Marisa Wright
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Department's guidance may support the Protective View of the NVRA's 90-day quiet period provision.

Even if the quiet period does not wholly apply to such challenges, there is still a case to be made that removals based on certain types of challenges are still prohibited by the NVRA—if they are made pursuant to "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(c)(2)(A). A limiting provision immediately follows the 90-day quiet period provision; it states that the provision "shall not be construed to preclude—(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or (ii) correction of registration records pursuant to this subchapter." *Id.* § 20507(c)(2)(B). This limiting provision directs toward the General Removal Provision, which states that registered voters may not be removed from the voter rolls except:

> (3)(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity...
>
> (4)(A) the death of the registrant…

Id. §§ 20507(a)(3)(A), 20507(a)(3)(B), 20507(a)(4)(A). Thus, the NVRA creates four exceptions to the 90-day quiet period provision: (1) States may make "correction of registration records"; or States may remove names (2) at the request of the registrant; (3) as provided by State law, by reason of criminal conviction or mental incapacity; and (4) upon death of the registrant. Removals resulting from challenges made based on registrant conviction, incapacity, or death may fall within the exceptions to the NVRA's 90-day quiet period provision, making them

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permissible. The exceptions to the 90-day provision provide that States may remove names from the list of eligible voters during the 90 days preceding a primary or general election due to registrant conviction, incapacity, or death. *Id.* § 20507(c)(2)(B). Thus, it is possible that States may remove names from the list of eligible voters because of challenges submitted on the basis that a registrant was criminally convicted, is mentally incapacitated, or died.

Removals resulting from challenges made based on any other reason than registrant conviction, incapacity, or death may not fall within the exceptions to the NVRA's 90-day quiet period provision. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Const. Co.*, 446 U.S. 608, 616–17 (1980); *see also United States v. Brockamp*, 519 U.S. 347, 352 (1997) (noting that an "explicit listing of exceptions" indicates that "Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute"). In *Arcia*, 772 F.3d at 1344–45., the court held that removal of non-citizens during a period within 90 days of a primary and general election violated the NVRA's 90-day quiet period because, inter alia, removal of non-citizens does not fall within one of the exceptions to the 90-day provision. Like in *Arcia*, removals of voters from a state's list based on challenges not made based on registrant conviction, incapacity, or death may not fall within one of the exceptions to the 90-day quiet period provision. Removals based on a change of address, for example, are explicitly left out of the exceptions. Although including (4)(A) of subsection (a), the Exceptions Provision, 52 U.S.C. § 20507(c)(2)(B), does not include (4)(B) of subsection (a), which allows removal based on "a change in the residence of the registrant..." 52 U.S.C. §§ 20507(a)(4)(B); *see also United States v. Fla.*, 870 F. Supp. 2d 1346, 1350 (N.D. Fla. 2012) ("During the 90–day quiet period, a state may pursue a program to systematically remove

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registrants on request or based on a criminal conviction, mental incapacity, or death, but not based on a change of residence."). Thus, removals based on challenges made for reasons other than registrant conviction, incapacity, or death may not fall within the exceptions to the NVRA's 90-day quiet period provision.

B. Purpose of the NVRA

The purposes of the NVRA may support the Protective View of the 90-day quiet period provision because challenges can undermine the goals of accurate voter rolls, increasing participation, and protecting the integrity of elections. The NVRA states its four purposes are:

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
> (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
> (3) to protect the integrity of the electoral process; and
> (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501(b). All four purposes are implicated by challenges that result in removals from voter rolls within 90 days of an election. Challenges, particularly those done by regular citizens (and not sophisticated political operations), may employ haphazard methodologies of verifying registrant information. The amateur nature of these challenges can result in inaccurate information being collected and submitted to states. The 90-day window before an election may not provide enough time for states to carefully and methodically evaluate information submitted from challenges, resulting in a risk that people are mistakenly or otherwise impermissibly removed. The risk of unwarranted removals undermines the goal of maintaining the integrity of the electoral process and ensuring the accuracy of voter registration rolls by disenfranchising otherwise eligible voters. The risk of unwarranted removals also

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undermines the goals of enhancing participation of eligible voters because voters who are not listed on the state's list of registered voters will not be able to vote, though they may be able to submit a provisional ballot in some jurisdictions (provisional ballots are usually accompanied by some verification requirement, which can be a barrier for voters). In this way, unwarranted removals hinder participation at best and altogether prevent participation at worst. Finally, the risk of unwarranted removals undermines the goal of increasing the number of eligible citizens who register to vote because a removal necessarily reduces the number of registered voters. Thus, the purposes of the NVRA can be used to support the Protective View of the 90-day quiet period provision.

III. Arguments Against Applying the Quiet Period to Mass Challenges

A. Text of the NVRA

The statute's textual reference to "voter removal programs" may limit the application of the 90-day quiet period provision to only programs established by a state and not efforts initiated by challengers. Just before the 90-day quiet period provision, the NVRA refers to voter removal programs as programs that a state "establish[es]." 52 U.S.C. § 20507(c)(1). The meaning of "voter removal program[]" is not provided in the statute's list of definitions. *See id.* § 20502. One view of this provision might be that the statute exclusively discusses voter removal programs that are established by the state, meaning that only state-established programs of removal must be completed within 90 days of an election. On the other hand, the 90-day quiet period provision refers to "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." *Id.* § 20507(c)(2)(A). This language seems to define voter removal programs more narrowly by only referring to programs with the purpose of systematically removing names of ineligible voters. One could argue that

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these two provisions are speaking of programs in different ways such that the part of § 20507(c)(1) referring to states establishing voter removal programs does not apply to § 20507(c)(2)(A). One could further argue that because the language of states establishing voter removal programs was not included in § 20507(c)(2)(A), this provision is not exclusively referring to state-established programs. This alternative view seems to be shaky at best. The fact that there is a concrete textual reference to programs as being established by states probably makes a stronger case for the view that 90-day quiet period provision only applies to state-established programs and not challenges.

B. Purpose of the NVRA

The purpose of the NVRA may support allowing removals based on individualized challenges because they do not present the same risks as systematic removals. For example, in *Arcia*, the Eleventh Circuit wrote that "[t]he 90 Day Provision by its terms only applies to programs which 'systematically' remove the names of ineligible voters. As a result, the 90 Day Provision would not bar a state from investigating potential non-citizens and removing them on the basis of individualized information, even within the 90–day window." *Arcia*, 772 F.3d at 1348 (emphasis added). Although the court's comment was made in the context of removing non-citizens from state voter lists, its broader point that removals based on "individualized information" are allowable could be viewed as permitting removals based on individual challenges so long as the county board individually verifies the information. The court does not explicitly delineate the line between systematic removals and removals based on individualized information, but it seems like the plain meaning of each word is being used in the opinion.

The *Arcia* court elaborated that removals based on individualized information are permitted under the purposes of the NVRA. The court found that the NVRA's 90-day quiet

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period provision "is designed to carefully balance these four competing purposes in the NVRA...by limiting its reach to programs that 'systematically' remove voters from the voter rolls [and] permit[ting] removals based on individualized information at any time." *Arcia*, 772 F.3d at 1346; *see also Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1368 (M.D. Ga. 2021). Further, "[i]ndividualized removals do not present the same risks as systematic removals because they are 'based on individual correspondence or rigorous individualized inquiry, leading to a smaller chance for mistakes.'" *N. Carolina State Conf. of the NAACP v. N. Carolina State Bd. of Elections,* No. 1:16CV1274, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016) (quoting *Arcia*, 772 F.3d at 1346). The *Arcia* court also found that "the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time except for the 90 days before an election because that is when the risk of disfranchising (sic) eligible voters is the greatest." *Arcia*, 772 F.3d at 1346; *see also Majority Forward*, 512 F. Supp. 3d at 1368. The Eleventh Circuit's findings, and at least two other courts' acceptance of the Eleventh Circuit's findings, indicate that individual removals of eligible voters from a state's list based on individual challenges may not violate the NVRA's 90-day quiet period provision. It is unclear, however, how a court would treat removals that result from a series of individual challenges that are coordinated as part of an arguably systematic campaign to disenfranchise voters. Still, it is possible that *Arcia* could be interpreted to permit removals based on individualized challenges.

Applicant Details

First Name	**Daniel**
Middle Initial	**W.**
Last Name	**Xu**
Citizenship Status	**U. S. Citizen**
Email Address	**daniel.xu@emory.edu**
Address	**Address** Street **1084 Mill Field Ct.** City **Great Falls** State/Territory **Virginia** Zip **22066** Country **United States**
Contact Phone Number	**7036063450**

Applicant Education

BA/BS From	**College of William and Mary**
Date of BA/BS	**May 2021**
JD/LLB From	**Emory University School of Law** **https://law.emory.edu/index.html**
Date of JD/LLB	**May 7, 2024**
Class Rank	**10%**
Law Review/Journal	**Yes**
Journal(s)	**Emory Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Hawkins, Haley
haley_hawkins@dcd.uscourts.gov
Kirk, Aaron
akirk@emory.edu
Smith, Fred
fred.smith@emory.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Daniel W. Xu
1084 Mill Field Ct.
Great Falls, VA 22066
daniel.xu@emory.edu
(703) 606-3450

May 30, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am a rising third-year student at the Emory University School of Law, and am writing to apply for a clerkship in your chambers for the 2024–2025 term. I am eager to return home to Virginia, where I grew up and intend to practice as a civil rights attorney.

While in law school, I have developed strong legal research and writing skills—producing a student comment that will be published in the *Emory Law Journal*, submitting written advocacy to the Alabama Parole Board, and drafting memoranda for the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the Eleventh Circuit. In each instance, I received praise for my thorough research, clear prose, and robust analysis. As such, I am confident in my ability to succeed as a law clerk.

My desire to clerk is driven by a deep belief in public service. Through my externships and volunteer work, I have seen the tangible effects that our legal system can have on individuals and their communities. These experiences have reinforced my decision to pursue a public interest career. Serving as your clerk would allow me to gain insight on the role of courts in promoting fairness and justice, enabling me to be a more effective advocate in the future.

I have enclosed my resume, writing sample, law school transcript, and three letters of recommendation. The Honorable Jill A. Pryor, U.S. Circuit Judge for the Eleventh Circuit Court of Appeals, and her career law clerk, Elizabeth Eager, have also agreed to serve as references for my application. They can both be reached at (404) 335-6525. If you have any questions, or should you need any additional materials, I can be contacted at (703) 606-3450 or daniel.xu@emory.edu. Thank you for your consideration.

Respectfully,

Daniel W. Xu

Enclosures

DANIEL W. XU

1084 Mill Field Ct., Great Falls, VA 22066
703-606-3450 | daniel.xu@emory.edu

EDUCATION

Emory University School of Law **Atlanta, GA**
J.D. Candidate May 2024

- GPA: 3.775 (Top 10%)
- Journal: *Articles Editor*, Emory Law Journal. Selected for publication in Volume 73 (forthcoming 2024)
- Awards: Justice John Paul Stevens Public Interest Fellow, Dean's List (all semesters)
- Activities: Civil Rights Society, American Constitution Society, Asian Pacific American Law Student Association, Emory Public Interest Committee, Morningside House Coordinator, DeKalb County Election Clerk

The College of William & Mary **Williamsburg, VA**
B.A. in Public Policy, Minor in Economics May 2021

- Activities: *Fellow*, D.C. Institute for American Politics; *President*, Kappa Delta Rho Fraternity; Orientation Aide; *Residential Program Assistant*, National Institute of American History & Democracy

EXPERIENCE

Federal Defender Program, Inc. **Atlanta, GA**
Selected as a Fall 2023 Legal Extern August 2023 – November 2023

ACLU of the District of Columbia **Washington, D.C.**
Legal Intern May 2023 – Present

- Researched and drafted memoranda on issues related to the Americans with Disabilities Act and Rehabilitation Act

U.S. Court of Appeals for the Eleventh Circuit **Atlanta, GA**
Judicial Extern for the Honorable Jill A. Pryor January 2023 – April 2023

- Researched and drafted bench memoranda and opinions for cases on appeal before the Court
- Observed oral arguments before three-judge panels, as well as rehearings en banc
- Assisted chambers by writing case summaries and literature reviews

Southern Center for Human Rights **Atlanta, GA**
Legal Extern September 2022 – November 2022

- Advocated for a client, under attorney supervision, before the Alabama Board of Pardons and Paroles. Spoke with them in prison, conducted family interviews, and delivered oral and written testimony in support of their release
- Investigated juror information for a *Batson* challenge against a prosecutor's preemptory strikes
- Researched recent capital murder dispositions as part of an effort to negotiate a favorable plea bargain

U.S. District Court for the District of Columbia **Washington, D.C.**
Judicial Intern for the Honorable Reggie B. Walton May 2022 – July 2022

- Researched and drafted memorandum opinions resolving 12(b)(1) and 12(b)(6) motions to dismiss
- Proofread documents and citations written by clerks, court attorneys, and other interns
- Observed jury trials, motion hearings, re-entry progress hearings, and other court proceedings

Emory LGBTQ+ Legal Services Clinic **Atlanta, GA**
Clinic Volunteer October 2021 – May 2022

- Examined state-level approaches to conversion therapy regulation. Reviewed how states and circuits addressed marriage equality prior to *Obergefell v. Hodges*. Analyzed cases, state constitutions, and state statutes

Chicago Justice Project **Chicago, IL**
Open Cities Project Remote Volunteer October 2021 – December 2021

- Researched and drafted legal memoranda on public information laws and the availability of police accountability data

Emory Public Interest Committee **Atlanta, GA**
"Know Your Rights" Volunteer September 2021 – May 2022

- Instructed high school students about their rights and responsibilities during encounters with law enforcement officers

ICF International, Inc. (ICF) **Fairfax, VA**
Workforce Innovations and Poverty Solutions (WIPS) Intern June 2020 – August 2020

- Compiled, organized, and visualized data for federal contract reports
- Drafted literature reviews on community victimization, social determinants of health, and workforce readiness

ADDITIONAL INFORMATION

Fluent Mandarin speaker. Former competitive chess player (USCF 1631). Avid Washington Wizards fan.

Advising Document - Do Not Disseminate

Name: **Daniel Xu**
Student ID: **2537607**

Institution Info: Emory University
Student Address: 1084 Mill Field Ct
Great Falls, VA 22066-1868
Print Date: 05/16/2023

Beginning of Academic Record

Fall 2021

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	505	Civil Procedure	4.000	4.000	A-	14.800
LAW	510	Legislation/Regulation	2.000	2.000	A-	7.400
LAW	520	Contracts	4.000	4.000	A-	14.800
LAW	535A	Intro.Lgl Anlys, Rsrch & Comm	2.000	2.000	A	8.000
LAW	550	Torts	4.000	4.000	B+	13.200
LAW	599A	Professionalism Program	0.000	0.000	S	0.000
LAW	599B	Career Strategy & Design	0.000	0.000	S	0.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.638	Term Totals	16.000	16.000	16.000	58.200
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.638	Comb Totals	16.000	16.000	16.000	58.200
Cum GPA	3.638	Cum Totals	16.000	16.000	16.000	58.200
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.638	Comb Totals	16.000	16.000	16.000	58.200

Spring 2022

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	525	Criminal Law	3.000	3.000	A	12.000
LAW	530	Constitutional Law I	4.000	4.000	A	16.000
LAW	535B	Introduction to Legal Advocacy	2.000	2.000	A	8.000
LAW	545	Property	4.000	4.000	A	16.000
LAW	599A	Professionalism Program	0.000	0.000	S	0.000
LAW	701	Administrative Law	3.000	3.000	B+	9.900

			Attempted	Earned	GPA Units	Points
Term GPA	3.869	Term Totals	16.000	16.000	16.000	61.900
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.869	Comb Totals	16.000	16.000	16.000	61.900
Cum GPA	3.753	Cum Totals	32.000	32.000	32.000	120.100
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.753	Comb Totals	32.000	32.000	32.000	120.100

Fall 2022

Program: Doctor of Law
Plan: Law Major

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Name: **Daniel Xu**
Student ID: **2537607**

Course		Description	Attempted	Earned	Grade	Points
LAW	669	Employment Discrimination	3.000	3.000	A	12.000
LAW	747	Legal Profession	3.000	3.000	B+	9.900
LAW	844A	Judicial Decision Making	3.000	3.000	A	12.000
LAW	870A	EXTERN: Public Interest	1.000	1.000	S	0.000
LAW	871	Extern: Fieldwork	2.000	2.000	S	0.000
Course Topic:		Fieldwork: 150 Hours (2 units)				

			Attempted	Earned	GPA Units	Points
Term GPA	3.767	Term Totals	12.000	12.000	9.000	33.900
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.767	Comb Totals	12.000	12.000	9.000	33.900
Cum GPA	3.756	Cum Totals	44.000	44.000	41.000	154.000
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.756	Comb Totals	44.000	44.000	41.000	154.000

Spring 2023

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	632X	Evidence	3.000	3.000	B+	9.900
LAW	671	Trial Techniques	2.000	2.000	S	0.000
LAW	721	Federal Courts	3.000	3.000	A	12.000
LAW	729X	State Constitutional Law	2.000	2.000	A	8.000
LAW	870E	EXTERN: Judicial	1.000	1.000	S	0.000
LAW	871	Extern: Fieldwork	2.000	2.000	S	0.000
LAW	885	Emory Law Journal:Second Year	2.000	2.000	A+	8.600

			Attempted	Earned	GPA Units	Points
Term GPA	3.850	Term Totals	15.000	15.000	10.000	38.500
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.850	Comb Totals	15.000	15.000	10.000	38.500
Cum GPA	3.775	Cum Totals	59.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	59.000	59.000	51.000	192.500

Fall 2023

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	622A	Const'lCrim.Proc:Investigation	3.000	0.000		0.000
LAW	635	Child Welfare Law and Policy	2.000	0.000		0.000
LAW	675	Constitutional Lit	3.000	0.000		0.000
LAW	731L	Crimmigration	2.000	0.000		0.000
LAW	860A	Colloquium Series Workshop	2.000	0.000		0.000
LAW	870I	EXTERN: Advanced	1.000	0.000		0.000
LAW	871	Extern: Fieldwork	2.000	0.000		0.000

			Attempted	Earned	GPA Units	Points
Term GPA	0.000	Term Totals	15.000	0.000	0.000	0.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	0.000	Comb Totals	15.000	0.000	0.000	0.000

EMORY

Advising Document - Do Not Disseminate

Name: **Daniel Xu**
Student ID: **2537607**

Cum GPA	3.775	Cum Totals	74.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	74.000	59.000	51.000	192.500

Law Career Totals

Cum GPA:	3.775	Cum Totals	74.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	74.000	59.000	51.000	192.500

End of Advising Document - Do Not Disseminate

United States District Court
for the District of Columbia
Washington, D.C. 20001

Chambers of
Reggie B. Walton
United States District Judge

October 14, 2022

Dear Judge:

I write to enthusiastically recommend Daniel Xu for a clerkship in your chambers. I currently serve as a law clerk to the Honorable Reggie B. Walton of the United States District Court for the District of Columbia.

Daniel served as one of nine interns in Judge Walton's chambers during the summer of 2022, and was a stand-out, both in terms of his work product and engagement as part of our chambers community. Interns for Judge Walton are responsible for drafting substantive writing assignments resolving pending motions in active cases before Judge Walton, including memorandum opinions, orders, and bench memoranda; editing and Bluebooking opinions and orders drafted by Judge Walton's clerks; and attending Judge Walton's hearings.

As Daniel's supervisor, I found that his work to be very strong. For his main substantive assignment, he prepared a memorandum opinion resolving a pending motion to dismiss in a civil case. This assignment required significant research skills, analysis, and critical thinking on Daniel's part, as it presented a novel issue over which there is currently a circuit split and no clear D.C. Circuit precedent. Daniel not only met, but exceeded, this challenge. His research was thorough, and his draft was well-constructed and required fewer edits than I would normally give to an intern. Throughout this assignment, Daniel took the initiative to set up in-person meetings with me to orally discuss his research findings and the progress of his assignment, demonstrating effective communication skills. These conversations with Daniel reminded me of the collaborative conversations I often have with my co-clerks—conversations which I have found to be an essential part of a well-functioning chambers environment.

Additionally, Daniel is a pleasant and friendly person. He took the initiative to get to know Judge Walton and his law clerks on a personal level and was well-liked in chambers. I have no doubt that Daniel's capacity for critical thinking, strong writing and research skills, and collegiality would make him a valuable addition to any chambers. I would be happy to discuss his qualifications in further detail and can be reached at (336) 404-2873.

Sincerely,

Haley Hawkins
Law Clerk to the Hon. Reggie B. Walton
Term: October 2021 to September 2023

June 9, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Re: Clerkship Application of Daniel Xu

Dear Judge Walker:

I am writing with enthusiasm to recommend Daniel Xu for a clerkship. Daniel is an excellent student, legal analyst, and writer. I am confident that as a judicial clerk, he will apply his formidable skills with great success.

Daniel was a student in my Introduction to Legal Analysis, Research, and Communication course at Emory University School of Law during his first year in law school (the 2021 fall semester and the 2022 spring semester). My class is very writing intensive. In the fall semester, students write two memoranda based on state law issues. In the spring semester, they write an appellate brief based on an issue of federal law and participate in an oral argument exercise. Throughout the year, I review and provide feedback on multiple drafts of their written work and discuss their work with them individually.

I have taught law students for 15 years, and Daniel was one of my very best students. During the two semesters I taught him, Daniel's analysis consistently was clear eyed and his work product polished. He was writing at the level of a junior attorney by the middle of the fall semester.

In addition, Daniel was a pleasure to work with both in and outside of class. Daniel is very responsive to constructive criticism. I demand a lot from my students, and many become frustrated by my expectations. If Daniel ever was frustrated, he never showed it. To the contrary, he was a model of professionalism. I always looked forward to his visits during my office hours; Daniel is personable and engaging, and his views are insightful.

I have no doubt that Daniel will excel at any legal endeavor to which he applies his considerable skills, and I am confident that he will be an excellent judicial clerk after he graduates. I highly

EMORY SCHOOL OF LAW

recommend Daniel for a clerkship. Please feel free to contact me if you wish to discuss his candidacy.

Very truly yours,

Aaron R. Kirk
Professor of Practice, Introduction to Legal Analysis, Research, and Communication and Introduction to Legal Advocacy

EMORY LAW

Fred Smith, Jr.
Charles Howard Candler Professor of Law

June 9, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Recommendation Letter for Daniel Xu

Dear Judge Walker:

It is my pleasure to recommend Daniel Xu—an exceptional student in Emory Law School's class of 2024— for a judicial clerkship. Over the past year, I have assessed Daniel's clerkship potential in three settings. First, he authored a substantial research paper that I supervised. Second, Daniel enrolled in a small, writing-intensive seminar that I co-taught. Third, I taught Daniel in Federal Courts. My resultant impression is that Daniel would make a first-rate clerk. Indeed, I have invited him to serve as my research assistant next year. He is brilliant, mature, inquisitive, and kind. Further, he writes with elegance, clarity, and sophistication. I recommend him enthusiastically.

I first encountered Daniel in the fall of his second year of law school, when he asked me to serve as his advisor for a research paper he was submitting to the Emory Law Journal. (Each year, students on the journal write and submit research papers for potential publication.) Daniel chose to write about state criminal liability for unconstitutional violence. Because he chose to write about state law rather than federal law, he had to carefully canvas relevant legal regimes in all fifty states. Moreover, he needed to identify trends and flaws in current doctrine as he developed a workable, balanced recommendation. I was impressed with his detailed research and careful analysis. Further, I appreciated how receptive he was to critical feedback. He genuinely welcomed the opportunity to work through potential gaps in his arguments as he edited the paper. That said, Daniel is no pushover. He defended his ideas where appropriate with well-reasoned arguments and data. It was no surprise to me at all that Emory Law Journal ultimately selected his piece of publication. I assigned the paper an A+.

The second setting in which I have gotten to know Daniel is a class called State Constitutional Law that I co-teach with a former Chief Justice of the Georgia Supreme Court. Eighteen students are enrolled in the class. All are expected to do fairly heavy reading and come

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to class prepared to carefully engage in discussions. Students also submit two required papers over the course of the semester. In this class, Daniel was one of the stars. It was genuinely a joy to call on him in class because I always knew his comments would be filled with non-obvious insights that meaningfully advanced the discussion. I learned a great deal from that commentary.

Moreover, Daniel authored two excellent papers for State Constitutional Law. The first paper was about educational adequacy requirements in state constitutions. In my written feedback to Daniel about the paper, I called it "thoughtful," "well-balanced," and "insightful." The second paper addressed the intersection of property rights and economic development. In my written feedback, I called it "excellent work," "well-reasoned," and "easy to follow. My colleague offered similarly high praise of both papers. Daniel was one of the few students in the course who received an A on both of the assigned papers. Ultimately, he earned an A in the course.

Another setting where I got to know Daniel was in Federal Courts during the second semester of his 2L year. That course covers topics that are central to any Article III clerkship: subject matter jurisdiction; appealability; justiciability; abstention; immunity; Congressional control of federal courts; and habeas. The habeas component of that course involves a deep dive into the most complex aspects of habeas: procedural default; second or successive petitions; retroactivity; deference to state court adjudications under 28 U.S.C. §2254(d); and exhaustion. Daniel's visits to office hours and his commentary in class showed careful engaged these complex doctrines. It was therefore not a surprise that of the 69 students who enrolled in Federal Courts, Daniel wrote the third best exam in the class. Accordingly, he earned an A. For context, Federal Courts consistently attracts the top students at Emory Law and, as such, it is exceptionally difficult to earn an A in that setting.

I hope this letter conveys my enthusiastic endorsement of this clerkship application. Daniel is going to make a formidable lawyer. As he begins that path, any chambers would be fortunate to have him as a clerk. He has a gift for seeing both the big picture and the details. He writes beautifully and clearly. And he is a pleasure with whom to work. If you have any further questions, please do not hesitate to contact me at 706-540-4525.

Best regards,

Fred Smith, Jr.

DANIEL W. XU
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WRITING SAMPLE

This memorandum opinion draft was researched and written during my summer internship in the Chambers of the Honorable Reggie B. Walton, United States District Judge for the District of Columbia. It is my original work, but reflects feedback from my supervising clerk. It has been redacted, condensed, and approved for use as a writing sample.

Written Summer 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[redacted],	)	
Plaintiff,	)	
v.	)	Civil Action No. [redacted]
[redacted],	)	
Defendant.	)	

MEMORANDUM OPINION

The plaintiff, [redacted], brings this civil action against the defendant [redacted], asserting a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. ("ADA"). See Amended Complaint ("Am. Compl.") at 1, ¶¶ 7–14, ECF No. 32. Currently pending before the Court is the Defendant's Motion to Dismiss ("Def.'s Mot." or the "defendant's motion"), ECF No. 31. Upon careful consideration of the parties' submissions,[1] the Court concludes for the following reasons that it must grant the defendant's motion to dismiss to the extent that it seeks dismissal for failure to state a claim but deny it in all other respects.

I. BACKGROUND

A. Factual Background

The plaintiff initiated this civil action on August 11, 2020. See generally Compl. ¶ 18. The plaintiff resides in [redacted], and states that she is "an individual with disabilities as defined by the ADA." Am. Compl. ¶ 1. She requires various accommodations because she is "unable to . . . walk[] more than a few steps without assistive devices[,] . . . is bound to . . . a wheelchair[,] . . . and has limited use of her hands." Id. The defendant owns a "place of public accommodation . . . known as [redacted][,]" located on [redacted] in Washington, D.C. (the "hotel"), id. ¶ 2, and utilizes an online reservations system ("ORS" or "websites") so that "members of the public may reserve guest accommodations and review

[1] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the plaintiff's original Complaint ("Compl."), ECF No. 2; (2) the plaintiff's Statement Made Pursuant to 28 U.S.C. Section 1746 ("Pl.'s Statement"), ECF No. 29-2; (3) the Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss ("Def.'s Mem."), ECF No. 31-1; (4) the Plaintiff's Memorandum in Opposition to Motion to Dismiss ("Pl.'s Opp'n"), ECF No. 33; (5) the Defendant's Supplemental Authority in Support of Motion to Dismiss ("Def.'s Suppl. Auth."), ECF No. 34; and (6) the Plaintiff's Response to Notice of Supplemental Authority ("Pl.'s Resp. Suppl. Auth."), ECF No. 35.

information pertaining to . . . [the] accommodations of the [hotel,]" id. ¶ 9. This ORS includes third-party websites such as booking.com, expedia.com, and priceline.com. See id. The defendant is being sued for alleged violations of 28 C.F.R. § 36.302(e) and Title III of the ADA. See id. at 1, 11 ¶¶ 6–10, 13, 19, 22, 24.

This action is one of many similar lawsuits that have been initiated by the plaintiff around the country. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]) ("In total, [the p]laintiff has filed at least 557 suits in sixteen different states, plus the District of Columbia."). The plaintiff identifies as a "tester" who files such actions "for the purpose of asserting her civil rights and . . . determining whether places of public accommodation . . . are in compliance with the ADA." Compl. ¶ 2. Despite the plaintiff's use "of nearly identically drafted [c]omplaints[,]" her lawsuits have generated inconsistent rulings, with "myriad decisions cutting both ways across the country." [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]) (citation omitted). Notably, another member of this Court recently dismissed one of the plaintiff's lawsuits for lack of standing. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D.D.C. [redacted]), aff'd, [redacted], [redacted] WL [redacted] (D.C. Cir. [redacted]).

In the case currently before the Court, the plaintiff visited the defendant's ORS in July 2020 "for the purpose of reviewing and assessing the accessible features at the [hotel] and ascertain[ing] whether they met the requirements of [the ADA Regulation.]" Am. Compl. ¶ 10. She wanted to "ascertain[] whether or not she would be able to stay at the hotel[,]" as she "planned to travel to various states around the country, including Washington, D.C.[,] as soon as the [COVID-19] crisis abated[.]" Id. However, the plaintiff was unable to do so because the defendant's ORS "did not identify or allow for reservation of accessible guest rooms and did not provide sufficient information regarding accessibility at the hotel." Id. at ¶ 10.

In June 2021,[2] the plaintiff "again reviewed [the d]efendant's ORS and found that it still did not comply with the [ADA] Regulation[.]" Id. ¶ 13. She did so "for the purpose of planning her [upcoming] trip and ascertaining where on her trip she would be able to book an accessible room at an accessible hotel." Id. That summer,[3] the plaintiff traveled by car through Washington, D.C., and several other states (the "summer 2021 trip"). See id. While in Washington, D.C., she "needed a hotel to stay in[.]" Pl.'s Opp'n at 4. However, since the defendant's ORS did not contain accessibility information that was required by the ADA Regulation, the plaintiff alleges that she was unable to "ascertain[] whether . . . she would be

[2] There are inconsistencies in the plaintiff's filings about the timing of this ORS visit. In her Amended Complaint and Response to Supplemental Authority, the plaintiff states that she visited the ORS in June 2021. See Am. Compl. ¶ 13; Pl.'s Resp. Suppl. Auth. at 2. However, in her Opposition, she states that this occurred in August 2021. See Pl.'s Opp'n at 4. Based upon the temporal proximity of these inconsistencies, as well as the fact that these ORS visits occurred for the purpose of planning the same cross-country trip, the Court infers that these filings refer to the same incident. Accordingly, the Court will thereafter refer to this ORS visit as the "June 2021" visit.

[3] There are also inconsistencies in the plaintiff's filings about the month that this trip occurred. In her Amended Complaint, Response to Supplemental Authority, and Statement, the plaintiff states that this trip occurred in July 2021. See Am. Compl. ¶ 13; Pl.'s Resp. Suppl. Auth. at 2; Statement ¶ 2. However, in her Opposition, the plaintiff states that this trip occurred after she "reviewed the [defendant's] ORS in August 2021[.]" See Pl.'s Opp'n at 4. Based upon the temporal proximity of these dates, and the lack of indication that the plaintiff took multiple trips, the Court infers that these filings refer to the same trip. As such, the Court will refer to it as the "summer 2021 trip."

able to stay at the hotel during her trip[,]" Am. Compl. ¶ 10, and "deprived . . . of the ability to book an accessible room in the same manner as other non-disabled persons," Pl.'s Opp'n at 4. The plaintiff states that it was "extremely difficult to find hotels with accessible rooms" and that "there were occasions when [she] had to sleep in [her] car." Pl.'s Statement ¶ 4. The plaintiff further represents that she:

> intends that, in December 2022, she will again drive from Florida to such states as New York, Maine, etc. and will therefore drive through Washington, D.C., and will need hotels along her route to comply with the [ADA] Regulation so that she can have the information she needs to select a hotel and book a room

(the "December 2022 trip"). Am. Compl. ¶ 15. During this trip, the plaintiff "will . . . revisit[the defendant's ORS] when looking for a place to stay for the night." Pl.'s Statement ¶ 5.

B. Statutory Background [Section Omitted]

C. Procedural History [Section Omitted]

II. STANDARDS OF REVIEW [Section Omitted]

III. ANALYSIS

The plaintiff alleges that "[t]he violations present at [the d]efendant's websites . . . deprive her of the information required to make meaningful choices for travel . . . and [that she] continues to suffer frustration and humiliation as the result of [those] discriminatory conditions[.]" Am. Compl. ¶ 17. She states that these violations "contribute[] to [her] sense of isolation and segregation . . . and deprive[her] of [the] equality of opportunity offered to the general public." Id. She also alleges that the defendant's violations caused her "stigmatic injury and dignitary harm because it was difficult to find hotels in which to stay[.]" Id. ¶ 15. As a result, the plaintiff has requested declaratory and injunctive relief from the Court. Id. at 11.

The defendant seeks dismissal of the plaintiff's Amended Complaint under both Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Def.'s Mot. at 1. First, the defendant argues that the plaintiff's Amended Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because the "[p]laintiff does not have standing to bring this action." Def.'s Mem. at 4. Second, the defendant argues that the plaintiff's allegations "contain[] none of the essential facts required to state a claim[,]" and therefore, should be dismissed under Federal Rule of Civil Procedure 12(b)(6). Def.'s Mem. at 10–11.

Because a 12(b)(1) motion "presents a threshold challenge to [a] court's jurisdiction[,]" Haase, 835 F.2d at 906, and because a court "can proceed no further" if it lacks subject matter jurisdiction, Simpkins v. District of Columbia Gov't, 108 F.3d 366, 371 (D.C. Cir. 1997), the Court will only conduct a 12(b)(6) analysis after determining whether the plaintiff's case survives the defendant's initial 12(b)(1) claim. See Green v. Stuyvesant, 505 F. Supp. 2d 176, 177 n.2 (D.D.C. 2007) ("[D]ue to the resolution of the defendants' Rule 12(b)(1) request, the Court does not need to address . . . alternative grounds for dismissal at this time."); Al-Owhali v.

Ashcroft, 279 F. Supp. 2d 13, 20 (D.D.C. 2003) ("Although [the d]efendant states in his motion that he is seeking dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), dismissal, if warranted, could be entered solely on Rule 12(b)(1) grounds."). Accordingly, the Court will proceed by: (1) conducting a 12(b)(1) analysis to determine whether the plaintiff has established standing, and (2) conducting a 12(b)(6) analysis to determine whether the plaintiff has stated a claim upon which relief may be granted.

A. The Defendant's 12(b)(1) Motion to Dismiss

In seeking dismissal of the plaintiff's claim under Federal Rule of Civil Procedure 12(b)(1), the defendant asserts that the plaintiff "has not demonstrated that she suffered an actual and actionable injury that satisfies the standing requirements for subject matter jurisdiction." Def.'s Mem. at 5. The defendant argues that the plaintiff's allegations are "nothing more than mere conjecture and hypothetical injury[,]" id. at 6, as the plaintiff did not actually visit the defendant's hotel during her summer 2021 trip through Washington, D.C., and does not specifically intend to book a room there during her upcoming December 2022 trip, id. at 7. Furthermore, the defendant argues that the plaintiff has not "allege[d] any imminent injury as required to warrant injunctive relief." Def.'s Mem at 7.

In response, the plaintiff states that "[t]he facts set forth in [her Amended] Complaint . . . satisfy not only the [redacted] criteria" for establishing standing, "but also every negative decision in which a court imposed [an] intent-to-book criteria."[4] Pl.'s Opp'n at 4. The plaintiff argues that she has standing because she: (1) reviewed the defendant's ORS "for the purpose of ascertaining where she could stay during her [summer 2021] trip" through D.C.; (2) "traveled to . . . [D.C.] and needed a hotel to stay in;" (3) was "deprived . . . of the ability to book an accessible room in the same manner as other non-disabled persons;" (4) was "deprived of the information she required to make a meaningful choice in selecting a hotel in which to stay;" (5) has a definite intent to return to visit D.C. again in December 2022; and (6) will "again review [the d]efendant's ORS . . . for the purpose of ascertaining where she will be able to stay." See id.

Under Article III of the United States Constitution, federal courts are limited to adjudicating actual cases or controversies. See Honig v. Doe, 484 U.S. 305, 317 (1988). "In an attempt to give meaning to Article III's case-or-controversy requirement, the courts have developed a series of . . . 'justiciability doctrines,' among which [is] standing[.]" Nat'l Treasury Employees Union v. United States, 101 F.3d 1423, 1427 (D.C. Cir. 1996) (quoting Allen v. Wright, 468 U.S. 737, 750 (1984)). Indeed, "[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy[,] . . . limit[ing] the category of litigants

[4] The plaintiff does not specify what cases she is referring to. Instead, after referencing "every other negative decision" that utilized an "intent-to-book" criteria, the plaintiff states "See, e.g.[,]" without citing any sources for the Court to consider. See Pl.'s Opp'n at 4. As such, the Court is forced to assume that the plaintiff was alluding to the string of cases where, because of her lack of intent to actually book a stay at the property in question, she was denied standing to sue. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Colo. [redacted]) ("[redacted] alleged an information injury but did not allege what, if any, 'downstream consequences' she will face from the loss of information. She did not . . . intend[] to use the ORS . . . to book an accessible room."); see also [redacted] v. [redacted], 22 F.4th [redacted], [redacted] (10th Cir. [redacted]); [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D. Colo. [redacted]); [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D. Colo. [redacted]).

empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (citation omitted). To establish Article III standing, the plaintiff must show (1) "that [s]he has suffered an injury in fact[;] . . . (2) that a causal connection exists between the injury and the conduct at issue, such that the injury is fairly traceable to the challenged conduct; and (3) that it is likely, not merely speculative, that the injury will be redressed by a decision in favor of the plaintiff." Jefferson v. Stinson Morrison Heckler LLP, 249 F. Supp. 3d 76, 80 (D.D.C. 2017) (citing Lujan, 504 U.S. at 560–61).

The defendant's 12(b)(1) motion to dismiss only contests the injury in fact requirement for Article III standing. See generally Def.'s Mem. "To establish [an] injury in fact, a plaintiff must show that . . . [he or she] suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, 578 U.S. at 339 (quoting Lujan, 504 U.S. at 560). Additionally, in an action seeking injunctive relief, "harm in the past . . . is not enough to establish[,] . . . in terms of standing, an injury in fact." Am. Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334, 336 (D.C. Cir. 2003). "[A] party has standing . . . only if [he or she] alleges . . a real and immediate . . . threat of future injury." Nat. Res. Def. Council v. Pena, 147 F.3d 1012, 1022 (D.C. Cir. 1998).

"For an injury to be particularized, it must affect the plaintiff in a personal and individualized way." Spokeo, 578 U.S. at 339 (internal quotation marks omitted) (collecting cases). However, to constitute an injury in fact, that particularized injury must also be concrete. Id. For an injury to be "concrete," it must be "de facto" and actually exist. See id. at 340 (citing Black's Law Dictionary 479 (9th ed. 2009)). "'Concrete' is not, however, necessarily synonymous with 'tangible[,]' . . . [as] intangible injuries can nevertheless be concrete." Id.

In determining whether an intangible harm is concrete enough to constitute an injury in fact, "the judgement of Congress play[s an] important role[]." Id. "Congress may 'elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.'" Id. at 341 (citing Lujan 504 U.S. at 578). For example, discriminatory treatment is often elevated in this way. See TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2205 (2021) (citing Allen, 468 U.S. at 757 n.22). Indeed, "[c]ourts must afford due respect to Congress'[s] decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's violation of that statutory prohibition or obligation." Id. at 2204 (citing Spokeo, 578 U.S. at 339). "But even though Congress may 'elevate' harms that 'exist' in the real world[,] . . . it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." Id. at 2205 (internal quotation marks omitted) (citation omitted).

However, "Article III standing requires a concrete injury even in the context of a statutory violation." Spokeo, 578 U.S. at 341. An "important difference exists between . . . a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal law, and . . . a plaintiff's suffering concrete harm because of the defendant's violation of federal law." TransUnion, 141 S. Ct. at 2205. Therefore, an injury in law does not necessarily create injury in fact. See id. "Only those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation[.]" Id. (emphasis omitted).

In this case, the plaintiff alleges two intangible harms stemming from the defendant's statutory violation: first, an informational injury for being "deprived of the information she needed to make a meaningful choice in finding places in which to stay during her trip[,]" and second, a stigmatic injury because the defendant's violation made it "difficult to find hotels in which to stay, severely limited her options, and deprived her of full and equal access to the same goods and services enjoyed by non-disabled individuals[.]" Am. Compl. ¶ 13. The defendant contests the concreteness of these two injuries, and also challenges whether the plaintiff has "demonstrate[d] the 'imminent' future injury required for . . . injunctive relief[.]" Def.'s Mem at 6 (quotation omitted). As such, the Court will proceed with its analysis by determining: (1) whether the plaintiff's informational injury, as alleged, sufficiently constitutes an injury in fact, (2) whether the plaintiff's stigmatic injury, as alleged, sufficiently constitutes an injury in fact, and (3) because the Court ultimately concludes that the plaintiff has successfully alleged a stigmatic injury, whether the plaintiff has alleged the real and immediate threat of future injury needed to support standing for injunctive relief.

1. **Informational Injury** [Section Omitted]

2. **Stigmatic Injury**

Having established that the plaintiff's alleged informational injury is insufficient to confer standing, the Court will proceed with its analysis by addressing the plaintiff's contention that she suffered a stigmatic injury. See Am. Compl. ¶ 13. The plaintiff argues that the defendant, by omitting ADA-required accessibility information from its ORS, "contribute[d] to [the p]laintiff['s] sense of isolation and segregation[,] . . . deprive[d her] of the equality of opportunity offered to the general public[,]" id. ¶ 17, and caused her to experience "stigmatic injury and dignitary harm because it was difficult to find hotels in which to stay[,]" id. ¶ 13. In response, the defendant argues that the plaintiff could not have suffered such harms without actually intending to stay at the hotel, stating that the "[p]laintiff, somehow without even visiting [the hotel] or attempting to book a guest room, claims to have suffered 'frustration, increased difficulty, stigmatic injury, and dignitary harm.'" Def.'s Mem. at 5 (quotation omitted).

"'There is no doubt that dignitary harm is cognizable' because 'stigmatic injury is one of the most serious consequences of discrimination.'" [redacted], [redacted] WL [redacted], at [redacted] (quoting Carello v. Aurora Policemen Credit Union, 930 F.3d 830, 833–34 (7th. Cir. 2019)). Indeed, "discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." Heckler v. Mathews, 465 U.S. 728, 729 (1984); see also Brintley v. Aeroquip Credit Union, 936 F.3d 489, 493–94 (6th Cir. 2019) ("It[is] true that 'dignitary harm' and 'stigmatic injury' might give rise to standing in some settings.").

However, "not all dignitary harms are sufficiently concrete to serve as injuries in fact." Griffin v. Dep't of Labor Fed. Credit Union, 912 F.3d 649, 654 (4th Cir. 2019). "While 'statutes may define what injuries are legally cognizable—including intangible or previously unrecognized harms'—they 'cannot dispense with the injury requirement altogether.'" [redacted], [redacted] WL [redacted], at [redacted] (quoting [redacted], [redacted] F.3d at [redacted]).

Consequently, "an 'abstract stigmatic injury,' standing alone, [is] not cognizable." Penkoski v. Bowser, 486 F. Supp. 3d 219, 228 (D.D.C. 2020) (quoting Allen, 468 U.S. at 755). A "plaintiff[must] show that they have been 'personally denied equal treatment by the challenged discriminatory conduct,' not just that they feel stigmatized." Penkoski, 486 F. Supp. 3d at 228 (emphasis omitted) (quoting Allen, 468 U.S. at 755); but see [redacted] v. [redacted], [redacted] F.4th [redacted], [redacted] (11th Cir. [redacted]) ("[While] a violation of an antidiscrimination law is not alone sufficient to constitute a concrete injury, . . . the emotional injury that results from [the] illegal discrimination is."). "The stigmatic injury thus requires the identification of some concrete interest with respect to which [a plaintiff is] personally subject to discriminatory treatment." Allen, 468 U.S. at 757 n.22.

Determining the level of concreteness required to support a stigmatic injury under Title III of the ADA "is, ultimately, an unsettled area of standing jurisprudence, with myriad decisions cutting both ways across the country." [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]). While existing case law does not indicate the precise point at which an interest becomes concrete enough to support a stigmatic injury in fact, "[i]n many cases the . . . question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases." Allen, 468 U.S. at 751–52. Accordingly, to determine whether the plaintiff has identified "some concrete interest" that was harmed by the defendant's alleged discrimination, the Court will proceed by comparing the facts of the current case to others that contain similar details and allegations.[5] See id. at 757 n.22.

First, the plaintiff alleges that she traveled to Washington, D.C., in summer 2021. See Am. Compl. ¶ 13. By visiting the city where the defendant's hotel was located, the plaintiff's allegations are already distinguishable from those in [redacted], where she failed to demonstrate "enough of a concrete interest" that was harmed by the defendant's ADA violation because she had not been to Washington, D.C., and "lack[ed] any allegations that she intend[ed] to visit [Washington, D.C.]" [redacted] WL [redacted], at [redacted]. Additionally, the plaintiff's allegations are distinguishable from those in [redacted] v. [redacted],[6] where she "failed to plead a concrete stigmatic or dignitary [injury]" even after alleging a visit to Eastern Colorado, the general region of the defendant's hotel. [redacted], [redacted] WL [redacted], at [redacted] (D. Colo. [redacted]). The U.S. District Court for the District of Colorado reasoned that "[Eastern Colorado] [wa]s a large swath of Colorado and could encompass numerous different places," and therefore, the plaintiff had "not alleged that she w[ould] or intend[ed] to travel to the location of the defendants' hotel[.]" Id. However, in the current case, the plaintiff traveled through "the specific [city] where [the d]efendants' hotel [was] located"—Washington, D.C. Cf. [redacted] WL

[5] Some of these cases were decided by district courts in other jurisdictions and are not binding on this Court. Nonetheless, due to their factual and legal similarities to the case at hand, as well as the shortage of analogous cases within the D.C. Circuit, this Court finds them instructive.

[6] [redacted], like the case currently before the Court, was stayed during the appeal of another of the plaintiff's suits, [redacted] v. [redacted], [redacted] F.4th [redacted], to the Tenth Circuit. See [redacted] WL [redacted], at [redacted]. When the Tenth Circuit affirmed the dismissal of [redacted] for lack of standing, the plaintiff motioned to file a supplemental complaint in [redacted], see id., just as she did when this Circuit affirmed the dismissal of [redacted], see generally Mot. File Suppl. Compl. However, in [redacted], the court denied her motion to file another complaint because her "proposed supplemental complaint [did] [not] remedy the defects in [her] original pleading." [redacted] WL [redacted], at [redacted].

, at (holding that the plaintiff did not plead a concrete injury because she "d[id] not suggest an intent to visit the specific town where [the d]efendants' hotel [wa]s located").

Second, the plaintiff's intent to return to Washington, D.C., see Am. Compl. ¶ 15, is more concrete than it was in , WL , at , and more geographically narrow than her intent to return to "Eastern Colorado" was in , WL , at . In , the plaintiff's "vague allegations" that she would visit Washington D.C. "as soon as the [COVID-19] crisis [was] over[,]" WL , at , were too speculative and "undefined" to show standing, id. (citing , WL , at). In the current case, the plaintiff specifically alleges that "she will return to the [ORS] . . . and [Washington, D.C.,] . . . in December 2022," Am. Compl. ¶ 15, and provides a description of her plans to drive through the East Coast, see Statement ¶ 5. Moreover, unlike her plans in , the plaintiff intends to return to the "specific [city] where [the d]efendants' hotel is located[.]" Cf. WL , at (holding that the "[p]laintiff's did not allege that she would visit Byers, Colorado, the site of [the d]efendants' hotel," because she had only alleged that "she w[ould] travel to Eastern Colorado).

Third, unlike the scenario in where she "visited the [defendant's ORS] to see if the [defendant] complied with the law, and nothing more[,]" WL , at (internal quotations omitted) (quoting , F.3d at), the plaintiff now alleges that she visited the defendant's ORS to "ascertain whether she would be able to stay at [the hotel,]" Am. Compl. ¶ 10. See also v. , , WL , at (W.D. Tex.) (quoting Brintley v. Aeroquip Credit Union, 936 F.3d 489, 494 (6th Cir. 2019)) ("[M]erely browsing the web, without more, is[not] enough to satisfy Article III."), report and recommendation adopted sub nom., , WL (W.D. Tex.), aff'd sub nom., Fed. App'x. (5th Cir.); , F.4th at ("[The plaintiff] has not alleged that she has any interest in using the . . . [defendant's] ORS beyond bringing [a] lawsuit."). Indeed, the plaintiff was not simply "surfing various websites in her home to check for ADA compliance[,]" , WL , at , but rather, "intend[ed] to use the information to evaluate places to stay for a future trip[,]" v. , , WL , at (W.D. Wis.).

As such, the plaintiff did not merely "feel stigmatized" by the defendant's alleged ADA violation. See Penkoski, 486 F. Supp. 3d at 228 (emphasis removed) (citation omitted). Although she did experience "frustration and humiliation[,]" she contends that the defendant's noncompliant ORS harmed her in a more concrete way by "depriv[ing her of] the same advantages, privileges, goods, services and benefits readily available to the general public." Am. Compl. ¶ 17. Moreover, the plaintiff alleges that the defendant's ADA violation impaired her ability to "ascertain[] whether or not she would be able to stay at the hotel during her [upcoming] trip[,]" and made it "difficult to find hotels in which to stay." Id. ¶ 10. Indeed, when she traveled through Washington, D.C., "and needed a hotel to stay in[,]" she claims that "[the d]efendant's discriminatory ORS operated as a barrier . . . and deprived [her] of the ability to book an accessible room in the same manner as . . . non-disabled persons." Pl.'s Opp'n at 4. The plaintiff also states that it was "extremely difficult to find hotels with accessible rooms" and that "there were occasions when [she] had to sleep in [her] car." Statement ¶ 4. Thus, the

plaintiff's alleged stigmatic injury is not an "abstract" one that "stand[s] alone[.]" Penkoski, 486 F. Supp. 3d at 228 (quoting Allen, 468 U.S. at 755). Rather, it is accompanied by allegations of real-world harm to her ability to assess hotel options and book accessible rooms. Cf. [redacted], [redacted] WL [redacted], at [redacted] (conferring standing to a plaintiff as a result of the dignitary harm that stemmed from being unable to "evaluate places to stay for a future trip").

Therefore, the Court concludes that the plaintiff's inability to "ascertain[] whether or not she would be able to stay at the [defendant's] hotel[,]" Am. Compl. ¶ 10, combined with her visit to the specific city where the defendant's hotel was located, see [redacted], [redacted] WL [redacted]; [redacted], [redacted] WL [redacted], as well as her need to stay at a hotel in that specific city, see Am. Compl. ¶ 10, collectively constitute "some concrete interest" that was harmed by the defendant's ADA violation,[7] Allen, 468 U.S. at 757 n.22. The plaintiff's summer 2021 trip through Washington, D.C., created a particularized "connection between [the] plaintiff and [the] defendant . . . [that] separate[d] her from the general population visiting the [ORS,]" and as a result, the plaintiff suffered a concrete and particularized stigmatic injury in fact. [redacted], [redacted] WL [redacted], at [redacted]. Accordingly, the Court concludes that the "concrete interest" needed to support a stigmatic injury under the ADA does not necessarily require an intent to book. Allen, 468 U.S. at 757 n.22. As such, the plaintiff has established a stigmatic injury in fact.

3. Future Injury [Section Omitted]

B. The Defendant's 12(b)(6) Motion to Dismiss [Section Omitted]

IV. CONCLUSION

For the foregoing reasons, the Court concludes that it must grant the defendant's motion to dismiss to the extent that it seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) but deny it in all other respects.

SO ORDERED this ___ day of ___, 2022.[8]

REGGIE B. WALTON
United States District Judge

[7] Admittedly, the plaintiff did not specifically visit the defendant's hotel or intend to book an accessible room there. See Def.'s Mem. at 5. However, the defendant's ADA violation "served as a barrier to this very event[,]" Pl.'s Opp'n at 2–3, preventing the plaintiff from ascertaining "whether the . . . hotel [was] accessible" enough for her specific needs in the first place. Am. Compl. ¶ 17. Moreover, the ADA Regulation specifically requires that hotel owners "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs[.]" 28 C.F.R. § 36.302(e)(ii). Therefore, the Court concludes that an intent to book is not necessary for establishing a stigmatic injury.

[8] The Court will contemporaneously issue an Order consistent with this Memorandum Opinion.

Applicant Details

First Name	**Hamee**
Last Name	**Yong**
Citizenship Status	**U. S. Citizen**
Email Address	**hamee.yong.2024@lawmail.usc.edu**
Address	**Address** Street **9820 Exposition Blvd #304** City **Los Angeles** State/Territory **California** Zip **90034** Country **United States**
Contact Phone Number	**3127712832**

Applicant Education

BA/BS From	**University of Chicago**
Date of BA/BS	**June 2017**
JD/LLB From	**University of Southern California Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90513&yr=2009**
Date of JD/LLB	**May 10, 2024**
Class Rank	**15%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Hale Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Armour, Jody
jarmour@law.usc.edu
(213) 740-2559

Craig, Robin
rcraig@law.usc.edu
(213) 821-8153

Garry, Hannah
hgarry@law.usc.edu
213-740-9154

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Hamee Yong

9820 Exposition Blvd., Apt. 304, Los Angeles, CA 90034 | hamee.yong.2024@lawmail.usc.edu | 312-771-2832

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am writing to apply for a 2024-2025 term clerkship in your chambers or any subsequent term thereafter. I am a rising third-year law student at the University of Southern California Gould School of Law. I grew up in three countries—South Korea, Singapore, and the U.S.—without being tied to one place, which allows great flexibility to relocate to Norfolk for a clerkship.

I entered law school to pursue indigent defense. As an aspiring public defender, I am keen on gaining unique insights into the role of advocacy in the judicial decision-making process. As a yearlong research assistant to Prof. Hannah Garry, I expanded my legal research skills by working on multiple databases and synthesizing wide-ranging literature in international refugee law and transitional justice. Before law school, I worked for four years as an investment banker and private equity investment associate in New York, conducting financial and operational due diligence on mid-market to multi-billion dollar enterprises. I believe such transactional experience would be an asset in your chambers when it comes to cases relating to securities and market transactions.

Enclosed please find a copy of my resume, my most recent transcript, and a writing sample. USC will submit letters of recommendation from Professor Hannah Garry, Professor Jody Armour, and Professor Robin Craig under separate cover. I would welcome the opportunity to interview with you. Thank you very much for your consideration.

Respectfully,

Hamee Yong

Enclosures

Hamee Yong

9820 Exposition Blvd., Apt. 304, Los Angeles, CA 90034 | hamee.yong.2024@lawmail.usc.edu | 312-771-2832

EDUCATION

University of Southern California Gould School of Law — **Los Angeles, CA**
Juris Doctor Candidate — *May 2024*

GPA: 3.79 (Class Rank forthcoming)
Honors: Hale Moot Court Honors Program; 2022 & 2023 Public Interest Summer Grant Recipient; 2023 FASPE (Fellowships at Auschwitz for the Study of Professional Ethics) Fellow; 2023-2024 American Association of Women Selected Professions Fellowship Recipient ($20,000)
Activities: Public Interest Law Foundation (Pro Bono Chair); International Refugee Assistance Project (President)

The University of Chicago — **Chicago, IL**
Bachelor of Arts in Economics with Honors; Minor in Human Rights — *Jun 2017*

GPA: 3.64
Honors: Dean's List; Odyssey Scholar; Mirae Asset Global Investors Scholarship Recipient ($80,000)

LEGAL EXPERIENCE

Brooklyn Defender Services, Criminal Defense Practice — **New York, NY**
Summer Clerk — *Jun 2023 – Aug 2023*
Will draft motions, legal briefs, and appear on record under attorney supervision.

USC Gould School of Law — **Los Angeles, CA**
Research Assistant to Professor Hannah Garry — *Aug 2022 – Present*
Research existing international mechanisms for refugee protection and victim reparations at the ICC & tribunals.

Student Attorney, International Human Rights Clinic — *Aug 2022 – May 2023*
Represented an Afghan female in an affirmative asylum case. Travelled to Malawi to interview women incarcerated for their acts of self-defense against gender-based violence.

Fair and Just Prosecution — **New York, NY**
Summer Fellow at Westchester County District Attorney's Office: Conviction Review Unit — *May 2022 – Aug 2022*
Drafted a legal & policy recommendation memo on threats to shoot up places. Analyzed case files and transcripts on a case involving a plausible claim of innocence based on conflicting eyewitness testimonies.

PROFESSIONAL EXPERIENCE

Morgan Stanley Alternative Investment Partners — **New York, NY**
Private Equity Investment Associate — *Mar 2019 – Apr 2021*
Executed buy-out opportunities by conducting financial & operational due-diligence in a 2–3-person deal team.

Mizuho Securities — **New York, NY**
Investment Banking Analyst: Financial Sponsors Group — *Jul 2017 – Feb 2019*
Advised private equity funds on acquisition targets and exit options through IPO, divestitures, and M&A.

PRO BONO ACTIVITIES

Parole Justice Works, *Legal Volunteer* — *Jan 2022 – Jan 2023*
Community Legal Aid SoCal, *Intake Volunteer* — *Jan 2022 – May 2022*
International Refugee Assistant Project, *Naturalization Clinic Volunteer* — *April 2022 – May 2022*
Skid Row & Venice Beach Homeless Citation Clinic, *Intake Volunteer* — *Sep 2021 – May 2022*

SKILLS & INTERESTS

Language: Fluent in Korean & Conversational in Chinese.
Interests: Enjoys skiing, ice-skating, wheel pottery, and exploring different metro systems around the world.

On-line Academic Student Information System

OASIS Unofficial Transcript

ID#: 3427027654

askUSC Knowledge Base Start Here

Last Name	First Name
Yong	Hamee

Unofficial Transcript

Current Degree Objective

	Degree Name	Degree Title
MAJOR	Juris Doctor	Law

Cumulative GPA through 20231

	Uatt	Uern	Uavl	Gpts	GPAU	GPA
UGrad	0.0	0.0	0.0	0.00	0.0	0.00
Grad	0.0	0.0	0.0	0.00	0.0	0.00
Law	60.0	60.0	60.0	204.90	54.0	3.79
Other	0.0	0.0	0.0	0.00	0.0	0.00

Fall Term 2021

Course	Units Earned	Grade	Course Description
LAW-515	3.0	4.0	Legal Research, Writing, and Advocacy I
LAW-503	4.0	3.9	Contracts
LAW-509	4.0	3.5	Torts I
LAW-502	4.0	4.1	Procedure I

Spring Term 2022

Course	Units Earned	Grade	Course Description
LAW-531	3.0	3.4	Ethical Issues for Nonprofit, Government and Criminal Lawyer
LAW-516	2.0	4.0	Legal Research, Writing, and Advocacy II
LAW-504	3.0	3.7	Criminal Law
LAW-508	3.0	3.8	Constitutional Law: Structure
LAW-507	4.0	3.5	Property

Fall Term 2022

Course	Units Earned	Grade	Course Description
LAW-667	2.0	3.6	Hale Moot Court Brief
LAW-787	2.0	4.0	Race, Social Media and the Law
LAW-743	2.0	4.0	Federal Criminal Law
LAW-608	4.0	3.6	Evidence
LAW-849	5.0	CR	International Human Rights Clinic I

Spring Term 2023

Course	Units Earned	Grade	Course Description
LAW-817	3.0	4.1	International Arbitration
LAW-721	3.0	3.8	Crime, Punishment and Justice
LAW-602	3.0	3.8	Criminal Procedure
LAW-850	5.0	3.9	International Human Rights Clinic II
LAW-668	1.0	CR	Hale Moot Court Oral Advocacy

May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with great pleasure and without reservation that I write this letter of recommendation for Ms. Hamee Yong. I know Ms. Yong as a student in one of my large 1L class, Criminal Law, where she received an A-.

Ms. Hamee Yong was president of the International Refugee Assistance Project (IRAP) at USC Gould School of Law during her first year. IRAP is a legal aid/advocacy organization focused on refugee rights. During her presidency she coordinated pro bono projects/clinics and collaborated with International Law and Relations Organization (ILRO) and the International Human Rights Clinic to host several events over a year. This student group is in association with about 29 law schools that maintain a school chapter of IRAP.

Ms. Hamee was also a member of the International Human Rights Clinic where she was tasked with two workstream, Affirmative asylum for Afghan female and Trial Watch /Waging Justice for Women. She also was a research assistant for the director of the International Human Rights Clinic and was tasked to with two other research assistants to provide a summary of existing mechanisms to strengthen refugee protection under international law. She was a Hale Moot Court participant.

Hamee's strengths include intelligence, seriousness of purpose, diligence, sound character and enthusiasm. In the classroom, she welcomes challenges, inviting and thriving on intellectually challenging assignments and interactions. Outside the classroom and library, she is personable and highly-regarded by her peers. She has strong interpersonal skills and can carry on intense discussions about emotionally-charged topics with diplomacy, tact and wit. Put differently, she can negotiate the ambiguous and sometimes treacherous social terrain that characterizes law school student bodies in an exemplary way.

Hamee is also committed to engaging in serious reflection on legal issues rather than merely credentializing or padding her resume. Her interest in the study of law as an intellectual adventure has kept her motivated to refine and hone her legal writing. In a word, I do not hesitate to give Ms. Yong the highest recommendation. I am customarily something of a curmudgeon, stingy to a fault with praise. Nevertheless, when I come across someone who has earned and deserves it, I give credit where it is due. Hamee Yong is a student I can recommend with enthusiasm and without qualification. I would be glad to expand on these remarks over the phone or by e-mail.

Sincerely,

Jody David Armour
Roy P. Crocker Professor of Law

JDA/mcm

Jody Armour - jarmour@law.usc.edu - (213) 740-2559

May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my great pleasure to recommend Hamee Yong for a clerkship in your chambers, to begin late summer or early fall 2024. Ms. Yong is currently finishing her second year here at the University of Southern California (USC) Gould School of Law. Last year, she was a student in my Fall 2021 Civil Procedure course, where she earned one of the highest grades in the class. Ms. Yong has demonstrated that she has the skills and the drive to be an excellent judicial clerk.

Ms. Yong is an excellent legal researcher and writer. She earned solid A grades (4.0) in both semesters of her first-year Legal Research and Writing course, as well as a 4.0 in the seminar she completed last semester (Fall 2022) on "Race, Social Media, and the Law." In addition, last year I had my Civil Procedure students write a simple federal court complaint, and Ms. Yong did an outstanding job, earning a grade of 4.3 on the assignment. The heart of the assignment was to write a complaint that would satisfy the most scrupulous judge apply the standards of Twombly and Iqbal. I frame the assignment this way to force students to work with facts rather than legal argument—broadening their skills from what they learn in Legal Writing. Ms. Yong did a marvelous job of presenting the facts I provided in the assignment to her client's advantage in a lively and straightforward way, while also remaining safely within ethical and legal boundaries.

One thing worth noting is that at Gould, rising 2Ls have to choose between being on a law review or participating in our Hale Moot Court Honors Program; they cannot do both. This was a real choice for Ms. Yong, and she chose to participate in moot court. Nevertheless, her interest in writing remains strong, and she plans to complete a Directed Research project before she graduates to write a law review comment comparing the penal systems in the United States and Korea. She has also been working as Professor Hannah Garry's research assistant.

Ms. Yong is already dedicated to advancing the public interest through the rule of law. Indeed, at Gould, she devotes much of her energy to public interest projects. For instance, she is President of Gould's chapter of the International Refugee Assistance Project (IRAP). IRAP is a legal aid/advocacy organization focused on refugee rights, and there are about 29 law schools that maintain a school chapter of IRAP. Ms. Yong coordinates pro bono projects/clinics, such as Afghan Special Immigration Visa (SIV) case support, country conditions research projects, and Title 42 screening clinics. She also collaborated with the International Law and Relations Organization (ILRO) and Gould's International Human Rights Clinic to host several events during the 2022-2023 academic year, inviting a Hong Kong political asylee and activist (Sunny Cheung) to talk about Hong Kong democratic movements and Professor Iryna Zaveruhka and Ambassador Rapp to discuss the Russian war on Ukraine and accountability measures under international law. In addition, Ms. Yong participates and our International Human Right Clinic and runs the Public Interest Law Foundation's pro bono program here at Gould and has accumulated 55 pro bono hours in addition to her clinical work.

In addition to her work in our clinic, Ms. Yong is developing professional experience through other avenues, as well. After her first year of law school, she worked as a Summer Fellow in the Westchester County District Attorney's Officer as part of the Conviction Review Unit. This summer (2023) she will be working with the Brooklyn Defenders Service doing criminal defense work in New York City. Notably, before coming to law school, she worked in investment banking.

Hamee Yong thus offers you a combination of legal research and writing skills, a commitment to public service, and practical experience in both civil and criminal law. She has also demonstrated an excellent ability to manage several complex projects at once while remaining cheerful and confident.

In short, I recommend Hamee Yong without reservation for a judicial clerkship in your chambers. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Robin Kundis Craig
Robert C. Packard Trustee Chair in Law
USC Gould School of Law
699 Exposition Blvd.
Los Angeles, CA 90089
Phone: 213-821-8153
E-Mail: rcraig@law.usc.edu

May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to give my enthusiastic support for Ms. Hamee Yong's application for a clerkship in your Chambers. I have known Hamee since April 2022 when I selected her through a competitive interview and application process for enrollment in the International Human Rights Clinic at the University of Southern California ("USC") Gould School of Law, which I direct. She was one of nine students participating in the Clinic in the 2022-2023 academic year (chosen from around 30 that applied). She was also my research assistant ("RA") for the 2022-2023 academic year on international law articles related to enforcement of international refugee law, compensation for atrocity crimes (war crimes, crimes against humanity and genocide), and transitional justice. Together with two other RAs, she met with me on a weekly basis to go over the research questions that I asked her to look into as well as the sources that she found. Finally, I am the faculty supervisor for the International Refugee Assistance Project ("IRAP"), a law student group which she led in the 2022-2023 academic year.

In the Clinic, Hamee worked on three different cases and projects, dedicating 15-20 hours per week on average to the work. One involved representing a female client for affirmative asylum in the U.S. who is an Afghan fleeing gender based and political persecution, which involved in-depth interviewing of the client; drafting of the client's declaration on her persecution claims; drafting of a brief establishing the client's claims under international refugee law and US immigration law; gathering evidence and other documentation to corroborate the client's declaration; and filling out immigration forms. In addition, Hamee and two other Clinic students drafted a memo for an advocacy campaign to classify discrimination against women and girls in Afghanistan as gender apartheid, an international crime, and call for accountability before various UN human rights mechanisms as well as the International Criminal Court. Finally, Hamee worked with three other students on a fair trial rights project in Malawi, surveying women in prisons who have charges against them due to gender-based violence in order to gather data for a report identifying patterns of violations of fair trial rights under international human rights law and advocating for legal reform. This work involved developing a questionnaire for in-depth interviewing; drafting an interview protocol; analysis of court documents for specific cases; and travel to Malawi in February 2023 for conducting the interviews.

Having worked closely with Hamee, I am absolutely certain that she would be an ideal law clerk for the following reasons. First, as demonstrated by her work in the Clinic and RA work, Hamee is bright and a quick learner. This became evident in our Clinic seminar class where we covered the substantive law and procedure for engaging in the Clinic's cases; in our weekly supervision meetings with her, as we reviewed her work product; and in our RA meetings as we analyzed law review articles and books on a given topic. She was always well-prepared, and her questions and comments were often quite insightful and creative on topics of law that were completely new to her. She is quite curious, and her questions evidenced a deep engagement with the material.

Second, Hamee is a natural at collaboration and teamwork. Typically, she worked with one to four other students in her Clinic work and international legal research. The teams reviewed each other's research and drafting, maintained the case files, and led seminar classes together on their casework. I noticed that Hamee leads by example through her strong organizational skills, attention to detail and dedication to making sure that the group work is completed as thoroughly as possible. She is absolutely dependable and reliable, which instills a lot of trust in her and her work.

Third, when finding herself in emotional and intellectually intense classroom discussions, I observed that Hamee remains quite grounded and non-reactionary. She does not shy away from such exchanges or avoid them; rather, she comes prepared with thoughtful, well-backed questions and views, which she offers up after hearing from others first. I have observed this particularly when co-organizing two speaker events in the law school with her in her capacity as president of the student-led IRAP organization. The first event involved hosting a democracy defender from Hong Kong now in exile in the United States, which the Chinese government demanded that USC cancel due to the high enrollment of Chinese students at the university. The second entailed hosting a professor from Ukraine who gave a historical and legal perspective on the ongoing war in Ukraine following Russia's invasion in February 2022, whose family and friends continue to suffer and remain in serious danger for their lives. Both events involved highly emotional presentations and Q/A sessions following. Further, in response to the presentation by the Hong Kong democracy activist, confrontational statements were made by one individual in the audience whom we suspected was doing so at the bidding of the Chinese consulate in Los Angeles to challenge the credibility of democracy protests in Hong Kong. While I played the leading role in moderating these discussions as professor, Hamee did an excellent job helping me to prepare for both events and facilitate productive discussions where all views were allowed and expressed so long as they were done so in a respectful and professional manner, seeking to understand the other and learn through the process.

Finally, on a more personal level, it is a pleasure to interact with Hamee. She is absolutely dedicated to her studies and work, and completes work product in a professional manner. She is hard working, and turns in assignments on time. She is able to multi-task with ease. I have always found that Hamee responds very well to constructive feedback and learns quickly when given direction. In addition, she is a great communicator. Her strong communications skills were evident when she led her fellow students in discussion of her casework during the seminar. She is a natural public speaker and, at the same time, is an active

Hannah Garry - hgarry@law.usc.edu - 213-740-9154

listener who engages well with others in the classroom. More generally, she possesses a level of maturity beyond her years and is pleasant conversationalist with a nice sense of humor. As a result of all of the above, I anticipate that she will earn an A or A+ in the Clinic this spring semester, and currently rank her at the top of the Clinic class. Because of her strong performance as my RA and in Clinic, I have invited her to continue on as my RA over this summer, and she will be joining the Clinic again as an Advanced Clinical student next academic year, assisting me with supervising new Clinic students in their work.

For these reasons, I highly recommend Hamee for a clerkship in your Chambers. If you need any further information, please do not hesitate to write or call.

Best Regards,

Hannah Garry

Hannah Garry - hgarry@law.usc.edu - 213-740-9154

Hamee Yong

9820 Exposition Blvd., Apt. 304, Los Angeles, CA 90034 | hamee.yong.2024@lawmail.usc.edu | 312-771-2832

WRITING SAMPLE

The attached writing sample is an excerpt from a brief I submitted for the Hale Moot Court Honors Program at the USC Gould School of Law. The case concerned a legal question of whether the Sixth Amendment right to counsel attaches at a preindictment plea stage.

A brief **statement of facts** is provided below:

The defendant-respondent James Robertson received a target letter informing that he was a subject of a grand jury investigation for money laundering. The Assistant United States Attorney (AUSA) offered an oral preindictment offer that would allow Robertson to plead guilty to one count of tax evasion. The government provided no preindictment discovery. In light of Robertson's representation of innocence, his defense counsel advised him not to accept the preindictment plea, and Robertson rejected the offer. Soon thereafter, a federal grand jury indicted Robertson for conspiracy to launder narcotics proceeds, money laundering, and tax evasion. Strong evidence of his guilt emerged against Robertson. Robertson indicated to the government his interest in receiving another plea offer. The government sent a written plea agreement that required him to plea to all charges as stated in the federal indictment. Robertson entered his guilty plea. Subsequently, Robertson hired a new attorney and filed a motion to withdraw his guilty plea, arguing that his first counsel rendered ineffective assistance of counsel when she advised him not to accept the preindictment plea offer.

The **questions presented** for the competition were:

I. Did the district court properly deny a defendant's motion to withdraw his guilty plea pursuant to a bright-line attachment rule that the Sixth Amendment right to counsel only attaches after adversarial judicial proceedings have begun, given that the bright-line rule follows directly from the plain text of the Sixth Amendment and various policy considerations support it over a functional standard?

II. Even if the defendant's right to counsel had attached at a preindictment plea stage, did the district court properly deny his ineffective assistance of counsel claim because his first defense counsel rendered effective assistance and even if her performance was deficient, the defendant was not prejudiced by her advice?

I represented the plaintiff-petitioner, the United States of America. For this sample, I chose the section of brief addressing only the **first question presented**. This sample has not been edited by others and is entirely my own work.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DENIED DEFENDANT ROBERTSON'S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE HIS RIGHT TO COUNSEL DID NOT ATTACH DURING HIS PREINDICTMENT PLEA NEGOTIATION AS A MATTER OF LAW.

The Sixth Amendment guarantees the right of the "accused" to have the assistance of counsel for his defense in all "criminal prosecutions." U.S. Const. amend. VI. The purpose of the Sixth Amendment right to counsel is rooted in the need to protect the accused's right at trial because an average defendant does not have the necessary legal skill to defend himself. Johnson v. Zerbst, 304 U.S. 458, 462-63 (1938)(extending the Sixth Amendment right to counsel to non-capital cases in federal courts); see also United States v. Gouveia, 467 U.S. 180, 190 (1984)(holding that the Sixth Amendment right to counsel does not attach at the time of arrest because it "protect[s] the accused during trial-type confrontations with the prosecutor").

Two distinct inquiries govern the Sixth Amendment right to counsel jurisprudence. Rothgery v. Gillespie Cnty., 554 U.S. 191, 211 (2008). The Sixth Amendment right to counsel attaches only when formal judicial proceedings have begun against an accused. Id. Even after attachment occurs, an accused may assert a Sixth Amendment right to counsel only during "critical stages" of postattachment proceedings. Id. at 212. If no

formal judicial proceedings have begun against an accused, the critical stage inquiry then becomes irrelevant as a matter of law because no attachment occurred. Id.

Following the bright-line attachment rule, the Supreme Court has repeatedly declined to extend the Sixth Amendment right to counsel to preindictment proceedings, even where the same proceedings are critical stages when they occur postindictment. Compare United States v. Wade, 388 U.S. 218, 236-37 (1967)(Sixth Amendment right to counsel in postindictment lineups), with Kirby v. Illinois, 406 U.S. 682, 690 (1972)(no Sixth Amendment right to counsel in preindictment lineups); compare Massiah v. United States, 377 U.S. 201, 205-06 (1964) (Sixth Amendment right to counsel in postindictment interrogations), with Moran v. Burbine, 475 U.S. 412, 431-32 (1986) (no Sixth Amendment right to counsel in preindictment interrogations).

No other courts have extended the Sixth Amendment right to counsel prior to the initiation of formal charges or judicial proceedings. See, e.g., Turner v. United States, 885 F.3d 949, 953-54 (6th Cir. 2018) (declining to extend the Sixth Amendment right to counsel to preindictment plea negotiations).

Defendants may withdraw a guilty plea after the court accepts it but prior to sentencing if they can show a fair and

just reason for requesting the withdrawal. Fed. R. Crim. P. 11(d)(2)(B).

Here, Robertson may not withdraw his guilty plea as a matter of law. His Sixth Amendment right to counsel did not attach at the time of his preindictment plea negotiation because no formal judicial proceedings or prosecution had commenced against him. The bright-line attachment rule should govern preindictment plea negotiations and the inquiry into whether a preindictment plea negotiation constitutes a critical stage is misplaced. Therefore, the district court correctly denied Robertson's motion to withdraw his guilty plea as a matter of law using the well-established bright-line attachment rule.

A. Standard of Review

A district court's denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. United States v. Cross, 962 F.3d 892, 896 (7th Cir. 2020). The district court does not abuse its discretion unless a defendant 'can show a fair and just reason' for withdrawing his guilty plea. Id.; Fed. R. Crim. P. 11(d)(2)(B). Whether the Sixth Amendment right to counsel attaches to preindictment plea negotiations is a question of law that is reviewed de novo. United States v. Moody, 206 F.3d 609, 613 (6th Cir. 2000) (declining to extend the Sixth Amendment right to counsel to preindictment pleas according to the bright-line attachment rule).

B. The Bright-Line Attachment Rule Follows Directly from the Plain Text of the Sixth Amendment and Upholds the Need for Ex Ante Clarity and Judicial Economy.

The phrase "criminal prosecutions" is unique to the Sixth Amendment and has been interpreted to limit Sixth Amendment counsel guarantee to critical stages at or after adversary judicial proceedings have been initiated. Kirby, 406 U.S. at 690 (declining to extend the bright-line attachment rule to preindictment interrogations).

1. The plain text of the Sixth Amendment commands a bright-line attachment rule.

The plain text of the Sixth Amendment requires that only the "accused" have the right to counsel in "criminal prosecutions." Gouveia, 467 U.S. at 188. The "accused" in criminal prosecutions have been interpreted as individuals "charged with crime" from the very onset of the Sixth Amendment right to counsel jurisprudence. See Powell v. Alabama, 287 U.S. 45, 69 (1932) (explaining that one "charged with crime" requires assistance of counsel); see also Zerbst, 304 U.S. at 467 (holding that an "accused" is "one charged with crime").

The term "criminal prosecutions" limits the Sixth Amendment right to counsel to the initiation of judicial criminal proceedings, which is "far from a mere formalism." Kirby, 406 U.S. at 689-90. Kirby established a bright-line attachment rule, holding that the Sixth Amendment right to counsel attaches

only at or after the initiation of adversary judicial criminal proceedings, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. Id. at 689. An individual turns into an accused only when the government has committed to prosecute because the commencement of criminal prosecutions marks alone the points at which "the explicit guarantees of the Sixth Amendment are applicable." Id. at 690. Thus, in Kirby, a defendant's Sixth Amendment right to counsel did not attach during his preindictment lineup because he was neither formally charged, indicted, nor arraigned. Id.

The distinction between "criminal prosecutions" under the Sixth Amendment and "criminal case[s]" under the Fifth Amendment has been interpreted to narrow the Sixth Amendment right to counsel to attach only when "prosecution" or "formal judicial proceedings" have been commenced against the accused. Rothgery, 554 U.S. at 222 (Thomas, J., dissenting) (noting that a criminal case under the Fifth Amendment is much broader than a criminal prosecution under the Sixth Amendment). While the Fifth Amendment right to counsel may attach to important preattachment stages of defense, such as police interrogations and identifications, the Sixth Amendment right to counsel does not extend to these proceedings. Compare Miranda v. Arizona, 384 U.S. 436, 478-79 (1966) (Fifth Amendment right to counsel at preindictment custodial interrogations), with Kirby, 406 U.S. at

690 (no Sixth Amendment right to counsel at preindictment interrogations).

Because the attachment question follows directly from the plain text of the Sixth Amendment, it has never been governed by a functionalist inquiry of whether counsel would be valuable at particular stages of the criminal process. See Burbine, 475 U.S. at 431-32. Particularly, the functionalist inquiry has no place for a constitutional guarantee because it cannot turn on a "wholly unworkable" principle, such as the moment of a prosecutor's first involvement, which would "bog the courts down." Rothgery, 554 U.S. at 206. In Rothgery, a defendant's right to counsel did attach at his first appearance before a judicial officer because a formal accusation filed with the court marked the commencement of criminal prosecution, regardless of whether a prosecutor had known about his appearance. Id. at 207, 213.

Thus, the plain text of the Sixth Amendment necessitates a bright-line attachment rule, which evolved from a careful adherence to the words "accused" and "criminal prosecutions." The bright-line rule was drawn exactly where the text of the Sixth Amendment agreed: at or after prosecution, or adversary judicial proceedings have commenced against the accused.

2. Plea processes at a preindictment stage are particularly "amorphous," which necessitates a bright-line attachment rule.

Courts have recognized the need for a bright-line attachment rule that has a "historically and rationally applicable" basis that can provide ex ante clarity to both states and defendants. See Kirby, 406 U.S. at 690; see also United States v. Hayes, 231 F.3d 663, 675 (9th Cir. 2000) (recognizing a need for a "clean and clear rule that is easy enough to follow"). In Kirby, the Court foreclosed any possibility that the Sixth Amendment right to counsel may attach during preindictment proceedings, explaining that the Sixth Amendment right is preserved only for the "accused," or one charged with crime. 406 U.S. at 690-91. Without the state's commitment to prosecute, routine police investigation techniques, such as lineups, do not turn a suspect into an accused who is "faced with the prosecutorial forces of organized society." Id. at 689.

In the context of plea bargains, the Court has noted the highly non-linear and "amorphous" process that plea bargains entail, with "no clear standards or timelines" and lacking "judicial supervision of the discussions between prosecution and defense." Missouri v. Frye, 566 U.S. 134, 143-145 (2012) (explaining the difficulty of defining the duties of defense counsels in pleas); see also Premo v. Moore, 562 U.S. 115, 126

(2011) ("art of [plea] negotiation is at least as nuanced as the art of trial advocacy," removed from judicial supervision). In Frye and Lafler v. Cooper, 566 U.S. 156, 165-66 (2012), the Court recognized postindictment plea negotiations as critical stages of prosecution but did not suggest the Sixth Amendment right to counsel could extend to preindictment plea negotiations. 566 U.S. at 141.

Moving the bright-line rule to encompass any preindictment events, such as interrogations, lineups, or plea offers, jeopardizes the proper investigatory function of the state and constrains judicial economy. See Escobedo v. Illinois, 378 U.S. 478, 494 (1964)(Stewart, J., dissenting). Originally decided as a Sixth Amendment case involving preindictment interrogations, Escobedo was subsequently reframed as a Fifth Amendment privilege against self-incrimination in custodial interrogations, akin to Miranda rights. Kirby, 406 U.S. at 689 (citing Johnson v. New Jersey, 384 U.S. 719, 729 (1966)). If the Sixth Amendment right to counsel were to attach to preindictment proceedings, routine police investigations and interrogations will turn into judicial trials, impeding the legitimate and proper function of the government by imposing an unnecessary and impractical burden on the government to supply public defenders at any suspect's request. See Escobedo, 378 U.S. at 496 (White, J., dissenting).

Hence, the Court should be wary of the direct and collateral consequences of attaching the Sixth Amendment right to counsel to preindictment pleas, which would diminish the ex ante clarity of rights afforded by the bright-line rule and increase the administrative burden on the government without added benefit. Furthermore, moving the bright-line attachment rule to include preindictment pleas may pave the path for criminal defendants to argue for an extension of the same right to other preindictment proceedings that this Court has repeatedly refused to recognize as points of attachment.

3. Other constitutional safeguards outside the Sixth Amendment right to counsel jurisprudence exist to protect the rights of defendants.

The Sixth Amendment right to counsel provides a floor, not a ceiling, protection for the accused, not whenever they may benefit from a lawyer's advice. See Burbine, 475 U.S. at 429-30; see also United States v. Larkin, 978 F.2d 964, 969 (7th Cir. 1992) (the fact that a lawyer's service may be useful in preventing hazards of eyewitness testimonies during preindictment lineups does not justify a constitutional right to counsel). In Burbine, a defendant waived his Fifth Amendment right to counsel and made inculpatory statements during custodial interrogation in the absence of counsel. Id. at 415-16. Although the Court recognized that a confession elicited during police questioning may often seal a suspect's fate, such

concern did not justify a constitutional right to counsel. Id. at 431-32.

Repeatedly, the Court has "declined to depart from its traditional interpretation of the Sixth Amendment right to counsel" in response to policy arguments because other constitutional safeguards protect defendants during pretrial proceedings. See Gouveia, 467 U.S. at 192 (upholding that statute of limitations and Fifth Amendment due process rights afford protection to defendants against the government that deliberately delays formal charges); see also Kirby, 406 U.S. at 691 (explaining that the due process requirements under the Fifth and Fourteenth Amendments forbid unnecessarily suggestive lineups). Moreover, in Miranda, the Court established the right to counsel for suspects under custodial interrogation, requiring the police to explain the right to remain silent and have counsel before initiating any questioning. 384 U.S. at 469-73; see U.S. Const. Amend. V.

In any event, legislatures are free to adopt further protection measures for defendants in addition to well-established constitutional rights. See 18 U.S.C. § 3599(a)(2); see, e.g., Martel v. Claire, 565 U.S. 648, 661-62 (2012) (creating a limited statutory right to counsel in habeas corpus proceedings). In particular to the Sixth Amendment jurisprudence, Congress has legislated beyond the constitutional

right to a speedy trial by enacting the Speedy Trial Act of 1974, which requires specific time limits for completing various stages of a criminal prosecution. See 18 U.S.C. § 3161.

In sum, the policy argument that the Sixth Amendment right to counsel should extend to preindictment pleas because it can be valuable is precisely the line of argument the Court rejected in Burbine. The Sixth Amendment right to counsel guarantees a minimum, but definitive protection for defendants once they are formally charged. Prior to attachment, other constitutional and procedural safeguards protect defendants to ensure the proper administration of justice, with room for legislatures to intervene and provide further protections as they see fit.

C. Robertson's Right to Counsel Did Not Attach at his Preindictment Plea Stage as a Matter of Law Because No Judicial Proceedings Had Commenced Against Him According to the Bright-Line Attachment Rule.

A target letter does not turn a subject of an investigation into an "accused" within the meaning of the Sixth Amendment. United States v. Olson, 988 F.3d 1158, 1163 (9th Cir. 2021); Hayes, 231 F.3d at 674-75 (held that no attachment occurred when a defendant received a target letter and consented to an interview by federal agents). In Olson, a defendant's right to counsel did not attach according to the bright-line attachment rule when he received a target letter that invited him to have

his counsel contact the government if he was 'interested in resolving this matter short of an Indictment.' Id. at 1160-61.

A subject of an investigation does not become an accused within the meaning of the Sixth Amendment when the government offers preindictment pleas. See, e.g., Turner, 885 F.3d at 955; see also Moody, 206 F.3d at 614. In Moody, a suspect voluntarily approached and cooperated with the government after the government successfully searched his home and business under valid warrants. 206 F.3d at 611. He volunteered information about the roles of other targets, and the government offered him a preindictment plea, which he later rejected at the advice of his attorney. Id. However, his Sixth Amendment right to counsel did not attach at a preindictment plea stage because he was an unindicted subject of an investigation. Id. at 614.

Other circuits, such as the First, Third, and Seventh, also have adhered to the bright-line attachment rule in various preindictment contexts. Roberts v. Maine, 48 F.3d 1287, 1291 (1st Cir. 1995) (held that a suspect's right to counsel did not attach at the time he refused to take the blood alcohol test because no formal charges had been brought); Matteo v. Superintendent, SCI Albion, 171 F.3d 877, 892-93 (3d Cir. 1999) (held that the right to counsel attached at a preliminary arraignment proceeding); Larkin, 978 F.2d at 967 (no Sixth Amendment right to counsel at preindictment lineups).

Here, Robertson did not have a Sixth Amendment right to counsel when the government offered a preindictment plea because no formal prosecution had been initiated against him. Like the defendant in Olson who did not turn into an accused when he received the target letter, Robertson did not turn into an "accused" within the meaning of the Sixth Amendment. Furthermore, like the defendant in Moody whose right to counsel did not attach when he received the preindictment offer, Robertson's Sixth Amendment right to counsel did not attach during his preindictment plea negotiation. Preindictment pleas do not trigger the same right to counsel as during postindictment pleas without the commencement of prosecution. Extending the Sixth Amendment right to counsel to the preindictment plea stage only benefits defendants like Robertson who was ready to take a chance and wait until he could further evaluate the government's case against him, only to regret having rejected a favorable preindictment offer. Although preindictment pleas can be an efficient tool, conserving prosecutorial resources and allowing defendants who admit their guilt to receive favorable sentences, the government may be discouraged from offering preindictment pleas if they can open doors to ineffective assistance claims that may end up benefitting defendants who purposely decline the offer in the hopes of avoiding convictions.

Applicant Details

First Name	**Nanxi**
Last Name	**You**
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Contact Phone Number	**6462728350**

Applicant Education

BA/BS From	**Columbia University**
Date of BA/BS	**May 2018**
JD/LLB From	**Washington University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014**
Date of JD/LLB	**May 1, 2024**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**Washington University Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Wiley Rutledge Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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Lewis, Jo Ellen
lewisj@wustl.edu
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

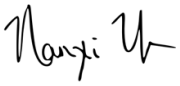
I am writing to apply for a clerkship in your chambers, either beginning in 2024 or for your next available position. I am a rising third-year law student at Washington University School of Law, where I am an Articles Editor for the *Washington University Law Review*. I plan to practice in my home state of New York after I graduate and look forward to returning to the East Coast.

Enclosed please find my résumé, transcripts, and writing samples. The first writing sample is based on a brief I submitted for the Wiley Rutledge Moot Court Competition. The second writing sample is a case comment I completed for the Write-On Competition. The following individuals are submitting letters of recommendation separately.

Professor Ronald M. Levin Washington University School of Law rlevin@wustl.edu (314) 935-6490	Professor Jo Ellen Dardick Lewis Washington University School of Law lewisj@wustl.edu (314) 935-4684	Professor Gregory H. Shill University of Iowa College of Law (Spring 2022 Visiting Professor) gregory-shill@uiowa.edu (319) 335-9057

I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,



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St. Louis, MO 63108

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Kew Gardens, NY 11415

EDUCATION

Washington University School of Law — St. Louis, MO
Juris Doctor Candidate | GPA: 3.84 (Top 10%) — May 2024
Honors & Activities: Dean's List (Spring 2022, Fall 2022, Spring 2023)
Highest grade in class for Civil Procedure (Spring 2022)
Washington University Law Review, Vol. 101, Articles Editor
Scholar in Law Award (merit-based scholarship)
Wiley Rutledge Moot Court Competition

Columbia University — New York, NY
Bachelor of Arts in Economics–Political Science | GPA: 3.62 — May 2018
Honors & Activities: Dean's List (4 Semesters)
Graduate School of Journalism, *Administrative Assistant*
Study Abroad, London School of Economics and Political Science

EXPERIENCE

Davis Polk & Wardwell LLP — New York, NY
Summer Associate — May 2023 – Present
- Researched case law and drafted legal memoranda in support of litigation and pro bono matters

Legal Assistant — June 2018 – January 2021
- Drafted and reviewed financial offering documents for client-specific structured investment product issuances linked to equities, rates, indices, commodities, and other market measures
- Facilitated communications between clients and attorneys to prepare and distribute material in a timely manner
- Managed time-sensitive regulatory filings with the Securities and Exchange Commission and attended to client requests related to each filing

Vedder Price P.C. — New York, NY
Summer Associate (Return Offer Extended) — May 2022 – July 2022
- Worked closely with shareholders specializing in transportation finance to draft and review contracts in connection with aircraft transactions
- Assisted in preparation of transactional documents for the Finance & Secured Lending, Mergers & Acquisitions, and Capital Markets groups

Sunset Park Family Health Center at NYU Langone — New York, NY
Early Learning Specialist, AmeriCorps Member — January 2021 – July 2021
- Provided early literacy support and child development guidance to 15 Mandarin-speaking families and children through virtual home visits
- Modeled positive verbal interactions and demonstrated language building strategies with books and toys
- Conducted evaluations of each family's progress in the program and maintained detailed records of home visits

Penn, Schoen, & Berland Associates — New York, NY
Market Research Intern — September 2017 – December 2017
- Assisted project team in quality control reviews for data accuracy in presentations and surveys to eliminate bias and ensure statistical significance
- Collaborated with research and survey teams on questionnaire development for various clients
- Conducted research on client's company and industry, including financials, corporate leaders, and products

SKILLS, INTERESTS & COMMUNITY ENGAGEMENT

ABA Antitrust Section, *Law Student Ambassador* (September 2022 – Present)
ABA Antitrust Section Legislation Monitoring Project, *Volunteer* (October 2020 – May 2021)
Chinese (Fluent) | Oil Painting, Go, Crossword puzzles, Family Karaoke, YouTube cooking videos

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Washington University School of Law

Unofficial Grade Sheet

Fall Semester 2021

Course Title	Instructor	Credit Hours	Grade
Legal Practice I: Objective Analysis and Reasoning	Lewis	2.00	3.88 (A)
Property	D'Onfro	4.00	3.52 (B+)
Torts	Norwood	4.00	3.64 (A-)
Constitutional Law I	Osgood	4.00	3.70 (A-)

Fall Semester GPA: 3.66
Cumulative GPA: 3.66

Spring Semester 2022

Course Title	Instructor	Credit Hours	Grade
Legal Research Methodologies II		1.00	(Pass)
Legal Practice II: Advocacy	Lewis	2.00	3.88 (A)
Contracts	Shill	4.00	3.88 (A)
Criminal Law	Diamantis	4.00	3.76 (A)
Civil Procedure	Levin	4.00	4.24 (A+)
Negotiation	Reeves	1.00	(Pass)

Spring Semester GPA: 3.95 ***(Dean's List)***
Cumulative GPA: 3.80

**This grade sheet has been self-prepared by the above-named student. I affirm the accuracy of all information contained herein. I will bring a copy of an unofficial and official transcript at the time of any scheduled interview or forward one upon request.*
For any questions, please feel free to contact me using the information listed above. Thank you.

Fall Semester 2022

Course Title	Instructor	Credit Hours	Grade
Evidence	Rosen	3.00	3.76 (A)
Federal Courts	Hollander-Blumoff	4.00	4.18 (A+)
Mediation Theory and Practice	Kuchta-Miller	3.00	3.58 (A-)
Pretrial Practice and Settlement	Walsh	3.00	3.94 (HP)
Law Review		1.00	
Moot Court		1.00	

Fall Semester GPA: 3.89 *(Dean's List)*
Cumulative GPA: 3.83

Spring Semester 2023

Course Title	Instructor	Credit Hours	Grade
Administrative Law	Levin	3.00	4.00 (A+)
Legal Profession	Joy	3.00	3.52 (B+)
Antitrust	Drobak	3.00	4.06 (A+)
International Money Laundering, Corruption, and Terrorism	Fagan/Delworth	3.00	3.88 (A)
Topics in Health Insurance Law and Regulation	Schwarcz	1.00	3.76 (A)
Law Review		1.00	

Spring Semester GPA: 3.86 *(Dean's List)*
Cumulative GPA: 3.84

**This grade sheet has been self-prepared by the above-named student. I affirm the accuracy of all information contained herein. I will bring a copy of an unofficial and official transcript at the time of any scheduled interview or forward one upon request.*
For any questions, please feel free to contact me using the information listed above. Thank you.

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Nanxi You
SSN#: XXX-XX-3659
SCHOOL: COLUMBIA COLLEGE

DEGREE(S) AWARDED: Bachelor of Arts
DATE AWARDED: May 16, 2018

MAJOR: ECONOMICS-POLITICAL SCIENCE

PROGRAM TITLE: ECONOMICS-POLITICAL SCIENCE

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
		Fall 2014		
HUMA	C 1001	EURPN LIT-PHILOS MASTERPI	4.00	A-
HUMA	W 1121	MASTERPIECES OF WESTERN A	3.00	A
MATH	V 1101	CALCULUS I	3.00	A
PHED	C 1001	PHYSICAL ED:PILATES/SCULP	1.00	P
SCNC	C 1000	FRONTIERS OF SCIENCE	4.00	B+
SCNC	C 1100	FRONTIERS OF SCIENCE-DISC	0.00	
SOCI	W 3324	GLOBAL URBANISM	3.00	A-
HONORS: DEAN'S LIST				
		Spring 2015		
ECON	W 3213	INTERMEDIATE MACROECONOMI	3.00	B+
ENGL	C 1013	UNIVERSITY WRITING: SUST	3.00	B
HUMA	C 1002	EURPN LIT-PHILOS MASTRPIE	4.00	A-
MATH	V 1201	CALCULUS III	3.00	B-
POLS	W 4871	CHINESE FOREIGN POLICY	4.00	A-
		Fall 2015		
COCI	C 1101	CONTEMP WESTERN CIVILIZAT	4.00	B-
ECON	V 2029	FED CHALLENGE WORKSHOP	1.00	P
ECON	W 3211	INTERMEDIATE MICROECONOMI	3.00	B
POLS	V 1601	INTERNATIONAL POLITICS	4.00	B+
POLS	V 1611	INT'L POLITICS - DISC	0.00	
POLS	W 4461	LATIN AMERICAN POLITICS	4.00	A-
POLS	W 4466	LATIN AMER POLITICS-DISC	0.00	
STAT	W 1211	INTRODUCTION TO STATISTIC	3.00	B+
		Spring 2016		
CLME	W 4031	CINEMA & SOC IN ASIA &	4.00	A
COCI	C 1102	CONTEMP WESTRN CIVILIZATI	4.00	A-
ECON	V 3025	FINANCIAL ECONOMICS	3.00	A-
ECON	W 3412	INTRODUCTION TO ECONOMETR	3.00	A-
PSYC	W 1001	THE SCIENCE OF PSYCHOLOGY	3.00	A-
HONORS: DEAN'S LIST				

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
		Fall 2016		
STAB	CC 0002	FULL-TIME STUDY ABROAD PR	15.50	
		Spring 2017		
STAB	C 0002	FULL-TIME STUDY ABROAD PR	15.50	
		Fall 2017		
ECON	GU 4370	POLITICAL ECONOMY	3.00	A-
HRTS	GU 4900	UN HUMAN RIGHTS BODIES	4.00	A
HUMA	UN 1123	MASTERPIECES OF WESTERN M	3.00	A
POLS	UN 3961	INEQUALITY WITHIN&BTWN NA	4.00	A
HONORS: DEAN'S LIST				
		Spring 2018		
ECPS	GU 4921	POLITICAL ECONOMY IN THE	4.00	A-
HRTS	GU 4500	SOCIO-ECONOMIC RIGHTS:SEL	3.00	A
PHED	UN 1002	PHYSICAL ED: CARDIO FITNE	1.00	P
POLS	UN 1501	INTRO TO COMPARATIVE POLI	4.00	A
POLS	UN 1511	INTRO-COMP POLITICS-DISC	0.00	
POLS	UN 3962	POL ECON-TRADE, AID & INV	4.00	A
HONORS: DEAN'S LIST				

REMARKS

Cumulative GPA: 3.616
10.00 Credits Transferred from College Bd: Advanced Placement
32.00 Credits Transferred from London Sch of Econ & Poli Sci

This official transcript was produced on FEBRUARY 12, 2020.

SEAL OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

Barry S. Kane
Associate Vice President and University Registrar

Copy of Official Transcript

TO VERIFY AUTHENTICITY OF DOCUMENT, THE BLUE STRIP BELOW CONTAINS HEAT SENSITIVE INK WHICH DISAPPEARS UPON TOUCH

OFFICE OF THE UNIVERSITY REGISTRAR
STUDENT SERVICE CENTER
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205 KENT HALL, MAIL CODE 9202
NEW YORK, NEW YORK 10027
(212) 854-4400

SEAL OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

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Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session
A, **B**, **C**, **D**, **F** (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

American Language Program, Center for Psychoanalytic Training and Research, Journalism
P (pass), **F** (failing). Grades of **A**, **B**, **C**, **D**, **P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

Architecture
HP (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A**, **B**, **C**, **D**, **F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

Arts
P (pass), **LP** (low pass), **F** (fail). **H** (honors) used prior to June 2015.

Business
H (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for H, HP and P1 grades Summer 2010 and thereafter.

College of Physicians and Surgeons
H (honors), **HP** (high pass), **P** (pass), **F** (failing).

College of Dental Medicine
H (honors), **P** (pass), **F** (failing).

Law
A through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing). **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.
E (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format – i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

Public Health
A, **B**, **C**, **D**, **F** - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

Social Work
E (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).
A though **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

OTHER GRADES USED IN THE UNIVERSITY

AB = Excused absence from final examination.

AR = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

AU = Audit (auditing division only).

CP = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

F* = Course dropped unofficially.

IN = Work Incomplete.

MU = Make-Up. Student has the privilege of taking a second final examination.

R = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

R = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

R = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

R = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

UW = Unofficial Withdrawal.

UW = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

W = Withdrew from course.

YC = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

OTHER INFORMATION

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of P (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of **A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A** (**A+**, **A**, **A-**) range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

*The **capital letter** indicates the University school, division, or affiliate offering the course:*

A	Graduate School of Architecture, Planning, and Preservation
B	School of Business
BC	Barnard College
C	Columbia College
D	College of Dental Medicine
E	School of Engineering and Applied Science
F	School of General Studies
G	Graduate School of Arts and Sciences
H	Reid Hall (Paris)
J	Graduate School of Journalism
K	School of Library Services/Continuing Education (effective Fall 2002)
L	School of Law
M	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytical Training and Research
N	School of Nursing
O	Other Universities or Affiliates/Auditing
P	School of Public Health
Q	Computer Technology/Applications
R	School of the Arts
S	Summer Session
T	School of Social Work
TA-TZ	Teachers College
U	School of International and Public Affairs
V	Interschool Course
W	Interfaculty Course
Y	Teachers College
Z	American Language Program

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*The **first digit** of the course number indicates the level of the course, as follows:*

0	Course that cannot be credited toward any degree
1	Undergraduate course
3	Undergraduate course, advanced
4	Graduate course open to qualified undergraduates
5	Graduate course open to qualified undergraduates
6	Graduate course
7	Graduate course
8	Graduate course, advanced
9	Graduate research course or seminar

Note: Level Designations Prior to 1961:
1-99 Undergraduate courses
100-299 Lower division graduate courses
300-999 Upper division graduate courses

The term designations are as follows:
X=Autumn Term, Y=Spring Term, S=Summer Term
Notations at the end of a term provide documentation of the type of separation from the University.

THE ABOVE INFORMATION REFLECTS GRADING SYSTEMS IN USE SINCE SPRING 1982. THE CUMULATIVE INDEX, IF SHOWN, DOES NOT REFLECT COURSES TAKEN BEFORE SPRING OF 1982. ALL TRANSCRIPTS ISSUED FROM THIS OFFICE ARE OFFICIAL DOCUMENTS. TRANSCRIPTS ARE PRINTED ON TAMPER-PROOF PAPER, ELIMINATING THE NEED FOR SIGNATURES AND STAMPS ON THE BACK OF ENVELOPES. FOR CERTIFICATION PURPOSES, A REPRODUCED COPY OF THIS RECORD SHALL NOT BE VALID. THE HEAT-SENSITIVE STRIP, LOCATED ON THE BOTTOM EDGE OF THE FACE OF THE TRANSCRIPT, WILL CHANGE FROM BLUE TO CLEAR WHEN HEAT OR PRESSURE IS APPLIED. A BLUE SIGNATURE ALSO ACCOMPANIES THE UNIVERSITY SEAL ON THE FACE OF THE TRANSCRIPT.

Washington University in St. Louis
SCHOOL OF LAW

August 31, 2022

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Recommendation for Nanxi You

Dear Judge Walker:

Nanxi You, a student in the Washington University School of Law class of 2024, has asked me to write in support of her application to serve as a law clerk in your chambers after her graduation. I am happy to recommend her to you.

Nanxi was a student in my Civil Procedure class in the spring of 2022. She received the highest score in her class of 90 students, with a grade of A+. In her exam paper, which I have reread for the purpose of writing this letter, she displayed a consistently strong familiarity with the statutes, rules, and doctrines covered in the course. All of her analyses were thoughtful and dispassionate. She got to the heart of each question and discerned a number of nuances that most students overlooked. In addition, her essays were straightforward, well organized, and concise, with a very readable and mature prose style.

I have also had conversations with Nanxi outside of class. She is sophisticated, intellectually curious, and highly engaged with issues of legal doctrine and practice. She looks forward to eventually becoming a litigator, probably specializing in the antitrust area. She has already gotten involved in several projects in the antitrust sphere, and she projects enthusiasm for continuing along that path. In addition, she comes across as friendly and good humored, and I expect you would enjoy working with her.

In short, I believe that Nanxi is highly qualified for a good clerkship, and I hope you will give her serious consideration. Please feel free to be in touch with me if you think I can furnish any other information that might be helpful.

Best,

/s/

Ronald Levin
William R. Orthwein Distinguished Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

COLLEGE OF LAW

280 Boyd Law Building
Iowa City, Iowa 52242-1113

October 6, 2022

Re: Recommendation for Nanxi You

Dear Judge:

I am writing to recommend Nanxi You for a clerkship in your chambers. She is a sharp student and an engaged, eager participant in class discussions, and I am confident she would make a terrific addition to your chambers.

I came to know Ms. You while I was teaching as a Visiting Professor at Washington University School of Law in Spring 2022. She was an active voice in my Contracts class, always prepared when cold-called and also volunteering often (but not too often). When she spoke in class, her comments displayed a high level of preparation and engagement with the material. My class that semester had approximately 90 students (and all classes at the school were on Zoom for the first two weeks due to Omicron), so my ability to comment with specificity on the participation of individual students is somewhat less than I would like, but Ms. You nevertheless distinguished herself in class in participation as well as her final grade. I also came to know her during office hours and by email, where she posed questions that indicated that she had given a lot of thought to the material we were studying. In every interaction, she has been thoughtful, hardworking, highly motivated, and courteous.

As a former practicing lawyer and law clerk, I believe Ms. You has a very bright future in practice and would make an outstanding contribution to your chambers. Please do not hesitate to contact me if you would like to discuss her candidacy further.

Sincerely,

/s/
Gregory Shill
Professor of Law
University of Iowa College of Law
gregory-shill@uiowa.edu
(319) 335-9057

Washington University in St. Louis
SCHOOL OF LAW

September 8, 2022

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Recommendation for Nanxi You

Dear Judge Walker:

I am writing this letter on behalf of Nanxi You as I understand that she has applied for a clerkship with you. I enthusiastically, and without qualification, recommend Nanxi for a clerkship. Nanxi is an outstanding researcher and writer, self-motivated and a delight to work with. Nanxi was one of fifty-three students in my first year required Legal Practice class during the 2021-22 academic year. Nanxi's research skills, written work product, and oral presentation skills were in the top 20% of my class in the fall and in the top 7% in the spring.

Nanxi's grade for the fall semester was based on drafting one major client advisory letter, and one major memorandum, as well as several shorter written assignments. The client advisory letter was "closed," meaning that the students were not required to do any original research and the memorandum was "open," that is, the students were required to do their own original research in order to draft the memorandum. In the spring, Nanxi's written projects included a "closed" trial court brief, an oral argument on that brief, and an "open" research appellate brief.

In addition to the written assignments in Legal Practice, Nanxi had to complete two individual oral research presentations. For the presentations, she had to independently research several issues based on a hypothetical problem, determine the relevant research results that would assist her in making a prediction for the client, and then present those results to me in person in an individual meeting. Nanxi did an excellent job of discerning the relevant issues and finding case law that resolved those issues. She was very poised and confident in her presentations. She did a great job of walking me through her research results, answering my questions and providing a prediction and advice for the clients. Nanxi's score on her individual research presentations improved dramatically from the fall to the spring – a sign that she absorbed the constructive criticism from her first presentation and applied it to her second presentation.

Nanxi took the initiative in her educational endeavors. For example, she took advantage of every opportunity to meet with me to ask questions about her written draft assignments. For her meetings with me, Nanxi made sure her draft was as complete as possible. She came to the meeting with specific questions and suggested answers. She asked insightful questions during her individual meetings that demonstrated she had thought about the material. As another example of her initiative, Nanxi told me that by changing the way she studied for classes, she improved her GPA dramatically from first to second semester. Nanxi has the ability to listen and embrace constructive criticism – a skill that will serve her well as a lawyer.

Because of the small group nature of my class, I had the opportunity to get to know and observe Nanxi on a personal, as well as professional level. She was always supportive of her fellow students in a non-competitive manner. Nanxi listens carefully to what others have to say and if she disagrees, does so in a respectful, thoughtful manner.

At WashULaw, students are asked to submit a clerkship recommendation request form to faculty when requesting a clerkship recommendation. The form requires students to think about why they are applying for a clerkship. Nanxi's clerkship recommendation request is the most detailed request I have seen which indicates to me that she has thought very deeply about why she wants to clerk. In her request, she noted that the believes that "clerking is an opportunity to learn about different areas of the law while thinking through challenging issues and helping judges make decisions that shape common law." She also stated that she believed "clerking would help develop a better sense of what should and should not do in practice." Both of those reasons, as well as others she noted, make sense to me and are the kinds of reasons I would want a potential clerk to identify.

In short, Nanxi is a very highly self-motivated, hard-working student who consistently strives to do her best. She was always open to suggestions and eager to improve her research and writing skills for her own educational reasons, not for a grade.

I was delighted to learn that Nanxi was applying for a clerkship with you. She is truly an outstanding student, exhibits a love of learning and is delightful to work with. Therefore, I enthusiastically and highly recommend that you hire Nanxi You as your law clerk. Please call me if you have any questions regarding this letter or Nanxi's qualifications for a clerkship.

Jo Ellen Lewis - lewisj@wustl.edu - 314-935-4684

Best,

/s/

Jo Ellen Dardick Lewis
Professor of Practice

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Nanxi You
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WRITING SAMPLE 1

The following writing sample is based on a brief submitted for the Wiley Rutledge Moot Court Competition. My partner and I represented the respondent, the West Canaan Unified School District (the "District"), in a petition for writ of certiorari filed by Maureen Moxon ("Petitioner"), as next friend to her minor child K.M., for the following issues:

I. Whether the parent of a student who refuses to participate in a prayer led by an on-duty public school employee has standing, as next friend of her child, to assert a violation of the Establishment Clause; and

II. Whether it is a violation of the Establishment Clause for a public school district to permit an employee to lead a prayer among students participating in a school-sponsored activity.

Bud Kilmer ("Kilmer") is a coach of the football team at West Canaan High School, a public school (the "School") within the District's jurisdiction. Since at least 2002, Kilmer has made it a practice to lead his players in a traditional Christian prayer in the locker room before the start of each football game. K.M., who is agnostic and does not ascribe to any religious belief, joined the School's football team in 2021.

When K.M. requested that Kilmer stop leading the students in prayer because he was not comfortable reciting it, Kilmer told him that he was not going to stop because the prayer was a longstanding tradition, and it would not be fair to the other players on the team who wanted to join in the prayer if he were to stop leading it. He further told K.M. that it was up to K.M. whether he wanted to join the prayer, but was encouraged to for team unity. K.M. chose to not recite the prayer and to remain seated during the prayer, leading to ridicule by his teammates.

When Petitioner requested the District to prohibit Kilmer from leading the prayer, the District informed her that it would not take action. Petitioner then brought suit under 42 U.S.C. § 1983, claiming that the District's policy of permitting Kilmer to lead prayer violated the Establishment Clause and requesting that the District and Kilmer be enjoined from leading students in prayer. The District Court for the Eastern District of Texasota entered a judgement for Petitioner. The Court of Appeals for the Twenty-First Circuit reversed, holding that while Petitioner had standing to challenge the District's practice of permitting its employee to lead students in prayer in connection with a school-sponsored activity, the District's practice did not violate the Establishment Clause.

For purposes of this writing sample, I have deleted the Table of Authorities, Questions Presented, Jurisdictional Statement, Constitutional Provisions and Statutes, Statement of the Case, and Issue I. The discussion of Issue I has been removed from the Summary of the Argument section. This writing sample is my own work product and has not been substantially edited by any other person.

Nanxi You

No. 22-105

In the Supreme Court of the United States

MAUREEN MOXON, AS NEXT FRIEND OF K.M., A MINOR CHILD, PETITIONER
v.
WEST CANAAN UNIFIED SCHOOL DISTRICT, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TWENTY-FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

Team No. 4

October 7, 2022

Nanxi You

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Nanxi You

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PARTIES ON APPEAL

Petitioner Maureen Moxon ("Petitioner"), as next friend to K.M., a minor child, was the plaintiff below and appellee below. Respondent West Canaan Unified School District (the "District") was the defendant and appellant below.

OPINIONS BELOW

The decisions of the District Court for the Eastern District of Texasota (the "District Court") and the Court of Appeals for the Twenty-First Circuit (the "Circuit Court") are included in the attached record at 4–8 and 10–15 respectively.

JURISDICTIONAL STATEMENT

[Intentionally Deleted]

CONSTITUTIONAL PROVISIONS AND STATUTES

[Intentionally Deleted]

STATEMENT OF THE CASE

[Intentionally Deleted]

SUMMARY OF THE ARGUMENT

The District did not violate the Establishment Clause by allowing Coach Kilmer ("Kilmer") to lead pregame prayers. The facts of this case are similar to the ones that were presented in *Kennedy v. Bremerton*, in which this Court did not find an Establishment Clause violation when a coach invited students to join his postgame prayer on the field in public. 142 S. Ct. 2407, 2433 (2022). Here, Kilmer led pregame prayers in the locker room in private. The most important fact that this case shares with *Kennedy* is that the prayer was voluntary, not coercive. Through a

historical understanding of the purpose of the Establishment Clause, the Establishment Clause is only concerned with government practices that coerce people into adopting religion through threat of penalty. Here, it was entirely up to K.M. whether he wanted to join in the prayer. Even if he felt peer pressure to join in, this pressure is not considered coercion by Establishment Clause standards.

This Court has also analyzed Establishment Clause cases through other tests that focus on whether the challenged government practice had a purpose of advancing religion and whether it would be perceived as endorsing or approving religion. But even through these alternative tests, which this Court has disfavored, the District policy of permitting Kilmer's prayer was allowed by the Establishment Clause. The Establishment Clause must be interpreted in a way that is tolerant of religious expression, rather than requiring the government to censor anything that relates to religion. This approach better situates the Establishment Clause with the free speech and free exercise rights guaranteed by the First Amendment. Thus, the Establishment Clause is not violated when Kilmer merely extended an *invitation* for students to join his private prayer—an invitation to pray is vastly different from a requirement to pray.

ARGUMENT

I. [INTENTIONALLY DELETED]

II. THE DISTRICT COMPORTED WITH THE REQUIREMENTS OF THE ESTABLISHMENT CLAUSE BY PERMITTING A HIGH SCHOOL COACH TO LEAD STUDENTS IN A PREGAME PRAYER.

The First Amendment forbids the government from any practice that amounts to "an establishment of religion" or any practice "prohibiting the free exercise thereof." *U.S. Const. amend. I.* As a threshold matter, Kilmer's pregame prayer does not fall within the scope of the Establishment Clause because it is private speech that is not attributable to the District. But even

if Kilmer's prayer constituted government speech, the District's policy of permitting his prayer did not violate the Establishment Clause under any of the approaches that this Court has adopted in analyzing Establishment Clause cases.

A historical approach to interpreting the Establishment Clause is necessary because it recognizes that there are many religious practices that have historically been allowed under the Establishment Clause. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 670 (1989) (Brennan, J., dissenting). Under a historical approach, the District can permit Kilmer's prayer without violating the Establishment Clause. Therefore, this Court should affirm the Circuit Court's judgement that the District's policy of permitting Kilmer's prayer comported with the requirements of the Establishment Clause.

A. The District's neutral policy of permitting private religious speech comports with the requirements of the Establishment Clause.

The Constitution does not mandate or permit the District to suppress private religious speech. *Kennedy*, 142 S. Ct. at 2433. As this Court has noted, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990). This Court has further consistently held that "it is no violation for government to enact neutral policies that happen to benefit religion." *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753, 764 (1995).

1. <u>Kilmer's prayer constitutes private religious speech that is not attributable to the District.</u>

Because Kilmer's prayer did not fall within the scope of his duties as a coach, it is private speech that is protected by the First Amendment. *See Lane v. Franks*, 573 U.S. 228, 235–42 (2014)

(when a government employee's speech is not ordinarily within the scope of his duties, it is private speech that is protected by the First Amendment); *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (whether speech is within scope of employee's duties depends on if the speech was part of what he was employed to do). Even when Kilmer was on duty as a coach, he was free to engage in private speech. *Kennedy*, 142 S. Ct. at 2425. In *Kennedy,* a football coach engaged in prayers on the field after games, to which students on the team asked to join; even though he was still on duty and served as a role model, this Court recognized the coach's prayers as private speech because he was not trying to convey a government-created message, instructing players, discussing strategy, or engaging in any speech that the school paid him to perform as a coach.

Kilmer's prayer is similar to the prayer at issue in *Kennedy*. The District did not pay Kilmer to say his prayer—it was not part of his coaching duties. Crucially, this Court recognized in *Kennedy* that the coach shouldn't be expected to "shed [his] constitutional rights" upon entering school grounds. 142 S. Ct. at 2423 (quoting *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969)). This is equally applicable to Kilmer's right to speech: even if he was on duty before the games and was serving as a role model to the students while in the locker room, Kilmer had a right to his religious expression. If the District censored Kilmer's prayer, it would violate the Free Speech and Free Exercise Clauses, as this Court held for the prayer at issue in *Kennedy*. Moreover, the fact that Kilmer's prayer might be perceived as government speech does not actually make his prayer attributable to the District. *See Capitol Square Review*, 515 U.S. at 764–69 (rejecting a "transferred endorsement" principle where private expression violates Establishment Clause because it might be mistaken for officially endorsed religious expression, since policymakers would find themselves "in a vise between the Establishment Clause on one side and the Free Speech and Free Exercise clauses on the other").

Nanxi You

While this Court has invalidated school prayers on Establishment Clause grounds, it has done so because they were endorsed by the government. *See Sante Fe Independent School District v. Doe*, 530 U.S. 290, 294–99 (2000) (school declared a policy that student elections must take place to select a chaplain to lead invocations at football games, which were delivered in an official setting over the school's public address system, and forcefully suggested that the invocation was to be a public prayer); *Lee v. Weisman*, 505 U.S. 577, 587–90 (1992) (principal's decision that prayers should be given and his selection of clergy for an official school graduation ceremony are choices attributable to the state, so government involvement with religious activity was pervasive); *Engel v. Vitale*, 370 U.S. 421 (1962) (a short prayer recommended by the New York Board of Regents for students at the start of each school day was an impermissible establishment of religion). In contrast, as the District stated in its correspondences with the Petitioner, it adopted a completely neutral position such that "while [K.M.] remains free not to participate in the prayer if he does not want to, Coach Kilmer and the other players equally have the right to engage in such a traditional pregame prayer if they wish to." R. at 5. The District did not institute a policy of mandating prayer, so in no sense was the District pervasively involved in Kilmer's prayer. Kilmer's prayer is not attributable to the District because the District did not implicitly or explicitly encourage Kilmer to lead his prayer.

2. <u>In permitting Kilmer's prayer, the District comported with the Establishment Clause by ensuring neutrality towards religion.</u>

The District's policy of permitting private religious speech on a nondiscriminatory basis does not violate the Establishment Clause. On the contrary, this Court has noted that the "First Amendment mandates governmental neutrality…between religion and nonreligion." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). *See also Mergens,* 496 U.S. at 248–49 (a state law that

prohibited schools from denying access to facilities to students who wanted to form clubs on the basis of religious speech at club meetings did not violate the Establishment Clause because the law granted equal access to both non-religious and religious speech); *Capitol Square Review*, 515 U.S. at 770 (permitting a private display of a religious symbol in a public forum did not violate the Establishment Clause because the public forum was open to everyone on equal terms).

In order for the District to comply with the First Amendment, it must be neutral. Neutrality means that it extends equal access to religious and nonreligious viewpoints. If the District censored private religious speech, it would be in danger of violating the Free Exercise and Free Speech Clauses because it would show hostility towards religion. *See Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384, 390–94 (1993) (school district's preclusion of private group from presenting films at the school based on the films' religious views violated the Free Speech Clause). In permitting Kilmer's prayer, the District granted equal access to both private religious and nonreligious speech. On its face, the District's policy is neutral because it neither endorses nor disapproves of religion, similar to the policies at issue in *Mergens* and *Capitol Square Revie*w; Kilmer and the students were all equally allowed to express their religious or non-religious viewpoints, and no one was forced by the District to adopt any particular viewpoint. Thus, permitting Kilmer's prayer did not mean that the District discriminated in favor of private religious expression. This is the case even if the District's policy happened to incidentally benefit religion. *See Capitol Square Review*, 515 U.S. at 763–65 (a policy that benefits religion does not count as sponsoring the private group's expression).

B. Even if Kilmer's prayer constitutes government-sponsored speech, the District's policy of permitting his prayer comported with the Establishment Clause under all of the approaches that this Court has adopted in analyzing Establishment Clause cases for government-sponsored speech.

This Court has taken three different approaches for Establishment Clause cases for government-sponsored speech. Under this Court's most recent approach in *Kennedy*, which looked to a historical understanding of the Establishment Clause, the District did not violate the Establishment Clause because it did not coerce K.M. into participating in the prayer. Under the test that this Court adopted in *Lemon v. Kurtzman* (the "*Lemon* test"), the District still did not violate the Establishment Clause because its policy of permitting Kilmer's prayer did not have the effect of advancing religion, was not perceived as advancing religion, and was not excessively entangled with religion. Under the modified version of the *Lemon* test that this Court adopted in *County of Allegheny* (the "endorsement test"), the District still did not violate the Establishment Clause because it did not endorse any religion. Given that this Court has expressly declined to apply the *Lemon* test or ignored it in the past due to its shortcomings, a historical understanding of the Establishment Clause is necessary. *See American Legion v. American Humanist Ass'n,* 139 S. Ct. 2067, 2080 (2019).

Nanxi You

1. Under the Court's most recent approach in *Kennedy*, the District's policy of permitting Kilmer's prayer comported with the Establishment Clause because it did not coerce students into participating in the prayer.

   a. The Establishment Clause only prohibits the District from coercing students into participating in Kilmer's prayer.

As this Court instructed in *Kennedy*, the Establishment Clause must be interpreted with reference to historical practices and understandings rather than through the *Lemon* test, which the Court "long ago abandoned." 142 S. Ct. at 2427. Even before *Kennedy*, this Court stated that its interpretation of the Establishment Clause "has comported with what history reveals was the contemporaneous understanding of its guarantees," rather than be confined to just the *Lemon* test. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

Through a historical understanding of the Establishment Clause, the District is only prohibited from coercing students into participating in prayer. Historically, the Establishment Clause prohibited coercion "by force of law and threat of penalty." *Weisman,* 505 U.S. at 640 (Scalia, J., dissenting). Specifically, it prohibited coercive state establishments that "exercised government power in order to exact financial support of the church, compel religious observance, or control religious doctrine." *Town of Greece v. Galloway*, 572 U.S. 565, 608 (2014). Thus, the Establishment Clause was concerned with the government's legal coercion, such as limiting political participation to established church members and levying taxes to generate church revenue. *Id.* at 608. Given this historical understanding, the District could only violate the Establishment Clause if it coerced students into participating in the prayer, in a similar manner to how coercive state establishments historically compelled religious observance: under force of law and threat of penalty. This is because, when there is no coercion, "the risk of infringement of religious liberty

by passive or symbolic accommodation is minimal." *County of Allegheny,* 492 U.S. at 662 (Brennan, J., dissenting).

b. K.M. was not coerced into participating in Kilmer's prayer.

K.M. was not coerced into participating in Kilmer's prayer because it was entirely voluntary. In *Kennedy*, this Court pointed to the fact that not a single student joined the coach's prayers during the games for which he was disciplined as evidence that he did not coerce them to join him in praying. 142 S. Ct. at 2430. It emphasized that, based on a historical understanding of the Establishment Clause, mere visible religious conduct by the coach is not impermissibly coercive on students. *Id.* at 2431. Similarly, Kilmer did not compel K.M. to join his prayer. Like in *Kennedy*, K.M. was never required to participate because Kilmer told him that it was "up to" K.M. if he wanted to join. R. at 2. K.M. himself evidently did not think that he was required to participate, and was not pressured into participating, since he chose to not say the prayer and to remain seated during the prayer. R. at 2.

Moreover, the District did not coerce K.M. into participating in the prayer by merely exposing him to the prayer, even if he did not want to participate in it. *See Zorach v. Clauson*, 343 U.S. 306, 311–12 (1952) (public school program permitting students to spend time in private religious classrooms off campus was not coercive because they were not required to attend religious classrooms and school did not persuade or force students to participate in religious classrooms); *Town of Greece*, 572 U.S. at 588–90 (town board's practice of prayers during the ceremonial portion of its meetings was not coercive because lawmakers did not single out dissidents, direct the public to participate, force the public to stay in the room during prayers, or indicate that their policymaking would be influenced by whether or not a person participated in the prayers). Thus, coercion does not occur when students like K.M. are given the option of

participating in religious activity, which they can always choose to disregard. Moreover, neither offense nor peer pressure from being subjected to Kilmer's prayer constitutes coercion. *See Town of Greece*, 572 U.S. at 589–90 (even if the prayers gave the audience members offense and made them feel excluded and disrespected by exposing them to prayers that they would rather not hear, this offense was not coercion).

Similar to *Town of Greece*, the District did not coerce K.M. into joining Kilmer's prayer because the District did not treat K.M. differently from other students for not praying. Historically, Kilmer's prayer would not have been coercive because K.M. was not punished by "force of law" or "threat of penalty." When Kilmer told K.M. that "it would be best for team unity" if K.M. joined in the prayer (R. at 2), he only suggested that K.M. join in the prayer, and his intention was to foster inclusiveness and team unity, rather than trying to convert non-believers like K.M. Specifically, Kilmer indicated to K.M. that the prayer was a longstanding tradition that he had started at the school over twenty years ago. R. at 1–2.

2. Under the *Lemon* test and the endorsement test, the District's policy of permitting Kilmer's prayer still comported with the Establishment Clause.

In *Lemon v. Kurtzman*, this Court created a three-part test to determine whether a government practice is deemed constitutional under the Establishment Clause: (1) the practice must have a secular purpose, (2) the primary effect of the practice must be one that "neither advances nor inhibits religion," and (3) the practice must avoid "excessive governmental entanglement with religion." 403 U.S. 602, 612–13 (1971). In *County of Allegheny*, this Court adopted the endorsement test, in which a government practice is a violation of the Establishment Clause if it has the effect of endorsing religion; the effects of a government practice depends on whether a reasonable observer would conclude that the government is conveying a message that

religion is favored or preferred. 492 U.S. at 630–31 (O'Connor, J., concurring). Under either the *Lemon* test or the endorsement test, the District still comported with the Establishment Clause.

a. The District's policy of permitting Kilmer's prayer has a secular purpose.

In permitting Kilmer's prayer, the District was not motivated by the advancement of religion. *Compare Lynch*, 465 U.S. at 680–81 (city's display of a creche has a legitimate secular purpose because the display was sponsored by the city to celebrate Christmas, which is a tradition that is recognized as a national holiday) *with Wallace v. Jaffree*, 472 U.S. 38, 56–57 (1985) (statute authorizing period of silence for voluntary prayer in public schools was invalid because, as lawmakers expressed, the *only* purpose for the enactment was to return voluntary prayer to schools). Unlike the statute in *Jaffree*, the purpose of the District's policy was to honor team tradition and foster team unity, which are secular purposes. The District's policy of not taking action with respect to Kilmer's prayer also served a broader secular purpose of fostering "mutual respect and tolerance…for religious and non-religious views alike." *Kennedy*, 142 S. Ct. at 2416.

That the District's policy may have created incidental benefits to religion, by giving Kilmer a platform to encourage students to join the prayer, does not diminish the secular purpose of the policy. *See Lynch*, 465 U.S. at 680. *See also Board of Education v. Allen*, 392 U.S. 236, 241 (1968) (statute requiring provision of free textbooks to be issued to all students in public and private parochial schools is valid because the purpose of the statute was to further students' education). Here, a policy of accommodating religious and non-religious views alike was not motivated by religious purpose, even if the policy benefitted Kilmer and religious students.

b. The District's policy of permitting Kilmer's prayer did not have the effect of advancing or inhibiting religion, and a reasonable observer would not think that the District was endorsing religion.

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Under the endorsement test, a reasonable observer would not think that the District was endorsing religion because refusal to prohibit Kilmer's prayer is not the same as affirmatively approving his prayer. *Compare Lynch*, 465 U.S. at 683 (city's display of a creche alongside purely secular symbols is no more an advancement or endorsement of religion than legislative recognition of the origins of the Christmas holiday or the "exhibition of literally hundreds of religious paintings in governmentally supported museums") *with County of Allegheny*, 492 U.S. at 598 (city's creche display communicated an unmistakably religious message because it was the only item on display and included a sign that said, "Glory to God in the Highest!").

Here, a reasonable observer would not think that the District's policy is conveying a message that religion is favored or preferred. High school students, regardless of their religious views, would understand that the District's accommodation of the prayer is to ensure that there is a neutral policy – the exact opposite of advancing or inhibiting religion. *See Mergens*, 496 U.S. at 250 (noting that secondary school students are mature enough to understand that schools "do not endorse everything they fail to censor"). Whereas the creche in *County of Allegheny* conveyed an unmistakably religious message, the District did not convey any unmistakably religious message because it never expressed that it preferred religious adherents over non-adherents.

c. <u>The District's policy of permitting Kilmer's prayer did not create excessive governmental entanglement with religion.</u>

The District's policy did not create excessive government entanglement with religion because there was no "intimate and continuing relationship between church and state." *Lemon*, 403 U.S. at 622. *Compare Lynch*, 465 U.S. at 684 (finding no entanglement in city's creche display because city did not contact church authorities about the content of the display prior to or after its purchase of the creche and city's material contribution to the creche was *de minimis*) *with Lemon*,

403 U.S. at 619–20 (state statutes providing financial support to church-related educational institutions fostered excessive entanglement with religion because they required continuing state surveillance to determine which expenditures were religious and which were secular).

Like in *Lynch*, the District was far removed from religion because it did not provide any material support to Kilmer for leading his prayer, let alone encourage or ask him to lead his prayer. As this Court expressed in *Lynch*, a litigant cannot "create the appearance of [political] divisiveness and then exploit it as evidence of entanglement." 465 U.S. at 684–85. Here, K.M. has created the appearance that the District's neutral policy is a pretext for supporting religion, when it is actually directed towards maintaining everyone's right to religious expression. Thus, this false appearance cannot be used as evidence of entanglement when the District has not provided any support, material or otherwise, to Kilmer for the purpose of leading prayer.

C. The Court should adopt a historical approach to the Establishment Clause, under which the District's policy of permitting Kilmer's prayer is so rooted in national tradition that it comports with the Establishment Clause.

1. <u>The District's policy of permitting prayer is so rooted in national tradition that it comports with the Establishment Clause.</u>

From a historical approach, the practice of voluntary school prayer would have been permitted under the Establishment Clause. In *Marsh v. Chambers*, this Court held that a state legislature's practice of employing a legislative chaplain to open each legislative session with a voluntary prayer comported with the Establishment Clause because Congress had opened sessions with a prayer for over 200 years, and many state legislatures followed suit. 463 U.S. 783, 786–92 (1983). This historical evidence showed that the drafters of the First Amendment did not intend for the Establishment Clause to apply to legislative prayers, and that the practice of legislative

prayers is "part of the fabric of our society." *Id.* at 792. *See also Town of Greece*, 572 U.S. at 576 ("That the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion's role in society").

Voluntary school prayers such as the one that Kilmer led has similar historical roots as legislative prayers. As the District noted, "[pregame] prayers are commonly said in locker rooms all across the country and have been for generations." R. at 5. *See also Weisman*, 505 U.S. at 631–32 (Scalia, J., dissenting) (noting that prayer at graduation ceremonies is a longstanding American tradition). Prayers, regardless of whether they are school or legislative, are a part of the fabric of our society because they have existed for so long. Just as the Framers saw legislative prayers as a "benign acknowledgement" of the role of religion in society, they also would have seen Kilmer's prayer as an acknowledgement of the role of religion in creating team unity for high school football teams. This kind of acknowledgement does not amount to establishment or endorsement of religion, because as this Court noted in *Marsh*, prayers "presents no more potential for establishment than the provision of school transportation…or tax exemptions for religious organizations." 463 U.S. at 791.

2. <u>A historical approach to interpreting the Establishment Clause is better suited than the *Lemon* test and endorsement test in delineating the boundaries of the Establishment Clause.</u>

A historical approach recognizes that tolerance for voluntary school prayers promotes the right to religious expression. *See Kennedy*, 142 S. Ct. at 2416. When this Court has used a historical approach in interpreting the Establishment Clause, it has emphasized that the government has an interest in cultivating respect for others' religious expressions. *See American Legion,* 139 S. Ct. at

2084–85 ("A government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion"). *See also Weisman*, 505 U.S. at 638 (Scalia, J., dissenting) (arguing that a non-adherent's interest in avoiding the false appearance of participating in a school prayer does not trump the government's interest in fostering respect for religion generally).

A historical approach recognizes that the District should not be required to insulate students from all things that have even the slightest religious significance. *See Town of Greece*, 572 U.S. at 591 (the purpose of a prayer during the ceremonial portion of the meeting is to merely acknowledge the "central place" that religion holds in people's lives rather than to coerce nonbelievers). Likewise, voluntary school prayers, especially pregame prayers like the one Kilmer led, serve a ceremonial purpose. Pregame prayers serve as an acknowledgement of the role of religion for team unity and tradition. School prayers are a part of heritage, no different from "the Pledge of Allegiance, inaugural prayer, or the recitation of 'God save the United States and this honorable Court' at the opening of this Court's sessions." *Town of Greece*, 572 U.S. at 587.

CONCLUSION

The District respectfully requests that this Court dismiss Petitioner's claim for lack of standing or affirm the Circuit Court's decision on the Establishment Clause claim.

Respectfully Submitted,

Dated: October 7, 2022

/s/Team No. 4

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WRITING SAMPLE 2

The following writing sample is based on a case comment submitted for the Write-On Competition at Washington University School of Law in May 2022. I was provided with a packet of "closed universe" materials to analyze the Ninth Circuit's approach to the issue of whether patients and health insurance companies who brought a civil action under the Racketeer Influenced and Corrupt Organizations Act (RICO) against pharmaceutical companies adequately established the required element of proximate cause. The Ninth Circuit's holding in *Painters & Allied Trades District Council 82 Health Care Fund v. Takeda Pharmaceuticals Co.* contributed to a circuit split over the central question of whether the decisions of prescribing physicians were intervening causes that severed the chain of causation between the pharmaceutical companies' allegedly fraudulent conduct and the harm to patients and health insurance companies.

For purposes of this writing sample, I have condensed my discussion of the development of the law leading up to the case under review.

The citations follow Bluebook rules. This writing sample is my own work product and has not been edited by any other person. Based on my performance in the Write-On Competition, the *Washington University Law Review* offered me a position as a Staff Editor.

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THE INTERPRETATION OF PROXIMATE CAUSATION UNDER CIVIL RICO:
Painters & Allied Trades District Council 82 Health Care Fund v. Takeda Pharmaceuticals Co., 943 F.3d 1243 (9th Cir. 2019)

The Racketeer Influenced and Corrupt Organizations Act (RICO) allows private parties to bring civil suits for treble damages.[1] To recover for a civil RICO violation under 18 U.S.C. § 1962, a plaintiff must prove that the defendant, through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly invested in, or maintained an interest in, or participated in an enterprise whose activities affect interstate or foreign commerce.[2] To have standing under 18 U.S.C. § 1964(c), a plaintiff must show that he was injured "in his business or property by reason of a violation of section 1962."[3] While it has been established that the language "by reason of" requires a plaintiff to prove proximate cause, courts have disagreed on how such a proximate cause test should be applied.[4] In *Painters & Allied Trades District Council 82 Health Care Fund v. Takeda Pharmaceuticals Co.*,[5] the Ninth Circuit concluded that pharmaceutical companies' allegedly fraudulent misrepresentation of a drug's known safety risk proximately caused RICO harm to patients and health insurance companies.

Five patients and a third-party payor (TPP) of health benefits to covered members filed a class action suit against Takeda Pharmaceuticals USA, Inc., its parent company Takeda Pharmaceutical Company Ltd., and Eli Lilly & Co.[6] The plaintiffs alleged that the defendants conspired to commit mail and wire fraud by intentionally misleading physicians, consumers, and TPPs to believe that a diabetes drug that the defendants developed and marketed did not increase a consumer's risk of developing bladder cancer.[7] The plaintiffs sought to recover economic damages under RICO for the payments they made to purchase the drug, Actos, which they claimed they would not have purchased had they known that it increased their risk of developing bladder cancer.[8] The District Court for the Central District of California dismissed the RICO claims, reasoning that the plaintiffs failed to sufficiently establish that the defendants' acts were the

proximate cause of their damages.[9] On appeal, the Ninth Circuit reversed and held that the plaintiffs adequately established RICO proximate cause: while the prescribing physicians and pharmacy benefit managers were intermediaries between the defendants' fraudulent conduct and the plaintiffs' payments for the drug, they did not constitute intervening causes that broke the chain of causation.[10]

The Supreme Court first interpreted § 1964(c) to require a proximate cause element in *Holmes v. Securities Investor Protection Corp.*[11] To establish proximate cause, the Court required a direct relation between the injury asserted and the injurious conduct alleged.[12] It provided three reasons why a direct relation was necessary to establish proximate cause. First, the less direct an injury is, the more difficult it is to ascertain the amount of a plaintiff's damages attributable to the violation as opposed to other independent factors.[13] Second, allowing recovery for indirectly injured parties would force courts to adopt complicated rules to apportion damages among plaintiffs, or else run the risk of multiple recoveries.[14] Third, the goal of deterring injurious conduct is furthered by counting on directly injured victims to bring their claims without the same issues facing remotely injured parties.[15]

However, the Court did not completely bar recovery for victims of third-party fraud. In *Bridge v. Phoenix Bond & Indemnity Co.*,[16] the defendants were bidders at a tax lien auction who allegedly violated a county rule that prohibited bidders from using agents to submit simultaneous bids and furnished fraudulent compliance affidavits.[17] The Court held that plaintiffs, who were other bidders in the tax sales, could adequately establish proximate cause even though the misrepresentations were made to the county.[18] Notably, it argued that it was a "foreseeable and natural consequence of [defendants'] scheme…that other bidders would obtain fewer liens" and

distinguished the case from *Holmes* in that there were no independent factors that accounted for the plaintiffs' injury.[19]

Lower courts have diverged in their interpretation of the proximate cause requirement for RICO claims pertaining to prescription drugs fraud. In *Sidney Hillman Health Center of Rochester v. Abbott Laboratories*,[20] TPPs that paid for beneficiaries' off-label use of seizure drugs brought a RICO claim against a drug manufacturer for its unlawful sales tactics, arguing that they were directly injured because they paid for most of the cost of the drugs.[21] However, the Seventh Circuit held that misrepresentations made to physicians don't support a RICO claim by the TPPs who were "several levels removed in the causation sequence" and not the initially injured parties.[22] In *UFCW Local 1776 v. Eli Lilly & Co.*,[23] the Second Circuit took the same approach as the Seventh Circuit. The TPPs alleged that the drug manufacturer's misrepresentation about the drug's efficacy and side effects resulted in higher price and greater demand for the drug, resulting in TPPs (1) paying for prescriptions that would not have been written but for the misrepresentation and (2) paying a higher price for the drug than they would have been charged absent the misrepresentation.[24] The court held that proximate cause could not be established for either theories of harm because of the independent actions of prescribing physicians, who may have relied on the misrepresentation to different degrees.[25]

In contrast, the First Circuit found proximate causation under similar facts in *In re Neurontin Marketing & Sales Practices Litigation*.[26] TPPs claimed that the drug manufacturers engaged in fraudulent marketing to doctors and TPPs, which influenced both formulary decisions and prescribing decisions, and misrepresented the drug's effectiveness for off-label uses.[27] The court found that TPPs satisfied the direct relationship test in *Holmes*, and that the causal chain was "anything but attenuated" because the drug manufacturers had always known that, "because of the

structure of the American health care system, physicians would not be the ones paying for the drugs they prescribed."[28] Notably, the court reasoned that the fact that some physicians may have based their prescribing decisions in part on factors other than the fraudulent marketing does not make the causal chain attenuated; this argument is only relevant to determining damages, but does not affect the question of proximate cause.[29] Similarly, in *In re Avandia Marketing, Sales Practices & Product Liability Litigation*,[30] the Third Circuit held that the conduct that allegedly caused the TPPs' injuries was the same conduct underlying the RICO scheme—the misrepresentation of risks associated with taking the drug—that caused TPPs to place the drug in the formulary. It further concluded that prescribing physicians did not suffer RICO injury from the fraudulent marketing, so the TPPs' economic injury was independent of any third parties who were injured.[31]

In *Painters*, the Ninth Circuit decided to take the same approach as the First and Third Circuits on the issue of proximate cause.[32] First, it found that the TPP's and patients' allegations satisfied the direct relation requirement stated in *Holmes*, as they were the immediate victims of the drug manufacturer's fraudulent scheme to conceal the risk of bladder cancer.[33] The court also found that the three *Holmes* factors weighed in favor of establishing proximate cause, as (1) it did not think that the calculation of damages would be so difficult that the plaintiffs should be denied the opportunity to prove their damages, (2) there was no concern of multiple recoveries because patients sought to recover only the amount they paid out-of-pocket, and (3) holding the defendants liable for the plaintiffs' alleged injuries would deter harmful conduct because they were the most direct victims suffering economic injury.[34]

Next, the Ninth Circuit analyzed the central issue between the Second and Seventh Circuits and the First and Third Circuits: "whether the decisions of prescribing physicians and pharmacy benefit managers constitute intervening causes that sever the chain of proximate cause between

the drug manufacturer and TPP."[35] It concluded that the First and Third Circuits' approach was more consistent with the Supreme Court's direct relation requirement, reasoning that prescribing physicians were not intervening causes because "it was perfectly foreseeable that physicians who prescribed [the drug] would play a causative role" in the defendants' allegedly fraudulent scheme.[36]

The Ninth Circuit correctly interpreted the direct relation requirement in holding that proximate cause was sufficiently established. In *Holmes*, the Supreme Court used the direct relation requirement to avoid the difficulties of distinguishing the amount of a plaintiff's damages attributable to the RICO violation from other independent factors.[37] Thus, the Court was concerned about the possibility of independent factors, such as the prescribing physicians and pharmacy benefit managers in *Painters*. But in *Painters*, as the Ninth Circuit noted, it is not so clear that the prescribing physicians are independent factors.[38] The Ninth Circuit correctly drew an analogy to *Bridge,* where proximate cause was established because the harm to the other bidders was a foreseeable consequence of the defendants' fraudulent scheme.[39] In the context of TPPs, foreseeability is important because it establishes that the defendants *intended* to cause economic injury to TPPs through their misrepresentation. Because Actos was a prescription drug, the defendants knew that the only way their alleged fraud could be carried out was through the actions of prescribing physicians.[40] The physicians were merely intermediaries that were necessary for the fraudulent scheme to work—they were not intended as the target of the alleged RICO violation because TPPs and patients were the parties that would inevitably suffer economic injury. The plaintiffs provided sufficient evidence that physicians lacked knowledge about the risk of the drug, and it was not the case that physicians deliberately prescribed the drug after learning about its risks.[41]

But even if prescribing physicians and pharmacy benefit managers are independent factors, they are not *substantial* factors that should break the causal chain.[42] In both *Holmes* and *Bridge,* the Court noted that proximate cause is a "flexible concept"[43] for which it is "virtually impossible to announce a black-letter rule that will dictate the result in every case."[44] The direct relation test is based on the assumption that the less direct an injury is, the more difficult it is to tell how much of a plaintiff's injury can be attributed to the RICO violation. But, in the context of pharmaceutical fraud, the direct relation test should not bar recovery when it is possible to tell how much of the economic injury to the patients and TPP stem from the drug manufacturers' fraudulent scheme. As the First Circuit noted in *Neurontin,* it is possible to use economic analysis and reasonable assumptions about alternative drugs that physicians would have prescribed absent the fraudulent misrepresentation.[45]

The *Holmes* Court may have wanted to bar recovery for harms that were too speculative and that could be due to any number of factors, but the nature and severity of the defendants' misrepresentation in *Painters* allowed for a reasonable assumption that physicians would have prescribed an alternative drug but for the alleged RICO violation, so the plaintiffs' economic injury was not speculative.[46] As the Ninth Circuit noted, there is an important difference between the fraudulent promotion of off-label uses in *Sidney Hillman* and *UFCW Local 1776* and the fraudulent failure to warn of a drug's known risk of causing bladder cancer in *Painters*: whereas it would be difficult to attribute which physicians' prescribing decisions were influenced by drug manufacturers' fraudulent promotion of off-label uses, it is more likely that knowing about a drug's risk of causing bladder cancer would materially influence physicians' prescribing decisions.[47] The Ninth Circuit correctly took a functional approach in its analysis of the *Holmes* factors, particularly in its recognition that calculation of damages was possible. A functional approach that does not

read too much into the literal requirement of a direct relation between the injury and the RICO violation is better for achieving the intended purpose of a proximate cause requirement.[48]

Rather than focusing on the difficulty of calculating damages as the Second and Seventh Circuits did,[49] the Ninth Circuit correctly focused on the purpose of the proximate cause requirement, noting that drug manufacturers should not be "insulated from liability" for their fraudulent conduct by hiding behind prescribing doctors.[50] Proximate cause is ultimately a policy question on how far to extend liability. The Second and Seventh Circuits' denial of standing to TPPs will have negative policy implications because it severely weakens the reach of the RICO statute, which is an important deterrent against drug manufacturers that engage in fraudulent marketing schemes.[51] By making it harder for TPPs to sue for pharmaceutical fraud, drug manufacturers will continue to engage in fraudulent marketing that harm multiple parties. The Ninth Circuit's interpretation of RICO's proximate cause requirement, on the other hand, recognizes a broader approach to the Supreme Court's direct causation test in which the foreseeability of harm can still be considered in imposing liability.[52] In opting for a broader interpretation, the Ninth Circuit has stayed true to the purpose of the RICO statute,[53] and has demonstrated how civil RICO can be used as a powerful tool against pharmaceutical fraud.[54]

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[1] 18 U.S.C. §§ 1961–1968.

[2] The statute lists approximately 150 predicate offenses deemed to be "racketeering activity" in 18 U.S.C. § 1961(1). Of particular relevance to this Case Comment are the predicate offenses of mail and wire fraud under 18 U.S.C. §§ 1341, 1343.

[3] *See* CHARLES DOYLE, CONG. RSCH. SERV., RL96-950, RICO: A BRIEF SKETCH 19–25 (2021) (explaining the elements of the civil RICO statute).

[4] *See infra* notes 15, 20 and accompanying text.

[5] 943 F.3d 1243 (9th Cir. 2019).

[6] *Id.* at 1246. The TPP, Painters and Allied Trades District Council 82 Health Care Fund, relies on its members to submit claims for drugs and expects that patients and prescribing physicians will make "informed decisions" about which drugs will be prescribed and submitted for reimbursement. *Id.* at 1247; *see also In re* Avandia Mktg., Sales Pracs. & Prod. Liab. Litig., 804 F.3d 633, 634–35 (3d Cir. 2015) (explaining how pharmacy benefit managers prepare TPPs' formularies of drugs approved for use by TPPs' members).

[7] The plaintiffs argued that despite learning of the increased risk of developing bladder cancer, the defendants refused to change the warning label on the drug or inform them of the risk. *Painters*, 943 F.3d at 1246.

[8] Patients claimed neither they nor their physicians knew about Actos's risk of bladder cancer when they began taking the drug and that they would never have submitted reimbursement claims for Actos to TPPs since they would never had purchased Actos. *Id.* at 1247.

[9] *Id.* at 1247–48.

[10] *Id.* at 1257.

[11] 503 U.S. 258 (1992).

[12] *Id.* at 266–68.

[13] *Id* at 269–70.

[14] *Id.*

[15] *Id*. The Court was concerned that a liberal construction of RICO, in which indirectly injured parties could recover, would open the door to "massive and complex damages litigation" that would burden the courts and undermine the effectiveness of treble-damages suits (quoting

Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 545 (1983)).

[16] 553 U.S. 639 (2008).

[17] *Id.* at 643–44 (2008).

[18] *Id.* at 648.

[19] *Id.* at 658.

[20] 873 F.3d 574 (7th Cir. 2017).

[21] *Id.* at 576.

[22] *Id.* at 578. The court noted several difficulties with calculating damages if the TPPs were to be given RICO standing: (1) not all off-label prescriptions were injurious to TPPs because they may have been beneficial to patients and cheaper than an alternative drug, (2) even in the absence of the drug manufacturer's misrepresentations, physicians may have written the same prescriptions anyways, and (3) physicians' prescribing practices may have been influenced by factors other than the drug manufacturer's misrepresentations. It rejected the TPPs' argument that the effects of the drug manufacturer's misrepresentations could be estimated using a regression analysis, suggesting that any estimate would be speculative. *Id.* at 577. *But see In re* Neurontin Mktg. & Sales Pracs. Litig., 712 F.3d 21 (1st Cir. 2013) (using economic analysis to find a causal connection between fraudulent marketing and quantity of prescriptions written for off-label indications).

[23] 620 F.3d 121 (2d Cir. 2010).

[24] *Id.* at 131.

[25] *Id.* at 136.

[26] 712 F.3d 21 (1st Cir. 2013).

[27] *Id.* at 28.

[28] *Id.* at 38.

[29] *Id.* at 39. One expert calculated the percentage of prescriptions caused by the fraudulent marketing: three out of ten prescriptions written by neurologists for migraine would not have been written but for the alleged misrepresentation. *Id.* at 30. Another expert calculated the damages number using a list of alternative drugs that were more appropriate for each off-label indication; the court accepted this method of damage calculation. *Id.* at 32.

[30] 804 F.3d 633, 644 (3d Cir. 2015).

[31] *Id.* Like the *Neurontin* court, the *Avandia* court noted that distinguishing the amount of damages attributable to the defendant's violation from other independent factors is a question of damages, not of proximate cause. *Id*.

[32] Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co., 943 F.3d 1243, 1257 (9th Cir. 2019).

[33] *Id.* at 1251.

[34] *Id*. In considering the difficulty of ascertaining damages, the court briefly noted that the plaintiffs had alleged there were at least three less expensive alternatives to Actos but that "[i]n any event, this is a damages question for another day." *Id.* at 1251 n.7.

[35] *Id.* at 1257.

[36] *Id.*

[37] Holmes v. Secs. Inv. Prot. Corp., 503 U.S. 258, 269 (1992).

[38] Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co., 943 F.3d 1243, 1257 (9th Cir. 2019).

[39] *Id.* at 1251. *But see* Hemi Grp., LLC v. City of New York, 559 U.S. 1, 12 (2010) ("Our precedents make clear that in the RICO context, the focus is on the directness of the relationship between the conduct and the harm… *Holmes* never even mentions the concept of foreseeability"); Randy D. Gordon, *RICO Had a Birthday! A Fifty-Year Retrospective of Questions Answered and Open*, 105 MARQ. L. REV. 131, 162 (2021) (noting that in *Hemi*, the foreseeability of the harm "proved insignificant").

[40] *Painters*, 943 F.3d at 1257; *see also* Simani M. Price et al., *What Influences Healthcare Providers' Prescribing Decisions? Results From a National Survey*, 17 RSCH. IN SOC. & ADMIN. PHARMACY 1770, 1770 (2021) (finding that contact with pharmaceutical industry was significantly associated with increased industry influence on providers' prescription decisions).

[41] *Compare Painters*, 943 F.3d at 1258 (survey showed that seventy-five percent of surveyed physicians' interest in another anti-diabetic drug declined greatly once they learned it carried a risk of bladder cancer), *and* Price et al., *supra* note 40, at 1777 (research indicates that physicians may genuinely lack understanding of what is promotion information and may not be able to distinguish promotional information and scientific evidence), *with* Sidney Hillman Health Ctr. of Rochester v. Abbott Lab'ys, 873 F.3d 574, 577 (7th Cir. 2017) (noting that some physicians were apt to write prescription whether or not the drug manufacturer promoted the drug for off-label uses).

[42] *See* Gordon, *supra* note 39, at 162 n.155 ("[T]he focus is on…whether the connection [between the conduct and the harm] is attenuated by substantial intervening factors or third party conduct." (quoting Doe v. Trump Corp., 385 F. Supp. 3d 265, 276 (S.D.N.Y. 2019))).

[43] Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639, 654 (2008).

[44] Holmes v. Secs. Inv. Prot. Corp., 503 U.S. 258, 272 n.20 (1992) (quoting Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 536 (1983)); *see also* Stephen Scallan, *Proximate Cause Under RICO*, 20 S. ILL. U. L.J. 455, 467 (1996) (arguing that the Court's directness test gives a broad reading to the phrase "direct injury"). *But see* Pamela Bucy Pierson, *RICO Trends: From Gangsters to Class Actions*, 65 S.C. L. REV. 213, 246 (2013) (arguing that *Holmes* created a "high and exacting burden" for plaintiffs to prove that their alleged injuries are directly caused by the alleged violation of RICO and that no other factors other than the RICO conduct contributed to their injury).

[45] *See supra* note 29. *But see* UFCW Local 1776 v. Eli Lilly & Co., 620 F.3d 121, 135 (2d Cir. 2010) (noting the difficulty of attributing injury to the drug manufacturer's RICO conduct because of uncertainty about what the alternative prescriptions would have been and how they would have been distributed among the plaintiffs); Tracy Weber et al., *Medicare Drug Program Fails to Monitor Prescribers, Putting Seniors and Disabled at Risk*, PROPUBLICA (May 11, 2013, 4:06 PM), https://www.propublica.org/article/part-d-prescriber-checkup-mainbar (showing that some physicians still choose to prescribe a drug even after knowing about risks of harmful side effects).

[46] *See In re* Neurontin Mktg. & Sales Pracs. Litig., 712 F.3d 21, 49 (1st Cir. 2013) (noting that, even if assumptions of whether doctors would have prescribed lower-cost alternative drugs are speculative, "the burden of proof as to damages is lower than that for causation, and the factfinder is afforded a greater deal of freedom to estimate damages where the defendant, as here, has created the risk of uncertainty").

[47] Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co., 943 F.3d 1243, 1258 (9th Cir. 2019). Plaintiffs alleged that sales of Actos decreased approximately eighty

percent when the Food and Drug Administration issued an official warning on the risk of bladder cancer. *Id*.

[48] *See* Scallan, *supra* note 44, at 457, 460 (discussing the limitations of the direct relation test and arguing that, instead of using a foreseeability test, courts have "effectively denied litigants standing by using archaic proximate cause tests").

[49] *See supra* note 22.

[50] *Painters*, 943 F.3d at 1257.

[51] *See* Scallan, *supra* note 44, at 505 (arguing that "RICO damages…are set at too low a level to overdeter").

[52] *Painters*, 943 F.3d at 1257.

[53] *See* S. REP. NO. 91-617, at 79 (1969) (noting that civil RICO is "necessary to free the channels of commerce from all illicit activity").

[54] *See* Pierson, *supra* note 44, at 215, 257 (arguing that civil RICO is "an untapped resource" and that "the way is bright if insurers, either as a single plaintiff or in class actions, want to use RICO to sue pharmaceutical companies for fraudulent misrepresentations about covered drugs").

Applicant Details

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Date of BA/BS	**May 2017**
JD/LLB From	**Temple University--James E. Beasley School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011**
Date of JD/LLB	**May 23, 2024**
Class Rank	**5%**
Law Review/ Journal	**Yes**
Journal(s)	**Temple Law Review**
Moot Court Experience	**No**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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The Honorable Jamar Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

June 11, 2023

Dear Judge Walker,

I write to express my strong interest in a clerkship with your chambers. I graduate from Temple University Beasley School of Law in May 2024, and would be available to clerk for the 2024-2025 term.

Having conducted legal research and analysis in both the public and private sectors, I am confident I would excel as your law clerk. At Temple, I received the top grade and "Best Paper" award in Legal Research and Writing II, and will intern with the Third Circuit Court of Appeals next year as part of Temple's Federal Judicial Clerkship Clinical Honors Program. I am particularly interested in applying my legal skills to a wide range of contexts, as demonstrated by my academic research as a Law & Public Policy Scholar and my work as an Articles Editor for Temple Law Review.

I have attached for your reference my resume, an unofficial transcript, and a writing sample. Letters of recommendation will be sent separately. I would welcome the opportunity to meet in person or remotely and further discuss the position. Thank you for your time and consideration.

Respectfully,

Asher Young

Asher Young

Asher Young

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EDUCATION

TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW Philadelphia, PA
J.D. Candidate | GPA: 3.82 (Top 5%) May 2024
Honors: *Temple Law Review*, Vol. 96 Articles Editor
2023-2024 Federal Judicial Clerkship Honors Program
2022-2023 Arthur H. Gold Scholarship for Outstanding Academic Performance
2022 Law & Public Policy Scholar
Distinguished Performance in Civil Procedure I and Constitutional Law
Best Paper in Legal Research and Writing II
Presentations: The Intersection of Law & Policy at Temple Law: 2023 Annual Update
Activities: American Constitution Society; Student Public Interest Network

WESLEYAN UNIVERSITY Middletown, CT
B.A. in Government and Spanish May 2017
Honors: NESCAC Spring All-Academic Team, 2015-2017; Dean's List
Activities: Men's Varsity Baseball Team, Captain; *Wesleyan Argus,* Staff Writer

WORK EXPERIENCE

FAEGRE DRINKER BIDDLE & REATH LLP Philadelphia, PA
Summer Associate May 2023 – July 2023
Research legal issues in commercial litigation cases and pro bono matters. Observe and prepare for hearings, conferences, and depositions.

TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW Philadelphia, PA
Research Assistant for Professor Craig Green August 2022 – December 2022
Research and edit articles on territory and statehood, and affirmative action in legal education.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES Washington, D.C.
Legal Intern May 2022 – August 2022
Track and analyze potential impacts of legislative proposals on federal agency operations and regulatory programs. Research administrative law issues to improve the fairness and efficiency of federal agency procedures for managing grants and benefits.

BENNETT MIDLAND LLC New York, NY
Senior Associate and *Associate* (promoted in June 2019) June 2017 – June 2021
Support nonprofits, government agencies, and philanthropies as a management consultant, with a focus on policy analysis, program design, strategic planning, and performance measurement. Coordinate the implementation of Raise the Age legislation and statewide bail reforms in New York City. Deliver technical assistance to elected municipal officials advancing racial and economic equity projects across the American South.

SKILLS AND INTERESTS

Proficient in Spanish. Interested in baseball analytics, urban design, and public history.

Asher Young

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Advising Transcript

Student Information | Institution Credit | **Transcript Totals** | Course(s) in Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Asher F. Young

Student Type

Continuing Degree Seeking

Curriculum Information

Current Program : Juris Doctor

Program	College	Campus
Law--Full Time	Law, Beasley School	Main

Major and Department

Law--Full Time, Law: Beasley School of Law