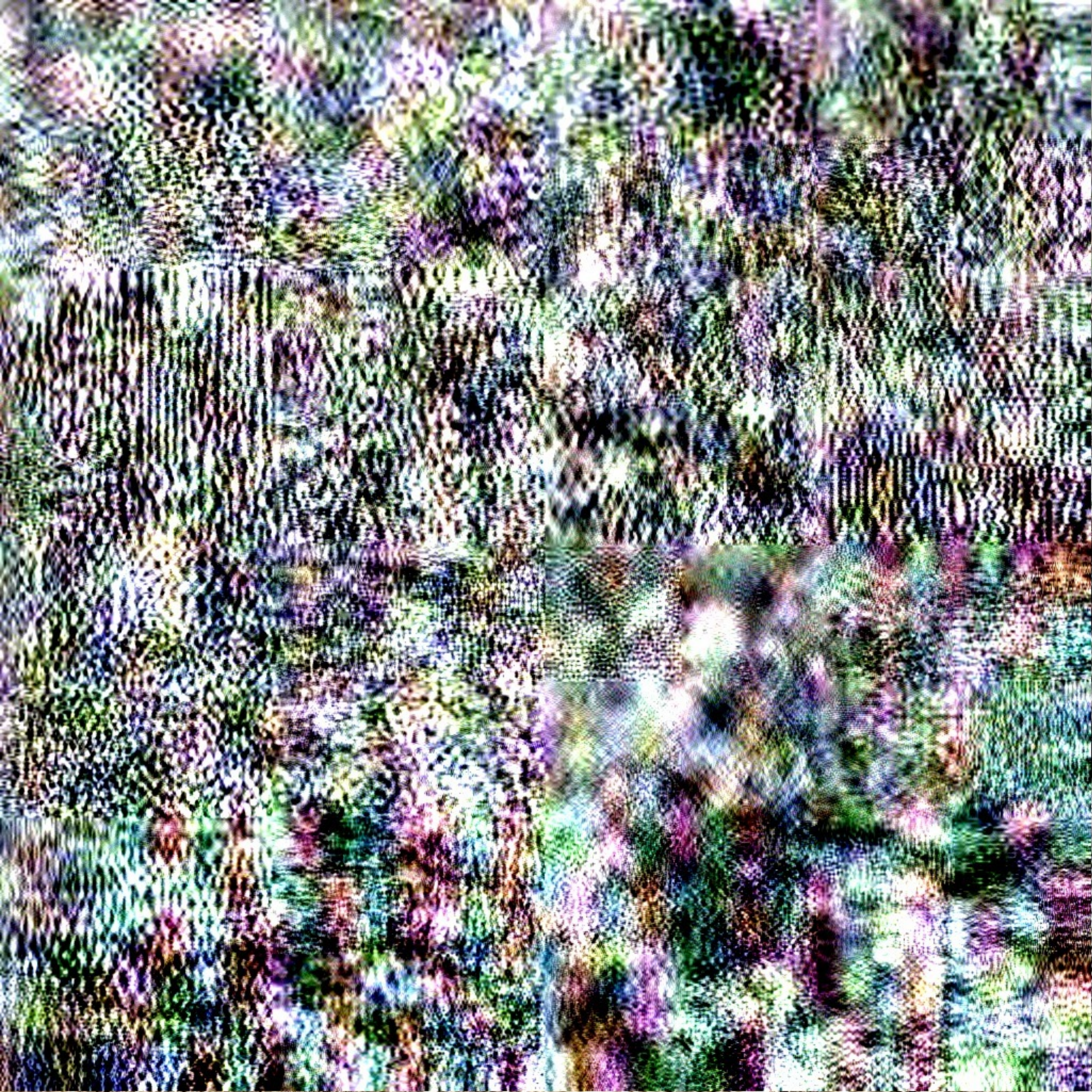


which is frequently considered



s head was brought to the  
oppressed and indignant people.  
discussion can be necessary to  
importance of the principles in-  
s case, or the duty of every  
er to construe, with all reason-  
the doubtful language of an  
er capable of being made the  
innumerable and gross en-  
upon the liberty of the citizen.  
e some ground for doubt in  
true construction of the orders  
department of August 8, 1862,  
has been inclined to think they were not  
to have the operation and effect  
as I understand, been con-  
ceded should be given to them, in accord-  
ance with what is alleged to be their literal  
effect.

However, that may be, in the view that  
I have not been compelled to take in regard to  
another question arising in the case, I do  
not feel it necessary to say more in respect  
to the construction of this order.—  
The question referred to is, whether the  
writ of *habeas corpus* has  
in this case, legally suspended?  
In answering this question I shall not  
consider the order under considera-  
tion, or purports to be made, by,  
the authority of the President of the  
United States. The use of the words, "By  
the President of the United



Story, and of the Supreme United States when the Chief was filled by John Marshall, constitutional lawyer our country. I cannot forbear now to portion of the opinion of the which refers to the authority Story, and of the Supreme United States. The Chief "But I am not left to form upon this great question from between the English government or the commentaries of Eng- or the decisions of English hgh upon this subject they are highest respect, and are justly authoritative by our courts of guide me to a right conclusion, commentaries on the Constitu- nited States, of the late Chief, not only one of the most ts of the age, but for a long he brightest ornaments of the rt of the United States, and and authoritative decision of self, given more than a half and conclusively establishing I have above stated.

Story, speaking in his com- he *habeas corpus* clause in on, says, "It is obvious that culiar emergency may arise,



officer residing in Pennsylvania, authorized to arrest a citizen of Maryland on vague and indefinite charges, without proof, so far as appears. Upon his house is entered in the night he is seized as a prisoner, and confined in the house of McHenry, and there kept in confinement. And when a *habeas corpus* writ is served on the commanding officer he is ordered to produce the prisoner before the Supreme Court, in order that it may examine into the legality of the confinement, the answer of the officer is that he is authorized by the President to suspend the writ of *habeas corpus* at his pleasure, in the exercise of that discretionary power, and on that ground he refuses obedience to the writ.

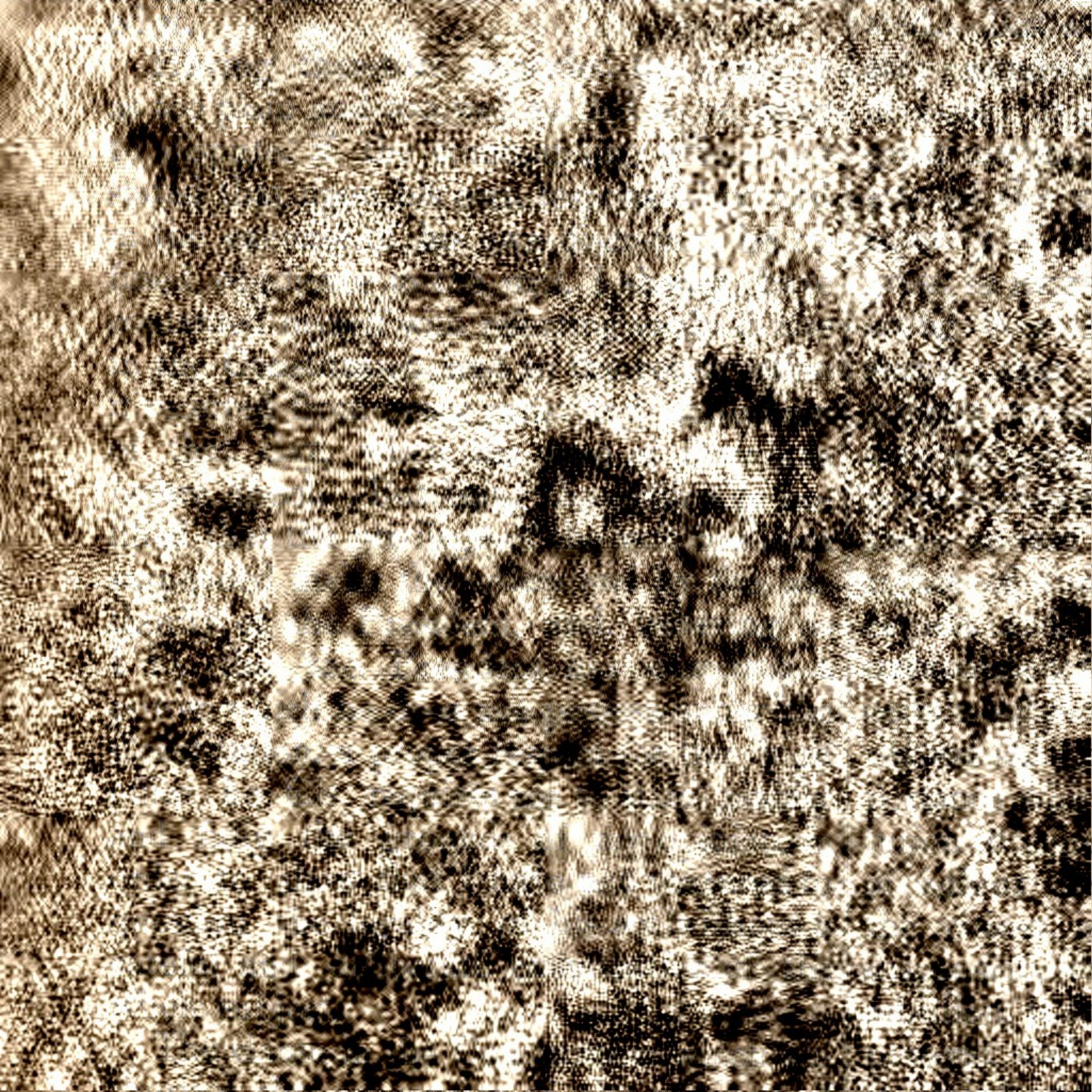
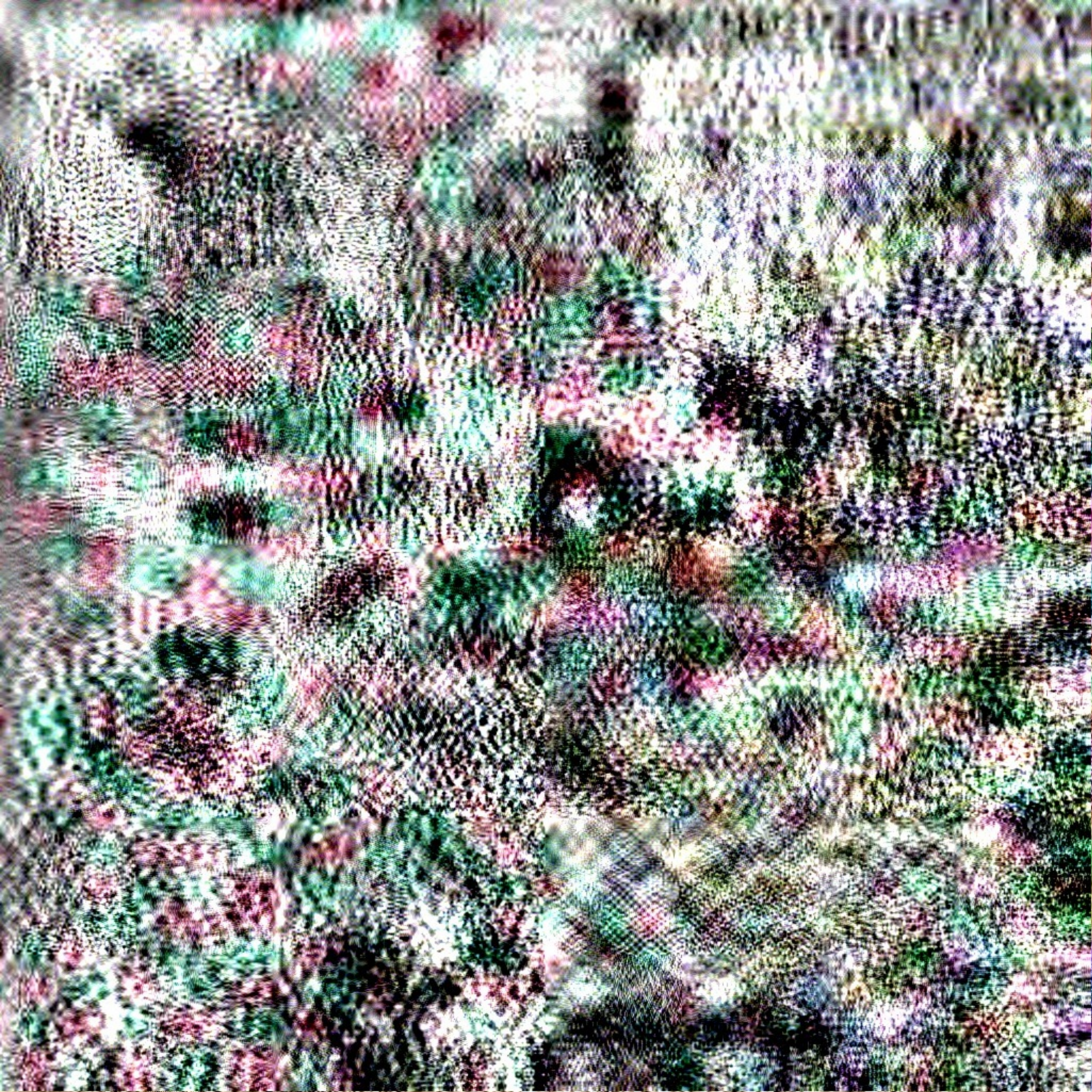
When he comes before me, therefore, I am to say that the President not only has the right to suspend the writ of *habeas corpus* at his discretion, but that he has that discretionary power to a great extent, and to leave it to him to determine whether he will or will not obey the writ.

means be not in existence, the privilege itself would be lost, although no law for its suspension should be enacted. Under the impression of this obligation, they gave to all the Courts the power of awarding writs of *habeas corpus*." And again, in page 101:

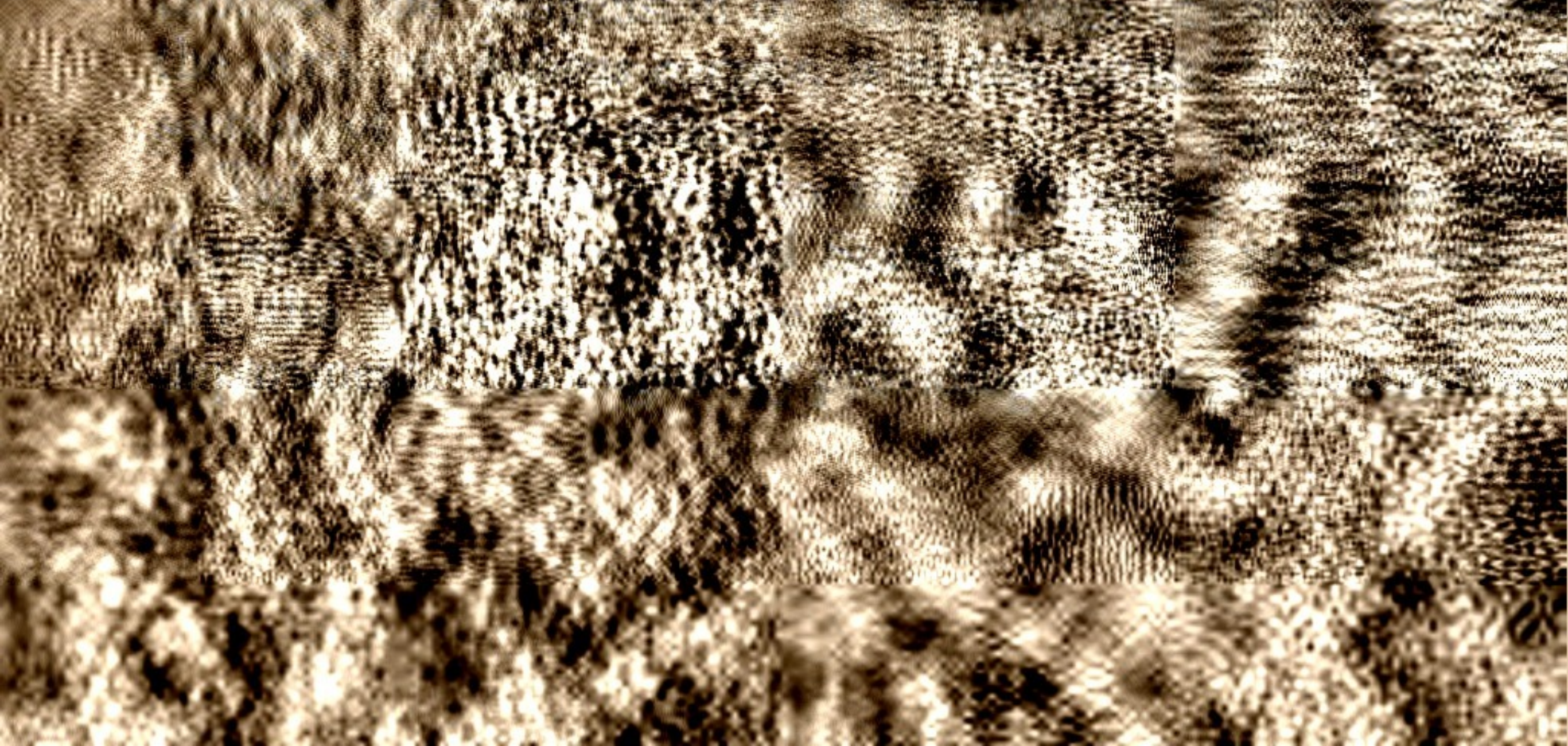
judicial process that may be served upon him.

No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise,

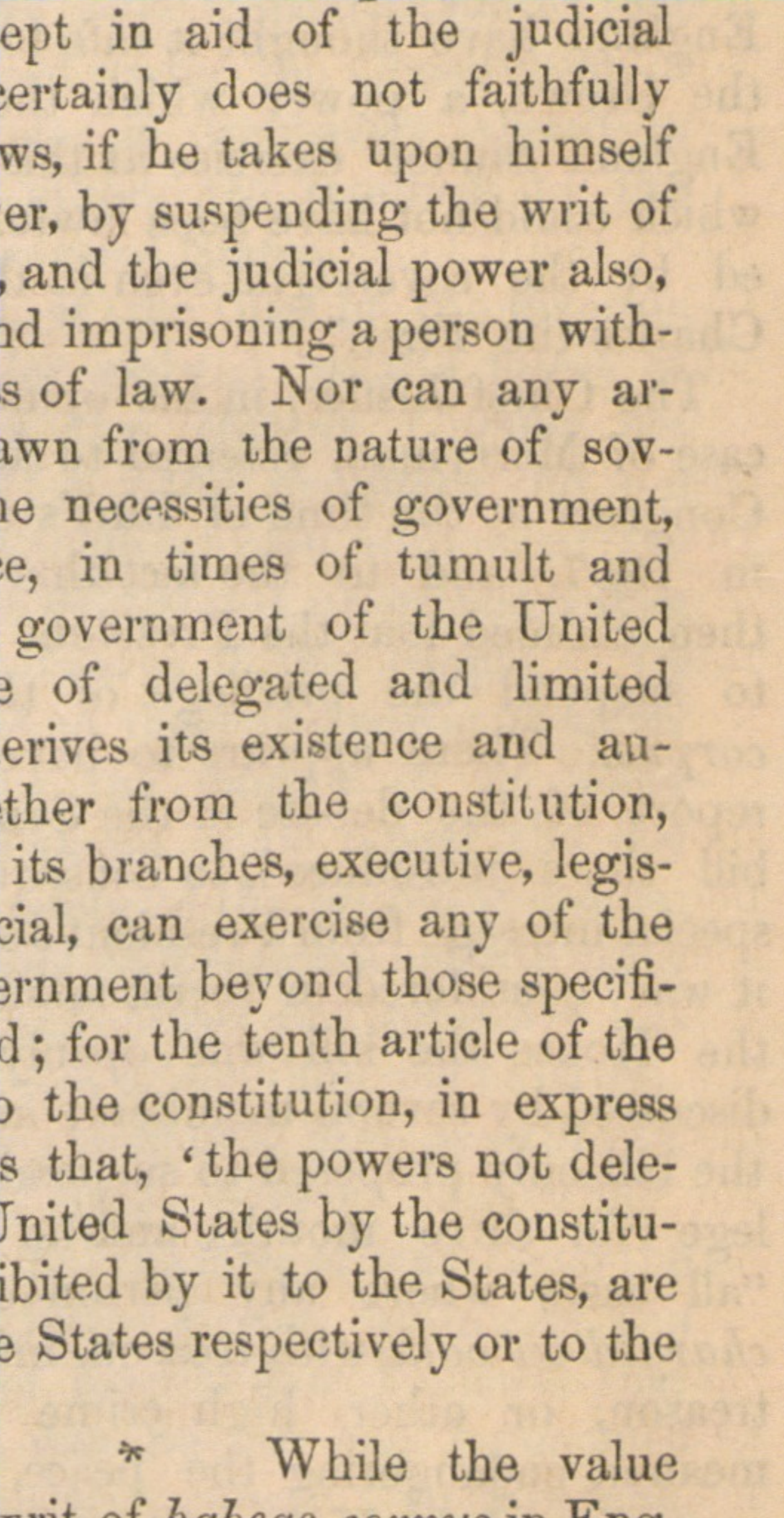
"If at any time the public safety should



...this limitation was unavoi-  
...at indefinite, it was deemed  
...guard more effectually certain  
...principles essential to the lib-  
...itizen, and to the rights and  
...the States, by denying to Con-  
...gress terms, any power of legis-  
...them. It was apprehended, it  
...such legislation might be at-  
...the pretext that it was neces-  
...er to carry into execution the  
...ed, and it was determined that  
...be no room to doubt, where  
...h vital importance were con-  
...accordingly, this clause was  
...ollowed by an enumeration of  
...ts to which the powers of leg-  
...not extend; and the great im-  
...h the framers of the Consti-  
...d to the privilege of the writ  
...*habeas corpus* to protect the liberty of  
...proved by the fact that its  
...cept in cases of invasion and  
...rst in the list of prohibited  
...even in these cases, the power  
...its exercise prohibited, unless  
...afety may require it. It is  
...he cases mentioned Congress  
...y, the judge of whether the  
...does or does not require it,  
...ment is conclusive. But the  
...of these words is a standing



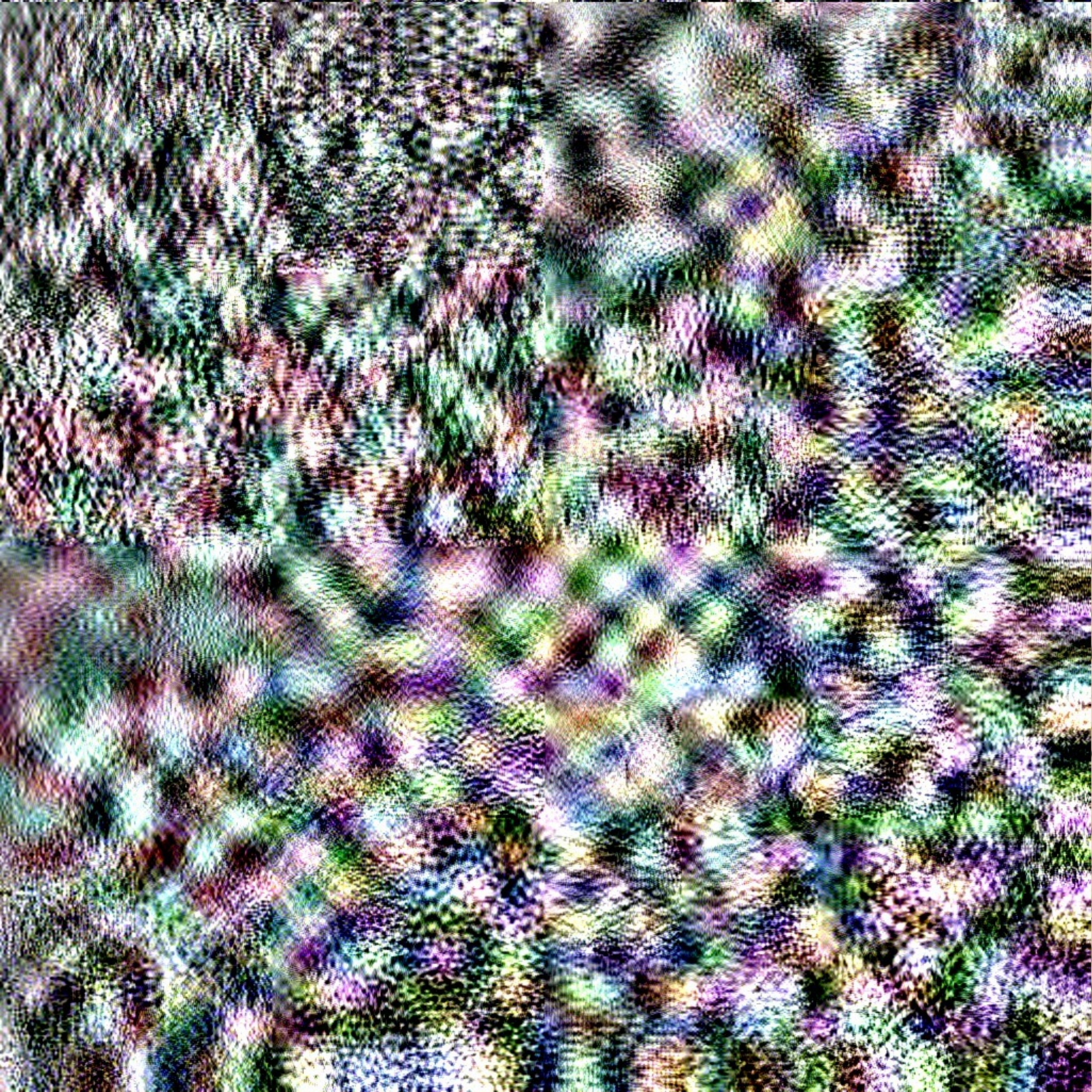
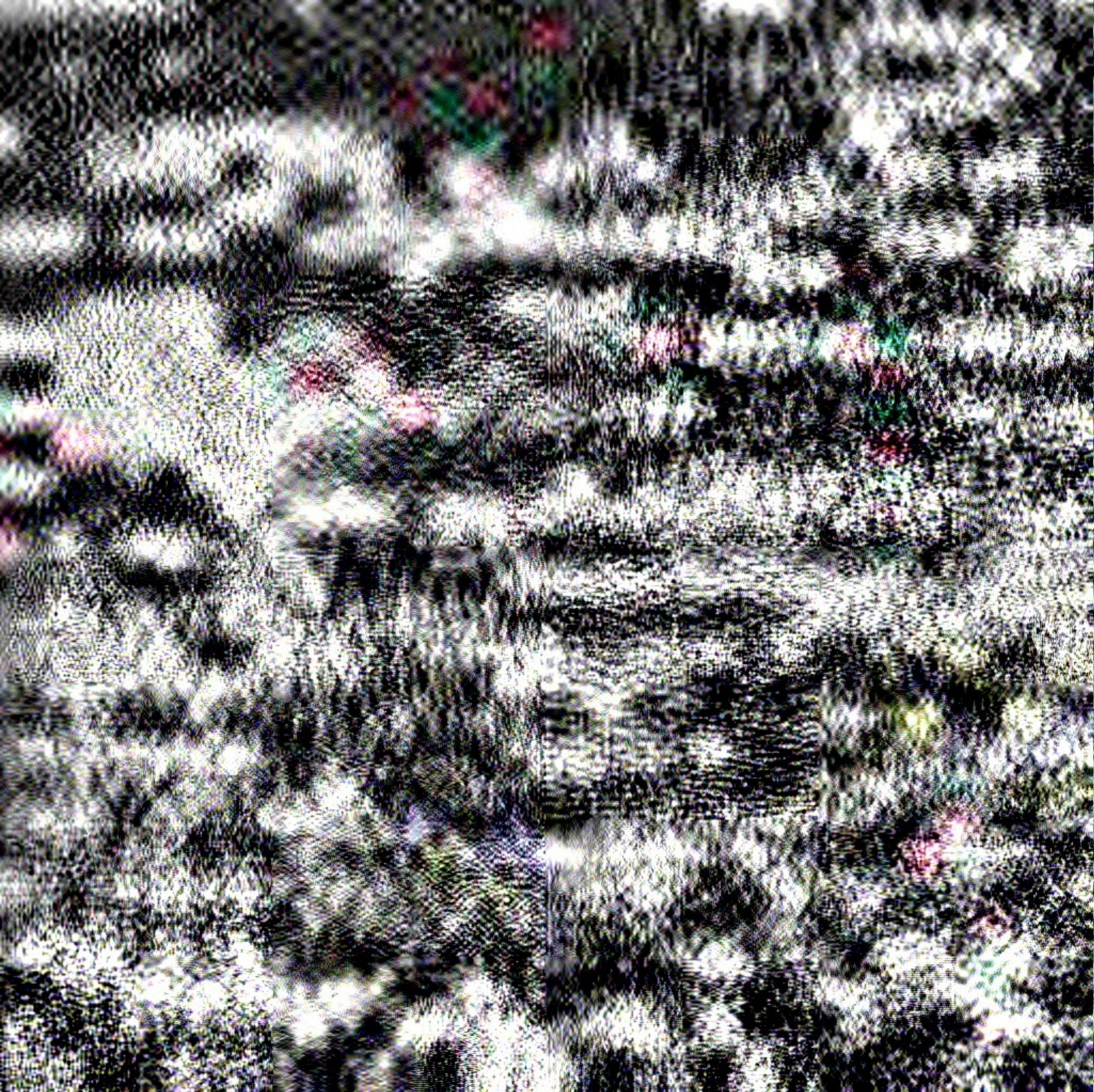
...of these words is a standing



cept in aid of the judicial  
certainly does not faithfully  
ws, if he takes upon himself  
er, by suspending the writ of  
and the judicial power also,  
and imprisoning a person with-  
s of law. Nor can any ar-  
awn from the nature of sov-  
e necessities of government,  
e, in times of tumult and  
government of the United  
e of delegated and limited  
erives its existence and au-  
ther from the constitution,  
its branches, executive, legis-  
cial, can exercise any of the  
ernment beyond those specifi-  
d; for the tenth article of the  
o the constitution, in express  
s that, 'the powers not dele-  
United States by the constitu-  
bited by it to the States, are  
e States respectively or to the

\* While the value  
set upon this writ of *habeas corpus* in Eng-  
land has been so great that the removal of  
the abuses which embarrassed its enjoyment  
has been looked upon as almost a new grant  
of liberty to the subject, it is not to be  
wondered at that the continuance of the  
writ thus made effective should have  
been the object of the most jealous care.—

one referred to, that is, the sixth article,  
provides that, in all criminal prosecutions  
the accused shall enjoy the right to a speedy  
and public trial by an impartial jury of the  
State and District wherein the crime shall  
have been committed, which district shall  
have been previously ascertained by law, and  
to be informed of the nature and cause of the



ectly relates to the question  
nsideration. After referring  
nt that all the functions of the  
e had been suspended by a  
of martial law, by the officer  
he military district, the Chief  
ded as follows: "This bold  
ertion is said to be supported  
section of the first article  
nstitution of the United  
ch are detailed the limitations  
of the Legislature of the  
there provided, *that the priv-  
rit of habeas corpus shall not  
unless, when in cases of in-  
llion, the public safety may re-  
are told that the commander  
y district is the person to sus-  
and is to do so whenever, in  
the public safety appears to  
at, as he may thus paralyze  
e justice of his country in the  
nt case, the protection of the  
ty of the citizen, it follows  
o can do the *more* can do the  
so suspend all other functions*

or shall be arrested and imprisoned by vir-  
tue of any warrant or authority of the Presi-  
dent of the United States, or from the chief  
executive magistrate of any State or Terri-  
torial government, or of any person acting  
under the direction or authority of the  
President of the United States," the House,

of the civil magistrate, which he does by his  
proclamation of martial law.

This mode of reasoning varies *toto coelo*  
from the decision of the Supreme Court of  
the United States, in the case of Swartwout  
and Bollman, arrested in this city in 1806,  
by General Wilkinson. The Court there



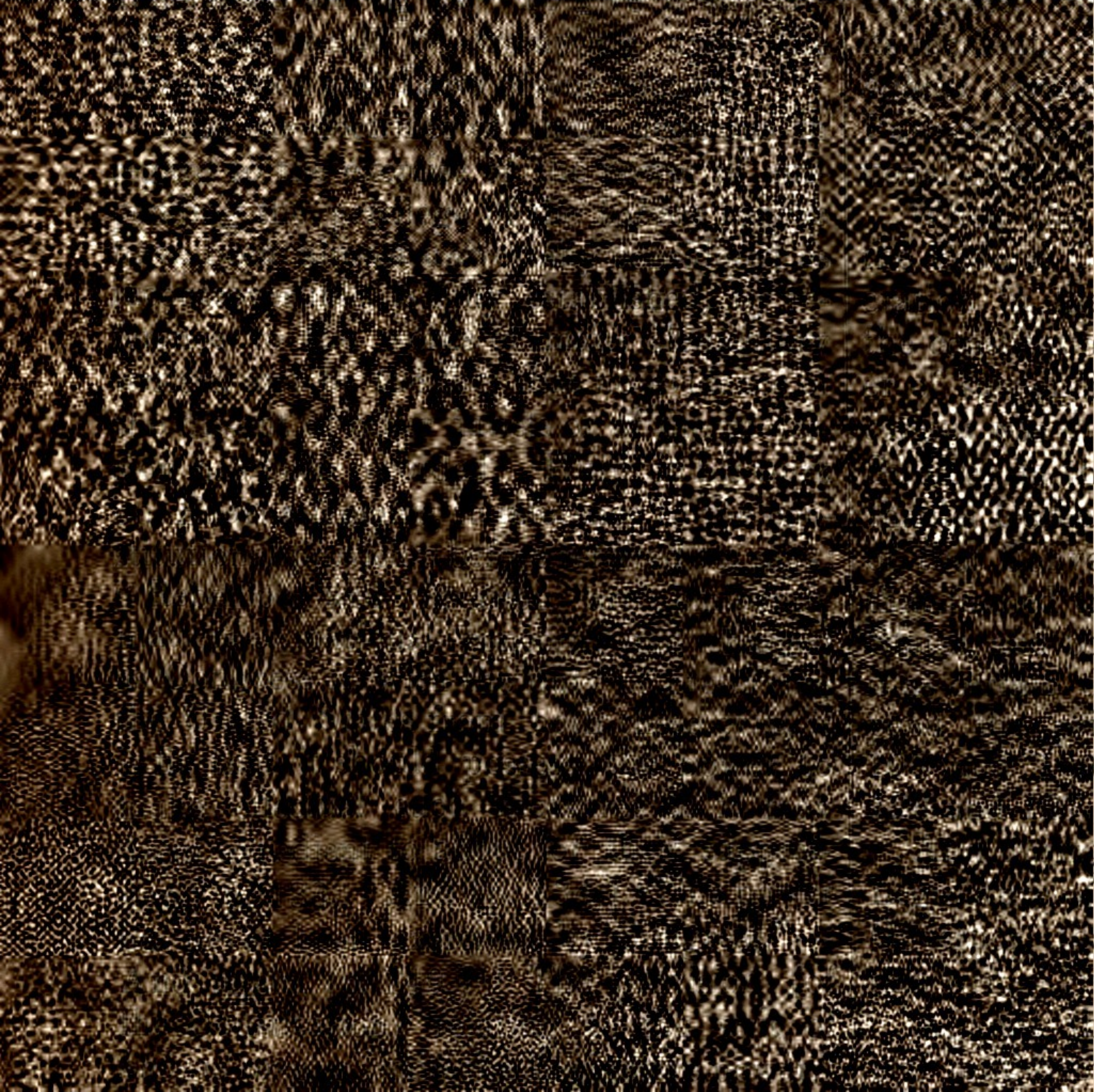
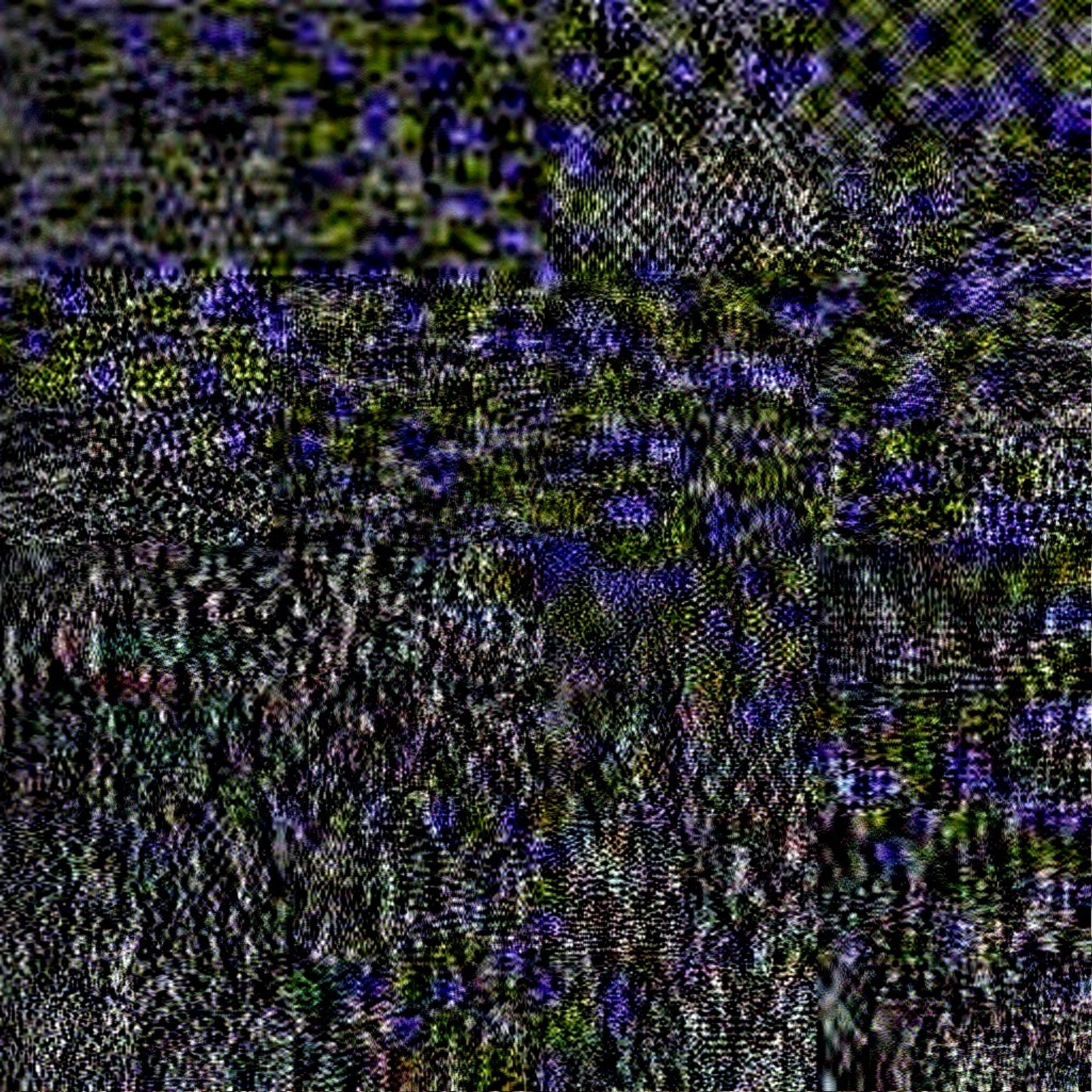


As every legislative power that is exercised under the Constitution of the United States is exclusively vested in Congress, and all powers not delegated to the United States, nor prohibited to the States, are retained by the several States. The Executive, at the time of the invasion of the States, assisted by the forces of the United States, the *Habeas Corpus* act was suspended; but the executive did not stretch its own authority; the suspension was deliberated upon and taken by the representatives of the people. De Witt v. The People. And there the power is safely vested in the Legislature, but the danger of its being abused by the Legislature may repeal the law if the safety of the people depends; and the Legislature may, by their own caprices and arbitrary measures, the caprices and arbitrary measures of men which they will have gratified, shall thus have overthrown the public liberty. [Id. 275, 276.]

decision of this Court. This leads me to the examination of the power of suspending the writ of *habeas corpus*; and that which it is said to include, of proclaiming *martial law*, as noticed in the Constitution of the United States. As in the whole article cited, no mention is

from whence the American Jurist derives his principles in this respect, 'martial law cannot be used without the authority of Parliament.' 5 Comyns 229. 'The authority of the monarch himself is insufficient. In the case of Grant vs. Sir C. Gould, 2d. Hen. Bl., 69, which was on a prohibition appli-

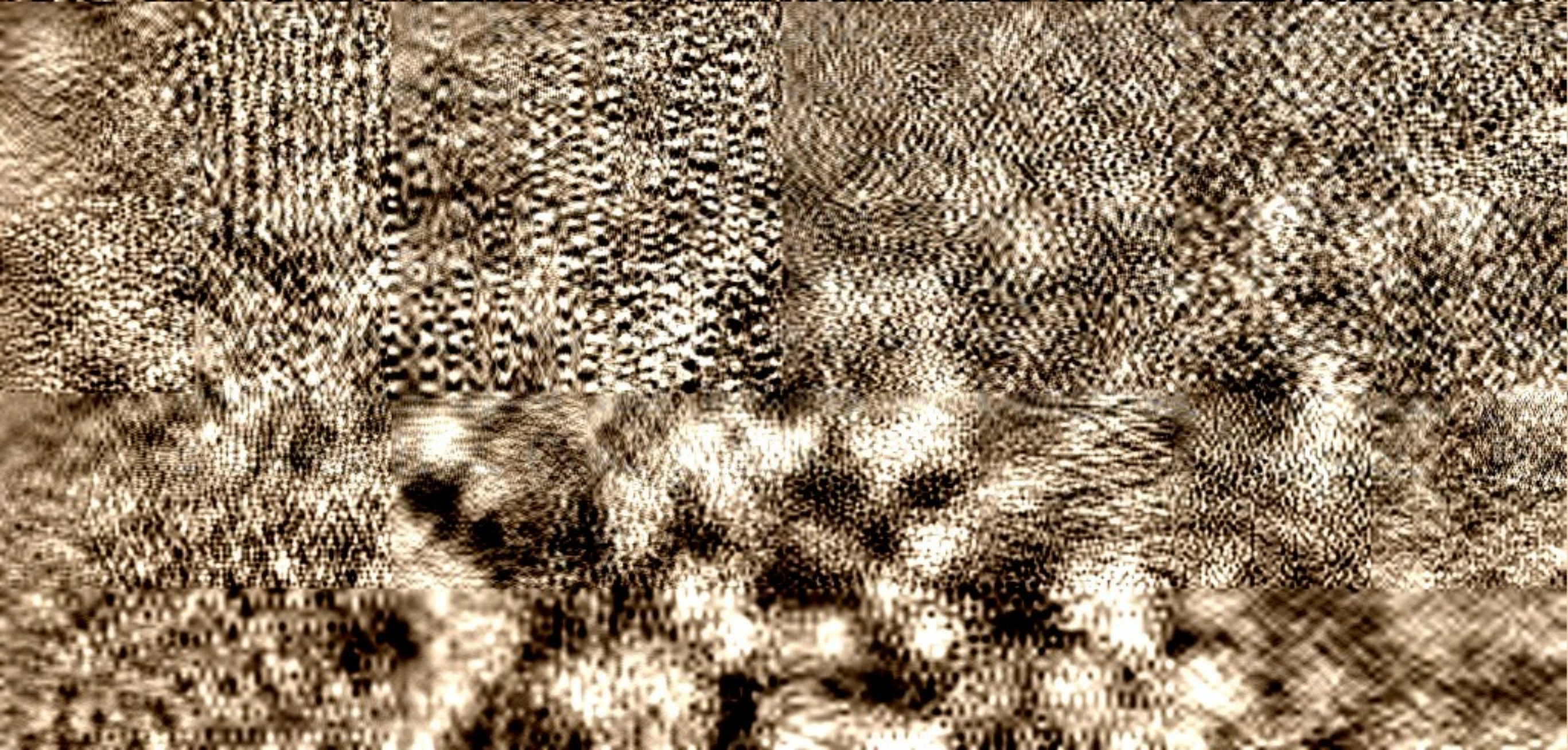




in England, martial law and the suspension of the writ of *habeas corpus*, required the authority of the executive to give them a constitutional basis.

The question of the adoption of the Constitution was under consideration at the Massachusetts Convention, and a restriction upon the power of suspending the privilege of the *habeas corpus* was discussed by Judges Dana and Chief Justice Shaw in the presence doubtless of Nathaniel and Rufus King, members of the Convention as well as of the one which framed the Constitution of the United States. Both Judges evidently regarded the power as one which only Congress could exercise.—2 Elliott's Debates, 179, Hurd on *Habeas Corpus*,

and in the case of Shay's rebellion it was the Legislature of Massachusetts, and not her Executive, that suspended the privilege of *habeas corpus*, Hurd, on *Habeas Corpus*, 136. These authorities, and the general opinion of elementary writers, there is no doubt, established the practice of the War of 1812, first inaugurated in a period of great excitement and alarm, and the opinion of the learned and venerable Chief Justice who now holds the office of Secretary of War of the United States.—"A Gentleman I entertain the highest respect for, and whose purity of motive and char-

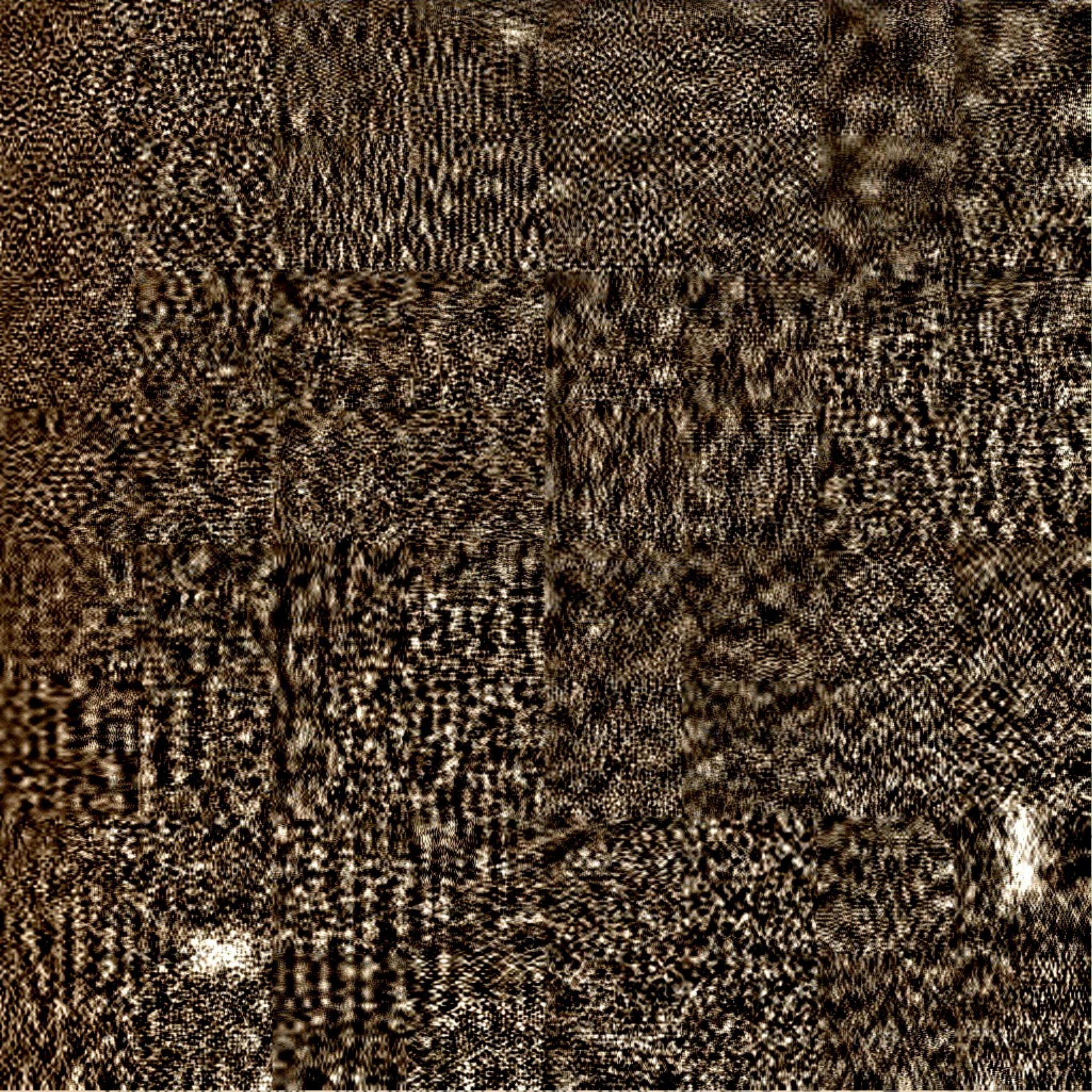
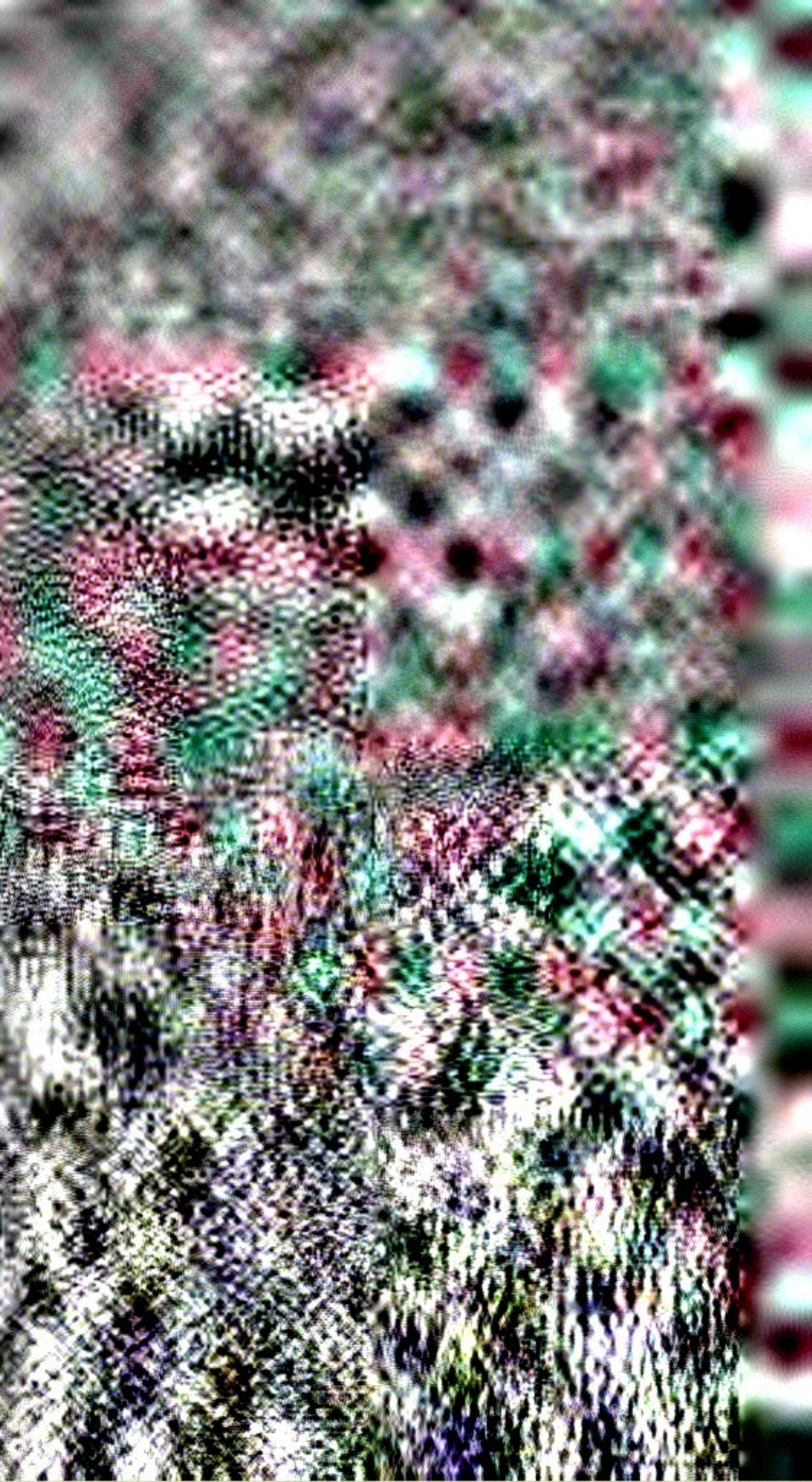
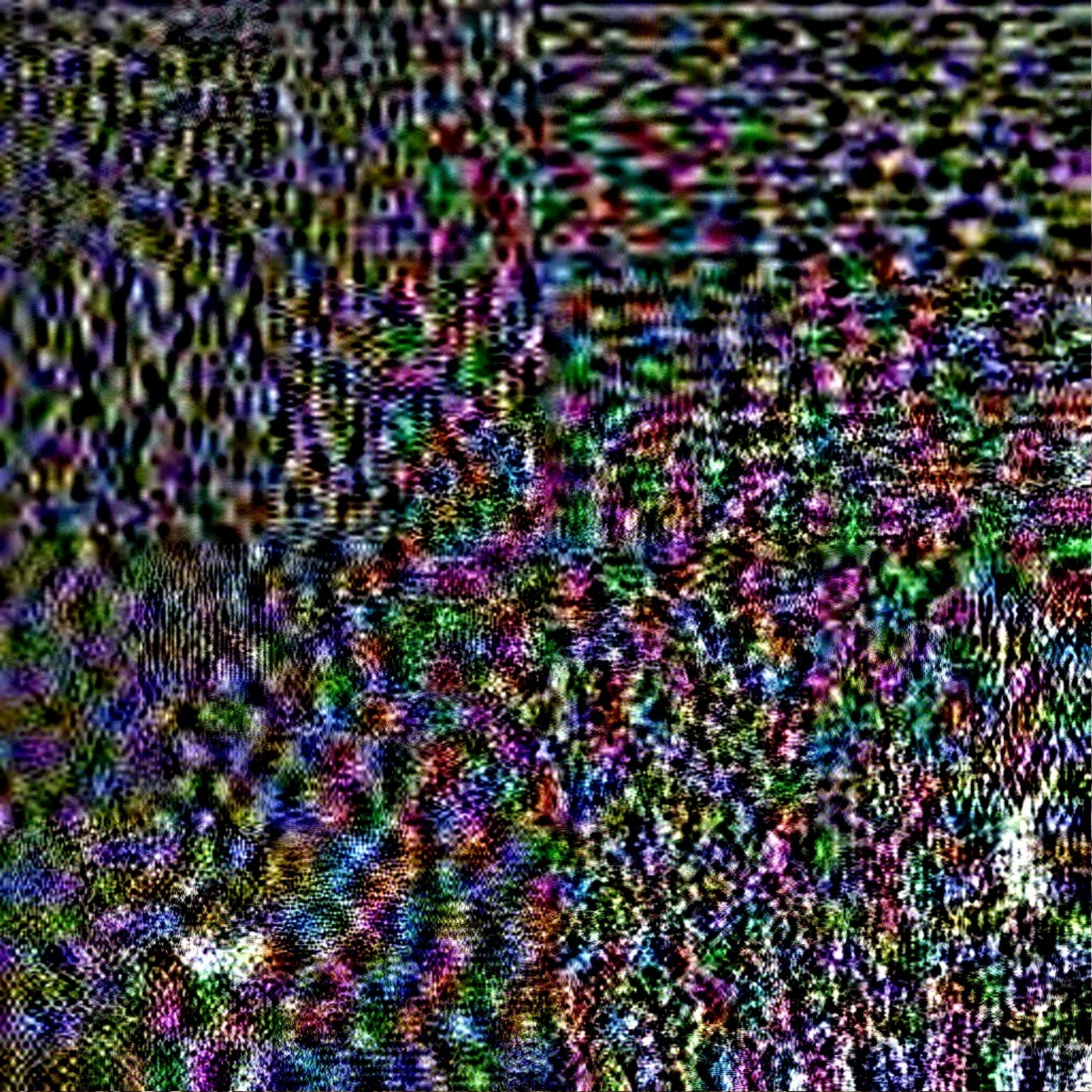


suspend the privilege of the writ of *habeas corpus* in the United States. The prisoner is therefore in any view which I have been able to take of this case entitled to the benefits of the writ of *habeas corpus*, and to be discharged unless some reason for detaining him, beyond that set out in his petition, is shown. But other reasons besides those set forth in his petition, or in any warrant or order of commitment under which he may be now held, may be shown. The District Attorney of the United States will have notice of the allowance of the *habeas corpus*, and if, on its return, or at any time, he, or the Marshal of the United States, or his deputy, or any other citizen, can show that the petitioner has been guilty of any offence against the laws of the United States, or has in any way subjected himself to legal arrest and imprisonment, it will be my duty, (a duty which I certainly shall not hesitate to perform,) to commit him to prison by a proper and sufficient order or warrant.

I have thus hastily, though with some labor, written out an opinion in this mat-

world wide reputation, (language used by them in deciding cases which had been fully argued, and used, too, after they had had the benefit of a full consultation with their learned associates on the bench)—rather than the less forcible and less authoritative language in which I might have expressed my own opinions. The decisions referred to have been before the profession and the country for more than forty years, and, so far as I know, they had not, until a very recent period, been questioned, or their doctrines assailed by any respectable jurist. I cannot but endeavor to follow, though with feeble and unsteady steps, in the paths of constitutional duty clearly and distinctly marked with the ineffaceable footprints of Marshall, of Story, of Washington, of Livingston, of Martin, and of Taney; and guided by the serene and steady light of their recorded opinions, I may certainly hope not to go far astray.

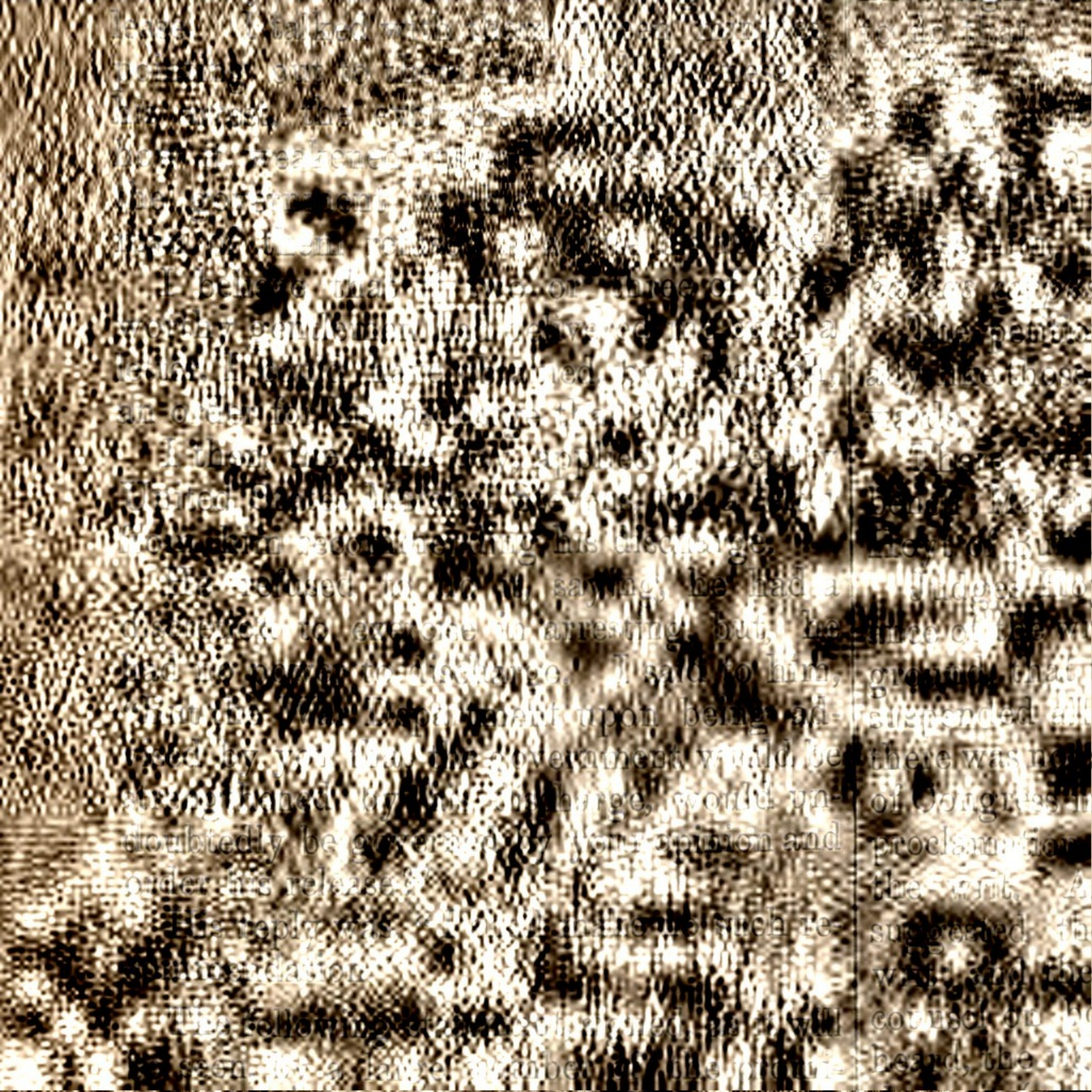
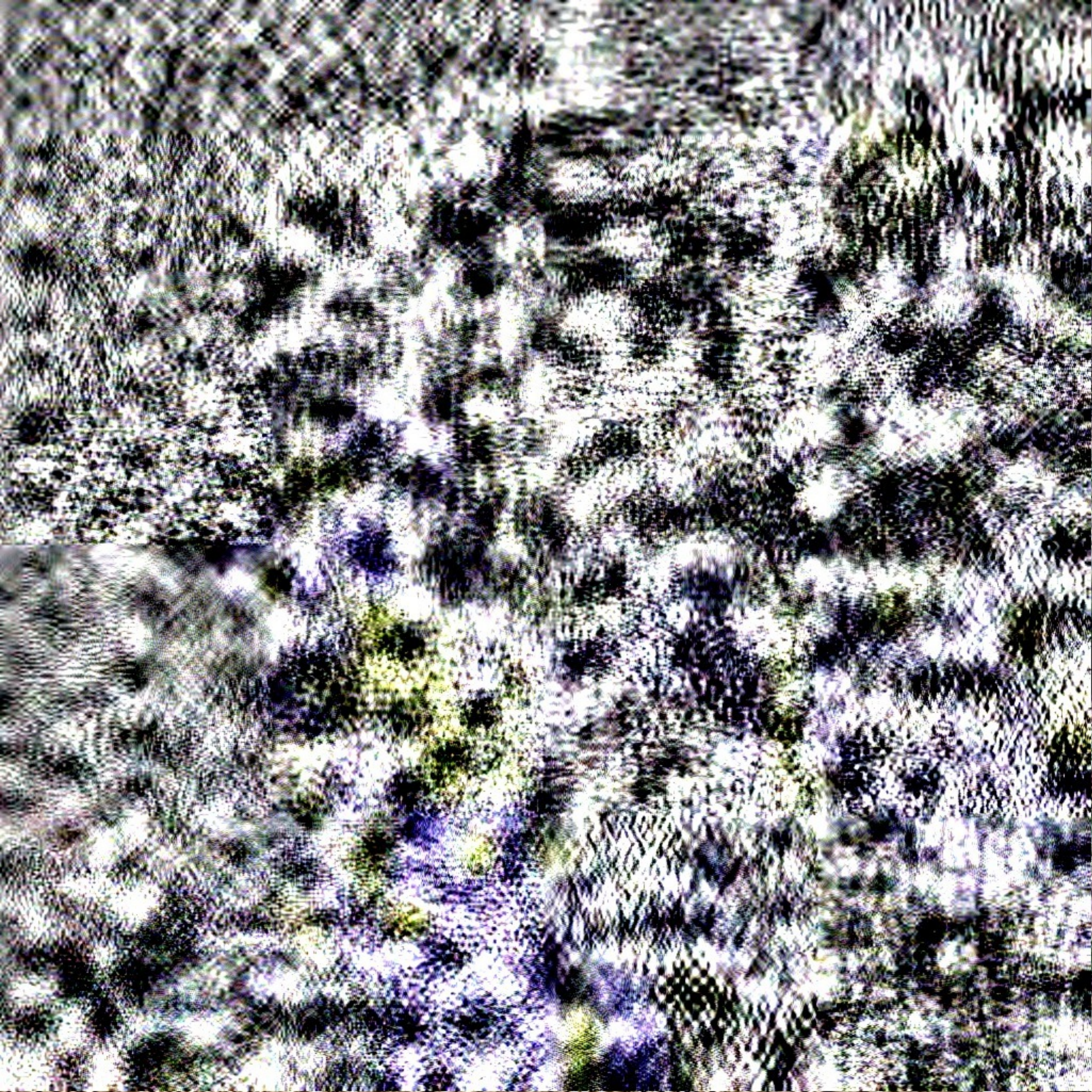
I have endorsed the proper allowance upon the petition presented, and upon the writ prepared by the Clerk.



ject was one for every man to  
himself according to his under-  
standing of the word of God.  
A complaint was made to  
the Marshal Stevens, that Rev. Mr.  
Stevens uttered seditious language  
to discourage enlistments, and re-  
quested to come to Aurora and obtain  
evidence. Mr. Stevens went to Aurora  
on the 21st, and at a private house that  
evening, next morning, took the affi-  
davit of several persons, neither of whom are  
members of his church, the contents of  
which this day unknown, the Mar-  
shal repeatedly refused to furnish  
him with his counsel with copies of  
the strength of these docu-  
ments. Supposed, Mr. Stevens arrested  
at his own house before break-  
ing morning, September 2d.—  
brought to this city, and conveyed  
to the Jail, where he was confined  
with four other political prison-  
ers, and suffered to remain until Wed-  
nesday at 11 o'clock, without hav-  
ing any food offered him. About noon

war of any kind. He referred to the Con-  
stitution of the State of New York which  
grants military exemption to Quakers, and  
said he saw no reason why his brethren  
should not obtain like immunity. If such  
were not granted, in the case of a draft, he  
advised his brethren not to resist it, but

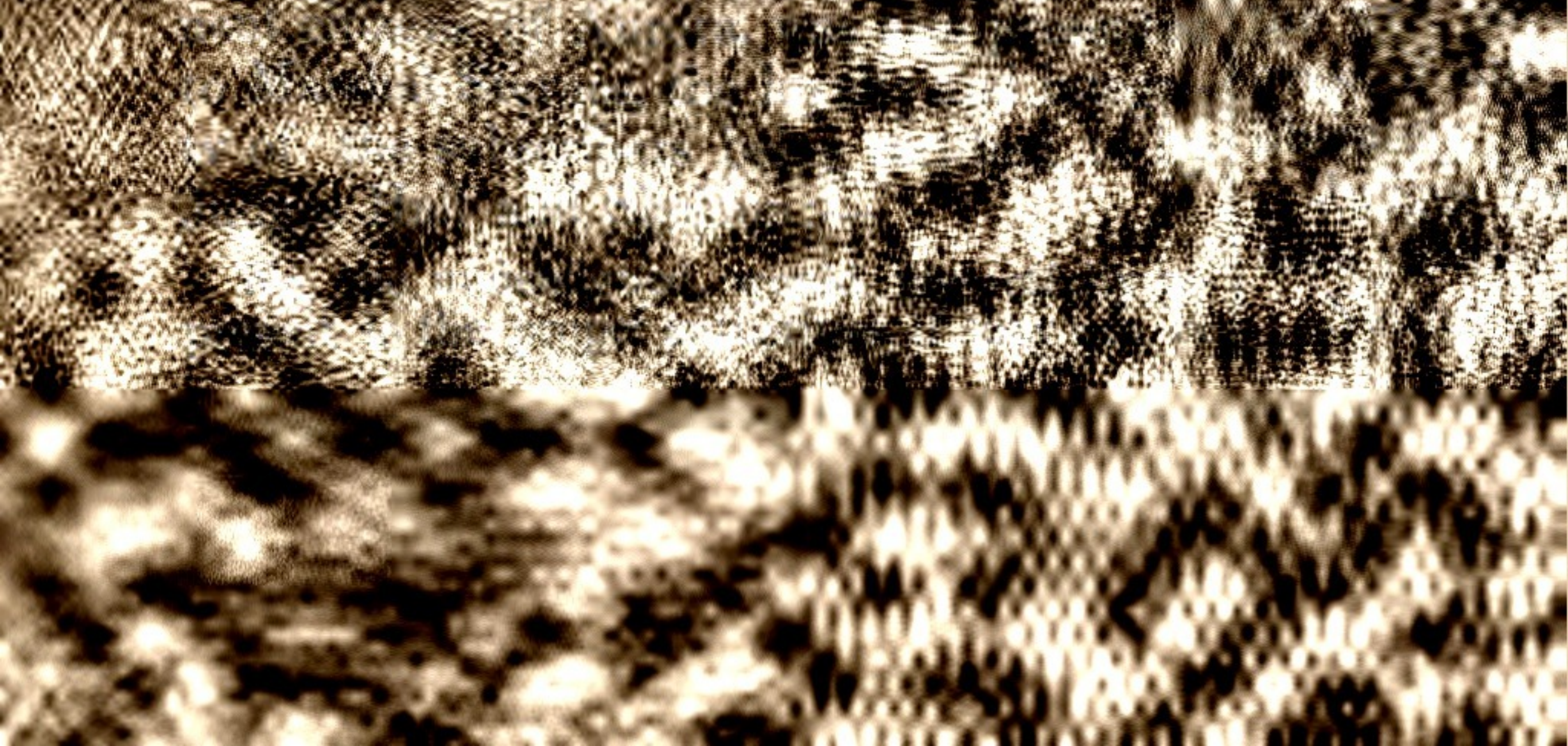
on Wednesday, he was transferred to the  
Jail, by the order of the Marshal.  
Last winter, the Rev. George B. Chee-  
ver preached a sermon at the Church of the  
Pilgrims, in New York, to two thousand  
people, and I believe, the same was pub-  
lished—in which he insisted that the policy



the first time, I looked at the jailer Best held him. No doubt that the General Term of the Court, then in session, would present a petition for a writ of *habeas corpus* to them. Affidavits and affidavits are substantiated and presented to Judge Hall after the first time.

There were but three judges on the bench: Grover of Angelica, James G. Grover, and Noah Davis of Albion. Grover and Davis refused the allowance of the writ of *habeas corpus*, on the sole ground that the writ of *habeas corpus* was suspended over the Union. I told them there was no copy of the laws of last session of Congress in the city. I had not seen any proclamation of the President suspending the writ. And, on so grave a matter, I suggested the expediency of allowing the writ to issue. When a return was made, both sides being prepared and the right of the President to suspend by that time the acts of Congress (being obtained) could be determined.

Grover and Hoyt said they would notice the writ was suspended. When they intimated there was, by



I then had on the same day of such denial requested Deputy Marshal Stevens to informally consent to or not oppose an allowance of a writ of *habeas corpus* by Judge Hall, for the sole purpose of enabling Mr. Benedict to give bail. That he could give bail to the amount of \$50,000 to comply with any condition the federal officers might impose.

Stevens replied, he would consent to no such thing, and *he would disobey any order for his release on bail which Judge Hall might make.* And yet in the case of Mr. Barker of Gowanda, such bail with the consent of a deputy marshal of Buffalo had been given, and Barker released.

I soon after had an interview with Marshal Chase, and he proposed that on a future day witnesses should be examined on both sides before a federal commissioner in the regular way, by examination and cross-examination in public, and he would forward their depositions to Washington.

This I agreed to, and on the day fixed several men and women who heard the sermon that occasioned his arrest, appeared as

I am copying the papers." Stevens replied, "there was no use of copying them, and Sawin knew it, and Sawin could not make any damned political capital out of it. I want the papers to send off immediately, and if Sawin wants to make a copy of them he can take them and go to hell with them." They were left with Stevens.

The family and friends of Benedict waited one week after this and no order came from Washington.

The papers for Noah B. Clark, committed for the same offence and by the same person, were forwarded two days later and he was released.

After Clark was released and being unable to learn that there was any prospect of any *voluntary* action on the part of the Marshal or the Secretary of War, for his discharge, at the request of the family and friends of Benedict I presented the papers to Judge Hall for a writ of *habeas corpus*.

The following are copies of such papers  
with the Writ and proof of service;  
Best and Stevens, and order  
on Chase; the second Writ  
*pus* and the proof of service;  
Petition for a writ of *habeas*  
papers accompanying:—

annexed, marked schedule (A.)

That A. G. Stevens arrested your petitioner at Aurora, Tuesday morning, the 2d day of September, inst. All he said to your petitioner at time of arrest was, "I have an unpleasant duty to to perform, I have come to arrest you. I suppose you are willing to go with me without opposition?" Your petitioner replied, "most certainly." Said Stevens then took deponent to Fort Porter, and left him there where your petitioner stayed until removed to jail.

Said Stevens showed no paper to your petitioner nor did he state any cause for such arrest.

Your petitioner has neither by act or speech, been disloyal to the Constitution or laws of the United States, or been guilty of any violation of any order of the War Department, or of the President of the United States, or been guilty of any offense or act subjecting him to arrest.

That your petitioner alleges, That such arrest and imprisonment are illegal for the reason that he has not been charged with

his own knowledge.

J. D. BENEDICT.

Sworn to before me, this 15th day of September, 1862.

P. G. PARKER,  
U. S. Commissioner for Erie Co.

( "A" )

MARSHAL'S OFFICE,  
BUFFALO, Sept'r 2d. 1862.

David M. Grant will take from Fort Porter, Thomas Cummings, James Parker, Antoine Quanliet, Noah B. Clark and Jared Benedict, prisoners confined there, committed under orders of the War Department, and remove them to the Erie County Jail for safe keeping, and there detain them until further order, and the sheriff or jailor of said county will keep them until further order in said jail.

(Signed,) A. G. STEVENS,  
U. S. Dep. Marshal.

To Col. E. P. CHAPIN, and the  
SHERIFF and JAILOR of Erie County.

WAR DEPARTMENT, }  
Aug. 8, 1862. }

all United States Marshals,  
Judges and Chiefs of Police  
of any city or district, be and they  
are authorized and directed to arrest  
any person or persons who  
are charged by act, speech or writing,



Albert Sawin, counsellor-at-law, being duly sworn says, that at the request of above named Judson D. Benedict, on the 3d day of September inst., he enquired personally of Deputy U. S. Marshal Stevens, at his office in Buffalo, if he arrested said Benedict by virtue of any order, process or paper. He said, he did not, but he showed deponent a slip cut from a newspaper printed, a copy of which is hereto annexed, and said that printed slip was his only authority for the arrest of said Benedict.

ALBERT SAWIN.

Sworn this 15th day of September, 1862.

P. G. PARKEE, U. S. Commissioner.

(*Endorsed.*)

NORTHERN DISTRICT OF NEW YORK, ss:

On the within petition I allow a writ of *habeas corpus* to be directed to Albert G. Stevens, U. S. Deputy Marshal and William F. Best, the keeper of Erie County Gaol, and made returnable on the 18th day of

forenoon of the eighteenth day of September, in the year of our Lord one thousand eight hundred and sixty-two, to do and receive what shall then and there be considered concerning the said Judson D. Benedict.

And have you then and there this writ.

Witness, the Hon. Nathan K. Hall, Judge of the District Court of the United States for the Northern District of New York, at the City of Buffalo, the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-two.

GEO. GORHAM, Clerk.

(*Endorsed.*)

NORTHERN DISTRICT OF NEW YORK, ss:

The within writ, on petition of the within named Judson D. Benedict, has been allowed, and hereby is allowed by me in pursuance of the Statute in such case made and provided.

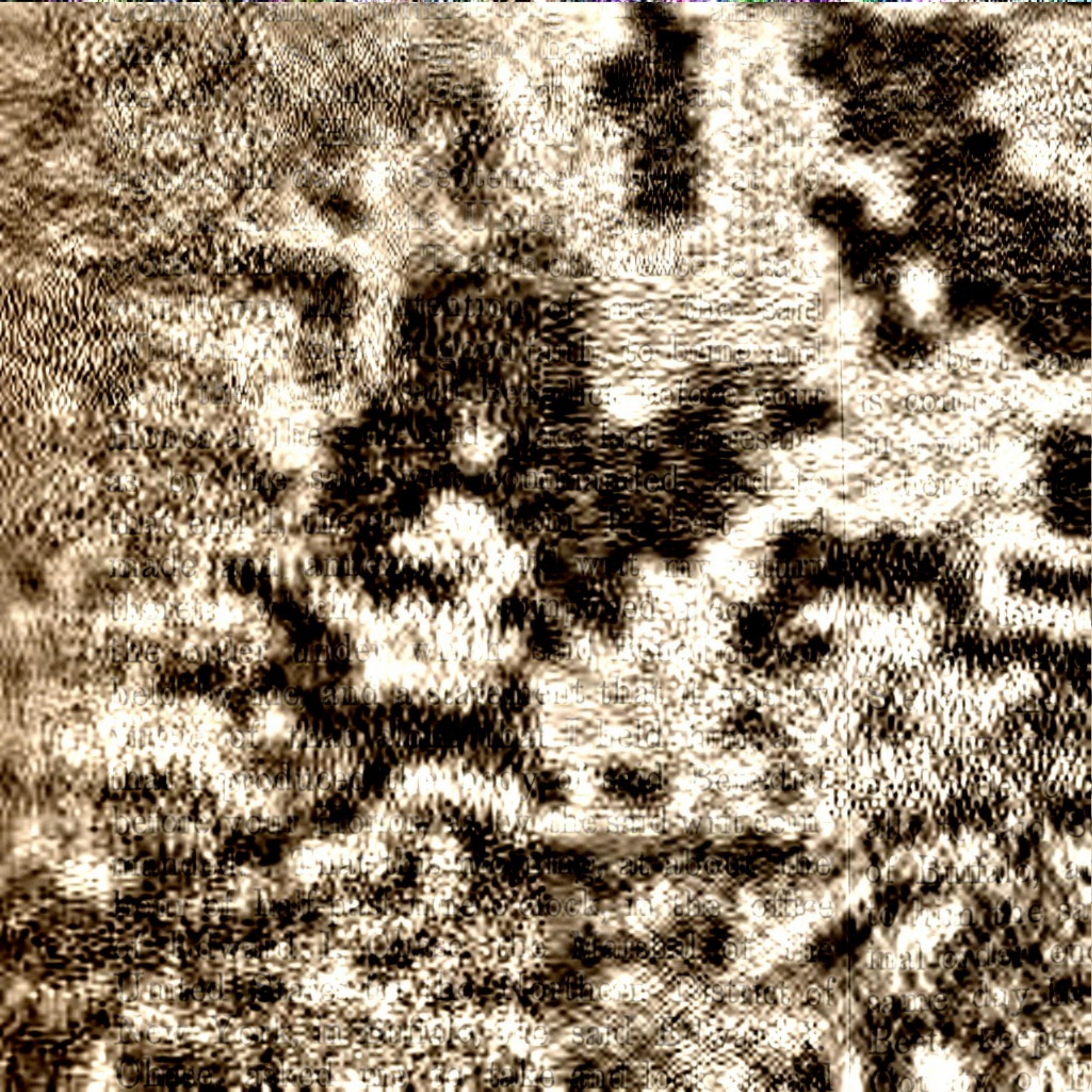
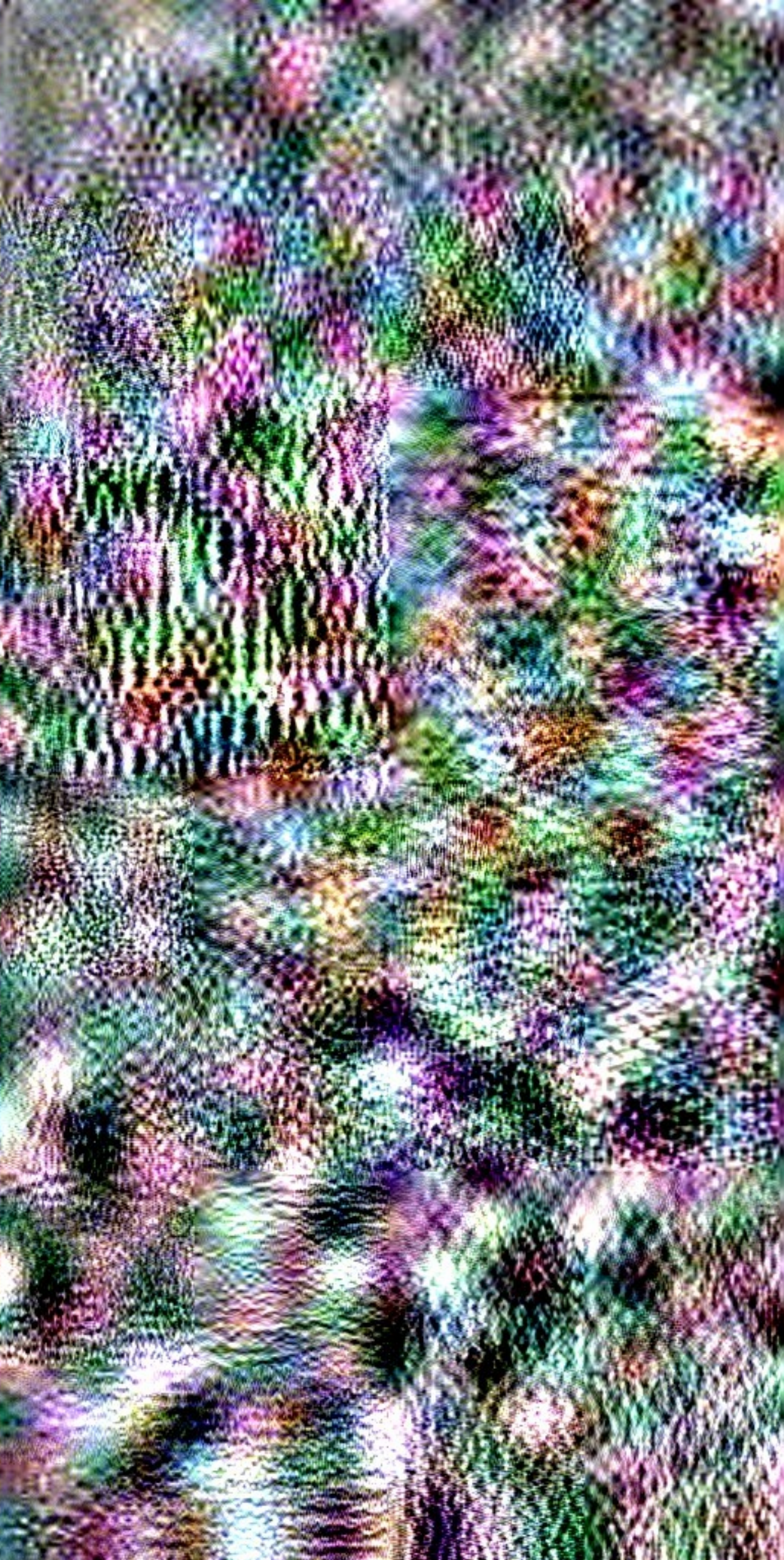
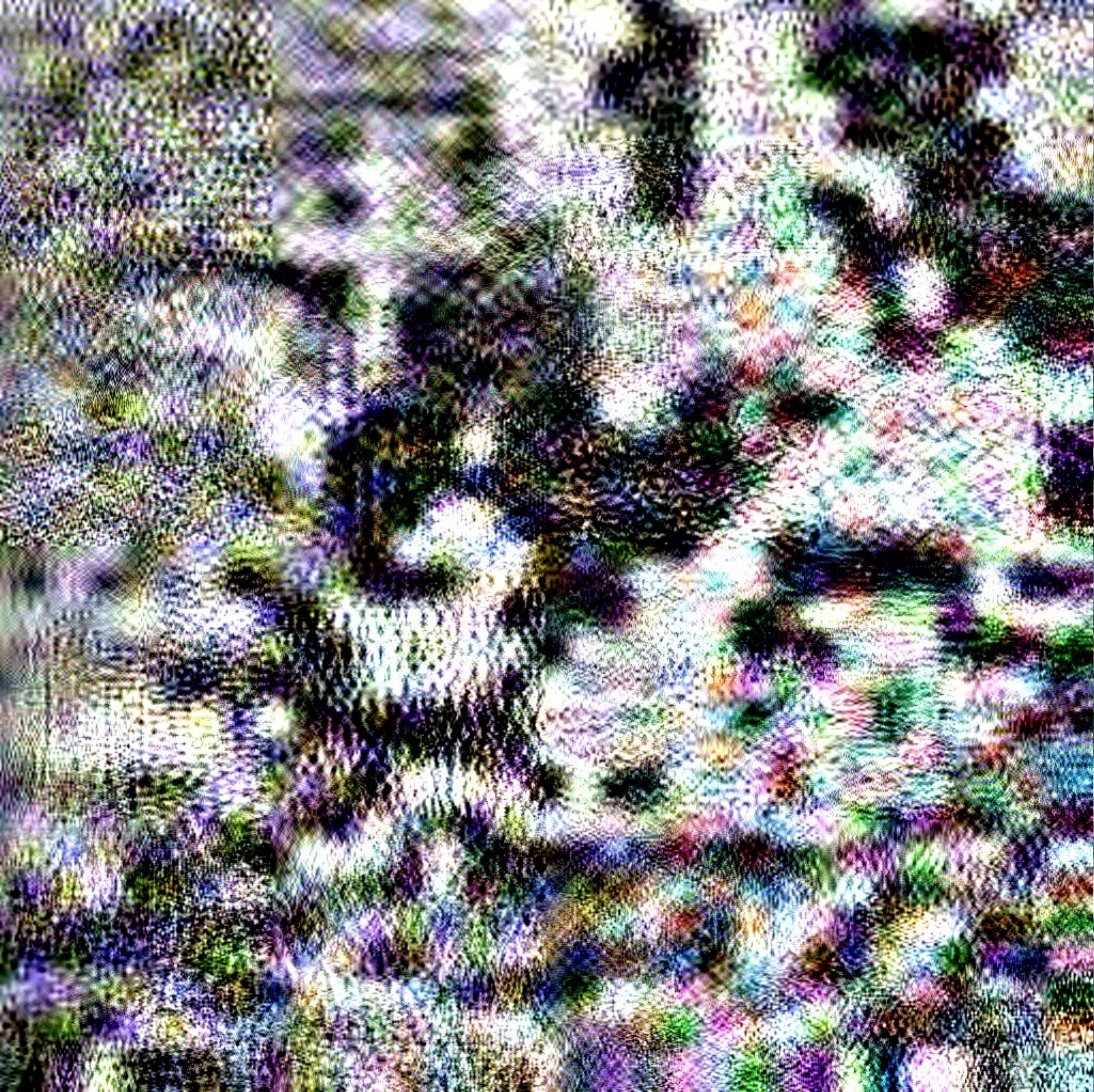
Sept. 16, 1862.

N. K. HALL,  
District Judge of the United States,  
for the Northern District of New York.

NATHAN K. HALL, JUDGE OF THE  
COURT FOR THE NORTHERN DISTRICT  
OF NEW YORK:

Deponent of William F. Best respect-

fully shew, and since the first day of  
September, 1862, has been the keeper of



WILLIAM F. BEST.

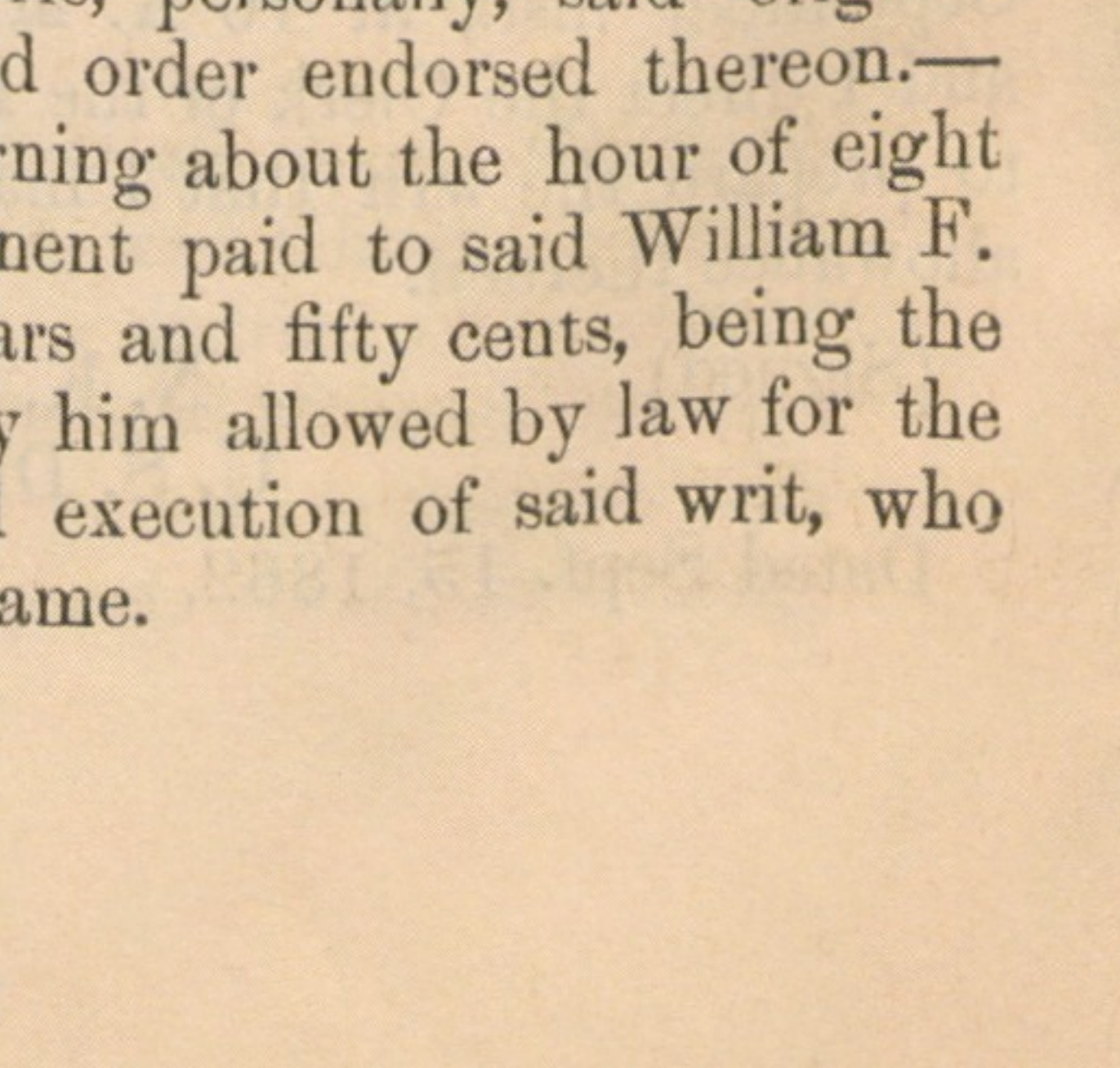
and sworn, this 18th day of Sep-  
 before me.

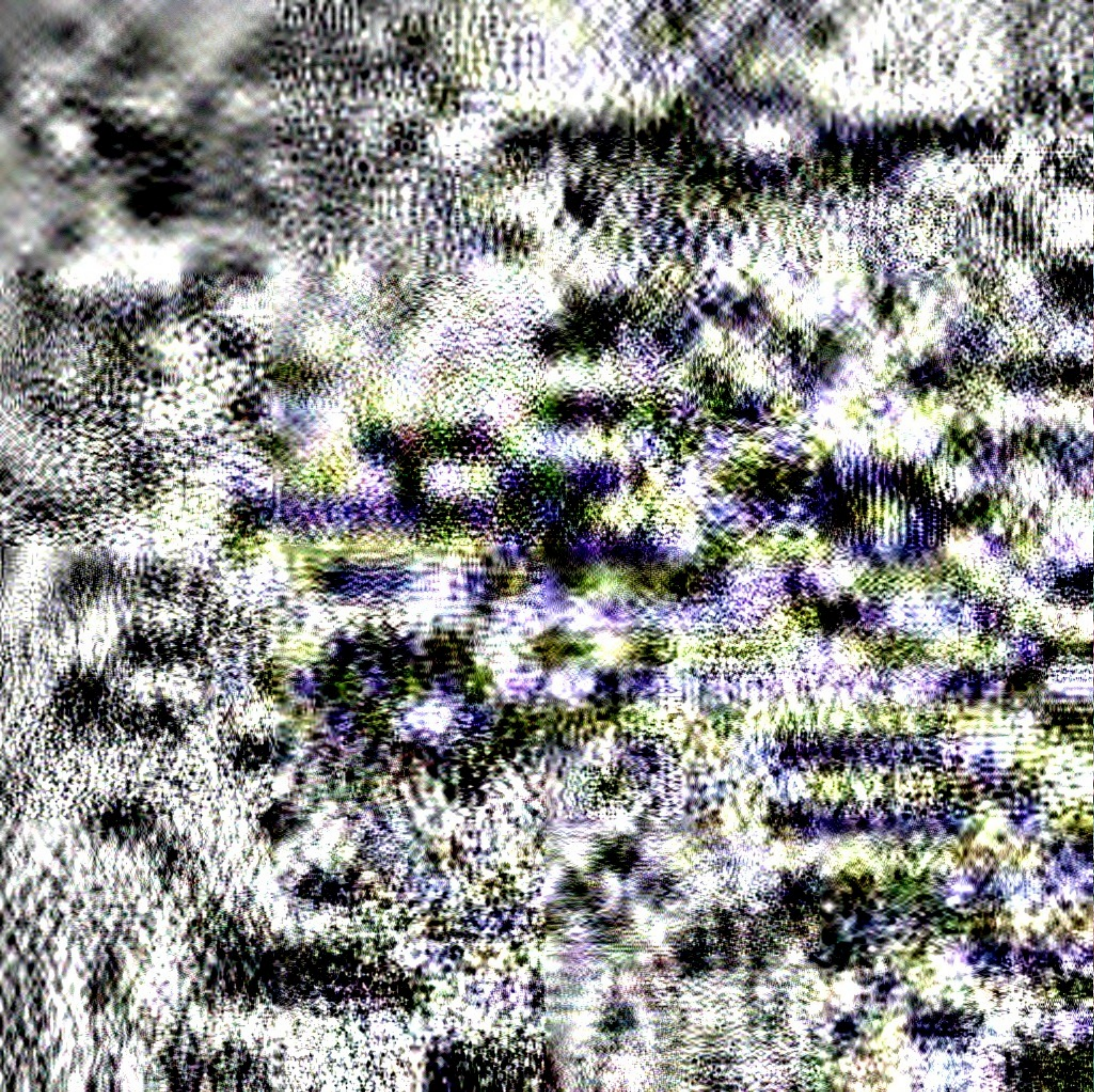
K. HALL, U. S. District Judge.

STATES OF AMERICA, }  
 DISTRICT OF NEW YORK, } ss :  
 COUNTY OF ERIE,

Albert G. Stevens, in being duly sworn, says he  
 as counsel for Judson D. Benedict, named  
 in a writ of *habeas corpus*, a copy of which  
 he heretofore annexed, and also a copy of orig-  
 inal order of allowance endorsed thereon.  
 On the sixteenth day of September  
 he delivered the said writ of *habeas cor-*  
 pus copy order upon Albert G.  
 Stevens, the Deputy Marshal therein named,  
 a copy of the same and of  
 allowance so endorsed person-  
 ally to said Stevens personally, at the City  
 of Buffalo, and at the same time showing  
 to him the said original writ and said orig-  
 inal order endorsed thereon. That on the  
 same day he delivered to said William F.  
 Best, keeper of the common jail of the  
 County of Erie, personally, said original  
 writ and order endorsed thereon.—

That on the following day, to-wit, the  
 eighteenth day of September, the sum of  
 one dollar and fifty cents, being the  
 amount paid to said William F.  
 Best by him allowed by law for the  
 execution of said writ, who  
 is the same.

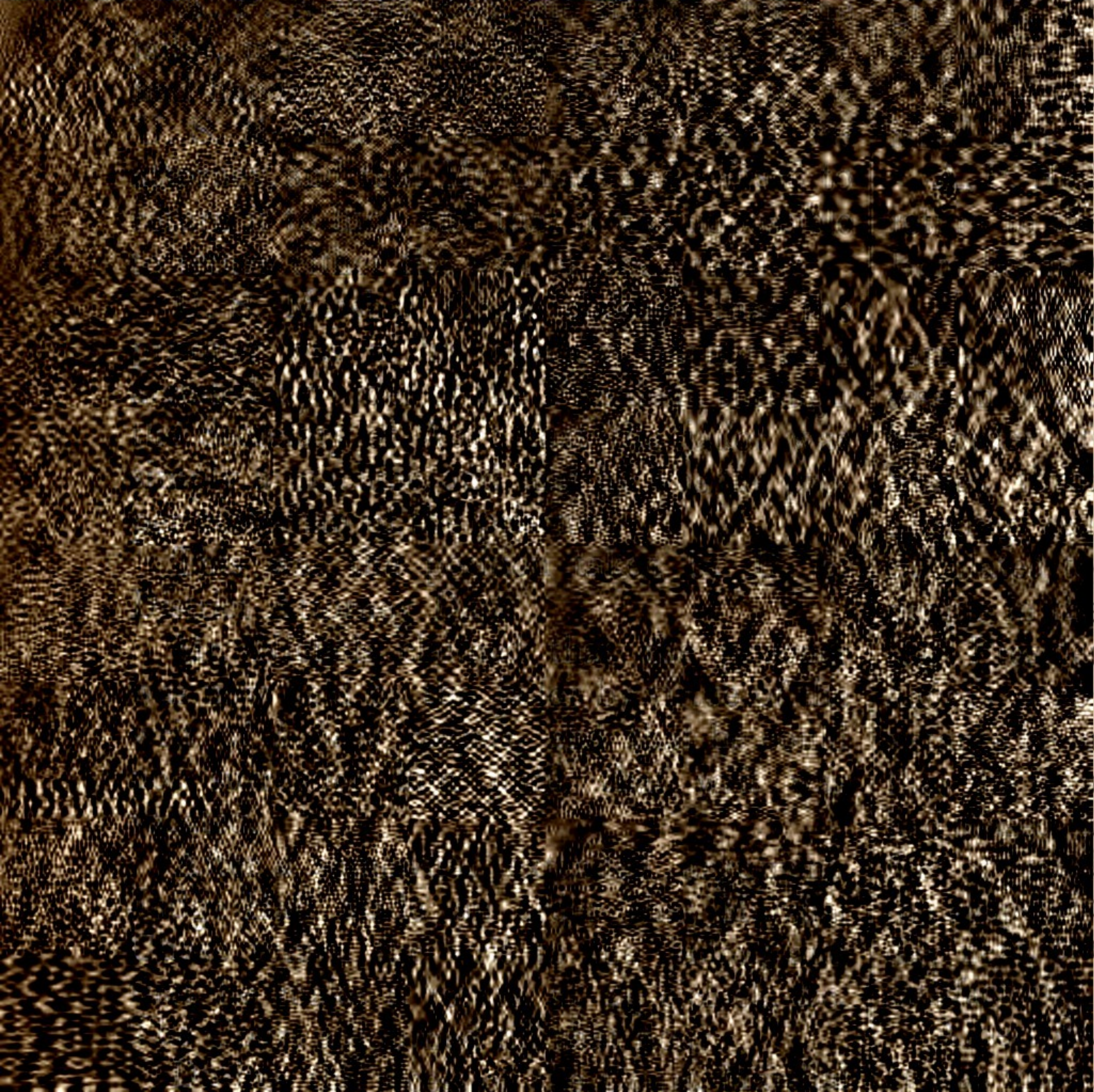
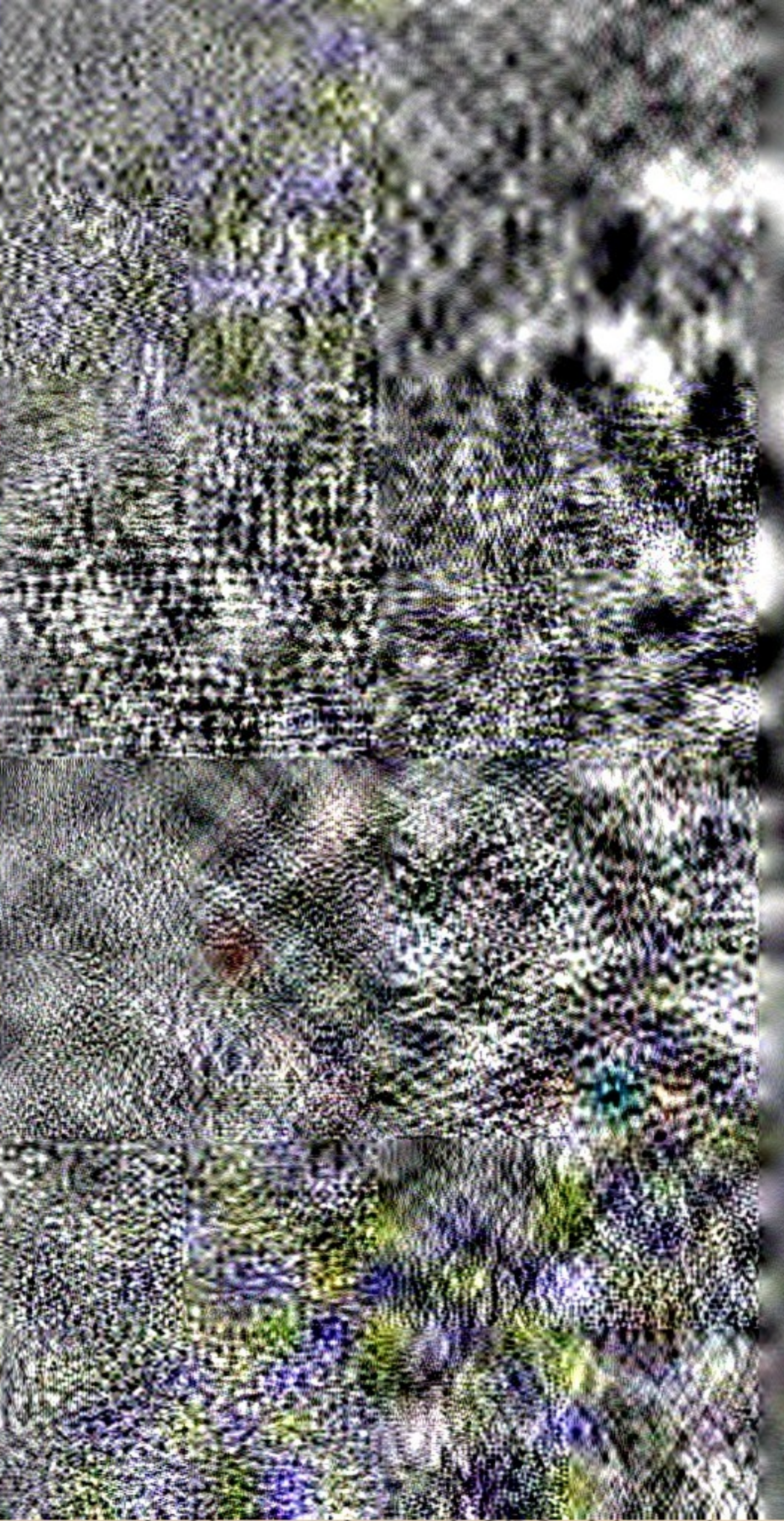




William F. Best, that Edward  
 y present, has received from  
 est, and detained from him,  
 l, the writ of *habeas corpus*  
 ed in this matter, (and direct-  
 ed to said William F. Best,)  
 revented his obedience to said  
 y order and direct the said  
 ase to deliver the said writ to  
 or to the undersigned, or  
 efore me, at the U. S. Court  
 in Buffalo, at half-past two o'clock  
 this afternoon, why he shall not be com-  
 mitted to prison for contempt.

N. K. HALL,  
 U. S. Dist. Judge.

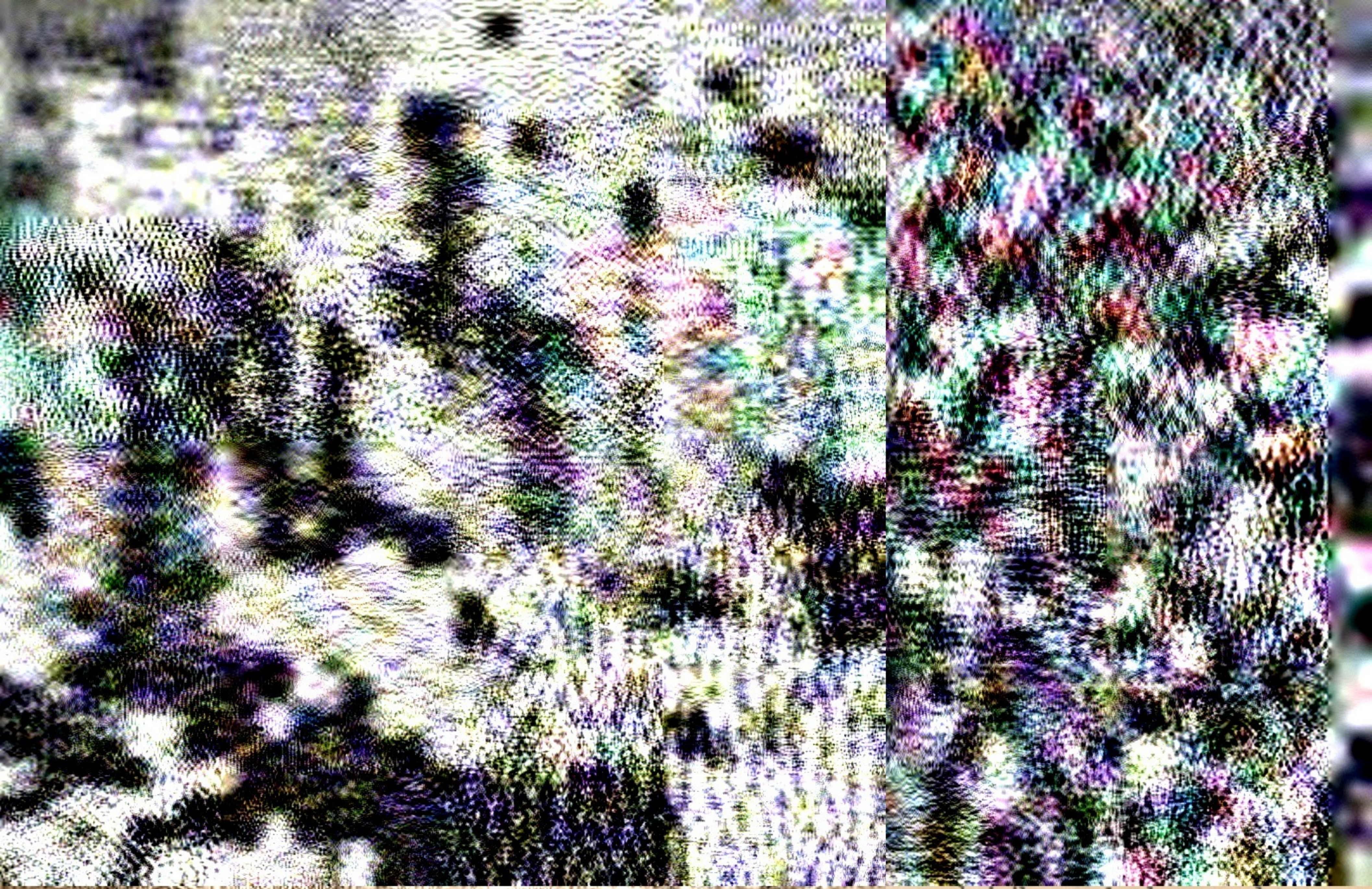
Alfred Stevens, the Deputy Marshal  
 was made a party as well as the jailor, who  
 had his actual custody. The return of  
 Stevens was a curiosity. The object of mak-  
 ing Stevens a party was to enable him to  
 produce any evidence showing Benedict had  
 done anything worthy of bonds. He de-  
 clared beforehand that jailor  
 Chase and  
 would  
 prevent it.  
 in the absence of the Colo-  
 regiment, Marshal Chase pro-  
 amp Morgan a company of  
 them in the vicinity of the



copy of the order of the Court  
him to return the writ.  
He said a copy would be furn-  
nols, Esq., then made the proper  
e writ, and produced Rev. J. D.  
Court.  
District Attorney Dart said, that a  
, in some way, obtained pos-  
United States prisoner, arrested  
the President of the United  
ugh the Secretary of War, for  
ditional language, or language  
weaken the confidence of the  
e Government. In such cases,  
nt has suspended the writ of  
us, and ordered that forcible re-  
ade to its execution. He hoped  
sion for arrests under this order  
nd that there would be no con-  
iction in this case. He asked  
on of proceedings until Tues-  
asting that the matter might be  
arranged before that time.  
win opposed the postponement.  
tant that the great question of  
rty in connection with the arbi-  
should be disposed of by a  
l.



l said the real question at issue  
the President had the power  
he writ of *habeas corpus*, and  
the question to be argued th



...the jailor...  
...make no such...  
...to have confidence...  
...believe they...  
...Judge Hall...  
...jailor as it is...  
...The...  
...of the...  
...moved from...  
...of...  
...can...  
...deter...  
...with...  
...to know...  
...the...  
...to do...

...as such jailor...  
...under the authority...  
...habeas corpus...  
...to which said hearing...  
...that said Wm. F. Best...  
...the body of the said Judson...  
...the said writ of habeas cor...  
...undersigned at the U. S...  
...in the city of Buffalo on the...  
...of September inst., at 11...  
...then and there to do and...  
...shall then and there be con...  
...on...  
...behalf.

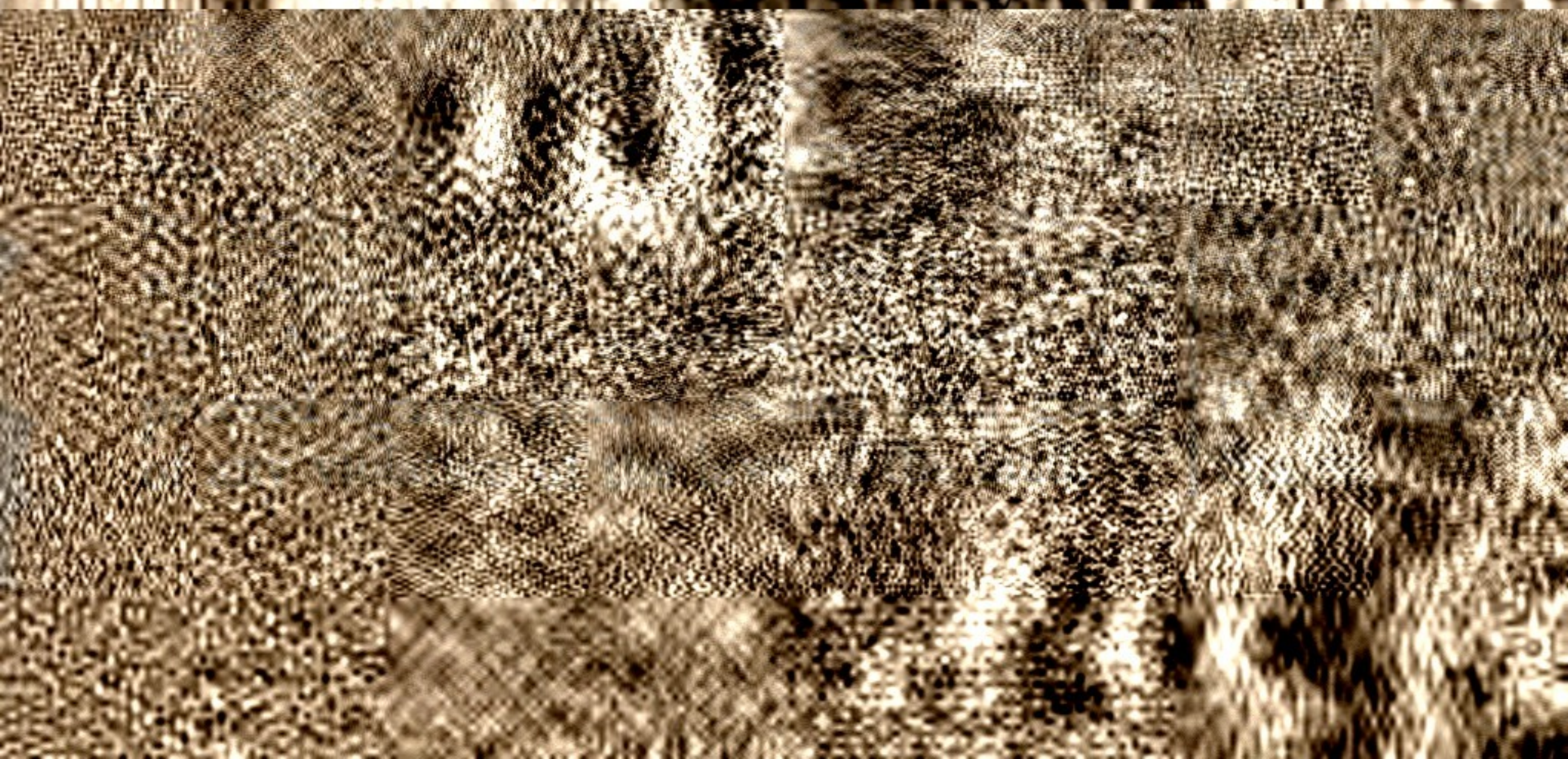
as such jailor, to be kept and  
him under the authority of  
*habeas corpus* and this order,  
to which said hearing is so  
that said Wm. F. Best pro-  
the body of the said Judson  
the said writ of *habeas cor-*  
undersigned at the U. S.  
in the city of Buffalo on the  
of September inst., at 11  
then and there to do and  
shall then and there be con-  
on...  
behalf.

N. K. HALL,  
U. S. District Judge."

...betrayed some uneasiness at  
the decree of the Judge, but remarked  
that he was a loyal man, and should re-  
spect the Court.

...the necessary papers were made  
...Benedict walked, in company  
back to his apartments at  
...it was rumored that the marshal  
the rescue of the prisoner,  
unfounded.

...stood that the marshal and  
they will send a statement of  
copies of the papers to Wash-  
wait instructions from the War  
the President. Meanwhile  
in the custody of the highest  
to the people of the United

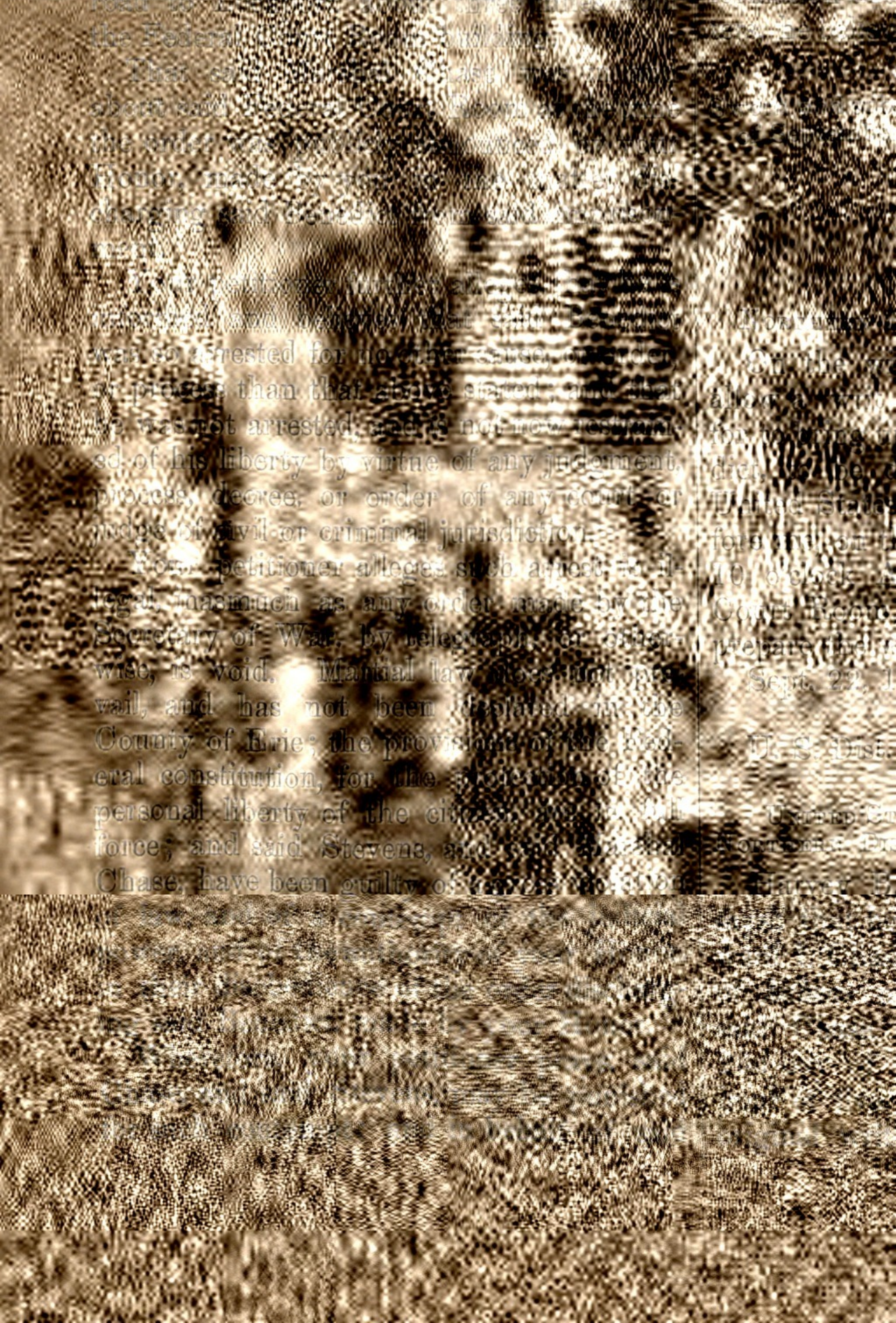
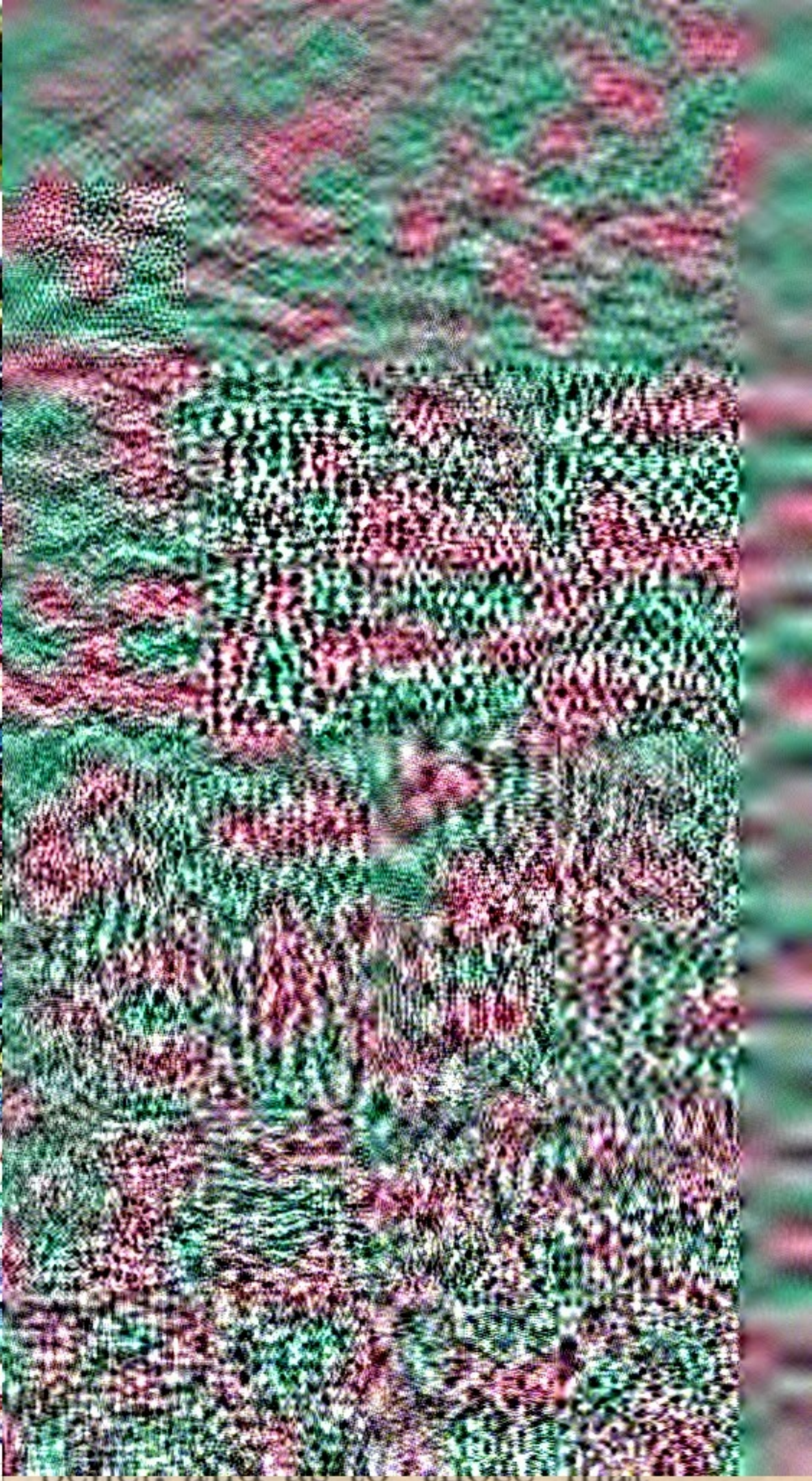


laws of the United States, or  
arrest, other than that set  
return, they should make it  
had prepared an opinion in  
bodying its legal bearings  
uld publish as his justification.  
like an order discharging the  
arrest, no cause having been  
he should be detained. The  
copy of his order :

HABEAS CORPUS,  
OF JUDSON D. BENEDICT

Judson D. Benedict having this  
in brought before me in pur-  
annexed writ of *habeas corpus*  
d the counsel of the said peti-  
filed a demurrer to the return  
rit made by W. F. Best, jailor,  
statement heretofore made by  
deputy marshal, (no one ap-  
pose the discharge,) I having  
*parte* to hear and consider  
ow presented, and determined  
cause for the arrest, imprison-  
ention of the said Benedict is  
l return or said statement and  
aving invited all persons pres-  
proof, if any could be made,  
Benedict had been guilty of  
gainst the laws of the United  
as subject to arrest for any  
than that appearing on said





...and as to those that  
 es it to be true.  
 ALBERT SAWIN.  
 ...scribed, this 23d day }  
 , 1862, before me, }  
 GEO. GORHAM,  
 United States Com'r.  
 (Endorsed.)  
 DISTRICT OF NEW YORK:  
 On the within petition and affidavit, I  
 do hereby grant a writ of *habeas corpus* as prayed  
 for in the body of Judson D. Bene-  
 dict, to be directed to Edward I Chase,  
 United States Marshal, and returnable be-  
 fore me on the 25th of September inst., at  
 10 o'clock, A. M., at the United States  
 Court House in Buffalo. The Clerk will  
 prepare the writ.  
 Sept. 22, 1862.  
 N. K. HALL,  
 U. S. Dist. Judge, N. Dist., of New York.  
 UNITED STATES OF AMERICA, }  
 DISTRICT OF NEW YORK, } ss.  
 I, the undersigned, Ransom being duly sworn,  
 do hereby certify that I am well acquainted with Ed-  
 ward I Chase, named in annexed copy writ  
*habeas corpus*. That he served upon  
 me at the City of Buffalo, on the  
 23d day of September inst., at about the  
 10 o'clock, P. M., of that day, an  
 order for a writ of *habeas corpus*, with the



ment to detain him in custody until the further order of said department. For safe keeping said Benedict was removed from Fort Porter to the jail of Erie county.

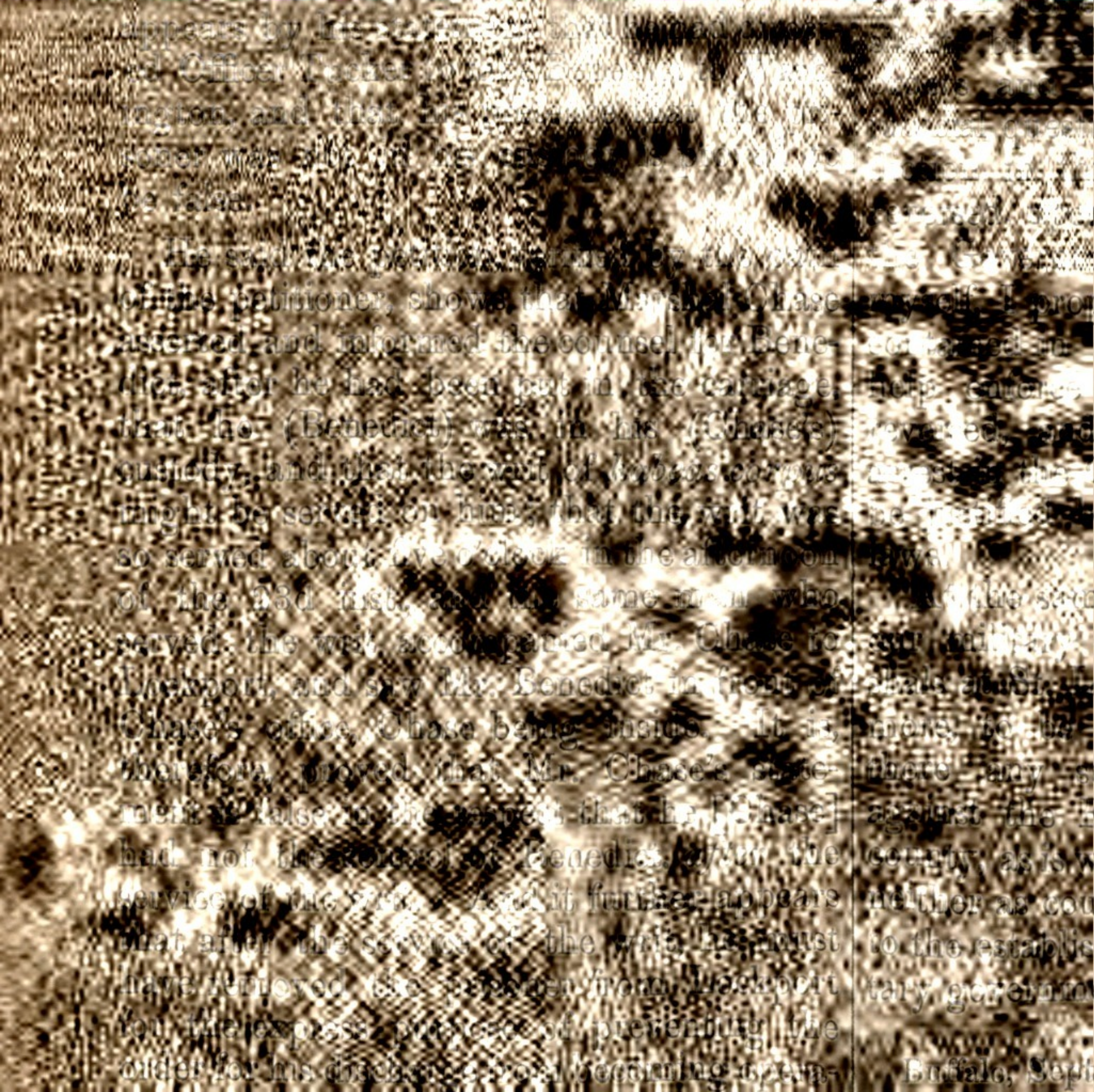
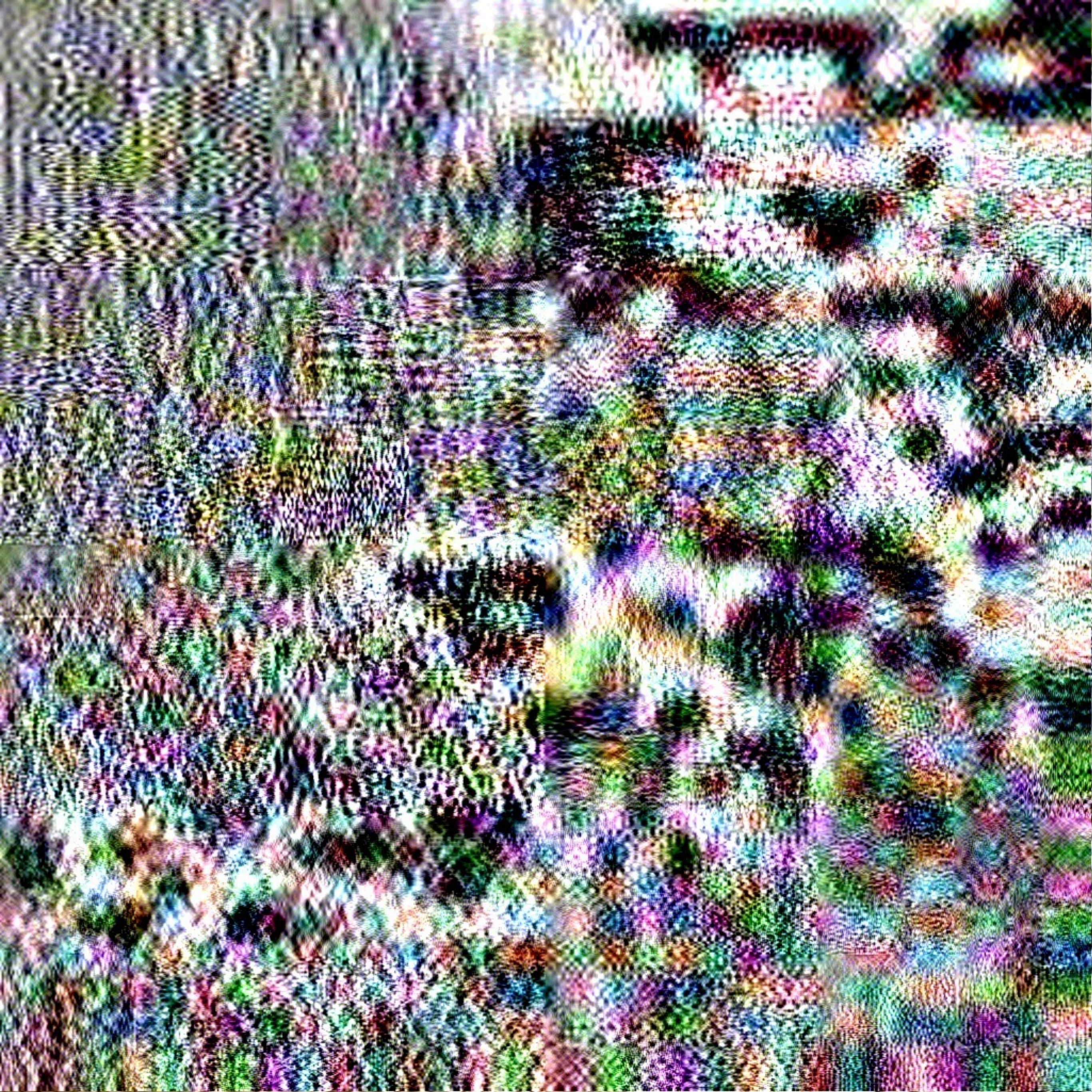
Afterwards, as is said, a writ of *habeas corpus*, directed to said Stevens and William F. Best, the jailor, was delivered to

country, thought it my duty to return to you the annexed writ of *habeas corpus*, and make the foregoing statement."

Very respectfully,

EDWARD I. CHASE,  
U. S. Marshal.

Dated the 25th day of September, A. D , 1862.

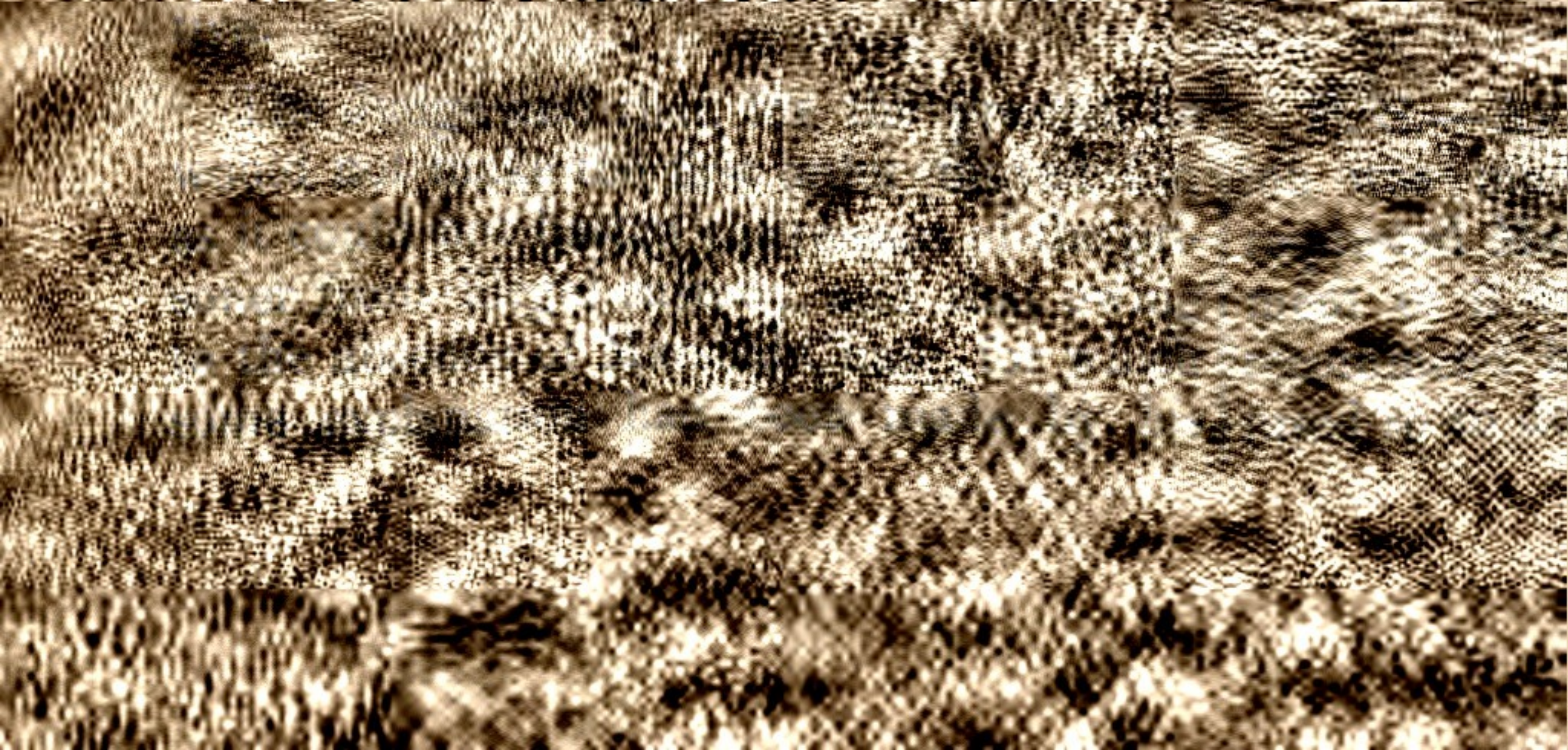


, that the laws are not here  
 ive and speaking; that the  
 decrees of Courts upon all  
 ions of which they have juris-  
 is locality are binding until  
 n Marshals, Cabinet officers,  
 ment, and the President. for  
 propose to abide by the principles  
 the opinion of Judge Hall,  
 obedience to his order until  
 resist by all legal ways any  
 City of Buffalo that can not  
 y the Constitution and the

at the same time I believe the acts of  
 commanders or provost mar-  
 ouis, New Orleans and Balti-  
 entirely justifiable, and were  
 any such dangerous conspirators  
 against the Federal Government in this  
 country as is well known exists in those cities,  
 whether as counsel or citizen, would I object  
 to the establishment of a like despotic mili-  
 tary government in this county.

ALBERT SAWIN.

Buffalo, Sept. 28, 1862.



soon as the above final decis-  
 le, the son of Mr. Benedict  
 rshal Chase to write a state-  
 to the Secretary of War, and  
 his release. The marshal re-