

No. 22-306

IN THE
SUPREME COURT OF THE UNITED STATES

LINDSAY O'BRIEN QUARRIE,

Petitioner,

v.

STEPHEN WELLS; THE BOARD OF REGENTS OF
THE NEW MEXICO INSTITUTE OF MINING AND
TECHNOLOGY; LORIE LIEBROCK;
ALY EL-OSERY,

Respondents.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Tenth Circuit*

PETITIONER'S SUPPLEMENTAL BRIEF

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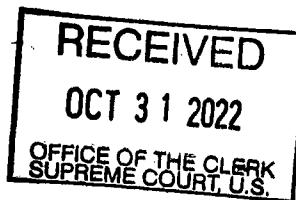


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PETITIONER'S SUPPLEMENTAL BRIEF

This supplemental brief, filed pursuant to Rule 15.8 of this Court, brings to the Court's attention an intervening matter of utmost importance to the proper disposition of the pending petition for a writ of certiorari in this case.

On October 18, 2022, Petitioner Lindsay O'Brien

(1)

Quarrie, accompanied by a witness over the age of eighteen, visited the campus of the New Mexico Institute of Mining and Technology (“NMT”) for the purpose of inspecting his NMT academic and administrative files pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* Upon inspecting his file maintained by the Office of Graduate Studies at NMT, Petitioner discovered therein two (2) copies of former-Dean of Graduate Studies Lorie Liebrock’s April 27, 2012 letter terminating Petitioner’s enrollment in the PhD program at NMT (“Liebrock termination letter”) after receiving his cap and gown and instructions to receive his diploma at the graduation ceremony May 3 2012. *See* App. 1a-12a.

Per the contractual terms of the Settlement Agreement and Mutual Release (“Settlement Agreement”) between Petitioner and Respondent NMT *et al.*, all copies of the Liebrock termination letter, which contained similar language to “terminated from graduate program”, needed to be permanently removed from Petitioner’s NMT academic and administrative files within five business days of the execution date of the Settlement Agreement. *See* Petition at 28 and Pet. App. 18a, 79a-81a, and 109a.

During discovery and briefing in the instant case, Respondents and their legal counsel represented to the district court that all copies of the Liebrock termination letter had been removed from all of Petitioner’s *non-legal* academic and administrative files at NMT, including his public records file in the Office of Graduate Studies.

Petitioner's discovery on October 18, 2022 of two copies of the Liebrock termination letter in his file maintained by the Office of Graduate Studies, which Respondent NMT *et al.* had never previously revealed, demonstrates that Respondent NMT *et al.* made false representations to the district court (and by extension to the court of appeals) and violated 18 U.S.C. § 1512(c), 18 U.S.C. § 1623(a), and NMSA 1978, § 14-2-1 *et seq.*

A. Respondents violated 18 U.S.C. § 1512(c)

By having concealed the two copies of the Liebrock termination letter in Petitioner's public records file maintained by the Office of Graduate Studies, Respondent NMT *et al.* violated 18 U.S.C. § 1512(c), which states the following:

(c) Whoever corruptly –

(1) alters, destroys, mutilates, or *conceals* a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1512(c)(1-2) (emphasis added). Both the district court and the court of appeals would have made a very different decision in the instant case if they had been aware that two copies of the Liebrock termination letter remained in Petitioner's NMT academic and administrative files and that Respondents' contrary testimony was a falsification of the facts. By having failed to permanently remove all copies of the Liebrock termination letter from all of Petitioner's academic and administrative files at NMT within five business days of the date of the execution of the Settlement Agreement, Respondent NMT *et al.* breached the contractual terms of the agreement, thereby providing Petitioner with substantive grounds for unilaterally rescinding the Settlement Agreement, which he did before applying for readmission to NMT in 2016. *See* Petition at 7 and 28-30. Thus, Respondents' proffered reason for refusing to readmit Petitioner to the PhD program at NMT in 2016 and thereafter is nothing but a pretext for their ongoing racial discrimination against him as an African American.

For this reason among others, therefore, the Court should grant the petition for a writ of certiorari, reverse the Tenth Circuit's decision, and remand the case to the district court for further proceedings.

B. Respondents violated 18 U.S.C. § 1623(a)

By having falsely stated to the district court (and by extension to the court of appeals) under oath in depositions and in certified documents filed in the

district court that all copies of the Liebrock termination letter had been removed from Petitioner's *non-legal* academic and administrative files at NMT, Respondents violated 18 U.S.C. § 1623(a), which states the following:

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 1623(a). If the district court and the court of appeals had been aware that Respondents knowingly made a false material declaration as concerns the two copies of the Liebrock termination letter in Petitioner's public records file maintained by the Office of Graduate Studies at NMT, the courts below would have made a very different decision in the instant case.

For this reason among others, therefore, the Court should grant the petition for a writ of certiorari, reverse the Tenth Circuit's decision, and remand the case to the district court for further proceedings.

**C. Respondents violated NMSA 1978, § 14-2-1
*et seq.***

As Petitioner stated under penalty of perjury in his declaration of December 18, 2020 (see Pet. App. 107a-111a), he first inspected his academic and administrative files in person at NMT on May 24, 2016, discovering therein

several documents, including Lorie Liebrock's April 27, 2012 termination letter, which contained identical or similar language to 'Terminated from Graduate Program' on them. This was a clear violation of the letter and spirit of the Settlement Agreement, which required the removal of said language from any related documents to [his] NMT academic transcript in [his] NMT academic and/or administrative files by no later than five (5) business days after the execution of the Settlement Agreement on October 8, 2015.

Pet. App. 109a.

However, after "receiving hundreds of documents from NMT in response to requests for production during discovery in the instant case, it became obvious to [Petitioner] that [he] had not been allowed to access all of the publicly available documents in [his] NMT academic and administrative files when [he] personally inspected them on May 26, 2016 at NMT." *Id.* And "[b]ecause [Petitioner] suspected that many of the documents in [his] NMT academic and administrative files that NMT claimed had been transferred to a legal file

pursuant to the terms of the Settlement Agreement “were in fact still publicly available”, *id.*, Petitioner made a written request on August 28, 2020 under the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*, to the NMT Records Custodian to inspect and copy all documents in Petitioner’s academic and administrative files maintained by the Office of the Registrar and the Office of Graduate Studies at NMT. But

[d]ue to the coronavirus pandemic, [Petitioner] was not able to inspect the requested public records at NMT in person, so the NMT Records Custodian provided [him] with copies of all of the requested public records, among which were numerous documents, including many copies of the Lorie Liebrock April 27, 2012 termination letter, that contained identical or similar language to ‘Terminated from Graduate Program’ on them. All of these documents, whether maintained by the Office of the Registrar or the Office of Graduate Studies at NMT, are publicly available. Thus, NMT is still in clear violation of the letter and spirit of the Settlement Agreement.

Pet. App. 110a.

The veracity of the above statement in Petitioner’s declaration of December 18, 2020 is confirmed by his October 18, 2022 discovery of the two copies of the Liebrock termination letter in his academic and administrative file maintained by the Office of Graduate Studies at NMT. Thus, Respondent NMT *et al.* violated NMSA 1978, § 14-2-

1 *et seq.* by having failed to provide Petitioner with copies of all of the documents in his academic and administrative file maintained by the Office of Graduate Studies at NMT when he requested them on August 28, 2020. And because Respondents are still to this day refusing to provide Petitioner with the requested photocopies of the two copies of the Liebrock termination letter discovered on October 18, 2022 in his file maintained by the Office of Graduate Studies (*see* App. 1a-12a), Respondents' violation of NMSA 1978, § 14-2-1 *et seq.* continues unabated. Respondents are continuing to conceal and indicated that they plan to destroy the two copies of the Liebrock termination letter found by the Petitioner during 18 October Inspection of Records at NMT, thereby further violating 18 U.S.C. § 1512(c)(1).

CONCLUSION

In light of the foregoing, the petition for a writ of certiorari should be granted, the Tenth Circuit's decision reversed, and the case remanded to the district court for further proceedings and injunction with criminal referral under 18 U.S.C. § 1512(c), 18 U.S.C. § 1623(a) to stop the continuing violations.

Respectfully submitted,

October 2022

/s/ Lindsay O'Brien Quarrie
Lindsay O'Brien Quarrie
Petitioner Pro Se

APPENDIX A

Declaration of Lindsay O'Brien Quarrie

I, Lindsay O'Brien Quarrie, declare the following under penalty of perjury:

1. I am over the age of eighteen and have personal knowledge of the factual information conveyed herein.
2. On October 18, 2022, starting at around 1:00 PM MT, I visited the New Mexico Institute of Mining and Technology ("NMT") in Socorro, New Mexico along with a witness (Shaun Fisher) over the age of eighteen for the purpose of inspecting my NMT academic and administrative records pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*
3. The inspection had been approved and scheduled by the NMT Custodian of Records Melissa Tull, and it was to take place in three different locations on the NMT campus: the Office of the Registrar, the Office of Graduate Studies, and the Department of Materials Engineering.
4. At the Registrar's Office, paper copies and a CD of the records in my file were provided for inspection by JoAnn Salome without subterfuge. The contents of the CD included a total of twenty-five copies of Lorie Liebrock's April 27, 2012 letter terminating my enrollment in the PhD program at NMT (NMT.00464-00487 reviewed.pdf and NMT.00424 reviewed.pdf) and one copy of my NMT academic transcript with the words "No Degree Earned" on it (NMT.00001-NMT.00003 reviewed.pdf).

(1a)

5. Upon inspecting the paper copies of my records at the Registrar's Office, I discovered therein one paper copy of the Liebrock termination letter and requested a signed and dated photocopy of it, which Ms. Salome provided without hesitation.

6. After completing the inspection of my records at the Registrar's Office, I proceeded with my witness as instructed by Ms. Salome to the Office of Graduate Studies to meet with the Dean of Graduate Studies Aly El-Osery before 2:00 PM.

7. Upon arrival at the Office of Graduate Studies, we were greeted by Karen Chavez, who began acting belligerently and would later spout false and derogatory accusations at me.

8. Dean El-Osery then provided me with a physical folder of records for inspection.

9. I discovered therein two (2) paper copies of Lorie Liebrock's April 27, 2012 termination letter, which I photographed with my phone. I then requested that Dean El-Osery provide me with signed and dated photocopies of them.

10. But Dean El-Osery refused to comply with my request, stating that he needed approval first from legal counsel.

11. I then explained to Dean El-Osery that I already had legal approval to receive copies of my academic and administrative records at NMT pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*, which was the very purpose of my scheduled visit to the Office of Graduate Studies, and that his refusal to comply with my request was a violation of state law.

12. But Dean El-Osery continued to refuse to comply with my request, stating that he needed legal advice, since this was in his view a legal matter. He then took the two copies of the Liebrock termination letter and left the room to make a phone call.

13. When Dean El-Osery returned, I explained to him that there was no legal issue in providing me with signed and dated photocopies of the designated records, that the signature and date were simply proof of having received the photocopies from the Office of Graduate Studies on that date. As an example, I showed him the signed and dated photocopy of the Liebrock termination letter that Ms. Salome had provided me without hesitation at the Registrar's Office.

14. Ms. Chavez then falsely accused me of having removed the signed and dated Liebrock termination letter from the physical folder provided by the Office of Graduate Studies for my inspection. Despite having no factual basis for her accusation against me and therefore being completely mistaken, Ms. Chavez proceeded nevertheless to call me a "crook".

15. Both my accompanying witness and I strongly objected to Ms. Chavez's false and derogatory accusation, and I made perfectly clear to her that I did not come to the Office of Graduate Studies to be verbally abused and insulted. As an African American, I found her unjustifiable behavior to be yet another manifestation of the kind of racial discrimination and mistreatment that I had experienced before on numerous occasions while a PhD student at New Mexico Tech.

16. Ms. Chavez then asked Dean El-Osery several times if she should call "Scott" from campus security, to which Dean El-Osery initially said no.

17. Dean El-Osery then stated repeatedly that he didn't understand anything about my case against NMT and that he was not an attorney and therefore did not know the law.

18. I responded to Dean El-Osery that ignorance of the law is never an excuse and that as a defendant in my federal lawsuit against NMT for the past several years it was his obligation to be informed about the case and its legal issues.

19. I then reiterated to Dean El-Osery that it was my legal right under the New Mexico Inspection of Public Records Act to receive copies of the designated records and that his refusal to comply with my request violated state law.

20. But Dean El-Osery continued to refuse to provide me with the requested photocopies of the Liebrock termination letter and then asked me and my accompanying witness to wait even longer while he made more phone calls.

21. Upon returning from being on the phone, Dean El-Osery explained that he would not comply with my request for photocopies of the Liebrock termination letter and that he could only provide me with photocopies of the other documents retained in the physical folder at a later date, suggesting that he had been directed to permanently remove and perhaps even destroy the two copies of the Liebrock termination letter.

22. I once again explained to Dean El-Osery that his refusal to comply with my request was in

violation of state law, since I had a right under the New Mexico Inspection of Public Records Act to receive photocopies of the designated documents upon inspecting them in person.

23. At that point, Ms. Chavez told Dean El-Osery that she was going to call "Scott" from campus security, and Dean El-Osery told her to go ahead and do so. My witness and I also told her to do so, since that would perhaps help to resolve the matter.

24. Ms. Chavez then proceeded to call "Scott" from campus security, telling him that "Lindsay Quarrie" was in the office and that he was very "irate", but she failed to inform him about Dean El-Osery's refusal to abide by state law.

25. I then told Dean El-Osery that if he didn't want to make photocopies of the designated records, I would be glad to do so myself, since there was a photocopier located just a few feet away from us, but Dean El-Osery rejected my offer.

26. Dean El-Osery then took back the physical folder of records that he had provided for inspection. Although I told him that we had not yet finished inspecting them, he refused to return either the folder or the two copies of the Liebrock termination letter.

27. My witness and I then decided to leave the Office of Graduate Studies. As we did so, we encountered "Scott" from campus security just outside the office door and explained to him that we were on a state-sanctioned records inspection visit and that Dean El-Osery was refusing to comply with my request for photocopies.

28. “Scott” from campus security said that he had been called about an “irate” person but was told nothing else about the situation – another stereotypical example of the institutional racism prevalent at New Mexico Tech. I then departed with my witness.

29. Due to what I had experienced at the Office of Graduate Studies, I decided to postpone my scheduled records inspection at the Department of Materials Engineering until the next day. (I would later learn that the department intended to prevent the inspection anyhow.)

30. Although I attempted to reschedule the inspection of my academic and administrative records at the Department of Materials Engineering for October 19, 2022, the Department Chair David Burleigh refused to allow the inspection to take place, which was also a violation of the New Mexico Inspection of Public Records Act.

31. On October 18, 2022, I wrote a letter to Dean El-Osery (copied to the NMT Records Custodian Melissa Tull), requesting that he **not** destroy the two copies of the Liebrock termination letter found in my files maintained by the Office of Graduate Studies, since they are of evidentiary value in my current lawsuit against NMT and since their destruction would therefore be a violation of 18 U.S.C. § 1512(c)(1). I also requested that he provide me with signed and dated photocopies of the two copies of the Liebrock termination letter without further delay. And a similar letter requesting photocopies of the same documents was sent directly to Ms. Tull on October 19, 2022.

32. To date, neither Dean El-Osery, nor Ms. Tull, nor anyone else on NMT's behalf has complied with my public records request, which is a violation of the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2022

/s/ Lindsay O'Brien Quarrie
Lindsay O'Brien Quarrie

APPENDIX B

Declaration of Shaun Fisher

I, Shaun Fisher, declare the following under penalty of perjury:

1. I am over the age of eighteen and have personal knowledge of the factual information conveyed herein.
2. On Tuesday, October 18, 2022 at 1:00 pm MT, I met Lindsay Quarrie on the campus of the New Mexico Institute of Mining and Technology in Socorro, New Mexico as a witness to the inspection of his academic and administrative records. He had three prearranged meetings scheduled to inspect his academic records, with the first meeting starting at 1:00 pm at the Registrar's Office, followed by the Graduate Studies Office and then the Materials Engineering Department.
3. The first scheduled meeting at the Registrar's Office began at 1:00 pm with JoAnn Salome, who remained with us throughout the records review. Mr. Quarrie requested a single time-stamped and signed photocopy of a copy of Lorie Liebrock's April 27, 2012 termination letter, which Mrs. Salome was happy to provide.
4. Ms. Salome had also prepared a CD of the documents still in Mr. Quarrie's academic file, which she gave to Mr. Quarrie but which we were unable to review at the time of the meeting.
5. We were at the Registrar's office for about 15 minutes total before proceeding to the next scheduled meeting at the Graduate Studies Office.

(8a)

6. Upon arriving at the Graduate Studies Office, Mr. Quarrie and I were met by secretary Karen Chavez, who then informed Dean Aly El-Osery of our arrival. Mr. Quarrie was presented with his entire public school record on file in the Graduate Studies Office for his review by Dean El-Osery. We were escorted into the adjacent conference room assisted by another graduate school student who sat in to witness the public records review.

7. A few minutes later, Mr. Quarrie discovered a copy of Lorie Liebrock's April 27, 2012 termination letter in his file and requested a time-stamped and signed photocopy of it. This was the exact same document that he had previously requested a time-stamped and signed photocopy of at the Registrar's Office, which Ms. Salome graciously provided.

8. The graduate student sitting in on the review took the Liebrock termination letter to Dean El-Osery to request a photocopy of it. Upon returning, he stated that Dean El-Osery would be arriving shortly with the photocopy. After we waited about 20 minutes, Dean El-Osery returned and dismissed his graduate student witness. He then proceeded to tell us that he did not feel comfortable making a photocopy of the requested document at that time until he sought legal counsel.

9. Mr. Quarrie then showed Dean El-Osery the signed and dated photocopy of the Liebrock termination letter that he had received from the Registrar's Office as an example of what he was requesting from the Graduate Studies Office.

10. Dean El-Osery explained that he was waiting on a call from legal counsel to determine whether he

was able to make a photocopy or not of the letter in Mr. Quarrie's file. This delayed the meeting another 35 minutes, keeping us waiting until he received his call back. During this time, Mr. Quarrie discovered a second copy of the Liebrock termination letter in his file.

11. Meanwhile, the office secretary Ms. Chavez created a very tense, hostile, and accusatory stance towards Mr. Quarrie. She belligerently accused him of trying to steal his own records. When Mr. Quarrie defended himself by showing Ms. Chavez that the document in question was provided to him by the Registrar's Office, Ms. Chavez became very hostile and hurled disparaging and derogatory comments at Mr. Quarrie, specifically calling him a "crook".

12. I was shocked to witness this unprofessional and unjustified treatment of Mr. Quarrie by the secretary of the Graduate Studies Office.

13. Dean El-Osery then returned and said that Mr. Quarrie was allowed to photograph the document that he was requesting a photocopy of but that Dean El-Osery would not comply with his request to make a photocopy of it.

14. Although Mr. Quarrie did take photographs of both copies of the Liebrock termination letter found in his file, he made it clear to Dean El-Osery that photographs were not sufficient and that he still needed official copies of the letter signed and dated by the Graduate Studies Office.

15. But Dean El-Osery remained very firm in his refusal to comply with Mr. Quarrie's request, stating that he did not feel comfortable releasing photocopies of any documents in Mr. Quarrie's file.

He explained that he first needed to review Mr. Quarrie's entire file with legal counsel, and then he would "make and give" only those photocopies that he was allowed to share with Mr. Quarrie, but not until then.

16. Mr. Quarrie reaffirmed that Dean El-Osery was in violation of the New Mexico Inspection of Public Records Act and that this meeting was specifically scheduled for the purpose of making photocopies of the documents in his file, and that Dean El-Osery was not following the law but rather intentionally breaking it by his choice to not comply with Mr. Quarrie's public records request.

17. While Dean El-Osery continued to refuse to comply with Mr. Quarrie's request, Ms. Chavez phoned campus police and indicated that there was an irate male threatening the Graduate Studies Office and that she needed immediate security to handle the situation.

18. An officer appeared within minutes of her call and informed us that he was called up over an irate male in the Graduate Studies Office. The officer quickly saw that there was no reason for the call, since Mr. Quarrie had never acted inappropriately.

19. Dean El-Osery restated that he would not make any photocopies until he met with legal counsel. Mr. Quarrie then thanked Dean El-Osery and the officer and we left. In total, the second meeting at the Graduate Studies Office lasted about 1 hour and 20 minutes.

20. Due to the hostility of the Graduate Studies Office, Mr. Quarrie decided to leave the NMT campus entirely rather than complete his third

12a

scheduled inspection of his records at the Materials Engineering Department. He later learned that the Materials Engineering Department had refused to let him inspect his records there on October 18, 2022, which violated state law.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Shaun Fisher
Shaun Fisher

October 26, 2022