17, 2019, 10:45 AM), https://www.vice.com/en/article/ne879z/i-tracked-someone-with-license-plate-readers-drn.

Perhaps because of the difficulty of establishing expressive purpose, private companies argue instead that the act of gathering photographs from public spaces is inherently protected speech. *See* Defendant's Memorandum in Support of Its Motion to Dismiss at 16, *ACLU v. Clearview AI, Inc.* (Ill. Cir. Ct. of Cook County Oct. 7, 2020) (No. 20 CH 04353), https://www.aclu.org/defendants-memorandum-support-its-motion-dismiss. This position finds support among some legal commentators. They argue that recent developments in technology and social practice have made captured images part of society's cultural and political discourse and that, like music, images are inherently expressive. *See* Seth F. Kreimer, *Pervasive Image Capture and the First Amendment: Memory, Discourse, and the Right to Record*, 159 U. Pa. L. Rev. 335, 372–73 (2011). Inherently expressive activities are afforded protection without inquiry into whether a specific message is conveyed. *See id.* at 373. Furthermore, captured images should not require an audience to be considered expressive, because "[i]n the emerging environment of pervasive image capture, the difference between capturing images and disseminating images erodes rapidly." *Id.* at 376. With some images being instantly live streamed, and others held for editing before upload, it is difficult to draw a logical line delineating when a captured image becomes expressive. *See id.* at 377. A simpler solution is to hold that images themselves are necessarily tied to acts of expression.

One might find these arguments persuasive, but there is still a lack of case law affirming that photography in public spaces is protected speech by default. Nevertheless, there is some merit to the assertion that there exists <u>a right</u> to take photographs of others or their property in public. While there is no guaranteed First Amendment right to take such photographs, the only protections

generally available to someone who does not wish to be photographed are common law privacy torts, which are exceedingly limited in scope. *See id.* at 352–53. There are also some legislative initiatives directed at curtailing image capture, but these are confined to very specific circumstances such as nonconsensual upskirt photography and wiretapping. *See id.* at 354–66. Thus, what might be called a "quasi-right" to photograph arises out of the lack of privacy protection afforded to citizens who venture into public spaces. *Cf.* Bert Krages, *The Photographer's Right: Your Rights and Remedies When Stopped or Confronted for Photography*, Bert P. Krages II (Jan. 2016), http://www.krages.com/ThePhotographersRight.pdf (asserting that the general rule in the United States is that anyone may take photographs of whatever they want when they are in a public place).

In general, one who voluntarily places themselves in the public eye will have no remedy under existing privacy torts if they are photographed against their will, because they will be judged under a "reasonable expectation of privacy standard." *See, e.g.*, *Deteresa v. Am. Broad. Companies, Inc.*, 121 F.3d 460 (9th Cir. 1997) (holding that videotaping a woman's conversation despite her refusal to appear on television was not an invasion of privacy because she was taped in public view from a public place and thus lacked a reasonable expectation of privacy); *see also* Kreimer, at 353–54 (describing how cases involving public privacy claims tend to run aground on either the absence of a reasonable expectation of privacy or on a news worthiness defense). Calls to expand privacy torts to encompass nonconsensual image capture in public spaces have "not yet begun to bear abundant fruit in case law." Kreimer, 159 U. Pa. L. Rev. 335, 353.

The reasonable expectation of privacy standard was first introduced in the context of Fourth Amendment jurisprudence in *Katz v. United States*, 389 U.S. 347 (1967), but, as demonstrated by *Deteresa*, has since "permeate[d] the rhetoric of privacy even in areas outside of constitutional

law." Joel R. Reidenberg, *Privacy in Public*, 69 U. Miami L. Rev. 141, 143 (2014). The upside of the widespread use of this standard in the privacy context is that it lends itself to arguments emphasizing the invasive nature of emerging surveillance technology. Though a person may lack a reasonable expectation of privacy upon entering a public space in the sense that they assume the risk of being photographed without their consent, it is far more difficult to assert that the same person has also assumed the risk of having their movements in public spaces systematically tracked over time. License plate reading technology enables precisely this type of tracking and has already been used for this purpose. *See You Are Being Tracked*, ACLU, https://www.aclu.org/issues/privacy-technology/location-tracking/you-are-being-tracked (last visited July 19, 2022).

Even if it is assumed that private companies have a First Amendment right to collect this type of data, the ways in which the data is <u>used</u> can be challenged on invasion of privacy grounds by asserting that the data subjects' reasonable expectation of privacy has been violated. Such an argument was neatly demonstrated in *ACLU v. Clearview.* Clearview characterized their collection and use of publicly available photographs as the "creation and dissemination of information," which the Supreme Court has held is speech under the First Amendment. Defendant's Memorandum in Support of Its Motion to Dismiss at 16 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011)). In denying the defendant's motion to dismiss, the court noted that these activities were entitled to <u>some</u> First Amendment protection, but:

> That does not end the inquiry. The First Amendment does not fully protect every act that involves collection or analysis of data. For instance, stealing documents and private wiretapping involve collection of data, but they are not protected by the First Amendment even if the purpose is to obtain information for a news story. *Branzburg v. Hayes*, 408 U.S. 665, 691 (1972).

Memorandum Opinion and Order at 8–9, *ACLU v. Clearview AI, Inc.* (Ill. Cir. Ct. of Cook County Aug. 27, 2021) (No. 20 CH 04353), https://www.aclu.org/opinion-denying-clearview-ais-motion-dismiss. The court went on to state:

> The fact that something has been made public does not mean anyone can do with it as they please. In the Fourth Amendment context, where the "expectation of privacy" concept is most common, law enforcement is not always allowed to use technology to analyze what is public and visible. For instance, the U.S. Supreme Court held in *Kyllo v. United States*, 533 U.S. 27, 35–36, that law enforcement could not aim an infrared heat scanner at the exterior of a house to search for drugs. So, too, in our case the photos may be public, but making faceprints from them may be regulated.

Memorandum Opinion and Order at 11.

Conclusion

The Supreme Court introduced the First Amendment right to gather information in *Zemel* and *Branzburg* to ensure that the freedoms of speech and the press were protected in the news-gathering context. Lower courts have subsequently expanded this right to protect information gathering by any private citizen where the information gathering activity sufficiently serves a public interest. Contrary to what some private companies now claim, under existing First Amendment precedent, there is no broad right to photograph or record in public spaces absent this public interest requirement. However, challenges to public image capture rarely succeed because existing privacy protections for citizens who enter public spaces are very limited. If legislators do not enhance privacy protections, it may be difficult to challenge the activities of companies that operate automatic license plate readers. Nevertheless, one promising avenue for challenge is violation of the reasonable expectation of privacy standard. This is especially promising given that companies are sharing their data with law enforcement, which may pose additional Fourth Amendment concerns.

Applicant Details

First Name	**Liam**
Middle Initial	**D**
Last Name	**Mahagan**
Citizenship Status	**U. S. Citizen**
Email Address	**liam-d-mahagan@berkeley.edu**
Address	**Address** Street **2100 Channing Way, Apt 247** City **Berkeley** State/Territory **California** Zip **94704** Country **United States**
Contact Phone Number	**4692365586**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**December 2020**
JD/LLB From	**University of California, Berkeley School of Law** **https://www.law.berkeley.edu/careers/**
Date of JD/LLB	**May 8, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Berkeley Business Law Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	**McBaine Honors Competition**

Bar Admission

Prior Judicial Experience

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

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Chacon, Jennifer
jchacon@law.stanford.edu
Feinberg, Brian
theprofessorfeinberg@gmail.com
Van Houweling, Molly
msvh@berkeley.edu

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

Liam Mahagan
2100 Channing Way, Apt. 247, Berkeley, CA 94704
liam-d-mahagan@berkeley.edu | 469-236-5586

The Honorable Jamar Kentrell Walker

United States District Court

Eastern District of Virginia

600 Granby Street

Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at Berkeley Law. I am writing to apply for a 2024-25 term clerkship in your chambers.

I am interested in clerking for your chambers due to your experience in civil litigation, white collar crime, and service as an assistant United States Attorney. As a student who wants to practice white collar and serve as an assistant United States Attorney, I am interested in learning more about the experience from your perspective.

Enclosed please find my resume, law school transcript, and writing sample.

If there is any other information that would be helpful to know, please let me know. Thank you for your consideration.

Liam Mahagan

Sincerely, Liam Mahagan

Liam Mahagan

2100 Channing Way, Apt. 247, Berkeley, CA 94704
liam-d-mahagan@berkeley.edu | 469-236-5586

EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA
J.D. Candidate, May 2024
Honors: Halloum Negotiations Competition Quarter-Finalist
1L Academic Distinction – Top 15%
2L Academic Distinction – Top 15%
Activities: *Berkeley Business Law* Journal
Berkeley Anti-Trafficking Program
McBaine Honors Moot Court

University of Texas, Austin, Austin, TX
B.A., *magna cum laude*, in Government, Dec. 2020
Honors: Dean's List all semesters
Activities: Neighborhood Longhorns Program Elementary School Tutor
Delta Sigma Phi Fraternity

EXPERIENCE

United States Attorney's Office – Civil Division, San Francisco, CA Aug. 2023 – Dec. 2023
Law Clerk

San Francisco District Attorney's Office, San Francisco, CA June 2022 – Aug. 2022, June 2023 – Aug. 2023
Law Clerk
Wrote motions, conducted legal research, and prepared arguments to assist with hearings and trials for prosecutors in the Domestic Violence Unit and Vulnerable Victims Unit. Worked on a novel legal issue regarding the constitutionality of California's gun registration requirements following the *Bruen* decision.

Berkeley Business Law Journal, Berkeley, CA Sept. 2021 – Present
Associate Editor, Network Contributor, Supervising Editor
Edit submitted articles. Analyze sources to ensure adequate support of article subject matter. Supervise teams of associate editors. Ensure timely completion of edits and revisions. Write blog articles on topics in corporate law.

The Home Depot, Wylie, TX Feb. 2021 – July 2021
Professional Sales Associate, Special Services Associate
Sold building materials, tools, and hardware to professional contractors. Created, processed, and facilitated orders and deliveries. Processed returns and transactions.

INTERESTS

Musical theatre. Classical movies and music. DIY house projects. Reading classical literature, science fiction, and fantasy. Military history. Quentin Tarantino movies.

Berkeley Law
University of California
Office of the Registrar

Liam D Mahagan
Student ID: 3036853751
Admit Term: 2021 Fall

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Page 1 of 2

Academic Program History
Major: Law (JD)

Awards

Prosser Prize 2022 Fall: Evidence

2021 Fall

Course		Description	Units	Law Units	Grade
LAW	200F	Civil Procedure Catherine Fisk	5.0	5.0	H
LAW	202.1A	Legal Research and Writing Michelle Cole	3.0	3.0	CR
LAW	202F	Contracts Reza Dibadj	4.0	4.0	H
LAW	230	Criminal Law Saira Mohamed	4.0	4.0	P

	Units	Law Units
Term Totals	16.0	16.0
Cumulative Totals	16.0	16.0

2022 Spring

Course		Description	Units	Law Units	Grade
LAW	201	Torts Kenneth Bamberger	4.0	4.0	HH
LAW	202.1B	Written and Oral Advocacy **Units Count Toward Experiential Requirement** Michelle Cole	2.0	2.0	P
LAW	203	Property Molly Van Houweling	4.0	4.0	HH
LAW	220.6	Constitutional Law **Fulfills Constitutional Law Requirement** Jennifer Chacon	4.0	4.0	HH

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	30.0	30.0

2022 Fall

Course		Description	Units	Law Units	Grade
LAW	207.5	Advanced Legal Writing **Fulfills 1 of 2 Writing Requirements** Ryan Wagner Brian Feinberg	2.0	2.0	HH
LAW	210	Legal Profession **Fulfills Professional Responsibility Requirement** Dena Roche	2.0	2.0	H
LAW	241	Evidence Jonah Gelbach	4.0	4.0	HH
LAW	250	Business Associations Emily Strauss	4.0	4.0	H
LAW	261.2	Intern. Litigation&Arbitration Neil Popovic	3.0	3.0	P

	Units	Law Units
Term Totals	15.0	15.0
Cumulative Totals	45.0	45.0

2023 Spring

Course		Description	Units	Law Units	Grade
LAW	222	Federal Courts William Fletcher	3.0	3.0	H
LAW	231	Crim Procedure-Investigations Orin Kerr	4.0	4.0	HH
LAW	245.2	Civil Trial Practice **Units Count Toward Experiential Requirement** Winifred Smith Evelio Grillo	3.0	3.0	H
LAW	248.5	Mergers & Acquisitions Reza Dibadj	3.0	3.0	H
LAW	267.51	Introduction to Roman Law Laurent Mayali	1.0	1.0	CR
LAW	295.3J	McBaine Moot Court Competition **Units Count Toward Experiential Requirement** Gregory Washington	2.0	2.0	CR

	Units	Law Units
Term Totals	16.0	16.0

Carol Rachwald, Registrar

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Berkeley Law
University of California
Office of the Registrar

Liam D Mahagan
Student ID: 3036853751
Admit Term: 2021 Fall

Printed: 2023-06-09 13:27

Cumulative Totals	61.0	61.0

2023 Fall

Course		Description	Units	Law Units	Grade
LAW	225	Legislation & Statutory Interp Sean Farhang	3.0	3.0	
LAW	243	Appellate Advocacy **Fulfills Either Writing Requirement/Experiential** Scotia Hicks	3.0	3.0	
LAW	295	Civ Field Placement Ethics Sem **Fulfills Either Prof. Resp. or Experiential** Susan Schechter Cheryl Stevens	2.0	2.0	
LAW	295.6A	Civil Field Placement **Units Count Toward Experiential Requirement** Susan Schechter	5.0	5.0	

	Units	Law Units
Term Totals	0.0	0.0
Cumulative Totals	61.0	61.0

Carol Rachwald, Registrar

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University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	–	High Honors	CR	–	Credit
H	–	Honors	NP	–	Not Pass
P	–	Pass	I	–	Incomplete
PC	–	Pass Conditional or Substandard Pass (1997-98 to present)	IP	–	In Progress
NC	–	No Credit	NR	–	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: https://www.law.berkeley.edu/careers/for-employers/grading-policy/

Transcript questions should be referred to the Registrar.

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Jennifer Chacón
Bruce Tyson Mitchell Professor of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-736-8777
jchacon@law.stanford.edu
June 09, 2023

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

Dear Judge Walker:

I am delighted to write this letter in support of Liam Mahagan's application for a clerkship in your chambers. Liam is an excellent student with an admirable work ethic, and I feel certain that he will be an excellent clerk.

Liam was a student in my Constitutional Law class at Berkeley Law in the spring semester of the 2021-2022 academic year. Liam and I are both originally from Texas, though from different parts, and we bonded over that fact, particularly as so many ongoing constitutional developments were arising out of legislation and litigation in Texas. Liam stopped by my office hours on several occasions throughout the semester. He was always had a prepared list of questions, allowing him to efficiently clarify any lingering questions that he had after lectures. In our conversations, I always found him to be professional, diligent, and intellectually curious.

Liam is also a great student. This is evident from his transcript, and it was also evident to me long before he completed his final examination. My Spring 2022 Constitutional Law class was a very large one, with 107 students. Because the class was so large, I gave my students the choice of participating through oral participation in a panel system, or through written comments reflecting on the reading materials for assigned class sessions. Liam chose to participate on an in-class panel. He did a great job. He was always prepared to answer my questions, and on days when he was not on call, he continued to contribute to class discussion with on-point comments and useful questions.

Liam's final examination was also excellent, and his final score placed him in the top 10% of the class. He received a high honors grade. In his exam answer, he effectively spotted issues, cited to the relevant cases, and effectively compared and contrasted the facts of those cases with the facts of the hypothetical fact patterns on the exam.

I left Berkeley for Stanford in the summer of 2022, so I have not had an opportunity to teach Liam again. However, his transcript suggests that his outstanding performance in my class was not at all unusual. He has performed exceptionally well in a number of classes, while also engaging in a number of challenging and rigorous extracurricular activities. Berkeley is a large school with many exceptional students. The fact that he has consistently done so well is truly impressive. His overall record certainly suggests that he has all of the skills required of a capable law clerk.

In short, I have no hesitation recommending Liam to you. Should you have any further questions, please don't hesitate to reach out to me.

Sincere regards,

Jennifer M. Chacón

Berkeley Law

Brian Feinberg
Adjunct Lecturer
University of California, Berkeley
School of Law
Berkeley, CA 94720-7200
www.law.berkeley.edu

May 5, 2023

Re: Clerkship Candidate Liam Mahagan

To Whom it May Concern,

I am writing to recommend Liam Mahagan. I had the privilege of teaching Mr. Mahagan in my Advanced Legal Writing course at Berkely Law. I found his work product to be excellent, his curiosity to be commendable and his attitude exceptional.

In my course, Mr. Mahagan was tasked with a number of challenging written assignments and oral exercises. He quickly established himself as a gifted advocate in both respects. He is adept at case research and synthesizing legal concepts. In particular, I found his ability and willingness to connect abstract legal principles to far exceed his peers.

Mr. Mahagan was a valuable contributor in our classroom discussions and would be an asset to whatever profession he pursues. I recommend him without hesitation.

Sincerely,

Brian Feinberg
Brian Feinberg

May 19, 2023

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

Dear Judge Walker:

I understand that Berkeley Law student Liam Mahagan is applying for a clerkship in your chambers. I was very impressed by Liam's performance in my class and predict he will bring a great work ethic and keen legal analysis to chambers. I am delighted to recommend him.

Liam was a student in my Property class in Spring 2022. In a class of 87 students, he was one of the most active participants in class discussion. His contributions reflected conscientious preparation, mastery of the material, and an eagerness to tackle interesting and difficult questions. I was very impressed by Liam's hard work, his energy, and his eagerness to engage with thorny legal doctrine.

Liam's thorough preparation served him well on the two exams in my class. He received a perfect score on the midterm exam (covering estates, future interests, and the notorious Rule Against Perpetuities). His final exam was also outstanding. His performance on the traditional issue-spotter portion of the exam was particularly strong, with comprehensive analysis of the issues raised. The only fault I identified in the other portions of the exam (which were more focused on property policy and theory) is that could have more thoroughly addressed a couple of counterarguments. I find this can be an issue for students who are particularly well prepared for an exam and therefore especially confident in their answers. I admired that preparation and confidence even as I deducted a couple of minor points from Liam's exam.

I see that Liam's outstanding performance in my class was no fluke. Indeed, he received high honors in every one of his doctrinal classes during that semester and his overall academic record is excellent (featuring many high honors grades and an award for one of the best class performances in Evidence).

Liam's quick mastery of legal material and his apparent confidence as a class participant and exam writer belie a hard road to law school success. Liam is a first-generation professional student who went to work at Home Depot before law school to save money to cover his expenses. Although this is an unusual route to law school, it is consistent with what I have observed about Liam's high energy and work ethic. These impressive characteristics will be valuable assets on a chambers team.

Please let me know if I can tell you anything else about Liam. I hope you take the opportunity to meet him.

Sincerely,

Molly S. Van Houweling

Molly Van Houweling - msvh@berkeley.edu

The following writing sample is based on a hypothetical fact pattern from an Advanced Legal Writing assignment. The writing is substantially my own work, with some editing done in accordance with feedback from my professor.

STATEMENT OF FACTS

At 12:00 PM, police answered a response to a report of a theft at Best Buy. Earlier that day, Chris Walpole ("defendant") entered the store, intending to steal a MacBook Air worth $1299. Defendant brought a bag with him into the store, walked over to the MacBook aisle, and placed the laptop into the bag. After attempting to exit the store, he was apprehended by the Loss Prevention Officer. Once the police arrived, they searched the defendant, interviewed the LPO, and transported the defendant to the police station.

Before beginning the interrogation, the interrogating officer advised the defendant of his *Miranda* rights, and asked the defendant if he understood them. The defendant told the police that he understood his rights, and then began to wonder aloud "I'm just thinking, maybe I shouldn't say anything without a lawyer." The officer, wanting to confirm that the defendant was indeed requesting the assistance of counsel, asked the defendant "What do you mean?" The defendant answered "On TV, they always get a lawyer." Worried that the defendant was taking legal advice from television, the officer sought to bring the defendant back to reality by saying "You watch too much TV. Tell me what happened." Immediately, Chris told the officer that he stole the MacBook in order to write a resume for his job search.

ARGUMENT

The defense asks this Court to suppress the defendant's confession to the police. The defense alleges that the defendant's confession is inadmissible because it was made in response

to police questioning after the defendant had already invoked his right to an attorney, and did not waive his *Miranda* rights. The defense is mistaken, because the defendant did not actually invoke his right to an attorney as his reference to having a lawyer present was too ambiguous to be understood as an invocation of the right to counsel, and his response to police questioning constituted an implicit waiver of his *Miranda* rights.

POINTS AND AUTHORITIES

I. The defendant's musings about his potential need for an attorney did not qualify as an invocation of the right to an attorney.

The prosecution may not use, as evidence, any statement the defendant makes in interrogation unless the Defendant has been informed of their right to counsel, and the defendant has waived that right. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Furthermore, the standards as to whether the defendant waived his right to counsel are the same as those in determining whether the defendant has waived his right to remain silent. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). Once the defendant has waived their *Miranda* rights, they may reinvoke their rights at any time after waiving them. *Edwards v. Arizona*, 451 U.S. 477, 484 (1981). Once the defendant has invoked their *Miranda* rights, questioning must cease until the defendant reinitiates communication. *Id.* at 485. Such invocation; however, must be unambiguous. *Davis v. United States*, 512 U.S. 452, 459 (1994).

A. The Defendant waived his right to counsel by answering the officer's questions.

The defendant may waive their 5th amendment rights, as long as they do so "voluntarily, knowingly, and intelligently." *Miranda*, 384 U.S. at 444. Such waiver may be implicit, upon an inquiry into the "totality of the circumstances surrounding the investigation." *Fare v. Michael C.*, 442 U.S. 707, 724 (1979). A defendant who "knowingly and voluntarily waives his right to

counsel after having that right explained to him has indicated his willingness to deal with the police unassisted." *Davis*, 512 U.S. at 460.

In *Davis*, the Court held that the defendant had waived his right to counsel by continuing to answer the investigators' questions after being advised of his rights. *Id.* 455. The Court acknowledged the concern that some suspects would be discouraged from invoking their rights, but held that the primary protection afforded to the defendant was "the *Miranda* warnings themselves," and reiterated that a defendant's full comprehension of their *Miranda* rights is sufficient to dispel whatever inherent coercion there may be in the interrogation. *Id.* at 460. Thus, the Court held that the defendant had waived his rights voluntarily by continuing to answer the officer's questions after indicating that he had understood his rights as read to him by the police.

In *Berghuis*, the Court held that the defendant waived his *Miranda* rights implicitly by responding to the officer's questions. 560 U.S. at 385. In *Berghuis*, the defendant was given a written record of his *Miranda* rights, and the interrogating officer confirmed that he could read and understand English. *Id.* In addition, the defendant was given enough time to read the warnings. *Id.* at 368. By answering the officer's questions after nearly 3 hours of remaining mostly silent, the Court held that this constituted a "course of conduct" inconsistent with one who invokes their right to remain silent. *Id.* at 386.

In this case, the defendant waived his *Miranda* rights by speaking to the police. Like in *Davis*, the defendant was read his rights by the interrogating officer, and indicated that he understood those rights. 512 U.S. at 455. Furthermore, the fact that the officer read the *Miranda* warnings to the defendant, and the defendant indicated that he understood those rights, is enough to dispel any inherent coercion in the interrogation process. *Id.* at 460. This case is also similar to *Berghuis*, in that both defendants answered the officer's questions after being read their

warnings. 560 U.S. at 385. Much like the defendant in *Berghuis*, the defendant in this case engaged in a "course of conduct" which is inconsistent with the invocation of the right to remain silent. *Id.* Thus, the defendant in this case waived his *Miranda* rights.

Since the defendant was read his rights, and the defendant indicated that he understood them, the proper procedural safeguards were met. Since the defendant was afforded the proper protections under *Miranda*, and the defendant continued to answer the officer's questions, the defendant validly waived his right to counsel. 384 U.S. at 444.

B. The defendant's statement to the police officer regarding his right to an attorney was too ambiguous and equivocal to be considered a valid invocation of his right to counsel.

An invocation is considered unambiguous and unequivocal only if such a desire is sufficiently clear so that a reasonable police officer under the circumstances would understand the statement to be a request for an attorney. *Davis*, 512 U.S. at 459. A statement which fails to meet the requisite level of clarity will not prevent the officer from being able to question the defendant. *Id.* If a defendant is "indecisive in his request for counsel," there is no rule mandating that police must cease questioning. *See id.* at 460.

In *Davis*, the Court held that the defendant's statement to the police was not an invocation. *Id.* at 462. In that case, the defendant said "Maybe I should talk to a lawyer," about an hour and a half into the interview. *Id.* at 455. The officers asked him to clarify whether he was asking for a lawyer, to which the defendant responded that he was not. *Id.* After another hour into the interview, the defendant said "I think I want a lawyer before I say anything else." *Id.* At that point, the officers immediately ceased questioning. *Id.* The Court held that the defendant's first statement to the officers was not an unambiguous request for counsel, and thus the officers were not required to cease questioning. *Id.* at 462. Furthermore, the officers asked the defendant

a clarifying question as to whether he was actually requesting an attorney, and while the Court acknowledged this was good practice, it did not explicitly require this of police officers. *Id.* at 461.

In *People v. Roquemore*, the court held that the defendant did not invoke his right to counsel by asking if he could have a lawyer because such a question was not an unambiguous request for counsel. 31 Cal.Rptr.3d 214, 224 (Cal. Ct. App. 2005). In that case, the arresting officers advised the defendant of his rights, to which the defendant claimed to understand them, and proceeded to answer the officer's questions. *Id.* at 219. After a series of questions, it became clear to the police that the interrogation was leading nowhere when the defendant asked "Can I call a lawyer or my mom to talk to you?" *Id.* At this point, the police ceased questioning, not because they believed the defendant to be invoking his right to counsel, but because they believed further questioning would not be productive. *Id.* The court clarified that a waiver of one's Miranda rights may be either "express or implied" and that a defendant may implicitly waive their rights by acknowledging that they understand them, and subsequently answering the police's questions. *Id.* While the defendant argued that his statement constituted an assertion of the right to counsel during questioning, the court held that his statement could not be understood by a reasonable officer to be a clear invocation of the right to counsel. *See id.* at 224. Thus, the court held that the defendant did not invoke his right to counsel. *Id.*

In *In re Art T.*, the court held that the defendant's statement to the police, in that context, was an unambiguous request for an attorney. 183 Cal.Rptr.3d 784, 799 (Cal. Ct. App. 2015). In that case, officers arrested a 13-year-old boy, and advised him of his rights. *Id.* at 339. The police showed the boy footage of the murder for which he was tried, claiming that the murderer in the video was him, and questioned him about the footage. *Id.* at 341. After repeatedly denying that

the individual in the footage was him, the defendant told police "Could I have an attorney? Because that's not me." *Id.* Believing that the boy was referring to his right to counsel during criminal trials, the police answered with "You'll have the opportunity." *Id.* The court held that this was an unambiguous request for counsel. *Id.* at 799. The court noted that statements which were closer to "can I have a lawyer" tend to be unambiguous invocations of the right to counsel, while statements that were closer to "maybe I should talk to a lawyer" were too ambiguous. *Id.* at 799 n. 14 (quoting *Davis*, 512 U.S. at 462). Thus, the court held that the defendant had invoked his right to an attorney. *Id.* at 800.

In this case, the defendant's statement to the police was too unambiguous to be considered an invocation under *Davis*. 512 U.S. at 462. In this case, the defendant told the police "I'm just thinking, maybe I shouldn't say anything without a lawyer." When the police officer asked him to clarify, he said "On TV, they always get a lawyer." This statement is similar to the defendant's statement in *Davis*, where both defendants not only explicitly used the word 'maybe,' but indicated some sort of internal conflict as to whether they should request an attorney. *Id.* at 455. Much like the defendant in *Davis*, the defendant in this case did not make an unambiguous statement so as to make a reasonable officer certain that they were requesting an attorney. *Id.* at 462. Furthermore, the defendant's statement to the police was more ambiguous than the defendant's in *Roquemore*, where the court held that "Can I call a lawyer or my mom to talk to you?" was also too ambiguous to be an invocation for counsel. 31 Cal.Rptr.3d at 224. While that statement was deemed to be ambiguous, a clarifying question as to whether someone else could speak to the police is still more unequivocal than a defendant's internal conflict about whether they would like to have a lawyer present.

Furthermore, the defendant's statement to the police constitutes no certain request to have an attorney present. Unlike in the case of *In re Art T.*, where the defendant's statement "Could I have an attorney," would signal to a reasonable officer that they were asking for counsel, there is no certain request in this case. 183 Cal.Rptr.3d at 341. In this case, the defendant never asks the police officer for an attorney. The defendant, at most, states that he is uncertain as to whether he should speak without an attorney. This uncertainty is not enough to invoke the right to counsel. *Davis*, 512 U.S. at 459.

Since the defendant never asks for an attorney, and since the defendant never states that he wants an attorney, his statement to the police does not constitute an unambiguous or unequivocal statement. Thus, the defendant did not invoke his right to counsel.

II. The case law does not support the defense's contention that the defendant invoked his Constitutional rights.

For the defendant to invoke their right to counsel, they must leave no room for uncertainty, as a statement is either "an assertion of the right to counsel or it is not." *Smith v. Illinois*, 469 U.S. 91, 98 (1984). An officer must cease all questioning of the defendant only when the circumstances leading up to the request and the request itself leave no room for ambiguity. *See id.* However, the question as to whether a defendant has invoked his right to counsel is categorically distinct from whether they have waived their *Miranda* rights. *Id.* Such a distinction is meant to protect defendants, so that the police may not "wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." *Id.* The waiver of those rights; however, may be inferred when considering "the particular facts and circumstances surrounding the case." *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). However, once the defendant has invoked their right to counsel, subsequent statements and actions by the defendant are "relevant only to the question whether the accused waived the right

he had invoked." *Smith*, 469 U.S. at 98. Accordingly, the defendant's actions and statements prior to invoking the right to counsel may be relevant in determining ambiguity, but not subsequent actions and statements. *See id.* at 98-100.

A. The cases that the defense cites fail to support the contention that the defendant had invoked their right to counsel.

A defendant, after waiving their *Miranda* rights, may subsequently invoke their right to counsel. *Edwards*, 451 U.S. at 484 (1981). Such invocation; however, must be made sufficiently clear so that a reasonable officer would understand the statement to be an invocation of the right to counsel. *Davis*, 512 U.S. at 459. If a suspect makes "a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking their right to counsel" then cessation of questioning is not required. *Id.*

The defense cites *People v. Dingle* to support the claim that the defendant invoked his right to counsel. 219 Cal.Rptr. 707, 709 (Cal. Ct. App. 1985). In *Dingle*, the court held that the defendant's statement, "I think now that you told me what you think, I better talk to a lawyer," was a valid invocation of the right to counsel. *Id.* In that case, the defendant's statement to the police reflected no uncertainty or ambiguity, and instead evidenced a clear desire to have an attorney present. *See id.*

Furthermore, the defense distinguishes this case from *People v. Bacon* to support the claim that the defendant here invoked his right to counsel. 240 P.3d 204 (Cal. 2010). In that case, the defendant told the interrogating officer, "[y]eah, I think it'd probably be a good idea … for me to get an attorney." *Id.* at 224. In the same exchange, the defendant told the officer, "that's what you're gonna say. I mean talk to me okay?" *Id.* At that point, the officer was unsure

whether "talk to me" was a waiver of the right to an attorney, or whether he was asking the officer what he wanted him to do. *Id.* After confirming with the defendant, the officer understood it to be a waiver. *Id.* The court held that this confirmation made such a statement an unambiguous waiver; however, the court clarified that had the statement been ambiguous, it would not have been an invocation of the right to counsel anyway. *Id.* Thus, the court held that the defendant did not invoke his right to counsel because he did not make a clear and unambiguous request for an attorney. *Id.*

The defense analogizes to *Wood v. Ercole* to argue that the defendant here invoked his right to counsel. 644 F.3d 83, 87 (2nd Cir. 2011). In *Wood*, the court held that the defendant's statement to the police, "I think I should get a lawyer," coupled with the surrounding circumstances, was an invocation of the right to counsel. *Id.* In that case, the defendant told the police he wanted an attorney, and the officer responded by handing him a phone, and leaving the room. *Id.* The court acknowledged that it was possible for such a statement to be uttered in an uncertain or ambiguous way, but that the officer's subsequent actions foreclosed any doubt as to his understanding of the statement. *Id.* at 92. Furthermore, the court declined to hold that the defendant should have been more insistent or combative in demanding a lawyer, and instead held that the defendant's attempts at being polite did not render his invocation ambiguous. *Id.*

The defense also analogizes this case to *Sessoms v. Grounds* in order to argue that the defendant's statement to the police was unambiguous. 776 F.3d 615, 617 (9th Cir. 2015). In *Sessoms*, the defendant explicitly told the police "Yeah, that's what my dad asked me to ask you guys … uh, give me a lawyer." *Id.* In that case, the court went to great lengths to emphasize that the defendant could have said very little to make that statement more unambiguous than it already was. *Id.* at 627. While it is true that the defendant was requesting an attorney on the

advice of his father, this was not relevant to the court's decision, as there could be no other reasonable interpretation of that statement than that he wanted an attorney present. *Id.*

The defendant's statement here is closer to the ambiguous statement uttered in *Bacon*. 240 P.3d 204, at 221. The defense argues that the totality of the circumstances of the entire investigation is what rendered the statement ambiguous, and consequently, the statement here was unambiguous. However, the court in *Bacon* actually held that the totality of the circumstances of the exchange where the reference to an attorney was made is what made the statement ambiguous. *Id.* In *Bacon*, the defendant's previous statements and behavior outside of the exchange was not dispositive as to whether the defendant actually invoked his right to counsel. *Id.* Furthermore, the court held that even if the defendant's statement, "talk to me," could be reasonably interpreted in multiple ways, such ambiguity would not have allowed the statement to be considered a valid invocation. *Id.* In this case, the defendant's statements to the police could be reasonably interpreted in multiple ways. For instance, the defendant could have meant that getting an attorney might be a good idea because people on TV always get an attorney. Alternatively, defendant could have been internally questioning whether he should talk to an attorney. Both of these interpretations are more likely than the interpretation that he unequivocally and unambiguously requested counsel.

The defense argues that the defendant's statement here reflects a similar level of clarity as the statement in *Dingle*. 219 Cal.Rptr. at 707. However, the statement in this case is "maybe I shouldn't say anything without a lawyer," while the statement in *Dingle* was "I better talk to a lawyer." *Id.* The former statement reflects ambiguity and uncertainty. A reasonable officer, such as the interrogating officer in this case, would interpret the former statement to reflect an inner conflict in the mind of the defendant. Nothing about the statement indicates a clear desire for an

attorney. However, the statement in *Dingle* reflects glaring certainty. *Id.* In that statement, the defendant is making a clear choice that speaking to an attorney is what they would rather do. Furthermore, the defendant's statement here is far from the level of certainty than the statement in *Sessoms*. 776 F.3d at 627. The defendant's statement here could be reasonably interpreted to mean something other than that he wanted a lawyer. It is reasonable to interpret the defendant's statement here as a form of wondering aloud, or a reflection of inner conflict. In *Sessoms*, the court emphasized that there was only one reasonable interpretation, which was that the defendant wanted an attorney. *Id.*

Furthermore, the defense argues that the standard set forth in *Wood* should be applied in this case to read the defendant's statement as an unambiguous request for counsel. 644 F.3d at 87. However, the surrounding circumstances in this case are substantially distinct from the case in *Wood. Id.* In this case, the interrogating officer responded to the suspect's statement by asking what he meant. When the defendant responded "On TV, they always get a lawyer," the officer reasonably interpreted this statement to indicate that the defendant was taking legal advice from TV. Meanwhile, the officer in *Wood*, upon hearing the defendant request counsel, stopped speaking to the defendant, and handed him a phone. *Id.* at 87. In that case, the court expressed doubt that the statement could be reasonably interpreted as anything but a request for an attorney in the first place, but that any ambiguity was dispelled by the officer's response to the defendant's request. *Id.* at 92. In *Wood*, it was the officer's response that confirmed the clarity of the defendant's statement, but in this case, the officer's response demonstrates the ambiguity of this defendant's statement. *Id.*

Since the defendant's statements to the police do not reflect the requisite level of clarity to invoke the right to counsel, such statements should not be read as a clear invocation of the

right to counsel. Since the defense did not invoke his right to counsel, his confession to the police should be admitted.

B. The cases that the defense cites fail to rebut the fact that the defendant waived their right to counsel.

A defendant's express statement that they wish to proceed with interrogation without the assistance of an attorney followed closely by a statement would almost certainly constitute a waiver. *Miranda*, 384 U.S. at 475. Furthermore, a valid waiver will not be presumed merely from the fact that the defendant was silent, or that a confession was actually obtained. *Id.* However, an express statement is not "indispensable to a finding of waiver." *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). In fact, the defendant's waiver "can be clearly inferred from the actions and words of the person interrogated." *Id.* However, once the defendant has invoked their right to counsel, the fact that the defendant continued to respond to police questioning is not enough to waive that right. *Edwards*, 451 U.S. at 484 (1981).

The defense cites *Dingle* to rebut a finding of waiver. 219 Cal.Rptr. at 707. In that case, the interrogating officers advised the defendant of his rights, and the defendant agreed to questioning. *Id.* After approximately two and a half hours of questioning, the defendant decided he wanted to answer no more questions, and invoked his right to counsel. *Id.* After the interrogating officer informed the officer in charge of the investigation, the latter officer confronted the defendant, and proceeded to interrogate him. *Id.* After relentlessly intimidating and badgering the defendant, the officer finally obtained a confession. *Id.* The defendant broke down crying, confessing to rape, murder, and arson. *Id.* The court held that the defendant's confession was inadmissible, because the second investigating officer purposefully and flagrantly disregarded the defendant's constitutional rights. *Id.* In light of this factor, the court

held that the defendant's confession to the police after invoking his right to counsel was not a waiver of that right. *Id.*

The defense cites *Martinez v. Cate* to rebut the fact that the defendant waived his *Miranda* rights. 903 F.3d 982 (9th Cir. 2018). In that case, the defendant was stipulated to have invoked his right to counsel. *Id.* at 993. The court held that because the defendant had invoked his right to counsel, and because the officer continued to interrogate the defendant after invoking that right, his responses to the interrogation could not be interpreted as valid waivers of the right to counsel. *Id.* In order for the defendant's subsequent statements to be inadmissible, the defendant would have needed to reinitiate communication with the officer himself, and have waived his *Miranda* rights voluntarily, knowingly, and intelligently. *Id.* at 996. Consequently, the court held that the defendant's confession was an inadmissible response to the officer's badgering and disregard of the defendant's *Miranda* rights. *Id.* at 997.

The defendant's responses to the interrogating officer in this case; however, should be interpreted as a valid waiver of their *Miranda* rights. In both *Martinez* and *Dingle*, the defendants responded to the officer's questions after validly invoking their right to counsel. *Id.*; 219 Cal.Rptr. at 707. In this case, the defendant did not validly invoke their right to counsel, and instead answered the officer's questions absent an invocation of that right. Since the defendant had not invoked his right to counsel, his responses to the officer's questions constitute a valid waiver of his *Miranda* rights. *See Berghuis* 560 U.S. at 386.

Since the defendant did not invoke his right to counsel, his responses to the officer's questions constitute a valid waiver of his *Miranda* rights. Since the defendant has no invoked his *Miranda* rights, his confession to the police should be admitted.

III. The interrogating officer here did not attempt to deprive the defendant of his Constitutional rights by discouraging him from invoking them, or minimizing their legal significance.

The primary protection afforded to defendants in interrogation is "the *Miranda* warnings themselves." *Davis*, 512 U.S. at 460. When a suspect indicates that they understand their rights as it has been explained to them, and proceeds to answer the police's questions, he has indicated he is willing to deal with the police unassisted. *Id.* When explaining a defendant's *Miranda* rights, the officer should not characterize the warnings as a "technicality" in order not to undermine the legal significance of those rights. *People v. Musselwhite*, 954 P.2d 475 (1998).

The defense analogizes this case to *Martinez* to argue that the officer here induced the defendant into waiving his rights. 903 F.3d at 996. In *Martinez*, the interrogating officer asked the defendant for his side of the story, and the defendant told the police that he wanted an attorney present before answering questions. *Id.* In response, the officer told the defendant that because he only has "one side of the story," he would have to book the defendant. *Id.* As a result, the defendant cooperated with the police. *Id.* The court held that such coercion was inadmissible, because the officer had badgered the defendant, and consequently, the admission was "at the authorities' behest." *Id.* at 998.

This case is substantially different from *Martinez*. *Id.* Here, the police officer did not threaten the defendant with booking if he invoked his right to an attorney, as the officer in *Martinez* did. *Id.* Furthermore, the police did not describe the *Miranda* warnings as a technicality, and ensured that the defendant understood his rights. The defense argues that the statement "you watch too much TV," was an attempt by the police to downplay the significance of those rights, but nothing in the record suggests anything coercive about this statement. The defendant had the ability to end interrogation at that moment by invoking his right to an attorney, but he did not. Moreover,

the defense cannot claim that the defendant did not understand his rights, because the defendant told the police he understood his rights.

Nothing in the record suggests that the police engaged in any prohibited trickery or coercion in inducing the defendant into waiving his rights. The defendant made an informed, knowing, and voluntary choice in speaking to the police unassisted.

CONCLUSION

Defense's motion to suppress the defendant's statement to the police should not be granted. The defendant waived his *Miranda* rights by answering the officer's questions, and never unambiguously and unequivocally invoked his right to an attorney during the questioning. Furthermore, the police never engaged in any prohibited conduct that would have deprived the defendant of his *Miranda* rights. The people respectfully request that the defense's motion be denied.

Applicant Details

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Applicant Education

BA/BS From	**University of New Hampshire**
Date of BA/BS	**May 2019**
JD/LLB From	**Northeastern University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12205&yr=2013**
Date of JD/LLB	**May 11, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Northeastern University Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

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

Specialized Work Experience

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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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May 11, 2023

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

Dear Judge Walker:

I am a second-year student at Northeastern University School of Law. I write to apply for a clerkship in your chambers starting August 5, 2024 and ending August 8, 2025. I am particularly interested in clerking for the District of Eastern District of Virginia because I have friends in Virginia, and I would appreciate the opportunity to learn more about that jurisdiction and work under an experienced judge. I have developed extensive research and writing skills as a judicial intern at the U.S. District Court for the District of Massachusetts, as a law clerk at a national law firm, and as a member of the *Northeastern University Law Review*. As an aspiring litigator, I believe I would be a strong candidate for a clerkship in your chambers given my background and desire to work in a federal trial court.

My internship with Judge Saris following my first year of law school allowed me to draw on my academic experiences and further hone my legal research and writing skills. During my internship, I analyzed various case law and drafted opinions, orders, and bench memoranda in preparation for upcoming hearings. I also had the opportunity to witness two full-length criminal trials as well as various hearings and sentencings. This internship proved to be an invaluable experience and sparked my interest in federal clerkships and my desire to gain greater exposure to different areas of law.

My most recent internship as a law clerk with MG+M has also clarified my interest in working as a judicial clerk. During this experience, I engaged in extensive legal research, drafted legal documents including briefs, pleadings, and discovery responses, prepared documents for depositions and trial, and attended multiple court hearings. This experience has allowed me to sharpen my legal research and writing skill in ways I know I will benefit from as a judicial clerk in your chambers.

Enclosed please find my resume, law school transcript, a writing sample, and letters of recommendation from Judge Saris, Professor Medwed, and Professor Meise. I am eager to contribute to the exiting and important work of Eastern District of Virginia and would welcome the opportunity to further discuss my interest and experience. Thank you for your consideration.

Respectfully,
Lily Malloy

LILY MALLOY

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EDUCATION

Northeastern University School of Law, Boston, MA
Candidate for Juris Doctor, May 2024

Honors:	*Northeastern University Law Review*, Senior Editor, Submissions Review Committee, Community Engagement Committee
Activities:	Women's Law Caucus; Student Bar Association
Teaching Assistant:	Professor Alexandra Meise, LSSC: Research and Writing (Fall 2022)
1L Legal Skills Project:	Researched state, federal, and international laws to create a congressional recommendation on displaced persons due to climate change

University of New Hampshire, Durham, NH
Bachelor of Arts, *summa cum laude*, in Psychology, GPA: 3.91, May 2019

Honors:	Dean's List Fall 2016 – Spring 2019
Activities:	Psychology Club; Animal Welfare Alliance
Research Assistant:	Interpersonal Violence Research Laboratory

LEGAL EXPERIENCE

MG+M The Law Firm, Boston, MA — Jan. 2023 – Present
Law Clerk

- Work closely with partners and associates of a national law firm on a variety of complex litigation matters
- Perform extensive research and draft memoranda and briefs on substantive and procedural matters

U.S. District Court for the District of Massachusetts, Boston, MA — May 2022 – Aug. 2022
Judicial Intern to the Honorable Patti B. Saris

- Conducted extensive legal research and drafted opinions and memoranda in civil and criminal matters
- Assisted in managing civil and criminal trials and handling discovery disputes
- Made recommendations concerning motions to dismiss, motions for summary judgment, motions to suppress, and motions for injunctive relief

Sherin and Lodgen LLP, Boston, MA — July 2019 – July 2021
Litigation Paralegal

- Assisted in all aspects of litigation support including legal research, factual investigation, and document review
- Drafted, reviewed, and filed legal documents including letters, pleadings, affidavits, summonses, subpoenas, and memoranda of law

ADDITIONAL EXPERIENCE

UNH University Advising Center, Durham, NH — May 2018 – June 2019
Peer Advisor

- Aided students with selecting courses each semester and informed them of available academic resources
- Advised undeclared students by answered questions relating to course registration, course planning, and campus advising tools and prepared students for appointments with professional advisors

My Friend's Place, Dover, NH — Jan. 2019 – May 2019
Intern

- Worked closely with the Executive Director and Case Manager to develop a client's individual/family case plan and to review the residents housing and job searches

INTERESTS

- Spin class, running, traveling, and cooking

NORTHEASTERN UNIVERSITY

Northeastern University
Registrar

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REFNUM:02925405

Primary Program
Juris Doctor
College : School of Law
Major : Law

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
INSTITUTION CREDIT:						
Fall 2021 Law Semester (08/30/2021 - 12/22/2021)						
LAW	6100	Civil Procedure	5.00	P	0.000	
LAW	6105	Property	4.00	H	0.000	
LAW	6106	Torts	4.00	H	0.000	
LAW	6160	Legal Skills in Social Context	2.00	H	0.000	
LAW	6165	LSSC: Research & Writing	2.00	H	0.000	
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000						
Spring 2022 Law Semester (01/10/2022 - 05/06/2022)						
LAW	6101	Constitutional Law	4.00	H	0.000	
LAW	6102	Contracts	5.00	H	0.000	
LAW	6103	Criminal Justice	4.00	HH	0.000	
LAW	6160	Legal Skills in Social Context	2.00	H	0.000	
LAW	6165	LSSC: Research & Writing	2.00	H	0.000	
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000						
Summer 2022 Law Semester (05/09/2022 - 08/23/2022)						
COOP: U.S. Dist. Court, Dist. of Mass., Judge Saris Boston, MA						
LAW	7964	Co-op Work Experience	0.00	CR	0.000	
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000						
Fall 2022 Law Semester (08/29/2022 - 12/23/2022)						
LAW	7323	Corporations	4.00	H	0.000	
LAW	7332	Evidence	4.00	H	0.000	
LAW	7443	Professional Responsibility	3.00	HH	0.000	

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
LAW	7678	Legal Research Workshop	1.00	HH	0.000	
LAW	7933	Scholarly Legal Writing	2.00	HH	0.000	
LAW	7937	Teaching Assistant	2.00	HH	0.000	
Ehrs:16.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000						
Spring 2023 Law Semester (01/09/2023 - 04/29/2023)						
MG + M LLP Boston, MA						
LAW	7964	Co-op Work Experience	0.00	CR	0.000	
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000						
Summer 2023 Law Semester (05/08/2023 - 08/26/2023)						
IN PROGRESS WORK						
LAW	7333	Family Law	3.00	IN PROGRESS		
LAW	7377	Trusts and Estates	4.00	IN PROGRESS		
LAW	7479	Basic Income Taxation	4.00	IN PROGRESS		
LAW	7647	Trial Practice	2.00	IN PROGRESS		
LAW	7672	Data Privacy Compliance	3.00	IN PROGRESS		
In Progress Credits 16.00						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	50.000	0.000	0.000	0.000
TOTAL TRANSFER	0.000	0.000	0.000	0.000
OVERALL	50.000	0.000	0.000	0.000

********** END OF TRANSCRIPT **********

Rebecca Hunter Assoc VP & University Registrar

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Northeastern University, Office of the Registrar
271 Huntington Ave.
Boston, MA 02115
SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS

Effective Fall 2016: College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.
Effective Fall 2009: Northeastern University converted its Student Information System. All courses and Programs were converted.

Northeastern University Course Numbering

UNDERGRADUATE

Orientation and Basic No degree credit	**0001-0999**
Introductory Level (First year) Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background	**1000-1999**
Intermediate Level (Sophomore/Junior year) Normally designed for sophomores and above, but in some cases open to freshman majors in thedepartment.	**2000-2999**
Upper Intermediate Level (Junior year) Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.	**3000-3999**
Advanced Level (Senior year) Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.	**4000-4999**

GRADUATE

Orientation and Basic No degree credit	**0001-0999**
1st level graduate Courses primarily for graduate students and qualified undergraduate students with permission	**5000-5999**
2nd level graduate Generally for Master's only and Clinical Doctorate	**6000-6999**
3rd level graduate Master's and Doctoral level classes. Includes Master's Thesis	**7000-7999**
Clinical/Research/Readings Includes Comprehensive Exam Preparation	**8000-8999**
Doctoral Research and Dissertation	**9000-9999**

Northeastern University Grade Scale

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts towardtotal degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

Course Comments

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

LAW SCHOOL

CR	Credit
F	Fail
H	Honors
HH	High Honors
I	Incomplete
MP	Marginal Pass
P	Pass

Earned Hours

Northeastern University offers both quarter hour and semester hour programs.

Quarter Hours to Semester Hours Conversion Rate: For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 creditsemester courses.

Northeastern University School of Law Grading and Evaluation System

A global leader in experiential learning for over 50 years, Northeastern University School of Law ("NUSL") integrates academics with practical skills as its core educational philosophy. To fulfill NUSL graduation requirements, law students must earn at least 83 academic credits and complete at least three terms of full-time, law-related work through "co-op," our unique Cooperative Legal Education Program.

Consonant with the word "cooperative," NUSL cultivates an atmosphere of cooperation and mutual respect, exemplified in our course evaluation system. NUSL faculty provide detailed feedback to students through narrative evaluations, designed to prepare law students for the practice of law. The narrative evaluations examine law student written work product, contributions to class discussions, results of examinations, specific strengths and weaknesses, and overall engagement in the course. Faculty also award the student a grade in each course, using the following categories:

- **High Honors**
- **Honors**
- **Pass**
- **Fail**

A small number of courses are evaluated using a Credit/No Credit evaluation system, instead of a grade. NUSL does not provide GPAs or class ranks.

NUSL transcripts include the following information:

- The course name, grade received, and number credits earned;
- The faculty's narrative evaluation for the course; and
- All co-ops completed, and the evaluations provided by the co-op employer.

"In progress" notations on a transcript indicate that a student has not yet received an evaluation from faculty for a particular course.

During the Spring 2020 semester, due to the COVID-19 pandemic, all courses were subject to mandatory "Credit" or "Fail" evaluations, except for year-long courses LAW 6160 and 6165.

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Legal Research Workshop
Course ID:	LAW 7678
Credits:	1
Term:	Fall 2022 Law Semester
Instructor :	Persons, Sharon
Grade:	High Honors

Course Description:

Designed to assist students in developing and executing research plans for writing projects. Requires students to identify an appropriate project early in the course; the project may be one that the student creates specifically for the course, or it could be one undertaken for a law review note, a seminar, or an independent study in which the student is concurrently enrolled. Includes readings, lectures, demonstrations, and in-class and homework exercises, as well as peer and instructor feedback focused on research strategies. Requires students to periodically present their research strategies and results for their writing projects.

Performance Highlights:

This student demonstrated strong skills in legal analysis and research to complete the initial research for one or more pieces of scholarly legal writing and to create an annotated outline. Steps included selecting a topic, preemption check, creating a research plan, working bibliography, leading scholar's essay, research summary, analytical framework, and an annotated outline. This student also did a great job on the two presentations, including fielding questions from the class and instructor.

Date: 2.14.2023 2:27PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Scholarly Legal Writing
Course ID:	LAW 7933
Credits:	2
Term:	Fall 2022 Law Semester
Instructor :	Persons, Sharon
Grade:	High Honors

Course Description:

Introduces basic concepts and principles of scholarly legal writing. Requires students to produce a piece of legal writing on a complex legal issue of their choice. The scholarly writing is expected to meet the standards of the upper-level rigorous writing requirement and be of publishable quality, analyzing an original legal issue.

Performance Highlights:

This student demonstrated strong skills in legal analysis, research and composition for one or more pieces of scholarly legal writing. Steps included selecting a topic, preemption check, creating a research plan, working bibliography, leading scholar's essay, research summary, analytical framework, annotated outline, and drafting and revising a first draft. This student also did a great job on the two presentations, including fielding questions from the class and instructor.

Date: 2.14.2023 1:55PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Teaching Assistant
Course ID:	LAW 7937
Credits:	2
Term:	Fall 2022 Law Semester
Instructor :	Meise, Alexandra
Grade:	High Honors

Course Description:

Working under the direct supervision of a full-time faculty member, an upper level student in good academic standing may serve as a teaching assistant for first year or upper level courses. Teaching assistants may be required to attend classes and complete all reading assignments. Other responsibilities may include, but are not limited to, conducting review sessions, classroom exercises or other forms of direct instruction; holding office hours or meetings with individual students taking the course; and assisting in the development of course materials and assessments. In addition, teaching assistants are expected to meet regularly with the professor.

Performance Highlights:

Lily served as a TA for the Skills portion of NUSL's Legal Skills in the Social Context program for 1Ls. In that role, she served as a leader, a guide, a trainer, and a mentor to the 28 students in the course. She also helped design assignments; reviewed, edited, and corrected assorted types of student work product; and collaborated with me and her fellow TA on lesson design and instruction techniques.

Lily was a fantastic team player. Her work with her fellow TA to help plan Bluebooking lessons and related assignments, including how and when those assignments would be reviewed and graded, demonstrated excellent project management skills.

I do not have enough positive adjectives to articulate how grateful I am to Lily for anticipating student questions, anticipating my needs on assignment prep, and asking excellent questions. The weekly "round-up" emails she drafted and circulated with her fellow TA were comprehensive but pithy, and kept the class on-point and accountable. I will be using their work-product as a model for subsequent TAs to follow.

Lily handled well working with, supervising, and guiding our 28 students with wide ranging personalities, strengths, and skillsets. Lily's research, writing, and organizational skills, including the ability to manage multiple and overlapping deadlines, will serve her well in her legal career.

Date: 2.10.2023 12:14PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Corporations
Course ID:	LAW 7323
Credits:	4
Term:	Fall 2022 Law Semester
Instructor :	Danielsen, Dan
Grade:	Honors

Course Description:

This course relates to the formation, financial structure, and governance of business enterprises, especially incorporated businesses. Partnerships, limited partnerships, limited liability companies and limited liability partnerships are also explored, principally as they compare to the corporate form. The topics studied include: rights of creditors to hold principals of the enterprise liable; distribution of control within the corporation; fiduciary duties of directors and officers; key aspects of the federal securities laws (including the regulation of insider trading and proxies); organic changes (such as mergers); shifts in control (such as takeovers and freeze-outs); and legal implications of the roles of corporations in society. The course introduces some of the specialized concepts explored in detail in courses on Securities Regulation and Corporate Finance.

Performance Highlights:

Your examination demonstrated a good understanding of the issues raised and a thoughtful application of relevant legal doctrine in resolving them.

Your examination demonstrated careful attention to the needs of the applicable client in each question.

Your short papers evidenced your ability to deliver helpful legal advice to clients on complex business problems.

Date: 2.7.2023 1:33AM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Evidence
Course ID:	LAW 7332
Credits:	4
Term:	Fall 2022 Law Semester
Instructor :	Medwed, Daniel
Grade:	Honors

Course Description:

This course examines how courtroom lawyers use the evidence rules to present their cases—notably, rules regarding relevance, hearsay, impeachment, character, and experts. The approach to the study of evidence will be primarily through the "problem" method—that is, applying the provisions of the Federal Rules of Evidence to concrete courtroom situations. Theoretical issues will be explored as a way to deepen the student's appreciation of how the evidence rules can and ought to be used in litigation.

Performance Highlights:

* I appreciated how you tried to organize your final examination answers around the different issues in the fact patterns, and how you identified many of the key issues

* In terms of substance, your exam showed a solid command of several complicated hearsay concepts, including the business record exception and double hearsay

* You effectively drew upon case law to support your exam analysis

Date: 1.27.2023 10:23AM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	24694
Course Title:	Professional Responsibility
Course ID:	LAW 7443
Credits:	3
Term:	Fall 2022 Law Semester
Instructor :	Rosenfeld, Arnold
Grade:	High Honors

Course Description:

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

Performance Highlights:

You methodically identified and analyzed the professional responsibility issues in the fact situation and not only referenced the rules that were most likely violated by the lawyers but also cited relevant caselaw that we covered in the class in support of your conclusions of misconduct by the lawyers. I was very impressed by the care you took in determining whether there were sufficient facts to support your views as to whether a rule was or was not violated and the analyses you wrote demonstrated an incisive thought process on your part. Outstanding examination.

Date: 1.21.2023 1:18PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13536
Course Title:	LSSC: Research & Writing
Course ID:	LAW 6165
Credits:	2
Term:	Spring 2022 Law Semester
Instructor :	Meise, Alexandra
Grade:	Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

Lily performed very well in the in the skills component of the LSSC course. She demonstrated strong research, writing and analytical skills, with the following highlights:

- successfully completed a series of memorandum assignments, beginning with objective writing in the fall and transitioning to persuasive writing during the spring semester;
- demonstrated marked improvement with each writing assignment, culminating with a persuasive memo on a trial motion;
- demonstrated an increasing ability to find relevant authority and apply it in a legal analysis;
- drafted an analysis in the final memo that was supported by facts and law;
- demonstrated steady improvement of citation skills and a solid performance on in-class assessments;
- demonstrated very strong oral communication and advocacy skills, particularly in the culminating oral argument exercise;
- was professional and timely with all assignments; and
- was collaborative and receptive to feedback.

Lily's performance in the culminating oral advocacy exercise was one of the best in the class. It was an absolutely stellar.

It was a pleasure to have Lily in class!

Date: 6.2.2022 10:03AM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13536
Course Title:	Legal Skills in Social Context
Course ID:	LAW 6160
Credits:	2
Term:	Spring 2022 Law Semester
Instructor :	Meise, Alexandra
Grade:	Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

LO14 completed a project on climate migration issues on behalf of a humanitarian organization that supports and helps resettle thousands of refugees in the United States and across the world.

As a collective, they prepared a comprehensive report for the organization identifying and describing national security challenges presented by climate change generally and its effects on climate migration and U.S. agricultural sectors in particular. They also made recommendations on policy, legislative, and advocacy actions that could be taken to address the dual challenges of climate migration and climate change's effects on major sectors of the U.S. economy. The organizational client was extremely pleased with the students' work product and noted their intension to incorporate it into their policy and legal strategies going forward.

In preparation for that final report, throughout the year the LO interviewed multiple immigration, migration, national security, and legislative experts and other individuals working on the front lines of policy making, law drafting, and law making. Most of the report drafting took place in the spring. To facilitate this, the class undertook significant background research in the fall. In the fall, the class was broken into four separate sub-groups, with each group doing extensive legal and policy research on one of the following subject areas: U.S. federal legislative mechanisms and policy; U.S. immigration laws & frameworks; subnational U.S. policy and economic development approaches to climate change; and international community approaches to climate displacement.

In the fall, Lily worked on the U.S. immigration laws and frameworks team. In the spring, she worked on the international and domestic case studies team and the cite-checking team. Cite-checking can often be a thankless task, but Lily's attention to detail in cite-checking and the public-facing community presentation helped ensure the final written work product and presentation were aesthetically pleasing, professional, and without glitches.

I watched Lily's public-speaking skills blossom over the course of the year, and she did a fantastic job in the final presentation. She took on a presenter role when many students did not, showing her ability to step up to the plate and go above and beyond as a team member. She also was able to communicate information clearly to the client, explaining the evolution of the students' research over the course of a year and responding accurately to complex questions in terms digestible to non-lawyers. She was a pleasure to have in class.

Date: 6.2.2022 10:02AM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13536
Course Title:	Constitutional Law
Course ID:	LAW 6101
Credits:	4
Term:	Spring 2022 Law Semester
Instructor :	Davis, Martha
Grade:	Honors

Course Description:

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

Performance Highlights:

Highlights:

- Your exam included very good use of case law, demonstrating an understanding of individual rights and congressional power, and an excellent understanding of state action.
- Your midterm, take-home assignment, an analysis of a complex equal protection problem, was excellent.

Date: 5.31.2022 3:46PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13536
Course Title:	Contracts
Course ID:	LAW 6102
Credits:	5
Term:	Spring 2022 Law Semester
Instructor :	Saito, Blaine
Grade:	Honors

Course Description:

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

Performance Highlights:

Question 1

You did a good job on the issue of the parol evidence rule, delegation, and economic waste. You discussed the statute of frauds, specific performance for land, and expectation damages.

Question 2

This was a strong answer. You did a good job analyzing the issues of requirements contracts, UCC § 2-207, course of performance on the delivery location, gap fillers, course of performance eon the type of basil, perfect tender, warrantee of merchantability, and duress. You also did pretty well in discussing damages.

Question 3

You showed an understanding of the doctrine and the key policy motivations behind it. You also dealt with the themes of the course.

You participated well in class. I appreciated having you this spring.

Date: 5.31.2022 3:24PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13536
Course Title:	Criminal Justice
Course ID:	LAW 6103
Credits:	4
Term:	Spring 2022 Law Semester
Instructor :	Medwed, Daniel
Grade:	High Honors

Course Description:

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

Performance Highlights:

This course had four primary goals. I hoped to (1) provide instruction regarding the substantive law of crimes in the United States, namely, the creation, definition and analysis of offenses and defenses; (2) introduce you to some of the major constitutional principles of criminal procedure; (3) develop skills related to statutory interpretation and fact analysis; and (4) give you a sense of how the criminal justice system operates in practice. My aim for the final examination was to test your ability to spot legal issues and apply legal doctrine to several complicated fact scenarios. Specifically, I sought to evaluate your familiarity with and understanding of the Model Penal Code (MPC), laws in non-MPC jurisdictions and general principles of constitutional criminal procedure related to the Fourth and Fifth Amendments.

Highlights

- You showed strong overall issue-spotting skills on the final exam
- Your final exam answers were also well-organized
- In terms of substance, your exam demonstrated a commendable grasp of the different homicide categories and the approaches in various states

Date: 5.31.2022 2:33PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13042
Course Title:	Legal Skills in Social Context
Course ID:	LAW 6160
Credits:	2
Term:	Fall 2021 Law Semester
Instructor :	Meise, Alexandra
Grade:	Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

Legal Skills in Social Context is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date: 6.2.2022 3:42PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13042
Course Title:	LSSC: Research & Writing
Course ID:	LAW 6165
Credits:	2
Term:	Fall 2021 Law Semester
Instructor :	Meise, Alexandra
Grade:	Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

LSSC: Research & Writing is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date: 6.2.2022 3:31PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13042
Course Title:	Property
Course ID:	LAW 6105
Credits:	4
Term:	Fall 2021 Law Semester
Instructor :	Swanson, Kara
Grade:	Honors

Course Description:

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

Performance Highlights:

Demonstrated strong ability to understand and explain property law, using case law and statutes.

Demonstrated strong ability to identify issues in complicated fact patterns.

Demonstrated strong ability to analyze legal issues, predict or advocate for outcome, and justify conclusions with support.

Date: 1.20.2022 6:34PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13042
Course Title:	Civil Procedure
Course ID:	LAW 6100
Credits:	5
Term:	Fall 2021 Law Semester
Instructor :	Daynard, Richard
Grade:	Pass

Course Description:

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution.

Performance Highlights:

Lily Malloy's exam properly resolved most of the issues presented. She also did a nice job in her in-class case presentation.

Date: 1.20.2022 6:33PM

Northeastern University School of Law

416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Malloy, Lily
Exam #:	13042
Course Title:	Torts
Course ID:	LAW 6106
Credits:	4
Term:	Fall 2021 Law Semester
Instructor :	Simon, David
Grade:	Honors

Course Description:

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

Performance Highlights:

- Demonstrated strong ability to use analogical reasoning, drawing on case law and legal rules; and to make arguments, justify them, and draw conclusions.
- Demonstrated strong ability to explain and analyze tort law principles, doctrines, and policies.
- Demonstrated strong ability to organize and answer and analyze a complicated fact pattern.

Date: 1.20.2022 6:31PM

Spring 2023: Lily J Malloy - Spring 2023 Co-op (97027) (MG + M LLP (Boston, MA))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Apr 24, 2023 5:20 pm
Student	Lily J Malloy
Date Employed From:	January 9, 2023
Date Employed To:	April 21, 2023
Address	125 High Street, Oliver Street Tower, 6th Floor Boston, MA
Employer Name	MG + M LLP (Boston, MA)
1) Areas of law engaged in, and level of proficiency	Lily worked on a wide variety of complex litigation matters. She assisted on business litigation, construction litigation, asbestos litigation, intellectual property litigation, products liability, real estate litigation, toxic tort liability matters.
2) Skills demonstrated during the co-op	Lily demonstrated exceptional research and writing skills, well beyond what we normally except in a law student. Lily was able to research legal questions, analyze potential liability issues and communicate her analysis in a thoughtful manner. She draft several motions and memorandums, correctly applying the law and rules to the facts. She was also an excellent communicator.
3) Professionalism, work ethic, and responsiveness to feedback	Lily had an unparalleled ability to analyze legal issues, conduct legal research and write legal memoranda. She also was also exceptionally professional. She communicated with attorneys and was always willing to accept a new assignments and help out her team. She asked questions about any feedback and took the time to improve her work.
4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines	Lily was a pleasure to have in the office. She accepted feedback and showed a willingness to learn and improve. She was professional with clients and a great addition to all teams.
Submitted by:	Marissa L Morte

Date submitted: April 25, 2023

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
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Summer 2022 : Lily J Malloy - Summer 2022 Co-op (91463) (U.S. Dist. Court, Dist. of Mass., Judge Saris (Boston, MA))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Aug 23, 2022 3:02 pm
Student	Lily J Malloy
Date Employed From:	May 9, 2022
Date Employed To:	August 19, 2022
Address	United States District Court - Boston Moakley Courthouse
Employer Name	U.S. Dist. Court, Dist. of Mass., Judge Saris (Boston, MA)
1) Areas of law engaged in, and level of proficiency	Lily wrote memoranda and drafted opinions on a variety of substantive and procedural issues, including motions for sanctions, social security benefits, disability discrimination, and remand to state court. She demonstrated strong research skills that allowed her to develop deep knowledge on each subject. Lily did a particularly excellent job on a memorandum concerning a motion to remand; she organized her analysis well and assessed each issue comprehensively.
2) Skills demonstrated during the co-op	Lily has all of the skills necessary to be a young litigator: she has excellent research, writing, and analytical ability. Another particularly impressive skill is her ability to learn quickly on the fly; she only needs to be told how to do something once before demonstrating mastery.
3) Professionalism, work ethic, and responsiveness to feedback	Lily is extremely hard-working, enthusiastic, and personable. Whether because of her previous legal experiences, her natural instincts, or some combination of the two, she showed immediately that she knows how to comport herself in a professional legal environment. She turned in all assignments on time, asked good questions, and used feedback to improve her capabilities. Lily always volunteered to help when asked.
4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines	Lily's interpersonal skills will serve her well when working with clients and colleagues, although she did not have many opportunities to do that during this co-op.

5) Further details about the student's performance	Lily was the rare intern who became part of the fabric of chambers and made herself indispensable. In her very first week, she oversaw the organization of exhibits in a complex criminal trial, saving the parties and chambers staff hours of additional work. She threw herself into her writing assignments and consistently produced work that was strong on both substance and writing skills. Lily was also a joy to work with, bringing a positive attitude and an infectious enthusiasm for the work of the court.
Submitted by:	lisa pezzarossi
Date submitted:	August 23, 2022

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
Privacy Policy | Terms of Use

May 11, 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 highly recommend Lily Malloy for a clerkship in your chambers. She was a Summer 2022 intern from Northeastern University School of Law in my chambers.

Lily engaged in multiple substantive areas of law during her co-op term. She wrote six memoranda and draft opinions that showcased her writing, research, and analytical abilities and assisted in two trials.

Notably, Lily did an excellent job on a memorandum concerning a motion to remand; she organized her analysis well and assessed each issue comprehensively. Lily is eager to assist and made very valuable contributions to chambers. In her very first week, she oversaw the organization of exhibits in a complex criminal trial, saving the parties and chambers staff hours of additional work.

Lily's work was timely, careful and well-reasoned. She also has stellar interpersonal skills and did a wonderful job of clearly communicating her progress on each project. Lily was the rare intern who became part of the fabric of chambers and made herself indispensable. She forged strong relationships with the court staff as well as the other interns, which is a testament to her positive and kind attitude. Please call me if there are any questions.

Very truly yours,

Patti B. Saris
U.S. District Judge

Patti Saris - Honorable_Patti_Saris@mad.uscourts.gov

Northeastern University
School of Law

May 22, 2023

To Whom It May Concern:

I write this letter in vociferous support of Lily Malloy's application to serve as your law clerk following her 2024 graduation from Northeastern University School of Law (NUSL). I have known Lily since her first days at NUSL two years ago. In that time, I have had the pleasure of getting to know her and her work as both a student and as my Teaching Assistant, and based on her performance in these roles, I know she would be a valuable contributor to your chambers.

I teach in NUSL's Legal Skills in Social Context (LSSC) program, where Lily was my student in for the full 2021-22 academic year. LSSC consists of two courses: a legal research and writing course and a smaller "law office" experiential course. In the latter, students work on a project for a "partner organization" applying their burgeoning legal skills to a formal project addressing a pressing social justice issue. Based on her LSSC performance as a 1L, I asked her to serve as one of my TAs as a 2L.

As a student, Lily performed very well in my legal research and writing course. She demonstrated strong research, writing, and analytical skills throughout the year across a complex series of assignments. She was very receptive to feedback and her research, writing, and citation skills improved with each assignment. Her assignments and communications were always professional and timely. Lily's contributions to class discussions made them better; I knew when she raised her hand that what she was about to share would be thoughtful and valuable. Lily also displayed very strong oral communication and advocacy skills; without question, her performance in the culminating oral advocacy exercise (oral arguments on a motion to suppress inculpatory statements) was *the best* in the entire class.

Lily also performed very well in my "law office" course, where her contributions proved essential to the class's performance successes. She was a consummate team player whose work researching and editing the project deliverables helped ensure the class met its obligations and produced very high quality, professional work-products for our partner organization. When I invited the class to submit to me "shout outs" of gratitude for their fellow classmates—especially for behind-the-scenes contributions I may not have seen—the acclaim for Lily was universal. Here are just a few highlights:

- "I had the opportunity to work in sub-groups with [Lily] … and it was a joy. [She was] so responsive, supportive, and quick to reply whenever I may have needed help."

- "I think Lily did a lot of work that sometimes goes unnoticed because she isn't vocal about her contributions. But we spent hours in the library every single weekend working on [law office tasks] and helping each other through editing, substantive pieces, and fact/cite checking."
- Lily "easily collaborate[d] with others and demonstrated that [she is an] excellent team member to work with. I think this will serve [her] extremely well in the workplace. [She was] organized, helped … other[s] out, quickly responded to questions, and did not ease off the gas until we finished the final product."

As a TA, I saw Lily's skills as a professional colleague and collaborator really shine. Lily served as a leader, a guide, a trainer, and a mentor to the twenty-eight students in my legal research and writing course. She helped design assignments and reviewed, edited, and corrected assorted types of student work-product. She also collaborated with me and her fellow TA on lesson design and instruction techniques. Lily demonstrated excellent presentation and project management skills in her work with her fellow TA to help create Bluebook lessons and assessments and to draft and circulate weekly "round-up" emails to students summarizing assignments and take-aways. She also demonstrated fantastic attention to detail. The students raved about how Lily and her fellow TA were great at making the arcane Bluebook material approachable. I do not have enough positive adjectives to articulate how grateful I am to Lily for anticipating student questions, anticipating my needs on assignment prep, and asking excellent questions.

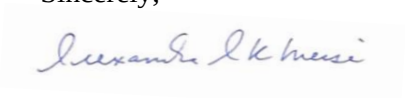
Lily is a fantastic team player and is collaborative and receptive to feedback. She is an efficient and effective researcher and a very strong editor. Her research, writing, and organizational skills, including the ability to manage multiple and overlapping deadlines, will serve her well in her legal career. Lily de-stresses her work places rather than add to the frenzy. The quality of her work and the positive influence of her presence elevate the work of those around her.

I have served a judge on the U.S. Court of Appeals for the First Circuit and multiple judges in the Pre-Trial and Supreme Court Chambers of the Extraordinary Chambers of the Courts of Cambodia/United Nations Assistance to the Khmer Rogue Tribunals.[1] Before pivoting to academia, I spent over a decade in private practice, culminating with being a litigation partner at a major U.S. law firm. In these roles, I supervised many attorneys, made many hiring decisions about law students and attorneys, and influenced others' hiring decisions regarding many more. Through these experiences, I have seen many succeed and fail in chambers as a clerk and in practice as an attorney. Based on the quality of Lily's performance as a student and as a Teaching Assistant, and on my interactions with her as her professor and work supervisor, I know Lily has what it takes to have a long and successful legal career and I have every confidence that she will be an extremely effective law clerk and an asset to your chambers.

[1] This court is colloquially known as the Khmer Rouge War Crimes Tribunal.

Please do not hesitate to contact me with any questions about Lily.

Sincerely,



Alexandra A.K. Meise, Associate Teaching Professor
Northeastern University School of Law
416 Huntington Ave.
Boston, MA 02115
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PH: 617-373-6878

Northeastern University
School *of* Law

400 Huntington Ave.
Boston, MA 02115

May 22, 2023

Recommendation on Behalf of Lily Malloy

Dear Your Honor:

I recommend Lily Malloy, a student in the Class of 2024 at Northeastern University School of Law, for a judicial clerkship.

Based on my interactions with Lily in two classes, Criminal Justice and Evidence, I believe she would be a very strong candidate. Lily earned a "High Honors" in Criminal Justice, and her final examination revealed very good issue-spotting skills and a nice command of the different categories of homicide, which is a very tricky aspect of the course.

On a personal level, I enjoyed each and every interaction with Lily. She seemed very attentive during class, and struck me as having a thoughtful and professional demeanor. She is also a friendly and kind person who would likely be a welcome addition to any workplace.

In sum, I think Lily would fit in nicely with your chambers. Please feel free to contact me if you have any questions.

Sincerely,

Daniel S. Medwed
University Distinguished Professor
Northeastern University
d.medwed@northeastern.edu
617 373-6590

LILY MALLOY

21 Essex Street, North Reading, MA 01864 • (978) 882-3431 • malloy.li@northeastern.edu

WRITING SAMPLE

This writing sample is a bench memorandum that I drafted during my co-op with the Honorable Patti B. Saris, Federal District Court Judge, District of Massachusetts in the Summer of 2022. This memorandum was drafted in anticipation of a Motion to Remand hearing and discusses and analyzes several legal issues, including the 30-day time period for removal to federal court, default in state court, and transfer to another division within the District of Massachusetts. This memorandum has been reviewed by a law clerk and edited in accordance with his recommendations. This writing sample was approved for use by the Honorable Patti B. Saris and personal identifying information has been removed.

MEMORANDUM

To: Judge Saris
From: Lily Malloy
Date: August 8, 2022
Case: Plaintiff v. Defendant A. et al.
Re: Motion to Remand

OVERVIEW

Pro se Plaintiff sought leave to file a Second Amended Complaint in Bristol Superior Court on May 5, 2022. **[Dkt 10 at 2].** The Superior Court granted leave to amend on June 10, 2022. **[Dkt 10 at 2].** Defendant A removed to this Court on June 30, 2022. **[Dkt 10 at 2].** Plaintiff now moves this Court for remand back to state court. **[Dkt. 10 at 2].** Plaintiff claims that removal was untimely and Defendants are in default in state court. **[Dkt 11 at 1, 3].** Plaintiff alternatively asserts *forum non conveniens* and claims that this case should be transferred to the Central Division in Worcester. **[Dkt. 11 at 5].**

For the reasons below, I recommend the Court **DENY** the Motion to Remand (Dkt. 10).

FACTUAL BACKGROUND

I. The Parties

Plaintiff ("Plaintiff") is a primary care physician trained in hair transplant procedures. **[Dkt 1-5 at 3].** Plaintiff works and resides in Bristol County, Massachusetts. **[Dkt 1-5 at 3].**

Defendant A ("Defendant A") operates in Massachusetts and is headquartered in Suffolk County. **[Dkt 1-5 at 3].** Defendant B is an employee of Defendant A and resides in Suffolk County. **[Dkt 1-5 at 3].** Defendant C was the Board Chair for Defendant A and resides in Essex County. **[Dkt 1-5 at 3].** Defendant D was the President and CEO of Defendant A and resides in Plymouth County. **[Dkt 1-5 at 3].**

II. The Dispute

This case arose out of a dispute between Plaintiff, his former patient, Defendant B, and Plaintiff's medical malpractice insurer, Defendant A. **[Dkt. 23 at 3].** In 2017, Plaintiff performed an unsuccessful hair transplant procedure on Defendant B and, as a result, Defendant B experienced sudden hair loss. **[Dkt. 1 at 2].** Plaintiff alleges that Defendant B accessed confidential data maintained by Defendant A, his employer, reflecting claims against Plaintiff at the Board of Registration in Medicine ("BORIM"). **[Dkt. 23 at 3].** Defendant B allegedly used that information to "extort" a $4,000 settlement from Plaintiff and to file his own complaint with

the BORIM against Plaintiff. **[Dkt. 23 at 3].** This caused the BORIM to move forward with adjudicatory proceedings and in May 2019, Plaintiff voluntarily agreed to cease practicing medicine while the complaint was being adjudicated. **[Dkt. 23 at 3-4].** Upon learning that Plaintiff's medical license had been suspended by virtue of his agreement with the BORIM, Defendant A cancelled Plaintiff's malpractice insurance policy**. [Dkt. 1 at 2].** Plaintiff was suspended by the BORIM in March 2021, but was permitted to return to practice under a Probation Agreement in May 2021. **[Dkt. 23 at 4].**

PROCEDURAL HISTORY

On February 12, 2021, Plaintiff filed his original, *pro se* Complaint against Defendant A and Defendant B. **[Dkt. 1 at 1].** On May 26, 2021, Plaintiff (who by then had retained counsel) filed an Amended Complaint, asserting three claims against Defendant A (tortious interference, violation of c. 93A, and breach of fiduciary duty) and three claims against Defendant B (malicious prosecution, abuse of process, and tortious interference). **[Dkt. 23 at 4].** Defendant A and Defendant B moved to dismiss, and the court set a hearing date of March 10, 2022. **[Dkt. 23 at 4].** Before the hearing, Plaintiff's counsel moved to withdraw, which the court allowed after the hearing. **[Dkt. 23 at 5].**

On March 30, 2022, the Superior Court granted Defendant B's motion to dismiss and dismissed him from the case. **[Dkt. 23 at 5].** The court also allowed Defendant A's motion regarding the c. 93A and tortious interference claims, but declined to dismiss the breach of fiduciary duty claim. **[Dkt. 23 at 5].** Defendant A moved for reconsideration or, in the alternative, dismissal pursuant to Mass. R. Civ. P. 12(b)(10). **[Dkt. 23 at 6].** Following a hearing, the Superior Court denied Defendant A's motions. **[Dkt. 23 at 6].**

Plaintiff served the Second Amended Complaint ("SAC") on Defendant A and Defendant B on May 5, 2022.[1] **[Dkt. 10 at 2, Dkt. 11 at 2, Dkt. 23 at 9].** The SAC sought to add two new defendants, Defendant C and Defendant D. **[Dkt. 23 at 7].** The SAC also asserted claims arising under federal law including the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (Count 1); the Federal Wiretap Act, 18 U.S.C. § 2520 (Count 2); and the federal Defend Trade Secrets Act, 18 U.S.C. § 1836 (Count 4). **[Dkt. 1 at 3].** However, the SAC did not list any of the claims against Defendant B that were in the Amended Complaint and did not list the breach of fiduciary duty

[1] In their Joint Opposition to Plaintiff's Motion for Remand, Defendants state that Plaintiff served the Motion to Amend and sought leave to file the SAC on May 12, 2022. **[Dkt. 23 at 7].**

claim against Defendant A, which was the only claim to survive the motion to dismiss. **[Dkt. 23 at 7].** Defendant A and Defendant B filed oppositions arguing that the amendments were untimely, futile, and improper. **[Dkt. 23 at 7].** On June 10, 2022, the Superior Court granted leave to amend and allowed Plaintiff's SAC. **[Dkt. 23 at 7-8].**

On June 30, 2022, Defendant A removed to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. **[Dkt. 1 at 1, Dkt. 23 at 8].** On July 1, 2022, Plaintiff moved for default judgement with the Superior Court, arguing that Defendants had not responded to the SAC within ten (10) days. **[Dkt. 23 at 8].** On July 6, 2022, the Superior Court rejected the motion for default because the case had already been removed to this Court. **[Dkt. 23 at 8].**

On July 7, 2022, Plaintiff moved to remand this case back state court**. [Dkt. 10].**

LEGAL STANDARD

A defendant may remove any civil action from state court to federal district court so long as the federal court has original jurisdiction. See 28 U.S.C. § 1441(a). Federal district courts have original jurisdiction over civil actions that raise a federal question. See 28 U.S.C. § 1331. The statute governing removal in this case is 28 U.S.C. § 1446. Under 28 U.S.C. § 1446(b)(3),

> [I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

Defendants have the burden of showing a basis for federal jurisdiction. See Danca v. Private Health Care Sys., Inc., 185 F.3d 1, 4 (1st Cir. 1999). Additionally, documents filed by *pro se* plaintiffs are "to be liberally construed" and "must be held to less stringent standards than formal pleadings drafted by lawyers," Estelle v. Gamble, 429 U.S. 97, 106 (1976).

ANALYSIS

This case raises three issues: (1) was removal timely, (2) are Defendants in default in state court and if so, does that matter, and (3) should this case be transferred to the Central Division in Worcester? The answer to each question dictates that this case should stay in front of this Court.

I. Removal Was Timely

The first issue of this case concerns the date that the present action became removable. This case was removed on June 30, 2022. **[Dkt. 23 at 8].**

While the First Circuit has not addressed whether the 30-day removal period begins at the date the proposed amended complaint was served or at the date the court allows leave to file the amended complaint, other circuits and district courts provide some guidance.

A majority of courts have held that the removal period starts to run when the court grants the motion to amend. See e.g., Freeman v. Blue Ridge Paper Products, Inc., 551 F.3d 405, 410 (6th Cir. 2008) (removal was timely because defendants removed within 30 days of the written order allowing the motion to amend); Sullivan v. Conway, 157 F.3d 1092, 1094 (7th Cir. 1998) ("Until the state judge granted the motion to amend, there was no basis for removal. Until then, the complaint did not state a federal claim. It might never state a claim, since the state judge might deny the motion. . . . When the motion was granted, the case first became removable . . ."); Concordia Partners, LLC v. Pick, No. 2:14-cv-09-GZS, 2014 WL 4060253, at *2 (D. Me. Aug. 14, 2014) (the 30-day removal time period begins when the state court allows the amendment of the pleading); Disher v. Citigroup Glob. Mkts., Inc., 487 F. Supp. 2d 1009, 1016 (S.D. Ill. 2007) ("[A] plaintiff's moving papers in state court generally do not create a right to remove under Section 1446(b); rather, the event triggering a right to remove is a state-court order granting a plaintiff's motion").

See also Universal Semiconductor, Inc. v. Tuoi Vo, No. 5:16-cv-04778-EJD, 2017 WL 2719987, at *2-3 (N.D. Cal. Feb. 9, 2017) (removal clock began ticking when the state court granted leave to amend); Vasquez v. First Student, Inc., No. 2:14-cv-06760-0DW, 2014 WL 6837279, at *5 (C.D. Cal. Dec. 3, 2014) ("[B]ecause Defendant's 30-day window to remove began on July 31, 2014 when Plaintiff was granted leave to amend her Original Complaint, Defendants Notice of Removal was timely filed"); Graphic Scanning Corp. v. Yampol, 677 F. Supp. 256, 258 (D. Del. 1988) ("Not until the state court rules on such a motion, and the basis for federal jurisdiction becomes evident, does the time period for removal commence").

A minority of courts have held that the 30-day removal clock starts when the defendants are served with a motion to amend, since that puts them on notice of the case's removability. See Harriman v. Liberian Maritime Corp., 204 F. Supp. 205, 206–07 (D. Mass. 1962) ("[O]nce such motion is filed defendant is then on notice that plaintiff is claiming that his case involves the jurisdictional amount and must remove or lose his right to do so within [thirty] days therefrom"); Webster v. Sunnyside Corp., 836 F. Supp. 629, 631 (S.D. Iowa 1993) ("Defendants waived their right to remove this case to federal court by not serving their notice of removal to federal court

within thirty days after the service on them of the motion to amend"). However, this approach faces criticism because it would allow removal of a case, despite the fact that the motion seeking leave to amend may ultimately be denied by the state court. See Lucente S.P.A. v. Apik Jewelry, Inc., No. cv-07-04005 MMM (RZx), 2007 WL 7209938, at *3 (C.D. Cal. Oct. 3, 2007).

Here, Plaintiff asserts that the clock for the 30-day removal period started when he served the SAC on Defendants on May 5, 2022, and thus removal was untimely. **[Dkt. 11 at 2-3].** Defendants argue that their removal to this Court was timely because the clock for removal did not start until the Superior Court granted leave to amend and filed the SAC on June 10, 2022. **[Dkt. 23 at 9].** In light of the above case law, I recommend that the Court agree with Defendants.

Plaintiff uses Romulus v. CVS Pharmacy, Inc., 770 F.3d 67 (1st Cir. 2014) to argue that the removal clock started ticking on May 5, 2020. **[Dkt. 11 at 2].** However, as Defendants point out, Romulus, concerns removal pursuant to the Class Action Fairness Act's amount-in-controversy requirement and does not involve removal based on a proposed amended pleading. **[Dkt. 23 at 11].** Rather, the defendant removed after receiving an e-mail from plaintiffs that illuminated issues related to plaintiffs' damages calculation. See Romulus, 770 F.3d at 70-71. The First Circuit held that "Section 1446(b)'s thirty-day clocks are triggered only when the plaintiffs' complaint or plaintiffs' subsequent paper provides the defendant with sufficient information to easily determine that the matter is removable" and that "Section 1446(b)(3) does not apply until removability can first be ascertained from the plaintiffs' own papers." Id. at 72, 74. The court went further and noted that a "defendant must remove within thirty days of a paper, filed by the plaintiffs, that explicitly specifies the amount of monetary damages sought or sets forth facts from which an amount in controversy in excess of $5 million can be readily ascertained." Id. at 76 (citing Cutrone v. Mortg. Elec. Registration Sys., Inc., 749 F.3d 137, 145 (2d Cir. 2014)).

The subsequent paper in Romulus was an email that informed the defendants of the removability of the case to federal court. Here, unlike in Romulus, the subsequent paper that gave notice to Defendants of the removability of the case was the SAC, which the state court needed to allow. Thus, Defendants are correct that Romulus does not pertain to the issue in this case.

In his reply, Plaintiff claims that removal is also barred by laches because Defendants were on notice that the case could be removed since February 2022. **[Dkt. 27 at 5].** Further,

Plaintiff contends that Dietrich v. Boeing Co., 14 F.4th 1089 (9th Cir. 2021) supports the plain language established in Romulus. **[Dkt. 27 at 3].** The Ninth Circuit in Dietrich evaluated the pathway for removal under § 1446(b) and at what point removal could first be ascertained. See Dietrich, 14 F.4th at 1093. The court explained that the term "ascertain" as used in § 1446(b)(3) is different from the term "set forth" as used in § 1446(b)(1) in that "'ascertain' means 'to find out or learn *with certainty*.'" Id. Ascertain "'seems to require a greater level of certainty or that the facts supporting removability be stated unequivocally.'" Id. (quoting Bosky v. Kroger Tex., LP, 288 F.3d 208, 211 (5th Cir. 2002)). With that definition in mind, the court then cited to Romulus to show that the First Circuit required "'a clear statement of the damages sought.'" Dietrich, 14 F.4th at 1093 (citing Romulus, 770 F.3d at 75). The court held that "an amended pleading, motion, order, or other paper must make a ground for removal unequivocally clear and certain before the removal clock begins under the second pathway of § 1446(b)(3)." Dietrich, 14 F.4th at 1095. In that case, the grounds for removal became clear when the plaintiff submitted discovery responses showing that his claims related to his time as a federal officer—not because he filed an amended complaint. See id. at 1095. The Dietrich case can ultimately be used to support Defendants' argument because ground for removal in this case was not unequivocally clear until the state court granted leave to amend and filed the SAC. Thus, I suggest that the Court deny Plaintiff's argument that removal is barred by laches because it was not unequivocally clear that the case could be removed until the state court granted leave to amend.

I recommend that the Court follow the majority of courts and hold that the 30-day clock for removal begins at the time that the state court grants leave to amend. Thus, Defendants timely filed a notice of removal.

II. Defendants are Not in Default in State Court, and if They Were, it Would Not Matter

Plaintiff also argues that this case should be remanded because Defendant A and Defendant B are in default in state court. **[Dkt. 11 at 3].** Plaintiff contends that Defendants had until June 20, 2022, ten (10) days after the court allowed the SAC, to file a responsive pleading. **[Dkt. 11 at 3].** Defendant A and Defendant B did not file responsive pleadings, and thus Plaintiff argues that they are in default. **[Dkt. 11 at 3].** Defendants argue that they are not in default because the Superior Court has not entered a default judgement and has rejected Plaintiff's motion for default. **[Dkt. 23 at 12].** Defendants further argue that the only applicable deadline

for responding to the SAC is under federal rules, as the case has been removed to this Court. **[Dkt. 23 at 12].**

In the First Circuit, "[i]t is clear that once a removal petition has been filed and proper notice given adverse parties in state court, the district court has exclusive jurisdiction over the case." Berberian v. Gibney, 514 F.2d 790, 792 (1st Cir. 1975) (citing Georgia v. Rachel, 384 U.S. 780, 797 n. 27 (1966)). See also Butner v. Neustadter, 324 F.2d 783, 787 (9th Cir. 1963) (holding that "[t]he federal court takes the case as it finds it on removal and treats everything that occurred in the state court as if it has taken place in federal court"). Here, the state court chose not to enter default judgement against Defendants, thus Defendants are not in default. And, even if the Superior Court had entered judgment, this Court could still vacate a default judgment. Id. at 793. See also Surabian v. HSBC Bank USA, NA as Tr. for Sequoia Mortg. Tr., No. 12-1556, 2013 WL 12476754, at *1 (1st Cir. Sept. 16, 2013) (rejecting plaintiff's argument that the defendant's answer to the complaint was untimely because the state court never entered default after the case was removed to federal court); Halter v. Nat'l Farmers Union Prop. & Cas. Co. of Denver, 502 F. Supp. 736, 737 (D. Ark. 1980) (rejecting plaintiff's argument that removal was improper where defendant did not file a responsive pleading in state court within the allotted time period).

Because the Superior Court did not enter default judgement against Defendants before or after the case was removed, Defendants are correct in arguing that remand based on a nonexistent default judgment would be inappropriate.

III. This Case Should Not be Transferred to the Central Division in Worcester

The final issue is whether this case should be transferred to the Central Division in Worcester. Plaintiff asserts *forum non conveniens* and claims that having to travel to Boston and pay for parking each time would be an insurmountable burden. **[Dkt. 11 at 5].** Plaintiff argues that the only federal court that would be workable is the Central Division in Worcester. **[Dkt. 11 at 5].** Defendants argue that this case should not be transferred to the Central Division in Worcester because the District of Massachusetts has no statutory division and that it is unsettled whether 28 U.S.C. § 1404(a) applies to the transfer of venue within the District of Massachusetts. **[Dkt. 23 at 13-14].** Defendants argue that transfer should not be allowed because Plaintiff having to drive into Boston and pay parking costs is not "good cause" to transfer. **[Dkt. 23 at 15].**

Under 28 U.S.C. § 1404(a), "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." In evaluating whether to transfer, the court must weigh factors including

> (1) the convenience of the parties, (2) the convenience of the witnesses, (3) the relative ease of access to sources of proof, (4), the availability of process to compel attendance of unwilling witnesses, (5) cost of obtaining willing witnesses, and (6) any practical problems associated with trying the case most expeditiously and inexpensively.

Optos, Inc. v. Topcon Med. Sys., Inc., 777 F. Supp. 2d 217, 237 (D. Mass. 2011). The burden of proving that transfer is warranted rests with the party seeking transfer. See Coady v. Ashcraft & Gerel, 223 F.3d 1, 11 (1st Cir. 2000).

Under Local Rule 40.1, Massachusetts constitutes one district with three divisions: the Eastern division in Boston, the Central division in Worcester, and the Western division in Springfield. See L. R. 40.1(c). Under Local Rule 40.1(f), "[a]ny case may be transferred from one division to another division on motion of any party for good cause shown or sua sponte for good cause by the judge to whom the case is assigned." However, also under the Local Rules, a case shall be assigned to a division if all parties reside in that division. See L.R. 40.1(c)(1),

Plaintiff argues that he would be inconvenienced by having to drive to Boston and pay for parking. **[Dkt. 11 at 5].** He argues that transfer to Worcester would be less of an insurmountable burden, but it is still an hour away. **[Dkt. 11 at 5].** I recommend that the Court deny transfer to the Central Division in Worcester. Plaintiff has not shown that transfer is properly warranted. Also, Plaintiff is a resident of North Attleboro, which is in Bristol County. **[Dkt. 23 at 14].** Defendant C resides in Essex County, Defendant D resides in Plymouth County, and Defendant A and Defendant B reside in Suffolk County. Under the Local Rules, all of these counties are included in the Eastern Division in Boston. L.R. 40.1(c)(1).

Thus, I recommend that the Court deny transfer to the Eastern Division in Worcester.

CONCLUSION

I recommend that the Court **DENY** Plaintiff's Motion to Remand (Dkt. 10).

Applicant Details

First Name	**Halie**
Last Name	**Mariano**
Citizenship Status	**U. S. Citizen**
Email Address	**hmariano@unc.edu**
Address	**Address** Street **623 Coolidge St** City **Chapel Hill** State/Territory **North Carolina** Zip **27516** Country **United States**
Contact Phone Number	**5856987419**

Applicant Education

BA/BS From	**Bucknell University**
Date of BA/BS	**May 2020**
JD/LLB From	**University of North Carolina School of Law** **https://law.unc.edu/**
Date of JD/LLB	**May 10, 2024**
Class Rank	**20%**
Law Review/Journal	**Yes**
Journal(s)	**North Carolina Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Holderness Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gurvich, Rachel
gurvich@email.unc.edu
Everett, Luke
lmeveret@email.unc.edu
Muller, Eric
emuller@email.unc.edu
919.962.7067

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

HALIE MARIANO
623 Coolidge Street, Chapel Hill, NC 27516 | (585) 698-7419 | hmariano@unc.edu

June 9, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of North Carolina School of Law, where I serve as the Executive Comments Editor of the *North Carolina Law Review*, compete on UNC's alternative dispute resolution moot court teams, and facilitate pro bono projects as a member of the UNC Pro Bono Board. I write to apply for a law clerk position in your chambers for the 2024–2025 term. Specifically, working for a judge of color in chambers dedicated to fostering diversity within the profession is an exciting and invaluable opportunity.

While in law school I have honed my research and writing skills. I have written academic pieces for the *North Carolina Law Review* and for my classes, edited pieces for the *Law Review*, and gained practical experience as a summer associate at both Williams & Connolly LLP and McGuireWoods LLP. These experiences confirmed my desire to litigate at the trial level and stirred a passion for diving into new and unfamiliar areas of the law. I am excited to bring these skills to a clerkship position.

As a Korean American adoptee, I hope to bring a unique perspective to chambers. Growing up, I realized that my life could have been radically different if my parents did not adopt me as an infant. Knowing that so many children do not have this opportunity motivates me to take advantage of every experience I can to grow and develop. My unique family composition and multicultural heritage has also encouraged me to give back to others. I have done this during law school by serving as a Guardian ad Litem, where I utilize the lessons and experiences from my childhood to advocate for foster children throughout the legal system.

The combination of my personal background, my time as a four-year Division I student-athlete, and my experiences within large law firms has helped refine my organizational and time management skills. I have also learned to lead and be a team player in various academic, athletic, and professional settings. These skills make me well-suited not only to individual, self-driven work, but also to collaboration with others.

Included in my application is my resume, writing sample, unofficial law school transcript, and letters of recommendation. Thank you for your time and consideration.

Sincerely,

Halie Mariano

HALIE MARIANO

623 Coolidge Street, Chapel Hill, NC 27516 | (585) 698-7419 | hmariano@unc.edu

EDUCATION

University of North Carolina School of Law, *Chapel Hill, North Carolina*
J.D., expected May 2024 G.P.A.: 3.675 (top 20% of class)

- Executive Comments Editor, *North Carolina Law Review*, Vol. 102
- Holderness Moot Court, Sports Law Negotiations Team
- Honors Writing Scholar for 1L Legal Research & Writing Program
- Eugene Gressman & Daniel H. Pollitt Oral Advocacy Award (2022)
- UNC Pro Bono Board (2021–23) & 150+ pro bono hours

Bucknell University, *Lewisburg, Pennsylvania*
B.S.B.A., *magna cum laude*, Management & Anthropology, May 2020 G.P.A.: 3.820

- Phi Beta Kappa
- Division I Varsity Softball (captain)

EXPERIENCE

Williams & Connolly LLP, Washington, DC May 2023 – Present
Summer Associate
Researched legal issues and drafted memoranda to advise partners and clients in complex civil litigation and appellate matters. Wrote multiple motions in limine to exclude prejudicial evidence in a criminal lawsuit. Worked with attorneys to develop case strategy and provided litigation counseling for Afghan asylum seekers.

McGuireWoods LLP, Charlotte, NC May 2022 – July 2022
Summer Associate
Conducted legal research, reviewed briefs, and wrote analytical memoranda for several general litigation matters. Analyzed agreements for transactional and corporate matters. Participated in in-house client rotation with Barings LLC.

Institute for Women's Policy Research, Washington, DC September 2020 – June 2021
Mariam K. Chamberlain Research Fellow
Conducted research projects on inequality, impact of COVID-19, violence against women, and diversity in STEM. Authored reports and blogs, developed literature reviews, and fact-checked publications.

National Collegiate Athletic Association (NCAA), Indianapolis, Indiana May 2019 – June 2021
Division I Student-Athlete Advisory Committee & Committee on Women's Athletics Member
Represented the Patriot League's 5,200 student-athletes. Provided feedback on NCAA legislation; recommended and passed National Election Day Off legislation; and advised the NCAA on gender- and inclusion- related issues.

Bucknell-Geisinger Research Initiative, Lewisburg, Pennsylvania May 2019 – September 2020
Senior Research Assistant
Studied barriers to social mobility and health by linking qualitative interviews with electronic health records. Planned and executed over 35 in-depth interviews. Generated narrative analyses of interviews and coded qualitative data.

PUBLICATIONS

The Status of Women in North Carolina: Poverty and Opportunity, Institute for Women's Policy Research. (Elyse Shaw and Halie Mariano – 2022)
Tackling the Gender and Racial Patenting Gap to Drive Innovation: Lessons from Women's Experiences, Institute for Women's Policy Research. (Elyse Shaw and Halie Mariano – 2021)
Narrow the Gender Pay Gap, Reduce Poverty for Families: The Economic Impact of Equal Pay by State, Institute for Women's Policy Research. (Elyse Shaw and Halie Mariano – 2021)

INTERESTS

Born in South Korea. Lived in New Zealand for five years. Enjoys cooking, running, and the New York Yankees.

UNC SCHOOL OF LAW

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
SCHOOL OF LAW

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Unofficial Transcript

Note to Employers from the Career Development Office: Grades at the UNC School of Law are awarded in the form of letters (A, A-, B+, B-, C, etc.). Each letter grade is associated with a number (A = 4.0, A- = 3.7, B+ = 3.3, B = 3.0, etc.) for purposes of calculating a cumulative GPA. An A+ may be awarded in exceptional situations. For more information on the grading system, including the current class rank cutoffs, please contact the Career Development Office at (919) 962-8102 or visit our website at https://law.unc.edu/careers/for-employers/grading-policy-faq/

Halie Mariano
GPA: 3.675

Class	Description	Units	Term	Grade
LAW 199-01	Transition to the Profession I	0.50	Fall 2021	**PS**
LAW 201	Civil Procedure	4.00	Fall 2021	**A**
LAW 205	Criminal Law	4.00	Fall 2021	**A**
LAW 209	Torts	4.00	Fall 2021	**A**
LAW 295	Research, Reasoning, Writing & Advocacy I	3.00	Fall 2021	**B+**
LAW 199-02	Transition to the Profession II	0.50	Spring 2022	**PS**
LAW 204	Contracts	4.00	Spring 2022	**A-**
LAW 207	Property	4.00	Spring 2022	**A**
LAW 234A	Constitutional Law	4.00	Spring 2022	**A-**
LAW 296	Research, Reasoning, Writing & Advocacy II	3.00	Spring 2022	**A**
LAW 220	Administrative Law	3.00	Fall 2022	**B+**
LAW 242T	Evidence	3.00	Fall 2022	**B+**
LAW 467	Negotiation	3.00	Fall 2022	**B+**
LAW 528	Race, Law & National Security	3.00	Fall 2022	**A**
LAW 206	Criminal Procedure Investigations	3.00	Spring 2023	**B+**
LAW 266	Professional Responsibility	2.00	Spring 2023	**B+**
LAW 275	Secured Transactions	3.00	Spring 2023	**A-**
LAW 301	Legislative Advocacy	2.00	Spring 2023	**A-**
LAW 550	Race & the Law	3.00	Spring 2023	**B+**
LAW 564	Dispute Resolution Competition Lab	1.00	Spring 2023	**PS**

**Federal Jurisdictions to be taken Fall 2023

= GPA	**3.675**

June 09, 2023

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

Dear Judge Walker:

I am delighted to recommend Halie Mariano for a clerkship in your chambers. Halie is a well-rounded student and an excellent legal researcher and writer. She is also a true leader who has earned the respect of the entire Carolina Law community, including faculty, staff, and students of all class years. Halie's work ethic is exemplary, and her maturity, ability to connect with peers and supervisors, and positive attitude, even in the most challenging times, make her a pleasure to work with. She will be an outstanding law clerk.

I have known Halie since I taught her in Research, Reasoning, Writing, and Advocacy (RRWA) during her first semester of law school. Taught in small sections, RRWA provides foundational, practice-oriented instruction which helps students develop the skills necessary to communicate professionally as attorneys. Working both individually and in teams, students learn the fundamentals of legal research, reasoning, and writing, primarily by simulating important aspects of law-office work.

I'm lucky to have worked closely and collaboratively with Halie when she was my student. That semester, I read multiple drafts of many pieces of her writing and met with her for six required individual conferences. But even outside those conferences, Halie's dedication to improving her written legal analysis led her to seek additional constructive feedback on her work. She regularly attended office hours and "bonus" conferences, even meeting with me multiple times after the end of RRWA I to continue developing her skills. Since her 1L year, Halie has remained in close contact with me and we've met to discuss course selection and extracurricular activities, employment opportunities, and clerkships.

Halie was already an impressive legal researcher in her 1L year, but her substantial research experience since then—as a summer associate at top-notch law firms, an author and editor on Law Review, and in courses with rigorous writing components—has honed and broadened her skills. As a former law clerk myself, I would not hesitate to seek Halie out for particularly complex or thorny legal issues, trusting that her research would both cover the field of potentially relevant solutions, casting as wide a net as appropriate, and also dive deep where relevant.

Halie's legal writing is top-notch. Her legal analyses are well organized, cogent, and thorough. She is especially good at extracting sophisticated rules from legal authorities and making good judgments about which cases to focus on for meaningful analogies and distinctions. Halie's application of law to fact is thorough, deliberate, and persuasive. She structures each piece of written work product with care, making sure that she sets up a helpful legal framework, meets her audience's expectations, and guides her reader with clear, easy-to-follow prose. And the variety of writing experiences that Halie has had since the fall of her 1L year—both academic and practical—have given her the opportunity to gain confidence and efficiency when writing complex, long-form documents.

Halie is a leader with an impeccable work ethic. Whether as the captain of a Division I softball team, a conference delegate to the NCAA National Student-Athlete Advisory Committee, or the sole Division I athlete on the NCAA's Committee on Women's Athletics, Halie's peers consistently recognize her vision and capacity to lead. Within weeks of arriving at the law school, Halie was selected from among a large group of applicants to be the 1L Class Representative on the Pro Bono Board, one of Carolina's most active and respected student organizations. And in my class, when students worked in small groups—which was often—Halie's leadership and careful preparation consistently kept her group engaged and on task.

Halie's oral communication skills are unparalleled among her peers. I didn't have the pleasure of teaching Halie during her spring legal writing class, when our curriculum shifts from objective writing to written and oral advocacy. But according to the professor who did teach her, Halie delivered the single best appellate oral argument he heard that spring across both of his sections of RRWA II. (I vividly remember him stopping me in the hall just to tell me how great Halie was.) As a result, he selected her to receive a Gressman-Pollitt award for exceptional oral advocacy.

Halie's oral communication is just as effective in less formal settings. She thinks on her feet and expresses her positions not only with confidence and clarity, but also with openness and humility. She asks for clarification when necessary and, when she disagrees with someone, appropriately and gently pushes back in ways that ultimately enrich the discussion. Halie was a consistent and enthusiastic participant in my class, and her engagement with the material always served her classmates well. Importantly, she is also an active and compassionate listener, making any conversation with her a pleasure. These skills are apparent after a single conversation with Halie: during both of her job-search cycles, employers were bending over backwards to recruit her after their interviews, leaving her with the enviable problem of having to choose among many competing offers.

Interpersonally, Halie is kind, warm, and easy to talk to. She is fundamentally devoted to diversity and public service, and cares fiercely about her community. These values inform Halie's extracurricular involvement in college and law school, her vision for her career as an attorney, and the way she moves through the world. She is attentive, collaborative, and easygoing. She would be a perfect fit for a close-knit work environment.

Rachel Gurvich - gurvich@email.unc.edu

In short, I believe that Halie would be an invaluable addition to your chambers. I would be happy to answer any questions you may have about Halie. Please feel free to contact me directly at (617) 640-9764 or gurvich@email.unc.edu.

Best regards,

Rachel Gurvich

Rachel Gurvich - gurvich@email.unc.edu

June 09, 2023

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

Dear Judge Walker:

I am writing in enthusiastic support of Halie Mariano's application for a clerkship in your chambers. I have had the pleasure of teaching Halie twice: in Research, Reasoning, Writing and Advocacy in the second semester of her 1L year, and in Evidence during the first semester of her 2L year. In the first course, I had many opportunities to work with her individually; in the second, I got to teach her in a traditional, large law school class. Based on both of those very different contexts, I am happy to recommend Halie unreservedly.

From a purely academic standpoint, Halie's resumé speaks for itself: she has a very high GPA and is a member of the Law Review, excelling in her classes while at the same time performing over 150 hours of pro bono; there are, simply put, very few students in the Law School who put together that trifecta. And from teaching her in my legal writing course, I can tell you that she is an absolute star. Throughout the semester, she turned in nothing but top-notch work on every assignment, graded or not. To give you a sense, of the two sections of that class that I taught semester (31 students in all), she wrote the second-best final memo and was the best oral advocate. (In fact, her oral argument was one of the five best that I've seen in my decade teaching first-year advocacy at UNC.) I have zero doubt that she can handle any work that you give her and, more than that, excel at it.

But beyond being an outstanding writer and student, Halie is just the type of person that a professor wants to have in class. I've mentioned my legal writing class, but she was just as good in my Evidence class. It is hard to stand out in a class of 65, but Halie did. She participated regularly but without ever overdoing it and dominating the conversation. More than that, I always knew that she was impeccably prepared; if the class was hesitant to answer, I could turn to her and she would volunteer and get us on-track.

Finally, while Halie would make a great clerk solely on her intellectual ability, preparation, and hard work, she would also be a great addition to any judge's chambers. My classes—and particularly my 1L class—offer multiple opportunities for collaboration throughout the semester. Halie was great in that setting, as she could bring innovative ideas to the table on the front end and then turn those ideas into an effective, polished final product. She also just has a wonderful personality: she's friendly, engaging, and a pleasure to talk with. She is, in short, exactly the sort of person who anyone would want in their office.

For all of these reasons and many more, I am delighted to give my strong endorsement in support of Halie Mariano's application for a clerkship in your chambers. Please do not hesitate to contact me if you have any further questions.

With every good wish, I am

Sincerely,

Luke H. Everett
Clinical Professor
UNC School of Law
Email: lmeveret@email.unc.edu
Cell phone: 919-621-1317

June 09, 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 offer you this recommendation of Halie Mariano for a clerkship in your chambers. It's an unqualified, enthusiastic recommendation. Halie is a rising star!

A word about me, so you'll know where this is coming from: I've been teaching since 1994, first at the University of Wyoming College of Law, and, since 1998, at UNC School of Law. Before going into academia, I was a federal district court law clerk (District of New Jersey) and an Assistant US Attorney (same district).

I began to get to know Halie a bit less than a year ago, when she was in my Constitutional Law class as a first-year student. It was a large-ish class – around 60 students – but Halie quickly stood out as one of the very best in the class. This was confirmed, of course, in her excellent performance on the final exam, where she earned an A- (and was just a point short of an A). But her strong performance came as no surprise; Halie was a reliable—and, more importantly, smart—contributor to our class discussions. These are difficult days for the study of Constitutional Law in law schools. Sensibilities are raw, politics are at the surface, and respect for the Supreme Court is the lowest I've seen in my three decades in this business. Halie came at the course with fresh, wide-open eyes, and an inquiring rather than pontificating approach. Unlike most students, who have a hard time seeing beyond the specific opinion assigned for that day's class, Halie constantly evaluated what she was reading against all of the cases she'd read until that point, and worked hard to find points not just of discontinuity but also of continuity between the Justices' various approaches. She certainly came to the material with the viewpoint of a liberal, but unlike most of her fellow students, she allowed the material to challenge her to rethink her premises. She resisted the urge to just say, "oh, this is all just politics," as so many do these days, and instead tried to understand constitutional law as a body of actual law, however racked by internal tensions it might be. I think the word I'd use for Halie's approach is **mature**.

During the fall semester, Halie was one of 15 students in a small legal history seminar I've just started offering. The topic of the seminar is the legal history of the removal and imprisonment of Japanese Americans in World War II. Here again, Halie was an all-star. In her seriousness of engagement with the material she was one of the top two students. She wrote six short "reaction papers" to the assigned reading across the semester and all were excellent—well-written, well-organized, and insightful. Her final paper was outstanding. She chose a knotty topic for herself, gauging the legal validity of the Court's claim in the recent "travel ban" case, *Trump v. Hawaii*, that it was overruling the notorious-but-never-formally-overruled case of *Korematsu v. United States*. (It's not self-evident that the majority opinion should be believed on this point, as the overruling came in obvious *dicta* and the majority opinion arguably makes some of the same mistakes as the Court made in *Korematsu*.) Halie's analysis was astute, and again, as with her other papers, her writing was excellent and well-structured.

In candor, I have to say that even though Halie's academic performance has been excellent, her smarts have not been the thing that has most distinguished her in my mind. It's her character. Halie was born in South Korea and adopted as a baby by a white American family. From the first time we met in January of 2022, she was very open about both the miracle and the challenges of her adoption and its legacy. She is immensely appreciative of her parents for bringing her into their lives and raising her lovingly and with abundant opportunities all around her. Yet she has also had to negotiate the complexities of being an Asian American growing up in a white family and a mostly white community. These experiences have made her an astute cultural observer. They have also motivated her to achieve – to take advantage of the many opportunities that she knows she would not have had growing up in her birth family. Her athletic prowess as an undergrad at Bucknell is indicative of her will to compete and excel at what she does. She wants to be, as she puts it, "the best, and if not the best, then the very best she can be." Halie is, quite simply, going places. She has the makings of a star lawyer of her generation.

I mention Halie's athletic background because I think it reveals something about how she will be in a workplace. She understands intuitively that success is a team, not an individual, venture. She shines in small-group work, where she both speaks her mind and ensures a good group dynamic. I have absolute confidence that Halie will be a delight in your chambers, shouldering her own workload while also contributing to a positive, friendly, caring office dynamic.

I simply cannot wait to see where Halie Mariano ends up, and I very much hope her career might start with a clerkship in your chambers. She's a gem.

I'll be happy to field a call if you'd like to talk further. My cellphone number is 919-931-5950.

Best regards,

Eric Muller
Dan K. Moore Distinguished Professor of Law in Jurisprudence and Ethics

Eric Muller - emuller@email.unc.edu - 919.962.7067

HALIE MARIANO

623 Coolidge Street, Chapel Hill, NC 27516 | (585) 698-7419 | hmariano@unc.edu

Writing Sample

This writing sample is an appellate brief I submitted in my 1L legal research and writing course. I wrote and revised this brief independently and received limited professor feedback. The brief is based on a closed universe of cases, some of which had been edited for this assignment.

CASE NO. 2:21-cr-02493

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TRAVIS ANTHONY HOPKINS,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE, AT GREENVILLE

BRIEF FOR THE APPELLANT

Halie Mariano
Attorney for the Appellant
160 Ridge Road
Chapel Hill, North Carolina 27514
(585) 698-7419
hmariano@unc.edu

STATEMENT OF THE ISSUE

Whether the district court erred in applying the Armed Career Criminal Act's ("ACCA") sentence enhancement, 18 U.S.C. § 924(e)(1), to Travis Anthony Hopkins after finding that the crimes he committed within a single hour the night of April 2, 2009, were three separate occasions.

STATEMENT OF THE CASE

In May 2021, Travis Anthony Hopkins pled guilty to one count of possession of a firearm by a felon under 18 U.S.C. § 922(g)(1). R. 2. He received an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). At sentencing, the district court found that Hopkins' three felony convictions, each resulting from crimes he committed the night of April 2, 2009, were three separate occasions sufficient to trigger the ACCA enhancement. This timely appeal followed.

On April 2, Hopkins climbed a fence to enter the Belmont Estates Apartments. R. 23. Earlier in the day he watched four friends, seemingly roommates, come out of an apartment with luggage and camping supplies. R. 28-29. Before leaving, one of the roommates yelled up to the others to make sure the door was locked and that there was enough food for the cat for three days. R. 28. Hopkins watched the roommates drive away in a Porsche Cayenne, with the impression that the students might have money or food for taking. Hopkins had struggled to maintain a consistent income since losing his job in 2007. R. 29.

Shortly after midnight, Hopkins jumped the fence into the apartment complex and used a crowbar to access Apartment 224—the same apartment he watched the four roommates depart from earlier that day. R. 23. Feeling stressed about the prospect of his family's future given his financial instability, over the next twenty-five minutes, Hopkins entered two of the bedrooms attached to the living room and kitchen common area, and in between spent time lounging in the apartment and eating food from the fridge. During this time, Hopkins removed a small handheld

personal computer, keys, and a wallet (with sixty dollars inside) from one bedroom, and some jewelry from the other. R. 25.

What was unclear to Hopkins that night was the "unique business model" Belmont Estates used. At Belmont Estates, four or five "apartments" share a common area with a kitchen and living room. R. 24. Doors off the common area lead to separate bedrooms and bathrooms for each of the roommates—each of which has their own locks with keys. R. 24. Hopkins did not know apartments like these existed and assumed the four roommates shared one individual apartment with separate bedrooms. R. 29. He recalls thinking, "when I went in there, I was just thinking I was in a regular apartment." R. 29. Even the trial judge noted that "it sounds like he broke into Apartment 224 and then robbed two . . . rooms in the apartment. Like he robbed two roommates." R. 30.

With Belmont Estates' business model, each resident has a separate lease, and plaques within Apartment 224 identified the different "apartments" within the larger residence. R. 24. When Hopkins entered the individual rooms, it was dark and he could not see the plaques, which were small and located above the frame of each bedroom door. R. 25. While Hopkins noticed it was odd that the separate rooms in the apartment had different locks and keys, the layout of the apartment closely resembled an average four-bedroom apartment. R. 30.

After moseying around the apartment, Hopkins saw a flashlight outside the main apartment door and panicked. R. 30. He jumped through an apartment window as one police officer forced through the apartment door. R. 30-31. Upon landing safely out of the two-story window, another police officer, Officer Thomas, ordered Hopkins to freeze. R. 31. Fearing the consequences, Hopkins turned and ran toward the other side of the apartment complex. R. 32. Officer Thomas pursued on foot. R. 32.

Hopkins took respite in a culvert while the officers continued searching for him. R. 32. In their search, Officer Thomas walked down the hill near the culvert, and Hopkins popped out, stunning Thomas with a crowbar before running away. R. 32-33. Hopkins recalled feeling "trapped" and panicked" with his heart "going about five miles a minute," never intending to hurt anyone. R. 33. As a result of these events, Hopkins pled guilty to two counts of aggravated burglary and one count of aggravated assault, and then served forty-two months in prison. R. 11.

In early 2021, Hopkins was leading a normal and problem-free life until he was detained by the Federal Burau of Investigations in an investigation related to Walker Lanergan. Hopkins was under suspicion for soliciting Langeran to assault one of Hopkins' co-workers. R. 11. During this detention, FBI agents discovered that Hopkins possessed a firearm purchased in 2012. R. 11. While the United States indicted Hopkins on solicitation charges, Hopkins vigorously maintains his innocence with respect to that crime, and the United States Attorney's office dropped that count of the indictment when Hopkins accepted the plea agreement. R. 12.

Since Hopkins' release from prison in 2012, he has held steady employment and leads a stable life, making approximately $30,000 per year and living alone in his Nashville apartment. R. 14. Additionally, while Hopkins' ex-wife has primary custody over their two daughters, Hopkins sees his children regularly, at least twice per month, and for extended periods each summer. R. 14. Hopkins also maintains a healthy relationship with his ex-wife, who is happy to give him time with their daughters. R. 14. Hopkins has no history of substance use issues and drinks socially but does not use drugs. R. 15. His mental and emotional health remains stable, apart from the regular stress associated with his legal challenges. R. 14-15.

SUMMARY OF THE ARGUMENT

Hopkins' criminal acts on the night of April 2, 2009, do not constitute three separate occasions as required by the Armed Career Criminal Act ("ACCA") to apply the fifteen-year mandatory sentence enhancement. An "occasion" is defined by "separate and distinct transactions" that show "a completion or definable endpoint" between crimes—neither of which is present in Hopkins' case.

Congress intended for the ACCA's sentence enhancement to target and punish recidivism, where three-time offenders could no longer get away with recurring felonies. But the Act's application has been extended to categorize continuous criminal episodes as separate occasions, resulting in an over-application of the sentence enhancement.

In this case, Hopkins' offenses on April 2, should not be considered three distinct occasions for several reasons. First, the two burglaries within Apartment 224 should be considered a single criminal episode. The offenses occurred simultaneously and continuously, making them essentially indistinguishable from one another, despite Belmont Estates' unique business model. Second, the subsequent assault of Officer Thomas is analogous to a former Sixth Circuit case, *United States v. Graves*, which illustrates that events occurring at the same location, within moments of one another, should be considered a single, continuous criminal episode.

The facts of Hopkins' crimes on April 2, 2009, do not demand the application of the ACCA's sentence enhancement, which is meant to dissuade career criminals from persistent reoffending. Rather, Hopkins' actions that night constitute only one or two separate occasions, and thus, do not meet the requirements of the sentence enhancement provision.

ARGUMENT

This court reviews questions of law *de novo*, while factual determinations are reviewed for clear error. *United States v. Graves*, 60 F.3d 1183, 1185 (6th Cir. 2006). Whether prior criminal conduct was a single occasion or multiple separate occasions under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1), is a legal question of statutory interpretation, so the District Court's decision will be reviewed *de novo*. *United States v. Murphy*, 107 F. 3d 1199, 1208 (6th Cir. 1997).

The District Court erred in applying the Armed Career Criminal Act's sentence enhancement, as Hopkins' three crimes on April 2, 2009, did not occur on three separate "occasions."

In cases where an individual with three previous convictions for violent felonies or serious drug offenses, committed on occasions different from one another, possesses a firearm, the ACCA provides a mandatory fifteen-year minimum prison sentence. 18 U.S.C. § 924(e)(1). Whether prior offenses may be treated as predicate crimes occurring on separate occasions under the ACCA does not depend on the number of convictions or the number of victims. *United States v. Thomas*, 211 F.3d 316, 319 (6th Cir. 2000). Rather, the absence of "a completion or definable endpoint" of the first crime before the second began supports a claim for the sentence enhancement's inapplicability. *Id*. at 321.

Defined broadly, an "occasion" is distinct from a criminal "episode." *See Thomas,* 211 F.3d at 319; *United States v. Brady*, 988 F.2d 664, 668 (6th Cir. 1993). An episode is an "incident that is part of a series" but forms a "separate unit" within the whole. *Brady*, 988 F.2d at 668. Although related to the entire course of events, an episode is a "punctuated occurrence" with a "limited duration," making an episode only a part of a larger criminal "occasion." *Thomas,* 211

F.3d at 319. While proximity alone does not make two crimes a single episode, crimes that "occur simultaneously" count as only *one* predicate offense. *Brady*, 988 F.2d at 668.

This Court uses three indicia to show whether offenses are separate occasions from one another: (1) Whether it is possible to discern the point at which the first offense is completed, and the subsequent point at which the second offense begins; (2) whether it would have been possible for the offender to cease his criminal conduct after the first offense; and (3) whether the offenses were committed in different residences or business locations. *United States v. Hill*, 440 F.3d 292, 297 (6th Cir. 2006). However, these indicia have been applied inconsistently, and do not align with the legislative intent behind the ACCA's sentence enhancement provision. *See Brady*, 988 F.2d at 668; *Thomas*, 211 F.3d at 319. Thus, the analysis of Mr. Hopkins' crimes should not be judged solely on these flawed indicia.

Congress intended for the ACCA to punish recidivism and career criminals who committed three separate felonies on different occasions. *United States v. Graves*, 60 F.3d 1183, 1187 (6th Cir. 1995). Because Congress intended to punish recidivists, the predicate conduct must amount to "separate and distinct" transactions in some "definable" sense. *United States v. Murphy*, 107 F.3d 1199, 1210 (6th Cir. 1997). To consider criminal conduct as a "definable" event, there must be a reasoned basis for doing so. *Id*.

The ACCA's sentence enhancement aims to convict "three-time losers"— career criminals consistently engaging in dangerous and violent crime. *Brady*, 988 F.2d at 666. This court emphasizes that deciding to apply this statute should not be a "reach," but instead, the statute should be applied when "the facts *demand* its application." *Graves*, 60 F.3d at 1187 (emphasis added). If the facts warrant the application of the ACCA, this court places the burden on the government to show that the defendant had "three previous convictions . . . for a violent felony or

a serious drug offense . . . committed on occasions different from one another." *United States v. Barbour*, 750 F.3d 535, 537; 18 U.S.C. § 924(e)(1).

A. The burglaries were not separate occasions as defined by the ACCA.

One sign of a distinct criminal occasion is if the defendant asserted substantial "dominion and control" over both victims at the same time. *Thomas,* 211 F.3d at 321. In *United States v. Thomas*, defendant Thomas' two convictions for sexual assault did not constitute two separate offenses under the ACCA. *Id.* at 317. When two women asked Thomas and his friend for directions, the men agreed to show them the way in exchange for a ride. *Id*. at 318. Thomas and his friend entered the back seat of the car and proceeded to sexually assault the women. *Id.* at 319. Because the acts could not have been committed on occasions different from one another, and arose out of a single, continuous criminal episode, the ACCA's sentence enhancement was inapplicable. *Id.*

Here, as in *Thomas*, there was not a "completion or definable endpoint" between the burglaries. Hopkins entered the apartment thinking it was a singular apartment with four bedrooms, not the unique business model Belmont Estates had implemented. Hopkins entered two of the bedrooms attached to the living room and kitchen and removed a series of inexpensive items thinking he was in a singular apartment. Additionally, given the darkness of the apartment, Hopkins could not see the individual plaques above each bedroom door. Rather, the burglaries occurred almost "simultaneously" as Hopkins navigated through the apartment and, similar to *Thomas*, should be deemed a "single, continuous episode."

Even the trial judge noted that Hopkins seemed to have "robbed two roommates," not two separate apartments. Hopkins had previously watched the four roommates engage as friends and leave on a road trip together, leaving no reason to think there was more than one "apartment"

inside the larger apartment. As in *Thomas*, the acts could not have been committed on occasions different from one another based on the proximity and timeline of the offenses. The inability to decipher between the end of one burglary and the other represents the impossibility of defining these acts as two "separate and distinct" transactions where Hopkins had "dominion and control" over the burglary victims. The acts occurred at the same location "within moments," likely constituting a criminal "episode," but not a separate occasion. As a result, the facts do not "*demand* [the ACCA's] application." Applying the sentence enhancement only undermines the original intent of the ACCA—to punish recidivism.

B. The assault was not a separate occasion as defined by the ACCA.

When applying the ACCA sentence enhancement, a court cannot count two predicate felony convictions related to only a single criminal act as separate occasions. *United States v. Taylor*, 882 F.2d 1018, 1029 (6th Cir. 1989). This reasoning applies to cases in which two crimes occurred at one location. *See Graves*, 60 F.3d at 1186-1187. In *Graves*, the defendant's burglary of a home and the subsequent assault on a police officer in the woods outside the home were deemed a single episode of criminal conduct. *Id*. The defendant, Graves, had not left the location of the burglary when he was confronted by the officers. *Id.* at 1187. This court reasoned that since the assault on the police officer occurred at the "same location within moments" of the burglary, the assault was part of a singular criminal episode. *Id.* at 1186-1187.

Here, Hopkins' assault on Officer Taylor was a continuation of the previous burglaries. As in *Graves*, when the officers approached Hopkins, he had not left the location of the burglary and was still on Belmont Estates property. While Graves assaulted the officer in the woods outside the home of the burglary, Hopkins assaulted Officer Thomas from a culvert only a short walk from Apartment 224. Since the assault occurred at the "same location within moments" after the

burglaries, the assault should not be considered a separate occasion under the ACCA, but a "single, continuous criminal episode."

Deeming the assault a separate occasion contradicts the legislative intent behind the ACCA's sentence enhancement. Hopkins should not be cona "three-time loser" based on the simultaneous burglaries and the subsequent assault. Instead, the series of three convictions should be measured based on the single location and limited duration of the crimes, neither of which was "separate and distinct" from one another. Because of this, Hopkins is not a dangerous career criminal, and the facts, once again, do not demand the ACCA's application. Intended to punish recidivism, the ACCA's sentence enhancement should not apply to Hopkins, whose previous convictions occurred on one day, within a limited time, and at a singular location.

CONCLUSION

In holding that Hopkins' 2009 convictions constitute three separate offenses, the district court erred in applying the Armed Career Criminal Act's (ACCA) sentence enhancement. For the foregoing reasons, the appellant further argues that the court's sentencing decision should be reversed due to the court's erroneous classification of Hopkins as a violent career criminal. The case should be remanded for resentencing without the application of the ACCA's sentence enhancement.

Respectfully submitted,

S/ Halie Mariano
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Attorney for the Appellant
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Applicant Details

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Contact Phone Number	**7738077796**

Applicant Education

BA/BS From	**University of Illinois-Urbana-Champaign**
Date of BA/BS	**May 2021**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 19, 2024**
Class Rank	**I am not ranked**
Law Review/Journal	**Yes**
Journal(s)	**George Washington International Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Van Vleck Constitutional Law Moot Court Competition** **First Year Moot Court Competition**

Bar Admission

Prior Judicial Experience

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

Specialized Work Experience

Professional Organization

Organizations	**Just The Beginning Foundation**

Recommenders

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

Cristina Marila

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June 25, 2023

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

Dear Judge Walker:

I am a rising third-year student at the George Washington University Law School. I write to you to apply for a clerkship in your chambers for the 2024–2025 term. My judicial internship with the Honorable Andrea R. Wood of the U.S. District Court for the Northern District of Illinois through the Just the Beginning program spurred a passion for litigation and legal writing that I have continued to foster throughout law school and hope to bring to your chambers.

I believe I would make a beneficial addition to your chambers because I excel in fast-paced environments that utilize my strong research and writing skills. My ability to handle multiple responsibilities and unwavering work ethic enables me to learn quickly and be efficient. As a law clerk for the Federal Tort Claims Act (FTCA) Section of the Department of Justice, I conducted research on the scope of the FTCA's protections for government employees and completed thorough recommendation memoranda for various administrative claims that resulted in approved settlements by the Section Director. As a judicial intern, I became a concise and detailed writer to ensure Judge Wood's opinions were exhaustive of the legal issues presented and fully understood by the filing parties, particularly pro se litigants. While working with Judge Wood and her extensive docket, I was able to keep up with the fast-paced environment of chambers and produce quality work. During both my judicial internship and FTCA Section externship, I completed the most assignments out of each cohort by regularly communicating with my superiors and effectively incorporating feedback into my assignments.

In addition to my technical skills, I have also developed strong communication and interpersonal skills. I engaged in complex legal discourse with Judge Wood and her judicial staff over my drafted orders and hearings I observed. I can expertly navigate legal matters with not only attorneys, but also lay people. During my time with AmeriCorps and the Richard H. Trais Law Office, I helped clients attain legal recourse by guiding them through legal processes recommended by the practicing attorney.

Enclosed please find a copy of my resume, transcript, and writing sample. In support of my application, I am submitting three letters of recommendation that can attest to the attributes that make me a well-qualified candidate for a clerkship in your chambers. Thank you for your time and consideration.

Respectfully,

Cristina Marila

Enclosures

Cristina Marila

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EDUCATION

The George Washington University Law School Washington, DC
J.D., GPA: 3.272 May 2024
Honors: The George Washington International Law Review (Executive Notes Editor); Fundamentals of Lawyering Legal Research and Writing Program (Teaching Assistant)
Activities: Immigration Law Association (Events Coordinator); Inns of Court Program (Student Advisor)

University of Illinois at Urbana-Champaign Champaign, IL
B.S., *cum laude*, in Political Science and Psychology, GPA: 3.90 May 2021
Honors: Dean's List (Honoree) (Fall 2017 – Spring 2019, Fall 2020 – Spring 2021); Wentcher Scholarship (Recipient); Chez Scholars Program Scholarship (Recipient)
Activities: Kappa Alpha Pi Pre-Law Fraternity (Founding Member, President); First Year Campus Acquaintance Rape Education Program (Facilitator); The Immigration Project (Volunteer)

EXPERIENCE

Prof. Cori Alonso-Yoder, The George Washington University Law School Washington, DC
Research Assistant Upcoming June 2023 – December 2023

U.S. Department of Justice, Civil Division, Office of Foreign Litigation Washington, DC
Law Clerk June 2023 – August 2023

- Draft memoranda on complex international legal topics concerning the actions of U.S. citizens abroad, such as the applicability of combatant immunity for state actions during the Ukraine-Russia war.
- Review incoming Letters of Request for judicial assistance from foreign courts for treaty compliance.

U.S. Department of Justice, Civil Division, Federal Tort Claims Act Section Washington, DC
Law Clerk August 2022 – December 2022

- Wrote recommendation memoranda on administrative claims for the Section Director's review.
- Recommended settlement of an automobile accident claim involving a federal driver and claimant's search for an escaped llama, and denial of four administrative claims seeking $160,000 for the failure of federal employees to investigate a pro se claimant's claims.
- Researched the limited applicability of the "Treasury Exception" of the FTCA where damages are sought based on its fiscal operations.

Honorable Andrea R. Wood, U.S. District Court for the Northern District of Illinois Chicago, IL
Judicial Intern, Just the Beginning Program May 2022 – July 2022

- Drafted orders to dismiss for Section 1983 violations and Americans with Disabilities Act claims.
- Discussed claims with Judge Wood and judicial staff and collaborated on determining appropriate findings for drafted orders.
- Analyzed what qualifies as a concrete injury for standing purposes when plaintiff suffers a risk of harm in the U.S. Court of Appeals for the Seventh Circuit.

Richard H. Trais Law Office Chicago, IL
Intern Summers of June 2017 – August 2021

- Researched country conditions and legal statutes to draft compelling asylum petitions for clients threatened by humanitarian issues abroad such as female genital mutilation and same-sex discrimination.
- Led clients through their filing requirements and case statuses for visa and naturalization applications in English, Romanian, and French.

Illinois JusticeCorps, **Champaign County Courthouse** Champaign, IL
AmeriCorps Intern August 2018 – May 2019

- Guided an average of 100 pro se court patrons per week through civil case procedures related to family law issues, expungement, and orders of protection.
- Conferred with attorneys to provide court patrons with effective legal information and local legal aid resources that give free legal representation to low-income pro se litigants.

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

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Date of Birth: 26-AUG

Date Issued: 07-MAR-2023

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Page: 1

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Admit Term: Fall 2021

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REFNUM:98285682

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Current Major(s): Law

GEORGE WASHINGTON UNIVERSITY CREDIT:

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2021			
Law School			
Law			
LAW 6202	Contracts Chatman	4.00	B
LAW 6206	Torts Schoenbaum	4.00	B
LAW 6212	Civil Procedure Smith	4.00	B
LAW 6216	Fundamentals Of Lawyering I Khetan	3.00	B
Ehrs 15.00 GPA-Hrs 15.00 GPA 3.000			
CUM 15.00 GPA-Hrs 15.00 GPA 3.000			
Spring 2022			
Law School			
Law			
LAW 6208	Property Nunziato	4.00	B
LAW 6209	Legislation And Regulation Schaffner	3.00	B
LAW 6210	Criminal Law Cottrol	3.00	B
LAW 6214	Constitutional Law I Morrison	3.00	B
LAW 6217	Fundamentals Of Lawyering II Khetan	3.00	A-
Ehrs 16.00 GPA-Hrs 16.00 GPA 3.125			
CUM 31.00 GPA-Hrs 31.00 GPA 3.065			
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2022			
Law School			
Law			
LAW 6380	Constitutional Law II Fontana	3.00	B+
LAW 6520	International Law Coffee	3.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6652	Legal Drafting Grant	2.00	B+
LAW 6668	Field Placement Mccoy	3.00	CR
LAW 6671	Government Lawyering Williams	2.00	A-
Ehrs 14.00 GPA-Hrs 10.00 GPA 3.500			
CUM 45.00 GPA-Hrs 41.00 GPA 3.171			
Good Standing			
Fall 2022			
Law School			
Law			
LAW 6657	Int'L Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Spring 2023			
LAW 6360	Criminal Procedure	4.00	----------
LAW 6379	Criminal Law/Procedure Seminar	2.00	----------
LAW 6400	Administrative Law	3.00	----------
LAW 6528	International Litigation	2.00	----------
LAW 6538	Immigration Law I	2.00	----------
LAW 6657	Int'L Law Review Note	1.00	----------
	Credits In Progress:	14.00	

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	45.00	41.00	130.00	3.171
OVERALL	45.00	41.00	130.00	3.171

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Katie Cloud
Interim University Registrar

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THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

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AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added*: A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

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http://www.gwu.edu/transcriptkey

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WRITING SAMPLE

The attached writing sample is a research memorandum that I drafted during my fall 2022 externship as a law clerk for the Department of Justice in the Federal Tort Claims Act (FTCA) Section. The focus of the memorandum is on defining the scope of Section 2680(i), which is an exception to the FTCA. This work has not been edited by any of my superiors. I am submitting the attached writing sample with the permission of my supervisors at the Department of Justice, FTCA Section.

MEMORANDUM

From: Cristina Marila
Date: October 12, 2022
Re: Defining Section 2680(i) of the FTCA

DISCUSSION

I. Defining Sovereign Immunity

Under the doctrine of sovereign immunity, the United States is shielded from lawsuits unless Congress consents to a suit being filed against the United States. *United States v. Testan*, 424 U.S. 392, 399 (1976). The Federal Tort Claims Act (FTCA) provides parties with a vehicle to file lawsuits against the United States as if it is a private citizen. *Fed. Deposit Ins. v. Meyer*, 510 U.S. 471, 477 (1994). Specifically, the FTCA waives sovereign immunity over a variety of tort claims and permits suits against federal agencies and their employees. *Id.* However, the applicability of this waiver is not without certain limitations. FTCA claims must have six elements in order to be cognizable. 28 U.S.C. § 1346(b). They must be:

> [1] against the United States, [2] for money damages, . . . [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Id. Additionally, there are exceptions to the FTCA where sovereign immunity is not waived over certain kinds of claims and are therefore barred. 28 U.S.C. § 2680. Section 2680 lists these thirteen exceptions. *Id.* One of the most used exceptions is Section 2680(a).

a. A Brief Analysis of One of the FTCA's Most Frequently Litigated Exceptions: The Discretionary Function Exception

Section 2680(a) of the FTCA retains sovereign immunity over any claim made against a federal agency or employee for, among other acts, the "failure to exercise or perform a

discretionary function or duty." 28 U.S.C. § 2680(a). When assessing whether the discretionary function exception applies, courts look at "the nature of the conduct, rather than the status of the actor." *United States v. Varig Airlines*, 467 U.S. 797, 813 (1984) (noting that the discretionary function exception shields all acts of government employees, regardless of rank, that are "of the nature and conduct" that Congress intends to protect). The discretionary function exception applies to acts committed by a federal employee or agency that involve an element of judgment or choice and grounded in social, economic, or political policy. *Gaubert v. United States*, 499 U.S. 315, 322 (1991) (holding that discretionary acts made by Federal Home Loan Bank Board were acts protected under the FTCA because there were no strict regulations governing their conduct and agency acted based on public policy considerations related to federal oversight of thrift industry).

If a regulation provides an employee with discretion, the existence of the regulation is evidence of a discretionary act protected under the exception. *Id.* at 324 ("When established governmental policy, as expressed or implied by statute, regulation, or agency guidelines, allows a government agent to exercise discretion, it must be presumed that the agent's acts are grounded in policy when exercising that discretion."). To fall under the exception, the regulation granting an employee discretion must not be mandatory and leave authority to agency members to use their own judgment instead of binding employees to a specific protocol. *Id.* at 329. However, if there is no regulation for federal employees to follow, their actions are judged by whether or not they are the kind that the discretionary function exception wants to shield. *Id.* at 322–23 (citing *Varig Airlines*, 467 U.S. at 813). The discretionary function exception in particular intends to protect "governmental actions and decisions based on considerations of public policy." *Id.* (citing *Berkovitz v. United States*, 486 U.S. 531, 537 (1988)).